

2660

A. L. McCUE,  
Complainant,  
vs.  
T. E. MALONE,  
Respondent.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
IN EQUITY.  
NO. 2260.

This matter coming on to be heard for final decree on the Amended Bill of Complaint as amended August 16, 1952, the Answer and Cross-Bill to such amended Bill of Complaint and upon the Stipulation of the parties filed in said cause on the 3rd day of October, 1952, and upon the testimony taken orally before the court, and it appearing to the court that the Complainant and the Respondent stipulated and agreed that the Respondent, T. E. Malone shall have and recover of the Complainant, A. L. McCue, the sum of Forty-six Hundred Dollars (\$4600.00) in full settlement of the matters complained of in said pleadings and the court having considered the same is of the opinion that the said T. E. Malone should have and recover of the said A. L. McCue the said sum of Forty-six Hundred Dollars (\$4600.00);

It is therefore, ORDERED, ADJUDGED AND DECREED by the court that T. E. Malone shall have and recover of the Complainant A. L. McCue, the sum of Forty-six Hundred Dollars (\$4600.00) in full settlement of the matters complained of, for which let execution issue.

It is further ORDERED, ADJUDGED AND DECREED by the Court that A. L. McCue, the Complainant in said cause, shall pay the costs of court which have accrued in said cause, for which let execution issue.

Done this 3rd day of October, 1952.

Jeffrey A. Madaleno Jr.  
Judge.

FINAL DECREE

A. L. McCUE,

Complainant,

vs.

T. E. MALONE,

Respondent.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

IN EQUITY.

NO. 2260.

Filed: October 3<sup>rd</sup> 1952

W. J. H. H. H. H.  
Register.

A. L. McCUE,	§	IN THE CIRCUIT COURT OF
Complainant,	§	BALDWIN COUNTY, ALABAMA
vs.	§	IN EQUITY.
T. E. MALONE,	§	NO. 2660.
Respondent.	§	

This matter coming on to be heard on this day by agreement of the parties made in open court, said cause being submitted on the Bill of Complaint as amended August 16, 1952, and the Answer and Cross-Bill to such amended Bill of Complaint and upon the testimony of A. L. McCue and Rupert C. McCall, as witnesses for the Complainant and testimony of A. G. Allegri, Jr., Sam Dyson, George Page, Fred Griffin and T. E. Malone, as witnesses for the Respondent in said cause, all of said testimony being taken orally before the Court and the Court having considered the same, the Court is of the opinion that the Complainant has failed to prove the allegations of his Bill of Complaint as last amended in connection with the Kaiser-Fraiser Agency and the Studebaker Agency and the Court is of the opinion from the evidence that the parties to this proceeding were not partners in either business venture referred to in paragraphs fourth, fifth and sixth of said amended Bill and that the Complainant is not entitled to the relief prayed for in said Bill in regard thereto.

It is therefore ORDERED, ADJUDGED AND DECREED by the Court that the Complainant and the Respondent were not partners in the Kaiser-Fraiser Agency or in the Studebaker Agency and that the Complainant is not entitled to have an accounting by the Court in regard to either of such agencies.

And it further appearing to the Court from the testimony in said cause that there is a dispute between the parties as to whether the Respondent has received more or less than the amount he was entitled to as profits under the partnership agreement referred to in Exhibit A to the Amended Bill of Complaint and that it is necessary for the Court to have the books and records of such partner-

ship examined by a disinterested certified public accountant, who shall report his findings to this Court, to ascertain whether the Respondent has received more or less than the amount to which he is entitled as profits, under such partnership agreement.

It is therefore ORDERED, ADJUDGED AND DECREED by the Court that the Complainant shall, within ten (10) days from the date of this decree, produce to this Court all books and records pertaining to the partnership between the parties to this cause known as the Baldwin County Beverage Company, so that such Court may have such books and records examined by a disinterested certified public accountant, who will report his findings to this Court.

Done at Bay Minette, Baldwin County, Alabama, this 16th day of September, 1952.

Telfair J. Mashburn, Jr.  
Telfair J. Mashburn, Jr., Judge of the  
Circuit Court of Baldwin County, Ala.

DECREE

A. L. McCUE,

Complainant,

vs.

T. E. MALONE,

Respondent.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

IN EQUITY.

NO. 2660.

FILED

SEP 18 1952

ALICE J. DUCK, Register

A. L. McCUE,

Complainant,

vs.

T. E. MALONE,

Respondent.

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

This matter coming on to be heard on the demurrer of the Respondent to the Amended Bill of Complaint filed by the Complainant in said cause on March 18, 1952, and it appearing to the court that such demurrer should be sustained,

It is therefore, ORDERED, ADJUDGED AND DECREED by the Court that the demurrer to the Amended Bill of Complaint filed March 18, 1952, be and the same hereby is sustained.

It is further ORDERED, ADJUDGED AND DECREED by the Court that the Complainant shall have twenty (20) days from the date of this order in which to amend said Bill of Complaint.

Dated this 3rd day of July, 1952.

Jeffrey A. Mallibury, Jr.  
Judge.

ORDER SUSTAINING DEMURRER  
TO AMENDED BILL OF COMPLAINT

A. L. McCUE,

Complainant,

vs.

T. E. MALONE,

Respondent.

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

Filed: July 3, 1952.

Miss F. L. Lusk  
Register.

A. L. McCUE,  
Complainant,  
vs.  
T. E. MALONE,  
Respondent.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
IN EQUITY.  
NO. 2260.

This cause coming on to be heard on the demurrer filed by the Respondent to the Bill of Complaint filed in the above styled cause, and the court being of the opinion that such demurrer should be sustained, it is therefore,

ORDERED, ADJUDGED AND DECREED by the Court that the demurrer to the Bill of Complaint be, and the same is hereby sustained.

Dated this 5th day of February, 1952.

*Jeffery M. Moore*  
Judge.



