

4019

SIDNEY P. duMONT, individually and as Executor of the will of Lina duMont, deceased,	§	
	§	IN THE CIRCUIT COURT OF
Vs.	Complainant,	§ BALDWIN COUNTY, ALABAMA.
ROBERT B. duMONT,	§	IN EQUITY. NO. _____
	Respondent.	§

ORIGINAL BILL OF COMPLAINT  
TO HONORABLE H. M. HALL, JUDGE, IN EQUITY SITTING:

Comes now your complainant Sidney P. duMont, individually and as Executor of the will of Lina duMont, deceased, and respectfully shows unto the Court as follows:

1. Complainant Sidney P. duMont is a resident of Mobile County, Alabama, over the age of twenty-one years and of sound mind. Respondent, Robert B. duMont, is a resident of Mobile County, Alabama, over the age of twenty-one years and of sound mind.

2. The last will and testament of Lina duMont, who died on, to-wit, November 22, 1956, was duly admitted to probate in the Probate Court of Baldwin County, Alabama, on the 13th day of December, 1956, and a true and correct copy of said last will and testament is hereto attached, marked Exhibit "A" and hereby made a part hereof.

3. On the 13th day of December, 1956, the said Probate Court of Baldwin County, Alabama, issued letters testamentary to your complainant Sidney P. duMont, as Executor of the said last will and testament of Lina duMont, deceased, the said letters testamentary are still in full force and effect and the administration of the said estate is still pending in the Probate Court of Baldwin County, Alabama.

4. A controversy has arisen and now exists between complainant Sidney P. duMont, individually and as Executor of the said last will and testament, and respondent Robert B. duMont as a devisee under Item Two of said will with respect to the power and authority of Sidney P. duMont as Executor of said last will and testament, to sell the real property described in

Item Two of said last will and testament. Your complainant contends that as Executor of said last will and testament, and under the provisions of Item Eight thereof, he has full power and authority to make sale of the real property described in Item Two of said will for division or distribution of the proceeds between the two devisees named in Item Two of the said will, that is the said Sidney P. duMont and the said Robert B. duMont. Respondent Robert B. duMont denies and disputes the power and authority of complainant as Executor as aforesaid to sell the said land for distribution or division of the proceeds.

5. In order for your complainant properly to perform his duties and responsibilities as Executor of said last will and testament it is necessary that he obtain a construction of the aforesaid provisions of said will and a declaration of his power and authority as Executor thereunder to make sale of the said real property for distribution or division of the proceeds between the said two devisees named in Item Two of the said will.

PRAYER FOR PROCESS

WHEREFORE, complainant prays that the said Robert B. duMont be made a party respondent to this bill of complaint and be served with process requiring him to plead, answer or demur to this bill of complaint as required by law and the rules and practice of this Honorable Court.

PRAYER FOR RELIEF

And complainant prays that upon hearing of this cause Your Honor shall make and enter a decree construing the aforesaid provisions of said will and declaring that the same confer full power and authority upon complainant as Executor thereof to sell and convey the real property described in Item Two thereof for distribution or division of the proceeds between the two devisees named in said Item Two; and for any

and all such other or different relief as may be meet and proper, the premises considered.

*C. R. Johnston*  
\_\_\_\_\_  
*McCoy, Turner, Rogers, Johnston & Adams*  
Solicitors for Complainant.

Respondent's address:

Business address: c/o U. S. Customs Office,  
Federal Building,  
Mobile, Ala.

Residence address: Creighton Towers,  
758 St. Michael Street,  
Mobile, Ala.

SUMMONS AND COMPLAINT

Baldwin Times

THE STATE OF ALABAMA,

CIRCUIT COURT, BALDWIN COUNTY

BALDWIN COUNTY

No. 4019

TERM, 19.....

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Comanded to Summon Robert B. DuMont

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

Robert B. DuMont

Defendant .....

by Sidney P. DuMont, ind. and as Executor of the will of Linda DuMont, deceased.

Plaintiff.....

Witness my hand this 26th day of April 19 57

*Arise J. ...* Clerk

A. Copy of the Complaint is attached hereto.

Executed April 30, 1957

Defendant lives at

RECEIVED IN OFFICE

4-26-57

19.....

