

SUMMONS AND COMPLAINT

THE STATE OF ALABAMA,
BALDWIN COUNTY

No. 1230

CIRCUIT COURT BALDWIN COUNTY

Nov. TERM, 1944

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon J ALBERT SCHOCK, and PHILLIP N. SCHOCK.

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

J ALBERT SCHOCK and PHILLIP N SCHOCK. Respondents

by EDWARD B OVERTON.

COMPLAINANT

Witness my hand this 29th day of Nov. 1944

Edwards Clerk.

No. _____ Page _____

THE STATE OF ALABAMA
BALDWIN COUNTY

CIRCUIT COURT

Plaintiffs

vs.

Defendants

SUMMONS AND COMPLAINT

Filed _____ 194 _____

Clerk

Plaintiff's Attorney

Defendant's Attorney

Defendant lives at

RECEIVED IN OFFICE

194

Sheriff

I have executed this summons

this _____ 194 _____

by leaving a copy with

Sheriff

Deputy Sheriff

No. 1230. EQUITY.

EDWARD B. OVERTON
Complainant

vs

J. ALBERT SCHOOK et al
Respondents.

To
E.G. Rickarby, Esq.
Solicitor for Complainant

J.B. Blackburn, Esq.
Solicitor for Respondents.

Pursuant to an order of reference made in the above entitled cause at Bay Minette on the 9th day of April, 1945, by the Honorable F. W. Hare, Judge of the Circuit Court of Baldwin County, I have appointed Friday April 13th, 1945 at 10 o'clock A.M. at the office of Complainant's Solicitor in Fairhope for considering the matters thereby referred to me as Register in Equity at which time and place all parties concerned are to attend.

WITNESS my hand as Register of said Court in Equity this ninth day of April, 1945.

Register.

I hereby accept service of a copy of the foregoing this the 9th day of April, 1945.

Solicitor for Complainant.

Solicitor for Respondents.

No. 1230. -- EQUITY.

EDWARD B. OVERTON,
Complainant.

vs

J. ALBERT SCHOCK, etal
Respondents.

NOTICE OF REFERENCE.

No. 1230. EQUITY.

EDWARD B. OVERTON
Complainant

vs

J. ALBERT SCHOCK et al
Respondents.

To

E.G. Rickarby, Esq,
Solicitor for Complainant


J.B. Blackburn, Esq,
Solicitor for Respondents.

Pursuant to an order of reference made in the above entitled cause at Bay Minette on the 9th day of April, 1945, by the Honorable F. W. Hare, Judge of the Circuit Court of Baldwin County, I have appointed Friday April 13th, 1945 at 10 o'clock A.M. at the office of Complainant's Solicitor in Fairhope for considering the matters thereby referred to me as Register in Equity at which time and place all parties concerned are to attend.

WITNESS my hand as Register of said Court in Equity this ninth day of April, 1945.


Register

I hereby accept service of a copy of the foregoing this the 9th day of April, 1945.


Solicitor for Complainant.

Solicitor for Respondents.

No. 1230- EQUITY.

EDWARD B. OVERTON,
Complainant

vs

J. ALBERT SCHOCK et al.
Respondents.

NOTICE OF REFERENCE.

1231

EDWARD B. OVERTON,
Complainant

E Q U I T Y

CIRCUIT COURT OF BALDWIN

vs

COUNTY, ALABAMA

J. ALBERT SCHOCK, et al.
Respondents

This cause coming on to be heard on the report of the Register, filed in this cause pursuant to the decree of reference made in April, 1945, and same having laid over 15 days and the report being duly considered, the Court is of the opinion that said report should be confirmed, whereupon:

It is ordered and decreed by the Court that the report of the Register be and the same is hereby confirmed that the parties to this cause pay over to the Register of this Court, to be applied by him, to the unpaid debts of the Colonial Inn the following sums: Edward B. Overton, ONE HUNDRED TWO DOLLARS and FORTY FOUR CENTS; J. Albert Schock, SIX HUNDRED NINETY SIX DOLLARS and FORTY SIX CENTS; Phillip N. Schock, THREE HUNDRED SIXTY TWO DOLLARS and TWENTY THREE CENTS. Said total of ONE THOUSAND ONE HUNDRED SIXTY ONE DOLLARS and THIRTEEN CENTS to be applied by the Register to the payment of the unpaid accounts as proven before him and shown by his report.

It is further ordered and decreed that the Burroughs Adding Machine described in Paragraph 7 of the Bill, be returned to the Colonial Inn by the Respondent, J. ALBERT SCHOCK within five days from the rendition of this decree and that should said machine not be returned in five days, that Respondent J. ALBERT SCHOCK pay SEVENTY DOLLARS, the value of said machine, to the Register of this Court to be paid over by him to the Complainant, OVERTON.

It is further ordered that Respondents, J. ALBERT SCHOCK and PHILLIP N. SCHOCK, pay the costs of this proceeding in the proportion of two thirds by J. ALBERT SCHOCK and one third by PHILLIP N. SCHOCK and that on default of the payments by the parties of this cause, as above provided, execution made at issue.

Done at Monroeville, Alabama, this the 7th day of March, 1946.



Judge, Circuit Court

1103

Quarta
of
Schack et al

Final Decree

Filed March 8, 1946
R. R. Ruel
Roth

EDWARD B. OVERTON,
Complainant

NO. 1230 EQUITY
CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

VS

J. ALBERT SCHOCK, et al,
Respondents

TO THE
HONORABLE F. W. HARE, JUDGE OF SAID COURT:

Whereas by a decree of this Court made and entered in the above styled cause on the ninth day of April, 1945, a reference was ordered directing the Register to ascertain what, if any, amounts are due from the parties to the cause to the several creditors of the Colonial Inn and to the respective parties under the terms of the agreement made a part of the bill; the amount of Income Tax due for the year 1944; the ownership of the adding machine described in Paragraph Seven of the Bill and the various equities of the parties toward each other.

