4617

STATE OF ALABAMA
BALDWIN COUNTY

IN THE CIRCUIT COURT - LAW SIDE

TO: ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon Charles R. Broughton, Jr. to appear within thirty days from the service of this Writ in the Circuit Court to be held for said County at the place of holding same, then and there to answer the complaint of T. Harry McDonnell.

Witness my hand this 3 day of March, 1961.

CLERK

Esq. 3-9-61

T. HARRY McDONNELL,
Plaintiff,

vs.

CHARLES R. BROUGHTON, JR.,
Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
LAW SIDE

COUNT ONE:

The Plaintiff claims of the Defendant the sum of Seven Hundred and Fifty Dollars ($750.00) as damages for that on, to-wit: October 29, 1960 the Plaintiff delivered his automobile to the Defendant at the Defendant's garage in Daphne, Baldwin County, Alabama in order that the Defendant, who was operating a garage at said time and place, might repair such motor vehicle. The Defendant agreed to repair the automobile that afternoon and have it ready for the Plaintiff on his return. The Plaintiff returned to such garage to get such automobile about 6:30 P.M., while it was dark, and there were no lights visible in the Defendant's house or his garage and the key was in the switch. The Defendant was not present at said time. When the

Plaintiff started the motor it blew up and caught fire and such motor vehicle was almost completely destroyed by fire. The Plaintiff alleges that the Defendant negligently left the carburetor and air intake off of the motor and left them on the floor of the car in the rear seat and had also left the key in the switch. The Defendant also negligently failed to notify the Plaintiff that such vehicle had not been properly repaired and that it was not in a suitable condition for driving as the Defendant had agreed it would be when the Plaintiff returned for it. The Plaintiff avers that the negligence of the Defendant in leaving the carburetor and air intake off of the motor and leaving the key in the switch and in not informing the Plaintiff that such car had not been properly repaired was the proximate cause of the Plaintiff's damages in the sum above sued for, hence this suit.

Mason & Stone
Attorneys for Plaintiff

No. 4617

SUMMONS AND BILL OF COMPLAINT

Received 3 day of March 1961
and on 9 day of March 1961
I served a copy of the within Writ
on Charles R. Broughton Jr

By service on

TAYLOR WILKINS, Sheriff
By W. O. Garner D. S.
Point Clear

Sheriff claims 80 miles at
Ten Cents per mile Total $ 8.00
TAYLOR WILKINS, Sheriff
BY Garner
DEPUTY SHERIFF

* * * * * * * * * * * * * * * * * * *

T. HARRY McDONNELL,

Plaintiff,

vs.

CHARLES R. BROUGHTON, JR.,

Defendant.

* * * * * * * * * * * * * * * * * * *

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

LAW SIDE.

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FILED

MAR 31 1961

ALICE J. DUCK, CLERK
REGISTER

Asst. Daphne, Ala.

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON
LAWYERS
SUITE 622 FIRST NATIONAL BANK BUILDING
MOBILE, ALABAMA

CHAS. C. HAND
C. B. ARENDALL, JR.
T. MASSEY BEDSOLE
THOMAS G. GREAVES, JR.
WM. BREVARD HAND
VIVIAN G. JOHNSTON, JR.
PAUL W. BROCK
ALEX F. LANKFORD, III
EDMUND R. CANNON, JR.
LYMAN F. HOLLAND, JR.
J. THOMAS HINES, JR.
W. C. BOONE, JR.
DONALD F. PIERCE

MAILING ADDRESS:
P. O. BOX 123

CABLE ADDRESS:
HAB

TELEPHONE:
HEmlock 2-5514

May 29, 1961

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

Re: T. Harry McDonnell vs. Charles R. Broughton, Jr., Circuit Court of Baldwin County, No. 4617

Dear Mrs. Duck:

Enclosed please find an Answer to be filed in the above cause. We have this date sent a copy of the pleadings to John Chason, Esq., attorney for the plaintiff.

With best regards,

Yours very truly,

Donald F. Pierce

For the Firm

DFP.pcb
Encl.

T. HARRY McDONNELL, Plaintiff,	X	IN THE CIRCUIT COURT OF
vs.	X	BALDWIN COUNTY, ALABAMA
CHARLES R. BROUGHTON, JR., Defendant.	X	LAW SIDE NO. 4617

DEMURRER:

Comes the Plaintiff in the above styled cause and demurs to Pleas Two, Three and Four filed by the Defendant in said cause and as grounds for such demurrer, separately and severally, says:

1. That said plea is not a proper plea of contributory negligence.

2. That pleas Three and Four attempt to set out the manner in which the Plaintiff was negligent and in doing so fails to sufficiently set out negligence of the Plaintiff which was the proximate cause of his injuries.

3. That plea Four does not allege that the Plaintiff negligently caused his own injuries and damages.

4. That there is no negligence of the Plaintiff charged in Plea Four.

Thomason & Stone
Attorneys for Plaintiff

Filed
5-31-61

T. HARRY McDONNELL,	)	IN THE CIRCUIT COURT OF
Plaintiff	)	BALDWIN COUNTY, ALABAMA
Vs.	)	LAW SIDE
CHARLES R. BROUGHTON, JR.,	)	CASE NO. 4617
Defendant	)	

A N S W E R

ONE

Not guilty.

TWO

At the time and place complained of in the complaint, to-wit, October 29, 1960, the plaintiff was himself guilty of negligence which proximately contributed to the injuries and damages of which he complains, hence he ought not recover.

