

566

-----	:	IN THE CIRCUIT COURT
Esther O'Gwynn, Plaintiff	:	
vs.	:	OF BALDWIN COUNTY, ALABAMA
Edward Awad, Defendant	:	
-----	:	AT LAW - NO. <u>566</u>

Comes the defendant in the above styled cause and demurs to each and every count of plaintiff's complaint, separately and severally, upon the following separate and several grounds:

1. Because the allegations of the said count do not show any duty on the part of defendant toward plaintiff.
2. Because it is not alleged in said count that the automobile in which it is alleged plaintiff was riding was on a public highway.
3. Because it is only averred in the alternative that the automobile in which it is alleged plaintiff was riding was upon the said highway.
4. Because there are no allegations in said count which show that the alleged negligence of Louis Weissberg can legally be imputed to defendant.

And for further and additional grounds for demurrer to count 2 of said complaint, defendant assigns the following additional separate and several grounds:

5. Because it is not alleged in said count that Edward Awad was the owner of the automobile which it is alleged he intrusted to the said Louis Weissberg.
6. Because it does not appear from the allegations of said count that Edward Awad had legal control of the automobile which it is alleged he intrusted to said Louis Weissberg.
7. Because it does not appear from the allegations of said count that defendant had any legal control of said Louis Weissberg at the time and place alleged in the said count.
8. Because it is not alleged in said count that the said Louis Weissberg was then and there acting as an agent or servant of defendant within the line and scope of his authority as such.

9. Because it does not appear from the allegations of the said count that the alleged collision was a proximate result of the alleged fact that said Louis Weissberg was a careless, indifferent, heedless, and reckless driver.

10. Because it does not appear from the allegations of the said count that the alleged collision was a proximate result of the alleged fact that defendant intrusted his said automobile to said Louis Weissberg.

11. Because the allegation in said count that the said injuries were proximately caused by the action of defendant in permitting the alleged incompetent driver to operate defendant's automobile is a mere conclusion of the pleader.

J. T. B. Blackburn
Attorneys for Defendant.

RECORDED
NO. 566 --- AT LAW
CIRCUIT COURT OF BALDWIN
COUNTY, ALABAMA

ESTHER O'GWYNN,
PLAINTIFF

VS.

EDWARD AWAD,
DEFENDANT.

DEMURRER

Filed September 30, 1940
R.S. Dinch, Clerk

McCORVEY, McLEOD, TURNER & ROGERS
ATTORNEYS AT LAW
NINTH FLOOR, MERCHANTS NATIONAL BANK BUILDING
MOBILE, ALABAMA

ESTHER O'GWYNN,

Plaintiff,

VS.

EDWARD AWAD,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

AT LAW.

NUMBER 566.

MOTION TO DISMISS.

Now comes the Defendant in the above entitled cause, by his attorneys, and shows unto the Court that the Plaintiff in this cause is a non-resident of the State of Alabama and that the said Plaintiff has not given security for costs in this cause or made a deposit for costs as provided by Section 7249 of the 1923 Code of Alabama:

WHEREFORE, Petitioner prays that this said suit be dismissed.

J. T. B. T. Blashum
Mr. Corney, Mr. Lind, Turner & Rodgers
Attorneys for Defendant.

RECORDED

MOTION TO DISMISS.

ESTHER O'GWYNN,

Plaintiff,

VS.

EDWARD AWAD,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

AT LAW. NUMBER 566.

Filed September 30, 1940
R.S. Duck, Clerk

SUMMONS

STATE OF ALABAMA ()
 :
BALDWIN COUNTY ()

IN THE CIRCUIT COURT
LAW SIDE
Jury Docket, No. 5-66.

TO ANY SHERIFF OF THE STATE OF ALABAMA, GREETING:-

You are hereby commanded to summon ^{EDWARD} AWAD to appear within thirty days from the service of this Writ in the Circuit Court of Baldwin County, Alabama, at the place of holding the same, then and there to answer to the Complaint of ESTHER O'GWYNN.
Witness my hand this the 8 day of February, 1940.

R. S. D.
Clerk of the Circuit Court.

By - Aubrie Thompson, Deputy

COMPLAINT

ESTHER O'GWYNN,
Plaintiff,

vs.

^{EDWARD} AWAD,
Defendant,
(~~of whose true name the Plaintiff is ignorant, but who is the reputed owner of the automobile designated in this complaint as having caused the damages claimed~~).

