

MARY G. GODARD,	)	
Plaintiff,	)	IN THE CIRCUIT COURT OF
vs.	)	BALDWIN COUNTY, ALABAMA
ALBERT PEYTON BUSH, JR.,	)	
Defendant.	)	LAW SIDE. NO. 7449.

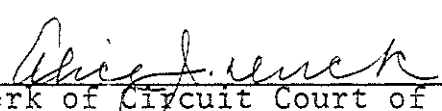
CITATION ON APPEAL:

TO ANY SHERIFF OF THE STATE OF ALABAMA, GREETING:

WHEREAS, at a Term of the Circuit Court of Baldwin County, Alabama, Law Side, held on the 30th day of June, 1967, in a certain cause in said Court wherein Mary G. Godard was Plaintiff, and Albert Peyton Bush, Jr., was Defendant, an order or decree was rendered striking one Lou Holland as a party defendant to Plea of Recoupment and counter-claim filed by the Defendant Albert Peyton Bush, Jr., to reverse which order or decree, the said Albert Peyton Bush, Jr., applied for and obtained from this office an appeal returnable to the next term of the Supreme Court of the State of Alabama, to be held at Montgomery, Alabama, at the next term of said Court, and the necessary security for costs having been given by J. Connor Owens, Jr., as Attorney of Record for the said Albert Peyton Bush, Jr.,

NOW, YOU ARE HEREBY COMMANDED, without delay, to cite the said Mary G. Godard or Chason, Stone & Chason, Attorneys, and Lou Holland or Cunningham, Bounds & Byrd, Attorneys, to appear at the next term of said Supreme Court, to defend against the said appeal if they think proper.

WITNESS my hand as the Clerk of the Circuit Court of Baldwin County, Alabama, this 27 day of July, 1967.

  
 Clerk of Circuit Court of Baldwin  
 County, Alabama.

Addresses of Attorneys of Record as follows:

CHASON, STONE & CHASON  
Attorneys of Record for Mary G. Godard  
Bay Minette, Alabama

CUNNINGHAM, BOUNDS & BYRD  
Attorneys of Record for Lou Holland  
1350 Dauphin Street  
Mobile, Alabama

Burley  
Baldwin Co  
No. 7449

Mary E. Woodard

VS.

Albert Eugene Banks

8/11 Birmingham  
Bureau  
Birmingham - Bureau  
1350 2nd St

Received 8 Day of Aug 19 67  
and on 11 Day of Aug 19 67  
I served a Copy of the within  
on Birmingham and Federal City  
by service on  
the firm  
RAY D. BRIDGES, Sheriff  
By M. Burley D. S.

28 day of July 19 67  
31 day of July 19 67  
I served a copy of the within  
Chas. Stone & Chas. Stone

TAYLOR WILKINS, Sheriff  
By H. H. Jackson

RECEIVED  
JULY 28 1967  
U.S. DEPT. OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION

MARY G. GODARD,

Plaintiff,

vs.

ALBERT PEYTON BUSH,  
JR.,

Defendant.

X

X

X

X

X

X

X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

LAW SIDE

NO. 7449

Comes the Plaintiff in the above styled cause and for  
answer to the Plea of Recoupment filed by the Defendant in said  
cause against the Plaintiff in said cause and says:

1. Not guilty.

*Chas. Stone & Chas.*  
Attorneys for Plaintiff

FILED

10 1967

ALICE L. DUCK, CLERK

MARY G. GODARD,	)	IN THE CIRCUIT COURT OF
Plaintiff,	)	
vs.	)	BALDWIN COUNTY, ALABAMA
ALBERT PEYTON BUSH, JR.,	)	LAW SIDE. NO. 7449
Defendant.	)	

NOTICE OF APPEAL

Now comes the Defendant, ALBERT PEYTON BUSH, JR., and appeals to the Supreme Court of Alabama from the order of this Court rendered in this cause on June 30, 1967.

DATED this 27th day of July, 1967.

OWENS AND PATTON  
and  
HOLBERG, TULLY & HODNETTE

By: J. Connor Owens, Jr.  
Attorneys for Defendant.

FILED  
21

ALICE I. DUCK, CLERK  
REGISTER

SECURITY FOR COSTS:

I, the undersigned, do hereby acknowledge myself security for the costs of said appeal.

DATED this 27th day of July, 1967.

J. Connor Owens, Jr.  
J. Connor Owens, Jr.,  
Attorney for Defendant.

Taken and approved on this the  
27th day of July, 1967.

Alice I. Duck  
Clerk of the Circuit Court of Baldwin  
County, Alabama.

MARY G. GODARD,	)	
	)	IN THE CIRCUIT COURT OF
Plaintiff,	)	
vs.	)	BALDWIN COUNTY, ALABAMA
ALBERT PEYTON BUSH, JR.,	)	
	)	LAW SIDE. NO. 7449
Defendant.	)	

ORDER:

This cause coming on to be heard upon the Plaintiff's motion to strike Lou Holland as a party defendant to the Plea of Recoupment and Counterclaim of the Defendant and upon the Defendant's demurrer to the Plea in Abatement filed by Lou Holland and upon the Plea of Abatement filed by the said Lou Holland and the Court having considered the same, it is, ORDERED, ADJUDGED and DECREED by the Court as follows:

1. The Defendant's demurrer to the Plea in Abatement filed in behalf of Lou Holland is hereby overruled.

2. The Plaintiff's motion to strike Lou Holland as a party defendant to the Plea of Recoupment and Counterclaim is hereby granted.

