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Clerk, Supreme Court of Appeals
Richmond, Va.

Record No. 6793

In the Supreme Court of Appeals of Virginia at Richmond

RUTH HURT HAYNES, ET AL.

v.

RUFUS C. HURT, EXECUTOR, ETC., ET AL.

FROM THE CIRCUIT COURT OF MONTGOMERY COUNTY

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

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Record No. 6793

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 10th day of October, 1967.

RUTH HURT HAYNES AND JESSIE HURT WOOD, Appellants,

against

RUFUS C. HURT, EXECUTOR OF THE ESTATE OF JOHN CALVIN HURT, RUFUS C. HURT, G. L. HURT, R. G. HURT, L. Q. HURT AND DALLAS KEMPER HURT, Appellees.

From the Circuit Court of Montgomery County
William S. Jordan, Judge

Upon the petition of Ruth Hurt Haynes and Jessie Hurt Wood an appeal and *supersedeas* is awarded them from a decree entered by the Circuit Court of Montgomery County on the 24th day of February, 1967, in a certain chancery cause then therein depending, wherein Rufus C. Hurt, Executor, etc., and others were plaintiffs and the petitioners were defendants.

And it appearing that a suspending and *supersedeas* bond in the penalty of $18,000, conditioned according to law, has heretofore been given in accordance with the provisions of sections 8-465 and 8-477 of the Code, an additional *supersedeas* bond conditioned according to law *in* required in the penalty of $2,000.

RECORD

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page 1 }

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BILL IN EQUITY

* * * * *

Your complainants, Rufus C. Hurt, Executor of the Estate of John Calvin Hurt, Deceased, Rufus C. Hurt, G. L. Hurt, R. G. Hurt, and L. Q. Hurt, humbly complaining, would show unto Your Honor as follows:

1. That their father, J. C. Hurt, a widower and a resident of Montgomery County, Virginia, departed this life testate on the 4th day of February, 1964, leaving Ruth Hurt Haynes, Jessie Hurt Wood, Rufus C. Hurt, G. L. Hurt, R. G. Hurt, L. Q. Hurt, and Dallas Kemper Hurt, an incompetent, as his only children and heirs at law; and

2. That his will dated September 19, 1951, was page 2 } probated in the Clerk's Office of Montgomery County, Virginia, on the 24th day of March, 1964, as will appear by a certified copy of said will filed herewith and marked "Exhibit A"; and

3. That Rufus C. Hurt was named in the said will as executor, and qualified as such on the 24th day of March, 1964, and gave bond as required by law, as will be shown by a certified Certificate of Qualification filed herewith and marked "Exhibit B"; and

4. That under Item I of said will the said John Calvin Hurt provided that his said wife, Rachael, stepmother of his children, should occupy a house and lot in Eau Gallie, Brevard County, Florida, for her life, and the remainder of his property be divided in equal shares among his daughters, Jessie Hurt Wood, and Ruth Hurt Haynes, and his sons, Robert Garland Hurt, Rufus Calvin Hurt, George Lawrence Hurt, and Lionel Quinton Hurt, share and share alike; and

5. That his said wife, Rachael, preceded him in death about one year; and

6. That under Item Two of the said will the residue of his property was given and bequeathed to his children as follows: "I give, devise and bequeath, in equal shares, to my children hereinabove named all the rest and residue of my property, real, personal and mixed, of whatsoever nature, wheresoever

situate." The testator had set out the names of all his children in Item I of said will, except that of Dallas Kemper Hurt, an incompetent, now in a hospital at Spencer, West Virginia, who was mentioned and provided for in Item 4 of said will; and

7. That the said John Calvin Hurt, before his death, had on deposit in the First National Bank of Christiansburg, Virginia, in his name as J. C. Hurt, who was John Calvin Hurt, a certain sum of money in excess of $5,000.00, all of which belonged to the said John Calvin Hurt, and page 3 } all of the deposits were made by the said John Calvin Hurt, and none of the same belonged to the said Ruth Hurt Haynes; that the said John Calvin Hurt became ill, sick and infirm, and was unable to attend to his financial and business affairs, and prior to February 4, 1964, for his convenience only in handling his affairs here and in Florida, he transferred his real estate in Florida to Ruth Hurt Haynes to be held in trust for him, and part of the said money to a joint account in the name of J. C. Hurt and Ruth Hurt Haynes, which is evidenced by a Certificate of Deposit dated August 5, 1963, Number 10962, for $1,053.00, which Certificate of Deposit was cashed by Ruth Hurt Haynes after the father's death, on August 18, 1964, and the money transferred to her personal account; that part of the $5,000.00 was deposited in February 1963 on Certificate of Deposit Number 11108 in the sum of $3,432.00, payable to J. C. Hurt and Ruth Hurt Haynes, which Certificate of Deposit will become due on the 19th day of February, 1965; that there remains on checking account in the name of J. C. Hurt, in the First National Bank of Christiansburg the sum of $24.05; and

8. That the said John Calvin Hurt had $2,000.00 in government bonds which were, likewise, held by the said Ruth Hurt Haynes and her sister, Jessie Hurt Wood, of Fayetteville, West Virginia; and

9. That the said John Calvin Hurt owned real estate in Eau Gallie, Florida, and *In* Orlando, Florida; that he was threatened with a law suit by his wife's son by a former marriage which caused him great concern and anxiety; that his children, in order to satisfy his mind and put him at ease, advised him to put the property in the name of Ruth Hurt Haynes to be held in trust for said John Calvin Hurt and his children, which was done, for the purpose of selling, managing and disposing of the same for his convenience; and

10. That the said Ruth Hurt Haynes sold certain of said real estate in Orlando, Florida, to the ABC Liquor page 4 } Company, 111 West Jefferson Street, which had

been placed in her name because of his ill health and physical inability to transact business, he having turned the affairs over to his daughter, Ruth Hurt Haynes, with whom he was living, and allowed her to handle the transactions; that an installment check in the sum of $5,000.00 was due and payable in February 1964, shortly after his death, and your complainants are advised that the said Ruth Hurt Haynes and Jessie Hurt Wood have received the said check in the sum of $5,000.00 belonging to the said John Calvin Hurt, and are withholding the funds therefrom from the Executor and your complainants; and that there was also due from the ABC Liquor Company, of Orlando, Florida, the sum of $6,000.00 belonging to said John Calvin Hurt, which your complainants are advised was paid to the said Ruth Hurt Haynes and Jessie Hurt Wood, which sum is being withheld from the Executor and your complainants; and

11. Your complainants would show unto Your Honor that all of the monies as above set out, totaling at least $17,219.05, was money belonging to the said John Calvin Hurt; that he made all the deposits in the said bank; that the real *estste* placed in the name of Ruth Hurt Haynes and sold in Florida was his real estate; that all the above named funds and proceeds are part of the estate of the said John Calvin Hurt, and should be turned over to the Executor of his estate for administration and distribution; but your complainants would show unto Your Honor that the said Ruth Hurt Haynes and Jessie Hurt Woods are claiming and holding the said funds as their own, and refuse to pay them to the said Executor for administration and distribution, as directed by said will; and

12. Your complainants would show unto Your Honor that the said John Calvin Hurt did not intend to make an *inter vivos* gift to the said Ruth Hurt Haynes or Jessie Hurt Wood, because he was not competent to make such
page 5 } a gift, and that he did not intend to give his property to the said defendants when he put his real estate in the name of Ruth Hurt Haynes for his protection and other personal reasons, and made the deposits jointly, and had the Certificates of Deposit issued jointly for his convenience only; and

13. Your complainant, Rufus C. Hurt, Executor, would show unto Your Honor that pursuant to Section 64-131 of the Code of Virginia, that it is his duty as personal representative to administer, well and truly, the whole personal estate of his decedent, John Calvin Hurt; that pursuant to Section 64-131.1 of the Code your complainant alleges that he has been requested in writing by his brothers, who are interested in the

assets, to claim on behalf of the decedent's estate, and especially for the incompetent brother, Dallas Kemper Hurt, the funds which were held by his sisters in joint bank accounts and all other assets of the estate held otherwise; and

14. Your complainants would show unto Your Honor that they have requested their sisters to pay unto them and to turn over to them the money and assets belonging to the estate of said John Calvin Hurt, but that their sisters neglect and refuse to pay the same over to your complainants, stating that the said John Calvin Hurt did not have any property or any estate that they knew of.

15. Therefore, your complainants, Rufus C. Hurt, Executor, and the other complainants are advised that they are entitled to judgment against Ruth Hurt Haynes and Jessie Hurt Wood, for the sum of at least $17,219.05 with interest from the 4th day of February, 1964, and to have the same turned over to them so that the Executor might complete settlement of his account as personal representative, and make a complete administration of their father's estate.

Therefore, being without remedy save in a court of equity where matters of this nature are properly cognizable, your complainants pray that the said Ruth Hurt Haynes and Jessie Hurt Wood may be made parties defendant to this cause, and required to answer the same, setting forth their reasons for claiming these funds belonging to the Estate of John Calvin Hurt, Deceased; that proper process may issue; that a guardian *ad litem* may be appointed to represent and defend the said Dallas Kemper Hurt, an incompetent, directed to file an answer for said incompetent and protect his rights in this cause; that an order of publication may be published and posted as to the non-resident defendants, Jessie Hurt Wood, Fayetteville, West Virginia, and Dallas Kemper Hurt, incompetent, Spencer, West Virginia; that this Honorable Court will by proper decree direct the said defendants, Ruth Hurt Haynes and Jessie Hurt Wood, to return these said funds, amounting to at least $17,219.05, with interest from February 4, 1964, over to the said Executor to administer the same in compliance with the will of John Calvin Hurt, especially for and on behalf of the incompetent, Dallas Kemper Hurt, and that your complainants have judgment against the defendants, Ruth Hurt Haynes and Jessie Hurt Wood in the sum of at least $17,219.05, with interest; that this matter may be referred to a Commissioner in Chancery to ascertain and determine the exact amounts in the joint accounts of John Calvin Hurt and Ruth Hurt Haynes, and any and all other property, monies and assets now in the hands of Ruth Hurt

Haynes and Jessie Hurt Wood, belonging to the estate of John Calvin Hurt; and may your complainants have all other specific and general relief as the nature of their case may require, or to equity may seem meet.

And in duty bound they will ever pray, etc. February 9, 1965.

Respectfully,
RUFUS C. HURT, EXECUTOR
RUFUS C. HURT
G. L. HURT
R. G. HURT
L. Q. HURT

by BENTLEY HITE
Counsel

BENTLEY HITE, p.q.
Christiansburg, Virginia

Filed in the Clerk's Office the 9th day of February, 1965.

Teste:

A. B. CORRELL, Clerk

By RENELDA TURMAN, D.C.

* * * * *

page 7 } EXHIBIT "A"

I, JOHN CALVIN HURT, formerly of the Town of Fayetteville, Fayette County, West Virginia, and now of Eau Gallie, Brevard County, Florida, being of full age, and of sound mind and memory, do hereby make and publish the following in duplicate as my Last Will and Testament, and revoke all previous testamentary dispositions heretofore by me made;

Item I. In the event that my beloved wife, *Racheal* B. Hurt, shall desire to occupy the house and lot which I own in the City of Eau Gallie, Brevard County, Florida, as a dwelling, for her life, or any part of her said life, then and in that event I give, bequeath, and devise that right to her; remainder in equal shares to my daughter Jessie Hurt Wood, my son Robert Garland Hurt, my daughter Ruth Hurt Haynes, my son Rufus Calvin Hurt, my son George Lawrence

Hurt and my son Lionel Quinten Hurt. However if my said beloved wife does not desire to occupy said home in Eau Gallie as a dwelling for her life or any part thereof, then and in that event I devise said real estate to my children hereinbefore named, share and share alike; and in lieu of the dower interest of my said beloved wife, I give and bequeath to her the sum of $5.00, the acceptance of said sum by her shall signify her intention to release her said dower. It is my desire that the decision with regard to this item of my Last Will and Testament be made solely by my said beloved wife, *Racheal,* and depending, in her sole judgment, whether I have adequately provided for her in other ways such as insurance.

Item II. I give, devise, and bequeath in equal shares to my children hereinabove named all the rest and residue of my property, real, personal, mixed, or of whatsoever nature, wherever situate.

Item III. I appoint my son, Rufus C. Hurt, to be the executor of this my Last Will and Testament, to serve without bond.

page 8 } Item IV. My executor shall arrange and pay for out of my estate a decent and proper funeral for my son, Dallas Kemper Hurt, and to the extent of necessary and reasonable expenses thereof, the same shall constitute a charge against all of my property.

In testimony hereof I have hereunto set my hand and seal on this the 19 day of September, 1951.

JOHN CALVIN HURT (SEAL)

The foregoing instrument contained on this page and the previous page was, on the 19 day of September, 1951, signed and sealed by the said John Calvin Hurt the testator therein named and duly published and declared by the said John Calvin Hurt to be his Last Will and Testament, and his free act and deed, in the presence of us, who, at his request, and in his presence, and in the presence of each other, hereunto subscribe our names as witnesses. And we, and each of us, do also certify and state that the signature of the said testator was duly made and appeared to us upon the will as above, before we signed as witnesses, and that we, and each of us, do now believe said testator at this time to be of sound mind and memory.

JOHN H. TOLER
H. W. CUNNINGHAM
G. W. BENNETT

STATE OF WEST VIRGINIA,
COUNTY OF FAYETTE, To-wit:

page 9 } John H. Toler, H. W. Cunningham, and G. W. Bennett, being first duly sworn, say that they are subscribing witnesses to the Last Will and Testament of John Calvin Hurt, a resident of Eau Gallie, Brevard County, Florida, dated the 19 day of September, 1951; that on said date the said John Calvin Hurt testator therein, signed, sealed, published, and declared the same as and for his Last Will and Testament in the presence of affiants, and that affiants, in the presence of each other and in the presence of the testator, and at the request of the said testator, signed their names as attesting witnesses to said Will.

