

647

J. I. CASE COMPANY, a corpora-
tion

Plaintiff,

vs.

LOUIS SMITH,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AMENDED COMPLAINT

FIRST

Complainant claims of the defendant \$1,989.10 damages for that on the 29th day of April, 1939 the plaintiff entered into a written contract with one William Marvin Hall, doing business under the trade name and style of Baldwin Implement Company, by which agreement the plaintiff made and appointed the said William Marvin Hall, doing business as Baldwin Implement Company, its dealer at Robertsdale, Baldwin County, Alabama, and authorized the said William Marvin Hall to purchase farm implements and machinery from the plaintiff for the purpose of resale and in and by said agreement the plaintiff agreed to furnish such farm implements and machinery to the said William Marvin Hall and extend credit to him for the purchase price thereof, said contract to extend from its date, April 29th, 1939, to October 31st, 1939.

That as a part of the said contract, it was agreed that the said William Marvin Hall, doing business as Baldwin Implement Company, would secure the plaintiff in the payment for the merchandise furnished on credit to said Hall by causing some responsible person to guarantee the payment of any indebtedness from the said Hall to the plaintiff and that thereafter, and on, to-wit, September 14, 1939, for the purpose of guaranteeing payment to be made by the said Hall to the plaintiff, the defendant made, executed and delivered to the plaintiff a written contract of guaranty in the words and figures following, to-wit:

GUARANTY

"In consideration of the acceptance by J. I. Case Company, of Racine, Wisconsin, of the purchase order herein contained, and in consideration of the

credit extended and which may be extended under this agreement by said J. I. Case Company to Baldwin Implement Co. hereinafter called the "DEALER" under the within contract, for value received, I hereby guarantee to J. I. Case Company, of Racine, Wisconsin, a complete fulfillment of said contract and any supplement or amendment thereto by said Dealer, and the payment of any and all indebtedness of any nature whatsoever of said Dealer to said J. I. Case Company incurred under the foregoing contract and any supplement or amendment thereto, including the payment of any and every account or note for goods ordered and purchased subsequent to the date hereof, together with all costs, expenses and attorneys' fees which it may incur by reason of the indebtedness herein described or in the enforcement of this guaranty, and I consent to any change, release or surrender of securities for said indebtedness and that said indebtedness may be compromised or renewed or extended from time to time at an increased rate of interest without notice to me, and I hereby waive all rights to any property herein purchased or which may subsequently be purchased or which may be held as collateral to Dealer's indebtedness.

I hereby waive notice of the acceptance of this guaranty and of credit given or to be given, and I waive notice of non-payment of any and every account, note or other obligation covered by this guaranty."

Dated Sept. 14, 1939

In presence of:

(Signed) J. C. Mergendoller (Signed) Louis Smith (Seal)

That under and in accordance with said contract with the said Hall, and relying upon the said Contract of the defendant, the Plaintiff did deliver to the said Hall, doing business as Baldwin Implement Company, large quantities of Farm implements and machinery and the said Hall made, executed and delivered to the plaintiff a large number of promissory notes representing credit extended to him by the plaintiff and at the time of the expiration of the said contract, on October 31, 1949, there was due from the said Hall, doing business as Baldwin Implement Company, to the plaintiff, the following described notes:

Note dated October 16, 1939, due June 30, 1940, for \$182.20, with interest at 8% per annum, after maturity.

Note dated October 16, 1939, due June 30, 1940, for \$121.60, with interest at 8% per annum, after maturity.

Note dated October 18, 1939, due June 30, 1940, for \$131.20, with interest at 8% per annum, after maturity.

Note dated October 1939, due May 31, 1940, for \$151.80, with interest at 8% per annum, after maturity.

Note dated October 18, 1939, due July 15, 1940, for \$74.00, with interest at 8% per annum, after maturity.

Note dated November 1, 1939, due May 31, 1939, for \$96.00, with interest at 8%, per annum, after maturity. This is a renewal of a note dated September 6, 1939.

Note dated November 1, 1939, due May 31, 1940, for \$136.80, with interest at 8% per annum, after maturity. This is a renewal of a note dated August 10, 1939.

Note dated November 1, 1939, due May 31, 1940, for \$136.80, with interest at 8% per annum, after maturity. This is a renewal of a note dated August 10, 1939.

Note dated November 22, 1939, due June 15, 1940, for \$155.61, with interest at 8% per annum, after maturity, which note bears a credit of \$30.05 as of February 3, 1941. This is a renewal of balance due on four (4) notes dated Sept. 27, October 19, October 14, and October 14, 1939.

Note dated November 22, 1939, due July 15, 1940, for \$135.62, with interest at 8% per annum, after maturity. This is a renewal of balance due on four (4) notes dated Sept. 27, October 10, October 14, and October 14, 1939.

