

W. P. WILLIE, JR.,

Plaintiff,

Vs.

WILSON H. VAIL, individually and doing business as Vail Trucking Co., and W. H. VAIL, individually and doing business as Vail Trucking Co., and CLARENCE SELDON HURST, and VAIL TRUCKING CO., a corporation, and X COMPANY, whose name is otherwise not now known to plaintiff, and JOHN DOE, whose name is otherwise unknown to plaintiff, jointly and separately,

Defendants.

IN THE CIRCUIT COURT OF

MOBILE COUNTY, ALABAMA,

NO. 3235

COUNT ONE

Plaintiff claims of the defendants the sum of Forty Thousand (\$40,000.00) Dollars as damages for that, heretofore, on, to-wit, the 8th day of May, 1956, the Defendant Clarence Seldon Hurst, while acting within the line and scope of his employment as the agent, servant or employee of one or more of the other named defendants, so negligently operated a motor truck and trailer on U. S. Highway 90, a public highway in the County of Baldwin, State of Alabama, at a point thereon approximately two miles north of the limits of Robertsdale, in Baldwin County, Alabama, as to cause or allow said motor truck to run into, upon or against the rear of a xxxxxxxx truck knocking the last mentioned truck into the rear of a pick-up truck being then and there operated by the Plaintiff, and Plaintiff alleges that as a proximate result of the aforesaid negligence of the Defendants, Plaintiff was caused to sustain a broken neck, a hole through one of his lips, internal injuries, and bruises and lacerations, and other injuries. Plaintiff alleges that he was permanently injured, was caused to sustain pain and suffering, to incur medical expenses in the ascertainment and treatment of such injuries as aforesaid, and in the future will be required to expend large sums of money in and about his efforts to treat his fractured neck, all as a proximate result of the aforesaid negligence of the defendants, and all to plaintiff's damages as aforesaid, wherefore Plaintiff sues the Defendants as aforesaid for \$40,000.00. Plaintiff alleges that he does not now know the exact name of X Company or of John Doe, and that such correct name or correct names will later be shown by amendment, but that plaintiff's intention is to sue all owners and/or operators of said motor truck at the time the aforesaid accident occurred.

3485

FILED  
DEC 8 1958

ALICE J. DUCK, Clerk

LAW OFFICES  
CHASON & STONE  
BAY MINETTE, ALABAMA

COUNT TWO

Plaintiff claims of the defendants the sum of Forty Thousand (\$40,000.00) Dollars as damages for that, heretofore, on, to-wit, the 8th day of May, 1956, the Defendant Clarence Seldon Hurst, while acting within the line and scope of his employment as the agent, servant or employee of one or more of the other named defendants and while driving a motor truck on U.S. Highway 90, a public highway in Baldwin County, Alabama, at a point thereon approximately two miles North of the limits of Robertsdale, Alabama, wilfully or wantonly injured plaintiff by then and there wilfully or wantonly driving said motor truck into, upon or against a truck being then and there operated, knocking the last-mentioned truck into a pick-up truck being then and there driven by plaintiff, and as a proximate result of such wilful or wanton misconduct of the Defendants, Plaintiff was caused to sustain a broken neck, a hole through one of his lips, internal injuries, a partial loss of use of one of his arms, bruises and lacerations and other injuries, and Plaintiff alleges that he was permanently injured, was caused to sustain, and will in the future sustain, pain and suffering, to incur medical expenses in the ascertainment and treatment of such injuries as aforesaid, and in the future will be required to expend large sums of money in and about his efforts to treat his fractured neck, all as a proximate result of the aforesaid wilful or wanton misconduct, and all to his damages as aforesaid, hence this suit. Plaintiff alleges that he does not now know the exact name of X Company or of John Doe, and that such correct name or correct names will later be shown by amendment, but that plaintiff's intention is to sue all owners and/or operators of said motor truck at the time the aforesaid accident occurred.

McCORMY, TURNER, ROGERS, JOHNSTON & ADAMS,

By

*J. Jephtha Hill*

(J. Jephtha Hill)

Attorneys for Plaintiff

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

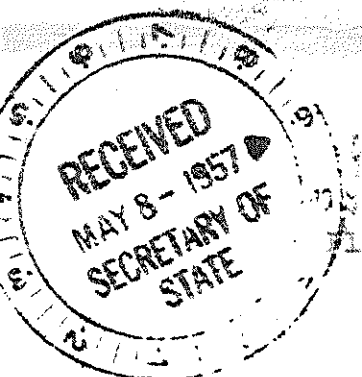
McCORMY, TURNER, ROGERS, JOHNSTON & ADAMS,

By

*J. Jephtha Hill*

(J. Jephtha Hill)

Attorneys for Plaintiff



COPY

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

NINTH FLOOR MERCHANTS NATIONAL BANK BUILDING  
HEMLOCK 3-5561 P. O. BOX 1070

MOBILE 6, ALABAMA

GESSNER T. MCCORVEY  
BEN D. TURNER  
C. M. A. ROGERS (1891-1957)  
C. A. L. JOHNSTONE, JR.  
R. F. ADAMS  
JAMES L. MAY, JR.  
ALEX T. HOWARD, JR.  
CHAUNCEY MOORE  
J. JEPHTHA HILL  
CHARLES B. BAILEY, JR.

July 23, 1958

AIR MAIL

The Honorable Sheriff  
Palm Beach County  
Delray Beach, Florida

Re: Service of process in case of  
W. P. Wyllie, Jr., v. Wilson H. Vail,  
individually and doing business as  
Vail Trucking Co., et al., and  
Clarence Seldon Hurst, et al.;  
Civil Case No. 3235, Circuit Court of  
Baldwin County, Alabama

Dear Sheriff:

By correspondence dated February 4, 1958, the Secretary of State of the State of Alabama, the Honorable Mary Texas Hurt Garner, forwarded you copies of summons and amended complaint together with notice of same having been served upon her as the defendant's agent, with the request that same be served upon Clarence Seldon Hurst. We were advised by the Sheriff of Palm Beach County that Hurst was now a resident in your County.

Nothing has been heard to date. We inquired about the progress in locating and serving Hurst by a letter to you dated March 18, 1958. The purpose of the present correspondence is to request that a status report on the efforts of your department be made to the writer, for which a self-addressed, stamped envelope is enclosed. It is requested that no further action be taken at this time in order to serve the papers upon Hurst, for the reason that there is a more recent amendment to the complaint and it is vital to our prosecution of this case that this amended complaint, and not the one of which you now have a copy, be served on Hurst.

Please advise us if Hurst has been located; and, if your report indicates that it is now possible to effect service of process upon him, we shall forthwith forward the appropriate version of the complaint.

Thanking you for your good services in this matter, we are

Yours very truly,

MCCORVEY, TURNER, JOHNSTONE, ADAMS & MAY

By

*J. Jephtha Hill*  
J. Jephtha Hill

JJH:fe

cc: Honorable Alice J. Duck  
Honorable Mary Texas Hurt Garner

STATE OF ALABAMA  
OFFICE OF SECRETARY OF STATE  
MONTGOMERY 4, ALABAMA

June 21, 1957

MARY TEXAS HURT  
SECRETARY OF STATE



Honorable J. Jephtha Hill  
Attorney at Law  
P. O. Box 1070  
Mobile, Alabama

Re: W. R. Wylie, Jr. VS Clarence Seldon Hurst, et al

Dear Mr. Hill:

Please refer to your file in the above-styled cause and be advised that on June 11, 1957, I sent by registered mail, return receipt requested, my notice, with copy of Summons and Complaint attached to The Honorable Sheriff, Manatee County, Bradenton, Florida. Your check in the amount of \$2.00 for his fee was enclosed.

Today I received my notice, together with copies of summons and complaint in duplicate, from the Sheriff of Manatee County with the following note attached:

SHERIFF'S RETURN

Received this writ on the 13th day of June, 1957, and return the same not served for the reason that after diligent search and inquiry I was unable to locate any person within the bounds of Manatee County, Florida, upon whom service of this writ would be binding as to CLARENCE SELDON HURST, the within named defendant.

ROY F. BADEN, Sheriff

Manatee County, Florida

By J. L. Robison (signed)  
Deputy Sheriff

Sheriff's costs 60¢

I enclose the Sheriff's check refunding \$1.40 and his statement of charges for attempted service.

Page 2  
Honorable J. Jephtha Hill  
June 21, 1957

If I can be of further assistance to you, I shall be very glad to do so.

Yours very sincerely,

*Mary Texas Hurt Garner*

Mary Texas Hurt Garner  
Secretary of State

*Mrs. Nancy Turner*

By: Nancy Turner (Mrs.)  
Secretary to Administrative Assistant

Enclosures

cc: Honorable Alice J. Duck, Clerk  
Circuit Court of Baldwin County  
Bay Minette, Alabama

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  
DEN O. TURNER  
C. M. A. ROGERS  
C. A. L. JOHNSTONE, JR.  
R. F. ADAMS  
JAMES L. MAY, JR.  
CHAUNCEY MOORE  
ALEX T. HOWARD, JR.

May 4, 1957.

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

Dear Mrs. Duck,

Enclosed are the original and six copies of a complaint of W.P. Wyllie, Jr. vs. Wilson H. Vail, et al. Please cause this suit to be filed immediately, since the Statute of Limitations is about to run. Your telephoning the writer collect that the suit papers have been received and filed, will be greatly appreciated by us.

We ask that service be had at this time only on Wilson H. Vail, individually and doing business as Vail Trucking Co., and on Clarence Seldon Hurst, through the Secretary of State, Montgomery, Alabama. Enclosed is our firm check payable to ~~her~~ in the amount of \$6.00 to cover the cost of effecting such service by registered mail, through that office.

The address of Wilson H. Vail is 26 W. 50th St., Hialeah, Florida, and the address of Clarence Seldon Hurst is 2308 22nd Ave., W., Bradenton, Florida.

Yours very truly,

McCormey, Turner, Rogers, Johnstone & Adams

By: *J. J. H. / jm*

JJH/jm

# COPY

MCCORVEY, TURNER, ROGERS, JOHNSTONE & ADAMS

ATTORNEYS AT LAW

NINTH FLOOR, MERCHANTS NATIONAL BANK BUILDING

P. O. BOX 1070

MOBILE, 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.  
J. JEPHTA HILL

June 6, 1957

Honorable Mary Texas Hurt Garner  
Secretary of State  
Office of Secretary of State  
Montgomery 4, Alabama

Re: W. P. Wyllie, Jr. vs. Wilson H.  
Vail, Clarence Seldon Hurst et al.

Dear Mrs. Secretary:

This acknowledges receipt of your letter of May 31st advising that the registered mail notice sent to Clarence Seldon Hurst, 2308 22nd Avenue, Bradenton, Florida, was returned to you with the reason for non-delivery given as "UNCLAIMED."

We enclose our check in the amount of \$2, and request that you proceed to have some duly authorized process server in the Florida County in which Bradenton is located serve the notice upon the defendant personally, as is provided for by Act No. 100 of the Second Special Session for 1956 of the Alabama Legislature.

We take note of the fact that said statute requires that the officer who actually serves the notice or process certify that he made personal service on the defendant, and also requires that the Clerk of the Circuit Court, or court of like jurisdiction, of the county of such officer's residence certify that such officer is duly authorized to serve such process in that state or county. The statute also requires, and we particularly ask that note be taken of the fact, that both of the aforementioned certifications are to be made on the copy of the notice or summons which is returned to this State by the serving officer. The exact language is as follows:

"Space shall be provided on the copy of the notice, summons or other legal process for the officer who serves such notice or process to certify that he made personal service thereof on the defendant or respondent, and also for the clerk of the circuit court, supreme court, or a court of like jurisdiction, of the county of such officer's residence, certifying that such officer is duly authorized to serve such process in such state or county."



