L. S. KIMBLER,	) (	
Plaintiff,	) (	IN THE CIRCUIT COURT OF
-vs-	) (	BALDWIN COUNTY, ALABAMA
HUB TRUCKERS ASSOCIATION, a corporation,	) (	AT LAW
	) (	CASE NO. 1683
Defendant		

ANSWER TO INTERROGATORIES

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

1. Yes
2. Legal designation is correct
3. The corporation is dissolved
4. Yes
5. Yes
6. No
7. No
8. Sold him none
9. See answers to Questions 6, 7 and 8
10. See answers to Questions 6, 7 and 8
11. See answers to Questions 6, 7 and 8
12. See answers to Questions 6, 7 and 8
13. See answers to Questions 6, 7 and 8
14. See answers to Questions 6, 7 and 8
15. See answers to Questions 6, 7 and 8
16. See answers to Questions 6, 7 and 8
17. See answer to Question 15.

Emil Morvac Pres

STATE OF ALABAMA

BALDWIN COUNTY

Before me, Cecil G. Chason, a Notary Public in and for said County in said State, personally appeared Emil Morvac, who is known to me, and who after being by me first duly and legally sworn, deposes and says that he was the last president of Hub Truckers Association, a corporation, and that he is the person who answered

C. G. C.

the foregoing interrogatories and that the answers thereto are true and correct.

Emil Moravec Pres

Sworn to and subscribed before me,
a Notary Public, on this the 15th
day of ~~October~~ November, 1951.

Notary Public, Baldwin County
State of Alabama

C. G. C.

1683

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

ANSWER TO INTERROGATORIES

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

L. S. KIMBLER,

Plaintiff,

-vs-

HUB TRUCKERS ASSOCIATION,
a corporation,

Defendant.

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

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

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

Filed 11-26-5-1
Avis Jenrich
Clerk

L. S. KIMBLER PLAINTIFF VS HUB TRUCKERS ASSOCIATION, A CORPORATION, DEFENDANT	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA AT LAW CASE NO. _____

INTERROGATORIES TO THE DEFENDANT HUB TRUCKERS ASS'N A CORPORATION.

Comes the plaintiff and desiring the testimony of the defendant Hub Truckers Ass'n a Corp. and propounds the following interrogatories to be answered by said defendant;

1. Has this defendant been sued by its proper legal designation?

2. If not, give the correct legal designation as the answer to this interrogatory.

3. Is this defendant incorporated?

4. Were you doing business in Robertsdale in the year 1950?

5. Did you sell seed in connection with your business during the year 1950?

6. Did you sell soy bean seed during the year 1950?

7. Did you sell soy bean seed during the year 1950 to Mr. L. S. Kimbler?

8. On what date or dates during the year 1950 did you sell soy bean seed to Mr. . S. Kimbler?

9. What was the quantity of bean seed that you sold Mr. L. S. Kimbler?

10. What was the variety of soy bean seed that you sold Mr. L. S. Kimbler in the year 1950?

11. Were the bean seed that you sold Mr. L. S. Kimbler labled shatter-proof soy bean seed?

12. Did these bean seed carry a lable that showed or indicated that they had been certified?

13. From whom did you purchase these seed?

14. Were these seed labeled and certified at the time you purchased them?

15. If you say that you sold these seed to Mr. Kimbler, who was your agent, servant or employee that sold these seed to the plaintiff?

16. Does this agent still work for you?

17. If not, give his present address as the answer to this interrogatory?

C. LeNoir Thompson
Attorney for Plaintiff.

I, _____, a Notary Public, in said County, and State, hereby certify that C. LeNoir Thompson who is known to me, appearing before me on this day and upon being duly sworn, deposes and says: That he is one of the attorneys for the plaintiff and that the answers to the above and foregoing interrogatories propounded to the defendant in said cause will be material evidence for theplaintiff.

Given under my hand and seal this 24th day of September, 1951.

_____

No 1683

copy received by
Mr. Shumpanne

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 Hub Truckers Association, Inc. 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 10th day of July, 1951.

