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Richmond, Va.

Record No. 5196

In the Supreme Court of Appeals of Virginia at Richmond

THE DOMINION NATIONAL BANK, AS PROPONENT OF THE WILL OF J. T. NUTTY, DECEASED

v.

TUNIS NUTTY JONES

FROM THE CORPORATION COURT OF THE CITY OF BRISTOL

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. 5196

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Friday the 10th day of June, 1960.

THE DOMINION NATIONAL BANK, AS PROPONENT OF THE WILL OF J. T. NUTTY, DECEASED,
Appellant,

against

TUNIS NUTTY JONES, Appellee.

From the Corporation Court of the City of Bristol

Upon the petition of The Dominion National Bank, as proponent of the will of J. T. Nutty, deceased, an appeal is awarded it from a final order entered by the Corporation Court of the City of Bristol on the 15th day of October, 1959, in a certain proceeding then therein depending styled, In *Re*: J. T. Nutty, deceased; upon the petitioner, or some one for it, entering into bond with sufficient security before the clerk of the said corporation court in the penalty of three hundred dollars, with condition as the law directs.

RECORD

* * * * *

Filed July 28th, 1959.

BERTHA R. DRINKARD, Clerk
By EDWINA FEATHERS, Dep. Clk.

APPLICATION FOR APPEAL.

To Bertha R. Drinkard, Clerk of the Corporation Court for the City of Bristol, Virginia:

The undersigned files this application pursuant to section 64-74 of the Virginia Code for 1950 and respectfully shows as follows:

1. She is advised that on the 8th day of June, 1959, a paper purporting to be the last will and testament of J. T. Nutty, deceased, was offered for probate in the Clerk's Office of the Corporation Court for the City of Bristol, Virginia, by the Dominion National Bank, Bristol, Virginia, which said Bank was named as Executor under the terms of said purported will, and said purported will was admitted to probate and said Dominion National Bank qualified as Executor.

2. At the time of his death J. T. Nutty was a citizen and resident of Sullivan County, Tennessee, and your petitioner is advised and believes that he died intestate.

3. The undersigned is a daughter of said J. T. Nutty, deceased, and as such is a "person interested" as provided by the Code Section hereinabove referred to.

4. Inasmuch as said J. T. Nutty was a citizen and resident of Sullivan County, Tenessee, and died intestate, petitioner qualified as Administratrix of his estate in the County Court of Sullivan County, Tennessee, at Blountville, on
page 2 } June 10, 1959, and executed bond as required by law. Certified copy of letters of administration is attached hereto and made a part hereof.

5. The undersigned in her own right and as Administratrix prays that an appeal be granted from said order entered on the 8th day of June, 1959, admitting said purported will of J. T. Nutty, deceased, to probate.

This 28 day of July, 1959.

TUNIS N. JONES.

STACY J. GRAYSON
Bristol, Tennessee.

STANT & ROBERTS
By BRADLEY ROBERTS
Reynolds Arcade Building
Bristol, Virginia
Attorneys for Applicant.

* * * * *

page 8 } EXHIBIT B.

Tunis N. Jones, Admr., of J. T. Nutty, Dec'd.

ORDER.

It appearing to the Court that J. T. Nutty, late a Citizen of Sullivan County, Tennessee, has departed this life intestate, and it appearing to the Court that the applicant, Tunis N. Jones is a proper person to administer upon the estate of the deceased; and the said Tunis N. Jones, having appeared in open court and entered into a proper bond in the penal sum of Fifty Thousand Dollars ($50,000.00) with Indemnity Insurance Company of No. America by J. Hansel Peoples, atty-in-fact, as surety thereto, conditioned according to law; it is therefore ordered by the Court that the said Tunis N. Jones be and is hereby clothed with all the powers and charged with all the duties imposed by law upon administrators, and the Clerk will issue Letters of Administration accordingly.

s/ HAL H. CARR, County Judge.

State of Tennessee,
County of Sullivan:

I, Marjorie S. Harr, County Court Clerk, do hereby certify the foregoing to be a true and correct copy of ORDER entered on June 10, 1959, and found on record in this office, Minute Book E-2, Page 310. Dated this 8th day of October, 1959.

MARJORIE S. HARR
Seal County Court Clerk.

10/15/59.

J. L. C., JR.

* * * * *

page 11 }

* * * * *

Heretofore came the Dominion National Bank, named as Executor in a document dated March 26, 1955, which it sought to probate as the last will and testament of J. T. Nutty, deceased, by its attorney and by its trust officer, and Tunis Nutty Jones, a daughter of J. T. Nutty, in her own right, by counsel and in person, to be heard on the appeal of said Tunis Nutty Jones from an order of the Clerk of the Corporation Court for the City of Bristol, Virginia, entered on June 8, 1959, admitting said document dated March 26, 1955, to probate as the last will and testament of J. T. Nutty, deceased.

After hearing evidence adduced by said Dominion National Bank, proponent of said document, it appears to the Court that J. T. Nutty was a citizen and resident of the State of Tennessee at the time of his death on May 10, 1959, that he died in the State of Tennessee, and that he had real estate located in the City of Bristol, Commonwealth of Virginia, in the names of J. T. Nutty, H. R. Sparger and E. A. Treadway, which was treated as partnership property belonging to the partnership of Service Mills Company, of which partnership J. T. Nutty was a member; that the said J. T. Nutty had United States Government Bonds and a negotiable note located in a safety deposit box in Bristol, Virginia; that he had a bank account in a bank located in Bristol, Virginia; that he had an uncashed check for $20,000.00 located in his office in Bristol, Virginia, drawn by Service Mills Company of Bristol, Virginia; and that he had no tangible personal property within the City of Bristol, Virginia.

It further appears that on June 10, 1959, Tunis Nutty Jones qualified as Administratrix in the County Court of Sullivan County, Tennessee, in which proceeding it was adjudged that J. T. Nutty died intestate.

page 12 } Upon consideration whereof, the Court is of opinion for reasons stated in writing and made a part of the record, that, although the foregoing findings are sufficient to give this Court jurisdiction; nevertheless, the Court should not assume jurisdiction in conflict with an existing adjudication of the probate court of the domicile of deceased; and on motion of Tunis Nutty Jones made at the conclusion of the evidence adduced by the proponent of said document dated March 26, 1955, purporting to be the last will

of J. T. Nutty, deceased, and upon subsequent proceedings disclosed by the record, doth adjudge, order and decree that the probate of said document be denied.

The Court further orders that the appeal of said Tunis Nutty Jones filed on July 28, 1959, from the order of probate entered by the Clerk of this Court on June 8, 1959, be, and the same is, hereby sustained and said order taken for naught as if it had never been entered. Said document copied in Will Book 8, pages 319-322, inclusive, is hereby stricken therefrom and treated as deleted therefrom as fully as if it had never been entered therein.

Pursuant to Section 64-74 of the Virginia Code of 1950, the Clerk is directed to cause a copy of this order to be copied into her Order Book and further ordered to make an appropriate reference to this Order on the margin of her Order Book and upon the margin of the Will Book where said purported will is recorded.

