

4164  
1293  
MOTION FOR A NEW TRIAL

FRANK VASUT,  
1300  
Plaintiff

-vs-

JAMES SALAC,  
Defendant.

IN THE CIRCUIT COURT OF BALDWIN COUNTY,  
ALABAMA. AT LAW.

TO THE HONORABLE F. W. HARE,  
JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA:

Comes now the Defendant, James Salac and files this his  
petition or motion for and moves the Court for a new trial in the above  
stated cause and sets forth and assigns the grounds in support of his  
motion as follows, to-wit:

1. Misconduct of the Plaintiff and his witnesses.
2. Accident and surprise which ordinary prudence could  
not have guarded against.
3. Excessive damages.
4. That the verdict or decision is not sustained by the  
greater preponderance of the evidence, and is contrary to law.
5. Newly discovered evidence which he could not with  
reasonable diligence have discovered or produced at the trial which is  
material for your Petitioner.

*James Salac*  
PETITIONER

Sworn and subscribed to before me on this 10th day of May,  
1939.

*Chas. H. Hare*  
NOTARY PUBLIC, BALDWIN  
COUNTY, ALABAMA.

*The foregoing motion being pre-  
sented to me on May 12, 1939, and being  
understand and considered is ordered  
annulled and denied*

*This May 27, 1939.*

*F. W. Hare*  
Judge

1509



FRANK VASUT,  
Plaintiff,  
VS.  
JAMES SALAC,  
Defendant.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA,  
AT LAW.

And now comes the Plaintiff and demurs to the Defendant's answer and set-off heretofore filed in this cause, and to each count thereof, separately and severally, and for grounds thereof says:

1. That said count states no facts which constitute a defense to the Plaintiff's cause of action.
2. That the facts alleged in said count neither traverse nor confess and avoid the Plaintiff's claim.
3. That said count sets out no facts showing an indebtedness from the Plaintiff to the Defendant.
4. That said count does not show any duty upon the Plaintiff to pay the indebtedness set out by the Defendant.
5. That said count does not set out any contract existing between the Plaintiff and the Defendant upon which the said claim is based.

Beiber & Beiber  
Attorneys for Plaintiff.

RECORDED

DEFENDERS

FRANK VASUT,

Plaintiff,

VS.

JAMES SALAC,

Defendant.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA,

AT LAW.

*Filed January 28, 1939*

*R.S. Buck, Clerk*

*By: M. H. H. Montgomery Deputy*

1210  
260  
950  
260  
0121

ANSWER AND SET-OFF

FRANK VASUT,

Plaintiff

-VS-

JAMES SALAC,

Defendant


IN THE CIRCUIT COURT OF

BAWDWIN COUNTY, ALABAMA.

AT LAW.

ONE: The Defendant for answer to the said complaint says that he is not guilty of the matter as alleged therein and specifically denies and demands strict proof of paragraphs One, Two, Three, Four, Five and Six of the said complaint as filed thereon, and each and every allegation thereof.

TWO: The Defendant as the defense to the action of the Plaintiff says that at the time the said action was commenced, the Plaintiff was indebted to the Defendant in the sum of forty Five Dollars (\$45.00) for board for this mule from the 16th day of February, 1938 until the 18th day of July, 1938 at the rate of Twenty-five cents per day, and for board for this mule from the 18th day of July until the date of this case whatever the amount may be at twenty-five cents per day which is a reasonable amount for board for this mule, which he hereby offers to set-off against the demand of the Plaintiff and he claims judgment for any excess of the Plaintiff's demand that might be at the time of the disposition of this case.

  
ORVIS M. BROWN,  
Attorney for Defendant.



STATE OF ALABAMA, )

BALDWIN COUNTY. )

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon JAMES SALAC 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 the same, then and there to answer the complaint of FRANK VASUT.

WITNESS my hand this 18<sup>th</sup> day of July, 1938.

R. S. Duck  
Clerk.

FRANK VASUT,

Plaintiff,

VS.

JAMES SALAC,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW.

1. The Plaintiff claims of the Defendant ONE HUNDRED and FIFTY (\$150.00) DOLLARS damages for a breach of warranty in the sale of a mule by him to the Plaintiff, on the 2nd day of October, 1937, which the Defendant warranted to be sound and free from all defects, when, in fact, the said mule was unsound and suffering with an ailment of the left front leg, which rendered the said mule worthless for the purposes for which the Plaintiff purchased it.