NOW, therefore, I respectfully report that I have held said reference in strict pursuance to said decree; that at said hearing the parties were present with their respective counsel and have ascertained as follows:

1. THE AMOUNTS DUE TO CREDITORS OF THE COLONIAL INN ARE:

✓ City Market	\$294.56	ch 549
✓ Fairhope Ice & Creamery Company	102.91	
✓ Fuel Oil Supply Company	29.75	
✓ L. Hammel Company	9.44	
✓ Hammonds	86.11	
✓ New Sanitary Market	22.31	
✓ Kampers	129.76	
✓ Ruffles & Son	79.57	
✓ Mobile Fixture & Equipment	9.56	
✓ Press Register	24.50	
✓ Sharpe-Botter	61.20	
✓ DuBrock Laundry	85.10	
✓ WALA	60.00	
✓ Colony Tax to 7/24	166.36	
		\$1161.13

2. COMPLAINANT OVERTON HAS PAID ON THE OBLIGATIONS OF COLONIAL INN UP TO JULY 24, 1944

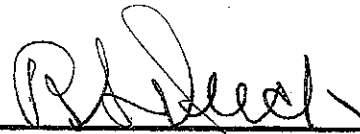
Lee's Salary 7/1 to 7/24/44	\$ 76.66	
Bower's Salary " " "	76.66	
Jerome's Salary " " "	24.00	
Social Security 7/1 to 7/24	10.38	
State Unemployment 7/1 to 7/24	19.19	
Federal Withholding " " "	21.70	
Social Security, Apr., May, June	53.34	
State Unemployment " " "	98.01	
Federal Withholding " " "	111.62	
Telephone	20.70	
Lights and water to 7/24	72.45	
Overdraft	16.11	
2% City Liquor Tax 7/1 to 7/24	21.21	
		\$ 622.03

3.		FORWARD	\$1783.16
3.	RESPONDENT J. A. SCHOCK PAID ON THE OBLIGATIONS OF COLONIAL INN UP TO JULY 24, 1944		
	Press Register		<u>28.00</u>
			1811.16
4.	AMOUNTS TO BE PAID BY EACH PARTY		
	Edward B. Overton 2/5/	\$ 724.47	
	Less accts. paid by him	<u>622.03</u>	102.44
5.	J. Albert Schock 2/5/	724.46	
	Less accts. paid by him	<u>28.00</u>	696.46
6.	Phillip N. Schock	<u>362.23</u>	<u>362.23</u>
	To be applied to unpaid accounts		\$1161.13

The Burroughs Adding Machine described in Paragraph Seven of the Bill, and removed by Respondent J. A. Schock, is a part of the equipment of the Inn now owned by Complainant Overton. The value of said machine is \$70.00 and under the contract of sale, said machine is the property of the Complainant, to the possession of which or its alternate value he is entitled.

The testimony adduced at the hearing has been transcribed and is presented herewith.

All of which is respectfully submitted this the 20 day of February, 1946.



 Register

EDWARD B. OVERTON
Complainant

E Q U I T Y

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

VS

J. ALBERT SCHOCK, et al
Respondents

CERTIFICATE OF JUDGMENT

I, ROBERT S. DUCK, Register of the Circuit Court of Baldwin County in Equity, in and for said County and State, do hereby certify that on the 7th day of March, 1946, a decree was rendered in above stated cause, wherein EDWARD B. OVERTON was the Complainant and J. ALBERT SCHOCK and PHILLIP N. SCHOCK were the Respondents and that by the decree the Court ordered that both the Complainant and Respondents pay various amounts totaling ONE THOUSAND ONE HUNDRED SIXTY ONE DOLLARS AND THIRTEEN CENTS to be applied by the Register to the payment of unpaid accounts.

The sums the respective parties are to pay are:

Edward B. Overton	\$103.46
J. Albert Schock	696.46
Phillip N. Schock	361.23

The decree further ordered that Complainant Edward B. Overton recover of J. Albert Schock the Burroughs Adding Machine or its alternate value of SEVENTY DOLLARS.

The costs in this case are THIRTY SIX DOLLARS AND SIXTY FIVE CENTS which are to be paid as follows: J. Albert Schock, two thirds, Phillip N. Schock, one third.

That Elliott G. Rickerby of Fairhope was the Attorney of record for Complainant, Edward B. Overton, in this cause.

WITNESS my hand this the _____ day of March, Nineteen Hundred and Forty six.

Register.

I, ROBERT S. DUCK, further certify that EDWARD B. OVERTON has paid the sum of ONE HUNDRED AND TWO DOLLARS AND FORTY FOUR CENTS as mentioned in the above decree.

Register.

EDWARD B. OVERTON
Complainant

VS

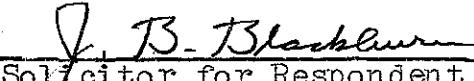
J. ALBERT SCHOCK AND
PHILLIP N. SCHOCK
Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY. No. 1230.

EXCEPTIONS TO REGISTER'S REPORT

Now comes the Respondent, J. Albert Schock, and excepts to the Register's Report filed in this cause and as grounds therefor sets down and assigns separately and severally the following:

1. It is contrary to the law and the evidence.
2. The Register in the report on reference has disregarded entirely the testimony of the Respondent, J. Albert Schock (see testimony, pages 1-4, inclusive, taken on reference).
3. This Respondent has not been allowed credit for amounts expended by him in payment of joint obligations of parties (testimony of J. Albert Schock, pages 1-4 inclusive).
4. Credit has not been allowed this Respondent for payment of \$97.17 deposited in the First National Bank of Mobile to cover check given P. W. Schock (testimony of Respondent, J. Albert Schock, pages 1-2).
5. The Burroughs adding machine referred to in the report is not a part of the equipment owned by the Complainant, Overton (see testimony of Respondent, J. Albert Schock, page 2).


Solicitor for Respondent, J. Albert Schock.

EXCEPTIONS TO REGISTER'S

REPORT

EDWARD B. OVERTON
Complainant

VS

J. ALBERT SCHOCK AND
PHILLIP N. SCHOCK
Respondents

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY. No. 1230.

