L. S. KIMBLER		IN THE CIRCUIT COURT OF
PLAINTIFF		BALDWIN COUNTY, ALABAMA
vs.		LAW SIDE.
H. KENNEDY,		NO. 1651.
DEFENDANT		

Now comes the complainant in the above styled cause and amends his complaint to read as follows:

He amends count five (5) to read as follows:

(5) Plaintiff claims of the defendant, Thirty Thousand ($30,000.00) Dollars, together with interest thereon, as damages for that on to-wit; in the year of 1950 the defendant was engaged in the business of growing seed. The Plaintiff avers that the defendant negligently packaged in containers certain non-shatter-proof soy bean seed and negligently labeled and negligently certified them to be shatter proof soy bean seed. That the defendant negligently put the said bean seed, that he had negligently labeled and negligently certified, on the market by selling these seed to Milton Novotny individually or as the agent of the "Hub Truckers Association," a corporation, both of Baldwin County, Alabama, for resale, said sale being made in Baldwin County, Alabama. Plaintiff further alleges that as a direct and proximate consequence of the aforementioned negligence of the defendant the plaintiff sustained damages in the aforesaid amount for in this that plaintiff purchased ninety (90) bushels of said seed in Baldwin County, Alabama on to-wit; the 19th day of May, 1950, from the retailer to whom the defendant had sold the same, said seed having been negligently labeled, certified and put on the market as shatter-proof soy bean seed by the defendant. Plaintiff further alleges that he planted the seed negligently labeled and certified by the defendant and tended the resulting crop in a husband like manner but was unable to harvest this crop because the beans shattered, burst from the pod and fell upon the ground before the time for harvesting this crop had arrived on account of the fact that the defendant hes negligently represented and negligently packaged these seed and certified the same negligently as shatter-proof seed when in fact

in fact these seed were non-shatter-proof seed, all to the damage of the plaintiff in the amount aforesaid. Plaintiff claims punitive damages, also.

Plaintiff amends count six (6) to read as follows:

(6) The plaintiff alleges that the defendant was engaged in the business of growing and selling seed during the year of to-wit; 1950. That the defendant sold certain soy-bean seed to a retailer that he had packaged in containers marked "shatter-proof soy bean seed," and affixed to the containers containing these seed in violation of the law certificates certifying among other things, that the seed contained therein were shatter-proof soy bean seed when the defendant knew that the said seed were not shatter proof seed yet the defendant fraudulently represented these seed to be such. That the defendant, knowing the label and certificate he had attached to the containers containing these seed were false, and with an intent to defraud placed these seed on sale as shatter-proof soy bean seed. That the plaintiff, relying on the label and certificate aforementioned purchased ninety (90) bushels of these seed that the defendant had falsely and fraudulently marked and marketed and certified on to-wit; the 19th day of May, 1950 and as a direct and proximate consequence of this false and fraudulent representation made by the defendant, the plaintiff sustained damages in the amount of thirty thousand ($30,000.00) Dollars in that he planted the seed so purchased, tended them in a hsband like manner and grew a crop but was unable to harvest the same because the seed were in fact non-shatter proof seed and hence shattered before the time for harvesting had arrived so that he was unable to gather the same for all of which the plaintiff claims damages as aforesaid, both general and punitive.

Plaintiff amends count seven (7) to read as follows:

(7) Plaintiff claims of the defendant thirty thousand ($30,000.00) Dollars, as damages, for in this, that on, to-wit; the 19th day of May, 1950, the defendant falsely, unlawfully and fraudulently marked and certified certain seed "shatter-proof soy bean seed," and packaged and put the said

seed on the market and sold the said seed to Milton Novotny, individually, or as the agent of the "Hub Truckers Association," a corporation, for resale said sale being made by the defendant in Baldwin County, Alabama. That the plaintiff was deceived by said false, unlawful and fraudulent representation and on to-wit; May 19th, 1950, in Baldwin County, Alabama while relying upon said false, unlawful and fraudulent representation of the defendant purchased from the said retailer Ninety (90) bushels of said seeds, properly planted, cultivated and harvested these seed in a husband like manner but on account of the fact that said seed were not of the variety that they had been fraudulently, unlawfully and falsely marked and certified to be by the defendant, the plaintiff was unable to properly harvest the same; that the said seed marked and certified by the defendant to be shatter-proof soy bean seed were in deed and in fact not shatter-proof seed as represented by the defendant and on this account most of these seed shattered from the pod before time to harvest the same. Plaintiff claims damages, both general and punitive in the amount first aforesaid from the defendant for and on account of and as the proximate result of defendant's fraudulent, unlawful and false representation in regard to said seed which was relied upon by the plaintiff to his damage.

Plaintiff adds to his complaint the following counts:

(8) The plaintiff claims of the defendant, as damages, thirty thousand ($30,000.00) Dollars, for in this, that on to-wit; the 19th day of May, 1950 the defendant falsely, unlawfully and fraudulently marked and certified certain seed as "shatter-proof soy bean seed," and packaged and put the said seed on the market and sold the said seed to Milton Novotny individually or as the agent of the "Hub Truckers Association, a corporation, for resale, said sale being made by the defendant in Baldwin County, Alabama. That the plaintiff was deceived by said false, unlawful and fraudulent representation and on to-wit; May 19, 1950 in Baldwin County, Alabama, while relying upon said false, unlawful and fraudu-

lent representation of the defendant purchased Ninety (90) bushels of said beans from the said Novotny, properly planted, cultivated and harvested these seed in a husband like manner but on account of the fact that said seed were not of the variety that they had been fraudulently, unlawfully and falsely marked and certified to be by the defendant, the plaintiff was unable to properly harvest the same; that the said seed marked and certified to by the defendant to be shatter-proof soy bean seed were in deed and in fact not shatter-proof seed as represented and certified to by the defendant and on this account most of the seed shattered from the pod before time to harvest them; that if the seed had been as they were falsely, unlawfully and fraudulently marked and certified to be by the defendant the plaintiff would have had a yield of more than ten thousand ($10,000.00) Dollars worth of soy beans but that the plaintiff was able to secure only approximately sixteen hundred and nine ($1609.00) Dollars for the entire crop he was able to harvest which he attempted to do in a husband like manner and at the proper time; and further that the stalks of the plants which the plaintiff grew from the seeds sold to him due to the false, unlawful and fraudulent representations of the defendant as set out above were so tough and unharvestable that the plaintiff burned up the motor in his tractor and tore up and rendered useless the harvesting mechanism of his combine in an effort to harvest the said bean crop, all to the general, special and punitive damage of the plaintiff in the amount first aforesaid for and on account of and as the proximate result of the fraudulent, unlawful and false representation made by the defendant and relied upon by the plaintiff to his damage.

