WILLIAM FRANKLIN GARDNER,	*	IN THE CIRCUIT COURT OF
Plaintiff,	*	BALDWIN COUNTY, ALABAMA
vs.	*	AT LAW
LARRY H. GILES,	*	
		CASE NO. 8855
Defendant.	*	

NOTICE OF DEPOSITION

TO: Eberhard E. Ball
Chason, Stone & Chason
Attorneys at Law
Bay Minette, Alabama

Please take notice that at 1 p.m. on the 4th day of February, 1970 in the office of Dr. M. H. Taylor situated at Foley, Alabama the defendant Larry H. Giles will take the deposition of Dr. M. H. Taylor whose address is Foley, Alabama upon oral exmination pursuant to an Act of the Legislature of the State of Alabama, designed as Act No. 375, Regular Session 1955, Approved September 8, 1955, before Mrs. Louise Dusenbury, an officer authorized to administer oaths in the County of Baldwin, State of Alabama, duly authorized to take depositions and swear witnesses in said County, in said State. The oral examination will continue from day to day until completed and you are invited to attend and examine the witness.

LYONS, PIPES AND COOK
Attorneys for Defendant

By: James B. Kierce Jr

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 6th day of Jan., 1970, served a copy of the foregoing Notice of Deposition on counsel for all parties to this proceeding by mailing the same be United States Mail, properly addressed, and first class postage prepaid.

James B. Kierce Jr

NOTE TO CLERK:
Please issue a subpoena to Dr. Taylor to appear at the time and place aforesaid for his deposition.

James B. Kierce Jr.

FILED
JAN 7 1970
ALICE J. DUCK CLERK REGISTER

VOL 85 PAGE 339

_____DIV. NO._____ CERTIFICATE OF APPEAL. (Civil Cases.)

No. 8855

THE STATE OF ALABAMA

Baldwin County.

I, Alice J. Duck, Clerk of the Circuit Court of Baldwin County, in and for said State and County, hereby certify that the foregoing pages numbered from one to _____, both inclusive, contain a full, true and complete transcript of the record and proceedings of said Court in a certain cause lately therein pending wherein William Franklin Gardner was plaintiff, and Larry H. Giles was Defendant, as fully and completely as the same appears of record in said Court.

And I further certify that the said Larry H. Giles did on the 8th day of January, 19 71, pray for and obtain an appeal from the judgment of said Court to the Supreme Court of Alabama to reverse said judgment of said Court upon entering into bond for cost with Fidelity and Deposit Company of Maryland, Baltimore, Maryland as surety thereon, which said bond has been approved by me.

Witness my hand and the seal of said Circuit Court of Baldwin County is hereto affixed, this the 8th day of JAnuary, 19 71.

Alice J. Duck

Clerk of the Circuit Court of

Baldwin County, Alabama.

(Code 1940, Title 7, Sec. 767)

Box 475-1 4743 MARSHALL & BRUCE-NASHVILLE

WILLIAM FRANKLIN GARDNER,	)	IN THE CIRCUIT COURT OF
	(	
Plaintiff,	)	BALDWIN COUNTY, ALABAMA
	(	
VS.	)	
	(	AT LAW
LARRY H. GILES,	)	
	(	
Defendant.	)	CASE NO. 8855

Comes now the Defendant in the above styled cause, as Principal and Fidelity And Deposit Company of Maryland, Baltimore, Maryland, as Surety, and hereby acknowledge themselves security for all costs of Appeal to the Supreme Court of Alabama from the Judgment of the Circuit Court of Baldwin County, Alabama rendered on, to-wit, December 2, 1970 and from the order of the Circuit Court of Baldwin County, Alabama rendered on, to-wit, January 4, 1971 denying the Defendant's Motion For New Trial, jointly and separately.

AS PRINCIPAL

Larry H. Giles
LARRY H. GILES

AS SURETY

H. L. Deneau
FIDELITY AND DEPOSIT COMPANY
OF MARYLAND, BALTIMORE, MARYLAND

Taken and approved on this the 8 day of Jan., 1971.

Bruce L. Drake
CLERK, CIRCUIT COURT, BALDWIN COUNTY, ALABAMA

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 8th day of Jan., 19 71, served a copy of the foregoing pleading on counsel for all parties to this proceeding by mailing the same by United States mail, properly addressed, and first class postage prepaid.

Jno. B. Kuenzel Jr.

appeal cost
40.75

CHASON, STONE & CHASON
ATTORNEYS AT LAW
P. O. BOX 120
BAY MINETTE, ALABAMA 36507

JOHN CHASON
NORBORNE C. STONE, JR.
JOHN EARLE CHASON
EBERHARD E. BALL

TELEPHONE 937-2191

February 17, 1971

Mrs. Eunice B. Blackmon, Clerk
Circuit Court of Baldwin County
Bay Minette, Alabama

Dear Eunice:

Re: Gardner vs. Giles
Case No. 8855

We would like to have an execution issued against the Defendant, Larry H. Giles, in the above case if one has not already been issued.

This case has been appealed to the Supreme Court of Alabama but no supersedeas bond was filed and therefore it is proper for execution to issue.

Thanking you for your attention to this request, we are

Sincerely,

CHASON, STONE & CHASON

By: Norborne C. Stone, Jr.