T. E. MALONE  
RESPONDENT

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

TO THE HONORABLE TELFAIR J. WASHBURN JUDGE OF SAID COURT:

Comes now your Complainant A. L. McCue and complains of Respondent, T. E. Malone and respectfully shows unto your Honor as follows:

FIRST:

That your Complainant is over 21 years of age and is a resident of Baldwin County, Alabama. That the Respondent T. E. Malone is over 21 years of age and is a resident of Baldwin County, Alabama.

SECOND:

That on to-wit: the 2nd day of January, 1943, the Complainant and Respondent entered into a partnership agreement, a copy of which is hereto attached and marked "Exhibit A" to this bill of complaint.

THIRD:

That in accordance with the terms of said partnership agreement, the Respondent to this cause, gave the Complainant due notice of his desire to terminate the partnership agreement and demanded of the Complainant payment of \$4,700.00 as was provided for by the terms of the partnership agreement. That during the period of time the said partnership agreement was

alive and before the Respondent withdrew from participation in the business known as the Baldwin County Beverage Company, said business operating under the terms of the partnership agreement, the Respondent had withdrawn funds from the said business over and above his share of the profits from said business. That the sums withdrawn by the Respondent were in excess of \$7,000.00. That there has been no final accounting of said partnership and your Complainant has no method of ascertaining what amount of the said \$7,000.00 the Respondent is equitably entitled to.

FOURTH:

That prior to the time of the Respondent's withdrawal from the partnership; the Respondent and Complainant extended their partnership agreement to include<sup>a</sup>/further business venture. Both acted under this extension as follows: the Complainant A. L. McCue arranged for the purchase of the Kaiser-Fraiser agency at Robertsdale, Alabama, from the owner A. G. Alligri. The Complainant paid the said A. G. Alligri the sum of \$1,000.00 as a binder with an agreed purchase price of \$4,000.00 and further agreed that the purchaser rent from the said A. G. Alligri the building occupied by the said business for the sum of \$3,600.00 per annum. The Complainant paid the sum of \$900.00 of said rent and placed the Respondent, in this cause, in possession of the Kaiser-Fraiser franchise agency, with the agreement that the said Respondent would complete the contracts entered into by A. G. Alligri and the Kaiser-Fraiser Corporation. It was agreed that the Respondent would conduct a franchise automobile dealer's agency, as a dealer for the Kaiser-Fraiser Corporation; that he would utilize funds provided by the Complainant together with funds of his own and would carry out

the agreements made by the said Complainant to the mutual advantage and benefit of both parties by carrying on the purchase and sale of automobiles, automobile parts, used cars, etc., as is customary by franchise dealers. It was further agreed by the Complainant and Respondent that the Complainant would receive 40% of the profits from this venture and that the Respondent would receive 60% of the profits from said venture.

FIFTH:

That the Respondent while conducting the Kaiser-Fraiser franchise agency in accordance with the partnership agreement and joint venture, made substantial profits for said business but he refused to pay the Complainant his share of said profits; that the Respondent has refused to make an accounting of this venture with the Complainant and has refused to allow him to have access to the account books of this said joint venture. Hence, the Complainant has been unable to ascertain the exact amount of profits made in said joint venture but he has been informed and believes that the said profits exceed \$7,000.00 and upon such information and belief avers that the profits of this joint venture exceed \$7,000.00.

SIXTH:

That prior to the time the Respondent withdrew from the original partnership agreement and while it was alive in full force and effect the Complainant and Respondent entered into a further joint venture hereinafter set out, to-wit: The Complainant obtained from the Studebaker Corporation a franchise to handle Studebaker Automobiles and arranged for the Respondent to be given the said franchise as a dealer for the

Studebaker Corporation in accordance with the terms of their prior joint venture relating to the Kaiser-Fraiser franchise. That the Respondent abandoned the Kaiser-Fraiser franchise but continued to operate the said Studebaker franchise.

SEVEN:

That the Complainant put money, business experience, time, and effort into the establishment of the automobile businesses as aforesaid.

EIGHT:

That the Respondent has been continuously in possession of all the books and records pertaining to said joint ventures and has been in possession of the office equipment and fixtures, shop fixtures and equipment all the moneys earned by the said partnership.

NINE:

That the Respondent has moved all of the possessions of the partnership as heretofore set out from its original premises at Robertsdale, Alabama, to Fairhope, Alabama.

TEN:

That the Respondent has refused and failed to make an accounting to the Complainant for the profits of their partnership and joint ventures. The Respondent has refused and failed to pay over to the Complainant any profits accruing from said partnership and joint ventures.

ELEVEN:

That the moneys originally invested in the partnership business, the profits earned under the terms of the partnership

business and joint ventures have been co-mingled. That the Complainant has been unable to ascertain the amounts due him by the Respondent under the terms of the partnership agreement and joint ventures.

#### PRAYER FOR PROCESS

To the end the equity may be had in the premises: Complainant prays that T. E. Malone be made a party Respondent to this bill of Complaint by the usual process of this Court.

#### PRAYER FOR RELIEF

The premises considered: The Complainant prays that a master or a register be appointed to take charge of all the partnership books and accounts and to hold a reference and make an accounting of this partnership venture and the joint ventures entered into by the Complainant and Respondent, reporting its findings to this court.

And for such other and further relief as the nature of the case may require and to this Honorable Court may seem proper.


