MAGGIE McDONALD	IN THE CIRCUIT COURT OF
PLAINTIFF	BALDWIN COUNTY, ALABAMA
VS	AT LAW.
JOHN H. ARMSTRONG AND JOHN J. ARMSTRONG	CASE NO. 2175
DEFENDANTS	

Comes Now Defendant John H. Armstrong, by his attorney C. LeNoir Thompson, and appearing specially for the purpose of filing this plea and for no other different subject or purpose and says that the suit heretofore filed against him should be abated and assigns the following separate and several grounds in support thereof:

1.

That said suit was not commenced according to law.

2.

That this Honorable Court is without jurisdiction of the matters complained of in said suit in that no letters of Administration have been issued the Complainant in said cause.

3.

That the proper venue of a suit against your Defendant is the State of Maryland where the death occurred.

4.

That said suit arises on a contract.

C. LeNoir Thompson
Attorney for Defendant.
per John H. Armstrong

STATE OF ALABAMA
BALDWIN COUNTY

BEFORE ME, T.C. Land, a Notary Public, in and for said County in said State, personally appeared C. LeNoir Thompson who is known to me and who, after being by me, first duly and legally sworn, did depose and say under oath as follows:

That he is the attorney for the Defendant in the above styled cause and that he has knowledge of the facts alleged in the foregoing plea and that they are true and correct.

Dated this 2 day of December, 1955.

C. LeNoir Thompson.

Sworn to and subscribed before me this 2 day of December, 1955.

T.C. Land
Notary Public, Baldwin County, Alabama.

MY COMMISSION AS A NOTARY PUBLIC EXPIRES 20 OF Jan 1956.

MAGGIE McDONALD PLAINTIFF VS JOHN H. ARMSTRONG AND JOHN J. ARMSTRONG DEFENDANTS	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA AT LAW

Comes the defendants in the above entitled cause and moves the court to set aside the verdict of the jury in the above entitled cause and the judgment of the court thereon and grant to them a new trial, and for grounds of said motion alleges the following, separately and severally:

1.

For that the verdict of the jury is not sustained by the great preponderance of the evidence and is contrary to both the law, and the facts in the case.

2.

For that the verdict of the jury is contrary to the law in the case.

3.

For that the verdict of the jury is contrary to the facts in the case.

4.

For that the verdict of the jury and the judgment entered thereon are contrary to the great weight and preponderance of the evidence in the case.

5.

That the verdict of the jury is contrary to the charge given by the Judge in said case.

6.

For that the verdict of the jury is not sustained by the great preponderance of the evidence and is contrary to both the law, and the facts in the case, in that the plaintiff testified that she had let the boys go with the defendants other years and further that she was not home any time the said Troy Young was picked up on any of the occasions that he went with the defendants.

7.

For that the verdict of the jury is contrary to the facts in the case in that the said plaintiff testified that she knew the boy was with the defendants and that she did not write to the boy.

8.

For that the verdict of the jury and the judgment entered thereon are contrary to the great weight and preponderance of the evidence in the case in that the plaintiff testified that she had had previous dealings with the defendant, John H. Armstrong, and that the said Troy Young was not working for the defendants but was working in the same field with the defendants.

9.

For that the verdict of the jury is contrary to the facts in the case in that the consent of the plaintiff for the boy, Troy Young to go with the defendant was shown by implication from the actions of the plaintiff in letting the boy, Troy Young, go with the defendants or either of them, on other occasions since the boy was 14 years old.

10.

For that the verdict of the jury is contrary to the evidence in said cause in that there is no evidence to show that the defendants took the minor Troy Young away for a hazardous occupation or that the said Troy Young lost his life in pursuance of a hazardous occupation or in the line of his duties.

11.

For that the verdict of the jury is contrary to the law in the case in that the consent of the plaintiff was impliedly given by permitting the minor to go on other occasions without complaint when the plaintiff was not at home.

12.

For that the verdict of the jury is contrary to the law in the case in that no evidence was before the jury to show the minor was taken away for a hazardous occupation.

