

JANE DEVINE,  
Plaintiff,  
-vs-  
MARVIN PIXTON, d/b/a  
PIXTON PIER AND COTTAGES  
Defendant.

\* IN THE CIRCUIT COURT OF  
\* BALDWIN COUNTY, ALABAMA  
\* AT LAW  
\* CASE NO. 3823  
\*  
\*

TO: Hon. Ernest M. Bailey  
255 Fairhope Avenue  
Fairhope, Alabama

Please take notice that at 2:00 P.M. on the 22nd day of July, 1959, in Courtroom No. 6, Circuit Court of Mobile County, County Court House, Mobile, Alabama, the defendant will take the deposition of Jane Devine whose address is Grand Hotel, Pt. Clear, Alabama, upon oral examination pursuant to an Act of the Legislature of the State of Alabama, designated as Act. No. 375, Regular Session, 1955, approved September 8, 1955, before William J. Kern, Jr., an officer authorized to administer oath in the County of Mobile, State of Alabama, and is an official court reporter for the Circuit Court of Mobile County, Alabama, duly authorized to take depositions and swear witnesses in said County in said State. The oral examination will continue from day to day until completed and you are invited to attend and cross-examine.

FOREMAN & BROWN

By *Alfred Brown*  
Attorneys for Defendant

JANE DEVINE,

Plaintiff,

-vs-

MARVIN PIXTON, d/b/a  
PIXTON PIER AND COTTAGES

Defendant.

\*

\*

\*

\*

\*

\*

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

CASE NO. \_\_\_\_\_

I, Alexander Foreman, Jr., one of the attorneys for the defendant in the above styled cause, do hereby certify that I served the attached and foregoing notice to take the deposition upon oral examination of Jane Devine by mailing the same to Ernest M. Bailey, at 255 Fairhope Avenue, Fairhope, Alabama, Attorney for the plaintiff in said cause on this 14th day of July,

  
Alexander Foreman, Jr.

FILED

JUL 15 1959

ALICE J. DUCK, Clerk

FOREMAN & BROWN

ATTORNEYS AT LAW

SUITE 214 FIRST NATIONAL BANK ANNEX

MOBILE 13, ALABAMA

July 29, 1959

ALEXANDER FOREMAN, JR.  
ALTON R. BROWN, JR.

Honorable Alice J. Duck, Clerk  
Circuit Court of Baldwin County  
Bay Minette, Alabama

RE: Jane Devine vs.  
Marvin Pixton, et al.  
At Law - #3823

Dear Mrs. Duck:


Enclosed herewith you will please find in duplicate the answer of the defendant's which we shall appreciate you causing to be filed in the above styled case. We are enclosing the duplicate copy so that you may either cause the copy thereof to be served on the attorney or mailed to him in accordance with your local custom.

Your courtesy in this regard will be appreciated.

Yours very truly,

FOREMAN & BROWN

BY

  
Alexander Foreman, Jr.

AFj:jm

enclosures

FOREMAN & BROWN  
ATTORNEYS AT LAW  
SUITE 214 FIRST NATIONAL BANK ANNEX  
MOBILE 13, ALABAMA

ALEXANDER FOREMAN, JR.  
ALTON R. BROWN, JR.

July 14, 1959

38-3  
Honorable Alice J. Duck, Clerk  
Circuit Court of Baldwin County  
County Courthouse  
Bay Minette, Alabama

Re: Jane Devine vs. Marvin  
Pixton, d/b/a Pixton Pier  
and Cottages

Dear Mrs. Duck:

Enclosed herewith you will please find the notice  
of the taking of the deposition of Jane Devine which  
notice we shall appreciate your causing to be filed in  
said cause.

Yours very truly,

FOREMAN & BROWN

By:   
Alexander Foreman, Jr.

