

FEB 8 1966

ALICE J. DICK, CLERK
REGISTER

KNOX L. MALLETT,)	IN THE CIRCUIT COURT OF
	(
Plaintiff,	*	BALDWIN COUNTY, ALABAMA
)	
vs.	(
	*	AT LAW
MRS. J. C. CALLOWAY,)	
	(
Defendant.	*	CASE NO. 6648

DEMURRER

Comes now the Defendant in the above styled cause and re-files her Demurrer, and each and every ground thereof, separately and severally, to Plaintiff's Complaint as last amended, and to each and every count thereof, separately and severally; and for additional grounds of demurrer, Defendant says:

37. For aught that appears, the said live electric wire was open and obvious to the Plaintiff.

38. For aught that appears, the said live electric wire was then and there a known and obvious danger to the Plaintiff or which should have been known and obvious to him in the exercise of ordinary care.

39. For aught that appears, the said damages and injuries resulted from a danger which was obvious to the Plaintiff or which should have been observed in the exercise of reasonable care.

40. For that the said conduct of the Plaintiff after receiving said shock could not have been foreseen by the Defendant within the exercise of reasonable care.

41. For that the Plaintiff does not aver that anyone working on such pump would likely come in contact with said wire.

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 7th day of Feb, 1966, served a copy of the foregoing pleading on counsel for all parties to this proceeding, by mailing the same by United States mail, properly addressed, and first class postage prepaid.

ARMBRECHT, JACKSON & DeMOUY

By: Brook G. Holmes

BROOK G. HOLMES

KNOX L. MALLETT,)	IN THE CIRCUIT COURT OF
	(
Plaintiff,	*	BALDWIN COUNTY, ALABAMA
)	
VS.	(
	*	AT LAW
)	
MRS. J. C. CALLOWAY,	(
	*	CASE NO. 6648
Defendant.		

P L E A S


Comes now the Defendant in the above styled cause and for answer to the Complaint and to each and every count thereof, separately and severally, files the following separate and several pleas:

1. Not guilty.

2. Defendant avers that at the time and place complained of in the Plaintiff's Complaint, the Plaintiff, KNOX L. MALLETT, so negligently conducted himself in and about the place in which he was to perform said work as to cause or allow a part of the said housing of said pump to strike the Plaintiff in his left eye, thereby proximately contributing to his own injuries. Wherefore, Plaintiff cannot recover.


JAMES R. OWEN

ARMBRECHT, JACKSON & DeMOUY

By: 
BROOX G. HOLMES
Attorneys for Defendant

CERTIFICATE OF SERVICE

I, BROOX G. HOLMES, do hereby certify that I have served a copy of the foregoing Pleas on Norborne Stone, Esquire, Attorney for the Plaintiff, by mailing a copy to him by United States mail, first class postage prepaid and properly addressed to his office in Bay Minette, Alabama, on this 20th day of May, 1966.

FILED
MAY 23 1966
CLERK
ALBANY, ALABAMA


BROOX G. HOLMES

We the jury find in favor of
the defendant

Wm D. Cooke
Perman

66458

KNOX L. MALLETT,

X

Plaintiff,

X

vs.

X

IN THE CIRCUIT COURT OF

X

BALDWIN COUNTY, ALABAMA

AT LAW

MRS. J. C. CALLOWAY,

X

Defendant.

X

AMENDED COMPLAINT

Comes now the Plaintiff in the above styled cause, by his attorneys and amends the complaint heretofore filed in this cause so that the same shall read as follows:

COUNT ONE:

The Plaintiff claims of the Defendant the sum of Thirty Thousand Dollars (\$30,000.00) for that, on heretofore, to-wit: the 28th day of April, 1965, while the Plaintiff was engaged in the course of his employment by the Defendant in installing a pump on the property of the Defendant in Baldwin County, Alabama, about five miles West of the intersection of Alabama Highway 59 and the Fort Morgan Parkway the Defendant negligently injured the Plaintiff by failing to provide the Plaintiff a safe place in which to perform his work in this: The Defendant negligently permitted a live electric wire to be strung to a pine tree in the immediate vicinity of the pump on which the Plaintiff was working in such a manner or condition that anyone who came in contact with the same would receive an electrical shock and while the Plaintiff was working on such pump he came in contact with such electric wire and received an electrical shock which caused him to drop the housing of the pump and from which housing a

