

**SUMMONS AND COMPLAINT**

**THE STATE OF ALABAMA**  
**BALDWIN COUNTY**

Circuit Court, Baldwin County

} No.....

.....TERM, 19.....

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon RESTER & COLEMAN ENGINEERS, INC. and  
HENRY DUKES, d/b/a DUKES CONSTRUCTION COMPANY

to appear and plead, answer or demur, within thirty days from the service hereof, to the complaint  
filed in the Circuit Court of Baldwin County, State of Alabama, at Bay Minette against RESTER &  
COLEMAN ENGINEERS, INC. & HENRY DUKES, d/b/a Defendant.....

by GEORGE E. JOHNSON  
..... Plaintiff.....

Witness my hand this 26 day of August 1971  
Ernie S. Blackmon Clerk

249-1-71

8868-9 7

No. 18,008 (2) Page.....

THE STATE OF ALABAMA  
BALDWIN COUNTY  
CIRCUIT COURT

GEORGE E. JOHNSON

Plaintiffs

TCR 831K Mr. Rester, Pres.  
vs.  
RESTER & COLEMAN ENGINEERS, INC.  
& HENRY DUKES, d/b/a  
DIX  
Defendants

SUMMONS AND COMPLAINT

FILED

Filed ..... 19.....

AUG 26 1971

Clerk

EUNICE B. BLACKMON  
CIRCUIT CLERK

AUG 27 1971

TAYLOR WILKINS  
SHERIFF

Taylor Wilkins, Jr.

Plaintiff's Attorney

Defendant's Attorney

Henry Dukes  
1418 Forrest Avenue  
Saraland ALABAMA

Defendant lives at  
Rester & Coleman Engineers, Inc  
66 Midtown Parkway West  
Mobile, Alabama

Received In Office  
AUG 27 1971

TAYLOR WILKINS  
SHERIFF

19.....

Sheriff

I have executed this summons

this .....  
by leaving a copy with

30 Day of Aug 1971  
31 Day of Aug 1971  
I served a copy of this within  
on Rester & Coleman Eng.  
by service on Mr. Rester, Pres.  
By RAY D. BRIDGES, Shr

EXECUTED

This day of Sept, 1971  
by serving a copy of the within on  
Henry Dukes  
RAY D. BRIDGES, Sheriff

By Taylor Wilkins, Jr.  
Sheriff

Deputy Sheriff

|  |   |                         |
|--|---|-------------------------|
| GEORGE E. JOHNSON  | ( | IN THE CIRCUIT COURT OF |
| PLAINTIFF  | ( | BALDWIN COUNTY, ALABAMA |
| VS   | ( | AT LAW                  |
| RESTER & COLEMAN ENGINEERS,<br>INCORPORATED, and HENRY DUKES,<br>d/b/a DUKES CONSTRUCTION CO., | ( |                         |
| DEFENDANTS   | ( | CASE NO: 10,008         |

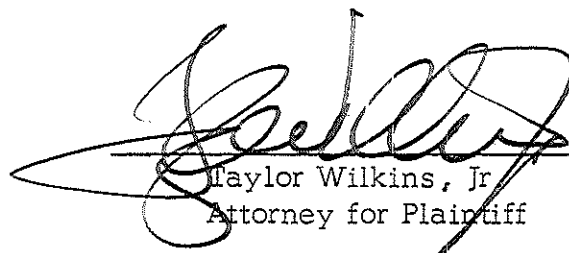
I.

The Plaintiff claims of the Defendants, ONE THOUSAND (\$1,000.00) DOLLARS damages for a trespass by the Defendant, Rester & Coleman Engineers, Incorporated, a corporation, by and through the Defendant, Henry Dukes, who was at the time of said trespass doing business under the name and style of Dukes Construction Company, on the following tract of land, viz: That real property located on the West side of the intersection of Alabama Highway #225 and U. S. Highway #31, lying in Baldwin County, Alabama, and being in the possession of the Plaintiff, and for proximately injuring said real property as follows, to-wit: Damaging and destroying shrubbery belonging to the Plaintiff and leaving a sunken depression upon said real property in the course of constructing a water or sewer line across the property in possession of the Plaintiff on, to-wit, September 25, 1970.