Clerk

****

L. S. KIMBLER, PLAINTIFF	)	IN THE CIRCUIT COURT OF
	)	BALDWIN COUNTY, ALABAMA
VS	)	AT LAW
HUB TRUCKERS ASSOCIATION, INC. a corporation, DEFENDANT	)	CASE NO. ____
	)	

COUNT ONE: The Plaintiff claims of the Defendant the sum of Ten Thousand Dollars ($10,000.00) damages, together with interest thereon for a breach of warranty in the sale of soy bean seed by their agent, servant or employee, who was then acting within the line and scope of his employment, to the Plaintiff on to-wit:__ day of _____ 195__ which the Defendant through their agent, servant or employee warranted to be shatter proof soy bean seed where in fact they were not shatter proof soy bean seed.

COUNT TWO: Plaintiff claims of the Defendant the sum of Ten Thousand Dollars ($10,000.00) damages, together with interest thereon, for that on to-wit: the __ day of _____ 195__, the Defendant's, agent, servant or employee, then acting within the scope and line of his employment, sold to the Plaintiff certain soy bean seed and warranted unto the Plaintiff that said seed were shatter proof, and the Plaintiff avers that they were not shatter proof seeds. The 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 this purpose. The 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 avers that had the seen been as warranted he would have been able to harvest the crop.

COUNT THREE: The Plaintiff claims of the Defendant the sum of Ten Thousand Dollars ($10,000.00) 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 19__ the Defendant put certain soy bean seeds on the market for sale. At the time he knew or should have known that a part of the seeds would ultimately be used to produce a crop of beans. The containers in which the seeds were sold were marked "shatter proof soy bean seed". The Plaintiff relied on the certificate, purchased from the agent, servant or employee of the Defendant, who was then and there acting within the line and scope of his employment, some of the seed, planted them, grew a crop, but was unable to harvest it because the seeds were not shatter proof as certified; but were non-shatter proof seeds, all to the great loss of the Plaintiff in the aforesaid amount.

COUNT FOUR: The Plaintiff claims of the Defendant the sum of Ten Thousand Dollars ($10,000.00) damages, together with interest to this, that the Defendant while operating a business, a part of which was selling seed, did sell through their agent, servant or employee, then and there acting within the line and scope of his employment, certified soy bean seed to the Plaintiff, on to-wit: the -- day of _____19__. The Defendant through their agent, servant, or employee warranted the soy bean seed 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 said seed, planted them and grew a crop of soy beans, but was unable to harvest the crop because the beans shattered, all to the loss of the Plaintiff in aforesaid amount.

COUNT FIVE: The Plaintiff claims of the Defendant Ten Thousand Dollars ($10,000.00) together with interest thereon as damages for that; in the year 195__ the Defendant was engaged in the business of selling seeds. The Plaintiff avers that the Defendant's agent, servant, employee, who was then and there acting within the line and scope of his employment, negligently put soy bean seeds that had been erroneously labeled and certified on the market. These seeds were labeled and certified to be shatter proof soy bean seed. The Plaintiff avers that he purchased some of these soy bean seed from the Defendant's agent, servant, or employee, who was then and there acting within the line and scope of his employment. As a direct and proximate consequence of the negligence of the Defendant's agent, servant or employee the Plaintiff sustained damages in the aforesaid amount.

COUNT SIX: The Defendant was engaged in the business of selling seed during the year 1950. The Defendant's agent, servant or employee, while acting within the line and scope of his employment, sold certain soy bean seed to the Plaintiff that had been packed in containers marked "shatter proof soy bean seed". To these containers were affixed certificates certifying, along with other things, that the seed contained therein were shatter proof soy bean seed. The Plaintiff avers that the Defendant's agent, servant or employee knew or should have known that the said seed were not shatter proof seed, yet he fraudulently represented them to be such. As a direct and proximate consequence of this false and fraudulent representation the Plaintiff sustained damages in the amount of Ten Thousand Dollars ($10,000.00) in that he planted the seed he had purchased, grew a crop, but was unable to harvest the same because the seeds were non-shatter proof and shattered so that he was unable to gather the same.

