

HORACE LONG, Doing Business
as McMillan-Harrison Fertilizer
Company, a Partnership,

PLAINTIFF,

VS

W. V. PHILLIPS, individually
and doing Business as Phillips-
Mims Feed & Flour Co.,

DEFENDANT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW

2966

Comes W. V. Phillips, Defendant in the above styled cause and amends
his answer filed in the above styled cause to read as follows:

HORACE LONG, Doing Business
as McMillan-Harrison Fertilizer
Company, A Partnership,

PLAINTIFF,

VS

W. V. PHILLIPS, individually
and Doing Business as Phillips-
Mims Feed & Flour Co.,

DEFENDANT.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW

Comes the Defendant in the above styled cause and for answer to said
complaint filed in said cause shows unto this Honorable Court as follows:

1.

As to Count One Defendant denies the allegations alleged therein.

2.

As to Count Two Defendant denies the allegations alleged therein.

3.

As to Count Three Defendant denies the allegations alleged therein.

4.

Now comes the Defendant and for further answer to said complaint,
and to each count thereof, separately and severally, and says that when the
debt sued on in this case was contracted, he was not a member of the Firm of
Phillips-Mims Feed & Flour Company, and he makes oath that this plea is true.

W. V. Phillips
Defendant

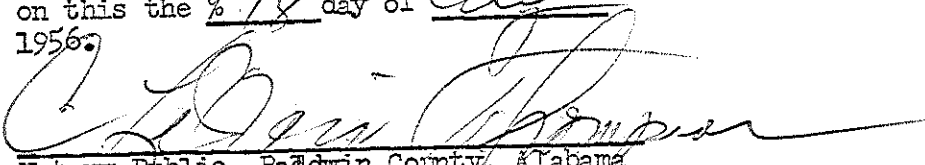
C. L. Davis
Attorney for Defendant

STATE OF ALABAMA
BALDWIN COUNTY

Before me, the undersigned authority, personally appeared W. V. Phillips

who is also known as William V. Phillips, and who being duly sworn deposes and says that the statement made in Count Four of the above answer is true and correct.

Subscribed and sworn to before me
on this the 18 day of Aug
1956.


Notary Public, Baldwin County, Alabama

BOOK 016 PAGE 448

SUMMONS AND COMPLAINT

Moore Prg. Co.

The State of Alabama,
Baldwin County.

Circuit Court, Baldwin County

No. 2966

July TERM, 1956.

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon W. V. Phillips, individually, and
doing business as Phillips-Mims Feed and Flour Co.

to appear and plead, answer or demur, within thirty days from the service hereof, to the complaint filed in
the Circuit Court of Baldwin County, State of Alabama, at Bay Minette, against W. V. Phillips,
individually, and doing business as Phillips-Mims Feed and Flour Co., Defendant.

by HORACE LOM, doing business as McMillan-Harrison Fertilizer
Co., a partnership, Plaintiff.

Witness my hand this 29 day of June, 1956.

Alice J. Duck, Clerk

BOOK
Old Part 443

HORACE LONG, Doing Business
as McMillan-Harrison Fertilizer
Company, a Partnership,

Plaintiff

VERSUS

W. V. PHILLIPS, individually
and Doing Business as Phillips-
Mims Feed & Flour Co.,

Defendant

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

AT LAW

NO. _____

BOOK 010 PAGE 444

COUNT ONE

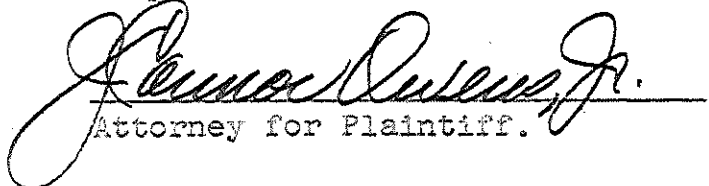
Plaintiff claims of the Defendant the sum of \$1,845.36, together with the interest thereon, due by account by and between the Plaintiff and Defendant on, to-wit, the 30th day of April, 1954, which sum of money together with the interest thereon is still due and unpaid.

