

2246

RAY GILES AND
VONCILE GILES,

PLAINTIFFS

VS

TAYLOR WILKINS, as Sheriff
of Baldwin County, Alabama,
and UNITED STATES FIDELITY
AND GUARANTY COMPANY, A
Corporation,

DEFENDANTS

DEMURRERS

Comes now the Defendants in the above styled cause and demurs to the
Plaintiffs' Complaint and as grounds therefor says:

1.

The Complaint fails to show wherein the Plaintiffs' had a property
interest in the items enumerated therein.

2.

For ought appearing the property seized by H. F. Hall was not the
property of the Plaintiffs.

3.

The Complaint fails to state a cause of action.

4.

The Complaint fails to allege that H. F. Hall, the agent, servant or
employee of Taylor Wilkins was acting within the line and scope of his
employment when he seized the property set out in the Complaint.

5.

For ought appearing H. F. Hall was acting without authority from the
Defendant Taylor Wilkins, when the seizure set out in the complaint was made.

6.

The Complaint fails to show wherein the Defendants were liable for
the acts of H. F. Hall.

FILED

June 10, 1954

ALICE J. SUECK, Clerk

Cecil Chason

BY: Robert M Brantley

Wilters & Brantley

BY: Robert M Brantley
Attorneys for Defendants

The Defendants demand a trial by jury.

Wilters & Brantley

BY: Robert M Brantley
Attorney for Defendants

2

2246

Sam

RAY GILES AND VONGILE GILES

PLAINTIFFS

VS

TAYLOR WILKINS, AS Sheriff of
Baldwin County, Alabama, and
UNITED STATES FIDELITY AND
GUARANTY COMPANY, A CORPORATION.

DEFENDANTS

DEMURRERS

FILED
JUN 10 1954
ALICE J. DICK, Clerk

6/10/54

Admitted to practice

Admitted to practice

RAY GILES AND VONCILE GILES,
Plaintiffs,

VS.

TAYLOR WILKINS, as Sheriff of
Baldwin County, Alabama, and
UNITED STATES FIDELITY AND
GUARANTY COMPANY, a Corporation,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

A M E N D E D C O M P L A I N T

Now come the Plaintiffs in the above styled cause and amend the complaint heretofore filed in said cause so that, when amended, the said complaint will read as follows:

COUNT ONE

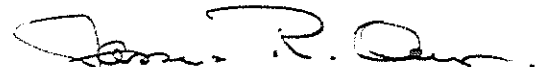
The Plaintiffs claim of the Defendants the sum of ~~Ten Thousand Seven Hundred Twenty (\$10,720.00)~~ *Twenty-Five Hundred (2500.00)* Dollars, as damages for this, that the Defendant, Taylor Wilkins, as Sheriff of Baldwin County, Alabama, acting by and through H. F. Hall as his agent, servant or employee, who was then and there acting within the line and scope of his authority as said agent, servant or employee, did seize, under a writ of detinue issued in the case of S. A. Brown vs. Ray Giles and Voncile Giles, Case No. 2099, in the Circuit Court of Baldwin County, Alabama, the following described personal property, to-wit: 1 International TD9 Front End Loader, Serial No. S/N TDCB29036T2, with one Bucyrus Erie Shovel, No. S/N 60333 and one Dozier Blade and one 1-yard bucket, on to-wit, October 7, 1953, which property was, at the said time, in the possession of the Plaintiffs, and claimed by the Plaintiffs as their property, and Plaintiffs allege that they did not within five days after the said property was seized as aforesaid, give a forthcoming bond, and that S. A. Brown, the Plaintiff, in the said detinue suit, failed to give a forthcoming bond for five days after the expiration of the time allowed the said Defendants in said suit to give said forthcoming bond, and notwithstanding the fact that the Plaintiff in said detinue suit failed or neglected to give said bond, the said Taylor Wilkins, as Sheriff of Baldwin County, neglected or failed

to deliver the above described property to the Plaintiffs in this suit as required by Section 920, Title 7 of the 1940 Code of Alabama, all to the Plaintiffs' damage in the amount aforesaid. Plaintiffs further allege that the Defendant, Taylor Wilkins, was duly elected Sheriff of Baldwin County, Alabama, to serve a term of four years from to-wit, January 15, 1951, that he has served as said Sheriff continuously since said date and that the Defendant, United States Fidelity and Guaranty Company, a Corporation, is, and has been, since December 5, 1950, the surety upon the official bond of the Defendant, Taylor Wilkins, as Sheriff of Baldwin County, Alabama.

FILED

June 16, 1954

ALICE J. DUCK, Clerk



Attorney for Plaintiffs.

2246

3

AMENDED COMPLAINT

RAY GILES AND VONCILE GILES,
Plaintiffs,
VS.

TAYLOR WILKINS, as Sheriff of
Baldwin County, Alabama, and
UNITED STATES FIDELITY AND
GUARANTY COMPANY, a Corporation,
Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

FILED
JUN 16 1954
ALICE J. DUCK, Clerk

At the Court of the Sheriff of the Baldwin County

Robert V. Landon
Attorney

RAY GILES AND VONCILE GILES,
Plaintiffs,

-vs-

TAYLOR WILKINS, as Sheriff of
Baldwin County, Alabama, and
UNITED STATES FIDELITY AND
GUARANTY COMPANY, a Corporation,
Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

PLEAS

Now comes the Defendant, United States Fidelity and Guaranty Company, a Corporation, Defendant in the above styled cause, and enters the following Pleas to the Plaintiff's Complaint as amended.

One:

It is not guilty of the matters alleged in the Complaint.

Two:

That the allegations of the Complaint are untrue.

Three:

That the levy alleged to have been made by the Sheriff's agent was a "paper levy" merely, and will not support this action.

Four:

That the levy alleged to have been made by the Sheriff's agents was merely a "paper Levy" and the Plaintiffs were not thereby damaged.

Five:

That the property of the Plaintiffs alleged to have been levied on by the agent of the Sheriff was not in the agent's view or possession, hence, the alleged levy was thereby ineffectual and will not support this suit.

