L. E. DARDEN,	)	IN THE CIRCUIT COURT OF
Plaintiff,	)	
		BALDWIN COUNTY, ALABAMA
vs.	)	
J. D. FULLER,	)	AT LAW. NO. 3983.
Defendant.	)	

SUPERSEDEAS BOND:

KNOW ALL MEN BY THESE PRESENTS: That we, J. D. Fuller as principal, and the undersigned as surety, are held and firmly bound unto L. E. Darden in the just and full sum of Fifty-one Hundred Dollars ($5100.00), for the payment of which, well and truly to be made and done, we bind ourselves, and each of us, ou and each of our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 1st day of July, 1960.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That Whereas, L. E. Darden obtained a judgment in the above styled ca in the Circuit Court of Baldwin County, Alabama, Law Side, on th 18th day of March, 1960, from which judgment the said J. D. Full has obtained an appeal returnable to the next term of the Suprem Court of Alabama.

NOW, THEREFORE, if the said J. D. Fuller shall prosecu the said appeal to effect, and satisfy such judgment as may be rendered against L. E. Darden in said cause by the Supreme Court then this obligation is to be null and void, otherwise to remain full force and effect.

And we, and each of us, hereby waive all rights to or claim of exemption as to personal property we or either of us have nor or may hereafter have, under the Constitution and Laws Alabama, and we hereby severally certify that we have property free from all encumbrance to the full amount of the above bond.

WITNESS our hands and seals this 1st day of July, 1960

J. D. FULLER. (SEAL

By _____
As his Attorney

FIDELITY & CASUALTY COMPANY OF
NEW YORK, a corporation. (SEAL

By: _____
As its Attorney in Fact.

Taken and approved on this

the 1st day July, 1960.

_____

Clerk of Circuit Court of Baldwin
County, Alabama.

L. E. DARDEN, Plaintiff,	)	IN THE CIRCUIT COURT OF
vs.	)	BALDWIN COUNTY, ALABAMA
J. D. FULLER, Defendant.	)	AT LAW. NO. 3983.

APPEAL BY DEFENDANT:

Now comes the Defendant and appeals to the Supreme Court of the State of Alabama, from the final judgment rendered in this cause in and by the Circuit Court of Baldwin County, Alabama, Law Side, on, to-wit, March 18, 1960, and in which caus Defendant's motion for a new trial was overruled by the trial court on, to-wit, April 19, 1960.

Attorney for Defendant.

* *

SECURITY FOR COSTS:

I, the undersigned, do hereby acknowledge myself a security for the costs of the appeal taken by the Defendant in this cause.

Attorney for Defendant.

Taken and approved on this the
1st day of July, 1960.

Clerk of the Circuit Court.

FILED
JUL 1 1960
ALICE L. DUCK, CLERK REGISTER

THE STATE OF ALABAMA
Baldwin County - Circuit Court

TO ANY SHERIFF OF THE STATE OF ALABAMA — GREETING:

Whereas, at a Term of the Circuit Court of Baldwin County, held on the 18th day of March, 1960 ~~Monday in~~, ~~195X~~, in a certain cause in said Court wherein L.E. DARDEN Plaintiff, and J.D. FULLER Defendant, a judgement was rendered against said J.D. FULLER to reverse which Judgment, the said J.D. FULLER applied for and obtained from this office an APPEAL, returnable to the Next Term of our Supreme Court of the State of Alabama, to be held at Montgomery, on the day of, 195 next, and the necessary bond having been given by the said J.D. Fuller with FIDELITY & CASUALTY COMPANY OF NEW YORK, A Corp., sureties,

Now, You Are Hereby Commanded, without delay, to cite the said L.E. DARDEN or Kenneth Cooper, attorney, to appear at the Next Term of our said Supreme Court, to defend against the said Appeal, if they think proper.

Witness, ALICE J. DUCK, Clerk of the Circuit Court of said County, this 6th day of July, A. D., 195~~X~~60.

Attest:

Alice J. Duck, Clerk.

eceived 6 day of July 19 60
nd on 7 day of July 19 60
served a copy of the within Citation
n Kenneth Cooper

y service on

TAYLOR WILKINS, Sheriff
By Tolbert D. S.
O Niles

#3983

CIRCUIT COURT
Baldwin County, Alabama

L.D. DARDEN

Vs. } Citation in Appeal

J.D. FULLER

Issued 6th day of July, 1960

To the Personal
Rep. Horace Kenneth
Cooper -

ATTACHMENT NOTICE

Moore Printing Co.

The State of Alabama,
Baldwin County

No. _____

CIRCUIT COURT

SEPTEMBER Term, 1959

L. E. DARDEN,

PLAINTIFFS

vs.

J. D. FULLER

DEFENDANTS

ATTACHMENT

WHEREAS, L. E. DARDEN,

as Plaintiff in said cause, has obtained an Attachment out of this Court, issued the _____ day of September 1959, against the estate of the said defendant J. D. FULLER,

which Attachment has been levied upon the following described real property as the property of the said defendant, to-wit:

West half of Northeast Quarter of the Northeast Quarter; East half of the Northwest Quarter of the Northeast Quarter and the Southwest Quarter of the Northwest Quarter of the Northeast Quarter, all in Section 8, Township 5 South, Range 3 East, containing 50 acres, more or less, all lying in Baldwin County, Alabama,

and whereas, it appears that the said J.D. FULLER

Defendant as aforesaid is a non-resident of the State of Alabama, Mountville Nurseries, Mountville, Georgia

NOW, THEREFORE, the said J.D. FULLER

wherever he may reside is hereby notified of the levy and pendency of said Attachment.

Witness my hand, this 19 day of Sept, 1959

Kenneth Cooper
Attorney for Plaintiff.

Alice J. Luck, Clerk

No. _____ Page _____

THE STATE OF ALABAMA,
BALDWIN COUNTY.

CIRCUIT COURT

L. E. DARDEN.

Plaintiffs

vs.

J.D. FULLER,

Defendants

NOTICE TO NON-RESIDENTS OF ATTACHMENT

Issued September, 19 59

Clerk.

MOORE PRINTING CO.,

L. E. DARDEN,	)	
Plaintiff,	)	IN THE CIRCUIT COURT OF
VS.	)	BALDWIN COUNTY, ALABAMA
J. D. FULLER,	)	AT LAW NO. 3983
Defendant.	)	

AMENDMENT TO PLEA

Now comes the defendant in the above styled cause and amends the plea heretofore filed in said cause by adding thereto the following:

8. For further plea and by way of recoupment, the defendant claims of the plaintiff $ 707 00 for money from March, 1958, to September, 1959, received by the plaintiff to the use of the defendant, which sums of money with the interest there are still unpaid.

Attorney for defendant

Filed 3-17-60
[illegible] clerk

We the Jury decide for the Plaintiff in the amount of 2500.00

J. T. Carlton
Foreman

AMENDMENT TO PLEA

L. E. DARDEN,

Plaintiff,

VS.

J. D. FULLER,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW NO. 3983

SUMMONS

STATE OF ALABAMA)
)
BALDWIN COUNTY)

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

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summons J. D. FULLER to appear before the Circuit Court, to be held for said County at the place of holding same, within thirty (30) days from service of this process, then and there to answer the complaint of L. E. DARDEN.

