

CANTERBURY MOTOR COMPANY, a Corporation existing under the Laws of the State of Ala- bama,	Plaintiff,	IN THE CIRCUIT COURT BALDWIN COUNTY, ALABAMA,
vs.		AT LAW,
ARCHIE McMILLAN,	Defendant.	No. 291.

PLAINTIFF'S REPLICATIONS TO DEFENDANT'S PLEAS

Comes now the Plaintiff in the above-styled cause,
and for answer to Defendant's pleas or answers and each and
every allegation therein contained, separately and severally,
says:

1.

For answer to the plea numbered "First", the Plain-
tiff joins issue on said plea.

2.

For answer to the plea numbered "Second", the Plain-
tiff joins issue on said plea.

3.

For answer to the plea numbered "Third", the Plain-
tiff joins issue on said plea.

4.

For answer to the plea numbered "Fourth", the Plain-
tiff demurs to the same and assigns as cause therefor:

1. That the said plea is not responsive to the alle-
gations of the complaint filed in said cause.
2. That, although the said plea attempts to set up
an affirmative defense, it fails to state matters which are
related to the facts averred in the complaint or which consti-
tute a defense thereto,
3. That the said plea is apparently entered as a plea
in bar, but that it neither traverses nor confesses and avoids
the allegations of the complaint and is therefore not responsive.

(turn)

5.

For answer to the plea numbered "Fifth", the Plaintiff joins issue on so much of said plea, and each and every allegation thereof, separately and severally, as reads as follows, to-wit: "and soon thereafter the Defendant learned that the truck and the motor therein were not as represented and warranted, but on the contrary was an old worn out motor; that he immediately rescinded the contract of sale by notifying the Plaintiff and the Plaintiff accepted said automobile truck".

6.

For answer to the plea numbered "Sixth", the Plaintiff joins issue on so much of said plea, and each and every allegation thereof, separately and severally, as reads as follows, to-wit: "that before finding out the condition of the motor in said truck, the Defendant paid to the plaintiff on the said note the sum of Seventy-five (\$75.00) Dollars; that immediately upon attempting to use the said truck, the Defendant learned that the motor in said truck was not as represented and warranted by the Plaintiff, but was an old worn out motor, and that the Defendant could not use the said truck; that he immediately notified the Plaintiff and the Plaintiff accepted said truck; that as a result of the misrepresentations and breach of warranty on the part of the Plaintiff, the defendant paid to the Plaintiff Seventy-five (\$75.00) Dollars.....".

7.

For answer to the plea numbered "Seventh", the Plaintiff joins issue on so much of said plea, and each and every allegation thereof, separately and severally, as reads as follows: to-wit: "that before finding out the condition of the motor of said truck, the Defendant paid to the Plaintiff on the said note the sum of Seventy-five (\$75.00) Dollars; that

(turn)


"immediately upon attempting to use the said truck, the Defendant learned that the motor in said truck was not as represented and warranted by the Plaintiff, but was an old worn out motor, and that the Defendant could not use the said truck; that he immediately notified the Plaintiff and the Plaintiff accepted said truck; that as a result of the misrepresentation and breach of warranty on the part of the Plaintiff, the Defendant paid to the Plaintiff Seventy-five (\$75.00) Dollars, and in addition thereto, had to employ other trucks for the purposes for which the said truck was purchased from the Plaintiff, and that as a result of said misrepresentations and breach of warranty, the Defendant has suffered a loss of One Hundred and Fifty (\$150.00) Dollars."

8.

For answer to the plea numbered "Eighth", the Plaintiff joins issue on said plea.

9.

For answer to the plea numbered "Ninth", the Plaintiff joins issue on said plea.


LESLIE HALL, Attorney for the Plaintiff.

(Original)

At Law, No. 291.

RECORDED
Duck
7-584

CANTERBURY MOTOR COMPANY, a
Corporation existing under
the Laws of the State of Ala-
bama,

Plaintiff,

vs.

ARCHIE McMILLAN,

Defendant.

PLAINTIFF'S REPLICATIONS AND
DEMURRER TO DEFENDANT'S PLEAS.

CIRCUIT COURT
BALDWIN COUNTY, ALABAMA.

Filed in Office this 2
day of October, 1936.

R. Duck
Clerk.

CANTERBURY MOTOR COMPANY, a
Corporation existing under
the Laws of the State of
Alabama,

Plaintiff,

VS.

