

C. H. MATTHEWS,  
Plaintiff  
VS  
KENNETH HOLLEY,  
Defendant

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
At Law

Comes the defendant in the above styled cause and further answering plaintiff's complaint and each count thereof separately and severally, says:

A

That the plaintiff ought not to further prosecute this suit for this that on the 29th day of April, 1954, a bonafide dispute existed between the plaintiff and the defendant as to the amount of the indebtedness owing by this defendant to the plaintiff, the basis of plaintiff's suit, and the defendant did deliver to the plaintiff goods, wares and merchandise, store fixtures and equipment and other articles of personal property, the property of the defendant, in full satisfaction and accord of the demand of the plaintiff and the same was received and accepted by the plaintiff and the debt of this defendant to the plaintiff was therein and thereby fully satisfied and the defendant discharged.

B

The plaintiff ought not to further prosecute this suit for this that on to-wit, the 29th day of April, 1954, the defendant did deliver to the plaintiff goods, wares and merchandise, store fixtures and equipment, the property of the defendant, in consideration of the defendant's release and discharge of the obligation sued on in this cause and the same was received and accepted by the plaintiff in satisfaction and accord of the debt sued on.

BEEBE & SWEARINGEN

By

*J. E. Swearingen*  
Attorneys for Defendant

C. H. MATTHEWS  
Plaintiff  
  
VS  
  
KENNETH HOLLEY,  
Defendant

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IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
  
AT LAW  
  
NUMBER: \_\_\_\_\_

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DEMURRER

Comes now the Plaintiff in the above styled cause and demurs to the Defendant's plea and answer as last filed and to each and every plea and answer therein contained, separately and severally, and assigns, separately and severally, the following grounds, to-wit:

1. The Defendant states no defense known to law.
2. The Defendant does not state a defense to the Plaintiff's complaint.
3. That the Defendant's allegations of full and complete satisfaction and discharge is but a conclusion of the pleader.
4. That the Defendant's allegation and plea that the Plaintiff did receive and accept said goods in full and complete satisfaction and accord and discharge of the debt is but a conclusion of the pleader.
5. That the Defendant's plea is multifarious.
6. That the Defendant's plea is inconsistent.
7. That the Defendant does not allege any consideration for the Plaintiff's acceptance of the goods alleged/accepted by Plaintiff.
8. That the Defendant fails to allege the owner of the goods alleged to have been intrusted to the said Defendant.
9. For aught that appears the goods alleged to have been accepted by the Plaintiff were the property of the Plaintiff.
10. Defendant fails to allege consideration for Plaintiff's acceptance of the said goods.
11. It affirmantly appears that no consideration was given for the alleged accord and satisfaction.
12. It affirmantly appears that no new consideration was given for the alleged accord and satisfaction.

13. The Defendant does not allege sufficiently which goods were accepted by the Plaintiff in accord and satisfaction of the debt.

14. It does not appear with sufficient certainty what goods were accepted by the Plaintiff.

15. Defendant fails to allege a dispute ~~as~~ to the amount due at the time of the alleged acceptance of goods by the Plaintiff.

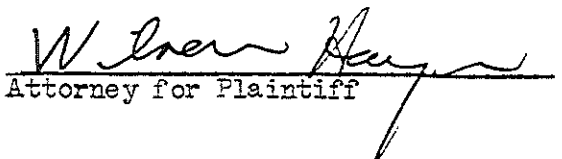
16. Defendant fails to allege that the amount of the indebtedness was in dispute at the time Plaintiff allegedly accepted the said goods.

17. Defendant fails to allege the value of the goods allegedly accepted by the Plaintiff.

18. Defendant fails to allege any value of the goods allegedly accepted by the Plaintiff.

19. The Defendant's plea is deficient in not showing that the amount of Defendant indebtedness to Plaintiff was in dispute at the time of acceptance by the Plaintiff of the goods tendered to him in full accord and satisfaction of Plaintiff's claim.

20. Defendant fails to allege any consideration for the alleged accord and satisfaction.

  
Attorney for Plaintiff

2505

C. H. MATTHEWS,

PLAINTIFF,

V3

KENNETH HOLLY,

DEFENDANT.

