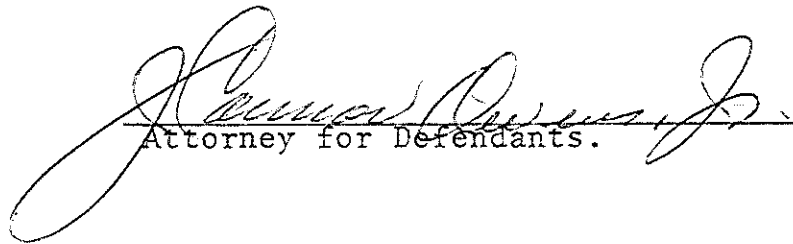


ALVIN JOHNSON, SR.,)	
Plaintiff,	)	IN THE CIRCUIT COURT OF
vs.)	
	)	BALDWIN COUNTY, ALABAMA
JOHN DILLON, FOLEY DAIRY,)	
JOHN DILLON d/b/a FOLEY)	
DAIRY and PHYLLIS S. NESBIT,	)	AT LAW. NO. 6235.
as Administratrix of the)	
Estate of Clarence Holmes,)	
Deceased, jointly and severally,)	
Defendants.)	

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, SR.,)	
Plaintiff,	)	IN THE CIRCUIT COURT OF
vs.)	
	)	BALDWIN COUNTY, ALABAMA
CLARENCE HOLMES, JOHN DILLON,)	
FOLEY DAIRY and JOHN DILLON,)	
d/b/a FOLEY DAIRY, jointly	)	LAW SIDE. NO. 6235.
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, and for separate and several grounds of demurrer, set down and assign separately and severally, 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's minor child.
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's minor child.
5. Said Complaint does not allege the place of the accident with sufficient certainty.
6. The allegation that Plaintiff's minor child 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 of the presence of the Plaintiff's minor child.
8. For aught that appears from said Complaint, the Plaintiff's minor son was a trespasser at the time and place of the accident.
9. No facts are alleged which show that the Defendant, John Dillon, knew or ought to have known, of the presence of the Plaintiff's minor child or any other children.

10. The allegation that Plaintiff's minor son was "on premises where he was accustomed to playing and where he had a right to be", are conclusions of the pleader.

11. No facts are alleged to show that the Plaintiff's minor son had a right to be on the premises where the alleged accident took place.

12. For it affirmatively appears that Plaintiff's minor son was playing upon the property of the Defendant, Clarence Holmes, and no facts are alleged showing that Plaintiff's minor son had any right to be upon the property of the Defendant.

13. For aught appears, Plaintiff's minor son had no right to be where he was at the time and place of said accident.

14. No facts are alleged to show what duty, if any, was owed by John Dillon, individually, or doing business as Foley Dairy, to the Plaintiff's minor son.

15. The allegation that the "decendant defendant, Clarence Holmes, while operating a truck owned by the Defendant, John Dillon, negligently ran said truck" against the Plaintiff's minor son is insufficient to charge the Defendant, John Dillon, with any liability in this cause.

16. 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 cause.

17. No facts are alleged to show what duty, if any, was owed by Defendant, Foley Dairy, to Plaintiff's minor child.

18. There is a misjoinder of parties Defendant.

OWENS AND PATTON

By: 

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.

J. Cameron Owens, Jr.

FILED

SEP 4 1968

ALICE J. DUCK CLERK
REGISTER

ALVIN JOHNSON, SR.,)	
)	
Plaintiff,	)	IN THE CIRCUIT COURT OF
vs.)	
JOHN DILLON, FOLEY DAIRY,	)	BALDWIN COUNTY, ALABAMA
JOHN DILLON d/b/a FOLEY)	
DAIRY and PHYLLIS S. NESBIT,	)	LAW SIDE. NO. 6235
as Administratrix of the)	
Estate of CLARENCE HOLMES,)	
Deceased, jointly and)	
severally,)	
)	
Defendants.)	

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.

Jessie J. Madburn
Circuit Judge.

