

STATE OF ALABAMA
BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon Hugh Windbigler and Jeff Shoots 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 Charles B. Logan.

WITNESS my hand this 31 day of Mar, 1964.

Miss L. ...
Clerk

CHARLES B. LOGAN,	Y	
Plaintiff,	Y	IN THE CIRCUIT COURT OF
Vs.	Y	BALDWIN COUNTY, ALABAMA
HUGH WINDBIGLER AND JEFF SHOOTS, jointly and severally,	Y	AT LAW
Defendants.	Y	

5997

I.

Plaintiff claims of the Defendants the sum of \$125,000.00 as damages, for that heretofore on, to-wit, the 25th day of June, 1963, at approximately 2/10 mile East of the limits of the Town of Elberta, Alabama, on the right of way of U. S. Highway 98 in Baldwin County, Alabama, the Defendant, Jeff Shoots, who was a servant, agent or employee of the Defendant, Hugh Windbigler, while acting within the line and scope of his employment as such, so negligently operated the motor vehicle he was driving so as to collide with the Plaintiff's motor vehicle, and as a direct and proximate result of the negligence aforesaid, the Plaintiff was injured and damaged as follows: He sustained fractures of the left femur and fibula, deep lacerations of left lower leg, multiple lunatomas of left upper thigh, chip fracture of left tibial plateau, Paresthesia of right hand and fingers, traumatic shock; he was bruised, wrenched and sprained about the body and he was permanently injured; and that his whole physical being was shaken and shocked, and he was made sick and sore and was caused

to suffer great physical and mental anguish. He was caused to lose time from his usual and customary duties and activities; that the Plaintiff was caused to incur great expenses in and about procuring doctors, medicine, medical aid and attention, and hospital care and treatment of said injuries and that he will be required to do so indefinitely. That the Plaintiff's motor vehicle was bent and damaged about the rear end and the left side was bent and broken, the frame was bent and the motor vehicle was a total loss.

II.

Plaintiff claims of the Defendants the sum of \$125,000.00 as damages, for that heretofore on, to-wit, the 25th day of June, 1963, at approximately 2/10 mile East of the limits of the Town of Elberta, Alabama, on the right of way of U. S. Highway No. 98 in Baldwin County, Alabama, the Defendant, Jeff Shoots, who was a servant, agent or employee of the Defendant, Hugh Windbigler, while acting within the line and scope of his employment as such, so wantonly operated the motor vehicle he was driving so as to wantonly collide with the Plaintiff's motor vehicle, and as a direct and proximate result of the wanton negligence aforesaid, the Plaintiff was wantonly injured and damaged as follows: He sustained fractures of the left femur and fibula, deep lacerations of left lower leg, multiple lumatomas of left upper thigh, chip fracture of left tibial plateau, Paresthesia of right hand and fingers, traumatic shock; he was bruised, wrenched and sprained about the body and he was permanently injured; and that his whole physical being was shaken and shocked, and he was made sick and sore and was caused to suffer great mental and physical anguish. He was caused to lose time from his usual and customary duties and activities; that the Plaintiff was caused to incur great expenses in and about procuring doctors, medicine, medical aid and attention, and hospital care and treatment of said injuries and that he will be required to do so indefinitely. That the Plaintiff's

motor vehicle was bent and damaged about the rear end and the left side was bent and broken, the frame was bent and the motor vehicle was a total loss.

WILTERS & BRANTLEY

BY: *S. M. Brantley*
Attorneys for the Plaintiff

*Defendant address
Foley, Ala.*

FILED

MAR 31 1964

ALICE J. DUCK, CLERK
REGISTER

*Executed
4-8-64
4-13-64*

CHARLES B. LOGAN,
Plaintiff,
VS.
HUGH WINDBIGLER and JEFF
SHOOTS, jointly and sev-
erally,
Defendants.

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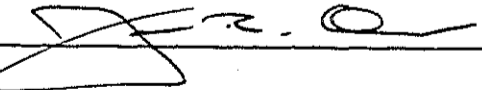
IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW NO. 5997

DEMURRER

Now come the defendants, separately and severally, and demur to the complaint heretofore filed in this cause and to each count thereof, separately and severally, and as grounds for said demurrer assign the following, separately and severally:

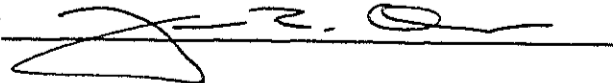
1. It does not state a cause of action.
2. The place where the alleged accident occurred is not described with sufficient certainty.
3. From aught appearing from the complaint the plaintiff was a trespasser at the time and place of the alleged accident.
4. The plaintiff does not allege where he was at the time and place the alleged accident occurred.
5. The allegation that the motor vehicle of the plaintiff was a total loss is a mere conclusion of the plaintiff.
6. It is not alleged that the defendants or either of them wantonly injured the plaintiff.
7. It is not alleged that the defendant, Hugh Windbigler, wantonly injured the plaintiff.
8. It is not alleged that the defendant, Jeff Shoots, wantonly injured the plaintiff.

