ROBERT E. HODNETTE, JR.
ATTORNEY AT LAW
ANNEX FIRST NATIONAL BANK BUILDING
MOBILE, ALABAMA

September 11, 1953

2088

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

Dear Mrs. Duck:

Re: Sarah Horn, Administratrix
vs. H. H. Weekley.

Enclosed please find original and copy of complaint in the above designated case for filing and service on the defendant.

We will greatly appreciate your kindness in forwarding us copies of all pleadings filed in this case and notifying us of hearing dates.

Very truly yours,

TONSMEIRE & HODNETTE

Robert E. Hodnette, Jr.

ai
Enclosure

2088

Sarah Horn vs.
adm. of the Estate of
George Craig
deceased

v.s.

Herman Henry
Weckerly

Damages
9-16-53

Sommier & Hodnette

Div. No. CERTIFICATE OF APPEAL (Civil Cases)

No. 2088 Baldwin County, Circuit Court.

SARAH HORN, As Administratrix of the Estate of GEORGE CRAIG, Deceased
Plaintiff
vs.
HERMAN HENRY WEEKLEY
Defendant

I, Alice J. Duck, Clerk of Circuit Court, of Baldwin County, Alabama, hereby certify that in the cause of SARAH HORN, As Administratrix of the Estate of GEORGE CRAIG, Deceased Plaintiff, vs. HERMAN HENRY WEEKLEY Defendant, which was tried and determined in this Court, on the 12th day of March 1954 in which there was a judgment for $3500.00 Dollars, in favor of the Plaintiff, (or judgment for Defendant), the ~~Defendant~~ on the 7th day of May 1954 took an appeal to the Supreme Court of Alabama to be holden of and for said State.

I further certify that HERMAN HENRY WEEKLEY filed security for cost of appeal, to the Supreme Court, on the 7th day of May 1954, and that HERMAN HENRY WEEKLEY, AND UNITED STATES FIDELITY AND GUARANTY COMPANY are sureties on the appeal bond.

I further certify that notice of the said appeal was, on the 7th day of May 1954, served on Chason & Stone as attorney of record for said appellee, and that the amount sued for was _____ Dollars.
(or certain lands) (or personal property)

Witness my hand and seal of this Court, this the 7th day of May 1954

Alice J. Duck
Clerk of the Circuit Court of
_____ County, Alabama

SARAH HORN, As Administratrix of the Estate of George Craige, Deceased, Plaintiff,	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA
VS.	)	AT LAW NO. 2088
HERMAN HENRY WEEKLEY, Defendant.	)	

STATE OF ALABAMA)
*
BALDWIN COUNTY)

SUPERSEDEAS BOND

KNOW ALL MEN BY THESE PRESENTS: That we, Herman Henry Weekley, as Principal, and United States Fidelity and Guaranty Company, a Corporation, under the laws of the State of Maryland, as surety, are held and firmly bound unto Sarah Horn, as Administratrix of the Estate of George Craige, Deceased, in the sum of Seven Thousand Five Hundred Dollars ($7,500.00), for the payment of which, well and truly to be made, we bind ourselves and each of us, our heirs, executors and administrators, jointly, severally and firmly by these presents, and as part of this undertaking, we hereby waive all our rights under the Constitution and Laws of the State of Alabama, to have any of our property, real or personal, exempt from levy and sale in satisfaction hereof.

Sealed with our seals and dated this 27th day of April, 1954.

WHEREAS, at the Spring Term, 1954, of the Circuit Court of Baldwin County, of and for said County, on, to-wit, the 12th day of March, 1954, the said Sarah Horn, as Administratrix of the Estate of George Craige, Deceased, recovered a judgment in said Court against Herman Henry Weekley for the sum of Three Thousand Five Hundred Dollars ($3,500.00), damages; and whereas the said Herman Henry Weekley as said Defendant, has made application for appeal from said judgment to the next term of the Supreme Court to be holden of and for said State, to reverse said judgment, and also for a supersedeas of the execution of said judgment, which has been granted on entering into this bond.

NOW, THEREFORE, the condition of the foregoing obligation is such, that if Herman Henry Weekley shall prosecute his said ap-

peal to effect, and satisfy such judgment as the Supreme Court may render in this case, then the said obligation to be null and void, otherwise to remain in full force and effect.

Herman H. Weekly (SEAL)
As Principal

AFFIX CORPORATE SEAL

UNITED STATED FIDELITY AND GUARANTY COMPANY, A Corporation

By Paul B. Fields
As its Attorney in Fact -- Surety

Taken and approved on this the 6th day of May, 1954.

Clerk.

(CERTIFIED COPY)

GENERAL POWER OF ATTORNEY

No. 57005

Know all Men by these Presents:

That the UNITED STATES FIDELITY AND GUARANTY COMPANY, a corporation organized and existing under the laws of the State of Maryland, and having its principal office at the City of Baltimore, in the State of Maryland, does hereby constitute and appoint

Paul B. Fields

of the City of Birmingham, State of Alabama
its true and lawful attorney in ~~and for the State of~~

for the following purposes, to wit:

To sign its name as surety to, and to execute, seal and acknowledge any and all bonds, and to respectively do and perform any and all acts and things set forth in the resolution of the Board of Directors of the said UNITED STATES FIDELITY AND GUARANTY COMPANY, a certified copy of which is hereto annexed and made a part of this Power of Attorney; and the said UNITED STATES FIDELITY AND GUARANTY COMPANY, through us, its Board of Directors, hereby ratifies and confirms all and whatsoever the said

Paul B. Fields

may lawfully do in the premises by virtue of these presents.

