

HARRY J. WILTERS, JR.  
TOLBERT M. BRANTLEY

LAW OFFICES OF  
WILTERS & BRANTLEY  
P. O. BOX 968  
BAY MINETTE, ALABAMA 36507

PHONE  
BAY MINETTE 937-5533

August 4, 1970

Mrs. Alice J. Duck  
Circuit Clerk  
Bay Minette, Alabama

Dear Mrs. Duck:

Please subpoena the following witnesses in the  
case of Rasberry vs Wilcox, case #9159. This is set for  
trial Friday, August 7, at 9:00 a.m.:

    Otis Lee, Aaronville (Foley)  
    Carlisle Childress, Foley

Yours truly,

  
Tolbert M. Brantley

TMB/agp

*Done 8/4/70*

DEFENDANT'S REPLEVY BOND

CARL RASBERRY,	)	
	)	IN THE CIRCUIT COURT OF
Plaintiff,	)	BALDWIN COUNTY, ALABAMA
VS.	)	AT LAW
ROY WILCOX,	)	CASE NO. 9159
Defendant.	)	

THE STATE OF ALABAMA

BALDWIN COUNTY

KNOW ALL MEN BY THESE PRESENTS, That we, Roy Wilcox as principal, and Quinton Cevens W. Max Griffin, as sureties, are held and firmly bound unto Carl Rasberry in the sum of \$1800<sup>00</sup> Dollars for the payment of which well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly, severally and firmly by these presents.

Sealed with our seals and dated this the 20th day of March, 1970.

The condition of the above obligation is such, that whereas, the said Carl Rasberry did on the 6th day of March, 1970, sue out of the Circuit Court of Baldwin County a writ of detinue directed to any Sheriff of the State of Alabama, and commanding him to take in his possession the following property sued for in said action of detinue, to-wit: One Home Made Flat Equipment Trailor which said writ was placed in the hands of Taylor Wilkins, Sheriff of the County of Baldwin on the 6 day of MARCH, 1970, and executed by him on the 18th day of March, 1970, by taking into his possession the following property, to-wit: One Home Made Flat Equipment Trailor, and whereas the above bound Roy Wilcox Defendant in said suit, has within five days from the execution of said writ, entered into this bond, as required by law, and thereby obtained possession of said property levied on:

Now, if the said Roy Wilcox shall defend said suit to effect, or if being cast therein he shall, within thirty days after judgment, deliver the property aforesaid to the Plaintiff and pay all such

Prop. E. Wilcox (L.S.)  
Lemon Givers (L.S.)  
Mabieff (L.S.)  
\_\_\_\_\_  
(L.S.)

h, 1970.

Taylor Williams

Sheriff

# BAILEE'S RECEIPT

BAY MINETTE, ALA. March 18 1927

The State of Alabama, }  
Baldwin County

I hereby agree to take, care for and preserve as the Bailee of Logan McWhorter  
Sheriff of Baldwin County, Alabama, the following described personal property this day levied upon  
under Writ of Fieri Facias, Attachment, Detinue, issued out of the Circuit Justice Civil Court of Baldwin  
County, Alabama, in the above styled case, to-wit:

1 - Home Made trailer 8'5" wide 21'3" long

I further agree to deliver the above described personal property to the said.....  
....., Sheriff of Baldwin County, Alabama, upon his written order of demand.

J. Roy C. Wiley, Bailee.

Witness : .....

PLEAS

CARL RASBERRY,	)	IN THE CIRCUIT COURT OF
Plaintiff,	)	BALDWIN COUNTY, ALABAMA
VS.	)	AT LAW
ROY WILCOX,	)	CASE NO. 9159
Defendant.	)	

1.

Not guilty.

2.

A general issue.

3.

