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Clerk, Supreme Court of Appeals
Richmond, Va.

207 Va. 177

Record No. 6174

In the Supreme Court of Appeals of Virginia at Richmond

HUMBLE OIL & REFINING COMPANY

v.

HENRY T. COX

FROM THE CHANCERY COURT OF THE CITY OF RICHMOND

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 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. 6174

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 16th day of June, 1965.

HUMBLE OIL & REFINING COMPANY, Appellant,

against

HENRY T. COX, Appellee.

From the Chancery Court of the City of Richmond
Alex H. Sands, Jr., Judge Presiding

Upon the petition of Humble Oil & Refining Company an appeal is awarded it from a decree entered by the Chancery Court of the City of Richmond on the 29th day of December, 1964, in a certain proceeding then therein depending wherein Henry T. Cox was plaintiff and the petitioner was defendant; upon the petitioner, or some one for it, entering into bond with sufficient security before the clerk of the said chancery court in the penalty of three hundred dollars, with condition as the law directs.

RECORD

* * * * *

Filed in Clerk's Office June 8, 1964.

LOIS A. MAXIE, Deputy Clerk.

SUIT FOR DECLARATORY JUDGMENT.

PETITION.

To the Hon. William A. Moncure, Judge:

The petitioner, by counsel, respectfully prays the Court for a declaratory judgment on account of the following facts:

1. The petitioner is the owner of a certain parcel of real estate with improvements, situated in the City of Richmond, Virginia, fronting approximately 121.20 feet on Forest Hill Avenue and 116.6 feet on Westover Hills Boulevard, which said real estate is commonly known as 4900 Forest Hill Avenus, Richmond, Virginia;

2. The respondent, Humble Oil & Refining Company is a Delaware corporation, having an office at Broad and Hamilton Streets, Richmond, Virginia;

3. That on or about April 13, 1964, the respondent, Humble Oil & Refining Company, by and through its resp-
page 2 } resentative, Robert Barden, approached the petitioner while petitioner was in a state of confusion and emotional shock brought on by recent death of his son, and by use of misrepresentations, pressure and undue influence did induce the petitioner, against his true will and purpose, to execute a document bearing date of April 13, 1964, purporting or offering, petitioner later learned, to lease the aforementioned real estate to the said respondent for a term of ten years commencing July 1, 1964, and ending on June 30, 1974, all as more fully set out in a copy of the aforesaid document attached hereto and made part hereof;

4. That on April 15, 1964, petitioner, realizing fully for the first time that he had been falsely and improperly induced to sign a document without being accurately apprised of the nature and terms thereof, did by his duly authorized agent and attorney, Joseph S. Bambacus, demand of the said Humble Oil & Refining Company to see a copy of said document, which demand was refused, respondent's local agents stating

that leases were subject to approval of and execution by the respondent's 'home office', and that before the document would be effective so that they could release a copy thereof it would be necessary to forward same to the 'home office' of respondent for execution. Whereupon the petitioner, by his said agent and attorney, did verbally and in writing revoke, cancel and withdraw his invalidly procured assent to said document, which, petitioner avers, terminated any force it may have had and precluded acceptance by respondent. A copy of the letter of revocation delivered by petitioner's agent and attorney is attached hereto and made part hereof.

5. Respondent, Humble Oil & Refining Company, after having received both oral and written notice of said
page 3 } revocation, did endeavor nonetheless to create a contractual relationship with petitioner by executing and personally leaving a copy of said document at petitioner's premises.

6. On April 16, 1964, and again on April 17, 1964, the petitioner, through his attorney and agent, received a letter from the law firm of Hunton, Williams, Gay, Powell and Gibson, over the signature of one H. Merrill Pasco, a photo copy of each of which letters is attached hereto and made part hereof, advising that respondent had signed the document on April 15, 1964, recorded same, and delivered a copy to petitioner, and considered that the said document was a binding lease which it expected petitioner to comply with.

7. That as a result of the aforesaid an actual controversy of legal rights exists between the petitioner and the respondent, the petitioner alleging that the aforesaid document admitted to record in the Hustings Court of the City of Richmond, Part II, on April 16, 1964, in Deed Book 293, page 537, is not and never has been a binding lease agreement between the petitioner and respondent by reason of the facts herein contained, and respondent indicating its intention to claim possession of petitioner's property on July 1, 1964 pursuant to said document.

WHEREFORE, the petitioner respectfully prays that the Court will take cognizance of this his petition, that proper process may issue, that the respondent be required to answer, answer under oath being waived, that the Court adjudge the respective rights of the parties in relation to the incidents, document and property herein referred to, and declare that said document is null and void and of no force and
page 4 } effect, and that petitioner has no obligation or duty to respondent by virtue thereof, and that petitioner

may have such further relief as to equity may seem just and fair.

And he will ever pray,

HENRY T. COX
By PAUL M. SHUFORD
Counsel.

* * * * *

page 6 }

* * * * *

Filed June 19, 1964.

CATHERINE W. BERLING, Dep. Clk.

ANSWER.

The Answer of Respondent, Humble Oil & Refining Company, to the Petition filed herein by Petitioner, Henry T. Cox.

1. Respondent admits the allegations of paragraphs 1 and 2 of the Petition.

2. Respondent admits that Petitioner executed the lease referred to in paragraph 3 of the Petition (herein called the "Lease"), a copy of which is attached to the Petition, but Respondent denies all other allegations of paragraph 3 of the Petition. Respondent avers that after extensive negotiations with Petitioner beginning April 10, 1964, Petitioner signed and sealed two counterparts of the Lease as of April 13, 1964 and delivered them to Respondent's representatives on April 14, 1964 for Respondent's acceptance, thereby making an offer under seal to make the Lease which was revocable only upon the expiration of a reasonable period of time and prior to acceptance by Respondent.

3. Respondent admits that one Joseph S. Bambacus, purporting to represent the "Cox Family" telephoned the Richmond District Office of Respondent at 2000 Trenton
page 7 } Avenue, Richmond, Virginia on April 15, 1964 and attempted orally to revoke Petitioner's execution of the Lease. Respondent also admits that the letter by which Joseph S. Bambacus sought to revoke in writing the Petitioner's execution of the Lease, which is referred to in paragraph 4 of the Petition and a copy of which is attached to the Petition, was received by Respondent's employee J. W. Mil-

ler at its Richmond District Office on April 15, 1964. Respondent denies all other allegations of paragraph 4 of the Petition and avers that Joseph S. Bambacus was not the duly authorized agent and attorney-in-fact of Petitioner on April 15, 1964 for the purpose of revoking Petitioner's execution of the Lease when the aforesaid telephone call was made and the aforesaid letter was written and dispatched to Respondent, that Petitioner's execution of the Lease was not revocable at that time and that such phone call and letter did not constitute a valid revocation of petitioner's execution of the Lease.

4. Respondent admits that its duly authorized representative on April 15, 1964 executed on its behalf two counterparts of the Lease which Petitioner had executed but denies all other allegations of paragraph 5 of the Petition. Respondent avers that after the two counterparts of the Lease were executed by its duly authorized representative on April 15, 1964, and after one counterpart thereof was filed for recordation in the Clerk's Office of the Hustings Court Part II of the City of Richmond, Respondent's representative delivered the other counterpart of the Lease to the Petitioner at his place of business at 4900 Forest Hill Avenue, Richmond, Virginia, on April 15, 1964, and that Petitioner at that time received and accepted the counterpart of the Lease, page 8 } thereby creating a valid and binding lease at that time if a valid and binding lease had not been created when Respondent's representative filed a counterpart of the Lease for recordation in the Clerk's Office of the Hustings Court Part II of the City of Richmond earlier that day. When he accepted the executed counterpart of the Lease on April 15, 1964, Petitioner stated that he was satisfied with it, but that other members of his family would not be.

5. Respondent admits the allegations of paragraph 6 of the Petition.

6. Respondent admits that the Lease has been admitted to record in the Hustings Court of the City of Richmond Part II in Deed Book 293 at Page 535 as alleged in paragraph 7 of the Petition and also agrees that an actual controversy exists which is proper for adjudication under Title 8, Chapter 25, Code of Virginia (1950), Sections 8-578 through 8-585, as amended.

7. The Respondent, further answering, says that it has provided gasoline and other petroleum products and automobile tires, batteries and accessories to Petitioner for sale at his service station at 4900 Forest Hill Avenue, Richmond, Virginia since 1933 pursuant to various motor fuel sales con-

tracts and equipment leases. The current motor fuel sales contract between Petitioner and Respondent is dated July 22, 1955 and provides for a term of 10 years ending September 30, 1965. The 10 year term was extended an additional 5 years by letter dated February 16, 1962 signed by the Petitioner, copy of the motor fuel sales contract dated July 22, 1955 and the letter of extension dated February 16, 1962 are attached hereto as *Exhibit A* and hereby made a part hereof. The current equipment lease between Petitioner and Respondent covering the special equipment for the storage and

page 9 } handling of petroleum products at the service station at 4900 Forest Hill Avenue, Richmond, Virginia, is dated February 16, 1962 and a copy thereof is attached hereto as *Exhibit B* and hereby made a part hereof. Prior to his extended illness and death on April 1, 1964, Petitioner's son, Raymond Cox, assisted him in the operation of the service station at 4900 Forest Hill Avenue, Richmond, Virginia. When Petitioner's son Raymond became seriously ill early in 1964 his wife Marjorie suggested to Respondent's representatives that they attempt to negotiate a lease for the service station from Petitioner since she did not wish to undertake the operation of the service station and did not believe that the Petitioner wished to in view of his age. It was pursuant to this suggestion which was joined in by Petitioner's son, Richard, at the time of the Petitioner's son Raymond's death, that Respondent's representative undertook the negotiations for the Lease on April 10, 1964 which resulted in the execution and sealing and delivery of the Lease by Petitioner as hereinabove alleged.

Therefore, Respondent prays that the Court adjudge that the Lease, a copy of which is attached to the Petition, is a valid, binding and enforceable lease in accordance with its terms and that the Court order the Petitioner to deliver possession of the premises to Respondent as of July 1, 1964 in accordance with the terms of the Lease.

Respectfully submitted,

page 10 }

H. MERRILL PASCO
JACK SPAIN, JR.
HUNTON, WILLIAMS, GAY,
POWELL & GIBSON
1003 Electric Building
Richmond 12, Virginia
Counsel for Respondent.

* * * * *

page 25 }

* * * * *

Filed in Court Octo. 2, 1964.

E. E. WARRINER.

AMENDED PETITION.

To the Hon. William A. Moncure, Judge:

The petitioner, by counsel, respectfully prays the Court for a declaratory judgment on account of the following facts:

* * * * *

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* * * * *

4. That on April 15, 1964, petitioner, realizing fully for the first time that he had been falsely and improperly induced to sign a document without being accurately apprised of the nature and terms thereof, did by his duly authorized agent and attorney, Joseph S. Bambacus, demand of the said Humble Oil & Refining Company to see a copy of said document, which demand was refused, respondent's local agents stating that leases were subject to approval of and execution by the respondent's 'home office', and that before the document would be effective so that they could release a copy thereof it would be necessary to forward same to the 'home office' of respondent for execution. Whereupon the petitioner, by his said agent and attorney, did verbally and in writing revoke, cancel and withdraw his invalidly procured assent to said document, which, petitioner avers, terminated any force it may have had and precluded acceptance by respondent. A copy of the letter of revocation delivered by petitioner's agent and attorney is attached hereto and made part hereof.

* * * * *

page 28a }

Chambers
CHANCERY COURT
Richmond, Virginia

November 6, 1964

Paul M. Shuford, Esquire
900 Travelers Building
Richmond, Virginia

H. Merrill Pasco, Esquire
1003 Electric Building
Richmond, Virginia

Re: Cox *v.* Humble Oil
CD-520

Gentlemen:

This is a declaratory judgment proceeding instituted for the purpose of determining the validity of a lease dated April 13, 1964, from petitioner to respondent of a certain service station property located at 4900 Forest Hill Avenue, Richmond, Virginia.

Background Facts

The factual background out of which the lease in question arises is, for the most part, uncontradicted.

The lot in question was acquired by petitioner, Henry T. Cox, (hereinafter referred to as "Cox") in 1902. In 1933 at the instance of his wife, Cox agreed to erect a service station upon the lot primarily for the purpose of setting up his oldest son Richard in business. From 1933 to date, the station has served as an outlet for respondent's products. When Richard tired of the business in 1936, the next son in age, Edward, took over and operated it until 1938 or 1939, at which time the youngest son, Raymond, took over and, with his mother's assistance, operated the station up until the date of his death on April 1, 1964. For a number of years prior to 1964, Cox, though the owner of the property, worked in the service station, the extent of his activities in such capacity being reserved for later comment. Upon the death of Cox's wife, son Raymond managed the station until his death, the business license being in his name. Upon Raymond's death
page 28b } his wife persuaded Cox, her father in law, that the family operation of the station should be dis-

continued and negotiations with Humble were immediately undertaken, such negotiations having been initiated either by the Cox family or by Humble representative Robert Barton, who had, at the time, been handling Humble's dealings with Cox and for members of his family for some 2½ years. These negotiations culminated in the execution of the lease involved in this proceeding.

Questions Presented

Four questions are presented for determination by the Court:

1. Was the document in question an offer of lease?
2. If so, was it revocable?
3. If revocable, was attorney Bambacus authorized to effect such revocation?
4. Did the circumstances leading up to and surrounding the execution of the lease establish constructive fraud upon the part of respondent justifying cancellation upon petitioner's request therefor?

A review of the evidence in this case in the light of the authorities and argument of counsel convinces the Court that the lease in question, when signed and sealed by petitioner and delivered to Barden, respondent's agent, constituted an offer of lease, (1) which being in the nature of an option, and under seal was irrevocable (2) at least, since no specific time of acceptance was therein specified, until respondent had had a reasonable time within which to accept or reject. (3) Since the offer, if validly obtained, was not subject to revocation it would make no difference whether or not attorney Bambacus was or was not authorized to attempt a revocation.

page 29 } This brings us, then, to the consideration of the question upon which the decision in this case must turn, i.e., should petitioners request be granted because of constructive fraud or undue influence in the procurement by respondent of the lease?

(1) *Cohen* v. *New England Mut. Life Ins. Co.*, 140 F (2) 1
(2) *Watkins* v. *Robertson*, 105 Va. 269
(3) *Turner* v. *Hall*, 128 Va. 247

Circumstances Surrounding Execution of the Lease

While conflicting in some particulars, the testimony as to the chronological events leading up to and immediately following the execution of the lease is for the most part uncontradicted.

At the funeral home immediately preceding Raymond's funeral, Barden and Richard Cox discussed the future of the station (each says the other initiated the discussion) and a similar discussion took place at the cemetery the following day. Upon each occasion Richard states that he indicated the possibility that the station might be leased, but upon each occasion requested Barton not to approach petitioner for ten days or two weeks until he had recovered from the emotional shock brought on by the death of Raymond and requested that any initial contacts be through him, Richard.

The evidence is in direct conflict as to whether Mrs. Raymond Cox or Barden initiated the next negotiations, but it is conceded that on Friday, April 10th, Barden and Miller, his immediate superior, went by the station without previous appointment, found Cox on the premises and engaged him in an informal discussion of the terms of a proposed lease. The only terms discussed were the term of lease and the amount of rental and Barden, knowing of Cox's hearing limitation, jotted certain figures, pertinent to the discussion, on paper and exhibited them to Cox. Blake Woodson, a station attendant, testified that upon this occasion he heard Barden and Cox agree that Richard was to look after the matter and that after the lease was drawn up that Cox's lawyer was to look it over.

page 30 } On Monday, April 13th, the lease having been drawn with a $600.00 monthly rental, a 20 year term with 10 one year renewal privilege and with purchase option agreement, Barden and Miller sought Cox out and conferred with him at home in his yard, and Barden says Cox raised objections to the $600.00 figure, the purchase option and the 20 year term and discussed these items intelligently with him and Miller, which testimony is confirmed by Miller. It is undisputed, however, that upon this occasion Cox stated that he would execute nothing until his son Richard had reviewed the instrument. He, at first, indicated that he wanted to himself confer with Richard but at Barden's and Miller's request, agreed that they could confer with Richard in his stead.

Barden and Miller, thereupon, made an appointment with and met with Richard the same night, Monday, April 13th. The lease had been changed to provide $750.00 per month,

which figure Barden and Miller stated had been acceptable to Cox, eliminated the purchase option agreement and modified the term period from 20 years to 10 years. Richard looked over the lease, said he thought it "neither good nor bad", that he thought the rental was too low and finally asked Miller and Barden not to contact Cox until 11:00 A. M. Wednesday morning, and that he, Richard, would discuss the lease with Cox in the interim. He asked that a copy of the lease be left with him, which request Barden and Miller refused.

On the following day, Tuesday, April 14th, Barden happened to be passing the station and dropped in for no particular reason. Mrs. Raymond Cox was present and during her conversation with Barden she informed him that a $900.00 per month rental offer (4) had been made Cox by another oil company. Shortly after Cox drove up and after a discussion with Cox, outside of Mrs. Cox's presence, Barden returned, stated Cox was ready to execute his lease and asked the whereabouts of a notary.

Barden and Cox then went to the office of the witness Kelly, who was a notary. The lease having no notarial certificate, Kelly had one typed and after Barden had read to
page 31 } Cox the parts which had been initialed, Cox signed.
Kelly states that he was concerned because Cox, who was customarily accompanied by a member of his family, when business transactions were being conducted, was alone and was in a very emotional state, because Cox appeared to have difficulty in signing the lease, and because Barden appeared in a hurry to conclude the transaction. Barden then produced a "first refusal option" agreement which, upon Kelly's advice, Cox refused to sign. Cox did not read the lease at the time and only the initialed changes were read and explained to him.

Almost immediately after Barden and Cox had departed, Kelly, very much disturbed, called Mrs. Raymond Cox and reported his concern about Cox's competency to execute the lease and Barden's apparent hurry in having the execution effected. Mrs. Cox thereupon contacted Richard who, surprised that the lease had been offered his father a day prior to the agreed time contacted Cox's attorney, Bambacus, early the following morning, Wednesday, April 15th, and when Bambacus called Mr. Cox he was instructed by Cox to do what was necessary to void the lease. Whereupon Bambacus

(4) While there is no evidence that this was a legal offer, it was enough to warn respondent that its competition was active.

seeing that Cox was confused about the lease and appeared not to understand it, phoned Barden and requested, as Cox's attorney, a copy of the lease. This being refused him, he notified Barden first by phone and then by hand delivered letter, that Mr. Cox desired the lease voided before its execution by Humble. Barden then left an important business meeting at the Humble office and carried the lease to south Richmond where it was executed by a proper Humble official. The lease was put to record the same afternoon. Although Humble's customary practice was to secure, after execution of a full lease, the execution of a short form lease for recordation purposes, in this instance this procedure was bypassed and the long form lease offered for recordation.

The same afternoon Barden and Miller took an executed copy of the lease and left it at the station. Their testimony is that Cox accepted it. The testimony of Cox and his station attendant is that he refused to accept it.

On May 5th, Cox was formerly offered a lease by Pure Oil Company paying $1,200.00 per month plus a gallonage rental of 2½¢ on each gallon over 576,000 during each annual lease period.

page 32 } *Testimony Concerning Cox's Capacity to Execute the Lease*

The testimony as to Cox's capacity is that he is a man of practically no education who has a hearing loss of from 60% to 90% from ear damage sustained while engaged in youth as a boilermaker. According to Dr. Hodges, he has limited vision due to cataracts in both eyes which would render it medically impossible for him to read print the size of that employed in the lease. (Although Cox stubbornly contended on the stand that he could read the lease, it was apparent that he could not.)

For a number of years Cox had not handled any of the business dealings involving the rather substantial amount of real estate standing in his name. While he was able to, and did sign his name to necessary business documents, it was always upon advice of and pursuant to business decisions made by other members of his family. All of his business affairs had been handled by his wife up until her death and then by Raymond, his youngest son. He never made independent business decisions concerning affairs of any moment. He was incapable of handling any but the simplest business affairs. He conducted sales of the service station's products, but did not have the capacity to check out the cash register or to prepare

deposits. His connection with the financial operations of the station was limited to the delivery to the bank of deposits prepared by other persons. At the time of the execution of the lease by Cox, the testimony is that he was in a highly emotional state, was without the protection customarily afforded him by the presence of other members of his family, appeared confused, had difficulty in effecting his signature to the lease and according to the testimony of three witnesses, including that of the notary, was not believed to be competent to understand or to comprehend the contents and terms of the lease agreement without help. The appearance of the plaintiff upon the witness stand and his response to both direct and cross examination convinced the court that his ability to understand and comprehend any business transactions except those of the simpliest sort was indeed limited.

page 33 } The only testimony to the contrary came from defendant's witnesses Barden and Miller, both of whom testified upon direct examination that plaintiff enjoyed "the reputation of being an astute business man in the community". Upon cross examination, however, it was developed that there was no basis for this statement nor was a single witness introduced to establish any such reputation. Then witness Miller finally admitted that even his own opinion of plaintiff's business ability was based *solely* upon the fact that plaintiff owned a great deal of property and "must have been an astute business man to have acquired it".

Findings of Fact

The following facts are found to be established by the evidence:

1. That at the time of the execution of the lease in question the petitioner was, and for many years had been, incapable of understanding or comprehending any but the simplest business transactions without the help and assistance of some member of his family.

2. That at the time of the execution of the lease the petitioner's limited capacity to understand business transactions was additionally restricted by impairment of hearing, of vision, of partial senility, and by emotional instability resulting from the recent death of his youngest son.

3. That for a long period of time prior to the execution of the lease in question, all business transactions of any moment concerning petitioner's property had been handled by his family, his only function being the signing of the necessary instruments to consummate transactions conducted by said

members of his family in his behalf.

4. That petitioner's execution of the lease in question was without the assistance of any member of his family and without the knowledge of his son, Richard Cox, who had been handling the negotiations for this particular lease as petitioner's adviser.

5. That at the time of execution petitioner was not capable of comprehending and did not comprehend the
page 34 } terms of the lease nor did he have the visual capability of reading the terms of the lease.

6. That respondent's representatives who either knew or who should have known of petitioner's mental and physical limitations and of his dependence and reliance upon the guidance of members of his family in business transactions, with full knowledge that petitioner had been approached by competitors indicating a willingness to negotiate a lease upon financial terms more favorable than those of respondent, and contrary to an express understanding with petitioner's son, Richard Cox, (whom respondent knew to be advising petitioner upon the execution of the lease), that petitioner would not be approached until Wednesday, April 15th, (giving Richard the opportunity of explaining the terms of the lease to petitioner), negotiated the lease with petitioner alone on April 14th.

7. That immediately upon receipt of advice by Richard Cox of the execution of the lease, he contacted the attorney who had handled legal matters involving petitioner's properties in the past and such attorney upon authorization from Richard Cox and petitioner, demanded, on behalf of petitioner, cancellation of the lease prior to its execution by respondent, which demand respondent ignored.

8. That subsequent to the execution of the lease in question, petitioner did, in fact, receive a binding offer from a third party to negotiate a lease upon substantially better financial terms than those of the lease in question.

Conclusions of Law

In view of these findings of fact, the law seems fairly clear. Mental capacity being the primary issue, factual situations in other cases are of but little assistance, for in such cases each decision must depend upon the circumstances surrounding the execution of the instrument in question.(5)

(5) *Lohman* v. *Sherwood*, 181 Va. 594

We do, however, find Virginia authority for three general principles which run throughout this class of
page 35 } cases(6).

The first principle is that mere weak-mindedness, whether natural or induced by old age, sickness or other infirmity, unaccompanied by any other inequitable incidents, if the person has sufficient intelligence to understand the nature of the transaction, and is left upon his own free will, is not a sufficient ground upon which to set aside an executed conveyance.

The second principle is that where failure of memory or mental weakness are accompanied by other inequitable incidents and are taken undue advantage of through their means, equity will grant affirmative relief.

The third principle applies to a case of marked mental incapacity in which situation a presumption arises against the validity of the instrument and the burden of proof is cast upon the party claiming the benefit of the conveyance to show the fairness of the transaction and the capacity of the other party.

Under the facts of the case at bar it is the second principle which is applicable. Where the "other inequitable incidents" disclose an intention of overreaching upon the part of the party seeking the benefit of the transaction a court of equity will invalidate the transaction.(7)

Such overreaching is abundantly shown by the evidence in the case at bar. The fact that respondent was pressed to beat its competitors to a lease of the premises involved; the coincidence that Barden happened to visit the station the day prior to April 15th in violation of his understanding with petitioner's son and happened to have a completed form of lease along with him; the fact that he "assumed" that petitioner had gone over the lease with his son but did not think it necessary to inquire as to this vital fact; the apparent haste with which Barden concluded the execution of the instrument as evidenced not only by the fact that he had omitted the notorial seal but by the testimony of the notary Kelly that Barden's apparent haste to get petitioner's name on the lease caused him such alarm that he contacted petitioner's family immediately after the parties left his office; the fact that the

(6) *Long* v. *Harrison*, 134 Va. 424
(7) Chitty on Contracts, page 1050; see also *C & O R.R. Co.* v. *Mosby*, 93 Va. at page 94

witness Miller was so anxious to get his company's signature on the lease that rather than let it clear through
page 36 } regular channels he interrupted an important business meeting at which he was in attendance to have the lease hurried to his south Richmond office for signature and then rushed the original long form lease to recordation rather than follow the customary procedure of securing a short form for recordation purposes; the refusal to leave a copy of the prospective lease agreement with Richard Cox to review with his father and the refusal to let petitioner's attorney have the opportunity to examine the lease until after its execution and recordation by respondent; the effort to have notorial acknowledgment of petitioners signature taken over telephone rather than walking a block for personal appearance; all add up to flagrant overreaching upon the part of respondent in its effort to drive through its lease with petitioner whose limitations must have been known to respondent.

While it cannot be said that the consideration is shockingly inadequate, the terms of the lease executed by petitioner on April 14th were for a rental figure considerably less than a figure which petitioner had just received from another company and the rental figure and terms considerably less favorable to petitioner than those of the lease subsequently offered by Pure Oil.

It is, therefore, held that constructive fraud and undue influence having been established in the procurement of the lease cancellation thereof should be awarded petitioner.

Collateral Agreements

As to the two collateral agreements in question, the "Motor Fuel Sales Contract" and the "Equipment Lease" under paragraph 3 of the latter instrument it is specifically provided that petitioner has the right of cancellation upon (a) the giving of five (5) days written notice and (b) paying to respondent the damages stipulated in paragraph 4. While in regards to the Motor Fuel Sales Contract there might be some question as to petitioner's right to purchase motor fuel from anyone other than respondent during the contract period were he to continue to himself operate a service station upon the premises, it would seem that his "Requirements" referred to in the contract would cease upon his lease of the premises to another.

page 37 } *Conclusion*

For the above reasons, petitioner is entitled to the relief prayed for. Counsel may present sketch for decree to this effect.

Yours very truly,

Alex H. Sands, Jr., Judge

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* * * * *

This suit came on to be heard upon the Petition and Amended Petition filed by Petitioner, the Answer filed by Respondent, evidence heard *ore tenus,* and the argument and memoranda of counsel; and upon consideration whereof, and for the reasons set forth in the Court's letter of opinion, dated November 6, 1964, the Court doth:

ADJUDGE, ORDER and DECREE:

(1) That the document in question, dated April 13, 1964, when signed by Petitioner and delivered to Respondent's agent, constituted an offer of lease which, being in the nature of an option and under seal, was irrevocable until Respondent had had a reasonable time within which to accept or reject.