And to this action of the Court said Dominion National Bank, Executor of the Estate of J. T. Nutty, deceased, by counsel, excepts, and noted its intention to appeal from this order, whereupon execution of same is suspended for a period of 60 days conditioned upon the giving of bond with sufficient surety in the penalty of $5,000.00 within fifteen days.

Enter this order this 15th day of October, 1959.

JAS. L. CANTWELL, JR., Judge.

* * * * *

page 13 }

* * * * *

Filed October 15, 1959.

BERTHA R. DRINKARD, Clerk.

OPINION.

This proceeding is an appeal from an order of the Clerk of this Court admitting to probate a certain writing as the Last Will of J. T. Nutty, deceased, and qualifying Dominion National Bank of Bristol, Virginia, as the executor named in such writing.

A hearing was heretofore held, orally by agreement, at the conclusion of which the court orally pronounced its opinion

that this Court was without jurisdiction to hear the motion for probate, because of the absence of any of the grounds set forth in Sec. 64-72 of the Virginia Code. It was directed that a decree be prepared accordingly.

The evidence at said hearing included the showing that deceased had a bank account in a substantial amount at said Dominion National Bank, in Bristol, Virginia, and that a check for $20,000.00, payable to deceased was at the time of his death, located at the office of deceased at Service Mills in Bristol Virginia. The check was drawn by Service Mills, a partnership with its place of business in Bristol, Virginia, and of which partnership the deceased was a member, the check being signed by another of the partners.

Before the above mentioned opinion was made a matter of record, the proceeding was held open at the request of counsel for Dominion, for further argument and written briefs.

All briefs now being before the Court, it is the opinion of the Court that if the matter could be considered apart from any proceeding in Tennessee, this Court page 14 } would have jurisdiction. *Andrews* v. *Avory,* 14 Gratt, 229, 73 Am. Dec. 355; 21 Am. Jur., "Executors and Administrators," Sec. 39-43, 50-51, 52, especially Sec. 41; Minor, "Conflict of Laws," Sec. 121, 124-125; Lamb, "Virginia Probate Practice," p. 202.

Some sort of qualification may ultimately be necessary in Virginia in order to reduce the evidence of debt to possession, unless all needs are covered by Code Sec. 64-123. However, this Court should not at this time assume jurisdiction in a manner which is in direct conflict with the order of the probate court in Sullivan County, Tennessee, where deceased was domiciled, had his residence, and died. It has been there adjudged that he died intestate. If he died testate, then the conflicting claims should be reconciled in that same jurisdiction. Conflicts, if any, between the institution nominated as executor, if there be a will, and the family, should be ironed out where deceased lived and moved and had his being, and where another Court has already assumed jurisdiction, rather than here.

In the interval, a curator may be appointed, if needed.

The fact that administration in Tennessee succeeded by two days the Clerk's order of probate now appealed from, is immaterial. This Court is to be controlled by the situation as it now exists. The Court is not inclined to enter into a race for jurisdiction.

Accordingly, let an order be entered annuling the Clerk's order of probate, and refusing probate of the writing offered as the Last Will of J. T. Nutty. But such order shall be

without prejudice to the right of any person interested to again offer for probate this or any other writing hereafter adjudged by any Court of competent jurisdiction to be a Last Will of J. T. Nutty.

Any papers in the file initialed by the Court may, at the request of either party, be treated as a part of the

page 15 } record.

A Copy of the order herein shall be mailed by the Clerk to the Judge of the County Court of Sullivan County, Tennessee, at Blountville, Tennessee, as a matter of courtesy.

JOS. L. CANTWELL, JR., Judge.

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* * * * *

The decree heretofore entered herein on October 15th, 1959, and not yet being final, is hereby amended by adding thereto the following:

The order herein shall be without prejudice to the right of any person interested to again offer for probate this or any other writing hereafter adjudged by any Court of competent jurisdiction to be a last will of J. T. Nutty.

Any papers in the file initialed by the Court may, at the request of either party, be treated as a part of the record.

A copy of this order shall be mailed by the Clerk to the Judge of the County Court of Sullivan County, Blountville, Tennessee.

Enter Oct. 20, 1959.

JOS. L. CANTWELL, JR., Judge.

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NOTICE OF APPEAL AND ASSIGNMENT OF ERROR.

To: Mrs. Bertha R. Drinkard, Clerk of the Corporation Court of the City of Bristol, Virginia.

Pursuant to Section 4 of Rule 5:1 of the Rules of Supreme Court of Appeals of Virginia, Notice is hereby given that Dominion National Bank, as proponent of the will of J. T. Nutty, deceased, will petition the Supreme Court of Appeals to grant it an appeal from the final order in this probate proceeding, which order was entered on the 15th day of October, 1959.

An appeal is sought in a controversy arising out of the propounding for probate of a paper dated March 26, 1955, purporting to be the last will and testament of J. T. Nutty. The aforesaid paper was propounded by your appellant, Dominion National Bank, who was nominated by said paper as executor thereof, in the matter of In *Re*: J. T. Nutty. The action of the court in denying probate to the said instrument, and in sustaining an appeal from an order of probate entered by the Clerk of the Corporation Court of Bristol on June 8, 1959, are the actions from which an appeal is sought.

Assignments of error are made as follows:

1. The court erred in its failure to assume jurisdiction when it found facts conferring upon it probate jurisdiction of the will in question.

page 19 } 2. Even if the court did possess a discretionary jurisdiction in matters of probate, it abused its discretion where the instrument propounded showed that it was the desire of the testator that his estate be administered by a named Virginia Executor and trustee to whom the testaor had already entrusted the bulk of his estate to the safekeeping of such person during his lifetime.

DOMINION NATIONAL BANK,
AS PROPONENT OF THE WILL
OF J. T. NUTTY, DECEASED
By LEONARD R. HALL
Of Counsel.

Filed December 10, 1959.

BERTHA R. DRINKARD, Clerk.

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page 3 }

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GUY B. ARNOLD,

was called as a witness on behalf of Dominion National Bank, and after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Hall:

Q. Mr. Arnold, I hand you what purports to be the Last Will and Testament of J. T. Nutty, and ask you if Mr. Nutty signed this Will in your presence and in the presence of Anna Sue Witt, both you and Anna Sue Witt being the subscribing witnesses to the Will?

A. That's right.

Q. Will you state if you and Anna Sue Witt signed the Will each in the presence of each other?

A. That's right.

Q. That is Mr. Nutty's signature?

A. Yes, sir.

page 4 } Q. And it is also Mr. Nutty's, or is it Mr. Nutty's signature that appears in the margin of each page of the Will?

A. Yes, sir.

Mr. Roberts: Your Honor, I believe that I am going to object to any further questions along that line until it be shown that Mr. Nutty was a resident of the State of Virginia and that there is some basis for this paper to even be offered for probate in this court.

The Court: I will overrule your objection. Of course, it will be necessary for the proponent to show the jurisdiction of this court before closing his case in chief; otherwise, your point would be good.