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW.

Count One

The Plaintiff claims of the Defendant the sum of TEN THOUSAND DOLLARS (\$10,000.00), as damages, for that, whereas, heretofore on, to-wit: the 4th day of February, 1940, at about 7:00 o'clock, P. M., the said Defendant, acting by and through one LOUIS WEISSBERG as his agent, servant, or employee, who was then and there acting within the line and scope of his employment, so negligently operated an automobile on ~~or along~~ the Montgomery-Mobile Highway, at a point in Baldwin County, Alabama, on the Cochrane Bridge Causeway, approximately one-half mile East of the Tensas River Drawbridge and Tensas River, that said automobile ran into or against an automobile in which the Plaintiff was riding as a guest along or upon said Highway, and as a proximate result of said negligence, the Plaintiff was seriously injured as follows, to-wit:

Her right leg was broken; the third finger on her left hand was broken; she suffered bruises and cuts over her entire body; all of said injuries being of a permanent nature; and that she was otherwise bruised and cut; that she was made sick, sore, lame, nervous, and rendered in a shocked condition

and suffered much physical pain and mental anguish, discomfort, disability, confinement to a bed, and loss of sleep; and that she was required to incur doctor, X-Ray, and hospital bills, and other expenses;

and the Plaintiff avers that her said injuries were proximately caused by the negligence of the said Defendant, who was acting by and through his agent, servant, or employee, the said LOUIS WEISSBERG, who was then and there acting within the line and scope of his employment in so operating said automobile along said highway at said point;

WHEREFORE, the Plaintiff sues.

Count Two


The Plaintiff claims of the Defendant the sum of TEN THOUSAND DOLLARS (\$10,000.00), as damages, for that, whereas, heretofore on, to-wit: the 4th day of February, 1940, at about 7:00 o'clock, P. M., the said Defendant intrusted his automobile to one LOUIS WEISSBERG; that the said LOUIS WEISSBERG was a careless, indifferent, heedless, and reckless driver; that the said LOUIS WEISSBERG was incompetent to drive an automobile; that the said Defendant knew at the time he intrusted his said automobile to the said LOUIS WEISSBERG that the latter was incompetent as a driver of automobiles; that the said Louis Weissberg was then and there driving the automobile of the Defendant on or along the Montgomery-Mobile public Highway, at a point in Baldwin County, Alabama, on the Cochrane Bridge Causeway, approximately one-half mile East of the Tensas River Drawbridge and Tensas River; that at such time and place the said Louis Weissberg so operated said automobile of the Defendant that the said automobile of the Defendant ran into or against an automobile in which the Plaintiff was then and there riding as a guest along or upon said Highway, and as a proximate result thereof, the Plaintiff was seriously injured as follows, to-wit:

Her right leg was broken; the third finger on her left hand was broken; she suffered bruises and cuts over her entire body; all of said injuries being of a permanent nature; and that she was otherwise bruised and cut; that she was made sick, sore, lame, nervous, and rendered in a shocked condition


and suffered much physical pain and mental anguish, discomfort, disability, confinement to a bed, and loss of sleep; and that she was required to incur doctor, X-Ray, and hospital bills, and other expenses;

and the Plaintiff avers that her said injuries were proximately caused by the action of the Defendant as aforesaid in permitting the said incompetent driver to operate the said Defendant's automobile as aforesaid at such time and place;

WHEREFORE THE Plaintiff sues.


LESLIE HALL, Attorney for the Plaintiff.

The Plaintiff demands a trial of this cause by a Jury.


LESLIE HALL, Attorney for the Plaintiff.

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WR Stuart Sheriff

RECEIVED IN OFFICE
MAR 8 - 1940
A. MOSLEY, Sheriff

Received 9 March 1940
and on Day of Feb 1940
I served a Copy of the within summons and complaint
on Edward Awad
by service on W. A. HOLCOMBE, Sheriff
By Arthur J. Keegan D.S.

ESTHER O'GWYNN,
Plaintiff,
vs.
E. AWAD,
Defendant.

SUMMONS AND COMPLAINT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

Filed in office this
8th day of February, 1940.

R. S. Dush
Clerk of the Circuit Court,
by Arthur J. Keegan
as Deputy Clerk.

To Be served on
Secretary of State
at Montgomery, Ala.

