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Record No. 5036

In the Supreme Court of Appeals of Virginia at Richmond

SARAH J. PATTON, ET AL.

v.

M. HOBERT PATTON, ET AL.

FROM THE CIRCUIT COURT OF WYTHE COUNTY

RULE 5:12—BRIEFS.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing council on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 5036

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 16th day of June, 1959.

SARAH J. PATTON, ET AL., Appellants,

against

M. HOBERT PATTON, ET AL., Appellees.

From the Circuit Court of Wythe County

Upon the petition of Sarah J. Patton and C. Bascom Patton an appeal is awarded them from decrees entered by the Circuit Court of Wythe County on July 25, 1957, and February 6, 1959, in a certain chancery cause then therein depending wherein M. H. Patton and others were plaintiffs and the petitioners and others were defendants; upon the petitioners, or some one for them, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of five hundred dollars, with condition as the law directs.

RECORD

* * * * *

Filed in the Clerk's Office the 7th day of Nov., 1952.

Teste:

J. E. CROCKETT, Clerk
By EMILY J. WILLIAMS, D. C.

BILL.

To the Honorable John S. Draper, Judge of said Court:

Your complainants, M. H. Patton, G. B. Patton, Edith P. Delp, and Bertha P. Dolinger, would respectfully represent unto your Honor the following facts, to-wit:

page 2 } 1. Elizabeth O. Patton died testate on November 14, 1945, and her will was admitted to probate in Wythe County Circuit Court Clerk's Office the 14th day of December, 1945, and recorded in Will Book 29, page 595.

A copy of said will is filed herewith as a part of this Bill marked "Exhibit No. 1";

2. J. W. Patton, husband of Elizabeth O. Patton, died intestate July 26, 1952:

3. The said J. W. Patton and Elizabeth O. Patton left surviving them as all of their heirs and distributees at law eight children, all of whom are of age, viz: Bertha P. Dolinger, daughter, Husk, North Carolina, Sarah Patton, daughter, Speedwell, Virginia, Emma P. Overstreet, daughter, 119 Winona Avenue, Roanoke, Virginia, George B. Patton, son, Rural Retreat, Virginia, M. H. Patton, son, Speedwell, Virginia, Effie P. Lauffer, daughter, 525 E. 14th Street, New York, N. Y., Edith P. Delp, daughter, and C. Bascom Patton, son, and D. B. Patton, grandson, Speedwell, Virginia, age 11 years, is one of the devisees under the will of Elizabeth O. Patton, all of whom are parties to this suit;

4. The said Emma P. Overstreet has been sick for sometime and is now mentally and physically unable to attend to business affairs and her husband, J. C. Overstreet, qualified as her Committee in the Clerk's Office in the City of Roanoke, Virginia, and is now acting as such;

5. All of said parties are residents of the State of Virginia, their addresses being as hereinbefore set out, except Effie Lauffer, who is a non-resident of the State of Virginia, her

last known post office address being 525 E. 14th Street, New York, N. Y.;

page 3 } 6. The will of Elizabeth O. Patton provided that her debts and funeral expenses first be paid, then she devised the interest in real estate which she owned to her husband, J. W. Patton, and son, C. Bascom Patton, for the life of J. W. Patton, and on the termination of the life estate aforesaid she devised her interest in house and the bottom land, and field North of the house, known as the McLaurin farm, with the boundary lines of said land being set out in the will, to her son, C. Bascom Patton, and daughter, Sarah J. Patton; and the remainder of her real estate she devised jointly to her other children, Bertha Dolinger, Emma P. Overstreet, George B. Patton, W. Edith Delp, M. H. Patton, and Effie M. Morrisett, who is now Effie M. Lauffer. The interest given to M. H. Patton was for life only and at his death same to go to his son, D. B. Patton. All of her personal property she devised to her husband, J. W. Patton, son, C. Bascom Patton, and daughter, Sarah J. Patton, to be theirs equally. The said C. Bascom Patton and Sarah J. Patton were named as Executors;

* * * * *

page 6 }

* * * * *

11. The present owners of the interest in the real estate which Elizabeth O. Patton died owning are her children and grandson, which they acquired as devisees under her will, a copy of which is filed as a part of this Bill, as

page 7 } hereinafter set out, and the present owners of the real estate which J. W. Patton, Sr., died owning are his six children, who own same equally and jointly, and whose names are hereinbefore set out;

12. There is no indebtedness due by the estate of Elizabeth O. Patton, deceased, and no indebtedness due by the estate of J. W. Patton, Sr., deceased, except for note for $ due Wythe County National Bank, which is secured by deed of trust on his real estate;

13. Your complainants further aver that they are entitled to have a partition of all the real estate which J. W. Patton, Sr., and Elizabeth O. Patton owned at the time of their deaths, either jointly or individually, hereinbefore referred to, in one of the modes provided by law among the owners thereof according to their respective interests, and they aver that said

real estate is not divisible and can not be partitioned to advantage in kind so as to give the owners the share to which each is entitled and that it will be necessary to have a sale of said real estate for the purpose of partition;

14. Complainants further aver that the interest of all persons who have a share in the real estate hereinbefore set out will be promoted by having a partition of said real estate and that the rights of no one will be violated by reason of said partition:

Being without remedy at law and remediless save in a court of equity where all such matters are properly cognizable, your complainants pray that Sarah Patton, C. Bascom Patton, Effie Lauffer, Emma P. Overstreet, J. C. Overstreet, Committee for Emma P. Overstreet, W. C. Thomas, guardian *ad litem* for Emma P. Overstreet, D. B. Patton, infant 11 years of age, and W. C. Thomas, his guardian *ad litem,* be made parties defendant to this Bill and required to answer same but not under oath, which is hereby expressly page 8 } waived, except guardian *ad litem* answers, which shall be sworn to; that subpoenas may issue; that partition may be had of the real estate hereinbefore described in one of the modes provided by law among the owners thereof, and that if it can not be partitioned in kind so as to give the owners thereof the share to which each is entitled that decree be entered directing sale of the real estate and the proceeds divided among the owners thereof according to their respective shares; that a competent and discreet attorney at law be appointed as guardian *ad litem* for said infant defendant to defend his interest in this suit, and also that a competent and discreet attorney at law be appointed guardian *ad litem* for the said Emma P. Overstreet to defend her interest in this suit; that reasonable fee be allowed attorneys for services rendered in the institution of this suit; that an account may be had and taken, orders and decrees entered as the Court may deem proper; and that complainants may have all other relief, both general and special, which the Court may deem proper in order to give adequate and complete relief.

And they will ever pray, etc.

This November 1, 1952.

M. H. PATTON
C. B. PATTON
EDITH P. DELP
BERTHA P. DOLINGER
By Counsel.

PARSONS AND ARTHUR, p. q.
By W. P. PARSONS, Atty.

* * * * *

page 16 }

* * * * *

Filed in the office of the Clerk of the Circuit Court of Wythe County, Virginia this 24 day of Nov. 1952.

Teste:

J. E. CROCKETT, Clerk
By EMILY J. WILLIAMS, Dep. Clk.

ANSWER OF SARAH PATTON AND C. BASCOM PATTON.

To the Honorable John S. Draper, Judge of the Circuit Court of Wythe County.

Your respondents, Sarah Patton and C. Bascom Patton for answer to the bill exhibited against them and others say, that:

1. The allegations of paragraph 1 of the bill are true and although no exhibit is filed as is stated, Elizabeth O. Patton died leaving a will by which she devised her two-fifths interest in the home and all the bottom lands and field north of the house to these respondents. These respondents ask that the complainants be required to file the exhibit as stated.

2. Respondents deny the allegation of paragraph 2 of the bill that J. W. Patton died intestate, and they file herewith marked "Exhibit J. W. Patton Will" a certified copy of his will and of the order of probate thereon. It is correct that J. W. Patton died July 26, 1952.

3. So far as your respondents know, the allegations of paragraphs 3, 4, and 5 of the bill are correct.

The allegations of paragraph 6 of the bill are correct, as will more fully appear from reading the will of Elizabeth O. Patton.

4. The allegations of paragraph 7 of the bill are correct, but no exhibits are filed with the bill and it is insisted that the bill is incomplete without these exhibits.

There is no paragraph 8 in the bill.

5. The allegations of paragraphs 9 and 10 of the bill are correct.

page 17 } 6. Your respondents deny the allegations of paragraph 11 of the bill and aver that instead of the real estate owned by J. W. Patton, Sr., being now owned equally and jointly by his children that your Respondents own that portion of the real estate described in the decedent's will, having taken two-fifths of this by devise from their mother Elizabeth O. Patton, and the remaining three-fifths by devise from their father J. W. Patton, Sr.

Your respondents aver that Elizabeth O. Patton and J. W. Patton, Sr., made an agreement between themselves and with your respondents that if your respondents would stay at home, look after the said Elizabeth O. Patton and J. W. Patton and help with the payments on the real estate and the discharge of the loan to the Federal Land Bank thereon that the said Elizabeth O. Patton and J. W. Patton would execute wills by which the home place and all the bottom lands and the field north of the house known as the McLauren farm would be owned by your respondents jointly and in fee simple, and pursuant to this contract with your respondents and with each other the said J. W. Patton and Elizabeth O. Patton consulted Honorable J. C. Shaffer, an attorney at law, of Wytheville, Va., and had him to prepare wills for each of them dated the 31st day of October, 1944, and pursuant to the agreement these wills were executed as mutual wills to carry out the agreement made by the said J. W. Patton and Elizabeth O. Patton with your respondents, and this agreement is recognized in the third paragraph of each will in the language used by each testator; "I have preferred Sarah J. Patton and C. Bascom Patton because of advancements heretofore made by them to me"; and your orators aver that both wills were made pursuant to this agreement afore-

page 18 } said and that they are entitled to the entire fee simple interest in the real estate described. Your rspondents fully performed all of their part of the contract and remained with their parents until the death of both of them, and waited on and looked after them and attended to the farm in a proper and business like way.

7. Your respondents deny the allegation of paragraph 12 of the bill that J. W. Patton owed no debts except that due to the Wythe County National Bank. He had other indebtedness, including his burial expenses, and he had practically no personal property, so that the personal property is insufficient to discharge the indebtedness.

8. Your respondents deny the right of the complainants

to a partition of the home and bottom lands and field north of the house as described in the bill and in the wills.

Your respondents take the position that the decedent died wholly testate, but if this position is wrong and the decedent died intestate as to the land other than the home and bottom land and field north of the house as described in the wills, then they aver that they are entitled to share equally with the other children in the land as to which their father died intestate, and they unite in the prayer of the bill for a partition of this land.

9. Your respondents deny the right of complainants to tax the estate with attorney's fees as each party hereto is entitled to employ attorneys of his or her own selection and is responsible for their compensation.

10. Your respondents deny all other allegations of the bill not expressly admitted or denied and call for strict proof of the same.

page 19 } 11. Your respondents now file this their cross-bill and set out the following matters as entitling them to equitable relief in the event that for any reason the devise in the will of J. W. Patton to your respondents is not held valid.

(A) As set out in the bill, J. W. Patton and Elizabeth O. Patton, the parents of your respondents, purchased what is known as the McLauren place from P. C. Shannahan and wife in December, 1920. The price paid for this land was very high and it was purchased on what is known as the land boom following World War One. In order to make this purchase it was necessary for J. W. and Elizabeth O. Patton to mortgage all of their real estate in addition to that which was bought from Shannahan, and to sell certain real estate owned by them in Grayson County, with which to make the cash payment on the Shannahan land.

(B) Shortly after 1920 land values and farm products depreciated greatly in value. Farms were being foreclosed under mortgages as a daily occurrence. Farmers were losing money on live stock and the outlook was so dark that it was extremely difficult to find purchasers for land even at depreciation prices. This condition continued through 1920 and into the 1930's and due to it J. W. Patton and Elizabeth O. Patton were hard put to it to raise the mortgage payments and to keep up the interest on the indebtedness, and found themselves unable to do so without assistance. In this dilemma they called upon your cross-complainants to assist them in discharging the mortgage indebtedness and in holding the farm together.

(C) During this period your cross-complainant page 20 } Sarah J. Patton was Post Mistress at Speedwell and received a very substantial salary for discharging these duties. This salary she devoted to a large extent toward making the payments due on the Federal Land Bank mortgage and other indebtedness of J. W. Patton and worked and helped at home in many capacities, and her father J. W. Patton often remarked that except for her help and that of her brother Bascom he would never have been able to pay for his land and would have lost everything he had.

During the same period Bascom Patton, as soon as he was large enough, began to work on the farm and away from the farm, and all of the proceeds of his labor went towards discharging these same obligations. The value of this cross-complainant's services to his father amounted to several thousand dollars.

At this time all of the other children had gone away from home and during a large part of the time Elizabeth O. Patton was sick and incapacitated from work. Your cross-complainants stayed at home under the express agreement next hereinafter set out and faithfully performed all of the duties required of them, and time and again their parents expressed their satisfaction with the services rendered and reiterated the agreement as to devising the land described in the wills to your cross-complainants.

(D) Your cross-complainants aver that between them they contributed at least $10,000.00 in money and services to the discharge of the mortgage and other indebtedness of their parents; that all of this was done pursuant to the definite agreement between their parents and them that your cross-complainants would be devised the described real estate and your cross-complainants aver that pursuant to this page 21 } agreement both Elizabeth O. Patton and J. W. Patton did devise this property to them and that the advancements mentioned in each of the wills were the advancements made in cash and services by your cross-complainants.

(E) Your cross-complainants further aver that during the period of time mentioned some land adjoining that devised to them in the wills aforesaid came on the market for sale and their father and mother insisted and urged them to buy this land because it would adjoin the property which the decedents had agreed to devise to your cross-complainants, and relying on these assurances and this contract your cross-complainants did buy this adjoining land so that it and the land devised

them in the wills of their parents could be operated together as one farm.

(F) Your cross-complainants aver that as has been hereinbefore set out in the answer, J. W. Patton and Elizabeth O. Patton agreed between themselves for the benefit of your cross-complainants that the wills would be executed as has hereinbefore been stated, and pursuant to this agreement they each had identical wills drafted by an attorney of their own selection, Hon. J. C. Shaffer, in whom both of them had confidence, and these wills were executed in consideration, each of the other, and in carrying out the contract between the decedents made for the benefit of these cross-complainants, in consideration of the fulfillment by them of the contract made between them and their parents.

(G) Your cross-complainants further aver that if for any reason the devise of the described land to them in the will of J. W. Patton should fail that they are entitled to have said land charged with the value of the services page 22 } rendered by them to the decedents pursuant to the contract hereinbefore set out, and they aver that they rendered long, faithful and arduous services to their parents and services that it would have been difficult to compensate in money values. J. W. Patton, father of cross-complainants, lived to a very advanced age. His mind became enfeebled and affected, and it was necessary to give him constant watching and attention. Your cross-complainants rendered most affectionate and faithful and efficient services to him, all pursuant to the agreement that the described land would be devised to them, and they aver that the reasonable value of these services and the reasonable value of the advancements made pursuant to the agreement hereinbfore set out is equal to the value of the described real estate, and they aver their readiness and willingness to accept said real estate in satisfaction of these charges, but they insist that all the real estate should be charged with an amount equal to the advancements made and the value of the services rendered, which all taken together your cross-complainants aver will equal the sum of $15,000.00, or thereabouts.

(H) Your cross-complainants pray that this bill be now filed against M. H. Patton, G. B. Patton, Edith P. Delp and Bertha P. Dolinger, complainants in the original bill, and they ask for leave of court to file this cross-bill as to the co-defendants J. C. Overstreet, Committee of Emma P. Overstreet, and William C. Thomas, Guardian *ad litem* for Emma P. Overstreet and D. B. Patton, an infant, and W. C. Thomas, his Guardian *ad litem;* and that all of them be made parties defendant and required to answer this bill, but not on oath,

that the court decree *quoad* these cross-complain-
page 23 } ants that J. W. Patton died testate and that by his
will the described real estate was devised to your cross-complainants, and that by virtue of this will and or the contracts aforesaid they are entitled thereto, or if for any reason this cannot be done that a lien be established on all of the real estate whereof J. W. Patton died seized and possessed to satisfy the claim of your cross-complainants for advancements made and services performed, and that your cross-complainants may have all such other, further and general relief as the nature of their case may require.

Respectfully,

SARAH PATTON,
C. BASCOM PATTON,
By Counsel.

S. B. CAMPBELL
Counsel, Wytheville, Va.

E. S. SHAFFER
Counsel, Wytheville, Va.

We, S. B. Campbell and E. G. Shaffer, do certify that copies of the foregonig pleading were mailed to Parsons and Arthur, counsel of record for M. H. Patton, G. B. Patton, Edith P. Delp and Bertha P. Dolinger, and that copies hereof were mailed to Effie Lauffer, 525 E. 14th St., New York, N. Y., Emma P. Overstreet, 119 Winona Ave., Roanoke, Va., J. C. Overstreet, Committee for Emma P. Overstreet, 119 Winona Ave., Roanoke, Va., and W. C. Thomas, Guardian *ad litem* for Emma P. Overstreet and D. B. Patton, Wytheville, Va., this 25th day of November, 1952.

S. B. CAMPBELL
Wytheville, Va.

E. G. SHAFFER
Wytheville, Va.

page 24 } "EXHIBIT J. W. PATTON WILL."

WILL OF JAMES WILLIAM PATTON DECEASED.

I, J. W. Patton, of Wythe County, Virginia, do hereby make and declare this as my last will and testament.

1st. I desire that all of my just debts and funeral expenses shall be paid.

2nd. I give to my wife, Elizabeth O. Patton and my daughter Sarah J. Patton, my undivided interest in all of my real estate for the remainder of the life of my wife, and if my wife dies within five years of my death, then my daughter Sarah J. Patton, shall hold the same and enjoy all of the *resnt* and profits from the same for a full period of five years from my death.

3rd. After the termination of the interest above given, I then give unto my daughter, Sarah J. Patton, and my son, C. Bascom Patton, my undivided interest in my home and all of my bottom lands and the field north of my house, which is known as the McLauren Farm, and described as follows:

Beginning at Gallimore's corner and running with his line north to the fence which encloses what is known as the Curfield fence, and with it to the corner of M. H. Patton's land and P. C. Shannahan's land; thence with Shannahan's line to Cripple Creek and down the creek with my line to Gallimore's corner on the creek; thence with Gallimore's line to the beginning;

to have and to hold the same jointly in fee simple.

I have preferred Sarah J. Patton and C. Bascom Patton because of advancements heretofore made by them to me.

4th. I give, devise and bequeath, all of the remainder of my real estate equally and jointly, unto my other children, Bertha Dollinger, Emma L. Overstreet, George B. Patton, W. Edith Delp, M. H. Patton, and Effie M. Morrisett. The interest given to M. H. Patton is for life only, and at his death I give the same to D. B. Patton his son.

5th. I give and bequeath unto my wife, Elizabeth O. Patton and my daughter Sarah J. Patton and my son, C. Bascom Patton, all of my personal property to be theirs equally.

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6th. I hereby appoint Sarah J. Patton and C. Bascom Patton as Executors and direct that no surety be required of them when they qualify and that no sales or settlement be required of them.

Given under my hand and seal, this the 31st day of October, 1944.

J. W. PATTON (Seal)

Signed, published and declared as and for the last will and testament of J. W. Patton, he having signed the same in our presence and we having signed the same in his presence, and in the presence of each other, and at his request, as attesting witnesses, this the 31st day of October, 1944.

I. W. PARK
J. C. SHAFFER

Virginia:

In the Clerk's Office of the Circuit Court of Wythe County, August 5, 1952.

In *Re*: James William Patton, deceased.

A paper writing bearing date of October 31, 1944, purporting to be the last will and testament of J. W. Patton, deceased, late of Wythe County, Virginia, who departed this life on July 26, 1952, was this day presented in the office aforesaid by the executors named therein and offered for probate. The said will was fully proven according to law by the oaths of I. W. Park and J. C. Shaffer, the two subscribing witnesses thereto. Whereupon the said paper writing is ordered to be probated and recorded as and for the true last will and testament of J. W. Patton, deceased.

It appearing that the will nominates Sarah J. Patton and C. Bascom Patton as personal representatives, on their own motion they qualified as such by taking the oath prescribed by law and by executing bond in the penalty of Forty-two Hundred Dollars ($4,200.00), no surety being required, which bond is conditioned according to law and ordered

page 25A } to be recorded.

Whereupon certificate is granted the said Sarah J. Patton and C. Bascom Patton for obtaining letters of administration on the estate of the said J. W. Patton, deceased, in due form.

It is further ordered that S. E. Cornett, A. L. Porter, S. T. Bennington, A. C. Woodruff and Virgil C. Boone, any three of whom may act after first taking an oath for the purpose, be appointed to appraise such goods and chattels of the said J. W. Patton, deceased, as may be shown to them by the per-

sonal representatives, and sign and return their appraisement to this court as the law directs.

Teste:

J. E. CROCKETT, Clerk.

A Copy—Teste:

J. E. CROCKETT, Clerk.

* * * * *

page 27} To J. E. Crockett, Clerk of Wythe County Circuit Court:

The undersigned, M. H. Patton, G. B. Patton, Edith P. Delp, and Bertha P. Dolinger, who are some of the heirs at law and distributees of the estate of J. W. Patton, deceased, under the statute of descent and distribution, and parties in interest, do hereby make application for an appeal to the Circuit Court for Wythe County, Virginia, from an order entered in the Clerk's Office of the Circuit Court for Wythe County, Virginia, on August 5, 1952, admitting to probate a certain paper writing as and for the true last will and testament of J. W. Patton, deceased, and request that you enter forthwith in the Clerk's Order Book an order allowing such appeal and docket the same as a preferred cause for trial at the next term of said court as provided by Section 64-74 of the 1950 Virginia Code.

This December 5, 1952.

M. H. PATTON
G. B. PATTON
EDITH P. DELP
BERTHA P. DOLINGER
By Counsel.

Filed in the office of the Clerk of the Circuit Court of Wythe County, Virginia this 5th day of Dec. 1952.

Teste:

J. E. CROCKETT, Clerk
By EMILY J. WILLIAMS, Dep. Clk.

* * * * *

page 28 } In the Clerk's Office of the Circuit Court for Wythe County, Virginia:

On the application of M. H. Patton, G. B. Patton, Edith P. Delp and Bertha P. Dolinger, who are some of the heirs at law and distributees of the estate of J. W. Patton, deceased, under the statute of descent and distribution, and who are parties in interest, this 5th day of December, 1952, an appeal is allowed as of right to the order entered in the Clerk's Office of said court by the Clerk of said court, on the 5th day of August, 1952, within six months, admitting to probate a certain paper writing as and for the last will and testament of the said J. W. Patton, deceased, and said appeal is docketed as a preferred cause for trial at the next term of the Circuit Court for Wythe County.

Given under my hand this 5th day of December, 1952.

J. E. CROCKETT
Clerk, Wythe County Circuit Court.

page 29 }

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Filed in the office of the Clerk of the Circuit Court of Wythe County, Virginia this 11 day of Dec., 1952.

Teste:

J. E. CROCKETT, Clerk.

ANSWER AND PLEAS OF M. H. PATTON, G. B. PATTON, EDITH P. DELP, AND BERTHA P. DOLINGER TO ANSWER AND CROSS-BILL FILED BY SARAH J. PATTON AND C. BASCOM PATTON IN THE ABOVE STYLED CAUSE.

To the Honorable John S. Draper, Judge of said Court:

Your respondents, M. H. Patton, G. B. Patton, Edith P. Delp, and Bertha P. Dolinger, for Answer and Pleas to the Answer and Cross-Bill filed by Sarah J. Patton and C. Bascom Patton in the above styled cause, say:

I.

PLEA.

Respondents, for plea to the Answer and Cross-Bill of Sarah J. Patton and C. Bascom Patton, and to the whole and every part thereof, and to all and every the relief therein prayed, say that neither the alleged grounds of relief by Sarah J. Patton and C. Bascom Patton, or either of them, nor any claim in said Answer and Cross-Bill asserted, arose within the period specified within which they have the right under the law to bring suit.

page 30 }

II.

PLEA.

For further Plea to the Answer and Cross-Bill of the said Sarah J. Patton and C. Bascom Patton, respondents say that neither Elizabeth O. Patton or J. W. Patton, nor any one by either of them authorized, did ever sign any contract or agreement in writing, to devise the real estate to the said Sarah J. Patton and C. Bascom Patton in the Answer and Cross-Bill described, or any interest therein, or to any such effect, or any memorandum or note in writing, of any such agreement, and there was never any part performance of any agreement as set out in said Answer and Cross-Bill.

III.

ANSWER.

1. Your respondents deny that the decedent, J. W. Patton, died testate as set out in the Answer and Cross-Bill and aver that he died intestate as stated in the original Bill filed in this cause. It is true that J. W. Patton executed a writing of date October 31, 1944, which was admitted to probate in the Clerk's Office of this court August 5, 1952, as and for the last will and testament of J. W. Patton, deceased; however, application has been made by the respondents for an appeal to the Circuit Court for Wythe County from the order of probate of said will, and an order was entered by the Clerk of said court on December 5, 1952, allowing such appeal and docketing same as a preferred cause for trial at the next term of Wythe County Circuit Court. The said J. W. Patton was lawfully married to Dorothy Testerman Caldwell on January 17, 1950, in Wythe County, Virginia, the marriage ceremony having

been performed by the Rev. James V. Defoe, which, page 31 } as will be seen, was after the date of the execution of his will on October 31, 1944, and by reason of said marriage said will was revoked, and the said J. W. Patton never executed another will after his marriage aforesaid, and consequently he died intestate;

2. Respondents deny that Elizabeth O. Patton and J. W. Patton, Sr., ever entered into an agreement between themselves and Sarah J. Patton and C. Bascom Patton by which they would execute wills devising the Home Place and all the bottom lands and the field North of the house, known as the McLaurin Farm, to Sarah J. Patton and C. Bascom Patton jointly, in fee simple, in consideration of the said Sarah J. and C. Bascom Patton staying in the home of Elizabeth O. and J. W. Patton, Sr., and looking after them and helping to make payments on the real estate and discharge loan to The Federal Land Bank of Baltimore thereon, as set out in the Answer and Cross-Bill of Sarah J. Patton and C. Bascom Patton, and deny that the wills which Elizabeth O. and J. W. Patton executed on October 31, 1944, were in pursuance to any agreement or contract, and they deny that the said Sarah J. and C. Bascom Patton are entitled to the entire fee simple interest in the real estate as claimed in the Answer and Cross-Bill;

3. It is true that J. W. and Elizabeth O. Patton purchased what is known as the McLaurin Farm from P. C. Shanahan and wife in December, 1920, and placed a mortgage on the property to secure loan from The Federal Lank Bank of Baltimore to help pay for the property, and they also sold certain real estate in Grayson County to obtain money to make a payment on the Shanahan land, and that about 1920 land values and farm products depreciated in value. page 32 } Respondents deny, however, that C. Bascom Patton made any payments on The Federal Land Bank loan, or any other indebtedness of J. W. Patton, or that he assisted in paying for the Shanahan land in any way, or that he worked and helped his father, J. W. Patton, to amount to anything. Perhaps the said C. Bascom Patton did a little work on the farm, however, he was furnished a home, maintenance and support by his father, and the work which he did was not of sufficient value to take care of the amount expended by his father for his upkeep. On the contrary, the said C. Bascom Patton was under the influence of intoxicants for a great deal of the time and stayed away from

home a good deal, and was a liability to his father instead of an asset. He did not contribute anything which went toward the discharge of any obligations of his father, and the value of services rendered to his father is negligible and, as herein before set out, any services he might have performed were more than compensated for by assistance rendered him by his father; also, there was no written contract to pay for services;

4. It is true that Sarah J. Patton was postmistress at Speedwell, Virginia, for sometime; however, the salary she received was not very large, and it may be that she furnished some money to her father to make payments due on the Federal Land Bank of Baltimore note and other indebtedness due by him; however, this would not amount to a great deal, and any amounts which were furnished by her were merely loans or gifts from her to her father and were not in consideration of any agreement or contract to devise real estate to her as set out in the Answer and Cross-Bill. The said Sarah J. Patton was also furnished a home by her father, and any work she might have done about the home was nothing more than would ordinarily be done by a member of the family by reason of being in the home; and, in the absence of a written contract with her father, she would not be entitled to compensation for services rendered by her;

page 33 } 5. Respondents deny that the said Sarah J. Patton and C. Bascom Patton are entitled to have said land charged with anything for services rendered by them to their father and mother, as no services were rendered by them pursuant to a contract to devise to them any real estate; and respondents also deny that the said Sarah J. Patton and C. Bascom Patton, or either of them, furnished any money to their father to help him pay any indebtedness pursuant to any contract or agreement to devise to them any real estate;

6. Your respondents aver, as set out in the Bill filed in this cause, that the real estate which J. W. Patton died seized and possessed of passed by inheritance to the persons as set out in the Bill;

7. Respondents deny all allegations and statements in the Answer and Cross-Bill of Sarah J. Patton and C. Bascom Patton which have not been admitted as true in this Answer;

WHEREFORE, respondents pray that the Answer and Cross-Bill of Sarah J. Patton and C. Bascom Patton be hence

dismissed, with their reasonable costs and charges in this behalf expended.

