


STATE OF ALABAMA

BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summons Claude T. Creighton, to appear and plead, answer or demur within thirty days from the service hereto to the Bill of Complaint filed in the Circuit Court of Baldwin County, Alabama, by Baldwin County Oliver Tractor Company, Inc., a Corporation.

Witness my hand this the 4 day of April, 1962.

  
Alice J. Duck, Clerk

BALDWIN COUNTY OLIVER  
TRACTOR COMPANY, INC.,  
a Corporation

Plaintiff

VS

CLAUDE T. CREIGHTON

Defendant

Q

Q

Q

Q

Q

Q

1.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 5104

The Plaintiff claims of the Defendant the sum of, to-wit, ONE THOUSAND THREE HUNDRED SIXTY-SEVEN AND 60/100 (\$1,367.60) DOLLARS, for the breach of a written agreement entered into by the Defendant on, to-wit, October 26, 1960, by which he promised to pay to the Plaintiff the sum of, to-wit, EIGHT HUNDRED EIGHTY-THREE AND 80/100 (\$883.80) DOLLARS on October 26, 1961, and the sum of EIGHT HUNDRED EIGHTY-THREE AND 80/100 (\$883.80) DOLLARS on October 26, 1962, until the sum of, to-wit, ONE THOUSAND SEVEN HUNDRED SIXTY-SEVEN AND 60/100 (\$1,676.60) DOLLARS had been paid for the purchase of, One (1) Moline Combine; said written instrument provided that in the event of default of said payments, the entire amount would then become due, and the Plaintiff would seize said combine and sell the same at public or private sale, with or without advertisement, with or without notice to the Defendant and apply the proceeds of said sale to the remainder due under the said written instrument and in the event of a deficiency the Defendant agreed to pay the amount of the deficiency.

Plaintiff alleges that the Defendant defaulted in said written instrument in that he failed to make the payments provided therein, leaving a balance of principal due of, to-wit, ONE THOUSAND SEVEN HUNDRED SIXTY-SEVEN AND 60/100 (\$1,767.60) DOLLARS; that the said combine mentioned therein was seized and sold and that the sum of, to-wit, FOUR HUNDRED (\$400.00) DOLLARS was received for the combine, which sum, the Plaintiff alleges, was the reasonable market value of the combine at the time of the seizure and at the time of the sale, and that after applying the amount received from the sale, of the said combine the balance due under the said written instrument, a balance of, to-wit, ONE THOUSAND THREE HUNDRED SIXTY-SEVEN AND 60/100 (\$1,367.60) DOLLARS remains due and unpaid. Plaintiff claims the additional sum of, TWO HUNDRED FIVE AND 14/100 (\$205.14) DOLLARS as a reasonable attorneys fee averring that, to-wit, TWO HUNDRED FIVE AND 14/100 (\$205.14) DOLLARS for a reasonable attorneys fee as is provided for in said written instrument and in addition thereto interest at the highest legal contract rate after maturity on the unpaid balance, as provided for in the written instrument.

WILTERS, BRANTLEY & NESBIT

BY:

*[Signature]*  
Attorneys for the Plaintiff

FILED

APR 4 1962

ALICE J. DUCK, CLERK  
REGISTER

64-4-12-62

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

AT LAW

NO. 5104

BALDWIN COUNTY OLIVER TRACTOR  
COMPANY, INC., a Corporation

Plaintiff

VS

CLAUDE T. CREIGHTON

Defendant

FILED

APR 4 1962

ALICE J. DUCK, CLERK  
REGISTER

Walters, Brantley & Nesbit  
Box 555  
Robertsdale, Alabama

Sheriff claims 100 miles at  
Ten Cents per mile Total \$ 10.00  
TAYLOR WILKINS, Sheriff

BY [Signature]  
DEPUTY SHERIFF

Served 4 day of Apr 1962  
on 12 day of Apr 1962  
Served a copy of the within At C  
Claude T. Creighton

Service on \_\_\_\_\_

TAYLOR WILKINS, Sheriff

By [Signature]

*Make Jury - Trial for the Plaintiff  
In the sum of \$700.00 including interest  
plus 205.00  
Attorney fees  
James T. Hearn*

BALDWIN COUNTY OLIVER  
TRACTOR COMPANY, INC.,  
a corporation,

Plaintiff,

Vs.

