

(351)

THE STATE OF ALABAMA, }
BALDWIN COUNTY }

No. _____

CIRCUIT COURT

193 _____

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon The Borden Company, a Corporation, 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, Alabama, against The Borden Company, a Corporation, Defendant, by John Newton Powell, an infant, by his Father, W. R. Powell, as next Friend, Plaintiff.

Witness my hand this 20 day of April, 1937.

R. D. Dyer Clerk.

John Newton Powell, an infant,
by his Father, W. R. Powell,
as Next Friend,

Plaintiff,

Vs.

The Borden Company, a Corporation,
Defendant.

No. _____

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA, TO
THE _____ TERM, 1937. AT LAW.

COMPLAINT

1.

Plaintiff claims of the defendant \$1,500.00 as damages, for this, that defendant, while operating a business, a part of which was manufacturing, canning and selling milk, known as Borden's Silver Cow Brand Milk, during the month of March, 1937, did so negligently conduct said business as to can an empty, rusty and impure part of another can, together with some of the beverage known as Borden's Silver Cow Brand Milk, in one of its cans, and did sell said can, or its contents, through its agents, H. P. Vass & Company of Mobile, Alabama, to a retailer, Green's Cash Grocery, of Bay Minette, Alabama, who in turn sold the same to plaintiff, on, to-wit, March 7, 1937, at and for a sum of, to-wit, 8 cents, and that by reason of drinking a

part of the contents of same, plaintiff was made sick with violent nausea, and suffered great bodily pain and mental anguish for a long space of time, to his damage in the amount above claimed, wherefore this suit.

2.

Plaintiff claims of the defendant the sum of \$1,500.00 damages for that on and prior to the 7th day of March, 1937, defendant was a corporation engaged in the manufacture, preparation, canning and distributing of a beverage known and designated by the name of Borden's Silver Cow Brand Milk, which said beverage, after being so prepared and canned was sold and distributed to merchants to be sold by them at retail for the purpose of human consumption as a beverage and as a food. Plaintiff avers that in the course of the said business the defendant, by and through its servants, agents, or employees, acting within the line and scope of their duty as such, prepared, manufactured and canned a portion of said beverage, which in due course of business was sold and delivered by the defendant's agents, H. P. Vass & Company of Mobile, Alabama, to Green's Cash Grocery, a retail merchant in Bay Minette, Baldwin County, Alabama, and was by him sold at retail to the plaintiff for a good and valuable consideration, to-wit, eight cents, for plaintiff's use and consumption. Plaintiff further avers that the defendant, by or through its servants, agents, or employees, acting within the line and scope of their authority as such, negligently permitted said can of said beverage to be unsuitable and unfit, in a reasonable manner, for human consumption, by reason of its having therein a rusted, unwholesome, impure part of another and smaller can, which made it nauseating, sickening and dangerous to any person who consumed the said beverage, and plaintiff further avers that plaintiff drank a portion of same, without knowing that it was defective, and as a result of the defendant's negligence as aforesaid was made sick, nauseated and violently ill, and remained so for a long space of time, to his damage in the amount above claimed, hence

this suit.

3.

Plaintiff claims of the defendant \$1,500.00 damages for that heretofore, to-wit: on or about the 7th day of March, 1937, the defendant was a corporation engaged in manufacturing, canning and distributing sweet milk, known as Borden's Silver Cow Brand Milk, and other products, through its agents, H. P. Vass & Company of Mobile, Alabama, to retailers for sale at retail in Bay Minette, Baldwin County, Alabama. Plaintiff avers that as such corporation engaged in said business, it became the duty of the defendant to provide only good, proper, healthful and sanitary milk to such retailers, but the plaintiff avers that upon the date hereinabove set forth, to-wit, March 7, 1937, the defendant, through its agents, H. P. Vass & Company of Mobile, Alabama, sold and delivered to Green's Cash Grocery, a retailer doing business in Bay Minette, Baldwin County, Alabama, for retail, a can of Borden's Silver Cow Brand Milk, and the said Green's Cash Grocery did sell said can of milk to the plaintiff, and plaintiff avers that said can of milk was impure, nasty, unhealthful and unsanitary, because the defendant, acting through and by its servants, agents, or employees, acting in the line and scope of their employment as such, did include in the can of milk aforesaid another and smaller, rusty, impure and unhealthful can, and which condition of said milk being then and there unknown to the plaintiff, who was an infant child of fifteen months, he took a part of said milk into his stomach as food, and by reason of its bad and nasty condition, and as a result of the smaller, rusty and impure can being included in said can of milk, he was made very sick and was caused to suffer great mental and physical pain and anguish, and was rendered for a long time weak, sick and nauseated, all of which was the direct consequence and proximate result of the defendants negligence in manufacturing, preparing, canning and distributing milk which was not good and which contained a part of a rusted and impure can, hence this action.