M. H. PATTON
G. B. PATTON
EDITH P. DELP
BERTHA P. DOLINGER
By Counsel.

PARSONS AND ARTHUR, p. q.
By W. P. PARSONS, Atty.

* * * * *

page 36 } Filed in the office of the Clerk of the Circuit Court of Wythe County this April 29, 1955.

Attest:

J. E. CROCKETT, Clerk.

To Parsons and Arthur, Counsel of Record for M. H. Patton, G. B. Patton, Edith B. Delp and Bertha P. Dolinger;

And to

F. A. Lauffer, 525, 14th Street, New York, N. Y., Emma P. Overstreet, 119 Winona Avenue, Roanoke, Va., J. C. Overstreet, Committee for Emma P. Overstreet, 119 Winona Avenue, Roanoke, Va., and W. C. Thomas, Guardian *ad litem* for Emma P. Overstreet, Wytheville, Va., and D. B. Patton, Wytheville, Virginia.

Please take notice that Sarah Patton and C. Bascome Patton will, on Friday, the 29th day of April, 1955, at the Court House at Wytheville, Va., move the Honorable Jack M. Matthews, Judge of the Circuit Court of Wythe County, for leave to amend their answer and cross-bill heretofore filed by inserting therein a paragraph to be known as (F 1), a copy of which is hereto attached.

Respectfully,

SARAH PATTON,
C. BASCOME PATTON,
By counsel.

E. G. SHAFFER
S. B. CAMPBELL
Counsel, Wytheville, Va.

I, S. B. Campbell, do certify that copies of the foregoing notice and amendment were mailed to the parties therein set out on this the 15th day of April, 1955.

S. B. CAMPBELL
Wytheville, Va.

page 37 } (F.1) Cross-complainants aver that the will executed by J. W. Patton was a reciprocal will to that executed by Elizabeth O. Patton, and that said wills were both reciprocal wills executed pursuant to a reciprocal agreement between J. W. Patton and Elizabeth O. Patton and pursuant to and in carrying out a reciprocal agreement between J. W. Patton and Elizabeth O. Patton and your cross-complainants, and your cross-complainants aver that upon the death of Elizabeth O. Patton her will was duly probated at the instance of J. W. Patton and that he proceeded to avail himself of the testamentary benefits provided for him in said will and under the reciprocal and mutual agreements herein set out. Your cross-complainants, therefore, aver that upon the death of Elizabeth O. Patton and the acceptance by J. W. Patton of the testamentary benefits accruing to him by that arrangement that the rights of the said J. W. Patton and of your cross-complainants became a fixed obligation and the said J. W. Patton thereupon became legally bound to execute his part of the agreement and that if his will executed in the attempt so to do was revoked by his second marriage *non constat* that under the facts of this case it was revoked by the statute, then cross-complainants aver that equity will enforce his obligation by impressing a trust upon his estate in favor of the beneficiaries of the two wills, particularly your cross-complainants.

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* * * * *

DECREE.

This cause came on this the 25th day of July, 1957, in term time of Wythe County Circuit Court, to be heard on an application by M. H. Patton and others, who are some of the heirs at law and distributees of the estate of J. W. Patton,

deceased, for an appeal, to this Court, from an order entered in the Clerk's Office of this Court, on August 5, 1952, admitting to probate a certain paper writing as and for the true last will and testament of J. W. Patton, deceased; upon an order entered by the Clerk of this Court on December 5, 1952, allowing an appeal from said order entered on August 5, 1952, which admitted to probate a certain paper writing as and for the last will and testament of the said J. W. Patton, deceased, and which docketed said appeal as a preferred cause for trial in this Court; upon bill of complaint, duly filed in the Clerk's Office of this Court, and regularly matured, on copy of bill and process duly served page 39 } on all of the resident defendants namely Sarah Patton, C. Bascom Patton, Emma P. Overstreet, J. C. Overstreet, Committee for Emma P. Overstreet, W. C. Thomas, Guardian *ad Litem* for Emma P. Overstreet, W. C. Thomas, Guardian *ad Litem* for D. B. Patton; upon Order of Publication duly published, posted and *mail* as to the defendant, Effie Lauffer, who is a non-resident of the State of Virginia; upon answer and cross bill of Sarah Patton and C. Bascom Patton duly filed, upon answer and pleas of M. H. Patton, G. B. Patton, Edith P. Delp and Bertha P. Dolinger duly filed; upon answer and cross bill filed by Sarah J. Patton and C. Bascom Patton, upon sworn answer of Emma P. Overstreet and J. C. Overstreet, Committee for Emma P. Overstreet, duly filed, upon motion of Sarah Patton and C. Bascom Patton to strike out Plea No. 1; upon amended answer and cross bill of Sarah Patton and C. Bascom Patton duly filed; upon sworn answer of W. C. Thomas, Guardian *ad Litem* for Emma P. Overstreet; upon sworn answer of W. C. Thomas, Guardian *ad Litem* for D. B. Patton, infant, and upon sworn answer of D. B. Patton, infant, by W. C. Thomas, Guardian *ad Litem,* all of said answers being duly filed; upon briefs filed on behalf of all the parties to this suit and upon argument of counsel:

Upon consideration of all which it appearing to the Court that J. W. Patton executed a certain paper writing on October 31, 1944, which was admitted to probate as his last will and testament in the Clerk's Office of this Court and that after the execution of this said paper writing the said J. W. Patton was lawfully married to Dorothy Testerman Caldwell on January 17, 1950, in Wythe County, Virginia, the marriage ceremony having been performed by Rev. James V. DeFoe and by reason of the said marriage the paper writing executed by the said J. W. Patton of date October 31, 1944, and which was admitted to probate in the Clerk's Office of this

Court as the last will and testament of J. W. Patton, deceased, as hereinbefore set out, was revoked by Section 64-58 of the 1950 Virginia Code.

page 40 } It is therefore, adjudged, ordered and decreed that the said paper writing which was admitted to probate in the Clerk's Office on the 5th day of August, 1952, purporting to be the last will and testament of the said J. W. Patton, deceased, is not, nor is any part thereof, the true last will and testament of the said J. W. Patton, deceased; and that the probate thereof and the proceedings thereunder be and the same are hereby set aside, and the same are hereby declared to be null and void, and it is adjudged that the said J. W. Patton died intestate; and

It further appearing to the Court that Elizabeth O. Patton, wife of J. W. Patton, departed this life testate on November 14, 1945, and her will was admitted to probate in the Clerk's Office of this Court on December 14, 1945, and recorded in Will Book 29, page 594; and

It further appearing to the Court that the said J. W. Patton and Elizabeth O. Patton, his wife, own jointly a certain tract of land known as the McLauren Farm containing something over 313 acres, situated near Speedwell in Speedwell Magisterial District, Wythe County, Virginia, the said J. W. Patton owning three fifths (3/5) undivided interest in said farm and the said Elizabeth O. Patton owning two-fifths (2/5) undivided interest in said farm, and that the said J. W. Patton also owned individually certain other real estate situated in Speedwell Magisterial District Wythe County, Virginia: and

It further appearing to the Court that the said Elizabeth O. Patton devised her undivided interest in a part of the McLauren Farm to her son, C. Bascom Patton, and her daughter, Sarah J. Patton, and that she devised the remainder of her real estate jointly and equally to her other children namely, Bertha Dolinger, Emma P. Overstreet, George B. Patton, W. Edith Delp, M. H. Patton and Effie M. Morrisett, the interest given to M. H. Patton being for life only, and at his death to go to his son, D. B. Patton, who are now the owners of said real estate: and

page 41 } It further appearing to the Court that the said J. W. Patton left surviving him eight children as all of his heirs at law namely, M. H. Patton, G. B. Patton, Edith P. Delp, Bertha P. Dolinger, Sarah Patton, C. Bascom Patton, Effie Lauffer, and Emma P. Overstreet, who inherited all of the real estate which he died owning, and are now the owners of same; and

It further appearing to the Court that an account should

be had and taken in this cause, it is adjudged, ordered and decreed that J. L. Gleaves, Jr. be and he is hereby appointed a Special Commissioner to take, state and report on account showing:

1. The real estate and personal property of which J. W. Patton died seized and possessed;
2. The real estate and personal property of which Mrs. Patton died seized and possessed;
3. The liens, if any, together with their priorities against the real estate which J. W. Patton died owning and any indebtedness due by his estate;
4. The liens, if any, together with their priorities against the real estate which Elizabeth O. Patton died owning, and any indebtedness due by her estate;
5. The cash and rental value of the real estate which J. W. Patton died owning, and of which Elizabeth O. Patton died owning.
6. Whether or not the real estate which J. W. Patton owned either individually or jointly with Elizabeth O. Patton, at the time of his death and whether or not the real estate which Elizabeth O. Patton owned individually or jointly with J. W. Patton at the time of her death, can be partitioned in kind among the owners thereof, and if partition cannot be conveniently made, whether or not any one or more of the interested parties are willing for the entire property to be allotted to them, and pay therefore to the other parties such sums of money as their interest therein may entitle them to; or whether any of the interested parties desire their share in said real estate to be laid off together, or in case partition cannot be conveniently made, and none of the parties are willing for the entire property to be allotted to them, if the interest of those who are entitled to the property or its proceeds will be promoted by sale of the entire property, or allotment of part and sale of the balance; and whether the rights of any one will be violated by reason thereof;

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7. Shall report whether or not the personal estate of J. W. Patton is sufficient to pay off the indebtedness due by his estate or whether it will be necessary to sell the real estate or a part of it which he died owning to provide funds to pay off the balance of the indebtedness;
8. Shall make settlement with the personal representatives of J. W. Patton, deceased;
9. Shall report who are the heirs and distributees at law of the said J. W. Patton, deceased, and of the said Elizabeth O. Patton, deceased;

10. Shall report who are now the owners of the real and personal property which J. W. Patton died owning and the respective interests of the owners of said property.

11. Shall report who are now the owners of the real and personal property which Elizabeth O. Patton died owning and the respective interests of the owners of said property.

12. To ascertain and report whether all parties in interest are properly before the Court.

13. Said Commissioner shall report any other matters that may be deemed pertinent by him or which may be requested by any interested parties, or their attorneys to report upon.

page 43 } Before taking this account said Commissioner shall give due notice of the time and place of taking same to the parties hereto, or their counsel, either by personal service or publication of notice of taking said account once a week for two successive weeks in one of the newspapers published in Wytheville, Virginia, which shall be in lieu of personal service.

Said Commissioner shall make his report to a future date of this Court.

And this cause is continued.

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Filed in the office of the Clerk of the Circuit Court of Wythe County, Virginia this 25 day of Sept. 1957.

Teste:

J. E. CROCKETT, Clerk.

NOTICE OF APPEAL AND ASSIGNMENT OF ERROR.

Come now Sarah Patton and C. Bascome Patton by counsel and give notice of their appeal from a certain decree entered on the 25th day of July, 1957, in the Circuit Court of Wythe County in the above-styled cause and assign error as follows:

1. The Court erred in holding that J. W. Patton died intestate.

2. The Court erred in not holding that Sarah Patton and C. Bascome Patton had a valid and enforceable contract with J. W. Patton to devise to them the real estate described in the will and attempted to be devised to them and in not holding that if J. W. Patton died intestate, that his heirs took this said real estate impressed with a trust in favor of Sarah Patton and C. Bascome Patton.

3. The Court erred in referring this case to a page 46 } Commissioner.

4. The Court erred in entering the decree of July 25th without the endorsement thereon of S. B. Campbell, counsel for Petitioners and said decree while signed by E. G. Shaffer as Attorney for Sarah Patton and C. Bascome Patton was delivered to opposing counsel after the decree had been endorsed by E. G. Shaffer and a line drawn thereon for the signature of S. B. Campbell and after opposing counsel was advised by E. G. Shaffer that the endorsement of S. B. Campbell was necessary before the decree should be presented to the Judge.

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Filed in the office of the Clerk of the Circuit Court of Wythe County, Virginia this 10 day of Nov. 1958.

Teste:

J. E. CROCKETT, Clerk.

COMMISSIONER'S REPORT.

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And whereupon, upon due consideration of all of which your Commissioner respectfully submits the following report:

I AND II.

REAL ESTATE AND PERSONAL PROPERTY OF WHICH ELIZABETH O. PATTON AND J. W. PATTON DIED SEIZED AND POSSESSED.

J. W. Patton and Elizabeth O. Patton owned jointly and individually the following real estate located in the Speedwell Magisterial District of Wythe County, Virginia:

(a) A tract of land containing 313 acres known as the McLaurin Farm conveyed from P. C. Shanahan, et ux, to J. W. Patton, Sr. and E. O. Patton by deed dated December 14, 1920, of record in Deed Book 71, page 343. J. W. Patton, Sr., died seized and possessed of a 3/5 undivided interest in said land and Elizabeth O. Patton died seized and possessed of a 2/5 undivided interest in said land.

page 51 } (b) A tract of land conveyed from the Virginia Iron, Coal & Coke Company to J. W. Patton and E. O. Patton by deed dated June 20, 1939, of record in Deed Book 101, page 236. J. W. Patton and Elizabeth O. Patton each died seized and possessed of a 1/2 undivided interest in said tract.

(c) A tract of land containing 8 acres conveyed from James W. Patton, Jr., et als. to I. P. Patton and J. W. Patton, Sr., by deed dated January 22, 1894, of record in Deed Book 48, page 293. I. P. Patton, et ux, subsequently conveyed the interest of I. P. Patton in said tract to J. W. Patton, Sr., by deed dated April 8, 1927, of record in deed Book 79, page 151. J. W. Patton died seized and possessed of said tract.

(d) A tract containing 16 acres which was conveyed from Andrew J. McAlister, et ux, to James W. Patton and Isaac P. Patton by deed dated September 22, 1891, of record in Deed Book 40, page 147. I. P. Patton, et ux, subsequently conveyed the interest of the said I. P. Patton to J. W. Patton, Sr., by deed dated April 8, 1927, of record in Deed Book 79, page 151. J. W. Patton, Sr., died seized and possessed of said land.

(e) A tract of land containing 16 acres which was conveyed from Mary J. Patton to J. W. Patton, Sr., by deed dated June 9, 1900, of record in Deed Book 47, page 599. J. W. Patton died seized and possessed of said land.

(f) A tract of land containing 16 acres conveyed by Nancy Ann Lanter, et vir, to J. W. Patton, Sr. by deed dated August 39, 1919, of record in Deed Book 71, page 327. J. W. Patton died seized and possessed of said land.

(g) Three tracts of land with improvements thereon known

as the "School House Property," conveyed by County School Board of Wythe County, Virginia, to J. W. Patton, Sr., by deed dated December 6, 1949, of record in Deed Book 130, page 564. J. W. Patton died seized and possessed of said land.

page 52 } (h) A tract of land containing 10 acres for which there is no deed, said land having been held adversely for more than 70 years which was acquired by J. W. Patton, Sr., from George W. Patton by letter. J. W. Patton died seized and possessed of said land.

There is to be deducted however, from the above *referenced* tracts or parcels of land all of those certain tracts or parcels of land containing 3.73 acres and 4.71 acres conveyed by J. W. Patton, et ux, to the Commonwealth of Virginia by deeds dated March 10, 1934 and September 28, 1935, of record in Deed Book 91, page 386, and 94, page 111, respectively.

Attention is directed to the settlement of the Administrator and Administratrix of the Estate of J. W. Patton regarding the personal property of which J. W. Patton died seized and possessed (Section VIII of this report). It has been stipulated that the personal property of which Elizabeth O. Patton died seized and possessed was of negligable value.

III.

LIENS IN ORDER OF PRIORITY AGAINST THE REAL ESTATE OF WHICH J. W. PATTON DIED SEIZED AND POSSESSED; AND INDEBTEDNESS DUE BY HIS ESTATE.

There are no liens against the real estate of which J. W. Patton died seized and possessed.

Any indebtedness due by his estate is reflected under Section VIII of this report.

IV.

LIENS IN ORDER OF PRIORITY AGAINST THE REAL ESTATE OF WHICH ELIZABETH O. PATTON DIED SEIZED AND POSSESSED; AND INDEBTEDNESS DUE BY HER ESTATE.

There are no liens against the real estate of which Elizabeth O. Patton died seized and possessed.

And indebtedness due by her estate is reflected under Section VIII of this report.

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V.

CASH AND RENTAL VALUE OF REAL ESTATE IN CONTROVERSY.

The cash value of all of the real estate of which J. W. Patton and Elizabeth O. Patton died seized and possessed, with the exception of what is referred to as the "School House Property," is approximately $60,000.00.

The 140 to 150 acre tract which is included in the real estate referred to in the preceding paragraph and of which a 2/5 undivided interest was devised to C. Bascom and Sarah Patton, has a cash value of approximately $325.00 per acre.

The annual rental value of all of the real estate in controversy exclusive of the "School House Property," is approximately $2,000.00 per year.

The cash value of what is known as the "School House Property," is approximately $3,000.00. The annual rental value of what is known as the "School House Property," is approximately $600.00.

VI.

SUSCEPTIBILITY OF PARTITION IN KIND OF REAL ESTATE OF J. W. AND/OR ELIZABETH O. PATTON; WILLINGNESS OF PARTIES IN INTEREST TO PURCHASE OUTSTANDING SHARES; PROPRIETY OF SALE OF REAL ESTATE IN CONTROVERSY.

(a) The real estate of which J. W. Patton and Elizabeth O. Patton died seized and possessed is not susceptible of partition in kind in any of the modes prescribed by law.

(b) No party in interest has expressed a willingness to purchase the outstanding interest of any or all other persons having an interest in the real estate of the estates of J. W. and Elizabeth O. Patton.

(c) A sale of the real estate in controversy and distribution of the proceeds to the parties as their interests appear will promote the interest of the parties to this cause and will not violate the rights of anyone.

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IX.

HEIRS AND DISTRIBUTEES OF J. W. PATTON AND ELIZABETH O. PATTON.

(a) J. W. Patton having departed this life intestate, the following persons constitute all of his heirs at law: Bertha P. Dolinger, a daughter; Sarah J. Patton, a daughter; J. C. Overstreet, husband of a deceased daughter, Emma P. Overstreet; William Rudolph Overstreet, son of Emma P. Overstreet; Warren Luck Overstreet, son of Emma P. Overstreet; George B. Patton, a son; M. Hobart Patton, a son; Effie M. Morrisett, a daughter; W. Edith Delp, a daughter; and C. Bascom Patton, a son. (Effie Morrisett is the same
page 57 } person as Effie Lauffer, whose name appears in the caption as a party to this cause).

(b) The heirs and distributees of Elizabeth O. Patton are as follows: Bertha P. Dolinger, a daughter; Sarah J. Patton, a daughter; J. C. Overstreet, husband of a deceased daughter, Emma P. Overstreet; William Rudolph Overstreet, son of Emma P. Overstreet; Warren Luck Overstreet, son of Emma P. Overstreet; George B. Patton, a son; M. Hobart Patton, a son; Effie M. Morrisett, a daughter; W. Edith Delp, a daughter, C. Bascom Patton, a son; and D. B. Patton, a grandson, grandson and devisee under the will of Elizabeth O. Patton.

X.

PRESENT OWNERS OF REAL ESTATE AND PERSONAL PROPERTY OF WHICH J. W. PATTON DIED SEIZED AND POSSESSED.

(a) All of the real estate of which J. W. Patton died seized and possessed is owned by the following persons in the proportions indicated as their respective interests appear:

Bertha P. Dolinger—a 1/8 undivided interest.

Sarah J. Patton—a 1/8 undivided interest.

J. C. Overstreet (age 68)—*consumated* curtesy in a 1/8 undivided interest.

William Rudolph Overstreet—a 1/16 undivided interest subject to curtesy.

Warren Luck Overstreet—a 1/16 undivided interest subject to curtesy.

George B. Patton—a 1/8 undivided interest.

M. Hobart Patton—a 1/8 undivided interest.

Effie M. Morrisett—a 1/8 undivided interest.
W. Edith Delp—a 1/8 undivided interest.
C. Basoom Patton— a 1/8 undivided interest.

page 58 } (b) All of the personal property of which J. W. Patton died seized and possessed has been disbursed by the Administrator and Administratrix and is reflected in their proposed settlement with the exception of household furniture and a corn planter. It is stipulated that the household furniture can be claimed by Sarah J. Patton under the exemption allowed for a daughter who has never married and was residing in the household at the time of the householder's death. (Section 64.121, Section 34-26 and Section 34-27, Code of Virginia of 1950). The corn planter constitutes a part of the estate of J. W. Patton.

XI.

PRESENT OWNERS OF REAL ESTATE AND PERSONAL PROPERTY OF WHICH ELIZABETH O. PATTON DIED SEIZED AND POSSESSED.

(a) Sarah J. Patton and C. Bascom Patton are seized and possessed of a 2/5 undivided interest in fee simple in all that certain tract or parcel of land bounded and described as follows, to-wit:

Lying South of the first fence North of the residence of J. W. and Elizabeth O. Patton, starting at the Northwest corner of the Gallimore Place and running thence to the line of the property formerly owned by Hobart Patton, now owned by Alex Robinson, and thence with the Robinson line to the Joe Shanahan property, and thence with the Joe Shanahan property to Cripple Creek, a fence is along this line.

It is stipulated that the parties in interest are familiar with the above described land, which said interest was devised to Sarah J. and C. Bascom Patton by Elizabeth O. Patton and which said tract contains approximately 140 to 150 acres.

(b) All of the residue of the real estate of which Elizabeth O. Patton died seized and possessed is owned as
page 59 } their interest appear in the proportions indicated by the following persons:

Bertha Dolinger—a 1/6 undivided interest.

J. C. Overstreet (age 68), *consumated* curtesy in a 1/6 undivided interest.

William Rudolph Overstreet—a 1/12 undivided interest subject to curtesy above.

Warren Luck Overstreet—a 1/12 undivided interest subject to curtesy above.

George B. Patton—a 1/6 undivided interest.

W. Edith Delp—a 1/6 undivided interest.

M. H. Patton, life estate in a 1/6 undivided interest.

D. B. Patton, vested remainder in a 1/6 undivided interest after above life estate.

Effie M. Morrisett—a 1/6 undivided interest.

(c) It has been stipulated that Mrs. Elizabeth O. Patton's personal estate was of negligable value.

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Filed in the office of the Clerk of the Circuit Court of Wythe County, Virginia this 19th day of Nov. 1958.

Teste:

J. E. CROCKETT, Clerk
By EMILY J. WILLIAMS, Dep. Clk.

EXCEPTIONS TO REPORT OF COMMISSIONER JAMES L. GLEAVES FILED ON BEHALF OF SARAH AND BASCOM PATTON.

These Defendants except to the report as follows:

(1) Because it does not establish a lien in favor of Sarah Patton for the moneys advanced by her to her father.

(2) Because it does not establish a lien in favor of Bascom Patton for the moneys advanced by him to his father.

(3) Because it fails to report that all of the southern portion of the McLauren place was owned by Sarah Patton and Bascom Patton but only recognized their ownership in two-fifths thereof, which passed to them under the will of Elizabeth O. Patton.

(4) Because no allowance was made to Sarah Patton for

advancements made to her father, J. W. Patton, at his special instance and request.

(5) Because no allowance was made to Bascom Patton for advancements made to his father, J. W. Patton, at his special instance and request.

(6) Because no allowance was made to Sarah Patton for services rendered to J. W. Patton under an express agreement that she and Bascom Patton were to be devised J. W. Patton's three-fifths interest in the southern part of the McLauren place.

(7) Because no allowance was made to Bascom Patton for services rendered to J. W. Patton under an express agreement that he and Sarah Patton were to be devised J. W. Patton's three-fifths interest in the southern part of the McLauren place.

page 62 } (8) Because it does not recognize nor allow Sarah Patton's full rights as an unmarried daughter.

(9) Because it does not report that the two-fifths undivided interest of Sarah and Bascom Patton in the southern part of the McLauren place is not susceptible of partition to the said Sarah and Bascom Patton.

Respectfully,

SARAH PATTON AND
BASCOM PATTON
By Counsel.

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DECREE.

This cause came on this day to be again heard on the papers formerly read, the report of James L. Gleaves, Jr., Special Commissioner, filed on the 10th day of November, 1958, the exceptions of Sarah Patton and Bascomb Patton to said report filed on the 19th day of November, 1958, and was argued by counsel.

Upon consideration of all of which, it is ADJUDGED, ORDERED AND DECREED as follows:

(1) That the exceptions of Sarah and Bascomb Patton

be, and the same are hereby, overruled.

(2) That the report of James L. Gleaves, Jr. be, and the same is hereby, confirmed.

(3) It appearing from said report that the real estate of which J. W. Patton died owning and the real estate of which Elizabeth O. Patton died owning is not susceptible of partition in kind and that none of the interested parties are willing for the property to be allotted to them, and that a sale would be necessary for the purpose of partition and the rights of all interested parties will be promoted by a sale for partition purposes, and that the rights of no one would be violated by reason thereof, it is, therefore, ADJUDGED, ORDERED AND DECREED that S. B. Campbell, Edwin G. Shaffer and W. P. Parsons, any two of whom may act, be, and they hereby are, appointed Special Commissioners to make sale of said real estate at public auction to the highest bidder, on the premises, upon terms of one-fourth
page 64 } cash, balance in one, two and three years, payable in equal annual installments, the purchaser or purchasers to execute bonds for the deferred installments of the purchase money bearing interest at the rate of 6 per cent per annum, and title to be retained until payment in full; any purchaser or purchasers may anticipate payment if it is so desired, and the purchaser of the residence will carry fire insurance for the protection of the holder of the purchase money bonds on that part of the property. The Commissioners shall advertise said property once a week for three successive weeks in the *Southwest Virginia Enterprise* prior to the date of sale and in any other manner that they may deem advisable. The Commissioners are authorized to employ a surveyor to lay off the portion of the land in which Sarah Patton and Bascomb Patton have a two-fifths interest and which is admitted by all parties to be susceptible of identification. After this portion has been laid off, then the Commissioners are authorized to subdivide it, as well as the remaining property of J. W. Patton and/or Elizabeth O. Patton and to offer the same in parcels and/or as a whole, as seems to them best. The Commissioners will provide a right of way from U. S. Highway No. 21 across the land first to be laid off in the whole of which Sarah and Bascomb Patton have a two-fifths interest. This right of way is to be 30 feet wide and is to be laid off so as to give convenient access to the residue of the farm doing as little damage as is reasonably possible to the tract over which it runs. The Commissioners may offer any of the lots as subdivided in groups or blocks, as well as separately, provided however, that unless Sarah Patton and Bascomb Patton agree, there shall be no blocking

of the property first laid off with the residue of the property.

page 65 } The Commissioners, if in their judgment it is advisable to do so, may employ an auction company to assist in the sale and in any event, are authorized to employ an auctioneer to conduct the sale. The Commissioners are not authorized to expend more than $300.00 for the services of the auction company.

Before proceeding to discharge the duties enjoined upon them hereunder, the Commissioners will give bond in the penalty of Twenty-five Thousand Dollars ($25,000.00), if corporate security be given, and Fifty Thousand Dollars ($50,000.00), if personal security be given.

The Defendants, Sarah and Bascomb Patton, indicating an intention to apply to the Supreme Court of Appeals for an appeal, execution of this decree is stayed for four months.

To the Clerk, Circuit Court of Wythe County:

Enter the foregoing decree this 6th day of February, 1959.

JACK M. MATTHEWS, Judge.

* * * * *

page 66 }

* * * * *

Filed in the office of the Clerk of the Circuit Court of Wythe County, Virginia this 11 day of Feb. 1959.

Teste:

J. E. CROCKETT, Clerk.

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

Come now Sarah Patton and Bascomb Patton and file this notice of appeal and assignments of error to two certain interlocutory decrees of the Circuit Court of Wythe County concerning the title to land and the probate of a will and adjudicating the principles of the cause and assign errors as follows:

A. As set out in the notice of appeal and assignments of errors 1, 2 and 3, heretofore filed on the 25th day of September, 1957, as follows:

(1) The Court erred in holding that J. W. Patton died intestate.

(2) The Court erred in not holding that Sarah Patton and C. Bascomb Patton had a valid and enforceable contract with J. W. Patton to devise to them the real estate described in the will and attempted to be devised to them and in not holding that if J. W. Patton died intestate, that his heirs took this said real estate impressed with a trust in favor of Sarah Patton and C. Bascomb Patton.

(3) The Court erred in referring this case to page 67 } a Commissioner.

B. To the decree of the 6th day of February, 1959.

(1) The Court erred in the same respects in this decree in confirming the report of the Commissioner as it erred in the assignments of error set out to the decree of July 25, 1957.

(2) The Court erred in overruling the exceptions of Sarah and C. Bascomb Patton to the report of Commissioner James L. Gleaves, Jr. and in confirming the report of the said Commissioner.

(3) The Court erred in not allowing Sarah Patton and C. Bascomb Patton reasonable compensation for the services rendered to J. W. Patton under a special contract.

Respectfully,

SARAH PATTON AND
C. BASCOMB PATTON
By Counsel.

* * * * *

In the Circuit Court of Wythe County.

W. H. Patton et als.,

v.

Sarah Patton et als.

DEPOSITIONS.