In Witness Whereof, the said UNITED STATES FIDELITY AND GUARANTY COMPANY has caused this instrument to be sealed with its corporate seal, duly attested by the signatures of its Vice-President and Assistant Secretary, this 28th day of April, A. D. 19 41.

UNITED STATES FIDELITY AND GUARANTY COMPANY.

(Signed) By Sidney Hall
Vice-President.

(SEAL)

(Signed) J. E. Gittings
Assistant Secretary.

STATE OF MARYLAND
BALTIMORE CITY, } ss:

On this 28th day of April, A. D. 19 41 before me personally came Sidney Hall, Vice-President of the UNITED STATES FIDELITY AND GUARANTY COMPANY and J. E. Gittings, Assistant Secretary of said Company, with both of whom I am personally acquainted, who being by me severally duly sworn, said that they resided in the City of Baltimore, Maryland; that they, the said Sidney Hall and J. E. Gittings were respectively the Vice-President and the Assistant Secretary of the said UNITED STATES FIDELITY AND GUARANTY COMPANY, the corporation described in and which executed the foregoing Power of Attorney; that they each knew the seal of said corporation; that the seal affixed to said Power of Attorney was such corporate seal, that it was so affixed by order of the Board of Directors of said corporation, and that they signed their names thereto by like order as Vice-President and Assistant Secretary, respectively, of the Company.

My commission expires the first Monday in May, A. D. 19 41.

(Seal) (Signed) Dorothy S. Drexel
Notary Public.

STATE OF MARYLAND
BALTIMORE CITY, } Set.

I, M. Luther Pittman, Clerk of the Superior Court of Baltimore City, which Court is a Court of Record, and has a seal, do hereby certify that Dorothy S. Drexel, Esquire, before whom the annexed affidavits were made, and who has thereto subscribed his name, was at the time of so doing a Notary Public of the State of Maryland, in and for the City of Baltimore, duly commissioned and sworn and authorized by law to administer caths and take acknowledgments, or proof of deeds to be recorded therein. I further certify that I am acquainted with the handwriting of the said Notary, and verily believe the signature to be his genuine signature.

In Testimony Whereof, I hereto set my hand and affix the seal of the Superior Court of Baltimore City, the same being a Court of Record, this 28th day of April, A. D. 19 41.

(SEAL) (Signed) M. Luther Pittman
Clerk of the Superior Court of Baltimore City.

COPY OF RESOLUTION

That Whereas, it is necessary for the effectual transaction of business that this Company appoint agents and attorneys with power and authority to act for it and in its name in States other than Maryland, and in the Territories of the United States and in the Provinces of the Dominion of Canada and in the Colony of Newfoundland.

Therefore, be it Resolved, that this Company do, and it hereby does, authorize and empower its President or either of its Vice-Presidents in conjunction with its Secretary or one of its Assistant Secretaries, under its corporate seal, to appoint any person or persons as attorney or attorneys-in-fact, or agent or agents of said Company, in its name and as its act, to execute and deliver any and all contracts guaranteeing the fidelity of persons holding positions of public or private trust, guaranteeing the performances of contracts other than insurance policies and executing or guaranteeing bonds and undertakings, required or permitted in all actions or proceedings, or by law allowed, and

Also in its name and as its attorney or attorneys-in-fact, or agent or agents to execute and guarantee the conditions of any and all bonds, recognizances, obligations, stipulations, undertakings or anything in the nature of either of the same, which are or may by law, municipal or otherwise, or by any Statute of the United States or of any State or Territory of the United States or of the Provinces of the Dominion of Canada or of the Colony of Newfoundland, or by the rules, regulations, orders, customs, practice or discretion of any board, body, organization, office or officer, local, municipal or otherwise, be allowed, required or permitted to be executed, made, taken, given, tendered, accepted, filed or recorded for the security or protection of, by or for any person or persons, corporation, body, office, interest, municipality or other association or organization whatsoever, in any and all capacities whatsoever, conditioned for the doing or not doing of anything or any conditions which may be provided for in any such bond, recognizance, obligation, stipulation, or undertaking, or anything in the nature of either of the same.

I, L. M. Smith, an Assistant Secretary of the UNITED STATES FIDELITY AND GUARANTY COMPANY, do hereby certify that the foregoing is a full, true and correct copy of the original power of attorney given by said Company to

Paul B. Fields

of Birmingham, Alabama, authorizing and empowering him to sign bonds as therein set forth, which power of attorney has never been revoked and is still in full force and effect.

And I do further certify that said Power of Attorney was given in pursuance of a resolution adopted at a regular meeting of the Board of Directors of said Company, duly called and held at the office of the Company in the City of Baltimore, on the 11th day of July, 1910, at which meeting a quorum of the Board of Directors was present, and that the foregoing is a true and correct copy of said resolution, and the whole thereof as recorded in the minutes of said meeting.

