

508

PAUL HAUPT,
Plaintiff,
vs.
JEROME PRICE,
Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AMENDED ANSWER

Comes now the defendant in the above entitled cause and for amended answer to the complaint says:

1. That he is not guilty of the matters alleged therein.

2. Defendant avers he is a cripple and is unable to stand erect or walk or move about without the aid or crutches. He admits that an altercation between the plaintiff and defendant took place on or about the 27th day of January, 1938 under the following circumstances:

On said date defendant was a Justice of the Peace in and for Beat 14, Baldwin County, Alabama, duly appointed, qualified and acting and on said date had held the trial of a case then pending before him as such Justice of the Peace in his residence where he was accustomed to hold court; that the plaintiff was interested in said case for the reason that his son was a party thereto and was in defendant's home for the purpose of attending the trial of said case. Defendant had decided said case and announced his decision and the plaintiff became enraged at such decision and advanced upon defendant to where he was sitting in a chair and the plaintiff, with every indication of a frenzy of rage, both in appearance and manner, shook his fist in defendant's face and addressed defendant in such a harsh and violent manner that the defendant, being unable to retreat because of his crippled condition and his position in the chair from which he could not arise, and being in fear of an assault by the plaintiff and with every reason to believe that such an assault was imminent, struck the plaintiff a blow with his bare hand in defense of his own person and for the purpose of protecting himself against an assault by the plaintiff.

Defendant avers that he was without fault in the matter; that he did believe and had good reason to believe that it was the

intention of the plaintiff to make an assault upon him and that it was necessary for defendant to protect himself from such assault and that he used no more force than was necessary to defend himself for the plaintiff.

Wherefore, defendant avers that the plaintiff ought not to recover anything in this cause.

Paul Thomas
Attorney for defendant.

RECEIVED
COURT CLERK
1914

JOHN W. BROWN

Plaintiff

vs.

THOMAS BROWN

Defendant

THOMAS BROWN

Paul Thomas
Attorney for defendant

THOMAS BROWN
Plaintiff

Handwritten notes and signatures at the bottom of the page, including a large signature that appears to be 'Paul Thomas'.

PAUL HAUPT,
Plaintiff,
vs.
JEROME PRICE,
Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

The defendant, for answer to the complaint, saith:
That he is not guilty of the matters alleged therein.

Sam Tomson
Attorney for Defendant

JEROME PRICE,
Plaintiff,
vs.
PAUL HAUPT,
Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

Attorney for Defendant

Sam Tomson

PAUL HAUPT,
Plaintiff,
vs.
JEROME PRICE,
Defendant.

PAUL HAUPT, Plaintiff,

vs.

JEROME PRICE, Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

ANSWER OF DEFENDANT

Filed April 14, 1939

R. S. DUCK

clerk, register

By *Lloyd A. Magney* Deputy

LLOYD A. MAGNEY
Attorney at Law
Foley, Alabama.

RECORDED

PAUL HAUPT,
Plaintiff,

vs.

JEROME PRICE,
Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

ANSWER OF DEFENDANT

Filed April 14, 1939
R. S. DUCK
clerk, & register

By *Lloyd A. Magney*
Deputy

LLOYD A. MAGNEY
Attorney at Law
Foley, Alabama.

NO 23500 RECORDED MAY 21
IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

FILED MAY 21 1939

RECORDED

FILED MAY 21 1939

RECORDED

THE DEPARTMENT OF THE ATTORNEY GENERAL HAS BEEN ADVISED BY THE
CLERK OF THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA, THAT THE
ANSWER OF DEFENDANT HAS BEEN FILED IN THIS CASE.

Attorney for Defendant

Paul Haupt
Plaintiff
vs
Jesse Price
Defendant

In the Circuit Court
of Cass County Mo.
At Law

Comes the Plaintiff and by leave
of Court amends his Complaint
by adding Count 2 as follows:

Count 2. The Plaintiff claims of the
defendant the sum of 5000.00 dam-
ages for this; that on or about Jan 27
1938 the defendant did assault and
beat the plaintiff, severely beating
and bruising his face and head
and thereby putting defendant to
great expense for medical attention
and caused him to lose good
time from his business and
caused him great physical
pain and mental suffering,
since his suit

Bobbe Haebeke
for Plaintiff

June 9/17/39

T. W. Moore

Judge

STATE OF ALABAMA.

