

DOCKET NO. 174

NUMBER	TERM	YEAR
82	September	1961

Clearfield Trust Company

VERSUS

Kenneth J. Chandler and

Kyle McQuillen, t/a

C & M Contracting Co

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA.

CLEARFIELD TRUST COMPANY :
VS : No. 82 September Term 1961
KENNETH W. CHANDLER and :
KYLE McQUILLEN, trading as :
C. & M. CONTRACTING CO. :
:

O R D E R

NOW, June 22, 1962, Sheriff's Distribution, with Exceptions thereto, filed with the Prothonotary, Monday, July 2, 1962, at 11 A.M., is fixed for hearing on the Exceptions, and disposition thereof.

BY THE COURT


John H. Dugay
President Judge

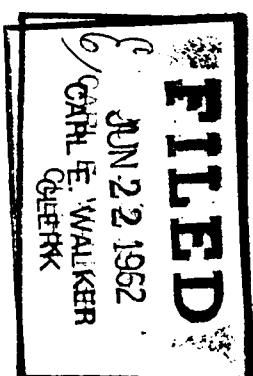
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
No. 82 September Term 1961

CLEARFIELD TRUST COMPANY

VS

KENNETH W. CHANDLER and
KYLE MCQUILLEN, trading as
C. & M. CONTRACTING CO.

ORDER



JOHN J. PENTZ
PRESIDENT JUDGE
CLEARFIELD, PENNSYLVANIA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA.

CLEARFIELD TRUST COMPANY	:	
	:	No. 82 September Term, 1961
-vs-	:	
KENNETH W. CHANDLER and	:	Execution No. 7 Sept. Term, 1961
KYLE McQUILLEN, trading as	:	
C. & M. CONTRACTING CO.	:	EXCEPTION TO SHERIFF'S DISTRIBUTION.

O P I N I O N

Clearfield Trust Company, the above named plaintiff, entered judgment by confession against the named defendants on the 14th day of September, 1961, by virtue of a warrant of attorney authorizing the entry of a judgment upon default, as contained in a note, a part of a secured transaction.

On the same day, the plaintiff issued a writ of execution for the unpaid principal sum, attorney's commission, interest and costs.

By virtue of the writ of execution the Sheriff levied upon four pieces of earth moving machinery and other personal property stated in the Sheriff's levy to be located "Approximately two miles from Wallacetown on dirt road in Boggs Township" on the 21st day of September, 1961.

The sale was fixed by the Sheriff to take place on the 25th of May, 1962, but was continued to the 1st day of June, 1962, at which time, as the Sheriff's return shows, six pieces of earth

moving equipment, including one Lorain Model 40, Serial 2693, were sold for the total sum of \$13,600.00.

On June 6, 1962, the Sheriff posted the distribution of the monies received by him by virtue of the sale, stating in said distribution that the sale had taken place on the 1st day of June, 1962.

Following the posting of the schedule of distribution, the United States Internal Revenue advised the Sheriff that a portion of the money was to be allocated to the United States Internal Revenue Bureau for payment of Social Security taxes owed by the defendants.

On the 20th day of June, David Lee Cowfer filed an "exception to the alleged sale of a Model 40 Lorain Shovel, Serial Number 2693 on June 1, 1962, for the reason that said shovel was not in the possession of the defendants either at the time of the levy or sale, nor was the shovel legally levied upon nor taken in possession by the Sheriff."

This exception was followed by a petition filed June 26th by the said David Lee Cowfer, and joined in by his brother, John T. Cowfer, to set aside the sale, because the Lorain Shovel above referred to had not been taken into the possession of the Sheriff at the time of the levy and consequently could not have been legally sold on the 1st of June, 1962.

The sheriff's sales of real and personal property are now governed by Civil Procedural Rule 3101-3149, becoming effective November 1, 1960.

Civil Procedural Rule 3136, subparagraph (a), provides that not later than thirty days after the sale of real property, and not later than five days after the sale of personal property, the sheriff shall prepare a schedule of proposed distribution of the proceeds of sale which shall be kept on file and be available for inspection in his office.

This schedule of proposed distribution of the proceeds of the sale of this equipment on June 1, 1962 was posted by the Sheriff on the 6th of June, 1962, and was available for inspection.

Subsection (d) of Rule 3136 provides that the sheriff shall distribute the proceeds of sale in accordance with the proposed schedule of distribution unless written exceptions are filed with him not later than ten days after the filing of the proposed schedule. Hence the document labelled "Exception" filed by Cowfer on the 20th day of June, 1962, is too late, not being filed within ten days after the proposed schedule was filed in the office of the Sheriff on June 6, 1962.'

In filing his petition of June 26 to set aside the sale, the petitioners invoke the aid of Rule 3132, which is equally unavailing.

Civil Procedural Rule 3132 provides as follows:

"Upon petition of any party in interest before delivery of the personal property or of the sheriff's deed to real property, the court may, upon proper cause shown, set aside the sale and order a resale or enter any other order which may be just and proper under the circumstances."

This Rule, along with all of the other Civil Procedural Rules governing executions, are expressive of the law as developed by the Courts of Pennsylvania, all of which are set forth in Volume 7, Chapter 31, of Revised Edition of Pennsylvania Standard Practice, discussing the Civil Procedural Rules governing executions and illustrating the basis for each of the rules as adopted and made effective as of November 1, 1960.

Thus, as required under the decisions of the various Courts of Pennsylvania, Rule 3132 requires that to set aside a sheriff's sale, such petition must be presented by a "party in interest", and before delivery of the personal property sold, or the sheriff's sale to real property.

In the instant case the Cowfers, even if they could be considered a party in interest, they have not presented their petition to set aside the sale before the delivery of the personal property by the Sheriff, as evidenced by the testimony of David Lee Cowfer taken at the hearing hereon on the 3rd day of July, 1962.

The prayer of the petition to set aside the sale of June 1st is further defective in that, as shown by the Sheriff's return, six pieces of equipment were sold, one of which is claimed by the petitioners as not having been affected by the sale. On page 715 of Volume 7 of Revised Pennsylvania Standard Practice, it is stated, with cases supporting the rule, that, "A levy of execution made upon articles subject to such levy cannot be vacated merely because an article not subject to levy, or sale, upon the levy, is included therein". That is, the sale shall not be set aside merely because

one of the items sold is not subject to levy and sale, as alleged by the Cowfers.

The case cited by petitioners in their brief, UNION NATIONAL BANK VS. DeLONG FURNITURE CORP., 344 Pa. 583, decides only that inadequacy of price at a sheriff's sale is not sufficient grounds to set aside such sale. The statement quoted in plaintiff's brief from this decision, is "obiter dictum", and as pointed out in MOYER VS. MERAY, 148 Pa. Super. Ct. 284, referred to in the opinion in UNION NATIONAL BANK VS. DeLONG, supra, it is held that a party having a paramount title or claim to property sold by the sheriff has no standing to set aside the sheriff's sale, but must rest upon his superior claim to title, in defending his right to possession and ownership against any person claiming such property.

Therefore, the petition to set aside this sale held the 1st day of June, 1962 is refused. Costs to be paid by the petitioners.

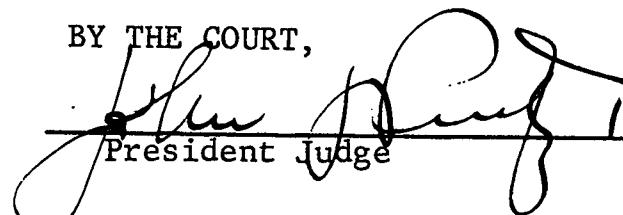
The exceptions filed by David Lee Cowfer to the Sheriff's distribution are refused. Costs are all to be paid by the exceptor.

Sheriff's distribution in all other respects affirmed, except the item of \$306.68 allocated to defendants by the Sheriff, shall be paid to the Department of Internal Revenue of the United States, as demanded by such Department.

Exception noted.

September 26, 1962

BY THE COURT,


John D. Rugh
President Judge

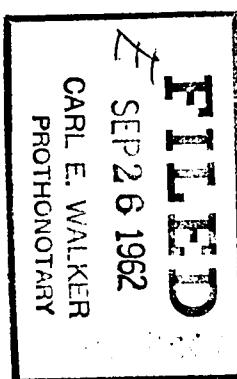
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
No. 82 September Term, 1961
Execution No. 7 Sept. T., 1961
Exception to Sheriff's Dist.

CLEARFIELD TRUST COMPANY

-vs-

KENNETH W. CHANDLER and
KYLE McQUILLEN, trading as
C. & M. CONTRACTING CO.

