

VS.

IN THE CIRCUIT COURT OF

WILMER LIPSCOMB and CLYDE LIPSCOMB, individually, and WILMER LIPSCOMB and CLYDE LIPSCOMB, a partnership,

AT LAW

NO. 4911

Defendants.

Now come the defendants and demur to the complaint as last amended (the amended complaint filed on, to-wit, October 28, 1965) and to each and every count thereof, separately and severally, and as grounds of such demurrer assign, separately and severally, the following:

1. It does not state a cause of action.
2. The allegations of the amended complaint are vague, indefinite and uncertain.
3. The allegations of the amended complaint are vague, indefinite and uncertain in that it does not apprise the defendants with sufficient certainty against what act or acts of negligence they are called on to defend.
4. It does not allege when the defendant was injured.
5. The allegations of the amended complaint are vague, indefinite and uncertain in that no facts are alleged to show how or in what way the works, machinery or plant of the defendants were defective.
6. The allegations of the amended complaint are vague, indefinite and uncertain in that no facts are alleged to show where the pulleys referred to in the amended complaint were located.
7. The allegations of the amended complaint are conclusions of the pleader.
8. No facts are alleged to show any negligence on the part of the defendants or either of them.
9. No facts are alleged to show that the defendants or either of them were negligent.

10. No facts are alleged to show any breach of duty owed by the defendants to the plaintiff.

11. No facts are alleged to show the negligent performance of any duty owed by the defendants to the plaintiff.

12. No facts are alleged to show any defect in the defendants' ways, works, machinery or plant.

13. It does not allege that any negligence on the part of the defendants was the proximate cause of the plaintiffs' injuries.

14. It does not allege that any defect in the ways, works, machinery or plant connected with or used in the business of the defendants was the proximate cause of the plaintiff's injuries.

15. No facts are alleged to show that the alleged defect in the ways, works, machinery or plant connected with or used in the business of the defendants arose from, or had not been discovered or remedied, owing to the negligence of the defendants or some person in the service of the defendants and entrusted by them with the duty of seeing that the ways, works, machinery or plant were in proper condition.

16. It does not allege how or in what way the plaintiff was permanently injured.

17. The allegation that the plaintiff was permanently injured is a conclusion of the pleader.

18. No facts are alleged to show that the grain auger fell as the proximate result of a defect therein or of a defect in any other tool, appliance or device forming a part of the ways, works, machinery or plant of the defendants.

19. No facts are alleged to show that the grain auger fell as the proximate result of the negligence of the defendants or of some person in their service entrusted by them with the duty of seeing that their ways, works, machinery or plant were in the proper condition.

20. No facts are alleged to show that the defendants' grain auger fell as the proximate result of a defect therein.

21. No facts are alleged to show that the plaintiff's alleged injuries were the proximate result of a defect in the defendants' grain auger or in any other tool, appliance or device of the defendants.

J. B. BLACKBURN  
JAMES R. OWEN  
Attorneys for Defendants

By J. B. Blackburn

STATE OF ALABAMA )  
\*  
BALDWIN COUNTY )

I hereby certify that I delivered a copy of the above and foregoing demurrer to Cecil G. Chason, attorney for the plaintiff, on the 2nd day of November, 1965.

J. B. Blackburn  
Of Counsel for Defendants

11-2-65  
J. B. Blackburn

ANGUS PAUL,	)	
	)	
Plaintiff,	)	IN THE CIRCUIT COURT OF
	)	
VS	)	BALDWIN COUNTY, ALABAMA
	)	
WILMER LIPSCOMB and CLYDE	)	AT LAW
LIPSCOMB, individually and	)	NO. 4911
WILMER LIPSCOMB and CLYDE	)	
LIPSCOMB, a partnership,	)	
	)	
Defendants.	)	

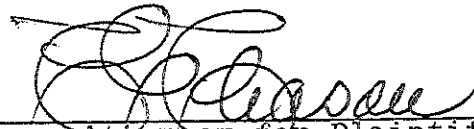
AMENDED COMPLAINT

Count One

The Plaintiff claims of the Defendants, Ten Thousand Dollars (\$10,000.00) as damages for that on, to-wit, the 10th day of October, 1960, the Defendants were engaged in the business of farming in Baldwin County, Alabama and the Plaintiff was in Defendants' employ as a laborer on the farm operated by the Defendants in Baldwin County, Alabama, and while so employed and on said date a grain auger which was a part of the ways, works, machinery or plant of the Defendants, and which was defective, by reason of said defect, fell on him and as a proximate result and consequence thereof, Plaintiff suffered a fracture of a vertebrae in his back, which caused him pain, suffering and anguish; required hospitalization and medical treatment; caused loss of income; caused permanent disability. The grain auger referred to as a part of the ways, works, machinery or plant connected with and used in the business of said employers and which fell on the Plaintiff was defective in that the pullys thereon were of insufficient size or of improper type; the grain auger was not securely affixed to the frame which allowed it to become disengaged and fall; the spout on the upper end of the grain auger was not of the proper length for use with the storage bins of the Defendants; which said defects arose from or had not been discovered or remedied owing to the negligence of the Defendants or some person in the service of the Defendants entrusted with the duty of seeing that the ways, works, machinery or plant were in proper condition.

Count Two

The Plaintiff claims of the Defendants, Ten Thousand Dollars (\$10,000.00) as damages in that on, to-wit, the 10th day of October, 1960, the Plaintiff was in the Defendants' employ as a laborer on a farm operated by the Defendants in Baldwin County, Alabama, and while engaged as a part of his duties as such laborer of using a grain auger provided by the Defendants to place soy beans in a storage bin in the line and scope of his employment, the Defendants negligently failed to exercise reasonable deligence to provide the Plaintiff with a safe grain auger, the said grain auger being defective or unsafe, with which to perform the duties of his said service as aforesaid and as a proximate result and consequence of the negligence of the Defendants as aforesaid, the grain auger fell on him causing a fracture of a vertebrae in his back; which caused him pain, suffering and anguish; required hospitalization and medical treatment; caused loss of income; caused permanent disability; all to the damages of the Plaintiff as aforesaid.



Attorney for Plaintiff

FILED  
Oct 28 1965  
ALICE I. DUCK  
CLERK  
REGISTER

ANGUS PAUL,	)	
	)	
Plaintiff,	)	IN THE CIRCUIT COURT OF
	)	
VS	)	BALDWIN COUNTY ALABAMA
	)	
WILMER LIPSCOMB and CLYDE	)	AT LAW NO. 4911
LIPSCOMB, individually and	)	
WILMER LIPSCOMB and CLYDE	)	
LIPSCOMB, a partnership,	)	
	)	
Defendants.	)	

AMENDED COMPLAINT

Count One

The Plaintiff claims of the Defendants, Ten Thousand Dollars (\$10,000.00) as damages for that on, to-wit, the 10th day of October, 1960, the Defendants were engaged in the business of farming in Baldwin County, Alabama and the Plaintiff was in Defendants' employ as a laborer on the farm operated by the Defendants and while so employed a grain auger which was a part of the ways, works, machinery or plant of the Defendants, and which was defective by reason of said defect, fell on him and as a proximate result and consequence thereof, Plaintiff suffered a fracture of a vertebrae in his back, which caused him pain, suffering and anguish; required hospitalization and medical treatment; caused loss of income; caused permanent disability. The grain auger referred to as a part of the ways, works, machinery or plant connected with and used in the business of said employers was defective in that the pullys thereon were of insufficient size or of improper type; the grain auger was not securely affixed to the frame which allowed it to become disengaged and fall; the spout on the upper end of the grain auger was not of the proper length for use with the storage bins of the Defendants which said defects arose from or had not been discovered or remedied owing to the negligence of the Defendants or some person in the service of the Defendants entrusted with the duty of seeing that the ways, works, machinery or plant were in proper condition.

Count Two

The Plaintiff claims of the Defendants, Ten Thousand Dollars (\$10,000.00) as damages in that on, to-wit, the 10th day of October, 1960, the Plaintiff was in the Defendants' employ as a laborer on a farm operated by the Defendants in Baldwin County, Alabama, and while engaged as a part of his duties as such laborer of using a grain auger provided by the Defendants to place soy beans in a storage bin in the line and scope of his employment, the Defendants negligently failed to exercise reasonable deligence to provide the Plaintiff with a safe grain auger, the said grain auger being defective or unsafe, with which to perform the duties of his said service as aforesaid and as a proximate result and consequence of the negligence of the Defendants as aforesaid, the grain auger fell on him causing a fracture of a vertebrae in his back, which caused him pain, suffering and anguish, required hospitalization and medical treatment, caused loss of income, caused permanent disability; all to the damages of the Plaintiff as aforesaid.

