PAUL HAUPT,

Plaintiff,

vs.

#### IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

# AMENDED ANSWER

JEROME PRICE,

Defendant.

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 phe 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.

ABRORN PROCES

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FERNIN WEINE

Attorney defendant! for

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(apar Q.W Same. Ś - register BALDWIN CUUNTY, ALABAM Plaintiff, Defendant. LLOYD A. MAGNEY Attorney-at-Law Foley,Alabama. eputy JU 001539 AMENDED ANSWER THOORDED **ν**θ. JEROME PRICE, By Marley PAUL HAUPT, servio strip ut Strington teadoet see Manalone, defaudant avere ther the plaintif ought not фC self for the plaintif. that he used no more force than was mecessary to defend he yes necessary for defendent to protect himself from such assume intervion of the glointiff to bake an eastald upon him and that it (\* \* \_\_\_\_\_

PAUL HAUPT, IN THE CIRCUIT COURT OF Plaintiff, BALDWIN COUNTY, ALABAMA. vs. JEROME PRICE, Defendant. The defendant, for answer to the complaint, saith: That he is not guilty of the matters alleged therein. Attorney for Defendant ttlatat mar DIRG SECORD AND THE COMPLY ADDRESS OF TRADE OF DELEDERS CARDAR . A CLOCK Karet de la 1. N. S. S. W. 12 120 DE 01 01 

IN THE CIRCULT COURT OF BALDWIN COUNTY, ALABAMA. LLOYD A. MAGNEY Attorney at Law Foley, Alabama. ANSWER OF DEFENDANT JEROME PRICE, Defendant. clerk, - register PAUL HAUPT, Plaintiff, By Mullin 200 Deputy 1939 vs. and the second secon The second se The second The second s Constant of the second or, the metrers silleged an The defendancy for wherea to the completing setting A P ETTERTA COMBRA 



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## 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 Cir-cuit 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  $2^{4}$  day of March, 1939.

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PAUL HAUP	Τ,	) IN 1	HE CIRCUIT COURT	OF

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	Plaintif
vs.	•

BALDWIN COUNTY, ALABAMA.

JEROME PRICE	>	

Defendant.

f,

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.

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

(istanton) IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA. SUMMONS AND COMPLAINT. 929 www PAUL HAUPT, Plaintiff, JEROME PRICE, Defendant. leantry Filed Nearly 24 leherer and l'erk. vs. 134 She 2 CLAReputy Sher Executed Free 193. by serving copy of within Summons a Complaint on Z Konne

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THE STATE OF ALABAMA,  No. 50 F  CIR    Baldwin County.	CUIT COURT
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Clerk of said Court, and make return of this Writ and the Execution thereof, according to law.

or every Summons and Complaint	CLERK'S FEES	Dollars	Cts	SHERIFF'S FEES	Dolla <del>r</del> s	Cts
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THE STATE OF ALABAMA,  $\langle$ 

Baldwin County.	By virtue of the within execution, I have at
o'clock, M., this	day of193 levied
o'clock, M., this	
	Sheriff
COLLECTION COSTS FROM The State of Alabama, BALDWIN COUNTY BALDWIN COUNTY I hereby certify that the within and costs in this case are correct, and there was perty under the Constitution and Laws of Ala- perty under the Constitution and Laws of Ala- pana.	Received in office Lund Clerk. Received in office Lund Clerk. 2.5 M.R. Shurd Sherift Sherift Sherift Alland Sherift Sherift's Hacurd Page Alland Alla
	JUN ~ F. 'n, 10      Defendant        Defendant

