

CLEARANCE C. DAW
PLAINTIFF

VS.

AUBREY EDGAR LOWERY
DEFENDANT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

Now comes the Defendant and moves the court to set aside the judgment heretofore rendered in this cause and grant him a new trial and as grounds for such motion, says:

1.

The verdict is contrary to law.

2.

The verdict is contrary to evidence in the case.

3.

The verdict is contrary to the law and the evidence.

4.

The Court erred in refusing to give written charge number 1, at the request of the Defendant, as follows: "I charge you Gentlemen of the jury that unless you are reasonably satisfied from the evidence that the Defendant did or omitted something on the occasion complained of which a reasonably prudent person similarly situate would not have done and this proximately caused damage to the Plaintiff, your verdict be for the Defendant!"

5.

The Court erred in refusing to give written charge number 2, at the request of the Defendant, as follows: "I charge you Gentlemen of the jury that if you believe from the evidence that the Plaintiff's damages were the proximate result of an accident, you should find for the defendant."

6.

The Court erred in refusing to give written charge number 6, at the request of the Defendant, as follows: "I charge you Gentlemen of the jury that if you believe from the evidence that the Plaintiff sustained his damages as the proximate result of a mere accident, it is your duty to return a verdict in favor of the defendant."

7.

The Court erred in refusing to give written charge number 10, at the request of the Defendant, as follows: "I charge you Gentlemen of the jury that if the defendant was suddenly put in peril without having time to consider all the circumstances, he is excusable for omitting some precaution or making an unwise choice under this disturbing influence, although if his mind had been clear he ought to have done otherwise."

8.

The Court erred in refusing to give written charge number 11, at the request of the Defendant, as follows: "I charge you Gentlemen of the jury that, where one, without fault on his part, is placed in a position of great mental stress or sudden emergency, the same degree of judgment and care is not required of him as is required of one who is acting under normal conditions. The test to be applied is whether or not the person in such a position did or attempted to do what a reasonably prudent person would have done under like circumstances. If, therefore, you find from the evidence in this case that the defendant, without fault on his part, was placed in a position of great mental stress or sudden emergency and while in such a position he did or attempted to do what any reasonably prudent person would have done under the same or similar circumstances you should find for the defendant."

9.

The Court erred in refusing to give written charge number 12, at the request of the Defendant, as follows: "I charge you Gentlemen of the jury that if you believe from the evidence that if the plaintiff after discovering the defendant in a place of peril, or by the use of reasonable diligence could have discovered the defendant in a place of peril in time to have avoided the collision, you should find for the defendant."

10.

The Court erred in refusing to give written charge number 13, at the request of the Defendant, as follows: "I charge you Gentlemen of the jury that if you believe from the evidence in this case that the Plaintiff after seeing the defendant in a position of imminent danger, or by the exercise of reasonable care could have seen the defendant in a position of imminent danger, in time to avoid the collision, and did nothing to avoid the collision, then you should find for the defendant."

11.

The Court erred in refusing to give written charge number A, at the request of the Defendant, as follows: "I charge you Gentlemen of the jury that if you believe the evidence in this case you should find for the defendant."

John Lee
Attorney for the Defendant

CLARENCE C. DAW

PLAINTIFF

VS.

AUBREY EDGAR LOWREY

DEFENDANT

FILED
NOV 12 1949
ALICE J. DUCK, Clerk

CLARENCE C. DAW

PLAINTIFF

VS

AUBREY EDGAR LOWERY

DEFENDANT

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 1223

Now comes the Defendant and demurs to the Plaintiff's complaint, and to each count thereof, separately and severally, says:

1.

That said count does not state a cause of action.

2.

That said count shows no duty owed by the Defendant to the Plaintiff.

3.

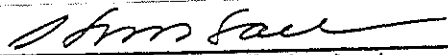
That said count does not set out how or in what manner the automobile of the Plaintiff's was injured.

4.

There is a misjoinder of causes of action in the same count.

5.

That said count alleges that the act rather than the injuries was willful and wanton.


Attorney for the Defendant.

CLARENCE C. DAW

PLAINTIFF

VS

AUBREY EDGAR LOWERY

DEFENDANT

FILED
OCT 29 1948
ALICE J. DUCK, Register

CLARENCE C. DAW

PLAINTIFF

VS.