Witness my hand this the 19 day of September, 1959.

Alice J. Duck, Clerk

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA AT LAW. CASE NO. _____. L. E. DARDEN, Plaintiff, Vs. J. D. FULLER, Defendant.

****

L. E. DARDEN,
Plaintiff,
Vs.
J. D. FULLER,
Defendant.

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

Case No. _____.

1.

The Plaintiff claims of the Defendant SIX THOUSAND THREE HUNDRED FORTY-NINE DOLLARS and FIFTY-TWO CENTS ($6,349.52) balance due him after all proper credits are given, for work and labor done as an agrucultural superintendent and for hire and wages due for labor, services and supplies rendered by the Complainant in and about the cultivation of the HILLTOP NURSERIES under contract for such labor and services furnished for the said J. D. FULLER during the period from March, 1958, through February, 1959, and since March 1st, 1959, up to the date of September 5, 1959. The Plaintiff avers that the Defendant defaulted in the payment of his one-half of the costs in operating the HILLTOP NURSERIES, located on Route No. 1, at Loxley, Baldwin County, Alabama, during the aforementioned periods, as per agreement between the Complainant and the Defendant. The Plaintiff avers that the whole amount is due and payable at this time. Plaintiff avers that the Defendant has advertised the aforementioned HILLTOP NURSERIES for sale, at public Auction by the J. L. Todd Auction Company, of Rome, Georgia, on Wednesday, September 23rd, 1959, at 10:00 AM, and that if the Defendant sells the aforementioned HILLTOP NURSERIES the Plaintiff will probably lose his debts, or have to sue for them in another state. Plaintiff claims interest at the rate of 8% per annum. And the Plaintiff avers that the Defendant resides out of the State of Alabama, to-wit: at Mountville Nurseries, Mountville, Georgia, or La Grange, Georgia, and that the Defendant is over the age of twenty-one years.

Kenneth Cooper
Solicitor for Plaintiff.

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

CASE NO. 3983

L. E. DARDEN,
Plaintiff,

Vs.

J. D. FULLER,
Defendant.

COMPLAINT

Filed this 19 day of Sept. 1979

Clerk

Plaintiff claims of the Defendant SIX THOUSAND THREE HUNDRED FORTY-NINE DOLLARS and FORTY-TWO CENTS ($6,349.42) balance due him after all proper credits are given, for work and labor done as an agricultural superintendent and for hire and wages due for labor, services and supplies furnished by the Complainant in and about the cultivation of the HILLTOP NURSERIES under contract for such labor and services furnished for the said J. D. FULLER during the period from March, 1979, through February, 1979, and since March 1st, 1979, up to the date of September 5, 1979. The Plaintiff avers that the Defendant defaulted in the payment of his one-half of the costs in operating the HILLTOP NURSERIES, located on Route No. 1, at Loxley, Baldwin County, Alabama, during the aforementioned periods, as per agreement between the Complainant and the Defendant. The Plaintiff avers that the whole amount is due and payable at this time. Plaintiff avers that the Defendant has absconded the aforementioned HILLTOP NURSERIES for sale, at public auction by the [illegible] Auction Company, of Dothan, Georgia, on Wednesday, September 22nd, 1979, at 10:00 AM, and that if the Defendant sells the aforementioned HILLTOP NURSERIES the Plaintiff will probably lose his debts, or have to secure the Plaintiff claims interest at the rate of 6% per annum. And the Plaintiff avers that the Defendant resides out of the State of Alabama, to-wit: at Morrisville Nurseries, Morrisville, Georgia, or in Georgia, and that the Defendant is over the age of twenty-one years.

Solicitor for Plaintiff.

STATE OF ALABAMA)
BALDWIN COUNTY)

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

SUMMONS

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summons J. D. FULLER to appear before the Circuit Court, to be held for said County at the place of holding same, within thirty (30) days from service of this process, then and there to answer the complaint of L. E. DARDEN.

Witness my hand this the 17 day of September, 1979.

Alice J. Duke, Clerk

Case No. _____

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

COMPLAINT

Filed 19 1979

ATTACHMENT BOND

Moore Printing Co.

THE STATE OF ALABAMA
Baldwin County

CIRCUIT COURT AT BAY MINETTE, ALA.

KNOW ALL MEN BY THESE PRESENTS, That We, _____

_____

....., of the County of Baldwin _____

are held and firmly bound unto _____

_____

in the sum of _____ Dollars, to

be paid to the said _____

heirs, executors, administrators, or assigns, for which payment, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the _____ day of _____, 19 ____

The Condition of this Obligation is such:

That whereas, the above bounden _____

_____ ha___, on the day of the date

hereof, prayed an Attachment at the suit of .....

_____ against the estate of above named

_____

for the sum of _____ Dollars,
and hath obtained the same, returnable to the Circuit Court of Baldwin County:

Now, if the said _____

should prosecute said Attachment to effect, and pay the said Defendant all such damages as _____ may sustain by the wrongful or vexatious suing out said Attachment, then the above obligation to be void; othewise to remain in full force and effect.

And we and each of us hereby waive all rights of claims of exemption we or either of us have now, or may hereafter have, under the Constitution and Laws of the State of Alabama.

Signed, Sealed, and delivered the date above written.

..... (Seal)

..... (Seal)

..... (Seal)

..... (Seal)

Approved, this _____ day of _____, 19 ____

....., Clerk

ATTACHMENT AFFIDAVIT

Moore Printing Co.

THE STATE OF ALABAMA
Baldwin County

CIRCUIT COURT AT BAY MINETTE, ALABAMA

Before me, ALICE J. DUCK, Clerk of Circuit Court,

in and for said County, personally appeared Kenneth COOPER, attorney for L.E. Darden,

who, being duly sworn, on oath saith that J. D. Fuller is

justly indebted to

L. E. Darden

in the sum of SIX THOUSAND THREE HUNDRED FORTY -NINE and 52/100 ($6,349.52) Dollars,

which said amount is justly due after allowing all just offsets and discounts, and that the said

J. D FULLER resdies out of the State of Alabama, to-wit:

Mountville Nurseries, Mountville, Georgia, or

La Grange, Georgia,

and that this Attachment is not sued out for the purpose of vexing or harassing the Defendant, or other improper motive.

Kenneth Cooper
Kenneth Cooper

Subscribed and sworn to before me this 19 day of September, 1959

Alice J. Duck

No. 3983 Page

STATE OF ALABAMA
Baldwin County

CIRCUIT COURT
At Bay Minette, Ala.

~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

J. D. FULLER

TO

L. E. DARDEN

ATTACHMENT BOND AND AFFIDAVIT

Filed this the 19 day

of September, 19 59

Alice J. Duck, Clerk

Attorney

L. E. DARDEN,	)	IN THE CIRCUIT COURT OF
Plaintiff,	)	BALDWIN COUNTY, ALABAMA
vs.	)	
J. D. FULLER,	)	AT LAW. NO. 3983.
Defendant.	)	

NOTICE TO TAKE DEPOSITION UPON ORAL EXAMINATION:

TO: L. E. DARDEN, LOXLEY, ALABAMA, AND KENNETH COOPER, ATTORNEY AT LAW, BAY MINETTE, ALABAMA, ATTORNEY FOR PLAINTIFF.