The depositions of J. C. Overstreet and others taken before me, Essie B. Marshall, the undersigned Notary Public, to be read on behalf of the cross-complainants and defendants, Sarah J. Patton and Bascomb Patton, at the law office of

Campbell and Campbell in the town of Wytheville, on this the 9th day of May, 1955, pursuant to agreement:

Present: W. P. Parsons, of Counsel for the Plaintiffs, and the Plaintiffs, M. Hobert Patton and George B. Patton, in person.

Edwin G. Shaffer and S. B. Campbell, Counsel for the Defendants and Cross-Complainants, Sarah J. Patton and Bascomb Patton; and the Defendants and Cross-Complainants, Sarah J. Patton and Bascomb Patton, in person.

The Witness,

J. C. OVERSTREET,

being first duly sworn, deposes and says:

DIRECT EXAMINATION.

By E. G. Shaffer:

Q. What is your full name?

A. James Crowder Overstreet.

Q. Where do you live?

A. In Roanoke.

Q. What is your address?

Dep. A. 919 Winona Avenue, Southwest.

May 9, 1955 Q. What is your age, Mr. Overstreet?

page 2 A. Sixty five.

Q. What is your relationship to the parties in this suit?

A. I am a brother-in-law. My wife was a sister.

Q. What was your wife's full name?

A. Emma Patton Overstreet.

Q. I believe that she is dead now?

A. Yes.

Q. What was the date of her death?

A. April 19, 1954.

Q. What was the date of your marriage to Emma Patton?

A. December 25, 1915.

Q. After your marriage did you return to Wythe County quite often and visit at the home of J.W. Patton?

A. Very often. Sometimes we would come every month through the summer and not so often during the winter.

J. C. Overstreet.

Q. Did you visit there very often during the latter years of the life of J. W. Patton?

A. Not very often, not as often as we did before. My wife was sick and wasn't able to come much.

Q. What is your occupation, Mr. Overstreet?

A. I was a letter carrier; retired.

Q. What are the ages of your children, and their names?

A. William Rudolph was born in 1918. He would be thirty-six. His birthday is not until August. Warren Luck is thirty-two. He was named after Dr. Luck.

Q. Are there just the two children?

A. Just the two.

Q. Where do they live at this time?

Dep. May 9, 1955 page 3

A. William Rudolph lives in Minneapolis, Minn., and Warren Luck lives in Chicago.

Q. Did your wife leave a will, Mr. Overstreet?

A. Well, she told me she made a will, but after she died we never did locate it. I think Mr. Shaffer wrote the will for her. She said she had; that is what she said, she said she got Mr. Shaffer to write the will and told me about it, but I never did see it.

Q. Did your wife ever make any statement to you with reference to how Mr. J. W. Patton had fixed for his property to go at his death?

Mr. Parsons: I want to make objection to this question. It would be hearsay as to any statement that she made to Mr. Overstreet.

A. Well, yes, she told me she read the will and when she was up here said Mr. Patton showed her the will and she read it over.

Q. Can you fix the time of that?

A. No; I don't remember any exact time, but it wasn't long after they made the will. Joint will she said.

Q. Do you know the approximate year?

A. It was around in the forties, somewhere.

Q. Did your wife make any mention of an agreement between Mr. J. W. Patton, her father, and her mother?

A. Well, she said that they made a joint will, the agreement both of them giving the same, and she said that the will was made that neither one of them could break it after the other's death. Neither one could change it after the other's death.

J. C. Overstreet.

Mr. Parsons: Same objection to this question and answer that it is hearsay.

Dep. May 9, 1955 page 4

Q. Did she tell you what the agreement was, or for whose benefit the agreement was?

A. Yes, she said it was giving Sarah and Bascomb the house and the land on that side.

Q. On which side?

A. The side of the farm that the house was on, the bottom land, she didn't say just how much.

Q. Did she tell you why that agreement was made?

A. They were to take care of them; said that they helped them out and taken care of them.

Q. Was any mention of any payments having been made by either Sarah Patton or Bascomb Patton?

A. She said they had paid on the place. They had helped them pay for the place.

Q. Do you know when the property in Wythe County was purchased by Mr. and Mrs. J. W. Patton?

A. No, I don't know, it must have been back in the twenties, somewhere.

Q. Do you know anything about the value of the property or the price that was paid for it?

A. The best I understand, they paid about fifty two thousand dollars. Fifty two or fifty four thousand dollars, somewhere in that neighborhood.

Q. Do you know whether that was a high or low price to pay for the property?

A. I thought it was a mighty big price at that time, in the decline in real estate. I understand they had assurance of getting so much for the place in Grayson is partly the reason he did it.

Dep. May 9, 1955 page 5

Q. Did Sarah Patton and Bascomb Patton take care of both their mother and father during the latter years of the life of each?

A. As far as I know they did.

Q. You made frequent visits there?

A. Yes.

Q. When you would visit there would Sarah and Bascomb both be there?

A. Practically all the time.

Q. Who ran the farm, or did the actual work on the farm when you were there?

A. Well, Mr. Patton and Bass would work together, I think. Mr. Patton was going most of the time, walking around.

J. C. Overstreet.

Q. What did Sarah Patton do?

A. She done everything, I think, around the house.

Q. Over what period of time did their work cover there on the property?

A. I just don't know. They was there all the time.

Q. I mean they were there when the property was purchased?

A. Yes.

Q. And they were there after the death of both Mr. and Mrs. J. W. Patton?

A. Yes.

Q. How long was Mr. Patton sick before his death?

A. Well, I don't remember just how long. My wife and I were here to see him in the Hospital soon after he was taken bedfast and then I imagine it was around two or three months.

Dep. May 9, 1955 page 6

Q. Did they care for him during that period?

A. As far as I know they did. I understand they did, but I didn't get up here much of that time because my wife was sick in the hospital the same time; she went to the Hospital the day we went back from here to see him, she was in the Hospital all the time.

Q. So far as you and your two children are converned, is it your desire to carry out the will of Mr. J. W. Patton?

A. Yes, I think so. I took that position because my wife was so strong in that position.

Q. And why was she strong, or you strong in that position?

A. Well, she said she thought they deserved it. Of course, I am just an in-law and I don't have any special desire about it. Of course, the children will get my wife's part, I guess.

CROSS EXAMINATION.

By Mr. Parsons:

Q. Mr. Overstreet, do you know the street address of your son William Rudolph Overstreet?

A. Yes, sir. 4724 North Quail, Minneapolis 22, Minn.

Q. What is the street address of your son Warren Luck Overstreet?

A. 140 Harlan Avenue, Glenview, Ill. That is a suburb of Chicago.

Q. As I understand, the statement that your wife made to you was that her father and mother had shown to her a will they had made, is that correct?

J. C. Overstreet.

A. That's right. She was up here at that time and I was not with her, and she came home and told me.

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Q. Was that about the time, or soon after, the wills were made?

A. I don't remember exactly what time it was, but it was some time back in the forties, I don't remember.

Q. I believe that Sarah Patton is unmarried, is that right?

A. That's right, so far as I know.

Q. And Bascomb Patton was not married until after his father died; is that true?

A. I am not sure. I believe he was married before his father died. I am pretty sure he got married before his father died.

Q. Did Sarah Patton make her home with her father and mother all the time?

A. Yes, all the time, so far as I know.

Q. She never went away from home at any time, but she stayed there all the time?

A. She claimed she couldn't come down to see us and stay over night.

Q. And Bascomb Patton, he stayed there at home?

A. So far as I know, except went up to his wife's home some week ends that we were there.

Q. Up until after he was married he stayed there all the time, didn't he?

A. Yes, all the time, so far as I know.

Q. And they were both maintained and supported there by their parents, were they not?

A. I think, the best I know they all worked together there.

Q. And I believe you said that Mr. Patton—(interrupted)

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A. Of course, I didn't know the financial dealings with one another.

Q. All you know in regard to any agreement between them would be what the wills might show, is that right?

A. What my wife said they told her.

Q. I believe you stated that Mr. Patton was active and going about his work there on the farm?

A. Going about looking after it. He wasn't able to do much work.

Q. Up until about two or three months before he died?

A. That's the impression I have, being up here.

J. C. Shaffer.

Q. I understand you don't have any special desire one way or another about how this matter may be determined?

A. No, not except I think his will for them to get it—I just felt like they ought to have it. My wife was so desirous of that too.

Q. You are basing your opinion on what the will states?

A. On what the will states and what I know of the family. As I say, it means nothing to me individually. Of course, my boys will get what is coming, I guess.

Q. Do you authorize the Notary to sign your name to the depositions when they are typed?

A. I do, yes.

And further this deponent saith not.

J. C. OVERSTREET
By ESSIE B. MARSHALL
Notary Public.

J. C. SHAFFER,
another witness of lawful age, being first duly sworn, deposes and says:

DIRECT EXAMINATION.

Dep.
May 9, 1955 By S. B. Campbell:
page 9 } Q. Mr. Shaffer, will you state your age, residence and occupation?

A. I am past seventy five, live in Wytheville and have heretofore practiced law.

Q. How long have you been practicing law?

A. Something over fifty years.

Q. What public offices, if any, have you held, Mr. Shaffer?

A. I was Commonwealth's Attorney one term. I was Assistant United States Attorney; I was appointed United States Attorney three times and was a member of the House of Representatives of the United States.

Q. Mr. Shaffer, did you know J. W. Patton?

A. Yes, sir; I knew Mr. Patton quite well.

Q. Just state about how intimately you knew him and the opportunities for contacts that you had with him?

A. From 1907 until the time of his death Mr. Patton was a special friend of mine. He came to see me very frequently. Judge Campbell represented him and I represented him, and

he would consult both of us, and after the Judge went on the Bench you represented him, and I did, and I saw him very very frequently.

Q. Did you all also belong to the same political faith?

A. Yes, sir; we belonged to the same political party and were very close politically as well as personally.

Q. About what was Mr. Patton's age at the time of his death?

Dep. May 9, 1955 page 10

A. I would suppose he was somewhere in eighty, but I don't remember.

Q. He was older than either you or I?

A. Yes, he was a good deal older than I was.

Q. Mr. Shaffer, there has been filed with the papers in this case a certified copy of the will of J. W. Patton. I here hand you another certified copy of that will and will ask you to look at it and state whether you drafted it and witnessed it?

A. Yes, sir; I drafted that will and was one of the witnesses to that will.

Q. Did you also draft a similar will for Mrs. Patton?

A. Yes, I drafted a similar will for Mrs. Patton at the same time I drafted this will.

Q. Will you please state the circumstances as nearly as you recall them, and anything that Mr. Patton said before or after the drafting or the execution of that will as to why he was doing what he did in it?

A. Mr. Patton discussed the writing of his will and Mrs. Patton's will on different occasions with me before the writing of the will. That was due to the kind of a will that he was making, and I told him to bring Mrs. Patton with him when we got ready to write the will. He had discussed it with me on different occasions and I think I put him off one time from writing the will, wanting Mrs. Patton to come with him, when he came over and said he wanted these wills prepared, and Mrs. Patton's will was the first will I ever drew for anybody who didn't tell me what they wanted, but I made this exception because of my knowledge and information about Mr. Patton. He told me when this will was written why he wanted it as it was written. If I remember correctly—I haven't read this will for many years—if I remember correctly he was preferring Miss Sarah Patton and Bascomb Patton, the reason for that, as he stated to me was that he would not have been able to have kept that farm if it had not been for the money advanced by Sarah and

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J. C. Shaffer.

Bascomb, and if they had not stayed there and worked and helped pay for the farm. He stated that Mrs. Patton, his wife, and he had an agreement and understanding with themselves and these two children that these similar wills were to be written to carry out the agreement they had with Sarah and Bascomb for the advancements that had been made and the work they had done there on the farm. That is about as I remember it.

Q. And as I understand you then, these wills were made because of the definite agreement between Mr. and Mrs. Patton and Miss Sarah and Bascomb that Sarah and Bascomb were to stay there and work and help pay for the farm?

A. They had made these advancements, they were to stay and help pay for the farm, as otherwise they couldn't have owned the farm.

Mr. Parsons: I make objection to the questions and answers on the ground that any statements made concerning a verbal agreement is not admissible until acts themselves have been shown which would indicate there was such an agreement.

Q. Mr. Shaffer, I think that the will itself says that the reason that Bascomb—(interrupted)

Dep. May 9, 1955 page 12 } A. It is my recollection that I put in that will that it was being made, the preferences were being made, because of the advancements made by the two. I haven't seen it, I don't believe, since I prepared it, but I believe that is in there.

Q. Look there and see, please, sir.

A. (Witness, reading from will) "I have preferred Sarah J. Patton and C. Bascomb Patton because of advancements heretofore made to me."

Q. Mr. Shaffer, did you ever visit at the Patton home or stop by there?

A. I have at different times been there.

Q. Were you there enough to know whether Miss Sarah stayed there at home?

A. No, Stuart, I wasn't. When I was there it was usually in the day and she was Postmaster.

Q. You do know that she was Postmaster at Speedwell?

A. Yes, for a number of years at Speedwell.

Q. Mr. Shaffer, in the early twenties what was the condition of the land market, if you know, in this County?

A. Well, it was depressed about that time. I know at the

time Mr. Shannahan bought this farm it was generally understood that he had paid an enormous price for that property and then it was also the same condition when Mr. Patton bought it, that he had paid a long price for that farm. I think it was due to the fact of the handling of the sale of that property by Mr. J. M. Parsons in selling this and also selling Mr. Patton's property in Grayson County. I discussed that at different times with Mr. Patton.

Dep. May 9, 1955 page 13 } Q. Mr. Patton had paid a higher price than Mr. Shannahan and Mr. Shannahan had paid plenty high, was that right?

A. That was the impression that every body had.

Q. That Cornett-Parsons *Acution* Company did an unusually good job in getting this sold?

A. Yes.

Q. Mr. Shaffer, what was it, if anything, that Mr. Patton said about whether he could have paid it off except for the help of Sarah and Bascomb?

A. He said he couldn't have paid for, and couldn't have owned it if it hadn't been for Sarah and Bascomb. He said that at the time I wrote the will.

Q. Did he say anything to you about whether he and his wife had discussed what they wanted to do?

A. Yes, he said it was understood between them that they were to make identical wills, as far as it could be done.

Q. Mr. Shaffer, in Mr. J. W. Patton's later years was he able to do any physical work himself?

A. No, Mr. Campbell, Mr. Patton certainly for quite a number of years would not have been able to have done much work. I don't see how he could do any. He couldn't hardly get about, for a number of years in walking up this street it would take him a long time to walk a square. I have watched him on many occasions out of my office, and he couldn't hardly move along.

Q. In addition to being old, he was very heavy?

A. Very heavy, yes, sir.

Dep. May 9, 1955 page 14 } Q. Now, please state whether or not Mr. Patton seemed to be appreciative of what Miss Sarah and Bascomb had done, as to whether they had complied with the contract that he and his wife had with them?

A. He just stated that they had that understanding and that they wanted to carry it out. He seemed, of course, to be appreciative. He was very much attached to that farm. They called it the McLaurin place. He said, "I couldn't have

owned the McLaurin farm if it hadn't been for Sarah and Bascomb."

Q. That is a beautiful farm?

A. Yes.

Q. Was it one of the outstanding places here in the County, people spoke of the McLaurin farm as an excellent farm?

A. It was, yes, sir.

CROSS EXAMINATION.

By Mr. Parsons:

Q. Mr. Shaffer, you put in the will here what Mr. Patton said to you was the reason for making his will?

A. Yes, sir.

Q. And that was, "I preferred Sarah J. Patton and C. Bascomb Patton because of advancements heretofore made by them to me." Is that right?

A. No, Mr. Parsons, that was not all of the reasons Mr. Patton gave me for making the will. I put that in to show the reason for it. That was more or less my language in putting that in there; that wasn't putting in the will what he said was the reason; that is just—I don't know how to express it—just a statement of fact in the will and not a statement of the conversation.

Dep. May 9, 1955 page 15

Q. Then this was your language?

A. That part of it was and not his.

Q. Did he say anything about how much had been advanced by either one of them?

A. If he did I have no recollection of it and I don't think he did.

Q. Do you know whether Bascomb ever worked anywhere except on his father's farm?

A. Well, no, I don't know, now this is a mere impression; I had an impression that Mr. Patton said something about Bascomb contributing a pretty good sum at one time, I don't remember, I don't know the amount at this time, but he had contributed, I think, a pretty good amount.

Q. Did Bascomb have any source of income except what he *mgith* have gotten off of his father's farm?

A. I don't know, Paul.

Q. As a matter of fact, Sarah and Bascomb both made their home with their father all their lives?

A. That is my understanding. She was Postmaster and stayed at home.

J. C. Shaffer.

Q. Do you know how long you talked to Mr. Patton before the will was made?

A. I talked to him on several occasions; I would say over a period of probably a month before the wills were drafted.

Q. It appears that the will was signed on October 31, 1944?

A. Yes, sir; he had discussed the writing of that will with me and the reason for it on several occasions before that time.

Dep. May 9, 1955 page 16

Q. Well, Mr. Patton did continue to be very active and looked after his affairs?

A. He looked after his affairs, but physically he was not very active. He was mentally up until about the time of his marriage, he was rather foggy at that time and after that time.

Q. Do you recall about when he was married the second time; about how long before he died?

A. I would have to guess at that, I would say about five years ago. I took sick about seven and a half years ago and I would estimate it was about two years after that that he came and consulted me about getting married and I was sick at that time.

Q. That *sas* something like a couple of years before he died?

A. It was two or three years before he died.

Q. Did Mr. Patton ever talk to you about making any other will? About making another will?

A. Yes, sir, he did.

Q. When was that?

A. He came to see me when he was talking about getting married and said that he was going to get married, or thinking about getting married and he wanted to know whether or not he could limit the interest that his wife would get in his property, that he didn't want her to have any of the McLaurin farm, but that he wanted to make a will and give her that old school house that he had turned into a kind of an apartment, I believe, probably some money in addition to that, and I told him that he could not limit her interest and deprive her of her rights, and if he made a will she would renounce it and claim under the law and she would get a rather substantial part of the McLaurin farm. He wanted to know whether or not there was any way he could carry out his intentions, and I told him he could have a marriage contract and take care of that situation, and I told him I was not able at that time to prepare it and advised him that if he was

Dep. May 9, 1955 page 17

going to get married he had better get another lawyer, and I told him he had better let that woman alone and not marry her, that she was after his property, and he didn't take my advice on that occasion.

Q. That was just before his second marriage?

A. Yes, sir, a short time before his second marriage.

Q. He did come to you and wanted to make a different will to what this was?

A. No, he wanted to know whether or not he could do it, whether he could make a will limiting the rights of his second wife.

Q. And he asked you about preparing this will?

A. No, he didn't ask me about preparing the will. He just asked me about whether he could do that and I told him he couldn't do it. He knew I wasn't in a physical condition to write his will, he was just talking about it, and I told him I wasn't able to do it, and I wasn't able to write his marriage contract.

RE-DIRECT EXAMINATION.

By Mr. Campbell:

Q. Mr. Shaffer, in this conversation about limiting the rights of the second wife, he was not in any way wanting to change the will that he had already written?

Dep. May 9, 1955 page 18

A. No, the thing he was trying to do was to protect the McLaurin farm and the bequests under that will because he wanted the second wife to have that old building over there is my recollection, and probably something in addition, but that I don't remember, I believe it was probably a sum of money.

Q. He bought the old school house after the will that you had prepared had been executed?

A. Yes, sir; and it was not included in that.

Q. Do you authorize the Notary to sign your name to this deposition?

A. Yes, sir.

And further this deponent saith not.

J. C. SHAFFER
By ESSIE B. MARSHALL
Notary Public.

Robert Lee Groseclose.

A. No, sir; we didn't have any right of way, but they give us permission to go through.

Dep. May 9, 1955 page 20

Q. You went across this farm to go to the balance of your father's farm?

A. Yes, sir.

Q. Did you talk with Mr. and Mrs. Patton on many occasions?

A. Yes, sir; especially him.

Q. Did you have occasion to witness a will of Mrs. J. W. Patton?

A. Yes, sir.

Q. Were you present at the time she executed that will?

A. Yes, sir.

Q. Who was the other witness to her will?

A. My son.

Q. Was Mr. Patton present when the will was executed by Mrs. Patton?

A. Yes, sir.

Q. Did either one of them make any statement at that time about the manner in which the wills were being executed, about whether there was more than one will?

A. Yes, sir; he said that he had his will fixed, too.

Q. Did they tell you what they were doing with the property?

A. Well, they said that which ever one went first the other one was to carry on.

Q. Did they tell you what they were doing with the property after the death of the other one, or the survivor?

A. Yes, they said that Miss Sarah and Bascomb was with them and had helped them pay for it and they wanted them to get the benefit of it.

Q. Did they tell you in what manner they were *prefering* Bascomb Patton or Sarah Patton?

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A. How was that?

Q. Did they tell you what portion of the property they were giving to Sarah or Bascomb?

A. They said they was to get the front part.

Q. And what is the front part?

A. That is the Home Tract.

Q. Do you know what that tract consists of?

A. No, sir, I don't.

Q. Did they during that conversation make any statement

ROBERT LEE GROSECLOSE,
another witness of lawful age, being first duly sworn, deposes and says:

DIRECT EXAMINATION.

By Edwin G. Shaffer:
Q. Where do you live?
A. Speedwell.
Q. What is your age?
A. Fifty three.
Q. What is your occupation?
A. Farmer.
Q. Where do you live with reference to the Home place of Mr. J. W. Patton?
A. At the present time I live on Dry Run now.
Q. Did you ever live closer to him?
A. Yes, sir.

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Q. Where did you live then and what period was that?
A. I lived in the Early Jones property.
Q. Where is that with reference to the Patton farm?
A. It is right in sight of the Patton farm.
Q. For what period of time did you live there?
A. Twelve years.
Q. When was that?
A. I moved there in '29.
Q. Then you moved from there in about '42 to Dry Run?
A. Yes, sir.
Q. Did you visit or know Mr. Patton after you moved to Dry Run?
A. Yes, sir.
Q. Were you very well acquainted with Mr. and Mrs. J. W. Patton?
A. Yes, sir.
Q. Did you visit at their home frequently?
A. Yes, sir; ever once in a while?
Q. Did you have to go on to the Patton farm when you lived at the Early Jones place?
A. Yes, sir; and before.
Q. For what reason?
A. My father bought a part of the McLaurin farm.
Q. Did you have a right of way across this Patton farm?

about what had been promised to Sarah and Bascomb Patton?

A. I don't understand.

Q. During that conversation did they make any statement to you, or in your presence, about what they had promised Sarah and Bascomb Patton?

A. They said they had an agreement with them, that they was to stay on there and take care of them and get their part.

Q. You mean by the part—was that the front part of the McLaurin farm?

A. Yes, sir.

Q. Did you have an occasion to talk to Mr. and Mrs. J. W. Patton after the execution of her will?

A. Well, I talked to him right often.

Q. Did he at any other times mention the wills, or mention to you the property?

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A. Well, he said that they had helped him quite a bit on it, if it hadn't been for their help he didn't believe he could ever have paid for it.

Q. Did he ever tell you that it was fixed so that they would get the property?

A. Yes, sir.

Q. When did he tell you that?

A. It was some time after the wills was wrote, I just don't remember how long.

Q. Do you know what work Sarah Patton did on this farm?

A. She worked awful hard.

Q. For what period of time?

A. All the time.

Q. Was that commencing from the time you first knew them up till today?

A. Yes, sir.

Q. Do you know the different types of work that she performed there on the farm?

A. Yes, sir.

Q. Just go into detail and tell what she did?

A. She done the house work, and I have seen her come out and help feed.

Q. Are you familiar with the work that Bascomb Patton did there on the farm?

A. Yes, sir; he helped on the farm.

Q. Is that the only work that he did?

A. So far as I know.

Robert Lee Groseclose.

Q. Did he work there on the farm continuously from the time you first knew him until today?

Dep. A. Yes, sir.

May 9, 1955 Q. Did he perform the actual manuel labor
page 23 } there on the farm?

A. They always kept their work up.

Q. Did Mr. or Mrs. Patton ever make any statement to you about Sarah and Bascomb Patton was to stay there with them and take care of them?

A. Yes, sir.

Q. What statement was made along that line?

A. They said they had always been with them and they wanted them to stay on and take care of them.

Q. Did they tell you before that time that they were to receive the property?

A. Yes, sir.

Q. Did you have the opportunity to know the physical condition of Mr. J. W. Patton during the last several years of his life?

A. He was awful stiff, couldn't get around very good.

Q. Was his condition such that he could perform farm labor?

A. No, he couldn't work.

Q. For what period of time was he unable to work?

A. There was several years there he wasn't able to do any work.

Q. During that period of time did Bascomb Patton do the actual management and farm work on the farm?

A. Yes, sir.

Q. Do you know what is referred to as the Buford farm?

A. Yes, sir.

Q. Where is the Buford farm located?

A. It lays kindly east of the Patton farm.

Dep. Q. Is a portion of the Buford farm adjoin-
May 9, 1955 ing the Patton farm?
page 24 } A. Yes, sir.

Q. Do you know when the Buford farm was sold?

A. I don't know the date. I remember approximately the year. Well, I would say it has been sold something like ten years.

Q. Do you know who purchased the portion of the Buford farm adjacent to the Patton farm?

A. Yes, Miss Sarah and Bascomb.

Robert Lee Groseclose.

Q. Did you have occasion to hear Mr. J. W. Patton ever make any statement with reference to the purchase of the Buford farm?

A. Well, he said something about he was glad they could get it, it would be adjoining what they would get, something like that.

Q. And that Buford farm lies adjacent to the front part of the J. W. Patton farm?

A. Yes, sir.

Q. Did Mr. J. W. Patton ever tell you that he wanted Sarah Patton and Bascomb Patton to buy that portion of the Buford Farm?

A. Yes, sir, he said it was joining them.

Q. Do you know whether or not that farm was sold at public auction, the Buford farm?

A. I don't think it was.

Q. Do you know whether or not Sarah Patton or Bascomb Patton contributed to paying off the indebtedness on the J. W. Patton farm?

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A. Mr. Patton told me that they did.

A. Do you know whether or not he had at any time had any source of income other than from the farm?

A. No, sir.

Q. Do you know the value of the farm at the time Mr. J. W. Patton purchased it?

A. Well, he paid an awful price for it, I though.t

Q. Was it considered an extra high price for the property?

A. Yes, sir.

CROSS EXAMINATION.

By Mr. Parsons:

Q. Bob, I believe you say you were one of the witnesses to Mrs. Patton's will?

A. Yes, sir.

Q. And at that time Mr. Patton told you he had his will fixed too, is that correct?

A. Yes, sir.

Q. Now, Sarah and Bascomb have made their home there all the time with Mr. Patton, didn't they?

A. Yes, sir.

Q. And Sarah did work about the house, the house work,

Robert Lee Groseclose.

and you said you had seen her do some feeding, is that right?

A. Yes, sir.

Q. What work have you seen Bascomb do?

A. I've seen him work on the farm.

Q. They had others there working on the farm, too?

A. Some, yes, sir.

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Q. And Mr. Patton was active and was overseeing and looking after the farm until a short time before he died, wasn't he?

A. He done the looking after it, but he didn't do any of the work practically.

Q. The last few years he wasn't able to do much manual work?

A. No.

Q. Do you know whether his son George Patton worked on the farm some too?

A. George farmed a little, I think.

Q. Do you know how many acres in the farm?

A. No, sir; not exactly.

Q. That is a good farm and has considerable road frontage there?

A. Yes, sir.

Q. Valuable property?

A. Yes, sir.

Q. I believe you say that he told you that whichever one went first, referring to he and his wife, that the other one would carry on?

A. Yes, sir; that's what he said.

Q. Do you know how long his first wife died before he did?

A. No, sir; I don't, not exactly.

Q. And what he told you about what Bascomb and Sarah did was what was shown in the will?

Q. Yes, he said that he wanted them to have the front part of the farm.

Q. Just as the will states?

A. Yes, sir.

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Q. Did you say that Bascomb stayed on the farm there all the time and worked?

A. As far as I know, he did.

Q. Do you know whether he ever worked for his brother Hobert in a filling station two or three years?

A. I believe he did stay in the filling station a while.

S. T. Bennington.

Q. Who was looking after the farm then?
A. I don't know. I guess Mr. Patton.
Q. Do you authorize the Notary to sign your name to this deposition?
A. Yes.

And further this deponent saith not.

ROBERT LEE GROSECLOSE
By ESSIE B. MARSHALL
Notary Public.

S. T. BENNINGTON,
another witness of lawful age, being first duly sworn, deposes and says:

DIRECT EXAMINATION.

By S. B. Campbell:
Q. Mr. Bennington, please state your age, residence and occupation?
A. Seventy eight, live at Speedwell, work in the store.
Q. How long have you lived at Speedwell?
A. Been there thirty two years.
Q. Have you been a merchant there during all that time?
A. Yes, sir.
Q. How close is your store to the McLaurin farm house?
A. Well, it is—the line is not very far, but the residence is a right smart piece.

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Q. Well, about half a mile?
A. Yes, sir; I would say so.
Q. Did you know Mr. Patton?
A. Yes, sir.
Q. How well did you know him?
A. Very well. He was at my place nearly every day for I don't know how long. That is when the weather was pretty, he would come up and sit and talk to me for hours at a time.
Q. Did he talk to you any about what a hard time he had in paying for the McLaurin farm?
A. Yes, sir.
Q. What did he say about that?
A. He just said he didn't know what he would have done if it hadn't been for Sarah.

S. T. Bennington.

Q. Was he proud of owning that farm?
A. Yes, sir; he was proud of it.
Q. It is a good farm, isn't it?
A. Yes, sir; he talked about it lots.
Q. In the conversations that he had with you did he tell you anything about any agreement that he had made with Miss Sarah and Bascomb?
A. I told him it wasn't any of my business at all—he said he had it fixed—I said it isn't any of my business, but there is one request I want to make; take care of Miss Sarah, she has been the stake at that place; and I said if it hadn't been for her, what would you have done? He said, "I don't know."

Mr. Parsons: I object to the witness' answer there about what he advised Mr. Patton that he should do.

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Q. Now, did Mr. Patton talk with you before he made his will—before he wrote his will?
A. I don't know when he wrote it.
Q. But did he talk to you like he was going to write a will?
A. Yes, sir.
Q. So you took it that he talked with you first before he had written his will?
A. That's the way I took it.
Q. Now, later on, did he tell you anything about having fixed his property, as to how it should go?
A. He said he had fixed for Sarah and Bass to have a part, but never did tell me in what way, just said he had fixed for them to have part.
Q. Did he tell you why he had?
A. He said he thought she ought to have it, she had contributed and it wouldn't be right to take away from her and give to the others.
Q. Did he tell you anything about an agreement or promise about what he would do if they stayed?
A. If he did I don't have any recollection.
Q. But said it wouldn't be fair if he didn't—
A. That's the way it sounded to me, if they made them all equal it would be taking away from her and giving to them.
Q. Mr. Bennington, did he tell you whether Miss Sarah had put money into that farm?
A. Yes, he said she did. He said if it hadn't been for her he didn't know what he would have done.

S. T. Bennington.

Q. What chance did she have to put money into the farm?

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A. She stayed in the Postoffice for eighteen or twenty years, I reckon. She was tight, she saved it; she used her head for something more than a hat rack.

Q. She was saving her money?

A. That's right.

Q. So she would have had the opportunity of helping?

A. That's right.

Q. Were you there enough to know whether or not she did look after him?

A. When I was there.

Q. Give us an idea?

A. I was there several times after he got bedfast; she was just as good to him as if he was a baby; take him water and help him up; awful good to him.

Q. Do you know how she treated her mother?

A. No, I don't know a thing about that; I knew her mother and was there and visited them, but she was up and able to go and wait on herself.

Q. After her mother got sick, who waited on her mother, do you know?

A. I don't know. I suppose she did.

Q. In addition to doing the work around the house, what did Miss Sarah do on the farm?

A. From what they said, and from what I seen, she done about everything there was to do except plow, harrow and grub. She milked and she fed and carried calves down off of that hill, in the snow half knee deep.

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Q. To put it in a short way, did she make a hand there on the farm?

A. I thought she did, yes.

Q. Now, did Mr. Patton say anything to you after his first wife died that the property was fixed and couldn't be changed?

A. Yes.

Q. What did he say?

A. He just said it was fixed up and couldn't be changed; he had made a will and his wife made a will and it was fixed so it couldn't be changed.

Q. That was with reference to what Miss Sarah and Bascomb were to get?

A. Yes.

S. T. Bennington.

Q. What sort of a work-hand was Bascomb?

A. I couldn't tell you. He was like most of us. He didn't work only what he had to.

Q. Nobody ever accused you of being lazy?

A. They had a right to.

Q. If Bascomb was as lazy as you are he would be a hard-working man. Did Bascomb work on the farm?

A. Yes, sir; he said he did, and I have seen him at work.

Q. During the latter part of Mr. Patton's life was he able to do any work?

A. Not much, no. He had a piece of corn in front of the house and he said he couldn't cut corn. I said as big and stout as you are? His legs was stiff, he was clumsey; he said he went to the house and got a corn cutter and tried to cut the corn but he would fall down and couldn't cut it.

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Q. Now, Mr. Bennington, what did Mr. Patton say to you, if anything, about an agreement that he made with Miss Sarah and Bascomb, that if they stayed there and looked after him what he would do?

Mr. Parsons: This question objected to for the reason that Mr. Bennington has already testified that he never heard Mr. Patton say anything about any agreement or promises to Sarah and Bascomb, and further because this is a leading question.

A. No, I never did hear him say anything about having any agreement.

CROSS EXAMINATION.

By Mr. Parsons:

Q. Mr. Bennington, you spoke of Sarah's work on the farm; I believe she run the Post Office there too, didn't she?

A. Yes, sir.

Q. Do you know what hours she was at the post office?

A. She would come up in the morning and back in the evening; I never paid no attention to what hours.

Q. Of course, while she was at the post office she couldn't do farm work? She made her home there all her life?

A. Yes, sir, as far as I know.

Q. And Bascomb stayed there all the time?

A. Yes, sir, so far as I know.

S. T. Bennington.

Q. Mr. Patton supported them and maintained them?

A. I couldn't tell you that, the income, I guess, coming off of the farm, but I don't know who was responsible for it.

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Q. Did Bascomb have any other way of getting income except what was off of his father's farm?

A. He run a filling station was all I knew of his doing; I believe it belonged to Hobert.

Q. Do you know who was looking after the farm while he was at the filling station?

A. He was there night and day most of the time.

Q. Do you know who was looking after the farm?

A. No. Ed Sayers lives on the place, and Mr. Testerman, he lived there on the back side, at the old place.

Q. Did George Patton, a brother to Bascomb, here, work there a while?

A. Yes, I think so.

Q. As a matter of fact Mr. Patton continued to look after the farm on up to a short time before he died?

A. Yes, siree, and he would do that.

Q. He was the boss?

A. He was the boss, I can tell you that.

Q. He was plenty capable of doing that until a few months before he died?

A. I reckon so.

Q. And his last illness lasted something like two or three months, is that right?

A. Yes.

Q. And you never heard him say anything about making any agreement or promise to give his property to them?

A. No, he never did say nothing to me about that.

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Q. It was your impression that Bascomb got by with as little work as he could on the place, is that right?

A. That's the way with most of us.

Q. You haven't seen Bascomb do much around?

A. Not lately, no. I think he stays at Sugar Grove about half the time.

Q. At any time have you ever seen him do much on the farm?

A. I didn't consider that was any of my business to watch a fellow work; if he can get by without it he is pretty sharp.

Q. You saw Sarah working, but didn't see much out of Bascomb?

A. I've seen her work.
Q. You didn't see much out of Bascomb?
A. I have some.
Q. Not to the extent that Sarah worked?
A. I don't think he stayed on the job like she did.
Q. Do you authorize the Notary to sign your name to this deposition?
A. Yes, sir.

And further this deponent saith not.

S. L. BENNINGTON
By ESSIE B. MARSHALL
Notary Public.

CARL JENNINGS,
another witness of lawful age, being first duly sworn, deposes and says:

DIRECT EXAMINATION.

By Mr. Shaffer.
Q. Where do you live now, Mr. Jennings?
A. I live at Speedwell.
Q. What is your occupation?
Dep. A. Paint and hang paper and farm. Been a
May 9, 1955 paper hanger mostly.
page 35 } Q. What is your age?
A. I will be sixty years old the 9th of November.
Q. Did you have an opportunity to know Mr. J. W. Patton and C. Bascomb Patton and Sarah Patton?
A. Yes, sir.
Q. What opportunity did you have to know them?
A. I knowed them all my life and lived on the place about twelve years, at the Buford place.
Q. What period was that?
A. I believe it was '41 or '42 when I moved there.
Q. You are still living there, now?
A. No, sir; I live on Sam Hudson'*t* place northeast of Speedwell.
Q. What year did you move from the Buford place?
A. I don't know exactly what year it was; it has been about two years, nearly.

Carl Jennings.

Q. Did you have an opportunity to observe the work that was performed there, of the work by Sarah Patton?

A. Yes, sir, I farmed up there most of the time.

Q. What work did she do there?

A. Well, she done—the most that she done was all the house work, her mother when I first went there was able to help, but in a few years her mother taken sick and died and she done all the rest after that.

Q. Were you familiar with the work done by Bascomb?

A. Yes, sir, we worked together.

Q. Did he actually perform manual labor there on the farm?

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A. Well, we farmed together and we worked in the corn, hay, wheat and stuff like that; but he was away a while at the service station and me and another, a Sayers fellow, worked on the place.

Q. For what period of time was he away?

A. I don't know.

Q. Was it one or two years?

A. I believe it must have been over a year.

Q. Somewhere between a year and two years?

A. That's what I think, I don't know.

Q. During the other portion of the years that you were there, not counting the one or two years that he was at the service station, did he work on the farm then?

A. Yes, sir; we all worked together.

Q. Did he live there on the farm all the time?

A. Yes, sir; stayed there at the place.

Q. Did you know the condition of J. W. Patton during the last several years of his life?

A. Of course, he wasn't able to do any work.

Q. For what period of time was he unable to work?

A. I would say when I first went there he could get around pretty well, but as for doing a day's work he couldn't have stood it.

Q. Did Sarah Patton and Bascomb Patton wait on him and take care of him there at the house?

A. Yes, sir.

CROSS EXAMINATION.

By Mr. Parsons:

Q. Carl, I believe you say that Bascomb was away from the

Carl Jennings.

farm for some time working at a service station?

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A. Yes, sir.

Q. Was that station owned by Hobert Patton?

A. Yes, sir.

Q. During that time he didn't do any work at all on the farm?

A. No, sir.

Q. Do you know what year?

A. No, sir; I don't know what year.

Q. It was after you went there in '41 or '42?

A. It was after I went there. I had been there quite a while.

Q. During the time that he was working at the Station, did he live with his father?

A. He stayed up there. Come back about twice a week. Did have a room there at the station.

Q. Was Bascomb married before or after his father died?

A. Before.

Q. How long before?

A. I couldn't say exactly; it must have been a couple of years, may be not that long.

Q. Where did he live after he was married?

A. He would go up to Sugar Grove sometimes of a Saturday evening late and come back Monday morning, and some times go Sunday and come back, and his wife didn't stay down there.

Q. Bascomb worked along there with you on the farm and with Sayers and any other hands they had on the farm?

A. Yes, sir, that's about all that worked there, just me and Sayers and Bascomb.

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Q. Who did the over-seeing and bossing of the farm work?

A. Mr. Patton, he always told us what to do, cut corn, cut wheat and stuff like that, he would always tell us.

Q. The work that Bascomb did was similar to what you did there and other farm hands, is that right?

A. Yes, sir; worked on the farm, corn, wheat, hay, feed, and stuff like that.

Q. Who paid you for your work, Mr. Jennings?

A. Well, when I worked by the day Mr. Patton some times paid me and Miss Sarah sometimes paid me and some times Miss Sarah.

Sarah J. Patton.

Q. Do you know where the money came from?
A. Mr. Patton would pay me in a check some times and they would give me money.
Q. The Work which Sarah did was the housework, is that right?
A. What time I was there. I wasn't there long till her mother taken sick and then her mother wasn't sick but a few days till she died and then she had to do the house work all by herself. She would milk and do the house work and may be feed the hogs, and things like that some times.
Q. And she and Bascomb both made their home there and stayed there all the time except may be the week ends after Bascomb was married he would go up to his wife's people and see his wife at Sugar Grove?
A. That's right.
Q. The work that Bascomb and Sarah did there was the kind of work that is customary to be done by members of the family, is that right, Carl?
A. Well, she taken care of the farm and looked after Mr. Patton.
Q. Do you authorize the Notary to sign your name to this deposition?
A. Yes, sir.

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And further this deponent saith not.

CARL JENNINGS
By ESSIE B. MARSHALL

MISS SARAH J. PATTON,
another witness of lawful age, being first duly sworn, deposes and says:

DIRECT EXAMINATION.

By Mr. Campbell:
Q. Miss Sarah, what is your age and where do you live?
A. I believe I am sixty eight, I believe I was. in March, sixty seven or eight, and I believe it is sixty eight.
Q. Do you live at Speedwell?
A. Yes, sir.
Q. You are the Sarah J. Patton that is mentioned in the will of J. W. Patton, are you?
A. Yes, sir.

Sarah J. Patton.

Q. Have you ever been married?
A. No, sir.
Q. Miss Sarah, do you remember when your father and mother bought the McLaurin place over near Speedwell?
A. Yes, sir.
Q. About what is the acreage of that farm?
A. I have heard them say, but I have just forgot.

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Q. Did you all move down there after the farm was bought?
A. Yes, sir.
Q. What sort of a price did your father pay for that farm?
A. I don't remember what it was, but I guess it was a big price from what they all said the day of the sale.
Q. Now, after he bought that farm did he have any trouble paying for it?
A. Oh; yes, I had to help him all along when I got in the post office where I was making anything.
Q. You were Postmaster at Speedwell for a number of years?
A. Yes, sir; twelve years, or something over.
Q. During what period would that have been?
A. The republicans went in—
Q. President Harding?
A. Yes, and Hoover.
Q. President Harding in 1920, you went in some time after Harding got elected?
A. Yes, I think a year after.
Q. You stayed on till Roosevelt got in?
A. Yes, sir; I think I stayed on two years after Roosevelt got in.
Q. So you had the post office around twelve years, or a little better?
A. Yes, sir.
Q. During that time did you help your father any in paying for the farm?
A. Oh; yes, lots of times when he would send off his payments I would give him some money, he didn't have enough.

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Q. What agreement did you have with your father about what he was to do in consideration of the payments and the work that you did there, and what Bascomb did on the farm?
A. You mean when I was first paying? There wasn't no agreement then, I just loaned him some.

Sarah J. Patton.

Q. Then did you make an agreement with your father and mother?

A. Yes, when they made the will. He come to me and asked if me and Bass had enough to pay it off, says if you will I will write the will and give us the lower part if we would pay it off the rest of it. We figured it up and agreed; it took the biggest part of what I had left. Tell you the truth, the whole business, I got about, I spent the biggest part of it on the other.

Q. You mean the biggest part you got of being postmaster went on the land?

A. Yes, sir; I had money to spend, but still the most of it went to paying on the farm.

Q. That was when it was paid up?

A. That's what I paid.

Q. I hand you what is a part of an old note, dated in 1939, signed, "J. W. Patton" and pasted onto a yellow piece of paper. Do you recognize the part of that note there?

A. Yes, sir.

Q. Where did you get that?

A. My daddy wrote it out and give it to me.

Q. How does it happen to be torn up?

A. After he died I didn't think about anything coming up and I was just cleaning up and all, I throwed that and all my checks and that other thing, $700.00, all of it in a big box up stairs, and after this come up I never did find it all, but found this much; that is how come it to be tore up, like that.

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Q. Now, the part of this that you have left here, looks like, "Promise to pay to S. J. Patton the interest only on" Then part of it is gone, and pick up: "Seven hundred and forty four dollars and fourteen cents" written out and then down below that are the figures "$2,744.14," and it says at "three per cent" and on land, for land, or something.

A. Yes, that's what it was.

Q. How did your father happen to give you that paper?

A. Well, when I paid that off he said he give me that to show I had paid it, and he said that he would pay me interest, but he never did get around to that; it looked like he never could have enough when he paid the taxes I would have to let him have money to pay taxes.

Q. Now, this $2,744.14 represented what you put in the final payment on the farm?

Sarah J. Patton.

A. Yes, that was the last payment. I expect you could see Walker, I think he was the fellow they paid it to.

Q. Now, Miss Sarah, your father gave you this, did he, as evidence of the fact, that is to show that you had paid this much money?

A. That's right.

Q. What was your agreement with your father about what he was to do if you paid this off?

A. Me and him and my mother and Bass all agreed together that he would make the will and give us that to the line fence next to the Kirk field. They made the agreement, all four of us together.

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Q. Will you file this part of the note there with your deposition marked "Exhibit Sarah J. Patton Number One"?

A. I will.

Q. Now, I hand you the remains of another note that is dated January 31, 1939, and payable to Sarah Patton and it reads, the part that is left, "*ven* Hundred" spelled out, "with interest at 3 per cent" and signed, "J. W. Patton, Sr." and then in ink "Note S. J. Patton," then the rest is torn off, "at Bank for me." Do you remember what was the amount of this note when it was given to you, and how much it was?

A. No, I can't remember.

Q. But it was for something that you had paid at the Bank for him?

A. You know what I think? I think it is that one.

Q. I hand you a note of $700.00 dated January 9, 1939, signed by J. W. Patton, payable six months after date to the Bank of Speedwell. Now, what is your recollection as to what this torn note was for?

A. All I know now, I won't be sure about it, unless it was a receipt for that; that's all I know.

Q. Now, you mean that this torn note was representing the note of J. W. Patton for $700.00 that you paid off at the Bank of Speedwell?

A. If it ain't, I don't know what it is for.

Q. Is that your recollection?

A. That's all I could figure out what it could be.

Q. Did you pay $700.00 for him at the Bank?

Sarah J. Patton.

A. Yes, sir, Hobert knows that.

Dep. May 9, 1955 page 44 } Q. You paid off a note of $700.00 for your father at the Bank?

A. On the Wes Lanter place. Hobert saw it.

Q. Now, Miss Sarah, then this torn note bears three per cent interest, doesn't it?

A. Yes.

Q. Did your father ever pay you that?

A. No. You see, he put it in the will. He said he might not be able to pay it, he said if he got the money he would. He put it in the contract; we was to have the whole place five years to represent the interest. The will tells that, don't it?

Q. You answer the questions as you remember them. Now, I hand you a certified copy of your father's will and on page 1, the second paragraph, it reads:

"I give to my wife Elizabeth O. Patton and to my daughter Sarah J. Patton, my undivided interest in all of my real estate for the remainder of the life of my wife and if my wife dies within five years of my death then my daughter Sarah J. Patton shall hold the same and enjoy all the rents and profits from the same for a full period of five years from my death."

Now, was that put into the will in accordance with the agreement that your father had about the interest?

A. Yes, sir, that was put in.

Q. Will you file the torn note dated January 31, 1939, and the note for $700.00 dated January 9, 1939, which I have just shown you, marked "Exhibits Sarah J. Patton Number Two and Three"?

A. I will.

(By Mr. Campbell: We will ask the Notary to paste the torn note on a piece of paper as was done for the $2,744.14 item.)

Dep. May 9, 1955 page 45 } Q. Now, Miss Sarah, did you know that your father was coming over here to get his will and your mother's will written?

A. He said he was.

Q. He told you?

A. Yes, sir.

Sarah J. Patton.

Q. Did he show you the wills after they were written?

A. Oh; yes, he brought them back and showed them to us.

Q. Just tell us what he said when he brought the wills?

A. I don't know whether I can remember just what he said. I can't tell you just what was said.

Q. As near as you can, what was the talk about the wills?

A. I know him and me and mother and Bass all discussed it, but I can't hardly repeat any of it.

Q. Did you discuss whether or not those wills carried out the contract that your father made?

A. Yes, sir.

Mr. Parsons: This question is objected to because Miss Patton has said two or three times she did not remember anything Mr. Patton said when he brought the wills back, and further that this is a leading question, trying to elicit something from a witness when she has testified she did not know anything about it.

A. I'll tell you, if I forget anything and anybody tells me, I remember then.

Q. Tell us what was said and what you talked about after your father brought those wills back; just what you said?

A. He asked if they was agreeable to what the contract was to make them, and me and Bass both told him they was all right.

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Q. Now, Miss Sarah, what was done with your mother's and father's wills after they was signed up?

A. My mother took them and put them in a machine drawer and locked them up.

Q. Did she have any other papers in there?

A. Yes, she had some money, we didn't know she had the money, but she had some money in the bottom of the drawer, and Bass—what he paid, he told her to give it to him, he might lose it. She said "you might need it." He paid his in a check and we went one day to look about the will, and Pa's will was gone. My mother's will was there, but Bass' check was gone that he paid on the land, and the lock was broke, somebody had broke in it. I asked him about it and he knowed nothing about it, but that will finally turned up, but it wasn't where we put it.

Q. You found it somewhere around the house?

A. Yes, but never did find the check.

Sarah J. Patton.

Q. That was Bass' cancelled check?
A. That's right.
Q. Do you know about what the amount of the check was?
A. I believe it was $1,600.00.
Q. Now, Miss Sarah, after your father and mother made these wills, did you know what part of the land you and Bass were to get?
A. Yes, sir; I knowed.
Q. And that is the part that is described in the will?
A. Yes, sir; that's what.

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Q. Did your father say anything to you about buying any land adjoining that?
A. Yes, sir; when they put the land up for sale.
Q. What land is that?
A. The Buford land. Mr. Parsons sold it. When they was advertising it, he says to me, "Why don't you and Bass buy that?" I said, "We haven't got no money." It hadn't been so long since we put in the money to pay the loan. Because, he says, "It joins you and if you get that much you can make a living on it." He named it to Bass, and I know I did, and so we bought it that day.
Q. Your father asked you to buy that land so it would adjoin you, what you were going to get under the will?
A. Yes, he said it joins us and we ought to make a good living. He was the cause of it.
Q. Would you have bought it except for the fact that you were to get the front part of the McLaurin property?
A. I doubt wehther we would, because it wouldn't have done us much good. I didn't think about it until he named it and I doubt whether we would have bought it.
Q. Now, just tell us what all you did there on the place, Miss Sarah?
A. I just couldn't hardly tell you: but now as to going to work on the farm, when we lived up the hollow I did work out, shucked corn, cut corn and everything, but after we moved down there I didn't, but I worked in the garden till the last few years Bass had to do it; I waited on my mother, and done too much. I can't do much now.
Q. What did you do for your mother?

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A. For the last few years she couldn't do much. She had asthma; she couldn't sweep.
Q. You had to do the house work?
A. Yes, and I milked I don't know how many cows there.

Sarah J. Patton.

Q. Was the milk sold?

A. Yes, we sold milk to go on the farm. I milked I don't know how many cows. Of course, she helped me a lot of the times when she was able.

Q. But she wasn't able part of the time?

A. Lots of the time she wasn't.

Q. After her death you had to do all the work?

A. Yes, sir.

Q. Did you do any feeding?

A. When Bass was gone, if he would be late I fed the hogs, and I think I have put out fodder, but I didn't make a habit of it; I fed the hogs.

Q. And did Bass work?

A. He worked; he went out with them to make hay and cut corn, and when they threshed or anything, he would help and even when my Dad was renting it he nearly always plowed the corn for the men.

Q. Would your father crop out part of his land?

A. He did for the last year, but before that Bass would put out a piece, Carl Jennings would put out a piece and Ed Sayers, and they would help one another get through with their work, but now for the last, of course, since we have been renting, but I have got disabled to do and Bass had to help more around home and that is one reason he said he rented more of it because Bass had to attend to the garden and help with the cows and do things like that, you see.

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Q. Now, Miss Sarah, when your father was sick who waited on him?

A. I waited on him; I believe he was sick four months; they all said two or three, but I believe it was four, may be a little over: and we brought him to the Hospital and he wouldn't stay. It is like Mr. Shaffer said, ever since he married this woman his mind went off at the Hospital, we had to take him back and I bet it was two or three weeks I never had my clothes off. Bass said he would stay some and help; he said you have just stayed here and stayed here, why don't you get out and go to Speedwell. He said if Bass was here he would wait on me, but he just don't know how.

Q. How old was your father when he died?

A. I believe eighty seven.

Q. For how long before his death had he not been able to do any work?

Sarah J. Patton.

A. I am telling you ever since we moved down to the McLaurin place he didn't do much actual work. He got out a few days and would fall, but for the last several years he hadn't even went to the field.

Q. Did he have trouble in walking?

A. Yes, sir.

Q. What was the date of your mother's death, if you remember?

A. I believe it was 1945, I ain't sure.

Q. After your mother's death did your father keep on with the whole farm, taking everything that was made on it?

A. My mother had six cows. She had seven or eight, but finally lost one or two. He said take two cows of my mother's, and I took two and Bass two and we got the calves from them.

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Q. I mean with the land?

A. Yes, he kept on with the land.

Q. He took all that was made on the land?

A. Yes, me and Bass had some cattle.

Q. But anything that was made other than the cattle that you and Bass had he took?

A. He took. He had Bass and Carl to put out the bottom one time and he told them he would—but one side that that is all Bass ever got any of the grain or anything they raised.

Q. Did your father tell you anything after he wrote his will, about that he was going to show it to the other children?

A. I tell you, when Ma died they all come and he said he was going to show it to them.

Q. Did he?

A. I think he did. I think he showed it to all of them but Hobert.

Q. Did he give any reason why he was not going to show it to Hobert?

A. Yes, he said Hobert would get mad and may be mistreat him. What he left to Hobert for his life and then to Hobert's child. He said Hobert was kinder hard to get along with. When he first wrote the will he said, "I wish I had just give it to himself and you all will have trouble with him, and then let Woodie get it after his death."

Q. Miss Sarah, during the time that you were there with your father and your mother, did they ever say anything to you about how well you were doing for them and taking care of them?

Sarah J. Patton.

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A. Yes; my Daddy was always getting after me about doing too much. He said, "When I am dead and gone you won't have to work."

Q. What did he say about Bascomb?

A. He said he wanted me and Bass to have it. But he told me on his dying bed—of course, his mind was bad, but he told me, I don't know how many times, "You and Bass are the only ones that have done anything for me." If he was living today, if I could stand on my feet, I would do everything I could for him. That's how much I thought of him.

Q. Coming back to the cancelled check, that was taken out of the machine drawer?

A. Yes, sir, the sewing machine drawer. Yes, we had it locked.

Q. You say as nearly as you can recall it was something like $1600.00?,

A. Yes, sir; that's right.

Q. And that was Bass' money that had gone into paying off the loan?

A. Yes, sir.

Q. Was that check payable to your father

A. Yes, I think it was. I wouldn't be positive, but I think we all give the checks to him and he put it in his name and sent it off.

Q. It was actually sent off in your father's name?

A. Yes.

Q. And you and Bass would give him the money, or the checks, and he would send it off?

A. That's right.

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Q. Was that $1600.00 to go on the last payment?

A. Yes, that was when we paid up the loan.

Q. That was plus the $2700.00 and something that it took to finish paying off the loan?

A. That's right.

Q. Now, all of the time after your mother's death your father took what she gave him under her will, didn't he?

A. Yes, he got one-third of the cattle and one-third of everything that belonged to her.

Q. He got that after her death?

A. Yes, sir.

Sarah J. Patton.

CROSS EXAMINATION.

By Mr. Parson:

Q. Sarah, I believe you have lived there with your father all your life?

A. That's right.

Q. You never have gone away from home?

A. Not even to visit, hardly.

Q. And you loved your father a great deal, didn't you?

A. Oh; yes, that's right, my daddy and mother was all to me.

Q. What you did there, caring for him, was on account of your love for him, and you would be willing to do it again?

Mr. Campbell: Put that in two questions.

Mr. Parsons: I am asking the questions. You ask yours the way you want to and I will ask mine.

A. My Daddy said he give me enough so when he was dead and gone, he says, "You are working too hard, and I am giving you enough that you won't have to work". He told me that several times after he was on his death bed. Of course, if he hadn't had nothing and hadn't a place to stick his head I would have done for him just what I done.

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Q. You did what was natural for a daughter to do?

A. Of course, and the fellow that waited on him and done for him was the ones to get what he had. That's the way I look at it. May be I am wrong.

Q. What you did after you moved to the McLaurin place was the house work?

A. I worked the garden, fed the pigs and milked the cows.

Q. But all this evidence about you being a regular farm hand is not correct?

A. I didn't work all the time. I didn't shuck corn and make hay, but I did up at the other place. The postmaster said one day, "If I was you I would quit work and not milk all those cows," she says, "You can't stand that."

Q. Sarah, I believe you said you loaned him little amounts along and you would make him some small loans?

A. I done that and helped him pay his taxes.

Q. They were loans that you made to him, is that right?

Sarah J. Patton.

A. Yes, he got the money from me to send to finish paying. Like him and Ma had so much to pay every month or every three months, and he lacked having enough. If Mr. Cornett was living he would know.

Q. Was there any understanding about this money being paid back?

A. Yes, sir; that was before he made the deed, but after he made the deed I never did get it back.

RE-DIRECT EXAMINATION.

By Mr. Campbell:

Q. You say deed; you mean the will?

A. That's right.

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page 54 } RE-CROSS EXAMINATION.

By Mr. Parsons:

Q. Then what you let him have was for loans?

A. I call it borrowing; I don't know.

Q. You don't have anything to show for any amount you let him have except this note that you have presented here?

A. I believe I might have in my pocket book one of the checks I give him away back there to pay on the tax to John McGavock, but I don't believe I've got but one.

Q. Do you know what you made at the post office?

A. Yes, around $1200.00.

Q. $1200.00 a year?

A. No, $1200.00 the time I was in there; no, $12,000.00; it was $1200.00 a year.

Q. During all that time you stayed there with your father?

A. That's right, and worked.

Q. Got board and room there?

A. Yes, and got up and milked all them cows and come to the post office and come back in the evening and worked till after dark.

Q. At the time you paid the loan off you made a loan to him at that time?

A. That is what that twenty seven hundred and some dollars was.

Q. Do you know what this $700.00 was at the Bank of Speedwell?

A. Yes, that was on the Wes Lanter place that he bought,

Sarah J. Patton.

and I don't know, I guess it was more than that at first, but I guess he paid some; but anyhow, when he paid the Bank loan off, the $700.00 loan was still due and I paid that too.

