

1323

STATE OF ALABAMA) IN THE CIRCUIT COURT OF BALDWIN COUNTY, TWENTY-
BALDWIN COUNTY.) EIGHTH JUDICIAL CIRCUIT OF ALABAMA.

NO. _____ TERM, _____ 194__.

TO ANY SHERIFF OF THE STATE OF ALABAMA - GREETING:

You are hereby commanded to summon D. H. Hodges, Hodges & Company, Sam Gardner and John Doe, whose name is otherwise unknown but will be supplied when ascertained, to appear before the Circuit Court to be held for said County at the place of holding the same, within thirty days from service of this process, then and there to answer the complaint of I.P.Olds.

Witness my hand this the 24th day of March 1949.

Heide J. Venable
Clerk.

C O M P L A I N T .

I. P. OLDS

VS

Plaintiff.

D.H.HODGES, HODGES &
COMPANY, SAM GARDNER
and JOHN DOE, WHOSE
name is unknown but
will be supplied when
ascertained.
Defendants.

COUNT ONE.

The plaintiff claims of the defendant the sum of \$250.00 damages, for that heretofore, on to-wit, the 8th day of April, 1948, the defendant was engaged in the business of hauling pulp wood or logs in Baldwin County, Alabama, and the plaintiff says that on the date aforesaid, the plaintiff was a pedestrian, leading his cow on a public road, known as the Rosinton road in Baldwin County, Alabama, said road leaves U. S. Highway 90 South of Robertsdale and goes by the Rosinton Methodist Church to Rosinton, Viz; on said road at or near the said church in said County and State, and on to-wit, said place, day and date, defendant's servant, agent or employee, while acting within the line and scope of his employment, negligently ran an automobile, truck or truck-trailer into or against the plaintiff's said cow, the property of the plaintiff, and as a proximate consequence thereof the cow was destroyed, killed or made worthless to plaintiff, for all of which he claims damages in the sum aforesaid.

COUNT TWO.

For Count Two plaintiff adopts all the words and figures contained in the first nine lines and down to the last comma in line ten of count one, and adds thereto the following; being conscious at the time that his conduct in so doing would probably result in injury to the cow, the property of the plaintiff, wilfully or wantonly ran an automobile, truck or truck-trailer into, upon or against the said cow, and as a proximate consequence thereof the cow was destroyed, killed or made worthless to plaintiff, for all of which plaintiff claims damages in the sum aforesaid.

COUNT THREE.

For Count Three plaintiff adopts all the words and figures contained in the first eight lines and down to the third comma in line nine, of count one, and adds thereto the following; and while plaintiff was leading his cow along said highway, where defendant was operating its automobile, truck or truck-trailer, plaintiff's cow was in a place of danger upon said highway, and the defendant's servant, agent or employee, while acting within the line and scope of his employment in and about the operation of said automobile, truck or truck-trailer; and plaintiff avers that after ~~at~~ plaintiff's cow being on the said highway, was discovered by defendant's servant, agent or employee, so operating said truck or truck-trailer, the said agent servant or employee so negligently conducted himself in and about the conduct, control or operation of said truck or truck-trailer, that plaintiff's cow was run into, upon or against by said truck or truck-trailer, and as a proximate consequence thereof the cow was destroyed, killed or made worthless to plaintiff, all of said damage was the proximate consequence and caused by the reason of the said negligence of the defendant's servant, ^{cow} agent or employee, after the peril of plaintiff's ^{cow} was discovered, and within time to have prevented the said injuries to plaintiff's cow.

Gaydon Newman
Attorney for Plaintiff

Plaintiff hereby demands a trial by jury in this cause.

Attorney for Plaintiff.

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D. H. Hodges
 Hodges & Co
 Sam. Gardner
 et al.
 Def.
 all Defendants
 are in Alberta
 Alotama
 28 1949
 ALICE J. DUCK, Clerk

Received _____ 19____
 By serving copy of within Summons
 Complaint on _____
Sam Gardner 4-7-11
 Not found as to D. H. Hodges
 & co, D. H. Hodges and John
 Doe.
 Taylor Will
 J. H. Hall Deputy

Received in Sheriff's Office
this 28 day of March 1949
TAYLOR WILKINS, Sheriff

STATE OF ALABAMA) IN THE CIRCUIT COURT OF BALDWIN COUNTY, TWENTY-
BALDWIN COUNTY.) EIGHTH JUDICIAL CIRCUIT OF ALABAMA.

