

3541

BALDWIN POLE & PILING COMPANY, a partnership composed of A. K. EASLEY, A. T. EASLEY and M. T. EASLEY; and A. K. EASLEY, A. T. EASLEY and M. T. EASLEY, individually,

Appellants

v.

STATE OF ALABAMA,

Appellee

IN THE CIRCUIT COURT

OF

BALDWIN COUNTY, ALABAMA,

IN EQUITY NO. 3541

FINAL DECREE

This cause coming on to be heard on this date and the parties thereto having appeared and made known to the Court that due to the specific facts and circumstances involved in this case, it now appears that it is very doubtful that the Appellant owes the tax which is covered by the final assessment of severance tax made by the State in this cause and for said reason, it appears that said final assessment should be set aside. Consent having been given by both parties to this cause that a decree be entered by this Court setting aside and declaring for naught said final assessment and that the costs be taxed against the Appellants;

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED by the Court that the final assessment of severance made by the State of Alabama against the Appellants in this cause on May 27, 1955 be and the same is hereby set aside and cancelled and declared to be a nullity; and

IT IS FURTHER ORDERED AND DECREED by the Court that the costs of said cause be and the same hereby are taxed against the Appellants, for which execution may issue if not paid within thirty days.

DONE this the 9th day of December, 1955.

FILED

DEC 9 1955

Hubert M. Hall
CIRCUIT JUDGE

ALICE J. DUCK, Register



STATE OF ALABAMA
DEPARTMENT OF REVENUE
LEGAL DIVISION
MONTGOMERY 2, ALABAMA.

December 6, 1955

W. L. HORN
Commissioner of Revenue

JAMES A. STEPHENS
Assistant Commissioner

JULIA KLINGE
Secretary

WILLARD W. LIVINGSTON
Counsel

H. GRADY TILLER
WILLIAM H. BURTON
JAMES R. PAYNE
Assistant Counsel

Mr. Norborne C. Stone
Chason & Stone
Attorneys at Law
Bay Minette, Alabama

Re: Baldwin Pole & Piling Company et al v. State. In the Circuit Court
of Baldwin County, Alabama, in Equity, No. 3541

Dear Mr. Stone:

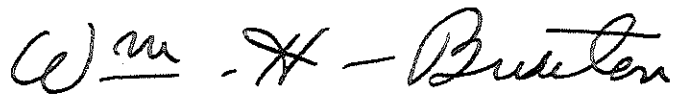
Delay in writing you about the Baldwin Pole & Piling Company matter has been caused by my being engaged in the trial of several other cases and for such reason, not having the time to give the matter attention until today.

With reference to the proposed decree which you attached to your letter of November 17, I note that it is in the form of a dismissal and for said reason, I do not believe it would work because of the fact that if the appeal is dismissed, it would serve only to leave the final assessment of severance tax still outstanding, with no further right of appeal as the time for appeal would have long since expired. In order to dispose of this matter, I suggest that we just go ahead and have Judge Hall enter a decree in the nature of a consent decree. In this connection I have drafted a proposed consent decree which I request that you please have Judge Hall enter, if same meets with both his and your approval.

This letter may be taken as the authority and consent, and as an appearance, on our part that said decree be entered. When the decree has been entered, I would appreciate your sending me a signed copy in order that we may be able to close our file in the case.

With best regards, I am

Sincerely yours,


WILLIAM H. BURTON
Assistant Counsel

WHB/hc
Encl.

FILED

DEC 9 1955

ALICE L. DUCK, REGISTER

BALDWIN POLE & PILING
COMPANY, A Partnership
composed of A. K. Easley,
A. T. Easley and M. T.
Easley and A. K. Easley,
A. T. Easley and M. T.
Easley, Individually,

Appellants

vs.

