

553

IN RE:

THE LAST WILL OF HATTIE
B. MOORE, Deceased, for
Appointment of a Trustee
for RITTENHOUSE R. MOORE,
a non compos mentis.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

CHANCERY

APPOINTMENT OF GUARDIAN AD LITEM.

In the matter of the Petition of Mark L. Bristol, and
Helen Moore Bristol, for the appointment of a trustee for
Rittenhouse R. Moore, a non compos mentis.

In said proceeding it being made to appear to the Register
that RITTENHOUSE R. MOORE, is over the age of twenty-one years,
and a non compos mentis; and AMANDA MOORE GOLDTHWAITE, is over
the age of twenty-one years, and of unsound mind; and that the
above named persons are heirs at law of the said Hattie B.
Moore, deceased, and interested in the settlement of the said
Estate:

It is therefore, CONSIDERED and ADJUDGED by the Register
that H. EMBREE SMITH, be, and he is hereby, appointed guardian
ad litem to represent said RITTENHOUSE R. MOORE and AMANDA MOORE
GOLDTHWAITE, upon the hearing of the said application. It is
further ORDERED that said H. EMBREE SMITH be notified of his
appointment, and of the time for the hearing of said application.

WITNESS, this the 24th day of May, 1939.

R. S. Duck
R. S. DUCK, Register of the
Circuit Court of Baldwin
County, Alabama.

By: Walter Thompson
Deputy Register.

IN RE: :
TRUSTEE UNDER WILL OF HATTIE B. MOORE, : IN THE CIRCUIT COURT OF
FOR RITTENHOUSE R. MOORE, : BALDWIN COUNTY, ALABAMA.
a non compos mentis. :

~~TO THE HONORABLE R. S. DUCK, REGISTER IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.~~

It is hereby ordered and directed that a hearing before the Register of this Court on the application filed by Helen M. Bristol, et al, for appointment of Robert H. Smith, as Trustee, under the will of Hattie B. Moore, be held on May 24, 1939 at ten o'clock A.M. in the office of the Register of this court and that notice of said application and of said hearing thereon, be given to Rittenhouse R. Moore of Norfolk, Virginia, Amanda M. Goldthwaite of Washington, D.C., and Helen M. Bristol of Washington, D.C., by publication once a week for three successive weeks in the Baldwin Times a newspaper published in Baldwin County, Alabama.

R. S. Duck
Register.
By - *Saullice Thompson,*
Deputy-Register

LAW OFFICES OF
D. R. COLEY, JR.
1010-1011 VAN ANTWERP BUILDING
MOBILE, ALABAMA

March 2, 1943

555

Honorable Robert Duck,
Clerk, Circuit Court,
Baldwin County,
Bay Minette, Alabama.

Dear Mr. Duck:

You will recall that there was on the docket of the Chancery Court in Baldwin County a proceeding involving the Estate of Hattie B. Moore, in which J. Irwin Burgett was Trustee for the benefit of Rittenhouse B. Moore, an incompetent.

My recollection is that subsequent to Mr. Burgett's death Mr. Robert Smith was appointed as Trustee to succeed Mr. Burgett, and a settlement of Mr. Burgett's Trusteeship was consummated.

The Fidelity & Deposit Company of Maryland has written me recently indicating that their records disclose that this Trusteeship is still in existence and that the bond has not been discharged.

Will you please advise me what the status of the matter is and if I am correct in my recollection that Mr. Burgett's Estate was released as Trustee, will you please furnish me with a copy of the order releasing him as such, forwarding to me statement for your services?

Very truly yours,


D. R. Coley, Jr.

C/D

IN RE: :
 :
 TRUSTEE UNDER WILL OF : IN THE CIRCUIT COURT OF
 HATTIE B. MOORE, for : BALDWIN COUNTY, ALABAMA.
 RITTENHOUSE R. MOORE, :
 a non compos mentis. : IN EQUITY.

KNOW ALL MEN BY THESE PRESENTS, that we, Robert H. Smith of Mobile, Alabama, and MARYLAND CASUALTY COMPANY of BALTIMORE, MARYLAND are held and firmly bound unto R. S. Duck, as Register of the Circuit Court of Baldwin County, Alabama, in the penal sum of one thousand dollars (\$1,000.00) for the payment of which well and truly to be made, we jointly and severally bind ourselves, our heirs, executors and administrators.

SEALED WITH OUR SEALS and dated this the 25th day of May, 1939.

The condition of the above obligation is such that whereas the said Robert H. Smith was on the 24th day of May, 1939, appointed by the said R. S. Duck, Register of the Circuit Court of Baldwin County, Alabama, as Trustee under the will of Hattie B. Moore for an estate for the benefit of Rittenhouse R. Moore, who is of unsound mind, upon his entering into this bond:

Now, if the said Robert H. Smith shall faithfully perform all of the duties which are, or may be required of him by law in the premises, then this obligation shall be null and void; otherwise, it shall be and remain in full force and effect.

Robert H. Smith (SEAL)
 MARYLAND CASUALTY COMPANY
 of Baltimore, Maryland
 By:- J. O. Jackson (SEAL)
 J. O. Jackson, Atty. in-fact.

Taken and approved, this the 26 day of May, 1939.

R. S. Duck
 Register of the Circuit Court of Baldwin County, Alabama.
 By- Handlin Thompson, Deputy

IN RE: :
: IN THE CIRCUIT COURT OF
TRUSTEE FOR RITTENHOUSE R. MOORE, : BALDWIN COUNTY, ALABAMA.
a non compos mentis. :

TO THE HONORABLE R. S. DUCK, REGISTER IN
THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA.

Come your Petitioners Rittenhouse R. Moore, a non compos mentis by Mark L. Bristol, his next friend, and Helen Moore Bristol, and show that the will of Hattie B. Moore was duly probated in Mobile County, Alabama on June 25, 1924, a copy of which is hereto attached and here referred to, and made a part hereof.

Petitioners show that by the third paragraph of the said will, the said Hattie B. Moore nominated and appointed Gregory L. Smith as Executor and Trustee under the terms of the said will, and in the event of his death before the settlement of the Estate, appointed Robert H. Smith as Executor and Trustee.

Petitioners show that the said Gregory L. Smith and Robert H. Smith both refused to accept said trust, and that the First National Bank of Mobile, Alabama, was appointed as Executor of said Estate, but not as Trustee, and the said Executor administered the said Estate as Executor, and was, on June 22, 1928, fully discharged and released by the Probate Court of Mobile County, Alabama from further duties as such Executor.

Pursuant to petition filed in this matter before the Register of this Court, an order was entered on August 21, 1933 by the Register of this Court, appointing J. Irwin Burgett as Trustee for the said Rittenhouse R. Moore for the purpose of carrying out the provisions of said will.

Petitioners show that the said J. Irwin Burgett died on October 27, 1938, and that the trust created in favor of said Rittenhouse R. Moore by the second paragraph of the said will of Hattie B. Moore, has not been fully administered, but petitioners are informed and believe that there is a balance of \$113.38 due by the Estate of said J. Irwin Burgett to the said Rittenhouse R. Moore, being balance of monies collected by the

said J. Irwin Burgett during his lifetime as Trustee, and not expended for the care of said Rittenhouse R. Moore, and that the said Trust created in favor of said Rittenhouse R. Moore owns a one-third interest in certain lands aggregating about 1400 acres and lying in the southern part of Baldwin County, Alabama; that the taxes for 1938 on said lands have not yet been paid, and it is necessary to secure the appointment of a Trustee to succeed J. Irwin Burgett so that he may arrange for the payment of said taxes in order to prevent the sale of said land, and the loss of the title hereto, and to administer the trust created by said will of Hattie B. Moore.

WHEREFORE, petitioners pray that notice of this application be given in such newspaper as may be directed by the Register of the Circuit Court of Baldwin County, Alabama for three successive weeks, as provided by law, and that after said notice has been duly given, Your Honor will appoint Robert H. Smith as Trustee under the will of Hattie B. Moore, the said Robert H. Smith being fully able and competent, and a proper person to act as Trustee, and has agreed to so act, upon being appointed, and that Your Honor will fix the amount of the bond to be given by said Trustee.

RITTENHOUSE R. MOORE,
a non compos mentis,

By

Mark De Bristol
 His next Friend.

Helen Gene Bristol

transport any or all investments for other investments.

THIRD: I nominate and appoint Gregory L. Smith to be the Executor of this, my Last Will and Testament, hereby expressly exempting him from giving bond and should he die before the settlement of my estate and the execution of the trust herein created, I nominate and appoint Robert H. Smith as my Executor.

IN TESTIMONY WHEREOF, I, the said Hattie B. Moore, have to this my Last Will and Testament, hereunto signed my name and affixed my seal this, the 2nd day of August, A. D., 1917.

ATTEST BY:

HATTIE B. MOORE (SEAL)

Sara E. White

Althea G. Stone
as Witnesses

We, Sara E. White and Althea G. Stone, hereby certify that Hattie B. Moore signed and published the above instrument as her Last Will and Testament in our presence and that we, in her presence and in the presence of each other, thereunto subscribed our names as Witnesses on the day of the date of said Will.

Sara E. White

Althea G. Stone

DISTRICT OF COLUMBIA,
UNITED STATES OF AMERICA.

Before me, May V. Judd, a notary public, in and for said District of Columbia, Mark L. Bristol, who upon oath deposes and says that he is the brother-in-law of Rittenhouse R. Moore, a non compos mentis, and is the husband of Helen Moore Bristol, and that he has personal knowledge of the facts stated in the above and foregoing petition, and that they are true and correct.

Mark L. Bristol

Subscribed and sworn to before me, this 20th day of March, 1939.

May V. Judd
Notary Public, District of Columbia.

KNOW ALL MEN BY THESE PRESENTS, That I, HATTIE B. MOORE, of the City and County of Mobile, Alabama, being of sound mind and over the age of twenty-one (21) years, do make and publish this, my Last Will and Testament, hereby revoking all Wills by me at any time heretofore made.

As to my worldly Estate and all real, personal and mixed property, of which I shall die seized and possessed, or to which I shall be entitled at the time of my decease, I devise, bequeath and dispose of in the manner following:

FIRST: My Will is that all my just debts and funeral expenses shall, by my Executor hereinafter named, be paid out of my estate as soon after my decease as convenient.

