

CIARA M. NOBLE, as Administra-
trix of the Estate of Auburn
H. Noble, Deceased,

Plaintiff,

vs.

JOHN THOMAS SMITH and the
HOWARD HALL C O M P A N Y,
INC., a corporation,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

No. 1196

COUNT ONE

The plaintiff claims of the defendants the sum of FIFTY THOUSAND and no/100 (\$50,000.00) DOLLARS, as damages, for that on, to-wit, the 17th day of March, 1948, the defendant John Thomas Smith, who was then and there a servant or agent of the defendant, Howard Hall C o m p a n y, Inc., while acting within the line and scope of his employment as such, so negligently operated a motor vehicle on public highway 31, at a point between Bay Minette, Alabama, and Stapleton, Ala-
about two miles north of Stapleton
bama, in Baldwin County, Alabama, as to cause or allow said motor truck to *then and there* run against or collide with the motor truck in which plaintiff's intestate, Auburn H. Noble, was riding *on said truck* as a proximate result of which negligence, plaintiff's in-
from
testate suffered injuries from which he died, all to her damage as aforesaid; wherefore plaintiff brings this suit and asks judgment in the above amount.

COUNT TWO

The plaintiff claims of the defendants the sum of FIFTY THOUSAND and no/100 (\$50,000.00) DOLLARS, as damages, for that on, to-wit, the 17th day of March, 1948, the said John Thomas Smith, who was then and there a servant or agent of the de-
about two miles north of Stapleton
fendant, Howard Hall C o m p a n y, Inc., while acting within the line and scope of his employment as such, wantonly injured plaintiff's intestate, Auburn H. Noble on public high-
about two miles north of Stapleton
way 31, between Bay Minette and Stapleton, in Baldwin County, Alabama, by then and there wantonly driving a motor truck against a motor truck in which plaintiff's intestate was then

and there riding, as a proximate result of which wantonness,
plaintiff's intestate suffered injuries from which he died;
wherefore plaintiff brings this suit and asks judgment in
the above amount.

Hybad & Paxon
Johnston McCall & Paxon
Attorneys for Plaintiff

Plaintiff demands a trial by jury in the above entitled
cause.

Hybad & Paxon
Johnston McCall & Paxon
Attorneys for Plaintiff

We the jury find for the plaintiff
and fix the damages at five thousand
dollars, \$5,000.00

George Thronan
Foreman

Received in Sheriff's Office
this 10 day of June, 1948
TAYLOR WILKINS, Sheriff

Executed this the 11 day of June, 1948
on Howard Hall Company
Incorporated in California

by leaving a copy of within with
D. A. Draper
Agent
of said company.
HOLT A. McDOWELL, Sheriff
Jefferson County, Alabama

By H. N. Herring D. S.

EXECUTED this the 14
day of June, 1948
by leaving a copy of the within with
John Thomas Smith
HOLT A. McDOWELL, Sheriff,
Jefferson County, Alabama

By H. N. Herring D. S.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW

No. 1196

RECORDED

CLARA M. NOBLE, as Ad-
ministratrix of the Estate
of Auburn H. Noble, De-
ceased,

Plaintiff,

vs.

JOHN THOMAS SMITH and the
HOWARD HALL COMPANY, INC.,
a corporation,

Defendants.

C O M P L A I N T

Filed 6-10-48
Alice J. Duck
clerk

JOHNSTON, MCCALL & JOHNSTON
LAWYERS
SUITE 804, FIRST NATIONAL BANK ANNEX
MOBILE 4, ALABAMA

CLARA M. NOBLE, as Admin-
istratrix of the Estate of
Auburn H. Noble, Deceased,

Plaintiff,

VS.

JOHN THOMAS SMITH and the
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a Corporation,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

AT LAW. NUMBER 1196.

TO J. M. KNIGHT, COURT REPORTER, NATIONAL BANK OF COMMERCE BUILD-
ING, NORFOLK, VIRGINIA:

Know Ye, That we, reposing confidence in your integrity,
skill and ability, have appointed you Commissioner to take the
testimony of Lawrence C. Pharo, Jr., a material witness for the
Plaintiff in this cause and we hereby authorize and empower you
to cause to come before you, Lawrence C. Pharo, Jr. of Norfolk,
Virginia, the said witness and take his deposition on oath on the
attached interrogatories and cross interrogatories, which deposi-
tion, when so taken, shall be signed by said witness and certified
by you as Commissioner. You are further commanded, the deposition,
when so taken, with this commission, to return under your hand
and seal to the Clerk of said Court with all convenient speed.

WITNESS my hand this 20th day of October, 1948.

Alice J. Smith
Clerk.

CLARA M. NOBLE, as Administra-
trix of the Estate of Auburn
H. Noble, Deceased,

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IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW No. 1196

Come the defendants in the above styled cause and respectfully show unto the Court that Lawrence C. Pharo, Jr. is absent from the State of Alabama, residing in Norfolk, Virginia, and that the said Lawrence C. Pharo, Jr. is a material witness in this cause, wherefore defendants request that a commission be issued by the Clerk of this Court to one or more persons to take the deposition of said witness, after prescribing the notice to be given the opposing party, or his attorney, of the time and place of taking same. Defendants respectfully suggest that J. M. Knight, Court Reporter, National Bank of Commerce Building, Norfolk, Virginia, is a suitable person to be named as Commissioner to be appointed for the taking of the testimony of said witness in this cause.

McCORVEY, TURNER, ROGERS, JOHNSTONE & ADAMS
AND J. B. BLACKBURN
BY *R. F. Adams*
Attorneys for Defendants

State of Alabama
Mobile County

Before me, *Ora S. Nelson*, a Notary Public in and for said state and county personally appeared R. F. Adams, who is known to me and being by me first duly sworn deposes and says that he is one of the attorneys for defendants in the above styled cause; that he is informed and believes, and on such information and belief avers that the allegations hereinabove contained are true and correct.

Sworn to and subscribed before me
on this the 13th day of October, 1948.

Ora S. Nelson
Notary Public, Mobile County, Alabama.

The defendants request that the following interrogatories be propounded to Lawrence C. Pharo, Jr. by the Commissioner appointed to take his testimony in this cause:

1. What is your name, age, address and occupation?
2. Were you, on or about March 17, 1948 driving from Auburn, Alabama to Mobile, Alabama?
3. Were you, on said occasion, driving southwardly on U. S. Highway No. 31 between Bay Minette and Mobile, Alabama at about 4:30 P. M.?
4. Were you, at said time on said highway, at a point 9 or 10 miles south of Bay Minette, Alabama, following a van up a slight grade on said highway?
5. Did said van or the tractor pulling it collide with another vehicle approaching it from the opposite direction, and did the automobile you were driving collide with said van?
6. If you have answered the preceding interrogatory in the affirmative, please state in your own words the circumstances under which said collision or collisions occurred.
7. How long had you travelled behind, and in sight of said van which was ahead of you going in the same direction you were going, before said collision or collisions occurred?
8. On which side of the center line of the highway were the van and tractor which was pulling it travelling at the time of and prior to the time of said collisions?
9. Was it travelling well on its right hand side of the highway?
10. Did the van and tractor within the last 100 yards travelled before it was involved in said collisions get over on its left of the center of said highway?
11. Did the van and tractor within the last 500 yards travelled before it was involved in said collisions get over on its left of the center of said highway?
12. Did the van and tractor at any time while you were close enough to it to observe its position on the highway get over on its

left of the center of said highway?

13. Had you, prior to your collision with the van seen the Ford truck which was involved in the accident?

14. On what side of the center line of said highway did the Howard Hall Company tractor and van collide with the Ford truck?

15. Had the tractor pulled off to the shoulder on its right of the pavement prior to its collision with the Ford truck?

16. Who was in the car with you?

McCORVEY, TURNER, ROGERS, JOHNSTONE & ADAMS
AND J. B. BLACKBURN

BY

R. F. Adams

Attorneys for Defendants

State of Alabama
Mobile County

Before me, Orsa S. Nelson, a Notary Public in and for said state and county, personally appeared R. F. Adams, one of the attorneys for defendants, who, being by me first duly sworn, on oath deposes and says that if the answers to the interrogatories propounded to the above named witness are well and truly made, they will be material evidence for the defendant in the trial of this cause.

R. F. Adams

Sworn to and subscribed before
me on this the 13th day of October, 1948.

Orsa S. Nelson
Notary Public, Mobile County, Alabama.

I hereby accept service of a copy of
Within Interrogatories this Oct-13-1948
Orsa S. Nelson
as one of the attys for Pls.

FILED

OCT 14 1948

ALICE J. DUCK, Clerk

MCCORVEY, TURNER, ROGERS, JOHNSTONE & ADAMS

ATTORNEYS AT LAW

NINTH FLOOR, MERCHANTS NATIONAL BANK BUILDING

MOBILE, ALABAMA

CLARA M. NOBLE, as Administra-
trix of the Estate of Auburn
H. Noble, Deceased,

Plaintiff,

vs.

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Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

No. 1196

OBJECTIONS OF THE PLAINTIFF TO INTERROGATORIES PROPOUNDED TO
THE WITNESS, LAWRENCE C. PHARO, JR. :

Comes the plaintiff and objects to Interrogatory No. 6
on the following separate and several grounds:

- (a) Said interrogatory seeks no specific information.
- (b) Said interrogatory asks no direct question.
- (c) Because said interrogatory seeks to elicit no specific
fact.

The plaintiff also objects to Interrogatory No. 9 on the
following separate and several grounds:

- (a) Said interrogatory is leading.
- (b) Said interrogatory calls for a conclusion of the
witness.

CROSS-INTERROGATORIES

Without waiving the objections to the foregoing interrogatories,
comes the plaintiff and propounds to the witness, Lawrence C.
Pharo, Jr., the following cross-interrogatories, separately and
severally:

1. At the time of the collision between the defendant's van
truck travelling south on U. S. Highway 51 in Baldwin County,
Alabama, at a point between Bay Minette and Stapleton, and a
Ford truck travelling north on said highway, on March 17, 1948,
please state in which direction you were travelling.