By Mr. Hall:

Q. Did Mr. Nutty indicate to you at that time or at anytime thereafter that he did not intend this very paper that I have in my hand to be his Last Will and Testament?

Mr. Roberts: Objected to, your Honor, on the ground of what he may have indicated. He can testify as to anything that was said, but what he indicated calls for a conclusion.

Mr. Hall: I will change the question.

By Mr. Hall:

Q. Did Mr. Nutty ever say to you at the time the Will was

executed, or at any time thereafter that he did not intend this very paper to be his Last Will and Testament?

Mr. Roberts: Objected to as leading and suggestive. He can ask what may have been said, but that question
page 5 } calls for a conclusion and is argumentative.

The Court: Sustained.

You can ask if he ever heard Mr. Nutty make any statement regarding the Will at the time of execution or afterwards.

Mr. Hall: I will ask it in the Court's language.

By Mr. Hall:

Q. Did you ever hear Mr. Nutty say anything at the time the Will was executed, or thereafter, that he did not intend this to be his Last Will and Testament?

Mr. Roberts: Objected to, your Honor.

The Court: That wasn't the language of the Court.

Did he ever say anything to you about this paper as to his intentions as to execution?

The Witness: He never said that he didn't mean that to be his Last Will—if I might explain. I had talked to Mr. Nutty over a period of about ten years and he talked with me about his Will.

The Court: After this paper was executed?

The Witness: Before the paper was executed. I knew Mr. Nutty very well, had known him since I was a boy and had been doing business with him at the milling operations and so forth, since I was a boy, and he was a very friendly affable man and you would never pass him on the street but what he would stop and talk with you and tell you a joke or something.

I have the impression that Mr. Nutty mentioned to
page 6 } me—he mentioned to me so many times about his Will whether or not—

The Court: Any comments after the time of its execution.

The Witness: —whether or not after that Will was executed he ever said to me that he intended making changes or not, I could not say. A good number of people who had Wills with us—

The Court: Don't go into that. What he wants to know if Mr. Nutty after he signed that paper ever made any comment what he intended it to be?

The Witness: No, sir.

Anna Sue Witt.

The Court: If he said anything about revoking it?
The Witness: I would have to say no to that.
The Court: Anything further?
Mr. Hall: That's all.
The Court: Do you have any cross examination?
Mr. Roberts: I reserve cross examination, your Honor, and renew my motion. They have not shown any jurisdiction of this court to probate.
The Court: He can't do it all at once, Mr. Roberts. If he hasn't at the time he closes his case in chief, your motion may be good. This may not be the witness by which he expects to prove that point.
Mr. Roberts: All right, sir. May I come back and cross examine him later?
The Court: Yes.
page 7 } Mr. Roberts: I reserve my right to cross examine him until later.

Thereupon,

ANNA SUE WITT,

was called as a witness on behalf of the Dominion National Bank, and after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Hall:
Q. Your name is Anna Sue Witt?
A. Yes, sir.
Q. I hand you what purports to be the Last Will and Testament of J. T. Nutty, purportedly signed by J. T. Nutty and signed in your presence, and the presence of Mr. Arnold, who has just testified. I ask you if this testation clause reflects the true facts in connection with the execution of the Will?

Mr. Roberts: We object to that, your Honor as being an improper question.
The Court: Since he objects, Mr. Hall, you will have to go into the details.
Mr. Hall: All right.

By Mr. Hall:
Q. Was the Will signed by Mr. Nutty in your presence and in the presence of Mr. Arnold?
A. Yes.

O. R. Galliher, Jr.

Q. And in the presence of each of you at the
page 8 } same time?
A. Yes, sir.
Q. Did he at that time say that he did not intend this to be his Last Will and Testament?

Mr. Roberts: We object to that question as being leading, your Honor.

By Mr. Hall:
Q. Did he or not say at that time that he intended this to be his Last Will and Testament?

Mr. Roberts: Objected to as leading and suggestive.
The Court: Overruled.
Mr. Roberts: Exception.
The Court: What was the answer?
The Witness: I wasn't sure you wanted one.
The Court: Yes.
The Witness: He made no comment either way.
The Court: At the time you all signed this, did he tell you what it was and why he wanted you to sign it? What did you understand you were doing?
The Witness: I understood he wanted us to witness his Will.
Mr. Hall: That's all.
The Court: Did you and Mr. Arnold both sign as witnesses in the presence of each other as well as in the presence of Mr. Nutty?
The Witness: Yes, sir.
Mr. Roberts: May I reserve cross examination of
page 9 } her also?
The Court: Yes.

Thereupon—

O. R. GALLIHER, JR.,
was called as a witness on behalf of the Dominion National Bank, and after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Hall:
Q. State your name, address, and occupation, please, sir?

O. R. Galliher, Jr.

A. O. R. Galliher, Jr., Trust Officer for the Dominion National Bank.

Q. As the Trust Officer of the Dominion National Bank, after the Will of J. T. Nutty was probated before the Clerk of this Court, did you take possession of the assets of the estate of J. T. Nutty?

A. We did.

Q. What did those assets consists of?

A. There were bonds, cash, and a small amount of personal property in the box.

Q. Where were they found?

Mr. Roberts: Your Honor, in order to preserve our rights, do we have to object to this line of questioning
page 10 } on the ground they have shown no ground on which this Will can be probated in this court.

The Court: Your objection is overruled. I understand he is undertaking to do that now. Can't object to him presenting the evidence if it is competent. As to its sufficiency, I will hear you when the evidence is completed on the part of the proponents.

Mr. Roberts: Exception.

By Mr. Hall:

Q. Where did you find the assets?

A. In a safe deposit box in the Dominion National Bank.

Q. Bristol, Virginia?

A. Bristol, Virginia.

Q. Did you make a list of those assets?

A. We did.

Q. A list or inventory, I should say, of the assets?

A. We did.

Q. I hand you what purports to be a list of the inventory of the contents of the safety deposit box of J. T. Nutty in the Dominion National Bank of Bristol, Virginia, and ask you if that is a true and correct list of the assets of personal property?

A. It is.

Mr. Roberts: May we see it?
page 11 } The Court: Yes.

By Mr. Hall:

Q. Did you find any other personal property of Mr. Nutty?

A. No.

O. R. Galliher, Jr.

Q. Such as checks outside the safe deposit box?
A. We found one check at Service Mills due him for $20,000.
Q. Did or not Mr. Nutty have any interest in a partnership, doing business in Bristol, Virginia, known as Service Mills?
A. He did.
Q. Has that interest in the partnership since you have qualified as Executor of the Estate been disposed of?
A. It has.
Q. What amount of money was received for the interest of J. T. Nutty in this partnership?