SECOND: I devise and bequesth all of the rest and residue of my estate to my daughters, Helen Moore Bristol and Amanda M. Goldthwaite, and to my Executor in trust for my son, Rittenhouse R. Moore, giving to each a one-third ($1/3$) part thereof, and the one-third so given to my Executor in trust for my son, Rittenhouse R. Moore, shall be invested by my said Executor and the rents, incomes and profits therefrom shall be, by my said Executor, used for the support and maintenance of my said son, Rittenhouse R. Moore, as long as he shall live, and at his death the said trust fund shall be paid over to my two daughters in equal parts, should they both survive him, or if only one should survive him, then to such survivor, Should any of my said children die in my lifetime, then the share which I have devised to any such child or to my Executor in trust for any such child, shall be divided into as many shares as there are children of mine surviving me, and I give one such share to each of my surviving daughters, if any, and if my said son, Rittenhouse R. Moore, shall survive me, then one such share to my said Executor in trust for my said son, to be held by my said Executor upon the same terms and conditions as he shall hold other property in trust for my said son under the terms of this will. And my said Executor may, from time to time, as in his discretion may seem best, vary, alter, change, or

IN RE:

TRUSTEE UNDER WILL OF
HATTIE B. MOORE, for
RITTENHOUSE R. MOORE,
a Non Compos Mentis,

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

APPOINTMENT OF TRUSTEE.

WHEREAS, Rittenhouse R. Moore, a non compos mentis, by Mark L. Bristol, his next friend, and Helen Moore Bristol, heretofore filed their petition with the Register of the Circuit Court of Baldwin County, Alabama, alleging that the last Will and Testament of Hattie B. Moore, deceased, was duly admitted to probate in the Probate Court of Mobile County, Alabama, by the terms of which, she devised an un-divided one-third (1/3) interest in certain lands in Baldwin County, Alabama, in trust, for the benefit of Rittenhouse R. Moore, and nominated and appointed Gregory L. Smith, as Executor and Trustee under the terms of said Will, and in the event of his death before the settlement of the said Estate, appointed Robert H. Smith, as Executor and Trustee, and that the Trustee, or Trustees, named in said Will and Testament refused to accept said trust, and pursuant to petition filed in this matter before the Register of the said Court, an order was entered on August 21, 1933, by the Register of this Court, appointing J. Irwin Burgett as trustee for the said Rittenhouse R. Moore, for the purpose of carrying out the provisions of said Will, and that the said J. Irwin Burgett died on October 27, 1933; and that the trust created in favor of said Rittenhouse R. Moore, by the second paragraph of the Last Will and Testament of the said Hattie B. Moore, deceased, has not been fully administered, and that the only persons interested in said Trust are Rittenhouse R. Moore, who is non compos mentis, and is over the age of twenty-one years and resides in Norfolk, Virginia; Amanda M. Goldthwaite, who is of unsound mind, and is over the age of twenty-one years, and is confined in the Sheppard and Enoch Pratt Hospital in Washington, D. C., and Helen M. Bristol, who is over the age of twenty-one years and resides in Washington, D. C.

AND, WHEREAS, said Petitioners did further pray that notice of said Application be given to all parties in interest, as provided by law, and that Robert H. Smith, be appointed as Trustee under the last Will of the said Hattie B. Moore, and that the Register will fix the amount of the bond to be given by the said Trustee; and

WHEREAS, notice of said Petition has been given as required by Section 10447 of the Code of Alabama, of 1923, for three (3) successive weeks, in the Baldwin Times, a weekly newspaper published in Baldwin County, Alabama, by the Register of the Circuit Court of Baldwin County, Alabama; and

WHEREAS, the Register did appoint H. Babree Smith, of Bay Minette, Alabama, as Guardian Ad Litem for the said Rittenhouse R. Moore and Manda Moore Goldthwaite, and he filed in this cause, in writing, his acceptance of said Appointment to represent and protect the interests of the said parties upon the hearing of the proceedings in this cause, and he denied each and every allegation contained in said petition as last amended, and demanded proof thereof; and

WHEREAS, the hearing of said Application was set for 10 o'clock, A.M., on this the 24th day of May, 1939, and at the said time the said cause came on for hearing upon the petition, the denial of Guardian Ad Litem, and the evidence in the said cause.

NOW, THEREFORE, it is considered, ordered, and found that the facts alleged in said petition are true, and that Robert H. Smith, be, and he hereby is, appointed as Trustee for Rittenhouse R. Moore, for the purpose of carrying out the provisions of the last Will of the said Hattie B. Moore, deceased, upon his making bond as such trustee in the sum of \$1,000.00.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of Office, this the 24th day of May, 1939.

R. S. DUCK, Register of the
Circuit Court of Baldwin
County, Alabama.

Appointment of Guardian Ad Litem and Acceptance.

THE STATE OF ALABAMA, }
BALDWIN COUNTY.

SPRING

Term, 19 39

To H. EMBREE SMITH:

Take notice that by an order of this Court, this day made and entered, you were appointed to act as guardian ad litem for RITTENHOUSE R. MOORE and AMANDA M. GOLDTHWAITE, non compos mentis,

~~heirs~~ heirs of HATTIE B. MOORE, deceased, to represent and protect their interests upon Petition of Mark L. Bristol and Helen Moore Bristol for the appointment of Robert H. Smith, as Trustee for Rittenhouse R. Moore, a non compos mentis, and Amanda M. Goldthwaite, who is over the age of twenty-one years and of unsound mind;

Given under my hand, this 24th day of May 19 39

R.S. Dorch
REGISTER OF THE ~~Judge of Probate~~
CIRCUIT COURT, Baldwin County, Ala.
By: *Stellio Quynn*
Deputy Register.

I hereby accept the appointment of guardian ad litem for

RITTENHOUSE R. MOORE and AMANDA M. GOLDTHWAITE, non compos mentis,

~~heirs~~ heirs of HATTIE B. MOORE, deceased, to represent and protect their interests upon the hearing of the above named proceedings and hereby deny each and every allegation contained in said proceedings and demand proof thereof.

Witness my hand, this 24th day of May 19 39

H E Smith

Guardian ad Litem.

IN RE:

TRUSTEE UNDER WILL OF
HATTIE B. MOORE, for
RITTENHOUSE R. MOORE,
a Non Compos Mentis,

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

APPOINTMENT OF TRUSTEE.

WHEREAS, Rittenhouse R. Moore, a non compos mentis, by Mark L. Bristol, his next friend, and Helen Moore Bristol, heretofore filed their petition with the Register of the Circuit Court of Baldwin County, Alabama, alleging that the last Will and Testament of Hattie B. Moore, deceased, was duly admitted to probate in the Probate Court of Mobile County, Alabama, by the terms of which, she devised an un-divided one-third (1/3) interest in certain lands in Baldwin County, Alabama, in trust, for the benefit of Rittenhouse R. Moore, and nominated and appointed Gregory L. Smith, as Executor and Trustee under the terms of said Will, and in the event of his death before the settlement of the said Estate, appointed Robert H. Smith, as Executor and Trustee, and that the Trustee, or Trustees, named in said Will and Testament refused to accept said trust, and pursuant to petition filed in this matter before the Register of the said Court, an order was entered on August 21, 1933, by the Register of this Court, appointing J. Irwin Burgett as trustee for the said Rittenhouse R. Moore, for the purpose of carrying out the provisions of said Will, and that the said J. Irwin Burgett died on October 27, 1938; and that the trust created in favor of said Rittenhouse R. Moore, by the second paragraph of the Last Will and Testament of the said Hattie B. Moore, deceased, has not been fully administered, and that the only persons interested in said Trust are Rittenhouse R. Moore, who is non compos mentis, and is over the age of twenty-one years and resides in Norfolk, Virginia; Amanda M. Goldthwaite, who is of unsound mind, and is over the age of twenty-one years, and is confined in the Sheppherd and Enoch Pratt Hospital in Washington, D. C., and Helen M. Bristol, who is over the age of twenty-one years and resides in Washington, D. C.

AND, WHEREAS, said Petitioners did further pray that notice of said Application be given to all parties in interest, as provided by law, and that Robert H. Smith be appointed as Trustee under the last Will of the said Hattie B. Moore, and that the Register will fix the amount of the bond to be given by the said Trustee; and


WHEREAS, notice of said Petition has been given as required by Section 10447 of the Code of Alabama, of 1923, for three (3) successive weeks, in the Baldwin Times, a weekly newspaper published in Baldwin County, Alabama, by the Register of the Circuit Court of Baldwin County, Alabama; and

WHEREAS, the Register did appoint H. Embree Smith, fo Bay Minette, Alabama, as Guardian Ad Litem for the said Rittenhouse R. Moore and Amanda Moore Goldthwaite, and he filed in this cause, in writing, his acceptance of said Appointment to represent and protect the interests of the said parties upon the hearing of the proceedings in this cause, and he denied each and every allegation contained in said petition as last amended, and demanded proof thereof; and

WHEREAS, the hearing of said Application was set for 10 o'clock, A.M., on this the 24th day of May, 1939, and at the said time the said cause came on for hearing upon the petition, the denial of Guardian Ad Litem, and the evidence in the said cause.

NOW, THEREFORE, it is considered, ordered, and found that the facts alleged in said petition are true, and that Robert H. Smith, be, and he hereby is, appointed as Trustee for Rittenhouse R. Moore, for the purpose of carrying out the provisions of the last Will of the said Hattie B. Moore, deceased, upon his making bond as such trustee in the sum of \$1,000.00.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of Office, this the 24th day of May, 1939.


R. S. DUCK, Register of the
Circuit Court of Baldwin
County, Alabama.

IN RE: :
TRUSTEE UNDER WILL OF HATTIE B. MOORE, : IN THE CIRCUIT COURT OF
FOR RITTENHOUSE R. MOORE, : BALDWIN COUNTY, ALABAMA.
a non compos mentis. :

TO THE HONORABLE R. S. DUCK, REGISTER IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

Come your petitioners, Rittenhouse R. Moore, a non compos mentis, by Mark L. Bristol, his next friend, and Helen Moore Bristol, and amend the petition heretofore filed by them in this Court, asking the appointment of Robert H. Smith as Trustee under the will of Hattie B. Moore, so that it shall read as follows:

"Come your Petitioners Rittenhouse R. Moore, a non compos mentis by Mark L. Bristol, his next friend, and Helen Moore Bristol, and show that the will of Hattie B. Moore was duly probated in Mobile County, Alabama on June 25, 1924, a copy of which is hereto attached and here referred to, and made a part hereof.

Petitioners show that by the third paragraph of the said will, the said Hattie B. Moore nominated and appointed Gregory L. Smith as Executor and Trustee under the terms of the said will, and in the event of his death before the settlement of the Estate, appointed Robert H. Smith, as Executor and Trustee.

Petitioners show that the said Gregory L. Smith and Robert H. Smith both refused to accept said trust, and that the First National Bank of Mobile, Alabama, was appointed as Executor of said Estate, but not as Trustee, and the said Executor administered the said Estate as Executor, and was, on June 22, 1928, fully discharged and released by the Probate Court of Mobile County, Alabama from further duties as such Executor.

Pursuant to petition filed in this matter before the Register of this Court, an order was entered on August 21, 1933 by the Register of this Court, appointing J. Irwin Burgett as Trustee for the said Rittenhouse R. Moore for the purpose of carrying out the provisions of said will.

upon being appointed, and that Your Honor will fix the amount of the bond to be given by said Trustee."

