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**SHELBY COUNTY, ALABAMA**

### FINAL ORDER OF CONDEMNATION

This cause coming on to be heard on this day for a decree confirming the report of the commissioners heretofore appointed in this cause, and for an order of condemnation in pursuance thereof as to the lands and interests described in Article Fourth of the application, as amended, heretofore filed in this cause;

059 Back 697

And it further appearing to the Court that notice of the appointment of said three persons as commissioners was issued by this Court to the sheriff



to be condemned as described in Article Fourth of said application, as amended, and the rights and interests therein described, be condemned, granted and awarded to said applicant, Southern Electric Generating Company, with the rights and for the uses and purposes set forth in said application, as amended, and that all rights, title and interests prayed for in said application, as amended, which are now condemned, granted and awarded to the applicant in and by this decree, be and the same are hereby divested out of the said defendants, the owners of, or the owners of an interest in, the lands described in Article Fourth of said application, as amended, and vested in the applicant;

And it is further ordered, adjudged and decreed by the Court that the applicant be and it is hereby granted, the right to erect, construct, operate and maintain steam or other electric generating plants, together with substations, structures, works, towers, poles and wire lines and other appliances necessary, convenient or useful in connection therewith for such purposes on, under, across and over the lands described in Article Fourth of said application, as amended;

And it is further ordered, adjudged and decreed by the Court that applicant be and it is hereby granted all the relief, rights, interests, easements, privileges and fee simple title in the lands set out, described and prayed for in said application, as amended.

Done in open court, this the 13<sup>th</sup> day of June, 1957.

*L. C. Walker*

Judge of the Court of Probate  
of Shelby County, Alabama

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of said County of Shelby, as required by law, and by said sheriff served on said three named persons as commissioners within five days from the receipt thereof by him;

And it further appearing to the Court that said commissioners, before entering upon the discharge of their duties in the premises, were sworn as jurors are sworn, and that they did thereafter receive all legal evidence offered by the parties touching the amount of damages the owners of, or the owners of an interest in, said lands will sustain and the amount of compensation they are entitled to receive;

And it further appearing to the Court that said commissioners did on, to wit, the 10th day of June, 1957, make their report in writing to this Court, stating the amount of damages and compensation ascertained and assessed by them for the owners of, or the owners of an interest in, the lands described in Article Fourth of said application, as amended, as follows: To Clarence C. Lance, W. W. Cather, L. B. Seymour, H. L. Jenkins, Gerald J. Bryan, Dock Vick, The Federal Land Bank of New Orleans and First National Bank of Columbiana (the owners of, or the owners of an interest in, the lands described in Par. 1 of Article Fourth) - \$21,095.50; to Martha Ann Livingston, T. G. Wood, W. O. Browne, E. L. Lansford and C. H. Lansford (the owners of, or the owners of an interest in, the lands described in Par. 3 of Article Fourth) - \$3,000.00;

And it further appearing to the Court that said commissioners did also file a certificate along with their award that none of them had ever been consulted, advised with or approached by any person in reference to the value of the lands or the proceedings to condemn the same prior to the assessment of damages and that they knew nothing of the same prior to their appointment;

It is, therefore, ordered, adjudged and decreed by the Court that the report of said commissioners be and the same is hereby ordered to be recorded, together with said application, as amended, and all the orders and decrees made in the cause and the pleadings filed herein.

And it further appearing to the Court that the damages and compensation so ascertained and assessed by said commissioners for the said defendants, the owners of, or the owners of an interest in the lands described in Article Fourth of said application, as amended, have been deposited in money in this Court by the applicant, Southern Electric Generating Company;

It is further ordered, adjudged and decreed by the Court that the applicant, Southern Electric Generating Company, pay all costs incurred in this cause.

And it further appearing to the satisfaction of the Court that all things necessary and required by Title 19, Chapter I, of the Code of Alabama of 1940, have been done and performed by the applicant.

It is further ordered, adjudged and decreed by the Court that the fee simple title in the land and other rights, interests and authority sought

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Par. 3 That part of Fraction "I" of Fractional Section 33, Township 20 South, Range 2 East, lying north of Coosa River and south of the Southern Railway Company's right of way and north and east of Yellow Leaf Creek. The said Martha Ann Livingston and T. G. Wood are the owners of, or the owners of an interest in, the lands described in this paragraph, together with W. C. Browne, E. L. Landsford and C. H. Lansford.

You may view the lands to be subjected and you must receive all legal evidence offered by any party touching the amount of damages the owners of the lands will sustain, and the amount of compensation they are entitled to receive, but the amount of compensation to which the owners are entitled must not be reduced or diminished because of any incidental benefits which may accrue to them or to their remaining lands in consequence of the uses to which the lands to be taken will be appropriated. Any person interested in the proceedings may be present in person or by attorney at any of the proceedings or trials which you may have.

You must within 20 days from the date of your appointment, which was, to wit, the 10 day of June, 1957, make a report in writing to the court, stating the amount of damages and compensation ascertained and assessed by you for the owners of the lands or persons injured, and file a certificate along with your award that none of you has ever been consulted, advised with or approached by any person in reference to the value of the lands, or the proceedings to condemn the same prior to the assessment of damages and that you knew nothing of the same prior to your appointment.

This the 13th day of May, 1957.

15/ *L. O. Walker*

Judge of the Court of Probate  
of Shelby County, Alabama

Case # 12-260

SOUTHERN ELECTRIC GENERATING  
COMPANY

v.

CLARENCE C. LANCE, ET AL.

IN THE COURT OF PROBATE  
OF SHELBY COUNTY, ALABAMA

NOTICE TO COMMISSIONERS

TO:

KNOW YE, that having full faith and confidence in your integrity and competency, you have been by an order and decree of the Court of Probate of Shelby County, Alabama, appointed and constituted commissioners in the application and cause hereinabove set forth with all the power, authority and duties vested in or which may devolve on you as such commissioners under and by virtue of the provisions of Title 19, Chapter I, of the Code of Alabama of 1940.

