

1066

Peoples Fertilizer Company,  
a corporation,  
Plaintiff,

-vs-

George Merinos and James C.  
Grimes, individually and as a  
partnership doing business as  
the Loxley Produce Company,  
Defendants.

IN THE CIRCUIT COURT OF BALDWIN  
COUNTY, ALABAMA.

No. 9672.

TO THE HONORABLE FRANCIS W. HARE, JUDGE OF THE CIRCUIT COURT FOR  
THE TWENTY-FIRST JUDICIAL CIRCUIT OF ALABAMA, IN EQUITY.

This causing having been regularly transferred from the law docket of this court to the equity docket thereof, come now the defendants and propound this their equitable defense to the cause of action set forth in the original complaint heretofore filed against them; and in defense of said claim of said plaintiffs, say:

That plaintiff's claim is based on an alleged conversion by the defendants of sixty thousand pounds of potatoes upon which plaintiff claims a landlord's lien evidenced by a rent note executed by E. B. Green and Ralph Green to Lena B. Green and transferred to the plaintiff, and which is of record; defendants allege that during the spring of 1932 they made certain advances of seed, fertilizer, and other necessary supplies to Lena B. Green to enable her to make a crop during the year 1932, being the crop which produced the said potatoes for the conversion of which the defendants are here sued; that for several years prior to the year 1932 the defendants had advanced the said Lena B. Green certain necessary supplies to enable her to make a crop; that during the time these advancements were made Walter Stewart was president and general manager of the plaintiff and in his capacity as such knew, and through him the plaintiff knew, that defendants had made such advances; that when the defendants began to make the advances for the year 1932 the said Lena B. Green was in possession of and residing on the property described in the complaint, being the property upon which the potatoes for conver-

sion of which the defendants are sued were grown; that defendants had no knowledge, either actual or constructive, of any agreement between the said Lena B. Green and the said E. B. Green and Ralph Green under the terms of which the said E. B. Green and Ralph Green had become the tenants of the said Lena B. Green; that there had been no change in the physical possession of the premises and that defendants in making said advances were acting under the bona fide belief that the said Lena B. Green was the owner of the property and had no knowledge that said property had been rented to anyone and therefore no knowledge of the existence of any rental agreement, or that, in fact, any person was a tenant on said premises.

That before the defendants made said advances for the year 1932 the said Walter Stewart, acting in his capacity as president and general manager of the plaintiff, entered into negotiations with the defendants wherein there was discussed between the defendants and the plaintiff the proposition of the plaintiff and the defendants jointly entering into an agreement whereby they might jointly finance the said Lena B. Green in the growing of her 1932 crop; that during this discussion the said Stewart made no mention of the fact that the plaintiff claimed a landlord's lien on the crop to be grown on said premises for the year 1932; that later the plaintiff declined to go further with its proposed plan of acting jointly with the defendants in financing the 1932 crop of the said Lena B. Green and suggested to the defendants that they by themselves undertake to finance said crop; that notwithstanding the fact that plaintiff then held the assignment of said rent note hereinabove referred to the plaintiff did not disclose to the defendants that such note was in existence nor that it was the owner thereof; and that, relying upon their bona fide belief that the said Lena B. Green was operating the said premises and that there was no landlord's lien outstanding, and upon the conduct of the plaintiff as above alleged, the defendants did finance the said Lena B. Green by mak-

ing to her the advancements hereinabove described; that the potatoes for the conversion of which the plaintiff sues were delivered to the defendants for sale and the proceeds thereof credited to the account of the said Lena B. Green.

And the defendants allege that they were induced to make said advances to the said Lena B. Green by the conduct of the plaintiff in that said plaintiff, through its duly authorized representative, requested the defendants to make said advances and did not disclose to the defendants that it held the landlord's lien so referred to in the plaintiff's complaint.

Wherefore, defendants allege that the plaintiff, in said original suit, namely, Peoples Fertilizer Company, is estopped to claim of these defendants or either of them the money or proceeds received by them from the sale of said products and ought not to have judgment therefor.

Stevens M. Lowry M. Reed G. L. & J. W. D.  
Attorneys for Defendants.

