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|                            |   |                         |
|----------------------------|---|-------------------------|
| VAN HARVILLE,              | I |                         |
| Plaintiff,                 | I |                         |
| vs.                        | I | IN THE CIRCUIT COURT OF |
| BAY MINETTE EQUIPMENT CO., | I | BALDWIN COUNTY, ALABAMA |
| Defendant.                 | I | AT LAW                  |
|                            | I |                         |

Comes the Defendant in the above styled cause and demurs to the Complaint 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 Count 1 of said Complaint is vague and indefinite.
3. That Count 1 of said Complaint affirmatively shows that the Plaintiff sold the A Tractor and equipment to the Defendant.
4. That the allegation in Count 1 of the Complaint as to the time the Plaintiff used the C Tractor and equipment is surplusage.
5. That the allegation in Count 1 of the Complaint as to the amount paid by the Plaintiff to the Defendant on his mortgage is surplusage.
6. That the allegation in Count 1 of the Complaint that the Plaintiff has lost his A Tractor and equipment and the money paid on the mortgage is surplusage.
7. That the allegation in Count 1 of the Complaint as to the wrongful re-possession by the Defendant of the C Tractor and equipment is but a conclusion of the Pleader and does not state how such Tractor and equipment was wrongfully re-possessioned.
8. That the allegation in Count 1 of the Complaint that justice requires that the Plaintiff be reimbursed for his losses is but a conclusion of the Pleader.
9. That the allegation in Count 1 of the Complaint that the Plaintiff was not in default in his mortgage an unreasonable length of time affirmatively shows that he was in default at the

time of re-possession of the C Tractor and equipment and that the Defendant had a right to re-possess it.

10. That the allegation in Count 1 of the Complaint that the Defendant agreed to hold the C Tractor and equipment and give the Plaintiff a right to redeem the Tractor and equipment is surplusage.

11. That the allegation in Count 1 of the Complaint that the Defendant agreed to hold the C Tractor and equipment and give the Plaintiff a chance to redeem it does not set out how long the Defendant agreed to hold the same.

12. For aught that appears in Count 1 of said Complaint the Defendant is still the owner of said C Tractor and equipment and could now resell the same to the Plaintiff.

13. That the allegation in Count 1 of the Complaint that the Plaintiff elected to rescind the sale and sue for the purchase price as the law gives him a right to do is but a conclusion of the Pleader and does not state facts which are the basis of this right.

14. That the allegation in Count 1 of the Complaint that the Defendant notified the Plaintiff that the C Tractor and equipment would be sold at public sale and that such sale was held and the property re-purchased by the Defendant is surplusage.

15. That the allegation in Count 1 of the Complaint that the Defendant sold the C Tractor and equipment at public sale affirmatively shows that the Defendant has complied with the law in regard to re-possession.

16. That the allegation in Count 1 of the Complaint that at the time the Defendant re-possessed the C Tractor and equipment the Baldwin County Bank was the holder of the mortgage given the Defendant on such Tractor and equipment is surplusage and does not allege that the Defendant was not entitled to re-possess such property.

17. For aught that appears from Count 1 of the Complaint the Defendant has acted entirely within the provisions of its mortgage and the laws of the State of Alabama.

18. That the allegation in Count 1 of the Complaint that the Defendant had already received the purchase price of the C Tractor and equipment and that the Defendant had no right to re-possess the property does not allege who paid the Defendant for such Tractor and equipment.

19. That the allegation in Count 1 of the Complaint that the Plaintiff did not voluntarily surrender the C Tractor and equipment but that the Defendant came to his home and took it while Plaintiff was absent does not allege a wrongful re-possession.

20. For aught that appears from Count 1 of the Complaint the Plaintiff had agreed that the Defendant re-possess the property.

21. That Count 3 of the Complaint is vague and indefinite.

22. For aught that appears from Count 3 of said Complaint the Plaintiff refused to accept the planter and fertilizer attachment which the Defendant contracted to deliver to him.

23. That Count 3 of said Complaint does not allege that the Plaintiff has fully complied with all of his agreement in the contract for which he claims a breach on the part of the Defendant.

24. For aught that appears in Count 3 of the Complaint the Plaintiff secured another planter of his choice before time for planting his crop.