In Testimony Whereof, I have hereunto set my hand and the seal of the UNITED STATES FIDELITY AND GUARANTY COMPANY on April 27, 1954.
(Date)

L. M. Smith
Assistant Secretary.

(11)

SUPERSEDEAS BOND

SARAH HORN,
As Administratrix of the Estate
of George Craige, Deceased,

Plaintiff,

VS.

HERMAN HENRY WEEKLEY,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW NO. 2088

Filed 5-6-54
Alice French
Clerk

J. B. BLACKBURN
ATTORNEY AT LAW
BAY MINETTE, ALABAMA

SARAH HORN, As Administratrix of the Estate of George Craige, Deceased, Plaintiff, VS. HERMAN HENRY WEEKLEY, Defendant.	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA AT LAW NO. 2088

APPEAL BY DEFENDANT

Now comes the defendant and appeals to the Supreme Court of Alabama from the final judgment rendered in this cause in and by the Circuit Court of Baldwin County, Alabama, Law Side, on, to-wit, March 12, 1954.

J. B. Blackburn

James R. Owen

Attorneys for defendant.

SECURITY FOR COSTS

We, the undersigned, do hereby acknowledge ourselves as security for costs of the appeal taken by the defendant in this cause.

J. B. Blackburn

James R. Owen

Attorneys for defendant.

Taken and approved on this the 6th day of May, 1954.

Alice J. Drake

Clerk of the Circuit Court.

(16)

APPEAL AND SECURITY FOR COSTS

SARAH HORN,
As Administratrix of the Estate of
George Craige, Deceased,

Plaintiff,

VS.

HERMAN HENRY WEEKLEY,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW NO. 2088

Filed
5-6-54
Anne Jenner
Clerk

J. B. BLACKBURN
ATTORNEY AT LAW
BAY MINETTE, ALABAMA

SARAH HORN, as Administratrix of the Estate of GEORGE CRAIGE, Deceased, Plaintiff	)	IN THE CIRCUIT COURT OF
	)	BALDWIN COUNTY, ALABAMA
vs.	)	AT LAW
HERMAN HENRY WEEKLEY, Defendant	)	NO.

COUNT I

Plaintiff claims of the defendant the sum of Twenty-Five Thousand and No/100 Dollars ($25,000.00) as damages, for that heretofore on, to-wit, the 17th day of July, 1953, the defendant so negligently operated the motor vehicle he was driving Southwardly on U.S. Highway 31, also known as U.S. Highway 90, at a point, to-wit, 105 feet Southwardly of the junction of said U.S. Highways 90 and 31, at Spanish Fort, which said highways at said point are public highways in Baldwin County, Alabama, as to cause or allow the same to strike the plaintiff's intestate, who was then and there standing alongside the West edge of the paved portion of said highways and as a direct and proximate result of the negligence of the defendant, as aforesaid, the plaintiff's intestate was killed; wherefore plaintiff sues.

TONSMEIRE & HODNETTE

By Robert E. Hodnette
Attorneys for Plaintiff

Plaintiff demands a trial of this cause by jury.

TONSMEIRE & HODNETTE

By Robert E. Hodnette
Attorneys for Plaintiff

Defendant's address for service:

Mr. Herman Henry Weekley
R.F.D. 1, Box 85
Bay Minette, Alabama

we the jury find for the plaintiff and assess the damages at $3,500.00

Darrell Stout
foreman

SUMMONS AND COMPLAINT

Moore Printing Co.

THE STATE OF ALABAMA,
BALDWIN COUNTY

CIRCUIT COURT, BALDWIN COUNTY

No. 2088

_____ TERM, 19____

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon Herman Henry Weekley

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, State of Alabama, at Bay Minette, against

Herman Henry Weekley, Defendant

by Sarah Horn, As Administrator of the Estate of George Craige, deceased, Plaintiff

Witness my hand this 16th day of September 19 53.

Alice J. Lenski, Clerk

RECORDED

No. 2088 Page

THE STATE OF ALABAMA
BALDWIN COUNTY

CIRCUIT COURT

SARAH HORN, as Adm. of the Estate of

GEORGE CRAIGE, deceased
Plaintiffs

vs.

HERMAN HENRY WESKLEY

Defendants

SUMMONS and COMPLAINT

Filed 9-16-53, 19

Ann Jones, Clerk

Plaintiff's Attorney

Defendant's Attorney

Defendant lives at

RECEIVED IN OFFICE

Sept. 16, 1953

Taylor Willis, Sheriff

I have executed this summons

this 10/8, 1953

by leaving a copy with

Herman Henry Weekley

Taylor Willis Sheriff

R. D. Sellers Deputy Sheriff

SARAH HORN, As Administratrix of the Estate of George Craige, Deceased,	I	
Plaintiff,	I	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA
vs.	I	AT LAW NO. 2088
HERMAN HENRY WEEKLEY,	I	
Defendant.		

Comes the Plaintiff in the above styled cause, by the Attorneys for said Plaintiff, and moves the Court to strike the affidavit attached to the Motion for a New Trial, and made a part thereof, filed by the Defendant in said cause and as grounds for said Motion to Strike such Affidavit, says:

1. That said affidavit is improperly attached to and made a part of said Motion for a New Trial.

2. That the affidavit attached to said Motion for a New Trial is not admissible as evidence for the purpose of proving such Motion and cannot, therefore, be attached to said Motion for a New Trial and made a part thereof.