Note dated June 30, 1940, due October 15, 1940, for \$998.80, with interest at 6% per annum, after maturity, which note bears a credits of \$700.00 as of October 3, 1940 and \$160.22 as of February 3, 1941. This is a renewal of a note dated October 17, 1939.

Note dated May 31, 1940, due October 31, 1940, for \$151.80, with interest at 6% per annum, after maturity. This is a renewal of a note dated October 17, 1939.

That in, by and as a part of each of the notes hereinbefore sued upon, it is provided that in addition to the principal of and interest upon said note, the maker will pay "an attorney's fee of ten (10) per cent. of the amount unpaid in case payment shall not be made at maturity and this note is placed in the hands of an attorney for collection."

That each and all of said notes have been placed in the hands of an attorney for collection and the aggregate amount of principal due upon said notes is \$1,692.56, and that the interest due thereon from the maturity of each of said notes to the date of filing this complaint is the sum of \$115.72, and that the total amount of principal and interest due on all of said notes is the sum of \$1,808.28 and that ten per cent of said amount, due to plaintiff as attorney's fees as aforesaid, is the sum of \$180.82.

That the said William Marvin Hall, doing business as Baldwin Implement Company, has failed and refused to pay said notes and that demand for payment thereof has been made upon defendant by the plaintiff, but defendant refuses to pay the same, wherefore, plaintiff avers that the defendant has breached said contract, hereinbefore setout, to the damage of the plaintiff as

aforesaid, wherefore, plaintiff sues.

SECOND

Complainant claims of the defendant the further and additional sum of \$2,031.81 damages for that on the 3rd day of November, 1939 the plaintiff entered into a written contract with one William Marvin Hall, doing business under the trade name and style of Baldwin Implement Company, by which agreement the plaintiff made and appointed the said William Marvin Hall, doing business as Baldwin Implement Company, its dealer at Robertsdale, Baldwin County, Alabama, and authorized the said William Marvin Hall to purchase farm implements and machinery from the plaintiff for the purpose of resale and in and by said agreement the plaintiff agreed to furnish such farm implements and machinery to the said William Marvin Hall and extend credit to him for the purchase price thereof, said contract to extend from its date, November 3, 1939, to October 31, 1940.

That as a part of the said contract, it was agreed that the said William Marvin Hall, doing business as Baldwin Implement Company, would secure the plaintiff in the payment for the merchandise furnished on credit to said Hall by causing some responsible person to guarantee the payment of any indebtedness from the said Hall to the plaintiff and that thereafter, and on, to-wit, November 10, 1939, for the purpose of guaranteeing payment to be made by the said Hall to the plaintiff, the defendant made, executed and delivered to the plaintiff a written contract of guaranty in the words and figures following, to-wit:

GUARANTY

"In consideration of the acceptance by J. I. Case Company, of Racine, Wisconsin, of the purchase order herein contained, and in consideration of the credit extended and which may be extended under this agreement by said J. I. Case Company to Baldwin Implement Co. hereinafter called the "Dealer" under the within contract, for value received, I hereby guarantee to J. I. Case Company, of Racine, Wisconsin, a complete fulfillment of said contract and any supplement or amendment thereto by said Dealer, and the payment of any and all indebtedness

of any nature whatsoever of said Dealer to said J. I. Case Company incurred under the foregoing contract and any supplement or amendment thereto, including the payment of any and every account or note for goods ordered and purchased subsequent to the date hereof, together with all costs, expenses and attorneys' fees which it may incur by reason of the indebtedness herein described or in the enforcement of this guaranty, and I consent to any change, release or surrender of securities for said indebtedness and that said indebtedness may be compromised or renewed or extended from time to time at an increased rate of interest without notice to me, and I hereby waive all rights to any property herein purchased or which may subsequently be purchased or which may be held as collateral to Dealer's indebtedness.

I hereby waive notice of the acceptance of this guaranty and of credit given or to be given, and I waive notice of non-payment of any and every account, note or other obligation covered by this guaranty."

Dated Nov. 10, 1939

In presence of:

(Signed) P. M. Buckner

(Signed) Louis Smith (Seal)

That under and in accordance with said contract with the said Hall, and relying upon the said contract of the defendant, the plaintiff did deliver to the said Hall, doing business as Baldwin Implement Company, large quantities of farm implements and machinery and he said Hall made, executed and delivered to the plaintiff a large number of promissory notes representing credit extended to him by the plaintiff and at the time of the expiration of the said contract, on October 31, 1940, there was due from the said Hall, doing business as Baldwin Implement Company, to the plaintiff, the following described notes:

Note dated January 5, 1940, due October 15, 1940, for \$130.40, with interest at 8% per annum, after maturity, which note bears a credit of \$114.80 as of January 31, 1941.

Note dated January 5, 1940, due October 15, 1940, for \$1,050.80, with interest at 8% per annum, after maturity.