MOTION TO STRIKE

RECORDED

FILED

JUL 11 1955

ALICE J. DUCK, Clerk

C. H. MATTHEWS,  
Plaintiff

-vs-

KENNETH HOLLEY,  
Defendant.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

AT LAW

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Comes now the Plaintiff in the above styled cause and amends the complaint to read as follows:

I

The Plaintiff claims of the Defendant the sum of six-hundred dollars (\$600.00) as balance due on a promissory note for two-thousand, five-hundred dollars (\$2,500.00) made by him on the 1st day of February 1954 and payable on the 1st day of April, 1954, with interest thereon.

II

Plaintiff claims of Defendant the sum of six-hundred dollars (\$600.00) as balance due on a promissory note for two-thousand, five-hundred dollars (\$2,500.00) made by him on the 1st day of February, 1954, as follows:

FOR VALUE received I, Kenneth Holley, promise to pay to C.H. Matthews the sum of two-thousand, five-hundred dollars (\$2,500.00) in monthly installments of one-hundred dollars (\$100.00) monthly there-after, together with interest on the principal sum or any unpaid portion thereof at the rate of six percent (6%) per anum from this day, until fully paid, and to pay the said payments of principal and interest between the first and the fifteenth day of each month, together at the same time until fully paid, the principal and interest to be payable to C.H. Matthews or his wife Dorothy H. Matthews at the office of the Matthews Furniture Store in Bay Minette, Alabama.

IF DEFAULT shall be made in the payment of the said principal, any payment thereon, or interest or any payment thereon, the whole amount shall immediately become due and payable without notice, at the option of the holder hereof.

INWITNESS whereof I have hereunto set my hand and seal, this the \_\_\_\_\_ day of February, 1954.

Witness

(signed) LEE WEEKLEY

(signed) KENNETH HOLLEY (LS)

(signed) WILSON HAYES

TO SECURE the within note or other liability to the above mentioned C.H. Matthews I do hereby pledge to the said C.H. Matthews that I will pay the said note upon it becoming due and unpaid at any time.

Witness

(signed) LEE WEEKLEY

(signed) J.B. HOLLEY (LS)

(signed) WILSON HAYES

The Defendant having defaulted in payment of the sum due on the 1st day of April, 1954, the Plaintiff has declared the whole amount of the note due according to his option and right as set out in the note.

III

Plaintiff claims of Defendant the sum of six-hundred dollars (\$600.00) as balance due on a promissory note for two-thousand, five-hundred dollars (\$2,500.00) which is as follows:

FOR VALUE received I, Kenneth Holley, promise to pay to C.H. Matthews the sum of two-thousand, five-hundred dollars (\$2,500.00) in monthly installments of one-hundred dollars (\$100.00) on the first day of April, 1954 and one-hundred dollars (\$100.00) monthly thereafter together with interest on the principal sum or any unpaid portion thereof at the rate of six percent (6%) per annum from this day, untill fully paid, and to pay the said payments of principal and interest between the first and the fifteenth day of each month together at the same time until fully paid, the principal and interest to be payable to C.H. Matthews or his wife Dorothy H. Matthews at the office of the Matthews Furniture Store in Bay Minette, Alabama.

IF DEFAULT shall be made in the payment of the said principal, any payment thereon, or interest of any payment thereon, the whole amount shall immediately become due and payable without notice, at the option of the holder hereof.

IN WITNESS whereof I have hereunto set my hand and seal, this the \_\_\_\_\_ day of February, 1954.

Witness

(signed) LEE WEEKLEY

(signed) KENNETH HOLLEY (LS)

(signed) WILSON HAYES

TO SECURE the within note or other liability to the above mentioned C.H. Matthews I do hereby pledge to the said C.H. Matthews that I will pay the said note upon it becoming due and unpaid at any time.

Witness

(signed) LEE WEEKLEY

(signed) J.B. HOLLEY (LS)

(signed) WILSON HAYES

The Defendant having defaulted in the payment thereof and the Plaintiff having declared the whole sum due and payable, the Defendant did, on or about May 5, 1954, give over to the Plaintiff certain goods and chattels of the worth of \$ 1900<sup>00</sup> leaving a balance of \$ 600<sup>00</sup> together with the interest thereon.