Six:

That the property alleged to have been levied upon by the Sheriff or his agent was never in the actual possession or physical custody of the Sheriff or his agent and therefore the Plaintiff was not deprived of its use by the Sheriff or his agent, therefore, no damage could have resulted to the Plaintiff by the alleged levy.

Seven:

That the Plaintiff was never deprived of the use of the property by the Sheriff or his agent.

Eight:

That the Plaintiff was never dispossessed of the machinery described.

Nine:

That the property was never removed from the location at which it was placed, housed or kept by the Sheriff or any agent.

Ten:

That the property described in the Bill of Complaint was re-stored to the Plaintiff after the expiration of five (5) days from the time allowed to the Plaintiff to file a forthcoming Bond.

Eleven:

That the levy alleged by the Plaintiff to have been made by the Sheriff, as the Sheriff of Baldwin County, acting by or through an agent, servant or employee, under a writ of detinue issued in the case of S. A. Brown -vs- Ray Giles and Voncile Giles, covered, in addition to the property described in the Bill of Complaint, One (1) GMC 1948 Truck, Motor #270-744017, Serial #9909, which also was not removed from the possession of the Plaintiff herein, and which said property has now been removed or disposed of by the Plaintiff herein, from the yard or premises of the Plaintiff herein, although levied upon in the same manner and in the same action as the property described in this suit.

Twelve:

That the Plaintiffs have shown conclusively that the property allegedly levied upon in the suit of S. A. Brown -vs- Ray Giles and Voncile Giles, was in their possession by selling or otherwise disposing of a truck which was, along with the machinery described in this Bill of Complaint, the subject of the alleged levy.

Thirteen:

That the Plaintiff did not have such a property right in the machinery described in the Complaint at the time of the

alleged levy, as would give them a right to bring this suit.

Fourteen:

That the Plaintiff, Ray Giles, told an agent, servant or employee of the Sheriff to have S. A. Brown, the Plaintiff in the suit of detinue for recovery of the equipment, to pick up the equipment where it was located, as its value was not as great as the amount due S. A. Brown under a Chattle Mortgage Note, therefore, a suit or levy of the equipment was a needless expense.

Fifteen:

That the Plaintiff, Ray Giles, voluntarily relinquished the property described in this complaint to S. A. Brown, who was claiming the property under a Chattle Mortgage Note, therefore, it was not subject to a levy by the Sheriff herein.

Sixteen:

That the Plaintiff, Ray Giles, who had the property herein described in his possession and control at the time of the institution of a suit in detinue by S. A. Brown for the recovery of the equipment, relinquished the equipment to the said S. A. Brown.

Seventeen:

That prior to the institution of this suit, the Plaintiffs herein conveyed by written Bill of Sale, properly Notarized in Baldwin County, Alabama, the property herein described, to S. A. Brown, who was the Plaintiff in a suit in detinue for the recovery of this property from Ray Giles and Voncile Giles.

Eighteen:

That the Plaintiffs made no demand for the return of the property described in this suit.

Nineteen:

That Plaintiffs are estopped from claiming title to the property described in this Complaint, as prior conveyance thereof had been made to S. A. Brown.

Twenty:

That Plaintiffs are estopped from claiming damages for removal of property from their possession, when no removal occurred.

- 4 -

Twenty-one:

The Bond filed by S. A. Brown in the case of S. A. Brown -vs- Ray Giles and Voncile Giles, being Case No. 2099 in the Circuit Court of Baldwin County, Alabama, is a substantial compliance with Section 920 of Title 7 of the Code of Alabama of 1940.

Twenty-two:

That S. A. Brown, Plaintiff in the suit of S. A. Brown -vs- Ray Giles and Voncile Giles, filed with the Clerk of the Circuit Court of Baldwin County, Alabama, in said action, a Bond in words and figures as follows:

"Bond"

STATE OF ALABAMA

BALDWIN COUNTY

KNOW ALL MEN BY THESE PRESENTS, That, S. A. Brown, as principal and Charles J. Ebert, as Surety, are held and firmly bound unto Ray Giles and Voncile Giles, in the sum of Four Thousand Two Hundred Sixty-six and no/100 Dollars (\$4,266.00), to be paid to the said Ray Giles and Voncile Giles, their heirs, executors, administrators or assigns; for which payment, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, administrators, successors and assigns, jointly and severally and firmly by these presents.

Sealed with our seals and dated this 25th day of September, 1953.

The condition of the above obligation is such, that whereas, the above bound S. A. Brown on the day of the date hereof hath obtained that the suit of S. A. Brown -vs- Ray Giles and Voncile Giles, a summons and complaint for the recovery of personal property in specie against the said defendants and asks an endorsement by the Clerk of this Court, "That the Sheriff is required to take the property mentioned in the said Complaint into his possession" as required by law in such cases, which summons and Complaint are returnable to the next term of the Circuit Court of Baldwin

County for said County and which said endorsement is made upon the Plaintiff entering into this Bond.

Now, if the Plaintiff shall fail in this suit and shall pay the Defendants all such costs and damages as they may sustain by reason of the wrongful complaint in said case, then this obligation is to be void, otherwise to remain in full force and effect.

/s/ S. A. Brown SEAL
As Principal

/s/ Charles J. Ebert SEAL
As Surety

Approved: This 28th day of
September, 1953.

/s/ Alice J. Duck
Clerk

This Bond meets the requirements of Title 7, Section 920 of the Code of Alabama of 1940.

Tolbert M. Brantley
[Signature]
Attorneys for Defendant

County for said County and which said endorsement is made upon the Plaintiff entering into this Bond.

Now, if the Plaintiff shall fail in this suit and shall pay the Defendants all such costs and damages as they may sustain by reason of the wrongful complaint in said case, then this obligation is to be void, otherwise to remain in full force and effect.

