

THE COURT CHARGES THE JURY THAT IF YOU ARE REASONABLY SATISFIED
WITH THE EVIDENCE IN THIS CASE, YOU WILL FIND FOR THE DEFENDANT,
J. I. CASE COMPANY, INC.

D-1

Refused,
Sufair y. madison
Judge

THE COURT CHARGES THE JURY THAT IF YOU ARE REASONABLY SATISFIED FROM THE EVIDENCE THAT THE EQUIPMENT SOLD BY THE DEFENDANT, DIXIE FARM EQUIPMENT COMPANY, TO THE PLAINTIFF HAS BEEN SUBJECTED TO MISUSE, NEGLIGENCE, ALTERATIONS OR ACCIDENT WHICH WAS THE PROXIMATE CAUSE OF THE FAILURE OF ANY PART, YOU CANNOT FIND FOR THE PLAINTIFF.

D 2

Given
Sejan J. Masleson
Judge.

THE COURT CHARGES THE JURY THAT IF YOU ARE NOT REASONABLY SATISFIED FROM THE EVIDENCE THAT DIXIE FARM EQUIPMENT COMPANY SELECTED THIS PARTICULAR MERCHANDISE FOR A PARTICULAR PURPOSE, YOU CANNOT FIND FOR THE PLAINTIFF AGAINST THE DEFENDANT, J. I. CASE COMPANY, INC., UNDER THE THEORY OF ALLEGATIONS OF IMPLIED WARRANTY FOR A PARTICULAR PURPOSE.

D3

*Refused,
J. I. Case
Judge.*

THE COURT CHARGES THE JURY THAT IF YOU ARE NOT REASONABLY SATISFIED FROM THE EVIDENCE THAT THE DEFENDANT, J. I. CASE COMPANY, INC., SELECTED THIS PARTICULAR MERCHANDISE FOR A PARTICULAR PURPOSE, YOU CANNOT FIND FOR THE PLAINTIFF AGAINST THE DEFENDANT, J. I. CASE COMPANY, INC., UNDER THE THEORY OF ALLEGATIONS OF IMPLIED WARRANTY FOR A PARTICULAR PURPOSE.

D4

*Refused
Jeffery J. MacLennan
Judge*

THE COURT CHARGES THE JURY THAT YOU ARE ENTITLED TO GIVE INTERPRETATION TO THE TERMS OF THE WRITTEN WARRANTY WHICH HAS BEEN FILED AS EVIDENCE IN THIS CAUSE, AND IF YOU ARE REASONABLY SATISFIED THAT THE DEFENDANT, J. I. CASE COMPANY, INC., WARRANTS PRODUCTS TO ITS AUTHORIZED DEALERS AND THEY IN TURN WARRANT SAID PRODUCTS TO THE PURCHASERS, YOU CANNOT FIND FOR THE PLAINTIFF AGAINST THE DEFENDANT, J. I. CASE COMPANY, INC.

D 5

Refused
Jeffrey G. MacLennan
Judge

THE COURT CHARGES THE JURY THAT THE SIGNIFICANCE OF THE WRITTEN WARRANTY FILED IN EVIDENCE IN THIS CAUSE IS THAT THE DEFENDANT, J. I. CASE COMPANY, INC., WARRANTS PRODUCTS IT SELLS TO ITS AUTHORIZED DEALER, WHO IN TURN WARRANTS SAID PRODUCTS TO THE ORIGINAL PURCHASER FOR THE PERIOD AND TERM AS SET OUT IN SAID WARRANTY, THEREFORE, YOU CANNOT FIND FOR THE PLAINTIFF AGAINST THE DEFENDANT, J. I. CASE COMPANY, INC., UNDER THE WRITTEN WARRANTY.

D6

Refused
Sefer J. MacLennan
Judge.

