

-----  
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.  
:

60  
Come the defendants and, without waiving but expressly in-  
sisting upon their motion heretofore filed in this cause to  
transfer the same to the equity side of this court, demand a  
jury trial herein in event the said cause is not transferred  
or, being transferred, is hereafter re-transferred to the law  
side of this court.

60  
*Stevens M. Conway M. Ford Ford Jones.*  
Attorneys for Defendants.

No  
RECORDED

Peoples Utility Co.

vs

Lexby Produce Co

Demand for Jury Trial

Filed Aug 2, 1932  
D. F. Rice

Clerk

STEVENS, McCORVEY, McLEOD, GOODE & TURNER  
ATTORNEYS AT LAW  
NINTH FLOOR, MERCHANTS NATIONAL BANK BUILDING  
MOBILE, ALABAMA

THOMAS M. STEVENS  
GESSNER T. McCORVEY  
WILLIAM McLEOD  
DAVID B. GOODE  
BEN D. TURNER  
C. M. A. ROGERS

August 30th, 1932.

Mr. T. W. Richerson,  
Bay Minette, Alabama.

Dear Sir: Re: Peoples Fertilizer Co. vs. Loxley Produce  
Company - No. 9673.

We hand you herewith amendment to petition to remove the above captioned cause to the Equity Court. You will recall that Judge Hare took this matter under advisement with the understanding that we would file an amendment to the motion.

Please mark the amendment filed and forward the same with the other papers in the cause, to Judge Hare at Monroeville. I will furnish him directly with the memorandum of authorities upon which I rely, as well as the ~~agreement~~ *amendment*.

We have furnished Mr. Gordy a copy of said amendment.

Yours very truly,

Stevens, McCorvey, McLeod, Goode & Turner,

By *Ben D. Turner*

BDT/H

Copy to

Judge Francis Hare,  
Bay Minette, Alabama.

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.

No. 9673

Come the defendants in this cause, demurrer having been interposed to its petition heretofore filed to remove this cause to the equity docket of this Court, and, by leave of Court heretofore granted, amend their petition for removal by adding, after the phrase "As your Honor may direct", in next to the last paragraph of said motion, the following averment:

"And defendants allege that at the time they agreed to and did furnish to the said A. G. Sirmon & Sons the seed hereinabove described, that the said Sirmon & Sons did not own and possess any property which was unincumbered and subject to the payment of their debts, except the homestead of the said A. G. Sirmon, and the crop to be grown by them in 1932, which defendants at the time of making said advances believed to be unincumbered; that the plaintiff by and through its duly authorized representative, the said Walter Stewart, knew the financial condition of the said A. G. Sirmon & Sons, and knew that defendants in making said advances were relying upon the 1932 crop to be grown by the said A. G. Sirmon & Sons as their security in making said advances; that it is customary in the vicinity of Loxley, Baldwin County, Alabama, for one engaged in the farm produce brokerage business, such as these defendants are engaged in, to receive, when produced and ready for market, the crops produced by seed furnished by such produce company, and that this custom and usage was known to the said plaintiff at the time of the transactions hereinabove set out; that said advances were made on credit, and at the time of making same, the defendants were looking to the 1932 crop as their particular security for the payment of the indebtedness thus created, and that plaintiff knew that defendants were relying for their security for said advances upon the 1932 crop to be grown by the said A. G. Sirmon & Sons."

Stevens M. Long McLeod Goble Grimes  
Attorneys for Defendants.

STATE OF ALABAMA, )  
MOBILE COUNTY. )

Personally appeared before me, Quinn L. Dugan,  
a Notary Public in and for said County in said State, 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 amend-  
ment to the motion heretofore filed in this cause for the removal  
of said cause to the equity docket of this Court, and that the  
same are true to the best of affiant's knowledge, information and  
belief.

James C. Grimes

Sworn to and subscribed before me this 3<sup>rd</sup> day of August,  
1932.

Quinn L. Dugan  
Notary Public, Mobile County, Alabama.

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.

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

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 the plaintiff's cause of action is based upon the purchase by the defendants of certain crops grown by A. G. Sirmon and others, which crops were mortgaged to the plaintiff; that at the time the defendants purchased said farm products they had no actual knowledge of the existence of said mortgage, nor did either of them have any actual knowledge of the existence of said mortgage; that on to-wit February 10th, 1932, the said A. G. Sirmon & Sons made arrangements with the defendants whereby the defendants would furnish them seed for a potato and corn crop for the year 1932, and that on that date the defendants furnished to the said A. G. Sirmon & Sons seed potatoes and seed corn of the approximate value of \$600.00 and thereafter, during March and April of the same year, furnished seed to the said A. G. Sirmon & Sons, the value of seed furnished in all being approximately \$690.00; that at the time said seed was furnished one Walter Stewart, being the general manager and controlling factor in the Peoples Fertilizer Company, a corporation, the plaintiff in this case, knew that defendants were