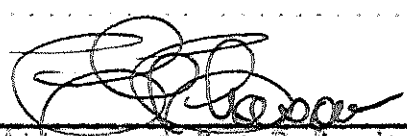
/s/ S. A. Brown SEAL
As Principal

/s/ Charles J. Ebert SEAL
As Surety

Approved: This 28th day of
September, 1953.

/s/ Alice J. Duck
Clerk

This Bond meets the requirements of Title 7, Section 920 of the Code of Alabama of 1940.

Tolbert M. Brantley

Attorneys for Defendant

RAY GILES and VONCILE GILES,
Plaintiffs,

VS.

TAYLOR WILKINS, as Sheriff of
Baldwin County, Alabama, and
UNITED STATE FIDELITY and
GUARANTY COMPANY, a Corporation,
Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW NO. 2246

DEMURRER

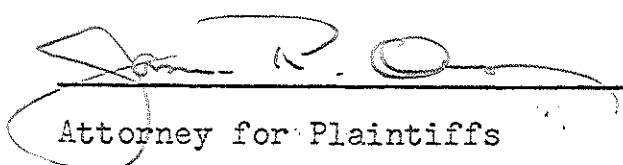
Now come the Plaintiffs in the above styled cause and demurs to pleas numbered 3 through 22 inclusive, heretofore filed separately by the Defendants in said cause and as grounds for said demurrer assigns the following separately and severally:

1. The said plea is irrelevant.
2. The said plea is immaterial.
3. The said plea raises an immaterial issue.
4. The said plea does not set up a valid defense to the Complaint.
5. The said plea does not set up a valid defense to the Complaint and raises an immaterial issue.
6. Said plea is frivolous.
7. Said plea is prolix
8. Said plea is repetitious.
9. No facts are alleged to show that the Plaintiff, in the case of S. A. Brown vs. Ray Giles and Voncile Giles, being Case No. 2099 in the Circuit Court of Baldwin County, Alabama, filed a forthcoming bond in compliance with Section 920 of Title 7 of the 1940 Code of Alabama.
10. It affirmatively appears that the Plaintiff in the Case of S. A. Brown vs. Ray Giles and Voncile Giles, being Case no. 2099 in the Circuit Court of Baldwin County, Alabama, did not file said bond in compliance with Section 920 of Title 7 of the 1940 Code of Alabama, after the expiration of time allowed for Defendant in said suit and before the property involved was delivered to Plaintiff in said suit.

FILED

Nov. 16, 1954

ALICE J. DUCK, Clerk


Attorney for Plaintiffs

RAY GILES AND VONCILE GILES,
 Plaintiffs,

VS.

TAYLOR WILKINS, as Sheriff of
 Baldwin County, Alabama, and
 UNITED STATES FIDELITY AND
 GUARANTY COMPANY, a Corporation,
 Defendants.

IN THE CIRCUIT COURT OF
 BALDWIN COUNTY, ALABAMA
 AT LAW NO. 2246

MOTION FOR NEW TRIAL

Now come the Plaintiffs, by their attorney, and move the court to set aside the jury's verdict in this case and grant them a new trial and as grounds for such motion assigns, separately and severally the following:

1. The verdict is contrary to the law.
2. The verdict is contrary to the evidence.
3. The verdict is contrary to the law and the evidence.
4. The court erred in refusing the following charge requested by the Plaintiffs:

"1. The court charges the jury that if you believe the evidence in this case you must find for the Plaintiffs."

5. The court erred in refusing the following charge requested by the Plaintiffs:

"2. The court charges the jury that if you believe the evidence in this case you must find for the Plaintiffs and fix their damages as the value of the property, described in the complaint, at the time of the taking."

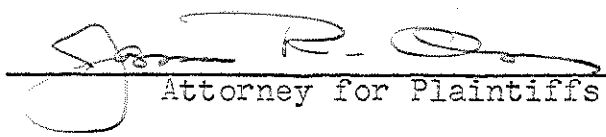
6. The court erred in refusing the following charge requested by the Plaintiff:

"3. The court charges the jury that the element of damages in this case is the full value of the property described in the complaint at the time of the taking."

FILED

Apr. 4, 1955

ALICE J. GUCK, Clerk


 Attorney for Plaintiffs.

RAY GILES and VONCILE GILES,
 Plaintiffs,
 -vs-
 TAYLOR WILKINS, as Sheriff of
 Baldwin County, Alabama, and
 UNITED STATES FIDELITY AND
 GUARANTY COMPANY, a Corporation,
 Defendants.

IN THE CIRCUIT COURT OF
 BALDWIN COUNTY, ALABAMA
 AT LAW

PLEAS

Now comes the Defendant, Taylor Wilkins, as Sheriff of Baldwin County, Alabama, defendant in the above styled cause, and enters the following Pleas to the Plaintiffs' Complaint as amended.

One:

He is not guilty of the matters alleged in the Complaint.

Two:

That the allegations of the Complaint are untrue.

Three:

That the levy alleged to have been made by Defendant's agent was a "paper levy" merely, and will not support this action.

Four:

That the levy alleged to have been made by Defendant's agents was merely a "paper levy" and the Plaintiffs were not thereby damaged.

Five:

That the property of the Plaintiffs alleged to have been levied on by the agent of the Defendant was not in the agent's view or possession, hence, the alleged levy was thereby ineffectual and will not support this suit.

Six:

That the property alleged to have been levied upon by Defendant or his agent was never in the actual possession or physical custody of the Defendant or his agent and therefore the Plaintiff was not deprived of its use by the Defendant or his agent, therefore, no damage could have resulted to the Plaintiff by the alleged levy.

Seven:

That the Plaintiff was never deprived of the use of the property by the Defendant or his agent.

Eight:

That the Plaintiff was never dispossessed of the machinery described.

Nine:

That the property was never removed from the location at which it was placed, housed or kept by the Defendant or any agent.

Ten:

That the property described in the Bill of Complaint was restored to the Plaintiff after the expiration of five (5) days from the time allowed to the Plaintiff to file a forthcoming Bond.