(2) That Respondent's acceptance of said offer of lease took place within a reasonable time; thereby making immaterial any decision as to whether, prior to such acceptance by Respondent, Attorney Bambacus had authority
page 39 } to try to effect on behalf of Petitioner a revocation of said offer solely on the grounds that Respondent had not yet accepted said offer.

(3) That Petitioner's signature to said lease, however, was procured by overreaching on the part of Respondent's agents amounting to constructive fraud and undue influence upon Petitioner: and, hence, Petitioner being entitled to cancellation or rescission upon timely request or action, the said lease, recorded in the Clerk's Office of the Hustings Court of the City of Richmond, Part II, is rescinded, cancelled and of no further effect.

(4) That Petitioner is entitled, under the terms thereof, to

cancel his "Equipment Lease" with Respondent upon (i) the giving of five (5) days written notice, and (ii) paying to Respondent the damages stipulated in Paragraph 4 thereof.

(5) That whatever purchase obligations the Petitioner might have to Respondent under the "Motor Fuel Sales Contract" so long as he personally continues to operate a service station upon the premises, any such obligations would cease upon Petitioner's lease of the premises to another.

To which action of the Court, as reflected in its Declarations of Judgment number 1 and 2, the Petitioner
page 40 } objects and excepts; and to the action of the Court, as reflected in its Declarations of Judgment number 3, 4 and 5, the Respondent objects and excepts.

The object for which this suit was instituted having been fully accomplished, it is ORDERED that the cause be stricken from the docket and the papers placed amongst the ended causes, properly indexed, with leave reserved to any party to have the suit reinstated for good cause shown and after such notice as the court may require.

Enter Dec. 29, 1964.

A. H. S., JR.

* * * * *

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Filed in Clerk's Office Jan. 14, 1965.

LOIS A. MAXIE, Deputy Clerk.

NOTICE OF APPEAL AND ASSIGNMENT OF ERRORS.

The Respondent, Humble Oil & Refining Company, hereby gives notice of its intention to appeal from the declaratory judgment entered in the above styled case on December 29, 1964, in which the Chancery Court of the City of Richmond rescinded and cancelled the lease agreement dated April 13, 1964 between the Petitioner, Henry T. Cox, as lessor, and the Respondent, Humble Oil & Refining Company, as lessee.

The Respondent assigns the following errors:

1. The Court's holding that the Respondent's agents were guilty of overreaching amounting to constructive fraud and undue influence upon Petitioner entitling him to a cancellation or rescission of the lease agreement dated April 13, 1964 is contrary to the law and evidence and without evidence to support it.

2. The Court erred in holding that Respondent's agents were guilty of constructive fraud upon the Petitioner in procuring his signature to the lease agreement dated April 13, 1964 as there is no evidence of misrepresentation of any material fact made to the Petitioner by Respondent's agents and such misrepresentation is an essential element of constructive fraud.

3. The Court erred in holding that Respondent's agents were guilty of undue influence upon the Petitioner in procuring his signature to the lease agreement dated
page 42 } April 13, 1964, as there is no evidence of coercion of the Petitioner by Respondent's agents and coercion is an essential element of undue influence.

4. The Court's finding of fact that Petitioner at the time of the execution of the lease agreement dated April 13, 1964 was, and for many years had been, incapable of understanding or comprehending any but the simplest business transactions without the help and assistance of some member of his family, is contrary to the evidence and without evidence to support it.

5. The Court's finding that at the time of the execution of the lease agreement dated April 13, 1964, Petitioner was not capable of comprehending and did not comprehend the terms of the lease and did not have the visual capability of reading the terms of the lease, is contrary to the evidence and without evidence to support it.

6. The Court erred in admitting testimony of the mental competence of the Petitioner by unqualified witnesses.

7. The Court erred in admitting evidence of a contract of lease (Pet. Ex. No. 2) negotiated and entered into by Petitioner with a third party subsequent to the execution by the Petitioner of the lease agreement dated April 13, 1964 with Respondent.

8. The Court erred in overruling Respondent's motion to strike out all of the evidence at the conclusion of Petitioner's case.

9. The Court erred in holding that the Petitioner could freely avoid the obligations of the current motor
page 43 } fuel sales contract between Petiitoner and Respondent (Res. Ex. No. 2) by a lease of the service

station premises to a third party at any time.

Respectfully,

HUMBLE OIL & REFINING COMPANY
By H. MERRILL PASCO
And
JACK SPAIN, JR.
HUNTON, WILLIAMS, GAY, POWELL & GIBSON
1003 Electric Building
Richmond 12, Virginia
Its Attorneys.

* * * * *

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* * * * *

Filed in Clerk's Office Jan. 21, 1965.

LOIS A. MAXIE, Deputy Clerk.

ASSIGNMENTS OF CROSS ERROR.

The Petitioner, Henry T. Cox, being satisfied with the effect of the Declaratory Judgment entered in the above styled suit on December 29, 1964 in so far as the same rescinded and cancelled the lease agreement there involved, and having no desire to appeal said decision, does none the less make the following Assignments of Cross Error, in accordance with Rule 5:1 §4, for the purpose of having the same considered by the Supreme Court of Appeals of Virginia in the event a Writ of Error is granted to the Respondent pursuant to its Notice of Appeal and Assignments of Error.

ASSIGNMENTS OF CROSS ERROR.

1. The Court was in error in holding that the document in question, dated April 13, 1964, when signed by the Petitioner and delivered to Respondent's agent, constituted an offer of lease.

2. The Court was in error in further holding that said

document was in the nature of an option, under
page 45 } seal, and, hence, was irrevocable until Respondent
had had a reasonable time within which to accept
or reject.

3. The Court further erred in holding that Respondent's acceptance of said "offer of lease" took place within a reasonable time; and, in consequence thereof, that any decision as to whether, prior to such acceptance by Respondent, Attorney Joseph S. Bambacus had authority to try to effect on behalf of Petitioner a revocation of said "offer" solely on the grounds that Respondent had not yet accepted said "offer" was immaterial.

Respectfully,

HENRY T. COX
By PAUL M. SHUFORD
Counsel.

* * * * *

Before Honorable Alex H. Sands, Jr., Judge

October 2, 1964

Richmond, Virginia

APPEARANCES:
Paul M. Shuford. Esquire, Counsel for the Petitioner.
H. Merrill Pasco, Esquire, and Jack H. Spain, Jr., Esquire, Counsel for the Respondent.

* * * * *

page 2 } Mr. Shuford: Your Honor, Mr. Pasco has proposed a stipulation which, as far as I am concerned, is agreeable with me. I would like to confer with Mr. Bambacus, who was originally counsel in the case but has withdrawn.

In the meantime, I would like to submit a petition which has been given to opposing counsel and which he indicated by letter he would consent to being filed without objection today. It was only a minor change, Your Honor, and I think from your standpoint would have probably no effect so far as the present trial.

(Said document so filed by the Court.)

John Robert Barden.

The Court: Are there any other preliminary matters?
Mr. Shuford: I wonder if we could have a few moments?
The Court: Other than that, is the plaintiff ready?
Mr. Shuford: Yes, sir.
Mr. Pasco: The proposed stipulation is made because one of our witnesses is sick who has been summoned, and I am prepared to go ahead if we can agree to this stipulation. If not, I want to move for continuance.

page 3 } The Court: Would you want to have the witnesses sworn in now and then recess to have an opportunity to discuss this matter?

Mr. Pasco: Before that, I would like to introduce Mr. Jack Spain, who is a member of the Bar and has not practiced in this Court before.

(Whereupon, Mr. Jack H. Spain, Jr., attorney, was sworn in to practice law before this Court.)

Mr. Pasco: If Your Honor please, Mr. Shuford says the stipulation is agreeable, so we can go ahead.
The Court: Well, do you still want to wait?
Mr. Shuford: No, sir. I do not think that is necessary now, Your Honor.

(Whereupon, all the witnesses were sworn; the court reporter was sworn; opening statements of counsel were heard by the Court; and the testimony and all other incidents of trial to-wit:)

Mr. Shuford: Your Honor, we will call Mr. Robert Barden and ask the Court to take cognizance he was the one primarily concerned with the negotiation of this alleged lease.

page 4 } JOHN ROBERT BARDEN,
called by the petitioner as an adverse witness, after being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Shuford:
Q. Would you please state your name and occupation?
A. John Robert Barden; I am presently oil heat supervisor. At the time of this lease I was the sales representative for Humble in South Richmond.

John Robert Barden.

Q. As sales representative what were your duties in regard to Cox's Esso Station?

A. Well, mainly to assist them in their business, to sell them our products and generally to assist them in any way that would benefit them.

Q. And when you say "them," what do you mean?

A. Cox's Auto Service, the dealer involved.

Q. Now who did that consist of so far as you were concerned?

A. Well, prior to the death of Raymond Cox much of my dealing was with Raymond, since he was what we call a tire and battery merchandiser for us, or rather a re-seller, more or less. Much of my dealing was with him.

page 5 } Q. As a matter of fact, the license for the station was in his name and you knew this, did you not?

A. It was mentioned to me, yes.

Q. Now would you tell me what was the first contact you had with anybody at or concerning Cox's Station following the death of Mr. Raymond Cox?

A. As my memory serves me, the first contact—now would you restate that question for me?

Q. I say, the first contact you had with anybody pertaining to Cox's Station as a business entity following Mr. Cox's death.

A. Well, you might say at the funeral. Well, at the funeral, at the cemetery I approached Richard Cox and Mrs. Raymond Cox to offer my condolences, and they mentioned to me, as best I can recall, that they would like to discuss the property with me but not to try to discuss it with anyone until a week to ten days after the funeral. There was no specific time other than a week to ten days. That was the first inference I received from anyone that the station might be available on a lease basis. As you know, we have been serving that account on a motor fuel contract for a number of years.

Q. As a matter of fact, you raised the question, did you not, Mr. Barden?

A. I don't think so.

page 6 } Q. You did not initiate it?

A. I don't think so, no.

Q. Are you absolutely sure, Mr. Barden?

A. I am relatively certain, yes. I would not have any reason to at a funeral, I don't believe.

Q. All right. What did you do pursuant to that request not to discuss it with anybody for a week to ten days?

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A. Well, I did nothing.

Q. And who next did you discuss it with and at what time?

A. The next I discussed this lease, or the next time the lease was brought up, let me put it that way, was about a week—well, it wasn't a week, either, it was a Monday following the funeral I stopped by the station to talk with Mrs. Raymond Cox concerning the bill, the charges in the credit account that Cox's Auto Service had with the company. It was rather sizable and they were supposed to be making payment schedules, and since Raymond's illness these payment schedules had not been made, mainly because Raymond had been making these payments, I believe. I am not certain whether Raymond was making these or Mrs. Raymond Cox was, but anyway, the payments had not been made according to schedule and I went by the station to see about this. After we discussed this and Mrs. Cox brought it to my
page 7 } attention that there was not enough money in the account to make a payment at this time—let's see —well, there wasn't enough money in the account to make a payment and she was rather concerned about this, and she mentioned to me she would like to not be part of the business any longer but she did not know what she could do because Mr. Cox had not wanted to lease the service station and that she would like to see the station leased to the company but, of course, she had nothing to do with it. I don't believe there was much conversation along that line except, I believe, she mentioned she wanted to talk to Mr. Henry Cox to see if he would lease the service station. I left. Mrs. Cox did not make a payment at the time because there was not enough money in the account, and I believe she told me, too, the account was frozen since the bank account was in Raymond's name. Now this may have been the motor fuel account or it may have been the total account. I don't know.

Q. What was your next contact, Mr. Barden?

A. Well, it was either the next night or one night during that same week, and this was the week of April 6, I believe. I received a phone call at home from Mrs. Raymond Cox and she told me she had discussed leasing the station with Mr. Cox and that he was in agreement and the only reason he was in agreement was that he thought, Mr. Henry
page 8 } Cox thought Mrs. Cox was staying at the station because she wanted to, and when Mrs. Raymond Cox mentioned that she did not want to stay with the business any longer, then he was rather relieved and decided he really did want to lease the station. He was only staying

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there himself because he thought she wanted to stay there, and she asked that I contact Mr. Cox as soon as possible.

Q. All right. When did you contact Mr. Cox or what was your next contact?

A. My next contact with Mr. Cox was, I believe, on Friday of that week. This was about ten days or so after the funeral, again, when Mr. Jack Miller and myself decided to go by and see Mr. Cox concerning the leasing of the station. Now could I interject something—well, let me go a little bit further. Anyway, Mr. Miller and I went by to see Mr. Cox at the station and we walked in and he greeted us very cordially, and we mentioned to him we would like to discuss the service station with him and he said something to the effect that he wanted to wait until tomorrow but since we were here he would discuss it with us now. So rather than discuss it in front where people could hear what we were discussing we went into the office, and there is a small office behind the sales room, and it is my impression that Mr. Cox is somewhat hard of hearing and I tried to, rather than discuss it in a loud voice page 9 } I used a piece of paper and we made some notes and my notes were based on a conversation I had with Mr. Cox prior to Raymond's death. And I would like to mention this, too, because I think it is significant here. I guess this was in March sometime, I went into the station one day and Mr. Cox was by himself and we were just passing the time of day and he was mentioning something about his illness. He had had difficulty with circulation in his leg and he was very cordial to me and he asked me what I thought he could lease the station for.

The Court: This is Raymond Cox?

A. (Continuing) This is Henry Cox now. Raymond was in the hospital. Then I was assuming he wanted to lease the station to Raymond if Raymond recovered, and I said to Mr. Cox that I thought that one cent a gallon would be a fair rental for the station, would enable a person under present volume to pay the rent and still have an income, but Mr. Cox said "No," that that wasn't what he had in mind. He had in mind something of about a cent and a half a gallon. This was in conversation. I thought the rental was a little bit high, but that was as far as the conversation went. Anyway, I had this in the back of my mind and on Friday, this Friday when Mr. Miller and I went by to see Mr. Cox we

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based our calculations to Mr. Cox on this cent and
page 10 } a half a gallon, and I had a clip-board in my hand
and I mentioned this conversation that we had had. I said, "If we use a cent and a half a gallon on your present volume we would come up with $750.00 a month." He said to me, "Well, this is about what I had in mind." This was on a piece of paper so he could see what we were calculating. And then I asked him how long a lease he would give us. I said, "Well, would twenty years be too long?" He didn't commit himself one way or the other on that particular idea. Then I suggested twenty years with ten one year options and he seemed to be in agreement with it. And I said. "Let me go back to the station and prepare a lease with these terms in it," and that we would see him the next week because this was on a Friday. Well, I guess that afternoon Mr. Miller and I went back to the plant and we prepared a lease with the terms—oh, let me say this now. Here is where we made a little error. When I calculated the rental to Mr. Cox at the service station I multiplied a cent and a half a gallon times 500,000 gallons, which is, yearly the correct figure would be $7,500.00 a year and I inadvertently came up with $750.00 a month. When we went back to the plant to draw up the lease we had to equate the volume back to a monthly rental by multiplying it out on a monthly basis and I realized it should
have been $625.00 a month, or $7,500.00 a year. As-
page 11 } suming Mr. Cox was probably still thinking about
the $750.00 a month, and when we multiplied out the $7,500.00 a year, with a twenty year renewal, or rather twenty year term with ten yearly renewals, that day we went by the service station to see Mr. Cox at the service station, but since his truck was not there it was decided to go by his house because I felt that is probably where he was. He lives just down the street, and we did and he was in his back yard plowing the garden. We walked in and greeted him and he was very cordial. We sat at a round table in the rear of his yard and we went over the lease with him. We first went over the rental terms and I explained to him what the $625.00 a month was and he said, "Well, this wasn't correct. This wasn't right." I told him the reason was because I had made an error and I felt that six and a quarter, based on a cent and a half a gallon, was reasonable rental and then I showed him the term and he didn't particularly agree to that twenty years at this time, ten one year renewals. And at the same time we went to the inside of the lease where we have what we call a purchase option clause, and I asked if he would

give us a purchase option. He said "No," he wanted to leave the property to his family. I said we would just cross that out, we would not request a purchase option. And then we asked him if this was agreeable to him, would he
page 12 } sign. He said, "No, I don't want to sign the lease. I want to discuss it with Richard." And I asked him, or we asked him if we could discuss it with Richard and he said that would be all right. I said we would try to get in touch with him and discuss the lease with him. So Mr. Miller and I left Mr. Cox's house—this was on a Monday, I believe, and went by the service station to make a phone call to Richard and we got Richard at his plant where he worked. I think it is the Rox Chemical Company. We told him we had just discussed the lease with his father and we told him what the rental terms were and what the length was and we wanted to make an appointment with him since we wanted to go over the lease with him, since his father requested we do it with him. Richard made an appointment with us for that evening at ten o'clock. Mr. Miller came by my house that evening and picked me up. We went by the service station and Richard came by there shortly after. We gave him the lease and let him look at it and showed him what we thought was a fair rental and the length of the lease, etc. Richard didn't seem to be in agreement with it. He did not like it but he did not dislike it. He mentioned he thought he could get a better rental there if the service station were not there and there were some other type of facility on it. Of course, this did not have any bearing on the lease, I don't think. He asked
page 13 } us to leave the lease with him, I believe, and, of course, we could not leave it. We did not want to leave the lease with him for any extended period of time. We gave him the opportunity to look it over, as we had his father. Now let me think. Do you have any other questions?

Q. You are doing fine.

Mr. Pasco: You have answered his question.

A. (Continuing) I remember something. He mentioned to me he did not want us to see his father until Wednesday, that he wanted to have the opportunity to discuss the lease with his father. Of course, we said that would be satisfactory, and we took the lease with us. That was in the evening, so I presume the next day we did nothing, really. I was working in South Richmond. I had another gentleman with me, a sales trainee, and we were driving to various stations talk-

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ing with dealers and conducting normal business affairs. I believe it was three o'clock that afternoon, a Tuesday, I drove by the service station and Mr. Cox was not there but Mrs. Cox was because I could see her behind the counter, Mrs. Raymond Cox, and I turned around and came back and I wanted to just go in and talk with her and see if perhaps things were favorable. So as I walked into the door Mrs. Cox looked at me and said something to the effect that

page 14 } "You are in real trouble now." I said, "What do you mean?" She said some other companies had been by to see her that morning, had made some offers that were considerably greater than ours. I said, "Well, just what do you mean?" She mentioned something, "Oh, about a thousand dollars a month rental," which, of course, was considerably greater than ours. And I said, "Well, that is completely unreasonable and I could never accept a lease for that amount of money and it isn't fair." About that time Mr. Cox drove up to the service station in his truck. Of course, I was somewhat upset, I believe, and I walked out to the truck to greet him and greeted him as I usually do, and I probably startled him somewhat because he did not see me. But he turned around and our greeting was cordial. I asked if he had had a visitor that morning. He said, "Well, yes," that he had and he said we were the cheapest people in town. I said, "Well, what do you mean?" He said a gentleman had been by and offered him a rental much greater than ours. I said, "Exactly what was it?" And he pulled a piece of paper out of his pocket and showed it to me, and the paper had notations on it which I read, which was $900.00 a month plus one cent per gallon over 40,000 gallons. I said, "Well, Mr. Cox, you realize one cent per gallon over 40,000 gallons means very little," because I felt we were the only company who could do that kind of volume here. Mr. Cox said, "Well, that

page 15 } is what I told the gentleman that made this offer." I said, "Of course, I feel $900.00 a month is unfair. No dealer could afford to lease a service station for that amount of rental and have any money left over for a profit. Of course, if we lease it we would lease it back to a gentleman or dealer for the same rental or approximately the same rental we would pay you, and it just would not be reasonable." I said, "Would you like to pay a rental of that nature for this service station?" He said, "No, I couldn't." I said, "Mr. Cox, what do you think a fair rental would be for you to lease the station to us?" He said, "Well, the same amount that you mentioned to me the other day." I said

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to him, "You mean $750.00 a month?" He said, "Yes, that is correct." I said, "Well, Mr. Cox, I guess I made a mistake when I made that calculation. I told you that the other day. However, I made the statement that we would pay this much money, and since I did I would be willing to sign a lease with you for that. Would you sign a lease with me if I changed the rental to $750.00 a month? Would you sign a lease for that amount with me today?" He said, "Yes, I would." I said, "I have got to change it. Let me get the lease." The lease was in my car in my brief case, I believe, and I picked it up and we went into the service station into

page 16 } the back room, and I had to change the rental from what we had in the lease, which was $625.00 a month, to $750.00 a month, and x'd out the clause

that was in it and this was satisfactory with Mr. Cox. Then I said, "Well, we have to get this notarized," and I asked Mrs. Raymond Cox if there was a notary nearby. She said, "Yes, Mr. Kelley is a notary." Mr. Kelley was the owner of the store across the street. So Mr. Cox and I left the service station and went over to see Mr. Kelley. Well, Mr. Kelley was in the store and I introduced myself to him and said we had a lease we wanted him to notarize. He said, "Well. go on upstairs. I will be up in just a minute." So we the office. Mr. Kelley came up and Mr. Kelley's secretary went up the stairs and we waited. Mr. Cox and I waited in came in and there was another gentleman there who, I believe, was Mr. Kelley's son, and in order for the lease to be signed I had to have—or notarized correctly. I had to have a notary seal on it with some kind of phrase that we use in all of our leases to make it legal, I presume, and it was not typed on the lease. It was an oversight on my part. We gave it to the secretary, and then to find out how to word it I had to make a phone call, which I did. I left Mr. Cox and Mr. Kelley in the office by themselves. I went and made the phone call and got the girl to type it up. She was interrupted, so I finished

page 17 } typing it for her and carried it back to the office for Mr. Cox to sign. Of course, I had to go through the lease with him to have him initial the changes

we made, one of them being the rental clause I had written in. Second, I had to get him to initial the option clause which we had deleted and I had to also get him to initial. I presume, the renewal clause, which was written in also and, of course, I signed it. Before he signed it Mr. Kelley asked him if Mr. Cox felt this was really what he wanted to do. Mr. Cox said, "Yes," that it was. And Mr. Kelley said he should have done

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it a long time ago. Anyway, we went through signing it, we went through signing the lease, and when we completed it I had another document I asked Mr. Cox if he would approve of and this document was a first refusal option. It merely gave us the right to purchase it—at no particular price—but would give us the right to purchase if Mr. Cox would sell it. It would allow us to have an opportunity to meet every price. I did not think it unreasonable since we had been doing business for so many years. However, Mr. Kelley said, "No," Mr. Cox shouldn't sign it because he had had experience with these before and he did not think it was a good idea. I said, "Well, Mr. Cox, it's not a big thing. We will forget it, as far as that goes." So we did. We did not carry it any further.

page 18 } And then Mr. Kelley carried on a conversation with Mrs. Cox and Mr. Cox interrupted and said we had to leave because his daughter was over at the service station, and we left the office and went back to the service station. Then I left and went back to my office, and that was about how it concluded.

Q. Mr. Barden, going momentarily now to the figures you mentioned, and the figure you said was unreasonable, as a matter of fact didn't you offer to lease this to another operator for considerably more money than you agreed to pay Mr. Cox?

A. No, sir.

Q. You made no offers to sublease it to anyone else?

A. Yes, we have. Let's put it this way. We have discussed leasing the service station to a gentleman we thought we would like to have as an operator. However, we don't want him as an operator after talking with him, and we discussed rental but we did not arrive at any figure.

Q. But you discussed $900.00 a month, didn't you?

A. I discussed—no, I don't believe so.

Q. You don't believe so?

A. No, I did not.

page 19 } Q. Neither of you discussed $900.00 a month?

A. No. sir.

Q. Now you say Mr. Cox is deaf?

A. I didn't know. I couldn't tell. He did not have a hearing aid, but he gave the impression he was partially deaf.

Q. Did you use your noraml tone of voice in talking to him?

A. No, sir.

Q. What did you do?

A. I talked loudly.

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Q. How loudly?

A. Loudly enough so he could hear us, and to help him understand I used a scratch pad when we discussed the rental at the service station to be certain he did understand everything we discussed with him.

Q. Why were you so concerned that he understand? You had a lease, didn't you?

A. Correct. But we were discussing terms and there were no rental terms. Well, there was no lease involved. We were discussing rental terms. We had no lease with us. This is the first time Mr. Miller and I went by the service station and to be sure he understood we used a scratch pad.

page 20 } Q. In other words, you knew there was serious doubt Mr. Cox could understand you at all unless you wrote it out rather largely, right?

A. No, I did not say that. I said we had to discuss the rental terms with him and to be sure he understood what we were saying I wrote it down, because this was important to me.

Q. You do that with all of them?

A. No, sir.

Q. Then you did know he had very serious difficulty in hearing?

A. I did not know he had very serious difficulty in hearing. I assumed he was slightly hard of hearing. He could hear me and understand me because we had carried on conversations before, but in all instances I talked loudly to be certain he did understand.

Q. All right. Were you aware of the condition of his eyes?

A. I don't know what you are referring to.

Q. Do you know anything about his eyes or do you assume he can see normally?

A. I assume he can see normally.

Q. Did he ever make an attempt to read the lease in your presence?

page 21 } A. I think so, yes, sir. I know he did. And I know he did because we went over the lease with him at his home which was, I believe, the first time we went over the lease with him and he pointed out the changes that we had made, which was the rental from $750.00 to $625.00 a month.

Q. Did he point out any other changes?

A. Yes. He pointed out twenty years was too long.

Q. And he picked up this lease and looked at it and said

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"Now this twenty years is too long"?

A. Yes, sir. He did not use those exact words, but that is what he was saying.

Q. As a matter of fact, he told you all along he wasn't going to lease to you for longer than ten years, didn't he?

A. No. The first time he mentioned that was the day we were over at his house, when he mentioned ten years was as long a lease as he would want but he was willing to give us ten one year renewals, which was twenty years.

Q. Did he say that?

A. Yes.

Q. Tell me what he said.

A. I asked him if a flat ten year lease with ten one year renewals was reasonable and he said "Yes."

page 22 } Q. Well, now, did you ever talk to Richard about it other than that one time when you made an appointment with him to come back and discuss it further with him Wednesday night?

A. I don't believe so, no. In fact, I never met Richard. I say I never met him—I don't recall meeting him at all except at the funeral or possibly at the funeral home. I don't remember seeing him there. All of my dealings in the past had been with Raymond Cox and with Mr. Cox, too, because earlier, approximately maybe two years ago when Raymond was alive we were trying to assist him in building his business. We were feeling the effects of competition in the area and because of our long relationship I made a recommendation that we install new lights there to help build their volume. This was after they had built the Atlantic Service Station across the street. I made the recommendation that we install them at our own cost and expense. I presume a letter was drawn up by either Raymond or Mr. Cox and I took the contract, a new contract by, which stated that these lights were ours. It was an equipment lease and a motor fuel contract and Mr. Cox signed it for me. Raymond was there and Mr. Cox signed it. So I had been dealing with both, mostly with Raymond because of his dealings in tires and batteries with us.

page 23 } Q. Did you ever advise Richard that you had signed the lease with his father without keeping your Wednesday night appointment that you agreed to keep?

A. No.

Q. You didn't think this was improper since he had said,

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Mr. Cox had told you according to your own statement that he wanted to discuss this with Richard?

A. No.

Q. Nor in view of Mr. Cox's advanced age, physical infirmity that you were aware of?

A. Physical infirmity? Which are you referring to?

Q. The one you said you were aware of.

A. Slightly hard of hearing, is that what you mean? No.

Q. After you got it did you say anything about it to anybody, about having signed a lease over there at the station? That is, did you discuss it with Mrs. Raymond Cox?

