

MITCHELL, HUTCHINS & CO.,  
INCORPORATED,

Plaintiff,

vs.

HERBERT LUNSFORD,

Defendant.

X

X

X

X

X

X

X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 20601

ANSWER

Comes now the Defendant in the above styled cause and for answer to the Bill of Complaint heretofore filed against him, says:

1. That the allegations of the Bill of Complaint are untrue.

2. That the Plaintiff is now, and was at all times prior hereto, a foreign corporation not qualified to do business in the State of Alabama, hence it should not recover.

CHASON, STONE & CHASON

By: M. P. Stone

Attorneys for Defendant

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon counsel for all parties to this proceeding, by mailing the same to each by First Class United States Mail, properly addressed and postage prepaid on this 22 day

of May, 1967.

M. P. Stone

FILED  
MAY 22 1967  
CLERK  
ALBANY, ALABAMA

MITCHELL, HUTCHINS & CO.,  
INCORPORATED,

Plaintiff

vs.

HERBERT LUNSFORD,

Defendant

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)

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

AT LAW

No. 20601

Now comes the Plaintiff and demurs to Plea No. 2 and for grounds of such demurrer sets forth the following separate and several grounds, separately and severally:

1. Said Plea does not allege that the transactions which are the basis of this suit took place within the State of Alabama.
2. For aught that appears, the transactions which are the basis of this suit took place outside the State of Alabama.
3. Said Plea does not allege that the Plaintiff was doing business in the State of Alabama.
4. For aught that appears, the Plaintiff was not and has never done business in the State of Alabama.
5. Said Plea does not allege that any acts of the Plaintiff relating to this suit required it to qualify to do business in the State of Alabama.
6. For aught that appears, no acts of the Plaintiff required it to qualify to do business in the State of Alabama.

CAFFEY, GALLALEE, EDINGTON & LOVELESS

By

*John L. Gallalee*  
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 23<sup>d</sup> day of May, 1962, served a copy of the foregoing pleading on counsel for all parties to this proceeding by mailing the same by United States mail, properly addressed, and first class postage prepaid.

MITCHELL, HUTCHINS & COMPANY, INC.,	)	IN THE CIRCUIT COURT OF
	*	
PLAINTIFF,	)	BALDWIN COUNTY, ALABAMA
	*	
vs.	)	AT LAW NO.7248
	*	
HERBERT LUNSFORD,	)	
DEFENDANT	*	
	)	

MOTION TO PRODUCE

Now comes the Plaintiff in the above styled cause and moves the Court to compel, by order, the defendant to produce, at or before the trial, the following papers or documents in his possession or power, which are necessary and material to the trial of said cause and containing evidence pertinent to the issues of said trial, to-wit:

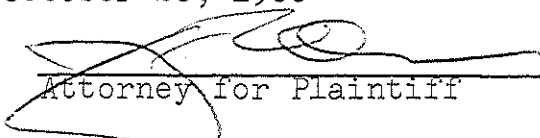
Western Union Telegram from Mitchell Hutchins and Co. to Herbert Lunsford dated July 18, 1966

Letter from Mitchell, Hutchins & Co. to Herbert Lunsford dated July 18, 1966

Letter from W. E. Buxton to Herbert Lunsford dated August 3, 1966

Letter from Mitchell, Hutchins & Co. to Herbert Lunsford dated August 9, 1966

Letter from Mitchell, Hutchins & Co. to Herbert Lunsford dated October 26, 1966

  
Attorney for Plaintiff

STATE OF ALABAMA )  
\*  
BALDWIN COUNTY )

Before me the undersigned authority personally appeared James R. Owen, who, being first duly sworn, deposes and says: That he is one of the Attorneys for the Plaintiff in the above styled cause and as such has knowledge of the facts set out in the foregoing motion; that the documents therein described contain evidence pertinent to the issues in this cause and that they are necessary and material to a proper disposition of this cause.

Sworn to and subscribed  
before me on this 28th  
day of November, 1967.

**FILED**

NOV 28 1967

  
Notary Public, Baldwin County, Alabama

**ALICE J. DUCK**

CLERK  
REGISTER

To: Chason, Stone and Chason, Attorneys for Defendant  
Please take notice that the above motion will be called to the attention of the Judge of the Circuit Court of Baldwin County, Alabama on November 30, 1967, at 1 o'clock P.M.

Presented to the undersigned Judge on November 28, 1967.

MITCHELL, HUTCHINS & COMPANY,  
INC.,

Plaintiff,

vs.

HERBERT LUNSFORD,

Defendant.

X

X

X

X

X

X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 7248

AMENDED PLEAS

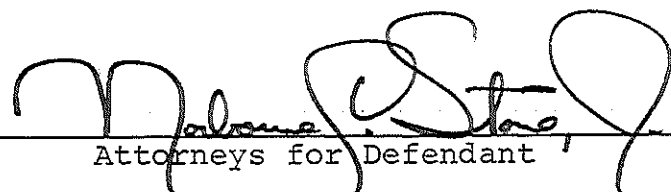
Comes now the Defendant in the above styled cause, by his attorneys, and amends the Pleas heretofore filed by him to the Complaint and to each Count thereof, separately and severally, so that the same shall read as follows:

1. The allegations of the Complaint are untrue.
2. The Plaintiff is a foreign corporation and it was not, at the time of the filing of the Complaint or at any time prior thereto, qualified to do business in the State of Alabama, and it had not complied with the Constitution and Laws of the State of Alabama relative to a foreign corporation qualifying to do business in the State of Alabama. Defendant further avers that the Plaintiff was, at all times mentioned in the Complaint doing business in the State of Alabama and it maintained an agent or agents in the State for the purpose of soliciting business and entering into contracts with its customers. Wherefore, the Defendant avers that the Plaintiff ought not to recover.

