

BARBARA FAYE PRICE,
a minor, suing by
her mother and next
friend, LILLIE BELL
PRICE MALONE,

Plaintiff,

-VS-

JACK M. PONDER, SR.,

Defendant

I
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IN THE CIRCUIT COURT

OF

BALDWIN COUNTY,

ALABAMA

AT LAW NO.

2084

COUNT ONE

The plaintiff, a minor over the age of eighteen (18) years, suing by her mother and next friend, LILLIE BELL PRICE MALONE, claims of the defendant, TWENTY-FIVE THOUSAND & No/100 (\$25,000.00) 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 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 (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, and as a direct and proximate consequence of the defendant's negligence as aforesaid, plaintiff was injured and damaged as follows: her right leg sustained a compound cominuted fracture, including the mangling and disfigurement of the tissues, muscles and nerves thereof; she underwent severe shock, multiple bruises, contusions

and lacerations over and about her entire body; her pelvis sustained multiple simple fractures; she was made sick, nervous and sore; she suffered, and continues to suffer, great physical pain and mental and mental anguish; she was permanently injured, scarred and disfigured; she was confined to a hospital in and about the treatment of her said injuries for a long period of time, to-wit, two (2) weeks; she was thereafter confined to her bed for a long period of time, to-wit, five additional months; she was thereafter confined to the use of a wheelchair, crutches, braces and casts for a long time, to-wit, a period of four (4) additional months; she was compelled by reason of her confinement, treatment and convalescence, to forfeit and abandon three-quarters (3/4) of her second college school year; she was forced to permanently forfeit and abandon her chosen major line of educational endeavor, viz., that of physical education, and can no longer pursue said course of education by reason of her permanent condition; she has continually been compelled to undergo prolonged and painful medical treatment and surgery, which will hereafter continue; all to the plaintiff's damages as aforesaid, hence this suit.

COUNT TWO

The plaintiff, a minor over the age of eighteen (18) years, suing by her mother and next friend, LILLIE BELL PRICE MALONE, claims of the defendant the further and additional sum of TWENTY-FIVE THOUSAND & No/100 (\$25,000.00) 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 long 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 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 entrusted 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 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 (who had been thrown from the car by the overturning thereof as alleged); and as a direct and proximate consequence of the defendant's negligence aforesaid plaintiff was injured and damaged as follows, to-wit: her right leg sustained a compound comminuted fracture, including the mangle and disfigurement of the tissues, muscles and nerves thereof; she underwent severe shock, multiple bruises, contusions and lacerations over and about her entire body; her pelvis sustained multiple simple fractures; she was made sick, nervous and sore; she suffered, and continues to suffer, great physical pain and mental anguish; she was permanently injured, scarred and disfigured; she was confined to a hospital in and about the treatment of her said injuries for a long period of time, to-wit, two (2) ~~months~~ ^{WEEKS}; she was thereafter confined to her bed for a long period of time, to-wit, five (5) additional months; she was thereafter confined to the use of a wheelchair, crutches, braces and casts for a long time, to-wit, a period of four (4) additional months; she was compelled by reason of her confinement, treatment and convalescence, to forfeit and abandon three-quarters (3/4) of her second college school year; she was forced to permanently forfeit and abandon her chosen major line of educational endeavor, viz., that of physical education, and can no longer pursue said course of education by reason of her permanent condition; she has continually been compelled to undergo prolonged and painful medical treatment and surgery, which will hereafter continue; all to the plaintiff's damages as aforesaid, hence this suit.