THE COURT CHARGES THE JURY THAT IF YOU ARE REASONABLY SATISFIED FROM THE EVIDENCE THAT THE DEFENDANT, DIXIE FARM EQUIPMENT COMPANY, IS MERELY A FRANCHISED, INDEPENDENT DEALER FOR THE SALE OF J. I. CASE COMPANY, INC., PRODUCTS AND NOT AN AGENT FOR THE SAID J. I. CASE COMPANY, INC., YOU CANNOT FIND FOR THE PLAINTIFF AGAINST THE DEFENDANT, J. I. CASE COMPANY, INC.

D 7

*Refused
Jeffery G. Madlock
Judge*

THE COURT CHARGES THE JURY THAT IF YOU ARE REASONABLY SATISFIED FROM THE EVIDENCE THAT THE DEFENDANT, DIXIE FARM EQUIPMENT COMPANY, INC., IS NOT THE AGENT, SERVANT OR EMPLOYEE OF J. I. CASE COMPANY, INC., YOU CANNOT FIND FOR THE PLAINTIFF AGAINST THE DEFENDANT, J. I. CASE COMPANY, INC.

D8

Refused
Sefar J. Macleburn
Judge.

THE COURT CHARGES THE JURY THAT IN EACH COUNT OF THE COMPLAINT THE PLAINTIFF ALLEGES THE PARTICULAR PURPOSE FOR WHICH THE EQUIPMENT WAS REQUIRED, THEREBY ALLEGING AN IMPLIED WARRANTY. THE COURT, THEREFORE, CHARGES THE JURY THAT YOU MUST BE REASONABLY SATISFIED FROM THE EVIDENCE THAT THE PLAINTIFF RELIED ON THE SKILL AND JUDGEMENT OF THE SELLER IN THE SELECTION OF THE PARTICULAR MERCHANDISE OR HE FAILS TO ESTABLISH THE EXISTENCE OF AN IMPLIED WARRANTY FOR FITNESS FOR A PARTICULAR PURPOSE.

D9

Refused
Jelmer J. MacLennan
Judge

THE COURT CHARGES YOU THAT IF YOU ARE REASONABLY SATISFIED FROM THE EVIDENCE THAT THIS COMBINE WAS FIT FOR THE ORDINARY PURPOSES FOR WHICH EQUIPMENT OF THIS TYPE IS USED, THEN YOU MUST FIND FOR THE DEFENDANTS.

D10

Refused
J. J. Marshall
Judge

THE COURT CHARGES THE JURY THAT TO FIND FOR THE PLAINTIFF YOU MUST BE REASONABLY SATISFIED FROM THE EVIDENCE THAT THE FOLLOWING THREE ELEMENTS EXISTED AND HAVE BEEN PROVEN:

1. THAT THERE WAS AN EXPRESS WARRANTY OF MERCHANTABILITY OR AN IMPLIED WARRANTY OF MERCHANTABILITY OR AN IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.
2. THAT THERE WAS A BREACH OF THIS WARRANTY.
3. THAT THE DAMAGES, IF ANY, ARE THE PROXIMATE CONSEQUENCE OF THE BREACH OF THE WARRANTY.

IF YOU ARE NOT REASONABLY SATISFIED FROM THE EVIDENCE THAT ALL THREE OF THESE CONDITIONS EXISTED AND WERE PROVEN, YOU MUST FIND FOR THE DEFENDANT.

