

BELLE M. EDMISTON and
ELOISE M. DAMPIER,

PETITIONERS

VS

K. R. EWALD, as trustee,
successor to KIRBY WHARTON,
as trustee.

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

This cause coming on to be heard is submitted upon the pleadings and evidence as noted by the register and the same being considered by the court, the court is of the opinion,, and does find, ascertain, adjudge and decree that under the last will and testament of Lillie M. Northrop, dated March 5, 1945, as recorded in the office of the Judge of Probate of Baldwin, County, Alabama, in Will Book E at Page 186, the petitioners, Belle M. Edmiston and Eloise M. Dampier, have the right to sell the shares of stock held by the defendant K. R. Ewald, as trustee, under the said will, and that upon the sale of the said property, they are the absolute owners of the proceeds thereof, each owning one half thereof and are entitled to the possession and use of the same, and that upon such sale and the payment of the proceeds thereof unto the said Belle M. Edmiston and Eloise M. Dampier, such trust is fully and completely and finally terminated.

It is further ordered, adjudged and decreed that K. R. Ewald, as trustee aforesaid, be and he is hereby authorized, directed and ordered to join with Belle M. Edmiston and Eloise M. Dampier in selling and conveying, delivering and assigning the 300 shares of capital stock of the Bank of Fairhope evidenced by certificate #21, issued to Kirby Wharton, trustee, January 2, 1951.

Henry G. Bishop and T. J. Klumpp, upon their paying therefor the sum of \$27,500.00, and that the proceeds of the said sale be by the said K. R. Ewald, as trustee, paid over to Belle M. Edmiston and Eloise M. Dampier, one half to each, after paying the court costs in this proceeding, and that upon paying the same/xx them, he be and is hereby released and discharged as trustee.

Done this the 13th day of May, 1952.

Jeffrey J. Maslowski
Judge

BELLE M. EDMISTON AND
ELOISE M. DAMPIER

PETITIONERS

VS

K. R. EWALD, as trustee
successor to Kirby Wharton,
as trustee

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

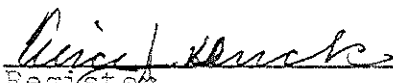
IN EQUITY

This cause is submitted on behalf of the petitioners
on:

1. Bill of complaint, exhibit 5.
2. Answer of defendant, exhibit 3.
3. Agreement for submission, exhibit 7.
4. Will of Lillie M. Northrop, dated March 5, 1945,
recorded in Will Book E, at page 186, in the Probate office of
Baldwin County, Alabama, exhibit 1.
5. Petition of Belle M. Edmiston and Eloise M. Dampier
to W. R. Stuart, Judge of Probate for appointment of trustee
under the last will and testament of Lillie M. Northrop, exhibit
2.
6. Order of the Probate Court appointing K. R. Ewald
trustee under the will of Lillie M. Northrop, exhibit 4.
7. Agreement by the petitioners and Henry G. Bishop and
T. J. Klumpp for sale of the shares of stock of the Bank of
Fairhope, exhibit 8.
8. Waiver of Margaret B. Wharton of right to purchase,
if any, exhibit 6.
9. Testimony of Henry G. Bishop.

On behalf of the defendant:

1. Defendant's answer, exhibit 3.
2. The will of Lillie M. Northrop, exhibit 1.
3. Agreement for submission, exhibit 7.


Register.

Received of K. R. Ewald as trustee by appointment of
W. R. Stuart, Judge of Probate of Baldwin County, Alabama,
as successor in trust to Kirby Wharton under paragraph eleven
of the last will and testament of Lillie M. Northrop, recorded
in the office of the Judge of Probate of Baldwin County,
Alabama in will book E at page 186, the sum of \$13,750.00
paid to and received by me under the order of the Honorable
Telfair J. Mashburn, Jr., Judge of the Circuit Court of Baldwin
County, dated May 13, 1952, in a cause pending in the Circuit
Court of Baldwin County, Alabama, in equity, between Belle M.
Edmiston and Louise M. Dampier against K. R. Ewald, as trustee.

This the 14 day of May, 1952.

Belle M. Edmiston

Received of K. R. Ewald as trustee by appointment of
W. R. Stuart, Judge of Probate of Baldwin County, Alabama,
as successor in trust to Kirby Wharton under paragraph eleven
of the last will and testament of Lillie M. Northrop, recorded
in the office of the Judge of Probate of Baldwin County,
Alabama in will book E at page 186, the sum of \$13,750.00
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Telfair J. Mashburn, Jr., Judge of the Circuit Court of Baldwin
County, dated May 13, 1952, in a cause pending in the Circuit
Court of Baldwin County, Alabama, in equity, between Belle M.
Edmiston and Louise M. Dampier against K. R. Ewald, as trustee.

This the 14 day of May, 1952.

Eloise M. Dampier

BELLE M. EDMISTON and
ELOISE M. DAMPIER,
Petitioners,

VS.

K. R. EWALD, as trustee,
successor to KIRBY WHARTON,
as trustee,

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

TESTIMONY TAKEN IN OPEN COURT ON MAY 13, 1952

APPEARED: For Petitioners

Hon. W. C. Beebe

MR. BEEBE: Judge, we will offer in evidence:

1. Certified Copy of the Will of Lillie M. Northrop
2. Certified Copy of Petition of Belle M. Edmiston and
Eloise M. Dampier to the Probate Judge for Appointment
of Trustee
3. Answer
4. Order of the Probate Court Appointing the defendant,
K. R. Ewald, as Trustee under the will

And we offer in evidence, of course:

5. Bill of Complaint in this case, and
6. Waiver on the part of Mrs. Kirby Wharton of any right
she might have, if any, to purchase the stock; and
7. Agreement for Submission

I would like for Mr. Bishop to be sworn, Judge.

