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IN THE  
BALTIMORE CITY COURT

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BOX 1782

McKINLEY HOWARD

-VS-

J 6  
a

STANLEY GAITHER, and  
FAIRFIELD WESTERN MARYLAND  
DIARY, INC., a Corporation  
Linden Avenue and Dolphin  
Street

DECLARATION

MR. CLERK:-

PLEASE FILE, ETC.,

*Thurgood Marshall*

ATTORNEY FOR PLAINTIFF

THURGOOD MARSHALL,  
ATTORNEY-AT-LAW  
4 E. REDWOOD STREET.

LUCAS BROS., INC., BALTIMORE

FILED DEC 4 - 1933

Deficit

Box 20

3 | 3419120

And the Plaintiff further alleges that the said damages sustained by him were caused directly as a result of the negligence

McKinley Howard the Defendant, Stanley Gaither, and the defendant, <sup>Fairfield</sup> Western Maryland Dairy, their agents, servants and employees in vs.

IN THE

STANLEY GAITHER, and <sup>Fairfield</sup> WESTERN MARYLAND DAIRY, Inc., a corporation, jointly. BALTIMORE CITY COURT

McKinley Howard, by Thurgood Marshall, his attorney, sues Stanley Gaither and the <sup>Fairfield</sup> Western Maryland Dairy, a corporation, jointly.

For that, on or about the sixth day of November, 1933, the Plaintiff was driving his automobile south on Annapolis Boulevard at Cedar Hill in Anne Arrundel County in the State of Maryland and was driving his automobile in a careful and lawful manner; that the Defendant, Stanley Gaither, driving north on the said Boulevard stopped his car and placed it so negligently as to block the side of the road set apart for north bound traffic and that said Stanley Gaither was holding conversation with one of the servants, agents and employees of the Defendant, <sup>Fairfield</sup> Western Maryland Dairy who was engaged in the delivery of milk from a truck of the <sup>Fairfield</sup> Western Maryland Dairy which was negligently parked on the side of the road set apart for southbound traffic without proper or sufficient lights as prescribed by the laws of the State of Maryland; that two defendants so negligently placed themselves and their vehicles as to block the entire road causing the Plaintiff to collide with the said truck whereof the Plaintiff sustained serious damage to his automobile and a severe shock and injury to his body and face; that he was treated at a hospital and subsequently suffered additional injuries and damages growing out of the said injuries to his face and causing additional pain and suffering and additional medical expenses; that because of said injuries the plaintiff suffered further damages in loss of employment during the period of his medical care.

1881

67

Howard

Just compensation for the same.

and also allow such damages as in their judgment would be a fair and

reasonable, to which persons subjected by reason of such injuries,

physical and mental suf-

reason of his injuries, how far said injuries disabled him from

Sanford

Wm Dury

Granted prayer

Wm Dury

COURT'S INSTRUCTION NO. 2  
at the request of the defendant

The Court instructs the Jury that the mere happening of the accident raises no presumption of negligence on the part of the Defendant, and the burden is upon the Plaintiff to establish by a fair preponderance of affirmative evidence that negligence on the part of the Defendant, or its agent, directly and proximately caused the accident complained of, and if the minds of the jury are in a state of even balance as to the existence of such negligence or as to whether or not such negligence, if found to exist, directly or proximately caused the accident, then their verdict shall be in favor of the Defendant.

*Granted*

*Admitted*

COURT'S INSTRUCTION NO. 3  
at the request of the defendant

The Court instructs the Jury that if they find that the accident complained of was caused partly by the negligence of the Defendant and partly by the negligence of the Plaintiff then the verdict of the Jury must be for the Defendant without regard as to whose negligence was the greater.

*Granted*

*J. H. Dennis*

Plaintiff's Prayer No. 1

The Court instructs the jury that: Under the laws of Maryland every vehicle at rest on a public highway at any time when there is not sufficient daylight to render clearly discernable a person, vehicle or other object on the highway at a distance of 200 feet ahead, is required to display a red light to the rear of such vehicle visible for 200 feet; and that, if the jury should find from the evidence that defendant's employees left the truck standing on the highway at such a time, without displaying a red light visible for 200 feet from the rear thereof, <sup>and that</sup> such failure to display said light ~~constituted negligence on the part of the defendant.~~

