Mercer Quarterly Court.

O.A.Byington, Plaintiff

vs.Reply

The Republican Publishing Company, Defendant.

The Plaintiff still insisting upon his demurrer to the answer and counterclaim of Defendant and not waiving any rights thereunder,for reply herein to the second paragraph of Defendant's answer and counterclaim,says he denies that by the terms or conditions of the contract,or any term or condition thereof,the said Boston Piano and Music Co.obligated or bound itself to the Defendant that its increase in the income from its business for a period of Thirteen months next following Oct.10,1914,should be the sum of $1600.00,or that in the event such increase was less than that amount it would pay to the Defendant 25% of the difference between the actual increase and $1600.00,or that the said Boston Piano & Music Co. bound itself to the Defendant in said contract in any sum in excess of $400.00 or guaranteed to the Defendant any increase of trade,for a period of Thirteen months or any length of time,exceeding $400.00, or bound itself under said contract,or in any manner,beyond the difference between the sum of $400.00 and 25%of the actual increase in trade during said period of Thirteen months,no one of which obligations was to be binding on the Boston Piano & Music Co.unless the Defendant complied with all the terms of the contract filed with Dft's answer,one of which Plaintiff avers is that Defendant shall pay the notes sued on when due which it has not done,but is now resisting their payment.Plaintiff says that the very clause upon which defendant is relying to defeat a recovery herein,styled "Assurance of Trade", and forming a part of the contract filed with Defendant's answer and counterclaim and expressly made a part thereof,specifically provides that said obligation of the Boston Piano & Music Co.contained in said clause,shall become effective ONLY when the dealer(Meaning Defendant)makes satisfactory proof of the deficiency referred to in said clause and complies with the terms of the contract by paying the notes sued on when due,all of which Defendant has failed and refused to do.Plff denies that said provision of the contract guarantees an increase inDft's business of $1600.00 during a period of 13 months or for any time,or that in the event Dft failed to increase its business to that extent in said period,the Boston Piano & Music Co.would pay the 25% of the Dft the difference between the actual increase and $1600.00.He denies that