

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON  
LAWYERS

FIRST NATIONAL BANK BUILDING

MOBILE, ALABAMA

36601

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P. O. BOX 123

CABLE ADDRESS:  
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TELEPHONE:  
432-5511  
AREA CODE 205

CHAS. C. HAND  
C. B. ARENDALL, JR.  
T. MASSEY BEDSOLE  
THOMAS G. GREAVES, JR.  
WM. BREVARD HAND  
VIVIAN G. JOHNSTON, JR.  
PAUL W. BROCK  
ALEX F. LANKFORD, III  
EDMUND R. CANNON  
LYMAN F. HOLLAND, JR.  
J. THOMAS HINES, JR.  
DONALD F. PIERCE  
LOUIS E. BRASWELL  
HAROLD D. PARKMAN  
G. PORTER BROCK, JR.  
HARWELL E. COALE, JR.  
STEPHEN G. CRAWFORD  
JERRY A. McDOWELL  
W. RAMSEY MCKINNEY, JR.  
LARRY U. SIMS  
C. WAYNE LOUDERMILCH

February 24, 1967

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

Re: Gerrard P. Smith, a minor v. Jesse Denman  
and J. D. Smith v. Jesse Denman

Dear Mrs. Duck:

Enclosed please find a demurrer which I would appreciate your filing on behalf of the defendant, Jesse Denman in each of the above-referenced cases. I am enclosing for your convenience a stamped, self-addressed envelope so that you may indicate on the enclosed copy of this letter the date of filing and return same to us.

Thanking you in advance for your cooperation.

Yours very truly,



For the Firm

DFP.mbd  
Enclosures



GERALD P. SMITH, a minor, : IN THE CIRCUIT COURT OF  
suing by and through his :  
father, J. D. Smith, : BALDWIN COUNTY, ALABAMA  
  
Plaintiff, :  
  
v. : AT LAW  
  
JESSE DENMAN, :  
  
Defendant. : Case No. 7373

A N S W E R


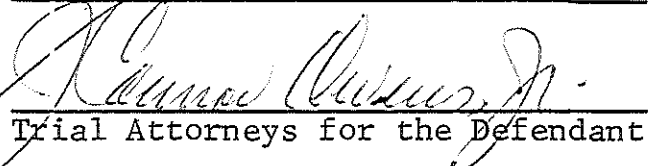
Comes now the defendant in the above-styled cause and for separate and several answer to each count of the complaint filed herein, sets down and assigns the following separate and several pleas, separately and severally:

1. Not guilty.

2. At the time and place alleged in the complaint, to-wit: April 29, 1966, the plaintiff did so negligently operate an automobile on or along U. S. Highway 98, at a point at or near the intersection to Lake Forest Estates Subdivision, both of said highways being public roads in Baldwin County, Alabama, so as to cause or allow same to run into upon or against the automobile operated by the defendant then and there, and as a direct and proximate result of the negligence of the plaintiff, as aforesaid, plaintiff contributed to the accident and the injuries and damages of which he complains; therefore plaintiff ought not recover.

Of Counsel:

HAND, ARENDALL,  
BEDSOLE, GREAVES & JOHNSTON

  
  
Trial Attorneys for the Defendant

Defendant demands a trial by jury.

Donald H. Hensel

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a true and correct copy of the foregoing Answer to James R. Owen, Esq., and M. A. Marsal, Esq., attorneys for the plaintiff, by depositing a copy of same in the United States mail, postage prepaid, addressed to Messrs. Owen and Marsal at their respective offices on this, the 30th day of August, 1967.