We hereby accept service of a copy of the foregoing statement of defendant's defense and waive all further service thereof, *but do not waive right to file motion to dismiss or demurres*

Gordon E. Smith & L. J. L.  
Attorneys for Plaintiff.

PEOPLES FERTILIZER COMPANY,  
a Corporation,

Plaintiff

vs.

GEORGE MERINOS and JAMES C.  
GRIMES, individually and as  
a partnership doing business  
as the Loxley Produce Company,

Defendants

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

AT LAW.

ONE

Plaintiff claims of the defendants the sum of Five Hundred (\$500.00) Dollars, due from them by account on or about the 15th day of June, 1932, which sum of money, together with interest thereon, is due and unpaid.

TWO

Plaintiff claims of the defendants the sum of Five Hundred (\$500.00) Dollars for money or on or about the 15th day of June, 1932, received by the defendants to the use of the plaintiff, which sum of money, together with the interest thereon, is still unpaid.

THREE

Plaintiff claims of the defendants the sum of Five Hundred (\$500.00) Dollars damages for the conversion by them at different dates between May 1 and June 15, 1932, of the following personal property: Sixty thousand (60,000) pounds of potatoes, the property of the plaintiff by reason of a rent lien on the property on which said potatoes were grown, evidenced by a rent note executed by E. B. Green and Ralph Green to Lena B. Green on November 17, 1931, being given as a rent note for the year 1932 on the south half of the southwest quarter of Section 12, township five south of range three east in Baldwin County, Alabama, and which was transferred to the plaintiff by the said Lena B. Green and all of which is recorded in Mortgage Book 53 page 170 in the office of

the Probate Judge of Baldwin County, which said amount with interest thereon is due and unpaid.

Gordon Edington Leigh  
ATTORNEYS FOR PLAINTIFF

The State of Alabama, BALDWIN County

CIRCUIT COURT

To Any Sheriff of the State of Alabama—Greeting:

You are hereby commanded to summon GEORGE MERINOS AND JAMES C. GRIMES,  
individually and as a partnership doing business as the Loxley  
Produce Company

to appear in the Circuit Court of BALDWIN County, Alabama, at the place  
of holding the same and plead, answer, or demur, within thirty days from service hereof to the complaint of  
PEOPLES FERTILIZER COMPANY, a corporation

Witness this 2nd day of July, 1932.

W. H. Harrison, Clerk.

IF THE DEFENDANT FAILS TO APPEAR AND PLEAD, ANSWER OR DEMUR WITHIN  
THIRTY DAYS AFTER SERVICE THE PLAINTIFF MAY TAKE JUDGMENT BY DEFAULT.

COMPLAINT

VS.

Plaintiff

Defendant

And the Plaintiff claim of the Defendant

Dollars, due

Original  
No. ....

State of Alabama  
BALDWIN County  
CIRCUIT COURT

ES FERTILIZER COMPANY  
oration  
Plaintiff  
vs.  
e Merinos & James C.  
s, individually and as  
nership doing business  
ley Produce Defendant  
Co.

Summons and Complaint

this 2nd day of  
July 1932  
Richerson  
Clerk.

on, Edington & Leight  
Plaintiff's Attorney.

Received this ..... day  
of ....., 19.....  
....., Sheriff.

Executed this ..... day  
of ....., 19....., by  
leaving a copy of the within Summons and Com-  
plaint with

..... Defendant.....  
..... Sheriff.

Executed July 7th 1932  
by serving copy of within Summons and  
Complaint on George Merinos &  
James C. Merinos Indiv-  
-idually and as a  
partnership doing bus-  
-iness as Jolly produce  
Co WK Stewart Sheriff  
By ..... Deputy Sheriff

The State of Alabama,  
..... COUNTY

To the Sheriff of ..... County:

Whereas, the Plaintiff..... in the within stated  
cause ha..... made affidavit and given bond as  
required by law, you are hereby required to  
take the property mentioned in the complaint  
into your possession, unless the Defendant.....  
give..... bond payable to the Plaintiff..... with  
sufficient surety in double the amount of the  
value of the property, with condition that if the  
Defendant

cost in the suit, .....  
within thirty days thereafter, deliver the property  
to the Plaintiff....., and pay all costs and damages  
which may accrue from the detention thereof.

