

Clarence Givens,
Plaintiff

-VS-

R. A. York and Maryland Casualty
Company, a corporation of Baltimore,
Maryland,
Defendants

IN THE CIRCUIT COURT
OF BALDWIN COUNTY, ALABAMA
AT LAW

Now come all parties to the above styled cause by their respective attorneys of record and, the costs of Court in said cause having been paid, move the Court to dismiss the said cause.

Attorneys for Plaintiff

Attorneys for Defendant R. A. York

Attorneys for Defendant Maryland
Casualty Company

Clarence Givens,
Plaintiff

-vs-

R. A. York and Maryland Casualty Company,
a corporation of Baltimore, Maryland,
Defendants

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

It being shown to the satisfaction of the Court
that all costs in the above styled cause have been paid and
all parties to the above styled cause having moved for dis-
missal of said cause:

IT IS ORDERED AND ADJUDGED by the Court that
the said cause be and the same is hereby dismissed and that
the defendants go hence without day.

Judge

Clarence Givens,
Plaintiff

-vs-

R. A. York and Maryland Casualty Company,
a corporation of Baltimore, Maryland,

Defendants

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

It being shown to the satisfaction of the Court
that all costs in the above styled cause have been paid and
all parties to the above styled cause having moved for dis-
missal of said cause:

IT IS ORDERED AND ADJUDGED by the Court, that
the said cause be and the same is hereby dismissed, and that
the defendants go hence without day.

February 27, 1941.

J. M. Hane
Judge

RECORDED

Order of Dismissal

September 25, 1941

the defendant do hereby appoint day.

the said cause be and the same is hereby dismissed and that

IT IS ORDERED AND ADJUDGED by the Court that
dismissal of said cause:

all parties to the above styled cause having moved and
that all costs in the above styled cause have been paid and
it being shown to the satisfaction of the Court

Defendants

a corporation of Baltimore, Maryland;
W. A. York and Maryland General Insurance Co., Inc.

-48-

Plaintiff
Clarence Glaves;

IN THE CIRCUIT COURT
OF EIGHTH COUNTY, VIRGINIA

Filed February 27, 1941
R. B. Decker, Clerk

Clarence Givens,
Plaintiff

-vs-

R. A. York and Maryland Casualty
Company, a corporation of Baltimore,
Maryland,
Defendants

IN THE CIRCUIT COURT
OF BALDWIN COUNTY, ALABAMA
AT LAW

Now come all parties to the above styled cause
by their respective attorneys of record and, the costs of
Court in said cause having been paid, move the Court to dis-
miss the said cause.

J. P. Beebe
Attorneys for Plaintiff

Thomas H. Lawson
Attorneys for Defendant R. A. York

McCoy, McLeod, Turner & Rogers
Attorneys for Defendant Maryland
Casualty Company

576

Motion To Dismiss

RECORDED

When the said case.

Compt said case having been said, now the Court is going to
by the respective affidavits of record and the case

Now come all parties to the above subject

WITNESSES FOR DEFENDANT

WITNESSES FOR DEFENDANT H. V. LOM

WITNESSES FOR DEFENDANT HALLS

WITNESSES FOR DEFENDANT

Reference

Reference, a copy of the report of the

-as-

Reference, a copy of the report of the

IN THE CIRCUIT COURT

OF THE DISTRICT OF COLUMBIA

Filed February 27, 1941
R.S. Dush, Clerk

STATE OF ALABAMA,
BALDWIN COUNTY.

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon R. A. YORK, and the MARYLAND CASUALTY COMPANY, a corporation of Baltimore, Maryland, to appear within thirty (30) days from the service of this writ in the Circuit Court, to be held for said County at the place of holding the same, then and there to answer the complaint of CLARENCE GIVENS.

Witness my hand this the 5th day of April, 1940.

R. S. Dush
Clerk, Circuit Court, Baldwin
County, Alabama.

CLARENCE GIVENS,
Plaintiff,

vs.

R. A. YORK and MARYLAND
CASUALTY COMPANY, a cor-
poration of Baltimore,
Maryland,
Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

AT LAW.

COUNT ONE.

