

2907

EMMA LOU BEAVERS and VAN P.
BEAVERS,

Plaintiffs,

VS.

ARTHUR HARRIS,

Defendant .

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 2907

AMENDED PLEA

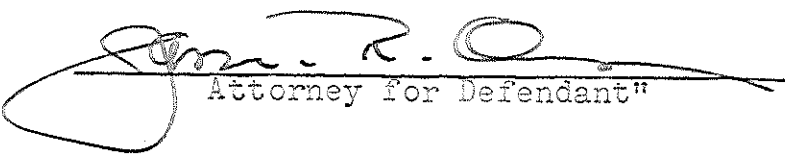
Now comes the Defendant, by his attorney, and amends the plea heretofore filed in this cause, so that as amended the said plea will read as follows:

"Now comes the Defendant, by his attorney, and for pleas to the Complaint heretofore filed in this cause, says:

1. Non detinet.

2. The personal property, for the recovery of which this suit was brought, was purchased by the Defendant from the ^{former} Plaintiff, Emma Lou Beavers, on to-wit, January 14, 1956, and possession of said property was delivered to him on that date by the ^{former} Plaintiff, Emma Lou Beavers. On the date of the purchase of said property by the Defendant on to-wit, the 14th day of January, 1956, the Defendant went with the ^{former} Plaintiff, Emma Lou Beavers, to the office of C. B. Delhomme, Inc., and executed a chattel mortgage to said C. B. Delhomme, Inc., to secure the balance of the purchase price due on the said property from the Plaintiffs under a previous chattel mortgage from the Plaintiff, Van P. Beavers to C. B. Delhomme, Inc. Defendant further says that on the said date he paid to C. B. Delhomme, Inc., the sum of, to-wit, Four Hundred Sixteen and 30/100 Dollars (\$416.30) to apply on the amount due said C. B. Delhomme, Inc., from the Plaintiff ^{Van P. Beavers} on the purchase price of the said property, and since the said date has fully and completely paid the entire balance of the purchase price of said property, to-wit, Nine Hundred Eighty-one Dollars (\$981.00). Wherefore, Defendant prays that he be discharged with his reasonable costs expended by him in the defense of this matter.

3. Defendant alleges that heretofore, on, to-wit, January 14, 1956, he became the purchaser of the legal title to the property sued for; that he purchased the same in good faith and paid a valuable consideration therefor, to-wit, Nine Hundred Eighty-one Dollars (\$981.00), and that he had no notice and knew no fact sufficient to put him on inquiry as to the title of any person other than his vendor, at the time of his purchase and before the time he paid the purchase money for the said property.


Attorney for Defendant"

EMMA LOU BEAVERS and VAN P.
BEAVERS,

Plaintiffs,

VS.

ARTHUR HARRIS,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 2907

NOTICE

Pursuant to the provisions of Act No. 375 enacted by the Legislature of Alabama and approved September 8, 1955, (General Acts of Alabama, 1955 Session, Volume 2, pages 901-7), notice is hereby given that the Defendant desires to take the testimony of the Plaintiffs by deposition upon oral examination for the purpose of discovery or for the use as evidence in the action or for both purposes.

Notice is further given that the said testimony will be taken in the office of Conklin and Harold, Room 509, State National Building, Houston, Texas, at 2:00 o'clock P. M. on May 11, 1956.


Attorney for Defendant.

I hereby certify that I delivered a copy of the foregoing notice to C. LeNoir Thompson, Esquire, the attorney for the Plaintiffs, on this the 3rd day of May, 1956.


Attorney for Defendant.

EMMA LOU BEAVERS and VAN P.
BEAVERS,

Plaintiffs,

VS.

ARTHUR HARRIS,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

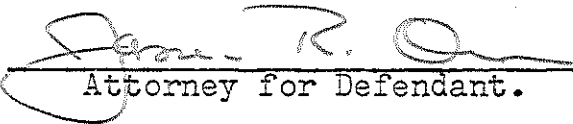
AT LAW

NO. 2907

PLEA

Now comes the Defendant, by his attorney, and for plea
to the Complaint heretofore filed in this cause, says:

1. Non detinet.


Attorney for Defendant.

