

1. — 2/13/52

MERCHANTS NATIONAL BANK OF
MOBILE, As Administrator of
the Estate of LOUIS G. BERTOLLA,
Deceased, ET AL,
COMPLAINANTS,

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

VS.

IN EQUITY.

ALEX S. BERTOLLA, ET AL,
RESPONDENTS.

And now come the Respondents separately and severally and for answer to the Complainants' Bill of Complaint and to each count thereof, separately and severally, say:

1.

They deny each and every allegation contained in the Bill of Complaint, not herein specifically admitted and demand strict proof of the same.

2.

They admit the allegation contained in Paragraph 1.

3.

They admit the allegation contained in Paragraph 2.

4.

They admit that all the property standing on the records in the names of Louis G. Bertolla, Alex S. Bertolla, Angelo F. Bertolla, John P. Bertolla and Rudolph F. Bertolla, or either of them, was the joint property of said parties, and that each owned an undivided one-fifth interest in and to the said properties; that the exhibits attached to the original Bill of Complaint are substantially correct, however, they have not made a complete search of the records to determine the same.

5.

They admit the allegation contained in Paragraph 4 except there was only a small amount of money, and that a greater part of the livestock has been sold and the proceeds deposited to the credit of all parties interested; they deny that they have held exclusive possession of the books and records of said partnership, but on the contrary state that the said books and records have been open at all times for examination and inspection by the Complainants and in fact, the Complainants have exercised this right and privilege; they admit that the partnership owned a large amount of stocks and bonds, and that said stocks and bonds were and are now in the possession of the Merchants National Bank, Mobile, Alabama, and that a part thereof was sold by the said Merchants National Bank, the amount of

which the Respondents are not definitely advised.

6.

The Respondents deny that they have, in any manner, neglected their duties as surviving partners, and deny that they have failed, of their own accord, to wind up the affairs of said partnership, but on the contrary state that they have always been ready and have made every effort to persuade the Complainants to join with them in a final settlement of the said estate;

They deny that they have failed to account to and settle with the said Merchants National Bank, as Administrator of the Estate of Louis G. Bertolla, deceased, for the estate's interest in said property, but on the contrary state that they have permitted the said bank, as it saw fit, to examine the records and have in each and every instance complied, as far as possible, with the wishes and requests of said bank; that they have repeatedly requested and begged the said bank to agree and go ahead and finish up the affairs of said partnership, and have repeatedly made offers of settlement to said bank, each of which has been refused and ignored.

7.

For answer to Paragraph 6, they say that all the properties belonging to said partnership was purchased as a unit to be owned, held and enjoyed by said partnership as a unit, and that its real value is its operation as a unit and that to break it up in small units would be detrimental to and necessarily cause a serious and material depreciation in the value thereof; that it is the wishes of the Respondents, and was the wish of Louis G. Bertolla, that said properties be forever held together and operated as a unit; that the properties are of such nature and kind that they cannot be equitably divided, without a sale thereof.

8.

They deny that it has been necessary to employ a solicitor in this matter and on the contrary state that on several occasions before the institution of the suit that they expressed a willingness and desire to adjust and settle in an amicable manner, the affairs of said partnership, and it was and is their desire to avoid any litigation.

And for further answer to the Complainants' Bill of Complaint, the Respondents, separately and severally, say:

9.

That the said Louis G. Bertolla, many years prior to his death, and while he was unmarried, took out an insurance policy with New York Life Insurance Company, said policy being No. 10083412; that said policy was taken out in the name of the said Louis G. Bertolla, after a thorough discussion between the said Louis G. Bertolla and the Respondents herein, and that said policy of insurance was taken out for the benefit of the partnership, so that it may have immediately available, cash, in the event that anything should happen to the said Louis G. Bertolla, who was the managing director and business manager of the business; that the premiums on said insurance were paid out of the partnership funds; that said policy was, and the proceeds thereof, are the properties of the said partnership; that the Merchants National Bank of Mobile has recently collected and holds the proceeds of said policy in the amount of \$26,972.63; that said sum of money is the property of the said partnership, and belongs one-fifth to the estate of Louis G. Bertolla, deceased, and one-fifth to each of the Respondents herein.

10.

That the properties belonging to the said partnership of which the Respondents own an undivided four-fifths interest, was and is an indivisible unit, purchased and accumulated over a period of years, to be held and operated as a unit; that its material value is in the holding together and operating said partnership as a unit; that the breaking up and selling of said property, other than as a unit, would necessarily bring about a material sacrifice to all parties concerned; that the Respondents together with the deceased member of the partnership spent many years accumulating the assets of the partnership with the desire and express understanding of all that it would be at all times held together as an evidence of their efforts, and in the event that anything should happen to one of them, the said assets would continue to be held together and operated by the surviving members.

11.

That after the death of the said Louis G. Bertolla, the Respondents, as surviving members of the partnership, continued operations and financed the same and have continued to hold together the assets of the partnership as it was the wish and desire of all; that they have at all times cooperated to the fullest extent, so

far as they were able, with the wishes and desires of the Merchants National Bank, as Administrator of the estate of Louis G. Bertolla, deceased; that they have permitted the said bank to hold all stocks and bonds belonging to the partnership; they have continued to deposit money in the said bank, and they have permitted the said bank and its representatives to examine all records and books of the partnership as it saw fit; that they have rendered every available assistance to the said bank in the conduct of the affairs of said partnership and are now ready to cooperate with and permit the said bank to examine any and all records that it may wish, and at such reasonable times as it desires; that the Respondents have made offers to the said bank, as Administrator, for a settlement of the affairs of said partnership, by purchasing the interest of the Estate of the said Louis G. Bertolla, deceased, for a cash consideration.

12.

That soon after the death of the said Louis G. Bertolla, appraisers were appointed to appraise the assets of the said partnership, and that the Respondents cooperated with said appraisers in every way possible; that audits have been made of the said partnership, which audits are now and have been at all times available to the use and inspection of the Complainants.

13.

That the Respondents have recently submitted to the Complainants an offer of \$55,000.00 in cash, in full payment of the interest of the Estate of the said Louis G. Bertolla, deceased, in and to the assets of said partnership; which said offer, the Respondents are now ready, able and willing to make good.

Wherefore, the premises considered, the Respondents pray that this be taken as their answer and cross bill, and that the Complainants, Merchants National Bank of Mobile, a national banking incorporation, As administrator of the Estate of Louis G. Bertolla, deceased; Helen S. Bertolla; Benny Louis Bertolla; and Helen Elizabeth Bertolla, minors, by Helen S. Bertolla, as their next friend, be made parties cross respondent, and required to plead, answer or demur hereto, within the time and under the penalties prescribed by law and the practice of this Honorable Court.

The Respondents, Cross-Complainants, further pray for the following separate and several relief:

1.

That the Merchants National Bank, As administrator of the Estate of Louis

G. Bertolla, deceased, be required to furnish an itemized and complete statement of all stocks and/or bonds sold and the amounts received therefor.

2.

That a decree be made and entered fixing and determining the amount of money due the estate of Louis G. Bertolla, deceased, for its entire interest in the said partnership.

3.

That a decree be made and entered granting to the Respondents, Cross-Complainants, the right to purchase the interest of the said Louis G. Bertolla, deceased, in and to the entire property belonging to said partnership; that in the event such is not proper, then a proper order and decree be made ordering a sale of the said property belonging to said partnership, for division among the parties interested therein.

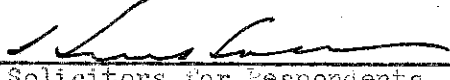
4.

That in the event that the Respondents, Cross-Complainants, have not prayed for the proper relief in the premises, that a proper decree be made and entered awarding to them such relief as they are entitled to under the allegations of their Answer and Cross-Bill.

5.

The Respondents, Cross-Complainants, pray for such other, further, different and general relief as they may be in equity and good conscience entitled to receive and as in duty bound they will ever pray.

BEEBE & HALL

By: 
Solicitors for Respondents, Cross-Complainants.

INVENTORY OF ESTATE OF LOUIS G. BERTOLLA, DECEASED

EXHIBIT "A"

Cash

Cash on hand and in Banks \$ 496.69

Proceeds of New York Life Insurance
Company Life Insurance Policy #10,063,412
on life of Louis G. Bertolla, deceased 26,972.63

INVENTORY OF ESTATE OF LOUIS G. BERTOLLA, DECEASED.

EXHIBIT "B"

STOCKS AND BONDS

100 shares Acme Steel Company-Capital Stock
200 shares American & Foreign Power Co., Inc. -Common Stock
300 shares American Nat'l Bank & Trust Co.-Capital Stock
100 shares Anaconda Copper Mining Co.- Capital Stock
200 shares Armour & Co. (of Ill.) - Common Stock
4 shares Bank of Fairhope-Capital Stock
100 shares The Borden Company-Capital Stock
300 shares Briggs Manufacturing Co.-Capital Stock
100 shares Buffalo, Niagra & Eastern Power Corp.-Pf'd Stock
2 shares Central Baldwin Bank, Robertsdale, Ala.
300 shares Charis Corporation- Capital Stock
30 shares Cities Service Company-Common Stock
300 Commercial Solvents Corp. -Common Stock
200 Commonwealth & Southern Corp. -Common Stock
500 shares Electric Bond & Share Co.-Common Stock
100 shares Electric Power & Light Corp. \$6 Pf'd Stock
add 300 shares Gillette Safety Razor Co. -Common Stock
200 shares Gillette Safety Razor Co. -\$5 Div. Contv. Pf'd Stock
200 shares Gold Dust Corp. -Comm. Stock Trust
add 200 shares Hecker Products Corp. -Common Stock
add 600 shares Illinois Central Railroad Co.-Common Stock
100 Kroger Grocery & Baking Co.-Common Stock
500 shares Lambert Company-Common Stock
200 shares Lehn & Fink Products Corp.-Common Stock
add 100 shares Libby-Owens-Ford Glass Co.-Common Stock
150 shares Merchants Nat'l Bank of Mobile-Capital Stock
100 shares Midland Steel Products Co.-Common Stock
\$6,250.00 Mobile Gas Service Corp.-1st. mtge. 5% Bonds Series due 1956
Accrued Interest to February 24, 1941 - \$126.20
\$6,000.00 Mobile Gas Service Corp.- 1st. mtge. Income Bonds Series A due Oct. 1, 1956
\$250.00 Mobile Gas Service Corp. -1st. mtge. Income Bonds-Series B due Oct. 1, 1956
S. A. A. 300 shares Nash-Kelvinator Corp. -Capital Stock

200 shares National Biscuit Company-Common Stock
200 shares National Dairy Products Corp.-Common Stock
100 shares National Distillers Products Corp.-Common Stock
100 shares National Power & Light Co.-Common Stock
400 shares New York Central Railroad Co.-Capital Stock
100 shares Newport Industries, Inc. -Capital Stock

200 2910 No. Amer. Trust Shares 1955 Bearer Certif.

100 shares Otis Steel Company-Common Stock
100 shares Paramount Pictures, Inc. -Common Stock
200 shares Parker Rust Proof Co. -Common Stock
100 shares Pennsylvania Railroad Co.-Capital Stock

200 200 shares Daniel Reeves, Inc.-Common Stock
500 shares Remington Rand, Inc.-Common Stock
500 shares Republic Steel Corp. Common Stock

200 500 shares Schenley Distillers Corp.-Common Stock

1062 1062 Selected American Shares, Inc.-Capital Stock

400 400 shares Standard Brands, Inc.-Common Stock

100 shares Studebaker Corporation-Common Stock
100 shares Sunshine Mining Company-Capital Stock
100 shares Swift & Company-Capital Stock

200 shares Twentieth Century-Fox Film Corp.-Common Stock

200 shares United Gas Corporation-Common Stock

500 500 shares United Gas Improvement Co.-Common Stock

100 shares United States Steel Corp.-Common Stock
400 shares Wesson Oil & Snowdrift, Inc.-Common Stock
300 shares Western Union Telegraph Co.-Capital Stock

100 shares Wilson & Company, Inc. -Common Stock

100 shares Youngstown Sheet & Tube Co.-Common Stock

INVENTORY OF ESTATE OF LOUIS G. BERTOLLA, DECEASED

EXHIBIT "C"

Mortgages and Notes Secured Thereby

Anders Anderberg dated 9/13/34 in amount of \$1500.00, due 9/12/42 with accrued interest at 6% to 2/24/41 of \$86.25.

J. M. Anthony dated 11/18/36 in amount of \$3,000.00, due \$1,000.00 on 11/15/37 and \$500.00 annually thereafter through 11/15/41 with accrued interest at 6% to 2/24/41 of \$770.50.

R. M. Black dated 7/2/36 in amount of \$500.00, due 7/2/37 with accrued interest at 6% to 2/24/41 of \$19.75.

W. H. Burmeister dated 7/30/36 in amount of \$1,200.00, due \$300.00 on 7/1/38 and \$300.00 annually thereafter through 7/1/41 with accrued interest at 5% to 2/24/41 of \$39.67.

W. S. Canaan dated 9/30/36 in amount of \$5,400.00, due \$1,350.00 on 10/1/39 and \$1,350.00 annually thereafter through 10/1/42 with accrued interest at 6% to 2/24/41 of \$132.30.

Rube Childress dated 9/22/38 in amount of \$1,740.00, due \$435.00 on 9/21/41 and \$435.00 annually thereafter through 9/21/44 with accrued interest at 6% to 2/24/41 of \$44.94.

J. P. Cooper dated 11/4/38 in amount of \$800.00, due \$200.00 on 11/1/39 and \$200.00 annually thereafter through 11/1/42 with accrued interest at 6% to 2/24/41 of \$15.47.

N. P. Cooper dated 1/9/39 in amount of \$500.00, due \$250.00 on 1/8/41 and 1/8/42 with accrued interest at 6% to 2/24/41 of \$3.41.

R. H. Dawson dated 1/18/37 in amount of \$220.00, due 1/17/39 with accrued interest at 6% to 2/24/41 of \$9.24.

R. R. Devine dated 10/29/37 in amount of \$375.00, due \$125.00 on 10/28/39 and \$125.00 annually thereafter through 10/28/41 with accrued interest at 6% to 2/24/41 of \$7.44.

J. O. Driskell dated 11/4/38 in amount of \$400.00, due \$100.00 on 11/1/41 and \$100.00 annually thereafter through 11/1/44 with accrued interest at 6% to 2/24/41 of \$7.73.

D. W. Fields dated 7/9/37 in amount of \$1,500.00, due \$300.00 on 6/15/38 and \$300.00 annually thereafter through 6/15/42 with accrued interest at 6% to 2/24/41 of \$63.50.

A. B. Hankins dated 2/1/37 in amount of \$1,600.00, due 2/1/40 with accrued interest at 4% to 2/24/41 of \$43.55.

W. Igo dated 11/30/38 in amount of \$500.00, due 12/1/41 with accrued interest at 6% to 2/24/41 of \$7.17.

H. W. Jordan dated 12/12/38 in amount of \$325.00, due \$25.00 on 12/11/40 and \$100.00 annually thereafter through 12/11/43 with accrued interest at 6% to 2/24/41 of \$11.26.

J. J. Powell dated 10/5/37 in amount of \$450.00, due \$225.00 10/2/40 and 10/2/41;
J. J. Powell dated 7/20/39 in amount of \$1,600.00, due 7/20/44;
J. J. Powell dated 11/27/39 in amount of \$1,188.30, due 11/27/40; all with accrued interest at 6% to 2/24/41 of \$254.19.

Joe Reding dated 11/3/36 in the amount of \$800.00, due 11/1/39;
Joe Reding dated 5/26/37 in the amount of \$600.00, due 6/1/40; both with
accrued interest at 6% to 2/24/41 of \$47.97.

Silverhill Chamber of Commerce dated 1/2/37 in the amount of \$150.00, due
1/1/42 with accrued interest at 6% to 2/24/41 of \$5.00.

J. L. Wright dated 8/10/37 in the amount of \$500.00, due \$100.00 on 8/10/38
and \$100.00 annually thereafter through 8/10/42 with accrued interest at 6%
to 2/24/41 of \$16.50.

Nora Mattingly dated 12/17/40 in the amount of \$700.00, due \$100.00 on 12/15/41
and \$150.00 annually thereafter through 12/15/45 with accrued interest at 6%
to 2/24/41 of \$8.05.

L. S. Devine dated 10/10/32 in the amount of \$103.69, due 10/10/33 with accrued
interest at 10% of \$6.60.

Crop Mortgage Notes of the following substantially maturing on June 1, 1941
with 6% interest:

Barnhill, Roger F.	\$ 1,507.55
Barnhill and Latner	245.45
Childress, B. T.	231.00
Childress, C. S.	129.75
Childress, Paul	292.50
Childress, Rube	448.50
Champion, J. A.	306.37
Driskell, W. P.	440.00
Fields, D. W.	840.00
Johnson, Fred	58.50
Johnson, Lee	73.50
Kral, Jos. J., Jr.	451.46
Krejcirik, J. B.	180.00
Marshall, Floyd G.	210.00
Rankins, Eddie	42.00
Rockwell, Roy W.	294.00
Sellars, H. M.	174.00

INVENTORY OF ESTATE OF LOUIS G. BERTOLLA, DECEASED

EXHIBIT "D"

Personal Property

- 1 Cotton Gin
- 1 Grader
- 1 Scales
- 1 Set Miscellaneous Office Equipment
- 1 1936 Iron Age Potato Planter
- 1 1937 Case Corn Planter
- 1 1940 Iron Age S. Potato Planter
- 1 Iron Age Large Potato Planter
- 1 Small New Idea Potato Planter
- 1 International Potato Digger
- 1 1939 International Digger
- 1 Champion Potato Sprayer
- 1 1928 Hardin Sprayer
- 2 1937 International Cultivators
- 5 International Cultivators
- 1 International Tractor Disk
- 1 Oliver Tractor Plow
- 1 International Tractor Plow
- 1 Walking Plow
- 2 One Row Avery Corn Planters
- 2 Two Row Corn Planters
- 1 McCormick Deering Hay Mower
- 1 Hay Rake
- 1 "Silo" Case Cutter
- 1 Case Hammer Mill
- 1 Section Harrows
- 2 Harrows
- 1 Electric Grind Rock
- 2 1920 Wagons
- 3 Wagons

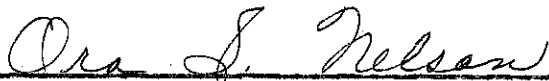
STATE OF ALABAMA

BALDWIN COUNTY

Before me, the undersigned authority within and for said County in said State, personally appeared M. B. Slaughter, who, after being by me first duly and legally sworn, deposes and says: That he is Vice President and Trust Officer of the Merchants National Bank of Mobile, a Corporation, which said corporation is the Administrator of the Estate of Louis G. Bertolla, Deceased, and as such officer is duly authorized to make this affidavit for and on behalf of the said corporation; that he has read over the inventory of the said estate shown by Exhibits "A", "B", "C" and "D", which are hereto attached and which are by reference made a part hereof as though fully incorporated herein, and that such inventory is full and complete as to the goods, chattels, debts and money of the said decedent, which have come to its knowledge or possession.



Sworn to and subscribed before me
on this the 1st day of May, 1941.



Notary Public, Baldwin County, Alabama.

MAY 11 1944

THE STATE OF ALABAMA - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1943-44.

1 Div. 212.

Merchants National Bank of
Mobile, a Corporation, as
Administrator etc., et als.

v.

Alex S. Bertolla et als.

Appeal from Baldwin Circuit Court In Equity.

GARDNER, Chief Justice:

The original bill was by the Merchants National Bank, as administrator of the estate of Louis G. Bertolla, deceased; Helen S. Bertolla, the widow; and two minor children, represented by their mother as next friend. The bill seeks an accounting and settlement of the partnership known as A. Bertolla & Sons.

This partnership was dissolved by the death of Louis G. Bertolla, one of its members, and indeed, its managing head. The partnership was composed of five brothers. The surviving partners are the four brothers of Louis G. Bertolla, who are made parties defendant to this suit. It was a family affair in its origin, and so continued to the date of the death of Louis. It appears to have originated

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defendants was prayed to be taken as a cross-bill. It set up the fact that Louis G. Bertolla, in the years prior to his death, and while he was unmarried, took out an insurance policy with the New York Life Insurance Company; that this policy was obtained after a thorough discussion between the said Louis and the defendants herein; that it was on the life of Louis and was so obtained for the benefit of the partnership in order that cash might be immediately available in the event of his death, he being the manager and business director of the firm; that the premiums on the insurance were paid out of the partnership funds and that the policy was, and the proceeds thereof, are the properties of said partnership; that the Bank, as administrator, has collected and holds the proceeds of the policy in the amount of \$26,972.63; that said sum of money is the property of the partnership, one-fifth of which should go to the estate of Louis G. Bertolla and one-fifth to each of the remaining four defendants, the surviving partners.

The policy of insurance on the life of Louis G. Bertolla, issued in March, 1928, was payable to the executors, administrators or assigns of the insured, with express reservation of the right on the part of the insured to change the beneficiary. When the final decree was rendered approving the settlement reached as set up in the answer, counsel for the respective parties agreed that the decree would settle all the equities between the parties except the ownership of the proceeds from this insurance policy, and that jurisdiction be reserved for the purpose of rendering such other and further orders and decrees as might be necessary to determine the ownership of these funds.

There was no demurrer interposed to the cross-bill, and the sufficiency thereof as a matter of pleading was in

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no manner questioned. Testimony was taken by way of depositions, and upon submission of the cause for final decree, the trial court concluded that the insurance policy on the life of Louis G. Bertolla was a partnership asset and the proceeds were to be divided as partnership property pursuant to the prayer of the cross-bill. From this decree the complainants have prosecuted the appeal, and the only question here presented relates to the ownership of these funds.

The cross-bill is filed upon the theory of a resulting trust. That a trust may be created in personal property by parol, with no particular words required to accomplish the result, is well established in this jurisdiction. Lashley v. Lashley, 212 Ala. 255, 102 So. 229.

We recognize also the well-established rule that when such trusts are supported and enforced, it is only upon plain and convincing evidence; and the authorities generally also held a closer correspondence must be had between the pleadings and the proof than in ordinary cases. Fatton v. Beecher, 62 Ala. 579; Lehman v. Lewis, 62 Ala. 129; Miles v. Rhodes, 222 Ala. 208, 131 So. 633; Owens & Co. v. Blanks, 225 Ala. 566, 144 So. 35.

We are cited by counsel for appellants to a number of authorities in other jurisdictions denying relief upon the proof, which cases have been read and duly considered. Among these authorities are: Fee v. Wells, 65 Col. 348; Bartlett v. Goodrich, 153 N. Y. 421; Vieth v. Chicago Title & Trust Co., 307 Ill. App. 99; Proctor v. MacClaskey, 129 N. E. 600; Zolintakis v. Orfanos, 119 Fed. (2d) 571. These cases merely demonstrate the effect of the rule requiring strict proof in cases of this character.

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Counsel direct attention to the fact that on second appeal in Lashley v. Lashley, 219 Ala. 312, 122 So. 314, relief was denied, but this authority also merely demonstrates how closely the courts scrutinize the evidence in this character of cases. Some of these authorities likewise are to the effect that the mere declarations of assured, made to strangers after the issuance of the policy are inadmissible to vary its terms and establish a trust in the proceeds in favor of another. See Fee v. Wells, supra; Wason v. Colburn, 99 Mass. 342. But the rule of these cases is inapplicable here. In Fee v. Wells, supra, the Colorado Court merely held "that in civil cases one cannot be held liable upon a claim based solely upon hearsay conversations against interest with strangers, without some proof to establish that such a claim previously existed."

