

The State of Alabama, }  
BALDWIN COUNTY

CIRCUIT COURT. (LAW)

January

Term, 194-1-

Hans Erickson, Plaintiff.

No. 578 vs.

R. A. York & Maryland Casualty Company  
Defendant.

578

### BILL OF COSTS

CLERK'S FEES:		AMOUNT		SUMMARY OF FEES, COSTS, AND JUDGMENT		AMOUNT	
<b>Fees in Circuit Court—</b>				<b>Fees and Costs in Circuit Court:</b>			
Docketing Cause, One Fee only of.....	.25	1.	25	Clerk's Fees .....		10.	05
Issuing Summ. and Complt., each.....	1.25		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 .....	2..... .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	.500		
Issuing Summ. to Garnishee, each .....	.50			Trial Tax .....	3.00	3.	00
Copy of Same, Per 100 Words .....	.15			.....			
Swearing Garnishee, Etc., Per 100 words,	.15, Minimum .....			.....			
Release of Garnishee, each .....	.25			.....			
Issuing Seire Facias or Similar Notice, each .....	.75			.....			
Copies of Same, Per 100 Words.....	.15			.....			
Making Copy of Interrogatories, Per	100 Words, .15; Minimum .....			.....			
Commission to Take Depositions, each .....	.75			<b>Fees and Costs in Inferior Court:</b>			
Filing Depositions, Each Pkg., .....	.10			Clerk of Inferior Court Fees .....			
Endorsing Each Package of Depositions Opened .....	.10			Sheriff's Fees .....			
Issuing Subpoenas, Each .....	.30			Justice of Peace Fees .....			
Issuing Witness Certificates, each.....	.25			Constable's Fees .....			
Entering Continuances, each .....	.10			.....			
Filing Papers, each .....	5..... .10		50	.....			
Other Orders of Court, each .....	.30		30	<b>Fees and Costs in Inferior Court</b> .....		17.	55
Trial and Incidents .....	.75		75	Total Fees and Costs .....			
Entering Judgment, each .....	.30		30	Judgment .....			
Complete Record, Per 100 Words .....	.15	5.	50	10 Per Cent Damages .....			
Taking Bonds, each .....	.75			Interest .....			
Certificate of Appeal .....	.25			<b>Certified Copy of order</b> .....		1.	00
Transcript to Supreme Court, Per 100 Words .....	.15			Total Judgment .....			
Additional Copies of Same, Per 100 Words .....	.05			Total Fees, Costs and Judgment .....			
Issuing Executions or Copy Thereof, each .....	.50			.....			
Entering Sheriff's Return, Per 100 Words, .15;	Minimum .....			.....			
.....	.20			.....			
.....				.....			
.....				<b>Total</b> .....		18.	55
<b>Total Clerk's Fees</b> .....		10.	05				
<b>SHERIFF'S FEES:</b>							
Serving and Returning Summons or	Writ, each .....	3..... 1.50	4.	50			
Levyng 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 .....							
Executing Writs of Possession, each.....	5.00						
Making Deed to Real Estate Sold, each. ....	2.50						
.....							
.....							
<b>Total Sheriff's Fees</b> .....		4.	50				

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Hans G. Erickson,  
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

-----  
Hans G. Erickson,  
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

-----  
Hans G. Erickson,  
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.

*J. P. Beebe*  
\_\_\_\_\_  
Attorneys for Plaintiff

*Thomas H. Lawson*  
\_\_\_\_\_  
Attorneys for Defendant R. A. York

*McCowan, McLeod, Turner & Rogers*  
\_\_\_\_\_  
Attorneys for Defendant Maryland  
Casualty Company

*Motion Is Dismiss*  
**RECORDED**

578

and cause.

and cause having been held, move the Court to dismiss the  
respective affidavits of record and, the Court so order in  
now come all parties to the space called upon to their

Defendants

Comptroller of the City of New York  
H. A. York and William C. Cavanaugh

-as-

District  
Judge C. E. Johnson

IN THE CIRCUIT COURT  
OF THE CITY OF NEW YORK

Comptroller of the City of New York

Attorneys for Defendants William C. Cavanaugh

Attorneys for Defendants H. A. York

Attorneys for Plaintiff

*Filed February 27, 1941*  
*R. S. Dugan, Clerk*

Hans G. Erickson,  
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. W. Hare*  
Judge

STATE OF ALABAMA, )  
BALDWIN COUNTY. )

I, R. S. DUCK, Clerk of the Circuit Court of  
Baldwin County, Alabama, hereby certify that the above and  
foregoing is a true and correct copy of the order rendered in  
the above cause by the Judge of the Circuit Court of said  
County on the 27th day of February, 1941; said original decree  
being on file and enrolled in this office.

WITNESS my hand and seal of Office this the  
27th day of February, 1941.

R. S. DUCK, Clerk,

By: *Handley Thompson*  
Deputy Clerk.

**RECORDED**

*Order of Dismissal*

February 24, 1941.

The defendant Go hence without day.

