

DOCKET NO. 373

NUMBER	TERM	YEAR
354	February	1961

Kenneth Kirkwood

Jane Kirkwood

VERSUS

James B. Kelley

Kenneth Kirkwood

vs.

James B Kelly

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY

No. 354 Feb Term, 1961

PRAECIPE FOR APPOINTMENT OF ARBITRATORS (1)

TO THE PROTHONOTARY OF SAID COURT:

The undersigned, pursuant to the Act of June 16, 1836, P. L. 715, as amended by the Act of June 14, 1952 (1951-52) P. L. 2087 and further amended July 22, 1955, Laws 1955, Act No. 91 and Clearfield County Court Rule, requests you to appoint a **BOARD OF ARBITRATORS** and certifies that:

- (X) The amount in controversy is \$1,000 or less.
- (X) The case is at issue.
- () An agreement of reference has been filed of record.
- () Judgment has been entered for want of an appearance.

RECORD APPEARANCES HAVE BEEN ENTERED FOR:

Plaintiff Dan P. Arnold Defendant J. J. LeeDate 5-3-61Attorney for Dan P. Arnold

TEN DAY PERIOD FOR APPOINTMENT OF ARBITRATORS IS WAIVED (2)

Attorney for

Attorney for

Attorney for

Attorney for

TIME AND PLACE OF HEARING and APPOINTMENT OF BOARD

Now, July 26, 1961, hearing of the above case is fixed for Wednesday, Aug 11, 1961, in 130 Room, Clearfield County Court House, Clearfield, Pa., and the following Clearfield County Bar members:

Chairman

are appointed as the **BOARD OF ARBITRATORS** to hear testimony, make report, and render their award within twenty (20) days from date of hearing.

I hereby certify that notice by mail was duly given to said Arbitrators, Attorneys, and/or parties of record of said appointment, time, and place of hearing.

WITNESS MY HAND AND THE SEAL OF THE COURT

Prothonotary

by

Deputy

(1) See Court Rule 27

(2) Waiver requires signatures of counsel for all parties.

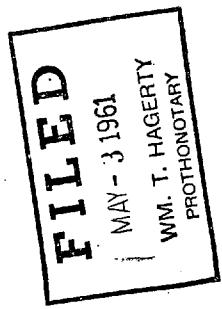
Sept 10, 1962 - At & Mee.

In the Court of Common Pleas
of Clearfield County

No. Term, 195

vs.

PRAECLICE FOR APPOINTMENT OF
ARBITRATORS



SIR:

The following three persons have been appointed Arbitrators
in the case of Kenneth Kirkwood

vs. James B. Kelley

No. 354 February Term, 1961

the first named being the Chairman of the Board:

Eugene L. Cimino, William U. Smith

& William C. Chase

Hearing of the case has been fixed for Friday

August 11, 1961, at 1:30 P.M.

in ~~Courtroom~~ Grand Jury Room.

Very truly yours,

William T. Hagerty,
Prothonotary.

WTH/jb

Kenneth Kirkwood

vs.

James B. Kelley

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY

No. 354 February Term, 1956

OATH OR AFFIRMATION OF ARBITRATORS

Now, this day of 1956, we the undersigned, having been appointed arbitrators in the above case do hereby swear, or affirm, that we will hear the evidence and allegations of the parties and justly and equitably try all matters in variance submitted to us, determine the matters in controversy, make an award, and transmit the same to the Prothonotary within twenty (20) days of the date of hearing of the same.

Eugene L. Cimino
Chairman

William U. Smith

William C. Chase

Sworn to and subscribed before me

this day of

1956.

..... Prothonotary

AWARD OF ARBITRATORS

Now, this day of 1956, we, the undersigned arbitrators appointed in this case, after having been duly sworn, and having heard the evidence and allegations of the parties, do award and find as follows:

..... Chairman

ENTRY OF AWARD

Now, this day of 1956, I hereby certify that the above award was entered of record this date in the proper dockets and notice by mail of the return and entry of said award duly given to the parties or their attorneys.