....., Clerk.

PEOPLES FERTILIZER COMPANY,  
a Corporation,

Plaintiff

vs.

GEORGE MERINOS and JAMES C.  
GRIMES, individually and as a  
partnership doing business as  
the Loxley Produce Company,

Defendants

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

AT LAW.

Comes the plaintiff, Peoples Fertilizer Company,  
a Corporation, by its attorneys of record, and demurs to  
the petition as filed in this cause to transfer same from  
the law docket to the equity docket of this court, and as  
grounds for such demurrer assigns the following:

1. Said petition avers no facts which show that  
there is an equitable question beneficial to the defendants  
which could be and should be adjudicated in this cause.

2. Because said petition avers no facts showing  
any equity which they could <sup>be</sup> invoke in this cause, and which  
would dispose of same.

3. Because there are no facts averred showing  
any duty upon the plaintiff to notify the defendants that  
it held a rent note upon the premises upon which was grown  
the products in question.

4. Because the complaint shows that the rent  
note as executed to the said Lena B. Green and which is the  
basis of the plaintiff's claim, was recorded, wherefore the  
defendants had constructive notice of the claim of the  
plaintiff.

5. Because it is not averred or shown that Lena  
B. Green had any interest in or title to the crop grown or  
that the said E. B. Green and Ralph Green did not own same.

6. Because the duty was upon the defendant to  
ascertain the facts of said Lena B. Green's rights to the  
crop prior to the advances which they allege were made.





Record on Civil  
Final Record

Filed Aug 5/1932  
J. W. Rimmer  
Clerk

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Peoples Fertilizer Company,  
a corporation,  
Plaintiff,

-vs-

George Merinos and James C.  
Grimes, individually and as a  
partnership doing business as  
the Loxley Produce Company,  
Defendants.  
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:  
:  
:  
: IN THE CIRCUIT COURT OF BALDWIN  
: COUNTY, ALABAMA.  
: AT LAW.

TO THE HONORABLE FRANCIS W. HARE, JUDGE OF THE CIRCUIT COURT FOR  
THE TWENTY-FIRST JUDICIAL CIRCUIT OF ALABAMA, IN EQUITY:

Come the defendants in this cause and move your Honor to transfer this cause to the equity docket of this court, and as grounds for said motion the defendants say:

That this suit involves an equitable question the decision of which should dispose of the cause, in that the defendants have an equitable defense to the cause of action sued on which cannot be recognized or disposed of on the law side of this court, said defense being predicated upon the following facts:

That plaintiff's claim is based on an alleged conversion by the defendants of sixty thousand pounds of potatoes upon which plaintiff claims a landlord's lien evidenced by a rent note executed by E. B. Green and Ralph Green to Lena B. Green and transferred to the plaintiff, and which is of record; defendants allege that during the spring of 1932 they made certain advances of seed, fertilizer, and other necessary supplies to Lena B. Green to enable her to make a crop during the year 1932, being the crop which produced the said potatoes for the conversion of which the defendants are here sued; that for several years prior to the year 1932 the defendants had advanced the said Lena B. Green certain necessary supplies to enable her to make a crop; that during the time these advancements were made Walter Stewart was president and general manager of the plaintiff and in his capacity as such knew, and through him the plaintiff knew, that defendants had made such advances; that when the defendants began to make the advances for the year 1932 the said Lena B. Green was in possession of and residing on the

property described in the complaint, being the property upon which the potatoes for conversion of which the defendants are sued were grown; that defendants had no knowledge, either actual or constructive, of any agreement between the said Lena B. Green and the said E. B. Green and Ralph Green under the terms of which the said E. B. Green and Ralph Green had become the tenants of the said Lena B. Green; that there had been no change in the physical possession of the premises and that defendants in making said advances were acting under the bona fide belief that the said Lena B. Green was the owner of the property and had no knowledge that said property had been rented to anyone and therefore no knowledge of the existence of any rental agreement, or that, in fact, any person was a tenant on said premises.