3. That a juror cannot impeach the verdict of the jury of which he was a member and, therefore, the affidavit attached to said Motion for a New Trial is improper.

4. That the affidavit of the juror attached to the Motion for a New Trial does not seek to corroborate the affidavit of a person other than a juror setting out extraneous facts which may have influenced the verdict of the jury.

5. That the affidavit attached to the Motion for a New Trial relates only to what took place between the jurors in their deliberations and is, therefore, not admissible as a part of the Motion for a New Trial.

6. That the affidavit attached to the Motion for a New Trial is not admissible to impeach the verdict of the jury on grounds of public policy.

7. That the affidavit attached to the Motion for a New Trial and made a part thereof was not of extraneous facts but concerned the deliberations and discussions of the case by the jury while deliberating thereon.

Lusmeir & Holmes

Mason & Stone

Attorneys for Plaintiff.

(13)

MOTION TO STRIKE

SARAH HORN, As Administratrix
of the Estate of George Craige,
Deceased,

Plaintiff,

vs.

HERMAN HENRY WEEKLEY,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW NO. 2088

Filed this 19th day of April,
1954.

Alice J. Leach
Clerk.

CITATION OF APPEAL

Baldwin Times - 100-5-47

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 12th day of ~~Monday~~ in March, 1954, in a certain cause in said Court wherein SARAH HORN, As Administratrix of the Estate of George Criage, Deceased Plaintiff, and HERMAN HENRY WEEKLEY Defendant, a judgment was rendered against said HERMAN HENRY WEEKLEY to reverse which Judgment, the said HERMAN HENRY WEEKLEY 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 ....., 194..... next, and the necessary bond having been given by the said HERMAN HENRY WEEKLEY with HERMAN HENRY WEEKLEY AND UNITED STATES FIDELITY AND GUARANTY CO. sureties,

Now, You Are Hereby Commanded, without delay, to cite the said SARAH HORN or Tonsmiere & Hodnotte, Chason & Stone, attorney, 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 7th day of May, A. D., 1954

Attest:

Alice J. Duck, Clerk.

#2088

Received 8 day of May 1954
and on 10 day of May 1954
served a copy of the within Citation
on Chason & Stone
by service on Norbiane Stone

TAYLOR WILLIAMS, Sheriff
By Pete Sellers, D.S.

Serve on Chason & Stone

CIRCUIT COURT
Baldwin County, Alabama

SARAH HORN, As Administratrix
of the Estate of GEORGE CRAIGE,
Deceased

Vs. } Citation in Appeal

HERMAN HENRY WEEKLEY

Issued 7th day of May, 194 54

No. 2088

THE STATE OF ALABAMA--JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

~~October Term, 19~~
SPECIAL TERM 1954-55

To the CLERK of the CIRCUIT Court of
BALDWIN County—Greeting:

Whereas, in the matter of

HERMAN HENRY WEEKLEY, Appellant,

vs.

SARAH HORNE, AS ADMINISTRATRIX OF THE ESTATE OF GEORGE CRAIGE, DECEASED, Appellee,

recently pending in the Supreme Court of Alabama, on appeal from the said CIRCUIT Court of BALDWIN County, our Supreme Court did on the 18th day of AUGUST, 1955, render a - - - - - JUDGMENT OF AFFIRMANCE - in said cause; and,

Whereas, a certificate of such action of the Supreme Court was duly issued to you, and thereafter an application for a rehearing of said cause was filed in this Court on the 1st day of SEPTEMBER, 1955:

Now, it is hereby certified, that our Supreme Court, or one of the Justices thereof, did, on the 1st day of SEPTEMBER, 1955, order that the said certificate be recalled. And you will accordingly return the same to this office at once, together with copy of the opinion in said cause issued to you.

Witness, J. Render Thomas, Clerk of the Supreme Court of Alabama, ~~at the Capitol~~, this the 1st day of SEPTEMBER, 1955

J. Render Thomas
Clerk of the Supreme Court of Alabama.

No. 2088

THE SUPREME COURT OF ALABAMA

SPECIAL TERM 1954-55
~~October Term 19xxx~~

1st Div., No. 604

HERMAN HENRY WEEKLEY

Appellant,

vs.

SARAH HORNE, as ADMINISTRATRIX OF THE ESTATE OF GEORGE CRAIGE, DECEASED,

Appellee.

From BALDWIN CIRCUIT *Court.*

Certificate of Recall

ON APPLICATION FOR REHEARING

The State of Alabama,
County. } *Filed*

this FILED *day of* *19*

SEP 2 1955

ALICE J. DUCK, Clerk

BROWN PRINTING CO., MONTGOMERY, ALA. 1938

SEP 2 8 1955 APPLICATION FOR REHEARING OVERRULED. NO OPINION WRITTEN ON REHEARING

AUG 1 8 1955

THE STATE OF ALABAMA - - - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

SPECIAL SESSION, 1955

1 Div. 604

Herman Henry Weekley

v.

Sarah Horne, As Admx. of the Estate of

George Craige, Deceased

Appeal from Baldwin Circuit Court

MAYFIELD, JUSTICE.