LESLIE HALL,
ATTORNEY AT LAW

Executed on this the 9th. day of March,
1940. on defendant E. Awad, by leaving
three copies of the within summons and
complaint with John Brandon, Secretary
of State of Ala. the true and lawful agent
or attorney of said defendant
E. Awad.

G. A. Mosley, Sheriff
by Clements, D.S.

Executed this the 18th day of
July, 1940. on defendant Edward
Awad, of 9405 Shore Road, by leaving
three copies of the within
summons and complaint with Edward
Awad at his place of business
1333 Broadway., N. Y. by exhib-
iting to him the original and
leaving the copy thereof.

Arthur J. Keegan
U. S. Marshal
By
Deputy Marshal

Plaintiff
Esther O'Gwynn, ~~Plaintiff~~

vs.

Edward Awad, Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
AT LAW - No. 566

Comes the Plaintiff in the above styled cause and every plea of defendant's answer, separately and severally, upon the following separate and several grounds:

1. Because the allegations of the said plea do not show any duty on the part of the ~~def~~ Plaintiff toward defendant.

2. Because there are no allegations in said plea which show that the alleged negligence of Rosalee Jenson can legally be imputed to Esther O'Gwynn.

3. Because there are no allegations in said plea which show that the alleged negligence of R. L. Jenson can legally be imputed to Esther O'Gwynn.

4. Because the said plea does not offer to set-off defendant's claim against the claim of the plaintiff.

5. Because the said plea fails to show ^{Defendant's injuries} ~~his injuries~~ except by conclusions of the pleader.

6. Because the said plea fails to set out the nature of the defendant's injuries.

7. Because the said plea fails to set out the damages to his car.

8. Because the said plea fails to show on what injuries his claim is based.

J. A. Mashburn, Jr.
Attorney for Plaintiff.

ESTHER O'GWYNN,
Plaintiff,
vs.
EDWARD AWAD,
Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW, No. 566

Affidavit of Non-Residence of Defendant

STATE OF ALABAMA
BALDWIN COUNTY

Before me, Cornelia Hall, a Notary Public
in and for said County in said State, personally appeared Leslie
Hall, known to me, who, being by me first duly and legally sworn
to tell the truth and nothing but the truth, deposes and says:

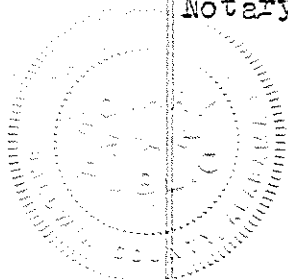
"That he is Attorney for the Plaintiff in the
above styled cause, and competent in every way to
make this affidavit;

"That this is a cause of action arising out of
the operation of a motor vehicle on the public high-
ways in this State, which said automobile was, at
the time of accrual of said cause of action, owned
by the Defendant, Edward Awad; that the said Defen-
dant, Edward Awad is a non-resident of the State of
Alabama, and that his address is 9405 Shore Road,
Brooklyn, New York; that said automobile was in-
volved in an accident or collision while being
operated on a public highway within the State of
Alabama; that said accident or collision is the
basis of this cause of action."

Leslie Hall
Attorney for the Plaintiff.

Sworn to and subscribed before me this
8 day of March, 1940.

Cornelia Hall
Notary Public, Baldwin County, Alabama.



Demurrer

Filed Sept 30 1941
Respect,
Check

RECEIVED
SEP 30 1941
DEPT. OF COMMERCE
WASHINGTON, D. C.

RECORDED

ESTHER O'GWYNN,
Plaintiff,

vs.

EDWARD AWAD,
Defendant.

Affidavit

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

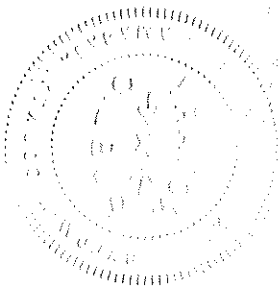
AT LAW

Filed in office this

8th day of March, 1940.

R. S. Duck
Clerk,

by H. E. Smith
as Deputy Clerk.



STATE OF ALABAMA

Esther O'Gwynn

v.

Edward Awad

CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

TO THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA:

I, John Brandon, Secretary of State of Alabama, hereby certify that on March 13, 1940, I mailed by registered mail, in an envelope addressed as follows:

"Mr. Edward Awad,
9405 Shore Road,
Brooklyn, N. Y."


"Registered Mail
Return Receipt Requested
Delivered to addressee only"

bearing sufficient and proper prepaid postage, a notice bearing my signature and the Great Seal of the State of Alabama in words and figures as follows:

"Mr. Edward Awad,
9405 Shore Road,
Brooklyn, N. Y."