CLAUDE T. CREIGHTON,

Defendant.

X

X

X

X

X

X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

CASE NO. \_\_\_\_\_

AMENDMENT TO COMPLAINT

Comes now the Plaintiff in the above styled cause and  
amends his Complaint by adding the following Counts:

2.

The Plaintiff claims of the Defendant \$1,367.60 due from  
him on an account stated between the Plaintiff and the Defendant  
on the 29 day of October, 1961, which sum of  
money, with interest thereon, is due and unpaid.

3.

The Plaintiff claims of the Defendant \$1,367.60 due from  
him by account on the 26th day of October, 1960, for merchan-  
dise, goods and chattels sold by the Plaintiff to the Defendant  
on to-wit, the 26th day of October, 1960, which sum of money,  
with interest thereon, is still due and unpaid.

WILTERS, BRANTLEY & NESBIT

BY: 

Attorneys for the Plaintiff

*Filed 3-11-64*

BALDWIN COUNTY OLIVER TRACTOR COMPANY,  
INC., a corporation

PLAINTIFF

VS

CLAUDE T. CREIGHTON

DEFENDANT

IN THE CIRCUIT COURT OF

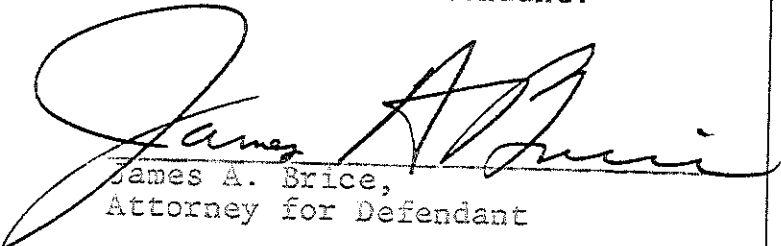
BALDWIN COUNTY, ALABAMA

AT LAW NO. 5904

DEMURRER

Comes now the Defendant in the above styled cause and for answer to Count One heretofore filed by the Plaintiff, says and demur thereto:

- 1) For that there is no equity in the Complaint.
- 2) For aught that appears from the Bill of Complaint, the Plaintiff has received payment in full from the Defendant.

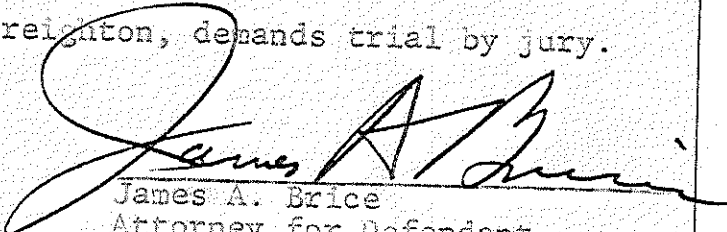
  
James A. Brice,  
Attorney for Defendant

The Defendant, Claude T. Creighton, demands trial by jury.