This is an appeal from a judgment rendered in favor of the plaintiff by the Circuit Court of Baldwin County. The action was for wrongful death under Code of 1940, Title 7, Section 123. Appellant's principal insistence relates to a single assignment of error, wherein it is contended that the trial court erred in overruling ground 6 of his motion for a new trial. The pertinent portion of that motion is as follows:

"6. When the jury was qualified for the trial of this case, the plaintiff's attorneys did not request that the court ascertain and the court did not ascertain if any of said jurors were officers or stockholders in or employees of any insurance company.

"The jury which tried this case was, in its deliberation, guilty of misconduct in that it discussed in the jury room and before it arrived at its verdict the question of insurance, it being stated by a juror in the presence of the other jurors, in substance that the defendant had Five Thousand Dollars ($5,000) liability insurance.

"The affidavit of Derrill Stuart, one of the said jurors, is attached hereto and made a part hereof as though fully incorporated herein.

"STATE OF ALABAMA)
BALDWIN COUNTY)

"Before me, the undersigned authority, within and for said County in said State, personally appeared DERRILL STUART, who, after being by me first duly and legally sworn, deposes and says:

"That he was one of the jurors who heard the evidence and who returned the verdict for Thirty-Five Hundred Dollars ($3500) for the plaintiff and against the defendant in the case of Sarah Horn, as Administratrix of the Estate of George Craige, Deceased, plaintiff, vs. Herman Henry Weekley, defendant, in the Circuit Court of Baldwin County, Alabama at Law, on, to-wit, March 12, 1954.

"Affiant further deposes and says that after the jury retired in the jury room to consider this case, and before the said verdict for the plaintiff was agreed upon, one of the jurors stated in the presence of the other said jurors, in substance, the following: 'The defendant has Five Thousand Dollars in liability insurance.'

" Derrill Stuart

"Sworn to and subscribed
before me on this the
29th day of March, 1954.

" James R. Owen
Notary Public, Baldwin County, Alabama"

We must first decide whether the affidavit of Derrill Stuart could properly be considered in connection with a motion for a new trial.

The general rule in Alabama, as well as in a majority of jurisdictions, is that affidavits of jurors will not be accepted for the purpose of impeaching their own verdict. Florence Coca Cola Bottling Co. v. Sullivan, 259 Ala. 56, 65 So. 2d 169; Lackey v. Lackey, ___ Ala. ___, 76 So. 2d 761; Birmingham Electric Company v. Yoast, 256 Ala. 673, 57 So. 2d 103; Gulf States Steel Company v. Law et al, 224 Ala. 667, 141 So. 641; Continental Casualty Company v. Ogburn, 186 Ala. 398, 64 So. 619; Birmingham Ry. Light & Power Co. v. Moore, 148 Ala. 115, 42 So. 1024. The basis for the rule is well expressed in Gulf States Steel Co. v. Law et al, supra, as follows:

> "The court committed no error, when it declined to consider the affidavit of one of the jurors trying the case, who undertook to testify to his own and fellow jurors' action and conduct while considering the case. A due regard for the proper and orderly administration of the law, a proper regard for the solemnity of verdicts of jurors, as well as a sound public policy forbid that members of a jury, after they have made their deliverances in court, should be allowed to impeach their verdicts. To give consideration to such affidavits would tend to bring the law and its administration into disrepute. * * *."

There is an exception to the general rule, that the affidavits of jurors will not be received to impeach their own verdict. This exception arises when the affidavits tend to show the extraneous facts which have influenced the verdict. Central of Georgia Ry. Co. et al v. Holmes, 223 Ala. 188, 134 So. 875; Alabama Fuel

& Iron Co. v. Powaski, 232 Ala. 66, 166 So. 782; McCormick v. Badham, 204 Ala. 2, 85 So. 401; Dulaney v. Burns, 218 Ala. 493, 119 So. 21; Alabama Fuel & Iron Co. et al v. Rice, 187 Ala. 458, 65 So. 402. It is on this exception that appellant relies and grounds his contention.

No cases are brought to our attention wherein this court has sought to define the meaning of extraneous facts within the stated exception. The cases which the appellant brings to our attention involve the consideration by juries of papers, documents, a dictionary, etc., which were not introduced into the evidence. We shall not here attempt to define and limit the term extraneous facts as embraced in the exception to the general rule. Each case must be decided in the light of attending circumstances.

Our prior opinions clearly establish that remarks between jurors during their deliberation, even though improper, are not such extraneous facts. In Central of Georgia Railway Co. et al v. Holmes, supra, is found the following:

> "But the law and public policy alike declare that affidavits of jurors with respect to occurrences in the jury room amongst themselves may not be received for the purpose of impeaching their verdict, * * * ."

The following statement is found in Alabama Fuel & Iron Co. v. Powaski, supra:

> "But the affidavits here offered were not of extraneous facts, but concerned the debates and discussion of the case by the jury while deliberating thereon. They are therefore directly within the influence of the authorities herein noted." [Emphasis supplied]

While the decisions of our sister states are not uniform, the best considered opinions from other jurisdictions seem to have reached the same conclusions. In adopting the rule of a previous Massachusetts case, the Supreme Court of Michigan stated:

> " * * * it is clear that by this [extraneous influence] was not meant improper communications between jurors themselves, whether in the court room or out of it." [Emphasis supplied] Sharp et al v. Merriman, 108 Mich. 454, 66 N.W. 372, and cases cited therein.