25. For aught that appears from Count 3 of said Complaint the Defendant stood ready, able and willing at all times to deliver the planter and fertilizer attachment in accordance with the terms of its contract.

26. That the damages claimed in Count 3 of the Complaint are not sufficiently set out.

27. That the allegation in Count 3 of the Complaint that the Plaintiff suffered damages by reason of being forced to lose time and get another planter is but a conclusion of the Pleader.

28. For aught that appears from Count 3 of the Complaint the Defendant furnished the other planter referred to therein to the Plaintiff before planting time.

29. For aught that appears from Count 3 of the Complaint the planter furnished the Plaintiff was as good as and similar to the one the Defendant had contracted to furnish the Plaintiff.

30. That the allegation in Count 3 of the Complaint that the Plaintiff was not able to plant as much land as he would otherwise have planted and that he lost time from the crop that he did plant causing him damages is but a conclusion of the Pleader and does not set out how much land he would have planted otherwise or how much land he did plant.

31. That Count 3 of said Complaint does not allege what crops the Plaintiff planted or when he planted them and in what manner he suffered a loss.

32. That Count 4 of said Complaint is vague and indefinite.

33. That the breach of warranty complained of by the Plaintiff is not sufficiently set out in Count 4 of the Complaint.

34. That Count 4 of the Complaint does not allege that there were any defective parts in either the Tractor or equipment referred to therein.

35. That Count 4 of the Complaint does not allege that the part was defective because of any reason for which the Defendant would be liable under its warranty.

36. That the allegation in Count 4 of the Complaint that there was a failure of the Defendant to live up to its agreement and to the things that it had agreed to do after being notified by the Plaintiff is but a conclusion of the Pleader and does not allege what the defects were or when they occurred.

37. That the allegation in Count 4 of the Complaint that the C Tractor needed major repairs does not allege when such repairs were needed, what such repairs consisted of or that it was within the time covered by the warranty.

38. For aught that appears from Count 4 of the Complaint the defects or repairs were caused by the negligence of the manner in which the Plaintiff used the same.

39. That Count 4 of the Complaint does not allege how the Plaintiff was damaged in his farming business.

40. That Count 5 of said Complaint is vague and indefinite.

41. That Count 5 of said Complaint does not sufficiently set out the Plaintiff's damages.

42. That Count 5 of said Complaint fails to show sufficient facts for an implied warranty.

43. That Count 5 of said Complaint does not allege that the Plaintiff did not know at the time he purchased the property that the Tractor and equipment had been in the possession of the Defendant for about two years.

44. That Count 5 does not allege that the Defendant represented to the Plaintiff that the Tractor and equipment had not been on the yard for two years.

45. That the allegation in Count 5 of the Complaint that the Tractor and equipment had been on Defendant's lot for two years and was practically unworkable is but a conclusion of the Pleader and does not allege that such Tractor and equipment had ever been used or why it was unworkable.

46. That Count 5 of the Complaint does not allege what was wrong with the Tractor and equipment at the time the Plaintiff took possession of the same.

47. That the allegation in Count 5 of the Complaint that the Tractor and equipment had been in the possession of the Defendant for two years does not allege that it was not in as good condition as the day it was received by the Defendant.

48. That no facts are alleged in Count 5 to show that the Plaintiff had been damaged in any respect.

49. That Count 5 of the Complaint does not allege how much time the Plaintiff lost from his crop because of any breach of any warranty by the Defendant.

50. That Count 5 of said Complaint does not allege that the Plaintiff attempted to diligently plant and harvest the crop referred to therein in a proper manner.

51. That the allegation in Count 5 of the Complaint that the Plaintiff lost time from his crop and delay in his work and the Defendant though often notified failed and refused to do anything about it is but a conclusion of the Pleader.

52. The allegation in Count 5 of the Complaint that this trade is evidenced by a contract between the Plaintiff and the Defendant is surplusage.

53. That the allegation in Count 5 of the Complaint that the Tractor and equipment did not function properly is but a conclusion of the Pleader and does not state sufficient facts.