Plaintiff demands a trial by jury of the issues involved herein.

C. LeNOIR THOMPSON

HORNE & WEBB
BY:

ATTORNEYS FOR PLAINTIFF.

Filed 3-4-53
Alvis French
Clerk.

L. S. KIMBLER,

Plaintiff,

vs.

H. KENNEDY,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
LAW SIDE.
NO. 1651.

Comes the Defendant in the above styled cause and demurs to the amended Complaint filed in said cause on January 21, 1952, and to each and every count thereof, separately and severally and assigns the following separate and several grounds, viz:

1. That said amended complaint does not state a cause of action.

2. That said amended Complaint is vague and indefinite.

3. That count 1 of the amended complaint is but a conclusion of the pleader.

4. That count 1 of said amended complaint does not allege any damage to the Plaintiff.

5. That the allegation in count 2 of the amended complaint that he was unable to harvest his crop because his beans shattered is but a conclusion of the pleader.

6. That count 2 fails to allege that the Plaintiff attempted to harvest the beans in a proper manner.

7. For aught that appears from count 2 of the amended complaint, the Plaintiff did not attempt to harvest the beans at a proper time.

8. For aught that appears from count 2 of the amended complaint, if the Plaintiff had attempted to harvest the beans at the proper time and in the proper manner, there would have been no loss or damage.

9. That it affirmatively appears from count 3 of the amended complaint that the Defendant did not warrant such seed to the Plaintiff.

10. That count 3 does not allege that the Defendant signed any certificate certifying the seed to be shatter-proof.

11. That said count 3 of the amended complaint does not allege what shatter-proof seed are.

12. That the allegation in count 4 that the Defendant warranted the soy bean seed through the retailer, to the Plaintiff, to be shatter-proof seed, is but a conclusion of the pleader.

13. That count 4 of the amended complaint does not allege that the Plaintiff tried to harvest the beans in the proper manner and at the proper time.

14. That count 5 of the amended complaint does not allege that the Plaintiff attempted to harvest the crop at the proper time and in the proper manner.

15. That the amended complaint does not allege that the seed were sold by the Defendant for re-sale.

16. That the amended complaint does not allege any duty owing by the Defendant to the Plaintiff.

17. That there is an improper joinder of causes of action.

Attorneys for Defendant.

DEMURRER

L. S. KIMBLER,

Plaintiff,

vs.

H. KENNEDY,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
LAW SIDE.
NO. 1651.

Filed: March 4th, 1952.

Clerk.

LAW OFFICES
~~HYBART~~, CHASON & STONE
BAY MINETTE, ALABAMA

L. S. Kimbler,	)	
Plaintiff,	)	IN THE CIRCUIT COURT OF
VS.	)	BALDWIN COUNTY, ALABAMA
H. Kennedy,	)	LAW SIDE.
Defendant.	)	NUMBER 1651.

MEMORANDUM BRIEF OF DEFENDANT

The Complaint as last amended contains Counts Five, Six, Seven, and Eight. Count Five alleges that the Defendant negligently packaged certain seed and put them on the market after he had negligently labeled such seed, which seed were put on the market for resale. This Count does not allege any fraud or deceit or anything which would give him the right to claim punitive damages.

Count Six alleges that the Defendant sold certain seed that he had improperly labeled to a retailer and that he, with an attempt to defraud, placed these seed on sale and that the Plaintiff purchased some of them. This Count does not allege that such seed were to be resold as seed and it does not allege who the Plaintiff purchased them from.

Count Seven of the Complaint is very similar to Count Six except that it alleges that the Plaintiff purchased such seed from Hub Truckers Association. It does not allege that the Defendant sold these seed to the Hub Truckers Association for resale as seed.

Count Eight of the Complaint is similar to Counts Six and Seven except that it claims speculative damages.

The Defendant filed Twenty-six grounds of demurrer and argued orally all such grounds. Without waiveing any grounds of demurrer we shall, in this brief, reply to the matters set up by the Plaintiff in his brief. The Plaintiff in such brief argued mainly two propositions (1) that the Complaint shows that the D efendant is liable to the Plaintiff, even though no representation of any kind was made by the Defendant to the Plaintiff directly and (2) that it is not necessary for the Plaintiff to set out the full contents of the label or certificate which the Defendant is alleged to have attached to the seed.

In arguing the first proposition, that the Defendant is liable to the Plaintiff even though the representations were not made to him, the Plaintiff has cited a few Alabama cases (none of which are

in point) and statements from Corpus Juris Secundun and American Jurisprudence. It will be noticed by the Court that none of these citations attempt to support Count Five which is purely a count of negligence and so we will assume that the Plaintiff recognizes that our demurrer is good as to Count Five.

In regard to such citations, dealing with the right of a third party to sue the Defendant because of his fraudulently packaging certain seed, it will be noticed in each of his citations that he recognizes the fact that such fraudulent statement must have been made to a particular class. Unless the Complaint alleges that these seed were packaged by the Defendant and sold to someone for resale as seed, then certainly there could be no liability on the Defendant, for if he had packaged these seed for resale as feed no injury could have resulted. The Plaintiff has studiously avoided saying that we packaged such seed for resale as seed.

The case of King vs. Livingston, Mfg. Co. which is cited by the Plaintiff, states plainly that it is necessary that the party making the false representation intended it to be acted upon by the party complaining or else by one of the general class to whom he belonged. Is there any allegation in the Complaint which would meet this statement of the law? The citation which he refers to in 23 American Jurisprudence, page 903 states distinctly that the false representation must have been made by us to be exhibited or repeated to a third party for the purpose of deceiving him. How can this be true in our case unless it is alleged by the Plaintiff that these seed put on the market by us to be resold as seed. Has the Plaintiff in either of the Counts shown any duty owing by the Defendant to the Plaintiff?

American Jurisprudence, Volume 23, page 954 states:

> Broadly speaking, a representation must be made to the complaining party in order for him to have a right to rely thereon. A person making a representation is only accountable for its truths or honesty to the very person or persons whom he seeks to influence; no one else has a right to rely on the representation and to allege its falsity as a wrong to him. It seems to be settled law that if a false statement is made to one person to induce him to act, the balance of the world has no legal right to rely on it.
>
> In order to be relied upon, a representation may be, and frequently is, made directly to the injured person by the person sought to be charged. Direct statement to a representee, however, is not always necessary in order to give such representee a right to rely upon a statement made, for it is immaterial whether it is made to him directly or indirectly or whether it passes through a direct or circuitous

channel in reaching him, provided it is made with the intent that it shall reach him and be acted upon by him, and that such intent is in fact accomplished. For example, a representation may be relied upon if it is made to a third person to be communicated to the complaining person or with a view of reaching and influencing him, or to a third person in his presence with a view of influencing him, or if it is made to a class of persons of whom the complaining party is one, or even if it is made to the public generally with a view to its being acted upon and the complaining party, as one of the public, acts on it and suffers damage thereby. It is not necessary that the person making a representation know the names of the persons to whom it may by communicated, provided he contemplates that it shall be communicated to others and be acted upon by them.

