DOROTHY C. WORD, and ROBERT B. WORD and DIANE WORD, as minors suing by their next friend and mother, DOROTHY C. WORD,	X	IN THE CIRCUIT COURT OF
Plaintiffs,	X	BALDWIN COUNTY, ALABAMA.
vs.	X	
LOUISVILLE AND NASHVILLE RAILROAD COMPANY, a corporation, and GARY ROBERTS,	X	NO. 1435
Defendants.	X	AT LAW.

The court having heretofore sustained demurrers to Counts One and Two of the complaint and now having further sustained demurrers to Counts Three, Four, Five and Six as amended of the complaint, now come the plaintiffs and take a non-suit on account of the adverse rulings of the court on the pleadings, and pray an appeal to the Supreme Court of Alabama to review the said rulings of said court;

Whereupon, it is ORDERED, and ADJUDGED by the court that a non-suit be and it is hereby entered in this cause, and that the defendants go hence without day, and do have and recover of and from the plaintiffs all costs in their behalf expended, for all of which let execution issue.

ORDERED and ADJUDGED this 8th day of December, 1953.

Hubert M Hall
JUDGE

DOROTHY C. WORD, and ROBERT B. WORD and DIANE WORD, as minors suing by their next friend and mother, DOROTHY C. WORD,	:	IN THE CIRCUIT COURT OF BALDWIN
Plaintiffs,	:	COUNTY, ALABAMA. AT LAW
vs.	:	
LOUISVILLE AND NASHVILLE RAILROAD COMPANY, a corporation, and GARY ROBERTS,	:	NO. _____
Defendants.	:	

D E M U R R E R

Come the defendants in the above styled cause, separately and severally, and demur to Counts Three, Four, Five, and Six of the amended complaint, separately and severally, and as separate and several grounds of such demurrer, assign the following:

1. Because the allegation that the defendant Gary Roberts "negligently failed to open said railroad bridge" is a mere conclusion of the pleader.

2. Because the allegation that the defendant Gary Roberts "negligently failed to open said railroad bridge" attempts to aver the quo modo of the alleged negligence, but the facts averred do not show negligence as a matter of law.

3. Because the allegation that the defendant Gary Roberts "negligently failed to open said railroad bridge and allow or permit a motor launch" to pass through said bridge is a mere conclusion of the pleader.

4. Because the allegation that the defendant Gary Roberts "negligently failed to open said railroad bridge and allow or permit a motor launch" to pass through said bridge constitutes an effort to plead the quo modo of the alleged negligence, but the facts set forth do not constitute negligence as a matter of law.

5. Because there is no allegation that proper warning of the approach of said motor launch to said railroad bridge was given by said motor launch.

6. Because said count fails to set forth any facts showing any

duty on said Gary Roberts to open said railroad bridge.

7. Because, for aught that appears, said motor launch did not advise said Gary Roberts of its approach in time to permit said railroad bridge to be opened.

8. Because it does not appear that said motor launch was seeking passage through the draw span of said railroad bridge.

9. Because said count fails to aver any facts constituting negligence on the part of the defendants, or either of them.

10. Because said count fails to aver any facts showing that the decedent was killed as a proximate result of negligence on the part of the defendants, or either of them.

11. Because said count fails to aver facts showing any liability of the defendants, or either of them.

12. Because said count fails to show that the plaintiffs have any right to prosecute this suit.

13. Because this court has no jurisdiction over this alleged cause of action.

14. Because there is no statute of the State of Alabama authorizing the prosecution of this suit by the plaintiffs.

15. Because the Act of the Legislature of the State of Alabama, approved October 9, 1947 (General Acts of Alabama, 1947, page 484) does not authorize the prosecution of this suit by the plaintiffs.

16. Because the Act of the Legislature of Alabama, approved October 9, 1947 (General Acts of Alabama, 1947, page 484) is unconstitutional and violative of Article IV, Section 45, Constitution of Alabama of 1901.

17. Because the allegation of said count that the defendant Gary Roberts "wantonly killed" the said decedent is a mere conclusion of the pleader.

18. Because the allegation that the said decedent was killed as a proximate result of the defendant Gary Roberts "wantonly failing to open said railroad bridge" is a mere conclusion of the pleader.

19. Because the allegation that said decedent was killed as a proximate result of the defendant Gary Roberts "wantonly failing to open said railroad bridge" constitutes an effort to aver the quo modo of the alleged wanton injury, but the allegations fail to show such wanton injury as a matter of law.

20. Because the allegation that the said decedent was killed as a proximate result of the defendant Gary Roberts "wantonly failing to open said railroad bridge and allow or permit a motor launch" to pass through the same is a mere conclusion of the pleader.

21. Because the allegation that said decedent was killed as a proximate result of the defendant Gary Roberts "wantonly failing to open said railroad bridge and allow or permit a motor launch" to pass through the same constitutes an effort to aver the quo modo of the alleged wanton injury, but the facts averred fail to show such wanton injury as a matter of law.

22. Because said count attempts to aver the quo modo of the alleged wanton injury, but the facts averred do not show a wanton injury as a matter of law.

23. Because, under the allegations of said count, Harrison Brothers Dry Dock and Repair Yard was a joint tort feasor with the defendants in this case, and the award rendered in the Circuit Court of Mobile County, Alabama, in favor of the plaintiffs, releases the defendants in the instant case from any liability to the plaintiffs.

24. Because it affirmatively appears that the plaintiffs have obtained an award against Harrison Brothers Dry Dock and Repair Yard.

25. Because it affirmatively appears that the plaintiffs have made a binding election to proceed solely under the workmen's compensation law of the State of Alabama.

26. Because it affirmatively appears that the plaintiffs have

elected to proceed solely under the workmen's compensation law of the State of Alabama and such law cannot lawfully give the plaintiffs any rights or cause of action against the defendants in the instant case.

27. Because it affirmatively appears that the plaintiffs are estopped or barred from recovering from the defendants, or either of them.

28. Because it affirmatively appears that the plaintiffs are estopped or barred from recovering from the defendants, or either of them, by virtue of the award which they have sought and obtained under the workmen's compensation law of the State of Alabama.

29. Because the award obtained by the plaintiffs under the workmen's compensation law of the State of Alabama constitutes an accord and satisfaction of the plaintiffs' alleged claim or cause of action against the defendants.