  
C. Zenoir Thompson  
Solicitor for Complainant

EXHIBIT A

Agreement made this 2nd day of January, A. D. 1943, by and between A. L. McCue, First Party, and Therrell E. Malone, Second Party,  
W I T N E S S E T H: Whereas First Party is the owner and operator of business known as The Baldwin County Beverage Company with place of business located in Robertsedale, Alabama, And, Whereas Second Party has placed in the hands of First Party for use in connection with said business the sum of Four Thousand Seven Hundred (4700) Dollars, Now

Therefore, it is understood and agreed between the Parties hereto that, subject to conditions herein set forth, the Parties hereto shall divide equally the net profits of said business EXCEPTING, HOWEVER, THE PROFITS GAINED BY THE SALE OF ALL COOKS AND SCHLITZ BEER which said last named sales are specifically excluded from any agreement existing between the parties hereto, and FOR THE DURATION OF THIS AGREEMENT, Second Party shall devote his time and effort as salesman, driver and in such other capacity as may be necessary in connection with the conduct of said business, and

It is understood and agreed by and between the parties hereto that within agreement shall endure until written demand shall be made by either party hereto to terminate same, Whereupon, First Party shall be expected to pay over to Second party said sum of Four Thousand Seven Hundred (4700) Dollars plus all accrued profits due said Second Party within ONE HUNDRED AND TWENTY (120) DAYS from the date of such written demand and upon said payment by said First Party to Second Party, this agreement shall be at an end and of no further force and effect.

It is understood and agreed that said division of profits as hereinabove set forth shall be on a semi-annual basis.

The Within Agreement shall apply to and bind the heirs, executors, administrators and assigns of the respective parties.

In Witness Whereof, the Parties have hereunto set their hands and seals this 2nd day of January, A. D. 1943.

Signed, sealed and delivered \_\_\_\_\_ (Seal)  
in presence of:

T. E. Malone (Seal)

Mrs. L. J. Postle

H. J. Weltair

REC

A. L. McCUE

COMPLAINANT

VS

T. E. MALONE

RESPONDENT

FILED  
JUL 2 1951  
ALICE J. DUCK, Register

From the law offices of  
C. LeNoir Thompson  
Bay Minette, Alabama

*Filed July 2, 1951  
Alice J. Duck, Register*

RECORDED

A. L. McCUE

COMPLAINANT

VS

T. E. MALONE

RESPONDENT

FILED  
JUL 2 1951  
ALICE J. DUCK, Register

From the law offices of  
C. LeNoir Thompson  
Bay Minette, Alabama

*Filed July 2, 1951*  
*Alice J. Duck, Register*



THERRELL E. MALONE,

Plaintiff,

VS.

A. L. McCUE,

Defendant.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.

AT LAW.

NO.

DEMURRER

Comes the Plaintiff in the above entitled cause and demurs to the Amended Motion to Transfer said Cause To Equity and as grounds for said Demurrer says:

1. That said Amended Motion sets up no grounds for equitable relief.

2. That said Amended Motion affirmatively shows that the Defendant has an adequate remedy at law.

  
Attorneys for Plaintiff

A. L. McCUE,	§	IN THE CIRCUIT COURT OF
Complainant,	§	BALDWIN COUNTY, ALABAMA
v.	§	IN EQUITY.
T. E. MALONE,	§	NO. 2260.
Respondent.	§	

On September 16, 1952, a decree was rendered by the court in the above styled cause to the effect that the Complainant and Respondent were not partners in the Kaiser-Fraiser Agency or in the Studebaker Agency and that the Complainant is not entitled to have an accounting by the court in regard to either of such agencies. And it was further decreed by the court that there was a dispute between the parties as to whether the Respondent had received more or less than the amount he was entitled to as profits under the partnership agreement referred to in Exhibit A to the Amended Bill of Complaint and the court ordered an accounting by a disinterested certified public accountant to ascertain whether the Respondent had received more or less than he was entitled to as profits under such partnership agreement and the parties to said cause having agreed between themselves that the said A. L. McCue shall pay the said T. E. Malone the sum of Forty-six Hundred Dollars (\$4600.00) in full settlement of the partnership business referred to in the partnership agreement attached to the Amended Bill of Complaint and in full settlement of the note executed by the said A. L. McCue to the said T. E. Malone.

It is therefore, STIPULATED AND AGREED by and between A. L. McCue, the Complainant in said cause, acting by and through C. LeNoir Thompson, as his Solicitor of Record, and T. E. Malone, the Respondent in said cause, acting by and through John Chason, as one of his Solicitors of Record in said cause:

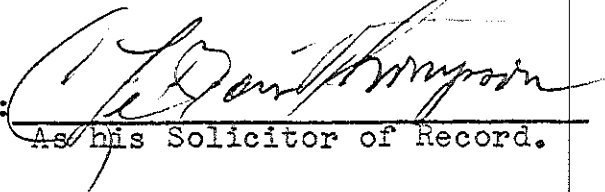
(1) That the court shall render a decree in said cause denying the Complainant the relief prayed for in his Bill of Complaint and granting relief to the Cross-Bill of the Respondent in said cause by rendering judgment in favor of the said T. E. Malone against the said A. L. McCue in the sum of Forty-six Hundred Dollars (\$4600.00) in full settlement of said cause.

(2) That the court shall tax the Complainant, A. L. McCue with the costs of court which have accrued in said cause.

Dated this 3<sup>rd</sup> day of October, 1952.

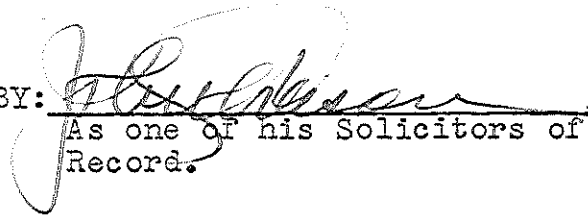
A. L. McCUE,  
Complainant,

BY:

  
As his Solicitor of Record.

T. E. MALONE,  
Respondent,

BY:

  
As one of his Solicitors of Record.

A. L. McCUE  
COMPLAINANT

VS.