EMMA LOU BEAVERS and VAN P.
BEAVERS

Plaintiffs

VS

ARTHUR HARRIS,


Defendant

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW. NO. 2907

NOTICE

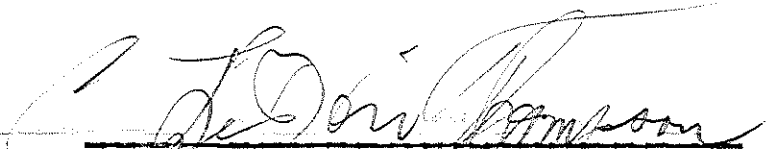
Pursuant to the provisions of Act No. 375 enacted by the Legislature of Alabama and approved September 8, 1955 (General Acts of Alabama, 1955 Session, Volume 2, pages 901-7), notice is hereby given that the Plaintiffs desire to take the testimony of Arthur Harris by deposition upon oral examination for the purpose of discovery or for the use as evidence in the action or for both purposes.

Notice is further given that the said testimony will be taken in the Court House in Bay Minette, Alabama at 10:00 A.M., on June 2, 1956.


Attorney for Plaintiffs.

I hereby certify that I delivered a copy of the foregoing notice to James R. Owen, the attorney for the Defendant, on this the 26 day of May, 1956.

FILED
MAY 26 1956
ALICE J. DUCK, Clerk


Attorney for Plaintiffs.

EMMA LOU BEAVERS and VAN P.
BEAVERS,

Plaintiffs,

VS.

ARTHUR HARRIS,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA


AT LAW

NO. 2907


NOTICE

Pursuant to the provisions of Act No. 375 enacted by the Legislature of Alabama and approved September 8, 1955, (General Acts of Alabama, 1955 Session, Volume 2, pages 901-7), notice is hereby given that the Defendant desires to take the testimony of Mrs. Inez B. Hamilton by deposition upon oral examination for the purpose of discovery or for the use as evidence in the action or for both purposes.

Notice is further given that the said testimony will be taken in the office of Conklin and Harold, Room 509, State National Building, Houston, Texas, at 2:00 o'clock P. M. on May 11, 1956.


Attorney for Defendant.

I hereby certify that I delivered a copy of the foregoing notice to C. LeNoir Thompson, the attorney for the Plaintiffs, on this the 2nd day of May, 1956.


Attorney for Defendant.

STATE OF ALABAMA,
Baldwin County.

BOOK 016 PAGE 131

KNOW ALL MEN BY THESE PRESENTS, That We, Emma Lou Beavers and Van P. Beavers

as principal, and _____

as surety, are held and firmly bound unto Arthur Harris

in the sum of Two Thousand (\$2000.00) - - - - - DOLLARS,

to be paid to the said Arthur Harris, his 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 and administrators, jointly and severally and firmly,
by these presents. Sealed with our seals, and dated this _____ day of _____
in the year of our Lord, 19_____

The condition of the above obligation is such, That whereas the above bound Emma Lou Beavers
and Van P. Beavers, on the day of the date hereof hath obtained at the suit of
Emma Lou Beavers and Van P. Beavers vs. Arthur Harris,

a summons and complaint for the recovery of personal property in specie against said defendant and asks
an endorsement by the Clerk of this Court "That the Sheriff is required to take the property mentioned in
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 said County, and which said endorsement is made upon
the plaintiff entering into this bond.

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

Emma Lou Beavers (L.S.)

Van P. Beavers (L.S.)

Ms Sadie L. Simpson (L.S.)

Rabek R. Zahang (L.S.)

Approved this 21 day of April 19 56

Archie J. Smith
Clerk.

STATE OF ALABAMA)
 *
 BALDWIN COUNTY)

KNOW ALL MEN BY THESE PRESENTS, THAT I, Arthur W. Harris, Jr., as principal, and L. D. Owen, Sr., and F. B. Newton, as sureties are held and firmly bound unto Emma Lou Beavers and Van P. Beavers in the sum of Four Thousand Dollars (\$4000.00) for the payment of which well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly, severally, and firmly by these presents.

Sealed with our seals and dated this the 26th day of April, 1956.

