DAVID M. QUINLEY, Plaintiff, VS. THE CITY OF BAY MINETTE, A MUNICIPAL CORPORATION, Defendant.	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ~~ALABAMA~~ AT LAW NO. 2319

DEMURRER TO AMENDED COMPLAINT

Now comes the defendant and for demurrer to the amended complaint and to each and every count thereof, separately and severally, assigns, separately and severally, the following:

1. It does not state a cause of action.

2. The facts alleged, if true, do not state a cause of action against this defendant.

3. It affirmatively appears from the allegations of the complaint that the defendant was acting in a governmental capacity at the time and place of plaintiff's alleged injury.

4. The complaint does not state a cause of action against this defendant because it affirmatively appears from the allegations thereof that the defendant was acting in a governmental capacity at the time and place where the plaintiff is alleged to have been injured.

5. The complaint does not state a cause of action against this defendant because it affirmatively appears from the allegations thereof that the defendant was engaged in the performance of a governmental function at the time and place where the plaintiff is alleged to have been injured.

6. No facts are alleged to show that the defendant was not engaged in the performance of a governmental function at the time and place where the plaintiff was alleged to have been injured.

7. No facts are alleged to show that the defendant was not acting in a governmental capacity at the time and place where the plaintiff is alleged to have been injured.

8. It affirmatively appears from the allegations thereof

that the plaintiff was injured in a building used by the defendant for its police department, which was a governmental function of the defendant at the time and place of plaintiff's alleged injuries.

9. No facts are alleged to show that plaintiff's alleged injury and damages were caused by the negligence of agents, servants or employees of the defendant while engaged in work therefor and while acting within the line and scope of their authority.

10. No facts are alleged to show that the alleged defect in the defendant's said building had been called to the attention of the defendant before plaintiff's alleged injury.

11. No facts are alleged to show how long the alleged defect in the building occupied by the defendant where the plaintiff is alleged to have been injured had existed.

12. The complaint does not state a cause of action against the defendant because no facts are alleged to show that the plaintiff's injury was done or suffered through the neglect, carelessness or unskillfulness of an agent, officer or employee of the defendant engaged in work therefor and while acting within the line and scope of his said employment.

13. It does not state a cause of action against this defendant because it does not allege that plaintiff's injury was done or suffered through the neglect, carelessness or failure of the defendant to remedy some defect in the building where plaintiff is alleged to have been injured after the same had been called to the attention of defendant's City Council.

14. It does not state a cause of action against this defendant because it does not allege that the alleged defect in the defendant's said building had existed for such unreasonable length of time as to raise a presumption of knowledge of such defect on the part of the City Council of the defendant.

15. No facts are alleged to show that the alleged defect in the building occupied by the defendant's police department had been called to the attention of the defendant's City Council before plaintiff's alleged injury.

16. No facts are alleged to show that the alleged defect in the building occupied by the defendant's police department had existed for such unreasonable length of time as to raise a presumption of knowledge of such defect on the part of the defendant's City Council.

17. It does not allege any duty owing by the defendant to the plaintiff.

18. No facts are alleged to show that the plaintiff's injuries were caused by the negligence of the defendant.

19. The allegations of the complaint are vague, indefinite and uncertain in that the way and manner in which the plaintiff was injured is not described with sufficient certainty.

20. No facts are alleged to show any causal connection between the defendant's alleged negligence and the plaintiff's alleged injury.

21. No facts are alleged to show that the defendant's alleged negligence was the proximate cause of plaintiff's alleged injuries.

22. The allegations of the complaint are vague, indefinite and uncertain in that the plaintiff's injuries are not described with sufficient certainty.

23. The allegations of the complaint are vague, indefinite and uncertain in that it does not describe with sufficient certainty the time that the plaintiff was away from his said work because of his said injuries.

24. No facts are alleged to show that the plaintiff was permanently injured.

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

26. The allegations of the complaint are conclusions of the pleader.

27. No facts are alleged to show that the defendant willfully and wantonly injured the plaintiff.

28. No facts are alleged to show whether the plaintiff was an invitee or licensee of the defendant at the time and place

of his alleged injuries.

29. Plaintiff's business with the defendant's police department is not described with sufficient certainty.

30. The words "official business", as used in the complaint, are conclusions of the pleader and no facts are alleged to show specifically what business the plaintiff had with the defendant's police department at the time and place of his alleged injuries.

31. No facts are alleged to show that the plaintiff was a police officer of the defendant at the time and place of his alleged injuries.

32. No facts are alleged to show that the plaintiff had any business with the defendant's police department at the time and place of his alleged injuries.

33. No facts are alleged to show the kind or nature of plaintiff's business with the defendant's police department at the time and place of his alleged injuries.

34. The allegations of the complaint are vague, indefinite and uncertain in that the location of the room used by the defendant's police department and the room referred to as a recreation room is not described with sufficient certainty.

35. No facts are alleged to show that the room used by the defendant for its police department is the same room as that used for the recreation room described in the complaint.

36. No facts are alleged to show that an agent, officer or employee of the defendant engaged in work therefor, and while acting in the line of his duty, placed the linoleum on the stairs in the defendant's said building.

37. No facts are alleged to show that the defendant's City Council knew of any of the alleged defects in its said building before plaintiff's alleged injury.

38. No facts are alleged to show that defendant's City Council knew that there was no guard rail or hand rail on or by the steps in its said building before the plaintiff was injured.

39. No facts are alleged to show that the defendant's City Council knew that the covering on the steps in its said building was worn and slippery before plaintiff's alleged injury.

40. No facts are alleged to show that defendant's City Council knew that the steps in its said building were not in a reasonably safe condition before plaintiff's alleged injury.

J. B. Blackburn

Attorney for defendant.

DEMURRER TO AMENDED COMPLAINT

DAVID M. QUINLEY,

Plaintiff,

VS.

THE CITY OF BAY MINETTE,
A MUNICIPAL CORPORATION,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW NO. 2319

FILED
MAR 2 1955
ALICE J. DUCK, Clerk

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

A M E N D E D C O M P L A I N T .