T. E. MALONE  
RESPONDENT

) IN THE CIRCUIT COURT OF  
)  
) BALDWIN COUNTY, ALABAMA  
)  
) IN EQUITY  
)  
) CASE NO. \_\_\_\_\_

Comes the Respondent in the above styled cause and demurs to the Bill of Complaint filed in said cause, and to each and every paragraph thereof, separately and severally, and assigns the following separate and several grounds, viz:

- ✓ 1. That said Complaint does not state a cause of action.
- ✓ 2. That said Complaint is vague and indefinite.
3. That it affirmatively appears from the exhibit attached to the Complaint that the Complainant did not execute the agreement referred to in the second paragraph of the Bill of Complaint.
4. That it is not alleged in the third paragraph of the Bill of Complaint when the Respondent gave the Complainant notice of his desire to terminate the partnership agreement.
5. That it is not alleged in paragraph three of the Bill of Complaint when the Respondent withdrew from participation in the business known as Baldwin County Beverage Company.
- ✓ 6. That it is not alleged in the third paragraph of the Bill of Complaint the amount of money withdrawn by the Respondent or when it was withdrawn.
- ✓ 7. It is not alleged in the fourth paragraph of the Bill of Complaint whether the business venture referred to therein was under a written or oral agreement.
- ✓ 8. It is not alleged in the fourth paragraph of the Bill of Complaint when this other business venture was started.
- ✓ 9. It is not alleged in the fourth paragraph of the Bill of Complaint that the Complainant was authorized by the Respondent to purchase the agency referred to therein.
- ✓ 10. That the fourth paragraph of the Bill of Complaint does not allege who the purchaser referred to therein was.

- ✓ 11. That the fourth paragraph of the Bill of Complaint does not state what funds the Complainant would furnish and what the Respondent would furnish.
- ✓ 12. That the seventh paragraph of the Bill of Complaint is vague and indefinite and does not allege the amount of money or the time that the Complainant put into the business referred to therein.
- ✓ 13. That the Bill of Complaint does not contain an appropriate prayer for relief.

H.M. Hall

CHASON & STONE

BY:

John Chason  
Solicitors for Respondents

702660

DEMURRER

RECORDED

\*\*\*\*\*

A. L. McCUE  
COMPLAINANT

VS.

T. E. MALONE  
RESPONDENT

\*\*\*\*\*

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
IN EQUITY  
CASE NO. \_\_\_\_\_

\*\*\*\*\*

FILED: AUGUST 2, 1951

Alfred. Leuch  
Register

*[Faint, mostly illegible text from the reverse side of the page, appearing as bleed-through. Some words like "and", "the", "and", "and" are visible.]*

COMPLAINT AS LAST AMENDED

A. L. McCUE,	I	IN THE CIRCUIT COURT OF
COMPLAINANT,	I	BALDWIN COUNTY, ALABAMA.
VS.	I	IN EQUITY
T. E. MALONE,	I	CASE NO. 2660
RESPONDENT.	I	

TO THE HONORABLE TELFAIR J. MASHEBURN, JR., JUDGE OF SAID COURT:

Comes now your Complainant, A. L. McCue, in the above styled cause and amends his Complaint to read as follows:

F I R S T

That your Complainant is over 21 years of age and is a resident of Baldwin County, Alabama. That the Respondent, T. E. Malone, is over 21 years of age and is a resident of Baldwin County, Alabama.

S E C O N D

That on to-wit: the 2nd day of January, 1943, the Complainant and the Respondent entered into a partnership agreement, a copy of which is hereto attached and marked "Exhibit A" to this Bill of Complaint.

T H I R D

That in accordance with the terms of said partnership agreement, the Respondent to this cause, gave the Complainant due notice of his desire to terminate the partnership agreement on to-wit, July 19, 1948, and demanded of the Complainant payment of \$4,700.00 as was provided for by the terms of the partnership agreement. That during the period of time the said partnership agreement was alive, an annual accounting, as provided by oral agreement between the parties, was made each year from 1943 through 1947. That an audit of the partnership book of the said Baldwin County Beverage Company for the six month period from January 1, 1948, to June 30, 1948, showed that profits were \$1,360.37. That T. O. Malone was paid \$680.24 of this amount; this being the amount due him under the terms of the partnership agreement. That during the period to-wit, January 1, 1948, to June 30, 1948, E. T. Malone withdrew \$3,500.00 in excess of the amount due him from the partnership funds. That no accounting for the partnership has been made for the period January 1, 1948 to July 19, 1948, and no audit made to show the profits due E. T. Malone for the period from June 30, 1948 to July 19, 1948. That, as pertains to this partnership agreement alone, your Complainant avers that

he is justly indebted to the Respondent in the amount of \$1,200.00 plus the profits of this partnership from June 30, 1948 to July 19, 1948. That there has been no final accounting of said partnership.

F O U R T H

That prior to the time of the Respondent's withdrawal from the partnership; the Respondent and the Complainant extended their partnership by oral agreement to include a further business venture on to-wit: May 14, 1948. Both acted under this extension as follows: The Complainant, A. L. McCue, arranged for and purchased the Kaiser-Fraiser agency in Robertsdale, Alabama, from the owner A. G. Allegri. The Complainant paid the said A. G. Allegri the sum of \$1,000.00 as a binder, with an agreed purchase price of \$4,000.00 and further agreed that the purchaser rent from the said A. G. Allegri the building occupied by the said business for the sum of \$3,600.00 per annum. The Complainant paid the sum of \$900.00 of said rent and placed the Respondent in this cause, in possession of the Kaiser-Fraiser franchise agency, with the oral agreement, that the said Respondent would complete the contracts entered into by the Complainant with A. G. Allegri and with the Kaiser-Fraiser Corporation. It was agreed between the Complainant and the Respondent that the Respondent would conduct a franchise automobile dealer's agency, as a dealer for the Kaiser-Fraiser Corporation; that he would utilize funds provided by the Complainant together with funds of his own and would carry out the agreements made by the said Complainant with A. G. Allegri and the oral agreements between the Complainant and the Respondent to the mutual advantage and benefit of both parties by carrying on the purchase and sale of automobiles, automobile parts, used cars, etc., as is customary by franchise dealers. It was further agreed by the Complainant and Respondent that the Complainant would receive 40% of the profits from this venture and that the Respondent would receive 60% of the profits from said venture; and the losses would be shared equally between the Respondent and the Complainant.