3. The Plea in Abatement is hereby allowed and the third party defendant, Lou Holland, is hereby discharged as a party to this cause and allowed to go hence without a day and such court costs as have been incurred in connection with her joinder, shall be a charge against the Defendant, Albert Peyton Bush, Jr., for which let execution issue.

DATED at Bay Minette, Alabama, this 30th day of June, 1967.

Julian J. Martin  
Judge.

Filed 6-30-67  
Alice French  
Clerk

MARY C. GODARD,	X		
Plaintiff,	X	IN THE CIRCUIT COURT OF	
vs.	X	BALDWIN COUNTY, ALABAMA	
ALBERT PEYTON BUSH, JR.	X	LAW SIDE	NO. 7449
Defendant.	X		

Comes the Plaintiff in the above styled cause and moves the Court to strike Lou Holland as a party in the Plea of Recoupment and Counterclaim which was filed by the Defendant in said cause and as grounds for her said motion assigns, separately and severally, the following:

1. That the said Lou Holland was not a party Plaintiff to said proceedings at the time of the filing of said Plea and so she was not subject to such Plea of Recoupment and counterclaim.

2. That the said Lou Holland is an improper party to such Plea of Recoupment under the laws of the State of Alabama.

The Plaintiff further moves the Court to strike the third-party plaintiff claim filed by the Defendant in said cause in which the Defendant claims of the Plaintiff and Lou Holland a sum of money and as grounds for her said motion assigns, separately and severally, the following:

3. That it does not appear from said claim that Lou Holland is or may be liable to the Defendant for all, or part, of the Plaintiff's claim against him."

4. That it is specifically provided by the laws of the State of Alabama that a third-party complaint may be filed only where a third-party defendant is or may be liable to the third-party plaintiff for all or part of the claim being made against him by the Plaintiff in said cause.

5. That the amount claimed against the Plaintiff in such

third-party claim is a duplication of the amount claimed against such Plaintiff in the Plea of Recoupment which the Defendant has filed against the Plaintiff.

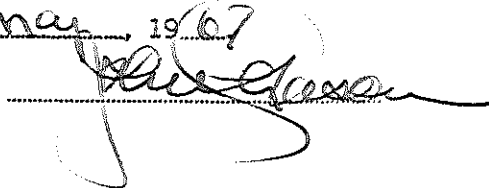
6. Sufficient facts are not alleged in such third-party claim to enable the Defendant to bring such claim under the third-party statute against the Plaintiff and Lou Holland.

  
Attorneys for the Plaintiff

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon counsel for all parties to this proceeding, by mailing the same to each by First Class United States Mail, properly addressed, and postage prepaid on this 8 day

of May, 1967





MARY C. GODARD,

Plaintiff,

vs.

ALBERT PEYTON BUSH, JR.,

Defendant.

\* \* \* \* \*

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

LAW SIDE NO. 7449

\* \* \* \* \*

MOTION TO STRIKE

\* \* \* \* \*

FILED

MAY 6 1964

ALICE I. HICKS CLERK  
REGISTERED

MARY C. GODARD, ) IN THE CIRCUIT COURT OF  
Plaintiff, ) BALDWIN COUNTY, ALABAMA  
vs. ) LAW SIDE. NO. 7449.  
ALBERT PEYTON BUSH, JR., )  
Defendant. )

DEMURRER:

Now comes the Defendant, ALBERT PEYTON BUSH, and demurs to the Plea in Abatement, and assigns the following grounds, both separately and severally, to the Plea in Abatement, and to each aspect thereof:

1. That said Plea does not set forth sufficient grounds to abate the action brought against Lou Holland.

2. That said Plea does not seek to give the Defendant a better writ.

3. For aught appears, Defendant would be barred from maintaining a separate suit against Mary C. Godard and Lou Holland.

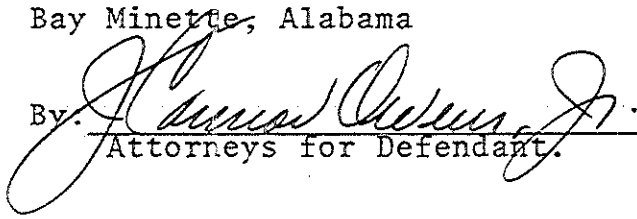
4. The allegation that the said Lou Holland is an improper party is a conclusion of the pleader.

5. That no facts are alleged in said Plea which might abate the action brought by the Defendant against Lou Holland.

HOLBERG, TULLY AND HODNETTE  
1107 Milner Building  
Mobile, Alabama,

-and-

OWENS AND PATTON  
Bay Minette, Alabama

By:   
Attorneys for Defendant.

I, the undersigned, one of the Attorneys of Record for the Defendant in the foregoing cause, do hereby certify that I have forwarded a copy of the foregoing demurrer to Cunningham, Bounds & Byrd, Attorneys of Record for Lou Holland, by United States Mail

properly addressed, with postage prepaid, this 16th day of May,  
1967.

*J. Cameron Owens, Jr.*

**FILED**  
MAY 18 1967  
ALICE I. DUCK, CLERK  
REGISTER

MARY G. GODARD,	)	IN THE CIRCUIT COURT
Plaintiff.	)	OF BALDWIN COUNTY,
-vs-	)	ALABAMA.
ALBERT PEYTON BUSH, JR.,	)	LAW SIDE.
Defendant.	)	CASE NO. 7449

PLEA IN ABATEMENT

Comes now LOU HOLLAND, the Third Party Defendant in the above cause, and appearing specially and only for the purpose of filing this plea, says that Albert Peyton Bush, Jr., Defendant and Third Party Plaintiff in this cause, ought not and cannot have and maintain his said Plea of Recoupment and Counter-claim and Third Party Plaintiff's claim in this cause against your Petitioner, and as grounds therefor, avers separately and severally as follows:

1. This said Third Party Defendant, at the time of the filing of this said suit, was not a party plaintiff to said proceeding and hence not subject to a Plea of Recoupment or Counter-claim.

