

MAILING ADDRESS  
P. O. BOX 4453  
CAROLINE AVE. STATION  
MOBILE, ALABAMA 36604

WARREN L. FINCH

*Lawyer*

963 OLD SHELL ROAD  
MOBILE, ALABAMA 36604

TELEPHONE  
438-2220

November 17, 1967

Clerk of the Circuit Court  
Bay Minette, Alabama

7633 - 7634

Dear Sir:

I have today been employed by Arnold Walker and son of this city to represent them in a case now pending in your Court wherein Mr. Fred Kroner is the attorney of record. Mr. Kroner died today and we have endeavored to get the file from his office but have been unable to do so. My understanding is that the case is set for trial on December 5th. and that it arises out of an automobile accident wherein Mr. Walker's son ran into a horse.

Will you please send me photostats of your file as soon as possible.

Yours very truly,

  
WARREN L. FINCH

WLF/ref

ARNOLD W. WALKER, ) IN THE CIRCUIT COURT OF  
Plaintiff, ) BALDWIN COUNTY, ALABAMA  
-VS- ) AT LAW  
C. C. LINDSEY, )  
Defendant. ) CASE NUMBER: 7633

INTERROGATORIES TO THE PLAINTIFF

1. State your correct name, age, residence address and business address.

2. Describe completely and in detail the vehicle owned by you on the occasion of the accident made the basis of this suit, stating in your answer the make, years, model and body style of the same. (a) State the name and address of the owner of said motor vehicle on the date of said accident. (b) State the name and address of the driver of said vehicle on said occasion. (c) State by whom said motor vehicle had been purchased prior to said accident, and give the date of the purchase. (d) How much was paid for said motor vehicle at the time of said purchase? (e) Give the name and address of any other person who had any interest of any nature whatsoever in said motor vehicle at the time of said accident and describe that interest.

3. Describe completely and in detail every item of damage sustained by said motor vehicle on the occasion of said accident. State in your opinion the fair reasonable market value of said motor vehicle immediately prior to said accident and also immediately after said accident, before it was repaired. (a) Give the amount of each repair estimate obtained as to said damage, and give the name and address of the person or company making said repair estimate. (b) State whether or not any of said damage was repaired and, if so, give the amount of the repair bill and the name and address of the person, firm or corporation that made said repairs. (c) State who paid for said repairs. (d) State how long the motor vehicle was in the repair shop. (e) State whether or not said motor vehicle has been sold subsequently the date of the accident made the basis of this suit, and, if so, for what amount, and state the name and address of the person, firm or corporation to which said vehicle was sold. (f) Give the mileage reading of said motor vehicle at the time of the accident made the basis of this suit. (g) Give the mileage reading of said motor vehicle at the time of answering these interrogatories. (h) Describe the condition of the brakes, signal device, steering apparatus, tires and lighting equipment on said motor vehicle, separately, at the time of the accident made the basis of suit. (i) When had the brakes, signal device, steering apparatus, lights and tires on said motor vehicle, separately, last been inspected prior to said accident, and by whom?

4. State the purpose of trip on which your automobile was engaged and whether same was in connection with your business or for your benefit.

JOHNSTON JOHNSTON & NETTLES

BY

  
Attorneys for Defendant

THE STATE OF ALABAMA    X  
COUNTY OF MOBILE        X

Before me, the undersigned authority in and for said county in said state, this day personally appeared Robert D. Kendall, who is known to me, and who, being by me first duly sworn, upon oath deposes and says that he is one of the attorneys for said specified defendant in the above entitled cause, and as such is authorized to make this affidavit; that the answers of the plaintiff to the foregoing interrogatories, when well and truly made and filed, will be material testimony for said defendant on the trial of this cause.

Robert D. Kendall

Sworn to and subscribed before me on this 4<sup>th</sup> day of April, 1968.

