

THE STATE OF ALABAMA }  
 Baldwin County - Circuit Court }

3597

TO ANY SHERIFF OF THE STATE OF ALABAMA — GREETING:

Whereas, at a Term of the Circuit Court of Baldwin County, held on the

March 11, 1959 Monday in, 195, in a cer-

tain cause in said Court wherein J.L. RUPLE

Plaintiff, and J.B. JONES AND THOMAS GIVENS

Defendant, a judgement was rendered against said

J.L. Ruple

to reverse which Judgment, the said

J.L. Ruple

applied for and obtained from this office an APPEAL, returnable to the Next

Term of our Supreme Court of the State of Alabama, to be held at Montgomery,  
 on the day of, 195 next, and the necessary bond

having been given by the said James R. Owen

with, sureties,

Now, You Are Hereby Commanded, without delay, to cite the said

J.B. Jones or Norborne C. Stone, Jr.

, attorney, to appear at the Next Term of our  
 said Supreme Court, to defend against the said Appeal, if they think proper.

Witness, ALICE J. DUCK, Clerk of the Circuit Court of said County, this 29th

day of May, A. D., 1959

Attest:

Alice J. Duck, Clerk.

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 19<sup>59</sup>=60

To the Clerk of the Circuit Court,  
Baldwin County—Greeting:

Whereas, the Record and Proceedings of the Circuit Court  
of said county, in a certain cause lately pending in said Court between

J. L. Ruple, Appellant,

and

J. B. Jones, Appellee,

wherein by said Court it was considered adversely to said appellant, were brought before our  
Supreme Court, by appeal taken, pursuant to law, on behalf of said appellant:

NOW, IT IS HEREBY CERTIFIED, That it was thereupon considered, ordered, and adjudged by  
our Supreme Court, on the 21 day of January, 1960, that said

Judgment of said Circuit Court be in all things  
affirmed, and that it was further considered, ordered, and adjudged that the appellant: ~~XXXX~~ =

J. L. Ruple,

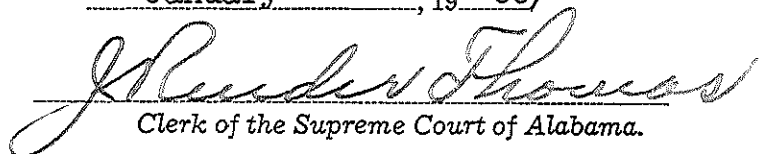
and

James R. Owen, surety on the appeal bond,

pay

the costs accruing on said appeal in this Court and in the Court below, for which costs let execution  
issue.

Witness, J. Render Thomas, Clerk of the Supreme  
Court of Alabama, at the Judicial Department  
Building, this the 21 day of  
January, 19 60/

  
Clerk of the Supreme Court of Alabama.

J. L. RUPLE,	¶	IN THE CIRCUIT COURT OF
Plaintiff,	¶	
vs.	¶	BALDWIN COUNTY, ALABAMA
J. B. JONES,	¶	
Defendant.	¶	AT LAW. NO. 3597.

AMENDMENT TO COMPLAINT:

Now comes the Plaintiff in the above styled cause and amends the original Bill of Complaint so that as amended, the said complaint will read as follows:

"J. L. RUPLE,	¶	IN THE CIRCUIT COURT OF
Plaintiff,	¶	
vs.	¶	BALDWIN COUNTY, ALABAMA
J. B. JONES and THOMAS	¶	AT LAW. NO. 3597.
GIVENS,	¶	
Defendants.	¶	

COUNT ONE:

The Plaintiff claims of the Defendants SEVEN HUNDRED DOLLARS (\$700.00) for a trespass by the Defendants, acting by and through their servants, agents or employees, acting within the line and scope of their authority as such agents, servants or employees, on the following tract of land situated in Baldwin County, Alabama, to-wit:

Begin at the Southeast corner of Section 40, Township 3 South, Range 2 East, and run thence North 2 degrees West 2437 feet, more or less, to the point where the East line of the said Section 40 intersects the South line of Bayou Wiltz; thence Southwestwardly along Bayou Wiltz and following the meanders thereof to the point where the said Bayou intersects the South line of said Section 40; run thence South 85 degrees East 2193 feet, more or less, to the point or place of beginning, and containing 55 acres, more or less.

belonging to and in the possession of the Plaintiff and for cutting the timber thereon on or about, to-wit, March 26, 1958.

COUNT TWO:

The Plaintiff claims of the Defendants SEVEN HUNDRED DOLLARS (\$700.00) damages for a trespass by the Defendants, or others by Defendants' authority and direction, on the following tract of land situated in Baldwin County, Alabama, to-wit:

Begin at the Southeast corner of Section 40, Township 3 South, Range 2 East, and run thence North 2 degrees West 2437 feet, more or less, to the point where the East line of the said Section 40 intersects the South line of Bayou Wiltz; thence Southwestwardly along Bayou Wiltz and following the meanders thereof to the point where the said Bayou intersects the South line of the said Section 40; run thence South 85 degrees East 2193 feet, more or less, to the point or place of beginning, and containing 55 acres, more or less,

belonging to and in possession of the Plaintiff and for cutting the timber thereon, on or about, to-wit, March 26, 1958.