~~§ 41, Maryland Code, Art. 56, Sec. 233, (3-6)~~

~~Miles v. Webb, 169 Md. 269 (1932).~~

was the proximate cause of the accident complained of then the verdict must be for the plaintiffs, unless the jury finds that the plaintiffs by his own negligence contributed to the accident and his said injuries

Granted as amended  
Sant & Dennis

Plaintiff's Prayer No. 5

The Court instructs the jury that: If the jury find for the plaintiff, then in estimating damages they may take into consideration the expense, if any, to which the plaintiff has been subjected by reason of his injuries, how far said injuries disabled him from pursuing his ordinary occupation; also the physical and mental suffering, if any, to which he was subjected by reason of such injuries, and also allow such damages as in their judgment would be a fair and just compensation for the same.

*Granted*

~~\_\_\_\_\_~~

*W. J. Dennis*



1485/67

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IN THE  
BALTIMORE CITY COURT  
FILED DEC 15 1933

MC KINLEY HOWARD

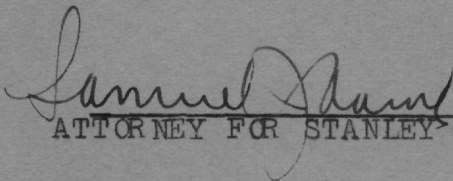
VS.

STANLEY GAITHER, and  
FAIRFIELD WESTERN MARYLAND  
DAIRY, Inc., a  
corporation, jointly

GENERAL ISSUE PLEA

MR. CLERK:

PLEASE FILE,  
etc.



ATTORNEY FOR STANLEY GAITHER

AARON & AARON  
ATTORNEYS AT LAW  
110 E. LEXINGTON STREET  
BALTIMORE, MD.

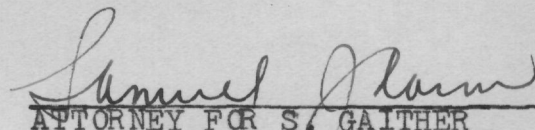
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FILED DEC 15 1933

MCKINLEY HOWARD :  
 VS : IN THE  
 STANLEY GAITHER, and FAIR- :  
 FIELD WESTERN MARYLAND :  
 DAIRY, Inc., a corporation, :  
 jointly. : BALTIMORE CITY COURT  
 :  
 :.....:

Stanley Gaither, for a plea to the Declaration herein filed against him says, for a first Plea:-

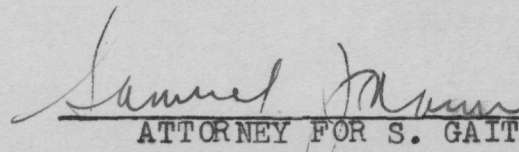
1- That he did not commit the wrongs alleged.

  
 ATTORNEY FOR S. GAITHER

MCKINLEY HOWARD :  
 VS : IN THE  
 STANLEY GAITHER, and FAIR- :  
 FIELD WESTERN MARYLAND :  
 DAIRY, Inc., a corporation, :  
 jointly. : BALTIMORE CITY COURT  
 :  
 :.....:

MR. CLERK:

Stanley Gaither, onw of the Defendants, elects to have the above entitled case tried before a jury.

  
 ATTORNEY FOR S. GAITHER

1485  
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D.

5TH PANEL  
JANUARY TERM, 1934.

Beginning Monday, April 2nd, 1934.

Chief Judge Samuel K. Dennis.

**BALTIMORE CITY COURT**

*McKenley Howard*

vs.

*Stanley Gaither et al.*

Jury Sworn *3 April* 1934

*1 Wilmer O. Andrews Foreman*

*2 W. EARL HOUCK, Coal Salesman, 841 Belgian Ave. Eastern Supply Co., Phila. Rd. and Haven St.*

*3 NICKOLAS J. BRADER, Carpenter, 1626 N. Bradford St. H. J. West Construction Co., Knickerbocker Bldg.*

*MALCOLM EDWARDS, SR., Auditor—Office Mgr., 2604 Hamilton Ave. Wm. Deiches & Co., 26 S. Hanover St.*

*WILMER O. ANDREWS, Clerk, 3505 Greemount Ave. Cons. Gas Elec. Lt. & Power Co., Lexington and Liberty St.*

*A. JAMES GILBERT, Watchman, 33 S. Potomac St. Pratt and Central Ave.*

*RAYMOND I. STORM, Clerk, 1633 Rosedale St. Tin Decorating Co., Boston and Linwood Ave.*