Honorable Mary Texas Hurt Garner -2-

June 6, 1957

Inasmuch as procedural statutes such as this one must be strictly complied with--we fear that where service of process is sought to be perfected under this statute, but wherein the said certifications do not appear on the copy proper, the service would be subject to a motion to quash if made by the defendant. Perhaps your office has a form designed to include both your notification and the two certifications on one page. If not, presumably, if the page bearing your notice does not have sufficient room for one or both of the certifications, the certifications could be made on one separate sheet which could refer to and be attached to your notice. We feel, however, that it would be much preferable to use only one sheet, even if both the front and back side had to be utilized. We request that you call this problem to the attention of the serving officer and the Court Clerk in the Florida county, and we request that you ask them to comply strictly with whatever form you decide to use.

In addition to your letter concerning the return of the letter to Hurst, this morning's mail brought us our carbon copy of your letter dated May 31st addressed to the Sheriff of Dade County, Florida, which you sent for us under the provisions of the aforementioned statute. We take this occasion to express our compliments to you upon the completeness and clarity with which that letter informs the Dade County Sheriff of how to comply with the terms of the statute.

Thanking you for your services in both these instances, we remain,

Yours very truly,

MCCORVEY, TURNER, ROGERS, JOHNSTONE & ADAMS

By:

*J. Septha Hill*

J. Septha Hill

JJH:bep

cc: Honorable Alice J. Duck, Clerk  
Circuit Court of Baldwin County  
Bay Minette, Alabama

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

NINTH FLOOR MERCHANTS NATIONAL BANK BUILDING  
HEMLOCK 3-5561 P. O. BOX 1070  
MOBILE 6, ALABAMA

GESSNER T. MCCORVEY  
BEN D. TURNER  
C. M. A. ROGERS (1891-1957)  
C. A. L. JOHNSTONE, JR.  
R. F. ADAMS  
JAMES L. MAY, JR.  
ALEX T. HOWARD, JR.  
CHAUNCEY MOORE  
J. JEPHA HILL  
CHARLES B. BAILEY, JR.

May 23, 1958

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

Re: W. P. Wyllie, Jr., v.  
Wilson H. Vail, etc., et al.  
In the Circuit Court of  
Baldwin County, Alabama,  
At Law No. 3235

Dear Mrs. Duck:

Please find enclosed the complaint of the plaintiff in the  
captioned matter, newly amended, which we hereby file in  
this cause.

Yours very truly,

MCCORVEY, TURNER, JOHNSTONE, ADAMS & MAY

By



Attorneys for W. P. Wyllie, Jr.

JJHill:fe

Enclosure

cc: Chason & Stone

COPY

M<sup>c</sup>CORVEY, TURNER, ROGERS, JOHNSTONE & ADAMS  
ATTORNEYS AT LAW

NINTH FLOOR MERCHANTS NATIONAL BANK BUILDING

HEMLOCK 3-5561 P. O. BOX 1070

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JAMES L. MAY, JR.  
CHAUNCEY MOORE  
ALEX T. HOWARD, JR.  
J. JEPHTA HILL  
CHARLES B. BAILEY, JR.

February 6, 1958

Honorable Mary Texas Hurt Garner  
Secretary of State  
State of Alabama  
Montgomery 4, Alabama

Dear Mrs. Secretary:

Re: W. P. Wyllie, Jr., vs.  
Wilson H. Vail, et al.  
Case No. 3235

Thank you for your letter of February 3, 1958, enclosing the papers returned by the sheriff's office of Dade County, Florida, with request for better address of defendant, and \$2 cash. We are forwarding to the Dade County sheriff the requested check for \$3.50.

Yours very truly,

MCCORVEY, TURNER, ROGERS, JOHNSTONE & ADAMS

By

*J. Jephtha Hill*  
J. Jephtha Hill

JJH:fe

cc Honorable Alice J. Duck, Clerk ✓  
Circuit Court at Law  
Baldwin County  
Bay Minette, Alabama

M<sup>c</sup>CORVEY, TURNER, ROGERS, JOHNSTONE & ADAMS  
ATTORNEYS AT LAW

NINTH FLOOR MERCHANTS NATIONAL BANK BUILDING  
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R. F. ADAMS  
JAMES L. MAY, JR.  
CHAUNCEY MOORE  
ALEX T. HOWARD, JR.  
J. JEPHIA HILL  
CHARLES D. BAILEY, JR.

January 13, 1958

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

Dear Mrs. Duck:

Enclosed with this letter please find an original and eight copies of the amended complaint in the case of W. P. Wyllie, Jr., vs. Wilson H. Vail, et al., Cause No. 3235, At Law, in the Circuit Court of Baldwin County. We request that this amended complaint be served on the defendant Wilson H. Vail, individually and doing business as Vail Trucking Company, and also upon Clarence Seldon Hurst, by service of same upon the Secretary of State of the State of Alabama at Montgomery, Alabama, under the provisions of Title 7, Section 199, of the Code of Alabama, 1940. Please issue and attach copies of your summons for both of these defendants to four copies of the amended complaint for service on the Secretary of State.

We are also requesting that the Secretary of State proceed to give notice of such service having been made upon her to the defendants under and in conformance with Act No. 100 of the Second Special Session, 1956, of the Legislature of Alabama. For that reason, you will also find enclosed this Firm's check payable to the Secretary of State in the amount of \$10 representing the \$3 fee specified by Title 7, Section 199, and the \$2 fee specified by the above mentioned Act No. 100, for perfecting such service and notice against both defendants. For the same reason, and to simplify the procedure, we are also enclosing herewith copies of our letter of today to the Secretary of State requesting that Act No. 100 be complied with and pointing out particular defects to be avoided in order to assure the necessary conformance with the statute. If this is done, we believe that the service of process would qualify under both of the two statutes referred to above. We request that you retain a copy of the letter addressed to the Secretary of State if you so desire and that the remaining

Honorable Alice J. Duck

2

January 13, 1958

copies be forwarded along with the complaint and the summons which you will attach thereto. When you forward these to the Sheriff of Montgomery County, we request that you ask him to leave said copies attached to the summons and complaint, so as to assure their reaching the Secretary of State.

Thanking you for your many courtesies, we remain

Yours very truly,

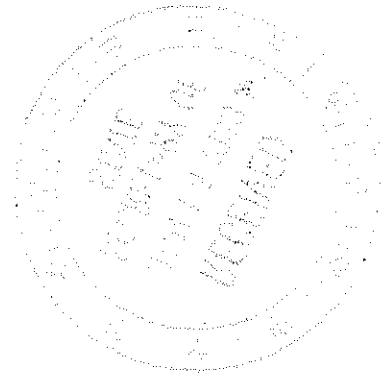
McCORVEY, TURNER, ROGERS, JOHNSTONE & ADAMS

By

  
S. Jephtha Hill

JJH:fe

Enclosures



4-1-5  
8



STATE OF ALABAMA  
OFFICE OF SECRETARY OF STATE  
MONTGOMERY 4, ALABAMA

January 15, 1958

MARY TEXAS HURT GARNER  
SECRETARY OF STATE

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

Re: W. P. Wyllie, Jr., VS Wilson H. Vail, individually  
and doing business as Vail Trucking Co., and W. H.  
Vail, individually and doing business as Vail Trucking  
Co., and Clarence Seldon Hurst and Vail Trucking Co.,  
a corporation, and X Company, whose name is otherwise  
not now known to Plaintiff, and John Doe, whose name  
is otherwise unknown to Plaintiff, jointly and  
separately, Case No. 3235

Dear Mrs. Duck:

Upon discovering that no summons were included with the amended complaints in the above-captioned case received this date from the Sheriff of Montgomery County, I talked with the Honorable J. Jephtha Hill, Attorney for Plaintiff, by long-distance telephone. He asked that I return all copies of the amended complaint to you with the request that you (1) execute the summons, (2) attach a copy of same to each copy of the amended complaint, and (3) return all nine copies of summons and amended complaint to the Sheriff of Montgomery County for service on the Secretary of State.

I am retaining Mr. Hill's Check No. 47275 in the amount of \$10.00 which covers fees for service by Secretary of State under Act No. 100 of the Second Special Session, 1956, of the Legislature of Alabama.

Thank you for your cooperation in this matter.

Yours very truly,

*Mary Texas Hurt Garner*

Mary Texas Hurt Garner  
Secretary of State

*Jamie L. Pettigrew*

By: Jamie L. Pettigrew  
Administrative Assistant

JLP:nt

cc: Honorable J. Jephtha Hill  
McCorvey, Turner, Rogers, Johnstone, & Adams  
P. C. Box 1070  
Mobile 6, Alabama

McCORMEY, TURNER, JOHNSTONE, ADAMS & MAY  
ATTORNEYS AT LAW

NINTH FLOOR MERCHANTS NATIONAL BANK BUILDING  
HEMLOCK 3-5561 P. O. BOX 1070  
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JAMES L. MAY, JR.  
ALEX T. HOWARD, JR.  
CHAUNCEY MOORE  
J. JEPHTA HILL  
CHARLES B. BAILEY, JR.

August 8, 1958

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

Re: W. P. Wyllie, Jr., vs. Wilson Vail, et al;  
Civil Case No. 3235

Dear Mrs. Duck:

Enclosed please find three copies of the complaint as last amended in the captioned cause. We request that this amended complaint be served on the defendant Clarence Seldon Hurst by service of same upon the Secretary of State of the State of Alabama at Montgomery, Alabama, under the provisions of Title 7, Section 199, of the Code of Alabama, 1940. Please issue and attach copies of your summons to these copies of the amended complaint and serve same upon the Secretary of State, which I presume would be done through the Office of the Sheriff in Montgomery County, Alabama.

By direct carbon copies of this correspondence, we are requesting that the Secretary of State proceed to give notice of such service having been made upon her to the defendant Hurst under and in conformance with Act No. 100 of the Second Special Session, 1956, of the Legislature of Alabama. Therefore, we are enclosing this Firm's check in the amount of \$3.00, as required by Title 7, Section 199, and we are also enclosing a separate check in the amount of \$10.10 which is in lieu of the \$2.00 fee specified in the above mentioned Act No. 100, inasmuch as we have already been advised by the Sheriff of Palm Beach County, Florida, that \$10.10 is the required sum for perfecting the service upon the defendant there. It is the request that the Secretary of State attach to the summons and copy of the amended complaint her notification of service upon her, and that there be typed, by her office, on the reverse of her notice, the same officer's return and certificate of clerk of court as such office has been good enough to do on the occasion of prior efforts to perfect service against Hurst on January 21, 1958. It is requested, also, that the Secretary of State use substantially

Honorable Alice J. Duck

2

August 8, 1958

the same covering letter as she used on the occasion of our last effort to serve Hurst, which was dated February 4, 1958.

Expressing our appreciation, we remain

Yours very truly,

McCORVEY, TURNER, JOHNSTONE, ADAMS & MAY

By



Attorneys for W. P. Wyllie, Jr.

JJHill:fe

Enclosure

cc: Honorable Mary Texas Hurt Garner



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

NINTH FLOOR MERCHANTS NATIONAL BANK BUILDING  
HEMLOCK 3-5561 P. O. BOX 1070

MOBILE 6, ALABAMA

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JAMES L. MAY, JR.  
CHAUNCEY MOORE  
ALEX T. HOWARD, JR.  
J. JEPHTHA HILL  
CHARLES B. BAILEY, JR.

March 11, 1958

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

Dear Mrs. Duck:

Re: W. P. Wyllie, Jr., vs.  
Wilson H. Vail, et al.  
Case No. 3235

Sometime has now elapsed since our last attempt to have notice of service upon the Secretary of State served upon the Defendant Wilson H. Vail, and we have not received anything indicating that the service has been completed or that it was impossible to complete service. We should muchly appreciate a statement from you informing us whether your file indicates that service has been completed.

We would also appreciate the same information as to the Defendant Clarence Seldon Hurst.

In the event this case has been assigned a trial date on the docket, please tell us the date.

We enclose a self-addressed, stamped envelope for your convenience. Thank you for your kindness.