A. Well, now, no, I did not discuss it with her. She may have asked me. I don't remember when the conversation took place, but she mentioned it to me or asked me if he had agreed to sign a lease. This is before we went over to get it notarized. I said, "Yes, he did." Now whether she asked me whether we had signed it when we came back, I don't know.

page 24 } Q. As a matter of fact, when you came back from Mr. Kelley's, the notary, you just waved and took off, didn't you?

A. I went back to my plant, yes, sir, back to the office.

Q. In an awful hurry. The next day did you get a message about—this was Tuesday? Tuesday was the day you had—

A. We signed the lease. Was Wednesday.

Q. Did you get any messages concerning the fact Mr. Cox might have some second thoughts on this?

A. We received a telephone call, or I received a telephone call—I presume it was directed to me, was in my box—still while we were at lunch. And when I came back to the office after lunch I don't recall whether I called Mr. Bambacus back or whether Mr. Bambacus called me. I assume I called him because there was a number on the slip. Mr. Bambacus asked me to return the lease, I believe, and I assume I said "What for?" I didn't have the slightest idea who Mr. Bambacus was. He did tell me he was representing the Cox family and the lease he had signed was no good or invalid or something to that effect. I probably said to him, "What do you mean?" And I remember him saying I was

page 25 } dealing with an incompetent, which surprised me, of course. He tried to carry the conversation further, but I said "Well, Mr. Bambacus, I am sorry but I don't wish to discuss it with you any longer." He was rather what I felt rather rude over the telephone so I simply—or he asked me who my boss was. I said "Mr. Miller," and he

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asked me if I would get him. I said, "Yes, certainly." So I went back upstairs. The rest of the people I was with had gone back up into the meeting and I went upstairs to our meeting room and I asked Mr. Miller to talk to Mr. Bambacus, and that is the extent of my conversation.

Q. Did you hear what Mr. Miller said to Mr. Bambacus?

A. No, sir.

Q. Were you present or advised of any note which was delivered requesting return of the lease?

A. I was.

Q. Was your reaction to that the same as to the telephone call, that you had no intention of returning the lease?

A. Well, the lease had already been executed when I received that note, sir. I was not at the office when the note was received.

Q. I see. Somebody else received the note first?

page 26 } A. The note that I saw was received by our switchboard operator.

Q. And what time was that?

A. What time did she receive the note?

Q. Do you know?

A. No, I don't.

Q. What time was the lease executed, do you know?

A. The lease was executed approximately 3:30 in the afternoon.

The Court: You mean by Esso?

The Witness: By Esso.

By Mr. Shuford:

Q. At what location?

A. At our area office at Broad and Hamilton Street, sir.

Q. And where were you at approximately 3:00 o'clock to 3:30?

A. I was at our area office.

Q. Broad and Hamilton?

A. Yes, sir.

Q. And where was Mr. Miller?

A. Mr. Miller was at our district office, sir, which is on Trenton Avenue in South Richmond.

Q. Did Mr. Miller or the man. Mr. Pembroke.

page 27 } who apparently executed the lease on behalf of Humble, discuss anything with you concerning your negotiations or relationship with the Cox's?

A. No, sir.

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Q. Nothing was said despite Mr. Bambacus' call and his note?

A. You are asking me if Mr. Pembroke discussed it with me? No, I discussed it with him. I mentioned it to him we had received a call from Mr. Bambacus and that I did not know what was happening, I had no idea except that it appeared that somebody or other was trying to have Mr. Cox declared incompetent.

Q. That was—

A. That someone was trying to have Mr. Cox declared incompetent, and I deduced this from the conversation I had with Mr. Bambacus because this was the only thing he said to me, was that the lease was invalid because we were dealing with an incompetent.

Q. You were concerned with the fact that somebody might be having Mr. Cox declared incompetent?

A. Yes, sir.

Q. What was your concern so far as the lease?

A. I don't understand what you mean, sir.

page 28 } Q. Well, after all, it seems to me it is less of Standard Oil's worry concerning Mr. Cox's being declared incompetent or not being declared incompetent than their concern about this purported lease. Now you are talking to your superior about a phone call that attempted first to withdraw a lease executed by Mr. Cox. What did you say in regard to that?

A. Well, simply that we had executed a lease with Mr. Cox at a rental which I felt was fair and a length of term I felt was fair and under the circumstances I felt was in the best interest, our best interest to execute it and, obviously, if Mr. Cox was incompetent the lease was invalid. However, if Mr. Cox was competent we had a valid lease. That is common sense, I think.

Q. Despite the fact a member of the Richmond Bar called you and said he represented Mr. Cox and the Cox family—

A. No, he said he represented the Cox family.

Q. And you knew the Cox family had all been tied up in the station because you have mentioned dealing with Mr. Henry Cox, Mrs. Raymond Cox, Mr. Richard Cox, all concerning this matter? You have talked to all of them?

A. Yes, sir.

page 29 } Q. That pretty well combines the Cox family. Now a member of the Richmond Bar calls you and says "I represent the Cox family and I want a copy of that lease and I want to see what Mr. Cox has signed,"

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because you have already testified you would not leave a copy over there, and you refused him, did you not?

A. Yes, sir.

Q. And then you told your boss you thought you had a good lease and you thought you ought to go ahead and sign it, despite your talk with the attorney telling you you might be dealing with a man who might not have the full capacity to sign?

A. Are you asking if Mr. Cox fully understood what he signed?

Q. I am asking you if you, despite the notice from an attorney, on your own said "Let's get this thing signed. Forget him. We've got a good lease." Isn't that what you said?

A. I said we had a fair lease.

Q. Fair to whom?

A. Fair to the company and fair to Mr. Cox and fair to the dealer who has to operate that service station.

Q. Now if it was a fair lease why were you reluctant to discuss the matter with an attorney who said he represented the family and insisted on signing it some hour or hour and a half after you got notice that he wanted to see it and withdraw it?

page 30 }

A. Well, I think I answered that question before. Mr. Bambacus did not say he was representing Mr. Cox. He said he was representing the Cox family. Now I think if you will carry this conversation or carry the events a little further you will see what I mean. But anyway, simply because of his approach of telling me that I was dealing with an incompetent, it didn't make sense because if he was an incompetent how could he have given the power of attorney to Mr. Bambacus? So who was he dealing with, Mr. Cox or Richard Cox or Marjorie Cox? I did not know who he was dealing with but I assumed he was not dealing with Mr. Henry Cox because Mr. Henry Cox certainly wasn't incompetent.

Q. Are you an attorney, Mr. Barden?

A. No, sir.

Q. And how many assumptions did you make to come to that conclusion that Mr. Bambacus did not represent who he said he was representing?

A. I made one assumption.

Q. What was that?

A. That Mr. Cox wasn't incompetent.

Q. So solely on that you decided to ignore Mr. Bambacus' request?

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A. No, No, I think the events of the telephone
page 31 } conversation was made clear to everyone. If the
decision was made it wasn't entirely my decision.
But I would have made it and I think I did—

Q. Did you make any attempt to contact Mr. Henry Cox then to see whether or not what Mr. Bambacus said to you might have been true?

A. No, sir. not at that time. We did contact him later.

Q. But you made sure you had executed the lease?

A. Yes, sir.

Q. Why were you so anxious to sign that lease, Mr. Barden, at that particular time? Why couldn't it have waited, say, until the next day when you might have had a chance to talk to Mr. Cox or Bambacus or anybody you chose?

A. Again, I have to go back to this idea that Mr. Cox might possibly be incompetent. Like I said, I am not a lawyer, I don't know what could have taken place. But using what I thought was common sense, if Mr. Cox were incompetent and the affairs of the business were turned over to some member of the family and they no longer desired to lease the station to us we would no longer have a service station. It was obvious other companies had been contacted. In my mind,
Mr. Henry Cox did not contact them. As I said,
page 32 } somebody had been by to the service station that
morning. They made another offer counter to
ours. Personally. I was surprised because I thought our conversations and our dealings were confidential. This was probably why I did not leave a copy of that lease, because I wanted them to remain confidential. But somebody obviously contacted other oil companies and—again, I have to assume this —used our lease proposal as a lever, I assume, or tried to use it. But that is again an assumption.

Q. You have more assumptions than most people?

A. Yes, sir.

Q. How do you know the oil companies did not contact the Cox's?

A. Well, again, sir, I have to make an assumption here, if I may.

Q. You may.

A. I don't know what other oil company would pay that for that location or, rather, I did not know. I guess I do now. I feel that Humble, having been on the corner for the number of years that we have been there, could probably afford to pay as much rental as anyone and probably do it economically. I did not think another oil company could come

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in and make an offer any greater than ours, simply because I did not feel that they could do the volume. It page 33 } was not economically possible. However, it is a choice location and they wanted that corner badly enough that they would most likely make an outrageous offer, but the only way they could make it would be to know what our lease terms were and I assume this is what happened. Someone told them what our lease terms were, the length of the lease, the amount and when the representative for whichever company it was came by they knew what our terms were and they made an offer which was greater than ours. Again, I cannot prove that, sir.

Q. Well, nobody saw a copy of your lease until the night before when you talked to Mr. Richard Cox and said you would see him again Wednesday.

A. That's correct. But we made our lease terms known to Mr. Cox. We told him.

Q. Tuesday night?

A. We told him that afternoon over the telephone what the terms of the lease were.

Q. You told him all of the terms so there was no problems? What was your concern about leaving a copy?

A. I told him what the terms of our lease were. I told him the length and I told him the rental clause. I do not know whether I told him whether we had any renewal option or not. I told him those two things and I did not want a copy of our lease to be given or shown to another oil page 34 } company, simply because we never record that lease. We always record a short form lease which doesn't give to competition the terms of our lease. That is why I did not leave it. It would be very simple to take a copy of that lease and photostat it, Verifax it and have it made known to competition. Now unfortunately, because we did not execute a short form lease with Mr. Cox we had to record that long form lease, so it is available to competition, to our regret, and if you will check our records you will find we recorded our long form. But it is not done normally. I have never done it and I don't know if it's ever been done before.

Q. Why didn't you execute a short form?

A. I did not have one with me. I forgot it, to be frank.

Q. This could not have waited until the next day to get a short form?

A. Under the circumstances, I think not.

Q. Despite the fact you contacted Mr. Richard Cox, whom you said wanted to talk it over with Mr. Henry Cox, you had to sign it Tuesday?

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A. I think so, under the circumstances.

Q. And you had to ignore Mr. Bambacus and made no effort to check with Mr. Henry Cox after the discussion you had with Mr. Bambacus?

page 35 } A. After the discussion with Mr. Bambacus, I think so, yes, sir.

Q. Was this opinion of yours concurred in by your superiors?

A. I assumed, yes, it was.

Q. You discussed it with them?

A. Only to the degree I have already mentioned to you of what has taken place, or what had taken place concerning Mr. Bambacus' phone call.

Q. As a matter of fact, you knew, didn't you, Mr. Barden, because Mr. Richard Cox told you on three separate occasions to leave Mr. Henry Cox alone, that he was an elderly man who could neither see nor hear and emotionally upset from the death of his son and was in no condition to execute any contract? Three different times he told you, didn't he?

A. I know of two occasions. I don't remember a third.

Q. Two occasions? All right. One was at the cemetery?

A. Yes, sir.

Q. Despite your own admission earlier in your own narrative that you knew he was hard of hearing, you chose to deal with him on a Tuesday when you made a pro-

page 36 } mise with his son, with whom he wanted to talk, to see him on Wednesday, got a lease drawn up, got him to sign it, and when you were notified by an attorney representing the family that he might be incompetent you went right ahead and recommended acceptance anyway?

Mr. Pasco: I think Mr. Shuford is arguing his case.

The Court: Objection overruled. I think it may be easier summarizing. Go head. I overrule your objection, Mr. Pasco.

Mr. Pasco: I request it be broken down. It is is too long a question for anybody to answer.

The Court: Suppose you break it down?

By Mr. Shuford:

Q. You admitted Mr. Richard Cox told you two times his father was in no shape to execute a contract with you?

A. No, no. He said he didn't want me to discuss the lease with his father.

Q. That is all he said?

A. Yes.

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Q. You knew he was hard of hearing?
A. To some degree.
Q. You had made an appointment with Richard Cox to see him Wednesday and knew at that time, because
page 37 } Henry Cox has told you, he wanted to discuss it with Richard?
A. Yes, but now I asked Mr. Henry Cox if I could discuss it, if Mr. Miller and I could discuss it with Richard for him.
Q. But he told you he wanted to discuss it with Richard?
A. Yes, sir.
Q. Despite that, on Tuesday you had Mr. Cox sign a lease?
A. Yes, sir, I had Mr. Cox sign a lease on Tuesday. Mr. Cox signed a lease on Tuesday.
Q. I want to ask you one question. Did he read it on Tuesday?
A. He had the opportunity to read it, yes, sir.
Q. Did you observe him apparently reading it?
A. Word for word?
Q. Did you observe him trying to read the lease, the full four pages of it?
A. Now I can't tell you, sir, whether he read the entire lease, what lines he read or what phrases he read.
Q. How long did he look at it?
A. Let me finish. When we went over the lease with him when I changed the lease he had an opportunity to read it then. When we signed the lease in Mr. Kelley's
page 38 } office, in order for Mr. Cox to read the lease and initial the clauses we had to go down one paragraph at a time. The questions on the lease are clear. He made no question as to anything on the lease except the clauses as to rental, the purchase option and the rental. I assumed he read the lease.
Q. You assumed it?
A. Or that he knew what he was signing when he signed it.
Q. But you did know you weren't due back until Wednesday?
A. Yes, sir. Correct.
Q. On Wednesday, the day you were supposed to come back, you received a call from an attorney who purported to be and told you on the telephone that he represented the Cox family?
A. Yes, sir.
Q. Without checking or doing anything to see whether this was true or not you refused him his request?

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A. Well—
Q. Just answer me yes or no.
A. Yes, we refused his request, that's correct.
Q. And you advised your superiors to go on and sign the lease because it was a fair lease?
page 39 } A. Yes, sir.
Q. And right after you signed it, despite the fact it wasn't a short form and you don't like to put it on record because your competition might read this valuable legal document, you went right down to the court house and recorded it that afternoon?
A. Yes, sir.
Q. What were you really concerned about, Mr. Barden?
A. What was I really concerned about?
Q. Trying to protect a sharp deal?
A. A sharp deal or a fair deal?
Q. A sharp deal.
A. A fair deal.
Q. A fair deal usually stands on its own feet?
A. I think it will.
Q. What was your hurry?
A. The hurry goes back to Mr. Bambacus' conversation with me on the telephone. I think if you will carry this a little bit further—we carried that lease back to Mr. Cox, Mr. Miller and I, after it was recorded and after it was signed and recorded and—
Q. And he wouldn't take it, would be?
A. We discussed this with Mr. Cox at the serv-
page 40 } ice station. We asked him what was the problem.
We did not know whether it was Mr. Bambacus, the Cox family or who was giving us the problem. We knew we would find out when we went back to the service station and know whether Mr. Cox would accept the lease or not. Mr. Cox accepted the lease and he told us after we explained our position to him, what I had explained before about the amount of money involved, the type of business this was and that we did feel it was fair, and he admitted to us at that time he felt so, too, that he was satisfied and the others weren't. In my mind that statement answered our question.
Q. As a matter of fact, though, Mr. Cox really would not accept it, you had to leave it on the counter and walk out, didn't you?
A. I believe Mr. Cox picked it up.
Q. You believe?
A. I know he did.

John Robert Barden.

Mr. Shuford: That is all for now.

CROSS EXAMINATION.

By Mr. Pasco:

Q. Mr. Barden. how long have you worked for Humble Oil Company?

A. Steadily since 1958.

page 41 } Q. Since 1958?

A. Yes, sir.

Q. And how old are you?

A. Thirty-one.

Q. And tell us where you went to college.

Q. University of North Carolina.

Q. Did you graduate there?

A. Yes, sir.

Q. And you went to work with Humble after graduation?

A. Yes, sir, for about three or four months. I had to go into the service for two years and I came back in 1958.

Q. Now how long had you had responsibility for the area where this service station is located when you undertook to negotiate this lease?

A. I believe just slightly over two years, two years and a half, approximately.

Q. And I believe you testified on a Monday afternoon you went to see Mr. Cox at his home with Mr. Miller?

A. Yes, sir.

Q. And you had a lease to show him at that time?

A. Yes, sir.

page 42 } Q. He asked you to see his son, Richard, after he had discussed these terms, is that correct?

A. Yes, sir.

Q. When did you see Mr. Richard Cox?

A. That evening.

Q. You made an appointment at 10:00 o'clock?

A. Yes, sir.

Q. And Mr. Shuford asked you about a subsequent appointment. I did not hear you sav anything about it except to answer his question. I would like to ask you whether or not you made a subsequent appointment with Mr. Richard Cox.

A. Richard asked us, Jack was with me and—

Q. Jack Miller?

A. Yes. He asked us to wait until Wednesday before we

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went back to see his father. That was the extent of the conversation.

Q. And why didn't you wait until Wednesday to see his father?

A. Well, purely by accident. When I went into the service station the next day, of course, Mr. Cox wasn't there but Mrs. Raymond Cox was and I mentioned, as I walked in to talk with her she mentioned that someone else had been by making offers, other oil companies had. They had
page 43 } gotten offers greater than ours, etc. Of course, I was upset because I thought and I was under the impression that our conversations with Mrs. Cox and Mr. Cox were confidential.

Q. Did Richard Cox indicate to you why he wanted you to wait until Wednesday to see his father?

A. No, other than I guess just to talk with him.

Q. Who?

A. Richard.

Q. The impression—

A. The impression was he wanted to discuss it with his father, discuss the lease with his father.

Q. And he asked you to wait until Wednesday to see him?

A. Yes, and we had every intention of doing so and we would have other than the circumstances that had evolved. I would have, because the lease was in my possession.

Q. Mr. Barden, I hand you a document entitled "Lease To Company," dated April 13, 1964 and ask you whether or not you can identify this was the lease Mr Cox signed that you have testified to here today? (Indicating document)

A. Yes, sir, this is the lease.

Mr. Pasco: If Your Honor please, we would like to have this marked as the Respondent's first exhibit.

page 44 } (The said document was marked and filed as Defendant's Exhibit No. 1.)

By Mr. Pasco:

Q. When you went to see Mr. Richard Cox at the service station on the Monday night did you have the lease with you then?

A. Yes, we had the lease with us then, yes.

Q. And you discussed the terms?

A. Yes. We gave the lease to Richard and asked him to look it over.

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Q. Did he look it over?
A. Yes.
Q. And I believe you said he never approved or disapproved but asked you to wait until Wednesday to see his father?
A. Yes.
Q. Now do I understand there are two different operations that are conducted or were conducted at this service station location?
A. Well, now again—
Q. Just answer my question.
A. Two different? I don't understand what you are asking me, Mr. Pasco.
Q. What were the arrangements between your company and Henry Cox? What sort of arrangement did
page 45 } you have with him?
A. I see. All of our contractual relationships were with Mr. Henry Cox because he owned the property.
Q. With respect to what?
A. Our selling him motor fuel and install our equipment. Of course, we have a motor fuel contract and we have an equipment lease. The motor fuel contract allows us to deliver motor fuel to him and he agrees to buy from us and the equipment lease gives us permission to install our equipment on that property and gives us the right to own it. Well, it says we own the property and we have a right to move it.
Q. Those documents were negotiated with and signed by whom?
A. Henry T. Cox.
Q. Was there a tire and battery agency?
A. Yes.
Q. Who conducted that?
A. Raymond Cox.
Q. That was merely a dealership, is that right?
A. This was an arrangement we made with Raymond Cox before I took over in that sales field, where he would buy tires and batteries from us. He wasn't obligated to buy from everyone. He resold them. There was a rebate.
page 46 } Q. Raymond purchased and resold tires and batteries?
A. Yes.
Q. That was separate from the motor fuel arrangement with Henry Cox, is that right?
A. Yes.

Mr. Pasco: I think that is all. Thank you.

John Robert Barden.

RE-DIRECT EXAMINATION.

By Mr. Shuford:

Q. Just one moment. When you negotiated these contracts that you speak of and equipment lease and a fuel sales contract with Mr. Henry T. Cox did you do it exclusively with him or was Mr. Raymond Cox ever involved?

A. Mr. Raymond Cox was involved.

Q. In fact, all of the actual negotiations concerning whether it was a good agreement or not took place with Mr. Raymond Cox and when Mr. Raymond Cox told his father it was all right to sign it he signed it, didn't he?

A. On the contracts I signed with him, yes, that is correct.

Mr. Shuford: That is all.

The Court: Anything further, Mr. Pasco?

page 47 } Mr. Pasco: No.

By the Court:

Q. Mr. Barden, may I ask you this? In regard to this short form lease, is that customarily executed simultaneously with the long form or is there any prescribed routine for that?

A. Sir, I am inclined to say this is up to the salesman involved in the negotiations. I have not been involved in a great deal of this sort of thing and your main concern is the lease itself, and generally I would say that after the lease, the basic lease signed. the parties agree to it, then we would take a short form by for execution. They are not necessarily signed together, and I think probably this is the best way to do it. I didn't do it this way, but it was an oversight on my part.

Q. Well, Mr. Cox never was requested to sign a short form, I take it?

A. No, sir.

Q. Because after your conversation with Mr. Bambacus you thought it would be useless?

A. In this instance, yes.

The Court: All right. Nothing further, gentlemen.

page 48 } RE-CROSS EXAMINATION.

By Mr. Pasco:

Q. His Honor's question was you thought it would be useless to do what, Mr. Barden?

D. P. Kelley.

A. Well, it didn't have any bearing on the contract. It had no effect one way or the other is all I meant.

Q. Did you have any question about Mr. Cox's competency?

A. No, I did not question Mr. Cox's competency, no, sir.

Q. Why did you think it would be useless to ask Mr. Henry Cox to sign a short form lease?

A. Well, I assume it probably didn't even cross our mind at the time.

The Court: Let me ask him this, Mr. Pasco.

By the Court:

Q. Why was a short form lease never presented to Mr. Cox?

A. Well, I don't know how to answer that, except Mr. Cox was in agreement with it. We were having difficulty with Mr. Bambacus. We did not want to do anything that would upset it any further, that was all. I did not know whether he would sign it or not. I did not ask him to.

page 49 } By Mr. Pasco:

Q. You took the long form back to him?

A. Yes.

Q. And he accepted it?

A. Yes, he accepted it.

Mr. Pasco: That is all.

(Witness stood aside.)

(Whereupon, a brief recess was taken.)

D. P. KELLEY,

a witness called by and on behalf of the petitioner, after being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Shuford:

Q. Would you please state your name and address?

A. D. P. Kelley; President of Kelley's, Incorporated, 5047 Forest Hill Avenue.

Q. Are you a notary public?

A. Yes, sir.

D. P. Kelley.

Q. I hand you here a document entitled "Lease To Company." It bears a notarial acknowledgment on the rear. I ask you if that is your notarial acknowldgment? (Indicating document)

page 50 } A. It is, sir.

Q. Have you ever seen that instrument before? Do you recognize it?

A. What, this lease?

Q. The paper that you have.

A. Yes, I have seen it.

Q. The same question would pertain to this document which is the original actually introduced in the record? (Indicating)

A. Right.

Mr. Shuford: Let the record show Mr. Kelley identified Exhibit 1, I believe it is.

By Mr. Shuford:

Q. Mr. Kelley, do you know Mr. Henry T. Cox?

A. Yes, sir.

Q. Do you know the members of his family personally?

A. Yes, sir.

Q. How long have you known them, approximately?

A. About, I went in business out there in 1937, Mr. Cox was out there before then and I have known them for thirty years, I would say.

Q. On the day you notarized this paper did Mr. Cox and Mr. Barden come to your office?

page 51 } A. Yes, sir, they did.

Q. What was said to you regarding what they would like you to do?

A. They wanted me to notarize a lease Mr. Cox was going to sign. I took them up in the office and I noticed there wasn't any certificate on the lease. I buzzed my secretary and she came in and I told her to put a certificate on the lease. Mr. Barden went out with the secretary and she was called to the phone or something just for a minute. He was in such a big hurry he typed it on himself on one of the papers. And one other thing, I glanced at the lease—I did not read it carefully because the papers people bring to notarize I did not think any of my business, particularly business like this in the neighborhood—but I noticed they did not put any equipment Mr. Cox owned there and I knew he was bound to own something in the station, so I called it to their attention. Mr. Cox sat there and Mr. Barden put down two air com-

D. P. Kelley.

pressors or something. I said, "Is that all?" He said it didn't make any difference.

Q. Have you ever notarized any documents for the Cox's before, particularly Mr. Cox?

A. I never notarized anything for Henry Cox before. Mrs. Cox, as everybody knows, runs the business.

page 52 } Q. Who is it?

A. Mrs. Henry Cox. She would say "Sign here." Mr. Cox has extreme difficulty in hearing and she would say, "Sign here," and he would sign. One time they were in there and he had so much trouble trying to hear I asked him why he did not get a hearing aid like mine. So Mrs. Cox went over town and bought him a hearing aid, which he never wore. He may have it on this morning. But I might say this, that that was the first thing that bothered me, was that there was no one there with Mr. Cox and he was very emotional that day. It was shortly after Raymond's death. If Ray's name was mentioned he would go all to pieces. It really upset me quite a bit because I had known Mr. Cox for years. And after this lease was signed Mr. Barden pulled another paper out of his pocket, and I naturally supposed Mr. Cox wasn't familiar with the paper so I read the paper and that, in essence, said that any offer, after ten years any offer made by any other oil company would have to be submitted to Standard Oil Company or the Humble Oil Company for their acceptance or refusal. So I looked at the paper and I said to Mr. Barden, whose name I did not know then, I said, "Young man, you are going to hate me, but I am going to do what I think is right." I said, "Mr. Cox, I am going to tell you not to sign this paper." Mr. Cox said "All

page 53 } right. I won't sign it." So then when they left my office I was quite concerned about the whole thing and I got on the telephone and I called Mr. Richard Cox and he wasn't at his office. So I called the service station and Mrs. Raymond Cox was there and I told her what had transpired and I told her that the young man was in such a terrible hurry to try to get this thing signed and out of there that I felt like I ought to tell them that he had signed this paper. Mrs. Cox told me, she said, "I wish you had advised Mr. Cox not to sign in the first place." I said, "That wasn't my right." The second paper, I did think I should advise him because we had been friends so long. She said, "Well, I wish you had done that." Of course, I did not. Mr. Cox did not sign the second paper.

Q. Did Mr. Cox read the second paper?

D. P. Kelley.

A. I don't think Mr. Cox ever looked at the second paper. I took the paper in my hand and I said, "Mr. Cox, this man is going to hate me, but I am going to tell you not to sign it." I can tell you another thing. On that certificate I put on there—there wasn't any on that lease, why, I don't know —but I put a short certificate on this and about the next day after it was signed Mr. Purdy's office called me and told me I had used the wrong certificate for a lease of that type.

page 54 } I told the young lady, "I am sorry I used any." She said, "Well, Mr. Purdy is having another one typed on there and have you sign it." I am very familiar with Mr. Purdy. He said, "Mr. Kelley, won't you come down and sign this paper?" I said, "No, Mr. Purdy. I am sorry I signed that paper. I won't sign another one."

Q. Why were you upset? Was there anything wrong with Mr. Cox's condition?

A. No, except Mr. Cox was very emotional. It was just shortly after Raymond's death. Another thing happened that I think proved this. A young lady went down there and asked him to give some information about the growth of Westover Hills and Mr. Cox ordered her out of the station. The young lady came to my office and was almost crying. She had never been treated like that. I said, "Marjorie, I would not pay any attention to that. Mr. Cox has been through a lot of trouble and he is very much upset and he just doesn't actually know what he is doing." I said. "You just forget that. You come down around to my house." I said, "I have been around as long as Mr. Cox has been in business." I said, "I will be glad to help you all I can." So she did and I gave her all the information.