AFJr/bd  
Enclosure

FILED

JUL 16 1959

ALICE J. DUCK, Clerk

FOREMAN & McNALLY

ATTORNEYS AT LAW

SUITE 214, FIRST NATIONAL BANK ANNEX

MOBILE 13, ALABAMA

May 29, 1959

ALEXANDER FOREMAN, JR.  
GEORGE E. McNALLY

Mrs. Alice J. Duck  
Clerk, Circuit Court  
Baldwin County Courthouse  
Bay Minette, Alabama

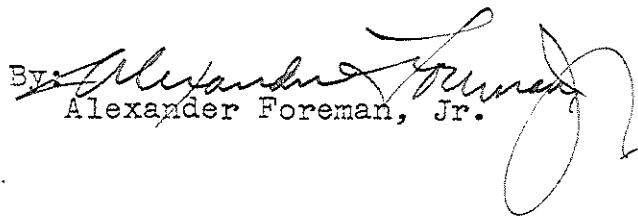
Re: Jane Devine vs. Marvin Pixton,  
d/b/a Pixton Pier and Cottages

Dear Mrs. Duck:

Please find enclosed herewith, in duplicate, the Motion or Plea of Marvin F. Pixton, Jr. which we shall appreciate your causing to be properly filed and served in connection with the above referred to cause. Since service was had in this matter on April 30, 1959, please notify the writer immediately upon receipt of this pleading.

Yours very truly,

FOREMAN & McNALLY

By:   
Alexander Foreman, Jr.

AFJr/bd  
Enclosures

3847

JAMES HARRIS 15. Tharion Myon

JURY LIST  
FALL SESSION, SEPTEMBER 14, 1959

- ~~1. Schwartz, Edward J., Farmer, Elberta~~
- ~~2. Thames, Wiley, Farmer, Robertsdale~~
- ~~3. Vines, Mack, Clerk, Bay Minette~~
4. Wallace, William, Farmer, Bay Minette
- ~~5. Weekley, Willard A., Newport, Bay Minette~~
- ~~6. Weeks, Harry J., Nurseryman, Gulf Shores~~
7. Weston, Herbert R., Bookkeeper, Bay Minette
- ~~8. Wren, Walter P., Fleet, Bay Minette~~
- ~~9. Lenz, William, Civil Service, Elberta~~
10. Little, Frank Eugene, Mechanic, Foley
- ~~11. Lunsford, Herbert L., Grower & Shipper, Foley~~
- ~~12. Malone, R., Farmer, Seminole~~
13. McDaniel, Schuler, Farmer, Robertsdale
14. Meszaros, Michael A., Retired, Elberta
- ~~15. Parker, Samuel F., Jr., C.P.A., Foley~~
- ~~16. Parker, Wilburn, Farmer, Rabon~~
- ~~17. Parker, Willard, Farmer, Gulf Shores~~
- ~~18. Pittman, Henry Durwood, Farmer, Gateswood~~
19. Pluscht, Peter, Jr., Carpenter, Elberta
- ~~20. Powell, Brady L., New Port, Bay Minette~~
- ~~21. Quinley, Lyman, Farmer, Bay Minette~~
- ~~22. Resmondo, Noah, Farmer, Summerdale~~
- ~~23. Rybar, Joe, Farmer, Silverhill~~
- ~~24. Bryant, George E., Farmer, Stockton~~
25. Hlinka, George, Retired, Elberta
- ~~26. Haxton, John L., Kemstrand, Bay Minette~~
- ~~27. Herron, William E., Merchant, Bay Minette~~
28. Hobbs, W.D., Farmer, Rosinton
29. Koehler, Charles G., Jr., Banker, Elberta
30. Krauss, Joseph, Retired, Elberta
31. Johnson, Coy L., Laborer, Bay Minette
- ~~32. Jones, Walter, Clerk, Bay Minette~~
- ~~33. Jones, Willie, Farmer, Bay Minette~~
- ~~34. Faulk, Billy, Barber, Robertsdale~~
35. Gullledge, Charles, Farmer, Summerdale
- ~~36. Hammond, Cecil G., Truck Operator, Bay Minette~~
- ~~37. Robinson, R.M., Farmer, Bay Minette~~
- ~~38. Miller, Henry, Farmer, Bay Minette~~
- ~~39. Rhodes, Virgil V., Farmer, Bay Minette~~