COUNT SEVEN: During the year 195__ the Defendant's agent, servant or employee, while acting within the line and scope of his employment, sold the Plaintiff certain soy bean seed that were falsely and fraudulently marked "shatter proof soy bean seed". The Plaintiff was deceived by the false and fraudulent representation and acted thereon, and as a proximate consequense of said false and fraudulent representation the Plaintiff was damaged in the amount of Ten Thousand Dollars ($10,000.00) for that he purchased and planted some of the said seed, but was unable to harvest same as they were not of the variety that they had been certified to be.

Plaintiff demands a trial by a jury.

Horne & Brantley

By _____

Attorneys for Plaintiff

Received in Sheriff's Office
this 11 day of July 51
TAYLOR WILKINS, Sheriff

Executed July, 16. 1951
By Serving Copy on

Milton J. Novotny

Sheriff
Taylor Wilkins
By
Edleigh Steadham

Milton J. Novotny

N01683

L. S. KIMMER

PLAINTIFF

VS

HUB TRUCKERS ASSOCIATION, INC.
a corporation,

DEFENDANT

SUMMONS AND COMPLAINT

FILED
JUL 10 1951
ALICE L. DUCK, Clerk

Filed 7-10-51
Alice L. Duck
Clerk

L. S. KIMBLER, Plaintiff, vs. HUB TRUCKERS ASSOCIATION, INC., A Corporation, Defendant.	)))))))	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA LAW SIDE. NO. 1683.

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 harves 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

Chasson

Chasson & Sone

Attorneys for Defendant.

DEMURRER

L. S. KIMBLER,

Plaintiff,

vs.

HUB TRUCKERS ASSOCIATION, INC., A Corporation,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

LAW SIDE.

NO. 1683.

Filed: March 4th, 1952.

Clerk.

LAW OFFICES

HYBART, CHASON & STONE

BAY MINETTE, ALABAMA

COMPLAINT AS AMENDED

L. S. KIMBLER,	X	
	X	
Plaintiff,		IN THE CIRCUIT COURT OF
	X	
VS.		BALDWIN COUNTY, ALABAMA
	X	
HUB TRUCKERS ASSOCIATION, INC. a Corporation,		AT LAW
	X	
		CASE NO. 1683
Defendant.	X	
	X	

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 their agent, servant or employee, who was then acting within the line and scope of his employment, to the Plaintiff on to-wit: 19th day of May, 1950 which the Defendant through their agent, servant or employee warranted to be shatter proof soy bean seed where in fact they were not shatter proof soy bean 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's, agent, servant or employee, then acting within the scope and line of his employment, sold to the Plaintiff certain soy bean seed and warranted unto the Plaintiff that said seed were shatter proof, and the Plaintiff avers that they were not shatter proof seeds. The 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 this purpose. The 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 avers that had the seed been as warranted he would have been able to harvest the crop.

COUNT THREE: The Plaintiff claims of the Defendant the sum of THIRTY ($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 1950 the Defendant put certain soy bean seeds on the market for sale. At the time he knew or should have known that a part of the seeds would ultimately be used to produce a crop of beans. The containers in which the seeds were sold were marked "shatter

proof soy bean seed". The Plaintiff relied on the certificate, purchased from the agent, servant or employee of the Defendant, who was then and there acting within the line and scope of his employment, some of the seed, planted them, grew a crop, but was unable to harvest it because the seeds were not shatter proof as certified; but were non-shatter proof seeds, all to the great loss of the Plaintiff in the aforesaid amount.

COUNT FOUR: The Plaintiff claims of the Defendant the sum of THIRTY THOUSAND ($30,000.00) DOLLARS damages, together with interest, to-this, that the Defendant while operating a business, a part of which was selling seed, did sell through their agent, servant or employee, then and there acting within the line and scope of his employment, certified soy bean seed to the Plaintiff, on to-wit: the 19th day of May 1950. The Defendant through their agent, servant, or employee warranted the soy bean seed 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 said seed, planted them and grew a crop of soy beans, but was unable to harvest the crop because the beans shattered, all to the loss of the Plaintiff in aforesaid amount.