IV

Plaintiff claims of Defendant the sum of six-hundred dollars (\$600.00) as balance due on a promissory note for two-thousand, five-hundred dollars (\$2,500.00) made by him on the 1st day of February, 1954, and payable at the rate of one-hundred dollars (\$100.00) on the first of April 1954, and one-hundred dollars (\$100.00) per month thereafter, with the further provision that upon default the whole sum then due should become due and payable at the option of the holder of the said note, and Defendant having been in default on April 1st 1954, Plaintiff did declare the whole sum due and payable, hence this suit.

W. H. Hayes  
ATTORNEY FOR THE PLAINTIFF

C. H. MATTHEWS,  
Plaintiff

VS

KENNETH HOLLEY,  
Defendant

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

At Law

Comes the defendant in the above styled cause and  
answering the plaintiff's complaint, says:

FIRST: That the matter alleged therein is untrue.

SECOND: That he has paid the debt, for the recovery  
of which this suit was brought, before the action was commenced.

THIRD: That heretofore, on to-wit, the 29th day of  
April, 1954, the plaintiff, at his request, and with the consent  
of the defendant, repossessed the goods intrusted to the said  
defendant, which said goods were pledged by the defendant as se-  
curity for the promissory note on which this action is based,  
~~and the said defendant did deliver said goods and the said plain-~~  
tiff did accept said goods as full and complete satisfaction and  
discharge of the debt allegedly owing under the said promissory  
note.

FOURTH: That heretofore, on to-wit, the 29th day of  
April, 1954, the defendant, at his request, and with the consent  
of the plaintiff, delivered the goods intrusted to the said defen-  
dant, which said goods were pledged as security for the promissory  
note on which this action is based, and the said plaintiff did  
receive and accept said goods in full and complete satisfaction  
and accord and in discharge of the debt allegedly owing under the  
said promissory note.

FIFTH: That at the time said action was commenced, the  
plaintiff was indebted to the defendant in the sum of Two Thousand  
Five Hundred Seventy-seven Dollars and two cents (\$2,577.02),  
due from him for merchandise, goods and chattels sold by the de-

fendant to the plaintiff on the 29th day of April, 1954, which sum of money with the interest thereon, is still unpaid, which he hereby offers to set off against the demand of the plaintiff, and he claims judgment for the excess.

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BEEBE & SWEARINGEN

By *F. B. Swearingen*  
Attorneys for Defendant

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C. E. MATTHESS,	)	IN THE CIRCUIT COURT OF
Plaintiff	)	BALDWIN COUNTY, ALABAMA
-vs-	)	AT LAW
KENNETH HOLLEY,	)	# _____
Defendant	)	

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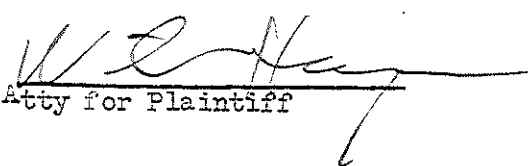
Comes now the Plaintiff in the above styled cause and makes reply to the pleas of Defendant heretofore filed in this cause, separately and severally, and assigns to each plea separately and severally the following separate and several replies:

1. The Plaintiff joins issue on said pleas.

2. For further reply the Plaintiff says to Defendants pleas that he received and accepted a stock of goods from the Defendant on, to-wit, April 29, 1954 which were given under a certain chattel mortgage as security for the said debt, and that the said stock of goods were received and accepted as partial satisfaction of the said debt, and that at the time and place of receiving and accepting the said goods by Plaintiff, there was no dispute as to the amount of the indebtedness, but that

3. For further reply to the pleas of Defendant, Plaintiff says that Defendant delivered to Plaintiff a stock of goods already the property of Plaintiff and that there was no consideration for the alleged satisfaction and accord.