We recognize the correctness of this holding. The trust must arise at the time the title passes -- as in this instance, upon the investment of the funds in the purchase of the policy. If there is no sufficient proof upon which to establish the trust as an original proposition, subsequent declarations of the insured will not suffice. Miles v. Rhodes, supra; Phillips v. Phillips, 240 Ala. 148, 198 So. 132; Owens & Co. v. Blanks, supra.

But once evidence is produced tending to establish the resulting trust, the verbal declarations or admissions of the insured are admissible as evidence against those claiming under him. Lehman v. Lewis, supra; Lashley v. Lashley, 219 Ala. 312, 122 So. 314.

As pointed out in the recent case of Marshall v. Marshall, 243 Ala. 169, 8 So. (2d) 843, the rule of resulting trusts depends upon equitable presumption of intention, and it is the settled general rule that presumably when land or

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other property is purchased by one with the money of another, a trust results to him who advances the purchase money thereof, the title being taken in the name of the person making the purchase or in the name of a third person. That is the simple theory upon which this case rests.

When this policy was procured by Louis Bertolla insuring his own life and payable to his estate, he was a single man. The partnership, as observed, was a family affair. And after discussion with his father and members of the family and the insurance agent who wrote the policy, it was decided that the policy thus secured would answer all purposes for the partnership. Viola Bertolla, a sister of the insured and of these defendants (who at one time was interested in the firm but who had, with the other girls, previously sold her interest), testified as to this partnership being a family affair, and that after the father's death the girls conveyed their interests to the five brothers. She remembers when the policy on the life of Louis in the New York Life Insurance Company was taken out. She states that Louis discussed the matter of going ahead with the business with the father and the question of taking out insurance. Louis thought it should be taken out in order to protect the firm. He discussed this matter with the father and with the family. The father thought that it would be better to divide the insurance among all the boys and let each carry so much. But Louis was to be the managing head, and he thought it best to take the twenty-five thousand dollar policy on his own life "because if something happened the company would feel it more than if it happened to some other one of the boys * * * and he felt like he should carry \$25,000 on his own life."

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A large part of the business of the company involved the shipment of produce, and many carload shipments on consignment were made, and considerable money was tied up in these shipments. The policy was taken out, as thus understood, and the premiums paid by the partnership. They were paid with checks drawn on A. Bertolla & Sons -- all of them. We have alluded to the fact that this partnership was so intimately a family affair that the large holdings, both in real and personal property, stocks and bonds, were acquired in the same manner; that is, title taken in the name of some one or more of the boys and paid for with partnership funds. All of this was partnership property.

This policy was delivered to Louis there at the place of business and afterwards placed in a safety deposit vault in the bank at Mobile, to which he and another brother had access. It was in this safety deposit box that the policy was at the time Louis died. As we have previously observed, the policy taken out when Louis was unmarried would have served the purpose, after all, for the benefit of this family partnership. One Charles Ebert was the agent representing the New York Life Insurance Company and the one who wrote this policy. He testifies positively to the fact that the insurance was taken out for the benefit of the partnership: "He said he wanted to take it out so that in the event of his death the money would be paid to his firm and his estate; at that time he was a single man." Ebert had conversations with him after his marriage, and in these conversations he still insisted he was carrying that insurance for the protection of A. Bertolla & Sons. And just a year before he died he repeated to Ebert that he was carrying this insurance for the benefit of the firm. Speaking of the time this policy was issued, Ebert's

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testimony continues: "I suggested he make it to A. Bertolla & Sons, and then after some discussion we decided it was just as well to leave it to his estate, as he was a single man; that his father and brothers would receive the money just as if it was left to A. Bertolla & Sons."

Numerous witnesses testified to declarations by Louis at different times and places to the effect that this policy was taken out for the benefit of the firm. Indeed, his widow, now Mrs. Jacobs, one of the complainants in this cause, admitted that Louis did make statements that the insurance was made payable to A. Bertolla & Sons. He made that statement many times, but she insists that it was in the presence of some of his family, and that when the two were alone he would merely tell her that she need not worry, that she would be well taken care of. And she admits in her testimony that in the settlement of the partnership affairs in the amount of cash she received for Louis's interest she was "well taken care of."

Dr. Jordan, who had been the physician of Louis throughout the years, testified that Louis told him time and again that this policy was taken out for the company and to take care of any losses the partnership might suffer should anything happen to him, and that he told him this also just a short while before he died.

Witness Stevens has for a number of years been representing as agent the New York Life Insurance Company. He likewise discussed this matter with Louis. The last conversation was during his illness, and not long before his death. Louis told him that the policy was taken out to protect the firm in the event of his death, with some detail as to the reasons supporting that course. In one conversation a year or two before he died Louis inquired whether or not

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he could change the beneficiary to his wife if he wanted to. Stevens told him that he could. His testimony continues: "He told me when I came back to see him the next time that he had decided not to name the wife as beneficiary, that he wanted his brothers to have the benefit of the insurance. He told me that he had made other provisions for his wife and children, and didn't want to change the insurance." Stevens told him that the record showed that his estate was the beneficiary; and he wrote a letter to the company to substantiate his statement, but Louis insisted they were wrong, that the business was the beneficiary. He specifically stated that he "wanted the boys to have it."

In Section 32, Title 43, Code of 1940, is the following:

"Property, whether real or personal, acquired with partnership funds is presumed to be partnership property."

That this policy was acquired with partnership funds is established by the uncontradicted proof. We have not overlooked the ingenious argument of counsel for appellants that this partnership was in a prosperous condition, and that in fact the interest of Louis therein was such as to justify the conclusion the funds with which the premiums were paid were those of Louis rather than of the firm, though paid by check of the partnership and out of the partnership account. We have considered in this connection the evidence as found in the cases cited by counsel, among them: Vieth v. Chicago Title & Trust Co., supra; Bartlett v. Goodrich, supra; Procter v. MacClaskey, supra. But we think there are material differences, not necessary here to relate, and that as of course, each case must rest upon its own peculiar facts.

Admittedly, the stocks and bonds which were purchased in the name of Louis were considered by all parties as having

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been purchased with partnership funds and belonging to the firm. There is no reason upon which the purchase of the insurance policy should be rested upon a different basis. Like all this other property, it was purchased with partnership funds and for partnership purposes. And when we consider the fact that this was purely a family business, the brothers having perfect confidence in each other, the failure of the books to show any cash surrender value of these policies as an asset of the firm is a matter of small consequence. So, likewise, as to the argument concerning the peculiar custom of these brothers of paying their individual debts out of partnership funds. All of these circumstances may tend to weaken, but not destroy, the presumption noted in the above-cited statute; and in no event could they be said to overcome the overwhelming, if not the uncontradicted, proof that the policy here in question was taken out for the benefit of the firm -- a fact which stands out clear and convincingly established from the evidence in this case.

But we forego further discussion of the facts. Suffice it to say this record has been carefully examined, and we find ourselves in full accord with the trial judge, who wrote a brief but helpful opinion, citing our cases of Winston v. Winston, 242 Ala. 45, 4 So. (2d) 730; McDonald v. McDonald, 212 Ala. 137, 102 So. 38, 36 A. L. R. 761; Lashley v. Lashley, supra, and in which he reached the conclusion that the overwhelming proof disclosed that this policy of insurance was taken out by agreement of the parties for the benefit of the partnership and the premiums all paid with partnership funds.

Counsel for appellants insist that there was no proof of agreement of the parties, but that at most the

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evidence showed an understanding, which is to be distinguished from agreement. This, however, is looking at the testimony with too critical an eye. The evidence of Viola was that the entire matter was discussed, not only with the father, but with the family, which of course would include the brothers of Louis who, subsequently with him, were the sole members of the firm. And it included all the members of the firm at the time the policy was taken out, because, as we have stated, the family was interested. We think the trial court reached the proper conclusion on the facts, and that cross-complainants have made out their case by clear and convincing proof.

Counsel for appellants lay some stress upon the accuracy of pleading required in cases of this character, and that the averments of the cross-bill are insufficient to meet this test. We have previously stated the substance of the averments of the cross-bill in this regard. It disclosed that the policy was taken out after a thorough discussion between the interested parties and for the benefit of the partnership, that there might be cash immediately available in the event anything should happen to Louis, who was the managing director, and that the premiums were paid out of the partnership funds, and that the policy and its proceeds were the properties of the partnership. There was no demurrer interposed to this cross-bill; and if it lacked in technical accuracy, the point should have been made in the lower court. It cannot be for the first time presented on this appeal. Bruce Coal Co. v. Bibby, 201 Ala. 121, 77 So. 545; Davidson v. Brown, 215 Ala. 205, 110 So. 384.

In Marshall v. Marshall, supra, the averments as to resulting trusts were rather meager, as was observed in the opinion, but were held sufficient to sustain a decree

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of resulting trust rested upon a decree pro confesso. Like reasoning is applicable to the instant case.

While the agreement of the parties for submission of the cause, confirming the settlement of the partnership affairs and reserving the right to contest the proceeds of this insurance policy, may not be sufficient to invoke the principle applied in Walker v. Walker, _____ Ala. _____ 16 So. (2d) 190, yet it must be confessed that the language of this stipulation, considering the pleadings on file, tended very much to lead one to the conclusion that the only remaining question left for determination in the litigation was one of fact. But, however that may be, in the absence of demurrer, we are clear to the view the cross-bill was entirely sufficient to support the decree rendered. By this decree the proceeds of this insurance policy are considered partnership assets, one-fifth payable to the complainants, who represent the estate of Louis G. Bertolla.

We are persuaded this was a correct decree, and is due here to be affirmed. It is so ordered.

Affirmed.

THOMAS, LIVINGSTON, and STARKLY, JJ., concur.

THE STATE OF ALABAMA--JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1st Div., No. 212

Merchants National Bank of Mobile, a Corporation, as Administrator etc., et als., Appellant, S

vs.

Alex S. Bertolla, et als., Appellee, S

From Baldwin Circuit Court.
[In Equity]

The State of Alabama, }
City and County of Montgomery. }

I, J. Render Thomas, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages, numbered from one to t w e l v e inclusive, contain a full, true and correct copy of the opinion of said Supreme Court in the above stated cause, as the same appears and remains of record and on file in this office.

Witness, J. Render Thomas, Clerk of the Supreme Court of Alabama, this the 11th day of

May, 19 44

J. Render Thomas
Clerk of the Supreme Court of Alabama.

MAY 11 1944

THE STATE OF ALABAMA - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1943-44.

1 Div. 212.

Merchants National Bank of
Mobile, a Corporation, as
Administrator etc., et als.

v.

Alex S. Bertolla et als.

Appeal from Baldwin Circuit Court In Equity.

GARDNER, Chief Justice:

The original bill was by the Merchants National Bank, as administrator of the estate of Louis G. Bertolla, deceased; Helen S. Bertolla, the widow; and two minor children, represented by their mother as next friend. The bill seeks an accounting and settlement of the partnership known as A. Bertolla & Sons.

This partnership was dissolved by the death of Louis G. Bertolla, one of its members, and indeed, its managing head. The partnership was composed of five brothers. The surviving partners are the four brothers of Louis G. Bertolla, who are made parties defendant to this suit. It was a family affair in its origin, and so continued to the date of the death of Louis. It appears to have originated

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THE SUPREME COURT OF ALABAMA

October Term, 1943-44

1st Div. No. 212

Merchants National Bank of
Mobile, a Corporation, as
Administrator, etc., et als.,

Appellants

vs.

Alex S. Bertolla, et als.,

Appellees

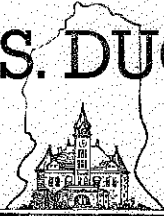
From Baldwin Circuit Court,
[In Equity]

COPY OF OPINION

R. S. DUCK

Register and Clerk

Of The Circuit Court



BALDWIN COUNTY

BAY MINETTE, ALA.

This is to certify that J. B. Blackburn has paid to me the sum of \$21⁰⁰ additional cost in the between case - \$89⁰⁰ is to be paid Baldwin County Bank as heretofore authorized and said sum of \$21⁰⁰ is to be paid said J. B. Blackburn by R. S. Duck when the costs in this case for taking the testimony, amounting to \$110⁰⁰, is paid to said R. S. Duck.

This 12 June 1943

R. S. Duck
Court Reporter

805

MERCHANTS NATIONAL BANK OF MOBILE,
a Corporation, as Administrator of
the Estate of Louis G. Bertolla,
Deceased, et al,

Complainants,

VS.

ALEX S. BERTOLLA, et al,

Respondents.

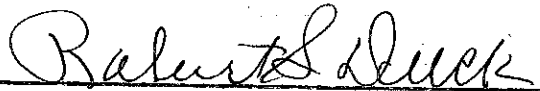
IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NO. 805.

NOTICE OF REFERENCE

TO THE MERCHANTS NATIONAL BANK OF MOBILE, A CORPORATION AS ADMINIS-
TRATOR OF THE ESTATE OF LOUIS G. BERTOLLA, DECEASED; DENNY LOUIS
BERTOLLA AND HELEN ELIZABETH BERTOLLA, MINORS, AND W. H. HAWKINS
AS GUARDIAN AD LITEM OF AND FOR THE SAID MINORS; ALEX S. BERTOLLA,
ANGELLO F. BERTOLLA, JOHN P. BERTOLLA, AND RUDOLPH F. BERTOLLA,
AND TO BEEBE AND HALL, THEIR ATTORNEYS.

You and each of you are hereby notified that a reference
will be held by me as Register of this Court at my office in Bay
Minette, Alabama, at 10:00 o'clock A.M. on Thursday, July 2, 1942,
to ascertain, determine, and fix the amount to be paid to Helen S.
Bertolla Jacobs as and for her dower interest in the manner provid-
ed by Section 272 of Title 61 of the 1940 Code of Alabama.

Witness my hand this 26th. day of June, 1942.

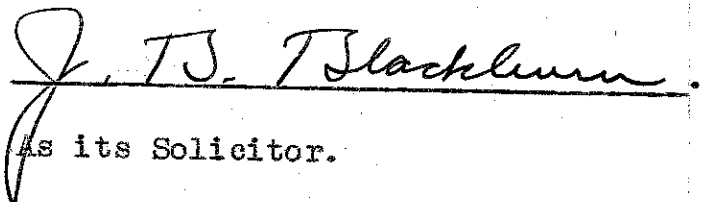


Register.

The Merchants National Bank of Mobile, a Corporation,
as Administrator of the Estate of Louis G. Bertolla, Deceased, here-
by accepts service of a copy of the foregoing notice and waives all
other and further notice of same.

Dated this 26th. day of June, 1942.

Merchants National Bank of Mobile,
a Corporation, as Administrator of
the Estate of Louis G. Bertolla,
Deceased.


As its Solicitor.

Service accepted and further notice waived this the 26th.
day of June, 1942.

Denny Louis Bertolla and Helen Elizabeth
Bertolla, minors.

By *W. A. Hawkins*
As Guardian, Ad Litem.

Service accepted and further notice waived this the
27 day of June, 1942.

Alex S. Bertolla, Angello F. Bertolla,
John P. Bertolla, and Rudolph F. Bertolla.

By *Beecher*
As their Solicitor.

MERCHANTS NATIONAL BANK OF MOBILE,
a Corporation,
As Administrator of the Estate of
Louis G. Bertolla, Deceased, et als,

Complainants,

VS.

ALEX S. BERTOLLA, et als,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NUMBER 805.

NOTICE TO PARTY NOT JOINING IN APPEAL

TO ANY SHERIFF OF THE STATE OF ALABAMA, GREETING:

THAT WHEREAS, Helen S. Jacobs, Denny Louis Bertolla and Helen Elizabeth Bertolla, three of the Complainants and Cross Respondents in the above entitled cause, did, heretofore on this date file in this Court their appeal from the Decree rendered herein on November 6, 1943:

NOW THEREFORE, you are hereby commanded to summon the Merchants National Bank of Mobile, a Corporation, as Administrator of the Estate of Louis G. Bertolla, Deceased, to appear before the Supreme Court of the State of Alabama at the time the said appeal is returnable and join therein if it shall think proper so to do.

Witness my hand and seal this 15th day of January, 1944.



Register.

STATE OF ALABAMA

BALDWIN COUNTY

I have executed the foregoing Return on this the 17 day of January, 1944, by serving a copy on J. B. Blackburn, Solicitor in the Lower Court for the Merchants National Bank of Mobile, a Corporation, as Administrator of the Estate of Louis G. Bertolla, Deceased.

W. R. Stuart, as Sheriff
Baldwin County, Alabama

By 

MERCHANTS NATIONAL BANK OF MOBILE,
a Corporation
As Administrator of the Estate of
Louis G. Bertolla, Deceased, et als,

Complainants,

VS.

ALEX S. BERTOLLA, et als

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NUMBER 805.

We hereby acknowledge ourselves security for costs on
the appeal taken by the Complainant and Cross Respondent, the
Merchants National Bank of Mobile, a Corporation, as Administrator
of the Estate of Louis G. Bertolla, Deceased, from the Final Decree
of the Circuit Court of Baldwin County, Alabama in Equity, in
the above entitled cause dated November 6, 1943.

J. T. Blackburn (SEAL)
W. Hawkins (SEAL)

Taken and approved this 22nd
day of January, 1944.

Redner
Register.

MERCHANTS NATIONAL BANK OF
MOBILE,
As Administrator of the Estate
of Louis G. Bertolla, Deceased,
et als,

Complainants,

VS.

ALEX S. BERTOLLA, et als,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NUMBER 805.

We hereby acknowledge ourselves security for costs on
the appeal taken by the Complainants and Cross Respondents, Helen
S. Jacobs, and Denny Louis Bertolla and Helen Elizabeth Bertolla,
Minors, from the Final Decree of the Circuit Court of Baldwin
County, Alabama, in Equity, in the above entitled cause dated
November 6, 1943.

J. T. Blackburn (SEAL)
W. H. Hawkins (SEAL)

Taken and approved this
the 15th day of January,
1944.

R. Duck

Register of the Circuit Court
of Baldwin County, Alabama.
In Equity.

CITATION OF APPEAL

MERCHANTS NATIONAL BANK OF
MOBILE, a Corporation
As Administrator of the Estate
of Louis G. Bertolla, et als,

Complainants,

VS.

ALEX S. BERTOLLA, et als

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY. NUMBER 805.

TO ALEX S. BERTOLLA, ANGELO F. BERTOLLA, JOHN P. BERTOLLA AND
RUDOLPH F. BERTOLLA, OR TO H. M. HALL, THEIR SOLICITOR OF RECORD:

WHEREAS, on the 15th day of January, 1944, the Complainants
and Cross Respondents, Helen S. Jacobs, and Denny Louis Bertolla and
Helen Elizabeth Bertolla, minors, took an appeal from the Decree
rendered in this said cause and dated November 6, 1943; and

WHEREAS, on January 22, 1944, the Complainant and Cross
Respondent, the Merchants National Bank of Mobile, a Corporation,
as Administrator of the Estate of Louis G. Bertolla, Deceased, took
an appeal from the Decree rendered in this said cause and dated
November 6, 1943:

NOW THEREFORE, You are cited to appear as required by law,
before the Supreme Court of Alabama to defend the said appeal if you
think proper so to do.

Witness my hand this 29th day of January, 1944.



Register in Chancery, Baldwin County,
Alabama.

MERCHANTS NATIONAL BANK OF
MOBILE, a Corporation, as
Administrator of the Estate
of Louis G. Bertolla, De-
ceased, et al,

Complainants,

VS.

ALEX S. BERTOLLA, et al,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NO. 805.

DECREE.

This cause coming on to be heard on this date is submitted on the petition filed herein by Helen S. Bertolla Jacobs on June 25, 1942; the decree of this Court dated June 25, 1942 ordering that a reference be held; notice of reference dated June 26, 1942; the acceptance of service and waiver of notice by the solicitors of record for the respective parties to this cause; the Register's report on reference; notice of the filing of the Register's report; acceptance of service and waiver of notice by the solicitors of record for the respective parties to this cause; the pleadings filed and decrees heretofore rendered in this cause and the testimony noted by the Register; upon consideration of all of which, it is therefore ORDERED, ADJUDGED and DECREED by the Court as follows:

1. The Register's report dated July 2, 1942 and filed in this cause on July 9, 1942 is in all respects approved and fully confirmed.

2. The sum of Two Thousand Dollars (\$2000.00) is hereby fixed as a reasonable sum to be paid to Helen S. Bertolla Jacobs, the widow of Louis G. Bertolla, Deceased, from the proceeds of the sale of the real property heretofore sold under the former orders and decrees of this Court rendered in this cause as and for her dower interest in the said property in the manner provided By Section 272 of Title 61 of the 1940 Code of Alabama.

3. The Merchants National Bank of Mobile, a Corporation, as Administrator of the Estate of Louis G. Bertolla, Deceased, is hereby ordered, authorized, empowered, instructed and directed to pay to the said Helen S. Bertolla Jacobs the said sum of Two Thousand Dollars (\$2000.00) from the moneys belonging to the said estate now in its possession or under its control and take her receipt therefor.

4. The sum of Thirty-five Dollars (\$35.00) is hereby fixed as a reasonable fee to be paid to W. H. Hawkins, as Guardian Ad Litem of and for Denny Louis Bertolla and Helen Elizabeth Bertolla, minors, which fee shall be and is hereby taxed as a part of the costs of this proceeding.

5. The Court costs incurred in this proceeding to date are hereby taxed against the Merchants National Bank of Mobile, a Corporation, as Administrator of the Estate of Louis G. Bertolla, Deceased, and the said Administrator is ordered, authorized, empowered and directed to pay the said costs from the funds of the said estate now in its possession or under its control.

6. Jurisdiction of this cause is reserved for such other and further orders and decrees as may be requisite and proper in the premises.

Done on this the 22nd day of July, 1942.

J. W. Stare
Judge.

Testimony of W. H. Hawkins to ascertain and fix the guardian ad litem fee in reference in the case of Merchant National Bank, as Admr. of the estate of Louis G. Bertolla, deceased et. als vs. Alex S. Bertolla Et. als.

W. H. Hawkins, on oath states that he represented as guardian ad litem the interests of Denny Louis Bertolla and Helen Elizabeth Bertolla, minor heirs of Louis G. Bertolla Deceased in the litigation over the insurance policy issued on the life of Louis G. Bertolla by the New York Life Insurance Company, the proceeds of said policy was approximately \$27,000.

In connection with the case, after accepting the appointment as guardian ad litem, I read over and carefully checked over the pleadings and signed all papers required to be signed by me, and I attended the taking of testimony of the witnesses at Loxley, Bay Minette and Mobile on three separate days and I took two trips to Monroeville to see Judge Hare in connection with the case. In taking the testimony of the witnesses at Loxley, Bay Minette and Mobile, I did not cross-examine the witnesses, as J. B. Blackburn attorney and I had thoroughly discussed the points we wish proved, and we decided it would be better for Atty J. B. Blackburn to examine and cross-examine the several witnesses and also it might cause a reduplication in the testimony etc. I conferred frequently with J. B. Blackburn on the law and the facts in preparation of the brief in the Circuit Court and appeared for the minors in the oral argument before Judge Hare at the Court-House.

Before this brief was written, I read some law in connection therewith and fully discussed the matter with J. B. Blackburn.