WITNESS MY HAND AND THE SEAL OF THE COURT

..... Prothonotary

(Arbitration Form 2)

by

In the Court of Common Pleas
of Clearfield County

No.

Term, 195

vs.

OATH OR AFFIRMATION
OF ARBITRATORS
AND AWARD

ARBITRATION BOARD

Common Pleas Court
of Clearfield County

I, Wm. T. Harterty, Prothonotary of the Courts of Clearfield County hereby certify that Eugene L. Cimino, a member of the Clearfield County Bar has served as an Arbitrator in the Court of Common Pleas of Case No. 354 Term, February, 1961 and has heard the evidence and has rendered an opinion, is now discharged from further attendance.

Prothonotary

Approved:

19
County Commissioner

By: _____

I hereby acknowledge receipt of the above amount.

ARBITRATION BOARD

Common Pleas Court
of Clearfield County

I, Wm. T. Magerty, Prothonotary of the Courts of Clearfield County hereby certify that William U. Smith, a member of the Clearfield County Bar has served as an Arbitrator in the Court of Common Pleas of Case No. 354 Term, February, 1961 and has heard the evidence and has rendered an opinion, is now discharged from further attendance.

No. of days _____ \$35.00 _____

Prothonotary

Approved:

19
County Commissioner

By: _____

I hereby acknowledge receipt of the
above amount.

ARBITRATION BOARD

Common Pleas Court
of Clearfield County

I, Wm. T. Harterty, Prothonotary of the Courts of Clearfield County hereby certify that William C. Chase, a member of the Clearfield County Bar has served as an Arbitrator in the Court of Common Pleas of Case No. 354 Term, February, 1961 and has heard the evidence and has rendered an opinion, is now discharged from further attendance.

No. of days _____ \$35.00

Prothonotary

Approved:

19
County Commissioner

By:

I hereby acknowledge receipt of the above amount.

JOSEPH J. LEE
ATTORNEY AT LAW
CLEARFIELD, PENNSYLVANIA

POPLAR 5-7893

July 31, 1961

Dan P. Arnold, Esq.
Clearfield, Pennsylvania

Re; Kenneth Kirkwood
vs
James B. Kelley
No. 354 February Term, 1961

Dear Dan:

I received notice that the above has been
scheduled for arbitration on Friday, August
11, 1961.

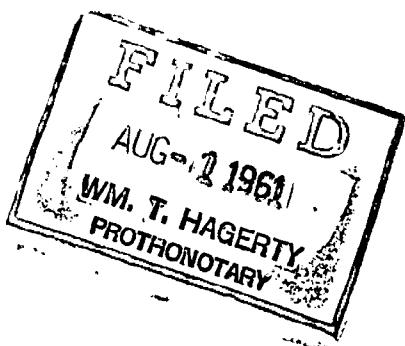
If you will review the pleadings in this
case you will find I filed a counterclaim
on behalf of Kelley in an amount in excess
of \$2000.00. Therefore, this is a case for
jury trial.

If you want to move this on the jury list
for this coming term that is allright by
me.

Very truly yours,

JJL:DH

CC: William T. Hagerty, Prothonotary



*Settled & Discontinued
Docket No. 354*
In the Court of Common Pleas

Kenneth Kirkwood
Jane Kirkwood

-VS-

James B. Kelley

Clearfield County, Pennsylvania

No. 354 Feb. Term, 1961

CERTIFICATE OF DISCONTINUANCE

Commonwealth of Pennsylvania
County of Clearfield

} ss

I, Carl E. Walker, Prothonotary of the Court of Common Pleas, in and for the County and Commonwealth aforesaid, do hereby certify that the above stated case was this day, the 10th day of September A. D. 1962 marked settled, and discontinued

Record costs in the sum of \$.44.70 have been paid in full by Dan P. Arnold

In Witness Whereof, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania, this 10th day of September A. D. 1962.

Carl E. Walker
Prothonotary

A. D. No. 354 February Term, 1961.

Kenneth Kirkwood
Jane Kirkwood

-vs-

James B. Kelley

CERTIFICATE of DISCONTINUANCE

Dan. P. Arnold

Attorney

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KENNETH KIRKWOOD and
JANE KIRKWOOD

vs.

