THE BANK OF ATMORE, A CORPORATION,	)	
Plaintiff,	)	IN THE CIRCUIT COURT OF
VS.	)	BALDWIN COUNTY, ALABAMA.
W. V. PHILLIPS,	)	AT LAW. NO. 2805
Defendant.	)	

AMENDED PLEAS

Comes the defendant and amends his answer heretofore filed in this cause so that, as amended, it reads as follows:

Comes the defendant and for answer to the complaint heretofiled in this cause and to each and every count thereof, separately and severaly,sets down and assigns the following separate and several pleas:

1.

He denies the allegations of said complaint.

2.

That prior to the execution of the note which is the basis of this action, Lambert C. Mims, who is the person who received the money for which the note in this suit was given, was indebted to the defendant in the amount of $22,500.00, by promissory note, dated the 29th day of May, 1953, to secure the payment of which note the said Lambert C. Mims executed a chattel mortgage to defendant on the 29th day of May, 1953, which said chattel mortgage is recorded in Miscellaneous Book 276, page 220, of the Probate Records of Mobile, County, Alabama, a copy of which instrument, marked Exhibit "A", was attached to defendant's Motion to Transfer this Cause to the Equity Side of this Court, and is, by reference, made a part hereof as though fully set out herein; that said chattel mortgage covered the following articles of personalty: One 1952 Model Packard Sedan, One 1950 Model Studebaker Sedan, One 1950 Model White Tractor, One 1948 Model Trailmobile Van Trailer, One 1952 Model Studebaker 2-ton Truck, and One 12-foot Van Body mounted on said Studebaker Truck; that, on, to-wit: March 23, 1954, the said Lambert C. Mims requested the defendant to release the foregoing chattels from said mortgage so that the said Lambert C. Mims could use said chattels as se-

curity to secure a loan from the plaintiff bank; that Defendant accompanied the said Lambert C. Mims to plaintiff's place of business in Atmore, Alabama, and there signified to a Mr. Sneed, who was then and there the agent, servant, or employee of the plaintiff, The Bank of Atmore, A Corporation, acting within the line and scope of his employment as such, Defendant's willingness to relinquish his prior claim to the chattels above described in order to assist Mr. Mims in securing his loan; that defendant, at the time and place as aforesaid, agreed with the plaintiff bank, acting by and through its duly authorized agent, Mr. Sneed, as aforesaid, that he would release his prior claim to the aforesaid chattels so that the said Lambert C. Mims could give the plaintiff a chattel mortgage as security for his loan; that The Bank of Atmore, a Corporation, acting by and through its duly authorized agent, Mr. Sneed, through fraud, or misrepresentation, secured defendant's signature as maker of the note which is the basis of this suit, when it knew that defendant had not agreed to sign as maker and knew that defendant was signing said note only for the purpose of his releasing his prior claim on the chattels of the said Lambert C. Mims; that defendant is an ignorant and uneducated man who can barely read and write and that he has had only a few months schooling in his whole life; that he executed the note which is the basis of this suit relying on the representations of the said Mr. Sneed, who was then and there the agent, servant or employee of the plaintiff, The Bank of Atmore, acting within the line and scope of his employment as such, that he was only releasing his prior claim to the chattels hereinbefore described and that the plaintiff bank would accept the said chattels as security for its said loand to Mims; That after the note which is the basis of this suit was in default and at a time when the said Lambert C. Mims had filed a petition in Bankruptcy in the United States District Court in Mobile, Alabama, the defendant repeatedly tried to get the plaintiff to claim the articles of personalty hereinabove described on which the said Lambert C. Mims had given the plaintiff a chattel mortgage as security for the note which is the basis of this suit; that the said Lambert C. Mims was adjudged a bankrupt on, to-wit: June 1, 1954; that defendant

after the note which is the basis of this suit and after the said Lambert C. Mims had been adjudged a bankrupt repeatedly tried to get the Bank of Atmore, the plaintiff, to exercise its preferred claim and to secure the release of the aforementioned chattels, from the Trustee in Bankruptcy, at a time when the chattels could have been sold for Four Thousand ($4,000.00) Dollars, which was more than was then due on said note; that the plaintiff bank refused to secure the release of said chattels under their preferred claim and that the said Bank also refused, or failed, to help defendant to secure said articles of personal property when defendant had a sale for said articles in the amount of $4,000.00 and so informed the said Bank of Atmore, the plaintiff; that the Bank of Atmore's failure to collect the amount due on the note which is the basis of this suit was occasioned by its own failure to proceed against the said Lambert C. Mims and the chattels above described, wherefore the plaintiff should not recover against the defendant in this case.

3.

Comes the defendant and without in any way confessing the Plaintiff's demand, as a defense to the action of the Plaintiff, says: that the said Plaintiff is indebted to the said defendant in the amount of Seven Hundred Eighty-three($783.00) for this: that since the note, subject of this suit, was filed with the United States Bankrupt in Mobile, Alabama, the said Plaintiff herein, wrongfully seized a deposit to the account of the defendant herein, W. V. Phillips, in the amount of Seven Hundred Eighty Three($783.00) Dollars, and has withheld this sum from the said defendant without just cause, which sum the defendant hereby offers to set-off against the demand of the plaintiff and he claims judgment for the excess.

4.

Comes the defendant and without in any way confessing the plaintiff's demand, as a defense to the action of the plaintiff says : that at the time said action was commenced the plaintiff was indebted to the defendant in the sum of four thousand($4,000.00) dollars for this: that the Plaintiff, by its attorney or agent, Honorable Leon Brooks, did release to the U S District Bankrupt Court at Mobile, or refuse to accept from the Trustee of said Bankrupt Court the said chattels, to-wit: one 30 ft van-type Trailmobile trailer, painted white, in good condition; one 1952 R-17 A Studebaker truck with van-type body;

collateral on the mortgage securing the promissory note subject of this suit, which chattels were in the possession of the United States Bankrupt Court, under the immediate control of the Trustee in Bankruptcy of said court, which Trustee through his attorney Honorable Chris C. Delaney, offered said chattels to the Bank of Atmore through its agent or attorney Honorable Leon Brooks, and the said Honorable Leon Brooks , acting in the line and scope of his employment declined to receive said chattels, which then had a value of Four Thousand ($4,000.00) Dollars, the date being on to-wit July 15, 1954, for all of which the said Plaintiff is indebted to the defendant in the sum of Four Thousand ($4,000.00) Dollars, which defendant offers to set off against the demand of the plaintiff, and he claims judgment for the excess, and the said bank through a Mr. J. E. Sneed, an officer, agent or employee of same in the line and scope of his employment has knowledge that the defendant herein received no consideration for executing said instrument, subject of this suit.

5.