Eleven:

That the levy alleged by the Plaintiff to have been made by the Defendant, as Sheriff of Baldwin County acting by or through an agent, servant or employee under a writ of detinue issued in the case of S. A. Brown -vs- Ray Giles and Voncile Giles, covered, in addition to the property described in the Bill of Complaint, One (1) GMC 1948 Truck, Motor #270-744017, Serial #9909, which also was not removed from the possession of the Plaintiff herein, and which said property has now been removed or disposed of by the Plaintiff herein, from the yard or premises of the Plaintiff herein, although levied upon in the same manner and in the same action as the property described in this suit.

Twelve:

That the Plaintiffs have shown conclusively that the property allegedly levied upon in the suit of S. A. Brown -vs- the Plaintiffs herein was in their possession by selling or otherwise disposing of a truck which was, along with the machinery described in this Bill of Complaint, the subject of the alleged levy.

Thirteen:

That the Plaintiff did not have such a property right in the machinery described in the Complaint at the time of the

alleged levy, as would give them a right to bring this suit.

Fourteen:

That the Plaintiff, Ray Giles, told an agent, servant or employee of the Defendant to have S. A. Brown, the Plaintiff in the suit of detinue for recovery of the Equipment, to pick up the equipment where it was located, as its value was not as great as the amount due S. A. Brown under a Chattle Mortgage ^{note} Note, therefore, a suit or levy of the equipment was a needless expense.

Fifteen:

That the Plaintiff, Ray Giles, voluntarily relinquished the property described in this complaint to S. A. Brown, who was claiming the property under a Chattle Mortgage Note, therefore, it was not subject to a levy by the Defendant herein.

Sixteen:

That the Plaintiff, Ray Giles, who had the property herein described in his possession and control at the time of the institution of a suit in detinue by S. A. Brown for the recovery of the equipment, relinquished the equipment to the said S. A. Brown.

Seventeen:

That prior to the institution of this suit, the Plaintiffs herein conveyed by written Bill of Sale, properly Notarized in Baldwin County, Alabama, the property herein described, to S. A. Brown, who was the Plaintiff in a suit in detinue for the recovery of this property from Ray Giles and Voncile Giles.

Eighteen:

That the Plaintiffs made no demand for the return of the property described in this suit.

Nineteen:

That Plaintiffs are estopped from claiming title to the property described in this Complaint, as prior conveyance thereof had been made to S. A. Brown.

Twenty:

That Plaintiffs are estopped from claiming damages for removal of property from their possession, when no removal occurred.

Twenty-one:

The Bond filed by S. A. Brown in the case of S. A. Brown -vs- Ray Giles and Voncile Giles, being Case No. 2099 in the Circuit Court of Baldwin County, Alabama, is a substantial compliance with Section 920 of Title 7 of the Code of Alabama of 1940.

Twenty-two:

That S. A. Brown, Plaintiff in the suit of S. A. Brown -vs- Ray Giles and Voncile Giles, filed with the Clerk of the Circuit Court of Baldwin County, Alabama, in said action, a Bond in words and figures as follows:

"Bond"

STATE OF ALABAMA

BALDWIN COUNTY

KNOW ALL MEN BY THESE PRESENTS, That S. A. Brown, as principal and Charles J. Ebert, as Surety, are held and firmly bound unto Ray Giles and Voncile Giles, in the sum of Four Thousand Two Hundred Sixty-six and no/100 Dollars (\$4,266.00), to be paid to the said Ray Giles and Voncile Giles, their heirs, executors, administrators or assigns; for which payment, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, administrators, successors and assigns, jointly and severally and firmly by these presents.

Sealed with our seals and dated this 25th day of September, 1953.

The condition of the above obligation is such, that whereas, the above bound S. A. Brown on the day of the date hereof hath obtained that the suit of S. A. Brown -vs- Ray Giles and Voncile Giles, a summons and complaint for the recovery of personal property in specie against the said defendants and asks an endorsement by the Clerk of this Court, "That the Sheriff is required to take the property mentioned in the said Complaint into his possession" as required by law in such cases, which summons and Complaint are returnable to the next term of the Circuit Court of Baldwin

County for said County and which said endorsement is made upon the Plaintiff entering into this Bond.

Now, if the Plaintiff shall fail in this suit and shall pay the Defendants all such costs and damages as they may sustain by reason of the wrongful complaint in said case, then this obligation is to be void, otherwise to remain in full force and effect.

/s/ S. A. Brown SEAL
As Principal

/s/ Charles J. Ebert SEAL
As Surety

Approved: This 28th day of
September, 1953.

/s/ Alice J. Duck
Clerk

This Bond meets the requirements of Title 7, Section 920 of the Code of Alabama of 1940.

FILED
9-14-54
ALICE J. DUCK, Clerk

Robert M Brantley
[Signature]
Attorneys for Defendant

6

PLEAS

#2246

RAY GILES AND VONCILE GILES,

PLAINTIFFS

VS

TAYLOR WILKINS, et al

DEFENDANTS

Filed 9-14-54
Aicef-urich
CNR

RAY GILES AND VONCILE GILES,
Plaintiffs,

VS.

TAYLOR WILKINS, as Sheriff of
Baldwin County, Alabama, and
UNITED STATES FIDELITY AND
GUARANTY COMPANY, a Corporation,
Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW NO. 2246

ORDER DENYING MOTION FOR NEW TRIAL

This day came the parties, by their attorneys, and the plaintiffs motion for a new trial having been argued by counsel being now understood and considered by the court, it is considered, ordered and adjudged by the court that the plaintiffs' motion to grant them a new trial be and the same is hereby overruled.

Dated this 8 day of April, 1955.

Hubert M. Hall
Judge.

RAY GILES AND VONCILE GILES,
Plaintiffs,

VS.

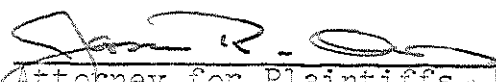
TAYLOR WILKINS, as Sheriff of
Baldwin County, Alabama and
UNITED STATES FIDELITY AND
GUARANTY COMPANY, a Corporation,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW NO. 2246

APPEAL AND SECURITY FOR COSTS

Come the Plaintiffs, in the above styled cause, Ray Giles and Voncile Giles, and hereby appeal to the Supreme Court of Alabama from the final judgment in the Circuit Court of Baldwin County, Alabama, Law Side, rendered in the above styled cause on the 14th day of March, 1955.