FILED

SEP 4 1968

ALICE J. DUCK CLERK
REGISTER

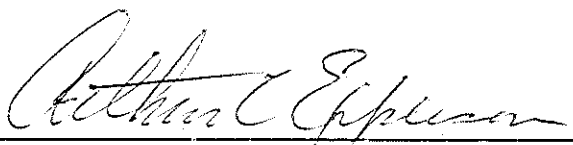
ALVIN JOHNSON, SR.	)	IN THE CIRCUIT COURT OF
)	
Plaintiff	)	BALDWIN COUNTY, ALABAMA
)	
VS.	)	AT LAW
)	
JOHN DILLON, FOLEY DAIRY,	)	Number 6235
JOHN DILLON d/b/a FOLEY)	
DAIRY and PHYLLIS S. NESBIT)	
as ADMINISTRATRIX of the	)	AMENDED COMPLAINT August 28, 1968
Estate of CLARENCE HOLMES,)	
Deceased, Jointly & Severally.)	
)	
Defendants)	

COUNT ONE

The plaintiff claims of the defendants, jointly and severally the sum of \$9,200.00 as damages, for that plaintiff avers that on to-wit: October 13, 1963, plaintiff's minor son, Alvin Johnson, Jr. 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, Alabama, in Baldwin County, Alabama, and within a fenced common yard to the residences of the deceased defendant Clarence Holmes; John Holmes and Wilbert Odom, and on to-wit: said day and date and on said premises within the said common yard at approximately three P.M. O'Clock, the decedant John Dillon, and with his permission, negligently ran said truck into, upon or against the plaintiff's said minor son, and by reason thereof and as the proximate consequence and result thereof, plaintiff's said minor son was severely injured in this to-wit: he was mashed, bruised, about the arms, hands, legs and body; his pelvis bone was mashed and broken; his bladder was punctured and ruptured; he had internal injuries and internal bleeding; he was not expected to live; he suffered and continues to suffer great physical pain and mental anguish; he was confined to the hospital for a long period of time; he required the services of doctors, nurses and medical attendants and he required the use of drugs in and about the treatment of his injuries, all as the proximate result and consequence of the averred negligence aforesaid.

And the plaintiff avers that as the result and consequence of said injuries sustained by his said minor son, he was put to the expense of doctor's bills, nurses bills, hospital bills and

medical bills and he was forced to lose the services and companionship of his son for a long period of time, for all of which he claims damages as aforesaid.



Attorney for the Plaintiff

FILED

AUG 2 5 1958

CLERK
REGISTER

ALVIN JOHNSON, SR.,)	
	)	IN THE CIRCUIT COURT OF
Plaintiff,)	
vs.	)	BALDWIN COUNTY, ALABAMA
CLARENCE HOLMES, JOHN DILLON,)	
FOLEY DAIRY and JOHN DILLON,	)	LAW SIDE. NO. 6235
d/b/a FOLEY DAIRY, 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 28, 1968, at 2:00 o'clock P M.

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

Jeffrey J. Madaleno
Circuit Judge.

FILED

AUG 9 1968

ALICE J. DUCK CLERK
REGISTER

ALVIN JOHNSON, SR.,)	
Plaintiff,	)	IN THE CIRCUIT COURT OF
vs.)	
	)	BALDWIN COUNTY, ALABAMA
CLARENCE HOLMES, JOHN DILLON,)	
FOLEY DAIRY and JOHN DILLON,)	
d/b/a FOLEY DAIRY, jointly	)	LAW SIDE. NO. 6235.
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 Defendnat 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;

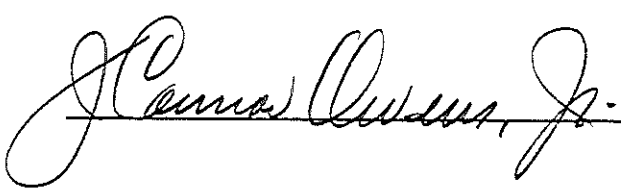
WHEREFORE, Defendant in this cause, separately and severally, move this Honorable Court to dismiss the complaint as last amended for want of prosecution.

OWENS AND PATTON

By: 

Attorneys for Defendant.

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.



FILED

JAN 29 1968

FILED IN CLERK REGISTER

ALVIN JOHNSON, SR.,)	
Plaintiff,	)	IN THE CIRCUIT COURT OF
vs.)	
	)	BALDWIN COUNTY, ALABAMA
CLARENCE HOLMES, JOHN DILLON,)	
FOLEY DAIRY and JOHN DILLON)	
d/b/a FOLEY DAIRY, jointly	)	LAW SIDE. NO. 6235.
and severally,)	
Defendants.)	

DEMURRER:

Now come each of the above Defendants, separately and severally and demur to the complaint as last amended, and for separate and several grounds of demurrer, set down and assign separately and severally, 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's minor child.
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's minor child.
5. Said Complaint does not allege the place of the accident with sufficient certainty.
6. The allegation that Plaintiff's minor child 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 of the presence of the Plaintiff's minor child.
8. For aught that appears from said Complaint, the Plaintiff's minor son was a trespasser at the time and place of the accident.
9. No facts are alleged which show that the Defendant, John Dillon, knew or ought to have known, of the presence of the Plaintiff's minor child or any other children.