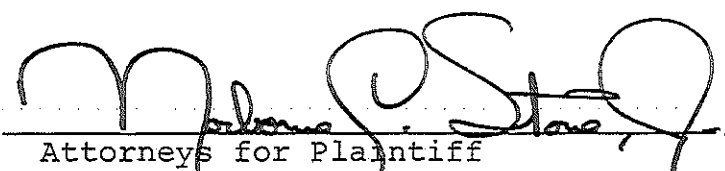
piece or part thereof became disengaged and hit the Plaintiff in the left eye causing him to lose the same. And the Plaintiff further alleges that as a proximate consequence and result of the negligence of the Defendant aforesaid he was caused to suffer much pain and suffering and will continue to suffer much pain and suffering, he was caused to incur medical expenses and hospital bills in and about the care and treatment of his eye and he will, in the future, be caused to incur medical expenses, that he was hospitalized and lost a great length of time from his work, that he had to undergo surgery in an attempt to save his eyeball and he had to undergo surgery to have the same removed and he lost the sight of his left eye, all to his damages aforesaid. And the Plaintiff further alleges that all of his injuries and damages were the proximate consequence and result of the Defendant in negligently failing to provide him a safe place in which to work, wherefore he brings this suit and asks judgment in the above amount.

CHASON, STONE & CHASON

By 
Attorneys for Plaintiff

The Plaintiff demands a trial by jury of this cause.

CHASON, STONE & CHASON

By: 
Attorneys for Plaintiff

FILED

FEB 11 1966

ALICE L. DICK, CLERK
REGISTER

CERTIFICATE OF SERVICE

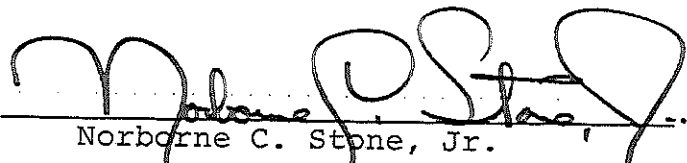
I, Norborne C. Stone, Jr., one of the Solicitors of Record for the Plaintiff in the above styled cause do hereby certify that I have this day mailed a copy of the foregoing amended complaint to Hon. Broox G. Holmes, attorney for the Defendant, by United States mail, postage prepaid and properly addressed to him at his office at P. O. Box 290, Mobile, Alabama.

Witness my hand in Bay Minette, Alabama, this 3rd day of February, 1966.

FILED

2-4-1966

AME L DICK, CLERK
REGISTER


Norborne C. Stone, Jr.

KNOX L. MALLETT,)	IN THE CIRCUIT COURT OF
	(
Plaintiff,	*	BALDWIN COUNTY, ALABAMA
)	
vs.	(
	*	AT LAW
MRS. J. C. CALLOWAY,)	
	(
Defendant.	*	CASE NO. 6648

D E M U R R E R

Comes now the Defendant, MRS. J. C. CALLOWAY, and demurs to Plaintiff's Complaint as a whole, and to each and every count thereof, separately and severally, upon the following separate and several grounds:

1. Said count wholly fails to state a cause of action.
2. The allegations contained in said count are vague, uncertain and indefinite.
3. The allegations in said count are vague, misleading and confusing and do not apprise Defendant of what she is called upon to defend.
4. From aught that appears from the allegations of said count, there was no legal duty owing from Defendant to the Plaintiff.
5. For that it affirmatively appears from the allegations of said count, that there was no legal duty owing from Defendant to the Plaintiff.
6. For aught that appears from the allegations of said count, there was no breach of any legal duty owing from Defendant to the Plaintiff.

7. Said count does not aver sufficient facts to state a cause of action.

8. Said count seeks to set out the quo modo constituting the negligence of Defendant without alleging sufficient facts in support thereof.

9. Said count wholly fails to set forth sufficient facts as to how Defendant was negligent.

10. There is no characterization of any alleged act of Defendant as a negligent act.

11. For aught that appears, the injury to the Plaintiff was not caused by Defendant's alleged negligence.

12. For that negligence, as averred, is a mere conclusion of the pleader.

13. For aught appearing from the allegations of said count, Plaintiff was not at a place where he had a right to be at the time and place of said accident.

14. For aught appearing from the allegations of said count, there was no proximate cause between the alleged negligence of Defendant and the injury to the Plaintiff.

15. For aught that appears, there was no causal connection between the alleged negligence of Defendant and the injury and damages of the Plaintiff.

16. For that it affirmatively appears that there was no causal connection between the alleged negligence of Defendant and the injury and damages to the Plaintiff.

17. For aught that appears, there was no physical causation between the alleged negligence of Defendant and the injury and damages to the Plaintiff.