Mr. Henry Bishop, having been first duly and legally sworn,
testified as follows:

ON DIRECT EXAMINATION

By Mr. Beebe

Q. Mr. Bishop, have you and Mr. Tony Klumpp entered into an
agreement with Mrs. Belle M. Edmiston and Eloise M. Dampier
for the purchase of the three hundred shares of stock in the
Bank of Fairhope?

A. We have.

Q. Have you the agreement to purchase?

A. The agreement to purchase? We have.

Q. Is this the agreement?

A. This is the agreement.

Q. Is that Belle M. Edmiston and Eloise M. Dampier's signature?

A. It is.

Q. Yours and Mr. Klumpp's signature?

A. It is.

MR. BEEBE: We offer this in evidence with leave to withdraw and substitute a copy, identified as Exhibit "8".

Q. How many shares of stock were held by Mr. Wharton at the time of his death for Belle M. Edmiston and Eloise M. Dampier?

A. Three hundred.

Q. Represented by Certificate Number?

A. Twenty-one.

Q. Issued? Remember the date of the issuance?

A. I don't remember the date.

Q. Is this offer you all make reasonable and the fair value of the stock?

A. We consider it so, after considerable negotiation with them.

Q. The best offer they had was Twenty-one Thousand Dollars?

A. To my knowledge that was.

MR. BEEBE: Judge, do you care to ask further questions?

THE COURT: No.

MR. BEEBE: That's all we have to offer.

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I, Ora S. Nelson, official Court Reporter of and for the Twenty-eighth Judicial Circuit of Alabama, hereby certify that the above and foregoing, together with the instruments offered in evidence which are attached hereto, constitute a complete transcript of the evidence taken on the hearing of the above styled cause on this date.

Transcribed and filed this 13th day of May, 1952.

Ora S. Nelson
Court Reporter

Filed 5-13-52
Hing J. [unclear]
Register

Exhibit "1"
Certified Copy of *Ora J. Marshall*
Court Reporter

KNOW ALL MEN BY THESE PRESENTS that I, LILLIE MARSHALL NORTHROP, a resident of Fairhope, Alabama, do hereby make and declare this my last will.

ONE: I name as the Executor of my estate and Trustee for the purposes hereinafter stated, my friend KIRBY WHARTON, now President of the Bank of Fairhope, and expressly exempt him from the necessity of giving bond in either of the said capacities.

TWO: All indebtedness that I leave and the expense of administration of my estate is to be paid primarily with the proceeds of the sale of what real estate or interest therein I own in the State of Alabama, other than my dwelling on White Avenue and should this not be adequate, the balance to be paid out of the proceeds of my said dwelling when sold. For the purpose of converting my real estate and the Fairhope Single Tax Corporation lease on my home into money, both for the payment of debts and for distribution, I authorize and empower my executor to sell or convey any or all of my property, both real and personal at private sale at such prices and terms as shall seem to him to the best advantage of the estate and without any order of Court, having confidence in his judgment and believing that in this way better values will be obtained than if sales are made by Court order and at public outcry.

THREE: While I desire the bequests here made to be effected and the estate settled and closed as soon as reasonably convenient, for the benefit of all concerned and to avoid the sale of any property at a sacrifice, my Executor may delay selling property and making final settlement as long as two years if in his judgment by so doing better prices can be obtained.

FOUR: My dwelling on Colony land at No. 13/5 White Avenue in the Town of Fairhope I desire my executor to sell at private sale to the best advantage for cash or on terms as he deems best and the net proceeds to divide equally between my two sisters, Eloise M. Dampier and Belle M. Edmiston of Baton Rouge, Louisiana.

FIVE: To my sisters Eloise Dampier and Belle Edmiston

Daphne C. Allegri
Helen P. Baugh

Lillie M. Northrop

I leave my gold pin in the form of a bunch of grapes to be theirs absolutely and without condition. My two diamond rings I leave them for life and upon the death of the survivor of them the rings are then to go absolutely to my late husband's nieces, Alison Denby of Ashland Place, Mobile and Betty Joice Northrop of Flomaton; they to decide by lot if they cannot otherwise agree, which ring goes to which girl.

SIX: To Daisy Gibson, my sister-in-law, of Lower Peach Tree, Alabama, I leave my wrist watch.

SEVEN: To my brother-in-law, Isaac Northrop of Atmore I leave absolutely the two lots of real estate still standing in the name of my late husband in the Towns of Imogene and Christine in the State of Texas and which I inherited by the terms of his will. I also leave to him my husband's watch and chain and signet ring, but these last are for his life only, as at his death they are to pass absolutely to Isaac's son, Henderson Northrop.

EIGHT: To Alison Denby I leave my gold locket and chain.

NINE: To the Alabama Masonic Home I leave all bonds of which I die possessed.

TEN: The personal effects in my home are to be divided among my loved ones by my executor in accordance with a detailed list which I will sign and place with this will. I

do not itemize these here as the list is fairly long and the values are personal and sentimental, rather than monetary.

The one hundred and forty seven and a half shares of the capital stock of the Bank of Fairhope which I inherited under my husband's will, I wish to go as follows:

ELEVEN: For the maintenance and support of my sisters, Eloise M. Dampier and Belle M. Edmiston, I leave sixty shares of Bank of Fairhope stock to Kirby Wharton as trustee for my said sisters, the income to be paid to them and to the survivor of them for their lives. Should my sisters desire to dispose of said stock during their lifetimes, they may do so but must give Mr. Wharton sixty days refusal of the right to purchase same. ^{If not sold prior to that time,} At the death of

Daphne C. Allegri
Helen P. Baugh

Lillie M. Northrop

the survivor, the Trustee will then convey the said stock to the heirs or devisees of my said sisters, but must then give Mr. Wharton, if living, the right in sixty days to buy same at the then book value.