30. Because the plaintiffs have no right to recover twice for the same injury.

31. Because it affirmatively appears that the prosecution of this suit is barred by the award rendered under the workmen's compensation law of the State of Alabama.

32. Because it affirmatively appears that the plaintiffs had a choice of remedy and have elected to proceed under the workmen's compensation law of the State of Alabama.

33. Because the award rendered in favor of the plaintiffs under the workmen's compensation law of the State of Alabama operates to release the defendants in the instant case from any liability.

34. Because the award rendered in favor of the plaintiffs under the workmen's compensation law of the State of Alabama constitutes a settlement of all of the plaintiffs' claims.

35. Because any recovery in this cause would be for the benefit of Harrison Brothers Dry Dock and Repair Yard, the other alleged joint tort feasor.

36. Because any application of the workmen's compensation law of the State of Alabama in the instant case would be violative of Section 2, Article 3 of the Constitution of the United States.

37. Because any application of the Act of the Legislature of Alabama, approved October 9, 1947 (General Acts of Alabama, 1947, page 484) to the instant case would be violative of Section 2, Article 3 of the Constitution of the United States.

38. Because it appears that this suit was filed, and plaintiffs seek to maintain and to recover, under and by virtue of the provisions of the workmen's compensation law of Alabama, when such law does not apply.

39. Because it affirmatively appears that no action can be prosecuted against the defendants on account of the alleged wrongful death of said decedent, except an action brought under Section 123 of Title 7 of the Code of Alabama of 1940.

40. Because it affirmatively appears that the cause of action, if any, arising against said Harrison Brothers Dry Dock and Repair Yard by virtue of the death of said decedent should have been brought under the Jones Act (46 U.S.C.A., Sec. 688).

41. Because it affirmatively appears that the cause of action, if any, arising against said Harrison Brothers Dry Dock and Repair Yard by virtue of the death of the said decedent was within the admiralty jurisdiction of the United States and no valid award, decree, or judgment was properly rendered under the workmen's compensation law of the State of Alabama.

42. Because it affirmatively appears that the cause of action, if any, against said Harrison Brothers Dry Dock and Repair Yard arising by virtue of the death of said decedent was within the admiralty jurisdiction of the United States and no valid award, decree, or judgment was rendered against said Harrison Brothers Dry Dock and Repair Yard under the workmen's compensation law of the State of Alabama, so that said workmen's compensation law cannot be applied against the defendants in this case.

43. Because it does not appear that the Circuit Court of Mobile County, Alabama had any jurisdiction to enter said judgment against said Harrison Brothers Dry Dock and Repair Yard.

44. Because the Circuit Court of Mobile County, Alabama was without jurisdiction to enter said judgment against said Harrison Brothers Dry Dock and Repair Yard, as the matter in controversy was within the admiralty jurisdiction of the United States.

45. Because the Circuit Court of Mobile County, Alabama was without jurisdiction to enter said judgment against said Harrison Brothers Dry Dock and Repair Yard, under Section 2, Article 3 of the Constitution of the United States.

46. Because under the maritime laws of the United States, the provisions of the workmen's compensation law of the State of Alabama are not to be enforced.

47. Because it appears from the complaint that plaintiffs have already recovered for the matters and things complained of against their intestate's employer, which settles and discharges their alleged claim against these defendants.

48. Because it appears from the complaint that plaintiffs have already recovered for the matters and things complained of against another alleged joint tort feasor, which, by operation of law, settles and discharges said claim against these defendants.

49. Because, for aught that appears, the compensation awarded plaintiffs in their suit against intestate's employer has been paid or is being paid, and such constitutes payment by one alleged joint tort feasor, which would settle and discharge said alleged claim against these defendants.

50. Because it appears from said complaint that for the identical claim asserted or attempted to be asserted against these defendants plaintiffs have received payment, or are receiving payments, in settle-

ment and discharge thereof from another alleged tort feasor, which payment or payments discharged said claim against these defendants.

51. Because it does not appear that the Circuit Court of Mobile County, Alabama had jurisdiction of the subject matter in the proceeding under the workmen's compensation law of the State of Alabama against Harrison Brothers Dry Dock and Repair Yard.

52. Because it does not appear that the Circuit Court of Mobile County, Alabama had jurisdiction of the person of Louisville and Nashville Railroad Company or Gary Roberts in the proceeding under the Workmen's Compensation Law of Alabama against said Harrison Brothers Dry Dock and Repair Yard.

53. Because the allegation that the business and work of said Harrison Brothers Dry Dock and Repair Yard "were local to the State of Alabama" is a mere conclusion of the pleader.

54. Because the allegation that the work in which said William B. Word was engaged at the time of his death "was incidental to his chief employment on land" is a mere conclusion of the pleader.

55. Because the allegation that "both said William B. Word and said Employer were at the time subject to and covered by Article 2 of the Workmen's Compensation Act of the State of Alabama" is a mere conclusion of the pleader.

56. Because it affirmatively appears, that at the time of the alleged accident the said William B. Word and said Harrison Brothers Dry Dock and Repair Yard were not subject to the Workmen's Compensation Law of the State of Alabama.

57. Because it affirmatively appears that the entire decree rendered on the 10th day of November, 1949 by the Circuit Court of Mobile County, Alabama, in the proceeding under the Workmen's Compensation Law of the State of Alabama is not attached to or made a part of said Exhibit "A".

Mason & Stone

Attorneys for Defendants

Of Counsel:

Messrs. Steiner, Crum & Baker
Montgomery, Alabama

RECORDED 1435

DEMURRER TO AMENDED COMPLAINT

DOROTHY C. WORD, and ROBERT B. WORD and DIANE WORD, as minors suing by their next friend and mother, DOROTHY C. WORD,

Plaintiffs,

vs.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, a corporation, and GARY ROBERTS,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO.__________________

Filed the 17th day of September, 1953.

Alice J. Duck
Clerk.