COUNT TWO

Plaintiff claims of the Defendant the sum of \$1,845.36, together with the interest thereon, due by account stated by and between the Plaintiff and Defendant on, to-wit, the 30th day of April, 1954, which sum of money together with the interest thereon is still due and unpaid.

COUNT THREE

Plaintiff claims of the Defendant the sum of \$1,845.36 together with the interest thereon due for goods, wares, and merchandise sold by the Plaintiff to the Defendant on, to-wit, the 30th day of April, 1954 and for several years previous thereto, at Defendant's request, which sum of money together with the interest thereon, is still due and unpaid.


Attorney for Plaintiff.

Received 29 day of June 1956
and on 29 day of June 1956
I served a copy of the within 29
on W. V. Phillips

By service on _____
TAYLOR WILKINS, Sheriff
By W. A. Folbert D. S.
omi

*see the jury find find
the plaintiff \$1845.36
without interest*

*MR Comarico
Forwarded*

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN LAW, NO. 2966

HORACE LONG, d/b/a McMillan
Harrison Fertilizer Co.,
a partnership

VS.

W. V. PHILLIPS, individually,
and d/b/a Phillips-Nims
Feed & Flour Co.

SUMMONS AND COMPLAINT

FILED
JUN 29 1956

ALICE J. DUCK, Clerk

J. CONNOR OWENS, JR.
ATTORNEY AT LAW
101 Court House Square
BAY MINETTE, ALABAMA

HORACE LONG, Doing Business
as McMillan-Harrison Fertilizer
Company, a Partnership,

PLAINTIFF

VS

W. V. PHILLIPS, individually
and doing Business as Phillips-
Mims Feed & Flour Co.,

DEFENDANT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

NO. _____

Comes the Defendant in the above styled cause and for answer to said complaint filed in said cause shows unto this Honorable Court as follows:

1.

As to Count One Defendant denies the allegations alleged therein.

2.

As to Count Two Defendants denies the allegations alleged therein.

3.

As to Count Three Defendants denies the allegations alleged therein.

Attorney for the Defendant

HORACE LONG, Doing Business
as McMillan-Harrison Fertilizer
Company, a Partnership,

Plaintiff

vs

W. V. PHILLIPS, individually
and Doing Business as Phillips-
Mims Feed & Flour Co.,

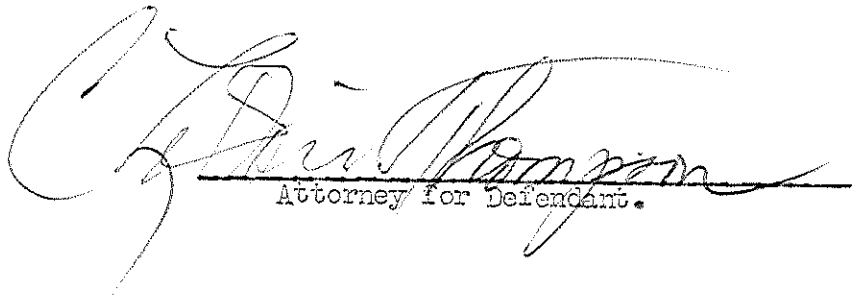
Defendant

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

AT LAW

NO. _____

Comes the Defendant and demands a trial by jury in said cause.


Attorney for Defendant.

HORACE LONG, Doing Business
as McMillan-Harrison Fertilizer
Company, a Partnership,

Plaintiff

VS

W. V. PHILLIPS, individually
and Doing Business as Phillips-
Mims Feed & Flour Co.,

Defendant

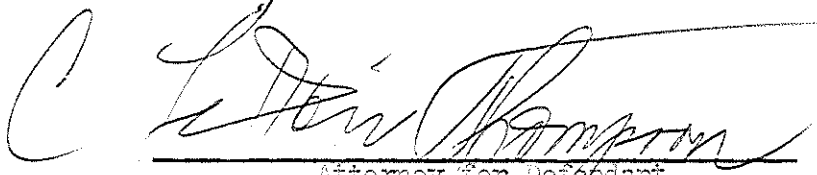
IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW.