*3 JESSIE ESSLINGER, Sun Route Owner, 3915 Walnut Ave. (Overlea). Baltimore Sun, 3915 Walnut Ave. (Overlea).*

*JAMES W. JONES, Accountant, 6013 Clear Spring Rd. Industrial Corp., 1308 Lexington Bldg.*

*4 HARRY WIENER, Trav. Salesman, 810 Brooks Lane.*

*5 ACHILLES, THIELE, Research Work, 115 W. Mulberry St.*

*CHARLES B. CLARKE, Telephonist, 2302 Roslyn Ave. C. & P. Tel. Co., 1917 Madison Ave.*

*ARTHUR H. HUSSMAN, Salesman, 3204 E. Gibbons Ave. The J. F. W. Dorman Co., 526 N. Calvert St.*

*6 WILLIAM J. SULLIVAN, JR., Clerk, 1701 N. Fulton Ave. JOHN B. ROGERS, President, 315 Thornhill Rd. Floating Flame Burner Co., 1117 N. Charles.*

*7 LOUIS A. DEHOFF, Gen'l. Mechanic, 4644 Park Hgts. Ave. P. LEO FLYNN, Elec. Contr., 2578 Hollins St.*

*8 ALLEN FADER, Salesman, 2702 Springhill Ave. Wm. Wolpon.*

*9 ROBERT G. COCHRAN, Bank Clerk, 2710 Garrison Blvd. First National Bank, Light and Redwood Sts.*

*10 EDWARD I. GOLDBERG, Clerk, 4821 Palmer Ave. H. Wolfe & Sons, 100 S. High St., cor. Lombard.*

*EDWIN E. HOUCK, Chauffeur, 610 Edgewood St.*

*THOMAS D. NOETH, Real Estate, Retired, 3311 Dorchester Rd.*

*11 WILLIAM HALLWIG, Portrait Artist, 1815 N. Fulton Ave.*

*HERBERT H. FREBURGER, Real Estate, 1908 Park Ave.*

*HOWARD F. SPENCER, Sales Mgr., 500 N. Payson St. Wm. J. Miller, 28 E. Baltimore St.*

*GEORGE B. LEE, Salesman, 706 Cator Ave.*

*WILLIAM B. BROOKS, accountant, 3621 Hayward Ave. Self, 333 Munsey Building.*

*12 WALTER A. BURALL, retired locomotive engineer, 2215 Roslyn Ave.*

*WILLIAM W. WRIGHT, insurance, 1900 E. 31st Street. Tongue Brooks & Zimmerman, 219 St. Paul Place.*

THE COURT

JANUARY TERM, 1936

Held in Court, Monday, April 28, 1936

Chief Judge Samuel K. Dennis

BALTIMORE CITY COURT

*Handwritten notes and scribbles at the top of the page.*

*Large handwritten scribble in the upper middle section of the page.*

- W. RANL HOOK, Coal Station, 841 Reigan Ave.
- Eastern Supply Co., Falls Rd. and Haven St.
- MEYERS, R. C., 1825 N. Bradford St.
- H. J. West Construction Co., Kitzlerhooker Bldg.
- MALCOLM EDWARDS, 221 Audubon - Office - Rm. 1204 Hamilton Ave.
- Wm. L. Jones & Co., 22 S. Harover St.
- WILMER O. ANDREWS, 2202 Greenmount Ave.
- Cons. Gas Elec. Co. & Power Co., Lexington and Liberty St.
- A. JAMES - 22 S. Potomac St.
- Pratt and Central Ave.
- RAZON, J. - 1833 Rosebush St.
- The Decorating Co., Boston and Landon Ave.
- JESSIE ESCHINGER, Sun Home Owner, 3015 Walnut Ave. (Overleaf)
- Baltimore Sun, 1015 Walnut Ave. (Overleaf)
- JAMES W. ... 1208 Lexington Bldg.
- Industrial Corp., 1208 Lexington Bldg.
- HARRY WINNER, 1747 Baltimore, 219 Brocks Lane.
- ACHILLE THIERE, Research Work, 110 W. Madison St.
- O. & M. Tel. Co., 1817 Madison Ave.
- The J. F. W. Dorgan Co., 224 N. Conover St.
- WILLIAM J. SULLIVAN, 1100 York, 1701 N. Fulton Ave.
- Frederic Plume Co., 111 N. Charles.
- LOUIS A. BERRY, 401 N. E. Baltimore, 401 Park High Ave.
- ROBERT A. COCHRAN, 2719 Garrison Bldg.
- First National Bank, Light and Redwood St.
- EDWARD I. GOLDBERT, 421 Palmer Ave.
- H. W. ... 101 N. High St., con. Labrad.
- WILLIAM HALLIDAY, 1818 N. Fulton Ave.
- HOWARD S. ... 500 N. Taylor St.
- Wm. A. ... 21 N. Baltimore St.