furnishing said seed for the purpose of permitting the said A. G. Sirmon & Sons to grow a crop for the year 1932, and knew that said defendants had no knowledge of the existence of the said mortgage to the plaintiff, and said Stewart, having such knowledge, said nothing to the defendants or to either of them about the existence of said mortgage but permitted the defendants to furnish said seed; that during the month of June, and on or about the 29th day thereof, the defendants received from the said A. G. Sirmon & Sons farm products grown from the seed which defendants furnished to the amount of approximately \$1,000.00; that said products were received at different times and that during all of the time that said products were being received by the defendants the said Walter Stewart, as general manager of the plaintiff, and therefore the plaintiff through the said Walter Stewart as its general manager, knew that defendants were buying said products but said nothing to the defendants of the existence of said mortgage but stood by and permitted the defendants, knowing that said defendants had no actual knowledge of the existence of said mortgage, to purchase said farm products. Said defendants allege that they advanced said seed in good faith and without actual knowledge of the existence of said mortgage and that the plaintiff through its conduct, acting by and through its general manager, is and ought to be estopped to claim title to said farm products or other proceeds thereof in the hands of these defendants. Defendants allege, however, that there is a surplus in their hands of approximately \$300.00 over and above the price and value of the bona fide advancements made by the defendants to the said A. G. Sirmon & Sons, which sum of money the defendants are ready to pay over to such person or persons as your Honor may direct.

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 M. Corney M. Ford*  
Attorneys for Defendants.

State of Alabama,

Mobile County.

Personally appeared before me, Romanus B. Baul  
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 fore-  
going motion; and that all matters of fact set up in the fore-  
going 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.

Romanus B. Baul  
Notary Public, Mobile County, Alabama.



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 One Thousand Two and 74/100 (\$1002.74) Dollars due from them by account on or about the 29th day of June, 1932, which sum of money, together with interest thereon, is still unpaid.

TWO

The plaintiff claims of the defendants the sum of One Thousand Two and 74/100 (\$1002.74) Dollars for money on or about the 29th 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

The plaintiff claims of the defendants the sum of One Thousand Two and 74/100 (\$1002.74) Dollars, damages for *at different date between May 1st and the* the conversion by said defendants ~~on or about the~~ 15th day of June, 1932, of one thousand fifty-two (1052) crates of corn and sixty-three thousand eight hundred forty-five (63,845) pounds of potatoes, and which property the plaintiff owned by reason of that certain mortgage executed by A. G. Sirmon, et al, to the plaintiff on or about January 2, 1932, which mortgage was recorded in the office of the Probate Judge of Baldwin County, Alabama, on the 6th day of January, 1932, in Mortgage Book 53, pages 100-1, which said amount, together with interest thereon, is herewith claimed.

*Gordon, Eugene Thigp*  
Att'y for the 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 Products 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 1st day of July, 19 52

T. M. Richardson, 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

9673

ORIGINAL  
No. RECORDED

The State of Alabama

County

## CIRCUIT COURT

Peoples Fertilizer Co

Plaintiff

vs.  
Loxley Products Co

Defendant

## Summons and Complaint

Filed this 1st day of

July, 1932

*T. W. Richardson*  
Clerk.

Gordon, Eddington &amp; Leigh

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 Munnos &  
James C. Grimes  
Individually and as  
a partnership doing bus-  
ness as Loxley Products Co*  
By *W. R. Stewart* Sheriff  
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 ALW.

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. Because there are no facts averred in said  
petition showing that these defendants have any equitable  
defense in this matter and which would dispose of this  
cause of action.

2. Because the complaint shows on its face that  
the said mortgage as executed by Sirmon, et al, was made  
after January 1, of the year in which the crop was grown  
and was recorded within a few days thereafter and all of  
which was before any advances were made to the said Sirmon  
by this plaintiff.

3. Because the recording of the said mortgage  
was notice to the said defendants that the plaintiff had a  
mortgage upon the said Sirmon crop, and there was no duty  
upon the plaintiff or its agent to go to the defendants and  
inform them of a fact which the law charged them with notice  
of.

4. Because there are no facts alleged in the pe-  
tition which show any duty upon the plaintiff or its agent  
to interfere with or advise the defendants in any of its  
transactions with A. G. Sirmon and Sons.

5. Because there are no facts averred in said petition which show an equitable right in the defendants as to the matters alleged in the complaint and which they cannot set up in an appropriate plea in a court of law.

6. Because it is nowhere averred or shown that the plaintiff or its agent knew that the defendants were making advances to Sirmon and Sons upon the belief, based upon facts warranting such belief, that they did have a lien upon the products grown and upon which the plaintiff had a mortgage.

7. Because it is not averred or shown that the said Sirmon would not have advanced or furnished the said seed to Sirmon and Sons, even though he had had personal knowledge of the plaintiff's mortgage.

8. Because the complaint shows that the said mortgage was duly recorded and this prior to the furnishing of any advances to Sirmon and Sons, and therefore the defendants were charged with knowledge of such mortgage, and therefore have no equitable defense against such mortgage.

9. Because the complaint shows on its face that the said mortgage was recorded and the law makes this<sup>a</sup> notice to the defendants, and the mere fact that they did not have actual knowledge, or that this plaintiff or its agent did not notify them of such mortgage, gives them no equitable defense in this cause.

*Gordon, Sension & Leigh*  
ATTORNEYS FOR PLAINTIFF

*Dear Sir*

*Friend Aug 5th/932  
J. W. Dickinson  
Clerk.*

*Yours truly  
J. W. Dickinson*

File this in case where  
the name Simon appears  
in last count.

R.B.G.