10. The allegation that Plaintiff's minor son was "on premises where he was accustomed to playing and where he had a right to be", are conclusions of the pleader.

11. No facts are alleged to show that the Plaintiff's minor son had a right to be on the premises where the alleged accident took place.

12. For it affirmatively appears that Plaintiff's minor son was playing upon the property of the Defendant, Clarence Holmes, and no facts are alleged showing that Plaintiff's minor son had any right to be upon the property of the Defendant.

13. For aught appears, Plaintiff's minor son had no right to be where he was at the time and place of said accident.

14. No facts are alleged to show what duty, if any, was owed by John Dillon, individually, or doing business as Foley Dairy, to the Plaintiff's minor son.

15. The allegation that the "decendant defendant, Clarence Holmes, while operating a truck owned by the Defendant, John Dillon, negligently ran said truck" against the Plaintiff's minor son is insufficient to charge the Defendant, John Dillon, with any liability in this cause.

16. No facts are alleged to show what duty, if any, was owed by Defendant, Foley Dairy, to Plaintiff's minor child.

17. There is a misjoinder of parties Defendant.

OWENS AND PATTON

By:

J. P. 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 ⁸~~25th~~ day of ^{June}~~May~~, 1967.

J. P. Owens, Jr.

FILED

JUN 8 1967

ALICE J. DUCK, CLERK

ALVIN JOHNSON, SR.,)	
Plaintiff,	)	IN THE CIRCUIT COURT OF
vs.)	
	)	BALDWIN COUNTY, ALABAMA
CLARENCE HOLMES, JOHN DILLON,)	
FOLEY DAIRY and JOHN DILLON,)	
d/b/a FOLEY DAIRY, jointly	)	LAW SIDE. NO. 6235.
and severally,)	
Defendants.)	

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.

Jessie J. Middleberry
Circuit Judge.

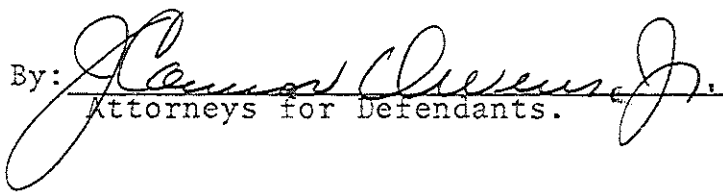
ALVIN JOHNSON, SR.,)	
Plaintiff,	)	IN THE CIRCUIT COURT OF
vs.	)	BALDWIN COUNTY, ALABAMA
JOHN DILLON, ET AL.,)	
Defendants.	)	LAW SIDE. NO. 6235

DEMURRER:

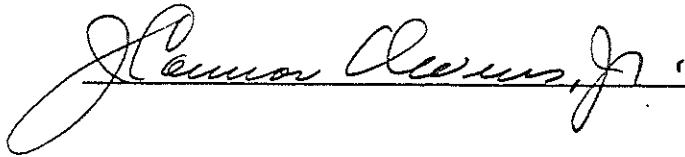
Come the Defendants in the above styled cause and demur to the Complaint of Plaintiff, as last amended, and as grounds therefor, assign the following both separately and severally:

1. 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 Plaintiff's minor child.
3. No facts are alleged to show what duty, if any, was owed by the Defendant, John Dillon, to Plaintiff's minor child.
4. Said complaint does not describe the place of the accident with sufficient clarity.
5. Said complaint does not allege who was operating the vehicle at the time of the accident.
6. For aught appears from said complaint, Plaintiff's minor son was a trespasser at the time of the accident.
7. The allegation that the decedent, Clarence Holmes, was operating a truck belonging to John Dillon, is an insufficient allegation of agency.
8. Said complaint does not state a cause of action against the Defendant, John Dillon.
9. The allegation that Plaintiff's minor child was playing where he was accustomed to playing is a conclusion of the pleader.
10. No facts are alleged to support the allegation that Plaintiff's minor child was where he had a right to be.

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.

A handwritten signature in cursive script, reading "James A. Buck, Jr.", written over a horizontal line.

FILED
JAN 25 1967
JAMES A. BUCK, CLERK
REGISTER

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 & Severally.