THE STATE OF ALABAMA,

Appellee

Y
Y
Y
Y
Y
Y
Y

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY

KNOW ALL MEN BY THESE PRESENTS: That we, Baldwin Pole & Piling Company, A Partnership composed of A. K. Easley, A. T. Easley and M. T. Easley and A. K. Easley, A. T. Easley and M. T. Easley, Individually, as Principals, and the undersigned as Sureties are held and firmly bound unto the State of Alabama in the sum of Five Thousand Sixty-seven and 76/100 Dollars (\$5,067.76), for the payment of which well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 5th day of June, 1955.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH: That Whereas, the above named, Baldwin Pole & Piling Company, A Partnership composed of A. K. Easley, A. T. Easley and M. T. Easley and A. K. Easley, A. T. Easley and M. T. Easley, Individually, have filed notice of appeal to the Circuit Court of Baldwin County, Alabama, In Equity, from a final deficiency assessment made by the State Department of Revenue of the State of Alabama, for additional severance tax alleged to be due the State of Alabama by the said Baldwin Pole & Piling Company, A Partnership composed of A. K. Easley, A. T. Easley and M. T. Easley and A. K. Easley, A. T. Easley and M. T. Easley, Individually, according to a final deficiency assessment made by such Department on May 27, 1955, whereby the said State Department of Revenue fixed such additional severance tax, penalty and interest, for the period from October 1, 1951, through December 31, 1954, at the sum of \$2,533.98.

NOW THEREFORE, if the said Baldwin Pole & Piling Company, A Partnership composed of A. K. Easley, A. T. Easley and M. T. Easley and A. K. Easley, A. T. Easley and M. T. Easley, Individually, shall pay all such additional severance tax, penalty, interest and costs, due the State of Alabama, or any agencies or subdivisions thereof, if any, and shall pay such judgment as may be rendered against them in the Circuit Court of Baldwin County, Alabama, In Equity, then this obligation to be void, otherwise to remain in full force and effect.

BALDWIN POLE & PILING COMPANY,
A Partnership composed of A. K.
Easley, A. T. Easley and M. T.
Easley:

By: A. K. Easley
As a Partner

and

A. K. Easley -

A. T. Easley

M. T. Easley

J. R. Wilson

L. D. Owen

Taken and approved this
9th day of June, 1955.

W. J. [Signature]
Register.

BALDWIN POLE & PILING COMPANY, A Partnership composed of A. K. Easley, A. T. Easley and M. T. Easley and A. K. Easley, A. T. Easley and M. T. Easley, Individually,	Y	
	Y	
	Y	IN THE CIRCUIT COURT OF
	Y	BALDWIN COUNTY, ALABAMA
Appellants	Y	IN EQUITY
vs.	Y	
THE STATE OF ALABAMA,	Y	
Appellee	Y	

KNOW ALL MEN BY THESE PRESENTS: That we, Baldwin Pole & Piling Company, A Partnership composed of A. K. Easley, A. T. Easley and M. T. Easley and A. K. Easley, A. T. Easley and M. T. Easley, Individually, as Principals, and the undersigned, as Sureties, are held and firmly bound unto the State of Alabama in the sum of One Hundred Dollars (\$100.00), for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 8th day of June, 1955.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH; That Whereas, the above named Baldwin Pole & Piling Company, A Partnership composed of A. K. Easley, A. T. Easley and M. T. Easley and A. K. Easley, A. T. Easley and M. T. Easley, Individually, have filed a notice of appeal to the Circuit Court of Baldwin County, Alabama, In Equity, from a final deficiency assessment made by the State Department of Revenue of the State of Alabama, for additional severance tax alleged to be due to the State of Alabama by the said Baldwin Pole & Piling Company, A Partnership composed of A. K. Easley, A. T. Easley and M. T. Easley and A. K. Easley, A. T. Easley and M. T. Easley, Individually, according to a final deficiency assessment made by such Department on May 27, 1955.

NOW THEREFORE, if the said Baldwin Pole & Piling Company, A Partnership composed of A. K. Easley, A. T. Easley, and M. T. Easley and A. K. Easley, A. T. Easley and M. T. Easley, Individually,

shall pay all costs which may accrue in said cause and which may be taxed against them in said cause, then this obligation to be void, otherwise to remain in full force and effect.

BALDWIN POLE & PILING COMPANY,
A Partnership composed of A. K.
Easley, A. T. Easley and M. T.
Easley:

By: A. K. Easley
As a Partner

and

A. K. Easley

A. T. Easley

M. T. Easley

J. R. Wilson

L. D. Quinn

Taken and approved this
9th day of June, 1955.