DAVID M. QUINLEY, Plaintiff, VS. THE CITY OF BAY MINETTE, A MUNICIPAL CORPORATION, Defendant.	))))))))))	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA. AT LAW. NO. _____

Comes now DAVID M. QUINLEY, the Plaintiff in the above styled cause, and amends his complaint heretofore filed in said cause by adding the following counts:

C O U N T "A"

The plaintiff claims of the defendant FIVE THOUSAND ($5,000.00) DOLLARS, as damages for that, heretofore, on to-wit: the 9th day of December, 1953, the defendant was a Municipal Corporation, and maintained offices for its Police Department, and a Recreation Room for its employees, on the second floor of a building, belonging to the Water Works and Gas Board of the Town of Bay Minette, on the East Side of Hand Avenue, next door to the Baldwin County Jail in the Town of Bay Minette; that on the date aforesaid, at about 9:00 o'clock in the morning, the plaintiff went to the office of the Police Department of the City of Bay Minette, on official business; that when he started down the steps from the second floor on which was situated the office of the Police Department of the City of Bay Minette and the Recreation Room as aforesaid, his foot slipped; that there was no guardrail or handrail on said steps and, as a consequence, plaintiff fell to the bottom of said steps; as a result, his left shoulder was dislocated, the ligaments in his left shoulder were strained, torn and permanently injured; he suffered bruises and contusions about his head and body; he was made sick, sore and lame and disordered; he was caused to lose much time from his work; he was caused to suffer much pain and inconvenience; he was permanently injured; and was caused to expend or become liable for large sums of

money in and about attempting to heal and cure his said injuries.

And plaintiff avers that he did, on to-wit: the 1st day of February, 1954, file with the City Clerk of the City of Bay Minette, Alabama, a sworn statement, stating substantially the manner in which said injuries were received, and the day and time and place where the accident occurred and that a copy of said statement is attached hereto, marked EXHIBIT "A", and by reference made a part hereof.

Plaintiff avers that all of his said injuries and damages were proximately caused by the negligence of the defendant in that the defendant, through its agents, officers or employees, engaged in work therefor, acting in the line and scope of their employment as such, negligently caused or negligently allowed said steps to its said office to be unsafe by reason of being covered with linoeum, which had become worn and slippery, or negligently having failed to place a handrail or guardrail on said steps for a person in peril to grasp; hence this suit.

C O U N T "B"

The Plaintiff claims of the defendant FIVE THOUSAND ($5,000.00) DOLLARS, as damages for that, heretofore, on to-wit: the 9th day of December, 1953, the defendant was a Municipal Corporation, and maintained offices for its Police Department, and a Recreation Room for its employees, on the second floor of the building, belonging to the Water Works and Gas Board of the Town of Bay Minette, on the East side of Hand Avenue, next door to the Baldwin County Jail in the Town of Bay Minette; that on the date aforesaid, at about 9:00 o'clock in the morning, the plaintiff went to the office of the Police Department of the City of Bay Minette, on official business; that when he started down the steps from the second floor on which was situated the office of the Police Department of the City of Bay Minette and the Recreation Room as aforesaid, his foot slipped;

that there was no guardrail or handrail on said steps and, as a consequence, plaintiff fell to the bottom of said steps; as a result, his left shoulder was dislocated, the ligaments in his left shoulder were strained, torn and permanently injured; he suffered bruises and contusions about his head and body; he was made sick, sore and lame and disordered; he was caused to lose much time from his work; he was caused to suffer much pain and inconvenience; he was permanently injured; and was caused to expend or become liable for large sums of money in and about attempting to heal and cure his said injuries.

And plaintiff avers that he did, on to-wit: the 1st day of February, 1954, file with the City Clerk of the City of Bay Minette, Alabama, a sworn statement, stating substantially the manner in which said injuries were received, and the day and time and place where the accident occurred and that a copy of said statement is attached hereto, marked EXHIBIT "A", and by reference made a part hereof.

And plaintiff avers that said injuries were proximately caused by the defendant's neglect, carelessness, or failure to remedy a defect in the steps leading to the second floor of a building where the defendant maintained offices for its Police Department and Recreation Room for its employees, after the same had been called to the attention of the Town Council of the City of Bay Minette, Alabama, or after the same had existed for such an unreasonable length of time as to raise a presumption of knowledge thereof on the part of said Town Council; said defect consisting of the fact that said steps were covered with linoeum, or like substance, which had become worn and slippery, and that there was no handrail or guardrail on said steps.

C O U N T "C"

The plaintiff claims of the defendant FIVE THOUSAND ($5,000.00) DOLLARS, as damages for that, heretofore, on to-wit: the 9th day of December, 1953, the defendant was a Municipal Corporation, and maintained offices for its Police Department, and a Recreation Room for its employees, on the second floor of a building, belonging to the Water Works and Gas Board of the Town of Bay Minette, on the East Side of Hand Avenue, next door to the Baldwin County Jail in the Town of Bay Minette; that on the date aforesaid, at about 9:00 o'clock in the morning, the plaintiff went to the office of the Police Department of the City of Bay Minette, on official business; that when he started down the steps from the second floor on which was situated the office of the Police Department of the City of Bay Minette and the Recreation Room as aforesaid, his foot slipped; that there was no guardrail or handrail on said steps and, as a consequence, plaintiff fell to the bottom of said steps; as a result, his left shoulder was dislocated, the ligaments in his left shoulder were strained, torn and permanently injured; he suffered bruises and contusions about his head and body; he was made sick, sore and lame and disordered; he was caused to lose much time from his work; he was caused to suffer much pain and inconvenience; he was permanently injured; and was caused to expend or become liable for large sums of money in and about attempting to heal and cure his said injuries.

Plaintiff avers that all of his said injuries and damages were proximately caused by the negligence of the defendant in that the defendant negligently allowed a defect to be and remain in said steps to said second floor where its Police Office and Recreation Room were situated; said defect consisting of the fact that there was no guardrail or handrail on said steps for the protection of those using said steps, and thereby said steps were not in a reasonably safe condition for use by the public.

And plaintiff avers that he did, on to-wit: the 1st day of February, 1954, file with the City Clerk of the City of Bay Minette, Alabama,

a sworn statement, stating substantially the manner in which said injuries were received, and the day and time and place where the accident occurred and that a copy of said statement is attached hereto, marked EXHIBIT "A", and by reference made a part hereof.

C O U N T "D"

The plaintiff claims of the defendant FIVE THOUSAND ($5,000.00) DOLLARS, as damages for that, heretofore, on to-wit: the 9th day of December, 1953, the defendant was a Municipal Corporation, and maintained offices for its Police Department, and a Recreation Room for its employees, on the second floor of a building, belonging to the Water Works and Gas Board of the Town of Bay Minette, on the East Side of Hand Avenue, next door to the Baldwin County Jail in the Town of Bay Minette; that on the date aforesaid, at about 9:00 o'clock in the morning, the plaintiff went to the office of the Police Department of the City of Bay Minette, on official business; that when he started down the steps from the second floor on which was situated the office of the Police Department of the City of Bay Minette and the Recreation Room as aforesaid, his foot slipped; that there was no guardrail or handrail on said steps and, as a consequence, plaintiff fell to the bottom of said steps; as a result, his left shoulder was dislocated, the ligaments in his left shoulder were strained, torn and permanently injured; he suffered bruises and contusions about his head and body; he was made sick, sore and lame and disordered; he was caused to lose much time from his work; he was caused to suffer much pain and inconvenience; he was permanently injured; and was caused to expend or become liable for large sums of money in and about attempting to heal and cure his said injuries.