2. Were you behind the van truck?

3. Were you travelling about 40 feet behind said van truck
at the time of the collision?

4. If not, how far were you behind it at the time of the
collision?

5. How fast were you travelling at a point 100 feet north of the collision?

6. At a point 40 feet north of the collision?

7. How fast were you travelling immediately prior to the collision?

8. Were you keeping a look out ahead of you at the time of and immediately prior to the collision?

9. Were you looking ahead as you approached the point of the collision?

10. Did you see the Ford truck travelling north prior to its collision with the van truck?

11. Did a head-on collision occur between the van truck of the defendants and the Ford truck travelling north?

12. Did you hear the collision?

13. What happened to the Ford truck?

14. Was it pushed southwardly by the van truck?

15. How far southwardly from the point of collision was said Ford truck pushed by the van truck?

16. Did the van truck push the Ford truck completely off of the pavement to the right side of the pavement?

17. Did the van truck also go off the pavement on its right side into a ditch?

18. Was the front end of the van truck and the front end of the Ford truck welded together after the collision and after they came to rest?

19. Did you hear the driver of the van truck at the scene of the collision state that his air brakes were put out of commission as a result of the accident and that it was due to this fact that his truck went so far after the two vehicles collided?

20. When said van truck turned off the paved highway to the right after the collision, please state if the left rear of said van truck extended over the center line of the paved highway.

21. Did you ever see the Ford truck prior to its collision with the van truck?

22. What directed your attention to the fact that a collision was imminent?

23. Did your automobile come in contact with the van truck?
24. What part of your automobile came in contact with the van truck?
25. What part of said van truck came in contact with your automobile?
26. Were said trucks on the paved highway at the time your automobile came in contact or struck the van truck?
27. Where did your automobile come to a stop with reference to the point of collision between the two trucks?
28. How far south of the point of collision between the trucks did your automobile first come to rest or stop?
29. Did your automobile strike the van truck before the said truck left the paved highway?
30. Did it strike the van truck while the van truck was still travelling forward?
31. At that time, did you know that the Ford truck was in front of the van truck?
32. When did you first know that the Ford truck was in front of the van truck?
33. Was it after the two trucks came to rest on the west side of the highway, that is the right side in the direction in which you were travelling?
34. Please examine the document which is attached to these cross-interrogatories as Exhibit "A" and state if you made such a statement to any one on March 19, 1948.
35. Who was said statement made to?
36. Who wrote it out?
37. Did you write out said statement made on March 19, 1948?
38. Where was it made?
39. When was it made and who was present at the time?
40. Was said statement secured from you by one Mr. Chris G. Hume, Jr.?
41. If not, who got you to make said statement?
42. Was the written statement which you made delivered over

to the person taking it?

43. Did you send the document attached hereto as Exhibit "A" to Mr. Norborne C. Stone, Jr., an attorney of Bay Minette, Alabama?

44. Was this document mailed to him during the month of May, 1948?

45. If not, please state when it was mailed to him.

46. Is the signature appearing on the second page of said statement attached hereto as Exhibit "A" your signature?

47. Is said Exhibit "A" a transcript of the statement given by you on March 19, 1948?

48. Was the collision to which you refer in the document attached hereto as Exhibit "A" the only collision in which you were involved on the 17th day of March, 1948, between Bay Minette and Stapleton, Baldwin County, Alabama, on U. S. Highway 31 between 4 and 5 o'clock in the afternoon?

49. Did you see the men in the Ford truck after the collision?

50. Were they both dead?

51. Did you learn their names at the time?

52. What were their names?

53. Were their names Auburn H. Noble and Julius Holloway?

54. Were you involved in any other collision between Bay Minette and Stapleton, Alabama, on the afternoon of March 17, 1948?

Hyatt and Chason
Johnston, McCall & Johnston
Attorneys for Plaintiff

The undersigned, as one of the attorneys for the defendants in the above entitled cause, hereby accepts service of a copy of the foregoing objections to interrogatories and a copy of the cross-interrogatories on this 15 day of October, 1948.

R. F. Adams
Attorney for the defendants

C
O
P
Y

Mobile, Alabama, March 19th, 1948

Report of accident by Mr. Lawrence C. Pharo, Jr., Apt. 5-A, Azalea Court,
1820 Old Government Street, Mobile, Alabama

I am 23 years of age and a student at Alabama Polytechnic Institute at Auburn, Alabama.

While returning from college to my home in Mobile on Wednesday, March 17, 1948, at about the hour of 4:15 PM, I was involved in an accident about three miles north of Stapleton on U.S. Highway #31, Baldwin County, Alabama. I was driving my 1942 Dodge 5-Passenger coupe. There were three other occupants of my car, all students of the same college and all residents of Mobile, Alabama. We were traveling in a southwardly direction on said highway upon our side of the road and were about 40 feet behind a large truck with van semi-trailer, owned by Jack Cole Company and driven by J. T. Smith and my speed was about 40-45 miles per hour when the said truck suddenly started stopping in emergency. We were on a slight down grade and in a curve bearing to our right. It was my intention to pass this truck but I did not intend to pass this truck until after we got out of the curve. I had not been following this truck but was gradually overtaking it and as before stated my car was about 40 feet behind it when the emergency arose.

I could not see what was taking place in front of the large truck, but a head-on collision occurred between said truck and a light Ford truck. The driver of the van stated immediately after the accident that the light truck he was meeting got off the pavement with its right wheels on its right side of the road and the shoulder of the road was slightly below the paved grade and in attempting to get back on the pavement, the light truck suddenly shot over to its left and directly in front of the van which was the cause of the head-on collision.

There were two middle-aged white men in the light truck, both of whom were fatally injured. One died immediately and the other died shortly after arriving at the Mobile Hospital. The front end of the large truck or trailer and the front end of the light truck were welded together from the impact. According to one of the investigating Officers of the Highway Patrol Department, the large truck pushed the small truck backwards a distance of about 96 feet after the impact. The driver of the large truck stated that his air brakes were put out of commission as a result of the accident and it was due to this fact that his truck went so far after the two vehicles collided. The large truck left the highway to its right where it came to rest at the side of the road. When said truck turned off the highway to the right, the left rear of the van extended over the center line of the road. I could not see ahead of the truck and did not realize an accident was about to happen before the truck started making an emergency stop. I cut to the left and applied my brakes promptly but the reaction period and distance was not sufficient to avert colliding with the left rear corner of the van. I missed the van with the front end of my car but the right side beginning at the right front corner body post, struck the corner of the van and practically demolished the top of my car. I stopped practically at the point of collision. The impact stopped me.

I was instructed by the investigating Officer to report to the Justice of Peace in Bay Minette, Alabama, this morning and I was fined \$25.00 and costs on a charge of reckless driving. The Judge stated that he was assessing the minimum fine on the ground that I did not have my car under control. I paid the fine and there were no other charges against me.

Miss Anne Bailey was the only occupant in my car that sustained any personal

Exhibit "A"

injury. She sustained a cut on her forehead, right ear and right shoulder. She received first aid treatment from Dr. Sherman in Bay Minette and is presently under treatment of Dr. McVay in Mobile. She was not hospitalized other than being X-rayed at the Mobile Infirmary, which proved negative.

My car struck the van before it left the highway and while it was still traveling forward. At that time I did not know that the light truck was in front of the van truck. The glancing impact of the side of my car and the corner of the van did not noticeably damage the van.

I feel certain the impact between my car and the van did not contribute in any way to the damage to the two trucks or the fatalities resulting from the accident of the two trucks.

Lawrence B. Pharo

Exhibit "A" Cont'd

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW No. 1196

CLARA M. NOBLE, as Ad-
ministratrix of the Es-
tate of Auburn H. Noble,
Deceased,

Plaintiff,

vs.

JOHN THOMAS ELLI and the
HOWARD HALL COMPANY, INC.,
a corporation,

Defendants.

PLAINTIFF'S OBJECTIONS TO
INTERROGATORIES PROFOUNDED
BY THE DEFENDANTS TO THE
WITNESS, LAWRENCE C. PHAIR,
AND CROSS-INTERROGATORIES

FILED

OCT 16 1948

ALICE J. DUCK, Clerk

JOHNSTON, MCCALL & JOHNSTON
LAWYERS
SUITE 804, FIRST NATIONAL BANK ANNEX
MOBILE 4, ALABAMA

CLARA M. NOBLE, as Adminis-
tratrix of the Estate of
Auburn H. Noble, Deceased,

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IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

AT LAW. NUMBER 1196.

By virtue of the Commission hereto annexed, issued from
the office of the Clerk of the Circuit Court of Baldwin
County, State of Alabama, I, the Commissioner therein named,
have called and caused to come before me the said LAWRENCE
C. PHARO, JR., the witness named in said commission, on this
27th day of October, 1948, at 502 National Bank of Commerce
Building, Norfolk, Virginia, and having duly cautioned and
sworn the said witness to speak the truth, the whole truth,
and nothing but the truth, LAWRENCE C. PHARO, JR., the said
witness, deposeth and saith as follows:

-----oOo-----

1 1st. To first interrogatory he saith: Lawrence C.
2 Pharo, Jr., age 24; 232 West 35th Street, Norfolk, Virginia;
3 electronics engineer employed at the Norfolk Naval Shipyard,
4 Portsmouth, Virginia.

5 2nd. To second interrogatory he saith: Yes.

6 3rd. To third interrogatory he saith: Yes.

7 4th: To fourth interrogatory he saith: Yes, I fol-
8 lowed a van up a slight grade and then I followed a van
9 down a slight grade after passing the crest of the incline.

10 5th. To fifth interrogatory he saith: Yes.