Respectfully submitted,

CHASON, STONE & CHASON

By:

  
Attorneys for Defendant

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon counsel for all parties to this proceeding, by mailing the same to each by First Class United States Mail, properly addressed and postage prepaid on this 1<sup>st</sup> day of December, 1967.



**FILED**

22

DEC 1 1967

**ALICE J. DUCK**

CLERK  
REGISTER

MITCHELL, HUTCHINS & COMPANY,  
INC.,  
  
Plaintiff,  
  
VS.  
  
HERBERT LUNSFORD,  
  
Defendant.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW NO. 7248

ORDER

This cause is submitted on the sworn motion to produce  
filed on November 28, 1967, and having been considered by the court,  
the said motion is hereby granted.

ORDERED on this the 30th day of November, 1967.

Jaeger J. Madeline  
Judge

Filed 12-5-67  
Alice J. Mack  
Clerk

JUN 25 1970

THE STATE OF ALABAMA - - - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1969-70

Mitchell, Hutchins & Company, Inc.

1 Div. 582

v.

Herbert Lunsford

Appeal from Baldwin Circuit Court

PER CURIAM.

Jury and verdict, followed by judgment, for defendant  
in a suit on common counts filed by appellant against appellee

2.

in the Circuit Court of Mobile County, and upon plea in abatement, the suit and papers were transferred to the Circuit Court of Baldwin County. - Act No. 76, Special Session of the Legislature, 1961, p. 1953; Title 7, § 64(1), Recompiled Code 1958, Cumulative Pocket Supplement. This appeal is from the judgment for defendant. Motion for new trial was denied.

There are five Assignments of Error. Assignment 1 refers to the trial court's refusal to give plaintiff's written instruction to the jury that if they believe the evidence they must find for the plaintiff on Count 1. Assignment 2 refers to a like refusal with respect to Count 2. The same is true as to Count 3. Assignment 4 charges error on the part of the trial court in refusing to grant plaintiff's motion for a new trial. Assignment 5 charges error by the court in giving defendant's written instructions with hypothesis as to Count 2 of the complaint. This count charges money paid by the plaintiff at defendant's request.

It appears from the record that plaintiff (appellant) is a non-resident corporation engaged as a grain broker having connection with a commodity exchange - The Chicago Board of Trade. This corporation buys and sells grain futures for its customers. On April 13, 1966, defendant (appellee) through plaintiff, sold short 10,000 bushels of November Soy Beans at \$2.77 1/4 a bushel; on April 27, 1966, he sold

3.

short an additional 10,000 bushels of November Soy Beans at \$2.83 1/8 a bushel; then on June 3, 1966 he sold short a third 10,000 bushels of November Soy Bean futures at \$2.85 5/8. Selling short means, according to plaintiff's witness, "It is a contract where you sell now with the intention of delivering when you harvest your crop. \* \* \* It is merely selling ahead - ahead of when you actually cut your soy beans and when they are ready to mature and cut and then you make delivery."

Witness Keith for plaintiff testified that these beans were sold on margin for defendant who at the time had on deposit with plaintiff the sum of \$5,112.50. The witness further testified that in June, 1966 the price of soy beans was going up. The reason was dry weather which meant that it would cut into the yield; consequently there would be less supply at harvest time. As the price went up the deposit margin with plaintiff was depleted or gradually eaten away. Witness testified that defendant was mailed notice from the Chicago office that additional money was needed to keep the account in good standing. Witness testified that on July 7, 1966, he called defendant at his home in Foley, when defendant told him that he was mailing check to cover margin. He had another telephonic conversation with defendant about the account on July 12, one on July 13, and one on the 14th of July, 1966. These conversations were pretty well identical



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with the other. He insisted on maintaining his position in the market. Introduced in evidence was a telegram, or copy, dated July 14, 1966, which defendant admitted sending. This telegram to plaintiff in Memphis stated "MARGIN CHECK IN MAIL RAINING". This check never arrived.

The increase in soy bean prices resulted in a loss of \$13,819.00. On July 18, 1966, plaintiff closed out the account by buying in the short sale of soy beans for defendant's account. Plaintiff paid The Chicago Board of Trade \$8,706.50 out of its own pocket - an amount in excess of defendant's deposit with plaintiff. Defendant never repaid plaintiff. This amount with interest is still due and payable since July 18, 1966. This is the substance of the testimony of plaintiff's witness.