NCS:jb

WILLIAM FRANKLIN GARDNER,	X	
Plaintiff,	X	IN THE CIRCUIT COURT OF
vs.	X	BALDWIN COUNTY, ALABAMA
LARRY H. GILES,	X	
Defendant.	X	AT LAW no. 4855

AMENDED COMPLAINT

COUNT ONE:

The Plaintiff claims of the Defendant the sum of Seventy-five Thousand Dollars ($75,000.00) as damages for that on, heretofore, to-wit: May 22, 1969, the Defendant, Larry H. Giles, so negligently operated a motor vehicle on the Old Loxley-Robertsdale Highway, a public road, at a point 2.5 miles North of Robertsdale, Baldwin County, Alabama, as to cause the said motor vehicle which he was then and there operating to run over, upon or against a pick-up truck which the Plaintiff was then and there operating, and as a proximate consequence and result of the negligence of the Defendant, Larry H. Giles, aforesaid, the Plaintiff's said pick-up truck was greatly damaged and rendered less valuable and the Plaintiff sustained serious personal injuries in this, to-wit: his left leg was broken, he suffered severe cuts and lacerations of his left leg, the muscles of his left leg were severely torn and injured, his left shoulder was fractured and bruised, he was caused to go into a state of shock, he was bruised, contused and lacerated over his entire body, he was made sick, sore and lame, he was caused to incur medical, hospital and drug bills in and about the care and treatment of his injuries, he was caused great mental and physical pain and anguish, he was caused to lose great amounts of time from work as a diesel mechanic, all to his damage aforesaid, hence this suit.

COUNT TWO:

The Plaintiff claims of the Defendant Seventy-five Thousand Dollars ($75,000.00) as damages for that on, heretofore,

to-wit: May 22, 1969, on the Old Loxley-Robertsdale Highway, a public road, at a point 2.5 miles North of Robertsdale, Baldwin County, Alabama, the Defendant, Larry H. Giles, wantonly injured the Plaintiff by then and there willfully and wantonly operating a motor vehicle so as to cause or allow the same to run over, upon or against a pick-up truck which the Plaintiff was then and there operating, and as a proximate consequence and reult of the willful and wanton conduct of the Defendant aforesaid, the Plaintiff was injured in this, to-wit: his pick-up truck was greatly damaged and rendered less valuable, his left leg was broken, he suffered severe cuts and lacerations of his left leg, the muscles of his leg were severely torn and injured, his left shoulder was fractured and bruised, he was caused to go into a state of shock, he was bruised, contused and lacerated over his entire body, he was made sick, sore and lame, he was caused to incur medical, hospital and drug bills in and about the care and treatment of his injuries, he was caused great mental and physical pain and anguish, he was caused to lose great amounts of time from work as a diesel mechanic all to his damage aforesaid, hence this suit.

CHASON, STONE & CHASON

By: Eberhard E Ball
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon counsel for all parties to this proceeding, by mailing the same to each by First Class United States Mail, properly addressed and postage prepaid on this 11 day of FEB, 1970.

Eberhard E Ball

FILED

FEB 11, 1970

ALICE J. BUSEK CLERK REGISTER

8855

We Allegiance Financial Corporation of Texas Plaintiff
in the amount of $31,000;
Kenneth Hall
Houston

FILED

FEB 11 1970

ALICE J. DUCK CLERK
REGISTER

STATE OF ALABAMA

BALDWIN COUNTY

IN THE CIRCUIT COURT - LAW SIDE

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon Larry H. Giles to appear, and plead, answer or demur, within thirty days from the service hereof, to the Complaint filed in the Circuit Court of Baldwin County, Alabama, At Law, by William Franklin Gardner as Plaintiff, against Larry H. Giles, as Defendant.

Witness my hand this 27 day of August, 1969.

Clerk

WILLIAM FRANKLIN GARDNER	X	
Plaintiff,	X	IN THE CIRCUIT COURT OF
	X	BALDWIN COUNTY, ALABAMA
vs.	X	
LARRY H. GILES,	X	AT LAW 8855
Defendant.	X	

COUNT ONE:

The Plaintiff claims of the Defendant the sum of Seventy-five Thousand Dollars ($75,000.00) as damages for that on, heretofore, to-wit: May 22, 1969, the Defendant, Larry H. Giles, so negligently operated a motor vehicle on the Old Loxley-Robertsdale Highway at a point 2.5 miles North of Robertsdale, Baldwin County, Alabama, as to cause the said motor vehicle which he was then and there operating to run over, upon or against a pick up truck which the Plaintiff was then and there operating, and as a proximate consequence and result of the regligence of the Defendant, Larry

H. Giles, aforesaid, the Plaintiff's said pick up truck was greatly damaged and rendered less valuable and the Plaintiff sustained serious personal injuries in this, to-wit: his left leg was broken, he suffered severe cuts and lacerations of his left leg, the muscles of his left leg were severely torn and injured, he suffered a broken rib, he was caused to go into a state of shock, he was bruised, contused and lacerated over his entire body, he was made sick, sore and lame, he was caused to incur medical, hospital and drug bills in and about the care and treatment of his injuries, he was caused great mental and physical pain and anguish, he was caused to lose great amounts of time from work all to his damage aforesaid, hence this suit.

COUNT TWO:

The Plaintiff claims of the Defendant Seventy-five Thousand Dollars ($75,000.00) as damages for that on, heretofore, to-wit: May 22, 1969, on the Old Loxley-Robertsdale Highway at a point 2.5 miles North of Robertsdale, Baldwin County, Alabama, the Defendant, Larry H. Giles, wantonly injured the Plaintiff by then and there willfully and wantonly operating a motor vehicle so as to cause or allow the same to run over, upon or against a pick up truck which the Plaintiff was then and there operating, and as a proximate consequence and result of the willfull and wanton conduct of the Defendant aforesaid, the Plaintiff was injured in this, to-wit: his pick up truck was greatly damaged and rendered less valuable, his left leg was broken, he suffered severe cuts and lacerations of his left leg, the muscles of his leg were severely torn and injured, he suffered a broken rib, he was caused to go into a state of shock, he was bruised, contused and lacerated over his entire body, he was made sick, sore, and lame, he was caused to incur medical, hospital and drug bills in and about the care and treatment

of his injuries, he was caused great mental and physical pain and anguish, he was caused to lose great amounts of time from work all to his damage aforesaid, hence this suit.