18. Because it affirmatively appears from the allegations of said count that there was an intervening cause between the alleged negligence of Defendant and the injury and damages to the Plaintiff.

19. For that said count exacts too high a degree of care from Defendant.

20. For that there is an insufficient allegation of the place of the alleged accident in said count.

21. For aught that appears, the said conduct of Defendant was only a remote cause or a mere antecedent occasion or condition of the said injury of Plaintiff.

22. For aught that appears, the alleged negligence of the Defendant served only to create a condition or status on which the negligence of the Plaintiff operated in producing his own injury.

23. For that it affirmatively appears that the Plaintiff was guilty of negligence which proximately contributed to his said injury and damages.

24. For that the facts averred do not constitute negligence as a matter of law.

25. For that it does not sufficiently appear how or in what manner Defendant was guilty of negligence.

26. For that the quo modo of Defendant's alleged negligence

as set forth in said count and the facts therein averred are insufficient to constitute negligence as a matter of law.

27. For aught that appears from the allegations of said count, Defendant did not own or control the said electric wire which allegedly caused said injury.

28. The averments of said count affirmatively show that the injury complained of was proximately caused by an act for which Defendant was in no way responsible or legally liable.

29. The averments of said count affirmatively show that the injury complained of was proximately caused by the Plaintiff's own act.

30. Insufficient facts are set out to justify the conclusion that the said electric wire was in a dangerous or unsafe condition.

31. For aught that appears from said Complaint, said wire was maintained at a place where it was not probable or likely that persons in the class of the Plaintiff would come in contact therewith.

32. For aught that appears, Defendant had no actual or constructive control over the alleged wire at the time of said accident.

33. For aught that appears, the alleged unsafe place to work was not dangerous to persons exercising ordinary care.

34. For that the allegation, "Defendant negligently injured the Plaintiff" is a mere conclusion of the pleader without sufficient facts averred in support thereof.

35. For that the allegation, "And the Plaintiff further alleges that all of his injuries and damages were the proximate consequence

and result of the Defendant in negligently failing to provide him a safe place in which to work" is a mere conclusion of the pleader without sufficient facts averred in support thereof.

36. For aught that appears, the Defendant did not know or have reason to know that said live electric wire was strung to said pine tree.

ARMBRECHT, JACKSON & DeMOUY

By: 
BROOX G. HOLMES

CERTIFICATE OF SERVICE

I, BROOX G. HOLMES, do hereby certify that I have served a copy of the foregoing Demurrer on Norborne C. Stone, Jr., Esq., Attorney for Plaintiff, by mailing the same by United States mail, first class postage prepaid and properly addressed, on this 14th day of September, 1965.


BROOX G. HOLMES

FILED
SEP 15 1965
ALICE J. DUCK, CLERK
REGISTER

STATE OF ALABAMA

IN THE CIRCUIT COURT - LAW SIDE

BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon Mrs. J. C. Calloway to appear within thirty 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 Knox L. Mallett.

Witness my hand this 20 day of August, 1965.

Alice D. Luck
Clerk

KNOX L. MALLETT,	X	
Plaintiff,	X	IN THE CIRCUIT COURT OF
vs.	X	BALDWIN COUNTY, ALABAMA
MRS. J. C. CALLOWAY,	X	AT LAW
Defendant	X	6648

COUNT ONE:

The Plaintiff claims of the Defendant the sum of Thirty Thousand Dollars (\$30,000.00) for that, on heretofore, to-wit: the 28th day of April, 1965, while the Plaintiff was engaged in the course of his employment by the Defendant in installing a pump on the property of the Defendant in Baldwin County, Alabama, about five miles West of the intersection of Alabama Highway 59 and the Fort Morgan Parkway the Defendant negligently injured the Plaintiff by failing to provide the Plaintiff a safe place in which to perform his work in this: the Defendant negligently

permitted a live electric wire to be strung to a pine tree in the immediate vicinity of the pump on which the Plaintiff was working and while he was working on such pump he came in contact with such electric wire and received a shock which caused him to drop the housing of the pump and from which housing a piece or part thereof became disengaged and hit the Plaintiff in the left eye causing him to lose the same. And the Plaintiff further alleges that as a proximate consequence and result of the negligence of the Defendant aforesaid he was caused to suffer much pain and suffering and will continue to suffer much pain and suffering, he was caused to incur medical expenses and hospital bills in and about the care and treatment of his eye and he will, in the future, be caused to incur medical expenses, that he was hospitalized and lost a great length of time from his work, that he had to undergo surgery in an attempt to save his eyeball and he had to undergo surgery to have the same removed all to his damages aforesaid. And the Plaintiff further alleges that all of his injuries and damages were the proximate consequence and result of the Defendant in negligently failing to provide him a safe place in which to work, wherefore he brings this suit and asks judgment in the above amount.