  
Attorney for Plaintiff

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CLERK  
JULIA J. JONES  
REGISTER

ANGUS PAUL,	)	
	)	
Plaintiff,	)	IN THE CIRCUIT COURT OF
VS.	)	BALDWIN COUNTY, ALABAMA
	)	
WILMER LIPSCOMB and CLYDE	)	AT LAW
LIPSCOMB, individually, and	)	NO. 4911
WILMER LIPSCOMB and CLYDE	)	
LIPSCOMB, a partnership,	)	
	)	
Defendants.	)	

DEMURRER TO AMENDED COMPLAINT

Now come the defendants and demur to the complaint as last amended (the amended complaint filed on July 21, 1965) and to each and every count thereof, separately and severally, and as grounds of such demurrer assign, separately and severally, the following:

1. It does not state a cause of action.
2. The allegations of the amended complaint are vague, indefinite and uncertain.
3. The allegations of the amended complaint are vague, indefinite and uncertain in that it does not apprise the defendants with sufficient certainty against what act or acts of negligence they are called on to defend.
4. The allegations of the amended complaint are vague, indefinite and uncertain in that it does not apprise the defendants of what they are called upon to defend.
5. The allegations of the amended complaint are vague, indefinite and uncertain in that no facts are alleged to show how or in what way the works, machinery or plant of the defendants were defective.
6. The allegations of the amended complaint are vague, indefinite and uncertain in that no facts are alleged to show where the pulleys referred to in the amended complaint were located.
7. The allegations of the amended complaint are conclusions of the pleader.
8. No facts are alleged to show any negligence on the part of the defendants or either of them.



9. No facts are alleged to show that the defendants or either of them were negligent.

10. No facts are alleged to show any breach of duty owed by the defendants to the plaintiff.

11. No facts are alleged to show the negligent performance of any duty owed by the defendants to the plaintiff.

12. No facts are alleged to show any defect in the defendants' ways, works, machinery or plant.

13. It does not allege that any negligence on the part of the defendants was the proximate cause of the plaintiff's injuries.

14. It does not allege that any defect in the ways, works, machinery or plant connected with or used in the business of the defendants was the proximate cause of the plaintiff's injuries.

15. No facts are alleged to show that the alleged defect in the ways, works, machinery or plant connected with or used in the business of the defendants arose from, or had <sup>not</sup> been discovered or remedied, owing to the negligence of the defendants or some person in the service of the defendants and entrusted by them with the duty of seeing that the ways, works, machinery or plant were in proper condition.

16. It does not allege how or in what way the plaintiff was permanently injured.

17. The allegation that the plaintiff was permanently injured is a conclusion of the pleader.

J. B. BLACKBURN  
JAMES R. OWEN  
Attorneys for Defendants

By

*J. B. Blackburn*

FILED

AUG 5 1965

ALICE I. DICK, CLERK  
REGISTER

ANGUS PAUL,	)	
	)	
Plaintiff,	)	IN THE CIRCUIT COURT OF
	)	
VS	)	BALDWIN COUNTY, ALABAMA
	)	
WILMER LIPSCOMB and CLYDE	)	AT LAW NO. 4911
LIPSCOMB, individually and	)	
WILMER LIPSCOMB and CLYDE	)	
LIPSCOMB, a partnership,	)	
	)	
Defendants.	)	

AMENDED COMPLAINT

Count One

The Plaintiff claims of the Defendants, Ten Thousand Dollars (\$10,000.00) as damages for that on, to-wit, the 10th day of October, 1960, the Plaintiff was in the employment of the Defendants as a laborer on a farm operated by the Defendants in Baldwin County, Alabama, and while so employed, a grain auger which was defective and which was a part of the ways, works, machinery or plant connected with and used in the business of said employers, by reason of said defect fell on him, and as a proximate result and consequence thereof, Plaintiff suffered a fracture of a vertebrae in his back, which caused him pain, suffering and anguish; required hospitalization and medical treatment; caused loss of income; caused permanent disability; and as a proximate consequence of the defect in the ways, works and machinery, Plaintiff has suffered damages as aforesaid. The ways, works and machinery of the Plaintiff hereinabove referred to was defective in that the pulleys thereon were of insufficient size or of improper type; the grain auger was not securely affixed to the frame which allowed it to become disengaged and fall; the spout on the upper end of the grain auger was not of the proper length for use with the storage bins of the Defendants.

Count Two

The Plaintiff claims of the Defendants, Ten Thousand Dollars (\$10,000.00) as damages in that the Defendants negligently provided for his use as an employee of the said Defendants, a

c. g. c.

grain auger which was unsafe, and while using the grain auger provided by the Defendants in the line and scope of his employment as a proximate result and consequence of the negligence of the Defendants as aforesaid, the grain auger fell on him causing a fracture of a vertebrae in his back, which caused him pain, suffering and anguish; required hospitalization and medical treatment; caused loss of income; caused permanent disability; all to the damages of the Plaintiff as aforesaid.

  
Attorney for Plaintiff



ANGUS PAUL,

Plaintiff,

VS.

WILMER LIPSCOMB and CLYDE  
LIPSCOMB, individually, and  
WILMER LIPSCOMB and CLYDE  
LIPSCOMB, a partnership,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 4911

MOTION TO DISMISS FOR WANT OF PROSECUTION

Now come the defendants, by their attorneys, and show unto the court that the defendants' demurrer to the complaint as last amended was sustained on April 30, 1965, and to date the plaintiff has failed to further amend his complaint.

WHEREFORE, defendants move that this cause be dismissed for want of prosecution.

J. B. BLACKBURN  
JAMES R. OWEN  
Attorneys for Defendants

By

*J. B. Blackburn*

FILED  
JUL 9 1965  
JAMES R. OWEN  
REGISTER

ANGUS PAUL,	)	
	)	
Plaintiff,	)	
VS.	)	IN THE CIRCUIT COURT OF
	)	
	)	BALDWIN COUNTY, ALABAMA
WILMER LIPSCOMB and CLYDE	)	
LIPSCOMB, individually, and	)	AT LAW
WILMER LIPSCOMB and CLYDE	)	NO. 4911
LIPSCOMB, a partnership,	)	
	)	
Defendants.	)	

# DEMURRER TO AMENDED COMPLAINT

Now come the defendants and demur to the complaint as last amended (the amended complaint filed on April 22, 1965) and to each and every count thereof, separately and severally, and as grounds of such demurrer assign, separately and severally, the following:

1. It does not state a cause of action.
2. The allegations of the amended complaint are vague, indefinite and uncertain.
3. The allegations of the amended complaint are vague, indefinite and uncertain in that it does not apprise the defendants of what they are called upon to defend.
4. The allegations of the amended complaint are conclusions of the pleader.
5. No facts are alleged to show any negligence on the part of the defendants or either of them.
6. No facts are alleged to show that the defendants or either of them were negligent.
7. No facts are alleged to show the breach of any duty owed by the defendants to the plaintiff.
8. No facts are alleged to show the negligent performance of any duty owed by the defendants to the plaintiff.
9. No facts are alleged to show any defect in the defendants' ways, works, machinery or plant.
10. The allegations of the amended complaint are vague, indefinite and uncertain in that it does not apprise the defendants with sufficient certainty against what act or acts of negligence they are called on to defend.

11. It does not allege that any negligence on the part of the defendants was the proximate cause of the plaintiff's injuries.

12. It does not allege that any defect in the ways, works, machinery or plant connected with or used in the business of the defendants was the proximate cause of the plaintiff's injuries.

13. It does not allege how or in what way the plaintiff was permanently injured.

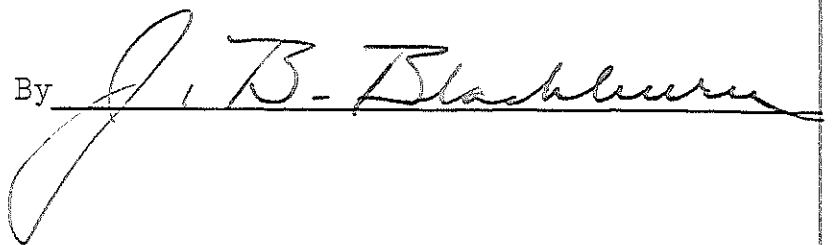
14. The allegation that the plaintiff was permanently injured is a conclusion of the pleader.