11 6th. To sixth interrogatory he saith: I was follow-
12 ing the van down a slight grade. I was going between 40 and
13 45 miles per hour gradually approaching the van. My inten-
14 tion was to pass that van at the best moment. As we were
15 entering a curve bearing to our right, when my car was 40
16 to 45 feet behind the van I stayed directly behind the van.
17 Suddenly the van's tail light came on. As I could not see
18 around the van and had no idea that an accident was about to
19 take place, I was, of course, taken completely by surprise.
20 I applied my brakes as promptly as possible and as it seemed
21 that I had a better chance to avert a collision by doing so,
22 I also pulled my car to the left as quickly as safety would
23 permit. The van stopped suddenly, however, and although I
24 swung my car to the left, the left rear corner of the van
25 was struck by the right door post of my car, demolishing

1 the windshield, right door and the steel top. The front of
2 my car from the cowl down was not damaged. Immediately
3 after the impact the rear of my car swung around to the left
4 in such a way that the car was at an angle of approximately
5 45° to the center line of the highway. My car stopped
6 straddling the center line of the highway and the van con-
7 tinued off into a small ditch or depression on the right
8 hand side of the highway, on the western side of the highway.
9 It seemed as though the left rear corner of the van went
10 about six inches over the center of the highway as the van
11 driver pulled off to the right. I did not actually see
12 the front of the van truck when it was going off to the
13 right but after the accident I saw that the van truck had
14 been to the right of the highway.

15 7th. To seventh interrogatory he saith: To the
16 best of my knowledge I had been gradually pulling up be-
17 hind the van for about five minutes while going at a speed
18 of about 40 to 45 miles per hour.

19 8th. To eighth interrogatory he saith: On the right
20 hand side during the entire time prior to and at the time
21 of the collisions.

22 9th. To ninth interrogatory he saith: Yes, as far
23 over on the right as he could safely go.

24 10th. To tenth interrogatory he saith: No.

25 11th. To eleventh interrogatory he saith: To the

1 best of my knowledge, no.

2 12th. To twelfth interrogatory he saith: No.

3 13th. To thirteenth interrogatory he saith: No.

4 14th. To fourteenth interrogatory he saith: On the
5 right hand side, on the west side of the highway. The
6 tractor and van were on the right and proper side of the
7 highway when struck head-on by the other vehicle.

8 15th. To fifteenth interrogatory he saith: No.

9 16th. To sixteenth interrogatory he saith: Miss Anne
10 Bailey, Miss Mamye Holloway and Mr. Fred Gunn, Jr. I don't
11 know their addresses. At that time they were students at
12 Alabama Polytechnic Institute.

13 CROSS-INTERROGATORIES

14
15 1st. To first cross-interrogatory he saith: South.

16 2nd. To second cross-interrogatory he saith: Yes.

17 3rd. To third cross-interrogatory he saith: I cannot
18 positively state when the collision took place; I was about
19 40 feet behind the van truck when the tail light of the van
20 truck came on.

21 4th. To fourth cross-interrogatory he saith: I don't
22 know.

23 5th. To fifth cross-interrogatory he saith: Forty
24 to 45 miles per hour; I don't know exactly where the colli-
25 sion took place.

1 6th. To sixth cross-interrogatory he saith: I don't
2 know when the collision took place.

3 7th. To seventh cross-interrogatory he saith: Forty
4 to 45 miles per hour.

5 8th. To eighth cross-interrogatory he saith: Yes.

6 9th. To ninth cross-interrogatory he saith: Yes.

7 10th. To tenth cross-interrogatory he saith: No.

8 11th. To eleventh cross-interrogatory he saith: Yes,
9 I saw that it had happened after the accident was over.

10 12th. To twelfth cross-interrogatory he saith: I
11 don't remember hearing the collision.

12 13th. To thirteenth cross-interrogatory he saith:
13 It hit the van truck head-on.

14 14th. To fourteenth cross-interrogatory he saith:
15 I don't know. I did not see the Ford truck before or at
16 the time of the collision.

17 15th. To fifteenth cross-interrogatory he saith: I
18 don't know.

19 16th. To sixteenth cross-interrogatory he saith: Yes,
20 I saw that after the accident.

21 17th: To seventeenth cross-interrogatory he saith:
22 Yes.

23 18th. To eighteenth cross-interrogatory he saith:
24 They were securely hooked together.

25 19th. To nineteenth cross-interrogatory he saith: No.

1 20th. To twentieth cross-interrogatory he saith:
2 I think it did but only a little, possibly six inches.

3 21st. To twenty-first cross-interrogatory he saith:
4 No.

5 22nd. To twenty-second cross-interrogatory he saith:
6 My first notice that something was wrong was when I saw the
7 tail light of the van come on. I did not know a collision
8 was taking place in front of me.

9 23rd. To twenty-third cross-interrogatory he saith:
10 Yes.

11 24th. To twenty-fourth cross-interrogatory he saith:
12 Right door post, right door, right side of top and right
13 windshield.

14 25th. To twenty-fifth cross-interrogatory he saith:
15 Left rear corner.

16 26th. To twenty-sixth cross-interrogatory he saith:
17 The rear of the van was on the right side of the paved high-
18 way, except that the left rear corner of the van was six
19 inches over the center line of the highway. I can't say
20 about the Ford truck.

21 27th. To twenty-seventh cross-interrogatory he saith:
22 I couldn't say because I don't know where the two trucks hit
23 except that they hit on the right side of the road.

24 28th. To twenty-eighth cross-interrogatory he saith:
25 I don't know. I couldn't say because I don't know where

1 they hit except that I know they hit on the right side of
2 the road.

3 29th. To twenty-ninth cross-interrogatory he saith:
4 Yes, I struck it before it left the highway. I couldn't
5 see the front of the van truck.

6 30th. To thirtieth cross-interrogatory he saith: I
7 think it did.

8 31st. To thirty-first cross-interrogatory he saith:
9 No.

10 32nd. To thirty-second cross-interrogatory he saith:
11 About five minutes after the accident happened.

12 33rd. To thirty-third cross-interrogatory he saith:
13 Yes.

14 34th. To thirty-fourth cross-interrogatory he saith:
15 Yes.

16 35th. To thirty-fifth cross-interrogatory he saith:
17 A Mr. Fisher.

18 36th. To thirty-sixth cross-interrogatory he saith:
19 Mr. Fisher, an adjuster making an investigation in behalf
20 of the insurers of my automobile.

21 37th. To thirty-seventh cross-interrogatory he saith:
22 No.

23 38th. To thirty-eighth cross-interrogatory he saith:
24 In Mr. Fisher's office in Mobile, Alabama. I think it was
25 in the American National Bank Annex.

1 39th. To thirty-ninth cross-interrogatory he saith:
2 March 19, 1948. Miss Mamye Hollaway and Mr. Fred Gunn, Jr.

3 40th. To fortieth cross-interrogatory he saith: No.

4 41st. To forty-first cross-interrogatory he saith:
5 Mr. Fisher.

6 42nd. To forty-second cross-interrogatory he saith:
7 Yes.

8 43rd. To forty-third cross-interrogatory he saith:
9 Yes.

10 44th. To forty-fourth cross-interrogatory he saith:
11 Yes.

12 45th. To forty-fifth cross-interrogatory he saith:
13 See answer above.

14 46th. To forty-sixth cross-interrogatory he saith:
15 Yes.

16 47th. To forty-seventh cross-interrogatory he saith:
17 Yes.

18 48th. To forty-eighth cross-interrogatory he saith:
19 Yes.

20 49th. To forty-ninth cross-interrogatory he saith:
21 Yes.

22 50th. To fiftieth cross-interrogatory he saith: No.
23 One looked to be dead. The other was still alive.

24 51st. To fifty-first cross-interrogatory he saith:
25 Yes, from the police.

1 52nd. To fifty-second cross-interrogatory he saith:
2 One was named Holloway and the other man was named Noble.

3 53rd. To fifty-third cross-interrogatory he saith:
4 Yes, as far as I know.

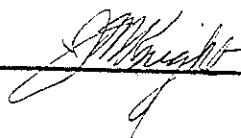
5 54th. To fifty-fourth cross-interrogatory he saith:
6 No.

7
8 *Lawrence C. Pharo, Jr.*
9 Deponent.

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11 -----oOo-----
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1 I, J. M. KNIGHT, the Commissioner in said commission
2 named, do hereby certify that the foregoing testimony and
3 answers, taken down and written by me in the words of the
4 witness, LAWRENCE C. PHARO, JR., were read over to him;
5 that he assented, swore to and subscribed the same in my
6 presence, at the time and place herein mentioned; that
7 proof hath been made before me of the identity of the said
8 witness; that I am not of counsel or kin to either of the
9 parties of said cause, nor interested in the event thereof.
10 And I enclose the testimony, together with said commission
11 and the interrogatories, direct and cross, to the said
12 Clerk of the Circuit Court, whence the same emanated, as my
13 full execution of said commission.

14 Given under my hand and seal this 28th day of October,
15 1948.

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25
(L.S.)

RECORDED

Filed 10-1-48
Alice J. Hirsch
Clerk

CLARA M. NOBLE, as Administra-
trix of the Estate of Auburn
H. Noble, Deceased,

Plaintiff,

vs

JOHN THOMAS SMITH and the
HOWARD HALL COMPANY, INC.,
a corporation,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW No. 1196

Come the defendants in the above styled cause,
separately and severally, and respectfully move the court that
the Ninth (9th) interrogatory heretofore propounded to each
of the defendants by the plaintiff be separated from the rest
of said interrogatories, and that the answers thereto be
likewise separated from the rest of said answers, to the end that
if said interrogatories and answers thereto be introduced in
evidence by the plaintiff, the jury will not have before it in
the jury room said interrogatory nine (9) and the defendants'
answers thereto. As grounds for said motion the defendants
assign, separately and severally, the following:

Said interrogatory nine (9) deals exclusively with the
question of public liability insurance carried by the defendant,
Howard Hall Company, and it is stated in the interrogatory that
it is for the purpose of qualifying the jury. The answer having
been given, Plaintiffs are now in a position to see that the jury
is qualified, and any other reference to liability insurance given
to the jury would be highly prejudicial and improper.