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

it is ORDERED AND ADJUDGED by the Court that

warrant of said cause:

All parties to the above styled cause having moved for dis-

missal all costs in the above styled cause have been paid and

it being shown to the satisfaction of the Court

*Filed February 27, 1941  
R.S. Duck, Clerk*

Defendants

Marling,  
Combs, & Corporation of Baltimore,  
H. V. York and Marling Oswald

-AS-

Plaintiff  
Hens G. Baxton

AT LAW.  
OF BALTIMORE COUNTY, MARYLAND  
IN THE CIRCUIT COURT

~~DEBENT OLEARY,  
SHERIFF OF ALABAMA,~~

~~being on file and enrolled in this office.  
Comptroller of the State of Alabama, 1941; said official decree  
the above cause in the name of the Circuit Court of said  
foregoing state and correct copy of the order rendered in  
Birmingham, Alabama, heretofore certified that the above and  
I, S. S. Duck, Clerk of the Circuit Court of~~

~~DEBENT OLEARY,  
S. S. DUCK, Clerk~~

-----:  
Hans G. Erickson,  
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 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 the 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 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.

23. 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.

24. 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.

25. 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.

26. 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.

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

26 B. Because the allegation in said count that defendant R. A. York was acting within the line and scope of his <sup>authority</sup> ~~employment~~ is made only in the alternative.

27. 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.

28. 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.

29. Because it does not appear from the allegations of the said count that the car of the plaintiff was on a public highway at the time alleged in the said count.

30. Because the location of the car of the plaintiff at the time alleged in the said count does not appear from the allegations of the said count.

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:

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

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

33. Because it is not alleged in said count that defendant R. A. York wantonly or wilfully damaged the plaintiff's car.

34. 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.

35. 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 said act was equivalent to a wilful or wanton injury of the plaintiff by said defendant R. A. York.

36. 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 plaintiff was equivalent to a wanton or intentional injury of the plaintiff.

*McCormey, 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<sup>th</sup>, 1940.

*J. P. Beebe*  
Attorney for Plaintiff

AT LAW

CIRCUIT COURT OF BALDWIN  
COUNTY, ALABAMA

HANS G. ERICKSON,  
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 30<sup>th</sup> 1940*  
*J. W. Hare*  
*Judge*

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

-----#-----  
Hans G. Erickson,  
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 of the plaintiff's complaint  
that portion thereof reading as follows:

"The plaintiff further avers that under and by virtue  
of the laws of the State of Alabama the defendants,  
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) payable to the State of Alabama con-  
ditioned upon the faithful performance of 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 con-  
stituted 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 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 Two 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 (\$2,000) 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."

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 ~~xxxxxx~~ of the foregoing motions.

Without waiving the foregoing motions, or either of them, this defendant moves to strike from Count Three of the plaintiff's complaint, 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 State Highway Patrol of Alabama, 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) 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."

Without waiving the foregoing motions, or any of them, this defendant moves to strike from Count One and Count Two 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 (\$2,000) 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 each of the foregoing motions.

Without waiving the foregoing motions, or any of them, this defendant moves to strike from Count Three of the plaintiff's complaint 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 State Highway Patrol of Alabama, 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) 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 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:

"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.

*The Conway McLeod Turner & Rogers*  
Attorneys For defendant Maryland Casualty Company.

578

AT LAW

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

---

Hans G. Erickson,  
Plaintiff

vs.

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

---

Motions to Strike Portions  
of Complaint

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*Filed June 5/1940*  
*W. S. Duck*  
*clerk*

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

HANS G. ERICKSON,

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.
3. For aught that appears from the allegations of said complaint, or any or all of the counts thereof, this defendant, in his capacity as a State Highway Patrolman, owed no official duty to the plaintiff in and about the matters and things complained of.
4. That it affirmatively appears that any duty owed by this defendant to the plaintiff in and about the matters and things complained of was an individual duty as contradistinguished with an official duty in his capacity as a Highway Patrolman of the State of Alabama.
5. That no facts are alleged in said complaint sufficient to show a breach of this defendant's official bond as a Highway Patrolman of the State of Alabama.

2.

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

6. That said count states no cause of action.

7. 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.

8. For aught that appears from the allegations of said count, any duty which this defendant owed to the plaintiff was an individual duty as contradistinguished with a duty he owed on account of the fact that he was a State Highway Patrolman acting in the due course of his authority as such.

9. 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.

10. 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.

11. 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.

12. 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.

3.

13. For aught that appears, this defendant was not engaged in the performance of any official act, duty or function at the time of the commission of the alleged acts out of which the alleged injury to the plaintiff arose.

14. That for aught that appears, the automobile of the plaintiff, with which it is alleged the automobile being operated by this defendant collided, was not in, upon or occupying that part or portion of the said highway upon which the operator thereof at said time and place was lawfully entitled to operate the same.

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

15. That said count states no cause of action.

16. 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.

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

18. 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.

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

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.

4.

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.

22. That for aught that appears, the automobile of the plaintiff, with which it is alleged the automobile being operated by this defendant collided, was not in, upon or occupying that part or portion of the said highway upon which the operator thereof at said time and place was lawfully entitled to operate the same.

