96

N. W. DEAN)
) IN THE CIRCUIT COURT OF BALDWIN COUNTY,
VS.)
T. J. APLIN) ALABAMA. LAW SIDE.

MOTION FOR NEW TRIAL.

May 21st., 1935. - The motion for new trial in the above styled cause is ordered continued until June 1st., 1935.

F. W. Hare
Circuit Judge.

June 1st., 1935. - It it ordered that the motion for a new trial heretofore filed in this case and regularly continued until this date, be and the same hereby is, overruled and denied, and the defendant excepts.

F. W. Hare
Circuit Judge.

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RECORDED

M. W. Deans

vs

T. J. Asbill

Motion for new Trial — Order Overruling

Filed June 4th 1935

Robt L Welch

Clerk

N. W. Dean
vs
T. J. Aplin
} Circuit Court, Baldwin Co. Ala.

The motion for new trial in above styled case is set for hearing in Monroeville, Ala. on Tuesday, May 21st 1935, and said motion is ordered continued to said date -

The Clerk will notify attorneys for the parties -

This April 3rd 1935 -

F. W. Hare
Judge

14 95

Dean
Ty
Apeir

Order of
Court

Filed · May 4, 1935
Robert S. Dueck
Clerk

CITATION OF APPEAL

Moore Ptg. Co.

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 Second Monday in April 1935 in a certain cause in said Court wherein N. W. Dean Plaintiff, and T.J.Aplin Defendant, a judgment was rendered against said T.J.Aplin in the Sum of $2,500.00---------- to reverse which Judgment the said T.J.Aplin has on this day applied for and obtained from this office an APPEAL, returnable to the Fall Term of our Supreme Court of the State of Alabama, to be held at Montgomery, on the 1st day of October, 1935 next, and the necessary bond having been given by the said T.J.Aplin with United States Fidelity & Guaranty Co., sureties,

Now, You Are Hereby Commanded, without delay, to cite the said ~~BEEBE & HALL~~ N.W.Dean, or BEEBE & HALL, attorney s, to appear at the Fall Term of our said Supreme Court, to defend against the said Appeal, if they think proper.

WITNESS, ~~T.W.Richerson~~ Robert S. Duck, Clerk of the Circuit Court of said County, this 9th day of October, A. D., 1935

Attest:

Robert S. Duck Clerk.

Executed this
10/9/35 by serving
a copy of the
within notice on
W. C. Beebe
M Moorehead
Sheriff

CIRCUIT COURT

BALDWIN COUNTY, ALA.

N. W. Dean

vs. } Citation in Appeal

T. J. Aplin,

Issued 9th day of October 1935

Moore Ptg. Co., Bay Minette

N. W. DEAN,
Plaintiff,

-vs-

T. J. APLIN,
Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

We, T. J. Aplin, and the undersigned as surety, hereby acknowledge ourselves as security, for all costs of appeal taken by the defendant, T. J. Aplin, from the judgment rendered against the said T. J. Aplin in favor of N. W. Dean, in the Circuit Court of Baldwin County, Alabama, on the 13th day of April, 1935, to the Supreme Court of the State of Alabama.

This 17th day of September, 1935.

T. J. Aplin

UNITED STATES FIDELITY & GUARANTY CO.

By E. W. PORTER, ATTORNEY-IN-FACT

Taken and approved this the

9th day of October, 1935.

Robert L. Duck
Clerk of the Circuit Court,
Baldwin County, Alabama.

19

19

Filed this 9 day Oct 1934

Peter S. Duel

Clerk-Register

STATE OF ALABAMA)
BALDWIN COUNTY.)

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summons T. J. APLIN to appear within thirty (30) days from the service of this writ in the Circuit Court, to be held in said County at the place of holding same, then and there to answer the Complaint of N. W. DEAN.

Witness my hand this the 15 day of December, 1934.

Clerk.

N. W. DEAN, Plaintiff, VS. T. J. APLIN, Defendant.	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA, AT LAW.

ONE:

The Plaintiff claims of the Defendant the sum of TEN THOUSAND ($10,000.00) DOLLARS, that on, to-wit, November 28th, 1934, the Defendant so negligently operated an automobile which he was then and there driving along the Bay Minette-Tensaw public road, in Baldwin County, Alabama, at a place about one-half mile North of Stockton Post Office, as to cause it to run into, or collide with an automobile in which the Plaintiff was riding and as a proximate result thereof the Plaintiff was seriously injured as follows, to-wit:

His right arm broken in two places, his right hand broken, mangled and crushed, his hip crushed, his rib broken, and his body otherwise mangled and/or bruised, that he was caused to suffer great physical pain and mental anguish, and to incur doctor and hospital bills, and other expenses; that he was caused a loss of time from his work and his earning capacity was impaired.

Plaintiff avers that his injuries were proximately

caused by the negligence of the Defendant in and about the management or operation of the said automobile he was then and there driving.

TWO:

Plaintiff claims of the Defendant the further sum of TEN THOUSAND ($10,000.00) DOLLARS, for on, to-wit, November 28th, 1934, he was riding as a passenger in an automobile owned by one W. V. Phillips and operated by Jack Phillips, on and along the Bay Minette-Tensaw public road, in Baldwin County, Alabama, at a point about one-half mile North of the Stockton Post Office, on said road; that at said time and place the Defendant who was operating or driving his automobile in an opposite direction on said road negligently ran or operated his said automobile as to cause it to run into or collide with the automobile in which the Plaintiff was riding and as a proximate result thereof the Plaintiff was serious injured, to-wit:

His right arm broken in two places, his right hand broken, mangled and crushed, his hip crushed, his rib broken, and his body otherwise mangled and/or bruised; that he was caused to suffer great physical pain and mental anguish, and to incur doctor and hospital bills, and other expenses. that he was caused to lose time from his work and his earning capacity was impaired

The Plaintiff avers that his injuries and damages were proximately caused by the negligence of the Defendant in and about the management and operation of his said automobile at said time.