COUNT THREE

Plaintiff, a minor over the age of eighteen (18) years, suing by her mother and next friend, LILLIE BELL PRICE MALONE, claims of the defendant the further and additional sum of TWENTY-FIVE THOUSAND & No/100 (\$25,000.00) 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 minor son, JACK MANN PONDER, JR., a youth under the age of twenty-one (21) years, and did negligently permit and allow the same 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 the said highway, to capsize and overturn, to hurl the person of the said plaintiff 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, and as a direct and proximate consequence of which said negligence of the defendant as aforesaid, the plaintiff was injured and damaged as follows: her right leg sustained a compound comminuted fracture, including the mangle and disfigurement of the tissues, muscles and nerves thereof; she underwent severe shock, multiple bruises, contusions and lacerations over and about her entire body; her pelvis sustained multiple simple fractures; she was made sick, nervous and sore; she suffered, and continues to suffer, great physical pain and mental anguish; she was permanently injured, scarred and disfigured; she was confined to a hospital in and about the treatment of her said injuries for a long period of time, to-wit, two (2) weeks;

she was thereafter confined to her bed for a long period of time, to-wit, five (5) additional months; she was thereafter confined to the use of a wheelchair, crutches, braces and casts for a long time, to-wit, a period of four (4) additional months; she was compelled by reason of her confinement, treatment and convalescence, to forfeit and abandon three-quarters (3/4) of her second college school year; she was forced to permanently forfeit and abandon her chosen major line of educational endeavor, viz., that of physical education, and can no longer pursue said course of education by reason of her permanent condition; she has continually been compelled to undergo prolonged and painful medical treatment and surgery, which will hereafter continue; all to the plaintiff's damages as aforesaid, hence this suit.

COUNT FOUR

The plaintiff, a minor over the age of eighteen (18) years, suing by her mother and next friend, LILLIE BELL PRICE MALONE, claims of the defendant the further and additional sum of TWENTY-FIVE THOUSAND & No/100 (\$25,000.00) 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, 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 said

son, when operating said motor car, to invite and solicit as guests to ride with him, members of the public, including this plaintiff, which fact was also well known to said defendant. Plaintiff avers that notwithstanding 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 plaintiff, 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, 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 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 rain storm, 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, injuring and damaging plaintiff in the following particulars: her right leg sustained a compound comminuted fracture, including the mangle and disfigurement of the tissues, muscles and nerves thereof; she underwent severe shock, multiple bruises, contusions and lacerations over and about her entire body, her pelvis sustained multiple simple fractures; she was made sick, nervous and sore; she suffered, and continues to suffer, great physical pain and mental anguish; she was permanently injured, scarred and disfigured; she was confined to a hospital in and about the treatment of her said injuries for a long period of time, to-wit, two (2)

weeks; she was thereafter confined to her bed for a long period of time, to-wit, five (5) additional months; she was thereafter confined to the use of a wheelchair, crutches, braces and casts for a long time, to-wit, a period of four (4) additional months; she was compelled by reason of her confinement, treatment and convalescence, to forfeit and abandon three-quarters (3/4) of her second college school year; she was forced to permanently forfeit and abandon her chosen major line of educational endeavor, viz., that of physical education, and can no longer pursue said course of education by reason of her permanent condition; she has continually been compelled to undergo prolonged and painful medical treatment and surgery, which will hereafter continue; all as a direct and proximate result of defendant's negligence as aforesaid, hence this suit.

Plaintiff respectfully demands a trial by jury.

HOLBERG, TULLY & ALDRIDGE
Attorneys for Plaintiff

By  H. W. Clevidence

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 ~~Mobile~~ ^{Baldwin} County, Alabama, at the place of holding the same, then and there to answer the complaint of

BARBARA FAYE PRICE

Alice J. Duck

Witness: ~~John E. Mandeville~~ Clerk of said Court, this 8th day of Sept, 1953.

Attest:

Alice J. Duck
Clerk

* * * * *

SHERIFF'S RETURN

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

by service on _____

~~XXXXXXXXXXXX~~ SHERIFF

By _____ D. S.

RECORDED

Original

Page 3 of 2

8 Sept 53
TAYLOR WILKINS, Sheriff

No. *2084*

JUDGE *HALL'S* DOCKET

CIRCUIT COURT

BALDWIN MOBILE COUNTY

**BARBARA FAYE PRICE, a Minor
pro am Lillie Bell Price
Malone**

VS. { Complaint and Summons

JACK M. PONDER, SR

Issued _____ day of _____, 19____

SEP 8 1953
ALICE J. DUCK, Clerk

HOLBERG TULLY & ALDRIDGE

Plaintiff's Attorney

White Ave.