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Q. That didn't have anything to do with the McLaurin Farm?

A. No, sir, that didn't belong on it. And he said he would pay that back, but he never, but he says, "If I ever get it, and if I don't you are getting enough for it any how that you won't have to work when you get older".

Q. What kind of work did Bass do?

A. He farmed along till the last few years. They usually have three patches, Carl put out one, Ed one and Bass one.

Q. He worked along the same as Carl Jennings and Ed Sayers?

A. Yes, and when they would make hay they all three make it, and when they cut wheat they was all three out doing it.

Q. Did your father continue to look after the farm until a short time before he died?

A. He would tell them where he wanted them to put it; some body come along and rent a piece he would tell them where, but he never got out on the farm, he hadn't for a long time. May be if it was right close the house he might go down in the field or something like that.

Q. You spoke of renting the farm out the last few years. What did you mean?

A. He just rented ground; he's got some rented now, we have. Some of them said if the will was broked—we sold a lot of our stuff. I've sold my horses; haven't got a thing to do nothing with; we rented some of the land.

Q. Did your father rent it before he died?

A. Some, to Carl and Ed. It has been several years ago, I reckon, George put out a little corn or wheat a time or two.

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Q. Was Bass away at the filling station for two or three years?

A. He was gone a while, I can't recall. That's when I had a hard time. I had to do feeding, some times I would even have to get out and measure the corn and see to it, Pa went one morning, and come in and says "I'm give out, I can't go"; and I would have them bring it most of the time into the crip and help measure it.

Q. Bass made his home there?

A. Yes.

Sarah J. Patton.

Q. I believe he married a couple of years before your father died?

A. I don't know just how long.

Q. He continued to stay there only on week ends?

A. Some times; some times go on Saturday and back Sunday or go on Sunday and back Monday morning.

Q. You spoke of Bass paying, you thought he paid, you wasn't sure, $1600.00.

A. Yes. I said I wasn't for sure it was that. It was either fifteen or sixteen hundred, and I think it was $1600.00.

Q. Was that a check on the Bank of Speedwell?

A. I believe it was; I ain't sure now; but I always wrote my checks to my Daddy and he sent the money off to the Land Company; I guess he did. I can't recall, but I've seen the check.

Q. When was that?

A. It was when we paid up the land, 1939,. Was it on that note.

Mr. Campbell: The note is 1939.

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page 57 } Answer continued. I guess that's about the time we paid it up.

Q. That was some five years before the will was written?

A. It may have been, I just forget.

Q. Now, do you understand that Bass gave a check on the Bank of Speedwell to your father for this amount, about 1939?

A. I won't be sure about that, but I guess it is about that time. If I tell you anything wrong I do it through ignorance. I want to do the right thing, there is a hereafter on this stuff and if I do anything wrong it is through ignorance. Talking about Bass when he stayed in the filling station, the men they had there—I had to go out and feed the big cattle, that is what Mr. Bennington was talking about; that's the reason he quit up there, I just couldn't do the work, but I never did think I was too good to do any kind of work as long as I stayed able.

Q. Where did Bass get this money, do you know, that he paid?

A. Yes; me and him both had a few cattle and later when he got it saved, he was like Mr. Bennington said about me, he didn't throw it away.

Q. He made it from cattle that was kept on your father's place?

Sarah J. Patton.

A. Yes, my mother give him a start of cattle, she give him a cow and she give me one, my mother; and we kept on till we got a few head, that way, you know.

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Q. I believe you said your father was sick four months?

A. I believe it was something like that.

Q. He was active until that time?

A. He wasn't much. Lots of times I had to pull him up. He would go to Speedwell and couldn't hardly get up the road, but he would say it was good for him, his legs got better when he walked around. He wasn't able to do nothing for a long time.

Mr. Parsons: I would like to make an objection to some of these questions and answers. All the foregoing questions and answers concerning the amounts paid by Sarah Patton and Bascomb Patton on loans due by their father objected to for the reason that any payments in this connection were mere loans. to Mr. Patton and are long since barred by the statute of limitations.

RE-DIRECT EXAMINATION.

By Mr. Campbell:

Q. Miss Sarah, Mr. Parsons has asked you something about lending money to your father. Now, I wish you would tell us just what your agreement was with your father about lending him money?

A. To go on the debt. After the will was made the agreement was already made. You see we paid off the debt before the will was made, didn't we. When we paid the debt the contract was that they were to make that will and we was to get that part of the land for it.

Q. So then your contract between your father and mother and you and Bass was that if you would pay off this payment on the McLaurin place?

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A. That's right.

Q. That they would leave you the part of the McLaurin place that is described there in the will. Is that right?

A. That's right.

Q. And it was on the strength of that promise on the part of your mother's and father's part that you went ahead and paid this money?

Sarah J. Patton.

A. That's right; a fellow wouldn't hardly do that, pay it and not know whether you would get it back.

Q. And the three per cent mentioned in those two torn notes, that's what he was going to pay you until you got the land?

A. Yes, he was to pay that interest.

Q. At three per cent?

A. Yes.

Q. And when he didn't do that he gave you the land for five years?

A. That's right, give us the land for five years for the interest on what we had done and paid off. He said they couldn't have stayed there—couldn't have kept house without us, and I think any of you can go over to Speedwell and find that out.

Q. And that is the second clause of your father's will that you and your mother were to have all the real estate for five years?

A. That's right, that's what that was for, it was for the interest.

Dep.
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page 60 } RE-CROSS EXAMINATION.

By Mr. Parsons:

Q. Sarah, at the time you let your father have money to finish paying off the loan, the amount being $2,744.14, he gave you a note for that money, didn't he?

A. Give me that thing.

Q. This?

A. Yes, sir; that's right; he said he was giving me that to show how much I had paid. I wasn't to ever get it back. He just signed it on that to show me that I had paid it because it says on one of them notes it was only the interest .—He has done said not to talk.—I believe that's the way of it. I ain't got much mind no more. I can't remember like I did.

Q. How long before the wills of your father and mother were made did you learn he was going to make the will? Was it about the time the wills were made?

A. It was when we paid it off, I guess. I know that's the reason we paid it, but I don't know whether that was just the

time or before that. I guess it was about that time. It might have been a month or two before we made the payment.

Q. With reference to when he made the wills, when was the time?

A. I don't know; when was the wills made?

Q. I am not asking about the date, but I mean how long before?

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A. It was when that loan was made, he would make us wills for it.

Q. Do you know how long it was before the wills was made?

A. It might have been two or three weeks, I don't believe it was long before we made the payment.

Q. How long was it before the wills were made that he told you he was going to make these wills?

A. I don't understand you. I just told you a while ago it might have been two or three weeks, but might have been a few days, but anyhow it might have been a month or two, two or three days, I couldn't tell you that.

Q. Do you authorize the Notary to sign your name to the deposition?

A. Yes.

And further this deponent saith not.

SARAH J. PATTON
By ESSIE B. MARSHALL
Notary Public.

BASCOMB PATTON,
another witness of lawful age, being first duly sworn, deposes and says:

DIRECT EXAMINATION.

By Mr. Shaffer:

Q. What is your full name?

A. Campbell Bascomb Patton.

Q. What do your relatives call you?

A. Bass.

Q. What was the date of your birth?

A. 1910.

Bascomb Patton.

Q. Where were you born?
A. Wythe County.
Dep. May 9, 1955 page 62 } Q. How old were you when you moved to the McLaurin farm?
A. I guess I was right around eleven, close eleven.
Q. Well, you are the person who is referred to in the will of J. W. Patton as C. Bascomb Patton?
A. Yes, sir.
Q. You are the person here several witnesses have referred to as Bass?
A. Yes.
Q. Do you remember when your father purchased the McLaurin farm?
A. Yes, sir.
Q. Was there any indebtedness against that property at the time it was purchased?
A. Yes.
Q. What grade did you go to in school?
A. Eighth grade.
Q. What did you do after you stopped school?
A. I worked on the farm.
Q. What farm?
A. The McLaurin farm, the one my Daddy owned.
Q. What acreage is in the McLaurin farm?
A. I think the tax ticket came out 356 and a fraction over.
Q. Is that the 356 acres that was owned by your father at the time of your mother's death?
A. Yes, sir.
Q. At the time the wills were written?
A. Yes; that means the whole tract that they owned together, the back farm and the McLaurin farm,
Dep. May 9, 1955 page 63 } but there is 313 I think in the McLaurin and the back place around fifty some acres, I don't know exactly.
Q. Did you and your sister Sarah Patton and your father J. W. Patton and your mother Elizabeth O. Patton have any agreement or contract as to the property that was owned by your father, J. W. Patton and your mother Elizabeth O. Patton?
A. Yes, sir.
Q. What agreement did the four of you have?
A. Well, they was to give us that frontage there, according to the will, you know.

Bascomb Patton.

Q. What frontage is that?
A. Next to the highway.
Q. How much land is included in that portion of the property?
A. I don't know exactly, I think around forty acres, forty some.
Q. That is the property referred to in the third paragraph of your father's will on page 1?
A. Yes, sir.
Q. What was the basis of this contract that the four of you entered into?
A. The way they made the will.
Q. Before the will what was the agreement that the four of you had?
A. Because we had helped them on it and paid some on it, and stayed there and helped them and worked and helped them pay on it, and if we would stay with them their life time and kept this agreement that was made between us.

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Q. Between who?
A. My mother and daddy and Sarah, if we stayed with them their life.
Q. All four of you were together at the time you had that agreement?
A. Yes, sir; that was several different times.
Q. What were you to do. and what was your sister to do to carry out that agreement?
A. We was to stay with them their life time.
Q. And mere you to make any payment there on the loan?
A. Yes, we did help them pay on it, but that was part of the agreement to make the payment on that loan, but what we done and gave them to make the will.
Q. Do you know what amount your sister Sarah Patton paid on this loan when it was closed out?
A. I couldn't remember the exact figures, but as well as I remember, something over $3,000.00.
Q. What amount did you pay on the indebtedness?
A. $1600.00.
Q. How was that paid?
A. By a check.
Q. Do you recall who the check was made payable to?
A. I think it was made payable to my mother.
Q. Do you know who it was made payable to?
A. No, not exactly, you see that has been so long, anyhow, I give them the money to pay on the place.

Bascomb Patton.

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Q. Did your mother at that time lend you any money which you paid on the place, also?
A. Yes, she gave me $400.00.
Q. And what then was the total amount which you paid on it?
A. $2,000.00.
Q. What was the amount of the check?
A. $2,000.00.
Q. Where was this check kept?
A. Kept in the machine drawer there in the house, locked up.
Q. That was with the wills?
A. Yes, sir.
Q. And have you been able to find that cancelled check?
A. No, sir.
Q. Why have you been unable to find it?
A. I reckon somebody broke the lock and got it, all I can figure out.
Q. Was this agreement made at the time, or shortly before the time the indebtedness was made, or part of it paid by you and your sister to give you and her a portion of the property?
A. Well, I don't know exactly what; it was a while after that, I couldn't say exactly how long it had been.
Q. Well, as a result of this agreement did you stay there on the farm and take care of your parents and continue to work on the farm?
A. Yes, sir.
Q. For what period of time did you stay there and work?
A. Well, I stayed,—only staying away in the filling station, which is something less than two years.

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Q. Did you work there in the filling station—
A. Somewhere around that, I couldn't say just to the month or week, but around two years, a little less.
Q. Bascomb, did you stay there at the filling station and work before or after the indebtedness was paid in full?
A. After the indebtedness was paid in full.
Q. That is, after you had paid up the money which you paid?
A. Yes, sir.
Q. That was after you had entered into this agreement with your parents?
A. Yes, sir.

Bascomb Patton.

Q. Where did you return to from the filling station?
A. Home.
Q. Have you worked there from that date up to the present time?
A. Yes, I stayed on the farm.
Q. Would you describe in detail the various work which you performed on the farm?
A. I farmed; Carl and all stayed there, we all worked together on the farm, but since my daddy died I have about altogether rented, but I have done some work on it, you know.
Q. Was there an understanding between the four of you as to the way the wills were to be made; that is, that your mother and father were to execute each will carrying out the agreement between the four of you?
A. Yes, sir.

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Q. Were these wills shown to you?
A. Yes, sir.
Q. Were your mother's will and your father's will both shown to you?
A. Yes, sir.

Q. Who showed the wills to you?
A. Well, I think my daddy brought them there and just laid them out there, handed them to me or laid them on the table, and I picked them up and read them.
Q. Did he talk to you numerous times about the will?
A. Yes, a few times I think they was mentioned.
Q. Was there ever any discussion between you and your father and Sarah Patton about the purchase of additional land?
A. Well, all I know is about the Buford place.
Q. What was that?
A. It was joining the place to Mother and Dad's farm there. We bought that, I think the date was in 1942.
Q. What conversation did you have with your father prior to the time you bought the Buford place?
A. He told us we ought to buy it to have more land there together, with the other, have more land to make a better living, said we had enough land to make a good living on.
Q. What other land was this Buford land to go with?
A. What other land? It was the Martin girl at that time. She bought part of it.
Q. I am referring to the part of the Buford place you bought. What was it to go with?
A. It was to go with what they give me and Sarah.

Bascomb Patton.

Q. That is the land that your mother and father had agreed to give you and Sarah?

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A. Yes, it joined that.

Q. Did you stay there on this property and work it as a result of their agreement to give you all that portion of it?

A. Yes, sir.

Q. How did you accumulate the money which you paid on that indebtedness?

A. I made most of it on the farm.

Q. How would you make it on the farm?

A. I had a few head of stock cattle; mighty few, I didn't have much.

Q. Up until the time that the indebtedness was paid off in full did you receive any compensation for the work on the farm, or did all the proceeds go toward paying off the indebtedness?

A. It went towards paying off the debt. I saved what I could get by with, I figured I had to do that or lose the place; the depression came at that time and there wasn't much money made on the farm, and that is the only thing I saved it for.

Q. Was it a difficult task to make enough money to pay it?

A. Yes, sir.

Q. What was the date of your mother's death?

A. 1945.

Q. After her death, did your father accept the benefits set out in your mother's will with reference to the property?

A. How is that?

Q. Did your father accept the benefits under your mother's will?

A. Yes.

Q. Did he operate the property after your mother's death?

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A. Yes.

Q. Did you receive any of the proceeds from the land for your interest in it after her death?

A. No, very little, from the grain or anything that growed on the land, very little.

Q. Did you receive any of the proceeds from the land after your mother's death, or did your father receive that?

A. He received most of it.

Q. How was the stock divided after your mother's death?

A. Well, it was divided between me and Sarah and my daddy.

Bascomb Patton.

Q. How was it divided?
A. One-third each.
Q. That is the stock that your mother owned on the farm?
A. Yes, sir.

CROSS EXAMINATION.

By Mr. Parsons:
Q. When was this agreement made that you speak off?
A. I couldn't tell you the exact date.
Q. When was it made in reference to the date of the will?
A. I couldn't tell you exactly about that.
Q. Was it along about the time the will was made?
A. Well, it was some time after.
Q. Some time after the will was made?
A. Oh; I thought you said when the will was made.
Q. Did you understand what my question was? You spoke of an agreement about making the will. When was that agreement?
A. Well, I guess it was before.
Q. Guess it was before what?
Dep. May 9, 1955 page 70 } A. I couldn't recall just exactly. Usually when anybody makes an agreement they make it before.
Q. Before what?
A. Before the will was wrote.
Q. How long before the will was written?
A. I can't recall.
Q. Can you give us some estimate?
A. I imagine a little while after.
Q. What do you mean by a little while?
A. Just a period of time.
Q. That's what I want to know, about what period of time?
A. I wouldn't know, I couldn't say exactly.
Q. Was it a period of days, period of weeks, months of what?
A. Well, I wouldn't know, I couldn't say, that has been years ago.
Q. Well, the wills were executed in 1944, I believe?
A. The dates here show.
Q. Was this agreement there in 1944?
A. I guess it was, I reckon, I couldn't tell you what date it was. I can't recall that.

Bascomb Patton.

Q. The will seems to have been dated October 31, 1944?
A. I think, I remember reading them.
Q. About how long before October 31, 1944, would you say this agreement was made?
A. I couldn't say exactly.
Q. Could you say it was some time during the year 1944?
A. Yes, I guess it was around that.

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Q. Now, Bascomb, tell us just what the agreement was?
A. The agreement was to—what they give us was for what we had helped them and paid on the place and we was to stay with them and take care of them.
Q. Now, at the time you advanced that money to pay on the loan, what was the understanding then between you and your father about the repayment of it?
A. He didn't say nothing about it, didn't say nothing about paying me, he just told us what he was going to do and what he was going to give me for what we had done.
Q. Was there any understanding there at the time you put the money up, anything said then between you, of any kind?
A. Yes, he said for what you all are doing, that if we had the money to pay the debt off, and he told us what he would do.
Q. When was it you worked at the filling station?
A. That was '46 and '47, through '46 and the biggest part of '47.
Q. That was after your mother died, wasn't it?
A. Yes, about the last of '45 when I started working.
Q. Was it your agreement that you were to stay there and work on the farm all the time after that agreement was made?
A. Yes.
Q. Then you were away for a period of about two years after the agreement was made, weren't you?
A. Not all the time. I was at home part of the time.
Q. But you spent most of the time at this filling station?
A. That's right, but that was all right with my daddy. He was living then, he didn't have any objections.

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Q. What Bank was that check given on that you spoke of?
A. Speedwell.
Q. And was that in 1939?
A. Well, it was when that loan was paid off. A fellow forgets dates that long, but if you know when the loan was paid off that is when the check was given.

Bascomb Patton.

Q. Bascomb, did your father continue to supervise and over-see the farm up to a short time before he died?
A. Well, most of the time. Of course, he was getting old and childish, you know.
Q. What you did was similar to that of a farm laborer, wasn't it?
A. Not *all together.*
Q. What kind of work did you do?
A. I worked on the farm.
Q. Did you drink any during this period, Bascomb?

Mr. Campbell: Objected to as immaterial.

A. Oh; yes, I drink some. During what period you mean?
Q. The time that you were there with your father in 1940, on?
A. 1940 on; I never drank much.
Q. You didn't?
A. No.
Q. Were you drinking at the time your mother died?

Mr. Campbell: Objected to as immaterial.

A. No, I wasn't drinking.
Q. Were you arrested on the day your mother died, by the officers?

Mr. Campbell: Objected to as immaterial.

A. Is that in this case.

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page 73 } Mr. Campbell: They have asked it, you have to answer.

A. Was I arrested?
Q. By the officers?
A. I can't recall about the day she died. I never did drink much from '40 on up, very little that I ever drank.
Q. You have been brought here in court a few times, haven't you?

Mr. Campbell: Objected to as immaterial.

Bascomb Patton.

A. What for.
Q. For drinking and tearing up a filling station?—
A. No.
Q. Not for any of those things?
A. Yes, sir; I have been up for drinking.
Q. I believe your father re-married after your mother died, didn't he?
A. Yes, sir; that's right.
Q. He re-married after these wills were made?
A. Yes, sir.
Q. Do you know the date of his marriage?
A. No, not exactly, in was in 1950. The year 1950 I am might near positive it was.
Q. How long did they live together?
A. I think for a period of three or four months. I don't know exactly.
Q. Did you stay at home then or somewhere else?
A. I stayed at home.
Q. How did you happen to go and take over the filling station in the first place, Bascomb?
A. A fellow has a right to buy, ain't he?
Q. I just asked you how you happened to go into it?

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page 74 } Mr. Campbell: Objected to as immaterial.

A. Every man's got a right to buy, buy a place if he wants to; I've got a right to go buy a filling station today if I want to.
Q. Any special reason why you took it over at that time?

Mr. Campbell: Objected to as immaterial.

A. The other fellow had it, I just took it off of his hands.
Q. Who owned it?
A. I took it off of Lon Hale was running it when I took it.
Q. Did Lon have it leased?
A. No, it belonged to Hobert at that time the building did.
Q. Bascomb, did you ever hear your father talk about changing his will?
A. Yes, I think I have, yes.

Bascomb Patton.

Q. What did he say about that?

A. Well he said something about changing it on account of Hobert.

Q. What did he say about making a change in his will?

A. He said he thought Hobert had done got his part and talked about changing it, and talked about changing it and giving Hobert a part off to himself.

Q. Did he ever talk to you about being dissatisfied with the work you were doing there on the farm?

A. Me and him; we got along.

Q. How is that?

A. I can't just recall.

Q. Do you remember him making complaint to you about how you were working there and what you were doing, etc.?

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A. No, I don't believe I do, exactly. Of course, when anybody gets old there is misunderstanding between us.

Q. What was the misunderstanding?

A. After he got old—me and him we always got along, about going to do anything, may be he would say we do it one way and I would suggest another.

Q. As a matter of fact he was very much dissatisfied there, wasn't he?

A. No, I don't think so. No. You know at the time he wrote the will, do you think he would have wrote a will if he was? He said I always stood by him.

Q. I am talking about after he made the will?

A. He said I always stood by him.

Q. Any time after he wrote the will wasn't he dissatisfied with the way you were doing?

A. I don't know about it.

Q. Do you know that he wanted George to go and take the place over?

A. No, didn't know that until Hobert was the one told that, the day we met, some time in 1952. My Daddy died in July, 1952, and two or three months after that Hobert told that over there. I think I heard him tell it or somebody told me, I believe I heard him say, that's all I know about it. I didn't hear George say a thing about it.

Q. You hadn't heard he made three different trips to George's at Rural Retreat trying to get him to come down and take over?

Bascomb Patton.

A. No, sir.

Dep. May 9, 1955 page 76 } Q. Now, you have been at the McLaurin farm since you were eleven years of age, is that right?

A. I wasn't quite eleven when we moved there, I believe was the way it was.

Q. You were furnished there with your board?

A. Yes.

Q. And with room?

A. Yes.

Q. Clothing, necessities of life, by your *w*ather, wasn't you?

A Yes, I stayed there and worked.

Q. You continued there as a member of the family?

A. Both of them helped me, my mother and daddy, both, they had to help me at that age, to start with.

Q. What little work you did around the farm is nothing more than any son would do for his father, was it?

A. Well, I tried to help him in every way I could. If I hadn't you know I wouldn't have saved that money to help him and I was getting to the age at that time that I realized, I thought we would lose the place if I didn't save and help him. Of course, I wasn't making very much at that time; that's all I saved, I don't know what period of time, several years.

Q. What work you did there would have been what you would naturally be supposed to do since you were living there with your father, and a member of the family, isn't that correct?

A. I done a lot of work there.

RE-DIRECT EXAMINATION.

Dep. May 9, 1955 page 77 } By Mr. Shaffer:

Q. Bascomb, you said at the time this money was put up that your father told you what he was going to do, in answer to one of Mr. Parson's questions. Now tell us what it was and what the agreement was that your father was going to do, you never did finish your answer?

A. Will that place for what we done, and if me and Sarah would stay with him, that we had lived with them and stayed with them.

Q. That's what the agreement was at the time this money was put up?

A. Yes.

Q. And the will just carried out that agreement.

A. Yes.

Bascomb Patton.

Q. When were you married?
A. '48
Q. After your marriage did you continue to stay on the farm and work the farm from the date of your marriage on till the present time?
A. Yes, sir.
Q. What was your father's physical condition during the last several years of his life?
A. He was awful feeble.
Q. For the past several years was his condition such that he could go out to the different sections of the farm and manage or direct the work?
A. Not to my judgment he couldn't.
Q. Did he ever go out?
A. No, sir, not in his last days
Q. Not in his last years?
A. Not in the last several years of his life.
Q Did you go out and attend to various matters on the farm?

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A. Yes, sir.
Q. Some question was asked you about a change in your father's will. Was there ever any discussion on the part of your father about changing the provisions for you and Sarah?
A. No, sir; I can't recall that there was.
Q. The only discussion then about the change of the will was with reference to your brother Hobert Patton?
A. Yes, sir.

RE-CROSS EXAMINATION.

By Mr. Parsons:
Q. Bascomb, your father continued to come to Wytheville and go to places up until a very short time before his death, didn't he?
A. Well, I think he did go places, Speedwell, and over here, as far as I know, he would leave the house a lot of times; most of the time I think he didn't go no further than up to Mr. Bennington's.
Q. He did come frequently to Wytheville?
A. He did come along, but he didn't come as often as he used to, to my understanding. Just like Mr. Bennington said, he would go to his place lots of times and set. He done that on account of if he stopped going he couldn't get around.
Q. Do you have any evidence of any kind of this $2,000.00 you say you put up?

Bascomb Patton.

A. I did have, I had a receipt to show.

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Q. What was that, the cancelled check?

A. Yes, sir.

Q. Did you ever have anything else except that?

A. I stayed there and worked. I wasn't paid nothing, just to help, and what I made I put it right back in the place, practically everything only just about what I could barely get by on, mostly.

Q. Sarah seemed to have a note from your father, I just wanted to know if you had anything?

A. Yes, I had a receipt to show and it got away. The will shows that there was advancements that I made.

Q. You had a receipt from your father, or was that the cancelled check?

A. Cancelled check.

Q. Did you have anything else except that?

A. No, sir.

RE-DIRECT EXAMINATION.

By Mr. Shaffer:

Q. Why was it that you had the cancelled check as a receipt?

A. My mother told me "you had better keep this it might come in good some time." I think I said, I *ain't* for sure, somebody said something about the will, and she said, "You had better keep that check it was a good receipt," that there wasn't "no better receipt than the old check."

Q. Since the check was lost or stolen, have you attempted to locate some evidence of that check?

A. I have searched around all over the house, I thought everywhere it would be, and me and Sarah has talked about it, wondering where it went and who got it. I don't know where it went to.

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Q. Did your father make any statement to you about the check being a receipt?

A. Yes, I think my mother and daddy both. I remember my mother well because she put it away and locked up up, and I think he said it would be a good receipt. I ain't positive, but I know she did because she told me where she put it at and locked it up.

Bascomb Patton.

Q. Do you authorize the Notary to sign your name to this deposition?
A. Yes.

And further this deponent saith not.

C. BASCOMB PATTON
By ESSIE B. MARSHALL
Notary Public.

I, Essie B. Marshall, a Notary Public in and for the County of Wythe, in the State of Virginia, do certify that the foregoing depositions were duly taken, reduced to writing, and signatures of the witnesses authorized before me at the time and place and for the purposes mentioned in the foregoing caption.

Given under my hand this 24th day of May, 1955.
My commission expires February 16, 1958.

ESSIE B. MARSHALL
Notary Public.

Fee to Essie B. Marshall, Notary Public, for taking and transcribing the foregoing depositions, $35.50.

My presence may be noted at the taking of the foregoing depositions.

W. C. THOMAS, Guardian *ad litem.*

M. H. Patton et als.

v.

Sarah Patton et als.

DEPOSITIONS.

The depositions of A. L. Porter and others taken before me, Essie B. Marshall, the undersigned Notary Public, to be read on behalf of the complainants in the suit of M. H. Patton et als. *v.* Sarah Patton et als. now pending in Wythe County

A. L. Porter.

Circuit Court, at the law offices of Campbell and Campbell, in Wytheville, Virginia, on this the 5th day of January, 1956, pursuant to agreement:

Present: W. P. Parsons, Attorney for the Complainants, and M. Hobert Patton and George B. Patton, two of the Complainants, in person.

S. B. Campbell, Attorney for the Defendants and cross-complainants, and Sarah J. Patton and Bascomb Patton, the Defendants, in person.

W. C. Thomas, Guardian *ad Litem.*

A. L. PORTER,

a witness of lawful age, after being duly sworn, deposes and states as follows:

DIRECT EXAMINATION.

By W. P. Parsons:

Q. Please state your age, place of residence and occupation?

A. Sixty seven years old, dairy farmer, R. F. D. Rural Retreat, Virginia.

Q. Did you know J. W. Patton, who is now deceased?

A. Yes, sir.

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Q. How long did you know him?

A. All my life.

Q. How well acquainted were you with him?

A. Unusually well. I saw Mr. Patton every week and some times every day.

Q. You are acquainted with the farm that he owned in Wythe County?

A. I know it very well.

Q. Known as the McLauren farm?

A. Know it well; been on it various times.

Q. Mr. Porter, what kind of property is this?

A. It is fine land, fine type of soil; not improved and somewhat grown up.

Q. Is there bottom land on it?

A. Yes, sir, nice bottoms.

Q. Where is this located?

A. East of Cripple Creek, on Highway 21, just outside of the little town of Speedwell.

A. L. Porter.

Q. What part of the farm is the bottom land on?
A. How is that?
Q. What part of the farm is the *borrom* land on?
A. It is on the east side, I guess.
Q. Is it down next to the highway?
A. The highway, I imagine, just about divides it equally. I mean the bottom land.
Q. Do you know what improvements are on the property?
A. Well, a dwelling house and some out-buildings. It is well fenced along the highway, and the barn, I guess, is just not much any more.

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Q. Mr. Porter, if the bottom land and the buildings and the field north of the house, and all the land that fronts on the road is cut off into a separate tract, how do you think that would compare—to contain say about 125 acres, how do you think that would compare in value with the rest of the property?

Mr. Campbell: This question objected to as immaterial.

