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Record No. 5226

In the Supreme Court of Appeals of Virginia at Richmond

J. LANDRETH SHOTWELL

v.

VERNON E. SHOTWELL

FROM THE CIRCUIT COURT OF PITTSYLVANIA 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. 5226

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 5th day of October, 1960.

J. LANDRETH SHOTWELL, Appellant,

against

VERNON E. SHOTWELL, Appellee.

From the Circuit Court of Pittsylvania County

Upon the petition of J. Landreth Shotwell an appeal is awarded him from a decree entered by the Circuit Court of Pittsylvania County on the 7th day of July, 1960, in a certain chancery cause then therein depending wherein Vernon E. Shotwell was plaintiff and the petitioner was defendant; upon the petitioner, or some one for him, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of three hundred dollars, with condition as the law directs.

RECORD

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Filed in the Clerk's Office the 14th day of July, 1959.

Teste:

E. E. FRIEND, Clerk.

BILL OF COMPLAINT.

To the Honorable Langhorne Jones, Judge of said Court:

Your complainant, Vernon E. Shotwell, would respectfully show unto your Honor the following facts, to-wit:

1. That James C. Shotwell departed this life, intestate, on December 17, 1949 and left surviving him as his only heirs and distributees his widow, Addie M. Shotwell, and the following children: Vernon E. Shotwell, J. Bennett Shotwell, Agathy S. Reynolds, J. Landreth Shotwell, Junior Ray Shotwell, Sherman W. Shotwell, Robert O. Shotwell and Ruth S. Stemock. The said Addie M. Shotwell died June 2, 1958.

2. The said James C. Shotwell died seized and possessed of a certain tract or parcel of land lying in Pittsylvania County, Virginia on the East side of Straightstone Creek, adjoining the lands now or formerly owned by J. T. Layne and others, supposed to contain 156 acres, and being the same land conveyed to the said J. C. Shotwell by James S. Easley, Trustee, by deed dated February 27, 1928 recorded in the Clerk's Office of your Honor's Court in Deed Book 200 page 298, a certified copy of which deed is filed herewith marked "Exhibit A."

3. That subsequent to the death of the said James C. Shotwell the said J. Landreth Shotwell has been in control of the said tract of land; that he has cultivated or managed the cultivation of the crops on said land; and he has received the rents and profits from the same. The said J. Landreth Shotwell has not accounted to your complainant for his share of the rents and profits from the said land during the entire

period from the death of his father to the present
page 3 } time. Your complainant alleges that he is entitled
to have an accounting from the said J. Landreth Shotwell for your complainant's share of the said profits which he has so received from said land.

4. That by deed dated December 22, 1958 recorded in the Clerk's Office of your Honor's Court in Deed Book 386 page 219, J. Bennett Shotwell, Frances J. Shotwell, his wife; Agathy S. Reynolds, Horace Reynolds, her husband; Junior Ray Shotwell, divorced; Sherman W. Shotwell, unmarried; Robert O. Shotwell, Ruby M. Shotwell, his wife; Ruth S. Stemock and John Stemock, her husband, conveyed to the said J. Landreth Shotwell their 6/8 undivided interest in said tract of land, a certified copy of the said deed is filed herewith marked "Exhibit B." The said J. Landreth Shotwell inherited a 1/8 interest in said land. Your complainant and the said J. Landreth Shotwell now own the said tract of land as tenants in common, your complainant owning a 1/8 undivided interest and the said J. Landreth Shotwell owning a 7/8 undivided interest.

5. Your complainant believes and here alleges that the said tract of land is not susceptible of a convenient or judicious division in kind; that neither one of the co-owners is willing to take said property at its fair value and pay to the other owner the value of his respective share; that it will be to the advantage of both parties and the rights of no person injured thereby that the said property be sold and a division of the proceeds according to their respective interests.

6. Wherefore, your complainant prays that partition of the said land described above may be made by the Court in this cause in one of the modes prescribed by law; if partition in kind be impracticable, that the Court will order the said property to be sold and the proceeds divided among those
entitled thereto; that the said defendant may be re-
page 4 } quired to render an accounting of complainant's
share of the rents and profits from said land; that reasonable fee be allowed complainant's counsel herein; and he will ever pray, etc.

VERNON E. SHOTWELL
By Counsel.

W. G. VANSANT, Counsel,
Chatham, Virginia.

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Filed in the Clerk's Office of the Circuit Court of Pittsylvania County the 22nd day of July 1959.

E. E. FRIEND, Clerk.

ANSWER TO BILL OF COMPLAINT.

To the Honorable Langhorne Jones, Judge of said Court:

Your respondent, J. Landreth Shotwell, respectfully submits the following answer to bill of complaint filed in this cause against him:

1. Respondent admits the allegations of paragraph 1.
2. The allegations of paragraph 2 are admitted.
3. The allegations of paragraph 3 are denied and a detailed reply will be made later in this answer.
4. The allegations of paragraph 4 are admitted.
5. The allegations of paragraph 5 are denied and will be answered in detail later in this answer.
6. For further answer this respondent says that he has cultivated the tract of 156 acres of land mentioned in these proceedings from the time of his father's death to the time of his mother's death, the same being operated for the benefit of his mother as her sole financial support came from this said tract of land with the knowledge and consent of all the family, the 1/4th received from the tobacco crop was paid by this respondent to his mother, Addie M. Shotwell up until the time of her death on June 2nd, 1958.
7. This respondent did continue the operation of the farm after the death of Mrs. Addie M. Shotwell and raised a crop of tobacco and the 1/4th received from the said tobacco was paid to the order of the other children and the share due to the complainant, Vernon E. Shotwell, was offered to him and he declined to accept it. This respondent is now ready to pay his 1/4th of said crop of tobacco at any time.

page 6 } 8. This respondent has purchased 6 of the shares of the children in the said tract of 156 acres of land and has offered to purchase the interest of the complainant, Vernon E. Shotwell, at the same price which he paid to the other children, to-wit: $1,250.00 for each 1/8th share.

9. The said complainant declined to accept this sum of

money and refused to make any offer of a sale to this respondent.

10. Your respondent has offered to the complainant to have a 1/8th share of this land cut off and assigned to him as his share in any manner the said complainant would suggest either through Court or by agreement or by arbitration this offer has been refused by the said complainant.

11. Your respondent as indicated in this his answer has offered to comply in any proper way with the adjustment of the claim of the complainant but has been thwarted in his efforts by the attitude of the complainant who refuses to agree to do anything.

12. Since the death of Addie M. Shotwell on June 2nd, 1958 your respondent who was in charge of the aforesaid tract of land and cultivated a crop on it in the year of 1958 and spent out of his own pocket considerable sums of money in improving the property by permanent additions including the following items, to-wit:

(a) A new room was added to the residence on the land.

(b) Barns were repaired, some having new roofs and other necessary repairs.

(c) All the fences on the farm have been renewed.

Your respondent asks this Court of equity to make some equitable disposition of this matter and to deny the request made in the bill of complaint filed herein that the 7/8ths interest of this respondent be subjected to the costs of a sale to gratify some desires on the part of the complainant who manifestly does not seek equity but is attempting to press unnecessary costs on this defendant to protect his interests in this land.

J. LANDRETH SHOTWELL
By Counsel.

EASLEY AND VAUGHAN
Attorneys at Law
South Boston, Virginia
By JAMES S. EASLEY
Counsel for Respondent.

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DECREE OF REFERENCE.

This cause, which has been regularly matured, set for hearing and docketed, came on this day to be heard on the Bill of Complaint and the Exhibits filed therewith on July 14, 1959; on the Answer of the defendant, J. Landreth Shotwell, duly filed in the Clerk's Office on July 22, 1959; and was argued by counsel.

ON CONSIDERATION WHEREOF THE COURT DOTH ADJUDGE, ORDER AND DECREE as follows:

That the papers in this cause be referred to Hon. Henry T. Clement, Commissioner in Chancery of this Court, who is directed to inquire and report to the Court as follows:

1. The title of the complainant and respondent in this suit in and to the real estate mentioned in the Bill of Complaint.
2. What liens, if any, are against the property, their priorities, and by whom held.
3. Whether the said real property is susceptible of a convenient or judicious partition in kind among the owners thereof in one of the modes prescribed by law; and if not
4. Whether any one or more of the owners would be willing to take the whole property and pay to the others such sums of money as their interests may entitle them to; and if not
5. Whether the interest of those who are entitled

page 8 } to the subject or its proceeds will be promoted by a sale of the entire property and a division of the proceeds according to the respective rights of the parties; and if so
6. Whether the proper parties are before the Court in this cause to enable the Court to effect such partition.
7. An account of the rents and profits from said land since the death of James C. Shotwell, and how such rents have been disposed of.
8. Any other matter not specifically stated which the Commissioner may deem relevant, or any of the parties may require.

Enter 8/31/59.

L. JONES.

J. Landreth Shotwell.

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DEPOSITIONS.

The depositions of J. Landreth Shotwell and others, taken before me, Henry T. Clement, Commissioner in Chancery for the Circuit Court of Pittsylvania County, Virginia, on the 13th day of October, 1959, pursuant to decree of notice entered in the above styled chancery cause and notice herewith attached, to be read in the said cause now pending in the Circuit Court of Pittsylvania County, Virginia.

Present: W. G. Vansant, Counsel for Complainant.
James S. Easley, Counsel for Defendant.

Filed in the Clerk's Office of the Circuit Court of Pittsylvania County the 20 day of October 1959.

E. E. FRIEND, Clerk.

Dep.
page 14 } J. Landreth Shotwell was called as an adverse witness.

The witness,

J. LANDRETH SHOTWELL,
being duly sworn, deposes as follows:

Examination by W. G. Vansant, Attorney for Plaintiff:
Q. Please state your age, residence and occupation.
A. What do you mean by that? 42, farming. I live in the east end of Pittsylvania County.
Q. I believe you are the defendant in this case, is that correct?
A. I am supposed to be.
Q. You are the son of the late James C. Shotwell?
A. Yes.
Q. When did your father die?
A. December 1949, 17th of December.
Q. Did he leave a widow?
A. Yes.

J. Landreth Shotwell.

Q. Is she living now?
A. No.
Q. When did she die?
A. June last year.
Q. How many children did your father leave?
A. Eight.
Q. Will you name them please?
A. Vernon, Bennett, Agathy, Ray, Sherman, Rob, Ruth and myself.
Q. Did your father leave some land?
A. He left a place to be divided between them.
Q. How much land?
A. 156 acres.
Q. 156 acres?
A. Yes.
Q. Where is the land located?
A. East end of Pittsylvania County.
Q. Did your father leave a will?
A. No, not as I know of.
Q. Then the eight children inherited his property after the death of your mother, is that correct?
Dep. A. Yes, as far as I know.
page 15 } Q. You have been living on this place and tending it?
A. Yes, both places.
Q. What do you mean by both places?
A. Both of them are signed up together, the home place and where I am living.
Q. What do you mean by the home place?
A. Where I was raised at.
Q. In your answer you stated that this place, this 156 acres had been operated for the benefit of your mother as her sole financial support?
A. Yes.
Q. What became of her land? Didn't she own a farm?
A. She willed it to Ray.
Q. Ray didn't get it until she died did he?
A. No.
Q. What happened to the rents?
A. My father said she was supposed to get the fourth off both places.
Q. Your father did not own the farm where she lived did he?
A. Yes.
Q. Your father owned that farm?

J. Landreth Shotwell.

A. He tended it.

Q. How many acres are in the farm on which your mother lived?

A. 93 acres.

Q. Who owned that farm?

A. She did.

Q. What did she get from the farm?

A. She got the fourth.

Q. You were mistaken in your answer when you said the income from the 156 acres was the sole support of your mother?

A. I said both farms.

Dep. page 16 } Q. You say in your answer that the income from the 156 acres was the sole support of your mother. Was that correct?

