

VICKERS AND THORNTON

ATTORNEYS AT LAW

MERCHANTS NATIONAL BANK BUILDING

MOBILE, ALABAMA

MARION R. VICKERS
J. EDWARD THORNTON
ERLING RIIS, JR.

February 10, 1954

2083

Mrs. Alice Duck
Circuit Clerk
Court House
Bay Minette, Alabama

Dear Mrs. Duck: Malone v. Ponder

We are herewith enclosing motions in the Ponder cases, which we would appreciate your filing for us.

I have just talked to Judge Hall by telephone and he tells me that it will be agreeable with him to hear the arguments in these cases on Wednesday, February 17, 1954, at 9:30 A.M., in view of the fact that Mr. Aldridge has a case set for trial here in Mobile on Tuesday.

Hence we will be in Bay Minette on next Wednesday in these cases.

Yours very truly,

J. Edward Thornton
J. EDWARD THORNTON

jet/hf
encl.

cc: Honorable Hubert Hall
cc: Henri Aldridge, Esq.

LILLIE BELL PRICE MALONE, I IN THE CIRCUIT COURT
 I OF
-VS- I BALDWIN COUNTY,
JACK M. PONDER, SR., I ALABAMA
 I AT LAW NO. _____

COUNT ONE

The plaintiff, who is the mother of BARBARA FAYE PRICE, a minor under the age of twenty-one (21) years (and whose father is deceased), claims of the defendant FIFTEEN THOUSAND & No/100 (\$15,000.00) DOLLARS damages, for that, heretofore, and on, to-wit, the 12th day of September, 1952, the defendant did own and possess an automobile which he did then and there loan to his son, JACK MANN PONDER, JR., and did then negligently permit the said JACK MANN PONDER, JR., to take and drive the same for his own personal pleasure and entertainment, and for the personal business of the said JACK MANN PONDER, JR; and plaintiff further avers that the said JACK MANN PONDER, JR., was wholly incompetent and unfit to drive said automobile, as was then well known to the said defendant; that on said date and on said occasion the said JACK MANN PONDER, JR., being so possessed of said automobile, and in sole control of its operation, did so carelessly, negligently and improperly operate said automobile on and along Highway 89, a public highway in the County of Baldwin, Alabama, at a point approximately 1.6 miles South of the Grand Hotel at Point Clear, Alabama, that he caused defendant's automobile to run off the edge of the said highway, to overturn and capsize, projecting and hurling the plaintiff's said minor daughter (who was then and there riding in said automobile with the aforesaid JACK MANN PONDER, JR., as his guest and invited passenger) from said car to the ground, critically and severely injuring plaintiff's aforesaid minor daughter, and as a direct and proximate consequence of defendant's negligence as aforesaid, plaintiff was damaged as follows: she was deprived of the

affection, companionship and services of her said minor child for a long period of time, was forced to expend vast and substantial sums of money in and about the treatment of the injuries of her said minor daughter, including doctors' and surgeons' fees, nurses compensation, hospital charges, was compelled also to expend additional sums of money for necessary medical appliances and therapeutic devices including, but not limited to, wheelchairs, braces, crutches and casts, was also compelled to expend great sums of money in and about the purchase of necessary medicines and pharmaceuticals required to treat the injuries aforesaid, and will, in the future, be required to expend vast and substantial amounts of money in and about the future treatment and convalescence of her said daughter's injuries as hereinbefore described, all to the plaintiff's damage as aforesaid, hence this suit.

COUNT TWO

The plaintiff, the mother of BARBARA FAYE PRICE, a minor under the age of twenty-one (21) years (and whose father has deceased) claims of the defendant the further and additional sum of FIFTEEN THOUSAND & No/100 (\$15,000.00) DOLLARS, as damages, for that, heretofore and on, to-wit, the 12th day of September, 1952, the defendant was the owner of a motor car of tremendous weight and great power which he had allowed his son, JACK MANN PONDER, JR., to operate. The said JACK MANN PONDER, JR., on the date aforesaid was, and a long time had been, a careless, incompetent, indifferent, heedless and reckless driver of such car, so that said car, in his hands was a dangerous and deadly agency, of which said fact defendant had been duly informed; yet, with full information of such facts, he allowed his said son to propel the said car on and along Highway 89, a public highway in the County of Baldwin, Alabama, at a point approximately 1.6 miles from the Grand Hotel at Point Clear, Baldwin County, Alabama, at will, and intrusted its management and operation to him, and on the day and place aforesaid, while his said son was engaged in operating said car on and along said highway, and

while plaintiff's aforesaid minor daughter was riding in the said car as a guest and invited passenger of the said son, the said JACK MANN PONDER, JR., so negligently, heedlessly, incompetently, recklessly, wrongfully and indifferently conducted himself with respect to the operation of the said car, that he ran the same off the edge of the said pavement, causing the same to capsize and overturn, upon and into the person of the plaintiff's said minor daughter (who had been thrown from the car by the overturning thereof as alleged); grievously and critically injuring the plaintiff's said minor daughter, and as a direct and proximate consequence of defendant's negligence aforesaid the plaintiff was damaged as follows, to-wit: she was deprived of the affection, companionship and services of her said minor child for a long period of time, was forced to expend vast and substantial sums of money in and about the treatment of the injuries of her said minor daughter, including doctors' and surgeons' fees, nurses' compensation, hospital charges, was compelled also to expend additional sums of money for necessary medical appliances and therapeutic devices including, but not limited to, wheelchairs, braces, crutches and casts, was also compelled to expend great sums of money in and about the purchase of necessary medicines and pharmaceuticals required to treat the injuries aforesaid, and will, in the future, be required to expend vast and substantial amounts of money in and about the future treatment and convalescence of her said daughter's injuries as hereinbefore described, all to the plaintiff's damages as aforesaid, hence this suit.

COUNT THREE

the mother of BARBARA FAYE PRICE, a minor (whose father is dead), Plaintiff/claims of the defendant the further and additional sum of FIFTEEN THOUSAND & No/100 (\$15,000.00) DOLLARS as damages, for that heretofore, and on, to-wit, the 12th day of September, 1952, the defendant did own and possess an automobile which he did then and there loan to his minor son, JACK MANN PONDER, JR., a youth under the age of twenty-one (21) years, and did negligently permit and allow the said JACK MANN PONDER, JR., to take and drive the same for his own personal pleasure and entertainment,

although, as plaintiff avers, the said JACK MANN PONDER, JR., was wholly incompetent and unfit to drive said automobile, as was then well known to said defendant; that on said date the said JACK MANN PONDER, JR., being so possessed of said automobile, and in sole control of its operation, did so carelessly, incompetently, negligently and improperly operate said automobile Southwardly on and along U. S. Highway 89, a public highway in Baldwin County, Alabama, at a point approximately 1.6 miles from the Grand Hotel at Point Clear, Alabama, that it was caused to run off the edge of said highway, to capsize and overturn, to hurl the person of the said plaintiff's minor daughter, who was then and there riding in said automobile as a guest and invited passenger of the said JACK MANN PONDER, JR., from the said automobile to the ground, and did cause or allow the said overturning automobile to strike said plaintiff's minor daughter, severely and critically injuring her, and as a direct and proximate consequence of which said negligence of the defendant as aforesaid, the plaintiff was damaged as follows: she was deprived of the affection, companionship and services of her said minor child for a long period of time, was forced to expend vast and substantial sums of money in and about the treatment of the injuries of her said minor daughter, including doctors' and surgeons' fees, nurses' compensation, hospital charges, was compelled also to expend additional sums of money for necessary medical appliances and therapeutic devices including, but not limited to, wheelchairs, braces, crutches and casts, was also compelled to expend great sums of money in and about the purchase of necessary medicines and pharmaceuticals required to treat the injuries aforesaid, and will, in the future, be required to expend vast and substantial amounts of money in and about the future treatment and convalescence of her said daughter's injuries as hereinbefore described, all to the plaintiff's damages as aforesaid, hence this suit.

COUNT FOUR

the mother of BARBARA FAYE PRICE, a minor (whose father is dead),
The Plaintiff/claims of the defendant the further and

additional sum of FIFTEEN THOUSAND & No/100 (\$15,000.00) DOLLARS,
as damages, for wantonly injuring the plaintiff in Baldwin
County, Alabama, on, to-wit, the 12th day of September, 1952,
in this: that at said time and place defendant was the owner
of a motor car of tremendous weight and great power which he
permitted and suffered his minor son, one JACK MANN PONDER, JR.,
to operate and drive without restraint upon the public highways,
and which said motor car, if entrusted to one who was wholly
incompetent and unfit to operate the same, became and was a
dangerous instrumentality and a deadly agency which would probably
inflict injury to members of the public, including this plaintiff's
said minor daughter, who might be riding as a passenger in said
car, or using the public highways, which fact was well known to
defendant at all times herein involved; plaintiff further avers
that at said time, and for a long time prior thereto, the
defendant's said son was wholly incompetent and unfit to drive
and operate said motor car, as was then also well known to said
defendant; plaintiff further avers that at said time and place,
and for a long time prior thereto, it was the custom and practice
of the said son, when operating said motor car, to invite and
solicit as guests to ride with him, members of the public,
including this plaintiff's said minor daughter, which fact was
also well known to said defendant. Plaintiff avers that notwith-
standing such facts and such knowledge, and notwithstanding
defendant's full knowledge and consciousness that injury would
likely result to the members of the public, including this said
plaintiff's minor daughter, from suffering or allowing said son
to operate said motor car as aforesaid, and with reckless
indifference to the consequences thereof, defendant intentionally
and wrongfully, and omitting his known duty to restrain or prevent

the same, on the date aforesaid, permitted and allowed his said son to propel said car on and along Highway 89, a public highway in Baldwin County, Alabama, at will, and entrusted its management and operation to him, the said son, and to solicit as guests members of the public, including this plaintiff's said minor daughter, to ride as passengers with him in said motor car, and while said incompetent son was thus operating said car at said time and place, averred, at a point on said highway, to-wit, 1.6 miles South of the Grand Hotel at Point Clear, Alabama, and while plaintiff's said minor daughter was riding in said car as an invited guest of said son, at a high and reckless rate of speed, to-wit, in excess of sixty (60) miles an hour, in the night time, in a heavy and driving rainstorm, and while said highway was wet and slippery, and being incompetent, unwilling or unable to manage said car and keep the same under control, the said JACK MANN PONDER, JR., caused or allowed said automobile to overturn, critically and severely injuring plaintiff's said minor daughter and damaging plaintiff in the following particulars: she was deprived of the affection, companionship and services of her said minor child for a long period of time, was forced to expend vast and substantial sums of money in and about the treatment of the injuries of her said minor daughter, including doctors' and surgeons' fees, nurses' compensation, hospital charges, was compelled also to expend additional sums of money for necessary medical appliances and therapeutic devices including, but not limited to, wheelchairs, braces, crutches and casts, was also compelled to expend great sums of money in and about the purchase of necessary medicines and pharmaceuticals required to treat the injuries aforesaid, and will, in the future, be required to expend vast and substantial amounts of money in and about the future treatment and convalescence of her said daughter's injuries as hereinbefore described, all as a direct and proximate

result of the defendant's negligence as aforesaid, hence this suit.

Plaintiff respectfully demands a trial by jury.

HOLBERG, TULLY & ALDRIDGE
Attorneys for Plaintiff


By J. W. Aldridge
Member Appearing

Service of process may be
had on the defendant at one
of the following addresses:

White Avenue (2nd West of
Summit), Fairhope, Alabama;
or Ponder Plumbing Company,
35 North Section St.,
Fairhope, Alabama.

The State of Alabama }
BALDWIN MOBILE COUNTY

CIRCUIT COURT

To any Sheriff of the State of Alabama:

You are hereby commanded to summon

JACK M. PONDER, SR.,

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

LILLIE BEIL PRICE MALONE

Alice J. Duck

Witness: ~~John B. Mander~~, Clerk of said Court, this 24 day of September, 19 53..

Attest:

Clerk

* * * * *

SHERIFF'S RETURN

Received _____ Day of _____, 19 _____, and on _____ Day
of _____, 19 _____, I served a copy of
the within _____ on _____

by service on _____

~~W. H. HOLCOMB~~ SHERIFF

By _____ D. S.

Received in Sheriff's Office
this 9 day of Sept, 1953
TAYLOR WILKINS, Sheriff

12. day of Sept 1953

12 day of Sept 1953

copy of the within

on Jack marn ponder sr

TAYLOR WILKINS, Sheriff

By F. F. Phillips D. S.

Repts E-1

RECORDED

No. 2183

JUDGE HALL'S DOCKET

CIRCUIT COURT
BALDWIN COUNTY

LILLIE BELL PRICE MALONE

VS. { Complaint and Summons

JACK M. PONDER, SR

Issued day of , 19

FILED

SEP 8 1953

ALICE J. DUCK, Clerk

HOLBERG TULLY & ALDRIDGE
Plaintiff's Attorney

IN THE CIRCUIT COURT FOR THE TWENTY-EIGHTH JUDICIAL CIRCUIT
OF ALABAMA

LILLIE BELL PRICE MALONE, I
 Plaintiff, I
vs. I
JACK MANN PONDER, SR., I
 Defendant, I

AT LAW NO. 2083

MOTION TO QUASH PROCESS

Comes now ^{appearing specially for the sole purpose of making this Motion} ~~JACK~~ ^{Jabey} MANN PONDER, JR., and shows unto the ^{only} Court that heretofore, on, to-wit, the 12th day of September, 1953, there was served on him a summons and complaint in the above styled cause by the Sheriff of Baldwin County, Alabama, and that said Sheriff made his return stating that said process had been executed by serving a copy on JACK MANN PONDER, SR. when in truth and in fact, said process had not been served on JACK ^{Jabey} MANN PONDER, SR. but had been served on ^{Jabey} JACK MANN PONDER, Jr.; that ^{Jabey} JACK MANN PONDER, JR. is the father of ^{Jabey} JACK MANN PONDER, III,; that ^{Jabey} JACK MANN PONDER, SR. is deceased; and that said process was not served on the defendant in this cause but on ^{Jabey} JACK MANN PONDER, JR. who is not the defendant in this cause.

WHEREFORE, PREMISES CONSIDERED, ^{Jabey} JACK MANN PONDER, JR. prays this Honorable Court:

1. That said process issued out of said Court and served on ^{Jabey} JACK MANN PONDER, JR. be quashed.
2. That ^{Jabey} the return made by the Sheriff to said process be amended to speak the truth.
3. For such other, further or different relief to which he may be entitled in the premises.

^{Jabey} Jack Mann Ponder Jr.
JACK MANN PONDER, JR.

^{Vickers Thornton}
VICKERS AND THORNTON
Attorneys

STATE OF ALABAMA,
COUNTY OF BALDWIN.

Personally appeared before me, the undersigned
Notary Public in and for said County in said State, *Jack*
MANN PONDER, JR. who being by me first duly sworn, deposes
and says:

That he has read the foregoing motion and that the
facts stated therein are true.

Jack Mann Ponder Jr.
JACK MANN PONDER, JR.
Jack

Subscribed and sworn to before me
this the 6 day of October, 1953.

Geo. S. Huffman
Notary Public, Baldwin County, Alabama

*****RECORDED*****

LILLIE BELL PRICE MALONE,
Plaintiff,

vs.

JACK MANN PONDER, SR.,
Defendant.

MOTION TO QUASH PROCESS

FILED

OCT 6 1953

ALICE J. DUCK, Clerk

VICKERS AND THORNTON
ATTORNEYS AT LAW
MERCHANTS NATIONAL BANK BUILDING
MOBILE, ALABAMA

LILLIE BELL PRICE MALONE,	I	IN THE CIRCUIT COURT
Plaintiff	I	OF BALDWIN COUNTY,
-VS-	I	ALABAMA
JACK M. PONDER, SR.,	I	AT LAW NO. 2083
Defendant	I	<u>ANSWER TO DEFENDANT'S</u>
	I	<u>MOTION TO QUASH PROCESS</u>
	I	<u>AND MOTION FOR LEAVE TO</u>
	I	<u>AMEND ORIGINAL COMPLAINT</u>

Now comes plaintiff in the above-entitled cause and for answer to the motion to quash process therein, and further as grounds for her hereinafter described motion for leave to amend, represents and shows unto this Honorable Court as follows:

1. Having insufficient personal knowledge either to admit or controvert the allegations of said motion to quash to the effect that the full, true and legal name of the defendant, surnamed Ponder, charged with negligently causing, permitting or allowing injury to plaintiff's minor daughter to plaintiff's damage, in the original complaint is "Jabez Mann Ponder, Jr.," instead of "Jack M. Ponder, Sr.," as denominated in the original complaint, plaintiff respectfully denies the allegations of said motion to quash and demands strict proof thereof.

2. Further answering plaintiff saith that the fact, if it be a fact, that the said defendant in this cause is misnamed in the original complaint or the summons issued thereon, has not altered, and does not alter, the fact that the said complaint and summons were correctly, properly and lawfully, personall served upon the individual to whom they were directed and the individual upon whom they were intended to be served, said individual (the alleged signatory of the motion to quash) being the same person who is charged with negligently injuring this plaintiff's minor daughter to the plaintiff's damage, all as more fully appears in the original complaint on file and served by copy on said defendant, now alleged to be named "Jabez Mann Ponder, Jr."

3. Further answering, plaintiff saith that if said individual defendant, charged in the instant cause with negligently injuring this plaintiff's minor daughter to the damage of plaintiff,

and served with legal process thereon, is, in truth and in fact, correctly and legally named "Jabez Mann Ponder, Jr.," as set forth in said motion to quash, he is also known, and has for many years been known, in the County of Baldwin, Alabama, and elsewhere, by the several other names of "Jack Ponder" and "Jack Mann Ponder, Sr."

4. Further answering, plaintiff saith that the owner of the automobile who negligently caused, permitted or allowed the injury to this plaintiff's minor daughter to plaintiff's damage in Baldwin County, Alabama, on, to-wit, the 12th day of September, 1952, all as more fully appears in the original complaint on file in this cause, is an adult, over the age of twenty-one (21) years, is surnamed "Ponder" and is the father of a minor son over the age of eighteen (18) years, also surnamed "Ponder", which said son was operating an automobile in which this plaintiff's minor daughter was injured to the damage of plaintiff, as described in said complaint; that this said adult defendant is the only adult individual named "Ponder" who owned an automobile which was being operated by a minor son and in which this plaintiff's minor daughter was injured at the time and place complained of in the said complaint; that the father of this said adult defendant is dead, so that, notwithstanding said adult defendant's election to describe himself as "Jr.," and further notwithstanding said adult defendant's election to describe his father as "Sr.," in truth and in fact there exists no individual named "Ponder, Sr.," and therefore said adult defendant is correctly surnamed and described in the original complaint, and the summons issued thereon, as "Ponder, Sr."

5. Further answering, plaintiff saith that the defendant, surnamed "Ponder", upon whom service of process was had in this cause on, to-wit, the 12th day of September, 1953, is, in truth and in fact, the same individual against whom this suit is filed, and none other, and is the same person who owned an automobile which was operated by his minor son at the time and place described in the original complaint, and the same person whom plaintiff charges negligently injured her minor daughter to the damage of plaintiff

in the manner and form described in the complaint, so that the summons and complaint were properly and lawfully served on the proper party defendant, irrespective of any error or misnomer, if any there be, in describing him in said complaint and summons as "Jack M. Ponder, Sr.," instead of "Jabez Mann Ponder, Jr.," which is now alleged to be his full, complete and legal name in the aforesaid motion to quash.

6. Further answering, plaintiff saith that there is, and was, only one adult defendant who owned an automobile which was operated by his minor son wherein plaintiff's minor daughter was riding, and who allegedly negligently injured plaintiff's said minor daughter by allowing or permitting the said minor son to operate the said automobile at the time and place and under the circumstances described in the said original complaint in this cause, and that such defendant is, and was, the same person against whom this complaint was filed, and the same person upon whom was served the summons and original complaint herein, on, to-wit, the 12th day of September, 1953, in the Town of Fairhope, County of Baldwin, State of Alabama, and further, that these facts obtained in truth and in fact, irrespective of whether said defendant's full, true and legal name is "Jack Mann Ponder, Sr.," as set forth in the original complaint, or "Jabez Mann Ponder, Jr.," as is alleged in the said motion to quash.

WHEREFORE, plaintiff having fully answered the said motion to quash process, and it fully appearing from said answer that service of process has been properly and lawfully had upon the correct individual adult defendant, notwithstanding the alleged misnomer, if any there be, in the original complaint and summons, plaintiff respectfully moves this Honorable Court as follows:

(1) To grant plaintiff leave to amend her original complaint and summons, both as to caption and content, to correctly reflect and incorporate the alleged full, true and correct name of the said adult defendant, all as more fully appears in the amended complaint which is filed contemporaneously with this answer and motion;

(2) Plaintiff further prays that the sheriff's return on the process and all other pertinent court records in this cause be corrected to reflect the aforesaid amendment including the alleged true and lawful name of said defendant; and

(3) That the motion to quash process heretofore filed in this cause on the 6th day of October, 1953, be denied.

HOLBERG, TULLY & ALDRIDGE
Attorneys for Plaintiff

By *H. W. Aldridge*
Member Appearing

STATE OF ALABAMA)

Lillie Bell Price Malone
LILLIE BELL PRICE MALONE

COUNTY OF BALDWIN)

Before me, the undersigned authority in and for the state and county aforesaid, personally appeared LILLIE BELL PRICE MALONE, who is known to me, and whose name is signed to the above and foregoing answer and motion, and who, having been by me first duly sworn, on oath deposes and says that she is the plaintiff in the above-entitled cause, and that she has read the above and foregoing motion, understands the contents thereof, and that the same are true and correct.

Lillie Bell Price Malone
LILLIE BELL PRICE MALONE

Subscribed and sworn to
before me this 16th day
of October, 1953.

Louis C. Maury
NOTARY PUBLIC, BALDWIN COUNTY, ALABAMA

RECORDED

NO 2082

Ans. to
motion to Quash

FILED

OCT 19 1953

ALICE J. DUCK, Clerk

LILLIE BELL PRICE MALONE,

Plaintiff

-VS-

JACK MANN PONDER, SR.,

Defendant

I
I
I
I
I
I

IN THE CIRCUIT COURT

OF BALDWIN COUNTY,

ALABAMA

AT LAW NO. 2083

AMENDED COMPLAINT

Now Comes the Plaintiff in the above-entitled cause and, with leave of the Court, first had and obtained, amends her Complaint in said cause, in manner and form, as follows:

a. By amending said caption to read as follows:

"LILLIE BELL PRICE MALONE,

Plaintiff

-VS-

JABEZ MANN PONDER, JR.,
sometimes called Jack
Ponder or Jack M.
Ponder, Sr.,

Defendant"

"IN THE CIRCUIT COURT

OF BALDWIN COUNTY,

ALABAMA

AT LAW NO. 2083"

b. By amending said complaint and each count thereof by inserting at every point therein where appears the name of "Jack Mann Ponder, Jr.," the following "sometimes called Jack Ponder or Jackie Ponder or Jabez Mann Ponder, III."

HOLBERG, TULLY & ALDRIDGE
Attorneys for Plaintiff

By J. W. Aldridge
Member Appearing

2083

RECORDED

Amended Complaint

FILED

OCT 19 1953

ALICE J. DUCK, Clerk

IN THE CIRCUIT COURT FOR THE TWENTY-EIGHTH JUDICIAL CIRCUIT
OF ALABAMA

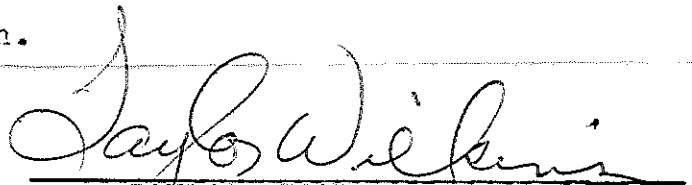
LILLIE BELL PRICE MALONE, I
Plaintiff, I

vs. I

AT LAW NO. 2083

JACK M. PONDER, SR., I
Defendant. I

Comes now TAYLOR WILKINS, the duly elected, qualified and acting Sheriff of Baldwin County, Alabama, and an officer of this court, and says that if the return made by him as such officer on the summons and complaint heretofore issued herein, does not speak the truth, then he, as such officer of this court, asks leave of the court to amend said return to make the return speak the truth.


TAYLOR WILKINS
Sheriff of Baldwin County, Alabama

RECORDED

FILED

NOV 17 1953

Alice J. Duck, Clerk

IN THE CIRCUIT COURT FOR THE TWENTY-EIGHTH JUDICIAL CIRCUIT
OF ALABAMA

LILLIE BELL PRICE MALONE,	I	
Plaintiff,	I	
vs.	I	AT LAW NO. 2083
JACK M. PONDER, SR.,	I	
Defendant.	I	

PLEA IN ABATEMENT

Comes now JABEZ MANN PONDER, JR., appearing solely and specially for the purpose of filing this Plea in Abatement and for no other purpose, and pleading in abatement to the Complaint, and each count thereof, separately and severally, says:

1. On, to-wit, the 12th day of September, 1953, there was served on Jabez Mann Ponder, Jr. a summons and complaint in the above styled cause by the Sheriff of Baldwin County, Alabama, and that said Sheriff made his return stating that said process had been executed by serving a copy on Jack M. Ponder, Sr. when in truth and in fact, said process had not been served on Jack or Jabez Mann Ponder, Sr., but had been served on Jabez Mann Ponder, Jr.; that Jabez Mann Ponder, Jr. is the father of Jabez Mann Ponder, III,; that Jabez Mann Ponder, Sr. is deceased; and that said process was not served on the defendant in this cause but on Jabez Mann Ponder, Jr. who is not the defendant in this cause; that Jabez Mann Ponder, Jr. the party on whom process was served in this case, is not now known or called nor has he ever been known or called by the name of Jack Mann Ponder, Sr.; that the true and correct name of the party on whom the process was served in this case is Jabez Mann Ponder, Jr. It is further alleged that there has been a misdescription of the party defendant in this cause, and a misnomer, in that the true and correct name of the party sought to be sued

herein and against whom a cause of action has been sought
to be stated is Jabez Mann Ponder, Jr.

WHEREFORE, Jabez Mann Ponder, Jr. says that this suit
should be abated and should not be allowed to proceed.


Attorneys for Jabez Mann Ponder, Jr.

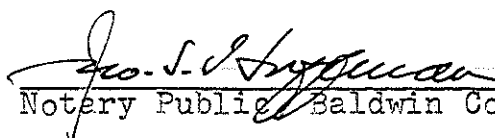
STATE OF ALABAMA,
COUNTY OF BALDWIN.

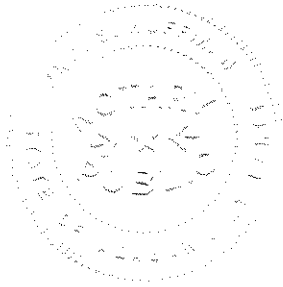
Personally appeared before me, the undersigned Notary Public in and for said County in said State, JABEZ MANN PONDER, JR., who being by me first duly sworn, deposes and says:

That he has read the foregoing Plea in Abatement and that the facts stated therein are true.


JABEZ MANN PONDER, JR.

Subscribed and sworn to before me
this the 10 day of December, 1953.


Notary Public Baldwin County, Alabama



FILED
DEC 14 1953
ALICE L. DUCK, CLERK

AT LAW NO. 2083 RECORDED

LILLIE BELL PRICE MALONE,

Plaintiff,

vs.

JACK M. PONDER, SR.,

Defendant.

PLEA IN ABATEMENT

FILED
DEC 14 1955
ALICE L. DUCK, Clerk

VICKERS AND THORNTON

ATTORNEYS AT LAW

MERCHANTS NATIONAL BANK BUILDING

MOBILE, ALABAMA

IN THE CIRCUIT COURT FOR THE TWENTY-EIGHTH JUDICIAL
CIRCUIT OF ALABAMA

LILLIE BELL PRICE MALONE,

Plaintiff,

-VS-

JACK M. PONDER, SR.,

Defendant

I

I

I

I

I

AT LAW NO. 2083

MOTION TO STRIKE

Now comes Plaintiff in the above-entitled cause and moves to strike the Plea in Abatement therein filed and as grounds for said motion separately and severally assigns the following:

1. Said plea was not timely filed.
2. Said plea was not filed within the time allowed for pleading.
3. Said plea was not filed within thirty (30) days from the service of process together with the original complaint in said cause.
4. It affirmatively appears that the complaint and summons in the above-entitled cause was served, on, to-wit, September 12, 1953 and that the Plea in Abatement herein was filed on December 14, 1953 contrary to Rule 12 of the Circuit and Inferior Courts of the 1940 Code of Alabama.
5. It affirmatively appears from the Record in said cause that the complaint and summons herein was served on defendant on, to-wit, September 12, 1953, that subsequent thereto and on, to-wit, October 6, 1953, defendant herein filed in said cause a Motion to Quash Process which was subsequently denied; and that, thereafter, on, to-wit, December 14, 1953, the instant Plea in Abatement was filed which is beyond the time allowed for pleading as set forth in Rule 12 of the Circuit and Inferior Court Rules in the 1940 Code of Alabama.
6. For that said plea sets forth no matter in abatement to the cause and process in the instant case.
7. It affirmatively appears that the instant suit was served on the proper party defendant irrespective of his name or designation.

8. It affirmatively appears that the complaint and summons were properly served on the proper minor defendant irrespective of his name or designation.

9. It affirmatively appears that the only distinction allegedly set forth in the Plea of Abatement in the designation of the party defendant is mere decriptio personae and that the proper defendant has been served in the instant cause.

10. It affirmatively appears from the Record in said cause that said plea raises no matter not heretofore raised on Motion to Quash filed October 6, 1953 and denied by this Honorable Court on, to-wit, November 17, 1953 and therefore said plea is irrelevant and unnecessarily repetitious.

11. It affirmatively appears that said plea is unnecessarily irrelevant, prolix, frivolous, or repetitious, contrary to the provisions of Title 7, Section 213 of the 1940 Code of Alabama.

12. It affirmatively appears that the complaint in the instant cause was amended on November 17, 1953 to properly include and reflect the alleged correct name of this defendant as set forth in said plea in abatement.

13. It affirmatively appears that the Plea in Abatement herein was filed in this cause to the Complaint as last amended which, by amendment on November 17, 1953, correctly denominates this defendant under the name and designation as set forth in said plea.

14. It affirmatively appears from the Record in this cause that said complaint was amended on November 17, 1953 to set forth a cause of action against: "Jabez Mann Ponder, Jr., sometimes called Jack Ponder or Jack M. Ponder, Sr."

HOLBERG, TULLY & ALDRIDGE
Attorneys for Plaintiff

By H. U. Cleander

Member Appearing

I hereby certify that I have served a copy of the above and foregoing Motion to Strike on Hon. J. Edward Thornton, of Counsel to Defendant, on this the 13th day of January, 1954.

H. U. Cleander
Of Counsel to Plaintiff

2053

RECORDED

FILED
JAN 14 1954
PRICE & DUCK, Clerk

Figure 1: A 3D plot showing the distribution of the number of nodes in the largest component of a network. The x-axis is labeled 'n' and ranges from 0 to 100. The y-axis is labeled 'p' and ranges from 0 to 1. The z-axis is labeled 'f(n, p)' and ranges from 0 to 1. The plot shows a series of peaks and valleys, with the highest peak occurring at n=1 and p=1. The distribution is highly skewed towards n=1 and p=1.

LILLIE BELL PRICE MALONE, :
 :
 Plaintiff :
 :
 vs. : AT LAW NO. 2083
 :
 JACK MANN PONDER, SR., :
 :
 Defendant :

Vickrey Thornton
Attorneys for Jabez Mann Ponder, Jr.

Holberg, Tully & Aldridge
Attorney for Plaintiff

RECORDED

IN THE CIRCUIT COURT FOR THE
TWENTY-EIGHTH JUDICIAL CIRCUIT
OF ALABAMA

LILLIE BELL PRICE MALONE,

Plaintiff

vs.

JACK MANN PONDER, SR.,

Defendant

AT LAW NO. 2083

MOTION TO STRIKE

FILED

FEB 10 1954

ALICE J. DUCK, Clerk

VICKERS AND THORNTON

ATTORNEYS AT LAW

MERCHANTS NATIONAL BANK BUILDING

MOBILE, ALABAMA

IN THE CIRCUIT COURT FOR THE TWENTY-EIGHTH JUDICIAL CIRCUIT
OF ALABAMA

LILLIE BELL PRICE MALONE, :

Plaintiff :

vs. :

AT LAW NO. 2083

JACK MANN PONDER, SR., :

Defendant :

DEMURRER

Comes now JACK M. PONDER, JR., and demurs to the complaint and each count thereof, separately and severally, and as grounds for such demurrer assigns, separately and severally, the following:

1. Sufficient facts are not alleged therein to state a cause of action.
2. Sufficient facts are not alleged therein to entitle plaintiff to the relief sought.
3. Sufficient facts are not alleged therein to show that the alleged conduct of the defendant constituted wantonness.
4. It affirmatively appears therefrom that the defendant was not guilty of wantonness.
5. The wanton or willful misconduct alleged therein is unsupported by a sufficient statement of facts to warrant the conclusion sought to be drawn.
6. The allegations as to wanton or willful misconduct are a mere conclusion of the pleader.
7. It does not appear that the defendant wantonly injured plaintiff.

8. Sufficient facts are not set up to show that the defendant wantonly injured the plaintiff.

9. It affirmatively appears therefrom that the defendant, if guilty of anything, committed a wanton act as distinguished from inflicting wanton injury.

10. Sufficient facts are not alleged therein to show that the defendant had knowledge of the likelihood of injury to the plaintiff.

11. It affirmatively appears therefrom that the defendant did not know, and was not chargeable with knowledge, that the plaintiff might be injured.

12. For aught appearing to the contrary therefrom, plaintiff's injury, if any, was consequential.

13. Sufficient facts are not alleged therein to entitle plaintiff to relief under the applicable statutes of the State of Alabama.

14. Sufficient facts are not alleged therein to entitle plaintiff to relief under Title 36, Code of Alabama, Section 95.


15. It affirmatively appears therefrom that the plaintiff is not entitled to relief under Title 36, Code of Alabama, Section 95.

16. The allegations contained therein as to negligence on the part of the defendant are a mere conclusion of the pleader.

17. The allegations therein contained as to the alleged proximate causation of the injury of the plaintiff is a mere conclusion of the pleader.

18. Sufficient facts are not alleged therein to show that defendant's conduct constituted negligence toward this plaintiff.

19. The allegations contained therein are inconsistent and repugnant.


Attorneys for Jack M. Ponder, Jr.

IN THE CIRCUIT COURT FOR THE
TWENTY-EIGHTH JUDICIAL CIRCUIT OF
ALABAMA

* * * * *

LILLIE BELL PRICE MALONE,

Plaintiff

vs.

JACK MANN PONDER, SR.,

Defendant

* * * * *

AT LAW NO. 2083

* * * * *

DEMURRER

FILED

FEB 17 1954

ALICE L. DUCK, Clerk

VICKERS AND THORNTON

ATTORNEYS AT LAW

MERCHANTS NATIONAL BANK BUILDING

MOBILE, ALABAMA

IN THE CIRCUIT COURT FOR THE TWENTY-EIGHTH JUDICIAL CIRCUIT
OF ALABAMA

LILLIE BELL PRICE MALONE, :
 Plaintiff :
 vs. :
 AT LAW NO. 2083
JACK MANN PONDER, SR., :
 Defendant :

ANSWER

Comes now JACK M. PONDER, JR., and for pleas and answer to the complaint and each count thereof, separately and severally, avers:

1. The defendant for answer to the complaint saith that he is not guilty of the matters alleged therein.

2. The defendant for answer to the complaint saith that the allegations of the complaint are untrue.

3. At the time and place complained of in the complaint, the plaintiff, who is the mother of Barbara Faye Price (whose father is dead), proximately contributed to the injuries and damages complained of by her own negligence in this: Plaintiff was in charge of and had supervision over said Barbara Faye Price, well knowing that plaintiff's said minor daughter might ride as a guest in an automobile which would be negligently operated and thereby negligently injure plaintiff's said minor daughter, and plaintiff would suffer the injuries and damages complained of in said complaint; and the alleged incompetence and unfitness of Jabez Mann Ponder III to operate an automobile was then well known to plaintiff, and plaintiff appreciating the danger and risk in her said minor daughter's riding as a guest in an automobile driven by said

Jabez Mann Ponder III as aforesaid, yet notwithstanding such knowledge on the part of plaintiff and plaintiff's appreciation of said danger and risk, (A)

plaintiff negligently permitted or allowed her said minor daughter to ride as a guest in the automobile described in the complaint, which said negligence of the plaintiff proximately contributed to the injuries and damages complained of in the complaint; WHEREFORE plaintiff should not recover.

4. Defendant adopts and incorporates by reference as and for this plea the allegations in plea number 3 down to (A), and in addition thereto the following:

plaintiff negligently failed to prohibit her said minor daughter from riding as a guest in the automobile described in the complaint, which said negligence of the plaintiff proximately contributed to the injuries and damages complained of in the complaint; WHEREFORE plaintiff should not recover.

5. Defendant adopts and incorporates by reference as and for this plea the allegations in plea number 3 down to (A), and in addition thereto the following:

plaintiff negligently failed to exercise proper parental authority over her said minor daughter to warn or otherwise caution plaintiff's said minor daughter against riding as a guest in the automobile described in the complaint, which said negligence of the plaintiff proximately contributed to the injuries and damages complained of in the complaint; WHEREFORE plaintiff should not recover.

6. At the time and place complained of in the complaint, the plaintiff, who is the mother of Barbara Faye Price (whose father is dead), proximately contributed to the injuries and damages complained of by her own negligence in this: Plaintiff was in charge of and had supervision over said Barbara Faye Price, well knowing that plaintiff's said

minor daughter might ride as a guest in an automobile which would be negligently operated and thereby negligently injure plaintiff's said minor daughter, and plaintiff would suffer the injuries and damages complained of in said complaint; and the alleged carelessness, incompetence, indifference, heedlessness and recklessness of Jabez Mann Ponder III in the operation of an automobile so that an automobile in his hands was a dangerous and deadly agency was then well known to the plaintiff, yet notwithstanding such knowledge on the part of plaintiff and plaintiff's appreciation of said danger and risk, (A) plaintiff negligently permitted or allowed her said minor daughter to ride as a guest in the automobile described in the complaint, which said negligence of the plaintiff proximately contributed to the injuries and damages complained of in the complaint; WHEREFORE plaintiff should not recover.

7. Defendant adopts and incorporates by reference as and for this plea the allegations in plea number 6 down to (A), and in addition thereto the following:

plaintiff negligently failed to prohibit her said minor daughter from riding as a guest in the automobile described in the complaint, which said negligence of the plaintiff proximately contributed to the injuries and damages complained of in the complaint; WHEREFORE plaintiff should not recover.

8. Defendant adopts and incorporates by reference as and for this plea the allegations in plea number 6 down to (A), and in addition thereto the following:

plaintiff negligently failed to exercise proper parental authority over her said minor daughter to warn or otherwise caution plaintiff's said minor daughter against riding as a guest in the automobile described in the complaint, which said negligence of the plaintiff proximately contributed to the injuries and damages complained of in the complaint; WHEREFORE plaintiff should not recover.

Vickroy Henton
Attorneys for Jack M. Ponder, Jr.

I hereby accept service of a copy of the foregoing answer on
this the 23 day of Mar., 1954.

H. W. Crenshaw
Attorney for Plaintiff.

RECORDED

AT LAW NO. 2083

IN THE CIRCUIT COURT FOR THE
TWENTY-EIGHTH JUDICIAL CIRCUIT
OF ALABAMA

LILLIE BELL PRICE MALONE

vs.

JACK MANN PONDER, SR.

ANSWER

FILED
MAR 24 1954
MOBILE & BIRMINGHAM

VICKERS AND THORNTON

ATTORNEYS AT LAW

MERCHANTS NATIONAL BANK BUILDING

MOBILE, ALABAMA