Defendants

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

Number 6235

AMENDED COMPLAINT

COUNT ONE

The plaintiff claims of the defendants, jointly and severally the sum of \$9,200.00 as damages, for that plaintiff avers that on to-wit; October 13, 1963, plaintiff's minor son, Alvin Johnson, Jr. 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, Alabama, in Baldwin County, Alabama, and within a fenced common yard to the residences of the deceased defendant Clarence Holmes; John Holmes and Wilbert Odom, and on to-wit: said day and date/at approximately three P. M. O'Clock, the decedant defendant Clarence Holmes while operating a truck owned by the defendant John Dillon, negligently ran said truck into, upon or against the plaintiff's said minor son, and by reason thereof and as the proximate consequence and result thereof, plaintiff's said minor son was severally injured in this to-wit: he was mashed, bruised, and cut about the arms, hands, legs and body; his pelvis bone was mashed and broken; his bladder was was punctured and ruptured; he had internal injuries and internal bleeding; he was not expected to live; he suffered and continues to suffer great physical pain and mental anguish; he was confined to the hospital for a long period of time; he required the services of docotrs, nurses and medical attendants and he required the use of drugs in and about the treatment of his injuries, all as the proximate result and consequence of the averred negligence aforesaid.

And the plaintiff avers that as the result and consequence of said injuries sustained by his said minor son, he was put to the expense of doctor's bills, nurse's bills, hospital bills and other medical bills and he was forced to lose the services and companionship of his son for a long period of time, for all of which he claims damages as aforesaid.

Arthur C. Epperson
Attorney for the Plaintiff

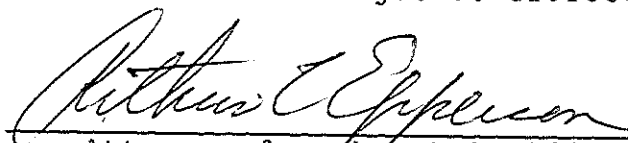
FILED
MAY 13 1964
ALICE L. DICK, CLERK
REGISTERED

ALVIN JOHNSON, SR.)	
Plaintiff)	
VS.	)	IN THE CIRCUIT COURT OF
)	
JOHN DILLON, FOLEY DAIRY	)	BALDWIN COUNTY, ALABAMA
JOHN DILLON d/b/a Foley)	
Dairy and PHYLLIS S. NESBIT	)	AT LAW
As Adminstratrix of the)	
Estate of CLARENCE HOLMES,	)	Number 6235
Deceased.)	
Jointly & Severally)	
Defendants	)	AMENDED COMPLAINT

COUNT ONE

The plaintiff claims of the defendants, jointly and severally, the sum of \$5800.00 as damages, for that plaintiff avers that on to-wit: October 13, 1963, plaintiff's minor son, Alvin Johnson, Jr. a child eight years of age at said time, was on premises where he was accustomed to paly 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 on to-wit: said day and date at approximately Three P. M. O'clock, the defendant and decedant Clarence Holmes while operating a truck owned by the defendant John Dillon, negligently ran said truck into, upon or against the plaintiff's said minor son, and by reason thereof and as the proximate consequence and result thereof, plaintiff's said minor son was severally injured in this to-wit: he was mashed, bruised and cut about the arms, hands, legs and body; his pelvis bone was mashed and broken; his bladder was ruptured; he had internal injuries and internal hemorrhaging; he was not expected to live; he suffered and continues to suffer great physical pain and mental anguish; he was confined to the hospital for a long period of time, all as the proximate result and consequence of the averred negligence aforesaid.

And the plaintiff avers that as the result and consequence of said injuries sustained by his said minor son, hewwas put to the expense of doctor's bills; hospital bills; medical bills and he was forced to lose the services and companionship of his son for a long period of time, for all of which he claims damages as aforesaid.


 Attorney for the plaintiff

FILED

JAN 18 1967

NOT A NOT CLERK

ALVIN JOHNSON SR.)	
)	
Plaintiff)	
	)	IN THE CIRCUIT COURT OF
VS.)	
	)	BALDWIN COUNTY, ALABAMA
)	
CLARENCE HOLMES, JOHN	)	LAW SIDE
DILLON, FOLEY DAIRY and	)	No. 6235
JOHN DILLON d/b/a Foley)	
Dairy, Jointly and Severally)	
Defendants)	