4. For further reply to the pleas of Defendant, plaintiff says that the goods, wares, and merchandise, store fixtures and equipment and other articles of personal property were accepted by the Plaintiff in partial satisfaction of the indebtedness of Defendant that that Defendant, though often requested to do so has wholly failed and refused to pay the balance owing on the said indebtedness.

  
Atty for Plaintiff

O. H. MATTHEWS,  
Plaintiff  
-vs-  
KENNETH HOLLEY  
Defendant

IN THE CIRCUIT COURT  
OF  
BALDWIN COUNTY, ALABAMA  
At Law

Comes the defendant in the above styled cause and moves to quash the attachment issued by the Circuit Clerk of Baldwin County, Alabama, on the 7th day of January, 1955, executed on the 19th day of January, 1955, by attaching one 1955 Ford tudor and by serving a copy of said attachment on the defendant, and as grounds therefore says:

FIRST:

That the said Kenneth Holley was not then, nor is he now, about to fraudulently dispose of his property, to-wit, his Ford automobile;

SECOND:

That it is not shown in what manner the said Kenneth Holley was about to fraudulently dispose of his property, to-wit, his Ford automobile;

THIRD:

That it is not shown that even if the said Kenneth Holley had disposed of said automobile, such would have perpetrated a fraud upon the plaintiff;

FOURTH:

That the attachment affidavit is too vague and indefinite in that the said Kenneth Holley may have more than one Ford automobile;

FIFTH:

That the said attachment affidavit does not negative the possibility of the said Kenneth Holley having other property on which an attachment could be issued and executed;

SIXTH:

That the said attachment bond is void on its face in that the said C. H. Matthews is the only surety therein and that the same is undated;

SEVENTH:

That the said attachment is void in that it was not executed on one 1955 Ford tudor, Motor No. 45MV-104087.

BEEBE & SWEARINGEN

By: *J. B. Swearingen*  
Attorneys for Defendant

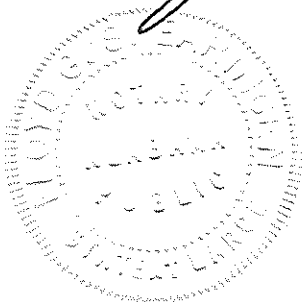
STATE OF ALABAMA  
BALDWIN COUNTY

Before me, Floyd G. Sweeney, the undersigned  
Notary Public in and for said county and state, personally  
appeared Kenneth Holley, who being by me first  
duly sworn, deposes and says that he has read the foregoing  
and that the same is true and correct.

Affiant further saith that he has not proposed to sell or  
dispose of, or offer for sale or disposal, any of his property,  
nor does he intend to sell or dispose or offer for sale or dis-  
posal, any of his property. Affiant further saith that the  
allegation in the plaintiff's attachment affidavit that the  
affiant was about to fraudulently dispose of his property, to-  
wit, his Ford automobile, is not true, and that he does not  
intend to sell, or offer for sale or disposal, the said automo-  
bile.

Kenneth Holley

Sworn to and subscribed before me on this the 27th day  
of January, 1955.



Floyd G. Sweeney  
Notary Public, State at Large.

**The State of Alabama, {**  
**Baldwin County**

KNOW ALL MEN BY THESE PRESENTS, That we, Kenneth Holley and J. B. Holley and Joe Broughton

are held and firmly bound unto C. H. Mathews  
 in the sum of Twelve Hundred DOLLARS,

for the payment of which, well and truly to be made, we jointly and severally bind ourselves, our heirs, executors and administrators, jointly and severally. And for the payment of the above bond, we waive our right of exemption as to personal property, under the Constitution and Laws of the State of Alabama.

Sealed with our seals and dated this 19th day of Jan 1955

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That whereas a Writ of Attachment issued by Circuit Court of Baldwin County  
 at the suit of said C. H. Mathews against  
 the estate of the above named Kenneth Holley  
 returnable before the said Judge of Circuit Court  
 as aforesaid, at his office on the 19th day of Jan, 1955, for the  
 sum of Six Hundred DOLLARS,  
 has been placed in the hands of Joe B. Wilkins, Sheriff

in and for the said County, and has been levied by him upon the following property, to-wit:

1-1955, Ford Truck Motor No  
45 MV. 104087 6955-ala Lic. 5-10464

and whereas, the property has been delivered to the said Kenneth Holley  
 on his entering into this bond.