And specially demurring to Count Three thereof, he assigns the following:

23. That said count states no cause of action.

24. 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.

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

26. That simple negligence and wanton negligence are both charged in said count.

27. 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.

28. 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.

5.

29. 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.

30. 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.

31. That for aught that appears, the automobile of the plaintiff, with which it is alleged the automobile being operated by this defendant collided, was not in, upon or occupying that part or portion of the said highway upon which the operator thereof at said time and place was lawfully entitled to operate the same.

32. For aught that appears from the allegations of said complaint, or any or all of the counts thereof, this defendant, in his capacity as a State Highway Patrolman, owed no official duty to the plaintiff in and about the matters and things complained of.



Thos. S. Lawson,  
Attorney General,



Chas. L. Rowe,  
Assistant Attorney General,

Attorneys for the defendant, York.

Demover

RECORDED

Filed May 4, 1940  
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 HANS G. ERICKSON.

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

R. S. Duck

Clerk, Circuit Court, Baldwin  
County, Alabama.

HANS G. ERICKSON,

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 <sup>authority and while acting under color of his office</sup> ~~employment~~, negligently proceeded on, over or along U. S. Highway Number 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 the said plaintiff, 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 his car to the pavement and was injured

in the manner following: Said plaintiff was thrown against his steering wheel with such an impact that he was badly injured in the solar plexus, that his chest was badly injured, his left wrist was severely sprained, one side of his right knee badly cut about three inches, his left knee bruised, the back of his head severely bruised and his hearing impaired, and he was otherwise injured in a more or less permanent nature; that as a result thereof the said plaintiff was confined to a hospital for eight (8) days under the care and supervision of a physician, and was forced to incur hospital and doctor's bills, and that the said plaintiff suffered severe physical pain and mental anguish, and is still under the care of a physician; that the said car of the said plaintiff was completely demolished by the impact from the car operated by the said R. A. York and was rendered worthless and of no further value, and by reason of said injuries said plaintiff 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.

X  
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 *authorizing and on under color of his office* was acting within the line and scope of his ~~employment~~, proceeded on, over or along U. S. Highway Number 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 the said plaintiff, 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 his automobile to the pavement and was injured in the manner following: Said plaintiff was thrown against his steering wheel with such an impact that he was badly injured in the solar plexus, that his chest was badly injured, his left wrist was severely sprained, one side of his right knee badly cut about three inches, his left knee bruised, the back of his head severely bruised and his hearing impaired, and he was otherwise injured in a more or less permanent nature; that as a result thereof the said plaintiff was confined to a hospital for eight (8) days under the care and supervision of a physician, and was forced to incur hospital and doctor's bills, and that the said plaintiff suffered severe physical pain and mental anguish, and is still under the care of a physician; that the said car of the said plaintiff was completely demolished by the impact from the car operated by the said R. A. York and was rendered worthless and of no further value, and by reason of said injuries said plaintiff 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 neg-

ligent 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 was *authoritatively and while acting under color of his office* acting within the line and scope of his employment and proceeded on, over or along U. S. Highway Number 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 the said plaintiff, who was then and there lawfully on said public highway in said County, and by reason of said recklessness, wantonness and wilfulness, and as a proximate consequence thereof, the plaintiff was thrown from his car to the pavement and was injured in the manner following:

Said plaintiff was thrown against his steering wheel with such an impact that he was badly injured in the solar plexus, that his chest was badly injured, his left wrist was severely sprained, one side of his right knee badly cut about three inches, his left knee bruised, the back of his head severely bruised and his hearing impaired, and he was otherwise injured in a more or less permanent nature; that as a result thereof the said plaintiff was confined to a hospital for eight (8) days under the care and supervision of a physician, and was forced to incur hospital and doctor's bills, and that the said plaintiff suffered severe physical pain and mental anguish, and is still under the care of a physician; that the said car of the said plaintiff was completely demolished by the impact from the car operated by the said R. A. York and was rendered worthless and of no further value, and by reason of said injuries said plaintiff 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 wilfull 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.

John P Beebe  
Attorney for Plaintiff.

The plaintiff demands a trial by Jury:

John P Beebe  
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-Rosamond and  
Company, Inc., as the agents of Maryland Casualty Company, a corporation of  
Baltimore, Maryland.

Sheriff of 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  
S. G. Mosley  
Sheriff Montgomery County  
By E. K. C.  
Deputy Sheriff

578

RECORDED

HANS G. ERICKSON,  
Plaintiff,

vs.

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

ORIGINAL  
SUMMONS AND COMPLAINT.

Filed April 5, 1940,

R. S. Duchs  
Clerk.

JOHN P. BEEBE  
ATTORNEY AT LAW

Received in Sheriff Office  
April 5<sup>th</sup> 1940  
322 W. P. Stuart Sheriff

Executed this the 8 day of April 1940  
on Maryland Casualty  
Company a corporation  
of Baltimore Maryland  
by leaving a copy of within with  
Roger G. Rice  
Adjutant  
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. P. Stuart  
By M. B. Hamilton Sheriff  
Deputy Sheriff