After the final decree was rendered in the Circuit Court, a rehearing was asked and it was in connection with this and the security for appeal that I took the two trips to Monroeville with J. B. Blackburn.

After the appeal was taken to Supreme Court, I joined in the appeal and also joined in giving security for the costs of the appeal in the Supreme Court. I read over and checked over the transcript of the record in the Circuit Court.

In preparing the briefs on the original appeal to the Supreme Court and on the rehearing, I frequently discussed the different phases of the case and the points we wished to stress and carefully read over the decision of the Supreme Court, and in the preparation of the brief on rehearing, I read and checked over the decision of the Supreme Court, and compared the points decided in the opinion of the Supreme Court with the transcript of the record.

All briefs were read over by me and signed as required.

I spent considerable time in the case not mentioned above.

As I mentioned above the proceeds of this insurance policy was approximately \$27,000.

For the time consumed and the work by me and the amount involved, I consider that I am entitled to a fee of \$1000.00 in this case.

As this guardian ad litem fee is part of the costs, and Merchants National Bank is to pay one fifth and the Bertolla Bros. four fifth, this would cost each only \$200.00, which is very small when they get over \$5,000 each.

MERCHANTS NATIONAL BANK OF
MOBILE, a Corporation,
As Administrator of the
Estate of Louis G. Bertolla,
Deceased, et als,

Complainants,

VS.

ALEX S. BERTOLLA, et als,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NUMBER 805.

STIPULATION

IT IS STIPULATED AND AGREED by and between the Complainants and Cross-Respondents, the Merchants National Bank of Mobile, as Administrator of the Estate of Louis G. Bertolla, Deceased, and Helen S. Bertolla, and the Respondents and Cross-Complainants, Alex S. Bertolla, Angelo F. Bertolla, John P. Bertolla and Rudolph F. Bertolla, acting by and through their respective solicitors of record as follows:

1. That this cause be submitted for a decree settling all of the equities between the parties hereto except the ownership of the proceeds of and from the policy of insurance issued by the New York Life Insurance Company on the life of Louis G. Bertolla, Deceased, amounting to \$26,972.63; that the Court render a decree at this time settling all of the equities except the ownership of the proceeds of and from the said insurance policy and that jurisdiction of this cause be reserved for the purpose of rendering such other and further orders and decrees as may be necessary to determine the ownership of the said funds.

2. The rendition of the Decree referred to in the foregoing paragraph shall be and is without prejudice to the rights of all of the parties to this suit or any one or more of them to claim the proceeds of and from the said insurance policy.

3. The said parties consent that the Court render a Decree as outlined in this stipulation.

Dated this 12th day of May, 1942.

Page 2.
(Stipulation)

J. B. Blackman

Solicitor for said Complainants and
Cross Respondents.

Beck & Hase

Solicitor for Respondents and Cross
Complainants.

MERCHANTS NATIONAL BANK OF
MOBILE, a Corporation, As
Administrator of the Estate
of Louis G. Bertolla, et al

Complainants,

VS.

ALEX S. BERTOLLA, et al

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY.

ORDER APPOINTING GUARDIAN AD LITEM

It appearing to the Register that the Respondents have filed an Amended Cross Bill in this cause in which the minor Complainants, Denny Louis Bertolla and Helen Elizabeth Bertolla, who are each minors under fourteen years of age, are made Cross-Respondents, and that it is therefore necessary that a guardian ad litem be appointed to represent the said minors in connection with the matters alleged in the said Amended Cross Bill and it further appearing to the Register that W H Hawkins, an Attorney at Law and Solicitor in Chancery practicing at Bay Minette, Alabama, is in all respects a fit and proper person to be appointed as such Guardian Ad Litem; that he is not of kin or counsel to any of the parties to this proceeding and that he has not been suggested by any of the parties, and further that he is not related to any of the said parties or their respective solicitors in any way or manner:

IT IS THEREFORE Ordered, Adjudged and Decreed that W H Hawkins be, and he is hereby appointed as Guardian Ad Litem for the minors, Denny Louis Bertolla and Helen Elizabeth Bertolla, to represent them and protect their rights and interest in connection with all of the matters alleged in the Amended Cross Bill filed against them in this cause.

Dated this 2nd day of May, 1942.

R. Duck

Register.

MERCHANTS NATIONAL BANK
OF MOBILE, a Corporation,
As Administrator of the
Estate of Louis G. Bertolla,
Deceased, et als,

Complainants,

VS.

ALEX S. BERTOLLA, et als,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

ANSWER TO AMENDED CROSS BILL

Now come the Merchants National Bank of Mobile, a Corporation, as Administrator of the Estate of Louis G. Bertolla, Deceased, and Helen S. Bertolla, two of the Complainants and Cross Respondents in this cause and for answer to the Amended Cross Bill filed in this cause by the Respondents and Cross Complainants say:

1. They and each of them deny each and all of the allegations contained in paragraphs numbered six, seven, ten, eleven and twelve of the said Amended Cross Bill.

2. These Complainants and Cross Respondents admit that the New York Life Insurance Company issued its policy numbered 10 063 412 on the life of Louis G. Bertolla, now deceased, and allege that this said policy was payable to the executors or administrators of the Estate of Louis G. Bertolla, Deceased. They further admit that after the appointment and qualification of the said Merchants National Bank of Mobile, as Administrator of the Estate of Louis G. Bertolla, Deceased it, as such Administrator, collected the proceeds of the said policy amounting to the sum of \$26,972.63 and that it, as such Administrator, is accountable to the heirs and distributees of the Estate of the said Louis G. Bertolla, Deceased for proper payment of the said funds so collected. These Complainants and Cross Respondents deny that the said policy was taken for the benefit of the Respondents and Cross Complainants in this suit or for the benefit of the partnership of A. Bertolla and Sons, deny that the premiums on the said insurance policy were paid out of partnership funds, and allege that

they were paid by the said Louis G. Bertolla, now deceased, from his own individual funds. They further deny that the proceeds of the said policy are an asset of the said partnership of A. Bertolla and Sons and further allege that no part of the said funds belong to the said partnership or the surviving partners thereof and that all of the said funds are assets of the Estate of Louis G. Bertolla, Deceased, to be distributed among the heirs and distributees thereof in the manner provided by law. These Complainants and Cross Respondents deny each and all of the other allegations contained in paragraph numbered nine of the said Amended Cross Bill.

3. These Complainants and Cross Respondents admit that the Respondents and Cross Complainants recently made the offer contained in paragraph numbered thirteen of the Amended Cross Bill filed by them in this cause and further admit that the said offer is reasonable, that it is to the best interest of the minor heirs of the said Louis G. Bertolla, Deceased that they be allowed to accept the said offer and recommend that this Court by a proper decree authorize such proceedings as may be necessary to effectuate a sale of the entire interest owned by Louis G. Bertolla, now deceased, at the time of his death in and to the partnership known as A. Bertolla and Sons to the surviving partners thereof; that the proceeds of the New York Life Insurance Company policy be not considered as an asset of the said partnership and not included in the said conveyance provided the said Administrator is authorized to pay Complainants' solicitor of record the attorney's fee agreed upon at the time the said offer of settlement was made; that the Estate of Louis G. Bertolla, Deceased, its Administrator, and all of the heirs of the said decedent are relieved and protected from all costs of every kind and nature due or to become due in the case of the State of Alabama versus A. Bertolla and Sons, et al, now pending in the Circuit Court of Baldwin County, Alabama, Law Side; that the Estate of Louis G. Bertolla, Deceased, its Administrator and all of the heirs of the said Louis G. Bertolla, Deceased be fully relieved of and from any and all obligation or obligations of every kind and nature which exists to the firm of

A. Bertolla and Sons or to the surviving partners thereof, that such decree be without prejudice as to the rights of any of the parties to this cause to claim the proceeds of and from the said New York Life Insurance Company policy on the life of Louis G. Bertolla, Deceased, and that litigation over this said insurance fund be completed with all convenient dispatch.


4. These Complainants and Cross Respondents deny each and all of the allegations of the said Amended Cross Bill which have not been specifically answered herein and demand strict proof thereof.

Having fully answered the said Amended Cross Bill these Complainants and Cross Respondents pray that they be discharged with their reasonable costs in this behalf expended.

MERCHANTS NATIONAL BANK OF MOBILE, a
Corporation, as Administrator of the
Estate of Louis G. Bertolla, Deceased,

By 
As its Vice President and Trust Officer.


As Complainants and Cross Respondents.


Solicitor for the said Complainants
and Cross Respondents.

2 D

RECORDED

Notice of
Reference

26
RECORDED

NOTICE TO PARTY NOT JOINING IN
APPEAL.

MERCHANTS NATIONAL BANK OF MOBILE,
a Corporation,
As Administrator of the Estate of
Louis G. Bertolla, Deceased, et als

Complainants,

VS.

ALEX S. BERTOLLA, et als

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY. NUMBER 805.

RECORDED

SECURITY FOR COSTS OF APPEAL

MERCHANTS NATIONAL BANK OF MOBILE,
As Administrator of the Estate of
Louis G. Bertolla, Deceased, et als

Complainants,

VS.

ALEX S. BERTOLLA, et als

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NUMBER 905.

7.

RECORDED

ORDER APPOINTING GUARDIAN
AD LITEM.

MERCHANTS NATIONAL BANK OF
MOBILE, a Corporation, As
Administrator of the Estate of
Louis G. Bertolla, Deceased,
et al,

Complainants,

VS.

ALEX S. BERTOLLA, et al

. Respondents

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

RECORDED

12

7

STIPULATION

MERCHANTS NATIONAL BANK OF
MOBILE, a Corporation,
As Administrator of the Estate
of Louis G. Bertolla, Deceased,
et als,

Complainants,

VS.

ALEX S. BERTOLLA, et als,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NUMBER 805.

Filed May 12 1942
[Signature]

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

MARCH 3, 1942

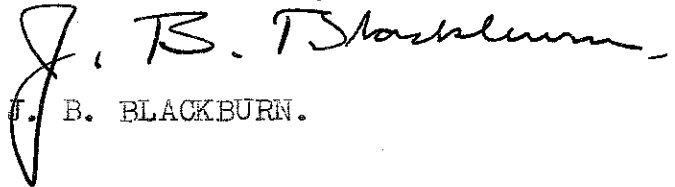
Mr. R. S. Duck
Register in Chancery
Bay Minette, Alabama

Dear Mr. Duck:

Attached hereto is the original Bill of Complaint in the case of the Merchants National Bank of Mobile, as Administrator of the Estate of Louis G. Bertolla, Deceased, et al, Complainants, vs. Alex S. Bertolla, et al, Respondents.

Please file and docket this case but do not have it served on the Respondents until Monday, March 9, 1942. The Complainants desire to give the Respondents every opportunity to adjust the matter and are for this reason requesting that service be withheld for the length of time stipulated herein.

Very truly yours,


J. B. BLACKBURN.

JBB:ON

Copy Merchants National Bank
Mobile, Alabama

Copy Messrs. A. Bertolla and Sons
Loxley, Alabama

MERCHANTS NATIONAL BANK OF
MOBILE,
As Administrator of the Estate
of Louis G. Bertolla, et als

Complainants,

VS.

ALEX S. BERTOLLA, et als

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY. NUMBER 805.

APPLICATION FOR RE-HEARING

Now come the Complainants and Cross Respondents and file this their application for a re-hearing of the said cause and move the Court to set aside the Decree rendered in this cause on November 6, 1943, and grant a re-hearing, and as grounds therefor set down and assign separately and severally the following:

1. The Decree is contrary to the law.
2. The Decree is contrary to the evidence.
3. The Decree is contrary to the law and the evidence.

J. B. T. Blankenship
Solicitor for Complainants and Cross
Respondents.

*Presented this 6th day of December
1943 and continued Dec. 8th 1943 -
J. W. Hare
Judge*

Continued to December 14th 1943 -

*J. W. Hare
Judge*

*Ordered continued to Jan. 12th 1944
This Dec. 17th 1943 - J. W. Hare
Judge*

MERCHANTS NATIONAL BANK
OF MOBILE, a Corporation,
As Administrator of the
Estate of Louis G. Bertolla,
Deceased, et als,

Complainants,

VS.

ALEX S. BERTOLLA, et als,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY. NUMBER 805.

REPORT

Now comes the Merchants National Bank of Mobile, a Corporation, as Administrator of the Estate of Louis G. Bertolla, Deceased, and Helen S. Bertolla, two of the Complainants and Cross Respondents in this cause, and respectfully report to the Court as follows:

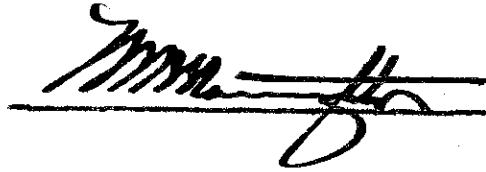
1. The said Administrator did, on May 26, 1942, receive from the Respondents and Cross Complainants in this cause the sum of \$66,625.00 and the conveyances and release which were ordered delivered to the said Administrator by the said Respondents and Cross Complainants in the Decree in this cause dated May 15, 1942.

2. The said Administrator has paid to the surviving partners the sum of \$26,982.64 which was ordered paid to them in paragraph numbered 7 of the Court's said Decree of May 15, 1942, and has also delivered to the said surviving partners the securities which the said Administrator was ordered to deliver to the said surviving partners in paragraph numbered 8 of the said Decree.

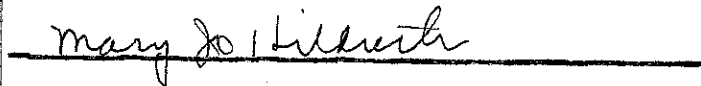
3. The said Administrator and the said Helen S. Bertolla have executed and delivered to the Respondents and Cross Complainants the deed which was ordered executed and delivered in paragraph number 4 of the said Decree of May 15, 1942.

4. The said Administrator, in further compliance with the terms and provisions of the said Decree also paid to the Complainants and Cross Respondents the further and additional sum of \$345.00, being income on securities received by the said Administrator since April 18, 1942, and also the sum of \$364.14 which represented the

being by me first duly and legally sworn, deposes and says: That he is Vice President and Trust Officer of the Merchants National Bank of Mobile, a Corporation, as Administrator of the Estate of Louis G. Bertolla, Deceased; that he has read over the foregoing Report and that the facts stated therein are true.



Sworn to and subscribed before me on this the 28 day of May, 1942.



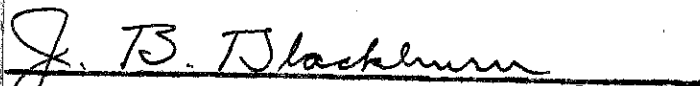
Notary Public, Mobile County, Alabama.

STATE OF ALABAMA |
BALDWIN COUNTY |

Before me, the undersigned authority within and for said County in said State, personally appeared Helen S. Bertolla, who, after being by me first duly and legally sworn, deposes and says: That she has read over the foregoing Report and that the facts stated therein are true.



Sworn to and subscribed before me on this the 28 day of May, 1942.



Notary Public, Baldwin County, Alabama.

ALEX S. BERTOLIA, ET AL

COMPLAINANTS

VS

MERCHANTS NATIONAL BANK, ET AL

RESPONDENTS

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY.

And now come the Complainants, separately and severally, and except to the report of the Register fixing the fee of Guardian, ad litem, in this cause on the ground that;

It is excessive.

It will be recalled by the Court that the Guardian ad litem was appointed in the original suit and received a fee of \$300.00, as fixed by the Court.

The Complainants in their Cross Bill complained of the Respondents four-fifths (4/5) of the proceedings of the insurance policy. The same Guardian ad litem was appointed to represent the two minors involved.

This Court rendered a decree, which was later examined by the Supreme Court of the State upholding the contention of the Complainants in that they were entitled to four-fifths (4/5) of the proceedings of the insurance. We, therefore, contend that the Guardian ad litem's fee should be fixed commensurate with the efforts made by him rather than on the basis of the amount involved. We readily admit that if the minors had recovered then the Guardian ad litem would be entitled to a liberal fee taking into consideration the amount involved.

An examination of the record will show that the only services rendered by the Guardian ad litem were in the filing of an answer to the Complainants' Cross Bill and the attending of the taking of testimony. It may also be true that the Guardian ad litem collaborated with the Attorney for the Respondents in writing the brief.

We submit, therefore, in view of the circumstances that the Guardian ad litem is entitled to a reasonable fee, but nothing like the amount fixed by the Register.

We dislike, very much, to even question a matter of this kind where a brother attorney is involved, however, in view of the decree of the Courts, four-fifths (4/5) of all the costs are paid by our Clients. We therefore determine it our responsibility to keep the costs as low as possible.

The Court will of course, in fixing the fee, take into consideration the amount allowed in the proceeding so far as it involved the appeal to the Supreme Court. It seems to us that the fee is reversed, as necessarily, in view of all the circumstances in the case, the Guardian ad litem should be entitled to a bigger fee for the prosecution of the case on appeal, than in the law of the Court.

We do not have the testimony of the witnesses before us, however, we do ask that the Court take into consideration all the evidence offered, and then, bearing in mind the efforts on the part of the Guardian ad litem, fix a reasonable fee, which necessarily must be paid four-fifths (4/5) by our clients.

Respectfully submitted,

BEERE & HALL

BY: W. M. Hall

Solicitors for the Complainants.

MERCHANTS NATIONAL BANK
OF MOBILE, a Corporation,
As Administrator of the
Estate of Louis G. Bertolla,
Deceased, et als,

Complainants,

VS.

ALEX S. BERTOLLA, et als,

Respondents.

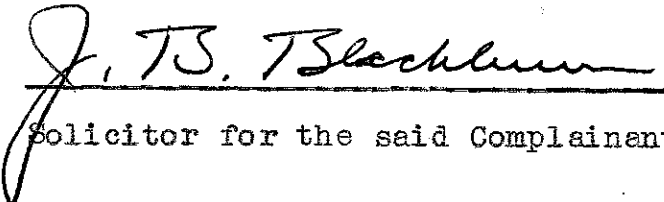
IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

Now come the Merchants National Bank of Mobile, a Corporation, as Administrator of the Estate of Louis G. Bertolla, Deceased, and Helen S. Bertolla, two of the Complainants in this cause, and show to the Register that they require an oral examination of the witnesses hereinafter named, the same to be examined orally before a Commissioner to be appointed by the Register of this Court at the times and places hereinafter shown:

The said Complainants move for the oral examination of M. B. Slaughter, Mobile, Alabama, Leon G. Brooks, Brewton, Alabama, William G. Caffey, Mobile, Alabama, Hugh M. Caffey, Brewton, Alabama, R. E. Gordon, Mobile, Alabama and Ben D. Turner, Mobile, Alabama, the testimony of the said M. B. Slaughter to be taken in Bay Minette, Alabama, on Wednesday, May 6, 1942 at nine o'clock A. M., and the testimony of the other said witnesses as soon as practicable thereafter at the offices of the respective witnesses.

The said Complainants suggest Ora S. Nelson, of Bay Minette, Alabama, as a suitable person to act as commissioner to take the testimony of the said witnesses.

The said Complainants aver that due notice of this motion has been given to all the adverse parties to this action or their solicitors of record in form and substance as is required by law.


Solicitor for the said Complainants.

MERCHANTS NATIONAL BANK
OF MOBILE, a Corporation,
As Administrator of the
Estate of Louis G. Bertolla,
Deceased, et als,

Complainants,

VS.

ALEX S. BERTOLLA, et als,

Respondents.

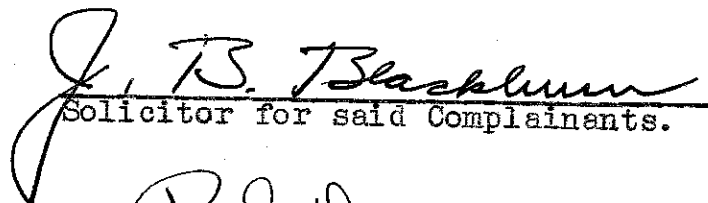
IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.


IN EQUITY.

TO ALEX S. BERTOLLA, ANGELO F. BERTOLLA, JOHN P. BERTOLLA AND RUDOLPH
F. BERTOLLA, INDIVIDUALLY AND AS SURVIVING PARTNERS OF THE FIRM OF
A. BERTOLLA AND SONS, OR TO H. M. HALL, THEIR SOLICITOR OF RECORD:

TO DENNY LOUIS BERTOLLA AND HELEN ELIZABETH BERTOLLA, MINORS, AND
W. H. HAWKINS, AS GUARDIAN AD LITEM FOR SAID MINORS:

You are hereby notified that the Complainants, the Merchants National Bank of Mobile, a Corporation, as Administrator of the Estate of Louis G. Bertolla, Deceased, and Helen S. Bertolla, have moved for and obtained an order permitting and directing an oral examination of the witnesses named in the attached copy of the Motion therefor, the said examination of the said witnesses to be oral before Ora S. Nelson, Commissioner appointed by this Court at the time stated in said motion, a copy of which is hereto attached and made a part of the said motion.


Solicitor for said Complainants.


Register.

I, H. M. Hall, as Attorney for the Respondents, Alex S. Bertolla, Angelo F. Bertolla, John P. Bertolla and Rudolph F. Bertolla, individually and as surviving partners of the firm of A. Bertolla and Sons, hereinabove named, do hereby accept service of the foregoing requirement of the oral examination of the witnesses named in the said motion and notice thereof and waive all other and further

MERCHANTS NATIONAL BANK OF
MOBILE,
As Administrator of the Estate
of Louis G. Bertolla, et als,

Complainants,

VS.

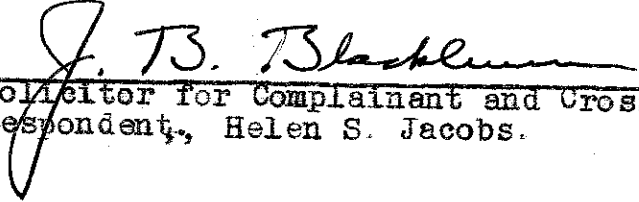
ALEX S. BERTOLLA, et als

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY. NUMBER 805.

Now comes the Complainant and Cross Respondent, Helen
S. Jacobs, and appeals from the Final Decree of the Court in the
above entitled cause dated November 6, 1943.


Solicitor for Complainant and Cross
Respondent, Helen S. Jacobs.

Filed this the 15th day
of January, 1944.



Register

THE STATE OF ALABAMA--JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 19 43-44.

To the REGISTER of the CIRCUIT Court, BALDWIN County—Greeting:

Whereas, the Record and Proceedings of the Circuit Court In Equity of said county, in a certain cause lately pending in said Court between Merchants National Bank of Mobile, as Administrator, etc., et als., and Alex S. Bertolla, et als., Appellant, S., Appellee S., wherein by said Court, at the Term, 19, it was considered adversely to said appellant S., were brought before our Supreme Court, by appeal taken, pursuant to law, on behalf of said appellant S.:

NOW, IT IS HEREBY CERTIFIED, That it was thereupon considered by our Supreme Court, on the 11th day of MAY, 19 44, that said DECREE * * * * * of said Circuit Court be in all things affirmed, and that it was further considered that the appellants, ~~and~~ Merchants National Bank of Mobile, as Administrator of the Estate of Louis G. Bertolla, Deceased, Helen S. Jacobs, Denny Louis Bertolla and Helen Elizabeth Bertolla, and J. B. Blackburn and W. H. Hawkins, sureties on the appeal bonds, pay * * * * *

the costs accruing on said appeal in this Court and in the Court below

Witness, J. Render Thomas, Clerk of the Supreme Court of Alabama, ~~at the Capitol~~ this the 11th day of May 19 44. J. Render Thomas Clerk of the Supreme Court of Alabama.