You will be sworn as jurors are sworn and you, or a majority of you, shall assess the damages and compensation to which the owners of the lands hereinafter described and set forth are entitled on account of any injury that may result to them by reason of the Southern Electric Generating Company's taking and condemning the fee simple interest in the lands hereinafter described for portions of the site on and under which Southern Electric Generating Company shall erect, construct, operate and maintain a steam or other electric generating plant or plants for the manufacture, distribution and supply of electric power to the public, together with substations, structures, works, transmission and distribution lines and all appliances, equipment and appurtenances necessary, convenient or useful in connection with such plant or plants for such purposes, together with all the rights conferred by law and all rights that are necessary, convenient or useful for the enjoyment of such site for such uses and purposes.

The fee simple interest in the said lands situated in Shelby County, Alabama, are described as follows:

- Par. 1 That part of the East half of East half ( $E\frac{1}{2}$  of  $E\frac{1}{2}$ ) of Fractional Section 6, Township 21 South, Range 2 East, lying north and west of Coosa River and South of the Southern Railway Company's right of way. Also that part of Fractional Section 5, Township 21 South, Range 2 East, lying north and west of Coosa River. The said Clarence C. Lance, W. W. Cather, L. B. Seymour, H. L. Jenkins, Gerald J. Bryan, Dock Vick, The Federal Land Bank of New Orleans and First National Bank of Columbiana are the owners of, or the owners of an interest in, the lands described in this paragraph.



(and other parties)

that the said defendants are the owners of, or the owners of an interest in, the lands hereinafter described and as hereinafter set forth.

ARTICLE SECOND: That applicant is an electric public utility corporation and it has the powers under its charter specifically to be an electric public utility corporation and to engage in and carry on an electric public utility business, to erect, construct, operate and maintain steam or other electric generating plants, substations, transmission lines and distribution lines for the manufacture, transmission, distribution, supply sale and furnishing to or for the public of electricity and electric power or energy, to generate, transmit and supply electricity to or for the public and for public use, to sell, exchange and otherwise dispose of all or any part of the power or energy output of the corporation or power or energy otherwise acquired by it to any one or more persons, firms and corporations, including Federal or state governmental bodies or agencies, public utility companies, industrial and commercial concerns, cooperatives, residential customers and others, and to enter into any contracts or other arrangements which are lawful regarding any such sale of power or energy; that applicant now owns, operates and controls property and facilities used and to be used for the generation, transmission, distribution, sale and furnishing to or for the public of electricity for light, heat or power, or other uses; that the lands, rights and interests herein described are sought to be condemned for the aforesaid purposes.

ARTICLE THIRD: That the uses and purposes for which the lands, rights and interests herein described are to be condemned and taken are for portions of the site on and under which applicant shall erect, construct, operate and maintain a steam or other electric generating plant or plants for the manufacture, distribution and supply of electric power to the public, together with substations, structures, works, transmission and distribution lines and all appliances, equipment and appurtenances necessary, convenient or useful in connection with such plant or plants for such purposes, together with all that rights conferred by law and all rights that are necessary, convenient or useful for the enjoyment of such site for such uses and purposes; that applicant therefore seeks to acquire by condemnation the fee simple interest in the lands herein described.

ARTICLE FOURTH: That the fee simple interest in the lands herein sought to be condemned in Shelby County, Alabama, are described as follows:

Par. 1. That part of the East half of East half (E $\frac{1}{2}$  of E $\frac{1}{2}$ ) of Fractional Section 6, Township 21 South, Range 2 East, lying north and west of Coosa River and South of the Southern Railway Company's right of way. Also that part of Fractional Section 5, Township 21 South, Range 2 East, lying north and west of Coosa River. The said Clarence C. Lance, W. W. Cather, L. B. Soymour, H. L. Jenkins, Gerald J. Bryan, Dock Vick, The Federal Land Bank of New Orleans and First National Bank of Columbiana are the owners of, or the owners of an interest in, the lands described in this paragraph.

PREMISES CONSIDERED, applicant makes the said W. W. Cather, Gerald J. Bryan, Dock Vick, Clarence C. Lance (and other parties named therein) parties defendant to this application and prays that the Court will make and enter an order appointing a day for the hearing of this application; and that notice of this application and of the day so appointed for the hearing thereof may be given to the nonresident defendants, Clarence C. Lance (and other parties named therein) by advertisement in some newspaper of general circulation published in Shelby County, Alabama, once a week for at least three consecutive weeks before the day appointed for such hearing; and that notice of this application and of the day so appointed for the hearing thereof may be issued to the resident defendants and that service thereof be had in this State in the manner required by law at least ten days before the day so appointed for such hearing; and that upon such hearing an order will be made by this Court condemning to the uses and purposes of your applicant all the rights, authority and power sought and described herein and for such other and further orders as may be authorized by law.

Said application was sworn to as provided by law and such bond as required by law was made and approved by the Court.



STATE OF ALABAMA

SHELBY COUNTY

IN THE PROBATE COURT OF

SHELBY COUNTY, ALABAMA

I, L. C. Walker, Judge of Probate in and for Shelby County, Alabama, hereby certify that on the 23rd day of April, 1957, Southern Electric Generating Company filed in the Probate Court of Shelby County, Alabama, its petition to condemn certain lands, rights and interests for portions of the site on and under which said Company shall erect, construct, operate and maintain a steam or other electric generating plant or plants for the manufacture, distribution and supply of electric power to the public, together with substations, structures, works, transmission and distribution lines and all appliances, equipment and appurtenances necessary, convenient or useful in connection with such plant or plants for such purposes, together with all the rights conferred by law and all rights that are necessary, convenient or useful for the enjoyment of such site for such uses and purposes, and in said application or petition were set out a great number of parcels of property sought to be condemned as aforesaid, with the owners named as provided by law and among these was Parcel 1 described in Article Fourth of the application, to which reference will be made more specifically hereafter. Said petition in so far as it relates to the land described in Parcel 1 is as follows, to-wit:

\*APPLICATION FOR ORDER OF CONDEMNATION

TO THE HONORABLE COURT OF PROBATE OF SHELBY  
COUNTY, ALABAMA, AND THE HONORABLE L. C. WALKER,  
THE JUDGE THEREOF

Comes Southern Electric Generating Company, an electric public utility corporation, and files this its application in the court of probate of Shelby County, Alabama, against the owners listed below in Article First for an order of condemnation of the lands, rights and interests therein, hereinafter described, and shows unto the Court as follows:

ARTICLE FIRST: That applicant, Southern Electric Generating Company, is a corporation organized and existing under the laws of the State of Alabama with its principal office at Birmingham, Jefferson County, Alabama; that the places of residence or post office addresses of the persons against whom this application is filed who are over the age of twenty-one (21) years, who are of sound mind and who are residents of the State of Alabama are as follows:

| <u>Name</u>     | <u>Address</u>                             |
|-----------------|--------------------------------------------|
| C. C. Cather    | 7314 - 4th Ave. So., Bham, Ala.            |
| Gerald J. Bryan | 728 9th Avenue West<br>Birmingham, Alabama |

|                     |                      |
|---------------------|----------------------|
| Dock Vick           | Wilsonville, Alabama |
| (and other persons) |                      |

that the following persons against whom this application is filed are over the age of twenty-one (21) years, of sound mind and nonresidents of the State of Alabama, residing at the addresses stated:

|                   |                                                                     |
|-------------------|---------------------------------------------------------------------|
| Clarence C. Lance | 1724 South Orange Blossom Trail<br>at 18th Street, Orlando, Florida |
|-------------------|---------------------------------------------------------------------|

702 MAY 1959

Thereupon, said L. C. Walker, Judge of Probate, Shelby County, Alabama, hereby certifies this case to the Circuit Court of Shelby County, Alabama, for trial on appeal.

This the                      day of                      1957.

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Judge of Probate

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Upon the filing of said petition or application, the Court set said cause for hearing for the 13th day of May, 1957, and the hearing was had at that time and the Court entered an order granting said application as to the several tracts of land described therein and for the purposes sought and appointed three commissioners possessing the qualifications required by law to assess the damages and compensation to which the several respondent owners of said parcels of land in said application named would be entitled.

Said commissioners were duly notified and entered into the discharge of their duties as such and on the 10th day of June, 1957, said commissioners filed their written report in said cause in which the damages and compensation to Clarence C. Lance as to his interest to said Parcel 2 was fixed at \$19,500.00 and the damages and compensation to W. W. Cather and Dock Vick as to their interest in crop lands through lease thereon to said Parcel 3 was fixed at \$1,595.50.

On June 13, 1957, the Court entered a decree reciting that the commissioners had made their report in said cause, and ordered the same filed and recorded together with all the pleadings in the case and entered an order confirming the report of the commissioners, but retaining jurisdiction over the cause pending payment of the several awards into said Court by the Applicant, Southern Electric Generating Company, which said payment was made to the Court on the said 13th day of June, 1957.

Thereupon, on the 3rd day of July, 1957, Clarence C. Lance who owns the land described in Parcel 2 of the petition and on the 3rd day of July, 1957, W. W. Cather, Gerald J. Bryan and Dock Vick who own a lease interest on the crop land described in Parcel 2 of the petition filed notice of an appeal from the order of condemnation entered in said cause on the 13th day of June, 1957, in so far as the condemnation relates to said Parcel 2 on which they hold interests. The original of said notices of appeal are incorporated in this certificate as follows:

TO: Southern Electric Generating Company and  
Messrs. Martin & Blakey,  
Attorneys for Southern Electric Generating Company

You are hereby notified that the above notice of appeal  
was filed in the Probate Court of Shelby County, Alabama, on  
the \_\_\_\_\_ day of July, 1957.

\_\_\_\_\_  
Judge of Probate of Shelby County, Alabama

STATE OF ALABAMA )

SHELBY COUNTY )

I hereby certify that I have on this date executed the  
within notice of appeal upon Southern Electric Generating Comp-  
any and Messrs. Martin & Blakey, Attorneys for Southern Electric  
Generating Company, by serving a copy of the same on them.

This \_\_\_\_\_ day of \_\_\_\_\_, 1957.

\_\_\_\_\_  
Sheriff, Shelby County, Alabama

By \_\_\_\_\_  
Deputy Sheriff

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IN THE PROBATE COURT OF SHELBY COUNTY, ALABAMA

SOUTHERN ELECTRIC GENERATING COMPANY

vs.

CLARENCE C. LANCE, et al

NOTICE OF APPEAL

Now comes Clarence C. Lance in the above styled proceeding and prays for and takes an appeal to the Circuit Court of Shelby County, Alabama, from the final order of condemnation entered in said proceeding on, to-wit, the 13<sup>th</sup> day of June, 1957, relating to lands owned by Clarence C. Lance and his interest in the lands as alleged in the application for an order of condemnation filed in said proceeding by said Southern Electric Generating Company.

Clarence C. Lance herewith files in the Court of Probate of Shelby County, Alabama, this his written notice of appeal and his appeal from the order of condemnation in said proceeding.

*Clarence C. Lance*  
CLARENCE C. LANCE

*Bainbridge & Hims*  
BAINBRIDGE & HIMS  
HASSEY BUILDING  
BIRMINGHAM, ALABAMA  
ATTORNEYS FOR CLARENCE C. LANCE

Clarence C. Lance hereby demands a jury for the trial of the said cause and proceeding in the Circuit Court of Shelby County, Alabama.

*Bainbridge & Hims*  
BAINBRIDGE & HIMS  
ATTORNEYS FOR CLARENCE C. LANCE

055 706

TO: Southern Electric Generating Company and  
Messrs. Martin & Blakey  
Attorneys for Southern Electric Generating Company

You are hereby notified that the above notice of appeal was  
filed in the Probate Court of Shelby County, Alabama, on the \_\_\_\_\_  
day of July 1957.

\_\_\_\_\_  
Judge of Probate of Shelby County, Alabama

STATE OF ALABAMA     )  
SHELBY COUNTY        )

I hereby certify that I have on this date executed the within  
notice of appeal upon Southern Electric Generating Company and Messrs.  
Martin & Blakey, Attorneys for Southern Electric Generating Company by  
serving a copy of the same upon them.

This \_\_\_\_\_ day of \_\_\_\_\_, 1957.