J. B. BLACKBURN and JAMES R. OWEN,
Attorneys for Defendants.

By _____


The defendants demand a trial by jury of this cause.

J. B. BLACKBURN and JAMES R. OWEN,
Attorneys for Defendants.

By _____


FILED

277

MAY 6 1964

ALICE L. BUCK, CLERK
REGISTER

July

77,5997

elived 1 day of April 1964

on _____ day of _____ 19____

received a copy of the within D. J. C. 4-13-64

Muon Windbigler

Charles B. Logan

Jeff Shoots 11-8-64

service on _____

TAYLOR WILKINS, Sheriff

By Charles Logan D.

Muon Windbigler

Jeff Shoots

Sheriff claims 144 miles at 1440

Tax Cents per mile Total \$

TAYLOR WILKINS, Sheriff

BY CC DEPUTY SHERIFF

Vertical text on the right side of the page, possibly a stamp or administrative note.

CHARLES B. LOGAN,	X	IN THE CIRCUIT COURT OF
Plaintiff	X	BALDWIN COUNTY, ALABAMA
vs	X	AT LAW
HUGH WINDBIGLER and JEFF	X	NO. _____
SHOOTS, jointly and	X	
severally,	X	
Defendants	X	

Comes now the Plaintiff in the above styled cause and amends his Bill of Complaint to read as follows:

1.

Plaintiff claims of the Defendants the sum of ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$125,000.00) as damages, for that heretofore on, to-wit, the 25th day of June, 1963, at approximately 2/10 mile East of the corporate limits of the Town of Elberta, on the right of way of U. S. Highway #98, in Baldwin County, Alabama, the Plaintiff was standing between his motor vehicle and the motor vehicle of another which were parked off the paved portion of the said Highway, a place where he had a right to be; at which time and place, the Defendant, Hugh Windbigler, while acting within the line and scope of his employment as such, so negligently operated the motor vehicle he was driving so as to collide with the rear of the Plaintiff's motor vehicle pinning the Plaintiff between his motor vehicle and the other motor vehicle above mentioned, and as a direct and proximate result of the negligence afore-said, the Plaintiff was injured and damaged as follows: He sustained fractures of the left femur and fibula, deep lacerations of left lower leg, multiple lumatomas of left upper thigh, chip fracture of left tibial plateau, paresthesia of right hand and fingers, traumatic shock; he was bruised,

wrenched and sprained about the body and he was permanently injured; and that his whole physical being was shaken and shocked, and he was made sick and sore and was caused to suffer great physical and mental anguish. He was caused to lose time from his usual and customary duties and activities; that the Plaintiff was caused to incur great expenses in and about procuring doctors, medicine, medical aid and attention, and hospital care and treatment of said injuries and that he will be required to do so indefinitely. That the Plaintiff's motor vehicle was bent and damaged about the rear end and the left side was bent and broken, the frame was bent and the motor vehicle was a total loss.

2.

Plaintiff claims of the Defendants the sum of ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$125,000.00) as damages, for that heretofore on, to-wit, the 25th day of June, 1963, at approximately 2/10 mile East of the corporate limits of the Town of Elberta, on the right of way of U. S. Highway #98, in Baldwin County, Alabama, the Plaintiff was standing between his motor vehicle and the motor vehicle of another which were parked off the paved portion of the said highway, a place where he had a right to be, and which time and place the Defendant, Jeff Shoots, who was a servant, agent or employee of the Defendant Hugh Windbigler, while acting within the line and scope of his employment as such, so wantonly operated the motor vehicle he was driving so as to wantonly collide with the rear of the Plaintiff's motor vehicle, pinning the Plaintiff between his motor vehicle and the other motor vehicle, above mentioned, and as a direct and proximate result of the wanton

negligence, the Defendant, Jeff Shoots, wantonly injured and damaged the Plaintiff as follows: He sustained fractures of the left femur and fibula, deep lacerations of left lower leg, multiple lumatomas of left upper thigh, chip fracture of left tibial plateau, Paresthesia of right hand and fingers, traumatic shock; he was bruised, wrenched and sprained about the body and he was permanently injured; and that his whole physical being was shaken and shocked, and he was made sick and sore and was caused to suffer great mental and physical anguish. He was caused to lose time from his usual and customary duties and activities; that the Plaintiff was caused to incur great expenses in and about procuring doctors, medicine, medical aid and attention, and hospital care and treatment of said injuries and that he will be required to do so indefinitely. That the Plaintiff's motor vehicle was bent and damaged about the rear end and the left side was bent and broken, the frame was bent and the motor vehicle was a tital loss.