Plaintiff avers that all of his said injuries and damages were proximately caused by the negligence of the defendant in that the defendant negligently allowed a defect to be and remain in said steps to said second floor where its Police Office and Recreation Room were situated; said defect consisting of the fact that said steps were

covered with linoeum, or like substance, which had become worn and slippery, and thereby said steps were not in a reasonably safe condition for use by the public.

And plaintiff avers that he did, on to-wit: the 1st day of February, 1954, file with the City Clerk of the City of Bay Minette, Alabama, a sworn statement, stating substantially the manner in which said injuries were received, and the day and time and place where the accident occurred and that a copy of said statement is attached hereto, marked EXHIBIT "A", and by reference made a part hereof.

C O U N T "E"

The plaintiff claims of the defendant FIVE THOUSAND ($5,000.00) DOLLARS, as damages for that, heretofore, on to-wit: the 9th day of December, 1953, the defendant was a Municipal Corporation, and maintained offices for its Police Department, and a Recreation Room for its employees, on the second floor of a building, belonging to the Water Works and Gas Board of the Town of Bay Minette, on the East Side of Hand Avenue, next door to the Baldwin County Jail in the Town of Bay Minette; that on the date aforesaid, at about 9:00 o'clock in the morning, the plaintiff went to the office of the Police Department of the City of Bay Minette, on official business; that when he started down the steps from the second floor on which was situated the office of the Police Department of the City of Bay Minette and the Recreation Room as aforesaid, his foot slipped; that there was no guardrail or handrail on said steps and, as a consequence, plaintiff fell to the bottom of said steps; as a result, his left shoulder was dislocated, the ligaments in his left shoulder were strained, torn and permanently injured; he suffered bruises and contusions about his head and body; he was made sick, sore and lame and disordered; he was caused to lose much time from his work; he was caused to suffer much pain and inconvenience; he was permanently

injured; and was caused to expend or become liable for large sums of money in and about attempting to heal and cure his said injuries.

Plaintiff avers that all of his said injuries and damages were proximately caused by the defendant's neglect, carelessness, or failure to remedy defect in said stairway, after the same had been called to the attention of the City Council of the City of Bay Minette, Alabama, or after the same had existed for such an unreasonable length of time as to raise a presumption of knowledge thereof on the part of said City Council; said defect consisting of the fact that said steps were covered with linoeum, or like substance, which had become worn and slippery when wet; that said steps were wet and slippery at the time of plaintiff's injury as aforesaid; and that there was no handrail or guardrail for one in peril to grasp; and thereby said steps were not in a reasonably safe condition for use of the public.

And plaintiff avers that he did, on to-wit: the 1st day of February, 1954, file with the City Clerk of the City of Bay Minette, Alabama, a sworn statement, stating substantially the manner in which said injuries were received, and the day and time and place where the accident occurred and that a copy of said statement is attached hereto, marked EXHIBIT "A", and by reference made a part hereof.

Telfair J. Marlsbury Jr.
Attorney for Plaintiff.

I have this day handed a copy of the foregoing Amended Bill of Complaint to Hon. J. B. Polsakburn, Attorney for Defendant. This 1st day of March, 1955.

Telfair J. Marlsbury

EXHIBIT "A"

STATE OF ALABAMA,)
)
COUNTY OF BALDWIN.)

Before me, the undersigned T. J. Mashburn, Jr., a Notary Public in and for said State and County, personally appeared David M. Quinley, who, being by me first duly and legally sworn, deposes and says as follows: "My name is David M. Quinley and I am a bona fide resident citizen of Baldwin County, Alabama, residing on the Huricane Road about 5 miles from Bay Minette, Alabama, my Post Office address being R. F. D. No. 1, Box 146B, Bay Minette, Alabama. Between 8:00 and 9:00 A. M. on the morning of 9 December 1953, I went to the Municipal Building of the Town of Bay Minette, Alabama, next door to the Baldwin County Jail, in which is housed the Police, Fire and Water Departments of the Town of Bay Minette for the purpose of obtaining a blank form on which to report an accident to the State Highway Patrol. I went up the stairs inside the building to second floor, but found none of the Police Department there. When I started down the stairs, which were covered with lineleum and were real slippery, it being a damp, wet, rainy morning, my foot slipped out from under me. I reached for the handrail but there was none, and, as a consequence, I fell all the way to the bottom of the stairs. I was carried to Dr. P. A. Bryant who informed me that I had a dislocated left shoulder with badly torn ligaments and muscles. As a result, I lost twenty (20) working days from my job at Brookley Field, where I am a civilian guard, two of which days paid double time. My base pay there is $117.46 every two weeks. I still have no strength in my left arm and suffer constant pain in it. Dr. Bryant informs me that I will probably always suffer pain from it. As a result of this accident, I hereby make demand on the Town of Bay Minette for $5,000.00 as damages for the permanent injury which I received. I further demand the name of the agent, servant, or employee of the Town of Bay Minette charged with the responsibility of maintaining the said municipal building and stairs in a safe condition."

David M. Quinley /s/

Sworn to and subscribed before me this 1st day of February, 1954.

Telfair J. Mashburn, Jr., /s/
Notary Public, Baldwin County, Alabama.

My Commission expires March, 1957.

RECORDED
2319

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

AT LAW.

NO. _____

DAVID M. QUINLEY,

Plaintiff,

VS.

THE CITY OF BAY MINETTE,
A MUNICIPAL CORPORATION,

Defendant.

****

AMENDED COMPLAINT.

****

FILED
MAR 1 1955
ALICE J. DUCK, Clerk

TELFAIR J. MASHBURN
ATTORNEY AT LAW
DAHLBERG BUILDING
BAY MINETTE, ALABAMA

DAVID M. QUINLEY, Plaintiff, VS. THE CITY OF BAY MINETTE, A MUNICIPAL CORPORATION, Defendant.	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA AT LAW NO. 2319

ANSWERS TO INTERROGATORIES

Now comes the defendant and for answer to the interrogatories propounded to it by the plaintiff, says:

1. The Water Works and Gas Board of the Town of Bay Minette, Alabama, a corporation.

2. Yes.

3. The lower floor of the said building, not including the entrance to the stairway and the stairs to the second floor, is occupied by the said owner. The second floor, the entrance to the stairs and the stairs leading to the second floor are occupied by the Police Department of the City of Bay Minette, Alabama, a municipal corporation, which is a tenant of the said owner. The part of the said building which is occupied by the said owner is entirely separated by a steel partition from the entrance to the stairs and the stairs leading to the second floor of the said building, and each part of the said building has a separate entrance.

4. The defendant in this case, the City of Bay Minette, Alabama, a municipal corporation, occupies the above described portion of the said building as a tenant of the said Water Works and Gas Board.

