

735

| | | |
|-------------------|---|--------------------------|
| STATE OF ALABAMA, |) | IN THE CIRCUIT COURT OF |
| BALDWIN COUNTY. |) | BALDWIN COUNTY, ALABAMA. |
| |) | LAW SIDE. |

TO ANY SHERIFF OF THE STATE OF ALABAMA:-

You are hereby commanded to summon H. D. Brooks 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 same, then and there to answer the Complaint of the Bank of Fairhope, a Corporation.

Witness my hand this 6th day of February, 1942.

R. L. Leach
Clerk.

| | | |
|--------------------------------------|---|--------------------------|
| THE BANK OF FAIRHOPE, A CORPORATION, |) | |
| Plaintiff, |) | IN THE CIRCUIT COURT OF |
| VS |) | BALDWIN COUNTY, ALABAMA. |
| |) | LAW SIDE. |
| H. D. BROOKS, |) | |
| Defendant. |) | |

The Plaintiff claims of the Defendant One Hundred Eighty-eight & 74/100 Dollars (\$188.74) due by Promissory Note made by him on the 8th day of January, 1941, and payable in four equal installments, said installments being due July 1st, 1941, December 1st, 1941, July 1st, 1942, and December 1st, 1942, together with interest thereon at the rate of 8% per annum from January 19, 1942.

The Plaintiff alleges that said Note was payable to the order of J. D. Boswell and Sons in the sum of Four Hundred Forty Dollars (\$440.00) in four installments of One Hundred Ten Dollars (\$110.00) each, said installments being due as hereinabove set out, together with interest thereon at the rate of 8% per annum from date, and that said note provided that should the Defendant default in the payment of any of the installments above set out

(page two)

on the due date of such installment, that the full amount of said Note should be immediately due and payable without notice, and the Plaintiff further avers that said Defendant did default in the payment at maturity of the installment due July 1st, 1941. The Plaintiff further alleges that said Note and the debt thereby secured was duly transferred, assigned and conveyed before maturity thereof by the said J. D. Boswell and Sons to the Plaintiff. The Plaintiff admits payment of interest to January 19, 1942 and admits a credit of Two Hundred Fifty-one & 26/100 Dollars (\$251.26) to apply on the said sum of Four Hundred Forty Dollars (\$440.00), leaving a balance of One Hundred Eighty-eight & 74/100 Dollars (\$188.74) with interest, due as above set out.

The Plaintiff further avers that in and by the terms of said note the Defendant waived all rights of exemption as to personal property and of this waiver the Plaintiff now claims the benefit.

The Plaintiff further alleges and avers that in and by the terms of said Note the Defendant agreed to pay an attorney's fee for the collection of said Note in the sum of 15% of the amount due on said Note, and the Plaintiff further claims of the Defendant the further and additional sum of Thirty-five Dollars (\$35.00) as such attorney's fee.

Kybart, Mason & Mason
Attorneys for Plaintiff.

735

SUMMONS AND COMPLAINT

RECORDED

THE BANK OF FAIRHOPE, A
CORPORATION,

Plaintiff,

VS

H. D. BROOKS,

Defendant.

147
2

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

LAW SIDE.

FILED 14 DAY OF FEBRUARY,
1942.

Redner

Clerk.

||||

HYBART, CHASON & CHASON
ATTORNEYS AT LAW
FOLEY, ALABAMA

Marlow Road
1 Mr. H. D. Brooks
1942

Received in Sheriff's Office
this 12 day of Feb, 1942
W R STUART, Sheriff

Executed February
13th 1942 by delivery
copy of within summons
& Complaint on
the *10th* *of* *H. D. Brooks*
W R Stuart
Sheriff

BANK OF FAIRHOPE, a
Corporation,

Plaintiff,

VS.

H. D. BROOKS,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

LAW SIDE.

INTERROGATORIES TO BE PROPOUNDED TO THE PLAINTIFF
UNDER TITLE 7, SECTION 477 OF THE 1940 CODE OF ALABAMA.

1. Attach to your answers to these interrogatories a true and exact copy of the note on which this suit is brought.
2. If the note on which this suit is brought was accompanied by a mortgage or conditional sales contract, attach a true and exact copy of the mortgage or conditional sales contract to your answers to these interrogatories.
3. If a mortgage or conditional sales contract was given in connection with the note for which this suit was brought, was the mortgage or conditional sales contract foreclosed or was the property described therein taken from this Defendant? If so, when, how and by whom?
4. If your answer to the foregoing interrogatory discloses that a mortgage was foreclosed, explain fully when, where and by whom this mortgage was foreclosed and to whom the property was sold at the sale.
5. If any property was taken from the Defendant on a conditional sales contract executed at the time the note for which this suit was brought was executed, state when, how and by whom the property was repossessed or taken from the Defendant. If any property was taken from the Defendant and sold at mortgage foreclosure sale or otherwise, to whom and for how much was the said property sold?
6. For what was the credit of \$251.26 referred to in the Complaint given?
7. Attach to your answers to these interrogatories a statement showing all credits on the note for which this suit is brought,

explaining in detail whether the credits are on principal or interest and show how, when and by whom the payments were made or for what the credit or credits were allowed.