Plaintiff claims of the defendant \$1,500.00 damages for that heretofore, to-wit: on or about the 7th day of March, 1937, defendant was a corporation engaged in manufacturing, canning and distributing, among other products, sweet milk, known as Borden's Silver Cow Brand Milk, through its agents, H. P. Vass & Company of Mobile, Alabama, to retailers for sale at retail in Bay Minette, Baldwin County, Alabama. Plaintiff avers that as such corporation engaged in said business, it became the duty of the defendant to provide only good, proper, healthful and sanitary milk to such retailers, but the plaintiff avers that upon the date hereinabove set forth, to-wit, March 7, 1937, the defendant, through its agents, H. P. Vass & Company of Mobile, Alabama, sold and delivered to Green's Cash Grocery, a retailer, doing business in Bay Minette, Baldwin County, Alabama, for retail, a can of Borden's Silver Cow Brand Milk, and the said Green's Cash Grocery did sell said can of milk to the plaintiff for a good and valuable consideration of, to-wit, eight cents, , and plaintiff avers that said can of milk was impure, nasty, unhealthful and unsanitary, because the defendant, acting through and by its servants, agents, or employees, acting in the line and scope of their employment as such, was willfully and wantonly negligent in the manufacturing and canning of said can of milk, and did willfully and wantonly include in the can of milk aforesaid another and smaller, rusty, impure and unhealthful can, and which condition of said milk being then and there unknown to the plaintiff, who was an infant child of fifteen months, he took a part of said milk into his stomach as food, and by reason of its bad and nasty condition, and as a result of the smaller, rusty and impure can being included in said can of milk, he was made very sick and was caused to suffer great mental and physical pain and anguish, and was rendered for a long time weak, sick and nauseated, all of which was the direct consequence and proximate result of the willful and wanton negligence of the defendant in

manufacturing, preparing, canning and distributing milk which was not good and which contained a part of rusted and impure and unsanitary can, hence this action.

J. A. Mashburn, Jr.
Attorney for Plaintiff.

The plaintiff in the above cause demands a trial by jury.

J. A. Mashburn, Jr.
Attorney for Plaintiff.

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No. 351

RECORDED
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IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA, TO
THE _____ TERM 193____. AT LAW.

JOHN NEWTON POWELL, AN INFANT,
BY HIS FATHER, W. R. POWELL,
AS NEXT FRIEND,

Plaintiff,

Vs.

THE BORDEN COMPANY,
A CORPORATION,
Defendant.

FILED IN THIS OFFICE THIS 20
DAY OF April, 1937.

R. S. Decker

Received 21 Day of April 1937
and on 26 Day of April 1937
I served a Copy of the within
on H. P. Waack, Jr. Co

BY SERVICE OF H. L. M. S. O'Connell

W. L. HOLCOMBE, S. S., Sheriff
more Summons

THE STATE OF ALABAMA,
BALDWIN COUNTY.

CIRCUIT COURT OF

No. 351

Judgment

Term, 193

John Newton Powell

VS.

The Borden Company
a Corp.

DEAR SIRs—At the

Term, 193, of the above Court

recovered a judgment against

for the sum of

Dollars,

besides

Dollars, costs of suit and execution

was duly issued thereon, commanding any Sheriff of the State that he cause to be made of the goods and chattels, lands and tenements of said

the amount of judgment and costs, and the Sheriff has returned said execution endorsed, "No Property Found," and the costs have not yet been paid. I herewith give below an itemized statement of the costs which have accrued in this cause, and respectfully request that you will, on receipt of this, remit the amount and save the additional expense of an execution against you. If I do not hear from you in a few days I will be forced to issue an execution for costs. Please return this with remittance. Respectfully yours,

Clerk.