CIVIL COST BILL - NOTICE - Form 22						Baldwin Times, Ba	y Min	lette	
THE STATE OF ALABAMA	)			N	0.508	CIRCUIT	CO	URT	
BALDWIN COUNTY	Ì			J	udgment	Jall	_Teri	m, 19	32
Paul Hausts	<u> </u>				- Jun	se Price			<u>,</u>
Plaintia	_}		-	vs.	{	Desa	1	<u>T</u>	<del>_</del>
DEAR SIRS: At the		5	- Ln i	1 mar		, of the Circuit Cou	rt of :	said (	County,
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ution to the Sherill of your County for cone	enon. espect	fullv	vour	s.		5. Duch_			Clerk.
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CLERK'S FEES	@	Amo	ount		SHERIFI	F'S FEES	@	Am	ount
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nature thereof, (each) IssuingExecution or copy thereof; (each)	50				Collecting money unde \$200.00; 4% to \$500.0	0; 3% all over \$500.00.		2	
Entering return, or copy thereof, for each 100 words, 15 cents; but in no case less than	1 201			17	Selling property attac under execution, Former Sheriff's fees,	hed, same for selling		6	80
Recording award of arbitrators, referees, audi- tors, etc., for each 100 words,	15			18	Former Shariff's fees, 			Ŷ	
Issuing execution or attachment thereon, and	-1.00	a La			· · · · · · · · · · · · · · · · · · ·		- -		
Taking bond for certiorari supersedeas, or ap-	75								
peal, or copy thereof and filing same, Issuing Subpoenas for Witness, (each) Administering an oath, not relating to a trial	30	2	10				[		
pending and certifying the same.	25								
IssuingAttachment and taking bond, (ea.) Filing	1.00				 				
Issuing Summons for garnishee, (each) Swearing and taking examination for Garni-					 				
shee and recording same, for each 100 words 15 cts; but not less than	50]				 		-		
Order to advertise, or order of survey, or copy thereof, Certificate of Judgment,	50				Total Sheriff's 1	Fees.			
Becording each surveyor and surveyor's report						•			
or copy thereof each 100 words 15 cts; but					RECAPITU	LATION			<i>′</i> -
not less than, Issuing Commission to take depositions, or copy thereof,	75			1	  Clerk's Fees,			[[[	20
Making copy of interrogatories accompanying				2	Clerk's Fees, Sheriff's Fees.			6	80
commission, Or for each 100 words, Diling packages of depositions (each)	15 10			4	Sneriff's Fees,  Witness Fees in Circuit			18	60
Filing packages of depositions, (each) Indorsing package of deposition, opened	10			6	Justice of the Peace Fe Witness Fees, in Justic	es,			<i>- -</i>
(each), Issuing writ of ad quod damnum or writ				8	Commissioner's Fees.				
in the nature thereof, Recording the return and inquest thereon,	50			10	Commissioner's Reside Constable's Fees				
Or for each 100 words. Issuing Writ of certiorari, prohibition.			·	12	Garnishee's Fees,			5	5-0
mandamus, or writ in the nature therof, Filing the same and entering return.				<u>  13 </u>	Stenographer's Fees Trial Tax,			4	14-7
Making a complete record of a cause or copy thereof, for each 100 words,	15	4	50		]			۔ ا	
Making copy of any paper not herein provided for, for each 100 words.	15								
Making.each certificate requiring the seal of office, and affixing seal.									
Jaking any bond not otherwise provided for, Making	75				)	<u>ب</u>	<u>+</u>	1.,	60
wise provided for, (each witness),	25	)	25		_,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,		Å	74	20
transcript under section 2851 of the Code,	5.00				)				
Record for Supreme Court, for each 100 words Each additional copy thereof, each 100 words	05				1				
Collecting money on judgments wherein said judgment has not been paid within 30 days					1 .			50	0-1)
after rendition, one half the per cent allow-					Judgment, Date.		Î		
ed sheriffs for same services for collecting				1.77	······				
ed sheriffs for same services for collecting money on executions,		11	20	10	Interest,		1 11		
ed sheriffs for same services for collecting		11	20	18	Damåges,				
ed sheriffs for same services for collecting money on executions,	 	11	20	18	Damåges,	nt, mages,		927	60

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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 Happt 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, MM

LAM:C.

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# 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 necessaryrresult 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

June Haupé, HJD 8 Maintiff. ander Carlet Indene hice Caronia Juitz ala Mutuk at deed Come the plaintiff in the above Alglek Caine and Thores to stripe definition plea 2 and as granda Therefor days Baid plan to proting 2. Paid der alles no faits Caustoliching a define to deritif action 3. The matters alled in Orig Please angildelerally the plant que al and H. Dald plea allega no Macles That declass be troked under difendants pla of general le Tile Hall TBuck or the plantiff

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Jury List, First Week, Sept. 11th, 1939 1\_Ulmer-E-Bradley, Farmer, Blacksher 🖌 2 Row Hines Hall Farmer Fersaw -3-John A. Moseley, Farmer, Stockton-Bivant, Merchant Form W Pittmen Farmer, Gateswood 6 Samuel J. Lawiss Farmer Gateswood Thomas Coleman, Turpentine\_Perdid Charles R. Weekley, Naval Stores, Perdido Stelby Folman, Farmer, Bay Minette 10 Irby E. Heaton, Naval Stores, Bay Minette 11-Adrian Ray, Mechanic, Bay Minette E Velno Thomas Farmer Loxley 12 13 Comer Hobbs, Mill Man, Loxley John Concern Merchant Loxley a -Tillman Allen, Farmer, Styx-16 Robert C. Henley, Bookkeeper, Foley Homer G Russell, Clerk , Foley 18 George Shoemaker, Lineman, Foley 19 John D. McKenzie, Farmer, Elberta 2<del>0 William Miller, Oysterman, Bon Secour</del> 21\_Herschal Flowers, Farmer, Bon Secour-22 Sim Parker, Fishenman, Bon Secour 23 \_Glen Boykin, Farmer, Daphne H. Fuller. Theatre Oparator W. Rockwell, Farmer, Fairhope Sr. Sr. Reedy F. Herron 291 Dénnis Howell 30: Y. Charles Hall Guess Lawrence Ira <sup>G</sup>uess 32. Loonard J. Hooder 34. Ernest D. Hand Willson Mar 35 and the second 36 Dizvon-Hermond 37: H: Pete Jones 40. Marvin Cabaniss

