

359

MARVIN D. WILSON,

Plaintiff,

VS.

MALBIS PLANTATION, INC.,  
a Corporation,

Defendant.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

AT LAW.

NO. 359.

DEMURRER.

Comes the Defendant in the above entitled cause and demurs to each count of the Complaint filed herein, separately and severally, and for grounds of demurrer sets down and assigns separately and severally the following:

1. It does not state facts sufficient to constitute a cause of action against this Defendant.

2. It affirmatively appears that this cause of action is barred by the statute of limitations.

3. For that negligence is therein alleged merely as a conclusion of the pleader.

4. It affirmatively appears that the ladder alleged to be defective is not permanent and a part of the ways, works, machinery or plant of the Defendant.

5. It does not allege that Defendant or its agent, servant or employee negligently ordered Plaintiff to go upon the said ladder.

6. It is vague, indefinite and uncertain in that it does not apprise this Defendant with sufficient certainty against what act or acts of negligence Defendant is called on to defend.

7. It does not appear with certainty what duty, if any, Defendant may have owed to the Plaintiff.

8. It does not appear with sufficient certainty wherein Defendant violated any duty which it may have owed to the Plaintiff.

9. It does not sufficiently appear that the Defendant owed any duty to the Plaintiff which the Defendant negligently failed to perform.

10. The averments set up, if true, do not show any liability on the part of the Defendant herein.

11. The pleader sets out in what said negligence consisted, and the facts set out do not show negligence.

12. There does not appear sufficient casual connection between Defendant's said breach of duty and Plaintiff's injury and damages.

J. T. Blackburn

Attorney for Defendant.

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Duch  
7.73  
RECORDED

DEMURRER.

Marvin D. Wilson,  
Plaintiff,

VS.

Malbis Plantation, Inc., a  
Corporation,  
Defendant.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.  
AT LAW. NO. 359.

Filed 18th June 1937  
R. S. Duch

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

MARVIN D. WILSON,  
Plaintiff.

VS

MALBIS PLANTATION, INC.,  
a Corporation,  
Defendant.

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

AMENDED BILL OF COMPLAINT:

Comes now the Plaintiff by his attorney, Orvis M. Brown, and with leave of the Court first had and obtained files this his amended bill of complaint.

COUNT ONE:

The Plaintiff claims of the Defendant, Malbis Plantation, Inc., a corporation, the sum of TWENTY THOUSAND DOLLARS (\$20,000.) damages for the breach of an oral contract entered into by the Defendant by its agent or servant or legal representative acting within the scope of his authority on or about the middle of October 1935, by the terms of which contract the Defendant agreed with the Plaintiff that the Plaintiff would be provided with a place in which to live and that he would be paid from month to month an amount not less than Seventeen Dollars (\$17.00) per month, this agreement running from month to month, and the payments to be received from month to month; and that the Plaintiff was to be employed by the Defendant as long as and until he was pronounced well by doctors and that his physical ability and physical condition was pronounced one hundred per cent and that he was in the same physical condition that he was before the injuries received on the Defendant's premises. And that the Defendant agreed that the terms, conditions and provisions of this contract should be renewed from month to month until he was completely recovered from the above stated injuries; that it was agreed and understood between the parties to the said contract that in the event that the Plaintiff did not regain his physical ability to a sufficient degree to perform manual labor that they would provide from month to month an income to the Plaintiff of not less than Seventeen