Note dated January 19, 1940, due July 15, 1940, for \$28.10, with interest at 8% per annum, after maturity.

Note dated January 17, 1940, due August 31, 1940, for \$108.00, with interest at 8% per annum, after maturity.

Note dated January 17, 1940, due October 15, 1940, for \$115.00, with interest at 8% per annum, after maturity, which note bears a credit of \$4.80 as of January 31, 1941.

Note dated January 17, 1940, due October 15, 1940, for \$115.00, with interest at 8% per annum, after maturity, which note bears a credit of \$4.80 as of January 21, 1941.

Note dated January 17, 1940, due October 15, 1940, for \$115.00, with interest at 8% per annum, after maturity, which note bears a credit of \$.80 as of January 21, 1941.

Note dated January 17, 1940, due October 15, 1940, for \$115.00, with interest at 8% per annum, after maturity, which note bears a credit of \$4.80 as of January 21, 1941.

Note dated February 13, 1940, due October 15, 1940, for \$22.13, with interest at 8% per annum, after maturity.

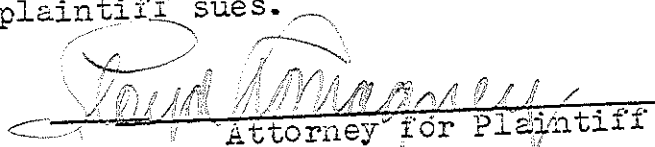
Note dated February 13, 1940, due October 15, 1940, for \$60.00, with interest at 8% per annum, after maturity.

Note dated February 13, 1940, due October 15, 1940, for \$60.00, with interest at 6% per annum, after maturity.

That in, by and as a part of each of the notes hereinbefore sued upon, it is provided that in addition to the principal of and interest upon said note, the maker will pay "an attorney's fee of ten (10) per cent. of the amount unpaid in case payment shall not be made at maturity and this note is placed in the hands of an attorney for collection."

That each and all of said notes have been placed in the hands of an attorney for collection and the aggregate amount of principal due upon said notes is \$1,785.43, and that the interest due thereon from the maturity of each of said notes to the date of filing this complaint is the sum of \$61.49, and that the total amount of principal and interest due on all of said notes is the sum of \$1,846.92 and that ten per cent of said amount, due to plaintiff at attorney's fees as aforesaid, is the sum of \$184.69.

That the said William Marvin Hall, doing business as Baldwin Implement Company, has failed and refused to pay said notes and that demand for payment thereof has been made upon defendant by the plaintiff, but defendant refuses to pay the same, wherefore, plaintiff avers that the defendant has breached said contract, hereinbefore set out, to the damage of the plaintiff as aforesaid, wherefore, plaintiff sues.


Attorney for Plaintiff

We the Jury
find for the
defendant
Signed
E. D. Certe
Foreman

RECORDED

647

J. I. CASE COMPANY, a cor-
poration

Plaintiff,

vs.

LOUIS SMITH,

Defendant.

AMENDED COMPLAINT

Filed October 8, 1941
R. S. D. uch, Clerk

LLOYD A. MAGNEY
ATTORNEY AT LAW
FOLEY, ALABAMA

STATE OF ALABAMA }
BALDWIN COUNTY }

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summons Louis Smith to appear within thirty days of the service of this writ in the Circuit Court, to be held for said county at the place of holding the same, then and there to answer the complaint of J. I. Case Company.

WITNESS my hand this 18th day of March, 1941.

R. S. Dush

Clerk

By - Nellie Thompson,

---000000000---

Deputy Clerk

J. I. CASE COMPANY, a corporation

Plaintiff,

vs.

LOUIS SMITH.

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

COMPLAINT

FIRST

Complainant claims of the defendant \$1,989.10 damages for that on the 29th day of April, 1939 the plaintiff entered into a written contract with one William Marvin Hall, doing business under the trade name and style of Baldwin Implement Company, by which agreement the plaintiff made and appointed the said William Marvin Hall, doing business as Baldwin Implement Company, its dealer at Robertsdale, Baldwin County, Alabama, and authorized the said William Marvin Hall to purchase farm implements and machinery from the plaintiff for the purpose of resale and in and by said agreement the plaintiff agreed to furnish such farm implements and machinery to the said William Marvin Hall and extend credit to him for the purchase price thereof, said contract to extend from its date, April 29th, 1939, to October 31st, 1939.