Affiants say that this affidavit is made at the request of the said John Calvin Hurt, testator in said Will, and that the said John Calvin Hurt, at the time said Will was executed, was in the opinion of the affiants, of sound mind and disposing memory.

JOHN H. TOLER
H. W. CUNNINGHAM
G. W. BENNETT

Taken, subscribed, and sworn to before me by the said John H. Toler, H. W. Cunningham and G. W. Bennett on this the 19 day of September, 1951.

My commission expires August 21, 1957.

CHARLES L. GORVIN, JR.
Notary Public

[SEAL]

A Copy—Teste:

A. B. CORRELL, Clerk
Circuit Court, Montgomery
County, Virginia

By: ....., Deputy Clerk

3 and Last

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EXHIBIT "B"

Virginia: *In the Clerk's Office of the* Circuit *Court of the* County *of* Montgomery:

I, A. B. Correll, Clerk of the Circuit Court of the County of Montgomery, do hereby certify that on the 24th day of March, 1964, Rufus C. Hurt duly qualified in my said Court as Executor of John Calvin Hurt, deceased, and gave bond as such according to law, which bond is still in full force and effect.

Given under my hand, this 24th day of March, 1964.

[SEAL] A. B. CORRELL, Clerk.

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Upon the motion of Bentley Hite, Attorney for the plaintiffs, it is ordered that J. Patrick Graybeal, a discreet and competent attorney at law, practicing in this Court, be and he is hereby appointed Guardian *ad Litem* for Dallas Kemper Hurt defendant incompetent in the above entitled cause to do whatever may be necessary to protect the interest of said defendant.

Given under my hand, this 12th day of February, 1965.

A. B. CORRELL, Clerk.

* * * * *

page 12 } AFFIDAVIT

I, Bentley Hite, Attorney, hereby make affidavit to the fact that I am attorney for the plaintiffs in the chancery cause this day filed in the Circuit Court of Montgomery County, Virginia, under the style of Rufus C. Hurt, Executor of the Estate of John Calvin Hurt, et als, vs. Ruty Hurt Haynes, et al; that the object of the suit is to establish the identity and ownership of certain funds belonging to the Estate of John Calvin Hurt, Deceased, now in the hands of Ruth Hurt

Haynes and Jessie Hurt Wood, and for complete administration of the Estate of the said John Calvin Hurt, and for general relief. I further certify that Jessie Hurt Wood is a non-resident of the State of Virginia, and is now living at Box 479, Fayetteville, West Virginia, and Dallas Kemper Hurt, Incompetent, is living at Spencer, West Virginia.

Given under my hand this 9th day of February, 1965.

BENTLEY HITE

* * * * *

Filed in Clerks Office Circuit Court of Montgomery County 9th Day of February, 1965.

A. B. CORRELL, Clerk

By RENELDA TURMAN, D.C.

page 13 } In the Clerk's Office of the Circuit Court of the County of Montgomery on the 12th day of February 1965

* * * * *

The object of this suit is to establish the identity and ownership of certain funds belonging to the Estate of John Calvin Hurt, deceased, now in the hands of Ruth Hurt Haynes and Jessie Hurt Wood, and for complete administration of the Estate of the said John Calvin Hurt, and for general relief. And an affidavit having been made and filed that the defendants, Jessie Hurt Wood and Dallas Kemper Hurt, are not resident of the State of Virginia, it is ordered that they do appear within ten days after due publication hereof, and do what may be necessary to protect their interests in this suit. And it is further ordered that a copy hereof be published once a week for four successive weeks in the Montgomery News Messenger, a newspaper published in the County of Montgomery, that a copy be posted at the front door of the Courthouse of this County within ten days after this order was entered, and that the Clerk mail a copy hereof to each of the said defendants to the post-office address given in the affidavit herein, and file a certificate of the fact in the papers of this case.

A Copy—Teste:

A. B. CORRELL, Clerk.

BENTLEY HITE, p.q.
Christiansburg, Va.

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CLERK'S CERTIFICATE

I, A. B. Correll, Clerk of the Circuit Court of the said County, do hereby certify that I posted a copy of the Order of Publication on the front door of the Courthouse within 10 days from the entry of this order; that I mailed a copy thereof to each of the defendants to the post office address given in the affidavit or bill required by Section 8-71 of the Code of Virginia, and that I delivered a copy to the Editor of Montgomery News Messenger for publication.

Given under my hand, this 12th day of February, 1965.

A. B. CORRELL, Clerk.

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PROOF OF SERVICE

* * * * *

Returns shall be made hereon, showing service of Subpoena in Chancery issued February 12, 1965, with copy of Bill of Complaint filed February 9, 1965, attached:

Executed on the 13 day of Feb., 1965, in the County of Montgomery, Virginia, by delivering a true copy of the above mentioned papers attached to each other, to Ruth Hurt Haynes in person.

GRADY A. McCONNELL, Sheriff
Sheriff, County/City of Montgomery, Va.

By JEFF FOLLEY, Deputy Sheriff.

* * * * *

Returned and filed the 15 day of February, 1965.

A. B. CORRELL, Clerk.

....., Deputy Clerk

page 16 } In the Clerk's Office of the Circuit Court of the County of Montgomery on the 12th day of February, 1965.

RUFUS C. HURT, Executor of the Estate of John Calvin Hurt, Deceased, et al, *plainfitt,* against RUTH HURT HAYNES et al, Defendants.

The object of this suit is to establish the identity and ownership of certain funds belonging to the Estate of John Calvin Hurt, deceased, now in the hands of Ruth Hurt Haynes and Jessie Hurt Wood, and for complete administration of the Estate of the said John Calvin Hurt, and for general relief. And an affidavit having been made and filed that the defendants, Jessie Hurt Wood and Dallas Kemper Hurt are not residents of the State of Virginia, it is ordered that they do appear within ten days after due publication hereof, and do what may be necessary to protect their interests in this suit. And it is further ordered that a copy hereof be published *onece* a week for four successive weeks in the Montgomery News Messenger, a newspaper published in the County of Montgomery, that a copy be posted at the front door of the Courthouse of this County within ten days after this order was entered, and that the Clerk mail a copy hereof to each of the said defendants to the post-office address given in the affidavit herein, and file a certificate of the fact in the papers of this case.

A Copy—Teste:

BENTLEY HITE, p.q.
Christiansburg, Va.

A. B. CORRELL, Clerk

* * * * *

PUBLICATION CERTIFICATE

Christiansburg, Va., 3/4 1965

I, Stanley Noodyare editor of The Montgomery News Messenger, hereby certify that the attached Order of Publication was printed in the Montgomery News Messenger 4 consecutive weeks from and after 2/18 3/11 1965.

BUCK WOODYARD, Editor

Publication Fee $33.80

Filed in Clerks Office Circuit Court of Montgomery County 5th Day of March 1965.

A. B. CORRELL, Clerk

By RENELDA TURMAN, D.C.

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* * * * *

ANSWER AND RESPONSIVE PLEADINGS OF RUTH HURT HAYNES

TO THE HONORABLE W. S. JORDAN, JUDGE OF THE ABOVE NAMED COURT:

Comes now, Ruth Hurt Haynes, for answer to a Bill of Complaint, filed in the above styled cause, exhibited against her and others, answers and says as follows:

1. Paragraph numbered One (1) is admitted as to the date of death of J. C. Hurt and the heirs at law but denies the allegations remaining therein.

2. Paragraphs numbered Two (2), Three (3), Four (4), Five (5) and Six (6) are neither admitted nor denied, but call for strict proof thereof.

3. That paragraph numbered Seven (7), is neither admitted nor denied but calls for strict proof thereof.

4. Paragraph numbered Eight (8), nine (9), Ten (10), Eleven (11) and Twelve (12) are denied.

5. Paragraph numbered thirteen (13) and Fourteen (14) are expressly denied.

6. Paragraph numbered Fifteen (15) is neither admitted nor denied but calls for strict proof thereof.

Now, having fully answered, your respondent prays that the Bill of Complaint and the relief sought therein be dismissed, that this respondent prays to be hence dismissed, with her costs in this behalf expended.

Respectfully,
RUTH HURT HAYNES

BY: JAY A. PRICE
Counsel

page 18 }

* * * * *

Filed in Clerks Office Circuit Court of Montgomery County 5th day of March 1965.

A. B. CORRELL, Clerk

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page 19 }

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ANSWER AND RESPONSIVE PLEADINGS OF JESSIE HURT WOOD

TO THE HONORABLE W. S. JORDAN, JUDGE OF THE ABOVE NAMED COURT:

Comes now, Jessie Hurt Wood, for answer to a Bill of Complaint, filed in the above styled cause, exhibited against her and others, answers and says as follows:

1. Paragraph numbered One (1) is admitted as to the date of death of J. C. Hurt and the heirs at law but denies the allegations remaining therein.
2. Paragraphs numbered Two (2), Three (3), Four (4), Five (5) and Six (6) are neither admitted nor denied, but call for strict proof thereof.
3. That paragraph numbered Seven (7), is neither admitted nor denied but calls for strict proof thereof.
4. Paragraphs numbered Eight (8), Nine (9), Ten (10), Eleven (11), and Twelve (12) are denied.
5. Paragraphs numbered Thirteen (13) and Fourteen (14) are expressly denied.
6. Paragraph numbered Fifteen (15) is neither admitted nor denied but calls for strict proof thereof.

Now, having fully answered, your respondent prays that the Bill of Complaint and the relief sought therein be dismissed, that this respondent prays to be hence dismissed, with her costs in this behalf expended.

Respectfully,
JESSIE HURT WOOD

BY: JAY A. PRICE
Counsel

page 20 }

* * * * *

Filed in Clerks Office Circuit Court of Montgomery County 5 day of March 1965.

A. B. CORRELL, Clerk

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page 21 }

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ORDER

APPOINTING SPECIAL COMMISSIONER

This cause, which has been regularly matured, docketed and set for hearing, came on this day to be heard on the bill and proceedings filed herein; upon the answer and responsive pleadings of the defendants filed on the 5th day of March, 1965; and said cause was argued by counsel.

Upon consideration whereof, and it appearing to the court that it is proper so to do, this cause is referred to J. Patrick Graybeal, Special Commissioner, for the purpose of making, stating and reporting as follows:

1. Whether the said John Calvin Hurt died testate or intestate, and the manner in which he disposed of his property.
2. The children and heirs at law of the said John Calvin Hurt, and their ages and addresses.
3. The respective interests of the said children and heirs at law of the said John Calvin Hurt.
4. The real estate and interest in real estate owned by John Calvin Hurt at the time of his death.
5. The money in bank, or banks, in the name of the said John Calvin Hurt at the time of his death.
6. All other personal property, including stocks, bonds, government bonds, and securities, or interest in the same, belonging to the said John Calvin Hurt at the time of his death, and where located or now held.
7. Any and all other matters which may properly come before the said Commissioner or be requested in writing by any party in interest.

page 22 } And this cause is continued.

* * * * *

Enter this Order, July 8, 1965.

W. S. JORDAN, Judge

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page 23 }

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ORDER

This day came the plaintiffs by their attorney, Bentley Hite, and the defendant by his attorney, Jay A. Price, showing unto the court that heretofore on the 12th day of February, 1965 J. Patrick Graybeal, a discreet and competent attorney at law, was appointed Guardian *ad Litem* for the incompetent defendant, Dallas Kemper Hurt, but that the said Guardian *ad Litem* has not filed an answer in the said cause; and that subsequent thereto on the 8th day of July, 1965, this cause was referred to the said J. Patrick Graybeal as Special Commissioner to make and state an accounting in the said cause.

Therefore, it is ADJUDGED, ORDERED and DECREED that the appointment of the said J. Patrick Graybeal as Special Commissioner, be, and the same is hereby set aside and annulled; and it is further ORDERED that Jacque Pierce a competent and discreet attorney at law, be, and he is hereby appointed Special Commissioner in the place of J. Patrick Graybeal.

And this cause is continued

Enter this Order, July 21, 1965.

W. S. JORDAN, Judge

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page 24 }

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ORDER

This day came J. Patrick Graybeal, Attorney at Law, who was by Order of the Clerk of this Court, dated February 12, 1965, and recorded in Clerk's Order Book 4, at Page 475, appointed as Guardian *Ad Litem* for Dallas Kemper Hurt, Incompetent, representing unto the Court that more than twenty-one days had elapsed since the appointment as Guardian *Ad Litem,* and further representing unto the Court that no answer has been filed by him as such Guardian *Ad Litem,* and petitions the Court to be allowed to file an answer in the above styled cause.

And it appearing unto the Court that the motion is not made for the purpose of delaying the proceedings and that the motion should be granted for the protection of Dallas Kemper Hurt, Incompetent, it is, therefore, ORDERED that the said J. Patrick Graybeal be, and he hereby is, allowed 5 days within which to file such answer as he is advised is necessary and proper in the above styled cause.

ENTER THIS ORDER, THIS 21 DAY OF JULY, 1965

W. S. JORDAN, Judge

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page 25 }

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ANSWER OF GUARDIAN *AD LITEM*

The answer of Dallas Kemper Hurt, Incompetent, by J. Patrick Graybeal, Guardian *Ad Litem,* assigned to defend his interest in this cause.

This defendant for answer to the bill of complaint says that by reason of his status as defendant *non sui juris,* being an incompetent person, he is incapable of understanding the matters involved in this suit and asks that no decrees be entered to his prejudice.

J. Patrick Graybeal, duly appointed Guardian *Ad Litem* for Dallas Kemper Hurt, Incompetent, answers and says that he is not advised as to the truth or falsity of the allegations contained in the bill of complaint and respectfully submits the interest of the said incompetent to the protection of the Court and asks that no decrees be entered to the prejudice of the said incompetent defendant.

