

ALBERT SCHWEIZER

COMPLAINANT

VS

FRANK MULLEX, ET AL

RESPONDENTS

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY.

NO. 1040

This cause, coming on to be heard, is submitted upon the motion of the Respondents to set aside the decree pro confesso heretofore entered in this cause, and the Court, after hearing the matter, is of the opinion that the Respondents are entitled to the relief prayed for.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that said decree pro confesso heretofore entered in this cause be, and it is hereby set aside and the Respondents allowed 20 days in which to file pleadings.

Dated this the 2nd day of March, 1943.

G. M. Hare  
Judge.



STATE OF ALABAMA,

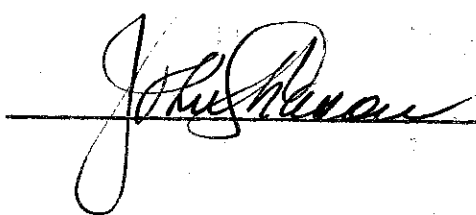
BALDWIN COUNTY.

Before me, Erin Stuart, a Notary Public, in and for said State and County, personally appeared John Chason, who is known to me and who after being by me first duly and legally sworn, doth depose and say under oath as follows:-

That his name is John Chason; that he is one of the Solicitors of Record for the Complainant in that certain suit filed in the Circuit Court of Baldwin County, Alabama, in Equity on January 6, 1944 in which Albert Schweizer is Complainant and Frank Mullek and Margaret Mullek are Respondents.

Affiant says that neither the said Frank Mullek nor the said Margaret Mullek were members of the Armed Forces of the United States of America within the meaning of the Soldiers and Sailors Civil Relief Act of 1940 as amended, at the time of the filing of the Bill of Complaint in this cause, nor at this time, nor at any time intervening since the filing of said Bill of Complaint.

Sworn to and subscribed before  
me, a Notary Public, whose seal  
is hereto affixed this 29th day  
of February, 1944.

  
\_\_\_\_\_  
Erin Stuart  
Notary Public, Baldwin County,  
Alabama.

The State of Alabama, }  
Baldwin County.

No. 1040 CIRCUIT COURT, IN EQUITY

ALBERT SCHWEIZER, Complainant

vs.

FRANK MULLEK AND MARGARET MULLEK, Defendant

In this cause it appears to the Register, R. S. Duck,  
that a Summons requiring the Defendant s Frank Mullek and Margaret Mullek


to appear and demur, plead to or answer the Bill of Complaint in this cause within thirty days after the service of said  
Summons upon Frank Mullek and Margaret Mullek  
was served upon them by the Sheriff of Baldwin County, Alabama, on the  
8th day of January 1944

And the said Defendant s having failed to demur, plead to or answer the said Bill of Complaint to this date,  
it is now, therefore, on motion of Complainant

ordered and decreed that the said Bill of Complaint in this cause be and it hereby is in all things taken as confessed  
against the said Frank Mullek and Margaret Mullek

Defendant s. aforesaid.

This 29th day of February 1944

  
Register.

ALBERT SCHWEIZER,

Complainant,

VS.

FRANK MULLEK AND  
MARGARET MULLEK,

Respondents.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA.

TO THE HONORABLE F. W. HARE, JUDGE OF THE TWENTY-FIRST JUDICIAL  
CIRCUIT OF ALABAMA:-

Your orator, Albert Schweizer, humbly complaining of  
the Defendants, Frank Mullek and Margaret Mullek, in a matter as  
will hereinafter appear

FIRST:

Your orator shows unto your Honor that both he and the  
Defendants are over the age of twenty-one years and residents of  
Baldwin County, Alabama.

SECOND:

Your orator further shows unto your Honor that the Defend-  
ants are the joint owners of the following described real estate  
situated in Baldwin County, Alabama, to-wit:-

Lot 2, Block 8, in the village of Elberta, being  
a subdivision of part of Sections 19, 20, 29 and  
30, Township 7 South, Range 5 East, per Plat  
thereof on file in the office of the Judge of  
Probate of Baldwin County, Alabama, In Map Book  
1 page 21;

that on said lot is located a building which is now being used by  
your orator to operate a cafe and also as his residence.

THIRD:

Your orator further shows unto your Honor that on to-wit,  
March 14, 1939, the defendant Frank Mullek entered into a lease  
and option contract with John D. Rung in which he leased said prem-  
ises to said John D. Rung for a period terminating on April 1,  
1944; that in said lease contract the said defendant Frank Mullek  
for a valuable consideration granted to the said John D. Rung an  
option to purchase said property with a stipulation that he would  
convey the same to the said John D. Rung at any time prior to the

1st day of April, 1944, upon the payment of the sum of Three Thousand Dollars (\$3,000.00) in cash. A copy of said lease and option is hereto attached marked Exhibit A, and is made a part of this Bill of Complaint. Your orator further shows unto your Honor that for a valuable consideration the said John D. Rung assigned said option to your orator on the 22nd day of July, 1941, and that all the rights under said option now belong to and is the property of your orator. A copy of said Assignment of said option is hereto attached and marked Exhibit B, and is made a part of this Bill of Complaint.

FOURTH:

Your orator further shows unto your Honor that it has come to his knowledge since he acquired said option and shortly prior to the filing of this Bill of Complaint, that the said Defendant Frank Mullek owns a one-half interest in and to said property; that the other one-half interest is owned by his wife, the Defendant Margaret Mullek, who was his wife and who owned a one-half interest in this property at the time that the said Frank Mullek gave the said John D. Rung the option on said property heretofore referred to; that the said defendant Frank Mullek has announced to your orator that he has changed his mind about the conveying of said property to your orator as conditioned and provided for in said option agreement; that in addition thereto the said Frank Mullek is unable to convey a full and complete title to said property for the reason that he only owns a one-half interest in said property, and that one-half interest is subject to the dower right of his wife, the said defendant Margaret Mullek, who is the mother of four children by the said Frank Mullek. Your orator further shows unto your Honor that said property can not be divided by metes and bounds but that for a proper division as hereinafter prayed for, it will be necessary that said property be sold under the orders of this Honorable Court; that to bring about a partition and division of said property it has been necessary for your orator to employ solicitors for this purpose, and for this purposes he has employed the firm of Hybart & Chason, Solicitors.

and proper, and that on the failure of the said Frank Mullek to

EXHIBIT B.

THE STATE OF ALABAMA,  
COUNTY OF BALDWIN.

ASSIGNMENT OF LEASE AND OPTION.

THIS INDENTURE, made and entered into on this the 22nd day of July, 1941, by and between the undersigned, John D. Rung, of said County and State, party of the first part, and Al. Schweizer, of said County and State, party of the second part, witnesseth:-

That, whereas, on the 14th day of March, 1939, said party of the first part entered into a contract with Frank Mullek, of said County and State, for the purchase of certain property in Baldwin County, Alabama, particularly described in said contract; and by which same contract the party of the first part leased said property until April 1st, 1944 from the said Frank Mullek; recorded in Deed Book 69 N. S. pages 145-6.

Whereas, said party of the first part desires to transfer and set over to the party of the second part, his rights, privileges and liabilities under and by virtue of said contract;

Now therefore, the premises considered, and in consideration of the agreement of said party of the second part to continue said contract above referred to, and keep all and singular the agreements contained in the same, assuming all the liabilities thereunder, the said party of the first part has granted, bargained and sold, and by these presents does grant, bargain, sell and convey unto the said party of the second part the contract above described, of date the 14th day of March, 1939, together with all the rights, title and interest of the said party of the first part in and to the property described therein.

To have and to hold the same unto the said party of the second part, and unto his heirs and assigns. Right of refusal is granted party of first part by party of second part if transfer this lease and option later had by party of second part.

And the said party of the second part hereby agrees to the provisions of this contract, and accepts, and agrees to assume all the rights, privileges and liabilities arising under the contract above referred to between the party of the first part and the said Frank Mullek.

In testimony whereof, the said parties hereto have hereunto set their hands and seals on this the day and date first above written.

ATTEST:

Stephen Schec

Alfred N. Neumann

John D. Rung            Seal  
Party of the first part.

Albert Schweizer    Seal  
Party of the second part.

VS

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

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BEEBE &amp; HALL

By James H. H. H. H.  
Solicitors for Defendants.

convey said property that your Honor will direct the Register of the Court to make the proper conveyance to your orator of the interest of the said Frank Mullek in said lands. Your orator further prays that in the event that the said Frank Mullek fails within the time as required by your Honor's decree to present his deed joined in by his wife Margaret Mullek conveying to your orator a one-half interest in said property together with the dower right of the said Defendant Margaret Mullek, that your Honor will make such orders as necessary to protect your orator's interest in said lands against any claim of a dower that might arise in the future. Your orator further prays that your Honor will order after the execution of said deed as herein prayed for to your orator from the said Frank Mullek to a one-half interest in said property, a sale of said property for partition and division between the joint owners thereof. Your orator further prays that your Honor will order reference to ascertain a reasonable solicitors fee to be paid to your orator's solicitors of record, Hybart & Chason, to be taxed as a part of the costs of this proceedings and to be paid over to the said Hybart & Chason by the Register of the Court. Your orator further prays that an abstract be ordered made and that the Register of the Court employ some capable attorney practicing at the Bay Minette Bar to make said abstract and the costs of the same be taxed as a part of the costs of this proceeding. Your orator prays for such other, further, different and general relief as in equity may seem just and meet and your orator will ever pray.

*Hybart & Chason*  
Solicitors for Complainant.

EXHIBIT A.

THE STATE OF ALABAMA,

LEASE AND OPTION.

COUNTY OF BALDWIN.

KNOW ALL MEN BY THESE PRESENTS, that I, Frank Mullek, Elberta, Alabama, have agreed to lease, and do hereby rent and lease unto John D. Rung the property in the city of Elberta, Alabama, described as follows: Lot Two in Block 8 in the city of Elberta, Alabama, said lease to commence on the 14th day of March, 1939, and to terminate on April 1st, 1944. The property is to be used by the party of the second part, John D. Rung, for residence and business purposes. The party of the second part agrees to take said property for the term above stated, and agrees to pay therefor the rental of \$10.00 per month, payable monthly in advance. On account of certain repairs and alterations paid for by the party of the second part, rent is waived for the premises until Oct. 1st, 1939, at which time the first \$10.00 monthly installment for the October, 1939, rent becomes due.

All alterations and repairs not expressly agreed to upon the execution of this contract shall be made and paid for by the party of the second part and it is expressly understood that said party of the second part shall not be permitted to make any repairs or material changes in the interior or exterior of the building without the written consent of the party of the first part. It is also expressly understood that all repair, improvements and improvements of a kind not otherwise becoming a permanent part of the building had by John D. Rung in accordance with the terms of the contract executed by John D. Rung and German Fraune this day will remain in said premises, and the said John D. Rung agrees that he will not move or attempt to move said improvements from the above-described premises.

Said party of the second part agrees to take good care of the premises above described, and to surrender the same at the expiration of the term of this lease in good condition, usual wear and tear excepted, and he will pay said rent installments as they mature.

In the event said party of the second part fails to keep and perform every agreement contained herein, or upon failure to pay each rent installment as the same falls due, the said party of the first part shall be authorized and empowered to terminate this contract forthwith and demand possession of the premises, in which event all rent installments shall immediately become due and payable.

In case of destruction of said premises by fire or the elements, then, in that event, this contract as to the unexpired term, shall become null and void. Party of the second part also agrees not to block or hinder in any way the use of the roadway on the West side of said premises by vehicles. First party has use of paking shed on premises for term of this year.

For and in consideration of the sum of one dollar and other valuable considerations to the party of the first part in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, by the party of the first part, party of the first part does hereby covenant and agree to sell to the said party of the second part, at and for the sum of three thousand dollars (\$3,000.00) in cash, the above described property, namely, Lot Two Block 8, Elberta, Alabama, provided, that the said party of the second part shall make a legal tender of the aforementioned amount to the party of the first part on or before the 1st day of April, 1944, noon; otherwise, this option shall become null and void. In witness whereof, the said parties have hereunto set their hands and seals, in duplicate, this the 14th day of March, 1939.

ATTEST:

Alfred N. Neumann  
Henry S. Gilbert

Frank Mullek Seal  
Party of the first part.

John D. Rung Seal  
Party of the second part.

SUMMONS AND COMPLAINT

THE STATE OF ALABAMA, } No. 1040.  
BALDWIN COUNTY }

CIRCUIT COURT BALDWIN COUNTY

Jan.

TERM, 194 4

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon FRANK MULLEK. and MARGARET MULLEK.

to appear and plead, answer or demur, within thirty days from the service hereof, to the Complaint filed in  
the Circuit Court of Baldwin County, State of Alabama, at Bay Minette, against

FRANK MULLEK and MARGARET MULLEK.

GGGGGGG  
Defendant  
Respondants.

by ALBERT SCHWEIZER.

Plaintiff  
Complainants.

Witness my hand this 6th day of January. 1944

R. L. Leach Clerk.

The State of Alabama,  
Baldwin County.

{ No. 1040... CIRCUIT COURT IN EQUITY.

ALBERT SCHWEIZER,

Complainant

vs.

FRANK MULLEK AND MARGARET MULLEK

Defendant S

Motion is hereby made for a Decree Pro Confesso against Frank Mullek and

Margaret Mullek

Defendant S

in the above stated cause, on the ground that more than thirty days have elapsed since service of summons upon said Defendant S; and that said summons was duly served according to law, and that said Defendant S have failed to demur, plead to or answer the Bill of Complaint in this cause to this date.

This 28th day of February 1944.

 Solicitor.

**RECORDED**

No. 1040

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**The State of Alabama,**  
Baldwin County.

**CIRCUIT COURT, IN EQUITY**

ALBERT SCHWEIZER,

Complainant,

vs.

FRANK MULLEK AND

MARGARET MULLEK

Defendants

**MOTION FOR DECREE PRO  
CONFESSO ON PERSONAL SERVICE**

Filed February 28 1944

  
Register.

Recorded in \_\_\_\_\_ Record,

Vol. \_\_\_\_\_ Page \_\_\_\_\_

Register.

OK

SCHWEIZER VS. MULLEK:

Root Vs. Johnson - 10 Southern page 277.  
99 Ala. page 90.

62 Corpus Jurus page 658, Subdivision 5.