

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

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

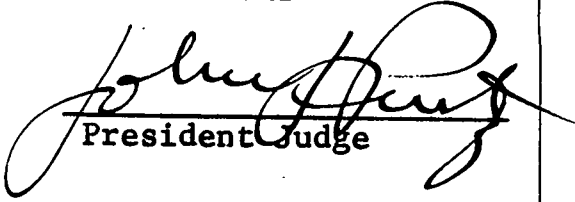
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No. 82 September Term 1961

O R D E R

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

BY THE COURT


President Judge

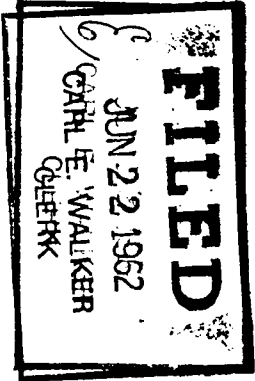
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
No. 82 September Term 1961

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


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

FILED
SEP 26 1962
CARL E. WALKER
PROTHONOTARY

Rec 200
JOHN J. PENTZ
PRESIDENT JUDGE
CLEARFIELD, PENNSYLVANIA

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
:
:

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 &
Griest 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,

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 their only
 proper use and behoof, their heirs, executors, administrators and assigns forever.

And he the said **Kenneth Chandler** does 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

Laura Hess

Kenneth W. Chandler



COMMONWEALTH OF PENNSYLVANIA)

COUNTY OF CENTRE)

SS..)

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.

Henry T. Head
Notary Public

My Commission expires 2/23/65

Bill of Sale

KENNETH CHANDLER

TO

DAVID LEE COWFER and

JOHN T. COWFER

THE PLATENEER CO., WILLIAMSPORT, PA.

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

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA No. 82 September Term, 1961 Execution No. 7 September Term, 1961	
CLEARFIELD TRUST COMPANY	
VS.	
KENNETH W. CHANDLER and KYLE McQUILLEN, trading as C & M CONTRACTING COMPANY	
<u>P E T I T I O N</u>	
<div>FILED JUN 26 1962 CARL E. WALKER PROTHONOTARY</div>	
BELL, SILBERBLATT & SWOPE ATTORNEYS AT LAW CLEARFIELD TRUST CO. BLDG. CLEARFIELD, PENNA.	
COMMERCIAL PRINTING CO., CLEARFIELD, PA	

June 25, 1962, article accepted by copy
James K. Neidung, Atty
for Plaintiff

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:

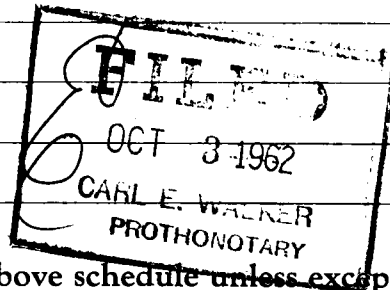
To Debt	\$11,166.71
Interest	129.77
Attorney	3.00
Plaintiff	12.00
Attorney Commission	1,450.00
Sheriff's costs	101.58
First National Bank, Phillipsburg on Secured Trans- action-Filed May 15, 1961	430.86
To Defendants	306.68
Total	\$13,600.00

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 United 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.

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

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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



Neuling and Davis

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.	70.83	Attorney Comm.	1,450.00	
Milage	10.00	Sheriff Costs	101.58	
Posting	3.75		<u>12,863.06</u>	
Adv.	3.75			
	<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.

Nevling & Davis

TO SHERIFF OF CLEARFIELD COUNTY, DR.

PLAINTIFF	DEFENDANT	NO.	TERM	AMOUNT
Clfd Trust Co.		No 82	Sept Term 1961	
vs				
Kenneth W. Chandler & Kyle McQuillen t/a C & M Contractors Co Philipsburgh, Pa.		No 7	Sept Term 1961	
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
Mileage	10.00 4.20			
Comm	87.50	Int fr 9.13. to		
		date		143.00
Total	104.95	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.

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.

:
:
:
:
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:
:

No. 82 September Term 1961

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 Prothonoter, 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

FORM 668-A
(REV. APRIL 1959)

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. Phillipsburg, 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	\$ 1428.64	\$ 104.26	\$ 1532.90
12/31/60 W&E	5/26/61	5-26-61List			
		5-165746			
1960 FUTA	5/26/61	5-26-61L	742.49	50.49	792.98
		5-880401			
3/31/61 W&E	5/26/61	5-26-61List	81.07	5.51	86.58
		5-165756			
12/31/61 W&E	2/9/62	5-26-61L	630.25	41.39	671.64
		2-165418	71.83	1.69	73.52
		2-9-62L	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)

Joseph J. Gubinski

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

John J. Rohaskey

TITLE

Chief Deputy Sheriff

DATE AND TIME

6/18/62 11:25 AM

SIGNATURE OF REVENUE OFFICER

Joseph J. Gubinski

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 distraint 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 accrued interest 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