2. For that a Plea of Recoupment and Counter-claim will lie only against a party plaintiff and not against any other, and your Petitioner avers that she was not and is not a party plaintiff to said cause.

3. For that the said Third Party Plaintiff's claim asserted by Albert Peyton Bush, Jr. against your Petitioner as a Third Party Defendant will not lie and has no standing in a court of law, inasmuch as your Petitioner is not liable to the said Albert Peyton Bush, Jr. for all or any part of the Plaintiff's claim against him.

4. For that the Third Party Practice Act as adopted by the Legislature of the State of Alabama specifically provides that a

defendant as a Third Party Plaintiff may implead a Third Party Defendant only where said Third Party Defendant is or may be liable to said Third Party Plaintiff for all or part of the claim being made against him by the Plaintiff in said cause.

5. For that Lou Holland, your Petitioner, is not liable for all or any part of the claim being made against Albert Peyton Bush, Jr. by Mary G. Godard.

WHEREFORE, the Third Party Defendant, Lou Holland, says that the Circuit Court of Baldwin County, Alabama is without jurisdiction over her in this said cause and that said action should be abated as to the said Lou Holland, and she prays this Honorable Court order the Plea of Recoupment and Counter-claim and Third Party Plaintiff's claim abated as to her.

CUNNINGHAM, BOUNDS & BYRD  
ATTORNEYS FOR LOU HOLLAND


BY:

  
ROBERT T. CUNNINGHAM

STATE OF ALABAMA )

COUNTY OF MOBILE )

Before me, a Notary Public in and for said County in said State, personally appeared ROBERT T. CUNNINGHAM who, being by me first duly sworn, deposes and says that he is the attorney for Lou Holland in the above styled case and that he is cognizant of the facts stated in the above and foregoing plea in abatement, and that the facts stated therein are true to the best of his knowledge, information and belief.

  
ROBERT T. CUNNINGHAM

Sworn to and subscribed before me this  
2nd day of May, 1967.

  
NOTARY PUBLIC, MOBILE COUNTY, ALABAMA

FILED  
MAY 3 1967  
FBI - NEW YORK

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 2<sup>d</sup>  
day of May, 1967, served a copy of the  
foregoing pleading on counsel for all parties to this  
proceeding by mailing the same by United States mail,  
properly addressed, and first class postage prepaid.

Robert T. Cunningham

MARY G. GODARD, ) IN THE CIRCUIT COURT OF  
Plaintiff, )  
vs. ) BALDWIN COUNTY, ALABAMA,  
ALBERT PEYTON BUSH, JR., ) LAW SIDE. NO. 7449.  
Defendant. )

ORDER

This cause coming on to be heard upon the pleadings of the Defendant, and it appearing to the Court that Defendant seeks to join in this action Lou Holland, who resides at 917 47th Street, North, Birmingham, Alabama;

Now therefore, it is ORDERED, ADJUDGED AND DECREED that the Circuit Clerk of Baldwin County, Alabama, issue to the said Lou Holland a summons to which is attached a copy of the original complaint and claims made in the Defendant's answer thereto.

Dated at Bay Minette, Alabama, this 20th day of April, 1967.

John A. McLaughlin  
(Judge)

FILED

APR 20 1967

ALB. CO. CLERK

STATE OF ALABAMA

IN THE CIRCUIT COURT - LAW SIDE

BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon Albert Peyton Bush, Jr., to appear within thirty days from the service of this Writ in the Circuit Court to be held for said County at the place of holding same, then and there to answer the Complaint of Mary G. Godard.

Witness my hand this 5 day of April, 1967.

Alvin L. Lusk  
Clerk

MARY G. GODARD,

X

Plaintiff,

X

IN THE CIRCUIT COURT OF

vs.

X

BALDWIN COUNTY, ALABAMA

ALBERT PEYTON BUSH, JR.,

X

LAW SIDE

Defendant.

X

720.7449

COUNT ONE:

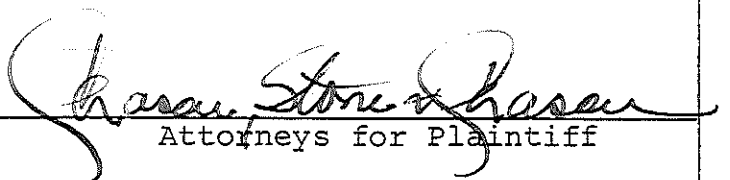
The Plaintiff claims of the Defendant the sum of Fifty Thousand Dollars (\$50,000.00) as damages for that on, to-wit: September 3, 1966, at about 1:30 P. M., on a public street in Fairhope, Alabama, known as Mobile Street, between the points where such street is intersected by White Avenue and Nichols Avenue, the Defendant negligently drove an automobile into or against an automobile which the Plaintiff was then and there driving and as a proximate result of the negligence of such Defendant the Plaintiff was injured in this: She received a traumatic laryngitis, a whiplash injury to her neck and back, fracture



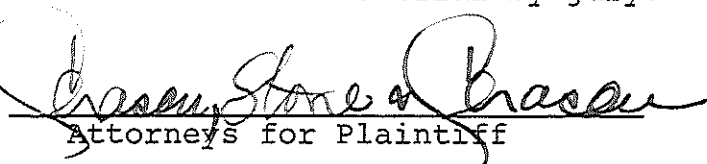
of the eighth and ninth ribs on right anterior lateral, a wound over her left eye, severe shock, pain and suffering, multiple bruises, she was permanently injured and she was caused to incur medical and hospital expenses, all to the damage of the Plaintiff in the sum above mentioned, hence this suit.