While it is true there is no evidence in this case of usage and custom with respect to trading in grain futures on The Chicago Board of Trade, we think a positive inference can be drawn from the evidence of defendant that he was acquainted with his responsibility and duty to put up requisite margin with his broker (plaintiff) in grain futures sold or bought on The Chicago Board of Trade. He admitted that he had the selling transaction with plaintiff. He also admitted that plaintiff called on him to put up more margin to cover the losses on the futures he had sold and that he failed or refused to do so. He admitted sending the telegram,

5.

supra. He also admitted that he had not mailed the check. The telegram was false. Not having received the check, plaintiff, on July 18, 1966, closed defendant's account as above noted. Defendant also admitted during the trial that he kept promising to send margin check so that plaintiff would keep him in the market. He also admitted that for about 15 years he had been "dealing in this kind of business". He testified that he told plaintiff to keep him in; also he testified that he knew if the market went up that either he or plaintiff had to advance the money; that plaintiff could not keep him unless he or plaintiff put up some money. We quote specific questions and answers:

"Q. What happens, Mr. Lunsford, if you don't send the margin check to your broker?

"MR. STONE: Object to the question, may it please Court.

"THE COURT: Overrule the objection.

"MR. STONE: Except.

"A. It is according to who you are doing business with.

\* \* \*

"Q. You knew if the market went up either you or them one had to advance the money, is that right? \* \* \*

"MR. STONE: May it please the Court, I think that

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is argumentive - - I hate to keep objecting.

"THE COURT: He says he told them to keep him in.

I think the jury is entitled to know how they are going to keep him in. I think that is what he is asking.

"MR. STONE: There is testimony that he was dealing with his own agent.

"THE COURT: Overrule the objection.

"MR. STONE: Except.

"Q. They could not keep you in unless you or them one put some money up, is that a fact?

"A. According to your talk.

"Q. I'm talking about - - - If that is not right, you will tell us?

"A. There is cases where it has been different.

"Q. In your particular case, as the market went up, every time it went up a penny that was how much, \$900.00 in your case?

"A. \$300.00.

"Q. So that if it went up a dime it would be \$3,000.00 a day.

"A. Yes.

"Q. On some days it did that during that period of time?

"A. Yes.

7.

"Q. You knew that?

"A. Yes sir.

"Q. You kept promising to send the margin check so they would keep you in the market and you didn't do it?

"A. That is what you say.

"Q. Isn't that correct? - - I don't want to testify for you; if that isn't correct, you tell the gentlemen - -

"A. - - - That seems to be correct."

We are impressed from the whole of the evidence that defendant sold the soy bean futures through plaintiff with full knowledge gained through 15 years experience in such commodity trading that if he sold on a marginal basis and did not put up money to protect the sale should the market rise, that plaintiff was authorized to close his account by proper procedure in buying a like quantity of soy beans.

It occurs to us from defendant's false telegram that he had mailed check to cover margin and from the other evidence, that defendant wanted to shift his responsibility to put up margin money to plaintiff; that he did not want to get out of the market with respect to the sales here involved. In other words that if a loss occurred, plaintiff would pay, and if a profit, he would benefit to that extent. It appears

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that defendant wanted to invoke the old adage, "Heads I win, tails you lose."

Defendant in our opinion from the evidence knew when he authorized the sales, supra, that his broker, the plaintiff here, had the right to close the account should he fail to make the margin payments and protect plaintiff.

We think the trial court committed reversible errors as charged in Assignments 1, 3, and 4.

We do not find from the evidence that defendant ever requested plaintiff to pay the money as alleged in Count 2 of the complaint. But suffice it to say that defendant knew that it was the custom of the broker in a transaction of this kind to pay the money and he impliedly assented thereto when he entered into the transactions of selling the grain through plaintiff.

The judgment of the trial court is reversed and the cause remanded.

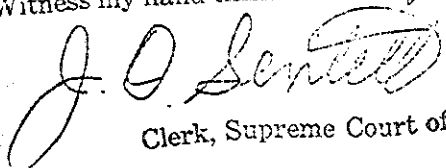
The foregoing opinion was prepared by B. W. Simmons, Supernumerary Circuit Judge, while serving on the Supreme Court at the request of the Chief Justice, and was adopted by the court as its opinion.

REVERSED AND REMANDED.

Livingston, C. J., and Simpson, Coleman, Bloodworth and McCall, JJ., concur.

I, J. O. Sentell, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appears of record in said Court.

Witness my hand this 25 day of June 19 70



Clerk, Supreme Court of Alabama

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 19 69-70

1st Div. No. 582

To the Clerk ~~Register~~ of the Circuit Court of \_\_\_\_\_  
Baldwin County, Greeting:

Whereas, the Record and Proceedings of the Circuit Court \_\_\_\_\_  
of said county, in a certain cause lately pending in said Court between  
Mitchell, Hutchins & Company, Inc., Appellant,  
\_\_\_\_\_ and \_\_\_\_\_  
Herbert Lunsford, Appellee,

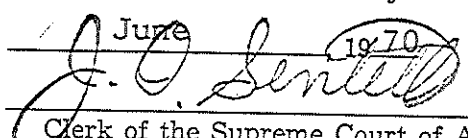
wherein by said Court it was considered adversely to said appellant, were brought before the  
Supreme Court, by appeal taken, pursuant to law, on behalf of said appellant;

Now, it is hereby certified:

That the Supreme Court on the 25th day of June, 1970, reversed  
and annulled the Judgment of the Court below, and remanded the cause to said  
Court for further proceedings therein.

That the Court further ordered the appellee, Herbert Lunsford,

pay the costs accruing on said appeal in this Court and in the Court below, for which costs let  
execution issue.