A. She got the fourth off both places up until she died.

Q. Then she got the income off the 93 acres in addition to the 156 acres, did she not?

A. Off both of them.

Q. Then this is not correct when you say that the income from the 156 acres was her sole support?

A. She got the fourth off both places as long as she lived.

Q. You collected the rents off the 156 acres since your father's death?

A. Last year I paid all of them a fourth except him and he wouldn't accept.

Q. Did you offer them a statement?

A. They didn't ask.

Q. Have you got a statement now?

A. Yes.

Q. Let us have it. Have you furnished a copy of these statements to your brothers and sisters?

A. They didn't ask.

Q. Then you haven't given any until today?

A. I never have yet.

Q. Have you given anybody statements from the time your father died?

A. No.

Q. What did you pay your mother from the farm?

A. I paid her a fourth each year.

Q. How much did you pay her in 1950?

A. I don't know now.

Q. Have you got any account or any record where you paid her anything?

J. Landreth Shotwell.

A. No.
Q. How much did you pay in 1951?
A. I don't know.
Q. No records?
Dep. A. No.
page 17 } Q. Have you got any record of any amount?
A. Yes.
Q. When?
A. 1956.
Q. All right, may we have this?
A. This ain't including the taxes and insurance though. The fertilizer bill ain't on there.
Q. According to these checks you paid your mother $577.00 in 1956?
A. Except the fertilizer, taxes and insurance had to be took out.
Q. Have you record of any other amounts that you paid your mother during that period?
A. No, none, but I paid her the money, settled it between me and her.
Q. I believe after your mother got her part that your brothers and sisters were entitled to the balance divided between them, is that correct?
A. I don't know nothing about that. Daddy said pay the fourth to her as long as she lived.
Q. Did your Daddy leave a will?
A. No. If they wanted to kick why not before now?
Q. According to your statement your father died without a will in 1949 leaving a widow and eight children, and the widow died in 1958, is that correct?
A. Yes.
Q. During that period have you paid your brother, Vernon, any part whatever of these rents?
A. What year you talking about?
Q. From 1950 through 1957?
A. No, none of them, but last year I paid the rest of them.
Q. What was the total amount you received from the tobacco last year?
A. This here is just a half of what crop I had.
Q. Why half of it?
A. Half on one place, half from another one.
Dep. Half on this farm.
page 18 } Q. How much now?
A. 3.69 acres.

J. Landreth Shotwell.

Q. Isn't it 3.78 acres?
A. May be .78, I don't know.
Q. How much tobacco acreage is there on the other farm?
A. 2.37 I believe.
Q. How much did you get from both farms last year? What is the total received from both farms?
A. Here are the statements.
Q. How much did that amount to?
A. $4,191.20. My crop, not Ray's. Ray had a crop too.
Q. The 156 acres now has a tobacco allotment of 3.78 acres, is that correct?
A. Yes.
Q. And the 93 acres has an allotment of 2.17 acres, is that correct?
A. No, 2.39 acres, isn't it.
Q. Have you got any figures to show that Ray works 2.37 acres?
A. You can go over to the office and find out.
Q. Then roughly the 156 acres had 2/3 of the total tobacco allotment did it not?
A. Well, I don't know if you meant it that way or not, both places are together and have been that way until this year.
Q. But the proper allotment for the 156 acres was 3.78 acres?
A. I don't know. It wasn't started until this time.
Q. If it had been separate in 1958 it would have been that amount or that amount with the adjustment, would it not?
A. Not quite that much because we got an increase on Ray's part.
Q. You got an increase on Ray's part?
A. Yes.
Q. As a matter of fact, was not the total allotment for 1958 5.95 acres?
A. Yes, both farms.
Dep. page 19 } Q. And the total crop according to your statement would have been twice $4,191.20?
A. No, that is the amount that we got off what we had off mine.
Q. According to your statement fertilizer was $206.90. Was that for anything besides the tobacco?
A. No, not even for the corn. I paid for it myself. Don't tend much corn.
Q. And the hail insurance was $120.00?
A. Yes.

J. Landreth Shotwell.

Q. How many acres of tobacco allotment did you in fact have last year?

A. Well, we measured it all together and I had a little over four acres. We didn't have it seperate but measured all together.

Q. Will you leave the tobacco statements with the Commissioner to be returned to you?

A. Yes.

Q. You file this statement with the Commissioner marked "Exhibit Landreth 1958"?

A. Yes.

Q. Then it appears from this statement that you did not work the 93 acre tract and the 156 acre tract together last year?

A. Yes, both of them was signed up together until this year.

Q. Who worked it?

A. I did and my brother together.

Q. You are only accounting for a certain amount that you say came from 156 acres?

A. Yes and 93 acres too.

Q. This represents 93 acres too?

A. Yes, I tended tobacco on both.

Q. Was that all of the tobacco tended last year from both places?

A. No, I ain't got Ray's, nothing to do with his.

Q. Then you are not accounting for a fourth of both places, are you?

A. No, nothing but what I had myself. I don't claim the other fellow's crop.

Dep. page 20 } Q. And over this period of approximately 9 years this is the first and only statement you have rendered to anybody in regard to the rents you have collected from the lands?

A. Only one I have had to. My mother got the fourth off both as long as she lived.

Q. Have you anything other than these two checks to show what you paid your mother?

A. I haven't been through her papers. I don't know if she has anything or not. She went to Washington and I put the money in the bank and straightened it up with her.

Q. My question is have you any records whatsoever of anything you have paid your mother other than these two checks?

A. No.

J. Landreth Shotwell.

Q. And up until 1958 you had not paid any of your brothers and sisters any money from this rent?

A. Not until last year.

Q. According to the records in the Clerk's Office you have bought out the interests of six of your brothers and sisters, is that correct?

A. Yes.

Q. And you now own 7/8?

A. Yes.

Q. Who owns the other 1/8?

A. My brother, Vernon, is supposed to.

Q. Why do you say he is supposed to own it?

A. He claims it.

Q. Don't you know that he owns it?

A. Well, he ain't got nothing to show for it.

Q. Well, are you claiming it as yours?

A. No.

Q. Well, why do you say that he claims to own it?

A. Well, it was divided between us.

Dep. page 21 } Q. Who divided it between you?

A. It was supposed to be divided between the eight.

Q. You are here shown an offer made by your brother, Vernon, to purchase your 7/8 interest in this tract of 156 acres at the price of $17,500.00. Do you wish to accept this offer or not?

A. No, I wouldn't have bought it if I was going to sell it and also he tried to get me to buy the rest unbeknowing and he would go halves with me. I wouldn't give him no answer.

Q. You did buy the rest, did you not?

A. Yes.

Q. What did you pay for each of these interests?

A. $1,250.00.

Q. Is that all you paid any of them?

A. That is all.

Q. Have you agreed to pay any more?

A. One of them came back and wanted more.

Q. Did you pay him any more?

A. No.

Q. Did you agree to pay him any more?

A. I told him if I came out all right I might.

Q. What do you mean by came out all right?

A. If I worked all right and made it so I could pay it.

Q. Which one was it that you agreed to pay?

J. Landreth Shotwell.

A. Rob. Bennett said he wanted more money but when I paid him I didn't pay but $1,250.00. I have the check.

Q. Have you agreed to pay any of them any more?

A. Rob. I promised Rob I might. Bennett said he wanted $1,500.00 but I paid him only $1,250.00.

Q. None of them have agreed for you to pay them more money? It is a closed affair so far as they are concerned?

A. All but Rob.

Q. How about the others?

A. Not a word, not until since you all have been running over the place and timber and appraising it way up. They said something else about it but I don't know whether they will get it or not.

Dep. page 22

Q. How much more?

A. I don't know.

Q. You did not agree to pay any more?

A. None but Rob. Bennett said he wanted more but he didn't take but $1,250.00.

Question by Henry T. Clement, Commissioner in Chancery:

Q. Does anybody have the deed?

A. I have my deed.

Q. Will you exhibit it?

A. Yes.

The Commissioner examined the original deed.

Examination by W. G. Vansant:

Q. Well, you purchased that on the basis of $1,250.00 for each 1/8 share, is that correct?

A. Yes.

Q. And you considered that a fair value then?

A. I didn't set a price. They set their own.

Q. Now then it appears that the property is worth twice that amount?

A. I don't know.

Q. You have an offer of twice that amount?

A. Who from?

Q. Your brother, Vernon.

A. I don't accept it.

Q. He is offering you that, is he not?

A. He may be but I won't accept it.

Q. Did you make any statement whatsoever to your brothers

and sisters when you got that land as to what the land would be worth?

A. They set their own price.

Q. You didn't suggest any price?

A. No.

Q. You know that your brother, Vernon, owns a 1/8 interest in that property at the present time, do you not?

A. That is what they say.

Dep. page 23 } Q. Why have you put up posted signs over the land?

A. They have been up five or six years.

Q. You know that he has a right to go on the land?

A. Well, Mr. Easley told me if anybody wanted to look it over if he knew where his part was they could look at it.

Q. What do you mean by his part?

A. If he knows where his part was, look it over, wherever it was at.

Q. What do you mean wherever it was at? Don't you know that he has an undivided interest in the whole thing?

A. I reckon he has but Mr. Easley told me if anybody come there and wanted to see about it they were supposed to ask me.

Q. Do you know where your part it?

A. Well, it is somewhere around.

Q. As a matter of fact, you and your brother own the whole 156 acres together, do *not* not?

A. He's just got 1/8.

Q. But 1/8 in the whole?

A. Yes.

Q. And he has got a right to go on and go over the place if he wants to?

A. I don't know.

Q. Is it your present intention to keep everybody off?

A. Everybody wants to hunt and I try to keep them off and get birds turned loose and keep them from being killed.

Q. Is that the only purpose for the posted signs?

A. Yes, I have been having them for the last ten years.

Q. Then if your brother wants to bring someone there or send someone it is all right with you, is it not?

A. Mr. Easley will tell you that much.

Examination by James S. Easley, Attorney for Defendant:

Q. Mr. Shotwell, your father died I believe in 1949?

A. Yes.

J. Landreth Shotwell.

Q. And at his death he owned the 156 acres?
Dep. A. Yes.
page 24 } Q And you live on it and farm it?
A. Yes.

Q. How long have you lived on it?
A. Will be 20 years this fall.
Q. How long was your father ill before his death? Did he work with you?
A. No, he was ill 8 or 10 years.
Q. So for that period of time you have lived on the home place and paid to your people the rent?
A. I paid it to my mother.
Q. Your mother was able to tend to business of this sort?
A. Yes.
Q. You settled with her?
A. Yes.
Q. You settled in cash?
A. All except those checks when she went to Washington.
Q. And you made those payments by check?
A. Yes.
Q. Has there been any secret about what you have been doing up there?
A. Yes.
Q. Did they know you were paying her the rent?
A. Yes.
Q. Has there ever been any question in the whole ten years?
A. No.
Q. Your mother was capable of knowing about the settlement?
A. Yes.
Q. And you settled with her by the warehouse figures?
A. Yes.
Q. Now, since your mother's death, as I understand last year, up until last year the tobacco between the two places, the 93 acres and the 156 acres, was worked together?
A. Yes.
Dep. Q. Who made the tobacco on the 93 acre farm?
page 25 } A. This time?
Q. Yes.

A. Rob. He settled for that with the rest of the family for last year.
Q. Do you know how much tobacco he had?
A. No.
Q. How much did you have?
A. I had a little over 4 acres.

J. Landreth Shotwell.

Q. 4 acres and a little?
A. Yes.
Q. How much in all was there?
A. 5.95 acres.
Q. He had about 2 and you about 4 acres?
A. Yes.
Q. He settled for his part and you settled for yours?
A. No, he was supposed to have got all of his.
Q. Is this the statement for the 1958 fourth? Was that yours?
A. Yes.
Q. Do you know how much his crop was?
A. No.
Q. When was this agreement reached between you and the other children about the sale of their interests to you?
A. I don't know the date the deed was signed, they said something about it before then, some time around November or December, 1958.
Q. And how did the word get to you that they would sell?
A. All of us met to settle up the estate except him and Ray sent him a registered letter and he didn't come. I asked if they wanted to sell their interest and they told me what they would take and then I went to Washington to see if they were still going to do what they said. I asked Vernon and he said he hadn't given it a thought.
Q. Then during the latter part of your mother's life who looked after her?
Dep. page 26 } A. I did.
Q. You took care of the farm and looked after her?
A. Yes.
Q. Did you make any additions and improvements on the property?
A. On the place I live on?
Q. Yes.
A. I put up shelters and things.
Q. Namely, in a general order?
A. Built shelters, garage shelter, wood house shelter, stable, two room basement to the main house.
Q. You paid for that?
A. I did, wire fences and all.
Q. Have you had that work estimated and appraised?
A. I've had people to look at it.
Q. Who have you had?
A. Eugene Hodnett.

J. Landreth Shotwell.

Q. Is he a carpenter?
A. He did the whole thing.
Q. Did the members of your family know you paid for this out of your own funds?
A. Well, I don't know.
Q. And what year were those improvements made?
A. Different years.
Q. Between what years? What was the first year?
A. I would say from 52 on up.
Q. When did you build the two rooms to the house?
A. This spring.