COUNT THREE:

The Plaintiff claims of the Defendants SEVEN HUNDRED DOLLARS (\$700.00) for wrongfully taking or causing to be wrongfully taken by their agents, servants or employees, while acting within the line and scope of their authority, on or about, to-wit, March 26, 1958, the following goods and chattels, the property of the Plaintiff, to-wit, Three Hundred One (301) pine trees.

COUNT FOUR:

The Plaintiff claims of the Defendants the sum of SIX THOUSAND TWENTY AND NO/100 DOLLARS (\$6,020.00) for this, that on or about, to-wit, March 26, 1958, the Defendants, acting by and through their servants, agents or employees, acting within the line and scope of their authority as such servants, agents or employees, did enter upon the following described property situated in Baldwin County, Alabama, to-wit:

Begin at the Southeast corner of Section 40, Township 3 South, Range 2 East, and run thence North 2 degrees West 2437 feet, more or less, to the point where the East line of the said Section 40 intersects the South line of Bayou Wiltz; thence Southwestwardly along Bayou Wiltz and following the meanders thereof to the point where the said Bayou intersects the South line of the said Section 40; run thence South 85 degrees East 2193 feet, more or less, to the point or place of beginning, and containing 55 acres, more or less,

and did willfully and knowingly cut therefrom three hundred one (301) pine trees, without the consent of the owner of said premises, and the Plaintiff avers that at the time of the cutting of said 301 pine trees, Plaintiff had the legal title to and was in the possession of said premises.

COUNT FIVE:

The Plaintiff claims of the Defendant, J. B. Jones, SEVEN HUNDRED DOLLARS (\$700.00) for a trespass by the Defendant, J. B. Jones, acting by and through his servants, agents or employees, acting within the line and scope of their authority as such agents, servants or employees, on the following tract of land situated in Baldwin County, Alabama, to-wit:

Begin at the Southeast corner of Section 40, Township 3 South, Range 2 East, and run thence North 2 degrees West 2437 feet, more or less, to the point where the East line of the said Section 40 intersects the South line of Bayou Wiltz; thence Southwestwardly along Bayou Wiltz and following the meanders thereof to the point where the said Bayou intersects the South line of said Section 40; run thence South 85 degrees East 2193 feet, more or less, to the point or place of beginning, and containing 55 acres, more or less,

belonging to and in the possession of the Plaintiff and for cutting the timber thereon, on or about, to-wit, March 26, 1958.

COUNT SIX:

The Plaintiff claims of the Defendant, J. B. Jones, SEVEN HUNDRED DOLLARS (\$700.00) damages for a trespass by the Defendant, J. B. Jones, or others by Defendant, J. B. Jones' authority and direction, on the following tract of land situated in Baldwin County, Alabama, to-wit:

Begin at the Southeast corner of Section 40, Township 3 South, Range 2 East, and run thence North 2 degrees West 2437 feet, more or less, to the point where the East line of the said Section 40 intersects the South line of Bayou Wiltz; thence Southwestwardly along Bayou Wiltz and following the meanders thereof to the point where the said Bayou intersects the South line of the said Section 40; run thence South 85 degrees East 2193 feet, more or less, to the point or place of beginning, and containing 55 acres, more or less,

belonging to and in possession of the Plaintiff and for cutting the timber thereon, on or about, to-wit, March 26, 1958.

COUNT SEVEN:

The Plaintiff claims of the Defendant, J. B. Jones, SEVEN HUNDRED DOLLARS (\$700.00) for wrongfully taking or causing to be wrongfully taken by his agents, servants or employees, while acting within the line and scope of their authority, on or about, to-wit, March 26, 1958, the following goods and chattels, the property of the Plaintiff, to-wit, Three Hundred One (301) pine trees.

COUNT EIGHT:

The Plaintiff claims of the Defendant, J. B. Jones, the sum of SIX THOUSAND TWENTY AND NO/100 DOLLARS (\$6,020.00) for this, that on or about, to-wit, March 26, 1958, the Defendant, J. B. Jones, acting by and through his servants, agents or employees, acting within the line and scope of their authority as such servants, agents or employees, did enter upon the following described property situated in Baldwin County, Alabama, to-wit:

Begin at the Southeast corner of Section 40, Township 3 South, Range 2 East, and run thence North 2 degrees West 2437 feet, more or less, to the point where the East line of the said Section 40 intersects the South line of Bayou Wiltz; thence Southwestwardly along Bayou Wiltz and following the meanders thereof to the point where the said Bayou intersects the South line of the said Section 40; run thence South 85 degrees East 2193 feet, more or less, to the point or place of beginning, and containing 55 acres, more or less,

and did willfully and knowingly cut therefrom three hundred one (301) pine trees, without the consent of the owner of said premises, and the Plaintiff avers that at the time of the cutting of said 301 pine trees, Plaintiff had the legal title to and was in the possession of said premises.