Q. Do you know anything about Mr. Cox's eyesight?

page 55 } A. I have not observed anything particular about his eyesight. I know he had difficulty in signing his name and initialing that lease.

Q. He had difficulty in actually signing his name?

A. Yes, sir. You can look at the signature and tell.

Q. Did he read any of these sections which he initialed or did you point them out or Mr. Barden?

A. Mr. Barden pointed them out. I had nothing to do with them.

Q. So far as you could observe there—well, let me ask you this. These initials were made in your presence along with the signature?

A. Yes, sir.

Q. So as far as you could observe at the time they were

D. P. Kelley.

in your office and up to and including the time the initials were affixed and name signed, did you see Mr. Cox at any time read or attempt to read this document?

A. No, I did not.

Q. During that time was any part of it read to him?

A. Not that I recall.

Q. And as I understand it, you were sufficiently upset or concerned, I should say—

page 56 } Mr. Pasco: Don't lead the witness. Objection to that, Your Honor.

Mr. Shuford: Withdraw the question. That is all right.

By Mr. Shuford:

Q. Did you have any familiarity with the business operation over there at the service station?

A. Yes. I have a truck, two station wagons, a couple of cars. We buy most of our gas and oil there and I run a monthly account. I have mailed in checks and I have been called by Mrs. Raymond Cox, and she said, "Mr.—

Q. Wait just a minute. Do you know the family, the ones who have been mentioned, sufficiently well to know of your own knowledge who assumes responsibility for what, the operation around there?

A. Now if you are talking about going back now, Mrs. Cox usually handled the pocketbook, handled the money, and then after Mrs. Cox passed on Raymond looked after everything. Whenever I was going to have my car serviced, anything, I never sent it down unless Raymond was there. As I started to say, I run a monthly account and I have mailed checks down there and Mrs. Cox would say, "I know you mailed your check in but your account hasn't been marked collected."

She said that Mr. Cox would open the mail and page 57 } did not put it in there. That was taken care of.

Q. Do you know whether or not Mr. Cox was in the habit of signing contracts, conducting business on that level on his own or did other members of the family do it? Just what was the operation, do you know of your own knowledge?

A. What are you talking about, contracts with wholesalers, that kind of thing?

Q. Any kind of contracts involving a written agreement.

A. Only thing I have seen, when I go into buy gas, tires,

whatever it happens to be, I sign the ticket. Mr. Cox is usually there but most times I make out my own ticket, put on what I have got and sign it, pass it on to him.

Q. I am going to ask a question, Mr. Kelley, to which there may be an objection. In any event, I don't want you to answer in substance, I merely want a yes or no answer to whether or not you feel that you know Mr. Henry Cox well enough to express an opinion as to whether or not at the time this instrument was initialed and signed by him he was, as a matter of fact, sufficiently competent and capable to understand the full import of what this document was and contained.

page 58 } Mr. Pasco: If Your Honor please, I object to that. That is a question in the realm of the medical world and I believe it is improper.

The Court: The question that that is leading up to—I don't think the answer to that question is going to be prejudicial, but the next question. He may answer that.

(The previous question was read by the reporter.)

A. No.

By Mr. Shuford:

Q. Your answer is "No," you don't know him well enough? That is all I am asking. You know him well enough to express an opinion, is that what you are saying?

A. Yes, sir.

The Court: Mr. Pasco, what about the objection? What is your position on that?

Mr. Shuford: I think this is an expression of opinion, which is entitled to whatever weight the Court chooses to give it. It is not presented as a medical opinion. It is a business man who has known this gentleman for some thirty years or more who is familiar with the family and has notarized most of their business transactions, and
page 59 } there is a sufficient acquaintanceship here, I think, for him to express a business man's opinion. I do not think it is a medical opinion, nor should it be offered as such.

The Court: Mr. Pasco, I am inclined to think perhaps that

D. P. Kelley.

testimony would be admissible. He is not, of course, qualified to give any medical opinion. In any event, we do not have a jury. If I conclude it is improperly admitted I shall not pay any attention to it, so I will admit it on that basis.

Mr. Pasco: Note my exception.

By Mr. Shuford:

Q. Will you now give us your opinion as to the answer to that question? Was Mr. Cox capable and competent?

A. I would say he was not capable because he was so emotionally upset that day he just wasn't thinking straight, and that is why I was concerned and why I went further after he had left the office to try and find out what was wrong.

CROSS EXAMINATION.

By Mr. Pasco:

Q. Mr. Kelley, how long have you been in busi-
page 60 } ness over in this area?

A. Since 1937. I have been in business in Richmond forty-three years.

Q. You have had a right close relationship with Mr. Henry Cox over those years, have you not?

A. Business relationship.

Q. Does he make purchases from you? Has he made purchases from you?

A. Yes, sir.

Q. In other words, you are a customer of his and he is a customer of yours?

A. That is correct.

Q. And have you notarized documents for him down through the years?

A. As I told you, I have, yes, sir, but not for him personally. Most of the time it is his personal signature, but in every instance Mrs. Cox was with him or Raymond, whichever happened to be available.

Q. But you have notarized documents for him down through the years?

A. I don't think I have ever notarized a document for him alone except this one. That is why I was concerned.

Q. But you did not have to, did you?

page 61 } A. Didn't have to, no, sir.

(Witness excused.)

JOSEPH S. BAMBACUS,
a witness called by and on behalf of the plaintiff, after being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Shuford:

Q. Would you please state your name and occupation?

A. Joseph S. Bambacus; attorney.

Q. You have heard the testimony and you are familiar with what is involved in this case, are you not?

A. Somewhat.

Q. What was your capacity, briefly, insofar as this case was concerned?

A. My sole interest in this case was that of a lawyer representing his client, Mr. Henry T. Cox.

Q. Have you known Mr. Cox prior to this incident?

A. Yes, I have.

Q. Have you known the members of his family?

A. Yes. I do, all of them.

Q. Would you please tell us what was the first contact or knowledge you had concerning the specific in-
page 62 } stance involved in this suit?

A. On the morning of April 15th, this year, Mr. Richard Cox came into my office and he told me that he was there pursuant to request and authority of his father and proceeded to explain to me that his father had signed some document that he thought was a lease. He knew nothing about any of the terms or conditions in the lease except he thought it provided for a rental payment of $750.00 a month and he further told me that several other oil companies had offered more, one more than doubled that amount of money, for that same service station. And he proceeded to tell me that he had told Mr. Barden or a Mr. Barden of the Humble Oil Company on several occasions to leave his father alone, that his father was in no condition to negotiate or execute a lease, that in view of his age, his hearing, his eyesight and emotional instability as a result of the recent death of his youngest son—I think he was buried about ten days, two weeks prior thereto—and notwithstanding his instructions on Monday night to Mr. Barden to leave the gentleman alone until he had had sufficient time to look into it and come up with what they thought would have been a fair offer, Mr. Barden went there on Tuesday instead of Wednesday as he had agreed and induced his father to sign a piece of paper

Joseph S. Bambacus.

which he thought was a lease. I then questioned
page 63 } Mr. Cox about just what conversation he had had
with his father. because I certainly did not want to make, or do anything by way of canceling a contract of that sort without express approval and request from the person in whose behalf I was acting. So I called the station and talked to Mr. Cox.

Q. Which?

A. Henry Cox, by telephone. While it was not easy by reason of his hearing to get him to understand who I was and what I was calling about, I was finally satisfied he understood who I was and he told me he wanted the lease canceled, that he thought they had pulled a fast one on him. Whereupon, I called Mr. Barden of the Humble Oil Company, and my first statement to Mr. Barden was to identify myself and tell him I represented Mr. Henry T. Cox and not the Cox family. I told him that I understood that he had obtained Mr. Cox's signature to what I thought was a lease and I would like to have a copy of it or at least an opportunity to look it over. Mr. Barden told me he could not and would not let me see it nor let me have a copy of it and, furthermore, he wasn't going to let anybody have a copy of it until after it had been sent to his home office, wherever that was, and signed by the home office and returned back to Richmond. My purpose in requesting a copy of it, notwithstanding I was instructed
to cancel whatever was on that piece of paper, I
page 64 } felt that prudence required that I at least take a
look at it before I followed through with the instructions. When it was apparent I could not see it I then proceeded to tell Mr. Barden that I was instructed by Mr. Cox to cancel whatever it was he had signed, revoke it and do everything necessary to bring it to an immediate and abrupt end at that point. And then Mr. Barden made certain remarks, then I asked to speak to his supervisor or superior or the name mentioned in Mr. Barden's testimony this morning—is it Miller?

Q. Miller.

A. Miller. I spoke with Mr. Miller very briefly and the sum and substance of what he had to say to me was that this was the way it was and this was the way it was going to be. Then, in an overabundance of precaution, when I hung up the telephone I thought I had better write a letter to document what I had told these gentlemen on the telephone, and simultaneously with the writing of the letter I thought prudence required I prepare a power of attorney, also, and get

Joseph S. Bambacus.

Mr. Cox, Mr. Henry Cox, to sign that. I delivered that letter to Mr. Barden's office over in South Richmond on Ninth Steet Road and I delivered that letter to a lady who was a receptionist there and I got a receipt for it. When I walked into the office over there I asked for Mr. Barden or Mr. Miller or either of them. The lady told me both were in
page 65 } the back office in conference and could not be disturbed at that time. I tried as persuasively as I could to have the lady interrupt the gentlemen so I could personally hand them the letter. She insisted she had instructions from them that they were not to be interrupted, they were in a very important conference. I asked her to make sure and deliver this letter to them, and I walked behind the receptionist's desk and I also asked her to give me a receipt, which is this paper here attached to a copy of the letter. (Indicating document) I also asked the lady to mark the time at which she received this letter and she did. The piece of paper reads as follows:

"Received a letter from Mr. Bambacus, on 4-15-64, 2:55 p.m. for Mr. Jack Miller.

Betty Phillips
4-15-64"

Q. Would you read into the record the contents of this letter?

A. The letter is addressed to and reads as follows:

"Humble Oil and Refining Company
2000 Trenton Avenue
Richmond, Virginia

Re: Cox's Auto Service
Corner of Forest Hill Avenue and
Westover Hills Boulevard or better
known as 4900 Forest Hill Avenue

page 66 } *Attention: Mr. Miller*

Gentlemen:

The alleged offer to lease the captioned real estate to you and/or one of your subsidiary or sister companies, which said offer was allegedly obtained by your representative, Mr. Robert Barton, on April 14, 1964, from Mr. Henry T. Cox, and not yet accepted by you, is hereby revoked, cancelled

and/or withdrawn and of no further legal effect or significance.

Yours very truley,

Joseph S. Bambacus
Attorney at Law and
Attorney in Fact for
Mr. Henry T. Cox

JSB/s

Delivered by Hand April 15, 1964 to 2000 Trenton Avenue, Richmond, Virginia''

Mr. Shuford: May I introduce this as Petitioner's Exhibit 1?

The Court: Is there any objection? If not, it will be so admitted.

(So marked and filed as Petitioner's Exhibit No. 1.)

A. (Continuing) During the telephone conversation with Mr. Barden he told me that the lease had not yet been signed and could not be signed and had to be sent away by them to be signed on behalf of Humble Oil Company. Right after I left there I went to the service station at 4900 Forest Hill Avenue for the purpose of obtaining a written, a signed power of attorney from Mr. Cox, and I tried to explain the contents of the power of attorney but when it became most apparent to me that Mr. Cox could not understand what I was talking about I felt it would have been useless to have him sign the power of attorney. All he understood was that I was his lawyer and I felt acting as his attorney at law was sufficient.

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By Mr. Shuford:

Q. Did he understand that your position as attorney at law concerned a purported lease at Esso?

A. Yes, he did.

Q. Did he give you any instructions or indication of his sentiment at that time?

A. He wanted out of it. He felt he had been duped. When I asked him, ''Well, what did they say or do to you to induce you to sign this lease,'' he said ''I had to lease it to them to keep the courtesy card business.'' Upon further questioning—

Joseph S. Bambacus.

Q. I was just going to ask you if you questioned him further.

A. And I began to question him about the courtesy card business, and he meant the credit card business, and I asked him, I said "Well, what concern is that of yours
page 68 } so long as the rent is being paid every month by whoever is renting the station?" He said, "Well," he scratched his head and said, "Well, I never really thought about that."

Q. Did you question him to ascertain whether or not he understood the terms of what he had signed?

A. Well, at that time I did not have a copy of the lease, did not know what the lease contained, did not know what it looked like and representatives of Humble refused to give us a copy of it.

Q. Did you ask him if he knew what he had signed?

A. He told me in that connection he was getting $750.00 a month rent—$7,500. for rent for nine months, is what he said one time. He was very confused. He would give me one figure and relate it to nine months and give another and relate it to twelve months. Basically, I think he understood something relating to $750.00 a month.

Q. Did he give any indication to you that he understood what was in the rest of the lease?

A. He didn't have any idea of what was in the lease. All he knew, it was a ten year lease and the rent, as I stated, he did not know whether it was $7,500. for nine months or $750.00 a month.

Q. You say you have known Mr. Cox for some
page 69 } time prior to this?

A. About fifteen years.

Q. Are you acquainted with his physical and mental capacity in any regard? Have you had to deal with him sufficient close?

A. He has very poor hearing and equally as poor eyesight. I know that Mrs. Cox, his wife, used to handle all of his business affairs prior to her death. So far as I knew, he was rarely consulted by her in connection with anything. She made all of the decisions and the only time Mr. Cox entered into the picture was when it was necessary to obtain his signature to real estate.

Q. Did you have occasion during the course of time you have been acquainted with this family to know anything of the relationship of the children to Mr. Cox?

A. Well, they are a very close family. For example, this service station was initially opened for the older son of the

family, Mr. Richard Cox, and Mr. Richard Cox operated it back in the Thirties for a brief period of time, three or four years—I don't know the exact time. He decided he did not want the service station, didn't want to remain in the service station business, so then it was given to his next brother, Edward Cox, who operated it for a number of years and he came to the conclusion he did not want the service sta-
page 70 } tion, and it was finally turned over to the youngest son who did stay there until his death. I think he took over the station in 1941, 1942, somewhere in there, and Mr. Raymond Cox ran the station and owned the station—owned the business, up until his death this past March, I believe it was, first of April, somewhere in there. I don't know what you mean by what do I know about him, other than to know they were a very close family and Mr. Cox worked there at the station, I might say, all through the years even though the sons were actually operating the business. I know they were having increasingly more difficulty with Mr. Cox in recent years by reason of his peculiarities and problems incidental to advanced age, such as the episode Mr. Kelley testified about. There have been a number of episodes of this type with customers.

Q. Do you know Mr. Cox, Henry Cox, well enough to have an opinion as to whether or not he would be capable at the time this lease was purportedly executed by him to comprehend the terms of this lease?

A. Yes, I have an opinion.

The Court: All right. There will be the same objection, the same ruling and exception.

Mr. Shuford: Yes, sir. This is offered purely as the opinion of the attorney who is representing him, not
page 71 } medical opinion.

By Mr. Shuford:

Q. What is your opinion?

A. In my opinion, I don't think he was competent to comprehend and understand the writings contained in that lease sufficiently to understand and reach any conclusion, and for which same reason I did not let him sign a power of attorney, because I couldn't get him to understand everything contained in it.

Q. Is it your opinion as a lawyer Mr. Cox is sufficiently incompetent he needs a committee?

Joseph S. Bambacus.

A. No, he does not need a committee. He needs somebody to protect him from people doing business with him. The man is perfectly competent to take care of himself by way of going to the grocery store, let us say, to buy soft drinks for the station, bread, to wait on customers at the station, to pump gas, take care of himself from a physical standpoint, but he is in my judgment not competent to understand an involved transaction such as the leasing of a piece of real estate.

CROSS EXAMINATION.

By Mr. Pasco:

Q. Mr. Bambacus, how long has the relationship of attorney and client existed between you and Mr. Henry Cox?

page 72 } A. I have represented Mr. Cox on several transactions between the family, for example, when I would be the attorney for everyone involved.

Q. I just want to know how long you have had this relationship. I am not interested in the details. If you cannot answer, say so.

A. The first time, to my best recollection, that I actually acted as his attorney was in 1954 or 1955, somewhere in there. when Mr. Cox owned a large tract, piece of real estate in Chesterfield County and his middle son. Edward, was going to go into the building business and build something like a hundred and some odd homes on that parcel of land. My dealings at that time were with Mrs. Cox, Mrs. Henry T. Cox and Mr. Edward Cox, his middle son. I remember when the documents were about to be signed we went to the Cox residence and Mrs. Henry Cox took the papers and said, "Henry, you sign here," at which time Mr. Henry Cox signed. So far as I know, nobody ever bothered to tell him and explain it to him.

Mr. Pasco: This seems to be unresponsive to the question. I simply asked the gentleman for a date.

The Court: I think the objection is well taken. That actually called for the answer, Mr. Bambacus, of

page 73 } just how long, and I think you answered that.

The Witness: 1954, 1955 somewhere.

The Court: Your motion is that the balance of it be stricken from the record So ordered.

Joseph S. Bambacus.

By Mr. Pasco:

Q. Now another date, please, sir. When was the last time prior to this lease employment that you had actually performed legal services for Mr. Cox?

A. Prior to this lease employment?

Q. Yes, prior to the lease employment.

A. The only thing that I ever did prior to the lease employment and subsequent to 1954, 1955, was to execute releases on these lots in this subdivision, and never necessarily to see Mr. Cox in that connection. That is all, so far as I can recall.

Q. And you said there were a number of episodes at the service station similar to the one that Mr. Kelley tesified about. Do you have any personal knowledge of these episodes?

A. No, I personally did not witness them. I was told about them by various people.

Q. It is hearsay evidence, as far as you are concerned?

A. Yes.

page 74 } Q. The fact of the matter is you had not seen Mr. Henry Cox for several weeks prior to the time Richard purported to employ you in his behalf, had you?

A. I had seen Mr. Cox at the funeral, which was about two weeks prior, and seen him at the funeral home and seen him once or twice at the station during this period.

Q. At that time you had no business transactions with him?

A. No.

Mr. Pasco: I think that is all.

By the Court:

Q. Let me ask you this, Mr. Bambacus. Aside from the business transactions you have related did you have any, over the period of time since you have been representing the family or Mr. Cox, since 1954, what was the extent of your social relationships with him on occasions on which you might have observed him other than business, if any?

A. The occasions on which I saw him, Your Honor, were principally at the service station and on the few limited occasions I went to the home for business reasons I used to see him there as often as once a month or three, four, five times a month, depending on how often it was necessary to be over there. I represented other members of the family as

page 75 } well, Your Honor, and the service station was the meeting place and that is the reason I had more than infrequent occasions to see him.

(Witness stood aside.)

HENRY T. COX,

the petitioner, after being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Shuford:

Q. Would you please state your name and address to this little lady here?

A. What? My name and address?

Q. Yes.

A. Ain't she got it?

Q. Yes, sir, but we need it in the record.

A. H. T. Cox. You can put it down there. I live at 1800 Westover Hills Boulevard.

Q. Mr. Cox, do you own a certain parcel of land at the corner of Forest Hill Avenue and the Boulevard?

A. Yes.

Q. On which there is an Esso Service Station?

A. (Affirmative nod)

Q. How long have you owned that land?

A. Since 1902.

page 76 } Q. Since 1902?

A. (Affirmative nod)

Q. When did the service station first go up on that property?

A. 1933.

Q. Has it ever been operated other than by members of your family?

A. No.

Q. What was the occasion of your considering leasing it to someone else at this time?

A. On account of my son passed away and I didn't want to fool with the station by myself.

Q. In that connection, now, did you have any dealings with a Mr. Barden?

A. Well, he used to come there and sell us stuff and all like that.

Q. Did you have any dealings with him concerning a lease?

A. Yes.

Henry T. Cox.

Q. Could you tell—
A. He brought it up first about leasing.
Q. He brought it up first?
A. Because I told him I was going to rent it out.

Q. All right, sir. On how many occasions did
page 77 } you see Mr. Barden concerning a lease?

A. I don't know exactly. I don't know exactly.
Q. Do you remember seeing him on any occasion in the presence of your son Richard?
A. Yes. Richard used to be there sometimes when he'd come in.
Q. Did you ever discuss a lease with Mr. Barden in Richard's prsence?
A. No, I don't think I did.
Q. Do you recall on what day of the week you signed this paper that we are talking about?
A. It was on a Tuesday, because I told him he come out there a day ahead of time, that he shouldn't have come until Wednesday.
Q. Where did you get the idea he wasn't due until Wednesday?
A. Well, I had done talked with Richard, my oldest son, and he said they had made a bargain to meet him out there on Wednesday.
Q. Did you ever read this lease?
A. No.
Q. I hand you this lease, Mr. Cox, and ask you if you can read this paragraph describing the real estate that is to be leased. Can you read that writing? (Indicating)

page 78 } A. You all know what it is just as good as I do.

Q. Can you read it, sir?
A. Yes.
Q. Can you make it out?
A. But I didn't read it when he give it to me to sign.
Q. Suppose you read the first line?
A. You see what it is. I am not going to read that.

The Court: What was his answer?
Mr. Shuford: He said, "You see what it is. I am not going to read it out."

By Mr. Shuford:
Q. What did you understand in regard to this lease? Did you know anything about it as to its terms?
A. No, I didn't read it at all.
Q. Did Mr. Barden ever explain anything to you?

Henry T. Cox.

A. No, only the rent that he would be willing to give me.

Q. Did you all ever discuss the term of years, that is, how long you would be willing to rent it for?

A. Yes. It was supposed to have been ten years.

page 79 } He wanted it for twenty and I told him no.

Q. At the time you signed this lease were you aware of the fact that this lease gives Standard Oil a ten year lease plus the right, their sole right to renew it for ten more years at one year intervals?

A. No, I didn't realize it that way. I said they had to give me sixty or ninety days' notice anyhow.

Q. Would you have signed it with this extra ten year period in it had you known

A. No. No, I wouldn't.

Q. Did you know at the time you signed this lease that Standard Oil had the privilege of canceling this lease at any time upon the payment of what amounts to one-twelfth of the rest of the rent?

A. No. I never thought about nothing like that.

Q. Would you have signed this lease had you known such a clause was in here?

A. No, indeed. No, sir.

Q. After you signed this lease did you authorize directly or indirectly, that is, either to Mr. Bambacus or to your son, Richard, that you wanted Mr. Bambacus to represent you and try to withdraw from that lease?

A. Yes. That was supposed to have been the

page 80 } next day. It was done wrong and I wanted him to cancel it.

Q. You told Mr. Bambacus that?

A. (Affirmative nod)

Mr. Shuford: Thank you, Mr. Cox. Mr. Pasco may have some questions for you.

CROSS EXAMINATION.

By Mr. Pasco:

Q. Mr. Cox, where were you when you told Mr. Bambacus that you wanted to employ him?

A. Where was he, you say?

Q. Where were you when you told him that?

A. I was at the station.

Q. Was he there?

A. He called up and we talked to one another.

Q. On the telephone?

Henry T. Cox.

A. Yes. My son Richard had done been to see him about it.

Q. Do you still work at the service station?

A. Yes.

Q. Who handles the deposits of the money from the service station every other day?

A. Well, my daughter-in-law helps me out and all like that, and my son Richard helps me out.

page 81 } Q. You make the deposits, though, don't you?

A. Yes.

Q. Do you remember Mr. Barden—do you know Mr. Miller with the Humble Oil Company?

A. Mister who?

Q. Miller.

A. No, I can't say I do.

Q. You know Mr. Barden?

A. Yes.

Q. Do you recall him coming to see you at your house two or three days before you signed this lease?

A. No.

Q. You don't recall his talking to you in the yard?

A. He come up there, but I did not ask him to come.

Q. But he did come to see you, didn't he?

A. Yes.

Q. And you talked to him about it?

A. We didn't make any bargain up there.

Q. Did he have any paper with him then?

A. I don't know whether he did or not because I did not sign a thing up there. I did not make any bargains.

Q. You don't recall whether he had a paper or

page 82 } not?

A. No.

Q. Did he show you a paper that day?

A. No, I don't think he did. If he did I don't remember.

Q. You discussed the lease with him but didn't sign, is that right?

A. Yes.

Q. And had you discussed it with him before that at your service station?

A. Only thing I did was talk to him down there.

Q. Yes, you had talked to him?

A. Yes.

Q. You went back in the back room and talked to him about it a few days before you saw him at home? He didn't come to the service station and talk to you?

A. He might have come in the service station, but was no

Henry T. Cox.

going in the back room hiding from nobody. What I do is out in public.

Q. Did you discuss the rental with him?

A. No.

Q. At the time he came in before, on the week end—did he come in to see you on the week end before you

page 83 } met him at home?

A. No. Of course, he come when we fixed up them papers. I had been over in town on some business, wasn't expecting him out there, that was only Tuesday, because he was supposed to have come out there on a Wednesday, and he got after me to sign up them papers that day.

Q. You drove up to the service station and he was there?

A. Yes, he was there. I imagine that was around about 2:00 o'clock, something like that.

Q. That was two or three days after he had been to your house and talked to you in the yard, wasn't it?

A. I never paid no attention to when he come up to the house. I can't tell you a thing in the world, only I remember his coming up there. That is true. What business we attended to did not amount to nothing because we didn't attend to no business.

Q. Did you ever tell Mr. Barden before you signed this lease what rent you wanted for the station?

A. No, I didn't tell him what rent. He first made me a little offer, I believe it was $625.00, and I laughed at him. I didn't understand about nothing like that. Then he made me another offer of $750.00.

Q. Was that satisfactory to you?

page 84 } A. I just commenced thinking about it, and that was a little bit better than the first offer.

Q. How much gasoline do you sell at this station every year, do you know?

A. No, I can't tell you that to save my life. That has all got to be figured out.

Q. You have a pretty good business there, don't you?

A. Fairly good.

Q. And when he offered you $750.00, was that satisfactory?

A. Getting ready to make out the taxes, then we figure up the gallons of gas.

Q. When he offered you $750.00, was that satisfactory to you?

A. That is what he offered me.

Q. You accepted that at the time, did you?

A. Yes, at that present time, but I didn't realize what I was doing because I shouldn't have done it.

Henry T. Cox.

Q. You signed the lease, though, didn't you?

A. Yes. The terms in that lease don't amount to nothing because they could take it away or extend it, as I understand it, anytime they wanted.

Q. Had you ever taken up with Mr. Bambacus
page 85 } any other business concerning your service station relationships with Humble than this one?

A. No.

Q. You had always handled them direct with the company, hadn't you?

A. Yes.

Q. With your family's assistance?

A. Mighty little business I talked with him about when he came out there because he used to come out there and take orders for things like that—not orders from me. Half the time he come out there he didn't pay no attention to me.

Q. I was asking you about your employment of Mr. Bambacus here as your lawyer. I said, had you employed him before to handle matters with Humble?

A. To handle what?

Q. Service station matters with the Standard Oil Company.

A. No.

Q. This was the first time, wasn't it?

A. No, he attended to some business for me way back yonder, seven, eight years ago. But that ain't got nothing to do with that station.

Q. Mr. Cox, you owned some property out there
page 86 } that the post office rents, don't you?

A. Yes.

Q. And when did you make a lease with them?

A. Well, that is another thing hasn't got nothing to do with this.

Q. I just wanted to know whether you made the lease.

A. I did.

Q. Do you recall when you made it?

A. Who made it?

Q. When, do you recall?

A. I reckon it's been five years ago or more since I made the last one.

Q. Who handled those negotiations?

A. My son looked after it and attended to it.

Q. And you signed it?

A. Yes, and they sent me the checks every month. That post office ain't got nothing to do with this business here.

Q. And you own other properties in the area out there?

Blake Woodson.