W. J. [Signature]
Register.

BOOK 017 PAGE 478

STATE OF ALABAMA)
BALDWIN COUNTY) IN THE CIRCUIT COURT - IN EQUITY

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon The State of Alabama to appear and plead, answer or demur, within thirty days from the service hereof, to the Bill of Complaint filed in the Circuit Court of Baldwin County, Alabama, In Equity, by Baldwin Pole & Piling Company, A Partnership composed of A. K. Hasley, A. T. Hasley, M. T. Hasley and A. K. Hasley, A. T. Hasley and M. T. Hasley, Individually, as Appellants, against The State of Alabama, as Appellee.

Witness my hand this 9th day of June, 1955.

Arice J. ...
Register.

BALDWIN POLE & PILING	X	
COMPANY, A Partnership	X	
composed of A. K. Easley,	X	IN THE CIRCUIT COURT OF
A. T. Easley and M. T.	X	
Easley and A. K. Easley,	X	BALDWIN COUNTY, ALABAMA
A. T. Easley and M. T.	X	
Easley, Individually,	X	IN EQUITY
	X	
Appellants	X	
	X	
vs.	X	
	X	
THE STATE OF ALABAMA,	X	
	X	
Appellee	X	

TO THE HONORABLE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA, IN EQUITY, AND TO THE HONORABLE HUBERT M. HALL, JUDGE THEREOF:

Come now the Appellants, Baldwin Pole & Piling Company, a Partnership composed of A. K. Easley, A. T. Easley and M. T. Easley and A. K. Easley, A. T. Easley and M. T. Easley, Individually, and file this their Bill of Complaint and respectfully represent and show unto your Honor and unto this Honorable Court as follows:

FIRST:

That Baldwin Pole & Piling Company is a Partnership composed of A. K. Easley, A. T. Easley and M. T. Easley, and that it is engaged in the business of buying poles and processing the same and selling the finished poles; that A. K. Easley, A. T. Easley and M. T. Easley are each over the age of twenty-one years and are bona fide resident citizens of Baldwin County, Alabama, having their permanent address therein and that the principal place of business and office of said Partnership is also in said County and State, at Bay Minette, Alabama.

SECOND:

That on to-wit: May 27, 1955, the State Department of Revenue of the State of Alabama, acting by and through J. A. Stephens, Assistant Commissioner of Revenue, under the authority conferred upon said Department by the provisions of Title 8, Sections 231 (2), et. seq., of the Code of Alabama of 1940, as amended, entered an order

making final a deficiency assessment previously made against your Appellants on February 24, 1955, for additional severance tax alleged to be due by your Appellants under the provisions of the Alabama Severance Tax Act (Act numbered 169, Acts of the Legislature, Regular Session, 1945, pages 235, et. seq., Title 8, Section 231 (2), as amended), for the period of time from October 1, 1951, through December 31, 1954, together with penalty and interest thereon in the following amounts:

Additional Severance Tax for said period.....	\$2049.76
Penalty thereon.....	242.06
Interest on said additional tax.....	<u>242.06</u>

Total amount assessed..... \$2533.88

THIRD:

Your Appellants respectfully contend that they are not due the State of Alabama, or any agency or subdivision thereof, any additional severance tax as set out in such final assessment but that, in fact, the State of Alabama owes to your Appellants a refund for and on account of an over-payment to the State of Alabama for severance tax during said period of time in this: that during said period of time they did, as manufacturers of forest products, pay to the State of Alabama, the sum of One Thousand Eight Hundred Seventy-four and 62/100 Dollars (\$1,874.62) as severance tax as shown by the records on file in the Office of the State Department of Revenue in Montgomery, Alabama, when, in fact, they were only liable for the payment of the sum of One Thousand Six Hundred Fifty and 24/100 Dollars (\$1,650.24), as such tax, which latter sum represents one-half (1/2) of one per cent. (1%) on the invoice value, F. O. B., loading out point on all of the poles purchased by your Appellants during said period, or a total invoice value, F. O. B., loading out point, of Three Hundred Thirty Thousand Forty-seven and 60/100 Dollars (\$330,047.60).