54. That the allegation in Count 5 of the Complaint that the Tractor and equipment did not function properly causing the Plaintiff not to be able to work as much land as he otherwise would have been able to work is but a conclusion of the Pleader and does not allege in what manner the Tractor and equipment did not function properly and does not allege why the Plaintiff was not able to work as much land as he otherwise would have been able to work and does not allege that he had any other land that he could have worked.

FILED

Aug. 6, 1954

ALICE L. DUCK, Clerk

*Harmon Stone*  
Attorneys for Defendant.

DEMURRER

VAN HARVILLE,

Plaintiff,

vs.

BAY MINETTE EQUIPMENT CO.,

Defendant

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

Filed this 6th day of August, 1954.

*Reid H. Stone*  
Clerk.

LAW OFFICES

**CHASON & STONE**

BAY MINETTE, ALABAMA

AMENDED COMPLAINT, NO. 2

FILED

Aug. 31, 1954

ALICE L. DUCK, Clerk

Van Harville

Plaintiff

Vs

Bay Minette, Equipment Co.

Defendant

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\* In the Circuit Court of  
\* Baldwin County, Alabama  
\* At Law.

1.

The Plaintiff claims of the Defendant the following personal property, viz; One Farmall A tractor, one Farmall A 147 plow, one Farmall A 96 planter and one Farmall A 138 cultivator, with the value of the hire or use during the detention, viz; from the 25th day of October, 1952.

2.

The Plaintiff claims of the Defendant eight hundred fifty and 00/100 dollars for money had and received by the Defendant on to wit the 25th day of October, 1952, which sum of money with the interest thereon is still due and unpaid.

3.

The Plaintiff claims of the Defendant eight hundred fifty dollars damages for that on the 25th day of October, 1952, for the purpose of inducing Plaintiff to trade him one Farmall A tractor, one Farmall A 96 planter and one Farmall A 138 cultivator, Defendant, through its agent, Marvin Cabaniss, represented to the Plaintiff that one C tractor and equipment, which the Defendant was trying to trade to the Plaintiff was new, or as good as new and in good condition and that the guarantee on said tractor was the same as on a new one.

The Plaintiff was thereby induced to trade to and deliver to the Defendant the Farmall A tractor and equipment named above, of the value of \$850.00.

The said representations were false and then known to be or ought to have been known by the Defendant to be false and that the said tractor and equipment were not as represented, but the rings in the said C tractor motor were stuck, allowing oil to flood the rest of the motor. It blew oil out of the motor and around the crankshaft, wetting the whole front of the motor, causing the motor to run hot, resulting in considerable delay and time lost by the Plaintiff as a proximate result thereof.

4.

The plaintiff claims of the Defendant one thousand dollars damages for breach of a covenant entered into by him on the 25th day of October, 1952, in substance as follows; the Defendant agreed to deliver to the Plaintiff one C 278 planter and fertilizer attachment for a valuable consideration and the Plaintiff says that although he has complied with all its provisions on his part, the Defendant has failed to comply with the following provisions, viz; the Defendant has failed and refused upon demand to deliver to the Plaintiff the C 278 planter and fertilizer attachment, or a reasonable substitute therefor.

5.

The Plaintiff claims of the Defendant five thousand dollars damages for the breach of a covenant entered into by him on the 25th day of October, 1952, by which he promised to keep one C tractor traded by the Defendant to the Plaintiff in good order and repair, send a man out to repair the C tractor and equipment for a period of ninety days from the date they were started being used and replace any defective part on said C tractor and equipment for said 90 days. The rings in the motor of the C tractor were stuck, allowing oil to flood the rest of the motor. it blew oil out of the motor, causing the motor to use large quantities of oil and to run hot. This caused the Plaintiff considerable loss of time and delay in his work. Plaintiff notified the Defendant of these things several times within the three month period of guarantee, carried the tractor back to Defendant for repairs once and the Defendant though often notified, failed and refused to live up to his covenant or to make the agreed necessary repairs. Defendant through its agent, Marvin Cabaniss told Plaintiff that if he, Plaintiff would make the repairs himself, that he, Cabaniss would sell him the necessary parts for \$75.00 or \$80.00.

Plaintiff demands a trial by jury.

Robert H. McQuilley  
Attorney for the Plaintiff

Robert H. McQuilley  
Attorney for the Plaintiff



VAN HARVILLE,

Plaintiff,

vs.