15. No facts are alleged to show when the plaintiff was injured.

16. No facts are alleged to show that the plaintiff was injured in Baldwin County, Alabama.

J. B. BLACKBURN  
JAMES R. OWEN  
Attorneys for Defendants

By



FILED

APR 22 1965

ALICE I. DUCK, CLERK  
REGISTER

ANGUS PAUL,	)	
	)	
Plaintiff,	)	
	)	IN THE CIRCUIT COURT OF
VS.	)	
	)	BALDWIN COUNTY, ALABAMA
WILMER LIPSCOMB and CLYDE	)	
LIPSCOMB, individually and	)	AT LAW
WILMER LIPSCOMB and CLYDE	)	NO. 4911
LIPSCOMB, a partnership,	)	
	)	
Defendants.	)	

AMENDED COMPLAINT

The Plaintiff claims of the Defendants, Ten Thousand Dollars (\$10,000.00) as damages for that on, to-wit, the 10th day of October, 1960, the Plaintiff was in the employment of the Defendants as a laborer on a farm operated by the Defendants in Baldwin County, Alabama, and while so employed, a grain auger, which was defective and which was a part of the ways, works, machinery or plant connected with and used in the business of said employers, by reason of said defect fell on him, and as a proximate result and consequence thereof Plaintiff suffered a fracture of a vertebrae in his back, which caused him pain, suffering and anguish; required hospitalization and medical treatment; caused loss of income; caused permanent disability; and as a proximate consequence of the defect in the ways, works and machinery, Plaintiff has suffered damages as aforesaid.

Count Two

The Plaintiff claims of the Defendants, Ten Thousand Dollars (\$10,000.00) as damages in that the Defendants negligently provided for his use as an employee of said Defendants a grain auger which was unsafe and while using the grain auger provided by said Defendants in the line and scope of his employment and as a proximate result and consequence of the negligence of the Defendants as aforesaid the grain auger fell on him causing a fracture of a vertebrae in his back, which caused him pain, suffering and anguish; required hospitalization and medical treatment; caused loss of income; caused permanent disability; all to the damages of Plaintiff as aforesaid.

C. G. C.

**FILED**

4- 22- 1965

ALICE L. DICK, CLERK

*[Signature]*  
Attorney for Plaintiff

ANGUS PAUL,	)	
	)	
Plaintiff,	)	
VS.	)	IN THE CIRCUIT COURT OF
	)	
	)	BALDWIN COUNTY, ALABAMA
WILMER LIPSCOMB and CLYDE	)	
LIPSCOMB, individually, and	)	AT LAW NO. 4911
WILMER LIPSCOMB and CLYDE	)	
LIPSCOMB, a partnership,	)	
	)	
Defendants.	)	

# DEMURRER TO AMENDED COMPLAINT

Now come the defendants and demur to the complaint as last amended (the amended complaint filed on January 21, 1965) and to each and every count thereof, separately and severally, and as grounds of such demurrer assign, separately and severally, the following:

1. It does not state a cause of action.
2. The allegations of the amended complaint are vague, indefinite and uncertain.
3. The allegations of the amended complaint are vague, indefinite and uncertain in that it does not apprise the defendants of what they are called upon to defend.
4. The allegations of the amended complaint are conclusions of the pleader.
5. No facts are alleged to show any negligence on the part of the defendants or either of them.
6. No facts are alleged to show that the defendants or either of them were negligent.
7. No facts are alleged to show the breach of any duty owed by the defendants to the plaintiff.
8. No facts are alleged to show the negligent performance of any duty owed by the defendants to the plaintiff.
9. No facts are alleged to show any defect in the defendants' ways, works, machinery or plant.
10. The allegations of the amended complaint are vague, indefinite and uncertain in that it does not apprise the defendants with sufficient certainty against what act or acts of negligence they are called on to defend.



11. It does not allege that any negligence on the part of the defendants was the proximate cause of the plaintiff's injuries.

12. It does not allege that any defect in the ways, works, machinery or plant connected with or used in the business of the defendants was the proximate cause of the plaintiff's injuries.

J. B. BLACKBURN  
JAMES R. OWEN  
Attorneys for Defendants

By J. B. Blackburn

FILED  
JAN 11 1935  
ALICE I. BOWEN, CLERK  
RECEIVED

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW NO. 4911

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JAN 13 1965

ALICE L. DUCK, CLERK  
RECEIVED

ANGUS PAUL,	)	
	)	
Plaintiff,	)	
	)	IN THE CIRCUIT COURT OF
VS	)	
	)	BALDWIN COUNTY, ALABAMA
WILMER LIPSCOMB and CLYDE	)	
LIPSCOMB, individually and	)	AT LAW NO. 4911
WILMER LIPSCOMB and CLYDE	)	
LIPSCOMB, a Partnership,	)	
	)	
Defendants.	)	

AMENDED COMPLAINT

The Plaintiff claims of the Defendants, Ten Thousand Dollars (\$10,000.00) as damages for that on, to-wit, the 10th day of October, 1960, Plaintiff was employed by the Defendants as a laborer on a farm operated by the Defendants in Baldwin County, Alabama, and while so employed, by reason of a defect in the condition of the ways, works, machinery or plant connected with, or used in the business of said employers, to-wit, a grain auger which was defective having fallen on him, and as a proximate result and consequence thereof, Plaintiff suffered fracture of a vertebrae in his back, which caused him pain, suffering and anguish; required hospitalization and medical treatment; caused loss of income; and caused permanent disability; and as a proximate consequence thereof Plaintiff has suffered damages as aforesaid.

Count Two

The Plaintiff claims of the Defendants, Ten Thousand Dollars (\$10,000.00) damages as a proximate result of the negligence of the Defendants in that he, as an employee of the Defendants in the line and scope of his employment, was operating a grain auger, a part of the ways, works, machinery or plant of the Defendants, which said grain auger was defective and said defect was known to the Defendants, or should have been known to the Defendants and which said grain auger as a result of said defects, fell upon him, causing permanent injury to his back in that he suffered a fracture of a vertebrae in his back, causing

him pain, suffering and anguish, required hospitalization and medical treatment, caused loss of income and permanent disability, all to the damage of the Plaintiff as aforesaid..



Attorney for Plaintiff.

FILED  
JAN 21 1965  
FBI - NEW YORK

ANGUS PAUL,

Plaintiff,

VS.

WILMER LIPSCOMB, ET AL,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 4911

PLEA

Now come the Defendants in the above styled cause and for plea to the complaint heretofore filed in said cause and to each count thereof, separately and severally, says, separately and severally:

1. Not guilty.

2. At the time and place alleged in the complaint, the Plaintiff was himself guilty of negligence which proximately contributed to his alleged injuries and damages in that he then and there, while alone, did move or attempt to move a large, heavy grain auger, and while in the process of moving or attempting to move the said grain auger he caused it to become overbalanced and fall upon him thereby causing his alleged injuries and damages.

J. B. BLACKBURN and JAMES R. OWEN  
Attorneys for Defendants

By 

FILED

FEB 20 1962

ALICE J. DUCK, CLERK  
REGISTER

ANGUS PAUL,

Plaintiff,

VS.

WILMER LIPSCOMB and CLYDE  
LIPSCOMB, individually and  
WILMER LIPSCOMB and CLYDE  
LIPSCOMB, a Partnership,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 4911

AMENDED DEMURRER

Now come the Defendants and amend the demurrer heretofore  
filed in said cause so that as amended the said demurrer will read  
as follows:

"Now come the Defendants and demur to the complaint here-  
tofore filed in said cause and to each count thereof separately  
and severally and as grounds for said demurrer assign the following  
separately and severally:

1. It does not state a cause of action.
2. The allegations of the complaint are mere conclusions  
of the pleader.
3. There is no duty alleged owing by the Defendants to  
the Plaintiff.
4. It is not alleged with sufficient certainty how the  
Plaintiff was injured.
5. It is not alleged that the Plaintiff was injured  
through any negligence of the Defendants.
6. It does not allege any negligence on the part of the  
Defendants.
7. It is vague, indefinite and uncertain in that it does  
not apprise the Defendants with sufficient certainty against what  
act or acts of negligence they are called on to defend.
8. It is vague, indefinite and uncertain in that it does  
not allege which ways, works, machinery or plant connected with,  
or used in the business of the Defendants were defective.