P. XXXX XX

D. XXXX XI

39  
25  
14



JANE DEVINE,

Plaintiff,

-vs-

MARVIN PIXTON, Individually,  
also known as M. F. PIXTON,  
JR., and PIXTON PIER AND  
COTTAGES, a Co-Partnership  
composed of Mabel C. Pixton  
and M. F. Pixton, Jr., Ad-  
ministrators for the estate  
of M. F. Pixton

Defendants.

\* IN THE CIRCUIT COURT OF  
\* BALDWIN COUNTY, ALABAMA  
\* AT LAW  
\* NO. 3823  
\*  
\*  
\*  
\*  
\*  
\*

NOTICE OF FILING OF DEPOSITION UPON ORAL  
EXAMINATION OF JANE DEVINE

TO: Honorable Ernest M. Bailey  
255 Fairhope Avenue  
Fairhope, Alabama

You are hereby notified that the deposition taken upon  
oral examination of Jane Devine on Wednesday, July 22, 1959,  
in the above styled cause was filed with the Clerk of the Circuit  
Court of Baldwin County, Alabama, by mailing the same to her on  
July 31, 1959.

FOREMAN & BROWN

BY



STATE OF ALABAMA:  
COUNTY OF MOBILE:

I, Alexander Foreman, Jr., one of the attorneys of record  
for the defendants in the above styled cause do hereby certify  
that I have this day mailed a copy of the foregoing notice to  
Hon. Ernest M. Bailey, attorney of record for the defendant, on  
this 31st day of July, 1959.

  
Alexander Foreman, Jr.

FILED

AUG 1 1959

ALICE J. DUCK, CLERK  
REGISTER

STATE OF ALABAMA

I

IN THE CIRCUIT COURT OF

BALDWIN COUNTY

I

BALDWIN COUNTY, ALABAMA

AT LAW

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon Marvin Pixton, d/b/a Pixton Pier and Cottages, to appear and answer, plead or demur, within thirty days from the service of this writ, to a Bill of Complaint filed against it in the Circuit Court, at Law, for said County and State, by Jane Devine.

Herein fail not. Due return make of this writ as the law directs.

Witness my hand this the 28 day of April, 1959.

Deane J. Sack  
CLERK OF COURT

JANE DEVINE,

I

IN THE CIRCUIT COURT OF

Plaintiff

BALDWIN COUNTY, ALABAMA

I

vs.

AT LAW

MARVIN PIXTON, d/b/a  
PIXTON PIER AND COTTAGES,

I

Defendant

I

COUNT ONE:

Plaintiff claims of the Defendant the sum of \$35,000.00 as damages, for that, heretofore, to-wit, December 8, 1958, the Defendant occupied and was in possession of certain premises in Baldwin County, Alabama, on one of the public streets of Gulf Shores, Baldwin County, Alabama, where he conducted or operated a public business, to-wit, the renting of cottages for hire to vacationers, to which the public generally was invited to come and trade or on other business; Plaintiff further avers that she was an invitee of the Defendant upon said premises, being there on the occasion complained of as a tenant of one of the cottages owned by the Defendant, and while such a tenant and invitee and on said premises, on the occasion aforesaid, she

fell or was caused to fall into or over a dangerous step leading into the cottage belonging to the Defendant; Plaintiff further avers that the dangerous condition as aforesaid was caused by dangerously constructed steps leading into said cottage and by a dangerous lighting condition leading into said cottage.