2. The Plaintiff claims of the Defendant ONE HUNDRED and FIFTY (\$150.00) DOLLARS damages for a breach of warranty in the sale of a mule by him to the Plaintiff, on the 2nd day of October, 1937, which the Defendant warranted to be sound and free from all defects, when, in fact, the mule was suffering with a disease of the left fore-leg, commonly called "spavin"; that the said warranty on the part of the Defendant was falsely and fraudulently made by the Defendant and that the Plaintiff relied thereupon to his damages, hence this suit.

3. The Plaintiff claims of the Defendant ONE HUNDRED and FIFTY (\$150.00) DOLLARS damages, for that, whereas, on the 2nd day of October, 1937, the Defendant sold and delivered to the Plaintiff a mule, which the Defendant falsely and fraudulently represented to be sound and free from physical defect, when, in fact, the said mule was at the time suffering with a defect which rendered it unfit for

the purposes for which the Plaintiff purchased it, which was known to the Defendant, and the Plaintiff relying upon the representations of the Defendant was induced to purchase the said mule as aforesaid, all his damages as aforesaid, hence this suit.

4. The Plaintiff claims of the Defendant the sum of ONE HUNDRED and FIFTY (\$150.00) DOLLARS due from the Defendant to the Plaintiff for monies received by the Defendant to the use of the Plaintiff, on the 2nd day of October, 1937, with the interest thereon due and unpaid.

5. The Plaintiff claims of the Defendant ONE HUNDRED and FIFTY (\$150.00) DOLLARS damages, for that whereas, on to-wit, October 2nd, 1937, the Defendant sold and delivered to the Plaintiff a mule; that the Defendant falsely and fraudulently represented to the Plaintiff that the said mule was sound and free from defect; that the Plaintiff believing and relying upon said representations purchased the said mule; that the said mule was at the time it was purchased by the Plaintiff suffering with a defect in its left fore-leg, commonly called "spavin", which rendered it useless to the Plaintiff, all to the damage of the Plaintiff as aforesaid, hence this suit.

6. The Plaintiff claims of the Defendant ONE HUNDRED and FIFTY (\$150.00) DOLLARS damages, for that whereas, on October 2nd, 1937, the Defendant sold and delivered to the Plaintiff a mule; that the Defendant falsely and fraudulently represented to the Plaintiff that the said mule was sound and free from blemishes, when, as a matter of fact, it was suffering with a defect which rendered it useless for the purposes for which the Plaintiff bought it; that the Plaintiff immediately upon the discovery of the said defect reported the same to the Defendant and was requested by the Defendant to give the mule another chance, which was done; that the said mule continued to be lame and suffer from the defect with which it was suffering at the time it was sold by the Defendant to the Plaintiff and that the said mule was then delivered to and accepted by the Defendant; that the Defendant now refuses to return the purchase price paid by the Plaintiff to the Defendant or to make any amends for damages, all to the damage of the Plaintiff, hence this suit.

B. B. B. B. B. B.  
Attorneys for Plaintiff.

Plaintiff demands a trial by Jury.

B. B. B. B. B. B.  
Attorneys for Plaintiff.



RECORDED  
Book 82667 Robert Adams

SUMMONS AND COMPLAINT

FRANK VASUT,

Plaintiff,

VS.

JAMES SALAC,

Defendant.

IN THE CIRCUIT COURT OF

BALWIN COUNTY, ALABAMA,

AT LAW.

Filed this 19 day July 1935

R. S. Duck

Clk.

194

Printed Aug 5<sup>th</sup> 1935

Serving copy of within SUBPOENA and  
complaint on

James Salac

M. H. Walters  
John Adams Deputy Sh

We the Jury  
find for the plaintiff  
within the \$150.00 with  
off witness fees etc  
of our Court \$163.50  
Blair Dickman  
Juryman

1935  
0107  
0107

THE STATE OF ALABAMA

BALDWIN COUNTY

S.D. Page No. ....

