

MCCORVEY, TURNER, ROGERS, JOHNSTONE & ADAMS
ATTORNEYS AT LAW

NINTH FLOOR MERCHANTS NATIONAL BANK BUILDING
HEMLOCK 3-6556 P. O. BOX 1070

MOBILE 6, ALABAMA

GESSNER T. MCCORVEY
BEN D. TURNER
C. M. A. ROGERS
C. A. L. JOHNSTONE, JR.
R. F. ADAMS
JAMES L. MAY, JR.
CHAUNCEY MOORE
ALEX T. HOWARD, JR.

January 6, 1956

2746

Mrs. Alice J. Duck, Clerk
Bay Minette, Alabama

Dear Mrs. Duck:

Re: Fred McKenzie vs. Frank A. Kirchoff -
Law Side

As one of the attorneys for the defendant in this case
I hereby authorize you to tax the costs of court against the
defendant upon dismissal of the suit by plaintiff.

Very truly yours,

R. F. Adams

RFA:mah

cc: Wilters & Brantley
cc: Mr. W. C. Beebe

*Placed
letter in file*

STATE OF ALABAMA

BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon Frank A. Kirchoff 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 Frank A. Kirchoff, defendant, by Fred McKenzie, plaintiff.

Witness my hand this the 12 day of Oct, 1955.

Alice J. Mack CLERK

FRED MCKENZIE
PLAINTIFF

VS

FRANK A. KIRCHOFF
DEFENDANT

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

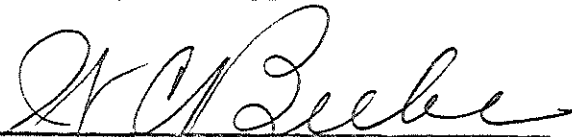
AT LAW

The plaintiff, Fred McKenzie, claims of the defendant, Frank A. Kirchoff, the sum of FIVE THOUSAND (\$5,000.00) DOLLARS, as damages for that on to-wit: the 1st day of October, 1955, the plaintiff was standing in front of the parked automobile of one Alton E. Parker on State Highway 89, the same being Federal Highway 98, a public road, opposite the Delchamps Farm about one and one-half miles West of Fish River Bridge, in Baldwin County, Alabama; the plaintiff and the said automobile of the said Alton E. Parker being well off the paved travel portion of the said road, at or about 3:00 o'clock A.M., at which time and place the defendant while driving an automobile on or along the said public highway so negligently operated his said automobile so as to drive the same on to and against the automobile of the said Alton E. Parker, thereby driving or hurling the automobile of the said Alton E. Parker on to and against the plaintiff, whereby and as a proximate

result thereof the plaintiff sustained injuries namely; his right hip was severely bruised and lacerated, his body was severely bruised and lacerated, his left arm was severely bruised and lacerated, his face and head was severely bruised and lacerated so that he was caused to incur medical and hospital expenses, and to suffer loss of time from his occupation and excruciating pain and suffering; and that the said damage suffered by the plaintiff as aforesaid was a direct and proximate consequence of the negligence of the said defendant in the operating of his automobile at the said time and place; all to the damage of the plaintiff as aforesaid.

BEEBE & SWEARINGEN

BY


Attorneys for plaintiff

no. 2746

Received 12 day of Oct 1955
and on 19 day of Oct, 1955
I served a copy of the within Rec
on _____

By service on Frank A. Kirchoff

TAYLOR WILKINS, Sheriff
By [Signature] D. S.

Fred McKenzie

Plaintiff

VS

Frank A. Kirchoff

Defendant

Complaint

Filed: 11/2/55
Alice J. Duck
[Signature]

BEEBE & SWEARINGEN
LAWYERS
BAY MINETTE, ALABAMA

FRED MCKENZIE

PLAINTIFF

VS

FRANK A. KIRCHOFF

DEFENDANT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,
AT LAW

PLEAS

Now comes the defendant in the above styled cause and files the following Pleas to Count 1 and 2 thereof. The said Pleas are being filed separately and severally to each of the aforesaid counts.

1.

Not guilty.

2.