RECORDED

APPLICATION FOR RE-HEARING

MERCHANTS NATIONAL BANK OF MOBILE,
As Administrator of the Estate of Louis G. Bertolla, et als

Complainants,

VS.

ALEX S. BERTOLLA, et als

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY. NUMBER 805.

Filed May 15 1943
Produce
and

155-151-103
155-151-103
155-151-103

Division of the Circuit Court of Baldwin County

1. The record is complete to the fact and the legal effect.
2. The record is complete to the facts.
3. The record is complete to the facts.
4. The record is complete to the facts.
5. The record is complete to the facts.
6. The record is complete to the facts.
7. The record is complete to the facts.
8. The record is complete to the facts.
9. The record is complete to the facts.
10. The record is complete to the facts.

APPLICATION FOR RE-HEARING

RECORDS

STATE OF ALABAMA

AL.

COURT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

RECORDS
STATE OF ALABAMA

John J. ...
6/15/44

REPORT

EXPERIENCES OF THE MERCHANTS

RESPONDENTS

MERCHANTS NATIONAL BANK, ET AL

VS

COMPLAINANTS

ALEX S. BERTOLIA, ET AL

9.
RECORDED

MOTION FOR AND NOTICE OF ORAL
EXAMINATION OF WITNESSES.

MERCHANTS NATIONAL BANK OF MOBILE,
a Corporation,
As Administrator of the Estate of
Louis G. Bertolla, Deceased, et al

Complainants,

VS.

ALEX S. BERTOLLA, et als,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

Filed May 2nd 1942
Robert
Byjust

THE SUPREME COURT OF ALABAMA

October Term, 19 43-44.

1st Div., No. 212

Merchants National Bank of
Mobile, as Administrator, etc.,
et als.

Appellant,s

vs.

Alex S. Bertolla, et als.

Appellee. s

From Baldwin Circuit Court.
In Equity

Certificate of Affirmance

The State of Alabama,

Baldwin County.

} Filed

this 12 day of May 1944

[Signature]

[Signature]

RECORDED

APPEAL OF

HELEN S. JACOBS

MERCHANTS NATIONAL BANK OF MOBILE,
As Administrator of the Estate of
Louis G. Bertolla, Deceased, et als

Complainants,

VS.

ALEX S. BERTOLLA, et als

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NUMBER 805.

MERCHANTS NATIONAL BANK OF
MOBILE, a Corporation, as
Administrator of the Estate
of Louis G. Bertolla, Deceased,
et als,

Appellants,

VS.

ALEX S. BERTOLLA, et als,

Appellees.

AGREEMENT TO ABRIDGE RECORD

In this case of the Merchants National Bank of Mobile, a Corporation, as Administrator of the Estate of Louis G. Bertolla, Deceased, et als, Appellants, vs. Alex S. Bertolla, et als, Appellees, which has been appealed to the Supreme Court of Alabama from the Circuit Court of Baldwin County, Alabama, Equity Side, it is agreed by and between the parties to this cause acting by and through their respective solicitors of record that the record on appeal of this case be abridged and that the transcript to be prepared for use in the said appeal shall include only the following part of the proceedings had in the Circuit Court of Baldwin County, Alabama, Equity Side:

1. A copy of this Agreement.
2. Original Bill of Complaint.
3. Answer and Cross Bill filed April 13, 1942.
4. Amended Answer and Cross Bill filed May 2, 1942.
5. Answer of Merchants National Bank of Mobile, a Corporation, as Administrator of the Estate of Louis G. Bertolla, Deceased; and Helen S. Bertolla, filed May 2, 1942.
6. Order Appointing Guardian Ad Litem.
7. Notice of Appointment, Acceptance and Answer of Guardian Ad Litem.
8. Stipulation dated and filed May 12, 1942.
9. Agreement for Submission of Cause dated and filed May 14, 1942.
10. Decree dated May 15, 1942.
11. Report filed May 28, 1942.
12. Report filed June 10, 1942.

13. Decree dated July 6, 1942.
14. Stipulations or Agreements of the parties dated March 5, 1943 and June 11, 1943 respectively relative to the taking of testimony of witnesses on behalf of the Respondents and Cross-Complainants, namely, John A. Russell, Mr. Hankins, Floyd G. Marshall, R. G. Stevens, Fred C. Griffin, Dr. H. W. Jordan, Charles J. Ebert, Sarah Dolive, Viola Bertolla, Ernest D. Corte and Finley Owens, and that M. R. Farish act as Commissioner, the testimony of each and all of the said witnesses and the Exhibits identified as Exhibits "A", "B", "C", "D", "E", "F", "G", "H", "I", "J", "K", "L", "M", "N", "O", "P", "Q", "R", and "S" in the testimony of the Respondents and Cross Complainants.
15. Notice to Produce Records filed June 8, 1943, together with the Sheriff's return thereon.
16. Subpoena Duces Tecum to V. R. Pritchard, together with the Sheriff's return thereon.
17. Stipulation or Agreement of parties dated June 11, 1943, relative to the taking of the testimony of Helen S. Jacobs, M. B. Slaughter, V. R. Pritchard and that Miller Farish act as Commissioner, the testimony of the said witnesses, together with Exhibit "1" to the testimony of the Complainants and Cross Respondents.
18. Amended Answer to Amended Cross Bill filed August 24, 1943.
19. Respondents and Cross Complainants' Note of Testimony filed September 22, 1943.
20. Complainants and Cross Respondents' Note of Testimony filed September 22, 1943.
21. Stipulation and Agreement of parties dated and filed September 22, 1943.
22. Final Decree dated November 6, 1943.
23. Complainants and Cross Respondents' Application for Re-Hearing and Orders continuing same.
24. Decree denying Complainants and Cross Respondents' Application for Re-Hearing.
25. Appeal of Helen S. Jacobs.

26. Appeal of Denny Louis Bertolla and Helen Elizabeth Bertolla, Minors, by Helen S. Jacobs as next friend.

27. Appeal of Denny Louis Bertolla and Helen Elizabeth Bertolla, Minors by Guardian Ad Litem.

28. Security for Costs of Appeal.

29. Notice to party not joining in Appeal.

30. Appeal of Merchants National Bank of Mobile, a Corporation, as Administrator of the Estate of Louis G. Bertolla, Deceased.

31. Security for Costs of Appeal.

32. Citation of Appeal.

33. Receipt of Respondents and Cross Complainants for \$21,578.10, being the amount of the Court's said Decree dated November 6, 1943, which receipt is dated February 9, 1944, and which was filed February 25, 1944.

34. Clerk's Certificate.

IT IS FURTHER AGREED that the said appeal may be heard on a Transcript containing the above described part of the said proceedings in the said cause.

Dated this 14th day of March, 1944.

J. B. Blackburn
Solicitor for Appellants.

W. H. Hawkins
Guardian Ad Litem.

Paula H. H. H.
W. H. H.
Solicitors for Appellees.

TWENTY-FIRST JUDICIAL CIRCUIT

OF ALABAMA

F. W. HARE, JUDGE

R. L. JONES, CIRCUIT SOLICITOR

M. R. FARISH, COURT REPORTER

MONROEVILLE, ALABAMA

March 9, 1943

Mr. R. S. Duck,
Bay Minette, Alabama.

Dear Bob:

I am enclosing herewith my bill in the case of Merchants National Bank of Mobile, as Administrator of the Estate of Louis G. Bertolla, Deceased, and request that you please place same in the court file.

You will note that I have authorized and directed, at the foot of the bill, that you pay this sum of \$89.00 to the Baldwin County Bank when the same is collected by you. J. B. and estimated what the costs would be for taking his testimony, and he very kindly arranged to let me collect the whole sum of \$89.00 at the Baldwin County Bank before I left there Saturday. I have sent Mr. Holmes a copy of this bill for his files.

I wish to thank you for your kindness in permitting me to use your typewriter and office while I was there, and assure you I appreciated it very much.

I have finished transcribing the testimony and have forwarded a copy each to Hubert and J. B. However, I will hold up sending you the original for a few days in the hope that I may be able to send it by someone.

Again thanking you for your kindness, and with regards and best wishes, I am,

Your friend,



MILLER FARISH
COURT REPORTER
MONROEVILLE, ALABAMA

Merchants National Bank of Mobile,)
as Administrator of the Estate of)
Louis G. Bertolla, Deceased, Et Al.)
VS.)
Angelo S. Bertolla, Et Al.)

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
In Equity.

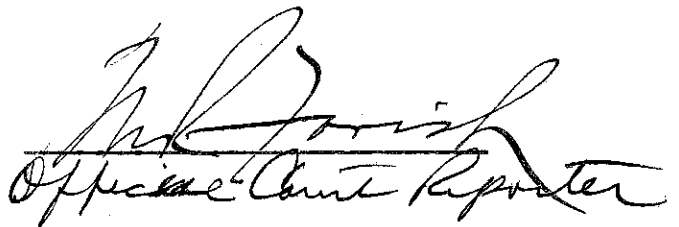
IN ACCOUNT WITH
M. R. FARISH, COURT REPORTER,
MONROEVILLE, ALABAMA.

To Original Transcript of Testimony and two
Copies thereof delivered to Messrs. J. B.
Blackburn and H. M. Hall - - - - - \$89.00

TO MR. R. S. DUCK, REGISTER IN CHANCERY:

The Baldwin County Bank, Bay Minette, Alabama,
having advanced to me the above sum of Eighty-Nine and
NO/100 (\$89.00) Dollars, you are hereby authorized and
directed to deliver to the said Baldwin County Bank the
said sum of Eighty-nine and NO/100 (\$89.00), the amount of
my costs in the above styled case, when the same are
collected by you.

Witness my hand and seal, this the 6th day of
March, 1943.


Official Court Reporter

MERCHANTS NATIONAL BANK OF MOBILE,
As Administrator of the Estate of
Louis G. Bertolla, et als

Complainants,

VS.

ALEX S. BERTOLLA, et als

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NUMBER 805.

Now come the Complainants and Cross Respondents, Denny Louis Bertolla and Helen Elizabeth Bertolla, Minors, by W. H. Hawkins, as their Guardian Ad Litem and appeal from the Final Decree of the Court in the above entitled cause dated November 6, 1943.

Denny Louis Bertolla and
Helen Elizabeth Bertolla, Minors

By W. H. Hawkins
As their Guardian Ad Litem.

Filed this the 15th day
of January, 1944.

R. Duck

Register.

MERCHANTS NATIONAL BANK OF
MOBILE, a Corporation, As
Administrator of the Estate
of Louis G. Bertolla, De-
ceased, et als,

Complainants,

VS.

ALEX S. BERTOLLA, et als,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NO. 805.

DECREE.

This cause coming on to be heard on this date is submitted for a decree confirming the actions of the parties to this cause as ordered and directed in the decree rendered herein on May 15, 1942 and is submitted on the said decree, the report of the Merchants National Bank of Mobile, a Corporation, as Administrator of the Estate of Louis G. Bertolla, Deceased, and Helen S. Bertolla, filed herein on the 28th day of May, 1942 and the report of Alex S. Bertolla, Angelo F. Bertolla, John P. Bertolla and Rudolph F. Bertolla, filed herein on the 10th day of June, 1942, upon consideration of all of which the Court is of the opinion that the said parties have complied with the terms and provisions of the said decree of May 15, 1942; that their said actions have been reported to this Court by them and should be confirmed; whereupon, it is therefore ORDERED, ADJUDGED and DECREED by the Court as follows:

1. The parties hereto have fully complied with all of the terms and provisions of the said decree of May 15, 1942 and the actions of the Merchants National Bank of Mobile, a Corporation, as Administrator of the Estate of Louis G. Bertolla, Deceased, and Helen S. Bertolla, as reported by them in the report filed herein on the 28th day of May, 1942 and the actions of Alex S. Bertolla, Angelo F. Bertolla, John P. Bertolla and Rudolph F. Bertolla, as reported by them in the report filed herein on the 10th day of June, 1942, are each and all hereby in all respects ratified and fully confirmed.

2. The Register of this Court shall file a certified copy of this decree for record in the office of the Probate Judge of Baldwin County, Alabama and tax the cost thereto as a part of the costs of this proceeding.

3. This decree and all of its provisions is without prejudice to the rights of the parties to this suit or any one or more of them to claim the proceeds paid by the New York Life Insurance Company under its policy numbered 1006342 on the life of Louis G. Bertolla, Deceased, which said proceeds amounting to \$26,972.63 were paid by the said New York Life Insurance Company to the Merchants National Bank of Mobile, a Corporation, as Administrator of the Estate of Louis G. Bertolla, Deceased, and is also without prejudice to the claim for \$486.72, filed by the surviving partners of the firm of A. Bertolla and Sons against the Estate of Louis G. Bertolla, Deceased.

4. The Court costs in this proceeding to date are hereby taxed against the Merchants National Bank of Mobile, a Corporation, as Administrator of the Estate of Louis G. Bertolla, Deceased, and the said Administrator is authorized, empowered, instructed and directed to pay all of the said costs from the funds of the said Estate now in its possession or under its control.

5. Jurisdiction of this cause is reserved for all such other and further orders and decrees as may be requisite and proper in the premises.

Done on this the 6th day of July, 1942.

J. M. Stone
Judge.

MERCHANTS NATIONAL BANK
OF MOBILE, a Corporation,
As Administrator of the
Estate of Louis G. Bertolla,
Deceased, et als,

Complainants,

VS.

ALEX S. BERTOLLA, et als,

Respondents.


IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY. NUMBER 805.

NOTE OF TESTIMONY

This cause coming on to be heard on this date is submitted on behalf of the Complainants upon the following:

1. Original Bill of Complaint.
2. Answer to Amended Cross Bill.
3. Appointment, Acceptance and Answer of W. H. Hawkins, as Guardian Ad Litem for Denny Louis Bertolla and Helen Elizabeth Bertolla, Minors.
4. Stipulation dated May 12, 1942.
5. Agreement for Submission of Cause.
6. Oral Depositions of the following witnesses with Exhibits thereto attached, all of which were taken before Ora S. Nelson, Commissioner appointed by this Court: M. B. Slaughter, Leon G. Brooks, Wm. G. Caffey, Hugh M. Caffey and R. E. Gordon.



Solicitor for Complainants.

The said cause is submitted upon behalf of the Complainants and Cross Respondents, the Merchants National Bank of Mobile, a Corporation, as Administrator of the Estate of Louis G. Bertolla, Deceased, and Helen S. Bertolla, upon the following:

1. Original Bill of Complaint.
2. Answer to Amended Cross Bill.
3. Appointment, Acceptance and Answer of W. H. Hawkins, as

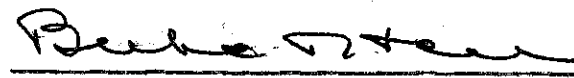
Guardian Ad Litem for Denny Louis Bertolla and Helen Elizabeth Bertolla, minors.

4. Stipulation dated May 12, 1942.
5. Agreement for Submission of Cause.
6. Oral Depositions of the following witnesses with Exhibits thereto attached, all of which were taken before Ora S. Nelson, Commissioner appointed by this Court: M. B. Slaughter, Leon G. Brooks, Wm. G. Caffey, Hugh M. Caffey and R. E. Gordon.


Solicitor for said Complainants and Cross Respondents.


This cause is submitted upon behalf of the Respondents and Cross Complainants upon the following:

1. Amended Cross Bill.
2. Stipulation dated May 12, 1942.
3. Agreement for Submission of Cause.
4. Oral Depositions of the following witnesses, all of which were taken before Ora S. Nelson, Commissioner appointed by this Court: Viola Bertolla, Fred C. Griffin and Ernest D. Corte.



Solicitor for Respondents and Cross Complainants.

This cause is submitted upon behalf of Denny Louis Bertolla and Helen Elizabeth Bertolla, minor Cross Respondents, upon the following:

1. Appointment, Acceptance and Answer of W. H. Hawkins, as Guardian Ad Litem for the said minors.


Guardian Ad Litem for Denny Louis Bertolla and Helen Elizabeth Bertolla, Minors, Cross Respondents.

Dated this 15th day of May, 1942.


Register.

MERCHANTS NATIONAL BANK
OF MOBILE, a Corporation,
As Administrator of the
Estate of Louis G. Bertolla,
Deceased, et als,

Complainants,

VS.

ALEX S. BERTOLLA, et als,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.


IN EQUITY.

TO ALEX S. BERTOLLA, ANGELO F. BERTOLLA, JOHN P. BERTOLLA AND RUDOLPH
F. BERTOLLA, and to H. M. HALL, SOLICITOR OF RECORD:


You are hereby notified and requested to produce at the time
of the taking of the testimony of M. B. Slaughter in this cause the
following described original letters from the Merchants National Bank
of Mobile, a Corporation, by M. B. Slaughter, as its Vice President
and Trust Officer, to Angelo F. Bertolla, Alex S. Bertolla, Rudolph
F. Bertolla and John P. Bertolla, dated January 7, 1942 and January
27, 1942.

Upon your failure to produce the said original documents
secondary evidence thereof will be introduced by the Complainants in
the said cause.

Dated this 25th day of April, 1942.


Solicitor for Complainants.

Service accepted this 25th day of April, 1942.


Solicitor for Respondents.

RECORDED

AGREEMENT TO ABRIDGE RECORD

MERCHANTS NATIONAL BANK OF
MOBILE, a Corporation, as
Administrator of the Estate of
Louis G. Bertolla, Deceased,
et als,

Appellants,

VS.

ALEX S. BERTOLLA, et als,

Appellees.

Filed March 14, 1944

*R. Shuck
Register*

21
RECORDED

APPEAL OF DENNY LOUIS BERTOLLA
AND HELEN ELIZABETH BERTOLLA,
Minors,
By Guardian Ad Litem

MERCHANTS NATIONAL BANK OF MOBILE,
As Administrator of the Estate of
Louis G. Bertolla, Deceased, et als

Complainants,

VS.

ALEX S. BERTOLLA, et als,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NUMBER 805.

15

RECORDED

NOTE OF TESTIMONY

MERCHANTS NATIONAL BANK OF
MOBILE, a Corporation,
As Administrator of the Estate
of Louis G. Bertolla, Deceased,
et als,

Complainants,

VS.

ALEX S. BERTOLLA, et als,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NUMBER 805.

#42

~~RECORDED~~

NOTICE TO PRODUCE DOCUMENTS

MERCHANTS NATIONAL BANK OF MOBILE
a Corporation,
As Administrator of the Estate of
Louis G. Bertolla, Deceased, et al

Complainants,

VS.

ALEX S. BERTOLLA, et als,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

Filed April 25th 1942
J. J. [Signature]
Register

Merchants Nat. Bk. of Mobile
as Admr. of Estate of Louis G.
Bertolla et. als.

vs.

Alex S. Bertolla Et. als.

Motion by W. H. Hawkins, Guardian
Ad Litem for reference.

Filed June 23 1944
R. L. Deed

MERCHANTS NATIONAL BANK OF MOBILE,
a Corporation, as Administrator of
the Estate of Louis G. Bertolla,
Deceased, et al,

Complainants,

VS.

ALEX S. BERTOLLA, et al,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NO. 805.

NOTICE

TO THE HONORABLE H. E. SMITH, SOLICITOR FOR HELEN S. BERTOLLA JACOBS;
HONORABLE W. H. HAWKINS, AS GUARDIAN AD LITEM OF AND FOR DENNY LOUIS
BERTOLLA AND HELEN ELIZABETH BERTOLLA, MINORS; HONORABLE H. M. HALL,
SOLICITOR FOR ALEX S. BERTOLLA, ANGELLO F. BERTOLLA, JOHN P. BERTOLLA,
AND RUDOLPH F. BERTOLLA; J. B. BLACKBURN, SOLICITOR FOR THE MERCHANTS
NATIONAL BANK OF MOBILE, A CORPORATION, AS ADMINISTRATOR OF THE ES-
TATE OF LOUIS G. BERTOLLA, DECEASED:

You and each of you are hereby notified that I have reported to the Court my findings on the matters and questions referred to me by this Court in its Decree of Reference dated June 25, 1942, which report has been filed in this cause and entered upon the Docket Book. You are further notified that the said report will lie over until noon on Saturday, July 11th., 1942, until which time any interested parties may file objections or exceptions thereto.

Dated this the 9th day of July, 1942.

B. Duck

Register.

We hereby accept service of the foregoing notice and waive all other and further notice of same.

H. E. Smith
atty for Helen S Jacobs
W. H. Hawkins
Guardian ad Litem
Bertolla, 7/9/42

*J. B. Blackburn, Solicitor for Merchants
National Bank of Mobile, a Corporation, as
Administrator of the Estate of Louis G. Bertolla
Deceased. Filed 9th day of July, 1942*

MERCHANTS NATIONAL BANK OF
MOBILE, a Corporation
As Administrator of the Estate
of Louis G. Bertolla, Deceased,
et als,

Complainants and Cross-
Respondents,

VS.

ALEX S. BERTOLLA, et als,


Respondents and Cross-
Complainants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NUMBER 805.

EXCEPTIONS TO REGISTER'S REPORT

Now comes the Merchants National Bank of Mobile, as Administrator of the Estate of Louis G. Bertolla, Deceased, and excepts to the Report and findings of the Register of this Court heretofore filed on the 13th day of July, 1944, and as cause for exceptions says:

1. It excepts to the findings contained in paragraph numbered 3 of the said Report because the amount allowed for the said services of the said guardian ad litem is excessive. (Testimony of H. E. Smith, consisting of one sheet and testimony of John Chason consisting of two sheets).


Solicitor for said Administrator.

MERCHANTS NATIONAL BANK
OF MOBILE, a Corporation,
As Administrator of the
Estate of Louis G. Bertolla,
Deceased, et als,

Complainants,

VS.

ALEX S. BERTOLLA, et als,

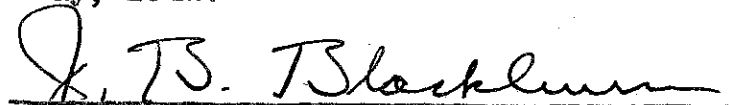
Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NUMBER 805.

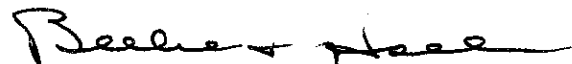
AGREEMENT FOR SUBMISSION OF CAUSE

IT IS AGREED by and between all of the parties to this cause
that it be submitted to the Honorable F. W. Hare, Judge of this Court
for Decree on Friday, May 15, 1942.

Dated this 14th day of May, 1942.



Solicitor for Complainants and
Merchants National Bank of Mobile, as
Administrator of the Estate of Louis G.
Bertolla, and Helen S. Bertolla, Cross
Respondents.



Solicitor for Respondents and Cross
Complainants.



As Guardian Ad Litem for Denny Louis
Bertolla and Helen Elizabeth Bertolla,
minor Cross Respondents.

MERCHANTS NATIONAL BANK, ET AL,
COMPLAINANTS,

IN THE CIRCUIT COURT OF

VS.

BALDWIN COUNTY, ALABAMA,

ALEX S. BERTOLIA, ET AL,
RESPONDENTS.


IN EQUITY.

And now come the Respondents and report that they have fully complied with the terms and conditions of the decree of this Court made and entered on the 15th day of May, 1942, by executing all conveyances and paying over the money as provided in said decree.