DALLAS KEMPER HURT, INCOMPETENT

BY J. PATRICK GRAYBEAL
Guardian *Ad Litem*

* * * * *

Filed in Clerks Office Circuit Court of Montgomery County 22nd day of July 1965.

A.B. CORRELL, Clerk

By RANELDA TURMAN, D.C.

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NOTICE

The parties in the above styled case will please take notice that on the 9th day of August, 1965 at 10:00 a.m. at the law office of Bentley Hite, Christiansburg, Virginia, I will commence on the taking of an accounting as directed by a decree entered on the 21st day of July, 1965, in the above styled cause.

If the said proceedings be not completed on said day, they will be adjourned from day to day at the same time and place until completed.

Given under my hand this 22nd day of July, 1965.

JACQUE W. PIERCE
Special Commissioner

* * * * *

Filed in Clerks Office Circuit Court of Montgomery County 23rd day of July 1965.

A. B. CORRELL, Clerk

By RANELDA TURMAN, D.C.

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WE COMMAND YOU, That you summon Mary Lou Hurst (Mrs. G. L.) Ladysmith, Va. to appear before Jacque W. Pierce, Special Commissioner of our Circuit Court of the County of Montgomery, at the law offices of Bentley Hite, Christiansburg, Va. thereof, on the 10th day of September, 1965, at 1:30 o'clock P.M., to testify and the truth to say in behalf of the plaintiff, in a certain matter of controversy in our said Court, before the said Judge, depending and undetermined, between Rufus C. Hurt, Executor, Plaintiff, and Ruth Hurt Haynes, et al, Defendant. And have then there this writ.

WITNESS, A. B. CORRELL, Clerk of our said Court, at the Courthouse, this 4th day of September, 1965, and in the 190th year of the Commonwealth.

A. B. CORRELL, Clerk

By RANELDA TURMAN, Deputy Clerk.

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NOTICE

TO ALL COUNSEL OF RECORD:

You will please take notice that on the 14th day of March, 1966, I will file my Special Commissioner's report in the above styled cause.

JACQUE W. PIERCE
Special Commissioner

* * * * *

Filed in Clerks Office Circuit Court of Montgomery County 14 day of March 1966.

A. B. CORRELL, Clerk

By RANELDA TURMAN, D.C.

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REPORT OF SPECIAL COMMISSIONER

TO: HONORABLE W. S. JORDAN, JUDGE OF THE ABOVE NAMED COURT:

Pursuant to a decree of reference made and entered in this cause on the 8th day of July, 1965 and by an order entered on the 21st day of July, 1965 in which Jacque W. Pierce

was substituted for J. Patrick Graybeal as Special Commissioner, whereby the cause was referred to the undersigned Special Commissioner for the purpose of reporting on the following matters in this cause:

1. Whether the said John Calvin Hurt died testate or intestate, and the manner in which he disposed of his property.

2. The children and heirs at law of the said John Calvin Hurt, and their ages and addresses.

3. The respective interests of the said children and the heirs at law of the said John Calvin Hurt.

4. The real estate and interest in real estate owned by John Calvin Hurt at the time of his death.

5. The money in bank, or banks, in the name of the said John Calvin Hurt at the time of his death.

6. All other personal property, including stocks, bonds, government bonds, and securities, or interest in the same, belonging to the said John Calvin Hurt at the time of his death, and where located or now held.

7. Any and all other matters which may properly come before the said Commissioner or be requested in writing by any party in interest.

page 30 } Your Special Commissioner examined witnesses produced by the complainants and respondents, reducing their examination to writing in the form of depositions, which are herewith returned and made a part of this report.

Whereupon and upon due consideration your Special Commissioner respectfully submits the following report:

1. John Calvin Hurt died testate and in his will dated September 19, 1951 he devised and bequeathed all of his estate in equal shares to his daughters Jessie Hurt Wood and Ruth Hurt Haynes and his sons, Robert Garland Hurt, Rufus Calvin Hurt, George Lionel Hurt and Lionel Quinton Hurt. In Item V of his will he directed his Executor to pay out of the estate for a decent and proper funeral for his incompetent son, Dallas Kemper Hurt and this bequest was to constitute a charge against all his property.

2. The children and heirs of law of John Calvin Hurt, with their ages and addresses are as follows:

(1) Jessie G. Hurt Wood, Box 479, Fayettesville, West Virginia—age 60

(2) Dallas Kemper Hurt—Incompetent, Spencer, West Virginia—age 57

(3) Robert Garland Hurt, 239 West Chestnut Street, Washington, Pennsylvania—age 54

(4) Ruth Hurt Haynes, Rose Hill Addition, Christiansburg, Virginia—age 51

(5) Rufus Calvin Hurt, 3519 Wedgewood Road, S.W., Roanoke, Virginia—age 49

(6) George Lawrence Hurt, 302 Lynhaven Circle, Vinton, Virginia—age 47

(7) Lionel Quinton Hurt, R.R. #2, Box 340, Melbourne, Florida,—age 45.

page 31 } 3. Before proceeding with the other questions to be answered in this report, it might be well to give a summary of the facts in this case and conclusions.

"John Calvin Hurt (hereinafter called decedent) died on February 4, 1964 at the age of 85 or 86. His second wife had died in December, 1961 and he was survived by his seven children as stated above. Prior to the death of his second wife the decedent and his wife resided in Eau Gallie, Florida where they owned their own home. Arrangements had been made to sell their home and the Hurts intended to move into an apartment. Before the papers concerning the sale could be consummated Mrs. Hurt died. Papers had been prepared in which decedent and Mrs. Hurt would have received a total consideration of $21,500.00 payable as follows: $1500.00 down and the remainder plus interest payable in five yearly payments, the principal being due in February of each year and the interest in August.

On January 30, 1962 decedent, then a single man, executed and delivered a deed to Orange Trading Company, a Florida Company, conveying the Florida property and received in return a deed of trust and a promissory note payable to him for $15,550.00 payable in five annual installments. Also on January 30, 1962 decedent executed a document which assigned the deed of trust and note to J. C. Hurt and Ruth Hurt Haynes, a ½ interest in said mortgage to be owned by said J. C. Hurt, and a ½ interest therein to be owned by Ruth Hurt Haynes, and in the event of the death of either of said assignees, the entire proceeds to be payable to the survivor (complainant's Exhibit D and B).

Shortly after the sale of the Florida property decedent left Florida for Christiansburg, Virginia, to make his home with his daughter, Ruth Hurt Haynes. Mr. Hurt opened a joint checking account at the First National Bank of Christiansburg with Ruth Hurt Haynes, or the survivor. Mrs. Haynes wrote checks on this account to pay for decedent's needs.

Decedent remained at the home of Mrs. Haynes for 20 months during which time his health deteriorated.

page 32 } Some four months before he died in February,

1964 he returned to Florida to live with his son, Lionel Quinton Hurt. After decedent's death, the joint account in Christiansburg was closed out. Mrs. Haynes testified there was approximately $100 in the checking account and $3300 in a time savings certificate. Mrs. Wood, her sister, received from Mrs. Haynes in early 1965 the sum of $7200 from the Florida property proceeds which sum is presently in the Fayette County National Bank of Fayettesville, West Virginia. After the death of decedent, Rufus Calvin Hurt probated the will and qualified as Executor. He was unable to find any funds belonging to the estate. Mrs. Haynes after inquiry told him there was no estate.

The complainants in this case claim that the funds from the sale of the Florida property and any funds in the joint account with Ruth Hurt Haynes are the property of the J. C. Hurt estate. Ruth Hurt Haynes claims these funds are hers by virtue of the survivorship clause.

L. Q. Hurt testified that it was at his suggestion that the deed of trust note be changed to the name of Ruth Hurt Haynes (deposition pp. 30 and 32) for the purpose of facilitating collection. Ruth Hurt Haynes testified that her father had made the survivorship provision before he came to her house and she didn't go into that (reasons) with him (deposition pg. 57). In other words she had never discussed with her father the meaning of the survivorship clause.

The evidence quite clearly shows that for the last few years of his life decedent was physically incapacitated as might be expected for a man of his age. He had arthritis and over a period of time his condition deteriorated. He had to be helped to the bathroom and could not move around unaided. Testimony also makes it rather clear that his mental facilities were intact to the end except for his tendency to live in the past.

There was testimony to the effect that decedent tended to lean upon the child that was closest to him at any particular given time. Prior to 1962 he had a joint bank page 33 } account with his son L. Q. Hurt. In September, 1948 decedent had a joint bank account with Rufus Hurt (Complainant's Exhibit F). On November 21, 1949 decedent executed a power of attorney to his son Rufus C. Hurt (Complainant's Exhibit G). Also see Complainant's Exhibit I which shows a joint account with the right of survivorship with G. Lawrence Hurt. The above certainly do not show anything unusual or different on the part of decedent in maintaining any kind of a joint account with his children.

There was evidence to the effect that decedent's relationship with all of his children was good and he did not favor one over the other.

Rufus Hurt testified Mrs. Haynes had telephoned him late in 1963 and told him that the father had become too much for her and that he would have to be put in a nursing home. Mrs. Haynes denies this happened and says that she had considered additional help for her father.

Mrs. Haynes testified that her father told her that he had talked to lawyers and had things fixed like he wanted (depositions p. 56). The lawyers were not identified. Decedent during his lifetime had consulted lawyers from time to time and apparently was aware of the value of a will. If he had consulted a lawyer or lawyers about his estate it seems odd they did not advise him to change his will or at least to destroy the one that survived him.

In 1962 the Supreme Court of Appeals of Virginia had the opportunity to decide the case of *Quesenberry* vs: *Funk,* 203 Va., 619, 125 Southeast 2nd 869. The factual situation there was that Walter S. Coalson, who had been ill a long time opened a savings account in a bank in his name and the name of his daughter, Thelma C. Quesenberry, jointly with the right of survivorship. Following Coalson's death Mr. Quesenberry, the Executor under Coalson's will, included the funds in the account as assets of the estate. Mrs. Quesenberry made no claim to the account until an employee of the bank suggested that it belonged to her and the litigation which followed the funds in the account were held to be
page 34 } the property of the estate. All of the testimony showed that the reason Coalson opened the account jointly with the daughter was so that she could look after his business and keep his bills and everything payed up and look after his needs. See *Rhen* vs: *Daniels,* 200 Va. 419 in which it was said that in the case of joint bank accounts the intent of the depositor is the controlling factor, but there is a presumption the deposits were made for the depositor's convenience only. Also see *Wilkinson* vs: *Witherspoon,* 206 Va. 297.

It appears that the continuing thread of decision running through these cases is that the intention of the depositor is the all important consideration.

In the case at bar it is the opinion of your Commissioner that the funds from the sale of the Florida property belong to the estate of J. C. Hurt and not to Ruth Hurt Haynes or Jessie Wood Hurt.

It is difficult to fathom the intentions of a dead person but this the Court must try to do. If we assume that decedent did toward the end of his life intend that his daughters should have his estate, it would seem from the general pattern of his life that he would have drawn a new will. The evidence

as presented by the respondents is insufficient to prove any such intention or desire.

If it is assumed there is a presumption in this case that Ruth Hurt Haynes's name was placed upon the funds belonging to J. C. Hurt for the convenience of the decedent, your Commissioner holds that the presumption is not overcome by the evidence presented by the respondents.

It is the opinion of your Commissioner that decedent placed the name of his daughter on his joint banking account and on the deed of trust note for his own convenience and did not intend to make an *inter vivos* gift to her.

4. Decedent owned no real estate and no interest in real estate at his death.

5. At the death of the decedent there was on deposit in the First National Bank of Christiansburg a time savings certificate of $3300. There was also checking account at the same bank with a total deposit of $100.

page 35 } 6. A total of $6200.00 more is due under the deed of trust note. One payment was due in February, 1966 and the final payment is due in February, 1967. Mrs. Jessie Wood Hurt testified that she has received from Ruth Hurt Haynes the sum of $7200.00 and this money is on deposit in the Fayette County National Bank in Fayettesville, West Virginia. Mrs. Ruth Hurt Haynes testified she has under her control presently the sum of $3,658.00 (this does not include the payment received in February, 1966, since the testimony was taken before this payment was received).

Respectfully submitted,

JACQUE W. PIERCE
Special Commissioner

Filed in Clerks Office Circuit Court of Montgomery County 14th day of March 1966.

A. B. CORRELL, Clerk

By RANELDA TURMAN, D.C.

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EXCEPTIONS TO THE REPORT OF THE COMMISSIONER IN CHANCERY

Exceptions taken by Ruth Hurt Haynes and Jessie Hurt Wood, to the report of Commissioner Jacque Pierce, to whom this cause was referred by decree made herein on the 8th day of July, 1965, and which report was filed on the 14th day of March, 1966.

First Exception: That the Commissioner erred in his ruling, in that the monies derived from the sale of the property in Florida are a part of the estate of John Calvin Hurt, and not the property of Ruth Hurt Haynes, who is properly named as survivor on the instruments introduced in this matter. The authority cited by the Commissioner is not in point due to the respective physical conditions of the principals involved. There is evidence to the effect that the decedent had given large sums of money to the sons during his lifetime, and wanted to do something for his daughters. In opposition to the report of the Commissioner, the respondents respectfully request the Chancellor to review the evidence which appears on the following pages, in support of their position.

Pages 57-58—"didn't want the boys borrowing anymore money."

Page 61—"didn't have any estate."

page 37 } Page 62—"Said he had a will, but didn't apply to anything that I (Ruth Haynes) had."

Page 76—"No money in the estate—had things fixed up."

Page 92—"My Dad said he wanted to leave the money to my sister and me (Jessie Wood)."

Page 93—"Said he wasn't going to leave any estate."