COUNT NINE:

The Plaintiff claims of the Defendant, Thomas Givens, SEVEN HUNDRED DOLLARS (\$700.00) for a trespass by the Defendant, Thomas Givens, acting by and through his servants, agents or employees, acting within the line and scope of their authority as such agents, servants or employees, on the following tract of land situated in Baldwin County, Alabama, to-wit:

Begin at the Southeast corner of Section 40, Township 3 South, Range 2 East, and run thence North 2 degrees West 2437 feet, more or less, to the point where the East line of the said Section 40 intersects the South line of Bayou Wiltz; thence Southwestwardly along Bayou Wiltz and following the meanders thereof to the point where the said Bayou intersects the South line of said Section 40; run thence South 85 degrees East 2193 feet, more or less, to the point or place of beginning, and containing 55 acres, more or less,

belonging to and in the possession of the Plaintiff and for cutting the timber thereon, on or about, to-wit, March 26, 1958.

COUNT TEN:

The Plaintiff claims of the Defendant, Thomas Givens, SEVEN HUNDRED DOLLARS (\$700.00) damages for a trespass by the Defendant, Thomas Givens, or others by Defendant, Thomas Given's authority and direction, on the following tract of land situated in Baldwin County, Alabama, to-wit:

Begin at the Southeast corner of Section 40, Township 3 South, Range 2 East, and run thence North 2 degrees West 2437 feet, more or less, to the point where the East line of the said Section 40 intersects the South line of Bayou Wiltz; thence Southwestwardly along Bayou Wiltz and following the meanders thereof to the point where the said Bayou intersects the South line of the said Section 40; run thence South 85 degrees East 2193 feet, more or less, to the point or place of beginning, and containing 55 acres, more or less,

belonging to and in possession of the Plaintiff and for cutting the timber thereon, on or about, to-wit, March 26, 1958.

COUNT ELEVEN:

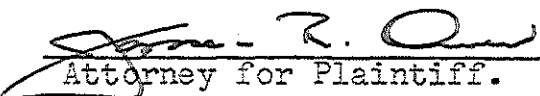
The Plaintiff claims of the Defendant, Thomas Givens SEVEN HUNDRED DOLLARS (\$700.00) for wrongfully taking or causing to be wrongfully taken by his agents, servants or employees, while acting within the line and scope of their authority, on or about, to-wit, March 26, 1958, the following goods and chattels, the property of the Plaintiff, to-wit, Three Hundred One (301) pine trees.

COUNT TWELVE:


The Plaintiff claims of the Defendant, Thomas Givens, the sum of SIX THOUSAND TWENTY AND NO/100 DOLLARS (\$6,020.00) for this, that on or about, to-wit, March 26, 1958, the Defendant, Thomas Givens, acting by and through his servants, agents or employees, acting within the line and scope of their authority as such servants, agents or employees, did enter upon the following described property situated in Baldwin County, Alabama, to-wit:

Begin at the Southeast corner of Section 40, Township 3 South, Range 2 East, and run thence North 2 degrees West 2437 feet, more or less, to the point where the East line of the said Section 40 intersects the South line of Bayou Wiltz; thence Southwestwardly along Bayou Wiltz and following the meanders thereof to the point where the said Bayou intersects the South line of the said Section 40; run thence South 85 degrees East 2193 feet, more or less, to the point or place of beginning, and containing 55 acres, more or less,

and did willfully and knowingly cut therefrom three hundred one (301) pine trees, without the consent of the owner of said premises, and the Plaintiff avers that at the time of the cutting of said 301 pine trees, Plaintiff had the legal title to and was in the possession of said premises.

  
Attorney for Plaintiff.

Plaintiff demands a trial  
of said cause by Jury.

  
Attorney for Plaintiff."

  
Attorney for Plaintiff.



AMENDMENT TO COMPLAINT

J. L. RUPLE,

Plaintiff,

vs.

J. B. JONES,

Defendant.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW. NO. 3597.

FILED

DEC 5 1958

ALICE L. DUCK, Clerk

JAMES R. OWEN  
ATTORNEY AT LAW  
BAY MINETTE, ALABAMA

We do say for J. B. Jones  
Raymond Allen  
Stewart

SUMMONS AND COMPLAINT

Moore Fig. Co.

The State of Alabama, }

Baldwin County.

Circuit Court, Baldwin County

No. 3597

TERM, 19

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon THOMAS GIVENS

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

J.B. JONES, AND THOMAS GIVENS

, Defendant

by J.L. RUPL

, Plaintiff

Witness my hand this 5th day of December 19 58

*Executed Dec. 16, 1958  
on Thomas Givens*

*Alice J. Luck*, Clerk

J. L. RUPLE,	I	
Plaintiff,	I	IN THE CIRCUIT COURT OF
	I	
vs.	I	
	I	BALDWIN COUNTY, ALABAMA
J. B. JONES and	I	
THOMAS GIVENS,	I	
Defendants.	I	AT LAW NO.3597
	I	

DEMURRER TO AMENDED COMPLAINT

Comes now the Defendant J. B. Jones, by his attorneys, and demurs to the Complaint as last amended, and to each count thereof, separately and severally, and assigns the following separate and several grounds in support thereof:

1. The Complaint fails to state a cause of action.
2. There is a misjoinder of causes of action.
3. There is a misjoinder of parties defendant.
4. There is a misjoinder of counts in the Complaint as last amended in that the Plaintiff seeks to recover severally on separate causes of action against different Defendants in separate counts.
5. There is a misjoinder of causes of action in that the Plaintiff attempts to join a count for a joint cause of action with counts for several causes of action.
6. There is a misjoinder of causes of action in that the Complaint declares against the Defendants jointly in four of the counts and against each of the Defendants separately in the other counts.
7. There is a misjoinder of causes of action in that the Complaint declares against the two Defendants jointly in counts "One", "Two", "Three" and "Four" and against the Defendant J. B. Jones separately in counts "Five", "Six", "Seven" and "Eight" and against the Defendant Thomas Givens in counts "Nine", "Ten", "Eleven" and "Twelve".