F I F T H

That the Respondent, while conducting the Kaiser-Fraiser franchise agency in accordance with the partnership agreement and joint venture, made substantial profits for said business but he refused to pay the Complainant his share of said profits; that the Respondent has refused to make an accounting of this



venture with the Complainant and has refused to allow him to have access to the account books of this said joint venture. Hence, the Complainant has been unable to ascertain the exact amount of profits made in said joint venture but he has been informed and believes that the said profits exceed \$7,000.00 and upon such information and belief avers that the profits of this joint venture exceed \$7,000.00

S I X T H

That prior to the time the Respondent withdrew from the original partnership agreement and while it was alive, in full force and effect the Complainant and Respondent agreed to and entered into a further joint venture on to-wit: June 15, 1948, as hereinafter set out, to-wit: The Complainant obtained from the Studebaker Corporation a franchise to handle Studebaker Automobiles and arranged for the Respondent to be given the said Franchise as a dealer for the Studebaker Corporation in accordance with the terms of their prior joint venture relating to the Kaiser-Fraiser franchise. That the Respondent by agreement with Complainant abandoned the Kaiser-Fraiser franchise but continued to operate the said Studebaker franchise.

S E V E N T H

That the Complainant put money, business experience, time, and effort into the establishment of the automobile business as aforesaid.

E I G H T H

That the Respondent has been continuously in possession of all the books and records pertaining to said joint ventures concerning the Kaiser-Fraiser agency and the Studebaker agency and said Respondent has been in possession of the office equipment and fixtures, shop fixtures and equipment all the moneys earned by the said joint ventures.

N I N E T H

That the Respondent has moved all of the possessions of the joint ventures as heretofore set out, from its original premises at Robertsdale, Alabama, to Fairhope, Alabama.

T E N T H

That the Respondent has refused and failed to make an accounting to the Complainant for the profits and losses of their partnership and joint ventures. The Respondent has refused and failed to pay over to the Complainant any profits

accruing from said partnership and joint ventures.

E L E V E N T H

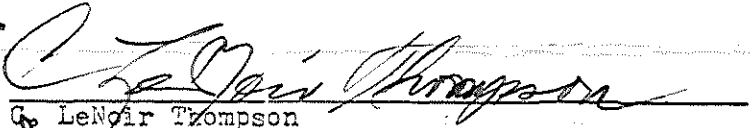
That the Complainant has been unable to ascertain the amounts due him by the Respondent under the terms of the partnership agreement and joint ventures, as to the Kaiser-Fraiser agency and to the Studebaker agency as herein set out.

PRAYER FOR RELIEF

The premises considered, the Complainant prays that a master or a register be appointed to take charge of all the joint venture books and accounts aforesaid and to hold a reference and make an accounting of these joint ventures entered into by the Complainant and Respondent, reporting its findings to this Court.

And for such other and further relief as the nature of the case may require and to this Honorable Court may seem proper.

And the Complainant submits himself to the jurisdiction of the Court, and offers to do whatever the Court may consider necessary to be done on his part toward making the decree which he seeks just and equitable with regard to the other parties to the suit.

  
G. LeNoir Thompson

  
Tolbert M. Brantley, Solicitors for Complainant.

"EXHIBIT A"

Agreement made this 2nd day of January, A. D. 1943; by and between A. L. McCue,  
First Party, and Therrell E. Malone, Second Party, W I T N E S S E T H:

Whereas First Party is the owner and operator of business known as The Baldwin County Beverage Company with place of business located in Robertsdale, Alabama, And Whereas Second Party has placed in the hands of First Party for use in connection with said business the sum of FOUR THOUSAND SEVEN HUNDRED (4700) DOLLARS, Now

Therefore, it is understood and agreed between the Parties hereto that, subject to conditions herein set forth, the Parties hereto shall divide equally the net profits of said business EXCEPTING, HOWEVER, THE PROFITS GAINED BY THE SALE OF ALL COCKS AND SCHLITZ BEER which said last named sales are specifically excluded from any agreement existing between the parties hereto, and FOR THE DURATION OF THIS AGREEMENT, Second Party shall devote his time and effort as salesman, driver and in such other capacity as may be necessary in connection with the conduct of said business, and

It is understood and agreed by and between the parties hereto that within agreement shall endure until written demand shall be made by either party hereto to terminate same, Whereupon, First Party shall be expected to pay over to second part said sum of Four Thousand Seven Hundred (4700) Dollars plus all accrued profits due said

Second Party within ONE HUNDRED AND TWENTY(120) DAYS from the date of such written demand and upon said payment by said First Party to Second Party, this agreement shall be at an end and of no further force and effect.

It is understood and agreed that said division of profits as hereinabove set forth shall be on a semi-annual basis.

The Within Agreement shall apply to and bind the heirs, executors, administrators and assigns of the respective parties.

In Witness Whereof, the Parties have hereunto set their hands and seals this 2nd day of January, A. D. 1943.

Signed, sealed and delivered                      unsigned                      (SEAL)

in presence of:                      signed T. E. Malone                      (SEAL)

Mrs. L. J. Postle - signed

H. J. Weltein - signed

A. L. McCUE,	§	IN THE CIRCUIT COURT OF
Complainant,	§	BALDWIN COUNTY, ALABAMA,
vs.	§	IN EQUITY. NO. 2660.
T. E. MALONE,	§	
Respondent.	§	

Comes the Respondent in the above styled cause and for answer to the Bill of Complaint as last amended, filed in said cause and to each and every paragraph thereof, separately and severally, says:

1. The respondent admits the allegations of the First paragraph of the Amended Bill of Complaint.

2. The Respondent admits the allegations of the Second paragraph of the Amended Bill of Complaint.

3. The Respondent denies all of the allegations of the Third paragraph of the Amended Bill of Complaint and demands strict proof thereof.