LAW OFFICES
CHASON & STONE
BAY MINETTE, ALABAMA

Refiled this 8th day of Dec 1953
Alice J. Duck
Clerk

DOROTHY C. WORD, and ROBERT B. WORD and DIANE WORD, as minors suing by their next friend and mother, DOROTHY C. WORD,	)	IN THE CIRCUIT COURT
Plaintiffs,	)	OF BALDWIN COUNTY,
vs.	)	
LOUISVILLE AND NASHVILLE RAILROAD COMPANY, a corporation, and GARY ROBERTS,	)	ALABAMA. AT LAW.
Defendants.	)	NO. _____

The Court having sustained demurrers to Counts One and Two of the complaint, come the plaintiffs and amend said complaint by adding Counts Three, Four, Five, and Six, as follows:

COMMON AVERMENTS

As a part of each Count of the complaint, plaintiffs aver that Dorothy C. Word is the widow of William B. Word, deceased, and that Robert B. Word and Diane Word are the minor son and daughter of the said William B. Word, deceased, being seven (7) years and nine (9) years of age, respectively. Plaintiffs are the total dependents of the said William B. Word, who came to his death on the 13th day of November, 1948, as the result of an accident arising out of and in the course of his employment by William Harrison, Jr., Frank D. Harrison, Joseph E. Harrison and Magdalene W. Harrison, and Marion C. Hyland, individually and as partners doing business under the firm name and style of Harrison Brothers Dry Dock and Repair Yard, hereinafter in this complaint called the "Employer. On the date said William B. Word came to his death said Employer operated a local repair yard on the Eastern bank of Mobile River in the City and County of Mobile, Alabama, for the repair and construction of small water craft, and, in connection therewith, maintained machine shops in which a large part of its

repair or construction work was performed. The said William B. Word was on the 13th day of November, 1948, and for eighteen (18) months prior thereto, had been employed by said Employer as one of the superintendents of its repair yard, the larger part of his work having been performed in said repair yard on land. From time to time as directed by his Employer, the said William B. Word tested out water craft on Mobile River repaired or constructed by his Employer in its said plant. On November 12, 1948, the said William B. Word and Rexford E. Murphy, another employee of the said Employer, were directed by one of said Employer partners to proceed to Mt. Vernon in Mobile County, Alabama, with a motor launch and return with a barge under tow to the Employer's plant in Mobile, said motor launch and barge both being owned by said Employer. The two said employees repaired with said motor launch to Mt. Vernon as so directed, took the barge in tow, and during their return therewith and while approaching the Louisville and Nashville Railroad bridge over Mobile River, approximately sixteen (16) miles above Mobile, the motor launch overturned and sank, as the proximate result of the negligence, as hereinafter alleged, of the defendant, Gary Roberts, an employee of the defendant Louisville and Nashville Railroad Company, a corporation, while acting within the line and scope of his employment as such, the said William B. Word and Rexford E. Murphy were drowned. Said Employer's business and work were local to the State of Alabama, and the said William B. Word at the time resided in the City of Mobile. The work in which the said William B. Word was engaged at the time of his death was incidental to his chief employment on land in the repair yard of his Employer. Said Employer was insured at the time of his death, and for a long time prior thereto, both under the Workmen's Compensation Law of the State of Alabama and

the Federal Longshoremen's and Harbor Workers' Compensation Act, and the premiums paid for the Workmen's Compensation Insurance under the Alabama law were calculated and based upon the amount of said Employer's monthly payroll; and notices were posted on the repair yards of said Employer that its employees were subject to the Workmen's Compensation Law of Alabama and to the Federal Longshoremen's and Harbor Workers' Act; that the said William B. Word came to his death as the result of an accident arising out of and in the course of his employment by said Employer; that at said time he and the plaintiffs herein resided at 11 North Fulton Street in the City and County of Mobile, Alabama, while the residencies of the members of the Partnership Employer, and of said Partnership Employer, were the City and County of Mobile, Alabama; that at the time of the death of the said William B. Word as aforesaid and for a long time prior thereto, the said Employer regularly employed more than sixteen (16) employees in its said repair yard, and that the said William B. Word's average weekly wages at the time of his death were $108.00 per week; and both said William B. Word and said Employer were at the time subject to and covered by Article 2 of the Workmen's Compensation Act of the State of Alabama; that said Employer had due notice and knowledge of the death of the said William B. Word within forty-eight (48) hours thereof; that compensation under the Workmen's Compensation Law of the State of Alabama not having been paid plaintiffs, but having been refused to them by said Employer, plaintiffs, subsequent to the death of the said William B. Word, and before the expiration of twelve (12) months therefrom, filed on the law side of the Circuit Court of Mobile County, Alabama, an action against the Employer of the said William B. Word for the recovery of compensation for said widow and minor children

under the Workmen's Compensation Law of the State of Alabama; that said Employer as defendants in said action answered said complaint, and denied that plaintiff and her minor children were entitled to recover compensation under the Workmen's Compensation Law of the State of Alabama; that upon the trial of said cause, the court did, on the 10th day of November, 1949, enter a final judgment against said Employer, the defendants therein, awarding said widow compensation for herself and said minor children in the amount of $18.00 a week for three hundred (300) weeks, a copy of which judgment and a copy of the "Findings of law" therein referred to are hereto attached, marked Exhibits "A" and "B," respectively and made a part hereof.

COUNT THREE

Plaintiffs claim of the defendants the sum of FIFTY THOUSAND and no/100 ($50,000.00) DOLLARS, as damages, for that on, to-wit, the 13th day of November, 1948, the defendant, Gary Roberts, while acting within the line and scope of his employment as a servant or agent of the Louisville and Nashville Railroad Company, as a bridge tender of its railroad bridge spanning Mobile River in Mobile County, Alabama, negligently failed to open said railroad bridge and allow or permit a motor launch in Mobile River upon which said William B. Word was then and there employed, and which had in tow a barge, to pass through the draw span of said railroad bridge, as a proximate result of which negligence, said William B. Word was drowned and killed; WHEREFORE, plaintiffs bring this suit and ask for damages in the above amount.

COUNT FOUR

Plaintiffs claim of the defendants the sum of FIFTY THOUSAND and no/100 ($50,000.00) DOLLARS, as damages, for that on, to-wit, the 13th day of November, 1948, the defendant, Gary Roberts, while acting within the line and scope of his employment as a servant or agent of the Louisville and Nashville

Railroad Company, as a bridge tender of its railroad bridge spanning Mobile River in Mobile County, Alabama, wantonly killed the said William B. Word through wantonly failing to open said railroad bridge and allow or permit a motor launch in Mobile River, upon which said William B. Word was then and there employed, and which had in tow a barge, to pass through the draw span of said railroad bridge, as a proximate result of which wantonness, said William B. Word was drowned and killed; WHEREFORE, plaintiffs bring this suit and ask for damages in the above amount.

