

ALVIN JOHNSON, JR., a minor)
suing by his father and next)
friend, ALVIN JOHNSON, SR.,)

Plaintiff,)

vs.)

JOHN DILLON, FOLEY DAIRY,)
JOHN DILLON d/b/a FOLEY DAIRY,)
and PHYLLIS S. NESBIT as)
Administratrix of the Estate)
of Clarence Holmes, Deceased,)
jointly and severally.)

Defendants.)

IN THE CIRCUIT COURT OF

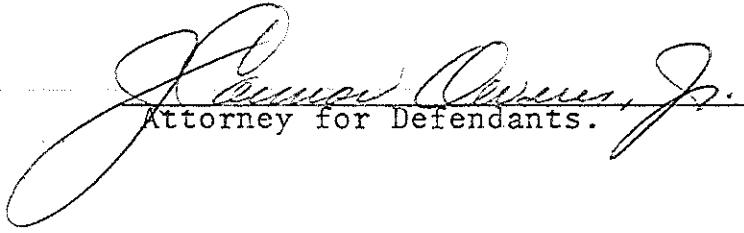
BALDWIN COUNTY, ALABAMA

AT LAW. NO. 6234

ANSWER:

Now come the Defendants in the above styled cause and for
answer to the complaint as last amended in said cause, says as
follows:

1. Not guilty.


Attorney for Defendants.

FILED
JUN 10 1969
ALICE J. DUCK CLERK
REGISTER

ALVIN JOHNSON, JR., a minor,)	
suing by his next friend and	)	IN THE CIRCUIT COURT OF
father, ALVIN JOHNSON, SR.,)	
	)	BALDWIN COUNTY, ALABAMA
Plaintiff,)	
vs.	)	LAW SIDE. NO. 6234
JOHN DILLON, FOLEY DAIRY,)	
JOHN DILLON, d/b/a FOLEY)	
DAIRY and CLARENCE HOLMES,)	
jointly and severally,)	
)	
Defendants.)	

DEMURRER:

Now come each of the above Defendants, separately and several-
ly and demur to the complaint as last amended on August 28, 1968,
as a whole and to each Count contained therein, and for separate
and several grounds of demurrer, set down and assign separately
and severally, the following:

1. That it does not state a cause of action.
2. No facts are alleged to show what duty, if any, was owed
by the deceased Defendant, Clarence Holmes, to the Plaintiff.
3. It does not allege the circumstances of the alleged ac-
cident with sufficient clarity so as to allow the Defendants to
ascertain what they are called upon to defend.
4. It does not allege the place of the accident with
sufficient certainty.
5. The allegation that the Plaintiff was playing on premises
where he was accustomed to playing is not sufficient to impute
knowledge of his presence to the Defendants or any of them.
6. For aught it appears the Plaintiff was a trespasser at
the time and place of the alleged accident.
7. The allegation that the Plaintiff was "on premises where
he was accustomed to playing and where he had a right to be" are
conclusions of the pleader.
8. No facts are alleged to show that the Plaintiff had a
right to be on the premises where the alleged accident took place.
9. It affirmatively appears that the Plaintiff was playing
upon the property of the deceased Defendant, Clarence Holmes, and

no facts are alleged showing that the Plaintiff had any right to be upon the property of the Defendant, Clarence Holmes.

10. For aught appears, the Plaintiff was a trespasser at the time and place of the alleged accident.

11. No facts are alleged to show what duty, if any, was owed by the Defendant, John Dillon, to the Plaintiff.

12. No facts are alleged to show what duty, if any, was owed by John Dillon, doing business as Foley Dairy, to the Plaintiff.

13. No facts are alleged to show what duty, if any, was owed by the Defendant, Foley Dairy, to the Plaintiff.

14. There is a misjoinder of parties Defendant.

15. The allegation that the deceased Defendant, Clarence Holmes, operated said vehicle with the permission of the said John Dillon, is insufficient to charge the Defendant John Dillon, with liability in this suit.

16. The allegation that the deceased Defendant, Clarence Holmes, was operating a dangerous instrumentality or machine, is a conclusion of the pleader.

17. That it does not describe the "dangerous instrumentality or machine" with sufficient clarity.

18. For aught appears, the deceased Defendant, Clarence Holmes, was operating a motor vehicle which is not an attractive nuisance.

19. The allegation that the Plaintiff and other small children were attracted to said machine or dangerous instrumentality, is a conclusion of the pleader.

20. That the allegation that the said deceased Defendant, Clarence Holmes, ran said dangerous instrumentality or machine against, upon or over the Plaintiff is vague, indefinite and uncertain in that it does not apprise the said Defendant with sufficient certainty against what act of negligence he is called upon to defend.

21. For that it affirmatively appears from said amended complaint that the Defendant, John Dillon, owed no duty to the Plaintiff.

22. The allegation that "the said John Dillon negligently allowed the said Clarence Holmes to take such dangerous instrumentality or machine and operate the same on said premises at said time", is insufficient to charge the Defendant, John Dillon, with any breach of any duty to the Plaintiff.

23. For that it does not sufficiently appear that the Defendant, John Dillon, owed any duty to the Plaintiff which the Defendants negligently failed to perform.

24. For that it does not sufficiently appear that the deceased Defendant, Clarence Holmes, owed any duty to the Plaintiff which the Defendants negligently failed to perform.

OWENS AND PATTON

By: *James Owens, Jr.*
Attorneys for Defendants.

I, the undersigned, one of the attorneys of record for the Defendants in the foregoing cause, do hereby certify that I have forwarded a copy of the foregoing demurrer to Arthur Epperson, the attorney of record for the Plaintiff, by United States Mail, properly addressed, with postage prepaid, this 3rd day of September, 1968.

James Owens, Jr.

FILED

SEP 4 1968

ALICE J. DUCK CLERK
REGISTER

ALVIN JOHNSON, JR., a minor
suing by his father and next
friend, ALVIN JOHNSON, SR.,

Plaintiff,

vs.

JOHN DILLON FOLEY DAIRY,
JOHN DILLON d/b/a FOLEY DAIRY
and PHYLLIS S. NESBIT as Ad-
ministratrix of the Estate of
CLARENCE HOLMES, Deceased,
jointly and severally,

Defendants.

)
) IN THE CIRCUIT COURT OF

)
) BALDWIN COUNTY, ALABAMA

)
) LAW SIDE. NO. 6234

ORDER:

This cause coming on to be heard upon the motion of the
Defendants to dismiss this cause for want of prosecution and the
same having been considered by the Court, it is, therefore,

ORDERED, ADJUDGED AND DECREED by the Court that the motion be,
and the same is hereby denied.

DATED at Bay Minette, Alabama, this 28th day of August, 1968.

Fair J. Madson
Circuit Judge.

FILED

SEP 4 1968

ALICE J. DUCK CLERK
REGISTER

ALVIN JOHNSON, JR., a minor)	
suing by and through his next)	
friend and father, Alvin Johnson,	)	IN THE CIRCUIT COURT OF
Sr.,)	
)	
Plaintiff,	)	BALDWIN COUNTY, ALABAMA
)	
vs.)	
	)	LAW SIDE. NO. 6234
JOHN DILLON, FOLEY DAIRY,)	
JOHN DILLON, d/b/a FOLEY)	
DAIRY and CLARENCE HOLMES,)	
jointly and severally,)	
)	
Defendants.)	