Beebe & Hare
Attorneys for Plaintiff.

Plaintiff demands a trial by Jury.

Beebe & Hare
Attorneys for Plaintiff.

V.

RECORDED
Duck

Executed by Serving
a Copy of the within
Summons & Complaint
on T J Aplin
This Dec 28- 1934

L M Sawyer
Sheriff

We the jury find
for the Plaintiff
and Assess the
damage at
Two Hundred & Dollars
$200.00
J E Taylor
Foreman

Docket Page 96

RECORDED
Duck

N. W. DEAN,

Plaintiff,

VS.

T. J. APLIN,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW.

SUMMONS AND COMPLAINT.

Filed this the 13 day of
Dec., 1934.
By C. Stone
Clerk.

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 1935-6

To the Clerk of the Circuit Court of

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

J. J. Aplin, Appellant,

and

N. W. Dean, Appellee,

wherein by said Court, at the ~~Term~~ Term, 192~, 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 by our Supreme Court on the 19th day of December, 1935, that said judgment of said Court be reversed and annulled, and the cause remanded to said court for further proceedings therein; and that it was further considered that the appellee pay

the costs accruing on said appeal in this Court and in the Court below

Witness, Robert F. Ligon, Clerk of the Supreme Court of Alabama, at the Capitol, this the 19th day of December, 1935

Robt. F. Ligon

Clerk of the Supreme Court of Alabama.

WILSON PTG. CO. MONTGOMERY

96

Duck
RECORDED
2-379

THE SUPREME COURT OF ALABAMA

October Term, 1935-6

1st Div., No. 899

J. J. Aplin

Appellant,

v.

H. W. Dean

Appellee.

From Baldwin Circuit Court.

CERTIFICATE OF REVERSAL

The State of Alabama, Baldwin County. } Filed

this 30 day of Dec 1935.

Peters & Duck

Clerk.

WILSON PTG. CO. MONTGOMERY

THE STATE OF ALABAMA -- JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1935-36.

1 Div. 899.

T. J. Aplin

v.

W. W. Dean,

Appeal from Baldwin Circuit Court.

KNIGHT, Justice.

Action by W. W. Dean, appellee here, to recover damages for personal injuries sustained by him in a collision between a truck driven by the defendant, appellant, and a truck driven by one Jack Phillips, and in which last named truck the plaintiff was riding as a passenger.

The accident occurred at or near Stockton, in Baldwin County, on November 28, 1934, at an early hour in the morning. The complaint avers that the accident occurred "on the Bay Minette-Tensaw public road, at a place about one-half mile north of Stockton post-office."

We call attention to this averment of the complaint, for the reason that the defendant requested the general affirmative charge, predicated, as here insisted, upon the failure of plaintiff to prove that the road upon which the accident occurred was one of the public highways of the State, or that it was, in fact, the Bay-Minette-Tensaw public road. It will be noted, however, that, if there was any variance between the averment of the complaint, in this regard, and the proof submitted, no such variance was suggested to the trial court so far as the bill of exceptions discloses. That the accident occurred upon a public highway in Baldwin County, the evidence leaves no room to doubt. That it occurred within a very short distance of Stockton, is also shown by the evidence. One witness, W. E. Richardson described the road as the main Stockton-Tensaw highway, and it ran by or through Stockton to Bay-Minette.

The evidence tended to show that the collision was the result of negligence on the part of the defendant, and also to show that the driver of the car, in which plaintiff was riding, was also negligent in handling his car just at the time of, or immediately preceding the accident, and finally that the collision was the result of the combined negligence of the two drivers. That if the driver of the car in which plaintiff was riding was guilty of any negligence, that such negligence concurred and coalesced with the negligence of defendant and the negligence of the two drivers thus concurring at the same moment of time proximately caused plaintiff's injury. The evidence was such that the jury was warranted in drawing the above conclusion.

That the plaintiff was a guest only in the Phillips' car is not controverted.

It is first insisted that the court committed error to reversal in sustaining plaintiff's demurrer to defendant's pleas of contributory negligence, numbered 2, 3 and 5. This contention cannot be sustained for more than one reason. First, there is no judgment entry sustaining the demurrers. All that the record shows with reference to any action of the court on these pleas is what purports to be "a docket entry." We quote this in full: "Docket sheet. The docket sheet in the above styled cause shows the following entry: to-wit: 2/28/23. Demurrer to complaint overruled. Demurrers sustained to pleas 2 and 3 and 5. Overruled as to plea 4." This is not a judgment of the court upon the demurrer, but a mere direction to the clerk to enter the proper judgment, which was not done.

In the next place, the defendant, under plea 4, had the full benefit of all matters of defense available to him under pleas 2, 3 and 5.

There is no merit in defendant's eighth assignment of error. The evidence was sufficient to authorize the jury to find that the accident occurred upon a public highway in Baldwin County, within a half mile of Stockton, that this public highway ran through Stockton to Bay-Minette. One of the witnesses called it the Stockton-Tensaw Highway. At most, the omission of proof, in this respect, presented only a question of variance, capable of being supplied by further evidence identifying the highway. The variance, if any in fact, was not called to the trial court's attention, and the court will not be put in error for refusing to give the general affirmative charge for defendant based upon this supposed variance. - Rule 35.

Charge 6, requested by the defendant, was refused without error. If for no other reason, the charge was fully covered by the court in its oral charge to the jury.