Received _____ day of _____, 19____
and _____ day of *Sept*, 19*53*

by a copy of the within
in *Jack m. ponder sr.*

by service on
12- Sept 53

TAYLOR WILKINS, Sheriff

By *Floyd Phillips D.S.*

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

BARBARA FAYE PRICE, etc. :
Plaintiff :
vs. : AT LAW NO. 2084
JACK MANN PONDER, SR., :
Defendant :

ANSWER

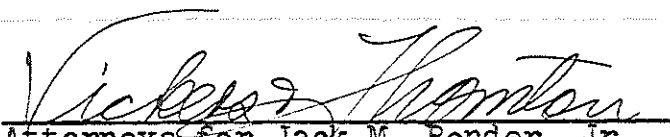
Comes now JACK M. PONDER, JR., and for pleas and answer to the complaint and each count thereof, separately and severally, avers:

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, a minor over the age of 18 years, proximately contributed to the injuries and damages complained of by her own negligence in this: 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 of likely injury and damage to herself by riding as a guest in an automobile operated 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 at said time and place, plaintiff negligently entered into and rode in said automobile as a guest and invited passenger, which said negligence of plaintiff proximately contributed to the injuries and damages complained of in the complaint; WHEREFORE plaintiff should not recover.

4. At the time and place complained of in the complaint, the plaintiff, a minor over the age of 18 years, proximately contributed to the injuries and damages complained of by her own negligence in this: the alleged carelessness, incompetence, indifference, heedlessness and recklessness of Jabez Mann Ponder III in the operation of an automobile so that said automobile in his hands was a dangerous and deadly agency was well known to the plaintiff, and plaintiff appreciating the danger of likely injury and damage to herself by riding as a guest in an automobile operated by said Jabez Mann Ponder III as aforesaid, yet notwithstanding such knowledge on the part of the plaintiff and plaintiff's appreciation of said danger at said time and place, plaintiff negligently entered into and rode in said automobile as a guest and invited passenger, which said negligence of plaintiff proximately contributed to the injuries and damages complained of in the complaint; WHEREFORE plaintiff should not recover.


Attorneys for Jack M. Ponder, Jr.

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


Attorney for Plaintiff

RECORDED

AT LAW NO. 2084

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

BARBARA FAYE PRICE,

vs.

JACK MANN PONDER, SR.

ANSWER

FILED
MAR 24 1954
ALICE L. DICK, 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

BARBARA FAYE PRICE, a minor, I
suing by her mother and next I
friend, LILLIE BELL PRICE I
MALONE, I

Plaintiff, I

vs. I

AT LAW NO. 2084

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; 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.

FILED
DEC 14 1953
ALICE L. DYER, Clerk

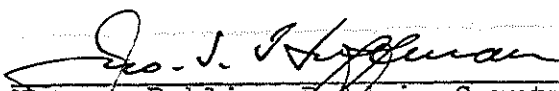
STATE OF ALABAMA,
COUNTY OF BALDWIN.

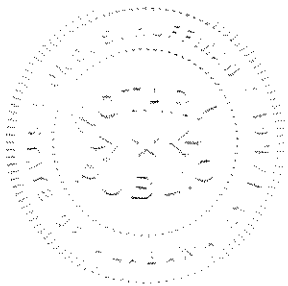
Personally appeared before me, the undersigned Notary Public in and for said County in said State, JABEZ MANN PONDER, JR., who being by me first duly sworn, deposes and says:

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



*****RECORDED*****

BARBARA FAYE PRICE, a minor,
suing by her mother and next
friend, LILLIE BELL PRICE
MALONE,

Plaintiff,

vs.

JACK M. PONDER, SR.,

Defendant.

PLEA IN ABATEMENT

FILED
DEC 14 1955
ALICE J. DICK, 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

BARBARA FAYE PRICE, a minor,
suing by her mother and next
friend, LILLIE BELL PRICE
MALONE,

Plaintiff,

-VS-

JACK M. PONDER, SR.,

Defendant

AT LAW NO. 2084

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, and 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.