Robt. H. Smith
Attorney for Petitioners.

State of Alabama,

Mobile County.

Before me, Ora Gates, a notary public, in and for said state and County, personally appeared Robert H. Smith who upon oath deposes and says, that he has personal knowledge of all facts alleged in the above petition, except as to the mental condition of Amanda M. Goldthwaite, and that they are true, and that he is informed and believes and upon such information and belief states, that the allegations in the above petition as to the mental condition of said Amanda M. Goldthwaite are true.

Robt. H. Smith

Subscribed and sworn to before me, this 3rd day of May, 1939.

Ora Gates
Notary Public, Mobile County, Alabama.

Amended Petitions

(more)

RECORDED

*Filed May 4, 1939
R.S. Dade, Register*

Signed and published in open court
this 25th day of June, 1924. Re-
corded Will Book Number 12, Page 275.

Exhibit A.

KNOW ALL MEN BY THESE PRESENTS, that I, Hattie B. Moore,
of the City and County of Mobile, Alabama, being of sound mind
and over the age of twenty-one (21) years, do make and publish this,
my last will and testament, hereby revoking all wills by me at any
time heretofore made.

As to my worldly estate and all real, personal and mixed prop-
erty, of which I shall die seized and possessed, or to which I shall
be entitled at the time of my decease, I devise, bequeath and dis-
pose of in the manner following.

FIRST: My will is that all my just debts and funeral expenses
shall, by my Executor, hereinafter named, be paid out of my estate
as soon after my decease as convenient.

SECOND: I devise and bequeath all of the rest and residue
of my estate to my daughters, Helen Moore Bristol and Amanda M.
Goldthwaite, and to my Executor, in trust for my son, Rittenhouse
R. Moore, ^{giving to each a one third (1/3) thereof, and the one third (1/3) so given to my executor} shall be invested by my said Executor, and the rents,
incomes and profits therefrom, shall be, by my said Executor, used
for the support and maintenance of my said son, Rittenhouse R.
Moore, so long as he shall live, and at his death, the said trust
fund shall be paid over to my two daughters in equal parts, should
they both survive him, or, if only one should survive him, then to
such survivor. Should any of my said children die in my lifetime,
then the share which I have devised to any such child or to my
Executor, in trust for any such child, shall be divided into as
many shares as there are children of mine surviving me, and I give
one such share to each of my surviving daughters, if any, and if
my said son, Rittenhouse R. Moore shall survive me, then one such
share to my said Executor, in trust for my said son, to be held by
my said Executor upon the same terms and conditions as he shall hold
other property in trust for my said son, under the terms of this will.

in trust for my son Rittenhouse R. Moore.

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IN RE:

TRUSTEE UNDER WILL
OF HATTIE B. MOORE, Deceased,
for RITTEHOUSE P. MOORE, a
Non-Compos Mentis.

IN THE DISTRICT COURT
OF BALDWIN COUNTY, ALA.
CHANCERY

APPOINTMENT OF TRUSTEE

FILED this MAY 24, 1939,
Register,

IN RE:

TRUSTEE UNDER WILL
OF HATTIE B. MOORE, Deceased,
for RITFENHOUSE R. MOORE, a
Non Compos Mentis.

IN THE CIRCUIT COURT
OF
BALDWIN COUNTY, ALA.
CHANCERY

RECORDED

APPOINTMENT OF TRUSTEE.

Filed this May 24, 1939.

H. S. Decker
Register,

By: Wallace Thompson,
Deputy Register

CIRCUIT COURT, BALDWIN COUNTY, ALA. IN EQUITY

No. *In Re: Appointment of Trustee for Pittman* PLAINTIFF
vs.
R. Moore *Admin. Commission trustee* DEFENDANT
estate of Mattie B. Moore Deceased

BILL OF COSTS

FEES OF REGISTER	Dollars	Cents	Brought Forward	\$	¢
Filing each bill and other papers	10	70		5	20
Issuing each subpoena	50		For Receiving, keeping and paying out or distributing money, etc.: 1st \$1,000, 1%, all over \$1,000, and not over \$5,000, 3-4 of 1%; all over \$5,000 and not exceeding \$10,000, 1-2 of 1%, all over \$10,000 1-4 of 1%.		
Issuing each copy thereof	40		Receiving, keeping and paying out money paid into court, etc., 1-2 of 1% of amount received.		
Entering each return thereof	15		Each notice sent by mail to creditor	15	
For each order of publication	1 00	1 00	Filing receipting for and docketing each claim, etc.	25	
Issuing Writ of injunction	1 50		For all entries on subpoena docket, etc.	50	
For each copy thereof	50		For all entries on commission docket, etc.	50	
Entering each return thereof	15		Making final record, per 100 words	15	5 00
Issuing Writ of Attachment	1 00		Certified copy of decree	1 00	
Entering each return thereof	15		Report of divorce to State Health Office (Acts 1915)	50	
Docketing each case	1 00	1 00	TOTAL FEES OF REGISTER		10 20
Entering each appearance	25		FEES OF SHERIFF		
Issuing each decree pro confesso on per ser.	1 00		Serving and returning subpoena on deft.	\$1 50	
Issuing each decree pro confesso on publica	1 00		Serving and returning subpoena for witness	65	
Each order appointing guardian	1 00	1 00	Levyng attachment	1 50	
Any other order by Register	50	50	Entering and returning same	25	
Issuing Commission to take testimony	50		Selling property attached		
Receiving and filing	10		Impaneling Jury	75	
Endorsing each package	10		Executing Writ of possession	2 50	
Entering order submitting cause	50		Collecting execution for costs	1 50	
Entering any other order of court	25		Serving and returning sci. fa., each	65	
Noting all testimony	50		Serving and returning notice	65	
Abstract of cause, etc.	1 00		Serving and returning writ of injunction	1 50	
Entering each decree	75		Serving and returning writ of exeat	1 50	
For every 100 words over 500	15		Taking and approving bonds, each	75	
Taking account, etc.	3 00		Collecting money on execution		
Taking testimony, etc.	15		Making Deed	2 50	
Each report, 500 words or less	2 50		Serving and returning application, etc.	1 00	
For every 100 words over 500	15		Serving attachment, contempt of court	1 50	
Amount claimed less than \$500, etc.	2 00		TOTAL FEES OF SHERIFF		
Issuing each subpoena	25		RECAPITULATION		
Witness certificate, each	25		Register's Fees	10 20	
Issuing execution, each	75		Sheriff's Fees		
Entering each return	15		Commissioner's Fees		
Taking and approving bond, each	1 00	1 00	Solicitor's Fees		
Making copy of bill, etc.	15		Witness Fees	20 00	
Each notice not otherwise provided for	50		Guardian Ad Litem <i>N.C. Smith</i>	3 92	
Each certificate or affidavit, with seal	50		Printer's Fees <i>Baldwin Jones</i>	3 00	
Each certificate or affidavit, no seal	25		Trial Tax		
Hearing and passing on application, etc.	3 00	5 20	Recording Decree in Probate Court		
Each settlement with Receiver, etc.	3 00		TOTAL	37 12	
Examining each voucher of Receiver, etc.	10				
Examining each answer, etc.	3 00				
Recording resignation, etc.	75				
Entering each certificate to Supreme Court	50				
Taking questions and answers, etc.	25				
For all other ser relating to such proceedings	1 00				
For services in proceeding to relieve minors, etc., same fee as in similar cases.					
Commission on sales, etc: 1st \$100, 2 per cent; all over \$100 and not exceeding \$1,000, 1 1-2 per cent; all over \$1,000, and not exceeding \$20,000, 1 per ct; all over 20,000, 1-4 of 1 per cent.					
Sub Total Carried Forward					

And my said Executor may, from time to time, as in his discretion
sence, and in the presence of each other, thereunto subscribed
our names as witnesses, on the day of the date of said will.

WITNESSES: I do hereby certify and attest Gregory L. Smith to be the
SARA E. WHITE
ALTHEA G. STONE

and appoint Robert H. Smith as my Executor.

IN RE: : IN THE CIRCUIT COURT OF
TRUSTEE UNDER WILL OF : BALDWIN COUNTY, ALABAMA
HATTIE B. MOORE : IN EQUITY

TO THE HONORABLE F.W. HARE, JUDGE OF CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

Your Petitioner, Robert H. Smith, shows to the Court
the following facts;

FIRST: That the Will of said Hattie B. Moore was
duly admitted to probate in the Probate Court of Mobile
County, on June 25, 1924 and a copy of said Will is here-
to attached and marked Exhibit (A), and is made a part
hereof.

That Gregory L. Smith and Robert H. Smith, who were
named in said Will as Trustees, refused to accept the
trust created by said Will, and pursuant to petition filed
in this matter before Register of this Court, an order was
entered on August 21, 1933 by the Register of this Court,
appointing J. Irwin Burgett as Trustee, for the purpose of
carrying out the provisions of said Will.

The said J. Irwin Burgett died on October 27, 1938,
before the Trust created by the Will of said Hattie B. Moore,
had been fully administered, and thereafter on May 3, 1939,
a petition was filed with the Honorable R. S. Duck, Register
of this Court, for the appointment of Robert H. Smith, as
Trustee under the said Will of Hattie B. Moore and thereafter,
on May 24, 1939, the Register entered an order, appointing
the said Robert H. Smith as Trustee, upon his making bond in
the sum of \$1,000. Said bond was duly made with Maryland
Casualty Company as Surety, and the said Robert H. Smith
entered upon his duties as such Trustee.

STATEMENT OF ACCOUNT SHOWING ALL MONEYS RECEIVED AND DISBURSED

BY ROBERT H. SMITH AS TRUSTEE UNDER WILL OF HATTIE B. MOORE

RECEIPTS

March 9, 1939.	By cash paid by G. C. Randolph to Robert H. Smith, as agent for wood on lands in which Estate owned a (1/3) interest. Paid \$75.00 of which the estate received (1/3) thereof.	\$ 25.00
April 1, 1939.	By cash paid by Estate of J. Irwin Burgett to Robert H. Smith to be used for payment of 1938 tax on (1/3) interest in lands.	43.24
April 16, 1940.	By cash paid by Estate of J. Irwin Burgett to Robert H. Smith as Trustee being balance due to Trust under the Will of Hattie B. Moore.	70.14
September 30 1941.	By cash paid by P.L. Wilson for (1/3) interest of Trust Estate under Will of Hattie B. Moore, in lands in Baldwin County, Alabama.	1,397.66
	Total Receipts	<u>\$1,536.04</u>

DISBURSEMENTS

March 9, 1939.	To (1/3) of \$10.00 charged for sale of wood to G. C. Randolph and drawing conveyance thereof.	\$ 3.34
April 1, 1939	To cash paid for 1938 tax on (1/3) interest in lands of estate.	43.24
May 27. 1939.	To cash paid notarial fee for proof of claim vs. Estate of J.I. Burgett.	.50
May 27, 1939.	To cash paid to Probate Court of Mobile County, Alabama, for recording proof of claim vs. Estate of J. I. Burgett	.15
May 29, 1939	To cash paid Maryland Casualty Co. for premium on Trustees bond for 1 year.	10.00
February 14, 1940.	To cash paid Clerk of Circuit Court of Baldwin Co. Alabama, in re proceedings for appointment of Trustee. (Court Costs)	37.12

DISBURSEMENTS

April 16, 1940.	To fee for examining records and files of J. I. Burgett to determine whether or not the Estate of J. I. Burgett was indebted to the Trust Estate, created under the Will of Hattie B. Moore, and stating an account between said estates.	\$ 66.67
May 29, 1940.	To cash paid Maryland Casualty Co. for premium on Trustees bond for 1 year.	10.00
August 22, 1940.	To (1/3) notary fee to tax return on lands of Trust Estate.	.17
August 22, 1940.	To (1/3) of cash paid Probate Judge of Baldwin County, Alabama for 1939 tax on Trust lands.	68.62
November 1940.	To (1/3) of cash paid for express on abstracts to Beebe & Hall, Bay Minette, Alabama.	.29
December 4, 1940.	To (1/3) of cash paid to Beebe & Hall for continuation of abstract to Baldwin County lands, to be delivered to P.L. Wilson, the proposed purchaser of the land of the Trust Estate.	11.67
May 29, 1941,	To cash paid Maryland Casualty Co. for premium on Trustees Bond.	10.00
September 19, 1941.	To cash paid R.S. Duck, Clerk-Register of Circuit Court of Baldwin County, for copy of decree appointing Trustee, to be used in closing trade for lands with P. L. Wilson.	2.00
September 30, 1941.	To (1/3) of fee of surveyor for surveying corners of Trust land to put purchaser in possession.	13.33
September 30, 1941.	To cash paid for (1/3) of fee of recording plot of land	1.67

SECOND: At the time of the appointment of Robert H. Smith as Trustee, the Trust Estate consisted of a debt of \$113.38, due by the Estate of J. Irwin Burgett to the said Estate, and a (1/3) undivided interest in a tract of land in Baldwin County, Alabama. An undivided (1/3) interest in said land was also owned by Helen M. Bristol, and an undivided (1/3) interest therein was owned by Amanda M. Goldthwaite.

Said Robert H. Smith collected the said \$113.38 due from the Estate of J. Irwin Burgett, and sold wood from the said lands for \$75.00, of which sum (1/3) thereof belonged to the Trust Estate, and because of the fact that said lands were cut over pine lands, and produced no revenue, and that the taxes were high and were rapidly consuming the Trust Estate, he also sold the (1/3) interest of the Trust Estate in and to said lands, to P.L. Wilson for \$1,397.66 so that the Trust Estate now consists entirely of money.

There were many expenses, and a large amount of taxes paid by the Trustee in the administration of said Trust Estate.

The Trustee attaches hereto a full and complete statement of all money received, and all moneys expended by him for said Trust Estate, which statement shows a balance now in the hands of the Trustee, of \$1,010.45.

THIRD: Petitioner further shows that the only persons interested in the said Trust Estate, created by the Will of Hattie B. Moore are 3.

Helen M. Bristol, who is over the age of twenty-one and resides in the District of Columbia, and is now, and has for over three years, been an invalid and has been a patient in the "Home for Incurables" in the District of Columbia.

Rittenhouse R. Moore, who is non compos mentis, and is over the age of twenty-one years, and resides in Norfolk, Virginia, and is confined in a nursing home in said City.

Amanda M. Goldthwaite, who has been adjudged to be non compos mentis, by the Probate Court of Mobile County, Alabama, and is over the age of twenty-one, and is confined in Bryce Hospital, Tuscaloosa, Alabama:

First National Bank of Mobile, whose principal place of business is in Mobile, Alabama, and who is guardian of the Estate of the said Amanda M. Goldthwaite, now non compos mentis, having been appointed such guardian by the Probate Court of Mobile County, Alabama, and duly qualified as such.

FOURTH: Petitioner is unable to find a suitable investment for said money, and is not engaged in a business that has facilities for investing money.

The banks in Mobile, Alabama paid only 1/2% interest on savings deposits in the year 1941 and until July 1, 1942, and since July 1, 1942 said banks have only paid 1% on savings deposits, so that the income from said Trust Fund, if deposited in a savings account would pay only enough to pay the premium on the Trustees bond.

It is the judgement and belief of this Petitioner, that it would be to the interest of the Estate to appoint as Trustee, a person or corporation, who is engaged in the business of investing money.

Petitioner therefore tenders his resignation as Trustee.

PRAYER

Your Petitioner, Robert H. Smith prays that his resignation as Trustee of said Trust Estate, created by the Will

THE BALDWIN TIMES

PUBLISHED IN THE LAND OF THE GOLDEN SATSUMA

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

NOTICE

Notice is hereby given to Rittenhouse R. Moore of Norfolk, Virginia, Amanda M. Goldthwaite of Washington, D. C., and Helen M. Bristol of Washington, D. C., that an application has been filed in the Circuit Court in Baldwin County, Alabama in Equity, by Helen M. Bristol, et al, for the appointment of Robert H. Smith as Trustee of a trust created by the will of Hattie B. Moore, and that a hearing on said application will be held on May 24, 1939 at ten o'clock A. M., in the office of the Register of this Court.

R. S. DUCK, Register of Circuit Court of Baldwin County, Alabama.
ROBERT H. SMITH, Atty. 14-3t

BAY MINETTE, ALA.

AFFIDAVIT OF PUBLICATION

STATE OF ALABAMA,
BALDWIN COUNTY.

J. H. Faulkner, 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

Hattie B. Moore, will notice

Was published in said Newspaper for 3 consecutive weeks in the following issues:

Date of first publication	<u>May 4, 1939</u>	Vol. <u>50</u>	No. <u>14</u>
Date of second publication	<u>" 11, 1939</u>	Vol. <u>50</u>	No. <u>15</u>
Date of third publication	<u>" 18, 1939</u>	Vol. <u>50</u>	No. <u>16</u>
Date of fourth publication		Vol. _____	No. _____

Subscribed and sworn before the undersigned this 5 day of

June 1939
W. P. Reddick

J. H. Faulkner
Publisher

	Receipts	\$1,536.04
September 30, 1941.	To (1/3) of cash paid for taxes for 1940 on lands of Trust Estate.	\$ 66.31
October 1, 1941	To cash paid H. H. Maschmeyer for his commission on sale of land of Estate to P. L. Wilson.	83.86
October 1, 1941.	To fee of Robert H. Smith for services in matter of sale of land of Estate to P. L. Wilson.	75.00
	To cash paid for documentary stamp on deed to P.L. Wilson	1.65
May 29, 1942.	To cash paid Maryland Casualty Co. for premium on Trustees bond.	10.00
May 29, 1943	To cash paid Maryland Casualty Co. for premium on Trustees Bond.	10.00
	Total Disbursements	<u>\$525.59</u>
	Balance of Cash on Hand	\$1,010.45

Copy

IN RE : IN THE CIRCUIT COURT OF
TRUSTEE UNDER WILL OF : BALDWIN COUNTY, ALABAMA
HATTIE B. MOORE : IN EQUITY

TO THE HONORABLE F.W. HARE, JUDGE OF CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA.

at \$118.33, due by the Estate of J. Irwin Burgett to the said Estate, and a (1/3) undivided interest in a tract of land in Baldwin County, Alabama. An undivided (1/3) interest in said land was also owned by Nolan H. Bristol, Your Petitioner, Robert H. Smith, shows to the Court the following facts:

FIRST: That the Will of said Hattie B. Moore was duly admitted to probate in the Probate Court of Mobile County, Alabama, on June 25, 1924 and a copy of said Will is here-

held by Robert H. Smith collected the said \$118.33 due to attached and marked Exhibit (A), and is made a part hereof.

That Gregory L. Smith and Robert H. Smith, who were named in said Will as Trustees, refused to accept the said lands were cut over pine lands, and produced no revenue, and that the taxes were high and were rapidly accumulating in this matter before Register of this Court, an order was entered on August 21, 1933 by the Register of this Court, appointing J. Irwin Burgett as Trustee, for the purpose of carrying out the provisions of said Will.

The said J. Irwin Burgett died on October 27, 1938, before the Trust created by the Will of Hattie B. Moore, had been fully administered, and thereafter on May 3, 1939,

a petition was filed with the Honorable R. S. Duck, Register of this Court, for the appointment of Robert H. Smith, as Trustee, under the said Will of Hattie B. Moore and there-

after, on May 24, 1939, the Register entered an order, appointing the said Robert H. Smith as Trustee, upon his making bond in the sum of \$1,000. Said bond was duly made with Maryland Casualty Company as Surety, and the said

Robert H. Smith entered upon his duties as such Trustee, and resided in the District of Columbia, and is now, and has for over three years, been an invalid and has been a patient in the "Home for Invalids" in the District of Columbia.

STATEMENT OF ACCOUNT SHOWING ALL MONEYS RECEIVED AND DISBURSED

BY ROBERT H. SMITH AS TRUSTEE UNDER WILL OF HATTIE B. MOORE

RECEIPTS

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April 1, 1939.	By cash paid by Estate of J. Irwin Bargett to Robert H. Smith to be used for payment of 1938 tax on (1/3) interest in lands.	43.24
April 16, 1940.	By cash paid by Estate of J. Irwin Bargett to Robert H. Smith as Trustee being balance due to Trust under the Will of Hattie B. Moore.	70.14
September 30 1941.	By cash paid by P.L. Wilson for (1/3) interest of Trust Estate under Will of Hattie B. Moore, in lands in Baldwin County, Alabama.	1,397.66
	Total Receipts	<u>\$1,536.04</u>

DISBURSEMENTS

March 9, 1939.	To (1/3) of \$10.00 charged for sale of wood to G. C. Randolph and drawing conveyance thereof.	\$ 3.34
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May 27, 1939.	To cash paid notarial fee for proof of claim vs. Estate of J.I. Bargett.	.50
May 27, 1939.	To cash paid to Probate Court of Mobile County, Alabama, for recording proof of claim vs. Estate of J. I. Bargett	.15
May 29, 1939	To cash paid Maryland Casualty Co. for premium on Trustees bond for 1 year.	10.00
February 14, 1940.	To cash paid Clerk of Circuit Court of Baldwin Co. Alabama, in re proceedings for appointment of Trustee. (Court Costs)	37.12

DISBURSEMENTS

April 16, 1940.	To fee for examining records and files of J. I. Bargett to determine whether or not the Estate of J. I. Bargett was indebted to the Trust Estate, created under the Will of Hattie B. Moore, and stating an account between said estates.	\$ 66.67
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August 22, 1940.	To (1/3) of cash paid Probate Judge of Baldwin County, Alabama for 1939 tax on Trust lands.	68.62
November 1940.	To (1/3) of cash paid for express on abstracts to Beebe & Hall, Bay Minette, Alabama.	.29
December 4, 1940.	To (1/3) of cash paid to Beebe & Hall for continuation of abstract to Baldwin County lands, to be delivered to P.L. Wilson, the proposed purchaser of the land of the Trust Estate.	11.67
May 29, 1941.	To cash paid Maryland Casualty Co. for premium on Trustees Bond.	10.00
September 19, 1941.	To cash paid R.S. Duck, Clerk-Register of Circuit Court of Baldwin County, for copy of decree appointing Trustee, to be used in closing trade for lands with P. L. Wilson.	2.00
September 30, 1941.	To (1/3) of fee of surveyor for surveying corners of Trust land to put purchaser in possession.	13.33
September 30, 1941.	To cash paid for (1/3) of fee of recording plot of land	1.67

	Receipts	\$1,536.04
September 30, 1941. To (1/3) of cash paid for taxes for 1940 on lands of Trust Estate.	\$ 66.31	
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October 1, 1941. To fee of Robert H. Smith for services in matter of sale of land of Estate to P. L. Wilson.	75.00	
To cash paid for documentary stamp on deed to P.L. Wilson	1.65	
May 29, 1942. To cash paid Maryland Casualty Co. for premium on Trustees bond.	10.00	
May 29, 1943 To cash paid Maryland Casualty Co. for premium on Trustees Bond.	10.00	525.59
Total Disbursements	\$525.59	
Balance of Cash on Hand		\$1,010.45

SECOND: At the time of the appointment of Robert H. Smith as Trustee, the Trust Estate consisted of a debt of \$113.38, due by the Estate of J. Irwin Burgett to the said Estate, and a (1/3) undivided interest in a tract of land in Baldwin County, Alabama. An undivided (1/3) interest in said land was also owned by Helen M. Bristol, and an undivided (1/3) interest therein was owned by Amanda M. Goldthwaite.

Said Robert H. Smith collected the said \$113.38 due from the Estate of J. Irwin Burgett, and sold wood from the said lands for \$75.00, of which sum (1/3) thereof belonged to the Trust Estate, and because of the fact that said lands were cut over pine lands, and produced no revenue, and that the taxes were high and were rapidly consuming the Trust Estate, he also sold the (1/3) interest of the Trust Estate in and to said lands, to P.L. Wilson for \$1,397.68 so that the Trust Estate now consists entirely of money.

There were many expenses, and a large amount of taxes paid by the Trustee in the administration of said Trust Estate.

The Trustee attaches hereto a full and complete statement of all money received, and all moneys expended by him for said Trust Estate, which statement shows a balance now in the hands of the Trustee, of \$1,010.45.

THIRD: Petitioner further shows that the only persons interested in the said Trust Estate, created by the Will of Hattie B. Moore are:

Helen M. Bristol, who is over the age of twenty-one and resides in the District of Columbia, and is now, and has for over three years, been an invalid and has been a patient in the "Home for Incurables" in the District of Columbia.

Rittenhouse R. Moore, who is non compos mentis, and is over the age of twenty-one years, and resides in Norfolk, Virginia, and is confined in a nursing home in said City.

Amanda M. Goldthwaite, who has been adjudged to be non compos mentis, by the Probate Court of Mobile County, Alabama, and is over the age of twenty-one, and is confined in Bryce Hospital, Tuscaloosa, Alabama:

First National Bank of Mobile, whose principal place of business is in Mobile, Alabama, and who is guardian of the Estate of the said Amanda M. Goldthwaite, now non compos mentis, having been appointed such guardian by the Probate Court of Mobile County, Alabama, and duly qualified as such.

FOURTH: Petitioner is unable to find a suitable investment for said money, and is not engaged in a business that has facilities for investing money.

The banks in Mobile, Alabama paid only 1/2% interest on savings deposits in the year 1941 and until July 1, 1942, and since July 1, 1942 said banks have only paid 1% on savings deposits, so that the income from said Trust Fund, if deposited in a savings account would pay only enough to pay the premium on the Trustees bond.

It is the judgement and belief of this Petitioner, that it would be to the interest of the Estate to appoint as Trustee, a person or corporation, who is engaged in the business of investing money.

Petitioner therefore tenders his resignation as Trustee.

PRAYER

Your Petitioner, Robert H. Smith prays that his resignation as Trustee of said Trust Estate, created by the Will

PRAYER

of Hattie B. Moore, be accepted promptly by the Court.

Petitioner further prays that the Court shall require that notice of the filing of this petition and of the filing of the statement of his accounts be given to Helen M. Bristol, Hittenhouse R. Moore, and First National Bank of Mobile, Alabama as guardian of Amanda M. Goldthwaite, in the same manner as required by law, in cases of final settlement, and that the Court will approve his accounts and direct to whom the Trustee shall pay and deliver the Trust Estate, and that it will also decree, that upon the payment of said Trust Estate as so directed, he will be discharged from all further liability as such Trustee, and that his bondsman, Maryland Casualty Company, will also be discharged from further liability as Surety on his bond, and that such other proceedings may be had in the premises as may be proper.



Signed and published in open court
this 25th day of June, 1924. Re-
corded Will Book Number 12, Page 275.

Exhibit A

KNOW ALL MEN BY THESE PRESENTS, that I, Hattie B. Moore,
of the City and County of Mobile, Alabama, being of sound mind
and over the age of twenty-one (21) years, do make and publish this,
my last will and testament, hereby revoking all wills by me at any
time heretofore made.

As to my worldly estate and all real, personal and mixed prop-
erty, of which I shall die seized and possessed, or to which I shall
be entitled at the time of my decease, I devise, bequeath and dis-
pose of in the manner following.

FIRST: My will is that all my just debts and funeral expenses
shall, by my Executor, hereinafter named, be paid out of my estate
as soon after my decease as convenient.

SECOND: I devise and bequeath all of the rest and residue
of my estate to my daughters, Helen Moore Bristol and Amanda M.
Goldthwaite, and to my Executor, in trust for my son, Rittenhouse
R. Moore, ^{giving to each a one third (1/3) thereof, and the one third (1/3) so given to} shall be invested by my said Executor, and the rents,
incomes and profits therefrom, shall be, by my said Executor, used
for the support and maintenance of my said son, Rittenhouse R.
Moore, so long as he shall live, and at his death, the said trust
fund shall be paid over to my two daughters in equal parts, should
they both survive him, or, if only one should survive him, then to
such survivor. Should any of my said children die in my lifetime,
then the share which I have devised to any such child or to my
Executor, in trust for any such child, shall be divided into as
many shares as there are children of mine surviving me, and I give
one such share to each of my surviving daughters, if any, and if
my said son, Rittenhouse R. Moore shall survive me, then one such
share to my said Executor, in trust for my said son, to be held by
my said Executor upon the same terms and conditions as he shall hold
other property in trust for my said son, under the terms of this will.

my executor is trust for my son Rittenhouse R. Moore

Signed and published in open court
this 25th day of June, 1924. Re-
corded Will Book Number 12, Page 275.

Exhibit A

KNOW ALL MEN BY THESE PRESENTS, that I, Hattie B. Moore,
of the City and County of Mobile, Alabama, being of sound mind
and over the age of twenty-one (21) years, do make and publish this,
my last will and testament, hereby revoking all wills by me at any
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As to my worldly estate and all real, personal and mixed prop-
erty, of which I shall die seized and possessed, or to which I shall
be entitled at the time of my decease, I devise, bequeath and dis-
pose of in the manner following.

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of my estate to my daughters, Helen Moore Bristol and Amanda M.
Goldthwaite, and to my Executor, in trust for my son, Rittenhouse
R. Moore, *giving to each a one third (1/3) thereof, and the one third (1/3) so given to*
shall be invested by my said Executor, and the rents,
incomes and profits therefrom, shall be, by my said Executor, used
for the support and maintenance of my said son, Rittenhouse R.
Moore, so long as he shall live, and at his death, the said trust
fund shall be paid over to my two daughters in equal parts, should
they both survive him, or, if only one should survive him, then to
such survivor. Should any of my said children die in my lifetime,
then the share which I have devised to any such child or to my
Executor, in trust for any such child, shall be divided into as
many shares as there are children of mine surviving me, and I give
one such share to each of my surviving daughters, if any, and if
my said son, Rittenhouse R. Moore shall survive me, then one such
share to my said Executor, in trust for my said son, to be held by
my said Executor upon the same terms and conditions as he shall hold
other property in trust for my said son, under the terms of this will.

my executor in trust for my son Rittenhouse R. Moore

And my said Executor may, from time to time, as in his discretion may seem best, vary, alter, change or transpose any or all investments for other investments.

THIRD: I do nominate and appoint Gregory L. Smith to be the Executor of this, my last will and testament, hereby expressly exempting him from giving bond, and should he die before the settlement of my estate, and the execution of the trust herein created, I nominate and appoint Robert H. Smith as my Executor.

IN TESTIMONY WHEREOF, I, the said Hattie B. Moore have to this, my last will and testament, hereunto signed my name and affixed my seal, this the 2nd day of August A.D., 1917.

HATTIE B. MOORE(SEAL)

ATTEST BY:

SARA E. WHITE

ALTHEA G. STONE

As witnesses.

We, Sara E. White and Althea G. Stone, hereby certify that Hattie B. Moore signed and published the above instrument as her last will and testament in our presence, and that we, in her presence, and in the presence of each other, thereunto subscribed our names as witnesses, on the day of the date of said will.

SARA E. WHITE

ALTHEA G. STONE

McCORVEY, TURNER, ROGERS, JOHNSTONE & ADAMS
ATTORNEYS AT LAW
NINTH FLOOR, MERCHANTS NATIONAL BANK BUILDING
P. O. BOX 1070
MOBILE 6, ALABAMA

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

April 26, 1947

Judge Francis W. Hare,
Monroeville, Alabama.

Dear Judge Hare:

Re: Marie Lipscomb vs. Agnes Lott
No. 1429 on the Baldwin County
Equity Docket

Our demurrer to bill of complaint as amended in this matter was taken under submission by Your Honor last Fall, and we submitted our brief in support of our demurrer on October 3. We have not been furnished a copy of Mr. Hall's brief, and feel sure that Your Honor has delayed making a ruling pending receipt of his brief.

We certainly wish to show Mr. Hall every possible consideration, but we must also remember our duty to our client. We have mentioned the matter to Mr. Hall a time or two during the past months, and wrote him about the matter on April 2 and again on April 16. It is our opinion our demurrer is well taken--Your Honor sustained our demurrer to the complaint as originally filed--and we respectfully submit that the demurrer to the complaint as amended should be sustained. We shall appreciate if you will either request Mr. Hall to submit his brief, if he wishes to do so, without further delay, or else that Your Honor rule on the demurrer on the basis of the law as cited in our letter of October 3.