JAMES B. KELLEY

No. 354 February Term, 1961

IN TRESPASS

TO CARL E. WALKER, PROTHONOTARY:

Mark the above case settled and discontinued.

Dated: September 10, 1962


Attorney for Plaintiff

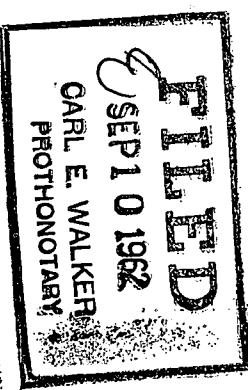
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PA.
No. 354 February Term, 1961
IN TRESPASS

KENNETH KIRKWOOD and
JANE KIRKWOOD

vs.

JAMES B. KELLEY

P R A E C I P E



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KENNETH KIRKWOOD and :
JANE KIRKWOOD :
VS : No. 354 February Term, 1961
: :
JAMES B. KELLEY : Trespass

PETITION FOR LEAVE TO WITHDRAW
AS COUNSEL

TO THE HONORABLE JOHN J. PENTZ, PRESIDENT JUDGE OF SAID COURT:

The Petition of Joseph J. Lee respectfully represents:

(1). That your Petitioner is a member of the Bar of this Court.

(2). That to the above term and number an action was begun between Kenneth Kirkwood and Jane Kirkwood, as plaintiffs, and James B. Kelley, as defendant, to recover for certain damages occurring to the plaintiffs' automobile as the result of an accident which took place in the City of DuBois on January 28, 1959.

(3). That your Petitioner was retained by the Glens Falls Insurance Company to defend the claim against the defendant, and in such capacity your Petitioner notified the defendant that he had appeared in the case for the defendant and filed a Counter-claim on behalf of the defendant against the plaintiffs seeking to recover for and on behalf of the defendant the value of the defendant's vehicle which was damaged in the accident occurring as aforesaid, and certain medical expenses on behalf of the defendant.

(4). That the plaintiffs, through their attorney, Dan P. Arnold, Esq., filed Preliminary Objections to the Counterclaim with particular reference to the claim for bodily injury and medical expense incurred by the defendant - setting forth sub-

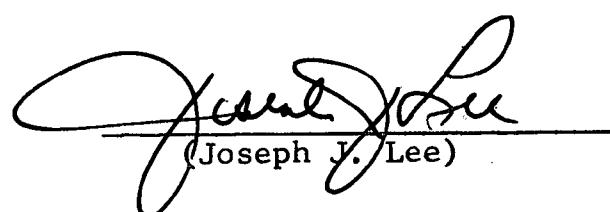
stantially that this claim was barred by the Statute of Limitations.

(5). That after the Counterclaim was filed the said Glens Falls Insurance Company and the insurance carrier for Kenneth Kirkwood and Jane Kirkwood, by virtue of an agreement, settled the original claim between Kenneth Kirkwood and Jane Kirkwood and the same James B. Kelley, and agreed among themselves to discontinue any further action in this Court.

(6). That upon being notified of such a settlement your Petitioner contacted the said James B. Kelley and requested that he agree to a discontinuance of the Counterclaim - which said request was denied by the said James B. Kelley.

WHEREFORE, your Petitioner prays that he be permitted to withdraw as counsel for James B. Kelley.

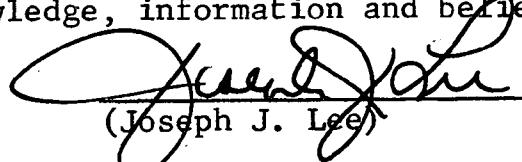
And he will ever pray.



(Joseph J. Lee)

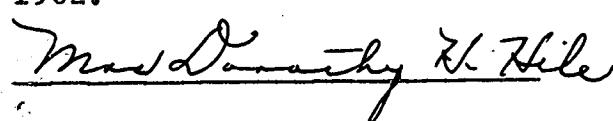
STATE OF PENNSYLVANIA:
:SS
COUNTY OF CLEARFIELD :

JOSEPH J. LEE, being duly sworn according to law, deposes and says that the facts set forth in the within Petition are true and correct to the best of his knowledge, information and belief.