4. The Respondent denies all of the allegations of the Fourth paragraph of the Amended Bill of Complaint and demands strict proof thereof.

5. The Respondent denies all of the allegations of the Fifth paragraph of the Amended Bill of Complaint and demands strict proof thereof.

6. The Respondent denies all of the allegations of the Sixth paragraph of the Amended Bill of Complaint and demands strict proof thereof.

7. The Respondent denies all of the allegations of the Seventh paragraph of the Amended Bill of Complaint and demands strict proof thereof.

8. The Respondent denies all of the allegations of the Eighth paragraph of the Amended Bill of Complaint and demands strict proof thereof.

9. The Respondent denies all of the allegations of the Ninth paragraph of the Amended Bill of Complaint and demands strict proof thereof.

10. The Respondent denies all of the allegations of the Tenth paragraph of the Amended Bill of Complaint and demands strict proof thereof.

11. The Respondent denies all of the allegations of the Eleventh paragraph of the Amended Bill of Complaint and demands strict proof thereof.

For further answer to the Bill of Complaint as last amended and as a Cross-Bill, the Respondent T. E. Malone says that he and A. L. McCue entered into a partnership agreement as shown by Exhibit "A" of the original Bill of Complaint on or about January 2, 1943, and continued such business for approximately five years; that the said A. L. McCue kept all books and records of such business and all payments made to the respondent were made by check and the Complainant has or should have a complete record of all such payments if he has not destroyed the books of such partnership venture. That at no time has the Respondent had possession or control of such books and records and he does not know the amount that was paid to him but that such amounts did not exceed the amounts to which he was entitled under such partnership agreement. That at the time of such termination of such partnership agreement the Respondent gave notice to the complainant of his desire to terminate such agreement as provided in such agreement and the Complainant has failed and refused for more than 120 days from the date of written demand upon him to pay the Respondent \$4700.00, together with interest thereon as required by said agreement. That about the beginning of 1948, A. L. McCue arranged for the purchase of the Kaiser-Fraiser Agency at Robertsdale, Alabama, and requested the Respondent to operate such agency with him under a partnership agreement, but the Respondent refused to enter into such agreement and had no interest in such Kaiser-Fraiser agency. That complainant requested your Respondent to spend a part of his time in such agency. That said Complainant had rented a building in Robertsdale from A. G. Allegri in which to operate such agency and said agency was operated by said Complainant for approximately three or four months and Complainant desired to terminate such agency and was released by the said A. G. Allegri from his lease agreement of such building and he terminated his franchise agreement with the Kaiser-Fraiser dealers.

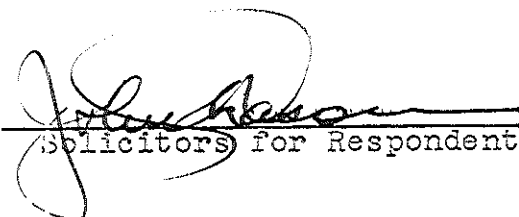
That your Respondent then leased such building individually from A. G. Allegri and operated the Kaiser-Fraiser Agency in his name for about thirty days until he secured the Studebaker Agency at which time your Respondent secured a release from the Kaiser-Fraiser Agency. That there was never any partnership agreement between the complainant and the respondent for such Kaiser-Fraiser Agency. That Complainant only sold four or five automobiles while he had such agency and that Respondent did not sell any while he had such agency and that in the opinion of your respondent neither he nor the complainant made any profit from the Kaiser-Fraiser Agency. That the Respondent does not have the records of the Complainant while such Complainant had the agency but that Respondent has his records while he had such agency and such records will show that he made no profit therefrom. That the Complainant had nothing whatsoever to do with securing the Studebaker franchise and it was secured by the Respondent and in his name alone and such Respondent operated such Studebaker Agency in Robertsdale, Alabama, from the summer of 1948, until about July in 1950, at which time he moved the agency to Fairhope, Alabama, where he is now operating the same. That the Complainant did not put any money, business experience, time or effort into the Studebaker Agency and has never had anything to do with it. That there has never been any mingling of funds by the Respondent in any partnership venture as the Respondent has had only one partnership agreement with the complainant, that being the partnership agreement entered into on January 2, 1943, and Respondent is not indebted to the Complainant in any amount. That such Complainant is now indebted to the Respondent in the sum of \$4700.00 together with interest thereon, which amount should be paid.

WHEREFORE, the Respondent prays that this answer be considered as a Cross-Bill and that the Complainant A. L. McCue be required to pay to the Respondent T. E. Malone, the sum of \$4700.00 together with interest thereon since the demand of the termination of such original partnership agreement and that this Court render judgment

in favor of the Respondent, T. E. Malone, and against the Complainant, A. L. McCue, for such sum. The Respondent prays for such other, further and different relief to which he may be entitled.

CHASON & STONE

By:

  
Solicitors for Respondent.

A. L. McCUE,	§	IN THE CIRCUIT COURT OF
Complainant,	§	BALDWIN COUNTY, ALABAMA
vs.	§	IN EQUITY.
T. E. MALONE,	§	NO. 2660.
Respondent.	§	

Comes the Respondent in the above styled cause and demurs to the Bill of Complaint as last amended on August 16, 1952, and to each and every paragraph thereof, separately and severally, and assigns the following separate and several grounds, viz:

1. That said Amended Bill of Complaint does not state a cause of action.
2. That said Amended Bill of Complaint is vague and indefinite.
3. That said Amended Bill of Complaint does not offer to do equity.
4. That said Amended Bill of Complaint seeks to include in an accounting three separate and distinct operations which were not entered into under the same agreement and which are the results of separate and distinct agreements.