AUBREY EDGAR LOWREY

DEFENDANT

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IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 1223

Now comes the Defendant and for answer to the Plaintiff's complaint, and to each count thereof, separately and severally says:

1.

That he is not guilty.

2.


That the Plaintiff at the time and place alleged was guilty of negligence, which proximately contributed to the injuries and damages complained of.

3.

The Plaintiff was at the time of the filing of this suit in this cause, indebted to the Defendant in the sum of FIVE THOUSAND (\$5000.00) DOLLARS, as damages for that on to-wit, April 5th, 1948, the Defendant was driving his automobile along the highway leading from Summerdale to Foley being Alabama State Highway Number 3, in Baldwin County, Alabama, at a point approximately one mile North of the Town of Foley, Baldwin County, Alabama; that at said time and place the Plaintiff negligently drove an automobile into, upon or against the automobile of the Defendant, and in which the Defendant was riding; and as a proximate result of the said negligence on the part of the Plaintiff, the automobile of the Defendant was demolished or greatly damaged or rendered less valuable, and the Defendant received severe personal injuries in this, to-wit:

He was badly bruised; he was permanently injured; he was caused to lose time from his work; he was caused to expend money for medical treatment, hospital care and medicines;

all to the damage of the Defendant, and which the Defendant claims as a set off against the claims of the Plaintiff, and prays judgment for the excess.


Attorney for Defendant

CLARENCE C. DAW

PLAINTIFF

VS.

AUBREY EDGAR LOWREY

DEFENDANT

FILED

MAR 31 1949

ALICE J. BUCK, Clerk

STATE OF ALABAMA
BALDWIN COUNTY

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

LAW SIDE
TO ANY SHERIFF OF THE STATE OF ALABAMA, GREETING:

You are hereby commanded to summons Aubrey Edgar Lowery to appear within thirty (30) 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 Clarence C. Daw.

WITNESS my hand this 19th day of August, 1948.

Deice J. ...
Clerk

CLARENCE C. DAW,
Plaintiff,
-vs-
AUBREY EDGAR LOWERY,
Defendant.

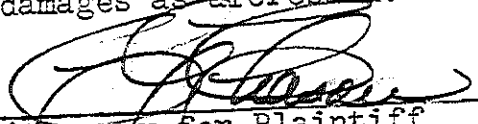
IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
LAW SIDE

COUNT I

The plaintiff claims of the defendant, Twenty Thousand Dollars (\$20,000.00) as damages for that on, to-wit, April 5, 1948, on Alabama State Highway 3, approximately one mile North of the North city limits of the Town of Foley, Baldwin County, Alabama, the plaintiff was driving his automobile along or upon said public highway in said County of Baldwin, and then and there, the defendant negligently ran another automobile into, upon or against the plaintiff's said automobile and thereby and as the proximate result and consequence thereto, the plaintiff's said automobile was demolished or greatly damaged or rendered less valuable, and the plaintiff received severe personal injuries in this, to-wit: Head injury; fractured ribs; left knee severely injured; bruised and lacerated; he was made sick, sore and lame; he was permanently injured; he was caused to expend considerable sums for medical treatment, hospital care and medicines in and about the treatments of his injuries; he lost much time from his work; he was rendered permanently less able to work, for all of which, he claims damages as aforesaid.

COUNT II

The plaintiff claims of the defendant, Twenty Thousand Dollars (\$20,000.00) as damages for that on, to-wit, April 5, 1948, on Alabama State Highway 3, approximately one mile North of the North city limits of the Town of Foley, Baldwin County, Alabama, the plaintiff was driving his automobile along or upon said public highway in said County of Baldwin, and then and there, the defendant, being conscious at the time that his conduct in so doing would probably result in injury to the plaintiff's said car and the occupant thereof, wilfully and wantonly ran another automobile into, upon or against the plaintiff's said automobile and thereby and as the proximate result and consequence thereto, the plaintiff's said automobile was demolished or greatly damaged or rendered less valuable, and the plaintiff received severe personal injuries in this, to-wit: Head injury; fractured ribs; left knee severely injured; bruised and lacerated; he was made sick, sore and lame; he was permanently injured; he was caused to expend considerable sums for medical treatment, hospital care and medicines in and about the treatments of his injuries; he lost much time from his work; he was rendered permanently less able to work, for all of which, he claims damages as aforesaid.


Attorney for Plaintiff

Plaintiff demands a trial by jury in this cause.