\_\_\_\_\_  
Sheriff, Shelby County, Alabama

By \_\_\_\_\_  
Deputy Sheriff

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IN THE PROBATE COURT OF SHELBY COUNTY, ALABAMA

SOUTHERN ELECTRIC GENERATING COMPANY

Vs.

CLARENCE C. LANCE, et al

NOTICE OF APPEAL

Now come W. W. Cather, Gerald J. Bryan and Dock Vick, separately and severally, in the above styled proceeding and pray for and take an appeal to the Circuit Court of Shelby County, Alabama, from the final order of condemnation entered in said proceeding on, to-wit, the 13<sup>th</sup> day of June, 1957, relating to lands owned by W. W. Cather, Gerald J. Bryan and Dock Vick and their interest in the lands as alleged in the application for an order of condemnation filed in said proceeding by said Southern Electric Generating Company.

W. W. Cather, Gerald J. Bryan and Dock Vick, separately and severally, herewith file in the Court of Probate of Shelby County, Alabama, this their written notice of appeal and their appeal from the order of condemnation in said proceeding.

W. W. Cather, Gerald J. Bryan  
and Dock Vick, separately and  
severally, hereby demand a jury  
for the trial of the said cause  
and proceeding in the Circuit Court  
of Shelby County, Alabama.

Bainbridge & Mims  
BAINBRIDGE & MIMS,  
ATTORNEYS FOR W. W. CATHER,  
GERALD J. BRYAN AND  
DOCK VICK

W. W. Cather  
W. W. CATHER

Gerald J. Bryan  
GERALD J. BRYAN

Dock Vick  
DOCK VICK

Bainbridge & Mims  
BAINBRIDGE & MIMS,  
MASSEY BUILDING, BIRMINGHAM, ALABAMA  
ATTORNEYS FOR W. W. CATHER, GERALD J.  
BRYAN AND DOCK VICK



not suspended pending such appeal and desires to enter upon and otherwise use said lands for the purposes stated in said application pending said appeal;

NOW, THEREFORE, the condition of the above obligation is such that if the said Southern Electric Generating Company shall pay such damages as the said Clarence C. Lance, W. W. Cather, Dock Vick and Gerald J. Bryan may sustain, this obligation shall be void; otherwise to remain in full force and effect.

**SOUTHERN ELECTRIC GENERATING COMPANY**

**Attest:**

W. W. T. Chum  
Secretary

By [Signature]  
As Its \_\_\_\_\_

St. Paul Fire & Marine Insurance Co.

BY: Mae Christie  
Attorney-in-Fact

Approved and filed this                  day of  
                    , 1957.

**Judge of the Court of Probate  
of Shelby County, Alabama**

STATE OF ALABAMA

JEFFERSON COUNTY

KNOW ALL MEN BY THESE PRESENTS, That we, Southern Electric Generating Company, as principal, and St. Paul Fire & Marine Insurance Company, as surety, are held and firmly bound unto Clarence C. Lance, W. W. Cather, Dock Vick and Gerald J. Bryan in the just and full sum of Forty Two Thousand One Hundred Ninety One and No/100 Dollars (\$42,191.00) for the payment of which well and truly to be made we bind ourselves, our successors and assigns, jointly and severally by these presents.

This the 22 day of July, 1957.

WHEREAS said Southern Electric Generating Company heretofore filed its application in the Court of Probate of Shelby County, Alabama, against Clarence C. Lance, W. W. Cather, Dock Vick and Gerald J. Bryan seeking to condemn the lands, rights, interests and easements therein described;

AND WHEREAS the said Court of Probate did in and by a decree of date the 18th day of May, 1957, grant the prayer of said application and appoint commissioners, as required by law, to ascertain and assess the damages and compensation of the defendants as the owners of the lands, rights, interests and easements described in paragraph one of Article Fourth of said application;

AND WHEREAS, said commissioners did ascertain and assess such damages and compensation of the said Clarence C. Lance, W. W. Cather, Dock Vick and Gerald J. Bryan in accordance with the statutes of the State of Alabama at the sum of Twenty-one Thousand Ninety-five and 50/100 Dollars (\$21,095.50) as shown in paragraph one of the report of said commissioners;

AND WHEREAS an order was thereafter made by said Court of Probate condemning the said lands, rights, interests and easements belonging to the said Clarence C. Lance, W. W. Cather, Dock Vick and Gerald J. Bryan;

AND WHEREAS the said Clarence C. Lance, W. W. Cather, Dock Vick and Gerald J. Bryan have taken an appeal from such order of condemnation to the Circuit Court of the Eighteenth Judicial Circuit of Alabama;

AND WHEREAS said Southern Electric Generating Company has paid into said Court of Probate in money, the amount of said damages and compensation so assessed by said commissioners for said Clarence C. Lance, W. W. Cather, Dock Vick and Gerald J. Bryan and is desirous that said judgment, or order of condemnation, be

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Shelby County, Alabama and described as follows:

That part of the East half of East half ( $\frac{1}{2}$  of  $\frac{1}{2}$ ) of Fractional Section 6, Township 21 South, Range 2 East, lying north and west of Coosa River and South of the Southern Railway Company's right of way. Also that part of Fractional Section 5, Township 21 South, Range 2 East, lying north and west of Coosa River.

Thereupon, the Court proceeded to have assessed by the jury the damages and compensation to which the defendants, Clarence C. Lance, W. W. Cather, L. B. Seymour, H. L. Jenkins, Gerald J. Bryan, Dock Vick, First National Bank of Columbiana and The Federal Land Bank of New Orleans are entitled for the condemnation of the fee simple interest in the lands, rights, and interests condemned for the uses and purposes described in such application.

Thereupon, on the 8th day of November, 1957, came a jury of good and lawful men, to wit, Leo Foster, Foreman, and eleven others who, being duly sworn and impaneled according to law, upon their oaths do say:

"We the jury hereby assess and fix the damages and compensation to the owners of the property described in paragraph 1 of parcel 1 in Article 4 of the application for condemnation filed in the office of the Judge of Probate of Shelby County, Alabama on the 23rd day of April 1957 at \$38,000.

