

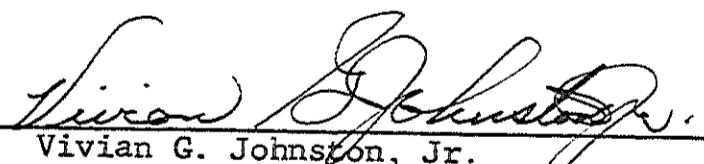
4706

IN THE MATTER OF THE ESTATE : IN THE CIRCUIT COURT OF
OF ADOLPH O. BERGLIN, : BALDWIN COUNTY, ALABAMA
DECEASED. : (SITTING IN EQUITY)
: CASE NO. 4706

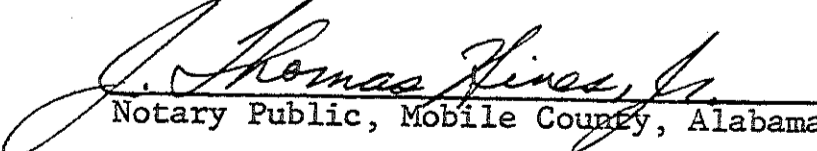
AFFIDAVIT

Before me, the undersigned authority, in and for said County in said State, personally appeared Vivian G. Johnston, Jr., who, being known to me and being by me first duly sworn, deposes and says:

That he is personally acquainted with Eva M. Berglin, Evalyn B. Porter Kennedy, Myrtle B. Slye and Lavigne A. Berglin, Jr., who are respondents in the above-styled cause; that the said respondents have made no appearance and have not pleaded, answered or demurred to the bill of complaint in the above-styled cause; and that the said respondents are, and ~~neither~~ ^{each} of the said respondents is, not now in the military service of the United States of America, or in any branch of said military service, but each of said respondents is a resident of Fairhope, in Baldwin County, Alabama.


Vivian G. Johnston, Jr.

Subscribed and sworn to before me on this the 19TH day of FEBRUARY, 1960.


Notary Public, Mobile County, Alabama

FILED
FEB 22 1960

ALICE J. DUCK, Register

STATE OF ALABAMA:

COUNTY OF BALDWIN:

IN THE MATTER OF THE
ESTATE OF ADOLPH O.
BERGLIN, DECEASED.

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IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,
IN EQUITY
CASE NO. 4706

Comes Myrtle B. Slye, a respondent in the above styled cause, a resident of Fairhope in the County of Baldwin and State of Alabama, and acknowledges service of summons and complaint, and waives any other service of process in said cause, in accordance with the Code of Alabama of 1940, Title 7, Section 197.

Myrtle B. Slye
Myrtle B. Slye

Witness:

Ernest M. Bailey

STATE OF ALABAMA:

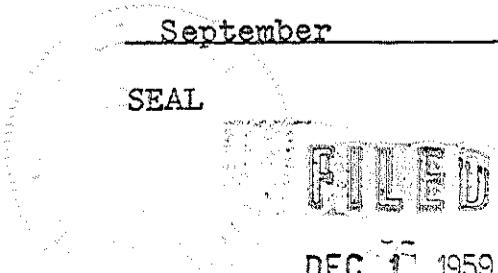
COUNTY OF BALDWIN:

I, the undersigned authority in and for said County and said State, do hereby certify that the foregoing acknowledgement of service of summons and complaint and waiver of any other service of process was executed by Myrtle B. Slye, who is known to me, and who acknowledged before me on this date, that being informed of the contents of said acknowledgement and waiver, she executed the same voluntarily on the day the same bears date in the presence of ERNEST M. BAILEY, a credible witness who has subscribed his name thereto, and in my presence.

Given under my hand and official seal on this the 11th day of September, 1959.

SEAL

Ernest M. Bailey
Notary Public, Baldwin County, Alabama



DEC 17 1959

STATE OF ALABAMA :

COUNTY OF BALDWIN :

IN THE MATTER OF THE ESTATE)
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OF ADOLPH O. BERGLIN, DECEASED.)
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IN THE CIRCUIT COURT OF
THE COUNTY OF BALDWIN,
STATE OF ALABAMA
CASE NO. 4706

Comes Robert S. Berglin, one of the respondents in the above styled cause, a resident of and domiciled in the State of Alabama but temporarily stationed at Fort Jackson, South Carolina, in the service of the Army of the United States, and acknowledges service of summons and complaint, and waives any other service of process in said cause, in accordance with the provisions of Title 7, Section 197 of the Code of Alabama of 1940. Said Robert S. Berglin does hereby waive all other or further notice either by publication or otherwise, of any and all proceedings in this cause, and does hereby enter his appearance in court upon the hearing of the petition for final settlement of the estate and for construction of the will of the said Adolph O. Berglin, deceased, and for any and all other purposes in connection with, or related to, the said cause.

The said Robert S. Berglin does hereby waive any and all rights and privileges to which he is otherwise entitled under the provisions of the Soldiers' and Sailors' Civil Relief Act, 50 U.S.C.A. Section 510 et seq., and requests, insofar as the court may legally do so, that the court shall proceed in the hearing of the above styled cause in the same manner in which the court could otherwise proceed if the said Robert S. Berglin were not in the active service of the Army of the United States and thereby entitled to certain rights and

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ALICE J. DUCK, CLERK
REGISTER

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privileges under the provisions of the said Soldiers' and Sailors' Civil Relief Act.

Robert S. Berglin
Robert S. Berglin

WITNESS:

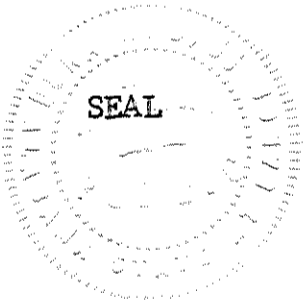
Mildred F. Gessard

STATE OF ALABAMA:

COUNTY OF BALDWIN:

I, the undersigned authority in and for said County and said State, do hereby certify that the foregoing acknowledgment of service of summons and complaint and waiver of any other service of process was executed by Robert S. Berglin, who is known to me, and who acknowledged before me on this date, that being informed of the contents of said acknowledgment and waiver, he executed the same voluntarily on the day the same bears date in the presence of Mildred F. Gessard, a credible witness who has subscribed her name thereto, and in my presence.

Given under my hand and official seal on this the 20 day of October, 1959.



Diana W. Bass
Notary Public, Baldwin County, Alabama

State at Large
My Commission expires January 20, 1962.

FILED
DEC 1 1959
ALICE L. DUCK, CLERK
REGISTER

IN THE MATTER OF THE ESTATE
OF ADOLPH O. BERGLIN, Deceased.

MARIANNE LOUISE BERGLIN, PAULA H.
PORTER, and BECKY BERGLIN, Minors.

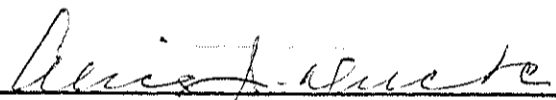
IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

IN EQUITY.

No. 4706


TO THE HONORABLE NORBORNE C. STONE, Esq.

Take notice that under and by an ORDER and DECREE of this Honorable Court, made, entered and issued on this the 1 day of December, 1959, you have been appointed to serve as Guardian ad Litem of the above named minors in connection with the matter of the Bill of Declaratory Judgment and Petition for Final Settlement by Marvin O. Berglin, individually and as Executor under the Last Will and Testament of Adolph O. Berglin, Deceased et al.


Register in Chancery

ACCEPTANCE OF GUARDIAN AD LITEM

Now Comes Norborne C. Stone, Esq., heretofore appointed by the Court as Guardian Ad Litem to represent the interest of Marianne Louise Berglin, Paula H. Porter, and Becky Berglin, minors, in the above matter, and accepts said appointment and consents to represent the interest of said minors at said hearing.


Guardian Ad Litem

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EMEL MAE CLERK
REGISTER

IN THE MATTER OF THE ESTATE
OF ADOLPH O. BERGLIN

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IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY NO. 4706

ANSWER OF GUARDIAN AD LITEM

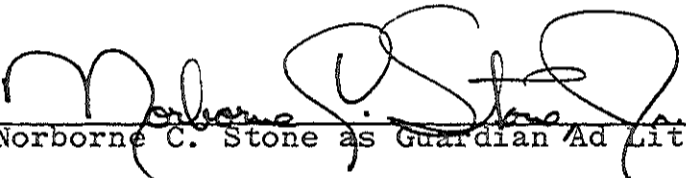
Comes now the undersigned Norborne C. Stone, as Guardian Ad Litem for Marianne Louise Berglin, Paula H. Porter and Becky Berglin, minors, and for answer to the Bill for Declaratory Judgment and the Petition for Final Settlement heretofore filed in the above matter, says as follows:

He denies each and every allegation of the petition and bill and demands strict proof thereof.