Attorney for Plaintiff

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we, the jury, find for the Plaintiff
and assess his damages at
\$30000.

Joe C Durant
Foreman.

Will all
the \$30000
be paid to
the Plaintiff
for his
damages
and
costs
of
this
suit.
Joe C Durant
Foreman.

201223	SUMMONS AND COMPLAINT	CLARENCE C. DAW, Plaintiff,	-VS- AUBREY EDGAR LOWERY, Defendant.	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA LAW SIDE	FILED AUG 19 1948 ALICE J. DUCK, Clerk	CECIL G. CHASON ATTORNEY AT LAW FOLEY, ALABAMA
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Served 10-18-48
By S. C. [unclear]
Exempted 10-18-48
by serving copy of within Summons and
Complaint on
Aubrey Edgar Lowery
Taylor W. [unclear]
Alice J. Duck, Sheriff

Received in [unclear] Office
this 19 day of Aug, 1948
TAYLOR WILKINS, Sheriff

First Week, October 31, 1949

1. Andrew Benton, Farmer, Foley
2. Henry Topps, Clerk, Foley
3. J. O. Driskell, Farmer, Loxley P¹⁶
4. Ray Reed, Laborer, Bay Minette P¹²
5. Wallace L. Green, Foreman, Newport, Bay Minette P¹⁵
6. Ted W. Cooper, Livestock Dealer, Robertsdale P⁷
7. W. C. Roley, Farmer, Perdido
8. James Emmett, Retired, Magnolia Springs
9. D. B. Wiggins, Reserve Fleet, Stapleton P¹
10. Edward Kane, Farmer, Silverhill P⁴
11. Lee Callaway, Seafood, Foley P¹⁹
12. Charles C. Street, Farmer, Point Clear P¹⁵
13. Arthur Beller, Oil Dist., Foley P⁶
14. Deval Laurant, Laborer, Foley
15. Freddie Waters, Butcher, Bay Minette P²⁰
16. Tillman Allen, Farmer, Gateswood P¹
17. Elmer Lindell, Filling Station, Silverhill P⁶
18. Fred R. Walker, Farmer, Foley P⁴
19. Kirby Boothe, Farmer, Fairhope P¹⁹
20. Larkin T. Rhodes, Jr., Broker, Bay Minette
21. Edward Carver, Farmer, Bon Secour
22. Walter K. Byers, Real State, Fairhope P⁵
23. Clyde P. Robinson, Farmer, Belforest P¹²
24. Cliff C. Beck, Retired, Lillian P⁸
25. John L. Gwaltney, Farmer, Robertsdale
26. W. C. Brown, Laborer, Foley P¹⁷
27. Ducan J. Beech, Farmer, Foley P¹³
28. Chas. H. Matthews, Furniture, Robertsdale P³
29. W. H. Pollard, Merchant, Daphne P¹⁶
30. J. W. Crosby, Office Clerk, Foley P¹⁴
31. Paul W. Faekler, Mechanic, Loxley P⁷
32. Chester E. Billy, Merchant, Fairhope P¹²
33. Frank Soeslee, Mechanic, Foley
34. Rawleigh McKnezie, Farmer, Magnolia Springs P³
35. George Dephilippi, Farmer, Daphne P¹⁰
36. George H. Baldwin, Produce Dealer, Robertsdale
37. Elroy McKenzie, Jr., Farmer, Fairhope P²
38. Franklin Hall, Pilot, Foley P²
39. Albert Boone, Mechanic, Foley
40. Cecil Vinson, Laborer, Stapleton P¹⁸
41. George D. Lundberg, Agent, Silverhill P¹⁰
42. Bruce Grimes, Farmer, Belforest P⁵
43. W. Evan Penry, Farmer, Belforest P¹⁸
44. Roy Dukes, Farmer, Foley P¹⁷
45. Robert Miller, Drug Clerk, Bay Minette P⁸
46. Albert Bruhn, Farmer, Elberta P¹⁴
47. Joe Durant, Newport, Bay Minette
48. Joseph L. Lucassen, Auto Dealer, Foley P⁷
49. Joseph Wesley, Clerk, Silverhill
50. Joe Heidelberg, Jr., Farmer, Silverhill P¹¹
51. Kenneth Cain, Merchant, Fairhope P⁷
52. Robert L. Teem, Farmer, Foley
53. Albert Faulk, Merchant, Foley P¹¹

P. 7 9 10 4
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