The general rule is that it is no defence, in actions for injuries resulting from negligence, that the negligence of third persons contributed to cause the injury to the plaintiff, if the negligence of the defendant was an efficient cause, without which the injury would not have occurred. Stated differently, where a defendant is guilty of negligence, which causes an injury, and the plaintiff is free from negligence contributing thereto, the fact that the negligence of a third person also contributed, does not relieve the defendant from liability for his negligence. - 22 R. C. L. section 16, pp. 128-9.

Causes are concurrent when they act contemporaneously to produce a given result. - Pollard v. Oklahoma City R. Co., 36 Okla.86, 128 Pac. 300, Ann. Cas. 1915-A 140; Herr v. Lehman, 149 Pa. St. 222, 24 Atl. 207, 34 A. S. R. 603, 16 L. R. A. 106.

We fully recognize the rule stated in Garrett v. Louisville & Nashville R. R. Co., 196 Ala. 52, 71 So. 685, that: "The law, in its practical administration in cases of this kind, regards only proximate or immediate, and not remote, causes, and, in ascertaining which is proximate and which remote, refuses to indulge in metaphysical niceties. Where, in the sequence of events, between the original default and the final mischief, an entirely independent and unrelated cause intervenes, and is of itself sufficient to stand as the cause of the mischief, the second cause is ordinarily regarded as the proximate cause and the other as the remote cause." - Atchison, etc., Ry. Co. v. Calhoun, 213 U. S. 1, 29 Sup.Ct. 321, 53 L. ed. 671; Milwaukee, etc., R. Co. v. Kellogg, 94 U. S. 469, 24 L. ed. 256.

But it seems to be firmly settled in this jurisdiction that if one is guilty of negligence and this negligence concurred or coalesced with the negligence of another, and the two combine to produce a given result, each is liable for the damages, and the negligence of each will be deemed the proximate cause of the injury producing the damages. - Alabama Power Co. v. Bass, 218 Ala. 586, 119 So. 628; Eaton v. Boston, etc., R. Co., 11 Allen (Mass.) 500, 87 Am. Dec. 730; Hood v. Doral, 200 Ala. 607, 76 So. 965.

In such a case the intervener does not act as a "non-conductor and insulates the negligence" of the first actor, as is the case where two distinct, successive causes, unrelated in operation, have contributed to some extent to an injury.

Under the evidence it was open to the jury to find that the negligence of the defendant and of the driver of the car, in which plaintiff was riding, if in fact the latter was guilty of any negligence, combined and coalesced at the moment of time when the injury occurred, and this conjoint negligence, continuously operative, proximately caused plaintiff's injury.

Therefore, it would follow that defendant was not entitled to have the jury instructed in the terms of any of its refused charges 7, 8, 9, 10, 11 and 14.

Charge E was refused without error. This charge not only singles out facts, but is invasive of the province of the jury.

There was no error in permitting the plaintiff to prove the amount of the hospital bill. However, before the jury could award him any amount to cover this expenditure, the plaintiff had to show that the bill or charge was reasonable. The plaintiff could not prove both the charge and the reasonableness of the same at one and the same time. True he must prove both. The natural order is to prove what the charge was, and then prove whether or not it was reasonable. If after proving the amount of the charge, the plaintiff should fail to offer any evidence tending to show hospitalization was necessary, and the charge to be reasonable, the defendant should either move for the exclusion of the testimony as to the charge or bill, at the close of the evidence, or should ask for an affirmative instruction against recovery in that behalf, as in other cases of failure of proof. - Birmingham Amusement Co. Vs. Norris, 212 Ala. 138, 112 So. 653; Birmingham Ry. Lt. & P. Co. Vs. Humphries, 172 Ala. 495, 55 So. 307.

The complaint claimed, by way of special damages, that plaintiff was caused "to incur doctor and hospital bills, and other expenses." By proper proof plaintiff could recover such reasonable sums as he was caused to incur for such services, but there is no hint in the complaint that he would seek to recover for physician's services in the future.

Therefore, it is our opinion the court committed reversible error in overruling the defendant's objection to the following question propounded by the plaintiff to Dr. Vaneaza "What do you consider a reasonable charge for services in attending him from now until there is a recovery as much as it is possible for him to recover, charges of necessary treatment." - Central of Georgia Ry. Co. v. McNab, 150 Ala. 332, 43 So. 222; Birmingham Ry. Lt. & P. Co. v. Humphries, supra.

To this question the witness answered: "About $150.00. Of course, if I have to make trips like this often it will be more."

Whether, in any event, plaintiff would be allowed to recover for amounts that might be incurred in doctor's bills after the trial, we need not now determine.

We are also of the opinion that the court committed error in overruling defendant's objection to the following question asked plaintiff by his counsel: "About what was your income from your farming and turpentine operations per year before the accident?" This was not the proper way to prove loss of earning capacity, or what that loss amounted to in dollars and cents.

Nor can we see upon what theory of the case an answer to the following question could have been admissible: "What is the condition of your business?"

Inasmuch as the cause must be reversed for the errors pointed out, it is unnecessary to pass upon the defendant's motion for a new trial.

For the errors pointed out the judgment must be reversed and the cause remanded.

Reversed and remanded.

Thomas, Bouldin and Brown, JJ., concur.

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1st Div., No. 899,

T. J. Aplin, Appellant,

vs.

N. W. Dean, Appellee,

From Baldwin Circuit Court.

The State of Alabama,
City and County of Montgomery.

I, Robert F. Ligon, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages, numbered from one to 7 inclusive, contain a full, true and correct copy of the opinion of said Supreme Court in the above stated cause, as the same appears and remains of record and on file in this office.

Witness, Robert F. Ligon, Clerk of the Supreme Court of Alabama, at the Capitol, this the 19th day of December, 1935

Robt F. Ligon
Clerk of the Supreme Court of Alabama.

