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Record No. 5113

In the Supreme Court of Appeals of Virginia at Richmond

HATTIE GOUGH S. NEWTON, ET AL

v.

JOHN ERNEST NEWTON

FROM THE CIRCUIT COURT OF BUCKINGHAM 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 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.

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. 5113

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 1st day of December, 1959.

HATTIE GOUGH S. NEWTON, ET AL., Appellants,

against

JOHN ERNEST NEWTON, Appellee.

From the Circuit Court of Buckingham County

Upon the petition of Hattie Gough S. Newton, Elbon B. Sprouse, William C. Sprouse, Robert S. Sprouse, James W. Sprouse, David Linwood Sprouse, Wallace G. Sprouse and Frederick C. Sprouse an appeal is awarded them from a decree entered by the Circuit Court of Buckingham County on the 20th day of June, 1959, in a certain chancery cause then therein depending wherein John Ernest Newton was plaintiff and the petitioners 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

* * * * *

page 53 }

* * * * *

DECREE OF NOVEMBER 2nd, 1953.

This cause came on this day to be heard on the application of the complainant for the appointment of a receiver, notice of which was duly given to all persons in interest, touching which application the Court considered the bill of complaint duly verified, the three answers of the respective defendants to said bill, the two affidavits of the defendant filed in opposition to the said application, the evidence presented *ore tenus* on behalf of the defendants, and was argued by counsel.

On consideration whereof, the Court doth adjudge, order and decree:

(1) That the said application for the appointment of a receiver be and the same is hereby denied; and

(2) That, without intimating what its decision shall be on the merits of the cause after it has been fully presented, the following procedure shall be followed until the further order of the Court:

(a) The Sprouse estate shall continue to rent the cabins on that estate, collect the rentals therefor and pay the expenses incident to such operation, keeping an accurate record of such transactions; and

(b) The complainant shall rent the cabins known as the Newton cabins, collect the rentals therefor and pay the expenses incident to such operation, keeping an accurate record of such transactions; provided, that David Linwood Sprouse shall have the right to rent the Newton cabins when the complainant is not personally present, and shall turn the rentals collected by him, less the rentals fees according to the schedule now in effect for cabins rented by him, over to the complainant, and that for such of the Newton cabins as the complainant shall personally rent the said David Linwood Sprouse shall be entitled to a fee of $.50 per cabin.

And on the motion of the adult defendants, other than the wives of the Sprouse defendants, they are given time to file their amendment to this answer and cross-bill, which is accordingly done.

page 53-a }

Enter:

JOEL M. FLOOD, Judge.

page 177 }

* * * * *

DECREE OF APRIL 19, 1958.

This cause came on this day to be again heard on the papers formerly read, and on the decree of the Supreme Court of Appeals of Virginia, entered in this cause on January 20, 1958, and on the petition of the complainant filed in the Clerk's Office of this court on April 10, 1958, and on the demurrer of the defendants to said petition, and was argued by counsel.

On consideration whereof, and the defendants, by counsel, moving the court to enter the decree offered by them, notice of which having been duly given counsel for the complainant, the court doth defer action on such motion.

And the parties hereto so stipulating, the court doth adjudge, order and decree (1) that the complainant owns in his own right the TV set purchased from Wards and Company for $158.00, and shall have the right to remove the same from his room in the so-called Newton cabins, and that no part thereof shall be charged in this case, and the item of $158.00 therefor in said petition mentioned is stricken and disallowed; and (2) that the other six items mentioned in paragraph (1) of said petition, aggregating $2,774.74, shall be charged against the operating expenses of said cabins, and said items shall be considered a part of the property to which the defendants are entitled under the said decree of the Supreme Court of Appeals of Virginia. The effect of the foregoing is that the questions raised by paragraph (1) of said petition have been disposed of, leaving for further consideration paragraph (2) of said petition.

And the Court having considered the demurrer to said paragraph (2) of said petition, doth overrule the same, to which action of the court the defendants by counsel duly excepted; and the defendants are given five days from this date in which to answer or further plead to said petition; and the Court doth fix on May 10, 1958, for a further

page 178 } hearing in this matter.

Enter:

JOEL W. FLOOD, Judge.

* * * * *

page 191 }

* * * * *

DECREE—MAY 5, 1958.

This cause came on this day to be again heard on the papers formerly read, on the decree of the Supreme Court of Appeals of Virginia entered on the 20th day of January, 1958, in this cause (there referred to as Hattie Gough S. Newton, et al., *v.* John Ernest Newton, Record No. 4730), a certified copy of which has been filed among the papers in this cause, on the petition filed by the complainant on April 10, 1958, on the answer thereto of the defendants, on the petition of the defendants filed on April 21, 1958, and on the complainant's answer thereto, and was argued by counsel.

Upon consideration whereof, the court doth postpone a hearing before it on the petition of the complainant and answer thereto by the defendants and the petition of the defendants and the answer thereto by the complainant as it is a matter that can be presented to the commissioner to whom this cause will be referred herein.

The court doth further adjudge, order and decree that this cause be and it hereby is again referred to G. M. Rogers, Commissioner in Chancery, who shall take, state and report to the court a further account showing:

page 192 }

(1) The rents, operating expenses and profits from the operation of the thirty-six cabins mentioned and described in the bill and proceedings in this cause from the date shown in his first report to the date of filing of the report now directed to be made, (including in the operating expenses of the Newton cabins the six items aggregating $2,774.74 mentioned and described in the decree herein of April 19, 1958);

(2) What is the proper division of the foregoing between the complainant and the defendants on the basis stated in his first report;

(3) The balance due the complainant on the $74,778.06 cost of the construction and equipping of the eighteen Newton cabins, after applying the proper available credits, and the balance so ascertained shall bear interest from the date of the filing of this report; and

(4) What is a fair compensation to be paid to the complainant for the land on which the four and a fraction cabins

were built, together with the adjacent strip of land, as provided in the court's decree, with a proper description thereof to be included in the deed therefor to be made to the defendants.

Before taking these accounts, the Commissioner shall give notice of the time and place thereof to counsel for the said complainant and defendants.

The court doth further adjudge, order and decree that the complainant shall have the right to have a certified public accountant go over the account and books kept by the defendants in the operation of the Sprouse cabins at the complainant's own proper cost and that the defendants shall have a right to have a certified public accountant go over the account and books of the complainant showing the operation of the Newton cabins at the defendants' own proper cost. The complainant and/or defendants, upon being requested to do so by the other, shall make their books available for such auditing. Said audit and account shall be limited to the operation of said cabins since the closing date of the account heretofore filed in this cause by said commissioner.

page 193

In accordance with the said decree of January 20, 1958, it is ordered that the costs of this cause, including the commissioner's fee for his first report and his fee for the report herein directed to be made, shall be paid by the complainant.

Enter:

JOEL W. FLOOD
Judge of the Circuit Court of
Buckingham County, Virginia.

• • • • •

page 199 Virginia:

In the Clerk's Office of the Circuit Court of Buckingham County, Saturday, September 6, 1958, in Recess of the Court:

• • • • •

INJUNCTION ORDER.

• • • • •

This day came the Petitioner, John Ernest Newton, by Counsel, before the undersigned Judge of the Circuit Court

of Buckingham County, Virginia, and tendered to the undersigned Judge and asked leave to file the Petition duly sworn to; and it is ordered that the said Petition, duly sworn to, be and the same is herewith accordingly filed.

page 200 } Thereupon, the said Petitioner, by Counsel, moves the Court for a preliminary injunction pursuant to the prayer of the said petition; and the said motion for a preliminary injunction came on to be heard on the verified petition of the said Petitioner and exhibits therewith.

Upon due consideration whereof, it appearing to the Court that the said Petitioner is entitled to the preliminary injunction prayed for and that the conduct of the said defendants as set forth in the said Petition is unduly molesting the said Petitioner and that the said *Defnedants* are improperly and unlawfully trespassing upon the lands of the said Petitioner an injunction is hereby granted the Petitioner, John Ernest Newton, in joining and restraining each of the Defendants named above from trespassing upon or entering upon or going upon that portion of the Petitioners land, namely, the land of John Ernest Newton which lies immediately adjoining the lands owned by the Defendants herein named above, and for the distance of 50 yards in a general northeastern direction running from the boundary line as shown on that certain plat of survey dated February 24, 1955 made by R. C. Dodl, a copy of which is filed with the original Petition filed before the court this day, which lands commence on the northwestern side of U. S. Highway No. 15 and extend back to the point designated on the said Petition as "Small Branch," which said boundary line begins at point designated "A" on the said petition and extends south 38° 00′ E. 1085′ to point "B" as shown on the said Petition and thence extends to route U. S. Highway 15, S. 59° 00′ E. 324.7′.

This injunction order shall be enforced and effective from the moment that the said Petitioner, John Ernest Newton, or someone for him, shall enter into a bond before the Clerk of the Circuit Court in the penalty of $500.00, with surety, to be approved by the said Clerk upon condition to

page 201 } pay all such cost as may be awarded against the said Petitioner and all such damages that shall be incurred or sustained by the said defendants in case the injunction be dissolved and shall continue in force for a period of sixty (60) days, unless sooner dissolved.

The service of a certified copy of this order upon the said

defendants shall have the same force and effect as the issuance and service of a former writ of injunction.

Enter:

JOEL W. FLOOD
Judge of the Circuit Court of
Buckingham County, Virginia.

* * * * *

page 205 }

* * * * *

Filed in open Court 9-12-58.

JOHN C. SPENCER, Clerk.

NOTICE BY DEFENDANTS.

To John Ernest Newton:

You are hereby notified that on September 12, 1958, at 10 o'clock A. M., or as soon thereafter as counsel can be heard, the undersigned, the defendants in the above styled *cuase,* will move the Circuit Court of Buckingham County, Virginia, at the Courthouse thereof at Buckingham, Virginia, to annul, vacate and set aside the decree entered in the above styled cause on September 6, 1958, on the ground that said decree was entered in contravention of the provisions of Rule 2:18 of the Rules of the Supreme Court of Appeals of Virginia, which directs that drafts of orders and decrees "shall be endorsed by counsel of record or notice given of the time and place of presentation for entry." The first and only notice that the defendants or their counsel had that any such decree would be presented or had been presented for entry, or had been entered, was when a copy of the decree was served by an officer of the law on William C. Sprouse on September 6, 1958. Service has not even been attempted on any of the other defendants, though nearly all of them are in Buckingham County.

At the same time and place the defendants will move the court to vacate and dissolve the injunction granted in said decree upon the following grounds:

(1) No notice was given to them or their counsel of the time and place of moving for said injunction; and the injunction was not necessary to prevent threatened and irreparable damage.

(2) The injunction contravenes and violates the decree of the court in this cause of November 14, 1956, and of the decree of the Supreme Court of Appeals of Virginia, in this cause of January 20, 1958 in that said injunction
page 206 } deprives these defendants of the use and benefit of the strip of land therein directed to be conveyed by John Ernest Newton to them, including the roadway mentioned and described in the said decree of November 14, 1956.

(3) There was and is no necessity for the injunction, and it was issued on false suggestion.

(4) The petition for the injunction was sworn to by John Ernest Newton on September 4, 1958. The injunction order was actually signed by the judge on September 5, 1958, as is shown by two letters from George Abbitt, Jr., Esquire, one of Newton's attorneys, doth dated September 5, 1958, copies of which are herewith filed as parts of this motion, marked, respectively, "Exhibit 1 and Exhibit 2." At that time the defendant, Hattie Gough Newton, was out of this State and had been for about a month, and several of the other defendants had not even been on the premises described in the injunction for any purpose.

(5) The application for the injunction is punitive, and is designed to harrass and embarrass the defendants.

(6) The injunction was improvidently awarded.

Respectfully,

HATTIE GOUGH NEWTON
ELBON B. SPROUSE
WILLIAM C. SPROUSE
ROBERT S. SPROUSE
JAMES W. SPROUSE
DAVID LINWOOD SPROUSE
WALLACE G. SPROUSE
FREDERICK C. SPROUSE
By counsel.

JOHN B. BOATWRIGHT
Buckingham, Virginia.

ROBERT WHITEHEAD
Lovingston, Virginia, p. d.

* * * * *

page 210 }

* * * * *

Sept. 12, 1958.

DECREE.

This day came the parties both the petitioner and the defendants by counsel and in their own proper persons and the defendants filed a notice of motion to dissolve the Injunction heretofore granted on the petition of J. E. Newton on the 6th day of September, 1958, and on the motion of the defendants to dissolve the same and the Court having heard evidence *ore tenus* for both the plaintiff and defendants doth dismiss and dissolve the said injunction as to all of the defendants named therein save and except William C. Sprouse and Frederick C. Sprouse and as to them the injunction is continued until the further order of the Court in this cause.

And the Court deeming it proper so to do, leave hereby is granted unto the defendants during the pendency of this suit to make necessary repairs to the Motel known as the Newton Motel which is erected on the 24/25th of an acre and 1/4 of an acre additional land from the Maxey Tract, said repairs to be made at the expense of the defendants and not to be charged as improvements or operating expense.

And the Court doth further extend the injunction heretofore granted as to William C. Sprouse and Frederick Sprouse and they are enjoined and restrained from going upon the 24/25th of an acre to which the deed to J. E. Newton and Hattie G. Newton was heretofore set aside as well as any of the land embraced in the tract of land of 62 acres, more or less, known as the "Maxey Tract" and now owned by the said J. E. Newton.

Enter.

JOEL W. FLOOD, Judge.

page 211 }

* * * * *

Filed in Clerk's Office 9-15-58.

JOHN C. SPENCER, Clerk.

PETITION OF HATTIE GOUGH S. NEWTON, ET AL., OF SEPTEMBER 13, 1958.

To the Honorable Joel W. Flood, Judge of said Court:

Your petitioners, Hattie Gough S. Newton, Elbon B. Sprouse, William C. Sprouse, Robert S. Sprouse, David Lindwood Sprouse, Wallace G. Sprouse and Frederick C. Sprouse, respectfully represent that:

1. In the above styled chancery cause a decree was entered by your honor on December 2, 1953, (Chancery Order Book 13, page 298) which reads in part as follows:

"(2) That, without intimating what its decision shall be on the merits of the cause after it has been fully presented, the following procedure shall be followed until the further order of the Court:

"(a) The Sprouse estate shall continue to rent the cabins on that estate, collect the rentals therefor and pay the expenses incident to such operation, keeping an accurate record of such transactions; and

"(b) The complainant shall rent the cabins known as the Newton cabins, collect the rentals therefor and pay the expenses incident to such operation keeping an accurate record of such transactions; provided, that David Linwood Sprouse shall have the right to rent the Newton cabins when the complainant is not personally present, and shall turn the rentals collected by him, less the rentals fees according to the schedule now in effect for cabins rented by him, over to the complainant; and that for such of the Newton cabins as the complainant shall personally rent the said David Linwood Sprouse shall be entitled to a fee of $.50 per cabin."

2. The cause was referred to a commissioner who made his report (filed January 20, 1956) in which he found:

(a) "The contract of November 10, 1951, has been breached by the complainant who has refused to permit the thirty-six cabins to be operated as one unit under one management and persists in his breach."

(b) "Should the court hold that the defendants are not entitled to have said deed and contracts rescinded, or should the defendants not elect to insist on such rescision, then your commissioner finds that the thirty-six cabins should be operated as one unit under one management with the said

Hattie Gough Newton, one of the defendants, as such manager in accord with said 'overall agreement' subject to the jurisdiction of the court and until its further order."

(c) "The agreement of November 10, 1951, provides that the thirty-six cabins were to be operated under one management. Though the agreement failed to provide who was to be the manager, by a preponderance of the testimony, all of the parties agreed between themselves that the defendant, Hattie Gough Newton, the wife of the complainant, was to be such manager. As heretofore reported under the FIRST INQUIRY your commissioner finds that the complainant breached this agreement by refusing to allow the page 212 } thirty-six cabins to be operated as one unit under one management, and, from the evidence, he persists in his breach."

(d) "Heretofore your commissioner reported herein that the complainant refused to permit the thirty-six cabins to be operated as a unit under one management. He interrupted and interfered with his wife's management in a manner which prevented her from the performance of her duties as the manager under the agreement of the parties."

The commissioner further found that the profits from all thirty-six cabins should be divided, one-fourth to complainant, one-fourth to Hattie Gough S. Newton and one-half to the estate of E. B. Sprouse.

3. On November 14, 1956 (Chancery Order Book 13, page 491) this court confirmed said report in part, did not expressly pass on most of it, and adjudicated the cause on its merits. It did not overrule or disturb in any respect the above quoted findings of the commissioner. It decreed in part:

"The Court doth further adjudge, order and decree that the complainant, John Ernest Newton, is entitled to retain the profits from the operation of the Newton Motel or cabins since November 2, 1953."

4. An appeal was taken from that decree by the defendants and by its decree of January 20, 1958, the Supreme Court of Appeals of Virginia reversed said decree in certain respects, including the direction "that the appellee retain the profits from the Newton cabins since November 2, 1953." Except with respect to compensation for the strip of land owned by him and directed to be conveyed by him to appellants (defendants), the decree of the appellate court provides that "the report of the commissioner is confirmed," and directs

that the cause be referred back to the same commissioner "to take a further account of rents, operating expenses and profits from the date shown in his first report to the date of filing his next report, and to state the proper division thereof between the appellee and the appellants on the basis stated in his first report." That division was, one-fourth to complainant, one-fourth to Hattie Gough S. Newton and one-half to the estate of E. B. Sprouse.

5. On, to-wit, April 21, 1958, defendants filed their petition in this cause, in which, in paragraphs 7-a, 8-a, 9-a, and 10-a, they set forth the reasons why a decree should be entered terminating complainant's occupancy and management of the Newton cabins and placing Hattie Gough S. Newton, the person originally agreed upon as the manager of the entire 36 cabin units, in possession thereof, and that she was ready and willing to take over the management thereof page 213 } and pending the proceeding, to give, if required, an adequate bond for the faithful discharge of her duties. They so prayed. Said petition is incorporated herein by reference. To date defendants have not been able to effect a change in the management of said Newton cabins.

6. Since the filing of said petition, a further material change in conditions has occurred. The motel then being constructed by complainant for his own private gain was opened for business on September 10, 1958, and is now being conducted by complainant in competition with the original "Newton" cabins of 18 units, of which *he* is the manager and of which *he* is in possession and of which *he* is not the owner. This new Newton motel of 16 units is located within sight of the original Newton cabins and is on the same side of U. S. Highway No. 15, and both are to the north of the intersection of that highway with U. S. Highway Route 60.

7. Complainant is using the same maid service at both motels. He is directing the operations of both, with his brother ostensibly in charge of the "new" motel. He is leaving much of the actual handling of the customers of the old Newton Motel in the hands of a young, inexperienced boy and the service being there rendered is inefficient. The old Newton cabins are not being properly cleaned or properly kept in order. The appearance is depreciating. He has refused to make the necessary repairs to the property to keep it in order. He permitted the paling fence on the highway in front of the cabins to become dilapidated and unsightly. He has refused to allow defendants to make repairs, even when they offered to do so at their own expense. At the injunction hearing on September 12, 1958, the court took

notice in part of this deplorable and inexcusable condition and on its own motion decreed:

"And the Court deeming it proper so to do, leave hereby is granted unto the defendants during the pendency of this suit to make necessary repairs to the Motel known as the Newton Motel which is erected on the 24/25th of an acre and 1/4 of an acre additional land from the Maxey Tract, said repairs to be made at the expense of the defendants and not to be charged as improvements or operating expense."

8. That relief merely skims the surface. It does not go to the root of the trouble. Complainant is in the driver's seat. He is in charge of the old Newton Motel of which these defendants are the equitable owners, and entitled to 3/4ths of the profits therefrom, and running it to suit himself, though he is entitled to only 1/4th of the profits. He has, as stated, opened for business on September 10, 1958, and is now operating his *own* individual motel just north of page 214 } it. He owns and operates another motel at the intersection of U. S. Routes 15 and 460. There is an obvious conflict of interest. If he promotes his own individual interest, as he is doing, he works against the interests of these defendants in the operation of a valuable property which they beneficially own and for which they must pay, and to the profits of which they are entitled to 75%. If he works for their interest he is working against himself, and that he is not doing. He is in possession of the old Newton Motel in a semi-fiduciary capacity, namely, by designation of the court, and that position is incompatible with his own private and individual interests. No man can serve two masters. John Ernest Newton is serving himself first. No court of equity should permit this unjust and intolerable situation to continue.

9. Defendants pray that complainant's occupancy and control of the old Newton Motel (or 18 Newton cabins) be forthwith terminated and that Hattie Gough S. Newton be placed in charge thereof. She stands ready and willing to give an adequate bond in any reasonable amount for the faithful discharge of her duties.

10. In the alternative, they pray that some competent, disinterested person may be placed in charge of said property with authority to operate the same under the decree of the court and with directions to account.

11. They are advised by the court that the earliest date available for a hearing on this petition is October 3, 1958,

and in view thereof, they pray that the matter may then be heard and acted upon.

Respectfully,

HATTIE GOUGH NEWTON
ELBON B. SPROUSE
WILLIAM C. SPROUSE
ROBERT S. SPROUSE
DAVID LINWOOD SPROUSE
WALLACE G. SPROUSE
FREDERICK C. SPROUSE
By counsel.

JOHN B. BOATWRIGHT
Buckingham, Virginia.

ROBERT WHITEHEAD
Lovingston, Virginia
For Petitioners.

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page 216 }

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DECREE OF OCTOBER 3, 1958.

This cause came on this day to be again heard on the papers formerly read, and on the motion of the defendants to terminate John Ernest Newton's occupancy and management of the Newton Cabins under the decree in this cause of November 2, 1953 and on the evidence heard *ore tenus,* and the statements made at the bar of the court, and was argued by counsel.

On consideration whereof the court doth adjudge, order and decree that:

1. There is an obvious conflict of interest in the operation by the complainant of the said Newton Cabins and his two individual and personal motels, and especially the new motel which he opened on, to-wit; September 10, 1958, a short distance north of the aforesaid Newton Cabins mentioned and described in the decree herein of November 2, 1953, and that this conflict can be eliminated in full only by the termi-

nation of the complainant's occupancy and operation of the said Newton Cabins;

2. The petition of the defendants that Hattie Gough S. Newton should be placed in charge of and be made the manager of said Newton cabins is denied;

3. Due to the inability of the parties hereto to agree upon some other person to assume the occupancy and management of said Newton cabins pending this cause, and the inability of the court to now designate some suitable person for that responsibility, the said John Ernest Newton shall for the time being continue in operation under the decree of November 2, 1953, with the specific direction from this court (a) that he forthwith take all necessary and appropriate steps to meet the requirements of the Virginia State Health Department and expend from the monies collected by him all sums necessary in order that the said Newton cabins may meet such requirements, and (b) that he refrain from diverting any customers or prospective customers from the said Newton cabins or the Sprouse cabins (mentioned and described in said decree of November 2, 1953), to either of his personal or individual motels or to the motels of any other person; and

4. The further consideration of the aforesaid motion of the defendants is continued.

To the action of the court in denying their application for the appointment of Hattie Gough S. Newton, the defendants, by counsel excepted.

Enter:

JOEL W. FLOOD, Judge.

* * * * *

page 218 }

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DECREE OF NOVEMBER 15, 1958.

This cause came on this day to be again heard on the papers formerly read, and on the petition of the defendants to this cause this day filed, and was argued by counsel.

On consideration whereof, the Court doth adjudge, order and decree that:

1. The commissioner, G. M. Rogers, having filed his report in the Clerk's Office of this Court on November 13, 1958, and, under the decree of the Supreme Court of Appeals of January 20, 1958, interest begins to run on the balance due the complainant by the defendants on account of improvements, from the date of such filing, and the complainant is entitled to his one-fourth of the net profits from the operation of the 36 cabins from May 31, 1958 (up to which date the commissioner computed profits and closed the account) until November 13, 1958, and the parties shall account for such profits for that period and endeavor to settle among themselves therefor, and failing that, for any cause, shall so report to the court, and if they succeed in reaching a satisfactory conclusion shall report to the court the results, to the end that proper credit may be received of record;

2. The complainant shall forthwith deliver to the defendants full possession and *occupany* of the 18 "Newton" cabins and the real estate therefor, namely, the lot of 24/25ths of an acre and the strip of 0.21 of an acre shown on the plat of Carroll Gillispie filed as an exhibit in this cause, and his possession and *occupany* thereof are hereby terminated, and defendants are entitled to a writ of possession therefor if, for any cause, such possession and occupany are not forthwith delivered; and this direction as to the delivery of real estate includes all personal property and equipment belonging to said Newton cabins, both that included in the original figure of $74,778.06 and thats since purchased and for which credit has been claimed by complainant as operating page 219 } expenses;

3. The defendants having paid into court the sum of $7,667.74, being one-fourth of the balance of $30,-670.94 due complainant according to the report of Commismissioner Rogers, this fact is noted of record and credit therefor is allowed accordingly;

4. Nothing in this decree contained shall in any way prejudice the rights of any of the parties hereto to except to the aforesaid report of Commissioner Rogers, nor shall it be construed as adjudicating the balance due the complainant herein, as to which the court reserves decision when action is taken on said report;

5. The injunction heretofore issued against William C. Sprouse and Frederick C. Sprouse is hereby dissolved; this revocation does not apply to J. E. Newton's residence or to the motel property he owns.

6. The defendants electing to accept said property, this fact is noted of record.

Enter:

JOEL W. FLOOD, Judge.

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page 221 }

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PETITION OF NOVEMBER 16, 1958, OF HATTIE GOUGH S. NEWTON, ET AL.

