

11 "1900" Court docket No. 1.

U.S. District Court,
Western Dist. of N.Y.

Machinists' Supply
Company Plaintiffs,
against

William H. Wise, as
trustee of Russell &
Birkett, bankrupts. Defendant.

Summons and
Complaint.

William De Graff,
Attorney for plaintiff.
330 Powers Building
Rochester, N.Y.

Do

Filed July 24, 1900

WILLIAMSON LAW BOOK CO., ROCHESTER, N. Y.

I hereby admit
due personal ser-
vice upon me of a
copy of the annexed
Summons & Complaint at
Poughkeepsie N.Y. this
18th day of July
1900.

Wm H. Wise
by C. J. Nugent
his Atty.

United States District Court,
FOR THE NORTHERN DISTRICT OF NEW YORK.

Machinists Supply Company

Plaintiff.

AGAINST

*William H. Wise as trustee &c
of Calvin Russell & Clarence
T. Birkett, liqrs.*

Defendant.

To the above named Defendants

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the Plaintiff Attorney at his office, No. 330 Commerce Bldg. in the City of *Rochester* *Monroe* County, New York, within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear, or answer, judgment will be taken against you by default for the relief demanded in the complaint.

WITNESS, the Honorable *John R. Hazel* ~~WILLIAM S. WATKINS~~, Judge of the District Court of the United States of America, for the Northern District of New York, at the City of Buffalo, this *15th* day of *July*, in the year one thousand ~~eight~~ hundred and ~~seventy~~.

Wm. De Graff

Plaintiff's Attorney.

Geo. P. Keating Clerk.

York, having its office and principal place of business in the City of Rochester, New York, and is engaged in the manufacture and sale of leather belts &c.

2. That, as plaintiff is informed and believes, Calvin Russell and Clarence T. Birkett were, from March 1, 1899, to May 1, 1899, copartners engaged in the milling business at Penn Yan, Yates County, New York, under the style and firm name of Russell & Birkett.

3. That, as plaintiff is informed and believes, in bankruptcy proceedings had in the United States District Court for the Northern District of New York, the said firm of Russell & Birkett, was, on or about the 1st day of May, 1899, duly adjudged bankrupt, and defendant was duly appointed trustee thereof.

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fol 3

File - 1.

District Court of the United States,
In and for the Western District of New York.

Machinists' Supply Company,

Plaintiff,

against

In Bank-
ruptcy.

William R. Wise, as trustee of Calvin Russell
& Clarence T. Birkett members of the coaprtner-
ship of Russell & Birkett, bankrupts,

Defendant.

For Complaint the plaintiff alleges:

1. That it is a manufacturing corporation duly organ-
ized and incorporated under the Laws of the State of New
York, having its office and principal place of business in
the City of Rochester, New York, and is engaged in the manu-
facture and sale of leather belts &c.

file 2

2. That, as plaintiff is informed and believes, Calvin
Russell and Clarence T. Birkett were, from March 1, 1899, to
May 1, 1899, copartners engaged in the milling business at
Penn Yan, Yates County, New York, under the style and firm
name of Russell & Birkett.

3. That, as plaintiff is informed and believes, in
bankruptcy proceedings had in the United States District
Court for the Northern District of New York, the said firm
of Russell & Birkett, was, on or about the 1st day of May,
1899, duly adjudged bankrupt, and defendant was duly appoint-
ed trustee thereof.

file 3

4. That, as plaintiff is informed and believes, the defendant, on or about the date last aforesaid, took possession of all the property and chattels of said bankrupt firm, and all property and chattels which were then in its possession, and which included the following described goods and chattels, of the value of \$748.76:

250 ft. of 8" Sing. Lea. Belt,
400 ft. of 6" Sing. Lea. Belt,
200 ft. of 4" Sing. Lea. Belt,
100 ft. of 12" Dbl. Lea. Belt,
1000 ft. of 5"---4ply Cotton Belt,
4 -- 2 15/16" Post Hangers,
2 -- 2 15/16" Solid Collars,
16 -- 1-15/16" Post Hangers,
12 -- 1-15/16" Solid Collars,
96 Sq. ft. of Lace Leather,
4 -- 2 11 16 Post Hangers.

fol. 4

5. That on the 7th day of March, 1899, under a contract between the plaintiff and said Russell & Birkett, the above described goods and chattels were sold by the plaintiff to said Russell & Birkett for the sum or price of \$748.76, to be paid to the plaintiff by said Russell & Birkett within ten days from the date of delivery, and said goods were duly delivered on or about the 27th day of March, 1899. That said sum has not, nor has any part thereof, been paid.

fol. 5

6. That the plaintiff was induced to sell and deliver said property and chattels to said Russell & Birkett upon credit, as aforesaid, by reason of and upon the false and

fraudulent representations made to the plaintiff by said Russell and Birkett, that said firm of Russell & Birkett was financially strong, had abundantⁿ resources and that plaintiff would be taking no chances in delivering the said goods upon credit, whereas, as plaintiff is informed and believes, the said firm of Russell & Birkett was then insolvent, was not financially strong and had not abundant resources, all of which said firm of Russell & Birkett well knew. That plaintiff sold and delivered said goods to said firm in reliance upon said representations as being true. That such representations were made by said Russell & Birkett with intent to deceive and defraud plaintiff by procuring said goods on credit not intending to pay for them.