The Supreme Court of Alabama

October Term, 19 35-6

1st Div., No. 899,

T. J. Aplin

Appellant,

vs.

N. W. Dean

Appellee.

From Baldwin Circuit Court.

COPY OF OPINION

BROWN PRINTING CO., MONTGOMERY, 1929

Montgomery, Ala., June 18 1936.

Mr. Hon. Robt S. Duck, Clk Circuit Court Dr.

per Baldwin County

Bay Minette, Alabama,

To ROBERT F. LIGON,

Clerk of the Supreme Court of Alabama,

Montgomery, Ala.

BROWN PRINTING CO., MONTGOMERY, ALA., 1934

193

To Costs of Appeal in Supreme Court,

1st Div. No. 899

J. J. Aplin, *Appellant,*

vs.

W. W. Dean, *Appellee,*

From Baldwin *Circuit Court*

By Items:

Docketing Cause		$ .30
Entering Attorney	(.30 ea.)	.60
Appeal or Writ of Error		.50
Order		.50
Continuance	(.25)	
Judgment		1.00
Mandate or Certificate to Court Below		2.00
Writ of Fieri Facias	(1.00)	1.00
Taxing cost, copying, and entering satisfaction		.85
Fee in lieu of State Tax		4.00
Library fee		5.00
Sheriff's fee	(1.50)	1.50

$ 17 25

Received payment,

Robt F. Ligon

Clerk of Supreme Court.

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Per

N. W. DEAN, Plaintiff, vs. T. J. ALPIN, Defendant. : IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA.

Now comes the defendant in the above cause and for pleas to Counts One and Two, each separately and severally, says as follows:

1st. Not guilty.

2nd. That plaintiff was guilty of negligence which proximately contributed to his alleged injuries that he knew and saw that the driver of the truck in which he was riding was driving on his left, and the wrong side of the road, and that said truck was bound to collide with defendant's truck, and which was coming directly toward the truck in which plaintiff was riding, and negligently failed to do anything toward making the driver of the truck in which he was riding get back on his right side of said road or to avoid the alleged collision.

3rd. For further plea, the defendant says that the driver of the truck in which plaintiff was riding was guilty of negligence which proximately contributed to plaintiff's alleged injuries in that he was driving on his left hand side of the road, knowing and seeing that the defendant's truck was meeting him, and that said defendant's truck had the right of way on said side of the road.

4th. For further plea, the defendant says that the plaintiff was guilty of negligence which proximately contributed to his alleged injuries in that he knew that the truck he was riding in was being driven on the left and wrong side of the road, and that the truck which defendant was driving was meeting them and that it had the right of way on said side of the road, and that notwithstanding the knowledge on the part of the plaintiff, he negligently failed to do anything toward having the driver to turn to his right

side of the road, or do anything to avert and avoid his alleged injuries, although he had ample time to do so after he knew, or by the exercise of reasonable care and diligence could have known, that a collision was imminent.

5th. For further plea the defendant says that the plaintiff was guilty of contributory begligence, which proximately contributed to his injuries in that he knew, or by the exercise of reasonable care and foresight could have known, that the driver of the truck in which he was riding was going or traveling on the left and wrong side of the highway, and that the plaintiff's truck was meeting them on said side of the said highway, and which was defendant's right side of the road; that plaintiff saw and knew that there was going to be a collision, and that he had ample time and space within which to save himself from any injuries by reason of such collision, but that he negligently failed to do anything to avoid the collision or save himself from said alleged injuries, which said negligence on his part was the proximate cause of his alleged damages.

Wesson & Dorn

Gordon Davidson & Young

ATTORNEYS FOR DEFENDANT

916

[redacted]
Duck

Filed
February 28 1931
Robert L. Duck
Clerk

N. W. Dean, Plaintiff	I	In the Circuit Court
vs.	I	Baldwin County, Alabama
T. J. Alpin, Defendant	I	At Law

Comes the defendant in the above styled cause and for answer to the complaint filed therein, demurs to the complaint and to each and every count thereof separately and severally on the following separate and several grounds:

1. The complaint does not state a cause of action.

Comes the defendant in the above styled cause and for answer to Count~~X~~ One of the complaint demurs thereto on the following grounds:

1. Count One Does not state a cause of action.

Comes the defendant in the above styled cause and for answer to Count Two of the complaint demurs thereto on the following grounds:

1. Count Two does not state a cause of action.

William C. Dean

Powell & Stanley

Attorneys for Defendant

176

N. W. DEAN, PLAINTIFF

VS.

T. J. ALPIN, DEFENDANT

DEMURRERS FILED BY DEFENDANT

Filed January 31-1935

Robert L Beech
Clerk

POWELL & HAMILTON
ATTORNEYS
GREENVILLE, ALABAMA

CIVIL EXECUTION — Moore Printing Co., Bay Minette

The State of Alabama
Baldwin County

CIRCUIT COURT

No. 96 Fall Term, 1935

To Any Sheriff of the State of Alabama--Greeting:

You are hereby commanded, That of the goods and chattels, lands and tenements of _____

N W Dean. Plaintiff. ~~xx Defendants~~,

you cause to be made the sum of _____ Dollars,

which T J Aplin. ~~Defendant~~ Plaintiffs

recovered of him on the 19th day of December. 1935 by

the Judgment of our ~~Circuit~~ Supreme Court, held for the County of Baldwin, besides the sum of _____

one hundred fifty three and 85/ 100---------- Dollars

costs of suit, and have the same to render to the ~~said~~ Robert S Duck.

and make return of this Writ and the execution thereof, according to law.

Interest from _____, 193__, to date of collection.