COUNT FIVE

As a part of this count, plaintiffs add the following allegations to its Common Averments, viz; The judgment of the Circuit Court of Mobile County, Alabama, made on the 10th day of November, 1949, has been paid pro tanto as the amounts thereunder respectively became due, by the defendants' insurance carrier under the Workmen's Compensation Law of Alabama.

The plaintiffs further adopt all the remaining allegations of Count Three of the complaint as a part of the allegations of this Count.

COUNT SIX

As a part of this count, plaintiffs add the following allegations to its Common Averments, viz; The judgment of the Circuit Court of Mobile County, Alabama, made on the 10th day of November, 1949, has been paid pro tanto as the amounts thereunder respectively became due, by the defendants' insurance carrier under the Workmen's Compensation Law of Alabama.

The plaintiffs further adopt all the remaining allegations of Count Three of the complaint as a part of the allegations of this count.

Johnston, McCall & Lumpkin
Attorneys for plaintiffs J. B. Blackburn

DOROTHY C. WORD, Plaintiff, vs. WILLIAM H. HARRISON, JR., FRANK D. HARRISON, JOSEPH E. HARRISON, MAGDALENE W. HARRISON, and MARION C. HYLAND, individually and as partners doing business under the firm name and style of HARRISON BROTHERS DRY DOCK AND REPAIR YARD, Defendants.	)	IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA.

FINDING OF FACTS

This case was submitted for final judgment upon the complaint, the answer of the defendants, and the evidence offered at the trial. On the 13th day of November, 1948, William B. Word, an employee of the defendants, came to his death as the proximate result of an accident arising out of and in the course of his employment by the defendants; leaving as his total dependents, his widow, the plaintiff, Dorothy C. Word and their two (2) minor children, Robert B. Word, a son now seven (7) years of age, and Dianne Word, a daughter now nine (9) years of age; his average weekly earnings with the defendants being ONE HUNDRED EIGHT and no/100 ($108.00) DOLLARS per week.

The defendants operate a local repair yard on the eastern bank of Mobile River in the City of Mobile, for the repair and construction of small water craft and in connection therewith, maintained machine shops, in which a large part of its repair or construction work is performed. The said William B. Word was employed by the defendants about eighteen (18) months prior to his death, and the larger part of his work was performed in the repair yards on land. From time to time, as directed, the said William B. Word, tested out water craft repaired or constructed by the defendants in their plant. On November 12, 1948,

said William B. Word and Rexford Earl Murphy, an employee of the defendants, were directed by one of the defendants to proceed to Mount Vernon, Mobile County, Alabama, with a thirty (30') feet launch and return with a barge under tow to the defendants' plant in Mobile. The launch and the barge were owned by the defendants. The two employees repaired with said launch to Mount Vernon, took the barge in tow, and during their return and while approaching the Louisville and Nashville Bridge over the Mobile River approximately sixteen (16) miles above Mobile, the launch overturned and sank, through the negligence of the railroad bridge tender in not opening the bridge and permitting the motor boat and barge to pass through it; and both Mr. Word and Mr. Murphy were drowned.

The barge was owned by the defendants as stated above, and at the time was being towed to their plant in Mobile for some repairs. The defendants' business was localized in Mobile. Paragraph Two (2) of the Complaint alleged:

> "2. On and prior to the 13th day of November, 1948 the defendants operated a local repair yard for the repair or construction of small water craft.",

and the allegation was admitted by the defendants' answer. Defendants did no business outside the State of Alabama, it being local to this neighborhood, the City of Mobile; and their employees reside in the City of Mobile. The work in which the said William B. Word was engaged at the time of his death was incidental to his employment in the repair yards on land where he worked. The defendants' answer and the proof show that they were insured both under the Workmen's Compensation Law of the State of Alabama, and the Federal Longshoremen's and Harborworkers Compensation Act. Defendants' premiums paid for Workmen's Compensation Insurance under the Alabama law were calculated upon the amount of their monthly payroll; and notices were posted around the repair yard of the defendants that they were subject to the Workmen's Compensation Law of Alabama and of the Longshoremen's and Harborworkers' Act. The defendants deny that the death of the said William B. Word was within the protection of either the Alabama Workmen's

Compensation Act or the Longshoremen and Harborworkers' Act, that the death of said William B. Word was maritime, and any liability therefor is within the exclusive jurisdiction of admiralty.

FINDINGS OF LAW

The case of Emmie Fair Murphy, Plaintiff vs. William H. Harrison, Jr., Frank D. Harrison, Joseph E. Harrison, Magdalene W. Harrison, and Marion C. Hyland, individually and as partners doing business under the firm name and style of Harrison Brothers Dry Dock and Repair Yard, Defendants, in the Circuit Court of Mobile County, Alabama, No. 6588, is a companion case to this case, and the Court being of the opinion that the same law governs both cases adopts the Findings of Law as set out in the Findings and Judgment of said case of Emmie Fair Murphy, Plaintiff, vs. William H. Harrison, Jr., et al., Defendants, in the Circuit Court of Mobile County, Alabama, at Law, No. 6588.

The Court is therefore of the opinion that under the facts and law of this case, Dorothy C. Word, the widow of said William B. Word, deceased, is entitled to recover compensation for herself and said minor children, as total dependents of the said decedent, under the Alabama Workmen's Compensation Law.

JUDGMENT OF THE COURT

It is, therefore, ORDERED and ADJUDGED by the Court that the said Dorothy C. Word, do have and recover for and on behalf of herself and said minor children, Robert B. Word and Dianne Word, of and from the defendants, William H. Harrison, Jr., Frank D. Harrison, Joseph E. Harrison, Magdalene W. Harrison, and Marion C. Hyland, individually and as partners doing business under the firm name and style of Harrison Brothers Dry Dock and Repair Yard, three hundred (300) weeks compensation at EIGHTEEN and no/100 ($18.00) DOLLARS per week; and as fifty one (51) weeks and four (4) days have expired on November 10, 1949, since the death of said William B. Word on November 13, 1948,

with no compensation having been paid, it is, therefore, ORDERED and ADJUDGED by the Court that for said fifty one (51) weeks, four (4) days, plaintiff do have and recover for and on behalf of herself and said minor children, Robert B. Word and Dianne Word, of and from said defendants, the sum of NINE HUNDRED TWENTY EIGHT and 28/100 ($928.28) DOLLARS compensation, being fifty one (51) weeks, four (4) days compensation, together with interest thereon to November 10, 1949, amounting to TWENTY SEVEN and 54/100 ($27.54) DOLLARS, for both of which let execution issue; and that from November 10, 1949, she do have and recover on behalf of herself and said minor dependants, of and from the defendants, the remaining two hundred forty eight (248) weeks, and three (3) days compensation at EIGHTEEN and no/100 ($18.00) DOLLARS a week; together with all costs in this behalf expended.