D11

*Sweeney,
Deputy J. Marshall
Judge.*

PLAINTIFF'S CHARGE NO. 1

WHERE THE SELLER AT THE TIME OF CONTRACT HAS REASON TO KNOW ANY PARTICULAR PURPOSE FOR WHICH THE GOODS ARE REQUIRED AND THE BUYER RELIES ON THE SELLER'S SKILL OR JUDGMENT TO SELECT FURTHER SUITABLE GOODS, THERE IS AN IMPLIED WARRANTY THAT THE GOODS ARE FIT FOR SUCH PURPOSE UNLESS THERE IS A WRITTEN EXCLUSION OF SUCH IMPLIED WARRANTY AND IT IS WRITTEN IN A CONSPICUOUS MANNER. A WARRANTY THAT GOODS SHALL BE MERCHANTABLE IS IMPLIED IN A CONTRACT FOR THEIR SALE IF THE SELLER IS A MERCHANT WITH RESPECT TO THE GOODS OF THAT KIND. GOODS TO BE MERCHANTABLE MUST BE AT LEAST SUCH AS ARE FIT FOR THE ORDINARY PURPOSE FOR WHICH SUCH GOODS ARE USED. EXPRESS WARRANTY BY THE SELLER WILL CREATE AS FOLLOWS: ANY AFFIRMATION OF FACT OR PROMISE MADE BY THE SELLER TO THE BUYER WHICH RELATES TO THE GOODS AND BECOMES PART OF THE BASIS FOR THE BARGAIN CREATES AN EXPRESS WARRANTY THAT THE GOODS SHALL CONFORM TO THE AFFIRMATION OR PROMISE. IT IS NOT NECESSARY TO THE CREATION OF AN EXPRESS WARRANTY THAT THE SELLER USE ORAL WORDS SUCH AS "WARRANTY" OR "GUARANTEE" OR THAT HE HAD A SPECIFIC INTENTION TO MAKE A WARRANTY.

Given (4)

Refused ()

J. J. Mason
Circuit Judge

PLAINTIFF'S CHARGE NO. 2

IN ORDER TO EXCLUDE OR MODIFY AN IMPLIED WARRANTY OF MERCHANTABILITY BY A WRITTEN INSTRUMENT, THE EXCLUSION OF SUCH IMPLIED WARRANTY FOR FITNESS MUST BE WRITTEN AND MUST BE CONSPICUOUS.

Given:

Refused:

Jefair J. Maddux
Circuit Judge

PLAINTIFF'S CHARGE NO. 3

WHERE A MANUFACTURER OR DEALER CONTRACTS TO SUPPLY AN ARTICLE, WHICH THE MANUFACTURER OR PRODUCER OR IN WHICH THE TERMS TO BE APPLIED TO A PARTICULAR PURCHASE SO THAT THE BUYER NECESSARILY TRUSTS THE JUDGMENT OR SKILL OF THE MANUFACTURER OR DEALER THERE IS IN THAT CASE AN IMPLIED TERM OF WARRANTY THAT IT SHALL BE REASONABLY FIT FOR THE PURPOSE TO WHICH IT IS TO BE APPLIED.

Given

Refused

Julian J. Madole
Circuit Judge

PLAINTIFF'S CHARGE NO. 4

I CHARGE THE JURY THAT IF YOU ARE REASONABLY SATISFIED FROM THE EVIDENCE THAT THE COMBINE REFERRED TO IN THIS SUIT WAS MADE AND SOLD FOR THE PURPOSE OF HARVESTING SOY BEANS AND GRAIN AND THAT THE PLAINTIFF BOUGHT THIS COMBINE FROM THE DEFENDANT, DIXIE FARM EQUIPMENT, INC., AND THAT IT WAS NOT REASONABLY FIT FOR SUCH USE THERE IS A BREACH OF IMPLIED WARRANTY AND THE PLAINTIFF IS ENTITLED TO RECOVER.

Given

Refused

Jeffrey J. MacArthur
Circuit Judge

PLAINTIFF'S CHARGE NO. 5

I CHARGE THE JURY THAT

~~_____~~
~~_____~~
~~_____~~
~~_____~~
AN UNSUCCESSFUL EFFORT TO REMEDY THE DEFECTS RENDERS
THE SELLER LIABLE ON ~~IT~~ WARRANTY. THE BUYER IS NOT BOUND TO
ALLOW HIM A SECOND OPPORTUNITY OR TO PERMIT HIM TO TINKER
WITH THE ARTICLE INDEFINATELY IN HOPE THAT IT MAY UNTIMATELY
BE MADE TO COMPLY WITH THE WARRANTY.

Given ()

Refused (X)

J. J. M. M. M.
Circuit Judge