*Filed March 4th
1944*

*R. H. Hill
Register*

TESTIMONY OF ALBERT SCHOCK ON EXAMINATION BY

J.B. BLACKBURN, Esq.

Mr. Blackburn: Mr. Schock, I call your attention to fourteen bills, totaling \$1956.84, outlined in Statement of E.G. Rickarby, attorney, covering the period of time from July 1, 1944 to July 24, 1944, the first of which is a bill of the City Market. Do you have any knowledge of that bill?

(A) No sir, I have no knowledge, whatsoever.

(Q) Any knowledge of the Fairhope Ice and Creamery Company Bill?

(A) No sir.

(Q) Fuel Oil Supply?

(A) No sir.

(Q) L. Hammel Bill?

(A) No sir.

(Q) Sanitary Market?

(A) No sir.

(Q) Kamper's?

(A) No sir.

(Q) Ruffles?

(A) No sir.

(Q) What about Mobile Fixture Company?

(A) No sir.

(Q) Mobile Press Register?

(A) No sir.

(A) After the sale of the hotel there was a bill of \$61.20 which was not taken into consideration at the time of the sale for the time of the sale we brought out that the fans were to be figured in the sale, for the improvements on hand and we added up the cost of the fans and there was no mention of the \$61.20 due which Mr. Schock explained to me last week at my home. Mr. Overton had changed one of the fans that was originally bought.

(Q) When was that change made, before or after July 24th?

(A) Before. If you refer to the sale you will see and it can be easily determined that the amount of money was figured on the fans and prorated amongst the three of us.

(Q) Any knowledge of DuBrock's bill?

(A) No sir.

Thames & Batre has been paid because I have been released of the obligation for Thames and Batre.

(Q) WALA?

(A) I paid my part up to July 24th.

(Q) Colony Tax amounted to \$166.36 to July 24th. What is your portion?

(A) No mention of tax at the time of the sale and it came due after time of the sale and is not a proper charge.

(Q) I call your attention to the items of salaries of Mr. Lee, Mr. Bowers and Jerome Weeks.

(A) No knowledge of how salaries were handled and do not know if amounts are correct or not. With except of liquor tax; this is a tax that is paid by the City of Fairhope on the liquor that is purchased and is supposed to be absorbed as liquor moves on and I have no knowledge how that is handled.

(Q) Now, Mr. Schock, on Page 2 is outlined prorata of rents paid in advance which Mr. Overton claims to be due him, amounting to \$142.66.

(A) Those rents had been paid at the time of the sale.

(Q) As to the reference to the monies on hand and in the Bank at the time. That was to be the fund to be used in paying this obligation as far as it would go and therefore Mr. Overton is not due that money. Is that correct?

(A) No sir. It is not due to Mr. Overton.

(Q) In addition to those items, what obligations, if any, have you paid and what were they for?

(A) \$28.00 bill from Press Register against Colonial Inn, but the Colonial Inn was shut off as far as the account was concerned and there was a lot of discussion about it. It was paid and I paid that bill. Outstanding on the 24th of July.

(Q) In addition what else did you pay?

(A) I put in the First National Bank of \$97.17 to cover an outstanding check that was due P.W. Schock, drawn by Mr. Overton and

and J.A. Schock. That was a valid outstanding obligation and Mr. Overton will recall that check was in cash and there was not enough funds to cover the account and I deposited that from my personal funds.

(Q) Have you paid any other obligation?

(A) First National Bank overdraft paid for the Colonial Inn, \$.80.

(Q) Any other bills?

(A) Yes sir. At the time of this discussion of the sale of this property, Mr. Overton and I attempted to buy my brother Phil's interest in the Inn.

(Q) Was that before July 24th?

(A) I called Mr. Overton and told him I had talked to Phil and about getting his part of the stock and asked him to come over and we might acquire his share of stock.

(Q) Did Mr. Overton meet you?

(A) Mr. Overton met me in Mr. McCorvey's office. We thought we had an agreement with Phil, and Phil did make a proposition through you.

(Q) Who was present at that time?

(A) Mr. McCorvey, Miss Grace Pugh, myself and Mr. Swinson. Phil and Mr. Blackburn were in the library and Mr. Overton remained out of the way in Mr. Adams' office. Phil was upset with Mr. Overton and we thought it better to keep them apart.

(Q) How long did the meeting last that afternoon?

(A) Meeting lasted several hours, until after six o'clock.

(Q) Did Mr. McCorvey present a bill for this?

(A) He did not give me a bill on this until after the sale had taken place. He presented me with a bill for \$250.00.

(Q) Did you pay it?

(A) I argued until about the last of August but finally paid the \$250.00 Made it in two payments. First one on September 13, 1944 the other several days later.

(Q) Were there any other bills?

(A) I think that is all I have any record of.

(Q) Now then, one other thing. You are charged in this complaint with your moving and keeping an adding machine. What are the circumstances in this?

(A) About two months before this took place, I moved the machine to use at home and it was not considered as part of that equipment.

(Q) What was that adding machine worth on July 24th?

(A) I would say it was worth about \$70.00. It was a hand operated adding machine.

(Q) What make?

(A) Burroughs.

(Q) What capacity or size?

(A) 2 and 3 and 3 -- 7 digits.

(Q) Is there any other statement you have in connection with these accounts that I have not covered?

(A) No sir.

Now Mr. Rickarby, I would like to ask the Register to examine the lease from the Fairhope Single Tax Corporation covering this property in order that he can determine whether or not the porata was properly charged.

CROSS EXAMINATION

(Q) Mr. Schock, going back to those matters in that bill to the Mobile Register that you paid. Was not that \$24.50?

(A) No sir. It was \$28.00. They gave me this bill. Mr. Overton personally did not make it.

(Q) Mr. Schock, that item of \$97.17 that you paid as an overdraft to cover that check, was not that paid out of the liquor money that you all divided up the night of the 24th?

(A) No sir. I gave the money over to Mr. Overton, all that I had and Phil did not cash that.

(Q) When was the date of your overdraft? Have you a copy of the deposit slip?