TWELVE: To Kirby Wharton as trustee I leave fifteen shares of Bank of Fairhope stock to be held by him in trust for the Christian Church of Fairhope for ten years, in which time its earnings are to be paid to such Church. During this period this stock may not be sold but at its expiration this stock is to be turned over to the trustees of the Church with absolute title.

THIRTEEN: To Daisy Gibson I leave ten shares of Bank of Fairhope stock.

FOURTEEN: To Willie Denby I leave thirty shares of Bank of Fairhope stock.

FIFTEEN: To Gertrude Northrop I leave twenty-two shares of Bank of Fairhope stock.

SIXTEEN: To Julia Turner of Birmingham I leave two shares of Bank of Fairhope stock.

SEVENTEEN: To King Northrop English of 308 Dexter Avenue, Mobile, I leave three and a half shares of Bank of

The interlineation and alteration in Paragraph eleven were made at my request before signature.
Lillie M. Northrop

Fairhope stock.

EIGHTEEN: To Kirby Wharton individually I leave five shares of Bank of Fairhope stock. I also give to him the option to purchase the stock bequeathed in sections thirteen to seventeen inclusive at any time within six months from the date of grant of letters executory at the price of one hundred dollars per share, in which event the money thus paid for such stock will be paid to the respective legatees in lieu of the transfer of stock. This option is personal to him however and is given because of my late husband's friendship for him and in appreciation of the courtesies and assistance shown me since my husband's death that he may thus have the opportunity of preventing stock of the Bank in his charge that might otherwise be thrown on the market, from falling into outside and possibly unfriendly ownership.

NINETEEN: As a part of my funeral expense, I wish the

Daphne C. Allegri
Helen P. Baugh

Lillie M. Northrop

officiating minister suitably compensated and the date of my demise cut into the stone now standing on my burial lot.

TWENTY: Should Kirby Wharton die, remove from the State or for any reason be unable to continue to act as trustee, under the mandate of this will, the Judge of the Probate Court of Baldwin County is hereby authorized to name as successor as such trustee to carry on such trust and to name what amounts of bond, if any, that may deem proper under the then condition.

TWENTY-ONE: To the Fairhope High School I leave the vacant lot I own on the South side of Fels Avenue between Section and Church Streets in the Town of Fairhope; also all lots that I have in the sub-division known as Volanta in the northern part of the Town of Fairhope. I authorize my executor to make conveyance of the title of these properties to whatever authority is legally entitled to hold same for said school. I also leave to said school my victrola and all of my books.

TWENTY-TWO: The lots that I own in Daphne are to go to my husband's and my friend, Elliott G. Rickarby.

TWENTY-THREE: To the Fairhope Christian Church I leave my piano.

TWENTY-FOUR: All property not herein specifically devised is to be divided equally between my two sisters, Eloise M. Dampier and Belle M. Edmiston.

IN WITNESS WHEREOF, I hereto set my hand to this^{and}/the three preceding pages at Fairhope, this the 5th day of March, Nineteen hundzed and Forty-Five.

Lillie M. Northrop

This and the foregoing three pages were signed by the Testatrix and declared by her to be her last will in our presence, and in testimony thereof we do here set our hands as witnesses in her presence and in the presence of each other this the day of the date of said will.

Daphne C. Allegri

Helen F. Baugh

KNOW ALL MEN BY THESE PRESENTS that I, LILLIE M. NORTHROP, hereby make and publish this my codicil to my last will and testament, the date of which I do not recall and which will is at this time inaccessible. The purpose of this codicil is:

FIRST: The devise made in said will to GERTRUDE NORTHROP I hereby revoke but provide that the property therein sought to be conveyed to her vest in my son, Milan Northrop, under the ^{same} ~~said~~ terms as ~~was~~ conveyed to Gertrude.

SECOND: To the said Milan Northrop I further leave my piano with all music, my radio-victrola, the bedroom set in the back room of my home, the hand-made chest of drawers in the front bedroom downstairs and one wool comfort. Also living room set of Furniture.

In all other respects my will remains as written.

IN WITNESS WHEREOF, I hereunto set my hand and seal this the Sixteenth day of December, Nineteen hundred forty-seven. Interlineations made before signature.

Lillie M. Northrop Seal

Thefore going codicil was executed by the testatrix in our presence and in testimony thereof we do hereto set our hands and seals as witnesses in her presence and in the presence of each other on the day of the date of said codicil.

Witnesses:

Rhoda L. Allen Fairhope, Alabama.

Elliott G. Rickarby Fairhope, Alabama

The underlined part of the above codicil is written in long hand.

STATE OF ALABAMA

BALDWIN COUNTY

I, W. R. Stuart, Judge of the Probate Court of Baldwin County, do hereby certify that the foregoing is a true, correct and literal copy of the will of Lillie M. Northrop admitted to probate and record and recorded in this office in Will Book E at page 186.

Witness my hand this the 12th day of May, 1952.



W R Stuart
Judge of Probate, Baldwin County,
Alabama

TO THE HONORABLE W. R. STUART, JUDGE OF THE PROBATE COURT OF
BALDWIN COUNTY, ALABAMA:

Come Eloise M. Dampier and Belle M. Edmiston and respectfully

show unto your Honor as follows:

FIRST: That under the last will and testament of Little M.