NO. 2966

NOTICE OF APPEAL

Comes now the Defendant, W. V. PHILLIPS, separately and severally, and
does hereby appeal to the Supreme Court of Alabama from the final decree and
judgment in the Circuit Court of Baldwin County, Alabama, at law, rendered
in the above style cause on, to-wit, the 12th day of March, 1957,
and also, separately and severally, from the over-ruling of said defendant's
motion for a new trial, said motion having been filed by said defendant and
having been over-ruled by the Circuit Court of Baldwin County, Alabama, at law,
on, to-wit, the 12th day of May, 1957.


Attorney for Defendant.

SECURITY FOR COSTS

HORACE LONG, Doing Business
as McEllan-Harrison Fertilizer
Company, a Partnership,

PLAINTIFF

VS

W. V. PHILLIPS, individually
and Doing Business as Phillips-
Hins Feed & Flour Co.,

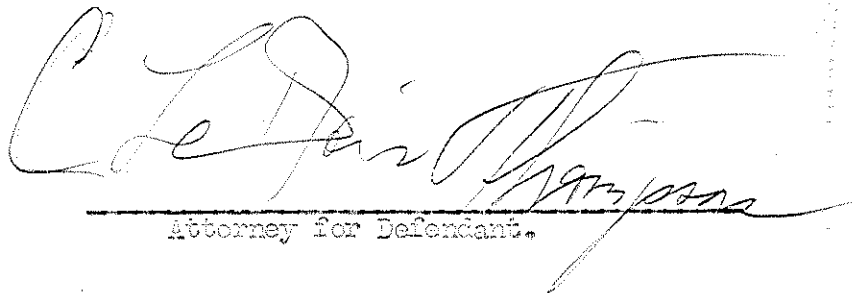
DEFENDANT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW.

NO. _____

I, C. LeNoir Thompson, Attorney At Law in the above styled cause hereby
acknowledge myself security for cost in the foregoing appeal.



Attorney for Defendant.

AUG 22 1957

THE STATE OF ALABAMA - - - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

SPRING TERM, 1956-57

1 Div. 741

W. V. Phillips, Individually,
and d/b/a Phillips-Mims Feed and Flour Company

v.

Horace Long,
d/b/a McMillan-Harrison Fertilizer Company,
a Partnership

Appeal from Baldwin Circuit Court

MERRILL, JUSTICE.

Plaintiff-appellee Long, doing business as McMillan-Harrison Fertilizer Company, sued appellant Phillips, individually and doing business as Phillips-Mims Feed and Flour Company, for \$1845.36 in three counts; one on an open account, one on a stated account and one for goods, wares and merchandise sold by plaintiff at the request of defendant. The due date in all counts was April 30, 1954.

2.

Defendant pleaded the general issue. Verdict and judgment were for the plaintiff in the amount sued for, and defendant appealed.

Appellant based his case in the court below, and here, on the claim that he was not a member of the partnership of Phillips-Mims, that appellee had notice of the dissolution of the partnership, that the dissolution agreement had been recorded in the Probate Office of Mobile County, and that Sam Smith, the manager of appellee's business, admitted that his salesman, one Moorer told him, in February, 1954, that Phillips was no longer a partner in the business.

The issue for the jury became one of fact under Tit. 43, § 35, Code 1940, which provides:

"The liability of a general partner for the acts of his copartners continues, even after a dissolution of the copartnership, in favor of persons who have had dealings with and given credit to the partnership during its existence, until they have had personal notice of the dissolution; and in favor of other persons until such dissolution has been advertised in a newspaper published in every county where the partnership, at the time of its dissolution, had a place of business, if a newspaper is there published, to the extent in either case to which such persons part with value in good faith, and in the belief that such partner is still a member of the firm."

Appellant Phillips was Mims' father-in-law. He furnished the money for the partnership, Mims did the buying and selling,

3.

and Mrs. Mims was bookkeeper. The partnership was formed in 1950, and it bought fertilizer from appellee for both cash and on credit. There is no question as to debt owing appellee in the amount of \$1845.36. The sole issue of fact was when did appellee, through his servants, agents or employees, learn that appellant was no longer a member of the partnership of Phillips-Mims.