That before the defendants made said advances for the year 1932 the said Walter Stewart, acting in his capacity as president and general manager of the plaintiff, entered into negotiations with the defendants wherein there was discussed between the defendants and the plaintiff the proposition of the plaintiff and the defendants jointly entering into an agreement whereby they might jointly finance the said Lena B. Green in the growing of her 1932 crop; that during this discussion the said Stewart made no mention of the fact that he claimed a landlord's lien on the crop to be grown on said premises for the year 1932; that later the plaintiff declined to go further with its proposed plan of acting jointly with the defendants in financing the 1932 crop of the said Lena B. Green and suggested to the defendants that they by themselves undertake to finance said crop; that notwithstanding the fact that plaintiff then held the assignment of said rent note hereinabove referred to the plaintiff did not disclose to the defendants that such note was in existence; and that, relying upon their bona fide belief that the said Lena B. Green was operating the said premises and that there was no landlord's lien outstanding, the defendants did finance the said Lena B. Green by making to her the advancements hereinabove described; that the potatoes

for the conversion of which the plaintiff sued were delivered to the defendants for sale and the proceeds thereof credited to the account of the said Lena B. Green.

And the defendants allege that they were induced to make said advances to the said Lena B. Green by the conduct of the plaintiff in that said plaintiff, through its duly authorized representative, requested the defendants to make said advances and did not disclose to the defendants that it held the landlord's lien so referred to in the plaintiff's complaint.

Wherefore, defendants pray that this cause may be transferred to the equity docket of this court in order that the issues may be so framed that the defendants may have the benefit of the equitable defense the substance of which is herein alleged.

Stevens McCleary M. Lord God Junior  
Attorneys for Defendants.

State of Alabama,

Mobile County.

Personally appeared before me, Rosemary D. Basso  
a Notary Public in and for said State and County, James C. Grimes, who being first duly sworn deposes and says that he is a member of the firm of Loxley Produce Company, which is a partnership composed of himself and one George Merinos; that he has knowledge of the facts concerning the transaction which is the basis of this suit and of the facts set up in the foregoing motion; and that all matters of fact set up in the foregoing motion are true and all matters of conclusion therein he verily believes to be true.

James C. Grimes

Sworn to and subscribed before me  
this 1st day of August, 1932.

Rosemary D. Basso  
Notary Public, Mobile County, Alabama.

ROBT. E. GORDON  
DAVID H. EDINGTON  
NORVELLE R. LEIGH, JR.

GORDON, EDINGTON & LEIGH  
ATTORNEYS AT LAW  
1011-15 MERCHANTS NATIONAL BANK BUILDING  
MOBILE, ALABAMA

August 18, 1933

Clerk of the Circuit Court,  
Baldwin County,  
Bay Minette, Ala.

Dear Sir:

Please find enclosed answer in re Peoples  
Fertilizer Company vs. George Marinos, et al.

You will find that this suit was originally  
filed on the law side of the court and under an order of  
the Court it was transferred to the equity side, and  
since which time a bill of complaint was filed. We do not  
have the number of the case, and therefore cannot give you  
any more direct information as to how it will be found  
in your files.

Will you please file this at once in said  
cause, and oblige,

Yours very respectfully,

GORDON, EDINGTON & LEIGH

By

*R. E. Gordon*

REG/D  
Encls.

PEOPLES FERTILIZER COMPANY,  
a corporation,  
Plaintiff,

vs.

GEORGE MARINOS and JAMES  
C. GRIMES, individually  
and as partners doing  
business as Loxley Produce  
Company,  
Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
IN EQUITY

Now comes the plaintiff in the original suit as filed in this cause, and which has been transferred to the equity side of the Court upon petition of the defendants, and for answer to the complaint as filed by the defendants in the original suit says as follows:

That the note referred to in said complaint was transferred to the plaintiff, Peoples Fertilizer Company, and that same is of record in Baldwin County, Alabama; that said note was a rent note and was transferred to the said Peoples Fertilizer Company for the purpose of securing advances for the purpose of raising a crop upon the lands then being cultivated by E. B. Green and Ralph Green, and which crop produced the potatoes for the conversion of which the Peoples Fertilizer Company filed suit against the Loxley Produce Company for conversion; that the Peoples Fertilizer Company does not know what have been the business relations between the said Greens and the Loxley Produce Company prior to the year 1932, but that said Peoples Fertilizer Company deny that it knew of any such transactions; that the said defendants did know or have constructive notice thereof that the said Lena B. Green had accepted the note in question from E. B. Green and Ralph Green as a rent note and that same had been transferred to the Peoples Fertilizer Company and that the said Peoples Fertilizer Company accepted said note to secure the advancing of fertilizer for the year 1932 with which to make the crop involved in this