Donald H. Hensel

FILED

AUG 31 1967

ALICE J. BOOK CLERK  
REGISTER


GERALD P. SMITH, a minor, suing	)	
by and through his father,	)	
J. D. Smith,	)	
	)	IN THE CIRCUIT COURT OF
Plaintiff,	)	BALDWIN COUNTY, ALABAMA
VS.	)	AT LAW NO. 7373
JESSE DENMAN,	)	
	)	
Defendant.	)	

AMENDED COMPLAINT

Now comes the plaintiff in the above styled cause and amends the complaint heretofore filed in the said cause to read as follows:

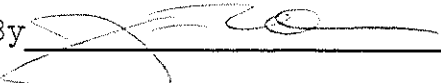
The plaintiff claims of the defendant the sum of Fifty Thousand Dollars (\$50,000.00) damages for that heretofore on to-wit, the 29th day of April, 1966, the defendant did so negligently operate an automobile vehicle on and along U. S. Highway 98 at a point where the said highway intersects the entrance to Lake Forest Estates Subdivision, said highway being a public road in Baldwin County, Alabama, as to cause it to run upon, over or against the automobile vehicle the plaintiff was operating at the time and place aforesaid, and as a direct and proximate result of the defendant's negligence, the plaintiff sustained severe and permanent injury to his neck and back, he has incurred physical and mental anguish and will continue to suffer this physical and mental anguish in the future, all for which the plaintiff sues.

M. A. MARSAL and JAMES R. OWEN  
Attorneys for Plaintiff

By 

Plaintiff demands a trial by jury.

M. A. MARSAL and JAMES R. OWEN  
Attorneys for Plaintiff

By 

**FILED**

AUG 22 1967

**ALICE J. DICK** CLERK  
REGISTER

GERRARD P. SMITH, a minor, : IN THE CIRCUIT COURT OF  
suing by and through his  
father, J. D. SMITH, : BALDWIN COUNTY, ALABAMA

Plaintiff : AT LAW

vs. : CASE NO. 43713

JESSE DENMAN, :

Defendant.

D E M U R R E R

Comes now the defendant, Jesse Denman, and demurs to the plaintiff's complaint filed herein and each count thereof, separately and severally, and for separate and several grounds of demurrer, sets down and assigns, separately and severally, the following:

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

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

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

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

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

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CLERK OF COURT  
BALDWIN COUNTY, ALA.

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

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

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

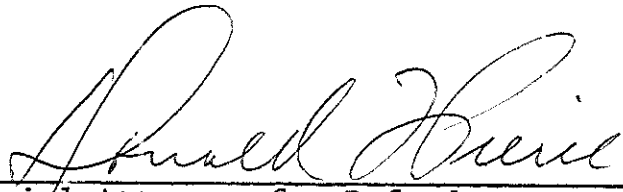
9) For that there does not appear sufficient causal connection between this defendant's said breach of duty and plaintiff's injuries and damages.

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

11) It is not alleged with sufficient certainty where said accident occurred.

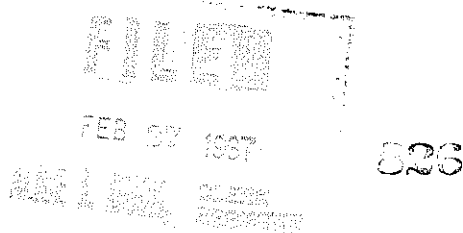
12) For aught that appears, plaintiff had no right to be where plaintiff was at the time and place of said accident.

13) It is not alleged that the negligence complained of proximately caused the accident and the injuries and damages complained of.

  
Trial Attorney for Defendant

Of Counsel:

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON



CERTIFICATE OF SERVICE

I hereby certify that I have mailed a true and correct copy of the foregoing Demurrer to M. A. Marsal, Esq., Attorney for Plaintiff by depositing a copy of same in the United States Mail, postage prepaid, addressed to Mr. Marsal at his office in Mobile, Alabama on this, the 24 day of Feb., 1967.

Donald H. Hume

726.1313

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA, AT LAW

COMPANION CASE #21485

CASE NO. 21484 - CAFFEY

\*\*\*\*\*

M.A. MARSAL

GERRARD P. SMITH, a Minor, suing by and through  
his father and next friend, J.D. SMITH

JURY

VS. Suit for \$50,000.00 damages, personal injuries.  
(TORT)

HAND, ARENDALL, BEDSOLE, GREAVES  
& JOHNSTON  
BY: DONALD F. PIERCE

JESSE DENMAN

N.J.

\*\*\*\*\*

PLEADINGS, PROCESS, ETC. \* FILING DATE \*

\*\*\*\*\*

1. Complaint & Summons \* 1-3-67 \*

C & S served on Defendant on January 10, 1967.