WILTERS & BRANTLEY

BY: 
Attorneys for the Plaintiff

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW

NO. 5997

CHARLES B. LOGAN,

Plaintiff

vs

HUGH WINDBIGLER and JEFF
SHOOTS, jointly and
severally,

Defendants

AMENDED COMPLAINT

WILTERS & BRANTLEY
Attorneys at Law
Bay Minette, Alabama

FILED

MAY 4 1965

CHARLES B. LOGAN,)	
)	
Plaintiff,)	IN THE CIRCUIT COURT OF
VS.)	BALDWIN COUNTY, ALABAMA
)	
HUGH WINDBIGLER and JEFF)	AT LAW
SHOOTS, jointly and sev-)	NO. 5997
erally,)	
)	
Defendants.)	

DEMURRER TO AMENDED COMPLAINT

Now come the defendants, each separately and severally, and demur to the complaint as last amended (the amended complaint filed on May 4, 1965), and as grounds of such demurrer assign, separately and severally, the following:

1. It does not state a cause of action.
2. There is a misjoinder of causes of action.
3. There is a misjoinder of parties defendant.
4. The plaintiff does not seek to recover from each defendant under each count of the complaint.
5. The allegations of the amended complaint are vague, indefinite and uncertain.
6. The allegations of the amended complaint are vague, indefinite and uncertain in that it does not apprise the defendants of what acts of negligence they are called upon to defend.
7. The allegations of the amended complaint are conclusions of the pleader.
8. No facts are alleged to show for whom Hugh Windbigler was acting at the time and place of the alleged accident.
9. No facts are alleged to show that the defendants wilfully injured the plaintiff.
10. No facts are alleged to show that the defendants wantonly injured the plaintiff.
11. No facts are alleged to show that the defendants wilfully or wantonly injured the plaintiff.
12. No facts are alleged to show that either of the said defendants wilfully injured the plaintiff.

13. No facts are alleged to show that either of the said defendants wantonly injured the plaintiff.

14. No facts are alleged to show that either of the said defendants wilfully or wantonly injured the plaintiff.

J. B. BLACKBURN
JAMES R. OWEN
Attorneys for Defendants

By J. B. Blackburn

FILED

JUN 10 1965

ALICE I. DUCK, CLERK
REGISTER

CHARLES B. LOGAN,	X	
Plaintiff	X	IN THE CIRCUIT COURT OF
vs	X	BALDWIN COUNTY, ALABAMA
HUGH WINDBIGLER and JEFF SHOOTS, jointly and severally,	X	AT LAW
Defendants	X	NO. _____

Comes now the Plaintiff in the above styled cause and amends his amendment to read as follows:

1.

Plaintiff claims of the Defendants the sum of ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$125,000.00) as damages, for that heretofore on, to-wit, the 25th day of June, 1963, at approximately 2/10 mile East of the Corporate limits of the Town of Elberta, on the right of way of U. S. Highway #98, in Baldwin County, Alabama, the Plaintiff was standing between his motor vehicle and the motor vehicle of another which were parked off the paved portion of the said Highway, a place where he had a right to be; at which time and place, the Defendant, Jeff Shoots, who was a servant, agent or employee of the Defendant, Hugh Windbigler, while acting within the line and scope of his employment as such, so negligently operated the motor vehicle he was driving so as to collide with the rear of the Plaintiff's motor vehicle pinning the Plaintiff between his motor vehicle and the other motor vehicle above mentioned, and as a direct and proximate result of the negligence aforesaid, the Plaintiff was injured and damaged as follows: He sustained fractures of the left femur and fibula, deep lacerations of left lower leg, multiple lumatomas of left upper thigh, chip fracture of left tibial plateau, paresthesia of right hand and fingers, traumatic

shock; he was bruised, wrenched and sprained about the body and he was permanently injured; and that his whole physical being was shaken and shocked, and he was made sick and sore and was caused to suffer great physical and mental anguish. He was caused to lose time from his usual and customary duties and activities; that the Plaintiff was caused to incur great expenses in and about procuring doctors, medicine, medical aid and attention, and hospital care and treatment of said injuries and that he will be required to do so indefinitely. That the Plaintiff's motor vehicle was bent and damaged about the rear end and the left side was bent and broken, the frame was bent and the motor vehicle was a total loss.

2.