You will take notice that the Sheriff of Montgomery County did, on the 9th day of March, 1940, serve on me, in my official capacity summons, with complaint attached, in a case entitled Esther O'Gwynn v. Edward Awad, in the Circuit Court of Baldwin County, Alabama, a true copy of which summons and complaint is hereto attached, and the said service upon me, as Secretary of State of Alabama, has the force and effect of personal service upon you.

Witness my hand and the Great Seal of the State of Alabama, this March 13, 1940.



(Signed) John Brandon
John Brandon,
Secretary of State "

I further certify that the notice above set out which was so mailed in the envelope addressed as above set forth had attached to it a true copy of the summons and complaint in the above entitled cause, ~~there being mailed in the envelope at the time shown the notice with the copy of summons and complaint attached thereto.~~

I further certify that on March 16, 1940, I received a return card showing the receipt by the designated addressee of the said notice with attached summons and complaint aforesaid, which receipt I attach hereto.

WITNESS MY HAND and the Great Seal of the State of Alabama, this April 1, 1940.




John Brandon,
Secretary of State.

ESTHER O'GWYNN,

Plaintiff,

VS.

EDWARD AWAD,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

AT LAW.

NUMBER 566.

MOTION

Now comes the Defendant in the above entitled cause and shows unto the Court that the Plaintiff in said cause is a non-resident of the State of Alabama and that the deposit for costs heretofore made by the Plaintiff is insufficient to cover the costs of Court which will accrue upon further proceedings in said cause, and no sufficient security for said costs has been given as required by Section 59 of Title 11 of the Alabama Code of 1940:

WHEREFORE, Defendant moves the Court to dismiss the said suit.

J. B. Blackburn

McCoy, McLeod, Turner & Rogers

Attorneys for Defendant.

RECORDED

MOTION

ESTHER O'GWYNN,

Plaintiff,

VS.

EDWARD AWAD,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
AT LAW. NUMBER 566.

Filed Sept 30 1941
J. B. Blackburn
Chick

J. B. BLACKBURN
ATTORNEY AT LAW
BAY MINETTE, ALABAMA

BALDWIN COUNTY

State of Alabama---~~Mobile County~~XXXX

CIRCUIT COURT, OCTOBER TERM 19.....

Esther O'Gwynn.

Plaintiff,

vs.

E. Awad, Defendant, of whose true name the plaintiff is ignorant, but who is the reputed owner of the automobile designated as having caused the damages herein claimed.)

Bay Minette, Alabama,

~~XXXXXX~~

March 9, 1940

J.B. Blackburn & Leo Berman appear for

Victor Awad

~~Defendants~~

upon whom process was served,

in the above entitled cause and reserve the right to demur or plead specially.

Leo Berman
J.B. Blackburn
Attorneys for
VICTOR AWAD.

RECORDED

No.

APPEARANCE

vs.

Filed in Office

March 9, 1940

R. S. Duck

Clerk

1858

ESTHER O'GWYNN,

Plaintiff,

-vs-

E. AWAD,

Defendant,

(of whose true name the
Plaintiff is ignorant, but
who is the reputed owner of
the automobile designated
in this complaint as having
caused the damages claimed).

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

AT LAW.

Comes Victor Awad, the party upon whom the summons
and complaint was served in the above entitled cause, in his
own proper person for himself, moves the Court to strike
from Counts One and Two, that portion of said Counts One and
Two which reads as follows:

"was seriously injured,"

and

"all of said injuries being of a permanent nature,"
and as grounds for the motion to strike each of said portions
assigns the following separately and severally:

1. For that said statements are irrelevant.
2. For that said statements are but conclusions
of the pleader.
3. Because said allegations are not sufficiently
certain or specific.
4. Because said allegations are superfluous.

J. T. S. T. Blachman

Lee Bernier
Attorneys for Victor Awad.

RECORDED

No.

APPEARANCE

vs.