O P I N I O N



Proc 260
JOHN J. PENTZ
PRESIDENT JUDGE
CLEARFIELD, PENNSYLVANIA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CLEARFIELD TRUST COMPANY :
VS. : No. 82 September Term, 1961
: Execution No. 7 September Term, 1961
KENNETH W. CHANDLER and KYLE :
McQUILLEN, trading as C & M :
CONTRACTING COMPANY :
:

P E T I T I O N

TO THE HONORABLE JOHN J. PENTZ, PRESIDENT JUDGE OF SAID COURT:

The Petition of David Lee Cowfer and John T. Cowfer respectfully represents:

(1). That your Petitioners purchased on the 29th day of June, 1961 one Model 40 Lorraine Shovel, Serial #2693 for the sum of Nine Hundred (\$900.00) Dollars cash, a Bill of Sale being prepared by the firm of Sharp & Giest in Philipsburg Borough, a copy of which is attached hereto marked Exhibit "A".

(2). That at such time, said Lorraine Shovel was not in working condition. The crankshaft was broken and the motor block was split, as a result of which your Petitioners had to install another motor before they could move it.

(3). That during the month of June, 1961, the shovel was transported from Ashland to the outskirts of Osceola Mills, the home of your Petitioners, where they continued to work on the shovel, putting on additional replacement parts to an amount in excess of Five Hundred (\$500.00) Dollars.

(4). That an Execution was issued to the above number and term on the 14th day of September, 1961 on a Judgment Note entered the same day.

(5). That the Sheriff of Clearfield County never saw, touched or had in his possession said Lorraine Shovel but made a return that a levy had been made, setting out a list of equipment shown on a secured transaction entered in the Court of Common Pleas of Clearfield County, Docket 3, page 41.

(6). That no sale was made after the levy until the 1st of June,

1962, when the present Sheriff of Clearfield County offered said articles levied upon by public sale, the said articles being offered separately and the Lorraine Shovel was bid for the sum of Two Hundred (\$200.00) Dollars, but the equipment was sold in a lump to the Community Bank of Port Matilda on its bid of Thirteen Thousand Six Hundred (\$13,600.00) Dollars.

(7). That your Petitioners had no knowledge of there being any sale or that said shovel had been levied on.

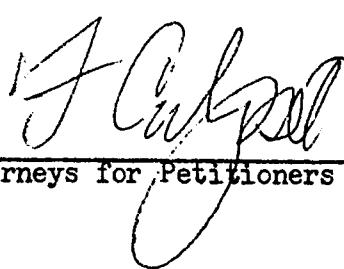
(8). That subsequently, a representative of the Community Bank of Port Matilda came around and asked your Petitioners if they knew where this shovel was, and your Petitioners showed him the shovel, which was at their home in Decatur Township outside of Osceola Mills Borough. Later, Charles Powell came along and said he had purchased the shovel from the Community Bank of Port Matilda.

(9). That your Petitioners immediately sought advice as to their rights and, as a result of which, Exceptions were filed to the schedule of distribution posted by the Sheriff on the sale of said shovel.

WHEREFORE, your Petitioners respectfully request that said levy and sale be declared illegal and that the Court decree that the sale of the Lorraine Shovel, Serial #2693 be declared invalid.

And they will ever pray.

BELL, SILBERBLATT & SWOOP
By



Attorneys for Petitioners

STATE OF PENNSYLVANIA :
SS:
COUNTY OF CLEARFIELD :

Before me, the undersigned officer, personally appeared DAVID LEE COWFER, who, being duly sworn according to law, deposes and states that the facts set forth in the foregoing Petition are true and correct to the best of his knowledge, information and belief.

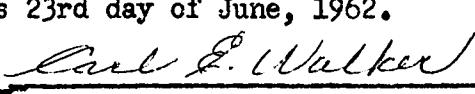
Sworn and subscribed to before me
this 23rd day of June, 1962.

PROTHONOTARY

My Commission Expires
1st Monday Jan. 1966



David Lee Cowfer



Carl E. Walker

Know all Men by these Presents,

That KENNETH CHANDLER
of the Borough of Philipsburg, County of
Centre and State of Pennsylvania, in consideration of the sum of
Nine Hundred (\$900.00) ----- Dollars to him in hand paid by
DAVID LEE COWFER and JOHN T. COWFER , at and before the ensealing and delivering of
these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, released and
confirmed, and by these presents do hereby grant, bargain, sell, release, and confirm unto the said
David Lee Cowfer and John T. Cowfer all the goods, chattels and articles of personal
property mentioned and expressed in the schedule of goods listed hereon or hereto annexed and all right,
title and interest in and to the same.

To Have and to Hold, all and singular, the said goods, chattels and articles of personal
property and every of them, by these presents bargained, released, sold and delivered, granted and con-
firmed unto the said David Lee Cowfer and John T. Cowfer to the ironly
proper use and behoof, their heirs, executors, administrators and assigns forever.

And he the said Kenneth Chandler ^{do es by}
the presents hereby promise, covenant and agree, his heirs, executors and administrators, to warrant
and defend the title of the said goods, chattels, and articles of personal property against all and
every person and persons whomsoever.

One Model 40 Lorraine Shovel, Serial #2693

In Witness Whereof, I have hereunto set my hand and seal this
29th day of June 19 61.

Signed, Sealed and Delivered
in the presence of

Leona Hess

Kenneth W. Chandler 


COMMONWEALTH OF PENNSYLVANIA)
) SS..
COUNTY OF CENTRE)

Before me, the undersigned officer, personally appeared Kenneth Chandler, who executed the foregoing Bill of Sale and acknowledged the same to be his free act and deed to the extent that the same may be recorded as such.

Witness my hand and official seal this 29 day of June
1961.


Leon T. Hess
Notary Public

My Commission expires 2/23/65

Bill of Sale

KENNETH CHANDLER

TO

DAVID LEE COWFER and

JOHN T. COWFER

THE PLATEHORN CO., WILLIAMSPORT, PA.

SHARP & GRIEST
ATTORNEYS AT LAW
20 N. SECOND ST.
PHILIPSBURG, PENNSYLVANIA

Exhibit "A"

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CLEARFIELD TRUST COMPANY

:

VS.

:

KENNETH W. CHANDLER and KYLE
McQUILLEN, trading as C & M
CONTRACTING COMPANY

: No. 82 September Term, 1961

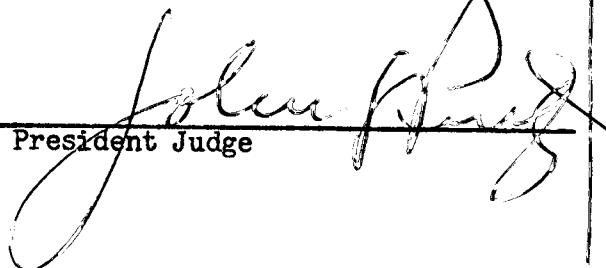
: Execution No. 7 September Term, 1961

:

ORDER OF COURT

NOW, this 26 day of June, 1962, hearing on Exceptions to the
Sheriff's Sale having been set for July 3, 1962, rule to show cause why said
sale should not be stricken off and heard at the same time. Notice to be
given by registered or certified mail to Charles Powell and the Community Bank
of Port Matilda.

BY THE COURT:



President Judge

—Lap over margin—

July 25, 1965, when the new law was adopted by the legislature and signed by the governor on July 12, 1965.

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
No. 82 September Term, 1961
Execution No. 7 September Term, 1961

PERSONAL PROPERTY SALE

SCHEDULE OF DISTRIBUTION

NOW, June 6, 1962, by virtue of the writ hereunto attached, after after having given due and legal notice of the time and place of sale, by hand bills posted on the premises, setting forth the time and place of sale, I sold on the 1st day of June 1962, the defendant's personal property for \$13,600.00, and made the following appropriations:

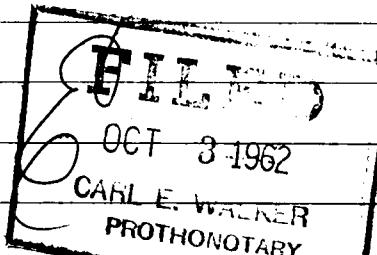
To Debt	\$11,166.71
Interest	129.77
Attorney	3.00
Plaintiff	12.00
Attorney Commission	1,450.00
Sheriff's costs	101.58
First National Bank, Philipsburg on Secured Trans- action-Filed May 15, 1961	430.86
To Defendants	306.68
Total	\$13,600.00

The \$306.68 (to defendants) was levied on by Internal Revenue Service Officer on June 18, 1962

Now, October 2, 1962, I return this Writ as per appropriations above listed with exception of item of \$306.68 is allocated to Department of Internal Revenue of the Untied States as ordered by the Court.