Appellee's manager, Sam Smith, testified that he had known appellant for many years, that he did not need a financial report on him, that the account was correct, that he did not learn of the dissolution of the partnership until February, 1954, when his salesman, Moorner, reported the fact to him, and, thereafter, he sold fertilizer to Phillips-Mims for cash.

Appellant, his daughter and his son-in-law all testified that they informed Moorner that appellant was no longer a member of the partnership sometime between December 31, 1952, and January 20, 1953. They admitted that the name of the business remained the same, that the trucks and stationery still carried the name Phillips-Mims, that no written notice was given to appellee and that no newspaper notice was given as required by Tit. 43, § 35, supra. In rebuttal, Moorner denied receiving any information as to the dissolution of the partnership from any of the witnesses until the latter part of February, 1954.

This decided conflict in the evidence could have been decided either way. The jury decided the issue in favor of the appellee. The credibility of conflicting testimony is for the jury. Mulkin v. McDonough Construction Company of Georgia, 95 So. 2d 921. The verdict was supported by the evidence.

Appellant requested and the court gave written charge 2, which reads:

"The Court charges the jury that if they believe from the evidence in this cause that the defendant W. V. Phillips personally notified McMillan-Harrison Fertilizer Company, or any partner thereof, or any agent or employee thereof in the line and scope of his agency or employment of the termination or dissolution of his partnership in the Phillips-Mims Feed and Flour Company, that the said W. V. Phillips is not liable for any indebtedness incurred by this company after such notice was given."

Appellant argues that the jury disregarded this instruction by the court and says in brief:

" * * * There is no dispute however in the evidence that the original plaintiff now Appellee had personal notice in February 1954 of the dissolution of the partnership prior to that date yet the last sale by McMillan Harrison Fertilizer Company to Phillips-Mims Feed and Flour Company in the amount of \$1845.76 was clearly shown by the testimony of the Appellee witness and the ledger sheet introduced by the Appellee to have been a sale made on or about April 30, 1954 some 75 days after Appellee had personal notice that Mr. Phillips the Appellant herein was no longer a partner in Phillips-Mims Feed & Flour Company. * * * "

We do not so interpret the ledger sheet. It shows a balance due of \$1845.36 on April 30, 1954. It shows a balance due of \$2096.96

5.

on February 27, 1954. Between the two dates, there are nine debits and twelve credits on the ledger sheets. These and the undisputed testimony show that purchases by Phillips-Mims after February, 1954, were on a cash basis. There is no merit in appellant's contention.

The other argued assignment of error is that the court erred in overruling the motion for a new trial. What we said in Mulkin v. McDonough Construction Company of Georgia, supra, is applicable here:

"Where there is evidence on both sides, or some evidence supports the verdict, it should not be set aside because it may not correspond with the opinion of the court as to the weight of the testimony or because it is against the mere preponderance of the evidence. Gulf, M. & O. R. Co. v. Sims, 260 Ala. 258, 69 So. 2d 449; Smith v. Smith, 254 Ala. 404, 48 So. 2d 546, Bell v. Nichols, 245 Ala. 274, 16 So. 2d 799."

The judgment of the circuit court is affirmed.

Affirmed.

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

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1st Div., No. 741

W. V. PHILLIPS, INDIVIDUALLY, and d/b/a PHILLIPS-MIMS FEED AND FLOUR COMPANY, Appellant

vs.