In Brabham v. State of Mississippi, 96 F. 2d 210, rehearing denied at 97 F. 2d 251, cert. den. 305 U.S. 636, 83 L. Ed. 409, 59 S. Ct. 103, the Court of Appeals for the Fifth Circuit said:

> "On the other ground for setting the verdict aside, the misconduct of the jury in discussing the liability of the surety company, it is the view of the majority that there was no error. They think the court below correctly held this to be a case for the application of the general rule that jurors will not be heard to impeach their own verdict by stating what they considered and thought in arriving at it. * * * cases cited * * * ."

See, also, Margiotta v. Aycock, 162 Va. 557, 174 S.E. 831; Columbia Amusement Co. v. Rye, 288 Ky. 179, 155 S.W. 2d 727.

To allow the deliberations of juries and the propriety of their discussions to be impeached by affidavits would abrogate the rule rather than create an exception. If the rule were otherwise it would allow and invite a veritable barrage of post trial affidavits, garnered and sought by non-successful

litigants in search of reversible error. This is the reason behind the rule which prevents a consideration of such affidavits.

In the light of the above, we conclude that the affidavit of Derrill Stuart comes within the general rule that jurors may not, by their own mouths, impeach their own verdict, and that this affidavit could not properly be considered on motion for new trial. As nothing further was offered in support of this portion of the motion, it follows that the sixth ground for the motion for new trial was properly overruled.

Appellant also makes assignments of error to the effect that the verdict is contrary to the evidence, and that the verdict is contrary to the charge of the court concerning contributory negligence. No authority is cited in support of these portions of the appellant's argument. However, we have carefully reviewed the evidence contained in the record. It is not disputed that George Craige died as the result of being struck by the defendant's automobile. The testimony adduced by the plaintiff was clearly sufficient to establish negligence on the part of the defendant and the absence of contributory negligence on the part of the deceased. While defendant's evidence was in direct conflict in many material respects, the credibility of the evidence made a jury question and the jury determined the question against the defendant. We, therefore, find that the trial court did not err in refusing to set aside the verdict.

It results that judgment is due to be, and is hereby, affirmed.

Affirmed.

Lawson, Stakely, Goodwyn and Merrill, JJ., concur.

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1st *Div., No.* 604,

HERMAN HENRY WEEKLEY, *Appellant*

vs.

SARAH HORNE, AS ADMX. OF THE ESTATE OF GEORGE CRAIGE, DECEASED, *Appellee,*

From BALDWIN *Circuit Court.*

The State of Alabama,
City and County of Montgomery,

I, J. Render Thomas, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages, numbered from one to SIX *inclusive, contain a full, true and correct copy of the opinion of said Supreme Court in the above stated cause, as the same appears and remains of record and on file in this office.*

Witness, J. Render Thomas, Clerk of the Supreme Court of Alabama, this the 18th *day of* AUGUST, *19*55

J. Render Thomas

Clerk of the Supreme Court of Alabama

THE SUPREME COURT OF ALABAMA

Special

~~October~~ Term, 19 54-55

1st Div., No. 604

HERMAN HENRY WEEKLEY

Appellant,

vs.

SARAH HORNE, AS ADMX. OF THE ESTATE OF GEORGE CRAIGE, DECEASED

Appellee.

From BALDWIN CIRCUIT Court.

COPY OF OPINION

SKINNER

No. 2088

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

SPECIAL TERM 1954-55
~~October Term, 19~~

To the CLERK *of the* CIRCUIT *Court,*

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*

HERMAN HENRY WEEKLEY, *Appellant* –,

and

SARAH HORNE, AS ADMINISTRATRIX OF THE ESTATE OF GEORGE CRAIGE, DECEASED, *Appellee* –,

wherein by said Court it was considered adversely to said appellant –, *were brought before our Supreme Court, by appeal taken, pursuant to law, on behalf of said appellant* –:

NOW, IT IS HEREBY CERTIFIED, That it was thereupon considered, ordered, and adjudged by our Supreme Court, on the 18th *day of* AUGUST*, 19*55 *that said* JUDGMENT *of said* CIRCUIT *Court be in all things affirmed, and that it was further considered, ordered, and adjudged that the appellant* –, ~~and~~ S

HERMAN HENRY WEEKLEY

and

UNITED STATES FIDELITY AND GUARANTY COMPANY, A CORPORATION,

SURETY ON THE SUPERSEDEAS BOND,

pay the amount of the judgment of the Circuit Court, and ten per centum (10%) damages thereon, and interest, and -

the costs accruing on said appeal in this Court and in the Court below.

It is further certified that, it appearing that said parties have waived their rights of exemption under the laws of Alabama, it was ordered that execution issue accordingly.

Witness, J. Render Thomas, Clerk of the Supreme Court of Alabama, this the 18th *day of* AUGUST*, 19*55

J. Render Thomas

Clerk of the Supreme Court of Alabama.

THE APPLICATION FOR REHEARING HAVING BEEN OVERRULED ON THIS DATE, THIS CERTIFICATE IS RE-ISSUED. THIS (DATE) SEP 22 1955

J. Render Thomas

CLERK, SUPREME COURT OF ALA.

NO. 2088

THE SUPREME COURT OF ALABAMA

SPECIAL TERM 1954-55

~~October Term, 19XXXXX~~

1st *Div., No.* 604

HERMAN HENRY WEEKLEY

Appellant,

vs.