Yours very truly,

MCCORVEY, TURNER, ROGERS, JOHNSTONE & ADAMS

By

  
J. Jephtha Hill

JJH:fe

Enclosure



MARY TEXAS HURT  
SECRETARY OF STATE

STATE OF ALABAMA  
OFFICE OF SECRETARY OF STATE  
MONTGOMERY 4, ALABAMA

August 18, 1958

To the Honorable Sheriff  
Palm Beach County  
Delray Beach, Florida

REGISTERED MAIL  
RETURN RECEIPT REQUESTED

Re: W. P. Wyllie, Jr. VS Clarence Seldon  
Hurst, et al, Case No. 3235

Dear Sir:

Enclosed is my notice, together with copies of summons and amended complaint in duplicate, in suit against Clarence Seldon Hurst, now pending in the Circuit Court of Baldwin County, Alabama at Law.

Act No. 100 of the Second Special Session of 1956 of the Alabama Legislature provides, among other things, that service of process may be had by a sheriff or other duly authorized public official within the jurisdiction of the defendant's residence. I am enclosing a check, Number 48076, in the amount of \$10.10 forwarded to me by the Honorable J. Jeptha Hill, Attorney for the Plaintiff, which will cover your charges for said services. If there are any additional charges by you, you will please contact Mr. Hill who will give same his prompt attention.

Mr. Hill and I shall greatly appreciate your efforts to complete this service upon Mr. Hurst by serving upon him the original and making your return to the Honorable Alice J. Duke, Clerk of the Circuit Court of Baldwin County, Bay Minette, Alabama.

In order to comply with Act No. 100, will you please (1) use the space provided on the back of the copy of my notice for certifying to the Court that you made personal service on defendant; (2) have the Clerk of the circuit court, the supreme court, or a court of like jurisdiction, of the county of your residence certify in the space provided on the same page that you are duly authorized to serve such process; and (3) return this form properly executed, with the copy of summons and amended complaint attached, to the Clerk of the Court whose name and address are given above, in paragraph 3.

The Attorney for Plaintiff has requested that (in order to preclude possibility of defective service) the signatures of the officer actually serving the papers and the Clerk of the Court certifying as to said officer's qualifications be original signatures and not those of other clerical personnel.

Page Two  
To the Honorable Sheriff  
Delray Beach, Florida  
August 18, 1958

For your further information, I am enclosing a copy of my letter of instructions from the Attorney for the Plaintiff.

Thank you very much for your continued cooperation in this matter.

Yours very truly,

*MTG*

Mary Texas Hurt Garner  
Secretary of State

JLP:nt

Enclosures

cc: Honorable J. Jeptha Hill  
McCorvey, Turner, Rogers, Johnstone & Adams  
Attorneys at Law  
P. O. Box 1070  
Mobile 6, Alabama

cc: Honorable Alice J. Duck, Clerk  
Circuit Court at Law  
Baldwin County  
Bay Minette, Alabama



STATE OF ALABAMA  
OFFICE OF SECRETARY OF STATE  
MONTGOMERY 4, ALABAMA

January 21, 1958

MARY TEXAS HURT  
SECRETARY OF STATE

To the Honorable Sheriff  
Bald County  
Hialeah, Florida

REGISTERED MAIL  
RETURN RECEIPT REQUESTED

Re: W. P. Wyllie, Jr. VS Wilson H. Vail, et al  
Case No. 3235

Dear Sir:

Enclosed is my notice, together with copies of summons and <sup>amended</sup> complaint in duplicate, in suit against Wilson H. Vail, now pending in the Circuit Court of Baldwin County, Alabama at Law.

Act No. 100 of the Second Special Session of 1956 of the Alabama Legislature provides, among other things, that service of process may be had by a sheriff or other duly authorized public official within the jurisdiction of the defendant's residence. This Act further provides a fee of \$2.00 for each service by said official. I am enclosing cash in the amount of \$2.00 forwarded to me by the Honorable J. Jephtha Hill, Attorney for the Plaintiff. If there are any additional charges by you, you will please contact Mr. Hill who will give same his prompt attention.

Mr. Hill and I shall greatly appreciate your efforts to complete this service upon Mr. Hurst by serving upon him the original and making your return to the Honorable Alice J. Duck, Clerk of the Circuit Court of Baldwin County, Bay Minette, Alabama.

In order to comply with Act No. 100, will you please (1) use the space provided on the back of the copy of my notice for certifying to the Court that you made personal service on defendant; (2) have the Clerk of the circuit court, the supreme court, or a court of like jurisdiction, of the county of your residence certify in the space provided on the same page that you are duly authorized to serve such process; and (3) return this form properly executed, with the copy of summons and amended complaint attached, to the Clerk of the Court whose name and address are given above.

The Attorney for Plaintiff has requested that (in order to preclude possibility of defective service) the signatures of the officer actually serving the papers and the Clerk of the Court certifying as to said officer's qualifications be original signatures and not those of other clerical personnel.

Page Two  
Honorable Sheriff  
Dade County, Florida  
January 21, 1958

For your further information, I am enclosing a copy of my letter of instructions from the Attorney for the Plaintiff.

Thank you very much for your continued cooperation in this matter.

Yours very truly,

*Mary Texas Hurt Garner*

Mary Texas Hurt Garner  
Secretary of State

JLP:nt

Enclosures

cc: Honorable J. Jeptha Hill  
McCorvey, Turner, Rogers, Johnstone & Adams  
Attorneys at Law  
P. O. Box 1070  
Mobile 6, Alabama

✓ cc: Honorable Alice J. Duck, Clerk  
Circuit Court at Law  
Baldwin County  
Bay Minette, Alabama

McCORVEY, TURNER, JOHNSTONE, ADAMS & MAY  
ATTORNEYS AT LAW

NINTH FLOOR MERCHANTS NATIONAL BANK BUILDING  
HEMLOCK 3-5561 P. O. BOX 1070

MOBILE 6, ALABAMA

GESSNER T. McCORVEY  
BEN D. TURNER  
C. M. A. ROGERS (1891-1957)  
C. A. L. JOHNSTONE, JR.  
R. F. ADAMS  
JAMES L. MAY, JR.  
ALEX T. HOWARD, JR.  
CHAUNCEY MOORE  
J. JEPHTHA HILL  
CHARLES B. BAILEY, JR.

March 25, 1958

AIR MAIL

Honorable E. B. Leatherman  
Clerk of the Circuit Court of  
Dade County  
Miami, Florida

Dear Mr. Leatherman:

We are enclosing herewith a notice from the Secretary of State of Alabama to a Mr. Wilson H. Vail informing Mr. Vail of a suit pending against him in Baldwin County, Alabama. On the back thereof is the "Officer's Return" which has already been executed by Deputy Sheriff R. L. Bishop of Dade County, and below same there has already been executed a statement designated "Certificate of Clerk of Court" by a clerk in your office with delegated authority to do so. You will also notice that there has been typed under his signature another line calling for your signature as Circuit Court Clerk.

This letter is to request that you oblige the writer by personally signing this certificate in the space so provided. We realize it is probably not the ordinary practice for you, as Clerk, to personally subscribe all the many papers which must bear the signature of the Clerk. However, in order for service of process to be legal according to the Alabama statute which we are following, it is necessary that the Clerk of the Court sign this certificate personally. We are sure that you will be willing to accommodate us in this particular.

You will also find enclosed a stamped envelope addressed to the Honorable Alice J. Duck, Clerk of the Circuit Court, Bay Minette, Baldwin County, Alabama. We ask that you mail the signed papers to Mrs. Duck in this envelope.

Thanking you for your courtesies, we remain

Yours very truly,

McCORVEY, TURNER, JOHNSTONE, ADAMS & MAY

By J. Jephtha Hill  
J. Jephtha Hill

JJH:fe  
Enclosure

OFFICER'S RETURN

I, R.L.BISHOP, a Deputy Sheriff,  
(Name of Officer or Deputy actually serving)  
hereby certify that original of the within notifi-  
cation of service of process upon the Secretary of  
State of the State of Alabama as service upon  
defendant, and copies of the within summons and  
complaint, were received the 7 day of Feb.,  
1958, and were by me duly served upon \_\_\_\_\_

WILSON H. VAIL  
by personally handing same to the defendant \_\_\_\_\_  
Wilson H.Vail, at  
26 W. 50th St. Hialeah, Dade Co. Fla., on  
(Local address including county)  
March 19,, 1958.  
(Date)

R.L. Bishop  
Name & Title of Officer Actually Serving  
R.L.BISHOP, Deputy Sheriff

We request that the following certification be employed for  
the statement by the Clerk of the Court:

CERTIFICATE OF CLERK OF COURT

STATE OF FLORIDA  
COUNTY OF Dade

I, E.B.LEATHERMAN, Clerk  
of the Circuit, Dade County, Florida,  
(Name & location of court)

hereby certify that R.L.BISHOP,  
whose name is signed to the  
foregoing Officer's Return, is a resident and duly  
constituted public law enforcement officer in and  
for said County, and that he is fully authorized  
and qualified to serve such legal process in said  
County.

Witness my hand and seal this 24 day of  
March, 1958.

E.B. Leatherman  
Name & Title  
E.B.LEATHERMAN, CIRCUIT COURT CLERK

Witness my hand and seal this 27  
day of March, 1958.

E.B. Leatherman  
E. B. Leatherman, Circuit Court Clerk



MARY TEXAS HURT GARNER  
SECRETARY OF STATE

STATE OF ALABAMA  
OFFICE OF SECRETARY OF STATE  
MONTGOMERY 4, ALABAMA

January 21, 1958

Wilson H. Vail, individually and  
doing business as  
Vail Trucking Company  
26 West 50th Street  
Hialeah, Florida

REGISTERED MAIL  
RETURN RECEIPT REQUESTED  
DELIVER TO ADDRESSEE ONLY

You will take notice that on January 21, 1958 the Sheriff of  
Montgomery County, Alabama, served upon me, in my official capacity, Summons and/Com-  
plaint in a case entitled: W. P. WYLLIE, JR.,

Plaintiff VS WILSON H. VAIL, individually and  
doing business as Vail Trucking Co., et al,

Defendant's in the CIRCUIT COURT OF BALDWIN  
COUNTY, ALABAMA AT LAW

Case No. 3235 true copy of which Summons and/Complaint is attached hereto and  
the said service upon me as Secretary of State of the State of Alabama has the force and effect  
of personal service upon you.

WITNESS MY HAND and the Great Seal of the State of Alabama this the 21  
day of January 1958

*Mary Texas Hurt Garner*  
Mary Texas Hurt Garner  
Secretary of State

Enclosure : Copy of Summons and/Complaint

cc: Honorable J. Jephtha Hill  
McCorvey, Turner, Rogers, Johnstone & Adams  
Attorneys at Law  
P. O. Box 1070  
Mobile 6, Alabama

(OVER)



Honorable Mary Texas Hurt Garner

January 13, 1958

OFFICER'S RETURN

I, R.L.BISHOP, a Deputy Sheriff,  
 (Name of Officer or Deputy actually serving)  
 hereby certify that original of the within notification of service of process upon the Secretary of State of the State of Alabama as service upon defendant, and copies of the within summons and complaint, were received the 7 day of Feb., 1958, and were by me duly served upon \_\_\_\_\_

WILSON H. VAIL  
 by personally handing same to the defendant \_\_\_\_\_  
Wilson H. Vail, at  
26 W. 50 Street, Hialeah, Dade Co. Fla., on  
 (Local address including county)  
March 19, 1958, 1958.  
 (Date)

R.L. Bishop  
 Name & Title of Officer Actually Serving  
R.L. Bishop, Deputy Sheriff

We request that the following certification be employed for the statement by the Clerk of the Court:

CERTIFICATE OF CLERK OF COURT

STATE OF FLORIDA  
 COUNTY OF Dade

I, \_\_\_\_\_, Clerk  
 of the Circuit Court, Dade County, Florida,  
 (Name & location of court)

hereby certify that R.L. Bishop,  
 whose name is signed to the foregoing Officer's Return, is a resident and duly constituted public law enforcement officer in and for said County, and that he is fully authorized and qualified to serve such legal process in said County.

Witness my hand and seal this 24 day of  
March, 1958.