BALDWIN COUNTY.

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon JEROME PRICE to appear within thirty (30) days from the service of this writ in the Circuit Court, to be held for said County at the place of holding the same, then and there to answer the complaint of PAUL HAUPT.

Witness my hand this the 24 day of March, 1939.

R. S. DUCK

Clerk.

~~clerk~~ register

By [Signature]
Deputy

PAUL HAUPT,
Plaintiff,

vs.

JEROME PRICE,
Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

The plaintiff claims of the defendant the sum of FIVE THOUSAND DOLLARS (\$5,000.00) damages for an assault and battery committed on the plaintiff by the defendant, viz.: on the 27th day of January, 1938.

Beebe Hall & Beebe.
Attorneys for Plaintiff.

*The Plaintiff demands trial by jury:
Beebe, Hall & Beebe
Attys. for Plaintiff.*

RECORDED

Executed 3-31 1939
by serving copy of within Summons a
Complaint on
Jerome Price

.....
.....
W.R. Shugart She:
John R. Davis Deputy She:

PAUL HAUPT,
Plaintiff,

vs.

JEROME PRICE,
Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

SUMMONS AND COMPLAINT.

Filed March 24, 1939

W.S. Dyer
Clerk.
By: Mallice Thompson,
Deputy

508

The State of Alabama, }
Baldwin County.

CIRCUIT COURT

No. 508

December Term, 1939

TO ANY SHERIFF OF THE STATE OF ALABAMA—GREETING:

YOU ARE HEREBY COMMANDED, That of the goods and chattels, lands and tenements of

Jerome Price, Defendant,

in cause to be made the sum of Fifty + 70/100 (\$120.00) DOLLARS,
Paul Haupt, Plaintiff,

covered of Jerome Price, Defendant,
the 14 day of September, 1939, by the Judgment of our Circuit Court held for the County of
Baldwin, besides the sum of DOLLARS,

costs of suit, and have the same to render to the said R.E. Dush, and make return of this Writ and
the execution thereof, according to law.

Interest from _____, 19____, to _____, 19____.

Witness, my hand this 11 day of December, 1939, R.E. Dush, Clerk.

CLERK'S FEES		AMOUNT	SHERIFF'S FEES		AMOUNT
Issuing Summons and Complaint	\$1.25	1.25	Serving and Returning Summons	\$1.50	1.50
Issuing copies of same	.30	30	Serving and Returning Writs	1.30	
Issuing Branch Summons and Complaint	1.25		Serving and Returning Subpoenas for Wit.	.65	4.55
Issuing copies of same	.30		Levying Attachment	3.00	
Entering Sheriff's Return or copy of above	.20	20	Entering and Returning Attachment	.25	
Docketing Cause	.25	25	Summoning and Returning Garnishee	1.50	
Entering Appearances	.20		Serving and Returning Sci. Fas. Notices	1.50	
Filing Pleas Demurrers (3)	10	30	Impaneling Jury	.75	75
Affidavits, Certified	.25		Collecting Cost, Execution	1.50	1.50
Commissions to take Depositions	.75	75	Taking and Approving Replevin Bonds	1.00	
copies of Interrogatories			Claim Bonds	1.00	
Notices of Filing Interrogatories	.50		Garnishment Bonds	.75	
Filing Packages of Depositions	.10		Forthcoming Bonds	1.00	
Inclosing Packages of Depositions	.10		Bail Bonds	1.00	
Orders in Court	.30		Detinue Bond	1.00	
Continuances	.10		Writ of Possession	5.00	
Issuing Subpoenas for Witnesses	.30	2.10	Making Deed	5.00	
Trial and Incidents	.75		Collecting Money on Execution		
Entering Judgment	.30	20	Writ of Restitution	2.00	
Issuing Execution	.50	50	Sheriff's Commissions		
Entering Sheriff's Return of Execution	.20	20	Sheriff's Deed		
Issuing Certiorari Sci. Fas.	.75		Seizing Personal Property in Detinue	3.00	
Filing Certiorari, etc.	.15		Former Sheriff's Fees		
Issuing Notices	.75		TOTAL SHERIFF'S FEES		8.30
Issuing copies of same	.50		WAIVER NO WAIVER		
Taking Bonds	.75		RECAPITULATION		
Filing Bonds	.10		Judgment for plaintiff for		50.00
Issuing Attachment Writ and taking Bond	1.00		Interest from		
Filing Attachments	.10		Damages		
Summons of Garnishee	.50		Clerk's Fees		11.90
Swearing and Ent. Answer of Garnishee			Sheriff's Fees		8.30
Complete Record, 15c per 100 words		4.50	Justice of Peace Fees		
Transcript to Supreme Court			Witness Fees in Justice of Peace Court		
Certificate of Appeal to Supreme Court	.75		Constable's Fees		
Notices of Appeal	.75		Court Reporters		5.00
Appeal Bond	.75		Commissioner's Fees		
Certificate of Judgment	.50		Commissioner's Residence		
5 Witness Certificates	.25	1.25	Printer's Fees		
			Garnishee's Fees		
			Witness Fees in Circuit Court		18.60
			Former Clerk's Fees		
			Trial Tax		2.06
TOTAL CLERK'S FEES		11.90	TOTAL FEES		96.80