FOURTH:

Your Appellants further show unto this Court and unto your Honor that during the period of time covered by the said final deficiency assessment that they were operating a pole peeling machine in Bay Minette, Alabama, and were engaged in the business of buying

poles as stumpage from the owners of the land from which said poles were cut and that they also purchased poles delivered to them by owners or contractors, all of which poles were delivered to the site of the pole peeling machine operated by your Appellants and all of which poles, before any peeling, treatment, process or other manufacturing step was taken by your Appellants, became the absolute property of your Appellants. That after your Appellants purchased said poles and peeled the same, graded and assembled said poles and sold them on the open market at the best price obtainable for said poles. That your Appellants did nothing more than peel and remove the bark from the poles that they purchased either as stumpage from the owners or which were delivered to them at their mill. That the sum of Three Hundred Thirty Thousand Forty-seven and 60/100 Dollars (\$330,047.60) alleged above represents the amount paid by your Appellants for poles processed by them during said period covered by said final deficiency assessment.

FIFTH:

Your Appellants further show unto your Honor and unto this Honorable Court that when they were notified of the original deficiency assessment made against them for such severance tax on February 24, 1955, that they duly appeared before the State Department of Revenue of the State of Alabama and protested such deficiency assessment by said Department and did at said time present their claim for the refund due them from the State of Alabama as set out above. That less than thirty days have elapsed since May 27, 1955, the date on which the State Department of Revenue overruled the objection and protest filed by your Appellants and made final the deficiency assessment of severance tax alleged to be due from your Appellants.

WHEREFORE, the premises considered, your Appellants respectfully pray that the State of Alabama be made a party to this appeal by the usual writ of process of this Honorable Court, in such cases made and provided, requiring the State of Alabama, acting by and through its duly authorized officer or agent to appear and plead, answer or demur within the time allowed by law and under the rule prescribed by this Honorable Court and the Statutes in such cases made and provided.

BOOK 017 300 470

Your Appellants further pray that upon a final hearing of this cause that this Honorable Court will make and enter an order setting aside the final deficiency assessment of severance tax, penalty and interest hereinafter referred to and that this Honorable Court will further order and decree that your Appellants are not indebted to the State of Alabama for any additional amount of severance tax, penalty and interest, and that the costs of this cause shall be taxed against the State of Alabama; and that in and by the terms of said decree that this Honorable Court will ascertain and fix the amount due your Appellants from the State of Alabama for and on account of the over-payment by them of severance tax during the period hereinabove referred to and that this Honorable Court will order and decree the State of Alabama to refund to your Appellants the amount of such over-payment, with interest thereon, and your Appellants pray for such other, further and different relief as in the premises will be meet and proper.

BALDWIN POLE & FILING COMPANY,
A Partnership composed of A. K.
Easley, A. T. Easley and M. T.
Easley:

By: A. K. Easley
As a Partner

and

A. K. Easley
A. T. Easley
M. T. Easley

CHASON & STONE
Solicitors for Appellants

STATE OF ALABAMA

BALDWIN COUNTY

Before me, Walter M. Lindsey, a Notary Public, in and for said County in said State, personally appeared A. K. Easley, who is known to me and who after being by me first duly and legally sworn did depose and say under oath as follows:

That his name is A. K. Easley and that he signed the foregoing Bill of Complaint as one of the Appellants named in the said Bill of Complaint and that the facts alleged in said complaint are true and correct.


A. K. Easley

Sworn to and subscribed
before me this 7 day
of June, 1955.


Notary Public, Baldwin County, Ala.

BOOK 017 PAGE 476

BALDWIN POLE & PILING	I	
COMPANY, A Partnership	I	
composed of A. K. EASLEY,	I	
A. T. EASLEY, and M. T.	I	IN THE CIRCUIT COURT OF
EASLEY, and A. K. EASLEY,	I	
A. T. EASLEY and M. T.	I	BALDWIN COUNTY, ALABAMA
EASLEY, Individually,	I	
Appellants	I	IN EQUITY
vs.	I	
THE STATE OF ALABAMA,	I	
Appellee	I	