13.

For that the verdict of the jury is contrary to the law in the case in that no evidence is before the jury that the minor lost his life in line of duty or employment.

14.

The verdict of the jury is contrary to the law in the case in that no negligence on the part of the defendants was alleged or proven.

For that the verdict of the jury is contrary to the law in the case as defined by the oral charge given by the Judge in said case.

C. LeNoir Thompson

Before me the undersigned authority personally appeared, C. LeNoir Thompson, attorney, who being duly sworn deposes and says: That the allegation of said motion and facts stated therein are true and correct to his best knowledge, information, and belief.

C. LeNoir Thompson

Sworn to and subscribed before me this the 6 day of April, 1957.

Randall McG. Gowan Jr.
Notary Public

I, the undersigned, as attorney of record for the Defendants, hereby accept service of a copy of the foregoing motion.

This the 6 day of April, 1957.

C. LeNoir Thompson
Attorney of Defendants

Filed in office April 6, 1957.

Annie J. Nemetz
Clerk

STATE OF ALABAMA

BALDWIN COUNTY

The above and foregoing motion shall be and the same is hereby continued until 2 P M. on April 16, 1957.

Dated this 6 day of April, 1957.

Hubert M Hall
Circuit Judge

4/16/57 The foregoing Motion Continued to 5/1/57, Hubert M Hall Judge.

5/1/57 The foregoing Motion Overruled and denied.

Hubert M Hall
Judge

MAGGIE McDONALD PLAINTIFF VS JOHN H. ARMSTRONG AND JOHN J. ARMSTRONG DEFENDANTS	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA AT LAW. CASE NO. 2975

NOTICE OF APPEAL

Comes now the Defendants, John H. Armstrong and John J. Armstrong, separately and severally, and does hereby appeal to the Supreme Court of Alabama from the final decree and judgment in the Circuit Court of Baldwin County, Alabama, at law, rendered in the above style cause on, to-wit, the 11th day of March, 1957, and also, separately and severally, from the over-ruling of said Defendant's motion for a new trial, said motion having been filed by said defendants and having been over-ruled by the Circuit Court of Baldwin County, Alabama, at law, on, to-wit, the 1st day of May, 1957.

C. Don Thompson

Attorney for Defendants.

MAGGIE McDONALD

PLAINTIFF

VS

JOHN H. ARMSTRONG AND
JOHN J. ARMSTRONG

DEFENDANTS

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

AT LAW.

CASE NO. ~~2715~~ 2775

Come the defendants in the above styled cause and for answer to the complaint filed therein and to each and ever phase thereof show unto this Honorable Court as follows:

1.

As to count one, not guilty.

2.

As to count two, not guilty.

3.

As to count three, not guilty.

FILED
JUL 3 1956
ALICE J. DUCK, Clerk

Attorney for John H. Armstrong and
John J. Armstrong, Defendants.

SECURITY FOR COSTS

MAGGIE McDONALD PLAINTIFF VS JOHN H. ARMSTRONG AND JOHN J. ARMSTRONG DEFENDANTS	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA AT LAW. CASE NO. 2975

I, C. LeNoir Thompson, Attorney At Law in the above styled cause hereby acknowledge myself security for cost in the foregoing appeal.

C. LeNoir Thompson
Attorney for Defendants.

Filed: June 1, 1957.

Alice F. Hauck
Clerk

MAGGIE McDONALD	IN THE CIRCUIT COURT OF
PLAINTIFF	BALDWIN COUNTY, ALABAMA
VS	AT LAW
JOHN H. ARMSTRONG AND JOHN J. ARMSTRONG	
DEFENDANTS	

KNOW ALL MEN BY THESE PRESENTS, That we JOHN H. ARMSTRONG and JOHN J. ARMSTRONG and J. C. Wynn & H. C. Wynn are held and firmly bound unto MAGGIE McDONALD in the just and full sum of Fifteen Hundred Dollars, for the payment of which, well and truly to be made and done, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 22 day of May, 1957.