Witness, J. O. Sentell, Clerk of the Supreme  
Court of Alabama, at the Judicial Department  
Building, this the 25th day of \_\_\_\_\_  
June 1970  
  
Clerk of the Supreme Court of Alabama.

THE SUPREME COURT OF ALABAMA

October Term, 19 69-70

1st Div., No. 582

Mitchell, Hutchins &

Company, Inc.

*Appellant,*

*vs.*

Herbert Lunsford

*Appellee.*

*From* Baldwin Circuit *Court.*

7248

**CERTIFICATE OF  
REVERSAL**

*The State of Alabama,*

**FILED**

*County.*

*} Filed*

*this* 26 *day of* JUN 1970

**ALICE J. DUCK**

CLERK  
REGISTER

MITCHELL, HUTCHINS & COMPANY,	)	
	)	
Plaintiff,	)	IN THE CIRCUIT COURT OF
	)	
VS.	)	BALDWIN COUNTY, ALABAMA
	)	
HERBERT LUNSFORD,	)	AT LAW NO. 7248
	)	
Defendant.	)	

APPEAL BY PLAINTIFF

Now comes the plaintiff and appeals to the Supreme Court of the State of Alabama from a final judgment for the defendant rendered in this cause in and by the Circuit Court of Baldwin County, Alabama, at Law, on to-wit, the 9th day of December, 1968, and from the order overruling the defendant's motion for a new trial on February 26, 1969.

DATED this 27<sup>th</sup> day of March, 1969.

CAFFEY, GALLALEE & EDINGTON and  
JAMES R. OWEN

By 

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have on this 27<sup>th</sup> day of March, 1969, served a copy of the foregoing appeal on the attorney for the defendant in this proceeding by mailing the same by United States mail, properly addressed and first class postage prepaid.

CAFFEY, GALLALEE & EDINGTON and  
JAMES R. OWEN

By 

Attorneys for Plaintiff

**FILED**

MAR 27 1969

**ALICE J. DUCK** CLERK  
REGISTER

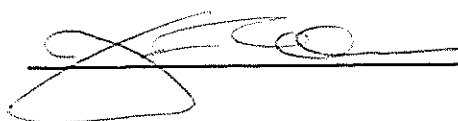


MITCHELL, HUTCHINS & COMPANY, )  
Plaintiff, )  
VS. )  
HERBERT LUNSFORD, )  
Defendant. )


IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW NO. 7248

SECURITY FOR COSTS

I, the undersigned, do hereby acknowledge myself as  
security for costs of the appeal taken by the plaintiff in this  
cause.



Taken and approved on this the  
27 day of March, 1969.

  
Clerk, Circuit Court, Baldwin  
County, Alabama.

**FILED**

MAR 27 1969

**ALICE J. DUCK** CLERK  
REGISTER

THE STATE OF ALABAMA  
Baldwin County - Circuit Court

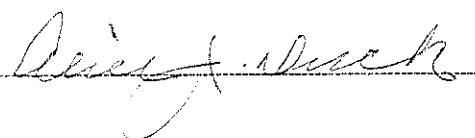
TO ANY SHERIFF OF THE STATE OF ALABAMA — GREETING:

Whereas, at a Term of the Circuit Court of Baldwin County, held on the 9th  
December, 1968 ~~Monday~~, 1968, in a cer-  
tain cause in said Court wherein Mitchell, Hutchins & Company  
Plaintiff, and Herbert Lunsford  
Defendant, a judgement was rendered against said  
Plaintiff  
to reverse which Judgment, the said Plaintiff  
applied for and obtained from this office an APPEAL, returnable to the ~~Supreme Court~~ next  
Term of our Supreme Court of the State of Alabama, to be held at Montgomery, on  
the day of , 196 next, and the necessary bond  
having been given by the said Plaintiff  
with James R. Owen, Surety, ~~xxxxxx~~

Now, You Are Hereby Commanded, without delay, to cite the said Herbert Lunsford  
or Chason, Stone & Chason  
attorneys to appear at the next Term of our  
said Supreme Court, to defend against the said Appeal, if they think proper.

Witness, ALICE J. DUCK, Clerk of the Circuit Court of said County, this 27th  
day of March, A. D., 1969.

Attest:

 Clerk.

Received 28 day of March 1968  
and on 28 day of March 1968  
I served a copy of the within Citation in Appeal  
on Norborne C. Stone

By service on Mr John Chason

TAYLOR WILKINS, Sheriff  
By W. G. Talbot D. S.  
am

7248

**CIRCUIT COURT**  
**Baldwin County, Alabama**

MITCHELL, HUTCHINS & COMPANY,

Plaintiff

Vs. { Citation in Appeal

HERBERT LUNSFORD,

Defendant

Issued 27th day of March, 1969

serve: Hon. Norborne C. Stone

\_\_\_\_DIV. NO.\_\_\_\_

CERTIFICATE OF APPEAL. (Civil Cases.)

No. 7248

THE STATE OF ALABAMA

BALDWIN County.

I, Alice J. Duck, Clerk of the Circuit Court of Baldwin County, in and for said State and County, hereby certify that the foregoing pages numbered from one to \_\_\_\_\_, both inclusive, contain a full, true and complete transcript of the record and proceedings of said Court in a certain cause lately therein pending wherein MITCHELL, HUTCHINS & COMPANY was plaintiff, and HERBERT LUNSFORD

was Defendant, as fully and completely as the same appears of record in said Court.