COUNT FIVE: The Plaintiff claims of the Defendant THIRTY THOUSAND ($30,000.00) DOLLARS together with interest thereon as damages for that; in the year 1950 the Defendant was engaged in the business of selling seeds. The Plaintiff avers that the Defendant's agent, servant, employee, who was then and there acting within the line and scope of his employment, negligently put soy bean seeds that had been erroneously labeled and certified on the market. These seeds were labeled and certified to be shatter proof soy bean seed. The Plaintiff avers that he purchased some of these soy bean seed from the Defendant's agent, servant, or employee, who was then and there acting within the line and scope of his employment. As a direct and proximate consequence of the negligence of the Defendant's agent, servant or employee the Plaintiff sustained damages in the aforesaid amount.

COUNT SIX: The Defendant was engaged in the business of selling seed during the year 1950. The Defendant's agent, servant or employee, while acting within the line and scope of his employment, sold certain

soy bean seed to the Plaintiff that had been packed in containers marked "shatter proof soy bean seed". To these containers were affixed certificates certifying, along with other things, that the seed contained therein were shatter proof soy bean seed. The Plaintiff avers that the Defendant's agent, servant or employee knew or should have known that the said seed were not shatter proof seed, yet he fraudulently represented them to be such. As a direct and proximate consequence of this false and fraudulent 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 seeds were non-shatter proof and shattered so that he was unable to gather the same.

COUNT SEVEN: During the year 1950 the Defendant's agent, servant or employee, while acting within the line and scope of his employment, sold the Plaintiff certain soy bean seed that were falsely and fraudulently marked "shatter proof soy bean seed". The Plaintiff was deceived by the false and fraudulent representation and acted thereon, and as a proximate consequence of said false and fraudulent representation the Plaintiff was damaged in the amount of THIRTY THOUSAND ($30,000.00) DOLLARS for that he purchased and planted some of the said seed, but was unable to harvest same as they were not of the variety that they had been certified to be.

Plaintiff demands a trial by jury.

C. LeNOIR THOMPSON

FRANK G. HORNE

TOLBERT M. BRANTLEY

By: Tolbert M Brantley
Attorneys for Plaintiff

1683

COMPLAINT AS AMENDED

L. S. KIMBLER,

Plaintiff,

VS.

HUB TRUCKERS ASSOCIATION, INC.
a Corporation,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

CASE NO. 1683

FILED

FILED JAN 21 1952

ALICE J. DUCK, Clerk

CLERK

mo. Such.

L. S. KIMBLER, PLAINTIFF vs. HUB TRUCKERS ASSOCIATION, INC, A CORPORATION, DEFENDANT	X X X X X X X X X X X	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA AT LAW. CASE NO. 1683.

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

Plaintiff amends count two to read as follows:

(2) Plaintiff claims of the defendant the sum of thirty thousand ($30,000.00) Dollars, as damages, together with interest thereon, for that on to-wit; the 19th day of May, 1950, in Baldwin County, Alabama the defendant's agent, servant or employee, then acting within the line and scope of his employment, sold to the plaintiff certain soy bean seed and warranted unto the plaintiff that said seed were "shatter-proof," and the plaintiff avers that the said seed sold to him by the defendant as shatter-proof soy bean seed were not in deed or in fact shatter-proof soy bean seed but were non-shatter-proof soy bean seed. The plaintiff further avers that as a proximate result of said representation of the defendant, which the plaintiff relied upon, the plaintiff planted the said seed in a field he had properly prepared for this purpose, grew a crop of soy beans and attempted to harvest this crop at the proper time and in a husband like manner but that he was unable to harvest this crop because the beans shattered so much that he could not gather them. The plaintiff avers that had the seed been as warranted by the defendant he would have been able to harvest the said crop and that his damages as mentioned aforesaid were proximately caused by the action of the defendant in warranting the said seed to be shatter-proof soy bean seeds when in deed and in fact the seeds sold the plaintiff by the defendant were non-shatter-proof soy bean seed.