That as a part of the said contract, it was agreed that the said William Marvin Hall, doing business as Baldwin Implement Company, would secure the plaintiff in the payment for the merchandise furnished on credit to said Hall by causing some responsible person to guarantee the payment of any indebtedness from

the said Hall to the plaintiff and that thereafter, and on, to-wit, September 14, 1939, for the purpose of guaranteeing payment to be made by the said Hall to the plaintiff, the defendant made, executed and delivered to the plaintiff a written contract of guaranty in the words and figures following, to-wit:

GUARANTY

"In consideration of the acceptance by J. I. Case Company, of Racine, Wisconsin, of the purchase order herein contained, and in consideration of the credit extended and which may be extended under this agreement by said J. I. Case Company to Baldwin Implement Co. hereinafter called the "DEALER" under the within contract, for value received, I hereby guarantee to J. I. Case Company, of Racine, Wisconsin, a complete fulfillment of said contract and any supplement or amendment thereto by said Dealer, and the payment of any and all indebtedness of any nature whatsoever of said Dealer to said J.I. Case Company incurred under the foregoing contract and any supplement or amendment thereto, including the payment of any and every account or note for goods ordered and purchased subsequent to the date hereof, together with all costs, expenses and attorneys' fees which it may incur by reason of the indebtedness herein described or in the enforcement of this guaranty, and I consent to any change, release or surrender of securities for said indebtedness and that said indebtedness may be compromised or renewed or extended from time to time at an increased rate of interest without notice to me, and I hereby waive all rights to any property herein purchased or which may subsequently be purchased or which may be held as collateral to Dealer's indebtedness.

I hereby waive notice of the acceptance of this guaranty and of credit given or to be given, and I waive notice of non-payment of any and every account, note or other obligation covered by this guaranty."

Dated Sept. 14, 1939

In presence of:

(Signed) J. C. Mergendoller

(Signed) Louis Smith (Seal)

That under and in accordance with said contract with the said Hall, and relying upon the said Contract of the defendant, the plaintiff did deliver to the said Hall, doing business as Baldwin Implement Company, large quantities of farm implements and machinery and the said Hall made, executed and delivered to the plaintiff a large number of promissory notes representing credit extended to him by the plaintiff and at the time of the expiration of the said contract, on October 31, 1939, there was due from the

said Hall, doing business as Baldwin Implement Company, to the plaintiff, the following described notes:

Note dated October 16, 1939, due June 30, 1940, for \$182.20, with interest at 8% per annum, after maturity.

Note dated October 16, 1939, due June 30, 1940, for \$121.60, with interest at 8% per annum, after maturity.

Note dated October 18, 1939, due June 30, 1940, for \$131.20, with interest at 8% per annum, after maturity.

Note dated October 18, 1939, due May 31, 1940, for \$151.80, with interest at 8% per annum, after maturity.

Note dated October 18, 1939, due July 15, 1940, for \$74.00, with interest at 8% per annum, after maturity.

Note dated November 1, 1939, due May 31, 1940, for \$96.00, with interest at 8%, per annum, after maturity.

Note dated November 1, 1939, due May 31, 1940, for \$136.80, with interest at 8% per annum, after maturity.

Note dated November 1, 1939, due May 31, 1940, for \$136.80, with interest at 8% per annum, after maturity.

Note dated November 22, 1939, due June 15, 1940, for \$135.61, with interest at 8% per annum, after maturity, which note bears a credit of \$30.05 as of February 3, 1941.

Note dated November 22, 1939, due July 15, 1940, for \$135.62, with interest at 8% per annum, after maturity.

~~Note dated July 15, 1940, due July 15, 1941, for \$23.60, with interest at 6% per annum, after maturity.~~

~~Note dated July 15, 1940, due July 15, 1941, for \$79.60, with interest at 6% per annum, after maturity.~~

~~Note dated July 15, 1940, due July 15, 1941, for \$18.20, with interest at 6% per annum, after maturity.~~

~~Note dated July 15, 1940, due July 15, 1941, for \$9.20, with interest at 6% per annum, after maturity.~~

Note dated June 30, 1940, due October 15, 1940, for \$998.80, with interest at 6% per annum, after maturity, which note bears a credit of \$700.00 as of October 3, 1940 and \$160.22 as of February 3, 1941.

Note dated May 31, 1940, due October 31, 1940, for \$151.80, with interest at 6% per annum, after maturity.

That in, by and as a part of each of the notes hereinbefore sued upon, it is provided that in addition to the principal of and interest upon said note, the maker will pay "an attorney's fee of ten (10) per cent. of the amount unpaid in case payment shall not be made at maturity and this note is placed in the hands of an attorney for collection."

That the aggregate amount of principal due upon said notes is \$1,692.56, and that the interest due thereon from the maturity of each of said notes to the date of filing this complaint is the sum of \$115.72, and that the total amount of principal and interest due on all of said notes is the sum of \$1,808.28 and that ten per cent of said amount, due to plaintiff as attorney's fees as aforesaid, is the sum of \$180.82.

That the said William Marvin Hall, doing business as Baldwin Implement Company, has failed and refused to pay said notes and that demand for payment thereof has been made upon defendant by the plaintiff, but defendant refuses to pay the same, wherefore, plaintiff avers that the defendant has breached said contract, hereinbefore setout, to the damage of the plaintiff as aforesaid, wherefore, plaintiff sues.