And I further certify that the said MITCHELL, HUTCHINS & COMPANY, did on the 27th day of March, 1969, pray for and obtain an appeal from the judgment of said Court to the SUPREME COURT of Alabama to reverse said judgment of said Court upon entering into bond with James R. Owen as surety thereon, which said bond has been approved by me.

Witness my hand and the seal of said Circuit Court of Baldwin County is hereto affixed, this the 27th day of March, 1969

Alice J. Duck  
Clerk of the Circuit Court of  
Baldwin County, Alabama.

(Code 1940, Title 7, Sec. 767)

*Mitchell Hutchins vs. Herbert Lumsford*  
 JURY LIST - DECEMBER TERM - DECEMBER 9, 1968

1. Allen, Thomas L., Farmer, Gateswood
2. ~~Avera, Leon W., Farmer, Foley~~
3. ~~Beverly, John, Salesman, Robertsdale~~
4. ~~Boomer, Travis, Farmer, Elseanor~~
5. Britt, Cecil, Carpenter, Bay Minette
6. ~~Brooks, Horace D., Farmer, Summerdale~~
7. ~~Bryers, Rudolph H., Brookley Field, Bay Minette~~
8. ~~Carlaway, Thomas Andrew, Seafood Dealer, Gulf Shores~~
9. ~~Chandler, Jack, Newport, Bay Minette~~
10. ~~Colgin, Ned, Farmer, Summerdale~~
11. ~~Creamer, Henry, City Employee, Fairhope~~
12. Dawson, Roy S., Livestock Dealer, Robertsdale
13. ~~Fell, Russell, Civil Service, Lillian~~
14. ~~Fell, Walter, Mechanic, Bon Secour~~
15. Flowers, Edward, Farmer, Bay Minette
16. ~~Guthrie, Hersey, Farmer, Bon Secour~~
17. Hall, John Sr., Carpenter, Loxley
18. ~~Hammond, Walter W., Grocer, Robertsdale~~
19. ~~Head, Charlie, Jr., Farmer, Stapleton~~
20. ~~Houston, Angelo, Clerk, Fairhope~~
21. ~~James, Dayton, Farmer, Foley~~
22. Kane, James, Farmer, Loxley
23. ~~Kochier, Charles G., Jr., Banker, Elberta~~
24. ~~Kriss, Frank, Farmer, Silverhill~~
25. ~~Little, Bernie, Mechanic, Bay Minette~~
26. ~~Lundberg, Carl, Newport, Bay Minette~~
27. Mason, Jimmy, Salesman, Fairhope
28. ~~Mathews, Charles L., F.C.A., Robertsdale~~
29. ~~McDaniel, Schuler, Farmer, Robertsdale~~
30. ~~Quimney, Bruce, Mobile Public Work, Daphne~~
31. Singleton, Art, Public, Rosinton
32. ~~Soesbe, John R., Mechanic, Foley~~
33. ~~Stripling, Fred, Television Repair, Robertsdale~~
34. ~~Thomas, Jennings, Farmer, Foley~~
35. Venson, Cecil, Civil Service, Stapleton
36. ~~Volovsky, Jimmie, Mechanic, Robertsdale~~
37. ~~Waters, Orville Clyde, Merchant, Bay Minette~~
38. Yarbrough, George C., Jr., International Paper Co., Bay Minette
39. Amos, Willie, Clerk, Silverhill
40. Conway, James, Mobile Construction, Daphne

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P XXXXX XXXXX XXXX

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no. 7748

Marshall H. H. H.

FALL TERM

JURY LIST - SEPTEMBER 9, 1968

V5.

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1. Bryars, Thomas Eugene, Brookley Field, Bay Minette
2. Pittman, Hubert, Public Works, Robertsedale
3. Quinley, Adrian L., Farmer, Bay Minette
4. Ray, Harry, Farmer, Robertsedale
5. Resmondo, Noah, Farmer, Summerdale
6. Schaff, George, Farmer, Elberta
7. Sibley, Robert, Civil Service, Stapleton
8. Singleton, Homer C., Salesman, Foley
9. Sopr, Joseph, Farmer, Silverhill
10. Teamer, Richard, Banker, Fairhope
11. Thieme, W. H., Foreman, Foley
12. Wynn, Harry, Farmer, Summerdale
13. Head, Hannis, Civil Service, Stapleton
14. Wallace, Jimmy R., Feed Mill, Robertsedale
15. Weeks, Stanley, Farmer, Magnolia Springs
16. White, Harold A., Laborer, Foley
17. Wilson, Jack H., Merchant, Foley
18. Lowell, Clyde, Laborer, Fairhope
19. Conway, Chas., Brookley Field, Bay Minette
20. Cox, Richard L., Timberman, Stockton
21. Duck, Robert S., Nursery Mgr., Loxley
22. Durant, Harry, Timber, Stapleton
23. Durant, Joe C., Farmer, Bay Minette
24. Gee, Luther, State Employee, Bay Minette
25. Gottler, Joe, Farmer, Elberta
26. Attaway, Hubert, State Emp., Gulf Shores
27. Bishop, Daniel C., Fisherman, Barnwell
28. Doan, Jessie Forest, Farmer, Stapleton
29. Bodenhamer, O. L., Contractor, Foley
30. Carmichael, Arlee, Brookley Field, Daphne
31. Gottler, John P., Postmaster, Elberta
32. Lyrene, George A., Farmer, Silverhill
33. Martin, Auburn W., Farmer, Stockton
34. Miller, R. Cecil, Implement Dealer, Foley
35. McCants, Joe., Brookley Field, Fairhope
36. McKenzie, Elroy, Jr., Farmer, Fairhope
37. Nelson, William J., Produce Man., Fairhope
38. Nespor, Frank E., Maintenance, Loxley
39. Kinsey, Daniel, Insurance, Foley
40. Klein, Raymond, Farmer, Fairhope
41. Inge, McKinley, Clerk, Bay Minette
42. James, Willie Lewis, Mill Worker, Stockton
43. Kostelecky, Jerry, Farmer, Silverhill
44. Krieger, Andrew J., Jr., Farmer, Lillian
45. Lazzari, A. V., Jr., Farmer, Belforest
46. Lipscomb, Ira., Farmer, Magnolia Springs
47. Little, Marshall, State Employee, Lottie