Mr. Roberts: We object to that, Mr. Hall. I don't believe that is in accordance with our stipulation.
The Court: Is the stipulation in the Court File?
Mr. Roberts: No, sir, your Honor, it was just an agreement between counsel with reference to the partnership interest. It was sold pending the outcome of this proceeding by mutual consent of everybody and was not to be taken into any account in this proceeding.
Mr. Hall: In so far as determining the probate page 12 } of this will, I did not understand it was not to be considered in determining whether Mr. Nutty had personal property in Virginia.
The Court: If that is all it is for, the sale subsequent to his death, it would be immaterial. The status of the estate at the time of his death would determine the facts as to whether there was any tangible personal property in Virginia, and, if so, what was it; identify it so the Court can pass on it. Intangibles, of course, would follow the domicile of the deceased and unless the domicile was shown to be in the State of Virginia, that wouldn't be a basis for jurisdiction, intangibles wouldn't.

By Mr. Hall:
Q. Mr. Galliher, did Mr. Nutty have a bank account in the Dominion National Bank at the time of his death?
A. Yes, sir.
Q. Do you recall the approximate amount?
A. Slightly over nine thousand, as I recall it.

Mr. Hall: In the absence of agreement of counsel, I offer in evidence a Deed, dated September 5, 1945, from John T. DeHart and wife, to J. T. Nutty and J. C. Dew, conveying to them the property in the City of Bristol, Vir-

ginia, on Sullins Street, and Deed dated June 11, 1952, from Mildred Brumet to J. T. Sparger and H. R. Sparger, and E. A. Treadway, trading as the Service Mills Company, conveying other property on the north side of Sullins Alley in Bristol, Virginia, and aver that title to the property at the time of Mr. Nutty's death was as is shown in these

page 13 } two deeds.

I don't think there will be any question about that. If you can't agree to it, then I will devise some way to get this in another way.

In any event, I ask Mr. Galliher to file these two original deeds as Exhibits 1 and 2 to his testimony.

Mr. Roberts: May we object to that, your Honor, and ask counsel if he will not concede that that property is treated as assets of the partnership, so carried in all the statements of the partnership prepared by a Certified Public Accountant as being partnership assets.

The Court: Overrule your objection. Let them be filed subject to your objection.

Mr. Roberts: May I ask counsel for that concession?

The Court: Are you willing to make any such concession at his request?

Mr. Hall: I think that is a true statement. I want the Court to have everything we have, all the information we have.

The Court: In other words, you are conceding his interest in the land conveyed by these two deeds, if he still held it under those two deeds at the time of his death, was an asset of the partnership?

Mr. Hall: I am.

Mr. Robert: That's all right, your Honor.

page 14 } The Court: Let the Will be marked Exhibit Will, and the two Deeds be marked Exhibits 1 and 2.

(Thereupon, the Will referred to was marked, "Exhibit Will," and the two Deeds above referred to were marked, "Exhibit 1-Galliher," and "Exhibit 2-Galliher," respectively.)

By Mr. Hall:

Q. Mr. Galliher, will you file the Inventory of the contents of the safe deposit box as Exhibit 3 to your testimony?

A. Yes.

O. R. Galliher, Jr.

The Court: Let it be filed and marked accordingly.

(Thereupon, the Inventory referred to was filed and marked, "Exhibit 3-Galliher.")

Mr. Hall: Now, your Honor, in the probating of the Will before the Clerk, as the Court well knows, the next step in the probate would be for the proponents of the Will to furnish to the Court certain information with reference to the name and age of the decedent, color, place of life residence, date of his death, and in whose possession were the testamentary papers found at his death. These things, as the Court knows, are handled most informally before the Clerk. This petition for review comes before you *De Novo,* as I understand it, and I do not want to not furnish the information that has already been furnished to the Clerk in this regard.

I am wondering if we can take the papers in
page 15 } the file prepared by the Clerk and treat them as
already in the file or being filed in this proceeding.

I must ask your guidance at this point. If the Court desires me to proceed, subject to their objection or after their objection, and pass on whether or not this Court has jurisdiction before going into that question, well and good.

The Court: Mr. Roberts, in event the Court should hold the jurisdiction for probate of the Will is here and that is his Last Will and Testament offered here, do you have any objection to treating the other formalities before the Clerk as a part of this proceeding without specific reference?

Mr. Roberts: What other formalities is your Honor referring to?

The Court: Valuation of the estate for the purpose of taxation, list of the heirs, and all those things that go with the record as to probating the Will.

Mr. Roberts: I don't want to be obstinate, your Honor, about it, but I don't believe so, because there were listed, as I understand it, with the Clerk, certain assets which certainly are not subject to any tax in Virginia, regardless of whether or not the Will is properly subject to probate over here.

The Supreme Court of the United States has held under a
very similar statute, which we have in question,
page 16 } that the interest of partnership is intangible per-
sonal property and follows the situs of the domicile
of the owner. Therefore, we could not agree to that.

O. R. Galliher, Jr.

The Court: Can you agree to the list of heirs?

Mr. Roberts: I don't know who they are. I haven't seen them, your Honor.

I will concede that they are his widow and his daughter, if that is who they are. I don't know who they have listed: I have not seen the list.

Mr. Hall: I do not have the entire Court File.

Mr. Roberts: We will concede, your Honor, that the heirs at law are his wife, Bertha M. Nutty, and his daughter, Tunis Nutty Jones.

The Court: We will treat that as part of the record here.

Mr. Hall: To be completely on the safe side, I file Exhibit A, a statement signed by me as the attorney for the Executor named in the Will, which in the main purports to furnish the necessary information required for initial probate, and ask that that be marked Exhibit 5.

The Court: Mr. Roberts, will you examine it and see if there is any objection to it.

Mr. Hall: I would like to call Mr. Robert's attention to the fact that the figures, valuation of the estate in connection with the Will for probate has absolutely no bearing on the final tax question, and is filed for the pur-
page 17 } pose of paying the probate tax and nothing else.

Mr. Roberts: There could be no probate tax on property in Tennessee.

Mr. Hall: That's true.

Mr. Roberts: Your Honor, we would have to object to this paper on the ground it contains hearsay, and the further ground it hasn't been properly authenticated.

The Court: Go ahead with your oral witnesses, Mr. Hall, and prove what you think is necessary to complete the probate proceeding in event the Will is accepted by the Court.

Mr. Hall: If I may, I would like to call the Court's attention to Section 27 of the Virginia Probate by Lamb in which this memorandum of fact can be signed by counsel, and is a suggested form to be furnished.

The Court: It has to be proved. If Mr. Galliher made that up, ask if that is a true statement. He is here as a witness, under oath, and to prove it or authenticate it.

By Mr. Hall:

Q. Did you make this statement up that I filed as Exhibit 4, Mr. Galliher?

A. I answered what questions I could on this statement.

O. R. Galliher, Jr.

Mr. Roberts: Your Honor, we are going to object to that paper on the grounds that it is irrelevant and immaterial what may be in that paper. It is not a matter of proof. The witness is here to testify.

The Court: Overruled. When he gets through
page 18 } qualifying the witness on the paper and the Court has heard enough evidence to determine whether or not it is or is not admissible, you may reserve your exception.

Mr. Roberts: Exception.