(A) No sir, but I can get it for you. It was not taken out of my fund. I took it out of my own funds.

(Q) Can you get your check that you paid it with?

(A) I think so. I can get a copy of it or the deposit slip.

(Q) This bill that Mr. McCorvey charged you, did not that come this way? Were not you and Phil in McCorvey's office and did you not telephone Mr. Overton that you were trying to get Phil to seal and for him to come up to see if you could not get some sort of settlement?

(A) No sir. Mr. Overton and I had been trying to come to some understanding. We were trying to see if we could come to some amicable settlement with Phil for \$3500. We thought it was high. I saw Mr. Blackburn in Mobile and told him not to let Phil know he was in town. I thought if Phil was out Ed and I could proceed with the hotel. I conferred with Ed with what was going on all the time. He left very much huffed up. He made us a proposition. It was not accepted.

(Q) Mr. Blackburn represented you, did he not?

(A) No. He represented my ~~xxxxxx~~ brother. He did not represent me until the night of July 24th.

(Q) Then you were trying to buy Phil out?

(A) With Mr. Overton. With Phil eliminated.

(Q) Mr. McCorvey had been representing you before that time?

(A) He represented me at various times and he understood Mr. Overton ~~xxxxxx~~ owned two-fifths with my two-fifths and my brother's one-fifth, but I was trying to make an amicable settlement together with Mr. Overton.

(Q) Mr. Overton came up to Mr. McCorvey's office at your request?

(A) Yes sir. McCorvey was representing the Colonial Inn Company, not J.A. Schock individually.

(Q) Did Mr. Overton engage Mr. McCorvey?

(A) Mr. Overton discussed the matter with Mr. McCorvey. We were using the funds of the Colonial Company to buy that share of ~~stock~~.

(Q) How long before that time did you ask Mr. Overton to come over?

(A) I had discussed the matter with Mr. Overton on several occasions to see if we could eliminate Phil as they could not agree on any particular question. I did not agree with Phil on everything. Mr. Overton asked me on several occasions could we eliminate Phil, buy his share of stock and that was my motive and it was with a clear understanding at the time of the meeting.

(Q) Have you Mr. McCorvey's receipt?

(A) No. I paid him in two checks. I will get the checks and send them back. Check #572 and #573.

(Q) Have you gotten a receipt for that amount that you paid Howell & Johnston?

(A) No. Johnston represented Phil and I in a later transaction and he met Phil and told him that the Colonial Inn had never paid this money and Phil paid him. I have no receipt but my brother will get a receipt and send it to you.

(Q) I paid Tom Johnston and have a receipt for it.

(A) I recall that Tom Johnston collected that money off Phil. My brother would not have made the statement to me.

(Q) Now, Mr. Schock, that adding machine. Was not that taken to Mobile before the sale was made?

(A) I loaned that machine to somebody out of the office and it was in their hands for a couple of weeks and I think I can prove that ~~they~~ the man was using it. I do not think anybody can testify in the hotel ~~xxx~~ when I took it out. I was doing work on the accounts.

(Q) What has happened to that machine?

(A) I have it in my possession. I do not think it was considered part of the sale. It was not in the house of the Colonial Inn and my brother and I discussed that and it was one thing that I brought

(Q) At any rate, you took the adding machine?

(A) At the thorough understanding and knowledge of everybody there. I never deliberately removed anything from the house without the knowledge of all concerned.

(Mr. Overton) He said he wanted to take it to Mobile and would return it the next day.

(Q) But it was a part of the equipment?

(A) No sir. I did not consider it such.

- (Q) But had it been part of the equipment up to that time?
(A) No sir.
(Q) You said just now that you took nothing out without the consent of the people in the Inn, is that right?
(A) Mr. Lee is a workman, not a member of the hotel. Mr. Lee was not there. It was moved at night and Mr. Lee works in the day.
(Q) Then it has never been returned?
(A) No sir.
(Q) Mr. Blackburn turned over to you, and you referred to a number of statements of the indebtedness of the Colonial Inn in July. Those statements never reached you?
(A) No sir.
(Q) Then Mr. Blackburn did not turn them over to you.
(A) Yes, they are here.
(Q) Have you been to the people who rendered those statements to find out if they were correct?
(A) No sir.
(Q) That's all.

(Mr. Schock) At the time of the sale there was supposed to be an audit made which was never made and the auditor who was going to audit the books would have verified the bills. When he came over on the Wednesday night after the sale to go over the bills and discuss the matter with Mr. Overton, a misunderstanding over the settlement came up and he was to see me the next day and I have never seen Mr. Overton excepting once on the street when he said: "Let the Court settle it."

Examination of Mr. Overton by Mr. Rickarby.

- (Q) Mr. Overton, will you tell whether or not you or the Colonial Inn, to your knowledge, engaged the services of Mr. McCarvey's law firm in the transaction between Albert and Phil Schock?
(A) We did not.
(Q) At that time were you represented by other counsel?
(A) I was.
(Q) Did you confer or request any advice from Mr. McCarvey?
(A) No, I did not.
(Q) Did he not know that you came with full knowledge that Albert was buying Phil's stock?
(A) Yes.

Filed Sept 24-1945
R. M. R. R.
R. M. R. R.

...the ...
...the ...
...the ...

...the ...
...the ...
...the ...

...the ...
...the ...
...the ...

...the ...
...the ...
...the ...

...the ...
...the ...
...the ...

...the ...
...the ...
...the ...

...the ...
...the ...
...the ...

EDWARD B. OVERTON,
Complainant.

vs

J. ALBERT SCHOCK et al,
Respondents.

No. 1230. EQUITY.

CIRCUIT COURT OF

BALDWIN COUNTY, ALA.