5. No.

6. There is no written lease.

7. Yes.

8. The City of Bay Minette, Alabama, is responsible for the upkeep, maintenance and repairs of that part of the said building which is occupied by it.

9. The defendant, the City of Bay Minette, Alabama, a municipal corporation.

10. Yes.

11. No.

12. Yes, asphalt tile.

13. The defendant declines to answer this interrogatory because it calls for incompetent, irrelevant and immaterial testimony.

Dated this 19th day of November, 1954.

THE CITY OF BAY MINETTE, ALABAMA,
A Municipal Corporation,

By J M Bristow

As its Mayor.

STATE OF ALABAMA)
*
BALDWIN COUNTY)

Before me, the undersigned authority, within and for said County in said State, personally appeared J. M. BRISTOW, who, after being by me first duly and legally sworn, deposes and says: That he is Mayor of the City of Bay Minette, Alabama, a municipal corporation; that he has read over the answers to the foregoing interrogatories, and that the facts stated therein are true.

J M Bristow

Sworn to and subscribed before me on
this the 19th day of November, 1954.

James R. [illegible]

Notary Public, Baldwin County, Alabama

RECORDED (4)

ANSWERS TO INTERROGATORIES

DAVID M. QUINLEY,

Plaintiff,

VS.

THE CITY OF BAY MINETTE,
A MUNICIPAL CORPORATION,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW NO. 2319

FILED
NOV 19 1954
ALICE J. DUCK, Register

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

DAVID M. QUINLEY, Plaintiff, VS. THE CITY OF BAY MINETTE, A MUNICIPAL CORPORATION, Defendant.	)))))))))	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA. AT LAW. NO. _____

INTERROGATORIES.

Now comes the plaintiff and files the following interrogatories to the defendant, THE CITY OF BAY MINETTE, A MUNICIPAL CORPORATION:

1. Who owns the building on the East side of Hand Avenue next door to the Baldwin County Jail?

2. Does the City of Bay Minette, or any of its departments, occupy any part of this building?

3. What departments of the City of Bay Minette occupy part of this building, and what part is occupied by each department?

4. If the City of Bay Minette does not own this building, under what arrangement does the City of Bay Minette, or any of its departments, occupy a part of this building?

5. Does the City of Bay Minette have a written lease with the owner of this building?

6. If there is a written lease between the City of Bay Minette and the owner of this building, please attach a copy of said lease to your answer to these interrogatories.

7. Is the entire second floor of this building occupied solely by the City of Bay Minette, or some of its departments?

8. Is the City of Bay Minette responsible for the up-keep, maintenance and repairs to the building herein referred to?

9. Who is responsible for the upkeep, maintenance and repairs on the stairs leading to the second floor of this building?

10. On the 9th day of December, 1953, was the City of Bay Minette responsible for the upkeep, maintenance and repairs on the stairway leading to the second floor of this building?

11. On the 9th day of December, 1953, was there a banister, or handrail, on the stairway leading to the second floor of this building?

12. On the 9th day of December, 1953, was there any kind of covering on the steps leading to the second floor of this building? If so, what was the covering?

13. Has a guard or handrail been erected on the stairway leading to the second floor of this building since the 9th day of December, 1953?

Tilman H. Mashburn, Jr.
Attorney for Plaintiff.

STATE OF ALABAMA,
COUNTY OF BALDWIN.

Before me, Ina H. Becker, a Notary Public in and for said County and State, personally appeared T. J. Mashburn, Jr., known to me, who being first duly sworn, deposes and says that he is of counsel for the plaintiff in the above styled cause; that the answers to the foregoing interrogatories truthfully made will be material evidence for the plaintiff in the trial of said cause.

Ina H. Becker
Notary Public, Baldwin County, Alabama.

RETURN OF SHERIFF.

Executed by serving a copy of the within on the defendant this _____ day of _____, 1954.

_____
Sheriff, Baldwin County, Alabama.

DAVID M. QUINLEY, Plaintiff, VS. THE CITY OF BAY MINETTE, A MUNICIPAL CORPORATION, Defendant.	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA AT LAW NO. 2319

DEMURRER

Now comes the defendant and for demurrer to the complaint and to each and every count thereof, separately and severally, assigns, separately and severally, the following:

1. It does not state a cause of action.

2. The facts alleged, if true, do not state a cause of action against this defendant.

3. No facts are alleged to show that the plaintiff's alleged injury and damages were caused by the negligence of agents, servants or employees of the defendant while engaged in work therefor and while acting within the line and scope of their authority.

4. No facts are alleged to show that the alleged defect had been called to the attention of the defendant before the plaintiff's alleged injury.

5. No facts are alleged to show how long the alleged defect in the building occupied by the defendant where the plaintiff is alleged to have been injured had existed.

6. It affirmatively appears from the allegations of the complaint that the defendant was acting in a governmental capacity at the time and place of the plaintiff's alleged injury.

7. The complaint does not state a cause of action against this defendant because no facts are alleged to show that the plaintiff's alleged injury was done or suffered through the neglect, carelessness or unskillfulness of an agent, officer or employee of the defendant engaged in work therefor and while acting within the line and scope of his said employment.

8. It does not state a cause of action against this defendant because it does not allege that plaintiff's injury was done

or suffered through the neglect, carelessness or failure of the defendant to remedy some defect in the said building where plaintiff is alleged to have been injured after the same had been called to the attention of defendant's City Council, or that such alleged defect had existed for such unreasonable length of time as to raise a presumption of knowledge of such defect on the part of the defendant.

9. The complaint does not state a cause of action against this defendant because it affirmatively appears from the allegations thereof that the defendant was acting in a governmental capacity or was engaged in the performance of a governmental function at the time and place where the plaintiff is alleged to have been injured.

10. It affirmatively appears from the allegations thereof that the plaintiff was injured in a building used by the defendant for its police department, which was a governmental function of the said defendant at the time and place of plaintiff's alleged injury.

11. No facts are alleged to show that the alleged defect in the building occupied by the defendant's police department had been called to the attention of the defendant's City Council before plaintiff's alleged injury.

12. No facts are alleged to show that the alleged defect in the building occupied by the defendant's police department had existed for such unreasonable length of time as to raise a presumption of knowledge of such defect on the part of the defendant's City Council.

J. B. Blackburn

Attorney for defendant.

RECORDED (2)

DEMURRERS TO AMENDED COMPLAINT

DAVID M. QUINLEY,

Plaintiff,

VS.

THE CITY OF BAY MINETTE,
A MUNICIPAL CORPORATION,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW NO. 2319

FILED
FEB 15 1955
ALICE L. BUCK, Clerk

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

STATE OF ALABAMA,)
COUNTY OF BALDWIN.) TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon THE CITY OF BAY MINETTE, A MUNICIPAL 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 DAVID M. QUINLEY.

Witness my hand this 20th day of July, 1954.