ORDER:

This cause coming on to be heard upon the motion of the Defendants to dismiss for want of prosecution, and the same having been previously set for hearing on June 6, 1968, at 10:30 o'clock A. M., and continued for cause by the Court, it is, therefore,

ORDERED, ADJUDGED AND DECREED by the Court that the same be and is hereby set for hearing on August 28th, 1968, at 2:00 o'clock P. M.

DATED at Bay Minette, Alabama, this 9th day of August, 1968.

Debra J. Madaleno
Circuit Judge.

ALVIN JOHNSON, Jr. a minor)	
suing by his father and next)	
friend, ALVIN JOHNSON, SR.	)	IN THE CIRCUIT COURT OF
)	
Plaintiff.	)	BALDWIN COUNTY, ALABAMA
)	
VS.	)	AT LAW
)	
JOHN DILLON, FOLEY DAIRY,	)	Number 6234
JOHN DILLON d/b/a FOLEY DAIRY)	
and PHYLLIS S. NESBIT as ADM-)	
INISTRATRIX of the Estate of	)	ADMENDED COMPLAINT August 28, 1968
CLARENCE HOLMES, Deceased,)	
Jointly and Severally,)	
)	
Defendants)	

COUNT ONE

The plaintiff, a minor, who sues by his next friend and father, Alvin Johnson, Sr. claims of the defendants, jointly and severally, the sum of \$20,000.00, as damages for that heretofore on to-wit: the 13th day of October, 1963, at approximately three P.M. O'Clock, the plaintiff, a child eight years of age at said time, was on premises where he was accustomed to playing and where he had a right to be, said premises being approximately one-half mile due East of the Southeast corner of the City Limits of Foley, Baldwin County, Alabama, in said County and State, and within a fenced common yard to the residences of the deceased defendant Clarence Holmes; John Holmes and Wilbert Odom, and that then and there on said date and on said premises within the said common yard, the deceased defendant Clarence Holmes while operating a truck owned by the defendant John Dillon and with his permission, negligently ran said truck into, upon, or against the plaintiff and by reason thereof and as the proximate result and consequence thereof, the plaintiff was severally injured in this to-wit: He was mashed, bruised and cut about the body, arms, hands and legs; he had internal injuries and internal bleeding; his pelvis bone was smashed and broken; his bladder was punctured and ruptured; he was not expected to live; he suffered great physical pain and mental anguish; he was confined to the hospital for a long period of time; he required almost constant attention and services by doctors, nurses and medical attendants for a number of days to save his life; he continues to suffer physical pain and mental anguish; he was

permanently injured, all as the proximate result and consequence of the averred negligence aforesaid and to his great damage as claimed.

COUNT TWO

The Plaintiff, a minor, who sues by his next friend and father, Alvin Johnson, Sr., claims of the defendants, jointly and severally, the sum of \$20,000.00 as damages for that heretofore on to-wit: October 13, 1963, at approximately Three P.M. O'Clock, on premises situated approximately one-half mile due East of the Southeast Corner of the City limits of Foley, Baldwin County, Alabama, in said county and state, and within a fenced common yard to the residences of the deceased defendant Clarence Holmes; John Holmes and Wilbert Odom, the said defendant Clarence Holmes was operating a instrumentality or machine belonging to the defendant John Dillon doing business as Foley Dairy that was attractive to children below the age of discretion and discernment by permission of the said John Dillon who knew or should have known that said machine was a dangerous instrumentality when being operated around children below the age of discretion and discernment and that said machine and its operation was attractive to children and that the same would be operated by the said Clarence Holmes on premises frequented by children of tender years and below the age of discretion and discernment who would be attracted to the operation of said machine, and that nevertheless, the said John Dillon negligently allowed the said Clarence Holmes to take the said instrumentality or machine and operate the same on said premises at said time and by reason thereof and as a proximate result and consequence thereof, the plaintiff, a child eight years of age at said time and below the age and experience of discretion and discernment while on said premises or common yard, where he and other small children habitually played and where he had a right to be, was attracted to said machine or instrumentality at the time and place aforesaid and that then and there at said time and place, the said Clarence Holmes ran said instrumentality or machine against, upon or over the plaintiff and the plaintiff avers that as a proximate result and consequence thereof, he was severally injured in this to-wit:

he was mashed, bruised and cut about the body, arms, hands and legs; his pelvis bone was mashed and broken; his bladder was punctured and ruptured; he had internal bleeding and internal injuries; he was not expected to live; he suffered and continues to suffer great physical pain and mental anguish; he was confined to a hospital for a long period of time; he required almost constant attention and services by doctors, nurses and medical attendants for a number of days to save his life, all as the proximate result and consequence of the averred negligence aforesaid and to his great damage as set forth.


Attorney for the Plaintiff

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ALVIN JOHNSON, JR., a minor
suing by his next friend and
father, Alvin Johnson, Sr.,

Plaintiff,

vs.

JOHN DILLON, FOLEY DAIRY,
JOHN DILLON, d/b/a FOLEY
DAIRY and CLARENCE HOLMES,
jointly and severally,

Defendants.

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IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

LAW SIDE. NO. 6234

ORDER:

This cause coming on to be heard upon the motion of the
Defendants to dismiss for want of prosecution, it is, therefore,

ORDERED, ADJUDGED AND DECREED by the Court that the same be
and is hereby set for hearing on June 6, 1968, at 10:30 o'clock
A. M.

DATED at Bay Minette, Alabama, this 24th day of May, 1968.

Jeffrey M. Madaleno
Circuit Judge.

ALVIN JOHNSON, JR., a minor,)	
suing by his next friend and)	
father, Alvin Johnson, Sr.,	)	IN THE CIRCUIT COURT OF
)	
Plaintiff,	)	BALDWIN COUNTY, ALABAMA
)	
vs.)	
)	
JOHN DILLON, FOLEY DAIRY,	)	LAW SIDE. NO. 6234.
JOHN DILLON, d/b/a FOLEY)	
DAIRY and CLARENCE HOLMES,)	
jointly and severally,)	
)	
Defendants.)	

MOTION:

Now come the Defendants in the above styled cause, both separately and severally, and show unto this Honorable Court as follows:

1. That on the 13th day of October, 1964, the Plaintiff in this cause filed suit against the Defendants, both separately and severally; that said cause of action arose from an event which allegedly took place in Baldwin County, Alabama, on the 18th day of October, 1963; that on the 21st day of October, 1964, service having been perfected immediately on the Defendants in this cause, Defendants demurred, which demurrer was sustained by this Honorable Court on April 22, 1965;
2. That on October 28, 1965, the Plaintiff not having amended in said cause, the Defendant in this cause filed a motion to dismiss said cause of action for want of prosecution, which motion was granted by this Honorable Court, and on November 24, 1965, the said cause of action was reinstated on the motion of the Plaintiff;
3. That on January 20, 1966, an amended complaint was filed in this cause by the Plaintiff and on January 21, 1966, a motion was filed suggesting the death of one of the original Defendants in this cause;
4. That subsequently on August 18, 1966, a motion to revive was granted by this Honorable Court and the Administratrix of the Estate of Clarence Holmes, Deceased, was substituted as a party Defendant in this cause; that on August 17, 1966, a demurrer was filed in this cause to the complaint as last amended and on

November 16, 1966, said demurrer was sustained;

5. That on January 18, 1967, the Plaintiff amended his complaint in this cause and on January 25, 1967, the Defendant filed a demurrer to said amended complaint and on February 16, 1967, said demurrer was sustained.