SARAH HORNE, AS ADMINISTRATRIX OF THE ESTATE OF GEORGE CRAIGE, DECEASED,

Appellee.

From BALDWIN CIRCUIT *Court.*

CERTIFICATE OF AFFIRMANCE

The State of Alabama,
County. } *Filed*

this ..... *day of* ..... 19.....

BROWN PRINTING CO., MONTGOMERY 1950

OFFICE OF
CLERK OF THE SUPREME COURT
STATE OF ALABAMA
MONTGOMERY

J. RENDER THOMAS
CLERK

SEPTEMBER 22, 1955

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

In re: 1 Div. 604
Herman Henry Weekley v. Sarah Horn,
as Administratrix of the Estate of
George Craig, Deceased.

Dear Mrs. Duck:

The Supreme Court today overruled the application for rehearing filed by the appellant in the above cause on September 1, 1955. No opinion was written on rehearing.

I am returning herewith the Certificate of Affirmance, which remains in force and effect, and Certified Copy of the Opinion which were recalled on September 1, 1955, pending consideration of the application for rehearing.

Yours very truly,

J. Render Thomas,
Clerk, Supreme Court

JRT/ld
Encls: 2.

SARAH HORN, as Administratrix of the Estate of GEORGE CRAIGE, Deceased, Plaintiff,	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA
VS.	)	AT LAW NO. 2088
HERMAN HENRY WEEKLEY, Defendant.	)	

AMENDED PLEA

Now comes the Defendant in the above styled cause and amends the plea heretofore filed in said cause so that when amended the said plea will read as follows:

1. Not guilty.

2. Plaintiff's intestate at the time and place complained of, was guilty of negligence which proximately contributed to his injuries and death in this: that he walked from the North shoulder of Highway 31, and from a point of safety, on to the said highway, upon which he was walking, and which the deceased well knew was usually and rightfully used for automobile traffic, and that at said time and place, notwithstanding the fact that he was coming from the North shoulder of said highway, from the point of safety, he walked immediately in front of and in such close proximity to the automobile referred to in the complaint, which was then and there rightfully traveling along said highway, and being operated by the defendant, Herman Henry Weekley, that said automobile could not stop or be stopped without striking the deceased and injuring him.

3. Plaintiff's intestate was guilty of contributory negligence which proximately contributed to his injuries and which should prevent a recovery by the plaintiff in this action; said contributory negligence consisting of the following: U. S. Highway 31 at the point where the injury occurred, was at said time a heavily traveled highway by motor vehicles, and this fact was known to plaintiff's intestate and plaintiff's intestate knew that automobiles or vehicles would probably be approaching the point where he was crossing said highway at the time he was so crossing, and in such close proximity to him that he would probably be injured by same, unless he exercised reasonable care in looking up and down

said highway for such approaching vehicles; that in spite of such knowledge, plaintiff's intestate through inattention, inadvertence, carelessness, or forgetfulness, proceeded across said highway in a southerly direction without looking up and down said highway for such approaching vehicles, and after walking to the approximate center of said highway, plaintiff's intestate proceeded to walk back to the North shoulder of said highway without looking up and down said highway for such approaching vehicles, and as a proximate consequence thereof sustained his injury.

J. B. Blackburn

Jean R. Cain

Attorneys for Defendant.

RECORDED 2088

(7)

AMENDED PLEA

SARAH HORN, as Administratrix of the Estate of GEORGE CRAIGE, Deceased,

Plaintiff,

VS.

HERMAN HENRY WEEKLEY,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW NO. 2088

FILED
MAR 18 1954
MADE L. DUCK, Clerk

SARAH HORN, As Administratrix of the Estate of GEORGE CRAIGE,	I	
Plaintiff,	I	IN THE CIRCUIT COURT OF
vs.	I	BALDWIN COUNTY, ALABAMA
HERMAN HENRY WEEKLEY,	I	LAW SIDE NO. 2088
Defendant.	I	

Comes the Plaintiff in the above styled cause and demurs to pleas 2, 3 and 4 filed by the Defendant in said cause, separately and severally, and assigns the following separate and several grounds, viz:

1. That said plea does not state a defense to the cause of action.

2. That said plea is not a proper plea of contributory negligence.

3. That said plea attempts to set out the manner in which the Plaintiff's Intestate was guilty of contributory negligence without setting the same out in detail.

4. That plea 2 fails to allege that the Plaintiff's Intestate was upon the Highway referred to therein at the time he was struck by the Defendant.

5. For aught that appears from plea 2 the Plaintiff's Intestate was struck by the Defendant before he reached such Highway.

6. For aught that appears from plea 2 the Plaintiff's Intestate would have had time to cross the Highway if the Defendant's automobile had been travelling at a reasonable rate of speed.

7. That plea 3 fails to allege that the Plaintiff's Intestate was upon the Highway at the time he was struck by the Defendant's automobile.

8. For aught that appears from plea 3 the Plaintiff's Intestate was upon the shoulder of the road at the time he was struck by the Defendant's automobile.

9. That plea 4 attempts to allege in a negative way that the Plaintiff's Intestate stepped upon the public Highway in front of the Defendant's automobile.