The Plaintiff claims of the Defendants the sum of FIVE THOUSAND DOLLARS (\$5,000.00) as damages, for that heretofore on, to-wit, the 11th day of February, 1940, the said Defendant R. A. York, a State Highway Patrolman for the State of Alabama, was operating an automobile the property of the State of Alabama, and then and there was acting within the line and scope of his ^{authority and/or under color of office} ~~employment~~ arrested the said Plaintiff and forced him to become a passenger in said automobile, the said R. A. York having proceeded on, over or along U. S. Highway No. 90, which is a public highway in Baldwin County, Alabama, to a point about one half mile East of Blackwater Creek in said County when the said Defendant R. A. York negligently ran said automobile on, over or against the car of one Hans G. Erickson, who was then and there lawfully on said highway in said County, and by reason of said negligence of the said R. A. York and as a proximate consequence thereof the plaintiff was thrown from the said-car through the windshield of the same and was injured in

the manner following: Said Plaintiff received a deep cut on his neck a distance of about two inches to the jugular vein, his nose was broken, he received a severe cut just above his Adam's apple on his neck, he was cut over his right eye, he received a cut on his forehead from the hair line to the side of his nose, was cut on his left knee about two inches to the bone, his right shoulder was badly bruised, one tooth was broken, his right eye was dislocated and cut just above the right eye, his body badly bruised and lacerated, and he was otherwise more or less seriously injured; that as a result of said injuries said plaintiff has been under the constant treatment of a physician and has incurred Doctor's and medicine bills and has suffered extreme physical pain and mental anguish, and by reason of said injuries he was incapacitated to work.

The Plaintiff avers that the said injuries were the proximate result of the negligence of the said defendant, R. A. York, in operating said automobile as aforesaid, and as a proximate result of said negligence the said plaintiff was injured as aforesaid to the damages as aforesaid.

The Plaintiff further avers that under and by virtue of the laws of the State of Alabama the defendant, R. A. York, as a member of the Alabama State Highway Patrol, was required to and did enter into a bond with the said Maryland Casualty Company, a corporation of Baltimore, Maryland, in the penal sum of Two Thousand Dollars (\$2,000.00), payable to the State of Alabama, conditioned upon the faithful performance of the duties of the said R. A. York, as State Highway Patrolman, as required of him by law, and that the Plaintiff's injuries were the proximate result of the negligence of the said R. A. York, as aforesaid, and that such negligence constituted a failure on the part of the said Defendant, R. A. York to faithfully perform his duties as State Highway Patrolman, as aforesaid.

The Plaintiff avers that under and by virtue of the terms of the said bond heretofore referred to the said Defendant, Maryland Casualty Company, a corporation of Baltimore, Maryland, is liable to the said Plaintiff for the damages received by him as aforesaid.

COUNT TWO.

The Plaintiff claims of the Defendants the sum of FIVE THOUSAND DOLLARS (\$5,000.00) as damages for that heretofore on, to-wit, the 11th day of February, 1940, the said Defendant R. A. York, State Highway Patrolman for the State of Alabama, was operating an automobile, the property of the State of Alabama, and then and there was acting within the line and scope of his ~~employment~~ ^{authority under color of office} arrested the said Plaintiff and forced him to become a passenger in said automobile, the said R. A. York having proceeded on, over or along U. S. Highway No. 90, which is a public highway in Baldwin County, Alabama, to a point about one half mile East of Blackwater Creek in said County, when the said Defendant, R. A. York so negligently and recklessly operated said automobile that the same collided with the car of one Hans G. Erickson, who was then and there lawfully on said highway in said County, and by reason of so negligently and recklessly operating said automobile and as a proximate consequence thereof the Plaintiff was thrown from the said car through the windshield of the same and was injured in the manner following: Said Plaintiff received a deep cut on his neck, a distance of about two inches to the jugular vein, his nose was broken, he received a severe cut just above his Adams apple on his neck, he was cut over his right eye, he received a cut on his forehead from the hair line to the side of his nose, was cut on his left knee about two inches to the bone, his right shoulder was badly bruised, one tooth was broken, his right eye was dislocated and cut just above the right eye, his body badly bruised and lacerated, and he was otherwise more or less seriously injured; that as a result of said injuries said Plaintiff has been under the constant treatment of a physician and has incurred Doctor's and medicine bills and has suffered extreme physical pain and mental anguish and by reason of said injuries he was incapacitated to work.

The Plaintiff avers that the said injuries were the proximate result of the negligent and reckless operation of the said automobile by the said R. A. York, as aforesaid and as a result of such negligent and reckless operation of the said automobile the said plaintiff received the said injuries as aforesaid to his damages as aforesaid.

The Plaintiff further avers that under and by virtue of the laws of the State of Alabama, the Defendant, R. A. York, as a member of the Alabama State Highway Patrol, was required to and did enter into a bond with the said Maryland Casualty Company, a corporation of Baltimore, Maryland, in the penal sum of Two Thousand Dollars (\$2,000.00), payable to the State of Alabama, conditioned upon the faithful performance of the duties of the said R. A. York, as State Highway Patrolman, as required of him by law, and that the Plaintiff's injuries were the proximate result of the negligence of the said R. A. York, as aforesaid, and that such negligence constituted a failure on the part of the said Defendant, R. A. York to faithfully perform his duties as State Highway Patrolman as aforesaid.