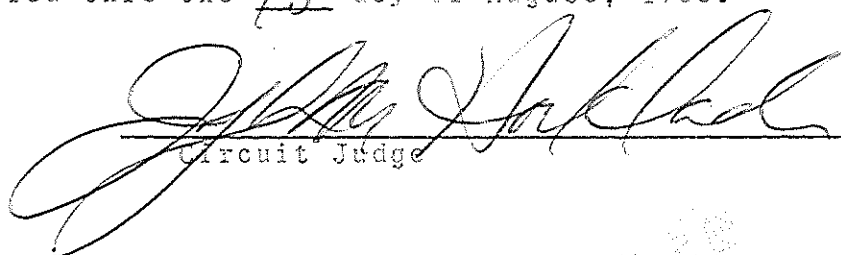
Comes the plaintiff by his attorney, and the death of Clarence Holmes is suggested of record with leave to revive against the personal representative of the said Clarence Holmes when known,

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 administratrix 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 the 18th day of August, 1966.


Circuit Judge

FILED
1966 AUG 25
BALDWIN COUNTY

ALVIN JOHNSON, SR.,)	
Plaintiff,	)	IN THE CIRCUIT COURT OF
vs.	)	BALDWIN COUNTY, ALABAMA
CLARENCE HOLMES, JOHN DILLON,)	
FOLEY DAIRY and JOHN DILLON	)	LAW SIDE. NO. 6235
d/b/a FOLEY DAIRY, 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's minor child.
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's minor child.
5. Said complaint does not allege the place of the accident with sufficient certainty.
6. The allegation that Plaintiff's minor child 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's minor child.
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 allurement for children.

11. That it does not appear from the complaint that the injury suffered by Plaintiff's minor child occurred on the property of the defendants.

12. The allegations 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's minor 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's minor child or any other children.

15. That said item of claimed damages of loss of companionship by plain tiff of his minor son is not compensible as damages.

16. That claimed damages of mental anguish on the plaintiff's part and that of his wife, the mother of the plaintiff's son, is not compensible as damages.

17. That claimed damages of doctors' bills in the future is not compensible.

18. That there is a misjoinder of parties defendant.

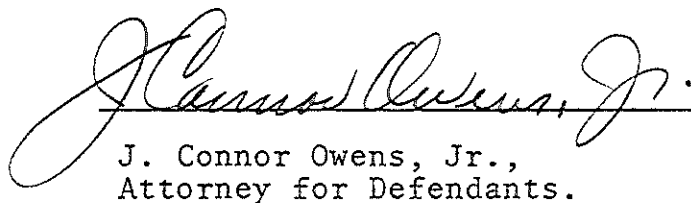
19. That the allegation that the "dump truck" belonged to John Dillon or Foley Dairy, is inconsistent, variant and contradictory.

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

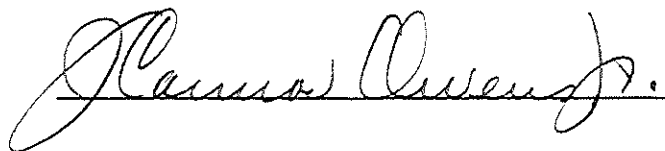
21. The allegation that the defendant, Clarence Holmes, was acting individually or as the agent, servant or employee of John Dillon, is vague, inconsistent and contradictory.

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

23. 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 L. BUCK, CLERK
REGISTER

ALVIN JOHNSON, SR.)	
)	
Plaintiff	)	IN THE CIRCUIT COURT OF
)	
VS.	)	BALDWIN COUNTY, ALABAMA
)	
CLARENCE HOLMES, JOHN	)	LAW SIDE
DILLON, FOLEY DAIRY and	)	No. 6235
JOHN DILLON d/b/a Foley)	
Dairy, Jointly and Severally)	
)	
Defendants)	

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 decedant in said suit in defense thereof.

Phyllis S. Nesbit

As Administratrix of the Estate
of Clarence Holmes, Deceased

FILED
AUG 8 1936
ALICE L. DIX, CLERK
REGISTER

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

LAW SIDE, No. 6235

Now comes the plaintiff by his attorney of record and shows unto the Court that the defendant CLARENCE HOLMES departed this life on or about to-wit: August 22, 1965, and that PHYLLIS S. NESBIT has been duly and legally appointed and qualified as administratrix of the extate of Clarence Holmes, deceased, a true copy of the letters of administration being hereby attached, marked " Exhibit A" and made a part hereof by reference.

Wherefore, the plaintiff moves that this cause be revived as to the said Clarence Holmes by amendment and substitution of Phyllis S. Nesbit, as Administratrix of the estate of Clarence Holmes, deceased, as defendant.