Plaintiff amends count three (3) to read as follows:

(3) The plaintiff claims of the defendant the sum of thirty thousand ($30,000.00) Dollars damages, together with interest thereon, for breach of warranty in the sale of soy bean seed by defendant to the plaintiff that grew out of the following facts:

In the year 1950 the defendant put certain soy bean seeds on the market for sale in Baldwin County, Alabama. At the time defendant knew or should have known that a part of the seeds would ultimately be used to produce a crop of beans. The containers in which the said seeds were sold were marked "shatter-proof soy beans seeds." The plaintiff relying on the certificate placed on said beans and representations of the defendant purchased from the agent, servant or employee of the defendant, who was then and there acting within the line and scope of his employment, ninety (90) bushels of the said seed, planted these seed in the proper manner, grew a crop but was unable to harvest the said crop because the seeds were not shatter-proof seed as pepresented by the defendant and as certified but on the contrary were non-shatter-proof seeds and as a proximate consequence of the acts of the defendant as aforesaid the plaintiff suffered a great loss in the amount mentioned above.

The plaintiff amends count four (4) as follows:

(4) The plaintiff claims of the defendant the sum of thirty thousand ($30,000.00) Dollars damages, together with interest for this; that the defendant, while operating a business in Baldwin County, Alabama, a part of which was selling seed, did sell through their agent, servant or employee who was then and there acting within the line and scope of his employment, certified soy bean seed to the plaintiff, on to-wit; the 19th day of May, 1950. That the defendant through their agent, servant, or employee warranted the said soy bean seed to the plaintiff to be shatter-proof soy bean seed, while in fact they were non-shatter proof seed. That the plaintiff, relying on said warranty, bought ninety (90) bushels of the said seed, planted them, culti-

vated them in a husband like manner, grew a crop of soy beans therefrom and attempted to harvest said crop at the proper time and in a proper manner but plaintiff was unable to harvest the crop so grown because the beans shattered due to the fact they were not in deed or in fact as warranted by the defendant and certified to be and as a proximate consequence of the defendant's actions in warranting the said seed to be shatter-proof soy bean seed when they were non-shatter proof soy bean seed the plaintiff suffered a loss in the aforesaid amount.

Plaintiff adds to his complaint the following count:

(8) The 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 in Baldwin County, Alabama, the defendant's agent, servant or employee, then and there acting within the line and scope of his employment, sold to the plaintiff certain soy bean seed, to-wit; ninety (90) bushels certified to be shatter-proof soy bean seed. That defendant through its agent warranted unto the plaintiff that said seed were shatter-proof. That the said agent at the time the warranty above mentioned was given was then and there acting within the line and scope of his employment. That as a proximate consequence of the action of the defendant as aforesaid the plaintiff planted the said seed, grew a crop of soy beans and attempted to harvest this crop at the proper time and in a husband like manner but on account of the fact these seed were not as warranted by the defendant and certified to be the said crop of soy beans shattered. That these seed sold to the plaintiff by the defendant were in deed and in fact non-shatter-proof soy bean seed. Plaintiff further avers that if the seed had been as they were certified and warranted to be the plaintiff would have had a yield of more than ten thousand ($10,000.00) Dollars worth of soy beans but that the plaintiff as a proximate consequence of the actions of the defendant as set out above was able to secure only to-wit; 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 and warranted by the defendant to be shatter-proof soy bean seed were not in deed or in fact the stalks of shatter-proof soy beans and 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 and special damage of the plaintiff in the amount first aforesaid for and on account of and as the proximate result of the fact that the seed sold by the defendant to the plaintiff were not as they were warranted to be by the defendant and as certified on the said packages containing these seed.

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

C. LeNOIR THOMPSON

HORNE & WEBB

BY:

ATTORNEYS FOR PLAINTIFF.

1683

L. S. KIMMLER

PLAINTIFF

VS

HUB TRUCKERS ASSOCIATION, INC.
A CORPORATION

DEFENDANT

FILED
3-6-53
ALICE J. DUCK, Clerk

L. S. KIMBLER, Plaintiff, vs. HUB TRUCKERS ASSOCIATION, INC., A Corporation, Defendant.	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA LAW SIDE. NO. 1683.