Comes the Complainant and shows to the Court that the Answer of Respondents places in issue the averments of the Bill as to the indebtedness due by the parties hereto and that said Bill prays that in such event a reference be ordered to ascertain the amount of such indebtedness, vel non,

WHEREFORE, Complainant now prays the Court that an order of reference issue forthwith, commanding the Register of this Court after giving notice of the time and place, to hold a reference and ascertain what amounts were due by the Colonial Inn and by the parties hereto under the terms of the agreement between them and made a part of the Bill and the facts averred in Paragraphs Fifth, Sixth and Seventh of said Bill and report his findings and computation thereon as to the amounts due from the several parties as well as the disposition of the personal property of said Colonial Inn prayed for in the Bill and make report of said findings and recommendations to this Court forthwith.

Edward B. Overton
Solicitor for Complainant

A copy of this motion was mailed to J.B. Blackburn, Esq, on April 7th, 1945.

Edward B. Overton
Solicitor for Complainant

EDWARD B. OVERTON,
Complainant,

vs

J. ALBERT SCHOCK, et al.
Respondents.

No. 1230. E Q I T Y

CIRCUIT COURT OF BALDWIN

COUNTY, ALABAMA.


This cause coming on to be heard this day on the prayer of the Bill for an order of reference in the event that the averments of same on the merits be disputed and it appearing from the answer that said averments are denied and same being heard in open Court after due notice to the parties:

It further appearing to the Court that said facts now disputed can best be determined by a reference;

IT IS ORDERED AND DECREED BY THE COURT that the Register of this Court, after giving notice to the parties as required by law, hold a reference and ascertain what, if any amounts are due from the parties to the cause to the several creditors of the Colonial Inn and to the respective parties under the terms of the agreement made a part of the bill, the amount of income tax due for the year 1944, the ownership of the Adding Machine described in Paragraph Seventh and the various equities of the parties toward each other, making due report of his findings in accordance with the averments of the Bill and Answer.

And this matter is reserved by the Court for such further orders as may be proper.

Done at Bay Minette this the ninth day of April, 1945.


Judge.

141122

141122

141122

141122

No. 1230- EQUITY.

EDWARD B. OVERTON, Complainant

vs

J. ALBERT SCHOCK et al. Respondents.

ORDER OF REFERENCE.

...

...

...

...

...

...

...

...

...

...

...

[Handwritten signature]

EDWARD B. OVERTON,
Complainant,
VS.
J. ALBERT SCHOCK AND
PHILLIP N. SCHOCK,
Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NUMBER 1230.

ANSWER

Now come the Respondents, J. Albert Schock and Phillip N. Schock, each separately and severally and for answer to the Bill of Complaint filed against them in this cause say:

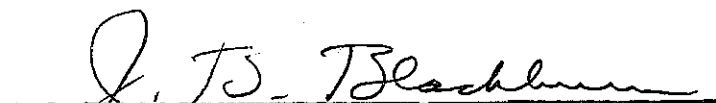
1. They admit the allegations of paragraph First of the Bill of Complaint.
2. The Respondents each admit the allegations of paragraph Second of the Bill of Complaint.
3. The Respondents each admit that they and the Complainant failed to agree as to the management and operation of the hotel property and that the Complainant paid J. Albert Schock \$15,300.00 for his interest and to the Respondent, Phillip N. Schock, \$7,650.00 for his interest in the said property and in the Colonial Company Inc. The Respondents each admit that the written agreement attached to the Bill of Complaint marked Exhibit "A" was entered into at the time the transaction was closed but deny each and all of the other allegations of paragraph numbered Third.
4. The Respondents each admit the allegations of paragraph Fourth of the Bill of Complaint.
5. Respondents each admit that the Complainant made a settlement at the time the amounts which he claimed to be due but a bona fide dispute arose as to the amounts which the Complainant claimed to be due consequently nothing has been paid by either of the Respondents. The Respondents each deny each and all of the other allegations of paragraph numbered Fifth.
6. The Respondents each admit that the income tax owing

by the Hotel and the Colonial Company has not been computed or paid but allege that they exercised due diligence to see that the said income taxes were computed but failed to secure Complainant's cooperation and assistance in this matter.

7. The Respondents each deny each and all of the allegations of paragraph Seventh.

8. Respondents each deny each and all of the other allegations of the Bill of Complaint that have not been specifically answered herein.

Having fully answered the Bill of Complaint, Respondents each pray that they be discharged with their reasonable costs in this behalf expended.


Solicitor for Respondents, J. Albert
Schock and Phillip N. Schock

ANSWER

EDWARD B. OVERTON,
Complainant,

VS.

J. ALBERT SCHOCK AND PHILLIP N.
SCHOCK,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NUMBER 1230.

Filed July 21st 1945
Red Welch
Per

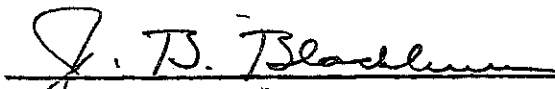
EDWARD B. OVERTON,
Complainant,
VS.
J. ALBERT SCHOCK AND
PHILLIP N. SCHOCK,
Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NUMBER 1230.

DEMURRER

Now come the Respondents in the above entitled cause by their Attorney and for demurrer to the Bill of Complaint filed against them each separately and severally say:

1. There is no equity in the Bill.
2. Complainant does not offer to do equity.
3. The Bill of Complaint is multifarious.
4. It affirmatively appears from the said Bill of Complaint that the Complainant has a full, complete and adequate remedy at law.


Solicitor for Respondents.

DEMURRER

EDWARD B. OVERTON,

Complainant,

VS.