Arthur C. Epperson
Attorney for the Plaintiff

FILED

AUG 5 1968

ALICE L. DICK, CLERK

"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. NESBIT 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 3P

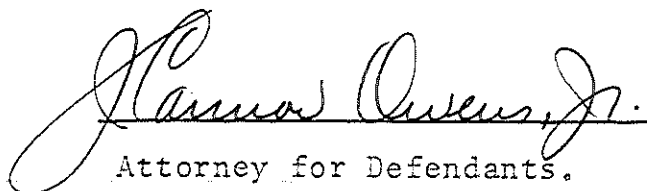
Recorded book page

Harry D. Oliver
Judge of Probate

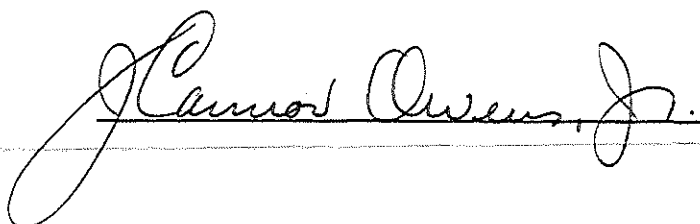
FILED
AUG 3 1966
BALDWIN COUNTY, ALABAMA

ALVIN JOHNSON, SR.,)	
Plaintiff,	)	IN THE CIRCUIT COURT OF
vs.	)	BALDWIN COUNTY, ALABAMA
CLARENCE HOLMES, JOHN)	
DILLON, FOLEY DAIRY and	)	LAW SIDE. NO. 6235.
JOHN DILLON, d/b/a FOLEY)	
DAIRY, jointly and severally,)	
Defendants,)	

Now comes J. Connor Owens, Jr., Attorney of Record for Clarence Holmes, and suggest 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

AUDIE L. DUCK, CLERK
 REGISTER

ALVIN JOHNSON, SR.,)	
Plaintiff,	)	IN THE CIRCUIT COURT OF
vs.	)	BALDWIN COUNTY, ALABAMA
CLARENCE HOLMES, JOHN DILLON,	)	LAW SIDE. NO. 6235
FOLEY DAIRY and JOHN DILLON,)	
d/b/a FOLEY DAIRY, jointly)	
and severally,)	
Defendants.)	

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 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 L. DICK, CLERK
REGISTERED

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
AT LAW

Number 6235

AMENDED COMPLAINT

COUNT ONE

The plaintiff claims of the defendants, jointly and severally, the sum of \$5800.00 as damages, for that plaintiff avers that on to-wit: October 13, 1963, plaintiff's minor son, a child of 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 on to-wit: said day and date at approximately three P. M. O'Clock at said place, the defendant Clarence Holmes while operating a dump truck owned by the defendant John Dillon, individually or as servant, agent or employee of John Dillon d/b/a Foley Dairy while working or acting within the line and scope of his employment, negligently ran said dump truck into, upon, against or over the plaintiff's minor son Alvin Johnson, Jr., and by reason thereof and as the proximate result and consequence thereof, plaintiff's said minor son 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 he continues to suffer great physical pain and mental anguish; he was confined to the hospital for a long period of time, all as the proximate result and consequence of the averred negligence aforesaid.

And plaintiff avers that as the result and consequence of said injuries sustained by his said minor son, he was put to the expense of doctors' bills; hospital bills; medical bills and he will have doctor bills in the future; he was forced to lose the services and companionship of his son for a long period of time; he and his wife, the mother of the plaintiff's said minor son were put to great mental anguish and suffering, for all of which he claims damages as aforesaid.

COUNT TWO

The plaintiff claims of the defendants, jointly and severally, the sum of \$5800.00 as damages for that plaintiff avers that 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 machinery, belonging to John Dillon D/B/A Foley Dairy, that was attractive to children below the age of discernment and discretion 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 who well knew or should have known that said dump truck would be operated on said premises and that said premises was frequented by children of tender years and below the age of discernment and discretion who would be attracted to said dump truck and it's operation on said premises, 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's minor son, Alvin Johnson, Jr., a child eight years of age at said time and place

and below the age of discretion, 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 equipment or machinery against, upon or over the plaintiff's said minor son and plaintiff avers that as a proximate consequence thereof, plaintiff's minor son was severely injured in this to-wit: he was cut, mashed, bruised and lacerated about the body; his pelvis bone was broken; he had internal hemorrhaging; he was not expected to live; he suffered and continues to suffer great mental anguish and physical pain; he was confined to the hospital for a long period of time all as the proximate result and consequence of the averred negligence aforesaid.