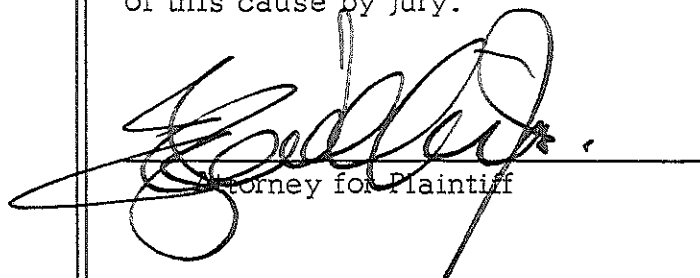
II.

The Plaintiff claims of the Defendants, ONE THOUSAND (\$1,000.00) DOLLARS as damages for a trespass by the Defendant, Henry Dukes, who was at the time of said trespass doing business under the name and style of Dukes Construction Company, and who was at the time of the trespass acting by and through his employees, agents or servants who were acting within the line and scope of their employment on the following tract of land, viz: That real property located on the West side of the intersection of Alabama Highway #225 and U. S. Highway #31, lying in Baldwin County, Alabama, and being in the possession of the Plaintiff, and for proximately injuring said real property as follows, to-wit: Damaging and destroying shrubbery belonging to the Plaintiff and leaving

a sunken depression upon said real property in the course of constructing a water or sewer line across the property in possession of the Plaintiff, on, to-wit, September 25, 1970.

  
Taylor Wilkins, Jr.  
Attorney for Plaintiff

Plaintiff respectfully demands a trial  
of this cause by jury.

  
Attorney for Plaintiff

FILED

AUG 26 1971

EUNICE B. BLACKMON CIRCUIT  
CLERK

|  |   |                         |
|--|---|-------------------------|
| GEORGE E. JOHNSON,   | : | IN THE CIRCUIT COURT OF |
| Plaintiff  | : | BALDWIN COUNTY, ALABAMA |
| vs.  | : | AT LAW                  |
| RESTER & COLEMAN ENGINEERS,<br>INCORPORATED, and HENRY DUKES,<br>d/b/a DUKES CONSTRUCTION CO., | : |                         |
| Defendants   | : | CASE NO. 10,008         |

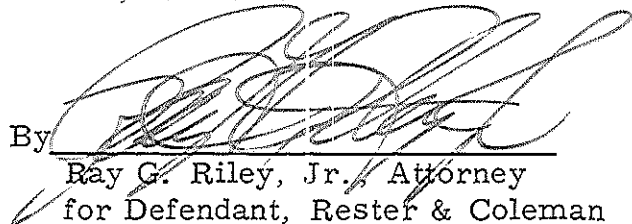
DEMURRER

Comes now the Defendant, Rester & Coleman Engineers, Incorporated, one of the defendants in the above styled cause, and demurs to the plaintiff's complaint and each count thereof, separately and severally, and as grounds for said demurrer, assigns the following, separately and severally:

1. For the complaint is vague, indefinite and uncertain in that the statement "by and through" does not adequately describe the relationship between the defendants joined in this cause.
2. For the complaint fails to allege that this defendant was acting through its agents, servants or employees who were then and there acting within the line and scope of their authority as agents, servants or employees of this defendant at the time of the alleged trespass.
3. For the complaint does not allege that the defendant Henry Dukes was an agent, servant or employer of this defendant.
4. For the land upon which the trespass is alleged to have been committed is not described with sufficient certainty.
5. For the complaint fails to allege in what manner this defendant committed trespass upon property in the alleged possession of the plaintiff.
6. For that Count II totally fails to state a cause of action against this defendant.

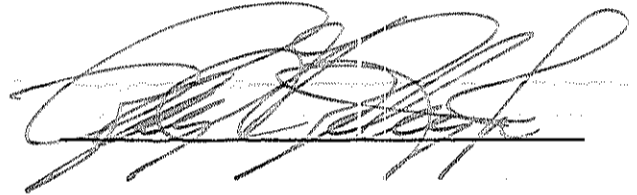
7. For that Count II totally fails to identify this defendant as one which committed the alleged trespass claimed by the plaintiff.