American Jurisprudence, Volume 24, page 76 says:

It must also be alleged that the misrepresentations were made to the Plaintiffs, or to a designated third person with the intention that they be communicated to the plaintiffs, or so made to a class of which the plaintiffs were members, or the public generally.

No where in any of the Counts of the Complaint is it alleged that shatter proof seed would not shatter nor is it alleged that the seed looked so much alike that the Plaintiff could not tell any difference.

In the second proposition dealt with by the Plaintiff in his brief, in which he is seeking to set out that it is not necessary for him to give us any more information in regard to the fraud that he says that we perpetrated on him, than the mere statement that we frauduently stated that such seed were shatter proof seed, the only authority cited by the Plaintiff in regard to this proposition supports the contention of the Defendant rather than that of the Plaintiff. In the case of Harris vs. Nichols 134 Southern Reporter, page 798 it is stated:

We are also inclined to the view the bill fails to measure up to the rule of equity pleading in charging fraud. General averments of fraud will not suffice, but the constituent facts must be averred so that the court can see clearly that fraud has intervened. Hyman vs. Langston supr; McDonald vs. Pearson, 114 Ala. 630, 21 So. 534.

A general statement of law in regard to pleading fraud is set out in 24 American Jurisprudence, page 72, in which it is stated:

A well-settled rule requires a pleader to state ultimate facts and avoid stating conclusions of law. The allegation of a conclusion of law is ineffective in the raising of issues. An allegation of "fraud" or of "acting fraudulently," not including the facts to which such a term has reference, is a mere legal conclusion which a demurrer does not admit or confess. Ordinarily, fraud must be alleged clearly, and the material facts relied upon as constituting the fraud and the various elements thereof must be specified so that the court may determine whether they constitute fraud in law. This is true whether actual or constructive fraud is relied on.

In the case of Stuart Vs. Holt 73 Southern Reporter, page 390 the court says that fraud is never presumed but, when relied upon, must be distinctly alleged and proved, furthermore, in the case of Williams Vs. Williams which is cited in the brief of the Plaintiff the court says:

> Without question general averments of fraud, in effect no more than the conclusions of the pleader, will not suffice when challenged by demurrer. The bill should aver facts disclosing in what the alleged fraud consists, advising the respondent wnat he is called upon to defend. Harris Vs. Nichols, 223 Ala. 58, 134 So. 798; Hyman et al. vs. Langston, 210 Ala. 509, 98 So. 564.

If the Defendant did falsely label any seed as alleged by the Plaintiff why should the Plaintiff object to setting out the averment of such label? If this is not done how can the Defendant know what kind of label he is going to be confronted with when he enters Court? Without this averment how can he prepare his defense? The cases all say that fraud, when relied upon by the Plaintiff, must be distinctly alleged and proved.

This label would possibly show whether the seed were to be resold as seed and for that reason the Plaintiff may not want to set out its contents.

Let us state again that the Plaintiff in his brief has not cited a single Alabama authority to show this Court that even if the defendant did label the seed with a false label and sold them to a third party that the Plaintiff can claim nominal or punitive damages; that his authorities all show that fraud must be distinctly alleged and proved; that the Plaintiff has not shown the Court any authority for his right to recover damages to his machinery as set out in Count Eight.

We respectfully submit that the demurrer to all of the Counts of this Complaint as last amended should be sustained.

Hill P. Gibson

Gibson & Stone

Attorneys for the Defendant.

I, John Chason, one of the Attorneys for the Defendant in this cause, to hereby certify that I have this day handed to C. Lenoir Thompson, as one of the Attorneys for the Plaintiff in said cause, a copy of the foregoing brief which we are this day filing in said cause.

Dated this 10th day of August, 1953.

As one of the Attorneys for the Defendant.

BRIEF OF DEFENDANT

L. S. KIMBLER,

Plaintiff,

vs.

H. KENNEDY,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

LAW SIDE.

NUMBER 1651

Filed: August 6th, 1953.

Alice J. Pucke
Clerk

LAW OFFICES
CHASON & STONE
BAY MINETTE, ALABAMA

COMPLAINT AS AMENDED

L. S. KIMBLER,	I	
Plaintiff,	I	IN THE CIRCUIT COURT OF
VS	I	BALDWIN COUNTY, ALABAMA
H. KENNEDY,	I	AT LAW
Defendant.	I	CASE NO. 1651

COUNT ONE: The Plaintiff claims of the Defendant the sum of THIRTY THOUSAND ($30,000.00) DOLLARS damages, together with interest thereon, for a breach of warranty in the sale of soy bean seed by him to the Plaintiff on to-wit: The 19th day of May, 1950, which the Defendant warranted to be shatter proof soy bean seed, where in fact they were not shatter proof seed.

COUNT TWO: Plaintiff claims of the Defendant the sum of THIRTY THOUSAND ($30,000.00) DOLLARS damages, together with interest thereon, for that on to-wit: the 19th day of May, 1950, the Defendant sold to the Plaintiff certain soy bean seed and represented unto the Plaintiff that said seed were shatter proof, and the Plaintiff avers that they were not shatter proof seed. Plaintiff avers that as a result of said representation, which the Plaintiff relied on, the Plaintiff planted the said seed in a field he had prepared for that purpose. Plaintiff avers that he grew a crop of soy beans but that he was unable to harvest the same because the beans shattered so much that he could not gather them. The Plaintiff further avers that had the seed been as warranted he would have been able to harvest his crop.

COUNT THREE: The Plaintiff claims of the Defendant THIRTY THOUSAND ($30,000.00) DOLLARS damages, together with interest thereon, for breach of warranty in the sale of soy bean seed by him to the Plaintiff that grew out of the following facts:

In the year of 1950, the Defendant, a seed grower and producer, put certain soy bean seed on the market for sale. At that time he knew or should have known that a part of the bean seed ultimately be used to produce a crop of beans. The Defendant marked or caused to be marked on the containers of seed "shatter proof" and had affixed it to a certificate stating the extent of purety of said seed and certified them to be shatter proof

soy bean seed. The Plaintiff relied on the certificate, purchased some of the seed from a retailer, planted them, grew a crop, but was unable to harvest it because the seed were not shatter proof as certified; but were non shatter proof seed, all to the great loss of the Plaintiff in the aforesaid amount.