SECOND

Complainant claims of the defendant the further and additional sum of \$2,031.61 damages for that on the 3rd day of November, 1939 the plaintiff entered into a written contract with one William Marvin Hall, doing business under the trade name and style of Baldwin Implement Company, by which agreement the plaintiff made and appointed the said William Marvin Hall, doing business as Baldwin Implement Company, its dealer at Robertsdale, Baldwin County, Alabama, and authorized the said William Marvin Hall to purchase farm implements and machinery from the plaintiff for the purpose of resale and in and by said agreement the plaintiff agreed to furnish such farm implements and machinery to the said William Marvin Hall and extend credit to him for the purchase price thereof, said contract to extend from its date, November 3, 1939, to October 31, 1940.

That as a part of the said contract, it was agreed that the said William Marvin Hall, doing business as Baldwin Implement Company, would secure the plaintiff in the payment for the merchandise furnished on credit to said Hall by causing some responsible person to guarantee the payment of any indebtedness from

the said Hall to the plaintiff and that thereafter, and on, to-wit, November 10, 1939, for the purpose of guaranteeing payment to be made by the said Hall to the plaintiff, the defendant made, executed and delivered to the plaintiff a written contract of guaranty in the words and figures following, to-wit:

GUARANTY

"In consideration of the acceptance by J. I. Case Company, of Racine, Wisconsin, of the purchase order herein contained, and in consideration of the credit extended and which may be extended under this agreement by said J. I. Case Company to Baldwin Implement Co. hereinafter called the "Dealer" under the within contract, for value received, I hereby guarantee to J. I. Case Company, of Racine, Wisconsin, a complete fulfillment of said contract and any supplement or amendment thereto by said Dealer, and the payment of any and all indebtedness of any nature whatsoever of said Dealer to said J.I. Case Company incurred under the foregoing contract and any supplement or amendment thereto, including the payment of any and every account or note for goods ordered and purchased subsequent to the date hereof, together with all costs, expenses and attorneys' fees which it may incur by reason of the indebtedness herein described or in the enforcement of this guaranty, and I consent to any change, release or surrender of securities for said indebtedness and that said indebtedness may be compromised or renewed or extended from time to time at an increased rate of interest without notice to me, and I hereby waive all rights to any property herein purchased or which may subsequently be purchased or which may be held as collateral to Dealer's indebtedness.

I hereby waive notice of the acceptance of this guaranty and of credit given or to be given, and I waive notice of non-payment of any and every account, note or other obligation covered by this guaranty."

Dated Nov. 10, 1939

In presence of:

(Signed) P. M. Buckner

(Signed) Louis Smith (Seal)

That under and in accordance with said contract with the said Hall, and relying upon the said contract of the defendant, the plaintiff did deliver to the said Hall, doing business as Baldwin Implement Company, large quantities of farm implements and machinery and the said Hall made, executed and delivered to the plaintiff a large number of promissory notes representing credit extended to him by the plaintiff and at the time of the expiration of the said contract, on October 31, 1940, there was due from the

said Hall, doing business as Baldwin Implement Company, to the plaintiff, the following described notes:

Note dated January 5, 1940, due October 15, 1940, for \$130.40, with interest at 8% per annum, after maturity, which note bears a credit of \$114.80 as of January 21, 1941.

Note dated January 5, 1940, due October 15, 1940, for \$1,050.80, with interest at 8% per annum, after maturity.

Note dated January 19, 1940, due July 15, 1940, for \$28.10, with interest at 8% per annum, after maturity.

Note dated January 17, 1940, due August 31, 1940, for \$108.00, with interest at 8% per annum, after maturity.

Note dated January 17, 1940, due October 15, 1940, for \$115.00, with interest at 8% per annum, after maturity, which note bears a credit of \$4.80 as of January 21, 1941.

Note dated January 17, 1940, due October 15, 1940, for \$115.00, with interest at 8% per annum, after maturity, which note bears a credit of \$4.80 as of January 21, 1941.

Note dated January 17, 1940, due October 15, 1940, for \$115.00, with interest at 8% per annum, after maturity, which note bears a credit of \$4.80 as of January 21, 1941.

Note dated January 17, 1940, due October 15, 1940, for \$115.00, with interest at 8% per annum, after maturity, which note bears a credit of \$4.80 as of January 21, 1941.

Note dated February 13, 1940, due October 15, 1940, for \$22.13, with interest at 8% per annum, after maturity.

Note dated February 13, 1940, due October 15, 1940, for \$60.00, with interest at 8% per annum, after maturity.

Note dated February 13, 1940, due October 15, 1940, for \$60.00, with interest at 8% per annum, after maturity.