2. Plea in Abatement \* 2-1-67 \*

February 10, 1967 - Plea in Abatement sustained, Case ordered transferred  
to Baldwin County. Will G. Caffey, Jr.

34-814

814

FILED  
FEB 14 1967  
CLERK  
MOBILE COUNTY, ALABAMA

I, JOHN E. MANDEVILLE, in my capacity as Clerk of the Circuit Court of Mobile County, Alabama, hereby certify that the above  
is a true and correct transcript of all the minutes, orders and other proceedings in the above styled case in this Court.

In witness whereof I have hereunto set my hand and attached my official seal as such Clerk of said Court at Mobile, Mobile  
County, Alabama, on this the 13th day of February, 1967.

*John E. Mandeville*, Clerk.



GERRARD P. SMITH, \* IN THE CIRCUIT COURT  
a minor, suing by  
and through his  
father and next friend, \* OF MOBILE COUNTY  
J. D. SMITH

Plaintiff \* ALABAMA

-VS-

JESSE DENMAN \* AT LAW

Defendant \* CASE NO. 21484

The Plaintiff claims of the Defendant the sum of FIFTY THOUSAND & 00/100 (\$50,000.00) DOLLARS *damages* for heretofore and on, to-wit, the 29th day of April, 1966, the Defendant did negligently operate an automotive vehicle on and along U. S. Highway 98 at or near Lakewood Estates Subdivision, said highway being a public road in Baldwin County, Alabama, as to run upon, over or against the automotive vehicle the Plaintiff was operating at the time and place aforesaid, and as a direct and proximate result of the Defendant's negligence, the Plaintiff sustained a severe and permanent injury to his neck and back, he has incurred physical and mental anguish and will continue to suffer this physical and mental anguish in the future, all for which the Plaintiff sues.

M. A. Marsal  
M. A. MARSAL, Attorney for Plaintiff

Plaintiff demands a trial by jury

M. A. Marsal  
M. A. MARSAL, Attorney for Plaintiff

Defendant may be served:

Daphne, Baldwin County, Alabama

STATE OF ALA. MOBILE CO.  
I CERTIFY THIS PLEADING  
WAS FILED ON

JAN 3 11 22 AM '67

Sheila M. Bould  
CLERK

**THE STATE OF ALABAMA**  
MOBILE COUNTY

**CIRCUIT COURT**

To Any Sheriff of the State of Alabama:

You are hereby commanded to summon

JESSE DENMAN

to appear within thirty days from service of this process, in the Circuit Court of Mobile County, Alabama,  
at the place of holding the same, then and there to answer the complaint of \_\_\_\_\_

GERRARD P. SMITH, a minor, suing by and through  
his father and next friend, J. D. SMITH

WITNESS: John E. Mandeville, Clerk of said Court, this 3rd day of JANUARY, 1967

Attest: \_\_\_\_\_

John E. Mandeville  
Clerk

**SHERIFF'S RETURN**

Received \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ and on \_\_\_\_\_ day  
of \_\_\_\_\_, 19\_\_\_\_, I served a copy of  
the within \_\_\_\_\_ on \_\_\_\_\_

by service on \_\_\_\_\_

RAY D. BRIDGES, SHERIFF

By \_\_\_\_\_ D.S.

REC'D. SHERIFF DEPT.  
MOBILE COUNTY, ALA.

JAN 3 3 26 PM '67

BY \_\_\_\_\_

Received 5 day of Jan 1967  
d on 10 day of Jan 1967  
served a copy of the within D & C  
Jesse Denman  
service on Starny Daphne

TAYLOR WILKINS, Sheriff  
By Roy Randall D. S.

Sheriff claims 54 miles at  
Ten Cents per mile Total \$ 5.40  
TAYLOR WILKINS, Sheriff  
BY Roy Randall  
DEPUTY SHERIFF

5 PM  
mail  
No. 21484C  
JUDGE \_\_\_\_\_ DOCKET  
CIVIL DIVISION  
CIRCUIT COURT  
MOBILE COUNTY

GERRARD P. SMITH, Minor, etc.

VS.