Witness my hand and seal  
 this 27 day of  
March, 1958.

E. B. Leatherman  
 E. B. Leatherman, Circuit  
 Court Clerk

E. B. Leatherman  
 Name & Title  
Clerk Circuit Court  
Dade County, Florida

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

NINTH FLOOR MERCHANTS NATIONAL BANK BUILDING  
HEMLOCK 3-5561 P. O. BOX 1070  
MOBILE 6, ALABAMA

GESSNER T. MCCORVEY  
BEN D. TURNER  
C. M. A. ROGERS (1891-1957)  
C. A. L. JOHNSTONE, JR.  
R. F. ADAMS  
JAMES L. MAY, JR.  
ALEX T. HOWARD, JR.  
CHAUNCEY MOORE  
J. JEPHTA HILL  
CHARLES B. BAILEY, JR.

February 12, 1959

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

Re: W. P. Wyllie, Jr., vs. Wilson H. Vail, etc.  
Case No. 3235

Dear Mrs. Duck:

Enclosed please find an Amended Complaint which is hereby filed on behalf of the plaintiff in the captioned case. This pleading may be served upon the Defendant Wilson H. Vail by serving a copy thereof upon his attorneys, the firm of Chason & Stone.


In order to effect service upon the Defendant Clarence Seldon Hurst, please have a copy of this amendment served on the Secretary of State at Montgomery in accordance with the provision of Code of Alabama, 1940, Title 7, Section 199. In accordance with the terms of said statute, we enclose herewith our check in amount of \$3.00 and the three copies of the complaint to which you should attach summons and forward to the Secretary of State.

The Secretary of State should mail notice of service of process upon her to Clarence Seldon Hurst at 1031 S. W. 23rd Avenue, Fort Lauderdale, Florida.

Yours very truly,

MCCORVEY, TURNER, JOHNSTONE, ADAMS & MAY

By

  
(J. Jephtha Hill)

Attorneys for W. P. Wyllie, Jr.

JJH:fe  
Enclosure

CHASON & STONE  
ATTORNEYS AT LAW  
BAY MINETTE, ALABAMA

JOHN CHASON  
NORBORNE C. STONE, JR.

PHONE 3641

February 9, 1960

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

Dear Mrs. Duck:

Re: Wyllie vs. Vail  
Case No. 3235

Would you please withdraw the appearance of this firm  
for the Defendant in the above styled cause.

Thanking you for your attention to this matter, we  
are

Yours very truly,

CHASON & STONE

By: 

NCS:jab

CC: Hon. J. Edwin Larson, Receiver  
Public National Insurance Company  
1440 79th Street Causeway  
Miami Beach 41, Florida

Hon. J. Jephtha Hill  
Attorney at Law  
Merchants National Bank Building  
Mobile, Alabama

Hon. J. B. Blackburn  
Attorney at Law  
Bay Minette, Alabama

Mr. Wilson H. Vail  
26 West 50th Street  
Hialeah, Florida

W. P. WYLLIE, JR.,	Y		
Plaintiff,	Y	IN THE CIRCUIT COURT OF	
vs.	Y		
	Y	BALDWIN COUNTY, ALABAMA	
WILSON H. VAIL, individually and doing business as VAIL TRUCKING COMPANY, et al.,	Y	AT LAW	NO. 3235
Defendants.	Y		
	Y		

Comes now the Defendant Wilson H. Vail and for answer to the interrogatories heretofore propounded to him, says:

1. Wilson H. Vail, age thirty-nine, 26 West 50th Street, Hialeah, Florida, Trucker.
2. (a) 1287 N. W. 20th Street, Miami, Florida.  
(b) 26 West 50th Street, Hialeah, Florida.
3. Individual proprietorship.
4. Individual proprietorship.
5. See answer to "4" above.
6. See answer to "4" above.
7. Wilson H. Vail, owner and manager.
8. My answers would not be different.
9. No.
10. Wilson H. Vail, doing business as Vail Trucking Company.
11. None.
12. Employee.
13. Yes.
14. Yes. Wilson H. Vail.
15. Yes. Wilson H. Vail, doing business as Vail Trucking Company.
16. Yes.
17. The tractor was lettered with W. H. Vail, Miami, Florida and telephone number. There was no lettering on the trailer.
18. The point of origin was Miami, Florida, to Los Angeles, California. The accident took place on the return trip from Los Angeles, California, to Miami, Florida.
19. No.

20. I do not know.
21. 1031 S. W. 23rd Avenue, Fort Lauderdale, Florida.
22. Same as answer to "21".
23. I do not know.
24. May 14, 1956.

Wilson H. Vail  
Wilson H. Vail

STATE OF FLORIDA

Dade COUNTY

Before me, Elinor L. Todd, a Notary Public, in and for said County in said State, personally appeared Wilson H. Vail who is known to me and who, after being by me first duly and legally sworn, did depose and say under oath as follows:

That his name is Wilson H. Vail and that he signed the foregoing answers to interrogatories propounded to him and has read over the interrogatories and the answers thereto and that said answers are true and correct.

Wilson H. Vail  
Wilson H. Vail

Sworn to and subscribed before me on  
this the 18<sup>th</sup> day of November,  
1958.

Elinor L. Todd  
Notary Public, \_\_\_\_\_ County, Florida

Notary Public, State of Florida at Large  
My Commission Expires Dec. 20, 1961  
Bonded by American Surety Co. of N. Y.



W. P. WYLLIE, JR.,

Plaintiff,

vs.

WILSON H. VAIL, individually  
and doing business as VAIL  
TRUCKING CO., and W. H. VAIL,  
individually and doing business  
as VAIL TRUCKING CO., and  
CLARENCE SELDON HURST, and  
VAIL TRUCKING CO., a corpora-  
tion, and X COMPANY, whose  
name is otherwise not now known  
to plaintiff, and JOHN DOE,  
whose name is otherwise unknown  
to plaintiff, jointly and sepa-  
rately,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW

NO. 3235

Comes now the plaintiff in the above entitled cause and propounds the following interrogatories to the defendant Wilson H. Vail, individually:

1. What is your name, age, address and occupation?
2. What is the correct name, if not as stated herein, and correct address of Vail Trucking Company, at the present time, and what was the correct name and address of the company at the time complained of in the suit?
3. Is Vail Trucking Company, so named or by the correct name if different, an individual proprietorship, a partnership or a corporation?
4. At the time complained of in the suit was Vail Trucking Company, so named or by the correct name if it was different, an individual proprietorship, a partnership or a corporation?
5. If Vail Trucking Company, by that name or by its correct name if different, was a partnership at the time complained of in the suit, state the ownership of the partnership at that time and your position with and your office or offices in said partnership at that time.

6. If Vail Trucking Company, by that name or its correct name if different, was a corporation at the time complained of in the suit, state the state in which it was then incorporated and state your position with and your office or offices in such corporation at that time.
7. If Vail Trucking Company, by that name or its correct name if different, was an individual proprietorship at the time complained of in the suit, state the ownership thereof and state your position with and your office or offices in said business at that time.
8. If any of your answers to the three preceding questions would be any different if given with respect to the present time, then state such different answers.
9. Did you at the time complained of in the suit, or do you now, hold any position with or office in any firm doing trucking business other than Vail Trucking Company; and, if so, state the name and address of such companies, the form of business in which same were or are conducted, and the positions or offices so held by you?
10. State which one or ones of the following, if either, was the employer of Clarence Seldon Hurst at the time complained of in the suit: Wilson H. Vail? Vail Trucking Company? Wilson H. Vail doing business as Vail Trucking Company?
11. State the name of any other known employer of Clarence Seldon Hurst at the time complained of in the suit.
12. At the time and place complained of in the suit, was Clarence Seldon Hurst acting as the agent, servant or employee of the employer described in your answer to question No. 10 above?
13. At the time and place complained of in the suit, was Clarence Seldon Hurst acting as the agent, servant or employee of the employer described in your answer to question No. 10 above and was he acting

within the line and scope of his authority as such agent, servant or employee?

14. At the time and place complained of in the suit, was Clarence Seldon Hurst driving a vehicle belonging to you or to Vail Trucking Company; or, if someone different, belonging to the employer described in your answer to question No. 11 above; and state to which one such vehicle belonged?
15. At the time and place complained of in the suit, was Clarence Seldon Hurst driving a vehicle which was then in the possession of or being operated by you or by Vail Trucking Company or by the employer described in your answer to question No. 11 above, and state which?
16. At the time complained of in the suit, did you or Vail Trucking Company or the employer named in your answer to question No. 11 above own, or was such party engaged in the business of operating, the truck described in the counts of the amended complaint as being driven by Clarence Seldon Hurst at the time and place of the wreck complained of in the suit?
17. Did the truck described in the counts of the amended complaint as being driven by Clarence Seldon Hurst at the time and place of the wreck complained of bear on any part of the exterior thereof any company name or any individual's name; and if so state exactly, or as closely as you are able, what such lettering or writing was?
18. At the time and place complained of in the suit, what was the point of origin and what was the destination of Clarence Seldon Hurst in the trucking job he was performing?
19. Is Clarence Seldon Hurst presently employed by you or by Vail Trucking Company and state which?
20. What is the present address of Clarence Seldon Hurst?



21. What is the last address of Clarence Seldon Hurst known to you?
22. What was the last address for Clarence Seldon Hurst shown by the records of Vail Trucking Company or by the records of the employer named in your answer to question No. 11 above?
23. By whom is Clarence Seldon Hurst now employed and what is the address of such employer?
24. If Clarence Seldon Hurst is not now employed by you or by Vail Trucking Company or by the employer named in your answer to question No. 11 above, state the last date on which he held such employment.

McCORVEY, TURNER, JOHNSTONE, ADAMS & MAY

By Jeptha Hill  
Attorneys for Plaintiff

STATE OF ALABAMA

COUNTY OF MOBILE

Before me, William H. S. Jones, a notary public in and for said State and County, personally appeared J. Jeptha Hill, who is known to me, who being by me first duly sworn, upon his oath deposes and says that he is one of the attorneys for the plaintiff, W. P. Wyllie, Jr., in the above entitled cause, and that the defendant's answers to the above and foregoing interrogatories if well and truly made will be material evidence for the defendant on the trial of said cause.

Jeptha Hill

Subscribed and sworn to before  
me on this the 16th day of October, 1958.

William H. S. Jones  
Notary Public, Mobile County, Alabama

W. P. WYLLIE, JR.,	I		
Plaintiff,	I	IN THE CIRCUIT COURT OF	
vs.	I		
	I	BALDWIN COUNTY, ALABAMA	
WILSON H. VAIL, individually	I		
and doing business as VAIL	I	AT LAW	No. 3235
TRUCKING COMPANY, et al,	I		
Defendants.	I		

DEMURRER

Comes now the Defendant, Wilson H. Vail, individually and doing business as Vail Trucking Company, by his attorneys and demurs to the amended complaint heretofore filed against him and to each count thereof, separately and severally, and assigns the following separate and several grounds in support thereof:

1. The complaint fails to state a cause of action.
2. Count "one" of the complaint fails to state a cause of action.
3. Count "two" of the complaint fails to state a cause of action.
4. The allegations of the complaint are vague, indefinite and uncertain.
5. The allegations of the complaint fail to allege that the Defendant Clarence Seldon Hurst was the agent, servant or employee of the Defendant Wilson H. Vail.
6. The complaint fails to allege that the Defendant Clarence Seldon Hurst was the agent, servant or employee of the Defendant Wilson H. Vail doing business as Vail Trucking Company.
7. For aught that appears from the complaint the Defendant Clarence Seldon Hurst, at the time and place complained of, was not the agent, servant or employee of the Defendant Wilson H. Vail, individually and doing business as Vail Trucking Company, acting within the line and scope of his employment as such.
8. The allegations of the complaint are in the alternative.
9. For aught that appears from the complaint the Defendant Clarence Seldon Hurst, at the time and place complained of, was not the agent, servant or employee of the Defendant Wilson H. Vail, either

individually or doing business as Vail Trucking Company, acting with-  
in the line and scope of his employment as such.