(Joseph J. Lee)

SUBscribed and sworn to
before me this 19 day of July,
1962.



Mrs. Dorothy H. Hile

MRS. DOROTHY H. HILE, Notary Public
CLEARFIELD, CLEARFIELD CO., PA.
My Commission Expires Dec. 3, 1962

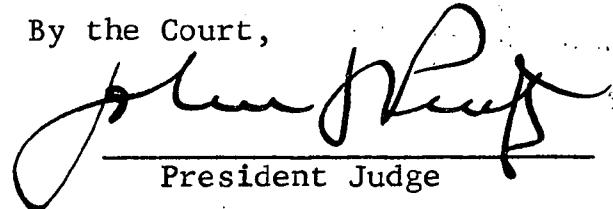
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KENNETH KIRKWOOD and :
JANE KIRKWOOD :
: VS : No. 354 February Term, 1961
: :
JAMES B. KELLEY : Trespass

O R D E R

NOW, to wit, this ~~22~~²³ day of ~~July~~^{Augt} 1962, the foregoing
Petition of Joseph J. Lee, Esq. for leave to withdraw as counsel
having been read and considered, it is hereby ORDERED, ADJUDGED
AND DECREED that the said Joseph J. Lee, Esq. is hereby discharged
as attorney of record for James B. Kelley, and the Prothonotary
is directed to so indicate on the dockets in these proceedings.

By the Court,



President Judge

Lap-over Margin

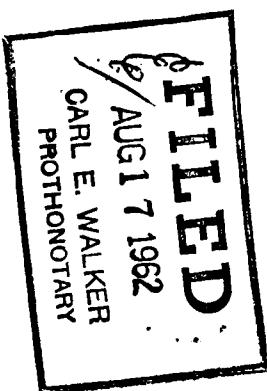
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
No. 354 February Term, 1961
Trespass

KENNETH KIRKWOOD ET AL

VS

JAMES B. KELLEY

PETITION FOR LEAVE TO WITH-
DRAW AS COUNSEL



JOSEPH J. LEE
ATTORNEY-AT-LAW
CLEARFIELD, PA.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KENNETH KIRKWOOD and :
JANE KIRKWOOD :
vs. : No. 354 February Term, 1961
: IN TRESPASS
JAMES B. KELLEY :
:

PRELIMINARY OBJECTIONS
TO COUNTERCLAIM

The accident in the above captioned case, according to the Counterclaim, occurred on January 28, 1959, and the Counterclaim was not filed within two (2) years from the said date. Consequently, the claim for damages for personal injuries as set forth in said Counterclaim are barred by the Statute of Limitations. The Counterclaim for property damages in the amount of \$200.00 has been filed within the requisite statutory period.



Dan R. Arnold
Attorney for Plaintiffs

The matters set forth in the within Preliminary Objections are all matters of record and, consequently, no affidavit is required.



10-2-69
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
No. 354 February Term, 1961
IN TRESPASS

KENNETH KIRKWOOD and
JANE KIRKWOOD

vs.

JAMES B. KELLEY

PRELIMINARY OBJECTIONS
TO COUNTERCLAIM



LAW OFFICES
CHAPLIN & ARNOLD
CLEARFIELD, PA.

Service Accepted 8-9-69
1961
Attala County
Alleged Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KENNETH KIRKWOOD and :
JANE KIRKWOOD :
VS : No. 354 February Term, 1961
JAMES B. KELLEY : Trespass

COUNTERCLAIM

(1). The plaintiff in this Counterclaim is James B. Kelley, defendant in the original action.

(2). The defendants in the Counterclaim, Kenneth Kirkwood and Jane Kirkwood, are the plaintiffs in the original action.

(3). On January 28, 1959, at approximately 12:00 o'clock noon, the plaintiff in the Counterclaim was operating a 1950 Ford four-door sedan in a northerly direction on Jared Street approaching the intersection of Weber Avenue therewith in the City of DuBois preparatory to making a left hand turn onto Weber Avenue.