HORACE LONG, d/b/a McMILLAN-HARRISON FERTILIZER COMPANY, A PARTNERSHIP, Appellee,

From BALDWIN NO. 2966 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 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 22nd day of

AUGUST, 19 57

J. Render Thomas
Clerk of the Supreme Court of Alabama

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

SPECIAL TERM 1956-57
~~OCTOBER TERM, 1957~~

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

Whereas, the Record and Proceedings of the CIRCUIT Court
of said county, in a certain cause lately pending in said Court between
W. V. PHILLIPS, INDIVIDUALLY AND d/b/a, Appellant,
PHILLIPS-MIMS FEED and FLOUR COMPANY,
and
HORACE LONG, d/b/a McMILLAN-HARRISON, Appellee,
FERTILIZER COMPANY, A PARTNERSHIP,
wherein by said Court it was considered adversely to said appellant, were brought before our
Supreme Court, by appeal taken, pursuant to law, on behalf of said appellant—:

NOW, IT IS HEREBY CERTIFIED, That it was thereupon considered, ordered, and adjudged by
our Supreme Court, on the 22nd day of AUGUST, 1957, that said

JUDGMENT of said CIRCUIT Court be in all things
affirmed, and that it was further considered, ordered, and adjudged that the appellant—, ~~and~~
W. V. Phillips, and Fidelity and Casualty Company of New York,
a Corporation, surety on the supersedeas bond, pay the amount of
the Judgment of the Circuit Court and ten per centum [10%]
damages thereon, and interest, and

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 22nd day of
AUGUST, 19 57
J. Render Thomas
Clerk of the Supreme Court of Alabama.

SCOTT COUNTY MILLING COMPANY,
INC., a corporation,

Plaintiff

vs.

W. V. PHILLIPS, individually
and doing business as Phillips-
Mims Feed and Flour Co.,

Defendant

IN THE CIRCUIT COURT OF

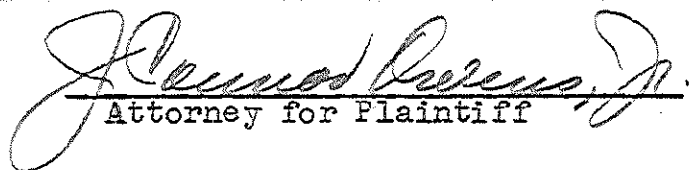
BALDWIN COUNTY, ALABAMA

IN LAW No. 2966

MOTION TO STRIKE

Comes now the plaintiff and moves to strike Paragraph 4 of the defendant's amended answer and sets forth the following grounds:

1. That the allegations of said paragraph are irrelevant.
2. That the allegations of said paragraph are prolix.
3. That said defendant has waived his right to plead specially by entering heretofore a plea to the general issue.
4. That said special plea was not filed within the time required by Title 7, Section 377 of the Code of Alabama, 1940.


Attorney for Plaintiff

HORACE LONG, Doing Business
as McMillan-Harrison Fertilizer
Company, a Partnership,

PLAINTIFF

VS

W. V. PHILLIPS, individually
and Doing Business as Phillips-
Mims Feed & Flour Co.,

DEFENDANT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

AT LAW.

NO. _____

SUPERSEDEAS BOND

KNOW ALL MEN BY THESE PRESENTS: That the undersigned W. V. PHILLIPS, as Principal, and the undersigned Fidelity and Casualty Company of New York, a Corporation, as Surety, are held and firmly bound unto HORACE LONG, Doing Business as McMillan-Harrison Fertilizer Company, a Partnership, in the full sum of THREE THOUSAND SEVEN HUNDRED FIFTY & no/100 (\$3750.00) DOLLARS, for the payment of which well and truly to be made and done, the Principal binds himself, his heirs, executors and administrators, and the Surety binds itself, its successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated on this the 14 day of may, 1957.

The condition of the above obligation is such that, Whereas, Horace Long, Doing Business as McMillan-Harrison Fertilizer Company, a Partnership, obtained a decree in the above styled cause in the Circuit Court of Baldwin County, Alabama, at law, on the 12th day of March, 1957, from which decree the said W. V. Phillips has obtained an appeal, returnable to the next term of the Supreme Court of Alabama. Now, therefore, if the said W. V. Phillips shall prosecute the said appeal to effect and satisfy such decree as may be rendered against him in the said cause by the said Supreme Court, then this obligation is to be null and void; otherwise, to remain in full force and effect.

IN WITNESS WHEREOF, the Principal has hereunto set his hand and affixed his seal, and the Surety has caused its corporate seal to be hereto affixed and this instrument to be executed by WALTER M. LINDSEY, as its Attorney in fact, on this the day and year first above written.