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P

XXXXX XXXXX XXXXX XX

D

XXXXX XXXXX XXXXX XX

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720,7248

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA, AT LAW

CASE NO. 20601 - McCALL

\*\*\*\*\*

CAFFEY, GALLALEE, EDINGTON & LOVELESS  
BY: JACK C. GALLALEE

MITCHELL, HUTCHINS & CO., INCORPORATED

JURY

VS. Suit for \$8,706.50 due on account.

CHASON, STONE & CHASON  
BY: NORBORNE C. STONE, JR.  
P.O. BOX 120  
Bay Minette, Alabama

HERBERT LUNSFORD

FILED  
NOV 9 1966  
JULIA DICK, CLERK  
REGISTER

\*\*\*\*\*

PLEADINGS, PROCESS, ETC. \* FILING DATE \*

\*\*\*\*\*

1. Complaint & Summons \* 9-21-66 \*

C & S served on Defendant on October 24, 1966.

2. Plea in Abatement \* 11-3-66 \*

ORDER SUSTAINING PLEA IN ABATEMENT AND ORDERING TRANSFER OF CASE

This cause coming on to be heard was submitted on the Plea in Abatement filed in this cause on behalf of the Defendant and it appearing to the Court that the Plaintiff has confessed said Plea and consents that the same should be sustained and this cause transferred to the Circuit Court of Baldwin County, Alabama, At Law: it is, therefore

ORDERED by the Circuit Court of Mobile County, Alabama, At Law, as follows:

1. That the Plea in Abatement heretofore filed in this cause on behalf of the Defendant be, and the same is, hereby sustained.

2. That this cause be transferred to the Circuit Court of Baldwin County, Alabama, At Law, in accordance with the provisions of Title 7, Section 64 (1) et seq. of the Code of Alabama for proceedings in such court as through this cause had been originally instituted therein.

Done this the 8th day of November, 1966.

DAN T. McCALL, JR.  
Circuit Judge

I, JOHN E. MANDEVILLE, in my capacity as Clerk of the Circuit Court of Mobile County, Alabama, hereby certify that the above is a true and correct transcript of all the minutes, orders and other proceedings in the above styled case in this Court.

In witness whereof I have hereunto set my hand and attached my official seal as such Clerk of said Court at Mobile, Mobile County, Alabama, on this the 8th day of November, 1966.

*John E. Mandeville*, Clerk.

MITCHELL, HUTCHINS & CO., INCORPORATED ) IN THE CIRCUIT COURT OF  
Plaintiff ) MOBILE COUNTY, ALABAMA  
vs. ) AT LAW  
HERBERT LUNSFORD )  
Defendant ) No. 20601

COUNT ONE

Plaintiff claims of the Defendant Eight Thousand Seven Hundred Six and 50/100 Dollars (\$8,706.50) due from him by account on, to-wit, July 18, 1966, which sum of money, with the interest thereon, is still unpaid.

COUNT TWO

Plaintiff claims of the Defendant Eight Thousand Seven Hundred Six and 50/100 Dollars (\$8,706.50) due from him for money paid by the Plaintiff for the Defendant on, to-wit, April 12, 1966, April 27, 1966 and June 3, 1966, at his request, which sum of money, with the interest thereon is still unpaid.

COUNT THREE

Plaintiff claims of the Defendant Eight Thousand Seven Hundred Six and 50/100 Dollars (\$8,706.50) due from him on account stated between the Plaintiff and the Defendant on, to-wit, the 1st day of August, 1966, which sum of money, with the interest thereon, is still unpaid.

CAFFEY, GALLALEE, EDINGTON & LOVELESS

By Jack L. Gallalee  
Attorneys for Plaintiff

Plaintiff respectfully demands a trial by jury of this cause.

CAFFEY, GALLALEE, EDINGTON & LOVELESS

Defendant's Address: Jack L. Gallalee  
Mobile Highway Attorneys for Plaintiff  
Foley, Alabama

STATE OF ALA. MOBILE CO.  
FILED IN THIS PLEADING  
SEP 21 3 25 PM '66  
Jack Marshall  
CLERK



STATE OF TEXAS  
COUNTY OF DALLAS  
JANUARY 1, 1907

BEFORE ME, the undersigned authority, on this day personally appeared

JOHN B. JAMES, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 1st day of January, 1907.