COUNT TWO:

The Plaintiff claims of the Defendant the sum of Fifty Thousand Dollars (\$50,000.00) as damages for that on, to-wit: September 3, 1966, at about 1:30 P. M., on a public street in Fairhope, Alabama, known as Mobile Street, between the points where such street is intersected by White Avenue and Nichols Avenue, the Defendant wilfully or wantonly injured the Plaintiff by wilfully or wantonly driving an automobile into or against an automobile in which the Plaintiff was riding and which she was then and there driving and as a proximate result of the Defendant's willful or wanton negligence the Plaintiff was injured in this: She received a traumatic laryngitis, a whiplash injury to her neck and back, fracture of the eighth and ninth ribs on right anterior lateral, a wound over her left eye, severe shock, pain and suffering, multiple bruises, she was permanently injured and she was caused to incur medical and hospital expenses, all to the damage of the Plaintiff in the sum above mentioned, hence this suit.

  
Attorneys for Plaintiff

Plaintiff demands a trial by jury.

  
Attorneys for Plaintiff

Defendant's Address: Home - 4249 Wilkinson Way, Springhill, Alabama  
Office - First National Bank Building,  
Mobile, Alabama

RECEIVED  
APR 5 1967

TAYLOR WILKINS  
SHERIFF

MARY G. GODARD,

Plaintiff,

vs.

ALBERT PEYTON BUSH, JR.,

Defendant.

Received 6 Day of April 1967  
and on 7 Day of April 1967  
I served a Copy of this writ  
on Albert Peyton Bush Jr.

by service on \_\_\_\_\_

KAY D. BRIDGES, CLERK  
B. D. Howell D. S.

\*\*\*\*\*  
SUMMONS AND COMPLAINT  
\*\*\*\*\*

FILED

APR 5 1967

WILLIAM J. DUCK, CLERK

CHASON, STONE & CHASON  
ATTORNEYS AT LAW  
P. O. Box 120  
BAY MINETTE, ALABAMA

REC'D. SHERIFF DE  
MOBILE COUNTY, AL  
APR 6 1 32 PM '67

STATE OF ALABAMA )

BALDWIN COUNTY )

SUMMONS: )

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

LAW SIDE. NO. 7449.

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon LOU HOLLAND, who resides at 917 47th Street, North, Birmingham, Alabama, to appear and plead, answer or demur, within thirty days from the service hereof, to the third party plaintiff claim filed in the Circuit Court of Baldwin County, State of Alabama, at Bay Minette, against Mary G. Godard and Lou Holland by Albert Peyton Bush, Jr.

Witness my hand this 2nd day of April, 1967.

David J. Newkirk  
Clerk

*The jury finds in favor of  
the Plaintiff the amount of 12,500*

MARY G. GODARD,	)	IN THE CIRCUIT COURT OF
Plaintiff,	)	
vs.	)	BALDWIN COUNTY, ALABAMA
ALBERT PEYTON BUSH, JR.,	)	LAW SIDE. NO. 7449.
Defendant.	)	

ANSWER:

Comes now the Defendant in the above styled cause, and for answer to each separate and several Count of the Complaint filed herein, assigns the following separate and several pleas, separately and severally:

1. Not guilty.
2. The material allegations thereof are untrue.

For further answer to Count I of the Complaint filed herein, Defendant says as follows:

That at the time and place described in said Count I, on, to-wit, September 3, 1966, on Mobile Avenue, approximately 26 feet North of its intersection with Nichols Street, in Fairhope, Alabama, where said Mobile Street is a public road in Baldwin County, Alabama, the Plaintiff herself so negligently operated a motor vehicle as to contribute proximately and directly to the collision and to the injuries and damages described in said Count; hence, Plaintiff ought not recover.

PLEA OF RECOUPMENT AND COUNTERCLAIM

For further answer to the Complaint and by way of recoupment and counterclaim against the Plaintiff and one Lou Holland, who resides at 917 47th Street, North, Birmingham, Alabama, the Defendant says as follows:

The Defendant claims of the Plaintiff and Lou Holland, the sum of FIFTY THOUSAND DOLLARS (\$50,000.00), for that heretofore, on, to-wit, September 3, 1966, at about 1:30 o'clock P. M., on a public street in Fairhope, Alabama, known as Mobile Street, at a

point thereon approximately 26 feet North of its intersection with Nichols Street, the Plaintiff, who was then and there an agent, servant or employee of Lou Holland, and acting within the line and scope of her employment as such, did so negligently operate an automobile which she was then and there driving, so as to cause, permit or allow the said automobile to collide with, run into, upon or against the motor vehicle which the Defendant was then and there driving, and as a proximate result and consequence of the negligence of the said Plaintiff, as aforesaid, the Defendant suffered injuries as follows: he was cut on his forehead, he was rendered unconscious, he suffered severe shock, pain and suffering and multiple bruises and was caused to incur medical and hospital expense, all to the damage of the Defendant in the sum above mentioned, hence this plea in recoupment and claim against Lou Holland.