*Faint handwritten notes and additional text at the bottom of the page.*

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No. 169

Dec. R. D., 1933.

# Baltimore City Court.

McKinley Howard

*Deceased*

vs.

Stanley Gaither et al

## WRIT OF SUMMONS

*With Copy*

2 Copies of Nar and Notice to plead  
within to be served on defendant.

Thurgood Marshall

Attorney for Plaintiff

FILED DEC 11 1933

Filed

day of

193

*8-10*

# SHERIFF'S RETURN

SUMMONED

*Fairfield Western Maryland Dairy*

A CORPORATION, BY SERVICE ON

*Wallace Thomas Treasurer*

AND A COPY OF NAR AND NOTICE TO PLEAD WITH A COPY OF THE PROCESS

LEFT WITH SAID

*Treasurer*

, ALSO NOTICE OF SAID SUMMONS

LEFT AT THE PRINCIPAL OFFICE OF SAID CORPORATION.

*Also summoned*

*Stanley Guithen and a copy of nar and notice to plead left with the defendant.*

*Biehy.  
Mc Williams*

*12/5/35*

*Dec 8/35*

*Joseph C. Deegan*

SHERIFF



# STATE OF MARYLAND

BALTIMORE CITY, to wit.

To the Sheriff of Baltimore City, Greeting:

You are commanded to summon

*12-5-33 (10)*  
*Wallace Thomas Treasurer*

Stanley Gaither, and Fairfield Western Maryland Dairy, a corporation

of Baltimore City, to appear before the Baltimore City Court, to be held at the Court House in the same City, on the second Monday of December inst. ~~next~~ to answer an action at the suit of McKinley Howard

and have you then and there this writ.

Witness the Honorable SAMUEL K. DENNIS, Chief Judge of the Supreme Bench of Baltimore City, the 11 day of Sept 1933.  
Issued the 4 day of Dec. in the year 1933.

*Geo. Carey Lindsay* Clerk.

WRIT OF SUMMONS

# STATE OF MARYLAND

BALTIMORE CITY, to wit.

To the Sheriff of Baltimore City, Greeting:

You are commanded to summon

*12-5-33 (10)*  
*Wallace Thomas Treasurer*

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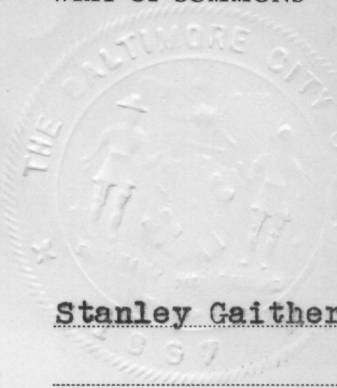
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Witness the Honorable SAMUEL K. DENNIS, Chief Judge of the Supreme Bench of Baltimore

City, the 11 day of Sept. 1933.

Issued the 4 day of Dec. in the year 1933.

*Geo. Carey Lindsay* Clerk.





FILED DEC 19 1933

1485  
57

IN THE BALTIMORE CITY COURT

MCKINLEY HOWARD

V

FAIRFIELD-WESTERN MARYLAND  
DAIRY, INC.  
a corporation

DEFENDANT'S GENERAL  
ISSUE PLEA

MR. CLERK:

PLEASE FILE

*Marbury, Gosnell & Williams*  
ATTORNEYS FOR DEFENDANT

**MARBURY, GOSNELL & WILLIAMS**  
ATTORNEY AT LAW  
BALTIMORE

✓  
FILED DEC 19 1933

MCKINLEY HOWARD : IN THE  
V : BALTIMORE CITY  
FAIRFIELD-WESTERN : COURT  
MARYLAND DAIRY, INC. :  
a corporation. :

. . . . .

Now comes Fairfield-Western Maryland Dairy, Inc.,  
by its attorneys L. Wethered Barroll and Marbury, Gosnell  
& Williams, and for pleas to the declaration in the above  
entitled case says:

That it did not commit the wrongs alleged.