Respectfully submitted

CHASON & STONE

*Filed Jan. 14, 1959*  
*Alvin J. Luck, Clerk*

J. L. RUPLE,  
Plaintiff,

vs.

J. B. JONES and THOMAS GIVENS,  
Defendants.

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DEMURRER TO AMENDED COMPLAINT

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IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW                      NO. 3597

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FILED  
JAN 14 1959

ALICE J. DUCK, Clerk  
LAW OFFICES

CHASON & STONE  
BAY MINETTE, ALABAMA

J. L. RUPLE,

Plaintiff,

vs.

J. B. JONES and THOMAS  
GIVENS,

Defendants.

IN THE CIRCUIT COURT OF

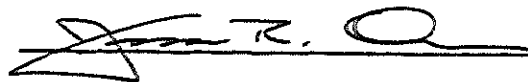
BALDWIN COUNTY, ALABAMA

AT LAW.

NO. 3597.

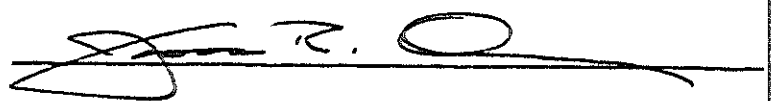
APPEAL AND SECURITY FOR COSTS:

Comes the Plaintiff in the above styled cause, by his Attorney, and hereby appeals to the Supreme Court of the State of Alabama, from the final judgment of the Circuit Court of Baldwin County, Alabama, rendered in the above styled cause on March 11, 1959.



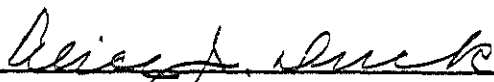
Attorney for Plaintiff.

I hereby acknowledge myself security for the costs of the foregoing appeal.



Taken and approved on this the

9th day of May, 1959.



Clerk of the Circuit Court of Baldwin  
County, Alabama.

J. L. RUPLE,	X	
Plaintiff,	X	IN THE CIRCUIT COURT OF
vs.	X	
	X	BALDWIN COUNTY, ALABAMA
J. B. JONES,	X	
Defendant.	X	AT LAW
	X	

ORDER TO SUBPOENA WITNESS

TO: ALICE J. DUCK AS REGISTER OF THE CIRCUIT COURT OF BALDWIN COUNTY,  
ALABAMA, LAW SIDE:

Comes now the Defendant in the above styled cause, by his attorneys, notice having been given to the adverse party as required by the law, of the Taking of the Deposition Upon Oral Examination of Thomas Givens at the office of Louise Dusenbury in the Court house in Bay Minette, Baldwin County, Alabama, on Friday, October 24, 1958, at 2:00 P. M., and hereby files this his order for the said Thomas Givens to be subpoenaed by the Register of the Court in which the above styled cause is now pending.

Dated this the 20 day of October, 1958.

CHASON & STONE

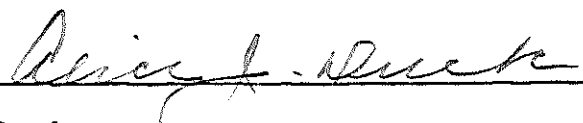
By: Melvin P. Stone, Jr.  
Attorneys for Defendant

STATE OF ALABAMA     )  
                              \*  
BALDWIN COUNTY        )

TO ANY SHERIFF OF THE STATE OF ALABAMA, GREETING:

You are hereby commanded to summon NORBORNE C. STONE, JR., Bay Minette, Alabama, at the instance of the plaintiff if he should be found in your County, personally to be and appear before the Circuit Court of Baldwin County, at the present term thereof to be held at the Courthouse in Bay Minette, Alabama, on to-wit, the 11th day of March, 1959, at nine o'clock A. M., and to bring with him and produce at the time and place aforesaid, to be used as evidence, all books, papers and other writings which indicate the amount of timber or number of trees sold by the defendants, J. B. Jones or Thomas Givens to Scott Paper Company during the week of March 24th to March 29th, 1958, and then and there to testify and the truth to speak concerning all and singular those things of which he may have knowledge or the said instruments of writing doth import of, and concerning a certain suit now pending and undetermined in said court wherein J. L. Ruple is Plaintiff, and J. B. Jones and Thomas Gives are Defendants. And this he shall in nowise omit under penalties of what the law directs, and shall have you then and there this writ with your endorsement thereon in what manner you have executed same.

WITNESS my hand this 4 day of March, 1959.

  
Clerk.