Dollars (\$17.00) per month with a place provided for his family to live; and that on, to-wit, during the month of June 1936 the Defendant demanded that the Plaintiff vacate the premises if he could not do the manual labor which was required of him and at which time the Plaintiff was compelled to vacate the premises of the Defendant. Hence this suit. The facts out of which this contract arose are that heretofore on, to-wit, on or about July 20th, 1935 the Defendant was engaged in the operation of a farm or plantation at Daphne, Alabama called Malbis Plantation, Inc., and on the said date the Plaintiff was in the services or employment of the said Defendant in the following capacity, to-wit, as a farm laborer, and while engaged in the discharge of his duties as such employee, and at this particular time in the capacity as a dairyhand and while so employed painting a silo the ladder upon which the Plaintiff was working gave way or broke throwing the Plaintiff or causing him to fall upon the cement foundation below injuring him internally, badly injuring his face and head, injuring his eyes, fracturing his skull, breaking his right arm in two places, breaking his left arm in one place, crushing his chest, fracturing several ribs, injuring his back, was rendered for a long time unable to work and earn money, to-wit, for two months, and was permanently injured in both arms, and his head and eyes, and permanently injured otherwise, and was put to much expense for medicine and medical services in his treatment of said injuries and the Plaintiff avers that his said wounds, injuries, suffering and loss of time was approximately a consequence and caused by reason of the negligence of a certain person, to-wit, Mr. Steve Papageorse, whose name is otherwise unknown to the Plaintiff, who was in the services or employment of the said Defendant and who had had superintendence entrusted to him, while in the exercise of such superintendence and the said negligence consisting in this, viz: said Steve Papageorse negligently permitted the said ladder upon which the Plaintiff was to work to be defective or to be improperly supported while the Plaintiff was working or negligently permitted Plaintiff to work on this dangerous instru-

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ment, and that the said Steve Papageorse negligently permitted the use of the said ladder by the said Plaintiff which he knew was liable to fall with the said Plaintiff, without warning or notifying said Plaintiff of such danger.

COUNT TWO

The Plaintiff claims of the Defendant TWENTY THOUSAND DOLLARS (\$20,000.) as damages for the breach of an oral contract entered into by the Defendant, by its agent, or servant or legal representative acting within the scope of his authority on or about to-wit, the middle of October, 1935, by the terms of which contract Defendant agreed with the Plaintiff that the Plaintiff was to live on their premises and if he were able was to do light manual labor. Defendant agreed with Plaintiff that these were to be furnished to the Defendant and that they were to guarantee him a monthly income of not less than Seventeen Dollars (\$17.00) per month payable monthly, this contract to run from month to month until the Plaintiff regained his physical strength and his physical condition was completely sound. And the Plaintiff avers that as a part of the contract he was to live on the premises and to do light tasks about the premises of the Defendant at times when his physical condition permitted. and the Plaintiff avers that he did live on the premises of the Defendant from month to month and received his pay from month to month under this contract until June 1936 and did the light work according to the terms of the said contract, but was prevented from further complying with the terms of the said contract by reason of his physical disability to do manual labor due to injuries previously received in this: on July 20th, 1935 the Defendant was engaged in the business of operating in Baldwin County, Alabama, a farm known as Malbis Plantation, and in connection therewith operated a dairy, and on to-wit, said day and date, in the said state and county Plaintiff was a servant or employee of the defendant, in the service or business of the defendant, and then and there, while in the performance of his duties

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as such servant or employee, he was upon a certain ladder, and while said plaintiff was upon said ladder aforesaid in the performance of his duties, the said ladder gave way because of a defect causing him to fall to the ground or pavement below, and thereby as an approximate result thereof plaintiff was injured internally, badly injured on his face and head, injuring his eyes, fracturing his skull, breaking his right arm in two places, breaking his left arm in one place, crushing his chest, fracturing several ribs, injuring his back, and was rendered for a long time unable to work and earn money, to-wit for two months, and was permanently injured otherwise, and was permanently injured in both arms, and his head and eyes, and was put to much expense for medicine and medical services in the treatment of said injuries. And Plaintiff avers that his said injuries were received as an approximate result and consequence of a defect in the condition of the ways, works or equipment used in connection with the farm or business of the Defendant, which defect arose from, or had not been corrected or discovered owing to, the negligence of defendant, or of some person in the service of Defendant and intrusted with the duty of seeing that the ways, works or equipment were in proper condition, in this: That the said ladder on which the said Plaintiff was instructed to work was defective. That whenever the Defendant discovered that the Plaintiff could not work further doing manual labor due to his physical disability although up to the said time Plaintiff had complied with his part of said contract and although at the time of the said condition Plaintiff offered to proceed under this contract and was ready and willing to stay on the premises, the Defendant refused to pay him further unless he performed manual labor for him which his health would not permit due to the above statement of facts and because of the above act of the Defendant by breaching this contract, Plaintiff was caused to suffer damages, in that he lost the profits which would have accrued to him had he been permitted to carry out his part of the said contract. Plaintiff further alle-