litigation; that the Peoples Fertilizer Company did not decline to go on further with the arrangement of furnishing the said seed and fertilizer as alleged in said bill, jointly with the said Loxley Produce Company, and denies that it ever suggested to them that they by themselves undertake to finance said crop and that they were induced to furnish any such supplies by any statement made by the said Walter Stuart. But to the contrary, the plaintiff says that the facts in the case are as follows: Take

That the note in question was prepared in the office of Beebe & Hall by Mr. W. C. Beebe, who was then acting as Attorney for Mrs. Green, and at the time the note was executed the Peoples Fertilizer Company held a mortgage on certain property belonging to Mrs. Green and her sons, and it was agreed that if she would lease the lands to the sons and they execute to her a rent note and that she would endorse the said rent note to the Peoples Fertilizer Company, that it would release its lien on certain property which was covered by said mortgage, and would also dismiss a detinue writ then pending to recover the said property, and which was done in conformity with said agreement; that she carried the note away from the office of Beebe & Hall, had her sons to execute same to her, she in turn endorsed the same to the Peoples Fertilizer Company, whereupon the said note was recorded in the Probate Records of Baldwin County, the said suit in the Circuit Court thereupon being dismissed and the property turned back to her, which was involved in said suit; that during the carrying on of the said matters leading up to the transfer of said note that Walter Stuart discussed the matter with George Marinos, one of the members of the firm of the Loxley Produce Company, and then it was that effort was made to adjust all of their matters, said Marinos at the time knowing that such note was executed and transferred, the conditions upon which said note was executed, the consideration for the execution ef



of said note; and that subsequent thereto that the Loxley

Produce Company, acting by and through Martinos, did attempt

to get plaintiff to join with them in an agreement to finance

the said Lena B. Green and her sons in the growing of the

crop of 1932, and which agreement the Peoples Fertilizer

Company declined to make, the Loxley Produce Company then

knowing that the Peoples Fertilizer Company held said note;

that the said Peoples Fertilizer Company, nor any agent

of it ever did or said anything that would lead anybody,

and especially the Loxley Produce Company, or any of its

members, to believe that it did not own this rent note,

but to the contrary informed them of such fact, and that all

the transactions that they had with the said Greens relative

to the crop of 1932 was with the knowledge on their part

that the plaintiff held said rent note and expected to

claim its lien thereby.

Wherefore, the plaintiff alleges that the

defendants in the original suit, and complainants in this

cause, owe it the sum of Five Hundred Dollars damages for

the conversion by them during the year 1932 of sixty

thousand pounds of potatoes, the property of the Peoples

Fertilizer Company by reason of the above said rent lien

on the property on which said potatoes were grown, and

which is evidenced by the alleged rent note, and which

said rent note is the property of the Peoples Fertilizer

Company.

Wherefore, the Peoples Fertilizer Company

prays that the Court will enter a decree declaring that

said note is a valid lien and ordering a reference to ascertain

the amount due it by the Loxley Produce Company, and its

individual members by reason of said conversion, and upon

such report being made a decree will be rendered in favor

of the Peoples Fertilizer Company and against George  
Marinos and James C. Grimes, individually and as a partner-  
ship doing business as the Loxley Produce Company.

*Gordon E. Smith*  
ATTORNEYS FOR PEOPLES FERTILIZER  
COMPANY.

# 1066  
equity  
9/22  
1/13

Filed Aug. 19, 1933  
Mary A. Stone  
Register  
by W. A. Stone

Attest  
J. S. [illegible]  
[illegible]

...of the ...  
...of the ...  
...of the ...

*[Faint handwritten notes]*

# 1066  
equity  
9/1/23

Filed Aug. 19, 1923  
Mary A. Stone  
Register  
by W. A. Stone

# CIRCUIT COURT, BALDWIN COUNTY, ALA., IN EQUITY.

No. 1066

*Proper*

VS.