NOW, THEREFORE, If the Defendant shall fail in said action, he or his securities shall return the specific property attached and above mentioned to the said Sheriff, within ten days after judgment against said Defendant in this suit, then this obligation to be void, otherwise to remain in full force and effect.

Taken and approved this 19th day of Jan, 1955  
Kenneth Holley (L. S.)  
J. B. Holley (L. S.)  
Joe Broughton (L. S.)

THE STATE OF ALABAMA }  
Baldwin County

CIRCUIT COURT AT BAY MINETTE, ALA.

KNOW ALL MEN BY THESE PRESENTS, That We, C. H. Matthews

....., of the County of Baldwin

are held and firmly bound unto Kenneth Holleyin the sum of Six-hundred (\$600.00) Dollars, tobe paid to the said Kenneth Holley

heirs, executors, administrators, or assigns, for which payment, 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, firmly by these presents.

Sealed with our seals and dated the ..... day of ....., 194.....

The Condition of this Obligation is such:

That whereas, the above bounden C. H. Matthews

has, on the day of the date

hereof, prayed an Attachment at the suit of C. H. Matthews, Plaintiff vs. Kenneth Holley,Defendant against the estate of above namedKenneth Holley

for the sum of Six-hundred (\$600.00) Dollars,  
and hath obtained the same, returnable to the Circuit Court of Baldwin County:

Now, if the said C. H. Matthews

should prosecute said Attachment to effect, and pay the said Defendant all such damages as he may sustain by the wrongful or vexatious suing out said Attachment, then the above obligation to be void; otherwise to remain in full force and effect.

And we and each of us hereby waive all rights of claims of exemption we or either of us have now, or may hereafter have, under the Constitution and Laws of the State of Alabama.

Signed, Sealed, and delivered the date above written.

C. H. Matthews (Seal)

E. J. Davidson Jr (Seal)

..... (Seal)

..... (Seal)

Approved, this 10th day of January, 1942

Benjamin H. Smith, Clerk

ATTACHMENT

The State of Alabama, {  
Baldwin County.

TO ANY SHERIFF OF THE STATE OF ALABAMA:

WHEREAS, C. H. Matthews

hath complained on oath to me, ALICE J. DUCK, Clerk of Circuit Court of Baldwin County, Ala., that

Kenneth Holley

is justly indebted to the Plaintiff C. H. Matthews

in the sum of Six hundred and n8/100 Dollars, and

C. H. Matthews having made affidavit and given bond  
as required by law, in such cases, you are hereby commanded to attach so much of the estate of

Kenneth Holley

as will be of value sufficient to satisfy said debt and costs, according to the complaint; and such estate, so  
attached unless replevied, so to secure, that the same may be liable to further proceedings thereon to be  
had by the Circuit Court of Baldwin County, Ala., at a term thereof, to be held at the Court House of said  
County, on \_\_\_\_\_ Monday of \_\_\_\_\_ 19\_\_\_\_  
next; when and where you must make known to said Court how you have executed this Writ.

WITNESS, my hand, this 7th day of January A. D., 1955.

Alice J. Duck Clerk.

SUMMONS AND COMPLAINT

STATE OF ALABAMA  
COUNTY OF BALDWIN

§  
§

TO ANY SHERIFF OF THE STATE OF  
ALABAMA

You are hereby commanded to summon Kenneth Holley 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 C. H. Matthews.

Witness my hand, this 1 day of January, 1955.

W. J. - H. H. H.  
Clerk

C. H. MATTHEWS,  
Plaintiff

§  
§

IN THE CIRCUIT COURT

of

-vs-

BALDWIN COUNTY, ALABAMA

KENNETH HOLLEY,  
Defendant

§  
§

At law

# \_\_\_\_\_

The Plaintiff claims of the defendant (\$600.00) six-hundred dollars, due by promissory note made by him on the 1st day of February, 1954 and payable on the 1st day of April, 1954, with interest thereon.

Wilson Hays  
Attorney for Plaintiff