

STATE OF ALABAMA,       0  
                              0 TO ANY SHERIFF OF THE STATE OF ALABAMA:  
COUNTY OF BALDWIN.     0

You are hereby commanded to summon the Louisville & Nashville Railroad Company, a Corporation, to appear within thirty days from the service of this Writ in the Circuit Court, to be held for said County, at the place of holding the same, then and there to answer the complaint of O. N. KING, JR.

Witness my hand this the 13 day of April, 1959.

Alfred J. Duck  
C L E R K

Ex. 4-14-59

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O. N. KING, JR.,

Plaintiff,

VS.

LOUISVILLE AND NASHVILLE  
RAILROAD COMPANY, A  
Corporation,

Defendant.

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IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

AT LAW.

NO. 3811

C O U N T   O N E

The plaintiff claims of the defendant TWO THOUSAND FIVE HUNDRED AND NO/100ths (\$2,500.00) DOLLARS as damages, for that, heretofore, on, to-wit: the 19th day of April, 1958, at about 4:00 o'clock, P. M., the defendant was engaged in operating a railroad in Baldwin County, Alabama, and at a point on said railroad, near the 639 Mile Post of said Railroad, between Bay Minette and Dyas, in said Baldwin County, Alabama, the defendant at said time and place maintained a public crossing, made for and used by vehicles in crossing the tracks of the defendant's said railroad; and plaintiff avers that at the time and place aforesaid, the defendant had negligently failed to maintain said crossing in good repair so that when plaintiff's automobile was driven upon said tracks for the purpose of crossing same, one of the rails became lodged between the front wheel and the frame of plaintiff's said automobile so that the automobile could<sup>be</sup> driven neither forward<sup>or</sup> backward, and before it could be moved one of the defendant's trains ran into, upon, or against it and demolished it; and plaintiff avers that his said automobile which was de-

molished was 1955, 4-Door, Dodge Custom Royal Lancer Sedan. And the plaintiff avers that his said injuries to said automobile and the damages here sued for are the proximate consequence and result of the negligence in and about the maintenance of said public crossing as aforesaid; wherefore he sues.

C O U N T   T W O

The plaintiff claims of the defendant TWO THOUSAND FIVE HUNDRED AND NO/100ths (\$2,500.00 DOLLARS as damages, for that, heretofore, on, to-wit: the 19th day of April, 1958, at about 4:00 o'clock, P. M., the defendant was engaged in operating a railroad through Baldwin County, Alabama, upon and over which defendant ran engines and trains of cars, for the transportation of passengers and freight for hire; that at the date and time aforesaid, defendant's agents and servants, while engaged in running one of its trains, upon and over said railroad, between Dyas and Bay Minette, in Baldwin County, Alabama, near the 639 Mile Post of said Railroad, and while in the discharge of their duties as such agents and servants of the defendant, so negligently and carelessly conducted themselves in and about the management of said train and of the engine pulling said train that said engine was caused or permitted to run against plaintiff's 1955, 4-Door, Dodge, Custom Royal Lancer Sedan, at a public crossing, at the time and place as aforesaid; and plaintiff avers that as a proximate result and consequence of the negligence of the agents and servants, who were acting within the line and scope of their employments as such agents and servants of the defendant, the plaintiff's automobile was completely demolished and rendered useless and of no value; hence this suit.

J. Blair N. Maddisum  
ATTORNEY FOR PLAINTIFF.

Plaintiff demands that this cause be tried by a jury.

J. Blair N. Maddisum  
ATTORNEY FOR PLAINTIFF

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

AT LAW. NO. 3811

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O. N. KING, JR.,  
Plaintiff,

VS.

LOUISVILLE AND NASHVILLE  
RAILROAD COMPANY, A Cor-  
poration,

Defendant.

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SUMMONS AND COMPLAINT.

FILED

APR 13 1959

MADE L. DICK CLERK  
BY REGISTRATION

TELFAIR J. MASHBURN, JR.

ATTORNEY-AT-LAW  
BAY MINETTE, ALABAMA

serve on Mr. Fomine  
Forte at F&N Station

received 14 day of April 1959  
nd on 14 day of April 1959  
served a copy of the within of 9C  
n Louisville & Nashville  
Railroad Co.  
By service on Jennie Forté Apt

TAYLOR WILKINS, Sheriff  
By W. A. Albert D. S.  
D. W.