To the Honorable Joel W. Flood, Judge of the said Court:

Your petetioners, the defendants to this cause, respectfully represent that:

1. On April 21, 1958, they filed their petition in this cause. They asked complainant's occupancy and management of the "Newton" cabins terminated and that Hattie Gough S. Newton, the person originally agreed upon, be placed in possession thereof, and offering to give an adequate bond for the faithful discharge of her duties.

2. On September 13, 1958, they filed their petition in this cause supplementary to the said petition of April 21, 1958, in which they set forth that on September 10, 1958, the complainant opened for business his own individual competing tourist court or motel located a very short distance from and in sight of the "Newton" cabins and on U. S. Route 15, and was also operating another motel of his own at the intersection of Route 15 and 460, and that there was an obvious conflict of interest, highly detrimental to the interests of these petitioners. They again prayed that Hattie Gough S. Newton be placed in charge of the "Newton" cabins, and averred that she stood ready and willing to give an adequate bond for the faithful discharge of her duties.

3. The matter came on to be heard on October 3, 1958, when evidence was presented *ore tenus* and when it was shown conclusively that since complainant opened for business his individual motel, on, to-wit, September 10, 1958, the great bulk of the business formerly enjoyed by the "Newton" cabins

was being enjoyed by complainant's individual motel, and very little business was being obtained for the original "Newton" cabins. By decree of that date your Honor held that there was an obvious conflict of interest in the operation by the complainant of the two compete*ti*ng motels and that the conflict could be eliminated in full only the termination of complainant's occupancy and operation of the "Newton" cabins, but refused to place Mattie Gough S. Newton in charge of the "Newton" cabins, and, in view of the inability to find some suitable person to take charge of the "Newton" cabins, gave certain directions to complainant.

4. The same situation continues to exist. Complainant is in charge of both motels, both *competinng* and his *own individual* motel is getting nearly all of the business. He has left the impression with the customers that the *new motel* (owned by him individually and operated in fact solely for his benefit) is but an *addition* to the other units. This is conclusively shown by a letter dated October 12, 1958, from Mrs. William T. Harper, 6402 Howe Street, Pittsburgh, Pa., which reads:

"Dear Mr. Newton:

"Enclose find the picture of Will & you it really looks fine I mean of both of you.

I'm sorry we missed Mrs. Newton on our trip going & coming. But hope she had nice vac. and feeling fine. Let us hear from you if you received this. Thanks again for nice Stay and wish both of you everything that is good and hope you will be successful with your addition of motels."

The original of said letter with the envelope and picture are herewith filed as a part hereof, marked "Exhibit 1."

5. On, to-wit, November 13th, 1958, Commissioner G. M. Rogers filed his second report, pursuant to the decree herein, in which he fixed the balance due complainant on account of improvements at $36,670.94. Under the decree page 222 } of the Supreme Court of Appeals of January 20, 1958, said balance bears interest from the date of the filing of the report. Therefore, complainant has no interest in the "profits" from the operation of the 36 cabins involved in this cause from and after the date of the filing of said report, but his return is by way of "interest" on the balance due him. The Supreme Court of Appeals in its

opinion (199 Va. 654, 661) expressly declared: "The complainant is not entitled to both interest and profits." Since he is now entitled to interest and not to profits, complainant has no further interest in the operation of the said "Newton cabins; and since petitioners are now entitled to *all* of the profits from the operation of the 36 cabins herein involved they are entitled to possession of the said "Newton" cabins. And in view of the conflict of interest aforesaid, it is vital to them that they be placed in possession without further delay.

6. They stand ready and willing to comply with any final decree entered in this cause as to the payment of the balance due complainant on account of improvements made by him and allowed herein. Under the decrees herein complainant has a lien on said "Newton" cabins and real estate for the amount due him, and he is amply secured. Moreover, petitioners stand ready and willing to give a bond in any reasonable amount with adequate security to make the down payment of one-fourth of the balance due complainant, and, in the alternative, they offer to pay said one-fourth into court.

7. Wherefore, they pray that a decree be entered in this cause terminating the occupancy of complainant of said "Newton" cabins and ordering a transfer of the possession thereof from him to them, and that the matter be heard on November 15, 1958, at 10 o'clock A. M., at Buckingham, Virginia.

HATTIE GOUGH S. NEWTON, et al.,
Defendants to this cause,
by counsel.

JOHN B. BOATWRIGHT
Buckingham, Virginia.

ROBERT WHITEHEAD
Lovingston, Virginia
Attorneys for Defendants, the
petitioners.

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page 224 }

* * * * *

REPORT OF COMMISSIONER.

To the Honorable Joel W. Flood, judge of said court:

Your undersigned commissioner in chancery would respectfully report unto the court, that:

(1) By a decree of reference entered herein on May 5, 1958, this cause was referred to him, and he was directed to take, state and report to the court certain inquiries set forth therein.

(2) Notice of the time and place of the taking of the accounts was duly given to all counsel of record, legal and timely service thereof was duly acknowledged and accepted by said counsel as shown by their signatures to an extract from said decree attached to the transcript of the depositions taken as hereinafter shown.

(3) Your commissioner began the taking of the depositions in the Courthouse of said county on July 5, 1958 and not completing them on that day they were continued and adjourned to July 7th and not completing them on that day they were again continued and adjourned to July 28, 1958 at the same place, on which day they were completed. They were taken and transcribed by C. R. McCarthy, Court Reporter, and consisted of three hundred and eight pages, which transcript is returned and filed along with this report as a part thereof. All of said counsel of record were present at the taking of said depositions. An index of the witnesses for the complainant and the defendants are attached to said transcript as is also a list of the exhibits filed with the depositions of the respective witnesses. Before the submission, by counsel, to the commissioner, said counsel consumed one and one-half days in argument and presentation of their views.

(4) Defendants statement by counsel with exhibits 1, 2 and 3 attached thereto marked "To be filed with the report of the commissioner."

Filed 11-13-58.

page 225 } FIRST INQUIRY.

Your commissioner executes this inquiry from the date shown in his first report only through the month of May, 1958, as the parties have only accounted to your commissioner for that period. The rents and profits for the period herein reported are as follows, to-wit:

Newton Cabins

October 1, 1954—December 31, 1954—Exhibit 67-A:		
Rental Receipts	$ 4,269.50	
Expenses (after disallowing J. E. Newton's claim for rental service)	3,183.99	
Net Profits	$ 1,085.51	$ 1,085.51
Year 1955—Exhibit 67-B:		
Rental Receipts	$23,270.25	
Expenses (after disallowing J. E. Newton's claim for rental service)	11,044.21	
Net Profits	$12,226.03	$12,226.03
Year 1956—Exhibit 67-C:		
Rental Receipts	$23,270.24	
Expenses (after disallowing J. E. Newton's claim for rental service)	11,371.02	
Net Profits	$12,153.92	$12,153.92
Year 1957—Exhibit 67-D:		
Rental Receipts	$26,056.37	
Expenses (after disallowing J. E. Newton's claim for rental service)	7,120.47	
Net Profits	$13,756.96	$13,756.96
January 1, 1958—May 31, 1958—Exhibit 67-E:		
Rental Receipts	$ 9,095.56	
Expenses (after disallowing J. E. Newton's claim for rental service)	7,120.47	
Net Profits	$ 1,975.09	$ 1,975.09
Total net profits from rentals eighteen Newton cabins		$41,197.51
T. V. collections eighteen Newton cabins—Exhibit 68		190.95
Coca-cola machine collections eighteen Newton cabins Exhibit 68		134.85
Total Item VI—Statement of September 25, 1958, filed with this report		86.36
Total net profits eighteen Newton cabins		$41,609.67

page 226 } *Sprouse Cabins*

October 1, 1954—December 31, 1954—Exhibit 74-A

Rental Receipts	$ 2,359.50	
Expenses	2,298.75	
Net Profits	$ 60.75	$ 60.75

Year 1955—Exhibit 74-A:

Rental Receipts	$15,202.15	
Expenses	12,515.73	
Net Profits	$ 2,686.42	$ 2,686.42

Year 1956—Exhibit 74-A:

Rental Receipts	$16,281.10	
Expenses	10,372.58	
Net Profits	$ 5,908.52	$ 5,908.52

Year 1957—Exhibit 74-B:

Rental Receipts	$19,743.86	
Expenses	15,590.73	
Net Profits	$ 4,153.13	$ 4,153.13

January 1, 1958—May 31, 1958—Exhibits 74-B & 74-E:

Rental Receipts	$ 8,187.63	
Expenses	8,327.60	
Net Profits	$ 139.97 loss	$ - 139.97
Total net profits from rentals eighteen Sprouse cabins		$12,668.85
Total of items disallowed and withdrawn as operating expenses on Exhibit 78 (Itemized later in this report)		1,243.08
		$13,911.93

Corrections on Mrs. Newton's books ($76.67 by Mr. Dulaney and $21.00 to Talley Neon, not entered on books. Mr. Dulaney's corrections on Exhibit 75 and Talley Neon payment on Exhibit 74-G).		- 97.67
Total net Total net profits eighteen Sprouse cabins		$13,814.26
Total net profits eighteen Newton cabins	$41,609.67	
Total net profits eighteen Sprouse cabins	13,814.26	
Total net profits thirty-six cabins	$55,423.93	$55,423.93

The claim of the complainant, J. E. Newton, fo compensation for his personal services in renting out the eighteen Newton cabins is disallowed. The claim of the defendants against the complainant for linen service for the cottage on J. E. Newton's home tract is disallowed.

page 227 } The items in question in Exhibits 78 and 87 are disposed of as follows:

(a) Item 1—1/2 h. p. motor—allowed as operating expense.
(b) Item 4—Road in front of cabins—allowed as operating expense.
(c) Item 6—Tubing and circulator—allowed as operating expense.
(d) Item 8—Two T. V. meters—disallowed as operating expense.
(e) Item 16—Used refrigerator, etc.—disallowed as operating expense.
(f) Item 21—T. V. meters—disallowed as operating expense.
(g) Item 34—Wiring 200′ conduit—allowed as operating expense.
(h) Item 39—Linens—allowed as operating expense.
(i) Item 40—Spread and duster—allowed as operating expense.
(j) Item 46—Nine blinds—allowed as operating expense.
(k) Item 51—T. V. antennas—disallowed as operating expense.

The commissioner is of the opinion that no portion of the rentals paid Stanford and Inge for advertisements should be charged to or be paid by the Sprouse Restaurant.

The defendants voluntarily eliminated the following items from Exhibit 78:

Item 3 —Running new circuits for air conditioners	$ 17.35	
Item 7 —Installing outside switches on cottages	85.94	
Item 11—Cement	29.00	
Item 15 —Two cribs and mattresses	43.12	
Item 32 —Step lights and conduit	72.58	
Item 33 —Labor on above	113.15	
Item 43 —Shrubs	165.00	
Item 51 —Amount allowed on T. V. antennas	35.00	
Item 54 —Construction of two bulletin signs	440.00	
Total items eliminated	$1,001.14	$1,001.14

The commissioner disallowed the following items from Exhibit 78:

Item 8 —Two T. V. meters	$ 19.70	
Item 16 —Used refrigeraotr, etc.	116.68	
Item 21 —T. V. meters	79.60	
Item 51 —Balance allowed on T. V. antennas	25.96	
Total items disallowed	$ 241.94	241.94
Total items eliminated and disallowed as operating expenses on Mrs. Newton's accounts		$1,243.08

SECOND INQUIRY.

The aforesaid net profits of $55,423.93 for the thirty-six cabins are to be divided as follows: One-fourth
page 228 } to the complainant, one-fourth to the defendant Hattie Gough S. Newton, the remaining two-fourths to the remainder of the defendants who are sons of Mrs. Newton by her first marriage, resulting in:

J. E. Newton $13,855.99
Mrs. J. E. Newton 13,855.98
Sprouse Estate 27,711.96

THIRD INQUIRY.

Your commissioner believes the net profits which should be applied as a payment on the $74,778.06 due the complainant as costs for the construction of the eighteen Newton cabins should be as follows:

3/4 Net profits Newton cabins	$31,207.25
1/4 Net profits Sprouse cabins	-3,453.58
Amount to be credited from this report	27,753.67
Amount to be credited from first report	16,353.45
Total amount to be credited	$44,107.12

Amount due on construction costs	—$74,778.06
Total amount to be credited	— 44,107.12
Balance due on construction after applying credits	—$30,670.94

(The above figures are calculated only through May 31, 1958).

FOURTH INQUIRY.

Your commissioner is of the opinion and does hereby report that the sum of $500.00 is a fair and just compensation to be paid the complainant for the small piece of land of about 21/100 of an acre upon which four and a fraction of the eighteen Newton cabins are located.

Under Section 8-256 of the Code of Virginia, your commissioner reports that he has given counsel of record notice of the filing of this report on this 13th day of November, 1958, and in addition thereto he has, by courtesy to the counsel, furnished them with a carbon copy therepage 229 } of. He has, in the taking and consideration of the accounts, expended three days in the taking of the depositions filed as a part hereof, and one and one-half days in the hearing of arguments of counsel on their views, totaling four and one-half days and has, in consideration of the questions raised, expended at least four days in the consideration thereof and he deems a fee of $500.00 a reasonable one for him, which covers the expense of clerical help he received herein.

Respectfully submitted,

G. M. ROGERS, Commissioner.

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page 242 }

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Filed in Clerk's Office 12-3-58.

JOHN C. SPENCER, Clerk.

EXCEPTIONS TO THE REPORT OF THE COMMISSIONER IN CHANCERY.

Comes now the complainant, John Ernest Newton, and files this his exceptions to the report of G. M. Rogers, Commissioner in Chancery, to whom this cause was referred, which report was filed on the 13th day of November, 1958.

(1) Your complainant excepts to the Commissioner's disallowance of complainant's claim for rental service which disallowance is shown in the First Inquiry and amounts to $9,768.50.

(2) Your complainant excepts to the finding of the Commissioner in Chancery in the Second Inquiry as the figures set out in the Second Inquiry should not include, as part of the assets, the amount due complainant as rental service as set out in Exception (1). The Commissioner's figures do not take into account your complainant's claim for rental services performed under the direction and order of this court and should be corrected showing the true amount due all of the parties after the rental services have been allowed.

(3) Your complainant excepts to the amounts set out by the Commissioner in Third Inquiry because the net profits from the Newton cabins are incorrect as the net profits include in the Commissioner's report the amount due your complainant for rental services. These figures should be corrected to take into account the rental services
page 243 } which should be deducted from the net profits as shown in the Commissioner's report.

(4) Your complainant excepts to the evaluation set by the Commissioner upon the land that is to be taken from your complainant and given to the defendants. The land is far more valuable than the $500.00 set by the Commissioner and is worth at least $2,500.00 as testified to by numerous witnesses.

On November 2, 1953. this court turned over the operation of the Newton Motel unto your complainant. Your complainant took over the motel, looked after it, cared for it and in general did everything a motel operator should do. By agreement of counsel, the court, in its order, permitted David Linwood Sprouse to rent out the Newton cabins when your complainant was not personally present for which he was to receive $1.00 per cabin rented out if the cabin brought $5.00 or more and 50¢ per cabin if the cabin brought less than $5.00. It was also provided by the court upon agreement by the parties that David Linwood Sprouse would receive 50¢ for each Newton cabin that was rented out by your complainant or someone for him.

From October 1, 1954, to May 31, 1958, that being the period for which your complainant requested compensation, the Newton Motel has netted approximately $41,000.00, to-wit: $41,609.67. During the same period, the Sprouse Motel has netted less than $14,000.00, to-wit: $13,814.26. All during the time from November 1953 until May 31, 1958, your complainant has spent practically every afternoon and night looking after, renting out and in general managing the Newton Motel without receiving one penny for his services. The evidence shows that a fee of $1.00 per cabin for those cabins renting for $5.00 and above and 50¢ per cabin for those cabins bringing less than $5.00 is a fair and just compen-
page 244 } sation.

In addition to the service that your complainant has performed, he has actually saved the motel 50¢ per cabin on every cabin that your complainant has rented out that brought $5.00 or more per cabin. That is to say, if your complainant rented out Cabin 14 for $6.00, David Linwood Sprouse only received 50¢. If your complainant had not been there and David Linwood Sprouse rented out cabin 14 for $6.00, David Linwood Sprouse would have received $1.00. Certainly good conscience and equity would entitle your complainant for just compensation for services rendered the parties owning the motel and it would be inequitable to fail to compensate him for his work and services rendered and to make the defendants bear their fair share of the burden of renting out the cabins. They are receiving a tremendous profit as a result of the labors of your complainant. In addition to this, David Linwood Sprouse, one of the defendants, has received full pay for every single Sprouse cabin that was rented out whether by David Linwood Sprouse or by one of the other defendants or someone acting

for David Linwood Sprouse. Your complainant does not object to this but he simply says he should be paid and compensated for the work he has performed for the benefit of the parties and at the direction of and in compliance with the order of this court.

Respectfully,

JOHN ERNEST NEWTON
By W. M. ABBITT
GEORGE ABBITT, JR.
Attorneys for the complainant.

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page 246 }

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Filed in Clerk's Office 12-24-58.

JOHN C. SPENCER, Clerk.

DEFENDANTS' REPLY TO COMPLAINANT'S EXCEPTIONS TO REPORT OF COMMISSIONER G. M. ROGERS, AND PRAYER FOR RELIEF IN THE ALTERNATIVE.

1. Commissioner G. M. Rogers filed his report in the Clerk's Office on November 13, 1958. To that report the complainant filed exceptions. All of the exceptions, save the one with respect to the value of the strip of land, relate to the commissioner's disallowance of complainant's claim of some $9,768.50 for rental service of the Newton cabins.

2. Defendants believe and aver that the report of the commissioner is equitable and fair and should be conformed in its entirety. Therefore, defendants file no exceptions to said report.

3. In their answer and petition in this cause of April 21, 1958, they denied that complainant was entitled to anything on account of his claim for rental service. They set forth, in the alternative, *inter alia,* that if complainant is allowed compensation for renting the Newton cabins, (1) they should be allowed compensation for renting the Sprouse cabins and (2) complainant should be charged with a reasonable sum for his personal use of cabin No. 26 of the Newton cabins, and in the alternative they prayed for such relief.

4. The disallowance by the commissioner of complainant's claim automatically disallowed the said two claims of the defendants asserted in the alternative, without express finding to that effect.

5. As stated, defendants are satisfied with the findings of the commissioner and ask for the confirmation of his report. However, they wish to make it perfectly clear that if the court sustains the exceptions of the complainants to said report with respect to the allowance to him for the rental of the Newton cabins, then without prejudice to their said position defendants insist (1) that they be allowed on a like basis for rental service of the Sprouse cabins, and (2) that complainant be charged with a reasonable sum page 247 } for his personal use of cabin No. 26 of the Newton cabins. They expressly assert both of said claims in the alternative.

Respectfully,

HATTIE GOUGH S. NEWTON, ELBON B. SPROUSE, WILLIAM C. SPROUSE, ROBERT SPROUSE, JAMES W. SPROUSE, DAVID LINWOOD SPROUSE, WALLACE G. SPROUSE and FREDERICK C. SPROUSE,
by counsel.

JOHN B. BOATWRIGHT
Buckingham, Virginia.

ROBERT WHITEHEAD
Lovingston, Virginia
Attorneys for Defendants.

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page 248 } "SPROUSE'S MOTEL"

INCOME AND EXPENSES JUNE 1, THROUGH NOV. 14, 1958

INCOME	$11,820.14
Less Lenwood's Commission	$ 817.50
Total After Lenwood's Commission	$11,002.64

EXPENSES

Laundry	$1,172.11	
Repairs	853.20	
Supplies	$1,424.82	
Tele. Freight, Ice Etc.	274.44	
Salaries	$1,648.69	
Light Heat and Power	$1,165.79	
Advertising	$1,814.05	
Social Security Tax Ins.	263.06	
Total Expenses		$8,616.16
Net Profit From Sprouse's Motel		$2,386.48

This expense does not include $1,653.00 rental service to Sprouse estate.

Filed in Clerk's Office 6-20-59.

JOHN C. SPENCER, Clerk.

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page 258 }

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DECREE OF JUNE 20, 1959.

This cause came on this day to be again heard on the papers formerly read, and on the report of Commissioner G. M. Rogers filed on November 13, 1958, and on the evidence and exhibits therewith filed, on the exceptions to the said report filed by the complainant on December 3, 1958, on the defendants' reply to said exceptions and the prayer for relief in the alternative filed on December 24, 1958, and on the statement of income and expenses for the period from June 1, 1958, to November 14, 1958, filed by the defendants this day, and showing a net profit of $2,386.48 from the operation of the "Sprouse cabins" without deduction of $1,653.00 for the expense of "rental service" claimed in the alternative, and on the statement of rentals and expenses for the period from June 1, 1958, to November 14, 1958, filed by the complainant this day, and showing a net profit of $3,381.76 from the operation of the "Newton cabins" without deduction of

$878.68 claimed for rental service by the complainant, and a net profit of $2,503.08 if such deduction is allowed, and was argued by counsel.

On consideration whereof, the court doth sustain the exceptions of the complainant to the report of Commissioner Rogers; and doth allow the complainant the full amount claimed by him on account of rental service of the "Newton cabins," namely, $9,768.50 for the period October 1, 1954, through May 31, 1958, and $878.68 for the period from June 1, 1958, to November 14, 1958, when he delivered possession of said "Newton cabins" to the defendants, making a total allowance to the complainant for rental service of $10,647.18; and doth disallow the claim of the defendants filed in the alternative for rental service of the "Sprouse
page 259 } cabins" for said periods, namely, $9,626.00 for the period October 1, 1954, through May 31, 1958, and $1,653.00 for the period June 1, 1958, to November 14, 1958, total, $11,279.00; and doth accordingly so adjudge, order and decree.

And the court doth reject the finding of Commissioner Rogers that $500.00 is a fair compensation to complainant for the lot of 0.2667 (sometimes referred to as 21/100) of an acre shown on the plat made by Carroll Gillispie, S. B. C., from a survey of July 1, 1958, and doth fix said compensation at $2,500.00, which said compensation is hereby allowed; and doth accordingly so adjudge, order and decree.

And the court proceeding to fix the amount due by the defendants to the complainant on account of the balance due on the sum of $74,778.06 in the decree mentioned and referred to on page 5 of the report of Commissioner Rogers, doth ascertain said balance to be $29,047.43, which amount is arrived at in this manner: the total net profits from the "Newton cabins" shown on page 3 of said report is $41,-609.67, to which is added $3,381.76 for the period June 1, 1958, to November 14, 1958, total, $44,991.43, from which is deducted $10,647.18 which the court allows complainant for rental service, leavings a balance of $34,344.25, with 3/4ths of which complaint is chargeable, namely, $25,759.69, from which is deduced $4,050.25 on account of his 1/4th of the net profits of the "Sprouse cabins" (arrived at by adding $13,814.26 shown in said report to $2,388.48 for the period June 1, 1958, to November 14, 1958), leaving a balance of $21,709.44, to which is added the balance of $16,353.45 from the first report, total, $38,062.89, which figure is deducted from the sum of $74,778.06, leaving a balance of $36,715.17, from which is deducted the amount paid into court by the defendants on November 15, 1958, $7,667.74, leaving the aforesaid balance

of $29,047.43, on which interest is due the complainant from November 14, 1958.

Except as herein otherwise provided, the report of Commissioner Rogers is confirmed.

page 260 } And the court doth adjudge, order and decree that upon the payment by the defendants to the clerk of this court of the sum of $29,047.43, with interest thereon from November 14, 1958, and the further sum of $2,500.00 on account of the compensation allowed by the court for the strip of 0.2667 of an acre, the clerk shall pay to complainant the entire sum less $7,985.38 on account of the 3/4ths of the $10,647.18 in controversy with reference to rental charges allowed the complainant, with interest thereon from November 14, 1958, and also less $2,000.00, being the difference between the $2,500.00 allowed by the court and the $500.00 allowed by the commissioner for said small strip of land, which said sums so withheld the clerk shall deposit on an interest bearing savings account in Buckingham County Bank payable to the order of the court in this cause.

Upon the payment aforesaid, the complainant shall deliver to the defendants a deed to the said lot of 0.2667 acres, less such part thereof as has been conveyed to the Commonwealth of Virginia for the right of way for U. S. Highway No. 15, in which deed complainant's wife shall unite, said conveyance to be made to Elbon B. Sprouse, Jr., William C. Sprouse, David Linwood Sprouse, Robert S. Sprouse, Wallace G. Sprouse and Frederick C. Sprouse, subject to a life estate of Hattie Gough S. Newton. Said conveyance shall be with general warranty and the usual covenants of title.

Upon the payment aforesaid, that certain deed from the devisees of the late E. B. Sprouse and the consorts of those married to J. E. Newton and Hattie G. Newton dated August 4, 1951, of record in the Clerk's Office of Buckingham County, Virginia, in Deed Book 53, page 475, conveying a lot of 24/25ths of an acre, shall stand vacated and cancelled, and the clerk shall make a proper marginal notation on said deed book to this decree.

page 261 } In keeping with the directions of the Supreme Court of Appeals, the court doth adjudge, order and decree that the complainant pay all unpaid costs of this cause, including the fee of $500.00 of Commissioner Rogers.

The defendants, by counsel, intimating their intention of applying to the Supreme Court of Appeals of Virginia for an appeal from this decree, it is ordered that the execution thereof as to the amounts in dispute be suspended for a period of ninety days from the this day upon the defendants, or any one or more of them, or some one for them, entering into and acknowledging before the clerk of this court within

ten days from the entry hereof a suspending bond in the penalty of $500.00, with security to be approved by the said clerk and conditioned as the law directs.

Enter:

JOEL W. FLOOD, Judge.

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page 262 }

* * * * *

July 15, 1959

Honorable John B. Boatwright
Attorney at Law
Buckingham, Virginia

Dear John:

I am enclosing the original of my Opinion in the Newton-Sprouse Case, directing that it be made a part of the record. I am mailing copies of this opinion to Bob Whitehead, George and Watt Abbitt, as well as copies of this letter.