Plaintiff claims of the Defendants the sum of ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$125,000.00) as damages, for that heretofore on, to-wit, the 25th day of June, 1963, at approximately 2/10 mile East of the Corporate limits of the Town of Elberta, on the right of way of U. S. Highway #98, in Baldwin County, Alabama, the Plaintiff was standing between his motor vehicle and the motor vehicle of another which were parked off the paved portion of the said Highway, a place where he had a right to be, at which time and place the Defendant, Jeff Shoots, who was a servant, agent or employee of the Defendant, Hugh Windbigler, while acting within the line and scope of his employment as such, so wantonly operated the motor vehicle he was driving so as to wantonly collide with the rear of the Plaintiff's motor vehicle, pinning the Plaintiff between his motor vehicle and the other motor vehicle, above mentioned, and as a direct and proximate result of the wanton negligence, the Defendant, Jeff Shoots, wantonly injured and damaged the Plaintiff as follows: He sustained fractures of

the left femur and fibula, deep lacerations of left lower leg, multiple lumatomas of left upper thigh, chip fracture of left tibial plateau, paresthesia of right hand and fingers, traumatic shock; he was bruised, wrenched and sprained about the body and he was permanently injured; and that his whole physical being was shaken and shocked, and he was made sick and sore and was caused to suffer great mental and physical anguish. He was caused to lose time from his usual and customary duties and activities; that the Plaintiff was caused to incur great expenses in and about procuring doctors, medicine, medical aid and attention, and hospital care and treatment of said injuries and that he will be required to do so indefinitely. That the Plaintiff's motor vehicle was bent and damaged about the rear end and the left side was bent and broken, the frame was bent and the motor vehicle was a total loss.

WILTERS & BRANTLEY

FILED

JAN 28 1986

ALICE J. DUCK, CLERK
REGISTER

BY: 
Attorneys for the Plaintiff

CHARLES B. LOGAN,)	
)	
Plaintiff,)	IN THE CIRCUIT COURT OF
)	BALDWIN COUNTY, ALABAMA
VS.)	
)	AT LAW
HUGH WINDBIGLER and JEFF)	NO. 5997
SHOOTS, jointly and sev-)	
erally,)	
)	
Defendants.)	

DEMURRER TO AMENDED COMPLAINT

Now come the defendants, each separately and severally, and demur to the complaint as last amended (the amended complaint filed on January 28, 1966), and as grounds of said demurrer assign, separately and severally, the following:

1. It does not state a cause of action.
2. There is a misjoinder of causes of action.
3. There is a misjoinder of parties defendant.
4. The plaintiff does not seek to recover from each defendant under each count of the complaint.
5. The allegations of the amended complaint are vague, indefinite and uncertain.
6. The allegations of the amended complaint are vague, indefinite and uncertain in that it does not apprise the defendants of what acts of negligence they are called upon to defend.
7. The allegations of the amended complaint are conclusions of the pleader.
8. No facts are alleged to show for whom Hugh Windbigler was acting at the time and place of the alleged accident.
9. No facts are alleged to show that the defendants wilfully injured the plaintiff.
10. No facts are alleged to show that the defendants wantonly injured the plaintiff.
11. No facts are alleged to show that the defendants wilfully or wantonly injured the plaintiff.
12. No facts are alleged to show that either of the said defendants wilfully injured the plaintiff.
13. No facts are alleged to show that either of the said defendants wantonly injured the plaintiff.

14. No facts are alleged to show that either of the said defendants wilfully or wantonly injured the plaintiff.

15. The place where the alleged accident occurred is not described with sufficient certainty.

16. It does not allege that the defendant, Jeff Shoots, was an agent, servant or employee of the defendant, Hugh Windbigler, at the time and place of the alleged accident.

17. The allegation that the plaintiff will be required indefinitely to incur great expense in and about procuring doctors, medicine, medical aid and attention, and hospital care and treatment of his alleged injuries is a mere conclusion of the plaintiff.

18. The allegation that the plaintiff will be indefinitely required to incur great expenses in and about procuring doctors, medicine, medical aid and attention, and hospital care and treatment of his alleged injuries is speculative.

J. B. BLACKBURN
JAMES R. OWEN
Attorneys for Defendants

By 

FILED

FEB 7 1966

ALICE I. DICK, CLERK
REGISTER

CHARLES B. LOGAN,)
)
 Plaintiff,)
)
 VS.)
)
 HUGH WINDBIGLER and JEFF)
 SHOOTTS, jointly and severally,)
)
 Defendants.)

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW NO. 5997


PLEA

Now come the defendants in the above styled cause and for plea to the complaint heretofore filed in said cause and to each count thereof separately and severally say, separately and severally:

1. Not guilty.

2. At the time and place complained of in the complaint the plaintiff was himself guilty of negligence, which proximately contributed to his injuries and damages, hence he should not recover.