STATE OF ALABAMA     )  
                              \*  
BALDWIN COUNTY        )

3597

TO ANY SHERIFF OF THE STATE OF ALABAMA, GREETING:

          You are hereby commanded to summon J. B. JONES, c/o  
J. B. Jones Timber Company, Magazine, Alabama, at the instance of  
the plaintiff if he should be found in your County, personally to  
be and appear before the Circuit Court of Baldwin County, at the  
present term thereof to be held at the Courthouse in Bay Minette,  
Alabama, on to-wit, the 11th day of March, 1959, at nine o'clock  
A. M., and to bring with him and produce at the time and place  
aforesaid, to be used as evidence, all books, papers and other  
writings which indicate the amount of timber or number of trees  
sold by the defendant J. B. Jones or Thomas Givens, to Scott Paper  
Company during the week of March 24th to March 29th, 1958, and then  
and there to testify and the truth to speak concerning all and  
singular those things of which he may have knowledge or the said  
instruments of writing doth import of, and concerning a certain  
suit now pending and undetermined in said court wherein J. L.  
Ruple is Plaintiff and J. B. Jones and Thomas Givens are Defendants.  
And this he shall in nowise omit under penalties of what the law  
directs, and shall have you then and there this writ with your en-  
dorsement thereon in what manner you have executed same.

WITNESS my hand this 11 day of March, 1959.

W. F. Duncanson  
Clerk.



STATE OF ALABAMA     )  
                              \*  
BALDWIN COUNTY        )

TO ANY SHERIFF OF THE STATE OF ALABAMA, GREETING:

You are hereby commanded to summon J. B. JONES, c/o J. B. Jones Timber Company, Magazine, Alabama, at the instance of the plaintiff if he should be found in your County, personally to be and appear before the Circuit Court of Baldwin County, at the present term thereof to be held at the Courthouse in Bay Minette, Alabama, on to-wit, the 11th day of March, 1959, at nine o'clock A. M., and to bring with him and produce at the time and place aforesaid, to be used as evidence, all checks and drafts made by him or J. B. Jones Timber Company to Thomas Givens, during the week of March 24th to March 29th, 1958, or anytime thereafter in payment for timber or hauling timber during the week of March 24th to March 29th, 1958, and then and there to testify and the truth to speak concerning all and singular those things of which he may have knowledge or the said instruments of writing doth import of, and concerning a certain suit now pending and undetermined in said court wherein J. L. Ruple is Plaintiff and J. B. Jones and Thomas Givens are Defendants. And this he shall in nowise omit under penalties of what the law directs, and shall have you then and there this writ with your endorsement thereon in what manner you have executed same.

WITNESS my hand this 6 day of March, 1959.

Reisner  
Clerk.

J. L. RUPLE,	X		
Plaintiff,	X	IN THE CIRCUIT COURT OF	
vs.	X	BALDWIN COUNTY, ALABAMA	
J. B. JONES,	X	AT LAW	NO. 3597
Defendant.	X		
	X		

DEMURRER

Comes now the Defendant in the above styled cause, by his attorneys, and demurs to the complaint heretofore filed against him and to each count thereof, separately and severally, and assigns the following separate and several grounds in support thereof:

1. The complaint fails to state a cause of action.
2. Count One of the complaint fails to state a cause of action.
3. Count Two of the complaint fails to state a cause of action.
4. Count Three of the complaint fails to state a cause of action.
5. Count Four of the complaint fails to state a cause of action.
6. The allegations of the complaint are vague, indefinite and uncertain.
7. The allegations of the complaint fail to allege in what the alleged trespass of the Defendant consisted.
8. Count One of the complaint fails to allege that the Defendant trespassed on the land of the Plaintiff.
9. There is a misjoinder of causes of action in Count Two of the complaint.
10. There is a misjoinder of causes of action in Count Three of the complaint.
11. Count four of the complaint fails to allege that the Plaintiff was the owner of the land therein described and of the trees situated thereon.

12. Count Two of the complaint fails to allege that the Defendant, acting by and through his agents, servants and employees, who were then and there acting within the line and scope of their employment as such trespassed on the lands allegedly belonging to the Plaintiff.

13. Count Two of the complaint fails to allege that the timber allegedly cut from the land therein described was cut by the Defendant, acting by and through his agents, servants or employees, acting within the line and scope of their employment as such.

14. Count Two of complaint is in the alternative.

15. Count Two of the complaint fails to allege that the acts therein complained of were committed by the Defendant or anyone acting in his behalf within the line and scope as their employment as the agent, servant or employee of the Defendant.

Respectfully submitted,

CHASON & STONE

*Filed July 26, 1958*  
*Alice J. Clark, Clerk*

By:

*Malcolm P. Stone, Jr.*  
Attorneys for Defendant

J. L. RUPLE,

Plaintiff,

VS.

J. B. JONES,

Defendant.

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IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW NO. 3597

\*\*\*\*\*

DEMURRER

\*\*\*\*\*

FILED

JUL 26 1958

ALICE J. DUCK, Clerk

LAW OFFICES

CHASON & STONE

BAY MINETTE, ALABAMA

STATE OF ALABAMA     )  
                              \*  
BALDWIN COUNTY        )

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon J. B. JONES, to appear within thirty days from the service of this writ in the Circuit Court of Baldwin County, Alabama, at Law, at the place of holding the same, then and there to plead, answer or demur to the complaint filed against him by J. L. RUPLE.

WITNESS my hand on this the 24 day of June, 1958.

Alice J. Luck  
Clerk.

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J. L. RUPLE,		IN THE CIRCUIT COURT OF
Plaintiff,		BALDWIN COUNTY, ALABAMA
vs.		AT LAW.
J. B. JONES,		
Defendant.		