A. Well, the side with the barn would be much more valuable. An acre of bottom is usually worth about four or five acres of hillside. Of course, there is some nice land up over the top, what you might call level up land. I would say that behind it wouldn't be worth over one-third per acre what this other is.
Q. How would the value of the land on the back side be affected if it is cut off entirely so that there is no road frontage?
A. It would be seriously hurt. It would be hard to make a farm, a complete farm unit without the front.

Mr. Campbell: All of this evidence is objected to as being immaterial.

Q. Mr. Porter, do you know whether or not Mr. Patton was active in looking after his business affairs during his life time?
A. It had been a long time since Mr. Patton was able to do any manual labor, but he did, I think, keep up very well with his business.

A. L. Porter.

Q. Do you know whether he continued to over-see and look after his farm up until a short time before his death?

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A. I feel that he did. I would not say in detail.

Q. Do you know his son, Bascomb Patton?

A. Yes, known him all of his life, I guess. Well, ever since they have lived in Wythe County.

Q. Do you know what work, if any, he did on the farm?

A. Yes, I know that he did work some.

Q. Do you know to what extent?

A. No, I don't know. Mostly hearsay, probably didn't work too hard.

Mr. Campbell: This is objected to as the witness has admitted he doesn't know anything about it. He says it is hearsay.

Q. Do you know whether he operated a filling station in Speedwell a few years ago?

A. Yes, sir, he did for a while.

Q. About how long was he operating that station?

A. I would say may be a couple of years, I am not sure about the time, may be less.

Q. Do you know during that time whether he devoted his time to working at the station rather than working on the farm?

A. He was at the station most of the time, was my observation trading some with him and being down there.

Q. Mr. Porter, do you recall the time that his mother died?

A. Yes, I do.

Q. I wish you would state whether or not on this date that there was a warrant out for Bascomb Patton and the officers were looking for him to make his arrest?

Mr. Campbell: This is objected to as immaterial and inadmissible.

A. I only heard that.

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Q. Do you know whether or not Bascomb drank any intoxicants very much about this time?

A. L. Porter.

Mr. Campbell: Objected to as immaterial and inadmissible.

A. Well, I think at that time he drank some.

CROSS EXAMINATION.

By S. B. Campbell:

Q. Mr. Porter, how often were you at Mr. Patton's home in the last five or ten years?

A. Just occasionally, Mr. Campbell, I wouldn't say.

Q. You wouldn't be there once a year?

A. Not over, I would say, a couple of times, sometimes go in to see Miss Sarah after preacher money.

Q. You would sometimes go to get money for the preacher?

A. That's right.

Q. Don't you know that during the last ten years of Mr. Patton's life he was not able to do any manual work?

A. That's right.

Q. Before that time for several years he hadn't done very much manual work?

A. That's right, he hadn't.

Q. Do you know Miss Sarah Patton?

A. Yes, sir.

Q. Did you ever know anybody to work any harder than Miss Sarah has?

A. I doubt if I did. She was a wonderful worker.

Q. She stayed there and took care of her mother and father, and looked after them well?

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A. She certainly did.

Q. That was a fact known in the community?

A. Yes, sir.

Q. And people remarked on how well she had cared for them?

A. Yes, sir.

Q. Now, Mr. Porter, in regard to *Branscomb,* you do know that *Branscomb* worked there on the farm because you have seen him, have you not?

A. Yes, sir, I have seen him do work.

Q. Did Mr. J. W. Patton ever discuss his business affairs with you?

A. Very little, he was a man that just didn't do that, as far as I know.

A. L. Porter.

Q. He and your father were really closer than you and he were?

A. Yes.

Q. Now, you were talking about the land over there. That is a beautiful bottom in front of the house, isn't it?

A. Yes, as good as anybody's.

Q. Now, when you go from the spring toward the creek there is a good deal of marsh?

A. Yes, sir, there is land in there that needs drainage.

Q. Land there that is a substantial part of it marshy?

A. Yes, sir.

Q. The land between the road and the creek over-flows?

A. I think I have seen water in there.

Q. Part of it is also marshy?

A. Yes, sir.

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Q. Mr. Porter, you are familiar with what is known as the Buford place?

A. Yes, sir.

Q. That is the big old frame house that was torn down?

A. Yes, eighty acres in all of it to begin with.

Q. Do you know that Miss Sarah and Bascomb bought that?

A. I know they bought part of it.

Q. That part of it that they bought would be mighty convenient to use with this bottom land off of the Patton place?

A. It certainly would.

Q. And it would fit in there and round out the bottom land of the Patton place?

A. That would make an awful nice farm.

Q. Now, when you talk about the other land of the Patton farm, when you get up on top of the hill back of the house is that mighty good land?

A. That is good land.

Q. Good strong land?

A. Oh, yes, one of our best types of soil in the County.

Q. That land lies well, too, doesn't it? In fact that McLauren farm taken as a whole was considered as one of the best farms in the County, wasn't it?

A. Yes, mighty good.

Q. That is what Mr. Patton bought about 1920 from P. C. Shannahan, did he not?

James L. Hale.

A. That's right.

Q. Now, Mr. Porter, did it come to your knowledge that Mr. Patton had a mighty heavy debt on that land and had paid mighty high for it?

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A. Yes, sir, I understand he owed about $10,000.00 and it was thought he had paid mighty high for that land.

Q. You and other people thought he would have trouble paying for it?

A. I thought he would.

Q. He was a mighty thrifty man?

A. Yes, he was saving.

Q. It took a hard long pull to pay out?

A. It does on any farm.

Q. And particularly when he had as much on that farm?

A. A lot of money then.

RE-DIRECT EXAMINATION.

By W. P. Parsons:

Q. Mr. Porter, do you know that Sarah Patton and Bascomb Patton made their home there with J. W. Patton?

A. Yes, I know that to be a fact.

Q. Mr. Porter, would you consider a loan of $8,500.00 a very big loan on that farm?

A. It would be a mighty safe loan.

Q. Be mighty safe for anybody to carry it?

A. Yes, sir.

Q. Do you authorize the Notary to sign your name to this deposition?

A. I do.

And further this deponent saith not.

A. L. PORTER
By ESSIE B. MARSHALL
Notary Public.

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JAMES L. HALE,

another witness of lawful age, after being first duly sworn, deposes and states as follows:

James L. Hale.

DIRECT EXAMINATION.

By W. P. Parsons:

Q. Please state your age, residence and occupation?

A. Forty years old, unemployed, at present live at Speedwell.

Q. What kind of work have you done?

A. Bookkeeping.

Q. Did you know Mr. J. W. Patton?

A. I did.

Q. Are you acquainted with the McLauren farm which he owned?

A. Not too well, just as you would any place that was around close to you is about all.

Q. Do you know Bascomb Patton and Sarah Patton?

A. I do.

Q. Do you know whether or not they lived there in the home with their father, Mr. J. W. Patton?

A. They did.

Q. Did they continue to live there on up till the time of Mr. Patton's death?

A. Yes, they still live there.

Q. Do you know whether or not Bascomb Patton operated a filling station at Speedwell for a while?

A. Yes.

Q. When was this?

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A. In December, some time in December, I don't remember the exact date; for approximately two years.

Q. December of what year?

A. '46.

Q. Did he, during this time did he spend most of his time at the station?

A. Yes.

Q. Did he do any work on the farm during this time?

A. I don't know whether he did or not.

Q. Did you see him around the station there a good deal?

A. Yes, sir.

Q. Do you know whether he slept at the station during this time?

A. Yes, sir.

Q. Did you have any connection with this station yourself?

A. No, I guess not. Not at the time when he was running it I didn't.

James L. Hale.

Q. Did you just before he took it?
A. Yes, I run it for a few weeks before he took it.
Q. How did you happen to be at the station?
A. I bought the station for him.
Q. You bought it for who?
A. For Bascomb.
Q. And how did you happen to buy it for him?
A. He asked me to.
Q. Who was operating it before?
A. Mostella.
Q. Do you know why Bascomb got you to buy this station?

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A. Most of that would be hearsay; what I heard about why he wanted to buy it would be hearsay because that's all. I wasn't there when it happened. About the warrant.

Q. What did you say about what you heard Mostella got a warrant for him?

Mr. Campbell: We object to that as inadmissible and immaterial.

Q. Do you know what the warrant was for?

Mr. Campbell: Object to that. Immaterial and inadmissible.

A. Will you state that question again?
Q. What was the warrant for?
A. I don't know exactly what. I heard it was for bad conduct.
Q. Then you operated it a couple of weeks and turned it over to Bascomb?
A. I don't know whether it was two or three weeks, I operated it a short while.
Q. Do you know to what extent Bascomb ever worked on the farm?
A. No.
Q. Did Mostella, the owner of this station, make any statement to you in regard to this warrant?

Mr. Campbell: Objected to as immaterial and hearsay.
Witness: May I ask a question? When a question is objected to am I supposed to answer?
Mr. Campbell: Yes.

E. M. Patton.

A. I was talking to Mostella. I visited the station because it was close to the Post Office and I usually went over there every day to the Post Office, and Mostella told me that if somebody would buy his station out he would just leave and forget everything. He tried to sell the station to me, Mostella did.

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Q. Did he say anything about not appearing against Bascomb if somebody would buy the station?

Mr. Campbell: Objected to as immaterial and inadmissible.

A. As I said, he said he would leave and not appear in Court.

Q. Do you authorize the Notary to sign your name to this deposition?

A. I do.

And further this deponent saith not.

JAMES L. HALE
By ESSIE B. MARSHALL
Notary Public.

E. M. PATTON,
another witness of lawful age, being first duly sworn, deposes and states as follows:

DIRECT EXAMINATION.

By W. P. Parsons:

Q. Please state your age, residence and occupation?

A. Fifty nine, carpenter.

Q. Live at Speedwell?

A. Yes, sir.

Q. Were you acquainted with Mr. J. W. Patton?

A. Yes, sir.

Q. Are you related to him?

A. Yes, sir.

Q. What relation?

A. He was my uncle.

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Q. Did you know the farm which he owned there at Speedwell, known as the McLauren farm?

A. Yes, sir.

E. M. Patton.

Q. Have you been on the farm?
A. Yes, sir; been all over it.
Q. I wish you would state whether or not Mr. Patton looked after his business affairs on up to a short time before his death?
A. Well, as far as I know he did.
Q. Do you know that he looked after and managed his farm there?
A. Yes, sir, he managed the farm, as far as I know.
Q. Did his son Bascomb Patton and his daughter Sarah Patton live with him there in the home?
A. Yes, sir, they lived with him?
Q. Do you know to what extent Bascomb worked on the farm?
A. Sir?
Q. Do you know to what extent Bascomb worked on the farm?
A. No, I don't know just how much he worked.
Q. Was he a good worker or not?

Mr. Campbell: Objected to as immaterial.

A. I have seen him working on the farm.
Q. Did you know he operated a filling station at Speedwell for a while?
A. Yes, sir.
Q. About how long?
A. I don't know; I imagine about a year and a half, or maybe two year, I couldn't say.

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Q. During that time do you know whether he did any work on the farm or gave his time to the station?
A. I don't know of him doing any work on the farm at that time.
Q. Do you know who looked after selling the livestock, doing the trading, etc., on the farm?
A. My uncle done all that as far as I know.
Q. Was that the case on up to about the time of his death?
A. Well, yes.
Q. Did you ever talk to him, or did he ever talk to you about his business affairs there on the farm?
A. He never talked to me much about his business on the farm, only he did tell me how much he would generally sell his cattle for and showed me how much his cattle brought.

E. M. Patton.

Q. Show you a check that he got for his cattle?

A. Yes, sir, he would show me every time, he did for several years.

Q. Do you know about how much it was?

A. Yes, they run the checks from along about $2,000.00 to $2,800.00 for cattle.

Q. Do you know what condition the farm is in at this time?

Mr. Campbell: Objected to as immaterial.

A. It is good land, but it needs a lot of repair work and fencing and cleaning up.

Q. Mr. Patton, what effect do you think that if the front part of that farm is cut off so as to take in all of the road frontage, including the buildings and the land north of the house there, would have on the value of the back part of the farm?

Mr. Campbell: Objected to as immaterial.

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page 15 } A. Do you mean the whole back side, back of the house?

Q. My question is if you take in all the road frontage how would it affect the value of the back part of it?

A. I wouldn't know. It would affect the value a whole lot.

Q. How would the value of the back part of it compare with the value of the front part of the farm?

Mr. Campbell: Objected to as immaterial.

A. I would say one acre down there would be worth six or eight back on the back side.

Q. Do you recall the time that Mrs. Patton died?

A. Yes, sir.

Q. Do you know whether or not the officers were looking for Bascomb on that day to make his arrest on a warrant?

Mr. Campbell: Objected to as immaterial.

A. No, I don't know only what I heard, and I don't know.

E. M. Patton.

Q. Did you ever buy anything from the farm?
A. Yes, sir, I bought some straw and sometimes a little corn.
Q. Who did you go to to buy?
A. I went to my uncle, Mr. Patton.
Q. And he was looking after the farm and would do the trading?
A. Yes, sir, I traded with him.

CROSS EXAMINATION.

By S. B. Campbell:
Q. Mr. Patton, your uncle, J. W. Patton, was a man of good judgment, wasn't he?
A. Yes, sir.
Dep. Jan. 5, 1956 page 16 } Q. And he had the reputation of being a man who knew his own mind, didn't he?
A. Yes, sir.
Q. Now, Mr. Parsons has asked you about who looked after the farm there in the latter years of Mr. Patton's life and I understood you to say that he still did trading and things like that, is that correct?
A. He traded with me, when I got anything I got it of him.
Q. Mr. Patton during his latter years was not able to do any manual work, was he?
A. No, sir, he didn't do any work in the field.
Q. That is what I am talking about, he didn't do any farm work for a long time before his death?
A. That's right, yes, sir.
Q. During that time Bascomb was there working?
A. Yes, sir, I have seen him work.
Q. And also Miss Sarah was there?
A. Yes, sir.
Q. Did she take care of her mother and father?
A. Yes, sir. She took care of them well.
Q. She devoted her life to them?
A. Yes, sir.
Q. She had been Post Mistress at one time?
A. Yes, sir.
Q. Do you know whether, when she was drawing a salary as Post Mistress she turned the checks over to your Uncle to go on the farm?
A. No, sir; I don't know.

E. M. Patton.

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Q. He didn't discuss his business affairs with you?

A. No, sir.

Q. You do know that Mrs. Patton had a right long illness, didn't she? Miss Sarah's mother?

A. Yes, sir, she was sick, I don't know just how long.

Q. And then some body had to look after the house and keep things going and Miss Sarah did it?

A. Yes, sir, she did it.

Q. And after her mother's death she just took the place there as the housekeeper?

A. That's right.

Q. Are you familiar with the will that Mr. and Mrs. Patton made?

A. No, sir.

Q. Now, it is in evidence here that these were the wills that were made. Mrs. Patton's name was Elizabeth O. Patton, wasn't it?

A. Yes, sir.

Q. You know Mr. J. C. Shaffer here in Wytheville, commonly called Joe Crock?

A. Yes, sir, I know him.

Q. Known him a long time?

A. Yes, sir.

Q. Your uncle had a great deal of respect for him and for his opinion?

A. Yes, I think he did.

Q. They were real good friends, weren't they?

A. Yes, sir, I think so.

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Q. Now, Mrs. Patton's will, which was dated in October, 1944, she gave her husband J. W. Patton and "my son C. Bascomb Patton an undivided interest in all of the real estate for the remainder of the life of my husband and if my husband should die within five years from my death then my son C. Bascomb Patton shall hold the same and enjoy all the rents and profits from the same for a full period of five years from my death."

Now, Mr. Patton's will says: I give to my wife Elizabeth O. Patton and my daughter Sarah J. Patton my undivided interest in all my real estate for the remainder of the life of my wife and if my wife dies within five years of my death, then my daughter Sarah J. Patton shall hold the same and enjoy all of the rents and profits from the same for a full period of five years from my death." And his will was dated

the same date as Mrs. Patton's will, and the evidence is that those two documents were prepared by Mr. J. C. Shaffer. Mr. Patton at that time knew exactly what he wanted, didn't he?

A. Well, I don't know. I suppose he did.

Q. You knew his mental condition and he was active and knew what he was doing and usually did what he wanted to do, didn't he?

A. That's right.

Q. In other words he was a man of his own will, wasn't he?

A. Yes, sir.

Q. Did you know that Mr. and Mrs. Patton owned that land half and half, owned it jointly?

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A. I knew they owned it together. I didn't know just what part they owned it.

Q. Now, Mrs. Patton's will continues and the same provision is found in Mr. Patton's will: "After the termination of the interest given above," that is, to his wife for life and to Bascomb for five years if Mrs. Patton did not live that long; "I then give to my son C. Bascomb Patton and my daughter Sarah J. Patton the undivided interest in my home and all the bottom lands and the field north of the house which is known as the McLauren farm." And Mr. Patton provides identically the same thing in his will. They must have had some reason for making those provisions, mustn't they?

A. I don't know.

Q. Knowing Mr. Patton like you did, you know he wouldn't do a thing without some reason?

Mr. Parsons: Objection. Calling for the opinion of the witness.

A. I suppose if he made it he wanted to make it. He made it on his own free will, I suppose.

Q. And each will says, "I have preferred C. Bascomb Patton and Sarah J. Patton because of advancements heretofore made by them to me." Did you know about those advancements?

A. No, sir.

Q. Moneys that they had let him have and work they had done there?

A. No, sir.

E. M. Patton.

Q. But Mr. Patton was a careful business man, wasn't he?

A. Yes, sir.

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Q. And if they had made advancements he would have known whether they had made any advancements to him, wouldn't he?

A. I suppose he would.

Q. When you were talking about the value of the property did you say six acres of the back land would equal one acre of the front land? Was that your proportion?

A. If *if* was all added up it would equal that much, I would say.

Q. How much of the back land were you considering when you arrived at that figure?

A. How is that?

Q. How much of the back land were you considering, or did you have in mind, when you reached that figure?

A. Well, I wasn't taking in the whole thing as far back as it went; if you took the whole farm back it would be more difference than that.

Q. How much were you taking into consideration as being the front land?

A. The field back of the fence where that calls for it, goes back to the woods; I would say that would be about five or six acres in that, to this down here next to the road.

Q. Now, that land on top of the hill and on back there is good strong land?

A. Yes, sir, it is good land.

Q. What is it worth an acre?

A. I don't know.

Q. What is your judgment?

A. I would hate to say.

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Q. What is your judgment as to what the other land is worth?

A. I don't know. I am not much of a real estate man and I don't know what it is worth.

Q. You are a carpenter?

A. Yes, sir.

Q. And what you are giving here about these values is just a guess?

A. The best of my judgm*d*nt.

Q. Just a guess and you don't claim to be a farmer or a real estate man?

A. No, I *aint* no real estate man.

Q. Mr. Patton, do you know the place called the Buford place?

M. Hobert Patton.

A. Yes, sir.
Q. Did you know that Miss Sarah and Bascomb bought that?
A. Yes, sir, I understood they owned it all the time.
Q. That would fit in mighty well with the bottom land on the Patton land, on the McLauren farm?
A. Yes, sir; that would go with that good.
Q. In fact you would nearly have to have that bottom land to make anything out of the Buford place?
A. It would help it a whole lot.
Q. Do you authorize the Notary to sign your name to this deposition?
A. Yes, sir.

And further this deponent saith not.

E. M. PATTON
By ESSIE B. MARSHALL
Notary Public.

Dep.
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page 22 } M. HOBERT PATTON,
another witness of lawful age, being first duly sworn, deposes and states as follows:

DIRECT EXAMINATION.

By W. P. Parsons:
Q. Please state your age, residence and occupation?
A. Fifty seven, farmer most of the time, a merchant now; residence Speedwell.
Q. Are you a son of J. W. Patton and Elizabeth O. Patton, both of whom are now deceased?
A. Yes, sir.
Q. Are you one of the complainants in this suit?
A. Yes, sir.
Q. What was the date of the death of your father?
A. It was in 1952, in July.
Q. What was the date of the death of your mother?
A. It was about '49, I believe; '46, she died in '46, I don't know just exactly the month.
Q. Please give the names of the heirs and distributees at law of your father and mother.

M. Hobert Patton.

Mr. Campbell: It is admitted that the bill sets out correctly the heirs and distributees of J. W. Patton.

Q. There are eight children as set out in the bill?
A. Yes, sir.
Q. I believe all of them are residents of the State of Virginia except one, your sister Effie, is that correct?
A. Yes. No, there is one in North Carolina, my oldest sister is in North Carolina.

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Q. What is the address of your sister Effie?
A. I haven't got that address. She was in New York the last I heard.
Q. I wish you would please state what real estate your father and mother owned at the time of their deaths?
A. They owned the McLauren farm, what they bought there in '20, and then he owned the back side of that that he owned when he bought that farm, I expect it would run sixty or seventy acres of it on the back side. It joins the McLauren farm. Then he owned the school house and four room apartment there in Speedwell.
Q. As I understand, the McLauren farm was owned jointly by your father and mother?
A. Yes.
Q. In what proportions?
A. My mother two-fifths and my father three-fifths is the way I understood it.
Q. How much is in the McLauren farm?
A. There is 300 and my recollection is the road might have taken up some; there was 337 I think when they first bought it.
Q. Has any of it been sold off?
A. Only the road took about three acres and something, nearly three acres.
Q. Then in addition to your father's interest in the McLauren farm he also owned individually a tract of land adjoining the McLauren farm on the back?
A. Yes, sir.

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Q. How much did that contain?
A. I don't know exactly the acres, but it was around sixty acres, or sixty some.
Q. And he also owned what is known as the school house property in Speedwell?
A. Yes.

M. Hobert Patton.

Q. Did your mother have any other real estate except her interest in the McLauren farm?

A. Not as I know of.

Q. I believe your father and mother bought this farm in 1920 from P. C. Shannahan?

A. That's right.

Q. What price did he pay for the farm?

A. He paid a pretty good price, I reckon I ought to know what he paid for it and what he got for the farm in Grayson because I lived on the Grayson farm and know what your Daddy offered him for that before he bid on this one at all.

Q. What was the price for the McLauren farm?

A. It was a little the rise of $46,000.00. I forgot the figures to the exact dollar, but it was over $46,000.00.

Q. How much did the Grayson farm bring?

A. It was 390 acres and he guaranteed $90.00 an acre; you can figure it.

Q. Do you know that farm brought $35,100.00?

A. It was a little over $35,000.00.

Q. So the money which was realized from the Grayson County farm was to pay on the purchase price of the McLauren farm?

A. Yes, sir.

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Q. Then this left about ten to eleven thousand dollars—

A. Around $11,000.00.

Q. Balance due on the McLauren farm?

A. Yes, probably a little over $11,000.00.

Q. Do you know from what other source he got money to pay for the McLauren farm?

A. He sold the timber off of the McLauren farm for $6,000.00, he put that on it, and he got the price of the road, $2,800.00; he told me he put all of that on it.

Q. So then the farm would have been pretty well paid for from the money realized from these sources?

A. He told me there was some expenses along and he borrowed $8,500.00 and he showed me the loan, he showed me where he borrowed $8,500.00, but I don't know just what year it was. It was after he bought this bottom.

Q. I believe he got this loan from the Federal Land Bank of Baltimore?

A. Yes, Mr. Thomas, there, collected the money.

M. Hobert Patton.

Q. Then the loan on the farm was $8,500.00, was that right?

A. Yes.

Q. Mr. Patton, I wish you would tell us something about this farm, the condition of it and just how it lays and kind of soil and improvements, etc.?

A. It lays southeast of Speedwell, southeast of Cripple Creek, and about one-third of the road cut off at the left as you go towards Speedwell, and about one-third of the bottom land, it was 90 acres in the bottom and this part of the bottom and to the first fence runs around between 140 and 150 acres, is my judgment on it.

Dep. Jan. 5, 1956 page 26 } Q. Now, is that the part of the land that is described in Mr. Patton's will that he gave to Bascomb and Sarah?

A. Yes.

Q. Does that take all of the road frontage?

A. Yes.

Q. If that is cut off would there be an outlet to the road from that part of the land?

Mr. Campbell: Objected to because an outlet is reserved as a matter of law.

A. It is not in the will, is it?

Q. Just go on and answer.

A. If it was cut off then we could hardly have anybody buy the back without a right of way, and it would be cheaper to get a right of way over the hill. I know what it is getting out of there because I owned some land back in there once.

Q. If this one hundred and forty or fifty acres was cut off to itself from the rest of the farm, how do you think the back part of the farm would compare in value with this one hundred and forty or fifty acre tract?

Mr. Campbell: Objected to as immaterial.

A. I wouldn't consider it over one-tenth. Some put it one-sixth or seventh, but the value would be less than that in my judgment.

Q. Would it affect very materially the value of the back part of the farm by cutting it off in this way?

Mr. Campbell: Objected to as immaterial.

M. Hobert Patton.

A. Oh, yes.

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Q. What buildings are on the farm, Mr. Patton?

A. The house, a big house, run down right smart, wood shed, wash house, and I believe the barn is tore down complete now, about to fall and was taken down.

Q. Are there buildings already on the one hundred and forty or fifty acre tract?

A. No, the back side of this where, as I told you, was not the McLauren farm, there was a small tenant house back there where we all used to live, practically raised.

Q. That building is not on the McLauren farm?

A. No, it is on the back side, it is about down now, it wouldn't be worth anything much.

Q. Please state in general what is the condition of the McLauren farm at this time?

Mr. Campbell: Objected to as immaterial.

A. It is pretty well run down, no fence on it much, no line fences either. On the front part down along the road is pretty fair fences. Pretty well growed up back behind, a lot of land back that was cleared up, it is growed back. It would be worth about as much to clean again.

Q. Mr. Patton, in your opinion, could the real estate which Mr. Patton owned at the time of his death be partitioned in kind to advantage among the owners; that is, give them so much land, or do you think it would be necessary to make a sale of the property for partition purposes?

A. Well, the way it lays it is pretty hard to partition. It could be done if it was stripped back through from one end to the other, but you see if one lays back he's

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got no way out. If it was stripped the other way it would be—But I never did go to my Daddy to ask about a will because I heard he made the will the way he had until I found out the will could be revoked. I don't know anything about what you can do about the will, in other words I don't need my part of it, I have been pretty lucky, but some of them do need it badly.

Q. In other words, you think if it was divided at all it would have to be a strip back from the road?

A. That's right.

M. Hobert Patton.

Q. And even if that was done do you think it would be better to sell it and divide the proceeds?

A. That would be the only way to get at it right is sell it.

Q. Would the interest of all the owners of the property be promoted by making a sale?

A. I think they would because there won't nobody buy it separated like it is. That would make more money for every body.

Q. Would the rights of any one be violated by reason of selling the property and dividing the proceeds?

A. No, not that I know of, if it was to be divided equal. We have all wanted to give Sarah more than anybody because she has done the work there longer than anybody and really needs more than anybody, and we want to give it that way, but didn't want to give as much as they are asking for, as the will calls for. You see Bascomb has never done the work that Sarah has, that is one reason I say she should have more than the rest.

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Q. As I understand, Sarah has lived there all her life?

A. Of course, she has had a home and lived there. She would have had to put out some for a home. Bascomb has had a home there; they couldn't have bought the McLauren farm, they would have been out. If they had been out and hadn't had a home, they would have to make some money some way or another.

Q. Mr. Patton, to what extent has Bascomb worked on the farm?

A. Bascomb has worked some, but he could have done more, I guess, but he has never over-worked, he has never kept the fences and gates and stuff up like he could have, but he has done some work, plowed corn and things.

Q. Do you reckon Bascomb has hurt himself?

A. I reckon not. I know I worked awful hard there for twenty six years. I would cut a field of corn, that is worth seventy five to one hundred dollars.

Q. How would you say the hill property you got compared—

Mr. Campbell: Objected to as immaterial and asked to be stricken from the record.

A. I ain't asking more than anybody else, and wouldn't want more than anybody else.

M. Hobert Patton.

Q. You worked yourself for twenty six years and all you got was a promise to be remembered in his will?

A. I bought a farm adjoining in 1924.

Mr. Campbell: Objected to.

A. And I give $8,500.00 for it and had $500.00 to pay down on it, and they never sold me out, and the old man went my security, but he never give me a nickel in his life, so far as that is concerned. They have been talking that the old man would have been sold out if he hadn't had help, but that 400 acres up there, with $8,500.00 loan which Mr. Thomas knows there, he wrote me one of $8,000.00 and I just had 119 acres.

Dep. Jan. 5, 1956 page 30

Q. Do you think the $8,500.00 loan could very easily pay off on that farm?

A. Very easy, from what he showed me he got for his cattle, there, $2,000.00 to $2,300.00. I don't see what went with that money.

Q. Hobert, did your father continue active on up till near the time of his death?

A. Yes, sir.

Q. What did he do?

A. I would tell him he oughtn't to walk up to Speedwell, have them bring him in a car. He says, "My legs, if I didn't use them I will get down and you know I am an old man, if I get down that will be the last of me."

Q. What did he do with reference to the farm?

A. I let him have fertilizer, and he always paid me for it. He bought the fertilizer, paid the hands for the work, and what was sold, of course, he got the money for it, corn and such as that, if he sold any.