Comes the defendant and claims of the Plaintiff by way of recoupment the sum of($4,000.00) Four Thousand Dollars damages for that on to-wit: July 15, 1954, the said Plaintiff through its agent or attorney Honorable Leon Brooks, without the consent of the said defendant, ~~[illegible]~~ refused possession of the following chattels: One 30-ft van-type Trailmobile trailer, painted white, in good condition; one 1952 R-17-A Studebaker truck with van-type body, of the value of Four Thousand ($4,000.00) Dollars and designated as security on both the promissory note and mortgage executed May 29, 1953 from Lambert C. Mims to W. V. Phillips and on the promissory note and mortgage subject of this suit executed by Lambert C. Mims to the Bank of Atmore, and which last named note and mortgage was also signed by W. V. Phillips for the purpose of giving the said P Plaintiff bank a prior lien on said chattels; of which action the said Bank of Atmore had knowledge through its officer, agent or employee, Mr. J. E. Sneed, and that an oral agreement existed between the said defendant W. V. Phillips the said J. E. Sneed, an officer, agent or employee of the said Bank of Atmore, acting in the line and scope of his employment at the time of said loan by the bank, that the said bank would upon default on said note to said bank. immediately obtain possession of said property and dispose of same at its maximum value in accordance with the terms of said note, and would apply the proceeds first to the note from Lambert C. Mims to the said bank, and then would make the remainder of said sum available to your defendant; which agreement was not carried out, hence the damage to defendant W. V. Phillips.

[illegible]

[illegible] Atty.

THE BANK OF ATMORE, a corporation, Plaintiff,	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA
VS.	)	AT LAW NO. 3805
W. V. PHILLIPS, Defendant.	)	

AMENDED COMPLAINT

COUNT ONE

The plaintiff claims of the defendant Two Thousand Sixty-five and 80/100 Dollars ($2,065.80) the balance due by promissory note made by him on March 23, 1954, and payable on to-wit: July 1, 1954, together with interest thereon from March 23, 1954.

COUNT TWO

The plaintiff claims of the defendant the further sum of Five Hundred Dollars ($500.00) as a reasonable attorney's fee paid or incurred by it in the institution of this suit on the note described in Count 1, alleges that said note contains a provision that the defendant will pay a reasonable attorney's fee for the collection of said note by suit or otherwise, and that the fee claimed herein is reasonable.

The plaintiff avers that the note sued on in this complaint contains a waiver by the defendant of his exemption of personal property and the plaintiff claims the benefit of such waiver.

J. B. Blackburn

BROOKS & GARRETT

By Leon G. Brooks (B)

Attorneys for Plaintiff.

THE BANK OF ATMORE, A CORPORATION
PLAINTIFF
VS
W.V. PHILLIPS,
DEFENDANT.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
AT LAW. NO. 2805

AMENDED PLEAS

COMES the defendant and ameds his answer heretofore filed in this cause by adding the follwing plea to each and every count of the amended complaint, separately and severally:

C.

Comes the defendant, W. V. Phillips, and claims of the plaintiff, the Bank of Atmore, a corporation, by way of recoupment, the sum of Four Thousand ($4,000.00) Dollars, damages for that, on to-wit: July 15, 1954, the said plaintiff, through its agent or attorney, Honorable Leon Brooks, acting in the line and scope of his employment, refused possession of said chattels, when offered to said agent or attorney by the Trustee of the U S Bankrupt Court at Mobile, which action was a breach of an oral agreement between the said defendant, W. V. Phillips and J. E. Snead, an agent, servant or employee of the Bank of Atmore, a corporation, plaintiff herein, acting in the line and scope of his employment, that the said Bank of Atmore, would, upon default of said note to the said Bank of Atmore, immediately act to obtain possession of said chattels, collateral on said note, to-wit: One 30-ft van-type trailer, painted white, in good condition,; one 1952 2-ton Studebaker truck with van type body, selling same at its maximum value in accordance with the terms of said note, then apply the proceeds first to the note from Lambert C. Mims to the said Bank, then would make the remainder available to the defendant herein; which agreement was not carried out, hence the damage in the sum of $4,000.00 to the defendant, W. V. Phillips, holder and owner of a mortgage lien upon said chattels.

"D"

Comes the Defendant, W. V. Phillips, and claims of the Plaintiff, the Bank of Atmore, a corporation, by way of recoupment, the sum of Four Thousand ($4,000.00) Dollars damages, for that, on to-wit: July 15, 1954, the said Plaintiff, through its agent or attorney, Honorable Leon Brooks, acting in the line and scope of his employment, disposed of certain chattels, for a sum less than there reasonable value, to-wit: one 30-ft van-type trailer, painted white, in good condition; one 1952 2-ton Studebaker truck with van-type body, which action was in violation of and a breach of an oral agreement between the defendant herein, W. V. Phillips and J. E. Sneed, an agent, servant or employee of said Bank of Atmore, acting in the line and scope of his employment, which agreement was in words and figures as follows: that in the event of a default on the part of Lambert C. Mims on his note to the said bank, the said Bank would act immediately to obtain possession of said chattels, collateral on said note from Mims to the bank, and would dispose of same at its maximum value, in accordance with the terms of said note,

then apply the proceeds first to the note from Lambert C. Mims to the said Bank, then would make the remainder available to the defendant herein; which agreement was not carried out, hence the damages in the sum of $4,000 to the defendant W. V. Phillips, holder and owner of a mortgage lien upon said chattels.

C. Davis Thompson

Lewis H. Massburg

THE BANK OF ATMORE, A CORPORATION, Plaintiff,	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA.
VS.	)	AT LAW. NO. 2805
W. V. PHILLIPS, Defendant.	)	

AMENDED PLEAS

Comes the defendant and amends his answer heretofore filed in this cause by adding the following separate and several pleas to each and every count of the amended complaint, separately and severally:

A.

That defendant's execution of the note which is the basis of this suit was obtained by fraud and misreprentation on the part of the plaintiff Bank of Atmore, acting by and through its duly authorized agent, servant or employee, in this: That on, to-with the 23rd day of March, 1954, one Lambert C. Mims was indebted to the defendant in the amount of $22,500.00, to secure the payment of which sum he had given the defendant a chattel mortgage on certain trucks, automobiles and trailers; that the said Lambert C. Mims requested the defendant to relinquish his prior claim to said chattels so that the said Mims could secure a loan from The Bank of Atmore; that the defendant accompanied the said Mims to plaintiff's place of business in Atmore, Alabama, and there entered into an agreement with one J. E. Sneed, who was then and there an agent, servant or employee of the plaintiff, acting within the line and scope of his employment as such, to release his prior claim to the aforesaid chattels so that the said Lambert C. Mims could give the plaintiff a chattel mortgage as security for his loan; that the Bank of Atmore, a Corporation, acting by and through its duly authorized agent, J. E. Sneed, as aforesaid, secured defendant's signature as Maker of the Note which is the basis of this suit, when it knew that defendant had not agreed to sign as maker and knew that defendant was signing said note only for the purpose of releasing his prior claim to the chattels of the said Lambert C. Mims; that defendant is an ignorant and uneducated man who can barely read and write and that

he has had only a few months schooling in his whole life; that he executed the note which is the basis of this suit relying on the representations of the said J. E. Sneed, who was then and there the duly authorized agent, servant or employee of the plaintiff, The Bank of Atmore, A Corporation, acting within the line and scope of his employment as such, that he was only releasing his prior claim to the chattels of the said Mims and that the plaintiff bank would accept said chattels as security for its loan to the said Mims; that defendant received none of the proceeds of said loan for which said note was given of which fact the plaintiff, through the said J. E. Sneed, had knowledge; wherefore the plaintiff should not recover against the defendant in this suit.