Bed L. Nettles  
NOTARY PUBLIC, MOBILE COUNTY, ALABAMA  
State at Large

I hereby certify that I have served a copy of the foregoing interrogatories on Hon. Warren Finch, attorney for the plaintiff, by mailing a copy thereof to him on this the 5th day of April, 1968.

Robert D. Kendall  
Attorney for the Defendant

FILED

APR 8 1968

ALICE J. DUCK   CLERK  
REGISTER

# Arnold Walker vs C.C. Lindsey

JURY LIST - DECEMBER TERM - DECEMBER 9, 1968

7633  
7634

- ~~1. Allen, Thomas L., Farmer, Gateswood~~
- ~~2. Avera, Leon W., Farmer, Foley~~
3. Beverly, John, Salesman, Robertsedale
- ~~4. Boomer, Travis, Farmer, Elseanor~~
5. Britt, Cecil, Carpenter, Bay Minette
- ~~6. Brooks, Horace D., Farmer, Summerdale~~
- ~~7. Bryars, Rudolph H., Brookley Field, Bay Minette~~
- ~~8. Calloway, Thomas Andrew, Seafood Dealer, Gulf Shores~~
- ~~9. Chandler, Jack, Newport, Bay Minette~~
- ~~10. Colgin, Ned, Farmer, Summerdale~~
11. Creamer, Henry, City Employee, Fairhope
- ~~12. Dawson, Roy S., Livestock Dealer, Robertsedale~~
13. Fell, Russell, Civil Service, Lillian
14. Fell, Walter, Mechanic, Bon Secour
- ~~15. Flowers, Edward, Farmer, Bay Minette~~
- ~~16. Guthrie, Hersey, Farmer, Bon Secour~~
- ~~17. Hall, John Sr., Carpenter, Loxley~~
18. Hammond, Walter W., Grocer, Robertsedale
- ~~19. Head, Charlie, Jr., Farmer, Stapleton~~
- ~~20. Hester, Angelo, Clerk, Fairhope~~
- ~~21. James, Dayton, Farmer, Foley~~
- ~~22. Kane, James, Farmer, Loxley~~
- ~~23. Koehler, Charles G., Jr., Banker, Elberta~~
- ~~24. Kriss, Frank, Farmer, Silverhill~~
- ~~25. Little, Bernie, Mechanic, Bay Minette~~
- ~~26. Lundberg, Carl, Newport, Bay Minette~~
27. Mason, Jimmy, Salesman, Fairhope
28. Mathews, Charles L., F.C.A., Robertsedale
- ~~29. McDaniel, Schuler, Farmer, Robertsedale~~
- ~~30. Quinney, Bruce, Mobile Public Work, Daphne~~
- ~~31. Singleton, Art, Public, Rosinton~~
32. Soesbe, John R., Mechanic, Foley
33. Stripline, Fred, Television Repair, Robertsedale
34. Thomas, Jennings, Farmer, Foley
- ~~35. Venson, Cecil, Civil Service, Stapleton~~
- ~~36. Volovsky, Jimmie, Mechanic, Robertsedale~~
- ~~37. Waters, Orville Clyde, Merchant, Bay Minette~~
- ~~38. Yarbrough, George C., Jr., International Paper Co., Bay Minette~~
39. Amos, Willie, Clerk, Silverhill
- ~~40. Conway, James, Mobile Construction, Daphne~~
- ~~41. Gill, R. A., Oil Co., Robertsedale~~

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R XXXXX XXX

D XXXXX XX

Johnston, Johnston & Nettles

Attorneys

810 Van Antwerp Building

Mobile, Alabama 36601

Telephone 432-1811

Samuel M. Johnston  
William E. Johnston  
Samuel M. Johnston, Jr.  
Bert S. Nettles

Mailing Address  
P. O. Box 550  
Mobile, Alabama

Robert G. Kendall, III

August 8, 1967

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

Dear Mrs. Duck:

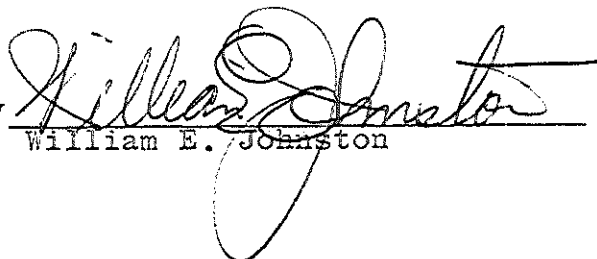
Please file the following pleas for the Defendant and advise me when this has been done. I am enclosing a self addressed stamped envelope for your convenience. I have mailed a copy of these pleas to Mr. Wilson Hays the attorney for the Plaintiffs at his office in Bay Minette, Alabama.

With kindest personal regards, I remain

Very truly yours,

JOHNSTON, JOHNSTON & NETTLES

By

  
William E. Johnston

WEJ:lc

TRIAL MEMORANDUM

Re: Arnold W. Walker v. C. C. Lindsey, Case No. 7633  
Eddy Arthur Walker v. C. C. Lindsey, Case No. 7634

These cases arise out of a collision between an automobile, owned by Arnold W. Walker and driven by Eddy Arthur Walker, and a horse owned by C. C. Lindsey. Both complaints allege that the defendant "knowingly or wilfully put or placed a horse on Alabama Highway #225" and that the automobile driven by Eddy Arthur Walker ran into the horse. The Eddy Arthur Walker complaint contains the further allegation that the defendant "allowed to be a horse on Alabama Highway #225." Arnold W. Walker seeks damages for the destruction of his automobile and Eddy Arthur Walker claims personal injury.

Defendant has filed a plea of the general issue in the Arnold W. Walker suit and pleas of the general issue, contributory negligence and recoupment in the Eddy Arthur Walker suit. The plea of recoupment seeks recovery for the death of the horse proximately caused by the negligent operation of the automobile.

The plaintiffs' cases are controlled by Tit. 3, § 79, Code 1940, which provides in applicable part as follows:

"Provided, however, that the owner of any stock or animal shall not be liable for any damages to any motor vehicle, or any occupant thereof, suffered, caused by, or resulting from a collision with such stock or other animal, unless it be proven that such owner knowingly or wilfully put or placed such stock upon such public highway, road or street, where such damages were occasioned."

This statute was construed in Randle v. Payne, 39 Ala.App. 652, 107 So.2d 907, certiorari denied, 268 Ala. 697, 107 So.2d 913. In that case the plaintiff collided with the defendant's bull on a public highway. The jury returned a verdict for the plaintiff and the trial court granted a new trial because of its failure to give the general affirmative charge as requested by the defendant. The plaintiff appealed and the action of the trial court in granting a new trial was affirmed. The court

said:

"There must be proof to the effect that the owner of the stock knowingly or wilfully placed the stock upon the public highway.

"'Wilfullness' signifies a designed set purpose, intention, or deliberation. Payne v. Vance, 103 Ohio St. 59, 133 N.E. 85.

"We find no evidence in this record that this defendant placed his bull upon Highway 11 knowingly, or wilfully. The value of the bull (\$1500.00) in and of itself would tend to negative completely the elements of knowingly and wilfully placing him on a highway highly traveled."

Randle v. Payne has been followed in McGough v. Wilson, 273 Ala. 179, 137 So.2d 43.

In the case at bar, the evidence shows that the horse was kept in a fenced pen. There is nothing to show that defendant knowingly or wilfully put or placed the horse on the highway. And, as was said in the case quoted above, the value of the horse would in and of itself tend to negative completely these elements.

As to the plea of recoupment, the question of whether Eddy Arthur Walker was negligent should be for the jury, there being evidence that he was and that he was not driving at a safe speed.