Witness my hand, this 16th day of January. 1936

_____ Clerk

CLERK'S FEES		AMOUNT
For every Summons & Complaint	$1.25	1 25
Each copy thereof s	30	30
Entering a Sheriff's Returns	20	20
Docketing	25	25
Entering Appearance	20	20
Filings s 2 d 8	10	80
Every order made in Court	30	
Copy thereof	25	
Every Trial with or without Jury d	75	75
Entering up Judgment or copy thereof	30	30
Issuing Execution d	50	50
Docketing Execution d	25	25
Entering Return on Execution d	20	20
Issuing Subpoenas d	30	30
Administering Oath	25	
Issuing each Attachment, taking bond	1.00	
Filing Attachment	10	
Each Summons for Garnishee	50	
Each Copy	50	
Notice to Deft. in Garnishee on Summons and copy, per 100 words	20	
Commissions to take Depositions or Copy	75	
Order to Execute Writ of Inquiry	30	
Copy of Interrogatories. 15c per hundred words or	50	6 40
Filing each Deposition and endorsing same	20	
Final Record, per hundred words	15	
Every Certificate, witness d	50	3 75
Taking Bond not Otherwise Provided for d	75	75
22 Witness Certificates d	25	5 50
Continuance	10	
Certificate of Judgment d	50	50
Order of Publication	1.00	
Record supreme court d		60 00

SHERIFF'S FEES		AMOUNT
For Levying an Attachment	$3.00	
Entering and Returning Attachment	25	
Summoning Garnishee	1.50	
Serving Summons on ~~Writ~~ Compts	1.50	1 50
Serving Notice Sci. Fa. Notice, etc.	65	
Serving 22 Subpoenas W	65	14 60
Empanelling Jury W	75	75
Entering and Returning Execution W	25	
Collecting Cost Execution W	1.50	
Executing a Writ of Possession	2.50	
Taking and Approving Bonds	1.00	
Commissions		1685
Sheriff's Commission for Property Sold under Attachment		
Seizing Personal Property on Writ of Detinue	3.00	

RECAPITULATION

Judgment for	xxxx for $xx	
Interest from		
Damages		
Clerk's Fees		81 40
Sheriff's Fees		
Justice of Peace Fees		
Witness Fees in Justice of Peace Court		
Constable's Fees		
Commissioner's Fees		
Printer's Fees		
Witness Fee in Circuit Court		47 10
Former Clerk's Fee		
Stenographer's Fee	$5.00	5 00
Trial Tax	$3.00	3 00
Cost in supreme court		17 25

1860
1685
175

8190

1710

96 1-11 1149 119

No._____

THE STATE OF ALABAMA,
Baldwin County

CIRCUIT COURT

_____

_____ Plaintiffs

vs.

_____

_____ Defendants

CIVIL EXECUTION

Judgment for _____ for $_____

Interest from _____ 193__

to _____ 193__ $_____

Damages _____ $_____

Costs _____ $_____

Total - - - - $_____

Civil Fee Book _____ Page _____

Execution Docket _____ Page _____

Filed _____ 193__

_____ Clerk.

_____ Plaintiff's Attorney.

_____ Defendant's Attorney.

COLLECT COST FROM

_____

THE STATE OF ALABAMA,
Baldwin County

I hereby certify that the within Judgment and Costs in this case are correct, and there was a waiver of exemption as to personal property under the Constitution and Laws of Alabama.

This _____ day of _____ 193__

_____ Clerk.

RECEIVED IN OFFICE

_____ 193__

_____ Sheriff

Sheriff's Execution Docket, Page _____

Sheriff's Fee Book, Page _____

Clerk's CivilFee Book, Page _____

Clerk's Civil Execution Docket, Page _____

The State of Alabama
Baldwin County

By virtue of the within execution, I have, at _____ o'clock, _____ M., this _____ day of _____ 193__, levied _____

N. W. Dean
Plaintiff
v
J. J. Aplin
} In the Circuit Court of Baldwin County, at Law.

And now Comes the Defendant and demurs to plea 2nd 3rd 4th and 5th and to each separately and severally, and for grounds thereof says:

1: That said plea alleges no facts showing negligence on part of Plaintiff

2: That said plea shows no facts charging the Plaintiff with the negligence of the driver of the truck in which Plaintiff was riding.

3: That Plaintiff is not chargeable with the negligence of the driver of the truck with whom he was riding

4: That said plea alleges no facts showing a duty on part of Plaintiff to do anything toward management of truck in which he was riding

5: That said plea setsout no facts which Constitute a defense to Plaintiff's cause of action

6: That said allegation that Plaintiff could have saved himself is the conclusion of Pleader

7: That the allegation that Plaintiff to do anything toward seeing driver turn to his right is conclusion of Pleader

Burke & Hall
Attys for Plaintiff

4

9 [redacted]
Clerk

Feb
February 28 1935,
Robert Speed
Clerk

16. The law requires that the driver of a truck ~~operated by him~~ shall keep such truck under such control as that a reasonably prudent person would do under similar circumstances, and if you are reasonably satisfied from the evidence in this case that the driver of the defendant's truck did not keep the truck under such control as was the proximate cause of plaintiff's injuries, then your verdict should be for the defendant.

Refused
G. W. Shore
Judge

10

I charge you, Gentlemen, that if you are reasonably satisfied from the evidence in this case, that Jack Phillips was driving his truck under such conditions and at such speed that he did not have it under control, and that then and there the proximate cause, plaintiff injuries then you should return a verdict for the defendant in this case.