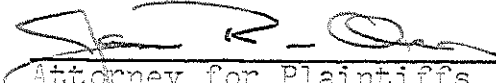

Attorney for Plaintiffs, Ray Giles and
Voncile Giles.

I hereby acknowledge myself security for the costs in
the foregoing appeal.

FILED

April 14, 1955

ALICE I. SNICK, Clerk


Attorney for Plaintiffs, Ray Giles and
Voncile Giles.

Div. No.

CERTIFICATE OF APPEAL (Civil Cases)

No. 2246

Baldwin

County, Circuit Court.

RAY GILES and VONCILE GILES

Plaintiff
vs.

TAYLOR WILKINS, as Sheriff of Baldwin County

Defendant and United States Fidelity and Guarantee Co., A Corp

I, Alice J. Luck

Clerk of Circuit

Court,

of Baldwin

County, Alabama, hereby certify that in the cause of

Ray Giles and Voncile Giles

Plaintiff....,

vs.

Taylor Wilkins, as Sheriff of Baldwin County, Ala., et al

Defendant...

which was tried and determined in this Court, on the 14th day of March 1955

in which there was a judgment for Defendant against Plaintiff, Dollars, in favor of the Plaintiff,

(or judgment for Defendant), the Plaintiff on the 14th day of April

1955 took an appeal to the Supreme Court of Alabama to be holden of and for said State.

I further certify that Ray Giles and Voncile Giles

filed

security for cost of appeal, to the Supreme Court, on the 14th day of April

1955, and that James M. Owen

are sureties on the appeal bond.

I further certify that notice of the said appeal was, on the April

1955, served on Walters and Brantley and C. G. Chason as attorney of record for said

appellee, and that the amount sued for was \$1 Dollars.

(or certain lands) (or personal property)

Witness my hand and seal of this Court, this the 14th day of April 1955

Alice J. Luck
Clerk of the Circuit Court of

Baldwin

County, Alabama

RAY GILES AND VONCILE GILES,
Plaintiffs.

VS.

TAYLOR WILKINS, as Sheriff of
Baldwin County, Alabama and
UNITED STATES FIDELITY AND
GUARANTY COMPANY, a Corporation,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW NO. 2246

TO TAYLOR WILKINS, AS SHERIFF OF BALDWIN COUNTY, ALABAMA, AND
UNITED STATES FIDELITY AND GUARANTY COMPANY, A CORPORATION,
DEFENDANTS OR TOLBERT M. BRANTLEY, HARRY J. WILTERS, JR. AND C.
G. CHASON, AS DEFENDANTS' ATTORNEYS OF RECORD:

Whereas, the Plaintiffs, Ray Giles and Voncile Giles have
prayed for and obtained an appeal to the Supreme Court of Alabama
from the final judgment rendered in the above stated cause by the
Circuit court of Baldwin County, Alabama, Law Side, on the 14th
day of March, 1955, and has given security for the costs of the
said appeal being made returnable to the second Monday in November,
1955:

Now, therefore, you are hereby cited to appear in the
Supreme Court of the State of Alabama on the second Monday in
November, 1955, and defend on said appeal as you think proper so
to do.

WITNESS my hand this 14th day of April, 1955.

David J. Leach
Clerk of the Circuit Court of Baldwin
County, Alabama.

ACCEPTANCE OF SERVICE OF NOTICE OF APPEAL

We hereby accept service of the above notice of appeal
and waive any and all further notice of said appeal and consent that
said cause may be submitted at any time without further notice to us.

Dated this 15th day of April, 1955.

TOLBERT M. BRANTLEY
HARRY J. WILTERS, JR.
C. G. CHASON
Attorneys for Defendants

By Tolbert M. Brantley

DEC 22 1955

THE STATE OF ALABAMA - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1955-56

1 Div. 637

Ray Giles et al.,

v.

Taylor Wilkins as Sheriff etc., et al.,

Appeal from Baldwin Circuit Court,
Bay Minette, Ala.

STAKELY, JUSTICE.

This is a suit by Ray Giles and his wife Vencie Giles (appellants) against Taylor Wilkins, as Sheriff of Baldwin County, Alabama and United States Fidelity and Guaranty Company, a corporation, as surety on the Sheriff's Bond (appellees). The action is for damages against the sheriff for an alleged official wrongdoing in failing to return property to Ray Giles and Vencie Giles which had been taken from them under a writ of detinue issued in a previous case brought by S. A. Brown against Ray Giles and Vencie Giles. The basis for the suit is set out in § 920, Title 7, Code of 1940.

2.

The instant case was tried on the issues made by the complaint and the general issue and resulted in a verdict for the defendants. On the trial of the cause Ray Giles and Voncile Giles (appellants) introduced in evidence a certified copy of the summons and complaint in the aforesaid case of S. A. Brown v. Ray Giles and Voncile Giles. Endorsed on that summons and complaint is a return which reads as follows: "Judgment executed by taking into my possession and storing property described within. This 7 day of October, 1953. Taylor Wilkins, Sheriff, by E. F. Hall, Deputy Sheriff." On the summons and complaint is also the following, "We, the jury, find for the plaintiff for the property sued for and fix the alternate value at \$2200."

On the trial of the instant case Ray Giles testified that he and his wife Voncile Giles were joint owners of the property involved in the detinue suit. He further testified that the property involved in the detinue suit and which was taken on October 7, 1953, by the Sheriff was never returned to him or to his wife.

Mrs. Alice J. Duck, Clerk of the Circuit Court of Baldwin County, Alabama, testified that the plaintiff S. A. Brown in the original detinue suit referred to above did not file a forthcoming bond within ten days after October 7, 1953.