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ges that he could have done light work on this farm or plantation of the Defendant which he was ready and willing to do at all times but the Defendant refused to permit him to do this work and demanded of him work that he knew he could not do as his physical condition would not permit and at which time the Defendant refused to pay him further and demanded that he move from the premises. Plaintiff further alleges that he would and could have remained under this contract from month to month until he had recovered his strength and in a sufficient manner in which he could have earned a living elsewhere for which under the contract he would have received Seventeen Dollars per month from month to month, which under the terms of the contract had he been allowed to continue to work under the said contract he could have probably earned Twenty Thousand Dollars (\$20,000.), all of which he lost by reason of the Defendant's breach of the contract as aforesaid.

#### COUNT THREE

Plaintiff claims of the Defendant TWENTY THOUSAND DOLLARS (\$20,000.) as damages for that to-wit, about the middle of October 1935 the Defendant was engaged in the business of operating in Baldwin County, Alabama a farm known as Malbis Plantation and on to-wit the said day and date in the said State and County the Plaintiff was a servant or employee of the Defendant in the services or business of the Defendant and then and there while in the performance of his duties as such servant or employee while under the direction and supervision of one Steve Papageorse, whose name is otherwise unknown to the Plaintiff and who was in the service of or employment of the said Defendant and who had the superintendence entrusted to him and Plaintiff while obeying the orders of said superintendent, Steve Papageorse, whose name is otherwise unknown to the Plaintiff to whose orders the Plaintiff was bound to conform and while confirming said Plaintiff was ordered upon a certain ladder by the said superintendent Steve Papageorse, whose name is otherwise unknown to the Plaintiff, and while confirming to the said orders the Plaintiff ascended the



said ladder which said ladder gave way because of a defect while the Plaintiff was thereon, causing the Plaintiff to fall to the ground or pavement below, and thereby the Plaintiff was injured internally, badly injured on face and head, injuring his eyes, fracturing his skull, breaking his right arm in two places, breaking his left arm in one place, crushing his chest, fracturing several ribs, injuring his back and permanently injuring both arms and his head and eyes and was otherwise permanently injured and was rendered for a long time unable to work and earn money and was put to much expense and trouble for medical services and medicine in the treatment of said injuries. And Plaintiff avers that his said injuries were received as the negligence of the Defendant and the said negligence consisting in, to-wit: the said superintendent of the Defendant Steve Papageorse, whose name is otherwise unknown to the Plaintiff, ordered Plaintiff to go upon said ladder knowing at the time of giving said order that the said ladder was defective and that it was dangerous to go upon and did not warn the Plaintiff thereof. After the Plaintiff had recovered sufficient strength to return to this Plantation the Defendant entered into a contract with the Plaintiff whereby the Defendant was to furnish the Plaintiff a house in which to live on these premises and was to permit him to do light manual work about the plantation for which he contracted to pay him not less than Seventeen Dollars per month, this contract extending from month to month and the Plaintiff had completely recovered from the injuries above set out, and the consideration of this contract being the mutual promises of the parties hereto and the Plaintiff performed under this contract for a period of about nine months until which time the Defendant demanded of him that he do manual labor which was impossible to perform under his condition and which the Plaintiff attempted to perform but was physically unable to do, and the Defendant demanded that he vacate the premises and refused to pay him further under this contract and that the Plaintiff in this cause has been ready and willing

at all times to perform any tasks under this contract which his physical condition would permit and that the Plaintiff's physical condition at this time has not recovered to a sufficient amount to permit him to do manual labor that requires much strength. And that due to the breakh of this contract the Plaintiff has suffered damages in the amount of Twenty Thousand Dollars.