Refused
G.M.H.
Judge

The court charges the jury that is you are reasonably satisfied by a preponderance of the evidence that the plaintiff was riding on a truck which was in a collision with the truck operated by the defendant and that the driver of the truck on which the plaintiff was riding negligently turned to the wrong side of the road and that the plaintiff knew and saw the driver of the truck on which he was riding negligently turning to the wrong side of the road and plaintiff did not give warning or protest to such negligent turning to the wrong side of the road but continued to ride and if plaintiff did not exercise common prudence and ordinary care for his own safety as a ordinarily careful and prudent person would have exercised under like circumstances and if you are reasonably satisfied by a preponderance of the evidence that the failure of plaintiff to exercise common prudence and ordinary care for his own safety in failing to warn or protest against the negligent turning to the wrong side of the road, proximately contributed to his injuries, then you cannot find for the plaintiff and your verdict should be for the defendant.

N. W. DEAN, Plaintiff, -vs- T. J. APLIN, Defendant.	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA. AT LAW.

Now comes the defendant in the above styled cause and moves this Honorable Court to set aside the verdict and judgment thereon heretofore rendered on April 13th, 1935, and grant the defendant a new trial and assigns the following separate and several grounds: to-wit

1. Because the verdict for damage is excessive.

2. That the verdict is not sustained by the great preponderance of the evidence.

3. That the verdict is contrary to law.

4. That the verdict is contrary to the law and the evidence in the case.

5. Because the court erred in refusing to give charge number one as requested by the defendant, which reads as follows:

> "The Court Charges the Jury that if they believe the evidence in this case. they should return a verdict for the Defendant."

6. Because the court erred in refusing to give Charge Number Six as requested by the defendant, which reads as follows:

> "The Court Charges you that it was the duty of the Plaintiff to exercise due care to conserve his own safety, under all the circumstances: and if you are reasonably satisfied from the evidence that Plaintiff's negligent failure to exercise such care, as alleged in the plea of contributory negligence, proximately contributed to Plaintiff's damages and injury, you must find for the Defendant."

7. Because the court erred in refusing to give Charge Number Seven as requested by the Defendant, which reads as follows:

> "The Court charges the jury that if the negligence of the driver of the truck in which the Plaintiff was riding was the proximate cause of the Plaintiff's damages as alleged in the Complaint, then the defendant would not be liable.

8. Because the court erred in refusing to give

Charge Number Eight as requested by the Defendant, which reads as follows:

> "I charge you, Gentlemen, that if you are reasonably satisfied from the evidence in this case, that the negligence of the driver of the truck in which Plaintiff was riding was the proximate cause of Plaintiff's damages and injuries, then you should return a verdict in favor of the Defendant."

9. Because the court erred in refusing to give Charge Number Nine as requested by the defendant, which reads as follows:

> "I charge you, Gentlemen, that if you are reasonably satisfied from all of the evidence in this case that the Phillips, who was driving the truck in which Plaintiff was riding, was unable to stop said truck on account of the speed it was making or the load it was carrying, and that this was the proximate cause of Plaintiff's injuries, then you should find for the Defendant in this case."

10. Because the court erred in refusing to give Charge Number Ten as requested by the defendant, which reads as follows:

> "I charge you, Gentlemen, that if you are reasonably satisfied from the evidence in this case, that Jack Phillips was driving his truck under such conditions and at such speed that he did not have it under control, and that this was the proximate cause of Plaintiff's injuries, then you should return a verdict for the defendant in this case."

11. Because the court erred in refusing to give Charge Number Eleven as requested by the defendant, which reads as follows:

> "I charge you, Gentlemen, that if you believe the evidence in this case, you should not find for the Plaintiff under Count One of the Complaint."

12. Because the court erred in refusing to give Charge Number Twelve as requested by the defendant, which reads as follows:

> "I charge you, Gentlemen, that if you believe the evidence in this case, you should not find for the Plaintiff under Count Two of the Complaint."

13. Because the court erred in refusing to give Charge Number Thirteen as requested by the defendant, which reads as follows:

> "I charge you, Gentlemen, that if you are reasonably satisfied from all of the evidence in this case, that the negligence of the driver of the truck in which the Plaintiff was riding was the proximate cause of

Plaintiff's injuries, then you should return your verdict in favor of the Defendant."

14. Because the court erred in refusing to give Charge Number Fourteen as requested by the defendant, which reads as follows:

"The law requires that the Driver of a truck must keep said truck under such control as that a reasonable prudent person would do under similar circumstances, and if you are reasonably satisfied from all of the evidence in the case, that the driver of the Phillips truck did not have his truck under such control, and this was the proximate cause of plaintiff's injuries, then your verdict should be for the defendant."

Thomas C Gordon

Gordon, Edington & Leigh
ATTORNEYS FOR DEFENDANT.

13

94

Deck.

Deane

vs

Dyslin

Motion for new trial

Filed May 3rd, 1935
Robert S. Deck
Clerk

13

#96

[redacted] Duck.

Dean

vs

Aplin

Motion for new trial

Filed May 3rd, 1935
Robert S. Duck
Clerk –

(96)

ORAL CHARGE OF THE COURT:

GENTLEMEN OF THE JURY:

The plaintiff, Mr. Dean, is suing the defendant, Mr. Aplin, seeking the recovery of damages in the amount of Ten Thousand Dollars for the alleged negligent operation of a truck by the defendant on a public highway in this County, and as a proximate result of such negligence on the part of the defendant, certain injuries were received by the plaintiff. I say that is the contention of the plaintiff in this case, and he alleges in his complaint, and contends in the evidence that he was a guest in the car of another at the time. That Mr. Phillips was his host in driving the car which collided with that of the defendant, Mr. Aplin, and that he, the plaintiff, had no control over ~~it~~ the management of the car at the time.