, Sheriff

I have executed this summons

this

30th day of April 1957

19.....

by leaving a copy with

Robert B. DuMont

SIDNEY P. DuMONT, IND. AND AS

Executor of the will of Linda DuMont

Deceased

Plaintiffs

vs.

Robert B. DuMont.

Defendants

SUMMONS and COMPLAINT

Filed ..... 19.....

FILED

APR 26 1957

....., Clerk

ALICE L. DUCK, Clerk

The Sheriff claims

miles at 10c per mile for

a total of \$ 10

Ray Bridges, Sheriff

Mobile County, Alabama

Plaintiff's Attorney

Defendant's Attorney

Sheriff

Deputy Sheriff



SIDNEY P. DuMONT, ET AL.,  
COMPLAINANTS,  
VS.  
ROBERT B. DuMONT,  
RESPONDENT.

)  
) IN THE  
) CIRCUIT COURT OF BALDWIN COUNTY  
) ALABAMA. IN EQUITY  
) NO. 4019  
)

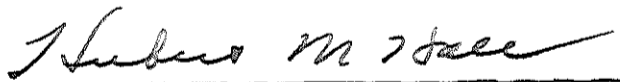
It appearing to the Court that the respective Solicitors of record of the above parties are desirous that this cause be dismissed;

=

It is, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the Cross bill on behalf of the Respondent be and it is hereby dismissed and respondent is taxed with the cost accruing as a result of the filing of said cross bill.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the original bill of complaint be, and the same is hereby dismissed without prejudice, and the Complainants are taxed with all costs, except those accruing as a result of the filing of the cross bill.

Done this 9th day of August, 1957.

  
\_\_\_\_\_  
Judge, 28th Judicial Circuit  
of Alabama.

SIDNEY P. duMONT, individually and as )	IN THE CIRCUIT COURT OF
Executor of the will of Lina DuMONT, )	
deceased. Complainant. )	BALDWIN COUNTY, ALABAMA.
	)
-vs-	)
	) IN EQUITY. NO. 4019.
ROBERT B. duMONT, Respondent. )	

ANSWER OF RESPONDENT.

Comes now the respondent in the above entitled cause, and answering the bill of complaint says as follows:

ONE.

The respondent admits the allegations of Paragraph One.

TWO.

The respondent admits the allegations of Paragraph Two.

THREE.

The respondent admits the allegations of Paragraph Three.

FOUR.

The respondent denies the allegations of Paragraph Four, and on the contrary alleges that this respondent is now and has at all times since the property was devised jointly to complainant and respondent, been ready, willing and able to either partition the property into two equal shares, or to agree upon a sale of said property for the best price available; that the respondent has offered to and now offers to divide the said real property into two shares and to allow the complainant to take his choice as to which of the two shares he desires; but that the complainant has at all times and still refuses to agree to any partition of the property that does not reserve to the complainant the right to control the sale by the respondent of his part of the property by reserving the right unto the complainant to purchase the property before the respondent's property can be sold by the respondent to any third party.

This respondent is further willing to agree that the property be sold for the best price obtainable and that one-half of the proceeds be distributed to the respondent. The respondent alleges that the complainant has collected rent in the sum of Eight Hundred and no/100 (\$800.00) Dollars for a parcel of the real property, but that the



complainant has refused and declined to pay to the respondent his one-half of the sum of money, or any sum of money received in rent of said parcel of property, and furthermore the complainant has used and continues to use a part of the property for the storage of personal property belonging to the complainant and in which your respondent has no interest; that the complainant claims to have the exclusive right to control the sales, use, renting and possession of all of said property to the exclusion of the respondent; and has used and is using the property for his own enjoyment and benefit and is refusing to account to the respondent for such use and benefit;

And this respondent further alleges that the complainant is wrongfully refusing to rent all of the property, but is, on the other hand, wrongfully holding part of the property for his own use without payment of any sum of money whatsoever to the respondent; that the interest of the complainant in keeping possession of part of the property to the exclusion of the respondent, for the storage of the complainant's personal property is adverse to and the interest of the complainant as executor or trustee under the said will of Lina duMont; and that the actions of the complainant, as evidenced by his refusal to rent the property and his refusal to remove his personal belongings therefrom, evidences an intention on his part to favor himself individually to the detriment of your respondent; that the complainant has stated that he will never agree to a division of the property unless the complainant is able to retain some control over the half of the property distributed to the respondent.