6. That on May 18, 1967, Plaintiff in this cause amended his complaint and on June 8, 1967, the Defendant filed a demurrer to the complaint as last amended and on August 17, 1967, said demurrer was sustained; that since the last order of this Honorable Court filed on August 18, 1967, Plaintiff in this cause has failed and/or refused to amend said complaint, although said case has been called each pleading day as set by the rules of this Honorable Court;

WHEREFORE, Defendant in this cause, separately and severally move this Honorable Court to dismiss the complaint as last amended for want of prosecution.

OWENS AND PATTON

By:

Lawrence Owens, Jr.
Attorneys for Defendants.

I, the undersigned, one of the attorneys of record for the Defendants in the foregoing cause, do hereby certify that I have forwarded a copy of the foregoing motion to Arthur Epperson, the attorney of record for the Plaintiff in said cause, by United States mail, properly addressed, with postage prepaid, this 26th day of January, 1968.

Lawrence Owens, Jr.

FILED

JAN 28 1968

CLERK
REGISTER

ALVIN JOHNSON, JR., a minor,)	
suing by his next friend and)	
father, Alvin Johnson, Sr.,	)	IN THE CIRCUIT COURT OF
)	
Plaintiff,)	
	)	BALDWIN COUNTY, ALABAMA
vs.)	
)	
JOHN DILLON, FOLEY DAIRY,	)	LAW SIDE. NO. 6234.
JOHN DILLON, d/b/a FOLEY)	
DAIRY and CLARENCE HOLMES,)	
jointly and severally,)	
)	
Defendants.)	

DEMURRER:

Now come each of the above Defendants, separately and severally and demur to the complaint as last amended, as a whole and to each Count contained therein, and for separate and several grounds of demurrer, set down and assign separately and severally, the following:

1. That it does not state a cause of action.
2. No facts are alleged to show what duty, if any, was owed by the deceased Defendant, Clarence Holmes, to the Plaintiff.
3. It does not allege the circumstances of the alleged accident with sufficient clarity so as to allow the Defendants to ascertain what they are called upon to defend.
4. It does not allege the place of the accident with sufficient certainty.
5. The allegation that the Plaintiff was playing on premises where he was accustomed to playing is not sufficient to impute knowledge of his presence to the Defendants or any of them.
6. For aught it appears the Plaintiff was a trespasser at the time and place of the alleged accident.
7. The allegation that the Plaintiff was "on premises where he was accustomed to playing and where he had a right to be" are conclusions of the pleader.
8. No facts are alleged to show that the Plaintiff had a right to be on the premises where the alleged accident took place.
9. It affirmatively appears that the Plaintiff was playing upon the property of the deceased Defendant, Clarence Holmes, and

no facts are alleged showing that the Plaintiff had any right to be upon the property of the Defendant, Clarence Holmes.

10. For aught appears, the Plaintiff was a trespasser at the time and place of the alleged accident.

11. No facts are alleged to show what duty, if any, was owed by the Defendant, John Dillon, to the Plaintiff.

12. No facts are alleged to show what duty, if any, was owed by John Dillon, doing business as Foley Dairy, to the Plaintiff.

13. No facts are alleged to show what duty, if any, was owed by the Defendant, Foley Dairy, to the Plaintiff.

14. There is a misjoinder of parties Defendant.

15. The allegation that the deceased Defendant, Clarence Holmes, was operating a dangerous instrumentality or machine, is a conclusion of the pleader.

16. That it does not describe the "dangerous instrumentality or machine" with sufficient clarity.

17. For aught appears, the deceased Defendant, Clarence Holmes, was operating a motor vehicle which is not an attractive nuisance.

18. The allegation that the Plaintiff and other small children were attracted to said machine or dangerous instrumentality, is a conclusion of the pleader.

19. That the allegation that the said deceased Defendant, Clarence Holmes, ran said dangerous instrumentality or machine against, upon or over the plaintiff is vague, indefinite and uncertain in that it does not apprise the said Defendant with sufficient certainty against what act of negligence he is called upon to defend.

20. For that it affirmatively appears from said amended complaint that the Defendant, John Dillon, owed no duty to the Plaintiff.

21. The allegation that "the said John Dillon negligently allowed the said Clarence Holmes to take such dangerous

instrumentality or machine and operate the same on said premises at said time", is insufficient to charge the Defendant, John Dillon with any breach of any duty to the Plaintiff.

22. For that it does not sufficiently appear that the Defendant, John Dillon, owed any duty to the Plaintiff which the Defendants negligently failed to perform.

23. For that it does not sufficiently appear that the Deceased Defendant, Clarence Holmes, owed any duty to the Plaintiff which the Defendants negligently failed to perform.

OWENS AND PATTON

By:

J. Cannon Owens, Jr.
Attorneys for Defendants

I, the undersigned, one of the attorneys of record for the Defendants in the foregoing cause, do hereby certify that I have forwarded a copy of the foregoing demurrer to Arthur Epperson, the attorney of record for the Plaintiff, by United States Mail, properly addressed, with postage prepaid, this 8th day of June, 1967.

J. Cannon Owens, Jr.

FILED

JUN 8 1967

ALICE J. DUCK, CLERK
REGISTER

ALVIN JOHNSON, Jr. a minor
suing by his father and next
friend, ALVIN JOHNSON, SR.

Plaintiff.

VS.

JOHN DILLON, FOLEY DAIRY,
HOHN DILLON d/b/a FOLEY DAIRY
and PHYLLIS S. NESBIT as ADM-
INISTRATRIX of the Estate of
CLARENCE HOLMES, Deceased,
Jointly and Severally,

Defendants

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

Number 6234

AMENDED COMPLAINT

COUNT ONE

The plaintiff, a minor, who sues by his next friend and father, Alvin Johnson, Sr. claims of the defendants, jointly and severally, the sum of \$20,000.00, as damages for that heretofore on to-wit: the 13th day of October, 1963, at approximately three P. M. O'Clock, the plaintiff, a child eight years of age at said time, was on premises where he was accustomed to playing and where he had a right to be, said premises being approximately one-half mile due East of the Southeast corner of the City limits of Foley, Baldwin County, Alabama, in said County and State, and within a fenced common yard to the residences of the deceased defendant Clarence Holmes; John Holmes and Wilbert Odom, and that then and there on said date and premises, the deceased defendant Clarence Holmes while operating a truck owned by the defendant John Dillon, negligently ran said truck into, upon, or against the plaintiff and by reason thereof and as the proximate result and consequence thereof, the plaintiff was severally injured in this to-wit: He was mashed, bruised and cut about the body, arms, hands and legs; he had internal injuries and internal bleeding; his pelvis bone was smashed and broken; his bladder was punctured and ruptured; he was not expected to live; he suffered great physical pain and mental anguish; he was confined to the hospital for a long period of time; he required almost constant attention and services by docotors, nurses and medical attendants for a number of days to save his life; he continues to suffer physical pain and mental anguish; he was permanently injured, all as the proximate result and consequence of the averred negligence aforesaid and to his great damage as claimed..