FILED

FEB 22 1960

ALICE J. DUCK, Register


Norborne C. Stone as Guardian Ad Litem

IN THE MATTER OF : IN THE CIRCUIT COURT
 THE ESTATE OF : OF BALDWIN COUNTY,
 ADOLPH O. BERGLIN, : ALABAMA
 DECEASED : IN EQUITY
 : NO. 4706

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

PETITION FOR REMOVAL OF ADMINISTRATION TO EQUITY

Your petitioner, the undersigned Marvin O. Berglin, executor of the estate of Adolph O. Berglin, deceased, respectfully shows unto this Honorable Court that he was on, to-wit, the 26th day of April, 1952, duly and legally appointed as executor of the estate of Adolph O. Berglin, deceased, in and by the Probate Court of Baldwin County, Alabama, and in said Court duly qualified as such executor and that the administration of said estate is now pending in the said Probate Court.

That there has been no final settlement of said estate, and that no proceedings have been taken in said Probate Court looking to a final settlement of said estate, and that in the opinion of your petitioner, the said executor, such estate can be better administered in the Circuit Court of Baldwin County, in Equity, than in the Probate Court.

Wherefore your petitioner respectfully prays that an order of this court be made and entered, removing the administration of the estate of Adolph O. Berglin, deceased, from the Probate Court of Baldwin County into this Honorable Court; and petitioner prays for any and all orders and decrees as may be necessary or appropriate in the premises.

FILED

SEP 16, 1959

ALICE J. DUCK, CLERK
 ALICE J. DUCK, REGISTER

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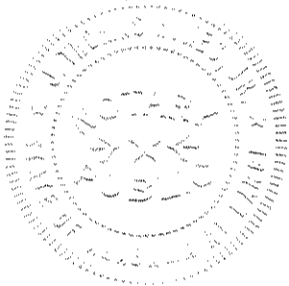
Marvin O. Berglin
 As Executor of the Estate of Adolph
 O. Berglin, Deceased.

STATE OF ALABAMA :

COUNTY OF BALDWIN:

Before me, J. Thomas Hines, Jr., a Notary Public in and for said State and County, personally appeared Marvin O. Berglin, whose name is signed to the foregoing petition and who, being by me first duly sworn, deposes and says that the facts stated in the foregoing petition are true.

Subscribed and sworn to before me on this 14TH day of SEPTEMBER, 1959.



J. Thomas Hines, Jr.
Notary Public, State of Alabama at Large

STATE OF ALABAMA:

COUNTY OF BALDWIN:

IN THE MATTER OF THE
ESTATE OF ADOLPH O.
BERGLIN, DECEASED.

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IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,
IN EQUITY
CASE NO. 4706

Comes Eva M. Berglin, a respondent in the above styled cause, a resident of Fairhope in the County of Baldwin and State of Alabama, and acknowledges service of summons and complaint, and waives any other service of process in said cause, in accordance with the Code of Alabama of 1940, Title 7, Section 197.

Eva M. Berglin
Eva M. Berglin

Witness:

Ernest M. Bailey

STATE OF ALABAMA:

COUNTY OF BALDWIN:

I, the undersigned authority in and for said County and said State, do hereby certify that the foregoing acknowledgement of service of summons and complaint and waiver of any other service of process was executed by Eva M. Berglin, who is known to me, and who acknowledged before me on this date, that being informed of the contents of said acknowledgement and waiver, she executed the same voluntarily on the day the same bears date in the presence of Ernest M. Bailey, a credible witness who has subscribed his name thereto, and in my presence.

Given under my hand and official seal on this the 14th day of September, 1959.

SEAL

FILED

DEC 17 1959

AUG. L. DUCK, CLERK REGISTER

Helen Bailey
Notary Public, Baldwin County, Alabama.

STATE OF ALABAMA :

COUNTY OF BALDWIN :

IN THE MATTER OF THE)
ESTATE OF ADOLPH O.)
BERGLIN, DECEASED.)

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,
IN EQUITY
CASE NO. 4706

Comes Evalyn B. Porter Kennedy (being one and the same person as Evalyn B. Porter) a respondent in the above styled cause, a resident of Fairhope in the County of Baldwin and State of Alabama, and acknowledges service of summons and complaint, and waives any other service of process in said cause, in accordance with the Code of Alabama of 1940, Title 7, Section 197.

Evalyn B. Porter Kennedy
Evalyn B. Porter Kennedy

Witness:

Helen Bailey

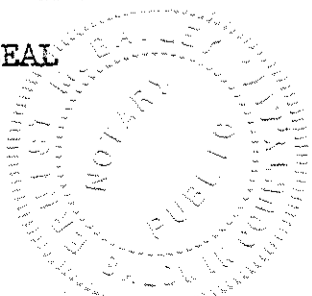
STATE OF ALABAMA:

COUNTY OF BALDWIN:

I, the undersigned authority in and for said County and said State, do hereby certify that the foregoing acknowledgment of service of summons and complaint and waiver of any other service of process was executed by Evalyn B. Porter Kennedy (being one and the same person as Evalyn B. Porter) who is known to me, and who acknowledged before me on this date, that being informed of the contents of said acknowledgment and waiver, she executed the same voluntarily on the day the same bears date in the presence of Helen Bailey, a credible witness who has subscribed her name thereto, and in my presence.

Given under my hand and official seal on this the 21 day of November, 1959.

SEAL



FILED

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ALICE L. DUCK, CLERK REGISTER

Helen Bailey
Notary Public, Baldwin County, Alabama

STATE OF ALABAMA:

COUNTY OF BALDWIN:

IN THE MATTER OF THE)	IN THE CIRCUIT COURT OF
ESTATE OF ADOLPH O.)	BALDWIN COUNTY, ALABAMA,
BERGLIN, DECEASED.)	IN EQUITY
)	CASE NO. 4706

Comes Lavigne A. Berglin, Jr., a respondent in the above styled cause, a resident of Fairhope in the County of Baldwin and State of Alabama, and acknowledges service of summons and complaint, and waives any other service of process in said cause, in accordance with the Code of Alabama of 1940, Title 7, Section 197.

Witness:

Lavigne A. Berglin, Jr.
Lavigne A. Berglin, Jr.

Michael F. Grand

STATE OF ALABAMA:

COUNTY OF BALDWIN:

I, the undersigned authority in and for said County and said State, do hereby certify that the foregoing acknowledgement of service of summons and complaint and waiver of any other service of process was executed by Lavigne A. Berglin, Jr., who is known to me, and who acknowledged before me on this date, that being informed of the contents of said acknowledgement and waiver, he executed the same voluntarily on the day the same bears date in the presence of Michael F. Grand, a credible witness who has subscribed her name thereto, and in my presence.

Given under my hand and official seal on this the 14 day of September, 1959.

SEAL

Dora W. Boas
Notary Public, Baldwin County, Alabama.
State of Large
My Commission expires Jan 20, 1959

FILED

DEC 17 1959

ALICE J. DUCK, CLERK REGISTER

IN THE MATTER OF THE
ESTATE OF ADOLPH O. BERGLIN,
DECEASED.

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IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
(SITTING IN EQUITY)
CASE NO. 4706

TO THE HONORABLE HUBERT H. HALL, JUDGE OF THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA, SITTING IN EQUITY:

Come now the Complainants, Marvin O. Berglin, individually and as Executor under the Last Will and Testament of Adolph O. Berglin, deceased; Ouida S. Berglin, individually and as Executor under the Last Will and Testament of Lavigne A. Berglin, deceased; and The Merchants National Bank, a National Banking Association, having its principal office and post office address at 106 St. Joseph Street, Mobile, Alabama, as Executor under the Last Will and Testament of Lavigne A. Berglin, deceased, and respectfully allege:

1. Adolph O. Berglin, who was a bona fide resident citizen and inhabitant of Baldwin County, Alabama, at the time of his death, departed this life on, to-wit, the 9th day of April, 1952, leaving a Last Will and Testament which was duly admitted to probate in the Probate Court of Baldwin County, Alabama, on the 26th day of April, 1952, a true and correct copy of said Will being attached hereto and made a part hereof as if fully set out herein, and marked Exhibit "A" for purposes of identification. Letters testamentary under said Will were duly issued to your Complainant, Marvin O. Berglin, and to Lavigne A. Berglin by the Probate Court of Baldwin County, Alabama, on the 26th day of April, 1952. Lavigne A. Berglin served as Executor under said Will until the time of his death on, to-wit, the 23rd day of April, 1957, and Marvin O. Berglin, one of your Complainants, is still serving as an Executor under said Will. Complainants aver that the administration of the Estate of Adolph O. Berglin, deceased, was, by decree of the Circuit Court of Baldwin County, Alabama, in Equity,

dated the _____ day of _____, 1959, removed from the Probate Court of Baldwin County, Alabama, to the Circuit Court of Baldwin County, Alabama, in Equity, where the administration of said estate is presently pending.