Please take notice that at 9:30 A. M. on November 3, 1959, at the office of Louise Dusenbury, Court Reporter, at the Courthouse in Bay Minette, Alabama, the Defendant desire to and will take the deposition of L. E. Darden the Plaintiff in this cause, such deposition being upon oral examination and being taken pursuant to the statutes applicable the taking of the same before Louise Dusenbury, an officer authorized to administer oath by the laws of the State of Alabama and the said L. E. Darden is requested to have with him at said time and place all paper writings, documents, receipts or other instruments pertinent to this cause.

DATED on this the 15th day of October, 1959.

Attorney for Defendant.

3983

copy mailed to
Hon. K. Cooper
Mr. L. E. Durden

FILED

OCT 15-54

MARK HILL, CLERK

ATTACHMENT NOTICE

Moore Printing Co.

The State of Alabama,
Baldwin County

No. _____

CIRCUIT COURT

SEPTEMBER Term, 19 59

L. E. DARDEN,

PLAINTIFFS

vs.

J. D. FULLER

DEFENDANTS

ATTACHMENT

WHEREAS, L. E. DARDEN,

as Plaintiff in said cause, has obtained an Attachment out of this Court, issued the _____ day of September 19 59, against the estate of the said defendant J. D. FULLER,

which Attachment has been levied upon the following described real property as the property of the said defendant, to-wit:

West half of Northeast Quarter of the Northeast Quarter; East half of the Northwest Quarter of the Northeast Quarter and the Southwest Quarter of the Northwest Quarter of the Northeast Quarter, all in Section 8, Township 5 South, Range 3 East, containing 50 acres, more or less, all lying in Baldwin County, Alabama,

and whereas, it appears that the said J.D. FULLER

Defendant as aforesaid is a non-resident of the State of Alabama, Mountville Nurseries, Mountville, Georgia

NOW, THEREFORE, the said J.D. FULLER

wherever he may reside is hereby notified of the levy and pendency of said Attachment.

Witness my hand, this _____ day of _____, 19____

Kenneth Cooper
Attorney For Plaintiff.

_____, Clerk

No. 3983 Page

THE STATE OF ALABAMA,
BALDWIN COUNTY.

CIRCUIT COURT

L. E. DARDEN

Plaintiffs

vs.

J. D. FULLER.

Defendants

NOTICE TO NON-RESIDENTS OF ATTACHMENT

Issued September, 19 59

Clerk.

MOORE PRINTING CO.,

NOTICE OF LEVY ON REAL ESTATE

L. E. DARDEN, Plaintiff, Vs. J. D. FULLER, Defendant.	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA AT LAW. CASE NO. 3983

To W. R. STUART, JUDGE OF PROBATE, BALDWIN COUNTY, ALABAMA:

Notice is hereby given that under a Writ of Attachment issued in favor of the Plaintiff in above entitled cause, I have levied on the following described property of said Defendant, described as follows, to-wit:-

West half of Northeast Quarter of the Northeast Quarter; East half of the Northwest Quarter of the Northeast Quarter and the South-west Quarter of the Northwest Quarter of the Northeast Quarter, all in Section 8, Township 5 South, Range 3 East, containing 50 acres, more or less,

the above described real property being in Baldwin County, Alabama.

Given under my hand this _____th day of September, 1959.

Taylor Wilkins
SHERIFF, BALDWIN COUNTY,
ALABAMA.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW.

CASE NO. _____.

****

L. E. DARDEN,

Plaintiff,

Vs.

J.D.FULLER,

Defendant.

****

NOTICE OF LEVY ON

REAL ESTATE

****

Warden vs. Turner

JURY LIST, SPRING TERM, MARCH 14, 1960

1. Fullard, Louis, Laborer, Foley
2. Hoad, Perry M., Farmer, Stapleton
3. Holms, Kenneth B., Civil Service, Elberta
4. Holms, John R., Civil Service, Elberta
5. King, Orphens N., Jr., Clerk, Bay Minette
6. Kinz, Donald, Civil Service, Elberta
7. Hughes, Wayne, Motel Owner, Fairhope
8. Bishop, Earnest E., Meat Packer, Fairhope
9. Cooper, M.C., Carpenter, Robertsdale
10. Cooper, Ted W., Livestock Dealer, Robertsdale
11. Conte, Ferdinand A., Farmer, Loxley
12. Gipson, Leon Fisher, Mechanic, Bay Minette
13. Harrison, John, Laborer, Summerdale
14. Parker, Joe G., Farmer, Bon Secour
15. Gamble, T.Jack, Salesman, Bay Minette
16. Gantt, Ralph F., Farmer, Little River
17. Peavy, Richard V., Building Supply, Foley
18. Pilgrim, A.L., Farmer, Elberta
19. Pilgrim, H.E., Farmer, Elberta
20. Pilgrim, Joseph A., Jr., Farmer, Elberta
21. Reedy, M.J., Postal Clerk, Bay Minette
22. Blunt, Hugh Paul, Brookley Field, Bay Minette
23. Boone, W.A., Farmer, Little River
24. Bryant, Julis Lee, Farmer, Stockton
25. Chestang, Pelham D., Brookley Field, Bay Minette
26. Childress, Calvin, Farmer, Summerdale
27. Childress, Hobson, Farmer, Silverhill
28. Chestain, Charles, Farmer, Bay Minette
29. Cleverdon, Paul E., Farmer, Summerdale
30. Andress, Herbert E., Farmer, Foley
31. Armstrong, William, Civil Service, Elberta
32. Williams, Bryant, Farmer, Fairhope
33. Wenzel, Emmett O., Merchant, Gulf Shores
34. Walters, Thomas W., Farmer, Bon Secour
35. Craft, Ervin F., Rubber, Daphne
36. Crull, Calvin, Creamery, Fairhope
37. Dean, David E., Farmer, Lottie
38. Fell, Walter, Laundry, Bon Secour
39. Flowers, Albert F., Farmer, Gulf Shores
40. Ford, W.B., Jr., Type Setter, Foley
41. Laflam, Laurence F., Machinest, Foley
42. Lazzari, Angelo, Farmer, Belforest
43. Lazzari, Joe, Farmer, Daphne
44. Graham, James R., Laborer, Bay Minette
45. Graham, John C., Brookley Field, Bay Minette
46. Grimes, Roy A., Newport, Bay Minette
47. Gulledge, William, Farmer, Robertsdale
48. Gualtney, John L., Farmer, Robertsdale
49. Vitous, Albert, Farmer, Silverhill

49
14
35
18
17

P XXXX XXXXX X

D XXXXX XXXXX X

L. E. DARDEN, Plaintiff, Vs. J. D. FULLER, Defendant.	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA AT LAW. No. 3983

REPLICATION

TO

DEFENDANT'S PLEAS

Now comes the Plaintiff in above styled cause and for reply to the Defendant's Pleas No. 2, 3, 4, 5, 6, and 7 separately and severally says he joins issue on each and every plea thereof.

Kenneth Coza
Attorney for Plaintiff

FILED
FEB 24, 1960
ALICE L. DUCK, CLERK
REGISTER

CASE NO. 3983

****

L. E. DARDEN,

Plaintiff

Vs.

J. D. FULLER,

Defendant.