#### THIRD PARTY PLAINTIFF CLAIM

For further answer to Complaint and by way of a Third Party Plaintiff claim against one Lou Holland, who resides at 917 47th Street, North, Birmingham, Alabama, the Defendant, as a Third Party Plaintiff, claims as follows:

The Defendant claims of the Plaintiff and Lou Holland, the sum of FIFTY THOUSAND DOLLARS (\$50,000.00), for that heretofore on, to-wit, September 3, 1966, at about 1:30 o'clock P. M., on a public street in Fairhope, Alabama, known as Mobile Street, at a point thereon approximately 26 feet North of its intersection with Nichols Street, the Plaintiff, who was then and there an agent, servant or employee of Lou Holland, and acting within the line and scope of her employment as such, did so negligently operate an automobile which she was then and there driving, so as to cause, permit or allow the said automobile to collide with, run into, upon or against the motor vehicle which the Defendant was then and there driving, and as a proximate result and consequence of the

negligence of the said Plaintiff, as aforesaid, the Defendant suffered injuries as follows: he was cut on his forehead, he was rendered unconscious, he suffered severe shock, pain and suffering and multiple bruises and was caused to incur medical and hospital expense, all to the damage of the Defendant in the sum above mentioned, hence this Third Party Plaintiff Claim.

HOLBERG, TULLY AND HODNETTE  
1107 Milner Building  
Mobile, Alabama,

-and-

OWENS AND PATTON  
Bay Minette, Alabama

By: *James Owens, Jr.*  
Attorneys for Defendant.

Defendant demands a trial of  
this cause by a Jury.

*James Owens, Jr.*

I, the undersigned, one of the Attorneys of Record for the Defendant in the foregoing cause, do hereby certify that I have forwarded a copy of the foregoing to Chason, Stone and Chason, Attorneys of Record for the Plaintiff, by United States Mail, with postage prepaid, and properly addressed this 20th day of April, 1967.

*James Owens, Jr.*

STATE OF ALABAMA

IN THE CIRCUIT COURT - LAW SIDE

BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon Albert Peyton Bush, Jr., to appear within thirty days from the service of this Writ in the Circuit Court to be held for said County at the place of holding same, then and there to answer the Complaint of Mary G. Godard.

Witness my hand this 5 day of April, 1967.

Rebecca J. Henshaw  
Clerk

MARY G. GODARD,

X

Plaintiff,

X

IN THE CIRCUIT COURT OF

vs.

X

BALDWIN COUNTY, ALABAMA

ALBERT PEYTON BUSH, JR.,

X

LAW SIDE

Defendant.

X

No. 7449

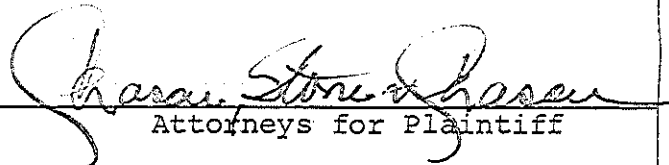
COUNT ONE:

The Plaintiff claims of the Defendant the sum of Fifty Thousand Dollars (\$50,000.00) as damages for that on, to-wit: September 3, 1966, at about 1:30 P. M., on a public street in Fairhope, Alabama, known as Mobile Street, between the points where such street is intersected by White Avenue and Nichols Avenue, the Defendant negligently drove an automobile into or against an automobile which the Plaintiff was then and there driving and as a proximate result of the negligence of such Defendant the Plaintiff was injured in this: She received a traumatic laryngitis, a whiplash injury to her neck and back, fracture


of the eighth and ninth ribs on right anterior lateral, a wound over her left eye, severe shock, pain and suffering, multiple bruises, she was permanently injured and she was caused to incur medical and hospital expenses, all to the damage of the Plaintiff in the sum above mentioned, hence this suit.

COUNT TWO:

The Plaintiff claims of the Defendant the sum of Fifty Thousand Dollars (\$50,000.00) as damages for that on, to-wit: September 3, 1966, at about 1:30 P. M., on a public street in Fairhope, Alabama, known as Mobile Street, between the points where such street is intersected by White Avenue and Nichols Avenue, the Defendant wilfully or wantonly injured the Plaintiff by wilfully or wantonly driving an automobile into or against an automobile in which the Plaintiff was riding and which she was then and there driving and as a proximate result of the Defendant's willful or wanton negligence the Plaintiff was injured in this: She received a traumatic laryngitis, a whiplash injury to her neck and back, fracture of the eighth and ninth ribs on right anterior lateral, a wound over her left eye, severe shock, pain and suffering, multiple bruises, she was permanently injured and she was caused to incur medical and hospital expenses, all to the damage of the Plaintiff in the sum above mentioned, hence this suit.

  
Attorneys for Plaintiff

Plaintiff demands a trial by jury.

  
Attorneys for Plaintiff

Defendant's Address: Home - 4249 Wilkinson Way, Springhill, Alabama  
Office - First National Bank Building,  
Mobile, Alabama

FILED  
APR 5 1967  
CLERK  
REGISTERED

24 4-25-67



RECEIVED

APR 20 1967

TAYLOR WILKINS  
SHERIFF

*Baldwin*  
No. 1449

*Mary C. Rodwell*

*DS*

*Albert Peyton Buehler*

*✓ Don Holland*  
*9/7 49th St Mo*

EXECUTED the 25th day of APR 25 1967  
by *Don Holland*  
Melvin Bailey, Sheriff  
Jefferson County, Alabama  
DS

Melvin Bailey, Sheriff of  
Jefferson County, Alabama,  
claims \$1.50 each for serving  
Arvel (processes) and \$1.00  
travel expense on each of  
processes) or a total of  
*2.50*  
*11/18* Deputy Sheriff

J. CONNOR OWENS, JR.

WALTER S. PATTON, ASSOCIATE  
ATTORNEYS AT LAW  
DAHLBERG BUILDING  
BAY MINETTE, ALABAMA

*The Long Creek - Jager of the*  
*Plenty the most of \$12,500.00*

*Ret. W. H. H.*  
*Thomas*

OWENS & PATTON  
ATTORNEYS AT LAW  
DAHLBERG BUILDING  
P. O. BOX 729  
BAY MINETTE, ALABAMA - 36507

J. CONNOR OWENS, JR.  
WALTER S. PATTON

TELEPHONE NO. 937-4661

August 15, 1967

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

Subject: Godard vs. Bush  
Law Side - Case No. 7449

Dear Mrs. Duck:

In the above styled matter which has been appealed by the Defendant to the Supreme Court of Alabama, please prepare the necessary transcript and certificate of appeal, showing that notice of appeal has been served on the attorneys for the plaintiff.