9. It is vague, indefinite and uncertain in that it does not allege how the ways, works, machinery or plant connected with, or used in the business of the Defendants were defective.

10. It does not allege that any of the ways, works, machinery or plant connected with or used in the business of the Defendants were defective.

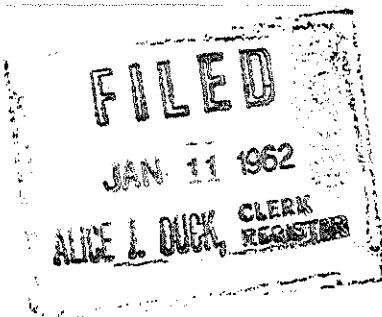
11. It does not allege that any negligence on the part of the Defendants was the proximate cause of the Plaintiff's injuries.

12. It does not allege that any defect in the ways, works, machinery or plant connected with or used in the business of the Defendants was the proximate cause of the Plaintiff's injuries.

13. No facts are alleged to show that the Plaintiff was injured in Baldwin County, Alabama.

J. B. BLACKBURN and JAMES R. OWEN,  
Attorneys for Defendants,

By 



ANGUS PAUL,

Plaintiff,

VS.

WILMER LIPSCOMB and CLYDE  
LIPSCOMB, individually and  
WILMER LIPSCOMB and CLYDE  
LIPSCOMB, a Partnership,

Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW

FILED

4911

JAN. 11 1962

ALICE J. DUCK, CLERK  
REGISTRY

J. B. BLACKBURN  
ATTORNEY AT LAW  
BAY MINETTE, ALABAMA



ANGUS PAUL,

Plaintiff,

VS.

WILMER LIPSCOMB and CLYDE  
LIPSCOMB, individually and  
WILMER LIPSCOMB and CLYDE  
LIPSCOMB, a Partnership,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 4911

DEMURRER

Now come the Defendants and demur to the complaint heretofore filed in said cause and to each count thereof separately and severally and as grounds for said demurrer assign the following separately and severally:

1. It does not state a cause of action.
2. The allegations of the complaint are mere conclusions of the pleader.
3. There is no duty alleged owing by the Defendants to the Plaintiff.
4. It is not alleged with sufficient certainty how the Plaintiff was injured.
5. It is not alleged that the Plaintiff was injured through any negligence of the Defendants.
6. It does not allege any negligence on the part of the Defendants.

J. B. BLACKBURN and JAMES R. OWEN,  
Attorneys for Defendants,

By 

FILED

NOV 10 1961

WILLIAM L. DUCK, CLERK  
REGISTER



STATE OF ALABAMA )  
BALDWIN COUNTY ) . . . . IN THE CIRCUIT COURT . . . . LAW SIDE

TO ANY SHERIFF OF THE STATE OF ALABAMA:-

You are hereby commanded to summon Wilmer Lipscomb and Clyde Lipscomb, individually, and Wilmer Lipscomb and Clyde Lipscomb, a partnership, to appear within thirty (30) days from the service of this writ in the Circuit Court to be held for said County at the place of holding same, then and there to answer the Complaint of Angus Paul.

WITNESS my hand this the 9 day of October, 1961.

*Alfred H. Hinch*  
Clerk

\*\*\*\*\*

- COMPLAINT -

ANGUS PAUL,  
Plaintiff  
vs  
WILMER LIPSCOMB and CLYDE LIPSCOMB, individually, and WILMER LIPSCOMB and CLYDE LIPSCOMB, a partnership,  
Defendants

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW  
NO. 4914

COUNT I

The Plaintiff claims of the Defendants Ten Thousand Dollars, (\$10,000.00) as damages for that on, to-wit, the 10 day of October, 1960, Plaintiff was in the employment of the Defendants as a laborer on a farm operated by the Defendants in Baldwin County, Alabama, and while so employed, by reason of a defect in the condition of the ways, works, machinery, or plant connected with, or used in the business of the said employers, *now* he *a grow ankle having fallen on him and as a proximate result there* suffered from a fracture of a vertebrae in his back which caused him pain, suffering, and anguish, required hospitalization and medical treatment, caused loss of income, and caused

permanent disability, and as a proximate consequence thereof, Plaintiff has suffered damages as aforesaid.

COUNT 2

Plaintiff claims of the Defendants Ten Thousand Dollars (\$10,000.00) damages for that, on, to-wit, the 10 day of October, 1960 while in the employment of the Defendants, and while operating, as a part of his employment, a grain auger, and while acting within the line and scope of his employment, said grain auger did fall upon him, and that he was permanently injured, was required to be hospitalized, did suffer much pain and anguish, did lose income and suffer hardship in that he suffered a fracture of a vertebrae in his back, and Plaintiff further alleges that said injury was caused by reason of defects in the condition of the works, machinery, or plant used in the business of the Defendants, all to Plaintiff's injury as aforesaid.

COUNT 3

The Plaintiff claims of the Defendants, Ten Thousand Dollars (\$10,000.00) as damages as a proximate result of the negligence of the Defendants in that he, as an employee of the Defendants, was operating a grain auger, a part of the works, ways, machinery and plant of the Defendants, which fell upon him causing permanent injury to his back in that he suffered a fracture of a vertebrae in his back which caused him pain, suffering and anguish, required hospitalization and medical treatment, caused loss of income, and caused permanent disability, all as a result of, and proximately caused by a defect in the condition of the works, ways, machinery or plant used in the business of the Defendants as aforesaid.

*[Signature]*  
Attorney for Plaintiff

*Plaintiff demands  
trial by jury.*

*[Signature]*  
*67-10-11-6A*

FILED  
OCT 9 1960  
CLERK  
REGISTER

Served 9 day of Oct 1961  
on 11 day of Oct 1961  
served a copy of the within  
Wilmer Lipscomb

and  
service on

TAYLOR WILKINS, Sheriff  
D.S.

Served 9 day of Oct 1961  
on 11 day of Oct 1961  
served a copy of the within  
Clyde Lipscomb

TAYLOR WILKINS, Sheriff  
D.S.

Served 9 day of Oct 1961  
on 11 day of Oct 1961  
served a copy of the within  
Wilmer Lipscomb  
Clyde Lipscomb  
service on  
TAYLOR WILKINS, Sheriff  
D.S.

Sheriff claims 23.46 miles at  
Ten Cents per mile Total \$2.35, 20  
TAYLOR WILKINS, Sheriff  
BY DEPUTY SHERIFF

Mr. 4911

SUMMONS AND COMPLAINT

\*\*\*\*\*

Angus Paul,

Plaintiff

VS

Wilmer Lipscomb and Clyde  
Lipscomb, individually, and  
Wilmer Lipscomb and Clyde  
Lipscomb, a partnership,

Defendants

\*\*\*\*\*

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

AT LAW

\*\*\*\*\*

CECIL G. CHASON  
ATTORNEY AT LAW  
FOLEY, ALABAMA

FILED  
OCT 9 1961  
ALICE J. BUSH  
CLERK  
REGISTERED

See  
Summons

ANGUS PAUL,	)	
	)	
Plaintiff,	)	IN THE CIRCUIT COURT OF
VS.	)	BALDWIN COUNTY, ALABAMA
	)	
WILMER LIPSCOMB and CLYDE	)	AT LAW
LIPSCOMB, individually, and	)	NO. 4911
WILMER LIPSCOMB and CLYDE	)	
LIPSCOMB, a partnership,	)	
	)	
Defendants.	)	

# DEMURRER TO AMENDED COMPLAINT

Now come the defendants and demur to the complaint as last amended (the amended complaint filed on August 24, 1965) and to each and every count thereof, separately and severally, and as grounds of such demurrer assign, separately and severally, the following:

1. It does not state a cause of action.
2. The allegations of the amended complaint are vague, indefinite and uncertain.
3. The allegations of the amended complaint are vague, indefinite and uncertain in that it does not apprise the defendants with sufficient certainty against what act or acts of negligence they are called on to defend.
4. The allegations of the amended complaint are vague, indefinite and uncertain in that it does not apprise the defendants of what they are called upon to defend.
5. The allegations of the amended complaint are vague, indefinite and uncertain in that no facts are alleged to show how or in what way the works, machinery or plant of the defendants were defective.
6. The allegations of the amended complaint are vague, indefinite and uncertain in that no facts are alleged to show where the pulleys referred to in the amended complaint were located.
7. The allegations of the amended complaint are conclusions of the pleader.
8. No facts are alleged to show any negligence on the part of the defendants or either of them.

