

W. J. McKINLEY,
Plaintiff

vs

B. F. SUTTON, individually
and doing business as BEN'S
TAXI SERVICE,

Defendant

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

AT LAW

NUMBER 1678

Comes the defendant in the above styled cause and
answering the interrogatories propounded to him by plaintiff
says:

Answering interrogatory One: My name is B. F. Sutton.
I am 45 years of age. My address is Bay Minette, Alabama. I
am engaged in the business of operating Ben's Taxi Service.

Answering interrogatory Two: On March 28, 1951 I
was doing business in the State of Alabama, in Baldwin County
under the name of Ben's Taxi Service.

Interrogatory Three requires no answer.

Answering interrogatory Four: I was the owner of a
motor vehicle involved in an accident occurring on or about March
28, 1951, on U. S. Highway 31 about one mile south of the inter-
section of U. S. Highway 31 and Alabama Highway No. 3 in Baldwin
County, Alabama.

Answering interrogatory five: I am the owner of a 1950
two door Ford sedan.

Answering interrogatory Six: I do not know whether my
automobile collided with the motor vehicle of the plaintiff or
whether or not the motor vehicle of the plaintiff collided with
my motor vehicle.

Answering Interrogatory Seven: At the time of the accident
referred to in answering interrogatory four my automobile was being
driven by one Dorothy Gibson, who had no authority to operate the
same and who had unlawfully taken possession of my automobile and
who was not at that time and never has been my agent, servant or
employee, and her possession of the said car was unauthorized and
unlawful, she having unlawfully taken possession of the same and was

then and there engaged in temporary misuse of personal property.

Answering Interrogatory Eight: The driver of the automobile at the time of the accident was not an employee of mine.

Interrogatory Nine requires no answer.

Answering Interrogatory Ten: The driver of the automobile was not then, had never before been, and has never since been an employee of mine.

Interrogatory Eleven requires no answer.

Answering Interrogatory Twelve: On March 28, 1951 I was in the business of transporting passengers for hire.

Answering Interrogatory Thirteen: My automobile involved in the accident was owned and operated by me in my business of transporting passengers for hire, but at the time of the accident it was not so being used but was being unlawfully used for the pleasure of the driver and not in the line and scope of my employment. And such driver was not my employee and unlawfully had possession of my car.

Answering Interrogatory Fourteen: The driver of my automobile at the time of this accident was not operating the same for me or in the line and scope of my employment but had unlawfully taken possession of the same and was operating the same for her own pleasure.

Answering Interrogatory Fifteen: The driver of the automobile at the time, as I have previously stated, had unlawfully taken possession of my car and was operating the same for her own benefit.

Answering Interrogatory Sixteen: As I have previously stated the driver had unlawfully taken possession of my car and I do not know where she was going.

Answering Interrogatory Seventeen: I do not know where the operator of my motor vehicle had been immediately prior to the accident, she had taken possession of the same unlawfully and was

operating the same for her own benefit.

Answering Interrogatory Eighteen: The driver of my motor vehicle at the time of the accident had possession of the same and was driving the same without my knowledge or consent.

Answering Interrogatory Nineteen: My motor vehicle at the time and place of the accident was not being operated by my agent, servant or employee. The person having possession of the same had unlawfully taken possession of the same and was not acting within the line and scope of my employment.

Answering Interrogatory Twenty: No person other than I had any interest in the said automobile.

Interrogatory Twenty-one requires no answer:

Answering Interrogatory Twenty-two: My automobile at the time and place of the accident had my trade name thereon, namely: "Ben's Taxi".

Answering Interrogatory Twenty-three: At the time and place of the accident my automobile had no cargo, wares, merchandise or any other merchantable matter being transported as a cargo.

Interrogatory Twenty-four requires no answer.

Interrogatory Twenty-five requires no answer.

Answering Interrogatory Twenty-six: At the time and place of the accident my automobile was not transporting any person or persons for a consideration or a reward which was to be paid to me. The driver had unlawfully taken possession of the same and was driving the same for her own benefit or pleasure.

Answering Interrogatory Twenty-seven: At the time and place of the accident my automobile was not return from transporting any person or persons for hire to some specified destination and I was not receiving, or to receive any reward for such transportation. Such operation was by a person who had unlawfully taken possession of my automobile without my knowledge or consent and the operation was not within the line and scope of my employment or for my benefit in any manner.

Answering Interrogatory Twenty-eight: My automobile was not proceeding to a destination to pick up a person to be transported for hire for which transportation I was to receive reward.

As I have previously stated the person driving the automobile had unlawfully taken possession of my automobile without my knowledge or consent and the operation was not within the line and scope of my employment or for my benefit in any manner.

Answering Interrogatory Twenty-nine: I did not derive any benefit immediately prior to this accident by the driver involved in this accident.

Interrogatory Thirty requires no answer:


Answering Interrogatory Thirty-one: I would not have derived any benefit from the operation of my motor vehicle by the driver involved in this accident had the driver reached the destination at the time of the accident for she was not driving the same with my knowledge or consent or in the operation of my business, but she had unlawfully taken possession of the same and was driving the same for her own benefit or pleasure.

Interrogatory Thirty-two requires no answer:

Answering Interrogatory Thirty-three: The driver of the automobile at the time of the accident was not performing any service for me at the destination to which the automobile was being driven at the time of the accident.

Answering Interrogatory Thirty-four: The driver of the automobile at the time of the accident had not performed any service for me at the point from which she departed in my automobile immediately prior to this accident, her possession thereof having been unlawfully taken and her use thereof being unlawful and without my knowledge or consent.

Answering Interrogatories Thirty-five to Forty-three, both inclusive: The defendant says that his automobile was not damaged, that the collision was a mere side swipe scratching the paint on the side of plaintiff's car.


Defendant.

STATE OF ALABAMA

BALDWIN COUNTY

Before me, the undersigned Notary Public in and for said State and County, this day personally appeared B. F. Sutton, who is known to me, and who being by me duly sworn, deposes and says that he is defendant in that certain cause pending in the Circuit Court of Baldwin County, Alabama, number 1678, in which W. J. McKinley is plaintiff and this affiant is defendant; that his foregoing answers to the interrogatories are full, complete and true to the best of his knowledge and belief.

B. F. Sutton

Sworn to and subscribed before me this the 10 day of

August, 1953.

Madeline L. Byers
Notary Public, Baldwin County, Ala.

Received copy of foregoing
answers this Aug 10, 1953

Wm. J. McKinley

1678

W J McKenley
vs

B F Suttan

Deputy District
Clerk to Inter-
galeries

Filed Aug 10, 1953

W J McKenley
Clerk

W. J. McKINLEY,
Plaintiff,

vs

B. F. SUTTON individually
and doing business as BEN'S
TAXI SERVICE,

Defendant

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW

NUMBER 1678

Comes the defendant in the above styled cause by his attorney of record, W. C. Beebe, and desiring testimony of the plaintiff, W. J. McKinley, propounds the following interrogatories to the plaintiff, under the provisions of the statutes made and provided, the answers to which will be material evidence for the defendant upon the trial of said cause.

1. State your name and place of residence.
2. State whether or not you are plaintiff in the above styled cause.
3. State whether or not your car was in a collision on Highway 31 just North of Stapleton on March 28, 1951.
4. Describe your car, giving the make, age, and type of body.
5. State whether or not your car was in motion or parked at the time of the alleged accident, and which way the car was headed.
6. If you say that your car was parked state whether or not it was wholly or partially on and off the paved surface of the road and what distance the same was from the center of paved drive way of said road.
7. If you say that your car was in motion state the direction in which it was going and whether or not it was on the right or left hand side from the center of the road and how far the same was from the center at the time of the impact.
8. Please describe the damage done to your car and on what part of your car was the impact.
9. State what portions of the car were damaged and in what manner and to what extent the same was damaged.
10. State whether or not your car was repaired and if so by whom and what work and labor was done and material used on the car in and about the repair.

11. Attach copy of the statement from the garage which repaired the same showing in detail what work, labor, material and parts were used in repairing the same, the cost of the same, and total amount of said bill.

12. State whether or not you have paid such bill.

13. State whether or not you paid the repair bill by check, and if by check attach the check to your deposition.

14. State whether or not the repair bill was paid by cash and if cash attach your receipt therefor.

W C Beebe
Attorney for Defendant.

STATE OF ALABAMA

BALDWIN COUNTY

Before me, the undersigned Notary Public in and for said State and County, this day personally appeared J. C. Beebe, who is known to me and who being by me duly sworn deposes and says that he is the attorney of record for the defendant in this cause, that as such, he is authorized to make this affidavit; and the answers to the above and foregoing interrogatories, proounded by the defendant to the plaintiff, if truthfully answered, will be material testimony for the defendant in this cause.

Sworn to and subscribed before me this the 10 day of August, 1953.

Madeline Sherman
Notary Public, Baldwin County, Alabama.

Copy of foregoing interrogatories
received in service mailed
this Aug 10, 1953

Attorney for
Plaintiff

W. J. McKinley
Plaintiff

VS

B. J. Sutton, individually and doing business as Ben's Taxi Service
Defendant.

Defendants'
Interrogatories to
Plaintiff

FILED
AUG 10 1953
ALICE J. DUCK, Clerk

Filed August 10, 1953

Clerk

I hereby accept service this
1st of Aug. 1953.

Telfair J. Worlbourne Jr.

W. J. MCKINLEY,	*	IN THE CIRCUIT COURT OF
Plaintiff,	*	BALDWIN COUNTY, ALABAMA.
VS	*	AT LAW. NO.
B. F. SUTTON individually	*	
and doing business as BEN'S	*	
TAXI SERVICE,	*	
Defendant.	*	

Now comes the plaintiff, W. J. McKinley, and desiring testimony of the defendant, B. F. Sutton, propounds the following interrogatories to the defendant, B. F. Sutton, under the provisions of Section 477 of Title 7 of the 1940 Code of the State of Alabama, the answers to which will be material evidence for the plaintiff upon the trial of said cause.

1. Please state your full name, age, address, and occupation.
2. Please state whether or not on or about March 28, 1951, you were doing business in the State of Alabama, in Baldwin County under the name of Ben's Taxi Service.
3. If answer to preceding interrogatory is no, please give the name under which you were doing business at said time.
4. Were you the owner of a motor vehicle involved in an automobile accident occurring on or about March 28, 1951, on U. S. Highway 31 about one mile south of the intersection of U. S. Highway 31 and Alabama Highway No. 3 in Baldwin County, Alabama.
5. If the answer to the preceding interrogatory is yes, please give the make and model of said vehicle together with the motor No. of same.
6. If answer to interrogatory No. 4 is yes, please state whether or not your motor vehicle collided with the motor vehicle belonging to the plaintiff on the date mentioned in said interrogatory No. 4 and at the place there specified.
7. If answer to interrogatory No. 4 is yes, who was the driver of your motor vehicle at the time of this accident?
8. Was the driver of your motor vehicle at the time of this accident an employee of yours.
9. If answer to preceding interrogatory is in the affirmative, please state what capacity the driver of your motor vehicle

at the time of this accident was so employed.

10. If answer to preceding interrogatory is no, please state whether or not the driver of your motor vehicle at the time of this accident has ever been employed by you.

11. If answer to preceding interrogatory is yes, please give the date of his employment together with the capacity in which he served as your employee, giving the date or dates on which said employee was hired and the date or dates on which he ceased to be your employee.

12. Please state whether or not on or about March 28, 1951, you were engaged in the business of transporting passengers for hire in Baldwin County, Alabama.

13. If answer to preceding interrogatory is yes, please state whether or not your said motor vehicle involved in said accident was used in your business to transport such persons or passengers for hire.

14. For what purpose was the driver of your motor vehicle operating same at the time of this accident.

15. For whose benefit was the driver of your motor vehicle operating same at the time of said accident.

16. At the time of said accident where was the driver of your motor vehicle going in said vehicle.

17. Where had the driver of your motor vehicle been in said vehicle immediately prior to this accident.

18. Was the driver of your motor vehicle at the time of this accident driving you motor vehicle with your knowledge and permission.

19. Was the motor vehicle which struck the plaintiff's automobile on said day and at said time and place operated by your agent, servant, or employee, while acting within the line and scope of his employment as such.

20. Please state whether or not anyone else owned any interest in the motor vehicle involved in this collision.

21. If another owned any interest in your motor vehicle, please state the name of this party and the extent of such

interest owned by such party.

22. Please state whether or not at the time of this accident your motor vehicle had any lettering or signs painted on it, and if so, please state what they were.

23. Please state whether or not at the time of this accident your motor vehicle had any cargo, merchandise, wares, oil, or any other merchantable matter, which was being transported in said motor vehicle as cargo.

24. If answer to preceding interrogatory is yes, please list the goods, wares, or merchantable products, which were being transported in your motor vehicle at the time of this accident, and give the name of the owner or persons for whom said articles were being transported.

25. If answer to preceding interrogatory shows that there was goods being transported by your motor vehicle at the time of this accident, and that said goods did not belong to you and were not being for you, please state whether or not you were to receive any pay or benefit from the transporting of said goods at said time and place.

26. Please state whether or not at the time of this accident, your motor vehicle was transporting any person or persons for a consideration or a reward to be paid to you or part of which was to be paid to you.

27. If answer to preceding interrogatory is no, please state whether or not at the time of this accident your motor vehicle was returning from transporting such person or persons for hire to some specified destination and please state whether or not you were to receive any reward from such transportation.

28. If answer to preceding interrogatory is no, please state whether or not your motor vehicle was proceeding to a destination to pick up a person or persons to be transported for hire for which transportation you were to receive some financial reward.

29. Please state whether or not you did derive any benefit immediately prior to this accident by the operation of your motor vehicle by the driver involved in this accident.

30. If answer to preceding interrogatory is yes, please state in detail what benefit you received from said operation.

31. Please state whether or not you would have derived any benefit from the operation of your motor vehicle by the driver involved in this accident had the driver reached the destination to which he was proceeding at the time of this accident.

32. If answer to preceding interrogatory is yes, please state in detail what benefit you would have derived had the driver reached his said destination.

33. Please state whether or not the driver of your motor vehicle at the time of this accident was performing any service for you at the destination you were driving your automobile at the time of this accident.

34. Please state whether or not the driver of your automobile at the time of this accident had performed any service for you at the point from which he departed in your automobile immediately prior to this accident.

35. What part of your motor vehicle was damaged as a result of this collision?

36. What extent was it damaged?

37. Did you have the damage to your motor vehicle repaired and if so by whom were the repairs made?

38. Did you receive an itemized bill for the said repairs.

39. If so, please attach a true and correct copy of same to your answers.

40. Did you have any damage repairs that you included in said bill other than those which occurred in the accident complained of, If so describe these.

41. Did you pay for said repairs?

42. If so, how much did you pay and state how payment was made whether in cash or by check.

43. If you did not pay for these repairs, please state who did pay for same.

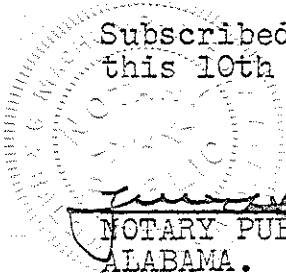
Julius A. Madlauer, Jr.
ATTORNEYS FOR PLAINTIFF

STATE OF ALABAMA, 0
 0
COUNTY OF BALDWIN. 0

Before me, the undersigned authority in and for said County and State, personally appeared Telfair J. Mashburn, Jr., who, being by me first duly sworn, deposes and says that he is the attorney of record for the plaintiff in this cause, that as such, he is authorized to make this affidavit; and the answers to the above and foregoing interrogatories, propounded by the plaintiff to the defendant, if truthfully answered, will be material testimony for the plaintiff in this cause.

Telfair J. Mashburn, Jr.

Subscribed and sworn to before me
this 10th day of June, 1953.


[Signature]
NOTARY PUBLIC, BALDWIN COUNTY,
ALABAMA.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
AT LAW. NO. 1678.

Received in Sheriff's Office
this 11 day of June, 1953
TAYLOR WILKINS, Sheriff

W. J. MCKINLEY,
Plaintiff,

VS.

B. F. SUTTON, individually
and doing business as
BEN'S TAXI SERVICE,
Defendant.

INTERROGATORIES.

FILED
JUN 11 1953
ALICE L. DUCK, Clerk

Received _____ day of _____ 19____
and on 11 day of June 1953
I served a copy of the within _____
on _____

By service on B. F. Sutton

TAYLOR WILKINS, Sheriff
By Taylor Wilkins D.S.

W. J. MCKINLEY

PLAINTIFF

VS

B. F. SUTTON, ET AL,

DEFENDANT

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

AT LAW

NO. 1678

Now comes the Defendant and demur to the Plaintiff complaint, and

for grounds thereof says:

1.

That said complaint does not state a cause of action.

2.

That said complaint sets out no duties owed by the Defendant to the Plaintiff.

3.

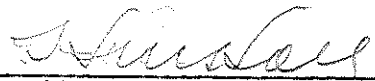
That the complaint sets out no negligence with which the Defendants is chargeable.

4.

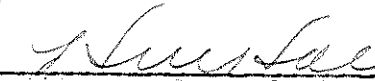
That said complaint does not set out wherein the Defendants is guilty of negligence.

5.

That the said complaint does not set out or enumerate the Plaintiff's alleged damages.


Attorney for Defendant

The Defendant demands a trial by jury.


Attorney for Defendant

1678

W. J. MCKINLEY

PLAINTIFF

VS

B. F. SUTTON, ET AL,

DEFENDANTS

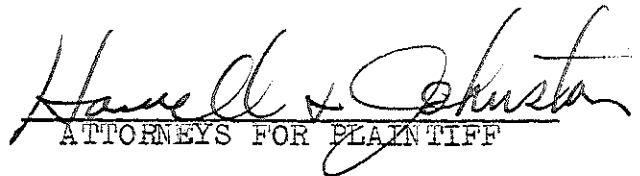
DEMURRERS

FILED
JUL 9 1951
ALICE J. DUCK, Clerk

W. J. McKINLEY, * IN THE CIRCUIT COURT OF
Plaintiff, * BALDWIN COUNTY, ALABAMA.
-vs- * AT LAW.
B. F. SUTTON, individually * NO.
and doing business as *
BEN'S TAXI SERVICE. *
Defendant. *

COUNT ONE:

Plaintiff claims of the defendant the sum of \$850.00 as damages, for that heretofore, on, to-wit, the 28th day of March, 1951, the defendant, by his agent, servant, or employee, acting in the line and scope of his authority, so negligently operated a motor vehicle which he was driving in an eastwardly direction on U. S. Highway 90, a public street in Baldwin County, Alabama, at a point about one mile east of the Tensaw River bridge, said point being on the Mobile Bay causeway, as to cause or allow said automobile to run into, on, over or against an automobile belonging to the plaintiff which was then and there parked on the right hand shoulder of U. S. Highway 90, and as a proximate and direct result of defendant's negligence the plaintiff's automobile was badly bent, broken and damaged, hence this suit.


ATTORNEYS FOR PLAINTIFF

DEFENDANT'S ADDRESS:

Bay Minette, Alabama

SUMMONS AND COMPLAINT

Baldwin Times

THE STATE OF ALABAMA,

BALDWIN COUNTY

CIRCUIT COURT, BALDWIN COUNTY

No. 1678.....

.....TERM, 19.....

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon B. F. Sutton, individually and d/b/a Ben's Taxi Service

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 _____

B. F. Sutton, individually and d/b/a Ben's Taxi Service, Defendant

by W. J. McKinley

....., Plaintiff.....

Witness my hand this 27th day of June 1951.....

Archie Leach, Clerk

THE STATE OF ALABAMA
BALDWIN COUNTY**CIRCUIT COURT**

W. J. McKINLEY

Plaintiffs

vs.

B. F. SUTTON, individually and

d/b/a BEN'S TAXI SERVICE

Defendants

SUMMONS and COMPLAINT

Filed 6-27, 1951

W. J. McKinley, Clerk

Howell & Johnston

Plaintiff's Attorney

Defendant's Attorney

Defendant lives at

RECEIVED IN OFFICE

, 19.....

, Sheriff

I have executed this summons

this 6-27, 1951

by leaving a copy with

*B. F. Sutton**Taylor Wilkins* Sheriff
W. F. Wall Deputy Sheriff

PETITION OF

W. J. McKINLEY

* IN THE CIRCUIT COURT OF
* BALDWIN COUNTY, ALABAMA.
* AT LAW. No. 1678

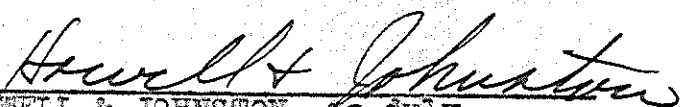
Comes your petitioner, W. J. McKinley, and respectfully shows unto the Court as follows:

1. That he is plaintiff in the case entitled W. J. McKinley vs. B. F. Sutton, individually and doing business as Ben's Taxi Service, defendant; said case being numbered 1678 on the docket of the Circuit Court of Baldwin County, Alabama; and that on, to-wit, June 25, 1951, the above suit was instigated by the plaintiff by the filing of complaint; that thereafter the defendant appeared by and through his attorney and demurred to the complaint filed by the plaintiff; said demurrer was not heard or ruled upon until March 4, 1952, at which time the said demurrer was overruled; and petitioner further shows that on the date of March 4, 1952, Attorney Hubert Hall, attorney of record for B. F. Sutton in this case, agreed to submit to Mr. Thomas A. Johnston, III, one of the attorneys of record for the petitioner, a detail report in regard to this suit; since that date, attorneys Howell & Johnston have heard nothing from Mr. Hubert Hall, although they repeatedly requested that he furnish them with the detail report requested by them; petitioner's attorneys relying on the fact that they would be furnished with a report by said Hubert Hall in an effort to reach some amicable settlement of this claim did not feel that any action would be taken in regard to this matter on October 14, 1952.

2. Your petitioner further shows that this suit was filed by one Vernol R. Jansen, Jr., who was formerly associated with the firm of Howell & Johnston, and who ceased to be associated with said firm more than one year ago; petitioner further avers that since the time Vernol R. Jansen, Jr. ceased

to be associated with the firm of Howell & Johnston, this matter has been handled by Mr. Thomas A. Johnston, III, who was on the 14th day of October out of the State of Alabama on business for the State of Alabama, and was therefore unable to attend court in Baldwin County on October 14, 1952, when this matter was called to trial; petitioner further avers that on, to-wit, October 14, 1952, this said cause was set for trial; that at said time and place neither the plaintiff, nor his attorney, appeared and that at said time and place this Honorable Court did then and there dismiss the plaintiff's suit; and the plaintiff further avers that the said suit was dismissed due to accident, surprise, and mistake, which ordinary prudence could not have guarded against.

WHEREFORE, the premises considered, your petitioner respectfully prays that this Honorable Court will take jurisdiction of this petition; and that upon a final hearing hereof the court will set aside and annul said dismissal and will reinstate said plaintiff's suit against the said defendant without prejudice to the plaintiff; and will grant unto said plaintiff a new trial.


HOWELL & JOHNSTON, as duly
authorized attorney for petitioner.

Now comes Hubert Hall as attorney for defendant and hereby consents to the granting of this motion.

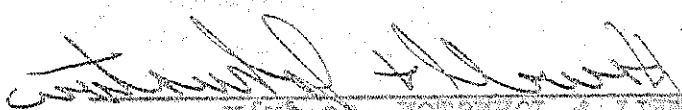
to be associated with the firm of Howell & Johnston, this
matter has been handled by Mr. Thomas A. Johnston, III, who
was on the 14th day of October out of the State of Alabama on
business for the State of Alabama, and was therefore unable
to attend court in Baldwin County on October 14, 1932, when
this matter was called to trial; petitioner further avers that

on October 14, 1932, this said cause was set for trial;

that at said time and place neither the plaintiff, nor his
attorney, appeared and that at said time and place this Honor-

able Court did then and there dismiss the plaintiff's writ;
and the plaintiff further avers that the said writ was
dismissed due to accident, surprise, and mistake, which ordinary
prudence could not have guarded against.

WHEREFORE, the premises considered, your petitioner
respectfully prays that this Honorable Court will take juris-
diction of this petition; and that upon a final hearing hereof
the court will set aside and annul said dismissal and will re-
instate said plaintiff's writ against the said defendant with-
out prejudice to the plaintiff; and will grant unto said plain-
tiff a new trial.


HOWELL & JOHNSTON, as duly
authorized attorney for petitioner.

Now comes Hubert Hall as attorney for defendant and hereby

consents to the granting of this motion.

MAILED
OCT 14 1932
CLERK

PETITION OF

W. J. McKINLEY

* IN THE CIRCUIT COURT OF

* BALDWIN COUNTY, ALABAMA.

* AT LAW. No. 1678

Comes your petitioner, W. J. McKinley, and respectfully shows unto the Court as follows:


1. That he is plaintiff in the case entitled W. J.

McKinley vs. B. F. Sutton, individually and doing business as Ben's Taxi Service, defendant; said case being numbered 1678 on the docket of the Circuit Court of Baldwin County, Alabama; and that on, to-wit, June 25, 1951, the above suit was instigated by the plaintiff by the filing of complaint; that thereafter the defendant appeared by and through his attorney and demurred to the complaint filed by the plaintiff; said demurrer was not heard or ruled upon until March 4, 1952, at which time the said demurrer was overruled; and petitioner further shows that on the date of March 4, 1952, Attorney Hubert Hall, attorney of record for B. F. Sutton in this case, agreed to submit to Mr. Thomas A. Johnston, III, one of the attorneys of record for the petitioner, a detail report in regard to this suit; since that date, attorneys Howell & Johnston have heard nothing from Mr. Hubert Hall, although they repeatedly requested that he furnish them with the detail report requested by them; petitioner's attorneys relying on the fact that they would be furnished with a report by said Hubert Hall in an effort to reach some amicable settlement of this claim did not feel that any action would be taken in regard to this matter on October 14, 1952.

2. Your petitioner further shows that this suit was filed by one Vernol R. Jansen, Jr., who was formerly associated with the firm of Howell & Johnston, and who ceased to be associated with said firm more than one year ago; petitioner further avers that since the time Vernol R. Jansen, Jr. ceased

to be associated with the firm of Howell & Johnston, this matter has been handled by Mr. Thomas A. Johnston, III, who was on the 14th day of October out of the State of Alabama on business for the State of Alabama, and was therefore unable to attend court in Baldwin County on October 14, 1952, when this matter was called to trial; petitioner further avers that on, to-wit, October 14, 1952, this said cause was set for trial; that at said time and place neither the plaintiff, nor his attorney, appeared and that at said time and place this Honorable Court did then and there dismiss the plaintiff's suit; and the plaintiff further avers that the said suit was dismissed due to accident, surprise, and mistake, which ordinary prudence could not have guarded against.

WHEREFORE, the premises considered, your petitioner respectfully prays that this Honorable Court will take jurisdiction of this petition; and that upon a final hearing hereof the court will set aside and annul said dismissal and will reinstate said plaintiff's suit against the said defendant without prejudice to the plaintiff; and will grant unto said plaintiff a new trial.


HOWELL & JOHNSTON, as duly
authorized attorney for petitioner.

Now comes Hubert Hall as attorney for defendant and hereby consents to the granting of this motion.

2201678

FILED
OCT 21 1952
ALICE J. DUCK, Clerk