Northrop, dated March 5, 1945, duly admitted to probate and record
in the Probate Court of Baldwin County, Alabama, and recorded in
Will Book B at Page 186, paragraph eleven thereof, certain shares
of the capital stock of the Bank of Rathhope were bequeathed to

Kirby Wharton as trustee for your petitioners, and under paragraph
twenty of the said will it is provided that, in the event of the

death of the said Kirby Wharton, the Judge of Probate Court of Bald-
win County, Alabama, is authorized to name a successor to the said
trustee to carry on such trust, and to name the amount of bond, if
any, that may be deemed proper under the then conditions.

SECOND: Petitioners further show that the said Kirby Wharton
died on the 3rd day of April, 1952, that at the time of his death,
he held as such trustee for petitioners, three hundred shares of

the capital stock of the Bank of Rathhope, and that it is necessary
and proper that a successor to him as trustee under the said will
be appointed.

THIRD: That K. R. Ewald, whose residence is Centerville, Missi-
ssippi, and who has the confidence of the beneficiaries of such

trust estate, is in the opinion of your petitioners, who are the bene-
ficiaries of such trust, a suitable and proper person to be appointed
trustee as successor to the said Kirby Wharton, now deceased, and

that in the opinion of your petitioners the conditions of such trust
estate are such that no bond or a nominal bond should be required of

the trustee under the said will as successor to the said Kirby Wharton.

WHEREFORE, petitioners pray that you, as Judge of the Probate
Court of Baldwin County, Alabama, will appoint the said K. R. Ewald

as trustee under the mandates of the said will, as successor to the
said Kirby Wharton, now deceased, with the full rights, powers, duties,
and subject to restrictions and limitations provided by the said will

and by the laws of the State of Alabama relating thereto, and that
he be relieved of giving bond or be required to give such bond as in

the opinion of your Honor is sufficient and proper in the premises.

Eloise M. Dampier

Belle M. Edmiston

I, K. R. Ewald, do hereby consent and agree to serve as trustee for Eloise M. Dampier and Belle M. Edmiston, under paragraph eleven of the will of Lillie M. Northrop, in the event the Judge of the Probate Court of Baldwin County, Alabama, shall appoint me as such.

Witness my hand this the 6th day of May, 1952.

K.R. Ewald

STATE OF ALABAMA

BALDWIN COUNTY

I, W. R. Stuart, Judge of the Probate Court of Baldwin County do hereby certify that the foregoing is a true, correct and literal copy of petition of Belle M. Edmiston and Eloise M. Dampier for appointment of trustee, successor to Kirby Wharton trustee, under the last will and testament of Lillie M. Northrop.

Witness my hand this the 12th day of May, 1952.



W R Stuart

Judge of Probate, Baldwin Co., Ala.

2
BELLE M. EDMISTON and
ELOISE M. DAMPIER

PETITIONERS

VS

K. R. EWALD, as trustee,
successor to KIRBY WHARTON,
as trustee.

Exhibit "5"
Ora S. Nelson, Court Reporter
IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY.

TO THE HONORABLE TELFAIR J. MASHBURN, JR., JUDGE OF THE CIRCUIT
COURT OF BALDWIN COUNTY, ALABAMA, IN EQUITY SITTING:

Come Belle M. Edmiston and Eloise M. Dampier and bring this
their petition under Article 12 of Title 47 of the Code of Alabama
1940, for a declaratory judgement of construction of the will of
Lillie M. Northrop, dated March 5, 1945, and duly admitted to pro-
bate and record in the Probate Court of Baldwin County, Alabama,
and recorded in Will Book E at Page 186, and for a declaratory
judgement ascertaining and determining their rights and powers as
to and over the properties bequeathed to Kirby Wharton, as trustee
for petitioners, under paragraph eleven of such will, and humbly
complaining against K. R. Ewald, as trustee under paragraph eleven
of said will, respectfully show unto your Honor as follows:

FIRST: That your petitioners are over the age of twenty-one
years and are residents of 2511 Laurel Street, Baton Rouge, Louisi-
ana; that the said K. R. Ewald is over the age of twenty-one years,
and resides at and his post office address is Centreville, Mississip-
pi.

SECOND: Petitioners further show unto your Honor that Lillie
M. Northrop, late a resident of Baldwin County, Alabama, departed
this life in Baldwin County, leaving a last will and testament dated
March 5, 1945, which said will and testament was duly admitted to
Probate and recorded in Baldwin County, Alabama, in Will Book E at
Page 186 of the records in the office of the Judge of Probate, a
copy of which said will and testament is hereto attached, marked
exhibit "A" and made a part of this petition; that in and by para-
graph eleven of the said will and testament, some sixty shares of
capital stock of the Bank of Fairhope were bequeathed to Kirby Whar-
ton, as trustee for your petitioners, Belle M. Edmiston and Eloise

M. Dampier, which said paragraph eleven is in words and figures as follows:

"ELEVEN: For the maintenance and support of my sisters, Eloise M. Dampier and Belle M. Edmiston, I leave sixty shares of Bank of Fairhope Stock to Kirby Wharton, as Trustee for my said sisters, the income to be paid to them and to the survivor of them for their lives. Should my sisters desire to dispose of said stock during their lifetimes, they may do so, but must give Mr. Wharton sixty days refusal of the right to purchase same. If not sold prior to that time, at the death of the survivor, the Trustee will then convey the said stock to the heirs or devisees of my said sisters, but must then give Mr. Wharton, if living, the right in sixty days to buy same at the then book value."

And petitioners further show that the option to purchase the said shares of stock given to the said Kirby Wharton, as shown by paragraph eighteen of the said will, was personal to him and given to him that he might thus have an opportunity of preventing the stock of the bank being thrown on the market and falling in the hands of persons unfriendly to him, thereby assuring to him, Kirby Wharton, personally, the control of the said bank and the assurance of his position as president thereof, so long as he should live; the option to purchase the said stock, given to the said Kirby Wharton, being personal, lapsed upon his death and is no longer in force and effect.