2. This bill of complaint is brought against Myrtle B. Slye, Eva M. Berglin, Evalyn B. Porter Kennedy (being one and the same person as Evalyn B. Porter), Paula H. Porter, Lavigne A. Berglin, Jr., Robert S. Berglin, Becky Berglin, and Marianne Louise Berglin. Complainants aver that they have made party respondents hereto all persons, other than Marvin O. Berglin, who is a party complainant, who could claim any interest under the Last Will and Testament of Adolph O. Berglin, deceased, by virtue of or on account of, any possible construction or interpretation thereof, or who could claim any interest if the said Adolph O. Berglin had died intestate. Complainants aver that Eva M. Berglin, Marvin O. Berglin, Myrtle B. Slye and Evalyn B. Porter Kennedy are presently living and that Lavigne A. Berglin survived Adolph O. Berglin, but died prior to the date of the filing of this bill of complaint.

3. Each of the party respondents hereto is of sound mind, a resident of Baldwin County, Alabama, and their names, ages, residences and post office addresses are as follows:

(a) Eva M. Berglin is over the age of twenty-one years and resides at 113 Oak Street, Fairhope, Alabama.

(b) Lavigne A. Berglin, Jr. is over the age of twenty-one years and resides at Morphy Avenue, Fairhope, Alabama. Marianne Louise Berglin is under the age of fourteen years, in the care and custody of Lavigne A. Berglin, Jr., and resides with him at Morphy Avenue, Fairhope, Alabama.

(c) Robert S. Berglin is over the age of twenty-one years and resides at Battles Wharf, Fairhope, Alabama.

(d) Evalyn B. Porter Kennedy is over the age of twenty-one

years and resides at 111 Oak Street, Fairhope, Alabama. Paula H. Porter is under the age of twenty-one years, in the care and custody of Evalyn B. Porter Kennedy, and resides with her at 111 Oak Street, Fairhope, Alabama.

(e) Myrtle B. Slye is over the age of twenty-one years and resides at 1 Merston, Fairhope, Alabama.

4. Complainants aver that Lavigne A. Berglin departed this life on, to-wit, the 23rd day of April, 1957, leaving a Last Will and Testament. Said Will was duly admitted to probate in the Probate Court of Baldwin County, Alabama, on the 30th day of April, 1957, and, on the same date, letters testamentary under said Will were duly issued to Guida S. Berglin and The Merchants National Bank of Mobile.

5. There is attached hereto and made a part hereof as if fully set forth herein, and marked for identification as Exhibit "B", a true and correct statement, to the best of the knowledge and belief of Marvin O. Berglin, one of your Complainants and the surviving Executor of the Estate of Adolph O. Berglin, deceased, of the inventory of the Estate of Adolph O. Berglin, deceased, on which said statement is shown all of the personal property, including monies and debts, of every type and form which has come to the knowledge or possession of Marvin O. Berglin, the surviving Executor of said Estate. Said Eva M. Berglin has received all of the property shown on said inventory.

6. Complainants aver that the Last Will and Testament of Adolph O. Berglin, deceased, is ambiguous, and should be construed by this Court for the purpose of determining the intention of the testator as to the proper legatees of the property bequeathed thereunder and that upon such construction thereof substantial property rights depend.

7. Paragraphs First and Second of the Last Will and Testament of Adolph O. Berglin, deceased, are set out in full as follows:

"FIRST: After the payment of what debts I may leave and the expense of administration, all property of which I die possessed and income therefrom is to go to my beloved wife, EVA M. BERGLIN, for her use and benefit for the term of her natural life, except that out of said income shall be erected a head stone for my grave to be bought and erected at my grave as soon as possible after my death unless this has already been done under the Will of my wife."

"SECOND: My daughter, Evalyn B. Porter and her daughter, Paula H. Porter, are to receive jointly the sum of fifty dollars per month until Paula attains the age of eighteen, when such allowance for both shall stop."

Complainants aver that there is a conflict between Paragraph First and Paragraph Second of said Will. Paragraph First provides that all the property of which testator should die possessed, and the income therefrom, is to go to his wife, Eva M. Berglin, for her use and benefit for the term of her natural life. Paragraph Second provides that Evalyn B. Porter Kennedy and Paula H. Porter shall receive jointly the sum of fifty dollars per month until Paula reaches the age of eighteen, when such allowance to both shall stop. Said Will fails to provide from what source the said allowance of fifty dollars per month shall be paid or when the payment of said allowance shall commence. The only property from which such payments could be made is the property devised and bequeathed under Paragraph First. Complainants are unable to determine whether the said allowance provided for in Paragraph Second should take precedence over the life estate of Eva M. Berglin provided for in Paragraph First, or whether said allowance provided for in Paragraph Second is to be paid out of income which Paragraph First provides that Eva M. Berglin shall receive for the period of her natural life, or whether said allowance provided for in Paragraph Second should be payable out of the corpus of the property devised and bequeathed under Paragraph First.

8. Complainants aver that the property shown on the inventory of the Estate of Adolph O. Berglin, deceased, being Exhibit "B" attached hereto, has been distributed as follows:

(a) Item No. 1, consisting of forty-four (44) shares of common stock of Peoples Ice Company, on said inventory has been registered, pursuant to the provisions of Paragraph First and Third of said Will, in the name of Eva M. Berglin for life with the remainder interest in eleven (11) shares to each of the following named persons: Lavigne A. Berglin, Marvin O. Berglin, Myrtle B. Slye, and Evalyn B. Porter Kennedy.

(b) Item No. 2, consisting of seventy (70) shares of common stock of the Bank of Fairhope, on said inventory has been registered, pursuant to the construction by the Executors of said Estate of Paragraphs First and Sixth of said Will, in the name of Eva M. Berglin for life with the remainder interest therein in Lavigne A. Berglin, Marvin O. Berglin, Myrtle B. Slye, and Evalyn B. Porter Kennedy, each of said persons having an undivided one-fourth interest in such remainder.

(c) Item No. 3, consisting of forty (40) shares of common stock of the Central Baldwin Bank, on said inventory was delivered to Eva M. Berglin. Said stock was sold by Eva M. Berglin, as the owner of said stock for life, with the consent of Lavigne A. Berglin, Marvin O. Berglin, Myrtle B. Slye, and Evalyn B. Porter Kennedy.

(d) Item No. 4, consisting of cash in the sum of \$.22 on deposit in the Bank of Fairhope, on said inventory was delivered to Eva M. Berglin.

(e) Item No. 5 of said inventory: subsequent to the death of Adolph O. Berglin, the interest of said estate in part of the assets of Fairhope Ice and Creamery Company, a partnership, were transferred to Fairhope Ice and Creamery Company, Inc., a corporation

organized and existing under the laws of the State of Alabama, in exchange for one hundred and fifty (150) shares of common stock of the par value of one hundred and no/100 dollars (\$100.00) each and ten (10) debentures in the face amount of five thousand and no/100 dollars (\$5,000.00) each or a total face amount of fifty thousand and no/100 dollars (\$50,000.00). Said stock and debentures are registered in the name of Eva M. Berglin for life, with the remainder interest therein in Lavigne A. Berglin, Marvin O. Berglin, Myrtle B. Slye and Evalyn B. Porter Kennedy, each of said persons having an undivided one-fourth interest in such remainder. The interest of said Estate in all assets of said partnership which were not transferred to said Fairhope Ice and Creamery Company, Inc. are owned and held by Eva M. Berglin for life with the remainder interest therein in Lavigne A. Berglin, Marvin O. Berglin, Myrtle B. Slye and Evalyn B. Porter Kennedy, each of said persons having an undivided one-fourth interest in such remainder.