THE STATE OF ALABAMA,
Baldwin County.

By virtue of the within execution, I have at

o'clock, M., this day of 193 levied

COLLECTION COSTS FROM

The State of Alabama,
BALDWIN COUNTY

I hereby certify that the within
and costs in this case are correct, and there was
waiver of exemption as to personal pro-
perty under the Constitution and Laws of Ala-
bama.

This day of 193

Clerk.

Received in office June 25th 1930

Sheriff

Sheriff's Execution Docket, Page

Sheriff's Fee Book, Page 324/40

No Property of
Paul Haupt found
in Baldwin County
W. R. Stewart
Clerk

No. 508

Page

THE STATE OF ALABAMA,
BALDWIN COUNTY

CIRCUIT COURT

Paul Haupt
Plaintiff

vs.

Jerome Price
Defendant

Civil Execution for Costs
Against Plaintiff

Costs \$46.00

Civil Fee Book Cont'd. Page 508

Execution Docket Page 11

Filed June 25, 1930

W. R. Stewart Clerk.

Breche & Hall
Plaintiff's Attorney

Lloyd A. Magney
Defendant's Attorney

JUN 25 1930

Sheriff

508

LLOYD A. MAGNEY
LAWYER
FOLEY, ALABAMA

September 7th, 1939

Hon. R. S. Duck,
Clerk of the Circuit Court,
Bay Minette, Alabama.

Dear Sir:-

Re; Paul Haupt vs. Jerome Price

Please issue subpoenas to Homer Walters, Bon Secour, Alabama and Warren Taylor, Bay Minette, Alabama as witnesses for the defendant in the above entitled cause and deliver the same to the sheriff for service.

By agreement with Mr. Beebe, this case has been set for trial Wednesday the 13th and you will please insert the docket sheet in the trial docket for that day.

Very truly yours,

Lloyd A. Magney

LAM:C.



Abusive language - No justification - May mitigate

Self defence
Blow for blow - but not excessive force

Free from fault

No duty of retreat if attacked
no more force than appears
reasonably necessary ✓

PAUL HAUPT VS. JEROME PRICE

Following is a memorandum of authority in support of requested instructions Numbered 1 and 2:

Instruction No. 1

There are but three constituted elements of self-defense recognized by the law, within which the defendant must bring himself to invoke the doctrine of self-defense. They may be stated generally as, first, freedom from fault in bringing on the difficulty; second, a necessity to strike from an impending peril or danger, real or apparent; and, third, retreat, unless there is no convenient mode of escape, or the peril will be increased thereby.