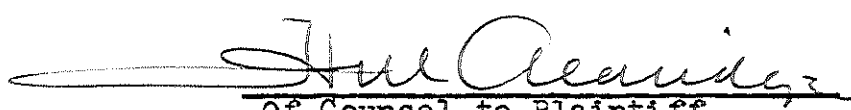
13. It affirmatively appears that the Plea in Abatement herein was filed in this cause to the Complaint as last amended which, by amendment on November 17, 1953, correctly denominates this defendant under the name and designation as set forth in said plea.

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 
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.


Of Counsel to Plaintiff

2084

RECORDED

and the law enforcement officials have been advised of the same.

The following information was received from the Bureau of Investigation on January 14, 1957:

On January 14, 1957, the Bureau of Investigation advised that it had received information from the Chicago Police Department regarding the activities of the Chicago Police Department.

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FILED
JAN 14 1957
ALICE L. DUCK, Clerk

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

BARBARA FAYE PRICE, etc., :
Plaintiff :
vs. : AT LAW NO. 2084
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 the 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.

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

BARBARA FAYE PRICE, etc.,

Plaintiff

vs.

JACK MANN PONDER, SR.,

Defendant

AT LAW NO. 2084

DEMURDER

FILED
FEB. 17 1954
ALICE J. DUCK, Clerk

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

BARBARA FAYE PRICE,
a minor, suing by her
mother and next friend,
LILLIE BELL PRICE MALONE,

Plaintiff

-VS-

JACK MANN PONDER, SR.,

Defendant

IN THE CIRCUIT COURT
OF BALDWIN COUNTY,
ALABAMA

AT LAW NO. 2084

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:

"BARBARA FAYE PRICE,
a minor, suing by her
mother and next friend,
LILLIE BELL PRICE MALONE,

Plaintiff

"IN THE CIRCUIT COURT
OF BALDWIN COUNTY,
ALABAMA

-VS-

JABEZ MANN PONDER, JR.,
sometimes called Jack
Ponder and Jack Mann
Ponder, Sr.,

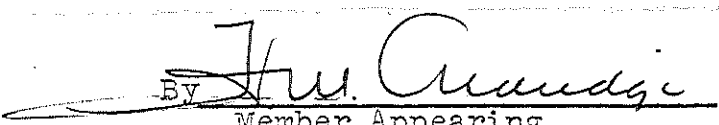
Defendant"

AT LAW NO. 2084"

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


Member Appearing

RECORDED

NO 20840

Amended Complaint

FILED

OCT 19 1953

ALICE J. DUCK, Clerk

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

BARBARA FAYE PRICE, a minor,
suing by her mother and next
friend, LILLIE BELL PRICE
MALONE,

Plaintiff,

vs.

JACK MANN PONDER, SR.,

Defendant.

AT LAW NO. 2084

MOTION TO QUASH PROCESS

Jabey appearing specially for the sole purpose of making this Motion
Comes now ~~JACK~~ *Jabey* MANN PONDER, JR., and shows unto the 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 ~~JACK~~ *Jabey* 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 ~~JACK~~ *Jabey* MANN PONDER, JR. be quashed.
2. That 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 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, *Jabez*
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.

Jabez Mann Ponder Jr.
JACK MANN PONDER, JR.

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

Joe S. Higman
Notary Public, Baldwin County, Alabama

* * * * *

BARBARA FAYE PRICE, a minor,
suing by her mother and next
friend, LILLIE BELL PRICE MALONE,

Plaintiff,

vs.

JACK MANN PONDER, SR.,

Defendant.

* * * * *

MOTION TO QUASH PROCESS

* * * * *

FILED

OCT 6 1953

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

BARBARA FAYE PRICE, a
minor, suing by her
mother and next friend,
LILLIE BELL PRICE MALONE, I

Plaintiff, I

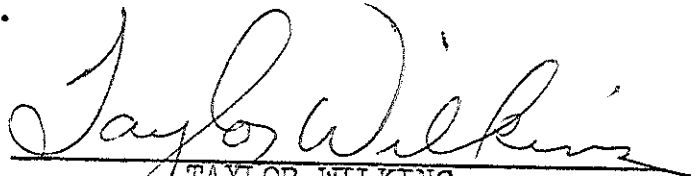
vs. I

AT LAW NO. 2084

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

THE COURT OF THE DISTRICT OF COLUMBIA

IN RE: THE ESTATE OF ALICE L. DUCK

FILE NO. 100-100000

NOV 17 1953

ALICE L. DUCK, DECEASED

FILE NO. 100-100000

ALICE L. DUCK, DECEASED, Plaintiff, vs. ALICE L. DUCK, DECEASED, Defendant.