J. B. BLACKBURN and
JAMES R. OWEN

By 
Attorneys for Defendants

FILED

DEC 9 1966

ALICE I. NIX, CLERK
REGISTER

11/13
3
9

Was the jury find in favor of
the defendants -

John D. Corbett

12-13-66

FILED

DEC 9 1966
AIME J. DICK, CLERK
REGISTRAR

CHARLES B. LOGAN,	X	
Plaintiff,	X	IN THE CIRCUIT COURT OF
vs.	X	BALDWIN COUNTY, ALABAMA
HUGH WINDBIGLER and JEFF	X	AT LAW
SHOOTS, jointly and	X	CASE NO. 5997
Severally,	X	
Defendants.	X	

DEMURRER

Comes now the Plaintiff, in the above styled cause and demurs to the Defendant's Plea #2, and for grounds therefor says:

1.

That this is an attempt to plead contributory negligence; and that said plea does not set out contributory negligence with sufficient particularity.

WILTERS & BRANTLEY

BY: *[Signature]*
Attorneys for Plaintiff

Filed 12.12.66
Beinghuck
clerk

12-12-66

Demurrer overruled.

Jefair. Maslibon
judge.

CHARLES B. LOGAN,	X	
Plaintiff,	X	IN THE CIRCUIT COURT OF
vs.	X	BALDWIN COUNTY, ALABAMA
HUGH WINDBIGLER & JEFF	X	AT LAW
SHOOTS, jointly and	X	CASE NO. 5997
severally,	X	
Defendants.	X	

APPEAL BY PLAINTIFF

Now comes the Plaintiff and appeals to the Supreme Court of the State of Alabama from a final judgment for the Defendants rendered in this cause in and by the Circuit Court of Baldwin County, Alabama, Law Side, on, to-wit, the 13th day of December, 1966.

Dated this 24th day of May, 1967.

WILTERS & BRANTLEY

BY: *Henry J. Wilters Jr.*
Attorneys for the Plaintiff

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 24 day of May 1967 served a copy of the foregoing pleading on counsel to all parties to this proceeding by mailing the same by United States Mail, properly addressed, and first class postage prepaid.

WILTERS & BRANTLEY

By: *Henry J. Wilters Jr.*

FILED

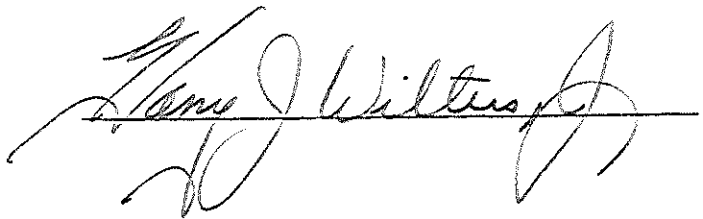
MAY 24 1967

AME L. BUCK, CLERK REGISTER

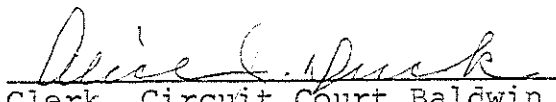
CHARLES B. LOGAN, X
Plaintiff, X IN THE CIRCUIT COURT OF
vs. X BALDWIN COUNTY, ALABAMA
HUGH WINDBIGLER & JEFF X AT LAW
SHOOTS, jointly and X CASE NO. 5997
severally, X
Defendants. X

SECURITY FOR COSTS

I, the undersigned, do hereby acknowledge myself as security for costs of the Appeal taken by the Plaintiff in this cause.



Taken and approved
this 24 day of
May, 1967.


Clerk, Circuit Court Baldwin County, Ala.