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 Cont-
racting 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 2:00 PM. 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

#1 - INSTRUCTIONS TO DELIVERING EMPLOYEE	
<input type="checkbox"/> Deliver ONLY to addressee	<input type="checkbox"/> 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	
W. F. Mosty	
DATE DELIVERED	ADDRESS WHERE DELIVERED (only if requested in item #1)
5-25-62	==

REGISTERED NO.	1715
Value \$	22.00
Spec. del'y fee \$	
Fee \$	6.00
Ret. receipt fee \$	1.00
Surcharge \$	
Rest. del'y fee \$	
Postage \$	2.40
Airmail	<input type="checkbox"/>
Postmaster, By	
From	James B. Reese Sheriff, Clearfield Co. Pa.
To	Cleveland Bros Equip Co Philipsburg, Pa.

POSTMARK: CLEARFIELD PA MAY 24 1962

CFB-16-71848-4 GPO

POD Form 3806-Oct. 1960

048-16-70493-5

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

JAMES K. NEVLING
WILLIAM T. DAVIS

PHONE
POPLAR 3-7895

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 kept 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 Wallaceton and West Decatur and near Houtzdale. These items of equipment are 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

Very truly yours,

NEVLING AND DAVIS by

James K. Nevling
James K. Nevling

Indman Bld 112500
Bulk 13.600

↑
sold

B 54 S
David Powers for
Bought from Chandler
June 29, 1961 for 900
plus repairs.
JKN:j
DC put up
Sed - 250%

Wallaceton

Wade 29

Run exc

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 - 2:10 PM

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 distribu-
tion 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.

Rem. 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 (Red.)

Approx 2 miles from Wallacetown - on Dirt Road
along the road to Boggs Twp..

1 ALLIS-CHALMERS Tractor Model HD-20H

Roller HD 14 # 67115753

1 3/4 yd. Lorain Shovel # 5439

1 Lorain 40 # 2693

1 McCarty Hor. Drill

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~~19~~, 1961

Qui ex a

Clearfield Trust Company

vs.

Kenneth W. Chandler and Kyle
McQuillen, 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

County of Clearfield

SS:

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 ~~xx~~

\$ 125.66

Attys. Comm.

1,450.00

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

\$

John T. Herty
Prothonotary

By _____

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.

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.
Robert H. Spinnema
 Sheriff

WRIT OF EXECUTION

FILED
 JUN 20 1962
 CARL E. WALKER
 PROTHONOTARY

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

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 - - - - -	
<i>320.80 Pd</i>	

*refund made
10-1-62*

Nevling & Davis
 Attorney for Plaintiff(s)

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 ~~the~~ 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

COUNTY OF CLEARFIELD

:
:
:

SS:

Donald E. 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 E. Meckley
Clear

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

Mrs. Frances W. Spingola

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.

Newbury 3156
 Service copy
 by a/c
 Bill Belcher
 City of Newbury
 Edward J. Belcher
 Attorney-at-Law