J. ALBERT SCHOCK AND PHILLIP N.
SCHOCK,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY. NUMBER 1230.

Filed Jan 3 1945
R. Schock
Reply

EDWARD B. OVERTON,
Complainant

vs

J. ALBERT SCHOOK, ET AL,
Respondents

E Q U I T Y
IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

Pursuant to an Order of Reference made by the Honorable F. W. Hare, Judge of this Court, on April 9, 1945, and after due notice given the solicitors of the parties, I, ROBERT S. DUCK, as Register, held a reference at ten a. m. on April 13, 1945, in the office of Complainant's solicitor in Fairhope, Alabama. At this there were present Mr. E. G. Rickarby, solicitor for Complainant, and Mr. J. B. Blackburn, solicitor for Respondents. Complainant appeared in his own behalf and testified in substance as follows:

EDWARD B. OVERTON

I am the Complainant in this cause, a former part owner and now present sole owner of the Colonial Inn in Fairhope. On the early morning of July 24, 1944, the Respondents and I entered into the agreement attached to the Bill under the terms of which I was to set out the indebtedness as of that date owing by the Colonial Inn which we, up to that time, had held jointly. I thereupon collected all of the accounts against the Inn and verified their correctness by my own records. These were as set out in the schedule attached to the Bill, which I know to be correct. I know of my personal knowledge that the fifteen accounts set out in the first paragraph of the Bill are for merchandise or service furnished to the Colonial Inn prior to July 24, 1944, when it was owned by the parties hereto jointly. The bills for these several accounts were collected and checked by me both from our own books and from the people to whom they were due and the original bills were turned over to my solicitor, who informs me that they were handed to Respondents solicitor, Mr. Blackburn. All of these bills are still due, with the exception of that of Thames and Batre, which was sometime later paid by agreement in the proportions of responsibility set out in the Bill; that is, two-fifths each by J. A. Schook and me and one-

fifth by P. N. Schock. The items in the account marked "Paid by Edward B. Overton" were all paid by me in the amounts set out in that statement, and I have not yet been reimbursed by the other parties for their respective proportions. There is still due from Respondents their two-fifths of \$1,161.13 on the first paragraph of the account and on the second paragraph those items paid by me Respondents still owe three-fifths of \$622.03; namely, \$373.21.

The item "Prorate of Rents Paid in Advance" is for rental of the Inn Apartments that were paid in advance prior to July 24, 1944, and were deposited in the Bank of Fairhope where we have a credit in what is known as a mortgage account for payments on the mortgage held by the Bank. This item computes the amount of unearned rent on these several accounts up to July 24th, aggregating \$148.62, for which amount I am entitled to credit.

In accordance with the understanding, covered by the agreement above referred to, all interests due on the mortgage was to be deducted from this account, which left a balance of \$242.00, out of which, as above stated, \$148.62 was due me, leaving a balance to the credit of the three of us of \$93.38, plus a delayed payment of rent from a Mrs. Eagen amounting to \$4.66, making \$98.04 in balance due the joint account.

The recapitulation on this account is correct as of the time the Bill was filed, but after deducting the Thames & Batre account, the balance due to the creditors of the Colonial Inn is:

J. A. Schock	\$992.33	less	\$318.28	\$674.04
P. N. Schock	496.17	"	159.14	337.03
E. B. Overton	370.30	"	318.28	52.02

These are the amounts the three of us still owe under our several proportions.

Paragraph 7 of the Bill is based upon a Burroughs Adding Machine that was in the Colonial Inn and owned by the three of us jointly, as the property of the Inn. A few days before the foregoing agreement was signed, Albert Schock came to the Inn and told not only me but Mr. Lee, the clerk of the Inn, that he wanted to do some special work on the Inn accounts at his home which would require the use of an adding machine. He then took this machine and has not brought it

back, although I have made repeated attempts to have him return it.

The income tax referred to in the Bill has not been computed and no income tax was ever paid by the Inn as a corporation, and I am advised that there is no liability for same; should there be I am ready to pay my proportion. The sums shown on the statement are of no interest to me except that I am jointly liable for a part of same and want to see the creditors paid. In such payment there is no profit to me whatever.

Upon cross-examination the witness continued:

In Exhibit "B" in the Bill of Complaint there are outlined fifteen bills to various parties, total of which is \$1,956.84. All of these bills are unpaid except that of Thames & Batre, which was prorated and my share was paid. No recent demand has come from Thames & Batre about that. The claim of Fairhope Single Tax Corporation was paid with my personal check sometime during August, after July 24th when this agreement was signed. Amounts I have paid to various parties for services rendered or other charges between July 1 and July 24, 1944 were paid on August 1st. July salaries of Lee, Bonner and Weeks I paid in full amount. These figures represent the prorata part of the salaries for the month. Lee - \$100.00; Bonner - \$100.00; Weeks - \$45.00, half a month from the 15th to the 24th. The Social Security claims for April, May and June were paid in July, the last one in October. State Unemployment at same time. Federal Withholding Tax paid in October. Light and water bills before 10th of August, overdraft, State Liquor Tax -- none of these claims were paid by me before July 24th. The rents were paid in advance. The one from the Smalls July 24th. Rent was payable from July 24th to August 4th and they paid their total amount on July 24th. Haney's monthly rent is \$45.00 and Odom's monthly rent was either \$60.00 or \$65.00. Breeland's was \$60.00. Beatty's was \$60.00. When they paid their respective rents in the early part of July the rents were deposited in the Mortgage account in the Bank of Fairhope. The monies that were in the 1st Mortgage Account were in the Bank and the Bank took out of that account the retirements and interest on first mortgage. The joint obligations for the accounts due benefit from it up to the 24th but this rent

statement is from the 24th on. The agreement under which Respondents sold out to me was of July 24th and each party released all claim that he had against the joint venture as of that date except liability for whatever monies were owed and for this we were to be billed and we were each to put up our share as there was not enough in the Bank. There has been no partnership with the Schocks. The Colonial Inn Corporation was the operating company and the property was owned jointly by the two Schocks and myself and the operating company paid rent to the three of us. Mrs. Eagan, July 22nd, did not pay her rent till later on and this represents rent paid by her from the 22nd to the 24th. All of these claims in the first part of Exhibit "B", including the Fairhope Single Tax Corporation and Thames & Batre were a part of joint operations of the business and to be paid according to the contract.

TO THE HONORABLE FRANCIS W. HARE, JUDGE OF THE CIRCUIT COURT
OF BALDWIN COUNTY, ALABAMA; IN EQUITY

Comes EDWARD B. OVERTON and by this his Bill of Complaint presented against J. ALBERT SCHOCK and PHILLIP N. SCHOCK respectfully shows:

FIRST: That all parties to this cause are over the age of twenty-one years; that Complainant and Phillip N. Schock are residents of Baldwin County, Alabama, and J. Albert Schock of the City of Mobile.