The Respondent further demurs to that aspect of the Amended Bill of Complaint set out in paragraph Third, and assigns the following separate and several grounds, viz:

5. That it is affirmatively shown that the Complainant has all books and records necessary to ascertain the amount due by either party to the other under the agreement attached to the Bill of Complaint but such paragraph of said Amended Bill does not set out the amount due by either of such parties to the other.
6. That it is affirmatively shown that the Respondent has none of the books or records from the original agreement and therefore cannot state the amount that he has drawn or that the Complainant has drawn under such agreement.
7. That it is affirmatively shown by said paragraph that the Complainant has failed and neglected to account to the Respondent for his part of the earnings between June 30, 1948, and July 19, 1948.



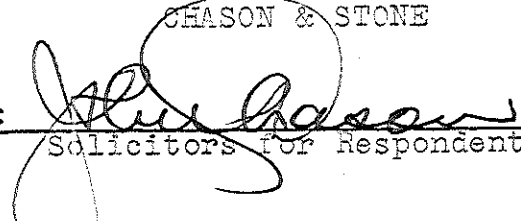
The Respondent demurs to that aspect of the Amended Bill of Complaint as set out in paragraphs Fourth and Fifth, and assigns the following separate and several grounds, viz:

8. That said paragraphs seek to set out the action of the parties but fails to state the agreement entered into between such parties in regard to the business therein referred to.

9. That it is not alleged whether the Complainant used his personal money in making the payments referred to or whether he used money belonging to the original partnership.

10. That it is not alleged that the Complainant ever paid Allegri the sum that he agreed to pay him.

11. For aught that appears from said paragraphs the books and records were not kept by the Respondent and are not in his possession at this time.

CHASON & STONE  
BY:   
Solicitors for Respondent.

A. L. McCUE,

Complainant,

vs.

T. E. MALONE,

Respondent.

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

Comes the Respondent in the above styled cause and demurs to the amended Bill of Complaint filed by the Complainant in said cause on March 18, 1952, and to each and every paragraph thereof separately and severally and assigns the following separate and several grounds, viz:

1. That said amended Bill of Complaint does not state a cause of action.

2. As to that aspect of the Third paragraph of the amended Bill of Complaint in which the complainant alleges that the Respondent had withdrawn funds from the business over and above his share of the profits from said business and that the funds withdrawn by the Respondent were in excess of \$7,000.00, the Respondent demurs and assigns the following separate and several grounds, viz:

(a) That the agreement attached as an exhibit stated that the Respondent would have the right to withdraw \$4,700.00 plus all accrued profit to him and said complaint does not allege the amount of accrued profit included in the withdrawal of \$7,000.00.

(b) That it is not alleged how much the Respondent had withdrawn from said business over and above his share of the profits.

(c) That it is not alleged how much the Respondent had withdrawn from said business.

(d) That it is not alleged that the Complainant was unable to determine the amount of profits to which the Respondent was entitled.

(e) That it is not alleged when the Respondent withdrew from the original partnership agreement.

3. As to that aspect of the Amended Bill of Complaint set forth in paragraphs Fourth and Fifth in which it is alleged that the Complainant and Respondent entered into a further partnership agreement, the Respondent demurs and assigns the following separate and several grounds, viz:

(a) That it is not alleged that any actual agreement was entered into.

(b) That it affirmatively appears that the Complainant purchased the agency referred to therein and the Respondent had no interest in such agency.

(c) That it is not alleged that the Respondent agreed to complete the contract entered into between Allegri and said Corporation.

(d) It is not alleged that the Respondent agreed to operate the agency in his own name or as a partner with the Complainant.

(e) It is not alleged what funds the Complainant was to furnish the partnership.

(f) It is not alleged what funds the Respondent was to furnish the partnership.

(g) It is not alleged what monies the Complainant or Respondent did furnish said partnership.

(h) It is not alleged for what length of time the alleged partnership existed.

(i) It is not alleged that the Respondent has any books of such partnership.

4. As to that aspect of the Amended Bill of Complaint set forth in paragraph Sixth in which it is alleged that the Complainant and Respondent entered into a further partnership the Respondent demurs and assigns the following separate and several grounds, viz:

(a) That it is not alleged when such partnership agreement was entered into.

(b) That it affirmatively appears that the agency was taken in the name of the Respondent and not in a partnership name.

(c) That it is not averred that the Complainant had any interest in the Studebaker Franchise.

5. The Respondent demurs to paragraph Seven of the Amended Bill of Complaint and assigns the following separate and several grounds, viz:

(a) That it is not alleged how much money or what amount of time and effort the Complainant put into the businesses referred to therein.

6. The Respondent demurs to paragraph Nine of the Amended Bill of Complaint and assigns the following separate and several grounds, viz:

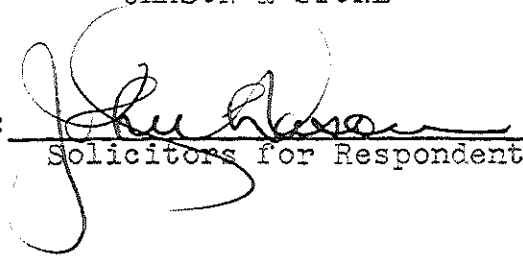
(a) That it is not alleged which joint venture is referred to therein.

7. The Respondent demurs to paragraph Ten of the Amended Bill of Complaint and assigns the following separate and several grounds, viz:

(a) That it is not alleged that the Respondent kept the books on the original partnership agreement or that he holds any money belonging to the Complainant arising out of such agreement.

(b) It is not alleged what profits were made from the original partnership agreement.

CHASON & STONE

By:   
Solicitors for Respondent.

ORDER

A. L. McCUE,

Complainant,

VS.

T. E. MALONE,

Respondent.

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IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA.  
IN EQUITY  
CASE NO. \_\_\_\_\_.

ORDER OVERRULING DEMURRERS

This day, before me came both Complainant and Respondent by their respective attorneys and orally argued the Respondent's demurrers to the Complainant's complaint as last amended; and it appearing to the Court that the said demurrers are not well grounded,

It is therefore ordered that they be and they are hereby overruled. The Respondent is granted twenty (20) days to plead further in this cause.