FILED

MAY 14 1962

ALICE J. DUCK, CLERK  
REGISTER

  
James A. Brice  
Attorney for Defendant

BALDWIN COUNTY OLIVER TRACTOR COMPANY,  
INC., a corporation,

PLAINTIFF

VS

CLAUDE T. CREIGHTON,

DEFENDANT

) IN THE CIRCUIT COURT OF  
) BALDWIN COUNTY, ALABAMA  
) AT LAW, NO. 5104

AMENDED ANSWER

Now comes the defendant in the above styled cause and amends  
his answer heretofore filed by adding thereto the following  
separate and several special pleas;

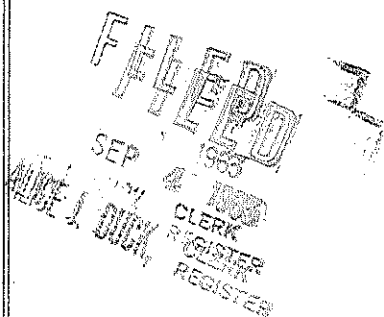
VIII

The debt for the recovery of which this suit was brought,  
was paid in full before the action was commenced.

*James A. Brantley*  
Attorney for Defendant

I certify that a copy of this answer  
has been mailed, postage paid, to Wiltsers  
& Brantley, attorneys for Plaintiff, this  
3rd day of September, 1963.

*James A. Brantley*  
Attorney for Defendant



BALDWIN COUNTY OLIVER  
TRACTOR COMPANY, INC.,  
a Corporation,

Plaintiff,

Vs.

CLAUDE T. CREIGHTON,

Defendant.

X

X

X

X

X

X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

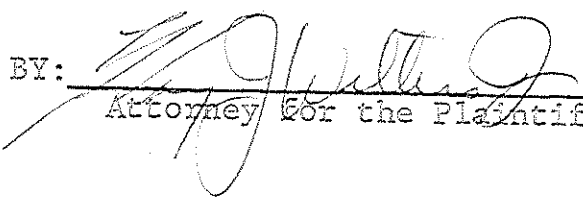
AT LAW

CASE NO. 5104

Comes now the Plaintiff in the above styled cause and amends his answer to paragraphs 3, 4, and 5 of the Defendant's answers and says to each paragraph thereof, separately and severally: That the Defendant failed to return or to offer to return the said Moline Combine to the Plaintiff in substantially as good condition as it was at the time the property was transferred to the Defendant. Further that the Defendant waited approximately one year before he returned the combine and during that period of time never complained to the Plaintiff of any breach of warranty.

WILTERS & BRANTLEY

BY:

  
Attorney for the Plaintiff

FILED  
MAR 9 1964  
ALICE I. DUCK, CLERK  
REGISTER

BALDWIN COUNTY OLIVER TRACTOR COMPANY,)  
INC., a corporation,

PLAINTIFF

VS

CLAUDE T. CREIGHTON,

DEFENDANT

) IN THE CIRCUIT COURT OF

) BALDWIN COUNTY, ALABAMA

) AT LAW, NO. 5104  
)

ANSWER

Comes now the defendant in the above styled cause, and for answer to the complaint heretofore filed, interposes the following separate and several pleas thereto:

I

Not guilty.

II

The material allegations thereof are untrue.

III

Comes the defendant, pleading specially by way of recoupment, and claims of the plaintiff One Thousand Seventy-five and 34/100 (\$1,075.34) Dollars, damages for a breach of warranty in the sale of one (1) Moline Combine by the plaintiff to the defendant, on, to-wit: the 22nd day of October 1960 which the plaintiff warranted to be in good operating condition, fit for use in combining soybeans and further warranted against any defects in same through the fall, 1960 soybean combining season, when in fact said Moline Combine was not in good operating condition; that it broke down on November 3, 1960, and was not fit for further use by defendant in combining soybeans.

IV

Comes the defendant, pleading specially and claims of the plaintiff One Thousand Seventy-five and 34/100 (\$1,075.34) Dollars, for that on October 25, 1960, the plaintiff and defendant were "seller" and "buyer" respectively, as defined by Code of Alabama, 1940, Title 57, Section 1; that Title 57, Section 75, Code of



Alabama provides in part as follows:

"(1) Where there is a breach of warranty by the seller, the buyer may at his election: (d) rescind the contract to sell or the sale and refuse to receive the goods, or if the goods have already been received, return them or offer to return them to the seller and recover the price or any part thereof which has been paid. (and) (6) The measure of damages for breach of warranty is the loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty".