NOTICE OF APPEAL

TO THE SECRETARY OF THE STATE DEPARTMENT OF REVENUE OF THE STATE OF ALABAMA, AND TO ALICE J. DUCK, AS REGISTER OF THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA, IN EQUITY:

Take notice that the undersigned, Baldwin Pole & Piling Company, a Partnership composed of A. K. Easley, A. T. Easley and M. T. Easley and A. K. Easley, A. T. Easley and M. T. Easley, Individually, have appealed to the Circuit Court of Baldwin County, Alabama, In Equity, from the action of the State Department of Revenue of the State of Alabama, acting by and through J. A. Stephens, Assistant Commissioner of Revenue, making final its deficiency assessment of severance tax against the said Baldwin Pole & Piling Company a Partnership composed of A. K. Easley, A. T. Easley and M. T. Easley and A. K. Easley, A. T. Easley and M. T. Easley, Individually, for that period of time from October 1, 1951 through December 31, 1954, for additional severance tax alleged to be due for said period together with penalty and interest thereon, which said deficiency assessment was made final on May 27, 1955.

This notice of appeal is given pursuant to the requirements of Title 51, Section 140, and Title 8, Section 231 (19), of the Code of Alabama of 1940.

Dated this ___ day of June, 1955.

BOOK 017 PAGE 470

BALDWIN POLE & PILING COMPANY,
A Partnership composed of A. K.
Easley, A. T. Easley and M. T.
Easley:

By: A. K. Easley
As a Partner

and

A. K. Easley
A. T. Easley
M. T. Easley

We hereby certify that we have on this the 9th day of June, 1955, mailed a copy of the foregoing notice of appeal by registered mail, return receipt requested, postage prepaid, to the Secretary of the State Department of Revenue of the State of Alabama, at Montgomery, Alabama, and by filing the original of this notice with the Register of the Circuit Court of Baldwin County, Alabama, and by giving her a copy of the same.

Dated this 9th day of June, 1955.

CHASON & STONE

By: M. Stone
Solicitors for Appellant.



STATE OF ALABAMA
DEPARTMENT OF REVENUE
LEGAL DIVISION
MONTGOMERY 2, ALABAMA

July 13, 1955

W. L. HORN
Commissioner of Revenue

JAMES A. STEPHENS
Assistant Commissioner

JULIA KLINGE
Secretary

WILLARD W. LIVINGSTON
Counsel

H. GRADY TILLER
WILLIAM H. BURTON
JAMES R. PAYNE
Assistant Counsel

Mrs. Alice J. Duck
Register in Equity
Baldwin County Court House
Bay Minette, Alabama

Re: Baldwin Pole & Piling Company, a partnership composed
of A. K. Easley, A. T. Easley, and M. T. Easley; and
A. K. Easley, A. T. Easley, and M. T. Easley, individually,
vs. State of Alabama

Dear Mrs. Duck:

Enclosed is the original of the State's demurrer and answer in the above-styled cause, which we will appreciate your filing for us. You will note that we have combined our demurrer and answer in one document, without in any way waiving the demurrer.

Copy of these pleadings has been forwarded today to counsel for appellants.

With personal regards, I am

Sincerely yours,

WILLIAM H. BURTON
Assistant Counsel

WHB:hr

Enclosure

BALDWIN POLE & PILING
COMPANY, A Partnership
composed of A. K. EASLEY,
A. T. EASLEY, and M. T.
EASLEY: and A. K. EASLEY,
A. T. EASLEY and M. T.
EASLEY, individually

Appellants

VS.

STATE OF ALABAMA,

Appellee

IN THE CIRCUIT COURT

OF

BALDWIN COUNTY, ALABAMA

IN EQUITY

NO. 3541

DEMURRER

TO THE HONORABLE HUBERT M. HALL, JUDGE OF SAID COURT, SITTING IN EQUITY:

Now comes the appellee, State of Alabama in this cause, acting by and through its lawful counsel, and demurs to the bill of complaint filed by the appellants herein and as grounds of demurrer assigns the following, separately and severally, to-wit:

1. The bill of complaint is without equity.
2. The bill of complaint is without equity in that it fails to state a cause of action on which the relief prayed for therein could be granted.
3. The bill of complaint is without equity in that the averments thereof are vague and uncertain and fail to state a cause of action.
4. That the averments contained in the paragraph designated as "THIRD" by the appellants in said bill of complaint are conclusions on the part of the appellants which are not supported by any allegations of material fact.
5. That the allegations contained in the paragraph designated as "THIRD" of the bill of complaint are contrary to law.
6. That the allegations contained in the paragraph designated as "FOURTH" are conclusions on the part of the appellants which are not supported by any allegations of material fact.
7. That the allegations contained in the paragraph numbered "FOURTH" of the bill of complaint are contrary to law.