NO. _____ TERM, _____ 194__.

TO ANY SHERIFF OF THE STATE OF ALABAMA - GREETING:

You are hereby commanded to summon U. H. Hodges, Hodges & Company, Sam Gardner and John Doe, whose name is otherwise unknown but will be supplied when ascertained, to appear before the Circuit Court to be held for said County at the place of holding the same, within thirty days from service of this process, then and there to answer the complaint of I.P.Olds.

Witness my hand this the 28th day of March 1949.

Archie J. Duck
Clark.

C O M P L A I N T .

I. P. OLDS

VS

Plaintiff.

D.H.HODGES, HODGES &
COMPANY, SAM GARDNER
and JOHN DOE, WHOSE
name is unknown but
will be supplied when
ascertained.
Defendants.

COUNT ONE.

The plaintiff claims of the defendant the sum of \$250.00 damages, for that heretofore, on to-wit, the 8th day of April, 1948, the defendant was engaged in the business of hauling pulp wood or logs in Baldwin County, Alabama, and the plaintiff says that on the date aforesaid, the plaintiff was a pedestrian, leading his cow on a public road, known as the Rosinton road in Baldwin County, Alabama, said road leaves U. S. Highway 90 South of Robertsdale and goes by the Rosinton Methodist Church to Rosinton, Viz; on said road at or near the said church in said County and State, and on to-wit, said place, day and date, defendant's servant, agent or employee, while acting within the line and scope of his employment, negligently ran an automobile, truck or truck-trailer into or against the plaintiff said cow, the property of the plaintiff, and as a proximate consequence thereof the cow was destroyed, killed or made worthless to plaintiff, for all of which he claims damages in the sum aforesaid.

COUNT TWO.

For Count Two plaintiff adopts all the words and figures contained in the first nine lines and down to the last comma in line ten of count one, and adds thereto the following; being conscious at the time that his conduct in so doing would probably result in injury to the cow, the property of the plaintiff, wilfully or wantonly ran an automobile, truck or truck-trailer into, upon or against the said cow, and as a proximate consequence thereof the cow was destroyed, killed or made worthless to plaintiff, for all of which plaintiff claims damages in the sum aforesaid.

COUNT THREE.

For Count Three plaintiff adopts all the words and figures contained in the first eight lines and down to the third comma in line nine, of count one, and adds thereto the following; and while plaintiff was leading his cow along said highway, where defendant was operating its automobile, truck or truck-trailer, plaintiff's cow was in a place of danger upon said highway, and the defendant's servant, agent or employee, while acting within the line and scope of his employment in and about the operation of said automobile, truck or truck-trailer; and plaintiff avers that after ~~of~~ plaintiff's cow being on the said highway, was discovered by defendant's servant, agent or employee, so operating said truck or truck-trailer, the said agent servant or employee so negligently conducted himself in and about the conduct, control or operation of said truck or truck-trailer, that plaintiff's cow was run into, upon or against by said truck or truck-trailer, and as a proximate consequence thereof the cow was destroyed, killed or made worthless to plaintiff, all of said damage was the proximate consequence and caused by the reason of the said negligence of the defendant's servant, agent or employee, after the peril of plaintiff's ^{cow} was discovered, and within time to have prevented the said injuries to plaintiff cow.

Attorney for Plaintiff

Plaintiff hereby demands a trial by jury in this cause.

Attorney for Plaintiff.

Plaintiff hereby demands a trial by jury in this cause.

RETURNED TO SENDER

that he have prevented the said injuries to plaintiff, cow.

agent or employee, after the death of plaintiff's deceased, and within
for

and caused by the reason of the said negligence of the defendant's employee,

negligence to plaintiff, all of said damages are the proximate consequence
and as a proximate consequence thereof the cow was destroyed, killed or maimed

plaintiff's cow was run into, run or injured by said truck or truck-trailer,
about the control or operation of said truck or truck-trailer, that

said agent servant or employee so negligently conducted himself in and
around, agent or employee, so operating said truck or truck-trailer, the
the plaintiff's cow being on the said highway, was discovered by defendant's
said automobile, truck or truck-trailer, and plaintiff avers that after

within the line and scope of his employment in and about the operation of
highway, and the defendant's agent or employee, within the line and scope of his
or truck-trailer, plaintiff's cow was in a place of danger upon said

along said highway, where defendant was operating his automobile, truck
and made thereby the following: and while plaintiff was loading his cow

the first eight lines and down to the third count in this indictment.