(f) Item No. 6 consisting of an automobile on said inventory was delivered to Eva M. Berglin. Eva M. Berglin transferred her interest in said automobile to Myrtle B. Slye and delivered said automobile to her.

(g) Item No. 7, consisting of personal effects, including watch and ring on said inventory, has been delivered to Eva M. Berglin.

Complainants are informed and believe, and, upon such information and belief, aver that the taxes and expenses of administration exceeded the value of cash on deposit and personal effects.

(9) Complainants further aver that there is no property remaining in the said Estate from which the bequest made in Paragraph Second of said Will may be paid. Complainants are informed and believe and, upon such information and belief, aver that, if the said bequest to Evalyn B. Porter Kennedy and Paula H. Porter jointly is not payable out of the income of said estate, the said bequest must be abated in full.

10. Said Will provides in part as follows:

"THIRD: Upon the death of my said wife, the following devises and bequests are to be paid out of the estate:

(e) To my grandson, Lavigne A. Berglin, Jr., I leave Five Hundred Dollars in cash.

(f) To my grandson, Robert S. Berglin, I leave Five Hundred Dollars in cash to be given him at the age of twenty-one.

(g) To my granddaughter, BECKY BERGLIN, I leave Five Hundred Dollars in cash to be given her when she attains the age of eighteen years.

(h) To my granddaughter, PAULA H. PORTER, I leave Twenty-five Hundred Dollars in cash to be paid to her when she attains the age of eighteen years.

(i) To my great granddaughter, MARIANNE LOUISE BERGLIN, I leave Two Hundred Dollars in cash to be paid to her when she reaches the age of eighteen years.

Complainants aver that all of the property of Adolph O. Berglin, was specifically bequeathed and there is no property in the Estate of Adolph O. Berglin, deceased, out of which the pecuniary bequests provided to be made in Paragraph Third may be paid. Complainants are informed and believe, and, upon such information and belief, aver that said bequest provided to be made in Paragraph Third of said Will must be abated in full.

11. Paragraph Seventh of said Will provides as follows:

"SEVENTH: Upon the death of my wife, Eva M. Berglin, the one-third income of Fairhope Ice and Creamery Company provided for her in next succeeding paragraph is to be divided equally among our four living children, Lavigne, Marvin, Myrtle, and Evalyn or to the survivors living at my death."

Your Complainants are informed and believe, and, upon such information and belief, aver that the term "income of Fairhope Ice and Creamery Company" was inaptly used in drafting said Will and that Adolph O. Berglin, deceased, thereby intended to dispose of his interest in said Fairhope Ice and Creamery, a partnership, and that no other disposition was made of the remainder interest in said partnership. It appears that the said words "income of Fair-

hope Ice and Creamery Company" as used in said Will were intended by said Testator to be synonymous with the words "interest in Fairhope Ice and Creamery Company". Complainants aver that the Executor of the Estate of Adolph O. Berglin, deceased, has treated said provision as meaning that the remainder interest in the interest of Adolph O. Berglin, deceased, in the Fairhope Ice and Creamery Company, a partnership, vested absolutely and unconditionally upon the death of Adolph O. Berglin, in the following named parties, in the proportions stated, subject to the life estate of Eva M. Berglin, such remainder interest not subject to being divested by any subsequent event or happening: a one-fourth remainder interest in Lavigne A. Berglin, a one-fourth remainder interest in Marvin O. Berglin, a one-fourth remainder interest in Myrtle B. Slye, and a one-fourth remainder interest in Evalyn B. Porter Kennedy.

12. Complainants aver that no claims were filed in the Probate Court of Baldwin County, Alabama, against the Estate of Adolph O. Berglin, deceased; and that all Federal Estate Taxes of the said Estate have been settled, and discharged.

PRAYER FOR PROCESS

Complainants pray that Eva M. Berglin, Myrtle B. Slye, Lavigne A. Berglin, Jr., Robert S. Berglin, Evalyn B. Porter Kennedy, Paula H. Porter, Becky Berglin, and Marianne Louise Berglin each be made a party respondent to this bill of complaint. Complainants further pray that each party respondent to this bill of complaint be required to plead, answer or demur hereto within the time required by law and the rules and practices of this Court.

Complainants further pray that Eva M. Berglin, Myrtle B. Slye, Lavigne A. Berglin, Jr., Robert S. Berglin and Evalyn B. Porter Kennedy, each be personally served with the summons and a copy of this bill of complaint.

Complainants pray that the summons and a copy of this bill of Complaint be personally served on Marianne Louise Berglin, an infant, and that such summons and a copy of this bill of complaint also be served on Lavigne A. Berglin, Jr., a parent having the care, custody and control of said infant, and, in this connection, Complainants aver that the said infant has no resident guardian appointed under the laws of the State of Alabama.

Complainants pray that the summons and a copy of this bill of complaint be personally served on Becky Berglin, an infant, and that such summons and a copy of this bill of complaint also be served on Marvin O. Berglin, a parent having the care, custody and control of said infant, and, in this connection, Complainants aver that the said infant has no resident guardian appointed under the laws of the State of Alabama.

Complainants pray that the summons and a copy of this bill of complaint be personally served on Paula H. Porter, an infant, and that such summons and a copy of this bill of complaint also be served on Evalyn B. Porter Kennedy, a parent having the care, custody and control of said infant, and, in this connection, Complainants aver that the said infant has no resident guardian appointed under the laws of the State of Alabama.

Complainants further pray that a guardian ad litem be appointed to represent the interests of each and every minor respondent to this bill of complaint.

PRAYER FOR RELIEF

Complainants pray that, upon a final hearing hereof, the Court will enter a decree construing the Last Will and Testament of

Adolph O. Berglin, deceased, and will decree that Eva M. Berglin was given a life estate in and to all of the property validly and effectively devised or bequeathed under the said Will; that the allowance provided to be made to Evalyn B. Porter Kennedy and Paula H. Porter under the provisions of Paragraph Second of the said Last Will and Testament of Adolph O. Berglin, deceased, is abated in full; that the pecuniary bequests to Lavigne A. Berglin, Jr., Robert S. Berglin, Becky Berglin, Paula H. Porter, and Marianne Louise Berglin provided to be made under Paragraph Third of said Last Will and Testament are, and each of said bequests is, abated in full; that the remainder interest in the interest of Adolph O. Berglin, deceased, in the Fairhope Ice and Creamery Company, a partnership, vested absolutely and unconditionally, upon the death of Adolph O. Berglin, in the following named parties, in the proportions stated, subject to the life estate of Eva M. Berglin, such remainder interest not subject to being divested by any subsequent event or happening: a one-fourth remainder interest in Lavigne A. Berglin, a one-fourth remainder interest in Marvin O. Berglin, a one-fourth remainder interest in Myrtle B. Slye, and a one-fourth remainder interest in Evalyn B. Porter Kennedy. Complainants further pray that the inventory filed herewith will be accepted and filed; that the final accounting be examined and audited and the Court enter its decree that said accounting be approved, allowed and passed; and that Ouida S. Berglin and The Merchants National Bank of Mobile, as Executors of the Estate of Lavigne A. Berglin, deceased, who was an Executor of the Estate of Adolph O. Berglin, deceased, until the time of the death of Lavigne A. Berglin, and Marvin O. Berglin, as surviving Executor of the Estate of Adolph O. Berglin, deceased, will be released and discharged of any and all liability arising from,

under or in connection with the administration of the Estate of Adolph O. Berglin, deceased.

Complainants pray for such other, further, different or general relief to which they may be entitled, the premises considered.

Marvin O. Berglin
Marvin O. Berglin, Individually and as Executor of the Estate of Adolph O. Berglin, deceased.

Ouida S. Berglin
Ouida S. Berglin, Individually and as Executor of the Estate of Lavigne A. Berglin, deceased.

Garret Aldred TRUST OFFICER
The Merchants National Bank of Mobile, as Executor of the Estate of Lavigne A. Berglin, deceased.

Of Counsel:
HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON
622 First National Bank Building
Mobile, Alabama

STATE OF ALABAMA:
COUNTY OF BALDWIN:

Marvin O. Berglin, Executor of the Estate of Adolph O. Berglin, deceased, being by me first duly sworn, makes oath that the foregoing account is a full, true and correct statement of all of the dealings and transactions and of all moneys and effects received and paid out by Marvin O. Berglin and Lavigne A. Berglin, on account of the said estate, and that the said Executors (nor either of them) have not used any of the funds of said estate for their (or his) own benefit.