No. 5997

Charles R. Loyare
vs.
Hugh W. Washburn

JURY LIST - DECEMBER 12, 1966

- 1. Allen, Norman W., Farmer, Gateswood
- ~~2. Andrews, Herbert E., Farmer, Foley~~
- ~~3. Boros, Anthony J., Farmer, Elberta~~
- ~~4. Cane, P. Gray, Mill Director, Bay Minette~~
- ~~5. Childress, Guy, Farmer, Robertsdale~~
- ~~6. Clark, Percy, Mill Worker, Stockton~~
- 7. Clay, Harris, Mechanic, Fairhope
- ~~8. Colgin, Ned, Farmer, Summerville~~
- 9. Cooper, Grady, Farmer, Elsenor
- ~~10. Coover, Nolan B., Merchant, Rosinton~~
- 11. Dubose, James W., Gov't Emp., Gulf Shores
- ~~12. Easby, E. Jack, Salesman, Bay Minette~~
- 13. Gipson, Leon Fisher, Mechanic, Bay Minette
- 14. Graham, James R., Laborer, Bay Minette
- ~~15. Grantham, Donald R., Farmer, Mag. Spgs.~~
- ~~16. Gwaltney, William H., Clerk, Robertsdale~~
- ~~17. Hester, Thomas E., Gulf Gas Agent, Robertsdale~~
- ~~18. Jenkins, Marvin B., Civil Service, Stapleton~~
- ~~19. Jones, George, Business Operator, Daphne~~
- ~~20. Jones, James, Farmer, Loxley~~
- ~~21. Kaise, Frank, Farmer, Silverhill~~
- 22. Langer, Stanley, Machinst, Robertsdale
- ~~23. Mazzari, Joe Jr., Farmer, Belforest~~
- ~~24. Mazzari, John, Farmer, Belforest~~
- ~~25. Mosley, Rufus, Farmer, Stapleton~~
- ~~26. Novoty, Milton J., Farmer, Robertsdale~~
- ~~27. Owen, E.D., Jr., Merchant, Bay Minette~~
- ~~28. Rhodes, Charles R., Farmer, Foley~~
- ~~29. Rhodes, Eberhart, Farmer, Summerville~~
- ~~30. Rieben, Everett, Brookley, Bay Minette~~
- 31. Rieben, Ray, Paper Mill, Bay Minette
- ~~32. Robinson, Matt, Laborer, Robertsdale~~
- ~~33. Robinson, Odell, Contractor, Bay Minette~~
- 34. Sedlock, Fred J., Farmer, Robertsdale
- ~~35. Sheppard, Floyd, Farmer, Foley~~
- ~~36. Simon, Arthur, Farmer, Belforest~~
- ~~37. Smith, Columbus, Mill Worker, Stockton~~
- ~~38. Veal, Arthur, Attendant, Summerville~~
- ~~39. Winder, George, Airport Oper., Foley~~
- ~~40. Wiley, James, Clerk, Loxley~~
- ~~41. Yending, Bailey, Sr., Carpenter & Bricklayer, Daphne~~
- 42. Mason, Jimmy, Salesman, Fairhope
- ~~43. Davidson, W.W., Turpentine Farmer, Bay Minette~~
- ~~44. Marino, Percy, Mobile Housing Board, Daphne~~
- ~~45. Nail, William, Farmer, Elberta~~
- ~~46. Bryant, Charles Henry, Jr., Farmer, Stockton~~
- ~~47. Childress, Wyatt, Farmer, Foley~~
- 48. Cock, John D., Merchant, Montrose
- ~~49. Deever, Charles, Farmer, Rosinton~~
- 50. Eslava, Clarence, Farmer, Mag. Spgs.
- ~~51. McLeod, George, State Emp., Gulf Shores~~
- ~~52. Hodgeson, William W., Jr., Manufacturer, Bay Minette~~

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49	40
12	12
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F XXXX XXXX XX=

D XXXX XXXX XX=

MAR 14 1968

THE STATE OF ALABAMA - - - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1967-68

Charles B. Logan

1 Div. 457

v.

Hugh Windbigler and Jeff Shoots,
Jointly and Severally

Appeal from Baldwin Circuit Court

COLEMAN, JUSTICE.

Plaintiff appeals from a judgment for defendants in an action for personal injury sustained by plaintiff as the result of a collision between plaintiff's truck and a motor vehicle owned by one defendant and being operated by the other defendant.

2.

The allegations of the complaint are that plaintiff was standing between his truck and a third vehicle when one of the defendants drove the other defendant's vehicle into the rear of plaintiff's truck, thereby crushing plaintiff.

Defendants filed a plea of the general issue and a plea of contributory negligence. The latter plea recites:

"2. At the time and place complained of in the complaint the plaintiff was himself guilty of negligence, which proximately contributed to his injuries and damages, hence he should not recover."

Plaintiff demurred to the plea of contributory negligence on the following ground:

"That this is an attempt to plead contributory negligence; and that said plea does not set out contributory negligence with sufficient particularity."

The court overruled plaintiff's demurrer. The case was submitted to the jury who returned a verdict for defendants.

Plaintiff's assignment of error is that the court erred in overruling his demurrer to the plea of contributory negligence.

Defendants appear to admit that their plea of contributory negligence is subject to appropriate demurrer and we are inclined to agree.

3.

To support a claim of contributory negligence, the plea must aver facts which raise a duty to defendant imposed on plaintiff by law and a negligent breach of that duty which must be shown by the allegations of the plea to have been a proximate contributing cause of plaintiff's injuries. Walker v. Bowling, 261 Ala. 46, 49, 72 So. 2d 841; Williams v. Pope, ___ Ala. ___, 203 So. 2d 105, 107.

In the instant case, defendants' plea does not aver any facts but states as a conclusion that plaintiff was himself guilty of negligence which proximately contributed to his injuries. No facts are averred to show a duty owed by plaintiff to defendants and no facts are alleged to show a breach of that duty.