ARCHIE McMILLAN,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,

AT LAW,

NO. 291.

Comes the Defendant and for answer to the Plaintiff's
complaint and each and every allegation therein contained, separate-
ly and severally, says:

FIRST:

That the facts therein alleged are untrue.

SECOND:

That the said account is barred by the statute of limita-
tion of six years.

THIRD:

That the account sued on was paid before suit was filed.

FOURTH:

That the Defendant purchased from the Plaintiff an auto-
mobile truck; that the Plaintiff at the time of the sale represented
and warranted the motor in the truck to be a new motor, and that
the Defendant, relying upon said representation and warranty, pur-
chased the said automobile truck; that after purchasing the said
truck, the Defendant learned that the motor was not as represented
and warranted, but an old worn out motor; that he immediately re-
scinded the sale and delivered the truck to the Plaintiff and the
Plaintiff accepted the said truck.

FIFTH:

That the note sued on was given by the Defendant to the
Plaintiff as the purchase price of an automobile truck; that at
the time the Defendant purchased the said truck, the Plaintiff repre-
sented and warranted to the Defendant that the said truck had a
new motor in it and that the motor and working parts thereof were
as good as new; that the Defendant, relying upon said representation

and warranty, purchased the said truck and gave his note in payment thereof; that the Plaintiff delivered the said truck to the Defendant at Stockton, Alabama, and soon thereafter the Defendant learned that the truck and the motor therein were not as represented and warranted, but on the contrary was an old worn out motor; that he immediately rescinded the contract of sale by notifying the Plaintiff and the Plaintiff accepted said automobile truck.

SIXTH:

That the note sued on was given by the Defendant to the Plaintiff in the purchase of an automobile truck; that before purchasing the said truck, the Defendant advised the Plaintiff of the use for which he was purchasing the said truck; that the Plaintiff represented and warranted to the Defendant that the said automobile truck was in good shape and that there was a new motor therein; that the Defendant, relying upon the said representation and warranty, purchased the said truck and the Plaintiff delivered the truck to him at Stockton, Alabama; that before finding out the condition of the motor in the said truck, the Defendant paid to the Plaintiff on the said note the sum of Seventy-five (\$75.00) Dollars; that immediately upon attempting to use the said truck, the Defendant learned that the motor in said truck was not as represented and warranted by the Plaintiff, but was an old worn out motor, and that the Defendant could not use the said truck; that he immediately notified the Plaintiff and the Plaintiff accepted said truck; that as a result of the misrepresentations and breach of warranty on the part of the Plaintiff, the Defendant paid to the Plaintiff Seventy-five (\$75.00) Dollars, which the Defendant offers as a setoff against any claim on the part of the Plaintiff and claims judgment for the excess.

SEVENTH:

That the note sued on was given by the Defendant to the Plaintiff in the purchase of an automobile truck; that before purchasing the said truck, the Defendant advised the Plaintiff of the use for which he was purchasing the said truck; that the Plaintiff represented and warranted to the Defendant that the said automobile

truck was in good shape and that there was a new motor therein; that the Defendant, relying upon the said representation and warranty, purchased the said truck and the Plaintiff delivered the truck to him at Stockton, Alabama; that before finding out the condition of the motor in said truck, the Defendant paid to the Plaintiff on the said note the sum of Seventy-five (\$75.00) Dollars; that immediately upon attempting to use the said truck, the Defendant learned that the motor in said truck was not as represented and warranted by the Plaintiff, but was an old worn out motor, and that the Defendant could not use the said truck; that he immediately notified the Plaintiff and the Plaintiff accepted said truck; that as a result of the misrepresentation and breach of warranty on the part of the Plaintiff, the Defendant paid to the Plaintiff Seventy-five (\$75.00) Dollars, and in addition thereto, had to employ other trucks for the purposes for which the said truck was purchased from the Plaintiff, and that as a result of the said misrepresentations and breach of warranty, the Defendant has suffered a loss of One Hundred and Fifty (\$150.00) Dollars, which he claims as damages against the Plaintiff and offers it as a set off against any claim of the Plaintiff and claims judgment for the excess.