That in, by and as a part of each of the notes hereinbefore sued upon, it is provided that in addition to the principal of and interest upon said note, the maker will pay "an attorney's fee of ten (10) per cent. of the amount unpaid in case payment shall not be made at maturity and this note is placed in the hands of an attorney for collection."

That the aggregate amount of principal due upon said notes is \$1,785.43, and that the interest due thereon from the maturity of each of said notes to the date of filing this complaint

is the sum of \$61.49, and that the total amount of principal and interest due on all of said notes is the sum of \$1,846.92 and that ten per cent of said amount, due to plaintiff at attorney's fees as aforesaid, is the sum of \$184.69.

That the said William Marvin Hall, doing business as Baldwin Implement Company, has failed and refused to pay said notes and that demand for payment thereof has been made upon defendant by the plaintiff, but defendant refuses to pay the same, wherefore, plaintiff avers that the defendant has breached said contract, hereinbefore setout, to the damage of the plaintiff as aforesaid, wherefore, plaintiff sues.

Steph. J. Tommaney
Attorney for Plaintiff

Plaintiff demands a trial by jury.

Steph. J. Tommaney
Attorney for Plaintiff

Received in Sheriff's Office
this 18 day of March, 1941
W. R. STUART, Sheriff

Executed this 18th day of March 1941
by *James A. Coppy* Copy of
the within
original *within*
summons *Complaint*
on Louis Smith

and placing him

W. R. Stuart
Sheriff

D. S.

RECORDED

6-177

New Foley Hotel
Foley, Alabama

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

J. I. CASE COMPANY, a cor-
poration,

Plaintiff,

vs.

LOUIS SMITH,

Defendant.

COMPLAINT

Filed March 18, 1941
R. L. Dorch, Clerk

LLOYD A. MAGNEY
ATTORNEY AT LAW
FOLEY, ALABAMA

The State of Alabama,
Baldwin County

S. D. Page No. _____

Case No. 647

CIRCUIT COURT

Nov. Term, 1934

To Any Sheriff of the State of Alabama, GREETING:

YOU ARE HEREBY COMMANDED TO SUMMON

W. M. Hall, Foley, Gen. T. Burne
Wm.

if to be found in your County, at the instance of the

Pltff -

to be and appear before the honorable, the Judge of the Circuit Court of Baldwin County, at the Court House thereof,

by 8:30 o'clock of the forenoon, on the 5 day of Nov 1934, and from day to

day and term to term of said Court until discharged by law, then and there to testify, and the truth to say, in a certain

cause pending, wherein J. I. Case Co Plaintiff

and Louis Smith Defendant.

Herein fail not, and have you then and there this Writ.

Given under my hand and seal, this 24th day of Oct, 1934

R. S. Duck

CLERK.

Received in office this

24

day of

October

1934

W.R. Stuart

SHERIFF

I have executed this writ

by serving
copy of Within

Geo J Byrne 10/30/41

WM Hall

EP

ORIGINAL

No. 647

Page

THE STATE OF ALABAMA
Baldwin County

CIRCUIT COURT

J. I. Case Co

Plaintiff

VS.

Louis Smith

Defendant

CIVIL SUBPOENA

Issued this

24th

day of

Oct

1934

R. L. Duck

Clerk.

W.R. Stuart

SHERIFF

The State of Alabama,
Baldwin County

S. D. Page No. _____

CIRCUIT COURT

Case No. 647

Fall

Term, 1931

To Any Sheriff of the State of Alabama, GREETING:

YOU ARE HEREBY COMMANDED TO SUMMON Ensign Perry M. Buckner---

Room 216 B O Q , Breezy Point, Naval Air Station, Norfolk, Virginia

if to be found in your County, at the instance of the plaintiff

to be and appear before the honorable, the Judge of the Circuit Court of Baldwin County, at the Court House thereof,

by 8:30 o'clock of the forenoon, on the 5th day of November, 1931, and from day to

day and term to term of said Court until discharged by law, then and there to testify, and the truth to say, in a certain

cause pending, wherein J. I. Case Company, a Corporation Plaintiff

and Louis Smith Defendant.

Herein fail not, and have you then and there this Writ.

Given under my hand and seal, this 15th day of October, 1931.

A. S. Much

CLERK.

Received in office this 15 day of

Oct 1941

W B Stuart
by M M M SHERIFF

I have executed this writ

by mailing subpoena
to Ensign Perry M. Buckner
this 15th day of Oct. 1941

SHERIFF

ORIGINAL

No. 647

Page

THE STATE OF ALABAMA
Baldwin County

CIRCUIT COURT

J. I. CASE COMPANY, A CORPORATION,

Plaintiff

Plaintiff

VS:

LOUIS SMITH,

Defendant.

Defendant

CIVIL SUBPOENA

Issued this 15th day of

October

1941

R. S. Finch
Clerk.

J. I. CASE COMPANY, A Corporation,

Plaintiff,

VS.