So Answers,

James B. Reese
James B. Reese
Sheriff



Distribution will be made in accordance with the above schedule unless exceptions are filed with this office within ten (10) days from this date.

James B. Reese Sheriff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA.

CLEARFIELD TRUST COMPANY

-vs-

KENNETH W. CHANDLER and
KYLE McQUILLEN, trading as
C. & M. CONTRACTING CO.

: No. 82 September Term, 1961
: Execution No. 7 Sept. Term, 1961
: EXCEPTION TO SHERIFF'S
: DISTRIBUTION.

O P I N I O N

Clearfield Trust Company, the above named plaintiff, entered judgment by confession against the named defendants on the 14th day of September, 1961, by virtue of a warrant of attorney authorizing the entry of a judgment upon default, as contained in a note, a part of a secured transaction.

On the same day, the plaintiff issued a writ of execution for the unpaid principal sum, attorney's commission, interest and costs.

By virtue of the writ of execution the Sheriff levied upon four pieces of earth moving machinery and other personal property stated in the Sheriff's levy to be located "Approximately two miles from Wallaceton on dirt road in Boggs Township" on the 21st day of September, 1961.

The sale was fixed by the Sheriff to take place on the 25th of May, 1962, but was continued to the 1st day of June, 1962, at which time, as the Sheriff's return shows, six pieces of earth

moving equipment, including one Lorain Model 40, Serial 2693, were sold for the total sum of \$13,600.00.

On June 6, 1962, the Sheriff posted the distribution of the monies received by him by virtue of the sale, stating in said distribution that the sale had taken place on the 1st day of June, 1962.

Following the posting of the schedule of distribution, the United States Internal Revenue advised the Sheriff that a portion of the money was to be allocated to the United States Internal Revenue Bureau for payment of Social Security taxes owed by the defendants.

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This exception was followed by a petition filed June 26th by the said David Lee Cowfer, and joined in by his brother, John T. Cowfer, to set aside the sale, because the Lorain Shovel above referred to had not been taken into the possession of the Sheriff at the time of the levy and consequently could not have been legally sold on the 1st of June, 1962.

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Civil Procedural Rule 3136, subparagraph (a), provides that not later than thirty days after the sale of real property, and not later than five days after the sale of personal property, the sheriff shall prepare a schedule of proposed distribution of the proceeds of sale which shall be kept on file and be available for inspection in his office.

This schedule of proposed distribution of the proceeds of the sale of this equipment on June 1, 1962 was posted by the Sheriff on the 6th of June, 1962, and was available for inspection.

Subsection (d) of Rule 3136 provides that the sheriff shall distribute the proceeds of sale in accordance with the proposed schedule of distribution unless written exceptions are filed with him not later than ten days after the filing of the proposed schedule. Hence the document labelled "Exception" filed by Cowfer on the 20th day of June, 1962, is too late, not being filed within ten days after the proposed schedule was filed in the office of the Sheriff on June 6, 1962.

In filing his petition of June 26 to set aside the sale, the petitioners invoke the aid of Rule 3132, which is equally unavailing.

Civil Procedural Rule 3132 provides as follows:

"Upon petition of any party in interest before delivery of the personal property or of the sheriff's deed to real property, the court may, upon proper cause shown, set aside the sale and order a resale or enter any other order which may be just and proper under the circumstances."

This Rule, along with all of the other Civil Procedural Rules governing executions, are expressive of the law as developed by the Courts of Pennsylvania, all of which are set forth in Volume 7, Chapter 31, of Revised Edition of Pennsylvania Standard Practice, discussing the Civil Procedural Rules governing executions and illustrating the basis for each of the rules as adopted and made effective as of November 1, 1960.

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In the instant case the Cowfers, even if they could be considered a party in interest, they have not presented their petition to set aside the sale before the delivery of the personal property by the Sheriff, as evidenced by the testimony of David Lee Cowfer taken at the hearing hereon on the 3rd day of July, 1962.

The prayer of the petition to set aside the sale of June 1st is further defective in that, as shown by the Sheriff's return, six pieces of equipment were sold, one of which is claimed by the petitioners as not having been affected by the sale. On page 715 of Volume 7 of Revised Pennsylvania Standard Practice, it is stated, with cases supporting the rule, that, "A levy of execution made upon articles subject to such levy cannot be vacated merely because an article not subject to levy, or sale, upon the levy, is included therein". That is, the sale shall not be set aside merely because

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Therefore, the petition to set aside this sale held the 1st day of June, 1962 is refused. Costs to be paid by the petitioners.

The exceptions filed by David Lee Cowfer to the Sheriff's distribution are refused. Costs are all to be paid by the exceptor.

Sheriff's distribution in all other respects affirmed, except the item of \$306.68 allocated to defendants by the Sheriff, shall be paid to the Department of Internal Revenue of the United States, as demanded by such Department.

Exception noted.

BY THE COURT,

September 26, 1962

President Judge



TO SHERIFF OF CLEARFIELD COUNTY, DR.

PLAINTIFF	DEFENDANT	NO.	TERM	AMOUNT
Clearfield Trust Company			No. 82 September Term, 1961	
vs			No. 7 September Term, 1961	
Kenneth W. Chandler and Kyle McQuillen t/a C & M Contracting Co.				
RDR	\$3.75		Exec. Debt	\$11,166.71
Levy	3.75		Int. from 3/21/62	129.77 111.67
Service	3.75		Attorney	3.00
c/s	2.00		Plaintiff	12.00
Comm.	70.85		Attorney Comm.	1,450.00
Milage	10.00		Sheriff Costs	<u>101.58</u>
Posting	3.75			10.844.96
Adv.	3.75			<u>12,863.06</u>
	<u>101.58</u>			

James B. Reese, SHERIFF

Please Give This Prompt Attention

Return this Bill with Remittance

No Sheriff shall be required to render any service in any civil proceedings until he receives indemnity satisfactory to him for the payment of his official fees, mileage, expenses, and legal costs or payment of same, from the party at whose instance or for whose benefit such service is to be performed, but any money advanced for his charges, and not earned or expended shall be refunded to the payer thereof. And in case he does not receive his charges in advance or upon demand, he may file with his return an itemized list of unpaid fees, mileage, costs and expenses respecting the services to which such return relates, and if no exceptions are filed to the same within thirty days, from the time of making such return, the items included in such list shall be considered taxed, and confirmed as fees and costs due such Sheriff and become a judgment in law against the party for whose benefit the services were rendered as well as against any other party who may be or become liable for such fees and costs by law; and the said Sheriff may issue an execution for the amount so taxed, and collect the same from any party so chargeable therewith without further suit, and shall not be disqualified to enforce such execution by reason of his interest therein.



TO SHERIFF OF CLEARFIELD COUNTY, DR.

PLAINTIFF	DEFENDANT	NO.	TERM	AMOUNT
Clfd Trust Co.		No 82	Sept Term 1961	
vs				
Kenneth W. Chandler &		No 7	Sept Term 1961	
Kyle McQuillen t/a				
C & M Contractors Co				
Philipsburgh, Pa.				
RDR	3.75	Exec Debt		\$14,500.03
Levy	3.75			
service	3.75	Int Fr 7.21.61 to		
c/s d/s	2.00	9.13.61.		125.66
Milege	10.00 4.20			
Comm	<u>87.50</u>	Int fr 9.13. to		
Total	104.95	date		143.00
		Attorney		3.00
		Plaintiff		12.00
		Attys Comm		1,450.00
		Sheriff s Costs		<u>104.95</u>
		Total		\$16,338.64

Charles G. Ammerman

SHERIFF

Please Give This Prompt Attention

Return this Bill with Remittance

No Sheriff shall be required to render any service in any civil proceedings until he receives indemnity satisfactory to him for the payment of his official fees, mileage, expenses, and legal costs or payment of same, from the party at whose instance or for whose benefit such service is to be performed, but any money advanced for his charges, and not earned or expended shall be refunded to the payer thereof. And in case he does not receive his charges in advance or upon demand, he may file with his return an itemized list of unpaid fees, mileage, costs and expenses respecting the services to which such return relates, and if no exceptions are filed to the same within thirty days, from the time of making such return, the items included in such list shall be considered taxed, and confirmed as fees and costs due such Sheriff and become a judgment in law against the party for whose benefit the services were rendered as well as against any other party who may be or become liable for such fees and costs by law; and the said Sheriff may issue an execution for the amount so taxed, and collect the same from any party so chargeable therewith without further suit, and shall not be disqualified to enforce such execution by reason of his interest therein.