The condition of the above obligation is such, that whereas, MAGGIE McDONAID obtained a judgment in the above styled cause in the Circuit Court at Law for said County, on the 11th day of March, 1957, from which judgment the said JOHN H. ARMSTRONG AND JOHN J. ARMSTRONG have obtained an appeal returnable to the next term of the Court of Appeals of Alabama.

Now, therefore, if the said JOHN H. ARMSTRONG and JOHN J. ARMSTRONG shall prosecute the said appeal to effect, and satisfy such judgment as may be rendered against them in said cause by the Court of Appeals, then this obligation is to be null and void, otherwise to remain in full force and effect.

And we, and each of us, hereby waive all rights to or claim of exemption as to personal property we or either of us have now or may hereafter have, under the Constitution and Laws of Alabama, and we hereby severally certify that we have property free from all incumbrance to the full amount of the above bond.

Witness our hands and seals this the 22nd day of May, 1957.

John H. Armstrong (L.S.)

John J Armstrong (L.S.)

J. C. Wynn (L.S.)

H. C. Wynn (L.S.)

Taken and approved this the 22 day of May, 1957.

Clerk.

THE STATE OF ALABAMA
Baldwin County - Circuit Court

TO ANY SHERIFF OF THE STATE OF ALABAMA — GREETING:

Whereas, at a Term of the Circuit Court of Baldwin County, held on the 2nd Monday in March, 1957, in a certain cause in said Court wherein Maggie McDonald Plaintiff, and John H. Armstrong and John J. Armstrong Defendant, a judgement was rendered against said John H. Armstrong and John J. Armstrong to reverse which Judgment, the said John H. Armstrong and John J. Armstrong

applied for and obtained from this office an APPEAL, returnable to the next Term of our Supreme Court of the State of Alabama, to be held at Montgomery, on the day of, 195 next, and the necessary bond having been given by the said John H. Armstrong and John J. Armstrong with J.C. Wynn and H.C. Wynn, sureties,

Now, You Are Hereby Commanded, without delay, to cite the said Maggie McDonald or Telfair J. Mashburn, Jr., attorney, to appear at the Next Term of our said Supreme Court, to defend against the said Appeal, if they think proper.

Witness, ALICE J. DUCK, Clerk of the Circuit Court of said County, this 1st day of June, A. D., 1957.

Attest:

Alice J. Duck, Clerk.

ceived 4 day of June 1957
d on 4 day of June 1957
erved a copy of the within Citation
J. J. Mashburn Jr.

service on

TAYLOR WILKINS, Sheriff
By Tindal D. S.

CIRCUIT COURT
Baldwin County, Alabama

MAGGIE McDONALD

Vs. } Citation In Appeal

JOHN H. ARMSTRONG
JOHN J. ARMSTRONG

Issued 1st day of June, 1957

Brewton, Alabama, Nov 26, 1953

TO THE SHERIFF Baldwin COUNTY,
Bay Minette ALABAMA.

Dear Sir:

I enclose herewith your S/C for J.H. & J.J. Lassiter. Served on J.H. Lassiter. John J. is in either Fla. or this county. No info. available from J.H.

Please serve and return as early as possible.

W.B. Connor
Sheriff, Escambia County, Alabama.
By W.B. Connor D.S.

(If not found in your county please advise promptly, giving information as to present location, if possible).

Standard Pub. Co.—Brewton

THE STATE OF ALABAMA --- JUDICIAL DEPARTMENT

THE ALABAMA COURT OF APPEALS

OCTOBER TERM, 1957-58

1 Div. 754

John H. Armstrong and John J. Armstrong

v.

Maggie McDonald

Appeal from Baldwin Circuit Court

CATES, JUDGE

Though at times disappointed in his hope, a parent has the right to expect the personal services of an unmarried minor child.

The Armstrongs persuaded Maggie McDonald's minor son, Troy Young (also known as Troy McDole) to leave his home with her in Baldwin County, Alabama, to go to Maryland as a migratory farm worker without any express consent by the mother to the boy's going on this particular trip.