****

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

****

AT LAW

****

REPLICATION TO

DEFENDANT'S PLEAS

****

FILED

FEB 24 1960

ALICE J. DUCK, CLERK REGISTER

L. E. DARDEN,	)	IN THE CIRCUIT COURT OF
Plaintiff,	)	
		BALDWIN COUNTY, ALABAMA
vs.	)	
J. D. FULLER,	)	AT LAW. NO. 3983.
Defendant.	)	

PLEA:

Now comes the Defendant in the above styled cause and for plea to the complaint as last amended and to each count thereof, separately and severally, says as follows, separately and severally:

1. The allegations of said count are untrue.

2. The claim of the Plaintiff is within the statute of fraud and is therefore barred.

3. For further plea and by way of recoupment, the Defendant claims of the Plaintiff, $10.00 for money loaned by the Defendant to the Plaintiff on the 29th day of April, 1958, which sum of money with the interest thereon is still unpaid.

4. For further plea and by way of recoupment the defendant claims of the plaintiff $400.00 for money loaned by the Defendant to the Plaintiff on the 6th day of May, 1958, which sum of money with the interest thereon is still unpaid.

5. For further plea and by way of recoupment the Defendant claims of the Plaintiff $100.00 for money loaned by the Defendant to the Plaintiff on the 18th day of July, 1958, which sum of money with the interest thereon is still unpaid.

6. For further plea and by way of recoupment the Defendant claims of the Plaintiff $50.00 for money loaned by the Defendant to the Plaintiff on the 9th day of September, 1958, which sum of money with the interest thereon is still unpaid.

7. For further plea and by way of recoupment the Defendant claims of the Plaintiff $100.00 for money loaned by the Defendant to the Plaintiff on the 17th day of October, 1958, which sum of money with the interest thereon is still unpaid.

Attorney for Defendant.

I, Kenneth Cooper, Attorney for Plaintiff, do hereby accept service of the above and foregoing plea on this the 1st day of February, 1960.

Kenneth Cooper

Attorney for Plaintiff.

3983

L. E. DARDEN,)	IN THE CIRCUIT COURT OF
Plaintiff,)	BALDWIN COUNTY, ALABAMA
Vs.)	AT LAW
J. D. FULLER,)	Case No. 3983
Respondent)	

AMENDED BILL OF COMPLAINT

Comes the Plaintiff in the above styled cause and amends the Bill of Complaint filed in said cause so that the same shall read as follows:

I.

Plaintiff claims of the Defendant Six Thousand Three Hundred Forty-Nine Dollars and Fifty-two cents ($6,349.52) for work and labor done for the Defendant and for supplies furnished for the Defendant by the Plaintiff during the period from March 1st, 1958, to September 5th, 1959, which sum of money, with interest thereon, is due and still unpaid.

II.

Plaintiff claims of the Defendant Six Thousand Three Hundred Forty-Nine Dollars and Fifty-two cents ($6,349.52) after all proper credits are given, for work and labor and supplies furnished for the Defendant by the Plaintiff during the period from March 1st, 1958, to September 5th, 1959, at his request, which sum of money, with interest thereon, is due and still unpaid.

Kenneth Cooper
Kenneth Cooper
Solicitor for Plaintiff

FILED
JAN 21-60
ALICE L. BUCK, CLERK

CASE NO. 3983

****

L. E. DARDEN,

Plaintiff,

Vs.

J. D. FULLER,

Defendant.

****

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

****

AT LAW

****

AMENDED BILL OF COMPLAINT

****

FILED

JAN 21 1960

ALICE L. DUCK, CLERK REGISTER

L. E. DARDEN, Plaintiff,	)	IN THE CIRCUIT COURT OF
vs.	)	BALDWIN COUNTY, ALABAMA
J. D. FULLER, Defendant.	)	AT LAW. NO. 3983.

DEMURRER:

Now comes the Defendant, by his attorney, and demurs to the amended complaint heretofore filed in this cause and as grounds for said demurrer, assigns to each count thereof, separately and severally, the following separately and severally:

1. It does not state a cause of action.

2. It does not allege any facts to show that the Defendant is liable to the Plaintiff for payment of any labor done or wages due.

3. The alleged agreement between the Plaintiff and the Defendant is not set out in the complaint.

4. No facts are alleged to show the legal effect of the alleged agreement between the Plaintiff and Defendant along with facts showing the Defendant's obligation thereunder.

5. No facts are alleged to show the consideration for the alleged agreement between the Plaintiff and Defendant.

6. No facts are alleged to show all of the terms and provisions of the alleged contract.

7. No facts are alleged to show the length of time that the alleged agreement remained in force.

8. No facts are alleged to show the time during which the alleged oral agreement between the Plaintiff and Defendant was in force and effect.

9. No facts are alleged to show that the Plaintiff has complied with all of the terms and provisions of his alleged agreement with the Defendant.

10. No facts are alleged to show that the Plaintiff has rendered any services for the Defendant for which he is liable under the alleged agreement with him.

11. The allegations of the complaint are conclusions of the pleader.

12. No facts are alleged to show that the Plaintiff rendered any services to the Defendant for which he is liable to him.

13. From aught that appears the amount claimed by the Plaintiff has been paid.

14. It does not allege that the amount claimed by the Plaintiff is due and unpaid.

15. It affirmatively appears that the alleged agreement between the Plaintiff and the Defendant is within the statute of frauds.

Attorney for Defendant.

Filed
12-4-29

DEMURRER

L. E. DARDEN,

Plaintiff,

vs.

J. D. FULLER,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW. NO. 3983.

L. E. DARDEN,	)	IN THE CIRCUIT COURT OF
	)	
Plaintiff,	)	BALDWIN COUNTY, ALABAMA
	)	
Vs.	)	AT LAW.
	)	
J. D. FULLER,	)	Case No. 3983
	)	
Defendant.	)	

AMENDED BILL OF COMPLAINT

Comes the Plaintiff in the above styled cause and amends the Bill of Complaint filed in said cause so that the same shall read as follows:

I.

Plaintiff claims of the Defendant SIX THOUSAND THREE HUNDRED FORTY-NINE DOLLARS and FIFTY-TWO CENTS ($6,349.52), for work and labor done, and supplies furnished, for the Defendant by Plaintiff during the period from March 1st, 1958, to September 5th, 1959, at his request. Plaintiff claims interest at the rate of eight per cent (8%) per annum, since September 5th, 1959.

II.

Plaintiff claims of the Defendant SIX THOUSAND THREE HUNDRED FORTY-NINE DOLLARS and FIFTY-TWO CENTS ($6,349.52), after all proper credits are given, for work and labor, and supplies furnished for the Defendant by Plaintiff during the period from March 1st, 1958, to September 5th, 1959, at his request. Plaintiff claims interest at the rate of eight per cent (8%) per annum, since September 5th, 1959.

III.