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 S.D. Page No.	
BALDWIN COUNTY Case No. 508 Fall Term, 193. 2	
To any Sheriff of the State of Alabama, GREETING:	
You are hereby commanded to summon Homer Walters - Bon Secon	
+ Warren Zaylor - Byminter	
A. A. t	
if to be found in your County, at the instance of the definition of the definition of the second	
to be and appear before the honorable, the Judge of the Circuit Court of Baldwin County, at the Court House thereof,	
by 8130 o'clock of the forenoon, on the 13 day of Systember 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 $A$	
say, in a certain cause pending, wherein Plaint Hauft Plaintiff	
and Auronie Price Defendant.	
Herein fail not and have you then and there this Writ.	
Given under my hand and seal, this day of 547-193.9.	
R. 5. Duch Clerk.	

Received in office this.      I day of      ORIGINAL        Sept      1937      No. 508      Pege        WOR Struct      Sherif.      THE STATE OF ALABAMA BALDWIN COUNTY        I have executed this writ      CIRCUIT COURT        Sherif.      CIRCUIT COURT        Warnen Saylor -9.9      Paule Naryt        Plaintiff      VS.        Plaintiff      VS.        Issued this.      day of        198.      198.		· · ·
Received in office this of a large of Sept 1927 Were struct Sheriff. Sheriff. THE STATE OF ALABAMA BALDWIN COUNTY have executed this writ CIRCUIT COURT Mo. 508 Page. THE STATE OF ALABAMA BALDWIN COUNTY CIRCUIT COURT Plaintiff VS. Plaintiff VS. Defendant CIVIL SUBPOENA		
Web      Sheriff.      THE STATE OF ALABAMA BALDWIN COUNTY        have executed this writ      GIRCUIT COURT        Jonner Walters 7-9-9      Pare Nayt        Varren Jaylor -9.9      Pare Nayt        Plaintiff      VS.        Vorme Brice      Defendant        CIVIL SUBPOENA      Issued this	Received in office this	ORIGINAL
BALDWIN COUNTY BALDWIN COUNTY BALDWIN COUNTY CIRCUIT COURT CIRCUIT COURT Plaintiff VS. Plaintiff VS. Defendant CIVIL SUBPOENA Issued this	Sept 1937	No. 508 Page
Homes Walten 79 Jamen Daylor - 99 Pare Nayt Plaintiff VS. Plaintiff US. Defendant CIVIL SUBPOENA Issued this	VR Stuart Sheriff.	
Plaintiff VS. Jerome Brice Defendant CIVIL SUBPOENA Issued this day of		CIRCUIT COURT
Plaintiff VS. Defendant CIVIL SUBPOENA Issued this	Jamen Saylor -9-9	
US. Jurome Brice Defendant CIVIL SUBPOENA Issued this	V	Paul Naryt
CIVIL SUBPOENA Issued this		
CIVIL SUBPOENA Issued this		Jerome Price
Issued thisday of		Defendant
		CIVIL SUBPOENA
WRShind WR. Davis Sheriff. Clerk.	WRStund R. Danis Sheriff.	Clerk.

XVIL 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      S.D. Page No.      CIRCUIT COURT        BALDWIN COUNTY      Case No. 508      Fall Term, 193.9	
BALDWIN COUNTY ) Case No. 508 - Jall Term, 193.7	
To any Sheriff of the State of Alabama, GREETING:	
You are hereby commanded to summon Zaylor Wilhing M. N. Willing	
· · · · · · · · · · · · · · · · · · ·	
f to be found in your County, at the instance of the plainty function of Baldwin County, at the Court House thereof,	
by Sii 20 o'clock of the forenoon, on the 13 day of Systemler 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 Plaintiff	
and Defendant.	
Herein fail not and have you then and there this Writ.	
Given under my hand and seal, this 12 day of 544 - 193.7.	
Red Duck Clerk.	

Received in office this /2ORIGINAL .....day of Page..... No. THE STATE OF ALABAMA Sheriff. BALDWIN COUNTY I have executed this writ CIRCUIT COURT Jaylor Wilkins Vaul Nauget Plaintiff VS. Defendant **CIVIL SUBPOENA** Issued this\_\_\_\_\_day of 1/11 Sheriff. Clerk.

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# 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.