Marvin O. Berglin
Marvin O. Berglin

Sworn to and subscribed before me on this the 14 day of September, 1959.

Dorcas Buss
Notary Public, Baldwin County, Alabama

State at Large
My Commission expires Jan. 20, 1952

EXHIBIT A

LAST WILL AND TESTAMENT

KNOW ALL MEN BY THESE PRESENTS that I, ADOLPH O. BERGLIN, a resident of Fairhope, Alabama, do hereby make, publish and declare this my last WILL and TESTAMENT:

FIRST: After the payment of what debts I may leave and the expense of administration, all property of which I die possessed and the income therefrom is to go to my beloved wife, EVA M. BERGLIN, for her use and benefit for the term of her natural life, except that out of said income shall be erected a headstone for my grave to be bought and erected at my grave as soon as possible after my death unless this has already been done under the will of my wife.

SECOND: My daughter EVALYN B. PORTER and her daughter, PAULA H. PORTER, are to receive jointly the sum of Fifty Dollars per month until Paula attains the age of eighteen, when such allowance for both shall stop.

THIRD: Upon the death of my said wife, the following devises and bequests are to be paid out of the estate:

(a) To my son LAVIGNE A. BERGLIN I leave eleven shares of Capital Stock of the Peoples Ice Company.

(b) To my son MARVIN O. BERGLIN I leave eleven shares of the Capital Stock of the Peoples Ice Company.

(c) To my daughter MYRTLE B. SLYE I leave eleven shares of the Capital Stock of the Peoples Ice Company, also the home I now occupy on 113 Oak Street with its contents; also my automobile.

(d) To my daughter, EVALYN B. PORTER, I leave eleven shares of the Capital Stock of the Peoples Ice Company, also the Schalkenbach house on the southwest corner of Summit and Keifer Streets; also the Fuller house which she now occupies on 111 Oak Street, both in Fairhope, Alabama.

(e) To my grandson, LAVIGNE A. BERGLIN, JR., I leave Five Hundred Dollars in cash.

(f) To my grandson, ROBERT S. BERGLIN, I leave Five Hundred Dollars in cash to be given him at the age of twenty-one.

(g) To my granddaughter, BECKY BERGLIN, I leave Five Hundred Dollars in cash to be given her when she attains the age of eighteen years.

(g) To my granddaughter, PAULA H. PORTER, I leave Twenty-five Hundred Dollars in cash to be paid to her when she attains the age of eighteen years.

(i) To my great granddaughter, MARIANNE LOUISE BERGLIN, I leave Two Hundred Dollars in cash to be paid to her when she reaches the age of eighteen years.

FOURTH: All Capital Stock of Central Baldwin Bank of Robertsdale, Alabama, to be divided equally among my four children, Lavigne, Marvin, Myrtle, and Evalyn or to survivors.

FIFTH: The land known as the Swift tract is to be divided equally among the four living children, Lavigne, Margin, Myrtle, and Evalyn or survivors of them at my death.

SIXTH: All stock in Bank of Fairhope to be equally divided among our four living children, Lavigne, Margin, Myrtle, and Evalyn, or survivors at my death.

SEVENTH: Upon the death of my wife, Eva M. Berglin, the one-third income of Fairhope Ice and Creamery Company provided for her in next succeeding paragraph is to be divided equally among our four living children, Lavigne, Margin, Myrtle, and Evalyn or to the survivors living at my death.

EIGHTH: Although the Single Tax Colony lease upon the property known and operated as the Fairhope Ice and Creamery Company stands in the names of my two sons and myself, with a provision as to survivorship, it is my desire that on my death all profits of the business accruing to my one-third share shall continue to be paid to my wife, Eva Berglin, during her lifetime.

NINTH: All the funds including U. S. Treasury Bonds after the payment of my debts, cash bequests and expenses of administration are to be equally divided among those of my four children, Lavigne A. Berglin, Sr., Myrtle B. Slye, Marvin O. Berglin, and Evalyn B. Porter living at my death.

TENTH: The plot of land in Silverhill known as the Silverhill Creamery, consisting of six lots and a tract of land in the Volanta Subdivision consisting of seven acres, and one lot, are to be divided among those of our four children living at my death. These are now held in the name of the Fairhope Ice and Creamery Company in fee simple.

ELEVENTH: As Executors of my estate I name my sons, Lavigne A. Berglin and Marvin O. Berglin of Fairhope, Alabama or the survivor of them, and exempt said Executor from the necessity of giving bond as such. The responsibility of said Lavigne and Marvin Berglin, in my opinion, being adequate security for the protection of my heirs and devisees. I also authorize my Executors, or the survivors to sell at private sale, or otherwise realize upon such securities as are needed to be sold to pay the cash bequests herein provided without any order of Court.

TWELFTH: My Executors are also to retain control of the bequests made to my minor grandchildren, until each grandchild

attains the age of eighteen years, for girls and twenty-one years for boys when the share of each is to be paid over to him or her. I request that my wife's wishes as to legal counsel engaged to advise as to the administration of my estate to be respected.

THIRTEENTH: This will is made concurrently with an almost similar will of my wife, with whom most of my property is owned jointly, our ideas being alike as to the disposition of our property and the protection of the rights of each of us by the other.

IN WITNESS WHEREOF, I hereunto set my hand and seal at Fairhope, Alabama, this the Eleventh day of September, Nineteen Hundred Fifty-one.

/s/ Adolph O. Berglin

This and the two foregoing pages were signed and published as the last Will of ADOLPH O. BERGLIN in our presence, and we in his presence and in the presence of each other, have hereunto subscribed our names as witnesses on the day of the date of said will.

/s/ Florence Copeland, Fairhope, Alabama.

Elliott G. Rickarby Fairhope, Alabama.

EXHIBIT "B"

ESTATE OF ADOLPH O. BERGLIN, DECEASED

INVENTORY

- No. 1 44 shares of common stock of People's Ice Company.
- No. 2 70 shares of common stock of The Bank of Fairhope.
- No. 3 40 shares of common stock of The Central Baldwin Bank.
- No. 4 Checking account, Bank of Fairhope (\$.22).
- No. 5 Partnership interest - Fairhope Ice & Creamery.
- No. 6 Automobile.
- No. 7 Personal effects, including watch and ring.

STATE OF ALABAMA:
COUNTY OF BALDWIN:

Marvin O. Berglin, surviving Executor of the Estate of Adolph O. Berglin, deceased, being by me duly sworn, makes oath that he is informed and believes, and, upon such information and belief states, that the foregoing inventory, made by him, is full and complete as to the goods, chattels, debts and moneys, which were the property of the said decedent at the time of his death, so far as the same have come to his knowledge or possession.

Marvin O. Berglin
Marvin O. Berglin, Executor of the
Estate of Adolph O. Berglin, deceased.

Subscribed and sworn to before me
this 14 day of September 1959.

Dora W. Bass
Notary Public, Baldwin County, Alabama

State at Large

My Commission expires Jan. 20, 1962

SUMMONS AND COMPLAINT

Moore Ptg. Co.

The State of Alabama,
Baldwin County.

Circuit Court, Baldwin County

No. 4706

TERM, 19

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You Are Hereby Commanded to Summon Marianne Louise Berglin, Paula H. Porter, and
Becky Berglin

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 Marianne Louise
Berglin, Paula H. Porter, and Becky Berglin, Defendant

by The Estate of Adolph O. Berglin, Plaintiff

Witness my hand this 1st day of December 1959

Alice J. Duck, Clerk

No. 4706

Page

The State of Alabama
Baldwin County

CIRCUIT COURT

IN THE MATTER OF THE ESTATE OF

ADOLPH O. BERGLIN, Deceased

Plaintiffs

vs.

~~MARIONNA~~

Defendants

Summons and Complaint

Filed December 1, 1959

Alice J. Duck

Clerk

Plaintiff's Attorney

Defendant's Attorney

Defendant lives at

Received In Office

12/1 1959

Sheriff

I have executed this summons

this 19

by leaving a copy with

- 1 Marianne ~~Sum~~ Berglin 1/7/60
- 2 Paula H. Carter 1/17/60
- 3 Beaky Berglin 1/7/60

Sheriff claims 210 miles at

Ten Cents per mile Total \$ 21.00

TAYLOR WILKINS, Sheriff

BY DEPUTY SHERIFF

Taylor Wilkins Sheriff
Paula H. Carter Deputy Sheriff

[Handwritten signature]

FILED
APR 18 1960
ALICE J. DUCK, CLERK
REGISTER

500

)	
)	IN THE
ESTATE OF)	
)	CIRCUIT COURT OF BALDWIN
A. O. BERGLIN DECEASED.)	
)	COUNTY ALABAMA.
)	
)	IN EQUITY.