COUNT FOUR

The Plaintiff claims of the Defendant the sum of TWENTY THOUSAND DOLLARS (\$20,000.) as damages and avers that on, to-wit, July 20th, 1935 the Defendant operated a farm in Baldwin County, Alabama known as Malbis Plantation, Inc., and in connection therewith operated a dairy which said dairy was part of the said farm, the said dairy was in charge of and control of Defendant's employee and under the supervision of one Steve Papageorse, whose name is otherwise unknown to the Plaintiff, who was in the employment of the Defendant, and who had superintendence of said employees and had management and control of the said dairy which was entrusted to him as superintendent on the said farm, and on said date Plaintiff was in the employment of Defendant on said farm as a farm hand or laborer, that on the said date said Plaintiff was engaged in the painting of a silo for the Defendant in or on the said farm under the supervision or/and control of said Steve Papageorse, whose name is otherwise unknown to the Plaintiff, and said foreman or superintendent was engaged in the painting of the silo of the Defendant and the Plaintiff was directed or instructed by the said superintendent of the Defendant to go upon a certain ladder to paint the silo on said farm, Plaintiff while obeying the instruction of the said superintendent of the Defendant in the said superintendency notwithstanding Plaintiff's peril and danger was on said ladder, said superintendent at the time acting in the capacity as superintendent for the Defendant permitted or allowed or directed Plaintiff to go upon said ladder which he knew was defective or should have known was defective, which said ladder gave way because of said defect

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while the Plaintiff was thereon at the instructions of the said superintendent, thereby throwing or causing Plaintiff to fall to the ground or pavement below and as an approximate result or consequence thereof Plaintiff was injured to-wit: injuring Plaintiff internally, badly injuring face and head, fracturing skull, injuring eyes, breaking right arm in two places, breaking his left arm, crushing his chest, fracturing several ribs, injuring back, which all constitute permanent injuries and otherwise permanently injuring him, and was rendered unable to work and is still unable to work and was put to much expense and trouble for medicine and medical services in the treatment of said injuries and is still encountering said expense. Hence this suit. And the Plaintiff avers his said damages and injuries are caused as aforesaid, owing to and as an approximate consequence of the negligence of the said Steve Papageorse, whose name is otherwise unknown to Plaintiff, Defendant's said superintendent, on its said farm while the said superintendent was in the exercise of the superintendency entrusted to him by the Defendant, which negligence consisted in this: that said superintendent knowing the Plaintiff's peril and danger and well knowing the defective condition of said ladder negligently suffered the Plaintiff to go upon said ladder which was defective. That after this occurrence the Defendant entered into a contract with the Plaintiff whereby the terms and conditions and provisions of said contract the Defendant was to furnish the Plaintiff with house to live in and guarantee him an income of not less than Seventeen Dollars per month payable from month to month and contract to run from month to month until the Plaintiff had completely recovered one hundred percent from the above said injuries which have continued and will still continue and which the Plaintiff has reason to believe are permanent injuries and that for and in consideration of this service the Plaintiff was to live on the premises and perform any light task in and around the plantation that his physical condition will permit and that Plaintiff continued in

in this position for a period of about eight months receiving his pay from month to month and after which time the Defendant demanded that he do manual labor which was beyond his ability to do or must move from his premises, and the Plaintiff attempted to do this labor as required by the Defendant but which his physical condition did not permit and that the Defendant refused to pay him further under this contract and demanded that he vacate the premises and that the Plaintiff has been ready and willing at all times to perform under the terms and conditions of this contract and that as a result of the breach of this contract the Plaintiff has suffered damages to the amount of Twenty Thousand Dollars. Hence this suit.