Comes the Defendant in the above styled cause and demurs to the Complaint as amended March 6, 1953, 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 is vague and indefinite.

3. For aught that appears from said Complaint the variety of seed known as shatter proof soy bean seed will shatter.

4. For aught appearing from said Complaint the agent, servant or employee of Defendant was not acting within the line and scope of his employment as such agent.

5. That it does not appear from said Complaint whether the warranty referred to in each count was orally or in writing.

6. That the allegation in Count Two of said Complaint that the Defendant warranted the seed to be shatter proof seed, is but a conclusion of the pleader and sufficient facts are not alleged.

7. That it is not alleged in Count Three of said Complaint that the Defendant warranted the seed to be shatter proof soy bean seed.

8. That it does not appear in Count Three of said Complaint what representations were made by Defendant to the Plaintiff.

9. That it does not appear in Count Four of the Complaint that the Defendant sold such seed to the Plaintiff for planting purposes.

10. That it does not appear in Count Four of the Complaint that the agent, servant or employee of the Defendant, was acting within the line and scope of his employment as such in making the warranty referred to therein.

11. That the allegation in Count Four of the Complaint that the beans shattered due to the fact that they were not as warranted by the Defendant, is but a conclusion of the pleader and does not allege sufficient facts.

12. That it is not alleged in Count Eight of the Complaint that the seed were sold by the Defendant to the Plaintiff for planting purposes or knew that he intended to plant them.

13. That the allegation in Count Eight of said Complaint that if the seed had been as they were certified and warranted to be, that the Plaintiff would have had a yield of more than $10,000.00 worth of seed is speculative.

14. For aught appearing from said Complaint the Plaintiff produced more beans from the seed that he purchased than he would have produced if they had been shatter proof soy bean seed.

15. That it is not alleged in Count Eight of said Complaint that the stalks of the plants which the plaintiff grew were any different from the stalks which would have been raised from shatter proof seed.

16. That it is not alleged in said Complaint that there is any duty owing by the Defendant to the Plaintiff.

17. That it is not alleged in said Complaint that the Plaintiff was injured by the Defendant.

C. E. Gibson

Gibson & Stone,

Attorneys for Defendant.

D E M U R R E R

L. S. KIMBLER,

Plaintiff,

vs.

HUB TRUCKERS ASSOCIATION, INC.,
A Corporation.

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

LAW SIDE.

NO. 1683.

Filed: April 23rd 1953.

Clerk.

LAW OFFICES
CHASON & STONE
BAY MINETTE, ALABAMA

L. S. KIMBLER, PLAINTIFF VS HUB TRUCKERS ASSOCIATION, INC. a corporation, DEFENDANT	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA LAW SIDE CASE NO. _____

Comes the Defendant in the above style cause and demurs to the Complaint filed in said cause and 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 is vague and indefinite.

3. That said Complaint does not state the time that such seed were supposed to have been sold by the Defendant to the Plaintiff.

4. That said Complaint fails to show any duty owing by the Defendant to the Plaintiff.

5. That said Complaint does not show any damage to the Plaintiff.

Attorneys for Defendant

1683

DEMURRER

L. S. KIMBLER,
PLAINTIFF

VS

HUB TRUCKERS ASSOCIATION, INC.
a corporation,
DEFENDANT

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

CASE NO. _____

FILED: JULY 24, 1951

Clerk

LAW OFFICES
HYBART, CHASON & STONE
BAY MINETTE, ALABAMA

L. S. KIMBLER,	)	
Plaintiff,	)	IN THE CIRCUIT COURT OF
vs.	)	BALDWIN COUNTY, ALABAMA
HUB TRUCKERS ASSOCIATION, INC., A Corporation,	)	LAW SIDE.
	)	NO. 1683.
Defendant.	)	

Comes the Defendant in the above styled cause and its 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 it 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.

1683

DEMURRER:

L. S. KIMBLER,

Plaintiff,

vs.

HUB TRUCKERS ASSOCIATION, INC., a corporation,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
LAW SIDE.
NO. 1683.

Filed: February 26 1953.

Clerk.