By Mr. Hall:

Q. Will you please state the name of the deceased?

A. J. T. Nutty.

Q. Do you know his age?

A. I am not sure, but I believe seventy-nine.

Q. Do you know his color and whether or not he was married or single?

A. White, and married.

Q. Do you know his last place of residence?

A. Bluff City Highway, Bristol, Tennessee.

Q. Do you know the date and place of his death?

A. I believe it was May 10th, at the Bristol Memorial Hospital.

Q. May 10, 1959, Bristol Memorial Hospital, located in Bristol, Tennessee?

A. Bristol, Tennessee.

Q. Do you know the date of the Will we seek to probate here?

A. It is March 26, 1955.

Q. Do you know the name and address of the Executor nominated by the Will?

page 19 } A. Dominion National Bank, Bristol, Virginia.

Q. Do you know the value of the decedent's personal estate?

A. In Virginia, as I recall it, it was about one hundred and twenty thousand.

Mr. Roberts: We object to that as calling for a conclusion of the law.

The Court: Sustain that objection. He can state what he had, and its valuation the Court will have to determine whether or not for the purpose of probate tax it is an asset under the *Virinia* Law and subject to this jurisdiction, segregate the tangibles and intangibles.

Mr. Hall: All right, sir.

G. R. Galliher.

By Mr. Hall:

Q. Do you know the total value of decedent's real and personal estate?

Mr. Roberts: We object to that your Honor on the ground it is irrelevant and immaterial.

The Court: I think the objection is good. He can state the individual items Mr. Nutty left and the Court will determine whether tangible or intangible and whether or not they are a part of the evaluation of the estate which has any status in Virginia.

By Mr. Hall:

Q. Will you read or state the contents of the safety deposit box in the name of J. T. Nutty at the Dominion National Bank, Bristol, Virginia?

page 20 } The Court: I believe he has already shown that. What you are asking now is as to values. Unless the list which has already been filed by Mr. Galliher shows the value of the items, it is the matter of taking up each individual item and showing its value, and the Court will reserve ruling on Mr. Robert's objection until I have heard the evidence on all the items and then determine whether there is any tangible personal property in the State of Virginia, City of Bristol.

Mr. Hall: I certainly don't want to unduly prolong this situation and I, in the probate of the Will before the Clerk, this question is asked as to the values—

The Court: Usually the Clerk lists down item by item what the man left and places the value opposite it. The extent that list already does show, the proof is completed to that exent and anything that is not listed or valued, then we are open now to proof of such items. You can't by a lump sum summary of the value of what you claim is the personal estate and prove either that is the value or the tangible personal property.

Mr. Hall: For the purpose of the record, then I will ask this:

By Mr. Hall:

Q. Will you explain briefly or will you state the value of any United States Savings Bonds payable to J. T. Nutty?

The Court: I don't think I made myself clear. Where the list is already sworn to furnishing the proof
page 21 } of the value, you don't need to repeat it. I want you to go into any items that you claim are tangi-

ble personal property located in Virginia, and prove the value of those, if there is any. What on that list do you contend is tangible personal property of Mr. Nutty, or outside of that list if you have anything to show it.

Mr. Hall: We have shown on this list the deposit of money in the Dominion National Bank and if the Court doesn't want it, we will not pursue it further.

The Court: Scan the list and see if any items there do not carry the value along with it. If so, the Court will give you the opportunity to prove its value, or any evidence outside the list.

Mr. Hall: I think, your Honor, the values are all shown here.

The Court: What is the last item on the list there, Mr. Galliher?

The Witness: Watch, chain, knife and emblems, Masonic emblems.

The Court: Whose property are they?

The Witness: They are Mr. Nutty's.

Mr. Roberts: If I might ask a preliminary clarifying question, I think Mr. Galliher will concede they were put in there after his death.

The Court: I didn't so understand that from page 22 } the evidence.

I understood that is a list of his personal property. I don't know whether the evidence shows clearly from what source each of those items came into your possession. Apparently I got the mistaken impression that everything on the list was in the safe deposit box. Is that correct?

The Witness: Yes, this was in the box.

The Court: At the time of the death?

The Witness: Yes.

The Court: The watch, chain and emblems.

Mr. Hall: I think that's all, your Honor. We rest.

The Court: Do you have any further evidence to offer on behalf of your client?

Mr. Hall: No, sir.

The Court : We will take a short recess.

(Thereupon a short recess was taken, after which the following proceedings were had:)

The Court: All right, Mr. Roberts.

Mr. Roberts: I want to call the Court's attention to the fact that Lamb says that those two jurisdictions. that is

dealing with the presence of property in this State, are both ancillary. In other words, there has to be a primary probate before that can come into play.

The Court: That is part of the argument that I am anticipating, whether Mr. Hall had a right to probate.

Mr. Roberts: All right, sir.

page 23 } Mr. Roberts: I guess I will cross examine Mr. Galliher at this time.

CROSS EXAMINATION.

By Mr. Roberts:

Q. Mr. Galliher, in connection with this list of contents of the lock box in the name of J. T. Nutty, Box 142, I notice, first, that this a carbon. Where is the original?

A. It is in the Bank.

Mr. Roberts: Your Honor, we demand or request that the original be sent for, the reason being—

The Court: Original of what?

Mr. Roberts: The original of this list.

By Mr. Roberts:

Q. I note, Mr. Galliher, that this is a carbon copy and that there is in someone's handwriting at the end of the list after the words "Inventory in the presence of the following people, May 27, 1959," the following words written in, apparently, with pen, the rest of the document being in typewriting: Watch, chain, knife and emblem.

Now, are you testifying that the watch, chain, knife and emblem were in the lock box at the time of Mr. Nutty's death?

A. I would have to see the original before answering that question.

Q. As a matter of fact, to refresh your recollection, did not Mrs. Nutty bring to you after Mr. Nutty's

page 24 } death the watch, chain, knife and emblem?

A. I would like to see the original before I answer that question, because I don't remember.

Q. You don't have any recollection one way or the other?

A. Not positive recollection.

Q. Do you have any recollection seeing them at the time?

A. I don't recall whether they were in there at that time or not. I would have to see the original list.

O. R. Galliher, Jr.

The Court: Is that in your possession?
The Witness: Yes.
The Court: We will suspend and give you an opportunity to get it.
Mr. Roberts: We ask that it be produced.

By Mr. Roberts:
Q. How long had you know Mr. Nutty?
A. Over a period of years, not intimately though.
Q. You know he was a lifelong resident of the State of Tennessee, was he not?
A. Yes, sir.
Q. Mr. Galliher, why didn't you offer that Will for probate in Tennessee?
A. We consulted Mr. Hall, our attorney, and that was his advice.
Q. Well, do you have any other reason other page 25 } than that?
A. That is the only reason.
Q. That is your only reason. I believe you have taken a course in Wills and you are in the Trust Department of Dominion National Bank?
A. That's right.
Q. It is customary to probate a Will—

Mr. Hall: I object.
Mr. Roberts: Let me get through, Mr. Hall.
The Court: Don't answer the question until he finishes the question.

By Mr. Roberts:
Q. It is customary to probate a man's Will where he resides, is it not?

Mr. Hall: We object, your Honor.
The Court: Sustain the objection. The question is whether the Court has jurisdiction under 64-72.