Defendants say, however, that the court ought not to be put in error for overruling the demurrer because the demurrer does not specify how or in what manner the substance of the plea was objectionable. Defendants rely on § 236, Title 7, Code 1940, which recites:

"No demurrer in pleading can be allowed except as to matters of substance, which the party demurring specifies; and no objection can be taken or allowed which is not distinctly stated in the demurrer."

Defendants rely also on principles stated in opinions of this court as follows. Under the statute, § 236, supra, our consideration is limited to the grounds of demurrer which are distinctly stated, and it was error to sustain demurrers which

failed to point out the real objections to the pleas.

Fruitticher Electric Co. v. Birmingham Trust and Savings Co.,

201 Ala. 676, 677, 79 So. 248. Our statute requires specification of defects. The consideration on demurrer to a plea susceptible of healing amendment is restricted to grounds assigned within the rule of the cited statute.

Birmingham Ry. Light & Power Co. v. Barranco, 203 Ala. 639,

643, 84 So. 839. Defendants say the instant demurrer does not in any way sufficiently specify the objection to the plea, and, therefore, the demurrer was properly overruled.

In a case where this court reversed for error in sustaining demurrer to pleas, this court said:

"The first ground of demurrer was:

'Said plea is no answer to the third and fourth counts of the complaint.' Nothing could be more general than this objection. The second was: 'Said plea does not set out such facts as constitute a traverse or a confession and avoidance of the facts stated in the third and fourth counts of said complaint.' This, also, is a mere general objection to the plea without pointing out distinctly the ground of objection. The plea may be defective, but the ground of demurrer carefully fails to point out in what the defect consists. The reason for requiring by statute the causes

5.

of demurrer to be distinctly shown is that defects in pleading may be so distinctly pointed out as that the party pleading may be apprised of their existence, and have opportunity to cure them by amendment if he can. . . ." Cowan v. Motley, 125 Ala. 369, 371, 28 So. 70.

In Scharnagel v. Furst, 215 Ala. 528, 531, 112 So.

102, this court said:

". . . . The assigned ground that 'the plea is no answer to the complaint' is but a general demurrer, and is not available for impeachment of the plea, however defective it may be. (Citations Omitted.)"

The instant demurrer does allege that the defendants' plea does not set out contributory negligence with sufficient particularity, but the demurrer fails to state wherein the allegations are deficient.

In McWilliams v. Birmingham Southern R. Co., 204 Ala. 53, 85 So. 293, plaintiff sued for wrongful death of her intestate. This court considered the rulings of the court on demurrer to the complaint. With respect to count 4, which charged that defendant was guilty of negligence, this court said:

". . . . The only ground urged in brief as against count 4 was ground 7; and it was general. . . ." (204 Ala. at page 55)

Ground 7 of the demurrer recited:

"The facts set forth in said complaint as constituting negligence on the part of the defendant or its servants or agents do not, as matter of law, charge negligence." (204 Ala. at page 54)

Ground 7 stated that the facts set forth as constituting negligence do not, as matter of law, charge negligence. In the instant case, the demurrer states that the plea does not set out contributory negligence with sufficient particularity. Both ground 7, supra, and the instant demurrer state, in substance, that the facts alleged do not constitute negligence, and we are of opinion that the instant demurrer is also general and was properly overruled under § 236, Title 7, because the instant demurrer fails to specify in what particular the instant plea failed to set out contributory negligence.

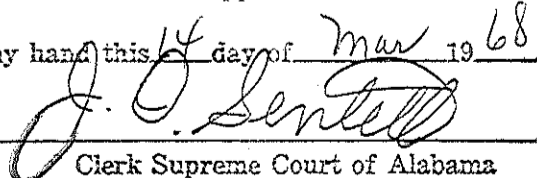
Error not being shown, the judgment is affirmed.

AFFIRMED.

Livingston, C. J., and Lawson and Goodwyn, JJ., concur.

I, J. O. Sentell, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appears of record in said Court.

Witness my hand this 14 day of Mar 19 68


Clerk Supreme Court of Alabama

728,5997

THE STATE OF ALABAMA--JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 19.67-68

To the Clerk of the Circuit Court, Baldwin County—Greeting:

Whereas, the Record and Proceedings of the Circuit Court of said county, in a certain cause lately pending in said Court between Charles B. Logan, Appellant,

and Hugh Windbigler and Jeff Shoots, Jointly and Severally, Appellee,

wherein by said Court it was considered adversely to said appellant, were brought before our Supreme Court, by appeal taken, pursuant to law, on behalf of said appellant:

NOW, IT IS HEREBY CERTIFIED, That it was thereupon considered, ordered, and adjudged by our Supreme Court, on the 14th day of March, 19.68, that said

Judgment of said Circuit Court be in all things affirmed, and that it was further considered, ordered, and adjudged that the appellant, and Harry J. Wilters, Jr., surety on the appeal bond, pay

the costs accruing on said appeal in this Court and in the Court below, for which costs let execution issue.