The condition of the above obligation is such, that whereas the said Emma Lou Beavers and Van P. Beavers did on to-wit, the 20th day of April, 1956, sue out of the Circuit Court of Baldwin County a Writ of Detinue directed to any sheriff of the State of Alabama, and commanding him to take in his possession the following property sued for in said action of detinue, to-wit:

One 14½ foot Correct Craft inboard 62 Gray Marine,
 Coast Guard No. 22P63.

which said Writ was placed in the hands of Taylor Wilkins, Sheriff of Baldwin County on the 21st day of April, 1956, *and received by him on April 21, 1956* by taking into his possession the above described property and whereas the above bound Arthur W. Harris, Jr., also known as Arthur Harris, Defendant in said suit, has, within five days from the execution of said Writ, entered into this bond as required by law, and thereby obtained possession of said property levied on.

Now, if the said Arthur W. Harris, Jr., shall defend said suit to effect, or if being cast therein he shall, within thirty days after judgment, deliver the property aforesaid to the Plaintiffs and pay all such costs and damages as may have accrued from the detention thereof, then, in either of said events, this obligation to be null and void, otherwise to remain in full force and effect.

ARTHUR W. HARRIS, JR.

By  As his Attorney

L. B. Newton (SEAL)

L. B. Newton Jr (SEAL)

Taken and approved on this the
26th day of April, 1956.

L. B. Wilkins
Sheriff

By _____
Deputy Sheriff

EMMA LOU BEAVERS and
VAN P. BEAVERS

PLAINTIFF

VS

ARTHUR HARRIS

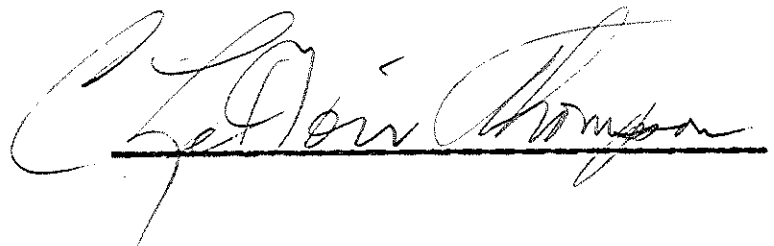
DEFENDANT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW

CASE NO. 2907

Comes C. LeNoir Thompson, Attorney for Van P. Beavers, Plaintiff in
said cause and acknowledges himself liable for costs in said matter.



OFFICE OF
CLERK OF THE SUPREME COURT
STATE OF ALABAMA
MONTGOMERY

J. RENDER THOMAS
CLERK

FEBRUARY 28, 1957

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

In re: 1 Div. 685
Van P. Beavers vs.
Arthur Harris

Dear Mrs. Duck:

The Supreme Court today overruled the application for rehearing filed by the appellee in the above case on January 2, 1957, and extended the opinion as originally announced on December 21, 1956, per page 5 "On Rehearing" herewith enclosed.

Since the Certificate of Reversal and Copy of Opinion were not recalled from you pending consideration of the application for rehearing, I will thank you to attach page 5 enclosed to the copy of opinion previously sent you in order to complete your copy.

Yours very truly,


Clerk, Supreme Court

JRT/ld

Encl: Page 5 "On Rehearing."

VAN P. BEAVERS

PLAINTIFF

VS

ARTHUR HARRIS

DEFENDANT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW.

CASE NO. 2907

MOTION FOR A NEW TRIAL

Now comes the Plaintiff in the above styled cause and moves the court to set aside the judgment and verdict heretofore rendered in said cause and to grant to the Plaintiff a new trial in said cause and for grounds for said motion assigns the following:

1. For that said judgment was obtained as the result of accident, surprise, or mistake.
2. For that said judgment and verdict were contrary to law.
3. That said judgment and verdict are not sustained by the preponderance of the evidence.

4. For that all of said parties being non-residents, the Plaintiff was deprived of the evidence of a material witness who resided beyond the jurisdiction of this court and was not present due to a sickness as set out in the attached affidavit.

5. For that the judgment and verdict entered in said cause are contrary to the great weight and preponderance of the evidence in said cause.

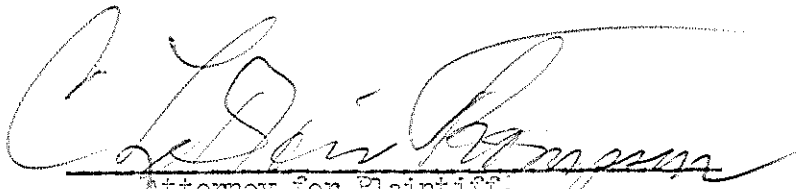
6. For that the verdict of the court is contrary to the evidence in that the cause being tried on the law side of this Honorable Court and there being no competent testimony on the part of the Defendant to show title in the said Defendant.