/s/ Leo Foster  
Foreman

NOW, THEREFORE, Premises Considered, IT IS ORDERED, ADJUDGED and DECREED by the Court that the defendants, Clarence C. Lance, W. W. Cather, L. B. Seymour, H. L. Jenkins, Gerald J. Bryan, Dock Vick, First National Bank of Columbiana, and The Federal Land Bank of New Orleans have and recover of Southern Electric Generating Company the sum of Thirty-eight Thousand and no/100 Dollars (\$38,000.00) as damages and compensation as to the lands described in Paragraph 1 of Article Fourth of such application.

And now comes the applicant by its attorneys and shows unto the Court that it has heretofore deposited with the Judge of the Probate Court of Shelby County, Alabama the sum of Twenty-one Thousand Ninety-five and 50/100 Dollars (\$21,095.50) and further with the Clerk of the Circuit Court of Shelby County the further sum of Sixteen Thousand Nine Hundred Four and 50/100 Dollars (\$16,904.50) in money for such defendants as damages and compensation for the condemnation of the lands described in Paragraph 1 of Article Fourth of such application.

SOUTHERN ELECTRIC GENERATING  
COMPANY, a corporation,

v.

CLARENCE C. LANCE, W. W.  
CATHER, L. B. SEYMOUR, H. L.  
JENKINS, GERALD J. BRYAN,  
DOCK VICK, FIRST NATIONAL  
BANK OF COLUMBIANA, and THE  
FEDERAL LAND BANK OF NEW  
ORLEANS

IN THE CIRCUIT COURT OF

SHELBY COUNTY, ALABAMA

JUDGMENT

On the 6th day of November, 1957, came into open court the applicant, Southern Electric Generating Company, a corporation, by and through its attorneys and also came the defendants, Clarence C. Lance, W. W. Cather, Gerald J. Bryan and Dock Vick by and through their attorneys on an appeal by the aforementioned defendants from the final order of condemnation rendered in the Probate Court of Shelby County, Alabama on June 13, 1957 relating to the lands owned by Clarence C. Lance, W. W. Cather, Gerald J. Bryan, Dock Vick, L. B. Seymour, H. L. Jenkins, First National Bank of Columbiana and The Federal Land Bank of New Orleans as alleged in Paragraph 1 of Article Fourth of the Application for Order of Condemnation filed in this cause by Southern Electric Generating Company.

Thereupon, the Court proceeded to hear the allegations of the application for condemnation, such application being incorporated herein and made a part hereof; and after hearing the allegations of such application, and all legal evidence offered by the parties concerning the same is of the opinion that the petitioner has the right and power to condemn land for the uses and purposes stated in such application and is entitled to the relief prayed for therein;

And further, that said applicant is entitled to have the fee simple interest in the lands, rights and interests condemned for the uses and purposes described in the application and that such application should be granted;

IT IS, THEREFORE, Premises Considered, ORDERED, ADJUDGED and DECREED by this Court that such application of Southern Electric Generating Company for the condemnation of the fee simple interest in the lands described in Paragraph 1 of Article Fourth of such application be and the same is hereby granted; such lands in Paragraph 1 of Article Fourth being located in

4.

And IT IS, Premises Considered, FURTHER ORDERED, ADJUDGED and DECREED by the Court that applicant be and it is hereby taxed with the costs incurred in this cause and let execution issue as to such costs incurred.

Done in open court this 20th day of November, 1957.

s/ A. S. Hardegree  
Judge of Circuit Court of  
Shelby County, Alabama

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NOW, THEREFORE, IT IS ORDERED, ADJUDGED and DECREED by this Court that the said Judge of Probate of Shelby County pay to the Clerk of this Court the sum of Twenty-one Thousand Ninety Five and 50/100 Dollars (\$21,095.50), the amount heretofore deposited with him as aforesaid. It is further ordered that the said Clarence C. Lance, W. W. Cather, L. B. Seymour, H. L. Jenkins, Gerald J. Bryan, Dock Vick, First National Bank of Columbiana, and The Federal Land Bank of New Orleans are entitled to have and receive of the said Clerk of this Court the sum of Thirty-eight Thousand and no/100 Dollars (\$38,000.00).

And it is further ORDERED, ADJUDGED and DECREED by this Court that the fee simple title in the land described in Paragraph 1 of Article Fourth of such application and other rights, interests and authority sought to be condemned as described in such application, be and hereby are condemned, granted and awarded to said applicant, Southern Electric Generating Company, with the rights and for the uses and purposes set forth in said application and that the fee simple interest in the lands described in Paragraph 1 of Article Fourth, together with all rights, interests and authority concerning the same prayed for in such application, be and the same are hereby divested out of the said defendants, Clarence C. Lance, W. W. Cather, L. B. Seymour, H. L. Jenkins, Gerald J. Bryan, Dock Vick, First National Bank of Columbiana, and The Federal Land Bank of New Orleans, and vested in the applicant, Southern Electric Generating Company;

And IT IS, Premises Considered, FURTHER ORDERED, ADJUDGED and DECREED by this Court that the applicant be and it is hereby granted the right to erect, construct, operate and maintain steam or other electric generating plants, together with substations, structures, works, towers, poles and wire lines and other appliances necessary, convenient or useful in connection therewith, for such usages or purposes set forth in such application on, under, across and over the lands described in Paragraph 1 of Article Fourth of such application.

And IT IS, Premises Considered, FURTHER ORDERED, ADJUDGED and DECREED by this Court that applicant be and it is hereby granted all the relief, rights, interests, title and privileges set out, described and prayed for in such application.

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Appellant states in brief that "the sole issue for the jury in this case was the valuation issue, viz., determination of the fair market value of appellees' land on June 13, 1957. All errors argued herein deal with the exclusion or admission of valuation evidence or statements of counsel to the jury on matters of valuation." Assignments of error are listed and numbered as they are argued in brief.

Assignment of error 11 charges that the court erred in overruling appellant's objection to the following question asked appellant's witness McEwen on cross-examination: "What did you sell it to the Southern Electric Generating Company for?", and in permitting the witness to answer the question. McEwen had bought 122 acres of land in 1954 and sold it to appellant in 1957 to become a part of the plant site for which appellees' land was being condemned.