8. Attach to your answer to these interrogatories a copy of the agreement by the Bank of Fairhope, a Corporation and J. D. Boswell and Sons under which or by which credit was extended by the Bank of Fairhope to J. D. Boswell and Sons at the time the note for which this suit was brought was transferred to the said Bank of Fairhope.

9. Attach to your answers to these interrogatories a copy of all writings made and entered into by and between the Bank of Fairhope and J. D. Boswell which relate in any way to the note for which this suit is brought.

10. Attach to your answer to these interrogatories a true and exact copy of the written instrument or instruments whereby J.D. Boswell and Sons guaranteed payment of the note on which this suit is brought.

11. On what date did the note on which this suit was brought become an asset of the Bank of Fairhope?

J. B. Blackburn
Attorney for Defendant.

STATE OF ALABAMA |
BALDWIN COUNTY |

Before me, Ora S. Nelson, a Notary Public, within and for said County in said State, personally appeared J. B. Blackburn, who, after being by me first duly and legally sworn, deposes and says: That he is attorney for the Defendant in the above entitled cause and that the answers to the foregoing interrogatories, if well and truly made, will be material testimony for the Defendant in the said cause.

Sworn to and subscribed before me
on this the 5th day of Oct., 1942.

Ora S. Nelson
Notary Public, Baldwin County, Alabama.

735 -

INTERROGATORIES TO BE PROPOUNDED
TO THE PLAINTIFF UNDER TITLE 7
SECTION 477 OF THE 1940 CODE OF
ALABAMA.

BANK OF FAIRHOPE, a Corporation,

Plaintiff,

VS.


H. D. BROOKS,

Defendant.

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

*Filed 10-5-42
P.S. Duck*

J. B. BLACKBURN
ATTORNEY AT LAW
BAY MINETTE, ALABAMA

Received in office October 6th, 1942.
Executed by serving a copy of the within Interrogatories on
John Chason, Attorney for the Plaintiff. This 5th Day of October 1942.
W. R. Stuart, Sheriff
By , Deputy Sheriff

In answer to the 6th Interrogatory Plaintiff says that there was deducted from the sale price of said property the sum of \$19.75 for repossession and storage, \$3.06 for publication notice, and \$54.00 Attorneys' fees, and the balance of

\$283.19 was applied as follows:- \$31.93 as interest to date of sale and \$251.26 applied on the principal.

In answer to Interrogatory 7 Plaintiff says that no payment had been made by the Defendant on the principal sum due and that the only payment that had been made on the contract prior to the repossession of the property was the sum of \$4.25 which was applied on the interest.

In answer to the 8th Interrogatory Plaintiff says that there was no agreement by the Bank of Fairhope and J. D. Boswell and Sons which is pertinent to this suit.

In answer to the 9th Interrogatory Plaintiff says that there is no writing between the Bank of Fairhope and J. D. Boswell which relates to this suit other than the assignment of the contract to them, which is shown by the Exhibit attached hereto.

In answer to the 10th Interrogatory Plaintiff says that they have no written instrument in their file guaranteeing the payment of the note on which this suit is brought.

In answer to the 11th Interrogatory Plaintiff says that the note and contract were executed on January 8, 1941 and such instrument was filed for record in the office of the Judge of Probate of Baldwin County, Alabama, by the Bank of Fairhope on January 16, 1941, and that at sometime during this eight day period intervening between the execution and recording of the contract such paper became the property of the Plaintiff.

BANK OF FAIRHOPE, a Corporation
BY *[Signature]*
As its President.

STATE OF ALABAMA,
BALDWIN COUNTY.

Before me, *Mabel Ann Tipton*, a Notary Public, in and for said County in said State, personally appeared Kirby Wharton, who is known to me and who after being by me first duly and legally sworn, doth depose and say under oath as follows:

That he is president of the Bank of Fairhope,

and as such is duly authorized to make this Affidavit; that the foregoing answers to the Interrogatories propounded to the Bank of Fairhope by the Defendant in the above styled cause are true and correct to the best of his knowledge, information and belief.

by [Signature]
[Signature]

Sworn to and subscribed before
me, a Notary Public, whose seal
is hereto affixed this 12th day
of June, 1944.

Michael Knapp Nixson
Notary Public, Baldwin County,
Alabama.

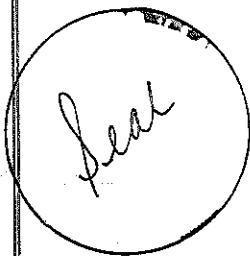


EXHIBIT A.

Conditional Sale Installment Contract

73162

1/8;1941

Foley, Alabama.