While in Maryland Troy, in his off time, went swimming and drowned. His mother spent some $700 to bring his body back and for the funeral.

Maggie McDonald brought this action claiming $50,000 because the elder Armstrong, through his agent, Armstrong the younger, took her son away without her consent to Maryland, where he drowned, causing her to be deprived of his services and society and expense to bring back and bury his body.

No demurrer was taken to the complaint, nor was any exception taken to the oral charge.

The jury brought in a general verdict for the plaintiff, assessing her damages at $700. Motion for new trial was denied.

The grounds for new trial and the assignments of error are confined, with two exceptions, to claims that the verdict was contrary to the weight of the evidence. The exceptions are (1) that the plaintiff failed to show her son was taken away for a hazardous occupation, and (2) that negligence by the defendants was neither alleged nor shown.

The tort here involved is discussed in general terms in Restatement, Torts, § 766:

> " * * * one who, * * * induces * * * a third person not to (a) perform a contract with another, or
>
> * * * * * *
>
> "is liable to the other for the harm caused thereby."

and more pertinently in Torts, § 700:

> "One who, without a privilege to do so,
> (a) abducts a minor child, or
> (b) induces it to leave its home with knowledge that the parent has not consented, or
> (c) with knowledge that it has left its home and that the parent is unwilling that the child should be absent, induces it not to return thereto or prevents it from so doing,
> is liable to the parent, who is legally entitled to the child's custody."

In 67 C. J. S., Parent and Child, § 101, we find:

> "A parent who has the right to the custody, control, and services of a minor child may maintain an action for damages against anyone who unlawfully entices away or harbors such child,
> * * *
>
> " * * * This right of action is not limited to cases where the enticing away is for immoral purposes or where the child is the heir or oldest son. On the other hand, it has been held that there is no right of action where no fraud, force, or persuasion has been used.
>
> "Where the enticement has been for the purpose of marriage, it has been held that there can be no recovery after the marriage, if it is a legal one."

There was at common law a presumption of the child being in the service of the parent while in the family, Gandy v. State, 81 Ala. 68, 1 So. 35, thus the damages of the father for the seduction of the daughter lay not in the family dishonor but stemmed from interference with a quasi-fictitious master-servant standing, Young v. Young, 236 Ala. 627, 184 So. 187.

In Steward v. Gold Medal Shows, 244 Ala. 583, 14 So. 2d 549, our Supreme Court modified the master-servant fiction as the basis for the assessment of damages in the abduction of a minor child and admitted the assessability of punitive damages for the outrage to the parent as well as compensatory damages.

This view accords with the so-called modern view--thus in Restatement, Torts, § 700, comment g, we find:

> "The parent can recover for the loss of society of his child and for his emotional distress resulting from its abduction or enticement. If there has been a loss of service or if the child, though actually not performing service, was old enough to do so, the parent can recover for the loss of the service which he could have required of the child during the period of its absence. He is also entitled to recover for any reasonable expenses incurred by him in regaining custody of the child and for any reasonable expenses incurred or likely to be incurred in treating or caring for the child if it has suffered illness or other bodily harm as a result of the defendant's tortious conduct."

In Pickle v. Page, 252 N. Y. 474, 169 N. E. 650, 72 A. L. R. 842, the leading case on this doctrine, we find:

> "An action of trespass for the abduction of a child was originally maintainable by a father where the child abducted was the son and heir and not otherwise. Barham v. Dennis, 2 Cro. Eliz. 770. This was 'by reason the marriage of his heir belongs to the father, but not of any other his sons or daughters;' and, although it had been adjudged that the writ of trespass lay 'for a parrot, a popinjay, a thrush, and, as 14 Hen. 8 is, for a dog; the reason thereof is, because the law imputes that the owner hath a property in them,' whereas 'the father hath not any property or interest in the daughter, which the law accounts may be taken from him.' Later it was held that an action of trespass was maintainable by a father per quod servitium amisit where a child old enough to do him service, other than the heir, was abducted. For the abduction of any other child the action did not lie. Gray v. Jefferies, 1 Cro. Eliz. 55; Hall v. Hollander, 4 Barn. & C. 660. In the latter case it was said: 'It is clear that in cases of taking away a son or daughter, except for taking a son and heir, no action lies, unless a loss of service is sustained, Gray v. Jefferies, supra; Barham v. Dennis, supra. The mere relationship of the parties is not sufficient to constitute a loss of service.' In the case of an injury inflicted upon a child so immature that it was incapable of rendering service, the parent might have no remedy against the person inflicting the injury. Hall v. Hollander, supra.
>
> "The principle that the abduction of a child, not the heir, or not capable of rendering service, was