Yours very truly,

McCorvey, Turner, Rogers, Johnstone & Adams,

RFA/mch

By: 

cc: Mr. Hubert M. Hall,
Bay Minette, Alabama.

McCORMY, TURNER, ROGERS, JOHNSTONE & ADAMS

ATTORNEYS AT LAW

NINTH FLOOR, MERCHANTS NATIONAL BANK BUILDING

P. O. BOX 1070

MOBILE 6, ALABAMA

GESSNER T. MCCORMY
BEN D. TURNER
C. M. A. ROGERS
C. A. L. JOHNSTONE, JR.
R. F. ADAMS

JAMES L. MAY, JR.
CHAUNCEY MOORE

July 2, 1947

Judge Francis W. Hare
Monroeville, Ala.

Dear Judge Hare: Re: Marie Lipscomb vs. Agnes Lott
 No. 1429 on the Baldwin County
 Equity Docket

We have received notice that this case is set
for trial on July 15.

Your Honor sustained our demurrer to the original
bill of complaint and you have under submission our demurrer
to the bill of complaint as amended. Briefs have been filed
by both Mr. Hall and the writer, but we have not been advised
of any ruling thereon. We shall appreciate it if you will
advise us that you have again sustained our demurrer (at least,
we hope this will be your ruling).

Very truly yours,

R. F. Adams

RFA:ac

HUBERT M. HALL
LAWYER
BAY MINETTE, ALABAMA

May 8, 1947

Honorable F. W. Hare
Monroeville, Alabama

Dear Judge Hare:

IN RE: Lipscomb vs Lott

The Complainant in this cause, in her original bill of complaint, seeks permission to redeem real property from a tax sale, in accordance with the provision of Title 51 Section 303 of the 1940 Alabama Code. There is and can be no question but that the Complainant has an interest in the property. The Statute is broad enough to give aid to anyone having an interest either legal or equitable, in severalty or as tenant in common.

Section 303, Title 51 of the Code is for the protection of minors, in tax sales of property. To preclude the right of the Complainant to redeem will wholly destroy the import and affect in this statute. This special statute should not be accorded the same construction as the general statute. The law making bodies undoubtedly had some specific case in mind when this section was written. It was clearly intended that it should be accorded some field or operation. The authorities cited by the Respondent or as to the general law. Where we have a special statute it is and rightly should be given its general import. To sustain the demurrers of the Respondent to the original bill of complaint, it seems to me, wholly destroys any rights that might be given to a minor under this statute.

The Complainant has amended her bill of complaint alleging that the Respondent claims under a tax title and that she has never taken possession of the property, nor have her predecessors in title.

It is elementary law that title carries with it the presumption of possession until the contrary is shown.

The Respondent relays on a tax title obtained through sale of property for taxes. She has failed to sue within three years after acquiring tax title and therefore all of her rights are barred. This is the clearly established law. It is applicable as against the Respondent. The case of Grayson vs Muckleroy, 124 Sou. 217 holds: "Where Plaintiff in ejectment relays on tax title obtained through sale of property for taxes, but failed to sue within three years after tax sale, under Code 1907, Section 2311, his action was barred.

The case of Laney vs Procter 182 Sou. 37 is also conclusive on the question. It holds: "A tax purchaser's ejectment action filed July 7, 1937, in which purchaser claimed through tax sale had on June 23, 1930, was barred by three year limitation statute, even if sale under which the purchaser would have been entitled to tax deed on June 23, 1932, was valid".

The Complainant having alleged in her amended complaint that the Respondent, holding under a tax sale is not in possession, clearly brings the matter within the purview of the foregoing twodecisions of the Supreme Court of the State of Alabama.

I wish to call your attention to the law as appearing in Section 295 Title 51 of the 1940 Code of Alabama and ask that it be considered along with Title 303.

I therefore respectfully submit that the allegations of the original and amended bill of complaint as good as against the demurrers filed by the Respondent, and that the Complainant is entitled to a hearing on the merits of her claim.

I am sending a copy of this letter to Mr. Adams as solicitor for the Respondent.

Yours very truly,


H. M. Hall

HMH/ew

cc/ Mr. R. F. Adams
Merchant National Bank Building
Mobile, Alabama

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

NINTH FLOOR, MERCHANTS NATIONAL BANK BUILDING

P. O. BOX 1070

MOBILE 6, ALABAMA

GESSNER T. McCORVEY
BEN D. TURNER
C. M. A. ROGERS
C. A. L. JOHNSTONE, JR.
R. F. ADAMS

JAMES L. MAY, JR.
CHAUNCEY MOORE

May 12, 1947

Honorable Francis W. Hare,
Monroeville, Alabama.

Dear Judge Hare:

Re: Marie Lipscomb vs. Agnes Lott
No. 1429 on the Baldwin County
Equity Docket

We have copy of Mr. Hall's letter to you of May 8 with reference to this case. We respectfully submit that said letter cites no authority to prevent Your Honor's sustaining our demurrer to the bill of complaint as amended, just as Your Honor sustained our demurrer to the original bill of complaint.

Counsel for complainant cites the cases of Grayson vs. Muckleroy, 124 So. 217, and Laney vs. Proctor, 182 So. 37. Both of these cases concerned actions in ejectment where the plaintiff relied upon a tax title, and in each instance the court cited the three-year limitation statute as a bar to an action by the plaintiff, where the action was commenced more than three years after the right to the deed accrued.

We respectfully call Your Honor's attention to the fact that in the case of Lipscomb vs. Lott, we are not concerned with an action brought by the holder of the tax title to recover real estate sold for the payment of taxes, but instead the respondent is defending her title which is being attacked by the complainant Lipscomb. To take our worthy opponent's statement in his letter of May 8 that "she has failed to sue within three years after acquiring tax title and therefore all of her rights are barred" to its logical conclusion, we would have to assume that if someone purchased land at tax sale and no one made a claim on it within three years or attempted to molest or take possession of said land, the purchaser at the tax sale would be forever barred from either asserting or establishing his title, because there had been no one during said three years against whom he could bring an action. The fallacy of this argument, of course, is that the purchaser at the tax sale is not in such case, nor in the

Hon. Francis W. Hare,
Monroeville, Alabama.

May 12, 1947

case at bar, bringing an action for the recovery of real estate sold for the payment of taxes. Certainly it cannot be contended that a section of the code requiring one to bring an action for recovery of land against an adverse claimant within three years deprives one of the right of defending his title when no adverse claim is presented until after the expiration of said three - year period. As to the contention of complainant's rights under Section 303, Title 51 of the Alabama Code of 1940, suffice it to say that the case of Spann vs. First National Bank of Birmingham. 200 So. 554 completely disposes of this contention by holding, in effect, that where the infant, Marie Lipscomb, had a Trustee fully capable of redeeming for her, or taking such actions as may have been necessary to protect her interests, and the Trustee's right to act has now been barred, the right of the cestui que trust, Marie Lipscomb, is also barred.

We therefore respectfully submit that our demurrer to the bill of complaint as amended should be sustained.

Respectfully submitted,

McCorvey, Turner, Rogers, Johnstone & Adams,

By: 

RFA/mch

cc: Mr. H. M. Hall,
Attorney at Law,
Bay Minette, Alabama.

W. C. BEEBE
H. M. HALL

BEEBE & HALL
LAWYERS
BAY MINETTE, ALABAMA
July 31, 1946

Honorable F. W. Hare
Monroeville, Alabama

Dear Judge,

I have just read a copy of Mr. Adams letter to you relative to the Lipscom lot matter.

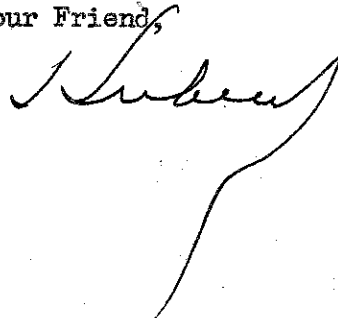
Mr. Adams has sighted the case of Spann vs First National Bank, Montgomery. I do not feel that this case is applicable, in view of the special statute, which expressly allows an infant 12 months, after reaching majority, in which to redeem real property.

If the Law was other than we contend, then a person, by misplaced confidence, could place her estate in the hands of one not financially responsible, as trustee, and this trustee could by his own acts absolutely rob a cestui que trust of all his right in the estate. Mr. Adams contends that only the trustee had the right to redeem the property, and a financially irresponsible trustee, by his conduct could absolutely rob a cestui que trust, and then the cestui que trust would have no one to look to.

I am wondering what you are doing to amuse yourself.

I hope to see you in Bay Minette Friday.

Your Friend,



MARIE LIPSCOMB,
COMPLAINANT,
VS
AGNES B. LOTT,
RESPONDENT,



IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

B R I E F A N D A R G U M E N T
O F
B E E B E & H A L L
S O L I C I T O R S F O R T H E C O M P L A I N A N T

STATEMENT OF THE CASE

Martha Pearl Weber Reeves, who during her life time owned a ~~part~~ of land in Section 4, Township 8 South, Range 2 East, in Baldwin County, Alabama, died several years ago leaving a Last Will and Testament, in which the Complainant, Marie Lipscomb, was named as one of the beneficiaries. The Merchant National Bank of Mobile was named as executor in the said Last Will and Testament. The suit in this cause was filed on October 15, 1945. The Complainant was 21 years of age on October 20, 1944, or 5 days less than 1 year, before the suit was filed.

The Merchant National Bank under took the administration of the estate and assessed the real property belonging to Mrs. Reeves. Upon failure to pay the taxes, the property was sold and later acquired by Agnes B. Lott, who held a title to the property at the time of the filing of the suit in this cause.

The Complainant has never received the bequest left by the said Martha Pearl Weber Reeves to her, in the Last Will and Testament.

The Complainant brought this action, within 1 year from the time she reached her majority, to redeem the property.

The Complainant has submitted herself to the jurisdiction of the court and agreed to comply with all orders and decrees thereof.

POINTS OF PROPOSITIONS

Real estate which may be sold for taxes ----- may be redeemed any time within three years from the date of the sale by the owner, his heirs or personal representative, ----- or by any person having an interest therein, or in any part thereof, legal or equitable, in severalty or as tenant in common -----; and an infant or insane person entitled to redeem at any time before the expiration of three years from the sale, may redeem at any time within 1 year after the removal of such disability-----.

Title 51, Section 303, 1940 "Code of Alabama".

"A deed to a trustee places legal title in him".
Norton vs Linton 18 Ala. 690.

"While at law the trustee is considered the owner of the trust property, yet in a court of equity-- the cestue que trust is the absolute owner; the trustee taking only sufficient title to discharge the trust".
Ex-parte Jones 64 Sou. 960-- 186 Ala. 576.

A holding by an executor of a trustee in recognition of the rights of the cestui que trust is not adverse.
Flemming vs Gilmer 35 Ala. 62.