Plaintiff claims of the Defendant, J. D. Fuller, the sum of SIX THOUSAND THREE HUNDRED FORTY-NINE DOLLARS and FIFTY-TWO CENTS ($6,349.52) damages, after all proper credits are given, for breach of an oral agreement entered into by the Defendant with the Plaintiff, on or about, to-wit, March 1st, 1958, by the terms of which, in substance, the Defendant agreed with Plaintiff for Plaintiff to superintend and operate the Hilltop Nursery, owned by Defendant, located on Route No. 1, at Loxley, in Baldwin County, Alabama. Plaintiff avers that as a part of the said agreement he, the Plaintiff, was to purchase all needed fertilizers, insecticides, equipment, stocks, containers, labor and other items needed to operate said Hilltop Nursery, and that Defendant was to pay one-half of all said costs and expenses as they occured and the Plaintiff was to pay one-half of said costs, with said arrangements to remain in force as long as the Plaintiff cared to remain on the place. Plaintiff avers that the proceeds from the sales of all stocks of the nursery then growing on the place, and those to be grown thereon, were, by the terms of said agreement, to be divided equally between the Plaintiff and the Defendant, and that the Defendant agreed that he would not sell the said Hilltop Nursery during his lifetime; but that on or about, to-wit, September 5th, 1959, Plaintiff was advised that Defendant was going to sell aforementioned Hilltop Nursery. Plaintiff futher avers that he did superintend and operate the said Hilltop Nursery according to the terms of aforesaid agreement; that he did buy fertilizers, insecticides, equipment, stocks, containers, labor and other items used to operate said Hilltop Nursery, as well as furnished his own labor and that of his wife, Mrs L. E. Darden, and that he, the Plaintiff, paid for said fertilizers, insecticides, equipment, stocks, containers and all labor, except for that of his own and that of his wife. Plaintiff further avers that he has paid

ONE THOUSAND FOUR HUNDRED FIFTY-FOUR DOLLARS and TWENTY-FOUR CENTS ($1,454.24) for hired labor, and ONE THOUSAND FIVE HUNDRED NINETY-FOUR DOLLARS and TEN CENTS ($1,594.10) for fertilizers, insecticides, equipment, stocks, containers and other expenses for operation and maintenance of the said Hilltop Nursery during aforesaid period of time pursuant to aforesaid agreement, and that during said period of time the Defendant paid to Plaintiff only FIVE HUNDRED FIFTY DOLLARS ($550.00) on his one-half of said costs, and that a total of EIGHT HUNDRED EIGHTY-NINE DOLLARS AND THIRTY CENTS ($889.30) was received during said period of time for the sale of nursery stocks and plants, one-half of which was credited to Defendant's agreement. Plaintiff further avers that he is also entitled to the sum of FIVE THOUSAND EIGHT HUNDRED and TWENTY DOLLARS ($5,820.00) for labor performed by Plaintiff and Plaintiff's wife during aforesaid period of time on the Hilltop Nursery because of the failure of the Defendant to permit Plaintiff to continue to operate under the terms of aforesaid agreement. Plaintiff further avers that on several occasions he demanded from Defendant payments for aforementioned hired labor and other enumerated costs, but that Defendant refused to pay as provided by aforesaid agreement, and that when Plaintiff learned that Defendant was going to sell the Hilltop Nursery he again demanded from Defendant payments for aforesaid work and labor, and other costs, but that the Defendant refused such demand, and refused to abide by the terms of aforesaid agreement as stated, all of which he, the Plaintiff, lost by reason of Defendant's breach of said agreement, as aforesaid. Plaintiff claims interest at the rate of eight per cent (8%) per annum since September 5th, 1959.

IV.

Plaintiff claims of the Defendant, J. D. Fuller, the sum of SIX THOUSAND THREE HUNDRED FORTY-NINE DOLLARS and FIFTY-TWO CENTS ($6,349.52) damages, after all proper credits are given, for breach of a contract entered into by the Defendant with the Plaintiff, on or about, to-wit, March 1st, 1958, by the terms of which were oral, in substance, the Defendant agreed with Plaintiff for Plaintiff to superintend and operate the Hilltop Nursery, owned by Defendant, on Route No. 1, at Loxley, Baldwin County, Alabama. Plaintiff avers that as part of the said oral contract, or agreement, he, the Plaintiff, was to purchase all needed fertilizers, insecticides, equipment, stocks, containers, labor and other items needed to operate said Hilltop Nursery, and that Defendant was to pay one-half of all costs thereof and expenses as they occured and Plaintiff was to pay the other one-half of said costs and expenses, with said arrangements to be and remain in force as long as the Plaintiff cared to remain at the said Hilltop Nursery on said terms. Plaintiff avers that the proceeds from the sales of all nursery stocks and plants then growing on said place, and those to be grown on said place, were, by the terms of said agreement, to be divided equally between Plaintiff and Defendant, and that the Defendant agreed that he would not sell the said Hilltop Nursery during his lifetime, but that on or about, to-wit, September 5th, 1959, Plaintiff was advised that Defendant was going to sell aforementioned Hilltop Nursery. Plaintiff further avers that he did superintend and operate the said Hilltop Nursery according to the terms of aforesaid agreement; that he did buy fertilizers, insecticides, equipment, stocks, containers, labor and other items needed to operate said Hilltop Nursery, as well as furnish his own labor and that of his wife, and that he, Plaintiff, paid for said fertilizers, insecticides, equipment, stocks, containers and all labor, except for that of his own and that of his wife. Plaintiff further avers that he has paid ONE THOUSAND FOUR HUNDRED FIFTY-FOUR DOLLARS and TWENTY-FOUR CENTS ($1,454.24) for hired labor, and ONE THOUSAND FIVE HUNDRED NINETY-FOUR DOLLARS and TEN CENTS ($1,594.10) for fertilizers, insecticides, equipment, stocks, containers, and other expenses for operation and maintenance of said Hilltop Nursery during aforesaid period of time pursuant to said agreement, and that during said period of time the

Defendant paid to Plaintiff only FIVE HUNDRED FIFTY DOLLARS ($550.00) on his one-half of said costs, and that a total of EIGHT HUNDRED EIGHTY-NINE DOLLARS and THIRTY CENTS ($889,30) was received during said period of time from the sale of nursery stocks and plants, one-half of which was credited to Defendant's part of said agreement. Plaintiff further avers that he is also entitled to the sum of FIVE THOUSAND EIGHT HUNDRED AND TWENTY DOLLARS ($5,820.00) for labor performed by Plaintiff and Plaintiff's wife during aforesaid period of time on the Hilltop Nursery because of the failure of the Defendant to permit Plaintiff to continue to operate under the terms of aforesaid agreement. Plaintiff further avers that on several occasions he demanded from Defendant payment for aforementioned labor and all other costs, but that Defendant refused to pay as provided by aforesaid agreement, and that when Plaintiff learned that Defendant was going to sell the said Hilltop Nursery he again demanded from Defendant payments for aforesaid work and labor, and other expenses, but that the Defendant refused to pay such demand and refused to abide by the terms of aforesaid agreement as stated, all of which he, the Plaintiff, lost by reason of Defendant's breach of aforesaid agreement. And Plaintiff says that, although he has complied with allof the provisions of said agreement on his part, the Defendanthas failed to comply with the following provisions thereof, viz: a. the Defendant has paid only FIVE HUNDRED FIFTY DOLLARS ($550.00) on his one-half of the costs for labor and work and other operation costs of said Hilltop Nursery during aforesaid period of time, whereas his onephalf of said costs total ONE THOUSAND FIVE HUNDRED TWENTY-FOUR DOLLARS AND THIRTY-ONE CENTS ($1,524.31); b. the Defendant sold the aforementioned Hilltop Nursery contrary to the terms of his agreement, and refused to pay the Plaintiff for labor and services rendered by Plaintiff and Plaintiff's wife during aforesaid period; and c., the Defendant refused to pay the Plaintiff the sum of SIX THOUSAND THREE HUNDRED FORTY-NINE DOLLARS and FIFTY-TWO CENTS ($6,349.52) due for work and labor and supplies furnished the said Hilltop Nursery by Plaintiff during aforesaid period of time. Plaintiff claims interest at the rate of eight per cent (8%) per annum since September 5th, 1959.