Bruce A. Drake
CLERK.

****

COMPLAINT

DAVID M. QUINLEY, Plaintiff,	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA. AT LAW. NO. 2319
VS.	)	
THE CITY OF BAY MINETTE, A MUNICIPAL CORPORATION, Defendant.	)	

COUNT ONE.

The Plaintiff claims of the Defendant FIVE THOUSAND ($5,000.00) DOLLARS as damages for that, heretofore, on, to-wit: the 9th day of December, 1953, the defendant was a Municiapl Corporation, and maintained offices for its Police Department on the second floor of a building, belonging to the Water Works and Gas Board of the Town of Bay Minette, on the East Side of Hand Avenue next door to the Baldwin County Jail in the Town of Bay Minette; that on the date aforesaid, at about 9:00 O'clock in the morning, the plaintiff went to the Office of the Police Department of the City of Bay Minette; that when he started down the steps to the first floor of the said building, his foot slipped; that there was no handrail or guardrail on said steps and, as a consequence, plaintiff fell to the bottom of said steps; that his left shoulder was dislocated; the ligaments in his left shoulder were strained and torn and permanently injured; he suffered bruises and contusions about his head and body; he was made sick, sore, lame and disordered; he was caused to lose much time from his work; he was caused to suffer much pain and inconvenience; he was permanently injured; and he was caused to expend or become liable for large sums of

money in and about attempting to heal and cure his said injuries.

Plaintiff avers that all of his said injuries and damages were proximately caused by the negligence of the defendant in that the defendant, through its agents, officers or employees, acting within the line and scope of their employment as such, negligently caused or negligently allowed said steps to its said office to be unsafe by reason of being covered with linoleum which had become worn and slippery, or negligently having failed to place a handrail or guardrail on said steps for a person in peril to grasp; hence this suit.

COUNT TWO.

The Plaintiff claims of the defendant FIVE THOUSAND ($5,000.00) DOLLARS as damages, for that, heretofore, on, to-wit: the 9th day of December, 1953, the defendant was a Municipal Corporation, and maintained offices for its Police Department on the second floor of a building, belonging to the Water Works and Gas Board of the Town of Bay Minette, on the East side of Hand Avenue next door to the Baldwin County Jail in the Town of Bay Minette; that, on the date aforesaid, at about 9:00 O'clock in the morning, the plaintiff, having business with the police, went to the office of the Police Department of the City of Bay Minette on the second floor of said building as aforesaid; that the steps from the first floor of said building to the second floor were covered with linoleum which was worn and slippery; that there was guardrail or handrail on said steps; that when he started down said steps to the first floor, his foot slipped, and, there being no handrail or guardrail, plaintiff fell to the bottom of said steps; that, as a result thereof, his left shoulder was dislocated and permanently injured; he suffered bruises and contusions about his head and body; the ligaments in his left shoulder were strained and torn and permanently injured; he was made sick, sore, lame and disordered; he was caused to lose much time from his work; he was caused to suffer much pain and inconvenience; he was permanently injured; and he was caused to expend or become liable for large sums of money in and about attempting to heal and cure his said injuries.

Plaintiff avers that all of his said injuries and damages were proximately caused by the negligence of the defendant in that the defendant, through its agents, officers or employees, acting within the line and scope of their employment as such, negligently caused or

negligently allowed said steps to its said office to be unsafe by reason of being covered with linoleum which had become worn and slippery; or negligently failed to place on said steps a guardrail or handrail for the use of those in peril; hence this suit.

COUNT THREE.

The Plaintiff claims of the defendant FIVE THOUSAND ($5,000.00) DOLLARS as damages, for that, heretofore, on, to-wit: the 9th day of December, 1953, the defendant was a Municipal Corporation, and maintained offices for its Police Department on the second floor of a building, belonging to the Water Works and Gas Board of the Town of Bay Minette, on the East side of Hand Avenue next door to the Baldwin County Jail in the Town of Bay Minette; that, on the date aforesaid, at about 9:00 O'clock in the morning, the plaintiff, having business with the police, went to the office of the Police Department of the City ~~Town~~ of Bay Minette on the second floor of said building as aforesaid; that the steps from the first floor of said building to the second floor were covered with linoleum, or like substance, which become slippery when wet; that it was a rainy day and said steps were wet and slippery; that, when he started down said steps to the first floor, his foot slipped and plaintiff fell to the bottom of said steps; that, as a result thereof, his left shoulder was dislocated and permanently injured; the ligaments of his left shoulder were strained and torn and permanently injured; he suffered bruises and contusions about his head and body; he was made sick, sore, lame and disordered; he was caused to lose much time from his work; he was caused to suffer great pain and inconvenience; and he was caused to expend or become liable for large sums of money in and about attempting to heal and cure his said injuries.

Plaintiff avers that all of his said injuries and damages were proximately caused by the negligence of the defendant in that the defendant, through its officers, agents, or employees, acting within the line and scope of their employment as such, negligently caused or negligently allowed said steps to its office to be unsafe by reason of being covered with linoleum, or like substance, which had become wet and slippery; hence this suit.

COUNT FOUR

The Plaintiff claims of the defendant FIVE THOUSAND ($5,000.00) DOLLARS as damages, for that, heretofore, on, to-wit: the 9th day of December, 1953, the defendant was a Municipal Corporation and maintained offices for its Police Department on the second floor of a building, belonging to the Water Works and Gas Board of the Town of Bay Minette, on the East side of Hand Avenue next door to the Baldwin County Jail in the Town of Bay Minette; that, on the date aforesaid, at about 9:00 O'clock in the morning, the Plaintiff, having business with the police, went to the office of the Police Department of the City of Bay Minette on the second floor of said building as aforesaid; that there was no guardrail or handrail on the steps from the first floor of said building to the second floor; that, when he started down the steps from the second floor, where the office of the Police Department was situated, to the first floor, his foot slipped, and, there being no guardrail or handrail to grasp to save himself, the plaintiff fell to the bottom of said steps; that, as a result thereof, his left shoulder was dislocated and permanently injured; the ligaments of his left shoulder were strained and torn and permanently injured; he suffered bruises and contusions about his head and body; he was made sick, sore, lame and disordered; he was caused to lose much time from his work; he was caused to suffer great pain and inconvenience; and he was caused to expend or become liable for large sums of money in and about attempting to heal and cure his said injuries.

Plaintiff avers that all of his said injuries and damages were proximately caused by the negligence of the defendant in that the defendant, through its agents, officers or employees, acting within the line and scope of their employment as such, negligently caused or negligently allowed said steps to its office to be unsafe by reason of their failure to build, or maintain, proper guardrails or handrails for the use of those in peril on said steps; hence this suit.

Tilman A. Madlebury Jr.
Attorney for Plaintiff.

Plaintiff respectfully requests that this cause be tried by a jury.