When you have completed the above, if you will let me know, I will give you a copy of the assignment of errors in this case.

Thank you for your aid and consideration in this matter.

Sincerely yours,



J. Connor Owens, Jr.

JCO:am

DIV. NO. \_\_\_\_\_

CERTIFICATE OF APPEAL. (Civil Cases.)

No. 7449

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 MARY C. GODARD,

\_\_\_\_\_ was plaintiff, and ALBERT PEYTON BUSH, JR.,

\_\_\_\_\_ was Defendant, as fully and completely as the same appears of record in said Court.

And I further certify that the said Albert Peyton Bush, Jr. did on the 27th day of July, 1967, 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 J. Connor Owens, Jr., Attorney for Defendant, as surety thereon, which said bond has been approved by me.

Witness my hand and the seal of said Circuit Court of Baldwin County is hereto affixed, this the 27th day of July, 1967

Alice J. Duck  
Clerk of the Circuit Court of  
BALDWIN County, Alabama.

(Code 1940, Title 7, Sec. 767)

70. 7449

JURY LIST - SPECIAL CIVIL TERM - NOVEMBER 30, 1970

12

- ~~1. Bergman, Albert W. III; Farmer, Foley, Ala.~~
- ~~2. Blackwell, Eloyd; Service Station Manager, Foley, Ala.~~
- ~~3. Booker, Lester H.; Station Oper. Foley, Ala.~~
- ~~4. Boone, Alvin R.; Painter, Foley, Ala.~~
- ~~5. Brown, Jim; Carpenter, Foley, Ala.~~
- ~~6. Bryers, Ewing E.; Reserve Fleet, Bay Minette, Ala.~~
- ~~7. Bryers, Cosque P.; County Employ., Bay Minette, Ala.~~
- ~~8. Burt, Calvin C.; Mechanic, Bay Minette, Ala.~~
- ~~9. Burt, Clinton H.; Mechanic, Bay Minette, Ala.~~
- ~~10. Byrne, Charles; Merchant, Foley, Ala.~~
- ~~11. Chafin, Sally; Housewife, Perdido, Ala.~~
- ~~12. Cleveland, Fred L.; Maintenance Foreman, Foley, Ala.~~
- ~~13. Cleverdon, William S.; Farmer, Foley, Ala.~~
- ~~14. Cole, Frank H.; Bowling Alley Manager, Foley, Ala.~~
- ~~15. Cometti, Carrell E.; Businessman, Spanish Fort, Ala.~~
- ~~16. Cowles, Robert T.; Printer, Fairhope, Ala.~~
- ~~17. Cox, John; Laborer; Bay Minette, Ala.~~
- ~~18. Cox, M. Douglas; Farmer, Stockton, Ala.~~
- ~~19. Craft, R. C. Jr.; Farmer, Foley, Ala.~~
- ~~20. Crosby, James W.; Bookkeeper; Foley, Ala.~~
- ~~21. Ethridge, Jack; Truck Driver; Foley, Ala.~~
- ~~22. Faye, Lindsey; Daphne Business Operator, Daphne, Ala.~~
- ~~23. Gabel, Ernest W. Jr.; Farmer, Fairhope, Ala.~~
- ~~24. Gibson, Mrs. Leon; Housewife, Bay Minette, Ala.~~
- ~~25. Gibson, Thelma; Cox Candy Company, Stockton, Ala.~~
- ~~26. Gipson, C. R.; Contractor, Fairhope, Ala.~~
- ~~27. Guenther, Paul O.; Civil Service, Foley, Ala.~~
- ~~28. Hall, Rex D.; Clerk, Foley, Ala.~~
- ~~29. Hamburg, Floy; Clerk, Foley, Ala.~~
- ~~30. Hancock, W. H.; Farmer, Foley, Ala.~~
- ~~31. Hardison, J. C.; International Paper Co.; Fairhope, Ala.~~
- ~~32. Harding, Robert C., Jr.; Motel Oper., Foley, Ala.~~
- ~~33. Howard, Lewis C.; Manufacturer, Foley, Ala.~~
- ~~34. Hayes, Howard; Farmer, Foley, Ala.~~
- ~~35. Helms, John R.; Civil Service, Elberta, Ala.~~
- ~~36. Holman, George T.; Teller, Foley, Ala.~~
- ~~37. Inceore, Harold E.; Fairhope Labor, Fairhope, Ala.~~
- ~~38. Ishee, Gavin L.; Office Worker, Fairhope, Ala.~~
- ~~39. James, Seaburn; Farmer, Foley, Ala.~~
- ~~40. Lane, Howard B.; Retired, Fairhope, Ala.~~
- ~~41. Lennix, George J.; Salesman, Fairhope, Ala.~~
- ~~42. Lott, Leonard; Farmer, Rosinton, Ala.~~
- ~~43. Lucke, Teddy; Salesman, Robertsedale, Ala.~~
- ~~44. Macon, Ethel S.; Office Work, Fairhope, Ala.~~
- ~~45. Malone, E.; Farmer, Seminole, Ala.~~
- ~~46. Marks, Adlee E.; Cook, Fairhope, Ala.~~
- ~~47. Marsh, George R.; Forester, Bay Minette, Ala.~~
- ~~48. McBroom, Sherwood; Salesman, Fairhope, Ala.~~
- ~~49. McCrory, Naomi B.; Office Worker, Belforest, Ala.~~
- ~~50. Means, Hermine B.; Housewife, Fairhope, Ala.~~
- ~~51. Metcale, Hugo S.; Farmer, Foley, Ala.~~
- ~~52. Mixon, Juanita; Housewife, Fairhope, Ala.~~
- ~~53. Osborne, James C.; Carpenter, Foley, Ala.~~
- ~~54. Quates, John W.; Carpenter, Foley, Ala.~~
- ~~55. Ringhoffer, Betty Gould; Housewife, Spanish Fort, Ala.~~
- ~~56. Roley, Willie; Carpenter, Bay Minette, Ala.~~
- ~~57. Rucher, Golden J.; Farmer, Spanish Fort, Ala.~~
- ~~58. Rufus, Sirmon J.; Farmer, Daphne, Ala.~~
- ~~59. Smith, Clinton; Defense Worker; Bay Minette, Ala.~~
- ~~60. Smith, Howard R.; Retired, Foley, Ala.~~
- ~~61. Stewart, Edith P.; Housewife, Spanish Fort, Ala.~~
- ~~62. Swindle, Bessie; Housewife, Spanish Fort, Ala.~~
- ~~63. Totsch, Kenneth E.; Carpenter, Foley, Ala.~~
- ~~64. Webb, Mary Banner; Secretary, Spanish Fort, Ala.~~
- ~~65. Williams, Ray B. Self-Emp., Foley, Ala.~~