COUNT FOUR: Plaintiff claims of the Defendant THIRTY THOUSAND ($30,000.00) DOLLARS damages, together with interest thereon, for this; that the Defendant, while operating a business, a part of which was growing and selling soy bean seed, did sell certain soy bean seed to a retailer who in turn sold the same to the Plaintiff on, to-wit: the 19th day of May, 1950. The Defendant warranted the soy bean seed, through the retailer, to the Plaintiff to be shatter proof soy bean seed while in fact they were non-shatter proof seed. The Plaintiff, relying on said warranty, bought some of the seed, planted them and grew a crop of soy beans, but was unable to harvest the crop of beans because the beans shattered, all to the loss of the Plaintiff in the aforesaid amount.

COUNT FIVE: Plaintiff claims of the Defendant THIRTY THOUSAND ($30,000.00) DOLLARS together with interest thereon, as damages for that; in the year of 1950 the Defendant was engaged in the business of growing seed. The Plaintiff avers that the Defendant negligently packaged in containers certain non-shatter proof soy bean seed and negligently labeled and negligently certified them to be shatter proof soy bean seed. Plaintiff avers that the Defendant negligently put the bean seed, that he had negligently labeled and certified, on the market. As a direct and proximate consequence of the negligence of the Defendant the Plaintiff sustained damages in the aforesaid amount. For that the Plaintiff purchased some of the soy bean seed that the Defendant had negligently labeled, certified and put on the market. Plaintiff planted the seed, grew a crop but was unable to harvest it because the beans shattered.

COUNT SIX: The Defendant was engaged in the business of growing and selling seed during the year 1950. The Defendant sold certain soy bean seed to a retailer that he had packaged in containers marked "shatter proof soy bean seed". To those containers the Defendant had affixed certificates, certifying among other things, that the seed contained therein were shatter proof soy bean seed. The Plaintiff avers that at the time of the packing

and affixing of the certificate ~~of the certificates~~ the Defendant knew that the said seed were not shatter proof seed yet he fraudlently represented them to be such. Knowing that the label and certificate were false and fraudlent, the Defendant put the said seed on sale. The Plaintiff relying on the label and certificate, purchased some of the seed that the Defendant had falsely and fraudlently marked and marketed and as a direct and proximate consequence of this false and fraudent representation the Plaintiff sustained damages in the amount of THIRTY THOUSAND ($30,000.00) DOLLARS in that he planted the seed he had purchased, grew a crop, but was unable to harvest the same because the seed were non-shatter proof and shattered so that he was unable to gather the same.

COUNT SEVEN: During the year 1950 the Defendant falsely and fraudlently marked and certified certain seed; "shatter proof soy bean seed" and put them on the market. The Plaintiff was deceived by said false and fraudent representation and acted thereon, and as a proximate consequence of said false and fraudent representation Plaintiff was damaged in the amount of THIRTY THOUSAND ($30,000.00) DOLLARS for that he purchased and planted some of the seed that were falsely and fraudlently marked, but was unable to harvest the same for that they were not of the variety that they had been certified to be.

Plaintiff demands trial by jury.

C. LeNOIR THOMPSON

FRANK G. HORNE

TOLBERT M. BRANTLEY

By: Tolbert M Brantley

Attorneys for Plaintiff

SUMMONS AND COMPLAINT

THE STATE OF ALABAMA) IN THE CIRCUIT COURT OF
BALDWIN COUNTY) BALDWIN COUNTY, ALABAMA
) AT LAW, CASE NO.____

TO ANY SHERIFF OF THE STATE OF ALABAMA----GREETING:

You are hereby commanded to summon H. Kennedy to appear at the next term of the Circuit Court, to be held for said County, at the place of holding the same, then and there to answer the complaint of L. S. Kimbler.

Witness my hand this 8th day of May, 1951.

Clerk

****

C O M P L A I N T

L. S. KIMBLER, PLAINTIFF,) IN THE CIRCUIT COURT OF
) BALDWIN COUNTY, ALABAMA
VS) AT LAW
H. KENNEDY, DEFENDANT.) CASE NO. ____

COUNT ONE: The Plaintiff claims of the Defendant the sum of Ten Thousand ($10,000.00) Dollars damages, together with interest thereon, for a breach of warranty in the sale of soy bean seed by him to the Plaintiff on to-wit: The 19th day of May, 1950, which the Defendant warranted to be shatter proof soy bean seed, where in fact they were not shatter proof seed.

COUNT TWO: Plaintiff claims of the Defendant the sum of Ten Thousand ($10,000.00) Dollars damages, together with interest thereon, for that on to-wit: the 19th day of May, 1950, the Defendant sold to the Plaintiff certain soy bean seed and represented unto the Plaintiff that said seed were shatter proof, and the Plaintiff avers that they were not shatter proof seed. Plaintiff avers that as a result of said representation, which the Plaintiff relied on, the Plaintiff planted the said seed in a field he had prepared for that purpose. Plaintiff avers that he grew a crop of soy beans but that he was unable to harvest the same because the beans shattered so much that he could not gather them. The Plaintiff further avers that had the seed been as warranted he would have been able to harvest his crop.

COUNT THREE: The Plaintiff claims of the Defendant Ten Thousand ($10,000.00) Dollars damages, together with interest thereon, for breach of warranty in the sale of soy bean seed by him to the Plaintiff that grew out of the following facts:

In the year of 1950, the Defendant, a seed grower and producer, put certain soy bean seed on the market for sale. At that time he knew or should have known that a part of the bean seed ultimately be used to produce a crop of beans. The Defendant marked or caused to be marked on the containers of seed "shatter proof" and had affixed it to a certificate stating the extent of purety of said seed and certified them to be shatter proof soy bean seed. The Plaintiff relied on the certificate, purchased some of the seed from a retailer, planted them, grew a crop, but was unable to harvest it because the seed were not shatter proof as certified; but were non shatter proof seed, all to the great loss of the Plaintiff in the aforesaid amount.

COUNT FOUR: Plaintiff claims of the Defendant Ten Thousand ($10,000.00) Dollars damages, together with interest thereon, for this; that the Defendant, while operating a business, a part of which was growing and selling soy bean seed, did sell certain soy bean seed to a retailer who in turn sold the same to the Plaintiff on, to wit: the 19th day of May, 1950. The Defendant warranted the soy bean seed, through the retailer, to the Plaintiff to be shatter proof soy bean seed while in fact they were non-shatter proof seed. The Plaintiff, relying on said warranty, bought some of the seed, planted them and grew a crop of soy beans, but was unable to harvest the crop of beans because the beans shattered, all to the loss of the Plaintiff in the aforesaid amount.