BAY MINETTE EQUIPMENT COMPANY,

Defendant.

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

Comes the Defendant in the above styled cause and for plea to Counts 1 and 2 of the Complaint filed by the Plaintiff in said cause on August 31, 1954, says:

1. As to Count 1 of said Complaint Defendant says that it was not in possession of the property sued for by the Plaintiff at the time of the filing of said Complaint.

2. As to Count 2 of said Complaint the Defendant says that the allegations of said Count are untrue.

FILED

Jan. 19, 1955

ALICE J. DUCK, Clerk

*Sharon Stue*  
Attorneys for Defendant.

To any Sheriff of the State of Alabama:

You are hereby commanded to summon Bay Minette Equipment Company to appear within thirty days from the service of this writ, in the Circuit Court to be held for said County at the place of holding the same, then and there to answer the complaint of Van Harville.

Witness my hand, this the 9th day of June 1954.

Beauford  
Clerk

Van Harville

Plaintiff

Vs

Bay Minette Equipment Co.

Defendant

In the Circuit Court of

Baldwin County, Alabama

At Law

1.

The Plaintiff claims of the Defendant Eight hundred fifty dollars as the trade in value of one A. tractor, one A 147 plow, one A96 planter and one A 138 cultivator traded by the Plaintiff to the Defendant on to-wit the 25th day of October 1952, as the down payment on one C tractor and equipment. Plaintiff alleges that he executed a mortgage to the Defendant as the balance of the purchase of said C tractor and equipment. He alleges that he has used said C tractor and equipment for from fifty to one hundred days and paid Three hundred six and 04/100 dollars on the mortgage on said C tractor and equipment and that he has lost his A tractor and equipment, his Three hundred six and 04/100 dollars paid on the mortgage on said C tractor and equipment and now has lost his C tractor and equipment by the wrongful repossession by the Defendant of said C tractor and equipment and that justice requires that he be reimbursed for that part of his losses named above, namely the trade in value of his old A tractor and equipment named above.

2.

The Plaintiff claims of the Defendant Eight hundred fifty and 00/100 dollars for money had and received by the Defendant to the use of the Plaintiff on to-wit the 25th day of October, 1952, which sum of money with the interest thereon is still due and unpaid.

3.

The Plaintiff claims of the Defendant one thousand dollars as damages for the breach by the Defendant of a contract entered into between the Plaintiff and the Defendant on to-wit 10/25/52 whereby the Defendant contracted with the Plaintiff to deliver to the Plaintiff one C 278 planter and fertilizer attachment, which said planter and fertilizer attachment was never delivered to the Plaintiff.

4.

The Plaintiff claims of the Defendant one thousand dollars as damages for the breach of an express warranty to replace any defective part and send a man to put the equipment in order, said warranty being on one C tractor and equipment traded by the Defendant to the Plaintiff on to-wit 10/25/52, which warranty and agreement is contained in a contract of purchase entered into between the Plaintiff and the Defendant on to-wit 10/25/52 and which was expressly violated by the failure of the Defendant to live up to his agreement and to do the things he had agreed to do, after being notified of said defects.

5.

The Plaintiff claims of the Defendant five thousand dollars as damages for breach of an implied warranty by the Defendant that one C tractor and equipment traded by the Defendant to the Plaintiff on to-wit 10/25/52 was new and in good working condition, caused Plaintiff considerable time lost from his crop and delay in his work and the Defendant, though often notified failed and refused to do anything about it, causing the Plaintiff the damages aforesaid.

*Robert F. McHenry*  
Attorney for the Plaintiff

Plaintiff demands a trial by jury.