COUNT ONE:

The Plaintiff claims of the Defendant SEVEN HUNDRED DOLLARS (\$700.00) for a trespass by the Defendant, acting by and through his servants, agents or employees, acting within the line and scope of their authority as such agents, servants or employees, on the following tract of land situated in Baldwin County, Alabama, to-wit:

Begin at the Southeast corner of Section 40, Township 3 South, Range 2 East, and run thence North 2 degrees West 2437 feet, more or less, to the point where the East line of the said Section 40 intersects the South line of Bayou Wiltz; thence Southwestwardly along Bayou Wiltz and following the meanders thereof to the point where the said Bayou intersects the South line of said Section 40; run thence South 85 degrees East 2193 feet, more or less, to the point or place of beginning, and containing 55 acres, more or less,

belonging to and in the possession of the Plaintiff and for cutting the timber thereon or or about, to-wit, March 26, 1958.

COUNT TWO:

The Plaintiff claims of the Defendant SEVEN HUNDRED DOLLARS (\$700.00) damages for a trespass by the Defendant, or others by

Defendant's authority and direction, on the following tract of land situated in Baldwin County, Alabama, to-wit:

Begin at the Southeast corner of Section 40, Township 3 South, Range 2 East, and run thence North 2 degrees West 2437 feet, more or less, to the point where the East line of the said Section 40 intersects the South line of Bayou Wiltz; thence Southwestwardly along Bayou Wiltz and following the meanders thereof to the point where the said Bayou intersects the South line of the said Section 40; run thence South 85 degrees East 2193 feet, more or less, to the point or place of beginning, and containing 55 acres, more or less,

belonging to and in possession of the Plaintiff and for cutting the timber thereon, on or about, to-wit, March 26, 1958.

COUNT THREE:

The Plaintiff claims of the Defendant SEVEN HUNDRED DOLLARS (\$700.00) for wrongfully taking or causing to be wrongfully taken by his agents, servants or employees, while acting within the line and scope of their authority, on or about, to-wit, March 26, 1958, the following goods and chattels, the property of the Plaintiff, to-wit, Three Hundred One (301) pine trees.

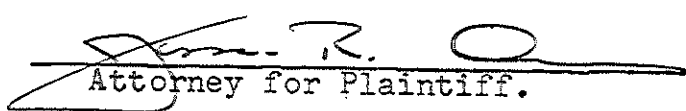
COUNT FOUR:

The Plaintiff claims of the Defendant the sum of SIX THOUSAND TWENTY AND NO/100 DOLLARS (\$6,020.00) for this, that on or about, to-wit, March 26, 1958, the Defendant, acting by and through his servants, agents or employees, acting within the line and scope of their authority as such servants, agents or employees, did enter upon the following described property situated in Baldwin County, Alabama, to-wit:

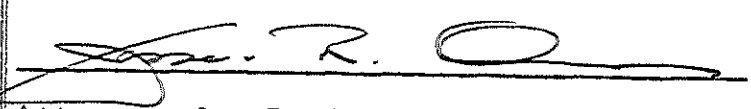
Begin at the Southeast corner of Section 40, Township 3 South, Range 2 East, and run thence North 2 degrees West 2437 feet, more or less, to the point where the East line of the said Section 40 intersects the South line of Bayou Wiltz; thence Southwestwardly along Bayou Wiltz and following the meanders thereof to the point where the said Bayou intersects the South line of the said Section 40; run thence South 85 degrees East 2193 feet, more or less, to the point or place of beginning, and containing 55 acres, more or less,

and did willfully and knowingly cut therefrom three hundred one (301) pine trees, without the consent of the owner of said premises, and the Plaintiff avers that at the time of the cutting of said 301

pine trees, Plaintiff had the legal title to and was in the possession of said premises.

  
Attorney for Plaintiff.

Plaintiff demands a trial of  
said cause by Jury.

  
Attorney for Plaintiff.

*Filed June 24, 1958*  
*Alvin J. Duck, Clerk*

*Printed June 27, 1958*

PK 357/120

SUMMONS AND COMPLAINT

J. L. RUPLE,

Plaintiff,

*vs.*  
J. B. JONES,

Defendant.

Received 25 day of June 1958  
and on 27 day of June 1958  
I served a copy of the within C & S  
on J. B. Jones  
By service on \_\_\_\_\_  
Ray D. Bridgman, Clerk  
B. B. Sanders, D. S.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW.

FILED

JUN 24 1958

ALICE J. DUCK, Clerk

JAMES R. OWEN  
ATTORNEY AT LAW  
BAY MINETTE, ALABAMA



J. L. RUPLE,

Plaintiff,

vs.

J. B. JONES and  
THOMAS GIVENS,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 3597

PLEAS

Comes now the Defendant J. B. Jones, by his attorneys,  
and for answer to Counts "ONE", "TWO", "THREE", "FOUR", "FIVE", "SIX",  
"SEVEN" and "EIGHT" of the Amended Complaint heretofore filed against  
him, separately and severally, pleads as follows:

1. Not guilty.

*Filed March 11, 1929*  
*Alice J. Hook, Clerk*

CHASON & STONE

By:

*[Signature]*  
Attorneys for Defendant J. B.  
Jones.