W. V. Phillips (SEAL)

FIDELITY AND CASUALTY COMPANY OF NEW YORK, a Corporation, (SEAL)

By Walter M. Lindsey
As its attg in fact

Attest Corporate Seal.

Taken and approved on this the 15th
day of May, 1957.

Rice J. French
Clerk of the Circuit Court of
Baldwin County, Alabama, at law.

FILED

MAY 15 1957

ALICE A. DUNN, CLERK

The Fidelity and Casualty Company of New York

The Pioneer Bonding Company of the United States
BONDING DEPARTMENT

80 MAIDEN LANE, NEW YORK, N. Y.

Know all Men by these Presents:

That The Fidelity and Casualty Company of New York has made, constituted, and appointed, and by these presents does make, constitute, and appoint

Walter M. Lindsey of Bay Minette, Alabama

its true and lawful attorney for it and in its name, place, and stead to execute on behalf of the said Company, as surety, bonds, undertakings, and contracts of suretyship to be given to

all obligees

provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed in amount the sum of fifty thousand dollars.

In Witness Whereof The Fidelity and Casualty Company of New York has caused its official seal to be hereunto affixed, and these presents to be signed by one of its vice presidents and attested by one of its assistant secretaries this 30th day of March, 1953

The Fidelity and Casualty Company of New York

By John C. Brodsky

Vice President.

Attest:

A. J. Miller

Assistant Secretary.

STATE OF NEW YORK,

COUNTY OF NEW YORK,

ss.:

A. J. Miller

, being duly sworn, deposes and says:

That he is an assistant secretary of The Fidelity and Casualty Company of New York, the corporation which is described in and which executed the instrument overleaf; that he knows the corporate seal of the said corporation; that the seal affixed to the instrument overleaf is the corporate seal of The Fidelity and Casualty Company of New York, and was thereto affixed by order and authority of the board of directors of the said Company; that he signed his name thereto by like order and authority; that he is acquainted with JOHN C. BRODSKY, and knows him to be a Vice President of the said Company; that the signature of the said JOHN C. BRODSKY subscribed to the said instrument is in the genuine handwriting of the said JOHN C. BRODSKY, and was thereto subscribed by order and authority of the said board of directors of the said Company; that the said Company is duly and legally incorporated under the laws of the State of New York, and has complied with and is now complying with the provisions of the Act of Congress of August 13, 1894, allowing certain corporations to be accepted as surety on bonds.

The deponent further states that the following is a true copy of an extract from the minutes of a meeting of the board of directors of the said Company held at its office in the City of New York on the 17th day of January, 1951, a quorum being present, and the resolution contained in the said extract was unanimously adopted and is now in full force and effect:

"RESOLVED, That FRANK A. CHRISTENSEN, President of the Company, J. VICTOR HERD, Executive Vice President of the Company, WILLIAM L. BATES and JOHN C. BRODSKY, each a Vice-President of the Company, be, and that each of them hereby is, authorized to execute powers of attorney qualifying the attorney named in the given power of attorney to execute in behalf of The Fidelity and Casualty Company of New York bonds, undertakings, and all contracts of suretyship; and that any Vice-President, or any Secretary, or any Assistant Secretary be, and that each of them hereby is, authorized to attest the execution of any such power of attorney, and to attach thereto the seal of the Company."

Sworn to before me this

A. J. Miller

Assistant Secretary.

30th day of March, 1953

Florence Carroll

COMMISSIONER OF DEEDS,
CITY OF NEW YORK.

I, H. Paliotto, an attorney of The Fidelity and Casualty Company of New York, do hereby certify that I have compared the copy of the power of attorney overleaf and the foregoing copy of the affidavit annexed to the said power of attorney with the originals now on file in the home office of the said Company, and that the same are correct transcripts therefrom and of the whole of the said originals, and that the said power of attorney has not been revoked and is now in full force and effect.

In testimony whereof I have hereunto set my hand and affixed the seal of the said Company this

14 day of May, in the year of one thousand nine hundred and 57.

