

JAMES E. IRWIN

Plaintiff

vs

J. L. BAGGETT and

WILLIE NIMS

Defendants

X

X

X

X

X

X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 4580

Come the defendants in the above styled cause and for demurrer to said cause and to each count thereof separately and severally and to each phase of each count thereof separately and severally say as follows:

-1-

That said allegations fail to state a cause of action.

-2-

That the allegations of said complaint are the conclusions of the pleader.

-3-

That the said complaint fails to allege whether said accident occurred in the daytime or in the nighttime.

-4-

That said willful and wanton allegations are the conclusions of the pleader.

-5-

That said Count II of said complaint fails to allege what acts were willfully and wantonly done.

-6-

That Count IV of said complaint fails to allege what acts were willfully and wantonly done.

-7-

That Count VI of said complaint fails to allege what acts were willfully and wantonly done.

-8-

That said complaint fails to allege the time of night at which said accident occurred.

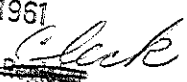
THOMPSON & WHITE

BY: 

Attorneys for Defendants

FILED

MAR 15 1961

ALICE J. DUCK, 

JAMES E. IRWIN,)
)
Plaintiff,)
)
Vs)
)
J. L. BAGGETT and)
)
WILLIE NIMS,)
)
Defendants.)

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW.

Case No. 4580.

COUNT ONE:

The Plaintiff claims of the Defendants the sum of Two Thousand One Hundred (\$2,100.00) Dollars as damages, for that on, to-wit, October 7, 1960, on Baldwin County Road No. 63, at a point approximately four miles northwest of the Alabama-Florida State line in Baldwin County, Alabama, the Defendant J. L. Baggett, acting by and through his agent, servant or employee, Willie Nims, who was then and there acting within the line and scope of his employment as such, negligently operated his motor vehicle, to-wit, his 1942 model Ford farm tractor and trailer, upon the said highway at night without any lights thereon, and as a proximate result of the said negligence of said Defendants the Plaintiff's automobile was wrecked and damaged; and also as a proximate result of the said negligence of the defendants the Plaintiff, together with his wife, Sherley Irwin, and their minor child, suffered lacerations of the head and bruises of the body, and the Plaintiff was caused to incur hospital, doctor and medical bills, all to the damage of the Plaintiff in the sum aforesaid, hence this suit.

COUNT TWO:

The Plaintiff claims of the Defendants the sum of Two Thousand One Hundred (\$2,100.00) Dollars as damages, for that on, to-wit, October 7, 1960, on Baldwin County Road No. 63, at a point approximately four miles northwest of the Alabama-Florida State line in Baldwin County, Alabama, the Defendant J. L. Baggett, acting by and through his agent, servant or employee, Willie Nims, who was then and there acting within the line and scope of his employment as

such, wilfully and wantonly operated his motor vehicle, to-wit, his 1942 model Ford farm tractor and trailer, upon the said highway at night without any lights thereon, and as a proximate result of said wilfulness and wantonness of said Defendants, the Plaintiff's automobile was wrecked and damaged; and also as a proximate result of the said wilfulness and wantonness of the Defendants the Plaintiff, together with his wife, Sherley Irwin, and their minor child, suffered lacerations of the head and bruises of the body, and the Plaintiff was caused to incur hospital, doctor and medical bills, all to the damage of the Plaintiff in the sum aforesaid, hence this suit.

COUNT THREE:

The Plaintiff claims of the Defendants the sum of One Thousand and Six Hundred (\$1,600.00) Dollars as damages, for that on, to-wit, October 7, 1960, on Baldwin County Road No 63, at a point approximately four miles northwest of the Alabama-Florida State line in Baldwin County, Alabama, the Defendant, J. L. Baggett, acting by and through his agent, servant or employee, Willie Nims, who was there and then acting within the line and scope of his employment as such, negligently operated his motor vehicle, to-wit, his 1942 Ford farm tractor and trailer, upon the said highway at night without any lights thereon, and as a proximate result of the said negligence of said Defendants the Plaintiff's automobile was wrecked and damaged, all to the damage of the Plaintiff in the sum aforesaid, hence this suit.