We have consistently held that in a condemnation proceeding, the price paid by the condemnor for other lands which are to be used for the same purpose as the lands being condemned is inadmissible, and its admission is reversible error. Blount County v. McPherson, 105 So. 2d 117; Housing Authority of Phenix City v. Stillwell, 241 Ala. 420, 3 So. 2d 55; Pickens County v. Jordan, 239 Ala. 589, 196 So. 121; Leahy v. State, 214 Ala. 107, 106 So. 599; Alabama Power Co. v. Sides, 212 Ala. 687, 103 So. 859. But McEwen had testified on direct as to his opinion of the value of the property, he had made a trip to Florida to try to get appellee Lance to sell the property to appellant, he was then selling materials to appellant and he



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March 12, 1959

THE STATE OF ALABAMA - - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1958-59

7 Div. 396

Southern Electric Generating Company

v.

Clarence C. Lance, et al.

Appeal from Shelby Circuit Court

MERRILL, JUSTICE.

This appeal is from a judgment of condemnation and an award by the jury of \$38,000 to appellees. The proceedings in probate court had resulted in an award of \$21,095.50. Appellees appealed from that judgment and the cause was tried to a jury in circuit court. A motion for a new trial was overruled.

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the commissioners by showing amounts of awards they had made for other lands. A person who had sold lands to the condemnor to be used for the same purpose as condemned lands would not be qualified to be a commissioner in condemnation proceedings. McEwen could not have been a commissioner because he was not disinterested, and he could not have made the oath required of commissioners by Tit. 19, § 11, Code 1940. The evidence in the instant case was admissible for the limited purpose for which the trial court restricted it.

Assignment of error 12, relating to the specific price per acre requested by McEwen for his land and paid by appellant, is answered by the same authorities as cited in the discussion of Assignment No. 11.

Assignment 15 charges error in the overruling of appellant's objection to the question asked appellant's witness Bolton on cross-examination: "Did any of them (appraisers for appellant) discuss with you the valuation they placed on the Wolf property right next to it?" (also property making up the site and next to the suit property). Conceding, without deciding, that the question was improper, the ruling was rendered harmless by the answer of the witness, who replied, "I don't remember, I don't recall talking to me about the valuation of Wolf property." In Tankersley v. Webb, 263 Ala. 234, 82 So. 2d 259, we said:

"\* \* \* The rule that the overruling of an objection to a question is harmless, where the witness answers that he does not know,

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had paid \$7,500 for the 122 acres in 1954 and had sold it to appellant for \$15,000 three years later. When appellant objected to the question, the basis of this assignment of error, the court stated: "It is limited for shedding light on the question of interest of the witness." We think the trial court ruled correctly. We have held that it is always permissible to cross-examine a witness to ascertain his interest, bias, prejudice, social and business relations with and friendship for the party who calls him to testify. Housing Authority v. Decatur Land Co., 258 Ala. 607, 64 So. 2d 594; Mobile City Lines v. Alexander, 249 Ala. 107, 30 So. 2d 4; Louisville & Nashville R. Co. v. Martin, 240 Ala. 124, 198 So. 141. In the Alexander case, we said:

" \* \* \* It is always permissible to cross-examine a witness to ascertain his interest, bias, prejudice, or partiality concerning the matters about which he is testifying. Alabama Power Co. v. Gladden, 237 Ala. 527, 187 So. 711. The party producing a witness may not shield him from such proper cross-examination for the reason that the facts thus elicited may not be competent upon the merits of the cause. We think this line of questioning was proper as tending to affect the credibility of the witness. \* \* \*"

There is no conflict in this holding and the holding in the Stillwell case, supra. There, the attempt was to show bias of

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for appellees had "no reason to 'expect' any \$300 per acre appraisal testimony." But two witnesses did put that exact valuation on the suit property.

Assignment 21 reads: "That the trial court erred in denying appellant's motion to exclude the testimony of appellees' witness Mark J. Williamson as to the value he put on the river front property of appellees' land." The witness had just testified that he estimated the river front property as 58 lots, 100 by 200 feet, at \$500 each. Appellant moved to exclude this testimony and the motion was granted. The witness then stated his valuation of the river front property was \$14,000. Even though there was no reference to the 58 lots, appellant again asked for and was granted an exclusion as to the 58 lots. The motion was then made "to exclude the value he put on the river property." The witness had testified that he placed a value of \$500 per acre on the 26 acres of river front property and thereby reached a value of \$14,000. (A correct multiplication would show \$13,000). The witness had qualified as an expert and had been over the property inspecting and appraising it. Laying to one side the indefiniteness of the motion to exclude the "value" the witness had put on the river front property, we find no error in the ruling of the trial court. A similar situation was considered in Alabama Power Co. v. Berry, 222 Ala. 20, 130 So. 541, where it was said:

"The plaintiff's cross-examination of the witness developed the fact that, in making his estimate as to the depreciation of value, he

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or does not remember, is applicable here.

Brown v. Johnston Bros., 135 Ala. 608, 33 So. 683; Gates v. Morton Hardware Co., 146 Ala. 692, 40 So. 509; Southern Cotton Oil Co. v. Harris, 175 Ala. 323, 57 So. 854; Kellett v. Cochran, 239 Ala. 313, 194 So. 805; 2 Alabama Digest, Appeal and Error, Key 1048(5)."

Assignments of error 2 and 3 are argued together. Assignment 2 reads: "That the trial court erred in overruling appellant's objection to a remark by appellees' counsel in his opening statement concerning what would be the valuation testimony by certain witnesses who had not been served." This is not the proper way to call attention of the lower court to argument of counsel or to assign same as error on appeal. Prior to the court's ruling, there was no record of the objectionable statement of counsel either quoted or in substance or effect. We have said that "where the argument of one's counsel passes beyond the bounds of legal propriety, it is the duty of opposing counsel to object specifically, and point out substantially the language deemed objectionable; and the record should disclose with reasonable certainty what was said in the court below, in order that the appellate court may review it." Flowers v. State, 6 Div. 278, Sup. Ct. Ms. Neither the assignment of error nor page 24 of the transcript points out substantially the language deemed objectionable, and we find no merit in assignment 2. Assignment 3 is likewise without merit. It is argued that counsel

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the question was improper, the error was rendered harmless by the answer of the witness, "I couldn't say." Tankersley v. Webb, 263 Ala. 234, 82 So. 2d 259.