Examination by W. G. Vansant:
Q. You stated that you looked after your mother after your father's death. Did she live in your home?
A. No.
Q. Where did she live?
A. At the home place.
Q. Who lived with her?
A. Ray and Rob. They went to Canada and won't nobody there but her sometime.

Dep. page 27 }

Q. You stated the home place. What do you mean? The 93 acres?
A. Her home place, where I was raised.
Q. That was her land?
A. Yes.
Q. Well, didn't Ray and Rob look after her some?
A. When they were there but when they were gone to Canada I did.
Q. Did they live in Canada?
A. No.
Q. How long did they stay?
A. Around 8 weeks, 7 or 8 weeks.
Q. Did they go each year?
A. Some years they did, some they didn't.
Q. Well, who looked after her while they were in Canada?
A. While they were in Canada, I did.
Q. What did you do?
A. I saw they had wood.
Q. Would you mind telling the Commissioner what they did?
A. They helped get the wood and stuff and looked after her as well as myself.
Q. You only helped them, is that correct?

J. Landreth Shotwell.

A. Yes, but when they were there I looked after her myself and my father too.

Q. Wasn't your tobacco as good as Ray's last year?

A. No.

Q. How much did he get for his?

A. I don't know.

Q. Did you have separate fields of tobacco?

A. No, some of it was in the same field.

Q. For these improvements that you have testified to, where did you get the timber?

A. Some of it I bought and some dead trees I cut and paid for the sawing.

Q. All the timber you used came off the place, did it not?

A. When?

Dep. page 28 } Q. The timber for these improvements?

A. No.

Q. How much?

A. I ain't figured it up, some edging boards that don't cost so much I used for shelters.

Q. Didn't you sell some of the timber or give some to have it sawed?

A. A year or two ago we did.

Q. What was that for?

A. On the home place where Ray had his crop.

Q. How much?

A. I don't know.

Q. How much have you bought out of your own money?

A. I don't know.

Q. You haven't the least idea, have you?

A. No.

Q. Now, part of these were improvements and part changes, were they not? Didn't you tear down the kitchen?

A. I tore down the porch and made a room from it.

Q. Made a room from the porch?

A. Yes.

Q. And have you any statements whatsoever for what you paid out for improvements on the property?

A. This room I have. I ain't got it with me. I have an estimate to see what it is worth.

Q. Are you able to give the Commissioner any definite information as to what the cost of the improvements were?

A. They have the figures in yonder, the men who looked it over.

Q. Have you any information from records?

A. What do you mean?

A. H. Overbey.

Q. Can you tell the Commissioner any amount that you have paid?

A. I have the bills at home but they made an estimate to see what they are all worth.

Dep. page 29 } Q. Did Mr. Easley tell you to bring your statements?

A. Well, he didn't exactly tell me to bring them, just to have it estimated to have what it would be, is that right Mr. Easley.

Q. When the depositions are transcribed, you authorize the stenographer to sign your name to this deposition?

A. Yes.

And further this deponent saith not.

J. LANDRETH SHOTWELL
By stenographer.

The witness,

A. H. OVERBEY,

being duly sworn, deposes as follows:

Examination by W. G. Vansant:

Q. Please state your age, residence and occupation.

A. I am 66 years old, engaged principally in real estate business and farming.

Q. How long have you been in the real estate business?

A. Well, off and on since '31 in real estate but appraising property since '31 connected with the bank here.

Q. At the request of Mr. Vernon Shotwell and me did you have an occasion to examine the Shotwell farm?

A. I did.

Q. Who showed you the lines?

A. You and Mr. Shotwell.

Q. State whether or not in your opinion this farm could be divided in kind so as to give one man a 1/8 interest and the other man a 7/8 part in a convenient division.

A. I don't think it would be practical.

Q. Why don't you think it would be practical?

A. Well, if you cut it up into 1/8 part there is timber on part of it and part of it is open. I don't know where you would begin.

Q. How are the buildings located?

A. Most of the buildings are pretty close together.

A. H. Overbey.

Dep. page 30

Q. Are the buildings all on one side of the road or on both sides?

A. I think they are all on one side. There might be a barn on the other side but I am not positive.

Q. Mainly on one side?

A. Yes.

Q. Are you related to any of the parties by blood or marriage?

A. No.

Q. Have you any interest in this controversy?

A. No.

Examination by James S. Easley:

Q. Mr. Overbey, give me some description of the property. Is it located on a hard surfaced road?

A. Not far off a hard surfaced road on a good all weather road.

Q. How far it is from the hard surface?

A. Well, I would just have to guess at it. I would say it is a mile.

Q. Is it near any town or market?

A. No, sir, it's near Cedar Forest Store.

Q. The nearest town would be Brookneal?

A. I think so.

Q. Do you know how far it is from Brookneal?

A. No, but I imagine some 15 or 20 miles.

Q. How much is in wood and how much is open?

A. Well, I don't know. I just had to ask and as well as I remember they told me that something less than half of it was tendable land. I went by the tobacco acreage and the way the land layed and what other farms in that section had been selling for.

Q. Is there much timber?

A. I did not go to the timber except that I could just see it. I didn't cruise it.

Q. Was it mostly small or what?

A. I didn't go down to the timber, just saw it from the hill.

Q. What was the size of the house? How many rooms?

Dep. page 31

A. I just looked at the house at a glance, didn't go in. It looked like a pretty nice house. They asked me for an estimate on the worth and I based my judgment on what the sales in the neighborhood had been and I have to get information from other people. I asked in the neighborhood. Very good house,

tenant house, but I gathered from the neighborhood it was worth from seven to eight thousand dollars or more.

Q. The house?

A. That is what I was informed. Now, I didn't go in the house.

Q. You don't know anything about what part was added new or anything?

A. No, sir, I didn't have anything much to do with the appraisal of the house.

Examination by W. G. Vansant:

Q. Assuming that this property is owned by two people, one owning 7/8 interest and the other 1/8 interest, state whether or not in your opinion it would be to the best interests of the parties to have the entire property sold and a division of the proceeds.

A. The best interests of both parties? It is a hard question. If they can't get together selling it is a way of settling it.

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

A. Yes.

And further this deponent saith not.

A. H. OVERBEY
By stenographer.

The witness,

VERNON E. SHOTWELL,

being duly sworn, deposes as follows:

Examination by W. G. Vansant:

Q. Please state your age, residence and occupation.

A. Vernon E. Shotwell, 50 years old, 3116-13th Road S., Arlington, Va.

Q. Are you the plaintiff in this case?

A. Yes, sir, I am.

Q. You are the son of Mr. James C. Shotwell?

Dep. page 32 } A. Yes, sir, I am.

Q. And as has been previously testified, you own a 1/8 undivided interest in the farm left by your father?

Vernon E. Shotwell.

A. Yes, sir, I do.

Q. Has your brother, Landreth, at any time paid you any money from the rent from this farm since your father's death?

A. No, sir, he did say that he was going to send me a check and I told him not to because because we would have to have a staement. In June he did send a register letter which I did not accept.

Q. Did you ever ask for statements before?

A. No.

Q. Did you ask for a statement when he offered your check?

A. Well, he was at my brothers only 10 miles from where I lived. I said I would have to have the statements before I could settle at all this time.

Q. Have you ever seen the statement for the 1958 rent before this morning?

A. I was down there in 1958 when he got his first statement and he showed me his statement. I don't remember exactly when but it was '58. That was the one statement that I have seen out of the 9 years, that's the first and the last. I don't remember the amount but it was maybe around two or three hundred dollars.

Q. Did you at any time ever authorize and direct him to pay your share to your mother?

A. So far as I know I never have authorized him to do that.

Q. Are you familiar with the boundary lines on your father's farm?

A. Yes, sir, fairly close, I wouldn't say that I could pick them exactly straight but I am very familiar with them.

Q. Did you point out those lines to Mr. Overbey?

A. Yes, to the best of my ability I did.

Q. Has the place ever been surveyed?

A. No, sir, not to my knowledge.

Dep. page 33 } Q. If the place has to be sold, in your opinion should there be a survey?

A. I think that would be the proper thing to do, yes, sir, I do. I am satisfied to do it in other words.

Q. How much tobacco allotment is there on the place at the present time?

A. 3 acres and .78 or .79 I believe it is. I don't have it down but I went over here to the court house and got it.

Q. There is between 3 3/4 and 4 acres?

Vernon E. Shotwell.

A. Yes, that's very close.

Q. State whether or not in your opinion this land could be conveniently or judiciously divided in kind so as to give you a 1/8 part in value and your brother, Landreth, a 7/8 part in value.

A. Well, the only thing about it up until now the last few years I didn't know property was worth what *is* is worth and with the tobacco that is on it I would get less than a half acre and he would get all the buildings there on it. He told me I could have mine on the creek banks and I have no use for it down there.

Q. Did he ever make any suggestion to you that the land might be sold and the proceeds divided?

A. No, sir, no suggestion.

Q. Did he make an offer to you for your 1/8 interest?

A. I received a letter from Mr. Easley offering me $1,-250.00. That was the first offer. I told him we would have to settle this rent before the land.

Q. Is that the only offer you have had?

A. Yes, $1,250.00 from Mr. Easley.

Q. Have you today made him an offer for his 7/8 interest?

A. Yes.

Q. Is this the offer?

A. Yes, sir.

Q. Then you are willing to take the whole property and pay your brother $17,500.00 for his 7/8 interest with a merchantable title?

A. Yes, if the property is left as it stands and not destroyed any way.

Dep. page 34 } Q. And you have set out the terms in your offer which you are willing to meet?

A. Yes.

Q. State whether or not in your opinion since he has rejected this offer whether or not it will be to the best interests to have the whole property sold and a division of the proceeds.

A. Well, I will have to take the same stand Mr. Overbey did. There is no other way out of it as I see it. I own 1/8 and he owns 7/8 and I can not take $1,250.00 for mine and he won't take $17,500.00 which is twice as much as he paid the others. It is a nice little profit he has made in about 8 or 10 months.

Examination by James S. Easley:

Q. Mr. Shotwell, that is your brother's home, isn't it?

A. My daddy's farm.

Vernon E. Shotwell.

Q. Hasn't he made his home there and lived with your mother?

A. He lived on it. My mother had her own farm.

Q. How far apart were they?

A. I think it is either .4 or .6 of a mile.

Q. Right in the same neighborhood?

A. Yes.

Q. Who looked after your mother?

A. He did some things but two of my brothers stayed there practically all time.

Q. These three brothers helped?

A. Yes.

Q. Did you do anything?

A. I have spent 3 to 4 weeks with my mother each year.

Q. You didn't have the responsibility of looking after her?

A. No.

Q. Did she ever complain about the way your brother treated her?

A. I have asked her many times if she received statements. She said she took what he gave her.

Dep. page 35 } Q. She was a capable woman and settled in a way agreeable to her and to him. Was there any trouble? Did your mother say he was taking advantage of her?

A. My mother was a very kind woman. If things didn't suit her she probably wouldn't say anything.

Q. During these 9 years that you were away and he was there did you ask your mother about her financial condition?

A. She always said her farm would provide anything she needed, her own farm.

Q. She was satisfied with the relationship existing between her and Landreth?

A. Well, she didn't complain too much except as to small matters as all families do.

Q. What did she complain of?

A. He was very nasty to her at times. One time I was down there to help build a porch and mother needed a wheelbarrow and he said no, we couldn't use his wheelbarrow, he wouldn't let anybody use his wheelbarrow to haul concrete in.

Q. It was for your mother?

A. Yes.

Q. When did the friction start between you and Landreth?

A. When I told him I wouldn't accept his offer.

Junior Ray Shotwell.

Q. Why?
A. Because I felt like I was entitled to more.
Q. Have you had the property appraised?
A. No.
Q. He offered to pay you the rent like he did the others, didn't he?
A. I suppose he would have.
Q. He sent you a registered letter?
A Yes, but I didn't accept it.
Q. Why not?
A. Because I had told him while I was down there last June I would have to see the statements and dispose of the crops first and then we would go into the land. That caused it. We have been close before. I have done many things for him.