The Plaintiff avers that under and by virtue of the terms of the said bond heretofore referred to the said Defendant, Maryland Casualty Company, a corporation of Baltimore, Maryland, is liable to the said plaintiff for the damages received by him as aforesaid.

COUNT THREE.

The Plaintiff claims of the Defendants the sum of FIVE THOUSAND DOLLARS (\$5,000.00) as damages for that heretofore on, to-wit, the 11th day of February, 1940, the Defendant, R. A. York, a State Highway Patrolman for the State of Alabama, was operating an automobile the property of the State of Alabama, and then and there acting within the line and ~~authority and~~ *under color of his office* scope of his ~~employment~~ arrested the said Plaintiff and forced him to become a passenger in said automobile, the said R. A. York having proceeded on, over or along U. S. Highway No. 90, which is a public highway in Baldwin County, Alabama, to a point about one half mile East of Blackwater Creek in said County, when the said Defendant R. A. York, so recklessly, wantonly and wilfully ran said automobile on, over or upon the car of one Hans G. Erickson, who was then and there lawfully on said public highway in said County, and by reason of said recklessness, wantonness and wilfullness, and as a proximate consequence thereof, the plaintiff was thrown through the windshield of the said automobile and was injured in the manner following: Said Plaintiff received a deep cut on his neck a distance of about two inches to the jugular vein, his nose was broken,

he received a severe cut just above his Adams apple on his neck, he was cut over his right eye, he received a cut on his forehead from the hair line to the side of his nose, was cut on his left knee about two inches to the bone, his right shoulder was badly bruised, one tooth was broken, his right eye was dislocated and cut just above the right eye, his body badly bruised and lacerated, and he was otherwise more or less seriously injured; that as a result of said injuries said plaintiff has been under the constant treatment of a physician and has incurred doctor's and medicine bills, and has suffered extreme physical pain and mental anguish, and by reason of said injuries he was incapacitated to work.

The plaintiff avers that the said injuries were the proximate result of the recklessness, wantonness and wilfulness of the said defendant, R. A. York, in operating said automobile as aforesaid, and as a proximate result of the wilful and wanton negligence on the part of the said R. A. York, the said plaintiff received the said injuries as aforesaid to his damages as aforesaid.


The Plaintiff further avers that under and by virtue of the laws of the State of Alabama the defendant, R. A. York, as a member of the Alabama State Highway Patrol, was required to and did enter into a bond with the said Maryland Casualty Company, a corporation of Baltimore, Maryland, in the penal sum of Two Thousand Dollars (\$2,000.00), payable to the State of Alabama, conditioned upon the faithful performance of the duties of the said R. A. York, as State Highway Patrolman, as required of him by law, and that the Plaintiff's injuries were the proximate result of the negligence of the said R. A. York, as aforesaid, and that such negligence constituted a failure on the part of the said Defendant, R. A. York to faithfully perform his duties as State Highway Patrolman as aforesaid.

The Plaintiff avers that under and by virtue of the terms of the said bond heretofore referred to the said Defendant, Maryland Casualty Company, a corporation of Baltimore, Maryland, is liable to the said Plaintiff for the damages received by him as aforesaid.

The Plaintiff demands

a trial by jury.


Attorney for Plaintiff.



STATE OF ALABAMA,
JEFFERSON COUNTY.

I have executed this Writ this day of , 1940,
by serving a copy of the within Summons and Complaint, on Perry-Rossmore
and Company, Inc., as Agents of Maryland Casualty Company, a corporation
of Baltimore, Maryland.

Sheriff, Jefferson County, Ala.

EXECUTED BY DELIVERING
a copy of the within
TO Frank N. Julian
AS Supt. of Ins.
OF THE State of Ala
AND SAID Frank N. Julian
WAS SUCH WHEN SO SERVED 4/15/40
L. A. Mosley
Sheriff Montgomery County
By L & C
Deputy Sheriff

Serve on Frank N. Julian
as Commissioner of Insurance,
576 Montgomery

CLARENCE GIVENS,
Plaintiff,

VS.

RECORDED

R. A. YORK and MARY-
LAND CASUALTY COMPANY,
a corporation of Balti-
more, Maryland.
Defendants.

ORIGINAL
SUMMONS & COMPLAINT.

Filed April 5, 1940.

R. S. Duchs
Clerk.

JOHN P. BEEBE
ATTORNEY AT LAW
LAMBERT BUILDING
BAY MINETTE, ALABAMA

Received in Sheriff
office April 5th 1940
323 W.R. Stuart Sheriff

Executed this the 8 day of April, 1940
on Maryland Casualty
Company a corporation
of Baltimore Maryland
by Roger F. Rice
Deputy
of said company.
HARRY E. SMITH, Sheriff,
Jefferson Co., Ala.
By B. M. Travis D.S.