9. No facts are alleged to show that the defendants or either of them were negligent.

10. No facts are alleged to show any breach of duty owed by the defendants to the plaintiff.

11. No facts are alleged to show the negligent performance of any duty owed by the defendants to the plaintiff.

12. No facts are alleged to show any defect in the defendants' ways, works, machinery or plant.

13. It does not allege that any negligence on the part of the defendants was the proximate cause of the plaintiff's injuries.

14. It does not allege that any defect in the ways, works, machinery or plant connected with or used in the business of the defendants was the proximate cause of the plaintiff's injuries.

15. No facts are alleged to show that the alleged defect in the ways, works, machinery or plant connected with or used in the business of the defendants arose from, or had not been discovered or remedied, owing to the negligence of the defendants or some person in the service of the defendants and entrusted by them with the duty of seeing that the ways, works, machinery or plant were in proper condition.

16. It does not allege how or in what way the plaintiff was permanently injured.

17. The allegation that the plaintiff was permanently injured is a conclusion of the pleader.

18. No facts are alleged to show that the grain auger fell as the proximate result of a defect therein or of a defect in any other tool, appliance or device forming a part of the ways, works, machinery or plant of the defendants.

19. No facts are alleged to show that the grain auger fell as the proximate result of the negligence of the defendants or of some person in their service entrusted by them with the duty of seeing that their ways, works, machinery or plant were in the proper condition.

20. It does not allege when the defendant was injured.

21. It does not allege where the defendant was injured.

22. No facts are alleged to show any right on the part of the plaintiff to prosecute this action in Baldwin County, Alabama.

J. B. BLACKBURN  
JAMES R. OWEN  
Attorneys for Defendants

By

*J. B. Blackburn*

STATE OF ALABAMA )  
\*  
BALDWIN COUNTY )

I hereby certify that I delivered a copy of the above and foregoing demurrer to Cecil G. Chason, attorney for the plaintiff, on this the 26th day of August, 1965.

*J. B. Blackburn*  
Of counsel for defendants

FILED  
AUG 26 1965  
ALICE L. DICK CLERK  
REGISTER

ANGUS PAUL,	)	
	)	
Plaintiff,	)	
	)	IN THE CIRCUIT COURT OF
VS	)	
	)	BALDWIN COUNTY, ALABAMA
WILMER LIPSCOMB and CLYDE	)	
LIPSCOMB, individually and	)	AT LAW NO. 4911
WILMER LIPSCOMB and CLYDE	)	
LIPSCOMB, a partnership,	)	
	)	
Defendants.	)	

AMENDED COMPLAINT

Count One

The Plaintiff claims of the Defendants, Ten Thousand Dollars (\$10,000.00) as damages for that on, to-wit, the 10th day of October, 1960, the Plaintiff was in the employment of the Defendants as a laborer on a farm operated by the Defendants in Baldwin County, Alabama, and while so employed, a grain auger which was defective by reason of said defect fell on him, and as a proximate result and consequence thereof, Plaintiff suffered a fracture of a vertebrae in his back, which caused him pain, suffering and anguish; required hospitalization and medical treatment; caused loss of income; caused permanent disability. The grain auger referred to was a part of the ways, works, machinery or plant connected with and used in the business of said employers and as a proximate consequence of the defect thereof, Plaintiff has suffered damages as aforesaid. The grain auger above referred to as a part of the ways, works, and machinery of the Plaintiff was defective in that the pulleys thereon were of insufficient size or of improper type; the grain auger was not securely affixed to the frame which allowed it to become disengaged and fall; the spout on the upper end of the grain auger was not of the proper length for use with the storage bins of the Defendants.

Count Two

The Plaintiff claims of the Defendants, Ten Thousand Dollars (\$10,000.00) as damages in that the Defendants negligently provided for his use as an employee of the said Defendants, a



grain auger which was unsafe, and while using the grain auger provided by the Defendants in the line and scope of his employment as a proximate result and consequence of the negligence of the Defendants as aforesaid, the grain auger fell on him causing a fracture of a vertebrae in his back, which caused him pain, suffering and anguish; required hospitalization and medical treatment; caused loss of income; caused permanent disability; all to the damages of the Plaintiff as aforesaid.

  
Attorney for Plaintiff

FILED  
MAY 25 1963

CLERK  
REGISTER

ANGUS PAUL,

Plaintiff,

VS.

WILMER LIPSCOMB and CLYDE  
LIPSCOMB, individually, and  
WILMER LIPSCOMB and CLYDE  
LIPSCOMB, a Partnership,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 4911

SUPERSEDEAS BOND

KNOW ALL MEN BY THESE PRESENTS: That we, Wilmer Lipscomb and Clyde Lipscomb, individually, and Wilmer Lipscomb and Clyde Lipscomb, a Partnership, as Principals, and the undersigned, as Surety, are held and firmly bound unto Angus Paul in the just and full sum of TWELVE THOUSAND FIVE HUNDRED DOLLARS (\$12,500.00) for the payment of which well and truly to be made and done, we bind ourselves, and each of us, our and each of our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 9th day of July, 1962.

The condition of the above obligation is such, that whereas, Angus Paul obtained a judgment in the above styled cause in the Circuit Court of Baldwin County, Alabama, Law Side, on the 16th day of March, 1962, from which judgment the said Wilmer Lipscomb and Clyde Lipscomb, individually, and Wilmer Lipscomb and Clyde Lipscomb, a Partnership, has obtained an appeal returnable to the next term of the Supreme Court of Alabama, which appeal was filed on July 31, 1962.

NOW, THEREFORE, if the said Wilmer Lipscomb and Clyde Lipscomb, individually, and Wilmer Lipscomb and Clyde Lipscomb, a Partnership, shall prosecute the said appeal to effect, and satisfy such judgment as may be rendered against them in said cause by the Supreme Court, then this obligation is to be null and void, otherwise to remain in full force and effect.

And we, and each of us, hereby waive all rights to or claim of exemption as to personal property we or either of us have

now or may hereafter have, under the Constitution and Laws of Alabama and we hereby severally certify that we have property free from all encumbrance to the full amount of the above bond.

WITNESS our hands and seals on this the 9th day of July, 1962.

Wilmer Lipscomb and Clyde Lipscomb

By [Signature]  
As their attorney

WILMER LIPSCOMB and CLYDE LIPSCOMB,  
a Partnership,

By [Signature]  
As their attorney

GUARANTY SECURITY INSURANCE COMPANY (SEAL)

Surety  
By: [Signature]  
Attorney-in-fact

Taken and approved on this  
the \_\_\_\_\_ day of \_\_\_\_\_, 1962

Clerk of the Circuit Court of Baldwin  
County, Alabama.

GUARANTY & SECURITY  
Insurance Co.

MINNEAPOLIS MINNESOTA

#5003-C

GENERAL POWER OF ATTORNEY

Know all men by these Presents, That the GUARANTY SECURITY INSURANCE CO. has made, constituted, and appointed, and by these presents does make, constitute, and appoint

WAYNE VILLADSEN

its true and lawful attorney for it and in its name, place and stead to execute on behalf of the said Company, as surety, bonds, undertakings and contracts of suretyship to be given to

ALL OBLIGEEES

provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed in amount the sum of

TWO HUNDRED FIFTY THOUSAND AND NO/100----- Dollars

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of GUARANTY SECURITY INSURANCE CO. at a meeting duly called and held on the 11th day of October, 1960:

"RESOLVED, that the President, an Executive Vice President or any Vice President of the Company, be, and that each or any of them hereby is, authorized to execute Powers of Attorney qualifying the attorney named in the given Power of Attorney to execute in behalf of GUARANTY SECURITY INSURANCE CO., bonds, undertakings and all contracts of suretyship; and that any Secretary or any Assistant Secretary be, and that each or any of them hereby is, authorized to attest the execution of any such Power of Attorney, and to attach thereto the seal of the Company.