Tilman A. Madlebury Jr.
Attorney for Plaintiff.

I served a copy of the within H & C

on City of Bay Minette

By service on

TAYLOR WILKINS, Sheriff

By D. S.

Received 21 day of July 1954

and on 21 day of July 1954

I served a copy of the within H & C

on City of Bay Minette

By service on

TAYLOR WILKINS, Sheriff

By D. S.

RECORDED

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

AT LAW.

NO. 2319

****

DAVID M. QUINLEY,

Plaintiff,

Vs:

THE CITY OF BAY MINETTE, A MUNICIPAL CORPORATION,

Defendant.

****

SUMMONS AND COMPLAINT.

FILED

JUL 20 1954

ALICE J. DUCK, Clerk

TELFAIR J. MASHBURN, JR.

ATTORNEY-AT-LAW

BAY MINETTE, ALABAMA

A M E N D E D C O M P L A I N T .

DAVID M. QUINLEY, Plaintiff,	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA. AT LAW.
VS.	)	
THE CITY OF BAY MINETTE, A MUNICIPAL CORPORATION, Defendant.	)	NO. 2319

Comes now DAVID M. QUINLEY, the plaintiff in the above styled cause, and amends his complaint heretofore filed in said cause by adding the following counts:

C O U N T "A"

The plaintiff claims of the defendant FIVE THOUSAND ($5,000.00) DOLLARS, as damages for that, heretofore, on to-wit: the 9th day of December, 1953, the defendant was a Municipal Corporation, and maintained offices for its Police Department, and a Recreation Room for its employees, on the second floor of a building, belonging to the Water Works and Gas Board of the Town of Bay Minette, on the East side of Hand Avenue, next door to the Baldwin County Jail in the Town of Bay Minette; that on the date aforesaid, at about 9:00 o'clock in the morning, the plaintiff went to the office of the Police Department of the City of Bay Minette, to obtain a blank form on which to report an accident to the State Highway Patrol; that when he started down the steps from the second floor on which was situated the office of the Police Department of the City of Bay Minette and the Recreation Room as aforesaid, his foot slipped; that there was no guardrail or handrail on said steps and, as a proximate consequence, plaintiff fell to the bottom of said steps; as a result, his left shoulder was dislocated, the ligaments in his left shoulder were strained, torn and permanently injured; he suffered bruises and contusions about his head and body; he was made sick, sore and lame and disordered; he was caused to lose much time from his work; he was caused to suffer much pain and inconvenience; he was permanently injured; and was caused to expend or

become liable for large sums of money in and about attempting to heal and cure his said injuries.

And plaintiff avers that he did, on to-wit: the 1st day of February, 1954, file with the City Clerk of the City of Bay Minette, Alabama, a sworn statement, stating substantially the manner in which said injuries were received, and the day and time and place where the accident occured and that a copy of said statement is attached hereto, marked EXHIBIT "A", and by reference made a part hereof.

Plaintiff avers that all of his said injuries and damages were proximately caused by the negligence of the defendant in that the defendant, through its agents, officers or employees, engaged in work therefor, acting in the line and scope of their employment as such, negligently caused or negligently allowed said steps to its said office to be unsafe by reason of being covered with lindeum, which had become worn and slippery, or negligently having failed to place a handrail or guardrail on said steps for a person in peril to grasp; hence this suit.

C O U N T "B"

The plaintiff claims of the defendant FIVE THOUSAND ($5,000.00) DOLLARS, as damages for that, heretofore, on to-wit: the 9th day of December, 1953, the defendant was a Municipal Corporation, and maintained offices for its Police Department, and a Recreation Room for its employees, on the second floor of a building, belonging to the Water Works and Gas Board of the Town of Bay Minette, on the East Side of Hand Avenue, next door to the Baldwin County Jail in the Town of Bay Minette; that on the date aforesaid, at about 9:00 o'clock in the morning, the plaintiff went to the office of the Police Department of the City of Bay Minette, to obtain a blank form on which to report an accident to the State Highway Patrol; that when he started down the steps from the second floor on which was situated the office

of the Police Department of the City of Bay Minette and the Recreation Room as aforesaid, his foot slipped; that there was no guardrail or handrail on said steps and, as a proximate consequence, plaintiff fell to the bottom of said steps; as a result, his left shoulder was dislocated, the ligaments in his left shoulder were strained, torn and permanently injured; he suffered bruises and contusions about his head and body; he was made sick, sore and lame and disordered; he was caused to lose much time from his work; he was caused to suffer much pain and inconvenience; he was permanently injured; and was caused to expend or become liable for large sums of money in and about attempting to heal and cure his said injuries.

And plaintiff avers that he did, on to-wit: the 1st day of February, 1954, file with the City Clerk of the City of Bay Minette, Alabama, a sworn statement, stating substantially the manner in which said injuries were received, and the day and time and place where the accident occurred and that a copy of said statement is attached hereto, marked EXHIBIT "A", and by reference made a part hereof.

And plaintiff avers that said injuries were proximately caused by the defendant's neglect, carelessness, or failure to remedy a defect in the steps leading to the second floor of a building where the defendant maintained offices for its Police Department and Recreation Room for its employees, after the same had been called to the attention of the Town Council of the City of Bay Minette, Alabama, or after the same had existed for an unreasonable length of time as to raise a presumption of knowledge thereof on the part of said Town Council; said defect consisting of the fact that said steps were covered with lindeum, or like substance, which had become worn and slippery, and that there was no handrail or guardrail on said steps.

C O U N T "C"

The plaintiff claims of the defendant FIVE THOUSAND ($5,000.00) DOLLARS, as damages for that, heretofore, on to-wit: the 9th day of December, 1953, the defendant was a Municipal Corporation, and maintained offices for its Police Department, and a Recreation Room for its employees, on the second floor of a building, belonging to the Water

Works and Gas Board of the Town of Bay Minette, on the East Side of Hand Avenue, next door to the Baldwin County Jail in the Town of Bay Minette; that on the date aforesaid, at about 9:00 o'clock in the morning, the plaintiff went to the office of the Police Department of the City of Bay Minette, to obtain a blank form on which to report an accident to the State Highway Patrol; that when he started down the steps from the second floor on which was situated the office of the Police Department of the City of Bay Minette and the Recreation Room as aforesaid, his foot slipped; that there was no guardrail or handrail on said steps; and, as a proximate consequence, plaintiff fell to the bottom of said steps; as a result, his left shoulder was dislocated, the ligaments in his left shoulder were strained, torn and permanently injured; he suffered bruises and contusions about his head and body; he was made sick, sore and lame and disordered; he was caused to lose much time from his work; he was caused to suffer much pain and inconvenience; he was permanently injured; and was caused to expend or become liable for large sums of money in and about attempting to heal and cure his said injuries.