10. There is a misjoinder of parties defendant.

11. There is a misjoinder of causes of action.

12. There is a misjoinder of causes of action in that the Plaintiff in count "One" of the amended complaint attempts to join in the same count an action of trespass and an action of trespass on the case.

13. The allegations of the amended complaint fail to allege a duty owing from the Defendant Wilson H. Vail, either individually or doing business as Vail Trucking Company, to the Plaintiff and a breach of that duty proximately resulting in the injuries allegedly sustained by the Plaintiff.

14. The allegations of count "Two" of the complaint fail to allege that the Defendant Clarence Seldon Hurst, while acting with-  
in the line and scope of his employment as the agent, servant or employee of the Defendant Wilson H. Vail, either individually or doing business as Vail Trucking Company, willfully or wantonly injured the Plaintiff.


15. The allegations of the complaint fail to allege with sufficient particularity the acts complained of.

16. The complaint fails to allege facts which would constitute negligence as a matter of law.

17. The complaint fails to allege that the Defendant Clarence Sheldon Hurst, while acting in the line and scope of his employment as the agent, servant or employee of the Defendant Wilson H. Vail, individually and doing business as Vail Trucking Company, negligently knocked any truck, motor vehicle, or other object into or upon or against the truck allegedly being operated by the Plaintiff at the time and place complained of.

CHASON & STONE

*Filed - 4-12-58*

By:   
Attorneys for Defendant Wilson  
H. Vail, individually and do-  
ing business as Vail Trucking  
Company

W. P. WYLLIE, JR.,

Plaintiff,

vs.

WILSON H. VAIL, individually and  
doing business as VAIL TRUCKING  
COMPANY, ET AL.

Defendants.

\*\*\*\*\*

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 3235

\*\*\*\*\*

DEMURRER

\*\*\*\*\*

FILED  
APR 12 1958  
ALICE L. DUCK, Clerk

LAW OFFICES

CHASON & STONE

BAY MINETTE, ALABAMA

W. P. WYLLIE, JR.,

Plaintiff,

v.

WILSON H. VAIL, individually  
and doing business as VAIL  
TRUCKING CO., ET. AL.,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 3235

AMENDMENT TO COMPLAINT

Comes now W. P. Wyllie, Jr., plaintiff in the above styled cause, by his attorneys, and amends the complaint heretofore filed by him in this cause by striking out the word "Mobile" where it appears in the heading of said complaint, and inserting in lieu thereof the word "Baldwin."

MCCORVEY, TURNER, ROGERS, JOHNSTONE & ADAMS

By

*John H. Hiler*  
Attorneys for Plaintiff

*Filed*  
*11-26-57*

W. P. WYLLIE, JR.,	X		
	X	IN THE CIRCUIT COURT OF	
Plaintiff,	X		
vs.	X	BALDWIN COUNTY, ALABAMA	
	X		
WILSON H. VAIL, individually	X	AT LAW	NO. 3235
and doing business as VAIL	X		
TRUCKING CO., ET AL.,	X		
	X		
Defendants.	X		

MOTION TO QUASH SERVICE

Comes now the Defendant Wilson H. Vail, individually and doing business as Vail Trucking Company, by his attorneys, and appearing specially for the purpose of filing this motion and for no other different object or purpose, and moves this Honorable Court to quash the service of process heretofore had upon him and assigns the following separate and several grounds in support thereof:

1. It affirmatively appears from the complaint that the Circuit Clerk of Baldwin County, Alabama, had no authority to issue the summons heretofore issued by her on May 6, 1957, a copy of which was served upon this defendant.

2. It affirmatively appears from the complaint that the summons in this case was issued by the Circuit Clerk of Baldwin County Alabama, on a suit in the Circuit Court of Mobile County, Alabama.

3. It affirmatively appears from the Bill of Complaint and the summons attached thereto that the summons was issued by the Clerk of a circuit court other than the Circuit Court of Mobile County, Alabama.

4. It affirmatively appears from the allegations of the complaint that the summons heretofore issued by the Clerk of the Circuit Court of Baldwin County, Alabama, is void and of no force and effect.

5. There is no certificate by the Deputy Sheriff of Dade County, Florida, that he made personal service of the summons on this Defendant.

6. There is no certificate on the summons by the Clerk of the Circuit Court, the Supreme Court, or a court of like jurisdiction of the County of the residence of the officer who attempted to make

the service in this case that such officer is duly authorized to serve such process in such state or country.

7. There is no certificate of the Clerk of the Circuit Court of Dade County, Florida, that the officer who attempted to make service in this case is duly authorized to serve such process in Dade County, Florida.

8. There is no certificate of the Clerk of the Supreme Court of Florida that the officer who attempted to make service in this case is duly authorized to serve process in the State of Florida.

9. There is no certificate that process in this case was served by a duly constituted public officer qualified to serve like process in the state of the jurisdiction where this process purports to have been served.

10. For aught that appears from the return on the summons in this cause the same was not served by the Sheriff or some other law enforcement officer authorized to serve summonses and legal process in the State of Florida.

11. There is no certificate or return on the summons issued in this case that the same was served by the Sheriff or some other law enforcement officer authorized to serve summonses and legal process in Dade County, Florida.

12. It affirmatively appears from the complaint filed in this cause that this is not a suit or proceeding at law wherein service or notice of process on the Defendant therein may be had by registered or certified mail.

13. It affirmatively appears from the complaint that this is not a suit or proceeding at law or in equity when the Defendant or Respondent is a non-resident of Alabama, and service or notice of process on such Defendant or Respondent may be made by registered or certified mail.

14. The summons in this case does not appear to have been served by a sheriff, deputy sheriff or United States Marshal, or Deputy United States Marshal, or any duly constituted public officer qualified to serve like process in the state of the jurisdiction where this Defendant was found.

Respectfully submitted,

CHASON & STONE

By:

*John Chason*

*Filed*  
*11-1-57*

W. P. WYLLIE, JR.,

Plaintiff,

vs.

WILSON H. VAIL, individually  
and doing business as VAIL  
TRUCKING CO., ET AL.

Defendants.

\*\*\*\*\*

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW                      NO. 3235

\*\*\*\*\*

MOTION TO QUASH SERVICE

\*\*\*\*\*

FILED

NOV 1 1957

ALICE L. DUCK, CLERK

LAW OFFICES

CHASON & STONE

BAY MINETTE, ALABAMA



W. P. WYLLIE, JR.,

Plaintiff,

Vs.

WILSON H. VAIL, individually and doing business as Vail Trucking Co., and W. H. VAIL, individually and doing business as Vail Trucking Co., and CLARENCE SELDON HURST, and VAIL TRUCKING CO., a corporation, and X COMPANY, whose name is otherwise not now known to plaintiff, and JOHN DOE, whose name is otherwise unknown to plaintiff, jointly and separately,

Defendants.

IN THE CIRCUIT COURT OF

MOBILE COUNTY, ALABAMA,

AT LAW,

NO. \_\_\_\_\_

COUNT ONE

Plaintiff claims of the defendants the sum of Forty Thousand (\$40,000.00) Dollars as damages for that, heretofore, on, to-wit, the 8th day of May, 1956, the Defendant Clarence Seldon Hurst, while acting within the line and scope of his employment as the agent, servant or employee of one or more of the other named defendants, so negligently operated a motor truck and trailer on U. S. Highway 90, a public highway in the County of Baldwin, State of Alabama, at a point thereon approximately two miles north of the limits of Robertsdale, in Baldwin County, Alabama, as to cause or allow said motor truck to run into, upon or against the rear of a ~~pick-up~~ truck knocking the last mentioned truck into the rear of a pick-up truck being then and there operated by the Plaintiff, and Plaintiff alleges that as a proximate result of the aforesaid negligence of the Defendants, Plaintiff was caused to sustain a broken neck, a hole through one of his lips, internal injuries, and bruises and lacerations, and other injuries. Plaintiff alleges that he was permanently injured, was caused to sustain pain and suffering, to incur medical expenses in the ascertainment and treatment of such injuries as aforesaid, and in the future will be required to expend large sums of money in and about his efforts to treat his fractured neck, all as a proximate result of the aforesaid negligence of the defendants, and all to plaintiff's damages as aforesaid, wherefore Plaintiff sues the Defendants as aforesaid for \$40,000.00. Plaintiff alleges that he does not now know the exact name of X Company or of John Doe, and that such correct name or correct names will later be shown by amendment, but that plaintiff's intention is to sue all owners and/or operators of said motor truck at the time the aforesaid accident occurred.

COUNT TWO

Plaintiff claims of the defendants the sum of Forty Thousand (\$40,000.00) Dollars as damages for that, heretofore, on, to-wit, the 8th day of May, 1956, the Defendant Clarence Seldon Hurst, while acting within the line and scope of his employment as the agent, servant or employee of one or more of the other named defendants and while driving a motor truck on U.S. Highway 90, a public highway in Baldwin County, Alabama, at a point thereon approximately two miles North of the limits of Robertsedale, Alabama, wilfully or wantonly injured plaintiff by then and there wilfully or wantonly driving said motor truck into, upon or against a truck being then and there operated, knocking the last-mentioned truck into a pick-up truck being then and there driven by plaintiff, and as a proximate result of such wilful or wanton misconduct of the Defendants, Plaintiff was caused to sustain a broken neck, a hole through one of his lips, internal injuries, a partial loss of use of one of his arms, bruises and lacerations and other injuries, and Plaintiff alleges that he was permanently injured, was caused to sustain, and will in the future sustain, pain and suffering, to incur medical expenses in the ascertainment and treatment of such injuries as aforesaid, and in the future will be required to expend large sums of money in and about his efforts to treat his fractured neck, all as a proximate result of the aforesaid wilful or wanton misconduct, and all to his damages as aforesaid, hence this suit. Plaintiff alleges that he does not now know the exact name of X Company or of John Doe, and that such correct name or correct names will later be shown by amendment, but that plaintiff's intention is to sue all owners and/or operators of said motor truck at the time the aforesaid accident occurred.

MCCORVEY, TURNER, ROGERS, JOHNSTONE & ADAMS,

By

*J. Jephtha Hill*

(J. Jephtha Hill)

Attorneys for Plaintiff

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

MCCORVEY, TURNER, ROGERS, JOHNSTONE & ADAMS,

By

*J. Jephtha Hill*

(J. Jephtha Hill)

Attorneys for Plaintiff

SUMMONS AND COMPLAINT

Moore Ptg. Co.

The State of Alabama,

Baldwin County.

Circuit Court, Baldwin County

No. 3235

TERM, 19

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon Wilson H. Vail, Ind. & d/b/a/ Vail Trucking Co.

& W. H? Vail, Ind. & d/b/a/ Vail Trucking Co. & Clarence Seldon Hurst, and Vail

Trucking Co. a Corp. & X Company, whose name is otherwise unknown to the Plaintiff

& John Doe, whose name is otherwise unknown to the plaintiff, jointly and Individually

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

Wilson H. Vail, ind and d/b/a/ Vail Trucking Co. et al., Defendant

by W. P. Wyllie, Jr.

Plaintiff

Witness my hand this 6th day of May 19 57

James J. H. H. H., Clerk  
EX-8-57 on the 8th day of May 1957

W. P. WYLLIE, JR.,

Plaintiff,

vs.

WILSON H. VAIL, individually  
and doing business as VAIL  
TRUCKING CO., and W. H. VAIL,  
individually and doing business  
as VAIL TRUCKING CO., and  
CLARENCE SELDON HURST and VAIL  
TRUCKING CO., a corporation, and  
X COMPANY, whose name is other-  
wise not now known to Plaintiff,  
and JOHN DOE, whose name is  
otherwise unknown to Plaintiff,  
jointly and separately,

Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

AT LAW

NO. 3235

AMENDED COMPLAINT

Comes now the Plaintiff in the above styled cause and hereby amends the complaint as last amended, and the caption thereof, so that Plaintiff's amended complaint, and the caption thereof, reads in words and figures as follows:

W. P. WYLLIE, JR.,

Plaintiff,

vs.

WILSON H. VAIL, individually  
and doing business as VAIL  
TRUCKING COMPANY, and,  
CLARENCE SELDON HURST,  
jointly and severally,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

AT LAW

NO. 3235

AMENDED COMPLAINT

COUNT ONE

Plaintiff claims of the Defendants, jointly and severally, the sum of Forty Thousand and No/100 (\$40,000.00) Dollars as damages for that, heretofore and on, to wit, the 8th day of May, 1956, the Defendant Clarence Seldon Hurst, who was then and there the agent, servant or employee of the Defendant Wilson H. Vail and was acting within the line and scope of his employment as such, so negligently operated a motor

truck and trailer on U. S. Highway 90, a public highway in Baldwin County, State of Alabama, at a point thereon approximately two miles North of the City limits of Robertsdale, Alabama, as to cause or allow said motor truck to run into, upon or against the rear of another certain truck which was then and there being operated, thereby knocking the last mentioned truck into the rear of a pick-up truck being then and there operated by the Plaintiff; and Plaintiff alleges that as a proximate result of the aforesaid negligence of the Defendant Clarence Seldon Hurst, while acting within the line and scope of his employment as the agent, servant or employee of the Defendant Wilson H. Vail, Plaintiff was caused to sustain a broken neck, a hole through one of his lips, internal injuries, and bruises and lacerations, and other injuries. Plaintiff alleges that he was thereby permanently injured, was caused to sustain pain and suffering, to incur medical expenses in the ascertainment and treatment of such injuries and in the future will be required to expend large sums of money in and about his efforts to treat his fractured neck and other said injuries, all as a proximate result of the aforesaid negligence of the Defendants, and all to Plaintiff's damages as aforesaid, wherefore Plaintiff sues the Defendants as aforesaid for Forty Thousand and No/100 (\$40,000.00) Dollars.

COUNT TWO

Plaintiff claims of the Defendants, jointly and severally, the sum of Forty Thousand and No/100 (\$40,000.00) Dollars as damages for that, heretofore and on, to wit, the 8th day of May, 1956, the Defendant Wilson H. Vail acting by and through his agent, servant or employee, Clarence Seldon Hurst, who was then and there acting within the line and scope of his employment as such agent, servant or employee, willfully or wantonly injured the Plaintiff by willfully or wantonly operating a motor truck on U. S. Highway 90, a public highway in Baldwin County, Alabama, at a point thereon approximately two miles North of the City limits of Robertsdale, Alabama, so as to cause or allow said

motor truck to run into, upon or against the rear of another certain truck which was then and there being operated, thereby willfully or wantonly knocking the last mentioned truck into the rear of a pick-up truck being then and there operated by the Plaintiff; and Plaintiff alleges that as a proximate result of the aforesaid willful or wanton misconduct of the Defendants, Plaintiff was caused to sustain a broken neck, a hole through one of his lips, internal injuries, and bruises and lacerations, and other injuries, and Plaintiff alleges that he was permanently injured, was caused to sustain, and will in the future sustain, pain and suffering, to incur medical expenses in the ascertainment and treatment of such injuries as aforesaid, and in the future will be required to expend large sums of money in and about his efforts to treat his fractured neck and other injuries as aforesaid, all as a proximate result of the aforesaid willful or wanton misconduct of the Defendants. Plaintiff herein also claims punitive damages against the Defendants.

McCORVEY, TURNER, JOHNSTONE, ADAMS & MAY

By J. Jephtha Hill  
(J. Jephtha Hill)  
Attorneys for Plaintiff

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

McCORVEY, TURNER, JOHNSTONE, ADAMS & MAY

By J. Jephtha Hill  
(J. Jephtha Hill)  
Attorneys for Plaintiff

*Filed*  
*2-16-58*

W. P. WYLLIE, JR.,

Plaintiff,

Vs.

WILSON H. VAIL, individually and  
doing business as Vail Trucking Co.,  
and W. H. VAIL, individually and  
doing business as Vail Trucking Co.,  
and CLARENCE SELDON HURST and VAIL  
TRUCKING CO., a corporation, and  
X COMPANY, whose name is otherwise not  
now known to Plaintiff, and JOHN DOE,  
whose name is otherwise unknown to  
Plaintiff, jointly and separately,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 3235

AMENDED COMPLAINT

COUNT ONE

Plaintiff claims of the Defendants the sum of Forty Thousand (\$40,000.00) Dollars as damages for that, heretofore, on, to-wit, the 8th day of May, 1956, the Defendant Clarence Seldon Hurst, while acting within the line and scope of his employment as the agent, servant or employee of one or more of the other named Defendants, so negligently operated a motor truck and trailer on U. S. Highway 90, a public highway in the County of Baldwin, State of Alabama, at a point thereon approximately two miles north of the limits of Robertsdale, in Baldwin County, Alabama, as to cause or allow said motor truck to run into, upon or against the rear of a truck knocking the last mentioned truck into the rear of a pick-up truck being then and there operated by the Plaintiff, and Plaintiff alleges that as a proximate result of the aforesaid negligence of the Defendants, Plaintiff was caused to sustain a broken neck, a hole through one of his lips, internal injuries, and bruises and lacerations, and other injuries. Plaintiff alleges that he was permanently injured, was caused to sustain pain and suffering, to incur medical expenses in the ascertainment and treatment of such injuries as aforesaid, and in the future will be required to expend large sums of money in and about his efforts to treat his fractured neck, all as a proximate result of the aforesaid negligence of the Defendants, and all to Plaintiff's damages as aforesaid, wherefore Plaintiff sues the Defendants as aforesaid for \$40,000.00. Plaintiff

alleges that he does not now know the exact name of X Company or of John Doe, and that such correct name or correct names will later be shown by amendment, but that plaintiff's intention is to sue all owners and/or operators of said motor truck at the time the aforesaid accident occurred.

COUNT TWO

Plaintiff claims of the Defendants the sum of Forty Thousand (\$40,000.00) Dollars as damages for that, heretofore, on, to-wit, the 8th day of May, 1956, the Defendant Clarence Seldon Hurst, while acting within the line and scope of his employment as the agent, servant or employee of one or more of the other named defendants and while driving a motor truck on U. S. Highway 90, a public highway in Baldwin County, Alabama, at a point thereon approximately two miles North of the limits of Robertsdale, Alabama, willfully or wantonly injured Plaintiff by then and there willfully or wantonly driving said motor truck into, upon or against a truck being then and there operated, knocking the last-mentioned truck into a pick-up truck being then and there driven by Plaintiff, and as a proximate result of such willful or wanton misconduct of the Defendants, Plaintiff was caused to sustain a broken neck, a hole through one of his lips, internal injuries, a partial loss of use of one of his arms, bruises and lacerations and other injuries, and Plaintiff alleges that he was permanently injured, was caused to sustain, and will in the future sustain, pain and suffering, to incur medical expenses in the ascertainment and treatment of such injuries as aforesaid, and in the future will be required to expend large sums of money in and about his efforts to treat his fractured neck, all as a proximate result of the aforesaid willful or wanton misconduct, and all to his damages as aforesaid, hence this suit. Plaintiff alleges that he does not



now know the exact name of X Company or of John Doe, and that such correct name or correct names will later be shown by amendment, but that Plaintiff's intention is to sue all owners and/or operators of said motor truck at the time the aforesaid accident occurred.

McCORVEY, TURNER, ROGERS, JOHNSTONE & ADAMS

By J. Jephtha Hill  
(J. Jephtha Hill)  
Attorneys for Plaintiff

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

McCORVEY, TURNER, ROGERS, JOHNSTONE & ADAMS

By J. Jephtha Hill  
(J. Jephtha Hill)  
Attorneys for Plaintiff

FILED  
JAN 14 1958  
ALICE J. BUCK, Clerk

SUMMONS AND COMPLAINT

Baldwin Times

THE STATE OF ALABAMA,

CIRCUIT COURT, BALDWIN COUNTY

BALDWIN COUNTY

No. 3235

TERM, 19.....

TO ANY SHERIFF OF THE STATE OF ALABAMA:

WILSON H. VAIL, Individually and d/b/a VAIL TRUCKING CO.,  
You Are Hereby Commanded to Summon and W.H. VAIL, ind., and d/b/a/ Vail Trucking Co, and  
Clarence Seldon Hurst and Vail Trucking Co., a corporation, and X. COMPANY, whose name is  
otherwise not now known to Plaintiff, and JOHN DOE, whose name is otherwise unknown to  
Plaintiff, jointly and separately,

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 WILSON H. VAIL, ind. and  
d/b/a Vail Trucking Co., and W.H. Vail, ind., and ET ALS, Defendant .....

by W.P. WYLLIE, JR.

Plaintiff.....

Witness my hand this 11th day of January 19 58

Clerk

W. P. WYLLIE, JR.,

Plaintiff,

vs.

WILSON H. VAIL, individually and  
doing business as Vail Trucking Co.,  
and W. H. VAIL, individually and  
doing business as Vail Trucking Co.,  
and CLARENCE SELDON HURST and VAIL  
TRUCKING CO., a corporation, and  
X COMPANY, whose name is otherwise not  
now known to Plaintiff, and JOHN DOE,  
whose name is otherwise unknown to  
Plaintiff, jointly and separately,

Defendants.

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IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

AT LAW

NO. 3235

### AMENDED COMPLAINT

Comes now the Plaintiff in the above styled cause and hereby amends the complaint filed in said cause as last amended by adding thereto COUNT THREE and COUNT FOUR, so that said amended complaint shall read in words and figures as follows:

### COUNT ONE

Plaintiff claims of the Defendants the sum of Forty Thousand (\$40,000.00) Dollars as damages for that, heretofore, on, to-wit, the 8th day of May, 1956, the Defendant Clarence Seldon Hurst, while acting within the line and scope of his employment as the agent, servant or employee of one or more of the other named Defendants, so negligently operated a motor truck and trailer on U. S. Highway 90, a public highway in the County of Baldwin, State of Alabama, at a point thereon approximately two miles north of the limits of Robertsdale, in Baldwin County, Alabama, as to cause or allow said motor truck to run into, upon or against the rear of a truck knocking the last-mentioned truck into the rear of a pick-up truck being then and there operated by the Plaintiff, and Plaintiff alleges that as a proximate result of the aforesaid negligence of the Defendants, Plaintiff was caused to sustain a broken neck, a hole through one of his lips, internal injuries, and bruises and lacerations, and other injuries. Plaintiff alleges that he was permanently injured, was caused to sustain pain and suffering,

to incur medical expenses in the ascertainment and treatment of such injuries as aforesaid, and in the future will be required to expend large sums of money in and about his efforts to treat his fractured neck, all as a proximate result of the aforesaid negligence of the Defendants, and all to Plaintiff's damages as aforesaid, wherefore Plaintiff sues the Defendants as aforesaid for \$40,000.00. Plaintiff alleges that he does not now know the exact name of X Company or of John Doe, and that such correct name or correct names will later be shown by amendment, but that Plaintiff's intention is to sue all owners and/or operators of said motor truck at the time the aforesaid accident occurred.

#### COUNT TWO

Plaintiff claims of the Defendants the sum of Forty Thousand (\$40,000.00) Dollars as damages for that, heretofore, on, to-wit, the 8th day of May, 1956, the Defendant Clarence Seldon Hurst, while acting within the line and scope of his employment as the agent, servant or employee of one or more of the other named defendants and while driving a motor truck on U. S. Highway 90, a public highway in Baldwin County, Alabama, at a point thereon approximately two miles north of the limits of Robertsdale, Alabama, willfully or wantonly injured Plaintiff by then and there willfully or wantonly driving said motor truck into, upon or against a truck being then and there operated, knocking the last-mentioned truck into a pick-up truck being then and there driven by Plaintiff, and as a proximate result of such willful or wanton misconduct of the Defendants, Plaintiff was caused to sustain a broken neck, a hole through one of his lips, internal injuries, a partial loss of use of one of his arms, bruises and lacerations and other injuries, and Plaintiff alleges that he was permanently injured, was caused to sustain, and will in the future sustain, pain and suffering, to incur medical expenses in the ascertainment and treatment of such injuries as aforesaid, and in the future will be required to expend large sums of money in and about his efforts

to treat his fractured neck, all as a proximate result of the aforesaid willful or wanton misconduct, and all to his damages as aforesaid, hence this suit. Plaintiff alleges that he does not now know the exact name of X Company or of John Doe, and that such correct name or correct names will later be shown by amendment, but that Plaintiff's intention is to sue all owners and/or operators of said motor truck at the time the aforesaid accident occurred.

### COUNT THREE

Plaintiff claims of the Defendants, jointly and severally, the sum of Forty Thousand (\$40,000.00) Dollars as damages for that, heretofore, on, to-wit, the 8th day of May, 1956, the Defendant Clarence Seldon Hurst, while acting within the line and scope of his employment as the agent, servant or employee of, severally, each of the other Defendants named in the captioned hereof, so negligently operated a motor truck and trailer the property of, severally, each of the other Defendants named in the captioned hereof, on U. S. Highway 90 in the County of Baldwin, State of Alabama, at a point thereon approximately two miles north of the limits of Robertsedale, in Baldwin County, Alabama, at which time and place said highway was a public highway in said County and State, as to cause or allow said motor truck to run into, upon or against the rear of another truck being then and there operated, and so as to negligently knock the last-mentioned truck into the rear of a pick-up truck being then and there operated by the Plaintiff, and Plaintiff alleges that as a proximate result of all of the aforesaid negligence of the Defendant Clarence Seldon Hurst, who was then and there the agent, servant or employee of each of the other named Defendants and was acting within the line and scope of such employment, the Plaintiff was caused to sustain a broken neck, a hole through one of his lips, internal injuries, bruises and lacerations and other injuries, and Plaintiff was permanently injured, was caused to sustain pain and suffering, to incur medical expenses in the ascertainment and treatment of such injuries as aforesaid,

and in the future will be required to expend large sums of money in and about his efforts to treat his fractured neck; wherefore Plaintiff sues the Defendants as aforesaid for \$40,000.00. Plaintiff alleges that he does not know the exact name of X Company or of John Doe, and that such correct name or correct names will later be shown by amendment, but that Plaintiff's intention is to sue all the owners and operators of the motor truck which was being driven by Clarence Seldon Hurst as aforesaid as of the time the aforesaid injuries were inflicted.

#### COUNT FOUR

Plaintiff claims of the Defendants, jointly and severally, the sum of Forty Thousand (\$40,000.00) Dollars as damages for that, heretofore, on, to-wit, the 8th day of May, 1956, the Defendant Clarence Seldon Hurst, while acting within the line and scope of his employment as the agent, servant or employee of, severally, each of the other Defendants named in the captioned hereof, and while driving a motor truck on U. S. Highway 90, a public highway in Baldwin County, Alabama, at a point thereon approximately two miles north of the limits of Robertsdale, Alabama, willfully or wantonly injured Plaintiff by then and there willfully or wantonly driving said motor truck into, upon or against a truck being then and there operated, knocking the last-mentioned truck into a pick-up truck being then and there driven by Plaintiff, and as a proximate result of such willful or wanton misconduct of the Defendants, Plaintiff was caused to sustain a broken neck, a hole through one of his lips, internal injuries, a partial loss of use of one of his arms, bruises and lacerations and other injuries, and Plaintiff alleges that he was permanently injured, was caused to sustain, and will in the future sustain, pain and suffering, to incur medical expenses in the ascertainment and treatment of such injuries as aforesaid, and in the future will be required to expend large sums of money in and about his efforts to treat his fractured neck, all as a proximate result of the aforesaid willful or wanton misconduct, and all to his damages as aforesaid, hence this suit. Plaintiff alleges that

he does not now know the exact name of X Company or of John Doe, and that such correct name or correct names will later be shown by amendment, but that Plaintiff's intention is to sue all owners and/or operators of said motor truck at the time the aforesaid accident occurred.

McCORVEY, TURNER, JOHNSTONE, ADAMS & MAY

By J. Jephtha Hill  
(J. Jephtha Hill)  
Attorneys for Plaintiff

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

McCORVEY, TURNER, JOHNSTONE, ADAMS & MAY

By J. Jephtha Hill  
(J. Jephtha Hill)  
Attorneys for Plaintiff

SUMMONS AND COMPLAINT

Moore Ptg. Co.

The State of Alabama, }

Baldwin County.

Circuit Court, Baldwin County

No. 3235

-----TERM, 19-----

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon WILSON H. VAIL, Ind. & d/b/a VAIL TRUCKING  
CO. & W.H. VAIL, Ind & d/b/a VAIL TRUCKING CO. & CLARENCE SELDON HUBB  
& VAIL TRUCKING CO., a corp. & X Company, whose name is otherwise not  
now known to Plaintiff, and JOHN DOE whose name is otherwise unknown  
to Plaintiff, jointly and separately.

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 WILSON H. VAIL,

Ind & d/b/a VAIL TRUCKING CO. ET AL-----, Defendant.

by W.P. WYLLIE, JR.-----

-----, Plaintiff.

Witness my hand this 24 day of May 1958

by 8-15-58 on Sec. of State Alice J. Luck, Clerk



W. P. WYLLIE, JR.,	X		
Plaintiff,	X	IN THE CIRCUIT COURT OF	
vs.	X		
WILSON H. VAIL, individually	X	BALDWIN COUNTY, ALABAMA	
and doing business as VAIL			
TRUCKING COMPANY, et al.,	X	AT LAW	NO. 3235
Defendants.	X		

DEMURRER

Comes now the Defendant, Wilson H. Vail, individually and doing business as Vail Trucking Company, by his attorneys and demurs to the amended complaint heretofore filed against him and to each count thereof, separately and severally, and assigns the following separate and several grounds in support thereof?

1. The complaint fails to state a cause of action.
2. Count "one" of the complaint fails to state a cause of action.
3. Count "two" of the complaint fails to state a cause of action.
4. The allegations of the complaint are vague, indefinite and uncertain.
5. The allegations of the complaint fail to allege that the Defendant Clarence Seldon Hurst was the agent, servant or employee of the Defendant Wilson H. Vail.
6. The complaint fails to allege that the Defendant Clarence Seldon Hurst was the agent, servant or employee of the Defendant Wilson H. Vail, doing business as Vail Trucking Company.
7. For aught that appears from the complaint the Defendant Clarence Seldon Hurst, at the time and place complained of, was not the agent, servant or employee of the Defendant Wilson H. Vail, individually and doing business as Vail Trucking Company, acting within the line and scope of his employment as such.
8. The allegations of the complaint are in the alternative.
9. For aught that appears from the complaint the Defendant Clarence Seldon Hurst, at the time and place complained of, was not the agent, servant or employee of the Defendant Wilson H. Vail,

either individually or doing business as Vail Trucking Company, acting within the line and scope of his employment as such.

10. There is a misjoinder of parties Defendant.

11. There is a misjoinder of causes of action.

12. There is a misjoinder of causes of action in that the Plaintiff in count "One" of the amended complaint attempts to join in the same count an action of trespass and an action of trespass on the case.

13. The allegations of the amended complaint fail to allege a duty owing from the Defendant Wilson H. Vail, either individually or doing business as Vail Trucking Company, to the Plaintiff and a breach of that duty proximately resulting in the injuries allegedly sustained by the Plaintiff.

14. The allegations of count "Two" of the complaint fail to allege that the Defendant Clarence Seldon Hurst, while acting within the line and scope of his employment as the agent, servant or employee of the Defendant Wilson H. Vail, either individually or doing business as Vail Trucking Company, willfully or wantonly injured the Plaintiff.

15. The allegations of the complaint fail to allege with sufficient particularity the acts complained of.

16. The complaint fails to allege facts which would constitute negligence as a matter of law.

17. The complaint fails to allege that the Defendant Clarence Sheldon Hurst, while acting in the line and scope of his employment as the agent, servant or employee of the Defendant Wilson H. Vail, individually and doing business as Vail Trucking Company, negligently knocked any truck, motor vehicle, or other object into or upon or against the truck allegedly being operated by the Plaintiff at the time and place complained of.

18. There is a misjoinder of causes of action in that the Plaintiff in count "three" of the amended complaint attempts to join in the same count an action of trespass and an action of trespass on the case.

19. The allegations of count "three" of the complaint

fail to allege that the Defendant Clarence Seldon Hurst was acting within the line and scope of his employment as the agent, servant or employee of the Defendant Wilson H. Vail, either individually or doing business as Vail Trucking Company, willfully or wantonly injured the Plaintiff.

20. The allegations of the amended complaint relative to the Plaintiffs intention to sue all the owners and operator of the motor truck which was being driven by Clarence Seldon Hurst is a conclusion of the pleader and is mere surplusage.

21. The allegations of the amended complaint that the Plaintiff will in the future sustain pain and suffering and will incur medical expenses in the ascertainment and treatment of the injuries therein alleged are but conclusions of the pleader.

Respectfully submitted

CHASON & STONE

*Filed*  
*6-13-58*

By: 

Attorneys for Defendant Wilson  
H. Vail, individually and doing  
business as Vail Trucking Com-  
pany

W. P. WYLLIE, JR.,

Plaintiff,

VS.

WILSON H. VAIL, ET AL.,

Defendants

\*\*\*\*\*

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 3235

\*\*\*\*\*

DEMURRER

\*\*\*\*\*

FILED  
JUN 13 1958  
ALICE J. BUCK, Clerk

LAW OFFICES

CHASON & STONE

BAY MINETTE, ALABAMA

W. P. WYLLIE, JR.,	X		
Plaintiff,	X		
	X	IN THE CIRCUIT COURT OF	
vs.	X		
	X	BALDWIN COUNTY, ALABAMA	
WILSON H. VAIL, individually	X		
and doing business as VAIL	X	AT LAW	NO.3235
TRUCKING COMPANY, et al.,	X		
Defendants.	X		

AMENDMENT TO DEMURRER

Comes now the Defendant, Wilson H. Vail, individually and doing business as Vail Trucking Company, by his attorneys and amends the demurrer heretofore filed to the amended complaint filed against him and to each count thereof, separately and severally, and assigns the following additional separate and several grounds to said complaint and to each count thereof:

22. There is a misjoinder of causes of action in that the Plaintiff in count "two" of the amended complaint attempts to join in the same count an action of trespass and an action of trespass on the case.

23. There is a misjoinder of parties Defendant in that the Plaintiff in count "two" of the amended complaint attempts to join a suit in trespass against the servant, agent or employee with a count in trespass on the case against the master or principal of such servant, agent or employee.

24. There is a misjoinder of causes of action in that the Plaintiff in count "four" of the amended complaint attempts to join in the same count an action of trespass with an action of trespass on the case.

25. There is a misjoinder of parties Defendant in that the Plaintiff in count "four" of the amended complaint attempts to join a count in trespass against an agent, servant or employee with a count in trespass on the case against the alleged principal, master or employer of such agent, servant or employee.

26. There is a misjoinder of causes of action in counts "two" and "four" of the amended complaint in that the Plaintiff seeks to join in said counts an action in trespass against an alleged

employee with an action in case against his alleged employer.

27. There is a misjoinder of parties Defendant in counts "two" and "four" of the amended complaint in that the Plaintiff attempts to join in the same count an action in trespass against an employee and an action in case against his alleged employer.

28. There is a misjoinder of causes of action in counts "two" and "four" of the amended complaint in that the causes of action therein sued upon by the Plaintiff against the agent, servant or employee and his principal, master or employer are separate and distinct causes of action based upon different theories of liability.

Respectfully submitted

CHASON & STONE

*Filed*  
*7-15-58*

By: 

3235  
W. P. WYLLIE, JR.,

Plaintiff,

vs.

WILSON H. VAIL, individually  
and doing business as VAIL  
TRUCKING COMPANY, et al.,

Defendants.

