

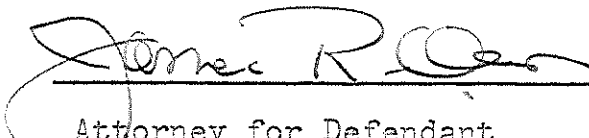


of knowledge the said written instrument was not properly completed although it was understood and agreed between the parties thereto that the said written instrument constituted a valid mortgage on the said automobile. A photostatic copy of the said written instrument is attached hereto marked "Exhibit A", and made a part hereof as though fully incorporated herein.

3. The Defendant alleges that the written instrument attached hereto is an equitable mortgage on the said automobile mentioned in the Complaint in this cause and that under the terms thereof he was entitled to possession of the said automobile due to the fact that the Plaintiff was delinquent in his payments thereunder and was in default of the said payments for a period of to-wit, 8 weeks, when the said automobile was seized by the Defendant.

4. The Defendant further alleges that the Circuit Court of Baldwin County, Alabama, at Law, is without authority to reform the said written instrument or to declare it to be an equitable mortgage on the said automobile referred to therein.

Wherefore, the said Defendant files this motion and moves the court to make and enter an appropriate order transferring this cause from the law side of court to the equity side of the court.

  
Attorney for Defendant



\$ \_\_\_\_\_ Bayminette Ala. March 6 1954

after date without grace Byrd promise to pay to the order of W. J. Porter \$450<sup>00</sup> one 1950 Chev. 2 dr. Motor No. HAA304013 tag No. 5-4275, full amount \$765<sup>00</sup> traded in one 1946 Chev. 4 dr. \$200 for value received, in gold coin of the United States of the present standard of weight and fineness with interest from traded in at \$315<sup>00</sup>, 19 \_\_\_\_\_ at the rate of \_\_\_\_\_ % per annum until paid.

Payable at Bd due \$450<sup>00</sup> to be paid to W. J. Porter at \$125<sup>00</sup> each two weeks

The parties to this instrument, whether maker, endorser, surety, or guarantor, each for himself, hereby severally waive as to this debt or any renewal thereof, all rights of exemption under the Constitution and Laws of Alabama as to personal property, and they each severally agree to pay all costs of collecting or securing or attempting to collect or secure this debt, including a reasonable attorney's fee, whether the same be collected or secured by suit or otherwise. And the maker, endorser, surety, or guarantor of this note severally waives demand, presentment, protest, notice of protest, suit and all other requirements necessary to hold them, and they agree that time of payment may be extended without notice to them of such extension. The bank at which this note is payable is hereby authorized to apply on or after maturity to the payment of this debt any funds in said bank belonging to the maker, surety, endorser, guarantor, or any one of them. All suits for the collection of this note may be prosecuted in any county in this State that the payee or assignee elects.

beginning Mar. 20/54 sold as this  
Witness \_\_\_\_\_ and seal this the \_\_\_\_\_ day of \_\_\_\_\_, 1954

Witness Edward Porter James E. Byrd

Witness Adell Porter Minnie S. Byrd

No. \_\_\_\_\_ Due \_\_\_\_\_

The State of Alabama, \_\_\_\_\_ County

WHEREAS, \_\_\_\_\_ a \_\_\_\_\_ indebted to \_\_\_\_\_

in the sum of \_\_\_\_\_ Dollars

evidenced by \_\_\_\_\_ promissory note of even date herewith and due on the \_\_\_\_\_ day of \_\_\_\_\_

19 \_\_\_\_\_, and to secure the payment of same \_\_\_\_\_ hereby bargain, sell and convey to the said

the following property, upon which there is no incumbrance, to-wit: \_\_\_\_\_

to have and to hold unto the said \_\_\_\_\_

upon this condition: That if all amounts secured hereby are paid when due, this instrument shall be null and void, otherwise to remain in full force, and the said \_\_\_\_\_

\_\_\_\_\_ agents or assigns, in the event default is made in such payment, are hereby empowered to seize said property, without process, and after giving five days' notice at three public places in the county, to sell the same at public outcry to the highest and best bidder for cash, and apply the proceeds to the discharge of said debt and cost of foreclosure and pay balance to \_\_\_\_\_

Given under \_\_\_\_\_ hand, this day and date above written

Witness: Edward Porter James E. Byrd (L. S.)  
Adell Porter Minnie S. Byrd (L. S.)  
\_\_\_\_\_ (L. S.)

MOTION TO TRANSFER CAUSE  
FROM LAW SIDE TO EQUITY  
SIDE OF COURT

JAMES EDWARD BYRD,

PLAINTIFF,

VS

WALTER J. PORTER,

DEFENDANT,

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

AT LAW        2279

FILED

JUN 18 1954

ALICE J. DUCK, Clerk

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JAMES R. OWEN

ATTORNEY-AT-LAW

BAY MINETTE, ALABAMA

STATE OF ALABAMA

BALDWIN COUNTY

Comes the Plaintiff, James Edward Byrd, in the cause of James Edward Byrd vs Walter J. Porter now pending in the Circuit Court of Baldwin County, Alabama, at Law and being duly sworn deposes and says: That my name is James Edward Byrd, I am the Plaintiff in the above cause that no purchase was made from Walter J. Porter on March 6, 1954, that the said transaction took place on March 9, 1954, and that the said Defendant wrote out and delivered to me, Plaintiff in said cause, the following bill of sale on March 9, 1954:

March 9, 1954

As a bill of Sale, From W. J. Porter to James Edward Byrd. One 1950 Chev. 2 dr, Motor No. NHA304013, License 5-6275, Full price, \$765.00 truck in as down payment 1950 Chev 4 dr Motor No. AFOA731351. License 5-5-830 Bal to be paid at Baldwin County bank \$150.00 plus interest, divided in 12 payments, First payment beginning April 3, 54

(Signed) W. J. Porter

That all payments due in accordance with same bill of sale had been paid and there were no payments due and unpaid as set forth in said bill of sale on date of conversion, and further that the said Plaintiff had proceeded in the Justice Court of Baldwin County, to-wit, that of T. C. Hand, where an adjudication of said cause was had concerning said motor vehicle, the subject of this suit and that a few days following, said conversion as alleged in the complaint filed in this cause by the said James Edward Byrd took place subsequent to the adjudication in the Court of T. C. Hand, Justice of the Peace.