Page 99—"He had done enough for the boys."

Page 102—"He had never done anything for the girls."

Pabe 107—"All of his life he had taken care of the boys and never done anything for the girls and wanted them, if anything happened to them, for them to have the money from the property. I suggested a note payable to himself and the daughters.

The evidence clearly shows that a survivorship instrument was created by the decedent after he had signed the will introduced by the complainants. That the decedent had pro-

vided financial assistance for the complainants, and that the decedent had done much more than establish a joint checking account, but had clearly shown on the face of the complainants "Exhibit B", that he intended the assignee, Ruth Hurt Haynes, to have the proceeds of the sale of the property.

For the reasons, stated above, and the evidence as set forth in the depositions, the respondents respectfully move the Chancellor to set aside the Report of the Commissioner, concerning the status of the proceeds of the sale of the property and respectfully request the Chancellor to cause this matter to be heard *ore tenus* before the Chancellor on all matters pertinent to the determination of the ownership of the subject proceeds.

Respectfully submitted,
RUTH HURT HAYNES
JESSIE HURT WOODS

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BY: JAY A. PRICE
Counsel

* * * * *

Filed in Clerks Office Circuit Court of Montgomery County 23rd day of March 1966.

A. B. CORRELL, Clerk

By RENELDA TURMAN, D.C.

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NOTICE

TO: RUTH HURT HAYNES AND JESSIE HURT WOOD

You are hereby notified that the undersigned will, on Tuesday, the 22nd day of November, 1966, at 2:00 P.M., or as soon thereafter as the same may be heard request the Judge of the Circuit Court of Montgomery County, Virginia, sitting

at the Courthouse thereof in Christiansburg, Virginia, to confirm the report of the Commissioner appointed by this Court to determine certain matters therein set out. And at the same time and place the undersigned will present a Decree to the Court and request that the same be entered therein. This, you will take due notice thereof.
November 8, 1966.

Respectfully,
RUFUS C. HURT, EXECUTOR
RUFUS C. HURT
G. L. HURT
R. G. HURT
L. Q. HURT

BY BENTLEY HITE
Counsel

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BRIEF IN OPPOSITION TO COMMISSIONER'S REPORT

TO: THE HONORABLE W. S. JORDAN, JUDGE OF THE ABOVE NAMED COURT

Comes now your Respondent's, Ruth Hurt Haynes and Jessie Hurt Wood, and by counsel, files their brief in opposition to the report filed by the commissioner in the above styled suit. To this end the respondent's set forth the following grounds in opposition to the report.

In the case of *Wilkinson* v. *Witherspoon,* reported in 206 Va. 297 and 142 S.E. 2d 478, the question of survivorship of a joint account came before the Court of Appeals.

This controversy is between John W. Witherspoon, the Complainant, and Nancy Eugenia Wilkinson, the Defendant. The litigation arose when the complainant, individually and as co-executor under the will of Oscar O. Hewitt, deceased, filed a bill of complaint against the defendant, individually and as co-executor of the estate.

The bill of complaint sought the advice and guidance of the court in the settlement of the estate. Specifically, the bill was directed to the ascertainment of the ownership of a

savings account in the Franklin Federal Savings and Loan Association of Richmond. The account was in the names of the testator, Oscar O. Hewitt, and the defendant, page 41 } as joint tenants with the right of survivorship. The prayer of the bill was that the court determine whether the balance of $9,703.88 in the account belonged to the estate or to the defendant.

The chancellor heard the case *ore tenus* and ruled that the savings account belonged to the estate. A final decree was entered directing delivery of the funds to the executors, and the defendant, individually, was granted an appeal.

This order of the chancellor was reversed by the Supreme Court of Appeals of Virginia, Mr. Justice Carrico, writing the majority opinion and entered up a final decree. The court, in reaching the decision reversing the order of the chancellor, distinguished this case from the case cited by the commissioner in the present case of *Hurt* v. *Haynes,* that is, *Quesenberry* v. *Funk,* reported in 203 Va. page 619, 125 S.E. 2d 869, stating that no claim was made by the survivor of the bank account until after an employee of the bank suggested that it belonged to her. The court went on to state that all of the testimony showed that the reason Coalson opened the account jointly with his daughter was so that she "could look after his business and keep his bills and everything paid up, and look after his needs." This is not the evidence before the court in this matter, in which by uncontradicted testimony, Mrs. Haynes testified that Mr. Hurt was able to take care of himself and did not have any estate, and wanted her to have the money.

Your respondent's, by their counsel, in support of their position, state that the above case, *Wilkinson* v. *Witherspoon* is in accord with the case at bar in that the Su- page 42 } preme Court of Appeals based its decision on the words contained in the signature card establishing the joint account in that the primary source of all the funds, regardless of whether they were placed in joint bank accounts, time deposits or bonds were derived from the sale of the property in Florida, and from the deed of trust creating the survivorship in which it is stated "A one-half interest in said mortgage to be owned by Ruth Hurt Haynes, and in the event of the death of either of said assignee's, the entire proceeds to be payable to the survivor. Unlike the *King, Wrenn and Quesenberry* cases, the evidence in this case negates the notion that the mortgage was established for Mr. Hurt for mere convenience. At the time this survivor-

ship in the mortgage was established, Mr. Hurt was in good health, able to travel to and from Florida, active and alert, and from the evidence, apparently not concerned about his ability to handle his affairs. In the case cited, *Wilkinson* v. *Witherspoon,* the decedent deliberately intended to favor his *neice,* the defendant, over his nephew in the distribution of his wordly goods upon his death. In the case at bar, on evidence presented by Mr. Frank K. Mayhan, Attorney at Law, which was uncontradicted, he stated on page 107 of the depositions, and I quote: "He told me he was selling his property in Florida, and that, I believe—Don't remember the date in January—but he did tell me the state was taking his property for the highway and he was going to sell it, and all his life he had taken care of the boys and never page 43 } did anything for the girls and wanted them, if anything happened to him, for them to have the money from that property. And he asked my suggestions, and I did suggest a note payable to himself and the daughters, secured by a deed of trust payable to them and the survivors. He didn't indicate to me whether he would take my suggestion. I know he did sell his property later."

The respondent's take the position that the disposition of the money after the survivorship clause was established in the mortgage was of little significance. The controlling factor is the tenor and expressed words used in the instrument creating the survivorship. The court, in its decision in *Wilkinson* v. *Witherspoon,* stated: "In so deciding, we do not overlook what has been said in our previous cases that, in situations similar to the one before us, there arises a presumption that the account was opened for the convenience of the depositor. Here, any such presumption pales in the light of the language of the deposit contract and the *curcumstances* surounding its execution." In accordance with Code Section 55-21 of the 1950 Code of Virginia, as amended, such survivorship may be provided for and this code section applies to the case at bar.

Based on the foregoing reasons, your respondent's respectfully request the court to overrule the report of the Commissioner in Chancery and enter up judgment for your respondent's or either order the Commissioner to take additional evidence to determine from a preponderance of the page 44 } evidence if a contrary intent was established by

the decedent overruling the wording set forth in the mortgage.

Respectfully submitted,
RUTH HURT HAYNES
JESSIE HURT WOOD

BY: JAY A. PRICE
Counsel

* * * * *

Filed in Clerks Office Circuit Court of Montgomery County 23 day of Feb. 1967.

A. B. CORRELL, Clerk

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MOTION TO RECOMMIT

TO: THE HONORABLE W. S. JORDAN, JUDGE OF THE ABOVE NAMED COURT.

Your Respondent's, Ruth Hurt Haynes and Jessie Hurt Wood, respectfully move the court to recommit the report submitted in the above styled case to the Commissioner in Chancery, The Honorable Jacque C. Pierce, and set forth the following grounds in support thereof:

1.) It has come to the attention of counsel for the respondent's that evidence has been made available which was not known or where of at the time of the hearings.

2.) It is incumbent upon the commissioner to adduce all evidence pertinent to the questions involved, and the counsel for the petitioner hereby requests that the commissioner examine additional evidence which the counsel for the respondent's is now ready to produce, not having it available to him at any prior time.

The counsel for the respondent's petition the court for the matter to be recommitted to the commissioner in chancery for further hearing and requests that the counsel for the

petitioner be permitted to present the evidence to the commissioner for his consideration.

Respectfully submitted,
RUTH HURT HAYNES
JESSIE HURT WOOD

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BY: JAY A. PRICE
Counsel

* * * * *

Filed in Clerks Office Circuit Court of Montgomery County 23 day of Feb. 1967.

A. B. CORRELL, Clerk

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MOTION IN OPPOSITION TO RECOMMITTING MATTER TO COMMISSIONER

TO THE HONORABLE W. S. JORDAN, JUDGE OF THE ABOVE NAMED COURT:

Your complainants, Rufus C. Hurt et als, respectfully submit that the respondents, Ruth Hurt Haynes and Jessie Hurt Wood are not entitled to, and that Your Honor should not recommit the Commissioner's Report, filed by Jacque W. Pierce on the 14th day of March, 1966, more than ten days prior to the first day of the February Term of Court 1967, to the said Commissioner in Chancery, Jacque W. Pierce, and set forth their grounds for opposing the said recommittal thereof as follows:

1. That this motion to recommit the case to the Commissioner for further evidence comes too late after both parties have rested and argument of counsel has been heard. *Rice* v. *Standard Products Company,* 199 Va. 380, 99 S.E. 2d 529. Rule 2:21 of the Rules of the Supreme Court of Appeals of Virginia; Phelps, Handbook of Virginia Rules and Equity Practice and Procedure, on Commissions, P. 77.

2. The Commissioner had power to compel attendance of witnesses by summons, rule, or attachment in like manner as the Circuit Court, pursuant to Section 8-252. The respondents did not request the Commissioner to order production of any additional evidence, and therefore, no error was committed. *Raiford* v. *Raiford,* 193 Va. 221, 68 S.E. 2d 888.

3. The respondents failed to file a Brief within twenty-one days from the 1st day of February, 1967, as directed and ordered by this Honorable Court.

Therefore, your complainants pray that the Report of Commissioner Pierce may be confirmed, ratified
page 48 } and made firm, and that your Complainants may have judgment against the said Ruth Hurt Haynes and Jessie Hurt Wood for the sum of $17,219.05, with interest from the 4th day of February, 1964, as set out in the said proceedings.

Respectfully submitted,
RUFUS C. HURT, EXECUTOR
RUFUS C. HURT
G. L. HURT
R. G. HURT
L. Q. HURT

BY BENTLEY HITE
Counsel

* * * * *

Filed in Clerks Office Circuit Court of Montgomery County 24 day of Feb. 1967.

A. B. CORRELL, Clerk

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DECREE

This cause came on again this day to be heard on the papers formerly read, upon the orders and decrees heretofore entered; upon the answers and responsive pleadings filed by the defendants herein on the 5th day of March, 1965; upon the answer of J. Patrick Graybeal, Guardian *Ad Litem,* for

Dallas Kemper Hurt, an incompetent, filed on the 22nd day of July, 1965; upon the report of Special Commissioner, Jacque W. Pierce, filed on the 14th day of March, 1966, together with the depositions and evidence transcribed and filed therewith, and which has lain in the Clerk's Office more than ten days; upon the exceptions of the defendants filed to said Special Commissioner's report on the 23rd day of March, 1966; and said cause was argued by counsel.

Upon consideration of all of which, and the court, being of the opinion that the said exceptions are not well founded or properly supported by evidence, doth hereby overrule and dismiss all the said exceptions filed by said defendants on the 23rd day of March, 1966.

And it further appearing unto the Court *thas* this cause was referred to Jacque W. Pierce, a competent and discreet attorney at law, as Special Commissioner, on the 21st day of July, 1965, for the purpose of making, stating and reporting as follows:

1. Whether the said John Calvin Hurt died testate or intestate, and the manner in which he disposed of his property.

2. The children and heirs at law of the said John Calvin Hurt, and their ages and addresses.

3. The respective interests of the said children and heirs at law of the said John Calvin Hurt.

page 50 } 4. The real estate and interest in real estate owned by John Calvin Hurt at the time of his death.

5. The money in bank, or banks, in the name of the said John Calvin Hurt at the time of his death.

6. All other personal property, including stocks, bonds, government bonds, and securities, or interest in the same belonging to the said John Calvin Hurt at the time of his death, and where located or now held.

7. Any and all other matters which may properly come before the said Commissioner or be requested in writing by any party in interest.

And it further appearing unto the court that Commisssioner Pierce filed his report, together with a transcription of the depositions and evidence taken before him, on the 14th day of March, 1966, and had found from the evidence, and held therein that, among other things, the moneys derived from the sale of property in Florida and the moneys deposited in joint accounts with the defendant Ruth Hurt Haynes and subsequently transferred to Jessie Hurt Wood by Ruth Hurt Haynes, amounting to $17,219.05, belonged to and were a part of the estate of John Calvin Hurt, a man advanced in years, physically impaired and unable to look

after and handle his affairs, and that the said moneys and notes had been handled and placed in a joint bank account in the name of John Calvin Hurt and Ruth Hurt Haynes for the convenience only of the said John Calvin Hurt, and that the said moneys and property did not belong to the said Ruth Hurt Haynes or Jessie Hurt Wood, but as a part of the estate of John Calvin Hurt, the moneys and property belonged to the Executor of the Estate of said John Calvin Hurt, who provided in his Will that his estate should be divided equally among his children after taking care of the funeral and other expenses of his son, Dallas Kemper Hurt, an incompetent.

Therefore, the court, being of the opinion that the Special Commissioner's Report is just and right in all respects and should be confirmed, doth ADJUDGE, ORDER
page 51 } and DECREE, that the report filed by Special Commissioner Jacque W. Pierce on the 14th day of March, 1966, be, and the same is hereby ratified, confirmed and made firm.

