

3684

- You are hereby commanded to summon CHARLES PARKER, to appear and plead, answer or demur, within thirty days from the service hereof, to the complaint filed in the Circuit Court of Baldwin County, State of Alabama, at Bay Minette, against CHARLES PARKER, by PRINCE GRIFFIN, EXECUTOR, Estate of H. M. Parsons, deceased, Plaintiff.

WITNESS my hand this 23 day of October, 1958.

Alice J. Black
Clerk.

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AT LAW.

CASE NO. 3684

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I.

THOMPSON & WHITE

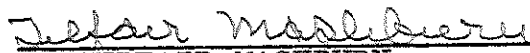
C. L. Smith Thompson
Attorney for Plaintiff.

STATE OF ALABAMA

BALDWIN COUNTY

S T I P U L A T I O N

It is stipulated that the attached testimony consisting of five pages which was taken before Mrs. Sue S. Lynn, a stenographer in the office of E. G. Rickarby; and sworn to by Mr. Ayres Little, when filed in this cause can be used as testimony taken under the rules pertaining to discovery: And can be used in court in accordance with the rules of court, it being agreed that no objection will be raised to the informal manner in which they were taken.


TELFAIR MASHBURN
Attorney for Defendant


E. G. RICKARBY
Attorney for Plaintiff

T E S T I M O N Y

Testimony of AYRES LITTLE, one of the Defendants in the case of WILLYS SALES CORPORATION, a Corporation, Plaintiff against CLYDE LITTLE and AYRES LITTLE, individually and doing business as LITTLE MOTOR COMPANY, A Partnership, Defendants, now pending in the Circuit Court of Baldwin County, Alabama, at Law.

Direct examination of Mr. E. G. Rickarby, attorney for the Plaintiff:

Q. Mr. Little, you have read over the Complaint in this case, and have you gotten the goods for which the Plaintiff is suing as shown by the complaint and itemized statement?

A. Mr. Rickarby, without checking those statements I would assume that we did.

Q. Has the Plaintiff been billing you for these over a period of time?

A. Yes.

Q. Have you paid the account?

A. No.

Q. Is there a reason why you have not paid the account?

A. Yes.

Q. What is that reason.

A. One of the reasons we have not paid this account is the fact that back in 1956, after much negotiation, I made a deal with the Masonite Corporation of Laurel, Mississippi, to sell them five jeeps at a quoted price of FOURTEEN HUNDRED AND SEVENTY FIVE DOLLARS (\$1,475.00) each plus the used merchandise they traded in. My quotation was based on furnishing them jeeps with certain accessories, including a standard heater. When the Willys Corporation out of Atlanta furnished me with four of these jeeps they included a deluxe heater and defroster which wholesaled to me for \$208.20 as against a cost to me of \$94.00 for the standard heater, which I had used in making my deal with the Masonite Corporation. The Masonite Corporation refused to pay any extra for this deluxe heater and defroster saying that they did not need that type of merchandise

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in their business and as a consequence I took a loss of \$114.20 on the four units.

I discussed this matter with Mr. Ben A. Black of Atlanta, Georgia, who at that time, was Zone Parts and Service Manager for the Willys Sales Corporation and also had charge of the distribution of vehicles in this area. ~~Mr. Black~~, most of our conversation was over the phone, and he promised me that he would attempt to have this matter adjusted because he knew that I had made my sale with the Masonite Corporation on a close margin and that when I had to pay this extra \$114.20 I would have my profit cut to nothing. Despite his promise to take care of this matter for me, I was never given credit for this \$114.20 difference and I feel that I am entitled to that from the Willys Sales Corporation as against the bill that I owe them. In addition, I have discussed this matter over the phone ^{with} ~~to~~ Mr. Jim Hendrixson of Atlanta, Georgia who was at that time zone manager of this area for the Willys Sales Corporation, and he, too, over the phone promised that he would get me credit for this. Because of past experience with the Masonite Corporation both of these men knew that the Masonite Corporation did not need or use delux equipment in their jeeps.

The matter just testified by me having to do with the four jeeps with the delux^e heater instead of the standard heater were sales made to me during the period between April and July, 1956. Most of my conversations taking place during the month of June, 1956,

In addition in late 1956 or early 1957, we sold a Willys Jeep to the Scott Paper Company; within the warranty period the crankshaft on the jeep broke between the second rod and the center main and after calling the matter to the attention of Mr. Ben A. Black, who at that time was regional manager for the Atlanta region, correction, who at that time was parts and service manager for the Atlanta zone and being authorized by him on the 17th of May, 1957, to replace the crankshaft with the necessary ^{spare} ~~repair~~ parts, we proceeded to install the new