Respectfully submitted,

MCCORVEY, TURNER, ROGERS, JOHNSTONE & ADAMS
AND J. B. BLACKBURN

BY

[Signature]
Attorneys for Defendants

*I, John Hason as one of the attorneys for
the Plaintiff in the above styled cause
hereby accept service of a copy of
above motion this 22nd Day of Dec. 1948. John Hason*

CLARA M. NOBLE, as Administra-
trix of the Estate of Auburn
H. Noble, Deceased,

Plaintiff,

vs.

JOHN THOMAS SMITH and the
HOWARD HALL C O M P A N Y,
INC., a corporation,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

No. _____

INTERROGATORIES PROPOUNDED TO EACH OF THE DEFENDANTS BY THE
PLAINTIFF:

1. Please give the age and address of the defendant, John Thomas Smith. (a) How long had he been in the employ of the defendant, Howard Hall C o m p a n y, Inc. on the 17th of March, 1948? (b) How long had he been driving trucks on that date? (c) When was he employed by the defendant, Howard Hall C o m p a n y, Inc? (d) Had he ever made any trips along Highway 31 between Bay Minette and Stapleton in Baldwin County, Alabama, prior to March 17, 1948? (e) If so, for how long a time had he been driving trucks or other motor vehicles along said highway past said towns? (f) When was the last time, prior to March 17, 1948, that he passed on highway 31 between Bay Minette and Stapleton in Baldwin County, Alabama? (g) Please state whether a motor truck operated by the defendants on March 17, 1948, between Bay Minette and Stapleton in Baldwin County, Alabama, had a collision while travelling south on said highway at said time and place with another motor vehicle travelling north on said highway at said time and place.

2. On or about March 17, 1948, was the defendant, John Thomas Smith, operating a motor vehicle on Highway 31 between Bay Minette and Stapleton in Baldwin County, Alabama? If so, please state the type of motor vehicle he was operating. (a) What was the length of the same, including the trailer? (b) What was the length of said motor vehicle, excluding the trailer? (c) What was the weight of said motor vehicle? (d) What was its width at its widest point? (e) What was the width of the

trailer at its widest point? (f) What was the weight of said motor truck and trailer without a load? (g) What was its weight with the load it was transporting March 17, 1948 between Bay Minette and Stapleton? (h) What make of motor vehicle was it? (i) What year model was said motor vehicle? (j) Please state the nature of the brakes with which it was equipped?

(3) Did the motor vehicle owned and operated by the Howard Hall Company, Inc. and driver by John Thomas Smith on March 17, 1948, have a collision in Baldwin County, Alabama, on Highway 31 near Stapleton with another motor vehicle? (a) If you answer yes, please state how far north of Stapleton said collision occurred. (b) What was the width of the pavement at the point of the collision? (c) What type of pavement was said highway constructed of at the point of the collision? (d) Was the road straight at the point of the collision looking north? (e) If so, for what distance? (f) Was the highway at the point of collision straight looking south? (g) If so, for what distance? (h) If you answer that there was a slight curve looking south from the point of collision, please state how far south on said highway a driver in a motor vehicle of the type the defendants were operating on said date, could see from the point of the collision? (i) What time of day did said collision occur? (j) What was the condition of the weather? (k) Was it fair or cloudy? (l) Was the pavement wet or dry?

4. If you answer that the motor vehicle driven by John Thomas Smith collided with another motor vehicle near Stapleton on Highway 31 in Baldwin County on March 17, 1948, please state the time of day said collision occurred. (a) When did said John Thomas Smith first see the motor vehicle with which the motor vehicle he was driving collided prior to the collision? (b) How far was he from said motor vehicle when he first saw it prior to the collision? (c) How far was he from the point of collision when he first saw said motor vehicle with which he collided prior to the collision? (d) How fast was the motor vehicle which said John Thomas Smith was driving travelling when he first saw the other motor vehicle with which he had a col-

lision? (e) How fast was said motor vehicle which said John Thomas Smith was driving travelling at the time of the collision? (f) How fast was the other motor vehicle travelling at the time John Thomas Smith first saw it? (g) How fast was the other motor vehicle travelling at the moment of the collision?

(5). What precautions, if any, did John Thomas Smith take to avoid a collision with the motor vehicle with which he did collide on March 17, 1948, on Highway 31 between Bay Minette and Stapleton in Baldwin County, Alabama? (a) Did said John Thomas Smith slow down said motor vehicle prior to the collision in an effort to avoid colliding with said other motor vehicle? (b) If so, how far from the point of collision did he slow said motor vehicle down? (c) Did the brakes hold? (d) In which direction was the motor vehicle driven by said John Thomas Smith travelling at the time of the collision? (e) In which direction was the other motor vehicle travelling at the time of the collision? (f) On which side of the center of the highway did said collision occur? (g) Please state exactly how said collision did occur. (h) What part of the motor vehicle operated by the defendants came in contact with the other motor vehicle? (i) Please state the exact point on the motor vehicle operated by the defendants where contact was made with the other motor vehicle. (j) What part of the other motor vehicle came in contact with the motor vehicle operated by the defendants? (k) Did John Thomas Smith see the driver of the other truck prior to the collision? (l) Did he see the driver of the other truck do anything to cause the collision? (m) If so, please state what the other driver did to cause the collision. (n) Please describe the route of the motor vehicle which collided with the defendants' said motor vehicle at said time and place followed from the time John Thomas Smith first saw it up to the time of the collision. (o) Please state fully everything John Thomas Smith did from the time he saw the motor vehicle with which he had a collision approaching him up until the time of

(6) How far south of the point of collision did the motor vehicle operated by the defendants come to rest? (a) On which side of the highway did it come to rest? (b) Did it run off the highway? (c) What became of the motor vehicle with which it collided? (d) Where did it come to rest? (e) Where was it located with respect to the point of collision after the defendants' motor vehicle came to rest? (f) On which side of the highway was it when the defendants' motor vehicle came to rest?

(8) Did another motor vehicle run into the back end of the defendant's motor vehicle shortly after the above collision?

(a) If so, please state who ran into defendants' motor vehicle at said time and place from the rear, the kind of motor vehicle which ran into it and give the names and addresses of the occupants of said motor vehicle. (b) Where did this collision take place?

Hybart & Benson
Phinton, McCarty, Benson
Attorneys for the Plaintiff

Before me the undersigned authority in and for said state

and County, personally appeared Sam M. Johnston, one of the attorneys for the plaintiff, who, being by me first duly sworn on oath deposes and says that if the answers to the interrogatories propounded to the defendants are well and truly made, they will be material evidence for the plaintiff on the trial of this cause.

Sam M. Johnston

Subscribed and sworn to before me

this 1 day of June, 1948.

Eric A. Widener
NOTARY PUBLIC, MOBILE COUNTY, ALABAMA

Defendant John Thomas Smith's address:
3130 Third Ave. So., Birmingham, Alabama

Defendant Howard Hall Company, Inc. address:
3130 Third Ave. So., Birmingham, Alabama

Received in Sheriff's Office
this 22 day of June, 1948
TAYLOR WILKINS, Sheriff

Executed this the 11 day of June, 1948

by Howard Hall Company
Incorporated & Co. Incorporated

by leaving a copy of within with

D. C. Draper

August

of said company.

HOLT A. McDOWELL, Sheriff
Jefferson County, Alabama

By H. H. H. H. H. D. S.

EXECUTED this the

day of June, 1948

by leaving a copy of the within with

John Thomas Smith

HOLT A. McDOWELL, Sheriff,
Jefferson County, Alabama

By H. H. H. H. H. D. S.

RECORDED

BALDWIN COUNTY, ALABAMA

AT LAW

No. 1194

CLARA M. NOBLE, as Ad-
ministratrix of the Es-
tate of Auburn H. Noble,
Deceased,

Plaintiff,

VS.

JOHN THOMAS SMITH and the
HOWARD HALL COMPANY, INC.
a corporation,

Defendants.

D. C. Draper

INTERROGATORIES PROPOUND-
ED TO EACH OF THE DE-
FENDANTS BY THE PLAINTIFF

Filed 6-10-48
A. J. H. H. H.

76111

104

JOHNSTON, MCCALL & JOHNSTON
LAWYERS

SUITE 804, FIRST NATIONAL BANK ANNEX

MOBILE 4, ALABAMA

Will

Plaintiff.

CLARA M. NOBLE, as Adminis-
tratrix of the Estate of
Auburn H. Noble, Deceased,

VS.

JOHN THOMAS SMITH and the
HOWARD HALL COMPANY, INC.,
a Corporation,

Defendants.

By virtue of the Commission hereto annexed,

issued from the office of the Clerk of the Circuit Court of Baldwin
County, State of Alabama, I, the Commissioner therein named, have
called and caused to come before me the said Fred Gunn, Jr., the
witness named in said commission, on this 2nd day of November,
1948, at my office, and having duly cautioned and sworn the said
witness to speak the truth, the whole truth, and nothing but the
truth, Fred Gunn, Jr., the said witness, deposeth and saith as
follows:

1st. To first interrogatory he saith my

name is Fred W. Gunn, Jr.; twenty years of age, student at the

Alabama Polytechnic Institute, Auburn, Alabama.

2nd. To second interrogatory he saith, "yes."

3rd. To third interrogatory he saith that as

well as he remembers it was later that he was in said car on said

highway.

4th. To fourth interrogatory he saith that

the car in which he was riding on said occasion was not following

a van but was pulling up behind a van.

5th. To fifth interrogatory he saith, "yes."

6th. To sixth interrogatory he saith that

the car in which he was riding was pulling up behind the van and

the first thing that he noticed was the tail lights of the van flashed

on and the car cutting sharply to the left, that is the car he was

riding in.

7th. To seventh interrogatory he saith that

it was only a short distance he was pulling up behind the van.

8th. To eighth interrogatory he saith the best he can remember the van was well on the right of the center line.

9th. To ninth interrogatory he saith, "yes."

10th. To tenth interrogatory he saith, "Not that I remember."

11th. To eleventh interrogatory he saith that he doesn't know.

12th. To twelfth interrogatory he saith, "Not that I noticed."

13th. To thirteenth interrogatory he saith, "No."

14th. To fourteenth interrogatory he saith, "When I saw the lights flash on the truck, he was on his side of the road."

15th To fifteenth interrogatory he saith, "I don't know."

16th. To sixteenth interrogatory he saith, "Mr. Larry Pharo, Miss Anne Bailey, and Miss Mamye Holloway."

17th. To seventeenth interrogatory he saith, "In the back seat behind the driver."

Leed Gunn Jr.

SWORN TO AND SUBSCRIBED BEFORE ME
ON THIS THE 2nd DAY OF NOVEMBER, 1948.

Mrs. Helen Boyd
Commissioner, Lee County, Miss.

CLARA M. NOBLE, as Adminis-
tratrix of the Estate of
Auburn H. Noble, Deceased,

Plaintiff.

) IN THE CIRCUIT COURT OF
) BALDWIN COUNTY, ALABAMA.
) AT LAW. NUMBER 1196.

VS.

)
JOHN THOMAS SMITH and the
HOWARD HALL COMPANY, INC.,
a CORPORATION,

Defendants.
)

By virtue of the Commission hereto annexed, issued from the office of the Clerk of the Circuit Court of Baldwin County, State of Alabama, I, the Commissioner therein named, have called and caused to come before me the said Fred Gunn, jr., the witness named in said commission, on this 2nd day of November, 1948, at my office, and having duly cautioned and sworn the said witness to speak the truth, the whole truth, and nothing but the truth, Fred Gunn, jr., the said witness, deposeth and saith as follows:

1st. To first cross-interrogatory he saith, "Yes."

2nd. To second cross-interrogatory he saith,
"Miss Holloway."

3rd. To third cross-interrogatory he saith,
"No."

4th. To fourth cross-interrogatory he saith,
"No."

5th. To fifth cross-interrogatory he saith,
"I signed a statement but I do not know that Exhibit A is a true
copy of my statement."

6th. To sixth cross-interrogatory he saith,
"I don't remember the man's name but I was requested to sign a
statement."

7th. To seventh cross-interrogatory he saith,
"See above."

8th. To eighth cross-interrogatory he saith,
"I guess an insurance company in behalf of Mr. Pharo."

9th. To ninth cross-interrogatory he said,

"Yes, he did but I don't remember who."

10th. To tenth cross-interrogatory he said,

"Yes. He told me that it was in behalf of Mr. Pharo."

11th. To eleventh cross-interrogatory he said,

"It was written in Mobile. Mr. Pharo, Miss Holloway, myself and

an insurance adjuster."

12th. To twelfth cross-interrogatory he said,

"I don't know that this is a true copy."

13th. To thirteenth cross-interrogatory he

said, "I don't know."

14th. To fourteenth cross-interrogatory he

said, "No."

15th. To fifteenth cross-interrogatory he

said, "About four or five minutes after we had collided with the

van."

16th. To sixteenth cross-interrogatory he

said, "On the right side of the road in front of the van."

17th. To seventeenth cross-interrogatory he

said, "I didn't see them collide but after our collision, apparently the Ford and the van had collided head on according to the positions of the vehicles."

18th. To eighteenth cross-interrogatory he said,

"I don't know."

19th. To nineteenth cross-interrogatory he said,

"I didn't see him measure it at the time."

20th. To twentieth cross-interrogatory he said,

"I wouldn't be sure on the distance."

21st. To twenty-first cross-interrogatory he

said, "Yes."

22nd. To twenty-second cross-interrogatory he

said, "Yes."

23rd. To twenty-third cross-interrogatory he

said, "As well as I remember, I did."

24th. To twenty-fourth cross-interrogatory he saith, "I don't have the original statement before me so I don't know whether it is in there or not."

25th. To twenty-fifth cross-interrogatory he saith, "The statement I gave was written by the insurance adjuster from facts which I gave him."

26th. To twenty-sixth cross-interrogatory he saith, "Yes."

27th. To twenty-seventh cross-interrogatory he saith, "Mr. Pharo, Miss Holloway, myself, and the insurance adjuster. Statement was given in insurance adjuster's office in a bank building in Mobile."

28th. To twenty-eighth cross-interrogatory he saith, "I don't know."

29th. To twenty-ninth cross-interrogatory he saith, "I heard Mr. Pharo make a statement to that effect, whether that was the exact statement, I don't know."

30th. To thirtieth cross-interrogatory he saith, "Yes, Mr. Pharo's car struck the van while still on the highway, so ^{the} van must have been travelling forward."

31st. To thirty-first cross-interrogatory he saith, "Mr. Pharo said something to this effect."

32nd. To thirty-second cross-interrogatory he saith, "I don't know."

33rd. To thirty-third cross-interrogatory he saith, "I don't know."

34th. To thirty-fourth cross-interrogatory he saith, "I don't know."

35th. To thirty-fifth cross-interrogatory he saith, "No."

36th. To thirty-sixth cross-interrogatory he saith, "No one."

Handwritten Signature

SWORN TO AND SUBSCRIBED BEFORE ME
ON THIS THE 2nd DAY OF NOVEMBER, 1948.

Handwritten Signature Commissioner, Lee County, Alabama.

I, Mrs. Glenn Byrd, the Commissioner in said commission named, do hereby certify that the foregoing testimony and answers, taken down and written by me in the words of the witness, Fred Gunn, jr., were read over to him; that he assented, swore to and subscribed the same in my presence, at the time and place herein mentioned; that he was made known to me as the person who was named and designated as the witness in the foregoing commission and to whom the interrogatories were to be propounded; that I am not of counsel or kin to either of the parties of said cause, nor interested in the event thereof. And I enclose the testimony, together with said commission and the interrogatories, direct and cross, to the said Clerk of the Circuit Court, whence the same emanated, as my full execution of said commission.

Given under my hand and seal this 2nd day of November, 1948.

Mrs. Glenn Byrd (L.S.)

Commissioner's fee \$10.00

CLARA M. NOBLE, as Administra-
trix of the Estate of Auburn
H. Noble, Deceased,

Plaintiff,

vs.

JOHN THOMAS SMITH and the
HOWARD HALL COMPANY, INC.,
a corporation,

Defendant.s

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

No. 1196

OBJECTIONS OF THE PLAINTIFF TO INTERROGATORIES PROPOUNDED TO
THE WITNESS, FRED GUNN, JR. :

Comes the Plaintiff and objects to Interrogatory No. 6
on the following separate and several grounds:

(a) Said interrogatory seeks no specific information.

(b) Said interrogatory asks no direct question.

(c) Because said interrogatory seeks to elicit no specific
fact.

The plaintiff also objects to Interrogatory No. 9 on the
following separate and several grounds:

(a) Said interrogatory is leading.

(b) Said interrogatory calls for a conclusion of the
witness.

CROSS-INTERROGATORIES

Without waiving the objections to the foregoing interrogatories,
comes the plaintiff and propounds to the witness, Fred Gunn, Jr.,
the following cross-interrogatories, separately and severally:

1. Were you on the back seat of the automobile in which you
were riding at the time of said collision?

2. Who was sitting on said back seat with you?

3. Is it not true that you knew nothing of the accident until
the collision of the automobile in which you were riding with the
said van truck?

4. Afterwards, did you not tell a number of people that you
did not know how the accident happened as you were dozing at the

time?

5. Please look at the document attached hereto as Exhibit "A" and please state whether you signed such a statement as that on March 19, 1948.

6. If you answer that you did sign such a statement, please state who requested you to sign it.

7. If you answer that Mr. Chris G. Hume, Jr. got you to sign such a statement, please state who Mr. Hume is.

8. Who was he representing at the time?

9. Please state whether he told you who he was representing at the time. If so, please state who it was.

10. Did he tell you why he was requesting you to sign the statement? If so, what did he tell you?

11. Where was the same written and who was present at the time?

12. Is not Exhibit "A" hereto attached a true copy of the statement you signed on March 19, 1948?

13. If not, please state in what respect it is different from the one you signed.

14. Did you see the Ford truck which collided with the van truck at a point between Bay Minette and Stapleton in Baldwin County, Alabama, between 4 and 5 o'clock in the afternoon on March 17, 1948, prior to its collision with said van truck?

15. When did you first see said Ford truck?

16. Where was it at the time?

17. Did said van truck and said Ford truck collide head-on?

18. How far did the van truck travel from the point of collision before it left the highway?

19. Did you see a Highway Patrolman at the scene of the accident measure the distance from the point of collision to where it left the highway?

20. Was not that distance approximately 96 feet? If not, please state what distance it was.

21. You do not know, do you, which side of the road the van truck was on at the time the car in which you were travelling collided with it?

22. You do not know, do you, which side of the road said van truck was on at the time of its collision with the Ford truck?

23. If you knew which side of the road on which the two said collisions took place, please state if you mentioned that fact to Mr. Chris Hume or such other person who took the statement, a copy of which is hereto attached as Exhibit "A".

24. Do you know why such a fact was not put in said statement?

25. Who wrote the statement, a copy of which is hereto attached and marked Exhibit "A"?

26. Were you present in Mobile, Alabama, on March 19, 1948 when Mr. Lawrence C. Pharo, Jr. gave a written statement to Mr. Chris C. Hume or some other person?

27. If you answer "yes", please state who was present at the time and where said statement was given.

28. Who was said statement given to?

29. Did you hear Mr. Lawrence C. Pharo, Jr. tell Mr. Hume, or the person taking such statement at the time: "my car struck the van before it left the highway and while it was still travelling forward." ?

30. Will you please state whether the car in which you were riding struck the van before it left the highway and while it was still travelling forward?

31. At said time, did you further hear Mr. Lawrence C. Pharo, Jr., state to Mr. Hume or such person who took such statement, as follows: "When said truck turned off the highway to the right, the left rear of the van extended over the center line of the road" ?

32. Will you please state whether when said van truck turned off the highway to the right the left rear of the van extended over the center line of the road?

33. How far did said van truck travel southwardly on the highway after its collision with the Ford truck before it left the paved portion of said highway?

34. How far did said van truck travel southwardly on the highway after the collision of the car in which you were riding with it before it left the highway?