(4). At the time and place aforesaid defendant in the Counterclaim, Kenneth Kirkwood, was driving a motor vehicle owned by himself and Jane Kirkwood, south on Jared Street, and was likewise approaching the intersection of Jared Street with Weber Avenue, and was at a point north of said intersection.

(5). The plaintiff in the Counterclaim having observed that he could, with safety, make a left hand turn into Weber Avenue, gave a signal of intention to make a left hand turn and proceeded to enter into the intersection as aforesaid and make a left hand turn onto Weber Avenue.

(6). The defendant, Kenneth Kirkwood, in the Counterclaim did so negligently operate his vehicle as to attempt to enter the intersection while the plaintiff in the Counterclaim was engaged in making a left hand turn and causing the damage and injuries

hereinafter set forth.

(7). The defendant in the Counterclaim was negligent in that:

(a). He failed to yield the right-of-way to the plaintiff in the Counterclaim's vehicle which was lawfully engaged in making a left hand turn at the intersection.

(b). He was operating his vehicle at an excessive rate of speed under the circumstances.

(c). He failed to maintain a proper lookout for other users of the highway, and more particularly that of the plaintiff in the Counterclaim.

(d). He failed to operate his vehicle in such a manner in order to avoid striking the plaintiff in the Counterclaim's vehicle.

(e). He violated the provisions of the Motor Vehicle Code in such case made and provided.

(8). As the result of the defendant in the Counterclaim's negligence, which is imputed to Jane Kirkwood as well, the plaintiff in the Counterclaim's vehicle was damaged making it a total loss. Just prior to the accident the plaintiff's vehicle had a value of \$250.00, and just after the accident had a value of \$50.00.

(9). In addition, the plaintiff in the Counterclaim sustained bodily injuries to his low back necessitating the following expenditures:-

DuBois Hospital - - - - -	\$50.00
Dr. Cerutti - - - - -	76.00
Dr. Davenport - - - - -	12.00
Dr. Cochrane - - - - -	4.00
Back Brace - - - - -	10.50

all of which were made necessary as the result of the accident and the defendants' negligence, as aforesaid.

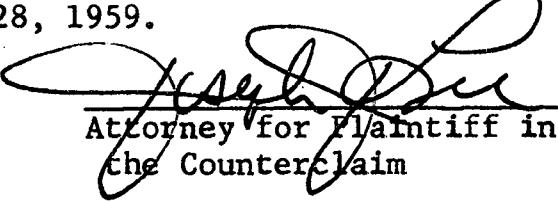
(10). In addition to the foregoing the plaintiff in the Counterclaim was, as the result of the injuries sustained, unable to work for a period January 28, 1959 to August 1, 1960. Plaintiff in the Counterclaim was, prior to the accident, an automobile mechanic by profession and had been gainfully employed, and would have earned during said period he was unable to work as the result of the accident over \$3500.00.

(11). As the result of the injuries sustained as aforesaid, the plaintiff in the Counterclaim experienced great pain and suffering, and still continues to experience pain and suffering in the area of the low back.

(12). The amount claimed in this Counterclaim is over the amount set down for arbitration in Clearfield County.

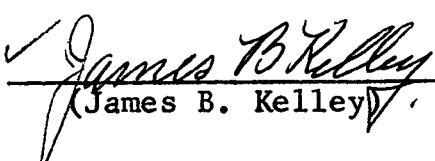
(13). The amount of the claim of the plaintiff in the Counterclaim is in excess of \$5000.00.

WHEREFORE, the plaintiff in the Counterclaim brings this Counterclaim to recover an amount in excess of \$5000.00, both for liquidated and unliquidated damages, together with damages for delay in payment from January 28, 1959.

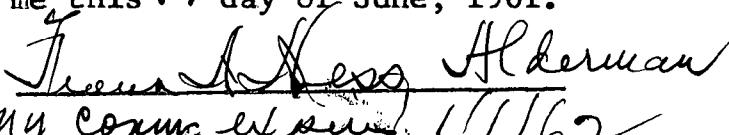

Attorney for Plaintiff in
the Counterclaim

STATE OF PENNSYLVANIA:
:SS
COUNTY OF CLEARFIELD :

JAMES B. KELLEY, being duly sworn according to law, deposes and says that the facts set forth in the foregoing Counterclaim are true and correct to the best of his knowledge, information and belief.