The law of self-defense is not the same in its application to assault and battery cases as applied to homicide cases. This defense is complete in the former class of cases, if it appears that the defendant did not provoke the difficulty, and did not fight willingly, but only to repel or prevent an attack upon him, and that in doing this, he used only such force as was reasonably necessary to that end. Blankenship v. State, 11 Ala. App. 125, 65 South. 860; Beyer v. B.R., L. & P. Co., 186 Ala. 56, 64 South. 609. It was not necessary to the defendant's plea of self-defense that he should have honestly been impressed with the belief that he was in imminent peril of life or limb. For the purposes of self-defense, which stops short of killing or attempting to kill, there is no need for the apprehension of serious bodily harm; and it is for the jury to determine in each case whether the defendant's counter assault was protective and justifiable in using no more force than necessary, or was unjustified and unlawful.

Greenwood Cafe v. Walsh 74 South 82, 15 Ala. 519.

PAUL HAUPT VS. JEROME PRICE.

Instruction No. 2.

It seems to be now fully settled in this state that in an action for an assault and battery in Code form, which does not show the character of the offense, there can be no recovery of compensatory damages, even for physical pain or mental suffering, unless the elements of injury are stated and the damages claimed in the complaint. Irby v. Wilde, 150 Ala. 402, 43 South. 574; Powell v. Schimpf, 154 Ala. 665, 44 South. 1044; S.S.S. & I. Co. v. Dickinson, 167 Ala. 211, 52 South. 594.

Under these decisions, we are constrained to hold that the trial court erred in refusing to give at defendant's request the several charges denying plaintiff's right to recover for physical injuries or physical suffering caused by the battery complained of.

Miller v. McGuire, 80 South. 433
202 Ala. 351.

A complaint for assault and battery in the Code form only covers such general damages as are the necessary result of the injury which the law implies from the commission thereof, so that, if special damages are sought to be recovered they must be specially pleaded.

Irby v. Wilde 43 South. 574, 150 Ala. 402.
Powell v. Schimpf 44 South, 1044 154 Ala. 665.
Sloss-Sheffield Steel & Iron Co. v. Dickinson 52 South 594
167 Ala. 211

Paul Haupt,
Plaintiff

#508

vs
Jerome Price
Defendant

Circuit Court
Pulaski County, Mo.
at Lees

Comes the plaintiff in the
above styled case and moves
to strike defendants plea and
as grounds therefor says:

1. Said plea is frivolous
2. Said plea alleges no facts
constituting a defense to
plaintiffs action
3. The matters alleged in said
plea are available under
the plea of general issue
4. Said plea alleges no matters
that cannot be proved
under defendants plea
of general issue

Piche Hall & Beebe
for the plaintiff

Filed Sept. 13 1939
R. S. Smith, Clerk

6 / III / 1
6 / III / 1

Jury List, First Week, Sept. 11th, 1939

- ~~1. Ulmer E. Bradley, Farmer, Blackstier~~ *L*
- ~~2. R. Hines Hall, Farmer, Tensaw~~
- ~~3. John A. Moseley, Farmer, Stockton~~ *P2*
- ~~4. Julius Lee Bryant, Merchant, Stockton~~
- ~~5. John W. Pittman, Farmer, Gateswood~~ *P4*
- ~~6. Samuel T. Lewis, Farmer, Gateswood~~ *P5*
- ~~7. Thomas Coleman, Turpentine, Perdido~~ *P4*
- ~~8. Charles R. Weekley, Naval Stores, Perdido~~ *P1*
- ~~9. Shelby Folmar, Farmer, Bay Minette~~
10. Irby E. Heaton, Naval Stores, Bay Minette
- ~~11. Adrian Ray, Mechanic, Bay Minette~~ *P1*
- ~~12. E. Velpe Thomas, Farmer, Loxley~~
13. Comer Hobbs, Mill Man, Loxley
- ~~14. John Canaan, Merchant, Loxley~~
- ~~15. Tillman Allen, Farmer, Styx~~ *P5*
16. Robert C. Henley, Bookkeeper, Foley
- ~~17. Homer G. Russell, Clerk, Foley~~
- ~~18. George Shoemaker, Lineman, Foley~~
19. John D. McKenzie, Farmer, Elberta
- ~~20. William Miller, Oysterman, Bon Secour~~
- ~~21. Herschel Flowers, Farmer, Bon Secour~~ *P3*
- ~~22. Sam Parker, Fisherman, Bon Secour~~
23. Glen Boykin, Farmer, Daphne
- ~~24. George H. Fuller, Theatre Operator, Fairhope~~ *P6*
- ~~25. Roy W. Rockwell, Farmer, Fairhope~~
- ~~26. Devan Stapleton, Sr.~~ *P5*
27. M. J. Reedy
28. Will F. Herron
29. Dennis Howell
30. Y. Charles Hall
- ~~31. Lawrence V. Guess~~
- ~~32. Ira Guess~~
- ~~33. Leonard J. Hooper~~
34. Ernest D. Hand
- ~~35. Wilson M. Hall~~
- ~~36. Dixon Hammond~~
37. H. Pete Jones
- ~~38. H. J. Jordan~~ *P6*
- ~~39. J. Simpson Lowe~~
- ~~40. Marvin Gabanias~~