It further appearing to the court from the said Special Commissioner's report that the plaintiffs are entitled to the prayer of their bill; Therefore, it is ADJUDGED, ORDERED and DECREED that the plaintiffs do have and take judgment against Ruth Hurt Haynes and Jessie Hurt Wood, severally and jointly, for the sum of $17,219.05, with interest from the 4th day of February, 1964, until paid, and that said sum with interest, shall be paid forthwith to Rufus C. Hurt, Executor of the Estate of John Calvin Hurt, who shall disburse the same pursuant to the provisions of the Will of said John Calvin Hurt, after payment of the cost of this proceeding, including a fee of $200.00 to the G.A.L. and a fee of $400.00 to the Special Commissioner.

* * * * *

Enter this Decree, Feb. 24, 1967.

W. S. JORDAN, Judge

* * * * *

page 52 } February 24, 1967

The Honorable W. S. Jordan
Judge, Circuit Court of Montgomery County
Christiansburg, Virginia

Re: *Hurt* vs. *Haynes*

Dear Judge Jordan:

I am, by letter, excepting to the order of the court entered today. I am, by this letter, notifying the court of my intention to apply to the Supreme Court of Appeals for a writ of error in the above action. Since it is not in my original order of my intention to apply for writ of error, I would like to prepare a separate order setting forth my intention to appeal, and the suspension of the execution of the judgment conditioned on the respondent's entering into a bond with surety before the clerk of the court within sixty days from date in the amount set by you.

Very truly yours,
Jay A. Price
Attorney at Law

JAP/jr

cc: A. B. Correll, Clerk

Filed in Clerks Office Circuit Court of Montgomery County 27 day of February 1967.

A. B. CORRELL, Clerk
By RANELDA TURMAN, D.C.

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OUTSIDE OBJECTION TO ENTRY OF FINAL ORDER

Your Respondents, Ruth Hurt Haynes and Jessie Hurt Wood, by counsel, object to the entry of the order in the above styled chancery cause entered on February 23, and sets forth the following reasons:

1) That the order was entered without notice to counsel for the respondents.

2) That the counsel for the respondent was ordered to file a brief in opposition on February 2 by the judge of this honorable court, and was not given an opportunity to argue his brief in opposition to the order.

3) That the order entered by the court in this matter is contrary to the law and evidence applicable to this case.

4) That the motion to recommit, filed by this respondent, was not considered by the court, nor was the counsel for the respondents given an opportunity to argue his motion.

These objections are to be a part of the final order entered in this matter, since the counsel for the respondent was not present when the final order was entered, and these objections would be placed on the order if he had been present at the time of the entry of this order by the judge of this honorable court.

Respectfully submitted,
RUTH HURT HAYNES
JESSIE HURT WOOD

BY: JAY A. PRICE
Counsel

Filed in Clerks Office Circuit Court of Montgomery County 17 day of March 1967.

A. B. CORRELL, Clerk

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* * * * *

ORDER

Upon the motion of the Respondent's, Ruth Hurt Haynes and Jessie Hurt Wood, by their counsel for the suspension of the execution of the judgment in this cause, until such time as the Supreme Court of Appeals of Virginia has acted on the respondent's petition for a writ of error, or, if a writ of error be granted by the Supreme Court of Appeals of Virginia, until an opinion be rendered by the Supreme Court of Appeals, it is hereby ADJUDGED and ORDERED that if the respondent's duly filed their petition, for a writ of error, in accordance with the Rules of the Supreme Court of Appeals, within four (4) months from this date, execution of the judgment be suspended until the Supreme Court of Appeals has acted upon said petition; and if a writ of error

be granted in this cause, it is ADJUDGED and ORDERED that execution of the judgment be suspended until the opinion has been rendered by the Supreme Court of Appeals. The suspension of this judgment is conditioned upon the respondent's, or some person or persons on their behalf, entering into a bond, with surety before the clerk of this court, within sixty (60) days from date, in the amount of $18,000.00 Dollars conditioned according to law.

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Enter this Order on this the 7 day of March, 1967.

W. S. JORDAN, Judge

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NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

TO: BENTLEY HITE, Counsel of Record for the Complainant

and

J. PATRICK GRAYBEAL, Guardian *ad Litem* for Dallas Kemper Hurt

Notice is hereby given that the undersigned Respondents, Ruth Hurt Haynes and Jessie Hurt Wood, appeal from a certain final judgment rendered by the Circuit Court of Montgomery County, Virginia, on the 24th day of February, 1967, and will apply to the Supreme Court of Appeals of Virginia, for a writ of error and *supersedeas* to said judgment.

Notice is further given that the undersigned respondents will, within the time allocated pursuant to the directions of the trial court, post a good and sufficient bond to stay execution on said judgment, in the Clerk's Office of the Circuit Court of Montgomery County, Virginia.

Notice is further given that the undersigned will rely on the following assignments of error:

1) That the order was entered without notice to counsel for the respondents.

2) That the counsel for the respondent was ordered to file a brief in opposition on February 2 by the judge
page 58 } of this honorable court, and was not given an opportunity to argue his brief in opposition to the order.

3) That the order entered by the court in this matter is contrary to the law and evidence applicable to this case.

4) That the motion to recommit, filed by this respondent, was not considered by the court, nor was the counsel for the respondents given an opportunity to argue his motion.

Respectfully submitted,
RUTH HURT HAYNES
JESSIE HURT WOOD

BY: JAY A. PRICE
Counsel

* * * * *

Filed in Clerks Office Circuit Court of Montgomery County 20th day of April, 1967.

* * * * *

A. B. CORRELL, Clerk

By RANELDA TURMAN, D.C.

* * * * *

The transcript of evidence taken at the first hearing of the Special Commissioner, Jacque W. Pierce, held on August 10, 1965, in the law offices of Bentley Hite, Attorney at Law, Christiansburg, Virginia, pursuant to notice dated July 22, 1965, served on all counsel of record by the said Special Commissioner, notifying them of the time and place of the taking of said account, which was originally set for August 9, 1965, and continued to August 10, at the request of the defendants' attorney, Jay A. Price. Said depositions to be filed in the above styled chancery proceedings to enable the Special Commissioner to determine the merits of the said case.

Present:

Rufus C. Hurt, Executor of the Estate of John Calvin Hurt, deceased; L. Q. Hurt, of Melbourne, Florida; G. L. Hurt, Vinton, Virginia, in person and by their attorney, Bentley Hite.

J. Patrick Graybeal, Guardian *ad Litem* for Dallas Kemper Hurt, incompetent.

Jacque W. Pierce, Special Commissioner.

Ruth Hurt Haynes and her attorney, Jay A. Price, were present for a few minutes but left before any evidence was taken, as is shown by the following statements.

page 2 } By Mr. Hite:

I would like to call Mrs. Haynes first.

By Mr. Price:

She is my client.

By Mr. Hite:

I know, I want to call her as an adverse witness, ask certain questions before examining the others.

By Mr. Price:

You talked with Mr. Pierce and said I had agreed upon the date, which I had not, then when you sent the notices out you said "out of state witnesses" and I agreed to it, and the only evidence to be taken is for out of state witnesses, and that is all we are here on today.

By Mr. Pierce:

When you first called me on this I asked you if you had cleared the date with Mr. Price and Mr. Graybeal, and then after I saw him he told me he could not possibly be here the 9th.

By Mr. Hite:

I didn't limit it to out of state witnesses. I don't know how we can take those witnesses and then have them come back.

By Mr. Price:

Mrs. Haynes is here by agreement. Actually, she hasn't been summoned. So she can leave if I tell her to.

By Mr. Hite:

I consider Mrs. Haynes as my adverse witness, and I expect to call her if she is here today.

page 3 } By Mr. Price:

Then I will have to object to the taking of evidence as agreed upon, object to any report filed and ask it be heard *ore tenus* in the Circuit Court of Montgomery County.

By Mr. Hite:

I cannot keep you from leaving. But we will go ahead with the proceedings and take what evidence we have got.

(Mr. Price and Mrs. Ruth Haynes, at this point, leave the room and do not return.)

RUFUS C. HURT, being duly sworn, takes the stand:

DIRECT EXAMINATION

By Mr. Hite:

Q. You are Mr. Rufus C. Hurt?

A. Yes.

Q. And I believe that you are a son of John Calvin Hurt, deceased?

A. Yes.

Q. Where do you live, Mr. Hurt?

A. I live at 3519 Wedgewood Road, Southwest, Roanoke, Va.

Q. Your father was John Calvin Hurt, and when did he die, Mr. Hurt?

A. That was in February of last year, 1964, February 4, I believe.

Q. February 4, that is right, February 4, 1964, and did he leave any children or heirs at law?

page 4 } A. Yes, he did.

Q. Would you name them please? Give us their names and ages if you can, and their addresses.

A. Lional Quentin Hurt, Melbourne, Florida, Rural Route 2, Box 340, and his age is 45. George Lawrence Hurt, 302 Lynhaven Circle, Vinton, Virginia. His age is 47. Myself of course which you already have. My age is 49. Robert G. Hurt—His new address is in Washington, Pennsylvania, street address, 239 West Chestnut Street, and his age is 54 I think. Ruth Hurt Haynes' address is here in Christiansburg. She is 51. And Jessie G. Hurt Wood, her address is Box 479, Fayetteville, West Virginia, and her age is 60 I believe. And we have one brother, Dallas Kemper Hurt, he is

57 I believe. He is an inmate at the insane asylum at Spencer, West Virginia.

Q. Are they all the children and heirs at law of your father?

A. Yes.

Q. Was he married at the time of his death?

A. No.

Q. Did he leave a Will, or did he die intestate?

A. He left a Will.

Q. Where was that Will probated?

A. Christiansburg, Virginia

Q. Who was the Executor of that Will?

A. Rufus C. Hurt.

Q. I will file herewith a certified copy of the Will showing that it was probated in the Clerk's Office of Montgomery County, Virginia, with the Commissioner. Under page 5 } the Will your father made this provision which I will read from it at this time, but the whole Will will be filed. ". . . I give, devise, and bequeath in equal shares to my children hereinabove named all the rest and residue of my property, real, personal, mixed, or of whatsoever nature, and wheresoever situate. . . ." Q. The above bequests which he has reference to was to whom? Who was Rachel B. Hurt?

A. Rachel B. Hurt was his wife at the time the Will was made.

Q. His second wife?

A. Yes.

Q. The Will is dated September 19, 1951, and at that time he was married to Rachel, and she had subsequently died?

A. Yes.

Q. When did she die?

A. December 1961, I believe. I think that is correct.

Q. He had provided that she would have a home and certain lands in Florida?

A. Yes.

Q. And after her death he willed and devised all of his property equally, share and share alike to his children?

A. Yes, with the exception of Dallas Kemper.

Q. That is right. He made provision for Dallas Kemper. Where did your father live most of the time prior to his death?

A. When you mention, prior to his death, I don't know how far back.

Q. Just two or three years before his death.

Rufus C. Hurt

A. With my sister here in Christiansburg, with
page 6 } the exception of just a few months prior to his death he lived with my brother, L. Q. Hurt, in Florida.

Q. Did he have property or financial means in Montgomery County, Virginia?

A. Yes.

Q. Prior to the time he came to live with your sister, Mrs. Haynes, in Montgomery County, Christiansburg, did he own any property, real estate, in Florida?

A. Yes.

Q. What place in Florida?

A. A small incorporated town, Eau Gallie, Florida, which is approximately twenty miles from Cape Canaverall, now Cape Kennedy.

Q. Brevarde County?

A. Brevarde County.

Q. What did he do with that real estate?

A. That was sold to ABC Liquor Corporation, with home offices in Orlando, Florida, in I believe 1961. I am not certain about that. However, I would like for the record to show that I have a copy of those legal documents in the mail and will file the date and when it was and the methods of payments or arrangements that he made at the time, which will be supplied for the record.

Q. I ask you to file them and make them a part of the depositions here.

A. Yes. I will forward them in the next day or so.

Q. Do you know what the property was sold for in Florida?

page 7 } A. $21,500.00 I believe, but these documents will show.

Q. $21,500.00?

A. I think that is correct.

Q. Do you remember what year that was sold?

A. 1961 I think.

Q. How was it sold, on time, notes payable different dates, or how was it sold?

A. He preferred it that way. He wanted the deferred interest and principal payments over five years I think. I think he received $1500.00 and he deferred the bulk of it, payable over a period of five years. That is going from memory, of course.

Q. Why did he want that? Do you know? For what purpose?

Rufus C. Hurt

A. Tax purposes, and for the interest he would receive also.

Q. Do you know that he didn't take all the payment at one time?

A. That is correct.

Q. What did he do with the money? What became of the money?

A. Well, after my step-mother died he decided, upon the advice of L. Quinton, to make his home with my sister, Ruth Hurt Haynes, for the balance of his days, and also upon the advice of L. Quinton Hurt, which he can more readily testify to than I can, for his convenience due to the state of his health, he had those notes and those deferred payments put in a joint account in the name of John Calvin Hurt and Ruth Hurt Haynes. I don't know whether that is exactly the way they were made or not, but upon the advice of L. Quinton Hurt he had those made in that manner. I would like to add, that is not just an instance in his life. It is a pattern. Whatever child he was close to at the time he leaned on
page 8 } for advice. At one time he had his savings in G. L. Hurt's and his name in West Virginia, and at one time he made a Will with G. L. Hurt as Administrator of his estate to serve without bond. Prior to his going to Florida he was closest to me at that time. He sought my advice on the sale of his home in Fayetteville. He sought my advice on making this Will before us. And always, whatever instrument he was making involved the advice of which ever child was nearest him. He sought my advice prior to going to Florida. Sought my advice in the sale of his home which I handled for him. I went to Florida, at his request, and bought his home, which was sold previously, and also bought the furniture. Wherever he was he sought the advice of that particular person. And he again sought the advice of my brother Quinton, who can testify much better than I can, he asked him about how many nurses to use during my step-mother's illness, and asked him about how much money should be spent, asked him about the casket and whether he should buy a vault. It is just a pattern which we can prove throughout his life, because he trusted his children.