THREE

The plaintiff, on, to-wit, October 29, 1960, was himself guilty of negligence which proximately contributed to the injuries and damages of which he complains, in that, plaintiff, after delivering his automobile into the custody and care of the defendant for repairs did himself negligently attempt to operate said automobile, without first ascertaining if said automobile was in a reasonably safe condition for operation, and without first communicating with the defendant to determine if said automobile was in proper operating condition, and as a result of the negligence of the plaintiff in attempting to operate his automobile without the knowledge, consent or advice of the defendant, he attempted to start said automobile and because of plaintiff's own negligence in attempting to operate

and start said automobile, plaintiff contributed to the injuries and damages of which he complains, hence he ought not recover.

FOUR

The plaintiff, on, to-wit, October 29, 1960, was himself guilty of negligence which proximately contributed to the injuries and damages of which he complains, in that, after delivering said automobile into the care and custody of the defendant, for repair and maintenance work, the plaintiff returned to the business place of the defendant, at approximately, to-wit, 6:30 o'clock p.m. while it was dark and there were no visible lights in the house or garage of the defendant, and in the absence of the defendant, or any agent, servant or employee of defendant, plaintiff attempted to start said automobile, without first ascertaining if said automobile was in a safe operating condition, and said plaintiff's conduct in attempting to start said automobile while it was in fact in an unsafe operating condition proximately contributed to the injury and damage of which plaintiff complains, hence he ought not recover.

Donald F Pierce
Attorney for Defendant

Of Counsel:

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

C E R T I F I C A T E

I, Donald F. Pierce, the attorney of record for the defendant Charles R. Broughton, Jr., hereby certify that a copy of the above pleas have been served on Messrs. Chason and Stone, attorneys for the plaintiff, by mailing a copy of same to their law offices, Bay Minette, Alabama.

Donald F. Pierce

DONALD F. PIERCE

T. HARRY McDONNELL,	)	IN THE CIRCUIT COURT OF
Plaintiff	)	BALDWIN COUNTY, ALABAMA
Vs.	)	LAW SIDE
CHARLES R. BROUGHTON, JR.,	)	CASE NO. 4617
Defendant	)	

D E M U R R E R

Comes now the defendant in the above styled cause and demurs to each count of the complaint filed herein, separately and severally, and for separate and several grounds of demurrer sets down and assigns, separately and severally, the following:

1. For that it does not state facts sufficient to constitute a cause of action against this defendant.

2. For that the negligence therein alleged merely is a conclusion of the pleader.

3. For that it is vague, indefinite and uncertain, in that it does not apprise this defendant with sufficient certainty against what act or acts of negligence defendant is called on to defend.

4. For that it does not appear with sufficient certainty what duty, if any, this defendant may have owed to the plaintiff.

5. For that it does not appear with sufficient certainty wherein this defendant violated any duty owed by defendant to plaintiff.

6. For that it does not appear sufficiently that this defendant owed any duty to the plaintiff which defendant negligently failed to perform.

7. For that the averments set up, if true, do not show any liability on the part of this defendant.

8. For that the pleader sets out in what said negligence consisted, and the facts so set out do not show negligence.

9. For that there does not appear sufficient causal connection between this defendant's said breach of duty and plaintiff's injuries and damages.

10. No facts are alleged to show that plaintiff sustained any damage or injury as a proximate result of any negligence or breach of duty on the part of this defendant.

11. It is not alleged with sufficient certainty the place of defendant's said negligence, which allegedly proximately caused the plaintiff's injuries and damages.

12. For ought that appears from the allegations of the complaint defendant was a gratuitous bailee without promise of any valuable consideration and the allegations of the complaint do not charge the defendant with any duty to the plaintiff which he negligently failed to perform.

13. For aught that appears from the allegations of the complaint, the defendant has breached no agreement made with the plaintiff.

14. For aught that appears defendant owed the plaintiff no duty to have plaintiff's automobile repaired at 6:30 p.m. on the date it was allegedly received of him.

15. For aught that appears from the allegations of the complaint, plaintiff knew that the carburetor and air intake were off of the motor at the time he attempted to start it and caused the alleged explosion and fire.

16. For aught that appears from the allegations of the complaint, the alleged explosion and fire was caused by the negligence of the plaintiff in attempting to start the automobile.

17. For that the allegation of the complaint that: "The plaintiff avers that the negligence of the defendant in leaving the carburetor and air intake off of the motor and leaving the key in the switch and in not informing the plaintiff that such car had been properly repaired was the proximate cause of plaintiff's damages in the sum above sued for; hence this suit," is but a conclusion of the pleader, not supported by the facts averred.

18. For that it affirmatively appears from the allegations of the complaint that the plaintiff was guilty of negligence in attempting to start said automobile with the carburetor and air intake off of the motor, hence by the allegations of plaintiff's own complaint, the plaintiff is guilty of negligence which if proved, would bar his recovery.

19. For that it affirmatively appears from the allegations of the complaint that plaintiff was guilty of negligence in attempting to start the said automobile without the knowledge and consent of the defendant, who is charged in plaintiff's complaint and who is charged by the allegations of the plaintiff's complaint with a duty to keep and safeguard the car, hence by the allegations of plaintiff's own complaint, plaintiff was guilty of negligence which, if proved by the plaintiff, would bar his recovery.

20. For aught that appears from the allegations of the complaint, all of the injuries and damages of which plaintiff complains were proximately caused by the plaintiff in negligently attempting to start his car with the air intake and carburetor off the motor.

21. For aught that appears from the allegations of the complaint, the defendant owed no duty to the plaintiff to notify him that the vehicle had not been properly repaired, and was not in suitable condition for driving, as the allegations of plaintiff's complaint aver that the defendant had no notice of the plaintiff's attempt to drive the automobile at 6:30 p.m., at which time the explosion and fire allegedly occurred.

W. E. Boone, Jr.

Donald F. Pierce

Attorneys for Defendant

Of Counsel:

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON