Mrs. Sara Curran, a witness for the complainant, having been duly sworn, testified as follows:

DIRECT EXAMINATION, by Mr. Smith:

My name is Sara Curran. My husband's name is William Buck Curran. I live at Battles Wharf and have lived there over thirty years. I am with Mr. Curran the owner and proprietor of a hotel at that place. We run it together. We have run that hotel at that place off and on since it was remodeled, I think about 1912. We have both lived there previous to the time that we operated that hotel.

I knew Dr. Schowalter during his life time, and I know his wife, Mrs. Charlott Schowalter. When Dr. Schowalter came back with his wife they took supper at our place the first night they landed. I met Mrs. Schowalter then and have known her ever since. I have been with Dr. and Mrs. Schowalter a great deal, and I never heard anything that was not of the pleasantest from either side, as far as I know. We were not here when Dr. Schowalter died; we were in Seattle. We left Baldwin County for Seattle, I believe, the 31st of May, 1926, and Dr. Schowalter died the latter part of June. Prior to the time we went to Seattle Dr. Schowalter was our family physician. I do not think I had a more intimate friend than Dr. Schowalter, and he was also on the same terms with my husband.

Dr. Schowalter came to our home to bid us good-bye before we went to Seattle, and he had a great habit of teasing my husband, because he thought I sort of had him under my thumb. It used to be a great source of enjoyment to him. He said, "You are going on a long trip and I hope you have got every-

thing satisfactorily arranged." I said, "Dr. Mc., don't you know me well enough for that; I sent him to Mr. Joe Rich so that there would be no mistake made, because I know if an accident happens I am going to get out, and I am not coming back to find I haven't got anything," and he laughed at Mr. Curran, like he always did, and said, "Well, Buck, what did you do?" He said, "My wife and I have lived together for over twenty-five years and she has helped me in every way, and I thought the best thing that I could do was to turn it all over to her to do with as she saw fit," and Dr. Mc. said, "That is just what I have done; I have left everything to Charlott with no strings tied to it." That was the only conversation I ever had with him about it, and that was how it came up, because he was teasing Mr. Curran about his will. That was on the occasion when he came to tell us good-bye. We were on our way to Seattle.

There was no cross examination of the witness.

W. D. Curran, a witness for the complainant, having been duly sworn, testified as follows:

DIRECT EXAMINATION, by Mr. Smith:

My name is W. D. Curran, my wife is Mrs. Sara Curran, who has just testified as a witness in this case. I live at Battles Wharf, Alabama. I and my wife operate the Battles Wharf Hotel. We do not stay there all of the time. In the winter time we live at our residence, a cottage next door.

I knew Dr. V. McR. Schowalter during his life time intimately. I suppose I had known Mc. thirty or thirty-five years. He was my family physician. I heard him make a statement in regard to his having made a will. That was at the time I was leaving for Seattle. I think I said something about 1925 once upon a time, but it was May, 1926 when Mc. came by there to tell me good-bye, my wife and myself. We were going to Seattle. In the course of the conversation I made the remark to Mc, confided in him my family affairs, and said, "Mc, I went up town the other day and had Joe Rich to make my will, and I told him I did not want any wherefores or whereases,etc., I wanted plain American, and I wanted it short and sweet," and he said, "That's right, the less you say the better." I said, "I left everything to my wife. We have been living together for twenty-five years or more and she has helped me and I have helped her and I consider she should have the money; I am not afraid my children will suffer from it. We are going away now, and there might be an accident." He said, "You know, that is the very thing I did, I left everything I had to Charlott without any strings tied to it." I said, "That is the way I did."

That was the substance of the whole conversation so far as it related to the will. That is the only occasion I discussed the will with him. I went to Seattle and he died two or three months afterwards. I think he died in August.

CROSS EXAMINATION, by Mr. Allen:

That conversation occurred at Battles Wharf at my house. It was on the front gallery, I think. Myself and my wife were there. As to how the conversation came up, in the course of the conversation I made the remark that I had just been to see Joe Rich. The doctor did not bring that up himself. The doctor did not ask my wife whether or not she had made me make a will. He did not say anything to her about my having made a will. He certainly did not say anything to me like that; I made the remark that I had been up to Joe Rich's and made my will. We had not been talking about wills before I made that remark. He did not say anything about his children, that I recollect, when he told me he had done the same thing that I had done. He said nothing at all about where his property was to go on his wife's death or remarriage. He said he made his will without any strings tied to it, had left everything to Charlott without any strings tied to it; they had lived together this long, and thought she could take care of it. He did not say anything about where the property was to go on her death or remarriage. He did not, that I know of, mention anything that he wanted his children to have. He did not say that to me. He never discussed with me at any time during my association with him the probability of his widow's remarriage. He never at any time said anything to me about where his property was to go on his widow's death or mentioned his children to me. I do not know who at that time owned the home at Fairhope.

That is the place where he and his wife lived. I thought it belonged to Mrs. Schowalter, but I don't know. I do not

know whether he had given it to her or not.

As to when I made this trip, my grandchild is two years old, very near it; I left Mobile about the 1st of June, 1926. During those two years I have not been talking to anybody about this case but my wife. My wife and I have discussed it frequently, in reference to that conversation, but not recently; not until we were summoned up here. Then we both discussed what the doctor said on that occasion. We did not agree on what to say when we came here; we agreed with what we heard, what the doctor told us. As to whether both of us remembered exactly what occurred, we both had sense to recollect it. As to whether we both recollected it exactly alike, I recollect what he said, that is, the substance of it. I don't know about my recollecting it exactly the way my wife recollected it.

(Examination by Mr. Rogers)

Mr. Rich was my attorney. I do not think he was Dr. Schowalter's attorney. Why should I know whether or not Dr. Schowalter consulted Mr. Rich or any other attorney in connection with the drafting of his will? He did not mention that in talking to me about his will.

Q. Will you just tell us in your own language the provisions of your own will that Mr. Rich drafted for you at that time?

Complainants' counsel objected to the question as calling for irrelevant and immaterial testimony.

A. I can go down to the bank and get it if you want to see it.

Q. I want you to tell me, I don't want the original paper; I am not prying into your affairs at all; I want to know in a general way.

A. "Do hereby leave to my wife, Sara Curran, all my

property both personal and real." That is the way you lawyers put it, isn't that right?

Witness continued:

That is all there was to it, and she was to be executrix. I have two children, one boy and one girl. I have given my property to my wife absolutely, and have made no mention of my children whatever. I have confidence enough in my wife to know she will do the right thing by the children. If I did not, I would have made it otherwise. My children are perfectly satisfied.

Mrs. R. C. Macy, a witness for the complainant, having been duly sworn by the commissioner, testified as follows:

DIRECT EXAMINATION, by Mr. Smith:

My full name is Hannah Elisabeth Macy. My husband's name is Robert C. Macy. My husband is a physician and surgeon. We live at Magnolia Springs, Alabama. We went to Magnolia Springs to live, as I remember, in August will be two years, just after the burning up of my home. Prior to that we lived at Bon Secour in our own home, since December, 1923, and we had been at Bon Secour six months preceding that.

I knew Dr. Schowalter in his life time, and had known him for about three years prior to his death. He was living at Fairhope when I first knew him. I knew him well; he was my physician. About a week before his death, late in the week preceding his death, my husband and myself had a noon meal with Dr. and Mrs. Schowalter, and we had gone into his operating room and office, and Mrs. Schowalter was somewhere about the house, engaged in some duty, and Dr. Schowalter began to talk about his business matters. He began to speak with a great deal of appreciation and affection for Mrs. Schowalter. He said, "What I am today I feel she has made me, and I want everything I have to be hers, and I have so arranged that everything that I have shall be at her disposal after my death.

Q. Everything the doctor had would be at her disposal after his death?

Respondents' counsel objected to the question as leading.

A. Yes, sir, that is exactly what he said.

Witness continued:

My husband was present at that time. Dr. Schowalter had expressed appreciation and affection for his wife. He said, "What I am now I owe to her." That was an oc-

casion when I and my husband were dining at the Schowalter's home. It was the noon day meal, I don't know whether you call it lunch or dinner. We were taking the meal there at the house.

Frequently before that Dr. Schowalter had spoken of Mrs. Schowalter, and always with a great deal of respect and affection. I knew nothing of their relations except what he told me and what we had seen. We had been there week in and week out, and we had seen nothing but the most pleasant relationship between them. We were both patients of Dr. Schowalter.

In talking to us he did not use the words, "remainder of his estate," at all. He used the words, "absolute", "Absolute disposal," but never said anything about remainder.

CROSS EXAMINATION by Mr. Rogers:

I did not know the members of the doctor's family, only Miss Alice. I never knew his boys. He had never mentioned his children to me.in any way, except he hoped to be able to see Miss Alice through with her studies, that she wanted to be a physician and he wished her to be and would make every effort to help her to be a physician. He did not mention Edward or Preston. I heard him speak of, "my sons." He said nothing about having made any provision for them in discussing his will with me. He did not mention his will in that way: he simply said, "I have placed my property absolutely at Mrs. Schowalter's disposal." He did not use the word "will" that I remember. He said he had placed his property absolutely at her disposal. I think we dined with him either Friday or Saturday at noon, and he died either Monday or Tuesday of the following week, as I remember. I know nothing of whether or not he had at that time deeded or leased the place at Fairhope to Mrs. Schowalter.

As to whether I do not know, in saying he had put the property at her absolute disposal, he was talking of the home place or any other property that he owned, I understood his entire property, she was to have it, from the conversation, absolutely at her disposal. Any of the details I know nothing about. There are only two details that I know: one is, whether it was better he should continue practicing in Fairhope or come to Mobile. That was one question. Sometimes that was talked between us, "Shall I go on practicing here or would it be more to our advantage for me to go to Mobile." That came up once or twice, and I never heard another item about his property or their property, that I can remember. Just what he said was that he wanted Mrs. Schowalter to have the absolute disposal of his property after his death. As to whether he mentioned his death, he said after he was gone, that he had so placed it at her disposal. He did not say whether or not he had created in Mrs. Schowalter a fee simple disposition or life estate. He did not mention any particular terms as to how he had given her the absolute disposal of the property. He did not tell me whether he had made a lease hold or free hold, or use any other legal terms. He said he had absolutely given her his property, so that it would be at her disposal absolutely. He did not tell me at that time whether or not Mrs. Schowalter was to have the property for her life and that she was to have power of disposing of all the property, that she would be able to sell it. We did not discuss that at all. He did not tell me that he had given Mrs. Schowalter a life estate in his property and she was not to have disposition of it. He did not tell me at that time that he had given Mrs. Schowalter a life estate in his property and that at her death or remarriage the property was to vest in the children. There was nothing whatever of that kind said. He did not tell me that he had given her a life estate and at her death the property was to go to his children. That never came up. I quoted exactly what he said.

I remember it because he died so soon afterwards. I remember so distinctly that talk because of the shock of his sudden death.

When we moved to Bon Secour, we came from foreign service in the Philippine Islands, and preceding that in Mexico. I was born in California and educated in New York.

Mrs. Schowalter never made to me any statement of the kind, that the greatest mistake she had ever made in her life was in coming south. She expressed herself entirely the opposite. I never heard her make any statement to the effect that she had suffered the tortures of hell since she came south. I never heard any such statement from her. As far as I know, their domestic relations were pleasant and agreeable.

I knew Miss Alice Schowalter. I knew from that conversation that Dr. Schowalter wanted to make it possible for her to become a physician, do everything in his power.

My husband at present is retired. He was invalided home from the Philippines. He was a medical missionary. He does some practice. I have been in the service for about thirty-five or forty years. He became of his own wish a volunteer. This was here in Alabama. They invalided him here from the Philippines. He was unable to think of the position they wanted him to take, and they asked him to go as near his home place as he could, and he came to Bon Secour. I was reappointed to service in that field. I am not a preacher. Women do not preach in our church. I am a religious, evangelical, educational and social service worker, and we have two points, Bon Secour and Magnolia Springs. He refused a diocesan appointment, being a volunteer worker in the church. He has not any interest in a proprietary medicine. He was at one time very much interested in an anti-tubercular serum, which I think is a famous thing, but, unfortunately, the discoverer of it has not seemed to stay on his feet, and so he has given it up.

He was not backing it, but he believed in it. He had used it in Baldwin County.

Counsel for complainant objected to further examination of the witness on a matter that is wholly foreign to any possible connection with this case, creating expense and making the record cumbersome.

Witness continued:

It is not a fact that since Dr. Schowalter's death I and Mrs. Schowalter have considered promoting, selling or handling that serum. She has not a thing to do with it. She was never connected with the serum in any way.

My husband was a medical missionary and I am a missionary myself. I do not teach a particular creed outside of the teachings of the Episcopal Church, as I am an Episcopalian.

I could not say just how long I have known Mrs. Schowalter, because I met her casually at some time when teaching; possibly about three years. Mrs. Schowalter and I have not been intimate friends since the doctor's death. Since the doctor's death, I might have been in her house a half dozen times and she has been in my house once. We did not discuss the doctor's will on each one of those occasions. We have not discussed the will; I do not remember her ever mentioning it to me except in this way: when the first idea of this trouble came she said it caused her a great deal of grief, because she always counted the boys as hers and always tried to be what she considered a good mother, and the trouble grieved her. When I say trouble, I mean simply any question that came up about the will. In our discussion I do not know whether we used the word will or not. Dr. Schowalter did not discuss the will in her presence on the occasion I have testified about. I do not think I ever told Mrs. Schowalter what he had said until perhaps very recently here in Mobile, since we came into the matter, because it had not dawned on me that I had any connection with it. I do not remember when I was first spoken to about being a witness.

I do not remember who spoke to me about being a witness, except Mr. Caffey asked me what I knew about the case,--Mr. Smith, I think it was Mr. Smith. As to whether that was before or after I saw Mrs. Schowalter in Mobile and told her what the doctor had said, I did not tell her here because I did not see her. I do not remember telling her about it; if we mentioned it in the conversation, I could not say the identical inquiry or time. I never discussed it with Dr. Macy except when the matter of this difference came in, that is, since the matter that the will was evidently not accepted, or, at least, there was some difficulty over the property. As to how long ago it was that I discussed this with Dr. Macy, we have spoken of it frequently. I do not know that we agreed on what the doctor said at that dinner, because that part we have not talked about. I imagine the first time we talked about it was when we first knew that the will was not acceptable. I do not know when that was. I could not tell you how I found out that the will was not acceptable. I cannot tell you whether Dr. Macy told me himself that the will was not acceptable, or whether Mrs. Schowalter spoke of it, or what. All I know is that it came to my knowledge that there was some difficulty with the Schowalter will. I do not know how long that was after Dr. Schowalter died. I have no recollection of that. I could not tell you whether it has been more than a year. As I remember, Dr. Schowalter died in the late spring or early summer of 1926. I do not know how long after he died it was when I heard that this will was not acceptable. I could not tell you whether it was six months or a year. I do not know that I told Mrs. Schowalter in Mobile about this conversation with Dr. Schowalter in reference to his will. I do not remember where I told her; I do not know. I am very fond of Mrs. Schowalter. We have never had any heart to heart conversation with each other about this will at any time that I can recall, not about the details.

In saying that I heard that the will was not acceptable, I used that word "acceptable" not intentionally or unintentionally: I simply heard there was a difficulty about the Schowalter will. I do not think it came through her. I think it came from some outside casual conversation. The next thing that I remember, is that the doctor and I have been speaking of it and regretting that any question had come up. I could not say that in so far as any one besides my husband is concerned the only other time I spoke about the will to any one was when Mr. Smith asked me to testify, because I might have made a casual observation in conversation, because people around there would speak of the will. He was very well known and he was once an official in Baldwin County, and when it became known, there was probably some casual mention of it. I could not answer as to that. My recollection about the persons with whom I have discussed the will, and the conversation, if any, with Mrs. Schowalter and other persons about the will, is not as clear in my mind as what Dr. Schowalter said to me and my husband about his will, for the very reason that what he said was very strongly impressed upon me because of the way in which he spoke and because of the shock of his sudden death just following that conversation. I knew casually that Dr. Schowalter had several children. I have not myself, but Dr. Macy has. I think two of them are in Mobile.

Q. The doctor is estranged from them, is he not?

Complainants' counsel objected to the question as irrelevant and immaterial, having no connection with this case.

A. Not that I know of.

Q. Is there any social intercourse between the doctor and his children?

A. Well, I should reckon.

RE DIRECT EXAMINATION, by Mr. Smith:

If I have been quoted

in cross examination as having stated that Dr. Schowalter made this statement at his dinner table, I will say that he did not make it at the dinner table. We had gone into his office and operating room, and I do not know whether Mrs. Schowalter was engaged in some social duty or some house duty, but she was not there. Nothing occurred at the dinner table whatever, and Mrs. Schowalter was not connected with the conversation.

Dr. R. C. MACY, a witness for the complainant, having been duly sworn, testified as follows:

DIRECT EXAMINATION, by Mr. Harry T. Smith:

My name is R. C. Macy, and I live at Magnolia Springs. I am a doctor of medicine. The lady who has just testified, Mrs. Macy, is my wife. I have been following my profession as a private practitioner since I have been home in the United States. I have been a medical missionary. I was a medical missionary in Mexico and the Philipine Islands. I have been living in Baldwin County five years.

I knew Dr. V. McR. Schowalter about four years before his death. My relationship with him was quite intimate after I moved to Baldwin County. I used to stop in there, and would be invited to a meal frequently. Dr. Schowalter treated both me and my wife, and we were there on frequent occasions for that purpose. I had an opportunity in that way of observing Dr. Schowalter's relations with his wife. Their relationship seemed to me to be the pleasantest and most happy imaginable. I never heard a word between them that indicated anything else.

I remember with my wife taking a meal at Dr. Schowalter's house several days before his death, either Friday or Saturday, and he died in the early part of the week following; died Monday, I believe. After that meal, we went in Dr. Schowalter's office, and we discussed various things for some time. Dr. Schowalter made a statement to me as to whether or not his wife had been a help-meet and as to his disposition of his property after his death. He said on that occasion, and on other occasions, that everything he was at that time, and everything he had, he owed to her. He said that very distinctly, on more occasions than one. He said then what disposition he had made of his property after his death. He said that he had made a will,-- whether he said that on that occasion or a previous one I don't remember, but he said he had left his wife in full control of his affairs, - of his property rather, I should have said.

Q. Do you recall his having used the language, "left her full power of disposition?"

Defendants' counsel objected as leading.

Ans. Yes, since you mention it, I think he did use that word "disposition."

Defendant's counsel moved to exclude the answer on the same ground.

Witness continued:

I said that he told me the same thing on other occasions. Since we were going there regularly for treatment, and I some times passed through Fairhope without going in there, I could not give you the exact dates. We were intimate friends, and I seldom passed around meal time that I was not asked to a meal, and he discussed his affairs frequently with me.

Q. I wish you would state the substance of what he told you in regard to whether or not he had left his property in such a way that his wife could dispose of it after her death.

Defendants' counsel objected as leading.

Ans. Well, he said nothing about what might occur after his wife's death, to me.

Q. What did he say in regard to whether or not his wife should be allowed to dispose of the property after his death, before her death?

Ans. I understood she had full and absolute control and authority to do as she pleased with it, as it was left to her. That is what I understood.

Defendants' counsel moved to exclude the answer, on the ground that a witness can not testify as to his understanding.

CROSS EXAMINATION, by Mr. Rogers:

At the time of the conversation in his office, about which I testified, Dr. Schowalter never mentioned to me his children by his first wife. I knew he had some, but I never had any conversation with him on the subject. He mentioned Miss Alice at that time, was very much interested in her medical education. He said she was studying medicine and he wanted to help her, wanted to see her through. He made that very clear. He never mentioned anything at all about what disposition was to be made of his property after his wife's death. He did not mention to me whether or not any disposition was to be made of his property in event his wife remarried. As to whether

he said he had so disposed of his property as to give his wife a fee simple estate, he did not use the word "fee simple" at all in his conversationwith me. He did not say anything about having given her a life estate. He did say something about absolute disposition. My recollection is he said that he had given her the absolute disposition of the property. I think he did use those words. I am not sure about the word "absolute," but the words "disposal of my property" are words that he did use. He might have used the word "full" or "complete," something of that sort. I will not say that he said "absolute." I had no idea at the time of being asked to repeat the thing. I am prepared to swear that he used the word "disposition," at that time, and that it was qualified by "full" or "complete," or something that was equivalent. He never said anything about the remainder of his property. He said nothing about her remarriage and nothing about a life estate whatever to me on any occasion. He said nothing about having given her a life estate or life interest, whatsoever, and did not mention any "remainder." He did not mention any of his children at that time in this connection. I never met the children, and naturally they did not come up in the conversation, although he spoke of Miss Alice frequently just before his death. He did not tell me, in effect, that at the death or remarriage of his wife the remainder of his estate was to be equally divided between his children, Edward R. Schowalter, Preston J. Schowalter, and Alice Elsa Schowalter. He did not state to me, in effect, that at his wife's death the remainder of his estate was to be equally divided between his children, Edward R. Schowalter, Preston J. Schowalter and Alice Elsa Schowalter. He never mentioned anything that would occur after his wife's death, to me, nothing in regard to his disposition of his property, or anything else.

As I remember, the conversationto which I refer to occurred a few days before Dr. Schowalter's death. As I remember, that was about two years ago this last spring, if I am not mistaken, or early summer. My wife was present at that time.

She was not always present at every conversation I had with Dr. Schowalter, but she was present that last day. She was present on the occasion of the conversation which I have testified about. As to whom I have discussed that conversation with concerning Dr. Schowalter's will, I have been asked what I remembered by Mr. Smith here, and stated to him. I have discussed the matter to some extent, but very little, with Mrs. Schowalter. I have not discussed it with any one else. I discussed it with Mrs. Schowalter shortly after Dr. Schowalter's death. I can not give you the exact date; it might have been a month afterwards. As to whether it was before or after I had heard there was any difficulty in connection with the Doctor's will, when that difficulty arose Mrs. Schowalter showed me the will. I have read the will. I did not discuss it with anybody much, not until quite recently with Mr. Smith.

(EXAMINATION BY MR. ALLEN).

During my long association with Dr. Schowalter, he never discussed the probabilities of the remarriage of his widow after his death. I do not know who owned the house in which they lived at Fairhope. I do not know whether it was in his name or in Mrs. Schowalter's name.

Q. I will ask you to repeat again the exact words Dr. Schowalter used to you in discussing what he had done with his property, on this occasionseveral days before his death, in the presence of your wife, as near as you can recollect.

A. Well, he gave me to understand,---

Q. I want, as near as you can remember, the exact words that Dr. Schowalter used.

Complainant's counsel objected to the question, undertaking to limit the witness in his answer as to what Dr. Schowalter said to him, to the exact language that was used, on the ground that the witness has the right to state the substance, even though he can not remember the exact language.

Q. The exact language, as nearly as you can remember it.

A. Well, he said that everything that he had, everything he was, and everything he was at that time, he owed to Mrs. Schowalter. He said that he only asked the good Lord to let him live long enough to provide for her amply. He also said he left his property entirely

in her hands. He said that once, and I think it was left, - last conversation we had, one just prior to his death, where he said he had left everything entirely at her disposal. He reiterated more than once, in the different conversations that we have had, that he had left her full authority, full control of his affairs. The words that he used was "disposition," and the adjective that went before it was either "full" or "entire," I am not sure.

Q. He said he had provided for the disposition in his will, in his will he gave her the right of disposition, is that right?

A. He used the words --.Did I say "disposition?"

Q. Yes, sir.

A. I should have said "disposal." Pardon my saying "disposition,"- "disposal."

Witness continued:

He did not say he had used that expression in his will. He did not tell me anything about the exact language of his will. He said he had made his will and he had left her full or complete, some such adjective, disposal.

It is not a fact that I have been negotiating with Mrs. Schowalter to put a tuberculosis serum on the market under Dr. Schowalter's name. There were never any negotiations about that. Dr. Schowalter was a physician, and so am I. He was very much interested in this serum. He and I were friends. There was no negotiation with Mrs. Schowalter. At one time I told Mrs. Schowalter that if we succeeded with the serum as I hoped we would, after all danger of any possible loss to her was concerned, I would be glad to let her share in any profits that might come in. That was the total negotiations that took place between us. I wanted to do that as an act of friendship to my firned's widow. She was to invest in it when all possible danger of any financial loss to her was past. It is not a fact that the serum was to bear the name of Dr. Schowalter, nor mine either, for that matter.

MISS VIRGINIA THOMAS, a witness for the complainant, having been duly sworn, testified as follows:

DIRECT EXAMINATION, by Mr. Smith:

My name is Virginia Thomas. I own a home at Point Clear, Alabama. I have owned that home ever since I was a small child. I spend my summers there.

I know the home that was formerly occupied by Dr. Schowalter at Point Clear. There is just one other house in between that place and my place.. I have spent my summers at Point Clear for many years. I have known Dr. Schowalter always, ever since I can remember. He lived down at his father's house before he was married. Then he moved from his father's house to the house I have been asked about. My father was a physician, too. My father died thirty-one years ago last spring. After his death, while I was at Point Clear, Dr. Schowalter called upon me if necessary. I remember when Mrs. Schowalter married Dr. Schowalter and came to Point Clear to live. I refer to the present Mrs. Schowalter. Dr. Schowalter's financial condition was such that before his first wife died, he had given up his house on the beach in order to rent it, and had gone to live out in the country. It was just a little place; there was nothing out there. That is where the first Mrs. Schowalter died, where they were living at the time. He was far from prosperous prior to his last marriage. I remember when Mrs. Charlotte Schowalter married him. I was not at Point Clear at that time, was not there for a year or so. I met her after their marriage, but I did not live at Point Clear for a year or so after that. I think they had been married two or three years when I began going back there for the summer. I have known Mrs. Schowalter very well since I have been going back to Point Clear for the summers. I think when Mrs. Schowalter married Dr. Schowalter and went to his home, she found conditions anything but pleasant, because the children had been living there, - and I do not know whether their grandmother was there, but she was quite old, and I think things had to be all renovated and looked

after, and after she came there we all noticed the change in the house and conditions, and the little boys were always nicely taken care of and always looked well, and comfortably dressed for children in their circumstances. We noticed a change for the better after she came there. I was not there at the time myself. They appeared to live happily together as man and wife. I remember when Dr. Schowalter moved away from Point Clear. I remember it because we regretted very much their leaving us. We were very happy neighbors and regretted their going to Fairhope. They moved from Point Clear to Fairhope. We all noticed a change in Dr. Schowalter's status, not as a man of ability, but as to prsperity, after he moved to Fairhope. We noticed how spruced-up he looked, how nice he looked, and how different he seemed to be.

I remember when Dr. Schowalter's two sons came to Mobile to work. After they left home and came to Mobile to work, for a number of years they continued to go back to the home for week-ends as long as Dr. Schowalter was at Point Clear. Ned left. He did not stay in Mobile as long as Preston, but they came back as long as he was in Mobile, and Preston came back after they moved to Fairhope, because I would meet him on the street and ask him about them. I knew of his being over there quite often. At the time of Dr. Schowalter's death, they had both gone way to New Orleans and had been away for some time. I never heard anything but that their relations at home were perfectly friendly. I think Mrs. Schowalter was kind and helpful to Dr. Schowalter's sons at the time they lived at Point Clear. When they started to school, she helped them, and when they came to work she helped them to take positions. I never knew anything about the will at all.

CROSS-EXAMINATION, by Mr. Rogers:

I have spoken of the first Mrs. Schowalter. I had no intimate knowledge of their finances, just the general knowledge of Dr. Schowalter being in anything but a prosperous condition. When they kived back of the beach on the farm, I know that

Dr. Schowalter and his first wife did not live there in very affluent circumstances. I never did call on them while they were living there. I know they did not live in very affluent circumstances there because it was the talk of the community. It was a small community. We were all very fond of her and regretted her going out there, because we felt that she was not very comfortable. No, I do not know anything about Dr. Shocwalter and his first wife going back there to live in order to save money so that he could come to Mobile and practice his profession. I have spoken of Dr. Schowalter's improved appearance and apparent financial condition after he moved to Fairhope. I do not know at that time whether Dr. Schowalter was selling some of his property. I do not know of any sales that he may have made. That was some time before the boom on the Baldwin County side, several years before the boom. The boom did not come until two or three years after that. I just heard that Mrs. Schowalter, the second wife, helped Edward and Preston Schowalter to take positions. I could not testify that of my own knowledge. I heard it discussed at the time. I have not testified just from what I have heard as to the relations between Dr. and Mrs. Schowalter. That is from my own personal, intimate knowledge. Also my knowledge of the boys, their improved appearance, and the improved conditions. That is my own knowledge, but as to the other I couldn't say. I knew that because I have been in contact with them. I knew what their relations were, and from what you hear I think you are apt to know.

(EXAMINATION BY MR. ALLEN).

I do not know how often I was in contact with them. We were over there in the summer and saw them. Dr. Schowalter was in our house. Dr. and Mrs. Schowalter were in our house together. I have seen them in their house together. I could not say how often that was. I really couldn't give any idea how often. It was just like neighbors would be. I did not go over there

every day. I don't know that I went over there once a week. At Point Clear I did not go in their house very often; we had most of our visits out on the beach. I could not tell you how often I saw them on the beach and talked with them. I never kept a record of how often I visited my firnds. I lived next door to them. I have seen them in Point Clear, seen them in Fairhope. I could not say that I went in their house, at Point Clear, once a month during the summer. My observations are not based altogether on seeing them on the outside, in public. I saw them in their home, saw them on the beach. I did not see them through their windows. I don't go round peeping and spying on people through their windows. I don't think you ought to ask me that kind of question, because I am not that kind of woman. I saw them and knew them in different homes of the people at Point Clear. I saw them around there and know what their relations were. How should I know anything concerning people I have known always? I saw enough to know whether they were living happily together or not. I testified about the condition of the house. You don't have to go every day or week or month to know that. The Schowalter home at Point Clear may have been renovated and repaired before Mrs. Schowalter, the second, came there, but it was not in condition until after she came there, as far as being fixed up and tidy. I could not tell you that before she came there it was kept by these little children, because I wasn't there at that time. I knew the family then. They had three children. It is a hard proposition to remember how old the children were when Mrs. Schowalter came there. They were small children. I can tell you exactly how old Ned is: He is thirty-three years old. I did not say that the little boys began to dress up better. I said the children always looked nice and neat. I do not know that the boys spent their time in working while other little boys were playing. I know that they had a cow and Dr. Schowalter sold the milk, and the boys took care of the cow, and they used to sell papers. There may have been more than one cow, but there was more than one boy, too. I don't know whether there

wase seven or eight cows; I never counted them. I don't know of any other work that the boys did. As to whether I know that Mrs. Schowalter made Ned cook, that is a mighty good thing, and I wish more children did. I have not the slightest interest in this case, only my personal friendship for Dr. Schowalter and Mrs. Schowalter. I feel I am doing this to help him as much as Mrs. Schowalter. I am doing this to help Dr. Schowalter. I am doing it to help them both. I feel it would be his wish, and Mrs. Schowalter, too.

I had not the slightest trouble over the will of my brother. I never had any difficulty with my brother about a will. My brother had some property in Louisiana. Mr. Harry T. Smith represented my brother's first wife, and if I hadn't been pretty smart Mr. Harry T. Smith would have got the property. I knew something about the Louisiana laws. My brother's first wife brought suit for alimony, and Mr. Harry T. Smith represented her. The property here was deeded back, and they got it; it wasn't much, and I guess Mr. Smith got most of it. That Louisiana property, I went over there and found out about it. My brother owned one-fourth in it, and immediately I sent my brother a check for $4,000.00, and Mr. Smith sent me a communication to please hand that over with the rest, but I knew he would never get it. My brother and I never had any trouble over any will. There was not the slightest disagreement between us. My father left everything to my mother and we never contested it, neither my brother nor I. By the Louisiana law we would have been entitled to our portion.

I do not think there could have been considerable friction between the second Mrs. Schowalter and the children without my knowing anything about it. When they were little children, I heard the same old story, that the step-mother wasn't kind, but I did not see any evidence of it. I do not know the circumstances under which Rightor left home. I do not know the circumstances under which Ned left home. I do not know the circumstances under which Preston left home. I know they

came back, though. They came back at different times, week-ends. I could not tell you how often they went back. It was quite frequently. I mean by quite frequently, every few weeks during the summer. I couldn't tell you whether it would be four times in thesummer, because I wasn't that much interested. Their father was there. As to whether Rightor came back, he went off to the navy and died, poor boy. I don't remember much about that. I know Preston came back up to the time he left Mobile. I would meet him on the street, and ask him. Of my own knowledge I do not know how often they went back; if I told you I did, I would lie.

REDIRECT, by Mr. Smith:

I never had any difference with my brother at all. On the contrary, he conveyed everything, his interest in the property, to me before there was any suit at all; turned over the little mother left. She only left a little. He simply conveyed his interest to me voluntarily. My brother's wife sued for back alimony, and you (Mr. Smith), represented her. She and my brother were divorced. I think she sued for alimony and got judgment and tried to reach this property that my brother had conveyed to me. My lawyer advised me to hand it over. So far as the Alabama property was concerned, I simply declined to have any litigation over it and voluntarily conveyed the property my brother conveyed to me back. As far as the Louisiana property is concerned, I paid my brother a consideration for his share. Mr. Smith, who is examining me now, is the one who tried to do me out of the property, but I beat him to it. I was pleased about that, too. My subsequent relations with Mr. Smith have been very pleasant. I had some feeling at the time, but I have gotten over it.

~~RECROSSEXX~~

RE-CROSS EXAMINATION:

The brother who conveyed to me was Mr. James Gray Thomas. He

died three years ago. I do not know whether he had the same opinion of the pleasantness of this transfer or not. I know that until he died our terms were most amicable. We never had any unpleasantness. He visited me and I visited him, and we all were very happy together.

COMMISSIONER'S CERTIFICATE.

I, Robt. H. McConnell, as commissioner in the foregoing entitled cause, by agreements of the solicitors of record in the cause, which are returned herewith, do hereby certify that I caused the witnesses for the complainant to come before me at the law offices of Messrs. Harry T. Smith & Caffey, 7th floor First National Bank Building, Mobile, Alabama; that is to say, I caused the witness, Charlotte Gertrude Schowalter, to come before me at said place at 10:00 o'clock A. M. on June 1, 1928, and the witnesses, W. D. Curran, Mrs. Sara Curran, Dr. R. C. Macy, Mrs. R. C. Macy, Miss Virginia Thomas and Joseph Pose to come before me at said place on July 18, 1928, at 10:00 o'clock A. M.; that each of said witnesses was duly made known to me and was by me duly sworn according to law; that the testimony of the respective witnesses was by me reduced to writing as near as might be in their own language; that each of said witnesses testified as set forth in their respective depositions herewith returned; that the deposition of Mrs. Charlotte Gertrude Schowalter was read over by her and was by her signed in my presence; that the solicitors of record in the cause waived the reading and signing of their depositions by the other witnesses herein named.

I hereby certify that I am not of counsel or of kin to any party to the cause, nor am I interested in the result of the suit. I further certify that my commissioner's fee for taking said depositions is $80.80. Witness my hand and seal this 24th day of July, 1928.

Robt H McConnell
Commissioner.

V. McR. Schowalter, Deceased,
Estate of.
As to final settlement. November 22, 1932.

This day came Charlotte G. Schowalter, as the executrix in this Court of said estate, and filed her accounts, vouchers, evidences and statement for a final settlement of her administration.

It is ordered that the 28th day of December, 1932, be appointed a day for such settlement, at which time all persons interested can appear and contest the same if they think proper. It is further ordered that notice of the nature of this settlement and the time setto consider the same be given by publication once a week for three consecutive weeks in the Baldwin County Times, a newspaper published in this county, for all persons in interest to contest the same if they think proper.

It is further ordered that Preston J. Schowalter be notified of this proceeding and of the day above set for hearing the matter, by citation to be personally served upon him at least ten days prior to the day set for hearing the same.

F. W. Hare
Circuit Judge

Schowalter

Filed Nov 23rd 1932
T W Robinson
Register

State of Alabama, In Circuit Court.
Baldwin County. at Bay Minette, Alabama.
In Estate of V. McR. Schowalter, Deceased.
In the matter of a final settlement. This day came Charlotte G. Schowalter, as the executrix of said estate, and filed her accounts, vouchers and statements and evidences for a final settlement of her administratration. It is ordered that the 28th day of December, 1932, be appointed a day for such settlement at which time all persons interested can appear and contest the same if they think proper. This Nov. 22, 1932

F. W. Hare

As Judge of the 21st Judicial Circuit
of Alabama

Filed Nov 23rd 1932
D M Richmond
Register

CHARLOTTE GERTRUDE SCHOWALTER, APPELLANT.	:	
versus	:	IN THE SUPREME COURT OF ALABAMA.
EDWARD R. SCHOWALTER, PRESTON J. SCHOWALTER AND ALICE ELSA SCHOWALTER, APPELLEES.	:	

Now come the Appellees Edward R. Schowalter and Preston J. Schowalter and acknowledge due service of citation in appeal in the above entitled cause on the 18th day of July, 1929.

STEVENS, McCORVEY, McLEOD, GOODE AND TURNER,

By C. M. Rogers

John M. Allen,

Solicitors for Appellees Edward R. Schowalter and Preston J. Schowalter.

CHARLOTTE GERTRUDE SCHOWALTER, Complainant,	:	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA.
versus	:	IN EQUITY.
EDWARD R. SCHOWALTER, PRESTON J. SCHOWALTER AND ALICE ELSA SCHOWALTER, Respondents.	:	

COMPLAINANT'S NOTE OF EVIDENCE.

At the hearing of this cause the following note of evidence was taken, to-wit:

FOR COMPLAINANT.

1. Original bill of complaint filed Nov. 5th, 1926.
2. Amendment to original bill - filed Dec. 16th, 1926.
3. Amended bill- filed January 17, 1927.
4. Answer of Charlotte G. Schowalter to cross-bill, filed Dec. 16, 1926.
5. Answer of Charlotte G. Schowalter to cross-bill of Edward R. Schowalter and Preston J. Schowalter, filed April 23, 1928.
6. Answer by Alice Elsa Schowalter to the Cross-bill of Edward R. Schowalter and Preston J. Schowalter.
7. Inventory of Estate of V. McR. Schowalter - filed Sept. 29th, 1927.
8. Deposition of W. B. Curran and all exhibits thereto.
9. Deposition of Dr. R. C. Macy and all exhibits thereto.
10. Deposition of Mrs. R. C. Macy and all exhibits thereto.
11. Deposition of Joseph Pose and all exhibits thereto.
12. Deposition of Miss Virginia Thomas and all exhibits thereto.
13. First deposition of Mrs. Sara Curran and all exhibits thereto.
14. Second deposition of Mrs. Sara Curran or Mrs. W. B. Curran and all exhibits thereto.
15. First deposition of Mrs. Charlotte G. Schowalter and all exhibits thereto.

16. Second deposition of Mrs. Charlotte G. Schowalter and all exhibits thereto.

17. Deposition of Mrs. W. B. Patterson.

18. Deposition of Dr. Claude G. Godard.

19. Deposition of Rittenhouse M. Smith.

20. Deposition of Alice Elsa Schowalter, and all exhibits thereto.

REGISTER.

SOLICITORS FOR COMPLAINANT.

CHARLOTTE GERTRUDE SCHOWALTER, Complainant, -vs- EDWARD R. SCHOWALTER, PRESTON J. SCHOWALTER AND ALICE ELSA SCHOWALTER, Respondents.	:	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA. IN EQUITY.

Now comes Charlotte Gertrude Schowalter and answering the cross-bill of Edward R. Schowalter and Preston J. Schowalter says:-

That she now reiterates and adopts all of the allegations of the original bill of complaint as last amended as a part of this answer and that she denies each and every allegation contained in said cross-bill which is inconsistent therewith.

Harry Smith & Lake
Solicitors for Complainant.

We hereby accept service of a copy of the above and foregoing answer to the cross-bill, this the 21st day of April, 1928.

Stevens McCorvey McLeod Goode & Turner and
John N. Allen
Solicitors for Respondents.

CHARLOTTE GERTRUDE SCHOWALTER,	)	
Complainant,	)	IN THE CIRCUIT COURT
VS.	)	OF BALDWIN COUNTY, ALA.
EDWARD R. SCHOWALTER, PRESTON J. SCHOWALTER AND ALICE ELSA SCHOWALTER,	)	IN EQUITY.
Respondents.	)	

Upon motion of the Complainant, it is ordered adjudged and decreed by the Court, and it is hereby ordered that publication of the testimony be published.

F. W. Hare
Judge.

8

RECORDED

Order Publishing
testimony -

Filed 2/14/29
F. W. Hare
Judge

CHARLOTTE GERTRUDE SCHOWALTER, Complainant, Vs. EDWARD R. SCHOWALTER, PRESTON J. SCHOWALTER AND ALICE ELSA SCHOWALTER, Respondents.	)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA. IN EQUITY.

Now comes the Complainant and moves the Court for a publication of the testimony in this case.

R M Smith
Harry T Smith & Happy
Solicitors for Complainant.

7

RECORDED

Motion to
Publish testimony

Filed 2/14/29

F. W. Hare
Judge

Charlotte Gertrude Schowalter, individually and as executrix of the Estate of V. McR. Schowalter, deceased, Complainant, -vs- Edward R. Schowalter, Preston J. Schowalter and Alice Elsa Schowalter, Respondents.	No. _____. IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA.

Come the respondents Edward R. Schowalter and Preston J. Schowalter, by their solicitors, and demur to the bill of complaint in this cause, as last amended, on the following separate and several grounds, viz.:-

1. Because said bill does not contain equity.

2. Because said bill is without equity for that it appears therefrom that there is no ambiguity in the will.

3. Because said bill is without equity for that said will shows without ambiguity a devise to complainant of an estate for her life with remainder over to testator's children.

4. Because said bill is without equity for that said will shows without ambiguity a devise to complainant of an estate for her life with remainder over to testator's children, without power of disposition in complainant.

5. Because it affirmatively appears that the construction of the will prayed for by complainant is in violation of the express letter of the will, which contains a devise to complainant of an estate for her life with remainder over to testator's children.

6. Because it affirmatively appears that the construction of the will prayed for by complainant is in violation of the express letter of the will, which contains a devise to complainant of an estate for her life with remainder over to testator's children, without power of disposition in the complainant.

7. Because said bill seeks to alter or vary the express letter of said will by parol evidence.

8. Because said bill seeks to alter or vary the express letter of said will by extrinsic evidence.

9. Because it affirmatively appears from the language of said will that there is no latent ambiguity which parol evidence would serve to explain.

10. Because the express language of said will is such that the matters and things alleged in said bill are inadmissible for the purpose of endeavoring to ascertain testator's intention.

Stevens, McCorvey, McLeod, Goode & Turner,
John N. Allen.

Solicitors for respondents Edward R. and Preston J. Schowalter.

6

Schowalter
vs
Schowalter

Demurrer to
Amended Bill.

Filed Feb 17/1927
T. W. Rimmer
Register

RECORDED

CHARLOTTE GERTRUDE SCHOWALTER, Complainant, -vs- EDWARD R. SCHOWALTER, PRESTON J. SCHOWALTER AND ALICE ELSA SCHOWALTER, Respondents.	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA. IN EQUITY.

FOR RESPONDENTS AND CROSS-COMPLAINANTS, EDWARD R. AND PRESTON J. SCHOWALTER:

At the submission of the above captioned cause had before the Honorable F. W. Hare at Monroeville, Alabama, on Thursday, the 14th day of February, 1929, the following evidence was noted:

1. The amended answer and cross-bill of the Respondents and Cross-Complainants, Edward R. Schowalter and Preston J. Schowalter, together with the exhibit thereto attached.

2. The deposition of Edward Brodbeck taken before O. H. Swinson, Commissioner, on the 21st day of November, 1928.

3. The deposition of Otto E. Zundel taken before O. H. Swinson, Commissioner, on the 22nd day of November, 1928.

4. The deposition of Edward R. Schowalter taken before O. H. Swinson, Commissioner, on the 22nd day of November, 1928, together with exhibits or documents attached to the deposition of the said Edward R. Schowalter.

5. The deposition of Preston J. Schowalter taken before O. H. Swinson, Commissioner, on the 22nd day of November, 1928, together with exhibits or documents attached to the deposition of the said Preston J. Schowalter.

6. The deposition of Mrs. Blanche S. Broadwood taken before O. H. Swinson, Commissioner, on the 12th day of January, 1929, together with the exhibit thereto attached.

F. W. Hare
JUDGE

6

RECORDED

Note of testimony

Filed 2/14/29
F. W. Hare
Judge

Charlotte Gertrude Schowalter, Complainant, vs. Edward R. Schowalter, Preston J. Schowalter and Alice Elsa Schowalter, Respondents.	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA. IN EQUITY. NO. _____.

It is agreed by and between Messrs. Harry T. Smith & Caffey and R. M. Smith, solicitors for the complainant, Charlotte Gertrude Schowalter, and Messrs. Stevens, McCorvey, McLeod, Goode & Turner and John N. Allen, solicitors for Edward R. Schowalter and Preston J. Schowalter, the respondents in the above captioned cause, that they may remove from that certain pleading marked "Cross-bill and Answer, Schowalter vs. Schowalter, Filed November 19th, 1926, T. W. Richerson, Register" a photostatic copy of the last will and testament of V. McR. Schowalter, deceased, which said photostatic copy was attached to the answer and cross-bill first made by Edward R. Schowalter and Preston J. Schowalter, and duly filed in the Circuit Court of Baldwin County, Alabama, in equity. This agreement is entered into in order that the photostatic copy may be detached from this pleading and attached to the answer and cross-bill of Edward R. Schowalter and Preston J. Schowalter to be filed to the bill of complaint as last amended.

R M Smith

Harry T Smith Caffey

Solicitors for the Complainant.

Stevens McCorvey McLeod Goode & Turner

John N Allen

Solicitors for the Respondents
Edward R. Schowalter and Preston
J. Schowalter.

11 ~~1/15~~ 9/4

Schwalb

Agreement between
Solheim for Complainant
v. Solheim for
Respondent

Filed 9/1/25/28
T. J. Hickey
Registrar

RECORDED

1

CHARLOTTE GERTRUDE SCHOWALTER, Complainant.	)	CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA.
-VS-	)	
EDWARD R. SCHOWALTER, PRESTON J. SCHOWALTER, and ALICE ELSA SCHOWALTER. Respondents.	)	IN EQUITY.

Now comes the complainant, and again amends her original bill of complaint by striking out so much of the fourth (4th) paragraph as last amended, as begins with the words "The estate of the testator amounted to approximately Twenty thousand and no/100 ($20,000.00) Dollars, partly invested", and continuing through to the end of said paragraph, and by inserting in lieu thereof, as follows, viz:-

At the time of the execution of said will, the estate of the testator consisted of a lot of real estate in Baldwin County, Alabama, none of which was improved, or produced any income whatever, except a house and lot at Point Clear, Alabama, which rented from Two hundred fifty and no/100 ($250.00) Dollars to Three hundred and no/100 ($300.00) Dollars per annum, which did not more than pay the taxes, together with a professional library, instruments and a few accounts all told worth less than One thousand and no/100 ($1,000.00) Dollars, and which produced no income, so that any devise and bequest of the testator's entire estate which did not enable the devisee and legatee to sell the property and use the money, would have been a burden rather than a blessing. In addition to this, any disposition of the property by his will by giving a life estate to one person with remainder estate to others, would have made it impossible for the life tenant to obtain a benefit therefrom, and made it necessary for the owners of the remain-

der estate to pay the taxes upon the property as long as the life tenant lived, without obtaining any use or benefit thereof, and the testator during his life declared the intent of said will to be to vest in his wife a fee simple title.

Your oratrix, therefore, submits that the only natural construction of said will is to attribute to the testator the intent that your oratrix take a fee simple title to the property devised and bequeathed to her, and should enjoy the right to sell and dispose of said estate, and to use the proceeds as she found necessary or desirable.

Your oratrix, therefore, shows to the Court that it was the purpose of the testator to confer upon her a fee simple title, which included the power of sale, and that no other construction of the will can reconcile his purpose to confer upon her any benefit, and that any other construction would simply attribute to him a purpose to compel the complainant either to pay the taxes upon a lot of vacant property during her whole life without benefit, or to make it necessary for his children to pay such taxes during her life without return, and on the whole, to make his estate a burden to his whole family.

R. M. Smyth &
Harry S. Smith & Laffey
Attorneys for complainant.

We acknowledge service of the foregoing amendment on this the 14th day of January, 1927, and waive further notice of service thereon.

Stevens, McCorry, McCord, Goode & Turner
Attorneys for Defendants.

Amended Bill

Schowalter
vs
Schowalter

Filed Jan 17/927.
T. W. Reimmon
Register

RECORDED

CHARLOTTE GERTRUDE SCHOWALTER, Complainant, -vs- EDWARD R. SCHOWALTER, PRESTON J. SCHOWALTER AND ALICE ELSA SCHOWALTER, Defendants.	:	IN THE CIRCUIT COURT OF BALDWIN COUNTY. IN EQUITY.

INTERROGATORIES TO BE PROPOUNDED ON BEHALF OF THE COMPLAINANT, TO CHARLOTTE GERTRUDE SCHOWALTER, WHO RESIDES AT FAIRHOPE, BALDWIN COUNTY, ALABAMA, UNDER SECTION 7764 ET SEQ OF THE CODE OF 1923.

1. You will please state your name, age and place of residence.

2. Were you or not the wife of Volney McR Schowalter, and, if so, you will please state, first, when and where you were married to Dr. Schowalter; second, whether you lived together happily as man and wife from that time to the time of his death; and third, where you and he so resided during your married life. Did you have any child or children by your marriage with Dr. Schowalter, and if so, give the name and age of each of such children and state which of them are still living. If you had more than one child, how many of them were living when your husband executed his will on June 11th, 1925, and how old were each of the deceased children at the time of their deaths? Please state whether or not the defendants, Preston J. Schowalter and Edward R. Schowalter, were the sons of Dr. Schowalter, and, if so, give their ages and state whether they were your children or the children of Dr. Schowalter by a former marriage.

3. You will please state whether Dr. Schowalter is living or dead, and, if dead, when and where he died, and his age at the time of his death and what life insurance, if any, he left and to whom it was payable.

4. You will please give a list of both the real and the personal property that Dr. Schowalter owned at the time that he executed the will in question on June 11th, 1925, and state the value of each. If you say that he left a professional library you will please state about what the value thereof was. If you say that he left any medical instruments, you will please state the value thereof. If you say that he left any accounts due to him for medical services, you will please state the amount and the value thereof. Have you or not, since you became the executrix of his estate, made a diligent effort to realize upon said accounts? How much in the aggregate have you been able to realize therefrom? If he possessed certain real estate, at the time of executing said will you will then give a list thereof and state, as to each piece of property he owned at the time he executed said will; first, where it is located; second, its size; third, the nature of the improvements thereon, if any; fourth, its value; fifth, whether or not it was subject to any mortgage and, if so, for what amount; sixth, what income is derived from each piece of property; and seventh, if the property is subject to mortgage, you will please state the rate of interest thereon, and when the mortgage became due as well as the amount thereof.

5. You will please state as to each piece of property which Dr. Schowalter owned at the time that he executed his will, just what income he was deriving therefrom. Is it or not true that the only property which he owned at that time, which was of any substantial value, consisted of a house and lot at Point Clear, Alabama, which he had formerly occupied as his home before he went to live at Fairhope? Please state whether or not this house could be rented during the winter months. For how long a season each year was this house rentable, and what rent was Dr. Schowalter able to obtain for this property each year for the five years preceding the execution of his will. If you have not already done so, please state just what income was produced by each piece of property owned by Dr. Schowalter at the time that he executed his will. Please also state whether or not the said properties as a whole were producing enough to pay the taxes,

insurance and repairs thereon. Please state just what taxes, insurance and repairs upon said property amounted to per annum at that time.

6. You will please state whether your husband, after executing his will and before his death, sold any of the property which he had, at the time he executed the will. If you say that he sold a house and one-half a lot at Point Clear, you will then please state when he made this sale, and how much he received therefor and how he invested this money. Please give the dimensions of that one-half of the lot which he retained and its value at that time. If you say that he invested this money in two buildings in Mobile, then please state when he did so. Please describe each piece of property which he purchased in Mobile, and, if you say that it consisted of two houses, please state when he purchased and what he gave for each and whether or not he paid for them in full, or made partial payments and took them subject to mortgages. If you say that he took them subject to mortgages, please state the amount of the mortgage on each piece of property and the date of the maturity of each mortgage, and the rate of interest, and when the interest was payable. You will please state whether he made any provision for the payment of these mortgages, if they should mature after his death. You will please state what means you have of paying off these mortgages so as to protect this property, if it is held that you had no power of sale of the property devised and bequeathed to you under the will of your husband. You will please state what means you have for the payment of the taxes, insurance and repairs upon this property and the other real estate left by your husband, if the property devised to you by your husband is not available for this purpose. You will please state what average gross income each of the houses in Mobile that your husband purchased, have produced since your husband purchased them, and what the taxes, insurance and repairs upon each amounts to per annum.

7. You will please state, as to your daughter, whether she is educated or uneducated, and if educated, to what extent. You will please state the class of society to which Dr. Schowalter and his family belong. You will please state the nature of the relationship which existed between Dr. Schowalter and yourself during your married life, that is to say, whether you lived together happily or otherwise.

8. You will please state, as to each of Dr. Schowalter's sons; first, their ages; second, education; third, ability; fourth, their occupations; and fifth, their degree of success in earning their livelihoods.

9. You will please give a list of the indebtednesses of Dr. Schowalter at the time of his death, as fully as you are able to do so.

10. You will please state the nature of the relationship which existed between Dr. Schowalter and his daughter, Alice Elsa, that is to say, whether their relation was affectionate and confidential or otherwise.

11. You will please state what separate estate Dr. Schowalter's daughter, Alice, possessed at the time of the execution of his will and also at the time of his death. You will please state her age at the time of the execution of said will and whether or not she had, at that time, finished her education. Was she living at home at Fairhope, at that time or was she off at school? If she was off at school, then please state what she was studying and how much longer was necessary that she should continue to remain at school. What was her personal earning capacity at that time and to what extent, if at all, was she then dependent upon Dr. Schowalter for her livelihood and for her means of obtaining an education? If she was at that time earning any part of her own expenses, about what proportion of her expenses was she then earning? If she was living at home at that time what business or occupation was she engaged in, if any? Had your daughter ever earned her own living before June 11th, 1925?

12. You will please state what properties you are possessed of in your own right, and what means of livelihood you possess other than your legacy and devise under Dr. Schowalter's will, and also state just what estate you had, if any, at the time that Dr. Schowalter executed his will, and also at the time of his death.

13. You will please state what, if anything, has been your own earnings from the time of your marriage up to June 11th, 1925, and whether you had devoted yourself to business or to your domestic affairs during this time. If you had any earnings what did they amount to per annum?

14. You will please state whether or not Dr. Schowalter told you of having executed the will in question at the time or shortly after he had executed it. Please state what he did with his will just after its execution and if you say that he gave it to you to take care of, what did he say to you, if anything, in regard to it at the time that he handed it to you for safe keeping? You will please state whether or not you were ever present at any time when Dr. Schowalter made any statement to your daughter, Alice Elsa, as to what disposition he had made of his property in his last will, and as to what provision he had made for you in that will. Please state the occasion and just what was said. Please state whether or not you ever heard Dr. Schowalter say anything to his sons as to what was the effect of the provision which he had made in said will for you, and, if he did make such statements you will then please state the time and place of the statements that you can recall and what his statement was.

15. You will please state what is the income actually derived from the estate left by Dr. Schowalter as a whole, including the houses bought, after he executed his will, with the money which he received for the Point Clear property, which he sold after he executed the will, and what is the annual interest on the mortgage indebtedness, and what the taxes and repairs and insurance on the Mobile property amount to.

16. You will please state whether or not you would be able to pay the interest upon the mortgage indebtedness upon the two

houses that Dr. Schowalter purchased shortly after the execution of his will, if you were not permitted to sell any of the property which he left with which to do so. Could you pay said mortgages off in any other way? Could you and your daughter, or you alone, live on the income which could have been derived from Dr. Schowalter's investments as they stood at the time that he executed his will, or would it be possible for you and your daughter, or you alone, to live on the income of Dr. Schowalter's estate as it existed at the time of his death, as the same was invested at that time? If the real estate owned by Dr. Schowalter at the time that he died had to be sold at public outcry, would you have any means with which to protect the same from sacrifice by buying the same in upon your own responsibility? If any of this property was sold under mortgages, would you or your daughter, Alice, have any means of redeeming the same?

A M Smith

Harry T Smith Pelle,

SOLICITORS FOR COMPLAINANT.

We suggest George A. Sossaman of Mobile, Alabama, as a suitable and competent person to take the deposition of Charlotte Gertrude Schowalter, in the above styled cause.

A M Smith

Harry T Smith Pelle

SOLICITORS FOR COMPLAINANT.

Service of interrogatories accepted and further notice of filing waived May 8, 1928.

John N. Allen

Stevens, McCorvey, McLeod, Goode & Turner

SOLICITORS FOR RESPONDENTS.

Charlotte Gertrude Schowalter, individually and as Executrix of the Estate of V. McR. Schowalter, deceased, Complainant,	No. _____.
-vs-	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA.
Edward R. Schowalter, Preston J. Schowalter and Alice Elsa Schowalter, Respondents.	

Come the respondents Edward R. Schowalter and Preston J. Schowalter, by their solicitors, and, by leave of the court, file the following additional grounds of demurrer to the bill of complaint as last amended, viz:-

1a. Because said bill as last amended is without prayer for relief.

Said respondents, by leave of the court, also demur specifically to the fourth paragraph of said bill of complaint as last amended on the following additional grounds, separately and severally, viz:-

2a. Because the will referred to shows without ambiguity a devise to complainant of an estate for her life with remainder over to testator's children.

3a. Because the will referredto shows without ambiguity a devise to complainant of an estate for her life with remainder over to testator's children, without power of disposition in complainant.

4a. Because the allegations in said paragraph seek to alter or vary the express letter of said will by parol evidence.

5a. Because the allegations in said paragraph seek to alter or vary the express letter of said will by extrinsic facts and circumstances.

6a. Because it affirmatively appears from the language of said will that there is no latent ambiguity which parol evidence would serve to explain.

7a. Because it affirmatively appears from the language of said will that there is no latent ambiguity which extrinsic facts and circumstances would serve to explain.

8a. Because the express language of said will is such that the matters and things alleged in said paragraph are inadmissible for the purpose of endeavoring to ascertain testator's intention.

9a. Because the express language of said will is so plain and unambiguous that the matters and things alleged in said paragraph are inadmissible for the purpose of endeavoring to ascertain testator's intention.

Stevens, McCorvey, McLeod, Goode & Turner,
John N. Allen.
Solicitors for respondents Edward R. and Preston J. Schowalter.

We acknowledge service of a copy of the foregoing demurrers and waive further notice of the filing thereof.

R. McLemore, Harry Smith, Haffey
Solicitors for Complainant.

7 ~~[illegible]~~

D A Howeller

Additional
Demurrer to amended
Bill

Filed April 9, 1927
T. O. V. Richmond
Register

RECORDED

STEVENS, McCORVEY, McLEOD, GOODE & TURNER
ATTORNEYS AT LAW
502-8 FIRST NATIONAL BANK BUILDING
MOBILE, ALABAMA

THOMAS M. STEVENS
GESSNER T. McCORVEY
WILLIAM McLEOD
DAVID B. GOODE
BEN D. TURNER
C. M. A. ROGERS

April 17th, 1928.

Hon. T. W. Richerson,

Bay Minette, Ala.

Dear Sir:- Schowalter vs. Schowalter:

In this matter we are preparing our answer to the original bill of complaint as last amended. You may recall we filed an answer to the original bill, but after the amendments were made we filed no additional answer, nor did we request that our answer as first filed be re-filed. When the original bill had been twice amended we demurred; our demurrer was over-ruled; we appealed to the Supreme Court, and the Supreme Court has affirmed the ruling of the Lower Court. We shall appreciate it, very much, if you will forward to us the answer as originally drafted by us, as in view of the amendments it now becomes necessary for us to make certain changes in the pleading, and as we also wish to have the photo-static copy of the will to attach to the answer we shall now make. In other words, the answer as made to the original bill as last amended is now no part of the record and is wholly inapplicable to the situation presented by the two amendments.

Thanking you to forward us this answer by return post, as it is incumbent on us to have our answer filed within the next day or two, we are,

Yours very truly,

Stevens, McCorvey, McLeod, Goode & Turner,

By Rogers

CMAR-S.

636

Send answer to Bill received Apr 19-28.

CHARLOTTE GERTRUDE SCHOWALTER, Complainant.	IN THE CIRCUIT COURT OF
VS.	BALDWIN COUNTY, ALABAMA.
EDWARD R. SCHOWALTER, PRESTON J. SCHOWALTER, and ALICE ELSA SCHOWALTER, Respondents.	IN EQUITY.

Now comes the complainant and amends the original bill of complaint in this cause by re-writing the third and fourth paragraphs thereof, so as to read as follows, viz:-

3rd. That a doubt has arisen as to the true construction of said will, and that the construction and interpretation of this will by this Court is necessary in order to enable the complainant to perform her duties under said will as executrix, and in order to determine just what disposition of the said estate was, in fact, made by the said testator, that is to say, that the complainant understands from said will that there was devised and bequeathed to her, in fee simple, all of the residue of the said testator's estate after providing for the bequests of Five ($5.00) Dollars to each of his children; that it was the purpose and intent of said testator and of the provisions of said will that the complainant should have and enjoy said entire residue with full power and authority to dispose thereof as she saw fit, and that it was the purpose and intent of the clause following this devise and bequest reading:-

> "At her death or remarriage the remainder of my estate to be equally divided between my children Edward R. Schowalter, Preston J. Schowalter and Alice Elsa Schowalter",

to so limit the preceding devise and bequest of a fee simple title as to pass to the children only such portion of said residue as the complainant did not dispose of during her lifetime. On the other hand, while the defendant, Alice Elsa Schowalter, has always insisted on the same view of the subject as asserted by the complainant, the two defendants, Edward R. Schowalter and Preston J. Schowalter insist that the proper construction of said will

devised and bequeathed to the complainant only a life estate in the said residue with the remainder estate over, after her death, to the said three children jointly.

4th. Your oratrix further shows unto Your Honor, that while the language of the said clause which is quoted in the third paragraph of the bill is ambiguous, the intent of the testator to refer only to such portion of the residue of said estate so devised and bequeathed to the complainant as she did not dispose of during her lifetime, is manifest from the fact, which is a fact, that the testator, who himself drew the will, so construed said language during his lifetime and further, from the conditions and circumstances surrounding the execution of the will. Your oratrix shows unto Your Honor that she and her said husband had lived together happily for many years; that they had two children by said marriage, namely, John, who died in infancy before the execution of said will, and the said Alice Elsa Schowalter, who is now twenty-one years of age, the other two defendants being the children of the testator by a former wife; and while the said Alice Elsa Schowalter was dependent upon her parents for her support and maintenance, the other two defendants were prosperous men and not at all in need of any assistance from their father or his estate. The Complainant, on the other hand, was possessed of a very little separate estate, the income from which approximates $25.00 per month. The daughter of the testator was a girl of refinement and education, and without any separate property or earnings, and her father was very much devoted to her. The estate of the testator amounted to approximately $20,000.00, partly invested and consisting of two houses in Mobile, which he purchased for about Eight Thousand ($8,000.00) Dollars apiece, something like a year before his death, and each of which was subject to a separate mortgage of about Forty-five Hundred ($4500.00) Dollars. Each of these houses rents for Seventy-five ($75.00) Dollars a month, out of which there must be paid the interest upon the mortgage loans, the taxes, insurance and repairs. The balance of said estate consists of vacant property, including a vacant lot on the Bay at Point Clear, Alabama, worth something like Ten Thousand ($10,000.00) Dollars; something like one hundred acres of wild land in Baldwin County, Alabama,

worth approximately Fifteen ($15.00) Dollars per acre, a medical library, surgical instruments, and two or three hundred dollars worth of accounts due from patients, so that if the residuary legacy to the complainant was to consist merely of a life estate, the necessary result would be that, in order to preserve this estate and provide for the interest on the mortgages and pay the taxes, insurance, and repairs upon the two houses, as well as the taxes upon the vacant lot, the legacy would be of substantially no value whatever to the complainant, as the income would be consumed in taking care of the property, and the complainant would be left practically without any beneficial provision whatever, and, incidentally, would be unable to support and maintain her daughter, while, on the other hand, there would be incurred a grave danger of the said houses and lots in Mobile being sacrificed by the foreclosure of the mortgages thereon, and the vacant property sold for taxes, and in no event would the sons realize any benefit from the property during your oratrix's life. Your oratrix, therefore, submits that the only natural construction of said willwas to attribute to the testator the intent that your oratrix should enjoy the right to change the nature of the investment from time to time and to sell and dispose of any portion of the property, and to use the proceeds as she found necessary or desirable, for the support and maintenance of herself and her daughter, and she, therefore, shows to the Court that, in fact and in truth, the true and correct interpretation of said will is in accordance with her contention; otherwise we would attribute to the testator a purpose to burden his wife with the care of his estate during her life without benefit; to endanger its preservation and make it wholly unavailable to his family as long as his wife lives; to cast his daughter upon her own resources at once, and then after his wife's death divide up whatever little might remain, after paying off the mortgages, equally among his two sons, who were already provided for, and his one daughter, who had nothing but whom he knew would be provided for by her mother as far as she was able.

R. M. Smith

Harry A. Mitchell

SOLICITORS FOR COMPLAINANT.

FOOT NOTE :-

Each of the respondents, Edward R. Schowalter, Preston J. Schowalter and Alice Elsa Schowalter, is required to answer each and every allegation of the above and foregoing paragraphss three and four, as amended, but not under oath, oath as to such answers being hereby expressly waived.

R. M. Smith

Harry T. Smith & Calley
SOLICITORS FOR COMPLAINANT.

ORAL EXAMINATION.

I, T.W.Richerson, as Register and hereby certify that the foregoing ~~deposition~~ Oral Examination was taken down in writing by me in the words of the witness and read over to the witness and they signed the same in the presense of myself and Hon.R.M.Smith,Atty forPetition, at the time and place herein mentioned; that I have personal knowledge of personal identity of said witness or had proof made before me of the identity of said witness; that I am not of counsel or of kin to any of the parties to said cause, or any manner interested in the result thereof

~~I enclose the said Oral Examination in an envelope to the Register of said Court.~~

Given under my hand and seal, this 15th day of October, 1930

T.W.Richerson (L. S.)

NO. PAGE

THE STATE OF ALABAMA
BALDWIN COUNTY

IN CIRCUIT COURT, IN EQUITY.

Ex parte Charlotte G.Schowalter

Administratrix of the estate of Dr. V.Mc R.Schowalter.

vs. Complainant

Respondent.

Oral ~~Deposition~~ Examination

Filed Oct 15th, 1930, 192

T.W.Richerson Register.

Recorded in

Record

Vol. Page

, Register

ORAL DEPOSITION. M Ptg Co., Bay Minette

The State of Alabama, Baldwin County. } Circuit Court of Baldwin County, Alabama (In Equity.)

Ex parte Charlotte G.Schowalter, Administratrix of the Estate of V.Mc R.Schowalter,

Petition to Sell Lands,

VS.

I T.W.Richerson

as Register

have called and caused to come before me ~~Charlotte G.Schowalter~~, G.W.Humphries, Harry H.Parker,

witness es named in the ~~Requirement~~ order for for Oral Examination, on the 15 day of Oct 1930, at the office of ~~Bay Minette~~ Register

This hearing being continued from Sept 30,th 1930 to Oct 15th,1930

in Bay Minette, Ala, Alabama, and having first sworn said witness es to speak the truth, the whole truth, and nothing but the truth, the said Witnesses,

doth depose and say as follows:

G.W.Humphries a wirtness who being duly sworn testified as follows:- My name is G.W.Humphries, I am ~~an~~ IN no way interested in the estate of Dr. V.Mc. R.Schowalter, deceased.

I knew the said deceased during his life time and up to the time of his death and am also acquainted with the status of his estate. The debts of his estate amount to more than $15000.00 and the only personal property which he left at the time of his death were some household furniture his library, his medical instruments, and some accounts and notes due to him and the total value of his personal property was less than $3000.00. They have not increased in value since his death.

The value of the personal property of his estate, have never since his death been more than $3000.00. I know that the Will of the Doctor gave no power to sell any lands for the payment of the debts of his estate.

G.W.Humphries

H.H.Parker who being duly sworn testified as follows:

My name is Harry H. parker. I am a Surveyor and Abstractor, I was intimately acquainted with Dr. ~~&&&~~ V.Mc R.Showalter, for many years prior to his death . Dr. Schowalter did not at the time of his death have sufficient personal property to pay the debts of his estate. Since his death at no time have there been sufficient personal property of his estate to pay the debts of his estate. At the time of his death he owed more than $15000.00 and the value of his personal property was less than $3000.00 and his personal property has never been worth more than $3000.00 since the time of his death. I have never been interested in his estate either as a Creditor or otherwise but and am a totally disinterested witness.

The will of Dr. Schowalter gave no power to sell any lands for the payment of the debts of the said estate.

Harry H. Parker.

HARRY T. SMITH & CAFFEY
ATTORNEYS AT LAW
716-722 FIRST NATIONAL BANK BUILDING
MOBILE, ALA.
HARRY T. SMITH
WILLIAM G. CAFFEY.

May 24th, 1928.

Hon. T. W. Richerson, Clerk,
Circuit Court of Baldwin County,
Bay Minette, Alabama.

Dear Sir:-

Enclosed we hand you rebutting interrogatories to Miss Alice Elsa Schowalter in the case of Charlotte Gertrude Schowalter vs. Edward R. Schowalter, et als., which you will please file.

We failed to suggest a commissioner when filing our direct interrogatories, and now hand you enclosed an agreement for the appointment of David J. Wood as commissioner in this matter.

Please issue a commission to Mr. Wood and attach thereto the direct, cross and rebutting interrogatories, and forward said commission to us. We will then write Mr. Wood giving him instructions as to the taking of this deposition.

Your prompt attention will be appreciated.

Very truly yours,

Harry T. Smith & Caffey

Encs. 2

LBG

Com - Issued May 25/1928

October 15, 1930

In re
Estate of
V. McR. Schowalter, Deceased.

This being the day set for the hearing of the petition to sell certain lands for the payment of debts of the estate, it is ordered, decreeed and adjudged that the hearing be continued to November 15, 1930.

F. M. Hare
Judge.

Filed Oct 15th 1930
T M Richardson
Register

CHARLOTTE GERTRUDE SCHOWALTER, Complainant, -vs- EDWARD R. SCHOWALTER, PRESTON J. SCHOWALTER AND ALICE ELSA SCHOWALTER, Respondents.	:	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA. IN EQUITY.

ANSWER BY ALICE ELSA SCHOWALTER TO THE CROSS-BILL OF EDWARD R. SCHOWALTER AND PRESTON J. SCHOWALTER.

Now comes this respondent and answering the said cross-bill says:-

That the facts are as set forth in the original bill of complaint in this case as last amended and she now adopts and reiterates the allegations of the original bill of complaint as last amended and denies each and every allegation of the cross-bill which is inconsistent therewith.

Now having fully answered the said cross-bill this respondent prays to be hence discharged with her reasonable costs in the premises.

Alice E. Schowalter

CHARLOTTE GERTRUDE SCHOWALTER, Complainant. VS. EDWARD R. SCHOWALTER, PRESTON J. SCHOWALTER, and ALICE ELSA SCHOWALTER, Respondants	CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA. IN EQUITY.

Now comes Charlotte Gertrude Schowalter, and answering the cross-bill in this cause, says:-

That the first and second paragraphs thereof make no allegation of fact to be answered, and that in answer to the third paragraph she says, that she admits the allegations of the third paragraph except the allegation that the attempted partial revocation of the said last will and testament of said V. McR. Schowalter, deceased, is null and void and of no effect, in that the attempted partial revocation was not made in the manner prescribed by law, and consequently said last will and testament stands as it was originally proved, and except the allegation that the complainant. Charlotte Gertrude Schowalter, is entitled to a life estate only in the properties, real, personal and mixed, of the said V. McR. Schowalter, deceased, and that such life estate is made contingent on her remaining a widow. These allegations the complainant denies and here reiterates the allegations of the original bill of complaint as amended, to the effect that by the terms of said will, a fee simple estate is vested in the complainant to said residue and that it was the purpose and intent of the said will that the children of the said testator should take only whatever portion of the property so devised and bequeathed to complainant should remain undisposed of by her at the time of her death, which said effort on the part of the testator to devise and bequeath the property remaining undisposed of at the time of the complainant's death, after already bequeathing and devising a fee simple title to the complainant, was null and void.

R. M. Smith

Harry D. Smith & Cash Jr.

SOLICITORS FOR COMPLAINANT.

PUBLISHED EVERY THURSDAY

THE BALDWIN TIMES

PUBLISHED IN THE LAND OF THE GOLDEN SATSUMA

SUBSCRIPTION $2.00 PER YEAR IN ADVANCE
ADVERTISING RATES GIVEN ON APPLICATION

R. B. VAIL
EDITOR AND PROPRIETOR

BAY MINETTE, ALA.

NOTICE TO NON-RESIDENT
In the State of Alabama, Baldwin County, Circuit Court, in Equity, this the 8th day of November, 1926. Charlotte Gertrude Schowalter, individually and as executrix of the estate of V. McR. Schowalter, deceased, No. 63, vs. Edward R. Schowalter and Preston J. Schowalter, et al.
It in this cause it being made to appear to the Clerk of this Court by the affidavit of Charlotte Gertrude Schowalter that the Defendants Edward R. Schowalter and Preston J. Schowalter are non-residents of the State of Alabama and residents of the state of Louisiana, and further that in the belief of said Affiant the Defendants are over the age of 21 years, it is, therefore, ordered that publication be made in The Baldwin Times, a newspaper published in Bay Minette, Baldwin County, Alabama, once a week for four consecutive weeks, requiring the said Edward R. Schowalter and Preston J. Schowalter to answer or demur to the Bill of Complaint in this cause on the 11th day of December, 1926, or after thirty days therefrom a decree Pro Confesso may be taken against them.
T. W. RICHERSON, Register.
M. Smith, Atty for Complainant.

issues:

ALFIDAVIT OF PUBLICATION

STATE OF ALABAMA,
BALDWIN COUNTY.

R. B. Vail, being duly sworn, deposes and says that he is the PUBLISHER of THE BALDWIN TIMES, a Weekly Newspaper published at Bay Minette,, Baldwin County, Alabama; that the notice hereto attached of Non Res. Notice Schowalter Est

Was published in said Newspaper for 4 consecutive weeks in the following issues:

Date of first publication November 11 – 1926 Vol. 37 No. 41

Date of second publication " 18 " Vol. 37 No. 42

Date of third publication " 25 " Vol. 37 No. 43

Date of fourth publication December 2 " Vol. 37 No. 44

Subscribed and sworn to before the undersigned this 6th day of December 1926.

T. W. Richerson
Clerk Circuit Court

R. B. Vail
Publisher.

Largest Weekly Circulation in South Alabama

Bay Minette, Ala., 1/1/26

M J. M. Richerson

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PROMPT SERVICE. LOWEST PRICES. LOCAL AND LONG DISTANCE TELEPHONE

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11/11 Non Res Notice S. Hornsby Est. [illegible]

9¢

R. M. Davis Atty

Charlotte Gertrude Schowalter,
Complainant,

vs.
Edward R. Schowalter, Preston J. Schowalter,
and Alice Elsa Schowalter, Respondents.

In the Circuit
Court of Baldwin
County, Alabama.

This cause coming on to be heard upon the motion of the complainant for a decree pro confesso against the defendant, Alice Elsa Schowalter, and it appearing that due process was served upon her, and she having failed to plead, answer or demur to the bill of complaint for more than the time allowed by law: Therefore, it is ordered, adjudged and decreed by the Court that the allegations of the bill of complaint, as amended, be and the same are hereby taken as confessed by her, and a decree pro confessos is hereby rendered against her.

Dated this the 14th day of February, 1929.

F. W. Hare
Judge

3 RECORDER ~~146~~

RECORDED

Decree Pro. Con,

Filed Feb. 14, 1929

F. W. Hare

Judge

Charlotte Gertrude Schowalter, Complainant, -vs.- Edward R. Schowalter, Preston J. Schowalter and Alice Elsa Schowalter, Respondents.	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA. IN EQUITY.

Now come Edward R. Schowalter and Preston J. Schowalter and file this their answer to the bill of complaint as last amended of Charlotte Gertrude Schowalter and their cross-bill against the said Charlotte Gertrude Schowalter and Alice Elsa Schowalter and show unto your Honor as follows:-

FIRST.

These respondents and cross-complainants admit each of the allegations of the first paragraph of the bill of complaint as last amended.

SECOND.

These respondents and cross-complainants neither admit nor deny the allegations of the second paragraph of the bill of complaint as last amended, but demand strict proof of the said allegations.

THIRD.

Answering the third paragraph of the bill of complaint as last amended, these respondents and cross-complainants neither admit nor deny the allegations concerning the understanding and views of the complainant and her daughter, the respondent Alice Elsa Schowalter, as to the purpose and intent of the testator and the provisions of his will, particularly the clause of the will set forth in the said paragraph, but they demand strict and legal proof showing the intent of the testator and the provisions of the will to be in accordance with their alleged understanding. These respondents admit that they have always insisted, and still insist, that the only true and proper construction of the will is that it creates in complainant a life estate only in all of testator's property, without power to dispose of any part thereof, except by

order of a Court of competent jurisdiction, and these respondents further show that it is their contention that upon the completion of the complainant's life estate, without power of disposition, the will vests in fee the remainder of the entire estate of the testator in the three respondents herein.

FOURTH.

Answering the fourth paragraph of the bill as last amended, these respondents admit that they are children of the testator by his first wife who died when the respondents were quite young, and they further admit that the respondent Alice Elsa Schowalter is the daughter of the testator by his second wife, Charlotte Gertrude Schowalter, the complainant herein. These respondents are not at present sufficiently informed concerning the real and personal property referred to in the said paragraph as to state that it constitutes all of the property left by the testator at the time of his death, but these respondents deny that a devise of the testator's property for the life of the complainant, without power of disposition, with remainder over to his children, would result in a burden rather than a blessing and that such construction would make it impossible for the life tenant to obtain any benefit therefrom, or would create the necessity of the remaindermen paying the taxes on the property so long as the life tenant lives. These respondents further deny that the testator during his lifetime construed his will as alleged by the complainant in the fourth paragraph of the bill of complainant as last amended, and they deny also that the respondent Alice Elsa Schowalter was dependent on her parents for support and maintenance, but on the other hand they show that the respondent Alice Elsa Schowalter was a capable and intelligent woman fitted to earn her own living and earning sufficient amounts to keep her supplied, not only with the necessities of life, but to provide her with some of its luxuries. These respondents deny that the testator was more devoted to the respondent Alice Elsa Schowalter than to themselves, and they deny also that they were not in need of any part of their father's estate. These respondents further state that they are not fully informed of the extent of the complainant's separate estate or the income to be derived therefrom, and they therefore neither admit nor deny the allegation to the effect

that the complainant was vested of a very little separate estate, but demand strict and legal proof thereof.

These respondents allege the true facts to be that their father, V. McR. Schowalter, was equally devoted to all of his children as is manifested by the terms of his will; they show further that while the complainant has always been considerate of her daughter, Alice Elsa Schowalter, who it is alleged contends for the same construction of the will sought by the complainant, the complainant, Charlotte Gertrude Schowalter, has never borne any love for these respondents, the sons of V. McR. Schowalter by his first marriage, but on the contrary these respondents show that the complainant has always been inconsiderate of and unkind to these respondents, as well as to a younger brother now dead, from the time they were very small children when complainant married their father until the respondents grew into young manhood, and these respondents further allege and show that these facts, conditions and circumstances were well known to Doctor Schowalter. These respondents therefore deny that the natural construction of this will is to attribute to the testator the intent that the widow shall take a fee simple title to this estate, or an estate for her life, with power of disposition, but on the contrary they aver that the true construction of this will is that complainant takes only the income therefrom, without power of disposition of any part of the corpus, and further that the said corpus is to be preserved in its entirety for division in equal shares among all of the children of the testator.

FIFTH.

These respondents show finally that the fourth paragraph of the last will and testament of V. McR. Schowalter, deceased, reads as follows: "To my beloved wife, Charlotte Gertrude Schowalter, I give, device and bequeath the residure of my estate, both real and personal, at her death ~~or remarriage~~ the remainder of my estate to be equally divided between my children, Edward R. Schowalter, Preston J. Schowalter and Alice Elsa Schowalter;" that the words "or remarriage" were originally made a part of the said last will and testament of V. McR. Schowalter as of the date of its execution, to-wit, June 11th, 1925, but that subsequent thereto they were

stricken out by lines being drawn through them with a pen or pencil as is above indicated, and that the said V. McR. Schowalter caused to be inscribed at the bottom of the paper on which his will is written what purported to be a codicil, executed on, to-wit, October 30th, 1925, and reading as follows: "The erasure of the words 'or remarriage' were erased by me October 30th, 1925;" this said writing having been duly signed by the said V. McR. Schowalter and attested by two witnesses; that in order that your Honor may more fully comprehend just what was done in this connection, these respondents and cross-complainants have caused to be attached hereto a photostatic copy of the said last will and testament of V. McR. Schowalter; these respondents and cross-complainants further show unto your Honor that the attempted partial revocation of the said last will and testament of V. McR. Schowalter, deceased, was null and void and of no effect in that the attempted partial revocation was not made in the manner prescribed by law and consequently the said last will and testament stands as it was originally drafted and that the complainant, Charlotte Gertrude Schowalter, is entitled to a life estate only, without power of disposition, in the properties, real, personal and mixed, of the said V. McR. Schowalter, deceased, and that such life estate is made contingent on her remaining a widow.

PRAYER FOR PROCESS.

Edward R. Schowalter and Preston J. Schowalter having now fully answered the bill of complaint as last amended of Charlotte Gertrude Schowalter, pray that this their answer may be taken and treated in all respects as a cross-bill, and that the said Charlotte Gertrude Schowalter and Alice Elsa Schowalter may be made parties defendant to this their cross-bill and that they may have notice of the same according to the practice of this Honorable Court.

PRAYER FOR RELIEF.

And these cross-complainants pray that this Honorable Court will undertake the administration of the estate of the said V. McR. Schowalter, deceased, and they join with the complainant in her prayer to the effect that this Court will render a decree construing the said will; these cross-complainants further pray

that this Court will enter a decree to the effect that the attempted partial revocation of the said last will and testament of V. McR. Schowalter is of no effect and void, and that the said complainant, Charlotte Gertrude Schowalter, is, under the terms of said will, entitled to a life estate only, without power of disposition, in the properties devised and bequeathed her under the said fourth provision of the said last will and testament of V. McR. Schowalter, and that this life estate is made contingent on her widowhood and that upon the death or remarriage of the said Charlotte Gertrude Schowalter these cross-complainants and Alice Elsa Schowalter shall become entitled in equal parts to the properties, real, personal and mixed of the said estate, and these cross-complainants further pray that they may have such other and further relief as they may be entitled to receive, the premises considered, and in duty bound they will ever pray.

Stevens McCorney McLeod Goode & Turner and
John N. Allen
Solicitors for Edward R. Schowalter and
Preston J. Schowalter.

FOOT NOTE:

The said Charlotte Gertrude Schowalter and Alice Elsa Schowalter are required to answer each and every allegation of the above and foregoing cross bill, from paragraph First to paragraph Fifth, both inclusive, but not under oath, oath to the same being hereby expressly waived.

Stevens McCorney McLeod Goode & Turner and
John N. Allen
Solicitors for Edward R. Schowalter and
Preston J. Schowalter.

We hereby accept service of the above and foregoing cross-bill and answer on this the 20th day of April, 1928, and waive all further notice of the same.

R. A. Smith
Smith McCaffey
Solicitors for the Complainant,
Charlotte Gertrude Schowalter.

Fairhope, State of Alabama, County of Baldwin

Know all men by these presents that I V McR Schowalter MD of the above mentioned, town, state and county being of sound and disposing mind and memory, do therefore, make, ordain, publish and declare this instrument in writing to be my last Will and Testament, that is to say, First after all my lawful debts are paid and discharged, I give five dollars (5.00) to my son Edward R Schowalter, Second to my son Gustav J Schowalter five dollars (5.00), Third to my daughter Alice E Schowalter five dollars (5.00) Fourth to my beloved wife Charlotte Gertrude Schowalter I give, devise and bequeath the residue of my Estate both real and personal, at her death ~~[illegible]~~ the remainder of my Estate to be equally divided between my children Edward R Schowalter, Gustav J Schowalter and Alice Elsa Schowalter. I hereby constitute and appoint my said wife Charlotte Gertrude Schowalter to be the sole Executrix of this my last will and testament hereby revoking all former Wills by me made. And I direct that my Executrix be not required to give Bond

In witness whereof I have hereunto signed my name and affixed my seal this 4th day of June 1925

V McR Schowalter MD (Seal)

Attested by M G Green
H. S. Bishop

The above instrument was subscribed by the said V McR Schowalter MD in our presence and acknowledged by him to each of us, and he at the same time declared the above written instrument to be his last Will and Testament; and we at his request have signed our names as witnesses hereto, in his presence and in the presence of each other, and within opposite our names our respective places of residence

(Seal) M G Green — Fairhope Ala.
(Seal) H. S. Bishop Fairhope, Ala.

Codicil No. 1 October 30 1925

The erasure of the words "or remarriage" were erased by me October 30 1925 V McR Schowalter (Seal)

Attested by Henry H. Hewson Fairhope, Ala. (Seal)
M G Green, Fairhope Ala (Seal)

CHARLOTTE GERTRUDE SCHOWALTER, Complainant. -vs- EDWARD R. SCHOWALTER, PRESTON J. SCHOWALTER and ALICE ELSA SCHOWALTER, Respondents.	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA. IN EQUITY.

IT IS HEREBY AGREED by and between the solicitors of record in the above entitled cause that this cause may be forthwith submitted for final decree in vacation, without any further notice or formality, and that a final decree may be rendered thereon in vacation.

Made this the 16th day of June, 1950.

Harry L. Smith & Caffey
SOLICITORS FOR COMPLAINANT.

Stevens McCorvey & McLeod & Loder & Turner
per C. M. Rogers

John R. Allen
SOLICITORS FOR RESPONDENTS.

Copy

CHARLOTTE GERTRUDE SCHOWALTER, Complainant, versus EDWARD R. SCHOWALTER, PRESTON J. SCHOWALTER AND ALICE ELSA SCHOWALTER, Respondents.	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA. IN EQUITY.

COMPLAINANT'S NOTE OF EVIDENCE.

At the hearing of this cause the following note of evidence was taken, to-wit:

FOR COMPLAINANT.

1. Original bill of complaint filed Nov. 5th, 1926.
2. Amendment to original bill - filed Dec. 16th, 1926.
3. Amended bill- filed January 17, 1927.
4. Answer of Charlotte G. Schowalter to cross-bill, filed Dec. 16, 1926.
5. Answer of Charlotte G. Schowalter to cross-bill of Edward R. Schowalter and Preston J. Schowalter, filed April 23, 1928.
6. Answer by Alice Elsa Schowalter to the Cross-bill of Edward R. Schowalter and Preston J. Schowalter.
7. Inventory of Estate of V. McR. Schowalter - filed Sept. 29th, 1927.
8. Deposition of W. B. Curran and all exhibits thereto.
9. Deposition of Dr. R. C. Macy and all exhibits thereto.
10. Deposition of Mrs. R. C. Macy and all exhibits thereto.
11. Deposition of Joseph Pose and all exhibits thereto.
12. Deposition of Miss Virginia Thomas and all exhibits thereto.
13. First deposition of Mrs. Sara Curran and all exhibits thereto.
14. Second deposition of Mrs. Sara Curran or Mrs. W. B. Curran and all exhibits thereto.
15. First deposition of Mrs. Charlotte G. Schowalter and all exhibits thereto.

16. Second deposition of Mrs. Charlotte G. Schowalter and all exhibits thereto.

17. Deposition of Mrs. W. B. Patterson.

18. Deposition of Dr. Claude G. Godard.

19. Deposition of Rittenhouse M. Smith.

20. Deposition of Alice Elsa Schowalter, and all exhibits thereto.

T M Reiner
REGISTER.

RECORDED

Harry T. Smith & Alley
SOLICITORS FOR COMPLAINANT.

He has referred to adjacent and to subsequent deed of conveyance dated June 1, 1920, and recorded in Book 1, Page 1, Deed Records of Multnomah County, Oregon.

"Grantor's E. W. Ater to Grantee's Deed of Trust to Mortgage.

"Grantee's Deed of Trust to Grantor's Mortgage.

"Grantor's Mortgage to Grantee's Deed of Trust.

"Grantee's Deed of Trust to Grantor's Mortgage.

"Grantor's Mortgage to Grantee's Deed of Trust.

"Grantee's Deed of Trust to Grantor's Mortgage.

"Grantor's Mortgage to Grantee's Deed of Trust.

"Grantee's Deed of Trust to Grantor's Mortgage."

F.R. Engerby

RECORDED

Filed June 18/20
J. P. Mannix
Recorder

STATE OF OREGON
MULTNOMAH COUNTY

I hereby certify that this instrument was received and duly recorded in Book

Charlotte Gertrude Schowalter, Complainant, vs. Edward R. Schowalter, Preston J. Schowalter and Alice Elsa Schowalter, Respondents.	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA. NO. 635 IN EQUITY.

We, the undersigned, hereby acknowledge ourselves security for the costs of appeal, taken to the Supreme Court of Alabama, by the respondents, from the decree rendered on the 23th day of May, 1927, in the above entitled cause, by the Circuit Court of Baldwin County, Alabama, sitting in equity.

Witness our hands and seals this 3rd day of June, 1927.

FIDELITY & DEPOSIT CO., of MD.

By [signature]

ATTORNEY IN FACT

Bond approved June 1/1927 by the Clerk of this Court. Register.

9ter

Schowalter
vs
Schowalter

Journey for
Cost of Appeal.

Filed June 18, 1927.
T. W. Beckman
Register

RECORDED

V

CHARLOTTE GERTRUDE SCHOWALTER, Complainant.	:	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA.
versus	:	
EDWARD R. SCHOWALTER, ET ALS., Respondents.	:	IN EQUITY. NUMBER 635.

The complainant in the above entitled cause hereby takes an appeal to the Supreme Court of Alabama from the final decree in said cause dated June 10th, 1929, and filed June 21st, 1929.

Dated this the 13th day of July, 1929.

A M Smith

Harry T Smith & Calle

Solicitors for Complainant.

CHARLOTTE GERTRUDE SCHOWALTER, Appellant.	:	
versus	:	IN THE SUPREME COURT OF ALABAMA.
EDWARD R. SCHOWALTER, PRESTON J. SCHOWALTER AND ALICE ELSA SCHOWALTER, Appellees.	:	

I, Alice Elsa Schowalter, being one of the Appellees in the above entitled cause, do hereby acknowledge service of citation in appeal, and do hereby waive any further citation or notice, and do hereby consent that the said appeal may be submitted to the Supreme Court of Alabama without any further notice to me and at any time.

Dated this the 26th day of October, 1929.

Alice Elsa Schowalter

Alice Elsa Schowalter.

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 192 7-8

To the Register *of the* Circuit *Court of* Baldwin *County—Greeting:*

Whereas, the Record and Proceedings of the Circuit *Court of said county, in a certain cause lately pending in said Court between* Edward R Schowalter et al, *Appellant~~s~~,* *and* Charlotte Gertrude Schowalter, *Appellee,* *wherein by said Court, at the* ——— *Term, 19*—, *it was considered adversely to said appellant, were brought before our Supreme Court, by appeal taken, pursuant to law, on behalf of said appellant:*

NOW, IT IS HEREBY CERTIFIED, *That it was thereupon considered by our Supreme Court, on the* 22nd *day of* March *192*8, *that said* decree *of said* Circuit *Court be in all things affirmed, and that it was further considered that the appellant~~s~~, ~~and~~* Edward R Schowalter, and Preston J Schowalter and Fidelity & Deposit Co of Maryland surety on the appeal bond pay

the costs accruing on said appeal in this Court and in the Court below

Witness, Robert F. Ligon, Clerk of the Supreme Court of Alabama, at the Capitol, this the 24 *day of* March, *192*8

Robt F Ligon

Clerk of the Supreme Court of Alabama.

The Supreme Court of Alabama.

October Term, 1927-8

1st *Div., No.* 467.

Edward R Schowalter et al

Appellant,

vs.

Charlotte Gertrude Schowalter

Appellee.

From Baldwin Circuit *Court.*
(In Equity)

CERTIFICATE OF AFFIRMANCE.

The State of Alabama,
Baldwin *County.* } *Filed*

this 27 *day of* Nov *192*8

T N Nicrson

Register

BROWN PRINTING CO. MONTGOMERY. 8807

In Re
Estate of V. McR. Schowalter, Decd.

To the Honorable W. Hare, as Judge of the Circuit Court for the 21st Judicial Circuit of Alabama:-

Comes Charlotte G. Schowalter, and shows unto this Honorable Court that more than twelve months ago she was duly appointed Executrix of the above estate and duly qualified as such; that all of the just debts and expenses have been paid; that the claim of the First National Bank of Gulfport was secured by mortgage on some real property, but said mortgage was foreclosed after the grant of letters of administration, and this debt was canceled by the foreclosure proceedings; that the claim of Baldwin Buick Company is for a debt not owing, and the said Baldwin Buick Company is no longer in existence and can not be located; that the estate is heavily insolvent, but by contract between this petitioner and the creditors of said estate, such monies as were on hand have been distributed amongst the creditors, and contracts have been made with all of the creditors by which this petitioner is to be discharged as executrix, and this proceedings be a final settlement of the estate, and the said Charlotte G. Schowalter is to hold certain lands in trust for the creditors; that said contracts are in writing, and the said written contracts are herewith filed and attached hereto, and are made a part hereof as exhibits.

Petitioner therefore prays thiss Honorable Court for a decree, discharging this petitioner, and for such other relief as she may be entitled to.

Charlotte G. Schowalter
As Executrix of the estate of
V. McR. Schowalter, Decd.

R. W. Smith
Attorney for Petitioner.

The State of Alabama,
Baldwin County.

Personally appeared before me, G. E. Perkins a notary public in and for Baldwin County, Alabama, Charlotte G. Schowalter, as executrix of the estate of V. McR. Schowalter Deceased, who upon oath deposes and says that the statements contained in the above petition are true.

Subscribed and sworn to before me this the 5th day of September, 1932.

Charlotte G. Schowalter
Affiant

G. E. Perkins
Notary Public aforesaid.

My Commission Expires Oct. 24th. 1933

It is agreed between the undersigned creditor (hereinafter called first party) of the estate of Dr. V. McR. Schowalter, deceased, and Mrs. Charlotte G. Schowalter, individually and as executrix of the said estate, hereinafter called second party, as follows:

That in order to wind up the above estate without having a judicial declaration of insolvency, the said Charlotte G. Schowalter as executrix, shall pay to the undersigned first party from the monies now on hand belonging to the said estate twenty per cent (20%) of the principal of the claim of first party against said estate, and first party does hereby release and discharge all claims that first party may have against the undivided half interest in the two lots in Pensacola, Florida, which half interest was owned by the said Dr. Schowalter at the time of his death, and also the following described real estate situate in Baldwin County, Alabama:

NW¼ of SE¼ of Section 11, T. 7 S., R. 2;
Lots 1 - 2 - 6 - 7 - 9 - 10 - 11 - 12 - 13 - 14 - 15 - 16 - 25 - 26 - 28 - 29 - 30 - 31 - 32 - 33 - 34 and 40 in NE¼ of Section 5, T. 7 S., R. 2

Also the medical books, medical instruments and other chattels and office equipment which were owned by the said V. R. McR. Schowalter at the time of his death.

It being understood that the said lands and personalty are released from liability to the claim of this creditor, first party, as exemptions, or in lieu of exemptions, to the said Charlotte G. Schowalter, in consideration of her not having claimed homestead exemptions in the lot at Point Clear from which were derived the monies now on hand and in consideration of her acting as trustee as hereinafter stated.

Mrs. Schowalter individually shall, however, hold in trust for the creditors of the estate of Dr. Schowalter, five acres of land in the rear of Lots 9 and 10 of the Point Clear Subdivision in Baldwin County, Alabama, to be sold by her with the consent of the First National Bank of Mobile, Alabama, and L. Hammel Dry Goods Company when in judgment of the said creditors and Mrs. Schowalter the time is proper for the sale; the said five acres to be held by her in trust as aforesaid for the creditors of the estate, and the proceeds of the sale to be distributed when said property is sold.

There is on hand the sum of Seventeen Hundred and Thirty-five ($1735.00) Dollars of the estate, and the twenty per cent (20%) is to be paid from this, also some balance of court costs and expenses of administration and funeral expenses, and if there is any balance after payment of the twenty per cent (20%) and these preferred claims, such balance is to be held for the payment of taxes on the said five acres, and any balance after payment of said taxes shall be distributed at the time of the distribution of the proceeds of the sale of the said five acres.

Said creditor does hereby fully release and discharge the said Charlotte G. Schowalter, individually and as executrix aforesaid, from all claims which the said creditor may have or have had for the obligation due the said creditor as a creditor of the said estate, but not otherwise, and it is agreed that the court in which the administration proceedings are pending, shall, when requested by said Charlotte G. Schowalter, make a decree discharging the said Charlotte G. Schowalter, individually and as executrix, from all further accounting in the matter of the said estate, it being understood that the said Charlotte G. Schowalter, as trustee, shall hold the said five acres, and the balance of monies on hand as trustee, after payment of the costs and expenses of the administration and the taxes.

Dated this the _____ day of December, 1931.

Wm Ruffles
Creditor.

By _____
As its authorized Agent.

Charlotte G Schowalter
As executrix.

It is agreed between the undersigned creditor (hereinafter called first party) of the estate of Dr. V. McR. Schowalter, deceased, and Mrs. Charlotte G. Schowalter, individually and as executrix of the said estate, hereinafter called second party, as follows:

That in order to wind up the above estate without having a judicial declaration of insolvency, the said Charlotte G. Schowalter as executrix, shall pay to the undersigned first party from the monies now on hand belonging to the said estate twenty per cent (20%) of the principal of the claim of first party against said estate, and first party does hereby release and discharge all claims that first party may have against the undivided half interest in the two lots in Pensacola, Florida, which half interest was owned by the said Dr. Schowalter at the time of his death, and also the following described real estate situate in Baldwin County, Alabama:

NW¼ of SE¼ of Section 11, T. 7 S., R. 2;
Lots 1 - 2 - 6 - 7 - 9 - 10 - 11 - 12 - 13 - 14 - 15 - 16 - 25 - 26 - 28 - 29 - 30 - 31 - 32 - 33 - 34 and 40 in NE¼ of Section 5, T. 7 S., R. 2

Also the medical books, medical instruments and other chattels and office equipment which were owned by the said V. R. McR. Schowalter at the time of his death.

It being understood that the said lands and personalty are released from liability to the claim of this creditor, first party, as exemptions, or in lieu of exemptions, to the said Charlotte G. Schowalter, in consideration of her not having claimed homestead exemptions in the lot at Point Clear from which were derived the monies now on hand and in consideration of her acting as trustee as hereinafter stated.

Mrs. Schowalter individually shall, however, hold in trust for the creditors of the estate of Dr. Schowalter, five acres of land in the rear of Lots 9 and 10 of the Point Clear Subdivision in Baldwin County, Alabama, to be sold by her with the consent of the First National Bank of Mobile, Alabama, and L. Hammel Dry Goods Company when in judgment of the said creditors and Mrs. Schowalter the time is proper for the sale; the said five acres to be held by her in trust as aforesaid for the creditors of the estate, and the proceeds of the sale to be distributed when said property is sold.

There is on hand the sum of Seventeen Hundred and Thirty-five ($1735.00) Dollars of the estate, and the twenty per cent (20%) is to be paid from this, also some balance of court costs and expenses of administration and funeral expenses, and if there is any balance after payment of the twenty per cent (20%) and these preferred claims, such balance is to be held for the payment of taxes on the said five acres, and any balance after payment of said taxes shall be distributed at the time of the distribution of the proceeds of the sale of the said five acres.

Said creditor does hereby fully release and discharge the said Charlotte G. Schowalter, individually and as executrix aforesaid, from all claims which the said creditor may have or have had for the obligation due the said creditor as a creditor of the said estate, but not otherwise, and it is agreed that the court in which the administration proceedings are pending, shall, when requested by said Charlotte G. Schowalter, make a decree discharging the said Charlotte G. Schowalter, individually and as executrix, from all further accounting in the matter of the said estate, it being understood that the said Charlotte G. Schowalter, as trustee, shall hold the said five acres, and the balance of monies on hand as trustee, after payment of the costs and expenses of the administration and the taxes.

Dated this the _____ day of December, 1931.

Travlope Courier
E B Gaston
Creditor.

By _____
As its authorized Agent.

Charlotte G. Schowalter
As executrix.

It is agreed between the undersigned creditor (hereinafter called first party) of the estate of Dr. V. McR. Schowalter, deceased, and Mrs. Charlotte G. Schowalter, individually and as executrix of the said estate, hereinafter called second party, as follows:

That in order to wind up the above estate without having a judicial declaration of insolvency, the said Charlotte G. Schowalter as executrix, shall pay to the undersigned first party from the monies now on hand belonging to the said estate twenty per cent (20%) of the principal of the claim of first party against said estate, and first party does hereby release and discharge all claims that first party may have against the undivided half interest in the two lots in Pensacola, Florida, which half interest was owned by the said Dr. Schowalter at the time of his death, and also the following described real estate situate in Baldwin County, Alabama:

NW¼ of SE¼ of Section 11, T. 7 S., R. 2;
Lots 1 - 2 - 6 - 7 - 9 - 10 - 11 - 12 - 13 - 14 - 15 - 16 - 25 - 26 - 28 - 29 - 30 - 31 - 32 - 33 - 34 and 40 in NE¼ of Section 5, T. 7 S., R. 2

Also the medical books, medical instruments and other chattels and office equipment which were owned by the said V. R. McR. Schowalter at the time of his death.

It being understood that the said lands and personalty are released from liability to the claim of this creditor, first party, as exemptions, or in lieu of exemptions, to the said Charlotte G. Schowalter, in consideration of her not having claimed homestead exemptions in the lot at Point Clear from which were derived the monies now on hand and in consideration of her acting as trustee as hereinafter stated.

Mrs. Schowalter individually shall, however, hold in trust for the creditors of the estate of Dr. Schowalter, five acres of land in the rear of Lots 9 and 10 of the Point Clear Subdivision in Baldwin County, Alabama, to be sold by her with the consent of the First National Bank of Mobile, Alabama, and L. Hammel Dry Goods Company when in judgment of the said creditors and Mrs. Schowalter the time is proper for the sale; the said five acres to be held by her in trust as aforesaid for the creditors of the estate, and the proceeds of the sale to be distributed when said property is sold.

There is on hand the sum of Seventeen Hundred and Thirty-five ($1735.00) Dollars of the estate, and the twenty per cent (20%) is to be paid from this, also some balance of court costs and expenses of administration and funeral expenses, and if there is any balance after payment of the twenty per cent (20%) and these preferred claims, such balance is to be held for the payment of taxes on the said five acres, and any balance after payment of said taxes shall be distributed at the time of the distribution of the proceeds of the sale of the said five acres.

Said creditor does hereby fully release and discharge the said Charlotte G. Schowalter, individually and as executrix aforesaid, from all claims which the said creditor may have or have had for the obligation due the said creditor as a creditor of the said estate, but not otherwise, and it is agreed that the court in which the administration proceedings are pending, shall, when requested by said Charlotte G. Schowalter, make a decree discharging the said Charlotte G. Schowalter, individually and as executrix, from all further accounting in the matter of the said estate, it being understood that the said Charlotte G. Schowalter, as trustee, shall hold the said five acres, and the balance of monies on hand as trustee, after payment of the costs and expenses of the administration and the taxes.

Dated this the _____ day of December, 1931.

Dave Russell Est.
Chas A. Russell
Creditor.

By _____
As its authorized Agent.

Charlotte G. Schowalter
As executrix.

It is agreed between the undersigned creditor (hereinafter called first party) of the estate of Dr. V. McR. Schowalter, deceased, and Mrs. Charlotte G. Schowalter, individually and as executrix of the said estate, hereinafter called second party, as follows:

That in order to wind up the above estate without having a judicial declaration of insolvency, the said Charlotte G. Schowalter as executrix, shall pay to the undersigned first party from the monies now on hand belonging to the said estate twenty per cent (20%) of the principal of the claim of first party against said estate, and first party does hereby release and discharge all claims that first party may have against the undivided half interest in the two lots in Pensacola, Florida, which half interest was owned by the said Dr. Schowalter at the time of his death, and also the following described real estate situate in Baldwin County, Alabama:

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Also the medical books, medical instruments and other chattels and office equipment which were owned by the said V. R. McR. Schowalter at the time of his death.

It being understood that the said lands and personalty are released from liability to the claim of this creditor, first party, as exemptions, or in lieu of exemptions, to the said Charlotte G. Schowalter, in consideration of her not having claimed homestead exemptions in the lot at Point Clear from which were derived the monies now on hand and in consideration of her acting as trustee as hereinafter stated.

Mrs. Schowalter individually shall, however, hold in trust for the creditors of the estate of Dr. Schowalter, five acres of land in the rear of Lots 9 and 10 of the Point Clear Subdivision in Baldwin County, Alabama, to be sold by her with the consent of the First National Bank of Mobile, Alabama, and L. Hammel Dry Goods Company when in judgment of the said creditors and Mrs. Schowalter the time is proper for the sale; the said five acres to be held by her in trust as aforesaid for the creditors of the estate, and the proceeds of the sale to be distributed when said property is sold.

There is on hand the sum of Seventeen Hundred and Thirty-five ($1735.00) Dollars of the estate, and the twenty per cent (20%) is to be paid from this, also some balance of court costs and expenses of administration and funeral expenses, and if there is any balance after payment of the twenty per cent (20%) and these preferred claims, such balance is to be held for the payment of taxes on the said five acres, and any balance after payment of said taxes shall be distributed at the time of the distribution of the proceeds of the sale of the said five acres.

Said creditor does hereby fully release and discharge the said Charlotte G. Schowalter, individually and as executrix aforesaid, from all claims which the said creditor may have or have had for the obligation due the said creditor as a creditor of the said estate, but not otherwise, and it is agreed that the court in which the administration proceedings are pending, shall, when requested by said Charlotte G. Schowalter, make a decree discharging the said Charlotte G. Schowalter, individually and as executrix, from all further accounting in the matter of the said estate, it being understood that the said Charlotte G. Schowalter, as trustee, shall hold the said five acres, and the balance of monies on hand as trustee, after payment of the costs and expenses of the administration and the taxes.

Dated this the _____ day of December, 1931.

Klumpp Motor Co
R. R. Klumpp N
Creditor.

By _____
As its authorized Agent.

Charlotte G. Schowalter
As executrix.

_____

It is agreed between the undersigned creditor (hereinafter called first party) of the estate of Dr. V. McR. Schowalter, deceased, and Mrs. Charlotte G. Schowalter, individually and as executrix of the said estate, hereinafter called second party, as follows:

That in order to wind up the above estate without having a judicial declaration of insolvency, the said Charlotte G. Schowalter as executrix, shall pay to the undersigned first party from the monies now on hand belonging to the said estate twenty per cent (20%) of the principal of the claim of first party against said estate, and first party does hereby release and discharge all claims that first party may have against the undivided half interest in the two lots in Pensacola, Florida, which half interest was owned by the said Dr. Schowalter at the time of his death, and also the following described real estate situate in Baldwin County, Alabama:

NW¼ of SE¼ of Section 11, T. 7 S., R. 2;
Lots 1 - 2 - 6 - 7 - 9 - 10 - 11 - 12 - 13 - 14 - 15 - 16 - 25 - 26 - 28 - 29 - 30 - 31 - 32 - 33 - 34 and 40 in NE¼ of Section 5, T. 7 S., R. 2

Also the medical books, medical instruments and other chattels and office equipment which were owned by the said V. R. McR. Schowalter at the time of his death.

It being understood that the said lands and personalty are released from liability to the claim of this creditor, first party, as exemptions, or in lieu of exemptions, to the said Charlotte G. Schowalter, in consideration of her not having claimed homestead exemptions in the lot at Point Clear from which were derived the monies now on hand and in consideration of her acting as trustee as hereinafter stated.

Mrs. Schowalter individually shall, however, hold in trust for the creditors of the estate of Dr. Schowalter, five acres of land in the rear of Lots 9 and 10 of the Point Clear Subdivision in Baldwin County, Alabama, to be sold by her with the consent of the First National Bank of Mobile, Alabama, and L. Hammel Dry Goods Company when in judgment of the said creditors and Mrs. Schowalter the time is proper for the sale; the said five acres to be held by her in trust as aforesaid for the creditors of the estate, and the proceeds of the sale to be distributed when said property is sold.

There is on hand the sum of Seventeen Hundred and Thirty-five ($1735.00) Dollars of the estate, and the twenty per cent (20%) is to be paid from this, also some balance of court costs and expenses of administration and funeral expenses, and if there is any balance after payment of the twenty per cent (20%) and these preferred claims, such balance is to be held for the payment of taxes on the said five acres, and any balance after payment of said taxes shall be distributed at the time of the distribution of the proceeds of the sale of the said five acres.

Said creditor does hereby fully release and discharge the said Charlotte G. Schowalter, individually and as executrix aforesaid, from all claims which the said creditor may have or have had for the obligation due the said creditor as a creditor of the said estate, but not otherwise, and it is agreed that the court in which the administration proceedings are pending, shall, when requested by said Charlotte G. Schowalter, make a decree discharging the said Charlotte G. Schowalter, individually and as executrix, from all further accounting in the matter of the said estate, it being understood that the said Charlotte G. Schowalter, as trustee, shall hold the said five acres, and the balance of monies on hand as trustee, after payment of the costs and expenses of the administration and the taxes.

Dated this the _____ day of December, 1931.

Farley Jeff. Meat Market
Edith [illegible]
Creditor.

By _____
As its authorized Agent.

Charlotte G. Schowalter
As executrix.

It is agreed between the undersigned creditor (hereinafter called first party) of the estate of Dr. V. McR. Schowalter, deceased, and Mrs. Charlotte G. Schowalter, individually and as executrix of the said estate, hereinafter called second party, as follows:

That in order to wind up the above estate without having a judicial declaration of insolvency, the said Charlotte G. Schowalter as executrix, shall pay to the undersigned first party from the monies now on hand belonging to the said estate twenty per cent (20%) of the principal of the claim of first party against said estate, and first party does hereby release and discharge all claims that first party may have against the undivided half interest in the two lots in Pensacola, Florida, which half interest was owned by the said Dr. Schowalter at the time of his death, and also the following described real estate situate in Baldwin County, Alabama:

NW¼ of SE¼ of Section 11, T. 7 S., R. 2;
Lots 1 - 2 - 6 - 7 - 9 - 10 - 11 - 12 - 13 - 14 - 15 - 16 - 25 - 26 - 28 - 29 - 30 - 31 - 32 - 33 - 34 and 40 in NE¼ of Section 5, T. 7 S., R. 2

Also the medical books, medical instruments and other chattels and office equipment which were owned by the said V. R. McR. Schowalter at the time of his death.

It being understood that the said lands and personalty are released from liability to the claim of this creditor, first party, as exemptions, or in lieu of exemptions, to the said Charlotte G. Schowalter, in consideration of her not having claimed homestead exemptions in the lot at Point Clear from which were derived the monies now on hand and in consideration of her acting as trustee as hereinafter stated.

Mrs. Schowalter individually shall, however, hold in trust for the creditors of the estate of Dr. Schowalter, five acres of land in the rear of Lots 9 and 10 of the Point Clear Subdivision in Baldwin County, Alabama, to be sold by her with the consent of the First National Bank of Mobile, Alabama, and L. Hammel Dry Goods Company when in judgment of the said creditors and Mrs. Schowalter the time is proper for the sale; the said five acres to be held by her in trust as aforesaid for the creditors of the estate, and the pr[illegible]ds of the sale to be distributed when said property is sold.

There is on hand the sum of Seventeen Hundred and Thirty-five ($1735.00) Dollars of the estate, and the twenty per cent (20%) is to be paid from this, also some balance of court costs and expenses of administration and funeral expenses, and if there is any balance after payment of the twenty per cent (20%) and these preferred claims, such balance is to be held for the payment of taxes on the said five acres, and any balance after payment of said taxes shall be distributed at the time of the distribution of the proceeds of the sale of the said five acres.

Said creditor does hereby fully release and discharge the said Charlotte G. Schowalter, individually and as executrix aforesaid, from all claims which the said creditor may have or have had for the obligation due the said creditor as a creditor of the said estate, but not otherwise, and it is agreed that the court in which the administration proceedings are pending, shall, when requested by said Charlotte G. Schowalter, make a decree discharging the said Charlotte G. Schowalter, individually and as executrix, from all further accounting in the matter of the said estate, it being understood that the said Charlotte G. Schowalter, as trustee, shall hold the said five acres, and the balance of monies on hand as trustee, after payment of the costs and expenses of the administration and the taxes.

Dated this the _____ day of December, 1931.

Ralph Keller

Mrs Ralph Keller
Creditor.

By _____
As its authorized Agent.

Charlotte G. Schowalter
As executrix.

It is agreed between the undersigned creditor (hereinafter called first party) of the estate of Dr. V. McR. Schowalter, deceased, and Mrs. Charlotte G. Schowalter, individually and as executrix of the said estate, hereinafter called second party, as follows:

That in order to wind up the above estate without having a judicial declaration of insolvency, the said Charlotte G. Schowalter as executrix, shall pay to the undersigned first party from the monies now on hand belonging to the said estate twenty per cent (20%) of the principal of the claim of first party against said estate, and first party does hereby release and discharge all claims that first party may have against the undivided half interest in the two lots in Pensacola, Florida, which half interest was owned by the said Dr. Schowalter at the time of his death, and also the following described real estate situate in Baldwin County, Alabama:

NW¼ of SE¼ of Section 11, T. 7 S., R. 2;
Lots 1 - 2 - 6 - 7 - 9 - 10 - 11 - 12 - 13 - 14 - 15 - 16 - 25 - 26 - 28 - 29 - 30 - 31 - 32 - 33 - 34 and 40 in NE¼ of Section 5, T. 7 S., R. 2

Also the medical books, medical instruments and other chattels and office equipment which were owned by the said V. R. McR. Schowalter at the time of his death.

It being understood that the said lands and personalty are released from liability to the claim of this creditor, first party, as exemptions, or in lieu of exemptions, to the said Charlotte G. Schowalter, in consideration of her not having claimed homestead exemptions in the lot at Point Clear from which were derived the monies now on hand and in consideration of her acting as trustee as hereinafter stated.

Mrs. Schowalter individually shall, however, hold in trust for the creditors of the estate of Dr. Schowalter, five acres of land in the rear of Lots 9 and 10 of the Point Clear Subdivision in Baldwin County, Alabama, to be sold by her with the consent of the First National Bank of Mobile, Alabama, and L. Hammel Dry Goods Company when in judgment of the said creditors and Mrs. Schowalter the time is proper for the sale; the said five acres to be held by her in trust as aforesaid for the creditors of the estate, and the proceeds of the sale to be distributed when said property is sold.

There is on hand the sum of Seventeen Hundred and Thirty-five ($1735.00) Dollars of the estate, and the twenty per cent (20%) is to be paid from this, also some balance of court costs and expenses of administration and funeral expenses, and if there is any balance after payment of the twenty per cent (20%) and these preferred claims, such balance is to be held for the payment of taxes on the said five acres, and any balance after payment of said taxes shall be distributed at the time of the distribution of the proceeds of the sale of the said five acres.

Said creditor does hereby fully release and discharge the said Charlotte G. Schowalter, individually and as executrix aforesaid, from all claims which the said creditor may have or have had for the obligation due the said creditor as a creditor of the said estate, but not otherwise, and it is agreed that the court in which the administration proceedings are pending, shall, when requested by said Charlotte G. Schowalter, make a decree discharging the said Charlotte G. Schowalter, individually and as executrix, from all further accounting in the matter of the said estate, it being understood that the said Charlotte G. Schowalter, as trustee, shall hold the said five acres, and the balance of monies on hand as trustee, after payment of the costs and expenses of the administration and the taxes.

Dated this the _____ day of December, 1931.

Reiss Mercantile Co
Creditor.

By M. Lands
As its authorized Agent.

Charlotte G. Schowalter
As executrix.

It is agreed between the undersigned creditor (hereinafter called first party) of the estate of Dr. V. McR. Schowalter, deceased, and Mrs. Charlotte G. Schowalter, individually and as executrix of the said estate, hereinafter called second party, as follows:

That in order to wind up the above estate without having a judicial declaration of insolvency, the said Charlotte G. Schowalter as executrix, shall pay to the undersigned first party from the monies now on hand belonging to the said estate twenty per cent (20%) of the principal of the claim of first party against said estate, and first party does hereby release and discharge all claims that first party may have against the undivided half interest in the two lots in Pensacola, Florida, which half interest was owned by the said Dr. Schowalter at the time of his death, and also the following described real estate situate in Baldwin County, Alabama:

NW¼ of SE¼ of Section 11, T. 7 S., R. 2;
Lots 1 - 2 - 6 - 7 - 9 - 10 - 11 - 12 - 13 - 14 - 15 - 16 - 25 - 26 - 28 - 29 - 30 - 31 - 32 - 33 - 34 and 40 in NE¼ of Section 5, T. 7 S., R. 2

Also the medical books, medical instruments and other chattels and office equipment which were owned by the said V. R. McR. Schowalter at the time of his death.

It being understood that the said lands and personalty are released from liability to the claim of this creditor, first party, as exemptions, or in lieu of exemptions, to the said Charlotte G. Schowalter, in consideration of her not having claimed homestead exemptions in the lot at Point Clear from which were derived the monies now on hand and in consideration of her acting as trustee as hereinafter stated.

Mrs. Schowalter individually shall, however, hold in trust for the creditors of the estate of Dr. Schowalter, five acres of land in the rear of Lots 9 and 10 of the Point Clear Subdivision in Baldwin County, Alabama, to be sold by her with the consent of the First National Bank of Mobile, Alabama, and L. Hammel Dry Goods Company when in judgment of the said creditors and Mrs. Schowalter the time is proper for the sale; the said five acres to be held by her in trust as aforesaid for the creditors of the estate, and the proceeds of the sale to be distributed when said property is sold.

There is on hand the sum of Seventeen Hundred and Thirty-five ($1735.00) Dollars of the estate, and the twenty per cent (20%) is to be paid from this, also some balance of court costs and expenses of administration and funeral expenses, and if there is any balance after payment of the twenty per cent (20%) and these preferred claims, such balance is to be held for the payment of taxes on the said five acres, and any balance after payment of said taxes shall be distributed at the time of the distribution of the proceeds of the sale of the said five acres.

Said creditor does hereby fully release and discharge the said Charlotte G. Schowalter, individually and as executrix aforesaid, from all claims which the said creditor may have or have had for the obligation due the said creditor as a creditor of the said estate, but not otherwise, and it is agreed that the court in which the administration proceedings are pending, shall, when requested by said Charlotte G. Schowalter, make a decree discharging the said Charlotte G. Schowalter, individually and as executrix, from all further accounting in the matter of the said estate, it being understood that the said Charlotte G. Schowalter, as trustee, shall hold the said five acres, and the balance of monies on hand as trustee, after payment of the costs and expenses of the administration and the taxes.

Dated this the 29 day of ~~December~~ Sept, 1931.

L. HAMMEL DRY GOODS CO.
Creditor.

By _____ SECY. and TREAS.

By _____
As its authorized Agent.

Charlotte G. Schowalter
As executrix.

It is agreed between the undersigned creditor (hereinafter called first party) of the estate of Dr. V. McR. Schowalter, deceased, and Mrs. Charlotte G. Schowalter, individually and as executrix of the said estate, hereinafter called second party, as follows:

That in order to wind up the above estate without having a judicial declaration of insolvency, the said Charlotte G. Schowalter as executrix, shall pay to the undersigned first party from the monies now on hand belonging to the said estate twenty per cent (20%) of the principal of the claim of first party against said estate, and first party does hereby release and discharge all claims that first party may have against the undivided half interest in the two lots in Pensacola, Florida, which half interest was owned by the said Dr. Schowalter at the time of his death, and also the following described real estate situate in Baldwin County, Alabama:

NW¼ of SE¼ of Section 11, T. 7 S., R. 2;
Lots 1 - 2 - 6 - 7 - 9 - 10 - 11 - 12 - 13 - 14 - 15 - 16 - 25 - 26 - 28 - 29 - 30 - 31 - 32 - 33 - 34 and 40 in NE¼ of Section 5, T. 7 S., R. 2

Also the medical books, medical instruments and other chattels and office equipment which were owned by the said V. R. McR. Schowalter at the time of his death.

It being understood that the said lands and personalty are released from liability to the claim of this creditor, first party, as exemptions, or in lieu of exemptions, to the said Charlotte G. Schowalter, in consideration of her not having claimed homestead exemptions in the lot at Point Clear from which were derived the monies now on hand and in consideration of her acting as trustee as hereinafter stated.

Mrs. Schowalter individually shall, however, hold in trust for the creditors of the estate of Dr. Schowalter, five acres of land in the rear of Lots 9 and 10 of the Point Clear Subdivision in Baldwin County, Alabama, to be sold by her with the consent of the First National Bank of Mobile, Alabama, and L. Hammel Dry Goods Company when in judgment of the said creditors and Mrs. Schowalter the time is proper for the sale; the said five acres to be held by her in trust as aforesaid for the creditors of the estate, and the proceeds of the sale to be distributed when said property is sold.

There is on hand the sum of Seventeen Hundred and Thirty-five ($1735.00) Dollars of the estate, and the twenty per cent (20%) is to be paid from this, also some balance of court costs and expenses of administration and funeral expenses, and if there is any balance after payment of the twenty per cent (20%) and these preferred claims, such balance is to be held for the payment of taxes on the said five acres, and any balance after payment of said taxes shall be distributed at the time of the distribution of the proceeds of the sale of the said five acres.

Said creditor does hereby fully release and discharge the said Charlotte G. Schowalter, individually and as executrix aforesaid, from all claims which the said creditor may have or have had for the obligation due the said creditor as a creditor of the said estate, but not otherwise, and it is agreed that the court in which the administration proceedings are pending, shall, when requested by said Charlotte G. Schowalter, make a decree discharging the said Charlotte G. Schowalter, individually and as executrix, from all further accounting in the matter of the said estate, it being understood that the said Charlotte G. Schowalter, as trustee, shall hold the said five acres, and the balance of monies on hand as trustee, after payment of the costs and expenses of the administration and the taxes.

Dated this the 10 day of December, 1931.

For Alice E. Schowalter
M. G. Johnston
Notary Public.

Alice E. Schowalter
Creditor.

By _____
As its authorized Agent.

Charlotte G. Schowalter
As executrix.

It is agreed between the undersigned creditor (hereinafter called first party) of the estate of Dr. V. McR. Schowalter, deceased, and Mrs. Charlotte G. Schowalter, individually and as executrix of the said estate, hereinafter called second party, as follows:

That in order to wind up the above estate without having a judicial declaration of insolvency, the said Charlotte G. Schowalter as executrix, shall pay to the undersigned first party from the monies now on hand belonging to the said estate twenty per cent (20%) of the principal of the claim of first party against said estate, and first party does hereby release and discharge all claims that first party may have against the undivided half interest in the two lots in Pensacola, Florida, which half interest was owned by the said Dr. Schowalter at the time of his death, and also the following described real estate situate in Baldwin County, Alabama:

NW¼ of SE¼ of Section 11, T. 7 S., R. 2;
Lots 1 - 2 - 6 - 7 - 9 - 10 - 11 - 12 - 13 - 14 - 15 - 16 - 25 - 26 - 28 - 29 - 30 - 31 - 32 - 33 - 34 and 40 in NE¼ of Section 5, T. 7 S., R. 2

Also the medical books, medical instruments and other chattels and office equipment which were owned by the said V. R. McR. Schowalter at the time of his death.

It being understood that the said lands and personalty are released from liability to the claim of this creditor, first party, as exemptions, or in lieu of exemptions, to the said Charlotte G. Schowalter, in consideration of her not having claimed homestead exemptions in the lot at Point Clear from which were derived the monies now on hand and in consideration of her acting as trustee as hereinafter stated.

Mrs. Schowalter individually shall, however, hold in trust for the creditors of the estate of Dr. Schowalter, five acres of land in the rear of Lots 9 and 10 of the Point Clear Subdivision in Baldwin County, Alabama, to be sold by her with the consent of the First National Bank of Mobile, Alabama, and L. Hammel Dry Goods Company when in judgment of the said creditors and Mrs. Schowalter the time is proper for the sale; the said five acres to be held by her in trust as aforesaid for the creditors of the estate, and the proceeds of the sale to be distributed when said property is sold.

There is on hand the sum of Seventeen Hundred and Thirty-five ($1735.00) Dollars of the estate, and the twenty per cent (20%) is to be paid from this, also some balance of court costs and expenses of administration and funeral expenses, and if there is any balance after payment of the twenty per cent (20%) and these preferred claims, such balance is to be held for the payment of taxes on the said five acres, and any balance after payment of said taxes shall be distributed at the time of the distribution of the proceeds of the sale of the said five acres.

Said creditor does hereby fully release and discharge the said Charlotte G. Schowalter, individually and as executrix aforesaid, from all claims which the said creditor may have or have had for the obligation due the said creditor as a creditor of the said estate, but not otherwise, and it is agreed that the court in which the administration proceedings are pending, shall, when requested by said Charlotte G. Schowalter, make a decree discharging the said Charlotte G. Schowalter, individually and as executrix, from all further accounting in the matter of the said estate, it being understood that the said Charlotte G. Schowalter, as trustee, shall hold the said five acres, and the balance of monies on hand as trustee, after payment of the costs and expenses of the administration and the taxes.

Dated this the _____ day of December, 1931.

Frm H G Stff
Creditor.

By _____
As its authorized Agent.

Charlotte G. Schowalter
As executrix.

It is agreed between the undersigned creditor (hereinafter called first party) of the estate of Dr. V. McR. Schowalter, deceased, and Mrs. Charlotte G. Schowalter, individually and as executrix of the said estate, hereinafter called second party, as follows:

That in order to wind up the above estate without having a judicial declaration of insolvency, the said Charlotte G. Schowalter as executrix, shall pay to the undersigned first party from the monies now on hand belonging to the said estate twenty per cent (20%) of the principal of the claim of first party against said estate, and first party does hereby release and discharge all claims that first party may have against the undivided half interest in the two lots in Pensacola, Florida, which half interest was owned by the said Dr. Schowalter at the time of his death, and also the following described real estate situate in Baldwin County, Alabama:

NW¼ of SE¼ of Section 11, T. 7 S., R. 2;
Lots 1 - 2 - 6 - 7 - 9 - 10 - 11 - 12 - 13 - 14 - 15 - 16 - 25 - 26 - 28 - 29 - 30 - 31 - 32 - 33 - 34 and 40 in NE¼ of Section 5, T. 7 S., R. 2

Also the medical books, medical instruments and other chattels and office equipment which were owned by the said V. R. McR. Schowalter at the time of his death.

It being understood that the said lands and personalty are released from liability to the claim of this creditor, first party, as exemptions, or in lieu of exemptions, to the said Charlotte G. Schowalter, in consideration of her not having claimed homestead exemptions in the lot at Point Clear from which were derived the monies now on hand and in consideration of her acting as trustee as hereinafter stated.

Mrs. Schowalter individually shall, however, hold in trust for the creditors of the estate of Dr. Schowalter, five acres of land in the rear of Lots 9 and 10 of the Point Clear Subdivision in Baldwin County, Alabama, to be sold by her with the consent of the First National Bank of Mobile, Alabama, and L. Hammel Dry Goods Company when in judgment of the said creditors and Mrs. Schowalter the time is proper for the sale; the said five acres to be held by her in trust as aforesaid for the creditors of the estate, and the proceeds of the sale to be distributed when said property is sold.

There is on hand the sum of Seventeen Hundred and Thirty-five ($1735.00) Dollars of the estate, and the twenty per cent (20%) is to be paid from this, also some balance of court costs and expenses of administration and funeral expenses, and if there is any balance after payment of the twenty per cent (20%) and these preferred claims, such balance is to be held for the payment of taxes on the said five acres, and any balance after payment of said taxes shall be distributed at the time of the distribution of the proceeds of the sale of the said five acres.

Said creditor does hereby fully release and discharge the said Charlotte G. Schowalter, individually and as executrix aforesaid, from all claims which the said creditor may have or have had for the obligation due the said creditor as a creditor of the said estate, but not otherwise, and it is agreed that the court in which the administration proceedings are pending, shall, when requested by said Charlotte G. Schowalter, make a decree discharging the said Charlotte G. Schowalter, individually and as executrix, from all further accounting in the matter of the said estate, it being understood that the said Charlotte G. Schowalter, as trustee, shall hold the said five acres, and the balance of monies on hand as trustee, after payment of the costs and expenses of the administration and the taxes.

Dated this the 18th day of ~~December, 1931.~~ March 1932

First National Bank of Mobile
Creditor.

By S. P. Bestor Jr. President
As its authorized Agent.

Charlotte G. Schowalter
As executrix.

It is agreed between the undersigned creditor (hereinafter called first party) of the estate of Dr. V. McR. Schowalter, deceased, and Mrs. Charlotte G. Schowalter, individually and as executrix of the said estate, hereinafter called second party, as follows:

That in order to wind up the above estate without having a judicial declaration of insolvency, the said Charlotte G. Schowalter as executrix, shall pay to the undersigned first party from the monies now on hand belonging to the said estate twenty per cent (20%) of the principal of the claim of first party against said estate, and first party does hereby release and discharge all claims that first party may have against the undivided half interest in the two lots in Pensacola, Florida, which half interest was owned by the said Dr. Schowalter at the time of his death, and also the following described real estate situate in Baldwin County, Alabama:

NW¼ of SE¼ of Section 11, T. 7 S., R. 2;
Lots 1 - 2 - 6 - 7 - 9 - 10 - 11 - 12 - 13 - 14 - 15 - 16 - 25 - 26 - 28 - 29 - 30 - 31 - 32 - 33 - 34 and 40 in NE¼ of Section 5, T. 7 S., R. 2

Also the medical books, medical instruments and other chattels and office equipment which were owned by the said V. R. McR. Schowalter at the time of his death.

It being understood that the said lands and personalty are released from liability to the claim of this creditor, first party, as exemptions, or in lieu of exemptions, to the said Charlotte G. Schowalter, in consideration of her not having claimed homestead exemptions in the lot at Point Clear from which were derived the monies now on hand and in consideration of her acting as trustee as hereinafter stated.

Mrs. Schowalter individually shall, however, hold in trust for the creditors of the estate of Dr. Schowalter, five acres of land in the rear of Lots 9 and 10 of the Point Clear Subdivision in Baldwin County, Alabama, to be sold by her with the consent of the First National Bank of Mobile, Alabama, and L. Hammel Dry Goods Company when in judgment of the said creditors and Mrs. Schowalter the time is proper for the sale; the said five acres to be held by her in trust as aforesaid for the creditors of the estate, and the proceeds of the sale to be distributed when said property is sold.

There is on hand the sum of Seventeen Hundred and Thirty-five ($1735.00) Dollars of the estate, and the twenty per cent (20%) is to be paid from this, also some balance of court costs and expenses of administration and funeral expenses, and if there is any balance after payment of the twenty per cent (20%) and these preferred claims, such balance is to be held for the payment of taxes on the said five acres, and any balance after payment of said taxes shall be distributed at the time of the distribution of the proceeds of the sale of the said five acres.

Said creditor does hereby fully release and discharge the said Charlotte G. Schowalter, individually and as executrix aforesaid, from all claims which the said creditor may have or have had for the obligation due the said creditor as a creditor of the said estate, but not otherwise, and it is agreed that the court in which the administration proceedings are pending, shall, when requested by said Charlotte G. Schowalter, make a decree discharging the said Charlotte G. Schowalter, individually and as executrix, from all further accounting in the matter of the said estate, it being understood that the said Charlotte G. Schowalter, as trustee, shall hold the said five acres, and the balance of monies on hand as trustee, after payment of the costs and expenses of the administration and the taxes.

Dated this the 28 day of ~~December, 1931.~~ april 1932

C. J. Gayfer and Co.
Creditor.

By Frank L. Smithing,
As its authorized Agent.

Charlotte G. Schowalter
As executrix.

It is agreed between the undersigned creditor (hereinafter called first party) of the estate of Dr. V. McR. Schowalter, deceased, and Mrs. Charlotte G. Schowalter, individually and as executrix of the said estate, hereinafter called second party, as follows:

That in order to wind up the above estate without having a judicial declaration of insolvency, the said Charlotte G. Schowalter as executrix, shall pay to the undersigned first party from the monies now on hand belonging to the said estate twenty per cent (20%) of the principal of the claim of first party against said estate, and first party does hereby release and discharge all claims that first party may have against the undivided half interest in the two lots in Pensacola, Florida, which half interest was owned by the said Dr. Schowalter at the time of his death, and also the following described real estate situate in Baldwin County, Alabama:

NW¼ of SE¼ of Section 11, T. 7 S., R. 2;
Lots 1 - 2 - 6 - 7 - 9 - 10 - 11 - 12 - 13 - 14 - 15 - 16 - 25 - 26 - 28 - 29 - 30 - 31 - 32 - 33 - 34 and 40 in NE¼ of Section 5, T. 7 S., R. 2

Also the medical books, medical instruments and other chattels and office equipment which were owned by the said V. R. McR. Schowalter at the time of his death.

It being understood that the said lands and personalty are released from liability to the claim of this creditor, first party, as exemptions, or in lieu of exemptions, to the said Charlotte G. Schowalter, in consideration of her not having claimed homestead exemptions in the lot at Point Clear from which were derived the monies now on hand and in consideration of her acting as trustee as hereinafter stated.

Mrs. Schowalter individually shall, however, hold in trust for the creditors of the estate of Dr. Schowalter, five acres of land in the rear of Lots 9 and 10 of the Point Clear Subdivision in Baldwin County, Alabama, to be sold by her with the consent of the First National Bank of Mobile, Alabama, and L. Hammel Dry Goods Company when in judgment of the said creditors and Mrs. Schowalter the time is proper for the sale; the said five acres to be held by her in trust as aforesaid for the creditors of the estate, and the proceeds of the sale to be distributed when said property is sold.

There is on hand the sum of Seventeen Hundred and Thirty-five ($1735.00) Dollars of the estate, and the twenty per cent (20%) is to be paid from this, also some balance of court costs and expenses of administration and funeral expenses, and if there is any balance after payment of the twenty per cent (20%) and these preferred claims, such balance is to be held for the payment of taxes on the said five acres, and any balance after payment of said taxes shall be distributed at the time of the distribution of the proceeds of the sale of the said five acres.

Said creditor does hereby fully release and discharge the said Charlotte G. Schowalter, individually and as executrix aforesaid, from all claims which the said creditor may have or have had for the obligation due the said creditor as a creditor of the said estate, but not otherwise, and it is agreed that the court in which the administration proceedings are pending, shall, when requested by said Charlotte G. Schowalter, make a decree discharging the said Charlotte G. Schowalter, individually and as executrix, from all further accounting in the matter of the said estate, it being understood that the said Charlotte G. Schowalter, as trustee, shall hold the said five acres, and the balance of monies on hand as trustee, after payment of the costs and expenses of the administration and the taxes.

Dated this the 19 day of ~~December~~ March, 1937.

E. A. Mellen
Creditor.

By _____
As its authorized Agent.

Charlotte G. Schowalter
As executrix.

E. H. BRITTON
SHOES AND HOSIERY
159 DAUPHIN ST.

No 3147

Received of Mrs. E. Britton, Mobile, Ala., 3-19 1932

Five and 00/100 Dollars

$ 5.00

E. H. BRITTON

Per

It is agreed between the undersigned creditor (hereinafter called first party) of the estate of Dr. V. McR. Schowalter, deceased, and Mrs. Charlotte G. Schowalter, individually and as executrix of the said estate, hereinafter called second party, as follows:

That in order to wind up the above estate without having a judicial declaration of insolvency, the said Charlotte G. Schowalter as executrix, shall pay to the undersigned first party from the monies now on hand belonging to the said estate twenty per cent (20%) of the principal of the claim of first party against said estate, and first party does hereby release and discharge all claims that first party may have against the undivided half interest in the two lots in Pensacola, Florida, which half interest was owned by the said Dr. Schowalter at the time of his death, and also the following described real estate situate in Baldwin County, Alabama:

NW¼ of SE¼ of Section 11, T. 7 S., R. 2;
Lots 1 - 2 - 6 - 7 - 9 - 10 - 11 - 12 - 13 - 14 - 15 - 16 - 25 - 26 - 28 - 29 - 30 - 31 - 32 - 33 - 34 and 40 in NE¼ of Section 5, T. 7 S., R. 2

Also the medical books, medical instruments and other chattels and office equipment which were owned by the said V. R. McR. Schowalter at the time of his death.

It being understood that the said lands and personalty are released from liability to the claim of this creditor, first party, as exemptions, or in lieu of exemptions, to the said Charlotte G. Schowalter, in consideration of her not having claimed homestead exemptions in the lot at Point Clear from which were derived the monies now on hand and in consideration of her acting as trustee as hereinafter stated.

Mrs. Schowalter individually shall, however, hold in trust for the creditors of the estate of Dr. Schowalter, five acres of land in the rear of Lots 9 and 10 of the Point Clear Subdivision in Baldwin County, Alabama, to be sold by her with the consent of the First National Bank of Mobile, Alabama, and L. Hammel Dry Goods Company when in judgment of the said creditors and Mrs. Schowalter the time is proper for the sale; the said five acres to be held by her in trust as aforesaid for the creditors of the estate, and the proceeds of the sale to be distributed when said property is sold.

There is on hand the sum of Seventeen Hundred and Thirty-five ($1735.00) Dollars of the estate, and the twenty per cent (20%) is to be paid from this, also some balance of court costs and expenses of administration and funeral expenses, and if there is any balance after payment of the twenty per cent (20%) and these preferred claims, such balance is to be held for the payment of taxes on the said five acres, and any balance after payment of said taxes shall be distributed at the time of the distribution of the proceeds of the sale of the said five acres.

Said creditor does hereby fully release and discharge the said Charlotte G. Schowalter, individually and as executrix aforesaid, from all claims which the said creditor may have or have had for the obligation due the said creditor as a creditor of the said estate, but not otherwise, and it is agreed that the court in which the administration proceedings are pending, shall, when requested by said Charlotte G. Schowalter, make a decree discharging the said Charlotte G. Schowalter, individually and as executrix, from all further accounting in the matter of the said estate, it being understood that the said Charlotte G. Schowalter, as trustee, shall hold the said five acres, and the balance of monies on hand as trustee, after payment of the costs and expenses of the administration and the taxes.

Dated this the _____ day of December, 1931.

Jno J. Samuel
Creditor.

By Jno J. Samuel Jr
As its authorized Agent.

Charlotte G. Schowalter
As executrix.

It is agreed between the undersigned creditor (hereinafter called first party) of the estate of Dr. V. McR. Schowalter, deceased, and Mrs. Charlotte G. Schowalter, individually and as executrix of the said estate, hereinafter called second party, as follows:

That in order to wind up the above estate without having a judicial declaration of insolvency, the said Charlotte G. Schowalter as executrix, shall pay to the undersigned first party from the monies now on hand belonging to the said estate twenty per cent (20%) of the principal of the claim of first party against said estate, and first party does hereby release and discharge all claims that first party may have against the undivided half interest in the two lots in Pensacola, Florida, which half interest was owned by the said Dr. Schowalter at the time of his death, and also the following described real estate situate in Baldwin County, Alabama:

NW¼ of SE¼ of Section 11, T. 7 S., R. 2;
Lots 1 - 2 - 6 - 7 - 9 - 10 - 11 - 12 - 13 - 14 - 15 - 16 - 25 - 26 - 28 - 29 - 30 - 31 - 32 - 33 - 34 and 40 in NE¼ of Section 5, T. 7 S., R. 2

Also the medical books, medical instruments and other chattels and office equipment which were owned by the said V. R. McR. Schowalter at the time of his death.

It being understood that the said lands and personalty are released from liability to the claim of this creditor, first party, as exemptions, or in lieu of exemptions, to the said Charlotte G. Schowalter, in consideration of her not having claimed homestead exemptions in the lot at Point Clear from which were derived the monies now on hand and in consideration of her acting as trustee as hereinafter stated.

Mrs. Schowalter individually shall, however, hold in trust for the creditors of the estate of Dr. Schowalter, five acres of land in the rear of Lots 9 and 10 of the Point Clear Subdivision in Baldwin County, Alabama, to be sold by her with the consent of the First National Bank of Mobile, Alabama, and L. Hammel Dry Goods Company when in judgment of the said creditors and Mrs. Schowalter the time is proper for the sale; the said five acres to be held by her in trust as aforesaid for the creditors of the estate, and the proceeds of the sale to be distributed when said property is sold.

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Said creditor does hereby fully release and discharge the said Charlotte G. Schowalter, individually and as executrix aforesaid, from all claims which the said creditor may have or have had for the obligation due the said creditor as a creditor of the said estate, but not otherwise, and it is agreed that the court in which the administration proceedings are pending, shall, when requested by said Charlotte G. Schowalter, make a decree discharging the said Charlotte G. Schowalter, individually and as executrix, from all further accounting in the matter of the said estate, it being understood that the said Charlotte G. Schowalter, as trustee, shall hold the said five acres, and the balance of monies on hand as trustee, after payment of the costs and expenses of the administration and the taxes.

Dated this the _____ day of December, 1931.

Julius Goldstein & Son Inc
Creditor.

By Raymond P. Goldstein Pres.
As its authorized Agent.

Charlotte G. Schowalter.
As executrix.

In consideration of the payment to us by the estate of Dr. V. McM. Schoualter, Deceased, of 20% of our claim against said estate, without insolvency proceedings, we do hereby accept said 20% in full compromise and settlement of said claim.

Dated this April 29, 1932.

By _____

As it's _____

duly authorized to execute this instrument for above named creditor.

Received April _____, 1932, of Mrs. C. L. Schoualter, as the executrix of the estate of Dr. V. McM. Schoualter, Dect., five dollars, in full of all claims of every kind against the estate of Dr. V. McM. Schoualter, deceased.

W. F. PRIOR COMPANY, Inc.

By - _____ President

It is agreed between the undersigned creditor (hereinafter called first party) of the estate of Dr. V. McR. Schowalter, deceased, and Mrs. Charlotte G. Schowalter, individually and as executrix of the said estate, hereinafter called second party, as follows:

That in order to wind up the above estate without having a judicial declaration of insolvency, the said Charlotte G. Schowalter as executrix, shall pay to the undersigned first party from the monies now on hand belonging to the said estate twenty per cent (20%) of the principal of the claim of first party against said estate, and first party does hereby release and discharge all claims that first party may have against the undivided half interest in the two lots in Pensacola, Florida, which half interest was owned by the said Dr. Schowalter at the time of his death, and also the following described real estate situate in Baldwin County, Alabama:

NW¼ of SE¼ of Section 11, T. 7 S., R. 2;
Lots 1 - 2 - 6 - 7 - 9 - 10 - 11 - 12 - 13 - 14 - 15 - 16 - 25 - 26 - 28 - 29 - 30 - 31 - 32 - 33 - 34 and 40 in NE¼ of Section 5, T. 7 S., R. 2

Also the medical books, medical instruments and other chattels and office equipment which were owned by the said V. R. McR. Schowalter at the time of his death.

It being understood that the said lands and personalty are released from liability to the claim of this creditor, first party, as exemptions, or in lieu of exemptions, to the said Charlotte G. Schowalter, in consideration of her not having claimed homestead exemptions in the lot at Point Clear from which were derived the monies now on hand and in consideration of her acting as trustee as hereinafter stated.

Mrs. Schowalter individually shall, however, hold in trust for the creditors of the estate of Dr. Schowalter, five acres of land in the rear of Lots 9 and 10 of the Point Clear Subdivision in Baldwin County, Alabama, to be sold by her with the consent of the First National Bank of Mobile, Alabama, and L. Hammel Dry Goods Company when in judgment of the said creditors and Mrs. Schowalter the time is proper for the sale; the said five acres to be held by her in trust as aforesaid for the creditors of the estate, and the proceeds of the sale to be distributed when said property is sold.

There is on hand the sum of Seventeen Hundred and Thirty-five ($1735.00) Dollars of the estate, and the twenty per cent (20%) is to be paid from this, also some balance of court costs and expenses of administration and funeral expenses, and if there is any balance after payment of the twenty per cent (20%) and these preferred claims, such balance is to be held for the payment of taxes on the said five acres, and any balance after payment of said taxes shall be distributed at the time of the distribution of the proceeds of the sale of the said five acres.

Said creditor does hereby fully release and discharge the said Charlotte G. Schowalter, individually and as executrix aforesaid, from all claims which the said creditor may have or have had for the obligation due the said creditor as a creditor of the said estate, but not otherwise, and it is agreed that the court in which the administration proceedings are pending, shall, when requested by said Charlotte G. Schowalter, make a decree discharging the said Charlotte G. Schowalter, individually and as executrix, from all further accounting in the matter of the said estate, it being understood that the said Charlotte G. Schowalter, as trustee, shall hold the said five acres, and the balance of monies on hand as trustee, after payment of the costs and expenses of the administration and the taxes.

Dated this the _____ day of December, 1931.

Charlotte G. Schowalter
Creditor.

By _____
As its authorized Agent.

Charlotte G. Schowalter
As executrix.

Estate of
Mrs. R. Schwalter

Report

Filed October 17th/1932
T. W. Nelson
Register

CHARLOTTE GERTRUDE SCHOWALTER, Complainant,	)	
vs.	)	IN THE CIVIL COURT OF BALDWIN COUNTY, ALABAMA.
EDWARD R. SCHOWALTER, PRESTON J. SCHOWALTER and ALICE ELSA SCHOWALTER, Respondents.	)	NO. _____ IN EQUITY

By her bill, which has been twice amended, complainant individually and as executrix seeks a decree construing the last will and testament of V. McR. Schowalter, deceased,

Two of the respondents, Edward R. Schowalter and Preston J. Schowalter have demurred to the entire bill as last amended and also separately to the fourth paragraph of the bill as last amended, and the cause is submitted on such demurrers.

While I am doubtful as to whether the bill is so framed that a partial demurrer, or in other words a demurrer to particular paragraph should be entertained, I shall not take this feature into consideration and will treat the cause as though the demurrer to such paragraph should be considered and passed upon.

The testator was a physician, a man of education, and himself wrote the will here in question. It appears from the fourth paragraph of the bill as last amended that at the time the will was written testator's property consisted entirely of his professional library and instruments and a few accounts, all told worth less than One Thousand Dollars, a lot of real estate in Baldwin County, Alabama, none of which was improved or provided any income, except a house and lot in Point Clear, which rented for $250.00 or $300.00 a year, which did not more than pay the taxes. His wife, complainant here, and his daughter, one of the respondents, were then entirely dependent upon him, and must now look to his bounty for maintenance and support, except that his widow has an income of about twenty-five dollars per month from her separate estate, while his sons, who interposed the demurrers had then reached the age of maturity, and are now men of no mean business ability and are prosperous and well to do.

Reading the original bill, the bill as first amended and briefs of counsel for respective parties, I find that subsequent to the execution of the will testator acquired two pieces of property situate in Mobile, the value of each of which was about Eight Thousand Dollars, and on each of which there is a mortgage for about Forty-five Hundred Dollars, and that he owned this property so encumbered at the time of his death. This property it seems is rented, and a total annual income of Eighteen Hundred Dollars will be derived therefrom provided it remains at all times rented and all rent is collected, but according to the complaiant's contention this income is wholly insufficient to pay taxes, upkeep, insurance and discharge the mortgage indebtedness or any great portion of such indebtedness. Complainant insists that if construction sought by respondents be placed upon the will the devise and bequest to her will prove a curse rather than a blessing.

The will, after providing for the payment of debts, by Items 1, 2 and 3, respectively, gives each of testator's children Five Dollars, and then comes Item Four, which contains the last and final devise and bequest and is in words as follows:

"To my beloved wife, Charlotte Gertrude Schowalter, I give, devise and bequeath the residue of my estate, both real and personal; at her death ~~or remarriage~~ the remainder of my estate is to be equally divided between my children, Edward R. Schowalter, Preston J. Schowalter and Alice Elsa Schowalter."

It is over the above quoted provision of the will that the controversy here arose. Demurrants insist that it is plain and unambigious and vests a life estate in the complainant with remainder over to the children therein named, testator having undertaken to eliminate words "or remarriage" by codicil written a few months after the execution of the will. The complainant assebts that the word "remainder" has two meanings, one accorded by laymen, meaning that which has not been disposed of by the tenant in a limited estate, and the other its strictly technical sense, not usually understood by laymen and meaning "one estate or title in the same property succeeding another" and that it was

in the former sense that Dr. Schowalter used the words "remainder of my estate" when he wrote his own will, and complainant undertakes to aver facts in her bill, some of which are above noted, to show that it was the Doctor's intention that the words should be so understood or construed.

Evidently counsel for the parties have given much thought and study of the question, for thay have submitted able briefs and arguments, citing many authorities in support of their respective contentions. The Solicitors for the parties each cite one Alabama case which they respectively insist definitely settles this case as they would have it decided. Demurrants cite Hatcher vs Rice, 213 Ala. 676, and complainant Park vs. Powledge, 198 Ala. 172.

Neither of the above cases as I read and understand it is directly in point and neither puts the question beyond controversy, and can only be looked to for guide and enlightenment.

The will ~~xxxxxxxxxx~~ while showing that it was written by a man of education, is inartificially drawn and words are used not in keeping with terms employed by the lawyer of average ability. Hardly any lawyer after writing a residuary clause disposing absolutely and unconditionally of all the testator's real and personal property would, without saying more, have used the term "remainder of my estate". If he intended that the first taker should have only a life estate the word "life" or some like term would have probably been used, and if it was his purpose that the first taker should have an absolute title or unlimited right to dispose of the property the second clause of paragraph would hardly been worded as it is.

What then did Dr. Schowalter mean by "remainder of my estate" and how are we to ascertain what he meant? Effect should be given to the general scheme and intent of the testator, if lawful, rather than the mere phraseology of the will. The first clause of the fourth item of the will undoubtedly, if standing alone would have given complainant an absolute and unconditional title. Does the second clause limit or cut down this title so as

to vest only a life estate in the widow.

"It is a well settled rule that: 'A clear gift is not to be cut down by anything which does not with reasonable certainty indicate an intention to cut down.' O'Connell vs O'Connell, 196 Ala. 224. Parl vs. Powledge 198 Ala. 172,175."

In the same case the Court quotes with approval the following:

"It is the rule that where property is given in clear language sufficient to convey an absolute fee, the interest thus given shall not be taken away, cut down, or diminished by any subsequent vague and general expressions. This rule is applied where a fee is given either expressly by words of limitation, as to a person and his heirs, or by implication by a devise in general language through the operation of the modern statutes. If it is clearly the intention of the testator that the devisee shall own the fee simple, his subsequent language, directing that what remains of the property at the death of that devisee shall devolve upon a particular person or class of persons, will not cut down the fee to a life estate. The fee, being vested by express and appropriate words, will not be diminished by subsequent words of a vague and general character which are absolutely repugnant to the estate granted.' (2 Underhill, Law of Wills, 689.) *** It not infrequently happens that a testator disposes of property in fee, and then attempts to provide for the disposition of the property after the death of the devisee in fee simple. A provision of this sort is to be carefully distinguished from the cases where a fee simple is cut down to a life estate by a devisee over after the death of the first taker. The distinction between the two classes of cases, though not strongly marked, is well recognized by the courts. If the devise over upon the death of A. is intended to pass the entire property; it is evident that the testator contemplated that A. should take only a life estate, without any power of disposing of his property for a longer term than his own life. But where the devise over upon the death of A. shows that A. was vested with a fee simple estate, and that testator wishes him to have such an estate, but to directthe course of its descent upon his death, the limitation over after the fee is repugnant to the nature of the estate

and void.'"

The gift under consideration, as I see it, must necessarily fall within the one or the other of the two classes discussed in the preceding quotation. "To my beloved wife, Charlotte Gertrude Schowalter, I give, devise and bequeath the residue of my estate, both real and personal" is clear unambigious language. Such expressions or expressions of like kind are frequently found in wills and if nothing more had been said they most surely would have conveyed an absolute and unconditional title to the widow. As to what shall be done with the clause, "at her death the remainder of my estate is to be equally divided between my children, Edward R. Schowalter, Preston J. Schowalter and Alice Elsa Schowalter", I hardly know what to say. I confess I have wavered between two opinions,- one that it is sufficient to show to a reasonable certainty there was an intent to limit or cut down the devise and bequest to the widow, and the other to the contrary. But on considering this item of the will as a whole I do not feel at liberty to assert at this time that it was the intent of the testator to give only a life estate in the real and personal property to the widow and after her death the entire property, including real and personal, as well as money and choses in action should pass to the children, nor am I any more certain that it was his intent to vest a fee simple estate in the widow with the understanding that any part of the property remaining at her death should be divided among his children. I am as doubtful on the one point as I am on the other. In short, I am of the opinion that the language of this item is capable of being understood in either of the two senses mentioned. I am convinced the language is ambigious, and that testator's meaning and intent can only be ascertained by placing ourselves as near as we can in his place, and considering all of the circumstances and conditions,- some of which have been enumerated above - surrounding him at the time he wrote his will, and am of the opinion that for that reason the demurrers should be overruled.

I desire to make it plain, however, that I am doing nothing more than passing upon the equity of the bill and am not

deciding whether the will means the one thing or the other. Nothing said is to be construed as intimating my idea of the testator's intention. I do not know what he intended- That is a question I will not undertake to pass upon until all the relevant and material testimony has been duly considered.

Something is said in complainat's brief, about bad blood existing by reason of the fact that the testator and complainant had quit the Catholic Church. I find no allegation in any of the pleadings that makes any such charge or statement, and it is to be regretted that an argument not justified by the facts alleged has been used. Let me say, however, that I have great respect for complainant's counsel, and do not believe that they would undertake to win their point by appealing to any religious prejudice they supposed I entertained. I have respect for all religions and whether Dr. Schowalter and complainant were ever Catholics or whether they quit that church has not influenced me in reaching a conclusion. I have decided the case in accordance with my understanding of the law and without considering whether the parties are Catholic or Protestant, Jew or Gentile. If I have reached a wrong conclusion, it is because I have misinterpreted the law or erred in holding that the will is ambigious and the Supreme Court, on appeal, will reverse the decree which I render as follows:

CHARLOTTE GERTRUDE SCHOWALTER, Complainant,	IN THE CIRCUIT COURT OF
vs	BALDWIN COUNTY, ALABAMA.
EDWARD R. SCHOWALTER, PRESTON J. SCHOWALTER and ALICE ELSA SCHOWALTER, Respondents.	NO. _____ IN EQUITY

This cause coming on to be heard is submitted for decree on demurrers of respondents, Edward R. Schowalter and Preston J. Schowalter, to the entire bill of complaint as last amended, and to the fourth paragraph of said bill as last amended. After hearing argument of counsel for both parties and after due consideration the court is of the opinion that neither demurrer is well taken and that both should be overruled.

It is therefore ordered, adjudged and decreed by the Court that the demurrers of respondents, Edward R. Schowalter and Preston J. Schowalter, to the bill of complaint as last amended and to the fourth paragraph of said bill of complaint as last amended, be and each and both of them, are hereby overruled.

It is further ordered and decreed that the said respondents have thirty days from the date of this decree in which to answer the bill of complaint as last amended.

Ordered, adjudged and decreed this the 28th day of May, 1927.

John D. Leigh
JUDGE.

8 Ten

RECORDED

Filed May 20th/927.
T. W. Reimer
Register

Decree on Demurrer
to Bill of Complaint.

RECORDED

Delivered

8587 SUMMONS—Original. MOORE PTG CO BAY MINETTE

The State of Alabama,
Baldwin County.

CIRCUIT COURT OF BALDWIN COUNTY,
IN EQUITY.

To any Sheriff of the State of Alabama—GREETING:

WE COMMAND YOU, That you summon Charlotte Gertrude Schowalter,

of Baldwin County, to be and appear before the Judge of the Circuit Court of Baldwin County, exercising Chancery jurisdiction, within thirty days after the service of Summons, and there to answer, plead or demur, without oath, to a CROSS Bill of Complaint lately exhibited by

Edward R. Schowalter, and Preston J. Schowalter,

against said Charlotte Gertrude Schowalter,

and further to do and perform what said Judge shall order and direct in that behalf. And this the said Defendant shall in no wise omit, under penalty, etc. And we further command that you return this writ with your endorsement thereon, to our said Court immediately upon the execution thereof.

WITNESS, T. W. Richerson, Register of said Circuit Court, this 19th day of November, 1926.

T. W. Richerson Register.

N. B.—Any party defendant is entitled to a copy of the bill upon application to the Register.

Original

SERVE ON .....

Circuit Court of Baldwin County
In Equity.

No. .....

SUMMONS

Edward R. Schowalter and
Preston I. Schowalter

Charlotte vs.
/Gertrude Schowalter,

Stevens, Mc Corvey, Mc Leod
and Turner.

.....
Solicitor for Complainant

Recorded in Vol. ..... **Page** .....

Serve copy on
Charlotte G. Schowalter

THE STATE OF ALABAMA,
BALDWIN COUNTY.

Received in office this .....

day of ..... 192...

.....
Sheriff.

Executed this 27 day of
November 1926

by leaving a copy of the within Summons with
Charlotte Schowalter

.....
Defendant.

W. R. Stuart
Sheriff.

By J. P. White
Deputy Sheriff.

(B)

CHARLOTTE GERTRUDE SCHOWALTER, Complainant. -vs- EDWARD R. SCHOWALTER, PRESTON J. SCHOWALTER and ALICE ELSA SCHOWALTER, Respondents.	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA. IN EQUITY.

IT IS HEREBY AGREED by and between the solicitors of record in the above entitled cause that this cause may be forthwith submitted for final decree in vacation, without any further notice or formality, and that a final decree may be rendered thereon in vacation.

Made this the 16th day of June, 1930.

Harry T. Smith & Calfee
SOLICITORS FOR COMPLAINANT.

Stevens McCorvey McLeod & Turner
per C M Rogers

John V Allen
SOLICITORS FOR RESPONDENTS.

Schowalter
vs
Schowalter.

Agreement for Submission

Filed June 18, 1930
T. W. Richmond
Register

IN THE DISTRICT COURT OF
MUSKOGEE COUNTY, OKLAHOMA

MINNIE SCHOWALTER,
Plaintiff,

-vs-

No. 20,

GEORGE SCHOWALTER,
Defendant.

AGREEMENT FOR SUBMISSION

Comes now the plaintiff herein and the defendant herein, and agree that the above and foregoing cause may be submitted to the court upon the pleadings and the testimony of the witnesses heretofore sworn to and recorded in said cause, and that the same be taken as deemed and considered by the court as if the same were a jointly prepared and signed agreement of the parties hereto.

Dated this the 18th day of June, 1930.

Plaintiff's Attorney

Defendant's Attorney

To the Honorable John D. Leigh, Judge of the Circuit Court for the Twenty First Judicial Circuit of Alabama, In Equity:

Comes Charlotte Gertrude Schowalter, both individually and as executrix of the estate of V. McR. Schowalter, Deceased, and brings this her bill of complaint against Edward R. Schowalter, Preston J. Schowalter and Alice Elsa Schowalter, and shows to your Honor:

1st. That the said Edward R. Schowalter, Preston J. Schowalter and Alice Elsa Schowalter, are each over the age of twenty one years, and that each is of sound mind; that the said Edward R. Schowalter and Preston J. Schowalter both reside in New Orleans, in the Parish of Orleans, in the State of Louisiana, and that the said Alice Elsa Schowalter resides at Fairhope, Baldwin County, Alabama.

2nd. That the said V. McR. Schowalter died in Baldwin County, Alabama, on towit June 28, 1926, leaving a last will and testament and codicil thereto, a copy of which said will and codicil is hereto attached, marked Exhibit A, made a part hereof, and is now referred to; and that after the death of the said V. McR. Schowalter, the said will and codicil were duly probated in the Probate Court of Baldwin County, Alabama, under and by decree of the said Probate Court, on towit September 10, 1926, and by said decree this complainant was appointed executrix of the said will and duly qualified as such executrix, and has continued to serve as such executrix ever since, andthat said estate is still being administered upon in said Probate Court.

3rd. That a doubt has arisen as to the true construction of the said will, and that the interpretation of said will by this Court is necessary to enable this complainant to perform her duties under said will as executrix, in this, that a doubt has arisen as to what part of the estate of the said deceased was devised and bequeathed to this complainant as legatee and devisee under said will, and whether or not under said will, afterthe payment of the debts and funeral expenses, and the five dollars to

each of the respondents, this complainant ~~this complainant~~ should have the absolute fee simple in the residue of the estate, with absolute power of disposition, with title in the respondents, after the death of this complainant, in whatever remains undisposed of.

4th. Complainant shows unto Your Honor that the only heirs at law of the said V. McR. Schowalter, Deceased, at the time of the death of the said deceased, were this complainant, who is the widow of the said deceased, and the said respondents, who are the only children of the said deceased; that the said Edward R. Schowalter is towit thirty one years of age; that the said Preston J. Schowalter is towit twenty nine years of age, and that the said Alice Elsa Schowalter is towit twenty one years of age; that the personal property of the said estate consists almost entirely of a library of medical and surgical books and a quantity of surgical instruments; that the said deceased also left owing to him a number of accounts for services which he had rendered to patients in his capacity as a medical and surgical practitioner, and some other mixed property, and that the said deceased, also, at the time of his death, owned two tracts of land in Baldwin County, Alabama, one being located at Point Clear, and the other being located some two miles below Point Clear and being vacant country lands, and he also owned at the time of his death two houses and lots in the City of Mobile, Alabama, one known as 108 South Joachim Street, and one as 505 Michigan Avenue; also a vacant lot at or near Pensacola, Florida; and that the said deceased, also, at the time of his death, owed debts, both unsecured, and also debts which were secured by mortgage on parts of the said real estate.

Complainant prays that this Honorable Court will make the said Edward R. Schowalter, Preston J. Schowalter and Alice Elsa Schowalter each a party respondent to this bill of complaint, and will cause summons of this court to issue, requiring the said Alice Elsa Schowalter to appear and answer this bill of complaint within the time required by law, and that this Court will also cause publication to be made requiring the said Edward R. Schowalter

and Bruton J. Schowalter.
to appear and answer this bill of complaint within the time required by law; that this Court will also cause service to be had upon the said nonresident respondents by delivery to them of summons and notice by registered mail, as is provided by the laws and statutes of this state.

Complainant further prays that this Court will render a decree, construing the said will , and that this Court will in said decree direct and instruct this complainant in the premises, as executrix of said will, and that the Court will grant to complainant, both individually and as executrix, such other and further relief as she may be entitled to in the premises; and this complainant hereby offers to do equity.

R. W. Smith
Solicitor for the Complainant.

Foot Note: Each of the respondents is required to answer each allegation of the foregoing bill of complaint, from paragraph 1st to paragraph 4th, both inclusive, but oath as to such answers is hereby expressly waived.

R. W. Smith
Solicitor for the Complainant.

The State of Alabama,

Baldwin County.

Personally appeared before me, Gladys Lowell a notary public in and for Baldwin County, Alabama, Charlotte Gertrude Schowalter, who upon oath deposes and says that she is the complainant in the above entitled cause, and that the averments of the foregoing bill of complaint are true; that the said Edward R. Schowalter and Preston J. Schowalter are both nonresidents of the State of Alabama, and both of them reside in the city of New Orleans, Parish of Orleans, State of Louisiana; and that the postoffice address of the said Edward R. Schowalter is care of the Office of the Attorney General of the State of Louisiana, New Couut Building, New Orleans, Parish of Orleans, State of ~~Alabama;~~ La. and that the postoffice address of the said Preston J. Schowalter is number 3850 Napoleon Avenue, New Orleans, Parish of Orleans, State of Louisiana.

Subscribed and sworn to before me this the 29th day of October, 1926.

Charlotte Gertrude Schowalter

Gladys Lowell
Notary Public in and for Baldwin County, Alabama.

Fairhope, State of Alabama, County of Baldwin.

Know all men by these presents that I, V. McR Schowalter Md, of the above mentioned Town, State, and County, being of sound and disposing mind and memory, do therefore, make ordain, publish and declare this Instrument in writing to be my last will and testament, that is to say, First after all my lawful debts are paid and discharged, I give five dollars (5.00) to my son Edward R. Schowalter, Second to my son Preston J Schowalter five dollars (5.oo) third to my daughter Alice Elsa Schowalter five dollars (5.00) Fourth to my beloved wife, Charlotte Gertrude Schowalter I give device and bequeath the residure of my Estate both real and personal; at her death the remainder of my Estate to be Equally divided between my children Edward R. Schowalter, Preston J. Schowalter, and Alice Elsa ~~Schowalter~~ Schowalter. I hereby constitute and appoint my said wife Charlotte Gertrude Schowalter to be the sole Executrix of this my last will and testament hereby revoking all former wills by me made, and I direct that my Executrix be not required to give Bond.

In witness whereof I have hereunto signed my name and affixed my seal the 11th day of June 1925.

V. McR. Schowalter Md. (SEAL)

(Attested by) M. E. Green
H. G. Bishop

The above Instrument was subscribed by the said V. McR. Schowalter Md., in our presence and acknowledged by him to each of us and he at the same time declared the above written instrument, so subscribed, to be his last will and testament, and we at his request have signed our names as witnesses hereto, in his presence and in the presence of each other, and written opposite our names our respective place of residence.

(SEAL) M. E. Green,-Fairhope, Ala.
(SEAL) H. G. Bishop,- Fairhope, Ala.

Codicil No. 1 October 30, 1925, The erasure of the words "or remarriage" were erased by me October 30, 1925.

V. McR. Schowalter (SEAL)

(Attested by) Henry H. Henkel, Fairhope, Ala. (SEAL)
M. E. Green, Fairhope, Ala. (SEAL)

Exhibit A

Charlotte Gertrude Schowalter, Complainant, Vs. Edward R. Schowalter, Preston J. Schowalter, and Alice Elsa Schowalter, Respondents.	No. _____ IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA, IN EQUITY.

Now come Edward R. Schowalter and Preston J. Schowalter, and file this their answer to the original bill of complaint of Charlotte Gertrude Schowalter and their cross-bill against the said Charlotte Gertrude Schowalter and Alice Elsa Schowalter and show unto your Honor as follows:

FIRST:

These respondents and cross-complainants admit each of the allegations of the first paragraph of the original bill of complaint.

SECOND:

These respondents and cross-complainants neither admit nor deny the allegations of the second and fourth paragraphs of the original bill of complaint but demand strict proof of the said allegations.

THIRD:

Answering the third paragraph of the original bill of complaint, these respondents and cross-complainants admit that doubt has arisen as to the true construction of the said will and that before the complainant may properly perform her duties under the said will as Executrix it will be necessary for this Honorable Court to construe its provisions; these respondents further admit that the doubt which has arisen is created by the fourth paragraph of the said will, the said fourth paragraph reading as follows: "To my beloved wife, Charlotte Gertrude Schowalter, I give, device and bequeath the residure of my estate, both real and personal, at her

death ~~or remarriage~~ the remainder of my estate to be equally divided between my children, Edward R. Schowalter, Preston J. Schowalter and Alice Elsa Schowalter"; that the words "or remarriage" were originally made a part of the said last will and testament of V. McR. Schowalter as of the date of its execution, to-wit, June 11th, 1925, but that subsequent thereto they were stricken out by lines being drawn through them with a pen or pencil as is above indicated, and that the said V. McR. Schowalter caused to be inscribed at the bottom of the paper on which his will was written what purported to be a codicil, executed on, to-wit, October 30th, 1925, and reading as follows: "The erasure of the words 'or remarriage' were erased by me October 30th, 1925"; this said writing having been duly signed by the said V. McR. Schowalter and attested by two witnesses; that in order that your Honor may more fully comprehend just what was done in this connection these respondents and cross-complainants have caused to be attached hereto a photostatic copy of the said last will and testament of V. McR. Schowalter; these respondents and cross-complainants further show unto your Honor that the attempted partial revocation of the s aid last will and testament of V. McR. Schowalter, Deceased, was null and void and of no effect in that the attempted partial revocation was not made in the manner prescribed by law, and consequently the said last will and testament stands as it was originally drafted, and that the complainant, Charlotte Gertrude Schowalter, is entitled to a life estate only in the properties, real, personal and mixed, of the said V. McR. Schowalter, Deceased, and that such life estate is made contingent on her remaining a widow.

PRAYER FOR PROCESS.

Edward R. Schowalter and Preston J. Schowalter having now fully answered the original bill of complaint of Charlotte Gertrude Schowalter, pray that this their answer may be taken and treated in all respects as a cross-

bill and that the said Charlotte Gertrude Schowalter and Alice Elsa Schowalter may be made parties defendant to this their cross-bill and that they may have notice of the same according to the practice of this Honorable Court.

PRAYER FOR RELIEF.

And these cross-complainants pray that this Honorable Court will undertake the administration of the estate of the said V. McR. Schowalter, deceased, and they join with the complainant in her prayer to the effect that this Court will render a decree construing the said will; these cross-complainants further pray that this Court will enter a decree to the effect that the attempted partial revocation of the said last will and testament of V. McR. Schowalter is of no effect and void and that the said complainant, Charlotte Gertrude Schowalter, is under the terms of the said will entitled to a life estate only in the properties devised and bequeathed her under the said fourth provision of the said last will and testament of V. McR. Schowalter, deceased, and that this life estate is made contingent on her widowhood, and that upon the death or remarriage of the said Charlotte Gertrude Schowalter these cross-complainants and Alice Elsa Schowalter shall become entitled in equal parts to the properties, real, personal and mixed, of the said estate; and these cross-complainants further pray that they may have such other and further relief as they may be entitled to receive, the premises considered, and in duty bound they will ever pray.

STEVENS, McCORVEY McLEOD GOODE & TURNER

BY [signature]

Solicitors for Edward R. Schowalter and Preston J. Schowalter.

FOOT-NOTE: The said Charlotte Gertrude Schowalter and Alice Elsa Schowalter are required to answer each and every allegation of the above and foregoing cross-bill from paragraph first to paragraph third, both inclusive, but not under oath, oath to the same being hereby expressly waived.

STEVENS, McCORVEY McLEOD GOODE & TURNER

BY [signature]

Solicitors for Edward R. Schowalter and Preston J. Schowalter.

8587 SUMMONS—Original. MOORE PTG CO BAY MINETTE

The State of Alabama,
Baldwin County.

CIRCUIT COURT OF BALDWIN COUNTY,
IN EQUITY.

To any Sheriff of the State of Alabama—GREETING:

WE COMMAND YOU, That you summon Edward R.Scowalter, and Preston J J .Schowalter,

of Louisana, County, to be and appear before the Judge of the Circuit Court of Baldwin County, exercising Chancery jurisdiction, within thirty days after the service of Summons, and there to answer, plead or demur, without oath, to a Bill of Complaint lately exhibited by

Charlotte Gertrude Schowalter,

against said Edward R.Schowalter and Preston.J.Schowalter,

and further to do and perform what said Judge shall order and direct in that behalf. And this the said Defendant shall in no wise omit, under penalty, etc. And we further command that you return this writ with your endorsement thereon, to our said Court immediately upon the execution thereof.

WITNESS, T. W. Richerson, Register of said Circuit Court, this 8th day of November, 1926

T. W. Richerson Register.

N. B.— Any party defendant is entitled to a copy of the bill upon application to the Register.

SERVE ON.....

Circuit Court of Baldwin County
In Equity.

No.....

SUMMONS

Charlotte Gertrude Schowalter

vs.

Edward R.Scowalter and

Preston Schowalter,

R.M.Smith.

Solicitor for Complainant

d in Vol.....Page.....

THE STATE OF ALABAMA,
BALDWIN COUNTY.

Received in office this .....

day of .....192....

.....
Sheriff.

Executed this.....day of

.....192....

by leaving a copy of the within Summons with

.....
Defendant.

.....
Sheriff.

By Copy of
Deputy Sheriff.

Complaint
Recorded
Book 170 8/52

Alias

8587. SUMMONS--Original. Moore Ptg. Co.

The State of Alabama, Baldwin County } CIRCUIT COURT OF BALDWIN COUNTY, IN EQUITY

To Any Sheriff of the State of Alabama---GREETING:

WE COMMAND YOU, That you summon Preston J.Schowalter

of Jefferson County, to be and appear before the Judge of the Circuit Court of Baldwin County, exercising Chancery jurisdiction, within thirty days after the service of Summons, and there to answer, plead or demur, without oath, to a Bill of Complaint lately exhibited by

Eharlotte G.Schowalter executrix of the estate of V.Mc R.Schowalter,

against said

Preston J. Schowalter,

and further to do and perform what said Judge shall order and direct in that behalf. And this the said Defendant shall in no wise omit, under penalty, etc. And we further command that you return this writ with your endorsement thereon, to our said Court immediately upon the execution thereof.

WITNESS, T. W. Richerson, Register of said Circuit Court, this 13th day of Sept. 1930

T W Richerson Register.

N. B.—Any party defendant is entitled to a copy of the bill upon application to the Register.

Original

Serve on _____

Circuit Court of Baldwin County
In Equity.

No. _____

SUMMONS

Charlotte G.Schowalter
executrix of the estate
of V.Mc R.Schowalter.

vs.

Preston J.Schowalter,

R.M.Smith,
Solicitor for Complainant.

Recorded in Vol. _____ Page _____

The State of Alabama,
BALDWIN COUNTY.

Received in office this _____

day of _____ 193____

_____
Sheriff.

Executed this 19th day of
Sept 1930

by leaving a copy of the within Summons with
Preston J Schowalter
Defendant.

W O Downs
Sheriff.

By J M Donaldson
Deputy Sheriff.

CHARLOTTE GERTRUDE SCHOWALTER, Complainant.	:	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALA.
versus	:	
EDWARD R. SCHOWALTER, PRESTON J. SCHOWALTER AND ALICE ELSA SCHOWALTER, Respondents.	:	IN EQUITY.

IT IS HEREBY AGREED by and between the solicitors of record in the above entitled cause, that the testimony of either party which has not already been filed may be marked filed by the Chancellor and treated in all respects as if filed with the Register before the hearing. When the Court orders the publication of testimony, it will be published by consent and endorsed on the depositions. It is further agreed that the case shall be submitted for final hearing at Monroeville, Alabama, on Thursday, February 14th, 1929, unless continued by the court, and the filing and publication of the testimony shall be treated as if regular in all respects and the submission as if made in term time.

It is further agreed that the note of evidence of the respective parties may be made by the Chancellor on account of the absence of the Register and may be treated in all respects as if it had been made in accordance with the rule.

Dated this the 14th day of February, 1929.

A M Smith

Harry T Smith & Lapley

Solicitors for Complainant.

Stevens McCorvey McLeod Goode & Turner

John N Allen

Solicitors for Respondents Edward R. Schowalter and Preston J. Schowalter.

7 ~~145~~

RECORDED

Agreement of Solicitors to Reference

Filed Feb. 14, 1929

F. W. Hare

Judge

HARRY T. SMITH & CAFFEY
ATTORNEYS AT LAW
718-722 FIRST NATIONAL BANK BUILDING
MOBILE, ALA.
HARRY T. SMITH.
WILLIAM G. CAFFEY.

April 20th, 1928.

Hon. T. W. Richerson, Clerk,
Circuit Court of Baldwin County,
Bay Minette, Alabama.

Dear Sir:-

Enclosed we hand you an answer to the cross-bill by Mrs. Charlotte Gertrude Schowalter, in her case against Edward R. Schowalter and Preston J. Schowalter, which you will please file.

Very truly yours,

Harry T. Smith & Caffey

Enc. 1.

HTS:CW

RITTENHOUSE M. SMITH
ATTORNEY-AT-LAW
SUITE 502 FIRST NAT'L BANK BLDG.
MOBILE, ALA.

November 22, 1930

Mr. T. W. Richerson,
Bay Minette, Ala.

Dear Mr. Richerson:-

Re: Schowalter Sale

I understand that Judge Hare is to be in Bay Minette on Monday, and I am handing you herewith the file in this matter. You already have the proofs of the service by registered mail.

I also hand you a letter which I wrote to the Birmingham Sheriff, Mr. Downs, with his reply on the bottom, from which you will note that he made return of service on Preston J. Schowalter on September 19th.

I also hand you my note of evidence for submission, together with form of decree of sale.

Mr. McCorvey has checked each of these matters and he is satisfied. He represents the prospective buyer of the property, and I am having him to check the various proceedings as I go along, so that there will be no hitch, so far as his client is concerned, when the day of sale arrives.

I would appreciate it if you will get from the Sheriff at Bay Minette, the return of the service on Preston J. Schowalter, and submit the matter for a decree of sale. Mr. McCorvey asks that decree be dated as of October 15th.

~~I have drawn and hand you also order of continuance of the hearing from October 15th to November 24th.~~

Judge Hare has already signed the order of continuance from September 30th to October 15th, and I hand you same herewith. This should of course be entered in the minutes as of September 30th.

Please let me know as soon as the decree of sale is signed, so that I can proceed to advertise during the week of the 24th, if possible.

When is the last day for me to send advertisement to Baldwin County Times?

Yours truly,

R M Smith

Charlotte Gertrude Schowalter, Complainant,	
-vs-	NO. 635. IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA. IN EQUITY.
Edward R. Schowalter, Preston J. Schowalter and Alice Elsa Schowalter, Respondents.	

Come the respondents, Edward R. Schowalter and Preston J. Schowalter, acting by and through their undersigned solicitors, and appeal from the decree overruling the respondents' demurrer rendered on the 28th day of May, 1927, by the Circuit Court of Baldwin County, Alabama, Sitting in Equity, and file herewith their bond for security for costs of the said appeal.

John N. Allen

Stevens Convey & Leon Foode & Turner

Solicitors for Edward R. Schowalter and Preston J. Schowalter, Respondents.

8th

Filed June 18/927
T. W. Reimann
Register

RECORDED

✓

Office of
R. Schowalter, M. D.
Office Hours:
7 to 9:30 A. M. 1:30 to 3 P. M.

Feb-4-1929
Exhibit Cl's Number 1
Lulie B Grandchild
Commissioner

Point Clear, Ala., Aug 25 1908

My own darling little Boots:
A long time ago there were only boys in Dada's home, and Dada got down on his knees and asked God to send him a little baby girl to pull his hair and his heart strings. That was many years ago and Dada did not let any body know what he was praying for because if God had not sent Dada a baby girl he did not want any body to know that he was sorry because the baby girl could not come. But God heard Dada's prayers and four years ago to day an Angel was passing over Point Clear and she had the prettiest, sweetest, cutest little baby girl you ever saw, with cheeks all dimpled and a little mouth like a half opened Rosebud smiling and sweet and the prettiest, silkiest brown hair and the Angel looked down in Dadas and Mama's home and said "There

is a home and there is no baby girl in it. I will leave her there, they will love her, cherish and be good to her. So the good angel kissed the sleeping baby girl and left her with Dada & Mother, and Dada was so happy because God had told the good angel to give her to him. And Mother was so proud that she could scarcely take her eyes off the baby girl. And the little girl grew prettier and sweeter every day and she grew very fast because the good angel had also left plenty of baby food for the little girl to eat, and bye and bye a good kind Priest came along and blessed that baby girl. Christened her and named her Alice. And Dada watched that little baby grow bigger and bigger and sweeter and sweeter and Dada swaddled with her, hugged and kissed her until the bear many come through her pretty little soft cheeks that Dada didn't know he was kissing so hard. Dada watched her when she would try to crawl and every time she would bump her dear little brown head and

Office of
L. R. Schowalter, M. D.
Office Hours:
7 to 9:30 A. M. 1:30 to 3 P. M.

Point Clear, Ala., 2 190

Cry that cry went straight to Dada's heart. I wonder if you know that Dada is talking about his baby girl little Alice. Bootsie as he loves best to call her. You must always mind Mother dear for what she tells you is for your good and she knows what is best for Bootsie and will always tell you so. You must take good care of mother and of Dada's baby girl too because when Dada does not hear from mother and Bootsie he is afraid that something may have happened to them and this hurts his heart. Dada did not hear from his darlings to night and he will be so anxious until the mail man brings him a letter tomorrow night. You must mind mother dear in all she tells you to do for that is the way to be good and Dada knows his little girl will be good if she only knows how and that is why

Dada is telling you what to do.
Once Dada went to Mobile and brought
some peanuts home, Fonish and Dada
he knew better but he got carried
away being foolish, and gave them to Bootsie
and told her to chew them good and Bootsie
did not chew them good and they made
Bootsie sick and for 8 long days every
time Mother looked at Dada he turned his
head away and every time Dada looked
at Mother she turned her head away, for
Mother thought and Dada thought that
the Angel was coming back to Point Clear
and take little Bootsie back to Heaven
with her and Dada didn't want Mother
to know how heavy his heart was and
Mother did not want Dada to read
the pain in her eyes. So you must mind
mother and not eat any thing that
mother tells you not to eat or do
any thing that mother tells you not
to do. That is the way to be a good
little girl and Dada knows that
his Bootsie wants to be good. Dada
is sending you a dollar for your birth
day darling ask mother dear to take
you down to Mr Johnson's and buy you

Office of
J. R. Schowalter, M. D.
Office Hours:
7 to 9:30 A. M. 1:30 to 3 P. M.

Point Clear, Ala., 3 190

a nice little gold ring and put it on your dear little finger for Dodo for your birth-day. Every day tell Mother "my Dodo is lonesome, write him a letter be sure to tell her dear. Mother does not seem to know it but it is so. Take good care of my baby Boots for me for every hair on your dear little brown head is taught in your Dad's heart. You and mother are so far away from Dodo so ~~much~~ many things could happen to you both that would break your Dad's heart. Dodo thinks of these things day and night. Dodo sees them Bad man's pictures and he sees them all the time. Dodo's heart will not rest easy until Mother and Bootsie are safe and well at home again. Dodo asks God to take good care of Mother and Bootsie. to let nothing happen to them while they are away and every night when Dodo goes to bed

the last thing Dada says to God is Heavenly Father protect and guide Mother and Bootsie and keep them from all harm. Your old Dada is their Bootsie now and he has a hard day work tomorrow. So Dada will ask you to put your little arms around Mothers neck and hug her hard and give her many kisses for him and ask Mother to hug and kiss you for your Dada. Kiss Grandma and Aunt Ord for Dada too and give them lots of love. Dada hopes & prays that you may have many, many birth days each one happier than all the rest and that at every birth day you will find the love of God and Dada stronger in your precious little heart. May God keep Mother & Bootsie is the constant prayer of your Daddy

"Old Dada"

844

Five Days Return To
SCHOWALTER, M. D.
NT CLEAR, ALA.

POINT CLEAR
AUG
26
6 A M
1908
ALA.

Miss Alice Schowalter
Bradford
Pa.
8 Cliff
Street

V

CHARLOTTE GERTRUDE SCHOWALTER, Complainant.	:	
versus	:	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA.
EDWARD R. SCHOWALTER, PRESTON J. SCHOWALTER AND ALICE ELSA SCHOWALTER, Respondents.	:	IN EQUITY.

COMPLAINANT'S NOTE OF EVIDENCE.

At the hearing of this cause the following note of evidence was taken, to-wit:

FOR COMPLAINANT.

1. Original bill of complaint filed Nov. 5th, 1926.
2. Amendment to original bill - filed Dec. 16th, 1926.
3. Amended bill - filed January 17, 1927.
4. Answer of Charlotte G. Schowalter to cross-bill, filed Dec. 16, 1926.
5. Answer of Charlotte G. Schowalter to cross-bill of Edward R. Schowalter and Preston J. Schowalter, filed April 23, 1928.
6. Answer by Alice Elsa Schowalter to the Cross-bill of Edward R. Schowalter and Preston J. Schowalter.
7. Inventory of Estate of W. McR. Schowalter - filed Sept. 29th, 1927.
8. Deposition of W. B. Curran and all exhibits thereto.
9. Deposition of Dr. R. C. Macy and all exhibits thereto.
10. Deposition of Mrs. R. C. Macy and all exhibits thereto.
11. Deposition of Joseph Pose and all exhibits thereto.
12. Deposition of Miss Virginia Thomas and all exhibits thereto.
13. First deposition of Mrs. Sara Curran and all exhibits thereto.
14. Second deposition of Mrs. Sara Curran or Mrs. W. B. Curran and all exhibits thereto.
15. First deposition of Mrs. Charlotte G. Schowalter and all exhibits thereto.

16. Second deposition of Mrs. Charlotte G. Schowalter and all exhibits thereto.

17. Deposition of Mrs. W. B. Patterson.

18. Deposition of Dr. Claude G. Godard.

19. Deposition of Rittenhouse M. Smith.

20. Deposition of Alice Elsa Schowalter, and all exhibits thereto.

A M Smith
Stacy & Smith Happy
Solr for Compl

February _____, 1929.

F. M. Lace
JUDGE.

4 ~~24~~

RECORDED

Note of Testimony
Filed 2/14/1929
F. W. Hare
Judge

CHARLOTTE GERTRUDE SCHOWALTER, Complainant, -vs- EDWARD R. SCHOWALTER, PRESTON J. SCHOWALTER AND ALICE ELSA SCHOWALTER, Respondents.	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA.

IT IS HEREBY AGREED by and between the solicitors for the complainant and the respondents in the above entitled cause, that the depositions of:

Mrs. Charlotte Schowalter
Mr. W. B. Curran, ~~Daphne~~, Ala.
Mrs. Sara Curran, ~~Daphne~~, Ala.
~~Mrs. R. C. Macy, Magnolia Springs, Ala.~~
Mrs. R. C. Macy, Magnolia Springs, Ala.
Miss Virginia Thomas, Point Clear, Ala.
Mr. Joseph Pose, ~~Daphne, Alabama.~~ c/o St. Joseph Orphanage Mobile Ala.
Mrs. W. B. Patterson, 1673 Government St., Mobile, Alabama.

may be taken on behalf of the complainant before Robert H. McConnell, without the necessity of any commission issuing to him, and shall be treated, in all respects, as if they had been taken under a regular commission issued out of the court to the said Robert H. McConnell.

Hayes & Smith & Pike
SOLICITORS FOR COMPLAINANT.

Jno N. Allen

Stevens McCorvey McLeod & Goode & Turner
SOLICITORS FOR RESPONDENTS.

CERTIFICATE OF APPEAL

I, T. W. Richerson, Clerk of the Circuit Court of Baldwin County, Alabama, hereby certify that in the cause of Charlotte Gertrude Schowalter, Complainant, vs. Edward N. Schowalter, Preston J. Schowalter, and Alice Else Schowalter, Respondents, which was tried and determined in this Court on the 10th day of June, 1929, the Complainant, on the 15th day of July, 1929, took an appeal to the Supreme Court of Alabama to be holden of and for said State.

I further certify that Charlotte Gertrude Schowalter filed security for cost of appeal, to the Supreme Court, on the 16th day of July, 1929, and that National Surety Company is surety on the Appeal Bond.

I further certify that notice of said Appeal was on the 18th day of July, 1929, served on G. M. A. Rogers, one of the attorneys for Respondents, and the suit was the contestant of a will.

Witness my hand and the seal of this Court, this the 10th day of September, 1929.

T W Richerson

Clerk of the Circuit Court of Baldwin County, Alabama.

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

In Re)
Estate of)
V. McR. Schowalter,)
Deceased.)