CIVIL SUBPOENA—ORIGINAL—In case witness shall wish to charge for attendance, he shall produce to the Clerk in term this Subpoena, or within five days after adjournment of Court, else he will be barred.

Gill Ptg. & Sta. Co., Mobile—Re-Order No. 720

THE STATE OF ALABAMA

BALDWIN COUNTY

S.D. Page No.

Case No. *508*

CIRCUIT COURT

Fall Term, 193*9*

To any Sheriff of the State of Alabama, GREETING:

You are hereby commanded to summon *Homer Walters - Bon Secour*

+ *Warren Taylor - Bay Minette*

if to be found in your County, at the instance of the *Defendant*

to be and appear before the honorable, the Judge of the Circuit Court of Baldwin County, at the Court House thereof,

by *8:30* o'clock of the forenoon, on the *13* day of *September* 193*9*

and from day to day and term to term of said Court until discharged by law, then and there to testify, and the truth to

say, in a certain cause pending, wherein *Paul Hays* Plaintiff

and *Jerome Price* Defendant.

Herein fail not and have you then and there this Writ.

Given under my hand and seal, this *8* day of *Sept.* 193*9*

R. S. Duck Clerk.

Received in office this 8 day of

Sept

1939

W.R. Stuart

Sheriff.

I have executed this writ

Homer Walters 9-9-
Warren Saylor -9-9

ORIGINAL

No. 508

Page

THE STATE OF ALABAMA

BALDWIN COUNTY

CIRCUIT COURT

Paul Noyt

Plaintiff

VS.

Jerome Price

Defendant

CIVIL SUBPOENA

Issued this.....day of

193.....

W.R. Stuart

J.R. Davis

J.S.

Sheriff.

Clerk.

CIVIL SUBPOENA—ORIGINAL—In case witness shall wish to charge for attendance, he shall produce to the Clerk in term this Subpoena, or within five days after adjournment of Court, else he will be barred.

Gill Ptg. & Sta. Co., Mobile—Re-Order No. 720

THE STATE OF ALABAMA

BALDWIN COUNTY

S.D. Page No.

Case No. *508*

CIRCUIT COURT

Fall Term, 193*9*

To any Sheriff of the State of Alabama, GREETING:

You are hereby commanded to summon *Jaybor Welburn, M. H. Wilkins*

if to be found in your County, at the instance of the *plaintiff*

to be and appear before the honorable, the Judge of the Circuit Court of Baldwin County, at the Court House thereof,

by *9:30* o'clock of the forenoon, on the *12* day of *September* 193*9*

and from day to day and term to term of said Court until discharged by law, then and there to testify, and the truth to

say, in a certain cause pending, wherein *Paul Haupt* Plaintiff

and *Jerome Price* Defendant.

Herein fail not and have you then and there this Writ.

Given under my hand and seal, this *12* day of *Sept -* 193*9*

Paul Price Clerk.

Defendant requests the court to instruct the jury as follows:
One who honestly & reasonably believes himself in danger of an assault has a right to strike in his own defense if he uses no more force than necessary & was free from fault in trying to avoid the difficulty.

Wm
J. W. Hare
Judge

PAUL HAUPT VS. JEROME PRICE

The Defendant requests the Court to instruct the Jury as follows:-

2. You are instructed that under the pleadings in this case the Plaintiff cannot recover any thing from the defendant for any injuries, physical pain or mental suffering.