Q. Did he continue to manage and look after the farm?

A. Yes.

Q. Who maintained and supported Bascomb?

A. Well, I guess he maintained and supported himself. He had some stuff, and cattle there on the farm and got paid for them, and outside of the farm all he worked was up in the station that he rented from me for around two years, I don't know the exact date, but around two years.

Dep. Jan. 5, 1956 page 31

Q. Do you think the work that Bascomb did on the farm would be any more than sufficient for his upkeep?

M. Hobert Patton.

Mr. Campbell: Objected to as immaterial.

A. Well, I wouldn't know. If he was working for me it wouldn't if he was working for me. I don't know what about the other fellow.

Q. Now, I believe that Bascomb ran a filling station at Speedwell for a while?

A. Yes.

Q. What date was that?

A. That was from December until he went out, around two years, I don't know. I owned the filling station and I could look at the records and find out how long he was in there.

Q. December of what year?

A. 1946.

Q. During that time did he stay at the station most of the time?

A. Yes, I was up there. He had a bed there and would go to the house once in a while, but very seldom.

Q. Did he do any work on the farm during this time?

A. No, he couldn't have.

Q. How did Bascomb happen to go into the filling station business?

A. Well, he drank a little liquor along at that time and he got up there, and that fellow that had it rented from me—

Mr. Campbell: All of this is objected to as immaterial and inadmissible.

Dep. Jan. 5, 1956 page 32

A. He got into trouble with him and he got Lon Hale to see about buying it out, and he said if he would buy it he wouldn't appear in court, so he give Lon the money to buy it from him, he thought he wouldn't sell it to him.

Q. That was Mostella, is that right?

A. Yes, sir.

Q. Well, then, did Mostella leave and fail to appear against him in court?

A. Yes.

Q. Hobert, do you recall the time your mother died?

A. Yes, it was that morning that they had a warrant for him, they run him in home.

Mr. Campbell: Objected to as immaterial and inadmissible.

M. Hobert Patton.

A. When she found out that they come for him she fell dead.

Q. She fell dead when they came to arrest him?

A. Yes.

Q. How did Bascomb keep up the gates and fences?

A. He never kept them up. The old man might have been alive today if it hadn't been for one gate. He was tying a chain around it, it was off the hinges, and it fell on him, the wind was blowing; he might have been alive today. Went to the hospital right after it and never did get out again.

Q. Did your brother George also work on this farm?

A. Yes, I know he helped some on the farm. When I bought my farm in 1924 I had to quit mostly. I helped cut a big field of corn, cut it after night on his own, but after that I didn't do much work there. Geroge built a spring house and built most all the fence along the side of the road where I went through there, but I don't know nothing about their contracts, how it was or nothing.

Dep. Jan. 5, 1956 page 33

Q. Do you know how long George worked on the farm?

A. I couldn't tell you how long he worked, off and on for several years.

Q. Do you know whether he received any pay for the work he did?

Mr. Campbell: Objected to as immaterial.

A. No, I don't know.

Q. Hobert, is there anything else that you wish to state that I haven't questioned you about?

A. No, not that I know of in particular unless, as I was telling you, I don't know how they paid all that money out when he didn't owe that much at that time he put all that on he told me. Sarah, I don't know how come her to misstate it; she claimed she made $100.00 every month at the post office, she has told here more than once. She didn't make more than $40.00 when she first took it over, $60.00 about Christmas times, and I had that record checked and that stands pretty well. Gladys Copenhaver witnessed the record.

Mr. Campbell: Objected to as hearsay.

Q. The only thing I could think was she tried to make them believe she made more money, and the post office wasn't paying it. It was just paying at the cancellation at that time.

M. Hobert Patton.

Q. In other words, according to the records she was getting $40.00 to $60.00?

Mr. Campbell: This question is objected to because it is leading and also the records are the best evidence.

CROSS EXAMINATION.

Dep.
Jan. 5, 1956 By S. B. Campbell:
page 34 } Q. Did you know about your Mother's will?
A. No, sir, I never did go to find out anything about it because I knew the old man was at his right mind and I figured that it would all be called up some time or another when they all passed out.
Q. You figured he would do what was right?
A. I figured he would.
Q. Your father was a man of good mentality, strong mind?
A. Yes, sir, right to the last.
Q. You got to talking about the purchase of the McLauren farm and the sale of the Grayson County farm.
A. Yes.
Q. Mr. John M. Parsons negotiated both of those sales?
A. That's right.
Q. And they were both sky-high?
A. Oh, yes.
Q. Now, Mr. Patton, the values that you have given as to the front and back of the farm there have been based on the fact that the back wouldn't have any outlet from it?
A. Yes, that's the way I understood, I heard you all read the will.
Q. If there is an outlet that is a very different proposition?
A. It is according to where it would be.
Q. If it is in the place where it ought to be?
A. It would make the value of the land worth more.
Q. It would make a big difference?
A. Oh, yes, it would make a big difference.
Dep. Q. Did your father tell you that he had made a
Jan. 5, 1956 will?
page 35 } A. He said something a time or two about a will. I said "I didn't want to hear nothing about it and you make it to suit yourself, you know you

promised me a time or two that you would take care of the stuff that I had done," but I says, "Now, you know what you are going to do, I don't want to hear another word about it."

Q. Did you know that your father had been over here and got Mr. Shaffer to write a will for him?

A. Andy Porter told me, that is all I know, he never told me.

Q. You know that Mr. Shaffer and your father were very close friends?

A. Oh; they always was.

Q. And he had a great deal of respect for Mr. Shaffer?

A. Yes, sir.

Q. Didn't you try to get your father to change that will?

A. No, sir.

Q. And to write another?

A. No, sir, never did.

Q. But you do recognize, and all of you, that Miss Sarah is entitled to more than anybody else?

A. Sure, that's right.

Q. She stayed and looked after your mother and father?

A. In a way she did; of course, she had a home while she was doing it.

Q. Gave them affection and good attention?

A. Yes.

Dep. page 36

Q. Hobert, did your father marry again after Jan. 5, 1956 your mother died?

A. Yes.

Q. When did he marry?

A. As to the date—I am hard about dates, I never kept up with it, I couldn't tell you.

Q. It was about 1950?

A. It was along about that time.

Q. At any rate, he was remarried after the will was executed?

A. Yes, sir.

Q. Who did he marry the second time?

A. He married a Testerman.

Q. I believe they lived together for a while and were then divorced, is that right?

A. Yes.

Q. Now, D. B. Patton who is mentioned in your father's will is your son?

A. Yes.

Q. What is his age at this time?

A. Fifteen.

George B. Patton.

Q. Do you authorize the Notary to sign your name to this deposition?
A. Yes, sir.

And further this deponent saith not.

M. HOBERT PATTON
By ESSIE B. MARSHALL
Notary Public.

GEORGE B. PATTON,
another witness of lawful age, being first duly sworn, deposes and states as follows:

DIRECT EXAMINATION.

Dep. Jan. 5, 1956 page 37

By W. P. Parsons:
Q. Please state your age, residence and occupation?
A. Sixty three, run a filling station now. I have been a farmer a long time.
Q. You live where, at Rural Retreat?
A. Yes. The last seven years I have been in a filling station.
Q. I believe you are a son of J. W. and Elizabeth O. Patton?
A. Yes, sir.
Q. You are one of the complainants in this suit?
A. Yes, sir.
Q. Mr. Patton, did you work on this farm for your father?
A. Yes, sir.
Q. About how long?
A. Well, I just couldn't say. Away back in the twenties I did a lot of work there. Helped them put up most all the corn, and just worked off and on.
Q. Over about what period of years there did you help him with work?
A. Eight or ten years all together.
Q. Were you living with him at that time, or had you moved away?
A. I never lived there.
Q. You then had married and were living to yourself before he bought the McLauren farm?
A. Yes.

George B. Patton.

Q. Did you receive any pay from your father for any work you did on the farm?

Mr. Campbell: Objected to. Immaterial.

Dep.
Jan. 5, 1956 page 38 } A. No, I don't think, practically nothing, if anything. I don't recollect him giving me anything for work I done. My sister did give me a little once, a time or two.

Q. Mr. Patton, you know about where the line would run if you cut off a 150 acre tract of land?

A. Yes.

Q. Is that correct?

A. Yes, sir.

Q. I believe this takes in all the bottom land, all the buildings and all the road frontage?

A. The road is right through the middle of it, the bottom land, practically.

Q. Then the back part of it would not have any frontage or outlet at all to the road?

A. No.

Q. What is the condition of the farm at this time?

A. Pretty bad shape on the back side. I went back there not long ago, it is might near in woods again.

Q. How do you think the back part of the farm would compare in value with the 140 or 150 acre tract?

Mr. Campbell: Objected to as immaterial.

A. For the whole works. I wouldn't give for all that is back there, I wouldn't give it for the bottom land, just what the bottom land is down there.

Q. If that tract is cut off would the land in the back be depreciated in value?

A. Do which.

Q. Be depreciated if that is cut off?

Dep.
Jan. 5, 1956 page 39 } A. I don't exactly understand.

Q. What effect would it have on the back part of the land if this 140 acres is cut off?

A. It wouldn't be worth much the place it is in and the shape it is in, getting to it, it wouldn't be worth half what the bottom land would be worth.

George B. Patton.

Q. I believe there are eight of you children, is that correct?

A. Yes, sir.

Q. Do you think the land could be partitioned in kind, that is, to give the owner so much land according to their shares, or would it be necessary to make a sale of it for the purpose of partition?

A. It looks to me like they would have to sell it, I don't know. Where it lays there is no outlet and they have got the front.

Q. Do you think it would be to the advantage of the owners to sell it for the purpose of partition.

A. That's what I would think.

Q. Would the rights of any one be violated by reason thereof?

A. No.

Q. Has your sister Sarah and your brother Bascomb made their homes there all their lives?

A. Yes, been there all their lives.

Q. How much work has Bascomb done on the farm?

A. Well, he used to, when I was there and *heoped* them, he used to cut corn and done a little bit of work, I don't know what he has done since. That was back, away years ago, he done a right smart work, but in later years I don't think he has done anything.

Dep. Jan. 5, 1956 page 40

Q. Away back, how far back are you talking about?

A. Back in the twenties and thirties, along in there he did some work because I helped them a whole lot then, helped cut all the corn at that time.

Q. Did Bascomb run a filling station at Speedwell for a while?

A. Yes, sir.

Q. About how long?

A. Well, I just wouldn't say, I wasn't down there, I was at Rural Retreat. I just wouldn't say how long he was down there, I wasn't down there but a few times while he was in there.

Q. Do you know whether he did any work on the farm while he was operating the filling station?

A. I don't think he did—any that I know of.

Q. Do you know whether Bascomb drank a good deal along then?

Mr. Campbell: Objected to as immaterial.

George B. Patton.

A. Yes, he drank a whole lot.
Q. Do you know about the time of your mother's death?
A. Yes, sir.
Q. What happened with reference to Bascomb on that day?

Mr. Campbell: Objected to as immaterial.

A. Just what they told me, I didn't see it.
Q. Do you know whether the officers were looking for him on a warrant?

Mr. Campbell: Objected to. Immaterial.

A. Yes, sir.

Dep. Jan. 5, 1956 page 41

Q. You have heard the testimony of your brother Hobert about the amount paid for the farm and the sources from which money was derived to pay for it? Do you know anything about that?

A. Well, nothing more than I left there after they made the deal to sell the land in Grayson County and bought that farm, and I left there shortly after that. I was backwards and forwards several times, and my Dad, I recollect, along about in '39 or the first of '40, he come and showed me his receipt where he had paid the whole thing off.
Q. You mean the receipt from the Federal Land Bank?
A. Yes, the receipt where he made the last payment on it.
Q. Do you know what he paid for the McLauren farm?
A. No, I don't know exactly.
Q. Do you know what he got for the Grayson County farm?
A. Yes, I knew he got around what Hobert said he did.
Q. About $35,000.00?
A. Yes, sir.
Q. And was this used to pay on the purchase price of the McLauren farm?
A. That was my understanding.
Q. Do you know whether there was some timber cut off of the place that went to pay on the property?
A. Yes, sir.
Q. Did he also get some money from the State for road damages?

George B. Patton.

A. Yes, I built a fence up through there. I know what that was because I built all that fence up the road.

Dep. Jan. 5, 1956 page 42

Q. I believe you are living at Rural Retreat at this time?

A. Yes, sir.

Q. How long have you been living there?

A. I was at Speedwell.

Q. I mean now?

A. Oh; I've been there for several years.

Q. I believe your father married again after your mother died?

A. Yes, sir.

Q. Do you remember when he married?

A. No, I couldn't say. I knew at the time.

Q. Did your father ever go up to your home there at Rural Retreat and talk to you?

A. Yes, up there several times. He brought his wife first, up there a couple of times with her after they married, at my place.

Q. Did he ever talk to you about his farm and his business when he came up there?

A. Yes, sir.

Q. How many different times did he talk to you?

A. Two or three times he talked to me about it.

Q. Was his wife there?

A. Yes, a couple of times when he talked to me she was there.

Q. This was after he married the second time?

A. Yes.

Q. What did he say to you, George?

A. I don't know what went wrong or what happened, but what his object was, he said he wanted me to come down there and take that farm over, said Bascomb quit, wouldn't work. I told Dad, I said "That would cause trouble, you can't afford to start nothing like that." He said, well, he was going to do something, he said he couldn't stay in the house with them, he had to hunt him another place.

Dep. Jan. 5, 1956 page 43

Q. Did he buy another place and move out of the home?

A. That was my understanding, he bought the old school house and moved over in that.

Q. Just what did your father want you to do, George?

A. He wanted me to take the farm and run it, said they

wasn't getting nothing out of it, all the fences going down.

Q. Was that the McLauren farm?

A. Yes, sir.

Q. How many different times did he try to get you to go down there and do that?

A. Three different times.

Q. Did you go?

A. I went down there, but, no I didn't take the farm over.

Q. Why didn't you?

Mr. Campbell: Objected to as immaterial.

A. Just the trouble they had.

Q. You were afraid you would have trouble with Bascomb?

A. Well, I was afraid I would have to have a racket over it with my brother and I didn't want to have to do that. I think Bascomb can recall that I told him that my Dad tried to get me to take over.

Q. Do you know about when this was, George? Do you know about what year this was he was up there talking to you?

Dep. Jan. 5, 1956 page 44

A. It has been between six and seven years ago; it has been worse than that—

Q. It was after he married; he married in '50?

A. It wouldn't have been that long.

Q. Was it a short time after he married?

A. Yes, sir, he hadn't been married long.

CROSS EXAMINATION.

By S. B. Campbell:

Q. Mr. Patton, this time that he seemed to be dissatisfied about not being able to live in the house with Miss Sarah that was after he married this other woman, wasn't it?

A. Yes.

Q. Now, Miss Sarah had lived there all of her life and looked after and cared for her mother and father, and did it well?

A. That's right.

Q. When did you first find out about your mother's will?

A. Not till Mr. Shaffer came up there after and told me what the will was.

George B. Patton.

Q. Which Shaffer?

A. Wanted to know if I wanted to sign it over so they could straighten the deed out.

Q. Which Shaffer was that?

A. Edwin.

Q. What was it he asked you?

A. Wanted to straighten the deeds out, and says you know that after your father died they would have to do something else about it, and he brought me down and wanted to talk to a couple of us; he brought us down to Speedwell. I was working on the buildings in Smyth County; and he wanted to straighten it up, wanted me to release, said, "I reckon you know that after your mother died that broke all that up, we would have to change things." I told him I wouldn't do anything about it until we talked to the rest of them. I wanted satisfaction out of all the rest.

Dep. Jan. 5, 1956 page 45

Q. Was this before or after your father's death?

A. It was after he died.

Q. So until after your father's death you didn't know any thing about your mother's will?

A. No.

Q. You didn't know anything about your father's will until when?

A. Until they came up and showed me the deed. I hadn't been around there much.

Q. Bascomb was along there with Mr. Shaffer, wasn't he?

A. Yes.

Q. Don't you remember telling the two of them together that your father had told you that Bascomb had put some money on that place and he had more coming to him because of that fact?

A. Not that I recall.

Q. Your father had told you that, hadn't he?

A. I didn't know anything about it. I didn't know anything about the will could be broke until Edwin came up there.

Q. First time you knew of the will?

A. No, Dad told me, he said "I fixed it so you will get your part.

Q. In his will he gave you what he wanted you to have, didn't he?

A. I don't know.

Q. He told you he fixed it so you would get what he wanted you to have?

Dep. Jan. 5, 1956 page 46

Laura E. Patton.

A. Told me I would get my part.
Q. You know your father was very fond of Mr. Shaffer and thought a lot of him, that's right isn't it?
A. Yes, sir.
Q. Did he tell you that Mr. Shaffer had fixed these wills for him?
A. They hadn't been fixed then.
Q. In 1944 your father was attending to his own business wasn't he?
A. In 1944?
Q. Yes?
A. I suppose he was.
Q. You know he was, don't you? You know he was capable of doing it?
A. I wasn't there.
Q. You never saw him during that year?
A. Probably so, but I don't know anything about it.
Q. You figured he was capable of taking care of his own business?
A. I figured he was.
Q. He was a man of strong mind?
A. Yes, sir.
Q. Do you authorize the Notary to sign your name to this deposition?
A. Yes.

Dep.
Jan. 5, 1956
page 47 } And further this deponent saith not.

GEORGE B. PATTON
ESSIE B. MARSHALL
Notary Public.

MRS. LAURA E. PATTON,
another witness of lawful age, being first duly sworn, deposed and states as follows:

DIRECT EXAMINATION.

By W. P. Parsons:
Q. Please state your age, residence and occupation?
A. Fifty eight, live at Rural Retreat. I help operate a filling station.

Laura E. Patton.

Q. I believe you are the wife of Mr. George B. Patton who has just testified?
A. That's right.
Q. You knew his father, J. W. Patton?
A. I certainly did.
Q. Did your husband work on the farm for Mr. Patton?
A. Oh; yes he did when we lived at Speedwell.
Q. That was on the McLauren farm?
A. Yes.
Q. Do you know about how much work he did over there?
A. No, but I know he worked off and on for twenty five years for him. We lived in Speedwell that long. My two oldest boys were just kids, but they did work there too, like hauling in hay and things like that.
Q. Do you know what pay they received?
Dep. A. Some times he would give them a nickel or
Jan. 5, 1956 something like that.
page 48 } Q. Did your husband receive pay?
A. Not that I know of.
Q. Do you know that Hobert Patton worked there?
A. Yes, I know he worked there and worked hard.
Q. Do you recall about the time that Mr. Patton married the second time?
A. Oh, yes.
Q. Where were you living, at Rural Retreat?
A. Living at Rural Retreat, operating a filling station.
Q. Did you ever hear any conversation between Mr. Patton and your husband?
A. I certainly did.
Q. Where did that take place?
A. There in the station.
Q. At Rural Retreat?
A. Yes.
Q. How many different times?
A. He was up there three times, but I heard the conversation only a couple of times.
Q. Mr. Patton made three trips from Speedwell up to Rural Retreat?
A. That's right.
Q. What did you hear Mr. Patton say?
A. He wanted him to go and take the farm over. He said he had married. The first thing he said, he said, "Are you all mad

Laura E. Patton.

Dep. Jan. 5, 1956 page 49

at me". We said no. He said because he married again and all the rest of them are mad, and I said, "That's nothing to us." He said he wanted George to go take the farm, and said he couldn't get Bascomb to do anything, and he says, "If you will go and take it over I will run Bascomb off." He says, "I will run Bascomb off if you will take the farm over."

Q. Did he say why he wanted George to take the farm over?

A. Said Bascomb wasn't doing anything and the farm was going *downa* all the time; he had married and couldn't live at home, he had to get somewhere else, couldn't stay at home.

Q. How many different times did you hear him talk to your husband about taking the farm over?

A. Only twice. He was up there three times, but the last time I was busy and didn't hear the conversation. My husband said that was what he came for.

Q. Do you know about how soon it was after the second marriage?

A. It wasn't too long. I don't remember how long, but it wasn't too long after he was married.

Q. Do you know that Mr. Patton did buy the old school house property and move out of his home into that?

Mr. Campbell: Objected to as immaterial.

A. Yes, I know that.

Q. Do you know how Bascomb worked on the farm?

A. I guess he was like the rest of us, he never did hurt himself.

Q. Do you know whether he drank intoxicants?

Mr. Campbell: Objected to as immaterial.

Dep. Jan. 5, 1956 page 50

A. Yes, he used to drink pretty bad.

Q. Did Bascomb and Sarah make their home there all the time?

A. Yes, they certainly have.

Q. Do you recall the day that Mrs. J. W. Patton died?

A. Yes.

Q. Do you know where Bascomb was on that day?

Mr. Campbell: Objected to. Immaterial.

Laura E. Patton.

A. I don't know personally, but they said the law was after him. He was drunk and Mrs. Patton had a stroke and fell in the door and she died the next morning, never did regain consciousness.

Mr. Campbell: Objected to. Immaterial.

Q. Had a stroke and—
A. Yes, fell in the door.

Mr. Campbell: Objected to as immaterial.

Q. Do you know whether Mr. Patton continued to manage and look after operations?
A. Yes, sir; he had a wonderful mind.
Q. Did he manage the farm?
A. To my knowledge he did, yes, sir.
Q. Do you authorize the Notary to sign your name to this deposition?
A. Yes.

And further this deponent saith not.

MRS. LAURA E. PATTON
ESSIE B. MARSHALL,
Notary Public.

Dep.
Jan. 5, 1955
page 51 } Virginia,
Wythe County, to-wit:

I, Essie B. Marshall, a Notary Public in and for the County and State aforesaid, do certify that the foregoing depositions were duly taken, reduced to writing and signatures of the witnesses authorized before me, at the time and place, and for the purposes mentioned in the foregoing caption.

Given under my hand this 16th day of January, 1956.
My commission expires February 16, 1958.

ESSIE B. MARSHALL
Notary Public.

To Essie B. Marshall for taking and transcribing the foregoing depositions, $27.00.

Filed in the office of the Clerk of the Circuit Court of Wythe County, Virginia this 10 day of Nov. 1958.

Teste:

J. E. CROCKETT, Clerk.

The depositions of M. H. Patton and others taken at the law office of Parsons and Arthur in Wytheville, Virginia, before James L. Gleaves, Special Commissioner, pursuant to agreement and notice to be read as evidence in chancery suit now pending in Wythe County Circuit Court under the style of M. H. Patton, et als., *v.* Sarah Patton, et als.

Present: M. H. Patton, George B. Patton, two of the complainants in person and by W. P. Parsons their attorney, Sarah Patton and C. Bascom Patton, two of the defendants in person and by S. B. Campbell and Edwin G. Shaffer, their attorneys, W. C. Thomas, Guardian *ad litem,* D. B. Patton, infant defendant.

It is stipulated between all parties that the evidence heretofore taken in this case shall be considered by the Commissioner so far as pertains to the issues submitted to him by decree of July 25, 1957, with leave to any party to take additional depositions or give additional evidence on any of these matters.

It is also agreed that at the July, 1958, term of Wythe County Circuit Court there shall be submitted to the Judge the question as to whether he intended by the decree of July 25, 1957, to disallow the claims of Sarah Patton and Bascom Patton for services rendered in lieu of the provisions made for them in the will of J. W. Patton and if the Judge determines that he did disallow these claims a decree shall be entered expressly stating that fact and if he did not disallow these claims then the commissioner should not disallow them and the same procedure shall be followed with the claims for moneys advanced to J. W. Patton by either Sarah or Bascom Patton.

It is further stipulated that all of the parties are familiar with the lands devised by Elizabeth O. Patton and attempted to be devised by J. W. Patton to Sarah and C. Bascom Patton, and this land embraces all of the land that would lie South of the first fence North of the residence. This line will start at the Northwest corner of the Gallimore place and

M. Hobart Patton.

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running then to the line of the property formerly owned by Hobart Patton now owned by Alex Robinson and then with the Robinson line to Joe Shanahan property and then with Joe Shanahan property to Cripple Creek. A fence is now along this line.

It is stipulated that Emma Patton Overstreet died after the institution of the present suit leaving surviving her, her husband, J. C. Overstreet, and the following two children, William Rudolph Overstreet and Warren Luck Overstreet, both of whom are over the age of 21 and who constitute all of her heirs and distributees at law; that J. C. Overstreet is now 68 years of age and it is further stipulated that all parties are properly before the court.

M. HOBART PATTON,

a witness of lawful age after first being duly sworn deposes and states as follows, to-wit:

DIRECT EXAMINATION.

By W. P. Parsons:

Q1. What is your age, residence and occupation?

A. Sixty, Speedwell, Virginia, farmer.

Q2. I believe you are the son of J. W. Patton and Elizabeth O. Patton, and one of the complainants in this suit, are you not?

A. Yes.

Q3. Please state what real estate your father, J. W. Patton died owning?

A. He died owning 3/5 undivided interest in the McLauren farm containing 312 acres, more or less, and also the whole of the Lanter and McAllister place, back of that containing 52 acres which adjoin each other located near Speedwell, Virginia, and also an old school house which has been made into apartments.

Q4. Do you know what personal property your father owned at the time of his death?

A. Not all of it.

Q5. What real estate did your mother own at the time of her death?

A. Two-thirds of the McLauren farm.

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Q6. Did she own any personal property?

A. I imagine she did, I don't know.

Q7. Do you know what happened to the personal property that your father owned?

M. Hobart Patton.

A. It was there on the place.

Q8. Do you know whether it came into the hands of the administrators of your father's estate?

A. I suppose it did.

Q9. Are there any liens against the real estate which your father owned at the time of his death?

A. None that I know of.

Q10. Are there any liens against the real estate that your mother died owning?

A. None that I know of.

Q11. What do you consider is a fair market value of the real estate of which your father owned?

A. About $60,000.00.

Q12. What do you think the McLauren farm is worth?

A. Nearly all of it, around $57,500.00.

Q13. Then you think the McLauren farm would be worth about $57,500.00 and the Lanter and McAllister place about $2,500.00, is that right?

A. Yes.

Q14. About how much land is in the part of the McLauren farm which was set out in the wills of your father and mother that was to go to Bascom and Sarah?

A. I don't know if it was ever run by the acre. I would estimate it between 140 and 150 acres.

Q15. What do you think is a fair market value per acre for the McLauren farm?

A. The land along the highway is worth more than the rest. I would figure some of it would bring $450.00 per acre along the highway. I would figure the average with the buildings $325.00.

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Q16. That is for the 140 to 150 acres is that correct?

A. Yes.

Q17. What do you think is a fair market value of the residue of the McLauren farm?

A. It would be much cheaper because it is rough, I would figure between $60 and $70 per acre.

Q18. What is a fair market value for the school house property?

A. I think my father gave between $3,000.00 and $3,200.00. It would not be worth no more than that now. I think it would bring that much.

Q19. What is a fair cash rental value for the farm which your father owned including the McLauren farm and the McAllister and Lanter place?

M. Hobart Patton.

A. $2,000.00 to $2,500.00 per year.

Q. 20. What is a fair rental value for the school house property?

A. I understand they are renting the apartments for $12.50 per month. They have not been rented all the time, around $50.00 per month if all of them are rented.

Q21. Do you think the real estate of which your father died owning could be partitioned to advantage in kind among the owners or do you think it would be necessary to make a sale of the farm for partition purposes?

A. It would be a hard matter to partition in eight parcels. It is possible that a couple of parcels could be laid off and then the others agree on something.

Q22. Do you think it would be possible to lay off the parcels that Sarah and Bascom are entitled to and sell the rest of it?

A. That could be done.

Q23. Do you think the interest of the owners would be promoted by handling it in this manner?

A. I would think so.

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Q24. Would the rights of anyone be violated by reason of a sale?

A. I don't think so.

Q25. Who has had control and possession of the real estate which your mother and father died owning since the date of the death of your father in 1952?

A. Sarah and Bascom.

Q26. Have they been living on the property?

A. Yes.

Q27. Have they been receiving all the income that is derived from the farm?

A. As far as I know.

Q28. Do you know what they have recived from it?

A. I do not.

Q29. Do they receive the rent from the school house property?

A. As far as I know.

Q30. Do you know what indebtedness your father owed?

A. I do not.

Q31. Do you know whether any of the owners of the property are willing for all of it to be allotted to them and they pay a reasonable price to the other owners?

A. No, not that I know of.

Q32. Then you think it would be to the advantage of all parties to sell the property and divide the proceeds, except

M. Hobart Patton.

possibly the interest of Sarah and Bascom might be laid off in the farm, is that correct?

A. That is right.

CROSS EXAMINATION.

By Mr. Stuart B. Campbell:

Q33. Mr. Patton, what would you figure the interest of Sarah and Bascom would be if it were laid off?

A. That is not for me to say, I think some disinterested party should decide that. Whatever they said would suit me.

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Q34. You have just said in answering Mr. Parsons' question that you thought possibly Sarah and Bascom's part could be laid off to them, how much was you figuring on laying off to Bascom and Sarah in order to give them their part and sell the rest?

A. I think some disinterested party should lay it off.

Q35. Then in your answer you thought their part could be laid off to them but you don't know what their part would be?

A. I want some disinterested fellow to do it.

Q36. Mr. Patton, do you recall that after your father's death an agreement was made with Sarah and Bascom about the personal property?

A. I was never in no agreement of that kind.

Q37. And that you and the others agreed for Sarah and Bascom to have the personal property that your father owned?