Sincerely yours,

JOEL W. FLOOD.

JWF:f
encl.

Filed in Clerk's Office 7-18-59.

JOHN C. SPENCER, Clerk.

page 263 }

* * * * *

The appeal in this case is to two rulings made by this Court. First in fixing the value of the land to be conveyed by the complainant to the respondents under a ruling of the Supreme Court of Appeals at $2,500.00, and second, for

allowing the complainant $10,647.18 for rental service of the Newton Cabins from October 1, 1954, to November 14, 1958, when he delivered possession of said "Newton Cabins" to the respondents.

Commissioner Rogers fixed the value of the land to be conveyed by Newton at $500.00. Six witnesses testified before Mr. Rogers. Two of these witnesses living directly across the Highway fixed its value at $2,500.00, and another living two miles distant in the Town of Dillwyn fixed its value at from $2,500.00 to $3,000.00. The three others, living a much greater distance, fixed its value much lower. All of the witnesses are known by the Court to be reputable men. It would certainly seem that those living in close proximity would be better qualified to fix its true value. How Mr. Rogers reached his conclusion is beyond my understanding.

I viewed this property carefully, and reached the conclusion that is *is* well worth $2,500.00. In making this conclusion, I did not take into consideration the fact that 3½ of the "Newton Sprouse" cabins are on a part of it, or that Mr. Newton could erect a building on it that would partially obscure these cabins or that the entrance to these cabins is located on this strip of land. But I did take into consideration the value placed on the twenty-four twenty-fifths of an acre of land on which the remainder of the Sprouse-Newton cabins are built as shown from the evidence in this case, and the price paid by the Highway Department for a strip of land directly across the Highway.

Now for the rental service allowed the complainant of $10,647.18 from October 1, 1954, to November 14, 1958. During this period Mr. Newton paid Elwood Sprouse $1.00 for each cabin he rented that rented for $5.00 or more, and .50 cents for cabins that rented for less than $5.00. Mr. Newton is claiming the same for cabins he rented personally. He appears to have kept a detailed and accurate account. This, of course, does not include cabins one of his employees rented ("what is sauce for the goose is sauce for the gander"), and it appeared to the Court to be fair and right, and was allowed.

page 264

It is ordered that this opinion be made a part of the record.

JOEL W. FLOOD, Judge.

Filed in Clerk's Office 7-18-59.

JOHN C. SPENCER, Clerk.

page 265 }

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Filed in Clerk's Office 8-4-59.

JOHN C. SPENCER, Clerk.

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

To the Clerk of the Circuit Court of Buckingham County, Virginia:

Counsel for the defendants in the above styled cause in the Circuit Court of Buckingham County, Virginia, hereby give notice of appeal from the decree entered therein on June 20, 1959, and state the following assignments of error:

(1)

The court erred in not confirming in its entirety the report of Commissioner G. M. Rogers, which report is fully sustained by the evidence and accords with the applicable legal principles.

(2)

The court erred in sustaining the exceptions of the complainant to the report of Commissioner Rogers.

(3)

The court erred in allowing the complainant the amount claimed by him on account of alleged rental service of the "Newton cabins," namely, $9,768.50 for the period October 1, 1954, through May 31, 1958, and $878.68 for the period from June 1, 1958, to November 14, 1958, making a total allowance to the complainant for alleged rental service of $10,647.18. In so doing, the court, in effect, rewarded the complainant for his breach of contract which occasioned the original delivery of possession of said cabins to him, and permitted him to profit from his own wrongdoing.

(4)

The court erred in disallowing the claim of the defendants filed in alternative for similar rental service of the Sprouse

cabins for the said periods, namely, $9,626.00 for the period from October 1, 1954, through May 31, 1958, and $1,653.00 for the period from June 1, 1958, to November 14, 1958, total, $11,279.00.

(5)

The court erred (1) in overruling the finding of Commissioner Rogers that $500.00 is a fair compensation to complainant for the lot of 0.2667 (sometimes referred
page 271 } to as 21/100) of an acre, (2) in fixing and allowing $2,500.00 as compensation for said strip of land, and (3) in directing that $2,500.00 be paid therefor.

(6)

The court erred in fixing the amount due by the defendants to the complainants, other than the allowance for said strip of land, at $29,047.43, with interest thereon from November 14, 1958. Said amount should have been only $21,062.05, with interest from November 14, 1958.

JOHN B. BOATWRIGHT
Buckingham, Virginia.

ROBERT WHITEHEAD
Lovingston, Virginia
Counsel for Defendants.

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page 4 } LESLIE O'BRYANT,
a witness called on behalf of the complainant, having been first duly sworn, deposes and says as follows:

DIRECT EXAMINATION.

By Mr. W. M. Abbitt:

Q. Mr. O'Bryant, are you the bookkeeper or do you look after the books for Mr. J. E. Newton and his brother's store?

A. Yes, sir.

Q. And do you also look after the books and keep account of the records of the motel that Mr. Newton is now operating under an order of the court which is run under the name of "Newton Motel"?

Leslie O'Bryant.

A. Yes, sir.

Q. In your accounting have you charged up any expenses for your services for keeping the accounts for the motel?

A. Yes, sir, $100.00 for the whole time.

Q. I hand you a statemnt of receipts and disbursements for October, November and December of 1954 and ask you if that is a true and correct statement as prepared by you?

A. Yes, sir.

Mr. Abbitt: This statement is composed of six sheets the first of which is entitled "Receipts from rental service from Newton Motel and expense for October, Novmber and December, 1954." We would like to have that marked Exhibit 67a.

The second sheet is entitled "Receipts from rental service from Newton Motel and expense for year 1955. We would like that to be marked Exhibit 67b.

The third sheet is entitled "Rent receipts and expense for Newton Motel for 1956". We would like that to be marked Exhibit 67c.

page 5 } The next sheet is entitled "Rental receipts and expense for Newton Motel for 1957". We would like to have that marked 67d.

The next sheet is entitled "Receipts from rental services for Newton Motel and expense for January, February, March, April and May 1958". We would like to have that marked Exhibit 67e.

The last sheet is entitled "Summary of monies that J. E. Newton has in his possession from the Newton Motel for the period of October 1954 through May 1958 and we would like to have that marked Exhibit 67f.

We would like for that statement composed of six sheets to be filed as Plaintiff's Exhibit No. 67.

Note: The above-mentioned statement of account marked "Exhibit No. 67" is filed with and attached to these depositions.

Q. Mr. O'Bryant, since making those statements and since we have sent them to the attorneys for the defendant have you discovered any error or errors in the accounts?

A. We discovered two.

Q. All right now, tell us where they are.

A. One of them is an error of $100.00 in 1957. That was a check for money that was loaned to the maid and it was repaid.

Leslie O'Bryant.

Q. Was it deposited back in the fund?
A. Yes.
Q. But you don't credit the deposit on this statement?
A. No, sir.
Q. So $100.00 should be added to the assets of 1957?
A. Yes, sir.
Q. Is there anything else?
page 6 } A. In 1958 there is an error in one of the payrolls of $20.00.
Q. Can you explain what that error was in 1958?
A. It was an error in copying from the time book to the original cabin books.
Q. An error in copying from the original time book to the records?
A. It was an item that should have been $36.00 and in putting it down I put it down $56.00. I discovered that in going over the books yesterday.
Q. That is when you found the $20.00 error?
A. Yes, sir.
Q. That is your error in copying from the temporary books to the permanent books?
A. Yes, sir.
Q. So then $20.00 in assets should be added to the 1958 account?
A. Yes, sir.
Q. I will ask you, Mr. O'Bryant, will you add the $100.00 item to the 1957 account which is marked "67-d"?
A. Yes, sir.

(The witness does as requested.)

Q. So the 1957 net profit total should be $10,681.96 instead of $10,581.96?
A. Yes, sir.
Q. Now, will you turn to the account for the first four months in 1958 and add the $20.00 to that?
A. Yes, sir.

(The witness does as requested.)

Q. So instead of that being $996.60 it should be $1,016.60?
A. Yes, sir.
page 7 } Q. I will now ask you to turn to 67-f, which is a recapitulation, and after or opposite the year 1957 which is shown as $10,581.96 will you add $100.00 to that, and

right opposite 1958—January, February, March, April, May which shows a total of $996.60 will you add $20.00 opposite that?

A. Yes, sir.

(The witness does as requested.)

Q. Then I will ask you to add to the total the $120.00 and tell us what the new total will be.

A. Instead of being $30,978.98 it will now be $31,098.98.

Q. Now, Mr. O'Bryant, did you have any other assets in addition to the rentals from the motel?

A. We have money that was received from the television sets and from the Coca-Cola machine.

Q. How much money did you receive from the television sets?

A. $190.95.

Q. That is profit?

A. Yes, sir, that was net profit of $190.95.

Q. And what was the net profit on the Coca-Cola machine?

A. $134.85.

Q. Will you put those figures down on this yellow sheet of paper for us?

A. Yes, sir.

Note: The witness does as requested.

Q. What is the total?

A. $325.80.

Q. Is that net profit that Mr. Newton has from the televisions and from the Coca-Cola machines?

A. Yes, sir.

page 8 } Q. Will you file that as Exhibit 68?

A. Yes, sir.

Note: The above-mentioned paper marked "Exhibit 68" is filed as an exhibit with these depositions and is attached hereto.

Mr. Abbitt: You may cross examine.

CROSS EXAMINATION.

By Mr. Whitehead:

Q. Mr. O'Bryant, there has been filed in evidence as Ex-

Leslie O'Bryant.

hibit 67, consisting of sub-items a, b, c, d, e and f, statements of the receipts from the rental service of what is designated as the Newton Motel. Under the heading "Expense" there are certain items listed and then there is shown a total expense. On each one of these statements covering the periods designated there is an item of deduction by J. E. Newton which on the statements is designated "Rental service by J. E. N.". I refer you first to Exhibit 67-a for the period of October, November and December of 1954 in which there is a deduction of $407.00 for "Rental service by J. E. N.". Will you please tell us what that item consists of, what is represents, and how the total was arrived at.

A. Well, it consists of cabins Mr. Newton rented himself and to arrive at the totals the registration books of each room is listed in it and the ones that were rented by persons other than Mr. Newton are marked by an X and the ones that Mr. Newton claims he rented are just open. There is an X by the ones other persons rented and nothing by the ones Mr. J. E. Newton rented.

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page 11 }

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Q. Who gave you instructions as to what amounts of rental commissions to charge?

A. Mr. Newton.

Q. You mean Mr. J. E. Newton?

A. Yes, sir.

Q. And your chore in the matter simply was to take the charge that he gave you, examine the books as to the number of cabins rented and the amount of rentals, and figure out what the amount came to?

A. Yes, sir.

Q. When did Mr. Newton give you instructions to enter on the records that you kept this rental commission?

A. You want the date?

Q. As best you can give it.

page 12 } A. In the month of April, 1958.

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page 14 }

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J. C. Hayes.

Q. Mr. O'Bryant, you made up for Mr. Newton his accounts up to September 30th, 1954 which were filed with Commissioner Rogers at a previous hearing, did you not?

A. I made up the original accounts but I think
page 15 } the accounts given to the court were made up by
myself and William Sprouse and Mrs. Newton and all of us.

Q. In those accounts was there any entry in favor of Mr. J. E. Newton for any service charge or rental service on the rooms of the cabins that were rented?

A. No, sir.

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J. C. HAYES,

a witness called on behalf of the defendants, having been first duly sworn, deposes and says as follows:

DIRECT EXAMINATION.

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page 16 }

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Q. This plat shows a parcel of land containing just over a quarter of an acre which abuts on U. S. Highway No. 15 39.2 feet and runs back a total distance of 224.5 feet. Are you familiar with that parcel of land?

A. Yes, sir. I have seen it.

Q. This plat shows the northern line of this property runs back from Highway 15 a distance of 234.81 feet. The back line somewhat parallels U. S. Highway 15, being 63 feet. The south line is 224.5 feet and it fronts 39.2 feet on the highway. Not including the value of the buildings and improvements on the property, but regarding only the land as such, what would be a fair valuation for this piece of land, not including the improvements?

A. Not to include any buildings but just the bare land is what you are speaking of?

Q. That is right.

A. Well, looking up in the Clerk's Office the val-
page 17 } uation of properties back two years ago or three
years ago and then adding on what I felt it possibly or probably had increased in valuation, in land

J. C. Hayes.

values I arrived at a figure for that particular piece of land at $360.00.

Q. Have you any interest in this matter?

A. No, sir, none whatever.

Mr. Boatwright: The witness is with you.

CROSS EXAMINATION.

By Mr. W. M. Abbitt:

Q. Mr. Hayes, are you familiar with the sale of any lots or small tracts of land around Sprouse's Corner recently?

A. No, sir, I am not familiar with that. I have heard some prices mentioned but so far as making any investigation I have made none.

Q. Would it be any difference in the value of this little lot, about a fourth of an acre, and the land right immediately adjoining it?

A. I wouldn't think so.

Q. Most of your buying for the government has been in farm tracts?

A. Yes, sir.

Q. I don't believe you are familiar with lots for developing?

A. I have never bought any lots.

Q. Nor sold any?

A. Well, I have bought some lots but not in that area.

Q. Were you present when we had a hearing and there was testimony about how valuable that land was right adjoining it when we had a hearing some time ago?

A. No, sir.

page 18 } Q. Of course, as a matter of fact, when you take off that lot from the home house it means no other building can be put between the house and this lot unless it ruins the yard?

A. I don't know what you mean.

Q. You know where the Newton home house is with reference to this lot?

A. Yes. The Newton house is up here.

Q. That is right. Now, to come any closer to his house with commercial property would ruin the value of his house, would it not?

A. I wouldn't want to say that. I just wouldn't know.

Q. How close is that lot to his home house?

A. I didn't measure it but it is a considerable distance. From where they told me this boundary line is it is pretty

much in the ditch line and I don't see that this would enhance the value of his property.

Q. It wouldn't enhance it at all and if it comes closer and puts a commercial value on it it would hurt the value of his home, would it not?

A. I just wouldn't know. I wouldn't testify to that.

Q. What would be the difference in this quarter of an acre and a quarter of an acre immediately by it toward the Sprouses?

A. Well you get to the intersection of Route 60 where you have two roads intersecting there and I think the value would increase.

Q. You think a quarter of an acre right by it would be worth more than this quarter of an acre?

A. I wouldn't say that but the nearer you came to 60 the higher the value would be. That is my own opinion about it, my personal opinion.

page 19 } Q. Do you know what the highway has offered for a fifth of an acre along there?

A. No, sir.

Q. As a matter of fact, it would be a fair statement, wouldn't it, to say that you really don't know what the value of land in that immediate area is?

A. Well, I placed that amount on it and I based it on my own personal judgment.

Q. You are not basing it on what somebody else says?

A. No, sir, not one way or the other.

Q. Or what land might be bought for or might be sold for there?

A. What I had in mind was the assessed valuation of it and I figured now if that land was assessed at a certain price in 1954 that certainly land values as such have increased some since that time. I just put around about 2½% increase on it and that was just my own personal judgment. I am not passing judgment on what you can do with it or what other people can do with it because I don't know that.

Q. You don't know what Mr. Anderson paid for his tract of land immediately aross the road?

A. No, sir.

Q. Wasn't that about the last land that was bought or sold there?

A. I think so.

Mr. Abbitt: I believe that is all.

J. E. Newton.

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page 20 }

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J. E. NEWTON,

the complainant, called as a witness on his own behalf, being first duly sworn deposes and says as follows:

DIRECT EXAMINATION.

By Mr. W. M. Abbitt:

Q. Mr. Newton, you are the complainant in this case?

A. Yes, sir.

Q. And under the court order you have charge of the so-called Newton Cabins or the Newton Motel. What do you call them?

A. I call them the Newton Motel. That is the way they are booked.

Q. Really it is eighteen cabins or eighteen sep-
page 21 } arate rooms standing there?

A. Yes, sir.

Q. Have you been renting out the cabins?

A. Yes, sir.

Q. You have been renting them together with Mr. Lynwood Sprouse?

A. That is right.

Q. Is Mr. Sprouse paid for the cabins he rents?

A. All he rents he is paid for and if Pete or Hattie rents one they put a cross mark and he collects the money. The books will show it.

Q. If one of them rents a cabin they put a check mark by it?

A. If any of them rents a cabin they put a cross mark and the book will show it.

Q. What pay do they get for renting a cabin?

A. Well, anything under $5.00 is 50¢. From $5.00 up, regardless of price, it is $1.00. That is the same for any of us, me, Lynwood or any of them. $1.00 is the limit per cabin. If the cabin brings $15.00 we get $1.00.

Q. If one party rents more than one room what happens then?

A. Of course, that adds up and if it runs over $5.00 a room, say there are three rooms at over $5.00, that is $3.00. If

anyone rents three rooms under $5.00 each would be 50¢ or $1.50.

Q. My recollection is you had charge of these Newton cabins or the Newton Motel since November 1953 under an order of the court?

A. That is correct.

Q. I believe under the same court order it was directed that Lynwood would be paid 50¢ a cabin even if you rented them?

A. For all cabins that are rented I give him 50¢ and a dollar if it is $5.00 and up.

page 22 } Q. For the cabins you rent he still gets 50¢?

A. Yes, sir. That is part of the bargain.

Q. That is the bargain and that was what was directed by the court?

A. The court instructed me to give him 50¢.

Q. In the last account that we had here, which I think ended in September 1954, nothing was paid you for looking after the cabins or renting them out?

A. No, not a cent.

Q. Now, suppose you tell us the time you spend and what you do in and about renting the cabins.

A. I spend a good deal of time there, from around 3:30 in the afternoon and sometimes until the next morning. I get up any time during the night and rent a cabin if any man knocks on the door and during the last two months I have occasionally got up after 12:00 or 1:00 o'clock but not very often, but I usually stay up until around 12:00 o'clock.

Q. You stay there personally?

A. Yes, sir.

Q. When you say 3:30 you mean 3:30 in the afternoon?

A. Yes, sir, between 3:00 and 4:00 in the afternoon and I have rented them as late as 3:00 or 4:00 o'clock in the morning.

Q. But you start in the afternoon?

A. That is right, anywhere from 3:00 to 4:00 o'clock.

Q. You don't have many renters come in before then?

A. No, sir. Sometimes if they happen to come in before I get there Lynwood will rent them the cabin or probably he will rent one at 12:00 o'clock at night if I am not there. They rent a cabin and they make a cross mark, which is perfectly all right.

Q. Certain forms must be filled out on your

page 23 } books there by whoever does the renting?

A. Well, the man who rents the cabin does

J. E. Newton.

practically all the filling out except when Lynwood turns the money over to me or whoever rents them then I put "J. E. N." by it to show that they turned the money over to me. Once or twice Hattie has rented cabins and I don't know whether Pete puts his name down or not but sometimes I mark it to show who rented those rooms but anyhow all of them that has an X is paid out of the commission. That is turned over to Lynwood. I pay to Lynwood for every room he checks and puts an X mark by.

Q. The rooms that Lynwood or one of his brothers or his mother rents they usually have a check mark by them?

A. Yes, sir. Anybody that they send down to rent the cabin it is perfectly all right and anybody they send down they put a cross mark and they draw a dollar for all over $5.00 and 50¢ for all under $5.00.

Q. Have they ever sent one of the little Fair boys down to rent a cabin?

A. They have sent different ones when nobody else was around and her sister has rented them but I don't believe Ruby ever put down any money. She just sent them down and, of course, when they did rent them they put the cross mark.

Q. If somebody other than you, some of the defendants, rented a cabin they put a cross mark?

A. Yes, sir, and I never object to who does it because I didn't want to lose a customer. It would be against all of us to lose a customer.

Q. Have you charged up in this account the same schedule of rental fees that you have paid consistently to Lynwood?

page 24 } A. That is my instructions to the man who made them off. My instructions to him was to allow $1.00 for all over $5.00 and 50¢ for all under $5.00.

Q. If it is even $5.00 what is it?

A. It is a dollar. That is the instructions I gave him.

Q. Now, are you there on Sunday?

A. I never have taken a night off to go to preaching even. I don't believe I have taken a night off to go to a show or anything since I have been there. I have been just like a slave.

Q. Now, the cabins that are rented by Lynwood Sprouse, one of the defendants, do you get anything whatever for that cabin for rental?

A. No, I don't. He gets that. I just get the ones he hasn't rented.

J. E. Newton.

Q. And you pay him the same schedule that you have been paying him all the time?

A. All the time. Me and him settles up but we never have any difference about settling up.

Q. How often do you settle up? Do you have regular times?

A. Sometimes we settle up every two weeks and sometimes every month or probably longer when it suits him or when it suits me. We have no troubling about settling up. We check the books and if we find an error he makes or an error I made we correct it.

Q. You and Lynwood check the books periodically to see about the rentals?

A. Yes, sir, and to see who gets the rentals and sometimes when a room is rented a little cheaper it is put over in the corner and we check and put it back over where it belongs because we don't like to rent a man a room for $3.00 and for it to show up on the books and another man is charged $7.00. He wouldn't like it.

page 25 } Q. What is the average time you spend there at these cabins in the afternoon or night?

A. Like I say, take it on an average, it would be from about 3:30 in the afternoon until 1:00 or 2:00 o'clock in the morning. In fact, I spend the rest of the night there if it is necessary.

Q. From 3:30 in the afternoon until 12:00 or 1:00 o'clock as an average?

A. During the time I have been there I have been mighty fortunate. I haven't lost but one little spell. I was in the hospital just a few days back in 1953.

Q. How many days or afternoons or nights have you spent away since this account started in October 1954, would you say?

A. I don't think I have been away a night.

Q. Do you also stay there all night to be available for the renting of a cabin?

A. I stay there all night every night.

Q. Have you gotten up early in the morning yourself to rent cabins?

A. Yes, sir, sometimes I hate to get up when I am sleeping so good about 4:00 o'clock but I rented one this morning. There is one thing I would like to tell about. My brother was sick about a week ago and I was away from 7:00 o'clock until about 11:00. I went to the hospital to see him. It was

J. E. Newton.

about 11:00 o'clock when I got back. That was the first night in all that length of time I have been away.

Q. Do you stay there at the cabins to be available even after you go to bed?

A. I am there from 3:30 in the afternoon on. In the morning from 7:00 o'clock I am out on another job.

Q. There is not much renting of cabins in the morning?

A. No, but occasionally somebody will rent

page 26 } one.

Q. If any of the Sprouses send a customer down there you give them a room and they get the rental fee for it?

A. Yes, sir.

Q. When was this schedule with Lynwood set up about the rental fee for the cabins?

A. When the Judge passed on it in Farmville about the rentals Lynwood was only to get $1.00 for every room he rented, nothing for the rooms that I rented, and I volunteered and told him I would be willing to give him a dollar on that and 50¢ on the ones I rented.

Q. I am talking about Lynwood's actual rental fees, was that set up from the time the cabins were first started?

A. Yes.

Q. In other words, when Lynwood was doing the rentals he would get a dollar for those that he rented that brought $5.00 or more and 50¢ for those that brought less than $5.00?

A. That is right, the same as it is now.

Q. Has that worked out to be about fair and right and reasonable for the pay of renting the cabins?

A. Well, it has been satisfactory to myself and satisfactory to Lynwood and I don't know of anybody else that has anything to do with it. We were both satisfied and went on fine. We settle up and I don't think we have ever had any trouble at all in our settlements.

Q. Then you have charged the same fee that you and Lynwood agreed upon to pay Lynwood?

A. That is right.

Q. You think that is a fair compensation?

A. I reckon it is fair. I thought if we were both

page 27 } getting the same it would be as fair for one as it was for the other. Of course, as to going down to rent them I think it is worth a dollar a room to rent them straight through. It would be worth it of my time I know.

Q. I understand you to say if one of the other defendants

Hattie Gough Newton.

other than Lynwood rents one of the Newton cabins they get the same schedule or charge?

A. They put the cross mark and when me and Lynwood settle up it is all counted as Lynwood's. They don't collect the money. Lynwood collects the money.

Q. Lynwood is paid for the cabins that any of his brothers or his mother rents?

A. For any cabins that are rented besides the ones I rent he gets the pay.

Q. I notice in 1955 the rental receipts amounted to over $23,000.00 and your rental service amounted to a little over $2400.00.

A. That is correct as far as I know. That was taken from the books. This was copied from the books by Leslie O'Bryant with instructions to copy it exactly as it was and when Lynwood and I settled they were correct as near as we could get them. We then turned them over to Mr. O'Bryant to copy from those books.

Q. I notice in 1956 the rental receipts were $23,524.94 and that your rental service for that year was $2,706.50. In 1957 the rental receipts were $26,056.37 and your rental service was $3,075.00. Do you know what percentage of the cabins are rented by you and what percentage are rented by Lynwood or some of the others?

A. No, I don't. I guess I rent about 60% or more of them. I wouldn't like to say that to be correct because I page 28 } haven't checked the books to see about that and that is just guessing at it. If that is not a true statement I would like to qualify it. Lynwood does the biggest or the majority of it when I am not there. Like I say the others just help him at times.

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page 29 } MRS. HATTIE GOUGH NEWTON,

one of the defendants called as a witness to testify in her own behalf, having been first duly sworn deposes and says as follows:

DIRECT EXAMINATION.

* * * * *

page 32 } Q. Did you personally rent any of what we call the Newton cabins?

Hattie Gough Newton.

A. Indeed I have.

Q. Did you personally ever charge any commission whatever for any of the Newton cabins that you rented?

A. No, I never received anything.

Q. Have you rented Newton cabins off and on from time to time since they were built?

A. Yes, sir. I am on duty there most of the time during the day, especially when Mr. Newton is not there, and I also have a telephone connection and I take reservations day in and day out, night and day, and I take them down there and usually have them registered. I even take care of people and put them in their rooms and he comes along and registers them. He usually collects the money for it and he registers them up.