Dep. page 36

Q. What has he done for you?
A. Nothing more than a few meals and a nights lodging,
Q. And you have had a grudge against him for a long time?
A. No. I don't have a grudge against him now.
Q. Mr. Shotwell, you know that the value of this home to him is that it has been his home all his life?
A. I have always considered that my daddy's piece of property. I think if he had have wanted one of his children to have it he would have made a will.
Q. Has this feeling between you and Landreth been going on ever since your father died?
A. No. I don't have any today. I returned a registered letter. He told me it had the money.
Q. You did not know what was in the letter without looking in it?
A. No.
Q. Do you authorize the stenographer to sign your name to this deposition after it is written?
A. Yes, sir, I do.

And further this deponent saith not.

VERNON E. SHOTWELL
By stenographer.

The witness,

JUNIOR RAY SHOTWELL,
being duly sworn, deposes as follows:

Junior Ray Shotwell.

Examination by James S. Easley:

Q. Ray, you are a brother of these two boys?

A. That is right.

Q. You are one that came home after your father's death?

A. After I came out of service.

Q. What year did you come out of service?

A. In February '47 or '48, I don't remember.

Q. Was your father's health bad at that time?

Dep. page 37 }

A. He had been sick off and on for a right smart while.

Q. Was he able to do any farming?

A. Well, he would help a little, but not able to do much.

Q. Did you work the two farms as a unit?

A. Yes.

Q. Who worked them from the time of your father's death?

A. From the time he died Landreth and myself did. This time Rob worked my part.

Q. Your mother left you part of her farm?

A. That is right.

Q. What did you do about tobacco? Who did you pay it to?

A. Paid it to mother.

Q. Did all of the family understand?

A. That's the understanding that I always heard my daddy say, and her too, that he wanted her to have the fourth as long as she lived.

Q. That was understood in the family?

A. I did and I think the rest did too.

Q. Did anybody raise any question?

A. Not until this year.

Q. Was your mother entirely satisfied with the arrangement?

A. As far as I understood she was.

Q. You and he paid the fourth from the time of your father's death to your mother?

A. Yes and Rob too.

Q. What happened last year? Your mother died in 1958?

A. That's right.

Q. What happened last year?

A. Practically all the acreage on both places was raised on the place I had except an acre and a few tenths.

Q. How much was his crop?

A. I don't have the figures.

Junior Ray Shotwell.

Q. You and he divided it between you?

A. He paid the other members of the family half of his crop.

Q. And your crop was on your mother's place and half of his?

Dep. page 38 } A. There was only 1 acre and a few tenths on his farm. The rest was on mine.

Q. He paid a half of his own crop?

A. That is right. His half. He had more than I did.

Q. How much was the total acreage?

A. 5.95 acres.

Q. And out of the 5.95 acres you had he had more than half, is that right?

A. Yes, but a part of that tobacco was raised on mother's farm, all except one acre.

Q. And he gave to your mother half of his own crop?

A. He gave it to the 8 children.

Q. Do you know anything about the check that your brother refused to accept?

A. Yes. Well, one time went to see him on mama's estate and he won't in no hurry to settle and I did hear him ask him did he want his fourth back in the spring and he told me he mailed him a check for his part same as the others and he turned it back.

Q. Speaking of your mother's estate, did she leave you her farm?

A. Yes.

Q. I ask you again was the arrangement that was made there between you and Landreth, the part about your mother, was it agreeable to her for the years '49 through '58 to pay her the fourth?

A. Yes.

Q. Were there any questions from anybody?

A. No.

Q. Was she able to check the papers herself?

A. When I would sell I would come in and pay her mine but I have seen him come in the kitchen and there they would straighten up theirs. They would have the tickets before them and the money was passed. They made their own settlement.

Q All that was satisfactory to your mother as far as you know?

Dep. page 39 } A. Yes.

Q. Did Landreth care for her properly?

A. Yes, him and Rob was the only ones there while we were in service.

Junior Ray Shotwell.

Q. No trouble ever came up until this suit?
A. That is right.
Q. Were you present when the family agreed to convey your interest to Landreth for $1,250.00?
A. You mean when I sold my part?
Q. Yes.
A. That is right.
Q. Was $1,250.00 satisfactory to you?
A. Yes.
Q. How was that arrived at? Did he make an offer or the children?
A. Well, this came up while I had my mother's estate and had a period of one year to settle and I called them all together once. A few of them come and some didn't. The rest of them I called them. I had to send my brother, Vernon, a registered letter and he still refused to show up. After that all the others appeared one time and we settled that and then this was brought up. He asked them and they gave him an offer.
Q. Did they make the suggestion of $1,250.00?
A. Yes. Each one told him what they had to have and that is what it was.
Q. Those boys and daughters all knew about this property and had their own ideas?
A. Yes.
Q. Was any pressure used to pursuade them to take less?
A. No, we all sat at the table and discussed it. He asked and we made the agreement.
Q. Do you know anything about the repairing that your brother did, repairing the fences, tops, etc.?
A. I helped him work on the house last winter.

Dep. page 40

Q. Did he pay the costs?
Q. He paid for every bit of it. I do know that.
Q. You did some of the work yourselves?
A. Yes, sir, we did some of it.

Examination by W. G. Vansant:
Q. How much did your brother pay you for working on that?
A. That is between me and him.
Q. You refuse to answer?
A. No, I am not going to refuse to answer. I want to think a little bit. It is a hard question to answer here this way.
Q. You don't remember then, you don't remember his paying you anything?

Junior Ray Shotwell.

A. Make it this way, I didn't ask him for anything.

Q. Who suggested this $1,250.00 for a 1/8 interest in this property?

A. All the children.

Q. If you had have known that it was worth $2,500.00 would you have sold for $1,250.00?

A. It would have depended on who I was selling it to. Not out of the family, no.

Q. You meant to give him then $1,250.00 on your share?

A. No.

Q. If it now appears that the property is worth at least $20,000.00 that is what it amounts to, does it not?

A. Well, I really don't know.

Q. But you do tell the Commissioner you would have sold for $1,250.00 if you had known it was worth $2,500.00?

A. Yes. If it had to go out of the family, no.

Q. Then you meant to give Landreth $1,250.00?

A. No, I sold it at a fair price.

Q. You say your father stated that he wanted your mother to have a fourth interest?

A. A fourth as long as she lived.

Q. Did he leave a will?

A. No.

Dep. page 41

Q. And his property descended to his widow 1/3 for life and then to the 8 children?

A. Yes.

Q. Now, you never had any specific agreement with your brother so far as your interest in the rents was concerned, no definite agreement with Landreth?

A. No. We were renting together. He would have a certain amount of interest, he would pay his fourth, I would pay mine.

Q. So far as your share in the rents was concerned you never had a definite agreement?

A. No. I paid it to my mother.

Q. In 1958 how much did your crop bring?

A. My crop brought me? Now, I can't tell you right to the penny.

Q. How near can you tell?

time?

A. Well, $1,700.00.

Q. Well, if the records in the ASC Office show that the total crop for 1958 on the 5.95 acres amounted to $7,404.82 and your brother received $4,181.70, then you must have received approximately $3,200.00, is that correct?

Agathy S. Reynolds.

A. No, I told you what was correct. I am not definite but it is around $1,700.00. I have got the statements and can produce them. I have them at home.

Q. Do you authorize the Commissioner to get the information from the ASC Office as to the amount of tobacco sold from the two farms last year?

A. Yes.

Q. How long were you in the army?

A. Four years and two or three months.

Q. With the exception of that time hasn't your mother lived with you in the same house?

A. Yes.

Q. Who else lived there?

A. My brother, Rob, stayed some and Sherman stayed one year and then he went to Washington after service.

Dep. page 42 } Q. And all of you have stayed from time to time?

A. Yes, but actually looking after her you would have to be there and do the work.

Q. Are you familiar with the repairs that your brother put on the place?

A. Yes, sir.

Q. Where did he get the timber?

A. Well, the timber for the house came off the place but some of the shelters and things was put up years ago when I was in service.

Q. Didn't your brother sell part of the timber to get it to go in the house?

A. Not that I know of.

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

A. Yes, sir.

And further this deponent saith not.

JUNIOR RAY SHOTWELL
By stenographer.

The witness,

AGATHY S. REYNOLDS,
being duly sworn, deposes as follows:

Agathy S. Reynolds.

Examination by James S. Easley:

Q. Are you a daughter of Mr. Jim Shotwell?

A. Yes, sir.

Q. And a sister of Landreth and the others?

A. Yes.

Q. Are you familiar with the family understanding about your mother after your father's death, about what was to happen to her?

A. Yes.

Q. What was the understanding?

A. She was to have the rent as long as she lived.

Q. She was to have the rent from the 156 acre farm?

A. The rest was hers.

Dep. page 43 } Q. Was that done, that part carried out?

A. As far as I know.

Q. She never complained that it wasn't?

A. I didn't hear anything.

Q. It was understood that she was to have the fourth for her life?

A. Yes.

Examination by W. G. Vansant:

Q. When did you all make that understanding?

A. I really don't know.

Q. You don't know?

A. No.

Q. Who was present when the understanding was made?

A. I can't tell you that.

Q. How do you know it was made? When did you definitely agree to it?

A. After he died we all got together.

Q. Where were you together?

A. At home.

Q. And when was that? Who was present?

A. I don't know. All of us.

Q. Where did it take place?

A. Home place.

Q. What do you mean by the home place?

A. Where we lived.

Q. What time of day was it? When was that? What year?

A. I don't remember.

Q. You don't remember anything definite about any such agreement as that, do you?

A. No answer.

J. Bennett Shotwell.

Q. You don't remember any of the circumstances, do you?
No answer.
Q. I believe you sold your interest in the land to your brother, Landreth, for $1,250.00, is that correct?
Dep. A. Yes.
page 44 } Q. How did you determine the value? How did you determine that was a fair value?
A. We agreed it together.
Q. Would you have sold your 1/8 interest for $1,250.00 if you had known it was worth $2,500.00?
A. Yes.
Q. Do you authorize the stenographer to sign your name to this deposition when it is written up?
A. Yes.

And further this deponent saith not.

AGATHY S. REYNOLDS
By stenographer.

The witness,

J. BENNETT SHOTWELL,
being duly sworn, deposes as follows:

Examination by James S. Easley:
Q. What is your name?
A. John Bennett Shotwell.
Q. Where do you live?
A. 4800 Kirks Road, McLean, Virginia.
Q. You are one of the children of Mr. Jim Shotwell?
A. Yes.
Q. Mr. Shotwell, after your father's death did your family enter into any agreement about how the farm should be run?
A. Not to my knowledge. My father left it to my mother for her life and then to the children. That is what he told me.
Q. Did you all discuss it after your father's death?
A. Yes, sir.
Q. *Where* they all there?
A. Yes, sir.
Q. And that was the agreement?
A. Yes.

J. Bennett Shotwell.

Q. That she was to have the possession of the property and collect the rent?

Dep. page 45 } A. Yes.

Q. There were no questions about that?

A. No question.

Q. You saw your mother each year?

A. 3, 4, 5 or 6 times. We always came to visit after she sold the tobacco.

Q. There was no feeling that she was not getting what she was supposed to?

A. No.

Examination by W. G. Vansant:

Q. Did your father leave a will?

A. Not to my knowledge.

Q. What were the circumstances?

A. We were all at home and my father always told all of the children that he wanted mother to have the farm in her life and then to divide it.

Q. That was his statement?

A. Yes, sir.

Q. You first said you hadn't had any agreement between the children.

A. All of the children were there. I have heard him tell all of them.

Q. It appears in the evidence that you sold your interest for $1,250.00. Would you have sold that interest if you had have known it was worth more?

A. I would have sold to my brother for what I did because I felt that he did for my father what I couldn't do because I wasn't there. I wanted to give him a good deal.

Q. You did not go back and ask for more?

A. No.

Q. Was he mistaken when he said you wanted more?

A. I haven't said anything about more.

Q. That is a closed transaction. You wanted to give him $1,250.00?

A. Yes.

Dep. page 46 } Q. After you found out that the timber was so valuable did you look into it and make a trip for that purpose?

A. No.

Q. Will you authorize the stenographer to sign your name to this deposition?

Robert Shotwell.

A. Yes.

And further this deponent saith not.