MARVIN O. BERGLIN BEING FIRST DULY SWORN TESTIFIED AS FOLLOWS:

Examination by Mr. Hirs.

Q. Is this Marvin O. Berglin?

A. Yes sir.

Q. Is the following assets of the estate of A. O. Berglin deceased, 44 Shares Common Stock Peoples Ice Company 70 Shares Common Stock Bank of Fairhope 40 shares common stock of Central Baldwin Bank and 22 cents in casgm a one-third interest in Fairhope Ice and Creamery Company, a Partnership an automobile personal effects consisting of a watch a ring -- Were those all of the assets in the A. O. Berglin estate?

A. Let me see - there was a piece of land that was involved-- No, that was in the Fairhope Ice & Creamery Company -- that was all of his personal property.

Q. Were there a number of other items which were owned by A. O. Berglin jointly with Eva M. Berglin during his life time?

A. Yes sir.

Q. Those items passed by right of survivorship to Eva M. Berglin?

A. Yes sir.

Q. As to the assets that were in the estate have they now been distributed out/^{so}that they are presently owned and held by Eva M. Berglin for her life with the remainder

interest in the four children of A. O. Berglin being Marvin O. Berglin, the estate of L. A. Berglin Evelyn B. Porter Kennedy and Myrtle Slye?

A. That's right.

Q. As to the partnership interest is the Fairhope Ice & Creamery Company still operating as a Partnership?

A. No, Corporation.

Q. It has been incorporated?

A. Yes sir.

Q. Was it incorporated about 1954?

A. Yes sir.

Q. And what did the -- Did the estate receive 150 shares of Common Stock of the Corporation and 10 debentures of the face value of \$5 000.00 each on the transfer of the Corporation?

A. That's right.

Q. As to the automobile - the automobile was given to Eva M. Berglin for life with remainder to Myrtle B Slye. Has that automobile substantially be disposed of?

A. The car was given to Myrtle after dad's death; of course mother had no use for it and it was given to Myrtle with the consent of my brother myself and Evelyn.

Q. Your mother gave a bill of sale to that car to Myrtle?

A. Yes she did.

Q. Are there any assets now remaining in the estate?

A. You mean other than the corporation assets?

Q. Well, those have been distributed out have they not?

A. Yes sir.

- Q. Are there any assets now remaining in the estate that have not been distributed?
- A. No.
- Q. Now as to the partnership interest - were there some other assets which were not transferred to the Corporation - Fairhope Ice & Creamery Company?
- A. Yes, the building which was owned by the partnership
- Q. And some real property?
- A. Yes, sir a lot of land consisting of seven acres
- Q. Was that transferred to the Fairhope Holding Trust?
- A. Yes sir.
- Q. Are the beneficiaries of that Eva Berglin for life and the four children of A. O. Berglin as remaindermen?
- A. Yes sir.
- Q. You were duly appointed as Executor of the Estate of A. O. Berglin, together with L. A. Berglin?
- A. Yes sir.
- Q. You have been serving as Executor since the time of your appointment and are still serving?
- A. Yes sir.
- Q. Did L. A. Berglin serve as Executor until the time of his death?
- A. Yes sir.
- Q. Did you have any problems in the administration of the estate in regard to the terms of the will?
- A. No --- What do you mean did I have any problems?
- Q. Could you determine what the will meant?
- A. No, it was rather ambiguous from that standpoint.
- Q. Have you formed an opinion as to what your father Mr. A. O. Berglin -- how he intended to dispose of his property?

A. Other than to Mother for life and then for distribution after her death to the four children.

Q. Then has there been an agreement among the family members as to what was intended by the terms of the will?

A. Yes sir.

Q. Was it that your mother Mrs. Eva Berglin was to receive a life estate in and to all of the property owned by your father at the time of his death which did not pass to your mother absolutely?

A. That is right.

Q. What was that understanding and opinion in regard to the remainder? -- Was it that the property was to pass to the four children of A. O. Berglin?

A. Yes sir.

Q. Subject to Mrs. Eva M. Berglin's life estate?

A. That's right.

Q. Were there some cash bequests in the will to grand children and great grand children of A. O. Berglin?

A. Yes there were.

Q. Are there any assets in the estate which could now be used to pay those bequests?

A. No, there was none at the time.

Q. Was all of the other property specifically disposed of to designated persons?

A. Yes sir.

Q. In regard to the remainder interest in the Fairhope Ice and Creamery Partnership interest which has now been converted into a Corporation interest. is it the agreement of the family and your understanding of intention in the will that A. O. Berglin intended to dispose of the remainder interest in the partnership to

the four children -- the remainder interest?

A. Yes sir.

ON CROSS EXAMINATION OF THIS WITNESS HE TESTIFIED:

Examination by Mr. Stone.

Q. Is your mother still living Mr. Berglin?

A. Yes sir.

Q. That is Mrs. Eva Berglin?

A. Yes sir.

Q. Now at the time that your father wrote this will

Fairhope Ice & Creamery Company was a partnership?

A. Yes sir.

Q. Was it incorporated during his life time?

A. No, after.

Q. Incorporated after his death?

A. Yes sir.

Q. Did you and your brother as executors of the estate of your father, consent to the incorporation of the Partnership?

A. Yes sir.

Q. You were partners in the business as well as Executors of your father's estate?

A. Yes sir.

Q. How was the stock issued that the estate became entitled to receive?

A. It was issued to mother for life.

Q. To your mother for life?

A. Yes sir.

Q. With the remainder how?

A. To be disposed of according to the will to the four children

Q. The Fairhope Holding Trust - was -- is that a Corporation?

A. No.

Q. It is just a trusteeship?

A. Yes sir.

Q. Who are the Trustees of that?

A. I guess I would be - my brother and myself and mother

Q. That is Lavene Berglin and Mrs. Berglin?

A. Yes sir.

Q. Is Evelyn a beneficiary under that trust?

A. Yes sir.

Q. Now that trust was established after the death of your father?

A. Yes sir.

Q. That was done in conjunction with the Incorporation of the Fairhope Ice & Creamery Company?

A. Yes.

Q. What do the assets consist of?

A. Building and the property - a piece of land that is situated north of Fairhope and I believe that is all

Q. In Volanta?

A. Yes sir.

Q. The Fairhope Ice & Creamery Company is located on Single Tax property?

A. Yes sir.

Q. The physical plant is located on Single Tax Land but the Corporation owns the building?

A. No sir. the holding Company owns them and we pay rent to the Holding Company.

Q. The Corporation has no real estate is that correct?

A. That's right.

Q. Now Mr. Berglin under paragraph three of your father's will he provided that upon the death of my said wife that is Mrs. Eva M. Berglin the following devisees and bequests are to be paid out of the estate --- Do you

remember that clause in the will?

A. Yes sir.

Q. Did you and your brother in attempting to construe this will and determine your father's intentions consider the possibility that perhaps your father meant for his estate to remain open until Mrs. Berglin's death at which time it would be distributed?

A. It would stay open --

Q. The estate would stay open until the death of your mother, at which time these specific bequests would be distributed?

A. Probably would have^v if my brother had not died

Q. Don't you think that could have been construed that way? -- Did you consider that-that in the event your father pre-deceased your mother that his estate would remain open and that your mother would receive the benefits during her life time from all of the property which he owned during his life time and on her death the Executors of her estate should distribute to the persons named in his will the particular property that he has mentioned in the will?

A. specific property that he named in the will -- he distributed to each of the four children as it was

Q. Done that before his death?

A. No, he had specified that in the will.

Q. My point is this: He says in his will that upon the death of my wife, the following devisees and bequests are to be paid out of the estate - for example LaVene Berglin 11 shares of the Stock in the Peoples Ice Company the same to the other three children together with the home on Oak Street to ~~Mrs. Porter~~ Mrs. Porter Slye and the same to Mrs. Porter

together with a piece of property and a home referred to as the Fuller house and he goes on and in the same paragraph he makes specific bequest to the minor grandchildren of cash. Did you consider that perhaps your father meant for the estate to remain open and on the death of your mother that those bequests be made and the estate be closed at that time rather than prior to the death of your mother?