35. Have you talked to any one about what your answers would be to these interrogatories after October 16, 1948, and before the time you were to appear before the Commissioner to answer them?

36. Whom have you talked with concerning your answers?

Nyhart and Chonon
Johnston, McNeeley and Johnston
Attorneys for Plaintiff

The undersigned, as one of the attorneys for the defendants in the above entitled cause, hereby accepts service of a copy of the foregoing objections to interrogatories and a copy of the cross-interrogatories on this 16 day of October, 1948.

N. J. Adams
Attorney for the defendants

Mobile, Alabama, March 19, 1948

Report of accident of Mr. Fred W. Gunn, Jr., 2059 Foster Lane, Fulton Ridge
Mobile, Alabama.

I am 19 years of age and a student of Alabama Polytechnic Institute at Auburn, Alabama. I was an occupant of the car driven by Mr. Lawrence C. Pharo Jr. when we were involved in an accident near Stapleton, Ala. on U. S. Highway 31. I sustained no injury as result of this accident. I occupied the rear seat on the left side of the car. In other words, I was sitting directly behind the driver. I was observing the road ahead just before and at the time of the accident. I noticed we were overtaking a large van truck and that we were in a curve bearing to the right at the time. I imagine we were running about 40 miles per hour and our car was about 30-40 feet behind the van when it suddenly started making an emergency stop.

I immediately jerked Miss Holloway down in the seat and ducked. After the accident I noticed the van truck had gone off the highway to its right and later learned it had collided head-on with a light Ford truck. I did not see the Ford truck before that. I understand it was meeting the large van.

I noticed Mr. Pharo cutting his car suddenly to the left and I know the right side of our car struck the left corner of the van and that our car stopped practically at the point of collision. I looked at the van where our car struck it and noticed no noticeable damage to the van caused by our car.

The top of our car was severely damaged.

We had not been following this van truck but had just caught up with it when the accident started to happen. As I recall it was slightly cloudy but visibility was good.

SIGNED: Fred W. Gunn, Jr.

Exhibit "A"

2/24/49
We the jury find for the plaintiff
and for the damages at five thousand
dollars (\$5,000.00).
Garry L. Hooper
Foreman

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW No. 2196

RECORDED

CLARA M. MOBLE, As Admin-
istratrix of the Estate
of Auburn M. Moble, De-
ceased,

Plaintiff,

vs.

JOHN THOMAS SMITH and the
HOWARD HALL COMPANY, INC.
a corporation,

Defendants.

OBJECTIONS OF THE PLAINTIFF
TO INTERROGATORIES PRO-
POUNDED TO THE WITNESS,
FRED CUNY, JR., and
CROSS-INTERROGATORIES

FILED

OCT 18 1948

ALICE J. BUCK, Clerk

JOHNSTON, MCCALL & JOHNSTON
LAWYERS
SUITE 804, FIRST NATIONAL BANK ANNEX
MOBILE 4, ALABAMA

CLARA M. NOBLE, as Admin-
istratrix of the Estate of
Auburn H. Noble, Deceased,

Plaintiff,

VS.

JOHN THOMAS SMITH and the
HOWARD HALL COMPANY, INC.,
a Corporation,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

AT LAW. NUMBER 1196.

TO MRS. GLENN BYRD, POST OFFICE BOX 272, OPELIKA, ALABAMA:

Know Ye, That we, reposing confidence in your integrity, skill and ability, have appointed you Commissioner to take the testimony of Fred Gunn, Jr., a material witness for the Plaintiff in this cause and we hereby authorize and empower you to cause to come before you, Fred Gunn, Jr., Pi Kappa Phi House, Auburn, Alabama, the said witness and take his deposition on oath on the attached interrogatories and cross interrogatories, which deposition, when so taken, shall be signed by said witness and certified by you as Commissioner. You are further commanded, the deposition when so taken, with this commission, to return under your hand and seal to the Clerk of said Court with all convenient speed.

WITNESS my hand this 20th day of October, 1948.

Alice J. Smith
Clerk.

CLARA M. NOBLE, AS Administra-
trix of the Estate of Auburn
H. Noble, Deceased,

Plaintiff,

vs

JOHN THOMAS SMITH and the
HOWARD HALL COMPANY, INC.,
a corporation,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW No. 1196

Come the defendants in the above styled cause and respectfully show unto the Court that Fred Gunn, Jr. is residing at the Pi Kappa Phi House, Auburn, Alabama, and that the said Fred Gunn, Jr. is a material witness in this cause, wherefore defendants request that a commission be issued by the Clerk of this Court to one or more persons to take the deposition of said witness, after prescribing the notice to be given the opposing party, or his attorney, of the time and place of taking same. Defendants respectfully suggest that Mrs. Glenn Byrd, Post Office Box 272, Opelika, Alabama, is a suitable person to be named as Commissioner to be appointed for the taking of the testimony of said witness in this cause; and that Auburn, Alabama is more than one hundred miles from the place of trial.

MCCORVEY, TURNER, ROGERS, JOHNSTONE & ADAMS
AND J. B. BLACKBURN

BY

R. F. Adams
Attorneys for Defendants

State of Alabama
Mobile County

Before me, Myrtle H. Jaullean, a Notary Public in and for said state and county personally appeared R. F. Adams, who is known to me and being by me first duly sworn deposes and says that he is one of the attorneys for defendants in the above styled cause; that he is informed and believes, and on such information and belief avers that the allegations hereinabove contained are true and correct.

R. F. Adams
Sworn to and subscribed before me
on this the 15th day of October, 1948.

Myrtle H. Jaullean
Notary Public, Mobile County, Alabama.

The defendants request that the following interrogatories be propounded to Fred Gunn, Jr. by the Commissioner appointed to take his testimony in this cause:

1. What is your name, age, address and occupation?
2. Were you, on or about March 17, 1948 in a car being driven from Auburn, Alabama to Mobile, Alabama?
3. Were you, on said occasion, in a car being driven southwardly on U. S. Highway No. 31 between Bay Minette and Mobile, Alabama at about 4:30 P. M.?
4. Were you, at said time on said highway, at a point 9 or 10 miles south of Bay Minette, Alabama, following a van up a slight grade on said highway?
5. Did said van or the tractor pulling it collide with another vehicle approaching it from the opposite direction, and did the automobile in which you were riding collide with said van?
6. If you have answered the preceding interrogatory in the affirmative, please state in your own words the circumstances under which said collision or collisions occurred.
7. How long had you travelled behind, and in sight of said van which was ahead of you going in the same direction you were going, before said collision or collisions occurred?
8. On which side of the center line of the highway were the van and tractor which was pulling it travelling at the time of and prior to the time of said collisions?
9. Was it travelling well on its right hand side of the highway?
10. Did the van and tractor within the last 100 yards travelled before it was involved in said collisions get over on its left of the center of said highway?
11. Did the van and tractor within the last 500 yards travelled before it was involved in said collisions get over on its left of the center of said highway?
12. Did the van and tractor at any time while you were close enough to it to observe its position on the highway get over on its left of the center of said highway?

13. Had you, prior to your collision with the van seen the Ford truck which was involved in the accident?

14. On what side of the center line of said highway did the Howard Hall Company tractor and van collide with the Ford truck?

15. Had the tractor pulled off to the shoulder on its right of the pavement prior to its collision with the Ford truck?

16. Who was in the car with you?

17. Where were you sitting in the car in which you were riding?

MCCORVEY, TURNER, ROGERS, JOHNSTONE & ADAMS
AND J. B. BLACKBURN

BY

R. F. Adams
Attorneys for Defendants

State of Alabama
Mobile County

Before me, *Myrtle H. Jaulleau*, a Notary Public in and for said state and county, personally appeared R. F. Adams, one of the attorneys for defendants, who, being by me first duly sworn, on oath deposes and says that if the answers to the interrogatories propounded to the above named witness are well and truly made, they will be material evidence for the defendant in the trial of this cause.

R. F. Adams
Sworn to and subscribed before
me on this the 15th day of October, 1948.

Myrtle H. Jaulleau
Notary Public, Mobile County, Alabama.

Service accepted this the 15 day of October, 1948.

James M. Johnston
One of Attorneys for Plaintiff

FILED

OCT 16 1948

WILLIAM J. DUCK, Clerk

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

CLARA M. NOBLE, as Administra-
trix of the Estate of Auburn
H. Noble, deceased,

Plaintiff,

vs.

JOHN THOMAS SMITH and the
HOWARD HALL COMPANY, INC.,
a corporation,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

No. 1196

Comes the plaintiff and demurs separately and severally
to plea 3 as pleaded by each defendant separately to the com-
plaint as a whole and as pleaded separately to Count No. 2
on the following separate and several grounds:

1. A Plea of contributory negligence is not good as
against a wanton count.

2. Because said plea of contributory negligence is no
answer to a wanton count.

3. Even though plaintiff's intestate may have been
guilty of contributory negligence, still if he was wantonly
injured and killed, the defendants would be liable.

Hyatt & Choate
John T. McElroy
Attorneys for Plaintiff

The undersigned, as one of the attorneys for the de-
fendants in the above entitled cause, hereby accepts service
of a copy of the foregoing demurrers to plea 3 as pleaded
separately to the complaint as a whole and as pleaded separately
to Count 2 of the complaint, on this 15 day of October, 1948.

N. A. Adams
Attorney for the defendants

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

RECORDED

AT LAW No. 1196

CLARA M. NOBLE, 3d Ad-
ministratrix of the Es-
tate of Auburn H. Noble,
deceased,

Plaintiff,

vs.

JOHN THOMAS SMITH and the
HOWARD HALL COMPANY, INC.,
a corporation,

Defendants.

PLAINTIFF'S DEMURRERS TO
PLEA 3 AS FILED SEPARATELY
TO THE COMPLAINT AS A
WHOLE AND AS FILED
SEPARATELY TO COUNT 2 OF
THE COMPLAINT

FILED

OCT 16 1948

ALICE J. DUCK, Clerk

JOHNSTON, MCCALL & JOHNSTON
LAWYERS
SUITE 804, FIRST NATIONAL BANK ANNEX
MOBILE 4, ALABAMA

CLARA M. NOBLE, as Administra-
trix of the Estate of Auburn
H. Noble, Deceased,

Plaintiff,

vs.