James B. Kelley

Sworn to and subscribed before
me this 17 day of June, 1961.


James B. Kelley
My coxm. expense 1/1/62

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
No. 354 February Term, 1961
Trespass

KENNETH KIRKWOOD and JANE
KIRKWOOD

VS

JAMES B. KELLEY

COUNTERCLAIM

TO THE WITHIN NAMED PLAINTIFFS:

You are hereby notified to
answer to the within Counter-
claim within 20 days from
service hereof.

Joseph J. Lee

Attorney for Plaintiff
in the Counterclaim

John J. McGerty

Attorney
PROBATE

JOSEPH J. LEE
ATTORNEY-AT-LAW
CLEARFIELD, PA.

Aug 1 1961
Anne P. Hurd
David P. Hurd

Kenneth Kirkwood
et al

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PA.

VERSUS

James B. Kelley

No. 354 Term Fall 1961

To Wm. T. Hayes

Prothonotary.

Sir: Enter my appearance for James B. Kelley

in above case.



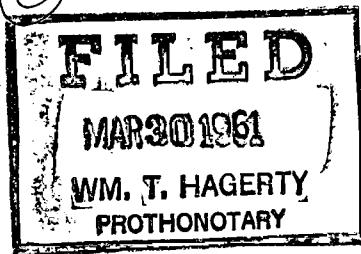
Attorney for James B. Kelley

No. 354 Term Feb 1961

vs.

APPEARANCE

For _____



In the Court Of Common Pleas Of Clearfield County, Penna.

Kenneth Kirkwood
Jane Kirkwood
vs

No 354 Feb Term 1961

Now, March 28, 1961 at 2:10 O'Clock P.M. served the within
Complaint In Trespass on James B. Kelley at place of employ
ment Portzer's Garage, Du Bois, St., Du Bois, Pa. by handing to
him personally a true and attested copy of the original Complaint
In Trespass and made known to him the contents thereof.

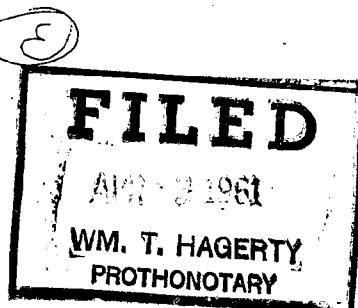
Costs Sheriff Ammerman \$17.20
(Paid by Atty Arnold)

So Answers

Charles A. Ammerman.
Sheriff Ammerman
Sheriff.

Sworn to before me this 29th
day of March 1961

Wm G. Knobley
Prothonotary.



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KENNETH KIRKWOOD and JANE KIRKWOOD :
vs. : No. 354 *Feb.* ~~May~~ Term, 1961
JAMES B. KELLEY : IN TRESPASS

COMPLAINT

1. The plaintiffs are husband and wife and reside in the City of DuBois, Clearfield County, Pennsylvania, and were, on and prior to January 28, 1959, owners of a 1956 Plymouth Sedan.

2. The defendant is an individual residing in the City of DuBois, Clearfield County, Pennsylvania.

3. That on January 28, 1959 at approximately 12:00 noon the plaintiff, Kenneth Kirkwood, was driving the motor vehicle referred to in Paragraph 1, south on Jared Street and approaching the intersection of Jared Street with Weber Avenue in the City of DuBois.

4. That on the date and at the time aforesaid, the defendant herein was operating a motor vehicle north on Jared Street approaching the intersection of Weber Avenue in the City of DuBois.

5. At a point where plaintiff was approximately 20 to 25 feet north of the intersection of Jared Street with Weber Avenue, the northbound vehicle operated by the defendant herein, without signal or warning, suddenly made a lefthand turn across Jared Street directly in the path of the plaintiffs' vehicle travelling south on Jared Street, the defendant herein attempting to turn into Weber Avenue, and as a result of the sudden turn of the defendant herein, the plaintiffs' and defendant's cars collided causing the damages hereinafter set forth to the plaintiffs' vehicle.