The Defendant, as a defense to the action of the Plaintiff, saith that, at the time the said action was commenced, the Plaintiff was indebted to him in the sum of SIX HUNDRED DOLLARS (\$600.00) for that, on, to-wit: August 21, 1969, the Plaintiff sold the Defendant a home made trailer for the sum of NINE HUNDRED DOLLARS (\$900.00). SIX HUNDRED DOLLARS (\$600.00) of this amount was paid at that time leaving a balance of THREE HUNDRED DOLLARS (\$300.00) due. The Defendant avers that, at the time of the sale, the Plaintiff knew that the Defendant was purchasing this trailer to haul equipment along and over public roads in the State of Alabama. That he also knew that this trailer was over width and could not be legally used on said highways. The Defendant avers that it was the duty of the Plaintiff to inform the Defendant of this. The Defendant further avers that the trailer he purchased is in excess of 100 inches in width; that the maximum legal width for a trailer used on public highways in Alabama is 96 inches. He further avers that he did not discover that the trailer was of excess width until several days after his purchase. He says further that he informed the Plaintiff of this and asked that his money be refunded. This the Plaintiff refused to do. The Defendant avers that this trailer is not usable for the purpose for which it was purchased and that he ought to recover from the Plaintiff the sum of SIX HUNDRED DOLLARS (\$600.00)

for breach of the implied warranty made to the Defendant by the Plaintiff which he hereby offers to set off against the demands of the Plaintiff and he claims judgment for the excess.

4.

The Defendant, as a defense to the action of the Plaintiff, saith: that at the time said action was commenced, the Plaintiff was indebted to him in the sum of SIX HUNDRED DOLLARS (\$600.00) damages for deceit in the sale of a ~~wide~~ trailer. The Plaintiff impliedly represented to the Defendant that it was of legal width and the Plaintiff knew at the time of said sale that it was over width, which he hereby offers to set off against the demands of the Plaintiff and he claims judgment for the excess.

5.

The Defendant, as a defense to the action of the Plaintiff, saith that at the time said action was commenced, the Plaintiff was indebted to him in the sum of SIX HUNDRED DOLLARS (\$600.00) damages for deceit in the sale of a ~~wide~~ trailer. The Defendant avers that, at the time he purchased said trailer, the Plaintiff knew he intended to use said trailer on public highways in Alabama and the Plaintiff knew that the trailer was over size for this purpose. The Defendant avers that the Plaintiff, knowing the purpose for which the Defendant intended to use said trailer, by his silence fraudulently induced the Defendant to purchase the same, which he hereby offers to set off against the demands of the Plaintiff and he claims judgment for the excess.

WILTERS & BRANTLEY

BY: 

Attorneys for Defendant

**CERTIFICATE OF SERVICE**

I do hereby certify that I have on this 22 day of March 1970, 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.

WILTERS & BRANTLEY

By: 

**FILED**

MAR 24 1970

**ALICE J. DUCK** CLERK  
REGISTER

CARL RASBERRY, X  
Plaintiff, X  
vs. X IN THE CIRCUIT COURT OF  
ROY WILCOX, X BALDWIN COUNTY, ALABAMA  
Defendant. X AT LAW NO. 9159

DEMURRER

Comes now the Plaintiff in the above styled cause and demurs to pleas "3", "4" and "5" heretofore filed by the Defendant in the above styled cause and shows unto the Court the following separate and several grounds in support of said demurrer, viz:

1. That said pleas do not state a good and sufficient defense to the action.
2. That said pleas are vague, indefinite and uncertain.
3. That the allegations of said pleas that the Plaintiff knew that the trailer was over width and could not legally be used on highways are mere conclusions of the pleader.
4. That the allegation that the Plaintiff knew that the Defendant was purchasing the trailer to haul equipment over public roads in the State of Alabama is a mere conclusion of the pleader.
5. That the allegation of said pleas that the Defendant should recover from the Plaintiff the sum of Six Hundred Dollars (\$600.00) for breach of implied warranty does not state a proper defense to the action in that there is no implied warranty in the sale of used merchandise.
6. That the allegation that the Plaintiff by his silence fraudulently induced the Defendant to purchase the trailer is a conclusion of the pleader and does not state a good and sufficient defense to the action.

CHASON, STONE & CHASON

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 2/21 of April, 1970.

By:

*John E. Chason*  
Attorneys for Plaintiff

FILED

APR 21 1970

ALICE J. DUCK  
CLERK  
REGISTER

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CARL RASBERRY,

X

Plaintiff,

X

IN THE CIRCUIT COURT OF

vs.

X

BALDWIN COUNTY, ALABAMA

X

AT LAW

ROY WILCOX,

X

*No. 9159*

Defendant.

X

BOND

KNOW ALL MEN BY THESE PRESENTS: That we, Carl Rasberry and Warren W. Day, are held and firmly bound unto Roy Wilcox in the sum of Fifty Dollars (\$50.00), for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally and firmly by these presents.