Executed 4/9 1940
by serving copy of within Summons and
Complaint on

R. A. York
W. R. Stuart Sheriff
By Dr. B. J. Hamilton Deputy Sheriff

CLARENCE GIVENS,

Plaintiff

v.

R. A. YORK AND MARYLAND
CASUALTY COMPANY, A
CORPORATION,

Defendants.

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

Comes the defendant, R. A. York, and demurs to
the complaint in the above styled cause and as grounds therefor
he assigns the following:

1. That said complaint states no cause of action.

2. That for aught that appears from said complaint
the alleged acts of this defendant, which plaintiff complains
of, were not done by virtue of nor under color of his office
as a State Highway Patrolman.

And specially demurring to Count One of said com-
plaint, he assigns the following:

3. That said count states no cause of action.
*3! That each alternative allegation of said count as to the
manner in which the defendant acted, that is to say, by virtue of or under*

4. That for aught that appears from said count
the alleged acts of this defendant, which plaintiff complains
of, were not done by virtue of nor under color of his office as
a State Highway Patrolman.

5. That said count is duplicitous in that there are
incorporated therein two separate and distinct causes of action,
viz., action on the case against this defendant, and action in
assumpsit on defendant's official bond against the defendant,
Maryland Casualty Company, a corporation.

6. For aught that appears from the allegations of
said count, the acts of this defendant, rather than the injury to
the plaintiff, were negligently done.

Color of his authority

2.

7. That the said count is duplicitous in that it declares upon two separate and distinct causes of action as against this defendant, viz., the one based upon the alleged act of this defendant in "forcing plaintiff to become a passenger in said automobile," and the other based upon the alleged personal injury sustained by the plaintiff arising out of the collision of the automobile operated by this defendant with an automobile operated by one Erickson.

8. For aught that appears, this defendant's alleged act of "forcing plaintiff to become a passenger in said automobile operated by him" was not within the scope of his authority as a Highway Patrolman of the State of Alabama.

9. For aught that appears, the alleged act of this defendant in arresting the plaintiff was not within the scope of his authority as a Highway Patrolman of the State of Alabama.

10. For aught that appears from the allegations of the said count, this defendant was not engaged in the performance of any official act or function at the time that it is alleged the plaintiff sustained injury.

11. That the said count is duplicitous in that it declares upon one cause of action seeking damages for \$5,000 as against this defendant and declares upon another cause of action seeking \$2,000 as damages against another defendant, to wit, Maryland Casualty Company, a corporation.

And specially demurring to Count Two of said complaint, he assigns the following:

12. That said count states no cause of action.

13. That for aught that appears from said count the alleged acts of this defendant, which plaintiff complains of, were not done by virtue of nor under color of his office as a State Highway Patrolman.

3.

14. That simple negligence and gross negligence are both charged in said count.

15. That said count is duplicitous in that there are incorporated therein two separate and distinct causes of action, viz., action on the case against this defendant, and action in assumpsit on defendant's official bond against the defendant, Maryland Casualty Company, a corporation.

16. For aught that appears from the allegations of said count, the acts of this defendant, rather than the injury to the plaintiff, were negligently done.

17. That the said count is duplicitous in that it declares upon two separate and distinct causes of action as against this defendant, viz., the one based upon the alleged act of this defendant in "forcing plaintiff to become a passenger in said automobile," and the other based upon the alleged personal injury sustained by the plaintiff arising out of the collision of the automobile operated by this defendant with an automobile operated by one Erickson.

18. For aught that appears, this defendant's alleged act of "forcing plaintiff to become a passenger in said automobile operated by him" was not within the scope of his authority as a Highway Patrolman of the State of Alabama.

19. For aught that appears, the alleged act of this defendant in arresting the plaintiff was not within the scope of his authority as a Highway Patrolman of the State of Alabama.

20. For aught that appears from the allegations of the said count, this defendant was not engaged in the performance of any official act or function at the time that it is alleged the plaintiff sustained injury.

21. That the said count is duplicitous in that it declares upon one cause of action seeking damages for \$5,000 as against this defendant and declares upon another cause of action seeking \$2,000 as damages against another defendant, to wit, Maryland Casualty Company, a corporation.

4.

And specially demurring to Count Three of said complaint, he assigns the following:

22. That said count states no cause of action.

23. That for aught that appears from said count the alleged acts of this defendant, which plaintiff complains of, were not done by virtue of nor under color of his office as a State Highway Patrolman.

24. That simple negligence and gross negligence are both charged in said count.

25. That said count is duplicitous in that there are incorporated therein two separate and distinct causes of action, viz., action on the case against this defendant, and action in assumpsit on defendant's official bond against the defendant, Maryland Casualty Company, a corporation.

26. That it affirmatively appears from the allegations of said complaint that the alleged acts of the defendant and not the alleged injuries to the plaintiff were recklessly, wantonly and wilfully done.