O. N. KING, JR.,	X	
Plaintiff,	X	IN THE CIRCUIT COURT OF
vs.	X	
	X	BALDWIN COUNTY, ALABAMA
LOUISVILLE & NASHVILLE RAIL- ROAD COMPANY, A Corporation,	X	
Defendant.	X	AT LAW

Comes the Defendant in the above styled cause and for plea to the complaint filed in said cause and to each and every count thereof, separately and severally, says:

1. Not guilty.

2. That at the time, place and in the same accident complained of in the complaint the Plaintiff was himself guilty of negligence which proximately contributed to his alleged injuries and damages in that he so negligently operated his motor vehicle as to cause or allow the same to stop on the crossing where it was struck by the Defendant's train.

3. That at the time, place and in the same accident complained of in the complaint the Plaintiff was himself guilty of negligence which proximately contributed to his alleged injuries and damages in that he so negligently operated his motor vehicle as to cause or allow the right rear wheel thereof to run off the main traveled portion of the road and into a ditch, thereby causing his automobile to stop upon the railroad track where it was struck by the Defendant's train.

4. That at the time and place and in the same accident complained of in the complaint the Plaintiff was himself guilty of negligence which proximately contributed to his alleged injuries and damages in that he negligently failed to warn the engineer who was operating the Defendant's train of his danger and that such automobile was on the railroad crossing.

5. That the crossing where the Plaintiff's automobile was damaged is a private crossing, which fact was well known to the Plaintiff and the Plaintiff frequently crossed such crossing and well knew its condition at the time of his alleged injuries and damages and knowing that this was a narrow private crossing, negligently operated his automobile in such a manner as to cause it to stall upon the railroad track at the time and place alleged in the complaint

and thereby contributed to his own injuries and damages, hence he should not recover of the Defendant the amount sued for in his complaint.

*Filed*  
*June 22, 1959*  
*Alice J. Duck,*  
*clerk*

*Sharon Stone*  
Attorneys for Defendant

3811

O. N. KING, JR.

Plaintiff,

vs.

LOUISVILLE & NASHVILLE RAIL-  
ROAD COMPANY, A CORPORATION,

Defendant.

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IN THE CIRCUIT COURT OF

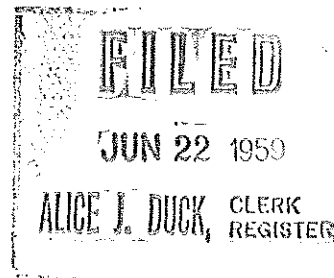
BALDWIN COUNTY, ALABAMA

AT LAW

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PLEAS

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LAW OFFICES

CHASON & STONE

BAY MINETTE, ALABAMA

O. N. KING, JR.,

Plaintiff,

vs.

LOUISVILLE AND NASHVILLE  
RAILROAD COMPANY, A Cor-  
poration,

Defendant.

Y

Y

Y

Y

Y

Y

Y

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

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

DEMURRER:

Comes the Defendant in the above styled cause and demurs to the complaint filed in said cause and to each and every count thereof separately and severally and assigns the following separate and several grounds, viz:

1. That said complaint does not allege any duty owing by the Defendant to the Plaintiff.
2. That the allegation in COUNT ONE of the complaint that the Defendant had negligently failed to maintain said crossing in good repair is but a conclusion of the pleader and does not state facts that would show what the negligence consisted of.
3. That said complaint does not allege who drove the Plaintiff's automobile upon said tracks at said time and place.
4. That COUNT ONE of the complaint does not allege that the Plaintiff's automobile was in a good state of repair at the time it was driven upon the tracks.
5. That the allegation in COUNT ONE of the complaint that one of the rails became lodged between the front wheel and frame of Plaintiff's automobile so that it could be driven neither forward nor backward is but a conclusion of the pleader and does not allege that this was caused by any negligence of the Defendant.
6. That COUNT ONE of the complaint does not allege how long the automobile of the Plaintiff had been upon the Defendant's track prior to the time it was struck by Defendant's train.
7. That COUNT ONE of the complaint does not allege whether the Plaintiff had a reasonable length of time in which to remove his automobile before it was struck by the Defendant's train.

8. For aught that appears from COUNT ONE of the complaint the Plaintiff's automobile had been abandoned and left upon the Defendant's tracks before it was struck by the Defendant's train.

9. That COUNT ONE of the complaint does not allege that the Plaintiff tried to warn anyone that his automobile was upon the Defendant's tracks prior to the time it was struck by the train.

10. That the allegation in COUNT ONE of the complaint that the car was struck by Defendant's train before it could be moved is vague and indefinite and does not allege how long the automobile had been upon the tracks before it was struck.

11. COUNT ONE of the complaint does not allege whose negligence proximately caused the Plaintiff's damages.

12. That COUNT TWO of the complaint does not allege that the Defendant's agents and servants were acting within the line and scope of their employment as such at the time the Plaintiff's automobile was struck.