CLERK'S FEES		Dollars	Cts	AMOUNT BROUGHT FORWARD		\$
Issuing Summons and Complaint	\$1 25	1	25	Transcript to Supreme Court, 15c per hundred words		
Copies of same, when over 200 words, 15c; per 100	30		30	Copies, 5c per hundred words		
Issuing Alias Summons and Complaint	1 25			Citation to Appellee in Appeal, 20c per hundred words		
Entering Sheriff's Return on Summons and Complaint	20		20	Certificate with Seal, 50c. Without Seal	25	
Docketing Cause 25c. Ent. Appearance 20c	45		45	Witness Certificate	25	
Subpoena for Witness	30			Taking Bond Not Above Mentioned	75	
Making Certificate of Judgment	50		10	Entering Order of Court not above named	30	
Filing	10			Administering Oath	25	
Trial and Incidents	75			Taking Bond for Costs of Non-Resident Plaintiff	75	
Entering Judgment, or copy of same	30			Copy of any paper not above named, 15c per hundred words		
Order for Continuance	10			Filing Writ of Prohibition and Entering Return	15	
Issuing Execution	50			Issuing Writ of Prohibition	75	
Docketing Execution	25			Issuing copies of same, 15c per 100 words		
Issuing copy of same	50			Filing Mandamus and Entering Return	15	
Entering Sheriff's Return on Execution, 15c per hundred words	20	3	00	Issuing Writ of Mandamus	75	
Final Record, 15c per hundred words	30			Issuing copies of same, 15c per 100 words		
Order for Alias Summons and Complaint	30		30	Total Clerk's Fees		
Order to Dismiss Cause	30			SHERIFF'S FEES		
Order to Set Aside Dismissal	30			Serving and Returning Summons	\$1 50	1 50
Order Overruling Motion to Set Aside Dismissal	75	5	60	Serving and Returning Subpoenas	65	
Order Granting New Trial	30			Collecting Execution for Costs	1 50	
Order Overruling Motion for New Trial	30			Serving and Returning Sci. Fa. Notice, etc.	65	
Order Overruling Motion for Continuance	30			Executing Writ of Possession	2 50	
Order Overruling Motion to Set Aside Default	30			Levy and Attachment	3 00	
Order for Notice to Non-Resident Defendant	30			Entering and Returning Attachment	25	
Issuing Notice for Publication and Copy, 20c per hundred words	30			Entering and Returning Execution	25	
Order to Give Security for Costs	30			Summoning and Returning Garnishee	1 50	
Order to Give Additional Bond	30			Taking and Approving Garnishee Bond	75	
Order to Execute Writ of Inquiry	30			Serving and Returning Writs	1 50	
Order of Sale in Attachment	30			Serving and Returning Summons on Forcible Entry	1 00	
Order for Leave to Amend Complaint	30			Executing Writ of Restitution in such cases	2 00	
Order for Leave to Amend Pleas	30			Taking and Approving Bonds of Every Kind	1 00	
Order for Leave to Amend Writ of Process	30			Taking and Approving Claim Bond	1 00	
Order for Attachment for Witness	30			Taking and Approving Forthcoming Bond	1 00	
Filing Deposition	10			Taking and Approving Bail Bond	1 00	
Issuing Commission to Take Deposition	75			Taking and Approving Plaintiff's Detinue Bond	1 00	
Issuing copy of same, 15c per 100 words				Taking and Approving Defendant's Detinue Bond	1 00	
Issuing Copy of Interrogatories, 15c per hundred words, but not less than	50			Making Deed	2 50	
Endorsing each Pet. Deposition Opened	10			Serving Attachment for Contempt of Court	1 50	
Taking Bond in Garnishment on Summons	75			Collecting Money on Execution		
Summons to Garnishee	50			Empanelling Jury	75	
Copies of same, 20c per hundred words				Sheriff's Commission for Property Sold Under Attachment		
Notice to Defendant in Garnishee on Summons, and copy, 20c per 100 words				Seizing Personal Property on Writ of Detinue	3 00	1 50
Swearing Garnishee and Recording Answer, 15c per hundred words but not less than	50			Total Sheriff's Fees		
Filing Attachment	10			RECAPITULATION		
Issuing Attachment Writ and Taking Bond	1 00			Judgment		
Issuing Copies of Attachment Writ, 15c per hundred words				Interest		
Filing Certiorari and Entering Return	15			Clerk's Fees		5 60
Taking Certiorari Bond and Filing Same	75			Sheriff's Fees		1 50
Issuing Writ of Certiorari	75			Justice's Fees		
Issuing copies of Same, 15c per 100 words				Constable's Fees		
Issuing Writ of Scieri Facias or Notice in Nature of	75			Witnesses' Fees		
Issuing copies of same, 15c per 100 words				Commissioner's Fees		
Taking Supersedeas Bond and filing same	75			Printer's Fees		
Taking Appeal Bond and filing same	75			Stenographer's Fees	5 00	
				Answer of Garnishee		
				Trial Tax	3 00	3 00
TOTAL FORWARDED				Total	\$	10 10

Received Payment this day of 193

ATTEST:

Clerk Circuit Court, Baldwin County, Ala.