WHEREFORE the respondent prays that this answer be made a cross-bill and that the complainant be required to plead, answer or demur hereto within the time required by law and the practice of this Honorable Court.

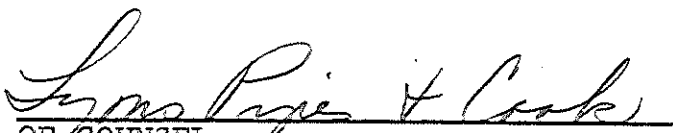
PRAYER FOR RELIEF

And cross-complainant prays that upon a hearing of this cause your Honor will enter a decree removing the complainant as

executor of the will of Lina DuMont, deceased, and will appoint a suitable commissioner to partition the property into two equal shares and will set apart one share to the complainant and one share to the respondent; or in the alternative, that a commissioner be appointed with directions to sell all of said property, pay the reasonable and customary costs of said sale and the balance of said sum of money be distributed to the complainant and the respondent equally, after the complainant has been charged with all sums of money that he has collected as rent on said property and failed and refused to account to the respondent, and further with all sums of money to which the respondent is entitled as damages for the wrongful withholding of possession of part of the property by the complainant from the respondent; or in the alternative that the cross-respondent be required to make bond in and sufficient amount to adequately protect your cross-complainant/be directed to promptly partition, or sell the property; that the cross-respondent be charged with all rents that he has collected and filed and refused to account to your cross-complainant and with all sums of money to which your cross-complainant is entitled for the withholding of possession by the cross-respondent and that the one-half of the property partitioned, or the one-half of the purchase money be ordered delivered to the cross-complainant by the cross-respondent.

And the cross-complainant prays for such other, further and different relief as to which he may be entitled to receive, the premises considered.

  
SOLICITOR FOR RESPONDENT AND  
CROSS-COMPLAINANT.

  
OF COUNSEL.

filed may 9, 1957  
Alice J. Luck  
executed 14 of May, 1957

Received in Sheriff's Office  
this 9 day of May, 1957  
TAYLOR WILKINS, Sheriff

Ex 499 4019 297

Sidney P. Dumont  
vs.  
Robert B. Dumont

Answer

EXECUTED  
This 14th day of May, 1957  
by serving a copy of the within on  
Sidney P. Dumont  
RAY D. BRIDGES, Sheriff  
By A. J. Chatham D.S.

The Sheriff claims 6  
miles at 10c per mile for  
a total of \$ .60  
Ray Bridges, Sheriff  
Mobile County, Alabama

✓ to be served  
on:  
Sidney P. Dumont  
162 Roberts Ave.,  
Mobile, Ala.

14X  
Cham (b)

FILED  
MAY 9 1957  
ALICE L. BUCK, Register

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able to either partition the property into two equal shares or to agree upon a sale of said property for the best price available" is not equivalent to an admission of the power and authority of cross-respondent as Executor as aforesaid to make sale of the said property for division or distribution.

6. The allegations of paragraph 4 of the cross-complaint that cross-complainant is now and has been "ready, willing and able to either partition the property into two equal shares or to agree upon a sale of said property for the best price available" is inconsistent with the denial by cross-complainant of the allegations of paragraph 4 of the original bill of complaint.

7. It affirmatively appears from the allegations of the cross-bill that the cross-complainant has no right to have a partition of said real property while administration of the estate of said decedent is pending.

8. It does not appear from the allegations of the cross-bill that cross-respondent is under any duty to enter into any agreement with the cross-complainant with respect to a partition or division of the said real property.

9. It does not appear from the allegations of the cross-bill that cross-respondent is under any duty to enter into any agreement with the cross-complainant with respect to a sale of the said real property.

10. It affirmatively appears from the allegations of the cross-bill that cross-respondent as Executor as aforesaid has the right to possession of the said real property during the period of administration for the rental of the same for the account of said Executor as such.

11. For aught that appears from the allegations of the cross-bill, cross-respondent as Executor as aforesaid has the right to possession of the said real property during the period of administration for the rental of the same for the account of said Executor as such.

12. The admission in the cross-bill that the administration of the estate of said decedent is still pending, affirmatively shows that cross-complainant has no right to seek accounting at this time for the rentals collected by said Executor as alleged in the cross-bill.