27. That the said count is duplicitous in that it declares upon two separate and distinct causes of action as against this defendant, viz., the one based upon the alleged act of this defendant in "forcing plaintiff to become a passenger in said automobile," and the other based upon the alleged personal injury sustained by the plaintiff arising out of the collision of the automobile operated by this defendant with an automobile operated by one Erickson.

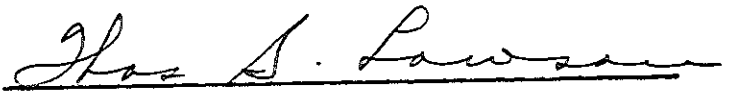
28. For aught that appears, this defendant's alleged act of "forcing plaintiff to become a passenger in said automobile operated by him" was not within the scope of his authority as a Highway Patrolman of the State of Alabama.

5.

29. For aught that appears, the alleged act of this defendant in arresting the plaintiff was not within the scope of his authority as a Highway Patrolman of the State of Alabama.

30. For aught that appears from the allegations of the said count, this defendant was not engaged in the performance of any official act or function at the time that it is alleged the plaintiff sustained injury.

31. That the said count is duplicitous in that it declares upon one cause of action seeking damages for \$5,000 as against this defendant and declares upon another cause of action seeking \$2,000 as damages against another defendant, to wit, Maryland Casualty Company, a corporation.



Thos. S. Lawson,
Attorney General.



Chas. L. Rowe,
Assistant Attorney General,

Attorneys for the defendant York.

Denumer

RECORDED

Filed May 4, 1940

R.S. Duck, Clerk

The State of Alabama, }
BALDWIN COUNTY

CIRCUIT COURT. (LAW)

January

Term, 1941

Clarence Givens, _____ Plaintiff

No. 576 vs.

R. A. York & Maryland Casualty Co.,
Defendant.

BILL OF COSTS

CLERK'S FEES:		AMOUNT		SUMMARY OF FEES, COSTS, AND JUDGMENT		AMOUNT	
Fees in Circuit Court--				Fees and Costs in Circuit Court:			
Docketing Cause, One Fee only of.....	.25	1.	25	Clerk's Fees		10.	05
Issuing Summ. and Complt., each.....	1.25	1.	25	Ex-Clerk's Fees		4.	50
Issuing Alias or Branch Summons & Complaint, each.....	1.25		60	Sheriff's Fees.....			
Making Copies Thereof, Minimum, each.....	2.30		40	Ex-Sheriff's Fees			
Making Copies Thereof, over 200 Words, per 100 words.....	.15		20	Witness Fees			
Entering Sheriff's Returns, each.....	.20			Commissioner's Fees			
Entering Appearances, each .....	.20			.....		
Certifying Affidavits, each .....	.25			Garnishee's Fees			
Issuing Attachments with Bond, each	1.00			Publisher's Fees			
Orders of Publication, each .....	.50			.....		
Copy of Same, each .....	.50			Court Reporter's Fees, Per Day or fraction thereof.....		3.	00
Issuing Summ. to Garnishee, each .....	.50			Trial Tax			
Copy of Same, Per 100 Words .....	.15			.....		
Swearing Garnishee, Etc., Per 100 words.....	.50			.....		
.15, Minimum .....	.25			.....		
Release of Garnishee, each .....	.75			.....		
Issuing Scire Facias or Similar Notice, each .....	.15			.....		
Copies of Same, Per 100 Words.....	.50			.....		
Making Copy of Interrogatories, Per 100 Words, .15; Minimum .....	.75			Fees and Costs in Inferior Court:			
Commission to Take Depositions, each .....	.10			Clerk of Inferior Court Fees			
Filing Depositions, Each Pkg., .....	.10			Sheriff's Fees			
Endorsing Each Package of Depositions Opened .....	.30			Justice of Peace Fees			
Issuing Subpoenas, Each .....	.25			Constable's Fees			
Issuing Witness Certificates, each.....	.10			.....		
Entering Continuances, each .....	.10			.....		
Filing Papers, each	5.10			Fees and Costs in Inferior Court		17.	55
Other Orders of Court, each .....	.30			Total Fees and Costs			
Trial and Incidents .....	.75			Judgment			
Entering Judgment, each .....	.30			10 Per Cent Damages			
Complete Record, Per 100 Words .....	.15			Interest			
Taking Bonds, each .....	.75			Certified copy of order		1.	00
Certificate of Appeal .....	.25			Total Judgment			
Transcript to Supreme Court, Per 100 Words .....	.15			Total Fees, Costs and Judgment			
Additional Copies of Same, Per 100 Words .....	.05			.....		
Issuing Executions or Copy Thereof, each .....	.50			.....		
Entering Sheriff's Return, Per 100 Words, .15; Minimum .....	.20			.....		
.....						
.....				Total		18.	55
Total Clerk's Fees		10.	05				
SHERIFF'S FEES:							
Serving and Returning Summons or Writ, each	3.150						
Levying Attachment, each	3.00						
Entering and Returning Same, each .....	.25						
Seizing Personal Property Under Writ of Detinue	3.00						
Taking and Approving Bonds, each.....	1.00						
Summoning Garnishee and Return, each	1.50						
Serving and Returning Sci. Fa. or Notice, Each	1.50						
Serving and Returning Subpoenas, each .....	.65						
Serving Contempt Attachment, each	1.50						
Impaneling Jury.....	.75						
Collecting Execution for Costs Only, each.....	1.50						
Coms. for Collecting Money on Executions	5.00						
Executing Writs of Possession, each.....	2.50						
Making Deed to Real Estate Sold, each,							
.....							
Total Sheriff's Fees		4.	50				