A. In other words, there was nothing in there; for instance the house or pieces of property that he disposed of he actually didn't own them; they were owned by daddy and mother together with joint survivorship

Q. Was that true as to the shares of stock in Peoples Ice Company?

A. No sir.

Q. Was that true with respect to his partnership interest in the Fairhope Ice and Creamery Company?
the way

A. Outside of ~~what~~ he willed it to mother.

Q. The three homes he mentioned were owned by his wife and your mother, with the right of survivorship?

A. Yes sir.

Q. That was not true as to the stock or his partnership interest?

A. No.

Q. The stock in the Peoples Ice Company?

A. No, that was made directly to dad.

Q. Now have any of those cash bequests been paid by either you or your brother as Executors?

A. No.

Q. Have they been paid in any respect - has anybody either Mrs. Berglin, your mother or you individually or your

brother individually paid any of these specific bequests?

A. No.

Q. Is Becky Berglin still a minor?

A. Yes sir.

Q. How old is she?

A. 12.

Q. How old is Paula Porter?

A. 15 I believe.

Q. Mary Ann Louise Berglin - how old is she?

A. She must be about 8 - I believe.

Q. No provision has been made by the estate to pay the bequests to those minors as contained in the will?

A. No.

Q. And it is not the intention of the Executors and it has not been the intention to pay those because of the ambiguity in the will?

A. Wasn't nothing to pay them with.

Q. There was personal property was there not Mr. Berglin consisting of stock in the Peoples Ice Company the Automobile, stock in the Central Baldwin Bank and stock in the Bank of Fairhope?

A. Yes there was that but he had already disposed of that

Q. In his will?

A. Yes sir.

Q. To whom did he leave that?

A. He left it to mother during her life time and division afterwards to the four surviving children.

Q. Now has the estate had any income Mr. Berglin from either the renting of real estate or dividends on the stock it received when the Fairhope Ice & Creamery was

incorporated?

A. Yes, the income goes to my mother of course as specified in the will - that the income from his interest in the partnership will be paid to her --

Q. During her life time?

A. Yes sir.

Q. The estate itself has had no income?

A. No sir.

Q. The only assets that it has had are the assets that you have listed in this petition?

A. Yes sir.

Q. Now Myrtle Slye Evelyn Porter your mother Mrs Berglin, LaVene Berglin Jr. and Robert S. Berglin have all agreed and consented to the closing of this estate in the manner in which we are proceeding is that correct?

A. Yes sir.

Q. The minor children who I was appointed by the Court to represent are Paula Porter Mary Ann Louise Berglin and Becky Berglin - they are the grand children of Mr Berglin, your father?

A. Yes sir.

Q. Now none of these children that I have mentioned are the children of deceased sons or daughters of your father? -- Their parents are all living?

A. Yes sir.

Q. Mary Ann Louise Berglin's father is LaVene Berglin Jr's daughter and Becky is your daughter and Paula is Evelyn's daughter?

A. Yes sir.

Q. Was LaVene, Jr. your brother's only child?

A. No, he had two children - Robert and LaVene Jr

Q. Robert is of age?

A. He had his disabilities removed but I believe he is of age now.

THE COURT: Was there a waiver of these adult heirs Like LaVene, Jr. and Robert?

A. Yes sir.

Q. Written consent?

A. Yes sir.

Q. They consented to a settlement?

A. There has not been a written agreement but they are in accord; they filed a waiver of notice on everything/

THE COURT: But they didn't consent?

MR. HIRES: NO.

C E R T I F I C A T E:

I hereby certify that the foregoing consisting of pages 1 to 11 both inclusive is a true and correct transcript of the testimony as taken by me in open court on this day in the above styled cause.

This -----18th day of April 1960.


Official Court Reporter

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON
LAWYERS

SUITE 622 FIRST NATIONAL BANK BUILDING

MOBILE, ALABAMA

September 19, 1959

CHAS. C. HAND
C. B. ARENDALL, JR.
T. MASSEY BEDSOLE
THOMAS G. GREAVES, JR.
WM. BREVARD HAND
VIVIAN G. JOHNSTON, JR.
PAUL W. BROCK
ALEX F. LANKFORD, III
EDMUND R. CANNON, JR.
LYMAN F. HOLLAND, JR.
J. THOMAS HINES, JR.
W. C. BOONE, JR.
DONALD F. PIERCE

MAILING ADDRESS:
P. O. BOX 123

CABLE ADDRESS:
HAB

TELEPHONE:
HEMLOCK 2-5514

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

Re: Petition for Removal of Administration
to Equity of Estate of Adolph O. Berglin,
Deceased - Case No. 4706

Dear Miss Duck:

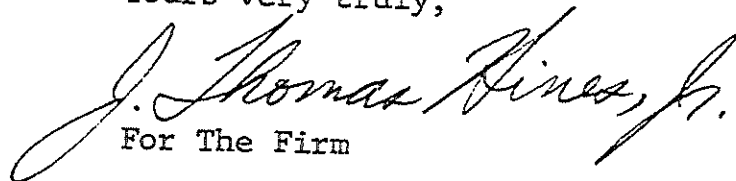
We inadvertently omitted page 2 of the petition for removal of administration of the above estate to equity. Page 2 is enclosed and we request that you insert same in the petition.

I have today mailed the proposed order for removal to Judge Hall. If the same is acceptable to him and when he grants such order, please enter the date of the granting of the order on page 2 of the petition for construction of the will of the above decedent and file the same.

We will prepare and forward to you the summons which we would like for you to use, covering the minors involved in this action. We will prepare waivers of service to be executed by all adults involved.

Your cooperation in regard to this matter is appreciated.

Yours very truly,


For The Firm

JTH:md
Enc.

IN THE MATTER OF THE : IN THE CIRCUIT COURT OF
ESTATE OF ADOLPH O. : BALDWIN COUNTY, ALABAMA
BERGLIN, DECEASED. : (SITTING IN EQUITY)
: CASE NO. 4,706

FINAL DECREE

This cause coming on to be heard was submitted for final decree upon the verified bill of complaint, decree pro confesso, the answer of the guardian ad litem for all of the minor respondents, and the testimony taken orally before the Court as noted by the Register. Upon consideration thereof, the court is of the opinion that the complainants, Marvin O. Berglin, individually and as Executor under the Last Will and Testament of Adolph O. Berglin, deceased, Ouida S. Berglin, individually and as Executor under the Last Will and Testament of Lavigne A. Berglin, deceased, and The Merchants National Bank of Mobile, a National Banking Association, as Executor under the Last Will and Testament of Lavigne A. Berglin, deceased, are entitled to the relief prayed for in the said bill of complaint and as hereinafter ordered and decreed. It is, therefore, ORDERED, ADJUDGED AND DECREED as follows:

1. That Eva M. Berglin was given and has a life estate in and to all of the property validly and effectively devised and bequeathed by the Last Will and Testament of Adolph O. Berglin, deceased, as filed for probate in the office of the Judge of Probate of Baldwin County, Alabama;

2. That the allowance provided to be made to Evalyn B. Porter Kennedy and Paula H. Porter under the provisions of Paragraph Second of the said Last Will and Testament is abated in full;

3. That the pecuniary bequests to Lavigne A. Berglin, Jr., Robert S. Berglin, Becky Berglin, Paula H. Porter and Marianne Louise Berglin provided to be made under Paragraph Third of the said Last Will and Testament are, and each of said bequests is, abated in full;

4. That the remainder interest in the interest of Adolph O. Berglin, deceased, in and to The Fairhope Ice and Creamery Company, a partnership, vested absolutely and unconditionally, upon the death of Adolph O. Berglin in the following named persons, in the proportions stated, subject to the life estate of Eva M. Berglin, such remainder interest not subject to being divested by any subsequent event or happening: an undivided one-fourth remainder interest in Lavigne A. Berglin, an undivided one-fourth remainder interest in Marvin O. Berglin, an undivided one-fourth remainder interest in Myrtle B. Slye, and an undivided one-fourth remainder interest in Evalyn B. Porter Kennedy;

5. That the inventory filed herewith is accepted and filed;

6. That the final accounting, having been examined, is hereby approved, allowed and passed;

7. That Ouida S. Berglin and The Merchants National

Bank of Mobile, as Executors under the Last Will and Testament of Lavigne A. Berglin, deceased, who was an Executor under the Last Will and Testament of Adolph O. Berglin, deceased, until the time of the death of Lavigne A. Berglin, and Marvin O. Berglin, as surviving Executor under the said Last Will and Testament of Adolph O. Berglin, deceased, are hereby released and discharged from any and all duty and liability arising from, under or in connection with the administration of the Estate of Adolph O. Berglin, deceased; and

8. That the fee of the guardian ad litem, for legal services rendered in this cause is hereby fixed at \$ 100⁰⁰; the court costs incurred in this proceeding are \$ 18/40; and that said fees and costs shall be paid by Marvin O. Berglin, as surviving Executor under the said Last Will and Testament of Adolph O. Berglin, deceased, for which execution may issue.