Q. Since the decree of November 2, 1953 who has gotten the money, you or he?

A. He has it all.

Q. Have you collected any of the money on account of rentals from the Newton cabins since the decree of November 2, 1953?

A. I have never collected one cent.

Q. You say you never received one cent on account of the rental of any of the Newton cabins. What sum of money does your son, Lynwood Sprouse, get on account of the rentals of the Newton cabins under the decree of the court of November 2, 1953?

A. Well, I think to follow that decree Lynwood collects a dollar from Mr. Newton if he rents a room for $5.00 or over and I think it is 50¢ for all other than what he rents, all that are rented other than what he rents.

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page 34 }

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Q. Please tell us as best you can who has rented the Newton cabins in addition to J. E. Newton, W. C. Sprouse, David Lynwood Sprouse and yourself? What other persons have rented any of those cabins?

A. Well, most anybody he has around there would rent them. The maid will rent them when she is there and Jimmy Dean is there now every evening practically. Of course he went to school during the spring but he was there after

Hattie Gough Newton.

school hours during the winter and he would rent them as well as other boys.

Q. Charles Heath?

A. Charles Heath and the Fair boy.

Q. What is the Fair boy's name?

A. Pete.

Q. Anybody else?

A. Bobby Davis.

Q. Do you know whether or not those boys whose names you have mentioned have been paid by Mr. Newton salaries or wages which have been charged up as a part of the operating expenses?

A. Yes.

Q. How do you know that?

A. Well, we cashed checks for them from time to time written by him at his store and yesterday I got a glimpse of his books, limited to one hour, and I glanced over the books and saw it charged in.

Q. Have you personally charged anything whatever for all of your services in renting out any of the Sprouse cabins?

page 35 } A. Have I personally charged it?

Q. Have you charged or collected it?

A. I haven't collected anything for myself.

Q. You have not collected for yourself anything on account of the rentals of either the Sprouse cabins or the Newton cabins?

A. No, not one cent.

Q. Do you occasionally rent some of the Sprouse cabins?

A. I rent some of them most every day, the Sprouse cabins and the Newton cabins both.

Q. You made mention of the fact that you received telephone calls in connection with the Newton cabins. Will you elaborate on that a bit?

A. Well, I or some member from the office, take practically all of the reservations and we have had sometimes a full house from reservations that we have made. I have had a number of times people from colleges write in and make reservations and fill up all 36 units practically for which I never received one cent.

Q. The telephone is in what name?

A. Sprouse's Tourist Court.

Q. Is that the original agreed upon operating name?

A. That is right.

Hattie Gough Newton.

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page 40 }

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Q. Which cabin does Mr. Newton occupy as a residence?
A. Cabin number 26.
Q. Is that one of the better cabins or not?
A. Yes, sir, that is one that he is supposed to give account of as renting. It is one he is in charge of.
Q. I don't understand.
page 41 } A. That is one that Mr. Newton has charge of to rent, one of the 18 mentioned.
Q. Who provided maid services, heat, light and so forth for that cabin?
A. That is all under the same operation.
Q. Do you tell us then that the cabin which Mr. Newton occupies as his residence is heated and lighted and serviced with linens out of the expenses of the 18 Newton cabins?
A. Yes, sir. There is no way you can separate them.
Q. To clarify, is the cabin which Mr. Newton occupies as his place of residence equally as good as the other 17 of the Newton cabins?
A. Yes, sir.

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page 42 }

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By Mr. Whitehead:
Q. Mrs. Newton, Mr. Newton filed a statement showing the amount that he would receive on account of rentals if for each cabin that he rented he was allowed $1.00 where the rental was $5.00 or more and 50¢ if the rental was less than $5.00. In order that the Commissioner might have an over-all picture of the entire situation, including both the Newton and the Sprouse cabins, have you made a statement of what comparable rentals would be on account
page 43 } of the renting of the Sprouse cabins from October 1, 1954 through May 31, 1958?
A. Yes, sir.

Hattie Gough Newton.

Q. I hand you a statement and ask you if this is the statement referred to in the preceding question?

A. Yes, sir, and this is the best I could figure it.

Q. Will you file this paper entitled "Rental service for Sprouse's cabins (Lynwood's commission not included)" as Exhibit No. 76?

A. Yes, sir.

Q. The total amount is what?

A. $9,626.50.

Q. In getting up this statement will you please outline what procedure you followed and will you show to the Commissioner and to counsel the work book which you used in that connection?

A. This is a work book of each day, beginning October 1, 1954, through May 31, 1958 and the procedure that I aimed to do, the only way I could get at it because I figured it would cost about as much to rent one room as the other, was to use the same procedure $1.00 per room if the room is $5.00 or more and 50¢ per room if the room is less than $5.00 and I have added on the work book the number here, putting the dollar room charges first and then the 50¢ per room in different lines.

Q. Is this book open to inspection by anybody who is interested?

A. Yes, it is.

Mr. Whitehead: If any of the parties are desirous that this book be filed as an exhibit we will be glad to file the same. (The book referred to is entitled on the front page "Top Flight".)

page 44 }

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CROSS EXAMINATION.

By Mr. W. M. Abbitt:

* * * * *

Q. If you would take them and register them in wouldn't you put an X mark beside them?

page 45 } A. Not every time. I might have done it sometimes. I have taken people down there when Mr. Newton wasn't even present and the maid would come out

ahead of me and take charge over me and collect for it right in my presence. She would have the authority to do that. It would embarrass me so I would walk away as though it was perfectly all right.

Q. Now, those cabins of the Sprouses that were rented, of course, I realize Lynwood couldn't be there all of the time but wasn't the charge made for every cabin rented out by the Sprouses?

A. I didn't understand the question.

Q. It would be impossible for Lynwood to be there all of the time?

A. That is true.

Q. When you rented out a Sprouse cabin wouldn't a charge be made for renting that cabin and Lynwood would be given credit?

A. Lynwood gets the same on both of them, on every room that is rented at both places. He gets a percentage on every room rented in the Sprouse cabins and every room that is rented down at Mr. Newton's.

Q. He didn't get a percentage on the Newton cabins unless he rented them prior to November 1953?

A. No. He got credit for every room that he rented prior to that but since November 2nd, 1953 he got credit for every room that was rented regardless of who rented it.

Q. Because of the order of the court?

A. That is right.

Q. Now, when he rents a Sprouse cabin what does he get?

A. It is the same procedure. He gets 50¢. It is not quite the same because he doesn't ever get more than 50¢ and if the room is under $5.00 he doesn't get but 25¢.

page 46 } Q. Suppose he is not there and Pete rents it?

A. He don't collect anything for it.

Q. Lynwood get a commission on every cabin that is rented there, every Sprouse cabin?

A. That is the way we set it up and that is what he receives instead of us paying him a salary, we give him a commission on the rooms.

Q. I am talking about the Sprouse cabins now, so regardless of who rents the Sprouse cabins he gets his regular fee whether it is 50¢ or a quarter?

A. That is right. He gets the same thing on both of them, not the same amount but he gets a fee regardless of each room that is rented.

Q. He never did that to the Newton Motel until November

Hattie Gough Newton.

1953 when the court entered the order allowing him the 50¢ for the cabins that Mr. Newton rented?

A. Well, Mr. Newton gave him a dollar for the rental down there. He started in order to draw the trade from the Sprouses he hoisted it to $1.00. He would say "If you rent it down here instead of the Sprouses I will give you $1.00."

Q. You told us that before and I have got plenty of time and am not in any hurry to finish this case but I think if you will just try to answer the questions that are asked you we might get along better but it is all right with me.

A. If you had been in any hurry we would have been through with this four or five years ago.

Q. Unfortunately we are not through.

A. It certainly puts us in a predicament the way it goes on.

page 47 } Q. As I understand it, Lynwood was paid by Mr. Newton, or whoever had charge of the books and the money, a dollar for each cabin he rented prior to November 1953?

A. He paid Lynwood but he hadn't paid me or anybody else.

Q. Now, in addition to that he was paid 50¢ for each cabin that Mr. Newton rented. Lynwood was paid 50¢ for each cabin Mr. Newton rented?

A. That is right.

Q. And that was the first of that?

A. I think it was.

Q. That is all I was trying to get at. Do you know when the maid leaves down there at the Newton Motel?

A. Sometimes she is there just a little while in the day and sometimes she comes late and leaves late in the evening. Very seldom she is there until 4:00 o'clock though.

Q. Then she wouldn't rent out many cabins, would she?

A. I wouldn't say how many. She has rented some. She has preference over any of us.

Q. Mr. Newton has charge of those cabins right now, doesn't he?

A. You would think he has charge of all of it and would think I had nothing to do with it if you only knew.

Q. Mr. Whitehead asked Mr. Leslie O'Bryant to bring one of the registers here and he has handed me this tourist register in the name of Newton Motel. I ask you does that look like the register?

A. That looks like the one I furnished for him.

Hattie Gough Newton.

Q. How long does one of these registers last?
A. Well, about a month, I reckon.
Q. I ask you if you recognize anybody's writing on March 22nd?
page 48 } A. I don't recognize any of my writing on there.
Q. For the benefit of the Commissioner will you tell us which part of the register the guest writes in?
A. The guest is supposed to do the filling in here and most of the time the one that is renting it will fill in the room number. It says "Write the name, address and car" and the one in charge usually has to put down the number in the party, the number of the room, the amount received, and over here Mr. Newton always puts his name because he receives all of the money. All of it is turned over to him regardless of who rents it.
Q. I happened to turn to this page—
A. Well let's look here at this page.
Q. When you finish I will ask you a question.
A. There is Mr. Newton's handwriting but here is a credit with an X by it for Lynwood. I think that I rented these rooms. I am not to sure. There is no mark, these two rented here on March 12th.
Q. You say you think you rented those. Why do you think that?
A. Because it is not in that column. Several times he cautioned me and I would always write it on the end right there —see right there.
Q. You are telling us you think you rented them. Why do you think you rented them?
A. I think I put this down here.
Q. You know your own handwriting, don't you?
A. That looks like my handwriting right here. This is his and that is mine right there and there is no X by that.
Q. How about that right there?
A. These two right here and there is no X by
page 49 } those. That is my handwriting.
Q. Now over on March 22nd see if you recognize that. Is that Pete's handwriting up on the first and second line?
A. I don't think so.
Q. Whose handwriting is that?
A. I don't know.
Q. You would know Pete's handwriting, wouldn't you?
A. I don't think that is his handwriting.
Q. Is it Lynwood's?

Hattie Gough Newton.

A. It may be Jimmy Dean's who works there, I don't know. It may be Lynwood's. I just don't know. I can't tell by an X who marked the X.

Q. I didn't ask you about the X but the word "Pete" on the first line.

A. That is not mine.

Q. And you say it is not Pete's handwriting?

A. No, sir.

Q. You say it looks like whose handwriting?

A. I don't know just whose it is.

Q. There is an X mark in front of it, isn't it?

A. One of them has an X mark.

Q. See if it isn't two of them.

A. Yes, sir.

Q. It is not Mr. Newton's handwriting, is it?

A. It is his handwriting out from it.

Q. The name "Pete", is that in Mr. Newton's handwriting?

A. It looks like his handwriting.

Q. It looks like Mr. Newton's handwriting?

A. Yes, sir.

Q. Is it your understanding that each one of page 50 } these X marks means Lynwood would get paid for that?

A. That is right.

Q. Then on March 23rd I see three of the six rentals have Pete's name in front of them. See if you can recognize that handwriting.

A. Pete can recognize his own handwriting. It is written so finely I wouldn't say whether it is Pete's or not. I don't know. Pete can identify his own handwriting. It doesn't look like his handwriting to me.

Q. Now, in answer to a question from Mr. Whitehead you were talking about the joint expense and some question was raised about the sign expense per month for advertising.

A. I don't know exactly what it is a month. We pay Stanford & Inge, I believe it is $243.00 for them and then I have electric light bills on five of the signs. That comes separate from each power company. I think it is three or four different companies that have those light bills that goes into the advertising lights. Then we have two signs that run $50.00 a month from Talley.

Q. Can you tell us what advertisements by way of signs, who with, and the amounts and the costs of those that you have now per month?

Hattie Gough Newton.

A. I don't have that information, Mr. Abbitt. I don't have the list before me. I have it on the books as advertisement but I don't have the list before me. I will just tell you what I can tell you from memory. Stanford & Inge is $243.00 a month.

Q. That is now $243.00 a month?

A. Yes, sir.

Q. What does that advertise?

A. It is five highway signs and the large sign in front of the business.

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page 55 }

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Q. Mr. Newton runs his own office and keeps his books in cabin number 26?

A. I wouldn't say he kept an office there. The sign there is for an office but it is more of a disadvantage that it is a help.

Q. Where does he keep his registration books?

page 56 } A. Inside the room or laying out in a chair part of the time. It lays out in a chair when he is not there. Nobody can get in the room unless he is there and we can't get to it and we have to use a register and transfer it to the book. It makes it an awful headache to operate that way. Words can't tell the trouble it puts us to the way it is operated.

Q. Such office as he has that is what he uses?

A. That is what he claims he has as an office but it is a disadvantage to the business.

Q. It looks like he has done right good business?

A. Yes, sir, he gives himself credit for what all of us have done. He makes it look pretty good.

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page 60 }

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Q. You certainly didn't expect Mr. Newton to pay for the road?

Hattie Gough Newton.

A. He tore the road up or most of it and it needs to be done over now and what was not broke aloose in front he has taken a bulldozer and has torn it up on the side. We will have to pay for it again.

Q. One thousand forty-four dollars and twenty cents was charged up for operating expenses even though it was for resurfacing of the road?

A. That is right. If it is fair to charge it up one way for the operating expenses it is fair for the other I figure. It was a thousand and some dollars allowed. It was pretty much the same thing. There was a pipe on that side of the road charged to the cabins and he tore it up with the bulldozer and put it into his own driveway. That is charged up to the total expenses.

Q. Am I correct now in saying that from October 1, 1954 through May 31, 1958 that the Sprouse Motel has netted $12,592.18?

A. To the best of my knowledge that is correct.

Q. Over the same period the summary that was filed this morning for Mr. Newton showed that he netted $31,098.98. You think the difference there is in the keeping of the office and the advertising?

A. Of course, our expense, I think, runs pretty close to his expense but don't forget the fact that those units rent for much more than our units rent for. They are larger and and it was in the beginning our agreement to rent them for more and naturally when people come in and page 61 } want a better unit we figure it is best for business as a whole to get as much money out of the customer as possible and I think it is fair to Mr. Newton and us too. Althought he has the money in his hand it doesn't mean that he has made that much money. The Sprouse's Tourist Court has made it and he has it in his hands. Of course, if he held all the amount of money that was in his hands it looks like he was doing the most business but that is really unfair to us. Some of our units rent for much less than his. All the expense that is possible that he can get us to pay for he does. For instance, we bought the ice machine. We furnished ice for all 36 units and he used our ice and we furnished a boy to carry it down to him and if we happened to run short of ice and didn't have the ice we would have to send out and buy ice and carry it to Mr. Newton and if it wasn't there on time he would have a fit and all of that was expense out of the Sprouses. Since that time he put in a machine. We had to pay for it but it is worn out.

Q. His units rent for more than your units?

A. Yes. They are newer and more modern. We try not to make any difference in the renting of them. We try to put the customers where they would rather be.

Q. And, of course, it amounts to the same thing as far as the net?

A. He has learned to speak of them as his.

Q. Now, something was said about the house up there, the home house of Mr. Newton's. I believe some girls do stay up there that work in the restaurant, don't they?

A. Yes, I have a niece that stays there because I don't like to stay there alone.

Q. And does Miss Agee stay there?

A. Yes, sir.

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page 74 }

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MRS. ROSA WHITLOW,

a witness called on behalf of the complainant, having been first duly sworn, deposes and says as follows:

DIRECT EXAMINATION.

By Mr. W. M. Abbitt:

Q. Do you work for Mr. J. E. Newton at the Newton Motel?

A. Yes, sir.

Q. How long have you worked there?

A. I have been working there ever since it has been in operation, I guess six or seven years.

Q. In addition to that do you clean his personal cabin that he owns back of his dwelling house and which he rents out occasionally?

A. I do.

Q. Do you get paid for that?

A. I get 50¢.

Q. Who pays you?

A. Mr. Newton.

Q. Do you know how he pays you?

A. I do.

Q. How?

A. Well, he pays me 50¢ each time I clean it and I let it run

on until it runs up about four or five dollars before
page 75 } I collect on it and he gives me a check on the Buckingham County Bank.

Q. Does he pay you from a different account from what he pays you for the work at the motel?

A. He does. He has a different book and he gives me a separate check.

Q. And the check is drawn on J. E. Newton rather than Newton Motel?

A. Yes, sir.

Mr. Abbitt: I believe that is all.

CROSS EXAMINATION.

By Mr. Whitehead:

Q. Mrs. Whitlow, what linens are used up in the cottage room?

A. We use the same linens. He told me to use the same linen up there that I was using down at the motel.

Q. In other words, you use the same linens in the cottage owned individually by J. E. Newton and situated back of the dwelling house that you do down in the Newton units?

A. That is right.

Q. Now, those linens consist of what, Mrs. Whitlow?

A. Well, it is two beds up there and sometimes both beds are used and sometimes not but one. If both beds are used it takes four sheets, four cases and two bath towels and two hand towels and one bath mat.

Q. What does that laundry amount to? Do you have any idea?

A. I don't know anything about the cost of the laundry.

Q. After each bed is used you have to change the linens?

A. Oh yes.

Q. And you have to change the towels?

A. Yes.

page 76 } Q. Now, Mrs. Whitlow, will you tell us when it was that Mr. Newton began to pay you by separate check on a different account for the work that you did in cleaning up his cottage cabin?

A. It started from the beginning from the time I started cleaning it, that is when he started paying me with a different check.

Q. When was that?

A. I can't remember but it was as soon as he fixed the

house up so he could rent it. I couldn't say what date it was. I've just been attending to it since it has been rented.

Q. What are your hours of work there at the Newton cabins?

A. According to what I have to do, according to the rooms they have rented.

Q. Generally it takes up how much time a day?

A. Well, if I have all seventeen units to clean it takes me from 8:00 o'clock in the morning until 4:00 or 4:30 in the afternoon.

Q. Do you rent any of the cabins?

A. Well, sometimes if someone comes by I let them in.

Q. Do you put the names on the books?

A. No, sir.

Q. Who puts the names on the books?

A. I couldn't say. I just tell them they can register and pay when the manager comes in.

Q. Do you make any memorandum of any kind?

A. No, sir.

Q. You tell them they can register and pay when?

A. Pay when the manager comes in.

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page 90 }

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CARROLL GILLISPIE,

a witness called on behalf of the defendants, having been first duly sworn, deposes and says as follows:

DIRECT EXAMINATION.

By Mr. Boatwright:

Q. Mr. Gillispie, what is your occupation?

A. Land surveyor.

Q. Do you hold any official position in Buckingham County?

A. I am County Surveyor.

Q. I hand you herewith a plat which is signed by you. Will you please examine it and tell us if it is your

page 91 } plat?

A. Yes, sir, I made that.

Q. When did you make it?

A. July 1, 1958.

J. M. Anderson.

Q. Who was present when the survey was made?
A. Mrs. Newton, Mr. Newton, Mr. George Abbitt and you, Mr. Boatwright.
Q. Were the lines that appear on your plat run by agreement of the parties at the time?
A. Yes, sir, they were.
Q. Will you file this plat with your deposition to be marked Exhibit No. 80?
A. Yes, sir.

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page 92 } It is stipulated by the parties to this suit, by counsel, that this plat represents that part of the Maxie tract owned by J. E. Newton personally that is needed and necessary for the operation of the so-called Newton Motel and a part of which small tract of land four and a fraction cabins are on, as well as the roadway and so forth. The parcel in question covered by this plat contains 0,2667 acres.

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page 133 }

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J. M. ANDERSON,
a witness called on behalf of the complainant, having been first duly sworn deposes and says as follows:

DIRECT EXAMINATION.

By Mr. W. M. Abbitt:
Q. Mr. Anderson, where do you live?
A. Andersonville.
Q. That is in Buckingham County?
A. Yes, sir.
Q. What is your business?
A. I am manager for Burruss Land and Lum-
page 134 } ber Company.
Q. Do you own any property at or near Sprouse's Corner?
A. Yes, sir.
Q. What do you own there?

J. M. Anderson.

A. I own the corner on the east side between Route 15 and Route 60 facing Route 60 and Route 15.

Q. Are you more or less right across the road from the Newton Motel and office of the Sprouse—Newton Motel?

A. Yes, sir.

Q. Are you familiar with the small parcel of land that was originally a part of the old Maxie Tract, now owned by J. E. Newton, upon which there are four and a fraction cabins and driveway as shown by the plat of survey made by Carroll Gillispie and containing 0.2667 acres?

A. Yes, sir. That oak tree, I think, is the line down there.

Q. That is right and that line runs through the cabins?

A. It runs through the cabins and takes those end cabins.

Q. And takes over the road?

A. It goes in the ditch over on the side next to Mr. Newton's house.

Q. Are you familiar with all the land around there?

A. Yes, sir.

Q. What would you say is a fair market value of that particular parcel of land which is shown by the plat, not counting the improvements on it such as cabins or the asphalt that may be put down, but the value of the land itself?

A. Well, land located in the place where this is I think a fair valuation on it is around $2,500.00.

Q. You say in your opinion $2,500.00 would be a fair market value for this 0.2667 of an acre?

page 135 } A. Yes, sir.

Q. Do you know of any land in that vicinity you can even purchase?

A. I haven't been able to buy any there along Route 60 or along Route 15 either at any price, not anywhere close in that corner.

Q. Land in and around that intersection is very valuable?

A. It is. This land right on the corner is right on the highway.

Mr. Abbitt: I believe that is all.

CROSS EXAMINATION.

By Mr. Whitehead:

Q. Mr. Anderson, when did you purchase the land at the corner of Route 60 and Route 15 opposite the land owned by E. B. Sprouse estate?

J. M. Anderson.

A. I think it was back in '49 but I am not sure.

Q. How much did you purchase at that time?

A. I think it was nearly ten acres, nine and a fraction acres.

Q. Who did you buy it from?

A. Mrs. Walter Maxie.

Q. And did that include the land on which the Tasty Freeze now is?

A. Yes, sir.

Q. Does that include the land on which the Esso filling station is?

A. Yes, sir.

Q. Does that include the land on which the restaurant is?

A. Yes, sir.

Q. And does that include the tract of land page 136 } that you sold to Henry Eugene Elcan and wife?

A. Yes, sir.

Q. Now is Elcan's land at the far end of the tract you bought or do you own land on beyond Elcan's?

A. That is the end of my land.

Q. What did you pay for the whole ten acres of unimproved land?

A. Do I have to tell what I paid for it? It was all in woods when I bought it. I paid $4,000.00 for it.

Q. All right, has there been any appreciable changes in land values at or near Sprouse's Corner since 1954?

A. I don't know. At one time Mrs. Maxie owned a corner over there where Mr. Harrison is operating a restaurant now and at one time they offered to sell it at $15,000.00 and I don't think you could buy it now for less than $25,000.00 or $30,000.00.

Q. You think then that there has been an increase in value since 1954?

A. I think so.

Q. Do you think the increase in values at or near Sprouse's Corner, and on Route 15 at that point, from 1954 up to the present time would exceed 50%?

A. Yes, I think it would.

Q. How much?

A. I think at least 50%.

Q. How much more than 50%? What would be the maximum?

A. Well I don't know. The property that is there now they won't take any price for it. In other words it is not for sale.

J. M. Anderson.

Q. Now, in the last few years has not the building on the Maxie tract been modernized?

A. The building on what tract?

page 137 } Q. The Maxie tract that you referred to on the other corner.

A. Well, possibly it has.

Q. Now, is it not a fact, Mr. Anderson, that you having bought the whole ten-acre tract at the corner, bringing you out to the intersection in 1949, for $4,000.00 and then in September of 1954 did you not sell to Henry Eugene Elcan and wife a parcel of 0.515 of an acre containing a frontage on highway 15 of 129.7 feet for $500.00?

A. Yes, sir, I did. He was operating my filling station and wanted a building lot and he could not buy a building lot anywhere else on that corner at any price.

Q. He was no kin to you, was he?

A. No, sir.

Q. It was a business transaction at arms length dealing, was it not?

A. Yes, sir.

Q. Now, that lot that you sold to Mr. Elcan of better than half an acre less than four years ago for $500.00 is situated diagonally across 15 from this little lot of 0.2667 of an acre referred to here?

A. I think it is right across the road in front of Mr. Newton's dwelling house now.

Q. It is diagonally across the road from this little lot, is it not?

A. Yes, sir.

Q. Do you think on Route 15 there that property on what I might call the west side of 15 is more or less valuable than the property on the east side of 15?

A. I don't understand your question.

Q. To clarify the question I will ask you this:

page 138 } Is the property on the Sprouse and Newton side of the road as valuable or less valuable than the property on the Anderson and Elcan's side of the road?

A. Well, as far as the land is concerned I would think that the land would be about the same valuation.

Q. Now, Mr. Anderson, do you fully appreciate that the valuation that you have placed on this lot of 0.2667 of an acre, namely of $2,500.00, would put a valuation of approximately between nine and $10,000.00 on one acre of ground at that point?

J. M. Anderson.

A. Well, if you take it right across the road from this and take that much land on my side I wouldn't take less than that for it.