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OCT 15 1970

THE STATE OF ALABAMA - - - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1970-71

Albert Peyton Bush, Jr.

1 Div. 475

v.

Mary G. Godard

Appeal from Baldwin Circuit Court

COLEMAN, JUSTICE.

In an action for damages allegedly sustained by plaintiff as the result of defendant's operation of an automobile on a public street, defendant sought to implead a third party defendant. The trial court granted plaintiff's

2.

motion to strike the third party defendant and discharged the third party from the cause. Defendant assigns the action of the court as error.

Defendant filed a plea of "recoupment and counter-claim" against plaintiff and one Lou Holland, who is the third party. The court ordered service of process on Holland.

Defendant's third party complaint recites in part as follows:

"The Defendant claims of the Plaintiff and Lou Holland, the sum of FIFTY THOUSAND DOLLARS . . . . for that . . . . on, to-wit . . . . on a public street . . . . the Plaintiff, who was then and there an agent, servant or employee of Lou Holland, and acting within the line and scope of her employment as such, did so negligently operate an automobile which she was then and there driving, so as to cause, permit or allow the said automobile to collide with . . . . the motor vehicle which the Defendant was then and there driving, and as a proximate result and consequence of the negligence of the said Plaintiff, as aforesaid, the Defendant suffered injuries as follows: . . . . hence this Third Party Plaintiff claim."

3.

Defendant argues that he is entitled to join Holland as a third party so as to enable defendant to prosecute his counterclaim against Holland who was allegedly the principal of plaintiff and responsible, under the doctrine of respondeat superior, for plaintiff's negligence at the time the vehicles collided and defendant was injured. Defendant argues in brief as follows:

"On September 2, 1965, Act 854 (1965) Regular Session became law, and can now be found under Alabama Code, Title 7 Article 11A, Section 259 (1)-(3). The Legislative Reference Service reports that the legislator who introduced the Act had given instructions to the Service that the proposed Act should be prepared so as to follow as closely as possible Rules 13 and 14 of The Federal Rules of Civil Procedure. It was the idea of the legislator that since a body of law has developed as to the application of these particular rules relating to counter-claims, cross-claims and third party practice, it would be simpler to follow these rules in our State Court.

"It is significant that the Act, as adopted and as prepared by the Legislative Reference Service, provides only for actions

which are commonly referred to as 'cross-claims' which are nominally litigated between parties on the same side of the main litigation. There is no mention of 'counter-claims' in Act 854, yet Rule 13 of the Federal Rules of Civil Procedure provides for the filing of counter-claims, some permissive and some compulsive, and for the joinder of parties necessary or proper to the complete determination of matter in one suit.

"It would appear, then, that the failure of the Legislature to incorporate the counter-claim provisions of Rule 13 into Act 854 grew out of the fact that such procedures were already available to the defendant under existing Statutory provisions. Such intentions are manifested by the declaration of the Legislature in Section 4 of the Act which states:

"Section 4. The provisions of this Act are cumulative and shall be construed insofar as practicable in pari materia with other laws and the rules of Court governing civil actions'.

"It is respectfully submitted, therefore, that the Code Sections 239, 259 (1-3) and 350, et seq., should be construed in pari materia with one another, all for the purpose of disposing of one transaction in one case. . . ."



5.

We are not able to agree with defendant's argument. If the right of a defendant to bring in additional parties existed at law prior to Act No. 854, it does not seem likely that the legislature would have passed the act. In a publication entitled: Continuing Legal Education, Federal Practice And Procedure, Copyright 1965 by the University of Alabama, at page 69; under the heading: "2. Alabama Practice at Law," the following statement appears:

"There is no method for bringing in as a formal party a person who is or may be liable over to the defendant on the plaintiff's claim. . . ."