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REGISTER

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COUNT TWO

The Plaintiff, a minor, who sues by his next friend and father, Alvin Johnson, Sr., claims of the defendants, jointly and severally, the sum of \$20,000.00 as damages for that heretofore on to-wit: October 13, 1963, at approximately Three P. M. O'Clock, on premises situated approximately one-half mile due East of the Southeast Corner of the City limits of Foley, Baldwin County, Alabama, in said county and state, and within a fenced common yard to the residences of the deceased defendant Clarence Holmes; John Holmes and Wilbert Odom, the said defendant Clarence Holmes was operating a dangerous instrumentality or machine belonging to the defendant John Dillon doing business as Foley Dairy that was attractive to children below the age of discretion and discernment by permission of the said John Dillon who knew or should have known that said machine was a dangerous instrumentality when being operated and that said machine and its operation was attractive to children and that the same would be operated by the said Clarence Holmes on premises frequented by children of tender years and below the age of discretion and discernment who would be attracted to the operation of said machine, and that nevertheless, the said John Dillon negligently allowed the said Clarence Holmes to take said dangerous instrumentality or machine and operate the same on said premises at said time and by reason thereof and as a proximate result and consequence thereof, the plaintiff, a child eight years of age at said time and below the age and experience of discretion and discernment while on said premises where he and other small children habitually played and where he had a right to be, was attracted to said machine or dangerous instrumentality at the time and place aforesaid and that then and there at said time and place, the said Clarence Holmes ran said dangerous instrumentality or machine against, upon or over the plaintiff and the plaintiff avers that as a proximate result and consequence thereof, he was severally injured in this to-wit: he was mashed, bruised and cut about the body, arms, hands and legs; his pelvis bone was mashed and broken; his bladder was punctured and ruptured; he had internal bleeding and internal injuries; he was not expected to live; he suffered and continues to suffer great physical pain and mental anguish; he was confined to a hospital for a long period of time; he required almost constant attention and services by doctors, nurses and medical attendants for a number of days to save his life, all as the proximate result and consequence of the averred negligence aforesaid and to his great damage as set forth.

FILED
MAY 18 1964
CLERK
REGISTERED

Arthur E. Spencer
Attorney for the Plaintiff
60 PAGE 749

ALVIN JOHNSON, JR., a minor,)	
suing by his next friend and	)	IN THE CIRCUIT COURT OF
father, Alvin Johnson, Sr.,)	
	)	BALDWIN COUNTY, ALABAMA
Plaintiff,)	
vs.	)	LAW SIDE. NO. 6234.
JOHN DILLON, ET AL.,)	
)	
Defendants.)	

DEMURRER:

Come the Defendants in the above styled cause and demur to the complaint of the Plaintiff, as last amended, and to each count thereof, separately and severally, and as grounds for said demurrer, set forth and assigns the following:

1. That said Count does not state a cause of action.
2. No facts are alleged to show what duty, if any, was owed by the Defendant, Clarence Holmes, to the Plaintiff.
3. The Count does not allege the circumstances of the alleged accident with sufficient clarity so as to allow the Defendants to ascertain what they are called upon to defend.
4. No facts are alleged to show what duty, if any, was owed by the Defendant, John Dillon, to the Plaintiff.
5. Said Count does not describe the place of the accident with sufficient certainty.
6. The allegation that Plaintiff was playing on premises where he was accustomed to playing is not sufficient to impute knowledge of his presence to the Defendants, or to either of them.
7. Said Count does not allege that the Defendant, Clarence Holmes, knew of the presence of the Plaintiff.
8. For aught it appears from the Count that the injury suffered by Plaintiff occurred on the property of the Defendants, or one of them.
9. The allegation that the Defendant, John Dillon, knew that the said equipment was attractive to children is a conclusion of the pleader.
10. For aught that appears from said Count, the Plaintiff was a trespasser at the time and place of the accident.

11. No facts are alleged which show that the Defendant, John Dillon, knew of the presence of the Plaintiff.

12. That there is a misjoinder of parties defendant.

13. That said Count does not allege that the Defendant, Clarence Holmes, was the agent, servant or employee of the said John Dillon.

14. That said Count does not allege that the said Defendant Clarence Holmes, was acting within the line and scope of his employment at the time of the said alleged accident.

15. Said Count does not describe the alleged dangerous instrumentality.

16. The allegations that Clarence Holmes was "operating a dangerous instrumentality" are vague and indefinite.

17. The allegations of said Count are insufficient to invoke the doctrine of an "attractive nuisance."

18. For aught appears, the danger from the operations of said dangerous instrumentality were obvious and apparent, even to a child of tender years.

19. That said Count fails to allege any negligence on the part of the Defendant, John Dillon.

20. That said Count fails to allege any negligence on the part of the Defendant, Clarence Holmes.

21. Said Count does not allege how the Plaintiff was attracted to said "dangerous instrumentality".

22. No facts are alleged to show any duty of care of the Defendant, Clarence Holmes, to the Plaintiff.

23. No facts are alleged to show any duty of care of the Defendant, John Dillon, to the Plaintiff.

OWENS AND PATTON

By: 
Attorneys for Defendants.

I, the undersigned, one of the Attorneys of Record for the Defendants in the above styled cause, do hereby certify that I have this day forwarded to Arthur C. Epperson, the Attorney of Record for the Plaintiff in the within styled cause, a copy of the foregoing demurrer by United States Mail, properly addressed, with postage prepaid, this 24 day of January, 1967.

J. Conrad Curran, Jr.

FILED

JAN 25 1967

ALICE L. DICK, CLERK
REGISTER

ALVIN JOHNSON, JR. a)
minor, suing by his father)
and next friend, ALVIN)
JOHNSON, SR.)

Plaintiff)

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

VS.)

AT LAW

JOHN DILLON, FOLEY DAIRY,)
JOHN DILLON d/b/a FOLEY)
DAIRY and PHYLLIS S. NESBIT)
as Administratrix of the)
Estate of CLARENCE HOLMES,)
Deceased. Jointly & Severally.)

Number 6234

AMENDED COMPLAINT

Defendants

COUNT ONE

The plaintiff, a minor, who sues by his next friend and father Alvin Johnson, Sr. claims of the defendants jointly and severally, the sum of \$20,000.00 as damages for that heretofore on to-wit: the 13th day of October, 1963, at approximately three P. M. O'clock, the plaintiff, a child eight years of age at said time, was on premises where he was accustomed to play and where he had a right to be, said premises being approximately one-half mile due East of the Southeast corner of the City limits of Foley, Baldwin County, Alabama, in said County and State, and that then and there on said date and premises, the defendant or decedant Clarence Holmes while operating a truck owned by the defendant John Dillon doing business as Foley Dairy, negligently ran said truck into, upon, over or against the plaintiff and by reason thereof and as the proximate result and consequence thereof the plaintiff was severely injured in this to-wit: he was mashed, bruised and cut about the body, arms hands, and legs, he had internal injuries and internal hemorrhaging; his pelvis bone was broken and mashed; his bladder was ruptured; he was not expected to live and was hospitalized for a long period of time; he suffered great physical pain and mental anguish and continues to suffer great physical pain and mental anguish; he was permanently injured, all as the proximate result and consequence of the averred negligence aforesaid and to his great damage as claimed.