JOHN THOMAS SMITH and the
HOWARD HALL COMPANY, INC.,
a corporation,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

No. 1196

Comes the plaintiff and for answer to Interrogatories
1, 2, 3, 4, 5, 6 and 7, separately and severally, says:

That she was not present when the collision occurred and
has no personal knowledge of the facts of the collision, and
hence she is not able to answer said interrogatories in so
far as they seek to elicit evidence of the facts; and in so
far as said interrogatories seek to ascertain the contention
or claim of the plaintiff, she is advised and informed that
she does not have to state what her claim or contention may
be and declines to do so unless ordered by this Court.

Clara M. Noble

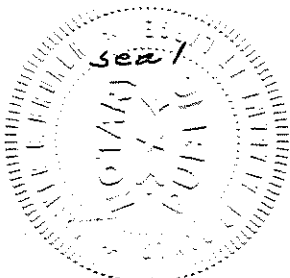
STATE OF ALABAMA
County of Lowndes
~~CERTIFICATE~~

Before me, Oliver G. Bruner, a Notary Public in and
for said State and County, personally appeared Clara M. Noble,
who being by me first duly sworn on oath deposes and says that
the foregoing answers to the interrogatories are true and cor-
rect to the best of her knowledge, information and belief.

Clara M. Noble

Subscribed and sworn to before me
on this 13th day of October, 1948.

Oliver G. Bruner
NOTARY PUBLIC, ~~BALDWIN COUNTY, ALABAMA~~
State - at - Large



DALWYN COUNTY, ALABAMA

RECORDED

AT LAW No. 1196

CLARA M. NOBLE, as Ad-
ministratrix of the Es-
tate of Auburn U. Noble,
Deceased,

Plaintiff,

vs.

JOHN THOMAS SMITH and the
HOWARD EALL COMPANY, INC.,
a corporation,

ANSWERS TO INTERROGATORIES
PROPOUNDED TO THE PLAINTIFF
BY THE DEFENDANTS.

FILED

OCT 16 1948

ALICE J. DUCK, Clerk

JOHNSTON, MCCALL & JOHNSTON
LAWYERS
SUITE 604, FIRST NATIONAL BANK ANNEX
MOBILE 4, ALABAMA

CLARA M. NOBLE, as Administra-
trix of the Estate of Auburn
H. Noble, Deceased,

Plaintiff,

vs

JOHN THOMAS SMITH and the
HOWARD HALL COMPANY, INC.,
a Corporation,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

AT LAW NO. _____

Come the defendants in the above styled cause,
separately and severally, and for answer to plaintiff's
complaint, and to each count thereof, separately and severally,
say:

1. Not guilty.
2. The allegations of the complaint are untrue.
3. The plaintiff's intestate was himself guilty
of negligence at the time and place alleged in the complaint
which proximately contributed to his injury and death,
wherefore plaintiff cannot recover in this cause.

McCORVEY, TURNER, ROGERS, JOHNSTONE & ADAMS

BY

N. J. Adams
Attorneys for Defendants

J. B. Blackburn
Of Counsel

RECORDED

RECORDED

FILED

OCT 2nd 1948

ALICE J. DUCK, Clerk

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

CLARA M. NOBLE, as Administra-
trix of the Estate of Auburn
H. Noble, Deceased,

Plaintiff,

vs

JOHN THOMAS SMITH and the
HOWARD HALL COMPANY, INC.,
a corporation,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW NO. 1196

ANSWERS TO INTERROGATORIES BY EACH OF THE DEFENDANTS

1. Fifty-seven years old. 3130 Third Avenue, South, Birmingham, Alabama. (a) Approximately nine years. (b) Has been driving a car since 1914 and has been driving trucks ever since trucks were first built. (c) In Spring of 1939. (d) Yes. (e) On an average of twice each month since he became employed by Howard Hall Company, Inc., and in 1938 he made regular trips over that part of Highway 31 three times each week while driving for Transportation, Inc., at Montgomery, Alabama. (f) Approximately two weeks. (g) A motor truck being owned by Howard Hall Company, Inc., and driven by John Thomas Smith in a southerly direction on said highway at said time and place was struck by another vehicle which had been headed in a northerly direction about said time and place, at a point entirely off the west edge of the pavement of the highway.

2. Yes. 1947 International K-8, ~~International~~ truck. (a) about 39 feet. (b) about 10 feet. (c) about 10,000 pounds. (d) about 7½ feet (standard width). (e) 7 feet 6 inches. (f) 20,150 pounds. (g) about 31,000 pounds. (h) International. (i) 1947. (j) Westinghouse straight air.

3. See answer to 1 (g). (a) about two miles. (b) about twenty feet. (c) Black-top. (d) No. Impact in a slight curve. (e) A short distance. (f) No. Impact in a slight curve. (g) A short distance. (h) 300 or 400 yards. (i) about 4:30 p.m.

(j) Cloudy. (k) Cloudy. (l) Dry.

4. See answers to 1 (g) and 3 (i). (a) After John Thomas Smith came up to top of the hill north of point of impact.

(b) About 300 to 400 yards. (c) About 75 to 100 yards.

(d) Between 25 miles per hour and 35 miles per hour. (e) About 20 miles per hour. (f) About 40 miles per hour to about 45 miles per hour. (g) About 45 - 50.

5. When I came over the hill and saw the approaching truck 300 or 400 yards away, I saw that its right wheels were off the pavement, and I therefore touched my brakes and started slowing down, and pulling off the edge of the pavement on my right, as I sensed he was in trouble. When the approaching pick-up truck was about 25 feet in front of me he got his right wheels up on the pavement and I could see he was headed across the road toward my truck. I therefore cut more sharply to the right and applied my brakes, and had pulled the front end of my truck and trailer completely off the pavement, the left front wheels of my tractor being about $2\frac{1}{2}$ to 3 feet off the right or west edge of the pavement, and my left rear trailer wheels being about 2 feet on the pavement, when he hit me. I knew there was a car following behind me, and was therefore unable to stop dead still, so took the only other alternative of slowing down and pulling off the highway. (a) Yes. (b) I started slowing down as soon as I saw the other truck, which, as stated above was between 300 or 400 yards away. (c) Yes, perfectly. (d) South. (e) North or Northeast. (f) Entirely off the pavement on the west side or Smith's right side. (g) See above. After Smith had pulled the front of his truck completely off the highway and had slowed down as much as he could in view of the close proximity of the automobile following his truck, the northbound pick-up truck cut almost straight across the road and crashed into the left front headlight of the Smith truck. (h) See (g). (i) See (g). (j) Practically the

(j) Cloudy. (k) Cloudy. (l) Dry.

4. See answers to 1 (g) and 3 (i). (a) After John Thomas Smith came up to top of the hill north of point of impact.

(b) About 300 to 400 yards. (c) About 75 to 100 yards.

(d) Between 25 miles per hour and 35 miles per hour. (e) About 20 miles per hour. (f) About 40 miles per hour to about 45 miles per hour. (g) About 45 - 50.

5. When I came over the hill and saw the approaching truck 300 or 400 yards away, I saw that its right wheels were off the pavement, and I therefore touched my brakes and started slowing down, and pulling off the edge of the pavement on my right, as I sensed he was in trouble. When the approaching pick-up truck was about 25 feet in front of me he got his right wheels up on the pavement and I could see he was headed across the road toward my truck. I therefore cut more sharply to the right and applied my brakes, and had pulled the front end of my truck and trailer completely off the pavement, the left front wheels of my tractor being about $2\frac{1}{2}$ to 3 feet off the right or west edge of the pavement, and my left rear trailer wheels being about 2 feet on the pavement, when he hit me. I knew there was a car following behind me, and was therefore unable to stop dead still, so took the only other alternative of slowing down and pulling off the highway. (a) Yes. (b) I started slowing down as soon as I saw the other truck, which, as stated above was between 300 or 400 yards away. (c) Yes, perfectly. (d) South. (e) North or Northeast. (f) Entirely off the pavement on the west side or Smith's right side. (g) See above. After Smith had pulled the front of his truck completely off the highway and had slowed down as much as he could in view of the close proximity of the automobile following his truck, the northbound pick-up truck cut almost straight across the road and crashed into the left front headlight of the Smith truck. (h) See (g). (i) See (g). (j) Practically the

center of its radiator. (k) Yes. (l) Mr. Smith saw the driver of the other truck trying to pull back on the paved portion of the highway, and in doing so, because of his excessive speed, and because there was a 5 or 6 inch drop from the pavement to the shoulder, when he mounted the high place he started fighting the wheel trying to regain control of it, but was apparently unable to prevent the truck from cutting almost straight across the road into Mr. Smith's truck. (m) See (l). (n) From the time Smith first saw the other vehicle its right wheels were off its right edge of the pavement, and they continued either to try to get it back on the pavement or to play with it, until it reached a point approximately 25 feet away from Smith's truck, when it cut across the highway and into Smith, as above stated. Mr. Smith, having seen that the truck was apparently in trouble, had already started slowing down and pulling his truck off the highway on the right, before the other truck succeeded in pulling back on the pavement. (o) See above. (p) See above. (q) Yes. (r)

6. About 35 to 40 feet, but before travelling this distance the back of the Smith truck had been crashed into by the automobile following it, which gave it a further impetus forward.

(a) On the west or Smith's right side. (b) It was already practically off before the collision, as stated above. (c) It came to rest under the front of the Smith truck, in about the same position as that in which it hit the Smith truck. (d) Also on the west side of the highway. (e) See above. (f) See above.

7. Yes. (a-l) Defendants were subsequently informed that the occupants of the pick-up truck were Aubrey H. Noble and Julius C. Holloway. (a) Yes. (b) One was apparently killed instantly and the other died about the time he reached the hospital. (c) Yes. (d) Passing motorists.