TONSMEIRE & MCFADDEN  
2210 First National Bank Building  
Mobile, Alabama 36602

By   
Ray G. Riley, Jr., Attorney  
for Defendant, Rester & Coleman  
Engineers, Incorporated

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing demurrer has been served on Taylor Wilkins, Jr, attorney for plaintiff, by mailing a copy of same to him at his office in Bay Minette, Alabama, on this the 8th day of September, 1971.



FILED

SEP 9 1971


EUNICE B. BLACKMON CIRCUIT  
CLERK

|                                |   |                         |
|--------------------------------|---|-------------------------|
| GEORGE E. JOHNSON,             | ) | IN THE CIRCUIT COURT OF |
| Plaintiff,                     | ) |                         |
| VS.                            | ) | BALDWIN COUNTY, ALABAMA |
| RESTER & COLEMAN ENGINEERS,    | ) | AT LAW                  |
| INCORPORATED, and HENRY DUKES, | ) |                         |
| d/b/a DUKES CONSTRUCTION CO.,  | ) |                         |
| Defendants.                    | ) | CASE NO. 10,008         |

DEMURRER

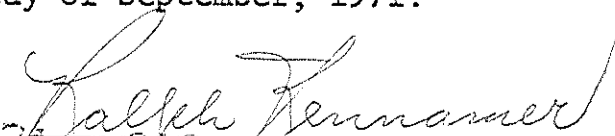
Comes now the Defendant, HENRY DUKES, d/b/a DUKES CONSTRUCTION CO., one of the Defendants in the above styled cause, and demurs to the Plaintiff's complaint and each count thereof, separately and severally, and as grounds for said demurrer, assigns the following, separately and severally:

1. For the complaint is vague, indefinite and uncertain in that the statement "by and through" does not adequately describe the relationship between the defendants joined in this cause.
2. For the land upon which the trespass is alleged to have been committed is not described with sufficient certainty.
3. For the complaint fails to allege in what manner this defendant committed trespass upon property in the alleged possession of the Plaintiff.

  
 \_\_\_\_\_  
 Ralph Kennamer, Attorney for Defendant,  
 HENRY DUKES, d/b/a DUKES CONSTRUCTION  
 CO.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing demurrer has been served on Taylor Wilkins, Jr., Attorney for Plaintiff, by mailing a copy of same to him at his office in Bay Minette, Alabama, on this the 16th day of September, 1971.

  
 \_\_\_\_\_  
 RICE 810

FILED

SEP 20 1971

EUNICE B. BLACKMON  
 CLERK

|   |   |                         |
|---|---|-------------------------|
| GEORGE E. JOHNSON   | ( | IN THE CIRCUIT COURT OF |
| Plaintiff   | ( | BALDWIN COUNTY, ALABAMA |
| VS  | ( | AT LAW                  |
| RESTER & COLEMAN ENGINEERS,<br>INCORPORATED, and HENRY DUKES,<br>d/b/a DUKES CONSTRUCTION CO. | ( |                         |
| Defendants  | ( | CASE NO: 10,008         |

AMENDED COMPLAINT

Comes now the Plaintiff in the above cause and amends his bill of complaint heretofore filed by striking therefrom, Count II of said bill of complaint by this amendment, and amending Count I as follows:

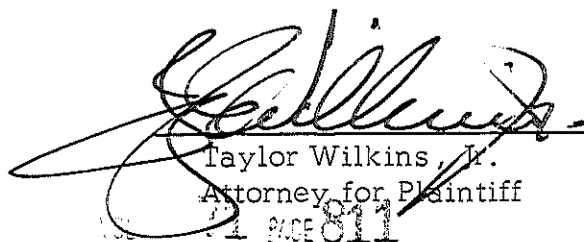
I.

The Plaintiff claims of the Defendants, jointly and severally, the sum of ONE THOUSAND (\$1,000.00) DOLLARS, as damages for a trespass by the Defendants, their agents, servants or employees, who were acting within the line and scope of their employment, on the following tract of land, viz.:

Commencing at the center of Section 30, Township 4 South, Range 2 West, Baldwin County, Alabama, run South a distance of 142.6 feet to a point on the North right of way line of U.S. Highway #31; thence along the North right of way line of U.S.