7. For that said judgment and verdict are contrary to the evidence in said cause in that the said cause being a detinue action, the court considered matters other than those provided by law and the rules of this Honorable Court in a detinue action.


8. The testimony of a witness was prevented, because of a sickness, from testifying, would have constituted a complete answer to Defendants allegations and that said witness can now be available for hearing in this Honorable Court and that said witness would have testified in accordance with an affidavit of said witness, Emma Lou Beavers, attached hereto and made a part of this motion.

9. This Plaintiff further avers that as hereinbefore stated he has a full and complete cause of action and a full adequate and complete defense to the testimony of the Defendant in this cause and that if properly presented to this court in his opinion the judgment would have been in favor of the Plaintiff, that he has not had his day in court for the reason herein above stated and that the ends of justice require that this judgment and verdict be set aside and a new trial granted.


WHEREFORE the premises considered this defendant moves the court to set aside the judgment and verdict heretofore rendered in said cause and grant to the Plaintiff a new trial herein.


Attorney for Plaintiff.

STATE OF ALABAMA
BALDWIN COUNTY

Before me , a Notary Public, in and for said State and County personally appeared C. LeNoir Thompson who is known to me and who being duly and legally sworn deposes under oath as follows:

That his name is C. LeNoir Thompson, that he is the attorney for Plaintiff in said cause, that the facts alleged in the foregoing petition are true and correct to the best of his information, knowledge and belief.


Attorney for Plaintiff.

Sworn to and subscribed before me this 25 day of June, 1956.


Notary Public, Baldwin County, Alabama.

THE STATE OF TEXAS)
)
COUNTY OF HARRIS)

BEFORE me, the undersigned authority, on this day personally appeared Emma Lou Beavers, who, after being duly sworn, disposes and says that:

I, Emma Lou Beavers, do hereby further state supplemental to my affidavit executed on the 15th day of June, 1956, in reference to Cause No. 2907 in the Circuit Court of Baldwin County, Alabama, styled Van P. Beavers -vs- Arthur Harris, that if I had been present at said trial I would have testified that I have never had an interest in the boat which is the subject matter of this suit; that I never told the Defendant, Arthur Harris, that said boat belonged to me or that I had an interest in said boat; that I never exhibited a Coast Guard registration certificate to the defendant, Arthur Harris, and that to my knowledge the Defendant never saw a Coast Guard Registration Certificate pertaining to said boat.

I would have also further testified that I was not present when the Plaintiff, Van P. Beavers, purchased said boat; that to my knowledge my name does not appear on any of the records pertaining to said boat at the company which held the mortgage on same; that if my name is on any records pertaining to the boat, it is there in error.

I would have further testified that the Defendant and I, after having secured the Plaintiff's permission to use said boat, went to the Plaintiff's residence to get it but that I did not state to anyone present that "I have come for my boat", or words to that effect.


Emma Lou Beavers
Emma Lou Beavers

SWORN AND SUBSCRIBED to before me on this the 21st day
of June, 1956.

VICTOR R. BLAINE
Notary Public in and for Harris County, Texas
My Commission Expires June 1, 1957

Victor R. Blaine
Notary Public in and for
Harris County, T e x a s

VAN P. BEAVERS

PLAINTIFF

VS

ARTHUR HARRIS

DEFENDANT

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW.

CASE NO. 2907

The foregoing application for a rehearing, having been filed in this cause and the same having been called to the attention of the Court, the Court is of the opinion that the same should be, and it hereby is, set down for hearing on the 29 day of June, 1956, at 10 A. M., and that the Defendant be given notice of the filing of said application by the delivery to him by the Register of this Court of a copy of said application and this order.

Dated this 26 day of June, 1956.

Hubert M. Hall
CIRCUIT JUDGE.

TO JAMES OWEN, His Attorney at Law:

You will please take notice that the foregoing petition will be called to the attention of the Honorable H. M. Hall, Judge of said Court, at his office in the Courthouse of Baldwin County, at Bay Minette, Alabama, on the 29 day of June, 1956, 10 A. M., at which time and place you may attend if you so desire.

C. L. Davis Thompson
Attorney for Plaintiff.

The within petition is on this day presented to me and I will at the Court House at Bay Minette, in Baldwin County, Alabama, on the 29 day of June, 1956, 10 A. M., hear the application made therein.

Dated this 26 day of June, 1956.

Hubert M. Hall
CIRCUIT JUDGE.

6/29/56 This being the day regularly set for hearing this motion and the Court after hearing arguments of attorneys in the afternoon the said motion should be overruled and denied. It is therefore ordered by the court that said motion be and it is hereby overruled and denied. Hubert M. Hall Judge

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 19 56-57

To the CLERK of the CIRCUIT Court of _____
BALDWIN County, Greeting:

Whereas, the Record and Proceedings of the CIRCUIT Court _____
of said county, in a certain cause lately pending in said Court between
VAN P. BEAVERS, Appellant,
and
ARTHUR HARRIS, Appellee,

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

APPELLEE'S MOTION TO STRIKE APPELLANT'S BRIEF DENIED, WHEREUPON:

Now, it is hereby certified, That it was thereupon considered, ordered, and adjudged by our Su-
preme Court on the 21 day of DECEMBER, 19 56, that said JUDGMENT
of said CIRCUIT Court be reversed and annulled, and the cause remanded to said court

for further proceedings therein; and that it was further considered, ordered, and adjudged that the
appellee: ~~xxxx~~ Arthur Harris, 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 21 day of
DECEMBER, 19 56
J. Render Thomas
Clerk of the Supreme Court of Alabama.

DEC 21 1956

THE STATE OF ALABAMA - - - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1956-57

1 Div. 685

Van F. Beavers

v.

Arthur Harris

Appeal from Baldwin Circuit Court

SIMPSON, JUSTICE

This is an appeal from a judgment for the defendant in a statutory action of detinue. The suit was before the court, without a jury, for the recovery of a certain 14-1/2 foot inboard motorboat.

Appellee's motion to strike the appellant's brief for non-compliance with rules 9 and 11 of the Revised Rules of the Supreme Court, Code of 1940, Tit. 7, Appendix, will first be considered. Rule 11 requires that the briefs be signed by the party or his attorney and that a certificate of service be signed in the same manner. The appellant's brief, as it

3.

payments not being made, nor has the boat company foreclosed the chattel mortgage. The plaintiff kept the boat in his possession from the date of purchase until sometime in January, 1956, at which time he gave his former spouse permission to come to his house, get the boat and use it. In June of 1956, he learned for the first time that the defendant claimed to own the boat and was in actual possession of it. The plaintiff testified that he did not sell the boat to the defendant and that he did not sign a bill of sale to anybody.

To show legal title, the plaintiff introduced into evidence an instrument which was a combination bill of sale and chattel mortgage covering the boat. The instrument showed that C. B. Delhomme, Inc. sold to the plaintiff the boat in question on August 26, 1954, reserving a chattel mortgage to secure the unpaid balance. The purchase price was \$2292.70. After the down payment, the balance of \$1692.70 was to be paid in 24 monthly installments. The instrument was stamped at its foot as follows:

"Paid
Apr. 20, 1956
J.E.
C. B. Delhomme, Inc. 2101 Leeland."

This instrument was mailed to the plaintiff by the seller of the boat in April of 1956.

The defendant admitted possession of the boat and attempted to show ownership of it by a transfer of title from Emma Lou Beavers and by a chattel mortgage from the boat company which he paid off. With respect to this alleged purchase, however, the most that his evidence showed was that at the solicitation of Emma Lou Beavers, he went to the plaintiff's home and with her got the boat, later advanced her \$100.00 to pay to the finance company on the delinquent payments, and then later

2.

appears before us at this time, complies with the rule.

With respect to compliance with rule 9, we must say that the appellant's brief is rather inexpertly drawn. But we are inclined to exercise our discretion in the matter and give consideration to it. - Wood v. Wood, 263 Ala. 334, 82 So. 2d 556; Quinn v. Hannon, 262 Ala. 630, 80 So. 2d 239; Schmale v. Bolte, 255 Ala. 115, 50 So. 2d 262; Simmons v. Cochran, 252 Ala. 461, 41 So. 2d 573.