The testimony of S. A. Brown shows that he filed the suit against Ray Giles and Voncile Giles on the 26th day of September, 1953, that he was the holder of the chattel mortgage covering the machinery, that he instructed a Mr. Willard Borganier to go to the clay pit near Fish River and remove a bulldozer which originally belonged to

3.

Mr. Ray Giles, that this was after the suit had been filed and that it was "Okay to get it." Mr. Baryanier got the bulldozer in about three weeks or a month. The bulldozer was first carried to a clay pit around Bonsecour and was then removed to his place (the place of S. A. Brown) on Cotton Bayou, that "it was really in bad shape."

The last sentence of § 920, Title 7, Code of 1940, reads as follows: "If the plaintiff fails to give such bond for five days after the expiration of the time allowed the defendant, the property must be returned to the defendant."

The appellants insist that instead of following the statute and returning the property to the appellants the property was later delivered to S. A. Brown, the plaintiff in the detinue suit. The failure to return the property to the appellants here, as provided by the statute, is the misfeasance under § 920, supra, of which the sheriff is alleged to be guilty and for which damages allegedly lie.

There is no doubt that under § 920, Title 7, Code of 1940, it is the duty of the sheriff where he takes property under a writ of seizure, "to hold the property subject to the defendant's right to have it restored upon giving bond within five days. If the defendant fails to give said bond, the sheriff is authorized to deliver to the plaintiff if he gives bond within the succeeding five days; and if, the plaintiff failed to give said bond, the property should have been restored to the defendant."—Torbert v. McFarland, 172 Ala. 117, 55 So. 311; Burton v. Cefalu, 165 Ala. 362, 51 So. 721; Elrod v. Hammer, 120 Ala. 463, 24 So. 882. Furthermore the return of the sheriff that he has taken possession of the property is conclusive against him. —Ingram, Probate Judge, v. Alabama Power Co., 201 Ala. 13, 75 So. 304.

4.

In the case at bar tendencies of the evidence showed that when Edleigh Steadham, as Deputy Sheriff, accompanied by H. F. Hall, also a Deputy Sheriff and also by one Charlie Griffin, went to serve the summons and complaint they had a conversation with Ray Giles at his home and asked him where the bulldozer could be found and they were told that it was in a certain clay pit. They then explained to him about making bond and asked him if he wanted to give bond and told him how long he would have in which to make the bond. In reply he said, "he owed more on the bulldozer than it was worth and he was not going to make the bond for it himself and to let him have it." Tendencies of the evidence further show that the bulldozer was bulky and the bulldozer was not moved from the place where it was originally located when seized and while no notice was placed on the machine, the deputies considered that the machine was under attachment.

We know of no reason why the appellants could not abandon their rights to the bulldozer or waive the right to restoration provided in § 920. If so, there was no need for the sheriff to return the property to them. In the case of Willoughby v. Jernigan, 6 Ala. App. 270, 60 So. 514, the evidence tended to show that the property seized by the sheriff under the writ of detinue was bulky, cumbersome and quite heavy and practically all of it was situated in the same place where it had been ever since the original suit was commenced. According to the tendencies of evidence, a deputy sheriff went to the home of the defendant and informed him that they wanted to return the property to him and wanted to know at what point he desired the property delivered. They were told by the defendant that he would not receive the property no matter where it was delivered. The court

5.

held that under the circumstances the offer to deliver and refusal to receive dispensed with the duty of doing that which would have been a useless formality, that is of making an actual tender of the heavy or cumbersome property after being informed that it would not be received if tendered. While the cases are not exactly similar, the foregoing authority shows that the sheriff is not required to go through a useless formality when the defendant abandons his rights to the property. Certainly appellants could waive the right to restoration of the property conferred by the statute. —92 C. J. S. pp. 1066-1067.

We, therefore, find no error in the action of the court in submitting to the jury the question in substance as to whether or not the appellants by their conduct and words waived and abandoned their right to the property, nor was there any error in admitting proof of the statements claimed to have been made by Ray Giles.

It is insisted that whatever may have been said to the sheriff by Ray Giles, Vencie Giles, his wife, had nothing to do with the matter and therefore the court was in error in submitting the case to the jury so far as she is concerned. There was no separate assignment of error by Vencie Giles. All the assignments of error which are insisted on here are made jointly in behalf of Ray Giles and Vencie Giles. Since the assignments of error are not good as to Ray Giles we will not consider the situation with reference to Vencie Giles. —Maya Corporation v. Smith, 240 Ala. 371, 199 So. 549; Fields v. Southeastern Fuel Co., 233 Ala. 437, 172 So. 257.

The judgment of the lower court is due to be affirmed.

Affirmed.

Livingston, C. J., Lawson and Merrill, JJ., concur.

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1st Div., No. 637

RAY GILES and VONCILE GILES, Appellants

vs.

TAYLOR WILKINS, as SHERIFF OF BALDWIN COUNTY,
ALABAMA, and UNITED STATES FIDELITY & GUARANTY
COMPANY, Appellees

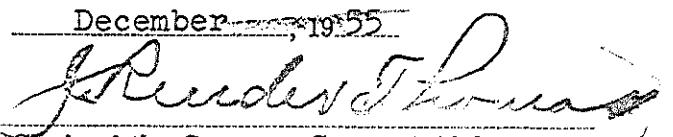
From Baldwin Circuit Court.
No. 2246

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 five 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 22 day of

December, 1955


Clerk of the Supreme Court of Alabama

THE SUPREME COURT OF ALABAMA

October Term, 1955-56

1st Div., No. 637

RAY GILES and VONCILE GILES

Appellant, s

vs.