COUNT FIVE

The Plaintiff claims of the Defendant the sum of TWENTY THOUSAND DOLLARS (\$20,000.) as damages and avers that on to-wit about the middle of October, 1935 the Defendant entered into a contract with the Plaintiff whereby the Defendant was to furnish the Plaintiff with a house in which to live and whereby according to the terms of the said contract the Defendant agreed and guaranteed the Plaintiff an income of not less than Seventeen Dollars per month payable monthly and the terms and conditions of the contract running from month to month and by the terms of the said contract the Defendant guaranteed this income until such time as the Plaintiff had regained his physical strength and completely recovered from the injuries received while on the Defendant's farm. And the Plaintiff avers and alleges that he has performed all the requirements which were required of him by the Defendant and has performed for a period of approximately eight months under this contract after which time the Defendant without any cause or fault on the part of the Plaintiff breached the terms of the conditions of this contract by the failure to make the payments provided and required that the Plaintiff move from the premises if he could not do the manual labor required of him. The Plaintiff alleges and avers that he had not recovered his

physical strength at that time and that he still has not recovered his physical strength from the injuries received from which this contract arose, that he has been ready and willing at all times to perform under this contract and the Defendant has refused and still refused to perform hereunder all to the damage of the Plaintiff in the amount of Twenty Thousand Dollars. Hence this suit. Plaintiff alleges and avers that the facts out of which this contract arose are to-wit: on to-wit, July 20th, 1935, Defendant operated a farm in Baldwin County, Alabama, known as the Malbis Plantation, Inc., and in connection therewith operated a dairy farm which said dairy is a part of said farm and operated in connection therewith and the said dairy is in charge of or control of Defendant's employee, and under the supervision of one Steve Papageorse, whose name is otherwise unknown to Plaintiff and who was in the employment of the Defendant, and who had superintendence of said employees and the management and control of this portion of the farm was entrusted to him as superintendent on the date, and on the said date the Plaintiff was in the employment of said Defendant on the said farm as a farm hand or laborer, and that on the said date said Plaintiff was engaged in the painting of a silo for the Defendant in or on the said farm, under the supervision or/and control of the said Steve Papageorse, whose name is otherwise unknown to the Plaintiff, and the said foreman or superintendent was engaged in painting said silo of the Defendant or superintending the same, and the said Defendant while so painting said silo on the said farm under the control of the said superintendent Plaintiff avers that the Defendant conducted the same in a careless heedless manner in willful and/or wanton disregard for the rights and safety of others without due caution and inspection and endangering the life of this Plaintiff, and the Defendant by directing and commanding this Plaintiff to go upon a ladder which was defective and the said defective ladder while the Plaintiff was thereupon engaged in painting the said silo for and at the request and instruction of the said Defendant through his said superintendent gave way thereby throwing or causing the Plaintiff

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to fall to the ground or the pavement below and as an approximate consequence thereof, Plaintiff was injured to-wit: injuring the Plaintiff internally, badly injuring his face and head, fracturing his skull, injuring his eyes, breaking his arm, right arm, in two places, breaking his left arm, crushing his chest, fracturing several ribs, injuring his back, which all constitute permanent injuries, and otherwise permanently injuring the Plaintiff, and he was rendered unable to work and is still unable to work and will continue for his life time to be unable to work and was put to much expense for medicine and medical services in the treatment of said injuries, and is still incurring said expenses. Hence this suit. By the said negligent operating, superintending, heedless and willful in operating the said farm and furnishing defective equipment thereon by the said Defendant was a direct and approximate cause of the injuries aforesaid.

  
Attorney for Plaintiff.

RECORDED

*Duch*

359

8-128-

MARVIN D. WILSON,  
PLAINTIFF,

VS.

NALBIS PLANTATIONS, INC  
DEFENDANT.

AMENDED BILL OF COMPLAINT

Filed this 16 day *Sept.* 1937

*R. S. Duch*  
Clerk-Register

STATE OF ALABAMA

BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon MALBIS PLANTATION, INC., a Corporation, 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 the same, then and there to answer the complaint of MARVIN D. WILSON.

Witness my hand, this 24<sup>th</sup> day of May, 1937.

R. S. Duck

Clerk.

MARVIN D. WILSON,

Plaintiff

VS.