FURTHER RESOLVED, that the signatures of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company when so affixed and in the future with respect to any bond, undertaking or contract of suretyship to which it is attached."

In Witness Whereof GUARANTY SECURITY INSURANCE CO. has caused its official seal to be hereunto affixed, and these presents to be signed by one of its Vice Presidents and attested by its Secretary this 9 day of July, 19 62.

GUARANTY SECURITY INSURANCE CO.

Attest:

By

*W.B. Snyder*  
Secretary



*George M. Hock*  
Vice-President

STATE OF MINNESOTA, }  
COUNTY OF HENNEPIN, } ss.:

On this 9 day of July, 1962, before me personally came George M. Hock, to me known, who being by me duly sworn, did depose and say: that he is a Vice - President of GUARANTY SECURITY INSURANCE CO., the corporation described in and which executed the above instrument; that he knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.



CERTIFICATE

STATE OF MINNESOTA, }  
COUNTY OF HENNEPIN, } ss.:

*Jane M. Van Camp*

JANE M. VAN CAMP  
Notary Public, Hennepin County, Minn.  
My Commission Expires Dec. 11, 1967.

I, the undersigned, the Secretary of GUARANTY SECURITY INSURANCE CO., a Minnesota corporation, DO HEREBY CERTIFY that the foregoing and attached Power of Attorney remains in full force and has not been revoked; and furthermore that the Resolution of the Board of Directors, set forth in the said Power of Attorney, is now in force.

Signed and sealed at the City of Minneapolis. Dated the 9 day of July, 19 62.



*W.B. Snyder*  
Secretary

ANGUS PAUL,

Plaintiff,

VS.

WILMER LIPSCOMB and CLYDE  
LIPSCOMB, individually, and  
WILMER LIPSCOMB and CLYDE  
LIPSCOMB, a Partnership,

Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

AT LAW

NO. 4911

SUPERSEDEAS BOND

III KNOW ALL MEN BY THESE PRESENTS: That we, Wilmer Lipscomb and Clyde Lipscomb, individually, and Wilmer Lipscomb and Clyde Lipscomb, a Partnership, as Principals, and the undersigned, as Surety, are held and firmly bound unto Angus Paul in the just and full sum of TWELVE THOUSAND FIVE HUNDRED DOLLARS (\$12,500.00) for the payment of which well and truly to be made and done, we bind ourselves, and each of us, our and each of our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 9th day of July, 1962.

The condition of the above obligation is such, that whereas, Angus Paul obtained a judgment in the above styled cause in the Circuit Court of Baldwin County, Alabama, Law Side, on the 16th day of March, 1962, from which judgment the said Wilmer Lipscomb and Clyde Lipscomb, individually, and Wilmer Lipscomb and Clyde Lipscomb, a Partnership, has obtained an appeal returnable to the next term of the Supreme Court of Alabama, which appeal was filed on July 31, 1962.

NOW, THEREFORE, if the said Wilmer Lipscomb and Clyde Lipscomb, individually, and Wilmer Lipscomb and Clyde Lipscomb, a Partnership, shall prosecute the said appeal to effect, and satisfy such judgment as may be rendered against them in said cause by the Supreme Court, then this obligation is to be null and void, otherwise to remain in full force and effect.

And we, and each of us, hereby waive all rights to or claim of exemption as to personal property we or either of us have

now or may hereafter have, under the Constitution and Laws of Alabama and we hereby severally certify that we have property free from all encumbrance to the full amount of the above bond.

WITNESS our hands and seals on this the 9th day of July, 1962.

Wilmer Lipscomb and Clyde Lipscomb

By [Signature]  
As their attorney

WILMER LIPSCOMB and CLYDE LIPSCOMB,  
a Partnership,

By [Signature]  
As their attorney

GUARANTY SECURITY INSURANCE COMPANY (SEAL)

Surety  
By:

[Signature]  
Attorney-in-fact

Taken and approved on this  
the 28 day of Aug, 1962

[Signature]  
Clerk of the Circuit Court of Baldwin  
County, Alabama.

GUARANTY & SECURITY  
Insurance Co.  
MINNEAPOLIS MINNESOTA

#5003-C

GENERAL POWER OF ATTORNEY

Know all men by these Presents, That the GUARANTY SECURITY INSURANCE CO. has made, constituted, and appointed, and by these presents does make, constitute, and appoint

WAYNE VILLADSEN

its true and lawful attorney for it and in its name, place and stead to execute on behalf of the said Company, as surety, bonds, undertakings and contracts of suretyship to be given to

ALL OBLIGEEES

provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed in amount the sum of

TWO HUNDRED FIFTY THOUSAND AND NO/100----- Dollars

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of GUARANTY SECURITY INSURANCE CO. at a meeting duly called and held on the 11th day of October, 1960:

"RESOLVED, that the President, an Executive Vice President or any Vice President of the Company, be, and that each or any of them hereby is, authorized to execute Powers of Attorney qualifying the attorney named in the given Power of Attorney to execute in behalf of GUARANTY SECURITY INSURANCE CO., bonds, undertakings and all contracts of suretyship; and that any Secretary or any Assistant Secretary be, and that each or any of them hereby is, authorized to attest the execution of any such Power of Attorney, and to attach thereto the seal of the Company.

FURTHER RESOLVED, that the signatures of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company when so affixed and in the future with respect to any bond, undertaking or contract of suretyship to which it is attached."

In Witness Whereof GUARANTY SECURITY INSURANCE CO. has caused its official seal to be hereunto affixed, and these presents to be signed by one of its Vice Presidents and attested by its Secretary this 9 day of July, 1962.

GUARANTY SECURITY INSURANCE CO.

By

Attest:

*W.B. Snyder*  
Secretary



*George M. Hock*  
Vice-President

STATE OF MINNESOTA, }  
COUNTY OF HENNEPIN, } ss.:

On this 9 day of July, 1962, before me personally came George M. Hock, to me known, who being by me duly sworn, did depose and say: that he is a Vice - President of GUARANTY SECURITY INSURANCE CO., the corporation described in and which executed the above instrument; that he knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.



CERTIFICATE

STATE OF MINNESOTA, }  
COUNTY OF HENNEPIN, } ss.:

*Jane M. Van Camp*

JANE M. VAN CAMP  
Notary Public, Hennepin County, Minn.  
My Commission Expires Dec. 11, 1967.

I, the undersigned, the Secretary of GUARANTY SECURITY INSURANCE CO., a Minnesota corporation, DO HEREBY CERTIFY that the foregoing and attached Power of Attorney remains in full force and has not been revoked; and furthermore that the Resolution of the Board of Directors, set forth in the said Power of Attorney, is now in force.

Signed and sealed at the City of Minneapolis. Dated the 9 day of July, 1962.



*W.B. Snyder*

Secretary

ANGUS PAUL,

VS.

Plaintiff,

WILMER LIPSCOMB and CLYDE  
LIPSCOMB, individually, and  
WILMER LIPSCOMB and CLYDE  
LIPSCOMB, a partnership,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 4911

APPEAL BY DEFENDANTS

Now come the defendants and appeal to the Supreme Court of the State of Alabama from the final judgment rendered in this cause in and by the Circuit Court of Baldwin County, Alabama, Law Side, on, to-wit, the 16th day of March, 1962, and in which cause defendants' motion for a new trial was overruled by the trial court on June 7, 1962.

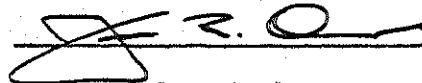
J. B. BLACKBURN  
JAMES R. OWEN

FILED

JUL 31 1962

ALICE J. DUCK, CLERK  
REGISTER

By

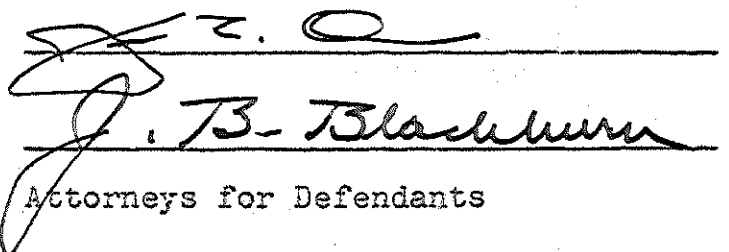


Attorneys for Defendants

\* \* \* \* \*

SECURITY FOR COSTS

We, the undersigned, do hereby acknowledge ourselves as security for the costs of the appeal taken by the defendants in this cause.