EIGHTH

The Defendant claims of the Plaintiff One Hundred and Fifty (\$150.00) Dollars, as damages for a breach of warranty on the part of the Plaintiff in a sale of an automobile truck by the Plaintiff to the Defendant, in which the Plaintiff represented and warranted that the motor in the truck in which the Plaintiff was selling to the Defendant was new and would serve the purposes for which the Defendant wanted the truck; that the said representations and warranties were untrue in that the motor in said truck was an old worn motor and wholly unfit for the purposes for which the Defendant purchased said truck; that immediately upon finding out the condition of the motor in said truck, the Defendant advised the Plaintiff and delivered the said truck over to the Plaintiff, which was accepted by the Plaintiff, which amount the Defendant claims as an offset

against any claim of the Plaintiff and prays judgment for the excess.

NINTH:

That the consideration for the said note has wholly failed, in that the Defendant purchased from the Plaintiff an automobile truck and that the Plaintiff represented and warranted to the Defendant that the motor in said truck was new; that immediately after receiving the said truck, the Defendant learned that the said motor was not as had been represented, and that the representations and warranty on the part of the Plaintiff were wholly untrue; that the truck delivered by the Plaintiff to the Defendant was wholly unfit for the purposes for which it was bought, and that the said truck was by the Defendant delivered back to the Plaintiff and accepted by the Plaintiff.

Richard Lee Seale
Attorneys for Defendant.

RECORDED

Duck
7-5-39

ANSWER

CANTERBURY MOTOR COMPANY, a
Corporation existing under
the Laws of the State of
Alabama,

Plaintiff,

VS.

ARCHIE McMILLAN,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,

AT LAW,

NO. 291.

Filed Sept. 8, 1936
R. S. Duck,
clerk

SUMMONS

STATE OF ALABAMA :
BALDWIN COUNTY :
 : IN THE CIRCUIT COURT, FALL TERM, 1936

To Any Sheriff of the State of Alabama, GREETING:

You are hereby commanded to summon Archie McMillan, of Stockton, Alabama, to appear within thirty days from the service of this writ, in the Circuit Court of Baldwin County, Alabama, at the place of holding the same, then and there to answer to the Complaint of Canterbury Motor Company, a Corporation existing under the Laws of the State of Alabama.

Witness my hand, this 28 day of July, 1936.

Robert L. Duck
Clerk of the Circuit Court.

COMPLAINT

CANTERBURY MOTOR COMPANY, a Corporation existing under the Laws of the State of Alabama,	:	At Law, No. _____
Plaintiff,	:	IN THE CIRCUIT COURT
vs.	:	BALDWIN COUNTY, ALABAMA,
ARCHIE McMILLAN,	:	FALL TERM, 1936.
Defendant.	:	

Suit on Promissory Waive Note

The Plaintiff claims of the Defendant the sum of One Hundred Seventy Five and no/100 Dollars (\$175.00) due by Promissory Note made by him on the 2nd Day of November, 1929, and payable January 2, 1930, with interest from date at 8% per annum until paid, which said Promissory Note is under Seal and is of the face value of Two Hundred Fifty Dollars (\$250.00), of which the sum of One Hundred Seventy Five and no/100 Dollars (\$175.00) is claimed by the Plaintiff as due, with interest thereon from February 7, 1930, together with the costs of this suit; and the Plaintiff claims the further and additional sum of Forty Dollars (\$40.00) as a reasonable attorney's fee in the premises; and as part of the said Note, the Defendant has waived

(Page two)

all right to claim any of his property of a personal nature as exempt from levy, execution, sale, or other legal process under the Constitution and Laws of the State of Alabama, or any other State.

A handwritten signature in cursive script, appearing to read "Leslie Hall", written over a horizontal line.

LESLIE HALL, Attorney for the Plaintiff.

I have executed the within
Summons and Complaint by
leaving a copy thereof with

Archie M. Millan

the Defendant. To-wit,

3 day of Aug.,
1936.

Mr. H. Wilkins
Sheriff,

by C. N. Anderson

116
Rec in office
7/28/36
J. H. Wilkins Stff

RECORDED
At Law, No. 291
7-530

CANTERBURY MOTOR COMPANY,
A Corporation existing under
the Laws of the State of
Alabama,

Plaintiff,

vs.

ARCHIE McMILLAN,
Defendant.

SUMMONS AND COMPLAINT

IN THE CIRCUIT COURT
BALDWIN COUNTY, ALABAMA.
FALL TERM, 1936.

Filed in Office this 28th
day of July, 1936.

Robert D. Dyer
Clerk.

LESLIE HALL
ATTORNEY AT LAW
BAY MINETTE, ALABAMA