J. O. Sentell
Witness, J. O. Sentell, Clerk of the Supreme Court of Alabama, at the Judicial Department Building, this the 14th day of March, 19.68
Clerk of the Supreme Court of Alabama.

CHARLES B. LOGAN,

Plaintiff,

VS.

HUGH WINDBIGLER and JEFF
SHOOTS, jointly and severally,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 5997

PLEA

Now come the defendants in the above styled cause and for plea to the complaint heretofore filed in said cause and to each count thereof separately and severally say, separately and severally:

1. Not guilty.

2. At the time and place complained of in the complaint the plaintiff was himself guilty of negligence, which proximately contributed to his injuries and damages, hence he should not recover.

J. B. BLACKBURN and
JAMES R. OWEN

By *[Signature]*
Attorneys for Defendants

FILED

DEC 9 1966

ALICE L. BUCK, CLERK
REGISTER

*Filed 12-12-66
Alice L. Buck
Clerk*

THE SUPREME COURT OF ALABAMA

October Term, 19 67-68

1st Div., No. 457

Charles B. Logan

Appellant,

vs.

Hugh Windbigler and Jeff

Shoots, Jointly and Severally
Appellee. s

From Baldwin Circuit Court.

No. 5997

CERTIFICATE OF
AFFIRMANCE

The State of Alabama,

FILED

County.

} Filed

this 1st day of MAR 1968 19

ALICE J. DUCK CLERK
REGISTER

DIV. NO. _____

CERTIFICATE OF APPEAL. (Civil Cases.)

No. 5997

THE STATE OF ALABAMA

BALDWIN County.

I, Alice J. Duck, Clerk of the Circuit Court of Baldwin County, in and for said State and County, hereby certify that the foregoing pages numbered from one to _____, both inclusive, contain a full, true and complete transcript of the record and proceedings of said Court in a certain cause lately therein pending wherein CHARLES B. LOGAN,

was plaintiff, and HUGH WINDBIGLER & JEFF SHOOTS, Jointly & Severally

was Defendant, as fully and completely as the same appears of record in said Court.

And I further certify that the said Charles B. Logan did on the 24th day of May, 1967, pray for and obtain an appeal from the judgment of said Court to the Supreme Court of Alabama to reverse said judgment of said Court upon entering into bond with Harry J. Wilters, Jr., as surety thereon, which said bond has been approved by me.

Witness my hand and the seal of said Circuit Court of Baldwin County is hereto affixed, this the 24th day of May, 1967

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

(Code 1940, Title 7, Sec. 767)

THE SUPREME COURT OF ALABAMA

October Term, 19 67-68

1st Div., No. 457

Charles B. Logan

Appellant,

vs.

Hugh Windbigler and Jeff

Shoots, Jointly and Severally
Appellee. s

From Baldwin Circuit Court.

No. 5997

CERTIFICATE OF
AFFIRMANCE

The State of Alabama,

FILED

County.

} Filed

this MAR 31 1968 19

ALICE J. DUCK CLERK
REGISTER

THE STATE OF ALABAMA }
Baldwin County - Circuit Court }

TO ANY SHERIFF OF THE STATE OF ALABAMA — GREETING:

Whereas, at a Term of the Circuit Court of Baldwin County, held on the 13th
Monday, December, 1967, in a cer-
tain cause in said Court wherein Charles B. Logan
Plaintiff, and Hugh Windbigler and Jeff Shoots,
jointly and severally Defendants a judgement was rendered against said
Plaintiff
to reverse which Judgment, the said Plaintiff

applied for and obtained from this office an APPEAL, returnable to the next
Term of our Supreme Court of the State of Alabama, to be held at Montgomery, on
the day of 1967 next, and the necessary bond
having been given by the said Harry J. Wilters, Jr. Attorney for Plaintiff
with _____, ~~sureties~~

Now, You Are Hereby Commanded, without delay, to cite the said Hugh Windbigler
and Jeff Shoots, jointly and severally or J. B. Blackburn
_____, attorney, to appear at the next Term of our
said Supreme Court, to defend against the said Appeal, if they think proper.

Witness, ALICE J. DUCK, Clerk of the Circuit Court of said County, this 24
day of May, A. D., 1967.

Attest:

Alice J. Duck, Clerk.

No. 5987

Received 29 day of May 1967
and on 29 day of May 1967
served a copy of the within Citation
J. B. Blackburn

CIRCUIT COURT
Baldwin County, Alabama

service on _____

TAYLOR WILKINS, Sheriff
By W. A. Talbot

Charles B. Logan

Vs. { Citation in Appeal

Hugh Wardbegler

Issued _____ day of _____, 1967