P. L. Laws.

1923

Act No. 220, page 347.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA.

CLEARFIELD TRUST COMPANY :
VS : No. 82 September Term 1961
KENNETH W. CHANDLER and :
KYLE McQUILLEN, trading as :
C. & M. CONTRACTING CO. :
:

O R D E R

NOW, June 22, 1962, Sheriff's Distribution, with Exceptions thereto, filed with the Prothonotary, Monday, July 2, 1962, at 11 A.M., is fixed for hearing on the Exceptions, and disposition thereof.

BY THE COURT

President Judge

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA.

CLEARFIELD TRUST COMPANY :
VS : No. 82 September Term 1961
KENNETH W. CHANDLER and :
KYLE McQUILLEN, trading as :
C. & M. CONTRACTING CO. :
:

O R D E R

NOW, June 22, 1962, Sheriff's Distribution, with Exceptions thereto, filed with the Prothonotary, Monday, July 2, 1962, at 11 A.M., is fixed for hearing on the Exceptions, and disposition thereof.

BY THE COURT

President Judge

June 21, 1962

Honorable John J. Pentz
President Judge
Clearfield County
Clearfield, Pennsylvania

Re: Clearfield Trust Company
-vs-
Kenneth W. Chandler and
Kyle McQuillen, t/a
C. & M. Contracting Co.
Execution
No. 82 September Term, 1961
Execution No. 7 September Term, 1961

Dear Judge:

In the above matter the Sheriff has filed in our office a Distribution Sheet in the above Estate together with the exceptions filed against the Distribution as prepared.

Under Supreme Court Ruling 3136 (g.e.) we believe that we should refer this matter to you to dispose of the exceptions or you would appoint an auditor to dispose of the exceptions.

Very truly yours,

Carl E. Walker
Prothonotary

CEW:pd

cc: James B. Reese
Nevling & Davis
Bell, Silberblatt & Swoope

June 19, 1962

Carl E. Walker
Prothonotary

Re:
Clearfield Trust Company
vs
Kenneth W. Chandler and
Kyle McQuillen, t/a
C. & M. Contracting Co.
No. 82 September Term, 1961
No. 7 September Term, 1961

Having received exception to Schedule of Distribution from
David Lee Cowfer, under rule 3136 of Rules of Civil Procedure,
I am referring the matter to you for proper disposition under
that rule.

James B. Reese
Sheriff

June 19, 1962

Carl E. Walker
Prothonotary

Re:

Clearfield Trust Company
vs
Kenneth W. Chandler and
Kyle McQuillen, t/a
C. & M. Contracting Co.
No. 82 September Term, 1961
No. 7 September Term, 1961

Having received exception to Schedule of Distribution from
David Lee Cowfer, under rule 3136 of Rules of Civil Procedure,
I am referring the matter to you for proper disposition under
that rule.

James B. Reese
Sheriff

NOTICE OF LEVY

TO: Honorable James Reese
Sheriff of Clearfield County
Clearfield, Pa.

DATE

June 18, 1962

You are hereby notified that there is now due, owing, and unpaid from (Name and Address of Taxpayer)

Kenneth W. Chandler & Kyle McQuillen
t/a C. & M. Contracting Co. Philipsburg, Pa.

to the United States of America the sum of **Three Thousand One Hundred Fifty-Seven Dollars**
and 62/100.

Dollars **\$ 3157.62**

PERIOD AND TYPE OF TAX	DATE OF ASSESSMENT	ACCOUNT NO.	UNPAID BALANCE	STATUTORY ADDITIONS	TOTAL
9/30/60 W&E	5/26/61	5-165730 5-26-61List	\$ 1428.64	\$ 104.26	\$ 1532.90
12/31/60 W&E	5/26/61	5-165746 5-26-61L	742.49	50.49	792.98
1960 FUTA	5/26/61	5-880401 5-26-61List	81.07	5.51	86.58
3/31/61 W&E	5/26/61	5-165756 5-26-61L	630.25	41.39	671.64
12/31/61 W&E	2/9/62	2-165418 2-9-62L	71.83	1.69	73.52
				TOTAL AMOUNT DUE	\$ 3157.62

You are further notified that demand has been made upon the taxpayer for the amount set forth herein, and that such amount is still due, owing, and unpaid from this taxpayer, and that the lien provided for by Section 6321, Internal Revenue Code of 1954, now exists upon all property or rights to property belonging to the aforesaid taxpayer. Accordingly, you are further notified that all property, rights to property, moneys, credits, and bank deposits now in your possession and belonging to this taxpayer (or with respect to which you are obligated) and all sums of money or other obligations owing from you to this taxpayer are hereby levied upon and seized for satisfaction of the aforesaid tax, together with all additions provided by law, and demand is hereby made upon you for the amount necessary to satisfy the liability set forth herein, or for such lesser sum as you may be indebted to him, to be applied as a payment on his tax liability.

DISTRICT DIRECTOR OF INTERNAL REVENUE

Ellis R. Rogers

BY (Signature)

TITLE

Revenue Officer

I hereby certify that this levy was served by delivering a copy of this notice of levy to the person named at the right hereof.

NAME

TITLE

John G. Robasky**Chief Deputy Sheriff**

DATE AND TIME

SIGNATURE OF REVENUE OFFICER

6/18/62 11:25 AM**John G. Robasky**

EXCERPTS FROM THE INTERNAL REVENUE CODE

SEC. 6321. LIEN FOR TAXES.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

SEC. 6322. PERIOD OF LIEN.

Unless another date is specifically fixed by law, the lien imposed by section 6321 shall arise at the time the assessment is made and shall continue until the liability for the amount so assessed is satisfied or becomes unenforceable by reason of lapse of time.

SEC. 6331. LEVY AND DISTRAINT.

(a) AUTHORITY OF SECRETARY OR DELEGATE.—If any person liable to pay any tax neglects or refuses to pay the same, within 10 days after notice and demand, it shall be lawful for the Secretary or his delegate to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer (as defined in section 3401 (d)) of such officer, employee, or elected official. If the Secretary or his delegate makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the Secretary or his delegate and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in this section.

(b) SEIZURE AND SALE OF PROPERTY.—The term "levy" as used in this title includes the power of distress and seizure by any means. In any case in which the Secretary or his delegate may levy upon property or rights to property, he may seize and sell such property or rights to property (whether real or personal, tangible or intangible).

(c) SUCCESSIVE SEIZURES.—Whenever any property or right to property upon which levy has been made by virtue of subsection (a) is not sufficient to satisfy the claim of the United States for which levy is made, the Secretary or his delegate may, thereafter, and as often as may be necessary, proceed to levy in like manner upon any other property liable to levy of the person against whom such claim exists, until the amount due from him, together with all expenses, is fully paid.

SEC. 6332. SURRENDER OF PROPERTY SUBJECT TO LEVY.

(a) REQUIREMENT.—Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made shall, upon demand of the Secretary or his delegate, surrender such property or rights (or discharge such obligation) to the

Secretary or his delegate, except such part of the property or rights as is, at the time of such demand, subject to an attachment or execution under any judicial process.

(b) PENALTY FOR VIOLATION.—Any person who fails or refuses to surrender as required by subsection (a) any property or rights to property, subject to levy, upon demand by the Secretary or his delegate, shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes for the collection of which such levy has been made, together with costs and interest on such sum at the rate of 6 percent per annum from the date of such levy.

(c) PERSON DEFINED.—The term "person," as used in subsection (a), includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to surrender the property or rights to property, or to discharge the obligation.

SEC. 6333. PRODUCTION OF BOOKS.

If a levy has been made or is about to be made on any property, or right to property, any person having custody or control of any books or records, containing evidence or statements relating to the property or right to property subject to levy, shall, upon demand of the Secretary or his delegate, exhibit such books or records to the Secretary or his delegate.

SEC. 6334. PROPERTY EXEMPT FROM LEVY.

(a) ENUMERATION.—There shall be exempt from levy—

(1) Wearing Apparel and School Books.—Such items of wearing apparel and such school books as are necessary for the taxpayer or for members of his family;

(2) Fuel, Provisions, Furniture, and Personal Effects.—If the taxpayer is the head of a family, so much of the fuel, provisions, furniture, and personal effects in his household, and of the arms for personal use, livestock, and poultry of the taxpayer, as does not exceed \$500 in value;

(3) Books and Tools of a Trade, Business, or Profession.—So many of the books and tools necessary for the trade, business, or profession of the taxpayer as do not exceed in the aggregate \$250 in value.