ARNOLD W. WALKER

PLAINTIFF

VS

C. C. LINDSEY

DEFENDANT

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

AT LAW

NUMBER: 7633

• - •

Plaintiff claims of Defendant the sum of THREE-THOUSAND and NO/100 (\$3,000.00) DOLLARS for that on to-wit the 31st day of July 1966 Defendant knowingly or wilfully put or placed a horse on Alabama Highway #225 at a point approximately 300 feet South of Walter Johnson's driveway and approximately 5.5 miles North of the intersection of Alabama Highway #225 and U. S. Highway 31 a public highway, and as a proximate result thereby causing or allowing the automobile of Plaintiff to run into, over or against said horse and as a proximate consequence of the presence of the said horse on said public highway Plaintiff's automobile was bent, broken, damaged and completely destroyed, hence this suit.

FRED M. KRONER, JR. AND WILSON HAYES  
Attorneys for Plaintiff

By: Wilson Hayes

Plaintiff demands trial by  
jury.

Wilson Hayes

FILED

JUL 19 1967

ALICE J. DUCK CLERK  
REGISTER



NUMBER: \_\_\_\_\_

ARNOLD W. WALKER

PLAINTIFF

VS

C. C. LINDSEY

DEFENDANT

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

COMPLAINT

SUMMONS AND COMPLAINT

MOORE PRINTING CO., BAY MINETTE, ALA.

STATE OF ALABAMA

Baldwin County

Circuit Court, Baldwin County

No. 7633

TERM, 19

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon C. C. LINDSEY

to appear and plead, answer or demur, within thirty days from the service hereof, to the complaint

filed in the Circuit Court of Baldwin County, State of Alabama, at Bay Minette, against

C. C. LINDSEY, Defendant

by ARNOLD W. WALKER

Plaintiff

Witness my hand this 19th day of July 1967

Alice J. Luck Clerk

Ex 7-22-67

53

*July*

No.....7633..

Page.....

STATE OF ALABAMA

Baldwin County

CIRCUIT COURT

ARNOLD W. WALKER

Plaintiffs

vs.

C. C. LINDSEY

Defendants

SUMMONS AND COMPLAINT

Filed *7-19* 19*67*

*Cliff J. Jones* Clerk

Fred M. Kroner, Jr. &

W. Hayes Plaintiff's Attorney

Defendant's Attorney

Defendant lives at

Received In Office

*7/19* 19*67*

*W. A. Wilkins* Sheriff

I have executed this summons

this *July 22* 19*67*

by leaving a copy with

*C. C. Lindsey*

Shuffle claim *30* miles at

Jan. Contz. per calls Total *300*

TAYLOR WICKINS, Sheriff

*W. A. Wilkins*  
DEPUTY SHERIFF

*W. A. Wilkins* Sheriff

*W. A. Wilkins* Deputy Sheriff

*Bromley*

ARNOLD W. WALKER,

Plaintiff

vs.

C.C. LINDSEY,

Defendant

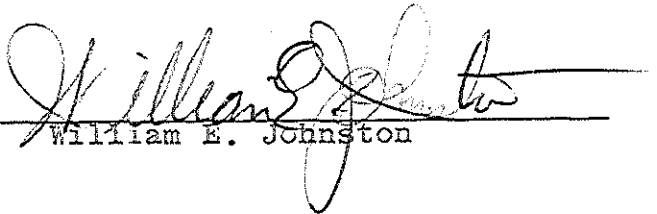
) IN THE CIRCUIT COURT OF  
)  
)  
) BALDWIN COUNTY, ALABAMA  
)  
)  
) AT LAW  
)  
) NO. 7633  
)

Comes the Defendant and as answer to the complaint

says; not guilty.

JOHNSTON, JOHNSTON & NETTLES  
Attorneys for Defendant

By

  
William E. Johnston

FILED

AUG 9 1937

ALICE I. DUCK, CLERK  
REGISTER