H. Paliotto

Attorney.

No. 2966

Baldwin County, Circuit Court.

~~HORACE LONG, d/b/a/ McMillan-Harrison Fertilizer Co.~~
Plaintiff.
vs.

~~W.V. Phillips, Ind. & d/b/a/ Phillips-Mims Feed & Flour Co.~~
Defendant.

I, Alice J. Duck Clerk of Circuit Court,
of Baldwin County, Alabama, hereby certify that in the
cause of Horace Long, d/b/a/ McMillan-Harrison Fertilizer Co. plaintiff,
vs.

W.V. Phillips Ind. & d/b/a Phillips-Mims Feed & Flour Co. defendant,
which was tried and determined in this Court on the 12th day of
March 19 57, in which there was a judgment for One Thousand, Eight
Hundred Forty Five & 76/100 Dollars, in favor of the plaintiff, (or judgment
for defendant,) the Defendant on the 1st day of
June 19 57, took an appeal to the Supreme Court
of Alabama to be holden of and for said State.

I further certify that C. LeNoir Thompson
filed security for cost of appeal, to the Supreme Court, on
the 1st day of June 19 57, and that
Fidelity and Casualty Company of New York, A corporation,
are sureties on the appeal bond.

I further certify that notice of the said appeal was on the
day of 19 57, served on J. Connor Owens, Jr.
as attorney of record for said appellee, and that the amount sued for
was Dollars. (Or certain lands)
(Or personal property.)

Witness my hand and the seal of this Court, this the 1st
day of June 19 57.

Clerk of the Circuit Court of
Baldwin County, Alabama.

HORACE LONG, Doing Business
as McMillan*Harrison Fertilizer
Company, A Partnership,

PLAINTIFF

VS

W. V. PHILLIPS, individually
and Doing Business as Phillips-
Mims Feed & Flour Company,

DEFENDANT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW.

Comes the Defendant in the above entitled cause and moves the court to set aside the verdict of the jury in the above entitled cause and the judgment of the court thereon and grant to him a new trial, and for grounds of said motion alleges the following, separately and severally:

1.

For that the verdict of the jury is not sustained by the great preponderance of the evidence and is contrary to both the law, and the facts in the case.

2.

For that the verdict of the jury is contrary to the law in the case.

3.

For that the verdict of the jury is contrary to the facts in the case.

4.

For that the verdict of the jury and the judgment entered thereon are contrary to the great weight and preponderance of the evidence in the case.

5.

That the verdict of the jury is contrary to the charge given by the Judge in said case.

6.

For that the verdict of the jury is contrary to the law in the case in that the evidence showed that the plaintiff, his agent or employee had personal notice of the dissolution of the partnership and the jury disregarded this evidence.

7.

For that the verdict of the jury is contrary to the facts in the case in that Mr. Sam Smith, witness for the plaintiff, admitted that in his capacity as manager for the company he had personal knowledge of the dissolution of partnership prior to the date alleged the debt was incurred.

8.

For that the verdict of the jury is contrary to the law in the case in that Mr. Sam Smith, witness for the plaintiff, admitted that in his capacity

as manager for the company he had personal knowledge of the dissolution of partnership prior to the date alleged the debt was incurred.

9.

For that the verdict of the jury is contrary to the facts in the case in that Mr. Sam Smith in his capacity as manager of the company admitted that he had personal notice of the dissolution of the said partnership and that subsequent to that notice he continued to sell to the remaining partner without any change in policy.

10.

For that the verdict of the jury is contrary to the facts of the case in that Mr. Sam Smith in his capacity as manager of said company acknowledged that he had personal notice of the dissolution of the partnership by W. V. Phillips, defendant in this case and subsequent to the said dissolution he collected more than \$2000.00 in money from the said remaining partner on the account as originally established.

11.

For that the court erred in sustaining objections on the part of the plaintiff to the introduction of the publication of general circulation in the area of Mobile, Alabama dated on to-wit May 23, 1953, which publication recited the dissolution of the partnership of W. V. Phillips and Lambert C. Mims d/b/a Phillips-Mims Feed and Flour Company.