WHEREFORE, your appellee prays that this Honorable Court will dismiss

appellants' said bill of complaint on said grounds of demurrer and will tax the costs of said cause against the appellants.

John Patterson
JOHN PATTERSON, Attorney General of Alabama

Willard W. Livingston
WILLARD W. LIVINGSTON, Counsel, Department of Revenue of the State of Alabama, and Assistant Attorney General of Alabama

Wm. H. Burton
WILLIAM H. BURTON, Assistant Counsel, Department of Revenue of the State of Alabama, and Assistant Attorney General of Alabama

Attorneys for Appellee

* * * * *

A N S W E R


Now comes the appellee, State of Alabama, acting by and through its legal counsel, and without waiving its above and foregoing demurrer, and still insisting upon said demurrer, and answers the bill of complaint filed by the appellants and each and every part and paragraph thereof, separately and severally as follows:

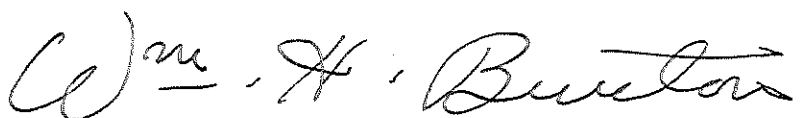
1. Appellee admits the allegations contained in the paragraph designated as "FIRST" of the bill of complaint.
2. Appellee admits the allegations contained in the paragraph designated as "SECOND" of the bill of complaint.
3. Appellee specifically denies the allegations contained in the paragraph designated as "THIRD" of the bill of complaint and further says that said allegations are untrue and incorrect.
4. Appellee specifically denies the allegations contained in the paragraph designated as "FOURTH" of the bill of complaint and further says that the allegations contained therein are both untrue and incorrect.
5. Appellee admits the allegations contained in the paragraph designated as "FIFTH" of the bill of complaint.

And in further answer to the bill of complaint, your appellee alleges that under Section 3 (8) of the Alabama Severance Tax Act, the administrative construction placed on said act by the State Department of Revenue since the inception thereof has been that the 1/2 of 1% of invoice value on poles was on the invoice value f. o. b. loading-out point on freight cars or other transportation facilities at the plant, where such poles were taken to a mill or plant prior to being shipped out of the State of Alabama; that for said reason the amount of severance tax, penalty, and interest which was assessed by the State Department of Revenue against the appellants in this case in the amount of \$2,533.88 was true and correct, and that said assessment was duly and regularly made by said Department in behalf of the State of Alabama and is valid in every respect, and same should be in all respects affirmed by this Honorable Court.

PREMISES CONSIDERED, your appellee prays that this Honorable Court will enter a final decree in this cause affirming said final assessment of severance tax in said amount of \$2,533.88 and will tax the costs of said cause against the appellants.


 JOHN PATTERSON, Attorney General of Alabama


 WILLARD W. LIVINGSTON, Counsel, Department of Revenue of the State of Alabama, and Assistant Attorney General of Alabama


 WILLIAM H. BURTON, Assistant Counsel, Department of Revenue of the State of Alabama, and Assistant Attorney General of Alabama

Attorneys for Appellee

* * * * *
 STATE OF ALABAMA
 MONTEGOMERY, COUNTY

I, William H. Burton, hereby certify that I have this date served the above and foregoing demurrer and answer on Chason & Stone, Attorneys at Law, Bay Minette,

Alabama, counsel of record for appellants, by mailing a copy of same to them by regular United States mail, properly addressed and with postage prepaid.

DONE this the 13th day of July, 1955.

FILED

JUL 14 1955

ALICE L. WALK, Register



William H. Burton