13. For aught that appears from the allegations of the cross-bill, cross-complainant has no right to seek accounting at this time for the rentals collected by said Executor as alleged in the cross-bill.

14. The allegation in the cross-bill that cross-respondent "is wrongfully refusing to rent all of the property", has the effect of admitting that cross-respondent as Executor as aforesaid has the power and authority to have possession of the said real property for the purpose of renting the same.

15. The allegation in the cross-bill to the effect that cross-respondent is wrongfully in possession of said real property is inconsistent with the other allegations of the cross-bill which affirmatively show that cross-respondent as Executor as aforesaid, has authority to have possession of the said real property for the purpose of renting the same while the administration of said estate is pending.

16. It does not appear from the allegations of the cross-bill that the alleged storage of personal property of cross-respondent in any way damages or is detrimental to the cross-complainant.

17. The allegation that cross-respondent is using the said property for his own individual benefit is a mere conclusion of the pleader.

18. The allegation that cross-respondent is using the said real property for his own individual benefit is inconsistent with other allegations of the cross-bill.

19. The allegation in the cross-bill that the actions of the cross-respondent evidence an intention on his part to favor himself individually to the detriment of cross-complainant, is a mere conclusion of the pleader.

20. No sufficient facts are alleged in the cross-bill to show any right on the part of cross-complainant to have cross-respondent removed as the Executor of the will of said decedent.

21. No sufficient facts are alleged in the cross-bill to show that cross-respondent as Executor as aforesaid should be required to give bond.

22. No sufficient facts are alleged in the cross-bill to show that the cross-respondent should be required to make any accounting at this time.

23. No sufficient facts are alleged in the cross-bill to show that cross-complainant has suffered any damage as the result of any alleged actions of cross-respondent.

24. The cross-bill is multifarious.

25. The subject matter of the cross-bill is not germane to the subject matter of the suit in which the same is filed.

Without waiving the foregoing demurrer, but expressly insisting thereon, said cross-respondent separately and severally demurs to that certain phase or aspect of said cross-bill seeking to remove the complainant as Executor of the will of said decedent, and for grounds of said demurrer adopts separately and severally each of the separate and several grounds hereinabove set forth numbered 1 to 25, inclusive.

And further said cross-respondent, without waiving the foregoing demurrers, or either of them, separately and severally demurs to that certain phase or aspect of the said cross-bill seeking a partition of the said real property and for grounds of said demurrer adopts separately and severally each of the separate and several grounds hereinabove set forth numbered 1 to 25, inclusive.

And further without waiving the foregoing demurrers, or any of them, said cross-respondent demurs to that certain phase or aspect of said cross-bill which seeks to have a sale of said property under order of Court, and for grounds of said demurrer adopts separately and severally each of the separate and several grounds hereinabove set forth numbered 1 to 25, inclusive.

And further without waiving the foregoing demurrers, or any of them, said cross-respondent demurs to that certain phase or aspect of said cross-bill which seeks an accounting by cross-respondent, and for grounds of said demurrer adopts separately and severally each of the separate and several grounds hereinabove set forth numbered 1 to 25, inclusive.

And further without waiving the foregoing demurrers, or any of them, said cross-respondent demurs to that certain phase or aspect of said cross-bill which seeks damages from cross-respondent, and for grounds of said demurrer adopts separately and severally each of the separate and several grounds hereinabove set forth numbered 1 to 25, inclusive.

And further without waiving the foregoing demurrers, or any of them, said cross-respondent demurs to that certain phase or aspect of said cross-bill which seeks to require cross-respondent to make bond as Executor under said will, and for grounds of said demurrer adopts separately and severally each of the separate and several grounds hereinabove set forth numbered 1 to 25, inclusive.

*C. K. Galtus Trust.*

*McCowen, James Rogers, Johnston & Ledgers*  
 Solicitors for cross-respondent.

Address of attorneys for  
 cross-complainant:

Sam W. Pipes, III, Esq.  
 Lyons, Pipes & Cook,  
 First National Bank Bldg.,  
 Mobile, Ala.