SECOND: That the parties to this cause up to the last part of the month of July, 1944 were the joint owners of the hotel property in the Town of Fairhope known as the Colonial Inn in the proportions of two-fifths interest each in Complainant and J. Albert Schock and a one-fifth interest in Phillip N. Schock and of a like proportionate interest in a corporation formed for the purpose of operating said hotel and incorporated in the County of Mobile for \$1000.00 under the name Colonial Company, Inc.

THIRD: That the parties hereto, failing to agree as to the management and operation of said hotel property, arranged an amicable settlement whereby Complainant paid to J. Albert Schock the sum of \$15,300.00 for all of his interest in said property and in the Colonial Company, Inc., and to Phillip N. Schock the sum of \$7650.00 for his interest. That at the time said trade was concluded the indebtedness of the hotel and of the Colonial Company, Inc., the operating Company, could not be definitely ascertained, and, as the payment of all accounts up to the date of sale was a material part of the transaction, a written agreement evidencing this and providing that upon the ascertainment of all indebtedness including income tax and expense of ascertaining same, this should be paid by all parties hereto in proportion of their respective interests was executed by the parties hereto. A copy of said agreement is hereto attached and made a part of this instrument as Exhibit A.

FOURTH: That pursuant to the terms of said agreement the Defendants executed and delivered to Complainant a bill of sale with covenants of warranty of all the hotel property including furniture, fixtures, lease and good-will, leaving only the settlement of the pending indebtedness of the said hotel to be ascertained and when ascertained to be paid by the parties in proportion to their several interests. It was further specified that when said indebtedness was paid in full that the Colonial Company, Inc., the operating corporation, should be dissolved.

FIFTH: That Complainant at once set about obtaining the amount of all indebtedness and in due time made a statement of same to Defendants' solicitor with a request for payment of the pro rata shares to be paid by said Defendants, which payments Defendants have neglected or failed to make. That according to Complainant's statement, a copy of which is also attached and marked "Exhibit B" there is owing the sum of \$992.33 from J. A. Schock, \$496.17 from P. N. Schock and \$992.33 from Complainant, less \$622.03 which Complainant has already paid on said indebtedness on matters requiring immediate attention such as taxes, licenses and wages of employees, leaving a balance due from him of \$370.30 which he is prepared to supply when the amounts owing by Defendants are paid. All of which amounts are owing to legitimate creditors of the Colonial Company and of the Colonial Inn and are unpaid.

SIXTH: That the income tax, if any, owing by the Hotel and/or by the Colonial Company, Inc., has not yet been computed but the services of an accountant have been engaged for the purpose. Payment of such tax and of the accountant in computing same are also to be paid under the terms of the signed agreement.

Complainant
desires to do equity
SEVENTH: That Defendant J. Albert Schock has in his possession a Burroughs Adding Machine, a part of the equipment of the Colonial Inn and as such included in the sale to Complainant, which said J. Albert Schock took from said Hotel claiming that it was needed for work on Hotel records. This machine he has failed or neglected to return although repeatedly requested by Complainant to do so.

THE PREMISES CONSIDERED, Complainant prays that J. Albert Schock and Phillip N. Schock be made parties defendant to this bill and

by proper process required to answer same within the time prescribed by law.

COMPLAINANT FURTHER PRAYS that upon the hearing of this cause an order be made commanding the Defendants J. Albert Schock and Phillip N. Schock in accordance with their signed agreement with Complainant to pay into the registry of this Court their proportionate shares of the indebtedness of the hotel business aforesaid and that the Register of this Court shall apply the amounts so paid together with the balance due from Complainant which he stands ready and willing to pay to the settlement of the indebtedness shown by the attached schedule, Exhibit "B" and make report of his action in the premises.

COMPLAINANT FURTHER PRAYS that Defendant J. Albert Schock be ordered to return to the Colonial Inn and to Complainant the Burroughs Adding Machine now in his possession and which is now the property of Complainant.

COMPLAINANT FURTHER PRAYS that should any question arise as to the correctness of Complainant's statement hereto attached or as to any of the indebtedness therein listed or as to Complainant's title to the Burroughs Adding Machine, that an order of reference be made directing the Register of this Court after a proper hearing to ascertain the proper amounts due and the rights of Complainant herein and to make such recommendations as to the payment and adjustment of same, including Income Tax and expense as are proper to effect the purposes of this bill.

COMPLAINANT FURTHER PRAYS that upon such report the parties hereto be commanded to pay to the Register the amounts found by him to be due by each that same may be applied to the payment of all proper indebtedness of the Hotel business and of the Colonial Company and the adjustment of all equities between the parties hereto.

COMPLAINANT FURTHER PRAYS that he may have such other, further or different relief as to Equity may seem meet.

Elliot B. Paisley
Solicitor for Complainant.

Note: The Defendants are required to answer each averment of the foregoing bill, but not under oath.

Elliot B. Paisley
Solicitor for Complainant.

EXHIBIT "A"

AGREEMENT

STATE OF ALABAMA

BALDWIN COUNTY

THIS AGREEMENT, in duplicate originals made and entered into on this the 24th day of July, 1944, by and between Edward B. Overton, J. Albert Schock and Phillip N. Schock, WITNESSETH:

THAT WHEREAS, the parties to this agreement jointly own the property in Fairhope, Alabama, known as the Colonial Inn Property, which property includes all of that property owned by the Colonial Company, a Corporation; and,

WHEREAS, the said Edward B. Overton has commenced suit against the other said parties which is now pending in the Circuit Court of Baldwin County, Alabama, and the parties hereto have settled the said litigation and in consideration of the said settlement, contract and agree as follows:

1. Edward B. Overton will pay to J. Albert Schock the sum of \$15,300.00 for all of his right, title and interest to all property of every kind and nature, which is jointly owned by the said parties or by the Colonial Company, Incorporated.
2. The said Edward B. Overton will pay to the said Phillip N. Schock the sum of \$7650.00 for all of his right, title and interest to all property of every kind and nature which is jointly owned by the said parties or by the Colonial Company, Incorporated.
3. The said payments referred to in Paragraphs Numbered 1 and 2 above will be made to the said parties at the Bank of Fairhope in Fairhope, Alabama before ten o'clock A. M. on Monday, July 24, 1944.
4. The parties hereto, each and all, waive any and all claim of every kind and nature, which they, or either of them, have against the said corporation, the property which is jointly owned, or the moneys on hand for services rendered by them or either or them to the said coproation or to their joint enterprize.
5. All existing bills against the said corporation and against the joint venture of the said parties shall be paid from the moneys which are now on deposit in the Bank of Fairhope in Fairhope, Alabama, and in the event any balance remains in the

said bank after the payment of all bills, the said balance shall be divided as follows: two-fifths to Edward B. Overton; two-fifths to J. Albert Schock and one-fifth to Phillip N. Schock. In the event the said moneys shall not be sufficient to pay all bills, including income tax owed by the said corporation and the reasonable charge for a certified public accountant in preparing all tax returns for the said corporation, the said parties agree that they will make up the deficit in the following proportions: EDward B. Overton, two-fifths; J. Albert Schock, two-fifths and Phillip N. Schock, one-fifth. In the event the parties hereto are unable to agree on any of the said bills, litigation may be had of the said bills, without prejudice or effect to the other features of this contract.

6. Edward B. Overton will assume and agree to pay the existing mortgage to the Bank of Fairhope and will save the other parties to this agreement harmless, from and because of the said obligation.

7. The said J. Albert Schock and Phillip N. Schock, on payment of the consideration referred to above, will make, execute and deliver to the said Edward B. Overton A Bill of Sale with covenant of warranty to their respective leasehold interest in the said property, the improvements thereon and all fixtures, appliances, stock in trade and every other asset of every kind and nature, including good will of the said businesses.

8. The Court costs incurred in the pending litigation and a total solicitor's fee of \$1,000.00 to Messrs. E. G. Rickarby and Beebe and Hall shall be paid from the said moneys, which are on deposit in the Bank of Fairhope.

9. The said J. Alabert Schock has in his possession or under his control the sum of \$1834.00. This said amount of money shall be divided between the parties hereto at the time this transaction is closed on the following basis: two-fifths to Edward B. Overton; two-fifths to J. Albert Schock and one-fifth to Phillip N. Schock:

10. Possession of all of the said property shall be sur-

rendered by the said J. Albert Schock and the said Phillip N. Schock to the said Edward B. Overton at the time the consideration of the said property is paid.

11. If, for any reason beyond the control of the said Edward B. Overton, he is unable to pay the said consideration referred to above, he expressly agrees to postpone the sale that has been set in this matter and that such postponement shall be made without prejudice to the rights of any of the parties of this agreement.

12. The said corporation shall, after payment of all of its just debts and obligations, be dissolved by mutual consent.

13. When the consideration referred to above is paid, the conveyances referred to above delivered, the said attorneys' fee and court costs paid, the said pending suit shall be dismissed.

Executed in duplicate on this the day and year first above written.

Edward B. Overton (SEAL)

J. Albert Schock (SEAL)

Phillip N. Schock (SEAL)

Witnesses:

J. B. Blackburn

E. G. Rickarby

E X H I B I T " B "

COLONIAL CO. INC., - BILLS - July 1st to 24th, 1944.

City Market,	294.56
Fairhope Ice & Creamery Co	102.91
Fuel Oil Supply Co	29.75
L Hammel Co.	9.44
Hammonds Grocery	86.11
New Sanitary Market	22.31
Kampers Grocery	129.76
Ruffles Plumbing Co	79.57
Mobile Fixture & Equipment Co.	9.56
Mobile Press-Register	24.50
Sharpe-Botter	61.20
DuBrock Laundry	85.10
Thames & Batre	795.71
WALA	60.00
Fairhope S Tax Colony to 7/24	<u>166.36</u>
	\$1956.84

AMOUNTS PAID BY EB. OVERTON

Lee's salary	7/1 to 7/24/44	76.66
Bower's salary	" "	76.66
Jerome Weeks	" "	24.00
Social Security	" "	10.38
State Unemploy'm't	" "	19.19
Federal Withholding	" "	21.70
Social Security, Apl, May, June		53.34
State Unemploy'm't "	" "	98.01
Federal Withholding"	" "	111.62
So. Bell Telephone Co		20.70
Lights and water to 7/24		72.45
Overdraft		18.11
2% City Liquor tax	7/1 to 7/24	<u>21.21</u>

Due E. B. Overton, TOTAL \$622.03

PRO RATE OF RENTS PAID IN ADVANCE DUE OVERTON.

Small	7/24 to 8/4	- 11 days	23.98
Haney	" 8/10	- 17 "	25.50
Odom	" 8/1	- 8 "	18.64
Breland	" 8/17	- 25 "	54.50
Beatty	" 8/5	- 13 "	26.00
			<u>\$148.62</u>

Mortgage Account in Bank after payment of interest to 7/24	\$242.00
Due E. B. Overton as above	<u>148.62</u>
	93.98
Egan 7.22 to 7/24	4.66
	<u>\$98.04</u>

R E C A P I T U L A T I O N .

Total Bills,	\$1956.84
Paid by E. B. Overton	622.03
	<u>2578.87</u>
Less balance in Mortgage account	98.04
	<u>\$2480.83</u>

Due from		
J. A. Schock		\$992.33
P. N. Schock		496.17
E. B. Overton	\$992.33 less 622.03	370.30

SINCE THE FOREGOING STATEMENT WAS COMPILED, THE BILL OF THAMES & BATHRE HAS BEEN PAID BY THE PARTIES PRO RATE LEAVING AMOUNTS DUE FROM EACH AS FOLLOWS:

J. A. Schock	\$992.33 less 318.28	\$674.04
P. N. Schock	496.17 " 159.14	337.03
E. B. Overton	370.30 " 318.28	52.02