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crankshaft and to repair the thing to the approval of Scott Paper Company. The total cost approved by Mr. Black was to have been \$138.85. On June 22, 1957, we mailed back or shipped by express, to Mr. Black, this defective crankshaft. On June 26, 1957, he wrote to us that he could not give us credit for the \$138.85 because of the fact that more than a month had lapsed between his authorization and our shipping the defective parts to them. However, the authorization did not include any time limit and we shipped the parts back to him as quickly as we could get the Scott Paper Company to bring their jeep in and remove and repair them. It took almost a month to get the authorization through. To be sure that this evidence is correct, we wish to state that the authorization, authorizing us to proceed to repair the jeep and return the defective crankshaft was dated on May 17, 1957 and it contained no time limit, as to the return of the defective parts for credit. On June 26, 1957, Mr. Black wrote us to the effect that he could not credit us with the return of this material because he had not received it until June 24th, 1957. We feel that we have been wrongly used in this insidence and that we are entitled to the credit for the \$138.85 against the bill that we owe the Willys Sales Corporation. Now we admit that we owe Willys Sales Corporation \$40.06, which would be the \$293.11 that they claim by itemized statement and subtracting the \$114.20 for the heaters that they sent that were not ordered, less the \$138.85 for the defective crankshaft which we replaced for the Scott Paper Company on Willys Sales Corporation's authorization and which we returned to them and were never credited with, we feel that since they brought suit against us unjustly that we should not pay the costs of court in this case but in an effort to be fair we do agree to pay the \$40.06 which we admit that we owe plus half of the Court Costs.

Q. Mr. Little, In short, you feel that the bill is correct-- \$293.11 is correct with the exception of these two credits that you are asking for?

A. yes

Q. Can you show me where these charges are made in the statement of account attached to the Summons and Complaint, copy of which I am showing you.

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- A. No, I can not, because, these vehicles were invoiced to me by invoice #25603-158, dated 6/21/56, which invoices were paid for by draft on the First National Bank of Bay Minette for the merchandise received and on that invoice the questionable items were heater, and defroster, fresh air, \$52.05 net and my purchase order was number L-43022 but that purchase order stated Masonite's purchase order number.
- Q. Do you have a copy of the order you made to the Willys Motor Company for this invoice?
- A. No, I do not, the order was placed by telephone to speed up delivery.
- Q. Can you tell me approximately when that order was placed?
- A. Masonite asked for quotation April 7, 1956 and my phone call was between April 4, 1956, and April 17, 1956, and I know I did not order heaters with defrosters and fresh air units.
- Q. How long after these goods were shipped did you call that to the attention of Willys Sales?
- A. That would be ^{approximately} between May 30, 1956 and June 5, 1956.
- Q. Who did you take this matter up with?
- A. First I called Mr. Black over the telephone.
- Q. What was the result of your conversation with Mr. Black at that time?
- A. The result of the phone conversation with Mr. Black was that he said that he would see what could be done about it.
- Q. Did Willys Sales ever notify you that they would do anything about this credit?
- A. Nothing ever came of it so therefore, I checked with the zone manager, Mr. Hendrixson, by telephone, within 30 days of the time I talked with Black.
- Q. What was the result of your talking with Mr. Hendrixson?
- A. He said that he would take the answer up with Mr. Whalin, who was then the Atlanta Branch Manager.
- Q. What was the result of his taking the matter up with Mr. Whalin?
- A/ I never heard anything else from him.

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Q. This question about delux^e heaters and standard heaters was in the four jeeps that Willys Sales sold you?

A. yes

Q. In other words, my contingent for the \$114.20 credit is that on invoice numbers 250603-158, 256-5-175, 250605-173, and 250605-185, you ordered standard heaters and they shipped you delux^e heaters by mistake and these heaters had defrosters and fresh air units which you did not order and which you did not allow in making your price to the Masonite Corporation?

A. Yes

Q. Mr. Little, do you remember who you gave your order to over the phone, for these jeeps.

A. Mr. Ben A. Black

Q. And you are claiming the \$138.85 credit for damage to crank shaft that was sent to you by invoice number 52664.

A. yes, and on May 17, 1957, Mr. Ben A. Black signed and approved request for credit authorization on this shaft and other necessary parts, 100% plus labor to remove and replace, where the total amount was \$138.85, which I am claiming. ^{we} ~~xx~~ shipped these goods back by Railway Express on June 18, 1957, charges prepaid and I have never been given credit therefor, and further when these parts to correct this defect came to us they were shipped C. O. D. ~~for \$30.58 by grayhound~~

Q. Mr. Little you have heard this testimony and have sworn to it being true and will sware to same before a notary, after you have a chance to read and see that it is typed correctly, and we have stipulated that this testimony will be used as testimony taken under the discovery section?

A. Yes

STATE OF ALABAMA

BALDWIN COUNTY

I, SUE S. LYNN, acting as Commissioner, took the testimony of AYRES LITTLE, and reduced the same to writing in the presence of Mr. Ayres Little, E. G. Rickarby, Esquire, Attorney for the Plaintiff, and Telfair J. Mashburn, Esquire, Attorney for the Defendant, who consented to me acting as such Commissioner.

Done this the 3rd day of February
1959.

Sue S. Lynn
COMMISSIONER