Plaintiff alleges that as a result of the negligence of the Defendant her leg was injured and made sore; she suffered great mental and physical pain and anguish, lost time from her employment, spent large sums for medicine and medical attention in and about the treatment of her said injuries and she was permanently injured.


Plaintiff further avers that all of her said injuries and damages were proximately caused by reason of the negligence of the Defendant in negligently failing to use due care to keep said premises reasonably safe for persons visiting the place by the Defendant's invitation express or implied.

COUNT TWO:


Plaintiff claims of the Defendant \$35,000.00 as damages for that, heretofore, to-wit, December 8, 1958, the Defendant was engaged in the business of operating a public lodging business on a public street in the city of Gulf Shores, Baldwin County, Alabama, and which lodging had several cottages connected therewith; that on, to-wit, December 8, 1958, the Defendant leased or let to the Plaintiff for her use and occupancy one of the said cottages and the Defendant leased or let to a party unknown to your Plaintiff an adjoining cottage for use and occupancy by him and such persons as he should lawfully there-to invite and the Defendant received rent therefor; Plaintiff further avers that she was an invitee in the cottage adjoining and while such an invitee, the Defendant maintained an insecure and unsafe condition in and about said premises in this, the steps leading into the premises were in an insecure and unsafe condition and the area around the premises was not adequately lighted to provide a safe walkway, stairway and guardway; Plaintiff further avers that the Defendant either knew, or in the exercise of due diligence should have known that said stairway, walkway and guardway was in an insecure and unsafe condition.

Plaintiff further avers that while on said premises by invitation of said Defendant, the Plaintiff slipped or fell, or was caused to

fall, by the unsafe condition all to the negligence of the Defendant as aforesaid and as a proximate consequence thereof her leg was injured, she became sick and sore, she was caused to lose much time from her employment, she was caused to spend great sums for medicine and medical care and she was permanently injured, all to the damage of the Plaintiff as aforesaid; hence this suit.

  
ATTORNEY FOR THE PLAINTIFF

For the trial of this cause,  
Plaintiff demands trial by jury.

  
\_\_\_\_\_

MO. 387.3

JANE DEVINE,

PLAINTIFF

VS.

MARVIN PIXTON, d/b/a  
PIXTON PIER & COTTAGES,

DEFENDANT

SUMMONS AND COMPLAINT

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

AT LAW

Received 28 day of April 1955  
and on 30 day of April 1955  
I served a copy of the within Doc  
on Marvin Pixton

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

TAYLOR WILKINS, Sheriff

By Alice J. Duck

Gulf Shores

Sheriff claims 100 miles at

Ten Cents per mile Total \$ 10.00

TAYLOR WILKINS, Sheriff

BY Alice J. Duck  
DEPUTY SHERIFF

**FILED**

APR 28 1955

ALICE J. DUCK, CLERK  
REGISTER

JANE DEVINE,

Plaintiff,

-vs-

MARVIN PIXTON, d/b/a  
PIXTON PIER AND COTTAGES

Defendant

\* IN THE CIRCUIT COURT OF  
\* BALDWIN COUNTY, ALABAMA  
\* AT LAW  
\* CASE NO. 3823  
\*  
\*

Comes now Marvin F. Pixton, Jr. and appearing specially for the purpose of filing this Motion or Plea and for no other or different purposes shows unto the Court as follows:

That the defendant is named in the Summons and Complaint in this cause as "Marvin Pixton, d/b/a Pixton Pier and Cottages, Defendant"; that on or about April 30, 1959, one Carlisle Childress, Deputy Sheriff for Baldwin County, Alabama, handed to your Movant or Petitioner a copy of the Summons and Complaint in this cause and that the return of service in this cause by Taylor Wilkins, Sheriff, through Carlisle Childress, Deputy Sheriff, is that on the 30th day of April, 1959, said Sheriff and/or Deputy Sheriff served a copy of the Summons and Complaint "on Marvin Pixton";