*George Martin Land Co. vs. Federal Co.*

PLAINTIFF

DEFENDANT

## BILL OF COSTS

Fees of Register		Dollars	Cts.		
Filing each bill and other papers	<u>1193 0518</u>	\$	10	Brought Forward	435
Issuing each Subpoena			50	For receiving, keeping and paying out or distributing money, etc.; 1st \$1,000 1 per ct.; all over \$1,000 and not over \$5,000, 3-4 of 1 per ct.; all over \$5,000 and not exceeding \$10,000, 1-2 of 1 per ct.; all over \$10,000, 1-4 of 1 per ct.	
Issuing each copy thereof			40	Receiving, keeping and paying out money paid into court, etc., 1-2 of 1 per cent of amount received.	
Entering each return thereof			15	Each Notice Sent by Mail to creditors	15
For each Order of Publication			1 00	Filing, Receipting for and Docketing each Claim, etc.	25
Issuing Writ of Injunction			1 50	For all entries on Subpoena Docket, etc.	50
For each copy thereof			50	For all entries on Commission Docket, etc.	50
Entering each return thereof			15	Making Final Record, per hundred words	15
Issuing Writ of Attachment			1 00	Certified Copy of Decree	1 00
Entering each return thereof			15	Report of Divorce to State Health Office, Acts 1915	50
Docketing each case			1 00	Total Fees of Register	7 35
Entering each Appearance			25		
Issuing each Decree Pro Confesso on personal service			1 00	Fees of Sheriff	
Issuing each Decree Pro Confesso on publication			1 00	Serving and Returning Subpoena on Deft.	\$1 50
Each order Appointing Guardian			1 00	Serving and Returning Subpoena for Witness	65
Any other order by Register			50	Levy on Attachment	1 50
Issuing Commission to Take Testimony			50	Entering and Returning same	25
Receiving and Filing			10	Selling Property Attached	
Endorsing each package			10	Impanelling Jury	75
Entering order Submitting Cause			50	Executing Writ of Possession	2 50
Entering any other Order of Court			25	Collecting Execution for Costs	1 50
Noting all Testimony			50	Serving and Returning Sci. fa., each	65
Abstract of Cause, etc.			1 00	Serving and Returning Notice	65
Entering each Decree			75	Serving and Returning Writ of Injunction	1 50
For every 100 words over 500			15	Serving and Returning Writ of Exeat	1 50
Taking account, etc.			3 00	Taking and Approving Bonds, Each	75
Taking Testimony, etc.			15	Collecting Money on Execution	
Each Report, 500 words or less			2 50	Making Deed	2 50
For every 100 words over 500			15	Serving and Returning Application	1 00
Amount claimed less than \$500, etc.			2 00	Serving Attachment, Contempt of Court	1 50
Issuing each Subpoena			25	Total Fees of Sheriff	2 00
Witness Certificate, each			25		
Issuing Execution, each			75	Recapitulation	
Entering each return			15	Register's Fees	
Taking and Approving Bond, each			1 00	Sheriff's Fees	3 35
Making copy of bill, etc.			15	Commissioner's Fees	3 00
Each notice not otherwise provided for			50	Solicitor's Fees	
Each certificate or affidavit, with seal			50	Witness Fees	
Each certificate or affidavit, no seal			25	Guardian Ad Litem	
Hearing and passing on application, etc.			3 00	Printer's Fees	
Each settlement with receiver, etc.			3 00	Trial Tax	3 00
Examining each voucher of receiver, etc.			10	Recording Decree in Probate Court	
Examining each answer, etc.			3 00	Total	13 35
Recording resignation, etc.			75		
Entering each certificate to Supreme Court			50		
Taking questions and answers, etc.			25		
For all other service relating to such proceedings			1 00		
For service in proceeding to relieve minors, etc same fee as in similar cases.					
Commission on sales, etc.: 1st \$100 2 per cent, all over \$100, and not exceeding \$1,000, 1 1-2 per ct.; all over \$1,000 and not exceeding \$20,000, 1 per ct.; all over \$20,000, 1-4 of 1 per ct.					
Sub Total Carried Forward			435		

Received payment this \_\_\_\_\_ day of \_\_\_\_\_ 193

*Costs to 5-2-35*

Register.