Pleas of Defendant  
J. B. Jones

FILED  
MAR 11 1959  
ALICE J. DUCK/SABK

LAW OFFICES  
**CHASON & STONE**  
BAY MINETTE, ALABAMA

J. L. RUPLE,

Plaintiff,

vs.

J. B. JONES and  
THOMAS GIVENS,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 3597

PLEAS

Comes now the Defendant Thomas Givens, by his attorneys,  
and for answer to Counts "ONE", "TWO", "THREE", "FOUR", "NINE", "TEN",  
"ELEVEN" and "TWELVE" of the Amended Complaint, separately and sever-  
ally, pleads as follows:

1. Not guilty.

CHASON & STONE

By:

*[Signature]*  
Attorneys for Defendant Thomas  
Givens

*Filed March 11, 1959*  
*Alice J. Ruck, Clerk*

Pleas of Defendant  
Thomas Green

FILED

MAR 11 1959

ALICE J. DUCK, Clerk

LAW OFFICES

CHASON & STONE

BAY MINETTE, ALABAMA

No. 3597

THE STATE OF ALABAMA

BALDWIN County.

I, ALICE J. DUCK, Clerk of the Circuit Court of Baldwin County, in and for said State and County, hereby certify that the foregoing pages numbered from one to \_\_\_\_\_, both inclusive, contain a full, true and complete transcript of the record and proceedings of said Court in a certain cause lately therein pending wherein \_\_\_\_\_

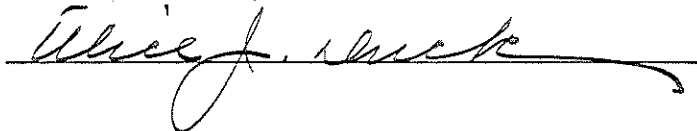
J.L. RUPLE

was plaintiff, and J.B. JONES and THOMAS GIVENS

was Defendant, as fully and completely as the same appears of record in said Court.

And I further certify that the said J.L. RUPLE did on the 9th day of May, 1959, pray for and obtain an appeal from the judgment of said Court to the \_\_\_\_\_ Supreme Court of Alabama to reverse said judgment of said Court upon entering into bond with James R. Owen \_\_\_\_\_ as surety thereon, which said bond has been approved by me.

Witness my hand and the seal of said Circuit Court of Baldwin County is hereto affixed, this the 9th day of May, 1959



Clerk of the Circuit Court of

BALDWIN County, Alabama.

(Code 1940, Title 7, Sec. 767)

J. L. RUPLE,	×	
Plaintiff,	×	IN THE CIRCUIT COURT OF
	×	
vs.	×	BALDWIN COUNTY, ALABAMA
	×	
J. B. JONES and	×	
THOMAS GIVENS,	×	AT LAW NO. 3597
Defendants.	×	

DEMURRER TO AMENDED COMPLAINT

Comes now the Defendant Thomas Givens, by his attorneys, and demurs to the Complaint as last amended, and to each count thereof, separately and severally, and assigns the following separate and several grounds in support thereof:

1. The Complaint fails to state a cause of action.
2. There is a misjoinder of causes of action.
3. There is a misjoinder of parties defendant.
4. There is a misjoinder of counts in the Complaint as last amended in that the Plaintiff seeks to recover severally on separate causes of action against different Defendants in separate counts.
5. There is a misjoinder of causes of action in that the Plaintiff attempts to join a count for a joint cause of action with counts for several causes of action.
6. There is a misjoinder of causes of action in that the Complaint declares against the Defendants jointly in four of the counts and against each of the Defendants separately in the other counts.
7. There is a misjoinder of causes of action in that the Complaint declares against the two Defendants jointly in counts "ONE", "TWO", "THREE" and "FOUR" and against the Defendant J. B. Jones separately in counts "FIVE", "SIX", "SEVEN", and "EIGHT" and against the Defendant Thomas Givens in counts "NINE", "TEN", "ELEVEN" and "TWELVE".

*Filed Jan. 14, 1959*  
*Alice J. Duck, Clerk*

Respectfully submitted,  
 CHASON & STONE

By: *M. G. Stone*

J. L. RUPLE,

Plaintiff,

vs.

J. B. JONES and THOMAS GIVENS,

Defendants.

\*\*\*\*\*

DEMURRER TO AMENDED COMPLAINT

\*\*\*\*\*

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 3597

\*\*\*\*\*

FILED

JAN 14 1959

ALICE J. DUCK, Clerk

LAW OFFICES

CHASON & STONE

BAY MINETTE, ALABAMA

JAN 21 1960

THE STATE OF ALABAMA - - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1959-60

1 Div. 837

J. L. Ruple

v.

J. B. Jones

Appeal from Baldwin Circuit Court

MERRILL, JUSTICE.

Appeal from a judgment in favor of the defendant below which was based upon a verdict resulting from the giving of the general charge with hypothesis in favor of the appellee, J. B. Jones.



2.

The amended complaint consisted of twelve counts, wherein damages were sought against defendants Jones and Givens for cutting and removing pine timber from appellant's land, and for the statutory penalty for cutting 301 trees from the property of appellant without his consent.