ORDERED and ADJUDGED this the 10th day of November, 1949.

/s/ Claude A. Grayson
JUDGE

"Exhibit B"

COPY OF FINDINGS OF LAW IN THE CASE OF EMMIE FAIR MURPHY, PLAINTIFF, VS. WILLIAM HARRISON, JR., FRANK HARRISON, JOSEPH E. HARRISON, MAGDALENE W. HARRISON, AND MARION C. HYLAND, INDIVIDUALLY AND AS PARTNERS DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF HARRISON BROTHERS DRY DOCK AND REPAIR YARD, DEFENDANTS, IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA, NO. 6588:

Since the decision of the Supreme Court of the United States of Southern Pacific Company vs. Jansen, 244 U. S. 205, 214; 61 L. Ed. 1086, the obligation of an employer to the employee in matters of a similar maritime nature, cognizable in admiralty, has been modified from time to time, so as to permit the application of local workmen's compensation laws, where the subject matter thereof is one of local concern. Whether it be or not a matter of local concern, is factual, and depends largely upon the circumstances of the particular case.

The case of Grant, Smith-Porter Ship Co. vs. Rohde, 257 U. S. 467, 476; 66 L. Ed. 321, 324, arose out of injuries suffered by a carpenter while at work on an uncompleted vessel lying in navigable waters within the State of Oregon. There were submitted to the Supreme Court, two questions.

1. Is there jurisdiction in admiralty because the alleged tort occurred on navigable waters?

2. Is libellant entitled, because of his injury, to proceed in admiralty against respondent for the damages suffered? In Response to the two questions, the Court said:

> "Construing the first question as meaning to inquire whether the general admiralty jurisdiction extends to a proceeding to recover damages resulting from a tort committed on a vessel in process of construction when lying on navigable waters within a state, we answer yes.
>
> Assuming that the second question presents the inquiry whether, in the circumstances stated, the exclusive features of the Oregon Workmen's Compensation Act would apply and abrogate the right to recover damages in an admiralty court which otherwise would exist, we also answer, yes."

It will be observed that the Supreme Court held that under the circumstances of that case, the regulation of the rights, obligations and subsequent liabilities of the parties,

as between themselves, by local rule, (the Workmen's Compensation Law of Oregon), would not necessarily work material prejudice to any characteristic feature of the general maritime law or interfere with the proper harmony or uniformity of that law in its international or interstate relations.

Shortly afterwards, the case of Millers Indemnity Underwriters vs. Braud, 270 U. S. 59; 70 L. Ed. 470, was decided. There a diver submerged himself from a floating barge anchored in the navigable Sabine River to remove obstructions to its navigation. While there submerged, the air supply failed and he died of suffocation. Obviously, removing these obstructions aided the commerce in vessels transporting goods in international and interstate commerce proceeding on the river. Nevertheless, the Court held:

> "In the cause now under consideration, the record discloses facts sufficient to show a maritime tort to which the general admiralty jurisdiction would extend save for the provisions of the State Compensation Act; but the matter is of more local concern and its regulation by the state will work no material prejudice to any characteristic feature of the general maritime law. The Act prescribes theonly remedy; its exclusive features abrogate the right to resort to the admiralty court, which otherwise would exist."

Defendants herein, however, insist that Rexford E. Murphy, the deceased, at the time of his death, was a seaman; that is, a member of the crew of the launch he was aiding in operating. However, if the business of his master and his own employment are of such local concern that the enforcement of the local compensation law would work no material prejudice to any characteristic feature of the general maritime law or interfere with the proper harmony or uniformity of that law in its international or interstate relations, his status as contended for by defendants, would not affect his remedy under the Alabama Workmen's Compensation Law. The launch towing defendants' own barge to their plant at Mobile, under the other circumstances of this case, is not comparable to a commercial vessel sailing on the high seas, carrying freight or passengers, or both, from port to port, where, if local law applied, the relationship of seaman to owner would vary, maybe one half a dozen times in the course of the voyage.

It is clear to the Court that the question here presented is set at rest by the case of Alaska Packers Association vs. Marshall, 95 Fed. 2d. 279 (C.C.A.), decided by the United States Circuit Court of Appeals for the Ninth Circuit. There, two employees of the Alaska Packers Association, a California corporation, were fishing in the waters of Alaska, far distant from their base. While thus engaged in fishing, and after several days away from shore, a storm overtook and destroyed the schooner which they were operating and they were drowned. The small schooner which the two men themselves operated was equipped with all paraphernalia needed for fishing, with provisions, and a galley and with bunks and bedding. Once every twenty-four hours, or more often should occasion require, they reported to deliver their fish to one of several lighters, anchored at Strategic points, called stations. The Court then said:

"They are thus seamen, as well as fishermen".

In the course of its opinion, Circuit Judge Denman, speaking for the Court, said:

> "With respect to the dual character of the fishing and sailing of the boats at the time of the death of their employees, as both local and maritime, the Company's brief frankly admits; 'In one aspect their work is purely local in character, in that they never sail their boats farther away than a few miles from the cannery to which they are attached and to which their catch is taken for packing. On the other hand the waters in which they sail their boats and fish are navigable waters of the United States and within the admiralty jurisdiction." (Italics supplied by the Court".

Further, in the opinion, the Court considered the question now before this Court, and then said:

> "It is thus apparent that the fishing incidents of the whole contract for the varied employment are by function and distance local to the plant and a part of the canning enterprise. Here is no commercial vessel sailing on the high seas carrying freight or passengers, or both, from port to port, where, if local law applied, the relationship of seamen to owner would vary, maybe half a dozen times, in the course of the voyage. So far as this cannery fish supplying is concerned, there is a single locus of employment and no disturbance of uniformity of relationship of employer to employee is created if certain portions of the contract of employment be regarded as maritime, and yet the employment status so created is controlled by the state law.