(4) UNEMPLOYMENT BENEFITS.—Any amount payable to an individual with respect to his unemployment (including any portion thereof payable with respect to dependents) under an unemployment compensation law of the United States, of any State or Territory, or of the District of Columbia or of the Commonwealth of Puerto Rico.

(b) APPRAISAL.—The officer seizing property of the type described in subsection (a) shall appraise and set aside to the owner the amount of such property declared to be exempt. If the taxpayer objects at the time of the seizure to the valuation fixed by the officer making the seizure, the Secretary or his delegate shall summon three disinterested individuals who shall make the valuation.

(c) NO OTHER PROPERTY EXEMPT.—Notwithstanding any other law of the United States, no property or rights to property shall be exempt from levy other than the property specifically made exempt by subsection (a).



U. S. TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
OFFICE OF THE DISTRICT DIRECTOR
State College, Pa.

IN REPLY REFER TO

Sheriff, Clearfield County
Clearfield, Pa.

Re: Chandler & McQuillen
C & M Contracting Co.
22 N. 2nd St.
Philipsburg, Pa.

Dear Sir :

It has been brought to my attention that on or about June 1, 1962 your office sold the property of the above named persons at forced sale. The partnership is indebted to the United States Government for W & E Taxes amounting to \$ 3157.62 including accrude intrest computed to June 1962. A Federal Tax Lien was filed against the assets of the partnership on August 10, 1961 at Centre County Court House, Bellefonte, Pa. If the proceeds of the sale have not been disbursed this letter will put your office on notice that there is a Federal Tax Lien to be considered before disbursement. If the proceeds have been distributed please send me the names of the persons that received the funds and other information regarding the sale of the assets.

Respectfully,

Joseph J. Zukowski
Joseph J. Zukowski,
Revenue Officer

Please Address mail to:

Internal Revenue Service
General Delivery
State College, Pa.
Att. JJZ

*Received
June 12, 1962*

*Ans.
6-14-62*

*Copies to Newling
& swoope*

June 27, 1962

Internal Revenue Service
State College, Penna.

Gentlemen:

This is to inform you that the Court Hearing on
the Chandler & McQuillen case has been postponed to Tuesday
July 3, 1962.

Very truly yours,

James B. Reese
Sheriff

REC
REGISTERED MAIL
RETURN RECEIPT REQUESTED

REGISTERED MAIL
RETURN RECEIPT REQUESTED

May 24, 1962

Cleveland Bros. Equip. Co.
Philipsburg, Penna.

Gentlemen:

Am writing to you concerning an Allis-Chalmers Crawler Tractor Model HD-20H, Serial No. 5793 which I found located on your property at Philipsburgh, Centre County.

This equipment was levied on as the property of Kenneth W. Chandler and Kyle McQuillen trading as C & M Contracting Co. The levy was made September 21, 1961 by Sheriff Ammerman in Clearfield County and should not have been removed from Clearfield County.

The Sheriff's sale of equipment of the above named is set for June 1, 1962 at 2:00PM. In order to avoid any legal technicalities, I would advise you to return the Crawler Tractor to Clearfield County, unless a settlement is made before that date.

Very truly yours,

James B. Reese
Sheriff

INSTRUCTIONS TO DELIVERING EMPLOYEE

Deliver ONLY to addressee Show address where delivered
(Additional charges required for these services)

RETURN RECEIPT

Received the numbered article described on other side.

SIGNATURE OR NAME OF ADDRESSEE (must always be filled in)

Cleveland Bros Equip. Co.

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

Mr. J. Mosty

DATE DELIVERED

ADDRESS WHERE DELIVERED (only if requested in item #1)

5-25-62

2

CS8-16-71548-4 GPO

REGISTERED NO. 1715

Value \$ 24 Spec. del'y fee \$

Fee \$ 6.00 Ref. receipt fee \$ 1.00

Surcharge \$ Rest. del'y fee \$

Postage \$ 0.40 Airmail

Postmaster, By

From James B. Reese
Sheriff, Cfd Pa.
To Cleveland Bros Equip Co
Philipsburg, Pa.



LAW OFFICES
NEVLING AND DAVIS
TRUST COMPANY BUILDING
P. O. BOX 752
CLEARFIELD, PA.

JAMES K. NEVLING
WILLIAM T. DAVIS

PHONE
POPLAR 5-7895

April 30, 1962

Sheriff James Reese
Clearfield County
Clearfield, Pennsylvania

Re: File C-1045

Dear Sheriff Reese:

On September 14, 1961, a writ of execution was issued to No. 7 September Term, 1961 at the suit of The Clearfield Trust Company against Kenneth W. Chandler and Kyle McQuillen, trading as C. & M. Contracting Co. Within a few days after issuance of the writ of execution, Sheriff Ammerman levied upon various items of equipment of the defendant located at their strip mining operations on the property of General Refractories Company on the road between Wallaceton and West Decatur, near Houtzdale. Those items of equipment are believed to be as follows:

Manitowoc Model 3500 Dragline, Serial No. 3810

Allis-Chalmers Crawler Tractor Model HD-20H, Serial No. 5793

Bulldozer HD 14, Serial No. 67115753

1 3/4 yard Lorain Shovel, Serial No. 5439

1 Lorain Model 40, Serial No. 2693

1 McCarthy Horizontal Drill

Subsequently, on October 4, 1961, we instructed Sheriff Ammerman that we would like the execution sale postponed for ninety (90) days in order to give the defendants an opportunity to pay the interest and the judgment and costs.

Sheriff James Reese

April 30, 1962

Page 2

On April 28, 1962, we directed the prothonotary to enter credits on the judgment, which is entered to No. 82 September Term, 1961, showing that the amount of principal had been reduced to \$11,166.71 and that interest was due from March 21, 1962. No credits against attorney's commissions or costs were entered.

We now want you to fix a time and place for the sale of the property held under your levy on the execution now in your hands and to give proper notice of this sale and proceed with the sale.

Very truly yours,

NEVLING AND DAVIS by

James K. Nevling

James K. Nevling,
Attorneys for the Clear-
field Trust Company,
Plaintiff.

JKN:j

CC: Donald Meckley

LAW OFFICES
NEVLING AND DAVIS
TRUST COMPANY BUILDING
P. O. BOX 752
CLEARFIELD, PA.

JAMES K. NEVLING
WILLIAM T. DAVIS

PHONE
POPLAR 5-7895

October 4, 1961

Sheriff Charles Ammerman
Clearfield Court House
Clearfield, Pennsylvania

Re: Clearfield Trust Company vs.
C. & M. Contracting Company,
Writ of Execution, No. 7
September Term, 1961

Dear Sheriff Ammerman:

The plaintiff in the above writ has reached an understanding with the defendants to the effect that if they keep up interest payments for ninety (90) days and within that time pay off the judgment and costs, that the execution sale will be postponed for that ninety (90) day period.

The plaintiff has not and does not intend to release the lien of your levy but merely to postpone the sale, upon the condition that the interest payments are kepted on a current basis for ninety (90) days.

Very truly yours,

NEVLING AND DAVIS by

James K. Nevling

James K. Nevling,
Attorneys for the Clear-
field Trust Company, Plaintiff.

JKN:j
CC: DONALD MECKLEY

Bill of Sale

Clearfield Trust Company
vs
Kenneth W. Chandler and
Kyle McQuillen, t/a
C. & M. Contracting Co.
Philipsburg, Pa.

No. 82 September Term, 1961
No. 7 September Term, 1961.

~~BILL OF SALE~~

Now, June 1, 1962, by virtue of a Writ of Execution No. 7 September Term, 1961 (Judgment No. 82 September Term, 1961) issued out of the Court of Common Pleas of Clearfield County, Pennsylvania, on the 14th day of September, 1961 and after giving due and legal notice of the time and Place of Public Sale, I sold as the property of Kenneth W. Chandler and Kyle McQuillen t/a/ C. & M. Contracting Co., Philipsburg, Pennsylvania, for the sum of \$13,600.00 to Community Bank of Port Matilda, Port Matilda, Pennsylvania, the following described property:

- 1 - Manitowoc 3500 Dragline, Serial No. 3810
- 1 - Allis-Chalmers Crawler Tractor Model HD-20H Serial No. 5793
- 1 - Bulldozer HD 14, Serial No. 67115753
- 1 - 1 3/4 yard Lorain Shovel, Serial No. 5439
- 1 - Lorain Model 40, Serial No. 2693
- 1 - McCarthy Horizontal Drill

James B. Reese
Sheriff

LAW OFFICES
NEVLING AND DAVIS
TRUST COMPANY BUILDING
P. O. BOX 752
CLEARFIELD, PA.