} Complaint and Summons

JESSE DENMAN

Issued 3rd day of JANUARY, 19 67

Defendant's Address

Daphne, Baldwin County, Alabama

M. A. MARSAL

Plaintiff's Attorney

GERRARD P. SMITH, a minor : IN THE CIRCUIT COURT OF  
suing by and through his :  
father and next friend, : MOBILE COUNTY, ALABAMA  
J. D. SMITH, :  
Plaintiff : AT LAW  
vs. :  
JESSE DENMAN, :  
Defendant. :  
: CASE NO. 21484 C

PLEA IN ABATEMENT

Comes now the defendant in the above-styled cause,  
Jesse Denman, and appearing specially and solely for  
pleading in abatement, and for no other purpose, pleads  
in abatement, and as grounds for the abatement of such  
action, says as follows:

1. That the accident which is the basis of this suit  
occurred on or about April 29, 1966 in Baldwin County,  
Alabama on U. S. Highway #98, and that the defendant, Jesse  
Denman was at that time, and is at the present time, a  
resident citizen of Baldwin County, Alabama, making his  
home in Daphne, Alabama.

The venue of said action is then proper in the Circuit  
Court of Baldwin County, Alabama and is not proper in the  
Circuit Court of Mobile County, Alabama in view of the  
fact that the defendant resides in Baldwin County, Alabama  
and that the automobile accident which is the basis of the  
suit occurred in Baldwin County, Alabama.

WHEREFORE, the premises considered, defendant pleads that this cause should be abated as to him and that his costs be allowed for the making of this Plea in Abatement or that the Court transfer said cause to the Circuit Court of Baldwin County, Alabama where venue is proper, or enter such other order and grant such other relief which is appropriate in matters of abatement.

Donald H. Hiehl  
Trial Attorney for Defendant

Of Counsel:

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

STATE OF ALABAMA:  
COUNTY OF MOBILE:

Before me, the undersigned Notary Public, in and for said County in said State personally appeared Jesse Denman who, being known to me, and being by me first duly sworn on oath deposes and says that the facts set forth in the foregoing Plea in Abatement are true and correct.

Jesse E. Denman  
Jesse Denman

Subscribed and sworn to before me on this 31 day of January, 1967.

Mary B. Whitt  
Notary Public, Mobile County, Alabama

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a true and correct copy of the foregoing pleading to M. H. Hiehl, Esq., Attorney for Plaintiff by depositing a copy of same in the United States mail, postage prepaid, addressed to said attorney at his office in Mobile, Alabama on this, the 1st day of February, 1967.

Donald H. Hiehl

STATE OF ALA. MOBILE CO.  
I CERTIFY THIS PLEADING  
WAS FILED ON

FEB 1 4 51 PM '67

Richard Marshall  
CLERK

FRIDAY, FEBRUARY 10, 1967

GERRARD P. SMITH, a Minor, suing by )	
and through his father and next )	
friend, J.D. SMITH )	PLEA IN ABATEMENT SUSTAINED,
CAFFEY -vs- 21484 )	CASE ORDERED TRANSFERRED TO
JESSE DENMAN )	BALDWIN COUNTY

This day in open Court came the parties by their attorneys, and Defendant's Plea in Abatement filed February 1, 1967, in this cause, coming on to be heard and being argued by counsel and understood by the Court;

It is ordered and adjudged by the Court that Defendant's said Plea in Abatement filed February 1, 1967, in this cause be, and the same is hereby sustained, and Case ordered transferred to Baldwin County, Alabama.

Minute Book 34

Page 814

STATE OF ALABAMA, }  
COUNTY OF MOBILE }

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

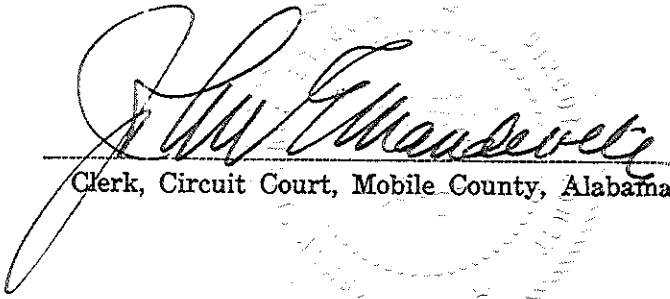
I, JOHN E. MANDEVILLE, Clerk of the Circuit Court of Mobile County, Alabama, do hereby  
certify that the foregoing is a full, true and correct copy of ORDER OF COURT

as rendered by the said Circuit Court on the 10th day of February, 1967, in the cause  
entitled No. 21484 - GERRARD P. SMITH, a Minor, suing by and through  
his father and next friend, J.D. SMITH, Plaintiff,  
— versus — JESSE DENMAN