L. Wethered Barroll

Marbury, Gosnell & Williams  
ATTORNEYS FOR DEFENDANT

1485  
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Howard

to

Fairfield

Wm

Dunlop

Refused

Payro

Plaintiff's Prayer No.2

The Court instructs the jury that: Noncompliance with the law of Maryland that a parked vehicle should have a red light visible 200 feet to the rear thereof is not excused by the fact that there was a light in the inside of the truck or that the headlights were burning.

Ebling v. Nielson 109 Wash. 355, 186 P 887

Western Indemnity v. Wasco Land Co. 197 P 390 (Cal.

Littlejohn v. Staggers 125 So. 61 (Ala).

Ross v. Willamette Valley Trasfer 119 Or. 395, 208 P 1088.

*Refused*

Plaintiff's Prayer No. 3.

The Court instructs the jury that: The plaintiff had a right to assume, in the absence of anything to put him on notice to the contrary, that a vehicle will not be left in the highway at night without displaying a proper light in the rear and he is under no duty to anticipate or lookout for such violators.

42 C. J. Motor Vehicles 1015

Kelly v. Huber Baking Company 145 Md. 321,338 (1924)

Brown v. Patterson 141 Md. 302.

Berry on Automobiles (3d Ed.) sec. 196

Huddy on Automobiles (6th Ed. ) 352.

*Refused*

Plaintiff's Prayer NO. 4.

The Court instructs the jury that: Negligence, to render a person liable, need not be the sole cause of the injury. It is sufficient if his negligence concurring with one or more efficient causes other than the plaintiff's fault, is the proximate cause of the injury. So that where several causes combine to produce injuries, a person is not relieved from liability because he is responsible for only one of them, it being sufficient that his negligence is an efficient cause, without which the injury would not have resulted to as great an extent and that such other cause is not attributable to the person injured.

Yellow Cab. v. Tracy Daily Record February 5, 1934.

*Refused*

COURT'S INSTRUCTION NO. A  
at the request of the Defendant

The Court instructs the Jury that no evidence has been offered in this case legally sufficient to entitle the Plaintiffs to recover a verdict against the Defendant, and that therefore, their verdict shall be in favor of the Defendant.

*Refused*

COURT'S INSTRUCTION NO. B  
at the request of the Defendant

The Court instructs the jury that from the <sup>un-</sup>contradictory evidence in this case it appears that the negligence of the Defendant contributed directly to the happening of the accident complained of, therefore the verdict of the jury must be for the Defendant.

Refused



COURT'S INSTRUCTION NO. 1  
at the request of the Defendant

The Court instructs the Jury that if they find from the evidence that the injury of Howard was caused by an unavoidable accident unmixed with negligence on the part of the Defendant, or its agent, then their verdict shall be in favor of the Defendant.

*Refused*

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P

5TH PANEL

JANUARY TERM, 1934.

Beginning Monday, April 2nd, 1934.

Chief Judge Samuel K. Dennis.

BALTIMORE CITY COURT

McKinley Howard

Stanley G. Nathan vs. Amy Sanford  
Western Maryland Dairy, Inc.

Jury Sworn 2 April 1934

1 Wilmer O. Andrews Foreman

2 W. EARL HOUCK, Coal Salesman, 841 Belgian Ave.  
Eastern Supply Co., Phila. Rd. and Haven St.

NICKOLAS J. BRADER, Carpenter, 1626 N. Bradford St.  
H. J. West Construction Co., Knickerbocker Bldg.

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11 JOHN B. ROGERS, President, 315 Thornhill Rd.  
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HOWARD F. SPENCER, Sales Mgr., 500 N. Payson St.  
Wm. J. Miller, 28 E. Baltimore St.

GEORGE B. LEE, Salesman, 706 Cator Ave.

WILLIAM B. BROOKS, accountant, 3621 Hayward Ave.  
Self, 333 Munsey Building.

WALTER A. BURALL, retired locomotive engineer, 2215  
Roslyn Ave.

WILLIAM W. WRIGHT, insurance, 1900 E. 31st Street.  
Tongue Brooks & Zimmerman, 219 St. Paul  
Place.

1/28/84  
1/27

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5TH FLOOR

JANUARY TERM, 1934

Beginning Monday, April 2nd, 1934

Chief Judge Samuel K. Davis

BALTIMORE CITY COURT

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