COUNT FIVE: Plaintiff claims of the Defendant Ten Thousand ($10,000.00) Dollars together with interest thereon, as damages for that; in the year of 1950 the Defendant was engaged in the business of growing seed. The Plaintiff avers that the Defendant negligently packaged in containers certain non-shatter proof soy bean seed and negligently labeled and negligently certified them to be shatter proof soy bean seed. Plaintiff avers that the Defendant negligently put the bean seed, that he had negligently labeled and certified, on the market. As a direct and proximate consequence of the negligence

of the Defendant the Plaintiff sustained damages in the aforesaid amount. For that the Plaintiff purchased some of the soy bean seed that the Defendant had negligently labeled, certified and put on the market. Plaintiff planted the seed, grew a crop but was unable to harvest it because the beans shattered.

COUNT SIX: The Defendant was engaged in the business of growing and selling seed during the year 1950. The Defendant sold certain soy bean seed to a retailer that he had packaged in containers marked "shatter proof soy bean seed". To those containers the Defendant had affixed certificates, certifing among other things, that the seed contained therein were shatter proof soy bean seed. The Plaintiff avers that at the time of the packing and affixing of the certificate of the certificates the Defendant knew that the said seed were not shatter proof seed yet he fraudlently represented them to be such. Knowing that the label and certificate were false and fraudlent, the Defendant put the said seed on sale. The Plaintiff relying on the label and certificate, purchased some of the seed that the Defendant had falsely and fraudently marked and marketed and as a direct and proximate consequence of this false and fraudent representation the Plaintiff sustained damages in the amount of Ten Thousand ($10,000.00) Dollars in that he planted the seed he had purchased, grew a crop, but was unable to harvest the same because the seed were non-shatter proof and shattered so that he was unable to gather the same.

COUNT SEVEN: During the year 1950 the Defendant falsely and fraudlently marked and certified certain seed; "shatter proof soy bean seed" and put them on the market. The Plaintiff was deceived by said false and fraudent representation and acted thereon, and as a proximate consequence of said false and fraudent representation Plaintiff was damaged in the amount of Ten Thousand ($10,000.00) Dollars for that he purchased and planted some of the seed that were falsely and fraudlently marked, but was unable to harvest the same for that they were not of the variety that they had been certified to be.

Plaintiff demands trial by jury.

Horne & Brantley

By:

Attorneys for Plaintiff

5-14-51

165-1

L. S. KIMBLER,

PLAINTIFF,

VS

H. KENNEDY,

DEFENDANT

SUIT FOR DAMAGES

Filed 5-8-51
Alice Jones
Clerk

Executed May 14, 1951
By Serving copy on

H. Kennedy

Sheriff
Taylor Wilkins

By
Edleigh Steadham

L. S. KIMELER,	)	
Plaintiff,	)	IN THE CIRCUIT COURT OF
vs.	)	BALDWIN COUNTY, ALABAMA
H. KENNEDY,	)	LAW SIDE. NO. 1651
Defendant.	)	

Comes the Defendant in the above styled cause and for plea to the complaint filed in said cause as last amended and to each and every count thereof, separately and severally, says:

1. That the allegations of the complaint are untrue.

Chason

Chason & Stone

Attorneys for Defendant.

No 1667

PLEA

L. S. KIMBLER,

Plaintiff,

vs.

H. KENNEDY,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
LAW SIDE NO. 1651

Filed this the 4th day of March, 1954.

Clerk.

J U R Y L I S T

NAME	OCCUPATION	ADDRESS
[illegible]	FISHERMAN	BON SECOUR
ROY F. [illegible]	BROOKLEY FIELD	BAY MINETTE
HUGO ROGERS	L & N	PERDIDO
L.D. LITTLETON	PLUMBER	FAIRHOPE
JAMES [illegible]	DRUGS	FOLEY
[illegible]	BUTCHER	BAY MINETTE
ROY D[illegible]	FARMER	FOLEY
B. YOUNG	MERCHANT	DAPHNE
[illegible]	ELECTRICIAN	STOCKTON
DERRILL STUART	CEMENT XX MFG	BAY MINETTE
ROBERT P. [illegible]	MACHINIST	BAY MINETTE
[illegible]	SHIPYARD	ROBERTSDALE
RUSSELL CAMPBELL	FARMER	LOXLEY
FRANK C. [illegible]	FARMER	GATESWOOD
C.E. [illegible]	MECHANIC	FAIRHOPE
EARNEST C. WEEKLEY	MERCHANT	PERDIDO
GEORGE [illegible]	FARMER	ROBERTSDALE
[illegible]	SAW MILL	BAY MINETTE
ARTHUR H. HALE	MERCHANT	STAPLETON
HAMILTON [illegible]	RESERVE FLEET	STOCKTON
[illegible]	DEFENSE	LOXLEY
JOHN [illegible]	CLERK	FAIRHOPE
[illegible]	FARMER	ROBERTSDALE
GEORGE P. ROBERTSON	FARMER	ROBERTSDALE
HOWARD BAXENDALE	FORESTER	STAPLETON
[illegible]	MERCHANT	LOXLEY
MACK J. [illegible]	DEFENSE	FOLEY
[illegible]	FARMER	SILVERHILL
FRANK [illegible]	FARMER	SILVERHILL
[illegible]	FLEET	BAY MINETTE
WILLIE R. COOPER	FARMER	XX ROSINTON
MARSHALL N. WHITE	ELECTRICIAN	BAY MINETTE
W. GAITHER HOBBS	MERCHANT	BAY MINETTE
JOHN [illegible]	FARMER	LOTTIE
W. C. ANDERSON	CONTRACTOR	FAIRHOPE
[illegible]	FARMER	POINT CLEAR
M. C. [illegible]	[illegible]	LOXLEY excused
[illegible]	DEFENSE	FOLEY
[illegible]	FARMER	MAGNOLIA SPRINGS

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SD. XXXXX XXXXX XX

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Trimble
vs.
Kennedy

L. S. KIMBLER,	I	IN THE CIRCUIT COURT OF
Plaintiff,	I	BALDWIN COUNTY, ALABAMA
vs.	I	LAW SIDE.
H. KENNEDY,	I	NO. 1651.
Defendant.	I	

Comes the Defendant in the above styled cause and demurs to the Complaint filed in said cause as last amended and to each count thereof, separately and severally, and assigns the following separate and several grounds, viz:

1. That said Complaint does not state a cause of action.

2. That Count Five of said Complaint does not allege any duty owing by the Defendant to the Plaintiff.

3. That Count Five of said Complaint does not allege that the Defendant grew such seed or knew that they were not as represented.