Assignments of error 17, 18 and 19 charge error in the sustaining of appellees' objections to the offer in evidence by appellant of the deeds by which appellee Lance took title to the property being condemned. The offer was made, according to appellant's counsel, "for the purpose of proving title in the respondent" (Lance). The court said: "It is undisputed, the title has been admitted in the record, the title is in this man and was on the date of the condemnation. The Court sustains the objection." This is supported by the record. Previously, the following had transpired:

"MR. BAINBRIDGE: May it please the Court, the Respondent, Mr. Lance, now admits in open court in the presence of the jury and counsel for petitioner that he owned this property described in the petition as of June 13, 1957, and that he owns the property at this time."

The trial court did not err in sustaining the objections to the deeds. The stated purpose was to prove the title was in Lance, and that fact had been admitted and was not disputed. If the deeds were admissible for the purpose indicated, there was no prejudice in excluding them. Ray v. Fowler, 265 Ala. 65, 89 So. 2d 573.

Assignments of error 23 and 24 are concerned with the court's sustaining objections to questions asked appellee Lance

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had assumed that the defendants would have to pay taxes, and that the plaintiff would have the right to fence the right of way and exclude the defendants from its use. Thereupon plaintiff made motion to exclude his evidence as to the value of the land after the construction of the right of way, on the ground that the witness had included in his estimate irrelevant and immaterial matters.

"The witness qualified under section 7656 of the Code 1923, and the fact that, in forming his opinion, he considered some irrelevant matters, goes to the credibility of his testimony, and not to its admissibility. *Cossett v. Morrow*, 187 Ala. 387, 65 So. 826. The rule is different where the opinion is predicated wholly upon immaterial matters. *Winter & Co. v. Burt*, 31 Ala. 33."

The record shows convincingly that the opinion of the witness Williamson was not "predicated wholly upon immaterial matters."

Assignment 7 reads: "That the trial court erred in overruling appellant's objection to the following question asked appellant's witness Grady Weaver on cross-examination: Q. 'But suppose you had a camp site on Coosa River on the Lance property fifty feet by sixty feet deep fronting on Coosa River what would you say that would be worth?' and in permitting such witness to answer such question." Again conceding, without deciding that

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Assignment 13 is without merit. It complains of a ruling on a question. Actually, no question was asked, even though the trial court called it a "question" in sustaining the objection to the statement of counsel. The trial court recognized it for what it was -- another attempt to get the deeds to the property in evidence.

Assignment 8 presents no prejudicial error. Conceding that the question was improper, the answer of the witness to the question was that he did not know. Tankersley v. Webb, supra.

Assignment 16 complains of the action of the trial court in overruling objection to a question propounded to appellant's expert appraiser on cross-examination. The question was "Can you answer this: Give the jury your best judgment as to the reproduction cost, total reproduction cost of all those buildings, and the market value of the same at the time you appraised them?" Irrespective of whether the question was improper, the answer was not prejudicial. The witness answered, "I think about \$6800.00." On direct examination in answer to this question, "I will ask you to give me from the figures you have given the total value of the buildings that entered into your appraisal on this property," the witness answered, "\$6830.00." Thus, his figure for reproduction cost of the buildings was actually lower than the total value he had placed on them, and the answer was favorable to appellant. We are not to be understood as approving the question or the answer.

Assignment 9 complains of the sustaining of an objection to a question, whereas, the record does not show such action by the trial court, nor does it show any answer by the witness.

on cross-examination in reference to what he had paid for his property. Lance had testified that his property, 217.6 acres, was worth \$360 per acre. He had acquired one parcel in 1940, the other in 1947. In Thornton v. City of Birmingham, 250 Ala. 651, 35 So. 2d 545, we said:

"The general rule, supported by overwhelming authority, is that evidence of the price paid by the owner for the property sought to be condemned is admissible as tending to illustrate or bearing probatively on its market value, unless the sale was too remote in point of time from the condemnation proceedings as to afford no fair criterion of present value, or if otherwise shown to be without probative force, as where the sale was not a voluntary one or where other special considerations conduced the sale at other than the true market value. (Citing cases).

"And, on the question of the remoteness of time of the purchase of the property by the owner, the rule seems to be that much is left to the discretion of the trial court. (Citing cases)."

The trial court sustained objections on the ground that the sale was too remote. We cannot say that the trial court abused its discretion in holding as too remote transactions made seventeen and ten years prior to the valuation date.

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"MR. HARRISON: Your Honor, we are going to object to it. Unless he has personal knowledge it is hearsay. He says he was not involved in the same, and it is hearsay, and we move to exclude his testimony.

"THE COURT: That might be a question for the jury. However, this is an expert witness. Overrule the objection.

"MR. HARRISON: We except.

"A It was in my opinion."

Appellant argues here that the answer invaded the province of the jury. But, it will be noted that the objection was on the ground that it was hearsay. In Louisville & Nashville R. Co. v. Scott, 232 Ala. 284, 167 So. 572, we said:

"When the court overrules an objection to evidence on special grounds assigned, which do not point out a valid objection, this court will not on review consider other grounds which might have been assigned, and which would have pointed out some legal objections." (Citing cases).

Appellant was not prejudiced by the ruling of the trial court.

Assignments of error 4, 5 and 6 are without merit. Even though they are argued together, we consider them separately because they are closely related, and we have held that related or kindred assignments of error may be argued together and that practice has been commended. Southern Railway Co. v. Cates, 211

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Assignment 10 reads: "That the trial court erred in sustaining appellees' objection to the following question to appellant's witness J. M. Batson on redirect examination: Q. 'I will state the question this way: If you know state what it sold for?'. The reference was to the Walton land which adjoined the river as did some of the Lance property. The witness had testified that he did not know of any river front property that had been sold, again that he did not know what the Walton land sold for, and the next day in answer to the question quoted in Assignment of error 10, the following occurred:

"A I don't actually have a personal knowledge of what it sold for--

"MR. BAINBRIDGE: We object to any further statement.