B.

The defendant, for answer to the complaint, saith that the note, upon which this action was founded, was not executed by him, or by any one authorized to bind him in the premises; and he makes oath that this plea is true.

C. Dixon Thompson
Jefferson A. Wadsworth, Jr.
ATTORNEYS FOR DEFENDANT.

STATE OF ALABAMA,)
COUNTY OF BALDWIN.)

Before me, the undersigned authority, personally appeared W. V. PHILLIPS, who is known to me and who, being by me first duly and legally sworn, on oath deposes and says that the allegations contained in the above and foregoing Pleas "A" and "B" are true and correct.

W. V. Phillips

Sworn to and subscribed before me on this the 10 day of September, 1956.

C. Dixon Thompson
NOTARY PUBLIC, BALDWIN COUNTY, ALA.

THE BANK OF ATMORE, a corporation, Plaintiff,	)	IN THE CIRCUIT COURT OF
VS.	)	BALDWIN COUNTY, ALABAMA
W. V. PHILLIPS, Defendant.	)	AT LAW

DEMURRER

Now comes the plaintiff and for demurrer to the answer or pleas Numbered 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 filed by the defendant in this cause (on August 21, 1956), each separately and severally, assigns, separately and severally, the following:

1. It does not constitute a defense to the amended complaint and raises an immaterial issue.

2. No facts are alleged to show any duty or obligation on the plaintiff to foreclose the chattel mortgage described in the plea before suing on the note described in the amended complaint.

3. No facts are alleged to show that the defendant is not liable on the note described in the amended complaint.

4. No facts are alleged to show that the defendant did not receive the consideration or proceeds of the note described in the amended complaint.

5. No facts are alleged to show that the defendant restored or offered to restore to the plaintiff the amount advanced or loaned by it on the note described in the amended complaint.

6. No facts are alleged to show any duty or obligation on the part of the plaintiff to enforce the mortgage which secured the note described in the amended complaint.

7. No facts are alleged to show that the property described in the mortgage which secured the said note described in the amended complaint was the property of the defendant.

8. The allegations thereof are vague, indefinite and uncertain.

9. The allegations thereof are vague, indefinite, uncertain and incomplete.

10. No facts are alleged to show that the defendant tendered to the plaintiff the full amount due on the note described

in the amended complaint before this suit was filed.

11. No facts are alleged to show that the defendant had any interest in the property described in the mortgage which was given to secure the note here sued on.

12. No facts are alleged to show when the plaintiff agreed to utilize the property described in the alleged chattel mortgage before bringing suit on the said note.

13. No facts are alleged to show which agent, officer, servant or employee of the plaintiff made the alleged agreement with the defendant.

14. No facts are alleged to show that the agent, officer, servant or employee of the plaintiff was acting within the line and scope of his employment at the time of the making of the alleged agreement with the defendant.

15. For aught that appears in the plea, the alleged agreement by the plaintiff with the defendant was not made before the execution and delivery of the note here sued on.

16. No facts are alleged to show any fraud or misconduct on the part of the plaintiff.

17. No facts are alleged to show any injury to the defendant.

18. No facts are alleged to show that the defendant was in default on the note described in the amended complaint on July 15, 1954.

19. No facts are alleged to show that the note described in the amended complaint was past due on July 15, 1954.

20. No facts are alleged to show any duty on the plaintiff to have taken the property described in the plea into its possession at any time.

21. The said plea does not state a cause of action against the plaintiff.

22. The allegations of the plea are conclusions of the pleader.

J. B. Blackburn

Brooks and Garrett

Attorneys for plaintiff (TS)

THE BANK OF ATMORE, A Corporation,	)	IN THE CIRCUIT COURT OF
	)	BALDWIN COUNTY, ALABAMA
PLAINTIFF,	)	AT LAW
VS	)	
W. V. PHILLIPS,	)	CASE NO. 2805
DEFENDANT.	)	
	)	

Comes the Defendant and amends his answer filed heretofore to read as follows:

THE BANK OF ATMORE, A Corporation,	)	IN THE CIRCUIT COURT OF
	)	BALDWIN COUNTY, ALABAMA
PLAINTIFF,	)	AT LAW
VS	)	
W. V. PHILLIPS,	)	CASE NO. 2805
DEFENDANT.	)	
	)	

Comes the Defendant and for answer to the complaint in the above styled cause and to each phase thereof separately and severally shows as follows:

1.

He denies the allegations alleged in Count One thereof.

2.

He denies the allegations alleged in Count Two thereof.

3.

For further answer to said Count One the Defendant denies liability under the said promissory note alleged in the complaint and as grounds for said denial shows that the said Plaintiff herein released or refused the security of a chattel mortgage, subject of this suit, said release or refusal being without the consent of the Defendant herein, and the said Bank through its officers or agents had knowledge that the said Defendant herein was an accommodation party to said instrument, and that the said W. V. Phillips executed said instrument as an accommodation party by agreement with an official, agent or employee of the bank of Atmore.

4.

That the said W. V. Phillips executed the said note subject of this suit as an accommodation maker for the purpose of waiving a prior lien held by the said W. V. Phillips on certain chattels property of Lambert C. Mims a co-maker on said note, which chattels were mortgaged on to-wit: May 29, 1953, to the said W. V. Phillips otherwise known as William V. Phillips, same being recorded in Miscellaneous Book 276, Page 220 on May 29, 1953, in the Office of the Judge of Probate of Mobile County, Alabama.

5.

That the said W. V. Phillips specifically agreed with an agent, officer, servant or employee of the said Bank of Atmore that the Bank was to take as security on the said instrument subject to this suit, and evidence of the loan from the Bank of Atmore to Lambert C. Mims, the goods and chattels listed on said note as Collateral Security for said obligation before the said Defendant would sign as accommodation co-maker, and further that the said W. V. Phillips did not receive any of the money from the said note. And further said W. V. Phillips did not receive consideration for executing the said note.

6.

For further answer to said Count One of said Complaint your Defendant denies liability under the said promissory note alleged in said complaint and that Defendant for said denial shows that the said Plaintiff herein agreed to accept and did accept as collateral security on said note the chattels listed thereon as an agreement and requirement between said Defendant and the said Complainant herein, that the said chattels, collateral security would be first utilized by the Bank before demand be made by the said Bank upon the Defendant in this cause,

7.

And the said Bank of Atmore through its attorney Honorable Leon Brooks, so informed the United States Bankrupt at Mobile and also their Attorney of Trustee in Bankruptcy handling the chattels, security on the mortgage upon which the present suit is based, and the said attorney for the Plaintiff herein informed C. LeNoir Thompson attorney for the Defendant herein, of such refusal to take the property designated as security on the chattel, subject of this suit and in words and figures in writing, stated as follows:

July 15, 1954

Mr. C. LeNoir Thompson
Bay Minette, Alabama

Dear LeNoir:

I have your letter of the 15th., further concerning the property covered by the mortgage of L. C. Mims and W. V. Phillips to the Bank of Atmore.

A few days ago Mr. DeLaney, the trustee, called me about this property and wanted the bank to take possession of it. I told him then that we would not be interested in doing this as we were relying upon the responsibility of Mr. Phillips. I should have thought of it at the time but I did not, so I overlooked telling him that the bank's loan is current and that in the absence of threatened danger to the security we could not take possession of this

property, anyhow.