So far as concerns the whole Alaska employment, the relationship of this California employer and its employees is more uniform if the California law applies, for the Supreme Court has held that it does control not only in the cannery and truly land occupations, but even where the fishermen, standing on the shore, is injured in fully launching a beached schooner partly in the water, to be navigated thence to the cannery. Alaska Packers' Assn. vs. Industrial Accident Comm., 276 U.S. 467, 469, 48 S. Ct. 346, 72 L. Ed. 656.

While if we consider separately from the contract the fishing and sailing incidents, the owner's obligation to the fisherman would clearly be cognizable in admiralty and determined by its particular law, it is not an absolute conformity to the admiralty law in every situation in which it may be applied, which is required by Southern Pacific Co. v. Jensen, 244 U.S. 206, 214, 37 S. Ct. 524, 61 L. Ed. 1086, L. R. A. 1918C, 451, Ann. Cas. 1917E, 900, as interpreted by more recent decisions of the Supreme Court.

Admiralty law is not conceived as a sacrosanct scientific sovereign nor is nonconformance at any place in navigable waters lese majeste. Like other bodies of law, the area of its application may be narrowed by new systems of law and administration more practical for human adjustments and advancement. It was a "characteristic feature of the general maritime law" that there was no survivor's right for a death tortiously caused on the high seas. The Supreme Court offended no such arbitrary sovereign when it held that the law of the state of the vessel's owner created such a liability. The Hamilton, 207 U. S. 398, 405, 28 S. Ct. 133, 52 L. Ed. 264. Nor has it been held that the Jensen Case overrules The Hamilton.

The Control of the status of the employees here comes clearly within the principles enunciated in Millers' Indemnity Underwriters v. Braud, 270 U.S. 59, 46 S. Ct. 194, 70 L. Ed. 470. There a diver submerged himself from a floating barge anchored in the navigable Sabine River to remove obstructions to its navigation. While there submerged the air supply failed and he died of suffocation. Obviously, removing these obstructions aided the commerce in vessels transporting goods in international and interstate commerce proceeding on the river. (Certainly the facts of the appeal before us are of less concern as affecting those engaged in such commerce). Nevertheless, the court held (270 U.S. 59, at pages 64,65, 46 S.Ct. 194, 195, 70 L. Ed. 470): 'In the cause now under consideration the record discloses facts sufficient to show a maritime tort to which the general admiralty jurisdiction would extend save for the provisions of the state Compensation Act; but the matter is of mere local concern and its regulation by the state will work no material prejudice to any characteristic feature of the general maritime law. The act prescribes the only remedy; its exclusive features abrogate the right to resort to the admiralty court which otherwise would exist.' * * *

The supplying of the cannery plant does not interfere with any 'international or interstate relations' whatsoever. Just as in the Millers' Case, the state act 'prescribes the only remedy' to claimants for the death of the fishermen, for under the admiralty law there is none.

> To deny compensation would work deep prejudice to the compensation system, now so widely accepted as 'necessarily' an incident to such creative service as supplying the material to this food canning plant, and which enlightened statesmanship, with its eyes opened to modern concepts of human relations, has enacted in so many of the states. While we do not regard the Millers Case as necessarily overruling the Jensen Case, we are in accord with that portion of the opinion of Mr. Justice Brandeis in Washington vs. W. C. Dawson Co., 264 U.S. 219, 228, 44 S.Ct. 302, 305, 68 L. Ed. 646, which treats of the relationship of the admiralty law to the progressive legislation of the states for the protection of workmen.
>
> With regard to the second appeal, we therefore hold that there was no error in overruling the exceptions to the master's report with reference to the applicability of the California Compensation Act to the claims, or in ordering the confirmation of his report in this respect."

In admiralty, there is no remedy for wrongful death, or for death from any cause, and an admiralty Court has always had to resort to local law to afford a remedy for such a death.

> Alaska Packers Assn. vs. Marshall, supra
> Miller Indemnity Underwriters vs. Braud, supra.
>
> Western Fuel Co. vs. Garcia, 257 U.S. 233, 66 L. Ed. 210.
>
> The Hamilton, 207 U.S. 398, 52 L. Ed. 264.

The Court is therefore of the opinion that under the facts and law of this case, Emmie Fair Murphy, the widow of said Rexford E. Murphy, deceased, is entitled to recover compensation for herself and minor children, as total dependents of the said decedent, under the Alabama Workmen's Compensation Law.

RECORDED

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

AT LAW. NO. 1435

DOROTHY C. WORD, and ROBERT B. WORD and DIANE WORD, as minors suing by their next friend and mother, DOROTHY C. WORD,

Plaintiffs,

vs.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, a corporation, and GARY ROBERTS

Defendants.

AMENDED COMPLAINT

FILED

AUG 27 1953

ALICE J. DUCK, Clerk

JOHNSTON, McCALL & JOHNSTON
ATTORNEYS AT LAW
TELEPHONE 2-0511
EIGHTH FLOOR FIRST NATIONAL BANK ANNEX
MOBILE 4, ALABAMA

Counts 3, 4, 5 & 6 of the foregoing complaint refiled this day as amended. This 8th day of December, 1953

Ernest Stevens
Circuit Clerk.

DOROTHY C. WORD, and ROBERT B. WORD and DIANNE WORD, as minors, suing by their next friend and mother, DOROTHY C. WORD,		
Plaintiffs,		IN THE CIRCUIT COURT OF
vs.		BALDWIN COUNTY, ALABAMA.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY, a corporation, and GARY ROBERTS,		NN 1435
Defendants.		