V.

The Plaintiff claims of the Defendant SIX THOUSAND THREE HUNDRED FORTY-NINE DOLLARS and FIFTY-TWO CENTS ($6,349.52) damages for breach of an oral agreement, entered into by him on the 1st day of March, 1958, by which he, the Defendant, promised to the Plaintiff that if he, the Plaintiff, would take over, operate and superintend the Hilltop Nursery, located on Route No. 1., at Loxley, Baldwin County, Alabama, and pay one-half of all costs involved therewith, he, the Defendant, would pay the other one-half of all labor and costs, and in return therefor they would divide the proceeds received from the sale of all stocks then growing on said place and those to be grown on said place. And the Defendant promised the Plaintiff that he would not sell the said Hilltop Nursery during his said lifetime, and that Plaintiff could live on the said property as long as he desired to do so so long as he worked under aforesaid terms. The Plaintiff avers that thetDefendant committed a breach of the aforementioned agreement in that he paid only FIVE HUNDRED FIFTY DOLLARS ($550.00) on his one-half of the costs for operating said Hilltop Nursery during said period of the agreement, to-wit, March 1st, 1958 to September 5th, 1959, whereas the total costs for operating said Hilltop Nursery was ONE THOUSAND FOUR HUNDRED FIFTY-FOUR DOLLARS AND TWENTY-FOUR CENTS ($1,454.24) for hired labor and ONE THOUSAND FIVE HUNDRED NINETY-FOUR DOLLARS and TEN CENTS ($1,594.10) for fertilizers, insecticides, equipment, stocks, containers and other expenses; that the Defendant did arrange and did sell the said Hilltop Nursery

contrary to said agreement; that Defendant's action in disposing of said Hilltop Nursery prevented Plaintiff and Plaintiff's wife, from receiving pay for their own work and labor, as had been included in aforementioned agreement. And the Plaintiff avers that as a result of the breach of aforementioned agreement entered into by the Defendant with Plaintiff, after all proper credits are given, including the sale of EIGHT HUNDRED EIGHTY-NINE DOLLARS AND THIRTY CENTS ($889.30) worth of nursery stocks and plants, the Defendant owes Plaintiff a total sum of SIX THOUSAND THREE HUNDRED FORTY-NINE DOLLARS and FIFTY-TWO CENTS ($6,349.52) for work and labor and operating expenses on said Hilltop Nursery. And Plaintiff avers that he has demanded payment from Defendant for aforesaid work and labor and other operating costs, but that Defendant refused such payment, and continues to refuse such payment. Plaintiff claims interest at the rate of eight per cent (8%) per annum since September 5th, 1959.

Kenneth Cooper
Kenneth Cooper
Solicitor for Plaintiff

FILED
NOV 16 1959
ALICE I. DUCK, CLERK REGISTER

Case No. 3983

****

L. E. DARDEN,

Plaintiff,

Vs.

J. D. FULLER,

Defendant.

****

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

****

AMENDED BILL OF COMPLAINT

****

L. E. DARDEN,	§	IN THE CIRCUIT COURT OF
Plaintiff,	§	BALDWIN COUNTY, ALABAMA
vs.	§	
J. D. FULLER,	§	AT LAW. NO. 3983
Defendant.	§	

DEMURRER:

Now comes the Defendant, by his attorney, and demurs to the complaint heretofore filed in this cause and as grounds for said demurrer, assigns, separately and severally, the following:

1. It does not state a cause of action.

2. It does not allege any facts to show that the Defendant is liable to the Plaintiff for payment of any labor done or wages due.

3. The alleged agreement between the Plaintiff and the Defendant is not set out in the complaint.

4. No facts are alleged to show the legal effect of the alleged agreement between the Plaintiff and Defendant along with facts showing the Defendant's obligation thereunder.

5. No facts are alleged to show the consideration for the alleged agreement between the Plaintiff and Defendant.

6. No facts are alleged to show all of the terms and provisions of the alleged contract.

7. No facts are alleged to show the length of time that the alleged agreement remained in force.

8. No facts are alleged to show the time during which the alleged oral agreement between the Plaintiff and Defendant was in force and effect.

9. No facts are alleged to show that the Plaintiff has complied with all of the terms and provisions of his alleged agreement with the Defendant.

10. No facts are alleged to show that the Plaintiff has rendered any services for the Defendant for which he is liable under the alleged agreement with him.

11. The allegations of the complaint are conclusions of the pleader.

12. No facts are alleged to show that the Plaintiff rendered any services to the Defendant for which he is liable to him.

Attorney for Defendant.

Defendant demands a trial of said cause by Jury.

FILED

OCT 15 1959

ALICE J. DUCK, CLERK REGISTER

Attorney for Defendant.

NOTICE OF LEVY ON REAL ESTATE

L. E. DARDEN, Plaintiff, Vs. J. D. FULLER, Defendant.	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA AT LAW. CASE NO. 3983

TO W. R. STUART, JUDGE OF PROBATE, BALDWIN COUNTY, ALABAMA:

Notice is hereby given that under a Writ of Attachment issued in favor of the Plaintiff in above entitled cause, I have levied on the following described property of said Defendant, described as follows, to-wit:-

> West half of Northeast Quarter of the Northeast Quarter; East half of the Northwest Quarter of the Northeast Quarter and the Southwest Quarter of the Northwest Quarter of the Northeast Quarter, all in Section 8, Township 5 South, Range 3 East, containing 50 acres, more or less,

the above described real property being in Baldwin County, Alabama.

Given under my hand this 19 th day of September, 1959.

Taylor Wilkins
SHERIFF, BALDWIN COUNTY, ALABAMA.

STATE OF ALABAMA, BALDWIN COUNTY
Filed 9-19-59 M
Recorded book 5 page 81-2
W. R. Stuart
Judge of Probate

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

****

L. E. DARDEN,
Plaintiff,
Vs.
J. D. FULLER,
Defendant.

****

NOTICE OF LEVY ON
REAL ESTATE.

****

R-50
Taylor Wilkins

ATTACHMENT

The State of Alabama,
Baldwin County.

TO ANY SHERIFF OF THE STATE OF ALABAMA:

WHEREAS, Kenneth Cooper, Attorney for L. E. Darden, the Plaintiff,

hath complained on oath to me, ALICE J. DUCK, Clerk of Circuit Court of Baldwin County, Ala., that

J. D. FULLER

is justly indebted to the Plaintiff L. E. DARDEN

in the sum of SIX THOUSAND THREE HUNDRED FORTY NINE and 52/100 ($6,349.52) Dollars and

Kenneth Cooper having made affidavit and no ~~sixex~~ bond

as required by law, out of State such cases, you are hereby commanded to attach so much of the estate of

J. D. FULLER

as will be of value sufficient to satisfy said debt and costs, according to the complaint; and such estate, so attached unless replevied, so to secure, that the same may be liable to further proceedings thereon to be had by the Circuit Court of Baldwin County, Ala., at a term thereof, to be held at the Court House of said County, on _____ Monday of _____ 19_____ next; when and where you must make known to said Court how you have executed this Writ.