For Count Three plaintiff avers all the words and allegations contained in
COUNT THREE.

which plaintiff claims damages in the sum of one hundred dollars.

the cow was destroyed, killed or maimed hereinafter to plaintiff, for all of
into, upon or against the said cow, and as a proximate consequence thereof

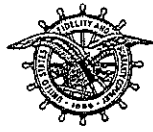
the plaintiff's activity or negligence, and the defendant's negligence, and the
in so doing would probably result in injury to the cow, the property of

and adds thereto the following: being conscious at the time that his conduct
the first nine lines and down to the last count in this set of count one,

For Count Two plaintiff avers all the words and allegations contained in
COUNT TWO.

7701323

F I L E
MAR 28 1949
ALICE J. DICK, Clerk



UNITED STATES FIDELITY AND GUARANTY COMPANY

MOBILE CLAIM OFFICE

LYONS, THOMAS & PIPES, ATTORNEYS

517-519 FIRST NATIONAL BANK BUILDING

MOBILE 8, ALABAMA

ALABAMA CLAIM DEPARTMENT
EDWIN B. CORLEY, ASST. MGR.
802 FIRST NATIONAL BLDG.
BIRMINGHAM, ALA.

May 3rd, 1949.

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

Dear Mrs. Duck:

There are two cases pending in your court under
the style of I. P. Olds, Plaintiff, vs. D. H.
Hodges, Hodges & Co., Sam Gardner and John Doe,
Defendants. Will you please send me copy of the
Sheriff's return of service on each of these
complaints, as I am anxious to see this return,
and particularly anxious to see the date on which
each was served.

Thanking you in advance, I am,

Very truly yours,

Daniel H. Thomas
Daniel H. Thomas

DHT:ee

Done
5-4-49

STATE OF ALABAMA) IN THE CIRCUIT COURT OF BALDWIN COUNTY, TWENTY-
BALDWIN COUNTY.) EIGHTH JUDICIAL CIRCUIT OF ALABAMA.

NO. _____ TERM, _____ 194__.

TO ANY SHERIFF OF THE STATE OF ALABAMA - GREETING:

You are hereby commanded to summon D. H. Hodges, Hodges & Company, Sam Gardner and John Doe, whose name is otherwise unknown but will be supplied when ascertained, to appear before the Circuit Court to be held for said County at the place of holding the same, within thirty days from service of this process, then and there to answer the complaint of I.P.Olds.

Witness my hand this the 2^{8th} day of March 1949.

Alvin J. Duck
Clerk.

C O M P L A I N T .

I. P. OLDS

VS

Plaintiff.

D.H.HODGES, HODGES &
COMPANY, SAM GARDNER
and JOHN DOE, WHOSE
name is unknown but
will be supplied when
ascertained.
Defendants.

COUNT ONE.

The plaintiff claims of the defendant the sum of \$250.00 damages, for that heretofore, on to-wit, the 8th day of April, 1948, the defendant was engaged in the business of hauling pulp wood or logs in Baldwin County, Alabama, and the plaintiff says that on the date aforesaid, the plaintiff was a pedestrian, leading his cow on a public road, known as the Rosinton road in Baldwin County, Alabama, said road leaves U. S. Highway 90 South of Robertsdale and goes by the Rosinton Methodist Church to Rosinton, Viz; on said road at or near the said church in said County and State, and on to-wit, said place, day and date, defendant's servant, agent or employee, while acting within the line and scope of his employment, negligently ran an automobile, truck or truck-trailer into or against the plaintiff said cow, the property of the plaintiff, and as a proximate consequence thereof the cow was destroyed, killed or made worthless to plaintiff, for all of which he claims damages in the sum aforesaid.

COUNT TWO.