A. Not out there.
Q. Only two?
A. Yes. I own some houses on 48th Street.
page 87 } Q. Who takes care of those?
A. What?
Q. Who takes care of the business about those?
A. The H. T. Richeson man looks after it. I believe his name is "Grove," something like that.
Q. And you employed H. T. Richeson to look after it?
A. Yes.

Mr. Pasco: I think that is all. Thank you.
The Court: Is there anything else? Did he state his age?

By Mr. Shuford:
Q. What is your age?
A. I will be eighty-two in January.

(Witness stood aside.)

BLAKE WOODSON,
a witness called by and on behalf of the petitioner, after being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Shuford:
Q. Would you please state your name and occupation?
A. Blake Woodson, and I am a service station
page 88 } attendant at Cox's Auto Service.
Q. How long have you been with that station?
A. Twenty-four years, sir.
Q. Do you know Mr. Henry T. Cox well?
A. Yes, sir.
Q. Do you have any other capacity in relation to him other than working at the station?
A. Working there, that is all. I live at his home, sir.
Q. You live at his home?
A. Yes, sir.
Q. For what reason?
A. Well, I just live there.
Q. So you have occasion to see him most of the day?
A. Yes, sir.
Q. Do you know anything about his hearing?
A. Well, his hearing is right bad, sir.
Q. Do you know anything about his eyesight?

Blake Woodson.

A. His eyesight is not too good, sir.

Q. During the time you have been connected with that station has he ever assumed or occupied the position of manager, you might say? I am not talking about technically,
page 89 } but has he undertaken to operate that station on his own?

A. His wife always headed everything. She was the brains of the station until she died. Then Raymond, his son, took over.

Q. Were you present during any portion of the negotiations or contact between Mr. Henry Cox and Mr. Barden of Humble Oil?

A. Well, only thing I ever heard of them, they were in there talking, that Richard Cox was supposed to take care of everything, you know, come to him. And after they got the lease up they were going to take it to a lawyer and have him go over it and then bring it back to Mr Cox and let him sign it, they say.

Q. You heard such a conversation, is that what you are saying?

A. Yes, sir.

Q. When was this? Was this prior to the—

A. Before.

Q. Before the signing?

A. Yes, sir.

Q. Were you present on the day when this lease was apparently signed by Mr. Cox?

A. I was at the station, yes, sir.

Q. Were you present on the day following when
page 90 } Mr. Barden testified he brought a copy of the lease back, on the 15th?

A. Yes, sir. It was in the afternoon late when he came back out there and he talked.

Q. About what time?

A. Oh, it was after 5:00 o'clock. He and another one of the gentlemen, I believe his name was "Miller," if I remember his name right, they came in the late afternoon, it was after 5:00, and they were in there talking. They offered Mr. Cox the lease and Mr. Cox told him he didn't want it. I also heard Mr. Miller tell Mr. Cox the reason other companies were offering Mr. Cox more was just to make them go up. Then I heard him mention that he wouldn't lose his credit card business.

Q. Did you understand what was said about that?

A. Just what I heard. I don't know what was brought up

before then about the credit card business, but I did hear mention of that.

Q. Did you actually hear Mr. Cox refuse the lease?

A. Yes, sir.

Q. What did Mr. Barden and/or Mr. Miller do?

A. They left the lease on the counter, sir.

Q. Does Mr. Cox have any difficulty understanding other people in the day to day affairs of the station?

page 91 } A. Yes, sir.

Q. Does he ever misinterpret what they say?

A. Often, sir.

Q. Can you give me a little example or two of what you are talking about?

A. Oh, just anything that you bring, like if you carry the money in there, he works the cash register, you tell him two dollars and he is liable to ring up three dollars, something like that. He misses things that way. If you make out a ticket or something like that and give it to him and tell him "That is for the car out there," you walk out there and see about something and in five minutes' time you go back and tell him you want the key and he will tell you you didn't give it to him.

Q. I would try to call your attention to an incident and ask you if you know anything about it. Do you recall an incident wherein apparently there was some misunderstanding between Mr. Cox and his son Richard as to some employee having a week off? Do you know about that particular incident?

A. I just heard him talking about it.

Q. You were not involved?

A. I wasn't involved. I only heard them speaking of it, sir.

page 92 } Mr. Shuford: That is all.

CROSS EXAMINATION.

By Mr. Pasco:

Q. Mr. Woodson, Mr. Cox still works around the service station most every day?

A. Yes, sir, every day.

Q Does he still drive his truck around?

A. Yes, sir, back and forth to the house, yes, sir.

Q. He has had other business interests besides this service station, hasn't he?

A. He owns property, sir, and everything like that.

Blake Woodson.

Q. He owned right much property?
A. Yes, sir.
Q. And did he take part in the handling of that property?
A. Someone else always looked out for him in handling it.
Q. For how long?
A. Ever since I can remember. I've been there twenty-four years.

Q. You say he hasn't been capable of handling
page 93 } his properties for twenty-four years?

A. No. I would say that he would have to get somebody to handle it for him. He doesn't have much education, sir, and in later years, you know, he just wasn't able to do it. Mrs. Cox always looked after it and then after she died Raymond always looked after it.

Q. When you went out there Mrs. Cox always looked after his affairs?
A. Yes, sir.
Q. Is it your opinion he was not capable of taking care of his affairs?
A. He couldn't take care of it. He could go down and work at the station, but he couldn't take care of it, no, sir.
Q. Now were you present in the office when Mr. Miller and Mr. Barden came out there on the 15th or did you just overhear it?
A. I was back and forth in there, you know, getting things. I heard part of it, not all of it.
Q. Did you see either one of them put the lease up on the counter?
A. Yes, sir.
Q. Did you actually listen to their conversation?

A. I heard them. As they were going to leave
page 94 } the lease Mr. Cox told them he did not want it.

Mr. Miller was doing most of the talking right then. He was telling the reason why other companies were offering more money, just to make them, the Standard Oil Company, go up on their prices, that the other oil companies were not going to lease that place and that is the reason why they do it, just to make the Standard Oil Company go up.

Q. Was it your understanding this conversation was not on the preceding Monday?
A. It took place on the 15th. I know that, sir.
Q. Did Mr. Cox generally work the cash register at the service station there?
A. Yes, sir. The family always worked the cash register.
Q. I say, when he is there does he work it?
A. Yes, sir.

J. Henry Dwyer, M. D.

Q. Does he sign these credit card slips when people buy gasoline on credit cards when he is there?

A. Once in a while. but the majority of the time someone else makes them out.

Q. He does do it?

A. He does once in a while, but the majority of the time someone else will do it.

page 95 } Q. What are your work hours at the station?

A. Right now it is from 12:00 in the day until closing time.

Q. Do you recall the hours you were working when this lease was signed, on the 15th, about that time?

A. The same, about 12:00 until closing time.

Q. And can you fix the date of this conversation that you said you overheard between Mr. Richard Cox and Mr. Barden at the station?

A. Yes. Well, Mr. Richard Cox and Barden, that was on the Monday night, the 13th. I did not hear all of that. I heard just part of it. I did hear enough said, I heard them say they would not come to anybody except him, Richard, and get everything straightened out. The first time I heard Mr. Barden say anything to him was at the funeral. He came to the car and told Mr. Richard Cox—I was with him—he was coming the next day. Mr. Cox told him, "For goodness sakes, stay away a while." Mr. Barden told him, "Well, I will see nobody else but you when I come out there." He said, "I will see no one except you. I will make that promise to you."

(Witness stood aside.)

(Whereupon, the proceedings were recessed, to reconvene at 2:00 o'clock p.m.)

page 96 } AFTERNOON SESSION.

October 2, 1964, 2:00 o'clock p.m.

J. HENRY DWYER, M. D.,

a witness called by and on behalf of the petitioner, after being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Shuford:

Q. What is your name, sir?

J. Henry Dwyer, M. D.

A. My name is J. Henry D-w-y-e-r.

Q. What is your occupation?

A. I am a physician.

Q. Are you any relation to Mr. Henry Cox?

A. He is my father-in-law.

Q. In your professional capacity as a physician and as a son-in-law of Mr. Henry Cox have you had occasion to observe him, to examine him and possibly to treat him?

A. Yes, sir, I have. I lived with Mr. and Mrs. Cox for about five, for approximately five years and I see him practically every day, and during this interim period I have examined him on several occasions.

Q. As a result of your knowledge and observation of him and your examinations of which you spoke are you
page 97 } familiar with the condition of his eyes?

A. Yes, sir, I am.

Q. Can you describe it?

A. The right eye has a large cataract and he can just barely perceive fingers, etc., out of that. The left eye also has an early cataract and is not too much better.

Q. Is he able to read print of the size that would be found in a newspaper or, more specifically, print that would be contained in this document which I now hand you, Defendant's Exhibit 1? (Indicating)

A. No, sir, he would not. He reads the newspaper, but mostly the headlines and the large print under the pictures and things like that.

Q. Are you familiar with the condition of his hearing?

A. Yes, sir. I had many occasions to observe that.

Q. What is that condition, sir?

A. Well, he has had difficulty in hearing ever since he spent several years as a boilermaker in his early years. and apparently his ears were damaged somewhat at this time and many people have difficulty in making him understand things.

Quite often, whenever we get a funny answer,
page 98 } you should go back and make sure he hears you because quite often he will say things and not understand you.

Q. Could you give us—let me ask it this way. Has it been your observation that his hearing is constantly of the same degree?

A. Well, I think he has days when he is slightly better and days when he is slightly worse.

Q. Have you been able, as a matter of medical opinion, to assign any percentage of impairment of hearing?

J. Henry Dwyer, M. D.

A. I would say sixty to ninety percent, depending on the day.

The Court: You mean impairment or ability?
The Witness: Loss of hearing.
The Court: Sixty to ninety percent loss?
The Witness: Yes.

By Mr. Shuford:
Q. Have you ever experienced difficulty yourself in trying to make him understand something?
A. Yes, sir. If you do not get right in front of him so he can read your lips to some extent you do. This helps a great deal, if he can look right at you when you are speaking, as do many deaf people. We have also tried to make him wear a hearing aid but he just won't.
Q. Are you familiar as a result of your observations and examinations of him, familiar with his overall
page 99 } mental capacity or condition?
A. Yes, sir. I feel he is getting along in years and shows many of the changes that many older people manifest, primarily a slight loss of memory for recent events and he can tell you things that happened fifty years ago with a great deal more clarity than he can something that happened a year ago.
Q. Has this interfered with his ability to comprehend things at all?
A. No, sir, if you make him understand and really work on it, then if someone sits down and tells him so and so he makes his own decisions and that sort of thing.
Q. Would you be able to express an opinion based on all that you have testified to in your examinations of him as to whether or not Mr. Cox would, as a matter of fact, be capable of comprehending a formal lease agreement such as I showed you a minute ago unless somebody did sit down and take a great deal of time and explain it to him?
A. I don't know. I believe I would have a hard time without some legal help myself.
Q. I am talking about Mr. Cox. Would he be able to comprehend this on his own?
A. No, sir, I don't think so.
Q. Do you know anything about his educational
page 100 } background?
A. I think he went through grade school, and that is about as far as he has gone.

Evelyn Cox Dwyer.

CROSS EXAMINATION.

By Mr. Pasco:

Q. Dr. Dwyer, are you in general practice of medicine?

A. No, sir, I am sub-specialized as pediatrician.

Q. Where is your office?

A. 4906 Forest Hill Avenue.

Q. If Mr. Cox testified that he could read the language of this lease you would not be prepared to contradict him, would you?

A. No.

Q. You don't know enough about his eyes to state with certainty he couldn't, do you?

A. I would know enough to know it would be highly unlikely he could.

Q. You don't know?

A. To my best judgment he couldn't read it.

Q. How do you know he can only read the headlines of the newspaper?

A. Well, on many occasions I have had him tell
page 101 } me about news, things that have happened, etc., and he apparently gets what he knows from what would be said in the headlines and things that happen a little bit further down, if you question him about it, you will find he knows nothing about it.

Q. You base your judgment, then, on what he tells you he can read and cannot read plus what you know about his eyes?

A. Plus an opthalmoscopic examination of his eyes.

Q. Do you have any record of having examined him within a week or ten days of last April 15?

A. No, sir, I examined him in June.

Mr. Pasco: That is all. Thank you, sir.

(Witness excused.)

EVELYN COX DWYER,

a witness called by and on behalf of the petitioner, after being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Shuford:

Q. Would you please state your name and address?

Evelyn Cox Dwyer.

A. Evelyn Cox Dwyer; 2729 Retting Road.

Q. Are you related to Mr. Henry T. Cox?

page 102 } A. Yes.

Q. What is your relationship?

A. Daughter.

Q. Are you familiar with your father's educational background? Have you ever discussed it with him?

A. No, he never has, but I mean I just know because apparently he and my mother discussed it and Mother would say, I think one time that he had told her he had gone to school two years.

Q. How many?

A. Two. Now what that means in terms of a country school back in eighteen something or other, I don't know.

Q. Have you been familiar with the operation generally known as Cox's Service Station since it was built?

A. It was built when I was one year old. I don't remember that, but I have been familiar with it ever since I can remember.

Q. Approximately when would that be?

A. Well, three or four, I guess, since I can remember, since memory goes—two, three, three or four.

Q. When would be the first time you had any adult or what would approach an adult appreciation of what

page 103 } was being done there?

A. Oh, always it was a family operation.

Q. No, I say when would it have been, approximately, in years when you began to understand enough of the business to have some adult appreciation of what was being done?

A. I guess I was about ten years old and all of us—of course, it was war time then, and all of us worked or participated in the operation of the station and at that time it was my job to paste the ration stamps. the ration stamps to purchase gasoline, to be turned in to purchase gasoline from the Standard Oil Company. As I say, it was my job.

Q. From that time to the present have you been familiar with the part your father played in that operation?

A. He worked there.

Q. Have you been familiar with it?

A. Yes, he worked there.

Q. At any time during the period discussed now did your father ever manage the station in the sense of directing its operation, its purchases, its agreements, that sort of thing?

A. When the salesman would come in and he was low on

Evelyn Cox Dwyer.

page 104 } Pepsi-Colas, Coca-Colas, what-have-you, he'd say "Mr. Cox, you need so many cases of blank-blank soft drinks," and he'd say "All right" and agree with them and that was fine. He also gave certain orders at the station. The attendants, what-have-you, listened to what he said, but so far as actually managing the business, he did not.

Q. Who did that, then, during the period you refer to?

A. Well, I understand my two oldest brothers did prior to 1940.

Q. Well, you wouldn't remember that?

A. I don't recall.

Q. From the period that you recall.

A. Oh, my mother did and my brother Raymond did.

Q. It has been testified that, or was asked, at least—I think perhaps the impression was given that Mr. Cox took care of the bank deposits. Is this true?

A. Oh, yes. He enjoyed that.

Q. What part did he play in it?

A. He took the deposits to the bank. That was a great joy for him.

Q. Who made up the deposit slip?

A. Well, my mother would, my brother Raymond would, I would, and then since my mother's death and my brother's death my sister-in-law, Mrs. Raymond Cox, has.

page 105 } Q. To the best of your knowledge did your father actually ever make up a bank deposit?

A. You mean prepare?

Q. That's right.

A. No, he has never. If he has I have never known about it.

Q. Now your father owned a good bit of property, apparently, over there?

A. That's right.

Q. It was testified, I think, he had owned this corner since 1902?

A. That's right.

Q. From the time you have been able to have an adult understanding of the operation of your father's affairs who has been primarily responsible for the decisions made in regard to the management of any property that he may have owned?

A. Well, most of the rental property was handled through real estate agents. My mother and my brother Raymond and even I on occasion would attend to repairs and what-have-you. I mean, any questions that came up about leasing and what-have-you or any problems, we always handled them in conjunction with the realty company.

Marjorie M. Cox.

Q. Now was this a family pattern or was this
page 106 } just an occasional thing?
A. Well, I don't know. It's been established through the years long before I came along and we just always did it.
Q. To the best of your knowledge in the period we are discussing did your father ever undertake to reach any contractual agreements and undertake any contractual obligations with anyone else without the advice and guidance of at least one member of his family?
A. No.

Mr. Shuford: If Your Honor please, I apologize to the Court. In the back of my mind there was another question and for now I cannot recall it. I wonder if I might excuse her for the moment with the right to recall her, if proper? She will be here.
The Court: Is there any objection?
Mr. Pasco: No, sir. I don't think I have any questions of Mrs. Dwyer.

(Witness stood aside.)

page 107 } MARJORIE M. COX.
a witness called by and on behalf of the petitioner, after being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Shuford:
Q. Would you please state your name and adress for the record?
A. I am Mrs. Raymond Cox; 4509 Forest Hill Avenue.
Q. Are you related to Mr. Henry Cox?
A. He is my father-in-law.
Q. And your husband, Mr. Raymond Cox, is he living?
A. He is deceased.
Q. Is he the son in the family whose death occasioned this problem of leasing the station?
A. Yes.
Q. Is your husband the one who was operating the station prior to his death?
A. That's right.
Q. What was the date your husband died?
A. April 1, 1964.

Marjorie M. Cox.

The Court: What was the year?
The Witness: April the 1st, 1964.

page 108 } By Mr. Shuford:
At the time of your husband's death who was operating that station?
A. At the time of his death?
Q. Just prior thereto.
A. His family, his brother, Richard Cox, Mr. Henry T. Cox, Mrs. Evelyn Dwyer.
Q. Why was this? I mean, your husband, was he in the hospital at that time?
A. He was in the hospital.
Q. Prior to his entry in the hospital.
A. Prior to his entry in the hospital he was at home ill then.
Q. Prior to that?
A. Prior to that Raymond was operating the business.
Q. How was the business license taken?
A. Raymond G. Cox.
Q. In other words, the license for the business was in his name?
A. That is correct.
Q. Were you familiar with the operation of that station during the period which your husband managed it?
A. To a certain extent, yes.
Q. Did you ever go there?
page 109 } A. Yes, I did.
Q. Were you familiar with the—oh, you might say method or manner in which decisions concerning the property and other property which Mr. Henry Cox owned were conducted?
A. Yes.
Q. Did Mr. Henry Cox make those decisions?
A. He did not make the decisions. He always discussed, or the decisions, the problem or whatever it might be that had arisen was discussed within the family. Of course, his wife, before her death, handled most of these things. My husband did a great deal. In fact, he handled through the station, he did everything that was needed when it came to the buying or that sort of thing.
Q. Have you ever tried to carry on any sort of discussions involving the business with Mr. Henry Cox?
A. Yes.
Q. Was he able to understand you well or did he have difficulty?

Marjorie M. Cox.

A. I found in some respects that he could understand what I meant. I discussed, tried to discuss after my husband's death the impossibility of Mr. Henry Cox and myself operating the place because I knew that I was physically and mentally exhausted after my husband's death and page 110 } at Mr. Cox's age he just would be almost dependent upon me and I did not feel I could carry the weight of this business, and I tried to discuss that with him.

Q. Did you ever discuss with him the question of a prospective lease with Humble Oil?

A. Yes, I did.

Q. What occasion was that?

A. I came back to Cox's Auto Service Station to help one week after my husband died, and when I came back into that place I found that things were in such a shape—things had been left undone. The business had been going on in a fashion but not as it should have been. I went to my father-in-law and I said, "Mr Cox, what do you plan to do? I mean, what are we going to do?" His answer to me was, "Well, just carry it on as we have been doing. You stay here with me." I knew from that answer it was impossible for me to carry the weight of the business and I knew it was not possible for him to carry the weight of the business. So I said, "Mr. Cox, so far as I am concerned, I feel we must lease the station." He said, "All right. Come next Monday I'll think about it." That was his answer to me.

Q. What day of the week was this?

A. This was probably on a Wednesday—Thursday, I believe.

page 111 } Q. So the Monday he would have referred to would have been Monday, the 13th of April?

A. That would be correct.

Q. Were you present at any time during any discussions which may have taken place between Mr. Barden of Humble Oil and Mr. Cox?

A. No actual discussions concerning the lease, no.

Q. Were you present in the station on the afternoon of April 14th, Tuesday?

A. Yes.

Q. When did Mr. Barden arrive, approximately?

A He arrived sometime the afternoon of April 14. It could have been 2:00 o'clock or 3:00 o'clock. I am not really sure.

Q. Was Mr. Cox there at the time?

A. No, he wasn't.

Q. How long was it before Mr. Cox arrived?

Marjorie M. Cox.

A. It may have been a half hour. I really don't know.

Q Did Mr. Barden conduct any business in any way with anyone while waiting for Mr. Cox?

A Not to my knowledge. He stood and talked to me there in the station.

page 112 } Q. When Mr. Cox did come on the scene what did Mr. Barden do?

A. He went outside and met Mr. Cox as he drove up in his truck outdoors.

Q. And where did the discussion take place between the two of them?

A. Outside by the truck.

Q. Approximately how long would you say they were out there discussing it?

A. It could have been a half hour, maybe less. I just don't remember.

Q. Did they at any time come into the station?

A. Yes. They came in the station and walked in together and I excused myself at that time and went to the ladies room.

Q. All right. Now what is the next thing you know of that incident?

A. I walked back in the station, Mr. Barden was in the back room and my father-in-law was by the cash register, I believe. I walked back and I asked Mr. Barden what he was doing. He said, "Preparing the lease." I said, "How did you get Mr. Cox to agree to a lease?" He said, "I came to a reasonable figure with him." I did not ask him the figure and he did not tell me. I did not inquire further

page 113 } on it.

Q. Had you ever understaken to give Mr. Cox any advice such as the other members of his family have testified to?

A. The only thing I had said to Mr. Cox concerning the lease was that afternoon earlier, between 1:00 and 2:00 o'clock, I came in the station to stay that afternoon and Mr. Cox was preparing to go home. When I walked in he showed me a slip of paper with a figure of $900.00 on it. He said some oil company—and I don't know which one—had been by to see him that morning, and he said "Look at the figure they have offered me." And my comment to him was, "That is fine, Mr. Cox, but I am sure you can do better." And that was it.

Q. After you returned to the office, with Mr. Barden in the back office and Mr. Cox by the cash register, did they stay around at that time or did they leave?

Marjorie M. Cox.

A. For a few minutes. Mr. Barden asked me where they could find a notary. I told him Mr. Kelley was a notary. He also asked would Mr. Kelley recognize Mr Cox's signature without Mr. Cox going up there. I said, "No, I don't think Mr. Kelley would. I don't think he would do that."

Q. So then what happened?

page 114 } A. I stayed in the service station. They walked out and went to Mr. Kelley's office.

Q. Did you see them any more that day?

A. Yes. They both came back later. Mr. Cox came on in, Mr. Barden came to the door, and that was it. I did not discuss anything with Mr. Barden. He did not discuss it with me. He left.

Q. Mr. Barden then left?

A. He then left.

Q. Did you at any time try to contact any of the other members of the family when you found out Mr. Cox had or was about to sign a lease?

A. Mr. Kelley called me from his office in between the time Mr. Barden and Mr Cox had been to his office and the time it took them to walk back to the station, and he told me that he hoped he had not interfered but he wanted me to know he had stopped Mr. Cox from signing another paper presented to him. I thanked him for telling me. I wasn't aware, I had not read any leases, I did not know anything about them and I was in no way capable of even discussing a lease and I did not. I thanked him and he said, "I have tried to get in touch with Richard and I cannot find him." He at that time said, "You might try to locate him." And at that time I tried to locate my brother-in-law, Richard Cox,

page 115 } and I did about 5:00 o'clock that afternoon.

Q. Now during the time you saw Mr. Barden and your father-in-law together did you at any time see your father-in-law appear to be reading a contract or paper?

A. No.

Q. I understood that you did not hear any of the conversation that took place between them?

A. No, it was outside. This day the conversation was all outside.

Q. Did Mr. Barden know who you were?

A. Yes, Mr. Barden knew who I was.

Mr. Shuford: That is all the questions I have.

Mr. Pasco: No questions.

(Witness stood aside.)

RICHARD R. COX,

a witness called by and on behalf of the petitioner, after being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Shuford:

Q. Would you state your name and address for the record?

A. Richard R. Cox; 6648 Wexford Lane, Richmond.

Q. Are you related to Mr. Henry T. Cox?

page 116 } A. He is my father.

Q. Where do you stand in age so far as the children? Are you the oldest?

A. I am the oldest. I will be fifty-one my next birthday.

Q. Do you recall when the Esso Station at the corner of Boulevard and Forest Hill Avenue was built?

A. Very well. He built it for me.

Q. Did you at any time operate that station?

A. I operated it from 1933 to about 1936.

Q. And who operated it thereafter?

A. My other brother who is three years younger than I, Edward H. Cox.

Q. And how long did he operate it?

A. Oh, about 1939, 1937, 1939, somewhere along in there.

Q. Then what happened?

A. Well, my daddy took over along with Raymond, who helped after school, and Raymond was out of school—I mean, later on went to college and the war came on and he was—I mean, they couldn't take him in the service on account of he had colitis, so he stayed on with my father from that time on.

page 117 } Q. Was your mother in any way involved in the operation of the station?

A. My mother was the only reason the station was built. I wanted a service station and Daddy didn't. He wanted to sell the corner, and my mother talked my daddy into building the station, primarily for me. I had finished high school and it would give me something to do. They were depression years, in 1932 and 1933.

Q. Well, now, during the time you operated the station did your father make any of the major decisions in regard to it?

A. He never made any business decisions at any time pertaining to the service station. They were always brought up by myself or other members of the family and my mother would take over and she would convince him.

Q. Do you know anything about the extent of your father's education?

Richard R. Cox.

A. He says he went to school a little over a year, and one time he says he went two years.

Q. All right. Now for the last several years who has been responsible for the operation of the station?

A. Well, my mother was primarily the main key to the station until she was taken sick about 1960, and Raymond being there at the station, she and he together page 118 } more or less ran the service station. My father worked there. My father doesn't know how to check the cash register at night and somebody has to be there to check the cash register out. He doesn't know how to read the tape or take the tape off or even read the register. Someone has to be there to check the cash register out. Someone has to be there to make out the courtesy cards or handle all of the business transactions of the station. He can work there. He can make change. He makes a lot of mistakes.

Q. Now has he ever demonstrated in your presence an inability to understand things that are said to him?

A. Well, as everybody knows, he is better than fifty percent deaf. Unless it is somebody that knows him well that comes into that station, I mean, in discussions they will get mad and walk out. I have seen that happen time after time.

Q. What would they get mad at?

A. Would come in and ask him something and he might give them a funny answer. Someone might come in and ask for a loaf of bread or package of cough drops and he might say, "No, we have never had those," and they can be looking right at them. It's hard to get things over to him. You have to be looking right at him and talking in a loud page 119 } voice to get over to him.

Q. Have you ever known of any instance where he apparently misunderstood anything to such an extent that it amounted to almost a delusion? I am referring specifically to any incident that may concern an employee's being off.