8. Yes. (a) Defendants are informed that the 1942 Dodge Coupe which ran into defendants' truck was driven by Lawrence

C. Pharo, Jr. of 1820 Old Government Street, Mobile, Alabama,
and Ann Bailey of 1556 Blair Avenue and Mamie Holloway of 105
Marine Street, Mobile, Alabama, were passengers in said automobile.
(b) Within a matter of seconds after the pick-up truck crashed
into Smith's truck.

~~XX~~
~~XX~~
~~XX~~
~~XX~~
~~XX~~

HOWARD HALL COMPANY, INC.

BY John Thomas Smith
As its Agent

John Thomas Smith
Defendants

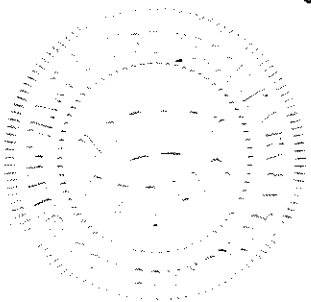
Subscribed and sworn to
before me on this the 13th
day of September, 1948.

Mary Louise Quick
Notary Public, Jefferson County, Ala.

My Commission Expires Sept. 16, 1949

Service Accepted this 15th
day of Sept. 1948-

Am Jones,
Atty for Plff.



RECORDED

FILED

SEP 16 1948

ALICE J. DUCK, Clerk

MCCORVEY, TURNER, ROGERS, JOHNSTONE & ADAMS

ATTORNEYS AT LAW

NINTH FLOOR, MERCHANTS NATIONAL BANK BUILDING

MOBILE, ALABAMA

CLARA M. NOBLE, as Administra-
trix of the Estate of Auburn
H. Noble, Deceased,

Plaintiff,

vs.

JOHN THOMAS SMITH and the
HOWARD HALL COMPANY, INC.,
a corporation,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

AT LAW

No. 1196

INTERROGATORIES PROPOUNDED TO THE
PLAINTIFF BY THE DEFENDANT.

1. Who was driving the truck in which you state Auburn H. Noble was riding at the time and place alleged in your complaint?

2. State in detail the negligence which you claim gives rise to your cause of action.

3. In what way was John Thomas Smith guilty of wanton misconduct in connection therewith?

4. How did Howard Hall Company wantonly injure your intestate at the time and place alleged?

5. State in detail everything John Thomas Smith did which you allege he should not have done, and everything he failed to do which he should have done at the time and place alleged in your complaint.

6. State in detail the manner in which the accident made the basis of your complaint occurred.

7. Have you stated in detail each act on the part of either defendant which you contend was an act of negligence or an act of wantonness at the time and place alleged in the complaint? If you have not

done so, please do so now.

McCORVEY, TURNER, ROGERS, JOHNSTONE & ADAMS

By

MAde
Attorneys for Defendants

STATE OF ALABAMA:

COUNTY OF MOBILE:

Before me, Grace G. Pugh, a Notary Public
in and for said state and county, personally appeared Robert
F. Adams, who, being by me first duly sworn on oath, deposes
and says that, if the answers to the interrogatories pro-
pounded to the plaintiff are well and truly made, they
will be material evidence for the defendant on the trial
of this cause.

MAde

Sworn to and subscribed before me
this 9th day of September, 1948.

Grace G. Pugh
Notary Public, Mobile County, Alabama

*Sentence accepted this the
10th day of Sept. 1948.*

*Bernard J. Turner,
Atty. for Pllt*

RECORDED

FILED

SEP-14-1948

Alice J. Duck, Register

McCorvey, Turner, Rogers, Johnstone & Adams

ATTORNEYS AT LAW

NINTH FLOOR, MERCHANTS NATIONAL BANK BUILDING

MOBILE, ALABAMA

CLARA M. NOBLE, as Administra-
trix of the Estate of Auburn
H. Noble, Deceased,

Plaintiff,

Vs.

JOHN THOMAS SMITH and the
HOWARD HALL COMPANY, INC.,
a corporation,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW NO. 1196

Come the defendants in the above styled cause and de-
mur to the plaintiff's complaint and to each count thereof
separately and severally and as grounds for said demurrer assign
separately and severally:

1. Because the complaint does not allege or show that
the defendants violated a duty owing by them to the plaintiff,
nor to plaintiff's intestate.

2. Because the complaint does not show that the defendants
owed to plaintiff's intestate a duty and that there was a breach
of this duty proximately causing plaintiff's damage.

3. Because the averment that the defendant, John Thomas
Smith, who was then and there a servant or agent of the defen-
dant, Howard Hall Company, Inc. so negligently operated a
motor vehicle as to cause or allow it to run against or collide
with the truck in which plaintiff's intestate was riding does
not constitute an averment of actionable negligence on the part
of the defendants.

4. Because the location of the point at which the collision
is said to have occurred is not sufficiently designated.

The defendants assign the following additional separate
and several grounds for demurrer to count two of the complaint:

1. Because said count undertakes to allege the quo modo of
the wantonness but is insufficient in that respect because it does
not allege knowledge by the defendant Smith of the dangerous
condition and other essentials of wantonness.

2. Because said count purports to set out the quo modo of
the wanton misconduct of the defendant Smith, and the facts
averred do not constitute wanton misconduct.

3. Because the facts set up in said count as constituting wantonness do not in themselves, as a matter of law, show wantonness.

4. Because said count fails to aver or show that defendant Smith was conscious at the time that his conduct would probably result in injury to the plaintiff's intestate.

5. Because it does not appear from the averments of said count that defendant Smith had knowledge that plaintiff's intestate was being endangered, or likely to be endangered, by his operating a motor vehicle at the time, place and speed, and in the manner in which he was operating the same.

6. Because it is not averred that the defendant Smith knew, or was conscious of the fact that the operating of the motor vehicle in the manner in which he was operating the same would cause or allow it to collide with the truck in which plaintiff's intestate was riding.

7. Because the act of the defendant Smith in so operating a motor vehicle as to drive or run the same into a truck in which the plaintiff's intestate was riding did not constitute wantonness.

M. Conway James Rogers Johnston & Day
Attorneys for Defendants

*Defence accepted & further
notice waived.
This 8th day of July, 1948,
James Johnston
Atty for Plaintiff*

RECORDED

Filed
7-9-48
Alice J. Smith
clerk

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

STATE OF ALABAMA

BALDWIN COUNTY

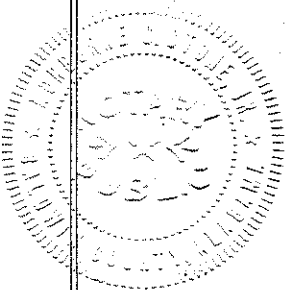
Before me Melborne P. Stone, Jr., a Notary Public, in and for said State and County personally appeared John Chason who is known to me and who, after being by me first duly and legally sworn, deposes and says, under oath as follows:-

That he is one of the Attorneys of record for the Plaintiff Clara M. Noble, as Administratrix of the Estate of Auburn H. Noble, deceased, in a case now pending in the Circuit Court of Baldwin County, Alabama, in which John Thomas Smith and the Howard Hall Company, Inc., a corporation, are the Defendants, being case #1196; that Henry Holloway is a resident of Fort Deposit, Alabama; that he resides more than 100 miles from Bay Minette, Alabama, the place where the trial will be had in said cause, computing by the route usually traveled; that the said Henry Holloway is a witness for the Plaintiff in said cause and that the personal attendance of said witness is necessary to a proper decision of said cause and that his deposition would be insufficient for that purpose.

Sworn to and subscribed
before me this 22nd day of
October, 1948.

Melborne P. Stone, Jr.
Notary Public, Baldwin County,
Alabama.

John Chason



AFFIDAVIT

RECORDED

CLARA M. NOBLE, as Admin-
istratrix of the Estate
of Auburn H. Noble,
Deceased,

Plaintiff,

vs.

JOHN THOMAS SMITH and the
HOWARD HALL COMPANY, INC.,
a corporation,

Defendants.

IN THE CIRCUIT COURT OF

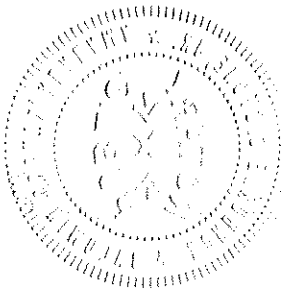
BALDWIN COUNTY, ALABAMA

AT LAW

NO. 1196

Filed October 22, 1948.

Alfred J. Smith
Clerk.



CLARA M. NOBLE, as
Administratrix of the Estate
of Auburn Noble, Deceased,

Plaintiff,

VS.

JOHN THOMAS SMITH & HOWARD HALL
COMPANY, INCORPORATED,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

AT LAW.

NO. 1196.

This day came the parties by their attorneys and the Plaintiff's Demurrer to Defendant's Plea No. 3 being argued by counsel, and understood by the Court, and being considered by the Court, it is considered, ordered and adjudged that Plaintiff's Demurrer to Plea Number 3 be and it is hereby sustained in so far as it purports to answer Complaint as a whole.

Plaintiff joins issue on Plea 3 as pleaded to Count 1 of the Complaint and the cause is set down for trial on the 23rd day of March, 1949.

And on agreement by the counsel, and the same being understood and considered by the Court, it is considered, ordered and adjudged that Plaintiff's Interrogatory Number 9, and the Defendant's Answer thereto be, and the same are hereby stricken from the record.

Dated this 11th day of February, 1949.

Jeffrey J. Madaleno Jr.
Judge

1196

STATE OF ALABAMA
BALDWIN COUNTY

||

IN THE CIRCUIT COURT
LAW SIDE.

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

You are hereby commanded to summon John Thomas Smith and the Howard Hall Company, Inc., a Corporation, to appear within thirty days from the service of this writ in the Circuit Court to be held for said County at the place of holding same, then and there to answer the Complaint of Mrs. Clara M. Noble, Administratrix of the Estate of Auburn H. Noble, Deceased.

Witness my hand this 10th day of June, 1948.

W. J. Smith
Clerk.