Plaintiff avers that all of his said injuries and damages were proximately caused by the negligence of the defendant in that the defendant negligently allowed a defect to be and remain in said steps to said second floor where its Police Office and Recreation Room were situated; said defect consisting of the fact that there was no guardrail or handrail on said steps for the protection of those using said steps, and thereby said steps were not in a reasonably safe condition for use by the public.

And plaintiff avers that he did, on to-wit: the 1st day of February, 1954, file with the City Clerk of the City of Bay Minette, Alabama, a sworn statement, stating substantially the manner in which said injuries were received, and the day and time and place where the accident occurred and that a copy of said statement is attached hereto marked EXHIBIT "A", and by reference made a part hereof.

C O U N T "D"

The plaintiff claims of the defendant FIVE THOUSAND ($5,000.00) DOLLARS, as damages for that, heretofore, on to-wit: the 9th day of December, 1953, the defendant was a Municipal Corporation, and maintained offices for its Police Department, and a Recreation Room for its employees, on the second floor of a building, belonging to the Water Works and Gas Board of the Town of Bay Minette, on the East Side of Hand Avenue, next door to the Baldwin County Jail in the Town of Bay Minette,; that on the date aforesaid, at about 9:00 o'clock in the morning, the plaintiff went to the office of the Police Department of the City of Bay Minette, to obtain a blank form on which to report an accident to the State Highway Patrol; that when he started down the steps from the second floor on which was situated the office of the Police Department of the City of Bay Minette and the Recreation Room as aforesaid, his foot slipped; that there was no guardrail or handrail on said steps and, as a proximate consequence, plaintiff fell to the bottom of said steps; as a result, his left shoulder was dislocated, the ligaments in his left shoulder were strained, torn and permanently injured; he suffered bruises and contusions about his head and body; he was made sick, sore and lame and disordered; he was caused to lose much time from his work; he was caused to suffer much pain and inconvenience; he was permanently injured; and was caused to expend or become liable for large sums of money in and about attempting to heal or cure his said injuries.

Plaintiff avers that all of his said injuries and damages were proximately caused by the negligence of the defendant in that the defendant negligently allowed a defect to be and remain in said steps to said second floor where its Police Office and Recreation Room were situated; said defect consisting of the fact that said steps were covered with lindeum, or like substance, which had become worn and slippery, and thereby said steps were not in a reasonably safe condition for use by the public.

And plaintiff avers that he did, on to-wit: the 1st day of February, 1954, file with the City Clerk of the City of Bay Minette, Alabama, a sworn statement, stating substantially the manner in which said injuries were received, and the day and time and place where the accident occurred and that a copy of said statement is attached hereto, marked EXHIBIT "A", and by reference made a part hereof.

C O U N T "E"

The plaintiff claims of the defendant FIVE THOUSAND ($5,000.00) DOLLARS, as damages for that, heretofore, on to-wit: the 9th day of December, 1953, the defendant was a Municipal Corporation, and maintained offices for its Police Department, and a Recreation Room for its employees, on the second floor of a building, belonging to the Water Works and Gas Board of the Town of Bay Minette, on the East Side of Hand Avenue, next door to the Baldwin County Jail in the Town of Bay Minette; that on the date aforesaid, at about 9:00 o'clock in the morning, the plaintiff went to the office of the Police Department of the City of Bay Minette, to obtain a blank form on which to report an accident to the State Highway Patrol; that when he started down the steps from the second floor on which was situated the office of the Police Department of the City of Bay Minette and the Recreation Room as aforesaid, his foot slipped; that there was no guardrail or handrail on said steps and, as a proximate consequence, plaintiff fell to the bottom of said steps; as a result, his left shoulder was dislocated, the ligaments in his left shoulder were strained, torn and permanently injured; he suffered bruises and contusions about his head and body; he was made sick, sore and lame and disordered; he was caused to lose much time from his work; he was caused to suffer much pain and inconvenience; he was permanently injured; and was caused to expend or become liable for large sums of money in and about attempting to heal or cure his said injuries.

Plaintiff avers that all of his said injuries and damages were proximately caused by the defendant's neglect, carelessness, or failure to remedy defect in said stairway, after the same had been called to the attention of the City Council of the City of Bay Minette, Alabama, or after the same had existed for such an unreasonable length of time as to raise a presumption of knowledge thereof on the part of the City Council; said defect consisting of the fact that said steps were covered with lindeum, or like substance, which had become worn and slippery when wet; that said steps were wet and slippery at the time of plaintiff's injury as aforesaid; and that there was no handrail or guardrail for one in peril to grasp; and thereby said steps were not in a reasonably safe condition for use of the public.

And plaintiff avers that he did, on to-wit: the 1st day of February, 1954, file with the City Clerk of the City of Bay Minette, Alabama, a sworn statement, stating substantially the manner in which said injuries were received, and the day and time and place where the accident occurred and that a copy of said statement is attached hereto, marked EXHIBIT "A", and by reference made a part hereof.

Julian A. Madden, Jr.
Attorney for Plaintiff.

EXHIBIT "A"

STATE OF ALABAMA,)
)
COUNTY OF BALDWIN.)

Before me, the undersigned T. J. Mashburn, Jr., a Notary Public in and for said State and County, personally appeared David M. Quinley, who, being by me first duly and legally sworn, deposes and says as follows: "My name is David M. Quinley and I am a bona fide resident citizen of Baldwin County, Alabama, residing on the Huricane Road about 5 miles from Bay Minette, Alabama, my Post Office address being R. F. D. No. 1, Box 146B, Bay Minette, Alabama. Between 8:00 and 9:00 A. M. on the morning of 9 December 1953, I went to the Municipal Building of the Town of Bay Minette, Alabama, next door to the Baldwin County Jail, in which is housed the Police, Fire and Water Departments of the Town of Bay Minette for the purpose of obtaining a blank form on which to report an accident to the State Highway Patrol. I went up the stairs inside the building to second floor, but found none of the Police Department there. When I started down the stairs, which were covered with linoleum and were real slippery, it being a damp, wet, rainy morning, my foot slipped out from under me. I reached for the handrail but there was none, and, as a consequence, I fell all the way to the bottom of the stairs. I was carried to Dr. P. A. Bryant who informed me that I had a dislocated left shoulder with badly torn ligaments and muscles. As a result, I lost twenty (20) working days from my job at Brookley Field, where I am a civilian guard, two of which days paid double time. My base pay there is $117.46 every two weeks. I still have no strength in my left arm and suffer constant pain in it. As a result of this accident, I hereby make demand on the Town of Bay Minette for $5,000.00 as damages for the permanent injury which I received. I further demand the name of the agent, servant, or employee of the Town of Bay Minette charged with the responsibility of maintaining the said municipal building and stairs in a safe condition."

David M. Quinley /s/

Sworn to and subscribed before me this 1st day of February, 1954.