So far as we are advised the quoted sentence was a correct statement as to law actions in Alabama prior to passage of Act No. 854. We do not understand any of the cases cited by defendant as holding to the contrary.

In an article entitled "Third Party Practice in Alabama," the author makes the following statements:

". . . . . It should be noted at the start that while Act 854 and Rules 13 and 14 of the Federal Rules of Civil Procedure are very similar in language, the Alabama Act does not follow the exact language of the Federal Rules which are the supposed models for the Alabama Act. . . . . Due to the limitations of time I will not attempt to review all the differences in

language . . . . although for purposes of construing the Alabama Act these differences in language may be a weighty factor to be considered.

" . . . . Both Federal Rule 14 and the Alabama statute provide that the defendant as third-party plaintiff may join a party not a party to the action 'who is, or may be liable to such third-party plaintiff for all or part of the plaintiff's claim against him.' Thus, impleader is proper to join a third-party only when such third party would necessarily be liable over to the defendant for all or part of the plaintiff's recovery against the defendant. . . . . The point to remember is that the third-party defendant must be liable under some theory of law or contract to the defendant for all or part of the plaintiff's recovery against the defendant." 28 Alabama Lawyer, January, 1967, page 65.

If defendant has the right to join Holland as a third party, defendant must find that right in Act No. 854. [Title 7, § 259(1)-(3), Code Recompiled 1958, Pocket Parts.] Section 2 of the act commences as follows:

"Section 2. At any time after commencement of a civil action, a defendant, as a

7.

third-party plaintiff, may cause a summons and complaint to be served upon a party not a party to the action who is, or may be, liable to such third-party plaintiff for all, or part, of the plaintiff's claim against him. . . . " Act No. 854, approved September 2, 1965; 1965 Acts, Vol. II, page 1591.

Referring to Section 2 of the act, this court has said:

"[4,5] Subparagraph (2) of Section 259, Title 7, relative to third party complaints states any time after the commencement of a civil action a defendant as third party plaintiff may cause a summons and complaint to be served. This brings in the additional party not a party to the action who is or may be liable to third party plaintiff for all or part of plaintiff's claim against him. . . ." (Emphasis Supplied) Ex parte Huguley Water System, 282 Ala. 633, 637, 213 So. 2d 799.

The following statement is found in Corpus Juris

Secundum:

"Under statutory provisions relating to the bringing in of a third person against whom defendant may recover, it is generally

8.

required that the person sought to be impleaded be liable over to the original defendant for all or part of plaintiff's claim in the main action, whether such liability over be by reason of contract or status.

The practice, under these provisions, of bringing in additional defendants is based on the possibility that the proposed defendants can be or will be required to respond to the present defendant for a part or the whole of plaintiff's claim, and a third person may not be brought in who will not be required to respond to defendant for the amount of the claim in whole or in part, which plaintiff is seeking to enforce, should plaintiff prevail. . . . " 67

C.J.S. Parties, § 74, page 1040.

Defendant's allegations in his third party complaint are to effect that the plaintiff and the third party are liable to defendant for defendant's claim against plaintiff and the third party. The allegations do not show that the third party, Holland, is or may be liable to defendant for plaintiff's claim against defendant, and, because the allegations do not show that the third party is or may be so liable over to defendant for plaintiff's claim against defendant, the defendant is not entitled to implead Holland as a third party defendant in this cause.

9.

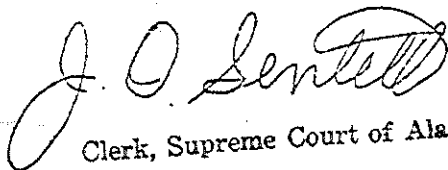
The court did not err in striking Holland as a third party defendant and discharging him from the cause.

AFFIRMED.

Simpson, Bloodworth, Maddox, and McCall, JJ., concur.

I, J. O. Sentell, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appears of record in said Court.

Witness my hand this 15 day of Oct. 1970



Clerk, Supreme Court of Alabama

7449

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 19\_\_70-71

1st Div. No. 475

To the Clerk ~~Register~~ 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  
Albert Peyton Bush, Jr., Appellant,  
\_\_\_\_\_ and \_\_\_\_\_  
Mary G. Godard, Appellee,  
wherein by said Court it was considered adversely to said appellant\_\_\_\_\_, were brought before the  
Supreme Court, by appeal taken, pursuant to law, on behalf of said appellant\_\_\_\_\_:

NOW, IT IS HEREBY CERTIFIED, That upon consideration thereof the Supreme Court, on the  
15th day of October, 19 70, affirmed said cause, in all respects, and  
ordered that appellant Albert Peyton Bush, Jr., \_\_\_\_\_

and J. Connor Owens, Jr.

surety  
~~sureties~~ for the costs of appeal, pay the costs of appeal in this Court and in the Court below,  
for which costs let execution issue.

~~It is further certified that, in appearing that said parties have waived their rights of exemption  
under the laws of Alabama, it was ordered that execution issue accordingly.~~

Witness, J. O. Sentell, Clerk of the Supreme  
Court of Alabama, this the 15th day  
of October, 19 70.

J. O. Sentell  
Clerk of the Supreme Court of Alabama.

THE SUPREME COURT OF ALABAMA

October Term, 1970-71

1st Div., No. 475

Albert Peyton Bush, Jr.  
Appellant,

vs.

Mary G. Godard  
Appellee.

From Baldwin Circuit Court.

#7449

CERTIFICATE OF  
AFFIRMANCE

The State of Alabama, }  
County. } Filed

this day of 19

OCT 17 1970

ALICE J. DUCK CLERK  
REGISTER

BROWN PRINTING CO., MONTGOMERY 1968

6-7-76