Filed in Office

March 9, 1940

R. S. Duck

Clerk

1858

RECORDED

Filed March 16-1940
R Saduck
clerk

-----	:	
Esther O'Gwynn,	:	IN THE CIRCUIT COURT OF
	:	
Plaintiff,	:	BALDWIN COUNTY, ALABAMA.
	:	
Vs.	:	AT LAW. NUMBER 566.
	:	
Edward Awad,	:	
	:	
Defendant.	:	
-----	:	

Now comes the defendant in the above styled cause and for answer to the plaintiff's complaint and to each and every count thereof, separately and severally, says:

1. That he is not guilty of the matters and things alleged in said complaint.

2. That the allegations of the said complaint are untrue.

3. That he denies each and every allegation of the said complaint.

4. And for further answer to the said complaint and to each and every count thereof separately and severally defendant says that Rosalee Jensen, an agent or servant of the plaintiff, who was then and there acting within the line and scope of her employment was guilty of negligence which proximately contributed to cause the injuries complained of in this that at the time and place complained of the said agent or servant of the plaintiff then and there acting within the line and scope of her employment negligently drove the automobile which she was then operating over to the left side of the center line of the said highway causing it to collide with the automobile of the defendant, and defendant avers that the alleged injuries of the plaintiff were the proximate result of the said negligent act of the said agent or servant of the plaintiff.

5. And for further answer to the said complaint and to each and every count thereof separately and severally defendant says that R. L. Jensen, Sr., an agent or servant of the plaintiff, who was then and there acting within the line and scope of his employment was guilty of negligence which proximately contributed to cause the injuries complained of in this that at the time and place complained of the said agent or servant of the plaintiff then and there acting within the line and scope of his employment negligently drove the automobile which he was then operating over to the left side of the center line of the

said highway causing it to collide with the automobile of the defendant, and defendant avers that the alleged injuries of the plaintiff were the proximate result of the said negligent act of the said agent or servant of the plaintiff.

6. For further answer to the said complaint and to each and every count thereof separately and severally defendant pleads specially by way of recoupment and avers that at the time of the commencement of this suit the plaintiff was indebted to him in the sum of, to-wit, \$10,000.00 as damages for that at the time and place alleged in the complaint Rosalee Jensen, an agent or servant of the plaintiff then and there acting within the line and scope of her employment negligently drove the automobile which she was then operating over to the left side of the center line of the said highway causing it to collide with the automobile of the defendant, and that as a proximate result of said negligence defendant was severely bruised, hurt and made sick and sore, suffered great pain and mental anguish and was caused to incur expense for medical treatment, and defendant's automobile was badly crushed, bent and broken all to defendant's damage as aforesaid.

7. For further answer to the said complaint and to each and every count thereof separately and severally defendant pleads specially by way of recoupment and avers that at the time of the commencement of this suit the plaintiff was indebted to him in the sum of, to-wit, \$10,000.00 as damages for that at the time and place alleged in the complaint, R. L. Jensen, Sr., an agent or servant of the plaintiff then and there acting within the line and scope of his employment negligently drove the automobile which he was then operating over to the left side of the center line of the said highway causing it to collide with the automobile of the defendant, and that as a proximate result of said negligence defendant was severely bruised, hurt and made sick and sore, suffered great pain and mental anguish and was caused to incur expense for medical treatment, and defendant's automobile was badly crushed, bent and broken all to defendant's damage as aforesaid.

McConvey McLeod Turner & Rogers
Attorneys for Defendant.

Circuit Court, Baldwin County, Ala.
No. 566

Esther O'Gywnn,
Plaintiff,

Vs.
Edward Awad,
Defendant.

RECORDED

DEFENDANT'S PLEAS

Filed Sept 30 1941
R. S. Duck
clerk

I hereby certify, That on the 18 day
of July, 1934 at the city of
Brooklyn, in my district, I personally served
the within Sumner G. Thompson
upon the within-named Edward A. Ward
9401 Shore Road Bk

by exhibiting to Edward A. Ward
at his place of business
1333 Broadway N.Y.
the within original, and at the same time leaving
with him

Arthur J. Rogers
United States Marshal,
Eastern District of New York
Per Michael E. Hurm, Deputy.

Dated 7/18/34, 1934

USP ATL. GA. 7-5-34 50M

Post Office Department
OFFICIAL BUSINESS

REGISTERED 20532

No.

INSURED PARCEL

No.

Return to Montgomery, Ala.
(NAME OF SENDER)

Street and Number,
or Post Office Box,

MONTGOMERY,
ALABAMA.

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article the original number of which appears on the face of this Card.

(Signature or name of addressee)

(Signature of addressee's agent)

Date of delivery _____ 19____
Form 3811

U. S. GOVERNMENT PRINTING OFFICE

5-7016