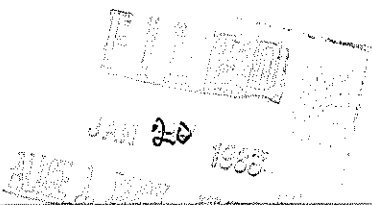
And plaintiff avers that as the result and consequences of said injuries sustained by his minor son, he was put to great medical, doctor and hospital expenses and will have doctor expenses in the future; he was forced to lose the services and companionship of his minor son for a long period of time; he and his wife, the mother of his said minor son, were put to great mental anguish and suffering, for all of which he claims damages as aforesaid.

COUNT THREE

The plaintiff claims of the defendants, jointly and severally, the sum of \$5800.00 as damages for that plaintiff avers that 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 John Dillon doing business as Foley Dairy that was attractive to children below the age of discernment and discretion by permission of the said John Dillon who knew or should have known that said dangerous machine, the same being a dump truck, was attractive to children below the age of discretion and discernment and who well knew or should have known that said dump truck would be operated on said premises and that said premises was frequented by children of tender years and below the age of discernment and discretion who would be attracted to said dangerous machine and its operation on said premises, nevertheless, the said John Dillon 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's minor son, Alvin Johnson, Jr, a child eight years of age at said time and place and below the age of discernment and discretion, while on 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 negligently ran said dangerous machine against, upon or over the plaintiff's minor son and plaintiff avers that as a proximate consequence thereof, plaintiff's minor son was severely injured in this to-wit: he was cut, mashed, bruised and lacerated about the body; his pelvis bone was broken; he had internal hemorrhaging; he was not expected to live; he suffered and continues to suffer great physical pain and mental anguish; he was confined to the hospital for a long period of time all as the proximate result and consequence of the averred negligence aforesaid and breach of duty owed by the defendant John Dillon.

And plaintiff avers that as the result and consequence of said injuries sustained by his said minor son, he was put to great expense for doctor bills, hospital and medical bills and will have doctor and medical bills in the future; he was forced to lose the services and companionship of his said minor son; the plaintiff and his wife, the mother of the plaintiff's said minor son, were put to great mental anguish and suffering, for all of which he claims damages as aforesaid.


Attorney for the Plaintiff



ALVIN JOHNSON, SR.,)	
Plaintiff,	)	IN THE CIRCUIT COURT OF
vs.	)	BALDWIN COUNTY, ALABAMA
CLARENCE HOLMES, JOHN DILLON,)	
FOLEY DAIRY and JOHN DILLON	)	LAW SIDE
d/b/a FOLEY DAIRY, jointly)	
and severally,	)	NO. 6235
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's minor child.
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's minor child.
5. Said Complaint does not allege the place of the accident with sufficient certainty.
6. The allegation that Plaintiff's minor child 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's minor child.
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 allurement for children.

11. That it does not appear from the Complaint that the injury suffered by Plaintiff's minor child 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's minor 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's minor child or any other children.

15. That said item of claimed damages of loss of companionship by Plaintiff of his minor son is not compensable as damages.

16. That claimed damages of mental anguish on the Plaintiff's part and that of his wife, the mother of the Plaintiff's son, is not compensable as damages.

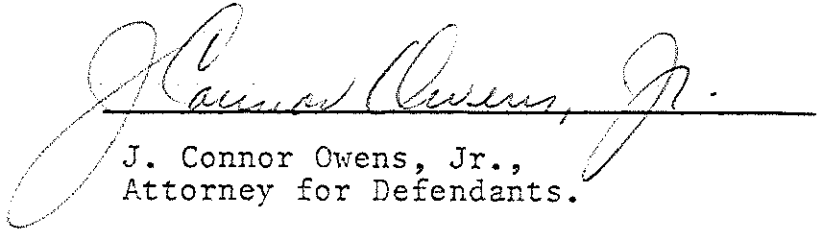
17. That claimed damages of doctors' bills in the future is not compensable.

18. That there is a misjoinder of parties Defendant.

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

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

21. 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

70,6235
DEMURRER

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
LAW SIDE.