Defendant, (~~Together with the cancellation thereof~~), as the same remains of record in this office in  
Minute Book No. 34, Page No. 814

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said Court at office  
in the City of Mobile, Alabama, on this the 13th day of February, 1967.

ATTEST:

  
Clerk, Circuit Court, Mobile County, Alabama.

CIVIL DIVISION, CIRCUIT COURT, MOBILE COUNTY

No. 21484 GERRARD P. SMITH, a Minor, suing by and through his father and next friend, J.D. SMITH vs. JESSE DENMAN Plaintiff Defendant

(Act No. 740, Reg. Session Ala. Legislature 1957 Appvd. Sept. 20, 1957) (Amend Sec. 21, Title 11, Code Ala. 1940)

BILL OF COST

(Act No. 571, Reg. Ses. Leg. 1955) (Amend Sec. 34 and 100, Title 11, Code Ala. 1940)

CLERK'S FEES	Pltff.	Deft.	SHERIFF'S FEES	Pltff.	Deft.
Suits for \$100 or less \$ 6.00			Mileage \$5.40	6 90	
Suits for over \$100 but less than \$1,000 10.00			Serving Summons & Complaint \$ 1.50		
Suits for \$1,000 and over 20.00	20 00		Serving Writ of Garnishment 1.50		
Suits in detinue, ejectment, etc. 10.00			Serving Sci Fa.-Notices 1.50		
Suits not otherwise provided 10.00			Levyng Attachment & Return 6.25		
Writs, Mandamus, Prohibition, etc. 15.00			Executing Writ Possession 5.00		
Appeals from Court General			Seizing personal property under Writ of Detinue 6.00		
Sessions 15.00			Serving subpoenas, each .75		
Appeals from Probate Court 20.00			Impanelling Jury .75		
Appeals from JP Courts 6.00			Taking & Approving Bond 2.00		
Appeals from State Dept of Pub. Safety, and other State Agencies 10.00			Collecting Costs Execution 1.50		
Workmen's Compensation Settle. 10.00			Serving Contempt Writ 1.50		
Garnishment on Judgment 6.00			Making Deed for Property sold 2.50		
Order of Sale, Motions to sell. 6.00			Commission, collecting money on executions, 1st \$200 5%; \$200 to \$500 4%; over \$500 3% \$		
Recording executions from State Agencies 3.00					
Cert. Copy of Record - per 100 words .15	80		Total \$	6 90	
Taking Appeal Bond .75					
Record for Supreme Court etc., per 100 words .15			RECAPITULATION		
Add'l Copies of Record for Supreme Court, per 100 words .05			Clerk 20 80		
Checking - including Reporters Transcript of Evidence 10.00			Sheriff Taylor Wilkins-Baldwin County 6 90		
Certifying Abstract in lieu of Transcript on Appeal 5.00			Inferior Civil Court		
Collecting Money on Judgments over 30 days old; ½ the percentage allowed Sheriffs \$			Justice Peace fees		
			Witness fees		
			Commissioner's fees		
			Certificate of Judgment		
			Judgment		
			10% Damages		
			Interest		
			Stenographer's fees (\$10.00 Day)		
			Library fee 1.50	1 50	
			Trial Tax (County) 1.50	1 50	
			Trial Tax (State) 1.50	1 50	
			Advertisement		
			Garnishee's fees		
Total \$	20 80				

\$32.20

I respectfully beg to advise that if this bill for costs is not paid before 19\_\_\_\_, it will be my unpleasant duty to issue execution for same.

JOHN E. MANDEVILLE, Clerk