TAYLOR WILKINS, AS SHERIFF OF
BALDWIN COUNTY, ALABAMA, AND
UNITED STATES FIDELITY & GUARNTY
COMPANY,

Appellee. s

From BALDWIN CIRCUIT Court.
NO. 2246

COPY OF OPINION

BROWN PRINTING CO., MONTGOMERY 1955

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 1955-56

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
RAY GILES and VONCILE GILES, Appellant S,
and

TAYLOR WILKINS, as SHERIFF OF BALDWIN COUNTY, Appellee S,
ALABAMA, AND UNITED STATES FIDELITY & GUARANTY COMPANY,
wherein by said Court it was considered adversely to said appellant S, were brought before our
Supreme Court, by appeal taken, pursuant to law, on behalf of said appellant S:

NOW, IT IS HEREBY CERTIFIED, That it was thereupon considered, ordered, and adjudged by
our Supreme Court, on the _____ day of DECEMBER, 19 55, that said
JUDGMENT of said CIRCUIT Court be in all things
affirmed, and that it was further considered, ordered, and adjudged that the appellant S; ~~and~~

RAY GILES and VONCILE GILES,

and

JAMES R. OWEN, surety 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 22 day of _____

DECEMBER, 19 55

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

THE SUPREME COURT OF ALABAMA

October Term, 19 55-56

1 Div., No. 637

RAY GILES and VONCILE GILES

Appellant,^s

vs.

TAYLOR WILKINS, as SHERIFF OF
BALDWIN COUNTY, ALABAMA, and
UNITED STATES FIDELITY AND
GUARANTY COMPANY, A CORPORATION,
Appellee.^s

From Baldwin Circuit Court.

CERTIFICATE OF
AFFIRMANCE

The State of Alabama,

Baldwin County.

} Filed

this 24 day of Dec 19 55

W. J. Nichols

Ray Giles vs. Jayer Wilkins

JURY LIST

Spring Term, March 14, 1955

NO. NAME OCCUPATION ADDRESS

- ~~1. Thomas V. Abernethy, Jr., butcher, Robertsdale~~
- ~~2. Lavigne Berglin, creamery, Fairhope~~ P1
- ~~3. J. Carlisle Childress, merchant, Foley~~
- ~~4. J. J. Jurkiewicz, merchant, Summerdale~~ P2
5. Joseph L. Lucassen, auto dealer, Foley
6. Irving Kamper, merchant, Fairhope
7. Vernon Wheat, reserve fleet, Bay Minette
- ~~8. Laidie L. Langham, Newport, Bay Minette~~ 101
- ~~9. Jesse Stewart, laborer, Robertsdale~~ 107
- ~~10. Roger Barnhill, farmer, Loxley~~ 104
- ~~11. Robert L. Teem, farmer, Foley~~
12. Barnard Laurendine, laborer, Foley
- ~~13. Edward McDaniel, farmer, Robertsdale~~ 104
14. Robert F. Helton, carpenter, Foley
15. David Golden, merchant, Foley
- ~~16. Edward W. Engel, farmer, Summerdale~~
- ~~17. Joseph Kral, farmer, Robertsdale~~
- ~~18. George McElite, mechanic, Foley~~
- ~~19. E. D. Sweeney, mechanic, Foley~~
- ~~20. Carl Slaughter, farmer, Tensaw~~ P6
21. Brad Neimier, merchant, Fairhope
22. Robert T. Cowles, laborer, Fairhope
23. Marshall N. Harris, farmer, Foley
- ~~24. Charles C. Hand, Jr., real estate, Bay Minette~~ 102
25. Quitman Cooper, veteran, Bon Secour
- ~~26. John A. Ebert, clerk, Foley~~ 106
- ~~27. Elmer G. Anderson, contractor, Fairhope~~
- ~~28. Max Griffin, oil distributor, Foley~~ 103
- ~~29. George Hertel, farmer, Elberta~~
30. John B. Flowers, farmer, Bon Secour
- ~~31. Frank Knowles, electrician, Bay Minette~~ 105
32. J. Hilary Brown, cobbler, Bay Minette
- ~~33. Martin Simmons, surveyor, Bay Minette~~ 103
- ~~34. Herman Tau, butane work, Foley~~
- ~~35. Edna McKenzie, Sr., farmer, Fairhope~~
- ~~36. William Gullidge, farmer, Robertsdale~~
- ~~37. Aaron C. Weaver, merchant, Bay Minette~~
- ~~38. Arthur Stenzil, furniture, Fairhope~~ 105

37
24
13

P. XXXXX X

12. XXXXX X

STATE OF ALABAMA)
 *
 BALDWIN COUNTY)

TO J. FRED THRASHER, CORONER OF BALDWIN COUNTY, ALABAMA:

You are hereby commanded to summon Taylor Wilkins, as Sheriff of Baldwin County, Alabama, 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 the same, then and there to answer the Complaint of Ray Giles and Voncile Giles.

WITNESS my hand this 7th day of May, 1954.

Alice J. Duck
 Clerk.

STATE OF ALABAMA)
 *
 BALDWIN COUNTY)

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon United States Fidelity and Guaranty Company, 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 the same, then and there to answer the Complaint of Ray Giles and Voncile Giles.

WITNESS my hand this 7th day of May, 1954.

Alice J. Duck
 Clerk.

Defendant United States Fidelity and Guaranty Company, a Corporation, has an office at 102 North Royal Street, Mobile, Alabama.

FILED

May 7, 1954

ALICE J. DUCK, Clerk.

RAY GILES AND VONCILE GILES,
Plaintiffs,

VS.