1871 1872 1873 1874 1875 1876 1877 1878 1879 1880 1881 1882 1883 1884 1885 1886 1887 1888 1889 1890 1891 1892 1893 1894 1895 1896 1897 1898 1899 1900 1901 1902 1903 1904 1905 1906 1907 1908 1909 1910 1911 1912 1913 1914 1915 1916 1917 1918 1919 1920 1921 1922 1923 1924 1925 1926 1927 1928 1929 1930 1931 1932 1933 1934 1935 1936 1937 1938 1939 1940 1941 1942 1943 1944 1945 1946 1947 1948 1949 1950 1951 1952 1953 1954 1955 1956 1957 1958 1959 1960 1961 1962 1963 1964 1965 1966 1967 1968 1969 1970 1971 1972 1973 1974 1975 1976 1977 1978 1979 1980 1981 1982 1983 1984 1985 1986 1987 1988 1989 1990 1991 1992 1993 1994 1995 1996 1997 1998 1999 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023 2024 2025 2026 2027 2028 2029 2030 2031 2032 2033 2034 2035 2036 2037 2038 2039 2040 2041 2042 2043 2044 2045 2046 2047 2048 2049 2050 2051 2052 2053 2054 2055 2056 2057 2058 2059 2060 2061 2062 2063 2064 2065 2066 2067 2068 2069 2070 2071 2072 2073 2074 2075 2076 2077 2078 2079 2080 2081 2082 2083 2084 2085 2086 2087 2088 2089 2090 2091 2092 2093 2094 2095 2096 2097 2098 2099 2100 2101 2102 2103 2104 2105 2106 2107 2108 2109 2110 2111 2112 2113 2114 2115 2116 2117 2118 2119 2120 2121 2122 2123 2124 2125 2126 2127 2128 2129 2130 2131 2132 2133 2134 2135 2136 2137 2138 2139 2140 2141 2142 2143 2144 2145 2146 2147 2148 2149 2150 2151 2152 2153 2154 2155 2156 2157 2158 2159 2160 2161 2162 2163 2164 2165 2166 2167 2168 2169 2170 2171 2172 2173 2174 2175 2176 2177 2178 2179 2180 2181 2182 2183 2184 2185 2186 2187 2188 2189 2190 2191 2192 2193 2194 2195 2196 2197 2198 2199 2200 2201 2202 2203 2204 2205 2206 2207 2208 2209 2210 2211 2212 2213 2214 2215 2216 2217 2218 2219 2220 2221 2222 2223 2224 2225 2226 2227 2228 2229 2230 2231 2232 2233 2234 2235 2236 2237 2238 2239 2240 2241 2242 2243 2244 2245 2246 2247 2248 2249 2250 2251 2252 2253 2254 2255 2256 2257 2258 2259 2260 2261 2262 2263 2264 2265 2266 2267 2268 2269 2270 2271 2272 2273 2274 2275 2276 2277 2278 2279 2280 2281 2282 2283 2284 2285 2286 2287 2288 2289 2290 2291 2292 2293 2294 2295 2296 2297 2298 2299 2300 2301 2302 2303 2304 2305 2306 2307 2308 2309 2310 2311 2312 2313 2314 2315 2316 2317 2318 2319 2320 2321 2322 2323 2324 2325 2326 2327 2328 2329 2330 2331 2332 2333 2334 2335 2336 2337 2338 2339 2340 2341 2342 2343 2344 2345 2346 2347 2348 2349 2350 2351 2352 2353 2354 2355 2356 2357 2358 2359 2360 2361 2362 2363 2364 2365 2366 2367 2368 2369 2370 2371 2372 2373 2374 2375 2376 2377 2378 2379 2380 2381 2382 2383 2384 2385 2386 2387 2388 2389 2390 2391 2392 2393 2394 2395 2396 2397 2398 2399 2400 2401 2402 2403 2404 2405 2406 2407 2408 2409 2410 2411 2412 2413 2414 2415 2416 2417 2418 2419 2420 2421 2422 2423 2424 2425 2426 2427 2428 2429 2430 2431 2432 2433 2434 2435 2436 2437 2438 2439 2440 2441 2442 2443 2444 2445 2446 2447 2448 2449 2450 2451 2452 2453 2454 245

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JUL 3 - 1962

CARLE E. WALKER
PROTHONOTARY

ATTORNEYS-AT-LAW
CLEARFIELD TRUST CO. BLDG.
CLEARFIELD, PA.

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.

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No. 7 *September* Term, 1961

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
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Attorney's commissions	1,450.00
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Interest from 7/21/61 to 9/13/61	125.66
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(Costs to be added)

James E. 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

163 21
FILED
SEP 14 1961
WM. T. HAGERITY
PROTHONOTARY
7.00

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

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

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

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

CLEARFIELD TRUST COMPANY

VS

KENNETH W. CHANDLER and
KYLE McQUILLEN, t/a
C. & M. CONTRACTING CO.

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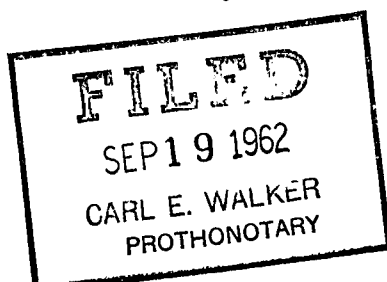
No. 82 September Term 1961.

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 L. 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 L. 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 Per 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.

*Send agreement with
Trust Co - not on
Books of Clearfield 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:

Table with 2 columns: Description, Amount. Rows include: 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.

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

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No. 82 September Term, 1961

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 E. Nevling
Of Nevling and Davis,
Attorneys for the Plaintiff

CLEARFIELD TRUST COMPANY

VS.

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

PRAECIPE TO ENTER CREDITS

FILED

APR 28 1962

CARL E. WALKER
PROTHONOTARY

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



CLEARFIELD, PA., December 21, 19 59 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, 19 60 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.

Philipsburg, Pa.

Samuel W. Chandler (SEAL)

Kyle M. McQuillen (SEAL)

T/A C & 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 injunction 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.

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

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No. 82 Sept

Term, 1961

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 E. Newling
Of Nevling and Davis,
Attorneys for the Clearfield
Trust Company, Plaintiff.

CONFESSION 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 K. 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 E. Newling
Attorneys for the Plaintiff

52 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.

DECLARATION
CONFESSION OF JUDGMENT
CERTIFICATE OF RESIDENCE

5/21/64

FILED IN FILE

\$00

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.

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

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:
: No. 7 September Term, 1961
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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
Hughes &
ath

David Lee Cowfer
David Lee Cowfer

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	
<div>FILED JUN 20 1962 CARL E. WALKER PROTHONOTARY</div>	
BELL, SILBERBLATT & SWOOPÉ ATTORNEYS AT LAW CLEARFIELD TRUST CO. BLDG. CLEARFIELD, PENNA.	
SPENCER, PRINTING CO., CLEARFIELD, PA.	

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