A. I carried the change up to him, yes, one real good one, because I stayed up half the night. I carried the change up to him. This was in the spring of the year, on a Sunday night. I carried the change in and he was asleep in his chair. The television was blasting out, so I cut the T. V. off, woke him up and sat and talked to him, got him fully awake. I asked him to tell one of the boys to do something to a customer's car that was left at the station. He said, "By golly, he is off. He is taking next week off." I said, "Pop, now you are tell-

ing me at 11:00 o'clock at night the main boy that runs the service station in the daytime is off?" I am there every night and have been since back in January, since my brother Raymond was taken ill and passed away the first of April. So, here it is at 11:00 or 11:30 and he tells me the key man that is at the station every day is not going to be there and has a week off. Well, it is next to impossible, you know, at 11:30 at night to get somebody to stay at the station. Nevertheless, I knew one boy I could get. I went back to the station, looked his number up and called this boy's home. He page 120 } wasn't at home, he was out at Shoney's on the Boulevard. I finally called Shoney's around on the Boulevard to get him on the phone. He said, "Yes," that he would work for a week, take off from his other job and work there at the station. I explained to him how important it was. I got to thinking about it later and called my sister-in-law, Mrs. Raymond Cox, and asked her why I hadn't been told of this. She said, "Well, I don't know anything about it." I asked her, I said "What is this boy's telephone number?" His name is James White. She told me where I could find it up on a calendar on a wall. I found the number, called this boy up and got him out of bed and he thought it was a big joke. He said, "No, I haven't told your father I was taking a week off." So that was great news. I spent about an hour and a half messing with telephone calls. And the following week—here is another one. I carried the change up and, incidentally, this happened to be on a Sunday night. He asked me to go back and look for his keys. I said, "Pop, you never left any keys on the cash register." He said, "I know I did." I started to come back and get them. I said, "Pop, I have been there since 1:00 o'clock today. You never left any keys there, but I will go back and look the place over." I couldn't find them anywhere. I go back to the house and I try to search his pockets. He said, page 121 } "No, I have been all through my pockets." He said the next day he could get a key and walk to the station. It's only four blocks from the station to his home. So the next morning, going from my office I stopped in. I said, "Pop, you must have found the keys I see the truck out there." He said, "You know, I had them all the time in my pocket"

Q. To get to another subject, Mr. Cox, when was the first time that you were involved in any discussion at all with Mr. Barden with Humble Oil Company concerning a possible lease of this corner?

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A. At Sutherland-Brown Funeral Home the first night my brother was laid out. Mr. Barden came in the funeral home expressing his sympathy, what-not, and asked me where Raymond's policy was. He had a policy with Standard Oil Company. At death, you know, he could get so much. He asked where was the policy and I said, "I don't know." We also discussed what would become of the service station. I said, "Barden, it's obvious I have two businesses to run. I have gotten too old for a service station. My dad will be eighty-two years old his next birthday." I said, "It's obvious there is nothing to do but lease it out. You know Mother always took care of the station and Raymond took over after she died. Since there is no more Raymond we will
page 122 } just lease the service station out." That was the first night that Raymond was laid out at Sutherland-Brown Funeral Home.

Q. Was anything said at that time as to possible negotiations with Mr. Barden, negotiations for a lease?

A. I asked Mr. Barden that night, I said, "Due to the circumstances and my father being more or less in a state of shock, I would appreciate it if you would leave my father alone. Now there is no one left but me, more or less, to look after my father." I said, "I would appreciate it if you would leave him alone for two or three weeks. Let him get back. We will open the station after the funeral. Let him get back to the station doing something that he has been doing for the last twenty-five or thirty years and it might get him straightened out." I asked him to leave my father alone, that I would negotiate a lease with Standard Oil Company.

Q. Was there any other occasion on which this was discussed?

A. The next occasion was at Maury Cemetery at my brother's funeral right after the funeral. My car, being the second car, I was close to the grave site. Mr. Barden walked over to the car. My wife was in the car with me. Mr.
page 123 } Blake Woodson, who previously testified here, and my oldest daughter who is nineteen years old, she was sitting in the back. Mr. Barden walked over and we shook hands. He expressed his sympathy. I again told him. I said, "We will no doubt open the station tomorrow. I will be there to help my dad at nights. Marjorie," that is my sister-in-law, "will help out in the afternoon." I said. "I will get in touch with you in a couple of weeks. Let's try to get these things straightened out as best we can."

Q. Did you make any comment to him at that time concerning your father?

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A. I made the comment on numerous times to him that my mother was more or less the brains of my famliy.

Q. I mean, on this occasion did you make any specific statement or request or comment concerning your father to Mr. Barden there at the funeral?

A. At the funeral, I can't recall other than I would get in touch with him in two or three weeks.

Q. Who was going to get in touch with him, you or your father?

A. I was going to because my father doesn't handle things like that.

Q. Mr. Barden seemed to understand that?

A. He seemed to.

page 124 } Q. When was the next time you had any conversation with Mr. Barden concerning the lease?

A. I never heard any more from Mr. Barden—I never saw him, as well as I can recollect—the next time I heard from Mr. Barden—and one reason I can pull these dates out of my hat, it was income tax time. It was a Monday, the 13th, and I had an appointment with my accountant that night after I left my office. About 3:00, 3:30, Mr. Barden called me and said, "I have been talking to your dad about leasing this station." He said, "I have a lease," and he says "Your dad informed me that he wasn't going to do anything or sign any lease or do anything until he discussed it with you, that you would handle it." He said, "I would like to get with you." I said, "I am at my office at Ellerson in Hanover County." I said, "You can come out here this afternoon, if you would like." He said, "No, you will be at the station tonight." I said, "Yes, but I am going to be a little late getting there because I have to go by Willow Lawn to my accountant's to fix my income taxes up." He said, "All right. What time do you think you might be out there?" I said, "Seven-thirty, eight o'clock." I got out there that night, I'd say 8:00, 8:15, I don't know I didn't look at the clock. Mr Barden and another gentleman were there. He introduced me to the gentleman. There were other people in the station and

page 125 } I did not pay any attention to the other gentleman, having known Mr. Barden, and he had this lease. He said, "I would like for you to look this lease over." I looked at the lease. Naturally, it was in fine print. I could see it was a copy normally used in business transactions and you don't read the fine print. I looked at the print where it was typed in in the blank spaces. I could see in the print there was nothing in there that said anything about taxes. They had just raised the tax assessment on this particular piece of

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property, $30,000, at one shot. The restaurant adjoining this piece of property, they likewise raised my taxes, the assessment value, which naturally raises the taxes. I saw there was nothing in there pertaining to taxes whatsoever. I saw in this lease he showed me in the typewritten part it was $625.00 a month rental. or $7,500.00 a year, which I knew—I mean, for this piece of property, it's a very valuable corner, which, I mean, was out of the question I didn't even discuss it. There was no egress or ingress or entrance, what-not. My property adjoins the service station. In other words, people pull into my restaurant, have to pull across the service station property to get to my property. People leaving the restaurant pull on the service station property. In other words, if we put a fence up on our line it wouldn't hurt the service
page 126 } station so much but would wreck my restaurant, would absolutely wreck it. So I mean everything has been a family affair with this property there. If we want to park in the parking area we do it jointly.

Q. That is all right. Well, on this occasion after you looked at the lease what comments, if any, did you make or what did Mr. Barden say?

A. I don't think I made any comments, no specific comments. I looked at it, looked at him, making no comments. So Mr. Barden asked me, he said, "Well, Richard, what is wrong with the lease?" I said, "Barden, I didn't say anything was wrong with the lease." I recall looking at my watch, and it must have been somewhere around 9:00 o'clock. I said, "I'll tell you what." I said, "I don't particularly like it." I did not discuss any specific thing about the lease. I said, "I don't particularly like it." He said, "Well, let's go up and talk to your dad." I said, "No, I would not bother my dad." I said, "You know, at Dad's age he's probably gone to bed." I said, "I wouldn't do that, Barden." I said, "Today is the 13th, today is Monday and I have got a lot to do tomorrow, which is Tuesday." I said, "How about letting me discuss this with my father on Tuesday, take it up with him, and I will get with you Wednesday." He said, "Well, what time Wednesday?" He wanted a
page 127 } specific time. I said, "I'll tell you what. I will get with you by at least 11:00 o'clock," and I said, "If I have not called you by 11:00 o'clock how about you calling me?" I thought something might happen that I might forget to call him, something like that. He said, "All right. Fine." He kept trying to pinch me on the lease. He said. "This is good rent, $625.00." He said, "That is about a cent and a half a gallon." I did not know how much was pumping

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on gallons. He said, "We have two Esso Stations less than a mile down the road. Both of them are closed up." I said, "Yes, they are dead ones. This is a live one."

Q. How was the situation left so far as the next negotiation? When was it supposed to be?

A. It was supposed to be on Wednesday. This was on a Monday night, on the 13th of April. I said, "I will get with you Wednesday by 11:00 o'clock and if I haven't called you by 11:00 o'clock you call me."

Q. Did he agree to that?

A. He agreed to that and they left.

Q. Did you say anything further to him on that occasion about not discussing it with your father?

A. I cannot recall specifically what I said about not discussing it with my father. I think, I am pretty positive I said.

page 128 } "Barden you know Pop doesn't handle these kind of transactions. My mother always looked out for these transactions and after my mother's death Raymond looked out after these transactions, so it's left up to me now to make the best deal I can." I also asked him on the 13th, I remember asking him because the lease, as well as I can recall, was a three or four page document and the print in this blank space was probably eight or ten lines, and I asked him would he leave this lease with me. He said, "Oh, no, I couldn't do that." I said, "Well, I will take care of it. I will give it back to you tomorrow." He said, "Oh, no," that he couldn't do that. So, therefore, I never read nothing in the lease except the print that was typed in there, about eight or ten lines.

Q. When is the next thing you heard concerning the lease?

A. On Tuesday, the 14th. I was out of my office that afternoon downtown somewhere. I got back to my office about 4:30 or 5:00 o'clock, somewhere in that neighborhood, and the first thing that greeted me, my secretary says "Your sister-in-law, Mrs. Cox, says it's very important you get in touch with her." I called my sister-in-law, Mrs. Marjorie Cox. She said, "Your dad has signed a lease with Humble Oil Company." I said, "Oh, no."

page 129 } Q. All right. Well, after you acquired that knowledge did your father at any time request you to do anything in regard to this lease that he had signed?

A. I came on down to the station that night like I usually do every night. I do right now. I got there about 6:00 o'clock, maybe a few minutes thereafter. I said, "Pop, what happened? What have you done? I understand you have signed

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a lease. What has happened?" And he says, "Yes." I said, "Pop, what did you tell me?" I said, "I had been negotiating with other companies. I had been talking to other people." I said, "I had an appointment with Barden tomorrow to take this thing further." He said, "I don't know why I did it." I said, "Well, what did you sign?" I said, "He brought a lease last night in here for $625.00 a month." He said, "Well, he raised it to $750.00 a month." I said, "Pop, do you realize what you have done?" Well, he did not know. He did not know why he did it. He did not know nothing. I said, "Do you think you have done wrong?" He said, "Yes, I have done wrong." He said, "What are we going to do about it?" I said, "I don't know." I was disgusted.

Q. You say he asked if there was any way to get out of it or break it?

A. That's right.

Q. As a consequence of that conversation, without going into detail of all small conversation, were you requested by him in any fashion to engage services of an attorney?

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A. Definitely, or I wouldn't have done it.

Q. Whom did you call?

A. I called Mr. Bambacus.

Q. When did you call Mr. Bambacus?

A. On Wednesday morning.

Q. Now you have heard Mr. Bambacus' testimony in regard to what took place as far as conferences with you and phone conferences with your father and his actions. So far as you were either present or had any personal knowledge of the transactions, what Mr. Bambacus said is what occurred?

A. Absolutely the truth. As a matter of fact, I went with Mr. Bambacus. We went in my car to Humble Oil Company, which is down off of the Ninth Street Road, to deliver this letter which was presented in this Court earlier. I carried Mr. Bambacus and drove him in my car down to Humble Oil Company and we both went into the office, and the girl who operates the switchboard there said Mr. Barden and other members were in a meeting in this particular building and we couldn't bother them. We were going to deliver the letter, Mr. Bambacus, by hand, to Mr. Barden or his superior. She said they were in a meeting and could not be bothered and she didn't know what time the meeting would break up. So we left the letter with this young lady and got her to sign a receipt for it and mark the time, and it was somewhere close to 3:00 o'clock. We left

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there then and went from there to my dad's service station, or to Boulevard and Forest Hill Avenue.

Mr. Shuford: I have no further questions.

CROSS EXAMINATION.

By Mr. Pasco:

Q. Mr. Cox, I believe you said on the night you met Mr. Barden at the service station you just read the typewritten part of it?

A. Yes, sir.

Q. Would you take the typewritten part out and point out to me the provisions about the taxes that you referred to?

Mr. Shuford: If Your Honor please, unless I misunderstand Mr. Pasco's question—as I recall Mr. Cox's statement, he saw nothing about taxes which was his objection, not that he did see something.

A. Yes, sir. There is nothing in here about taxes in case they double the taxes out here, and it looks like page 132 } that is what they are going to do.

By Mr. Pasco:

Q. You don't know there is nothing about taxes in there?

A. I asked him to leave the lease with me so I could go over it that night or maybe the next day so I could go over it, but he would not. So all I had read was the typewritten part.

Q. But you don't know what is printed in here about taxes?

A. No, not what is in all that little fine print. It's like a life insurance policy. They put it in there so small you need a magnifying glass.

Q. You did not look on the second page at all?

A. I can't recall I did. I looked at the part that says so many feet this way, so many feet this way, describing a parcel of land with a building on it, grossing "X" amount of dollars at the end of twelve months.

Q. You just assumed there wasn't anything printed in there about taxes, you don't know?

A. I don't know.

Q. Isn't it a fact that your father enjoyed in the business community of South Richmond a reputation of being a very successful and astute business man?

A. Well, naturally they would attribute all the page 133 } success to my father. Now people don't realize

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that it's been—I mean, a lot of people do realize that it's a family affair, but, well probably they are throwing the bouquets at my dad.

Q. But you agree the general business community—

A. They respect my father as a successful business man because he is very close. He spends no money for no nothing. He has never had a vacation in his life. I don't think he's ever been out of the State of Virginia over once or twice in his life. He's worked all his life and he will be eighty-two his next birthday.

Q. What was the nature of your relationship with the Standard Oil Company back in 1933 to 1936 when you operated the service station? Was it a satisfactory relationship?

A. If it hadn't been for me Standard Oil Company would have never been on that corner.

Q. I just asked you a question.

A. Yes, it was a very good relationship. I have had no axe to grind with Standard. As a matter of fact, I liked them. When we built the service station he wanted Texaco because somebody with Texaco was a good friend and I had to fight Texaco to get Standard in there.

page 134 } Q. Let's try to stick to my questions. Your relationship with the company when you operated it was satisfactory?

A. Satisfactory.

Q. I believe you said that you would not have employed a lawyer unless your father had told you to do so when you went to him that night?

A. That's right. He did not know what he had signed, he had no copy and I didn't know what he had signed.

Q. You knew he needed a lawyer, though, didn't you?

A. Definitely did. He should have had a lawyer, I mean, at such a time, or someone there.

Q. Did you have any discussions with representatives of Humble prior to Mr. Raymond Cox's death about the business arrangements of the service station?

A. Did I have any discussion?

Q. Do you recall any prior to that?

A. No, sir, I do not.

Q. Had your relationship in the last two or three years been on a satisfactory basis with the Humble people you came in touch with?

A. Oh, yes.

Q. You have had no disagreements with them?

page 135 } A. Oh, no. Let me clarify one thing. I don't work at the service station. That is not my regu-

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lar occupation. Over the past five or ten years I would go there, it's been a family affair. If there's not a member of the family at that service station that service station is closed up. My dad wouldn't have been here today if my brother hadn't been there to make change. He was going to close the station up. I had to call my brother, he is a building contractor, and have him there.

Q. Do I understand your testimony to be if the rental was satisfactory and the other provisions were right you would have favored a lease with Esso?

A. Let me put it this way. Had he had the right counsel, if he had wanted to rent it for $100.00 a month—

Q. I am talking about your attitude toward Humble.

A. Always been the highest—big people. You never question big people.

Q. That is all I am interested in in that question. Now this policy Mr. Barden picked up, it was paid promptly, was it not?

A. He did not pick it up at the funeral. He asked about it, which I did not know anything about. I told page 136 } him he would have to talk to Raymond's wife.

Q. You don't know whether they paid it or not?

A. It definitely was paid. He had that policy because he was a dealer in tires. I think those policies are tendered to all Esso stations, best of my knowledge, and the man that is operating the station can get "X" amount of coverage and his employees get a lesser amount of coverage. Of course, they pay for it. It's not given to them.

Q. Your father owns the service station?

A. My father owned the property and my brother owned the business.

Q. Who made the contracts with Humble or Esso or Standard Oil down through the years?

A. Down through the years it was my mother.

Q. Who actually signed it?

A. My father would have to sign it after the contracts were consummated with my mother or brother or members of the family sitting in.

Q. Your father signed them, he was the landowner? It was a family operation, is that right?

A. That's right.

Q. Do I understand it is your testimony you made an appointment with Mr. Barden to meet you and not your father

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on the Wednesday after this night session? Are
page 137 } you sure about it?

A. On the Monday night I was talking to Mr. Barden he showed me this document, I said, "Barden, let me discuss this with my father Tuesday," which was the 14th. I said, "Let me go over it with my father. Let me discuss it with my father." I said, "We'll get in touch with you," or "I will call you on Wednesday, and if I haven't called you by 11:00 a.m., call me."

Q. Now you said the assessment on this property had been increased. Do you know what it is today?

A. It's somewhere in the neighborhood of a hundred thousand dollars. It was raised.

Q. If I told you the record indicated ninety, that would not be far off?

A. I know they raised the assessment $30,000.00 at one pop because I likewise got a raise in assessment with my piece of property adjoining it.

Q. When you didn't read all of this lease Monday night it wasn't because Mr. Barden told you not to, was it?

A. No, sir. I'll tell you why if we want to go into that. I was late getting to the station, that was number one. Number two, I had worked all day long and been with my accountant for two hours going around on a merry-go-
page 138 } round. When I got to the service station I was pretty beat and probably had to stay there until 11:00, 12:00 at night. That is why I did not sit down and go into detail, and there were people in the station and as well as I can remember we were pretty busy on the outside, too.

Q. He did not rush you?

A. Oh, no.

Q. What would you say would be the busiest time at the service station, to your knowledge?

A. That would be a good question. If you could space it out—where right now that service station has, I'd say, six or seven employees, if that business could be spaced out, I have said it numerous times, where the customers would come one after another you could run it with two employees. But you can sit around and do absolutely nothing. I have had five employees on the front and we sat there and could play tiddly-winks. A boy says, "I am going to the drug store to get a cup of coffee. Another says, "Well, I think I'll go to the restaurant next door to get my lunch." I say, "Fine.

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Go ahead." The next thing, the next minute there will probably be ten cars. Funny thing about a service station. If you don't wait on them right away they pull out.

Q. I simply asked your judgment as to when is
page 139 } the busiest time.

A. Would be early morning, people going to work, and after the dinner hour in the evening.

Q. It's busier after the dinner hour than it is going home, from 4:00 to 6:00?

A. Well, you know, they have got a "No Left Turn" sign. They just put that up this spring out there on the corner. So, therefore, we lose a lot of business. People going that way can't make a left turn. From 4:00 to 6:00 o'clock, little after 6:00, it quiets on down. I'd say from 6:00 o'clock on out we get busy.

Q. Mr. Cox, when did you start these negotiations with the other oil companies you were talking about?

A. Well, after my brother's death, which was in the papers, etc., they know where "Cox's corner" is. or to a lot of people it is known as that—well, naturally, you know, people were out there trying to steal a little green acres. They started calling up, that is, different oil companies. Some oil companies had offered as much as $18,000.00 on down.

Q. But you started these discussions with other companies almost immediately after your brother's death?

A. Immediately it started, two or three days,
page 140 } and people would call me over at the plant and maybe the secretary would take it, and I would come back and ask for calls and she would say, "Well, here is such and such oil company." I knew exactly what they wanted. The corner is not going anywhere. We weren't in no rush about it.

Q. Did you receive any firm offers?

A. I have a firm offer. Yes, I have a lease.

Q. Was it approved by the party that offered it to you?

A. Yes.

Q. Is it signed by the party?

A. Yes.

Q. And when did you get the first firm offer? Is this the only offer you got to lease it?

A. Well, I had a lot of offers. After they knew there was litigation, we were going to court, they backed off. They'd say, "Get that straight and we'll talk turkey." Nobody wants to get in suits and go to court.

Q. I am talking about prior to the time you had your Monday night discussion.

Richard R. Cox.

A. It had only been discussions and nothing firm because I was waiting to get—

Q. You had no firm offer, then, when you talked to Mr. Barden on Monday night?

page 141 } A. No, nothing had been signed, sealed or delivered, no, sir.

Q. But by the following afternoon you had received some firm offers?

A. I won't say no. When you get an offer you don't know how firm it is until you get it in writing, you know.

Q. When did you get the first firm offer?

A. Before Barden ever come out there.

Q. I thought you said when he came out there you did not have any.

A. I mean, nothing signed, sealed and delivered. You might talk to somebody and say, "Well, what is the corner worth?" They say, "$15,000.00 a year." Nothing is firm until you get it in your hand.

Q. When you talked to Barden on Monday night did you consider you had a firm offer?

A. I knew I had more confirmed offers than what he was offering. Certainly, an individual would give you more than that. It wouldn't have to be an oil company.

Q. I wasn't talking about the amount of it, I was talking about the firmness of the offer, from your judgment.

A. No. No, I don't call nothing firm until it's

page 142 } in writing and gone through all the legal procedure and somebody big enough to back it up.

Q. You had nothing in writing when you talked to Barden on Monday night?

A. No.

Q. And you had nothing in writing when you went to see your father on Tuesday?

A. Nothing firm, no, sir.

Q. How about Wednesday when you undertook to—

A. Nothing firm, no, sir.

Mr. Pasco: That is all, sir.

The Court: Let me ask one question.

By the Court:

Q. When you had the talk on Monday night with Mr. Barden and the lease you looked at, then I believe you had the figure of $650.00?

A. $625.00, Your Honor.

Q. And did you indicate to Mr. Barden at that time that

while you had no firm offers that you had every reason to believe you could get considerably more than that and wouldn't think of recommending that to your father?

A. Well, Your Honor, I know just a little bit *a* about the real estate and values there. I knew we had a corner there we had been offered $150,000.00 for.

page 143 } Q. But did you tell Mr. Barden, though?

A. No, I didn't discuss it.

Q. That you wouldn't recommend that figure to your father?

A. No, Your Honor. He said, "What is wrong with the lease?" I said, "Mr. Barden, I have not said anything was wrong with it. I just don't like it. I'll put it in those words, I just don't like it."

(Witness stood aside.)

JOSEPH S. BAMBACUS,

a witness, having previously been sworn and testifying, was recalled by and on behalf of the petitioner and testified further as follows:

DIRECT EXAMINATION.

By Mr. Shuford:

Q. Mr. Bambacus, susequent to the incidents to which you testified regarding your conversations with the officials at Humble Oil, etc., have you as attorney for Mr. Henry Cox received, examined and recommended any sort of acceptance of any other offer from an oil company?

A. Yes, sir, I have.

Mr. Pasco: If Your Honor please, I object to this. I don't think it is relevant to this case. What offers have been received after this matter took place may be

page 144 } interesting but irrelevant to any allegation we have here as to whether Mr. Cox was under duress when he signed the lease.

The Court: Perhaps. I do not know, if he got any offer afterwards, whether it was a firm offer from one of the companies he had been discussing the possibilities with before. I will grant you that. I do not think the fact an offer was obtained afterwards would have any bearing, but it might have some, depending on whether it was with any party that had

negotiated with him before this happened. It seems to me that so far it is in evidence from Mr. Cox's own statement he had no firm offers at the time he had his conversation with Mr. Barden.

Mr. Shuford: That is correct.

The Court: I will overrule the objection. Go ahead, sir.

Mr. Shuford: My only purpose, I will state for the record, is simply to show what is a reasonably true offer for this corner.

Mr. Pasco: Note my objection to it.

page 145 } Mr. Shuford: Because Mr. Cox said he had no offer at that time. In fact, he would have been delighted to deal with Standard Oil if he had half the chance they were supposed to give him.

The Court: I will admit the question. Go ahead.

By Mr. Shuford:

Q. I will simply ask you this, Mr. Bambacus. Without going into details of the contract, is it legally a firm contract or is it one on condition?

The Court: What contract are you talking about?

Mr. Shuford: The one which I understood he had answered, had he had any since then, and I thought he had answered. Maybe I was in error.

Mr. Pasco: The best evidence is the contract and not what this gentleman recalls he may have read. I object to that on the ground the best evidence, if any, is the contract and we are entitled to see it.

The Court: I will sustain the objection on that ground.

By Mr. Shuford:

Q. Mr. Bambacus, I hand you this document. (Indicating)

page 146 } Mr. Shuford: If Your Honor please, this being a legal document, I would like to offer it in evidence with the privilege of withdrawing it and furnishing a copy if it is necessary later.

The Court: All right, sir.

By Mr. Shuford:

Q. Mr. Bambacus, I hand you here a document, which is "Pure Oil Company Lease Agreement." Have you ever seen that before?

Joseph S. Bambacus.

A. Yes, I have.
Q. Did you have anything to do with examining it and negotiating its terms?
A. Yes, sir, I did.
Q. Is it a conditional or absolute agreement?

Mr. Pasco: It seems to me the document speaks for itself.
Mr. Shuford: It does, Your Honor. I am simply trying to save time for His Honor, rather than forcing him to read a four page lease.

A. There is one condition in here, Your Honor. I believe it is numbered Paragraph 23. Should I read it?

By the Court:
Q. What is the gist of it?
A. "Notwithstanding anything herein contained . . ." and it goes on to say that the parties specifically agree that the lease shall not become effective and no rent page 147 } shall be due hereunder until peaceful possession of the premises is delivered to the lessee.

(Paragraph 23 of said "Pure Oil Company Lease Agreement" was read by the witness.)

By Mr. Shuford:
Q. In other words, the only condition in this agreement is whether or not they can get possession in view of the alleged lease of Humble Oil? Other than that, which is for the protection of Mr. Cox as well as the oil company, is there any condition in here?
A. No condition.
Q. What is the rental?
A. $14,400.00 a year, paid at the rate of $1,200.00 a month.

(The document entitled "Pure Oil Company Lease Agreement" was marked and filed as Petitioner's Exhibit No. 2.)

CROSS EXAMINATION.

By Mr. Pasco:
Q. Did you negotiate the lease on behalf of Mr. Henry Cox?
A. Mr. Richard Cox and I did.

Joseph S. Bambacus.

Mr. Pasco: That is all. Thank you.

(Witness stood aside.)

page 148 } Mr. Shuford: That concludes the petitioner's case in chief.

Mr. Pasco: We would like to at this point move to strike the plaintiff's evidence on the grounds that by the testimony this landowner is competent. The last evidence introduced is evidence of his competency. He signed this lease at a later date than the time he signed the lease in litigation.

I do not believe there is any evidence of undue influence or undue persuasion. Mr. Cox had an opportunity to discuss this lease before it was executed. It was discussed in his service station. The had time to go across the street. It was executed in the presence of a notary who was an old friend of his. He was a landowner. He is not hard of hearing. I examined him from where I sat and he had no great difficulty in hearing me.

I submit they have not made out a case of undue influence or persuasion. This man, while an elderly man, is still in active business. He signs courtesy cards, credit cards, he works the cash register, he goes to the bank. He has a reputation, his own son admitted, of an astute, successful
page 149 } business man in the community. Nobody has testified other than members of the family and these people related as to his forgetfulness, forgetful habits or things that naturally come on anyone who attains his age.