7. That the aforesaid property and chattels at the time the defendant took possession thereof, as aforesaid, were, and they now are, the property of the plaintiff, and it was then, and now is, entitled to the immediate possession thereof. That on or about the 11th day of May, 1899, the plaintiff duly demanded the said property and chattels of the defendant, but he refused to deliver the same to the plaintiff, and he wrongfully detains the same from the plaintiff.

8. That the plaintiff suffered damages by such wrongful detention by defendant in the sum of \$250.

9. That on motion of this plaintiff an order was made by this court on the 3rd of July, 1900, and entered in the office of the clerk of this court on the 6th of July, granting leave to the plaintiff to bring this action. That a copy of such order with notice of entry was served by mail

on Calvin J. Huson Esq., attorney for defendant, on the 7th of July 1900.

Wherefore the plaintiff demands judgment against the defendant for the possession and the recovery of the possession of said property and chattels, or for the value thereof, namely, \$748.76, in case a delivery thereof cannot be had, and also damages to the amount of \$250 for the unlawful detention thereof, with the costs of this action.

William De Graff
Attorney for plaintiff,
330 Powers Building,
Rochester, N.Y.

fol. 9
State of New York,)
County of Monroe,) ss.
City of Rochester,)

George L. Estes, being duly sworn, says that he is the president and manager of the Machinists' Supply Company, the plaintiff named in the foregoing complaint; that he has read the same and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

Geo. L. Estes

Sworn to before me this.

9th day of July, 1900.

J. Frank Unse
Notary Public

At a Term of the United States District Court held in and for the Western District of New York at Canandaigua, N.Y. on September 11th, 1917.

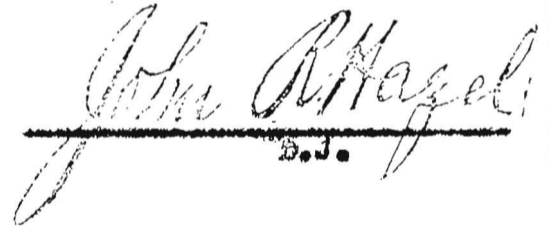
PRESENT: HON. JOHN R. HAZEL, District Judge Presiding.

MACHINISTS SUPPLY CO.
VS
WILLIAM N. WISE etc

Civ. 11

The above entitled action having been placed on a special calendar by the order of the Court made July 27th, 1917. pursuant to Rule 20 of this Court and having been called at the call of the said calendar had on September 11th, 1917, at Canandaigua, N.Y. and no cause having been shown why the said action should not be dismissed for lack of prosecution, it is

ORDERED that the above entitled action be dismissed for lack of prosecution.


D.J.

United States of America.

Western DISTRICT OF NY } ss:

I hereby certify and return that I served the annexed Summons & Complaint on the therein-named William N Wise

by handing to and leaving a true and correct copy thereof with C. J. Hanson his atty personally (admission of Service endorsed on Original) at Brown Van in said District on the 18th day of

July, A. D. 1900

Wm R Compton U. S. Marshal.
By Norris M Compton Deputy.

Marshals fees
Service 2.00
Travel 9.84

ONE THOUSAND EIGHT HUNDRED AND SEVENTY

Wm N Wise Plaintiff's Attorney.

Gov. Keating Clerk.

York, N. Y., his office and principal place of business in the City of New York, New York, and is engaged in the manufacture of Wagon of Wagon Co.

fol 2

2. That, as plaintiff is informed and believes, Calvin Russell and George T. Barrett were, from March 1, 1899, to May 1, 1899, respectively engaged in the milling business at Pearlton, Yates County, New York, under the style and firm name of Russell & Barrett.

3. That, as plaintiff is informed and believes, in the proceedings had in the United States District Court for the Southern District of New York, the said firm of Russell & Barrett, was, on or about the 1st day of May, 1899, duly declared bankrupt, and defendant was duly appointed trustee of the same.

fol 3

United States of America.

Western DISTRICT OF N.Y. } ss:

I hereby certify and return that I served the annexed Summons & Complaint on the therein-named William N Wise

by handing to and leaving a true and correct copy thereof with L. J. Hanson his atty (admission of Service Endorsed on Original) personally at Burrman in said District on the 18th day of July, A. D. 1900

Marshals fees
Service 2.00
Travel 7.84

Wm R Compton
U. S. Marshal.
By Norris H Compton
Deputy.

One thousand eight hundred and seventy

Wm N Craft
Plaintiff's Attorney.

W. P. Keating
Clerk.

fol 2

York, ... office and principal place of business in ... New York, and is engaged in the manu-
facture of ...

1. This plaintiff is informed and believes, Calvin Russell and Clarence T. Kirkett were, from March 1, 1899, to May 1, 1899, respectively engaged in the milling business at Pearlton, Yates County, New York, under the style and firm name of Russell & Kirkett.

fol 3

3. This, as plaintiff is informed and believes, in ... proceedings had in the United States District Court for the Northern District of New York, the said firm of Russell & Kirkett, was, on or about the 1st day of May, 1899, duly adjudged bankrupt, and defendant was duly appointed receiver thereof.