13. That the allegation in COUNT TWO of the complaint that the Defendant's agents and servants carelessly conducted themselves in and about the management of said train is but a conclusion of the pleader and does not specifically state how they were careless.

14. That COUNT TWO of the complaint seeks to set out what the negligence of the Defendant consisted of but fails to allege sufficient facts to show how or in what manner the agents or servants of the Defendant were negligent or careless.

15. That COUNT TWO of the complaint does not state that the Defendant negligently injured the Plaintiff.

16. That COUNT TWO of the complaint does not allege that the Plaintiff's automobile was on a public crossing at the time it was damaged.

17. That COUNT TWO of the complaint fails to sufficiently allege any negligence on the part of the agents or servants of the Defendant which caused the Plaintiff's damages.

*Filed*  
*April 22, 1959*  
*Alice J. Duck*  
*clerk*

*Barbara Stone*  
Attorneys for Defendant



3811

O. N. KING, JR.,

Plaintiff

vs.

LOUISVILLE & NASHVILLE RAILROAD  
COMPANY, A Corporation,

Defendant.

\* \* \* \* \*

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

AT LAW

\* \* \* \* \*

DEMURRER

\* \* \* \* \*

FILED

APR 22 1959

ALICE J. DUCK, CLERK  
REGISTER

LAW OFFICES  
CHASON & STONE  
BAY MINETTE, ALABAMA

JAMES A. BRICE

ATTORNEY AT LAW

FOLEY, ALABAMA

POST OFFICE BOX 298

April 17, 1959

WHITEHALL 3-3601

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

RE: State Bank of Elberta  
-vs-  
W. J. Tompkins Attachment

# 2812

Dear Mrs. Duck:

Please adjust your records to show me as attorney  
of record for plaintiff in this case.

Thank you.

Sincerely,

  
James A. Brice

JAB:jcp

WRIT OF ATTACHMENT

STATE OF ALABAMA )  
BALDWIN COUNTY )

TO ANY SHERIFF OF THE STATE OF ALABAMA \* GREETING:

Whereas, John Haupt, as Vice-President of State Bank of Elberta, a state banking corporation, hath complained on oath to me, Alice J. Duck, Clerk of the Circuit Court of Baldwin County, Alabama that W. J. Tompkins is justly indebted to State Bank of Elberta in the amount of Four Hundred Forty-nine & 44/100ths (\$449.44) Dollars; and the said John Haupt as Vice-President and agent of and for the State Bank of Elberta having made affidavit and given bond as required by law in such cases:

You are hereby commanded to attach one (1) 1955 Chevrolet Bel Air V-8 Hardtop Coupe, motor #VB55A-105533; and one (1) 1951 Oldsmobile 98 Four-door Sedan, motor #B736542; and said property, unless replevied, so to secure that the same may be liable to further proceedings thereon, to be had at the next term of the Circuit Court of Baldwin County, Alabama, to be held at the Court-house thereof, when and where you must make known how you have executed this writ.

Witness: Alice J. Duck, Clerk of said Court, my hand, this  
the \_\_\_\_\_ day of \_\_\_\_\_, 1959.

\_\_\_\_\_  
Circuit Clerk

The defendant and property  
may be found at Standard  
Oil Service Station,  
Robertsdale, Alabama

JAMES A. BRICE  
ATTORNEY AT LAW  
FOLEY, ALABAMA

POST OFFICE BOX 298

May 8, 1959

WHITEHALL 3-3601

Mrs. Alice J. Duck  
Register in Equity  
Bay Minette, Alabama

Re: State Bank of Elberta  
Vs: W. J. Tompkins

720.3812

Dear Mrs. Duck:

Please dismiss and release the complainant's  
attachment, sending me the cost bill.

Thank you.

Sincerely,

  
James A. Brice

JAB:jcp

AFFIDAVIT FOR ATTACHMENT

STATE OF ALABAMA )  
BALDWIN COUNTY )

*Re: State Bank of Elberta  
vs  
W. J. Tompkins*

Before me, the undersigned, Alice J. Duck, Clerk of the Circuit Court in and for said County in said State, personally appeared John Haupt, who being by me first duly sworn according to law, deposes and says:

That his name is John Haupt; that he is Vice-President of and attorney-in-fact for the State Bank of Elberta, a state banking corporation organized and existing under the laws of the State of Alabama; that W. J. Tompkins, a/k/a Tommy Tompkins is indebted to the State Bank of Elberta in the amount of Four Hundred Forty-nine & 44/100ths (\$449.44) Dollars, as evidenced by a chattel mortgage note executed by him, as the same appears in Mortgage Book 293 at page 565 in the office of the Judge of Probate of Baldwin County, Alabama; that the said W. J. Tompkins has defaulted in the payment of said indebtedness, and there is now due the State Bank of Elberta the sum of Four Hundred Forty-nine & 44/100ths (\$449.44) Dollars;

That the said notes as hereinabove described secure as payment for said indebtedness one (1) 1955 Chevrolet Bel Air V-8 Hardtop Coupe, motor #VB55A-105533; and one (1) 1951 Oldsmobile 98 Four-door Sedan, motor #B736542; that the said State Bank of Elberta has a mortgage lien upon said property, and that this attachment is not sued out for the purpose of vexing or harrassing the said W. J. Tompkins.