Notary Public

JOHN B. JAMES, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

WITNESSES my hand and seal of office this 1st day of January, 1907.

JOHN B. JAMES

Notary Public

JOHN B. JAMES, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

As the jury find for  
the defendant on both accounts

1 (one) and 3 Three

JOHN B. JAMES, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

J. B. James  
Notary

WITNESSES my hand and seal of office this 1st day of January, 1907.

JOHN B. JAMES

JOHN B. JAMES, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

**THE STATE OF ALABAMA**  
MOBILE COUNTY

**CIRCUIT COURT**

To Any Sheriff of the State of Alabama:

You are hereby commanded to summon

HERBERT LUNSFORD

to appear within thirty days from service of this process, in the Circuit Court of Mobile County, Alabama,  
at the place of holding the same, then and there to answer the complaint of \_\_\_\_\_

MITCHELL, HUTCHINS & CO., INCORPORATED

WITNESS: John E. Mandeville, Clerk of said Court, this 21st day of September, 19 66

Attest:

John E. Mandeville  
Clerk

**SHERIFF'S RETURN**

Received \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ and on \_\_\_\_\_ day  
of \_\_\_\_\_, 19\_\_\_\_, I served a copy of  
the within \_\_\_\_\_ on \_\_\_\_\_  
by service on \_\_\_\_\_

RAY D. BRIDGES, SHERIFF

By \_\_\_\_\_ D.S.

Exp. 10-24-66

REC'D. SHERIFF DEPT.  
MOBILE COUNTY, ALA.

SEP 22 3 04 PM '66

BY \_\_\_\_\_

*mail*  
No. 20601 - Mc  
JUDGE \_\_\_\_\_ DOCKET \_\_\_\_\_

CIVIL DIVISION

**CIRCUIT COURT**  
MOBILE COUNTY

MITCHELL, HUTCHINS & CO.,  
INCORPORATED

VS. }

Complaint and Summons

HERBERT LUNSFORD

Issued 21st day of September, 1966

Defendant's Address

Mobile Highway  
Foley, Alabama

JACK C. GALLALEE

Plaintiff's Attorney

TAYLOR WILKINS, Sheriff

By *J. M. Eastman*, S.

*Foley, Ala.*

Sheriff claims 7.2 miles at

Ten Cents per mile Total \$ 7.20

TAYLOR WILKINS, Sheriff

BY *J. M. Eastman*

DEPUTY SHERIFF

BAY MINETTE, ALABAMA

TELEPHONE 937-2191

Dear John:

Re: Mitchell, Hutchins & Co., Incorporated,  
vs. Herbert Lunsford  
At Law Case No. 20601

*John Marshall*  
CLERK

MITCHELL, HUTCHINS & CO.,	X	
INCORPORATED,	X	IN THE CIRCUIT COURT OF
Plaintiff,	X	
vs.	X	MOBILE COUNTY, ALABAMA
	X	
HERBERT LUNSFORD,	X	AT LAW NO. 20601 <i>me</i>
Defendant.	X	
	X	

PLEA IN ABATEMENT

Comes now the Defendant in the above styled cause and appearing specially for the purpose of filing this Plea in Abatement and for no other different object or purpose and pleads in abatement to the action heretofore filed in this cause against him and as grounds therefor assigns, separately and severally, the following:

1.

That the action sued upon by the Plaintiff is ex contractu and the Defendant is not now and has not been at any time prior hereto a resident of Mobile County, Alabama.

2.

That the Defendant, Herbert Lunsford is now, was at the time of the service upon him of the Summons and Complaint, and has been at all time prior thereto a resident citizen of Baldwin County, Alabama, residing in Foley, Alabama.

WHEREFORE, the Defendant files this his Plea in Abate-

ment as to venue of this Honorable Court.

Respectfully Submitted,

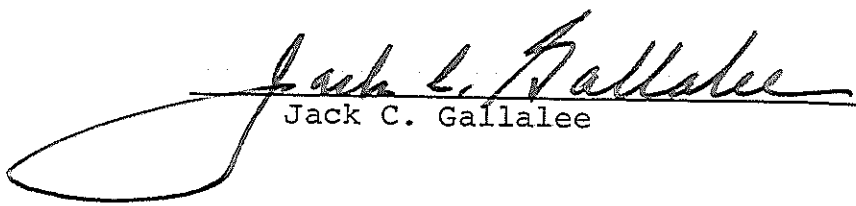
CHASON, STONE & CHASON

By:

  
Attorneys for Defendant.


I, Jack C. Gallalee, one of the Attorneys for the Plaintiff in the above styled cause do hereby accept service of a copy of the foregoing Plea in Abatement and do hereby also consent that the same may be sustained and this cause transferred to the Circuit Court of Baldwin County, Alabama, At Law in accordance with the statutes in such cases made and provided.

Witness my hand on this the 26 day of October, 1966.