By Mr. Roberts:
Q. Mr. Galliher, I notice that the Will, that this paper which you purport to be, which you say is the Last Will and Testament of J. T. Nutty, is obviously a carbon copy. Is that not correct?
A. That's correct.
Q. Where was that paper found?

O. R. Galliher, Jr.

A. At the time of his death it was in our safe keeping locker in the vault.

Q. Not in his possession, but in your possession?

A. In the bank's possession.

Q. The Bank's possession. He had a lock box page 26 } at the Bank there?

A. That's right.

Q. Now, have you ever before probated a carbon copy of a Will?

A. I haven't probated any Wills.

Q. Certainly this is the first carbon copy you have ever probated?

A. That's right.

Mr. Roberts: That's all.

Mr. Hall: That's all.

The Court: I understood the proponents rested without giving you an opportunity to cross examine Mr. Galliher. Now that that is complete, do you want to cross examine—

Mr. Roberts: Did you say they had rested?

The Court: That is what I understood Mr. Hall to say. He overlooked your right to cross examine. Now that that is completed, do you rest Mr. Hall?

Mr. Hall: We rest, your Honor.

The Court: Do you want to cross examine any witnesses who testified prior to the proponent resting?

Mr. Roberts: No, your Honor, not at this time until we make a motion. I want to make a motion that the Will be refused for probate on the ground that it is plainly shown that Mr. Nutty was a lifelong resident of the State of Tennessee, domiciled in the State of Tennessee at the time of his death, and died in the State of Tennessee.

* * * * *

EXHIBIT 1—GALLIHER.

J. L. C., JR.

THIS DEED made and entered into this June 11th, 1952, by and between MILDRED BRUMMITT (divorced), party of the first part, and J. T. NUTTY, H. R. SPRAGER, E. A. TREADWAY, tr/as SERVICE MILLS COMPANY, parties of the second part,

WITNESSETH

THAT for and in consideration of the sum of THREE THOUSAND & NO/100 ($3,000.00) DOLLARS, cash in hand paid, and other valuable consideration, the receipt of all of which is hereby acknowledged, the party of the first part has bargained and sold, and does hereby grant, bargain, transfer, sell and convey unto the parties of the second part, with covenants of general warranty of title, a lot or parcel of land, in the City of Bristol, Virginia, and more particularly described as follows:

BEGINNING on the north side of Sullins Alley on the line of lots 8 and 9, according to recorded map of the Johnston Lands purchased by the Town of Goodson; thence with said alley in a westerly direction about thirty-two and three tenths (32.3) feet to a point in line with the middle of a brick structure on lot 9, located between Sullins Alley and Sullins Street, which houses four outside toilets; thence in a northerly direction, and parallel with East and West lines of lot 9, about seventy-five (75) feet to the center of said brick structure; thence in an easterly direction, parallel with Sullins Street and Sullins Alley, about thirty-two and three tenths (32.3) feet to the line between lots 8 and 9; thence in a southerly direction with the east line of lot 9 to the BEGINNING, and being the same property conveyed to the party of the first part by A. J. Edwards (divorced) by deed dated the 1st day of May, 1946, of record in the Clerk's Office for the Corporation Court at Bristol, Virginia, in Deed Book 74, at page 87.

This property is conveyed subject to the conditions and restrictions as contained in the deed above referred to recorded in said Clerk's Office in Deed Book 74, at page 87.

TO HAVE AND TO HOLD said property, together with all improvements thereon and the appurtenances thereunto in any wise belonging, unto the parties of the second part, their successors and assigns, in fee simple forever.

And the party of the first part covenants with the parties of the second part that she is lawfully seized and possessed of the property hereby conveyed; that she has a good right, full power and authority to convey the same; that same is free and unencumbered and she will forever warrant and defend the title to said property against the lawful claims of all persons whomsoever.

WITNESS the signature and seal of the party of the first part, this the day and year first hereinabove written.

MILDRED BRUMMITT (Seal)

State of Virginia,
City of Bristol,

I, Ralph H. Brumet, a Notary Public in and for the State and City aforesaid, do certify that Mildred Brummitt (divorced), whose name is signed to the foregoing writing bearing date on the 11th day of June, 1952, has acknowledged the same before me in my City and State aforesaid.

Given under my hand this 11th day of June, 1952.
My commission expires Aug. 20, 1952.

RALPH H. BRUMET, Notary Public.

Virginia:

City of Bristol, to-wit:

In the Clerk's Office of the Corporation Court of the City and State aforesaid the 12 day of June 1952 at 2:20 o'clock P. M., the foregoing deed was presented in said office on the day and year above written, and, together with the certificate of acknowledgment, admitted to record.
Recorded in Deed Book No. 94, at Page 308, et seq.

Teste:

BERTHA R. DRINKARD, Clerk.

EXHIBIT 2—GALLIHER.

THIS DEED, made this the 5th day of September, 1945, by and between John T. DeHart, and his wife, Louise F. DeHart, parties of the first part, and J. T. Nutty and J. C. Dew, parties of the second part,

WITNESSETH:

That for and in consideration of the sum of FIVE THOUSAND ($5,000.00) DOLLARS, cash in hand paid by parties of the second part, receipt of which is hereby acknowledged, the parties of the first part have bargained and sold and do

by these presents bargain, sell, grant and convey unto the parties of the second part, with covenants of general warranty and free from encumbrances, two lots with a two-room house thereon situated in Bristol, Virginia, on Sullins Street, and more particularly described as follows, to-wit: Lots SEVEN(7) AND EIGHT (8) in City of Bristol, Virginia situate on Spruce Street (now Sullins Street), said lots or parcels of land adjoining each other and being bounded on the North by Sullins Street, on the East by the property of Maines, on the South by Sullins Alley, and on the West by the property of Edwards, this being the same property devised to Sallie A. DeHart by the will of Z. L. Burson, deceased, which will is recorded in the Clerk's Office of the Corporation Court for the City of Bristol, Virginia, in Will Book No. 1, page 55, and by said Sallie A. DeHart conveyed to John T. DeHart, party of the first part, by deed of date June 12th. 1903, recorded in said office in Deed Book 14, page 412, the said Sallie A. DeHart being unmarried when said deed was made and is now deceased. TO HAVE AND TO HOLD UNTO THE PARTIES OF THE SECOND PART their heirs and assigns the above described real estate in fee simple forever, together with all improvements thereon and appurtenances thereunto belonging.

WITNESS the hands and seals of the parties of the first part hereunto written and affixed on the day, month and year first above written.

JOHN T. DEHART (Seal)
LOUISE F. DEHART (Seal)

State of Virginia,
City of Bristol, to-wit:

I, Dan Drinkard, clerk of the Corporation Court for the City of Bristol, in the State of Virginia, do hereby certify that John T. DeHart, and his wife, Louise F. DeHart, whose names are signed to the writing above, bearing date of September 5th 1945, have acknowledged the same before me in my City aforesaid.

Given under my hand this the 5th day of September, 1945.

DAN DRINKARD
Clerk of Corporation Court for the City of Bristol, Virginia.