And petitioners further show that paragraph twenty of the said will provides that in the event of the death of the said Kirby Wharton, the Judge of Probate of Baldwin County, Alabama is authorized to name a successor to him as such trustee to carry on such trust; that subsequent to the death of the said Lillie M. Northrop, on to-wit, December 18, 1950, the capital stock of the said Bank of Fairhope was increased from \$15,000 of common stock to \$75,000 of common stock, by the issuance of stock dividends, four additional shares for each share then outstanding of common stock of the said Bank of Fairhope; and to the said Kirby Wharton, as trustee for your petitioners, there were issued and delivered 240 additional shares, so that the said Kirby Wharton, as trustee for your petitioners, held 300 shares of the common stock of the said Bank of Fairhope, represented by certificate #21 issued January 2, 1951, the said certificate representing the 60 shares held by him, as trustee aforesaid, prior to the increase of the capital stock and the 240 shares issued as stock dividends in the increase of the capital stock of the said bank.

THIRD: Petitioners further show unto your Honor that the said

Kirby Wharton died on to-wit, the 3rd day of April, 1952, and was at the time of his death, holding the said stock as trustee for these petitioners under paragraph eleven of the said will of Lillie M. Northrop; that on to-wit, the 8th day of May, 1952, upon the petition of the said Belle M. Edmiston and Eloise M. Dampier, the Honorable W. R. Stuart, Judge of Probate of Baldwin County, acting under authority of paragraph twenty of the said will of Lillie M. Northrop, did appoint K. R. Ewald trustee, as successor to the said Kirby Wharton, to carry on the said trust, and the said K. R. Ewald is now the duly appointed, constituted and acting trustee under paragraph eleven of the said will of Lillie M. Northrop, and as such trustee holds title to and possession of the said stock certificate.

FOURTH: Petitioners further show, as will appear from said will as a whole and especially from paragraph eighteen thereof, that the objects and purposes sought to be accomplished by Lillie M. Northrop in setting up the said trust and in making the said Kirby Wharton trustee of the said shares of stock, was to give to the said Kirby Wharton, so long as he should live, the right to vote the said stock to assure his control of said bank and his position as president of the same, and that upon the death of the said Kirby Wharton as aforesaid, the objects and purposes of the said trust have terminated, and that under the provisions of said will of Lillie M. Northrop, the title to and ownership of the said shares of capital stock, and the certificate evidencing the same, and the right to the possession and full use and enjoyment of the same has, ought to be and is vested in these petitioners, and there no longer exists any reason for the continuance of said trust.

FIFTH: Petitioners further show unto your Honor that under provisions of paragraph eleven of the said will, they have the power to sell the said capital stock, and acting under such power and exercise thereof, they have entered into an agreement with Henry G. Bishop and T. J. Klumpp to sell to them the said stock for and at the sum of \$27,500.00; that the par value of the said stock is \$15,000.00 and the said sum at which they propose to sell the stock is greatly in excess of the par value and of the book value of the same, and it is to the interest of your petitioners, who are the

owners of the said stock, each owning one half thereof, under the said will and testament of the said Lillie M. Northrop, that the said stock be sold at the said price, since the income from the same is comparatively small and of little benefit to your petitioners; and your petitioners have requested the said K. R. Ewald, as trustee aforesaid, to join with them in such sale and to transfer and assign the said stock and the certificate evidencing the same to the said Henry G. Bishop and T. J. Klumpp, and to pay over and deliver the proceeds thereon to these petitioners, one half to each, but the said K. R. Ewald refuses to join in the said sale and to transfer the said stock as aforesaid and to pay the proceeds thereof as aforesaid, so that an actual controversy of justiciable nature exists, viz: Your petitioners contend that under said will of Lillie M. Northrop, first, that they have the right to sell said shares of stock, and, second, that upon the sale thereof your petitioners are the absolute owners of the proceeds of such sale, each owning one half thereof, and that they are entitled to have the same paid over to them by said trustee, and that he be relieved and discharged as such trustee; and said trustee contends that petitioners have no right to sell said shares of stock and that if the same are sold, that they are not the absolute owners of the proceeds thereof, and would have no right to have the same paid over to them, but that he, as trustee, should hold such proceeds and continue to administer the same under the said will of Lillie M. Northrop.

WHEREFORE, petitioners pray that this Honorable Court will take jurisdiction of the cause made by this bill of complaint and will make the said K. R. Ewald party defendant hereto and will, by appropriate process, require him to plead, answer or demur to the same within the time and under the pains and penalties prescribed by law, and the practice of this Honorable Court;

And petitioners further pray that upon the hearing of the cause made by this petition, this Honorable Court will make and enter an order and decree construing the said will of Lillie M. Northrop, dated March 5, 1945, recorded in the office of the Judge of Probate of Baldwin County, Alabama, in Will Book E at Page 186, ascertaining, adjudging and decreeing that thereunder:

1. These petitioners have the right to sell the three hundred shares of capital stock of the Bank of Fairhope, evidenced by certificate #21 issued to Kirby Wharton, as trustee for Belle M. Edmiston and Eloise M. Dampier, dated January 2, 1951, now held by said K. R. Ewald, as trustee for petitioners under paragraph eleven of the will of Lillie M. Northrop, dated March 5, 1945, recorded in the office of the Judge of Probate of Baldwin County, Alabama, in Will Book E at Page 186, to Henry G. Bishop and T. J. Klumpp for and at the sum of \$27,500.00 cash, and authorizing, ordering and directing the said K. R. Ewald, as trustee, to join with petitioners in selling, transferring and assigning the said shares of capital stock, and the said certificate #21 evidencing the same as for 300 shares of capital stock of the Bank of Fairhope, to the said Henry G. Bishop and T. J. Klumpp, upon their paying the sum of \$27,500.00 in cash therefor.