COUNT FOUR:

The Plaintiff claims of the Defendants the sum of One Thousand and Six Hundred (\$1,600.00) Dollars as damages, for that on, to-wit, October 7, 1960, on Baldwin County Road No. 63, at a point approximately four miles northwest of the Alabama-Florida State line in Baldwin County, Alabama, the Defendant, J. L. Baggett, acting by and through his agent, servant or employee, Willie Nims, who was there and then acting within the line and scope of his employment

as such, wilfully and wantonly operated his motor vehicle, to-wit, his 1942 model Ford farm tractor and trailer, upon the said highway at night without any lights thereon, and as a proximate result of the said wilfulness and wantonness of the Defendants, the Plaintiff's automobile was wrecked and damaged, ALL TO THE damage of the Plaintiff in the sum aforesaid, hence this suit.

COUNT FIVE:

The Plaintiff claims of the Defendants the sum of Five Hundred (\$500.00) Dollars as damages, for that on, to-wit, October 7, 1960, on Baldwin County Road No. 63 at a point approximately four miles northwest of the Alabama-Florida State line in Baldwin County, Alabama, the Defendant, J. L. Baggett, acting by and through his agent, servant or employee, Willie Nims, who was then and there acting within the line and scope of his employment as such, negligently operated his motor vehicle, to-wit, his 1942 Ford farm tractor and trailer, upon the said highway at night without any lights thereon, and as a proximate result of said negligence of said Defendants the Plaintiff, together with his wife, Sherley Irwin, and their minor child, suffered lacerations of the head and bruises of the body, all to the damage of the Plaintiff in the sum aforesaid, hence this suit.

COUNT SIX:

The Plaintiff claims of the Defendant the sum of Five Hundred (\$500.00) Dollars as damages, for that on, to-wit, October 7, 1960, on Baldwin County Road No. 63, at a point approximately four miles northwest of the Alabama-Florida State line in Baldwin County, Alabama, the Defendant, J. L. Baggett, acting by and through his agent, servant or employee, Willie Nims, who was then and there acting within the line and scope of his employment as such, wilfully and wantonly operated his motor vehicle, to-wit, his 1942 Ford farm tractor and trailer, upon the said highway at night without any lights thereon, and as a proximate result of said wilfulness and wantonness of said Defendants the plaintiff, together with his wife, Sherley Irwin, and minor child, suffered

laceration of the head and bruises of the body, and the Plaintiff was caused to incur hospital, doctor and medical bills, all to the damage of the Plaintiff in the sum aforesaid, hence this suit.

Kenneth Cooper
Kenneth Cooper

Attorney for Plaintiff.

Plaintiff demands a trial by jury.

Kenneth Cooper
Kenneth Cooper

Attorney for Plaintiff.

FILED

FEB 1 1961

ALICE J. DUCK, Clerk

Case No. 4580

JAMES E. IRWIN,

Plaintiff,

Vs.

J. L. BAGGETT and

WILLIE NIMS,

Defendants,

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW.

BILL OF COMPLAINT

FILED

FEB 1 1961

ALICE J. DUCK, Clerk

KENNETH COOPER

ATTORNEY AT LAW

109 EAST 1ST STREET

BAY MINETTE, ALABAMA

STATE of ALABAMA

Baldwin County

CIRCUIT COURTJames C. Swain

Plaintiffs

vs.