COUNT TWO

The plaintiff, a minor, who sues by his next friend and father, Alvin Johnson, Sr. claims of the defendants jointly and severally the sum of \$20,000.00 as damages for that heretofore on to-wit: October 13, 1963 at approximately Three P. M. O'clock on premises situated approximately one-half mile due East of the Southeast corner of the City limits of Foley, Baldwin County, Alabama in said County and State, Clarence Holmes was operating a dangerous instrumentality or machine belonging to the defendant John Dillon doing business as Foley Dairy that was attractive to children below the age of discretion and discernment by permission of the said John Dillon who knew or should have known that said machinery was a dangerous instrumentality when being operated; that the same was attractive to children; that the same would be operated by the said Clarence Holmes on premises frequented by children of tender years and below the age of discernment who would be attracted to the operation of said machine and that nevertheless, the said John Dillon negligently allowed the said Clarence Holmes to take said dangerous instrumentality or machine and operate the same on said premises at said time and by reason thereof and as a proximate result and consequence thereof, the plaintiff, a child eight years of age at said time and below the age of discretion and discernment, while on the said premises and where he and other small children habitually played and where he had a right to be, was attracted to said dangerous instrumentality at the time and place aforesaid and that then and there the said Clarence Holmes ran said dangerous instrumentality or machine against, upon or over the plaintiff and the plaintiff avers that as a proximate consequence thereof, he was severely bruised and injured in this to-wit: he was mashed, bruised and cut about the body, arms, hands

and legs, he had internal injuries add internal hemorrhaging; his pelvis bone was mashed and broken; his bladder was ruptured; he was not expected to live; he suffered and continues to suffer great physical pain and mental anguish; he was permanently injured; he was confined to the hospital for a long period of time, all as the proximate result and consequence of the averred negligence as aforesaid and to his great damage as setforth.

COUNT THREE

The plaintiff, a minor, who sues by his next friend and father, Alvin Johnson, Sr. claims of the defednants jointly and severally the sum of \$20,000.00 as damages for that heretofore on to-wit: October 13, 1963 a approximately Three P. M. O'clock on premises situated approximately one-half mile due East of the Southeast corner of the City limits of Foley, Baldwin County, Alabama, in said County and State, Clarence Holmes was operating a dangerous instrumentality or machine belonging to John Dillon doing business as Foley Dairy, that was attractive to children below the age of discretion and discernment by permission of the said John Dillon on said premises known to the said Clarence Holmes to be frequented by children of tender years and below the age of discretion and discernment, when then and there, the plaintiff, achild eight years of age at said time and below the age of discernment and discretion and being upon property where he habitually played and had a right to be was attracted to said operation of said dangerous instrumentality or machine and the said Clarence Holmes negligently rans said dangerous instrumentality or machine into, upon over or against the plaintiff and by reason thereof and as the proximate result and consequence thereof the plaintiff was severally injured in this to-wit: he was mashed bruised and cut about the body, arms, hands and legs; he had internal injuries snd internal hemorrhaging; his pelvis bone was mashed and broken; his bladder was ruptured; he was not expected to live; he suffered and continues to suffer great physical pain and mental anguish; he was permanently injured; he was confined to a heospital for a long period of time, all as the proximate result and consequence of the averred negligence and to his great damage as aforesaid.

Arthur C. Eperson
Attorney for the Plaintiff

FILED

JAN 18 1967

ALICE L. DICK, CLERK
REGISTER

Defendants

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
LAW SIDE No. 6234

Comes the plaintiff by his attorney, and the death of Clarence Holmes is suggested of record, with leave to revive against his personal representative when known. W

It being made known to the court that Phyllis S. Nesbit is the administratrix of the estate of Clarence Holmes, deceased, it is

ORDERED by the court that scire facias issue to Phyllis S. Nesbit, as Administratrix of the estate of Clarence Holmes, deceased.

And now comes Phyllis S. Nesbit as administrator of the estate of Clarence Holmes, deceased, appears in said cause as a defendant, and adopts all of the pleas heretofore filed by said decedant as defendant in said suit in defense of said cause.

Done and ordered this 18th day of August, 1966.

Circuit Judge

FILED

AUG 18 1985

NOV 1 1964
S. ERK
S. ERK

ALVIN JOHNSON, JR., a minor,)	
suing by his next friend and)	
father, Alvin Johnson, Sr.,	)	IN THE CIRCUIT COURT OF
)	
Plaintiff,	)	BALDWIN COUNTY, ALABAMA
)	
vs.)	
)	
JOHN DILLON, FOLEY DAIRY,	)	LAW SIDE. NO. 6234.
JOHN DILLON, d/b/a FOLEY)	
DAIRY and CLARENCE HOLMES,)	
jointly and severally,)	
)	
Defendants.)	

DEMURRER:

Come the defendants in the above styled cause and demur to the complaint of the plaintiff, as last amended, and to each count thereof, separately and severally, and as grounds for said demurrer, set forth and assign the following:

1. That said complaint does not state a cause of action.
2. No facts are alleged to show what duty, if any, was owed by the defendant, Clarence Holmes, to the plaintiff.
3. The complaint does not allege the circumstances of the alleged accident with sufficient clarity so as to allow the defendants to ascertain what they are called upon to defend.
4. No facts are alleged to show what duty, if any, was owed by the defendant, John Dillon, to the Plaintiff.
5. Said complaint does not allege the place of the accident with sufficient certainty.
6. The allegation that plaintiff was playing on premises where he was accustomed to playing is not sufficient to impute knowledge of his presence to the defendants, or to either of them.
7. Said complaint does not allege that the defendant, Clarence Holmes, knew or ought to have known, of the presence of the plaintiff.
8. For that it affirmatively appears from said complaint that a "dump truck" is not an attractive nuisance.
9. That it affirmatively appears from said complaint that the danger from a "dump truck" being operated is obvious and patent.

10. That it affirmatively appears from the complaint that the operation of a "dump truck" is commonplace and cannot be said to hold any special allurements for children.

11. That it does not appear from the complaint that the injury suffered by plaintiff occurred on the property of the defendants.

12. The allegation that the defendant, John Dillon, knew that the said equipment was attractive to children is a conclusion of the pleader.

13. For aught that appears from said complaint, the plaintiff was a trespasser at the time and place of the accident.

14. No facts are alleged which show that the defendant, John Dillon, knew or ought to have known, of the presence of the plaintiff or any other children.

15. That claimed damages of doctors' bills in the future is not compensable.

16. That there is a misjoinder of parties defendant.

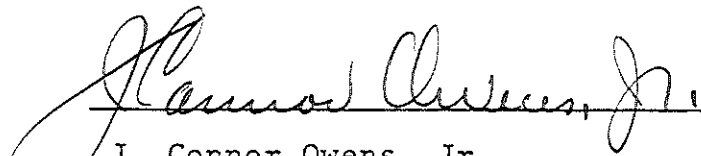
17. That the allegation that the "dump truck" belonged to John Dillon or Foley Dairy, is inconsistent, variant and contradictory.

18. That the allegation that Clarence Holmes was the agent, servant or employee of John Dillon, or Foley Dairy, is vague, inconsistent and contradictory.

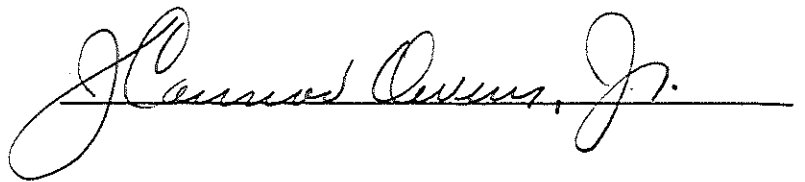
19. The allegation that the defendant, Clarence Holmes, was acting individually or as the agent, servant or employee of John Dillon, is vague, inconsistent and contradictory.