ALICE L. DUCK, DECEASED, Plaintiff, vs. ALICE L. DUCK, DECEASED, Defendant.

ALICE L. DUCK, DECEASED, Plaintiff, vs. ALICE L. DUCK, DECEASED, Defendant.

ALICE L. DUCK, DECEASED, Plaintiff, vs. ALICE L. DUCK, DECEASED, Defendant.

ALICE L. DUCK, DECEASED, Plaintiff, vs. ALICE L. DUCK, DECEASED, Defendant.

ALICE L. DUCK, DECEASED, Plaintiff, vs. ALICE L. DUCK, DECEASED, Defendant.

ALICE L. DUCK, DECEASED, Plaintiff, vs. ALICE L. DUCK, DECEASED, Defendant.

ALICE L. DUCK, DECEASED, Plaintiff, vs. ALICE L. DUCK, DECEASED, Defendant.

FILED
NOV 17 1953
ALICE L. DUCK, Clerk

BARBARA FAYE PRICE, etc., :
Plaintiff :
vs. : AT LAW NO. 2084
JACK MANN PONDER, SR., :
Defendant :

Vickens Hunter
Attorneys for Jabez Mann Ponder, Jr.

Holberg Tully & Aldridge
Attorney for Plaintiff.

2084 RECORDED

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

BARBARA FAYE PRICE, etc.,

Plaintiff

vs.

JACK MANN PONDER, SR.,

Defendant

AT LAW NO. 2084

MOTION TO STRIKE

FILED

FEB 10 1954

ALICE L. DUCK, Clerk

VICKERS AND THORNTON

ATTORNEYS AT LAW

MERCHANTS NATIONAL BANK BUILDING

MOBILE, ALABAMA

BARBARA FAYE PRICE,
a minor, suing by her
mother and next friend,
LILLIE BELL PRICE
MALONE,

Plaintiff

-VS-

JACK MANN PONDER, SR.,

Defendant

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IN THE CIRCUIT COURT
OF BALDWIN COUNTY, ALABAMA
AT LAW NO. 2084

ANSWER TO DEFENDANT'S
MOTION TO QUASH PROCESS
AND MOTION FOR LEAVE TO
AMEND ORIGINAL COMPLAINT

Now comes Plaintiff, a minor over the age of eighteen (18) years, who sues by her mother and next friend, LILLIE BELL PRICE MALONE, and for answer to the Motion to Quash Process in the above-entitled cause, 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 negligent injury to this plaintiff in the original complaint, is "Jabez Mann Ponder, Jr.," instead of "Jack Mann Ponder, Sr.," as denominated in the original complaint, plaintiff respectfully denies the allegations of the 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, personally 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, 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, 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 commonly 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 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 was injured 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 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 surnamed "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 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 Mann 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 was riding, and who allegedly negligently injured this plaintiff 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 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 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 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

By *John C. ...*

Member Appearing

Barbara Faye Price
BARBARA FAYE PRICE, Plaintiff

STATE OF ALABAMA)

COUNTY OF *Lee*)

Before me, the undersigned authority in and for the state and county aforesaid, personally appeared BARBARA FAYE PRICE, 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, that she sues by and through her mother and next friend, LILLIE BELL PRICE MALONE, and that she has read the above and foregoing motion, understands the contents thereof, and that the same are true and correct.

Barbara Faye Price
BARBARA FAYE PRICE

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

Berta Dunn
NOTARY PUBLIC
ALABAMA

Lee COUNTY,

RECORDED

2084

Ans. to next motion
to Quash

FILED

OCT 19 1953

ALICE J. DUCK, Clerk