J. L. Baggett & WillieThoms
Defendants**Summons and Complaint**

Filed _____ 19____

Clerk _____

Defendants' Address:
 Route 4,
 Cantonment, Fla.
 Pensacola-Muscogee Road
 about 4 miles northwest of
 Ala-Fla State line
 Highway 63

Plaintiff's Attorney
 Defendant's Attorney

Defendant lives at _____

Received In Office

2-1-, 1961

Sheriff,

I have executed this summons

this Feb. 23 1961
by leaving a copy withJ. L. Baggett
Willie ThomsSheriff claims 88 miles at 88Ten Cents per mile Total \$8.80
TAYLOR WILKINS, SheriffBY [Signature]
DEPUTY SHERIFF

Taylor Wilkins Sheriff.
W. A. Talbot Deputy Sheriff.
Galtwood

SUMMONS AND COMPLAINT

MOORE PRINTING COMPANY - BAY MINETTE, ALA.

The State of Alabama,

Baldwin County.

Circuit Court, Baldwin County

No. 4580

February TERM, 1961

TO ANY SHERIFF OF THE STATE OF ALABAMA

You Are Commanded to Summon J. L. BAGGETT and WILLIE NIMS

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 J. L. BAGGETT and

WILLIE NIMS, Defendant.

by JAMES E. IRWIN

Plaintiff.

Witness my hand this 1st day of February 19 61

E-42-223-61 Alice J. Duck, Clerk

No. 4580

Page _____

STATE of ALABAMA

Baldwin County

CIRCUIT COURT

James E. Lewis

Plaintiffs

vs.

J. L. Baggett + Willie

Nims
Defendants

Summons and Complaint

Filed _____ 19____

Clerk

Defendants' Address:
Route 4,
Cantonment, Fla
(Pensacola) Muscogee Road
about 4 miles northwest of
ala-Fla State line
Highway 63
Plaintiff's Attorney
Defendant's Attorney

Defendant lives at _____

Received In Office

2-1-, 1961

Sheriff.

I have executed this summons

this Feb 23 1961

by leaving a copy with

J. L. Baggett
Willie Nims

Sheriff claims 88 miles

Ten Cents per mile Total \$ 8.80
TAYLOR WILKINS, Sheriff

BY _____

DEPUTY SHERIFF

Taylor Wilkins

Sheriff.

W. A. Talbert

Deputy Sheriff.

Saterwood

JAMES E. IRWIN,)
Plaintiff,)
Vs)
J.L. BAGGETT AND)
WILLIE NIMS,)
Defendants.)

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW

Case No. 4580

ANSWER TO PLEAS

Comes now the Plaintiff, James E. Irwin, in the above-styled cause, and for reply to Defendants' pleas No. 1 and 2, filed on 1 September, 1961, separately and severally, says he joins issue on each and every plea thereof.

And comes the Plaintiff further, and for answer to Pleas No 1 and 2 pleads not guilty.

Kenneth Cooper
Attorney for Plaintiff

ATTORNEYS FOR DEFENDANTS:

Thompson and White
Attorneys at Law
Bay Minette, Alabama

Filed
9-13-61
Arice J. French
clerk

JAMES E. IRWIN,	X	
Plaintiff	X	IN THE CIRCUIT COURT OF
vs	X	BALDWIN COUNTY, ALABAMA
J. L. BAGGETT and	X	AT LAW NO. 4580
WILLIE NIMS,	X	
Defendants	X	

Come the defendants in the above styled cause and for answer to said complaint and to each count thereof separately and severally show unto this Honorable Court as follows:

-1-

As to Count One, not guilty.

-2-

As to Count Two, not guilty.

-3-

As to Count Three, not guilty.

-4-

As to Count Four, not guilty.

-5-

As to Count Five, not guilty.

-6-

Asto Count Six, not guilty.

-7-

As to Count One, defendant J. L. Baggett, denies that defendant, Willie Nims, was acting in the line and scope of his employment on to-wit October 7, 1960, on to-wit the time of said accident.

-8-

As to Count Two, defendant, J. L. Baggett, denies that defendant, Willie Nims, was acting in the line and scope of his employment on to-wit October 7, 1960, on to-wit the time of said accident.

-9-

As to Count Three, defendant, J. L. Baggett, denies that defendant, Willie Nims, was acting in the line and scope of his employment on to-wit October 7, 1960, on to-wit the time of said accident.