20. That said complaint does not allege that the defendant, Clarence Holmes, was the agent, servant or employee of the said John Dillon.

21. That said complaint does not allege that the said defendant, Clarence Holmes, was acting within the line and scope of his employment at the time of the said alleged accident.


J. Connor Owens, Jr.,
Attorney for Defendants.

I, the undersigned, J. Connor Owens, Jr., the attorney of record for the defendants in the above styled cause, do hereby certify that I have this day forwarded to Arthur C. Epperson, the attorney of record for the plaintiff in the within styled cause, a copy of the foregoing demurrer by United States Mail, properly addressed, with postage prepaid, this 18 day of August, 1966.



FILED

AUG 17 1966

ALICE J. DICK, CLERK
REGISTER

ALVIN JOHNSON, JR. a minor,
by his next friend and Father
ALVIN JOHNSON, SR.

Plaintiff

VS.

CLARENCE HOLMES, JOHN DILLON,
FOLEY DAIRY, and JOHN DILLON
d/b/a FOLEY, DAIRY. Jointly and
Severally

Defendants

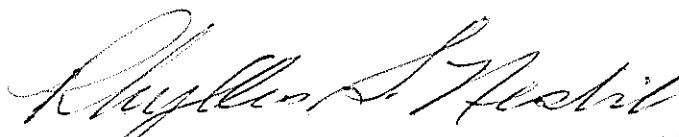
IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN LAW

No. 6234

Comes Phyllis S. Nesbit, as Administratrix of the Estate
of Clarence Holmes, Deceased, and appears in said cause as defendant
therein in the place and stead of and as to Clarence Holmes, and
adopts all of the pleadings heretofore filed by said decedent in
said suit in defense thereof.



As Administrator of the Estate
of Clarence Holmes, Deceased

FILED

AUG 8 1938

AUG 11 1938
ALICE J. BROWN, CLERK
REGISTERED

~~~~~

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
LAW SIDE                      No. 6234

[illegible]

~~~~~

Arthur C. Epperson
Attorney for the plaintiff

ADG 3 1966

ALICE J. DUCK, CLARK
REGISTER

"Exhibit A"

STATE OF ALABAMA

PROBATE COURT

BALDWIN COUNTY

IN THE MATTER OF THE ESTATE
OF CLARENCE HOLMES, DECEASED

Letters of administration on the estate of CLARENCE HOLMES, Deceased, are hereby granted to PHYLLIS S. NESSBIT in her capacity as general administratrix for said County, who has duly qualified and given bond as such and is authorized to administer said estate as general administratrix.

WITNESS my hand this the 3rd day of August, 1966.

Harry D. Oliver
Judge of Probate

STATE OF ALABAMA, BALDWIN COUNTY

Filed August 3, 1966 3:45 P.M.

Recorded 0 book page

Harry D. Oliver
Judge of Probate

FILED

AUG 3 1966

MADE 1 DAY, CLERK
REGISTER

345 100 MC 121

ALVIN JOHNSON, JR.,
a minor, suing by his next friend
and father, Alvin Johnson, Sr.,

Plaintiff,

vs.

JOHN DILLON, FOLEY DAIRY,
JOHN DILLON d/b/a Foley Dairy,
and CLARENCE HOLMES, jointly
and severally,

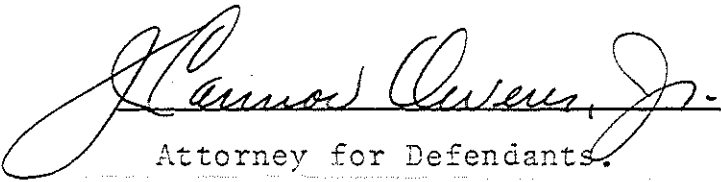
Defendants.

IN THE CIRCUIT COURT OF

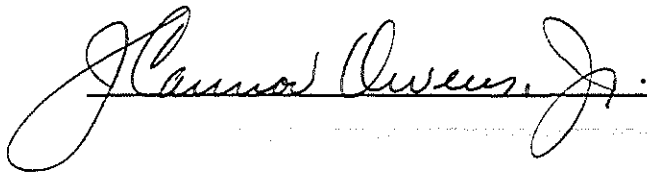
BALDWIN COUNTY, ALABAMA

IN LAW NO. 6234.

Now comes J. Connor Owens, Jr., Attorney of Record for
Clarence Holmes, and suggests to this Court that the said
Defendant, Clarence Holmes, is now deceased, having drowned at
Gulf Shores, Alabama, on or about the 22nd day of August, 1965.


Attorney for Defendants.

I, the undersigned J. Connor Owens, Jr., do hereby certify
that I have this day mailed a copy of the foregoing to Arthur
C. Epperson, Attorney for the Plaintiff in the above styled matter,
properly addressed, with postage prepaid, on this the 20th day
of January, 1966.



FILED

JAN 21 1966

Alice J. Duck, CLERK
REGISTER

ALVIN JOHNSON, JR. a)	
minor, suing by his)	
next friend and father	)	IN THE CIRCUIT COURT OF
Alvin Johnson, Sr.)	
	)	BALDWIN COUNTY, ALABAMA
Plaintiff)	
Vs.	)	IN EQUITY
)	
John Dillon, Foley Dairy,)	
JOHN DILLON d/b/a Foley	)	Number 6234
Dairy and CLARENCE HOLMES)	
Jointly and severally)	
)	
Defendants)	

AMENDED COMPLAINT

COUNT ONE

The plaintiff, a minor, who sues by his next friend and father, Alvin Johnson, Sr. claims of the defendnats jointly and severally, the sum of \$20,000.00 as damages for that heretofore on to-wit: the 13th day of October, 1963 at approximately three P. M. O'clock, the plaintiff, a child eight years of age at said time, was on premises where he was accustomed to play and where he had a right to be, said premises being approximately one-half mile due East of the Southeast corner of the city limits of Foley, Baldwin County, Alabama, in said County and State and that then and there on said date and premises, the defendant Clarence Holmes while operating a dump truck owned by the defendant John Dillon doing business as Foley Dairy, individually or as servant, agent or employee of the said John Dillon doing business as Foley Dairy while acting within the line and scope of his employment, negligently ran said dump truck into, upon, over or against the plaintiff and by reason thereof and as the proximate result and consequence thereof the plaintiff was severely injured in this to-wit: he was mashed, bruised and cut about the body, arms, hands and legs; he had internal injuries and internal hemorrhaging; his pelvis bone was broken; he was not expected to live; he suffered and continues to suffer great physical pain and mental anguish; he was permanently injured; he was confined to a hospital for a long period of time, all as the proximate result and consequence of the averred negligence aforesaid. and to his great damage as claimed.