The substantial import of appellant's assignments of error and argument in brief is that the judgment of the trial court was contrary to the great weight of the evidence. When, as here, testimony is taken ore tenus before the trial court, we review the case under the well known rule of presumption and will not disturb the finding below unless plainly and palpably wrong or contrary to the great weight of the evidence. - Pritchett v. Wade, 261 Ala. 156, 73 So. 2d 533; Malman v. Bullard, 261 Ala. 115, 73 So. 2d 351; Sparisman v. Williams, 260 Ala. 472, 71 So. 2d 274. As we see it, the judgment in the instant case is plainly and palpably wrong and against the great weight of the evidence.

A brief summary of the plaintiff's evidence shows the following: The plaintiff purchased the motorboat in question in his own name on August 26, 1954, which was some two years after his divorce from his former wife, Emma Lou Beavers. The plaintiff and his ex-wife were on friendly terms but she was not a party to the purchase of the boat. The plaintiff gave Emma Lou money with which to make payments on the boat for him, and she used the boat on occasions. He does not know whether she actually made the payments on the boat but he did not receive any complaints from the boat company as to the

4.

paid off the balance due to the finance company amounting to \$381.20. His exhibit No. 1 was an instrument similar in form to the plaintiff's exhibit No. 1, dated January 14, 1956, reciting a consideration of \$561.74 payable in monthly installments and stamped:

"April 18, 1956
Release hereby filed under 564 634
W. D. Miller, County Clerk,
By: C. Deputy".

It appears from the evidence that the plaintiff proved legal title and right to possession of the motorboat and that the defendant did not introduce any evidence that would defeat the plaintiff's rights. The principle is well established that a plaintiff may recover in detinue if he shows the legal title and the right of the immediate possession of the chattel. - Lafue v. Lovenan, Joseph & Loeb, 220 Ala. 2, 127 So. 241; Industrial Finance Corp. v. Turner, 215 Ala. 460, 110 So. 904; Crow v. Beck, 203 Ala. 444, 94 So. 580. The most that the defendant proved was some sort of equitable interest in the boat which was not sufficient to defeat the plaintiff's legal title and right to possession.

We, therefore, entertain the view that the judgment was against the great weight of the evidence and must be reversed.

Reversed and remanded.

Livingston, C.J., Goodwyn & Spann, JJ., concur.

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1st Div., No. 685,

VAN P. BEAVERS

, Appellant

vs.

ARTHUR HARRIS

, Appellee,

From

BALDWIN

Circuit Court.

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

I, J. Render Thomas, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages, numbered from one to FOUR 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 21st day of

DECEMBER, 19 56

J. Render Thomas
Clerk of the Supreme Court of Alabama

THE STATE OF ALABAMA }
Baldwin County - Circuit Court }

TO ANY SHERIFF OF THE STATE OF ALABAMA — GREETING:

Whereas, at a Term of the Circuit Court of Baldwin County, held on the 6th.
DAY ~~Monday~~ in June, 1945, in a cer-

tain cause in said Court wherein VAN P. BEAVERS

Plaintiff, and ARTHUR HARRIS

Defendant, a judgment was rendered against said

VAN P. BEAVERS

to reverse which JUDGMENT, the said VAN P. BEAVERS

applied for and obtained from this office an APPEAL, returnable to the

Term of our SUPREME Court of the State of Alabama, to be held at Montgomery,

on the day of 194 next, and the necessary bond

having been given by the said VAN P. BEAVERS

with C.L. THOMPSON, sureties,

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

or JAMES R. OWEN

attorney, to appear at the Term of our

said Supreme Court, to defend against the said Appeal, if they think proper.

Witness, ALICE J. DUCK, Clerk of the Circuit Court of said County, this 13th.
day of July, A. D., 1945

Attest:

Alice J. Duck, Clerk.

VAN P. BEAVERS

COMPLAINANT

VS

ARTHUR HARRIS

RESPONDENT


IN THE CIRCUIT COURT OF

BAWDWIN COUNTY, ALABAMA

AT LAW.

CASE NO. 2907

Comes VAN P. BEAVERS, Complainant in the above styled cause by C. LeNOIR THOMPSON, his attorney of record and hereby appeals to the Supreme Court of Alabama from the final decree and judgment from the Circuit Court of Baldwin County at law rendered in the above styled cause on the 6th day of June, 1956.