As to Count Four, defendant, J. L. Baggett, denies that defendant, Willie Nims, was acting in the line and scope of his employment on to-wit, October 7, 1960, on to-wit the time of said accident.

As to Count Five, defendant, J. L. Baggett, denies that defendant, Willie Nims, was acting in the line and scope of his employment on to-wit October 7, 1960, on to-wit the time of said accident.

As to Count Six, defendant, J. L. Baggett, denies that defendant, Willie Nims, was acting in the line and scope of his employment on to-wit, October 7, 1960, on to-wit the time of said accident.

Comes defendant, J. L. Baggett, and without waiving the demurrer heretofore filed to the plaintiff's complaint, and separately to each count thereof, by insisting on said demurrers as a defense to the action of the plaintiff, James E. Irwin, says that at the time this action was commenced, the plaintiff was indebted to him in the sum of One Thousand (\$1,000.00) Dollars, for that on to-wit October 7, 1960, about the hour of sunset, at or near a point approximately four miles West of the Alabama - Florida state line in Baldwin County, Alabama, on Baldwin County Road #63, a public highway, the said plaintiff while operating his said automobile negligently ran said automobile into, upon or against the trailer and farm tractor, property of said defendant, J. L. Baggett and thereby as the proximate results and consequence thereof the said defendant's trailer and farm tractor was broken, damaged, rendered less valuable to the defendant's damage as assessed which defendant hereby offers to set off against the demand of the plaintiff and he claims for the excess.

Comes the defendant, J. L. Baggett, and claims of the plaintiff, James E. Irwin, by way of recoupment the sum of One Thousand (\$1,000.00) Dollars damages for that heretofore on to-wit October 7, 1960, at a point on Baldwin County Road #63, a public highway, at a point approximately four miles West of the

Alabama-Florida line, in Baldwin County, Alabama, at about the hour of sunset and the place referred to in plaintiff's complaint, the said plaintiff negligently drove an automobile into, upon or against the trailer and farm tractor of the said defendant, J. L. Baggett, and as proximate consequence of said negligence, said farm trailer and tractor was damaged as follows, to-wit, said farm trailer being totally wrecked and said farm tractor being totally wrecked and the market value thereof was permanently depreciated.

-15-

Comes the defendant, Willie Nims and claims of the plaintiff, James E. Irwin, the sum of Twenty-five Thousand (\$25,000.00) Dollars by way of recoupment, as damages for that heretofore on to-wit, October 7, 1960, at a point on Baldwin County Road #63, a public highway, about four miles West of the Alabama-Florida line and about the hour of sunset and the place referred to in the plaintiff's complaint, the said James E. Irwin, plaintiff, negligently drove an automobile into, upon or against a farm trailer and tractor being operated by the said defendant, Willie Nims, and said trailer carried as a passenger, one Sallie Nims, mother of the said Willie Nims, defendant and as a proximate consequence of said negligence, the said Sallie Nims was injured, bruised, jarred, shocked and internally injured so that her general physical condition was aggravated whereof she died, hence this claim.

THOMPSON & WHITE

BY:

C. L. Davis Thompson
Attorneys for defendants.

FILED

APR 25 1961

ALICE J. DUCK, CLERK
REGISTER

JAMES E. IRWIN,)
Plaintiff,)
Vs)
J. L. BAGGETT and)
WILLIE NIMS,)
Defendants.)

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW

Case No. 4580

DEMURRERS

1. Comes now the Plaintiff in the above styled cause, and for answer to the Defendants' pleas or counts number 7, 8, 9, 10, 11, 12, 13, 14, and 15, inclusive, files the following demurrers to each and every plea or count thereof, separately and severally, as follows:

A. The pleas or counts are vague, indefinite and uncertain.

B. The pleas or counts do not state a cause of action or a defense to Plaintiff's complaint.

C. The pleas or counts do not state with certainty any amounts due Defendants by Plaintiff.

D. The pleas or counts do not state whether the trailer and farm tractor were being operated by the Defendant J. L. Baggett or the Defendant Willie Nims.