Q. Are you including the improvements?

A. Well, I am just talking about the land.

Q. Do you think any of that property there, the land alone, is worth approximately $10,000.00 an acre?

A. Right in that corner in that intersection it is.

Q. Do you realize, Mr. Anderson, that this lot about which you are testifying contains a frontage on Route 15 of only 39.2 feet, less than 40 feet? Do you realize that?

A. I am familiar with the lot.

Q. And the lot that you sold Elcan diagonally across the road had a frontage on Route 15 of 129.7 feet or about three times the frontage of this lot?

A. Mr. Whitehead, when I sold Mr. Elcan this lot he moved here from West Virginia and wanted to operate my filling station and the agreement was that I would rent him my filling station for five years time and he didn't have anywhere to live and I sold him that lot at that price. It wasn't what the lot was worth.

Q. You think the lot was worth much more than
page 139 } that?

A. Yes, sir, the lot was worth more than that.

Q. And you made him a gift to that extent?

A. Well I sold it to him cheap because he was operating the filling station and working with me and he has been with me ever since then.

Q. Do you think you bought your property too cheap over there at $4,000.00 in 1949?

A. I don't know whether I bought it too cheap or not. I paid Mrs. Maxie what she asked for it that day.

Q. That was a business deal?

A. Yes, sir, and I paid her in cash for it.

Mr. Whitehead: I think that is all I care to ask you.

RE-DIRECT EXAMINATION.

By Mr. W. M. Abbitt:

Q. Mr. Anderson, since 1949 how many places of business have been erected right there right in the close vicinity adjoining or across the road from this parcel of land?

J. M. Anderson.

A. Well, since I bought this lot which was all in woods like I told you, all in brush, when I bought it I have put the filling station up there and the restaurant and the motor court and then the Tasty Freeze building.

Q. How far is this lot from the intersection of Route 15 and Route 60?

A. This lot adjoins 15, runs out to 15.

Q. How far is it from the intersection of Route 60?

A. I reckon about 250 or 300 feet.

Q. Now, on the south side of 60 and the east side of 15 there is in the intersection what, a restaurant?

A. Yes, sir.

page 140 } Q. What else beside the restaurant is operated there?

A. It is a restaurant and then they have a gas tank there and I think they sell gas and oil and run the restaurant.

Q. Then right across the road from her in the intersection is that the store, the Sprouse's store, restaurant and gift shop and the Sprouse garage?

A. Yes, sir.

Q. And they have a general merchandise store?

A. Yes, sir.

Q. Then when you come in on your side of 60 there is the Sprouse Motor Court?

A. Yes, sir.

Q. So certainly within a hundred or two hundred yards of that intersection there are thousands and thousands and thousands of dollars worth of improved business property there?

A. Yes, sir. I would say two hundred and some thousand dollars worth of improved buildings have been put on there.

Q. And all that land along there that I have talked about is business property occupied and operated strictly as business?

A. Yes, sir.

Q. Do you know of a single acre of land you can buy on Route 60 right at that intersection, even though it is vacant and just farm land?

A. No, sir, I do not.

Q. You say the Harris land which is in the far corner on the other side of the intersection from you, and right in the intersection, is not for sale?

A. No.

Q. How many acres do they have?

J. M. Anderson.

A. I think it is somewhere about four or five
page 141 } acres in that lot over there. It goes back on 15
and down on 60.

Q. Now the only real building there is the restaurant or store you are talking about?

A. Yes, sir.

Q. Is it possible to buy any of the rest of the land there?

A. No, sir. At the time Elcan bought this lot from me, or when I let him have this lot when he came in from West Virginia and he wanted a home because he was renting, I sold him this piece of land. He went to Mr. Spencer at Dillwyn and tried to buy some land from him right on the other side of the house. He wanted a lot to build on and he couldn't buy it. He wouldn't even make him any price on it.

Q. This is a valuable industrial area and as far as you know it is impossible to buy any land there?

A. I haven't found any land adpoining that I could buy anywhere on the corner, not any since I went in there and bought that corner.

Q. It would be hard to say the real value of the industrial property right at that little intersection, wouldn't it?

A. Yes, sir, because two main roads cross each other in there and it is just a good business location in there. I don't know any other place you could find a better business location.

Q. You say Mr. Elcan came here to operate your filling station?

A. Yes, sir.

Q. And he has operated it and been with you ever since?

A. He has been operating the filling station for about 20 years, had about 20 years experience and I knew that he was a good filling station man, a good operator, and he came here to see me three times to lease this service station
and the third time he came I rented it to him and
page 142 } he went to Dillwyn and rented a house and was
living there for awhile and then he asked me
to let him have just enough land to build a house on and I let him have as small a place as I could because I couldn't do without any of the land no more than I could help.

Q. You did that because he was leasing your filling station and was a splendid filling station operator?

A. Yes, sir. I was operating the filling station myself at the time and found out I couldn't do it, I couldn't look after it.

J. M. Anderson.

RE-CROSS EXAMINATION.

By Mr. Whitehead:

Q. Mr. Anderson, do you realize that this lot of 0.2667 of an acre is not at the intersection of Route 15 and 60?

A. I know it doesn't touch 60. I told you it was 250 or 300 feet from Route 60.

Q. Do you know the lot of land containing about an acre owned by Mary Matthews and sold to Elijah Throckmorton and wife in June of this year and lying on Route 15 on the opposite side of the intersection from this lot?

A. I know where Mrs. Matthews' house was but I don't know anything about the sale of the lot.

Q. Did you happen to know that her lot of one acre with 100 foot frontage, with a well on it, with a septic tank on it and with foundation for a house on it that's at that point sold for $1500.00?

A. No, I don't know what it sold for.

Q. You did not have that figure in mind when you reached the figure which you previously mentioned with respect to this little lot?

page 143 } A. Well, this land down here is more valuable land than that is up there on 15.

Q. Isn't this on 15?

A. Yes, sir.

Q. It is just on the opposite side of the corner?

A. Yes, sir.

Q. One is on what we might call the north side of the corner and the other is on what we might call the south side of the corner and closer to the intersection?

A. Yes, sir.

Q. How much closer would you say it is?

A. I would say it is 150 feet closer or something like that.

By Mr. W. M. Abbitt:

Q. Mr. Anderson, do you authorize the reporter to sign your name to your deposition when he has written it out?

A. Yes, sir.

And further this Deponent saith not.

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T. J. DAVIS,

a witness called on behalf of the complainant, having been first duly sworn deposes and says as follows:

DIRECT EXAMINATION.

By Mr. W. M. Abbitt:

Q. Will you state your name and where you live?

A. T. J. Davis and I live two miles east of
page 144 } Sprouse's Corner down 60.

Q. What do you do now?

A. I am supposed to be retired.

Q. Do you own some real estate in that area?

A. Yes, sir.

Q. Are you familiar with Sprouse's Corner and the land and businesses there?

A. Yes, sir, I am.

Q. Are you familiar with this small parcel or tract of land next to Mr. J. E. Newton's home house upon which four and a fraction cabins are located, together with a driveway, comprising a little over a fourth of an acre?

A. Yes. When I operated the camp there I was ordered to clean down to the line and that oak tree was the line and Mr. Sprouse was cutting wheat over on the other side with a pair of mules when I was there and he said "This is the line". I think we decided that that was the line.

Q. Now, I show you the plat made by Mr. Gillispie on July 1, 1958 which is marked Exhibit No. 80 and ask you if you will identify that as being the parcel of land we are talking about?

A. Yes, sir, it is.

Q. What, in your opinion, is the fair market value of that particular parcel or tract containing a little over one-fourth of an acre, not counting the buildings or improvements or the road that is on it?

A. Well, if it was mine they would have to pay me $2500.00 to get it.

Q. You think that is a fair value for it?

A. Yes, sir, where it is located. The lot is large enough to put a building on it.

page 145 } Q. That is entirely industrial, that intersection in there, isn't it?

A. Yes, sir.

Q. Isn't it one of the best developed areas in that entire area?

T. J. Davis.

A. It is one of the best.

Q. In the last ten years there has been built in that intersection a filling station, restaurants, a Tasty Freeze and two motels?

A. That is correct and I would say that that is one of the best business intersections in the state anywhere and everybody who has went there has made money.

Q. How close does the ditch line come to the Newton house as best you can recall?

A. You mean the line that goes down across the cabins?

Q. In other words, here is Route 15 on this plat. Fifteen goes on towards 60 up here and this new line would run down this ditch line and Mr. Newton's house would be over on his land. How far is this new line from Mr. Newton's house?

A. I imagine that would be about 70 yards.

Q. You are not certain what the distance would be?

A. No, sir.

Q. This little plat takes in what was formerly part of his yard, doesn't it?

A. Yes, sir. I think Webb & Lacy cut that off for Mr. Newton, the road that goes down in there.

Q. In other words the lot was higher than it is now?

A. Yes, sir.

Q. You mean by that they bulldozed it down?

A. They graded it down for a road where the road is now.

page 146 }

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CROSS EXAMINATION.

By Mr. Boatwright:

Q. Mr. Davis, you own some land on 60 to the east of Sprouse's Corner, don't you?

A. Yes, sir.

Q. How many yards do you front on 60?

A. I really couldn't tell you that. I never have stepped it but it is a right good little strip.

Q. About a quarter of a mile?

A. Yes, I reckon it is a quarter of a mile.

Q. On both sides of the road?

A. No.

Q. Just on one side?

T. J. Davis.

A. On the side my home is on.

Q. And you are not far from Sprouse's Corner?

A. It is two miles to my mailbox.

Q. Do you know where Miss Mary Matthews' house was on 15 near Sprouse's Corner?

A. Who?

Q. Mary Matthews.

A. No, sir. Nobody has been living on there since I have been there by that name. George Anderson is up there on what was Charlie Garland's place.

Q. I said on Route 15 near Sprouse's Corner.

A. Who did you say?

Q. Mary Matthews.

A. Not as I know of.

Q. Her house burned down this year. Do you know anything about that?

page 147 } A. I know a house burned down right above Mrs. Sprouse's and them like going on toward Farmville.

Q. That is the house. That is on 15. Do you know where Creed Dowdy lives?

A. Yes, sir. This was next to his house.

Q. Did you know that an acre of land right there with a well, a septic tank and the foundation for a house with a frontage of 100 feet sold the latter part of June of this year for $1500.00?

A. No, sir. I just heard the other day it was sold last week.

Q. That is only a short distance from Sprouse's Corner, isn't it?

A. Yes, sir.

Q. It is in the other direction from this land you have been talking about?

A. Yes.

Q. Now, Mr. Davis, you say this land with a little less than 40 feet frontage on Route 60 is large enough to build something on?

A. Yes, sir, but this land doesn't face on 60.

Q. As a matter of fact, there are already a little over four cabins built on that tract of land now?

A. Yes, down on the lower end.

Q. There wouldn't be any opportunity to build anything between those cabins and the road?

A. It is plenty large enough if you take the road off.

Q. As a matter of fact isn't that strip nearly all taken up with the road at the present time?

T. J. Davis.

A. No, it is a right good little strip there.

Q. Look at this map again.

page 148 } A. I can't help that.

Q. Look at the map and see how much would be there outside of the road.

A. It is more in the yard that it is on the road.

Q. Not according to that map.

A. Never mind about this map. I will go down there with any three disinterested men and show them.

Q. I am asking you according to that map and that is what we are talking about.

A. Well, I say it is more in the yard than it is in the road.

Q. It is shown on the map that way?

A. I can't help about this map. This man makes mistakes as well as anybody else can.

Q. You say the map is not right?

A. No, I won't say that but I say it is more land in the yard than there is in the road, I mean right straight across from the house.

Q. Straight across from what house?

A. From Birdie Newton's house. I don't mean where the cabins are but across where the tree is.

Q. Would you say that the land on which Mr. Elcan built his house is practically diagonally across the road from this place?

A. From what place?

Q. From the land shown on this map.

A. Not exactly.

Q. I say diagonally across the road?

A. Yes, sir.

Q. You can stand on this land and throw a stone over to Elcan's land, can you not?

page 149 } A. Maybe so.

Q. It is on the opposite side of 15?

A. Yes, sir.

Q. Would you say that this land here was worth any more than the land, not speaking of the improvements but just the land, would you say this is worth any more than the Eugene Elcan's land, not including the building at all?

A. Well, I think all the land on the west side of 15 is valuable land.

Q. I am asking you to compare one side with the other. Do you think it is more valuable on the side that the Newton cabins are or on the Anderson side?

A. Including the buildings?

J. M. Anderson.

Q. I am not talking about the buildings.

A. Nobody would go there and buy the naked land there unless the cabins were on it.

Q. We are talking about the land and not the cabins. The cabins have been valued without the land.

A. On the side where those Newton and Sprouse cabins are I would say is the most valuable.

Q. Why do you say that, Mr. Davis?

A. There is a whole lot of difference.

Q. Why?

A. It is a better location.

Q. One side of the road is worth how much more than the other side?

A. I would say right much.

Q. How much?

A. I couldn't go ahead and say something I don't know exactly but you know yourself it is.

page 150 } Q. You are testifying, Mr. Davis, and not I.

A. You know it yourself.

Q. In figuring the value of the land on what you call the west side of the road did you take into consideration the buildings that were already on it?

A. Everything just like it stands.

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page 151 }

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J. M. ANDERSON,

recalled for further cross examination, deposes and says as follows:

CROSS EXAMINATION.

By Mr. Whitehead:

Q. Mr. Anderson, has the State Highway Department recently acquired some of your tract of land at the intersection of Routes 15 and 60 at Sprouse's Corner and along Route 15 until you hit the Elcan strip of land which he bought from you?

A. Yes, sir.

J. M. Anderson.

Q. Have you and the Highway Department as yet agreed on a price for the strip of land that it is to take?

A. No, sir.

Q. That strip of land takes in how many acres in addition to the present right of way of the highway?

A. I just don't remember exactly what amount
page 152 } of acreage it took in there. I have it in the papers at the motor court.

Q. Could you give us in a general way about what it is?

A. I think it is around close to half an acre.

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page 153 }

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RE-DIRECT EXAMINATION.

By Mr. W. M. Abbitt:

Q. They have asked you if it wasn't the same other than the things they pointed out. In addition wasn't the Tasty Freeze built since you bought the land?

A. Yes.

Q. So the Tasty Freeze was not there?

A. No, sir.

Q. The filling station was not there of yours?

A. No, sir.

Q. The restaurant was not there, was it?

A. No, sir.

Q. How many cabins do you have?

A. Fourteen.

Q. Were your fourteen cabins there?

A. No, sir.

Q. So in addition to the things Mr. Whitehead enumerated you have a number of other industrial buildings there costing you thousands and thousands of dollars?

A. That is right.

Q. There have been many improvements?

A. When I bought the corner in 1949 it was all in woods and I took a bulldozer there and started clearing it off before I built a filling station. All the land was in woods or in brush.

Q. Actually, as a matter of fact, then the only
page 154 } thing there was the store of the Sprouses?

A. That is right.

Q. And the Maxie restaurant?
A. Yes, sir.
Q. And the Sprouse's Motel?
A. Yes, sir.
Q. Which, as far as investment is concerned, was really a small part of what is there now?
A. Yes, sir.
Q. I show you Exhibit No. 77 which shows a picture more or less a part of the Sprouse and Newton Motel. That has a very prominent office building. That wasn't there, was it?
A. No, sir.
Q. All of these eighteen Newton cabins were not there?
A. No, sir.
Q. Now, if you had this little lot that you sold to Mr. Elcan today what would it be worth, the land only?
A. I would think that lot down there would be worth around $2,000.00.
Q. Are you familiar with this Matthews lot up there?
A. I am not familiar with the lines and all. I know where the lot is. I have seen it in driving by there.
Q. Is that next to this garage or junk yard we have been talking about?
A. I think there is possibly one house between the garage and that Matthews lot.
Q. Then would that be in the industrial section of the corner or would that be further away from the intersection where they have homes and houses?

page 155 } A. Well, it is more in the section where they have homes and houses. That is what it was built there for.

By Mr. Whitehead:
Q. In view of that let me ask you some questions. You realize, do you not, Mr. Anderson, that on the little lot of 0.2667 of an acre at present there are four cabins?
A. Yes, sir.
Q. When you bought there in 1949 how many tourist cabins were there at the corner?
A. I think it was about eighteen rooms.
Q. Who had all of them?
A. Mrs. Sprouse had all of them.
Q. Now, since then the Newton units of eighteen cabins have been built?
A. Yes, sir.
Q. And the office?

M. O. Sadler.

A. Yes, sir.

Q. Directly across the road from the Newton cabins you have built yourself a motel of how many units?

A. Fourteen units.

Q. J. E. Newton himself is now constructing on Route 15 further north than the present cabins another motel, is he not?

A. Yes, sir.

Q. Of fourteen units?

A. I don't know exactly how many units.

Q. On which side of his house is that new construction?

A. It is on the lower side next to Dillwyn.

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page 158 } M. O. SADLER,

a witness called on behalf of the defendants, having been first duly sworn deposes and says as follows:

DIRECT EXAMINATION.

By Mr. Boatwright:

Q. At the present time you are Treasurer of Buckingham County?

A. Yes, sir.

Q. Have you also been engaged in the real estate business?

A. Yes, sir.

Q. In Buckingham County?

A. Yes, sir.

Q. Are you acquainted with the small parcel of land containing approximately one-fourth of an acre on Route 15 just east of Sprouse's Corner which lies just this side of J. E. Newton's residence as shown on the map you have in your hands

A. Yes, sir.

Q. Have you looked at it recently?

A. Yes, sir.

Q. What, in your opinion, is the fair valuation for this small fraction of an acre without including the improvements on it in the way of buildings and so forth?

A. You want the valuation of this piece of land per acre?

Q. Just that piece of land which is just slightly over a quarter of an acre.

A. The 24/25th of an acre of land that this piece was taken off of was valued in the land books at $500.00 which is 50%

of the actual value according to the 1955 valuation. If you take that then this piece of land at that time had a value of $268.00, I believe, to be exact. In my opinion, the land around the corner there, cleared land, would be valued around $1,250.00.

Q. Per acre you mean?

page 159 } A. Per acre. That would run this land, I think, around $350.00. I haven't figured it out closely.

Q. Mr. Sadler, this is not a part of the 24/25ths of an acre but lies immediately adjacent to the 24/25th of an acre, being right here, as shown on this plat.

A. I understood that was part of the 24/25ths of an acre.

Q. It adjoins it but is not a part of it. This line here is the separating line between the two parcels. In your estimate of $1250.00 an acre you didn't include any buildings?

A. No, sir, simply the land.

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CROSS EXAMINATION.

By Mr. W. M. Abbitt:

Q. Mr. Sadler, you are Treasurer of Buckingham County?

A. Yes, sir.

Q. And I believe you say according to the assessed value that this 24/25ths of an acre should be worth about a thousand dollars?

A. That is the way it is valued.

Q. You weren't present at a former hearing when the Sprouses were testifying how valuable that tract of land was, were you, and that it was worth so much they couldn't even place a value on it?

A. No, sir, I didn't hear their testimony.

Q. Now, there would be no reason why this little extension of it wouldn't be just as valuable as the 24/25ths of an acre because it adjoins it?

A. I would think it would be equally as valuable.

Q. So if they said the 24/25ths of an acre was worth up in the thousands of dollars and so valuable they

page 160 } couldn't afford to sell it the same would be true of this approximately one-fourth of an acre, wouldn't it?

A. Well, as I say, I don't know what their testimony was.

Q. I say, assuming that is true.

A. Well, it is adjoining.

Q. Right smack against it.

W. A. Wood.

A. So far as land values the value is just as much as the other. That is my opinion.

Q. In other words, it has the same depth from the road and is right smack up against the 24/25ths of an acre, as I understand it. You don't know any land that can be bought right in that area, do you?

A. No, sir.

Q. You don't know what the Sprouses would want for their land there on Route 60, do you?

A. No, sir.

Mr. Abbitt: That is all.

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page 161 }

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W. A. WOOD,

a witness called on behalf of the defendants, having been first duly sworn deposes and says as follows:

DIRECT EXAMINATION.

By Mr. Boatwright:

Q. Mr. Wood, you are Commissioner of Rev-
page 162 } enue. How long have you been Commissioner of Revenue?

A. Twenty-six years.

Q. Are you familiar with the land around Sprouse's Corner in this county?

A. Yes, sir.

Q. I show you here a plat which has been filed as Exhibit No. 80 with the evidence here which shows a strip of land between the Newton house over here and the Newton cabins along here which fronts on Route 15 a distance of 39-1/5 feet and runs back 234 feet, making slightly over a quarter of an acre in this lot. Now, without regard to the value of the buildings which are on it and which has already been taken care of in this proceedings what would you say would be a fair valuation for the land?

A. How much land?

Q. That piece of land which is approximately a quarter of an acre.

W. A. Wood.

A. I figure that land would be worth $1500.00 per acre so you can figure it out that way.

Q. You think $1500.00 an acre would be a fair price for the land, not including the buildings or any improvements on it?

A. Yes, sir.

Q. Have you seen it recently?

A. I saw it today.

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CROSS EXAMINATION.

By Mr. W. M. Abbitt:

Q. Mr. Wood, do you know any land right along in that area that can be purchased at any price?

A. No, I don't.

page 163 } Q. Wouldn't you say that right in that intersec- section, Sprouse's Corner, the intersection of Route 15 and Route 60, is about the most valuable land in the county?

A. It is not assessed as high as some in the county.

Q. I know that, but being a Commissioner of the Revenue don't you have to think about assessed value of land when you talk about value of land?

A. The last time it was assessed at about a thousand dollars an acre.

Q. If it came to your attention that the Department of Highways paid about $4,000.00 for eighteen hundredths of an acre right across the road from this would that make any difference in your valuation?

A. I don't know that it would on account of the fact that the State Highway can put any price they want to on it and take it.

Q. Mr. Wood, if you will recall, the Sprouses own now all the land between this tract of land and the intersection of 15 and 60, a little parcel of 24/25ths of an acre which has all of the rest of the Newton cabins on it. If it came to your attention that the Sprouse defendants, that several of them, testified that that 24/25ths of an acre was almost invaluble, worth thousands of dollars, wouldn't you say that in proportion that this one-fourth of an acre would be worth just as much as that piece of land lying right by it?

A. Yes, sir.

W. A. Wood.

Mr. Boatwright: I want to note an exception. Counsel for the plaintiff is unintentionally misleading the witness in view of the fact that the Sprouse boys testified, and Mrs. Newton in testifying with regard to this property, said that they would not sell it at any price to a person who would build
page 164 } a competing motel or hotel on it and that was the situation which they testified to when they said there was no valuation at which they would sell it because of the prospective competition and not as to the particular value of the land itself.

Mr. W. M. Abbitt: You will find in the record, and I will vouch it, where she said it was worth thousands of dollars; that it was invaluable, that 24/25ths of an acre.

Mr. Boatwright: Your client testified he bought it for $1,000.00.

By Mr. W. M. Abbitt:

Q. Wouldn't you say that the fact that there is a large filling station, restaurant, a Tasty Freeze on one side of 15 right across from this, and then a restaurant beyond the intersection, and then a large store and restaurant on the other corner of the intersection, plus the Sprouse Motel, and the fact that the new motel is being erected on down toward Dillwyn from that, would naturally increase the value of that property?

A. Yes, it would.

RE-DIRECT EXAMINATION.

By Mr. Boatwright:

Q. Mr. Wood, do I understand from your testimony that you consider $1,500.00 per acre for the land without improvements a fair valuation?

A. Yes, sir.

By Mr. W. M. Abbitt:

Q. Do you think you could buy it?

A. I don't think you could buy it at any price.

Q. Do you think you could buy any other land at that price or any other price in that intersection?

page 165 } A. You can buy land but not land right on the front. He wouldn't sell that land.

Q. He is going to take it with him when he leaves if he can?

A. Yes, I expect he will.

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HENRY EUGENE ELCAN,

a witness called on behalf of the complainant, having been first duly sworn deposes and says as follows:

DIRECT EXAMINATION.

By Mr. W. M. Abbitt:

Q. Mr. Elcan, you live near Sprouse's Corner?

A. That is right.

Q. Right across the road almost from Mr. J. E. Newton's home house?

A. That is right.

Q. Are you familiar with the little parcel of land on which four and a fraction cabins are on, amounting to a little over one-fourth of an acre as shown by that plat there?

A. Yes, sir, I am familiar with it.

page 166 } Q. The fact that a parcel of land that we are talking about here is a fraction over a fourth of an acre which is actually 0.2667 of an acre, a fraction over a fourth of an acre, what would you say is the value of that piece of land? First, are you familiar with the value of lands right in that vicinity?

A. Well, I bought property there and the State bought some of my right of way.

Q. I believe you bought a small parcel and it has been testified here what you paid for it. I can't remember the figure but at the time you bought it who were you renting from?

A. At the time I bought it we were living in Dillwyn but I bought that piece of land to build on.

Q. Were you operating a filling station there?

A. Yes, sir.

Q. Renting a filling station from whom?

A. Snead Anderson.

Q. Did you get the land from him?

A. I did.

Q. Have you had occasion to sell some of the land that you bought from Mr. Anderson to the Department of Highways?

A. Yes, sir, I have.

Q. How much did you sell them?

A. Around 18/100ths of an acre.

Q. Is that right across the road diagonally from this tract?

A. Yes, sir, it is just about across from this tract you are speaking of.

Q. Is it a little further from the intersection than this tract is, isn't it?

A. Yes, it is.

Henry Eugene Elcan.

Q. What did the Highway Department pay you for your 18/100ths of an acre?

page 167 } A. Four thousand dollars, I believe it was.