CHASON, STONE & CHASON

By: Eberhard C Ball
Attorneys for Plaintiff

Plaintiff demands a trial of this cause by jury.

CHASON, STONE & CHASON

By: Eberhard C. Ball
Attorneys for Plaintiff

FILED

AUG 27 1969

ALICE J. DUCK CLERK REGISTER

VOL 65 PAGE 331

8-30-69

78.8855

Received 27 day of August 1969
and on 30 day of Aug. 1969
I served a copy of the within S&C
on Larry H. Giles

By service on

TAYLOR WILKINS, Sheriff
By Hall D. S.

Sheriff claims 50 miles at
Ten Cents per mile Total $ 5.00
TAYLOR WILKINS, Sheriff
BY Hall
DEPUTY SHERIFF

WILLIAM FRANKLIN GARDNER
Plaintiff

vs.

LARRY H. GILES
Defendant

* *

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

* *

SUMMONS and COMPLAINT

FILED

AUG 27 1969

ALICE J. [illegible] CLERK
REGISTER

CHASON, STONE & CHASON
ATTORNEYS AT LAW
P. O. BOX 120
BAY MINETTE, ALABAMA

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 19 70-71

1 *Div. No.* 671

To the Clerk ~~Register~~ of the Circuit Court of Baldwin

County, Greeting:

Whereas, the Record and Proceedings of the Circuit Court of said county, in a certain cause lately pending in said Court between

LARRY H. GILES, Appellant,

and

WILLIAM FRANKLIN GARDNER, Appellee,

wherein by said Court it was considered adversely to said appellant, were brought before the Supreme Court, by appeal taken, pursuant to law, on behalf of said appellant;

Now, it is hereby certified:

That the Supreme Court on the 24 day of June, 19 71, reversed and annulled the judgment of the Court below, and remanded the cause to said Court for further proceedings therein.

That the Court further ordered the appellee, William Franklin Gardner,

pay the costs accruing on said appeal in this Court and in the Court below, for which costs let execution issue.

Witness, J. O. Sentell, Clerk of the Supreme Court of Alabama, at the Judicial Department Building, this the 24th day of June 19 71

J. O. Sentell

Clerk of the Supreme Court of Alabama.

THE SUPREME COURT OF ALABAMA

October Term, 19 70-71

1 Div., No. 671

Larry H. Giles

Appellant,

vs.

William Franklin Gardner

Appellee.

From Baldwin Circuit *Court.*

CERTIFICATE OF REVERSAL

The State of Alabama,

FILED *County.* } *Filed*

this ____ *day of* JUN 29 1971 19____

EUNICE B. BLACKMON CIRCUIT CLERK

BROWN PRINTING CO., MONTGOMERY 1968

CITATION OF APPEAL Moore Printing Company, Bay Minette, Alabama

THE STATE OF ALABAMA
Baldwin County - Circuit Court

TO ANY SHERIFF OF THE STATE OF ALABAMA—GREETING:

Whereas, at a Term of the Circuit Court of Baldwin County, held on the 2nd day of December, 1971 Monday in ....., 19....., in a certain cause in said Court wherein William Franklin Gardner ..... Plaintiff, and Larry H. Giles .....Defendant, a judgement was rendered against said Larry H. Giles and on January 4, 1972, order denying motion for a new trial,

to reverse which Judgments, the said Larry H. Giles .....

.....

.....

applied for and obtained from this office an APPEAL, returnable to the next Term of our Supreme Court of the State of Alabama, to be held at Montgomery, on the ..... day of ....., 19..... next, and the necessary cost bond having been given by the said Larry H. Giles ..... with Fidelity and Deposit Company of Maryland, Baltimore, Maryland, sureties,

.....

.....

Now, You Are Hereby Commanded, without delay, to cite the said William Franklin Gardner or Alton Brown of Foreman, Brown & Hudgens and N. C. Stone ~~xxx~~ .....

....., attorneys to appear at the next Term of our said Supreme Court, to defend against the said Appeal, if they think proper.

Witness, ALICE J. DUCK, Clerk of the Circuit Court of said County, this 8 day of June A. D., 19 72

Attest:

Alice J. Duck, Clerk.

RECEIVED
JAN 12 1971
TAYLOR WILKINS
SHERIFF

ceived 29 day of Jan 1971
d on 15 day of Feb 1971
erved a copy of the within Citation in Appeal
N C. Stone

service on

TAYLOR WILKINS, Sheriff
By W. Carlton Collier D. S.

This 15 day of Jan 1971
/ serving a copy of the within on
Alton Brown
RAY D. BRIDGES, Sheriff
By M-Wannamaker D.S.

RETURNED 1-15-71
Not found in my County after diligent search and inquiry.
RAY D. BRIDGES, Sheriff
By M-Wannamaker D.S.

8523

Case No. 8855

CIRCUIT COURT
Baldwin County, Alabama

WILLIAM FRANKLIN GARDNER

Vs. } **Citation in Appeal**

LARRY H. GILES

RECV'D SHERIFF DEPT.
MOBILE COUNTY, ALA.
JAN 13 8 43 AM '71

Issued _____ day of _____, 19____

SERVE: N. C. Stone
and
Alton Brown of
Foreman, Brown & Hudgens

WILLIAM FRANKLIN GARDNER,	*	IN THE CIRCUIT COURT OF
Plaintiff,	*	BALDWIN COUNTY, ALABAMA
VS	*	AT LAW
LARRY H. GILES,	*	
Defendant.	*	CASE NO. 8855

Comes now the Plaintiff in the above styled cause and for Answer to Pleas 4 and 5 says that at the time and place complained of in Pleas 4 and 5, respectively, the Defendant was himself guilty of negligence which proximately contributed to his alleged injuries and damages in that at said time and place the Defendant so negligently operated a motor vehicle as to cause or allow the same to collide with the motor vehicle being operated at said time and place by the Plaintiff, wherefore Plaintiff says that the Defendant should have and recover nothing of the Plaintiff on said Pleas 3 and 4.