10. That plea 4 fails to allege that the Plaintiff's Intestate was upon the Highway referred to therein at the time he was struck by the Defendant's automobile.

11. That plea 4 fails to allege how the Plaintiff's Intestate knew that the Defendant's automobile was approaching at the time he attempted to cross the Highway.

Sumner & Holmes

Lucas & Stone

Attorneys for Plaintiff.

2088 (3)

RECORDED

DEMURRER TO PLEAS

SARAH HORN, As Administratrix
of the Estate of GEORGE CRAGIE,

Plaintiff,

vs.

HERMAN HENRY WEEKLEY,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

LAW SIDE. no. 2088

Filed this ____ day of February,
1954.

Clerk

FILED

FEB 4 1954

ALICE J. DUCK, Clerk

SARAH HORN, as Administratrix of the Estate of GEORGE CRAIGE, Deceased, Plaintiff,	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA.
VS.	
HERMAN HENRY WEEKLEY, Defendant.	CASE NO. 2088

Now comes the defendant, Herman Henry Weekley, and demurs to the complaint heretofore filed and to each count thereof, separately and severally, and does separately and severally assign the following grounds for said demurrer:

1. The complaint fails to state a cause of action.

2. The averments of said complaint are vague, indefinite and uncertain.

3. The averments thereof are mere conclusions of the pleader.

4. The averments thereof are unlawful conclusions of the pleader.

5. The averments thereof are conflicting and repugnant.

6. There is a misjoinder of causes of action.

7. For aught that appears, defendant owned no duty to the plaintiff.

8. For that it does not sufficiently appear what duty, if any was owed by said defendant to the plaintiff.

9. It does not sufficiently appear wherein or how this defendant was guilty of negligence.

10. For that the specific averments as therein set forth are insufficient to constitute negligence as a matter of law.

11. For that no causal connection appears between the defendant's alleged negligence and the injuries and damages complained of by the plaintiff.

12. For that it affirmatively appears that the plaintiff has no right to bring or maintain this action.

13. For that it affirmatively appears that the plaintiff has no cause of action against this defendant.

J. B. Blackburn

James R. Owen

Attorneys for Defendant.

(2)

RECORDED

DEMURRERS

SARAH HORN, as Administratrix of the Estate of GEORGE CRAIGE, Deceased.

Plaintiff,

VS.

HERMAN HENRY WEEKLEY,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY,

ALABAMA.

CASE NO. 2088

FILED

NOV 4 1953

ALICE J. DUCK, ~~Register~~ Clerk

Copy mailed to Jernigan & Hardwick

SARAH HORN, as Administratrix of the Estate of GEORGE CRAIGE, Deceased, Plaintiff,	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA
VS.	)	AT LAW NO. 2088
HERMAN HENRY WEEKLEY, Defendant.	)	

PLEA

Now comes the Defendant in the above styled cause and for answer and plea to the Complaint heretofore filed in this cause says as follows:

1. Not guilty.

2. Plaintiff's intestate was himself guilty of negligence which proximately contributed to cause his death, in this, that he attempted to cross said public highway in front of defendant's automobile without stopping to look to ascertain if there were motor vehicles approaching, and by reason of his own negligence in this respect, was struck and killed.

3. The Plaintiff's intestate, before attempting to cross the public highway mentioned in the Complaint, saw the automobile of the defendant coming toward him, and notwithstanding this, attempted to cross said public highway in front of said automobile, and by reason of his own negligence in this respect, proximately contributed to produce his own death.

4. The Plaintiff's intestate was himself guilty of negligence so gross and reckless as to be the equivalent of willfull injury to himself in this: That he attempted to cross said public highway in front of defendant's automobile, well knowing that said automobile was approaching and in such close proximity that no preventive efforts on the part of the defendant could have prevented the injury after the peril of Plaintiff's intestate became known to him, or after he stepped on the public highway on which the defendant's automobile was approaching.

J. B. Blakely

Tom R. Ross

Attorneys for Defendant.

(4)

RECORDED PLEA

SARAH HORN, as Administratrix of the Estate of GEORGE CRAIGE, Deceased,

Plaintiff,

VS.

HERMAN HENRY WEEKLEY,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW NO. 2088

FILED
JAN 14 1947
ALICE L. BUCK, Clerk

copy mailed

8208

1st Div. No. 604 Baldwin Circuit Court

Herman Henry Weekley No. 2088

Appellant.

vs.

Sarah Horn, as Admrx. etc.

Appellee.

Dear Mrs. Duck:-

~~Dear Sir:~~

The Certificate of Appeal

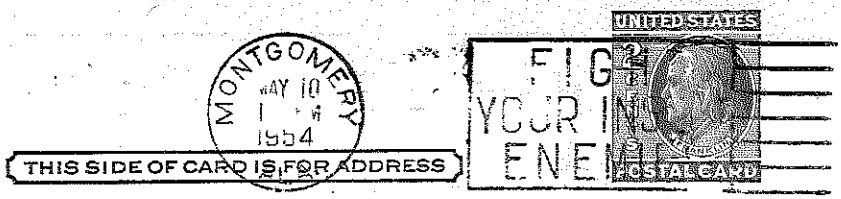
~~XXXXXXX~~ in above stated cause received and filed today.

Yours truly,

J. RENDER THOMAS,

Clerk Supreme Court.

May 10th, 1954.



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