To the Honorable F. W. Hare, as Judge of the Circuit Court for the Twenty First Circuit of Alabama, sitting in Equity:

Comes Charlotte G. Schowalter, as the executrix of the estate of V. McR. Schowalter, Deceased, and shows to this Honorable Court that she was by the Probate Court of Baldwin County, Alabama, appointed the executrix of the estate of the said V. McR. Schowalter, and duly qualified as such; that the administration of the said estate has been removed into this court; that under the will of the said V. McR. Schowalter no power was given to sell any of the lands for the payment of debts; that the debts of the estate, which were unpaid at the time of the death of the said deceased and which are still unpaid, are in excess of fifteen thousand dollars, and that the personal estate is of less value than two thousand dollars, and is insufficient for the payment of the said debts of the estate, and that the personal estate has never, since the death of the said deceased, been sufficient for the payment of the said debts; that the creditors holding said debts have duly filed claims for said debts as provided by law, and within the time provided by section 5618 of the Code of Alabama of 1923; that the heirs and devisees are all of sound mind and each is over the age of twenty one years; that the names of the said heirs and their places of residence, are as follows:

Edward R. Schowalter, whose place of residence is New Orleans, Louisiana, and whose specific address in said city is New Court House Building;

Preston J. Schowalter, whose place of residence is Birmingham, Alabama, and whose specific address in said city is Care of The Pan American Petroleum Corporation;

Alice Schowalter, whose place of residence is New York City, New York, and whose specific address in said city is Care The B ronx Hospital;

Charlotte G. Schowalter, this petitioner, whose place of residence is Fairhope, Alabama;

That the said Charlotte G. Schowalter, this petitioner, is the

sole devisee under the said will; that it is necessary that the following described real property be sold for the payment of the said debts:

The following described tract of land, with the improvement thereon, lying in Baldwin County, State of Alabama; A strip of land one hundred and four-tenths feet in width on the south line, and ninety four and one-tenth feet in width on the north line, off of the western side of that part of lot number nine of the Louis Troost Survey of a part of section thirty six, township six south, range one east, of the St. Stephens Meridian; as per map recorded on the records in the office of the probate court of Baldwin County, Alabama, in Book K page 805, which strip of land lies south of the public road running parallel, or nearly parallel, to the Bay shore and approximately 630 feet north of the high water line, the said property being known as the Schowalter place, and being more particularly described as being bounded by a line described as follows, viz: Commencing at a point on the south line of the said public road, which point is distant 105 and 4/10 feet westwardly, measured along the south line of the said public road, from the point where a fence, which is supposed to run along the east line of said lot number nine of the Louis Troost Survey, intersects the south line of the said public road; thence running from such beginning point north 64 degrees 15 minutes, west along the south line of the said public road, and along a fence 94 and 1/10 feet to a point on the west line of said lot No. nine of the Louis Troost Survey; thence running southwardly along the west line of said lot No. Nine of the Louis Troost Survey to a point on the margin of Mobile Bay; thence running eastwardly along the margin of Mobile Bay 100 and 4/10 feet, more or less, to the west line of property of Marcia B. Bush; thence running north 26 degrees 27 minutes east 624 and 5/10 feet, more or less, to the point of beginning, together with all riparian and other rights appurtenant thereto, excepting and reserving , however, a free and common ~~margin~~ highway on the margin of the Bay above high water mark, the property above described being bounded on the north by a fence running along the south line of the public road, on the east by property belonging to Marcia B.

Bush, on the south by Mobile Bay, and on the west by Lot No. Tan of the said Louis Troost Survey.

This petitioner therefore prays this Honorable Court to appoint a day for the hearing of this petition, and that this Honorable Court will require all publications to be made as required by law and all summons to issue as required by law, and will make a decree for the sale of the said lands, and will also make an order under section 6661 of the Code for the making of an abstract of title to the said property, and will grant to this petitioner such other relief as she may be entitled to.

F W Smith
Attorney for the Petitioner.

Foot-Note: Respondent is required to answer each allegation of the foregoing petition within the time required by law, but oath as to such answer is hereby expressly waived.

F W Smith
Attorney for the Petitioner.

The State of Alabama,
Baldwin County.

Personally appeared before me, G E Perkins a notary public in and for Baldwin County, Alabama, Charlotte G. Schowalter, who upon oath deposes and says that she is the above named executrix and petitioner, and as such executrix and petitioner she makes this affidavit; and that the statements contained in the foregoing petition are true.

Charlotte G Schowalter
As the Executrix of the Estate of
V. McR. Schowalter, Petitioner.

Subscribed and sworn to
before me this the 21st.
day of August, 1930.

G. E. Perkins
Notary Public in and for ~~Mobile~~ Baldwin County, Alabama.

RECORDED

Original Bill

Filed August 23rd/930.
T. M. Rillimon
Register

The State of Alabama,
Baldwin County--Circuit
Court-In Equity.
To the Sheriff of the State of Alabama-Greeting:

Whereas , at a non jury Term of the Circuit Court of Baldwin County,Ala,in Equity held on the 28 th day of May,1927, in a certain cause in said Court wherein Charlotte Gertrude Schowalter, Complainant and Edward R Schowalter, Preston J.Schowalter,and Alice Elsa Schowalter, Respondents, a decree was rendered overruling Respondent's demurrer's to Bill of Complaint as last amended,to reverse which the said Edward R.Schowalter,Preston J.Schowalter, and Alice Elsa Schowalter, has on this day applied for and obtained from this office an Appeal,returnable to the next Term of our Supreme Court of the State of Alabama, to be held at Montgomery ,on the 3rd day of October, next, and the necessary security for cost of appeal having been given by the said Respondents with Fidelity & Deposit Company of Maryland , as Surety .

NOW, You are hereby commanded, without delay, to cite the said Charlotte Gertrude Schowalter,or R.M.Smith,Harry T Smith & Caffey,attorneys, to appear at the next Term of our Supreme Court, to defend against the said Appeal if they think proper.

Witness, T.W.Richerson,Clerk of the Circuit Court of said County, this 18th day of June 1927.

ATTEST: T. W. Richerson --Clerk.

10 cu

ORIGINAL.

Circuit Court In Equity.

Baldwin County, Alabama.

Charlotte Gertrude Schowalter,

Complainant.

vs. Citation in Appeal,

Edward R.Schowalter et al

Respondents.

RECORDED

Issued June 18th,1927.

Received June 18, 1927

and on 23 Day of June 1927

I served a Copy of the within Citation in Appeal & Certificate on Charlotte G. Schowalter

by service on Mrs. Charlotte Schowalter

as the Grantee

PAT BYRNES Sheriff

By W. W. Hodge D.S.

Serve Copy on
Charlotte Gertrude Schowalter
Fairhope Ala.
or on R. M. Pruitt
or P. T. Lincoln & Coffey
her Attorneys Mobile
Ala.

6-23-27
Hodge

HARRY T. SMITH & CAFFEY
ATTORNEYS AT LAW
716-722 FIRST NATIONAL BANK BUILDING
MOBILE, ALA.
HARRY T. SMITH,
WILLIAM G. CAFFEY.

March 25th, 1929.

Judge F. W. Hare,

Monroeville, Ala.

Dear Sir:-

Enclosed we hand you a portion of the court file in the case of Schowalter vs. Schowalter, which our Mr. Smith by mistake brought back to Mobile in our office file in this matter.

Very truly yours,

Harry T. Smith & Caffey.

HARRY T. SMITH AND CAFFEY.

Enc. 1 -

REGISTERED

LBG

The State of Alabama,

Baldwin County - Circuit Court In Equity.

To any Sheriff of the State of Alabama- Greetings:-

Whereas, on the 10th day of June,1929, in the Circuit Court Court of Baldwin County; Alabama in equity, in a certain cause in said Court wherein Charlotte Gertrude Scowalter,Complainant, and Edward R.Schowalter, Preston J.Schowalter,and Alice Elsa Schowalter, Respondents, a decree was rendered to reverse which the Complainant Charlotte Gertrude Scowalter, has on this day applied for and obtained an appeal returnable to the next term of our Supreme Court of Alabama, to be held at Montgomery Alabama, beginning the 1st Monday of October,1929,next and the necessary security for costs of appeal having been given by the said Complainant Charlotte Gertrude Schowalter, with National Surety Company a corporation as Surety.

Now , You are hereby commanded without delay to cite Edward R.Schowalter, Preston J.Schowalter,and Alice Elsa Schowalter, or Stevens,Mc Corvey,Mc Leod,Goode & Turner, or John N.Alllen, Solicitors for Edward R.Schowalter and Preston J.Schowalter, to appear at the next term of our Supreme Court , to defend against the said appeal if they think proper.

Witness ,T.W.Richerson,Regsiter of the Circuit Court Equity Side Baldwin County,Alabama, this 16th day of July 1929.

T.W.Richerson Register.

30th Original

Notice served on C. M. A. Rogers on July 18, 1929.
Cal Byrne, Sheriff
By S. B. Dodge
DS

CITATION IN APPEAL.

IN CAUSE OF.

Charlotte Gertrude Scowalter,

Complainant.

vs.

Edward R. Scowalter, Preston J. Scowalter and Alice Elsa Scowalter, Respondents

D 7/18/29

ISSUED JULY 16th, 1929.

- - - - - - - - - - -Register.

Serve Copy on Stevens, McCorvey, McLeod, Goode & Burns Mobile Ala.

CHARLOTTE GERTRUDE SCHOWALTER,	:	
Complainant.	:	
versus	:	IN THE CIRCUIT COURT OF
	:	BALDWIN COUNTY, ALABAMA.
EDWARD R. SCHOWALTER, PRESTON J. SCHOWALTER AND ALICE ELSA SCHOWALTER,	:	IN EQUITY.
Defendants.	:	

This cause having been set by agreement for final hearing at Monroeville, Alabama, on February 14th, 1929, and coming on to be heard:

IT IS HEREBY SUBMITTED, by the consent of both parties, upon the pleadings & the evidence as noted, for a final hearing at Monroeville, Alabama.

Dated this the 14th day of February, 1929.

F. M. Hare
JUDGE.

5

RECORDED

Order of Submission

" " " " " " " "

Filed Feb. 14, 1929

F. M. Hare

Judge

STEVENS, McCORVEY, McLEOD, GOODE & TURNER
ATTORNEYS AT LAW
502-8 FIRST NATIONAL BANK BUILDING
MOBILE, ALABAMA

THOMAS M. STEVENS
GESSNER T. McCORVEY
WILLIAM McLEOD
DAVID B. GOODE
BEN D. TURNER
C. M. A. ROGERS

April 24th, 1928.

Hon. T. W. Richerson,
Register in Chancery,
Bay Minette, Alabama.

Dear Sir:- RE: Charlotte Gertrude Schowalter vs. Edward R. Schowalter, et als.

This is to thank you for having returned to us our answer and cross-bill filed to the original bill of complaint of Mrs. Schowalter in the above captioned proceeding. We hand you herewith certain papers, namely: first, an agreement or stipulation by and between ourselves and Messrs. Harry T. Smith & Caffey to the effect that the photostatic copy of the will attached to the answer and cross-bill as made by the respondents whom we represent be detached and attached to our answer and cross-bill to the bill of complaint as last amended; second, our answer and cross-bill to the bill of complaint as last amended; and third, our answer and cross-bill to the original bill of complaint which you were good enough to forward us. Our answer and cross-bill as first filed constitutes a part of the record, of course, and for this reason we are returning it to you in order that it may be kept by you as a part of the record. Will you kindly mark "Filed" the agreement and stipulation between counsel and our answer and cross-bill?

Thanking you for your courtesy, we are,

Yours very truly,

Stevens, McCorvey, McLeod, Goode & Turner,

BY Rogers

P. S. You will note that Messrs. Harry T. Smith & Caffey have accepted service of the answer and cross-bill to the bill of complaint as last amended.

CMAR:FAB

CHARLOTTE GERTRUDE SCHOWALTER, Complainant. -vs- EDWARD R. SCHOWALTER, PRESTON J. SCHOWALTER AND ALICE ELSA SCHOWALter, Respondents.	) :) :) :) :) :)	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA. IN EQUITY.

REBUTTING INTERROGATORIES PROPOUNDED BY THE COMPLAINANT TO THE WITNESS ALICE ELSA SCHOWALTER.

1. You have been asked in cross-interrogatories as to having gone over your father's surgical instruments and stated that there was nothing that you could think of that was missing, and that they were invaluable; you will now please state what, in your opinion all of the surgical instruments which he left at the time of his death could have been sold for. Please state the reasonable market value of his equipment in surgical instruments at the time of his death.

2. You have been asked upon cross-examination as to whether your father and mother had disagreements because of your mother's mistreatment of your two half-brothers, who are the defendants in this case, and you will now please state, as fully and comprehensively as you can, the family relations which existed in this particular. Please state the manner in which your mother treated your two half-brothers throughout the time that they resided at home, and just what attitude they assumed towards her and towards your father. If there was any discord between your brothers and your father, or your mother, you will please state just how this discord arose. If your father and mother's action in joining any particular church, or making any

other change in their religious connections had anything to do with the discord in the family, you will explain to the court just what this was. You will please state whether or not your mother ever mistreated your two half brothers, and, if so, in what manner, and whether or not your two half brothers ever mistreated your mother, or your father, and, if so, in what manner. In short, you will now go into the subject matter of the domestic relations between your father and your mother, and between your two half brothers, and each of them, and explain what that relation was, and if there was any differences between your mother and your two half brothers, with which of the two your father sided.

5. As you have been asked upon cross-examination whether your father and your mother had any disagreements, you will now please go fully into the relations that existed between your father and your mother during their married life, and also state fully whether or not your father and your mother lived together happily, and if they had any differences at all, the nature and extent of them, or, in other words, you will please state the facts so as to enable the court to determine from your statements whether your father and mother lived together in normal and happy union.

SOLICITORS FOR COMPLAINANT.

JOHN N. ALLEN
ATTORNEY AT LAW
811 VAN ANTWERP BLDG.
MOBILE, ALA.

February 16, 1927.

Hon. T. W. Richerson,

Register Circuit Court of Baldwin,

Bay Minette, Alabama.

Dear Sir:-

Enclosed herewith we hand you demurrer to the bill of complaint as last amended in the case of Schowalter vs. Schowalter, now pending on the equity side of the Circuit Court of Baldwin, and we ask that you file the enclosed demurrer in said cause, immediately. A carbon copy of this demurrer has been furnished to solicitors for the complainant in said cause.

Thanking you in advance for your attention to this matter, we are,

Yours very truly,

Stevens, McCorvey, McLeod, Goode & Turner,
John N. Allen.

Solicitors for respondents Edward R. and Preston J. Schowalter.

JNA-A

Enclosure (1)

Charlotte Gertrude Schowalter, individually and as Executrix of the Estate of V. McR. Schowalter, deceased, Complainant,	No. _____.
-vs-	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA.
Edward R. Schowalter, Preston J. Schowalter and Alice Elsa Schowalter, Respondents.	

Come the respondents Edward R. Schowalter and Preston J. Schowalter, by their solicitors, and, by leave of the court, file the following additional groundx of demurrer to the bill of complaint as last amended, viz:-

1a. Because said bill as last amended is without prayer for relief.

Said respondents, by leave of the court, also demur additionally and specifically to the fourth paragraph of said bill of complaint as last amended on the following additional grounds, separately and severally, viz:-

2a. Because the will referred to shows without ambiguity a devise to complainant of an estate for her life with remainder over to testator's children.

3a. Because the will referredto shows without ambiguity a devise to complainant of an estate for her life with remainder over to testator's children, without power of disposition in complainant.

4a. Because the allegations in said paragraph seek to alter or vary the express letter of said will by parol evidence.

5a. Because the allegations in said paragraph seek to alter or vary the express letter of said will by extrinsic facts and circumstances.

6a. Because it affirmatively appears from the language of said will that there is no latent ambiguity which parol evidence would serve to explain.

7a. Because it affirmatively appears from the language of said will that there is no latent ambiguity which extrinsic facts and circumstances would serve to explain.

8a. Because the express language of said will is such that the matters and things alleged in said paragraph are inadmissible for the purpose of endeavoring to ascertain testator's intention.

9a. Because the express language of said will is so plain and unambiguous that the matters and things alleged in said paragraph are inadmissible for the purpose of endeavoring to ascertain testator's intention.

Solicitors for respondents Edward R. and Preston J. Schowalter.

HARRY T. SMITH & CAFFEY
ATTORNEYS AT LAW
716-722 FIRST NATIONAL BANK BUILDING
MOBILE, ALA.
HARRY T. SMITH
WILLIAM G. CAFFEY

December

15th,

1926.

Hon. T. W. Richerson, Clerk,
Circuit Court of Baldwin County,
Bay Minette, Alabama.

Dear Sir:-

IN RE: Charlotte Gertrude Schowalter vs. Edward R. Schowalter, Preston J. Schowalter and Alice Elsa Schowalter.

Enclosed we hand you answer to cross-bill, and amendment to the original bill of complaint in the above entitled cause, which you will please file.

Very truly yours,

Harry T. Smith & Caffey

Encs. 2

LBG

JOHN N. ALLEN
ATTORNEY AT LAW
811 VAN ANTWERP BLDG.
MOBILE, ALA.

April 7th, 1927.

Hon. T. W. Richerson,

Register Circuit Court,

Bay Minette, Alabama.

Dear Sir:- Re: Schowalter vs. Schowalter.

I am enclosing herewith, for filing, additional demurrer to the bill as last amended. A copy of this additional demurrer has been served on solicitors for complainant (more than ten days ago), and so you need not notify them of the filing. As a matter of fact, both sides are submitting on the demurrer and additional demurrer, today, and briefs pro and con are being forwarded to Judge Leigh at Brewton. In the event you have already forwarded the file in this cause to Judge Leigh, we would thank you to also immediately forward to him the additional demurrer herewith enclosed, in order that he may have the entire file before him. Of course, in event the file is still in your possession, we would want you merely to file the enclosed additional demurrer with the other pleadings and await Judge Leigh's call for the file.

Thanking you for all past courtesies, we are

Yours very truly,

Stevens, McCorvey, McLeod, Toole & Turner,
John N. Allen.

Solicitors for respondents Edward R. and Preston J. Schowalter.

JNA-A

Enclosure (1)

HARRY T. SMITH & CAFFEY
ATTORNEYS AT LAW
716-722 FIRST NATIONAL BANK BUILDING
MOBILE, ALA.
HARRY T. SMITH.
WILLIAM G. CAFFEY

March 24th, 1928.

Hon. T. W. Richerson, Register,
Circuit Court of Baldwin County,
Bay Minette, Alabama.

Dear Sir:-

Enclosed we hand you the original inventory in the matter of the Estate of V. McR. Schowalter, which was forwarded by you to Mr. R. M. Smith several days ago, and which is now returned to you at his request.

Yours very truly,

Harry T. Smith and Caffey

LBG:VW
Enc. 1

HARRY T. SMITH & CAFFEY
ATTORNEYS AT LAW
716-722 FIRST NATIONAL BANK BUILDING
MOBILE, ALA.
HARRY T. SMITH.
WILLIAM G. CAFFEY

April 27th, 1928.

Hon. T.W.Richerson, Clerk,
Circuit Court of Baldwin County,
Bay Minette, Alabama.

Dear Sir:-

Enclosed we hand you answer of Miss Alice E. Schowalter in the case of Mrs. Charlotte Gertrude Schowalter vs. Edward R. Schowalter and Preston J. Schowalter, which you will please file.

Very truly yours,

Harry T. Smith & Caffey

Enc. 1.

HTS:CW

CHARLOTTE GERTRUDE SCHOWALTER,

Complainant.

versus

EDWARD R. SCHOWALTER, ET ALS.,

Respondents.

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA.

IN EQUITY. NUMBER 635.

We, NATIONAL SURETY COMPANY,

hereby acknowledge ourselves as security for costs on the appeal by the complainant, Charlotte Gertrude Schowalter, in the above entitled cause to the Supreme Court of Alabama from the final decree in said cause dated June 10th, 1929, and filed June 21st, 1929.

Dated this the 18th day of July, 1929.

NATIONAL SURETY COMPANY

By B. F. Wagner

Its Attorney-in-fact.

CHARLOTTE GERTRUDE SCHOWALTER,

Complainant,

vs.

EDWARD R. SCHOWALTER, ET ALS.,

Respondents.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY,

ALABAMA.

IN EQUITY. NUMBER 855.

Received for Record

26

Filed July 16 1929

D. W. Reinmiller

Register

NATIONAL SURETY COMPANY

We,

hereby acknowledge ourselves as security for costs on the appeal by the complainant, Charlotte Gertrude Schowalter, in the above cause in said cause dated June 10th, 1929, and filed June 21st, 1929.

Dated this the 16th day of July, 1929.

NATIONAL SURETY COMPANY

By

Attorney-in-fact

CHARLOTTE GERTRUDE SCHOWALTER, Complainant. -vs- EDWARD R. SCHOWALTER, PRESTON J. SCHOWALTER and ALICE ELSA SCHOWALTER, Respondents.	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA. IN EQUITY.

This cause coming on to be heard, and being submitted in vacation for a final decree under the agreement of solicitors of record, and upon the pleading and the evidence as noted by the Register, and having been considered and understood by the Court, it is ordered, adjudged and decreed that the last will and testament of Doctor V. McR. Schowalter, deceased, devised a fee simple title in his entire estate, both real and personal to his wife, the complainant, Charlotte Gertrude Schowalter, subject only to payment of the special legacy of Five Dollars to each of his three children, Edward R. Schowalter, Preston J. Schowalter and Alice Elsa Schowalter, and that the costs in this cause be, and the same are hereby taxed against the respondents, Edward R. Schowalter and Preston J. Schowalter, for which let execution issue.

Made this the 18th day of June, 1930.

S. W. Hare

JUDGE.

M Equity

RECORDED

Filed June 19/1930
T O Kleinman
Register

CHARLOTTE GERTRUDE SCHOWALTER, Complainant,	)	
-vs-	)	IN THE CIRCUIT COURT OF
EDWARD R. SCHOWALTER, PRESTON J. SCHOLWALTER, and ALICE ELSA SCHOWAHTER, Respondents.	)	BALDWIN COUNTY, ALABAMA.
	)	IN EQUITY.
	)	NO. 81113

This cause coming on to be heard, and being submitted in vacation for a final decree under the agreement of solicitors of record, and upon the pleading and the evidence as noted by the Register, and having been considered and understood by the Court, it is ordered, adjudged and decreed that the last will and testament of Doctor V. McR. Schowalter, deceased, devised a fee simple title in his entire estate, both real and personal to his wife, the Complainant, Charlotte Gertrude Schowalter, subject only to payment of the special legacy of Five Dollars to each of his three children, Edward R. Schowalter, Preston J. Schowalter and Alice Elsa Schowalter, and that the costs in this cau e be, and the same are hereby taxed against the respondents, Edward R. Schowalter and Preston J. Schowalter, for which let execution is ue.

Made this the 18th day of June, 1930.

F. W. HARE,
Judge.,

State of Alabama
Baldwin County,

I, M. A. Stone, Clerk of the Circuit Court, do hereby certify that the foregoing is a true, complete and correct copy of the Decree rendered in the above cause on the 18th day of June, 1930.

In Witness whereof I hereunto set my hand and affix the seal of the Circuit Court, this the 12th day of January, 1934.

M. A. Stone,
Register.,

CHARLOTTE GERTRUDE SCHOWALTER, Complainant,	)	IN THE CIRCUIT COURT OF
VS.	)	BALDWIN COUNTY, ALABAMA.
EDWARD SCHOWALTER, PRESTON J. SCHOWALTER AND ALICE ELSA SCHOWALTER, Respondents.	)	IN EQUITY.

IT IS HEREBY AGREED by and between the solicitors for the Complainant and the Solicitors for the Respondents Edward Schowalter and Preston J. Schowalter, that the deposition of Mrs. Blanche S. Broadwood, a witness for the above named Respondents, may be taken on their behalf before O. H. Swinson, without the necessity of any commission issuing to him. It is further agreed that the said witness shall not be required to sign and read over her deposition, her signature being hereby expressly waived.

And the said deposition when so taken, shall be returned to Court, and shall be treated, in all respects, as if it had been taken under a regular commission issued out of the Court to the said O. H. Swinson.

A. M. Smith

Harry T. Smith & Hafley

Solicitors for Complainant.

Stevens McCorvey McLeod Goode & Turner

John N. Allen

Solicitors for Respondents.

Published by agreement this the 14th day of Feb. 1929

Stevens McCorvey McLeod Goode & Turner

John N. Allen

Sol's for Respondents Edward R. & Preston J. Schowalter

Harry T. Smith & Hafley

A. M. Smith

Sols for Complr

CHARLOTTE GERTRUDE SCHOWALTER, Complainant, VS. EDWARD SCHOWALTER, PRESTON J. SCHOWALTER AND ALICE ELSA SCHOWALTER, Respondents.	No._____ IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA. IN EQUITY.

DEPOSITION OF
MRS. BLANCHE S. BROADWOOD,
a witness examined on behalf of
Respondents Edward R. Schowalter
and Preston J. Schowalter.

Mrs. Blanche S. Broadwood being first duly sworn to speak the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

By Mr. Rogers.

I am Mrs. Broadwood. My full name is Blanche Schowalter Broadwood. I am a sister of the late Dr. V. McR. Schowalter. The Doctor was four years older than me. We were raised in the same family,- brought up together, and we were more or less intimate throughout our entire lives. I do not think a brother and sister were ever more intimately associated than my brother and myself. We were in the confidence of each other and I do not think he ever had a thought he would not express to me. I knew the Doctor's first wife very well. Her name was Olive Rightor Schowalter. I also knew the second Mrs. Schowalter. She came to my house from the train when they were married. I received her as his wife when they came to Mobile. Edward Schowalter and Preston Schowalter are my nephews and Miss Alice Schowalter is my niece.

Q. Now, I will ask you, Mrs. Broadwood, if you can relate any specific instances of any unpleasantness which existed between Dr. Schowalter and Mrs. Schowalter, the second Mrs. Schowalter?

Complainant objects to the question as calling for irrelevant, immaterial and incompetent testimony.

Q. I will ask you to state, in addition, whether in your opinion the marital relationship of Dr. Schowalter with the second Mrs. Schowalter was happy or unhappy.

Complainant objects to the question on the same grounds above assigned, and also because it calls for the conclusion of the witness.

A. Well, there is no question in my mind but that my brother lived a very unhappy life, from the time shortly after they were married, from the time they were married he realized he had made a mistake, a very grave mistake. He expressly stated that if, when he went to Bradford, Pa. to be married, if he had known then who he was marrying, when he went up there, he would never have married. All through his life I have never known him to express any other thought but that they were unhappily and unsuitably married, and that his married life was the life of a martyr, but my brother belonged to the old school of southern gentlemen, and from the fact that she was his wife he protected her in every way. He was a high-toned, honorable man, and protected her simply because she was his wife -

Complainant objects to the testimony just given by the witness, because it is not in answer to the question, but is a voluntary speech, in which the lady has not only stated facts but her conclusions and her opinions, in which she has also assumed the role of advocate instead of that of a witness.

By Mr. Rogers: I just want to state to Mrs. Broadwood that any remarks made by Mr. Smith are, of course, addressed to the Court concerning the relevancy of her testimony, and that it is for the Court to determine whether what she says is relevant or irrelevant, and that she is to continue her testimony as she sees fit, properly and truly, and any statement made by counsel is not to be heeded by her, insofar as her testimony is concerned.

Complainant objects to the statement of counsel to the witness that she is to continue to testify as she pleases, rather than in answer to questions propounded to her.

By Mr. Rogers: The statement is, she was to testify truly.

I can not state any specific occasion when my brother, Dr. V. McR. Schowalter came to me to tell me of his domestic troubles, as, of course, I only know what my brother told me, and I am only saying just what I know, and from the time he was married it was understood that things were not as he had hoped they would be. It was not our custom to go to each other and tell tales about our family life, but when things would get so it was unbearable, and he would feel that he was going to take some decided action, then he would come to me and tell me what he had decided to do, and on one occasion I remember him having told me that he had decided, positively, to send his wife back to her home. I have always been opposed to divorces, and sat and talked to him until almost four o'clock in the morning, trying to argue the point with him, and trying to get it clear in his mind that it was a final thing for him to do, and was he quite sure that he was ready and willing to do it, and he made a positive statement that he could live with his wife no longer, that she was not a fit mother for his daughter, and that he would rather see his daughter dead than see her raised by her mother, that he would rather little Alice would die. Then I argued with him and said Mac, you are a good Catholic, and I do not understand you. You did not promise, when you were married, to send your wife back home, you promised to keep her until death, for better or for worse. He said the Church recognized only one cause for divorce, infidelity, and that he had talked with Bishop Allen, and that he was in thorough accord with him sending his wife back home, that it was the only thing to do, and he said "I have unquestionable proof of my wife's infidelity." He said he had unquestionable proof of his wife's infidelity. I said, Mac, even so, you must remember that if you brand your wife as unfaithful, you are also branding the mother of your little girl as unfaithful,- stop and think about that, you are branding the mother of your little daughter, and we talked until about four o'clock in the morning. He told me, at that time, that he had made arrangements to take care of his daughter, that he had arranged with an old lady to take care of his daughter, and I sat there and had a lengthy discussion, I sat down there on the beach until four o'clock, and it was only through my influence that he decided to waive divorce proceedings.

From the time Charlotte was married to my brother she has been jealous of me, because she knew he loved me better than anything in the world, and she exercised every power she could to keep him away from me. I recall the occasion when grandmother was ill at Dr. Schowalter's home, and a discussion had by and between me and Dr. Schowalter relative to providing a creole woman to nurse grandmother. I did what I could for granny when she was in Mac's house, but I was accused on all occasions when I went there of interfering with their domestic relations, and I went there just as little as possible, and finally un-

pleasantness prevented my going, and finally one afternoon Mac asked me if I knew of anyone he could get for Granny, that she needed attention, needed someone to look after her, and I told him about a creole woman in Mobile who lived with me through the summer at Point Clear, as my seamstress, she had lived with me, and I suggested writing Norine Nicholas to come, and I said I knew Norine would come, and knew Granny would like to have Norine, and I offered to pay for Norine, and offered to do anything I could, pay her wages and let her sleep up there at night, but I told Mac I would only do it with Charlotte's approval. I wrote the letter and to be quite sure that it was with Charlotte's approval, I went by to ask Mrs. Schowalter if I should send the letter. I did not see Charlotte when I went in, and went in to speak to granny. Charlotte was lying on the lounge crying, and I started through the Hall to the Doctor and Mrs. Schowalter got up from the lounge and told me never to put my foot in her house again, that I had meddled with her affairs -

Q. You said Doctor and Mrs. Schowalter, she was the one that made that statement -

Complainant objects to counsel stopping his witness in her narrative, correcting her and suggesting to her.

Q. Did Dr. Schowalter tell you never to put your foot in the house?

Mrs. Schowalter was lying on the lounge crying, in a state of excitement, she had evidently had a discussion about this letter. Anyway I started to pass through the Hall, and before I got to the back door Charlotte got up off the lounge and told me never to put my foot in her house again, that I was meddling with her business, trying to boss her house, and trying to run everybody else's business, and causing trouble in her life, and I said Charlotte you are very unfair to me, when I have been the best friend you have had during your married life. I said you know I have always done all I could to make things as easy and smooth for you as I possibly could, but she was in a high temper, and did not half know what she was doing, and she said she was going to kill me, and when she was going in the bedroom my brother got his arms around her waist, and she was pulling him into the room, swearing she was going to kill me before the night was over. I went over the back steps and little Preston said Aunt Blanche don't mind mama, as she has those fits all the time. Rightor was there and he said yes, Aunt Blanche, don't mind that, that is not anything.

I did not provide that nurse and never went back to the house, even after my grandmother died, because Mrs. Broadbeck told me -

Complainant objects to the lady putting in the record what other people told her-

I was in my front garden, and Mrs. Broadbeck had been down to the Doctor's -

Complainant objects to testimony as to what a third person told her as being incompetent, immaterial and irrelevant.

I, of course, was very much concerned about not going to see grandmother when she was desperately ill and not expected to live. I heard granny was dying and so when this neighbor passed I stopped her and asked her advice about going to the Doctor's house to see grandmother, and she said not to go, that Mrs. Schowalter was violently opposed to me coming and said that she would create a scene, and that granny understood, and that Mrs. Schowalter had threatened my life, had sworn that if I put my foot in her house she would kill me, and under the circumstances it was very inadvisable for me to go back to the house.

There were so many occasions when Dr. Schowalter came to me to tell me of his troubles with his wife that it is very difficult for me to specify them, because it was just an understanding of how the conditions were, but I know that when I had a very serious illness with one of my daughters that Mac told me that Charlotte would not let him come to see my daughter Hilda and he came down and said, you understand I can not come to you in your trouble for family reasons and abuse

at home. Charlotte forbid him to come to see me. Mac told me that Charlotte said "If you ever put foot in her house again I will leave you, you have to choose between me and her." He always stated his affection for me, and just before he died, the last time he was ever in my house, he put his arms around me and said, "If I never see you again in this life I want you to know that I love you better than anybody in the world and am proud of you." There was never any question of his devotion to me.