FILED  
July 9, 1954  
ALICE I. DUCK, Clerk

*Robert F. McHenry*  
Attorney for the Plaintiff

BOOK 003 PAGE 35

# Order for New McCormick Farm Equipment



To Bay Minette Equipment Co. Town Bay Minette State Ala  
The undersigned hereby orders of you, subject to all of the conditions and agreements herein contained AND THE  
WARRANTY AND AGREEMENT PRINTED ON THE REVERSE SIDE HEREOF, the following described Farm  
equipment to be delivered on or about the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, F.O.B.

| Quantity | Size and Description     | Price   |
|----------|--------------------------|---------|
| 1        | C Tractor Serial 77346   | 1450 00 |
| 1        | 10 A 5' Harrow           | 226 14  |
| 1        | 978 Planter + 7 ft. aft. | 302 16  |
| 1        | C 151 Plow               | 325 94  |
| 1        | C 254 Cultivator         | 244 80  |
|          | <i>Ala sales tax</i>     | 47 47   |

upon the following terms and conditions:

Cash Delivered Price \_\_\_\_\_  
Cash Payment with Order \_\_\_\_\_ \$ 2596.51  
Cash on Delivery \_\_\_\_\_ \$ \_\_\_\_\_  
Trade-In A Tractor A 147 Plow A 96 Planter  
A 138 Cultivator } \$ 850.00  
(Description of Trade-In)  
Total Cash and Trade-In \_\_\_\_\_  
Unpaid Cash Balance \_\_\_\_\_ \$ 250.00  
Finance Charge \_\_\_\_\_ \$ 1746.51  
Other Charges Recording \_\_\_\_\_ \$ \_\_\_\_\_  
Time Balance \_\_\_\_\_ (Describe) \_\_\_\_\_ \$ 4.20  
To be evidenced by installment conditional sale note, payable \_\_\_\_\_ \$ 1750.71

in \_\_\_\_\_ equal monthly installments of \$ \_\_\_\_\_ each beginning \_\_\_\_\_ 19\_\_\_\_, or  
\$ 875.36 Due Oct-15 1953 \$ \_\_\_\_\_ Due \_\_\_\_\_ 19\_\_\_\_  
\$ 875.35 Due Oct-15 1954 \$ \_\_\_\_\_ Due \_\_\_\_\_ 19\_\_\_\_  
\$ \_\_\_\_\_ Due \_\_\_\_\_ 19\_\_\_\_ \$ \_\_\_\_\_ Due \_\_\_\_\_ 19\_\_\_\_  
\$ \_\_\_\_\_ Due \_\_\_\_\_ 19\_\_\_\_ \$ \_\_\_\_\_ Due \_\_\_\_\_ 19\_\_\_\_

After maturity each installment of the note or notes described above shall draw interest at the rate of \_\_\_\_\_ percent per annum.  
At the request of the Seller, Purchaser agrees to execute a chattel mortgage covering the equipment ordered hereunder to secure payment of said note or notes.

If any sales, excise, floor or processing taxes now in effect shall be increased, or any new sales, excise, floor, or processing taxes shall be imposed by Federal, State or local laws, the Purchaser agrees to reimburse the Seller for any and all such increased or new taxes that the Seller may be required to pay or to reimburse to others by reason of the manufacture, purchase or sale of the equipment covered by this order. The amount of such increased or new taxes may be billed as a separate item or added to the price of the equipment, at the Seller's option.

If for any reason delivery of the equipment covered by this order is not made within ten (10) days of the date of this order the cash selling price quoted herein will be subject to adjustment to conform to the Seller's regular cash selling price of the equipment covered by this order in effect at the time of delivery. If the price adjustment results in an increase in price the Purchaser shall have the privilege of accepting delivery at the increased price or canceling this order by giving written notice of such cancellation to the Seller prior to delivery and within five (5) days after notice of such price increase is given to the Purchaser.

If the price of the property covered by this order is increased as provided above and the purchaser does not exercise the privilege or option to cancel this order, a new order shall be written to reflect such price increase and shall supersede this order.

The Purchaser acknowledges receipt of a copy of this order, which, together with the Warranty and Agreement on the back hereof, is understood to be the entire contract relating to the sale of the equipment covered by this order.

10-25 1952 \_\_\_\_\_  
(Date) (Post Office) Bay Minette Alabama (Purchaser's Signature) Van Harris

(County) \_\_\_\_\_ (Township) \_\_\_\_\_ Purchaser lives \_\_\_\_\_ (R. F. D.) \_\_\_\_\_ (State) \_\_\_\_\_  
Order taken by \_\_\_\_\_ miles north, east, south, west of above P.O.  
Accepted \_\_\_\_\_ Subject to acceptance by Seller to whom order is addressed.  
(Date) \_\_\_\_\_ 19\_\_\_\_ By \_\_\_\_\_

(GIVE PURCHASER A COPY OF THIS ORDER) (Seller)

BOOK 003 PAGE 48

# AMENDED COMPLAINT

Van Harville

Plaintiff

Vs

Bay Minette Equipment Co.