Witness my hand and seal this the 19th day of August, 1952.

Jeffrey A. Madlock, Jr.  
CIRCUIT JUDGE

[illegible]

Comes now your Complainant A. L. McCue in the above styled cause and amends his complainant to read as follows:

That your Complainant is over 21 years of age and is a resident of Baldwin County, Alabama. That the Respondent T. E. Malone is over 21 years of age and is a resident of Baldwin County, Alabama.

That on to-wit: the 2nd day of January, 1943, the Complainant and Respondent entered into a partnership agreement, a copy of which is hereto attached and marked "Exhibit A" to this bill of complaint.

That in accordance with the terms of said partnership agreement, the Respondent to this cause, gave the Complainant due notice of his desire to terminate the partnership agreement and demanded of the Complainant payment of \$4,700.00 as was provided for by the terms of the partnership agreement. That during the period of time the said partnership agreement was alive and before the Respondent withdrew from participation in the business known as the Baldwin County Beverage Company, said business operating under the terms of the partnership agreement, the Respondent had withdrawn funds from the said business over and above his share of the profits from said business. That the sums withdrawn by the Respondent were in excess of \$7,000.00. That there has been no final accounting of said partnership.

That prior to the time of the Respondent's withdrawal from the partnership; the Respondent and Complainant extended their partnership oral agreement to include a further business venture on or about May 11, 1948. Both acted under this extension as follows: The Complainant, A. L. McCue arranged for

and purchased the Kaiser-Fraiser Agency at Robertsdale, Alabama, from the owner A. G. Allegri. The Complainant paid the Said A. G. Allegri the sum of \$1,000.00 as a Binder with an agreed purchase price of \$4,000.00 and further agreed that the purchaser rent from the said A. G. Allegri the building occupied by the said business for the sum of \$3,600.00 per annum. The Complainant paid the sum of \$900.00 of said rent and placed the Respondent in this cause, in possession of the Kaiser-Fraiser Franchise agency, with the oral agreement. That the said Respondent would complete the contracts entered into by A. G. Allegri and the Kaiser-Fraiser Corporation.

It was agreed that the Respondent would conduct a franchise automobile dealer's agency, as a dealer for the Kaiser-Fraiser Corporation; that he would utilize funds provided by the Complainant together with funds of his own and would carry out the agreements made by the said Complainant to the mutual advantage and benefit of both parties by carrying on the purchase and sale of automobiles, automobile parts, used cars, etc., as is customary by franchise dealers. It was further agreed by the Complainant and Respondent that the Complainant would receive 40% of the profits from this venture and that the Respondent would receive 60% of the profits from said venture.

#### FIFTH:

That the Respondent while conducting the Kaiser-Fraiser Franchise agency in accordance with the partnership agreement and joint venture, made substantial profits for said business but he refused to pay the Complainant his share of said profits; that the Respondent has refused to make an accounting of his venture with the Complainant and has refused to allow him to have access to the account books of this said joint venture. Hence, the Complainant has been unable to ascertain the exact amount of profits made in said joint venture but he has been informed and believes that the said profits exceed \$7,000.00 and upon such information and belief avers that the profits of this joint venture exceed \$7,000.00.

#### SIXTH:

That prior to the time the Respondent withdrew from the original partnership agreement and while it was alive in full force and effect the Complainant and Respondent entered into a further joint venture on to-wit: August 15, 1946 as hereinafter set out, to-wit: The Complainant obtained from the Studebaker Corporation a franchise to handle Studebaker Automobiles and arranged for the Respondent to be given the said franchise as a dealer for the Studebaker Corporation in accordance with the terms

of their prior joint venture relating to the Kaiser-Fraiser franchise. That the Respondent by agreement with Complainant abandoned the Kaiser-Fraiser franchise but continued to operate the said Studebaker franchise.

SEVEN:

That the Complainant put money, business experience, time, and effort into the establishment of the automobile businesses as aforesaid.

EIGHT:

That the Respondent has been continuously in possession of all the books and records pertaining to said joint ventures and has been in possession of the office equipment and fixtures, shop fixtures and equipment all the moneys earned by the said joint venture.

NINE:

That the Respondent has moved all of the possessions of the joint venture as heretofore set out from its original premises at Robertsdale, Alabama, to Fairhope, Alabama.

TEN:

That the Respondent has refused and failed to make an accounting to the Complainant for the profits of their partnership and joint ventures.

~~The Respondent has refused and failed to pay over to the Complainant any~~  
profits accruing from said partnership and joint ventures.

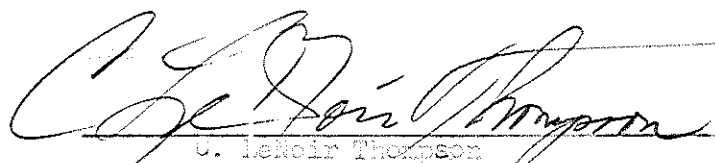
ELEVEN:

That the Complainant has been unable to ascertain the amounts due him by the Respondent under the terms of the partnership agreement and joint ventures.

PRAYER FOR RELIEF:

The premises considered: The Complainant prays that a master or a register be appointed to take charge of all the joint venture books and accounts and to hold a reference and make an accounting of this partnership venture and the joint ventures entered into by the Complainant and Respondent, reporting its findings to this court.

And for such other and further relief as the nature of the case may require and to this Honorable Court may seem proper

  
C. Lehair Thompson  
Solicitor for Complainant.



W 2660

AMENDED COMPLAINT  
**RECORDED**

A. L. McCUE

COMPLAINANT

VS

T. E. MALONE

RESPONDENT

From the law offices of  
C. LeNoir Thompson

**FILED**  
MAR 18 1952

ALICE J. DECK, Register

2660