Clarence Givens,
Plaintiff

-vs-

R. A. York and Maryland Casualty
Company, a corporation of Baltimore,
Maryland,
Defendants

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

Comes the defendant, Maryland Casualty Company, a corporation, and moves to strike from Count One, Count Two, and Count Three of the plaintiff's complaint, and from each of said counts separately and severally, that portion thereof reading as follows:

"The plaintiff further avers that under and by virtue of the laws of the State of Alabama the defendant, R. A. York, as a member of the Alabama State Highway Patrol, was required to and did enter into a bond with the said Maryland Casualty Company, a corporation of Baltimore, Maryland, in the penal sum of Two Thousand Dollars (\$2000) payable to the State of Alabama, conditioned upon the faithful performance of the duties of the said R. A. York, as State Highway Patrolman, as required of him by law, and that the plaintiff's injuries were the proximate result of the negligence of the said R. A. York, as aforesaid, and that such negligence constituted a failure on the part of the said Defendant, R. A. York to faithfully perform his duties as State Highway Patrolmen, as aforesaid.

The plaintiff avers that under and by virtue of the terms of the said bond heretofore referred to the said Defendant, Maryland Casualty Company, a corporation of Baltimore, Maryland, is liable to the said plaintiff for the damages received by him as aforesaid."

and for grounds for said motion this defendant sets out and assigns the following separate and several grounds:

1. The portion of said count sought to be stricken is irrelevant.
2. The portion of said count sought to be stricken claims damages not recoverable against this defendant.
3. The portion of said count sought to be stricken is inconsistent with the remainder of the said count.
4. The portion of said count sought to be stricken is irrelevant to the cause of action alleged in the remainder of said count in that it attempts to set up a claim for Two Thousand Dollars, although there is elsewhere claimed in said count the sum of Five Thousand Dollars as damages.

5. Because the portion of said count sought to be stricken improperly attempts to join in said suit the surety on the bond of said R. A. York.

6. Because the portion of said count sought to be stricken improperly attempts to join in the same count a cause of action entirely separate and distinct from the cause of action alleged elsewhere in the said count.

Without waiving the foregoing motion, but expressly insisting thereon, this defendant moves to strike from Count One, Count Two, and Count Three of the plaintiff's complaint, and from each of said counts separately and severally, that portion thereof reading as follows:

"The plaintiff further avers that under and by virtue of the laws of the State of Alabama the defendant, R. A. York, as a member of the Alabama State Highway Patrol, was required to and did enter into a bond with the said Maryland Casualty Company, a corporation of Baltimore, Maryland, in the penal sum of Two Thousand Dollars (\$2000) payable to the State of Alabama, conditioned upon the faithful performance of the duties of the said R. A. York, as State Highway Patrolman, as required of him by law"

and for grounds for said motion this defendant sets out and assigns separately and severally each of the separate and several grounds assigned in support of ~~xxxxxx~~ the foregoing motion~~/~~.

Without waiving the foregoing motions or ^{either} ~~any~~ of them, this defendant moves to strike from Count One, Count Two and Count Three of the plaintiff's complaint, and from each of said counts separately and severally, that portion thereof reading as follows:

"and that the plaintiff's injuries were the proximate result of the negligence of the said R. A. York, as aforesaid, and that such negligence constituted a failure on the part of the said Defendant, R. A. York to faithfully perform his duties as State Highway Patrolman, as aforesaid."

and for grounds for said motion this defendant sets out and

assigns separately and severally each of the separate and several grounds assigned in support of each of the foregoing motions.

Without waiving the foregoing motions or any of them, this defendant moves to strike from Count One, Count Two and Count Three of the plaintiff's complaint, and from each of said counts separately and severally, that portion thereof reading as follows:

"The plaintiff avers that under and by virtue of the terms of the said bond heretofore referred to the said Defendant, Maryland Casualty Company, a corporation of Baltimore, Maryland, is liable to the said plaintiff for the damages received by him as aforesaid."

and for grounds for said motion this defendant sets out and assigns separately and severally each of the separate and several grounds assigned in support of each of the foregoing motions.