Defendant

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BOOK 003 PAGE 49

\* In the Circuit Court of  
\* Baldwin County, Alabama  
\* At Law.

1.

The Plaintiff claims of the Defendant Eight hundred fifty dollars as the trade in value of one A. tractor, one A 147 plow, one A 96 planter and one A 138 cultivator traded by the Plaintiff to the Defendant on to wit the 25th day of October, 1952, as the down payment on one C tractor and equipment. Plaintiff alleges that he executed a mortgage to the Defendant as the balance of the purchase price of said C tractor and equipment. He alleges that he has used said C tractor and equipment for from fifty to one hundred days and paid three hundred six and 04/100 dollars on the mortgage on said C tractor and equipment and that he has lost his A tractor and equipment, his three hundred six and 04/100 dollars paid on the mortgage on said C tractor and equipment and now has lost his C tractor and equipment by the wrongful repossession by the Defendant of said C tractor and equipment and that justice requires that he be reimbursed for that part of his losses named above, namely the trade in value of his old A tractor and equipment named above. Plaintiff alleges that he was not in default an unreasonable length of time in the payment of said mortgage; that Defendant agreed to hold said C tractor and equipment and give Plaintiff a chance to redeem said tractor and equipment. Plaintiff elected to rescind the sale and sue for the purchase price, as the law gives him a right to do. Plaintiff alleges that Defendant notified Plaintiff that the C tractor and equipment would be sold at a public sale, that Defendant held a public sale of the C tractor and equipment and repurchased it at that sale. Plaintiff alleges that at the time Defendant repossessed said C tractor and equipment, Baldwin County Bank was the holder of the mortgage given Defendant on said tractor and equipment. Defendant had already received the purchase price of said C tractor and equipment and the Defendant had no right whatever to make said repossession. Plaintiff alleges that he did not voluntarily surrender said C tractor and equipment to Defendant but that Defendant came to his home and got it while Plaintiff was absent from home, all to the damage of Plaintiff as aforesaid.

2.

The Plaintiff claims of the Defendant eight hundred fifty and 00/100 dollars for money had and received by the Defendant to the use of the Plaintiff on to wit the 25th day of October, 1952, which sum of money with the interest thereon is still due and unpaid.

3.


The Plaintiff claims of the Defendant one thousand dollars as damages for the breach by the Defendant of a written contract entered into between the Plaintiff and the Defendant on to wit 10/25/52 whereby the Defendant contracted with the Plaintiff to deliver to the Plaintiff one C 278 planter and fertilizer attachment, which said planter and fertilizer attachment was never delivered to the Plaintiff, a copy of which said contract is attached hereto and is made a part and parcel hereof. The Plaintiff alleges that he suffered damage by reason of being forced to have to lose time and get another planter, all in the amount aforesaid, as a proximate result of the failure of the Defendant to deliver the planter as contracted. This resulted in Plaintiff not being able to plant as much land as he would otherwise have been able to plant and time lost from the crop he did plant, causing the Plaintiff the damages aforesaid.

4.

The Plaintiff claims of the Defendant one thousand dollars as damages for the breach of an express written warranty to replace any defective part and send a man to put the equipment in order and repair, said warranty being on one C tractor traded by the Defendant to the Plaintiff on to wit 10/25/52, which warranty and agreement is contained in a written contract of purchase entered into between the Plaintiff and the Defendant on to wit 10/25/52 and which was violated by the failure of the Defendant to live up to his agreement and to do the things he had agreed to do after being notified by the Plaintiff of said defects. The C tractor needed major repairs. The Plaintiff notified the Defendant of this fact within the time warranted and the Defendant though often notified failed and refused to do anything about it, causing the Plaintiff the damages to his farming business as aforesaid. A copy of the contract above referred to is attached hereto and is made a part and parcel hereof.

5.