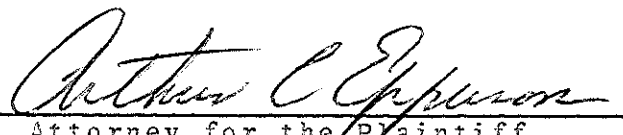
COUNT TWO

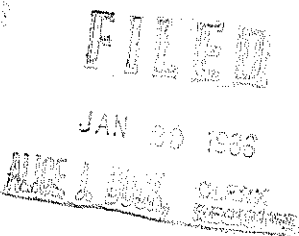
The plaintiff, a minor, who sues by his next friend and father Alvin Johnson, Sr. claims of the defendants jointly and severally the sum of \$20,000.00 as damages for that heretofore on to-wit: October 13, 1963 at approximately three P. M. O'clock on premises situated approximately one-half mile due East of the Southeast corner of the city limits of the City of Foley, Baldwin County, Alabama in said County and State, the defendant Clarence Holmes was operating a dangerous instrumentality or machine, belonging to the defendant John Dillon doing business as Foley Dairy, that was attractive to children below the age of discretion and discernment by permission of the said John Dillon who knew or should have known that said dangerous machinery, the same being a dump truck, was attractive to children below the age of discretion and discernment and that the said dangerous machinery would be operated by the said Clarence Holmes on said premises and further that said premises was frequented by children of tender years and below the age of discernment and discretion who would be attracted to the said dump truck and its operation on said premises and that nevertheless, the said John Dillon negligently allowed the said Clarence Holmes to take said dangerous instrumentality or machinery and operate the same on said premises at said time and by reason thereof and as a proximate result and consequence thereof the plaintiff, a child eight years of age at said time and below the age of discretion and discernment, while on the said premises where he and other small children habitually played

was attracted to said dangerous machinery at the time and place aforesaid and that then and there the said Clarence Holmes ran said dump truck or machinery against, upon or over the plaintiff and the plaintiff avers that as a proximate consequence thereof, he was severely injured in this to-wit: he was cut, mashed and bruised about the body, arms, hands and legs; his pelvis bone was broken; he suffered internal injuries and internal hemorrhaging; he nearly died and was not expected to live; he suffered and continues to suffer great physical pain and mental anguish; he was permanently injured; he was confined to the hospital for a long period of time all to his damage as aforesaid.

COUNT THREE

The plaintiff, a minor, who sues by his next friend and father, Alvin Johnson, Sr. claims of the defendants jointly and severally, the sum of \$20,000.00 as damages for that heretofore on to-wit: October 13, 1963, at approximately three P. M. O'clock on premises situated approximately one-half mile due East of the Southeast corner of the city limits of the City of Foley, Baldwin County, Alabama, in said County and State, the defendant Clarence Holmes was operating a dangerous instrumentality or machine belonging to the defendant John Dillon doing business as Foley Dairy that was attractive to children below the age of discretion and discernment by permission of the said John Dillon who knew or should have known that said dangerous machinery, the same being a dump truck, was attractive to children below the age of discretion and discernment and that the said dangerous machinery would be operated by the said Clarence Holmes on said premises and further that said premises was frequented by children of tender years and below the age of discretion and discernment who would be attracted to said machine and its operation on said premises and that nevertheless, the said John Dillon allowed the said Clarence Holmes to take said dangerous machinery and operate the same upon said premises at said time and by reason thereof and as a proximate result and consequence thereof, the plaintiff, a child eight years of age at said time and below the age of discretion and discernment, while on said premises where he and other small children habitually played, was attracted to said dangerous machinery at the time aforesaid and that then and there the said Clarence Holmes did negligently run said dangerous machine upon, against or over the plaintiff and the plaintiff avers by reason thereof and as the proximate result and consequence he was severely injured in this to-wit: he was mashed, bruised and cut about the body, arms, hands and legs; his pelvis bone was broken; he had internal injuries and internal hemorrhaging he was not expected to live; he suffered and continues to suffer great physical pain and mental suffering; he was permanently injured; he was confined to a hospital for a long period of time all to his great damage as aforesaid.


Attorney for the Plaintiff



ALVIN JOHNSON, JR., a minor,
suing by his next friend and
father, Alvin Johnson, Sr.,

Plaintiff,

vs.

JOHN DILLON, FOLEY DAIRY,
JOHN DILLON, d/b/a FOLEY
DAIRY and CLARENCE HOLMES,
jointly and severally,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

LAW SIDE. NO. 6234.

MOTION TO STRIKE:

Come now the Defendants in the above styled cause and move to strike the reinstatement granted to the Plaintiff, and Defendants also move that the complaint of the Plaintiff be dismissed with prejudice for want of prosecution.

That on October 13, 1963, the injury occurred of which the Plaintiff complains; that on October 13, 1964, the Plaintiff filed this suit in the Circuit Court of Baldwin County, Alabama; that on October 21, 1964, the Defendants filed a demurrer to the complaint of the Plaintiff; that on April 22, 1965, this Court sustained the demurrer of the Plaintiff; that on October 28, 1965, this Court dismissed the suit of the Plaintiff for want of prosecution; that on November 24, 1965, the suit of the Plaintiff was reinstated by the Court on motion of the Plaintiff.

The Defendants assign as grounds for striking the reinstatement of Plaintiff's cause and for dismissal with prejudice for want of prosecution, the following, both separately and severally:

1. The Plaintiff has acted in such a dilatory fashion in pursuing his cause as to leave the evidence stale and uncertain.

2. The Plaintiff had sufficient time to file an amended complaint since the demurrer to the original complaint was sustained and ought not be given leave to delay this cause an unreasonable length of time.

J. CONNOR OWENS, JR.

By: Walter S. Patton
Attorney for Defendants.

I, the undersigned Walter S. Patton, do hereby certify that I have this day mailed a copy of the foregoing Motion to Strike to Arthur Epperson, Attorney for the Plaintiff in the within styled cause, through the United States mail, properly addressed, postage prepaid.

Walter S. Patton

FILED

DEC 14 1965

ALICE A. DUCK, CLERK
REGISTER

ALVIN JOHNSON, JR., a minor,)	
suing by his next friend and)	
father, Alvin Johnson, Sr.,	)	IN THE CIRCUIT COURT OF
)	
Plaintiff,	)	BALDWIN COUNTY, ALABAMA
)	
vs.)	
)	
JOHN DILLON, FOLEY DAIRY,	)	LAW SIDE.
JOHN DILLON, d/b/a FOLEY)	
DAIRY and CLARENCE HOLMES,)	
jointly and severally,)	
)	
Defendants.)	

DEMURRER:

Come the Defendants in the above styled cause and demur to the Complaint of the Plaintiff and to each count thereof, separately and severally, and as grounds for said demurrer, set down and assign the following:

1. That said Complaint does not state a cause of action.
2. No facts are alleged to show what duty, if any, was owed by the Defendant, Clarence Holmes, to the Plaintiff.
3. The Complaint does not allege the circumstances of the alleged accident with sufficient clarity so as to allow the Defendants to ascertain what they are called upon to defend.
4. No facts are alleged to show what duty, if any, was owned by the Defendant, John Dillon, to the Plaintiff.
5. Said Complaint does not allege the place of the accident with sufficient certainty.
6. The allegation that Plaintiff was playing on premises where he was accustomed to playing is not sufficient to impute knowledge of his presence to the Defendants, or to either of them.
7. Said Complaint does not allege that the Defendant, Clarence Holmes, knew or ought to have known, of the presence of the Plaintiff.
8. For that it affirmatively appears from said Complaint that a "dump truck" is not an attractive nuisance.

9. That it affirmatively appears from said Complaint that the danger from a "dump truck" being operated is obvious and patent.

10. That it affirmatively appears from the Complaint that the operation of a "dump truck" is commonplace and cannot be said to hold any special allurements for children.