*John Haupt*  
John Haupt

Sworn to and subscribed  
before me on this 15th  
day of April, 1959.

*Alice J. Duck*  
Circuit Clerk, Baldwin County,  
Alabama

no. 3812

FILED

APR 15 1959

ALICE J. DUCK, CLERK  
REGISTER

ATTACHMENT BOND

STATE OF ALABAMA )  
BALDWIN COUNTY )

KNOW ALL MEN BY THESE PRESENTS

That we, John Haupt individually; and State Bank of Elberta by its Vice-President and attorney-in-fact, John Haupt, are held and firmly bound unto W. J. Tompkins in the sum of Eight Hundred Ninety-eight & 88/100 (\$898.88) Dollars, to be paid to the said W. J. Tompkins, his executors, administrators, and assigns; for which payment, well and truly to be made, we bind our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents. Sealed with our seals and dated this 15th day of April, 1959.

The condition of the above obligation is such that, whereas the above bounden John Haupt has on the date hereof, prayed an attachment against the estate of the above named W. J. Tompkins for the sum of Four Hundred Forty-nine & 44/100ths (\$449.44) Dollars, and has obtained the same, returnable to the Circuit Court of Baldwin County, Alabama.

Now if the plaintiff shall prosecute said attachment to effect, and pay the defendant all costs and damages as may be sustained by reason of any wrongful or vexatious suing out of such attachment, then this obligation to be void, otherwise to remain in full force and effect.

 (L.S.)  
John Haupt

STATE BANK OF ELBERTA

BY:   
Vice-President & Attorney-in-fact

*approved*  
*this 15 day of April 1959*  
*Delia J. Nebeck*  
*clerk*

FILED

APR 15 1959

ALICE J. DUFFY, Clerk  
 1960-1961



WRIT OF ATTACHMENT

STATE OF ALABAMA )  
BALDWIN COUNTY )

TO ANY SHERIFF OF THE STATE OF ALABAMA - GREETING:

Whereas, John Haupt, as Vice-President of State Bank of Elberta, a state banking corporation, hath complained on oath to me, Alice J. Duck, Clerk of the Circuit Court of Baldwin County, Alabama that W. J. Tompkins is justly indebted to State Bank of Elberta in the amount of Four Hundred Forty-nine & 44/100ths (\$449.44) Dollars; and the said John Haupt as Vice-President and agent of and for the State Bank of Elberta having made affidavit and given bond as required by law in such cases:

You are hereby commanded to attach one (1) 1955 Chevrolet Bel Air V-8 Hardtop Coupe, motor #VB55A-105533; and one (1) 1951 Oldsmobile 98 Four-door Sedan, motor #B736542; and said property, unless replevied, so to secure that the same may be liable to further proceedings thereon, to be had at the next term of the Circuit Court of Baldwin County, Alabama, to be held at the Court-house thereof, when and where you must make known how you have executed this writ.

Witness: Alice J. Duck, Clerk of said Court, my hand, this the 15 day of April, 1959.

Alice J. Duck  
Circuit Clerk

The defendant and property  
may be found at Standard  
Oil Service Station,  
Robertsdale, Alabama

*Executed April 21, 1959  
By attaching the within  
described property &  
storing in Bill Campbell  
garage in Robertsdale*

No. 3812

State Bank of Alberta

VS.

W. J. Tompkins

Received 15 day of April 1950  
and on 21 day of April 1950  
I served a copy of the within Writ  
on W. J. Tompkins

By service on

TAYLOR WILKINS, Sheriff

By E. H. S. S. S.

Executed By attaching  
the within described  
property and storing  
in Bill Campbell  
Garage in  
Robertsdale, Ala

FILED

APR 15 1950

ALICE I. DUCK, CLERK  
HONORARY

Sheriff claims 50 miles at  
Ten Cents per mile Total \$ 5.00  
TAYLOR WILKINS, Sheriff  
BY E. H. S. S. S.  
DEPUTY SHERIFF