TAYLOR WILKINS; as Sheriff of
Baldwin County, Alabama, and
UNITED STATES FIDELITY AND
GUARANTY COMPANY, a Corporation,
Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

C O M P L A I N T

COUNT ONE

The Plaintiffs claim of the Defendants the sum of Ten Thousand Seven Hundred Twenty (\$10,720.00) Dollars, as damages for this, that the Defendant, Taylor Wilkins, as Sheriff of Baldwin County, Alabama, acting by and through H. F. Hall as his agent, servant or employee, did seize, under a writ of detinue issued in the case of S. A. Brown vs. Ray Giles and Voncile Giles, Case No. 2099, in the Circuit Court of Baldwin County, Alabama, the following described personal property, to-wit: 1 International TD9 Front End Loader, Serial No. S/N TDCB29036T2, with one Bucyrus Erie Shovel, No. S/N 60333 and one Dozier Blade and one 1-yard bucket, on to-wit, October 7, 1953, which property was, at the said time, in the possession of the Plaintiffs, and Plaintiffs allege that they did not within five days after the said property was seized as aforesaid, give a forthcoming bond, and that S. A. Brown, the Plaintiff, in the said detinue suit, failed to give a forthcoming bond for five days after the expiration of the time allowed the said Defendants in said suit to give said forthcoming bond, and notwithstanding the fact that the Plaintiff in said detinue suit failed or neglected to give said bond, the said Taylor Wilkins, as Sheriff of Baldwin County, neglected or failed to deliver the above described property to the Plaintiffs in this suit as required by Section 920, Title 7 of the 1940 Code of Alabama, all to the Plaintiffs' damage in the amount aforesaid. Plaintiffs further allege that the Defendant, Taylor Wilkins, was duly elected Sheriff of Baldwin County, Alabama, to serve a term of four years from to-wit,

January 15, 1951, that he has served as said Sheriff continuously since said date and that the Defendant, United States Fidelity and Guaranty Company, a Corporation, is, and has been, since December 5, 1950, the surety upon the official bond of the Defendant, Taylor Wilkins, as Sheriff of Baldwin County, Alabama.

FILED

May 7, 1954

APR 1 1954



Attorney for Plaintiffs.

Accepted on the
13th day of May 1954
Taylor Wilkins, Sheriff

249 1 432
SUMMONS AND COMPLAINT

RAY GILES AND VONCILE GILES,
Plaintiffs,

VS.

TAYLOR WILKINS, Sheriff of
Baldwin County, Alabama, and
UNITED STATES FIDELITY AND
GUARANTY COMPANY, a Corporation.

EXECUTED
This 14 day of May 1954
by serving a copy of the within on
R. E. Money Agent
W. H. HOLCOMBE, Sheriff
By M. B. B. D. S.

1954
R. E. Money
Agent

FILED
MAY 7 1954
ALICE J. BUCK, Clerk

JAMES R. OWEN
ATTORNEY-AT-LAW
BAY MINETTE, ALABAMA

489 432
SUMMONS AND COMPLAINT

RAY GILES AND VONCILE GILES,
Plaintiffs,

VS.

TAYLOR WILKINS, Sheriff of
Baldwin County, Alabama, and
UNITED STATES FIDELITY AND
GUARANTY COMPANY, a Corporation.

EXECUTED

This 14 day of May, 1954
by serving a copy of the within on

W. H. HOLCOMBE, Sheriff

By *W. H. Holcombe* D. S.

19B
10
FILED
MAY 7 1954
ALICE J. BUCK, Clerk

JAMES R. OWEN

ATTORNEY-AT-LAW

BAY MINETTE, ALABAMA

RAY GILES AND VONCILE
GILES,

PLAINTIFFS

VS

TAYLOR WILKINS, AS Sheriff of
Baldwin County, Alabama, and
UNITED STATES FIDELITY AND
GUARANTY COMPANY, a corporation,

DEFENDANTS

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW

ADDITIONAL DEMURRERS

Comes now the Defendants in the above styled cause and files these
additional demurrers:

A.

The complaint fails to state whether the bond of the United States
Fidelity and Guaranty Company, a corporation, is oral or in writing.

B.

The complaint fails to show wherein the Defendant United States
Fidelity and Guaranty Company, a corporation, is liable to the Plaintiff.

C.

For aught appearing the liability of United States Fidelity and Guaranty
Company does not include suits of this nature.

D.

The complaint fails to set out terms of the bond of the United States
Fidelity and Guaranty Company, a corporation.

FILED
July 6, 1954
ALICE J. BUCK, Clerk

Walters & Brantley

By:

Attorney for the Defendants

RAY GILES AND
VONCILE GILES,

PLAINTIFFS

VS

TAYLOR WILKINS, AS Sheriff of
Baldwin County, Alabama, and
UNITED STATES FIDELITY AND
GUARANTY COMPANY, A corporation,

DEFENDANTS

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW

Comes Now the Defendants in the above styled cause and demur to the
Plaintiffs' complaint as amended and for grounds therefor say as follows:

1.

The Plaintiffs fail to state a cause of action.

2.

The Complaint fails to show wherein the Defendants are liable for
the amount sued for or any amount.

FILED

July 6, 1954

ALICE L. DICK, Clerk

Wilters & Brantley

BY:

Albert M. Brantley
Attorneys for Defendants

9

MINUTE ENTRY

February 15, 1955. Came the parties by their attorneys and the plaintiffs files demurrer to defendants pleas numbered 3 through 22 inclusive, and the same being heard and considered by the court, it is, therefore, ordered and adjudged by the court that the said demurrer be and it is hereby sustained as to defendants pleas numbered 3 through 22 inclusive.

(5)

MINUTE ENTRY

August 17, 1955. Came the parties by their attorneys and the defendants filed ~~demurrer~~ demurrer to plaintiffs amended complaint, and the same being heard and considered by the court, it is, therefore, ordered and adjudged by the court that the said demurrer be and it is hereby overruled.

5

Judgt
overruling
denied

8-17-85

15

citron

County for said County and which said endorsement is made upon the Plaintiff entering into this Bond.

Now, if the Plaintiff shall fail in this suit and shall pay the Defendants all such costs and damages as they may sustain by reason of the wrongful complaint in said case, then this obligation is to be void, otherwise to remain in full force and effect.

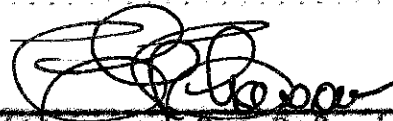
/s/ S. A. Brown SEAL
As Principal

/s/ Charles J. Ebert SEAL
As Surety

Approved: This 28th day of
September, 1953.

/s/ Alice J. Duck
Clerk

This Bond meets the requirements of Title 7, Section 920 of the Code of Alabama of 1940.

Tolbert M. Brantley

Attorneys for Defendant