That your Movant or Petitioner is an individual by the name of Marvin F. Pixton, Jr. and is not now known nor has he ever been known as "Marvin Pixton, d/b/a Pixton Pier and Cottages";

That your Movant or Petitioner is not now and never has been personally and individually engaged in a business under the name of "Pixton Pier and Cottages; that "Pixton Pier and Cottages" is the name in which a co-partnership composed of Mabel C. Pixton and M. F. Pixton, Jr., Administrators for The Estate of M. F. Pixton and M. F. Pixton, Jr., which is now doing business at Gulf Shores, Alabama, and was so doing business at said place on the date referred to in the Complaint in said cause.

WHEREFORE, premises considered, your Movant or Petitioner moves and prays the Court that said service of process be set

aside or quashed or that said return of service be set aside  
or quashed or that this action be abated as to the alleged  
defendant "Marvin Pixton, d/b/a Pixton Pier and Cottages".

FOREMAN & McNALLY

By *Alexander Foreman, Jr.*  
Attorneys for the Defendant

STATE OF ALABAMA:  
COUNTY OF MOBILE:

Before me the undersigned authority personally appeared  
Alexander Foreman, Jr., who being by me first duly sworn on oath  
deposes and says that he is one of the attorneys representing  
Marvin F. Pixton, Jr., the foregoing named Movant or Petitioner  
and that the matters and things alleged in said Motion or Plea  
are true and correct to his best knowledge and belief.

*Alexander Foreman, Jr.*  
Alexander Foreman, Jr.

Subscribed and sworn to this  
28th day of May, 1959.

*Betty Lewis*  
Notary Public, State of Alabama, At Large

*Filed*  
*May 29, 1959*  
*Alice J. Luck,*  
*clerk.*



3823



FILED

MAY 29 1959

Alice J. Duck, CLERK  
REGISTER

AMENDED BILL OF COMPLAINT

JANE DEVINE,	¶	IN THE CIRCUIT COURT OF
PLAINTIFF	¶	BALDWIN COUNTY, ALABAMA
VS.	¶	AT LAW
MARVIN PIXTON, d/b/a	¶	CASE NO. <u>3823</u>
PIXTON PIER AND COTTAGES,	¶	
DEFENDANT	¶	

-----

Comes now the Plaintiff in the above styled cause and amends the Bill of Complaint heretofore filed in this cause to read as follows:

JANE DEVINE,	¶	IN THE CIRCUIT COURT OF
PLAINTIFF	¶	BALDWIN COUNTY, ALABAMA
VS.	¶	AT LAW
MARVIN PIXTON, Individually,	¶	CASE NO. <u>3823</u>
also known as M. F. PIXTON,	¶	
JR., and PIXTON PIER AND	¶	
COTTAGES, a Co-Partnership	¶	
composed of Mabel C. Pixton	¶	
and M. F. Pixton, Jr., Ad-	¶	
ministrators for the estate	¶	
of M. F. Pixton,	¶	
DEFENDANTS	¶	

COUNT ONE:

Plaintiff claims of the Defendants the sum of \$35,000.00 as damages for that, heretofore, to-wit, December 8, 1958, the Defendants occupied and were in possession of certain premises in Baldwin County, Alabama, on one of the public streets of Gulf Shores, Baldwin County, Alabama, where they conducted or operated a public business, to-wit, the renting of cottages for hire to vacationers, to which the public generally was invited to come and trade or on other business; Plaintiff further avers that she was an invitee of the Defendants upon said premises, being there on the occasion complained of as a tenant of one of the cottages owned by the Defendants, and while such a tenant and invitee and on said premises, on the occasion aforesaid, she fell or was caused to fall into or over a dangerous step leading into the cottage belonging to the Defendants;

Plaintiff further avers that the dangerous condition as aforesaid was caused by dangerously constructed steps leading into said cottage and by a dangerous lighting condition leading into said cottage.