The Plaintiff claims of the Defendant five thousand dollars as damages for the breach of an implied warranty by the Defendant that one C tractor and equipment traded by the Defendant to the Plaintiff on to wit 10/25/52 was new and in good working condition, whereas it had been on the lot of Defendant for about two years and was practically unworkable, causing the Plaintiff considerable time lost from his crop and delay in his work and the Defendant though often notified failed and refused to do anything about it, causing the Plaintiff the damages aforesaid. This trade is evidenced by a conditional contract of sale between the Plaintiff and the Defendant, a copy of which said contract is attached hereto and is made a part and parcel hereof. Said C tractor and equipment would not function properly, causing Plaintiff not to be able to work as much land as he would otherwise have been able to work if the tractor and equipment had been as warranted and Plaintiff was not able to work what he did work adequately, as a proximate result of the breach by the Defendant, all to the damage of the Plaintiff as aforesaid.


  
Attorney for the Plaintiff

Plaintiff demands a trial by jury.

FILED

Aug. 4, 1954

ALICE I. DUCK, Clerk

  
Attorney for the Plaintiff

|                       |   |                         |
|-----------------------|---|-------------------------|
| VAN HARVILLE,         | I |                         |
| Plaintiff,            | I | IN THE CIRCUIT COURT OF |
| vs.                   | I | BALDWIN COUNTY, ALABAMA |
| BAY MINETTE EQUIPMENT | I | AT LAW                  |
| CO.,                  | I |                         |
| Defendant.            | I |                         |

Comes the Defendant in the above styled 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 the Complaint does not state a cause of action.
2. That Count 1 of said Complaint is vague and indefinite.
3. That Count 1 of said Complaint does not state a cause of action.
4. That it is affirmatively shown by Count 1 of said Complaint that the Plaintiff is seeking to recover the value of a tractor and equipment which had been conveyed by him to the Defendant on October 25, 1952.
5. That it is affirmatively shown by Count 1 of said Complaint that the Plaintiff executed a mortgage to the Defendant on the tractor and equipment which was repossessed by the Defendant and said Count fails to allege that the Defendant was not in default in the payment of such mortgage when such tractor and equipment were repossessed.
6. That the allegation in Count 1 of the Complaint that the Defendant wrongfully repossessed the tractor and equipment referred to therein is but a conclusion of the pleader.
7. For aught that appears from Count 1 of said Complaint the Plaintiff voluntarily surrendered the tractor and equipment covered by such mortgage to the Defendant.
8. That the allegation in Count 1 of the Complaint in regard to the amount of time that the Plaintiff used the tractor and equipment is surplusage.

9. That Count 1 of said Complaint fails to allege when the Defendant repossessed the property described in such Complaint.

10. That the allegation in Count 1 of said Complaint that justice requires that the Plaintiff be reimbursed for the trade-in value of his tractor and equipment is but a conclusion of the pleader.

11. For aught that appears from Count 1 of said Complaint the Plaintiff was in default in his mortgage at the time the property described in such mortgage was repossessed by the Defendant and that the Plaintiff voluntarily surrendered such property to the Defendant in accordance with the terms of such mortgage.

12. That Count 2 of said Complaint is not in Code form.

13. That Count 2 of said Complaint does not state a cause of action.

14. That Count 3 of said Complaint does not sufficiently set out the terms of the contract referred to therein.

15. That Count 3 of said Complaint does not sufficiently set out the date the parties entered into the contract referred to therein.

16. That Count 3 of said Complaint fails to allege the cost price of the planter and fertilizer attachment referred to therein or the manner whereby the Plaintiff was damaged.

17. That Count 4 of said Complaint does not state a cause of action.

18. That Count 4 of said Complaint fails to allege whether the warranty referred to therein was oral or in writing.

19. That Count 4 of said Complaint is vague and indefinite.

20. That Count 4 of said Complaint fails to set out the full terms and conditions of such warranty.

21. That Count 4 of said Complaint fails to allege the period of time for which the warranty was to be effective.

22. That Count 4 of said Complaint does not sufficiently describe the property which was warranted.

23. That Count 4 of said Complaint does not sufficiently set out the date of the warranty.

24. That Count 4 of said Complaint does not sufficiently set out the contract of purchase entered into between the parties in which the warranty is alleged to be set out.