Wherefore, they pray that their actions may be in all things confirmed.

BEEBE & HALL

By:


Solicitor for Respondents.

THE STATE OF ALABAMA,
Baldwin County

CIRCUIT COURT

TO Ora S. Nelson

KNOW YE: That we, having full faith in your prudence and competency, have appointed you Commissioner, and by these presents do authorize you, at such time and place as you may appoint, to call before you and examine M. B. Slaughter, Hugh M. Caffey, W. G. Caffey, Leon G. Brooks
Ben D. Turner, Robert E. Gordon,

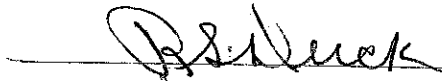
as witnesses in behalf of Complainants in a cause pending in our Circuit Court of Baldwin County, of said State, wherein Merchant National Bank, et al

Complainant-s
and Alex S. Bertolla, et al

Defendant-s
on oath to be by you administered, upon them

to take and certify the depositions of the witness^{es} and return the same to our Court, with all Convenient speed, under your hand.

Witness 6th day of May, 1942



REGISTER

Commissioner's Fee \$

Witness' Fees, \$

MERCHANTS NATIONAL BANK OF MOBILE,
a Corporation, as Administrator of
the Estate of Louis G. Bertolla, et al.,

vs.

ALEX S. BERTOLLA, ET AL.,

IN THE
CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY.

This matter coming on for hearing is submitted on petition of W. H. Hawkins, Guardian ad Litem for the minors interested in said estate, for a reference to ascertain a reasonable fee for his services as Guardian ad Litem in said cause.

IT IS ORDERED by the Court that the Register proceed to hold a reference to ascertain and report to the Court a reasonable fee to be paid the said Guardian ad Litem for his services in the cause.

The Register will give the Solicitors of the interested parties notice of the time and place of said reference.

This 24th day of June, 1944.



JUDGE

MERCHANTS NATIONAL BANK OF
MOBILE, A Corporation, as
Administrator of the Estate
of Louis G. Bertolla, Deceased,
Et al.,

Complainants and
Cross Respondents,

VS.

ALEX S. BERTOLLA, ET AL.,

Respondents and Cross
Complainants.

IN THE
CIRCUIT COURT OF BALDWIN
COUNTY, ALABAMA.
IN EQUITY.

NO. 805

This cause is submitted for decree upon exceptions to the Register's report ascertaining and fixing fee for W. H. Hawkins, Guardian ad Litem in said cause, and upon consideration thereof, I am of the opinion that the Exceptions filed both by the Complainants and Respondents should be overruled and denied.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that each of said exceptions, separately and severally, are hereby overruled and denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the said W. H. Hawkins be and hereby is allowed a fee of THREE HUNDRED FIFTY AND 00/100 (\$350.00) DOLLARS for representing said minors in the main suit in the Circuit Court of Baldwin County, Alabama, in equity, which sum is taxed, one-fifth against the Complainants and Cross Respondents, and four-fifths against the Respondents and Cross Complainants.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said W. H. Hawkins, as such guardian ad litem be allowed a fee of ONE HUNDRED FIFTY AND 00/100 (\$150.00) DOLLARS for representing said minors on the appeal in said cause, which said sum is taxed against the complainants and cross respondents.

This 28th day of July, 1944.


JUDGE

MERCHANTS NATIONAL BANK OF
MOBILE, a Corporation, As
Administrator of the Estate
of Louis G. Bertolla, et al

Complainants,

vs.

ALEX S. BERTOLLA, et al

Respondents.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

IN EQUITY.

To W. H. Hawkins, Esquire:

You are hereby notified that by an order made by the Register of this Court on this date you were appointed as guardian ad litem for Denny Louis Bertolla and Helen Elizabeth Bertolla, minors under fourteen years of age, being the minor heirs of Louis G. Bertolla, Deceased, to represent them and protect their interest in connection with all of the matters alleged in the Amended Cross Bill filed in this cause against the said minors.

In Witness whereof I have hereunto set my hand and affixed the seal of the Court on this the 2nd day of May, 1942.

R. Duck
Register.

State of Alabama)

Baldwin County)

I hereby accept the appointment of guardian ad litem for Denny Louis Bertolla and Helen Elizabeth Bertolla, minors under fourteen years of age, being the minor heirs of Louis G. Bertolla, Deceased, to represent and protect their interest in connection with all matters alleged in the Amended Cross Bill filed against them in this cause and as such guardian ad litem do hereby deny each and all of the allegations of the said Cross Bill and demand strict proof of same.

Witness my hand this 2 day of May, 1942.

W. H. Hawkins
Guardian Ad Litem for Denny Louis
Bertolla and Helen Elizabeth Bertolla,
Minors.

MERCHANTS NATIONAL BANK OF MOBILE,
A Corporation
As Administrator of the Estate of
Louis G. Bertolla, Deceased, et als,

Complainants,

VS.

ALEX S. BERTOLLA, et als

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NUMBER 805.

Now comes the Complainant and Cross Respondent, the Merchants National Bank of Mobile, a Corporation, as Administrator of the Estate of Louis G. Bertolla, Deceased, and appeals from the Final Decree of the Court in the above entitled cause dated November 6, 1943.

J. B. Blackburn
Solicitor for Complainant and Cross
Respondent, the Merchants National Bank
of Mobile, a Corporation, as Administra-
tor of the Estate of Louis G. Bertolla,
Deceased.

MERCHANTS NATIONAL BANK OF
MOBILE, a Corporation,
As Administrator of the Estate
of Louis G. Bertolla, Deceased,
et al,

Complainants,

VS.

ALEX S. BERTOLLA, et al,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NUMBER 805.

NOTE OF TESTIMONY

This cause is submitted on behalf of the Complainants and
Cross Respondents upon the following:

1. Original Bill of Complaint.
2. Order Appointing Guardian Ad Litem dated May 2, 1942.
3. Notice of Appointment, Acceptance and Answer of W. H. Hawkins, as Guardian Ad Litem for Denny Louis Bertolla and Helen Elizabeth Bertolla, minors under fourteen years of age.
4. Answer to Amended Cross Bill filed by the Merchants National Bank of Mobile, a Corporation, as Administrator of the Estate of Louis G. Bertolla, Deceased, and Helen S. Bertolla, on May 2, 1942.
5. Stipulation between parties dated and filed May 12, 1942.
6. Decree dated May 15, 1942.
7. Decree dated July 6, 1942.
8. Notice to Respondents and Cross Complainants to produce Records, dated and filed June 8, 1943.
9. Amended Answer to Amended Cross Bill.
10. Agreement of parties dated June 11, 1943, relative to the taking of the testimony of Helen S. Jacobs, M. B. Slaughter and V. R. Pritchard; the testimony of Helen S. Jacobs, M. B. Slaughter and V. R. Pritchard taken pursuant to the said Agreement before Miller Parish, acting as Commissioner.
11. Exhibit "1" to the testimony of Complainants and Cross Respondents, being Stipulation between parties, dated June 11, 1943,

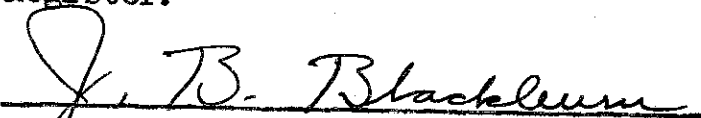
and the attached photostatic copy of Policy Numbered 10063412 issued by the New York Life Insurance Company on the life of Louis G. Bertolla.

12. Stipulation and Agreement between parties dated and filed September 22, 1943.

Dated this 22nd day of September, 1943.



Register.



Solicitor for Complainants and Cross Respondents.



As Guardian Ad Litem for Denny Louis Bertolla and Helen Elizabeth Bertolla, Minors under fourteen years of age.

MERCHANTS NATIONAL BANK OF
MOBILE, a Corporation,
As Administrator of the Estate
of Louis G. Bertolla, Deceased,
et al,

Complainants,

VS.

ALEX S. BERTOLLA, et al

Respondents.

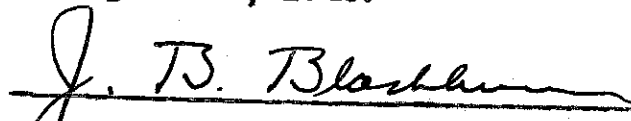
IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NUMBER 805.

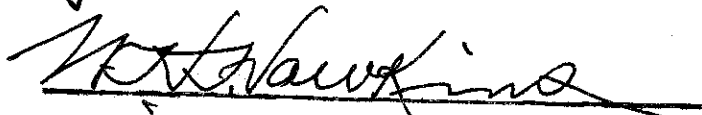
STIPULATION AND AGREEMENT

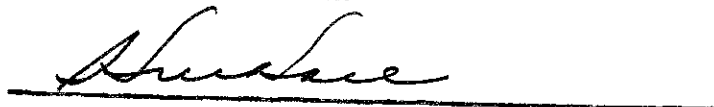
It is stipulated and agreed by and between the parties to this cause, acting by and through their respective solicitors as follows:

1. That this cause be and it is hereby submitted for Final Decree.
2. That all of the issues between the parties to this cause have been determined and settled by the former Decrees of this Court except the ownership of the proceeds of policy of insurance Number 10063412 issued by the New York Life Insurance Company on the life of Louis G. Bertolla, Deceased, amounting to \$26,972.63, which amount has been paid to and which is now in the possession of the Administrator of the said Estate.

Dated this 22nd day of September, 1943.


Solicitor for Complainants and Cross-Respondents.


Guardian Ad Litem.


Solicitor for Respondents and Cross-Complainants.

15

RECORDED

Merchants National Bank et al

vs

Alex S Bertola et al

Report

Filed June 18th 1945

Resnick
Ruf

AGREEMENT FOR SUBMISSION OF
CAUSE.

RECORDED

14

MERCHANTS NATIONAL BANK OF MOBILE,
a Corporation,
As Administrator of the Estate of
of Louis G. Bertolla, Deceased,
et als,

Complainants,

VS.

ALEX S. BERTOLLA, et als,

Respondents.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

IN EQUITY. NUMBER 805.

James May 14 1914
James
of

EXCEPTIONS TO REGISTER'S REPORT

MERCHANTS NATIONAL BANK OF MOBILE,
a Corporation,
As Administrator of the Estate of
Louis G. Bertolla, Deceased, et als

Complainants and Cross-
Respondents,

VS.

ALEX S. BERTOLLA, et als,

Respondents and Cross-
Complainants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NUMBER 805.

Filed July 14 1944
R. S. [Signature]
Register

Order of Reference

...to verify the fact...

...and to...

...

800-

James A. Reber

Received
July 29 1944
Reber

RECORDED

APPEAL OF

MERCHANTS NATIONAL BANK OF MOBILE,
a Corporation,
As Administrator of the Estate of
Louis G. Bertolla, Deceased, et als,

Complainants,

VS.

ALEX S. BERTOLLA, et als

Respondents.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

IN EQUITY. NUMBER 805.

Filed January 22, 1944.

Roberts
Register

8
RECORDED

NOTICE OF APPOINTMENT, ACCEPT-
ANCE AND ANSWER OF GUARDIAN
AD LITEM.

MERCHANTS NATIONAL BANK OF MOBILE
a Corporation, as Administrator
of the Estate of Louis G. Bertolla,
Deceased,

Complainants,

VS.

ALEX S. BERTOLLA, et al

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

May 2nd 1942
R. S. Dyer
Reporter

MERCHANTS NATIONAL BANK OF MOBILE,
As Administrator of the Estate of
Louis G. Bertolla, et als

Complainants,

VS.

ALEX S. BERTOLLA, et als

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NUMBER 805.

Now come the Complainants and Cross Respondents, Denny Louis Bertolla and Helen Elizabeth Bertolla, Minors, by Helen S. Jacobs, as their next friend, and appeal from the Final Decree of the Court in the above entitled cause dated November 6, 1943.

Filed

Clark Register

Denny Louis Bertolla and Helen Elizabeth Bertolla,

By Helen S. Jacobs
As their next friend.

Filed this the 15th day of
January, 1944.

R. S. Duck

Register.

MERCHANTS NATIONAL BANK OF
MOBILE, a Corporation,
As Administrator of the Estate
of Louis G. Bertolla, Deceased,
et als,

Complainants and Cross
Respondents,

VS.

ALEX S. BERTOLLA, et als,

Respondents and Cross
Complainants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NUMBER 805.

REPORT OF REGISTER ON REFERENCE

TO THE HONORABLE F. W. HARE, JUDGE OF THE CIRCUIT COURT OF BALDWIN
COUNTY, ALABAMA, SITTING IN EQUITY:

WHEREAS, by a Decree of this Court filed and enrolled in
this cause on the 24th day of June, 1944, it was ordered and decreed
among other things as follows: "IT IS ORDERED by the Court that the
Register proceed to hold a reference and ascertain and report to
the Court a reasonable fee to be paid the said Guardian Ad Litem
for his services in this cause."

NOW, THEREFORE, having held a reference for the purpose
of ascertaining the matters called for in the said Decree of
Reference I report as follows:

1. The hearing on the reference was had at my office in
the Court House of Baldwin County, Alabama on the 13th day of July,
1944; that due notice of the time and place of holding said reference
was given to all parties of record or their solicitors of record and
that at the said hearing there were present the following: W. H.
Hawkins, the said Guardian Ad Litem, J. B. Blackburn, solicitor for
Complainants and Cross Respondents, H. M. Hall, solicitor for
Respondents and Cross Complainants, John Chason and H. E. Smith,
witnesses for the said W. H. Hawkins.

2. I examined the said witnesses, namely, John Chason
and H. E. Smith on the said reference, the testimony of which said
witnesses is hereto attached.

3. I find and report that the sum of Three Hundred Fifty

MERCHANTS NATIONAL BANK OF MOBILE,)
A CORPORATION, AS ADMINISTRATOR OF)
THE ESTATE OF LOUIS G. BERTOLLA,)
DECEASED, ET AL,)

Complainants,)

VS.)

ALEX S. BERTOLLA, ET AL,)

Respondents.)

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

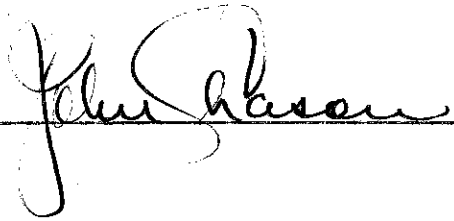
IN EQUITY.

I, John Chason, as a practicing Attorney at Law at the Bay Minette, Baldwin County, Alabama, Bar hereby certify that I have examined the transcript in the above styled cause. I find from such transcript that W. H. Hawkins was duly appointed as Guardian Ad Litem for Denny Louis Bertolla and Helen Elizabeth Bertolla, Minors, and that he accepted such appointment. I further find that he signed all of the Pleadings as such Guardian Ad Litem; that he was present at the taking of testimony in Loxley, Alabama; in Mobile, Alabama, and In Bay Minette, Alabama. I am informed that he did not prepare the Pleadings nor cross-examine the witnesses, but that he consulted with Mr. Blackburn who represented a client whose interest coincided with that of said minors, and that he spent quite a bit of time in connection with such consultations. I am of the opinion that the said W. H. Hawkins would be entitled to a fee as such Guardian Ad Litem in the sum of Three Hundred Fifty Dollars (\$350.00) in connection with the case pending in the Circuit Court of Baldwin County, Alabama.

I further notice that in said court the case was decided adverse to the interest of said minors and that an Appeal was taken to the Supreme Court of the State of Alabama, and that such Guardian Ad Litem acknowledged himself as security for costs of Appeal and that he executed the other papers necessary for taking such Appeal and consulted with Mr. Blackburn in the preparation of the Briefs on such Appeal. I am of the opinion that he would be entitled to a fee as such Guardian Ad Litem on Appeal in the sum of

One Hundred Fifty Dollars (\$150.00).

DATED this 13th day of July, 1944.



My name is H..E. Smith. I am a regularly licensed and practicing attorney. My office is in Bay Minette, Baldwin County, Alabama. I am a member of the Baldwin County Bar Association, and prior to 1931 was a member of the Mobile County Bar Association.

I am familiar with the rates for legal fees and charges made by members of the Baldwin County Bar association, which has practically adopted those of the Mobile County Bar Association.

I have reviewed the file in this case with reference to giving an opinion as to compensation to be allowed W. H. Hawkins, Esquire, for his services as guardian ad-litem in representing the two minors involved in this cause.

With reference to fees to be paid to guardians ad litem, the Mobile County Bar Association, fee bill provides that where the services are purely formal, the compensation shall be such amount as the court in its discretion may allow.

From statements made by opposing counsel and Mr. Hawkins himself, I think this provision would apply in this case rather than the regular percentages allowed under actions generally.

In my opinion, \$350.00 would be a reasonable fee for Mr. Hawkins for his services as guardian ad litem in this case up to and including final decree in this court and \$175.00 for such services in the appeal to our Supreme Court, or a total of \$525.00.

H. E. Smith

H. E. Smith

MERCHANTS NATIONAL BANK OF MOBILE,
ET AL,

COMPLAINANTS

VS

ALEX S. BERTOLLA, ET ALS

RESPONDENTS

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY.

NO. 805

The Respondents and Cross-Complainants, Alex S. Bertolla,
Angelo F. Bertolla, John S. Bertolla and Rudolph F. Bertolla,
hereby acknowledge receipt of \$21,578.10, being the amount
of the court's decree of November 6th, 1943, entered in the above
styled cause, from R. S. Duck, Register of the Circuit Court of
Baldwin County, Alabama, in Equity.

Dated this the 9th day of February, 1944.

Alex S. Bertolla
Angelo F. Bertolla
John S. Bertolla
Rudolph F. Bertolla

WITNESS:

Viola Bertolla
Adele Corte

11/6/43

MERCHANTS NATIONAL BANK OF MOBILE,
As Administrator of the Estate of
LOUIS G. BERTOLLA, ET AL.,

Complainants,

VS.

ALEX S. BERTOLLA, ET AL.,

Resphdents.

IN THE
CIRCUIT COURT OF BALDWIN
COUNTY, ALABAMA. IN EQUITY.

The legal testimony is without conflict to the effect that the policy of insurance was taken out by agreement of the parties for the benefit of the partnership and the premiums all paid with partnership funds. It is true that the testimony fails to show that all the numerous partners were parties to the original agreement with respect to the procurement of the policy, but it is clear that some of them were; and it is fair to presume that all of them knew of and assented to the arrangement, since all of Louis Bertolla's close friends were acquainted with the facts - The surviving partners were inhibited by law from testifying as to these facts, but the testimony of Miss Viola Bertolla is clear and full.

It is suggested that the several premium payments were payments by Louis Bertolla personally since the partnership was always solvent and at all times his individual interest in the assets and profits of the partnership far exceeded the several payments at the time they were made. But it appears that the profits accruing to the partnership remained in the partnership as partnership capital assets. There is no evidence of division between the several partners of profits or other assets, nor were the several premiums charged to the personal account of Louis Bertolla . It follows that the premium payments were made by the partnership.

with one-fifth of the costs of this proceeding and the Cross Com-
plainants with four-fifths thereof, for which let execution issue.

This 6th day of Nov., 1943.

F. W. Hare
JUDGE

9/22/43

THE MERCHANTS NATIONAL BANK, ET AL)
COMPLAINANTS)
VS)
ALEX S. BERTOLLA, ET AL)
RESPONDENTS)

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY.
NO. 805

This cause is submitted on behalf of the Respondents and Cross Complainants upon the following:

- 1. Original Bill of Complaint.
- 2. Answer and cross bill, filed April 13th, 1942.
- 3. Amended answer and cross bill, filed May 2nd, 1942.
- 4. Stipulation filed May 12th, 1942.
- 5. Agreement of submission filed May 14th, 1942.
- 6. Report filed May 28th, 1942.
- 7. Report filed June 10th, 1942.
- 8. Decree rendered July 6th, 1942.
- 9. Agreement and bill of sale from Viola Bertolla, et al, to Alex S. Bertolla, shown as Exhibit "A" of the Respondents and Cross Complainants, to the testimony of Miss Viola Bertolla.
- 10. The following checks payable to the New York Life Insurance Company for \$761.50 drawn on the Merchants National Bank of Mobile, Alabama, and signed "A. Bertolla & Sons",
 - No. 2697 dated 12-13-33
 - No. 1241 dated 12-14-34
 - No. 1344 dated December 2nd, 1935
 - No. 885 dated November 28th, 1936
 - No. 2205 dated December 11th, 1937;
 and identified as Exhibits "B", "C", "D", "E" and "F" in the Respondent's testimony.
- 11. Waiver of premium statements Nos. 310247, 384582, 411887, 441599, and 487437, and identified as exhibits "G", "H", "I", "J" and "K" in the Respondent's testimony.
- 12. Official premium receipts issued by the New York Life Insurance

Company, of November 18th, 1928, November 18th, 1929, November 18th, 1930, November 18th, 1931, November 18th, 1932, November 18th, 1933, November 18th, 1934, November 18th, 1936, all on Policy No. 10063412, New York Life Insurance Company, and identified as Exhibits "L", "M", "N", "O", "P", "Q", "R" and "S" in the Respondent Cross Complainant's testimony.

13. Agreement of parties dated March 5th, 1943, relative to the taking of testimony of witnesses on behalf of the Respondents and Cross-Complainants, and that M. R. Farrish act as Commissioner; filed by J. B. Blackburn, as Solicitor for Complainants and Cross Respondents, and by H. M. Hall, as Solicitor for the Respondents and Cross Complainants.

14. Testimony of the following witnesses, taken in accordance with and pursuant to the agreement and stipulation entered into on March 5th, 1943; John A. Russell, Mr. Hankins, Floyd G. Marshall, R. G. Stevens, Fred C. Griffin, Dr. H. W. Jordan, Charles J. Ebert, Sarah Dolive, and Viola Bertolla.

15. Stipulation entered into by and between J. B. Blackburn, Solicitor for the Complainants and Cross Respondents, and H. M. Hall, Solicitor for the Respondents and Cross Complainants; entered into on the 11th day of June, 1943, relative to the taking of testimony on behalf of the Respondents-Cross Complainants, and that M. R. Farrish act as Commissioner.

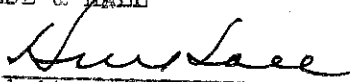
16. The testimony of the following witnesses: Ernest D. Corte, and Finley Owen.

17. Agreement of submission dated September 22nd, 1943.

Dated this the 22 day of Sept, 1943.


Register.

BEEBE & HALL

BY 
Solicitors for Respondents and
Cross Complainants.

- 6/8/43

SUBPOENA DECUS TECUM

STATE OF ALABAMA

BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA, GREETING:

You are hereby commanded to summon V. R. Pritchard, at the instance of the Complainants and Cross Respondents to be and appear before the Special Commissioner in the cause hereinafter described at the Merchants National Bank Building, Mobile, Alabama, (Trust Department) at three o'clock P. M. on June 11, 1943, in Mobile, Alabama, and to bring with him and produce at the time and place aforesaid, to be used as evidence, all books, papers and written instruments of every kind and nature in his possession or under his control, showing the amount of the partners' capital in the firm of A. Bertolla and Sons, for the years of 1926, 1927, 1928, 1929, 1930, 1931, 1932, 1933, 1934, 1935, 1936, 1937, 1938, 1939, 1940 and 1941, and then and there to testify and the truth to speak concerning all and singular those things of which he may have knowledge, or the said instrument of writing doth import of, and concerning, and concerning a suit now pending and undetermined in the Circuit Court of Baldwin County, Alabama, Equity Side, wherein the Merchants National Bank of Mobile, a Corporation, as Administrator of the Estate of Louis G. Bertolla, Deceased, et al, are Complainants and Cross Respondents and Alex S. Bertolla, et al, are Respondents and Cross Complainants. And this he shall in no wise omit under penalties of what the law directs and shall have you then and there this writ with your indorsement thereon in what manner you have executed same.