For further answer to Pleas 6 and 7 of the Defendant, the Plaintiff says as follows:

1. Not guilty.

CHASON, STONE & CHASON
Attorneys for the Plaintiff

BY Norborne C. Stone Jr
Norborne C. Stone, Jr.

FOREMAN, BROWN & HUDGENS
Attorneys for the Plaintiff

By
Alton R. Brown, Jr.

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 29th day of June, 1970 served a copy of the foregoing pleading on counsel for all parties to this proceeding by mailing the same by United States mail, properly addressed, and first class postage prepaid.

FILED

JUN 30 1970

ALICE J. BUCK CLERK REGISTER

VOL 55 PAGE 342

LYONS, PIPES & COOK
ATTORNEYS AT LAW
2510 FIRST NATIONAL BANK BUILDING
MOBILE, ALABAMA
36601

JOSEPH H. LYONS (1900-1957)
SAM W. PIPES
WALTER M. COOK
GORDON B. KAHN
G. SAGE LYONS
AUGUSTINE MEAHER, III
JAMES B. KIERCE, JR.
WESLEY PIPES
NORTON W. BROOKER, JR.

AREA CODE 205
TEL. 432-4483
P.O. DRAWER 2525

September 24, 1969

Mrs. Alice J. Duck
Circuit Clerk
Baldwin County Courthouse
Bay Minette, Alabama 36507

Re: William Franklin Gardner vs. Larry H. Giles, in the Circuit Court of Baldwin County, Alabama, Case No. 8855.

Dear Mrs. Duck:

Our firm is going to represent the defendant in connection with the above-referenced suit and I enclose the original and my file copy of a demurrer. Please file the original for me, stamp the copy "Filed" and return the copy to me in the enclosed self-addressed, stamped envelope.

With best wishes,

LYONS, PIPES AND COOK

Jas. B. Kierce Jr.

James B. Kierce, Jr.

JBK/lb

Encls.

WILLIAM FRANKLIN GARDNER,	X	
Plaintiff,	X	IN THE CIRCUIT COURT OF
	X	
vs.		BALDWIN COUNTY, ALABAMA
	X	
LARRY H. GILES,	X	AT LAW NO: 8855
Defendant.	X	

MOTION FOR APPOINTMENT OF
GUARDIAN AD LITEM

Comes now the Plaintiff in the above styled cause, by and through his Attorneys of Record, and makes this his Motion for the appointment of a Guardian Ad Litem to represent and defend the interest of the Defendant in said cause, a minor over the age of fourteen years and in support thereof, would show unto Your Honor and unto this Honorable Court as follows:

1. That insofar as your Plaintiff is informed and believes, the Defendant is a minor over the age of fourteen years having no general guardian.

2. That more than thirty days have elapsed since the filing of this suit and notice to said minor and no nomination of a Guardian Ad Litem has been made by the Defendant.

3. That it is necessary that this Honorable Court appoint a Guardian Ad Litem who is not adversely interested in said infant for the purpose of defending this action.

CHASON, STONE & CHASON

By: John E. Chason

ORDER

This day came the Plaintiff in the above styled cause on his motion for the appointment of a Guardian Ad Litem to represent and defend the interest of the minor Defendant in said

cause and it appearing to the Court that said motion is due to be granted; it is, on consideration thereof, hereby

ORDERED, ADJUDGED and DECREED that Jayson D. Workings, a practicing attorney in Bay Minette, Alabama, should be, and is hereby, appointed Guardian Ad Litem of Larry H. Giles, a minor, for the purpose of representing and defending the interest of said minor in that certain cause now pending in the Circuit Court of Baldwin County, Alabama, At Law, wherein William Franklin Gardner is Plaintiff and Larry H. Giles, a minor, is Defendant, being Case No. 8855.

Done this 1st day of December, 1970.

Telfair A. Waddell
Circuit Judge

FILED

DEC 1 1970

ALICE J. BUCK CLERK REGISTER

88555

66.50
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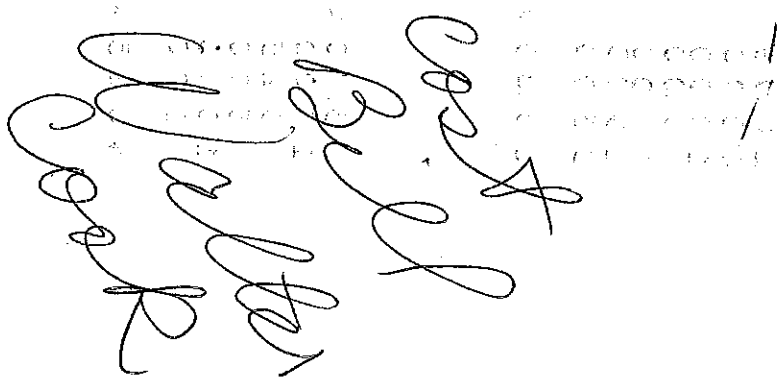
127.40

130.



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WILLIAM FRANKLIN GARDNER,	:	IN THE CIRCUIT COURT OF
Plaintiff,	:	BALDWIN COUNTY, ALABAMA
Vs.	:	AT LAW
LARRY H. GILES,	:	CASE NO. 8855
Defendant.	:	

DEMURRER

Comes now the defendant in the above-styled cause, and demurs to the plaintiff's amended complaint as a whole, and to each and every count thereof, separately and severally, and, for separate and several grounds of demurrer, assigns, separately and severally, each ground of demurrer heretofore assigned, being grounds one through eight inclusive, separately and severally.