Attorney for Complainant.

I, C. LeNOIR THOMPSON, attorney At Law in the above styled cause hereby acknowledge myself security for cost in the foregoing appeal.

FILED
JUL 5 1956
ALICE J. DUCK, Clerk

ALICE J. DUCK, Clerk


Attorney for Complainant.

DETINUE AFFIDAVIT

STATE OF ALABAMA
BALDWIN COUNTY

Personally appeared before me, Alice J. Duck, Clerk of the Circuit Court of Baldwin County, Emma Lou Beavers and Van P. Beavers, who, being duly sworn, deposes and says, that the property sued for in the complaint of Emma Lou Beavers and Van P. Beavers, VS Arthur Harris, to-wit:

One 14 $\frac{1}{2}$ ft., Correct Craft Inboard 62 Gray Marine, Coast Guard Number 22p63.

belongs to Van P. Beavers, the said Plaintiff.

Van P. Beavers
Emma Lou Beavers

Sworn to and subscribed before me, this the 21 day of April, 1956,

Alice J. Duck
Clerk.

Detinue Summons and Complaint.

Moore Printing Co.

THE STATE OF ALABAMA }
Baldwin County }

CIRCUIT COURT

No. _____

194_____

To Any Sheriff of the State of Alabama :

You Are Hereby Commanded to Summon Arthur Harris

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 _____

Emma Lou Beavers and Van P. Beavers

Witness my hand this 21 day of April 1956

Reice J. Smith, Clerk.

COMPLAINT

Emma Lou Beavers and

Arthur Harris

Van P. Beavers

Plaintiff

Versus

Defendant

The plaintiff S claims of the defendant the following personal property, to-wit:

One 14 1/2 ft., Correct Craft Inboard 62 Gray Marine, Coast Guard

Number 22p63.

with the value of the hire or use thereof during the detention, to-wit:

from April 18 1956, to late 194_____

Clifford Thompson, Plaintiff's Attorney.

Div. No. _____

CERTIFICATE OF APPEAL. (Civil Cases.)

No. 2907

THE STATE OF ALABAMA

BALDWIN County.

I, ALICE J. DUCK, Clerk of the Circuit Court of BALDWIN County, in and for said State and County, hereby certify that the foregoing pages numbered from one to _____, both inclusive, contain a full, true and complete transcript of the record and proceedings of said Court in a certain cause lately therein pending wherein VAN P. BEAVERS

was plaintiff, and ARTHUR HARRIS

was Defendant, as fully and completely as the same appears of record in said Court.

And I further certify that the said VAN P. BEAVERS did on the 5th. day of JULY, 1956, pray for and obtain an appeal from the judgment of said Court to the SUPREME COURT of Alabama to reverse said judgment of said Court upon entering into bond with C.L. THOMPSON as surety thereon, which said bond has been approved by me.

Witness my hand and the seal of said Circuit Court of BALDWIN County is hereto affixed, this the 13th. day of July, 1956

Alice J. Duck

Clerk of the Circuit Court of Baldwin County, Alabama.

(Code 1940, Title 7, Sec. 767)

5.

ON REHEARING

SIMPSON, JUSTICE.

Appellee seriously argues on rehearing that the status of the evidence on trial did not warrant a finding for the plaintiff because there was no proof of the alternate value of the property and a judgment entered accordingly; that therefore the judgment for the defendant should not be reversed. This is the general rule. - Title 7, §921, Code of 1940; Gwin v. Emerald Co., 201 Ala. 384, 78 So. 758; MacKey v. Hall Auto Co., 27 Ala. App. 557, 176 So. 318; Graham v. Fincher, 21 Ala. App. 276.

But a well recognized exception to the rule is that if no prejudice appears by the failure to assess the alternate value there is no error. - Universal C.I.T. Cred. Corp. v. Phenix-Girard Bank, 254 Ala. 643, 49 So. 2d 273; Dobson v. Neighbors, 228 Ala. 407, 153 So. 861; Sauls v. Hand, 242 Ala. 643, 7 So. 2d 762.

In the instant case the defendant was the successful party in the trial below and, of consequence, he suffered no prejudice by the failure of the court to follow the statute and assess the alternate value of the suit property. - Bolling v. Coffin, 262 Ala. 459, 79 So. 2d 808; Sauls v. Hand, Supra; Dobson v. Neighbors, Supra.