E. The pleas or counts do not state whether the trailer and farm tractor were being operated by Defendant J. L. Baggett or the said Defendant's agent, servant or employee.

F. The pleas or counts do not state whether the trailer and farm tractor were being operated by the Defendant J.L. Baggett's agent, servant or employee acting within the line and scope of his employment.

G. The pleas or counts do not state whether the acts complained of of the Plaintiff were wilfully, wantonly and wrongfully done.

H. The pleas or counts do not adequately describe how Defendant's trailer and farm tractor were damaged and rendered less valuable, nor what parts thereof were broken.

I. The pleas or counts do not allege any negligence on the part of the Plaintiff in his operation of his automobile.

J. The pleas or counts claim an unliquidated amount as damages.

K. The pleas or counts do not claim a liquidated amount of damages.

L. The pleas or counts do not state any facts sufficient to show that any contract existed between Defendants and Plaintiff at or before the time of the claim stated.

M. The pleas are but the conclusion of the pleader.

N. The pleas or counts fail to state a proper ground of defense.

O. The pleas or counts are uncertain.

P. The pleas or counts are vague.

Q. The pleas or counts are indefinite.

2. Comes the Plaintiff in above styled cause, and for further answer to Defendants' pleas or counts numbered 13 to 15, inclusive, files the following demurrers to the respective pleas as indicated below:

A. Plea or count number 13 does not state a sufficient cause of action that would entitle the Defendant to maintain the claimed "set off".

B. Plea or count number 13 claiming a \$1,000.00 indebtedness by Plaintiff to Defendant as a set off is a mere conclusion of the pleader.

C. Plea or count number 14 does not state a sufficient cause of action that would entitle the Defendant to maintain the claimed "recoupment".

D. Plea or count number 14 claiming a \$1,000.00 recoupment by Defendant against the Plaintiff is a mere conclusion of the pleader.

E. Plea or count number 15 does not state by what authority the claim of recoupment is made by Defendant Willie Nims on behalf of the deceased Sallie Nims.

F. Plea or count number 15 fails to show Defendant Willie Nim's right to maintain the alleged claim or suit.

G. Plea or count number 15 fails to allege sufficient facts to entitle Defendant Willie Nims to maintain the claim of recoupment against the Plaintiff.

H. Plea or count number 15 fails to allege whether the accident took place during the hours of daylight or darkness.

I. Plea or count number 15 fails to allege the cause of death of Sallie Nims.

J. Plea or count number 15 fails to allege that the injuries complained of by Sallie Nims were a proximate result of the negligence of the Plaintiff.

K. Plea or count number 15 fails to allege that the injuries complained of by Sallie Nims were a proximate cause of the death of said Sallie Nims.

L. Plea or count number 15 fails to allege the date of death of Sallie Nims

M. Plea or count number 15 does not state a sufficient cause of action that would entitle the Defendant Willie Nims to maintain a cause of action against the Plaintiff.

N. Plea or count number 15 fails to state sufficient facts to entitle the Defendant Willie Nims damages or recoupment for the death of his mother.

Kenneth Cooper
Attorney for Plaintiff

FILED

MAY 24 1961

ALICE J. DUCK, CLERK
REGISTER

JAMES E. IRWIN	X	
Plaintiff	X	IN THE CIRCUIT COURT OF
vs	X	BALDWIN COUNTY, ALABAMA
J. L. BAGGETT and	X	AT LAW NO. 4580
WILLIE NIMS	X	
Defendants	X	

Come the defendants in the above styled cause and amend the answer heretofore filed in said cause by adding thereto the following pleas:

-1-

For further answer to said count defendant, J. L. Baggett says that the plaintiff ought not to recover in this case for that on the occasion complained of the plaintiff was himself guilty of negligence proximately contributing to his alleged injuries and damages, in this that the said plaintiff was operating his said automobile in which he was riding on County Road 63 and drove and operated his automobile at an excessive rate of speed, and said defendant avers that said plaintiff's so driving his said automobile operated same at an excessive speed so that said automobile driven by the said plaintiff collided with the tractor and trailer striking same from the rear while said tractor and trailer was on the right side of said highway where it had a legal right to be; totally wrecking said trailer and tractor operated by defendant, Willie Nims. Said negligence of the said plaintiff proximately contributed to the said plaintiff's alleged injuries and damages, hence the said plaintiff ought not to recover in this suit.

-2-

For further answer to said count defendant, Willie Nims says that the plaintiff ought not to recover in this case for that on the occasion complained of the plaintiff was himself guilty of negligence proximately contributing to his alleged injuries and damages, in this that the said plaintiff was operating his said automobile in which he was riding on County Road 63 and drove and operated same at an excessive speed, and said defendant avers that said plaintiff's so driving his said automobile operated same at an excessive rate of speed so that said automobile driven

by the said plaintiff collided with said tractor and trailer operated by said defendant, Willie Nims, striking said tractor and trailer from behind while said tractor and trailer was on the right side of said highway where it had a legal right to be; totally wrecking said trailer and tractor operated by defendant, Willie Nims. Said negligence of the said plaintiff proximately contributed to the said plaintiff's alleged injuries and damages, hence the said plaintiff ought not to recover in this suit.

THOMPSON & WHITE

BY: Mary Thompson White
Attorneys for defendants.

FILED

SEP 1 1961

ALICE L. DUCK, CLERK
REGISTER

JAMES E. IRWIN,)
Plaintiff,)
Vs)
J. L. BAGGETT and)
WILLIE NIMS.)
Defendants.)

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

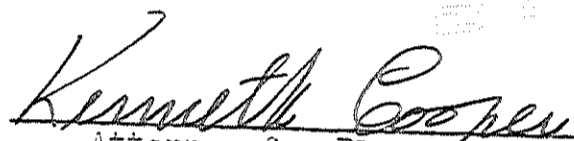
AT LAW

Case No. 4580

ANSWER TO DEFENDANT'S PLEAS

Comes now Plaintiff in above styled cause, and for reply to Defendants Please No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, separately and severally, says he joins issue on each and every plea thereof.

And comes the Plaintiff further, and for answer to Plea No. 14 pleas not guilty.


Attorney for Plaintiff

ATTORNEY FOR DEFENDANTS:
Hon C. Lenoir Thompson
Attorney at Law
Bay Minette, Alabama

FILED

AUG 10 1961

ALICE J. DUCK, CLERK
REGISTER

JAMES E. IRWIN,)
Plaintiff,)
Vs)
J. L. BAGGETT and))
WILLIAM NIMS,)
Defendants.)


IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

Case No. 4580

DEMURRERS

Comes now the Plaintiff in the above-styled cause, James E. Irwin, and offers the following separate and several demurrers to the Defendants' answer as amended, heretofore filed in this cause on the 1st day of September, 1961:

1. The Said Count One is vague, uncertain and indefinite.
2. The said Count One does not appraise the Plaintiff to which count of the Bill of Complaint the said Count One of the answer is directed.
3. The said Count One alleges no facts to show that the tractor and trailer were the property of the Defendant J.L. Baggett.
4. The said Count Two is vague, uncertain and indefinite.
5. The said Count Two does not appraise the Plaintiff to which count of the Bill of Complaint the said Count Two of the answer is directed.
6. The said Count Two alleges no facts to show that the tractor and trailer were the property of the Defendant Willie Nims.


Attorney for Plaintiff

Attorney of Record for Defendants:
Thompson and White
Attorneys at Law
Bay Minette, Alabama

FILED

SEP 12 1961

ALICE J. DUCK, CLERK
BALDWIN COUNTY