"A cestui que trust has power to assign his equitable interest in the trust fund to secure a valid indebtedness as against other creditors"
Rierdan vs Schlichler 41 Sou. 842; 146 Ala. 615.

"A trustee should administer trust estate created by will impartially, and for benefit of all cestui que trust in same class, alike".
First National Bank vs Shelhan 126 Sou. 409; 220 Ala. 524.

"Construction that confers absolute powers upon trustee is not favored in equity."
Gaines vs Dohlin, 154 Sou. 101; 228 Ala. 484.

"The mere neglect of a trustee to sell property conveyed to him cannot defeat the object of the trust."
Cowling vs Douglass 4 Ala. 206.

At law a trustee is clothed with the legal title, and unless restrained by the terms of the trust, may convey the trust estate; and if the beneficiary is injured thereby, he must resort to a court of equity for relief.
Amberson vs Johnson, 29 Sou. 176- 127 Ala. 490.

The cestui trusts are required in equity to be made parties to bill against the trustee in suit affecting the trust and their rights.
Henis vs Seibel, 86 Sou. 43; 204 Ala. 382.

Where suit in equity begun by trustee with legal title involves title to realty, beneficiaries must be made parties, unless terms of trust confer upon trustee power to represent beneficial interest or power of attorney confers such power.
Silversten vs First National Bank, 165 Sou. 827; 231 Ala. 565.

Equity court will not permit trust to fail by neglect of trustee to execute power.
Tarver vs Weaver, 130 Sou. 209; 221 Ala. 663.

"Whenever necessary, Court on proper application will take jurisdiction and see that trust is executed in its true spirit."
Grand Lodge K. P. vs Shorten, 122 Sou. 36; 219 Ala. 293.

"A trustee cannot, by permitting the property of his cestui que trustee to be hired out by another, divest title of the donees."
Easley vs Dye, 14 Ala. 158.

"Banks which are authorized by law to engage in trust business owe the same fidelity, and are subject to the same rules, as individuals trustee, when applicable on principle".
First National Bank vs Basham, 191 Sou. 873; 238 Ala. 500.

"Where trustee conveys legal title to stranger without court order or authority in the deed, beneficiary may follow the estate in the stranger's hands, and assert his interest in equity against any person who is either a volunteer or a purchaser with notice, or he may elect to hold the trustee personally liable, thereby ratifying the sale confirming the purchaser's title free of trust."
Street vs Pitts, 192 Sou. 258; 238 Ala. 531.

"A court of equity has inherent powers under the law of trusts to make such orders touching properties within its jurisdiction as will protect all interests -"
Gilmer vs Gilmer 178 2nd 529; 245 Ala. 450.

A R G U M E N T

The court will recall that at the time of the hearing of this cause, in open court, it was agreed that if the Complainant ever had a right to redeem the property, that right still existed at the time of the filing of the suit.

It is the contention of the Respondent that no one had any right, at any time, to redeem the property from a tax sale, other than the Merchant National Bank, which was named as executor and trustee under the will of Mrs. Reeves. If this contention should be upheld by the court, then a trustee, could willfully neglect or refuse to redeem property from a tax sale, and thereby cut out and eliminate all rights of any persons interested, whether they be insane, infants, mortgagees, judgment creditors, or what not, as all would necessarily have to be weighed in the same balance.

The statute positively provides that any one having an interest in property sold for taxes, or in any part thereof, legal or equitable may redeem it. There can, possibly, be not questions but that the legal title of the property, by the terms of the will, was placed in the name of the Merchant National Bank (Norton vs Linton, supra), however, the equitable title was vested in the Complainant, as one of the beneficiaries under the will, or a cestui que trust.

An effort on the part of a testator to confer absolute power upon a trustee is not favored in equity.

The Respondent seems to contend that the Complainant's only right is against the trustee. The law of our state are positive in that a beneficiary may follow the estate into a stranger's hands, and assert her interest in

equity against any persons who is either a volunteer or purchaser with notice, or she may elect to hold the trustee liable, thereby ratifying the sale and confirming the purchaser's title free of a trust (Street vs Pitts, supra). The Complainant has elected to follow the trust property.

This court has inherent power to make such orders as to the property involved, as will protect all interest.

I am unable to see any merit in the insistence that the title to the property is by virtue of the said will vested in the Merchant National Bank, as trustee. While in a court of law the trustee, as here may be considered the owner, yet in a court of equity the cestui que trust is the absolute owner, the beneficial and substantial owner. The Merchant National Bank, as trustee, took under the said will precisely ^{that} ~~as~~ quantum of legal estate which was necessary to the discharge of the declared powers and duties of the trust, no more and no less.

It is our contention that the title to the property involved, was by the said will, vested in the Merchant National Bank to carry out the terms thereof, and for the benefit of those entitled to share in the estate. The Complainant, or any other beneficiary thereunder, not barred by a statute of limitation could come into an equity court to assert or perfect his or her rights under the will. The Complainant, the suit to redeem having been filed within 1 year after the removal of her disability of non age, is clearly not barred by any statute of limitation.

We therefore, submit that the demurrers of the Respondent are not well taken and should be over ruled.

Respectively submitted,

BEEBE & HALL

BY: *[Signature]*
Solicitors for the Complainant.

*Copy Mailed M-Curry, Garner
& Royer. Atty for Respondent
7/22/46*

[Signature]

McCORVEY, TURNER & ROGERS
ATTORNEYS AT LAW

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R. F. ADAMS
JAMES L. MAY, JR.

February 14, 1946

Judge Francis W. Hare
Monroeville, Alabama

Dear Judge Hare: In Re: Marie Lipscomb vs.
 Agnes B. Lott -
 In the Circuit Court
 of Baldwin County, Ala.
 In Equity 1429

You have requested that we submit a brief or memorandum of authorities in support of our demurrer to this bill of complaint.

The bill of complaint alleges in substance that Martha Pearl Webber Reeves died in 1927 leaving a will in which the complainant was named as one of the beneficiaries and that she has never received said bequest left her; that testator at the time of her death owned certain land in Baldwin County which is particularly described in the bill of complaint; that said land was sold for taxes by the Tax Collector on July 8, 1931, in the name of Merchants National Bank, executor, to the State of Alabama; that said land was sold on December 15, 1937, to E. H. Bailey by the State Land Commissioner and that E. H. Bailey on September 26, 1941, sold it to the respondent; that complainant was 21 years of age on October 20, 1944 (the bill was filed on October 16, 1945). The Bill further asserts that the complainant, as one of the beneficiaries under said will, has the right to redeem the property from the tax sale and from the respondent. Our demurrer to the bill of complaint points out that the right to redeem said property is barred by the statute of limitations and that the complainant had no interest in said land, either legal or equitable, which would give her the right to redeem said property.

Title 51, Section 303 of the Alabama Code of 1940 provides that real estate sold for taxes and purchased by the State "may be redeemed at any time before the title passes out of the State, or if purchased by any other purchaser, may be redeemed at any time within three years from the date of the sale by the owner, his heirs or personal representatives, or by any mortgagee or purchaser of such lands, or any part

thereof, or by any person having an interest therein, or in any part thereof, legal or equitable....."

Section 295 of Title 51, commonly referred to as the "short statute of limitations" states that "No action for the recovery of real estate sold for the payment of taxes shall lie unless the same is brought within three years from the date when the purchaser became entitled to demand a deed therefor; but if the owner of such real estate was, at the time of such sale, under the age of twenty-one years, or insane, he, his heirs or legal representatives, shall be allowed one year after such disability is removed to bring suit for the recovery thereof....."

Your Honor will recall that at the oral argument of the pleadings it was called to the court's attention that the will contained numerous bequests; that the one under which the complainant was a beneficiary was Item 28 of said will. Under Item 28 testator bequeathed the sum of \$2,000.00 to the Merchants Bank in trust for Marie Lipscomb and Mazie Lipscomb. The complainant was not devised the land in question, but was the beneficiary of a trust fund to be paid in cash to the Merchants Bank as trustee.

In support of our contention that the complainant does not have the right to redeem the property which formerly belonged to the testator and which was sold for taxes in the name of the Merchants National Bank as executor we call attention to the fact that title to the property was in the trustee (Amberson vs. Johnson, 29 So. 176) and the usual statutory provision that a minor may within one year after reaching majority take action for redemption has no field for operation. Such provisions are intended to apply where there is no one qualified to do so who is under a legal duty to protect the interest of the minor. However, in the case at bar the trustee was fully competent to represent the interests of the minor. Within the statutory period for the redemption of the property either the Bank as trustee, on behalf of the numerous beneficiaries for whom it was named trustee in the will, or the Bank as executor, on behalf of all of the beneficiaries and of the unpaid creditors who had filed claims against the estate, could have brought an action to redeem the property. No such action was filed within the time allowed by law and neither the complainant nor any one else can now maintain an action to redeem.

There are numerous Alabama cases holding that the principle is established in Alabama that as between the trustee and a stranger the statute of limitations runs as in other cases,

and that if the trustee is barred the cestui que trust is also barred. A recent case so holding is that of Spann vs. First National Bank of Montgomery, 240 Ala. 539, 200 So. 554, in which the court also states, "but we have shown that the guardian was fully capable of bringing suit and was, in fact, the one upon whom the duty primarily rested to prosecute the action". On the principle that when the trustee is barred the beneficiary is also barred, the case of Melton vs. Henderson, 62 Ala. 426, is a leading case, and contains a thorough discussion of the questions involved. The court states the general rule, and adds, "The character of the disability is not material. It may be infancy, coverture, non-residence, or mental incompetency. Whatever it may be, it must be an exception expressed in the statute of limitations. If it is not one of these exceptions, the courts cannot add it as an exception to those which the statute has enumerated."

In another Alabama case, Lee vs. Wood, 85 Ala. 169, 4 So. 693, the court calls attention to the general rule that statutes of limitation do not run against those laboring under a personal disability such as infancy. The court states "this rule, however, does not apply to infants, or other persons disabled, who have a trustee capable of suing."

The text writers show that the Alabama rule is the general rule. In Scott on Trusts, Volume 3, Page 1777, it is stated, "It is frequently said that if the trustee is barred by the statute of limitations or by laches from maintaining action against a third person, the beneficiaries are also barred".

On Pages 1782 and 1783 of the same work consideration is given to cases where the trustee transfers trust property in breach of trust. Mr. Scott states "the situation is very different from that which arises where the third person does not collude with the trustee in a breach of trust but acts adversely to the trustee. In such a case, as we have seen, the right of action against the third person is in the trustee and not in the beneficiaries and if the trustee is barred the beneficiaries are barred."