Q. Did he favor one child over another in any of these?

A. Never did he show any favor over the other. The one brother which is not here is not a good citizen. He has a police record, but he treated him as a prodigal son. Never favored him over any other child.

Q. In drawing these wills did he discriminate over any child?

Rufus C. Hurt

A. No. The only other Will that he drew that I know of was that one with my brother Lawrence as Administrator, other than this one in question. In both he treated all the children equally.

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Q. He was relying on your brother in Florida, Quinton, because he was staying at his home?

A. Yes.

Q. After his wife died did he have any trouble with any of her children?

A. I wasn't there, but I have been advised that my step-brother, McGhee McClung, was very obnoxious about drinking and demanding.

Q. Was any suit instituted, anything like that?

A. Mr. McClung consulted a lawyer, but I don't know whether he brought a suit.

Q. Do you know what your father did with the money he got from this land in Florida?

A. I can't testify what he did with all of it. I know he was a very frugal person—even at his own expense. He wouldn't buy clothing. Even in his younger days he wouldn't spend. My step-mother had to make him get clothes. He saved every penny he could get his hands on.

Q. Did he have any other money other than what he received from the land?

A. I don't know about that.

Q. You did qualify as Executor of his Will here in this county, and gave bond?

A. Yes.

page 10

Q. Did you have information that your father did have money?

A. I knew he had gotten this money from the sale of the real estate. And I knew he had spent a good deal of money he had on my step-mother's funeral, and my father had considerable medical debts of his own.

Q. Have you made settlement of your father's estate?

A. No. I have been unable to find the estate.

Q. Have you called upon Mrs. Ruth Hurt Haynes for an accounting, or asked her if she had your father's funds?

A. Yes, I have.

Q. What information did you get?

A. None.

Q. Did she give you any reply at all?

A. After several telephone conversations with my sister, and she at one time made a statement that "Jessie and myself are supposed to decide what to do with it." I wrote her

a letter, which I could file if necessary, and she didn't answer, and I called her on the phone, asked her why she didn't answer my letter, and her only answer was, "It made me mad." She wrote me after that but made no answer to my telephone call or the letter with reference to the subject being discussed. here. I might add that several letters from the other brothers also met with the same answers, refusal to even discuss it.

Q. In other words, she refuses to say what, if any, money she had belonging to your father?

A. Yes.

page 11 } Q. Were you able to find out from her or from anybody what properties he had, what monies he had?

A. He had—At the time of his death one payment was due from the real estate he sold in Florida, and I do not know the amount of that. It will be shown in the instruments I will file here.

Q. Roughly, can you tell what the amount was?

A. I think, around $4,000.00. I do know that was received by her and retained by her. It came in my father's name, and she sent it back to be changed in her name. And there was one payment due following that this past February, which I do not have any knowledge whether that was paid or not. There were two more interest payments due at *intervales*. I have some knowledge he had some money on long term savings here in one of the banks in Christiansburg. He told one of my brothers he had $14,000.00 in Christiansburg shortly before his death.

Q. But the money in Florida came from the A. B. C. Liquor Corporation of Orlando, Florida?

A. Yes.

Q. You know there were at least two payments due at that time?

A. One was due at the time, and one has fallen due since then, and at least two interest payments. That is the only current note, and I know there was some in the bank here in Christiansburg. And of course his statement shortly prior to his death that he had $14,000.00.

Q. Do you have his bank statements?

A. No, his own statement to my brother that he had $14,000.00.

page 12 } Q. What provision was made in his Will for the brother who is sick in West Virginia?

A. He provided for a decent burial for the brother that is confined in the institution.

Rufus C. Hurt

Q. I will read into the record part of the Will with reference to that—Item IV says "My executor shall arrange and pay for out of my estate a decent and proper funeral for my son, Dallas Kemper Hurt, and to the extent of necessary and reasonable expenses thereof, the same shall constitute a charge against all of my property." Your brother Dallas Kemper is still living, isn't he?

A. Yes sir.

Q. The purpose of this suit is to obtain the assets of your father's estate, so as to settle his accounts and pay his debts and distribute the assets according to his Will?

A. Yes.

CROSS EXAMINATION

By Mr. Graybeal:

Q. I believe you have read the parties that were made parties to this suit, have you not?

A. Yes.

Q. Are they all the children and heirs of your father?

A. Yes.

Q. As to these notes that were made by A. B. C. Liquor Company, have you seen these notes at any time?

page 13 } A. No, but I will file those with the court, and I do know, as I previously stated for the record, upon the advice of my brother L. Quinton Hurt they were authorized to put those in the name of my father and Ruth Hurt Haynes.

Q. Who was?

A. A. B. C. Liquor Company. I think he made that change before he left Florida.

Q. Was he living with Ruth Hurt Haynes, or contemplating living with her at the time those notes were executed?

A. I think my brother Quinton would be more competent to answer those questions than I am.

Q. My question is whether or not they could have been assigned to Ruth Hurt Haynes?

A. I have no knowledge of them being assigned. I do know he authorized them to pay them to her in the event of his death.

Q. For what purpose were they authorized?

A. I think my brother Quinton could answer that better because he was there at the time.

Q. At the time was the will appointing you as Executor in existence?

A. Yes, but there was a very definite threat of legal action by his step-son, and had there been legal action by the step-son, I suppose he thought there would not have been an estate for them to attach. The home he sold in Fayetteville, West Virginia, prior to his going to Florida was prior to his marriage to Rachell McClong her home. Mrs. McClong's son, McGhee, he paid him a cash settlement for his page 14 } mother's home in Fayetteville and he paid off the note against it, and I know of extensive repairs he made in it. That was sold, and that money was used to buy the home in Florida, which increased in value due to activities near there, and his step-son probably thought he was entitled to some settlement though he had been paid his part. There was a survivor clause in the deed, and my father felt he owned it. He had paid him off. And I think that was the primary reason for transferring them to his name and my sister jointly. My step-brother has since died.

Q. Have you, as Executor, consulted with the banks with reference to the time deposits and open accounts?

A. I did at one time and was advised they were in the name of Ruth Hurt Haynes and John C. Hurt jointly. She received $11,000.00 and some odd dollars, and I forget what other, and legal action would be necessary before I could do anything about it.

Q. You found those assets in the banks here then, in the name of John C. Hurt and Ruth Hurt Haynes?

A. Yes. He was a great fellow to buy bonds, but I had no way of finding out.

Q. Did he have a safety deposit box in any bank that you know of?

A. Not to my knowledge, I don't think so.

Q. Any other personal property, assets, in Virginia that you know of?

A. No, not to my knowledge.

Q. What funds have you received as Executor?
page 15 } A. None.

RE-DIRECT EXAMINATION

By Mr. Hite:

Q. What was the age of your father at the time of his death?

A. It was 86 I believe.

Q. What was the state of his health and mental condition at that time?

Rufus C. Hurt

A. At the time of his death he was a complete invalid, but his mind seemed clear at the time, other than the fact that he wanted to lean on someone consistently, and that is understandable. He wasn't irrational at all.

Q. Was he able to do all his business transactions, or did he have to rely on someone?

A. He had to rely on someone to feed him even. He couldn't go to the bathroom.

Q. I got the impression the last few years he had to rely on someone.

A. He lost the use of his arm. He couldn't write checks. But I am not saying his mind was not clear. Other than acting childish, and leaning on someone—I would certainly say he was rational.

Q. Physically, he could not take care of activities of life, such as transacting business?

A. Physically, he could not take of activities at all.

Q. The Will refers to life insurance payable to his second wife. I wonder if you have found any insurance policies on his life?

page 16 } A. No. I think that was changed to my sister, Jessie Hurt Wood, as beneficiary of that policy, and I understand she has received payment. I might add there that—of course I cannot verify his thinking—but he wanted to be buried in the family plot beside my mother in West Virginia, and the funeral director was within 45 miles radius of where my sister lived, and he thought she could handle it by using the insurance money.

Q. Did she use that to pay the funeral bill?

A. I have been advised she used some of the proceeds of this estate, and I don't know what she did with that money.

CROSS EXAMINATION

By Mr. Pierce:

Q. Who was your father living with just before he died in February, 1964?

A. The last few months with L. Quinton Hurt, at Melbourne, Florida.

Q. He had been living with Ruth Haynes?

A. Yes.

Q. When did he live with her?

A. From 1961 until just a few months prior to his death.

Q. Almost two years?

A. Yes. And he voted here in this county.

Q. I believe you said at one time he had a joint banking account with G. L. Hurt?

A. Yes.

Q. When was that?

page 17 } A. That was right prior to World War II.

Q. Sometime back, long time back?

A. Yes. There is a pattern—

Q. After living with Mrs. Haynes from 1961 to 1964, was that when he transferred to her his real estate in Florida?

A. When he knew he was leaving for her house, right after my step-mother's death, he made that change.

Q. Did he transfer that property to her by deed?

A. No, he had deeded it to the A. B. C. Liquor Company.

Q. And he has received the money, and the money was put in a joint bank account. Is that right?

A. He hadn't received most of the money. There were deferred payments. I think my brother Quinton could testify to that better than I could.

Q. Were you aware, and your brothers aware, then that he had Mrs. Haynes' name on moneys coming in?

A. Yes.

Q. That was done on whose advice?

A. L. Quinton's *advise*.

Q. Why was Mrs. Haynes chosen to be the one?

A. Because he was going to live with her, and none of us could do it day to day.

Q. Was he planning to live with Mrs. Haynes the rest of his life?

A. That was his plan. My step-mother was gone, and I work and my wife worked, and it was the same with G. L. Hurt, his wife and he work, and our sister Jessie

page 18 } teaches school, and there was no one else he could go to except Ruth, not that he wouldn't be welcome at any of our homes.

Q. Why did he leave your sister's home and go back to Florida prior to his death?

A. My sister called me and said, "He is too big and heavy, can't take care of him any longer. When he falls I can't pick him up."

Q. So he left at her request?

A. I would say it was mutual, because she told him she was not physically able to take care of him any longer, and she called me and said she was going to put him in an old folks home. She said, "I cannot physically take care of him any longer." I called my brother Quinton and asked him what

he thought about it, and he said, "I would like to have him come down here. Put him on a plane and send him down here."

Q. How long before his death was that arrangement made?

A. Just a few months.

Q. Do you know when the change was made in the bank account?

A. No.

Q. Was that ever discussed?

A. Not with me, because I was not there.

Q. You knew at that time Mrs. Haynes' name was on these accounts?

A. Yes, and he had stated at one time in my sister's presence that she could distribute the money, might not be necessary to use the Will.

page 19 } Q. In her presence?

A. He had made statements in her presence that she could distribute the money, but there has not been any distribution of the money.

Q. I believe you said you talked with your sister on the telephone at one time about these matters. Is that right?

A. Yes.

Q. But never talked to her personally?

A. No I have not.

Q. Is there any reason why you have not talked to her personally? Is it because she didn't want to see you?

A. She indicated she just wasn't going to discuss it.

Q. Had you and your sisters been on good terms prior to your father's death?

A. Yes, I had.

Q. Did you ever visit your sister's home?

A. Yes.

Q. How many times did you visit her after your father died?

A. I don't think I visited her any after he died.

Q. What happened? You were on good terms before he died, then after he died you were on bad terms?

A. I wouldn't call it bad terms. Never been any animosity, but any person has pride, and, number one, I didn't appreciate it too much that I wasn't consulted any about the funeral arrangements. I didn't particularly care about the money. I can get along without the money. As a

page 20 } matter of fact, I wrote her if she wanted to give my part to my aunt. But it isn't right for a family that can't sit down and talk these matters over. As far as

I am concerned, I would have said, you kept him two or three years—though he paid her $50.00 a month—but a person wants to be consulted in these matters.

Q. Can you be absolutely certain your father did not give this money to your sisters?

A. I know he wouldn't do a thing like that without consulting the rest of us.

RE-RE-DIRECT EXAMINATION

By Mr. Hite:

Q. The Commissioner very wisely asked about your father's health, and why he went back to Florida. He went back at her request, you say?

A. She told him, and she told us, that she was not physically able to take care of him any longer, and he was about as heavy as I am and a little taller. He was a giant of a man physically, and at one time a giant of a man mentally.

Q. He went back to Quinton's home where he had been staying before coming up here?

A. Yes.

Q. The Commissioner wanted to know why you hadn't talked to Mrs. Haynes. Did you ever have me, or any attorney, contact Mrs. Haynes?

A. Yes, I had you contact Mrs. Haynes, and had Robert Garland Hurt go to see her personally and ask her if we couldn't sit down and work this thing out, and my
page 21 } brother Quinton told her the money was not important to us, but we felt we all should know as a family. I am completely amazed at my sister. She just clamed up and just refused to discuss it.

Q. I have a letter from Mrs. Haynes here which I will read in the record. I wrote her April 10, 1964, and told her her brother, Rufus C. Hurt—I will read it—"Dear Mrs. Haynes: Your brother, Mr. Rufus C. Hurt, of Roanoke, has qualified as Executor of the Estate of your Father, the late John Calvin Hurt, and has given bond accordingly. Appraisers have been appointed to appraise your Father's estate, and I would like to know when it would suit you to meet with the appraisers so that they can determine the amount of property which your father died seized and possessed." That was dated April 10, 1964. She wrote in her own handwriting —"April 24, 1964. Attorney Bentley Hite, Christiansburg, Virginia. Dear Sir: My father, J. C. Hurt, did not own any property here and did not leave an estate that I know of.

Yours very truly, Ruth Hurt Haynes." I wrote her one since then and got no reply. Now, at the time your father stayed with Mrs. Haynes, did he pay her any money?