In counts "one" through "four" appellee was sued jointly with Givens; in counts "five" through "eight" appellee was sued individually; and in the other counts, Givens was sued individually. Each of the defendants pleaded the general issue.

After appellant rested, appellee rested and requested the general charge as to counts one through eight, and the court granted this request. Appellant then took a nonsuit as to defendant Givens and the jury returned a verdict in favor of appellee.

The first assignment of error is that the court erred in denying appellant's motion to issue, under Tit. 7, § 489, Code 1940, a subpoena duces tecum to defendants, requiring them to bring into court all records, etc. which would indicate the amount of lumber or trees sold by either to Scott Paper Co. during the week of March 24-29, 1958.

The court did not err because Tit. 7, § 489, deals with the production of papers by persons not a party to the cause. The section was not applicable to the parties defendant. Parties are controlled by Tit. 7, § 426, Code 1940.

Assignment of error 2 complains of the exclusion of a purported admission by the appellee. In the cross-examination of appellant, the following occurred:

3.

"Q. Do you know of your own personal knowledge that the defendant, J. B. Jones cut some trees on your property?

"A. He admitted to it in Mr. Owen's office with he and I present---"

Appellee objected on the grounds that the conference in attorney Owen's office was for the purpose of discussing a settlement and was not admissible.

The court excluded the answer as not being responsive since the witness had "no personal knowledge." It is a fact that appellant had testified that he was out of town when the alleged trespass occurred, and could not have had personal knowledge of it. The ruling was correct.

Assignment 6 complains of the court's refusal to allow appellant to introduce the deposition of defendant Givens under the provisions of Act No. 375, Acts of Alabama 1955, page 901, listed in the pocket parts as Tit. 7, § 474(1)-(18). The deposition had been taken while Givens was in the status of a witness, but later he was made a party defendant.

The entire deposition was not offered but only certain extracts or portions from the deposition. In brief, appellant urges that it was error to exclude the following offered portion of the deposition:

"Q. Now Mr. Givens, in March of this year, or on or about March 26, 1958, did you cut some pulp wood or timber on lands which were represented to you to be the

lands of Mary Grice or her father, Charles  
Dudley Grice?

"A. Yes sir.

"Q. Were you cutting this pulp wood  
under contract with any one, or did you buy  
the pulp wood - either one - did you buy the  
pulp wood from the Grices?

"A. No sir.

"Q. Did you contract to cut that pulp  
wood?

"A. Yes sir.

"Q. With whom did you contract to cut  
that pulp wood?

"A. With J. B. Jones.

"Q. The Mr. J. B. Jones that is here  
this afternoon?

"A. Yes sir."

Counts "one," "two," "four," "five," "six" and "eight"  
described the property by legal description and averred that  
the land and the trees were the property of the plaintiff.  
Counts three and seven are in trover but also allege that the  
trees were the property of the plaintiff. It will be noted  
that Givens testified that the timber or pulpwood he cut was  
on lands represented to him as belonging to Mary Grice or  
Charles Dudley Grice. But the Grices are not parties to this  
suit. We have examined all of the proffered extracts and no-  
where is the land identified as the land described in the com-  
plaint.

5.

Since the land was not identified as being the land in question on which the trees were cut, the extracts were properly excluded. We do not intend to say that the full deposition of Givens does not identify the lands in question. But we are confined to a consideration of those portions of the deposition which were offered, and the required identification therein is lacking.

An additional reason applies to two of the counts. Counts "four" and "eight" are for the statutory penalty of \$20.00 per tree, Tit. 47, § 272, Code 1940, as amended. The statute provides that the cutting must be done knowingly and willfully.

The authorities make a broad distinction as to the liability of a principal or master, where it is sought to hold him responsible upon the common law liability for the torts of an agent or servant, and when it is sought to recover from him a statutory penalty. In the latter, the liability is fixed and limited by the statute itself. The distinction is clear and rests upon sound principles of law. To subject anyone to the penalty of the act, it must be shown to have been willfully violated by proof that the party charged committed the forbidden act himself, or caused another to do it by his command or authority. Rudolph v. Holmes, 201 Ala. 461, 78 So. 889; Williams v. Hendricks, 115 Ala. 277, 22 So. 439, 41 L. R. A. 650, 67 Am. St. Rep. 32.

There was no evidence of any agency on the part of defendant Givens or any one else acting for appellee and within

6.

the line and scope of any authority of the appellee to connect him with the cutting of the trees.

The remaining assignments of error are concerned with the giving of the affirmative charge with hypothesis for appellee as to each count. What we have said in the preceding paragraph justified the giving of the charges. The judgment is affirmed.

AFFIRMED.

Livingston, C. J., Lawson and Stakely, JJ., concur.

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1st Div., No. 837,

J. L. RUPLE, Appellant

vs.

J. B. JONES, Appellee,

From BALDWIN Circuit Court.

The State of Alabama,  
City and County of Montgomery, }

I, J. Render Thomas, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages, numbered from one to SIX inclusive, contain a full, true and correct copy of the opinion of said Supreme Court in the above stated cause, as the same appears and remains of record and on file in this office.

Witness, J. Render Thomas, Clerk of the Supreme  
Court of Alabama, this the 21st day of

JANUARY, 19 60

*J. Render Thomas*  
Clerk of the Supreme Court of Alabama