MALBIS PLANTATION, INC.,  
a Corporation,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW.

C O M P L A I N T

COUNT ONE:

Plaintiff claims of the Defendant TWENTY THOUSAND DOLLARS (\$20,000.00) as damages, for this: That heretofore on, to-wit, on or about July 20th, 1935 the Defendant was engaged in the operation of a farm or plantation at Daphne, Alabama called Malbis Plantation, Inc., and on the said date the Plaintiff was in the services or employment of the said Defendant in the following capacity, to-wit, as a farm laborer, and while engaged in the discharge of his duties as such employee, and at this particular time in the capacity as a dairyhand and while so employed painting a silo the ladder upon which the Plaintiff was working gave way or broke throwing the Plaintiff or causing him to fall upon the cement foundation below injuring him internally, badly injuring his face and head, injuring his eyes, fracturing his skull, breaking his right arm in two places, breaking his left



arm in one place, crushing his chest, fracturing several ribs, injuring his back, was rendered for a long time unable to work and earn money, to-wit, for two months, and was permanently injured in both arms, and his head and eyes, and permanently injured otherwise, and was put to much expense for medicine and medical services in his treatment of said injuries and the Plaintiff avers that his said wounds, injuries, suffering and loss of time was approximately a consequence and caused by reason of the negligence of a certain person, to-wit, Mr. Steve Papageorse, whose name is otherwise unknown to the Plaintiff, who was in the services or employment of the said Defendant and who had had superintendence entrusted to him, while in the exercise of such superintendence and the said negligence consisting in this, viz: said Steve Papageorse negligently permitted the said ladder upon which the Plaintiff was to work to be defective or to be improperly supported while the Plaintiff was working or negligently permitted Plaintiff to work on this dangerous instrument, and that the said Steve Papageorse negligently permitted the use of the said ladder by the said Plaintiff which he knew was liable to fall with the said Plaintiff, without warning or notifying said Plaintiff of such danger.

Count Two

The Plaintiff claims of the Defendant Twenty Thousand Dollars (\$20,000.00) as damages, for that, to-wit, on July 20th, 1935, the defendant was engaged in the business of operating in Baldwin County, Alabama, a farm known as Malbis Plantation, and in connection therewith operated a dairy, and on to wit, said day and date, in the said state and County Plaintiff was a servant or employe of the defendant, in the service or business of the defendant, and then and there, while in the performance of his duties as such servant or employe, he was upon a certain ladder, and while said plaintiff was upon said ladder aforesaid in the performance of his duties, the said

- ladder gave way because of a defect causing him to fall to the ground or pavement below, and thereby as a proximate result thereof plaintiff was injured internally, badly injured on his face and head, injuring his eyes, fracturing his skull, breaking his right arm in two places, breaking his left arm in one place, crushing his chest, fracturing several ribs, injuring his back, and was rendered for a long time unable to work and earn money, to-wit for two months, and was permanently injured otherwise, and was permanently injured in both arms, and his head and eyes, and was put to much expense for medicine and medical services in the treatment of said injuries. And plaintiff avers that his said injuries were received as a proximate result and consequence of a defect in the condition of the ways, works, or equipment used in connection with the farm or business of the defendant, which defect arose from, or had not been corrected or discovered owing to, the negligence of defendant, or of some person in the service of defendant and intrusted with the duty of seeing that the ways, works, or equipment, were in proper condition, in this: That the said ladder on which the said plaintiff was instructed to work was defective.

County Three.