WITNESS, my hand, this 19 day of September A. D., 19 59.

Alice J. Duck Clerk.
Alice J. Duck.

No. _____

ATTACHMENT

L. E. DARDEN,

Vs. } ATTACHMENT

J. D. FULLER.

Issued _____, 195____

Printed by Moore Printing Co.

ATTACHMENT

The State of Alabama,
Baldwin County.

TO ANY SHERIFF OF THE STATE OF ALABAMA:

WHEREAS, Kenneth Cooper, Attorney for L. E. Darden, the Plaintiff,

hath complained on oath to me, ALICE J. DUCK, Clerk of Circuit Court of Baldwin County, Ala., that

J. D. FULLER

is justly indebted to the Plaintiff L. E. DARDEN

in the sum of SIX THOUSAND THREE HUNDRED FORTY NINE and 52/100 ($6,349.52) Dollars, and

Kenneth Cooper having made affidavit and no bond

as required by law, out of State in such cases, you are hereby commanded to attach so much of the estate of

J. D. FULLER

as will be of value sufficient to satisfy said debt and costs, according to the complaint; and such estate, so attached unless replevied, so to secure, that the same may be liable to further proceedings thereon to be had by the Circuit Court of Baldwin County, Ala., at a term thereof, to be held at the Court House of said County, on _____ Monday of _____ 19_____ next; when and where you must make known to said Court how you have executed this Writ.

WITNESS, my hand, this 19 day of September A. D., 19 59.

Alice J. Duck Clerk.

Alice J. Duck.

No.

ATTACHMENT

L. E. DARDEN,

Vs. } ATTACHMENT

J. D. FULLER.

Georgia

Issued, 195

Printed by Moore Printing Co.

FILED
SEP 19 1959
ALICE J. DUCK, CLERK REGISTER

Executed Sept 16th 1959 by selling a Notice of Levy in Attached Property on the following described property

West half of Northeast Quarter of the Northeast Quarter, East half of the Northwest Quarter of the Northeast Quarter and the South West Quarter of the Northwest Quarter, all in section 8, Township 5 South, Range 3 East, containing 50 acres more or less.

Walter Elder
Deputy

STATE OF ALABAMA)
)
BALDWIN COUNTY)

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

ATTACHMENT AFFIDAVIT

Before me, Kenneth Cooper, Notary Public, State at Large, State of Alabama, personally appeared L. E. DARDEN, of Route #1, Loxley, Baldwin County, Alabama, who, after being duly sworn, on oath says that J.D. FULLER, whose address is La Grange, Georgia, is justly indebted to the said L. E. DARDEN in the sum of $6,349.52 , with interest thereon since the 5th day of September, 1959, which said amount is justly due after giving all just offsets and discounts, and that the said J. D. FULLER resides at Mountville Nurseries, Mountville, Georgia, and that this attachment is not sued out for the purpose of vexing or harassing the Defendant or other improper motives.

L. E. Darden

Subscribed and sworn to before me this the 18th day of September, 1959.

Kenneth Cooper
Notary Public, State at Large
State of Alabama

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

CASE NO. 3983

****

L. E. DARDEN,

Plaintiff,

Vs.

J. D. FULLER,

Defendant.

****

ATTACHMENT AFFIDAVIT

****

FILED

SEP 19 1959

ALICE J. DUCK, CLERK REGISTER

SUMMONS

STATE OF ALABAMA)
)
BALDWIN COUNTY)

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

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summons J. D. FULLER to appear before the Circuit Court, to be held for said County at the place of holding same, within thirty (30) days from service of this process, then and there to answer the complaint of L. E. DARDEN.

Witness my hand this the 19 day of September, 1959.

Alice J. Duck
Alice J. Duck, Clerk

****

L. E. DARDEN, Plaintiff, Vs. J. D. FULLER, Defendant.	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA AT LAW. Case No. _____.

1.

The Plaintiff claims of the Defendant SIX THOUSAND THREE HUNDRED FORTY-NINE DOLLARS and FIFTY-TWO CENTS ($6,349.52) balance due him after all proper credits are given, for work and labor done as an agrucultural superintendent and for hire and wages due for labor, services and supplies rendered by the Complainant in and about the cultivation of the HILLTOP NURSERIES under contract for such labor and services furnished for the said J. D. FULLER during the period from March, 1958, through February, 1959, and since March 1st, 1959, up to the date of September 5, 1959. The Plaintiff avers that the Defendant defaulted in the payment of his one-half of the costs in operating the HILLTOP NURSERIES, located on Route No. 1, at Loxley, Baldwin County, Alabama, during the aforementioned periods, as per agreement between the Complainant and the Defendant. The Plaintiff avers that the whole amount is due and payable at this time. Plaintiff avers that the Defendant has advertised the aforementioned HILLTOP NURSERIES for sale, at public Auction by the J. L. Todd Auction Company, of Rome, Georgia, on Wednesday, September 23rd, 1959, at 10:00 AM, and that if the Defendant sells the aforementioned HILLTOP NURSERIES the Plaintiff will probably lose his debts, or have to sue for them in another state. Plaintiff claims interest at the rate of 8% per annum. And the Plaintiff avers that the Defendant resides out of the State of Alabama, to-wit: at Mountville Nurseries, Mountville, Georgia, or La Grange, Georgia, and that the Defendant is over the age of twenty-one years.

Kenneth Cooper
Solicitor for Plaintiff.

Filed
9-19-59

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

CASE NO. 3983.

****

L. E. DARDEN,

Plaintiff,

Vs.

J. D. FULLER,

Defendant.

****

COMPLAINT

****

FILED

SEP 19 1959

ALICE J. DUCK, CLERK REGISTER

Returned 22 day of Sept 1959

Not found in my county after diligent search and inquiry.

Taylor Wilkins, Sheriff

By Wilkins

Deputy Sheriff

FEB 7 1963

THE STATE OF ALABAMA - - - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1962-63

1 Div. 917

J. D. Fuller

v.

L. E. Darden

Appeal from Baldwin Circuit Court

COLEMAN, JUSTICE.

This is an appeal by defendant from judgment for plaintiff and from judgment overruling defendant's motion for new trial in an action at law tried on the common counts

for work and labor done for defendant and for supplies furnished for defendant by plaintiff.

The assignments of error recite:

"1. The verdict of the jury and the judgment of the Court is contrary to the oral charge given by the Court. (Transcript page 78)

"2. The verdict of the jury is contrary to that portion of the Court's charge which reads as follows: 'Gentlemen, if after considering all of the evidence you are satisfied that the Plaintiff should recover, the form of your verdict would be: We the jury find for the Plaintiff - such amount as you see fit - no amount has been proven but even under that, the law says that if you believe the Plaintiff is entitled to recover, he would be entitled to recover nominal damages.' (Transcript page 78)

"3. The Court erred in overruling Appellant's motion for a new trial. (Transcript page 81)"

In assigning errors, the appellant must specify the action of the trial court of which he would have review and revision. Kimmon v. Louisville & Nashville R. Co., 187 Ala. 480, 482, 65 So. 397.