COMMON AVERMENTS

As a part of each Count of the complaint, plaintiffs aver that Dorothy C. Word is the widow of William B. Word and that Robert B. Word and Dianne Word are the minor son and minor daughter of said William B. Word, deceased, being seven (7) years and nine (9) years of age respectively. Plaintiffs are the total dependants of the said William B. Word, who came to his death on the 13th. day of November, 1946, as the result of an accident arising out of and in the course of his employment by William H. Harrison, Jr., Frank D. Harrison, Joseph E. Harrison and Magdalene W. Harrison, and Marion C. Hyland, individually and as partners doing business under the firm name and style of Harrison Brothers Dry Dock and Repair Yard; that compensation under the Workmen's Compensation Law of the State of Alabama, not having been paid plaintiff for herself and said minor children, but having been refused to them by said employers, the plaintiff, subsequent to the death of the said William B. Word, and before the expiration of twelve (12) months therefrom, filed in the Circuit Court of Mobile County, Alabama, an action against the employers of the said William B. Word, hereinabove named, as defendants therein for the recovery of compensation for herself and minor children under the Workmen's Compensation Law of the State of Alabama; that

said employers, as the defendants in said action, answered said complaint, and denied that plaintiff and her minor children were entitled to recover compensation under the Workmen's Compensation Law of the State of Alabama; that upon the trial of said cause, the Court did, on the 10th. day of November, 1949, enter a final judgment, awarding the plaintiffs compensation against the defendants under the Workmen's Compensation Law of the State of Alabama, for the death of said William B. Word, and the time has not expired for the defendants to apply for a writ of certiorari to the Supreme Court of the State of Alabama.

COUNT ONE

Plaintiffs claim of the defendants, the sum of FIFTY THOUSAND and no/100 ($50,000.00) DOLLARS, as damages, for that on, to-wit, the 13th. day of November, 1948, the defendant, Gary Roberts, while acting within the line and scope of his employment as a servant or agent of the Louisville and Nashville Railroad Company, as a bridge tender of its railroad bridge spanning Mobile River in Mobile County, Alabama, negligently failed to maneuver or open said railroad bridge, so as to allow or permit a motor launch in Mobile River upon which said William B. Word was then and there employed, and which had in tow a barge, to pass through the draw span of said railroad bridge, as a proximate result of which negligence, said William B. Word was drowned and killed; WHEREFORE, plaintiffs bring this suit and ask damages in the above amount.

COUNT TWO

Plaintiffs claim of the defendants the sum of FIFTY THOUSAND and no/100 ($50,000.00) DOLLARS, as damages, for that on, to-wit, the 13th. day of November, 1948, the defendant, Gary Roberts, while acting within the line and scope of his employment as a servant or agent of the Louisville and Nashville

Railroad Company, as a bridge tender of its railroad bridge spanning Mobile River in Mobile County, Alabama, wantonly killed the said William B. Word through wantonly failing to manuever or open said railroad bridge so as to allow or permit a motor launch in Mobile River, upon which said William B. Word was then and there employed, and while had in tow a barge, to pass through the draw span of said railroad bridge as a proximate result of which wantonness, said William B. Word was drowned and killed; WHEREFORE, plaintiffs bring this suit and ask for damages in the above amount.

Johnston, McCall & Johnston
J. B. Blackburn
Attorneys for the Plaintiffs

Plaintiffs demand a trial by jury in the above entitled cause.

Johnston, McCall & Johnston
J. B. Blackburn
Attorneys for the Plaintiffs

1435-

FILED
NOV 12 1949
ALICE J. DUCK, Clerk

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FILED
NOV 12 1949
ALICE J. DUCK, Clerk

SUMMONS AND COMPLAINT — Moore Printing Co.

THE STATE OF ALABAMA,
BALDWIN COUNTY

CIRCUIT COURT, BALDWIN COUNTY

No. 1435

_____ TERM, 19____

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon LOUISVILLE AND NASHVILLE RAILROAD COMPANY, AND GARY ROBERTS

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

LOUISVILLE AND NASHVILLE RAILROAD COMPANY , AND GARY ROBERTS, Defendant

by DOROTHY C. WORD, et als.

, Plaintiff

Witness my hand this 12th day of Nov. 19 49

Alice L. Hinck, Clerk

RECORDED

No. 1435 Page

THE STATE OF ALABAMA
BALDWIN COUNTY

CIRCUIT COURT

DOROTHY C. WORD, et als.

Plaintiffs

vs.

LOUISVILLE AND NASHVILLE R.R.

AND GARY ROBERTS

Defendants

SUMMONS and COMPLAINT

Filed Nov. 12, 19 49

Alice J. Duck, Clerk

Plaintiff's Attorney

Defendant's Attorney

Defendant lives at

RECEIVED IN OFFICE

Nov. 14, 1949

Taylor Wilkins Sheriff

I have executed this summons

this ____, 19____

by leaving a copy with

Gary Roberts 11-14-49

Found. Forte agent for

L. N. Railroad Co. 11-15-49

Taylor Wilkins Sheriff

H. F. Hall Deputy Sheriff

DOROTHY C. WORD, and ROBERT B. WORD, and DIANNE WORD, as minors, suing by their next friend and mother, DOROTHY C. WORD,		
Plaintiffs,		IN THE CIRCUIT COURT OF
vs.		BALDWIN COUNTY, ALABAMA.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY, a corporation, and GARY ROBERTS,		
Defendants.		

Upon motion, it is ORDERED and ADJUDGED by the Court that plaintiffs be and they are hereby allowed to amend each of Counts 3, 4, 5 and 6 of the Complaint by amending the common averments in ink, and further allowed to amend each of said counts of the complaint by adding thereto as Exhibit B, a copy of the findings of law in the case of Emmie Fair Murphy, et al., Plaintiffs vs. William Harrison, et al., Defendants, No. 6588 in the Circuit Court of Mobile County, Alabama.

ORDERED and ADJUDGED by the Court this 8 day of December, 1953.

Hubert M Hall

JUDGE

DOROTHY C. WORD, and ROBERT B. WORD and DIANNE WORD, as minors, suing by their next friend and mother, DOROTHY C. WORD,	:	IN THE CIRCUIT COURT OF
Plaintiffs	:	BALDWIN COUNTY, ALABAMA.
versus	:	
LOUISVILLE AND NASHVILLE RAILROAD COMPANY, a corporation, and GARY ROBERTS,	:	
Defendants	:	

D E M U R R E R

Come the defendants in the above styled cause, separately and severally, and demur to Count 1 and Count 2 of the complaint, separately and severally, upon the following separate and several grounds:

1. Because the allegation that the defendant Gary Roberts "negligently failed to maneuver or open said railroad bridge" is a mere conclusion of the pleader.

2. Because the allegation that the defendant Gary Roberts "negligently failed to maneuver or open said railroad bridge" attempts to aver the quo modo of the alleged negligence, but the facts averred do not show negligence as a matter of law.