But there is no real proof of undue influence or persuasion and no evidence this is an unconscionable lease and. therefore, that portion of the case has not been made out. If Your Honor will examine the lease you will note it is signed by Mr. Cox under seal. I believe the law in Virginia is clear that an offer under seal cannot be revoked without reasonable notice and, certainly, twenty-four hours is not reasonable notice. In addition, I could say it is not clear that Mr. Bambacus, who undertook to revoke the lease, had the authority of Mr. Cox. I believe his testimony is when he could not get a copy he revoked the lease, and I do not believe that constitutes authority to revoke a lease that appears to be, from the evidence here, an agreement made in good faith.

For those reasons the plaintiff has not made out the case.

The Court: On the second point, Mr. Pasco,
page 150 } on the twenty-four hours' notice, whether or not that was reasonable notice, I certainly am not

passing on that now, but that would depend on the circumstances, would it not, all of the circumstances of the particular case?

Mr. Pasco: Oh, yes.

The Court: Twenty-four might be most unreasonable under the circumstances and might under others be reasonable.

I am going to overrule the motion now. I would certainly want to have the full evidence, and I do certainly think there has been testimony this morning to the effect that this plaintiff was not capable of comprehending and understanding what the lease contemplated. Now what other factors would bear on that, I don't know at this time, but I am going to overrule your motion at this time and require the defendant to go forward.

Mr. Pasco: Note my exception. May I mention one thing? This morning I stated in our allegations, we talked about the existing contractual agreements and there was a prayer there for Your Honor to order them to be con-
page 151 } tinued pending this litigation. We since made an agreement we would continue, but we have asked an adjudication that those contracts which are for long term be determined to be in existence and enforceable after this litigation is over.

The Court: You mean the other agreements?

Mr. Pasco: Sales contract and equipment lease run for a substantial period of time and are not revocable. I did not, no matter what I said this morning, intend to lead you to believe we were conceding that issue, and except for the period of litigation—

Mr. Shuford: That is understood. We agreed, simply in order to prevent what might be irreparable financial loss, the situation would remain status quo pending an adjudication by either of the parties.

page 152 } JACK WILLIAM MILLER, JR.,
a witness called by and on behalf of the respondent, after being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Pasco:

Q. Will you state your name and residence, age and employment?

A. Jack William Miller, Jr.; 8703 Pinyon Road, Richmond,

Jack William Miller, Jr.

Virginia; thirty-three years old; I am dealer sales supervisor of Humble Oil and Refining Company.

Q. How long have you worked for Humble?

A. Nine and a half years.

Q. And tell us what education you have had.

A. Went to high school in Richmond at T. J., finished V. P. I. in 1955.

Q. So you have been working for Humble since you left V. P. I.?

A. Yes, sir.

Q. Do you occupy the same position today you did last April?

A. Yes.

Q. What are those responsibilities?

A. I have the management, I am responsible for all of the dealer motor fuel business and dealer sales page 153 } in the City of Richmond.

Q. Mr. Barden works under your supervision?

A. He did at that time. He doesn't now.

Q. What does he do now?

A. He is oil heat supervisor now.

Q. Tell us what first you had to do with this lease which is the subject of this case.

A. I had a sales meeting with my salesmen on Friday, April 10th, in the conference room at our district office, and Mr. Barden approached me at this time and said he had received a call from Mrs. Marjorie Cox and that Mr. Cox wanted to talk about leasing the station.

Q. What Mr. Cox?

A. Mr. Henry T. Cox wanted to talk about leasing the station. I told Mr. Barden we would go to see Mr. Cox together that evening after we had concluded our meeting, which we did, and I would suppose we arrived at Mr. Cox's station approximately 5:20, 5:25, in that area, somewhere in that neighborhood on Friday afternoon and we approached Mr. Cox. He was very cordial and we passed some comments, very friendly ones, and we indicated that we had come to discuss the leasing of his property and had he really given some thought to this. He says, "I have decided to lease it, but I was going to call you tomorrow," which I as- page 154 } sumed would have been Monday, but he used the word "tomorrow." He said, "But now that you are all here, I will talk to you now." So Mr. Barden and Mr. Henry Cox and myself went into the little back office

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there and Mr. Barden knew Mr. Cox better than I did so he proceeded with the negotiating. So he discussed the aspects of the lease with him and recalled that they, Mr. Cox, had previously indicated that a cent and a half a gallon was what he would assume to be a reasonable rent on this location.

Q. Explain what you mean by the term "a cent and a half per gallon."

A. Well, he had indicated that he felt like a cent and a half a gallon on the business he was pumping through the station there would be a good rental return to him for the leasing of the station.

Q. That means if you have "X" gallons sold in a year the rent would be a cent and a half a gallon?

A. Yes, sir.

Q. Go ahead.

A. So we proceeded to take his yearly volume and compute this at a cent and a half a gallon, which came to $7,500.00 a year. Mr. Barden did this. However, at that point we told Mr. Cox, after projecting it out we made an error and divided by ten rather than twelve, and this computed to

page 155 } be $750.00 a month, which we indicated to him the rent would be. Mr. Barden did not catch this error, nor did I at that point. Mr. Cox said, "Well, that sounds pretty good to me," for us to come back and see him the first of the week, that he felt like he might, that might be an acceptable figure to him. He did not commit this finally but he said this seemed to be something he could entertain very favorably. We discussed the term of the lease. We indicated ten years. He nodded in approval. We indicated twenty years, perhaps, as a basis of the period. He somewhat hedged. He did not nod approval or rejection of this. So we bade him farewell and left and went.

Q. Did he appear to have any difficulty understanding you?

A. No, sir, he didn't.

Q. Did you have a document to talk with him about at that time?

A. No, sir, not on this first date.

Q. It was merely a discussion?

A. That is correct, sir.

Q. Then what next did you have to do with these negotiations?

A. Monday Mr. Barden and I got together at

page 156 } our office and drafted a lease based on twenty years with ten one year renewals for a rent of

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$625.00 a month, payable in advance and, of course, this is an annual consideration of $7,500.00. We went back to the station and this was about, I would say, around 1:00 o'clock Monday afternoon. I guess Monday was the 12th, I believe, of April. Mr. Cox wasn't at the station. We were informed he was at home. We proceeded to his residence and got out of our car and he was in the back yard with his roto-tiller plowing up his garden. He stopped his roto-tiller and he came back and our exchanges of greetings were very cordial. There is a little sort of picnic table in the back of Mr. Cox's house and, as I recall, a circular one, and we all three decided since it was warm we would all sit out there and talk about it. We presented to Mr. Cox at this time this lease which we'd brought back. He looked at it, scanned it, wtih the comment that that wasn't the rental which we had agreed to. We acknowledged this and once again worked out the calculations to show where the error was made and agreed we had made the error and what we were really talking about was $7,500.00 a year, which represented and was based on his volume production at the station for the last year, one and a half cents a gallon for what he had pumped. So we admitted to the error and told him that $625.00 would rep-
page 157 } resent to him in revenue an actual return of a cent and a half return on a gallon, based on his last year's volume. He did not seem to reject this. He did not seem to accept it, either. We went on talking about other aspects of the lease and we were talking about the term of the lease. We mentioned the fact that we had worked this out to be for twenty years with ten one year renewals. Mr. Cox said, "Twenty years is too long." We countered with, "What do you think is reasonable?" He said, "I don't think we ought to make it over, base period over ten years." I said, "Are you agreeable to ten years with ten one year renewals?" He indicated this would be agreeable to him. The next issue discussed was the prospect of a purchase agreement in the lease. He indicated he would have no part of that, that he wanted the station to go to his family after he had deceased and that he had no desire at all to give us the right to purchase the property at any time. We asked him if this seemed to be acceptable. He said it did but he wanted to talk to Richard about it before he made any final commitment on it or signed it and he told us—we asked him, well, could we talk to Richard. He indicated we could and told us where we could locate Richard. Mr. Barden went to the telephone and called Mr. Richard Cox.

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Q. In your presence?

page 158 } A. No, sir. He had gone to the telephone.

Q. What was the result of the telephone call?

A. The result of the telephone call was that we did set up an appointment that evening at the station, which was Monday evening, to meet Mr. Richard Cox, and he indicated he would be at the station somewhere in the neighborhood of between 9:30 and 10:00 o'clock, probably closer to 10:00 because he had other business to transact that evening. So we left.

Q. This phone call was made from Mr. Cox's home?

A. No. This phone call was made at the station.

Q. He went back to the station and stopped off and made a phone call?

A. Yes, sir.

Q. And then went about your business?

A. Yes, went back to my business.

Q. Did you do anything about this lease that night?

A. Yes. I went back to the office and took another lease form, typed up the very same rental consideration we had had but changed the term from twenty years to ten years with ten one year renewals, as he had indicated that this would be acceptable, and scratched out the purchase option

page 159 } section of the lease.

Q. And then you went to see Mr. Richard Cox that night?

A. That is correct.

Q. And took that lease with you?

A. Yes, sir.

Q. You have heard Mr. Barden testify and Mr. Richard Cox testify as to what happened. I wish you would tell the Court your recollection of what transpired at this meeting.

A. Mr. Barden and I arrived at the station, I would say around ten minutes to 10:00. Mr. Richard Cox came in shortly thereafter. We greeted. Our greetings were cordial. He said, "Let me see what you have got."

Q. Where did you talk to him at the station?

A. At the station.

Q. In the office behind?

A. No. This was in the sales room because there was some activity at the station and we were sort of isolated there in one section close to the door, but there was activity going in and out and we weren't confined to any one place but we were in the sales room of the station as such.

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Q. He said, "Let me see what you have got"?

page 160 } A. "Let me see what you have got." He took the lease and looked at it, turned it over, looked at it, got through and he folded it and held it in his hand. He said, "Well, it's a basic lease." As I recall, Mr. Barden said, "Well, what is the matter with it?" He said, "Well, there is nothing really wrong with it." He said, "It's not a real good lease. It's not a bad one.' He said, "I haven't really indicated anything being wrong." His next comment was that he thought, however, that the rental consideration in it was less than he should have for that location. Mr. Barden and I both at this point—and I don't know who started talking—but tried to indicate to him how we had computed this rent and the economics behind it and how it related to some other rentals that we had and that it did relate very favorably. Mr. Richard Cox said he got—and I couldn't be completely sure about this figure—but I believe $800.00 a month, plus some percentage override on the use of the restaurant, which was adjacent to that. I believe my comment to this was, "Well, I expect in the total investment over there you probably have about as much as you have in the service station and we felt the rental we had in this lease was a good return on what you have invested at this location."

Q. How did you leave it with Mr. Richard Cox that night?

page 161 } A. Well, I believe Mr. Barden asked Mr. Richard Cox if we could talk to his father and he indicated no, that his father had retired for the evening and that he would see his father on Tuesday. This was Monday night. He would see him on Tuesday and that we then could see him on Wednesday and discuss, to see Mr. Henry T. Cox on Wednesday and discuss it, and this is how it concluded for that evening. We left. Mr. Richard Cox asked for a copy of the lease. We advised him we would not leave a copy of the lease. However, he had it in his hand throughout this entire discussion which lasted perhaps—and this is off the top of my head—I would say an hour to hour and fifteen minutes.

Q. Tell the Court whether or not you and Mr. Barden made an appointment to see Mr. Richard Cox on Wednesday.

A. No. We had no such date to see Mr. Richard Cox on Wednesday.

Q. Tell the Court whether or not you had any agreement to wait for his telephone call?

A. No, sir. We had no agreement to wait for a telephone

call. The way we left the situation was Mr. Barden and I were to see Mr. Henry T. Cox on Wednesday. No definite time was established as to when this should be done.

Q. You had nothing to do with the actual con-
page 162 } versations and execution of the lease You did not go with Mr. Barden, did you?

A. No, not with Mr. Barden when he executed the lease, no, sir.

Q. Did he bring the lease back to you after Mr. Cox had signed it?

A. Yes, sir.

Q. When did you first see it?

A. I saw it that next morning first thing because I had been out of the office with one of the other salesmen that evening and hadn't returned. I saw it that next morning. What was going on at the district office that day, that morning we had a sales meeting with all of the district salesmen on a spark plug and battery promotion that we were proposing.

Q. Who was conducting the meeting?

A. Mr. Gerard Bradley, who was our TBA coordinator, was there.

Q. It involved your salesmen?

A. Yes. We had Mr. Jolly from our area office over there and Mr. Smith was in attendance, from the district office. He was over there.

Q. He is your immediate superior?
page 163 } A. Yes, sir.

Q. And did you talk to Mr. Bambacus on the telephone that day?

A. Yes, sir, I did.

Q. Tell us how it happened when you talked to him and what your recollection of the conversation is.

A. Well, we had recessed for lunch and had been to lunch and returned and before the meeting reconvened Mr. Barden came up to me and says, "A Mr. Bambacus is on the telephone downstairs and wants to talk to you." And I said, "Well," I think my comment was as it would normally be, "Do you know what he wants to talk about?" He said, "Yes, sir. I think he wants to talk to you about the lease we negotiated with Mr. Cox." I said, "Well, fine." I went downstairs and at this point Mr. Bambacus had hung up. So I got the phone directory from our receptionist and looked his number up and called him back. He introduced himself and started out on me in a rather dogmatic manner to indicate

he did not like the way Mr. Barden had handled the conversation with him. As I recall, I apologized for anything that Mr. Barden may have done to infuriate Mr. Bambacus and asked if I could help him. He said, "Yes. I want to call to revoke the lease that you worked out with Mr. Cox yesterday.' I said, "Well, on what grounds?" He said, "Well, you didn't leave a copy of it." And I went on to pro-
page 164 } cede to tell him why we did not leave a copy, that we brought this back to have our management's approval and as soon as it was approved Mr. Cox would get a copy. He said, "Well, you have no lease." I said, "Well, Mr. Bambacus, if you will give me a letter, sir, indicating what you find wrong with the lease arrangement we will certainly try to rectify this." He said, "Your problem is you have no lease and you are dealing with a man who is incompetent." At this point I began to realize that something, perhaps, was wrong. I did not myself, my situations with Mr. Cox, did not consider this gentleman to be incompetent. I have always respected him as a very astute and outstanding business man and this just did not ring true to me that this gentleman was incompetent. So I told him, as I recall, I would have to talk to our people about this and we would be back in touch with him, at which time I hung up the telephone.

Q. Do you know who, if anybody, was in your presence when you had this conversation?

A. While I was talking to Mr. Bambacus Mr. Ashley Smith, my immediate superior, and Mr. Paul Jolly, our service station manager, happened to come down the steps and they were in the lobby during the conversation. I am not sure they were there the whole time, but they were
page 165 } there during the conversation at some point.

Q. After this conversation, what did you do?

A. After the conversation I talked to Mr. Smith, who is my superior, about this situation and I had received Mr. Bambacus' call and we decided that in view of the fact that the alleged comment was that Mr. Cox was incompetent we would proceed to have our lease executed and we would take it to Mr. Cox to see if he would accept it and find out if he was really, in fact, incompetent. So this is what we did. We proceeded to have the lease executed.

Q. Did you go over to the area office that afternoon?

A. No, sir.

Q. Did you continue in the meeting you were having?

A. Yes, sir.

Q. And who went over to the area office, as you recall?

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A. Mr. Barden went and Mr. Jolly went.

Q. Can you fix the approximate time they left to go?

A. I would say that they left in the neighborhood of 2:30, between 2:30 and perhaps twenty minutes to 3:00. This is rough, but I would say it's in that area.

page 166 } Q. Did you later receive a letter from Mr. Bambacus?

A. I did.

Q. And about when did you receive it?

A. The letter came into the office around 2:55. I did not receive the letter until about 3:50 because I was in a meeting and the girl did not disturb me from a meeting.

Q. Was this a rather large meeting with all your salesmen?

A. Yes.

Q. And it was being held upstairs in the meeting room?

A. That's correct.

Q. She delivered this to you about an hour after she got it?

A. Approximately, yes.

Q. And did you report that fact to the area office?

A. Yes. That fact was reported. I did not personally do it. I believe this was reported.

Q. To Mr. Smith?

A. Yes. I think Mr. Smith reported this to our area office.

Q. In your presence?

page 167 } A. Yes.

Q. This would be a few minutes after you received it?

A. Yes.

Q. And did you accompany Mr. Barden back to the service station later that day?

A. Yes, sir, I did.

Q. About what time did you go out?

A. Once again, we arrived at the station somewhere in the neighborhood of 5:15 to 5:30, I would say.

Q. You had a copy of the executed lease with you?

A. Yes, sir.

Q. Mr. Cox signed two copies?

A. Yes, sir, that is correct.

Q. And at that time the company had signed two copies?

The Court: Let me interrupt you. I understood that Mr. Barden and Mr. Jolly went over to the station.

Mr. Pasco: To the area office. The lease, Your Honor, was signed by Mr. Pembroke.

Jack William Miller, Jr.

The Court: That is all right.

By Mr. Pasco:

Q. Mr. Barden came back later and picked you
page 168 } up at the district office?

A. That is correct.

Q. And you proceeded to Mr. Cox's service station?

A. Yes, sir.

Q. Mr. Barden then had a signed copy of the lease?

A. Yes, sir.

Q. Did you find Mr. Cox at the service station?

A. Yes, sir, we did.

Q. Who else was there, if you recall, anybody you can remember?

A. I cannot be sure. There were some employees there. I cannot name them.

Q. Any other members of the family?

A. No, sir, they weren't.

Q. Tell us what happened.

A. Mr. Barden—Mr. Cox was standing by the cash register, behind the show case there—I think it's a show case—anyway, whatever the cash register was sitting on, he was behind it. Mr. Barden took the lease to him. He said, "Mr. Cox, here is your lease. It's signed, executed, approved by our company." Mr. Cox took the lease. When he took it he says, "Well, there is some confusion about this,"
page 169 } and we asked him what the confusion was and he said that, well, some of the others didn't like the lease. We asked him, "Were you satisfied with it?" He says, "Yes," he was satisfied with it but some of the others didn't like it. He said some of the other oil companies had offered considerably more money than we had offered and this apparently was the reason why they weren't favorable to it.

Q. And then you left?

A. Yes, we left shortly after delivering the lease.

Q. Are there any Pure Oil stations in the immediate neighborhood of this station, to your knowledge, Mr. Miller?

A. There is one Pure Oil station in the Stratford Hills section, which is further out Forest Hill Avenue west.

Q. How far out is that, for the record?

A. I would say this one is approximately three-quarters of a mile from this location. This is rough. It's just from memory. I can't certify to that being absolutely correct.

Jack William Miller, Jr.

Q. Who sent you back to the service station with this lease?

A. Mr. Smith, my superior, directed me to.

page 170 } Q. What were his instructions to you?

A. His instructions were to deliver the lease to Mr. Cox and in case Mr. Cox refused the lease to bring it back to our office.

Q. You left it with him?

A. I left it with Mr. Cox. He took it.

Mr. Pasco: That is all.

CROSS EXAMINATION.

By Mr. Shuford:

Q. Mr. Miller, you testified you have known Mr. Cox for some years, is that correct?

A. No, sir. I did not testify I had known him for some years.

Q. How long had you known him?

A. Actually, I had met him on a couple other occasions but I had known him for quite a short period of time, I would say perhaps six months, sir. I had met him several times, but I—

Q. Where had you seen him?

A. In the station, sir.

Q. What kind of conversation had you had with him?

A. Virtually none.

Q. When you saw him he was wearing the garb

page 171 } he had on in Court this morning?

A. Yes, sir.

Q. His manner and all the same as it was this morning?

A. He has indicated previously some deterring in hearing. I would say that perhaps his behavior has been somewhat similar to what he displayed this morning.

Q. On what did you base your opinion, then, that you considered him to be an astute business man?

A. Based on the fact that he has been able to accumulate some personal worth and has a reputation in the community for being an outstanding business man.

Q. Where did you get that reputation?

A. I got this, sir, from other persons and from the fact that he himself possesses a sizable amount of property and personal belongings.

Jack William Miller, Jr.

Q. Specifically, with whom have you discussed Mr. Cox's astuteness?

A. I have not established this by any method of intellectual test, sir. I have merely established this by my relative evaluation of what someone can accomplish as a result of his own effort in some business activity, and he has done quite well. I wish I had done half as well.

page 172 } Q. Did you ever check to see when he bought that corner or what he paid for it?

A. No, sir, I have not.

Q. Did you hear his testimony this morning he had owned that property since 1902?

A. Yes, sir.

Q. Would that fact change your opinion he was an astute business man? Would you think simply because he had managed to hold onto property from 1902 which, through some sixty some years had become valuable, that—

A. I think the endeavor that has been put forth by Mr. Cox relates beyond just owning a piece of property on a corner. He has operated a business most successfully and by doing this has accumulated additional worth and has bought additional property.

Q. What business does he operate?

A. He's operated the service station.

Q. On what do you base that?

A. He has been the operator of that service station, sir.

Q. How do you know?

A. He is the gentleman that has been working there and he is the gentleman we have had our contractual relations with there. I assume him to be the operator.

page 173 } Q. In other words, because he had his name on contracts with Humble Oil Company and because he owned that corner you were willing to assume, despite his obvious appearance and impairment in hearing, he was an astute business man?

A. I would consider him to be a good business man, yes, sir.

Q. Now if he was an astute business man to what did you attribute some of his failure to answer some of your questions directly? You indicated on several answers to Mr. Pasco you would make a proposal and he would neither say yes or no, but you assumed he meant yes because he didn't object.

A. Would you restate that?

Jack William Miller, Jr.

Q. I said, how do you equate your analysis of Mr. Cox as an astute business man when you answered to Mr. Pasco concerning his failure to answer a number of questions when he would say neither yes or no, a vagueness in here? Are those two things compatible in your mind?

A. I don't know under what conditions Mr. Cox answered those questions. The only thing I am saying, in my judgment I think Mr. Cox has been a successful business man. I don't quite understand what you are saying, really, I don't believe.

page 174 } Q. I am trying to get the reason for your action, Mr. Miller, frankly, that you would substitute your judgment, based on such limited knowledge of this man, that he was an astute business man so you felt you could ignore the repeated requests of his family prior to the signing and the request of an attorney who purported to represent him after the signing and go ahead and still execute the agreement.

A. The contractual relations we have had with Mr. Cox, or with the Cox's have been with Mr. Henry T. Cox. He is the gentleman who has signed all of the documents. We as a company have negotiated with him.

Q. Were you present at those signings?

A. No, sir.

Q. Did you take part in the negotiations?

A. No, sir.

Q. Then you would have no way in the world to dispute the statements that have been uncontradicted up to now that before he ever signed anything he sought the advice of his family and always relied on what they told him?

A. I cannot dispute that, no, sir.

Q. You did hear him say, though, according to your own admission, he had to take this up with Richard before he gave you any kind of answer?

A. That is correct.

page 175 } Q. And this was repeated by Richard to you on Monday night?

A. That is right.

Q. Yet on Tuesday you went back ahead of time with Mr. Barden—

Mr. Pasco: No.

By Mr. Shuford:

Q. You sent Mr. Barden?

Jack William Miller, Jr.

A. I did not sent Mr. Barden back.

Q. Mr. Barden went back?

A. He went not for the purpose of negotiating a lease. We were going to wait until Wednesday. As has been testified, circumstances dictated to Mr. Barden the action he took.

Q. You don't happen to know, since he was in the neighborhood by accident, how he happened to have copies of the lease and of the proposed purchase agreement?

A. Yes. This was prepared. He had this with him, as he would have on any type of transaction that he might be working on.

Q. Even though the appointment wasn't until the next day he would carry it around with him?

A. Yes. Mr. Barden's job entails being in the field perhaps eighty percent of the time, and he will have these things with him as opposed to having them in the office.

page 176 } Q. In answer to this question, you raised an interesting point. You said certain circumstances arose which changed your approach to this thing or Mr. Barden's approach. What were those circumstances?

A. I think this has come out in the evidence, that Mr. Cox had indicated an offer that he had received from another company, and I assume then that Mr. Barden proceeded to try to negotiate something with Mr. Cox that would be palatable with him.

Q. But you had been present along with Mr. Barden when Mr. Richard Cox said nothing would be done until Wednesday until he had seen him?

A. I was with Mr. Barden when Mr. Richard Cox told us to see Mr. Henry Cox on Wednesday, yes.

Q. And you all agreed to that?

A. Yes.

Q. Down to then, when Mr. Barden learned of these other offers that made him proceed to try to negotiate sooner than was contemplated?

A. I believe, if I remember his testimony, that this was revealed when he stopped into the station by Mrs. Cox, Mrs. Marjorie Cox, I forget the time that morning, and then Mr. Henry Cox subsequently came to the station.

page 177 } Q. After Mr. Barden had waited for him some half hour, I think the testimony was. You were not with him?

A. No. I don't think Mr. Barden was there waiting for him. I think he was there handling some other business and had briefly talked to Mrs. Cox and subsequently he arrived.

Jack William Miller, Jr.

Q. When Mr. Cox in these conferences gave you indications of his feelings, you say he did not give you direct answers. Did you think this was normal procedure?

A. Different persons react differently, I think, to acceptance or rejection of ideas. He didn't say he wasn't going to accept it until we found out.

Q. You also would not permit yourself to assume that maybe he hadn't even understood you, would you?

A. It was not my judgment he did not understand us, no.

Q. All right. Did you understand him when he said he did not want to be obligated to Standard Oil Company for twenty years?

A. Yes, sir.

Q. Then why did you draw up a lease that was, in effect, in Standard's favor twenty years in that Standard had ten years plus ten year options?

page 178 } A. Because he did not want to be obligated to us on a twenty year base period plus ten additional years.

Q. Did he use those words?

A. Yes, sir.

Q. Did he use "base period"?

A. I don't know if he understood "base period," but the base period in the first lease was twenty years and he said, "That is too long." He understand the renewals were in the lease.

Q. Did you hear him testify this morning that he never heard anything about renewals?

A. I heard that, sir.

Q. Did you tell Mr. Cox when you were talking to him that your lease contained the clause that despite your having a right to hold Mr. Cox twenty years, it provided you could get out any time upon payment of one-twelfth of the remainder? Did you ever inform Mr. Cox of this provision in your lease?

A. No, sir, I didn't.

Q. And you say you also recall that Mr. Cox said specifically he did not want to commit himself to sale to Humble or anybody, that he was going to leave it to his children?

A. That is correct.

page 179 } Q. Then can you explain to me why Humble Oil Company had prepared and in Mr. Barden's pocket a purchase option?

A. Mr. Barden did not have prepared a purchase option in his pocket, sir. Mr. Barden had prepared a first refusal.

Jack William Miller, Jr.

Q. But it still committed whoever signed it to let Humble have it if it were ever sold?

A. That's right. We have a right to, if it were agreeable. The first refusal would give you a right to consider any offer made on the property.

Q. So it effectively tied you to Humble and nobody else if Humble wanted it?

A. Not unless they wanted to sell it.

Q. I say, if they ever wanted to sell it?

A. This is correct.

Q. Your regular purchase option, that gives you a right to buy it at the end of a time?

A. That is correct.

Q. So when he said he did not want to tie it up with Humble you said, "All right. We won't have it definitely agreed you will sell, but we will offer you a paper that says if you ever sell you have got to sell it to us," is that your thinking?

page 180 } A. Mr. Barden handled this, sir. I assume that he was trying to get the right of first refusal on the property in case it was sold, yes.

Q. All right. Now despite your analysis of him as an astute business man, having noted that he was hard of hearing, noted that he did give some unusual responses or failure to respond to certain instances, that he had said definitely he wanted to talk it over with his son Richard, that his son Richard had made a definite appointment for you on another day, and knowing the next morning that the lease had been signed without any of this taking place in advance of the schedule, why did you choose to ignore a Member of the Richmond Bar who said he had talked to Mr. Cox and said since he could get no copy he wanted it revoked?