25. That Count 4 of said Complaint does not allege in what respects the warranty was breached.

26. That the allegation in Count 4 of said Complaint that the Defendant failed to live up to his agreement and do the things he had agreed to do is but a conclusion of the pleader.

27. That Count 5 of said Complaint does not state a cause of action.

28. That Count 5 of said Complaint is vague and indefinite.

29. That Count 5 of said Complaint does not sufficiently describe the property referred to therein.

30. That Count 5 of said Complaint does not allege that the C tractor and equipment traded by the Defendant to the Plaintiff was not new and in good working condition.

31. That Count 5 of said Complaint does not sufficiently set out in what respect the implied warranty referred to therein was breached.

32. For aught that appears from Count 5 of said Complaint the property sold by the Defendant to the Plaintiff was new and in good working condition.

33. That Count 5 of said Complaint does not allege what crop the Plaintiff lost because of the breach of the implied warranty.

34. That the allegation in Count 5 of the Complaint that the Plaintiff lost time from his crop and delay in his work and the Defendant though often notified failed to do anything about it is but a conclusion of the pleader.

35. That Count 5 of said Complaint does not sufficiently set out the terms of the implied warranty referred to therein and the damages which were caused the Plaintiff by the breach of such warranty.

36. That it is not shown by Count 5 of such Complaint that the time lost by the Plaintiff from his crop and the delay in his work was caused by defects in the C tractor and equipment referred to therein.

FILED

June 15, 1954

ALICE J. DUCK, Clerk

  
Attorneys for Defendant.

of the Defendant until reported to such Defendant by the Plaintiff.

10. That Count 4 of said Complaint does not allege when the Defendant was to deliver the planter to the Plaintiff.

11. That the allegation in Count 4 of the Complaint that the Plaintiff has complied with the provisions of his agreement to purchase the planter is but a conclusion of the Pleader and fails to allege that he has ever paid for such planter.

12. That the agreement referred to in Count 4 of the Complaint is not sufficiently set out.

13. For aught that appears from Count 4 of the Complaint the Defendant did deliver a planter and fertilizer attachment to the Plaintiff which was accepted by him.

14. That Count 4 of the Complaint does not allege when the demand was made by the Plaintiff to the Defendant to deliver the planter.

15. That sufficient facts are not alleged in Count 4 of the Complaint to show that the Plaintiff was injured.

16. For aught that appears from said Count 4 of the Complaint the Plaintiff has not engaged in any farming operations since October 25, 1952, and has had no use for a planter.

17. That Count 5 of said Complaint is vague and indefinite.

18. That Count 5 of said Complaint does not set out sufficient facts to show the Plaintiff was injured.

19. That Count 5 of said Complaint does not sufficiently set out the agreement referred to therein.

20. That Count 5 of said Complaint fails to allege that any agent, servant or employee of the Defendant, acting within the line and scope of his employment, entered into any agreement with the Plaintiff.

21. That Count 5 of said Complaint does not allege that the Plaintiff notified the Defendant that the rings in the motor of the tractor referred to therein was stuck within the period of time covered by the Defendant's guarantee.

22. That the allegation in Count 5 of said Complaint that the Plaintiff lost considerable time and was delayed in his work is but a conclusion of the Pleader and fails to allege sufficient facts to show his damages.

23. That Count 5 of the Complaint which alleges, that Defendant promised to keep the tractor in good order and repair, send a man out to repair the tractor and equipment for a period of ninety days from the date they were started being used and replace any defective part on the tractor and equipment is but a conclusion of the Pleader and fails to set out true terms of the warranty by which the purchaser agreed to give the equipment a fair trial as soon after purchase as possible and within two days after first use and that if such equipment failed to work properly to give prompt notice to the seller who would then send a man to put it in order and that if it still failed to work properly then Plaintiff was to return it to the Seller and the Seller would refund the amount paid thereby it would constitute a settlement in full.

24. That Count 5 of said Complaint affirmatively shows that the Plaintiff has not complied with his agreement and that he has not fully and accurately set out all of the terms and conditions of the warranty.

FILED

Sept. 3, 1954

ALICE J. DUCK, Clerk

*James W. Stone*  
Attorneys for Defendant.