Assignments 1 and 2 in the instant case fail to specify any action of the trial court and, therefore, present nothing for review.

This court has held an assignment reciting, ""3. The verdict of the jury is contrary to law,"" insufficient to present anything for review because such assignment fails to allege error by the trial court in any respect. King v. Jackson, 264 Ala. 339, 341, 87 So. 2d 623. Assignments 1 and 2 in the instant case allege nothing more than that the verdict is contrary to the law as stated in the instructions to the jury, and said assignments will not be considered.

Assignment 3 justifies consideration of any ground of the motion stated with sufficient definiteness to direct the court's attention to the alleged erroneous ruling, and, on such an assignment, we consider any ground of the motion which is clear and specific and which is argued by counsel. Pearson v. Birmingham Transit Co., 264 Ala. 350, 87 So. 2d 857.

Ground 6 of the motion for new trial contains the same language as Assignment 2. Ground 6 is sufficient to call on the trial court to decide whether or not the verdict of the jury, in exceeding a nominal amount, was contrary to the quoted excerpt from the charge of the court.

The reporter will set out the entire oral charge and the given charges in extenso.

The jury returned a verdict for the plaintiff for $2,500.00. Defendant contends that the court instructed the

jury that plaintiff could recover nominal damages only, that the verdict for $2,500.00 is in disregard of and contrary to the instructions, and that the court should have granted defendant's motion for new trial, citing Fleming and Hines v. Louisville and Nashville R. Company, 148 Ala. 527, 41 So. 683, and Penticost v. Massey, 202 Ala. 681, 81 So. 637.

Both cited cases hold that if the court is in error in giving instructions, the jury should, nevertheless, obey the instructions, and when the jury fails to find accordingly, the trial court is justified in setting aside the verdict and granting a new trial.

In Penticost v. Massey, the court gave affirmative instructions for defendant but the jury returned a verdict for plaintiff. On appeal, the action of the trial court in granting a new trial was affirmed. Other than in holding in accord with the general rule, Penticost v. Massey is no help in the instant case.

In the Fleming case, however, the original record discloses that the trial court gave at defendant's request the following charge:

> ". . . . 'The Court charges the jury that under the evidence in this case the jury ought not to find a verdict for the plaintiff for more than nominal damages'. . . . ."

Defendant insists that the charge in the instant case is to the same effect and requires the jury to limit

its verdict for plaintiff to nominal damages. We do not agree.

It is settled that the oral charge should be considered in its entirety and a few words should not be taken out of their context in order to give them a meaning that might be different if the entire charge is considered. Hawkins v. Hudson, 45 Ala. 482; Florence Coca Cola Bottling Co. v. Sullivan, 259 Ala. 56, 65 So. 2d 169.

Taking the charge as a whole, we are of opinion that it does not forbid the jury's bringing in a verdict for plaintiff for more than nominal damages. The excerpt relied on by defendant does no more than observe that even if the proof failed to show the amount defendant had agreed to pay for plaintiff's services, plaintiff would, nevertheless, be entitled to recover nominal damages if he is entitled to recover.

When the entire charge is considered, the verdict is not contrary to the instructions and the court did not err in overruling Ground 6 of the motion for new trial. No other ground is argued.

AFFIRMED.

Lawson, Goodwyn, and Harwood, JJ., concur.

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1st *Div., No.* 917,

J. D. Fuller, *Appellant*

vs.

L. E. Darden, *Appellee,*

From Baldwin *Circuit Court.*

The State of Alabama,
City and County of Montgomery,

I, J. Render Thomas, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages, numbered from one to five *inclusive, contain a full, true and correct copy of the opinion of said Supreme Court in the above stated cause, as the same appears and remains of record and on file in this office.*

Witness, J. Render Thomas, Clerk of the Supreme Court of Alabama,

this February 7, 1963

J. Render Thomas
Clerk of the Supreme Court of Alabama

THE SUPREME COURT OF ALABAMA

October Term, 19 62-63

1st *Div.*, *No.* 917

J. D Fuller

Appellant,

vs.

L. E. Darden

Appellee.

From Baldwin Circuit Court.

COPY OF OPINION

BROWN PRINTING CO., MONTGOMERY 1952

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 19 62-63

To the Clerk *of the* Circuit *Court,*

Baldwin *County—Greeting:*

Whereas, the Record and Proceedings of the Circuit *Court* _____ *of said county, in a certain cause lately pending in said Court between*

J. D. Fuller, *Appellant*,

and

L. E. Darden, *Appellee*,

wherein by said Court it was considered adversely to said appellant, *were brought before our Supreme Court, by appeal taken, pursuant to law, on behalf of said appellant*:

NOW, IT IS HEREBY CERTIFIED, That it was thereupon considered, ordered, and adjudged by our Supreme Court, on the 7th *day of* February, 19 63, *that said* Judgment *of said* Circuit *Court be in all things affirmed, and that it was further considered, ordered, and adjudged that the appellant* ~~XXXX~~ J. D. Fuller, and Fidelity and Casualty Company of New York, a Corporation, surety on the supersedeas bond, pay the amount of the judgment of the Circuit Court and ten percentum (10%) damages thereon, and interest and the costs of appeal of this Court and of the Circuit Court below. And it appearing that said parties have waived their rights of exemption under the laws of Alabama, it was ordered that execution issue accordingly.

~~the costs accruing on said appeal in this Court and in the Court below, for which costs let execution XXXX issue~~

Witness, J. Render Thomas, Clerk of the Supreme Court of Alabama, at the Judicial Department Building, this the 7th *day of* February, 19 63

J. Render Thomas

Clerk of the Supreme Court of Alabama.

3983

THE SUPREME COURT OF ALABAMA

October Term, 19 62-63

1st Div., No. 917

J. D. Fuller

Appellant,

vs.

L. E. Darden

Appellee.

From Baldwin Circuit Court.

CERTIFICATE OF AFFIRMANCE

The State of Alabama, } Filed
County. }

FILED
FEB 8-63
ALICE I. DUCK, CLERK
REGISTER

this day of 19

BROWN PRINTING CO., MONTGOMERY 1959

_____Div. No._____ CERTIFICATE OF APPEAL. (Civil Cases.)

No. 3983

THE STATE OF ALABAMA

BALDWIN County.

I, Alice J. Duck, Clerk of the Circuit Court of Baldwin County, in and for said State and County, hereby certify that the foregoing pages numbered from one to _____, both inclusive, contain a full, true and complete transcript of the record and proceedings of said Court in a certain cause lately therein pending wherein L.D. DARDEN was plaintiff, and J.D. FULLER was Defendant, as fully and completely as the same appears of record in said Court.

And I further certify that the said J.D. FULLER did on the 1st day of July, 1960, pray for and obtain an appeal from the judgment of said Court to the SUPREME COURT of Alabama to reverse said judgment of said Court upon entering into bond with FIDELITY & CASUALTY COMPANY OF NEW YORK, a Corporation, as surety thereon, which said bond has been approved by me.

Witness my hand and the seal of said Circuit Court of ~~XXX~~ BALDWIN County is hereto affixed, this the 6th day of July, 1960

Alice J. Duck

Clerk of the Circuit Court of

Baldwin County, Alabama.

(Code 1940, Title 7, Sec. 767)