4. That Count Five of said Complaint does not allege that the Defendant negligently injured the Plaintiff.

5. That Count Five of said Complaint does not allege that soy bean seed which are known as shatter proof seed will not shatter.

6. That Count Five of said Complaint does not allege that such seed were sold for resale as seed.

7. That the allegation in Count Five of said Complaint that such seed burst from the pod and fell upon the ground before the time for harvesting the crop had arrived on account of the fact that the Defendant had negligently packed the seed, is but a conclusion of the pleader and does not allege sufficient facts.

8. That no facts are alleged in Count Five of said Complaint to show the right of the Plaintiff to claim punitive damages.

9. That Count Six of the Complaint does not allege that the Defendant sold such seed to the Plaintiff.

10. That Count Six of the Complaint does not allege any duty owing by the Defendant to the Plaintiff.

11. That Count Six of said Complaint does not allege that the seed were sold for resale.

12. That Count Six of said Complaint does not allege that the Defendant injured the Plaintiff.

13. That the allegation in Count Six of the Complaint that the Plaintiff was unable to harvest the seed because they were non-shatter proof seed and hence shattered before the time for harvesting had arrived is but a conclusion of the pleader.

14. That Count Six of said Complaint does not allege that the variety of seed known as shatter proof seed will not shatter.

15. That Count Six of the Complaint does not allege sufficient facts to justify punitive damages.

16. That Count Seven of said Complaint does not allege that the Defendant knew that the seed referred to were non-shatter proof seed.

17. That Count Seven of the Complaint does not allege that the seed were sold for resale as seed.

18. That Count Seven of said Complaint does not allege any duty owing by the Defendant to the Plaintiff.

19. That the allegation in Count Seven of the Complaint that on account of the fact that the seed were not of the variety that they had been represented to be, the Plaintiff was unable to properly harvest the same, is but a conclusion of the pleader.

20. That the allegation in Count Seven of the Complaint that on this account most of these seed shattered from the pod before time to harvest the same, does not allege that such seed would not have shattered in a like manner had they been shatter proof seed.

21. That sufficient facts are not alleged in Count Seven of the Complaint to show the right of the Plaintiff to claim punitive damages.

22. That Count Eight of said Complaint does not allege that the Defendant knew that the seed referred to were not shatter proof seed.

23. That Count Eight of said Complaint does not allege that the seed were sold for resale as seed.

24. That the allegation in Count Eight that on account of the fact that the seed were not of the variety that they had been represented to be, that the Plaintiff was unable to properly harvest the same, is but a conclusion of the pleader and does not allege that the variety known as shatter proof will not shatter.

25. That the allegation in Count Eight of the Complaint that the stalks of the beans which the Plaintiff grew were so tough that the Plaintiff burned up the motor of his tractor and damaged his combine, is but a conclusion of the pleader and does not allege that there is any difference in the stalks of shatter proof soy beans and non-shatter proof soy beans.

26. That Count Eight of said Complaint does not allege sufficient facts for punitive damages.

C. R. Mason

Mason & Stone

Attorneys for Defendant.

D E M U R R E R

L. S. KIMBLER,

Plaintiff,

vs.

H. KENNEDY,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
LAW SIDE.
NO. 1651.

Filed: April 23rd 1953.

Clerk.

LAW OFFICES
CHASON & STONE
BAY MINETTE, ALABAMA

L. S. KIMBLER,	) (	IN THE CIRCUIT COURT OF
Plaintiff,	) (	BALDWIN COUNTY, ALABAMA
-vs-	) (	AT LAW
H. KENNEDY,	) (	CASE NO.____
Defendant.	) (	

Comes the defendant in the above styled cause and demurs to the complaint and separately and severally to each count thereof and for grounds of demurrer assigns separately and severally the following:

1.

Said Counts are vague and indefinite.

2.

Said Counts contain no cause of action.

3.

Said complaint does not contain the date of the alleged sale.

Attorney for Defendant

C. G. C.

L. S. KIMBLER,

Plaintiff,

vs.

H. KENNEDY,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
LAW SIDE
NO. 1651.

Comes the Defendant in the above styled cause and his demurrer filed in said cause on March 4, 1952, with grounds numbered 1 through 17 not having been ruled upon and files the following additional grounds of demurrer to each and every count of said Complaint, separately and severally, viz:

18. That said count does not allege the reasonable market value of the beans sold by the Defendant to the Plaintiff and what the Defendant charged the Plaintiff for such beans.

19. That said count does not allege how many bushells or pounds of beans were sold by the Defendant to the Plaintiff.

20. That the allegation that Defendant warranted the beans sold by him to the Plaintiff to be shatter proof beans does not allege whether such warranty was orally or in writing.

21. That said count does not allege how many acres of beans the Plaintiff planted with the seed that he had purchased from the Defendant.

22. That said count does not allege the value of the bean crop raised by the Plaintiff with seed which he had purchased from the Defendant, if gathered, or its value to him in the field.

23. That said count does not allege that beans which are known as shatter proof beans will not shatter in the field.

24. For aught that appears from said count the Plaintiff would have been unable to gather his beans at the time, and in the manner that he attempted to do so even if they had been shatter proof beans.

25. That the allegation in count three that the Defendant was a seed grower and producer was not an allegation that the Defendant produced the bean seed in question.

26. That counts three, four, five and six affirmatively show that the Defendant did not sell such bean seed to the Plaintiff and had no contract or agreement with him and no warranty for his benefit.

Attorneys for Defendant.

DEMURRER

L. S. KIMBLER,

Plaintiff,

vs.

H. KENNEDY,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
LAW SIDE.
NO. 1651.

Filed: February 26 1953

Alice L. Leuck
Clerk.

L. S. KIMBLER,	)	
Plaintiff,	)	IN THE CIRCUIT COURT OF
vs.	)	BALDWIN COUNTY, ALABAMA
H. KENNEDY,	)	LAW SIDE NO. 1651.
Defendant.	)	

Comes the Defendant in the above styled cause and demurs to the Complaint filed in said cause, as last amended, and to each and every count thereof, separately and severally, and assigns the following separate and several grounds, viz:

1. That said Complaint does not state a cause of action.

2. That said Complaint does not allege any duty owing by the Defendant to the Plaintiff.

3. That the allegations in Count 5 of the amended Complaint that the Defendant negligently packaged certain soy bean seed subject to shatter and negligently labeled and certified these seed to be non-shatter soy bean seed is but a conclusion of the pleader.

4. Count 5 affirmatively shows that the label as set out in such count did not recite that the seed referred to therein were non-shatter seed.