Application for rehearing overruled.

Livingston, C.J., Goodwyn and Coleman, JJ., concur.

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM 1956-57

1st Div., No. 685,

VAN P. BEAVERS, Appellant

vs.

ARTHUR HARRIS, Appellee,

From BALDWIN Circuit Court.

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

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

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

FEBRUARY, 19 57

J. Render Thomas
Clerk of the Supreme Court of Alabama

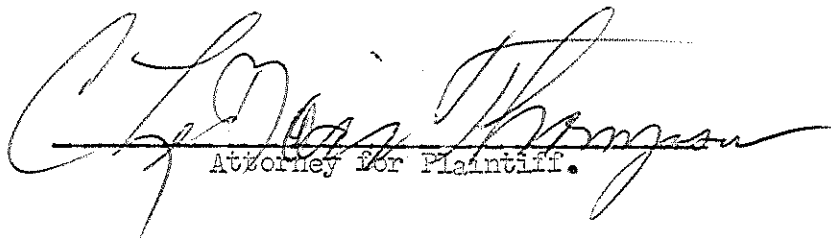
VAN P. BEAVERS
PLAINTIFF
VS
ARTHUR HARRIS
DEFENDANT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW.
CASE NO. 2907

Now comes the Plaintiff in the above styled cause by C. LeNoir Thompson his attorney of record and moves to amend the motion for anew trial heretofore filed in said cause by adding paragraph ten to his said motion:

That he has succeeded in locating a witness whose whereabouts was unknown to your Plaintiff on the day of said trial; that the name of said witness is Miss Jo Giankos whose address is 824 L.A., Bogalusa, Louisiana; that said witness will testify that she was present and heard the conversation between the said Arthur Harris and the said Lou Beavers and that the said conversation is in words and figures as follows:

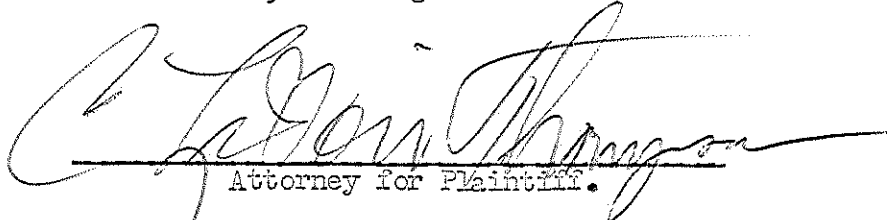
That the said Lou Beavers had no interest in the boat and so stated to Arthur Harris and that the said payments made by the said Arthur Harris were in the nature of a loan to the said Lou Beavers and that the said Lou Beavers did not by word or writing convey an interest in the said boat to the said Arthur Harris.


Attorney for Plaintiff.

STATE OF ALABAMA
BALDWIN COUNTY

Before me Frank P. Probst, a Notary Public, in and for said State and County personally appeared C. LeNoir Thompson who is known to me and who being duly and legally sworn deposes under oath as follows:

That his name is C. LeNoir Thompson, that he is the attorney for Plaintiff in said cause, that the facts alleged in the foregoing petition are true and correct to the best of his information, knowledge and belief.


Attorney for Plaintiff.

Sworn to and subscribed before me this 29 day of June, 1956.


Notary Public, Baldwin County, Alabama.

EMMA LOU BEAVERS and VAN P.
BEAVERS,

Plaintiffs,

VS.

ARTHUR HARRIS,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

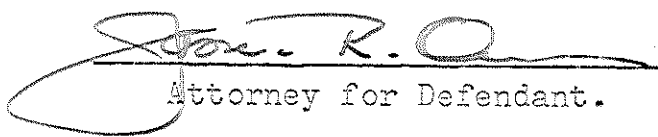
AT LAW

NO. 2907

MOTION TO REQUIRE SECURITY FOR COSTS

Now comes the Defendant and shows unto the Court that the Plaintiffs are non-residents of the State of Alabama and that they have not deposited or secured the Court costs to be incurred in this proceeding.

Wherefore, Defendant moves the Court to require the said Plaintiffs to deposit or secure the costs of this proceeding or dismiss it.


Attorney for Defendant.