a wrong for which the law furnished no civil remedy, was not adopted without protest, nor has it received unqualified approval. Thus in Barham v. Dennis, supra, Glanville uttered a strong dissent, saying: 'For the father hath an interest in every of his children to educate them, and to provide for them; and he hath his comfort by them; wherefore it is not reasonable that any should take them from him, and to do him such an injury, but that he should have his remedy to punish it.' Blackstone was of the opinion that for the abduction of a child, other than the heir, a father might maintain an action, stating that such a wrong was 'remediable by writ of ravishment or action of trespass vi et armis, de filio, vel filia, rapto vel abducto; in the same manner as the husband may have it on account of the abduction of his wife.' (Bl. Comm. 140.) Judge Cooley, referring to the holdings in Barham v. Dennis and Hall v. Hollander, has remarked: 'This sometimes leads to results which are extraordinary, for it seems to follow as a necessary consequence that, if the child from want of maturity or other cause is incapable of rendering service, the parent can suffer no pecuniary injury, and, therefore, can maintain no action when the child is abducted or injured.' Cooley on Torts, p. 481. Judge Cowen, referring to the English rule that, for the consequences of an injury to an immature child, no remedy runs to the father, has said that he should regard it as quite questionable whether such a principle prevailed in this state. Hartfield v. Roper, 21 Wend. 615, 34 Am. Dec. 273. It is to be noted, also, that Sir Frederick Pollock, without qualification, makes the broad statement: 'The common law provided a remedy by writ of trespass for the actual taking away of a wife, servant or heir, and perhaps younger child also;' and follows the statement by the further assertion that an action of trespass <u>also</u> lies for wrongs done to a plaintiff's wife, or servant or child, regarded as a servant, whereby the society of the former or the services of the latter are lost; the language of the pleading being per quod consortium, or servitium amisit. Pollock, The Law of Torts, p. 226."

* * * * * * *

"Returning to the subject of abduction, we find no decisions by the courts of this country holding that, in actions to recover damages for the abduction of a child, the parent must allege and prove, as a condition of his recovery, a loss of the services of the child. It is true that the Supreme Court of New Jersey, in the case of Magee v. Holland, 27 N. J. Law, 86, 72 Am. Dec. 341,

> expressed the opinion that it was the 'established law' that loss of service must be shown. That case involved the abduction of three children of the ages from 3 to 6. Notwithstanding the opinion expressed by the court, as to the general principle underlying all such cases, the court held that the jury was entitled to infer a loss of service, despite the tender ages of the children abducted. So far as the law of this country has become 'established' by the decisions of its courts, it would seem that the general principle is contrary to that stated in the New Jersey case. In South Carolina it has been held that the action is maintainable without proof or allegation of loss of service. Kirkpatrick v. Lockhart, 2 Brev. (S. C.) 276. The court there said: 'The true ground of action is the outrage, and deprivation; the injury the father sustains in the loss of his child; the insult offered to his feelings; the heart-rending agony he must suffer in the destruction of his dearest hopes, and the irreparable loss of that comfort, and society, which may be the only solace of his declining age.' In North Carolina the same holding was made in Howell v. Howell, 162 N. C. 283, 78 S. E. 222, 45 L. R. A. (N. S.) 867, Ann. Cas. 1914A, 893, the court stating that the theory that such an action was grounded on a loss of service was 'an outworn fiction.' In Kentucky it has been stated that in an action for the abduction of a child it is immaterial whether or not the abducted child rendered services to his parents. Soper v. Igo, Walker & Co. 121 Ky. 550, 89 S. W. 538, 1 L. R. A. (N. S.) 362, 123 Am. St. Rep. 212, 11 Ann. Cas. 1171. In Ohio it has been held that a complaint to recover damages for the abduction of a child is sufficient if it alleges that the parent was thereby deprived of his possession and services, although it did not allege an ability on the part of the child to serve its parent. Clark v. Bayer, 32 Ohio St. 299, 30 Am. Rep. 593. In Iowa it has been broadly stated 'that the father has a right to the care and custody of his minor children, and to superintend their education and nurture, is a proposition that does not admit of controversy. And where he is deprived of such care and custody, and of this superintendence, by the act of another, he has his remedy, by proper action, against such person, is equally clear.' Everett v. Sherfey, 1 Iowa, 356."