"THE COURT: Sustain the objection. I think he testified yesterday he didn't know."

There was no evidence in the record that the Walton property had ever been sold. In this state of the record, we find no reversible error in the ruling of the trial court.

Assignment 20 complains of the following which occurred during the direct examination of appellees' expert witness Williamson, who was testifying as to his knowledge of sales of farms in the vicinity, and he had specifically referred to it as "the Jackson sale.":

"Q Tell the jury whether or not, in your opinion, that was a distress sale?

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error and appellant cannot now avail itself of the error.

Ellerbee v. Atlantic Coast Line R. Co., 258 Ala. 76, 61 So. 2d

89. Assignment 5 complains of the answer to a similar question, but the answer was essentially the same as the answer to the first question, the objection to which was withdrawn. This, if error, was not prejudicial. Mobile City Lines v. Hardy, 264 Ala. 247, 86 So. 2d 393. To the question the basis of assignment 6, the witness stated that he could not answer it. The overruling of the objection to this question was rendered harmless.

Tankersley v. Webb, supra. We further observe that the trial court correctly gave five written charges requested by appellant to the effect that Lance was not entitled to any increased value for his land on account of the proposed improvements on or uses of the land in contemplation of its use as a generating plant site.

Assignment 22 charges error in connection with the motion to exclude witness Cather's testimony as to the value of the timber on the condemned lands. The witness testified that the timber was worth \$4,300. It developed that he had not looked at the timber himself but had employed timber cruisers to cruise it. The motion was: "I move to exclude the value he put on the timber." It is sufficient to say that there is no error in overruling a motion to exclude answers from evidence where no grounds are stated therefor. Alabama Securities Co. v. Dewey, 156 Ala. 530, 47 So. 55; Slaughter v. Green, 205 Ala. 250, 87 So. 358.

Ala. 282, 100 So. 356; Palytinsky v. Johnston, 211 Ala. 99, 99 So. 839. The rule that we consider no assignments of error when more than one are argued together and one is without merit applies only when they are not kindred or related. In Thompson v. State, 267 Ala. 22, 99 So. 2d 198, we said: "When unrelated assignments of error are argued together and one is without merit, the others will not be considered." In Hartford Fire Ins. Co. v. Clark, 258 Ala. 141, 61 So. 2d 19, we said:

" \* \* \* Where the assignments of error are so related as that they may be treated as being predicated upon a single argument, the fact they are argued in bulk is not objectionable. But that principle does not apply where the assignments of error are not dependent upon the same legal principles. \* \* \*"

There is a discussion of this point in White Dairy Co. v. Sims, 230 Ala. 561, 161 So. 812 [2]. See also, Socier v. Woodward, 264 Ala. 514, 88 So. 2d 783 [8].

The three assignments, 4, 5 and 6 complain that the court overruled objections to questions tending to show that the lands sought to be condemned were suitable for the purpose for which they had been condemned. Such evidence has been held inadmissible. Housing Authority v. Title Guarantee Loan & Trust Co., 243 Ala. 157, 8 So. 2d 835 [6]. But in the instant case, the objection to the question, the basis of assignment 4, was withdrawn. After the objection, counsel for appellant stated: "I think we will let the witness answer the question." This was invited

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never within the contemplation of the statute that a money judgment should be rendered, as in debt or assumpsit, as was here done, on which an execution should issue." It follows that neither penalty nor interest may be awarded on appeal in condemnation cases. See State of Alabama v. Moore, 5 Div. 695, Sup. Ct. Mo., this day decided.

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Appellees submitted on a motion to dismiss the appeal on the ground that prior to the appeal appellant took possession of the property under the judgment and commenced the erection of its steam electric generating plant and has continued in possession of the property since. The proposition of law cited is from a headnote in Russell v. Bush, 196 Ala. 309, 71 So. 397, which states: "Where the party condemning takes possession and pays the award, he is estopped from objecting to the proceedings, and waives his right of appeal." It is sufficient to state that in that case the condemnation proceedings had been instituted by the United States and prosecuted to a final decree condemning the property and "paid the damages therefor as determined by the rules of law governing such cases, and the defendant owner had received such damages so assessed for the condemned property." The court held that thereafter the United States had no right of appeal or of review, and no right of rescission, and in fact, no effort was being made by the United States to disturb the enjoyment of the proceeds of the condemnation proceedings.

In the instant case, the owner has not yet received the damages assessed. Ex parte Lance, 267 Ala. 693, 103 So. 2d 753.



Assignment 1 charges error in overruling the motion for a new trial. The question of value was in conflict and was for the jury to decide. Five witnesses for appellant placed the value of the lands from \$18,000 to \$26,000. Six witnesses for appellees ranged in testimony from \$42,000 to \$78,000. The only grounds of the motion argued here are concerned with the weight of the evidence. The motion was properly overruled.

Both parties to this appeal conclude their briefs with discussions about penalty and interest. We would prefer to award these items on appeal, but we think we must await authority from the Legislature before doing so.

The ten percent penalty is provided for in Tit. 7, § 814, Code 1940, as amended. It applies where a supersedeas bond is or could be made. But, as shown in Ex parte Lance, 267 Ala. 639, 103 So. 2d 753, Tit. 7, § 760, Code 1940, does not permit the superseding of a judgment on appeal where the compensation award and the costs of court are paid into court, and a bond in double the amount of damages is given.

Interest on judgments is also governed by statute. Interest on a judgment is provided where a judgment is for payment of money. Tit. 9, § 63, Code 1940. But, we have held that a judgment and assessment of damages rendered in a condemnation proceeding is not a personal, moneyed judgment. Ex parte Lance, *supra*; State v. Carter, 267 Ala. 347, 101 So. 2d 550; Calhoun County v. Logan, 262 Ala. 586, 80 So. 2d 529; Mobile & Ohio R. Co. v. Hester, 122 Ala. 249, 25 So. 220. Nor does Tit. 7, § 506, Code 1940, apply. As stated in the Hester case, *supra*, "It was



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That is why the cited case is not apt authority here. The motion to dismiss is denied.

The judgment of the lower court is affirmed.

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

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