Highway #31, run North 69° 16' East a distance of 608.95 feet to the POINT OF BEGINNING of the property herein described; thence run North, 20° 44' West a distance of 150 feet; thence run North, 69° 16' East a distance of 200 feet; thence run South 20° 44' East a distance of 150 feet to a point on said North right of way line of U.S. Highway #31; thence run South, 69° 16' West a distance of 200 feet to the POINT OF BEGINNING, Baldwin County, Alabama, including that portion of land now in possession of the Plaintiff lying between the North right of way line of U.S. Highway #31, and U.S. Highway #31 itself,

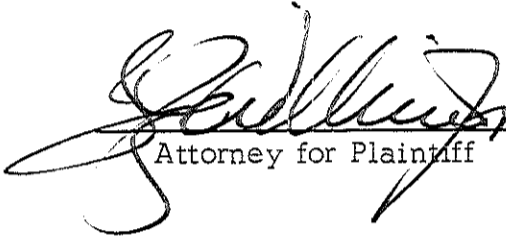
and being in the possession of the Plaintiff, and for approximately injuring said real property as follows, to-wit: damaging and destroying shrubery belonging to the Plaintiff and leaving a sunken depression upon said real property in the course of the construction of a water or sewer line across the property in possession of the Plaintiff, on, to-wit, September 25, 1970.

  
 Taylor Wilkins, Jr.  
 Attorney for Plaintiff  
 PAGE 811



CERTIFICATE OF SERVICE

I, the undersigned, Taylor Wilkins, Jr., do hereby certify that I have on this 2nd day of February, 1973, forwarded a true and exact copy of the foregoing amended complaint to Mr. Ralph Kennamer, Attorney at Law, Mobile, Alabama, and Ray G. Riley, Jr., Attorney at Law, Mobile, Alabama, attorneys of record for the Defendants, by mailing the same in the United States Post Office, properly addressed, with first class postage paid thereon.

  
Attorney for Plaintiff

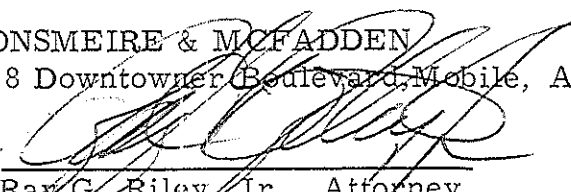
FILED  
FEB 5 1973  
EUNICE B. BLACKMON CIRCUIT CLERK

GEORGE E. JOHNSON, : IN THE CIRCUIT COURT OF  
 Plaintiff, : BALDWIN COUNTY, ALABAMA  
 vs. :  
 RESTER & COLEMAN ENGINEERS, : AT LAW  
 INCORPORATED, and HENRY DUKES, :  
 d/b/a DUKES CONSTRUCTION CO. :  
 Defendants. : CASE NO. 10,008

DEMURRER

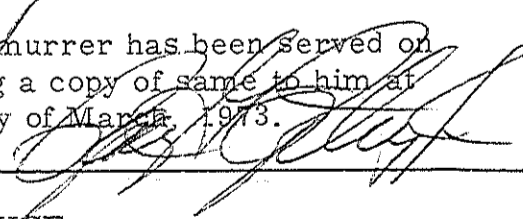
Comes now the defendant Rester & Coleman Engineers, Incorporated, one of the defendants in the above styled cause and demurs to the plaintiff's complaint as last amended and as grounds for said demurrer, assigns the following, separately and severally:

1. For the complaint is vague , indefinite and uncertain in that this defendant does not understand how one can "approximately" injure real property.
2. For said complaint fails to state a cause of action against this defendant.
3. For it is not averred what duty, if any, this defendant owed to the plaintiff.
4. For the land upon which the trespass is alleged to have been committed is not described with sufficient certainty.

TONSMEIRE & MCFADDEN  
 718 Downtowner Boulevard, Mobile, Ala  
 By   
 Ray G. Riley, Jr., Attorney  
 for Rester & Coleman Engineers

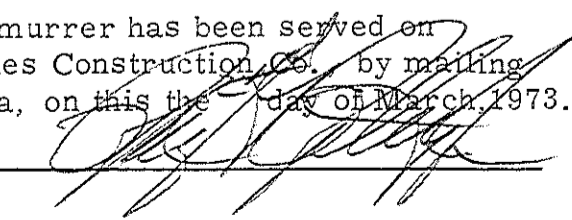
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing demurrer has been served on Taylor Wilkins, Jr., attorney for plaintiff, by mailing a copy of same to him at his office in Bay Minette, Alabama, on this the 7 day of March, 1973.