Now, in such cases the law says that the guest is not chargeable with any negligence on the part of the driver with whom he is riding, and who is his host, but the law does place upon the guest, it does place upon Mr. Dean in this instance, the right and duty to keep a look out and to warn the driver of the car in which he is riding at the time of any danger that is approaching, so as to enable the driver the better to avoid the accident and damage to the occupants of the car.

It is the contention of the defendant in this case, and it is his plea and he contends that ~~xxxxxxxxxxxx~~ the evidence tends to show that Mr. Dean although he was a guest in the car and is not chargeable with any negligence on the part of his host, Mr. Phillips, that he failed to give warning and to do what he could to enable Mr. Phillips to avoid the accident. Now, that is the issue before you.

The burden is on the plaintiff to reasonably satisfy you from the evidence of the negligent conduct and operation

of the car on the part of the defendant before he can recover, and he must further reasonably satisfy you from the evidence that his injuries were the proximate consequence of such negligence on the part of Mr. Aplin. If he has reasonably satisfied you from the evidence that he was injured on the occasion testified about, and that those injuries were approximately the result, or the proximate consequence of negligence on the part of Mr. Aplin, then he would be entitled to recover, provided he was not himself negligent in failing to give warning of the approaching danger. Those are the issues, as I say, for you to consider.

In considering and weighing the testimony in the case you may consider any interest any witness may have in the result of the suit, any relationship he may bear to any party, and if so related, whether that relationship had colored his testimony in anyway. You may consider whether or not any witness has shown himself to be what we call a swift witness, whether he has shown bias for or against either party in the case, his general appearance on the stand, his apparent effort to tell the truth, and his intelligence and general manner of testifying. Weigh all of those things in determining what credibility you will give any witness in the case.

In his complaint the plaintiff claims damages for mental and physical pain, for permanent disability, and for diminished earning capacity by reason of the accident. And in weighing that testimony so far as mental pain and physical pain and anguish is concerned there is no yard stick by which you can measure that, except your own godd common sense and judgment in the case, not to exceed the amount claimed in the complaint. It is for you to say whether or not the evidence shows the ~~defendant~~ plaintiff has less earning capacity than before the accident, and what the extent of it is, and if you can to arrive at a fair statement of how much he is damaged in that respect, if you find that he has been so damaged.

Now, gentlemen, the whole case as I see it, and so far as the law is concerned, is simple, and it is for the jury to consider and weigh the evidence and make upx your minds as to the true facts in the case. Was this defendant negligent in the operation of his truck on that occasion ? Are you reasonably satisfied of that from a preponderance of the evidence, and, if so, did that negligent conduct on his part proximately result in injury to this plaintiff, and did the plaintiff do or act under the circumstanes to warn the driver of the truck in which he was riding ofxthe approaching danger ? Those are matters for you to decide, and if you are reasonably satisfied from the evidence that the plaintiff should recover, the form of your verdict would be: "We, the jury, find for the plaintiff and assess his damages at - so much, not over the amount claimed in the complaint, $10,000.00.

If you are not reasonably satisfied from the evidence that this defendant was negligent in the operation of his automobile on that occasion, and that such negligence caused the accident and caused the injuries to this plaintiff, then the defendant would be entitled to a verdict at your hands. And the same would be true if you are reasonably satisfied from the evidence that this plaintiff did not give warning in time, if he had time to give warning, so that the driver of the automobile in which he was riding could have taken steps to avoid the accident. In that event the form of your verdict would be: "We, the jury, find for the defendant."

Now, the law permits the parties to request written instructions of the law, and the parties in this case have asked a number of written statement of the law which are correct statements of the law, and which I give you as a part of the general charge of the Court:

(Reads Charges)

Now, gentlemen, parties have a right to the use of the

public roads with their trucks and automobiles, but each person so operating a truck or car on the public road owes to the other a duty to use ordinary care and prudence to avoid injury to another; that is to say, each person on the road should conduct himself with such care and skill and pridence as a man of ordinary care and prudence would under the circumstances, and if by reason of his failure to exercise such care and prudence injury results, that is actionable injury, and I again call your attention to the fact that this plaintiff cannot be charged with any negligence on the part of Mr. Phillips; but it is the contention of the defendant in this case that this plaintiff failed to do what he could to call the attention of Mr. Phillips to the danger, and that he had plenty of time to do it after realizing it himself, and that this ommission or failure on his part constitues negligence that would prevent him from a recovery in this case. And if you are reasonably satisfied of the existence of that fact then the plaintiff would not be entitled to recover. Whichever form your verdict takes let one of your number write it on the back of the complaint and sign it as foreman.

Dean

vs

Aplin

Oral charge of Court

Filed - May 27, 1935

Robert L. Duck

Clerk

Filed Judge Dept

D The court charges the jury that if they believe the evidence in the case, they should return a verdict for the defendant.

5 The court charges the jury that ... if you find from the evidence in this case that the plaintiff was guilty of contributory negligence which proximately contributed to his damages as alleged in the complaint, then your verdict should be for the defendant.

Respectfully
F. W. Hare
Judge

3 I charge you, Gentlemen, that actionable negligence consists in the neglect of the use of ordinary care and skill toward a person to whom the defendant owes the duty of observing care and skill, by which neglect the plaintiff has suffered damages.

Respectfully
F. W. Hare,
Judge

6 Refused
Gillmore Judge

The court charges the jury that if you are reasonably satisfied by a preponderance of the evidence that some hogs came out from the right hand side of the road going across the road when defendant's truck was in close proximity to same and that the defendant turned to his left in order to go around and avoid striking the hogs and that the defendant in doing so exercised reasonable care as an ordinarily prudent person would have exercised under like circumstances, then the defendant would not be guilty of any negligence.

4 I charge you Gentlemen, that negligence is the omission to do something which a reasonable man, - guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would not do.