*filed June 14, 1957*  
*Alice G. Luck, Register*



MCCORVEY, TURNER, ROGERS, JOHNSTONE & ADAMS  
ATTORNEYS AT LAW

NINTH FLOOR MERCHANTS NATIONAL BANK BUILDING

HEMLOCK 3-6556 P. O. BOX 1070

MOBILE 6, ALABAMA

GESSNER T. MCCORVEY  
BEN D. TURNER  
C. M. A. ROGERS  
C. A. L. JOHNSTONE, JR.  
R. F. ADAMS  
JAMES L. MAY, JR.  
CHAUNCEY MOORE  
ALEX T. HOWARD, JR.

April 25, 1957.

SPECIAL DELIVERY

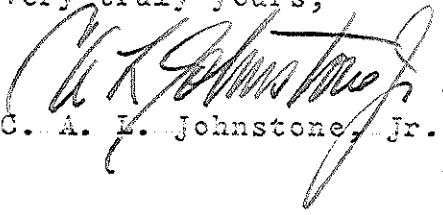
Mrs. Alice J. Duck,  
Register,  
Circuit Court of Baldwin County,  
In Equity,  
Bay Minette, Alabama.

Re: Sidney P. duMont, etc. vs. Robert B. duMont.

Dear Mrs. Duck:

In accordance with our telephone conversation this afternoon, I am enclosing an original and one copy of Exhibit "A" to be attached to the original and the copy of the bill of complaint in the above case, which I have sent to you by messenger today. I will certainly appreciate your attaching this exhibit and am sorry I failed to send it with the bill of complaint.

Very truly yours,

  
C. A. L. Johnstone, Jr.

CALJ/ws  
Enc.

MCCORVEY, TURNER, ROGERS, JOHNSTONE & ADAMS

ATTORNEYS AT LAW

NINTH FLOOR MERCHANTS NATIONAL BANK BUILDING

HEMLOCK 3-6556 P. O. BOX 1070

MOBILE 6, ALABAMA

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C. A. L. JOHNSTONE, JR.  
R. F. ADAMS  
JAMES L. MAY, JR.  
CHAUNCEY MOORE  
ALEX T. HOWARD, JR.

April 25, 1957.

Mrs. Alice J. Duck,  
Register,  
Circuit Court of Baldwin County,  
In Equity,  
Bay Minette, Alabama.

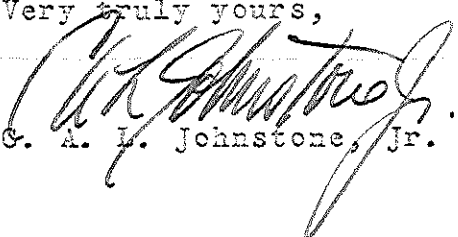
Re: Sidney P. duMont, etc. vs. Robert B. duMont.

Dear Mrs. Duck:

We hand you herewith original bill of complaint which we request that you please mark as filed immediately upon receipt.

We assume that you have a printed form of subpoena to be used but in the event you do not, we have prepared a form of subpoena which is enclosed with this letter and which may be used if you wish.

Very truly yours,

  
C. A. L. Johnstone, Jr.

CALJ/ws  
Enc.

LYONS, PIPES & COOK  
ATTORNEYS AT LAW  
517 FIRST NATIONAL BANK BUILDING  
MOBILE 8, ALABAMA

JOSEPH H. LYONS  
SAM W. PIPES, III  
WALTER M. COOK

May 6th, 1957.

Mrs. Alice J. Duck  
Clerk of the Circuit Court of  
Baldwin County  
Bay Minette, Alabama.

Sidney P. DuMont v. Robert B. DuMont  
Circuit Court of Baldwin County  
In Equity No. 4019.

Dear Mrs. Duck:

We enclose herewith original and one copy of answer by the respondent in the above entitled cause. Will you please have copy of the answer and cross-bill served upon Sidney P. DuMont at 162 Roberts Avenue, Mobile, Alabama.

Will you please note on the copy of this letter receipt of the enclosed papers and return same to us at P. O. Box 265, Mobile, Alabama.