3. Because the allegation that the defendant Gary Roberts "negligently failed to maneuver or open said railroad bridge, so as to allow or permit a motor launch" to pass through said bridge is a mere conclusion of the pleader.

4. Because the allegation that the defendant Gary Roberts "negligently failed to maneuver or open said railroad bridge, so as to allow or permit a motor launch" to pass through said bridge constitutes an effort to plead the quo modo of the alleged negligence, but the facts set forth do not constitute negligence as a matter of law.

5. Because said count fails to aver any facts constituting negligence on the part of the defendants, or either of them.

6. Because said count fails to aver any facts showing that the decedent was killed as a proximate result of negligence on the part of the defendants, or either of them.

7. Because said count fails to aver facts showing any liability of the defendants, or either of them.

8. Because said count fails to show that the plaintiffs have any right to prosecute this suit.

9. Because this court has no jurisdiction over this alleged cause of action.

10. Because there is no statute of the State of Alabama authorizing the prosecution of this suit by the plaintiffs.

11. Because the Act of the Legislature of the State of Alabama, approved October 9, 1947 (General Acts of Alabama, 1947, page 484) does not authorize the prosecution of this suit by the plaintiffs.

12. Because the Act of the Legislature of Alabama, approved October 9, 1947 (General Acts of Alabama, 1947, page 484) is unconstitutional and violative of Article IV, Section 45, Constitution of Alabama of 1901.

13. Because the allegation of said count that the defendant Gary Roberts "wantonly killed" the said decedent is a mere conclusion of the pleader.

14. Because the allegation of said count that the said decedent was killed as a proximate result of the defendant Gary Roberts "wantonly failing to maneuver or open said railroad bridge" is a mere conclusion of the pleader.

15. Because the allegation that said decedent was killed as a proximate result of the defendant Gary Roberts "wantonly failing to maneuver or open said railroad bridge" constitutes an effort to aver the quo modo of the alleged wanton injury, but the allegations fail to show such wanton injury as a matter of law.

16. Because the allegation that the said decedent was killed as a proximate result of the defendant Gary Roberts "wantonly failing to

maneuver or open said railroad bridge so as to allow or permit a motor launch" to pass through the same is a mere conclusion of the pleader.

17. Because the allegation that said decedent was killed as a proximate result of the defendant Gary Roberts "wantonly failing to maneuver or open said railroad bridge so as to allow or permit a motor launch" to pass through the same constitutes an effort to aver the quo modo of the alleged wanton injury, but the facts averred fail to show such wanton injury as a matter of law.

18. Because said count attempts to aver the quo modo of the alleged wanton injury, but the facts averred do not show a wanton injury as a matter of law.

19. Because, under the allegations of said count, Harrison Brothers Dry Dock and Repair Yard was a joint tort feasor with the defendants in this case, and the award rendered in the Circuit Court of Mobile County, Alabama, in favor of the plaintiffs, releases the defendants in the instant case from any liability to the plaintiffs.

20. Because it affirmatively appears that the plaintiffs have obtained an award against Harrison Brothers Dry Dock and Repair Yard.

21. Because it affirmatively appears that the plaintiffs have made a binding election to proceed solely under the Workmen's Compensation Law of the State of Alabama.

22. Because it affirmatively appears that the plaintiffs have elected to proceed solely under the Workmen's Compensation Law of the State of Alabama and such law cannot lawfully give the plaintiffs any rights or cause of action against the defendants in the instant case.

23. Because it affirmatively appears that the plaintiffs are estopped or barred from recovering from the defendants, or either of them.

24. Because it affirmatively appears that the plaintiffs are estopped or barred from recovering from the defendants, or either of

them, by virtue of the award which they have sought and obtained under the Workmen's Compensation Law of the State of Alabama.

25. Because the award obtained by the plaintiffs under the Workmen's Compensation Law of the State of Alabama constitutes an accord and satisfaction of the plaintiffs' alleged claim or cause of action against the defendants.

26. Because the plaintiffs have no right to recover twice for the same injury.

27. Because it affirmatively appears that the prosecution of this suit is barred by the award rendered under the Workmen's Compensation Law of the State of Alabama.

28. Because it affirmatively appears that the plaintiffs had a choice of remedy and have elected to proceed under the Workmen's Compensation Law of the State of Alabama.

29. Because the award rendered in favor of the plaintiffs under the Workmen's Compensation Law of the State of Alabama operates to release the defendants in the instant case from any liability.

30. Because the award rendered in favor of the plaintiffs under the Workmen's Compensation Law of the State of Alabama constitutes a settlement of all of the plaintiffs' claims.

31. Because any recovery in this cause would be for the benefit of Harrison Brothers Dry Dock and Repair Yard, the other alleged joint tort feasor.

32. Because any application of the Workmen's Compensation Law of the State of Alabama in the instant case would be violative of Section 2, Article 3 of the Constitution of the United States.

33. Because any application of the Act of the Legislature of Alabama, approved October 9, 1947 (General Acts of Alabama, 1947, page 484) to the instant case would be violative of Section 2, Article 3 of the Constitution of the United States.

34. Because it appears that this suit was filed, and plaintiffs seek to maintain and to recover, under and by virtue of the provisions of the Workmen's Compensation Law of Alabama, when such law does not apply.

35. Because it appears from the complaint that plaintiffs have already recovered for the matters and things complained of against their intestate's employer, which settles and discharges their alleged claim against these defendants.

36. Because it appears from the complaint that plaintiffs have already recovered for the matters and things complained of against another alleged joint tort feasor, which, by operation of law, settles and discharges said claim against these defendants.

37. Because, for aught that appears, the compensation awarded plaintiffs in their suit against intestate's employer has been paid or is being paid, and such constitutes payment by one alleged joint tort feasor, which would settle and discharge said alleged claim against these defendants.

38. Because it appears from said complaint that for the identical claim asserted or attempted to be asserted against these defendants plaintiffs have received payment, or are receiving payments, in settlement and discharge thereof from another alleged joint tort feasor, which payment or payments discharged said claim against these defendants.

Smith, Hand, Arendall & Bedsole
Attorneys for Defendant

Of Counsel:

Messrs. Steiner, Crum & Weil
Montgomery, Alabama

1435

RECORDED

FILED
DEC 12 1949
ALICE L. BUCK, Clerk