LOUIS SMITH, Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW.

No. 647.

And now comes the Defendant and for answer to the Plaintiff's complaint and to each count thereof, separately and severally, says:

1.

That the facts therein alleged are untrue;

2.

That the indebtedness, the basis of this suit, was paid before this suit was commenced;

3.

That he should not be held and bound under the guaranty, or contract of guaranty sued on because at the time he signed the same it was in the possession of the principal therein, William Marvin Hall, doing business under the trade name and style of Baldwin Implement Company, and it was agreed by and between the Defendant and the said Principal, William Marvin Hall; that before the delivery of the same to the Plaintiff in this cause that the name of George T. Byrne, would be secured by the said William Marvin Hall, Principal, and the Defendant avers that said instrument sued on was delivered by the Principal, the said William Marvin Hall, to the Plaintiff in this case in violation of said agreement and without the signature of the said George T. Byrne being signed thereto, hence the Defendant says he is not bound by said guaranty, or contract of guaranty or undertaking, and should be discharged in this matter with his cost in this behalf expensed;

4.

That he signed his name to said guaranty, or contract of guaranty, suit on, with the distinct agreement between him and William Marvin Hall, doing business under the trade name and style of Baldwin Implement Company, who was the Principal obligor that the said guaranty, or contract of guaranty, would not be delivered to the Plaintiff until signed by George T. Byrne and the Defendant says that the said William Marvin Hall delivered said guaranty, or contract of guaranty without getting the said George T. Byrne to sign it; Wherefore the Defendant is not bound thereby;

5.

That he signed the said guaranty, or contract of guaranty, sued on with the distinct understanding with the Principal, William Marvin Hall, doing business under the trade name and style of Baldwin Implement Company, that said guaranty, or contract of guaranty, should not be delivered to the Plaintiff until signed by George T. Byrne,

whose name the said William Marvin Hall agreed to have affixed to said guaranty, or contract of guaranty before it was delivered to the Plaintiff;

6.

That at the time he signed the said guaranty, or contract of guaranty, sued on, it was agreed by and between the Defendant and William Marvin Hall, doing business under the trade name and style of Baldwin Implement Company, that before the delivery of the same to the Plaintiff the name of George T. Byrne would be secured by the said William Marvin Hall, the Principal, and he avers that said guaranty, or contract of guaranty, was delivered in violation of said agreement and hence, he should not be bound thereby.

KEENE & HALL

BY

Thos. Loe

Attorneys for Defendant.

RECORDED

J. I. Case. Co. a corp
vs

Lewis Smith

Answers

Filed 9/30/41

Respect

By ^{Check} ~~John~~ 5/14/41
J. I. Case
clerk

J. I. CASE COMPANY,
a Corporation,

Plaintiff,

VS.

LOUIS SMITH,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW.

And now comes the Defendant and demurs to the Plaintiff's complaint in this cause, and to each count thereof, separately and severally, and for ground of said demurrer, says:

FIRST:

That said count does not state a cause of action.

SECOND:

That said count includes several notes not yet due.

THIRD:

That said count does not set out the contract sued on between the Plaintiff and the Defendant.

FOURTH:

That said count shows on its face that many of the notes or contract sued on were made after the alleged contract of guaranty had expired, and the Defendant, if any time liable, was not liable thereunder.

FIFTH:

That said count is vague, indefinite and uncertain, and does not sufficiently apprise the Defendant of matters which he is to defend.

BEEBE & HALL,

By: [Signature]
Attorneys for Defendant.

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RECORDED

DEMURRERS

J. I. CASE COMPANY,
a Corporation,

Plaintiff,

VS.

LOUIS SMITH,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,

AT LAW.

647

Filed April 17, 1941
R. S. Quich, Clerk
R. S. Quich
1941
1941

1. Tillman Allen, Farmer, Gateswood.
2. George W. Miller, Laborer, Bay Minette. *83*
3. Lester D. Linden, Farmer, Silverhill. *99*
4. John T. Hadley, Laborer, Foley. *27*
5. Thomas S. Bryars, Farmer, Latham. *P5*
6. Thomas B. McGowan, Cattleman, Tensaw. *P10*
7. Silas D. Powers, Farmer, Bon Secour. *27*
8. Walter T. Nall, Farmer, Foley.

~~XXXXXXXXXXXXXXXXXXXXXXX Filling Station Operator XXXX Bay Minette~~

10. Ernest D. Corte, Produce, Daphne.
11. Mack Aylin, Forrester, Bay Minette. *P4*
12. Joseph B. Smith, Surveyor, Tensaw. *P6*
13. Charles J. Ebert, Real Estate, Foley.
14. Walter M. Richerson, Merchant, Stockton. *P2*
15. Harold J. Miller, Mechanic, Fairhope.
16. Frank T. Peterson, Farmer, Gateswod.
17. Daniel Hall, Farmer, Tensaw. *21*
18. Thomas R. Dean, Farmer, Rabon.
19. Harold A. Stuart, Cleaner and Presser, Bay Minette.