As Mr. DeLaney appears to want something done to preserve the property and as Mr. Phillips seems to be much concerned about this, also, let me suggest that you and Mr. DeLaney discuss the subject and try to come to a satisfactory understanding as to what should be done. While we want to cooperate in every way with all of those interested in this property I would like to emphasize again that the bank feels that Mr. Phillips is good for the obligation to it and that if does not care to become involved any more than is necessary in the bankruptcy proceedings. I am sure that you and Mr. DeLaney both understand our position.

Yours very truly,

/s/ Leon G. Brooks

LGB/nme
CC:
Mr. Chris C. DeLaney
106 St. Joseph Street
Mobile, Alabama

CC: The Bank of Atmore
Atmore, Alabama

The said Plaintiff released or refused the following described equipment to the damage of the Defendant herein, and the said Bank through its officers or agents had knowledge that the said Defendant herein was an accommodation party to said instrument.

8.

Notwithstanding the statement made by the Plaintiff through its attorney of record Honorable Leon Brooks, the said Plaintiff had filed the chattel mortgage as a preferred claim with the United States Bankrupt Court at Mobile and after so filing, refused to accept the property or any part of said property covered by the chattel mortgage subject of this suit which was also of a value of to-wit: Four Thousand ($4000.00) Dollars at the time of said refusal, and the said Bank through its officers or agents had knowledge that the said Defendant herein was an accommodation party to said instrument, in accordance with an agreement between the said Bank of Atmore, it agent, officer, or employee and the Defendant herein, W. V. Phillips that the said Bank would exhaust the collateral, chattels listed on said note, before making demand on the defendant herein.

9.

That your Defendant made every effort to obtain possession of said property designated as security of the chattel mortgage subject of this suit but to date has been unable to obtain same and said property having greatly depreciated to a present value of to-wit: Three Hundred ($300.00) Dollars, your Defendant is damaged in the amount of the loss of said property and the said Bank through its officers or agents had knowledge that the said Defendant herein was an accommodation party to said instrument, and that

the said Bank of Atmore, its agen, officer, or employee had knowledge of an agreement that the said collateral, to-wit, chattels listed on said note would be disposed of for a maximum price and in accordance with the terms of said note, all of which agreement was not carried out.

10.

Comes the Defendant and claims of the Plaintiff by way of recoupment the sum of Four Thousand ($4000.00) Dollars damages for that on to-wit: July 15, 1954, the said Plaintiff through its attorney of record Honorable Leon Brooks, without the consent of said Defendant, released or refused the possession of chattels to the value of Four Thousand ($4000.00) Dollars designated as security on the chattel mortgage subject of this action and the market value of said chattels having greatly and permanently depreciated at the date of this action, and the said Bank through its officers or agents had knowledge that the said Defendant herein was an accommodation party to said instrument, and that the said Bank of Atmore through its officer, agents or employee had agreed to exhaust collateral, to-wit: chattels listed on said note subject of this suit, before suing on the said note and that by reason of the failure of the said Bank of Atmore to carry out the said agreement the said chattels were also lost to the Defendant herein.

11.

Comes the Defendant and without in anyway confessing the Plaintiff's demand as a defense to the action of the Plaintiff says: That the said Plaintiff is indebted to the said Defendant in the amount of Seven Hundred Eighty Three ($783.00) Dollars for this: That the said Plaintiff wrongfully seized a deposit to the account of the Defendant, W. V. Phillips, in the amount of Seven Hundred Eighty Three ($783.00) Dollars , and had withheld this sum from the said Defendant without just cause, which sum the Defendant hereby offers to set off against the demand of the Plaintiff and and he claims judgment for the excess.

12.

Comes the Defendant and without in any way confessing the Plaintiff's demand, as a defense to the action of the Plaintiff says: That at the time of said action was commenced the Plaintiff was indebted to the Defendant in the sum of Four Thousand ($4,000.00) Dollars for this: that the Plaintiff by Honorable Leon Brooks, its attorney of record did release to U. S. Bankrupt Court at Mobile or refuse, the following chattels, same being designated as security on the said chattel mortgage subject of this suit:

"One 30 ft van-type Trailmobile trailor, painted white, in good condition; One 1952 R17-A Studebaker truck with van-type body; which cchattels were in the possession of the United States Bankrupt Court under the immediate control of the Trustee in Bankruptcy of said court which Trustee through his attorney Honorable Chris C. DeLaney offered said chattels to the Bank of Atmore through its attorney Honorable Leon Brooks and the said Honorable Leon Brooks in his official capacity as said agent or attorney declined to receive said chattels which had a value of Four Thousand ($4000.00) Dollars on that occasion, for all of which the said Plaintiff is indebted to the Defendant in the sum of Four Thousand ($4000.00) Dollars which the Defendant hereby offers to set off against the demand of the Plaintiff, and he claims judgment for the excess, and the said Bank through its officer or agent has knowledge that the said Defendant herein was an accommodation party to said instrument, and there existed between the parties to this cause an oral contract in which the said Plaintiff, its agent or employee agreed to exhaust the said chattels listed on the instrument herein sued on before making a demand on the Defendant herein for payment of said note or any part thereof, that the said Plaintiff herein did not exercise its dominion over said chattels but released them or refused the possession of said chattels in violation of the agreement herein set fourth.

13.

The Defendant for further answer to the complaint says, that he tender to the Plaintiff the amount due to him, to-wit: Twenty Two Hundred Sixty Five and 80/100 ($2265.80) Dollars before the action commenced and now brings the money into court.

C. LeGrand Thompson

Attorney for the Defendant.

THE BANK OF ATMORE, a corporation, Plaintiff,	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA
VS.	AT LAW NO. 3805
W. V. PHILLIPS, Defendant.	

AMENDED COMPLAINT

COUNT ONE

The plaintiff claims of the defendant Two Thousand Two Hundred Sixty-five and 80/100 Dollars ($2,265.80) the balance due by promissory note made by him on March 23, 1954, and payable on to-wit: July 1, 1954, together with interest thereon from March 23, 1954.

COUNT TWO

The plaintiff claims of the defendant the further sum of Four Hundred Dollars ($400.00) as a reasonable attorney's fee paid or incurred by it in the institution of this suit on the note described in Count 1, alleges that said note contains a provision that the defendant will pay a reasonable attorney's fee for the collection of said note by suit or otherwise, and that the fee claimed herein is reasonable.

The plaintiff avers that the note sued on in this complaint contains a waiver by the defendant of his exemption of personal property and the plaintiff claims the benefit of such waiver.

J. B. Blackburn

BROOKS & GARRETT

By Leon G. Brooks (JB)

Attorneys for Plaintiff.

THE BANK OF ATMORE, a corporation, Plaintiff,	)	IN THE CIRCUIT COURT OF
VS.	)	BALDWIN COUNTY, ALABAMA
W. V. PHILLIPS, Defendant.	)	AT LAW NO. 2805

MOTION TO STRIKE

Now comes the plaintiff, by its attorneys, and moves the court to strike defendant's Pleas 3, 4, 5, 6, 7 and 8, each separately and severally, and as grounds for said motion assigns, separately and severally, the following:

1. It is unnecessarily prolix.
2. It is irrelevant.
3. It is frivolous.
4. It is unnecessarily repeated.

Brooks Hamett

J. B. Blackburn

Attorneys for plaintiff.