LYONS, PIPES AND COOK
Attorneys for Defendant.

BY: Jas. B. Kierce Jr.
JAMES B. KIERCE, JR.
2510 First National Bank
Building, Mobile, Alabama

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 16th day of Feb., 1970, served a copy of the foregoing pleading on counsel for all parties to this proceeding by mailing the same by United States mail, properly addressed, and first class postage prepaid.

Jas. B. Kierce Jr.

FILED
FEB 17 1970
ALICE J. BUCK CLERK
REGISTER

VOL 65 PAGE 336

WILLIAM FRANKLIN GARDNER,	)	IN THE CIRCUIT COURT OF
Plaintiff,	)	BALDWIN COUNTY, ALABAMA
VS.	)	AT LAW
LARRY H. GILES,	)	
Defendant.	)	CASE NO. 8855

NOTICE OF APPEAL

Comes now the Defendant in the above styled cause and hereby gives notice of Appeal to the Supreme Court of Alabama from the Judgment of the Circuit Court of Baldwin County, Alabama rendered on, to-wit, December 2, 1970, and from the order of the Circuit Court of Baldwin County, Alabama rendered on, to-wit, January 4, 1971 denying the Defendant's Motion For New Trial, jointly and separately.

LYONS, PIPES AND COOK
Attorneys for the Defendant.

BY: James B. Kierce Jr.
JAMES B. KIERCE, JR.

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 8th day of January, 1971, served a copy of the foregoing pleading on counsel for all parties to this proceeding by mailing the same by United States mail, properly addressed, and first class postage prepaid.

Jas. B. Kierce Jr.

FILED

JAN 8 1971

ALICE J. DUCK CLERK REGISTER

WILLIAM FRANKLIN GARDNER	*	IN THE CIRCUIT COURT
Plaintiff,	*	OF BALDWIN COUNTY
Vs.	*	ALABAMA
LARRY H. GILES,	*	AT LAW
Defendant.	*	CASE NO. 8855

Comes now the defendant and demurs to the plaintiff's complaint, and to each count thereof, separately and severally, upon the following separate and several grounds, to-wit:

1. Said count fails to allege the violation of any duty owed by the defendant to the plaintiff.

2. Said count fails to allege facts showing the violation of any duty owed by the defendant to the plaintiff.

3. For aught that appears from said count, the accident did not occur on a public street.

4. For aught that appears from said count, the plaintiff was not at a place where he had a legal right to be at the time and place complained of.

5. For aught that appears from said count, the injuries and damages suffered by the plaintiff were not the proximate result of any act or failure to act on the part of the defendant.

6. For that said count fails to allege any causal connection between the alleged negligence of the defendant and the alleged damages of the plaintiff.

7. For that the willful or wanton act alleged in said count characterizes the act and not the injury.

8. For that said count fails to allege facts showing wantonness on the part of the defendant.

LYONS, PIPES AND COOK
Attorneys for the Defendant

BY: _____

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 24th day of Sept., 1969, served a copy of the foregoing pleading on counsel for all parties to this proceeding by mailing the same by United States mail, properly addressed, and first class postage prepaid.

James B. Kuenzel

FILED
SEP 24 1969

VOL 96 PAGE 332 ALICE J. DUCK CLERK REGISTER

[illegible]

[illegible]

[illegible]

WILLIAM FRANKLIN GARDNER,	*	IN THE CIRCUIT COURT
Plaintiff,	*	OF BALDWIN COUNTY,
VS.	*	ALABAMA
LARRY H. GILES,	*	AT LAW
Defendant.	*	CASE NO. 8855

ANSWER

Comes now the defendant in the above-styled cause, Larry H. Giles, and for answer to the plaintiff's Complaint as last amended, and to each and every count thereof, separately and severally, sets down and assigns the following Pleas, separately and severally, to-wit:

1. Not guilty.

2. That the material allegations are untrue.

3. The defendant says that at the time and place complained of the plaintiff was himself guilty of negligence which proximately contributed to his alleged injuries and damages in that at said time and said place the said plaintiff so negligently operated a motor vehicle as to cause or allow the same to collide with the motor vehicle the defendant was driving, WHEREFORE, the defendant says that the plaintiff ought not to have and recover of him.

4. The defendant claims of the plaintiff by way of recoupment, the sum of THREE THOUSAND FIVE HUNDRED AND NO/100 ($3,500.00) DOLLARS as damages for that heretofore, at the time and place complained of in said count, the said plaintiff so negligently operated a motor vehicle as to cause or allow the same to collide with the motor vehicle the defendant was driving, and as a proximate consequence of the negligence of

the plaintiff as aforesaid, the motor vehicle the defendant was driving was badly bent, broken, damaged and rendered of greatly less value; all for which the defendant claims THREE THOUSAND FIVE HUNDRED AND NO/100 ($3,500.00) DOLLARS of the plaintiff by way of recoupment.

5. The defendant claims of the plaintiff by way of recoupment, the sum of TEN THOUSAND AND NO/100 ($10,000.00) DOLLARS as damages for that heretofore, at the time and place complained of in said count, the said plaintiff so negligently operated a motor vehicle as to cause or allow the same to collide with the motor vehicle the defendant was driving, and as a proximate consequence of the negligence of the plaintiff as aforesaid, the defendant was injured and damaged as follows, to-wit: The defendant was made sick, sore and lame, he suffered cuts, bruises and abrasions, he suffered a concussion, he suffered a blow to the area of his right eye, the vision in his right eye has been impaired and will be permanently impaired, he suffered severe headaches, he suffered severe physical pain and mental anguish and will so suffer in the future, he was caused to expend sums of money for hospital and doctor bills in and about his treatment and care; all for which the defendant claims TEN THOUSAND AND NO/100 ($10,000.00) DOLLARS of the plaintiff by way of recoupment.