Witness my hand this 8th day of June, 1943.



Register.

Bay Minette, Ala.,

MAR 9 1942

194

RS Books

IN ACCOUNT WITH

G. W. ROBERTSON

JUDGE OF PROBATE, BALDWIN COUNTY

Please Return Bill With Remittance

Recording	from	to	Privilege Tax	Rec. Fee	Total
<i>LR</i>	<i>New Water Bk</i>	<i>Case S Bertolla</i>			<i>60</i>
	<i>Paid</i>				
	<i>MAR 9 1942</i>				
	<i>GWR</i>				

R S Luck

Bay Minette, Ala.,

5/15

1942

IN ACCOUNT WITH

G. W. ROBERTSON

JUDGE OF PROBATE, BALDWIN COUNTY

Please Return Bill With Remittance

Recording	from	to	Privilege Tax	Rec. Fee	Total
<i>Deere</i>	<i>Merchants Natl</i>	<i>vs</i>			<i>500</i>
<i>Paid 5/15/42 GWR</i>					

Merchants National Bank of Mobile,
as Administrator Estate of Louis
G. Bertolla, et al

VS.

Alex S. Bertolla, et al,

THE STATE OF ALABAMA,
BALDWIN COUNTY

IN EQUITY

CIRCUIT COURT OF BALDWIN COUNTY

No. 805.

Helen S. Bertolla Jacobs

This cause is submitted in behalf of ~~Complainant~~ upon the original ~~Complainant~~ petition,
Decree of June 25, 1942; notice of reference and acceptance of
service; testimony of Helen S. Bertolla Jacobs taken orally before
register on reference; report of register on reference; notice of
filing report and acceptance of service; the ~~undersigned~~ pleadings
filed and decrees heretofore rendered in this cause

and in behalf of Defendant upon _____

B. S. Welch

Register.

750
RECORDED

No. _____

The State of Alabama,
BALDWIN COUNTY

IN EQUITY

CIRCUIT COURT OF BALDWIN COUNTY

VS.

NOTE OF TESTIMONY

Filed in Open Court this 18

day of July 1942

R. D. Duck
Register.

RECORDED

APPEAL OF DENNY LOUIS BERTOLLA
AND HELEN ELIZABETH BERTOLLA,
Minors
By Next Friend

MERCHANTS NATIONAL BANK OF MOBILE,
As Administrator of the Estate of
Louis G. Bertolla, Deceased, et
als,

Complainants,

VS.

ALEX S. BERTOLLA, et als

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NUMBER 805.

8067

RECORDED

~~Filed~~ July 25 1944
P. B. Beck
Register

8057

RECORDED

Filed June 10 1942
S. H. [Signature]

12
RECORDED

THE MERCHANTS NATIONAL BANK, ET AL

COMPLAINANTS

VS

ALEX S. BERTOLLA, ET AL

RESPONDENTS

NOTE OF TESTIMONY.

Filed

Sept 22, 1943

*R.S. Lucke Reg.
By Alice J. Lucke
U.P.*

6-16-43

Original

SUBPOENA-DUCUS TECUM

MERCHANTS NATIONAL BANK of
Mobile, a Corporation,
As Administrator of the Estate
of Louis G. Bertolla, Decceased,
et al,

Complainants,

VS.

ALEX S. BERTOLLA, et al,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NUMBER 805.

6-16-43

10 June 63
10 June 63
D. R. Britchard *Sydney Lucas Jackson*

Fred Davis

6/8/43
MERCHANTS NATIONAL BANK
OF MOBILE, a Corporation,
As Administrator of the
Estate of Louis G. Bertolla,
Deceased, et al,

Complainants,

VS.

ALEX S. BERTOLLA, et al,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY. NUMBER 805.

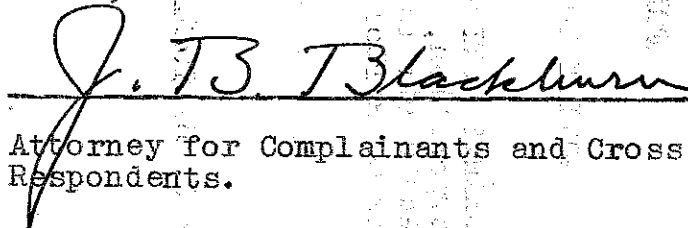
NOTICE TO PRODUCE RECORDS

TO MESSRS. ALEX S. BERTOLLA, ANGELO F. BERTOLLA, JOHN P. BERTOLLA,
AND RUDOLPH F. BERTOLLA, RESPONDENTS AND CROSS COMPLAINANTS, AND TO
HONORABLE H. M. HALL, THEIR SOLICITOR OF RECORD:

Notice is hereby given you to produce before the Special
Commissioner in this cause at the taking of testimony in this cause
on June 11, 1943, the general ledger or ledgers of the firm of
A. Bertolla and Sons, a Partnership, or such other records as will
be necessary to show the amount of the partners' capital in the said
partnership for each of the following years: 1926, 1927, 1928, 1929,
1930, 1931, 1932, 1933, 1934, 1935, 1936, 1937, 1938, 1939, 1940,
1941.

Upon your failure to produce the said records, secondary
evidence of their contents will be introduced.

Dated this 8th day of June, 1943.


Attorney for Complainants and Cross
Respondents.

MERCHANTS NATIONAL BANK OF
MOBILE, a Corporation,
As Administrator of the Estate
of Louis G. Bertolla, Deceased,
et al

Complainants,

VS.

ALEX S. BERTOLLA, et al

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NUMBER 805.

AMENDED ANSWER TO AMENDED CROSS BILL

Now come the Complainants and Cross Respondents, the Merchants National Bank of Mobile, a Corporation, as Administrator of the Estate of Louis G. Bertolla, Deceased, Helen S. Jacobs, formerly Helen S. Bertolla, Denny Louis Bertolla and Helen Elizabeth Bertolla, minors under fourteen years of age by Helen S. Jacobs, as their next friend and W. H. Hawkins, as their Guardian Ad Litem, and amend paragraph numbered Two of the Answer to the Amended Cross Bill filed in this cause by the Merchants National Bank of Mobile, a Corporation, as Administrator of the Estate of Louis G. Bertolla, Deceased, and Helen S. Bertolla, on the second day of May, 1942, so that said paragraph numbered Two as amended will read as follows:

"2. The Complainants and Cross Respondents admit that the New York Life Insurance Company issued its policy of insurance numbered 10063412 on the life of Louis G. Bertolla, who is now deceased, which said policy was dated November 29, 1927. They further admit that after the appointment and qualification of the Merchants National Bank of Mobile, as Administrator of the Estate of Louis G. Bertolla, Deceased, it, as such Administrator, collected the amount due on the said policy amounting to the sum of \$26,972.63, which is now in the possession of the said Administrator.

Complainants and Cross Respondents deny that the said policy was taken for the benefit of the Respondents and Cross Complainants in this suit or for the benefit of the said firm of A. Bertolla and Sons, they deny that the premiums on the said policy were paid with moneys belonging to the firm of A. Bertolla and Sons.

They further deny that the proceeds of the said policy are an asset of the Respondents and Cross Complainants or the partnership of A. Bertolla and Sons and allege that no part of the said funds belongs to the Respondents and Cross Complainants or the said firm of A. Bertolla and Sons.

For further answer to the Cross Bill as last amended, the Complainants and Cross Respondents allege that the New York Life Insurance Company issued its said policy of insurance Number 10063412 on the life of Louis G. Bertolla, dated November 29, 1927 when the said insured was unmarried which said policy was payable to "the executors, administrators or assigns of the insured" and contained a provision which authorized the said insured to change the beneficiary, which said provision reads as follows, to-wit:

"The Insured may from time to time change the beneficiary, unless otherwise provided by indorsement on this Policy or unless there be an existing assignment of this Policy. Every change of beneficiary must be made by written notice to the Company at its Home Office accompanied by the Policy for indorsement of the change thereon by the Company, and unless so indorsed the change shall not take effect. After such indorsement the change will relate back to and take effect as of the date the Insured signed said written notice of change whether the Insured be living at the time of such indorsement or not, but without prejudice to the Company on account of any payment made by it before receipt of such written notice at its Home Office. In the event of the death of any beneficiary before the Insured the interest of such beneficiary shall vest in the Insured, unless otherwise provided herein."

After the said policy of insurance was issued, the said insured Louis G. Bertolla married and his widow, the said Helen S. Jacobs, and his minor children, Denny Louis Bertolla and Helen Elizabeth Bertolla, survive him.

The said beneficiary named in the said policy of insurance was not changed during the lifetime of the said insured in the manner provided in the said policy or in any other legal or valid way and no assignment of the said policy or of its proceeds was made to any person or persons, firm or corporation. The said policy was payable on the death of the said insured to his executors, administrators or assigns, whose right to the proceeds therefrom became vested on the death of the said insured, who died intestate, on February 24, 1941 and after the death of the said insured, in the Merchants National Bank of Mobile, a Corporation, which had been appointed,

qualified and which was and is acting as Administrator of the estate of the insured, which collected the said proceeds amounting to \$26,972.63, which constitutes an asset of and belongs to the estate of the said Louis G. Bertolla to be accounted for by its said Administrator in the manner provided by law.

The said insured, Louis G. Bertolla, desired that his wife and children receive the benefit of the proceeds of and from the said policy of insurance and during the last few months of his life made inquiries to ascertain who would receive the proceeds of the said policy on his death, and on being informed that the said proceeds would go to his widow and children who survived him, stated in substance that there was no need for changing the beneficiary in the said policy, which was his executors, administrators or assigns.

No agreement or understanding is shown in the Cross-Bill as last amended to have existed between the said insured and the Respondents and Cross-Complainants or any of them, or any other person or persons. The facts alleged in the Cross-Bill as last amended do not show the creation of a trust in the proceeds of the said policy of insurance by the insured or any other person, the time and method of such creation, the beneficiary or beneficiaries entitled to share therein and the facts which are alleged do not show the creation of a trust by operation of law in favor of the Respondents and Cross-Complainants, or the said firm of A. Bertolla and Sons.

The said partnership of A. Bertolla and Sons has at all times since the issuance of the said New York Life Insurance Company policy on the life of the said Louis G. Bertolla, been a family partnership. From the time the said policy of insurance was issued to the death of A. Bertolla, which occurred during the year 1935, the said firm was composed of A. Bertolla, the father, and Alex S. Bertolla, Angelo F. Bertolla, John P. Bertolla, Louis G. Bertolla and Rudolph F. Bertolla, who were sons of the said A. Bertolla. After the death of the said A. Bertolla in the year 1935, the said partnership was composed of the following members of the Bertolla family: Alex S. Bertolla, Angelo F. Bertolla, John P. Bertolla,

Louis G. Bertolla, Rudolph F. Bertolla, Maddalena Bertolla, Emma Bertolla, Rosa Bertolla, Helen Bertolla Chandler, Viola Bertolla, Alma Bertolla, Mary Bertolla Bill, formerly Mary Bertolla, who continued to operate the said business until on to-wit, December 30, 1939, when the ladies interested in the said firm sold their entire interest therein to Alex S. Bertolla, Angelo F. Bertolla, John P. Bertolla, Louis G. Bertolla and Rudolph F. Bertolla, who continued to own and operate the said partnership until it was dissolved by the death of Louis G. Bertolla on February 24, 1941. During all of the said period of time, the said business was managed by the said Louis G. Bertolla on whose life the said New York Life Insurance Company policy was issued. From the time the said policy of insurance was issued up to the time of the death of the said Louis G. Bertolla, the said firm prospered to the extent that the total assets thereof at the time of the death of the said Louis G. Bertolla amounted to approximately \$350,000.00.

From the time the said policy of insurance was issued by the New York Life Insurance Company on the life of Louis G. Bertolla up to the time of his death, all, or practically all of his personal expenses, including bills for groceries and gasoline, were paid by checks drawn on the firm of A. Bertolla and Sons. During all of the time the premiums were paid on the said policy of insurance, the parties interested in the said firm did not withdraw therefrom any of the funds or assets thereof, except such as were necessary for living expenses, allowing all of the other fund and assets to accumulate for the benefit of the partnership, so that there was due the said Louis G. Bertolla by the said firm at the time the said policy of insurance numbered 10063412 was issued by the New York Life Insurance Company, and at all times when the annual premium was paid thereon, an amount much greater than the amount of the annual premium of the said policy which was \$761.50 and that regardless of the method used in remitting the annual premiums on the said policy to the New York Life Insurance Company, the moneys used in paying all of the premiums of the said policy were moneys belonging to the said

insured, Louis G. Bertolla, so that in truth and in fact, no consideration moved from the said partnership of A. Bertolla and Sons to the said New York Life Insurance Company in payment of premiums on the said policy of insurance. All of the premium receipts issued by the New York Life Insurance Company on the said policy of insurance were issued to the said insured, Louis G. Bertolla.

Prior to the death of the said Louis G. Bertolla, he became totally and permanently disabled, as a result of which the 1935 premium on the said policy amounting to \$761.50 and the 1937 premium on the said policy amounting to \$761.50, which had been paid, were refunded. The subsequent premiums on the said policy for the years of 1938, 1939 and 1940 were waived because of the said disability. During the time that the said Louis G. Bertolla was totally and permanently disabled, the said New York Life Insurance Company made monthly payments to him under the disability provision of the said policy amounting to \$250.00 per month. These payments were made by checks payable to the said Louis G. Bertolla and were used by him as he saw fit with the full knowledge of the other parties interested in the said firm.

The Complainants and Cross-Respondents further allege that the other parties interested in the said firm, namely, Alex S. Bertolla, Angelo F. Bertolla, John P. Bertolla and Rudolph F. Bertolla, had life insurance on their respective lives, the premiums on all of which said policies were paid by checks drawn on the partnership of A. Bertolla and Sons. The said partnership was not named as beneficiary in any of the said policies and none of the said life insurance policies on the lives of any of the said parties, including the said New York Life Insurance Company policy on the life of the said Louis G. Bertolla, were carried on the books of the firm of A. Bertolla and Sons as an asset of the said partnership.

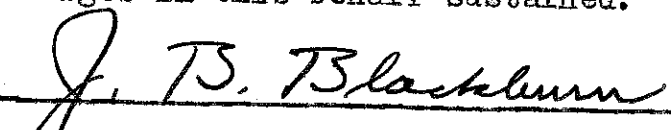
The Complainants and Cross-Respondents further allege that the Respondents and Cross-Complainants have taken an inconsistent position with reference to the two policies of insurance which were in existence on the life of the said Louis G. Bertolla at the time

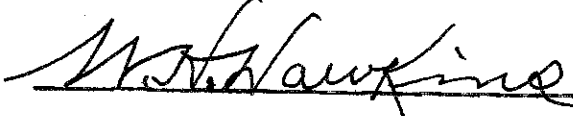
of his death, in that the policy of insurance numbered 202922 issued by the United States Government for \$5,000.00, in which Rudolph F. Bertolla was named as beneficiary, on which the premiums were paid by checks drawn on the firm of A. Bertolla and Sons and which was not carried as an asset on the books thereof, has been and is now being collected by the said Rudolph F. Bertolla, who has not accounted to the said partnership or to the Respondents and Cross-Complainants in this cause for the proceeds so collected, all of which are claimed by him, individually, by virtue of his being the beneficiary named in the said policy, while the Respondents and Cross-Complainants are in this suit attempting to recover the proceeds of the New York Life Insurance Company policy on the life of Louis G. Bertolla, which was payable to the Executors, Administrators or Assigns of the said insured.

Complainants and Cross-Respondents deny each and all of the other allegations contained in paragraph numbered 9 of the said Amended Cross Bill.

The said minor Complainants and Cross Respondents, Denny Louis Bertolla and Helen Elizabeth Bertolla, say that they are minors nine years of age and two years of age respectively and therefore submit their rights and interests in the matters in question in this cause to the tender consideration and protection of this Honorable Court and pray strict proof of the matters alleged in the said Amended Cross Bill.

Having fully answered the said Amended Cross Bill, the Complainants and Cross Respondents pray to be hence dismissed with their reasonable costs and charges in this behalf sustained.


Solicitor for Complainants and Cross-Respondents.


As Guardian Ad Litem for Denny Louis Bertolla and Helen Elizabeth Bertolla, minors under fourteen years of age.

7/2/42

MERCHANTS NATIONAL BANK OF
MOBILE, a Corporation, as
Administrator of the Estate
of Louis G. Bertolla, De-
ceased, et al,

Complainants,

VS.

ALEX S. BERTOLLA, et al,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NO. 805.

REPORT OF REGISTER ON REFERENCE.

TO THE HONORABLE F. W. HARE, JUDGE OF THE CIRCUIT COURT OF BALDWIN
COUNTY, ALABAMA, SITTING IN EQUITY:

WHEREAS, by a decree of this Court filed and enrolled in
the above entitled cause on the 25th day of June, 1942, it was or-
dered and decreed among other things, as follows:

"That a reference be, and the same is hereby ordered held
by the Register of this Court at his office in Bay Minette, Alabama,
on the 2nd day of July, 1942, for the purpose of ascertaining, deter-
mining, and fixing the amount to be paid to Helen S. Bertolla Jacobs
as and for her dower interest, in the manner provided by Section 272
of Title 61 of the 1940 Code of Alabama, and that all of the parties
to this cause be given 3 days notice of the said reference."

NOW, THEREFORE, having held a reference for the purpose
of ascertaining the matters called for in the said decree of refer-
ence, I report as follows:

1. That the hearing on the said reference was had in
my office in the court house of Baldwin County, Alabama at Bay Mi-
nette, Alabama, on the 2nd day of July, 1942, after having given
three days' notice of the time and place of holding the said refer-
ence to the solicitors of record for all of the parties to this
cause as provided in the said decree and that at the said hearing
there were present the following: Petitioner, Helen S. Bertolla
Jacobs, and H. E. Smith, as her solicitor of record; J. B. Black-
burn, solicitor of record for the Merchants National Bank of Mobile,
a Corporation, as Administrator of the Estate of Louis G. Bertolla,
Deceased, and W. H. Hawkins, as Guardian Ad Litem of and for Denny
Louis Bertolla and Helen Elizabeth Bertolla, minors.

2. That the Petitioner, Helen S. Bertolla Jacobs, is

the widow of Louis G. Bertolla, Deceased, thirty years of age, in good health and in good physical condition; that the interest of her deceased husband, Louis G. Bertolla, in the real property belonging to the partnership of A. Bertolla and Sons, a partnership formerly composed of Alex S. Bertolla, Angelo F. Bertolla, Louis G. Bertolla, John P. Bertolla and Rudolph F. Bertolla, which said firm was dissolved by the death of the said Louis G. Bertolla on, to-wit, February 24, 1941, was sold pursuant to the former orders and decrees of this Court for the approximate sum of Thirteen Thousand Five Hundred Dollars (\$13,500.00) cash, which has been paid to the Administrator of the Estate of the said Louis G. Bertolla, Deceased; that Petitioner, as the widow of the said decedent, consented that her dower interest in the said property be sold and that she is therefore entitled to have a part of the proceeds of the said sale set aside to her as and for her dower interest in the manner provided by Section 272 of Title 61 of the 1940 Code of Alabama.

3. That I have ascertained and determined and hereby fix Two Thousand Dollars (\$2000.00) as a reasonable amount to be paid to Petitioner, Helen S. Bertolla Jacobs by the Merchants National Bank of Mobile, a Corporation, as Administrator of the Estate of Louis G. Bertolla, Deceased, as and for her dower interest in the property and estate of her deceased husband, Louis G. Bertolla.

4. I further report that the Court costs incurred and to be incurred in connection with the petition of the said widow to set aside a sum to her for her dower interest have not been paid, included in which there is an item of costs, to-wit, a fee for the services of the Guardian Ad Litem herein, which should be allowed and added in the total costs. I further report that an allowance of ~~\$35.00~~ is a reasonable and proper amount to be allowed W. H. Hawkins, the said Guardian Ad Litem, for his services in this cause up to the present time.

All of which is respectfully submitted this 2nd day of
July, 1942.

R. S. Deek

Register.

6/25/47

MERCHANTS NATIONAL BANK OF MOBILE,
a Corporation, as Administrator of
the Estate of Louis G. Bertolla,
Deceased, et al,

Complainants,

VS.

ALEX S. BERTOLLA, et al,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NO. 805.

TO THE HONORABLE F. W. HARE, JUDGE OF THE CIRCUIT COURT OF BALDWIN
COUNTY, ALABAMA, SITTING IN EQUITY:

Your Petitioner, Helen S. Bertolla Jacobs, who is over
twenty-one years of age and a resident of Baldwin County, Alabama,
respectfully reports unto the Court and Your Honor as follows:

1. Petitioner is the widow of the said Louis G.
Bertolla, deceased, who at the time of the death of the said de-
cedent, and on this date, owns no separate estate.

2. That she, as such widow, consented to a sale of
all of the interest of the Estate of Louis G. Bertolla, deceased,
in the partnership composed of Alex S. Bertolla, Angelo F. Bertolla,
Louis G. Bertolla, John P. Bertolla and Rudolph F. Bertolla, doing
business under the firm name and style of A. Bertolla and Sons,
which said firm was dissolved by the death of the said Louis G.
Bertolla on to-wit: February 24, 1941, all of which will fully
appear from the pleadings filed and decrees rendered in this cause.
The said sale has now been made and the Merchants National Bank of
Mobile, a Corporation, as Administrator of the Estate of Louis G.
Bertolla, deceased, has received the sum of Sixty-six Thousand Six
Hundred Twenty-five Dollars (\$66,625.00) in cash, in addition to
which a conveyance of the homestead of the said decedent and cer-
tain personal property was made to your Petitioner and the minor
children of the said decedent, which said sum of money, less the
expenses heretofore authorized and incurred in this cause, is now
in the hands of the said administrator. Petitioner further alleges

that the interest of the said Louis G. Bertolla in and to all of the partnership real estate, was sold for the approximate sum of Thirteen Thousand Five Hundred Dollars (\$13,500.00). The said sale is now ready for confirmation and Petitioner, as the widow of the said decedent, is entitled to have a part of the said proceeds set aside to her as and for her dower interest in the manner provided by Section 272 of Title 61 of the 1940 Code of Alabama.

THE PREMISES CONSIDERED, Petitioner prays that this Court will take jurisdiction of the cause made by this petition; that a day be set to hear and determine same; that due notice thereof be given to all necessary and proper parties in the form and manner prescribed by law; that a reference be held to ascertain, determine and fix the amount to be so paid to Petitioner and that on confirmation of the Register's report on said reference, a proper decree be rendered, finally fixing the said sum to be so paid to Petitioner and ordering the said sum paid to her by the said administrator. Petitioner further prays that such other orders be made and decrees rendered as may be requisite and proper in the premises.

Helena S. Bertolla Jacobs
Petitioner.

Sworn to and subscribed before
me on this the 24 day of June,
1942.

Mary G. Liddell
Notary Public,
Mobile County, Alabama.

H. E. Smith
Attorney for Petitioner

MERCHANTS NATIONAL BANK OF MOBILE,
a Corporation, as Administrator of
the Estate of Louis G. Bertolla,
Deceased, et al,

Complainants,

VS.

ALEX S. BERTOLLA, et al,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NO. 805.

DECREE

The foregoing petition being presented on this date and it appearing that jurisdiction of this cause has been reserved for such other and further decrees as may be necessary and proper and that all necessary and proper parties are now before the Court, it is therefore ORDERED, ADJUDGED, and DECREED by the Court as follows:

(1) That the present parties to this cause are all of the necessary and proper parties to this petition, that they are all before the Court, and that the Court may proceed as provided in this decree without further notice to any of the said parties.

(2) That a reference be, and the same is hereby ordered held by the Register of this Court at his office in Bay Minette, Alabama, on the 2nd day of July, 1942, for the purpose of ascertaining, determining, and fixing the amount to be paid to Helen S. Bertolla Jacobs as and for her dower interest, in the manner provided by Section 272 of Title 61 of the 1940 Code of Alabama, and that all of the parties to this cause be given 3 days notice of the said reference.

(3) Jurisdiction of this cause is reserved for such other and further orders and decrees as may be requisite and proper.

Dated this the 25th day of June, 1942.

J. M. Hare

Judge.

#1D.

RECORD

Wear
on the
Back, Soft.

July 25 1942
B. D. D. D.
B. D.

MERCHANTS NATIONAL BANK
OF MOBILE, a Corporation,
As Administrator of the
Estate of Louis G. Bertolla,
Deceased, et als,

Complainants,

VS.

ALEX S. BERTOLLA, et als,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

DECREE

This cause coming on to be heard on this date is submitted upon the original Bill of Complaint; Amended Answer and Cross Bill filed by the Respondents, Alex S. Bertolla, Angelo F. Bertolla, John P. Bertolla and Rudolph F. Bertolla; Answer to Cross Bill filed by the Merchants National Bank of Mobile, a Corporation, as Administrator of the Estate of Louis G. Bertolla, Deceased, and Helen S. Bertolla; Appointment, Acceptance and Answer of W. H. Hawkins, as Guardian Ad Litem of and for Denny Louis Bertolla and Helen Elizabeth Bertolla, minors; Stipulation dated May 12, 1942; Agreement for Submission of Cause and the Testimony as noted by the Register; upon consideration of all of which it is ORDERED, ADJUDGED AND DECREED by the Court as follows:

1. That all of the real property described in the original Bill of Complaint filed in this cause, being the property described in the following described deeds, to-wit:

Deed from Louis G. Bertolla, et al, to Rudolph F. Bertolla dated December 9, 1939 and recorded in Deed Book Number 71 N. S. at pages 53-4, Baldwin County Records;

Deed from Madalena Bertolla, et al, to A. Bertolla and Sons, dated December 9, 1939 and recorded in Deed Book 71 N. S. at pages 55-6;

Deed from Madalena Bertolla, et al, to Rudolph F. Bertolla, dated December 9, 1939 and recorded in Deed Book 71 N. S. at pages 56-7;

Deed from Madalena Bertolla, et al, to Louis G. Bertolla, dated December 9, 1939 and recorded in Deed Book 71 N. S. at pages 57-8;

Deed from Madalena Bertolla, et al, to John P. Bertolla, dated December 9, 1939 and recorded in Deed Book 71 N. S. at pages 58-9;

Deed from Madalena Bertolla, et al, to Alex S. Bertolla, dated December 9, 1939 and recorded in Deed Book 71 N. S. at pages 59-60;

Deed from Madalena Bertolla, et al, to Angelo F. Bertolla, dated December 9, 1939 and recorded in Deed Book 71 N. S. at pages 60-62;

Deed from Madalena Bertolla, et al to Angelo F. Bertolla and Alex S. Bertolla, dated April 29, 1939 and recorded in Deed Book 71 N. S. at pages 63-5;

Deed from Angelo F. Bertolla to Rudolph F. Bertolla, dated December 9, 1939 and recorded in Deed Book 71 N. S. at page 66; and

Deed from Alex S. Bertolla, et al, to Louis G. Bertolla, dated December 9, 1939 and recorded in Deed Book 71 N. S. at pages 66-7;

being all real property owned by the partnership or one or more of the individual members thereof, was purchased with partnership funds belonging to A. Bertolla and Sons, a Partnership composed of Alex S. Bertolla, Angelo F. Bertolla, John P. Bertolla, Louis G. Bertolla and Rudolph F. Bertolla; that title to the said property was taken in the name of the said partnership or in the name or names of one or more of the individual members of the said firm for convenience only; that title to all of the said real property was owned by A. Bertolla Sons, a Partnership composed of Alex S. Bertolla, Angelo F. Bertolla, John P. Bertolla, Louis G. Bertolla and Rudolph F. Bertolla at the time the said partnership was dissolved by the death of the said Louis G. Bertolla on February 24, 1941, at which time the interest of each of the said partners in the said partnership and in the said lands was as follows: Alex S. Bertolla, one-fifth; Angelo F. Bertolla, one-fifth; John P. Bertolla, one-fifth; Louis G. Bertolla, one-fifth and Rudolph F. Bertolla, one-fifth.

2. That all personal property of every kind and nature in the possession of Alex S. Bertolla, Angelo F. Bertolla, John P. Bertolla, Rudolph F. Bertolla, as surviving partners of the firm of A. Bertolla and Sons, immediately after the death of the said Louis G. Bertolla on February 24, 1941, and on this date, and the securities not including insurance policies which were in the possession of the Merchants National Bank of Mobile, a Corporation, at the time of the death of the said Louis G. Bertolla on February 24, 1941, were purchased with partnership funds belonging to A. Bertolla and Sons, a Partnership composed of Alex S. Bertolla, Angelo F. Bertolla, John P. Bertolla, Louis G. Bertolla and Rudolph F. Bertolla; that title

to the said property was taken in the name of the said partnership or in the name or names of one or more of the individual members for convenience only; that all of the said property was owned by A. Bertolla and Sons, a Co-Partnership composed of Alex S. Bertolla, Angelo F. Bertolla, John P. Bertolla, Louis G. Bertolla and Rudolph F. Bertolla when the said partnership was dissolved by the death of the said Louis G. Bertolla on February 24, 1941, at which time the interest of each of the said partners in the said personal property was as follows: Alex S. Bertolla, one-fifth; Angelo F. Bertolla, one-fifth; John P. Bertolla, one-fifth; Louis G. Bertolla, one-fifth and Rudolph F. Bertolla, one-fifth.

3. That the offer made by Alex S. Bertolla, Angelo F. Bertolla, John P. Bertolla and Rudolph F. Bertolla, as surviving partners of the firm of A. Bertolla and Sons as described in the pleadings filed in this cause, being \$66,625.00 in cash, a conveyance of the Louis G. Bertolla home place at Loxley, being the following described real property situated in Baldwin County, Alabama, to-wit:

Lots Numbered One, Two and Three in Block Numbered Two in the Highways Addition to Loxley, according to the official plat thereof recorded in Map Book 1 at page 91, Baldwin County Records;

a conveyance of the Ford automobile used by Louis G. Bertolla at the time of his death and all household furniture and fixtures of every kind and nature, and the assumption by the said surviving partners of all costs and expenses of every kind and nature incurred or to be incurred in the case of the State of Alabama versus A. Bertolla and Sons, being Case Numbered 626 now pending on the Law Side of the Circuit Court of Baldwin County, Alabama, provided all costs and expenses of this equity proceeding, including all fees for Complainants' solicitor of record and Court costs incurred or to be incurred up to the commencement of litigation over the insurance to be hereinafter referred to are paid by the original Complainants; all of which said offer is without prejudice to the rights of any of the

parties to this cause to claim the proceeds of and from Policy Numbered 1006342 on the life of Louis G. Bertolla issued by the New York Life Insurance Company; is in all respects a fair and reasonable offer and is not disproportionate to the value of the interest of the said deceased partner in the said partnership. The said offer being fair and reasonable, a sale of the said interest of the said Louis G. Bertolla, Deceased to the said surviving partners is to the best interest of the minor complainants and cross respondents and all of the other parties to this proceeding and the said offer is in all respects approved and fully confirmed. The said offer so made is hereby fixed as and for the value of the interest of the Estate of Louis G. Bertolla, Deceased in and to all of the said partnership property and assets except the proceeds of and from the said New York Life Insurance Company policy on the life of the said Louis G. Bertolla, Deceased, and the Complainants and Cross Respondents are authorized, empowered, instructed and directed to sell and convey the said assets to the said surviving partners for the said consideration as provided in this Decree.

4. The Merchants National Bank of Mobile, a Corporation, as Administrator of the Estate of Louis G. Bertolla, Deceased, is hereby authorized, empowered, instructed and directed to make, execute and deliver to Alex S. Bertolla, Angelo F. Bertolla, John P. Bertolla and Rudolph F. Bertolla individually and as surviving partners of the firm of A. Bertolla and Sons, a deed conveying all of the right, title and interest of the said Louis G. Bertolla, at the time of his death in and to all of the above described real property owned by the said partnership at the time of its dissolution by the death of the said Louis G. Bertolla on February 24, 1941, except Lots One, Two and Three in Block Numbered Two in the Highways Addition to Loxley, according to the official plat thereof recorded in Map Book 1 at page 91, Baldwin County Records, the said conveyance to be delivered upon

X
payment by the said surviving partners to the said Administrator of the said cash consideration of \$66, 625.00 and upon delivery by the said surviving partners to the said Administrator of a release releasing the Estate of Louis G. Bertolla, Deceased, the Merchants National Bank of Mobile, a Corporation, as its Administrator, Helen S. Bertolla, Denny Louis Bertolla and Helen Elizabeth Bertolla from any and all judgment, costs and expenses of every kind and nature incurred or to be incurred in the case of the State of Alabama versus A. Bertolla and Sons, et al, being case Number 626 now pending on the Law Side of the Circuit Court of Baldwin County, Alabama and assuming and agreeing to pay the same; of a deed conveying all of the right, title and interest of the said partnership and the said surviving partners in and to Lots One, Two and Three in Block Numbered Two in the Highways Addition to Loxley, according to the official plat thereof recorded in Map Book 1 at page 91, Baldwin County Records, and a Bill of Sale conveying the Ford automobile and all household furniture and fixtures owned by or in the possession of the said Louis G. Bertolla at the time of his death to Helen S. Bertolla, the widow, Denny Louis Bertolla and Helen Elizabeth Bertolla, minor children of the said decedent. The said Helen S. Bertolla, the widow of the said decedent, is hereby authorized, empowered, instructed and directed to join in the said deed for the purpose of conveying any and all interest which she has or may have in the said property.

5. Alex S. Bertolla, Angelo F. Bertolla, John P. Bertolla and Rudolph F. Bertolla, individually and as surviving partners of the firm of A. Bertolla and Sons, and the wives of such of them as are married, are hereby authorized, empowered, instructed and directed to make, execute and deliver a deed to Helen S. Bertolla, Denny Louis Bertolla and Helen Elizabeth Bertolla, conveying all of their right, title and interest in and to the following described property situated in Baldwin County, Alabama, to-wit: Lots One, Two and Three in Block Numbered Two in the Highways Addition to Loxley, according to the official plat thereof recorded in Map Book 1 at page

91, Baldwin County Records; a Bill of Sale conveying all of their right, title and interest in and to the said household furniture and fixtures and the Ford automobile in the possession of the said Louis G. Bertolla at the time of his death; a release releasing the Estate of Louis G. Bertolla, Deceased, the Merchants National Bank of Mobile, a Corporation, as its Administrator; Helen S. Bertolla, Denny Louis Bertolla and Helen Elizabeth Bertolla from any and all judgment, costs and expenses of every kind and nature incurred or to be incurred in the case of the State of Alabama versus A. Bertolla and Sons, et al, being case Number 626 now pending on the Law Side of the Circuit Court of Baldwin County, Alabama, and assuming and agreeing to pay the same, all of which said instruments are to be delivered to the said Merchants National Bank of Mobile, a Corporation, as Administrator of the Estate of Louis G. Bertolla, Deceased, at the time of the payment of the cash consideration and upon delivery of the conveyances referred to in paragraphs numbered 4 and 5 of this Decree.

6. Alex S. Bertolla, Angelo F. Bertolla, John P. Bertolla and Rudolph F. Bertolla, individually and as surviving partners of the firm of A. Bertolla and Sons, are authorized, empowered, instructed and directed to make, execute and deliver to themselves at the time of the delivery of the other conveyances described in this Decree, a Bill of Sale conveying all of the personal property of every kind and nature belonging to the said partnership at the time of its dissolution by the death of the said Louis G. Bertolla on to-wit, February 24, 1941, except personal property to be conveyed to Helen S. Bertolla, Denny Louis Bertolla and Helen Elizabeth Bertolla, as described in paragraphs numbered 4 and 5 of this Decree, and also excepting the proceeds of and from the said policy of insurance issued by the New York Life Insurance Company on the life of Louis G. Bertolla, Deceased.

7. It appearing that there is now in the hands of the said Administrator the sum of \$8,344.16, being the interest of the Estate of Louis G. Bertolla, Deceased in the proceeds derived from the assets sold by the said Administrator at the request of the surviving partners, and that there was in the hands of the said Ad-

Administrator on April 18, 1942, the sum of \$18,638.48, being income received from the securities owned by the said partnership through the said date and the said Administrator shall, at the time of the delivery of the conveyances referred to in paragraphs numbered 4 and 5 of this decree, pay to the said surviving partners, Alex S. Bertolla, Angelo F. Bertolla, John P. Bertolla and Rudolph F. Bertolla, the sum of \$26,982.64 and upon such payment the said Administrator and the sureties on its bond shall be and they are hereby fully relieved of and discharged from any and all liability of every kind and nature which exists or may exist to the said surviving partners because of the said funds. The said Administrator is authorized, empowered, instructed and directed to also pay to the said surviving partners any further income from securities belonging to the said partnership collected by it after April 18, 1942 and until the said securities are delivered and transferred to the said surviving partners as provided herein.

8. At the time of the delivery of the conveyances referred to in paragraphs numbered 4 and 5 of this Decree, the Merchants National Bank of Mobile, a Corporation, as Administrator of the Estate of Louis G. Bertolla, Deceased, is authorized to deliver to Alex S. Bertolla, Angelo F. Bertolla, John P. Bertolla and Rudolph F. Bertolla as surviving partners of the firm of A. Bertolla and Sons, all of the securities now in its possession belonging to the said partnership, and is further authorized, empowered, instructed and directed to make, execute and deliver all such conveyance or conveyances which may be or become necessary to transfer title thereto to the said surviving partners.

9. Upon full compliance with all of the terms and provisions of this Decree the Estate of Louis G. Bertolla, Deceased, the Merchants National Bank of Mobile, a Corporation, as Administrator of the Estate of Louis G. Bertolla, Deceased; Helen S. Bertolla, the widow; Denny Louis Bertolla and Helen Elizabeth Bertolla, minor children of Louis G. Bertolla, Deceased, shall each and all be relieved of and

discharged from any and all liability of every kind and nature which exists or may exist to A. Bertolla and Sons, a Co-Partnership now composed of Alex S. Bertolla, Angelo F. Bertolla, John P. Bertolla and Rudolph F. Bertolla, to Alex S. Bertolla, Angelo F. Bertolla, John P. Bertolla and Rudolph F. Bertolla, individually, and to Alex S. Bertolla, Angelo F. Bertolla, John P. Bertolla and Rudolph F. Bertolla as surviving partners of the firm of A. Bertolla and Sons, which was dissolved by the death of Louis G. Bertolla on February 24, 1941.

10. Upon full compliance with all of the terms and provisions of this Decree the firm of A. Bertolla and Sons, a Co-Partnership now composed of Alex S. Bertolla, Angelo F. Bertolla, John P. Bertolla and Rudolph F. Bertolla, and Alex S. Bertolla, Angelo F. Bertolla, John P. Bertolla and Rudolph F. Bertolla individually, shall be relieved of and discharged from any and all liability of every kind and nature which exists or may exist to the Estate of Louis G. Bertolla, Deceased, the Merchants National Bank of Mobile, a Corporation, as Administrator of the Estate of Louis G. Bertolla, Deceased, and to Helen S. Bertolla, Denny Louis Bertolla and Helen Elizabeth Bertolla.

11. The sum of Three Thousand Dollars (\$3,000.00) is hereby fixed as a reasonable solicitor's fee to be paid to J. B. Blackburn, Complainants' solicitor of record for all services performed by him in this cause, being Equity Case Number 805, to this date and for services to be rendered by him through the Decree confirming the sale authorized and ordered herein, which said fee shall be and is hereby taxed as a part of the costs of this proceeding. The said fee so fixed does not include any services to be rendered by the said Solicitor in connection with the litigation over the proceeds of and from the insurance policy referred to in this Decree.

12. The sum of \$300⁰⁰ is hereby fixed as a reasonable Guardian Ad Litem's fee to be paid to W. H. Hawkins, Guardian Ad Litem for Denny Louis Bertolla and Helen Elizabeth Bertolla, minors,

for all services performed by him in this cause being Equity Case Number 805 to this date and for services to be rendered by him through the Decree confirming the sale authorized and ordered herein, which said fee shall be and is hereby taxed as a part of the costs of this proceeding. The said fee so fixed does not include any services to be rendered by the said Guardian Ad Litem in connection with the litigation over the proceeds of and from the insurance policy referred to in this Decree.

13. The Register of this Court shall file a certified copy of this Decree for record in the office of the Probate Judge of Baldwin County, Alabama, at once and tax the cost thereof as a part of the cost of this proceeding.

14. This Decree and all of its provisions shall be and is without prejudice to the rights of the parties to this suit or any one or more of them, to claim the proceeds paid by the New York Life Insurance Company under its policy numbered 1006342 on the life of Louis G. Bertolla, Deceased, which said proceeds amounting to \$26,972.63 were paid by the said New York Life Insurance Company to the Merchants National Bank of Mobile, a Corporation, as Administrator of the Estate of Louis G. Bertolla, Deceased.

15. The costs of this proceeding to date, including the solicitor's fee fixed in paragraph 11 of this Decree and the Guardian Ad Litem's fee fixed in paragraph 12 of this Decree, are hereby taxed against the Merchants National Bank of Mobile, a Corporation, as Administrator of the Estate of Louis G. Bertolla, Deceased, and the said Administrator is authorized, empowered, instructed and directed to pay all of the said costs from the funds of the said Estate now in its possession or under its control.

16. The parties hereto shall report their compliance with all of the terms and provisions of this Decree to this Court for confirmation within ten days from the date hereof.

17. Jurisdiction of this cause is reserved for all such other and further orders and decrees as may be requisite and proper

Page 10.

in the premises.

Done on this the 15th day of May, 1942.

F. M. Hare

Judge.

Service accepted
and further notices
waived, this 23rd day
of June, 1944.

Merchants National
Bank of Mobile, as
Administrator of the
Estate of Louis N.
Bertalla, and Helen
S. Jacobs.

By J. B. Blackburn
and their substitute
of Record.

A Bertalla check
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6/23/44

Merchants National Bank of
Mobile, a Corporation, as
Administrator of the Estate
of Louis G. Bertolla et. als.

In Circuit Court of Baldwin County
in Equity.

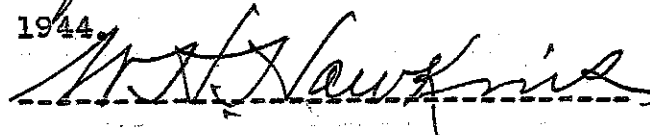
Vs.

Alex. S. Bertolla, Et. als.

To Hon. F. W. Hare, Judge of the Circuit Court,

Comes W. H. Hawkins, Guardian Ad. Litem for Denny Louis Bertolla and
Helen Elizabeth Bertolla, minors, and request the court to order a
reference to ascertain and fix a reasonable guardian ad litem fee in the
above matter, and that the register of this court be ordered to fix a
day for hearing of this motion *reference*

This the 23rd. day of June 1944.



Guardian ad Litem for Denny Louis Bertolla
and Helen Elizabeth Bertolla, Minors.

A. BERTOLLA & SONS
GROWERS AND SHIPPERS
Triumph Potatoes, Cucumbers, Green Corn
and Sweet Potatoes

REFERENCES:
THE PACKER PRODUCE MERCANTILE AGEN
MERCHANTS NATIONAL BANK, MOBILE, ALA.
AMERICAN NATIONAL BANK & TRUST CO.,
MOBILE, ALA.

PHONE L. D. 910



EXHIBIT "B"
(To testimony of M. B. Slaughter)
LOXLEY, ALA.

Ora S. Nelson
Commissioner

December 31, 1941

Merchants National Bank of Mobile
Mobile, Alabama

Attention: Mr. M. B. Slaughter,
Vice President and Trust Officer:

Gentlemen:

The surviving partners of the firm of A. Bertolla and Sons, for the purpose of compromising any difference which may exist between us and you as Administrator of the Estate of Louis G. Bertolla, Deceased, hereby offer you as such Administrator the sum of \$50,000.00 in cash for all of the property belonging to this Estate of every kind and nature except the home place in which the late Louis G. Bertolla lived at the time of his death, the Ford automobile owned by him at that time and the household furniture and fixtures. If you agree to recommend the acceptance of this offer we would expect you to pay us the sum of \$26,972.63 from the proceeds of the insurance collected by you as such Administrator on the policy issued by the New York Life Insurance Company on the life of Louis G. Bertolla.

We will appreciate your advising us within thirty days if you will recommend the acceptance of this offer.

Very truly yours,

Angela F. Bertolla

Alex S. Bertolla

Rudolph F. Bertolla

John P. Bertolla

JAN 2 1942

JAN 5 1942

EXHIBIT "C"

(to testimony of M. B. Slaughter)

W. J. Nelson
Commissioner

January 7, 1942

Messrs. Angelo F. Bertolla, Alice S. Bertolla,
Rudolph F. Bertolla, and John F. Bertolla,
Lowley, Alabama.

Gentlemen:

I have for acknowledgment your letter of December 31st received by us on January 2, 1942, under which you propose to offer the Administrator of the Estate of Louis G. Bertolla "the sum of \$50,000.00 in cash for all of the property belonging to this estate of every kind and nature except the home place in which the late Louis G. Bertolla lived at the time of his death, the Ford automobile owned by him at that time and the household furniture and fixtures"; with the further proviso that the acceptance of the foregoing offer would contemplate that this Administrator would be expected to pay to you "the sum of \$26,972.63 from the proceeds of life insurance collected "by us as such Administrator".

The foregoing offer would actually result in Mr. Bertolla's estate receiving only about \$25,877.37 for a one fifth interest in a business having a net worth of \$365,190.10, based on market values as of January 2, of which net worth, \$265,294.12 consists of marketable securities and cash. Under these circumstances your offer can not be entertained and is herewith declined.

As a counterproposal, we will agree to recommend to the court the acceptance of an offer for the Estate's one fifth undivided interest in A. Bertolla and Sons for \$72,000.00 payable in cash or upon such terms as the court may approve.

Since the Administrator feels that it is entirely without any authority to waive its right to the proceeds of life insurance on the life of Louis G. Bertolla amounting to \$26,972.63, your acceptance of the above counteroffer will be without reference to said insurance, and the question of the ownership of the same must be made a matter of litigation, since the said insurance was payable to the Estate of Louis G. Bertolla and we

as the legal representative of such estate have receipted for the payment of the said insurance,

The foregoing counteroffer will be held open for your acceptance or rejection until noon of Monday, January 17, 1942.