THE BANK OF ATMORE, A Corporation, Plaintiff,	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA.
VS.	)	AT LAW. NO. 3805
W. V. PHILLIPS, Defendant.	)	

MOTION TO TRANSFER

TO THE HONORABLE HUBERTM. HALL, JUDGE OF SAID COURT:

Now comes W. V. PHILLIPS, the defendant in the above styled cause, and respectfully shows to Your Honor by this his written and verified motion filed this day:

1. That he claims and asserts an equitable defense to said action at law, the decision of which should dispose of the cause and which cannot be disposed of on the law side;

2. That the equitable right or defense which he claims is as follows: "That prior to the execution of the note which is the basis of this action, Lambert C. Mims, who is the person who received the money for which the note in this suit was given, was indebted to Petitioner in the amount of $22,500.00, by promissory note, dated the 29th day of May, 1953, to secure the payment of which note the said Lambert C. Mims executed a chattel mortgage to Petitioner on the 29th day of May, 1953, which said chattel mortgage was recorded in Miscellaneous Book 276, page 220, of the Probate Records of Mobile County, Alabama, a copy of which instrument, marked Exhibit "A", is attached hereto, and, by reference, made a part hereof as though fully set out herein; that said chattel mortgage covered the following articles of personalty: One 1952 Model Packard Sedan, One 1950 Studebaker Sedan, One 1950 White Tractor, One 1948 Trailmobile Van Trailer, One 1952 Studebaker 2-ton truck, and One 12 foot Van Body mounted on said Studebaker Truck; that in the early part of 1954, on, to-wit: March 23rd, the said Lambert C. Mims, desiring to borrow money from The Bank of Atmore, the plaintiff in this cause, asked your Petitioner to release the foregoing chattels from Petitioner's mortgage so that the said Lambert C. Mims could use said chattels as security to secure a loan from the Plaintiff Bank; that Petitioner accompanied the said Lambert C. Mims to Plaintiff's place of business in Atmore, Alabama, and there signi-

fied to a Mr. Snead, who was then and there the agent, servant, or employee of the plaintiff corporation, acting within the line and scope of his employment as such, Petitioner's willingness to relinquish his prior claim to the chattels above described in order to assist Mr. Mims in securing his loan; that petitioner never agreed to become guarantor or surety for the repayment of said loan; that it was not his intention to become guarantor or surety for said loan; that in signing the note which is the basis of this suit Petitioner did not know that he was signing as a maker of said note and that he did not intend to sign as a maker and did not agree with the Bank of Atmore, the plaintiff, to sign as a maker of said note; that your Petitioner is an ignorant and uneducated man with only a few months schooling in his whole life; that he can barely read and write; that his signature to the note which is the basis of this suit was obtained by fraud or misrepresentation, or mistake, and that he signed the same through ignorance or mistake; that he received no benefit from the money which was loaned by the Bank to the said Lambert C. Mims; and that, because of the Bank's failure to assert its priority to the personal property above described in the Bankruptcy Court or to release the same to your Petitioner, your Petitioner was himself damaged to the extent of several thousand dollars."

3. WHEREFORE, THE PREMISES CONSIDERED, your said Defendant and Petitioner respectfully prays that upon a hearing of this Motion Your Honor will adjudge and decree that this action be transferred from the law side of this Court to the Equity side and that the said shall thereupon be docketed and proceeded on the Equity side of this Court in the manner and form as provided by law and according to the rules of Equity.

W. V. Phillips
PETITIONENG DEFENDANT.

STATE OF ALABAMA,
COUNTY OF BALDWIN.

Before me, [illegible], a Notary Public in and for said County and State, personally appeared W. V. PHILLIPS, who has knowledge of the facts set forth in the foregoing claim, who,

being by me first duly sworn, says on oath that the facts hereinabove set forth are true and correct, according to the best of his knowledge, information and belief.

W. V. Phillips

Sworn to and subscribed before me on this the 4 day of September, 1956.

C. Fetter Thomson
Notary Public, Baldwin County, Alabama.

I certify that I have this 4th day of September, 1956, served a copy of the above and foregoing motion on Hon J. B. Blackburn, by handing him a copy of the same —

Telfair J. Blackburn Jr.

EXHIBIT "A"

CHATTEL MORTGAGE

STATE OF ALABAMA,)
)
MOBILE COUNTY.)

I, LAMBERT C. MIMS, in consideration of Twenty-two thousand five hundred dollars ($22,500.00) Dollars paid by William V. Phillips, do bargain, sell, deliver and convey to said William V. Phillips the following personal property now in Mobile County, Alabama, to-wit:
One (1) 1952 Packard Sedan K215688 (Encumbrance to Prichard National Bank in amount $800.00)
One (1) 1950 Studebaker Sedan 695926
One (1) 1950 White WC 20T Tractor 130a-30355
One (1) 1948 Trailmobile Van Trailer 46-101-1899 (The last two items have encumbrance to Prichard National Bank in amount $1500.00)
One (1) 1952 Studebaker 2 ton Truck 4R-36872 (Encumbrance to Commercial Credit Corp. in amount $400.00)
One (1) 12 ft. Van Body Mounted on Studebaker Truck.

I warrant that the said property is free from all encumbrances and that I have a good right to sell the same.

Upon condition, however, that if I pay my certain promissory note bearing even date herewith, given to the said William V. Phillips or order, for the said sum of Twenty-two thousand five hundred dollars ($22,500.00) Dollars, with interest at the rate of five(5) per cent, according to the tenor of said note, then this mortgage shall be void; but if default should be made in the payment of the principal or interest above mentioned, or any part thereof, then said William V. Phillips is hereby authorized, to take possession of the above described personal property and advertise and sell the same at public sale to the highest bidder for cash, after giving thirty (30) days notice of the time and place of said sale by one notice posted at the court house door of Mobile County, Alabama, the said sale to take place either in front of the court house door of said Mobile County, Alabama or where the property is situated at the time of the default. It is agreed that the said William V. Phillips has the right to choose one of the above mentioned places as the place of sale of said property, and his choice shall be final and binding upon me. It is further agreed that the said property shall be at the place of sale at the time of the sale, whether sold at the court house door of said Mobile County, Alabama, or where the property is situated at the time of default. The proceeds of said sale shall be applied, first, to the payment of all costs of said sale, including a reasonable attorney's fee; second, to the amount due upon said note and interest; third, if any surplus remains, to be paid to the undersigned.

It is further agreed that the mortgagor herein shall retain possession of the property as the agent of the mortgagee, until default in the payment of the mortgage debt hereby secured.

Executed this 29th day of May, 1953.

Witnesses:

_____ /s/ Lambert C. Mims (SEAL)

_____

STATE OF ALABAMA,)
)
MOBILE COUNTY.)

I, Fred F. Smith, Jr. in and for the County and State aforesaid, hereby certify that Lambert C. Mims whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day, that being informed of the contents of the said mortgage he executed the same voluntarily on the day the same bears date.
Given under my hand this 29th day of May A.D. 1953.
/s/ Fred F. Smith, Jr.