6. The defendant claims of the plaintiff by way of recoupment, the sum of THREE THOUSAND FIVE HUNDRED AND NO/100 ($3,500.00) DOLLARS as damages for that heretofore, at the time and place complained of in said count, the said plaintiff wantonly injured the motor vehicle of the defendant by so wantonly operating a motor

vehicle so as to cause or allow the same to collide with the motor vehicle the defendant was driving, and as a proximate consequence of the wantonness of the plaintiff as aforesaid, the motor vehicle the defendant was driving was badly bent, broken, damaged and rendered of greatly less value; all for which the defendant claims THREE THOUSAND FIVE HUNDRED AND NO/100 ($3,500.00) DOLLARS of the plaintiff by way of recoupment.

7. The defendant claims of the plaintiff by way of recoupment, the sum of TEN THOUSAND AND NO/100 ($10,000.00) DOLLARS as damages for that heretofore, at the time and place complained of in said count, the said plaintiff wantonly injured the defendant by so wantonly operating a motor vehicle so as to cause or allow the same to collide with the motor vehicle the defendant was driving, and as a proximate consequence of the wantonness of the plaintiff as aforesaid, the defendant was injured and damaged as follows, to-wit: The defendant was made sick, sore and lame, he suffered cuts, bruises and abrasions, he suffered a concussion, he suffered a blow to the area of his right eye, the vision in his right eye has been impaired and will be permanently impaired, he suffered severe headaches, he suffered severe physical pain and mental anguish and will so suffer in the future, he was caused to expend sums of money for hospital and doctor bills in and about his treatment and care; all for which the defendant claims TEN THOUSAND AND NO/100 ($10,000.00) DOLLARS of the plaintiff by way of recoupment.

LYONS, PIPES AND COOK
Attorneys for the Defendant,
Larry H. Giles.

By: _____
Walter M. Cook

By: James B. Kierce, Jr.
James B. Kierce, Jr.

FILED

MAY 18 1970

ALICE J. DUCK CLERK REGISTER

Please have the Sheriff serve a copy of the foregoing Pleas upon the plaintiff's Attorney of Record who is Norborne C. Stone, Jr., Attorney at Law, Bay Minette, Alabama.

SUMMONS AND COMPLAINT

THE STATE OF ALABAMA
BALDWIN COUNTY

Circuit Court, Baldwin County

No. 8855

.....TERM, 19.....

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon ~~XXXXXXXXXXXXXX~~ William Franklin Gardner

Plaintiff or Norborne C. Stone, Jr., Attorney for Plaintiff,

to appear and plead, answer or demur, within thirty days from the service hereof, to the ~~Xxxxx~~ complaint
ANSWER & Pleas
filed in the Circuit Court of Baldwin County, State of Alabama, at Bay Minette against William Franklin

Plaintiff
Gardner, ~~Defendant~~

by Larry H. Giles,

Defendant
~~Plaintiff~~

Witness my hand this 18th day of May 19 70

Alice J. Duck Clerk

Ex-5-18-70

No. 8855 Page.....

THE STATE OF ALABAMA
BALDWIN COUNTY

CIRCUIT COURT

WILLIAM FRANKLIN GARDNER

.....

Plaintiffs

vs.

LARRY H. GILES

Defendants

SUMMONS AND COMPLAINT

Filed May 18, 1970

Alice J. Duck Clerk

NORBORNE C. STONE, JR.

Plaintiff's Attorney

LYONS, PIPES & COOK

Defendant's Attorney

SERVE: Defendant lives at
Norborne C. Stone, Jr.
Atty. for Plaintiff
Bay Minette,

Recieved In Office

May 18 1970

Taylor Wilkins Sheriff

I have executed this summons

this May 25 1970

by leaving a copy with

Norborne C. Stone, Jr.

Taylor Wilkins Sheriff

W. A. Zeller Deputy Sheriff

Moore Printing Co. - Bay Minette, Ala.

WILLIAM FRANKLIN GARDNER,	*	IN THE CIRCUIT COURT
Plaintiff,	*	OF BALDWIN COUNTY,
VS.	*	ALABAMA
LARRY H. GILES,	*	AT LAW
Defendant.	*	CASE NO. 8855

NOTICE OF DEPOSITION

TO: Mr. Norborne C. Stone, Jr.
Attorney At Law
Post Office Box 120
Bay Minette, Alabama 36507

Please take notice that at 10:15 a.m. on the 9th day of July, 1970 in the Law Library of the Baldwin County Courthouse situated at Bay Minette, Alabama the defendant Larry H. Giles will take the Deposition of L. B. Benbow, whose address is Route 1, Box 46 B, Loxley, Alabama upon oral examination pursuant to an Act of the Legislature of the State of Alabama, designated as Act No. 375, Regular Session 1955, Approved September 8, 1955, before Mrs. Louise Dusenbury, an officer authorized to administer oaths in the County of Baldwin, State of Alabama, duly authorized to take Depositions and swear witnesses in said County, in said State. The oral examination will continue from day to day until completed and you are invited to attend and examine the witness.

FILED
JUN 26 1970
ALICE J. BUCK

LYONS, PIPES AND COOK
Attorneys for the Defendant.
By: James B. Kierce, Jr.
James B. Kierce, Jr.

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 25th day of June, 1970, served a copy of the foregoing Notice of Deposition on counsel for all parties to this proceeding by mailing the same by United States Mail, properly addressed, and first class postage prepaid.

James B. Kierce, Jr.