JAMES K. NEVLING
WILLIAM T. DAVIS

PHONE
POPLAR 5-7895

September 14, 1961

Sheriff Charles Ammerman
Clearfield County
Clearfield, Pennsylvania

Re: File C-1045

Dear Sheriff Ammerman:

On behalf of our client, Clearfield Trust Company, we have had a writ of execution issued against Kenneth W. Chandler and Kyle McQuillen, trading as C. & M. Contracting Co. This writ has no doubt been delivered to you for execution on September 14, 1961. We wish to instruct you that in the execution of this writ, you may for the time being confine the execution to machinery of the defendants located at their strip mining operations on the property of General Refractories Company, on the road between Wallacetown and West Decatur and near Houtzdale. These items of equipment are as follows:

Manitowoc Model 3500 Dragline, Serial No. 3810

Indemand B&F 11250⁰⁰
Bulk 13,600
1 Allis-Chalmers Crawler Tractor Model HD-20H,
Serial No. 5793

1 Bulldozer HD 14, Serial No. 67115753

1 3/4 yard Lorain Shovel, Serial No. 5439

1 Lorain Model 40, Serial No. 2693

1 McCarthy Horizontal Drill

Very truly yours,

NEVLING AND DAVIS by

James K. Nevling
James K. Nevling

*R. B. + S.
David Clegg for
Bough for Chandler
June 25, 1961 for 9⁰⁰
DC put JKN:j
SERD - 250⁰⁰*

Wallacetown

Model 20

Run ex. c

Sheriff's Sale

=====

By virtue of A WRIT

OF EXECUTION

issued out of the Court of Common Pleas of Clearfield County,
Pennsylvania and to me directed, there will be exposed to Public
Sale, at the Dirt Road BETWEEN BEULAH AND SMOKE RUN
located in the TOWNSHIP of BIGLER
on Friday the 25th day of May
A. D. 19 62, at 2:00 o'clock, P. M. the
following property:

1 Manitowoc Model 3500 Dragline, Serial No. 3810

1 Allis- Chalmers Crawler Tractor Model HD-20H Serial No. 5793

1 Bulldozer HD 14, Serial No. 67115753

1 1 3/4 yard Lorain Shovel, Serial No. 5439

1 Lorain Model 40, Serial No. 2693

1 McCarthy Horizontal Drill

SALE CONTINUED TO

June 1, 1962 - 2:00PM

And all other personal property of the defendants, not listed
hereon.

Seized, taken in execution and to be sold as the property of
KENNETH W. CHANDLER & KYLE McQUILLEN t/a/ C. & M. CONTRACTING CO.

James B. Reese
James B. Reese

, Sheriff

Sheriff's Office, Clearfield, Pa., May 16, 1962

NOTICE: All claims to the property must be filed with the sheriff before sale and all
claims to the proceeds before distribution; a sheriff's schedule of distribution
will be on file in his office, five (5) days after sale; and distribution
will be made in accordance with the schedule unless exceptions are filed
within ten (10) days thereafter.

Run. Ex B

SHERIFF'S LEVY

BY VIRTUE of Writ of Execution, issued out of the Court of Common Pleas of Clearfield County, Pennsylvania, and to me directed, I have levied on the following described property of the Defendant, situated in the

Manitowoc Model 3500 Dragline, Serial No. 3810 (Real.)

Approx 2 miles from Gallatin - on Det Road
along the road to Bogs Typ ..

1 ALLIS - CHALMERS TRACTOR Model 14D-20H

2-11 Dozer HD 14 # 67115753

1 3/4 yd. Lorain Shovel # 5439

1 Lorain 40 # 2693

1 M⁵ Carty Hor. Dr. 11

All other personal property

belonging to Defendant -

Seized, taken in execution, and to be sold as the property of

Kenneth W. Chandler and Kyle McQuillen, t/a C. & M. Contracting Co.

CHARLES G. AMMERMAN

Sheriff

Sheriff's Office, Clearfield, Pa., September 21, 1961

Writ of Execution - Money Judgments.

Clearfield Trust Company

VS.

Kenneth W. Chandler and Kyle
McGuillen, t/a C. & M. Contracting Co.

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA.

NO. 7 September

Term, 19 61

WRIT OF EXECUTION

Commonwealth of Pennsylvania } SS:
County of Clearfield }

To the Sheriff of Clearfield County:

To satisfy the judgment, interest and costs against Kenneth W. Chandler and Kyle
McQuillen, t/a C. & M. Contracting Co. , defendant(s);

(1) You are directed to levy upon the following property of the defendant(s) and to sell his interest therein;

(2) You are also directed to attach the following property of the defendant not levied upon in the possession of _____, as garnishee,

(Specifically describe property)

and to notify the garnishee that

- (a) an attachment has been issued;
- (b) the garnishee is enjoined from paying any debt to or for the account of the defendant(s) and from delivering any property of the defendant or otherwise disposing thereof.

(3) if property of the defendant not levied upon and subject to attachment is found in the possession of anyone other than a named garnishee, you are directed to notify him that he has been added as a garnishee and is enjoined as above stated.

Amount due § 14,500.03

Interest from 7/21/61 to 9/13/61 ~~**~~ \$ 125.66

Attys. Comm. 1,450.00
Costs (to be added) Plaintiff \$12.00. Attys. N & D. \$3.00 \$

John J. Dugerty
Prothonotary



Bv

Deputy

Date September 14, 1961

Proth'y. No. 64

No. 82 September Term, 1961
No. 7 September Term, 1961

IN THE COURT OF COMMON
PLEAS, CLEARFIELD COUNTY,

PENNSYLVANIA.

John H. Hammes
Clearfield Trust Company

vs.

Kenneth W. Chandler and

Kyle McQuillen, t/a

C. & M. Contracting Co.

Philipsburg, Pa.

RECEIVED WRIT THIS 14th day
of Sept. A. D., 1961,

at 2:56 P. M.

John H. Hammes
Sheriff

WRIT OF EXECUTION
(Money Judgments)

EXECUTION DEBT \$14,500.03

Interest from 7-21-61
to 9-13-61 125.66

Prothonotary - - -

Use Attorney - - 3.00

Use Plaintiff - - 12.00

Attorney's Comm. - 1,450.00

Satisfaction - - -

Sheriff - - -

FILED
JUN 20 1962
CARL E. WALKER
PROTHONOTARY

*refused money
6-20-62*

Nevling & Davis
Attorney(s) for Plaintiff(s)

Nevling & Davis
Attorney for Plaintiff(s)

348

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CLEARFIELD TRUST COMPANY	:	
VS.	:	Judgment No. 82 September Term, 1961
KENNETH W. CHANDLER and	:	Execution No. 7 September Term, 1961
KYLE McQUILLEN, trading as	:	
C & M CONTRACTING COMPANY	:	

ANSWER OF THE CLEARFIELD TRUST COMPANY, PLAINTIFF, TO PETITION OF DAVID LEE COWFER ET AL. TO SHOW CAUSE WHY THE EXECUTION OF THE SALE SHALL NOT BE STRICKEN OFF AND TO THE EXCEPTIONS TO THE SALE FILED BY DAVID LEE COWFER.

TO THE HONORABLE JOHN J. PENTZ, PRESIDENT JUDGE OF THE SAID COURT:

The Answer of the Clearfield Trust Company respectfully represents:

(1), (2) and (3). The Plaintiff avers that it has no knowledge of the truth or falsity of the facts averred in paragraphs (1), (2) and (3) of the Petition of David Lee Cowfer and John T. Cowfer, and that it has made a reasonable investigation to obtain knowledge thereof but has been unable to ascertain their truth or falsity. Therefore, the Plaintiff denies the averments contained in the said paragraphs and, if material, demands proof thereof.

(4). The facts set forth in paragraph (4) of the said Petition are admitted.

(5). The facts set forth in paragraph (5) of the said Petition are denied and on the contrary it is averred that the Sheriff's levy sheet or return of levy lists as levied upon one Lorain Model 40, Serial #2693.

(6). The facts set forth in paragraph (6) of the said Petition are admitted.

(7), (8) and (9). Plaintiff avers that it has no knowledge of the truth or falsity of the facts averred in paragraphs (7), (8) and (9) of the said Petition and that the means of proof of such facts are under the exclusive control of the adverse party, the Petitioners. Therefore, the Plaintiff denies the averments contained in the said paragraphs and, if material, demands proof thereof.