\*\*\*\*\*

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 3235

\*\*\*\*\*

AMENDMENT TO DEMURRER

\*\*\*\*\*

FILED  
JUL 15 1958  
WILLIAM J. DUCK, Clerk  
LAW OFFICES

CHASON & STONE  
BAY MINETTE, ALABAMA



BETTYE FRINK  
SECRETARY OF STATE

STATE OF ALABAMA  
OFFICE OF SECRETARY OF STATE  
MONTGOMERY 4, ALABAMA

March 2, 1959

3225

Honorable J. Jephtha Hill

McCorvey, Turner, Johnstone, Adams & May

Attorneys at Law

Ninth Floor Merchants National Bank Bldg.

Mobile 6, Alabama

Re: W. P. Wyllie, Jr. VS Clarence Seldon  
Hurst, et al

Dear Mr. Hill:

Please refer to your file in the above-styled cause and be advised that on February 17, 1959, I sent by registered mail, return receipt requested, deliver to addressee only, my notice, with copy of Summons and <sup>Amended</sup> Complaint attached, to:

Clarence Seldon Hurst  
1031 S. W. 23rd Avenue  
Fort Lauderdale, Florida

On March 2, 1959, this letter (Registered No. 59628) was returned to me with reason for non-delivery given as "NO SUCH ADDRESS", and "NOT IN DIRECTORY".

Will you please advise me as to any further efforts you wish me to make in perfecting this service.

Sincerely yours,

B. F.

Bettye Frink  
Secretary of State

N. H. J.

By: (Mrs.) Nancy H. Turner  
Administrative Assistant

cc: Honorable Alice J. Duck, Clerk  
Circuit Court of Baldwin County  
Bay Minette, Alabama



Attach to P-S.



MARY TEXAS HURT  
SECRETARY OF STATE

STATE OF ALABAMA  
OFFICE OF SECRETARY OF STATE  
MONTGOMERY 4, ALABAMA

May 31, 1957

Honorable J. Jephtha Hill  
Attorney at Law  
P. O. Box 170  
Mobile, Alabama

Re: W. P. Wyllie, Jr. VS  
Clarence Seldon Hurst, et al

Dear Mr. Hill:

Please refer to your file in the above-styled cause and be advised that on May 8, 1957, I sent by registered mail, return receipt requested, deliver to addressee only, my notice, with copy of Summons and Complaint attached, to:

Clarence Seldon Hurst  
2308 22nd Avenue  
Bradenton, Florida

On May 31, 1957, this letter (Registered No. 56092) was returned to me with reason for non-delivery given as "UNCLAIMED."

Will you please advise me as to any further efforts you wish me to make in perfecting this service.

Sincerely yours,

*Mary Texas Hurt Garner*

Mary Texas Hurt Garner  
Secretary of State

*Jamie L. Pettigrew*

By: Jamie L. Pettigrew  
Administrative Assistant

cc: Honorable Alice J. Duck, Clerk  
Circuit Court of Baldwin County  
Bay Minette, Alabama



MARY TEXAS HURT  
SECRETARY OF STATE

STATE OF ALABAMA  
OFFICE OF SECRETARY OF STATE  
MONTGOMERY 4, ALABAMA

June 7, 1957

To the Honorable Sheriff  
Manatee County  
Bradenton, Florida

REGISTERED MAIL  
RETURN RECEIPT REQUESTED

Re: W. P. Wyllie, Jr. VS Clarence Seldon  
Hurst, et al

Dear Sir:

Enclosed is my notice, together with copies of summons and complaint in duplicate, in suit against Clarence Seldon Hurst, now pending in the Circuit Court of Baldwin County, Alabama.

Act No. 100 of the Second Special Session of 1956 of the Alabama Legislature provides, among other things, that service of process may be had by a sheriff or other duly authorized public official within the jurisdiction of the defendant's residence. This Act further provides a fee of \$2.00 for each service by said official. I am enclosing a check in the amount of \$2.00 forwarded to me by the Honorable J. Jeptha Hill, Attorney for the Plaintiff. If there are any additional charges by you, you will please contact Mr. Hill who will give same his prompt attention.

Mr. Hill and I shall greatly appreciate your efforts to complete this service upon Mr. Hurst by serving upon him the original and making your return on the copy of same to the Honorable Alice J. Duck, Clerk of the Circuit Court of Baldwin County, Bay Minette, Alabama.

In order to comply with Act No. 100, will you please (1) use the space provided on the back of the summons for certifying to the Court that you made personal service on defendant and (2) have the Clerk of the circuit court, the supreme court, or a court of like jurisdiction, of the county of your residence certify on the same page that you are duly authorized to serve such process.

Yours very truly,

*Mary Texas Hurt Garner*  
Mary Texas Hurt Garner  
Secretary of State

Enclosures

cc: Honorable J. Jeptha Hill, Attorney  
P. O. Box 1070  
Mobile, Alabama  
cc: Honorable Alice J. Duck, Clerk  
Circuit Court of Baldwin County  
Bay Minette, Alabama



MARY TEXAS HURT  
SECRETARY OF STATE

STATE OF ALABAMA  
OFFICE OF SECRETARY OF STATE  
MONTGOMERY 4, ALABAMA

May 31, 1957

To the Honorable Sheriff  
Dade County  
Miami, Florida

REGISTERED MAIL  
RETURN RECEIPT REQUESTED

Re: W. P. Wyllie, Jr. VS Wilson H. Vail, et al

Dear Sir:

Enclosed is my notice, together with copies of summons and complaint in duplicate, in suit against Wilson H. Vail, now pending in the Circuit Court of Baldwin County, Alabama.

Act No. 100 of the Second Special Session of 1956 of the Alabama Legislature provides, among other things, that service process may be had by a sheriff or other duly authorized public official within the jurisdiction of the defendant's residence. This Act further provides a fee of \$2.00 for each service by said official. I am enclosing a check in the amount of \$2.00 forwarded to me by the Honorable J. Jeptha Hill, Attorney for the Plaintiff. If there are any additional charges by you, you will please contact Mr. Hill who will give same his prompt attention.

Mr. Hill and I shall greatly appreciate your efforts to complete this service upon Mr. Vail by serving upon him the original and making your return on the copy of same to the Honorable Alice J. Duck, Clerk of the Circuit Court of Baldwin County, Bay Minette, Alabama.

In order to comply with Act No. 100, will you please (1) use the space provided on the back of the summons for certifying to the Court that you made personal service on defendant and (2) have the Clerk of the circuit court, the supreme court, or a court of like jurisdiction, of the county of your residence certify on the same page that you are duly authorized to serve such process.

Yours very truly,

*Mary Texas Hurt Garner*

Mary Texas Hurt Garner  
Secretary of State

Enclosures

cc: Honorable J. Jeptha Hill, Attorney  
P. O. Box 1070  
Mobile, Alabama

cc: Honorable Alice J. Duck, Clerk  
Circuit Court of Baldwin County  
Bay Minette, Alabama

COPY

M<sup>c</sup>CORVEY, TURNER, ROGERS, JOHNSTONE & ADAMS  
ATTORNEYS AT LAW

NINTH FLOOR MERCHANTS NATIONAL BANK BUILDING

HEMLOCK 3-5561 P. O. BOX 1070

MOBILE 6, ALABAMA

CESSNER T. MCCORVEY  
BEN D. TURNER  
C. M. A. ROGERS (1891-1957)  
C. A. L. JOHNSTONE, JR.  
R. F. ADAMS  
JAMES L. MAY, JR.  
CHAUNCEY MOORE  
ALEX T. HOWARD, JR.  
J. JEPHTHA HILL  
CHARLES D. BAILEY, JR.

February 3, 1958

Honorable Mary Texas Hurt Garner  
Secretary of State  
State of Alabama  
Montgomery 4, Alabama

Dear Mrs. Secretary:

Re: W. P. Wyllie, Jr., v.  
Clarence Seldon Hurst, et al.  
Case No. 3235

47  
4  
62  
22  
Your letter of January 30 forwarded to me a copy of the letter from the sheriff of Manatee County, Florida, reporting his inability to locate the defendant Clarence Seldon Hurst in that County, and suggesting his probable present residence in Palm Beach County. In reply to your inquiry as to whether we wish you to attempt to perfect service against him in the latter County, please be advised that we do so wish.

Thanking you once more for your assistance, we remain

Yours very truly,

MCCORVEY, TURNER, ROGERS, JOHNSTONE & ADAMS

By

*J. Jephtha Hill*  
J. Jephtha Hill

JJH:fe

cc Honorable Alice J. Duck, Clerk ✓  
Circuit Court at Law  
Baldwin County  
Bay Minette, Alabama



MARY TEXAS HURT  
SECRETARY OF STATE

STATE OF ALABAMA  
OFFICE OF SECRETARY OF STATE  
MONTGOMERY 4, ALABAMA

January 30, 1958

Honorable J. Jeptha Hill  
McCorvey, Turner, Rogers, Johnstone & Adams  
Attorneys at Law  
P. O. Box 1070  
Mobile 6, Alabama

Re: W. P. Wyllie, Jr. VS Clarence Seldon  
Hurst, et al  
Case No. 3235

Dear Mr. Hill:

You will find enclosed a copy of the letter I received this date from  
Roy F. Baden, Sheriff, Manatee County, Bradenton, Florida.

Shall I attempt service through the Sheriff of Palm Beach County?

Yours very truly,

*Mary Texas Hurt Garner*

Mary Texas Hurt Garner  
Secretary of State

*Jamie L. Pettigrew*

By: Jamie L. Pettigrew  
Administrative Assistant

JLP:nt

cc: Honorable Alice J. Duck, Clerk  
Circuit Court at Law  
Baldwin County  
Bay Minette, Alabama

C O P Y

ROY F. BADEN

SHERIFF

MANATEE COUNTY  
BRADENTON, FLORIDA

January 27, 1958

Honorable Mary T. Hurt Garner  
Secretary of State  
State of Alabama  
Montgomery, Alabama

Re: W. P. Wyllie, Jr. VS Wilson H. Vail, etc.

Dear Mrs. Garner:

We are returning herewith the papers in the above styled case as we have been unable to locate Clarence Seldon Hurst and it is our information that he is living in Delray Beach, Florida. The Sheriff is John F. Kirk, Palm Beach County, Delray Beach.

We are also returning the \$2.00 for service fee.

Yours very truly,

Roy F. Baden, Sheriff  
Manatee County, Florida

By V. L. Roesch DS

VLR:q



MARY TEXAS HURT  
SECRETARY OF STATE

STATE OF ALABAMA  
OFFICE OF SECRETARY OF STATE  
MONTGOMERY 4, ALABAMA

October 14, 1957

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

Re: W. P. Wyllie, Jr. VS Wilson H. Vail, et al  
Case No. 3235

Dear Mrs. Duck:

The enclosed documents showing service completed on the defendant Wilson H. Vail by Deputy Sheriff C. Russell of Dade County, Florida, were returned to this office by mistake.

I am therefore forwarding same to you for your information and files.

Yours very truly,

*Mary Texas Hurt Garner*

Mary Texas Hurt Garner  
Secretary of State

JLP:nt

Enclosures

cc: Honorable J. Jephtha Hill  
McCorvey, Turner, Rogers, Johnstone, & Adams  
Attorneys at Law  
P. O. Box 1070  
Mobile 6, Alabama

SUMMONS AND COMPLAINT

Moore Prg. Co.

The State of Alabama,

Baldwin County.

Circuit Court, Baldwin County

No. 1025

-----TERM, 19-----

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon Wilson H. Vail, Ind. & d/b/a/ Vail Trucking Co.  
& W. H. Vail, Ind. & d/b/a/ Vail Trucking Co. & Clarence Nelson Hurst, and Vail  
Trucking Co. a Corp. & I Company, whose name is otherwise unknown to the Plaintiff  
& John Doe, whose name is otherwise unknown to the plaintiff, jointly and individually

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

Wilson H. Vail, Ind and d/b/a/ Vail Trucking Co. et al.

Defendant

by W. H. Wylie, Jr.

Plaintiff

Witness my hand this 10th day of May 19 57

Alvin F. Wreck, Clerk