CHASON, STONE & CHASON

By:


Attorneys for Plaintiff

The Plaintiff demands a trial by jury of this cause.

CHASON, STONE & CHASON

By:


Attorneys for Plaintiff

FILED

AUG 20 1965

ALICE J. DUCK, CLERK
REGISTER

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Executed Sept. 8, 1965

Received 20 day of Aug. 1965
and on 8th day of Sept. 1965
I served a copy of the within 8 & c
on Mrs. J. C. Calloway

By service on above

TAYLOR WILKINS, Sheriff

By J. M. Eastman D. S.
Gulf Shores, Ala.

Sheriff claims 10.0 miles at

Ten Cents per mile Total \$ 10.00

TAYLOR WILKINS, Sheriff

BY J. M. Eastman
DEPUTY SHERIFF

Gulf Shores

6648

KNOX L. MALLET, Plaintiff,

VS

MRS. J. C. CALLOWAY, Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW

SUMMONS AND COMPLAINT

FILED

AUG 20 1965

Alice J. Duck, CLERK
REGISTER

CHASON, STONE & CHASON
ATTORNEYS AT LAW

JURY LIST - DECEMBER 12, 1966

1. Allen, Norman W., Farmer, Gateswood
2. Andrews, Robert L., Farmer, Foley
3. Borch, Anthony J., Farmer, Elberta
4. Cane, R. Gray, Oil Driller, Bay Minette
5. Childress, Guy, Farmer, Robertsdale
6. Clark, Percy, Mill Worker, Stockton
7. Clay, Harold, Mechanic, Fairhope
8. Colgin, Ned, Farmer, Summerdale
9. Cooper, Grady, Farmer, Ebeanon
10. Cooper, Nolan F., Merchant, Rosinton
11. Dubose, James W., Gov't Emp., Gulf Shores
12. Gamble, V. Jack, Salesman, Bay Minette
13. Gibson, Frank, Mechanic, Bay Minette
14. Graham, James R., Laborer, Bay Minette
15. Grantham, Donald R., Farmer, Mag. Spgs.
16. Gwathmey, William H., Clerk, Robertsdale
17. Hobbles, Thomas F., Gulf Gas. Vent, Robertsdale
18. Jenkins, Marvin E., Civil Service, Stapleton
19. Jones, George, Business Operator, Daphne
20. Kene, James, Farmer, Loxley
21. Kriss, Frank, Farmer, Silverhill
22. Langer, Stanley, Machinist, Robertsdale
23. Lazzari, Joe, Jr., Farmer, Belforest
24. Lazzari, John, Farmer, Belforest
25. Mosley, Rufus, Farmer, Stapleton
26. Novaty, Milton J., Farmer, Robertsdale
27. Owen, L.B., Jr., Merchant, Bay Minette
28. Rhodes, Charles R., Farmer, Foley
29. Rhodes, Albert W., Farmer, Summerdale
30. Ribben, Everett, Brookley, Bay Minette
31. Ribben, Ray, Paper Mill, Bay Minette
32. Roberson, Matt, Laborer, Robertsdale
33. Robinson, Odell, Contractor, Bay Minette
34. Sedlock, Fred J., Farmer, Robertsdale
35. Sheppard, Lloyd, Farmer, Foley
36. Simon, Arthur, Farmer, Belforest
37. Smith, Columbus, Mill Worker, Stockton
38. Veal, Arthur, Apprentice, Summerdale
39. Wilson, George, Airport Oper., Foley
40. Wilsey, James, Clerk, Loxley
41. Yelting, Bailey, Sr., Carpenter & Bricklayer, Daphne
42. Mason, Jimmy, Salesman, Fairhope
43. Davidson, W.E., Turpentine Farmer, Bay Minette
44. Marino, Percy, Mobile Housing Board, Daphne
45. Heil, William, Farmer, Elberta
46. Bryars, Charles Henry, Jr., Farmer, Stockton
47. Childress, Mynatt, Farmer, Foley
48. Cook, John D., Merchant, Montrose
49. Cooper, Charles, Farmer, Rosinton
50. Tolava, Clarence, Farmer, Mag. Spgs.
51. McLeod, George, State Emp., Gulf Shores
52. Hodgeson, William H., Jr., Manufacturer, Bay Minette
53. Lamar, Reuben, Laborer, Foley

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