~~XXXXXXXXXXXXXXXXXXXXXXX Filling Station Operator XXXX Bay Minette~~

21. Frank A. McKenzie, Farmer, Fairhope. *P1*
22. Young A. Cox, Merchant, Stockton. *21*

~~XXXXXXXXXXXXXXXXXXXXXXX Filling Station Operator XXXX Bay Minette~~

24. Hunter H. Mixon, Hardware, Bay Minette. *P4*
25. La Velle Ferguson Jr., Timber, Latham.
26. John E. Smith, Filling Station Operator, Bay Minette. *25*
27. William A. Vines, Turpentine Operator, Bay Minette. *07*

~~XXXXXXXXXXXXXXXXXXXXXXX Filling Station Operator XXXX Bay Minette~~

~~XXXXXXXXXXXXXXXXXXXXXXX Filling Station Operator XXXX Bay Minette~~

30. Jesse W. Joyner, Filling Station Operator, Bay Minette. *P1*
31. John N. Standard, Merchant, Bay Minette. *P4*
32. J. Frank Knowles, Newport, Bay Minette. *21*
33. Clyde N. Little, Mechanic, Bay Minette. *28*
34. Virgil V. Rhodes, Dairyman, Bay Minette. *23*

35. Jesse M. Smith, Real Estate, Bay Minette.

36. Neal H. McDuffie, Cafe Operator, Bay Minette.

37. Clinton L. White, Cashier, Bay Minette.

38. Norvelle Lee Cabaniss, Farmer, Bay Minette. *P8*

39. Alfred Billy, Barber, Bay Minette. *26*

~~XXXXXXXXXXXXXXXXXXXXXXX Filling Station Operator XXXX Bay Minette~~

41. George T. Byrne, Salesman, Bay Minette

Handwritten marks:
 11 / ###
 11 / ###

Handwritten numbers:
 34
 12
 22

Pl requests this instruction: ^{Refused} *F. M. Hare, Judge*

It is the delivery of the surety contract by the Principal without fulfilling the condition that relieves the surety of liability but if the contract is delivered by the surety himself or by another for him in his presence, then the surety would be bound by his signature.

Refused - F. M. Hare, Judge

I charge you Gentlemen of the jury that a person signing a contract of guaranty wholly as a matter of accommodation for another, may determine for themselves upon what condition they will undertake the burden.

Sinec
F. M. Hare, Judge

I charge you Gentlemen of the jury that if you believe from the evidence in this case that the Defendant Louis Smith, signed the contract of guaranty sued on, which was in the hands of William Marvin Hall, principal, upon condition that said contract of guaranty should not be delivered to the Plaintiff until George T. Byrne should also sign as guarantor, the said Hall was bound to observe conditions upon which he was authorized to make delivery, and the Plaintiff was charged with limitations placed by said Smith upon authority of said Hall in delivering the contract of guaranty.

Sinec
F. M. Hare, Judge

*Given
J. W. Hare
Judge*

I charge you Gentlemen of the jury that if you believe from the evidence in this case that the Defendant Louis Smith signed the bond or contract of guaranty sued on, on condition that the signature of George T. Byrne be obtained, it was not essential that the Plaintiff had notice of the conditional delivery, or that it consented thereto.

I charge you Gentlemen of the jury that if you believe from the evidence in this case that the Defendant Louis Smith signed the contract of guaranty sued on, on condition that George T. Byrne was to execute the instrument as guarantor before delivery, and that the said William Marvin Hall, delivered the said contract of guaranty to the Plaintiff without procuring the signature of said George T. Byrne, then the Defendant, Louis Smith was not bound thereby.

*Given
J. W. Hare
Judge*

Pl requests this instruction:

*Refused
J. W. Hare Judge*

*Wm. H. W. Hall
Jury*

I charge you Gentlemen of the jury that if you believe from the evidence in this case that the Defendant Louis Smith signed the guaranty, or contract of guaranty sued on, upon express condition that it should not be delivered until the signature of George T. Byrne was secured, and the said Hall delivered the same to the Plaintiff without securing the signature of said George T. Byrne, then the Defendant Louis Smith was not bound thereby.

*Wm. H. W. Hall
Jury*

I charge you Gentlemen of the jury that though there were stipulations in the guaranty, or contract of guaranty sued on, that there were no conditions or limitations, except those contained therein, applied to conditions and limitations going to effect of bond as such when executed, and did not waive condition made by the Defendant Louis Smith that he was not to be bound until signature of George T. Byrne was secured.

I charge you Gentlemen of the jury that if you believe the evidence in this case you should find for the Defendant.

Refused