12.

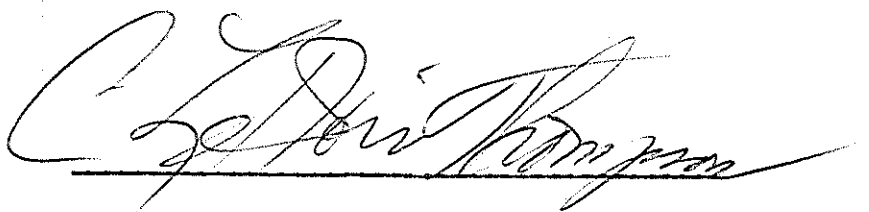
For that the court erred in denying the defendant the right to introduce the contract of dissolution which contract was recorded in the office of the Judge of Probate of Mobile County on to-wit May 23.

13.

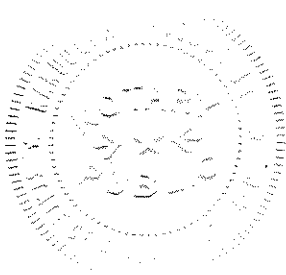
For that the Court erred in denying the defendant the right to introduce an original copy of the publication of general circulation in the area of Mobile, Alabama in which publication the dissolution of the partnership of W. V. Phillips and Lambert C. Mims d/b/a Phillips-Mims Feed and Flour Company was published.

14.

For that the verdict of the jury is contrary to the law in the cause as defined by the oral charge given by the Judge in said case.

A handwritten signature in dark ink, appearing to read "C. L. Davis Thompson", is written over a horizontal line.

Before me the undersigned authority personally appeared, C. LeNoir Thompson, attorney, who being duly sworn deposes and says: That the allegation of said motion and facts stated therein are true and correct to his best knowledge, information, and belief.


C. LeNoir Thompson

Sworn to and subscribed before me this the 9th day of April, 1957.

Randolph McLawrence
Notary Public.

I, the undersigned, as attorney of record for the Plaintiff, hereby accept service of a copy of the foregoing motion.

This the 9 day of April, 1957.

James Owens, Jr.
Attorney for Plaintiff.

Filed in office April _____, 1957.

Clerk.

STATE OF ALABAMA
BALDWIN COUNTY

The above and foregoing motion shall be and the same is hereby continued until 2 P M. on April 16, 1957.

Dated this 10 day of April, 1957.

Hubert M Hall
Circuit Judge.

4/16/57 the foregoing motion continued to 5/1/57 Judge
Hubert M Hall
5/1/57 the foregoing motion after a hearing is renewed
and denied. Hubert M Hall
Judge

THE STATE OF ALABAMA }
Baldwin County - Circuit Court }

TO ANY SHERIFF OF THE STATE OF ALABAMA — GREETING:

Whereas, at a Term of the Circuit Court of Baldwin County, held on the
2nd Monday in March, 1957, in a cer-
tain cause in said Court wherein Horace Long, doing business as McMillan-Harrison
Fertilizer Company, A Partnership Plaintiff, and W. V. Phillips, Individually and doing
business as Phillips Mims Feed and Flour Co. Defendant, a judgement was rendered against said
W. V. Phillips, Individually and d/b/a Phillips-Mims Feed and Flour Co.
to reverse which Judgment, the said W. V. Phillips, Ind. and d/b/a
Phillips-Mims Feed and Flour Company
applied for and obtained from this office an APPEAL, returnable to the next
Term of our Supreme Court of the State of Alabama, to be held at Montgomery,
on the day of , 1957 next, and the necessary bond
having been given by the said W. V. Phillips
with Fidelity and Casualty Company of New York, a Corporation, sureties,

Now, You Are Hereby Commanded, without delay, to cite the said Horace Long, d/b/a
McMillan-Harrison Fertilizer Co. or J. Connor Owens, Jr.
, attorney, to appear at the Next 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 1st
day of June, A. D., 1957.

Attest:

Alice J. Duck, Clerk.