For value received I, the Purchaser, promise to pay to J. D. Boswell & Sons, Dealer, or order, the sum of Four-Hundred-Forty- Dollars, in installments in the amounts and at the times stated in the schedule of installments shown hereon and made a part hereof, payable at Bank of Fairhope in the City of Fairhope, State of Alabama with interest thereon from the date hereof, at the rate of 8 per cent per annum until maturity and 8 per cent per annum from maturity until paid, and if this contract be placed with an attorney for collection, fifteen per cent (15%) of the amount due hereunder as attorney's fees, or if prohibited, the amount allowed by law.

| Schedule of Installments | | Endorsements | |
|--------------------------|-----------|--------------|--------------|
| Amount | Due | Amount | Date Paid |
| \$110.00 | 7/1 1941 | \$251.26 | Jan. 19 1942 |
| \$110.00 | 12/1 1941 | | |
| \$110.00 | 7/1 1942 | | Int. paid |
| \$110.00 | 12/1 1942 | | to 1/19/42 |
| | | | CGC, Atty. |

This contract is given for the balance of purchase price of Allis-Chalmers machinery described as follows:-

| Quality | Description of Article | Size or Model | Manufacturer's |
|---------|------------------------|---------------|----------------|
| | | | Serial No. |
| 1 | Used Airtired Tractor | B | 455 |
| 1 | Used 1 Row cultivator | LX1618 | |
| 1 | Used 118 Plow | | |

Purchaser acknowledges receipt of said property as above described in good order and condition, and further agrees that---

- (1) Title to said property and to all repairs, replacements, parts and accessories thereto, shall not pass to the Purchaser until all indebtedness hereunder is fully paid in cash.
- (2) This contract may be assigned by the Dealer. No transfer, renewal, extension or assignment of this contract, or any interest thereunder, or loss, injury, or destruction of said property, shall release the purchaser from his obligations hereunder. The Assignee shall be entitled to all rights of the Dealer.
- (3) No warranties, express or implied, have been made by the Dealer unless endorsed hereon in writing.
- (4) The Purchaser shall keep said property free of all taxes, liens, and encumbrances voluntary or involuntary; shall not use the same improperly or illegally; shall not transfer any interest in this contract or said property; shall not remove said property out of the county or filing district where first kept for use by Purchaser, without prior notice to Dealer. Dealer may insure said property for the protection of Purchaser and Dealer. The proceeds of any insurance, whether paid by reason of loss, injury, return premium or otherwise, shall be applied toward the replacement of the property or payment of this obligation, at the opinion of the Dealer.
- (5) In the event that Purchaser defaults on any payment or fails to comply with any condition of this contract, or a proceeding in bankruptcy, receivership or insolvency is instituted against the Purchaser or his property, all indebtedness hereunder shall be immediately due and payable without notice, and the Dealer may take

immediate possession of said property without demand (possession after default being unlawful), including any equipment or accessories thereto; and for the purpose the Dealer may enter upon the premises where said property may be and remove the same. If the purchaser redeems said property, he shall pay all expenses of retaking, keeping and storage. The Dealer may resell said property, so retaken, at public or private sale, without demand for performance, with or without notice to Purchaser (if given, notice by mail to address below being sufficient,) with or without having said property at the place of sale, and upon such terms and in such manner as the Dealer may determine. The Dealer may bid at any such sale. From the proceeds of any such sale, the Dealer shall deduct all expenses for retaking, repairing, and selling such property, including a reasonable attorney's fee. The balance thereof shall be applied to the amount due on this contract and to any other indebtedness hereunder, and any surplus shall be paid over to the Purchaser. In lieu of or in addition to the foregoing remedy, the Dealer may at his option enforce any other remedy which he may have at law or in equity. The Purchaser hereby waives all benefits, presentment, protest, or notice of protest and of valuation, appraisement, and homestead or other exemption laws now or hereafter in force and affect, including stay of execution, appraisement, condemnation and exemption as to property, real or personal.

(6) Any provision of this contract prohibited by the law of any State shall as to said state be ineffective to the extent of such prohibition, without invalidating the remaining provisions of the contract.

| | | | |
|-------------------------|--------------|----------------|----------------|
| Purchaser's Post Office | <u>Foley</u> | <u>Baldwin</u> | <u>Alabama</u> |
| | Town | County | State |

H. D. Brooks (L.S.)

J.D.BOSWELL & SONS (L.S.)
By: W. M. Boswell

For value received, I hereby endorse and transfer the within instrument to Bank of Fairhope, Fairhope, Ala. together with my interest in the goods for which it was given, without recourse.

J. D. Boswell & Sons
By: W. M. Boswell

Filed Jan. 16, 1941
Recorded Mortgage Book 87 pages 14-15
Probate Office, Baldwin County, Alabama.

ANSWERS TO INTERROGATORIES.

BANK OF FAIRHOPE, a
Corporation,

Plaintiff,

VS.

H. D. BROOKS,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

LAW SIDE.

FILED 19 DAY OF June 1944.

B. D. Brooks
Clerk.

LAW OFFICES

HYBART & CHASON

Bay Minette, Alabama

Attorney for Defendant.

735

DEMURRER

BANK OF FAIRHOPE, a
Corporation,

Plaintiff,

VS.

H. D. BROOKS,

Defendant.

RECORDED

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

Filed March 12 1943
Baldwin
clerk

735