In Bogert on Trusts it is stated, in Volume 4, Pages 2772-3-4, in speaking of causes of action in favor of the trustee and against third persons: "Since such causes of action are vested in him who is the legal owner of the trust property and who makes contracts on behalf of the trust, the delay of the trustee in pursuing his remedies should bar the cause of action under the terms of the statute of limitations..... The third party against whom the cause of action lies is entitled to the benefit of the doctrine of repose after the

Judge Francis W. Hare

February 14, 1946

statutory period has elapsed since the cause of action has been vested in a party who is sui juris The cases sustain the principles outlined above, and hold that the delay of the trustee in enforcing his causes of action against third persons, where there is no mistaken or collusive breach by the trustee in participation with the third party, bars both trustee and cestui, whether the latter is under a disability or not"

On Pages 2777-8 Mr. Bogert states: "The cases generally hold that the only cause of action against the third party is in favor of the trustee who has by mistake committed the breach of trust, that his delay bars the action, and that the disability of the cestui during the period is of no importance. For example, in a case coming before the United States Supreme Court an administrator had sold property of the deceased under an order of court, the validity of which was attacked by heirs of the intestate, who had been under disability during the period of holding under the sale. The court held that the cestuis were barred by the delay of their representative in whom the cause of action against the third person had been vested. The cestuis had no independent cause of action which would be saved by their disability to sue upon it." To like effect, see Scott on Trusts, page 1784 (".....it is held by the weight of authority that when the trustee is barred the beneficiaries are also barred.....")

It is our understanding that Your Honor requested us to limit our discussion to the one phase of the case hereinabove mentioned.

We respectfully submit that when no action for redemption of the property described in the bill of complaint was brought within three years from December 15, 1937, the complainant was barred from thereafter redeeming said property, and that our demurrer to the bill of complaint should be sustained.

Respectfully submitted,

McCorvey, Turner & Rogers

By: 

RFA:VLS

cc: Mr. Hubert M. Hall
Attorney at Law
Bay Minette, Alabama

MCCORVEY, TURNER & ROGERS

ATTORNEYS AT LAW

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C. A. L. JOHNSTONE, JR.
R. F. ADAMS
JAMES L. MAY, JR.

October 3, 1946

Judge Francis W. Hare,
Monroeville, Alabama.

In Re: Marie Lipscomb vs. Agnes Lott
In the Circuit Court of Baldwin
County, Alabama,
In Equity No. 1429

Dear Judge Hare:

You have requested that we submit a brief in support of our demurrer to this Bill of Complaint as amended.

Your Honor sustained our demurrer to the original Bill of Complaint, which, in brief, alleged that complainant was one of the beneficiaries under the will of Martha Pearl Weber Reeves, who died on June 7, 1927; that the testatrix owned at the time of her death certain lands in Baldwin County, Alabama, which were sold for taxes on July 8, 1931 to the State of Alabama; that on December 15, 1937 the State sold it to E. H. Bailey, who sold it to the respondent on September 26, 1941; that the complainant has never received the bequest left her by said testatrix and she therefore seeks to redeem the property from the tax sale. The original Bill of Complaint was filed on October 16, 1945, and complainant alleges that she was twenty-one years of age on October 20, 1944.

In sustaining our demurrer, Your Honor stated, "I am of the opinion that in the absence of allegations of collusive bad faith, the demurrer is well taken."

The complaint as amended makes no allegation of collusive bad faith, but simply avers that neither the respondent nor her predecessor in title now has, nor has had, possession of said property and that since neither respondent nor her predecessor in title "who held under a tax sale have at any time taken actual possession of the said property, all rights of the respondent, Agnes E. Lott, to said property are barred by the Statutes of Limitations of Three Years."

We respectfully submit that the amendments wholly fail to cure the defects in the original bill. It is still subject to Title 51, Section 295 of the Alabama Code of 1940, which provides

Judge Francis W. Hare,
Monroeville, Alabama.

October 3, 1946

Page #2.

that no action for the recovery of real estate sold for the payment of taxes shall lie unless the same is brought within three years from the date when the purchaser became entitle to demand a deed therefor. Certainly it does not take the case out from under the holding of Spann vs. First National Bank of Birmingham, 240 Ala. 539, 200 So. 554, and numerous other cases that when the trustee is barred, the cestui que trust is also barred.

Apparently, the amendment seeks to have the complainant benefit from the very act which was passed for the benefit of the respondent. The Bill of Complaint, as amended, is still a bill in which an effort is made to redeem from tax sale, and the effort is made by one who is barred by the Statute of Limitations. It contains no allegations that the complainant is, or has been, in possession of the property, and the character of the action has changed neither to a bill to quiet title, nor ejectment, nor an action in the nature of ejectment. It simply alleges that all rights of the respondent to the property are barred by the Statute of Limitations of Three Years. We have refiled our original demurrer and added certain additional grounds. The character of the action has not changed, and we find in it no allegation of collusive bad faith on the part of the Executor or Trustee. In the absence of such an allegation the complainant is clearly barred by the Statute of Limitations because her Trustee is barred, as Your Honor has already held.

Respectfully submitted,

McCorvey, Turner & Rogers,

By: 

RFA/mch

cc: Hon. Hubert M. Hall,
Bay Minette, Ala.

MCCORVEY, TURNER & ROGERS

ATTORNEYS AT LAW

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R. F. ADAMS
JAMES L. MAY, JR.

July 27, 1946

Judge Francis W. Hare
Monroeville, Alabama

Dear Judge Hare:

In Re: Marie Lipscomb vs.
Agnes B. Lott -
In the Circuit Court
of Baldwin County, Ala.
In Equity 1429

We are in receipt of brief and argument of Messrs. Beebe and Hall, Solicitors for complainant, and respectfully call your attention to the following in reply thereto:

With the points of proposition cited by them we take no exception as we cannot see how they, in any way, overcome the principle as laid down by both the text writers and the courts, that if a right of action by a trustee is barred by the statute of limitations, the right of action by beneficiaries or cestuis que trust is also barred. The Alabama courts have frequently reiterated this holding, the most recent of many such cases which we have found being that of Spann v. First National Bank of Montgomery, 240 Ala. 539, 200 So. 554. It certainly cannot be denied that the Merchants National Bank, as Trustee, could have redeemed the property from the tax sale, and that if it had done so, it would have done so for the benefit of all interested parties, including complainant. In the case of Lee v. Wood, 85 Ala. 169, 4 So. 693, the court holds that the general rule that statutes of limitation do not run against infants does not apply to infants who have a trustee capable of suing.

We can certainly take no exception to the portion cited by counsel for complainant from the case of First National Bank v. Basham, 238 Ala. 500, 188 So. 873, that "banks which are authorized by law to engage in trust business owe the same fidelity and are subject to the same rules as individual trustees, when applicable on principle."

July 27, 1946

However, we do regret that they did not quote a little further from the same case wherein it is stated "Equity will not, in the name of equity, grant relief which is inequitable and unwise". We respectfully submit that it would be both inequitable and unwise to grant the relief sought in this bill of complaint, and in this connection again call your Honor's attention to the statement made by Mr. Bogert that "Since such causes of action are vested in him who is the legal owner of the trust, the delay of the trustee in pursuing his remedies should bar the cause of action under the terms of the statute of limitations ... The third party is entitled to the benefit of the doctrine of repose after the statutory period has elapsed since the cause of action has been vested in a party who is sui juris ..."

Respectfully submitted,

McCorvey, Turner & Rogers

By *N. F. Adams*

RFA:VLS

cc: Mr. Hubert M. Hall
Attorney at Law
Bay Minette, Alabama

EX PARTE HELEN)
MOORE BRISTOL.) IN EQUITY - No. 9838
IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

THIS MATTER coming on to be heard on the verified petition of Nina Clay Burgett, as Executrix of the Estate of J. Irwin Burgett, deceased, for the settlement of his Trusteeship on the Estate of Rittenhouse R. Moore, incompetent, under appointment of this Court; and

It appearing to the Court that J. Irwin Burgett was duly qualified and acted as Trustee under the order of the Court herein entered; that on the 27th day of October, 1938, he died in Mobile County, Alabama; and that the Hon. Robert H. Smith has been appointed by this Court as his successor; that at the time of the death of the said J. Irwin Burgett, he had in his hands as Trustee for Rittenhouse R. Moore, funds in the amount of \$113.98; that the Executrix of his Estate, Nina Clay Burgett, has accounted to Robert H. Smith for said funds, and has filed with her said petition a voucher verifying the payment of said funds; and

It appearing to the Court that the Hon. Robert H. Smith, Trustee for the said Rittenhouse R. Moore, has in writing filed in this cause accepted notice of the filing of the petition, admitted the payment of all funds due by the said J. Irwin Burgett to the Estate of the said Rittenhouse R. Moore, and has consented that the petition for settlement be passed and allowed as filed;

NOW, THEREFORE, it is ordered, adjudged and decreed by the Court that said petition for final settlement of the Trusteeship of the said J. Irwin Burgett on the Estate of Rittenhouse R. Moore be and the same is hereby passed and allowed as filed, and the Estate of the said J. Irwin Burgett is released from any further or other liability in connection therewith, and his bond is fully discharged.

DONE this 1st day of November, 1940.

F. W. HARE

JUDGE

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Moore, Walter B

Full (Jan 26 1941)
R. Russell
Prof

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R. O. DICK
237 W. 14th St.

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MSCORVEY, TURNER & ROGERS
ATTORNEYS AT LAW
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MOBILE 6, ALABAMA

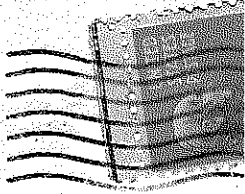
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vs
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Judge Francis W. Hare
Monroeville,
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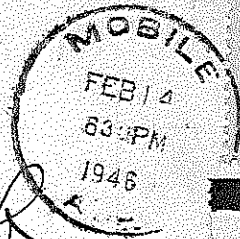
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Hon. F. W. Hare,
Monroeville, Ala.

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Judge Francis W. Hare
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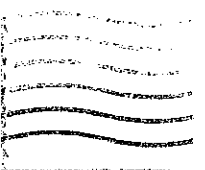
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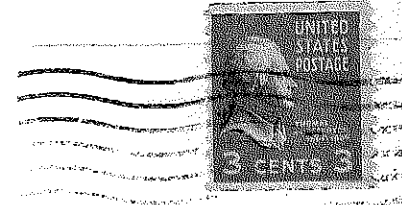
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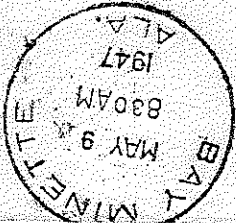
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vs
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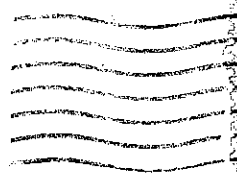
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Judge Francis W. Hare,
Monroeville, Alabama.

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Monroeville, Ala.



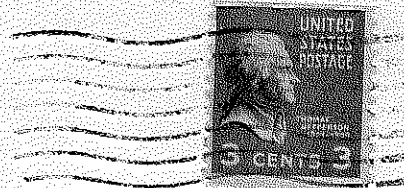
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Judge Francis W. Hare,
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Statement

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Hon. R. S. Duck

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