McCormack, McClellan, Turner & Rogers
Attorneys for defendant Maryland
Casualty Company.

576

AT LAW.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

Clarence Givens,
Plaintiff

vs.

R. A. York and the Maryland
Casualty Company, a corpo-
ration, of Baltimore, Maryland
Defendants

Motions to Strike
Portions of Complaint

Filed June 5 1948
P. S. Decker
clerk

McCORMY, McLEOD, TURNER & ROGERS

ATTORNEYS AT LAW

NINTH FLOOR, MERCHANTS NATIONAL BANK BUILDING

MOBILE, ALABAMA

Clarence Givens,
Plaintiff

R. A. York and Maryland Casualty Company, :
a corporation of Baltimore, Maryland, :

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

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

1. Because there are no facts alleged in said count showing that the alleged act of the defendant R. A. York was done in the performance of any duty imposed by law upon him as a State Highway Patrolman.

2. Because for aught that appears from the allegations of the said count the alleged act of the defendant R. A. York was not done in the performance of any duties imposed by law upon him as a State Highway Patrolman.

3. Because there are no facts alleged in the said count showing that the alleged act of the defendant R. A. York was committed under color of his office as a State Highway Patrolman.

4. Because for aught that appears from the allegations of the said count the alleged act of the defendant R. A. York was not committed under color of his office as a State Highway Patrolman.

5. Because the allegation in the said count that the defendant R. A. York then and there was acting within the line and scope of his employment is a conclusion of the pleader.

6. Because the allegation in the said count that the defendant R. A. York then and there was acting within the line

and scope of his employment is a conclusion of the pleader, and is not sufficient as against defendant Maryland Casualty Company as the alleged surety on the bond of the said R. A. York.

7. Because there are no facts and circumstances alleged in said count showing that the alleged act of the defendant R. A. York was done in the line and scope of his employment as a State Highway Patrolman.

8. Because for aught that appears from the allegations of the said count the alleged act of the defendant R. A. York was not done by him in the line and scope of his employment as a State Highway Patrolman.

9. Because for aught that appears from the allegations in the said count the alleged act of the defendant R. A. York was a mere private act not pertaining to any function the law cast on him as a State Highway Patrolman.

10. Because it is not alleged in said count that the said R. A. York as a member of the State Highway Patrol was authorized in writing by the Governor to have the power of a Peace Officer in this State.

11. Because it is not alleged in the said count that the said act of defendant R. A. York was committed by him in the performance of any duty required of him as a member of the State Highway Patrol by the Governor.

12. Because the allegation in the said count that "such negligence constituted a failure on the part of the said defendant R. A. York to faithfully perform his duties as State highway patrolman as aforesaid" is a mere conclusion of the pleader.

13. Because the allegation in the said count that "such negligence constituted a failure on the part of the said defendant R. A. York to faithfully perform his duties as State highway patrolman as aforesaid" is a mere conclusion of the pleader and is not sufficient as against the defendant

Maryland Casualty Company as the alleged surety on the bond of the said R. A. York.

14. Because the allegation in the said count that "such negligence constituted a failure on the part of the said defendant R. A. York to faithfully perform his duties as State highway patrolman as aforesaid" is a mere conclusion of law.

15. Because the allegation in the said count that under and by virtue of the terms of the bond referred to in said count, the said defendant Maryland Casualty Company, is liable to the plaintiff for the damages received by him as aforesaid is a mere conclusion of the pleader.

16. Because the allegation in the said count that under and by virtue of the terms of the bond referred to in said count, the said defendant Maryland Casualty Company, is liable to the plaintiff for the damages received by him as aforesaid is a mere conclusion of law.

17. Because the allegation in the said count that under and by virtue of the terms of the bond referred to in said count, the said defendant Maryland Casualty Company, is liable to the plaintiff for the damages received by him as aforesaid is not an allegation of fact but a conclusion of law.

18. Because no facts are alleged in said count showing that defendant R. A. York in his alleged official capacity as a State Highway Patrolman owed any duty to the plaintiff.

19. Because no facts are alleged in said count showing that defendant R. A. York was performing an official duty as a State Highway Patrolman in driving an automobile at the time and place alleged in said count.

20. Because no facts are alleged in said count showing that defendant R. A. York was performing any duty

imposed by law upon him as a State Highway Patrolman in driving an automobile at the time and place alleged in said count.

21. Because no facts are alleged in said count showing that defendant R. A. York was performing any act under color of his office as a State Highway Patrolman in driving an automobile at the time and place alleged in said count.