THE BANK OF ATMORE, a corporation, Plaintiff,	)	IN THE CIRCUIT COURT OF
VS.	)	BALDWIN COUNTY, ALABAMA
W. V. PHILLIPS, Defendant.	)	AT LAW

DEMURRER TO DEFENDANT'S MOTION TO TRANSFER CAUSE TO EQUITY COURT.

Now comes the plaintiff and for demurrer to the defendant's motion to transfer this cause to the Equity Court assigns, separately and severally, the following:

1. There is no equity in the motion.

2. No facts are alleged to show that the defendant has any equitable defense which cannot be asserted on the law side of the court.

3. No defense is alleged which cannot be asserted on the law side of the court.

4. The allegation that the defendant's signature on the said note was obtained by fraud is a conclusion of the pleader.

5. The allegation that the defendant's signature on the said note was obtained by misrepresentation is a conclusion of the pleader.

6. The allegation that the defendant's signature on the said note was obtained by fraud is a conclusion of the pleader and no facts are alleged to show any fraud on the part of the plaintiff or its agents, servants or employees.

7. The allegation that the defendant's signature on the said note was obtained by misrepresentation is a conclusion of the pleader and no facts are alleged to show any misrepresentation on the part of the plaintiff or its agents, servants or employees.

8. No facts are alleged to show any mistake on the part of the plaintiff or its agents, servants or employees.

9. No facts are alleged to show any duty or obligation on the plaintiff to foreclose the chattel mortgage to it before suing on the note described in its amended complaint.

10. No facts are alleged to show that the defendant is not liable on the note described in the amended complaint.

11. No facts are alleged to show any duty or obligation on the part of the plaintiff to enforce the mortgage which secured the note described in the amended complaint.

12. The allegations of the motion are vague, indefinite and uncertain.

13. The allegations of the motion are vague, indefinite, uncertain and incomplete.

14. No facts are alleged to show any fraud or misconduct on the part of the plaintiff.

15. No facts are alleged to show any misrepresentation on the part of the plaintiff.

16. No facts are alleged to show any mistake on the part of the plaintiff.

17. No facts are alleged to show that any mistake of the defendant was known to the plaintiff.

18. No facts are alleged to show any mistake on the part of the plaintiff's agent, servant or employee.

19. No facts are alleged to show that the plaintiff knew of the defendant's alleged mistake in signing the said note.

20. No facts are alleged to show that any agent, servant or employee of Plaintiff knew of the defendant's alleged mistake in signing the said note.

21. It affirmatively appears that the defendant could read and write, and no facts are alleged to show that the contents of the note were misrepresented to him by the plaintiff or by any of its agents, servants or employees.

22. It affirmatively appears that the defendant could read and write, and no facts are alleged to show that any fraud was practiced upon the defendant by the plaintiff or by any of its agents, servants or employees.

23. It affirmatively appears that the defendant could read and write, and no facts are alleged to show that any misrepresentations were made to the defendant by the plaintiff or by

any of its agents, servants or employees.

24. It affirmatively appears that the defendant had a mortgage on the personal property described in the said motion, and no facts are alleged to show that the plaintiff or its agents, servants or employees hindered or prevented the defendant from asserting his rights under the said mortgage.

25. No facts are alleged to show that the personal property described in the said mortgage was at any time in the posession or under the control of the plaintiff.

26. It does not allege when the plaintiff failed to assert its priority to the personal property described in the said mortgage or foreclose its said chattel mortgage.

27. It does not allege when the plaintiff failed to release the personal property described in the said motion.

28. It does not allege that the defendant was in default on the note which forms the basis of this suit when the plaintiff failed to assert its priority to the personal property described in the motion.

29. It does not allege that the defendant was in default on the note which forms the basis of this suit when the plaintiff failed to release the personal property described in the said motion.

30. No facts are alleged to show that the defendant restored or offered to restore to the plaintiff the amount advanced or loaned by it on the note described in the amended complaint.

31. The allegation "that he (defendant) received no benefit from the money which was loaned by the bank to the said Lambert C. Mims" is a conclusion of the pleader, and no facts are alleged to show that any loan was made by the plaintiff to Lambert C. Mims.

32. No facts are alleged to show that the defendant did not receive the benefit of the proceeds of the loan made by the plaintiff on the note which forms the basis of this suit.

33. No facts are alleged to show how the proceeds of the loan, which was made by the plaintiff on the note which forms the basis of this suit, were disbursed or paid out.

34. It affirmatively appears that the loan made by the plaintiff was made to the defendant, W. V. Phillips, and Lambert C. Mims and no facts are alleged to show how the proceeds of the said loan were disbursed or paid out by the plaintiff.

J. B. Blackburn

Brooks & Garrett

Attorneys for plaintiff.

THE STATE OF ALABAMA,)
BALDWIN COUNTY.) IN THE CIRCUIT COURT.

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon W. V. Phillips to appear within thirty (30) 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 The Bank of Atmore, a national banking association.

Witness my hand this the 21 day of December, 1955.

Alice L. Brock
Clerk

****

C O M P L A I N T

THE BANK OF ATMORE, A CORPORATION, PLAINTIFF, VS. W. V. PHILLIPS, DEFENDANT.

Count 1. The plaintiff claims of the defendant Two Thousand Eight Hundred Forty-eight and 80/100 Dollars ($2,848.80), the balance due by promissory note made by him on March 23, 1954 and payable on, to-wit: July 1, 1954, together with interest thereon from March 23, 1954.

Count 2. The plaintiff claims of the defendant the further sum of Four Hundred Dollars ($400.00) as a reasonable attorney's fee paid or incurred by it in the institution of this suit on the note described in Count 1, alleges that said note contains a provision that the defendant will pay a reasonable attorney's fee for the collection of said note by suit or otherwise, and that the fee claimed herein is reasonable.

The plaintiff avers that the note sued on in this complaint contains a waiver by the defendant of his exemption of personal property and the plaintiff claims the benefit of such waiver.

BROOKS & GARRETT

BY Frank G. Brooks
Attorneys for Plaintiff

THE BANK OF ATMORE, A Corporation, Plaintiff,	*	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA
vs.	*	LAW SIDE. NO: 3805
W. V. PHILLIPS, Defendant.	*	

DEMURRER

Now comes the Plaintiff and for demurrer to the amended pleas numbered 2, 3, 4 and 5 filed by the Defendant in this cause on September 7, 1956, each separately and severally, assigns, separately and severally, the following:

1. It does not constitute a defense to the amended complaint and raises an immaterial issue.

2. No facts are alleged to show any duty or obligation on the plaintiff to foreclose the chattel mortgage described in the plea before suing on the note described in the amended complaint.

3. No facts are alleged to show that the defendant is not liable on the note described in the amended complaint.

4. No facts are alleged to show that the defendant did not receive the consideration or proceeds of the note described in the amended complaint.

5. No facts are alleged to show that the defendant restored or offered to restore to the plaintiff the amount advanced or loaned by it on the note described in the amended complaint.

6. No facts are alleged to show any duty or obligation on the part of the plaintiff to enforce the mortgage which secured the note described in the amended complaint.