The Plaintiff claims of the Defendant Twenty Thousand Dollars (\$20,000.00) as damages, for that, to-wit, on July 20th, 1935, the defendant was engaged in the business of operating an Baldwin County, Alabama, a farm known as Halbis Plantation, and on to-wit, said day and date, in the said State and County, Plaintiff was a servant or employee of the defendant, in the service or business of the defendant, and then and there, while in the performance of his duties as such servant or employee while under the direct supervision of one Steve Papageorse, whose name is otherwise unknown to the Plaintiff, who was in the service or employment of the said defendant and who had the superintendence entrusted to him, and Plaintiff while obeying the orders of the said superintendant Steve Papageorse, whose name is other-

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-wise unknown to the Plaintiff, to whose orders the Plaintiff was bound to conform, and while confirming, said Plaintiff was ordered upon a certain ladder by the said superintendent, Steve Papageorse, whose name is otherwise unknown to the Plaintiff, and while conforming to said orders, the Plaintiff ascended the said ladder, which said ladder gave way because of a defect while the Plaintiff was thereon, causing the Plaintiff to fall to the ground or pavement below, and thereby the Plaintiff was injured internally, badly injured on his face and head, injuring his eyes, fracturing his skull, breaking his right arm in two places, breaking his left arm in one place, crushing his chest, fracturing several ribs, injuring his back, and permanently injured both arms, and his head and eyes, and was otherwise permanently injured, and was rendered for a long time unable to work and earn money, and was put to much expense for medicine and medical services in the treatment of said injuries. and Plaintiff avers that his said injuries were received as the negligence of the said defendant, and the said negligence consisted in to-wit: the said Superintendent of the defendant Steve Papagerose, whose name is otherwise unknown to the plaintiff, ordering Plaintiff to go upon said ladder, knowing at the time of giving said order that said ladder was defective and that it was dangerous to go upon, and did not warn the plaintiff thereof.

County Four:

The Plaintiff claims of the defendant the sum of Twenty Thousand (\$20,000.00) Dollars as damages, and avers that on to-wit, July 20th, 1935, defendant operated a Farm in Baldwin County, Alabama, known as the Mulbis Plantation Inc., and in connection therewith operated a Dairy, which said Dairy is a part of the said farm, and said Dairy is in charge of or controll of defendant's employes, and under the supervision of one Steve Papageorse, whose name is otherwise unknown to the plaintiff

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- who was in the employment of the defendant, and who had superintendence of said employes, and said management and control of said Dairy was intrusted to him as superintendent on said farm, that on said date plaintiff was in the employment of defendant on said farm as a farm hand or laborer, that on said date said plaintiff was engaged in the painting of a Silo for the defendant in or on the said farm, under the supervision or, and control of said Steve Papageorge, whose name is otherwise unknown to the plaintiff, the said foreman or superintendent and was engaged in painting Silo of the defendant and the plaintiff was directed or instructed by the said superintendent of the said defendant to go upon a certain ladder to paint the said Silo on said farm, plaintiff while obeying the instruction of the said superintendent of the defendant, and the said superintendent not withstanding plaintiff's peril and dangerous position on said ladder, said superintendent, at the time acting in the capacity as superintendent for the defendant permitted or allowed or directed plaintiff to go upon said ladder which he knew was defective or should have known was defective, which said ladder gave way because of said defective condition while the plaintiff was thereon at the instruction of the said superintendent, thereby throwing or causing plaintiff to fall to the ground or pavement below, and as a proximate consequence thereof, plaintiff was injured, to-wit;

Injuring Plaintiff internally, badly injuring his face and head, fracturing his skull, injuring his eyes, breaking his right arm in two places, breaking his left arm, crushing his chest, fracturing several ribs, injuring his back, which all constitute permanent injuries, and otherwise permanently injuring him, and he was rendered unable to work and is till unable to work, and was put to much expense for medicine and medical services in the treatment of said injuries and is still encountering said expenses. Hence this suit. And plaintiff avers his said damages and injuries are caused as aforesaid, owing to and as a proximate consequence

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-of the negligence of said Steve Papageorse, whose name is otherwise unknown to the Plaintiff, Defendant's said superintendent, on its's said farm, while the said superintendent was in the exercise of superintendence intrusted to him by the defendant, and which negligence consisted in this: That the said superintendent, well knowing the plaintiff's peril and dangerous position, and well knowing the defective condition of said ladder, negligently suffered the plaintiff to go upon said defective ladder.