J. BENNETT SHOTWELL
By stenographer.

The witness,

ROBERT SHOTWELL,
being duly sworn, deposes as follows:

Examination by James S. Easley:
Q. Are you the youngest child?
A. No, my sister.
Q. Your name is Rob?
A. That is right.
Q. Do you know of the agreement your family had after your father's death about the handling of the farm and your mother's interest in it?
A. No more than she got the fourth.
Q. She did get the fourth of the crop raised on the farm?
A. That is what as far as I know.
Q. Was that understood by the family and agreed to?
A. No.
Q. Did you discuss it after your father's death?
A. No, I don't think so.
Q. Where did you get that from?
A. My father always said he wanted her to have the fourth.
Q. He told all of the children?
A. He told me but I heard him tell some of the others.
Q. Was that generally understood among the children?
A. Not as I know.

Dep. page 47 }
Q. You never discussed it with him?
A. No.
Q. Were you satisfied with it that way?
A. Yes.

Q. Did anybody else ever raise any question about it?
A. No.

Examination by W. G. Vansant:
Q. It appears in the evidence that you sold your 1/8 undivided interest in your father's farm for $1,250.00. Would you have sold that interest if you had known it was worth $2,500.00?

Robert Shotwell.

A. I didn't sell it to him for no $1,250.00.
Q. What did you sell it to him for?
A. $1,500.00.
Q. Have you collected all the money?
A. No, sir.
Q. Why was it yours sold for $250.00 more than the rest?
A. The agreement I made.
Q. Who set the figure of $1,250.00?
A. I couldn't say who set the figure. Most of them told him that they would sell theirs for that and I told him that if he got all the rest of them for that I would let him have mine but if he didn't I wanted $1,500.00. After I signed the papers I asked him for $1,500.00 and he said he was.
Q. Do you know of any more who got more than $1,250.00?
A. No way of proving it, no.
Q. What did your brothers and sisters first ask for their shares?
A. I would say, I think it was $1,250.00. I ain't sure but I think my sister was the first one or Bennett. My sister told him she wanted $1,500.00 for hers but would let him have it for $1,250.00. Bennett said "I ain't got no use for it myself but will give $16,000.00."
Q. Who suggested $1,250.00 for 1/8 interest?
A. They agreed on that.
Dep. page 48 } Q. Did Landreth suggest $1,250.00 as being a fair value?
A. The one did I think so.
Q. Were you all present at the time when you agreed?
A. No.
Q. How many were absent?
A. One.
Q. And you say that Landreth suggested the $1,250.00?
A. No, I didn't say he did.
Q. Who did suggest the $1,250.00?
A. Ruth said that she wanted $1,500.00 for hers but she did let him have it for $1,250.00.
Q. What was said about the timber?
A. Ruth said something about selling the timber and then selling the place.
Q. What did Landreth say?
A. That there was not much timber on the place.
Q. Did he say how much?
A. I think he said five or six hundred dollars.
Q. A small amount?
A. Yes, a small amount.

Q. Do you authorize the stenographer to sign your name to this deposition when it is written up?
A. Yes.

And further this deponent saith not.

ROBERT SHOTWELL
By stenographer.

The witness,

EUGENE HODNETT,
being duly sworn, deposes as follows:

Examination by James S. Easley:
Q. Mr. Hodnett, what is your occupation?
A. Contractor.
Q. How far from the Jim Shotwell farm do you live?
A. About 8 or 10 miles.
Dep. page 49 } Q. You know the farm?
A. I don't know too much about the farm.
Q. You know where it is located and the house?
A. Yes.
Q. Did you go over the buildings on that property with Mr. Landreth Shotwell to make some estimate of the improvements?
A. I did.
Q. When did you do it?
A. I didn't set down the date. I would say it was something like six weeks or two months ago.
Q. Have you got an estimate?
A. Yes. Now, I just went over the dwelling house alone.
Q. What is your estimate of the value of the additions made there?
A. $4,500.00.
Q. You think that is fair?
A. Well, I wouldn't take the job today for that price. I didn't know what I was getting into but I went over it and tried to be fair. Some of it is out of rough lumber and some out of nice stuff, and he didn't tell me anything about what I was getting into but I wouldn't take the job this morning for that amount of money.
Q. You have a detailed estimate of the different items?
A. I made it off on a billhead and gave it to Landreth. Now, what I did I just went in each room and he told me what he had done and what was already done and I made an

Eugene Hodnett.

estimate of what I would have done that for but I don't have exactly everything. Just like if you came and sent me to your house to appraise it I wouldn't have itemized everything unless you said so. My hands done the work other than what Landreth and his boys did.

Q. Who did it?

A. A man who works with me now and he quit about long enough to do that job and paint a house or two.

Examination by W. G. Vansant:

Dep. page 50

Q. What about the man who did the work?

A. He is an employee to me now.

Q. How much do you pay him?

A. $1.60 an hour.

Q. All you know is what Landreth said, you did not know the conditions before?

A. He told me what he did and I estimated the work.

Q. Did he tell you when he did it?

A. Well, this man quit work with me. It was right around Christmas of 1957 that the man quit and he's done this job of work since then.

Q. This job was done this year?

A. Yes.

Q. How about the living room, do you know how much that was?

A. No.

Q. Front porch?

A. No, sir.

Q. Or back porch?

A. No, sir. I just estimated those.

Q. What do you suppose the timber would have amounted to?

A. Well, for that front porch and the back porch I would say the material in it would be somewhere around $300.00.

Q. How about the new part of the house?

A. You have me in a place where I can't say. It is a big house and hard to itemize. For the material that Landreth has used I would say it would have cost at least from $2,000.00 to $2,500.00 for the material and the way we base our work is against the material. If we use $2,000.00 for material we usually try to get $2,000.00 for working so that is sort of the way I got that.

Q. You don't know whether he bought any of the lumber or whether it came from the place?

A. Some of it he must have bought.

C. T. Moon.

Q. Do you know how much?

Dep. page 51 } A. I didn't get that close on it. I didn't know just what I was getting into. He just asked me what I would do the work for.

Examination by James S. Easley:

Q. Will you file the statement that you have showing the $4,500.00 along with the papers in this case?

A. Yes.

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

A. Yes.

And further this deponent saith not.

EUGENE HODNETT
By stenographer.

The witness,

C. T. MOON,

being duly sworn, deposes as follows:

Examination by James S. Easley:

Q. Mr. Moon, are you familiar with the farm of Mr. Jim Shotwell?

A. Yes, sir. I live about 3 or 4 miles from it.

Q. Did you go over the buildings and grounds and at the request of Mr. Landreth Shotwell see what he did in the way of putting roofs and different additions to see about the cost?

A. Yes.

Q. Do you have a statement there of it?

A. Yes.

Q. These are the things outside of the main building you have got: garden wire, barbed wire and fencing $275.00; repaired 3 barns and built shelters $300.00; 4 shelters $100.00; garage $325.00; 6 shelters $500.00; built room and two ends to cabin $100.00; cleared land with bull dozer $100.00; moved room and fixed it up $150.00, total $1,850.00. Is that your estimate?

A. Yes.

Q. You looked at that work you say and think these fair?

A. Yes.

Q. Do you know about how long ago that was done? Was

C. T. Moon.

some of it done several years ago and some done recently?

Dep. page 52 } A. Yes.

Q. And your estimate of the cost is $1,850.00?

A. Yes.

Q. Have you had experience with that type of work?

A. Yes.

Q. Will you file this statement with your deposition?

A. Yes.

Examination by W. G. Vansant:

Q. Mr. Moon, are you related to Mr. Landreth Shotwell by blood or marriage?

A. His wife is my niece.

Q. When was most of this work done on this house?

A. A lot of it about 8 or 10 years on the garage.

Q. How about the dwelling house?

A. We didn't have anything to do with the dwelling house. We didn't appraise that, the home he is living in.

Q. Your figures there are just an estimate. You had nothing to go on as to what the material cost?

A. No, nothing but what we could see.

Q. What about material 8 years ago as with today? Was it as high?

A. It was not all done 8 years ago. Some has been done since then.

Q. Hasn't material been going up since 1949?

A. Yes, it's gone up some.

Q. What is flooring worth now?

A. Good around $200.00 a thousand.

Q. How much was it worth in 1950?

A. About $140.00.

Q. You could buy good flooring for $100.00 in 1950?

A. Not the best.

Q. But material has gone up during this period, hasn't it?

A. Yes.

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

A. Yes.

Dep. page 53 } And further this deponent saith not.

C. T. MOON
By stenographer.

Sherman Shotwell.

The witness,

SHERMAN SHOTWELL,

being duly sworn, deposes as follows:

Examination by James S. Easley:

Q. What is your name?

A. Sherman Shotwell, S. W.

Q. You are a son of Mr. Jim Shotwell?

A. That is true.

Q. You are a brother of Landreth?

A. That is true.

Q. What is your address?

A. Hyattsville, Maryland.

Q. Mr Shotwell, after your father's death, which I believe was in 1949, did the family make any agreement or understanding about how to operate the farm?

A. My father said himself that mother was to draw the fourth off the place until her death and all members of the family understood as far as I know, yes.

Q. Was that done when you settled your father's estate?

A. There was no settling to be done. That was what daddy said, mother was to have the fourth for her life time.

Q. Was that done? Was that carried out?

A. As far as I know.

Q. Was any question ever raised until this trouble came up? Did your mother or anyone ever raise any question about that arrangement?

A. To my knowledge no.

Q. Your brothers, Landreth and Ray live on the farms, don't they?

A. Yes.

Dep. page 54 } Q. And they are the ones who settled with your mother?

A. My mother handled her own business. I told her one time I would do it but it would have to be in black and white but she never did give me that authority.

Q. Was she capable of handling her business?

A. Yes.

Q. Up until a short time before her death was she able to do the managing?

A. Yes.

Examination by W. G. Vansant:

Q. Did your father leave a will?

Sherman Shotwell.

A. No.

Q. Then you all never did have any definite agreement except what your father said?

A. What he said he wanted.

Q. No written agreement?

A. No.

Q. Mr. Shotwell, you sold your 1/8 interest to your brother for $1,250.00?

A. Yes.

Q. Who suggested that?

A. I took that as my business and made my own price.

Q. You would have sold it for that if you had known it was worth $2,500.00?

A. That was still my business and I made my own price.

Q. Are you refusing to answer my question?

A. If I had known it was worth $2,500.00, out of the family, no.

Q. Did you mean to give your brother $1,250.00?

A. I can't say that I meant to give him $1,250.00 but that was my price and he was willing to pay it.

Q. Was anything said about the timber?

A. We asked approximately how much timber was on the place and he said he didn't know exactly, but since then he has agreed to make an adjustment as to a certain amount.

Dep. page 55 } Q. What did he say the value of the timber was on the day you agreed to sell for $1,250.00?

A. What do you mean?

Q. Did he put a value on the timber on that first day?

A. Not a value. He said approximately.

Q. What did he say?

A. Five or six hundred dollars.

Q. And you have afterwards found out that it was worth a lot more?

A. I have been told it was. I have seen a letter written about it but the letter was not signed.

Q. And the agreement now is that he is to give you some more money?

A. He said he would make it right.

Q. What do you mean make it right?

A. If there is more there I will get more money.

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

Ruth Shotwell Stemock.

A. Yes.

And further this deponent saith not.

SHERMAN SHOTWELL
By stenographer.

The witness,

RUTH SHOTWELL STEMOCK,
being duly sworn, deposes as follows:

Examination by James S. Easley:
Q. You are a daughter of Mr. Jim Shotwell?
A. Yes.
Q. Are you married?
A. Yes.
Q. What is your married name?
A. Ruth Stemock, 4076 30th Street, Washington, D. C.
Q. Do you know if your father died in 1949 and left a farm of 156 acres? Do you know what agreement the family made about the handling of it after your father's death?
Dep. page 56 } A. Not any to my knowledge, no agreement other than she was to get the income as long as she lived. Any other agreement I don't know anything about. That is, the income from the farm was to go to her. That is what my father said.
Q. That was done, wasn't it?
A. As far as I know.
Q. Was there ever any question raised?
A. Not to my knowledge.

Examination by W. G. Vansant:
Q. You don't know of any agreement except what your father said?
A. There was no other agreement.
Q. Did your father leave a will?
A. Not to my knowledge. I have never seen one.
Q. As a matter of fact, your father just said what he wanted, there was no other agreement?
A. Yes.

Ruth Shotwell Stemock.

Q. You sold your 1/8 interest in the farm for $1,250.00, did you not?

A. Yes.

Q. Would you have sold for $1,250.00 if you had known it was worth $2,500.00?

A. Out of the family, no.

Q. You meant to give your brother extra?

A. He is in the family and living there and I felt that he was entitled to something and I told him I wanted $1,250.00 for my land.