7. No facts are alleged to show that the property described in the mortgage which secured the said note described in the amended complaint was the property of the defendant.

8. The allegations thereof are vague, indefinite and uncertain.

9. The allegations thereof are vague, indefinite, uncertain and incomplete.

10.. No facts are alleged to show that the defendant tendered to the plaintiff the full amount due on the note described in the amended complaint before this suit was filed.

11. No facts are alleged to show that the defendant had any interest in the property described in the mortgage which was given to secure the note here sued on.

12. No facts are alleged to show when the plaintiff agreed to utilize the property described in the alleged chattel mortgage before bringing suit on the said note.

13. No facts are alleged to show which agent, officer, servant or employee of the plaintiff made the alleged agreement with the defendant.

14. No facts are alleged to show that the agent, officer, servant or employee of the plaintiff was acting within the line and scope of his employment at the time of the making of the alleged agreement with the defendant.

15. For aught that appears in the pleas, the alleged agreement by the plaintiff with the defendant was not made before the execution and delivery of the note here sued on.

16. No facts are alleged to show any fraud or misconduct on the part of the plaintiff.

17. No facts are alleged to show any injury to the defendant.

18. No facts are alleged to show that the defendant was in default on the note described in the amended complaint on July 15, 1954.

19. No facts are alleged to show that the note described in the amended complaint was past due on July 15, 1954.

20. No facts are alleged to show any duty on the plaintiff to have taken the property described in the pleas into its possession at any time.

21. The said plea does not state a cause of action against the plaintiff.

22. The allegations of the plea are conclusions of the pleader.

23. The allegation that the defendant's signature on the said note was obtained by fraud is a conclusion of the pleader.

24. The allegation that the defendant's signature on the said note was obtained by misrepresentation is a conclusion of the pleader.

25. The allegation that the defendant's signature on the said note was obtained by fraud is a conclusion of the pleader and no facts are alleged to show any fraud on the part of the plaintiff or its agents, servants or employees.

26. The allegation that the defendant's signature on the said note was obtained by misrepresentation is a conclusion of the pleader and no facts are alleged to show any misrepresentation on the part of the plaintiff or its agents, servants or employees.

27. No facts are alleged to show any mistake on the part of the plaintiff or its agents, servants or employees.

28. No facts are alleged to show any duty or obligation on the plaintiff to foreclose the chattel mortgage to it before suing on the note described in its amended complaint.

29. No facts are alleged to show that the defendant is not liable on the note described in the amended complaint.

30. No facts are alleged to show any duty or obligation on the part of the plaintiff to enforce the mortgage which secured the note described in the amended complaint.

31. No facts are alleged to show any fraud or misconduct on the part of the plaintiff.

32. No facts are alleged to show any misrepresentation on the part of the plaintiff.

33. No facts are alleged to show any mistake on the part of the plaintiff.

34. No facts are alleged to show that any mistake of the defendant was known to the plaintiff.

35. No facts are alleged to show any mistake on the part of the plaintiff's agent, servant or employee.

36. No facts are alleged to show that the plaintiff knew of the defendant's alleged mistake in signing the said note.

37. No facts are alleged to show that any agent, servant or employee of the Plaintiff knew of the defendant's alleged mistake in signing the said note.

38. It affirmatively appears that the defendant could read and write, and no facts are alleged to show that the contents of the note were misrepresented to him by the plaintiff or by any of its agents, servants or employees.

39. It affirmatively appears that the defendant could read and write, and no facts are alleged to show that any fraud was practiced upon the defendant by the plaintiff or by any of its agents, servants or employees.

40. It affirmatively appears that the defendant could read and write, and no facts are alleged to show that any misrepresentations were made to the defendant by the plaintiff or by any of its agents, servants or employees.

41. It affirmatively appears that the defendant had a mortgage on the personal property described in the said motion and no facts are alleged to show that the plaintiff or its agents, servants or employees hindered or prevented the defendant from asserting his rights under the said mortgage.

42. No facts are alleged to show that the personal property described in the said mortgage was at any time in the possession or under the control of the plaintiff.

43. It does not allege when the plaintiff failed to assert its priority to the personal property described in the said mortgage or foreclose its said chattel mortgage.

44. It does not allege when the plaintiff failed to release the personal property described in the said motion.

45. It does not allege that the defendant was in default on the note which forms the basis of this suit when the plaintiff failed to assert its priority to the personal property described in the motion.

46. It does not allege that the defendant was in default on the note which forms the basis of this suit when the plaintiff failed to release the personal property described in the said motion.

47. No facts are alleged to show that the defendant restored or offered to restore to the plaintiff the amount advanced or loaned by it on the note described in the amended complaint.

48. No facts are alleged to show that the defendant did not receive the benefit of the proceeds of the loan made by the plaintiff on the note which forms the basis of this suit.

49. No facts are alleged to show how the proceeds of the loan, which was made by the plaintiff on the note which forms the basis of this suit, were disbursed or paid out.

50. It affirmatively appears that the loan made by the plaintiff was made to the defendant, W. V. Phillips, and Lambert C. Mims and no facts are alleged to show how the proceeds of the said loan were disbursed or paid out by the plaintiff.

51. No facts are alleged to show any duty on the plaintiff to proceed against Lambert C. Mims.

52. No facts are alleged to show any duty on the plaintiff to commence or prosecute a suit against Lambert C. Mims on the note which forms the basis of this suit.

53. No facts are alleged to show how or why the plaintiff is indebted to the defendant.

54. The allegations of the plea are conclusions of the pleader and no facts are alleged to show when the plaintiff wrongfully seized a deposit of the defendant.

55. The allegations of the ~~complaint~~ Plea are conclusions of the pleader and no facts are alleged to show that the plaintiff wrongfully seized a deposit of the defendant.

56. The allegations of fraud are conclusions of the pleader and no facts are alleged to show that the plaintiff or its agent, servant or employee defrauded the defendant.

57. The allegations of misrepresentation are conclusions of the pleader and no facts are alleged to show that the plaintiff or its agent, servant or employee misrepresented any material fact to the defendant.

58. The chattel mortgage from Lambert C. Mims to the defendant is not set out in the plea.

59. The legal effect of the mortgage from Lambert C. Mims to the defendant is not set out in the plea.

60. No facts are alleged to show any duty on the plaintiff to accept the personal property described in the plea.

_____

_____
Attorneys for Plaintiff.

THE BANK OF ATMORE, a corporation, Plaintiff,	)	IN THE CIRCUIT COURT OF
VS.	)	BALDWIN COUNTY, ALABAMA
W. V. PHILLIPS, Defendant.	)	AT LAW

AMENDED COMPLAINT

COUNT ONE

The plaintiff claims of the defendant One Thousand Eight Hundred Eighty-seven and 75/100 Dollars ($1,887.75), the balance due by promissory note made by him on March 23, 1954, and payable on, to-wit: July 23, 1954, together with interest thereon.

COUNT TWO

The plaintiff claims of the defendant the further sum of Five Hundred Dollars ($500.00) as a reasonable attorney's fee paid or incurred by it in the institution of this suit on the note described in Count 1, alleges that said note contains a provision that the defendant will pay a reasonable attorney's fee for the collection of said note by suit or otherwise, and that the fee claimed herein is reasonable.