Yours very truly,

M. B. Slaughter

Vice President and Trust Officer,

MB:jh

Page 2.
Exhibit "C"
to testimony of Mr. B. Slaughter
Ora A. Nelson
Commissioner

EXHIBIT "D"

(to testimony of M. B. Slaughter)

January 27, 1942

Ora S. Nelson
Commissioner

Messrs. Angelo F. Bertolla, Alex S. Bertolla,
Rudolph F. Bertolla, and John P. Bertolla,
Loxley, Alabama.

Gentlemen:

We do not appear to have had any reply to our letter of January 7, 1942, in which we stated to you the amount which we, as Administrator of the Estate of Louis G. Bertolla, felt that we could properly recommend to the Court for acceptance for the estate's interest in the partnership of A. Bertolla and Sons. While we do not wish to appear unreasonably insistent in the matter, it is nevertheless a legal necessity that we make our settlement as Administrator of this estate within the very near future if we are to avoid possible criticisms or even perhaps some measure of personal liability, and of course in order to effect a settlement of our accounts as contemplated under the law, we must collect the estate's interest in the partnership or otherwise dispose of the same.

You will recall that we have had many conferences concerning this matter, one of the first being in Mr. Ladd's office on the afternoon in which all interested parties agreed that we act as Administrator of this estate. In this conference you were advised that there was a definite legal responsibility on the surviving partners to liquidate the business and settle with the estate of the deceased partner. Since that time the writer has had several conversations with your Mr. Alex S. Bertolla, as well as with Mr. Angelo Bertolla, in which the entire matter was gone over, looking to a liquidation of the estate's interest in the business of A. Bertolla and Sons, as well as the responsibility resting on the surviving partners to liquidate the affairs of the partnership.

You will also recall that the writer and Mr. J. B. Blackburn, attorney for the Administrator, had a lengthy conference with all of the surviving partners and Miss Viola Bertolla in your office in Loxley, Alabama, on September 9, 1941, at which time the matter was discussed at great length and in much detail. In this conference both the writer and Mr. Blackburn explained to you the obligation imposed by law on you as the surviving partners

Messrs. A. F. Bertolla, A. S. Bertolla,
R. F. Bertolla, and J. F. Bertolla.

Jan. 27, 1942

to liquidate the business and to settle with the Administrator of the Estate of Louis G. Bertolla, deceased, and in which conference we also requested that the surviving partners make an offer for the interest of the Estate of Louis G. Bertolla in the partnership.

Several months have elapsed since the date of this conference, and although in the interim the writer has personally discussed the subject with both Mr. Angelo Bertolla and Mr. Alex Bertolla, we are without any advice or information as to what steps have been taken by the surviving partners to liquidate the affairs of A. Bertolla and Sons as provided under the laws of this state, or to purchase the estate's interest in the partnership other than the proposal contained in your letter of December 31, 1941, in which you offered approximately \$25,877.37 for the estate's interest in the said partnership. This offer was rejected as inadequate in our letter to you under date of January 7, 1942.

Our attorney advises that it is absolutely necessary that some definite course of action be agreed upon, but before taking any further steps we would like to arrange another conference with the surviving partners in your office in Levley as soon as possible. We will arrange to have Mr. Blackburn present and would like for your attorney to be there also in order that we may agree on a plan for the immediate disposition of the entire matter. To this end I would like to suggest that this conference be held in your office Thursday, February 5th at ten thirty o'clock, A. M., if this is satisfactory to you. Otherwise, I would appreciate your fixing a time near that we have indicated and so advising us, being sure of our full cooperation in every way possible under the circumstances.

Yours very truly,

M. B. Slaughter

Vice President and Trust Officer.

MBS:jh

*Page 2
Exhibit "D"
to testimony of M. B. Slaughter
Ora J. Nelson
Commissioner*

EXHIBIT "A"
 to testimony of M. B. Slaughter. *Oral & Nelson*
The State of Alabama, Baldwin County *Commissioner*

PROBATE COURT

LETTERS OF ADMINISTRATION

On the estate of Louis G. Bertolla, deceased,
 are hereby granted to The Merchants National Bank of Mobile, a Corporation,
 who has duly qualified and given bond as such Administrator, and is authorized to administer such
 estate.

Witness my hand, and dated this 4th day of March, A.D., 193 1941.

[Handwritten Signature]

 Judge of Probate.

5/14/42

TESTIMONY OF M. B. SLAUGHTER, VICE PRESIDENT
AND TRUST OFFICER OF THE MERCHANTS NATIONAL
BANK OF MOBILE, a Corporation,
As Administrator of the Estate of Louis G.
Bertolla, Deceased.

DIRECT EXAMINATION OF WITNESS BY J. B. BLACKBURN, ATTORNEY
FOR COMPLAINANTS.

My name is M. B. Slaughter. I am over twenty-one years of age and a resident of Mobile County, Alabama. I am Vice President and Trust Officer of the Merchants National Bank of Mobile, a Corporation. The said Merchants National Bank of Mobile was appointed as Administrator of the Estate of Louis G. Bertolla Deceased in and by the Probate Court of Baldwin County, Alabama during the month of March, 1941, and is still acting as such Administrator.

Attached to my testimony and marked Exhibit "A" is a copy of the Letters of Administration issued by the Probate Court of Baldwin County, Alabama to the said Administrator.

Immediately after the Administrator was appointed in this case it commenced its duties as such Administrator.

I have read over the Bill of Complaint filed in the case of Merchants National Bank of Mobile, As Administrator of the Estate of Louis G. Bertolla, Deceased, et al, Complainants, vs. Alex S. Bertolla, et al, Respondents, now pending in the Circuit Court of Baldwin County, Alabama, Equity Side.

Louis G. Bertolla, at the time of his death, was interested in the partnership existing and being conducted in Baldwin County, Alabama, known as A. Bertolla and Sons. Five partners were interested in this firm, namely: Alex S. Bertolla, Angelo F. Bertolla, John P. Bertolla, Louis G. Bertolla and Rudolph F. Bertolla, their respective interest therein being one-fifth. This partnership had been conducted in Baldwin County, Alabama, by the said partners since on to-wit, January 1, 1940 when the said partners purchased the interests of the other members of their family in the said business. It was engaged in the business of farming, stock raising, buying and selling produce, making advances to farmers, lending money and taking security therefor up to the time it was dissolved by the death of Louis G. Bertolla on February 24, 1941. The other said partners are the surviving partners of the said firm.

During the time this partnership did business in Baldwin County, Alabama, it acquired a large amount of real property, personal property which was used in connection with its farming operations and certain securities which will be hereinafter referred to, which were in the hands of the Merchants National Bank of Mobile, Alabama at the time of the death of the said Louis G. Bertolla, Deceased. After the death of the said Louis G. Bertolla and after the appointment of the said Administrator, we had audits made by a competent certified ^{public} accountant and from these audits and the other investigation which I have made of the business conducted by the said partnership prior to the time of its dissolution by the death of the said Louis G. Bertolla, it appears that all of the real estate standing on the records in Baldwin County, Alabama in the name of the said partnership or one or more of the individual partners thereof, was purchased with partnership funds and title taken in the name of the partnership or one or more of the individual members thereof. The same thing is true of the personal property located on the farms, the mortgages held by the partnership or its various members and the securities in the possession of the said Merchants National Bank at the time of the death of Louis G. Bertolla, Deceased. By this statement in my testimony I do not mean to state or infer that any insurance, particularly the policy of insurance issued by the New York Life Insurance Company on the life of Louis G. Bertolla, Deceased, was paid with partnership funds as this matter is entirely eliminated from the settlement which will be hereinafter referred to in my testimony and for the purpose of convenience in procedure no reference is made in my testimony to the said insurance. The exhibits attached to the original

Bill of Complaint filed in this cause showing the real estate owned by the partnership and its individual members is correct. Immediately after the said Administrator was appointed it notified the surviving partners of their duties as such surviving partners and after the completion of shipping season and during the middle of the summer of 1941 commenced efforts to have the property belonging to the said partnership divided or to have the surviving partners purchase the interest of the deceased partners therein. No progress was made in this matter until on to-wit, January 2, 1942 when the Administrator received an offer from the surviving partners for the interest of the deceased partner in the said partnership. This offer was made by letter, the original of which is hereto attached, marked Exhibit "B". On to-wit, January 7, 1942, the Administrator wrote the surviving partners in connection with the matter. A copy of its letter in this connection is attached and marked Exhibit "C". It also wrote the surviving partners a letter on January 27, 1942, a copy of which is hereto attached, marked Exhibit "D". A further letter in connection with the matter was written on February 3, 1942. No further progress was made and on to-wit, March 3, 1942 it and the other Complainants filed in the Circuit Court of Baldwin County, Alabama, in Equity, the original Bill of Complaint in this cause. It was necessary that a solicitor or attorney be employed to represent the said Complainants in this suit and J. B. Blackburn was employed as such attorney. He handled the matter for the Complainants and has devoted considerable time thereto. The services rendered by the said attorney were of substantial benefit to the Complainants and the fee which he agreed to accept for services through this phase of the litigation is in my opinion reasonable, having in mind the amount involved which, in this instance aggregates the sum in excess of \$350,000.00.

After the suit was commenced the Respondents made the offer of \$65,000.00 contained in their original Answer and Cross Bill filed in this cause. After the filing of the said original Answer and Cross Bill extensive negotiations were had toward settling the matter by the surviving partners purchasing the interest of the deceased partner in all of the partnership assets. This offer of settlement as outlined in the Amended Answer and Cross Bill filed by the Respondents in this cause is substantially correct, however, at the time negotiations were being had about a settlement of this controversy a question arose as to payment of the attorney's or solicitor's fee due Complainants' attorney in this cause and when the settlement was agreed upon by the Administrator and the widow it was understood that the solicitor's fee for Complainants' attorney would be paid from the moneys amounting to \$66,625.00 to be paid by the surviving partners. The amount of this fee as agreed upon was \$3,000.00.

The Administrator recommends to the Court that proper decrees be made authorizing the settlement as outlined in the proceedings filed herein, the said decrees to be without prejudice to the rights of any of the parties to this cause to claim the proceeds collected by the Administrator on the policy issued by the New York Life Insurance policy on the life of Louis G. Bertolla, Deceased.

If all of the parties to this suit are authorized by decrees of this Court to settle the matter as outlined in the proceeding the Administrator will deliver to the surviving partners all securities now in its possession.

Attached hereto and marked Exhibit "E" is a true, and correct list of all of the securities that were in the hands of the said Merchants National Bank at the time of the death of Louis G. Bertolla, Deceased. Since the death of Louis G. Bertolla, Deceased, and on to-wit, December 31, 1941, a certain amount of the said securities were sold at the request of the surviving partners. A true and correct list of the securities so sold is attached to my testimony in this cause and marked Exhibit "F". The total amount received from the sale of the stock so sold amounted to \$29,234.47. In addition to this amount certain bonds of the Mobile Gas Service Corporation were called for payment on to-wit, January 13, 1942 and the amount realized therefrom was \$12,500.00, making the total cash receipts from the sale of the assets amount to \$41,734.47. Since the said dates the said surviving partners requested payment to them by the said Administrator of certain moneys coming to them therefrom and on January 14, 1942 a

Q. What would you say is the value of the house?

A. The home, I would say is probably worth \$2500.00, the automobile is worth about \$400.00 because that's what they allowed her in trading it in, and the furnishings are probably worth, if you were to hold an auction sale, five or six hundred dollars.

Q. How much would that make an aggregate of?

A. An aggregate of \$70,100.00 would be about the amount allowed the estate of Louis G. Bertolla.

Q. In your judgment this is reasonable and fair?

A. I think it is reasonable, fair and generous.

Q. It would be to the best interest of the minors to accept this offer?

A. By all means.



A handwritten signature in cursive script, appearing to read "M. M. Bertolla", is written above a horizontal line.

EXHIBIT "E"

(to testimony of M. B. Slaughter)

Osaf Nelson
Commissioner

Certificate) Number) Numbers) of Shares)	LIST OF SECURITIES HELD (Registered in name (of Louis G. Bertolla unless otherwise noted)
NY 2207	100 Acme Steel Company capital stock @ 44-3/4
94667, 95467	200 American & Foreign Power Co. Inc. Common @ 13/16
877, 879, 880	300 American National Bank & Trust Co. capital stock @ 33 (100 shs. n/o Louis G. Bertolla, John P. Bertolla and Alex S. Bertolla)
651605	100 Anaconda Copper Mining Co. capital stock @ 23-5/8
NC77309, 82871	200 Armour & Company (of Ill.) common @ 4-9/16
11	4 Bank of Fairhope common (registered A. Bertolla & Sons) @ 50
C 22949	100 The Borden Company capital stock @ 19-1/16
NY16946, 20023,	
27732	300 Briggs Manufacturing Co. capital stock @ 21-5/16
39612	100 Buffalo, Niagra & Eastern Power Co. Preferred stock @ 18 1/2
29	2 Central Baldwin Bank capital stock (registered n/o A. Bertolla & Sons) @ 140
425, 528, 660	300 Charis Corp. capital stock @ 5-5/16
L A 74930	30 Cities Service Co. common @ 4 1/4
A146140, 175499,	
176738	300 Commercial Solvents Corp. common @ 8-7/8
C624086, 645231	
	200 Commonwealth & Southern Corp. common @ 1-1/16
N132159, 148301, 189333, 154747,	
179119	500 Electric Bond & Share Co. common @ 3-3/16
9325	100 Electric Power & Light Corp. \$6 Pfd. @ 25-1/8
61354, 62828	200 Gillette Safety Razor Co. Convertible Pfd. @ 35 1/2
50206, 50454	200 Gold Dust Corp. common @ 6-11/16
HL20901	100 Illinois Central Railroad Co. common @ 6-11/16
NY-C 94369	100 Kroger Grocery & Banking Co. common @ 26
XC32801, 33991	200 The Lambert Company common @ 12-1/8
2547, 3114	200 Lehn & Fink Products Corp. common @ 35 1/4
82	150 The Merchants National Bank of Mobile capital stock @ 61 (Cert #82 n/o A. Bertolla & Sons held by Bank, other two certificates for 50 shs. each, n/o Alex S. Bertolla and Rudolph F. Bertolla have never been delivered to Bank)
NY 11999	100 Midland Steel Products Co. common @ 32
G163623, 189306	
	200 National Biscuit Co. common @ 17-3/8
C282183, 294990	
	200 National Dairy Products Co. common @ 13 1/4
C72473	100 National Distiller's Products Corp. common @ 4-3/16
NY187996	100 National Power & Light Co. common @ 6-3/8
H90846, 142877	
HL51020, 157494	
	400 New York Central Railroad Co. capital stock @ 12-5/8
N 9677	100 Otis Steel Co. common @ 8-1/8
C 62761	100 Paramount Pictures, Inc. common @ 10-11/16
NY1986, 3108	200 Parker Rust-Proof Co. common @ 17 1/2
N 907093	100 Pennsylvania Railroad Co. capital stock @ 23 1/2
NYC117602,	
127649, 164582	
173732, 185018	
	500 Republic Steel Corp. common @ 18-5/8
31592	100 Newport Industries, Inc. Cap. 6-5/8

EXHIBIT "E"
 (to testimony of M. B. Slaughter)

Page 2

Cora J. Nelson
Commissioner

Certificate Numbers	Number of Shares	LIST OF SECURITIES HELD (Registered in name of Louis G. Bertolla unless otherwise noted)
C54456, 60529		
C65100, C0137601	330	Remington Rand, Inc. common - 300 shs. @ 8-5/16 (stock dividend) 30 shs. @ 7-7/8
118006	28	Safeway Stores, Inc. common (received in exchange for 200 shs. Daniel Reeves, Inc.) registered n/o Merchants National Bank of Mobile as Administrator of Estate.
C3001, 8057, 10043	300	Schenley Distillers Corp. common @ 9-3/8
C 390727	100	Standard Brands, Inc. common
90021	100	The Studebaker Corp. common @ 6-3/8
N 8088	100	Sunshine Mining Co. capital @ 8-7/8
N 21780	100	Swift & Co. capital @ 22-7/8
C27287, 28958	200	Twentieth Century Fox Film Corp. common @ 6
N113529, 115608	200	United Gas Corp. common @ 11/16
N 59520	100	United States Steel Corp. common @ 57-11/16
NY/C 17790, 18263		
18436, 20214	400	Wesson Oil & Snowdrift Co. common @ 18 $\frac{1}{2}$
112279, 116335, 118330	300	Western Union Telegraph Co. capital @ 20-3/16
NC 55074	100	Wilson & Co. Inc. common 4-5/8
NC 52627	100	Youngstown Sheet & Tube Co. common @ 34-7/16
	2910	North American Trust Shares 1955 at 2.03 less 1.50 tax
	1062	Shares of Selected American Shares, Inc., at 6 5/8 less 1.35 tax
	100	Shares Nash Kelvinator at 3 less 3.25 tax and 7.01 commission
	200	Shares Nash-Kelvinator at 3 1/8 less 6.50 tax and 14.02 commission
	300	Shares Standard Brands 3 7/8 less 24. tax and 21.03 commission
	500	Shares United Gas Impr. at 4 1/8 less 40. tax, 40.05 commission, and .24 postage
	200	Shares Hecker Product at 5 1/8 less 6.10 tax and 18.03 commission
	300	Shares The Lambert Co. at 10 1/8 less 24. tax and 42.09 commission
	100	Shares Libby-Owens-Ford Glass Co. 19 5/8 less 8. tax, and 14.04 commission.
	500	Shares Illinois Central at 5 1/4 less 40. tax and 45.08 commission and .24 postage
	300	Shares Gillette Safety Razor at 2 3/4 less 24. tax, 18.03 commission and .22 postage
	200	Shares Schenley Distiller's Corp. at 15 $\frac{1}{2}$ less 6.50 tax, 28.07 commission, .24 postage
		Mobile Gas Service Corp. \$6,250.00 5% coupon bonds
		6,000.00 Series A Income Bonds
		250.00 Series B Income Bonds

EXHIBIT "F"

(to testimony of M. B. Slaughter)

Orin J. Nelson
Commissioner

Number of
Shares

2910	Shares North American Trust Shares 1955 at 2.03 less 1.50 tax
1062	Shares Selected American Shares, Inc., at 6 5/8 less 1.35 tax
100	Shares Nash Kelvinator at 3 less 3.25 tax and 7.01 commission
200	Shares Nash-Kelvinator at 3 1/8 less 6.50 tax and 14.02 commission
300	Shares Standard Brands 3 7/8 less 24. tax and 21.03 commission
500	Shares United Gas Impr. at 4 1/8 less 40. tax, 40.05 commission and .24 postage
200	Shares Hecker Products at 5 1/8 less 6.10 tax and 18.03 com- mission
300	Shares The Lambert Co. at 10 1/8 less 24. tax and 42.09 com- mission
100	Shares Libby-Owens-Ford Glass Co. 19 5/8 less 8. tax, and 14.04 commission
500	Shares Illinois Central at 5 1/4 less 40. tax and 45.08 com- mission and .24 postage
300	Shares Gillette Safety Razor at 2 3/4 less 24. tax, 18.03 com- mission and .22 postage
200	Shares Schenley Distiller's Corp. at 15 1/2 less 6.50 tax, 28.07 commission, .24 postage

DIRECT EXAMINATION OF FRED C. GRIFFIN, WITNESS
FOR THE RESPONDENTS AND CROSS COMPLAINANTS,
BY H. M. HALL

My name is Fred C. Griffin. I live at Loxley in Baldwin County, Alabama.

I am acquainted with the parties to this action. I have been closely associated with the partners composing the firm of A. Bertolla and Sons, namely, Alex S. Bertolla, Angelo F. Bertolla, John P. Bertolla, Louis G. Bertolla and Rudolph F. Bertolla for the past fifteen or twenty years. It was the custom and practice of the members composing the partnership in buying property of any nature, kind or description, to take title in the names of the various members of the partnership, however, all property was the property of the partnership composed of Alex S. Bertolla, Angelo F. Bertolla, John P. Bertolla, Louis G. Bertolla and Rudolph F. Bertolla, regardless of the name of the party in whose name the title was taken.

I am personally acquainted with the properties belonging to the said partnership and it is my opinion that the real value of the assets of the partnership is in its being kept together and operated as a unit. I am acquainted with the offer made by the four surviving partners of the partnership, namely Alex S. Bertolla, Angelo F. Bertolla, John P. Bertolla and Rudolph F. Bertolla for the interest of the Estate of Louis G. Bertolla, Deceased, and it is my opinion that said offer is fair and reasonable and that it is to the best interest of all parties concerned that the said offer be approved.

Fred C. Griffin

CROSS EXAMINATION OF FRED C. GRIFFIN, WITNESS
FOR THE RESPONDENTS AND CROSS COMPLAINANTS,
BY J. B. BLACKBURN, ATTORNEY FOR COMPLAINANTS
AND CROSS RESPONDENTS.

I have bought and sold real and personal property in Loxley during all the time that I have been in business here and I am familiar with the values of the property such as that owned by the firm of A. Bertolla and Sons. The offer made by the surviving partners for the interest of Louis G. Bertolla in the partnership as contained in the Cross Bill filed by the surviving partners in this suit is a fair and reasonable offer.

Fred C. Griffin

THE STATE OF ALABAMA
Baldwin County

Circuit Court of Baldwin County, Alabama.
(In Equity)

MERCHANTS NATIONAL BANK OF MOBILE, a Corporation,
As Administrator of the Estate of Louis G. Bertolla,
Deceased, et al, **COMPLAINANT S**

VS.

ALEX S. BERTOLLA, et al, **RESPONDENTS**

I, Ora S. Nelson

as ~~Register and~~ Commissioner

have called and caused to come before me M. B. Slaughter, Leon G. Brooks, Wm. G. Caffey, Hugh M. Caffey, R. E. Gordon, Viola Bertolla, Ernest D. Corte and Fred C. Griffin,

witnesses named in the Requirements for Oral Examination, on the 6, 7, 8 days of May 1942, at ~~the office of~~ Loxley, Mobile and Brewton, Alabama

~~in~~ Alabama, and having first sworn said witnesses to speak the truth, the whole truth, and nothing but the truth, the said witnesses

doth depose and say as follows:

ORAL EXAMINATION

I, Ora S. Nelson, as ~~Register~~ and Commissioner hereby certify that the foregoing deposition^s on Oral Examination was taken down in writing by me in the words of the witness^{es} and read over to them and they signed the same in the presence of myself J. B. Blackburn and W. H. Hawkins at the time and place herein mentioned; that I have personal knowledge of personal identity of said witness^es or had proof made before me of the identity of said witness^{es}; that I am not of counsel or of kin to any of the parties to said cause, or any manner interested in the result thereof.

I enclose the said Oral Examination in an envelope to the Register of said Court.

Given under my hand and seal, this 14th day of May, 1942.

Ora S. Nelson (L. S.)

13.

No. _____ Page _____

THE STATE OF ALABAMA
Baldwin County

IN CIRCUIT COURT, IN EQUITY

MERCHANTS NATIONAL BANK OF MOBILE
a Corporation, AS Administrator of
the Estate of Louis G. Bertolla,
et al, Complainant

Vs.

ALEX S. BERTOLLA, et al

Respondent

ORAL DEPOSITION

Filed May 14 21, 1942
Ora S. Nelson Register

RECORDED IN

Record _____

Vol. _____ Page _____

Register _____