5. That it is affirmatively shown by each count of the Complaint that the seed were not represented to be non-shatter proof seed.

6. That it is not alleged in Count 5 that the Defendant negligently injured the Plaintiff.

7. That the allegation in Count 5 of the amended Complaint that the seed fell to the ground before time for harvesting the crop arrived due to the fact that the Defendant had negligently packaged these seed is vague, indefinite and states a conclusion of the pleader.

8. That the allegation in each count of the Complaint that the Defendant represented the seed to be non-shatter soy bean seed by means of a label set out in each of said counts is at variance with the actual label set out in each count.

9. For aught that appears from each of said counts the variety of soy beans known as tall growing n.s. Clemson will shatter under certain conditions and it is not shown that such conditions did not exist during 1950.

10. That it is affirmatively shown by the label set out in said count that no representation is made on such label as to whether the seed will shatter.

11. That each of said counts affirmatively show that the Defendant did not sell such seed to the Plaintiff and had no contract or agreement with him and no warranty for his benefit.

Cecil T. Gleason

Gleason & Stone

Attorneys for Defendant.

DEMURRER TO COMPLAINT AS LAST AMENDED

L. S. KIMBLER,

Plaintiff,

vs.

H. KENNEDY,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

LAW SIDE NO. 1651

Filed this 19th day of January, 1954.

Clerk

L. S. KIMBLER,) (
Plaintiff,) (
-vs-) (
H. KENNEDY,) (
Defendant.) (

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

ANSWER TO INTERROGATORIES

Comes the defendant in the above styled cause and in answer to the interrogatories propounded therein on the 25th day of September, 1951, answers as follows:

1. Question 1 is impossible to answer inasmuch as the defendant is an individual and not a corporation, partnership or association.

2. See answer to question 1.

3. No

4. Yes

5. Yes

6. No

7. See answer to question 6.

8. See answer to question 6.

9. See answer to question 6.

10. See answer to question 6.

11. See answer to question 6.

12. See answer to question 6.

H. Kennedy

STATE OF ALABAMA
BALDWIN COUNTY

Before me, Cecil G. Chason, a Notary Public in and for said County in said State, personally appeared H. Kennedy, who is known to me, and who after being by me first duly and legally sworn, deposes and says that he is the person who answered the foregoing interrogatories and that the answers thereto are true and correct.

H. Kennedy

C. G. C.

Sworn to and subscribed before me, a Notary Public, on this the 26th day of September, 1951.

(affix seal)

Notary Public, Baldwin County
State of Alabama

C. G. C.

1657

& & & & & & & & & & & & & & & & &

ANSWER TO INTERROGATORIES

& & & & & & & & & & & & & & & & &

L. S. KIMBLER,

Plaintiff,

-vs-

H. KENNEDY,

Defendant.

& & & & & & & & & & & & & & & & &

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

& & & & & & & & & & & & & & & & &

Filed 11-26-57
Ann Juerch
Clerk

L. S. KIMBLER	I	IN THE CIRCUIT COURT OF
PLAINTIFF	X	BALDWIN COUNTY, ALABAMA.
vs.	I	LAW SIDE.
H. KENNEDY,	I	NO. 1651.
DEFENDANT	I	

Now comes the Plaintiff in the above styled cause and amends his complaint to read as follows:

He amends Count Five (5) to read:

(5) Plaintiff claims of the Defendant, Thirty Thousand ($30,000.00) Dollars, together with interest thereon, as damages for that on to-wit; in the year of 1950 the Defendant was engaged in the business of growing seed for resale. The Plaintiff avers that the Defendant negligently packaged in containers certain soy bean seed subject to shatter and negligently labeled and negligently certified these seed to be Non-Shatter Soy Bean Seed by placing labels bearing the following certification on the containers holding said seed:

Variety	Kind	Net Weight
Tall Growing N. S. Clemson	Soy Beans	120

Purity 18% Weed 00% Crop 01% Inert 01%

Name and Number of Noxious Weeds Per Pound of Pure Seed

Primary Noxious Weeds:	Secondary Noxious Weeds:
None	None.

Germination 85% Hard Seed .00% Tested 4, 1950

Where Grown, Baldwin County. Lot No 1 - J

H. KENNEDY

SUMMERDALE, ALABAMA.

That the Defendant negligently put the said bean seed, that he had negligently labeled and negligently certified as set out above on the market by selling these seed to Milton Novotny individually or as the agent of the "Hub Truckers Association," a corporation, both of Baldwin County, Alabama for resale as seed, said sale being made in Baldwin County, Alabama. Plaintiff further alleges that as a direct and proximate consequence of the aforementioned negligence of the Defendant the Plaintiff was injured and damaged by the Defendant in the aforesaid amount in this; that Plaintiff purchased ninety (90) bushels of said seed in

Baldwin County, Alabama on to-wit; the 19th dey of May, 1950, from the retailer to whom the Defendant had sold the same, said seed having been negligently labeled, certified and put on the market as Non-Shatter Soy Bean Seed by the Defendant. Plaintiff further alleges that he planted the seed negligently labeled and certified by the defendant as aforesaid and tended the resulting crop in a husband like manner but was unable to harvest this crop because the beans represented by the Defendant to be Non-Shatter Soy Beans shattered, burst from the pod and fell upon the ground before the time for harvesting this crop had arrived due to the fact that the Defendant had negligently represented and negligently packaged these seed and certified the same negligently as Non-Shatter seed when in fact these seed were not Non-Shatter Soy Bean Seed as represented by the Defendant, all to the damage of the Plaintiff in the amount aforesaid.

Plaintiff amends Count Six (6) to read as follows:

(6) The Plaintiff alleges that the Defendant was engeged in the business of growing and selling seed during the year of to-wit; 1950. That the Defendant sold certain Soy Bean Seed to a retailer for resale as seed that he had packaged in containers marked "Non-Shatter Soy Bean Seed by attaching to the containers holding said seed tags bearing the following inscription:

Variety	Kind	Net Weight
Tall Growing N. S. Clemson	Soy Beans	120

Purity 18% Weed 00% Crop 01% Inert 01%

Name and Number of Noxious Weeds Per Pound of Pure Seed

Primary Noxious Weeds: None 10 Secondary Noxious Weeds: None

Germination 85% Hard Seed .00% Tested 4, 1950

Where Grown, Baldwin County Lot No I-J

H. KENNEDY

SUMMERDALE, ALABAMA.