Plaintiff alleges that as a result of the negligence of the Defendants her leg was injured and made sore; she suffered great mental and physical pain and anguish, lost time from her employment, spent large sums for medicine and medical attention in and about the treatment of her said injuries and she was permanently injured.

Plaintiff further avers that all of her said injuries and damages were proximately caused by reason of the negligence of the Defendants in negligently failing to use due care to keep said premises reasonably safe for persons visiting the place by the Defendants' invitation, express or implied.

COUNT TWO:

Plaintiff claims of the Defendants \$35,000.00 as damages for that, heretofore, to-wit, December 8, 1958, the Defendants were engaged in the business of operating a public lodging business on a public street in the city of Gulf Shores, Baldwin County, Alabama, and which lodging had several cottages connected therewith; that on, to-wit, December 8, 1958, the Defendants leased or let to the Plaintiff for her use and occupancy one of the said cottages and the Defendants leased or let to a party unknown to your Plaintiff an adjoining cottage for use and occupancy by him and such persons as he should lawfully thereto invite and the Defendants received rent therefor; Plaintiff further avers that she was an invitee in the cottage adjoining and while such an invitee, the Defendants maintained an insecure and unsafe condition in and about said premises in this, the steps leading into the premises were in an insecure and unsafe condition and the area around the premises was not adequately lighted to provide a safe walkway, stairway and guardway; Plaintiff further avers that the Defendants either knew, or in the exercise of due diligence should have known that said stairway, walkway or guardway was in an insecure and unsafe condition.

Plaintiff further avers that while on said premises by invitation of said Defendants, the Plaintiff slipped or fell, or was caused to fall, by the unsafe condition all to the negligence of

the Defendants as aforesaid and as a proximate consequence thereof her leg was injured, she became sick and sore, she was caused to lose much time from her employment, she was caused to spend great sums for medicine and medical care and she was permanently injured, all to the damage of the Plaintiff as aforesaid; hence this suit.

~~ALICE J. DUCK, Clerk~~

~~6551-71-700~~

~~FILED~~

*James M. Bailey*  
ATTORNEY FOR THE PLAINTIFF

FILED

JUL 14 1959

ALICE J. DUCK, Clerk

2823

JANE DEVINE,  
PLAINTIFF  
VS.

MARVIN PIXTON, d/b/a  
PIXTON PIER AND COTTAGES,  
DEFENDANT

AMENDED BILL OF COMPLAINT

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

AT LAW

FILED  
JUL 14 1959

ALICE J. DUCK, Clerk

Serve Two on  
Marvin Pixton.  
One individually  
one as partner

Received 14 day of July 1959  
and on 18 day of July 1959  
I served a copy of the within Copy  
on Marvin Pixton d/b/a  
Pixton Pier Cottages  
By service on Marvin Pixton

TAYLOR WILKINS, Sheriff  
By Larbit. Shores  
Joseph Shores

Sheriff claims 2.00 miles at  
Ten Cents per mile Total \$ 20.00  
TAYLOR WILKINS, Sheriff  
BY [Signature]  
DEPUTY SHERIFF

JANE DEVINE,

Plaintiff,

-vs-

MARVIN PIXTON, Individually,  
also known as M. F. PIXTON,  
JR., and PIXTON PIER AND  
COTTAGES, a Co-Partnership  
composed of Mabel C. Pixton  
and M. F. Pixton, Jr., Ad-  
ministrators for the estate  
of M. F. Pixton,

Defendants.

\* IN THE CIRCUIT COURT OF  
\* BALDWIN COUNTY, ALABAMA  
\* AT LAW  
\* CASE NO. 3823  
\*  
\*  
\*  
\*  
\*  
\*

Come now the defendants in the above styled cause and for answer, separately and severally, to the complaint and the separate and several COUNTS ONE and TWO thereof, as last amended, file the following separate and several pleas:

1. Not guilty.

2. That, at the time and place alleged in said plea, the plaintiff was herself guilty of negligence which proximately contributed to the plaintiff's alleged injuries and damages.