A. I don't remember any agreement.

Q38. Well, it was agreed for Sarah to have the personal property wasn't it.

A. I don't remember any agreement.

Q39. Remember at that time it was agreed that there was no way to divide the personal property and that Sarah might as well have it?

A. No, I don't remember any thing about that.

Q40. Mr. Patton, take the Lanter and McAllister land there is something like 60 acres?

A. Fifty-three I think, there might be a little over that.

Q41. How much of it is cleared?

A. Not much the field is growing up.

George B. Patton.

Q42. Was it all cleared at the time of your father's death?
A. No.

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Q43. How much of it was not cleared?
A. I imagine about two-thirds of it.
Q44. How much of that farm could be farmed?
A. All of it has been.
Q45. It is pretty steep isn't it.
A. Yes, seven acres is so steep it can't be farmed with a tractor.
Q46. What do you think would be a fair rental value per year for the Lanter and McAllister property?
A. I imagine about $120.00 or $125.00.
Q47. Do you think that this land would rent for $4.00 an acre per year?
A. I would say about $3.00.
Q48. Do you know of any land that rents for that?
A. I was offered $6.00 per year for good grazing land.
Q49. How many acres?
A. One Hundred.
Q50. Where does that land lie?
A. Speedwell.
Q51. You think that land would bring $3.00 an acre?
A. In that neighborhood.
Q52. How many acres is in the McLauren farm?
A. Three Hundred twelve.
54. Do you think you could rent that for $2,130.00.
A. I would like to have it for $2,000.00.
Q55. Do you know anybody else that would give that?
A. I do not.
Q56. Do you authorize the notary to sign your name to this deposition?
A. Yes.

M. HOBART PATTON
By ELSIE MAE SHAFFER
Notary Public.

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GEORGE B. PATTON,
a witness of lawful age after being first duly sworn deposes and states as follows, to-wit:

George B. Patton.

DIRECT EXAMINATION.

By Mr. W. P. Parsons:

Q1. Please state your age, place of residence and occupation?

A. Sixty-five, Rural Retreat, operate a filling station.

Q2. I believe you are the son of J. W. Patton and Elizabeth O. Patton and one of the complainants in this suit, is that right?

A. Yes.

Q3. George, what do you think is a fair market value for the McLauren farm.

A. I think what Hobart said would be about right.

Q4. Do you know the value of the place back of the McLauren farm?

A. Just about the same as Hobart stated.

Q5. What about the value of the school house property?

A. He would not be far off on that.

Q6. What is a fair market value of the real estate your father and mother died owning?

A. About the same as Hobart stated would be my guess.

Q7. Then you agree with what Hobart said in regard to the real estate?

A. Yes.

Q8. George, do you think the real estate which your father and mother died owning could be divided in kind or do you think it would have to be sold?

A. We have talked that over and I think it would have to be sold.

Q9. Do you think the interest of all the owners would be promoted by making sale of the property?

A. Yes.

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Q10. Do you think the rights of anyone would be violated by reason of a sale?

A. No.

Q11. Are any of the owners willing for the entire property to be allotted to them and they pay off the others?

A. I don't know about that.

Q12. Do you know of any of the others who want to do that?

A. No.

Q13. Do you know who has had possession of the personal property that your father owned at the time of his death?

A. Bascom and Sarah.

George B. Patton.

Q14. Who has had the control and possession of the real estate of which your father and mother died owning?

A. Sarah and Bascom.

Q15. Have they received all the income that has been derived from the property?

A. I have not gotten any.

Q16. Do you know of anyone who has received any income except them?

A. No.

Q17. Do you know what debts your father owed at the time of his death?

A. No.

Q18. Were there any liens of any kind against the property?

A. Well, there was supposed to have been.

CROSS EXAMINATION.

By Mr. S. B. Campbell:

Q19. After your father's death did you on one occasion talk to your sister, Sarah Patton, with reference to his personal property?

A. We talked some about it.

Q20. Was the personal property that was owned by your father given to Sarah Patton?

A. I couldn't say it was.

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Q21. Did you tell Sarah Patton that she could have the personal property?

A. No, I don't think so.

Q22. What was the nature of your conversation with Sarah Patton over the personal property?

A. I did tell her that I hoped she could hold a part of it.

Q23. Shortly after your father's death did you and all of the other heirs agree for her to have the personal property?

A. No, I don't think so.

Questions by Mr. James L. Gleaves, Jr.:

Q24. When you talked to Miss Sarah Patton concerning the personal property who was present?

A. We talked a little while Bascom was there and he refused to enter into any kind of settlement. She wouldn't say anything.

Q25. Was anyone else present except you, Miss Sarah and Mr. Bascom?
A. No, I don't think so.
Q26. Had you talked to the other heirs in regard to the personal property?
A. No.
Q27. Had they agreed to give Miss Sarah the personal property?
A. No.
Q28. Do you authorize the notary to sign your name to this deposition?
A. Yes.

GEORGE B. PATTON
By ELSIE MAE SHAFFER
Notary Public.

MR. M. HOBART PATTON,
recalled.

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Nov. 10, 1958 Questions by Mr. S. B. Campbell:
page 11 } Q1. Mr. Patton, when you were on the stand a few minutes ago you estimates that the entire farm was worth $60,000.00 and that there was between 140 and 150 acres of land in the tract that was devised by the will of your mother and attempted to be devised by your father's will to Bascom and Sarah, then in your estimate the value of the land given by the two wills to Sarah and Bascom would be $46,925.00?
A. That is right.
Q2. Then that would leave a valuation on the residue of the McLauren Farm of $10,575.00?
A. I never figured.
Q3. That would be the difference between the two figures?
A. The tract that was given to Sarah and Bascom is worth about 4½ times as much as the residue of the farm?

G. A. DELP,
a witness of lawful age after first being duly sworn deposes and states as follows, to-wit:

Q1. Please state your age, residence and occupation?
A. Fifty-three, contractor and farmer, Galax, Va.

G. A. Delp.

Q2. I believe you married Edith Patton, who is the daughter of Mr. and Mrs. Patton, is that correct?

A. Yes.

Q3. Are you familiar with the real estate which they died owning?

A. Yes.

Q4. I wish you would please state what you consider is a fair market value of this property?

A. I would say around $60,000.00.

Q5. Would you divide that up between the McLauren farm and the rest of the land?

A. I don't know too much about that part of the land, it isn't worth too much.

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Q6. How do you think the part that was devised under the wills to Sarah and Bascom would compare in value to the rest of the land?

A. That would be the larger part of it.

Q7. Could you estimate about what this would be worth per acre?

A. Well, I would say around $300.00 per acre.

Q8. What do you think the entire farm should rent for per year?

A. $2,000.00.

Q9. Are you familiar with the school house property?

A. Not too familiar.

Q10. Do you know about what it would be worth?

A. About what he paid for it, I would say about $3,200.00. I understand some work has been done on it.

Q11. What would it rent for?

A. I don't know.

Q12. Mr. Delp, do you think that the real estate which Mr. and Mrs. Patton died owning could be partitioned in kind among the owners or do you think it would have to be sold?

A. I don't see how it could be partitioned.

Q13. Do you think it would be to the advantage of all the owners to have a sale and the proceeds be divided among the owners?

A. Yes, that is my personal opinion.

Q14. Would the rights of anyone be violated by reason of a sale?

A. I don't see how they could be.

Q15. In your judgment a sale is the only way to settle it?

A. That is my opinion.

G. A. Delp.

Q16. Mr. Delp, what experience have you had in renting farm land?

A. I have not had any experience. I know of some who have.

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Q17. You have not been in that business at all?

A. No.

Q18. Mr. Delp some little while after Mr. Patton's death do you remember having a meeting or of there being a meeting of some of the heirs at Hobart's store?

A. I think it was at the house.

Q19. Were you there?

A. Yes.

Q20. Do you recall at that time that they were going to give Sarah the personal property?

A. No, I don't remember.

Q21. Mr. Delp, from what you know about other farms that have been rented do you think that what you mentioned is a fair value?

A. Yes, I do. The 70 acres of land across the road from the Jackson Memorial School house rented for $850.00 per year.

Q22. Based on how that farm is rented you think $2,000.00 is a fair rental value for the tract of land which Mr. and Mrs. Patton died owning?

A. I don't think it is any better land than the McLauren farm.

CROSS EXAMINATION.

By Mr. S. B. Campbell:

Q23. Mr. Delp that land you are talking about at Jackson Memorial School is the land that lies just across the road, is that right?

A. Yes, part of it is bottom and back of the bottom is a ridge, I guess one-half of it is bottom.

Q24. Has it been plowed?

A. I talked to the man there and he told me that it couldn't be plowed.

Q25. You are also familiar that there is a good deal of swamps on the McLauren farm?

A. There is some, one ditch would dry it up.

E. M. Patton.

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Q26. Mr. Delp, do you know of any way this land could be partitioned and all the land be properly watered?

A. No.

Q27. Why do you place a much lower value on the residue of the farm that was not devised to Miss Sarah and Mr. Bascom?

A. It is off the road and land like that is not valued too high.

Q28. Would the value that you placed on the residue be increased if an easement or right of way was given out to the road?

A. That would make some difference.

Q29. How much do you think the value would be increased if a right of way was placed over the McLauren farm?

A. I couldn't say, it would raise it some.

Q30. Do you authorize the notary to sign your name to this deposition?

A. Yes.

G. A. DELP
By ELSIE MAE SHAFFER
Notary Public.

E. M. PATTON,

a witness of lawful age, after first being duly sworn deposes and states as follows, to-wit:

DIRECT EXAMINATION.

By W. P. Parsons:

Q1. Please state your age, place of residence and occupation?

A. Sixty-one, Speedwell, contractor and farm a little.

Q2. I believe you are a nephew of Mr. and Mrs. J. W. Patton, is that correct?

A. Yes.

Q3. Are you familiar with the real estate they owned?

A. Yes.

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Q4. What do you consider is a fair value for the farm they owned including the McLauren farm and the place back of it known as the McAllister and Lanter place?

A. I wouldn't want to say, but I don't think Hobart was far wrong.

Aubrey L. Brewer.

Q5. What about the rental value of it?
A. I would say around $2,000.00 per year.
Q6. Are you familiar with the school house property?
A. Yes.
Q7. What do you think it is worth?
A. I don't think it would bring over $3,000.00.
Q8. What is the fair rental value of it?
A. I don't know I think they are getting around $12.50 for each apartment per month. There are four apartments.
Q9. Do you think the real estate which Mr. and Mrs. Patton died owning could be partitioned among the owners?
A. It could not be partitioned.
Q10. Do you think the interest of the owners would be promoted by making sale of the property?
A. Yes.
Q11. Would the rights of anyone be violated by making sale of the property?
A. I don't think so.
Q12. Do you authorize the notary to sign your name to this deposition when it is written up?
A. Yes.

E. M. PATTON
By ELSIE MAE SHAFFER
Notary Public.

AUBREY L. BREWER,
a witness of lawful age after first being duly sworn deposes and states as follows, to-wit:

DIRECT EXAMINATION.

By Mr. W. P. Parsons:

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Q1. Please state your age, residence and occupation?
A. Fifty-eight, Speedwell, Virginia, farmer.
Q2. Are you familiar with the real estate which Mr. and Mrs. Patton owned?
A. Yes.
Q3. What do you consider is a fair market value for this property?
A. I think the figure Hobart gave would be about right.
Q4. What about the school house property?
A. It isn't worth more than $3,000.00.

Aubrey L. Brewer.

Q5. What about the rental value of the property?
A. I had the back place rented.
Q6. What did you have the back place rented for?
A. Sixty Five Dollars per year.
Q7. Aubrey, do you think that the real estate could be partitioned in kind or do you think it would have to be sold?
A. I think Sarah should have a refusal to the home place, and if they can't come to some agreement sell it.
Q8. Do you think that if they can reach an agreement that the interest of the owners would be promoted?
A. Yes.
Q9. Would the rights of anyone be violated by making sale of the property for partition purposes?
A. No.

CROSS EXAMINATION.

By Mr. Campbell:
Q10. How much did you have rented of the McLauren farm in with the other?
A. Thirty or forty acres.
Q11. You paid $65.00 per year for the whole thing?
A. Yes.

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Q12. So far as you know would anyone else pay more for it?
A. No.
Q13. You think that Miss Sarah should have the home place, you feel that is due her?
A. She ought to have a refusal to the home place.
Q14. You know that she stayed there and took care of the old people?
A. Yes, sir.
Q15. You were there and you saw that Bascom was there helping his father?
A. He stayed there and worked on the farm.
Q16. The last years of Mr. Patton's life, did he do anything on the farm?
A. No he didn't. When I measured the corn Mr. Patton never did come to see if the corn was measured right.
Q17. Did you have the corn out for part of the *corp?*
A. Two-thirds.
Q18. The land drew one-third?
A. I furnished everything and gave them one-third.

Aubrey L. Brewer.

Q19. How much did you have rented which you planted corn on?

A. Twelve acres at one time and five acres at another time.

Q20. You rented for corn and wheat?

A. Yes.

Q21. Did Bascom operate a filling station for a period of time?

A. Yes.

Q22. Do you authorize the notary to sign your name to this deposition when it is written up?

A. Yes.

AUBREY L. BREWER
By ELSIE MAE SHAFFER
Notary Public.

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page 18 } It is stipulated that the following indebtedness was due by J. W. Patton estate to others than Sarah Patton and C. Bascom Patton, Wythe County National Bank loan in the amount of $3,498.00, the proceeds of this loan in part was used to pay on the purchase price of the school house property; Chitwood Memorial Clinic, hospital expenses for J. W. Patton $220.40; Barnett's Funeral Home, funeral expenses for J. W. Patton $763.00; Arthur Cornett, grave marker for J. W. Patton $31.00; J. E. Crockett, Clerk, cost of qualifying $27.60; Alex Robinson $20.00; for other miscellaneous expenses $20.00; and that he had money in the Bank of Speedwell $379.00; two horses $95.00; four cows $500.00; one hog $20.00; four calves $300.00; four head of cattle $600.00; ten sheep $100.00; furniture $25.00; machinery $25.00.

It is stipulated that Mrs. Elizabeth O. Patton died November 14, 1945, and that her personal estate was of negligible value.

The further taking of these depositions was adjourned until Friday, July 11, 1958, at 9:00 A. M. at the law offices of Parsons and Arthur in Wytheville, Virginia.

The further taking of these depositions was resumed on Friday, July 11, 1958, at 9:00 A. M. at the law offices of Parsons and Arthur pursuant to adjournment on July 7, 1958.

Present: M. H. Patton and Edith P. Delp and George B. Patton, three of the complainants in person and by W. P. Parsons their attorney, and Sarah Patton and Bascom Patton, two of the defendants in person and by S. B. Campbell and E. G. Shaffer, their attorneys, and W. C. Thomas, Guardian *ad Litem* for D. B. Patton, infant defendant.

It is stipulated that Sarah J. Patton and C. Bascom Patton have filed a certified copy of the inventory and apraisement of the estate of J. W. Patton marked, "Exhibit Appraisement."

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It is stipulated that taxes for the following years were paid by Sarah J. and C. Bascom Patton 1952, $213.60; 1953, $210.90; 1954, $228.48; 1955, $228.48; 1956, $246.05; 1957, $246.05, that these taxes were assessed for each year except 1952 on the real estate only, but for 1952 there was included captitation tax against J. W. Patton and personal property tax $25.80, and they filed duplicate tax tickets for these years marked "Exhibit Tax tickets."

It is also stipulated that these parties paid to the Wythe County National Bank a note of J. W. Patton for $3,300.00 dated February 20, 1952, with accrued interest of $189.20 making a total of $3,489.20 paid to the Wythe County National Bank on July 28, 1953, and a letter of the cashier is filed as "Exhibit H. L. Austin Letter."

It is stipulated that the following bills have also been paid by Sarah and Bascom C. Patton viz: Barnett's Funeral Home $475.00 and receipt therefor is filed; Chitwood Memorial Clinic $160.40 and a statement therefor is filed; $27.60 cost of qualification and receipt therefor is filed; for insurance on the school house $100.50 and receipts or bills as follows; December, 1952, $19.00; November 24, 1953, $16.50; November 22, 1954, $16.50; November, 1955, $16.50, no receipt or statement is shown for this premium; December 12, 1956, $16.00; December 6, 1957, $16.00.

It is stipulated that Sarah Patton has collected in rent from the school house and the house up the hollow during the period from July, 1952, until July, 1958, $2,000.00 and that during this same period she and Bascom collected pasture rent $369.00.

It is further stipulated that the Buford farm belonging to Sarah and Bascom Patton was operated jointly with the McLauren place and the home place of ..... acres and that the acreage of the Buford place is ..... acres and that the acreage of the McLauren place is ..... acres, and

Sarah Patton.

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that the joint income should be distributed proportionately according to the acreage of these three *place.*

It is stipulated and agreed that Sarah Patton paid $363.00 for repairs to the school house property.

It is stipulated that Sarah Patton paid to Chitwood Memorial Clinic $30.00 for J. W. Patton on April 4, 1952, which was prior to the death of J. W. Patton, and C. Bascom Patton paid to Arthur Cornett $31.00 for marker to J. W. Patton grave on August 7, 1952.

The further taking of these depositions was adjourned until Tuesday, July 22, 1958, at 2:00 P. M. at the law offices of Parsons and Arthur, in Wytheville, Virginia.

The further taking of these depositions was resumed on Tuesday, July 22, 1958, at 2:00 P. M. at the law offices of Parsons and Arthur, pursuant to adjournment on July 11, 1958.

Present: M. H. Patton and Bertha P. Dolinger, two of the complainants in person and by W. P. Parsons, their attorney, and Sarah Patton and Bascom Patton, two of the defendants in person and by S. B. Campbell and E. G. Shaffer, their attorneys, and W. C. Thomas, Guardian *ad Litem* for D. B. Patton, infant defendant.

It is stipulated that Sarah Patton, the daughter who has never married, claims the following property as belonging absolutely to her, the household furniture consisting of a bed, two dressers or a dresser and dressing table not exceeding $25.00 in value, the cook stove and heating stoves not exceeding three, and a pair of horses and wagon, one hog, cow and calf, plates, knives and forks and other like articles as allowed in Sections 34-26 and 34-27 of the Code of Virginia.

It is further stipulated that the personal representatives sold twelve cattle for $1,230.00, ten sheep for $100.00, two horses for $95.00, one hog for $20.00, mowing machine for $25.00, and that the corn planter was not sold and is now on the farm.

It is further stipulated that the household furniture can be claimed by Sarah Patton under the exemption.

SARAH PATTON,

after first being duly sworn deposes and states as follows, to-wit:

Sarah Patton.

Dep.
Nov. 10, 1958
page 21 } Q1. Miss Sarah, you and your brother lived on the farm after your father's death?

A. Yes.

Q2. Did your brothers or sisters say anything to you about who should have the personal property on the farm?

A. No.

Q3. Did they say anything about the livestock?

A. They told me I could have it.

Q. Who told you that?

A. George.

Q5. He said he was acting for the rest?

A. Yes.

Q6. Did you not think it was necessary to keep books?

A. No.

Q7. During the time that you and Bascom have been living there have you kept the place up?

A. We have done right much. I have fixed up the house, built up the land.

Q8. The land has been improved?

A. Yes.

Q9. Would you have welcomed your brothers and sisters there?

A. Yes. We told them they could have their part.

Q10. In your opinion would the grazing that you all did and the grain that you sold off the farm be enough to pay you and Bascom for looking after and improving the farm?

A. I don't think so.

Q11. And during all of this time you were operating the Buford place along with the McLauren farm?

A. That is right.

Q12. On your income tax return you show cattle sales, after your father's death did he have any interest in these sales?

Dep.
Nov. 10, 1958
page 22 } A. All his cattle were sold the year he died.

Q13. In the year after the year your father died you sold some cattle, now whose cattle were these?

A. Mine and Bascom's.

Q14. Your father's cattle were all sold in the year following his death?

A. Yes.

Sarah Patton.

Q15. The income tax return shows income from the sale of dairy products, whose products were they?
A. Mine and Bascom's.
Q16. That was your cow?
A. Yes.
Q17. These were your chickens?
A. Yes.
Q18. The cream, butter and eggs that you sold belonged to you?
A. That is right.

CROSS EXAMINATION.

By Mr. W. P. Parsons:
Q19. Sarah, you and Bascom have lived there since the death of your parents and have been living there all of your life haven't you?
A. Yes.
Q20. And you and Bascom have received all the income from the property since your father's death, is that correct?
A. Yes.
Q21. None of the other children have received anything whatsoever?
A. No, not that I know of.
Q22. Who told you, you could have the livestock?
A. George and he said the rest told him that I could have it.

Dep. Nov. 10, 1958 page 23

Q23. Did any of the others tell you, you could have the livestock?
A. No, none of the rest were there.
Q24. Was your sister, Effie, who lives in New York there?
A. No.
Q25. You say that you have improved the property since your father's death?
A. The land has been improved, we have built some fence and done a few things.
Q26. As a matter of fact has it grown up and run down?
A. The back fields were when he died, we have fixed fence.
Q27. You made the statement about welcoming your brothers and sisters there on the property, were you and Bascom willing for them to come in there and share the property?
A. They come to the house and they never asked to move in. The house is big enough for two or three families.

Sarah Patton.

Q28. You speak of them taking their part, you are talking about the back field, is that correct?

A. Yes.

Q29. But you and Bascom wanted to keep control and possession of all the front part?

A. That is what he said we were supposed to do.

Q30. And that is what you did do, and you had possession of the front tract and the back part to?

A. Yes.

Q31. You have never had any other home except there with your parents?

A. No, I stayed there and really worked and waited on them.

Q32. And that was Bascom's home also?

A. Sure, we couldn't have lived there without him.

Questions by Mr. James L. Gleaves:

Q33. Miss Patton, I have got to get straight what part of the farm operated was the estate and which part was owned by you and Bascom, the cattle that belonged to your father were sold the year after his death, is that correct?

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Nov. 10, 1958
page 24

A. Yes.

Q34. The crops that you raised on the farm after your father's death—

A. We divided that.

Q35. I understand that you divided the money, but did you have the crops out on share crops?

A. Yes.

Q36. Who paid for the seed that went into the planting?

A. The man that put it out.

Q37. All of the money that you and Bascom received from grain that was planted on the farm and sold came from share crops?

A. Yes.

Q38. Do you authorize the notary to sign your name to this deposition?

A. Yes.

SARAH PATTON
By ELSIE MAE SHAFFER
Notary Public.

C. BASCOM PATTON,
a witness of lawful age after first being duly sworn deposes and states as follows, to-wit:

DIRECT EXAMINATION.

By E. G. Shaffer:

Q1. Do you have copies of your tax returns for the years 1953 to 1957?

A. I believe I had all of them but one.

Q2. That one was for the year 1952?

A. Yes I believe that is right.

Q3. Is your return for the year 1952, if that is the one that is missing the same as your sister's?

A. Yes.

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Q4. Will you file your returns?

A. Yes.

Q5. On the returns there is income shown from the sale of cattle for a part of these years, who was the owner of the cattle after your father's death?

A. Me and Sarah.

Q6. There is income shown on some of the returns for dairy products and eggs, who was the owner of these items?

A. I believe she got all that.

Q7. Did the other owners during a period of years have the right to use the land?

A. Yes, we told them that they could have possession of it if they wished to.

Q8. Do you know who you told that to?

A. Garnett said he remembered.

Q9. Who did you tell that to?

A. I won't be for sure but I think Garnett, Hobart and George were all there.

Q10. Do you know whether or not any of the owners made a gift of the personal property to your sister?

A. Yes, George said that they sent him over there and he told Sarah all of them had talked it over and agreed to give her all the personal property.

Q11. You have used a portion of the land since your father's death?

A. Yes.

Q12. And you have received some income from that?

A. That is right.

C. Bascom Patton.

Q13. Have you since your father's death worked there on the land?

A. Yes.

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Q14. Do you know whether or not you have made any improvements on the land?

A. I think the land has improved.

Q15. Have you made any improvements to fences or buildings?

A. Yes, I have built some fence.

Q16. Bascom, there is shown on your tax return income from sale of grain and on your sister's tax return, have you done any work to bring about that income in the planting of the grain or harvesting the crops?

A. I rented it mostly to Mr. Linkous.

Q17. Have you worked with the crops each year that there is income shown from grain?

A. Yes, I helped with just about all the crops which Mr. Linkous had out.

Q18. Have you worked at any place other than on this farm since your father's death?

A. No.

Q19. Then all the income that is shown on your return is income from the farm?

A. Yes.

CROSS EXAMINATION.

By Mr. W. P. Parsons:

Q20. You said your brothers and sisters had a right to use the land, which land were you talking about?

A. On the back part. The way the will was fixed the division between me and Sarah and the other six turned it over to them after my father's death.

Q21. That was the back part?

A. Yes, sir.

Q22. You and Sarah are not willing for them to come in and use the front part of the land or the bottom land?

A. No.

Q23. You and Sarah expected to have complete control of it and did as a matter of fact?

A. Yes.

Dep. Nov. 10, 1958 page 27

Q24. You also got the income from the back part of the farm and the rent from the school house and other buildings, didn't you?

A. Yes.

Q25. You were not willing for them to come

in on the front part of the farm and are not willing for them to do so now?

A. No. I am willing to follow the will.

Q26. I believe you said you had these crops rented out to other people, is that right?

A. Yes.

Q27. Did the renter do the work in putting the crops out, cultivating and harvesting them?

A. Yes, I helped him some.

Q28. Did Hobart Patton or any of the other heirs tell you that Sarah could have the personal property?

A. George did. I was there when he came to the house.

Q29. Were you trying to reach an agreement at that time about the property?

A. Yes, something was said about the proposition made there by George in order to get the matter settled.

Q30. And no agreement has been entered into between you and Sarah and the other heirs?

A. That is right.

Q31. Bascom, has the farm grown up a good deal?

A. What do you mean?

Q32. Bushes, briars, etc. grown up on the farm?

A. No, sir, it might be on the back in the woods.

Q33. How about the fences and gates?

A. We have built some fence.

Questions by Mr. James L. Gleaves, Jr.

Q34. Have you or your sister, Miss Sarah, expended any money for fence?

A. No, sir.

Dep. Nov. 10, 1958 page 28

Q35. Have you or Miss Sarah prohibited any of your brothers or sisters the right to use the farm?

A. We gave them their part.

Q36. Did you deny them the right to use the front part of the farm?

A. I don't know as they have asked.

Q37. Has Miss Sarah denied anyone the right to use the front part of the farm?

A. No, they never asked to use it.

Q38. No one has sought legal recourse to get use of the land?

A. No, only through this suit we are going through now.

C. Bascom Patton.

Questions by Mr. W. P. Parsons:

Q39. Would you or Sarah be willing for them to come in on the front part of the farm or not?

A. No.

Q40. You don't feel that they should have the use and you and Sarah would have objected to it?

A. I would have.

Q41. What is the condition of the fences at this time, Bascom?

A. Well, some of it is pretty good fencing and some of it is not too good. That on the back place is not too good but it is holding cattle, it is keeping other peoples cattle off of us.

Q42. Is there a fence between your father's farm and the Buford place?

A. Yes, just about all the way, two-thirds or three-fourths of the way.

Q43. What is the condition of that fence?

A. That is a good fence, it has been built since daddy died. New *bob* wire fence been put up about four or five years.

Q44. Did you say it was just fenced for a part of the way?

A. About two-thirds of the way I reckon.

Dep.
Nov. 10, 1958
page 29 } Questions by Mr. E. G. Shaffer:

Q45. Bascom, was a part of the grain raised on the Buford place which is owned by you and Sarah?

A. Yes.

Q46. Do you authorize the notary to sign your name to this deposition?

A. Yes.

C. BASCOM PATTON
By ELSIE MAE SHAFFER
Notary Public.

State of Virginia,
County of Wythe, to-wit:

I, James L. Gleaves, Special Commissioner, who was appointed by decree entered in said suit to take an account, hereby certify that the foregoing depositions of M. Hobart

Patton and others were duly taken before me at the time, place and for the purpose stated in the caption, and that signatures were duly authorized.

Given under my hand this August ...., 1958.

JAMES L. GLEAVES, JR.
Special Commissioner.

Notary fee due $20.45.

A Copy—Teste:

H. G. TURNER, Clerk.

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RULE 5:12—BRIEFS

§1. Form and Contents of Appellant's Brief. The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

§2. Form and Contents of Appellee's Brief. The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

§3. Reply Brief. The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

§4. Time of Filing. As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) If the petition for appeal is adopted as the opening brief, the brief of the appellee shall be filed in the clerk's office within thirty-five days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. If the petition for appeal is not so adopted, the opening brief of the appellant shall be filed in the clerk's office within thirty-five days after the date printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office, and the brief of the appellee shall be filed in the clerk's office within thirty-five days after the opening brief of the appellant is filed in the clerk's office.

(b) Within fourteen days after the brief of the appellee is filed in the clerk's office, the appellant may file a reply brief in the clerk's office. The case will be called at a session of the Court commencing after the expiration of the fourteen days unless counsel agree that it be called at a session of the Court commencing at an earlier time; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) With the consent of the Chief Justice or the Court, counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

§7. Effect of Noncompliance. If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.

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