See Meredith v. Buster, 209 Ky. 623, 273 S. W. 454 (abduction of daughter--claim for loss of services and companionship, for grief, humiliation, mental anguish and expense of bringing her back home held good on demurrer).

In Brown v. Brown, 338 Mich. 492, 61 N. W. 2d 656, a mother (who by statute presumptively on divorce gains custody of the children under 12) recovered $150,000 against her former in-laws who had aided and conspired with her former husband in taking her two young children to South Africa, causing her to become very ill due to worry. As to liability and damage, the Michigan court said:

> "Appellants claim in their appeal that the cause of action asserted by plaintiff in count two of her declaration, conspiracy to deprive a parent of custody of her children, is not recognized in Michigan. In Oversmith v. Lake, 295 Mich. 627, 295 N. W. 339, 341, defendants were held liable for the abduction and false arrest of plaintiff's minor children. * * *
>
> * * * * * * *
>
> "The damages recoverable in such an action are not limited to the loss of services. The parent wrongfully deprived of the custody of his child may recover for the loss of society of his child and for the emotional distress resulting from the abduction. Pickle v. Page, 252 N. Y. 474, 169 N. E. 650, 72 A. L. R. 842; Stewart v. Gold Medal Shows, 244 Ala. 583, 14 So. 2d 549; Restatement of the Law, Torts, § 700, comment g."

Hence, we do not consider this a wrongful death action such as might be brought under Code 1940, T. 7, § 119: here, the plaintiff complains of the taking away, not of the killing. This is an action on the case according to I Street, Foundations of Legal Liability, pp. 265-268.

We have a misdemeanor, Code 1940, T. 26, § 332, providing in part:

> "Any person * * * who knowingly * * * entices away, or induces any minor to leave the service of any person to whom such service is lawfully due, without the consent of the party * * * to whom such service is due, * * * must on conviction be fined, * * *"

Moreover, our public policy stringently regulates emigrant labor agents and those who publicize their recruiting, Code 1940, T. 51, §§ 513-521, inclusive.

However, in view of the unquestioned authority of the Steward case, we find it unnecessary to explore the extent to which a violation of the criminal law confers a private right of action; though in passing we note Hardie-Tynes Mfg. Co. v. Cruse, 189 Ala. 66, 66 So. 657, wherein it is said:

> "It is hardly necessary to say that every criminal act which injures the person or property of another is also a civil tort, redressible by the courts, * * *"

See 1 C. J. S., Actions, § 12. In Pearl Assur. Co. v. National Insurance Agency, 150 Pa. Super. 265, 28 A. 2d 334, it was held that express statutory language is required for a criminal enactment to absorb and pre-empt a pre-existing common law tort. In Odell v. Humble Oil & Refining Co., 201 F. 2d 123, Judge Huxman (in denying jurisdiction for lack of a $3,000 maximum recovery), after analyzing the scope of the derivative tort doctrine and its implications and limitations, writes:

> "We accordingly conclude from a consideration of the authorities that where a penal act is passed for the benefit of a class a violation of the criminal statute resulting in injury to one of such class gives him a cause of action which he may assert in any court of competent jurisdiction, notwithstanding that no reference is made to such a right in the act, and also that where a cause of action exists at common law for the commission of a tort the passage of a penal statute in the interest of the public and providing for sanctions for its violation does not in the absence of clear language to the contrary wipe out such pre-existing common law action; but that where a penal statute is passed in the interest of the public, the commission of a violation of which did not give one injured thereby a cause of action at common law, no such cause of action arises in the absence of clear language evidencing a Congressional intent to give one injured thereby a

> cause of action in addition to the sanctions provided for its violation."