CIRCUIT COURT

Case No. 464

Spring

Term, 193 9

To any Sheriff of the State of Alabama, GREETING:

You are hereby commanded to summon George Perrin (R'dale), James Kiser (R'dale), Aron Giddens (R'dale), A. C. Jeter (R'dale).

if to be found in your County, at the instance of the Defendant

to be and appear before the honorable, the Judge of the Circuit Court of Baldwin County, at the Court House thereof,

by 8:30 o'clock of the forenoon, on the 13th day of April 193 9

and from day to day and term to term of said Court until discharged by law, then and there to testify, and the truth to

say, in a certain cause pending, wherein Frank Vasut Plaintiff

and James Salas Defendant.

Herein fail not and have you then and there this Writ.

Given under my hand and seal, this 4th day of April 193 9

R. S. DUCK

Clerk.

Charles Thompson  
Deputy

Received in office this 5<sup>th</sup> day of

April

1939

W.R. Stuart

Sheriff.

I have executed this writ on.

George Perrin 4-6-39

A.C. Toler 4-6-39

Aron Leudins 4-7-

Jim Kaiser 4-7-

W

W.R. Stuart

Sheriff.

O.B.K.

ORIGINAL

No. 464

Page

THE STATE OF ALABAMA

BALDWIN COUNTY

CIRCUIT COURT

Frank Vassut

Plaintiff

VS.

James Salac

Defendant

CIVIL SUBPOENA

Issued this 4<sup>th</sup> day of

April

1939

Pauline Thompson

Clerk.

# JURY LIST, FIRST WEEK, APRIL 10, 1939.

- ~~1. Preston McMillan, Laborer, Stockton.~~ P 11
2. Red B. Bryars, Farmer, Perdido.
3. Mack Aylin, Forester, Bay Minette.
- ~~4. Charles T. Sims, Printer, Bay Minette.~~
5. Blaine G. Dickman, Salesman, Bay Minette.
- ~~6. H. Pete Jones, Merchant, Bay Minette.~~ 51
- ~~7. Frank Faminear, Mechanic, Bay Minette.~~ 43
- ~~8. Charles V. Simmons, Barber, Bay Minette.~~ 57
- ~~9. Walter Trawick, Truckman, Bay Minette.~~ 94
- ~~10. Alfred Billy Barber, Bay Minette.~~ 5
- ~~11. James A. Morris, Farmer, Gateswood.~~
- ~~12. Oscar Williams, Stockman, Holman.~~ P 6
- ~~13. Thomas L. Baggett, Farmer, Holman.~~
- ~~14. John O. Mahathy, Farmer, Stapleton.~~ 15
- ~~15. Joe Byrd, Farmer, Stapleton.~~ 15
- ~~16. Lee White, Farmer, Loxley.~~ 15
- ~~17. Leon B. Comstock, Oil Agent, Loxley.~~ 15
- ~~18. Norman R. Dawson, Farmer, Rosinton.~~
- ~~19. John Shumate, Filling Station, Robertsdale.~~ P 12
- ~~20. Fletcher Toler, Farmer, Robertsdale.~~ P 2
- ~~21. John J. Jurkiewicz, Farmer, Summerdale.~~ P 3
- ~~22. Gus Hoff, Blacksmith, Silverhill.~~ P 9
- ~~23. Frank Kucera, Farmer, Silverhill.~~ P 10
- ~~24. Clyde Robinson, Farmer, Belforest.~~ P 8
- ~~25. John R. Gooden, Naval Stores, Fairhope.~~ P 11
26. Axil Johnson, Farmer, Fairhope.
- ~~27. Claud Andrews, Carpenter, Fairhope.~~ P 11
- ~~28. Aubrey Klump, Laborer, Point Clear.~~ P 11
29. Luther Street, Farmer, Point Clear.
30. John W. Spalding, Farmer, Foley.
- ~~31. Otto Kammerer, Garage, Foley.~~ P 10
- ~~32. Fred Seibert, Jr., Farmer, Elberta.~~ 24
33. Walter B. Miller, Farmer, Bon Secour.
34. Walter Fulford, Oysterman, Bon Secour.
35. Walter H. Benton, Oysterman, Bon Secour.
36. John Miller, Oysterman, Bon Secour.
37. Archie Walters, Farmer, Bon Secour.
38. Robert Underwood, Farmer, Magnolia Springs.

P 13 / III III I /  
 P 12 / III III I /