FILED

OCT 22 1964

AUGUST L. DUCK, CLERK
REGISTER

J. CONNOR

~~MASHEURN~~ & OWENS

ATTORNEYS AT LAW

DAHLBERG BUILDING

BAY MINETTE, ALABAMA

ALVIN JOHNSON, SR.)	
)	
Plaintiff)	
	)	IN THE CIRCUIT COURT OF
VS.)	
	)	BALDWIN COUNTY, ALABAMA
CLARENCE HOLMES, JOHN)	
DILLON, FOLEY DAIRY	)	AT LAW
and JOHN DILLON dba/ as)	
FOLEY DAIRY, Jointly and)	
Severally.)	
)	
Defendants	)	Number <u>67-35</u>

COUNT ONE

The plaintiff claims of the defendants, jointly and severally, the sum of \$5800.00 as damages, for that plaintiff avers that on to-wit, October 13, 1963, plaintiff's minor son a child of eight years of age at said time was on premises where he was accustomed to play approximately onehalf mile East of the Southeast corner of the city limits of Foley, Baldwin County, Alabama, in said County and State 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's minor son, and by reason thereof and as the proximate result and consequence thereof, plaintiff's minor son was 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 hemorageing; he was not expected to live, he suffered and continues to suffer great physical pain and mental anguish; he was confined to the hospital for a long period of time all as the proximate result and consequence of the averred negligence aforesaid.

And plaintiff avers that as the result and consequences of said injuries sustained by his minor son he was put to the expenses of doctor's expenses and bills, hospital expenses and will have doctor's bills in the future; he was forced to lose the services and companionship of his minor son and will be forced to lose the companionship of his son in the future; he and his wife the mother of the plaintiff's minor son were put to great mental anguish and suffering; for all of which he claims damages as aforesaid.

COUNT TWO

The plaintiff claims of the defendants, jointly and severally the sum of \$5800.00 as damages for that plaintiff avers that on to-wit, October 13, 1963, the defendant clarence Holmes was operating equipment or machinery belonging to John Dillon or Foley Dairy that was attractive to children below the age of discernment and discretion on premises approximately one-half mile East of the Southeast corner of the city limits of Foley, in Baldwin County, State of Alabama by permission of John Dillon or Foley Dairy the owner of said equipment or machinery; that the said owner of said equipment or machinery well knew that said equipment or machinery being a dump truck was attractive to children below the age of discretion and well knew that said equipment or machinery would be operated on premises frequented by children that would be attracted/said machinery or equipment nevertheless negligently allowed the said Clarence Holmes to take and operate said machinery or equipment on said premises at said time and by reason thereof and as a proximate result and consequence thereof, the plaintiff's minor son, a child of eight years of age at said time and below the age of discretion while on the said premises where he and other children below the age of discretion habitually played was attracted to said machinery or equipment at the time and place

aforesaid and that then and there the said Clarence Holmes ran said equipment or machinery against, upon or over the plaintiff's said minor son and plaintiff avers that as a proximate consequence thereof plaintiff's minor son was injured in this to-wit: He was cut, mashed and bruised about the body; his pelvis bone was broke; he had internal hemmoraging; he was not expected to live; he suffered and continues to suffer greet physical pain and mental suffering and anguish; he was confined to the hospital for a long period of time as as the proximate result and consequence of the averred negligence aforesaid.

And plaintiff avers that as the result and consequence of said injuries sustained by his minor son he was put to the expense of doctor's bills, hospital expenses and will have the expenses of doctor's bills in the future; he was forced to lose the services and companionship of his minor son and will be forced to lose the services and companionship of his son in the future; he and his wife the mother of plaintiff's said minor son were put to great mental anguish and suffering; for all of which he claims damages as aforesaid.

Arthur C. Epperson
Attorney for the Plaintiff

Defendant's reside
East of City Limits
of Foley, Ala

FILED

OCT 13 1964

The Plaintiff Demands a Trial
by Jury
Arthur C. Epperson
attorney for Plaintiff

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 Defendant s
by Alvin Johnson S C

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

Witness my hand this 13th day of October 1964

Alvin Johnson, Clerk

REF: 10-14-64

VOL

60 PAGE 767

No. 6235

Page _____

STATE of ALABAMA

Baldwin County

CIRCUIT COURT

Alvin Johnson, sr

Plaintiffs

vs.

Clarence Holmes

et al
Defendants

Summons and Complaint

Filed

10-13

1964

Price French

Clerk

B. Epperson

Plaintiff's Attorney

Defendant's Attorney

Defendant lives at

Received In Office

, 19____

Sheriff.

I have executed this summons

this 14 Oct 1964

by leaving a copy with

John Dillon

Clarence Holmes

Sheriff claims 144 miles

Ten Cents per mile Total \$ 14.40

TAYLOR WILKINS, Sheriff

DEPUTY SHERIFF

Stephen Jenkins
Sheriff.
Karl D. D.
Deputy Sheriff.

Stacy