J. B. Blackburn  
Attorneys for Defendants

Taken and approved on this the  
31st day of July, 1962.



Alice J. Duck  
Clerk of the Circuit Court



Div. No.

CERTIFICATE OF APPEAL. (Civil Cases,)

No. 4911

Baldwin County, Circuit Court.

ANGUS PAUL

Plaintiff.

vs.

WILMER LIPSCOMB and CLYDE LIPSCOMB, Individually and

WILMER LIPSCOMB and CLYDE LIPSCOMB, a Partnership  
Defendant.

I, Alice J. Duck Clerk of Circuit Court,  
of Baldwin County, Alabama, hereby certify that in the  
cause of Angus Paul plaintiff,

vs.

Wilmer Lipscomb and Clyde Lipscomb, Individually and Wilmer Lipscomb  
and Clyde Lipscomb, a Partnership defendant,

which was tried and determined in this Court on the 16th day of  
March 19 62, in which there was a judgment for Six Thousand, Two  
Hundred Fifty and no/100 - - Dollars, in favor of the plaintiff, (or judgment  
for defendant,) the Defendants on the 31st day of  
July 1962, took an appeal to the Supreme Court  
of Alabama to be holden of and for said State.

I further certify that said Defendants  
filed security for cost of appeal, to the Supreme Court, on  
the 31st day of July 1962, and that James R. Owen, and  
J.B. Blackburn,  
are sureties on the appeal bond.

I further certify that notice of the said appeal was on the  
day of 19 , served on Cecil G. Chason  
as attorney of record for said appellee, and that the amount sued for  
was Ten Thousand and no/100 - - - - - Dollars. (Or certain lands)  
(Or personal property.)

Witness my hand and the seal of this Court, this the 1st  
day of August 1962.

Alice J. Duck  
Clerk of the Circuit Court of  
Baldwin

County, Alabama.

ANGUS PAUL,

Plaintiff,

VS.

WILMER LIPSCOMB and CLYDE  
LIPSCOMB, individually, and  
WILMER LIPSCOMB and CLYDE  
LIPSCOMB, a partnership,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

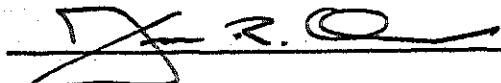
NO. 4911

APPEAL BY DEFENDANTS

Now come the defendants and appeal to the Supreme Court of the State of Alabama from the final judgment rendered in this cause in and by the Circuit Court of Baldwin County, Alabama, Law Side, on, to-wit, the 16th day of March, 1962, and in which cause defendants' motion for a new trial was overruled by the trial court on June 7, 1962.

J. B. BLACKBURN  
JAMES R. OWEN

By



Attorneys for Defendants

\* \* \* \* \*

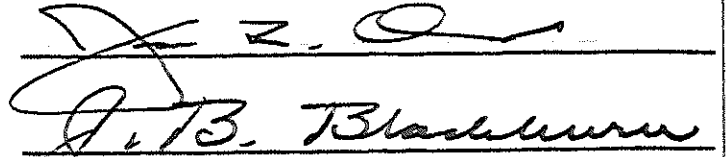
SECURITY FOR COSTS

We, the undersigned, do hereby acknowledge ourselves as security for the costs of the appeal taken by the defendants in this cause.

FILED

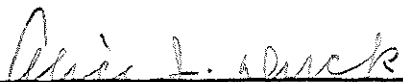
JUL 31 1962

WILDE J. DUCK, CLERK  
REGISTER



Attorneys for Defendants

Taken and approved on this the  
31st day of July, 1962.



Clerk of the Circuit Court

APPEAL BY DEFENDANTS AND  
SECURITY FOR COSTS.

ANGUS PAUL,

VS.

Plaintiff,

WILMER LIPSCOMB and CLYDE LIPS-  
COMB, individually, and WILMER  
LIPSCOMB and CLYDE LIPSCOMB, a  
partnership,

Defendants.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
AT LAW  
NO. 4911

CECIL G. CHASON

ATTORNEY-AT-LAW  
FOLEY, ALABAMA

July 20, 1965

Mr. J. B. Blackburn  
Attorney at Law  
Bay Minette, Alabama

Dear J. B.:

I am enclosing a copy an Amended Complaint in the case of Paul vs. Lipscomb. The original is being sent to Mrs. Duck. If you will ask the Judge to set a time for argument of your Demurrers, I will meet you in his office.

Yours very truly,



C. G. Chason

CGC:jc

Encl.

cc: Mrs. Alice J. Duck  
Clerk of Court  
Bay Minette, Alabama

Honorable Telfair J. Mashburn  
Judge of Circuit Court  
Bay Minette, Alabama

THE STATE OF ALABAMA  
Baldwin County - Circuit Court

TO ANY SHERIFF OF THE STATE OF ALABAMA — GREETING:

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

16th day of March, 1962 ~~Monday~~ ~~in~~ \_\_\_\_\_, 196~~x~~, in a cer-

tain cause in said Court wherein ANGUS PAUL

Plaintiff, and WILMER LIPSCOMB & CLYDE LIPSCOMB, Ind. & Partnership

~~XXXX~~ WILMER LIPSCOMB & CLYDE LIPSCOMB, A Defendant, a judgement was rendered against said  
Defendants

to reverse which Judgment, the said Defendants

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 \_\_\_\_\_, 196\_\_\_\_next, and the necessary bond

having been given by the said Defendants

with James R. Owen, and J.B. Blackburn, sureties,

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

or Cecil G. Chason

\_\_\_\_\_, 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 1st

day of August, A. D., 1962

Attest:

Received 1 day of Aug 1962  
and on 6 day of Aug 1962  
I served a copy of the within Citation  
on C. G. Chason

By service on \_\_\_\_\_

TAYLOR WILKINS, Sheriff

By Robert D. Soley D.S.

Alice J. Duck, Clerk.

Sheriff claims 72 miles at

Ten Cents per mile Total \$ 7.20

TAYLOR WILKINS, Sheriff

BY

DEPUTY SHERIFF

NO. 4911

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CIRCUIT COURT  
Baldwin County, Alabama

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*Angus Paul*

Vs. { Citation in Appeal

*Wilma Lipscomb  
et al.*

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Issued \_\_\_\_\_ day of \_\_\_\_\_, 196\_\_\_\_,

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*To be served on  
C. R. Chason*

OCT 22 1964

THE STATE OF ALABAMA - - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1964-65

1 Div. 91

Wilmer Lipscomb and Clyde Lipscomb,  
Ind. and a Partnership

v.

Angus Paul

Appeal from Baldwin Circuit Court

COLEMAN, JUSTICE.

Defendants appeal from a judgment for plaintiff in  
an action under the Employer's Liability Act, Title 26, §§  
326, et seq.

The complaint contained three counts, all apparently  
intended to state a cause of action under the first subdivision

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of § 326. The court overruled defendants' demurrer to the amended complaint and defendants assign this action as error, severally as to each count.

In Count 1, plaintiff claims damages for that he was in the employment of defendants as a laborer on a farm operated by defendants, and, while so employed, ". . . by reason of a defect in the condition of the ways, works, machinery, or plant connected, with or used in the business of the said employers, to-wit, a grain auger having fallen on him and as a proximate result thereof, HE suffered from a fracture of a vertebrae in his back . . . ." etc.

Defendants argue that each count is defective because it fails to point out which ways, works, machinery, or plant connected with or used in the business of defendants were defective.

A complaint declaring on negligence under the Employer's Liability Act should, in respect of certainty, conform to rules which, under our system, apply to pleading generally. Those rules permit the averment of conclusions, but conclusions, when employed, must ordinarily be accompanied with averments of fact whereon issues can be understood, joined, and tried. When based on defects in the ways, works, or machinery of the employer, the complaint should describe the defects with such particularity as to inform the defendant of what he is called on to defend. L. & N. R. Co. v. Jones, 130 Ala. 456, 470, 30 So. 586.



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In the last cited case, Count 1 contained the averment that plaintiff's intestate had died as a proximate consequence of a defect in the condition of the ways, etc. of defendant, as is averred of plaintiff's injuries in Count 1 of the case at bar, with the further averment that "the appliances used by defendant in or about attempting to get said car upon said rails were not proper and sufficient for that purpose." This court held the count demurrable. To like effect are the holdings in Whatley v. Zenida Coal Co., 122 Ala. 118, 26 So. 124; Woodward Iron Co. v. Johnson, 150 Ala. 365, 43 So. 186; and Richardson v. Vaughn, 208 Ala. 442, 94 So. 514.