The defendants took issue without raising the lack of any averment of negligence by way of demurrer; nor did they request any jury instruction on this theory. Even if we were to concede the wrong complained of required a showing of negligence, we should nevertheless consider the appellants precluded from raising it.

Nor do we think that a show of taking away into a hazardous occupation is necessary for this tort. However, if it were, it avails the appellants naught for the trial judge orally charged that it was necessary so to prove, and also to prove that the boy lost his life in pursuance of a hazardous occupation or while in line of his duties. The plaintiff having been required to prove more than the law requires, the defendants will not be heard to complain of error which might have aided them.

AFFIRMED.

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE COURT OF APPEALS OF ALABAMA

1st *Div., No.* 754

John H. Armstrong and John J. Armstrong *Appellant*,

v.

Maggie McDonald Appellee,

From Baldwin *Circuit Court*

The State of Alabama,
City and County of Montgomery.

I, Charles Bricken, Jr., Clerk of the Court of Appeals of Alabama, do hereby certify that the foregoing pages numbered from one to 9 *inclusive, contain a full, true and correct copy of the opinion of said Court of Appeals in the above stated cause, as the same appears and remains of record and on file in this office.*

Witness, Charles Bricken, Jr., Clerk of the Court of Appeals of Alabama, at the Capitol, this the 10th *day of* June, 19 58

Charles Bricken Jr.

Clerk of the Court of Appeals of Alabama.

THE COURT OF APPEALS OF ALABAMA

1st Div., No. 754

John H. Armstrong and

John J. Armstrong
Appellant

vs.

Maggie McDonald
Appellee

From Baldwin Circuit *Court.*

COPY OF OPINION

BROWN PRINTING CO., MONTGOMERY 1951

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE COURT OF APPEALS OF ALABAMA

October Term 19 57

To the Clerk of the Circuit *Court*

of Baldwin *County—Greeting:*

Whereas, the Record and Proceedings of the Circuit *Court of said county, in a certain cause lately pending in said Court between* John H. Armstrong and John J. Armstrong, *Appellant*, *and* Maggie McDonald, *Appellee*, *wherein by said Court, at the* ____ *Term, 19* ____, *it was considered adversely to said appellant* ____, *were brought before our Court of Appeals, by appeal taken, pursuant to law, on behalf of said appellant* ____:

NOW, IT IS HEREBY CERTIFIED, *That it was thereupon considered by our Court of Appeals, on the* 10th *day of* June *19* 58, *that said judgment of said* Circuit *Court be in all things affirmed, and that it was further considered that the appellant* ____, *and* J. C. Wynn and H. C. Wynn pay the judgment of the Circuit Court, ten percent damages thereon with interest, and

pay the cost accruing on said appeal in this Court and in the Court below

Witness, Charles Bricken, Jr., Clerk of the Court of Appeals of Alabama, at the Capitol, this the 10th *day of* June, *19* 58

Charles Bricken, Jr.

Clerk, Court of Appeals of Alabama.

2775

THE COURT OF APPEALS OF ALABAMA

October Term, 19 57

1st *Div., No.* 754

John H. Armstrong and

John J. Armstrong

Appellant,

vs.

Maggie McDonald

Appellee.

From Baldwin Circuit *Court.*

CERTIFICATE OF AFFIRMANCE.

THE STATE OF ALABAMA,
Baldwin County.