A. My sister advised me that he paid her $50.00 per month.

Q. Who told you that?

A. My sister told me that.

Q. Mrs. Haynes?

A. Yes, during one of my visits to her home.

page 22 } Q. He paid her $50.00 per month?

A. Yes.

Q. And she said he had gotten to be such a burden she couldn't take care of him, and he went back to your brother, Quinton?

A. Yes. I would like to make one more statement. I know why my sisters feel they are perhaps entitled to this money. The three brothers sitting here in this room and my father were in business together in West Virginia, and we all lost a fortune so to speak, at the time. I lost more than anyone, and of course my father was worth considerably more at the time than at his death, and our sisters apparently feel we were responsible our father lost money. I think that is their feeling.

Q. What is the background of that?

A. We all were involved in a bus business in West Virginia. We did fairly well too for a time, but we went broke, went broke honorably though. We paid all our debts and left honorably.

Q. Did your father own any other business which he sold and went into the bus business?

A. Yes. None of us could see at the time the coal business was done, and all of us lost our shirts, including our father, and about all he had left was this home. Of course, I was fortunate through my real estate ability to buy him a home in Florida, and could recuperate. All of us have, but it wasn't our fault he lost his money, but I think our sisters feel we were. Quinton was not in business with us. He had

page 23 } his own company, but G. L. and father and myself were partners so to speak, and we went under. I had a mansion in West Virginia at the time, and when I sold it I have proof I gave him the proceeds which helped him along in his old age. I have proof I am not money hungry.

Q. Do you permit the secretary to sign your name to these, Mr. Hurt, when they are written up?

A. Yes sir.

L. Quinton Hurt

(And further, this deponent saith not.)

RUFUS C. HURT

BY LAUIRA C. JOYNER
Secretary

L. QUINTON HURT, being duly sworn, deposes and says:

DIRECT EXAMINATION

By Mr. Hite

Q. Mr. Hurt, I believe your name is Lionel Quinton Hurt, and you are a son of Mr. John Calvin Hurt?

A. Yes.

Q. Where do you live, sir?

A. Melbourne, Florida.

Q. Your father is now deceased. Where was he living at the time of his death?

A. At my home in Melbourne, Florida. He had been there, I believe, four and a half months.

Q. Had he ever lived with you before?

page 24 } A. He had stayed with me, and he stayed with me three months before coming to Christiansburg, and then came to Christiansburg to stay with my sister Ruth, and came back to visit me on one occasion for about three weeks, but he maintained his residence here after he left Florida.

Q. Was he engaged in any type of business in Florida, or own any property in Florida?

A. He owned his home.

Q. Was that at Eau Gallie, Florida?

A. Yes sir.

Q. What happened to the home?

A. The property was in his own name, and about two weeks before my step-mother passed away suddenly with a heart attack, he had a contract to sell this property to the A. B. C. Liquor Company and they were going to get an apartment. Both of them were getting along in years. She was in agreement to sell the place although her name was not on the deed. They completed the abstract, the documents were made up, and the notes as he requested payable over a five-year period for the balance, and I believe they were all prepared the day she passed away. I called his attorney, and he decided after her death, of course he had these notes payable to him

and to her, and after we talked it over for some time, I thought my wife and I both work and we lived eight miles out of town, and he needed good doctors and to be near enough to walk down town, and he decided to go to Christiansburg. Called the attorney to change the notes to read to John Calvin Hurt and/or Ruth Hurt Haynes.

page 25 } Q. Who called?

A. I called at his request. And the notes were presented and the deed was signed at the funeral home the day of the funeral of my step-mother, and I witnessed the deed and trust deed.

Q. Did he intend to give Ruth that money, or—

A. He needed the money for his own use. He had some bonds and some money in Eau Gallie. Her hospital bill I think was $1200.00 and the funeral expense. He had enough Government bonds to pay all that. As far as I know they were bonds. I was with him.

Q. How much?

A. I think about $2800.00. I know there was a little more than enough to pay her funeral expenses and hospital bill. He cancelled his safe deposit box then. If he had any other he put it in his pocket or didn't cash them at the time.

Q. What was his physical condition at that time?

A. He, of course, was upset, at his age losing her and the change. He had had several strokes and his foot would give away, but he was able to write at that time. He did write several letters from my home. He buried his wife in West Virginia, and he was able, stayed at my home awhile, and was able to write some letters. My brother Lawrence then picked him up in South Carolina and brought him up here. He was to use his money for his own use. He had those notes set up—He wanted the payments once a year and wanted the interest once a year. The plans were that they were to be paid in February, I believe, one-fifth of the principal, which was $20,000.00, payable in February, and in August the interest was to be paid. That would give him two checks a year coming in.

page 26 } Q. The principal one time and the interest the next?

A. Yes.

Q. Principal was how much?

A. I don't know how much, but it is set out definitely in the trust deed.

Q. What was the consideration of the property?

A. $21,500.00.

L. Quinton Hurt

Q. Do you know how many payments were to be made?
A. Five.
Q. Five payments?
A. Yes.
Q. Little over $4,000.00 each?
A. Yes, about $4,000.00 apiece. There was some odd figures, $3,900.00 or some, few odd figures for some reason.
Q. Probably a down payment of a certain amount.
A. There was a little difference and they just agreed in the notes. They gave him a check for $500.00 at the time they were first talking about it, then they gave him a check for $1000.00 at the time the deed was signed, and I went with him to the bank and he deposited that in the bank in Eau Gallie. That was the day of the funeral. That same day he took the bonds and deposited them.
Q. What became of that $20,000.00?
A. He transferred that to Christiansburg. He said he just didn't know what was going to happen to him at his age, and he put it in my name and his, in Eau Gallie.
Q. He put it in your name and his in a joint account?
A. He had a joint account with his wife, and at page 27 her death he took her name off and put it in his and mine. I don't know what he did when he transferred it here to Christiansburg.
Q. When did he change from your name to Mrs. Haynes?
A. He wrote a check against that account for the exact amount and deposited it in the bank in Christiansburg. That was his intention and I am sure that is what he did.
Q. Did he tell you why he put it in your name and his?
A. That was just as a precaution because he was coming to West Virginia for the funeral and he couldn't get around and didn't know what was going to happen.
Q. Did he intend to give you that money?
A. He always told me he was going to give me a whole lot of money. I told him he better get the use out of it and enjoy his money.
Q. You certainly didn't think he gave it to you?
A. Oh no. Never investigated to see if it had been transferred but I am sure it has, but at the time he took his wife's name off at her death, he put mine on. He came back from the funeral and stayed with me for awhile. He had disposed of his personal items in the house, and would go to church and tell everybody good-bye, and he wanted to go to the church convention and tell them he was going and get his church letter, and all that took possibly three weeks or a

month, and that was before he came to Christiansburg, and I suppose during that time the money was in both our names. I suppose, I would say between $1500.00 and $1800.00.

Q. How were the notes made at that time?

page 28 } A. They were made to J. C. and/or Ruth Hurt Haynes, and the trust deed was made the same.

Q. Then he came here and stayed approximately three years?

A. Yes.

Q. What terminated that?

A. I think the last two years somebody had to be with him all the time. It got to the point where he couldn't do a thing for himself. Somebody had to take him to the bathroom, put him to bed, get him up three or four times a night, carry him to the bathroom and carry him back, sit him in his chair in the morning. Mentally he was all right. Of course he lived in the past, lost interest, couldn't read, couldn't watch television. He lost interest in current affairs. He lived in the days when we were kids, his memories of his youth.

Q. When he died he was 85 or 86 years old?

A. Yes.

Q. Did Mrs. Haynes, your sister, talk with you about taking him after he had stayed with you awhile?

A. Not any more when he came to Florida the last time.

Q. She said she couldn't take care of him any more?

A. Yes. That is a job, to take a person in that condition. It is more than you know if you have never done it, which we were more than glad to do, but you are up eight or ten times a night, and he had gotten childish and jealous. If I played with the dogs he would get upset, and if I hugged my daughters he didn't like it, just childish things. I know it must have worked her to a frazzle. If he had lived on and I couldn't have taken care of him—

page 29 } Q. You were requested to take him back in your home?

A. No, it was at my request. Ruth had called Rufus and told him the circumstances, and Rufus called me, and I think I more or less suggested it, but it was agreed he would come stay with me, no definite period of time. Just happened that way.

Q. He did come back and stay with you four and a half months?

A. Yes.

Q. During that time did he do anything with his money, or did you do anything with it?

L. Quinton Hurt

A. No. His Social Security checks were sent here and endorsed as Mrs. Haynes saw fit, because he couldn't write, and the drugs he needed, and doctor here that had been treating him and knew his condition, and she would get his prescriptions filled and send him the drugs. I took him to the doctor there, but the major part of his drugs she took his money and bought his stuff for his use.

Q. That was his Social Security?

A. Well, she had all his money. It was on deposit here and she signed all his checks.

Q. What we are after is to find how much money he had here. Then I will ask you about his Social Security.

A. I don't know any way of knowing other than the amount he might have brought here. He had had some hospital bills and expenses here.

Q. The notes on the house in Florida were in the amount of approximately $20,000.00, and they were made
page 30 } in your name and his jointly, and then were changed and put in his name and your sister's, at your suggestion, and brought here to Montgomery County?

A. He was in the process of selling when my step-mother passed away, and they were in his name and hers, and they changed all the notes to his and my sister's names.

Q. You advised that, I believe?

A. Yes.

Q. How much Social Security did he get?

A. I believe $60.00 a month minimum.

Q. Do you know what he paid Ruth for keeping him?

A. $50.00 a month.

Q. Do you know what she did with it?

A. Ruth always said that was what she drew out of his account.

Q. Did she tell you that?

A. Oh yes, I understood that during his lifetime that was what he agreed she was to draw out for his support.

Q. Drew out of the account, joint account?

A. I suppose so, or cashed his check.

Q. But she did compensate herself $50.00 a month out of his funds?

A. Yes, or his Social Security. That was all the money he had was in their joint account.

Q. Well, the bonds when they were paid.

A. Yes. They were deposited in the joint account here in this county.

page 31 } Q. Have you visited your sister since your father's death?

L. Quinton Hurt

A. Yes, and she visited me. She was down in Florida two or three months ago.

Q. Can't you people talk about this estate?

A. No. She hasn't said anything to anybody about it. When she was staying with me I asked her if things had been settled, and she said, no, there wasn't anything to be settled.

Q. Did "settled" have reference to what?

A. The estate.

Q. And she said there was nothing to be settled?

A. Yes. And I didn't push it any further. She was a guest in my house and I didn't want to insult her, and I didn't say anything else about it. There wasn't any use to argue with her.

Q. You knew your bother had qualified as executor of your father's estate, and you authorized me to bring this suit in your name and your other brothers names?

A. Yes.

Q. I believe there is a rather close association between you and your other brothers and sisters and you didn't want to upset that by talking about it?

A. There always was a close relationship. We never were one to fuss with each other. This is kindly embarrassing. We were always close in every respect.

CROSS EXAMINATION

By Mr. Graybeal:

Q. It was your suggestion the notes be made to him and/or Ruth?

page 32 } A. Yes.

Q. Do you know whether or not she knew the notes were made at this time?

A. No, she wasn't in on any of it. In fact, she wasn't included until the last couple of days of the contract, after my step-mother had passed away, because originally the agreement was to my father and Rachel B. Hurt, his wife, and they were in the process of closing when she passed away and we had them changed.

Q. Was there any question, if you know, whether or not Ruth Haynes knew this was being done?

A. No.

Q. And it was at your suggestion to your father that they be made to him and/or her?

A. Yes.

Q. And he agreed?

L. Quinton Hurt

A. Yes.

Q. Did he any time mention that Ruth would have some money for all of you?

A. No. As I said, he would say, "I am going to leave you some money," and I would say, "Go ahead and spend it." He would get depressed, start talking about these things and I would try to joke him out of it.

Q. Did he ever mention the fact that Rufus was executor under his Will?

A. Yes. I knew at the time but he didn't mention it at the time of this sale, or on his visit with me.

page 33 } Q. Did you suggest that the notes be payable to him and/or anyone else in the family?

A. No. I suggested Ruth because he would be here in Christiansburg and she could handle the collections and give him hospitalization and things he might need to have money to take care of him.

Q. After he came here did you have any conversations with Ruth about the way they had been made?

A. No.

Q. Do you know whether or not he did?

A. No. I stopped in to see them on two occasions while he was staying here and there was no discussion of it at the time.

Q. Do you know as a fact he didn't intend this for Ruth?

A. Well, yes. I don't think he intended to have any left actually, because he would always talk about Dallas—wanted to be sure he had a decent funeral. And this brother of mine, the other no good one, said he would like to make sure he had a place to stay. And he was always confident he would take care of the others not able to take care of themselves. He said he wanted them to be taken care of, or leave enough to guarantee they will be.

Q. Is it probable he intended to collect these himself and to be payable to Ruth only if she survived? Do you know whether or not he didn't mean for her to have them?

A. The checks were made payable to him and at his death it would be for her to be distributed. She says he told her a lot of things he wanted to do with it, but I don't know what. Evidently it was not intended for her to keep if he told her what to do with it.

page 34 } Q. Did he tell you *want* he wanted to do with it?

A. No. I saw him on only two occasions after this. When he came back to live with me he was pitiful, and I didn't discuss it with him.

L. Quinton Hurt

Q. Are all the heirs of your father made parties of this suit, as far as you know?

A. Yes, they are the children.

RE-DIRECT EXAMINATION

By Mr. Hite:

Q. You say Ruth told you what your father wanted to do with his money? What did she tell you he wanted her to do?

A. She didn't, but she said he had told her what to do with it. A year later when I asked her if it had been settled, she said there wasn't any estate.