We do not find in Count 1 of the instant case any averment pointing out any particular defect in defendants' ways, works, machinery, or plant. While the statute makes the master liable for an injury to one of his servants on account of any defect in his ways, etc., some particular defect must be alleged and proven. It is not sufficient merely to follow the language of the statute without describing any defect. See Shelby Iron Co. v. Bean, 203 Ala. 78, 32 So. 92, and 208 Ala. 264, 93 So. 906.

In the instant case, plaintiff does allege in Count 1: "to-wit, a grain auger having fallen on him and as a proximate result thereof, HE suffered," but this allegation is not an assertion that the auger was defective, or that any other tool or appliance was defective, or that the auger fell as the

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proximate result of a defect in the auger or any other tool, appliance, or device. For that reason, the demurrer to Count 1 should have been sustained.

In Count 2, plaintiff claims damages for that "while operating, as a part of his employment, a grain auger, and while acting within the line and scope of his employment, said grain auger did fall upon him," and "that said injury was caused by reason of defects in the condition of the works, machinery, or plant used in the business of the Defendants, all to Plaintiff's injury as aforesaid."

Here, again, plaintiff fails to point out any defect with sufficient particularity and, for that reason, Count 2 was demurrable.

In Count 3, plaintiff claims "damages as a proximate result of the negligence of the Defendants in that he, as an employee of the Defendants, was operating a grain auger, a part of the works, ways, machinery, and plant of the Defendants, which fell upon him causing permanent injury . . . . all as a result of, and proximately caused by a defect in the condition of the works, ways, machinery or plant used in the business of the Defendants as aforesaid."

The reference to "the negligence of the Defendants" fails to aid the generality of the subsequent averment that plaintiff suffered injury as a result of a defect. While negligence may, in our liberal system of pleading, often be averred as a conclusion, it would still appear that plaintiff

5.

must allege that defendants did or omitted to do, or negligently did, some act of some sort. In order to maintain an action based on negligence, the complaint must show the existence of some duty which defendants owed to plaintiff, and, in addition, must allege a breach of such duty. The complaint should allege a breach or negligent performance of the duty owed to plaintiff by defendants, although the plaintiff need not set out in detail the specific acts constituting the negligence complained of as this would be pleading evidence.

T. C. I. & R. R. Co. v. Smith, 171 Ala. 251, 256, 257, 55 So. 170.

The averment that plaintiff was an employee of defendants certainly shows that defendants owed plaintiff certain duties. We are not sure just which duty plaintiff relies on. We are sure, however, that Count 3 fails to show a breach of any duty. As a common law count for negligence, Count 3 is defective for failure to show any breach of duty. As a count under subdivision 1 of § 326, Count 3 is demurrable for failure to point out the defect.

We have examined the cases relied on by plaintiff to support his assertion that the complaint is not demurrable. In each of the cases cited, the complaint contains an allegation that some named tool, device, appliance, or part of defendants' ways or machinery was defective.

Plaintiff says that the cases cited by defendants "were decided prior to the adoption of this particular act

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in 1911." Examination of the Code of 1896, indicates that § 1749, subdivision 1, of that Code is the same, in all respects here material, as § 326, Title 26, Code 1940. Moreover, the same statute appears as § 2590 of the 1886 Code.

It is unnecessary to consider other assignments of error. Woodward Iron Co. v. Johnson, *supra*.

For the errors pointed out, the judgment is reversed and the cause remanded.

REVERSED AND REMANDED.

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

STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1st Div., No. 91

Wilmer Lipscomb and Clyde Lipscomb, Ind. and a Partnership, Appellant,

v.

Angus Paul, 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 22nd day of

October 1964

J. Render Thomas

Clerk of the Supreme Court of Alabama

THE STATE OF ALABAMA--JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 19<sup>64-65</sup>

To the Clerk of the Circuit Court of

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  
Wilmer Lipscomb and Clyde Lipscomb, Ind. and a Partnership, Appellant,

and

Angus Paul, 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 Su-  
preme Court on the 22nd day of October, 19<sup>64</sup>, that said judgment  
of said circuit Court be reversed and annulled, and the cause remanded to said court  
for further proceedings therein; and that it was further considered, ordered, and adjudged that the  
appellee xxx, Angus Paul, 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 22nd day of

October, 19<sup>64</sup>

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

THE SUPREME COURT OF ALABAMA

October Term, 1964

1 Div., No. 91

Wilmer Lipscomb and Clyde

Lipscomb, Ind. and a Partnership  
Appellant,

vs.

Angus Paul

Appellee.

From Baldwin Circuit Court.

CERTIFICATE OF  
REVERSAL

The State of Alabama,

Baldwin County. } Filed

this 23 day of Oct 1964

W. J. H. H. H.

CECIL G. CHASON

ATTORNEY-AT-LAW  
FOLEY, ALABAMA

August 23, 1965

Mrs. Alice J. Duck  
Clerk of Court  
Bay Minette, Alabama

Dear Mrs. Duck:

I am enclosing herewith Amended Complaint in the case of Paul vs Lipscomb, Case No. 4911, a copy of which is this day being mailed to J. B. Blackburn, attorney for Defendants.

Yours very truly,

  
C. G. Chason

CGC:dc

cc: Mr. J. B. Blackburn



JURY LIST - SPRING SESSION - MARCH 12, 1962

1. Christnacht, Leroy, Civil Service, Lillian
2. Cabaniss, Ray, Newport, Bay Minette
3. Byrd, Carl, Civil Service, Stapleton
4. Bryars, Rudolph M., Brookley Field, Bay Minette
5. Bryhn, Vernon A., Farmer, Elberta
6. Beasley, Wilson C., Merchant, Bay Minette
7. Bishop, Clarence, Farmer, Fairhope
8. Bloxham, Walter, Farmer, Fairhope
9. Brock, L.B., Farmer, Robertsdale
10. Gilbert, B.B., Mechanic, Bay Minette
11. Good, Joe, Farmer, Elberta
12. ~~Quentner, Paul O., Civil Service, Foley~~
13. Gullledge, Carl, REA, Robertsdale
14. ~~Awes, Redue M., Insurance, Bay Minette~~
15. Martin, Albert D., Newspaper, Bay Minette
16. Coleman, John E., Farmer, Bay Minette
17. Corley, Horace, W., Brookley Field, Bay Minette
18. Epperson, Edwin, Civil Service, Foley
19. Erdmann, Rudolph C., Plumber, Mag. Spgs.
20. Fell, Russell, Civil Service, Lillian
21. Hill, Robert, Merchant, Loxley
22. Gage, James J., Farmer, Rabon
23. Jordan, Green, Merchant, Bay Minette
24. Kane, James, Farmer, Loxley
25. Keenan, Ruben A., Oil Dealer, Robertsdale
26. Keuler, Albert, Salesman, Loxley
27. King, Horace, E., Farmer, Mag. Spgs.
28. King, Vernon, Farmer, Robertsdale
29. Stucki, Alfred, Locker Plant Mgr., Elberta
30. Styron, Irby L., Plant Forman, Robertsdale
31. Moorer, Douglas, Clerk, Bay Minette
32. ~~Moorer, Douglas, Clerk, Bay Minette~~
33. Nelson, J.L., Jr., Laborer, Fairhope
34. Nelson, Harry, Post Office, Bay Minette
35. Milton, Ovdrecka, Farmer, Robertsdale
36. Palmer, James J., Farmer, Robertsdale
37. Rhodes, Elbert M., Farmer, Summerdale
38. Roberts, Raymond C., Farmer, Foley
39. Roley, Charlie N., Farmer, Perdido
40. Schrieber, Bill, Carpenter, Foley
41. Stephens, Ray, Banker, Bay Minette
42. Seibert, Fred, Jr., Farmer, Elberta
43. Stewart, Frank, State Emp., Gulf Shores
44. Stuart, Derrill, Contractor, Bay Minette
45. Lamberth, Jack Ogal, Farmer, Bay Minette
46. Strickland, Marvin, Laborer, Bay Minette
47. McDaniel, Schuler, Farmer, Robertsdale
48. Corte, Albert, Farmer, Belforest

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