That the Defendant knew that the said seed were not Non-Shatter Seed but fraudulently represented these seed to be such. That the Defendant, knowing the labels and certificates he had attached to the containers containing these seed were false, and with

an intent to defraud placed these seed on sale for resale as Non-Shatter Soy Bean Seed. That the Plaintiff, relying on the label and certificate aforementioned purchased Ninety (90) Bushels of these seed that the Defendant had falsely and fraudulently marked and marketed and certified on to-wit; the 19th day of May, 1950 and as a direct and proximate consequence of this false and fraudulent representation made by the Defendant, the Plaintiff sustained damages in the amount of thirty thousand ($30,000.00) Dollars in that he planted the seed so purchased, tended them in a husband like manner and grew a crop but was unable to harvest the same because the seed were not in fact Non-Shatter Soy Bean Seed and hence shattered before the time for harvesting had arrived so that Plaintiff was unable to gather the same for all of which the Plaintiff claims damages as aforesaid, both general and punitive.

Plaintiff amends Count Seven (7) to read as follows:

(7) Plaintiff claims of the Defendant Thirty Thousend ($30,000.00) Dollars, as damages, for in this, that on, to-wit; the 19th day of May, 1950 the Defendant falsely, unlawfully and fraudulently marked and certified certain seed as Non-Shatter Soy Bean Seed by attaching to the containers holding said seed tags bearing the following inscription:

Variety	Kind	New Weight
Tall Growing N. S. Clemson	Soy Beans	120

Purity 18% Weed 00% Crop 01% Inert 01%

Name and Number of Noxious Weeds Per Pound of Pure Seed

Primary Noxious Weeds: None | Secondary Noxious Weeds: None

Germination 85% Hard Seed .00% Tested 4, 1950

Where Grown, Baldwin County Lot No 1 - J

H. KENNEDY

SUMMERDALE, ALABAMA.

That Defendant packaged, labeled and put the said seed on the market and sold the said seed to Milton Novotny, individually, or as the agent of the "Hub Truckers Association," a corporation, for resale as seed said sale being made by the Defendant in Baldwin County, Alabama. That the Plaintiff was deceived by said false, unlawful and fraudulent representation and on to-wit;

May 19th, 1950, in Baldwin County, Alabama while relying upon said false, unlawful and fraudulent representation of the Defendant purchased from the said retailer Ninety (90) Bushels of said seeds, properly planted, cultivated and harvested these seed in a husband like manner but on account of the fact that the said seed were not of the variety that they had been fraudulently, unlawfully and falsely marked and certified to be by the Defendant, the Plaintiff was unable to properly harvest the same; that the said seed marked and certified by the Defendant to be Non-Shatter Soy Bean Seed were in deed and in fact not Non-Shatter Soy Bean Seed as represented by the Defendant and on this account most of these seed shattered from the pod before time to harvest the same. Plaintiff claims damages, both general and punitive in the amount first aforesaid from the Defendant for and on account of and as the proximate result of Defendant's fraudulent, unlawful and false representation in regard to said seed which was relied upon by the Plaintiff to his damage.

Plaintiff amends Count Eight (8) to read as follows:

(8) The Plaintiff claims of the Defendant, as damages, Thirty Thousand ($30,000.00) Dollars, for in this, that on to-wit; the 19th day of May, 1950, the Defendant falsely, unlawfully and fraudulently marked and certified certain seed as Non-Shatter Soy Bean Seed by placing on the containers holding said seed tags bearing the following inscription:

Variety	Kind	New Weight
Tall Growing N. S. Clemson	Soy Beans	120

Purity 18% Weed 00% Crop 01% Inert 01%

Name and Number of Noxious Weeds Per Pound of Pure Seed.

Primary Noxious Weeds: None | Secondary Noxious Weeds: None.

Germination 85% Hard Seed .00% Tested 4, 1950.

Where Grown, Baldwin County Lot No 1 - J

H. KENNEDY

SUMMERDALE, ALABAMA.

That Defendant packaged and put the said seed on the market and sold the said seed to Milton Novotny individually or as the agent of the "Hub Truckers Association, a Corporation, for resale

as seed, said sale being made by the Defendant in Baldwin County, Alabama. That the Plaintiff was deceived by said false, unlawful and fraudulent representation and on to-wit; May 19, 1950 in Baldwin County, Alabama while relying upon said false, unlawful and fraudulent representation of the Defendant purchased Ninety (90) Bushels of said seed from the said Novotny, properly planted, clutivated and harvested these seed in a husband like manner but on account of the fact that said seed were not of the variety that they had been fraudulently, unlawfully and falsely marked and certified to be by the Defendant, the Plaintiff was unable to properly harvest the same; that the said seed marked and certified to by the Defendant to be Non-Shatter Soy Bean Seed were in deed and in fact not Non-Shatter Soy Bean Seed as represented and certified to by the Defendant and because these seed were not as Defendant represented them to be they shattered from the pod before time to harvest them; that if the seed had been as they were falsely, unlawfully and fraudulently marked and certified to be by the Defendant the Plaintiff would have had a yield of more than Ten Thousand ($10,000.00) Dollars worth of Soy Beans but that the Plaintiff was able to secure only approximately Sixteen Hundred and Nine ($1609.00) Dollars for the entire crop he was able to harvest which he attempted to do in a husband like manner and at the proper time; and further that the stalks of the plants which the Plaintiff grew from the seeds sold to him due to the false, unlawful and fraudulent representations of the Defendant as set out above were so much tougher and more unharvestable than Non-Shatter Soy Bean Seed Plants that the Plaintiff burned up the motor in his tractor and tore up and rendered useless the harvesting mechanism of his combine in an effort to harvest the said bean crop, all to the general, special and punitive damage of the Plaintiff in the amount first aforesaid for and on account of and as the proximate result of the fraudulent, unlawful and false representation made by the Defendant and relied upon by the Plaintiff to his damage.

Plaintiff demands a trial by jury of the issues involved herein.

C. LeNOIR THOMPSON

HORNE & WEBB

BY:

ATTORNEYS FOR PLAINTIFF.

1591

We the Jury find for the defendant.

W R Chapman
Foreman

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D E M U R R E R S

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L. S. KIMBLER,

Plaintiff,

-vs-

H. KENNEDY,

Defendant.

* * * * * * * * * * * * * * * * * * * *

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

* * * * * * * * * * * * * * * * * * * *

FILED
MAY 31 1951
ALICE J. DUCK, Clerk

CECIL G. CHASON
ATTORNEY AT LAW
FOLEY, ALABAMA

L. S. KIMBLER,

Plaintiff,

Vs

H. KENNEDY,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

CASE NO. 1651

FILED FILED

JAN 21 1952

ALICE I. DUCK, Clerk

CLERK

Law Offices of

Horne & Webb

Attorneys at Law

Atmore, Ala.