22. Because there are no facts alleged in the said count showing that there was imposed by law upon the defendant R. A. York, in his alleged official capacity as a State Highway Patrolman, the duty of making any arrest.

23. Because there are no facts alleged in the said count showing that there was imposed by law upon the defendant R. A. York, in his alleged official capacity as a State Highway Patrolman, the duty of arresting the plaintiff.

24. Because there are no facts alleged in the said count showing that there was imposed by law upon the defendant R. A. York, in his alleged official capacity as a State Highway Patrolman, the duty of carrying any prisoner as a passenger in an automobile.

25. Because there are no facts alleged in the said count showing that there was imposed by law upon the defendant R. A. York, in his alleged official capacity as a State Highway Patrolman, the duty of carrying the plaintiff as a passenger in the said automobile.

26. Because in the said count the plaintiff claims of both of the defendants the sum of \$5,000.00 as damages and it affirmatively appears from the allegations of the said count that the bond on which the defendant Maryland Casualty Company is alleged to be a surety is in the penal sum of only \$2,000.00.

27. Because the said count unites two distinct alleged causes of action in that the allegations of said

count purport to show a claim of \$5,000.00 damages against defendant R. A. York and purport to show a claim of only \$2,000.00 damages against defendant Maryland Casualty Company.

28. Because there is a misjoinder of parties defendant in said count in that the allegations of said count purport to show a claim of \$5,000.00 damages against defendant R. A. York and purport to show a claim of only \$2,000.00 damages against defendant Maryland Casualty Company.

29. Because there is a misjoinder of parties defendant in said count in that it affirmatively appears on the face of said count that the liability, if any, of each of the defendants is separate and distinct.

30. Because there is a misjoinder of parties defendant in said count in that it affirmatively appears on the face of said count that the liability, if any, of the defendant R. A. York is separate and distinct from the liability, if any, of the defendant Maryland Casualty Company.

31. Because the said count attempts to join an alleged cause of action against the defendant R. A. York and an alleged cause of action against the defendant Maryland Casualty Company although it appears on the face of said complaint that each of said defendants may have separate and distinct defenses.

32. Because two separate and distinct causes of action to each of which there may be separate and distinct defenses are attempted to be joined in the said count.

33. Because it does not appear from the allegations of the said count that the car of the said Hans G. Erickson was on a public highway at the time alleged in the said count.

34. Because the location of the car of the said Hans G. Erickson at the time alleged in the said count does not appear from the allegations of the said count.

34A. Because the allegation in said count that defendant R. A. York was acting under color of his office is made only in the alternative.

34B. Because the allegation in said count that defendant R. A. York was then and there acting within the line and scope of his authority is made only in the alternative.

And for further and additional grounds for demurrer to Count Three of the plaintiff's complaint, the defendant Maryland Casualty Company assigns the following separate and several grounds:

35. Because there is not averred in the said count a wanton or wilful injury of the plaintiff.

36. Because it is not averred in said count that the defendant R. A. York wilfully or wantonly injured the plaintiff.

37. Because there is merely averred in the said count the wanton and wilful doing of an act by the defendant R. A. York which is alleged to have resulted in an injury to the plaintiff but it is not alleged that the said defendant R. A. York wantonly or wilfully inflicted the said injury.

38. Because there is merely averred in the said count the wanton and wilful doing of an act by the defendant R. A. York which is alleged to have resulted in an injury to the plaintiff but there are no facts alleged in said count showing that the wanton or wilful doing of the act was equivalent to a wilful or wanton injury of the plaintiff by said defendant R. A. York.

39. Because no facts are averred in said count showing that the alleged wanton or wilful act of the defendant R. A. York in running the said automobile on, over, or upon the car of the said Hans G. Erickson was equivalent to a wanton or intentional injury of the plaintiff.

McCowen, Lee, Turner & Rogers
Attorneys for defendant Maryland
Casualty Company

I hereby accept service of a copy of the foregoing demurrers and hereby waive notice of the filing of the same and of the date set for the hearing thereof.

Dated August 30, 1940.

J. P. Beebe
Attorney for Plaintiff

AT LAW

CIRCUIT COURT OF BALDWIN

COUNTY, ALABAMA

CLARENCE GIVENS,
PLAINTIFF

- vs -

R.A. YORK AND MARYLAND CASUALTY
COMPANY, A CORPORATION OF
BALTIMORE, MARYLAND,
DEFENDANTS

DEMURRERS OF DEFENDANT
MARYLAND CASUALTY COMPANY
TO COMPLAINT

*Filed Aug 30th 1940,
J. W. Hare
Judge*

MCORVEY, MELOD, TURNER & ROGERS

ATTORNEYS AT LAW

NINTH FLOOR, MERCHANTS NATIONAL BANK BUILDING

MOBILE, ALABAMA