NEW MATTER

In further answer to the exceptions and Petition the Plaintiff avers the following new matter:

(10). That it appears as a matter of record from the Declaration filed in connection with the confession of judgment on these proceedings that indebtedness of Kenneth W. Chandler and Kyle McQuillen, trading as C & M Contracting Company, to the Plaintiff was secured by a security agreement of December 21, 1959, and by financing statements filed in the office of the Prothonotary of Clearfield County on December 21, 1959, to File Number 5775, and also filed in the Department of State on December 28, 1959, File Number 197346, in which financing statements there is listed as one item of the collateral one Lorain Model 40, Serial No. 2693; and that the said financing statements were made of public record prior to the alleged purchase of David Lee Cowfer and John T. Cowfer on June 29, 1961.

(11). That no exception to the schedule of distribution has ever been filed by the Petitioners, although David Lee Cowfer et al. did file an exception to alleged sale of a Model 40 Lorain Shovel, Serial #2693.

(12). That there is also before the Court in this

proceeding a claim of the United States Government for withholding and employee taxes amounting to \$3,157.62, a notice of Federal Tax Lien having been filed in the Prothonotary's office in Centre County, Pennsylvania, on August 10, 1961, but no notice thereof having been filed in Clearfield County.

WHEREFORE, the Clearfield Trust Company respectfully requests that your Honorable Court enter a decree:

(a). Directing that the Sheriff's schedule of distribution be confirmed insofar as it relates to the claims of the Clearfield Trust Company and directing that the monies proposed to be distributed to it as set forth in the said schedule be paid over to it;

(b). Holding that neither David Lee Cowfer or John T. Cowfer have in fact filed any exceptions to the Sheriff's schedule of distribution;

(c). Directing that the exceptions filed by the United States of America be dismissed insofar as they relate to the proposed distribution to the Clearfield Trust Company.

All of which is respectfully submitted.

James F. Newling

Newling & Davis

Attorneys for the
Clearfield Trust Company.

COMMONWEALTH OF PENNSYLVANIA : : SS:
COUNTY OF CLEARFIELD : :

Donald F. Meckley, being duly sworn according to law, deposes and says that he is the Treasurer of The Clearfield Trust Company and that the facts set forth in the foregoing Answer are true and correct to the best of his knowledge, information and belief.

Donald F. Meckley
Clear

Sworn and subscribed before
me this 3rd day of July, 1962.

Mrs. Frances H. Springer

NOTARY PUBLIC
Clearfield, Clearfield County, Pa.
My Commission Expires Jan. 6, 1966

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.

CLEARFIELD TRUST COMPANY

VS.

KENNETH W. CHANDLER and
KYLE MCQUILLEN, trading as
C & M CONTRACTING COMPANY

ANSWER OF THE CLEARFIELD
TRUST COMPANY, PLAINTIFF, TO
PETITION OF DAVID LEE COWFER
ET AL. TO SHOW CAUSE WHY THE
EXECUTION OF THE SALE SHALL
NOT BE STRICKEN OFF AND TO THE
EXCEPTIONS TO THE SALE FILED
BY DAVID LEE COWFER.

FILED

NEVILING & DAVIS
ATTORNEYS-AT-LAW
CLEARFIELD TRUST CO. BLDG.
CLEARFIELD, PA.
CARL E. WALKER
PROTHONOTARY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CLEARFIELD TRUST COMPANY :
vs. : No. 7 September Term, 1961
KENNETH W. CHANDLER and :
KYLE McQUILLEN, trading as :
C. & M. Contracting Co. :
:

PRAECIPE FOR WRIT OF EXECUTION

TO: WILLIAM T. HAGERTY, PROTHONOTARY

Issue writ of execution in the above matter.

The amount due on the said judgment is as follows:

Unpaid principal \$14,500.03

Attorney's commissions 1,450.00

Interest from 7/21/61 to

9/13/61 125.66

(Costs to be added)

James K. Nevling
of Nevling and Davis,
Attorneys for the Plaintiff

82 Sept 1961
IN THE COURT OF COMMON
PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CLEARFIELD TRUST COMPANY

vs.

KENNETH W. CHANDLER and
KYLE McQUILLEN, trading as
C. & M. Contracting Co.

PRAECIPE
FOR WRIT OF EXECUTION



NEVLING & DAVIS
ATTORNEYS-AT-LAW
CLEARFIELD TRUST CO. BLDG.
CLEARFIELD, PA.

OFFICE OF PROTHONOTARY AND CLERK OF COURTS

CLEARFIELD COUNTY

CARL E. WALKER
PROTHONOTARY



CLEARFIELD, PENNSYLVANIA

June 21, 1962

Honorable John J. Pentz
President Judge
Clearfield County
Clearfield, Pennsylvania

Re: Clearfield Trust Company
-vs-
Kenneth W. Chandler and
Kyle McQuillen, t/a
C. & M. Contracting Co.
Execution
No. 82 September Term, 1961
Execution No. 7 September Term, 1961

Dear Judge:

In the above matter the Sheriff has filed in our office a Distribution Sheet in the above Estate together with the exceptions filed against the Distribution as prepared.

Under Supreme Court Ruling 3136 (g.e.) we believe that we should refer this matter to you to dispose of the exceptions or you would appoint an auditor to dispose of the exceptions.

Very truly yours,

Carl E. Walker
Prothonotary

CEW:pd

cct: James B. Reese
Nevling & Davis
Bell, Silberblatt & Swoope

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA.

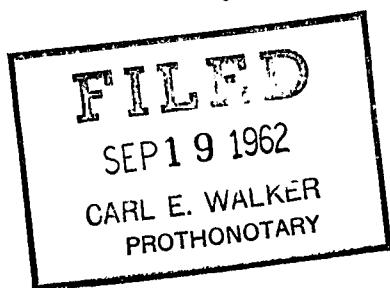
CLEARFIELD TRUST COMPANY :
VS : No. 82 September Term 1961.
KENNETH W. CHANDLER and :
KYLE McQUILLEN, t/a :
C. & M. CONTRACTING CO. :
:

You are hereby notified that the testimony in the above entitled case has been transcribed and lodged with the Prothonotary, and that the same will be duly certified and filed so as to become part of the record, if no objection be made thereto within fifteen days from this date. Court Order and Rules of Court will be computed from this date.

September 19, 1962.

Vera S. Kester
Official Stenographer

NOW, September 19, 1962, the above notice served by carbon copy on Bell, Silberblatt & Swoope, Esqs., counsel for petitioners; Nevling & Davis, Esqs., counsel for plaintiff; Baird, McCamley & Miller, Esqs., counsel for purchaser; Joseph Zakowski, Esq., of the Treasury Department; and Edward T. Kelley, Esq., counsel for Sheriff of Clearfield County.



Vera S. Kester
Official Stenographer

JAMES B. REESE
SHERIFF

EDWARD T. KELLEY
SOLICITOR

JOHN ROKOSKY
CHIEF DEPUTY SHERIFF

GEORGE BRILLA
DEPUTY SHERIFF



OFFICE OF THE

Sheriff of Clearfield County
CLEARFIELD, PENNSYLVANIA

162 Pe 118

June 19, 1962

Carl E. Walker
Prothonotary

Re:

Clearfield Trust Company
vs
Kenneth W. Chandler and
Kyle McQuillen, t/a
C. & M. Contracting Co.
No. 82 September Term, 1961
No. 7 September Term, 1961

Having received exception to Schedule of Distribution from
David Lee Cowfer, under rule 3136 of Rules of Civil Procedure,
I am referring the matter to you for proper disposition under
that rule.

Second agreement with
Trust Co - next on
Books of Clif Trust Co

James B. Reese
James B. Reese
Sheriff

PERSONAL PROPERTY SALE

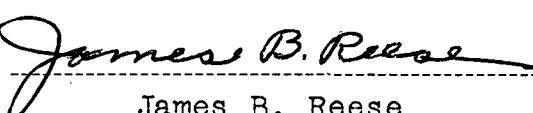
SCHEDULE OF DISTRIBUTION

NOW, June 6, 1962, by virtue of the writ hereunto attached, after after having given due and legal notice of the time and place of sale, by hand bills posted on the premises, setting forth the time and place of sale, I sold on the 1st day of June 19 62, the defendant's personal property for \$ 13,600.00, and made the following appropriations:

To Debt	\$11,166.71
Interest	129.77
Attorney	3.00
Plaintiff	12.00
Attorney Commission	1,450.00
Sheriff's costs	101.58
First National Bank, Philipsburg on Secured Trans- action-Filed May 15, 1961	430.26
To Defendants	306.68
Total	\$13,600.00

The \$306.68 (to defendants) was levied on by Internal Revenue Service Officer on June 18, 1962

Distribution will be made in accordance with the above schedule unless exceptions are filed with this office within ten (10) days from this date.