Q. Approximately $4,000.00?

A. Yes, sir.

Q. Some of that I assume was perhaps damages. Did they work out the damages for you?

A. Yes, sir, they worked it out very satisfactory.

Q. What did they do by way of alleviating the damage?

A. Well the grading. They did all of the grading, of course.

Q. In other words, in addition to paying you they did grade the bank down?

A. They sloped the bank down and put grass on it.

Q. Did they leave the grass in as good condition as before they fixed the road?

A. Yes, they did.

Q. Then, except for the taking of your property the damage amounted to very little?

A. It did. After it was all over with I am really better satisfied because I am up on a bank now.

Q. Let me see if I understand it. You think your property is in better shape now except you are minus some land?

A. I really do.

Q. And what did the highway pay you?

A. In the neighborhood of $4,000.00.

Q. And that was for 18/100ths of an acre?

A. Yes, sir.

Q. Of course, that came off the front of your land?

A. Yes, sir.

Q. What would you say would be a fair value for this tract of a little over one-fourth of an acre?

A. Well, I would think the same value or in the

page 168 } neighborhood of that.

Q. You think this would be worth as much as what the land was the State Highway got from you?

A. I would.

Q. Could you put us a figure on the value of that land, this tract of a little over a fourth of an acre?

A. I would say to the property owner $2500.00 or $3,000.00.

Q. When I ask you the value of this piece of land I meant the land minus the buildings, just the land itself.

A. That is what I am talking about.

Q. And you think this small tract of land, a little over a fourth of an acre, minus the buildings and improvements, is worth 2500 to $3,000.00?

Henry Eugene Elcan.

A. Yes, sir.

Q. I believe you testified you operate a filling station. How long have you been operating a filling station?

A. Quite a few years.

Q. Is it or is it not one of the best points from an industrial standpoint for tourist in this area of the state?

A. I think it is.

Q. Is that corner there highly industrialized now?

A. It is. I think it is a wonderful location.

Q. And on the Dillwyn side of the intersection—this is the side on which the small tract is on, has the tourist court gone even further than this tract? Are there other tourist courts between this tract of land and Dillwyn?

A. I didn't understand the question.

Q. This parcel is on the Dillwyn side of the intersection of Routes 15 and 60. Has the industrial building gone on toward Dillwyn where more cabins are being erected

page 169 } on the Dillwyn side of this land?

A. That is hard for me to say.

Q. Is Mr. Newton putting some more cabins in?

A. Yes, sir, he is.

Q. So this lot would be right in the industrial section of the corner there, wouldn't it?

A. Yes, sir, it would.

Q. Do you know of any land that you could buy right along this area if you wanted to?

A. No, I do not.

Q. You don't know of any that has been bought anywhere along there?

A. No, sir.

Mr. Abbitt: I believe that is all.

CROSS EXAMINATION.

By Mr. Whitehead:

Q. Mr. Elcan, this piece of land you have been referring to as being owned by you, is that the property which was conveyed to you and your wife by J. M. Anderson and wife by deed dated September 30, 1954, recorded in Deed Book 57, Page 461, consisting of an area of 0.515 acres?

A. That is right.

Q. And with a frontage on highway number 15 of 129.7 feet?

A. That is right.

Q. You paid $500.00 for that property, did you not?

Henry Eugene Elcan.

A. Four hundred dollars, I believe, as I remember now. I think I am right on that but I could be wrong.

Q. Did you erect on that property a very valuable dwelling house?

A. I did.

page 170 } Q. Without asking you for too much of a disclosure will you tell us in a general way what your investment in the house was?

A. Around $30,000.00.

Q. Now, at that time the line of the right of way of the Highway Department came how far from the front of your house?

A. Fifty-eight feet, I believe. I am not sure on that.

Q. The result of the taking by the Highway Department reduced it from 58 feet down to what?

A. At the top of the slope I believe it is around 28 or 30 feet. I am not sure about that.

Q. It is 28 or 30 feet now?

A. I believe it is.

Q. The effect of the acquisition of the Highway Department was to bring the edge of the highway very much closer to the front of your house?

A. That is right.

Q. Was that taken into consideration materially in the settlement that you all made?

A. Oh yes, it was.

Q. Now, in addition to that didn't the Highway Department lower the road or the highway, in front of your place?

A. They lowered the road in front of my place.

Q. How many feet did they lower it?

A. It seems like about and 18-foot cut there. It was 18 feet, I believe, as well as I can remember.

Q. And, as a result of that, that left your house rather highly elevated on a bank?

A. It did.

Q. You say, however, that by virtue of the work that has been done since then that has been diminished considerably?

page 171 } A. Yes, sir, it has.

Q. It is my understanding, Mr. Elcan, that when the Highway Department settles with landowners they put the evaluation first on the land that is actually bought. Then they put a valuation on the damages that are done to the balance of the tract. Do you know whether or not that was followed in your instance?

J. E. Newton.

A. No, sir, I do not. When they came through they made me an estimate on it.

Q. What was that?

A. For the frontage of my property that was taken it was around $4,000.00.

Q. We are talking about different things. I am asking first what did they allow you for the piece of land that they took, the 18-100ths of an acre, and then what did they allow you for the damage to the residue of the land by the taking and the cut down there in front of your place?

A. It was only one offer that I can remember.

Q. Only one offer?

A. Only one offer. It was a matter of take it or leave it, the way I understood it.

Mr. Whitehead: Mr. Commissioner, probably we can get those figures and if we do get those figures it may be we will want to recall Mr. Elcan back for further examination because it was a break-down between the two items.

The Commissioner: If you can show the value of the land that the Commonwealth took and the damage to the remainder of the property that can be shown.

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page 184 } J. E. NEWTON,
recalled for further cross examination, deposes and says as follows:

CROSS EXAMINATION.

By Mr. Whitehead:

Q. Mr. Newton, in your petition filed in this cause in April, 1958 you set up a claim of $1.00 for each cabin in the motel unit that you rented out of the Newton Motel since November 2nd, 1953. Do you still claim that?

A. Yes.

Q. You claim $1.00 on each cabin or motel unit?

A. No, sir. I claim $1.00 on those rented from $5.00 and up and 50¢ on everything under $5.00.

Q. And your claim runs back to the date of the court's decree of November 2nd, 1953?

A. That is right.

Q. I notice that in the account which you have filed with the Commissioner beginning with Exhibit 67 this claim for

rental service by yourself begins at the month of October 1954. Have you filed any claim for the period between November 2nd, 1953 and October 1, 1954?

A. I can't answer that because I don't know. That is 1953 to '54 you are asking about?

A. Yes, sir. You are asserting claims for rental service from November 2nd, 1953 through September 30th, 1954?

A. Yes.

Q. And is that amount included in the total amount of rental service which you have stated in one of the exhibits filed with the Commissioner?

A. I think so.

Q. If in fact you have not filed any claim for
page 185 } rental service other than the claim asserted in the petition aforesaid for the period from November 2nd, 1953 to September 30, 1954 that has been due to an oversight?

A. If it hasn't been filed it has been a mistake because that is what I was counting on getting from that time on.

Q. I just wanted to find out the extent of your claim.

A. I am counting on the rental from the date that the Judge turned it over to me until the date you mentioned. I think the Judge turned it over to me in Farmville in November of 1953 as well as I can remember. The papers will show what date it was.

Q. From my examination of your exhibits filed in your case by you and by Mr. O'Bryant, and from my recollection of the testimony, there is no statement that has been filed for the period November 2, 1953 through September 30, 1954. In order now that we may all be certain as to what your claim really is is it your claim that you are entitled to the rental from November 2nd, 1953, the date that Judge Flood passed the decree in Farmville?

A. I think I would be as much entitled to it from that day as I would from a date later on.

Mr. W. M. Abbitt: Mr. Commissioner, to get the record straight, I may say that I thoroughly agree with Mr. Newton but Mr. Newton has overlooked some of the facts. We have already had a settlement which you as the Commissioner has approved of the account from November 2nd, 1953 to the end of September 1954. For that reason in the papers and in the petition and in the account no claim is made so far as the papers are concerned for that period. The claim, as far as the record is concerned, is from October 1954 because

there has been no settlement from October 1954 down to date?

page 186 } The Commissioner: You are not going back of that?

Mr. Abbitt: We are not going back of the settlement. We didn't do it in the exhibit and we didn't do it in the claim and we didn't do it in the petition. It may be hard for Mr. Newton to remember the dates but so far as the record is concerned and so far as the legal situation is involved here we are not requesting any compensation beyond the date of the last settlement, which was September the 30th, 1954. We are starting our account as of October 1, 1954 which runs down to date.

The Witness: That is satisfactory with me.

Mr. Whitehead: In order that the record may stand further clarified I want to refer to the petition filed by Mr. Newton in April of 1958, Page 3, the concluding paragraph: "Your petitioner therefore prays that he may be allowed the sum of $2,932.74 as additional cost for permanent improvements placed upon the Newton Motel since the ending of the time of the account rendered by G. M. Rogers, Special Commissioner, and that he be allowed a fee of $1.00 for each cabin or motel unit that he has rented out of the Newton Motel since November 2nd, 1953."

Q. Mr. Newton, were you renting the Newton cabins in exactly the same way from November 2nd, 1953 through September 30, 1954 that you have rented them since October 1, 1954?

A. I am renting them now just like I started.

Q. As far as you are concerned then there has been no difference in the operation and no difference in the nature, type, extent and scope of the service which you have personally performed in the renting of those cabins?

page 187 } A. No difference. I have given the best service I could at all times.

Q. The question is has there been any difference in the service?

A. I don't know of any difference. I work a little harder but I don't know of any difference.

Q. Will you please give us the schedule which is now in effect with respect to the price that you charge for the units which you rent out?

A. You mean the prices per unit?

Q. Yes, sir.

J. E. Newton.

A. Well, we have different prices. If a man stays a good while, of course, his charges are not as much. We have rented some and the Sprouses have too for two dollars and a half a night, both parties have, and are still doing some of it. We have done some of that ever since I have been up there. One of them is a man who travels. I think his name is Winston. He don't pay but two dollars and a half and he never has. They do the same thing and I do the same thing. They don't do anything I don't do.

Q. Quite aside from the cabins which are rented on a long term basis, for the cabins that are rented night by night for one night only what is the schedule?

A. Well, this is only one night to him. He comes there once a week and for weekly people like that we rent them a little cheaper and sometimes when they stay a week it is probably $18.00 a week, sometimes $15.00.

Q. Well, for those that you have no long term arrangement with but just rent one cabin for one night and that is the end of it?

A. They run from seven to $8.00 for two peo-
page 188 } ple and $4.00 to $5.00 for one person.

Q. Is there any difference between the cabins as to the rental charges?

A. Well, the biggest difference is we don't let the man leave. If he ain't got but $4.00 he gets the cabin.

Q. You have got eighteen cabin units. Is there any difference in the price that you charge for one cabin as compared to the other or do they all rent for the same thing?

A. Some are a little nicer than others and we can come down to any amount we please but we can't go up any more than what is posted over the door.

Q. What is posted?

A. The best ones run about $8.00 for two or $5.00 for one but we can come down where we please but we can't go up.

Q. Then, as I understand from your evidence, there is no set rate that you collect for the cabins?

A. I didn't understand the question.

Q. You have no fixed rate?

A. We have fixed rates and we try to get that if we possibly can.

Q. But you don't always do it?

A. It is like any other deal, sometimes you make a deal and if you can't do it exactly like you want to you do it some other way.

Q. What would you think the average is?

J. E. Newton.

A. We try to get as much as seven or $8.00 for two people.

Q. Do you think you would average between seven and $8.00?

A. No, we wouldn't average that. That is our top price. I don't know if they would average $5.00.

Q. I thought the top price was $8.00.

page 189 } A. That is right but we don't rent so many of them. Lots of times it is one person and it is only $4.00. If you would take an average year round I wouldn't think they would average $5.00. Of course, you can tell by going through the books. It is kind of hard to try to get an average without the books. If they want to come to a final answer you can get it from the books and not from me. If it is important and you want a straight answer that is the only way I see to get it. When you rent one man a cabin for two dollars and a half and another one for $8.00 it is a hard proposition to figure what the average is.

Q. Where you have a cabin that you rent out to one person for a week or more what is the charge for a single person?

A. I don't know. I don't let a man leave if I can help it.

Q. That is not the question. Will you pay attention to my question? Where you are renting on a weekly basis or a monthly basis for a single person what would be your average charge?

A. Well, I guess the average charge would run about $15.00 a week. We have had a lot of people working down at Bremo and boarding them and furnishing a cabin and board for eighteen or $20.00 a week.

Q. Which cabin do you occupy?

A. One of the Newton cabins.

Q. Which one?

A. I occupy number 26.

Q. Now where is that situated with respect to the two ends of the front side of the cabins?

A. Somewhere close to the center. They start at twenty and you go to twenty-six.

Q. Is that about the middle of the front?

A. Not quite, about a third because it is eighteen of them.

page 190 } Q. About one-third?

A. Six out of twenty and that would give pretty close to a third.

Q. Is that the cabin over which you have the sign "Office"?

A. That is right. That is the one I have used for the office.

J. E. Newton.

That is not a high priced cabin. It doesn't have a tub in it. It only has a shower and that is supposed to be rented to anybody a dollar cheaper than one with a tub in it. I don't need anything so fancy.

Q. What use have you been making of the office which the Sprouses erected pursuant to the contract between the parties?

A. You mean the Sprouse's office?

Q. Yes, sir.

A. I haven't had anything to do with that at all. I just use this room. I don't use this room much for sleeping, I never go to bed before 12:00, 1:00 or 2:00 and get up from 5:00 to 6:00 and it is used mostly for an office.

Q. You never go to bed until 12:00 or 1:00?

A. Sometimes I am up at 2:00 and have been doing that for the last five years.

Q. And you have made no use whatever of the Sprouse office?

A. No. The Judge turned this over to me and I felt like I had no more to do with the Sprouse office.

Q. Are any of the records or books kept there?

A. At the Sprouse office?

Q. Yes

A. Nothing but what they take from down there at times. Now they are back at my office but at one time I couldn't lay one down and I am two short now. I don't know who got them. I won't say who got them but they are gone.

page 191 } Q. You tell us, then, in substance, that since the decree was entered on November 2nd, 1953 you have made no use whatever of the Sprouse office?

A. That is right.

Q. You have not used the telephone in the Sprouse office?

A. No. Well, I believe I have called there once or twice. I mean people have called me there but I never have called from there.

Q. And none of the books or records are kept there?

A. I have never seen any books or records. I have seen them too when they had them on the desk.

Q. Cabin number 26 of the Newton cabins is the one which is serving, if I understand your evidence correctly, as a combination office and sleeping quarters by yourself?

A. That is right.

Q. Now, that cabin is furnished with what?

A. Well, that cabin is furnished like all the rest of them.

J. E. Newton.

It has two beds, a dresser and everything. All of them are furnished alike—no difference in the cabins, but, of course, both beds are not used. I only use one bed.

Q. Does that cabin have anything that the others do not have?

A. I don't think so excepting I have an adding machine in there. That is the only difference.

Q. Is this cabin equipped with a telephone?

A. Yes, sir.

Q. Are all of the other seventeen Newton cabins equipped with telephones?

A. No, only one other one. There are two telephones in this motor court. One man pays for his himself

page 192 } and it is billed to him and everything. It is in Room 28. The bill never comes to me. It was put in for the miners that were there.

Q. So then it is only the room which you occupy, which is cabin number 26, that has a telephone in it which is charged to the operation of Newton Motel?

A. That is correct. I make some calls for the cabins over my 'phone in the office at Dillwyn. That 'phone is used only for the purpose of the cabins. At my office in Dillwyn I mail letters and all of that and that is taken out of my funds in Dillwyn. I have never bought a stamp out of this cabin money since it has been going on. I get all my stationary, envelopes, paper and stamps which I never have charged a penny against the cabins and sometimes I mail eight or ten a day.

Q. Was the telephone in Cabin 26 listed in your name?

A. No, Newton Motel. It is supposed to go with the motel not with me. I have a 'phone in my home and a 'phone in my office.

Q. Was this 'phone listed in your name as a residence 'phone for a while?

A. I believe it was for awhile.

Q. For how long?

A. I don't know. I can't tell you now.

Q. Will you be good enough to check back on your records before the hearing is concluded and give us the information with respect to that?

A. I can do it but I can't do it today.

Q. But you are prepared to tell us today, are you not, that certainly for a part of this operation for which you now claim compensation the telephone in Cabin 26 was listed as a residence 'phone and not a business 'phone?

J. E. Newton.

A. Well, I wouldn't like to say until I can go
page 193 } back and check the records because I really don't
know and I don't want to tell you what I don't know.

Q. Do you know a change was made?

A. I think it was but I would rather go back and check the records.

Q. Why was it if that 'phone was being used for the purposes of the cabins, which of course was a business undertaking, you had it listed as a personal or residence 'phone?

A. Well, the business was run as "J. E. Newton" until it was changed to the Newton Motel and that is the kind of 'phone I had and then when it was changed to "Newton Motel" they took the J. E. off and it was taken off and it is still off but it was run just like a tourist court. The 'phone had to correspond to the name of the tourist court. The 'phone was for the cabins and it wasn't worth a nickle for me. I been paying for one in my home for five years and have never used it three times in five years.

Q. Coming now, Mr. Newton, to the laundry of the linens and so forth which have been utilized in a cabin disassociated with the eighteen Newton cabins and located near your residence on the Maxie tract, was the laundry for that room, or rooms, charged up as a part of the operating expenses of the Newton Motel?

A. Yes. I've got a list of that laundry. What happened to this laundry business, the Sprouses got a lot of this laundry, over $300.00 from Richmond Linen and Mrs. Fair I put on the stand said they never did bring it all back and they was still owing 300 and some dollars which was at one time $700.00 and I got it down to 300 and something and I wouldn't pay it until it was straightened out.

Q. Mr. Newton, that answer is not responsive to the question I asked you. I asked you a very simple ques-
page 194 } tion and I want you to understand it. I am asking
you why the charge for the laundry in the cabin on the Maxie tract for which you have collected and have not accounted, why you have that charged against the Newton Motel?

A. It was because I made that arrangement with the man in Richmond and when this thing was settled I would pay for that laundry whatever it might be. I have a list of it. Most of the people use their own laundry and the rest is rented most of the times by the week or month. I have a list of everything.

J. E. Newton.

Q. You have been charging it up to the expenses of the operation of the Newton Motel?

A. Charging what?

Q. Charging the cost of the laundry on this cabin or room up on your individual tract, the proceeds of which you have not accounted for. Is that right?

A. I made this agreement with the laundry people. I was to use it but was to bring this bill up when we settled and I have got the list.

Q. We are not interested in what arrangements you made with the laundry people. I want you to answer a very simple question and the question is have you not been charging this laundry bill up as an item of operating costs for the Newton cabins?

A. Yes, sir, and I have been using it and she has been carrying it to her house and using it.

Q. And you are charging the expense of the laundrying as an expense for the Newton cabins?

A. That is right and here is a list of it but she has used some of this laundry in the home and didn't pay nothing for it and used it in her cabins and not paid for it so why couldn't I have it? I have an agreement with the

page 195 } Richmond Linen Company and when the time comes for a settlement we owe him 300 and some dollars that has never been paid for five years and it is going to be paid if I have to pay it when this thing is settled, as far as that is concerned.

Q. You testified that you stay up until 12:00 or 1:00 o'clock at night in connection with renting out the Newton cabins. Now is that the usual time you go to bed?

A. Well, I don't exactly have no certain time and another thing, if somebody comes to the door, I will get up if I am not asleep and rent a cabin if it is 3:00 o'clock.

Q. What do you mean when you said a few minutes ago "I never go to bed until 12:00 or 1:00 o'clock"?

A. Very seldom do I go to bed until that time.

Q. Then going to bed at 12:00 or 1:00 o'clock is your practice?

A. That is right.

Q. And if you go to bed earlier than that that is an exception to the practice?

A. That is right, and it is not every night. If I don't feel good I go to bed a little early and sometimes tell Lynwood I am going to bed and ask him to look out for me.

Q. So Lynwood knows then about when you go to bed?

J. E. Newton.

A. He ought to know pretty close.

Q. He is in position to know, you would say?

A. Pretty close. I don't say every night he knows but he knows the nights when I tell him I am going to bed a little early but sometimes nobody knows even where I am at.

Q. When you come in do you cut the lights off?

A. Sometimes I cut them off an hour and a half or two hours before I go to bed. I cut them off at 10:30 page 196 } last night, just cut the ones off against the wall. Some nights Pete is renting them and different nights different ones are renting them.

Q. When you turn in and cut the lights off what do you hang on the outside or near the outside of the door of the motel room that you occupy? What do you hang on the outside?

A. I have a little board and it gives the number of the rooms that are unlocked. I unlock those doors when I put those numbers up. I leave two or three cabins unlocked in case somebody comes in.

Q. You leave rooms unlocked that are vacant?

A. Some of them. I never leave over two or three.

Q. Tell us a little more about this.

A. I can tell you exactly how it is. I have a board and marked at the top is "White Only" and the number of those tags are on those doors, the doors that are unlocked, and on there is "Office will be open in the morning by 7:00". They come and register the next morning. Sometimes you have one and sometimes two and lots of times you don't have any.

Q. That little board then is hung on the outside of the door of the office?

A. That is right.

Q. The office that you occupy?

A. That is right and if I hear them come I don't wait but go on out but I could be asleep and yet they could get in.

Q. If you do not get up and go out all the guest has got to do is to take the key?

A. He don't have to take the key. The door is unlocked.

Q. All he has to do is to go to one of those rooms that you have numbered and occupy it?

A. That is right.

page 197 } Q. And he makes settlement the next morning?

A. The next morning. He registers that night. I leave them the book and they register on the book.

Q. Where does he register?

J. E. Newton.

A. At the door where he get the tag.

Q. Do you leave a register out there?

A. Yes.

Q. Now, we know a little more than we did before. You not only leave on the outside after you have retired the number of rooms which are vacant for occupancy but you also leave on the outside a form of registry for the guest to register?

A. Well the number of those other rooms is left at the top of the book so Lynwood or Pete will know which room it is. All the rooms that are not occupied are left at the top of the book.

Q. Would you be good enough after lunch today to bring us that little board that you use in order that the Commissioner may have perhaps a clearer view of the operation?

A. Yes. I think they done the same thing for awhile.

Q. Didn't you mention a minute ago something about you would tell Lyn—What do you mean by that?

A. Well, according to what you asked is what I meant.

Q. When you retired did you leave any instructions with Lynwood?

A. Yes, I would generally tell him that I was going to bed early and if anybody was to come in to let them have a room. None of us stay up any certain time. We are working for ourselves and not hired by the month. We are hired by the room, both of us. Sometimes we both get tired and go in.

Q. After the decision of the Supreme Court of Appeals of Virginia in January of 1958 did or did you not
page 197 } make an effort to get Lynwood 50¢ on the cabins that you rent cut out?

A. I don't remember that. I will have to ask my attorneys.

Q. I am not asking about your attorneys, I am talking about you.

A. I say that is a question I can't answer.

Q. In other words, didn't you make an effort to eliminate or to wipe out Lynwood's 50¢ on the cabins that you rented?

A. I don't remember nothing about that.

Q. Don't you remember that, Mr. Newton?

A. If I done that I don't remember anything about it. If it is in the court records all right but I don't remember it.

Q. I want to ask you again.

A. I can look you in the eye and tell you I don't remember anything about it.

J. E. Newton.

Q. I am not asking if it is in the record but didn't you make an effort to get Lynwood's 50¢ eliminated?

A. I said I don't remember it. I can't say "No" and say the wrong thing or say "Yes" and tell the wrong thing. I will just have to say I can't remember it.

Q. Don't you recollect, Mr. Newton, that acting on your instructions your attorneys asked us to agree to the elimination of the 50¢?

A. Well, maybe they did. I say I don't remember it. Probably they did.

Q. And we refused to do it?

A. Well, probably you did and if you did then you know.

Q. I want the Commissioner to know what you did. I am not talking about what I know.

A. You know more about it than I know. I don't know anything about it. So many things have gone on

page 199 } and this has been going on for five years and my head ain't got much hair on it and ain't got much in it and a man can't keep all that in his head for five years.

Q. I am not asking you to go back for five years but to go back to the confines of 1958, about seven months of which have already elapsed, and don't you know that you made an effort to get Lynwood's 50¢ cut out?

A. If I did I still say I don't remember it.

Q. Now I ask you that question for this reason: When you testified here, as I recall, on the 5th day of July you made reference to the fact about Lynwood getting his money and that you were perfectly willing for him to have it. Now, didn't you say that?

A. I don't recall that and I don't want to say something wrong about it. If I told it I told it. I have had right many problems since this thing has been going on and I can't keep everything in my head. I lost one of my eyes and I lost one of my attorneys and I lost my brother and I can't remember so many things that have come up. I can't remember all of those things and I don't know about the other fellow.

Q. Mr. Newton, have you bragged—

A. I don't know anything about bragging.

Q. And told your wife that you are going to string this thing out and hold on to those Newton cabins until you could get the ones that you had in mind built and were building in operation?

A. I never thought of such a thing. I could have had them

built long ago and I am not rushing them now. I am not rushing them at all. I had men working and had men to offer to work on Sunday and I turned them down. I wouldn't let them work on Sunday.

Q. Have you repeatedly told your guests that in due course the new Newton Motel would be open and in operation?

page 200 } A. I reckon they will be open and in operation if I live.

Q. Have you also told your guests that the new ones would be more spacious, more commodious and nicer than the ones now in operation?

A. Well, I don't remember that but I guess anything new is better than something old.

Q. Did you tell them that?

A. I don't remember that.

Q. Are they going to be nicer?

A. They will be new and they should be nicer but I can't say until we get done. You can't say what the color of a horse is until you have seen him.

Q. You are planning them to be nicer?

A. That is what I am trying to do. I don't want to build anything not as nice as the ones we have got.

Q. Have you kept the front of the Newton Motel, that is, the part which is of lumber construction, have you kept that all painted?