Q. Has he made any other settlement to you since?

A. No, sir. He said if there was more timber on the place than he knew about that he was willing to make adjustments.

Q. What kind of adjustment?

A. He doesn't know until he knows the worth of the timber.

Q. No definite statement?

Dep. page 57 } A. No. He said he would make adjustments if there was more.

Q. When you all agreed to sell on the basis of $1,250.00 for 1/8 interest, what was said?

A. Whether we should sell the timber before we sold the land. That was about all.

Q. Was anything said about the value?

A. We did ask and nobody seemed to know the exact value.

Q. Did Landreth say anything about the value?

A. He said it was small.

Q. What did he say about what it was worth?

A. I don't remember, about $800.00 or $900.00 or more.

Q. Have you since found out that there was more than $800.00 worth of timber on the land?

A. I don't know for sure. All I know is what I hear.

Q. How did you hear?

A. I was told by my brother and my brother.

Q. Which told you first?

A. Vernon told me.

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

A. Yes.

And further this deponent saith not.

RUTH SHOTWELL STEMOCK
By stenographer.

Willie Thurman.

The witness,

WILLIE THURMAN,

being duly sworn, deposes as follows:

Examination by James S. Easley:

Q. Mr. Thurman, what is your occupation?

A. I have a little saw mill.

Q. Are you in the saw mill business?

A. Yes.

Q. Can you estimate timber? Have you any experience?

A. I estimate for myself.

Dep. page 58 } Q. How long have you been in the lumber business?

A. 6 or 7 years.

Q. Are you familiar with the farm of Mr. Jim Shotwell, 156 acres?

A. Well, I have had a saw mill there behind it twice.

Q. Have you been over that land to look at the timber and see the amount and character?

A. Yes.

Q. What is the general character, large or small?

A. Some of both.

Q. How much heavy timber is there?

A. I didn't estimate it that way. We usually cruise it and try to average it by the thousand.

Q. How much did you estimate the value?

A. About 150 thousand, about $5,000.00.

Q. 150 thousand, that would be how much per thousand, $35.00?

A. Somewhere around.

Q. Within what size did you appraise it?

A. Just down to 8 inches.

Q. And you think it worth $35.00 per thousand?

A. Some not that, some more, as a whole about that, 145,000 to 150,000.

Q. What is it pine?

A. Some poplar, few oaks, most pine, lot of small pine, few big, as a whole it is fair timber.

Q. Do you authorize the stenographer to sign your name to this deposition when she writes it up?

A. Yes.

And further this deponent saith not.

WILLIE THURMAN
By stenographer.

J. A. Cardwell.

The witness,

J. A. CARDWELL,

being duly sworn, deposes as follows:

Dep. page 59 } Examination by James S. Easley:

Q. What is your name?

A. Cardwell.

Q. Mr. Cardwell, did you go over the Jim Shotwell farm to make an estimate of the improvements that have been put on the farm by Landreth Shotwell?

A. Yes.

Q. When?

A. About the 11th of September.

Q. What did you see?

A. Well, you want the whole estimate of it or what I saw that day?

Q. How about the whole place?

A. Well, he and I are brother-in-laws and I have been knowing the place ever since he was married, knew the place before he was married and he's done a lot of improving, practically everything had fallen down when he went there and he had to do it to make a living.

Q. Were they permanent improvements?

A. Well, some were, buildings, clearing some of the land, putting up fences.

Q. Did you make an estimate of the cost? What was the estimate?

A. $1,850.00.

Q. That did not cover the additions to the house?

A. No.

Q. Will you file this with the depositions?

A. Yes.

Examination by W. G. Vansant:

Q. You are a brother-in-law of Mr. Shotwell?

A. Yes.

Q. You and Mr. Moon got together on your estimates, didn't you?

A. Well, what else do you expect? We all did it together.

Q. Then this is not your individual estimate, is it?

A. No, but we did it together and we all come to the same conclusions.

Dep. page 60 } Q. Do you know when those improvements were made, Mr. Cardwell?

J. A. Cardwell.

A. I do.
Q. When were they made?
A. I can't tell you the exact date but over a period of years.
Q. You and Mr. Moon made up those estimates by estimates given by Mr. Shotwell?
A. We did it by our own observation.
Q. You did not make it all on your own?
A. No, we were asked to do it together.

Examination by James S. Easley:
Q. I understand that Landreth had to do some things to build it up and those were the things you were estimating there in that list?
A. Yes.

Examination by W. G. Vansant:
Q. Wasn't Landreth there some years during his father's life time?
A. He's been there his whole life, never lived any other place.
Q. He allowed his father to let the place go down?
A. I didn't say he did that.
Q. He didn't keep it up, did he?
A. He did.
Q. You have just said that Mr. Jim Shotwell let the place go down.
A. I didn't say that. I said the things were in a bad state of repair.
Q. Mr. Landreth Shotwell was there in the time that it got in the bad state of repairs?
A. It was that way, nothing but a shell.
Q. When did he do this?
A. He didn't until this year. He didn't start this until since his father's death.
Q. What changes has he made?
A. Well, there was an old room that he pulled away and lived in the main part of the house for several years.
Q. And building a room is included in the estimate?
Dep. page 61 } A. No.
Q. How long has Mr. Jim Shotwell been dead?
A. He died in 1950 or 1949, I think somewhere around there.

J. A. Cardwell.

Q. Then those repairs were made over a period of 8 or 10 years?
A. Part of it was done before he died.

Examination by James S. Easley:
Q. Mr. Shotwell was rather feeble in the last part of his life and this boy had to carry their burden?
A. Yes.
Q. Do you authorize the stenographer to sign your name to these depositions?
A. Yes.

And further this deponent saith not.

J. A. CARDWELL
By stenographer.

Dep.
page 62 } State of Virginia,
County of Pittsylvania, to-wit:

I, Henry T. Clement, a Commissioner in Chancery for the Circuit Court of Pittsylvania County, Virginia, do hereby certify that the foregoing depositions were duly taken and sworn to before me at the time and place and for the purpose mentioned in the caption, and subscribed to for the parties with their consent.

Given under my hand this 20th day of October, 1959.

HENRY T. CLEMENT
Commissioner in Chancery.

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* * * * *

Filed in the Clerk's Office of the Circuit Court of Pittsylvania County the 20 day of October 1959.

E. E. FRIEND, Clerk.

REPORT OF COMMISSIONER IN CHANCERY.

To the Honorable Judge of the Circuit Court of Pittsylvania County, Virginia:

Your undersigned Commissioner in Chancery respectfully

reports that pursuant to decree of reference entered in the above styled chancery cause on the 31st day of August, 1959, your Commissioner set the 13th day of October, 1959 as the time and the office of your Commissioner in the Town of Chatham, Virginia, as the place of hearing the testimony of witnesses and taking the said account, and after giving due notice to all parties, which notice with evidence of service is returned herewith, your Commissioner then and there proceeded to hear the testimony of witnesses, which was reduced to writing and is returned herewith, and then and there proceeded to take, state and return the following accounts:

1. The title of the complainant and respondent in this suit in and to the real estate mentioned in the Bill of Complaint.

Your Commissioner finds and reports that the said real estate is owned by the following persons in the hereinafter set forth undivided shares:

Vernon E. Shotwell, 1/8 undivided interest, J. Landreth Shotwell, 7/8 undivided interest.

2. What liens, if any, are against the property, their priorities, and by whom held.

Your Commissioner finds and reports the following liens against the property:

FIRST:

Deed of Trust Deed Book 346 page 92
Date August 17, 1953
J. R. Shotwell to W. G. Vansant, Trustee Conveyance of undivided interest in 156 acres mentioned in the Bill of Complaint (being a 1/8 undivided interest)
page 64 } In trust to secure the payment of two notes of even date signed by J. R. Shotwell made payable to his order at The Campbell County Bank, Brookneal, Virginia, as follows:

1 note for $1,297.50 payable 3 years after date bearing interest from date at 3%.

1 note for $1,000.00 payable on demand bearing interest from date at 6% per annum.

SECOND:

Judgment Lien Docket 38 page 77

Date September 25, 1953
Marion Woosley Shotwell *v.* Junior Ray Shotwell
Judgment for $15.00 per month beginning October 10, 1953 and continuing until further order of the court for the support and maintenance of infant child of Junior Ray Shotwell.

3. Whether the said real property is susceptible of a convenient or judicious partition in kind among the owners thereof in one of the modes prescribed by law.

Your Commissioner finds and reports that the real property mentioned in the Bill of Complaint in this cause is not susceptible of a convenient or judicious partition in kind among the owners thereof in one of the modes prescribed by law.

4. Whether any one or more of the owners would be willing to take the whole property and pay to the others such sums of money as their interests may entitle them to.

Your Commissioner finds and reports that no one or more of the owners would be willing to accept the whole property and pay to the others such sums of money as their interests may entitle them to.

5. Whether the interest of those who are entitled to the subject or its proceeds will be promoted by a sale of the entire property and a division of the proceeds according to the respective rights of the parties.

Your Commissioner finds and reports that the interest of those who are entitled to the subject or its proceeds will be promoted by a sale of the entire subject property and a division of the proceeds according to the respective rights of the parties.

page 65 } Your Commissioner further finds and reports that Vernon E. Shotwell, plaintiff, who owns a 1/8 undivided interest in the subject land, filed with your Commissioner in this cause an offer in writing to purchase the 7/8 undivided interest owned by J. Landreth Shotwell at the price of $17,500.00, to be paid in installments. This may be considered an offer to accept the whole property; however, your Commissioner is unable from the evidence in this cause to find and determine with any reasonable degree of certainty that the said offer is made at a fair price that would result in payment to the other owner, J. Landreth Shotwell, such sum of money as his interest might entitle him to. Your Commissioner finds and reports that it is exceedingly difficult, especially in view of the uncertainty of the value of the timber on the property, to determine the value thereof, and your Commissioner is of the opinion and so reports that the value of the property can only be determined to the best interests of the parties by a sale thereof at public auction.

6. Whether the proper parties are before the Court in this cause to enable the court to effect such partition.

Your Commissioner finds and reports that all necessary and proper parties are before the court in this cause to enable the court to effect such partition.

7. An account of the rents and profits from said land since the death of James C. Shotwell, and how such rents have been disposed of.

Your Commissioner finds and reports that prior to the year 1958 there is no evidence before him to enable him to determine with any degree of accuracy just how much the rents amounted to and how much was spent for repairs. Therefore, your Commissioner would reject the claim of complainant for rent prior to the year 1958. In regard to the rents for the year 1958, it appears from the evidence that the tract of land in question was operated along with another farm of 93 acres and the two farms had one serial number page 66 } in the County ASC Office for production of bright, flue cured tobacco; that this tobacco crop produced on the joint farms for that year sold for $7,404.82, $1,700.00 of this sale price would appear to have been paid to Junior Ray Shotwell, the owner of the 93 acre tract and the balance of $5,704.82 was alloted to the tract of land in question, which was then being operated by J. Landreth Shotwell. Of this amount the landowner's share would be one-fourth or $1,-426.20 before taxes and expenses were deducted. According to statement of J. Landreth Shotwell the taxes amount to $46.40, repairs $28.10 and one-fourth of other expenses $72.71, making the total deductions $147.21. This sum substracted from the landowner's share above mentioned leaves the net rent for the tobacco for 1958 as being $1,278.99, and the one-eighth part thereof due Vernon E. Shotwell being $159.87. These items are set forth as follows:

Total receipts of tobacco on 156 A and 93 A according to ASC records for 1958	$7,404.82
Less amount received by Ray Shotwell for the 93 tract tract	$1,700.00
Gross amount of tobacco from 156 Acres	$5,704.82
¼ part as gross rent from 156 Acres	$1,426.20
Taxes, repairs and ¼ of expenses from statement of J. Landreth Shotwell	$ 147.21
Net rent of tobacco from 156 Acres	$1,278.99
1/8 share of rent due Vernon E. Shotwell	$ 159.87

Your Commissioner finds and reports that J. Landreth Shotwell is indebted to Vernon E. Shotwell under this account for rents and profits in the sum of $159.87, for the year 1958.

8. Any other matter not specifically stated which the Commissioner may deem relevant, or any of the parties may require.

Your Commissioner reports that he was not specifically directed to take any account regarding any claim of J. Landreth Shotwell for improvements or repairs of the subject, neither was any written request for such account filed with him, however, his counsel by paragraph number 12 of his answer alleges certain improvements upon the subject property and counsel for J. Landreth Shotwell took lengthy depositions before your Commissioner touching upon this question.