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing demurrer has been served on Ralph Kennamer, attorney for Henry Dukes d/b/a Dukes Construction Co. by mailing a copy of same to him at his office in Mobile, Alabama, on this the 7 day of March, 1973.



**FILED**

MAR 7 1973

UNRECORDED

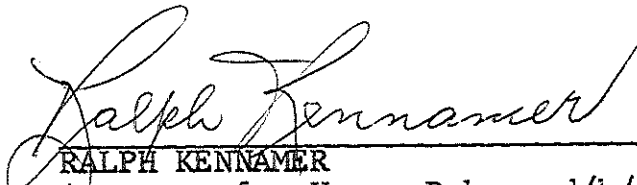
71 PAGE 813

GEORGE E. JOHNSON, : IN THE CIRCUIT COURT OF  
 Plaintiff, : BALDWIN COUNTY, ALABAMA  
 vs. :  
 RESTER & COLEMAN ENGINEERS, : AT LAW  
 INCORPORATED, and HENRY DUKES, :  
 d/b/a DUKES CONSTRUCTION CO. :  
 Defendants. : CASE NO. 10,008

DEMURRER

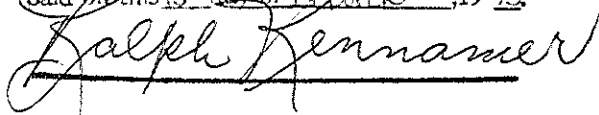
Comes now the defendant Henry Dukes, d/b/a Dukes Construction Co., one of the defendants in the above styled cause and demurs to the plaintiff's complaint as last amended and as grounds for said demurrer, assigns the following, separately and severally:

1. For the complaint is vague, indefinite and uncertain in that this defendant does not understand how one can "approximately" injure real property.
2. For said complaint fails to state a cause of action against this defendant.
3. For it is not averred what duty, if any, this defendant owed to the plaintiff.
4. For the land upon which the trespass is alleged to have been committed is not described with sufficient certainty.

  
 RALPH KENNAMER  
 Attorney for Henry Dukes, d/b/a  
 Dukes Construction Co.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon counsel for all parties to this proceeding, by mailing the same to each by First Class United States Mail, properly addressed and postage prepaid on this 13<sup>th</sup> day of March, 19 73.



FILED

MAR 14 1973

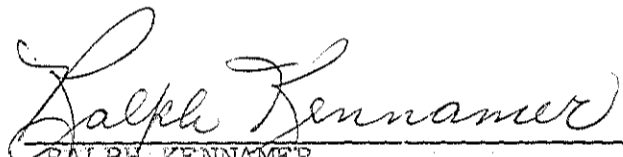
EUNICE B. BLACKMON CIRCUIT CLERK

GEORGE E. JOHNSON, : IN THE CIRCUIT COURT OF  
 Plaintiff : BALDWIN COUNTY, ALABAMA  
 vs. :  
 RESTER & COLEMAN ENGINEERS, :  
 INCORPORATED, and HENRY DUKES, : AT LAW  
 d/b/a DUKES CONSTRUCTION CO., :  
 Defendants : CASE NO. 10,008

ANSWER

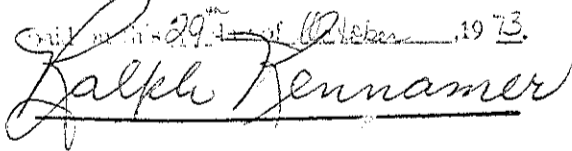
Comes now the defendant, HENRY DUKES, d/b/a  
 DUKES CONSTRUCTION COMPANY, one of the defendant's  
 herein, and for answer to the bill of complaint, says:

1. Not Guilty.
2. The allegations are untrue.

  
 \_\_\_\_\_  
 RALPH KENNAMER  
 Attorney for Defendant Dukes

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing  
 pleading has been served upon counsel for  
 all parties to it is proceeding by mailing the  
 same to mail by First Class United States  
 Mail, properly addressed and postage pre-

Paid on this 29<sup>th</sup> day of October, 1973.  
  
 \_\_\_\_\_

**FILED**

OCT 30 1973

NICE B. BLACKMON CIRCUIT  
 CLERK