COUNT FIVE

Plaintiff claims of the Defendant the sum of Twenty Thousand Dollars (\$20,000.) as damages and avers that on to-wit July 20th, 1935, Defendant operated a farm in Baldwin County, Alabama, known as the Malbis Plantation, Inc. and in connection therewith operated a dairy farm, which said dairy is a part of said farm and operated in connection therewith and the said dairy is in charge of or control of Defendant's employee, and under the supervision of one Steve Papageorse, whose name is otherwise unknown to Plaintiff and who was in the employment of the Defendant, and who had superintendence of said employees and the management and control of this portion of the farm was intrusted to him as superintendent on the date, and on the said date the Plaintiff was in the employment of the said Defendant on the said farm as a farm hand or laborer, and that on the said date said Plaintiff was engaged in the painting of a silo for the Defendant in or on the said farm, under the supervision or/and control of the said Steve Papageorse, whose name is otherwise unknown to the Plaintiff, the said foreman or superintendent was engaged in painting said silo of the Defendant or superintending the same, and the said Defendant while so painting said silo on the said farm under the control of the said superintendent Plaintiff avers that the Defendant conducted the same in a careless, heedless manner in willful and/or wanton disregard for the rights and safety of others

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without due caution and inspection and endangering the life of this Plaintiff, and the Defendant by directing and commanding this Plaintiff to go upon a ladder which was defective and the said defective ladder while the Plaintiff was thereupon engaged in painting the said silo for and at the request and instruction of the said Defendant through his said superintendent gave way thereby throwing or causing the Plaintiff to fall to the ground or the pavement below and as an approximate consequence thereof, Plaintiff was injured to-wit: injuring the Plaintiff internally, badly injuring his face and head, fracturing his skull, injuring his eyes, breaking his arm, right arm, in two places, breaking his left arm, crushing his chest, fracturing several ribs, injuring his back, which all constitute permanent injuries, and otherwise permanently injuring the Plaintiff, and he was rendered unable to work and is still unable to work and will continue for his life time to be unable to work and was put to much expense for medicine and medical services in the treatment of said injuries, and is still incurring said expenses. Hence this suit. By the said negligent operating, superintending, heedless and willful <sup>disregard.</sup> in operating the said farm and furnishing defective equipment thereon by the said Defendant was a direct and approximate cause of the injuries aforesaid.

  
Attorney for the Plaintiff.

Summers & Company  
369

Wm. D. Wilson,  
Plaintiff,

vs.  
Mallie Plantations, Inc.,  
a corporation,  
Defendant.

RECORDED  
Date 8-78

Filed May 27, 1937.  
R. A. Baker, Clerk

ORVIS M. BROWN  
ATTORNEY-AT-LAW  
ROBERTSDALE, ALABAMA

May 25 1937  
by serving copy of within Summons and  
Complaint on

Jas. Mallie  
As President of  
Mallie Plantations, Inc.

M. H. Mallie  
C. N. Anderson Deputy Sheriff

MARVIN D. WILSON,  
Plaintiff,

VS.

MALBIS PLANTATION, INC.,  
a Corporation,  
Defendant.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.  
AT LAW. NO. 359.

MOTION TO STRIKE.

Comes the Defendant in the above entitled cause and moves to strike the Amended Complaint filed herein, and as grounds therefor sets down and assigns separately and severally, the following:

1. It is irrelevant.
2. It is irrelevant because the Amended Complaint constitutes an entire departure from the original complaint filed by Plaintiff in said cause, in that it sets up a new and distinct cause of action.
3. It is irrelevant because it sets up an entirely new cause of action.
4. It constitutes an entire departure from the case made by the original complaint.

J. T. B. Bashburn.  
Attorney for Defendant.



*359 Duch*  
RECORDED  
*8-14-41*

MOTION TO STRIKE.

MARVIN D. WILSON,

Plaintiff,

VS.

MALBIS PLANTATION, INC.,  
a Corporation,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

AT LAW.

NO. 359.

*Filed December 14, 1937*  
*R. E. Duch, Clerk*

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