Virginia:

City of Bristol, to-wit:

In the Clerk's Office of the Corporation Court of the City and State aforesaid the 6th day of Sept. 1945, at 11:00 o'clock A. M., the foregoing Deed was presented in said office on the day and year above written, and, together with the certificate of acknowledgment, admitted to record.

Recorded in Deed Book No. 72, at Page 122 et seq.

Teste:

DAN DRINKARD, Clerk.

EXHIBIT 3—GALLIHER.

CONTENTS OF LOCK BOX IN NAME OF J. T. NUTTY
Box No. 142

Volunteer State Life Insurance Co. Supplemental Contract No. 1629 in amount of $2,000.00—Beneficiary Tunis C. Nutty
Certified Copy of Adoption decree dated April 23 1935
One lot of insurance receipts from Volunteer State Life Insurance Co.
Treasurer of the United States Savings Bonds as follows:

$500.00—Dated June, 1944	No. D 8 390 668E
100.00—Dated March, 144	C 69 189 280E
100.00—Dated October, 1944	C 78 781 372E
100.00—Dated October, 1944	C 78 781 371E
100.00—Dated March, 1944	C 69 189 327E
100.00—Dated March, 1944	C 69 189 366E
100.00—Dated March, 1944	C 69 189 364E
100.00—Dated June, 1944	C 74 917 673E
100.00—Dated February, 1944	C 69 189 259E
100.00—Dated February, 1944	C 69 189 258E
100.00—Dated October, 1944	C 78 781 373E
100.00—Dated June, 1944	C 74 917 674E
100.00—Dated June, 1944	C 74 917 675E
500.00—Dated October, 1944	D 9 344 878E
25.00—Dated December, 1944	Q 516 690 686E

Note dated December 12, 1957 for $2,000.00 payable to J. T. Nutty or Bertha Nutty signed by James Christian and Maude Christian

Marriage License from the County of Aiken, State of North Carolina signed by probate Judge showing marriage of James F. Jones and Tunis Madelyne Nutty on July 1, 1953

North America Assurance Society of Virginia, Incorporated Policy No. 31273 in name of James F. Jones of Bristol, Tennessee

Deed of B. W. Rutherford, et ux. to Paperville Southern Methodist Church dated June 23, 1936, recorded in—not recorded

6 $500.00 Treasurer of the United States Savings Bonds in name of Mrs. Bess D. Gose Series H Nos. D1074329H/334H dated April, 1956

1 $500.00 USA 2½% Treasury Bond of 1965-70, with March 15, 1959 and sca—No. 26615E

1 $500.00 USA 2½% Treasury Bond of 1967-72 No. 21927H, with June 15, 1959 and sca

2 $1,000.00 USA 2½% Treasury Bonds of 1965-70 Nos. 486651A and 486653C with March 15, 1959 and sca

1 $5,000.00 USA 2½% Treasury Bond of 1965-70 No. 80253C with March 15, 1959 and sca

6 $1,000.00 USA 2½% Treasury Bonds of 1967-72 Nos. 45753/C, 45754D, 45755E, 45756F, 45757H, 45758J with June 15, 1959 and sca

Adoption Petition of J. T. Nutty and wife for the adoption of Madeline Minor dated April, 1935.

5 $1,000.00 Treasurer of the United States Series H. Savings Bonds in name of Mr. James T. Nutty Nos. M308-7912/16H dated November, 1957

4 $1,000.00 Treasurer of the United States Series H Savings Bonds in name of Mrs. Bertha M. Nutty Nos. M308-7917/20H dated November, 1957

1 Wedding Band and Wedding ring (Small solitaire diamond) belonging to Mrs. Bertha M. Nutty

5 Expired insurance policies with May 23, 1949, Nov. 22, 1943, May 12, 1947, December, 1945 and June 13, 1944 expiration dates

Inventoried in the presence of the following people, this May 27, 1959.

Watch—chain .....

PAUL H. COCKE
MRS. J. T. NUTTY
MRS. TUNIS N. JONES
THOS. S. .....
.....

PAPERS, ETC. BELONGING TO MR. J. T. NUTTY FOUND IN SAFE AT SERVICE MILLS, INC.

Metropolitan Life Insurance Company Policy No. 560 105 893 issued January 1, 1956 in name of Mary L. Jones in the amount of $750.00
Metropolitan Life Insurance Company Policy No. 560 105 892 dated January 1, 1956 in name of James T. Jones in the amount of $750.00
Norge Protection Plan for Gas and Electric Clothes Dryers
1 Note for $50.00 dated April 30, 1955 payable to J. T. Nutty and due six months after date signed by M. H. Booher

Fire insurance policies, contracts, deeds, etc. not listed.

MRS. J. T. NUTTY
MRS. TUNIS N. JONES
.....
.....

Received of Dominion National Bank the following items which were in the Lock Box of J. T. Nutty (#142):

(1) 6—$500.00 Treasurer of the United States Savings Bonds in name of Mrs. Bess D. Gose, Series H Nos. D1074329/34 H dated April, 1956
(2) 4—$1,000.00 Treasurer of the United States Series H Savings Bonds in the name of Mrs. Bertha M. Nutty Nos. M 3087917/20 H dated November, 1957
(3) Jewelry—Watch, Chain, Knife and Emblem

MRS. J. T. NUTTY.

Date June 2, 1959.

EXHIBIT—WILL.

J. L. C. JR.

Book 8 Page 319.

State of Tennessee,
County of Sullivan,
City of Bristol.

LAST WILL AND TESTAMENT J. T. NUTTY.

I, J. T. Nutty, of the City of Bristol, State of Tennessee,

being of sound mind and disposing memory, but realizing the uncertainty of life and the certainty of death, do make, publish and declare this to be my last will and testament, hereby revoking all former wills and codicils by me at any time heretofore made.

FIRST

I desire that all my just debts, funeral expenses and all taxes against my estate be paid as soon after my death as may be convenient. In the event there should not be sufficient cash available for these purposes by the time the payment becomes necessary, my Executor is expressly authorized to renew any notes of mine which may be unpaid at the time of my death, securing the same with such collateral or otherwise as may be deemed expedient. My Executor is likewise specifically authorized to make other notes if necessary to raise the cash for these purposes, and do all things lawful and practicable to secure payment thereof, to avoid as far as possible any sacrifice of any part of my estate by reason of a forced liquidation in order to pay said debts, funeral expenses and taxes. All such notes are to be signed by my Executor in its representative capacity as such, and shall specifically provide that in no event shall my Executor be held liable except as Executor thereon.

SECOND

I give and bequeath unto my beloved wife, Bertha M. Nutty, all household furniture and furnishings, including all household goods and my car, clothing, jewelry, etc., that I may own at the time of my death.

THIRD

I hereby nominate, constitute and appoint the Dominion National Bank, a corporation organized under the National Banking Act, and having its place of business in the City of Bristol, Virginia, or its successors, as the Executor and Trustee of this, my last will and testament. I hereby excuse the said Dominion National Bank as Executor and Trustee from giving bond as surety, and my Executor and Trustee is excused from making any settlement with or report to any court, except to probate this will; provided, however, that any one of the beneficiaries hereunder may require the said Dominion National Bank as executor and/or Trustee to give bond at any time after its qualification. The

said Bank shall make full reports to the beneficiaries herein named at least once each year, and shall disclose to any beneficiary of my will, on any reasonable demand, all information requested concerning my estate, and the progress made in the administration of same.