2. The object of the trust has terminated and when the said stock is sold, petitioners are the absolute owners of the proceeds of such sale, each owning one half thereof, and are entitled to have the same paid over to them, and ordering and directing the said K. R. Ewald to pay the same over to petitioners, one half to each, upon the sale of the said stock, after the payment of the costs of this proceeding, and that he be relieved and discharged as such trustee;

And petitioners pray for such other, further or different relief as in equity and good conscience they shall be entitled to receive in the premises; and they place themselves wholly within the jurisdiction of this court and offer to do and perform whatsoever this court shall require of them.

Belle M. Edmiston
Petitioner

Eloise M. Dampier
Petitioner

W. C. Beebe
Solicitor for petitioners

I hereby accept service of the foregoing petition and waive further notice thereof.

This the 6th day of May, 1952.

K. R. Ewald
As Trustee

Exhibit "A"

Exhibit "1"

Ora S. Nelson Court Reporter

KNOW ALL MEN BY THESE PRESENTS that I, LILLIE MARSHALL NORTHROP, a resident of Fairhope, Alabama, do hereby make and declare this my last will.

ONE: I name as the Executor of my estate and Trustee for the purposes hereinafter stated, my friend KIRBY WHARTON, now President of the Bank of Fairhope, and expressly exempt him from the necessity of giving bond in either of the said capacities.

TWO: All indebtedness that I leave and the expense or administration of my estate is to be paid primarily with the proceeds of the sale of what real estate or interest therein I own in the State of Alabama, other than my dwelling on White Avenue and should this not be adequate, the balance to be paid out of the proceeds of my said dwelling when sold. For the purpose of converting my real estate and the Fairhope Single Tax Corporation lease on my home into money, both for the payment of debts and for distribution, I authorize and empower my Executor to sell or convey any or all of my property, both real and personal at private sale at such prices and terms as shall seem to him to the best advantage of the estate and without any order of court, having confidence in his judgment and believing that in this way better values will be obtained than if sales are made by court order and at public outcry.

THREE: While I desire the bequests here made to be effected and the estate settled and closed as soon as reasonably convenient, for the benefit of all concerned and to avoid the sale of any property at a sacrifice, my Executor may delay selling property and making final settlement as long as two years if in his judgment by so doing better prices can be obtained.

FOUR: My dwelling on Colony land at No. 315 White Avenue in the Town of Fairhope I desire my Executor to sell at private sale to the best advantage for cash or on terms as he deems best and the net proceeds to divide equally between my two sisters, Eloise M. Dampier and Belle M. Edmiston of Baton Rouge, Louisiana.

FIVE: To my sisters Eloise Dampier and Belle Edmiston I leave my gold pin in the form of a bunch of grapes to be theirs absolutely and

without condition. My two diamond rings I leave them for life and upon the death of the survivor of them the rings are then to go absolutely to my late husband's nieces, Alison Denby of Ashland Place, Mobile and Betty Joice Northrop of Flomaton; they to decide by lot if they cannot otherwise agree, which ring goes to which girl.

SIX: To Daisy Gibson, my sister-in-law, of Lower Peach Tree, Alabama, I leave my wrist watch.

SEVEN: To my brother-in-law, Isaac Northrop of Atmore I leave absolutely the two lots of real estate still standing in the name of my late husband in the Towns of Imogene and Christine in the State of Texas and which I inherited by the terms of his will. I also leave to him my husband's watch and chain and signet ring, but these last are for his life only, as at his death they are to pass absolutely to Isaac's son, Henderson Northrop.

EIGHT: To Alison Denby I leave my gold locket and chain.

NINE: To the Alabama Masonic Home I leave all bonds of which I die possessed.

TEN: The personal effects in my home are to be divided among my loved ones by my Executor in accordance with a detailed list which I will sign and place with this will. I do not itemize these here as the list is fairly long and the values are personal and sentimental, rather than monetary.

The one hundred and forty seven and a half shares of the capital stock of the Bank of Fairhope which I inherited under my husband's will, I wish to go as follows:

ELEVEN: For the maintenance and support of my sisters, Eloise M. Dampier and Belle M. Edmiston, I leave sixty shares of Bank of Fairhope stock to Kirby Wharton as Trustee for my said sisters, the income to be paid to them and to the survivor of them for their lives. Should my sisters desire to dispose of said stock during their lifetimes, they may do so but must give Mr. Wharton sixty days refusal of the right to purchase same. If not sold prior to that time, at the death of the survivor, the Trustee will then convey the said stock to the heirs or devisees of my said sisters, but must then give Mr. Wharton, if living, the right in sixty days to buy same at the then book value.

TWELVE: To Kirby Wharton as Trustee I leave fifteen shares of Bank of Fairhope stock to be held by him in trust for the Christian Church of Fairhope for ten years, in which time its earnings are to be

paid to such Church. During this period this stock may not be sold but at its expiration this stock is to be turned over to the Trustees of the Church with absolute title.

THIRTEEN: To Daisy Gibson I leave ten shares of Bank of Fairhope stock.

FOURTEEN: To Willie Denby I leave thirty shares of Bank of Fairhope Stock.

FIFTEEN: To Gertrude Northrop I leave twenty-two shares of Bank of Fairhope stock.

SIXTEEN: To Julia Turner of Birmingham I leave two shares of Bank of Fairhope stock.

SEVENTEEN: To King Northrop English of 308 Dexter Avenue, Mobile, I leave three and a half shares of Bank of Fairhope stock.