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Your Commissioner finds from the evidence that J. Landreth Shotwell lived upon and farmed the subject property for a number of years while the same was owned by his father, J. C. Shotwell, and Mr. J. C. Shotwell died, intestate, December 17, 1949 leaving eight children to whom the property descended. J. Landreth Shotwell continued to live on and operate the farm from the time of the death of Mr. J. C. Shotwell in 1949 until the present date. During all this time he has occupied the premises as a tenant thereof, paying one-fourth of the proceeds of the crop less one-fourth of the expenses as rent. The evidence very clearly shows that Mr. J. Landreth Shotwell, while being a tenant in common of the property, also occupied the relationship to the parties of tenant and landlord; that such repairs as he made upon the property and improvements he may have placed thereon were mainly for his own personal gain and benefit; and that he is not entitled to enforce any claim therefor in this cause (see 40 American Jurisprudence, p. 33, 34; partition paragraph 41).

Respectfully submitted:

HENRY T. CLEMENT
Commissioner in Chancery.

* * * * *

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* * * * *

Filed in the Clerk's Office of the Circuit Court of Pittsylvania County the 26 day of October 1959.

E. E. FRIEND, Clerk.

EXCEPTIONS TO REPORT OF COMMISSIONER IN CHANCERY.

This day comes the defendant, J. Landreth Shotwell, and excepts to the report of the Commissioner in Chancery heretofore filed in this cause and states the grounds of exception as follows:

1. Commissioner reported that the property mentioned in the bill of complaint is not suitable of partition in kind. It is respectfully submitted that there is no testimony in this case to show that the property is not suitable to partition in kind.

2. The Commissioner reported that the $6,330.00 which was paid by the defendant, J. Landreth Shotwell, for repairs and improvements to the land was done for his personal comfort and therefore he would be entitled to no credit for this contribution.

The evidence is clear that these repairs which were permanent repairs to this property were done to improve the value of the property, they were done at the cost of the said J. Landreth Shotwell and it was understood by the family that he would have credit for these improvements and no question was raised as to these expenditures until this suit was filed.

Your respondent respectfully submits that plaintiff in this case has the choice of two methods of accomplishing the partition of this property. The first is that the property can be divided in kind and the second is that your respondent has offered to purchase the interest of the said Vernon E. Shotwell at its fair cash value and this item can be determined by the Court and if he prefers to have this rather than the partition in kind it can be so ordered.

To compel the defendant, J. Landreth Shotwell, after purchasing all of the outstanding shares in this estate at a value agreed upon by the other members of the family
page 69 } and then compel him to be subjected to a Court action to sell the property with the necessary costs involved in a Court sale would be unjust and inequitable to him.

Respectfully submitted,

J. LANDRETH SHOTWELL
Defendant
By JAMES S. EASLEY
Counsel.

* * * * *

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COMPLAINANT'S EXCEPTIONS TO REPORT OF COMMISSIONER IN CHANCERY.

The complainant, Vernon E. Shotwell, by counsel, excepts to the report of the Commissioner in Chancery filed in this cause October 20, 1959 as follows:

1. The complainant excepts to the Commissioner's report in holding that no one of the owners is willing to take the whole property involved in this case and pay to the other owner such sum of money as his interest may entitle him to. The evidence shows that the complainant offered the defendant $17,500.00 for his 7/8 interest in the property, on the basis of $2,500.00 for each 1/8 interest. Whereas, the defendant has placed the sum of $1,250.00 as a fair value for each 1/8 interest.

2. The complainant excepts to the Commissioner's report in not requiring the defendant to account for the rents from the said property from 1950 through 1957 in the amount of $11,409.60, being 8 years at the rate of $1,426.20 per year.

Respectfully submitted,

VERNON E. SHOTWELL
Complainant
By W. G. VANSANT
THOMAS F. HAIRSTON
Counsel.

Filed in the Clerk's Office of the Circuit Court of Pittsylvania County the 29 day of October 1959.

E. E. FRIEND, Clerk.

* * * * *

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* * * * *

OPINION.

This suit for partition was brought by Vernon E. Shotwell, who owns 1/8 undivided interest, against his brother, J. Landreth Shotwell, owning 7/8 interest in a farm of 156 acres, inherited by eight children from James C. Shotwell, who died in 1949, the widow having died in 1958. The respondent, J. Landreth Shotwell, who lives on the farm, purchased the undivided interest of six children after the death of their mother in 1958. The bill also asks for an accounting of rents from 1950 through 1958 from the respondent and the respondent prays for an allowance or reimbursement for alleged permanent improvements placed thereon as a joint owner.

There was a reference to a Commissioner in Chancery and his report is excepted to by both parties to the cause.

The complainant excepts first on the ground that it was an error to hold that no one of the owners is willing to take the whole property and pay to the other owners such sum of money as his interest may entitle him to and second, failure of the Commissioner to require the defendant to account for rents from 1950 through 1957.

The respondent excepts first to the Commissioner's holding that the property is not susceptible in kind and second, in not allowing re-imbursement for improvements.

The Court will deal with these under the proper headings.

page 73 } *Weight to be Given Commissioner's Report.*

The best statement on this is found in *Roark* v. *Shelton*, 169 Va. 542, 194 S. E. 681, where it is stated:

"The power of a court to refuse to approve the report of its Commissioner when his conclusions are not supported by the evidence is beyond question, but this power must be exercised judiciously, not arbitrarily."

"Of course, the report of a Commissioner does not bind the Court like a verdict of a jury. It does not have the same weight (Code Section 6179) (8-250).

"The Court posesses the absolute power of review, though generally it is to accept the report as *prima facia* correct. When exceptions are filed to the report it is the duty of the Court to examine the evidence and review the conclusions of the Commissioner and ascertain whether they are supported. If they are supported by proper evidence the Court does not possess the arbitrary power to over-rule them."

* * * * *

"It is fundamental, however, that notwithstanding the weight due to the Commissioner's Report and the respect which is accorded his findings, neither the trial court nor this court should avoid the duty of weighing the evidence when its sufficiency is fairly challenged. Neither in the trial court, nor here upon appeal, should any judgment stand if the record shows it is unsupported by the testimony." (cases cited)

In view of the above it is necessary for the Court to examine the evidence taken before the Commissioner and apply it to the exceptions and examine it in the face of the law and this the Court will try to do.

Allowance for Rent.

This is designated in the Report as No. 7 and allowance was made to the complainant of $159.87 being his one-eighth share of the rent for 1958. No allowance was made for the years 1950 through 1957, during which years the page 74 } respondent, J. Landreth Shotwell, worked the farm after his father's death. The evidence shows very clearly that J. Landreth Shotwell worked the farm and paid the rent to his mother, widow of James C. Shotwell. That it was generally known that the father in his life time had requested this and that all the children knew of the arrangement and payment to the mother, including the complainant. The Commissioner has allowed rent for 1958, the first year after the mother's death. The Court feels the Commissioner's Report should not be disturbed and the exception is over-ruled.

Reimbursements for Improvements.

"The general rule is that a joint tenant who, at his own

expense, places permanent improvements upon common property is entitled in a partition suit to compensation for improvements whether the co-tenant asserts thereto or not. Such compensation is allowed not as a matter of legal right but purely from the desire of a Court of equity to do justice and to prevent one tenant from becoming enriched at the expense of another. In the absence of consent, the amount of compensation is estimated by and limited to the amount by which the value of the common property has been enhanced." *Ballou* v. *Ballou,* 94 Va. 350, 26 S. E. 840, 64 Am. St. Rep. 733; *Roark* v. *Shelton,* 169 Va. 542, 194 S. E. 681, and *Delagarno* v. *Baum,* 182 Va. 803, 30 S. E. (2d) 560.

That the above rule is the law in Virginia is not disputed, however, there must be some burden on the person claiming such reimbursement to prove the actual construction of the improvements and second, to show the amount by which the value of the common property is enhanced. No direct statement as to the burden of proof is found in the Virginia cases. After stating the general rule as to reimbursement for improvements in *Newton* v. *Newton,* 199 Va. 654 (660), 101 S. E. (2d) 580, reference is made to Code Section 8-845 as to recovery of improvements in ejectment. In *Hol-*
page 75 } *lingsworth* v. *Funkhouser,* 85 Va. 448, 8 S. E. 592, the Court in dealing with recovery for improvements in ejection actions under the statute required the proof to be clear and full as to the amount to which the value of the premises is actually increased thereby at the time of the assessment.

In the case at bar, the respondent, J. Landreth Shotwell, has not shown such proof. In fact his proof as to the improvements themselves is very vague and indefinite. He admits that some of the improvements were made from time to time during a ten year period and during which time he was a renter, paying rent to his mother, and in 1958 paying one-fourth to his brothers and sisters. He says during the period of ten years he "built shelters, garage shelter, wood house shelter, stable, two room basement to main house" and wire fences and in the spring built two rooms to the house. There is some evidence that he used timber off of the farm to do this construction. (Dep., pp. 14-15). He says he can't tell how much the improvements cost though he said he had statements at his home. There has been an estimate of costs by two witnesses, but there is a wide variation as to the values. There is absolutely no evidence offered as to the enhancement in value to the common property. For these reasons the Court feels that the Commissioner's findings in

this respect should not be disturbed and the exception to No. 8 of the Report will be over-ruled.

Is the Land Susceptible of Division in Kind Allotment of the Whole.

The main question in this cause seems to be whether or not the real estate of 156 acres is susceptible of a convenient and judicious partition in kind, and if not, whether page 76 } there should be an allotment to one of the co-owners or a sale be decreed.

The general rule seems to be stated in *Nickels* v. *Nickels,* 197 Va. 498 (502), 90 S. E. (2d) 140, after a discussion of Section 8-690 and Section 8-692:—

"Hence, the power of the Court to allot all or a part of the land or to sell all or a part thereof is in all cases dependent upon *a judicial determination from the record that 'partition cannot be conveniently made.' In addition* to this finding that partition cannot be conveniently made, the power of the Court to allot part of the land and sell the residue or to sell the entire subject and distribute the proceeds *is dependent upon the further judicial determination from the record that 'the interest of those who are entitled to the subject or its proceeds will be promoted by such disposition.'* "

Again in the same case and on the same page of the Virginia Report:

"Likewise, in the present statute, Code Section 8-692, the procedure for determination whether a division in kind can or cannot be conveniently made is not provided for and therefore the courts are left free to adopt such method of procedure as may be best suited to meet the exigencies of the particular case. *Thus the Court may in its sound discretion determine this issue from evidence* before it or it may call to its assistance a Master in Chancery or a special board of commissioners. *But in the final analysis the question must be left to the determination of the Court upon evidence as disclosed by the record.*" (cases cited)

Attention is also called to the excellent discussion in *Bridge* v. *Snead,* 151 Va. 383, 145 S. E. 338, quotations are from the Virginia Reports headnotes as numbered.

4. "The fundamental rule in Virginia as to partition is: If the property be divisible in kind, any co-owner has a right

to insist that partition be so made. The majority of the co-owners in such case may not insist on a sale against the will of their fellows."

7. "In partition cases the distinctive facts of each case properly enter into the determination of the question of whether partition should be in kind or by sale, because the interest of all of the owners should be the first consideration of the Court."

8 "In determining whether partition should be in kind or by sale for division, it is not only the consideration
page 77 } of the subject, i. e. the land to be divided, but the situation and interest of the parties involved in the particular suit which should also be considered."

Most of the evidence in this case is taken up with a question of rents due, the purchase by the respondent of the interest of the other co-owners and improvements. There is very little evidence as to whether the land is divisible in kind, nor is there any evidence to show directly whether either of the parties would be willing for the Court to assign the land to one of the parties and pay to the other his fair value. There is evidence that they will buy from the other on their *own* terms, but not at a price set by the Court, although it was so argued and indicated by counsel.

As to whether the land is divisible in kind or not the evidences comes from the complainant and his witness A. H. Overbey.

The witness A. H. Overbey on page 16 of Depositions says it is not practicable. As to his reasons he states, "Well, if you cut it up into 1/8 parts there is timber on part of it and part of it is open. I don't know where you would begin." On cross examination this witness, (pages 17 and 18), says he does not know how much timber or open land is on the farm, he was going by what someone told him. He did not go in the house or buildings. As to whether it would be to the interest of the parties, he states that "This is a hard question. If they can't get together selling it is a way of settling it."