Defendant avers that on November 2, 1960 he paid plaintiff Six Hundred and No/100 (\$600.00) Dollars as part of the purchase price for said Moline Combine; that defendant paid out Four Hundred Seventy-five and 34/100 (\$475.34) Dollars for soybean combining hired and for repair work in an effort to make said Moline Combine fit for the operation plaintiff warranted it would perform; that in October of 1961 defendant returned said Moline Combine to plaintiff; that because of plaintiff's breach of warranty as to fitness of said Moline Combine to perform the job of combining defendant is entitled to rescind said contract which is the basis of plaintiff's complaint, and to recover from plaintiff the sum of Six Hundred and NO/100 (\$600.00) Dollars, the part of the purchase price paid by defendant to the plaintiff; and to recover Four Hundred Seventy-five and 34/100 (\$475.00) Dollars additionally as damages, all as provided by said Title 57, Section 75 as above; and that plaintiff may not recover in this action.

V

Comes the defendant, pleading specially, and avers that plaintiff cannot recover in this action in that a material part of the consideration for the execution of the instrument as alleged by plaintiff was the warranty by the plaintiff that the Moline Combine sold to defendant by the plaintiff was fit for the job of combining soybeans when in fact it was mechanically defective for said job; that plaintiff has failed or refused to honor its said

warranty or to repair said combine; that as a proximate result thereof there is want of consideration for said instrument, hence plaintiff may not recover.

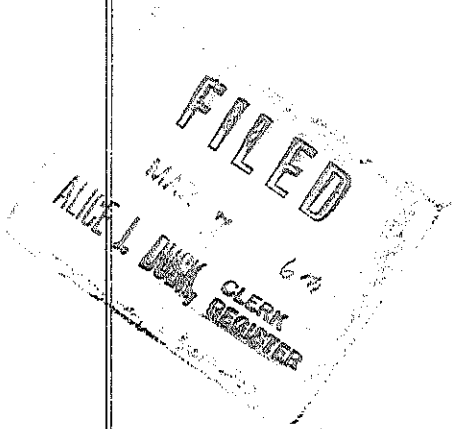
VI.

*The debt has been paid.*

*James A. Brantly*  
Attorney for defendant

I certify that a copy of this answer has been mailed, postage paid, to Wilters & Brantly, Attorneys for Plaintiff, this 6th day of March 1963.

*James A. Brantly*  
Attorney for Defendant



BALDWIN COUNTY OLIVER TRACTOR X  
COMPANY, INC., a corporation, X

Plaintiff, X

Vs. X

CLAUDE T. CREIGHTON, X

Defendant. X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

CASE NO. 5104

Comes now the Plaintiff in the above styled cause and in  
reply to the Defendants pleas says as follows:

1.

That he denies the allegations of pleas numbered III, IV,  
and V.

WILTERS, BRANTLEY & NESBIT

BY: 

Attorney for the Plaintiff

BALDWIN COUNTY OLIVER TRACTOR COMPANY,  
INC., a corporation,

PLAINTIFF

VS

CLAUDE T. CREIGHTON,

DEFENDANT

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW, NO. 5104

AMENDED ANSWER

Now comes the defendant in the above styled cause and amends his answer heretofore filed by adding thereto the following separate and several special pleas:

VI

There was no consideration for the agreement made a basis of this suit, hence plaintiff cannot recover.

VII

That the agreement alleged by plaintiff to have been entered into by the parties on, to-wit: October 26, 1960, was in fact executed by the plaintiff and defendant on Sunday, October <sup>16th</sup> ~~26~~, 1960, at defendant's farm East of Elberta, in Baldwin County, Alabama; that said agreement is void under the laws of the State of Alabama; hence plaintiff cannot recover.