Sealed with our seal and dated this 4th day of March 1970.

The condition of the above obligation is such, that whereas the above bound Carl Rasberry has this day commenced a suit in the Circuit Court of Baldwin County, Alabama, against said Roy Wilcox for the recovery of a trailer, and has made affidavit that the property sued for belongs to Carl Rasberry and entered into this bond and will obtain an order requiring the Sheriff of Baldwin County to take the said property sued for into his possession.

Now if the said Carl Rasberry shall fail in said suit and pay the Defendant all such costs and damages as he may sustain by wrongful complaint, then this obligation to be void, otherwise to remain in full force and effect. And for the payment of the above bond, we waive our right to exemption to personal property under the Constitution and Laws of the State of Alabama.

**FILED**

MAR 6 1970

ALICE J. DUCK CLERK  
REGISTER

*Carl C. Rasberry* (SEAL)  
*Warren W. Day* (SEAL)  
VOL 64 PAGE 572

*Approved*  
*3-6-70*  
*Alice J. Duck*  
*Clerk*

STATE OF ALABAMA

IN THE CIRCUIT COURT - AT LAW

BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon Roy Wilcox to appear within thirty days from the service of this Writ in the Circuit Court to be held for said County at the place of holding same, then and there to answer the Complaint of Carl Rasberry.

Witness my hand this 6 day of Mar, 1970.

Alice J. Duck  
Clerk

CARL RASBERRY,

X

Plaintiff

X

IN THE CIRCUIT COURT OF

X

BALDWIN COUNTY, ALABAMA

vs.

X

X

AT LAW

ROY WILCOX,

X

Defendant.

X

The Plaintiff claims of the Defendant the following personal property, viz: one (1) home made flat equipment trailer with the value of the hire or use thereof during its detention from, viz: the 22nd day of August, 1969.

CHASON, STONE & CHASON

By:

John E. Chason  
Attorneys for Plaintiff

FILED

MAR 6 1970

ALICE J. DUCK


STATE OF ALABAMA

BALDWIN COUNTY

Before me, Ruth S. Day, a Notary Public  
in and for said County, personally appeared Carl Rasberry, who  
being duly sworn, deposeth and saith, that the following property,  
to-wit: one (1) <sup>one made</sup> ~~six-foot-wide~~ flat equipment trailer for the re-  
covery of which he has instituted suit this day in the Circuit  
Court of Baldwin County, Alabama, At Law, against Roy Wilcox is  
the property of Carl Rasberry, affiant.

  
Carl Rasberry

Sworn to and subscribed before  
me this 4th day of March, 1970.

  
Notary Public, Baldwin County, Alabama  
My commission expires September 6, 1971

**FILED**

MAR 6 1970

**ALICE J. DICK** CLERK  
REGISTER

Sheriff claims 815 miles at  
Ten Cents per mile Total \$ 81.50  
TAYLOR WILKINS, Sheriff  
BY [Signature] DEPUTY SHERIFF

Received 6 day of March 19 70  
and on 18 day of March 19 71  
I served a copy of the within DETINUE  
on Roy Wilcox  
By service on \_\_\_\_\_

TAYLOR WILKINS, Sheriff  
[Signature]  
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The Plaintiff, Carl Rasberry,  
having made affidavit and given  
bond as required by law, the  
Sheriff is directed to take the  
property mentioned and de-  
scribed in the complaint endorsed  
on the Summons into his possession.

Alice J. Duck  
Circuit Clerk

MD 9159  
CARL RASBERRY,  
Plaintiff,

vs.

ROY WILCOX,  
Elberta, Ala  
Defendant,

\* \* \* \* \*

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW

\* \* \* \* \*

SUMMONS AND COMPLAINT

\* \* \* \* \*

FILED

MAR 6 1970

ALICE J. DUCK CLERK  
REGISTER

CHASON, STONE & CHASON  
ATTORNEYS AT LAW  
P. O. Box 120  
BAY MINETTE, ALABAMA

8'5" wide  
21'3" long  
6 wheels

March 18, 1970 Executed by attaching  
one 8'5" x 21'3" HomeMade Trailer.  
Stored at Wilcox Trucking Company  
Garage in Elberta, Alabama.

Carl Rasberry