The plaintiff avers that the note sued on in this complaint contains a waiver by the defendant of his exemption of personal property and the plaintiff claims the benefit of such waiver.

J. B. Blackburn

Brooks & Garrett

Attorneys for plaintiff.

BROOKS & GARRETT
ATTORNEYS AT LAW
BREWTON, ALABAMA

LEON G. BROOKS
BROOX G. GARRETT

December 20, 1955

Mrs. Alice Duck
Clerk of the Circuit Court
Bay Minette, Alabama

Dear Mrs. Duck:

We enclose to be filed an original and one copy of a summons and complaint in a suit of the Bank of Atmore vs. W. B. Phillips.

We understand that Mr. Phillips resides in the northern part of your county, perhaps somewhere around the Little River Community. He is represented by Mr. C. LeNoir Thompson, who I am sure would inform you or the Sheriff, if necessary, just where Mr. Phillips may be found.

Yours very truly,

BROOKS & GARRETT

BY Leon G. Brooks

LGB/nme
Encls. 2

THE BANK OF ATMORE, A Corporation PLAINTIFF VS W. V. PHILLIPS DEFENDANT	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA CASE NO. 2805

Comes the Defendant and for answer to the complaint in the above styled cause and to each phase thereof separately and severally shows as follows:

1.

He denies the allegations alleged in count one thereof.

2.

He denies the allegations alleged in count two thereof.

3.

For further answer to said count one the Defendant denies liability under the said promissory note alleged in the complaint and as grounds for said denial shows that the said Plaintiff herein released or refused the security of a chattel mortgage, subject of this suit, said release or refusal being without the consent of the Defendant herein, and the said Bank through its officers or agents had knowledge that the said Defendant herein was an accommodation party to said instrument.

4.

And the said Bank of Atmore through its attorney Honorable Leon Brooks, so informed the United States Bankrupt at Mobile and also their Attorney of Trustee and Bankruptcy handling the chattels, security on the mortgage upon which the present suit is based and the said attorney for the Plaintiff herein informed C. LeNoir Thompson attorney for the Defendant herein of such refusal to take the property designated as security on the chattel, subject of this suit and in words and figures in writing, stated as follows:

July 15, 1954

Mr. C. LeNoir Thompson
Bay Minette, Alabama

Dear LeNoir:

I have your letter of the 15th., further concerning the property covered by the mortgage of L. C. Mims and W. V. Phillips to the Bank of Atmore.

A few days ago Mr. DeLaney, the trustee, called me about this property and wanted the bank to take possession of it. I told him then that we would not be interested in doing this as we were relying upon the responsibility of Mr. Phillips. I should have thought of it at the time but I did not, so I

overlooked telling him that the bank's loan is current and that in the absence of threatened danger to the security we could not take possession of this property, anyhow.

As Mr. DeLaney appears to want something done to preserve the property and as Mr. Phillips seems to be much concerned about this, also, let me suggest that you and Mr. Delaney discuss the subject and try to come to a satisfactory understanding as to what should be done. While we want to cooperate in every way with all of those interested in this property I would like to emphasize again that the bank feels that Mr. Phillips is good for the obligation to it and that if does not care to become involved any more than is necessary in the bankruptcy proceedings. I am sure that you and Mr. DeLaney both understand our position.

Yours very truly,

/s/ Leon G. Brooks

LGB/nme
CC:
Mr. Chris C. Delaney
106 St. Joseph Street
Mobile, Alabama

CC: The Bank of Atmore
Atmore, Alabama

The said Plaintiff released or refused the following described equipment to the damage of the Defendant herein, and the said Bank through its officers or agents had knowledge that the said Defendant herein was an accommodation party to said instrument.

5.

Notwithstanding the statement made by the Plaintiff through its attorney of record Honorable Leon Brooks, the said Plaintiff had filed the chattel mortgage as a preferred claim with the United States Bankrupt Court at Mobile and after so filing, refused to accept the property or any part of said property covered by the chattel mortgage subject of this suit which was also of a value of to-wit: Four Thousand ($4000.00) Dollars at the time of said refusal, and the said Bank through its officers or agents had knowledge that the said Defendant herein was an accommodation party to said instrument.

6.

That your Defendant made every effort to obtain possession of said property designated as security of the chattel mortgage subject of this suit but to date has been unable to obtain same and said property having greatly depreciated to a present value of to-wit: Three Hundred ($300.00) Dollars, your Defendant is damaged in the amount of the loss of said property, and the said Bank through its officers or agents had knowledge that the said Defendant herein was an accommodation party to said instrument.

7.

Comes the Defendant and claims of the Plaintiff by way of recoupment the sum of Four Thousand ($4000.00) Dollars damages for that on to-wit: July 15, 1954 the said Plaintiff through its attorney of record Honorable Leon Brooks, without the consent of said Defendant, released or refused the possession of chattels to the value of Four Thousand ($000.00) Dollars designated as security on the chattel mortgage subject of this action and the market value of said chattels having greatly and permanently depreciated at the date of this action, and the said Bank through its officers or agents had knowledge that the said Defendant herein was an accommodation party to said instrument.

8.

Comes the Defendant and without in any way confessing the Plaintiff's demand, as a defense to the action of the Plaintiff says: That at the time of said action was commenced the Plaintiff was indebted to the Defendant in the sum of Four Thousand ($4000.00) Dollars for this: that the Plaintiff by Honorable Leon Brooks, its attorney of record did release or refuse the following chattels, same being designated as security on the said chattel mortgage subject of this suit: "One 30 ft van-type Trailmobile trailor, painted white, in good condition; One 1952 R17-4 Studebaker truck with van-type body; One 1954 Model White 5-ton truck on which there is a prior lien in favor of Universal C. I. T. approximating $5,000.00", which chattels were in the possession of the United States Bankrupt Court under the immediate control of the Trustee and Bankrupt of said court which Trustee through his attorney Honorable Chris C. Delaney offered said chattels to the Bank of Atmore through its attorney Honorable Leon Brooks and the said Honorable Leon Brooks in his official capacity declined to receive said chattels which had a value of Four Thousand ($4,000.00) Dollars on that occassion, for all of which the said Plaintiff is indebted to the Defendant in the sum of Four Thousand ($4,000.00) Dollars which the Defendant hereby offers to setoff against the demand of the Plaintiff, and he claims judgment for the excess, and the said Bank through its officers or agents had knowledge that the said Defendant herein was an accommodation party to said instrument.

C. L. Deis Thompson
Attorney for Defendant.

THE BANK OF ATMORE, a Corporation PLAINTIFF VS W. V. PHILLIPS, DEFENDANT	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA CASE NO. 2805

Comes the Defendant and for demurrer to said complaint and to each count thereof separately and severally shows unto this Honorable Court as follows:

1.

That for aught alleged in count one thereof said Defendant has no credit for payments made thereon.

2.

For aught alleged in count one thereof the maker of said note is not named.

3.

For aught alleged in count one thereof the said Plaintiff fails to credit the Defendant with monies received from United States Bankrupt Court on said cause.

4.

For aught alleged in count one thereof said Plaintiff fails to account for the security covered by the said note.

Attorney for Defendant.

Defendant demands trial by jury.

Attorney for Defendant.