For Count Two plaintiff adopts all the words and figures contained in the first nine lines and down to the last comma in line ten of count one, and adds thereto the following; being conscious at the time that his conduct in so doing would probably result in injury to the cow, the property of the plaintiff, ~~wilfully or wantonly ran an automobile, truck or truck-trailer~~ into, upon or against the said cow, and as a proximate consequence thereof the cow was destroyed, killed or made worthless to plaintiff, for all of which plaintiff claims damages in the sum aforesaid.

COUNT THREE.

For Count Three plaintiff adopts all the words and figures contained in the first eight lines and down to the third comma in line nine, of count one, and adds thereto the following; and while plaintiff was leading his cow along said highway, where defendant was operating its automobile, truck or truck-trailer, plaintiff's cow was in a place of danger upon said highway, and the defendant's servant, agent or employee, while acting within the line and scope of his employment in and about the operation of said automobile, truck or truck-trailer; and plaintiff avers that after ~~at~~ plaintiff's cow being on the said highway, was discovered by defendant's servant, agent or employee, so operating said truck or truck-trailer, the said agent servant or employee so negligently conducted himself in and about the conduct, control or operation of said truck or truck-trailer, that plaintiff's cow was run into, upon or against by said truck or truck-trailer, and as a proximate consequence thereof the cow was destroyed, killed or made worthless to plaintiff, all of said damage was the proximate consequence and caused by the reason of the said negligence of the defendant's servant, agent or employee, after the peril of plaintiff's ^{cow} was discovered, and within time to have prevented the said injuries to plaintiff's cow.

Attorney for Plaintiff

Plaintiff hereby demands a trial by jury in this cause.

Attorney for Plaintiff.

1323

I. P. OLDS, PLAINTIFF

VS.

SAM GARDNER, ET AL,
DEFENDANTS.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

NO. 1323.

Comes the defendant Sam Gardner in the above entitled cause and demurs to Count One of the plaintiff's complaint, and as grounds therefor sets out the following separate and several grounds of demurrer:

1. Said count is vague, uncertain and indifferent.
2. Said count does not fully apprise this defendant of what he is called upon to defend.
3. It is impossible to tell from said count whether this defendant is sued as principal or as an agent.
4. From aught that appears in said count, all four of the defendant's named in the caption of said cause are sued as principals.
5. From aught that appears in said count, the defendant's servant, agent or employee, who is alleged to have caused the damage complained of, was not acting within the line and scope of his employment as a servant, agent or employee of this defendant, or any of the defendants.
6. Said count does not definitely set out the time nor the place where the alleged accident occurred.
7. Said count does not allege that the accident occurred on a public thoroughfare in the County of Baldwin.
8. Said count does not set out that the damage complained of was the proximate result of the alleged negligent act of this defendant or of any of the defendants.

Comes the defendant Sam Gardner and demurs to Count Two of said complaint, and as grounds therefor sets out separately and severally the same grounds heretofore set out to Count One of plaintiff's complaint, and in addition thereto the following:

9. Said count does not sufficiently charge this defendant with willful and wanton conduct.

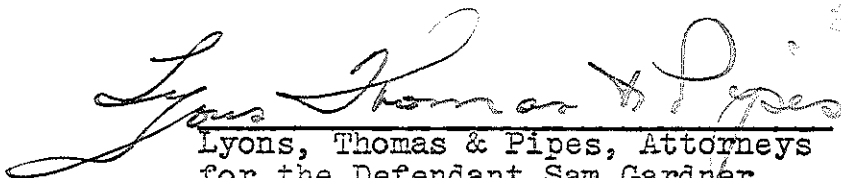
10. Said count does not set out that the damages complained of were the proximate result of any willful or wanton conduct of this defendant.

Comes the defendant Sam Gardner and demurs to Count Three of said complaint, and as grounds therefor sets out separately and severally the same grounds heretofore set out to Count One of plaintiff's complaint, and in addition thereto the following:

9. Said count does not set out sufficient facts to charge this defendant with subsequent negligence.

10. Said count shows on its face that the plaintiff's cow was not in a place of danger at the time and place complained of.

11. From aught that appears in said count, the plaintiff's cow was not in a place of danger at the time said cow was discovered by the defendant.


Lyons, Thomas & Pipes, Attorneys
for the Defendant Sam Gardner

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FILED

MAY 7 1949

ALICE J. DUCK, Clerk