He never did discuss with me the disposition of his property by will. He came to see me in May, it was the time I had trouble with my oldest daughter, she was in a very nervous condition, and he came to see me very often, and he asked me if I had made a will, and I said no Mac, I haven't, you know how I have always felt about wills and insurance, and I never felt that I wanted any insurance, and never felt like making a will, and he said "You should make a will in fairness to Barbara" and I told him I did not feel I could make a just will as conditions were, and that I did not know that I would ever make a will, and he said "Well, I think it is your duty to make a will, but as far as I am concerned, I never expect to make a will, because I believe the Alabama law is the best will a man can make, and I have a son who is a lawyer and he can see that that law is put in force. He stated that he would leave the distribution of his property to the Alabama law, and that his son would see that the law was put in force, that is the only discussion I ever had in regard to a will.

I have a recent communication from Mrs. Schowalter concerning my testimony in this case, a very threatening black-mail letter from her, it is nothing in the world but blackmail -

> Complainant objects to the statement as to its contents.
>
> The Solicitor for the Complainant in this case insists that the stenographer record the fact that the Complainant requested the privilege of examining the letter about which the witness is being examined, and that the Solicitor for the defendant took the letter out of the hands of the Solicitor for the Complainant and declined to permit the Complainant to examine it, declaring it to be their property,- that the request that brought about this action was the request of the complainant that she be allowed to examine the top of the letter, where it was mutilated.

Solicitor for Respondents wishes it to be noted that the letter in question was handed by counsel for Respondents to Counsel for Complainant for his examination, that it was duly and carefully examined by him, and that upon the completion of his reading and examination of it, the Complainant requested that the letter be handed to her; that the Solicitor for the Respondent stated to the Solicitor for the Complainant that the letter was the property of Mrs. Broadwood; that it is the purpose of the Solicitor for the Respondent, when the letter has been introduced in evidence, and is handed to the Commissioner who is taking this testimony, if in his discretion he wishes to do so, to state to the Commissioner that he may hand the letter to Mrs. Schowalter for her examination, but that until the letter is introduced in evidence it is the property of Mrs. Broadwood, and the Solicitor for the Respondents feels that he has not the right to give her property to persons other than those to whom she consents it be given.

The witness continued: I received this letter on my return from Europe, it is dated. The envelope bears a post-mark, it is November 20th. I know the hand-writing, and that is Mrs. Schowalter's

hand-writing. The letter is now in exactly the same state that it was when I received it. One of the pages of the letter was torn, and that is just as I received it. I have not made any notation and have not altered it in any way. I could not tell you whether I found that letter in my mail when I came back from England or not, but it was at my house. I got back on Thanks-giving day, and I think the letter was in my mail then, but I put my mail on my table, and it may have been that it came within the next day or two and put with other mail, but I received it through the mail at my residence , it was delivered by the Postman.

The incident referred to in this letter as being a common skeleton in the closet in the matter of blood is this. I am trying to remember the year- my daughter Barbara went with my oldest daughter to Cape Cod, Mass. My oldest daughter was a Counsellor and my youngest daughter was a member of the camp, and during the physical examination of the girls, which always takes place, there was a young Doctor there who looked at my youngest daughter Barbara's foot. She has a very long foot, exactly like her father's, who is an Englishman, but has fallen arches and is very, very flat footed, and noticing her being flat footed the Doctor remarked that she had a typical southern foot, like so many negroes in the South. My oldest daughter had had a great deal of illness, and was very nervous and highly excitable and her mind was highly inflammable, and she immediately thought that the Doctor insinuated that the child had negro blood in her, and she rushed from the room and wrote me a very inflammable letter, saying the Doctor had accused my daughter of having negro blood in her. I received that letter and sent it to my brother and asked him what I should do, because I knew I was not prepared or capable of taking action in the matter, and did not know what was the best thing to do. I sent the letter to my brother and he was highly insensed, and, of course, wanted to go up to Massachussetts and kill this man. My sister-in-law told me afterwards that she never allowed my brother to be alone at all that summer, and that she or her daughter Alice were with him the whole summer to prevent him going up to Massachussetts and killing this man because he made this insinuation. Prior to receiving this letter from my daughter the Directors of the Camp thought Hilda had made a mistake in coming up to camp,- she was very nervous, and they didn't think she was in condition to be with a crowd of young girls. Time went on and I had letters from the Directors of the Camp, assuring me that it was a great mistake on my daughter's part, all her imagination that the Doctor had made such an insinuation, the difficulty having been that he simply made this idle remark that she had a typical southern foot, having seen it on so many negroes of the South, and that he did not realize what he was saying, and apologizing, and saying that it was all Hilda's imagination. Mrs. Schowalter in her letter used this language: "This fact destroyed my peace long ago and Mac was aware of the truth while not admitting it." I do not understand the letter at all, because, of course, my brother was not aware of any truth in it when he wanted to kill a man for implying a thing of that kind, he could not admit that it was true. Later on he asked me not to tell his oldest son, not to repeat this incident to Ned because Ned would never understand why he tried to kill a man, and he knew Ned would never be happy until he had done this. Dr. Schowalter felt this very deeply and keenly. It was all based on this letter I sent to him. Afterwards when I asked for the letter he looked me straight in the eye and said "Charlotte says she burned the letter," but Mrs. Schowalter has the letter, I feel sure, and I can't see how a happy relationship could exist between a man and wife when she is probing him all the time, accusing him of having negro blood.

A portion of the letter is torn here. I think she had evidently written something that she didn't dare to say, and she tore a part of it off and left the little word "negro" there.

Respondents now offer in evidence this letter, identified by Mrs. Broadwood, and ask that the Commissioner accept it and mark it Ex hibit "A", and attach it to her testimony.

Complainant objects to the offering, first because there is no such thing in the practice of law as offering a document in evidence before the Commissioner, and, second, because counsel have declined to permit the Complainant to examine this letter before it is offered

in evidence, the rule clearly providing that no document can be offered without the Complainant having the right to examine it before it is offered in evidence and not afterwards, and also because the letter is incompetent, irrelevant and immaterial.

Respondents now ask the Commissioner to note the additional fact that before the letter was discussed, or before it was offered in evidence, it was handed to the Solicitor for the Complainant, who carefully examined it, before any further discussion concerning it was had.

Complainant also wishes to add that the party offering it in evidence declined to permit the complainant to examine it.

Respondents now ask the Commissioner, to meet the objection made by Mr. Smith as to offering the letter in evidence, to take the letter and to mark it for purposes of identification merely.

The witness continued: No discussion was ever had between Mrs. Schowalter and myself concerning what she has referred to as the skeleton in the Schowalter's family closet. I received a previous letter from Charlotte, telling me to keep my troubles to myself, that my brother was not the one to tell them to.

Q. Was anything else said in that letter?

Complainant objects to the question as to the contents of the letter, as the letter is the best evidence of its contents.

A. I can produce it, I have the letter at home, and will be glad to submit it in evidence if it is required. In this letter she goes on to say that my brother was not able to pull his share of their load because he was helping pull my share, and if I left him alone she would stay with him, and if I didn't she would leave him.

The witness continued: She threatened in that letter to leave my brother unless I left him alone. Dr. Schowalter never gave me any financial aid, never five cents worth, there was never a question of finances between my brother and me. My husband offered, several times to financially help Mac, if he ever needed help, but there was never a question of finances between us.

I was never allowed to have any relationship with my nephews, never allowed to go to see them, but it has always been pleasant as far as it went, and also with Alice, as far as it was allowed to go. I had extended my home to them, and told them that I was ready to aid them at any time, and done everything I could, always.

ON DIRECT EXAMINATION
By Mr. Allen:

I have never shown the letter I have handed the Commissioner for identification, from Mrs. Schowalter, dated November, 1920, to anyone. I have never shown the letter I handed to the Commissioner this morning to anyone before day before yesterday, when I showed it to you. The first time Ned Schowalter, who is present here, saw it was today.

I will produce the letter I received prior to that letter from Mrs. Schowalter and will ask that it be attached as an exhibit.

I know of the treatment of the children of Dr. Schowalter, the step-children of Mrs. Schowalter, I know of the treatment accorded them from the time she married him until they left home. It is difficult to state how I know, when I have not known anything else. I just know she was always most unkind and most cruel to the children, it was just commonly understood, and my brother had told me that his marriage had been a great mistake, whenever he spoke about it that was one of the things he said. He thought he was making a home for his children,

and he had not been able to make a home, and it had been so he could not see his children mistreated. We didn't talk about our affairs very often, because it was just generally understood, the conditions were understood, and it is better to suffer in silence than it is to talk about such things, but there was never a question about their not having been mis-treated, it was just understood in the family that they were mistreated. I only know what he told me as to the incident of little Rightor's nose being rubbed in waste matter he dropped on the floor. He told me of that. His reaction was that he wanted to send his wife away.

I remember when my brother had a heart stroke along about the summer or spring of 1925, over the Bay while in bathing. He came to see me after that and I talked to him and said "Mac, do you realize that you nearly died, that you might die any time, and you do not seem to take it very seriously," and he said "yes, why should I want to live in a home as I do, if I die I will be united with Olive. Life means nothing to me as I live, and death would be a relief and a release." Olive was his first wife.

ON CROSS-EXAMINATION
By Mr. Smith.

I am a married lady. My husband is in England.

Q. How long has he been there?

Respondents object to the question on the ground that it calls for incompetent, irrelevant and immaterial testimony.

A. I really do not remember, Mr. Smith.

I mean to tell you that I honestly do not remember, I do not remember dates very well. He has not been in Mobile within the last four years but I have been in England the last six or seven months -

Q. Did you understand me to ask you if you had been in England?

Respondents object to arguing with the witness.

A. I have never been a witness before and want to state to the Court that if I say anything I should not, I do it unintentionally.

Q. You must answer the questiouns as propounded or else decline to do so, in which event your testimony will not be admitted in evidence. If you decline to answer my questions I do not believe your testimony will be admitted in evidence.

Respondents object to the counsel for the complainant arguing with the witness or cutting her off in her answers when she has made them, and is about to add explanations of what she would say.

I can not answer definitely whether my husband has been in Mobile within the last six years, unless someone can answer me a question, if somebody can tell me when my house was burned at Point Clear,- if you will allow Mr. Schowalter to tell me when my house was burned -

By Mr. Schowalter: I returned South in 1920 and the house burned after 1920.

The witness continued: 1921 I think. Mr. Broadwood has been away six years, he has been away since the latter part of April, in 1921. He has been living in England during that time. I live at 62 South Hallett St., in Mobile, Alabama.

Mr. Broadwood left in April, and did not expect to stay longer than the summer. My daughter was very anxious to go to England with him when he left. It was after the war, and he didn't know what conditions would be in England, and he told Hilda she would have to allow

him to go to England and see how things were and he would send for her. Hilda had been petted and humored, and instead of waiting for her father to send for her, she was married against his will, and he was very much incensed about it and blamed me for it. Later she had trouble and was divorced and my husband blamed me for having allowed Hilda to take her name back, and said I was responsible for the whole thing. If the Court wishes to know anything about my private life I haven't anything in my life but what, if you wish to bring it out, I will be glad to answer it.

Q. I understand then that your estrangement was from having permitted your daughter to make an unfortunate marriage?

Respondents object to the question as calling for incompetent, irrelevant and immaterial testimony, filling up the record with things having no bearing on the issues in this cause.

A. Yes sir, as far as I know, Mr. Smith, we never know what -

Respondents object further to the question because there is a conclusion on the part of counsel that there was an estrangement between Mrs. Broadwood and her husband, and insofar as my recollection is concerned, I have heard her say nothing to that effect.

When he came to Mobile I saw him off on the train when he left, and we have written to each other regularly. He didn't like America, and didn't like prohibition, and wanted to go back, and all that sort of thing. There was never any estrangement, so far as I was concerned, there has been no estrangement between me and my husband.

Q. I will speak of his resentment?

A. He just didn't want to come back to America.

Q. You will have to answer my question?

A. Well, I do not know that there was, he had that feeling that he didn't want to come back.

Q. Do you mean to tell us that he resented your allowing your daughter to marry, or do you not say that?

A. Well, I think that he felt that an unfair advantage had been taken of him, and that it was one of the things he had not been asked about or consulted about, and that I should have influenced her, prevented our daughter from being married while he was away.

Q. What did you say your daughter's name was?

Respondents wish to renew their objection to all of this line of questioning of Mrs. Broadwood concerning her intimate family, private life on the ground that it is incompetent, irrelevant and immaterial, and has absolutely nothing to do with the issues involved in this proceeding, and is no part of the same.

A. Hilda Broadwood.

She does not live with me. So far as I know she is working for a living.

Q. Do you know whether or not your daughter is working?

A. My daughter is of age and she has been married and leads her own life as she sees fit to lead it, and it is not for me to question it.

Q. You have to answer my question?

A. To the best of my knowledge she is working.

She has other means of livelihood. My husband sends her an allowance, and it is paid out of my allowance, it is given her with my consent.

Q. Has your relationship with your daughter been pleasant or unpleasant?

Respondents object to this line of questioning on the ground that it calls for incompetent, irrelevant and immaterial testimony, and has absolutely nothing to do with the issues involved in this proceeding, and can be, legally, no part of this proceeding, as to what the relations between Mrs. Broadwood and her daughter are at this time.

Q. Since she left home?

I haven't had any relations with her. She is my oldest daughter. I have never been hostile to a child of mine. I am not hostile towards my daughter. We are always on speaking terms, and I would do anything in the world I could for her. I do not know how to answer, because there is no hostility between myself and my daughter. It was deemed advisable for us not to live together because my daughter has had an ill history and has had a great deal of trouble, and I should think you would understand that it would seem best for her to be away from me. I do not visit my daughter because it is not best, I do not wish to interfere with her life in any way. She does not visit me, but when I left Mobile last summer, just to show you there is no hostility, when I went away I left a note to my daughter, asking her to come to my house and take charge of it, and I left everything there, the servant was there to look after her, and asked her to take charge of my house and live in it during my absence. She saw fit not to do so, and I haven't pressed the matter. Before I came home I also asked her to meet me and to come to see me at any time she saw fit to do so. We are not hostile but simply do not associate with each other, but it is not my fault, because in these letters I asked her to come to see me, and asked her to welcome me home when I came back, so there is no hostility there.

I spoke of an occasion when Dr. Schowalter and I sat on the beach and discussed his wife until four o'clock in the morning. That was when Alice was about three years old. She is a year older than Barbara, and I could not positively swear when Barbara was born. Barbara is 23, and 23 from 29 is 1907, I expect it was 1908 or 1909. It was the year after Mrs. Schowalter's sister was there. That has been twenty years ago, roughly speaking. I do not know that I have ever revealed that conversation to my nephews or their attorneys until - yesterday was the first time I had ever seen Mr. Rogers. I have never been examined as a witness before.

Q. I am talking about this occasion?

A. No, I was not examined -

Q. You mean to tell us,- I just want to know what you mean to say -

Respondents object to arguing with the witness.

A. They could not ask me about it,- I just showed Mr. Allen this letter, and the reason I showed it to him was because I had never shown it to Ned.

I mean to say I never told them of this conversation until I was examined as a witness, never except to Mrs. Schowalter, I referred to it the day she threatened to kill me, I told her that I was the best friend she had ever had. That was when Granny was so ill. I could not tell you when that was, it was the year she died. That was after the conversation, because I referred to it. I do not know whether or not that was eighteen years ago. My best judgment is that it was 1910,

certainly after 1908 or 1909. I think it has been as much as fifteen years ago, I think I can safely say that. I have visited her since that time, but I have never been there that I was not sorry I went.

I spoke of a conversation I had with some lady who told me about some threat. That was the same summer, just after that was when my grandmother died. I heard she died, and I wanted to go to see her and asked her advisability about going. Mrs. Broadbeck knew about it because the Doctor went for her early that morning to get her to help him quiet his wife, and she knew the conditions and circumstances. She advised me not to go back to the house. The Broadbecks were the most intimate friends my brother had.

The conversation I spoke of having with my brother as to whether I had made a will was before Alice came home, - it was in the latter part of May or just the first few days of June, I think it was in May. It may have been in 1906, but I am not positive, but in July or August my brother 'phoned me and asked me to meet him, that he had something to tell me, wanted to discuss something with me. I think his wife heard him 'phone me, and sent his daughter with him. She never let him see me alone if she could possibly help it, and she would send her daughter up to town with him to keep him from seeing me. I think he had made his will and wanted to tell me about it.

I said something of having heard something of Mrs. Schowalter having rubbed one of the boys' noes in his waste matter, that was when the boys were little boys, I suppose Rightor was four or five years old. I can't say whether it was over twenty years ago, I can't tell you about dates, but can only tell you of things that happened, that I know that happened.

Respondents wish it noted that the Commissioner has handed to Mrs. Schowalter the letter in question, and that Mrs. Schowalter has looked at it.

The witness, after making a search for same, reported to the Commissioner that she was unable to find the other letter she testified to having received from Mrs. Schowalter, and which she stated she would furnish to be attached to her deposition, and this deposition is returned without such letter being attached.

Dear Blanche.

I am just ~~down~~ from Mobile, where I learned of the dastardly testimony which is being sworn to against me by Mac's emp. statements which Mac is alleged to have made about me to them and about times when he tried to get rid of me etc. It is up to you in your coming deposition to prove whether your ~~brother~~ was a man or not. I could write at great length about it all, but I will save you the unpleasant details. I only hope when you give your testimony you will not be prejudiced and state only things which you are prepared to prove as true.

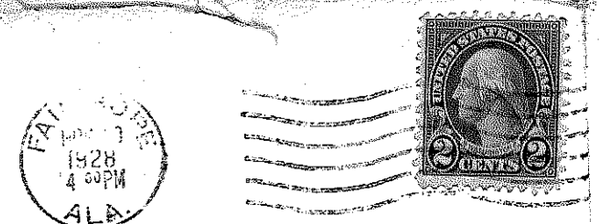
you. Barbara ~~[illegible]~~ I wish have a common skeleton in the closet in the matter of blood. This fact destroyed my peace long ago for Mac was aware of the truth while not admitting it. One other person suspect possibly knows but is silent also. I have given 25 years of my life to Mac's home & family. Never failing him once. ~~[illegible]~~ & suffering adversity & enjoying a short prosperity now I am middle aged & fighting with my back to the wall for a mere existence against malicious slander & tales of idle gossip which are being relayed by those whom I once loved. I am ~~determined to~~ give every one this chance for a place in the sun but if any further untruths are told or suggested about me in this testimony I will answer by telling ~~those~~ truths which I can prove if it takes

all I possess & carries in my one I love down with me I will publish to the world ~~truth which I know~~ every thing I know about the Schwatlers. past present & future;
"It is a long lane that has no turn"
May your lane turn down on happier times as well as mine.

Yours truly.
Charlotte.

Please forward

Ep "C"



FAIRHOPE
MAR 1
1928
4 30PM
ALA.

Mrs. L. J. Broadwood.
Mobile.
Alabama.

Hallett St.

Dicid 3/1/28
Ep "M" Hall
Judge

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

I, O. H. Swinson, the Commissioner appointed to take the deposition of Mrs. Blanche S. Broadwood, as per stipulation signed by the Solicitors for the Complainant and Respondents, and hereto attached, in that certain cause entitled: "Charlotte Gertrude Schowalter, Complainant, vs. Edward Schowalter, Preston J. Schowalter and Alice Elsa Schowalter, Respondents, pending in the Circuit Court of Baldwin County, Alabama, in Equity, do hereby certify that I caused the said witness to come before me on the 12th day of January, 1929, at the office of Mr. Harry T. Smith, in Room No. 717 First National Bank Building, in the City and County of Mobile, State of Alabama, that the said witness was made known to me, and before testifying was duly sworn to speak the truth, the whole truth and nothing but the truth So Help Her God; that during said examination Mr. Harry T. Smith and Mr. R. M. Smith appeared for the Complainant and Mr. C. M. A. Rogers and Mr. John N. Allen appeared for the Respondents Edward Schowalter and Preston J. Schowalter; that the testimony of the said witness was taken down by me in shorthand, as the questions were asked by counsel for the parties hereto and answered by the witness, and is here reduced to writing in narrative form as nearly in the language of the witness as may be done in so combining the questions and answers as to make it read in narrative form; that the witness did not read over or sign her deposition, this requirement having been expressly waived by the solicitors for the parties hereto; and I further certify that I am not of counsel or kin to any of the parties to this suit; and that I am not in any manner interested in the result thereof.

Given under my hand and seal, and returned unto Court, this _____ day of January, 1929.

O. H. Swinson
Commissioner.

Commissioner's fee
$10.00 paid by
Stevens, McCorvey, McLeod,
Goode & Turner, Solicitors
for Respondents.

O. H. Swinson
Commissioner.

(DECIDED MAR 22 1928)

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1927-28.

1 Div. 467.

Edward R. Schowalter, et als.

v.

Charlotte Gertrude Schowalter,

Appeal from Baldwin Circuit Court,
in Equity.

BOUDIN, J.

Complainant filed her bill as executrix and individually as devisee and legatee under the will of her late husband. It alleges doubt has arisen as to the true construction of the will, doubt as to what part of the estate was devised and bequeathed to complainant, and seeks a judicial construction of the will as necessary to enable her to perform her duties as executrix.

Demurrer to the bill as amended was overruled.

The appeal is to review this decree.

The will, omitting formal parts, reads:

"First: after all my lawful debts are paid and discharged, I give five dollars (5.00) to my son Edward R. Schowalter, second to my son Preston J. Schowalter, five dollars, (5.00) Third: to my daughter Alice Elsa Schowalter, five dollars (5.00), Fourth, to my beloved wife Charlotte Gertrude Schowalter, I give, devise and bequeath the residue of my estate both real and personal. At her death or remarriage the remainder of my estate to be equally divided between my children Edward R. Schowalter, Preston J. Schowalter and Alice Elsa Schowalter, I hereby constitute and appoint my said wife Charlotte Gertrude Schowalter to be the sole executrix of this my last will and testament, hereby revoking all former wills by me made, and I direct that my Executrix be not required to give bond." (Duly signed, attested and dated June 11, 1925.)

* * * * * *

"Codicil No. 1. October 30, 1925.

"The erasure of the words 'or remarriage' were erased by me October 30, 1925."

This codicil appears on the same paper duly signed and attested.

Complainant, appellee here, alleges: First, that under this will she takes title in fee simple to all the residue of the estate, real and personal, after payment of debts and specific legacies, or, Second: takes a life estate with full power of disposition, the remainder clause being intended to pass to the children only such portion as shall remain undisposed of at her death.

Appellants, the two sons named in the will, allege the complainant took a life estate only, and the children an estate in remainder as to the entire property.

Complainant claims there is such uncertainty or ambiguity in the terms of the will as to let in parol evidence whereby the judicial mind may assume the position of the testator in ascertaining his mind as expressed in the will. With this in view further averments are made which we summarize thus:

The testator drew his own will. At the time it was made he and complainant had lived happily as husband and wife

for many years. They had one daughter, Alice, twenty-one years of age, living with her father and mother, and without property or earnings. The father was devoted to her. Edward and Preston were sons of a former marriage, prosperous men not in need of assistance from their father. Complainant owned a small separate estate, yielding an income of some $25.00 per month, and no other personal income. The personal estate of the testator consisted of the professional library and instruments of the testator as a physician and surgeon, and some accounts due from patients, all not exceeding $1000.00 in value. The real estate consisted of unimproved lands producing no income whatever, except a house and lot at Point Clear, rented at $250.00 to $300.00 per annum, which did not more than pay the taxes. It is then averred that without the power of disposition the devise and bequest to complainant would impose upon her a burden of taxes for life without benefits, or make it necessary for his children to keep up the taxes during her life without return: on the whole make his estate a burden on the entire family. It is further averred the testator during his life declared the intent of the will to be to vest in his wife a fee simple title.

The demurrer challenges the bill on the ground that the will is clear and unambiguous; that its meaning is to be found within its four corners; that parol evidence is inadmissible for purpose of construction, and that it vests in the widow a life estate only, with remainder over to the children. Special grounds of demurrer are addressed to the matters sought to be made the basis of parol evidence.

Judge John D. Leigh, who heard the cause, wrote a well considered opinion in the case, reaching the conclusion that the will is ambiguous and of doubtful meaning, that the court should hear the circumstances and conditions which will place him in position of the testator; and so overruled the demurrers going to the equity of the bill as a whole, and the demurrers on

special grounds mentioned.

Looking to the will as expressive of the mind of the testator, we note that he first makes a special bequest in money to each of his children. They are in separate items. They are for equal amounts. They are merely nominal in amount.

The "residue of my estate both real and personal" is the description of the property devised and bequeathed to his wife.

Thus far the testamentary purpose is expressed in the usual form of special legacies followed by an inclusive residuary bequest. Without question the will thus far, and without more, vested in the wife an estate in fee simple in the entire property after payment of debts and special legacies of nominal amount.

This suggests the idea often found in wills of laymen that each natural object of his bounty shall have recognition in the will by a gift of something certain. In case of a father naming and remembering each child with some bequest, however small, may be indulged as a mark of affection. The inquiry then comes why these special nominal legacies if in the main item of his will he was giving the same children his entire estate subject to a life interest only in favor of his widow?

"Every estate in lands is to be taken as a fee simple, although the words necessary to create an estate of inheritance are not used, unless it clearly appears that a less estate was intended." Code of 1923, §6900.

This court has in many cases considered the effect of provisions expressly or in legal effect devising an estate in fee, followed by others raising an inquiry as to whether from the will as a whole a less estate is intended.

Each will present its own inquiry. The mind of the testator is the law of the will, unless unlawful in purpose. Broadly speaking, a will which by express words declares the estate

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5. The will, from view is wholly intestate. If some property of the first taker to be in "fee simple," "absolute and unconditional," or words of like import, will be so construed unless subsequent provisions reducing such estate are so clear and unambiguous that from the whole will the intent to create a less estate "clearly appears." - Sells v. Johnson, 200 Ala. 160; Pearce v. Pearce, 199 Ala. 499; Park v. Boulware, 198 Ala. 172; Fowlkes v. Gray, 205 Ala. 523. terminated? It is the law that Where the estate of the first taker is not expressly declared to be absolute or in fee, but such is the legal import of the terms used, the presumption that they are used in their technical and legal sense may be overcome by further provisions declaring an estate in remainder in the same property. - Hatcher v. Rice, 213 Ala. 676. The will in the cited case declared that at the death of the first taker "all property of mine to go" to named relatives. In the case before us the provision is that in such event "the remainder of my estate to be divided" &c. case in remainder. It is entirely clear that in the mind of the testator there would or might be a "remainder" upon the death or re-marriage of his widow. In his thought such remainder was dealt with as a part of his estate, — "my estate to be divided" is his expression. This is not consistent with the idea that he had given an unqualified fee to his wife, and was undertaking to control the descent of her property. The original will calls for a division among the children on her death or "re-marriage." In either of the events named the testator's declared purpose is that each of his three children shall share equally, that his daughter shall not take all the "remainder" to the exclusion of his sons. and personal prop

Appellee in argument seeks to reconcile the provisions of the will by a conjecture that the testator, a professional man of intelligence, had a vague idea of "mixed property" as distinguished from real or personal property, and this was the "remainder" meant

in the will. Such view is wholly untenable. If some property apart from that devised and bequeathed to his wife was in mind, where was the title placed during her life or widowhood? Why await her death or re-marriage before division?

The inquiry comes at last to what is meant by "the remainder of my estate?" Does it mean an estate in remainder as to the whole estate, or does it mean what remains of the estate when the needs of the wife have terminated? It is the law that legal terms are presumed to be used in their legal sense. The presumption is not conclusive except where there is an entire absence of other terms suggesting a different meaning. Dealing with the will of a layman of intelligence, but not a lawyer, we find he defined the gift to the first taker in terms of a fee. The same presumption obtains in the construction of this clause as in the remainder clause. Would a layman of intelligence be more likely to know the proper form of a devise of an estate for life merely, or more likely to know the proper terms to define an estate in remainder? Little aid can be had in the construction of this will from such presumptions.

But it does not follow that either of these clauses must be taken in other than a legal sense. An estate for life with absolute power of disposition passes a fee as to rights of creditors and purchasers, a fee in so far as essential to the exercise of the power itself, but subject to a remainder estate in so far as not exercised. - Code, §6928; Alford v. Alford, 56 Ala. 350; Young v. Sheldon, 139 Ala. 444; Cain v. Cain, 127 Ala. 440; Hood v. Bramlett, 105 Ala. 660.

The provision in question deals with both real and personal property.

A life estate in chattels with limitation of a remainder over was not recognized at common law. While such estate is now recognized, the life tenant usually takes an absolute title to

personality consumed in the using. - Underwood v. Underwood, 162 Ala. 553.

We think the will not free from doubt as to the meaning of "remainder of my estate" in the connection used.

When we consider the averments as to the nature and value of the estate, the relations of the testator to the beneficiaries named, and the natural obligations that arise therefrom, it becomes still more questionable. For all that appears Dr. Schowalter had all the normal affection and sense of obligation to his widow and daughter remaining at home. Did he give his wife a fee for the purpose of disposition in providing for herself and daughter while their status continued, with remainder to his three children in any portion of the estate, property or its proceeds, remaining unconsumed?

He trusted his wife in naming her as executrix without bond. If indeed the condition of his estate known to him was such that a life estate merely would be useless, valueless, and a burden to those who in the normal relations of life were the first objects of his care, we may well hesitate to approve the interpretation of his will asserted by appellants.

The cause will be affirmed that it may proceed to a proper hearing on all the facts placing the court in position of the testator that a decree may be rendered giving effect to his intention as expressed in the will.

Affirmed.

Anderson, C.J., Sayre and Gardner, JJ., concur.

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1 Div., No. 467,

Edward R. Schowalter, et als, Appellants,

vs.

Charlotte Gertrude Schowalter, Appellee,

From Baldwin Circuit Court.

The State of Alabama,
City and County of Montgomery.

I, Robert F. Ligon, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages, numbered from one to seven *inclusive, contain a full, true and correct copy of the opinion of said Supreme Court in the above stated cause, as the same appears and remains of record and on file in this office.*

Witness, Robert F. Ligon, Clerk of the Supreme Court of Alabama, at the Capitol, this the 22 *day of* March, 1928

Robt F. Ligon,
Clerk of the Supreme Court of Alabama.

The Supreme Court of Alabama

October Term, 1927-28

1 Div., No. 467,

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vs.

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Appellee.

From Baldwin Circuit Court.
In Equity

COPY OF OPINION

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Filed Nov 27/928
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HARRY T. SMITH & CAFFEY
ATTORNEYS AT LAW
716-722 FIRST NATIONAL BANK BUILDING
MOBILE, ALA.
HARRY T. SMITH
WILLIAM G. CAFFEY.

January 14th, 1927.

Hon. T. W. Richerson, Clerk
Circuit Court of Baldwin County,
Bay Minette, Ala.

Dear Sir:-

You will please find enclosed an amendment to the bill of complaint, in the case of Charlotte Gertrude Showalter against Edward R. Schowalter, Preston J. Schowalter and Alice Elsa Schowalter, to be filed.

Yours very truly,

Harry T. Smith & Caffey

Encs.

HTS:BG

CHARLOTTE GERTRUDE SCHOWALTER, Complainant.	:	
versus	:	IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA.
EDWARD R. SCHOWALTER, PRESTON J. SCHOWALTER AND ALICE ELSA SCHOWALTER, Respondents.	:	IN EQUITY.

Now comes the complainant in the above entitled cause and moves the court for a decree pro confesso against the respondent Alice Elsa Schowalter.

R M Smith
Thos T Smith Malloy
Sol for Complt

Solicitors for Complainant.

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Motion for Decree Pro Con.

Filed Feb. 14, 1929.
F. W. Hare
Judge

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