NOTE TO CLERK: Please issue a Subpoena for the witness to appear at the time and place aforesaid for his Deposition. The witness may be served at his place of employment which is Alabama Highway Department Repair Shop, Loxley, Alabama or his residence which is Route 1, Box 46 B, Loxley, Alabama.

Done 6-26-70

VOL 65 PAGE 321

James B. Kierce, Jr.

THE STATE OF ALABAMA - - - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1970-71

Larry H. Giles

1 Div. 671 v.

William Franklin Gardner

Appeal from Baldwin Circuit Court

MERRILL, JUSTICE.

This is an appeal from a verdict and judgment for the plaintiff-appellee in the amount of $31,000.00 against the defendant-appellant on a two-count complaint filed as a result of an intersection collision between the plaintiff's

pickup truck and the defendant's car. One count charged negligence and the second charged wantonness. The plaintiff's wanton count was charged out by the trial court. The defendant filed pleas of the general issue, contributory negligence and recoupment. After verdict and judgment, a motion for a new trial was overruled.

Appellant's first assignment of error is the refusal of the trial court to grant the defendant's requested affirmative charge with hypothesis. Most of the evidence is undisputed.

The plaintiff, an adult, was traveling west and the defendant, a nineteen-year-old boy, was going south when they collided at an intersection of two dirt roads, which intersected at right angles. There were no traffic control devices. Neither driver could see a vehicle on the other road until they actually entered the intersection. There was no evidence that either driver stopped before entering the intersection. Based on skid marks left before the impact, the speed of the defendant's car prior to the collision was estimated by a State Trooper at 50 to 60 miles per hour. The trooper also estimated the speed of the plaintiff's pickup truck to be about 30 miles per hour. At one point in the trial, the plaintiff testified that his speed was 35 miles per hour prior to entering the intersection. The plaintiff did not see the defendant's car until immediately before impact. The defendant did not testify.

It is the appellant's contention that the violation of the right-of-way rule contained in Tit. 36, § 18(a), Code 1940, as amended, established contributory negligence of the plaintiff as a matter of law, which was the proximate cause of the collision. The right-of-way rule is as follows:

> "§ 18(a). When two vehicles approach or enter an intersection at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right * * * ."

Generally speaking, proximate cause is a jury question. McCaleb v. Reed, 225 Ala. 564, 144 So. 28; Allman v. Beam, 272 Ala. 110, 130 So. 2d 194; and it is only when the facts are such that reasonable men must draw the same conclusion that the question of proximate cause is one of law for the courts. Morgan v. City of Tuscaloosa, 268 Ala. 493, 108 So. 2d 342; Louisville & N. R. Co. v. Courson, 234 Ala. 273, 174 So. 474.

In reviewing a trial court's refusal to grant the defendant's affirmative charge, the appellate court must consider the tendencies of the evidence in the light most favorable to the plaintiff. Smith v. Lawson, 264 Ala. 389, 88 So. 2d 322; Alabama Power Company v. Scholz, 283 Ala. 232, 215 So. 2d 447.

In the instant case, we think that a jury would be authorized to find that the proximate cause of the accident was the excessive speed at which the defendant entered the intersection rather than to find that the failure of the

plaintiff to yield the right-of-way was a proximate cause of the accident. In Moore v. Cruit, 238 Ala. 414, 191 So. 252, where the defendant contended that the plaintiff could not recover because he did not yield the right-of-way under the statute, the court said:

> " * * * if the rule of the road as to the approach of vehicles to an intersection, which gives the right of way to the one on the right, is conceded to be here applicable * * * yet that would not suffice to exonerate the defendant of all negligence in running the bus into the center of the Atmore highway at a 'blind' intersection, * * * ." Upon all the evidence, the question of negligence as to each was for the jury's consideration.
>
> * * * *
>
> "And it is too clear for discussion that it cannot be said the proof shows that any negligence of the driver of the car (in which the plaintiff was riding) was the sole proximate cause * * * ."

See also, Triplett v. Daniel, 255 Ala. 566, 52 So. 2d 184, where it was said that if "under the undisputed proof in the case there is a violation of § 17, Title 36, Code of 1940 (plaintiff failed to give proper sign), then such violation constitutes negligence on the part of the plaintiff as a

matter of law but it would still remain a question for the jury as to whether violation of the statute proximately contributed to her injury."

We hold that the trial court did not err in refusing to give defendant's requested affirmative charge.

Assignment of error two is predicated on the trial court's overruling of the defendant's objection to admitting into evidence the defendant's lack of a driver's license. The only witness presented in behalf of the defendant was the defendant's mother, who had given her son permission to use the car on the day the accident occurred. On cross examination, counsel for plaintiff asked, "You knew that he didn't have a driver's license, didn't you?" Then, without a ruling on the objection, the trial court asked, "Did he have a driver's license?" There was further objection and the trial court overruled the objection and the witness answered, "No."

Before such evidence is admissible there must be established a causal connection between the failure to have a license and the injuries received in the accident. Lindsey v. Barton, 260 Ala. 419, 70 So. 2d 633. In Chattahoochee Valley Railway Company v. Williams, 267 Ala. 464, 103 So. 2d 762, proof of revocation of a driver's license was held inadmissible absent a showing of a causal connection between such revocation and the injuries received from the accident. The existence or non-existence of a driver's license does not establish the competency or incompetency of a driver.