Filed this 11 day of
June 1958
Doris J. Whatley

S U M M O N S

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

You are hereby commanded to summon JOHN H. ARMSTRONG AND JOHN J. ARMSTRONG to appear within thirty days from the service of this writ in the circuit court of Baldwin County, Alabama, at the place of holding the same, then and there to answer the complaint of MAGGIE McDONALD.

WITNESS my hand this 9th day of November, 1955.

Nina J. Mack
CLERK

****

C O M P L A I N T

MAGGIE McDONALD,	)	
Plaintiff,	)	IN THE CIRCUIT COURT OF
VS.	)	BALDWIN COUNTY, ALABAMA.
JOHN H. ARMSTRONG AND JOHN J. ARMSTRONG,	)	AT LAW. NO. _____
Defendants.	)	

C O U N T O N E

The plaintiff claims of the defendants FIFTY THOUSAND ($50,000.00) DOLLARS as damages for that, heretofore, on, to-wit: the 6th day of July, 1955, the plaintiff was living near Bay Minette, in Baldwin County, Alabama, with her minor son, TROY U. YOUNG, age 16 years, whose father had abandoned them many years before, and the defendant, JOHN H. ARMSTRONG, acting by and through the defendant, JOHN J. ARMSTRONG, who was then and there the agent, servant or employee of the said JOHN H. ARMSTRONG, acting within the line and scope of him employment as such, cam to Bay Minette, Alabama, and, without the consent of the plaintiff, wrongfully took away the said minor, TROY U. YOUNG, and transported him to the State of Maryland to work as a farm laborer, where the said minor was drowned on, to-wit: the 6th day of August, 1955; and as a proximate consequence thereof the plaintiff was deprived of the services of her son, she was deprived of his society, and

she was caused to expend large sums of money in and about transporting the body of her son back to Bay Minette and for the expenses of his funeral; and plaintiff avers that all of her damages as aforesaid were the proximate consequence of the wrongful act of the defendants in taking and removing her minor son from his home without her consent, wherefore she sues.

C O U N T T W O

The plaintiff claims of the defendants FIFTY THOUSAND ($50,000.00) DOLLARS as damages for that, heretofore, on, to-wit: the 6th day of July, 1955, the defendants were engaged in recruiting famr laborers in the State of Alabama and transporting them to Maryland, and on the date aforesaid the defendants came to the home of the plaintiff near Bay Minette, in Baldwin County, Alabama, and, without the consent of the plaintiff, took her minor son, TROY U. YOUNG, who was then of the age of 16 years, and whose Father had abandoned him, from her home and transported him to Maryland, where he was drowned on, to-wit: the 6th day of August, 1955; and, as a proximate consequence thereof the plaintiff was deprived of the services of her said son, she was deprived of his society, and she was forced to expend large sums of money in and about transporting the body of her said son back to Bay Minette and for the expenses of his funeral, all to her damage in the amount aforesaid; hence this suit.

C O U N T T H R E E

The plaintiff claims of the defendants FIFTY THOUSAND ($50,000.00) DOLLARS as damages for that, heretofore, on, to-wit: the 6th day of July, 1955, the defendant, JOHN J. ARMSTRONG, who was then and there the agent, servant, or employee of the defendant, JOHN H. ARMSTRONG, acting within the line and scope of his employment as such, engaged in recruiting farm laborers in Alabama for work in other States, came to the home of the plaintiff near Bay Minette, in Baldwin County, Alabama, and, without the consent of the plaintiff, wrongfully took away her minor son, TROY U. YOUNG, who was then of the age of sixteen years and whose father had abandoned him, and transported him to Maryland, where the said

TROY U. YOUNG was drowned on, to-wit: the 6th day of August, 1955; and, as a proximate consequence thereof, the plaintiff was deprived of the services of her said son, she was deprived of his society, and she was forced to expend large sums of money in and about transporting the body of her son back to Bay Minette and for his funeral expenses, all to her damage in the amount aforesaid; hence this suit.

Delair A. Maddox Jr.
Attorney for Plaintiff.

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

Delair A. Maddox Jr.
Attorney for Plaintiff.