11. That it does not appear from the Complaint that the injury suffered by Plaintiff occurred on the property of the Defendants.

12. The allegation that the Defendant, John Dillon, knew that said equipment was attractive to children is a conclusion of the pleader.

13. For aught that appears from said Complaint, the Plaintiff was a trespasser at the time and place of the accident.

14. No facts are alleged which show that the Defendant, John Dillon, knew or ought to have known, of the presence of the Plaintiff or any other children.

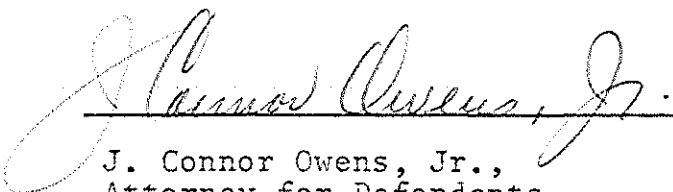
15. That claimed damages of doctors' bills in the future is not compensable.

16. That there is a misjoinder of parties Defendant.

17. That the allegation that the "dump truck" belonged to John Dillon or Foley Dairy, is inconsistent, variant and contradictory.

18. That the allegation that Clarence Holmes was the agent, servant or employee of John Dillon, or Foley Dairy, is vague, inconsistent and contradictory.

19. The allegation that the Defendant, Clarence Holmes, was acting individually or as the agent, servant or employee of John Dillon, is vague, inconsistent and contradictory.


J. Connor Owens, Jr.,
Attorney for Defendants.

FILED

OCT 21 1964

ALICE J. DUCK, CLERK
REGISTER

6234
DEMURRER

ALVIN JOHNSON, JR., a minor,
suing by his next friend and
father, Alvin Johnson, Sr.

Plaintiff,

vs.

JOHN DILLON, FOLEY DAIRY,
JOHN DILLON, d/b/a FOLEY
DAIRY and CLARENCE HOLMES,
jointly and severally,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
LAW SIDE.

FILED

OCT 21 1964

ALICE L. DUCK, CLERK
REGISTER

J. CONNOR

~~MASHEURN~~ & OWENS

ATTORNEYS AT LAW

DAHLBERG BUILDING

BAY MINETTE, ALABAMA

ALVIN JOHNSON, JR.)	
a minor, suing by his)	
next friend and father	)	IN THE CIRCUIT COURT OF
Alvin Johnson, Sr.)	
	)	BALDWIN COUNTY, ALABAMA
Plaintiff)	
	)	AT LAW
VS.)	
)	
JOHN DILLON, FOLEY DAIRY,)	
JOHN DILLON dba/ as FOLEY)	
DAIRY and CLARENCE HOLMES)	
Jointly and Severally.)	
Defendants	)	Number _____
)	

COUNT ONE

The plaintiff, a minor, who sues by his next friend and father, Alvin Johnson, Sr. claims of the defendants jointly and severally, the sum of \$20,000.00 as damages for that heretofore on to--wit, the 13 th day of October, 1963, the plaintiff was a minor eight years of age and on premises where he was accustomed to play approximately one-half mile East of the City limits of Foley, in Baldwin County, Alabama and on to-wit, said day and date at said time and place the defendant Clarence Holmes, individually or as servant, agent or employee of John Dillon or Foley Dairy while acting within the line or scope of his employment, negligently ran a dump truck which was the property of John Dillon or Foley Dairy, into, upon, against or over the plaintiff and by reason thereof and as the proximate result and consequence thereof plaintiff was severely injured in this to-wit: he was mashed, bruised and cut about the body, arms, hands and legs; his pelvis bone was broke; he had internal injuries and internal hemmoraging; he nearly died and was not expected to live; he suffered and continues to suffer great physical pain and mental anguish; he was confined to a hospital for a long period of time all to his great damage as aforesaid.

COUNT TWO

The plaintiff, a minor, who sues by his next friend and father Alvin Johnson, Sr. claims of the defendants jointly and severally the sum of \$20,000.00 as damages for that heretofore on to-wit the 13th day of October, 1963, the plaintiff was a minor eight years of age and below the age of descretion and was on premsises where he was accustomed to play approximately one-half mile East of the City limits of Foley, in Baldwin County, Alabama and on to-wit, said day and date as said time and place Clarence Holmes was operating machinery or equipment belonging to Hohn Dillon or Foley DAiry that was attractive to children below the age of discernment and discretion by permission of the owner of said machinery or equipment; that the said owner of said equipment or machinery knew that said equipment of machinery being a dump truck was attractive to children below the age of discretion and was inheirently dangerous to such children and that said owner well knew that said equipment of machinery would be used and operated on premises habitually frequented by children below the age of descretion and that would be attracted to said machinery or equipment that said owner of said equipment of machinery nevertheless negligently allowed the said Clarence Holmes to take said machinery or equipment and operate it at said time and place and that by reason thereof and as a proximate result and consequence thereof, the plaintiff was attracted to said equipment or machinery at said time and place aforesaid and that then and there the said Clarence Holmes did run said machinery or equipment into, upon or over the plaintiff and by reason thereof and as the proximate result and consequence thereof plaintiff was injured in this to-wit:

he was cut, mashed and bruised about the body, arms, ahnds and legs; his pelvis bone was broke; he had internal injuries and internal hemmoraging; he nearly died and was not expected to live; he suffered and contiues to suffer great physical pain and mental anguish; he was confined to the hospital for a long period of time; he was permanently injured and will suffer physical pain and physical inpairment in the future all to his great damage as aforesaid.

Arthur E. Epperson

Attorney for the Plaintiff

Defendants reside
East of Foley, Ala.

*The Plaintiff Demands
a trial by Jury -
Arthur E. Epperson
attney for Plaintiff*

FILED

OCT. 25 1934

ALICE J. DUCK, CLERK
REGISTER

SUMMONS AND COMPLAINT

MOORE PRINTING COMPANY - BAY MINETTE, ALA.

The State of Alabama, }
Baldwin County.

Circuit Court, Baldwin County

No.-----

-----TERM, 19-----

TO ANY SHERIFF OF THE STATE OF ALABAMA

You Are Commanded to Summon John Dillon, Foley, Ala. and Clarence Holmes,
Foley, Ala.

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 John Dillon,-----

Clarence Holmes, Foley Dairy, John Dillon dba Foley Dairy Defendants

by Alvin Johnson Jr. by his next friend and father, Alvin Johnson Sr.

-----, Plaintiff-----

Witness my hand this 13th day of October 1964

Alvin Johnson Jr., Clerk

94: 9-14-64

No. 62-34

Page _____

STATE of ALABAMA

Baldwin County

CIRCUIT COURT

Alvin Johnson Jr.

Plaintiffs

vs.

John Dillon

et al.

Defendants

Summons and Complaint

Filed

10-13

19 64

Henry Krick Clerk

Plaintiff's Attorney

Defendant's Attorney

Defendant lives at _____

Received In Office

Oct 13 th, 19 64

Taylor Wilkins

Sheriff.

I have executed this summons

this

14 Oct

19 64

by leaving a copy with

John Dillon

Clarence Holmer

Sheriff claims

Ten Cent. per mile total \$

TAYLOR WILKINS, Sheriff

DEPUTY SHERIFF

Taylor Wilkins

Sheriff.

Harold E. ...

Deputy Sheriff.

Dolan