EIGHTEEN: To Kirby Wharton individually I leave five shares of Bank of Fairhope stock. I also give to him the option to purchase the stock bequeathed in sections thirteen to seventeen inclusive at any time within six months from the date of grant of letters executory at the price of one hundred dollars per share, in which event the money thus paid for such stock will be paid to the respective legatees in lieu of the transfer of stock. This option is personal to him however and is given because of my late husband's friendship for him and in appreciation of the courtesies and assistance shown me since my husband's death that he may thus have the opportunity of preventing stock of the Bank in his charge that might otherwise be thrown on the market, from falling into outside and possible unfriendly ownership.

NINETEEN: As a part of my funeral expense, I wish the officiating minister suitably compensated and the date of my demise cut into the stone now standing on my burial lot.

TWENTY: Should Kirby Wharton die, remove from the State or for any reason be unable to continue to act as Trustee under the mandate of this will, the Judge of the Probate Court of Baldwin County is hereby authorized to name as successor as such Trustee to carry on such trust and to name what amounts of bond, if any, that may deem proper under the then condition.

TWENTY-ONE: To the Fairhope High School I leave the vacant lot I own on the South side of Fels Avenue between Section and Church Streets in the Town of Fairhope; also all lots that I have in the subdivision

known as Volanta in the northern part of the Town of Fairhope. I authorize my Executor to make conveyance of the title of these properties to whatever authority is legally entitled to hold same for said school. I also leave to said school my victrola and all of my books.

TWENTY-TWO: The lots that I own in Daphne are to go to my husband's and my friend, Elliot G. Rickarby.

TWENTY-THREE: To the Fairhope Christian Church I leave my piano.

TWENTY-FOUR: All property not herein specifically devised is to be divided equally between my two sisters, Eloise M. Dampier and Belle M. Edmiston.

IN WITNESS WHEREOF, I hereto set my hand to this and the three preceding pages at Fairhope, this the 5th day of March, Nineteen Hundred and Forty-Five.

Lillie M. Northrop

This and the foregoing three pages were signed by the Testatrix and declared by her to be her last will in our presence, and in testimony thereof we do here set our hands and witnesses in her presence and in the presence of each other this the day of the date of said will.

Daphne C. Allegri

Helen P. Baugh

KNOW ALL MEN BY THESE PRESENTS that I, LILLIE M. NORTHROP, hereby make and publish this my codicil to my last will and testament, the date of which I do not recall and which will is at this time inaccessible. The purpose of this codicil is:

FIRST: The devise made in said will to GERTRUDE NORTHROP I hereby revoke but provide that the property therein sought to be conveyed to her vest in my son, MILAN NORTHROP, under the said terms as was conveyed to Gertrude.

SECOND: To the said Milan Northrop I further leave my piano with all music, my radio-victrola, the bedroom set in the back room of my home, the hand-made chest of drawers in the front bedroom downstairs and one wool comfort. Also living room set of Furniture.

In all other respects my will remains as written.

IN WITNESS WHEREOF, I hereunto set my hand and seal this the Sixteenth day of December, Nineteen Hundred Forty-seven. Inter lineations made before signature.

Lillie M. Northrop

(SEAL)

The foregoing codicil was executed by the Testatrix in our presence and in testimony thereof we do hereto set our hands and seals as witnesses in her presence and in the presence of each other on the day of the date of said codicil.

Witnesses:

Rhoda L. Allen

Fairhope, Alabama

Elliott G. Richarby

Fairhope, Alabama

The underlined part of the above Codicil is written in long hand.

Exhibit 3
Ora S. Nelson

BELLE M. EDMISTON and
ELOISE M. DAMPIER,

PETITIONERS

VS

K. R. EWALD, as trustee,
successor to KIRBY WHARTON,
as trustee.

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

Comes, K. R. Ewald, as trustee, defendant in the above styled cause and answering petitioners' petition, says:

FIRST: He admits allegations of paragraphs first, second and third of the said petition.

SECOND: He denies the allegation of paragraph third.

THIRD: He admits those portions of the allegations of paragraph fifth wherein petitioners allege that they have entered into an agreement to sell the stock described in the petition to Henry G. Bishop and T. J. Klumpp at the sum of \$27,500.00; he admits that the par value of such stock is \$15,000.00; he admits that the sale price of the said stock is in excess of the book value of the said stock; he admits that the income thereof is of little benefit to petitioners; he admits that petitioners have requested and demanded that he join with them in the sale of the said stock at the said price and transfer and assign the certificate evidencing the same and that they claim the right to sell the said stock and they claim the ownership of the proceeds thereof and have demanded that he pay the same over to them upon the sale thereof, one half to each of them; he further admits that he has refused to join with them in the sale of the said stock and to pay over the proceeds to them as demanded.

FOURTH: Further answering the said petition and the allegations of fourth and fifth thereof, he says:

That under the said will and testament of the said Lillie M. Northrop, the petitioners have no right to sell the said stock, that if the said stock were sold, they are not the absolute owners of the proceeds thereof, that their only interest in the said stock is to

have the income therefrom paid over to them when and as the same is received by this trustee, that the trust under which he holds the said stock has not terminated, but that under the said trust, he is required and is duty bound to hold the said stock, to collect the dividends thereon and to pay the same to the petitioners, when received and that in the event the said stock is sold, under the said trust, he is required and duty bound to hold the proceeds thereof, to invest them in such manner as is provided by the laws of Alabama and to pay only the income thereof to the petitioners.

And now, having fully answered, this defendant prays that he may go hence with his reasonable cause in this behalf expended.