A. Well, I painted it I believe once. It is not like it should be right now. I didn't want to spend all I made on repairing like I understand they have done on the other eighteen. I told Lynwood if I have got to spend all my money in signs I will get in something else. I have got to have a little left if it ain't but a small amount.

Q. So you admit then that the painting has been neglected?

A. They need it a little bit. The only thing that needs it bad is the gutters and that is practically all.

Q. Have the wood portions on the outside been painted?

A. They have been painted, I believe last year.

Q. And the gutters?

page 201 } A. The gutters need painting. The paint is peeling, something I don't understand. It is coming off in little flakes. I scraped part of it off.

Q. In front of the eighteen Newton cabins is there a white paling fence?

A. That is right.

Q. What is the present condition of that fence?

J. E. Newton.

A. It is not in good condition. It needs remodeling but I feel like I would rather not have any fence than not to have a penny in bank.

Q. Are there any leaks in any of these Newton cabins?

A. I couldn't tell you. I heard the maid say that one room in a closet had a little leak but I never have checked it. I don't think there is none to amount to anything. If there is any at all there is none to amount to anything, not enough to be worth checking.

Q. Now, the rugs on the floors of the Newton cabins, have they been kept clean and inviting in appearance?

A. I think they are in mighty good shape for six years but I figure in six years a rug ought to be taken out and a new one put in. If it has not paid enough for itself in that time you ought to go out of business. Six years' service in a motor court is not like six years in a home. They are hard on rugs.

Q. Since this litigation has been in progress did you buy a motel over on Route 460 at or near the intersection of Route 15 and Prince Edward County?

A. That is right.

Q. What is the name of that court?

A. The Wind Mill Motel.

Q. And how long have you had that in operation?

page 202 } A. I reckon it has been a year or more, something like that. It is probably a little over a year.

Q. Are you now in the process of erecting a new motel on your Maxie tract on the opposite side of your dwelling from the present Newton cabins?

A. Yes, sir.

Q. Is that motel on Route 15?

A. That is correct.

Q. And it consists of how many units?

A. I can't tell you until I get done. I told a man Saturday that I started to build an office and one room and I don't know what I will stop at.

Q. What is your present plans?

A. To keep on until my money gives out.

Q. And your money is expected to give out at what point?

A. When the bank turns me down.

Q. Mr. Newton, this is no time to sit here and talk like children. How do you expect to build this motel?

A. I don't know.

Q. You have no plans?

J. E. Newton.

A. No, sir, no further than I have gone. I have got plans for how far I have gone. I don't see how you can make me tell something I don't know. Two days ago I added another room. Tomorrow I might add another one.

Q. How many rooms?

A. With the linen room sixteen rooms. I can tell you that at present but I may cut some down or I may put in some more.

Q. At present you have sixteen rooms and your plans are to enlarge it until your money gives out?

A. I don't know about that. I will say until page 203 } I get tired and stop. I don't know about that. I ain't got no plans.

Q. Didn't you just tell us you planned to keep on increasing until your money gave out?

A. I said I might do that. I didn't say I would.

Q. So you can sit here today and give the Commissioner no idea of how big you are going to make that motel?

A. At the present all the bigger I am going to make it is sixteen units. That is all I can tell you now.

Q. When did you begin construction of that motel?

A. I believe in January.

Q. January of 1958?

A. I believe it was and it rained so much of the time the men didn't work but a couple of hours a day and we had to move that bank to start with.

Q. You are counting on having these units in operation by what time?

A. No certain time.

Q. What is your expectation?

A. Well I couldn't say that because I don't know. I have got to leave it to my men who are working. They might get done in two weeks and it might be two months. I can't tell you.

Q. Do you think it will be done by the first of September?

A. Well, I don't think so.

Q. By the first of October?

A. Well, I guess along in October will have them completed. It takes a long time to do this work and you can't get but so much labor and I am not rushing them. I am not in any hurry.

Q. Now, since the decision of the court that you would have to give up the Newton Motel to the Sprouses, since that decree was entered by the Circuit Court you have bought

J. E. Newton.

page 204 } the Wind Mill Motel which we have referred to and you have built or are in the process of building the new ones on your Maxie tract. Is that right?

A. That is right so far.

Q. Did you and your wife give the State Highway Department an option for the sale of a strip of land approximately 40 feet wide, extending from the lot 24/25ths of an acre to the Davis lot on the Dillwyn side of your residence?

A. Yes, sir. Mr. Moon when he was supervisor asked me to go with him to Roanoke for a meeting of the Highway Department so me and my wife went with him and I told them if they would run that road from Sprouse's Corner to Dillwyn that I had nearly a half mile frontage on it and I would let them have it for most anything in reason to give them a title. The reason I give it to them was to get the highway. Mr. Elcan got $4500.00 for his little strip and I only charged them $1300.00. I practically gave it to them. I didn't try to sell it.

Q. You put a valuation, did you not, of $500.00 an acre on a strip of 1.32 acres making a total valuation of the land itself $660.00?

A. I reckon that is right. I told him he could have it for most anything to give them a title. I didn't want to sell it. My wife done the same thing. She promised them but I don't know what she will do. I told them if we could get that road we wouldn't be hard to settle with for that right of way and I am sticking to mine.

Q. And in addition to the item of $660.00 for the land itself consisting of 1.32 acres there was $640.00 for other damages making a total of $1300.00?

A. I reckon it was. I never got anything. I have given them a right of way at another time and never

page 205 } charged them a penny except a dollar to make the title. I don't call that a sale.

Q. Now this strip 40 feet wide takes in the front portion of the lot of 0.2667 of an acre surveyed by Mr. Carroll Gillispie, plat of which survey has been filed among the papers in this cause. Is that right?

A. That is right. I was offered a thousand dollars an acre for a quarter of an acre where I had my cabins and I wouldn't sell that. I give it to the State practically. I never got a check for it yet and don't know if I ever will get it.

Q. So the option which you and your wife gave the State is consummated by a deed and the lot which Carroll Gillispie

surveyed on July 1, 1958 will be reduced by having the 40 feet in front of it cut off?

A. I haven't signed the deed.

Q. Has the deed been presented to you?

A. It has been presented to me but I haven't signed it.

Q. Do you expect to sign it?

A. I will think about that. That is up to me.

Q. Are you going to comply with the option or not?

A. Well, I will have to think that over. I kind of give them that as a gift, not based on what they are trying to buy from me.

Q. I am asking you what are you going to do?

A. I don't think I will back out on them. I promised them I wouldn't charge them anything much. I may have to sign it.

Q. Am I correct then in assuming that you intend to comply with the option agreement?

A. Yes, sir, I promised them that I would do it. We made a trip to Roanoke to get this road and I think it is a good thing even if we don't get anything for the land.

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page 207 }

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Q. In view of what you said about not knowing whether you were going to get the money for this land which you own and have optioned to the State is it not a fact that a deed was sent you accompanied by a letter stating that when the deed was signed, acknowledged and delivered check for $1,300.00 would be delivered to you?

A. Well, what happened to that they didn't do what they had promised and finally I wrote a letter to Richmond and two days later Mr. Boatwright called me and told me the deed was ready.

Q. So the deed was delivered to you?

A. That is right, I got the deed.

Q. And was it not accompanied by a letter to the effect that when the deed was signed, acknowledged and delivered the check for $1,300.00 would be turned over to you? Will you just answer that question?

A. Yes, sir, and I want to tell you that part is all right and I am going to sign it. I am not going to back out on

nothing I promised. I just ain't took the time to do it. I told Mr. Boatwright I would be up later on and that was about a week or two ago I guess I told him that but I know if I got the money I would spend it right straight and I know as long as he kept it I would have it.

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page 215 }

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By Mr. W. M. Abbitt:

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page 216 } Q. In your opinion, was it necessary for you to have Cabin 26 to use as an office?

A. Yes, sir. If I didn't have that cabin I couldn't operate. There would be no way to operate without it.

Mr. Abbitt: That is all, I believe.

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page 222 }

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By Mr. Whitehead:

Q. Is Mr. Leslie O'Bryant your bookkeeper?

A. That is right.

Q. Was he your bookeeper during 1952, '53, '54, '55, '56, '57 and '58?

A. He was.

Q. Is it not a fact that Mr. O'Bryant, your bookkeeper, went over the accounts and books with Mrs. Newton before the statement was approved by the Commissioner and the court up through September 30, 1954?

A. That may be correct but you didn't ask me about Mr. O'Bryant. You asked about me.

Q. Was Mr. O'Bryant your employee at that time?

A. Yes, sir.

Q. Was he acting in your behalf?

A. Yes, sir.

Q. Is it not a fact that you personally were present when Mr. O'Bryant went over the situation?

A. Well, I was there for awhile. The last time I didn't even go at all, didn't go in the room.

Q. I am talking about when the account was gotten up through September 30, 1954. Weren't you present personally when your bookkeeper went over the Sprouse accounts?

A. I didn't go over them. You asked me did I go over them and I didn't.

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page 225 }

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JIMMY DEAN,

a witness called on behalf of the defendants, having been first duly sworn, deposes and says as follows:

DIRECT EXAMINATION.

By Mr. Whitehead:

Q. Where do you live, Jimmy?

A. Sprouse's Corner.

Q. What is your age?

A. Fifteen.

Q. Do you work for Mr. J. E. Newton?

A. Yes, sir.

Q. How long have you been working for him?

A. About a year and a half.

Q. What is your job?

A. Just general motel work.

Q. About what time do you go on the job
page 226 } during the day?

A. About 4:00 or 4:30.

Q. About 4:00 or 4:30 and you work until when?

A. Ten or 10:30.

Q. Is that at night?

A. Yes, sir.

Q. And do you rent out any of the rooms?

A. Yes, sir.

Q. About how many of the total rooms in the motel cabins do you rent out, what proportion?

A. About half.

Jimmy Dean.

Q. How are you paid for your services, Jimmy?
A. By the week.
Q. And who pays you?
A. Mr. Newton.
Q. And does he pay you by check or with cash?
A. By check.
Q. And on what account?
A. Newton Motel.
Q. Do you rent any of the Sprouse cabins?
A. No, sir.
Q. Have you ever rented any of them?
A. Yes, sir.
Q. How long ago was that?
A. That was before I worked for Mr. Newton.

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CROSS EXAMINATION.

By Mr. W. M. Abbitt:
Q. How did the Sprouses pay you?
A. They paid me by the room.
Q. Did they pay you by check?
page 227 } A. No, sir, with money—coins.
Q. They would give you money out of what they collected?
A. Yes, sir.
Q. What do you do there, Jimmy?
A. For Mr. Newton?
Q. Yes.
A. I get ice and cut the lights on and cut the grass.
Q. Anything else?
A. Just general work around there.
Q. Looking after the motel and the main thing you do is to get ice and people usually tip you for bringing the ice?
A. Yes, sir.
Q. Do you take in their bags for them sometimes?
A. Yes, sir.
Q. And their suitcases?
A. Yes, sir.
Q. And they usually tip you for that?
A. Sometimes.
Q. Most of the time you are hoping they do, don't you?
A. Yes, sir.
Q. And I assume that even when Mr. Newton is there you

go with the guests to their room and take their bags or take them out and get a tip for it?

A. Yes, sir.

Q. Do they usually pay you the money or do they usually pay Mr. Newton?

A. Well, I take it sometimes and sometimes they pay it to him.

Q. Is he there most of the time?

A. Yes, sir.

page 228 } Q. And he is looking after the business or seeing after it?

A. Yes, sir.

Q. Are there a lot of nights when you get off?

A. Yes, sir.

Q. What time do you usually come to work?

A. About 4:00 or 4:30 in the evening.

Q. How many nights a week do you reckon you get off?

A. I get off on Wednesday nights, about every Wednesday, and I go to a Boy Scout meeting and then on Saturday I go to the movies sometimes.

Q. And do you get off some other nights too?

A. Yes, sir, sometimes I don't feel good and I take off some nights.

Q. So really your job, as I gather from what you say, is cutting the grass, looking after helping the guests get their bags to their rooms, getting them ice and things like that?

A. Yes, sir.

Mr. Abbitt: I believe that is all.

RE-DIRECT EXAMINATION.

By Mr. Whitehead:

Q. When Mr. Newton is not there and you are there do you rent the rooms?

A. Yes, sir.

Q. You take the money from the guests and turn it over to whom?

A. To Mr. Newton.

Q. Do you often rent the rooms when Mr. Newton is not there?

A. Yes, sir.

Q. And you figure that of all the rooms rented you rent about half of them?

page 229 } A. Well, somewhere close to half.

Jimmy Dean.

RE-CROSS EXAMINATION.

By Mr. W. M. Abbitt:

Q. You say when Mr. Newton is away you rent rooms. Is it very seldom Mr. Newton is away at night?

A. I mean in the evenings before he comes.

Q. What time does he come?

A. Usually about 5:00.

Q. You don't rent many rooms before 5:00 o'clock, do you?

A. No, sir.

Q. As a matter of fact, when Mr. Whitehead asked you if you rented all the rooms when he was away, very seldom a room was rented when he was away?

A. Well, not many but sometimes in the evenings I rent a room.

Q. You rent one occasionally, I understand.

A. Yes, sir.

Q. But very few of them are rented that way?

A. Yes, sir.

Q. Now, what about the book? When Mr. Newton is not there the register book is usually locked up in the office, isn't it?

A. Yes, sir.

Q. So even though you take them to the room yet when he gets there then they have to sign the book and fill out that after he gets there, don't they?

A. Yes, sir.

Q. And Mr. Newton attends to all of that, don't he?

A. Yes, sir.

By Mr. Whitehead:

Q. When you take them to the cabins do you
page 230 } give them the rates and so forth?

A. Yes, sir.

Q. You attend to everything but the register?

A. Yes, sir.

Q. Then where do they register, at the office or is the book taken to them?

A. The book is taken to them most of the time.

Q. Do you generally take the book to them?

A. Yes, sir.

Q. When they register is that when you collect the money?

A. Yes, sir.

Hattie Gough Newton.

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page 236 }

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HATTIE GOUGH NEWTON,
one of the defendants, recalled to testify further in her own behalf, deposes and says as follows:

DIRECT EXAMINATION.

By Mr. Whitehead:

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page 239 }

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Q. You have heard Mr. J. E. Newton testify with respect to his renting of the Newton cabins?

A. I certainly did.

Q. Did you hear him say this morning that he generally stayed up until 12:00 or 1:00 o'clock at night and got up very early in the morning?

A. Yes, sir.

Q. Did you also hear him testify that he always got up when there were any calls for service?

A. Yes, sir, I heard that.

Q. In the light of his testimony will you please tell us what you have to say with reference to those items?

A. Well, he doesn't get up. He has told me time and time again that he wasn't going to get up at night for anybody under any circumstances; that it was too risky for one thing and it was too dangerous; that somebody was liable to knock him in the head and he wasn't going to take a chance getting up at night to rent no room and he has repeatedly told me that. Then also during several emergencies we have had to get in touch with people in the units and I haven't been able to arouse him or he wouldn't answer the telephone. For instance, about a week ago he had a doctor from Harrisonburg that was spending the night there. We made the reservations and rented the room and I think that Dr. Pennington probably made the reservations down there for the

same party. This doctor's brother died and we tried to get in touch with the man that night after Lynwood had gone home so I called Mr. Newton, called him by telephone three different times. The telephone rang and rang and I heard somebody pick up the receiver and he wouldn't say anything and I mentioned several times "It is an emer-
page 240 } gency. Will you please answer me." I told him it was an emergency call but he never said anything except he throwed the receiver back on the hook and I called, I know, the third time and the same thing happened every time and I never got a call through so I told the party that was calling that the best I could do was to get in touch with the party in the morning; that I couldn't get in touch with him that night. She asked me would I deliver a message and I told her I would so I took the message and early the next morning I called the store and had someone from the store to go over and deliver the message to the doctor to tell him that his brother had died. There have been many things like that. Time and time again those things come up and he will pay no attention to them whatsoever. He pays no attention to his customers. It is all left up to us, all the responsibility of taking care of the guests. He leaves that up to us at night.

Q. After he goes to bed?

A. Yes, sir, after he goes to bed, and all Mr. Newton is interested in is getting that money and as soon as he gets a dollar he don't care what becomes of the guest, although he will influence them to come back and go to his place when they return. Time and time again people have come up and told us that.

Q. Does Mr. Newton ever come up to the Newton residence and if so how often and about how long does he stay?

A. Yes, sir, very often he is up there until late at night.

Q. He does come to the Newton residence?

A. Yes, sir, he is very often there. He closes the door and it sounds like he is going to bed in his room and then he goes out and I don't know where he goes.

Q. He does come up to the house where you are frequently at night?

page 241 } A. Yes, sir.

Q. And about how long will he stay?

A. Well, sometimes he stays until the morning hours, way in the night. Just whatever suits Mr. Newton is what Mr. Newton does.

Hattie Gough Newton.

Q. Do you know that he generally goes to bed around 12:00 or 1:00 o'clock?

A. No. When he goes to bed he goes to bed earlier. Unless he is up at the house he goes to bed early, more especially since he has been constructing his new motel. He goes to bed early and is there later at night. He is late coming in because he usually stays over there as long as the men are working and he is usually up early and over there every morning.

Q. So that is occupying a good part of his attention now?

A. Yes, sir. Recently he has been getting up at 5:00 o'clock but he never always did that, just since he has been constructing this motel and he wants to get over there early.

Q. Has Mr. J. E. Newton made any statement to you since the Supreme Court of Appeals decided this case as to his intentions with respect to hanging on to the Newton cabins and if so for how long?

A. Yes, sir. He is constantly boasting of the fact that he is going to keep it going for five years.

Q. Do you know when he began the construction of the competing Newton cabins on the Dillwyn side of the Newton residence?

A. Immediately after the Supreme Court's decision.

Q. Do you know how long he has been operating the Wind Mill Motor Court over in Prince Edward County at the intersection of Routes 460 and 15?

A. About two years, I believe.

page 242 } Q. Did you call attention of J. E. Newton to the fact that his brother had a bed and equipment that goes with it over at the Wind Mill Motel?

A. Yes, sir.

Q. Was that shortly before the hearing began on July 5th of this year?

A. Yes, sir.

Q. Did Mr. J. E. Newton make any statement to you with respect to his new cabins and what tie-in there would be when he gave up the old ones and put the new ones into operation?

A. I didn't get that question.

Q. I will restate the question. You say that Mr. Newton told you that he expected to tie the matter up and stay in possession of the Newton cabins for as much as five years?

A. Yes, sir.

Q. Did he ever say anything about getting the new cabins into operation?

Hattie Gough Newton.

A. Oh yes, he said he was going to have them much sooner than he has. He had planned to have them ready earlier. He said some time ago he was going to have them ready by June and he said he thought he would have them open in a week or two and he has also stated to the tourists, we have had them to come in and tell us, that Mr. Newton promised to have them ready. One man told us that he told him last year he was going to have them ready in April, and then another fellow told us recently that he had promised him he would have them open in June. He said they drove up and were kind of disappointed that "our new units weren't open."

Q. What do you mean by "our new units"?

A. Well he has led the customers to believe it was all the same, that the business would be all the same and we would have new units ready for them to come back to

page 243 } and when they did to come to the new units and he would give them a new unit. It seems that he was leading the customers to believe that they were connected. In other words, whether he led them to believe it or not they were under that impression and the way the customers put it to us was that they thought it was connected with our present units.

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page 246 }

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Q. He occupies, he says, cabin number 26?

A. That is right.

Q. How does that room or cabin compare to the other cabins in the eighteen units?

A. Well it is no difference in them. There is only one difference and that is every other room has a tub and every other one has a shower. That is about the only difference in them.

Q. And this room has a shower?

A. This room has a shower and the adjoining room has a tub and he gets a dollar more for the rooms that have a tub and also I believe it is five air-conditioned rooms he has. That is the only difference. There are air-conditioners in some of the rooms.

Q. Now, the Supreme Court entered a decree in January of

this year with respect to this matter and it is now July, six months later, and Mr. Newton is still in possession of the Newton cabins. Is that possession by him proving helpful or harmful to the interest of your sons and yourself?

A. It is proving very harmful and detrimental to our business by him staying in it because he is not doing it any good. He is only in there for his own interest.

Q. Is it to the interest of your sons and yourself that his possession of those cabins be terminated?

A. It certainly is, very much so.

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page 248 } Q. Will you please tell us what services, if any, that you personally have rendered in connection with the operation of the Newton cabins?

A. I have rendered just about the same services for the Newton cabins that I have for the Sprouse cabins except for looking after the cleaning and the things that he pretends to do.

Q. You have not collected the money though?

A. Well, when I rent them I collect the money and I turn it over to him and, of course, he in turn writes it up on the books as though he collected it regardless of who collects it. It is turned over to him and he marks it up and is charging us for it whether I rent it or one of my sons rent it or some of the other help rents a room, or even Jimmy Dean. Mr. Newton is charging up the dollar or the 50¢ as though he is renting the room himself.

Q. With his knowledge and with his consent have you in emergencies made rentals of the Newton cabins yourself?

A. Yes, sir, I have rented them myself.

Q. Is that agreeable with him?

A. Yes.

Q. Who did you turn the money over to?

A. I turned it over to him.

Q. Was there any objection on his part?

A. No objection as long as he gets the money in his hands.

Q. Have you done that since November 2nd, 1953?

A. Yes, sir.

Q. And, of course, since September 30, 1954?

A. Yes, sir. What we aim to do regardless of which cabins are involved is to try to please the customer when he comes in. If they want a room, make reservations, and then decide

they would prefer one of the Newton units we
page 249 } try to let them have it for the betterment of the
business as a whole. We have always tried to place the customer wherever he wanted to go, whether it was in a cheaper unit or whether it was in the best unit, and therefore that is why we have rented so many more of the Newton units than we have of the others. Many of the customers prefer the new rooms.

Q. In other words, under the finding of the Commissioner and under the decision of the Supreme Court of Appeals the money would be divided in the same manner irrespective of whether it came from one set of cabins or came from the other set of cabins?

A. That is right.

Q. Now, with that in mind, what have you all done with respect to pushing the Newton cabins which rented for a higher figure than the Sprouse cabins?

A. We get more out of the Newton cabins so we push those.

Q. What have you done with respect to renting them out?

A. Well, we have tried to rent the cabins to get the most money out of the customer and therefore we try to rent the Newton cabins and get as much out of the customer as we can. Then, of course, it depends upon where they want to go and what they want to pay.

Q. Is that one of the reasons why the rentals from the Newton cabins exceed the rentals from the Sprouse cabins?

A. That is the main reason.

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page 253 }

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By Mr. Whitehead:

Q. Mrs. Newton, you have testified in the case with respect to your personal services in connection with the renting of both sets of cabins. Have you made or do you make any charge whatever for what you have done—that is, is there any claim for rental fees?

A. No, sir, I never made any charges for any-
page 254 } thing I have done.

Q. You are standing on the original contract for the division of profits?

Hattie Gough Newton.

A. That is right.
Q. And are you expecting Mr. Newton to stand likewise?
A. I certainly am.

RE-CROSS EXAMINATION.

By Mr. W. M. Abbitt:

Q. Mrs. Newton, as I understand it, when Lynwood rents one of the Newton cabins for $5.00 or up he gets his regular price for renting that cabin, a dollar, or whatever it is supposed to be, and if he rents one for less than $5.00 I believe he gets 50¢. Now, if he happens to be off that night and Pete works for him or somebody works for him, when they rent one of the cabins I assume Lynwood will get credit for renting that cabin the same as if he himself had rented it?

A. Lynwood is employed as an employee. Mr. Newton nor myself never classed ourselves as employees as we were sharing in the profits and he would naturally help out.

Q. If somebody was working for Lynwood would Lynwood get the credit for the cabins that were rented?

A. He was classed as an employee there.

Q. And that would include those that you rented or Pete rented?

A. Yes, sir, Lynwood got paid for each one on a salary just as he did over at Mr. Newton's.

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page 255 }

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In the event that the court or the Commissioner allows J. E. Newton his claim for renting out the Newton cabins do you on behalf of the Sprouse estate, and not for yourself personally, claim a like commission on rentals for the Sprouse cabins?

A. Yes, sir.

Q. Is it your position if one is to be allowed both should be allowed?

A. That is right. I feel like if one is allowed both should be allowed.

By W. M. Abbitt:

Q. Let me see if I understand you right. You mean you

have listed a number of cabins that have been rented, Sprouse cabins, by some members of the family other than Lynwood?

Mr. Whitehead: If you will refer to Exhibit No. 76 you will note our alternative claim for cabin rentals amounting to $9,626.50 which is through May 31st, 1958.

Mr. W. M. Abbitt: Does this or not include all of the Sprouse cabins rented during that time, whether rented by Lynwood or somebody else?

Mr. Whitehead: It does.

Mr. W. M. Abbitt: Lynwood has been paid.

Mr. Whitehead: Our position is this: If Mr. Newton is to be allowed commission which he has charged for rentals on one side then we say that in the alternative page 256 } the same rule should be applied on the other side.

Note: At this point there was some discussion between the Commissioner and counsel for the parties which the Commissioner did not want included in this record.

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W. C. (PETE) SPROUSE,
recalled, deposes and says as follows:

DIRECT EXAMINATION.

By Mr. Whitehead:

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page 258 }

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Q. Do you know anything about the service at night by Mr. Newton with respect to the Newton cabins?