Gillmore
Judge

Refused
Gillmore
Judge

12) I charge you, Gentlemen, that if you believe the evidence in this case, you should not find for the plaintiff under Count two of the complaint.

5 The court charges the jury that ... if you find from the evidence in this case that the plaintiff was guilty of contributory negligence which proximately contributed to his damages as alleged in the complaint, then your verdict should be for the defendant.

Yours
F. W. Hare
Judge

Trial Judge Refused

D The court charges the jury that if they believe the evidence in the case, they should return a verdict for the defendant.

2

3 I charge you, Gentlemen, that actionable negligence consists in the neglect of the use of ordinary care and skill toward a person to whom the defendant owes the duty of observing care and skill, by which neglect the plaintiff has suffered damages.

Yours
F. W. Hare,
Judge

8 I charge you, Gentlemen, that if you are reasonably satisfied from the evidence in this case, that the negligence of the driver of the truck in which plaintiff was riding was the proximate cause of plaintiff's damages and injuries, then you should return a verdict in favor of the defendant.

Refused
D.W. Hare
Judge

9 Refused D.W. Hare Judge

I charge you, Gentlemen, that if you are reasonably satisfied from all of the evidence in this case that the Phillips, who was driving the truck in which plaintiff was riding, was unable to stop said truck on account of the speed at which he was driving or the load he was carrying, and that this was the proximate cause of plaintiff's injuries ~~then you should find for~~ the defendant in this case.

6 The court charges you that it was the duty of the plaintiff to exercise due care to conserve his own safety, under all the circumstances; and if you are reasonably satisfied from the evidence that plaintiff's negligent failure to exercise such care, as alleged in the plea of contributory negligence, proximately contributed to plaintiff's damage and injury, you must find for the plaintiff.

Refused (assumes negligence)
D.W. Hare
Judge

Given 10
G.W. Hare Judge

(1) The Court charges the jury that to make the defendant guilty of negligence, they must be reasonably satisfied from the evidence that he did something which a reasonably prudent man, acting with reasonable prudence would not have done under the circumstances, or that he failed to do something which a reasonably prudent man, acting with reasonable prudence, would have done.

Refused
G.W. Hare
Judge

11

I charge you Gentlemen, that if you believe the evidence in this case you should not find for the plaintiff under count one of the complaint.

Refused
G.W. Hare
Judge

(7)

The Court charges the jury that if the negligence of the driver of the truck in which the plaintiff was riding was the proximate cause of the plaintiff's damages as alleged in the complaint, then the defendant would not be liable.

11

The Court charges the jury that if you believe the evidence in this case you should find the defendant not guilty

Refused
J.W. Hare
Judge

13

I charge you, Gentlemen, that if you are reasonably satisfied from the evidence in this case, that the negligence of the driver of the truck in which the plaintiff was riding was the proximate cause of plaintiffs injuries, then you should return your verdict in favor of the defendant.

Refused
J.W. Hare
Judge

B

The court charges the jury that if you are reasonably satisfied by a preponderance of the evidence that the plaintiff's negligence or his failure to exercise reasonable care proximately contributed to his injuries, he cannot recover and your verdict should be for the defendant.

Given
J.W. Hare
Judge

Refused H.M. Hare, Judge
10

I charge you Gentlemen of the jury that a person confronted with sudden emergency calling for quick action is not held to same correctness of judgment and action as if he had time and opportunity to consider fully and choose best means of escaping peril or preventing injury.

Refused H.M. Hare Judge
8

I charge you Gentlemen of the jury that the Defendant in turning sharply to the left to avoid hitting the hogs was negligent in colliding with the truck on which the Plaintiff was riding, coming from an opposite direction. I further charge you that if such negligence was the proximate cause of the in[illegible] ies to the Plaintiff, then your verdict should be for the Pl[illegible] tiff in this case.

Refused H.M. Hare Judge

I charge you Gentlemen of the jury that if you believe from the evidence in this case that the Defendant was operating his automobile truck along the left or wrong side of road, at the time of the accident, then he was guilty of negligence. I further charge you that if you believe from the evidence that such negligence was the proximate cause of the injuries to Plaintiff, then your verdict should be for the Plaintiff.

9

I charge you Gentlemen of the jury that the driver of the truck on which the Plaintiff was riding, under the evidence in this case, had the right to swerve from the right to the left side of the road if there appeared reasonable prospect of avoiding collision by doing so.

Refused H.M. Hare Judge

C

The court charges the jury that negligence on the part of the defendant is not to be conclusively assumed because of the mere fact that this accident occurred and the plaintiff sustained injuriss, and before the plaintiff can recover, he must reasonably satisfy you by a preponderance of the evidence that the defendant was guilty of negligence in the operation of his truck and that his injuries were sustained as a proximate result of such negligence.

Given
J.W. Hare
Judge

F

The court charges the jury that the burden of proof rests upon the plaintiff to reasonably satisfy you by a preponderance of the evidence that the defendant was guilty of negligence in the operation of his truck and that plaintiff's injuries were sustained as a proximate result of such negligence and if the plaintiff fails to meet the burden, the verdict should be for the defendant.

Given
J.W. Hare
Judge

d

Given
H.W. Hare
Judge

The court charges the jury that under the law there is no presumption of negligence on the part of the defendant and before the plaintiff can recover, the burden of proof is on the plaintiff to reasonably satisfy you by a preponderance of the evidence that the defendant was guilty of negligence in the operation of his truck and that plaintiff's injuries were sustained as a proximate result of such negligence.

Given
H.W. Hare
Judge

4

I charge you Gentlemen of the jury that the negligence of the driver of an automobile truck cannot be imputed to a passenger or guest having no control over its movement.

Given
H.W. Hare, Judge

Ref'd