Done on this the 18th day of April, 1960.

FILED
APR 18 1960
ALICE L. DUCK, CLERK
REGISTER

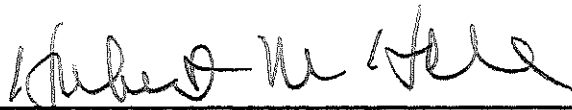
Hubert M. Hall
Hubert M. Hall, Judge of the
Circuit Court of Baldwin County,
Alabama, Sitting in Equity.

IN THE MATTER OF THE ESTATE : IN THE CIRCUIT COURT OF
OF ADOLPH O. BERGLIN, : BALDWIN COUNTY, ALABAMA
DECEASED. : (SITTING IN EQUITY)
: CASE NO. 4706

DECREE PRO CONFESSO

It being made to appear to the Court in the above-styled cause, that Eva M. Berglin, Evalyn B. Porter Kennedy, Myrtle B. Slye and Lavigne A. Berglin, Jr., respondents, acknowledged service of summons and complaint more than thirty days prior to the date hereof and the said respondents having failed to plead, answer or demur to the bill of complaint in the above-styled cause to the date hereof, it is now, therefore, on motion by the solicitor for the complainants, ORDERED and DECREED that the said bill of complaint in the above-styled cause be, and it hereby is, in all things taken as confessed against the said Eva M. Berglin, Evalyn B. Porter Kennedy, Myrtle B. Slye and Lavigne A. Berglin, Jr., respondents.

DONE on this the 19th day of February, 1960.


Hubert M. Hall, Judge of the Circuit
Court of Baldwin County, Alabama,
Sitting in Equity

FILED

FEB 19

ALICE J. DUCK, CLERK
REGISTER

IN THE MATTER OF THE ESTATE
OF ADOLPH O. BERGLIN, Deceased.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY NO. 4706

TO THE HONORABLE Norborne C. Stone

You are hereby appointed to act as Guardian ad Litem for Marianne Louise Berglin, Paula H. Porter and Becky Berglin, Minors to represent and protect their interest upon the Bill for Declaratory Judgment and Petition for Final Settlement by Marvin O. Berglin, Individually and as Executor under the Last Will and Testament of Adolph O. Berglin, Deceased, et als.

Done this 1st day of December, 1959.

Hubert M. Stone

JUDGE.

FILED
DEC 1 1959
ALICE I. DUNN, CLERK
REGISTER

IN THE MATTER OF THE)
ESTATE OF ADOLPH O. BERGLIN,)
DECEASED.)
)
)
)

IN THE CIRCUIT COURT OF
BALDWIN COUNTY,
ALABAMA; IN EQUITY
NO. 4706

DECREE REMOVING ADMINISTRATION OF ESTATE TO EQUITY

The sworn petition of Marvin O. Berglin, as Executor of the Estate of Adolph O. Berglin, deceased, praying for the removal of the administration of said estate from the Probate Court of Baldwin County, Alabama, into the Circuit Court of Baldwin County, Alabama, in equity, having been filed, now coming on to be heard, and the court finding that all the allegations of said petition are true, that it is in due form, and that the prayer of said petition should be granted, it is, therefore, ORDERED, ADJUDGED AND DECREED by the court:

1. That the prayer of the petition of the said Marvin O. Berglin, as Executor of the Estate of Adolph O. Berglin, deceased, be, and the same hereby is, granted and the administration of the said Estate of Adolph O. Berglin, deceased, be and it hereby is removed from the Probate Court of Baldwin County, Alabama, and transferred to the Circuit Court of Baldwin County, Alabama, in equity, here to be proceeded with according to the law and rules and practices of this court.

2. That the Judge of Probate of Baldwin County forthwith transmit to this court the file and all papers in connection with the administration of the said Estate of Adolph O. Berglin, deceased.

Done on this the 21 day of September, 1959.

FILED
SEP 21 1959
ALICE J. DUCK, CLERK
REGISTER

Hubert H. Hall
Hubert H. Hall, Judge of the
Circuit Court of Baldwin County,
Alabama, sitting in equity.

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON
LAWYERS

SUITE 622 FIRST NATIONAL BANK BUILDING

MOBILE, ALABAMA

CHAS. C. HAND
C. B. ARENDALL, JR.
T. MASSEY BEDSOLE
THOMAS G. GREAVES, JR.
WM. BREVARD HAND
VIVIAN G. JOHNSTON, JR.
PAUL W. BROCK
ALEX F. LANKFORD, III
EDMUND R. CANNON, JR.
LYMAN F. HOLLAND, JR.
J. THOMAS HINES, JR.
W. C. BOONE, JR.
DONALD F. PIERCE

MAILING ADDRESS:
P. O. BOX 123

CABLE ADDRESS:
HAB

TELEPHONE:
HEMLOCK 2-5514

November 30, 1959

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

Re: In the matter of the Estate of Adolph O.
Berglin, deceased, Case No. 4706.

Dear Mrs. Duck:

We are enclosing waivers of service of summons and complaint in the above cause for Eva M. Berglin, Myrtle B. Slye, Lavigne A. Berglin, Jr., Evalyn B. Porter Kennedy, and Robert S. Berglin. We are also enclosing carbon copies of the petition in the above cause, which we request that you cause to be served on the infants involved, being Marianne Louise Berglin, Becky Berglin, and Paula H. Porter, their respective parents, and the Guardian ad Litem. If the Guardian ad Litem has not been appointed, we request that the court appoint an attorney to serve as such.

Your attention to this matter is appreciated.

Yours very truly,


For the Firm

JTH.md
Enc.

IN THE MATTER OF THE ESTATE
OF ADOLPH O. BERGLIN, Deceased.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY NO. 4706

TO THE HONORABLE Norborne C. Stone

You are hereby appointed to act as Guardian ad Litem for Marianne Louise Berglin, Paula H. Porter and Becky Berglin, Minors to represent and protect their interest upon the Bill for Declaratory Judgment and Petition for Final Settlement by Marvin O. Berglin, Individually and as Executor under the Last Will and Testament of Adolph O. Berglin, Deceased, et als.

Done this _____ day of December, 1959.

JUDGE.

IN THE MATTER OF THE ESTATE
OF ADOLPH O. BERGLIN, Deceased.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY NO. 4706

TO THE HONORABLE Norborne C. Stone

You are hereby appointed to act as Guardian ad Litem for Marianne Louise Berglin, Paula H. Porter and Becky Berglin, Minors to represent and protect their interest upon the Bill for Declaratory Judgment and Petition for Final Settlement by Marvin O. Berglin, Individually and as Executor under the Last Will and Testament of Adolph O. Berglin, Deceased, et als.

Done this _____ day of December, 1959.

JUDGE.

4706

IN THE MATTER OF THE ESTATE
OF ADOLPH O. BERGLIN, Deceased.

MARIANNE LOUISE BERGLIN, PAULA H.
PORTER, and BECKY BERGLIN, Minors.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

IN EQUITY.

No. 4706

TO THE HONORABLE NORBORNE C. STONE, Esq.

Take notice that under and by an ORDER and DECREE of this Honorable Court, made, entered and issued on this the ___ day of December, 1959, you have been appointed to serve as Guardian ad Litem of the above named minors in connection with the matter of the Bill of Declaratory Judgment and Petition for Final Settlement by Marvin O. Berglin, individually and as Executor under the Last Will and Testament of Adolph O. Berglin, Deceased et al.

Register in Chancery

ACCEPTANCE OF GUARDIAN AD LITEM

Now Comes Norborne C. Stone, Esq., heretofore appointed by the Court as Guardian Ad Litem to represent the interest of Marianne Louise Berglin, Paula H. Porter, and Becky Berglin, minors, in the above matter, and accepts said appointment and consents to represent the interest of said minors at said hearing.

Guardian Ad Litem