James B. Reese Sheriff
James B. Reese

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CLEARFIELD TRUST COMPANY :
vs. : No. 82 September Term, 1961
KENNETH W. CHANDLER and :
KYLE McQUILLEN, trading as :
C. & M. Contracting Co. :
:

PRAECIPE TO ENTER CREDITS

TO: CARL WALKER, PROTHONOTARY

On the above judgment (on which a writ of execution has been issued to No. 7 September Term, 1961) will you please enter credits reducing the unpaid principal to \$11,166.71 with unpaid interest from March 21, 1962. No credits are to be entered against attorney's commissions or costs.

April 27, 1962

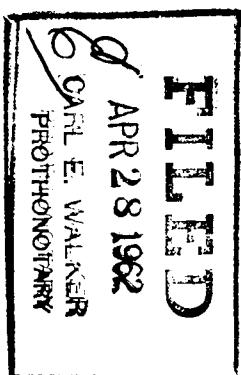
James K. Nevling
Of Nevling and Davis,
Attorneys for the Plaintiff

CLEARFIELD TRUST COMPANY

vs.

KENNETH W. CHANDLER and
KYLE McQUILLIN, trading as
C. & M. Contracting Co.

PRAECIPE TO BAYER CREDITS



NEVLING & DAVIS
ATTORNEYS-AT-LAW
CLEARFIELD TRUST CO. BLDG.
CLEARFIELD, PA.



CLEARFIELD, PA., December 21, 1959 No.

DUE 12/21/61

FACE	DISC.
NET.	

I or we promise to pay to the order of the CLEARFIELD TRUST COMPANY or its assigns at the CLEARFIELD TRUST COMPANY, Clearfield, Pennsylvania, \$ 20,000.00

Twenty Thousand - - - - - DOLLARS

in monthly payments of \$ 833.33 each commencing on January 21, 1960 and continuing on the same day of each and every month thereafter until the full amount hereof is paid, together with monthly installments at 6% on unpaid balances payable on the 21st day of each month.

I have deposited as collateral security security agreement of December 21, 1959 covering Manitow

Model 3500 Dragline, Serial No. 3810 and other equipment.

and do agree that the collateral hereby pledged and any property of mine in the possession of the holder may be applied to the payment of this obligation or any other obligation of mine either direct or contingent.

In the event of default in any payment on the due date thereof the holder may at its election declare the full amount of this note then remaining unpaid immediately due and payable.

I do hereby authorize any attorney to appear for me and confess judgment against me for the entire unpaid balance of the note at the time of or at any time after any default, with interest after maturity and with ten percent attorney's commission and costs of suit. I do hereby expressly release all errors and waive all rights to inquisition and appeal and the benefit of all laws exempting real estate or personal property from levy and sale.

Witness:

22 N. Second St.
2M
Philipsburg, Pa.

Kenneth W. Chandler (SEAL)
Kyle W. MacLellan (SEAL)
T/A K & M Contracting Co.

In consideration of the loan granted upon the within note at my request, I hereby unconditionally guarantee to the Clearfield Trust Company or its assigns the payment of the within note, in accordance with its terms, or any extension thereof, which extension may be granted without notice to me. I do hereby waive presentment, demand or protest and notice of non-payment.

I do hereby authorize any attorney to appear for me at the time of, or at any time after any default in any payment, in accordance with the terms of the note, and to confess judgment against me for the entire unpaid balance of the note at that time, with interest after maturity, with ten percent attorney's commission and costs of suit. I do hereby expressly release all errors and waive all rights to inquisition and appeal and the benefit of all laws exempting real estate or personal property from levy and sale.

.....(SEAL)

.....(SEAL)

.....(SEAL)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CLEARFIELD TRUST COMPANY :
vs. : No. 82 Sept Term, 1961
KENNETH W. CHANDLER and :
KYLE McQUILLEN, trading as :
C. & M. Contracting Co. :
:

DECLARATION

The plaintiff's claim in the above stated action is founded on a judgment note attached hereto under the hands and seals of the defendants dated December 21, 1959, in the amount of \$20,000.00, payable in monthly payments of \$833.33 together with interest at six (6) per cent on unpaid balances, payable on the 21st day of each month; and it is averred that no principal payments on the said note have been made since September 21, 1960, and that the interest on the said note is unpaid from July 21, 1961. The plaintiff, therefore, hereby exercises its election to declare the entire unpaid principal balance of the note in the amount of \$14,500.03 with interest from July 21, 1961 to be immediately due and payable.

The said note is secured by a security agreement of December 21, 1959, and financing statements filed in the office of the Prothonotary of Clearfield County on December 21, 1959, File Number 5775, and also filed in

the Department of State on December 28, 1959, File Number 197346, in which financing statements the collateral is as follows:

Manitowoc Model 3500 Dragline, Serial No. 3810

Allis-Chalmers Crawler Tractor Model HD-20H,
Serial No. 5793

Bulldozer HD 14, Serial No. 67115753

1 3/4 yard Lorain Shovel, Serial No. 5439

1 Lorain Model 40, Serial No. 2693

1 McCarthy Horizontal Drill

The said note contains a warrant of attorney authorizing any attorney to appear for the defendants and confess judgment against them for the entire unpaid balance of the note with attorney's commissions of ten (10) per cent, interest after maturity and costs of suit; releasing errors, waiving all rights to inquisition and appeal and the benefit of all exemption laws.

There is hereby certified to be due and owing to the plaintiff by the defendants, the sum of \$14,500.03 with interest from July 21, 1961, costs and attorney's commissions.

James K. Nevling
Of Nevling and Davis,
Attorneys for the Clearfield
Trust Company, Plaintiff.

CONFESSSION OF JUDGMENT

By virtue of a warrant of attorney above mentioned and hereunto annexed, we appear for Kenneth W. Chandler and Kyle McQuillen, trading as C. & M. Contracting Co., the defendants in the above stated action and therein confess judgment against them in favor of the Clearfield Trust Company, the plaintiff, for the sum of \$14,500.03, with interest from July 21, 1961, costs of suit and attorney's commissions of ten (10) per cent, and we hereby release all errors, waive all rights to inquisition and appeal, and waive the benefit of all laws exempting real estate or personal property from levy and sale.

James E. Nevling
Of Nevling and Davis,
Attorneys for the Defendants

CERTIFICATE OF RESIDENCE

TO: WILLIAM T. HAGERTY, PROTHONOTARY

We hereby certify that the address of the Clearfield Trust Company, the plaintiff herein, is 11 North Second Street, Clearfield, Pennsylvania, and that the address of Kenneth W. Chandler and Kyle McQuillen, defendants herein, is Philipsburg, Pennsylvania.

James F. Neff

Attorneys for the Plaintiff

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY,
PENNSYLVANIA

CLEARFIELD TRUST COMPANY

KENNETH W. CHANDLER and
KYLE McQUILLENN, trading as
C. & M. Contracting Co.

DECLARATION
CONFESSiON OF JUDGMENT
CERTIFICATE OF RESiDENCE

500

NEVLING & DAVIS
ATTORNEYS-AT-LAW
CLEARFIELD TRUST CO. BLDG.
CLEARFIELD, PA.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CLEARFIELD TRUST COMPANY :
vs. : No. 7 September Term, 1961
KENNETH W. CHANDLER :
KYLE McQUILLEN, trading as :
C & M CONTRACTING CO. :
:

EXCEPTION

To James B. Reese, Sheriff:

I except to the alleged sale of a Model 40 Lorraine Shovel, Serial Number 2693 at the Sheriff's Sale on June 1, 1962, for the reason that said shovel was not in the possession of the Defendants either at the time of the levy or sale. It is specifically averred that said shovel was never legally levied upon, taken into possession or identified, nor were the whereabouts of the shovel known at the time of the Sheriff's Sale.

June 19. 1962
F. C. Cowfer
atly

David Lee Cowfer
David Lee Cowfer

—Lap over margin—

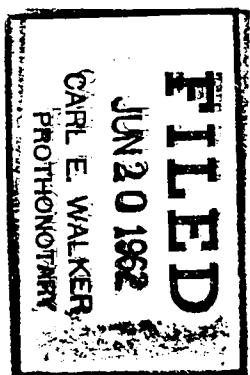
IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA,
No. 7 September Term, 1961

CLEARFIELD TRUST COMPANY

vs.

KENNETH W. CHANDLER
KYLE MCQUILLEN, trading as
C & M CONTRACTING CO.

EXCEPTION



BELL, SILBERBLATT & SWOOPPE
ATTORNEYS AT LAW
CLEARFIELD TRUST CO., BLDG.
CLEARFIELD, PENNA.