3. The plaintiff was guilty of negligence which contributed proximately to the injuries complained of, in that, at said time and place, there existed on the outside of the cottage rented by the plaintiff an electric light for her to use in going to and from said cottage that was being occupied by her and that the use of said light attached to said cottage being occupied by her at said time and place would have sufficiently lighted the allegedly dangerously constructed steps leading into the said cottage which she was entering at said time and place, but the plaintiff, notwithstanding the fact that the use of said light on the cottage being occupied by her would have furnished sufficient light in order to make her use of the steps of said cottage being entered by her reasonably safe, negligently failed to use said light attached to the said cottage being occupied by her at said time and place and as a consequence of her said negligence tripped or fell on the steps of said cottage being entered by her, which said negligence contributed proximately to her alleged injuries

and damages, wherefore the plaintiff should have and recover nothing of the defendants.

4. That the plaintiff, at the time and place alleged in said Count, knew, or in the exercise of reasonable diligence should have known, of the alleged condition of said steps but notwithstanding the fact that the plaintiff knew, or in the exercise of reasonable diligence should have known, the condition of said steps at said time and place, the plaintiff so negligently ascended the same as to cause herself to trip, stumble, or fall thereon, which said negligence contributed proximately to her injuries and damages alleged, wherefore the plaintiff should have and recover nothing of the defendants.

5. The plaintiff was guilty of negligence which contributed proximately to the injuries complained of, in that on said time and place there existed on the outside of the cottage rented by the plaintiff an electric light for her to use in going to and from said cottage that was being occupied by her and that the use of said light attached to said cottage being occupied by her at said time and place would have sufficiently lighted the allegedly dangerously constructed steps leading into the said cottage which she was entering at said time and place, but the plaintiff, notwithstanding the fact that she knew, or in the exercise of reasonable diligence should have known, that the use by her of said light on the cottage being occupied by her would have furnished sufficient light in order to make her use of the steps of the cottage being entered by her reasonably safe, negligently failed to use said light attached to the said cottage being occupied by her at said time and place and as a consequence of her said negligence tripped or fell on the steps of said cottage being entered by her, which said negligence contributed proximately to her alleged injuries and damages, wherefore the plaintiff should have and recover nothing of the defendants.

6. That the plaintiff, at the time and place alleged in said Count, knew, or in the exercise of reasonable diligence should have known, of the alleged condition of said steps and lighting provided without the use by her of the light attached to the cottage being occupied by her, but notwithstanding the fact that the plaintiff knew, or in the exercise of reasonable diligence should have known, of the alleged condition of said steps and lighting provided without the use by her of the light attached to the cottage being occupied by her, negligently ascended said steps with her arm or arms loaded with objects being carried by her and as a consequence of her said negligence she tripped or fell on the steps of said cottage being entered by her, which said negligence contributed proximately to her alleged injuries and damages, wherefore the plaintiff should have and recover nothing of the defendants.

7. That there was attached to the steps of the cottage being entered at said time and place by the plaintiff a guard rail for use of persons ascending or descending said steps, which said steps and guard rail were in a reasonably safe condition for use by the plaintiff, but notwithstanding the fact that said guard rail was provided for use in ascending or descending said steps the plaintiff negligently failed to use said guard rail in ascending said steps and as a consequence of her said negligence tripped or fell on the steps of said cottage being entered by her and said negligence contributed proximately to her said alleged injuries and damages, wherefore the plaintiff should have and recover nothing of the defendants.

FOREMAN & BROWN

*Filed*  
*July 30, 1959*  
*Alice J. Duck,*  
*Clerk*

By *Alexander Foreman*  
Attorneys for Defendants



3823

FILED

JUL 30 1950

ALICE L. DUCK, CLERK  
REGISTER