  
Jack C. Gallalee

STATE OF ALA. MOBILE CO.  
I CERTIFY THIS PLEADING  
WAS FILED ON

Nov 3 8 38 AM '66

  
CLERK

MITCHELL, HUTCHINS & CO.,	)	
INCORPORATED,	)	
Plaintiff,	)	IN THE CIRCUIT COURT OF
vs	)	
HERBERT LUNSFORD,	)	MOBILE COUNTY, ALABAMA
Defendant.	)	
	)	AT LAW No. 20601 - McCALL

ORDER SUSTAINING PLEA IN ABATEMENT  
AND ORDERING TRANSFER OF CASE

This cause coming on to be heard was submitted on the Plea in Abatement filed in this cause on behalf of the Defendant and it appearing to the Court that the Plaintiff has confessed said Plea and consents that the same should be sustained and this cause transferred to the Circuit Court of Baldwin County, Alabama, At Law; it is, therefore

ORDERED by the Circuit Court of Mobile County, Alabama, At Law, as follows:

1. That the Plea in Abatement heretofore filed in this cause on behalf of the Defendant, Be, and the same is, hereby sustained.

2. That this cause be transferred to the Circuit Court of Baldwin County, Alabama, At Law, in accordance with the provisions of Title 7, Section 64 (1) et seq. of the Code of Alabama for proceedings in such as through this cause had been originally instituted therein.

Done this the 8th day of November, 1966.

DAN T. McCALL, JR.  
Circuit Judge

Minute Book 34

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STATE OF ALABAMA, }  
COUNTY OF MOBILE }

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

I, JOHN E. MANDEVILLE, Clerk of the Circuit Court of Mobile County, Alabama, do hereby  
certify that the foregoing is a full, true and correct copy of Order of Court

as rendered by the said Circuit Court on the 8th day of November, 19 66, in the cause  
entitled No. 20601- McCALL -

MITCHELL, HUTCHINS & CO., INCORPORATED, Plaintiff,

— versus —

HERBERT LUNSFORD

Defendant, (~~Together with the cancellary thereon~~) as the same remains of record in this office in  
Minute Book No. 34, Page No. 442

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said Court at office  
in the City of Mobile, Alabama, on this the 8th day of November, 19 66

ATTEST:

*John E. Mandeville*  
Clerk, Circuit Court, Mobile County, Alabama.



CIVIL DIVISION, CIRCUIT COURT, MOBILE COUNTY

No. 20601

MITCHELL, HUTCHINS & CO., INCORPORATED

Plaintiff

VS.

HERBERT LUNSFORD

Defendant

(Act No. 740, Reg. Session Ala. Legislature 1957  
Appvd. Sept. 20, 1957)  
(Amend Sec. 21, Title 11, Code Ala. 1940)

BILL OF COST

(Act No. 571, Reg. Ses. Leg. 1955)  
(Amend Sec. 34 and 100, Title 11, Code Ala. 1940)

CLERK'S FEES

Pltff.

Deft.

Suits for \$100 or less \$ 6.00

Suits for over \$100 but less  
than \$1,000 10.00

Suits for \$1,000 and over 20.00

Suits in detinue, ejectment, etc. 10.00

Suits not otherwise provided 10.00

Writs, Mandamus, Prohibition, etc. 15.00

Appeals from Court General  
Sessions 15.00

Appeals from Probate Court 20.00

Appeals from JP Courts 6.00

Appeals from State Dept of Pub.  
Safety, and other State  
Agencies 10.00

Workmen's Compensation Settle. 10.00

Garnishment on Judgment 6.00

Order of Sale, Motions to sell. 6.00

Recording executions from State  
Agencies 3.00

Cert. Copy of Record - per  
100 words .15

Taking Appeal Bond .75

Record for Supreme Court etc.,  
per 100 words .15

Add'l Copies of Record for Supreme  
Court, per 100 words .05

Checking - including Reporters  
Transcript of Evidence 10.00

Certifying Abstract in lieu of  
Transcript on Appeal 5.00

Collecting Money on Judgments  
over 30 days old; ½ the per-  
centage allowed Sheriffs \$

Total \$

20 00

80

20 00

80

SHERIFF'S FEES

Pltff.

Deft.

Mileage \$7.20

Serving Summons & Complaint \$ 1.50

Serving Writ of Garnishment 1.50

Serving Sci Fa.-Notices 1.50

Levying Attachment & Return 6.25

Executing Writ Possession 5.00

Seizing personal property under  
Writ of Detinue 6.00

Serving subpoenas, each .75

Impanelling Jury .75

Taking & Approving Bond 2.00

Collecting Costs Execution 1.50

Serving Contempt Writ 1.50

Making Deed for Property sold 2.50

Commission, collecting money  
on executions, 1st \$200 5%;  
\$200 to \$500 4%; over \$500 3% \$

Total \$

8 70

8 70

RECAPITULATION

Clerk 20 00

80

Sheriff Taylor Wilkins-  
Baldwin County 8 70

Inferior Civil Court

Justice Peace fees

Witness fees

Commissioner's fees

Certificate of Judgment

Judgment

10% Damages

Interest

Stenographer's fees (\$10.00 Day)

Library fee 1.50

Trial Tax (County) 1.50

Trial Tax (State) 1.50

Advertisement

Garnishee's fees

1 50

1 50

1 50

33.20

.80

\$34.00

I respectfully beg to advise that if this bill  
for costs is not paid before  
19\_\_\_\_, it will be my unpleasant duty to issue  
execution for same.

JOHN E. MANDEVILLE, Clerk