Telfair J. Mashburn, Jr. /s/
Notary Public, Baldwin County, Alabama.

My Commission expires March, 1957.

(7)

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

AT LAW.

NO. 2319

****

DAVID M. QUINLEY,

Plaintiff,

VS.

THE CITY OF BAY MINETTE,
A MUNICIPAL CORPORATION,

Defendant.

****

AMENDED COMPLAINT.

****

FILED
MAR 7 1955
ALICE J. BUCK, Clerk

We the jury find for the Plaintiff.

Foreman
Ed W. Engel

We the jury set the amount of damages at $2000.00

Foreman
Ed W. Engel

We the jury find for the plaintiff and assess his damages at $2000

Edward W. Engel

DAVID M. QUINLEY, Plaintiff, VS. THE CITY OF BAY MINETTE, A MUNICIPAL CORPORATION, Defendant.	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA AT LAW NO. 2319

DEMURRER TO AMENDED COMPLAINT

Now comes the defendant and for demurrer to the amended complaint (filed March 7, 1955) and to each and every count thereof, separately and severally, assigns, separately and severally, the following:

1. It does not state a cause of action.

2. The facts alleged, if true, do not state a cause of action against this defendant.

3. It affirmatively appears from the allegations of the complaint that the defendant was acting in a governmental capacity at the time and place of plaintiff's alleged injury.

4. The complaint does not state a cause of action against this defendant because it affirmatively appears from the allegations thereof that the defendant was acting in a governmental capacity at the time and place where the plaintiff is alleged to have been injured.

5. The complaint does not state a cause of action against this defendant because it affirmatively appears from the allegations thereof that the defendant was engaged in the performance of a governmental function at the time and place where the plaintiff is alleged to have been injured.

6. No facts are alleged to show that the defendant was not engaged in the performance of a governmental function at the time and place where the plaintiff was alleged to have been injured.

7. No facts are alleged to show that the defendant was not acting in a governmental capacity at the time and place where the plaintiff is alleged to have been injured.

8. It affirmatively appears from the allegations thereof

that the plaintiff was injured in a building used by the defendant for its police department, which was a governmental function of the defendant at the time and place of plaintiff's alleged injuries.

9. No facts are alleged to show that plaintiff's alleged injury and damages were caused by the negligence of agents, servants or employees of the defendant while engaged in work therefor and while acting within the line and scope of their authority.

10. No facts are alleged to show that the alleged defect in the defendant's said building had been called to the attention of the defendant before plaintiff's alleged injury.

11. No facts are alleged to show how long the alleged defect in the building occupied by the defendant where the plaintiff is alleged to have been injured had existed.

12. The complaint does not state a cause of action against the defendant because no facts are alleged to show that the plaintiff's injury was done or suffered through the neglect, carelessness or unskillfulness of an agent, officer or employee of the defendant engaged in work therefor and while acting within the line and scope of his said employment.

13. It does not state a cause of action against this defendant because it does not allege that plaintiff's injury was done or suffered through the neglect, carelessness or failure of the defendant to remedy some defect in the building where plaintiff is alleged to have been injured after the same had been called to the attention of defendant's City Council.

14. It does not state a cause of action against this defendant because it does not allege that the alleged defect in the defendant's said building had existed for such unreasonable length of time as to raise a presumption of knowledge of such defect on the party of the City Council of the defendant.

15. No facts are alleged to show that the alleged defect in the building occupied by the defendant's police department had been called to the attention of the defendant's City Council before plaintiff's alleged injury.

16. No facts are alleged to show that the alleged defect in the building occupied by the defendant's police department had existed for such unreasonable length of time as to raise a presumption of knowledge of such defect on the part of the defendant's City Council.

17. It does not allege any duty owing by the defendant to the plaintiff.

18. No facts are alleged to show that the plaintiff's injuries were caused by the negligence of the defendant.

19. The allegations of the complaint are vague, indefinite and uncertain in that the way and manner in which the plaintiff was injured is not described with sufficient certainty.

20. No facts are alleged to show any causal connection between the defendant's alleged negligence and the plaintiff's alleged injury.

21. No facts are alleged to show that the defendant's alleged negligence was the proximate cause of plaintiff's alleged injuries.

22. The allegations of the complaint are vague, indefinite and uncertain in that the plaintiff's injuries are not described with sufficient certainty.

23. The allegations of the complaint are vague, indefinite and uncertain in that it does not describe with sufficient certainty the time that the plaintiff was away from his said work because of his said injuries.

24. No facts are alleged to show that the plaintiff was permanently injured.

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

26. The allegations of the complaint are conclusions of the pleader.

27. The allegations of the complaint are vague, indefinite and uncertain in that the location of the room used by the defendant's police department and the room referred to as a recreation room is not described with sufficient certainty.

28.. No facts are alleged to show that the room used by the defendant for its police department is the same room as that used for the recreation room described in the complaint.

29. No facts are alleged to show that an agent, officer or employee of the defendant engaged in work therefor, and while acting in the line of his duty, placed the linoleum on the stairs in the defendant's said building.

30. No facts are alleged to show that the defendant's City Council knew of any of the alleged defects in its said building before plaintiff's alleged injury.

31. No facts are alleged to show that defendant's City Council knew that there was no guard rail or hand rail on or by the steps in its said building before the plaintiff was injured.

32. No facts are alleged to show that the defendant's City Council knew that the covering on the steps in its said building was worn and slippery before plaintiff's alleged injury.

33. No facts are alleged to show that defendant's City Council knew that the steps in its said building were not in a reasonably safe condition before plaintiff's alleged injury.

34. No facts are alleged to show that the defendant breached any duty owing by it to the plaintiff.

35. No facts are alleged to show that plaintiff's injuries were caused by the breach of any duty owing by the defendant to the plaintiff.

36. No facts are alleged to show that the defendant willfully and wantonly injured the plaintiff.

37. It affirmatively appears that the plaintiff was a mere licensee of the defendant at the time and place of his alleged injuries and no facts are alleged to show that the defendant willfully and wantonly injured the plaintiff.

38. It affirmatively appears that the plaintiff did not have any business with the defendant's police department at the time and place of his alleged injuries.

39. It affirmatively appears that the plaintiff did not have any business with the defendant's police department at the time

and place of his alleged injuries and was a mere licensee at the time of his alleged injuries.

40. The allegations of the complaint are vague, indefinite and uncertain in that it does not allege how defendant's agents, officers or employees negligently allowed the said steps in defendant's said building to be unsafe.

J. B. Blackburn

Attorney for defendant.

DEMURRER TO AMENDED COMPLAINT

DAVID M. QUINLEY,

Plaintiff,

VS.

THE CITY OF BAY MINETTE,
A MUNICIPAL CORPORATION,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW NO. 2319

Filed 3/9/55
Thurber
Judge

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