A. Mr. Newton has been evidently trying to leave the impression that he has run the motel and it could not have been run without him and how well he has operated but I would say that he has been more of a hindrance there than he has of a help. He gets there any time in the afternoon that suits him. If he feels like coming in at 2:00 o'clock he comes or if

W. C. (Pete) Sprouse.

it's 6:00 or 8:00 o'clock at night he comes. You don't know when he is there. He doesn't tell anybody when
page 259 } he comes or when he leaves and the only way you can know when he is there is by seeing his car and then you can't always rely on that because he will leave his car there and go up to the house. He will average coming in from 5:00 to 6:30 and up until that time he has Jimmy Dean renting the rooms down there and us, of course, and we will rent the rooms if it happens to be a busy afternoon and we might rent eight or ten rooms and we don't have any register to register them up. We don't know which rooms are rented unless we make a note of it and then when he comes in he gets the register and goes to register them up and he gives himself credit for the renting of those rooms. We rent them, put the cots in, do anything that is necessary to be done, other than registering them up and the reason we don't register them up is he keeps the book locked up inside his office and it has happened a number of times there was a reservation marked up on the book, say Room 35 was reserved. The tourist will come in and I rent Room 35 and I don't know if it is reserved and after I put the people in then we have to take them out and move them to another room because that room was reserved and we offend the people by doing that.

Q. Let's move on to the night service. What about the night service?

A. Mr. Newton works during what you might consider the rush hours, from 5:00 to 8:30 at night. During that time he leaves and goes to dinner. Two or three times a week he will leave and go up to Mrs. Newton's and stay at the house an hour or two. He goes to bed anywhere from 10:00 to 10:30. If he is up later than 10:30 it is for some unusual reason. We close the store at 10:00 o'clock and he usually cuts his lights out then, every other one, and goes to bed at that time.

He testified about getting up at night. Mr. New-
page 260 } ton has never, not one time has he ever gotten up to rent a room and he has told me and I have heard him say it at the house in the presence of others several times that it was even dangerous to stay there even until 10:00 o'clock. He said he absolutely wasn't going to get up any time at night to rent a room. We have had calls where there would be an emegency and would ask him if he would see about the people or give whatever service was necessary and he wouldn't do that.

W. C. (Pete) Sprouse.

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page 262 }

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Q. You mean to say he will not get up?

A. He will not. He keeps his door locked. He is too afraid to get up.

Q. Why did he say he was afraid?

A. He said he wouldn't come out at night for anything. He said that on a number of occasions. In fact he testified to that in court, that he wouldn't get up with automobiles and places being held up, that he wouldn't think of opening his door and coming out by himself at night. Frankly I don't blame him. I think maybe he has got a point but if he claims to be there and claims that he gives that service he should do it but he doesn't do it.

Q. Do you know about the ticket business, how they handle the keys at night?

A. Yes, sir.

Q. Will you tell us about that?

page 263 } A. Well, when Mr. Newton goes to bed he puts a book outside, not the register but another register and sticks it in the screen and then he hangs a little cardboard on the front which says "White Only, these rooms are unlocked" and then he lists the numbers like 25, 26 or 27 on the board. "These rooms are unlocked. Register, go in and pay in the morning." He leaves that out at night for the benefit of people coming in after 12:00 or 1:00 o'clock to rent a room.

Q. Do you know anything about any statement Mr. Newton has made with respect to tying this matter up in litigation?

A. He has made the statement on numerous occasions that he was going to keep it tied up for five years. He is determined, from all he says outside of court, and with his threatening way of trying to treat us, that he is going to hold on to it as long as he can. He is deliberately trying to break our business.

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page 271 }

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W. C. (Pete) Sprouse.

CROSS EXAMINATION.

By Mr. W. M. Abbitt:

Q. Pete, as I gather from your evidence and sort of summing up part of it briefly, the business has gone down tremendously in the last several years?

A. Without a doubt.

Q. And if it continues in the way it is going now it soon will be wrecked?

A. That is right.

Q. I believe you said the customers were very dissatisfied, not being treated right?

A. Absolutely right.

page 272 } Q. Let me ask you this: If they are very dissatisfied and not being treated right how do you account for the fact that they continually ask about going to the new place up there that they know Mr. Newton is going to be running?

A. You tried to distort this the other day. They are larger rooms and they have double beds.

Q. I don't think you understood the question. I will ask the reporter to read it back.

Note: The question is read back to the witness.

A. I don't know. He leaves the impression it is all run the same. We do have some customers that are still satisfied, the ones that haven't seen Mr. Newton throw one of his fits in front of the place.

Q. Certainly none of your people have told them to come up to the new place that is going to be operated?

A. Absolutely not.

Q. How do you account for so many coming to you and asking you about it?

A. I say all of these people haven't seen all of the fusses and fights. Mr. Newton when he can rent a room and doesn't have one of his fits in front of the people I imagine they are very happy with the room. It is the antics he puts on down there occasionally that are ruining the business on the repeat business.

Q. And you say the place looks like it is half way run. What happens when Lynwood closes up? How do you take care of the people that come in after he closes up?

A. We don't. We used to have an office we kept open all night but it doesn't pay to do it any more. We want to do it

W. C. (Pete) Sprouse.

and we would start in the morning giving 24 hour service if we could get Mr. Newton to work out some kind
page 273 } of agreement to work out something with us.

Q. So you don't make any preparation when you close your cabins?

A. None whatsoever. If you can't rent a room properly I wouldn't want to rent it like that.

Q. Some people do rent them?

A. If somebody would answer the door I would be perfectly willing for Mr. Newton to stay there but he doesn't answer the door. If he would go to the room with the guest and put the people in the room it would be fine but Mr. Newton doesn't do that. He claims he does but he does not. We have already engaged a fellow to work on a 24-hour basis after we close at 12:00 or 12:30 and he would keep it open until 8:00 in the morning and if Mr. Newton would agree and work out something we could start it today. We should have 24-hour service.

Q. You say that frequently you get a number of people there before Mr. Newton comes on the job and you all rent them. Now when you rent them Lynwood gets credit?

A. No, not all the time. Let me straighten you out on that.

Q. I wish you would.

A. About two months ago I was down to Mr. Newton's cabin and he mentioned to me about an X. That was the first time on an oath of a Bible that I had ever known anything about how Lynwood got paid. I never knew until Mr. Newton told me himself about two months ago. I have never put an X on there before that time whether I worked for Lynwood or not. If Lynwood got paid only for the rooms that had an X by them I never gave Lynwood credit for a room I rented down there up until about two months ago when Mr. Newton brought it up himself and when he showed it to me. Since that time if I am working for
page 274 } Lynwood I will put an X down to give Lynwood the benefit of it. The doctors have asked me not to work in the restaurant so close and Lynwood has volunteered lately to work altogether on Sunday for me and lots of times at nights because the work at the motel is easier and when Lynwood and I switch jobs when he is working for me and I am working at the motel for Lynwood I give Lynwood the benefit but Mr. Newton has got claims for rooms I rented, rooms Mrs. Newton rented, rooms Ruby Sprouse rented, rooms Dowdy has rented during the day and every one of

the rooms that Jimmy Dean has rented and he is claiming credit for all of them. He could be in his room asleep or in Dillwyn when those rooms were rented by all of those people and he is claiming credit for every one that doesn't have an X by it which are the ones that Lynwood rented himself. All the others he is claiming rent for.

Q. How do you know that?

A. Because he said so himself; that every room that didn't have an X on it he was claiming it.

Q. Don't he and Lynwood get together ever so often and settle up?

A. That is right.

Q. Don't they work it out right?

A. They work it out. If Lynwood rents the room Lynwood gets paid for it but if anyone else rents the room Mr. Newton is going to collect a dollar for it.

Q. You mean when you rent the room or your mother rents the room Lynwood doesn't get paid for it?

A. Only here recently he has been paid for it when Lynwood and I have been switching back.

Q. How about back in 1956?

A. You cannot find any place in the book in page 275 } in 1956 or 1957 where I ever rented a room and where there is an X by it.

Q. So Lynwood got no pay at all except for the rooms he rented personally?

A. Only for the rooms that Lynwood rented himself.

By Mr. Boatwright:

Q. He gets the 50¢?

A. He gets the 50¢, that is right.

By Mr. W. M. Abbitt:

Q. You say the business is going back some. Let's see if that is true. In October, November and December of 1954 which is one-fourth of a year the rentals were $4,269.50 for the Newton Motel. For 1955 for the total year the receipts were $23,270.24. For 1956 it was $23,524.94. For 1957 it was $26,056.37. For the four months in 1958 it was $9,095.56. It has shown an increase every year, even this year?

A. You check them month by month and this is getting out in July and August and June. I suggest that you check them month by month since January the 20th and compare them with the same months for previous years.

Q. Here it is for one-fourth of a year.

W. C. (Pete) Sprouse.

A. That is the last part of 1954.

Q. And here I have January, February, March, April and May and that is for one-third of a year and that is $9,095.56.

A. You are comparing the good season of 1958 with the bad season of 1954.

Q. All right, the total for the year 1957 was $26,056.37.

A. I grant you that.

Q. It don't look like to me it has been going to pot.

A. Since January 20th of this year it has gone to pot.

Q. He has collected $9,095.56 in four months?

page 276 } A. Yes, but that is the best season, the good season. '57 was up some. Last year was probably up some but since January 20th he has deliberately tried to wreck that business and he has just run customers away from there as far as I can see.

Q. It looks like to me that in a period of a little over three years he has made a profit of $31,098.98 and that doesn't look like it is wrecking a business.

A. Mr. Newton has fell into a business that we have worked like dogs to build up for years and my daddy did too, trying to develop it up to the time that I came into it and we had people that we turned down on eighteen rooms and we were going ahead and build ourselves, we were going to add to them and we could have borrowed the money at 5%. Here we have got to pay him profits and everything else and we could have borrowed the money at one-fifth of what it is going to cost us fooling with him.

Q. You still say he is about to wreck the business?

A. Absolutely and Mr. Newton knows it. Now let me tell you another thing. I mentioned the boiler and the fence and all these bedspreads and so forth, all the drapes in there and they are no good and not fitting for people to use. All of that has got to be replaced at full price and yet we are paying him full price for it and we are going to dump it in the trash as soon as this is over and replace it. Those are things you are overlooking. You holler about him getting a little bit on a sign or something. Mr. Newton is going to come out on top of the thing regardless of how you figure it. He is going to make a small fortune off of it.

Q. Talking about the ice, didn't you go to his place to get ice last night?

A. Yes, sir, and when I did Mr. Newton like to jumped straight up in the air. That was the first time

page 277 } we have been down there to get ice at his place except to occasionally fill up a bucket. Last night

we had a gentleman in there who had a little baby and he wanted to keep the baby's milk cold and asked for some additional ice. I went down and got it and Mr. Newton I thought was going to drop dead right in front of me. I told my wife last night "I know Mr. Newton wanted so bad to say something to me about that ice but lately he don't jump on me like he used to." He used to jump on me any time but he don't do it any more.

Q. He has a reason now not to jump on you?

A. Yes, sir, he certainly has.

Q. You think $31,098.98 clear profit in a little over three years is wrecking a business?

A. I think if you would compare our motel with other motels that $31,000.00 is not near what it should be. The motel business has been a very good business and we knew it. We realized it and we were ready to build additional cabins but we let Mr. Newton in on it after he had just about ruined Mrs. Newton's life, thinking it would ease the problem some and all he had in mind was taking what we had away from us and right now at Mr. Newton's age I don't have any idea that he intends or thinks he will get the money out of the business that he has up on the hill but what Mr. Newton's point is he is going to overpower us; that he is going to overpower Mrs. Newton and he is going to do it financially if he can't do it otherwise. He has bragged that he is going to break us but I tell you now we are going to sit with him. He might have money but he hasn't got other things to back it up.

Q. What are some of these other things?

A. Things that I think are important and things you have deliberately overlooked. You have been yelling about a sign and let me tell you something else. You are

page 278 } hollering about the restaurant being on the sign. Every piece of stationary, every book of matches we have at the store advertises our motel. We have sales slips which we give out daily by the hundreds and every one advertises the motel. In our restaurant the menu has a picture of the motel displayed on it which we paid the man to draw. We paid the man for drawing the picture out of the restaurant funds. When customers come in our restaurant we are advertising through our menus and other ways the motels. We have spent I don't know how much. You all argue about table mats in the dining room. One time when we first put the table mats in we charged that to the motel because that was printing, the extra cost of it. Since that

time we have used those mats for years, two or three hundred of them every two or three months. We have paid for every bit of that through the restaurant and it doesn't advertise the restaurant, it advertises the motel. We are interested in advertising the whole thing as a business, not just J. E. Newton's sixteen or seventeen rooms that he is renting down there.

I have hung on there for the benefit of the business, working at a very, very small salary hoping some day it would amount to something, but all of us are working on a very small salary trying to hold it together because the expenses are so unusually high on us now but we will stick with it. We are not even making what some of the men out here working on the highway are making. We are trying to hold the business together but all this $31,000.00 nobody is benefiting from it. It is just stuck in Mr. Newton's account and he is drawing interest on it. This has been going on for five or six years. If Mr. Newton does what he says he will do he will hold it for another five years and he will darn near break us if he don't do it. He realizes it and he is deliberately trying to do it.

page 279 }

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LYNWOOD SPROUSE,

one of the defendants called as a witness to testify in his own behalf, having been first duly sworn, deposes and says as follows:

DIRECT EXAMINATION.

By Mr. Whitehead:

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page 283 }

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Q. Mr. Newton has testified "I never go to bed until 12:00 or 1:00 o'clock." What have you got to say about that?

A. Well, I will be down there at 10:00 o'clock to rent rooms and will find that card on the door and he is in his

Lynwood Sprouse.

room and never comes out the room to rent them. Many times people have drove up and he was in bed.

Q. Has that happened often?

page 284 } A. Yes, sir, between 10:00, 11:00 and 12:00. I don't know what happens after 12:00 because I am generally gone at 12:00.

Q. Do you know whether the people have tried to get him up?

A. At 12:00 o'clock, yes, sir, because I rented a room the other night and people tried to get him up. They knocked on the door and were getting back in the car and I drove down to cut the lights out. I drove down and the people were getting back in their car and I said "Did someone help you?" They said "No, we can't get anybody here." I said "Well, I will show you a room" and I pulled my keys out and picked up the register and walked on and rented them a room.

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page 287 }

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Q. On the whole, from your observations, about what time do you say Mr. Newton turns in down there at night?

A. I would say between 10:00 and 11:00 o'clock as a rule. Some nights he is up later.

Q. About what time does he come in in the afternoon?

A. Some evenings he will get there before I do and I get there around 4:00 o'clock. He is there most

page 288 } evenings when I get there.

Q. Since he has been working on the new cabins what is the situation?

A. Well, lots of evenings he is late now.

Q. And gets in at what time?

A. Well, some evenings at 5:00 and 6:00 o'clock and some evenings later.

Q. Do you know who besides yourself rents out most of the cabins, what boy?

A. Jimmy Dean.

Q. Iam talking about the Newton cabins.

A. That is what I am speaking of.

Q. Do you ever help Jimmy in any way?

A. Yes, sir.

Lynwood Sprouse.

Q. In what way?
A. I have been down and helped him rent rooms.
Q. Is that when Mr. Newton is not there?
A. Yes, sir.
Q. When Mr. Newton is there and has gone into his room who does some of the renting?
A. Jimmy Dean.
Q. Do you do any of it?
A. Some, yes, sir.

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page 290 }

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CROSS EXAMINATION.

By Mr. W. M. Abbitt:

Q. Lynwood, I don't think I will take but about a minute. As I recall the circumstances the Circuit Court of Buckingham County directed some time in early November of '54 that Mr. Newton was to look after the Newton cabins and gave you the right and privilege to rent any cabins in the Newton Motel when he wasn't there or when he needed your help. That is right, isn't it?
A. Yes, sir.
Q. And that you were to get the same scale of fees for renting his cabins that you had been getting all the time, plus the fact that you were to get 50¢ for each cabin that Mr. Newton rented whether or not you rented it?
A. Well, I was getting a dollar for every room before November 2nd, 1952.
Q. You were getting a dollar on a room?
A. A dollar on every roof over $5.00, regardless of who rented it, because I was in charge to rent them and I was paying somebody to work in my place when I wasn't there.
Q. But the situation that I outlined was correct according to the court's ruling?
A. All except you said I was getting the same I was before.
Q. So the cabins of Mr. Newton that you rented for $5.00 or more you were to get a dollar for and the
page 291 } cabins less than $5.00 you were to get 50¢?
A. Yes, sir.
Q. And any cabin that he rented or somebody rented for him you would get 50¢?

Lynwood Sprouse.

A. Yes, sir.

Q. Now, when somebody would work for you or rented the cabins up at the Sprouse's for you and they rented the Newton cabins you and Mr. Newton would try to check up so you would get pay for those?

A. When there was an X by it I would get pay for it. I know several times Pete said he rented a room down there and I asked him which rooms and he told me which rooms they were and I said "Did you make an X by them" and he said "No."

Q. Did you later check with Mr. Newton?

A. Not all the time because some nights Pete would work for me like on Sunday night and maybe I wouldn't be there any on Sunday night. I would work the following Monday. I would work the next day.

Q. But those that you could you checked up and you would get the proper credit for them?

A. Yes, sir.

Q. So far as Mr. Newton being late or going to bed early that wouldn't reflect on the cabins if you were still there, would it?

A. I don't think so.

Q. You would take care of it and had a right to do it?

A. Yes, sir.

Q. So the fact he would go to bed about 10:00 o'clock as long as you were there until 12:00 was all right?

A. If he would let me know it.

page 292 } Q. You would see when his lights were out?

A. Well, he wouldn't turn his office light out. Sometimes he would turn the lights off, every other light along the front before he would go to bed, and then would sit out an hour or so before he would go to bed.

Q. He would be out in front of the office?

A. Yes, sir. He didn't always let us know when he would go to bed. Once in awhile he would tell me "I am going to bed." This past Saturday night I happened to be down there and he said "I am going to bed in a few minutes."

Q. If he was sitting in front of the office he would attend to the renting of the cabins?

A. Yes, sir.

Q. I believe you say the ticket system is not very good but it is better than no rental at all after midnight after everybody closes up, is it not?

A. Yes, sir, I think it is better than none.

Mr. Abbitt: That is all.

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page 293 }

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J. E. NEWTON,
recalled in rebuttal, deposes and says as follows:

DIRECT EXAMINATION.

By Mr. W. M. Abbitt:

Q. Mr. Newton, there has been some testimony about cut rates and the wrecking of business in renting out cabins for less than the price that should be charged. Have you any explanation about that?

A. Well, about the cutting rates. I try to make all I can because the way it is I don't think I will get but one-fourth of it and Pete has rented cabins to Winston and Mr. Coleman, the best cabins they have got, and Winston paid two dollars and a half and Coleman paid three dollars and a half.

Q. For how long?

A. For one night and it was the best cabins they have, and the fellow above him he will charge him ten or $11.00 and the fellow below he will charge him the same.

page 294 } If they do that I think I can do the same thing. I can put these men on the stand if you want me to and they will testify to it. I can get the man's name off the truck. I don't blame him because he is a regular customer. The man can't pay more than that and I don't blame him. I want to explain that I am not doing this a hundred per cent. I like for him to do it. I am running it for what I get out of it, not only that tourist court but the one in Farmville, and in this one I only get one-fourth of the money. If I make a dollar they get 75¢ of it. I am the man that collects it the next morning and I am doing it for all of our benefit. I am doing it for all I can get out of it.

Q. And if you don't do that none of those cabins would be rented after 12:00 o'clock?

A. You are talking about the sign. It has been mighty nice and I have had so many people tell me that they liked it. I had a man come in at 2:00 o'clock and he left a note. I didn't even see him. He left the next morning at 5:00 o'clock and he left me a note and said in case of emergency he came

in at 2:00 o'clock in the morning and saw the sign and he went to bed and left at 5:30 and for me to send him a bill and he would send me a check. I sent him a bill and in five days got $8.00. I never lost a penny and have not had anybody dissatisfied about anything. Occasionally we might have one who is not satisfied about everything.

Q. You don't like to be woke in the middle of the night?

A. I ain't afraid of nobody but I ain't got long here to stay and I don't want to be knocked in the head for a hundred dollars or something like that. It don't pay and the way I do it I have got my screen door locked and my wooden door locked and when I open the wooden door if the people don't look to suit me I am not going out. If they page 295 } want to come in they would have to break a screen. When a man rents one of those cabins that way I get up before he leaves and get the money. I haven't left that place but nine days since it has been open and that was when my wife hit me in the eye and I had to be taken to the hospital then. I have never been on a vacation. Pete has been on a vacation and all the Sprouses go on a vacation when they get ready. I like to see them do it. I should do it but I don't. I have been right on that job for five years and I don't even go to church on Sunday night because I have to be at the cabins. I go to church in the daytime but if you have got a business you have got to 'tend to it and another thing Pete was talking about was about the tourist business dropping off. He is supposed to be a businessman. Tell me any business that ain't dropped off in the last twelve months. I want to know the name of that concern. I am in the timber business myself and that has dropped off over a fourth. The tourist court business has dropped and I haven't heard a soul say yet that none of the business hasn't dropped.

Q. The tourist business hasn't dropped too much, has it?

A. It is holding up mighty nice but not a hundred per cent as good as it was. I think it is holding up wonderfully well according to the way other things have done. You take the timber business and it has dropped completely off. It is picking up now. It is like the tourist court business, it has its ups and downs, but you have to get it while it is going.

Q. Do you want to say anything about the beds?

A. The beds, I got the checks. Hattie said those beds she carried down were hers and the davenport she took out of my basement was practically new and a chair and she said "I am going to place you one back" but she never has brought it

J. E. Newton.

back. That has been three years. It is not that I
page 296 } care too much about it but since they brought up
about the bed for my brother to sleep on two nights I would like to let this be known. She don't have the check books and stubs for what we bought in the house. I can bring that check and the stubs and prove that she told the wrong tale awhile ago about the bed. If you want the checks give me time to get them and I will bring them here before you. She has none of those checks about the home but she has all the checks and everything about the cabins and would have had all the rest if I hadn't been very sharp. I asked her the other day to let me have one of those bills where I had bought shingles to go on those cabins because I wanted to correspond that bill with what I pay now. If I could I wanted to pay less. She said she didn't know where they was.

Q. Tell us something about settling up the books for who rents the cabins.

A. I have always straightened up with Lynwood. I think Lynwood on the stand told the truth. Maybe there's one or two little things he didn't tell exactly right but he give the best evidence in court I have heard and I think Lynwood is straight and aimed to tell what is straight and if all the things were done that way we would be at home right now. For five years Lynwood and I have not had any trouble with the books. If Lynwood sees any error in the books which I make, and I do make them, and if a man didn't make them there's no use putting an eraser on a pencil, but Lyn and I always work that out. We will check it up and put that down and figure it out and if he makes an error he will do the same thing. I don't think we have had any trouble about settling up since he and I have been there. He sees the books when he wants to and he comes down and rents them like he says, anything he wants to rent. You know the court said nobody was to rent these cabins but me and Lynwood
but since that time the Sprouses have had as
page 297 } much say so as if the court hadn't said anything.
That was the Judge's ruling. They come down and rent a cabin when they ain't supposed to come down there since that injunction. If they want to shut down on me so tight why shouldn't I shut down on them a little?

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page 298 }

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J. E. Newton.

By Mr. W. M. Abbitt:

Q. A lot has been said here about the white paling fence. Was that included in the $74,000.00?

A. No, sir. I bought the lumber. I brought it from my own sawmill and put it up and it never has been charged in there, not one penny.

page 299 } Q. The Lumber?

A. The lumber, posts or nothing. I think the posts are four by four oak posts. I never charged them a cent for that. The fence is not any good and I was just counting on letting it go.

Q. Are the buildings about *the* fall down?

A. They may be about to fall down but people leave their cabins and come down to mine because they like them better.

Q. What is the condition of your cabins, generally speaking?

A. Everybody leaves their cabins and comes to mine. I don't say every one come to me but several have been there and said they are real nice, have said "They are real nice and we like them and we will be back again" and if they don't like them why would I keep renting them to those people? I say the cabins are in fair condition. They need repainting. My home needs repainting. I have a lot of houses that need painting. It would help them. They are in very good shape. I would like to say this about the furnace, if you don't mind. The furnace is exactly like the man left it when he put it in. I don't know if he left out a piece of the back. I had Mr. Watkins from Lynchburg and he said to let it go, that it was a little sweat, not water running all over the place and it would go no telling how long as far as that is concerned. It has been there six years like that and I think it will go six more but I don't know. The pipes from the furnace I have spent a lot of money on and I have got about two-thirds of that fixed and the other is not too good but the rest is in very good shape.

Q. Do you authorize the court reporter to sign your name to your deposition after it has been transcribed?

A. Yes, sir.

• • • • •

A Copy—Teste:

H. G. TURNER, Clerk.

INDEX TO RECORD

	Page
Appeal Awarded	1
Record	2
Decree—November 2, 1953	2
Decree—April 19, 1958	3
Decree—May 5, 1958	4
Injunction Order—September 6, 1958	5
Notice by Defendants	7
Decree—September 12, 1958	9
Petition of Hattie Gough S. Newton, et al.	10
Decree—October 3, 1958	14
Decree—November 15, 1958	15
Petition of Hattie Gough S. Newton, et al.	17
Report of Commissioner	20
Exceptions to the Report of the Commissioner in Chancery	26
Defendants' Reply to Complainant's Exception, etc.	28
Decree—June 20, 1959	30
Letter of July 15, 1959, from Judge Joel W. Flood	33
Opinion	33
Notice of Appeal and Assignments of Error	35
Witnesses:	
Leslie O'Bryant	36
J. C. Hayes	41
J. E. Newton	44, 87, 128
Mrs. Hattie Gough Newton	49, 109
Mrs. Rosa Whitlow	60
Carroll Gillispie	62
J. M. Anderson	63, 75
T. J. Davis	71
M. O. Sadler	78
W. A. Wood	80
Henry Eugene Elcan	83
Jimmy Dean	105
W. C. (Pete) Sprouse	116
Lynwood Sprouse	124