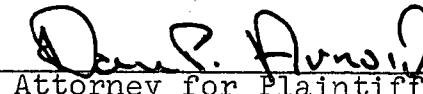
6. That in the operation of his vehicle the defendant was negligent in the following respects:

- (a) In failing to drive to the righthand side of the center line of the highway in the direction he was travelling;
- (b) In making a lefthand turn across the center line of the highway directly into the path of oncoming vehicles;
- (c) In failing to make any signal of his intention to make a lefthand turn;
- (d) In failing to observe the approach of the oncoming vehicle;
- (e) In otherwise failing to regard the lawful rights of other users of the highway.

7. That as a result of the negligence of the defendant as aforesaid, and the collision caused thereby, the plaintiffs' vehicle was damaged along the left front end side and necessitated the expenditure of \$361.90 to repair the same, an itemized statement of said repairs being attached hereto and made a part hereof.

8. That as a result of the negligence of the defendant as aforesaid, the plaintiffs' vehicle, which was injured in said collision, and after the repairs made thereto, has depreciated in the amount of \$200.00.

WHEREFORE, plaintiffs bring this suit to recover the sum of \$561.90 together with damages for delay in payment from January 28, 1959 to date of verdict.



Attorney for Plaintiff

COMMONWEALTH OF PENNSYLVANIA : : SS:
COUNTY OF CLEARFIELD : :

KENNETH KIRKWOOD and JANE KIRKWOOD, being duly sworn according to law, depose and say that the facts set forth in the foregoing Complaint are true and correct to the best of their knowledge, information and belief.

Jane Kirkwood
Kenneth Kirkwood

Sworn to and subscribed
before me this 20 day
of March, 1961.

Marshall Edmer
Notary Public
My com exp 11/16/63

W. B. McNEIL GARAGE
200 West Park Avenue
DuBois, Pa.

ESTIMATE OF REPAIR COSTS

Name Kenneth A. Kirkwood Date 1-28-59

Address 526 Knarr Street, DuBois, Pa.

Below is our estimate to repair your 1956 Ply. Sdn.

Model	License No.	Motor No.	Serial No.	Mileage
P 28	9435 R		14196879	
Parts Necessary and Estimate of Labor Required			Labor Estimate	Parts Cost Estimate
1 front bumper face bar				32.90
1 right back bar				7.25
1 left "	"		6.00	7.25
1 right guard				6.25
1 left "				6.25
1 hood panel with braces			15.60	44.40
1 hood hinge assy. R & L			4.00	10.40
1 front ground shield			6.00	12.75
Repair front frame horns			6.00	
1 right grille bar			4.00	16.55
1 right grille support				1.15
1 radiator support assy.				18.25
repair rad.			6.00	
2 gal. Zerex				6.50
1 right front fender & ext.			18.00	43.65
1 right front fender skirt				13.25
1 " " " hole cover			4.00	3.95
1 headlight door				6.25
1 sealed beam unit				2.50
1 park lamps, lens & bulb				2.65
Repair & paint right door			12.00	
1 hub cap				4.50
Align front end			7.50	
Paint & material				8.50
Tax				7.65
PARTS AND LABOR ESTIMATE GRAND TOTAL			89.10	262.80
Total \$351.90 & \$10.00 towing				

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
No. 354 Term, 1961
IN TRESPASS

KENNETH KIRKWOOD and JANE
KIRKWOOD

vs.

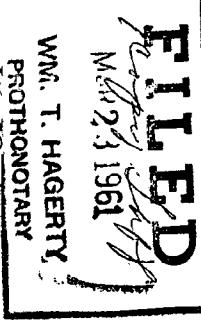
JAMES B. KELLEY

COMPLAINT

TO THE WITHIN DEFENDANT:

You are hereby notified to
plead to the enclosed Com-
plaint within twenty (20)
days from service hereof.

John R. Chaplin
Attorney for Plaintiffs



CHAPLIN & ARNOLD
CLEARFIELD, PA.