Commercial Union Ins. Co. of N. Y. v. Security Gen. Ins. Co., 282 Ala. 344, 211 So. 2d 477. In the instant case, no such causal connection is shown. Furthermore, we are of the opinion that the admission into evidence of the failure of the defendant to possess a driver's license was prejudicial error which requires a reversal. See Madison v. State, 40 Ala. App. 62, 109 So. 2d 749, cert. denied 268 Ala. 699, 109 So. 2d 755, holding that reversible error was committed in admitting evidence of the revocation of the defendant's driver's license in a case where defendant was convicted of manslaughter; and see also, Stanford v. State, 40 Ala. App. 220, 110 So. 2d 641, holding that reversible error was committed in allowing testimony that the defendant had no driver's license. That case was a criminal prosecution for leaving the scene of an accident. Although the instant case is civil, we think that the evidence admitted was prejudicial error necessitating a reversal of the judgment.

In assignment of error three, the appellant argues that reversible error was committed when the trial court permitted a State Trooper to give his opinion as to the speed of the defendant's car prior to the collision. The basis of the appellant's contention is two-fold. One, the trooper did not know the exact distance of skid marks made by the defendant's car and, two, that since the skid marks were made on a dirt road, the trooper was not rendering an expert opinion but merely "speculating or conjecturing." The trooper testified that the skid marks he found leading up to debris in the

intersection were "something like 50 to 75 feet." On cross examination, the trooper estimated that the skid marks "might have been 100 feet." He did not know the exact footage. The witness also testified that he found the road torn up, apparently from a point in the intersection and leading out to where the two vehicles rested. Based on the above information, the trooper was allowed to testify that he estimated the speed of the defendant's car at approximately 50 to 60 miles per hour.

An expert, who did not observe a collision, may express an opinion as to the speed of a vehicle on the basis of skid marks if such marks were made before impact. Holuska v. Moore, Ala. , 239 So. 2d 192; Rosen v. Lawson, 281 Ala. 351, 202 So. 2d 716; Stanley v. Hayes, 276 Ala. 532, 165 So. 2d 84. See generally, 29 A. L. R. 3d, at p. 248 et. seq. In the instant case, it is contended that there is an insufficient basis upon which to predicate an expert opinion due to the inexactness of the trooper's knowledge of the length of the skid marks. In all the Alabama cases cited in briefs and examined by independent research, the length of the skid marks were measured; they were not the result of a "rough estimate."

Under the facts in this case, we cannot say that the testimony of the trooper was admissible when objections, general and specific, were made to his indefinite conclusions. We are not to be understood as holding that he was not an expert generally in the investigation of highway collisions.

But the skid marks were not measured; his estimate was that their length was from 50 to 75 feet on direct examination and could have been as much as 100 feet on cross examination. We hold that the trial court erred in permitting the witness to give an opinion as to the speed of defendant's car when it was obviously based on indefinite figures and was obviously based upon speculation and conjecture.

Assignment of error four charges that the trial court erred in allowing the State Trooper to give an opinion as to the speed of the plaintiff's pickup truck prior to the collision. There was no evidence of any skid marks made by the plaintiff's vehicle prior to impact. It appears that the trooper's opinion was based on skid marks made after impact and on the condition of the two vehicles. It is clear that the admission of such evidence, over objection, when based on skid marks made after impact, is prejudicial error. Jowers v. Dauphin, 273 Ala. 567, 143 So. 2d 167. And it has been held that an expert opinion as to speed may not be given when based solely on the physical condition of the vehicles after an accident. Williams v. Roche Undertaking Co., 255 Ala. 56, 49 So. 2d 902. Nevertheless, it appears that the admission of this evidence in the instant case was harmless error. At one point, the plaintiff testified that his speed was about 35 miles per hour prior to impact, whereas, the trooper's opinion was that the plaintiff was traveling at about 30 miles per hour. Thus, it is clear that neither the plaintiff nor the defendant was prejudiced by the admission

of the trooper's testimony. We have discussed these matters because they will probably arise in a new trial.

In appellant's assignment five, it is contended that the trial judge erred in his oral charge and that such error was not cured by the giving of defendant's requested charge on same subject. In substance, the court charged that if two vehicles enter an intersection at the same time, the one on the left must yield the right-of-way to the one on the right, whereas, Tit. 36, § 18(a), Code 1940, as amended, states that when two vehicles enter an intersection at approximately the same time, the one to the left must yield the right-of-way to the one on the right. The trial court apparently conceded that an error was made and offered to give the defendant's requested charge which contained the pertinent exact wording in Tit. 36 § 18(a). The trial court did give one of the defendant's requested written charges which included the word "approximately." The better policy in dealing with the rules of the road in an oral charge is to quote the applicable statute.

Assignment six relates to the refusal of the trial court to give defendant's requested charge numbered 12. It does not appear that the refusal to give that requested charge was reversible error in that the same rule of law was covered in both the court's oral charge and the written charges given by the court. Tit. 7, § 273, Code 1940.

It is argued under assignment seven that the trial court erred in refusing to grant the defendant's motion for

a new trial. Since the motion for a new trial raised the same matters we have discussed in this opinion, it is not necessary to consider that assignment.

Appellee, in brief, states that the "application of the doctrine of subsequent negligence" to the facts would be sufficient to refuse defendant's request for the affirmative charge. It is true that a count sufficiently charging simple negligence can be the basis for recovery for subsequent negligence, Gulf, M. & O. R. Co. v. Sims, 260 Ala. 258, 69 So. 2d 449, Southern Railway Co. v. McCamy, 270 Ala. 510, 120 So. 2d 695. But the instant case was not tried on the theory of subsequent negligence and the trial court did not instruct the jury on that subject. Under those facts, the case will not be reviewed here on a theory different from that on which the trial was had. Barfield v. Wright, 286 Ala. , 240 So. 2d 593, Southern Railway Co. v. Terry, 268 Ala. 510, 109 So. 2d 919.

For the errors noted in the opinion, the judgment of the trial court is reversed and the cause is remanded.

REVERSED AND REMANDED.

Lawson, Harwood and Maddox, JJ., concur.

Heflin, C. J., concurs in the result.