A. Throughout my dealings with Mr. Cox and Richard Cox I received no indication Mr. Bambacus was respresenting Mr. Henry Cox and, as I say, when he got to the point of telling me the man was incompetent, then I began to have very serious doubt about him representing Mr. Cox and I proceeded to move along with the execution of the lease and to return it to Mr. Cox to see if he, in fact, would accept it.

Q. Well, now, why couldn't you have checked out the accuracy of the statement made to you that you had grave doubts about before you undertook to sign this lease and record it?

page 181 } A. I am not qualified to determine whether someone is competent or whether he is incom-

petent. I wasn't sure Mr. Bambacus was. I was merely acting to expedite the handling of this lease to protect our company's interest. This is what I am paid for doing.

Q. You were acting in a hurry to nail down a real good bargain?

A. No, sir, not a real good bargain.

Q. Has it been your experience that fair contracts will stand on their own feet, that you need not worry about them?

A. I think generally speaking this is correct.

Q. Then tell me again why you couldn't delay long enough to determine whether Mr. Bambacus was telling you the truth or not.

A. Because Mr. Bambacus indicated this gentleman was incompetent, as I have indicated before, and that did not sound right to me. So I proceeded to have the lease executed and delivered back to Mr. Cox.

Q. You have said that, but just a minute ago you said you did not consider yourself competent to determine if anybody was competent.

A. I don't consider Mr. Cox incompetent. Mr. Bambacus apparently did. He indicated this in his conver-
page 182 } sation with me. This is something you have to prove. I am not worthy of proving it. I did not think Mr. Bambacus was, so I proceeded on.

Q. Did you know Mr. Bambacus?

A. No, sir.

Q. Then why didn't you think he was competent to know?

A. Well, he told me he was a lawyer and I did not assume he was a physician.

Q. You didn't know but what Mr. Bambacus had taken him to a court and had a committee appointed for him?

A. I did not know that, correct.

Q. So you chose to ignore it. Coming back one more time, what was your real reason for not waiting to determine these doubts in your mind before trying to sign this contract? What were you worried about?

A. I didn't sign the contract, sir.

Q. Or had it signed?

A. What was I worried about?

Q. Yes.

A. I am not sure that we were worried about anything. Mr. Cox indicated an acceptance to Mr. Barden of a rental consideration. We proposed to take this and see if we got

Jack William Miller, Jr.

approval on it. This what we did, sir.

page 183 } Q. Well, you know, of course, that the rental consideration in the lease occupies about that much space, (demonstrating) and there are three and a half other full pages, don't you?

A. I also know on that morning, sir, Mr. Cox agreed to accept that.

Q. On what morning?

A. On the morning Mr. Barden negotiated it with him.

Q. Were you there?

A. No, but he certainly did. He signed it.

Q. But you don't know whether he agreed to anything in it? He signed it and that is all you can say, isn't it?

A. I wasn't there, sir, if that is the point you are making.

Q. So you don't know what he agreed to or understood or anything else?

A. I believe Mr. Barden. I wasn't there.

Q. Then whose judgment were you relying on Mr. Cox had, in fact, been competent to sign this instrument, yours or Mr. Barden's?

A. Well, I would say a combination of mine, Mr. Barden's and other people within our company who have

page 184 } known this gentleman. He has a reputation, certainly, of being a good business man.

Q. Was there anything to prevent you from the time of Mr. Bambacus' phone call first and then his letter, which reached you some thirty-five minutes, at least, before the lease was signed according to Mr. Barden, from running over to Cox's Service Station or calling him on the phone to see whether or not Mr. Bambacus was an imposter or knew what he was talking about?

A. No, sir. There was nothing to prevent this.

Q. Well, now, you went on and signed it?

A. Yes, sir.

Q. Now what was your particular reason for rushing down to the court house to record it?

A. As I told you previously, it was directed to me we were dealing with a man that was incompetent and I did not personally believe this. I don't think the members of the management of our company believed this. So we proceeded to have the lease executed and delivered back to Mr. Cox, and we felt that if he had ordered this action he wouldn't take the lease. We took it back and he accepted it.

Jack William Miller, Jr.

Q. You heard testimony from a witness that he refused it and laid it on the counter. Do you deny that?

A. I certainly do.

page 185 } Q. All right. Well now, did you follow the usual procedure, then, in executing this lease and recording it?

A. I don't know that there is really any concrete usual procedure. I would say this transaction perhaps has some difference in it than some others that we could conceivably negotiate.

Q. Notably, that nobody ever got a short form lease that is customary?

A. Well, the short form lease is something that we like to acquire. It is not mandatory that we acquire it. It has some value to us, in that the cost of recording is much less due to the fact it is a shorter form. It also has the value to us that it does not reveal the content of our negotiation or situation with the person and this is not recorded for competition's benefit. So where this can be acquired, then we certainly like to do it. It by no means is a mandatory document and there are often times we do not receive it.

Q. You have recorded this long form before?

A. Yes, sir.

Q. Then how do you assume it is a secret from your competition?

A. I do not indicate that where we have re-

page 186 } corded the long form it is a secret. I said where we could use the short form lease this makes the information less easy to get on the part of the competition.

Q. Does Mr. Pembroke usually sign all leases in this area?

A. Yes, sir.

Q. Is he the gentleman you referred to in stating that it had to be approved by your home office or your superiors, words to this effect?

A. Yes, sir. He is our area manager and he has this authority.

Q. How many leases in the local area would you say his name is on?

A. This is hard to say.

Q. Is it the majority of them he has actually signed?

A. Oh, yes.

Q. You don't send them out of town?

A. No.

Q. Do you usually execute them within twenty-four hours?

Jack William Miller, Jr.

A. Mr. Shuford, we have executed them within twenty-four hours. This depends upon the circumstances. In answer to your question, do we usually do this, I don't
page 187 } know we have a usual pattern. Most of our leases by virtue of going through correspondence, etc., will take longer than twenty-four hours. This doesn't preclude us from negotiating one within twenty-four hours if the situation indicates.

Q. Now who talked to Mr. Pembroke about this lease, anybody?

A. I don't know, sir. I talked to Mr. Smith, I assumed Mr. Barden and Jolly talked to him about that. They went over to the office to do this.

Q. Where was this, now?

A. This was at our area office over town, Broad and Hamilton.

Q. That is where Mr. Pembroke is?

A. That is correct, sir.

Q. So that as soon as they got Mr. Bambacus' call, you said they left at 2:30 and ran over to the area office, and that within an hour's time from the time they left South Richmond the lease was executed?

A. I think that is about right.

Q. Was it your opinion that you did not have anything worthwhile from Mr. Cox until it had been executed?

A. I would say that I felt that what we had was a stronger document after it had been executed.

Q. You wanted to perfect your position?
page 188 } A. Yes, I guess you might say that.

Q. In other words, if it turned out Mr. Bambacus was correct and that Mr. Cox was incompetent they were going to have to argue with a *fait accompli* so far as the lease was concerned and not something still open to negotiation?

A. I think that is a fair statement.

Mr. Shuford: That is all.

RE-DIRECT EXAMINATION.

By Mr. Pasco:

Q. Mr. Miller, did you notice anything different in Mr. Cox's demeanor when you delivered the lease than when you talked to him on the two previous occasions?

J. Robert Barden.

A. No, sir. He was very cordial, once again.
Q. Did he appear to be emotional or disturbed in any way?
A. No, sir.
Q. He was cordial to you?
A. Yes, sir.

Mr. Pasco: That is all. Thank you.

(Witness stood aside.)

page 189 } J. ROBERT BARDEN,
a witness called by and on behalf of the respondent, after being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Pasco:
Q. Mr. Barden, have you made a sufficient investigation of the records of this property to tell us what present assessment appears on the books?
A. Yes, sir, I have.
Q. What is it?

Mr. Shuford: Could we have the best evidence of it here?
Mr. Pasco: Bring the books upstairs.
Mr. Shuford: Have you personally checked?
Mr. Spain: I have.
Mr. Shuford: Then I withdraw my objection.

A. (Continuing) The land is assessed at $67,500.00. That is correct. The building is assessed at $22,500.00. The total assessment on this property is $90,000.00.
Q. Now, Mr. Barden, you heard Mr. Richard Cox testify about your various meetings with him. Is he correct about your visit to the funeral home before the service?
A. Yes, sir, he is.
Q. And what transpired at that meeting?
A. Well, again, as best I can recall, I had to
page 190 } make two trips to the funeral home. I believe this particular trip was prompted by an insurance claim when Raymond Cox died. One of my jobs is to see if the dealership has any group insurance on it. Our company sponsors a group insurance program for our dealers. They contribute and the dealer and his employees are covered. I did

not know and Mr. Cox didn't know, Mr. Richard Cox didn't know—and I'll tell you about that in a second. Anyway, I could not find out where this document was, the insurance contract. I did not know whether one was available. I was able to find out through our records that one was available but I had to locate it. So I went to the funeral home and Richard was there and so I asked if he knew where the insurance contract was. Of course, he had no idea one was available.

Q. Do you recall any discussion with him that night about the service station or lease?

A. No, I don't.

Q. Is that why you did not mention it earlier?

A. Yes, sir.

Q. You heard Mr. Richard Cox testify about your meeting with him and Mr. Miller on Monday night?

A. Yes, sir.

Q. Is it still your testimony that he told you to see Mr. Henry Cox on Wednesday rather than to make an

page 191 } appointment with Richard Cox?

A. Yes, sir.

Q. Now on the next day when the lease was executed did you go to the area office with the lease, take the lease?

A. Yes, sir. Mr. Jolly and I left the district office.

Q. About what time was that?

A. Must have been somewhere in the neighborhood of 2:30 to 3:00 o'clock.

Q. And you went over to the area office, Broad and Hamilton?

A. Yes, sir.

Q. And the lease was executed and you were instructed to do what?

A. To record the lease.

Q. And what happened?

A. Let me think. I believe, and I don't recall where this was mentioned, but I believe it was after we returned to the district office that it was suggested that we take the lease and return it to Mr. Cox to see, in effect, if Mr. Bambacus was acting in Mr. Cox's behalf. We did not know because of the conversation and our alternatives, we felt, were clear. We had to find out whether we were having difficulty

page 192 } from Mr. Cox or from the Cox family. We did not know. So from the legal standpoint I think we did what was correct. We went back to the Cox Service Station, Mr. Miller and I, and presented the lease to Mr. Cox.

J. Robert Barden.

Q. But it wasn't your idea to go back? You were instructed to go back, were you not?

A. Yes, sir.

Q. Did you notice any difference in Mr. Cox's demeanor and attitude when you returned the lease from what it had been on the two previous occasions?

A. No, sir.

Q. Did he seem to be normal and understand what he was doing?

A. Yes, sir, and we discussed the lease with him. We asked him what his objections were, and I think I testified that he stated, he suggested our rental wasn't high enough and we discussed with him again how we arrived at it and we felt and he felt that it was fair, and finally he said, "Well, I am satisfied but the others aren't." Then that was all that was discussed and we left.

Q. Now there has been testimony here he did not accept the lease but it was put on the counter. Did you hand the lease to him?

A. Yes, sir.

page 193 } Q. And he took it in his own hand?

A. Yes, sir.

Mr. Pasco: That is all. Just a moment.

By Mr. Pasco:

Q. In light of some recent testimony, will you state briefly how it was you happened to go back to the service station the first time on Tuesday, what the business was?

A. Well, I had a sales trainee with me. We had been riding around the area that day. I was going out to Stratford Hills. In order to get out to Stratford Hills I have to go around that intersection and, of course, this had been a business transaction we were anxious to conclude. We did not know where we stood. No one had really committed anything. We had discussed it, we thought we had arrived at a fair term and, as I went around the corner, I got it in mind I would like to talk to Mrs. Marjorie Cox because I could see her in the service station and rather than continuing on to Stratford Hills I stopped. Mr. Cox wasn't there. I knew this because the truck wasn't there. This was my purpose, to see if Mrs. Cox might have any information to see how we were progressing.

Q. Did you purposely wait for Mr. Cox?

A. No, sir.

J. Robert Barden.

page 194 } CROSS EXAMINATION.

By Mr. Shuford:

Q. Mr. Barden, you testified, I believe, that you felt it was duty or "our duty," I believe you expressed it, meaning your company, workers at Humble, to ascertain if the trouble you were getting was from Mr. Cox or the Cox family, is that correct?

A. I think this was the assumption, yes, sir.

Q. Now I have several questions on this. You had been dealing in good faith with the Cox family, had you not, or at least portions of them?

A. My dealings have been very good with Mrs. Raymond Cox, Mr. Raymond Cox, Mr. Henry T. Cox. I had very little dealings with Richard and I did not know how Richard felt.

Q. But you had dealt with him almost exclusively, other than Mr. Henry Cox, regarding the lease?

A. Yes, sir.

Q. On Mr. Henry Cox's insistence. And your relationship with Mr. Richard Cox on that occasion was very good, was it not? You had no trouble?

A. You might say I had no trouble. I had some reservations, and this was a business judgment.

Q. What reservations? He wasn't as easily page 195 } taken in as Mr. Henry Cox?

A. No. We could not get Mr. Richard Cox to make a firm commitment, and this was what we were looking for, nor could we get Mr. Henry Cox to make a firm commitment.

Q. If the trouble had then been with the Cox family you would have ignored it and gone ahead asserting every lever at your command to maintain the lease which you had executed, is that correct?

A. Would you rephrase that, sir?

Q. If you had discovered that the trouble was with the Cox family and not Mr. Cox you would have simply ignored it and done as you have done here, endeavor to hold Mr. Cox to the lease?

A. Ignore what?

Q. The trouble that you speak of. You said you wanted to see where the trouble was, whether it was Mr. Cox or the Cox family. Had you discovered the Cox family were the ones you would have ignored them, right?

A. I assume so, yes.

J. Robert Barden.

Q. What would you have done if you found out it was Mr. Cox?

A. Sir, you are dealing in contracts and at the time I ex-
executed the contract with Mr. Cox it was a commitment from
Mr. Cox and a commitment on my part. I think,
page 196 } again, that business judgment enters here, that
we *whould* have a right to either accept that or
not accept it. We felt that we wanted to accept it and I think we are entitled to that under, I guess under law. I did not know, but this was the assumption I had to go on, sir.

Q. So it then really made no difference to you who objected, whether it was Mr. Cox or the Cox family? You did not really care whom Mr. Bambacus represented, did you?

A. Sir, I think this that my relationship with Mr. Cox was good. I felt that if this was any problem it did not arise between a relationship between Mr. Cox and myself, that perhaps the confusion, as Mr. Cox put it, was coming from the family and I felt if we could sit down over a table and discuss it further he would agree. I feel he would agree now. If I had him in the same circumstances he would agree to our lease without any undue pressure.

Q. I imagine you do feel that way because you saw Mr. Cox for what he is, an elderly man who would yield to direction and doesn't understand. It really didn't make any difference to you that morning whether Mr. Bambacus represented Mr. Cox or the Cox family, you were still going to have the lease executed, weren't you?

A. Yes, sir.

page 197 } Q. That is your standard policy, to execute
all leases on behalf of the company, is it not?

A. Yes, sir.

Q. You never record one unless it's been executed by both parties?

A. Yes, sir.

Q. Did you hear Mr. Kelley's testimony, Mr. Barden, that during the time you were before him seeking to get Mr. Cox's signature on the lease and have it notarized that Mr. Cox was very emotionally upset and that he cried several times?

A. I did not hear him say he cried several times.

Q. That every time Raymond's name was mentioned he went to pieces?

A. I heard him make that statement, but I don't remember Raymond's name being mentioned, frankly.

J. Robert Barden.

Q. Are you saying, then, that during the whole time you were there Mr. Cox had full composure?

A. Yes, sir.

Q. And he never went to pieces?

A. No, sir, he certainly did not. In fact, it was at Mr. Cox's suggestion that we leave Mr. Kelley's office because, I mentioned in my testimony, Mr. Kelley was page 198 } trying to carry on a conversation. This was after the contract was signed. It was a very friendly atmosphere. Mr. Kelley was reminiscing with him about some little things that had taken place many years back since they were, I suppose, old friends, as Mr. Kelley testified, and it was at Mr. Cox's insistence. He said, "I'm sorry. I think we had better leave. My daughter is over at the service station and I think we'd better leave." That is how we happened to leave.

Q. Is that right after you pulled out the purchase option or first refusal?

A. Yes, sir. This wasn't a prepared form, sir. That was a form we would have liked to have had Mr. Cox agree to but he wouldn't agree to it.

Q. Why wouldn't he agree to it, because Mr. Kelley told him not to?

A. I think Mr. Cox would have made up his own mind if Mr. Kelley had not interrupted, and I don't know whether he would have said yes or no. He agreed with Mr. Kelley and Mr. Cox agreed it wasn't—well, he just did not agree to it.

Mr. Shuford: That is all.

page 199 } RE-DIRECT EXAMINATION.

By Mr. Pasco:

Q. This first refusal option has no dollar figure in it, does it? It gives you a right to meet any offer they get they will accept?

A. Yes, sir.

The Court: Let me ask you one question.

By the Court:

Q. As I understand it from your testimony, Mr. Barden, when the two of you went up to see Mr. Cox, Sr. on Saturday,

J. Robert Barden.

I believe it was, when you had the outdoor meeting with him—

A. This was Friday.

Q. Whichever day, the time you sat out in the yard and discussed it with him and he indicated at that time, first indicated that he wanted the opportunity of going over the lease with his son Richard, and I think at that time one of you suggested that perhaps you could go over it with Richard and he said it would be all right for you to contact Richard, but he had indicated to you a desire of having an opportunity to go over the lease with Richard. Then on Monday night when the two of you were talking with Richard and went over the lease or gave him the opportunity of going over it, he then indicated he wanted the opportunity of talk-
page 200 } ing with his father, I believe?

A. Yes, sir.

Q. And that then you could see his father on Wednesday?

A. Yes.

Q. Now when you went back on Tuesday and when the transaction took place with Mr. Cox, did you feel it necessary or did you ascertain from him whether he had discussed the matter with Richard?

A. If I remember correctly, I mentioned to him that we had talked with Richard the night before. I was trying to find out whether he had talked to Richard or not, and he indicated to me that he had talked to Richard over the telephone, and I believe that was the testimony given by Richard Cox, *hat* he had talked with his father that Monday evening, and I did not know what the nature of the discussions were but under the circumstances I knew that other oil companies had been contacted and I was anxious to see if I could not reach an agreement with Mr. Cox as to what he felt was a fair rental.

Q. And you understood on Tuesday that Mr. Cox and Richard had discussed the lease since you had seen Richard Monday night?

A. Yes.

page 201 } RE-CROSS EXAMINATION.

By Mr. Shuford:

Q. I would like to ask you where you got that indication that they had discussed the lease.

A. I did not say they had discussed the lease, I don't believe. I say that I knew Richard had been in contact with

J. Robert Barden.

Mr. Cox on that Monday evening. Whether they discussed the lease or not, I don't know, but I would guess if Richard called him this was the purpose.

Q. How could they discuss a lease they did not have?

A. They could discuss what we had talked about the night before and what I had given Richard an opportunity to look over and, again, this is what I thought they did.

Q. Was your lease you presented to Mr. Cox on Tuesday, then, identical with the one Richard had looked over?

A. Yes, sir, it was.

Q. Identical?

A. Yes, sir, I think so. I know so, yes.

Q. I thought you testified, and certainly Richard Cox did, the lease you showed him had $625.00 a month in it?

A. The lease I showed Mr. Cox had $625.00 a
page 202 } month in it.

Q. When did you change it?

A. I changed it after my discussion with Mr. Cox. In trying to find out what was objectionable to him and what he would consider a fair rental, this seemed to be the obstacle, the rental in the lease. Mr. Cox said earlier, "I think the rental should be what you quoted to me the other day," when I was in his office. I said, "Well, since I committed myself to that rental, then we would agree to that." I said that I would have to change that and we could change it inside. Then we went inside and it was changed from $625.00 a month to the figure he said he wanted, $750.00 a month.

Q. You did not know whether your company woud go for that or not, did you?

A. No, sir.

Q. So when you left there with your lease in hand it was still subject to your company's approval and they could reject it?

A. Yes, sir.

RE-DIRECT EXAMINATION.

By Mr. Pasco:

Q. The rental written in ink, is that your handwriting?

A. Yes, sir, it is.

page 203 } Mr. Pasco: I am referring to Defendant's Exhibit No. 1. That is all. Thank you.

(Witness stood aside.)

CHARLES C. GREEN,

a witness called by and on behalf of the respondent, after being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Spain:

Q. Mr. Green, you have been subpoenaed by the Humble Oil Company to appear in this case, is that correct?

A. Yes.

Q. Would you please tell the Court your name and occupation?

A. My name is Charles C. Green; I am employed at State Planters Bank in the Forest Hill Office of the bank.

Q. What is your position there?

A. I am Assistant Vice President.

Q. Mr. Green, does Mr. H. T. Cox have dealings with your bank?

A. Yes, he does.

Q. Do you know Mr. H. T. Cox?

page 204 } A. I do.

Q. How long have you known Mr. Cox?

A. Well, fifteen or twenty years, more or less.

Q. And has he dealt with your bank all that time?

A. Not with this office. We have not had this office out there quite a year yet.

Q. But he has dealt with that office all during this year, this last year?

A. He has since last October.

Q. And about how often do you see him in the course of this business?

A. Well, it would be hard for me to tell, but I would say approximately one time a week.

Q. And does he come into the bank himself or where do you see him?

A. I see him in the lobby.

Q. Does he come in by himself to transact his business with the bank?

A. Yes, sir.

Q. And as far as you know does he handle all transactions with the bank for the Cox's Service Station?

A. I wouldn't know about that.

Q. Does he make deposits for the Cox Service

page 205 } Station?

A. He does.

Q. Do you know how often he makes those deposits?

H. Paul Jolly.

A. No.

Q. Do you know his general reputation as a business man?

A. Only generally. We have had very few transactions in recent years with Mr. Cox.

Q. Has he ever borrowed any money from your bank?

A. Not since I have been in the office.

Q. You stated to me that you expected you knew the reason why he had never—

Mr. Shuford: If Your Honor please, I don't know what we are doing here, exactly.

The Court: Your objection is as to the form of the question?

I think, Mr. Spain, that your question should not be whether he had made a statement to you. Direct the question to him, but not whether he made a certain statement.

By Mr. Spain:

Q. To the best of your knowledged, do you know why he's never borrowed any money from the bank?

page 206 } A. No.

Mr. Spain: That is all, sir.

Mr. Shuford: I have no questions.

(Witness excused.)

H. PAUL JOLLY,

a witness called by and on behalf of the respondent, after being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Pasco:

Q. Would you tell us your name, residence and employment?

A. H. Paul Jolly; 6901 Cornwall Road; Humble Oil and Refining Company.

Q. What position do you hold?

A. Service station marketing management.

Q. What level of the company?

A. In the area office at Broad and Hamilton.

Q. And what area does this area office supervise?

H. Paul Jolly.

A. Supervises most of Virginia and about sixty percent of West Virginia and nineteen counties in Kentucky.

Q. Now were you over at the district office on the day that this lease was there for execution?

page 207 } A. Yes, I was.

Q. What occasioned your being there?

A. Attending a meeting with dealer-salesmen in the Richmond District.

Q. When did you first get brought into the question of this lease and its execution?

A. Upon my return from lunch.

Q. Tell the Court, then, what part you played in it.

A. We had returned from lunch and were preparing to start the afternoon session of the meeting when Mr. Barden came into the room and said that Mr. Bambacus was on the telephone and wanted to talk with Mr. Miller. So Mr. Miller went downstairs to talk with Mr. Bambacus and Mr. Smith and I later followed Mr. Miller downstairs. We didn't hear all of the conversation that Mr. Miller had with Mr. Bambacus, but after he had completed the conversation he told us that Mr. Bambacus said he was representing Mr. H. T. Cox and that he wanted the lease returned because Mr. Cox was incompetent. So at this point—and I have never had any business dealings with Mr. Cox myself, I have only the word of the people that deal with him, and they were of the opinion that his reputation in the area—they could not understand how suddenly he could become in-

page 208 } competent. So it was decided I should take the lease to the area office, have it signed, recorded and deliver it to Mr. Cox to see if he would accept the lease, and that is what we did.

Mr. Pasco: That is all. Thank you.

CROSS EXAMINATION.

By Mr. Shuford:

Q. Mr. Jolly, after you had the lease executed by Humble, with the view to then having it taken to Mr. Cox to see if he would accept it, what would you have done if he had not accepted it?

A. We instructed him to bring the lease back.

Q. Then what would you have done?

A. Would probably have mailed his copy.

H. Paul Jolly.

Q. In other words, you were not going to take no for an answer in any event?
A. No.

Mr. Shuford: That is all.

(Witness stood aside.)

Mr. Pasco: If Your Honor please, the parties have entered into a stipulation. I have given the court reporter a copy, but I would like to read it.

page 209 }

STIPULATION.

"The parties stipulate that James Watkinson was summoned to appear and testify on behalf of the Respondent, that he is unable to attend and testify because of illness, that he is an experienced real estate broker of the City of Richmond with ten years' experience as an appraisor, that he is a member of the American Institute of Real Estate Appraisors and one of the three appraisors for the City of Richmond in the current Henrico County Annexation proceedings, that if he were present he would testify that he is familiar with the Service Station property that is the subject of this case, that he is familiar with leases of other service stations in the area and leases of comparable property elsewhere in the City, that he is familiar with the volume of petroleum products sold at the Service Station in question during the past five years, and that in his opinion the lease which is the subject of this case is a fair lease, based either on the value of the property or on the petroleum sold at the Service Station during the last five years."

page 210 } Mr. Pasco: And that concludes the respondent's case.

Mr. Shuford: We agreed this is what he would say if he were present. We do not agree, of course, to the value of his testimony.

The Court: I understand. Is there any rebuttal?

Mr. Shuford: Yes. I would like to call Mrs. Marjorie Cox.

MARJORIE M. COX,

having been previously sworn and testifying, was recalled by and on behalf of the petitioner for further testimony as follows:

DIRECT EXAMINATION.

By Mr. Shuford:

Q. Mrs. Cox, we heard it testified to by Mr. Barden that you initiated a call to him with a request he come over and talk about a lease with Mr. Henry Cox. Did you hear such a statement?

A. I did hear it.

Q. Is it true?

A. I called Mr. Barden and told him in the conversation that Mr. Cox had agreed to leasing the place. However, I told him that Richard Cox was in New York at that
page 211 } time and Mr. Cox would see him Monday, because I had asked Mr. Cox who he would see and his words to me were, "I'll talk to the Standard man," and he was referring to Mr. Barden, I am sure. I said, "Mr. Barden, Mr. Cox, Richard Cox, is in New York and Mr. Cox will see you Monday." Mr. Barden said to me, I believe Mr. Barden said to me that he would be out of town for the week end or would be busy for the week end. He wanted to come over and see Mr. Cox Friday. I said, "Do as you like, but Mr. Cox is in New York."

Mr. Pasco: No questions.

Mr. Shuford: That is all, Your Honor.

Mr. Pasco: If Your Honor please, I have overlooked these three documents having to do with the case which were in effect at the time under which the service station was being operated. I would like to have them identified and filed. They are the motor fuel sales contract and equipment lease.

The Court: Copies were filed with your answer.

Mr. Pasco: That's right. I would like to have these three documents filed, under which the service station was being operated at the time of the negotiations.

page 212 } The Court: That would be Defendant's No. 2, I believe.

(The said documents were marked and filed as Defendant's Exhibit No. 2.)

(Whereupon, final argument of counsel was heard by the Court, and the matter was taken under advisement by the Court with final determination to be made at a later date.)

A Copy—Teste:

H. G. TURNER, Clerk.

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