Very truly yours,

LYONS, PIPES & COOK



Sam W. Pipes, III

SWP:ee

MCCORVEY, TURNER, ROGERS, JOHNSTONE & ADAMS

ATTORNEYS AT LAW

NINTH FLOOR MERCHANTS NATIONAL BANK BUILDING

HEMLOCK 3-6556 P. O. BOX 1070

MOBILE 6, ALABAMA

GESSNER T. MCCORVEY  
BEN D. TURNER  
C. M. A. ROGERS  
C. A. L. JOHNSTONE, JR.  
R. F. ADAMS  
JAMES L. MAY, JR.  
CHAUNCEY MOORE  
ALEX T. HOWARD, JR.

June 12, 1957.

Mrs. Alice J. Duck,  
Clerk,  
Circuit Court of Baldwin County,  
Bay Minette, Alabama.

Re: No. 4019 - In Equity  
Sidney P. duMont, etc. vs. Robert B. duMont.

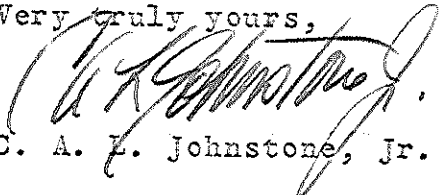
Dear Mrs. Duck:

Enclosed herewith is a demurrer to cross-bill which we request you to file in this matter.

Please give the usual notice to the opposing attorney of the filing of the demurrer and the time set for hearing.

We shall also appreciate it very much if you will advise us of the time when the demurrer will come up for hearing.

Very truly yours,

  
C. A. F. Johnstone, Jr.

CALJ/ws  
Enc.

M<sup>c</sup>CORVEY, TURNER, ROGERS, JOHNSTONE & ADAMS  
ATTORNEYS AT LAW  
NINTH FLOOR MERCHANTS NATIONAL BANK BUILDING  
HEMLOCK 3-5561 P. O. BOX 1070  
MOBILE 6, ALABAMA

GESSNER T. MCCORVEY  
BEN D. TURNER  
C. M. A. ROGERS (1891-1957)  
C. A. L. JOHNSTONE, JR.  
R. F. ADAMS  
JAMES L. MAY, JR.  
CHAUNCEY MOORE  
ALEX T. HOWARD, JR.  
J. JERETHA HILL  
CHARLES B. BAILEY, JR.

August 7, 1957.

Mrs. Alice Duck,  
Clerk of the Circuit Court,  
Baldwin County,  
Bay Minette, Alabama.

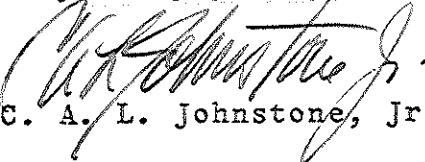
Re: Sidney P. duMont, etc. vs. Robert B.  
duMont. In Equity No. 4019.

Dear Mrs. Duck:

We have copy of letter to you from Mr. Sam W. Pipes, III, requesting dismissal of the cross-bill in the above styled cause and that the bill for cross-complainant's costs be mailed to him.

We hereby request that after such dismissal of the cross-bill that the original bill be dismissed and that the bill for court costs incurred by complainant be mailed to us.

Very truly yours,

  
C. A. L. Johnstone, Jr.

CALJ/ws

CC: Mr. Sam W. Pipes, III,  
Lyons, Pipes & Cook,  
Attorneys at Law,  
First National Bank Bldg.,  
Mobile, Ala.

LYONS, PIPES & COOK

ATTORNEYS AT LAW

517 FIRST NATIONAL BANK BUILDING

MOBILE 8, ALABAMA

JOSEPH H. LYONS  
SAM W. PIPES, III  
WALTER M. COOK  
SAMUEL W. INCE

August 5th, 1957.

Mrs. Alice Duck  
Clerk of the Circuit Court  
Baldwin County  
Bay Minette, Alabama.

Re: DuMont v. DuMont, Equity #4019

Dear Mrs. Duck:

As attorneys for Mr. Robert DuMont, we hereby ask that the cross bill in the above cause be dismissed without prejudice, and that the bill for the cross-complainant's costs be mailed to us. We do further hereby consent to the dismissal of the original bill and understand that you will be so authorized by Mr. C. A. L. Johnstone, Jr.

Very truly yours,

LYONS, PIPES & COOK

  
Sam W. Pipes, III

SWP:ee

cc: Mr. C. A. L. Johnstone, Jr.  
Attorney at Law  
Merchants National Bank Bldg.,  
Mobile, Ala.