FOURTH

I give and devise unto my wife, Bertha M. Nutty, the homeplace and all the land about it, except the lot or land where my daughter now lives.

FIFTH

I give and devise unto my daughter, Tunis M. Jones, for and during the remainder of her natural life, the home she is now occupying. Upon her death this property I devise equally to her children.

SIXTH

One-half of my adjusted gross estate, as defined in Section 312 (e) of the United States Internal Revenue Code, I give, devise and bequeath unto the Dominion National Bank of Bristol, Virginia, in trust nevertheless, for the following uses and purposes:

(a) To hold, manage, invest and reinvest, to pay all income therefrom, in monthly or quarterly installments to my beloved wife, Bertha M. Nutty, for and during the remainder of her natural life, and also to pay to her on her request any part or all of the corpus of this trust. Upon the death of my wife, to pay or otherwise dispose of the corpus of this Trust to such persons, including her estate, outright or in trust and in such manner and proportions as she may by her last will appoint; should she fail to appoint as empowered herein, then I direct that the corpus of this trust be paid over or added to the corpus of the trust herein created for my children and disbursed according to the provisions hereof.

(b) I direct my executor hereinabove named to pay, out of the rest, residue and remainder of my estate, all estate, inheritance, succession and other death taxes due and imposed on or in connection with my estate or any part thereof. All the balance of the said residue of my estate, I give, devise and bequeath to my aforesaid trustee, in trust, nevertheless, for the following uses and purposes:

(1) The said remainder of my estate I direct shall be held for the use and benefit of my daughter and her children and disbursement made to her as follows:

(a) I direct my Executor and/or Trustee to pay to my said daughter $100.00 each month for and during the remainder of her natural life. Should my daughter's husband be sick or incapicated because of ill health and be unable to provide for his family, then I direct the said monthly payments be increased to $200.00. I further direct that in case of emergency arising in the life and family of my daughter, if the said monthly payment of $100.00 or $200.00 per month is insufficient to properly care for and support and educate the children, then in that event, my Executor and/or Trustee is hereby directed in the exercise of a lenient and liberal discretion, to meet such emergency for them.

(2) Upon the death of my daughter, my estate remaining at that time, after payment of all her funeral expenses, shall be for the benefit of her children, J. T. Jones and Mary Lynn Jones, who shall share equally, that is to say, share and share alike per stirpes in my estate, and disbursement made to them as follows:

(a) I direct that such sums as are necessary for their care, support and education be paid to or for them until they finish their education, at which time the said children are to be paid $ ..... per month until they become twenty-five years of age, when they shall be paid $..... each from the principal of this trust; five years thereafter they are to be paid another like payment of $.....; and five years after the second payment, they are to be paid all of their respective shares of my estate and this trust shall then forever cease and terminate.

(3) Should *eighter* of my grandchildren die before they receive all their share of my estate hereunder, then in that event such one's share shall be paid over to his or her children, should they be survived by children; and if childless, then such one's share shall be added to the share of the surviving grandchild, and be treated exactly as though it had been a part of the trust of such surviving grandchildren, and disbursed according to the terms hereof.

SEVENTH

I direct that no beneficiary under this will shall have the right or power to alienate, dispose of, anticipate, or in any way encumber or create a charge upon the income or corpus

to which he or she is entitled under the foregoing provisions of this will; and the same shall not be subject to attachment or be liable to be taken over for their debts by any legal process whatsoever, it being my intention to assist and provide for the beneficiaries hereunder.

EIGHTH

Whenever it has been necessary for me to use an attorney, I have employed Mr. Thomas Curtin of Bristol, Tennessee; and should it become necessary to use an attorney in the settlement of my estate, I suggest that he be employed.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this the 26th day of March, 1955, in the City of Bristol, State of Virginia.

J. T. NUTTY (Seal)

The above signature of the testator, was made and the foregoing will, consisting of this and three other typewritten pages, bearing the signature of the Testator on the Margin of each, was acknowledged by the said Testator in the presence of us, two competent witnesses, present at the same time; and we, the said witnesses, do hereunto subscribe the said will in the presence of the said Testator and of each other at the request of the Testator.

This the 26th day of March, 1955.

. . . . . .

ANNA SUE WITT

It is hereby agreed that the compensation of the Dominion National Bank, herein named as Trustee, shall be five per cent (5%) of the gross income earned on this Estate. The Dominion National Bank shall receive compensation as Executor of this my last will and testament as follows:

Schedule of Fees.

5% on the first $40,000.00
4½% on the next 40,000.00
4% on the next 40,000.00
3½% on the next 40,000.00
3% on all over 160,000.00

J. T. NUTTY.

Accepted by the Dominion National Bank, this the 26th day of March, 1955.

DOMINION NATIONAL BANK
By .....
Trust Officer.

EXHIBIT—ORDER OF PROBATE —JUNE 8, 1959.

10/15/59.

J. L. C., JR.

Virginia:

In the Clerk's Office of the Corporation Court of the City of Bristol, on Monday, the 8th day of June, 1959, before the Clerk of said Court.

In *Re*: Will of J. T. Nutty, deceased.

It appearing that J. T. Nutty died on the 10th day of May, 1959, and at the time of his death had a known place of residence on the Bluff City Highway in the City of Bristol, Tennessee, but with real estate in the City of Bristol, Virginia, a writing bearing date on the 26th day of March, 1955, purporting to be the true last will and testament of the said J. T. Nutty, deceased, was produced before the Clerk of the Corporation Court and proved according to law by the oaths of G. B. Arnold and Anna Sue Witt, the subscribing witnesses thereto, who severally deposed that the said writing was signed and acknowledged by the testator in the presence of said witnesses, they being present at the same time, and that they did thereunto subscribe their names in the presence of the testator and in the presence of each other and at the request of the testator as subscribing witnesses thereto, and that the testator was of sound mind and disposing memory.

On motion of Dominion National Bank, Executor named in said writing, it is ordered that said writing be and the same hereby is, established, probated and admitted to record as and for the last will and testament of the said J. T. Nutty, deceased, upon the execution of a bond in the penalty of $150,000.00.

Thereupon, the said Dominion National Bank, entered into and acknowledged a bond in the penalty of $150,000.00, but without surety as provided by Sec. 6-95 of the Code of

Virginia, conditioned as the law directs and took the oath prescribed by law.

And the Clerk doth appoint E. K. Bibb, Ernest H. Dickey, S. T. Bowman, Robert C. Boswell, and Craig Rockett, who after being duly sworn, shall appraise the estate of the said J. T. Nutty, deceased, and return their appraisement under their hands as the law directs.

Teste:

BERTHA R. DRINKARD, Clerk.

A Copy—Teste:

H. G. TURNER, Clerk.

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