*James A. Brantley*  
Attorney for Defendant

I certify that a copy of this answer has been mailed, postage paid, to Wilters & Brantley, attorneys for Plaintiff, this 9th day of March, 1963.

*James A. Brantley*  
Attorney for Defendant

FILED  
MAR 11 1963  
ALICE J. DUCK, CLERK  
RECEIVED

JURY LIST - MARCH 9, 1964.

- Baldwin in CO*  
*Instructor CO*  
*VS*  
*5104*
- ~~1. Beck, Charles C., Businessman, Lillian~~
  - ~~2. Bialock, Greene C., Carpenter, Fairhope~~
  - ~~3. Bloch, Herman, Farmer, Elberta~~
  - ~~4. Malone, T.E., Merchant, Fairhope~~
  - ~~5. Mason, Jimmy, Salesman, Fairhope~~
  - ~~6. Mosley, Rufus, Farmer, Stapleton~~
  - ~~7. Eslava, Clarance, Farmer, Mag. Spgs.~~
  - ~~8. Haden, James T., Salesman, Robertsdale~~
  - ~~9. Quinley, Wilburn, Farmer, Bay Minette~~
  - ~~10. Rhodes, Charles R., Farmer, Foley~~
  - ~~11. Rhodes, Larkin T., Jr., Farmer, Bay Minette~~
  - ~~12. Rieben, Ray, Paper Mill, Bay Minette~~
  - ~~13. Roberson, Mutt, Laborer, Robertsdale~~
  - ~~14. Lazzari, Anglo, Farmer, Belforest~~
  - ~~15. Lazzari, Joe, Jr., Farmer, Belforest~~
  - ~~16. Lazzari, John, Farmer, Belforest~~
  - ~~17. Lager, J.E., Salesman, Foley~~
  - ~~18. Little, W.F., Mgr. Bell Tele. Commercial, Spanish Fort~~
  - ~~19. Robinson, Dale L., Ins. Agt., Foley~~
  - ~~20. Sanders, E. Frank, Banker, Foley~~
  - ~~21. Andress, Herbert E., Farmer, Foley~~
  - ~~22. Dickey, O.L., Butcher, Robertsdale~~
  - ~~23. Crosby, James W., Bookkeeper, Foley~~
  - ~~24. Arnould, M.L., Floor Finisher, Robertsdale~~
  - ~~25. Barton, John, Jr., Newport, Bay Minette~~
  - ~~26. Thompson, Albert M., Merchant, Bay Minette~~
  - ~~27. Wenzel, Emmett O., Merchant, Gulf Shores~~
  - ~~28. Woodward, C.H., Merchant, Fairhope~~
  - ~~29. Wright, Justice D., Forester, Stapleton~~
  - ~~30. Boan, Jessie Forest, Farmer, Stapleton~~
  - ~~31. Bung, Floyd, Merchant, Fairhope~~
  - ~~32. Oblak, John, Jr., Farmer, Silverhill~~
  - ~~33. Leiterman, Nick, Civil Service, Elberta~~
  - ~~34. Smith, Clinton, Defense Worker, Bay Minette~~
  - ~~35. Suddith, Jack, Officer Manager, Bay Minette~~
  - ~~36. Bosby, Eugene, Construction Worker, Fairhope~~
  - ~~37. Bryant, Nathan, Clerk, Fairhope~~
  - ~~38. Denton, Alphonse, Carpenter, Fairhope~~
  - ~~39. Lamar, Reuben, Laborer, Foley~~
  - ~~40. McReynolds, Leon, Labor Worker, Bay Minette~~
  - ~~41. Moore, Jessie, Court House, Bay Minette~~
  - ~~42. Wilson, Frank E., Brookley Field, Daphne~~
  - ~~43. Tullios, Abe, Brookley Field, Fairhope~~
  - ~~44. Nix, C. Herbert, Reserve Fleet, Bay Minette~~

P XXXX

D XXXXX

41  
12  
29  
12  
17  
8  
9