*James E. Byrd*  
Plaintiff  
*Walter J. Porter*  
Attorney for the Plaintiff

STATE OF ALABAMA  
BALDWIN COUNTY

Before me, the undersigned authority, personally appeared James E. Byrd, who being duly sworn deposes and says that the foregoing facts are true and correct.

*James E. Byrd*

Sworn to and subscribed before me on this the 10 day of July, 1954.

**FILED**

*Walter J. Porter*  
Notary Public, Baldwin County, Alabama

~~ALICE J. DUCK, Clerk~~

JAMES EDWARD BYRD,  
 PLAINTIFF,  
 VS  
 WALTER J. POSTER,  
 DEFENDANT.

IN THE CIRCUIT COURT OF  
 BALDWIN COUNTY, ALABAMA  
 AT LAW

Now comes James Edward Byrd, Plaintiff in the above styled cause and demurs separately and severally to each count of the motion filed by the Defendant to transfer said cause from the law side to said Equity side of this Honorable Court, and for demurrer thereto shows as follows:

1.

That the said motion does not present any equitable question.

2.

That said motion does not show that the Defendant has not a complete and adequate remedy at law.

3.

That said motion does not state the equitable right of defense asserted with the same precision and certainty as is required to state such right.

4.

That the facts alleged in said cause do not justify the transferring of said cause to the Equity side of this Honorable Court.

5.

That a transfer of this cause to the Equity side of this Court would deny the Plaintiff rights accruing to him under the law side of this Honorable Court.

6.

That said motion was not verified as required by law.

7.

And then finally more than 30 days have expired and no properly executed motion for transfer having been filed before this Honorable Court Defendant has waived his right to such transfer.

FILED

7-15-54

ALICE J. BUCK, Clerk

*Walter J. Poster*  
 Attorney for the Plaintiff

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon Walter J. Porter, to appear within thirty days from the service of the writ in the Circuit Court, to be held for said County at the place of holding the same, then and there to answer the complaint of James Edward Byrd.

Witness my hand, this the 27<sup>th</sup> day of May, 1954.

*Deirdre [Signature]*  
CLERK.

JAMES EDWARD BYRD,	Ø	
	Ø	IN THE CIRCUIT COURT OF
PLAINTIFF,	Ø	BALDWIN COUNTY, ALABAMA
	Ø	
VS	Ø	AT LAW
	Ø	
WALTER J. PORTER,	Ø	
	Ø	
DEFENDANT.	Ø	

1.

The Plaintiff claims of the Defendant One Thousand (\$1000.00) Dollars damages for wrongfully taking the following goods and chattels, the property of the plaintiff, to-wit:

One 1950 Chevrolet 2 door, Motor No. HHA 304013

2.

The Plaintiff claims of the Defendant Three Hundred Sixty-Nine (\$369.00) Dollars, damages for wrongfully taking the following goods and chattels, the property of the Plaintiff, towit:

- Rod and Reel
- Electric Drill Motor
- Small Tools
- Jack, Tire Wrench & Lug Wrench
- Lady's Coat
- Lady's Hat
- Carton of Cigarettes
- Study Board
- Little Boy's Jacket
- Fishing Equipment
- Small seat Cushion
- Insurance Policy.

3.

The Plaintiff claims of the Defendant One Thousand Dollars (\$1000.00) for the conversion by said Defendant on the 25th day of May, 1954, of the following chattels: One 1950 Chevrolet 2 door, Motor No. HHA 304013 property of the Plaintiff.

4.

The Plaintiff claims of the Defendant Three Hundred Sixty-Nine (\$369.00) Dollars for the conversion by said Defendant on the 25th day of May, 1954,



of the following chattels: Rod and reel, electric drill motor, small tools, jack, tire wrench, lug wrench, lady's coat, lady's hat, carton of cigarettes, study board, little boy's jacket, fishing equipment, small seat cushion and insurance policy, property of the Plaintiff.

*[Handwritten Signature]*  
Attorney for the Plaintiff.

FILED

5-27-54

ELICE J. DUCK, Clerk

*[Faint, illegible text from the reverse side of the page, appearing as bleed-through.]*

Received in Sheriff's Office  
this 28 day of May 1954  
TAYLOR WILKINS, Sheriff

no 22 79

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

AT LAW

JAMES EDWARD BYRD,

PLAINTIFF,

VS

WALTER J. PORTER,

DEFENDANT.

Summons & Complaint

FILED  
MAY 27 1954  
ALICE J. DUCK, Clerk

C. LeNoir Thompson  
Attorney At Law  
Bay Minette, Alabama

Received \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_  
and on 28 day of May 1954  
I served a copy of the within et c.  
on \_\_\_\_\_

By service on Walter J. Porter  
Taylor Wilkins  
TAYLOR WILKINS, Sheriff  
By J. Brown 17, 84