The Plaintiff is not entitled to recover in this cause for that on the occasion complained of the Plaintiff was himself guilty of negligence which proximately contributed to said alleged injuries and damages complained about, in that he negligently placed himself in a position of danger in the night time by staying at or near a vehicle parked partly on the traveled portion of the highway described in the complaint at said time and place; that parked vehicle had no lights burning at or near it nor were there any warning signals at or near the said parked vehicle to indicate its presence or location; well knowing or in the exercising of ordinary care on said occasion said Plaintiff should have known or appreciated the fact that staying in the position he did, at said time and place would result in danger to him from approaching automobiles upon or along said public highway, and as the proximate result of said intestate staying at or near the said vehicle parked as it was, on said highway, at said time and place complained of he was run upon or against by an automobile on said occasion, which said negligence of said plaintiff directly and proximately contributed to his injury, complained of.

3.

The Plaintiff is not entitled to recover in this cause for that Plaintiff was himself guilty of negligence in voluntarily exposing himself to danger,

well known to him or which should have been known in the exercise of reasonable and ordinary care and prudence on the occasion complained about, and placing himself, as a proximate result of his negligence, in a position of danger in the night time by staying at or near a vehicle parked on the traveled portion of the highway described in the complaint at said time and place; that said parked vehicle had no lights burning at or near it nor were there any warning signals at or near the said vehicle to indicate its presence or location, with full knowledge that so to do would place him in a position of peril and danger from all on coming automobiles along said public highway, and as a proximate result of his so placing himself in said dangerous and perilous position on said public highway his body was struck, or run upon or against by an automobile on said occasion, which negligence aforesaid of Plaintiff on the occasion complained about proximately and directly contributed to his alleged injuries.

Wilters & Brantley

BY:

Albert M Brantley

Attorneys for the Defendant

The defendant demands a trial by jury.

Wilters & Brantley

BY:

Albert M Brantley

Attorneys for the Defendant

STATE OF ALABAMA

BALDWIN COUNTY

Before me, Madeline S. Bryars, a Notary Public in and for said County, personally appeared W. C. Beebe who, being duly sworn, on oath saith that he is attorney for Fred McKenzie in the suit of Fred McKenzie against Frank A. Kirchoff pending in the Circuit Court of Baldwin County, Alabama, at law, and that the said Frank A. Kirchoff is justly indebted to Fred McKenzie in the sum of FIVE THOUSAND (\$5,000.00) DOLLARS, which said amount is justly due after allowing all just offsets and discounts, and that the said Frank A. Kirchoff is a non-resident of the State of Alabama, and plaintiff elects to sue out this writ of attachment without giving bond, and that this attachment is not sued out for the purpose of vexing or harassing the defendant, or other improper motive.



Subscribed and sworn to before me this 12 day of October, 1955.


Notary Public, State of Ala. at large.

STATE OF ALABAMA

BALDWIN COUNTY

CIRCUIT COURT AT BAY MINETTE, ALA.

KNOW ALL MEN BY THESE PRESENTS, that we, FRED MCKENZIE
as principal, and _____ and

_____ as sureties, of the County of
Baldwin are held and firmly bound unto Frank A. Kirchhoff in the
sum of TEN THOUSAND (\$10,000.00) DOLLARS, to be paid to the said
Frank A. Kirchhoff, his heirs, executors, administrators, or
assigns, for which payment well and truly to be made, we bind
ourselves and each of us, our and each of our heirs, executors
and administrators, jointly and severally, firmly by these
presents.

Sealed with our seals and dated the 1st day of December,
1955.

The Condition of this Obligation is such:

That Whereas, the above bounden Fred McKenzie did on
the 12th day of October, 1955, pray an Attachment at the suit
of Fred McKenzie against the estate of the above named Frank A.
Kirchhoff for the sum of FIVE THOUSAND (\$5,000.00) DOLLARS, and
did obtain the same, returnable to the Circuit Court of Baldwin
County, and did make affidavit that the said Frank A. Kirchhoff was
a non-resident of the State and elect to sue out such attachment
without giving bond, and the said Frank A. Kirchhoff having filed
an answer in said cause;

Now, if the said Fred McKenzie should prosecute said
attachment to effect, and pay the said Defendant all such damages
as he may sustain by the wrongful or vexatious suing out said
Attachment, then the above obligation to be void; otherwise to
remain in full force and effect.

And we and each of us hereby waive all rights of claims of
exemption we or either of us have now, or may hereafter have, under
the constitution and laws of the State of Alabama.

Signed, sealed, and delivered the date above written.

Approved this 1 day
of Dec, 1955

Wesley J. Drake
Clerk

Fred McKenzie (SEAL)
As principal

Joseph J. Jase (SEAL)

Fred H. McKenzie (SEAL)
As sureties