As Trustee, Defendant

are true, that Kirby Wharton, late a resident of Baldwin County, died on the 3rd day of April, 1952, that at the time of his death he was trustee under paragraph eleven of the will of Lillie M. Northrop, and as such, held shares of capital stock of the Bank of Fairhope for the petitioners, Eloise M. Dampier and Belle M. Edmiston, and that under paragraph twenty of the said will, the Judge of the Probate Court of Baldwin County, Alabama, is authorized and empowered to appoint a suitable person trustee, as successor to Kirby Wharton; and it further appearing that K. R. Ewald is a suitable person to act as trustee and to have and exercise the rights, powers and duties and to be subject to the restrictions and limitations provided by the said will and the laws of the State of Alabama relating thereto, and that the conditions of the estate are such that the trustee should be relieved of giving bond;

NOW THEREFORE, I, W. R. Stuart, Judge of the Probate Court of Baldwin County, Alabama, do hereby name and appoint K. R. Ewald as trustee to carry on the trust set up in paragraph eleven of the will of the said Lillie M. Northrop, dated March 5, 1945, and recorded in the office of the Judge of Probate of Baldwin County, Alabama, in Will Book E at Page 186, so that the title to the properties formerly held by the said Kirby Wharton, as trustee aforesaid, shall and does hereby vest in the said K. R. Ewald as trustee under the said paragraph of the said will with the full rights, powers, duties and subject to the restrictions and limitations provided by the said will and the laws of the State of Alabama made and provided relating thereto.

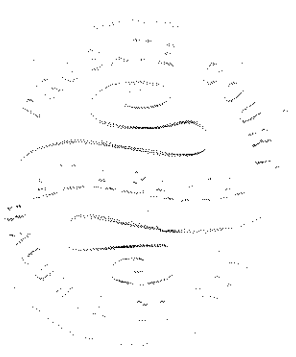
Done this the 8th day of May, 1952.

W R Stuart
Judge of Probate of Baldwin County, Alabama.

STATE OF ALABAMA

BALDWIN COUNTY

I, W. R. Stuart, Judge of Probate of Baldwin County hereby certify that the foregoing is a true, correct and literal copy of the order of the Judge of Probate of Baldwin County appointing K. R. Ewald trustee successor to Kirby Wharton trustee under the last will and testament of Lillie M. Northrop.



W. R. Stuart
Judge of Probate, Baldwin Co., Ala.

Exhibit "6"

Ora L. Nelson
Court Reporter

STATE OF ALABAMA

BALDWIN COUNTY

I, Margaret B. Wharton, the undersigned executor under the last will and testament of Kirby Wharton, heretofore admitted to probate and record in the Probate Court of Baldwin County, Alabama, and the sole beneficiary under the will and testament of the said Kirby Wharton, do hereby waive and relinquish any right which I, as executor of the estate of the said Kirby Wharton, deceased, and as beneficiary thereunder, may have to purchase the shares of capital stock of the Bank of Fairhope bequeathed to Kirby Wharton as trustee for Eloise M. Dampier and Belle M. Edmiston under paragraph 11 of the will of Lillie M. Northrop, dated March 5, 1945, admitted to probate and record in the office of the Probate Judge of Baldwin County, Alabama, recorded in Will Book E at Page 186.

Witness my hand this the 11 day of May, 1952.

Margaret B. Wharton

Exhibit "7"

Ora S. Nelson
Court Reporter

BELLE M. EDMISTON and
ELOISE M. DAMPIER,

PETITIONERS,

VS.

K. R. EWALD, as trustee,
successor to KIRBY WHARTON,
as trustee.

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

The parties to the foregoing cause do hereby consent,
agree and request that this cause be set down for hearing
forthwith.

This the 6th day of May, 1952.

Belle M. Edmiston
Petitioner

Eloise M. Dampier
Petitioner

K. R. Ewald
Defendant

Exhibit '8'
copy given Dad & Nelson
Court Reporter

ESCROW AGREEMENT

To: The Farmers Exchange Bank
Centreville, Mississippi

April 23, 1952

You are hereby instructed to make delivery of the following described cash and/or instruments herewith deposited in escrow upon payment or delivery to you of other cash and/or instruments as described below under delivery instructions, the latter to be delivered in exchange for the former:

DESCRIPTION OF CASH AND/OR INSTRUMENTS DEPOSITED

\$500.00 check signed by T. J. Klumpp, drawn on the Bank of Fairhope, as a guarantee of good faith.

DELIVERY INSTRUCTIONS

Mrs. Belle M. Edmiston, and Eloise M. Dampier agree to sell to T. J. Klumpp and Henry G. Bishop 300 shares of the common stock of the Bank of Fairhope, for \$27,500.00 of which the deposit of \$500.00 is a part, and is hereby acknowledged. Upon receipt of the certificates properly executed transferring them to T. J. Klumpp and Henry G. Bishop, the Farmers Exchange Bank of Centreville, Miss., agrees to pay over to Mrs. Belle M. Edmiston and Eloise M. Dampier the total amount of \$27,500.00, and to send the stock certificates to the Bank of Fairhope Alabama for the attention of Henry G. Bishop, Vice-Pres, Cashier. It is agreed that upon receipt of the securities, the Farmers Exchange Bank will notify said T. J. Klumpp, and Henry G. Bishop, at which time they will pay the balance of \$27,000.00.

If there should be failure to complete delivery instructions on or before April 23, 1953, you are hereby permitted to return all deposits to depositors, time being of the essence hereof.

The above cash and/or instruments is/are left with you in escrow and you are hereby released from any and all liability or claim whatsoever by receiving and delivering them, less your charges, and less any legal expenses incurred by you on account hereof.

T. J. Klumpp
Henry G. Bishop
Receipt is acknowledged of cash and/or instruments deposited as described above.

Belle M. Edmiston
Eloise M. Dampier

The Farmers Exchange Bank
Centreville, Miss.
By: N. B. Huey, Cashier
K. R. Ewald, Witness

Escrow Fee: None to be paid.