The complainant is very indefinite, says his brother indicated he could have his one-eight on the creek bank, estimated or guessed about the tobacco allotment. He said his brother had offered to buy but he would not sell at that price, feeling he was entitled to more.

page 78 } "The burden was upon the complainant to show that the land could not be conveniently divided in kind without a sacrifice of the interests of the owners. In

this he has failed." *Bridge* v. *Snead* (*supra*) (395). This case seems to be very similar to the *Bridge* v. *Snead* case.

For these reasons the exception to the report of the Commissioner holding that the land is not susceptible of partition in kind is sustained and the exception as to the failure of the Commissioner to allot the land to one of the co-owners would automatically fall.

In reading the evidence and from argument of counsel, it is very plain that the brothers, who are parties to this suit, are quite antagonistic and hostile towards each other. It is hard for the Court to evaluate their testimony and also possibly the Commissioner. In view of this and since the only question before the Court is in what manner partition shall be granted or carried out it might be well to appoint a special board of commissioners to go upon the land and determine whether or not it is divisible in kind, etc., and then for the Court to act in the premises. As to this further procedure the Court will be glad to discuss with counsel if they so desire.

12/9/59.

L. JONES.

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DECREE APPOINTING COMMISSIONERS.

This cause came on this day to be again heard on the papers formerly read; on the report of Henry T. Clement, one of the Commissioners of this Court, filed in the Clerk's Office October 20, 1959; on the exceptions thereto, filed by the defendant, J. Landreth Shotwell, October 26, 1959, and by the complainant, Vernon E. Shotwell, October 29, 1959; and was argued by counsel.

On consideration whereof, the Court doth overrule said exceptions other than the exception of the defendant on the question of partition in kind, and the Court being of the opinion that there is insufficient evidence before it at this time to determine whether or not the land described in the papers in this cause is not susceptible of a convenient division in kind, the Court doth hereby sustain the defendant's exception in that respect.

On consideration whereof, the Court doth adjudge, order and decree that E. B. Fitzgerald, Sr., Jerry Mitchell, Russell

H. East, Edward T. Cocke and Charles A. Moore be and they are hereby appointed Commissioners for the purpose, and after having been duly sworn by the Clerk of this Court or by a Notary Public, are authorized and directed to proceed to go upon the tract of land referred to in the bill and proceedings of this cause whereof James C. Shotwell died seized and possessed, containing 156 acres, more or less, lying in Staunton River Magisterial District, Pittsylvania County, Virginia, on the East side of Straightstone Creek, and if practicable to do so, to lay off and divide said tract of 156 acres into two parts, one of said tracts to contain
page 80 } 7/8 interest in value and assign the same to J. Landreth Shotwell, and the other part to contain 1/8 interest in value and assign the same to Vernon E. Shotwell.

But if said Commissioners should find, after considering the timber, the tobacco allotment, the number and location of the buildings and other factors which might affect the value of the property, that partition cannot be conveniently made in kind by assigning to J. Landreth Shotwell 7/8 interest in value and assigning to Vernon E. Shotwell 1/8 interest in value as directed above, then said Commissioners shall so report the facts to this Court upon which their opinion is based; they shall report whether the interests of those who are entitled to said real estate or the proceeds therof, would be promoted by a sale of the entire real estate or allotment of part and a sale of the residue; and what in the opinion of the Commissioners is a fair reasonable value for the fee simple interest of the whole of said tract of land. In either case the said Commissioners shall report their proceedings under this decree to this Court.

Enter 4/21/60.

L. JONES.

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To the Honorable Judge Langhorne Jones, Judge, Circuit Court, Pittsylvania County, Virginia:

Your undersigned commissioners, after being duly sworn, in compliance with your order on May 2, 1960, went upon the

Shotwell *v.* Shotwell land on May 10, 1960, and report our findings to be as follows:

1. The 156 acre farm located on the east band of Straightstone Creek does not lend itself to be divided in kind on the basis of 1/8-7/8 interests.
2. The above mentioned tract does not lend itself to be divided in kind and money.
3. Taking into account timber, buildings, tobacco allotment and all other factors embracing the value, we do hereby assign the value of $21,500.00 to be a fair and just value of the 156 acre farm as a whole.

E. B. FITZGERALD, SR.
Commissioner.

EDWARD T. COCKE
Commissioner.

PERRY MITCHELL
Commissioner.

CHARLES A. MOORE
Commissioner.

RUSSELL H. EAST
Commissioner.

Filed in the Clerk's Office of the Circuit Court of Pittsylvania County the 10th day of May 1960.

S. W. SWANSON, Clerk.
L. A. S.

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To the Honorable Langhorne Jones, Judge of said Court:

I hereby offer to purchase the 156 acres of land as a whole described in this cause at the value of $21,500.00, as shown by the report of the Commissioners filed in this cause May 10, 1960.

Witness my hand and seal:

VERNON E. SHOTWELL (Seal)

Filed in the Clerk's Office of the Circuit Court of Pittsylvania County the 16th day of May 1960.

S. W. SWANSON, Clerk
By ....., Dep. Clk.

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Law Offices
EASLEY AND VAUGHAN
South Boston Bank and Trust Company Building
South Boston, Virginia.

June 22, 1960.

Judge Langhorne Jones
Chatham, Virginia

Dear Mr. Jones:

Re: Vernon E. Shotwell *v.* J. Landreth Shotwell.

I only learned through a letter from Mr. Vansant which reached me on Saturday of last week that the Commission had filed its report in this case. It seems that while it was intended that a copy be sent to me, it failed to reach me.

This explains the tardiness in making the statement which I propose in this letter.

Upon the basis of the report of the Commission in this case, my client is willing to purchase the interest of the Complainant, Vernon E. Shotwell upon the basis of the evaluation made by the Commission that on the basis of $21,500.00 the amount to be paid will be one-eighth of that amount.

This offer follows my first letter to Mr. Vansant which was dated August 25, 1959 when I was trying to avoid the cost of litigation in this suit.

In the above letter I made this suggestion "I would like to know also whether your client would be willing to sell his interest for a sum to be appraised by three appraisers appointed by the Court who could ascertain the value of his interest."

It is evident from the depositions in this case that my client is making his home on this farm and has invested his own

labor and work towards its maintenance and improvements and would have much more reason for purchasing the farm than would the Plaintiff who lives in Arlington far from the farm in question.

In making this offer I have persuaded my client to authorize me to take this opportunity with the idea of saving further expenses which should have been avoided from the beginning if possible.

Yours very truly,

JAMES S. EASLEY.

JSE/lfh

cc: Mr. W. G. Vansant
cc: Mr. J Landreth Shotwell

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DECREE

This cause came on this day to be again heard on the papers formerly read; on the report of E. B. Fitzgerald, Sr., Perry Mitchell, Russell H. East, Edward T. Cocke and Charles A. Moore, Commissioners appointed by this Court by decree of May 2, 1960, filed in this cause May 10, 1960; on the offer of Vernon E. Shotwell to purchase the land involved in this suit, filed in this cause on the 16th day of May, 1960; on the offer of J. Landreth Shotwell, by counsel, dated June 22, 1960; and was argued by counsel.

It appearing to the Court that the complainant produced in evidence before the said Commissioners an offer of Burruss Land & Lumber Co., Inc. to purchase the timber on the land involved in this suit, which offer is marked "Exhibit Burruss," and the appraisement of Jesse W. DeJarnette, under oath, that the value of the land, timber and improvements on the property involved in this suit would be $24,800.00, marked "Exhibit DeJarnette"; and it further appearing that the Commissioners did not return said exhibits with their report, on the motion of the complainant, by counsel, it is hereby ordered that said "Exhibit Burruss" and "Exhibit DeJarnette" be made a part of the record in this case.

On consideration whereof, there being no exceptions to the said report of Commissioners E. B. Fitzgerald, Sr. and others, and more than ten days having elapsed since the filling of the same, the Court doth hereby confirm and approve said report.

On consideration whereof, it appearing to the Court from the pleading and from the report of Henry T. Clement, Commissioner in Chancery, filed October 20, 1959, and the report of E. B. Fitzgerald, Sr., Perry Mitchell, Russell H. East, Edward T. Cocke and Charles A. Moore, Commissioners, filed May 10, 1960, that partition in kind of the 156 acres of land described in this cause cannot be conveniently made, the Court doth so decide.

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It further appearing to the Court that on the 16th day of May, 1960 the complainant, Vernon E. Shotwell, offered to purchase the 156 acres of land as a whole, described in this cause, at the value of $21,500.00 as shown by the report of the Commissioners filed on May 10, 1960, and that on June 22, 1960 the defendant, J. Landreth Shotwell, by counsel, also offered to purchase the interest of the complainant upon the basis of the valuation made by the commission of $21,-500.00, but neither the complainant nor the defendant is willing to sell his interest in said land on said basis; therefore, since both parties have made identical offers for said land, the Court doth refuse to allot the entire subject to either one of the parties.

It further appearing to the Court that the interests of those entitled to the subject or its proceeds will be promoted by a sale of the entire land and a division of the proceeds, the Court doth so decide.

The Court doth hereby adjudge, order and decree that W. G. Vansant and James S. Easley, who are hereby appointed Special Commissioners for the purpose, either one or both of whom may act, shall offer for sale at public auction on the premises the tract of 156 acres, more or less, more fully described in the papers in this cause, after having advertised the time, place and terms of sale by handbills distributed in the neighborhood of the land for at least ten days, upon the following terms, to-wit: One-third cash and the balance in two equal installments, payable with interest in one and two years, respectively from the date of sale, the deferred installments to be evidenced by notes of the purchaser or purchasers. Any purchaser shall have the right to pay all of the purchase price in full.

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The said Special Commissioners, or the one so acting, may employ other forms of advertising in addition

to the method heretofore provided, and may employ a competent surveyor to make a survey of said land.

The complainant, by counsel, having moved the Court to allow the said Special Commissioners, or the one so acting, to offer the timber on said land separately from the land, then the land separately from the timber, and both as a whole, the Court doth hereby overrule said motion.

The Court doth further adjudge, order and decree that the said J. Landreth Shotwell may retain possession of the farming portion of said land for the year of 1960, and after the payment of taxes and usual expenses connected with the crops, he shall pay to the said Vernon E. Shotwell his share of one-fourth of the proceeds of the crops for the years of 1959 and 1960.

Before proceeding to execute this decree, the said W. G. Vansant and James S. Easley, or the one so acting hereunder, shall enter into bond before the Clerk of this Court in the penalty of $20,000.00, with approved security and conditioned according to law.

And the defendant, J. Landreth Shotwell, by counsel, having indicated his intention to apply to the Supreme Court of Appeals of Virginia for an appeal in this case, it is ordered that this decree be suspended for a period of ninety days, upon the defendant or someone for him, within ten days from this date, entering into a suspending bond before the Clerk of this Court in the penalty of $750.00, with approved security and conditioned according to law.

Enter 7/7/60.

L. JONES.

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

To the Clerk of the Circuit Court of Pittsylvania County:

Counsel for J. Landreth Shotwell, the Defendant, in the above styled case in the Circuit Court of Pittsylvania County, Virginia, hereby gives notice of appeal from the decree entered in this case on the 7th day of July, 1960, and sets forth the following assignments of error:

1. That the Court erred in the decree in refusing to accept the offer of the Defendant, J. Landreth Shotwell who owns a seven-eighths (7/8) interest in the land involved in this suit for purchase of the one-eighth (1/8) interest in said lands owned by the Complainant, Vernon E. Shotwell in accordance with the offer submitted by the Defendant to the Court and to pay for the same upon the basis of the value of the entire property as fixed by the Commissioners appointed for that purpose and others, which report was dated May 10, 1960.

2. That the Court erred in its said decree in compelling the sale of the entire property in order to divide the proceeds in money; and,

3. The Court erred in making a part of the record before the Commission papers marked as "Exhibit Burrus" and "Exhibit DeJarnette" parts of the record of the hearing before the Commissioners; and,

4. The Court erred in refusing to grant to the Defendant the credit for buildings and other permanent improvements made by him at his own expenses on the land which is involved in this case which materially added to the value of the property as the Court's ruling on this item is set forth in the opinion filed herein by the Court on December 9, 1959.

JAMES S. EASLEY
Counsel for Defendant, J.
Landreth Shotwell.

Filed in the Clerk's Office of the Circuit Court of Pittsylvania County the 11 day of July 1960.

S. W. SWANSON, Clerk
By ....., Dep. Clk.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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