Q. Did she say what he told her to do with it—Did he use the word "distribute"?

A. Said distribute.

Q. Was that her word?

A. That was my own interpretation. I know she has not done anything with the money yet. Can't tell that in court.

Q. You can tell what she said. What we are all concerned with is whether your father intended to give this money to Ruth, or—

A. She was to manage his affairs and write the checks for him, and there was no intention of leaving the money to her. The money was put in her name entirely for the reason to take care of his livelihood for the remaining days of his life.

Q. Did he have any intention of giving it to Ruth as a gift?

page 35 } A. Oh, no.

Q. Did you have any intention of giving it to your sister when you suggested putting it in her name?

A. Definitely not. If I had had such an idea I would have had the Judge appoint somebody to take care of his affairs for him, which would have been the same thing. But he had to have his insurance paid every month, and doctors bills, and she was the only one located conveniently to do it for him.

Q. More convenient for him and for everybody else?

A. Yes.

Q. That was the reason you advised he do it that way?

A. That is the reason I advised him. On the occasion he came down to visit me—He was an old Primitive Baptist and like to go to conference—When he came down to visit me and went to conference, he had me write Ruth to send his check to the conference.

Q. Did she send the check?

A. She cooperated in every way. When he would tell her to do anything, write a check, she would do it.

Q. Do you know any other occasions he did that?

A. I don't know of any objection she ever put up at the time to anything he wanted to do with the money.

CROSS EXAMINATION

By Mr. Pierce:

Q. You said it was at your suggestion that your father put the name of Ruth Haynes on the notes?

A. Yes.

page 36 } Q. Did you do that because you knew he was coming to live with her?

A. Yes.

Q. I think you said earlier that as long as he lived the money was to be paid to him?

A. There was no conversation on that point. It was to be in her name to take care of his affairs because he was coming here.

Q. How could she take care of his affairs if she didn't know her name was on it?

A. Well he was coming to live with her, and it was agreed it was the best thing for him to do to put her name on these notes because he was fast becoming disabled at the time.

Q. On the day your step-mother died you said any deposit he had in the bank at Eau Gallie had your name on it?

A. When she died he and my step-mother had a joint account, so the day she died he took her name off the account and put mine on.

Q. How much money was in that account?

A. He took her name off and deposited the money that came from the bonds.

Q. Suppose your father had died the following day, what would you have done with the money?

A. It certainly would not have been mine, because it was not put in my name for that purpose.

Q. Would you have considered it yours?

A. There is no question. It was not put in my name for that purpose.

page 37 } Q. You said your sister visited you in Melbourne how many months ago?

A. Two or three.

Q. You said you didn't mention this matter?

A. She said there was nothing to settle, and so I didn't go any further.

Q. Why?

A. There was no point in arguing the question. I knew this was coming up.

Q. Knew what was coming up?

A. This suit. This was just a couple or three months ago.

Q. You had had an opportunity to discuss it with your sister before *you* brothers brought the law suit?

A. The suit had never been mentioned between her and myself. The only previous time I talked to her, I believe was a year ago when I was up here. She said—That was not too long after our father passed away—She said, Dad told her how he wanted to distribute the money, or what he wanted done with it.

Q. She didn't say how he wanted it? Couldn't have been he wanted to distribute it to her?

A. Maybe, she has never discussed the money. When she came to see me she had written letters to other members of the family. I don't write, I usually call. I heard of all these letters she had written them that there was not any money. I knew there was no use to argue.

page 38 } RE-RE-DIRECT EXAMINATION

By Mr. Hite:

Q. You knew it would not be your money, even if it was in your name, didn't you?

A. Yes.

Q. Do you permit the secretary to sign your name, when these are written up?

A. Yes.

(And further this deponent saith not.)

L. QUINTON HURT

BY LOUISE C. JOYNER
Secretary

G. L. HURT, first being duly sworn, deposes and says:

DIRECT EXAMINATION

By Mr. Hite:

Q. Mr. Hurt, you are one of the heirs of the Estate of John Calvin Hurt?

G. L. Hurt

A. Yes.

Q. Where do you live?

A. 102 Lynhaven Circle, Vinton, Virginia.

Q. Did you have occasion to see your father shortly before his death, any time within a year or two before his death?

A. Yes, I visited my father in Florida at Christmas, from Christmas until the 30th of January, before he died February 4.

page 39 } Q. Prior to that time I believe he had been living with your sister here in Christiansburg?

A. Yes.

Q. Do you know the circumstances under which he came to live with her?

A. Yes, he explained it to me, in fact he chose me to come to Florida and get him after he returned there after my stepmother's funeral, and I believe it was about a month after her funeral I started to Florida to get him and the engine blew up in my car in North Carolina, and I had to return to Roanoke and get another car. I called my brother in Florida, told him I would be late, and he said he would meet me at *Columbus,* South Carolina, and he did, and I brought my father here to Christiansburg.

Q. Did you take him to the home of Mrs. Haynes?

A. Yes.

Q. Do you know anything about the sale of this land in Florida, and what he did with the money he received from it?

A. I had a general knowledge of it, just what he explained to me. I didn't pay particular attention to it, because he was always talking about his affairs and I usually dismissed it, but he told me he had, at Quinton's suggestion, and he explained it very thoroughly, "Since your wife works, and since his wife works, and all the other children's, he thought it best I come to live with Ruth in my declining years." He told me about the sale of the property, said he had $500.00 down and they were to give him another $1000.00 when the papers were signed, and they evidently did, and the rest was arranged in, I thought he said, four payments at

page 40 } that time of $5000.00 each. I do know the principal payments came some time in February.

Q. How was that money to be paid?

A. It was to be paid in installments.

Q. To whom?

A. It was to him was my understanding.

Q. What provision was made in there about Mrs. Haynes?

A. Mrs. Haynes, the money was put here in the bank and

was to be in her name and his name jointly, similar to an arrangement he had with me, prior to my recall to duty in the Korean War, in West Virginia, in which his money was put in his name and my name jointly, in which either one could draw the money out. Didn't take both signatures. That was from 1948 until he made my brother administrator of his estate in 1951.

Q. Why did he do that—for his convenience, or your convenience? Why did he put it in a joint account?

A. At that time he told me he had a provision in his Will whereby I was to serve without bond as administrator of his estate, and it would be a savings in taxes if his money was in an and/or situation, inheritance tax.

Q. Did you consider it was your money?

A. No sir.

Q. As the Commissioner asked Quinton, what would you have done with the money if it had been in your name at the time he died?

A. At the time I would have gone by the conditions in the Will existing at the time.

page 41 } Q. The will in existence at that time has been superceded by a will written later.

A. Yes.

Q. At the time you went to get your father, brought him back here, did he talk about his money?

A. He said he had arranged at L. Quinton's suggestion to put it in his name and Ruth's name jointly, and of course he trusted my sisters explicitly, as all of us, and he said, "Everything will be taken care of." He didn't qualify that statement to my knowledge.

Q. Do you know what arrangements were made with Ruth for taking care of your father?

A. Yes. I visited Christiansburg every Thursday. Gave him a shave, taken his bath, every Thursday until the time he left to go to Florida. At the same time I was attending Radford College, and I talked to him quite often. Now, to go back if I may—During my trip to Florida to get him, when my engine blew up, I was quite hard up. He offered me, said, "Well come down to the First National Bank of Christiansburg and get what money you want if you need it." I said, "No, I will get along all right." It cost a hundred dollars to get another engine. At that time I had other expenses, and I did come down. I got hard up, and he instructed my sister, Mrs. Haynes, to endorse a note for me for $300.00 at this bank in Christiansburg, and I paid it back in

twelve months at $26.50 a month, which I paid. Then in July of 1963, he wanted me to take him to Spencer, West Virginia, to visit our older brother Kemper, which I did, and on the way back he talked quite a bit, kept talking about page 42 } his estate. He was naturally sentimental after visiting his incapacitated son, and I again casually dismissed it. He told me, said, "Lawrence, come down if you get hard up, come down and get some money. You are going to teach school, go to graduate school." So I did decide to enter graduate school, and my wife had a baby, and I needed to borrow $500.00. I came to Christiansburg, and Mrs. Haynes raised cain. She was hard up and overdrawn, and just couldn't do it, and it kindly hurt my feelings, and after that she and her husband visited in Milwaukee, and my father came down to visit me, and he asked me did I get the money in Christiansburg, and I said, "No, Ruth said she didn't have it," and he said, "That is *my* money. That is not her's. That is *my* money." He made that statement in front of my wife. And he considered this money here as his money.

Q. On what occasion did he say that?

A. Prior to his going to Florida.

Q. That was after he visited here about three years, prior to the time he returned to Florida?

A. Yes. His brother died in November 1963, and it was on the way back from the funeral that he was telling me to come down get what money I needed, that I could borrow what money I wanted, and I did ask and my sister refused, but he didn't have knowledge of that. He didn't know she wouldn't endorse the note and he was a little disturbed about it. Said, "That is not her money. That is my money." He made that statement several times. Of course, I can always get money at the First National Exchange Bank in Roanoke, which I did.

Q. Did your sister give any reason why she re- page 43 } fused to endorse the note as your father suggested?

A. No, she just emphasized how hard up she was.

Q. On any other occasions did you talk with your father about his finances?

A. Well on several occasions he brought the subject up, as he did the last time when I visited at Christmas in Florida, and he would always indicate everything was all right, and all of it was in his Will, and things of that nature, but I never would permit him to finish. I always made some joke of it, said, "Dad, you will live longer than I will." He was conscious he had a Will and had made provisions.

Q. What do you do?
A. I teach school.
Q. High school?
A. I teach at the Viaud School, private school.

CROSS EXAMINATION

By Mr. Graybeal:
Q. Your father said it would be a tax savings if it was and/or situation?
A. Yes, that was my understanding at the time.
Q. He didn't say anything more about that, what he meant by a tax savings?
A. No, he didn't qualify the statement. He consulted quite frequently with his brother-in-law, a tax man. I didn't know what the situation was.

page 44 } By Mr. Pierce:
Q. When you wanted about $500.00 did you go to Ruth or your father?
A. I went to Ruth.
Q. Did you want to borrow the money from your father or from her?
A. I went to the bank. I wanted her to endorse it.
Q. Did you want to take the money out of your father's account?
A. No.
Q. What did your father mean later when he said, "That is my money, not her's"?
A. I don't know. I believe when they first came here they had not moved their money here. I believe my father's account superceded their doing business here.

By Mr. Hite:
Q. You mean Ruth and her husband had lived in Roanoke?
A. Yes.

By Mr. Pierce:
Q. The point you are making is, she must have not regarded it as her money then when she said she was hard up? Is that the point you are making?
A. Yes.
Q. Let me have your wife's name.
A. Mary Lou Hurt.
Q. Do you give the secretary permission to sign your name?

A. Yes.

page 45 } (And further, this deponent saith not.)

G. L. HURT

BY LOUISE C. JOYNER
Secretary

The further taking of these depositions is continued to a date to be agreed upon.

page 46 } Continuance of the taking of the evidence in the above named chancery cause in the law offices of Bentley Hite, Christiansburg, Virginia, on the 10th day of September, 1965, at 1:30 P.M., pursuant to agreement, to be read by the Commissioner; and if the same be not completed this day, to be continued from time to time until fully completed.

Present:
Rufus C. Hurt in person, and by his attorney, Bentley Hite.
Ruth Hurt Haynes in person, and by her attorney, Jay A. Price; Mrs. Haynes having been summoned as an adverse witness in the matter.
Jacque W. Pierce, Special Commissioner.
J. Patrick Graybeal, Guardian *ad Litem.*

RUTH HURT HAYNES, having been sworn, is called by the complainants as an adverse witness, and deposes as follows—

DIRECT EXAMINATION

By Mr. Hite:
Q. Mrs. Haynes, I believe you are one of the defendants in this chancery cause?
A. Yes sir.
Q. And I believe you are the sister of Rufus C. Hurt, and the daughter of John Calvin Hurt?
A. Yes.
Q. And I believe you are the sister of Mrs. Jessie Hurt Wood?
A. Yes sir.

page 47 } Q. And the other heirs that testified in this case before. Where is Mrs. Wood living at this time?

A. Fayette, West Virginia.

Q. Where is she now?

A. She is at Fayette right now. She has returned from this world tour. School has started and she is teaching.

Q. When did your father, John Calvin Hurt, die, Mrs. Haynes?

A. February 4, 1964.

Q. Where did he die?

A. In Florida, Brevarde County.

Q. At whose home?

A. He died at my brother Quinton's home. I wasn't there of course.

Q. Which brother?

A. L. Q.

Q. How long had he been at L. Q's. home?

A. I am not very good on dates—Let me see—He went for the winter to Florida—about 4 months I believe.

Q. Been staying with you prior to that?

A. Yes.

Q. About how long?

A. About 20 months.

Q. Had he stayed at times with his other children?

A. No.

Q. Just you and Quinton?

A. He stayed with me, made his home with me. Dr. Graybeal was his doctor. He had flu and arthritis. He page 48 } had spent 12 years in Florida where he lived with his wife in their own home, and she died and he come to my home.

Q. He had been at your home about how many months?

A. About 20 months.

Q. What did he pay you a month to take care of him?

A. Papa gave me $50.00 a month, and I put that back in our checking account.

Q. In the joint checking account you had with your father?

A. Yes.

Q. Did you have an agreement that he pay you $50.00 a month?

A. I had no agreement, but he insisted he pay me $50.00 a month. And I did take care of him. He was an invalid a lot of the time.

Q. He did pay you $50.00 a month the twenty months he was with you?

A. Yes.
Q. He paid his own doctor bills?
A. Yes.
Q. And took care of his other expenses otherwise?
A. Yes.
Q. Did he use tobacco and things like that?
A. He didn't use tobacco. He paid Quinton $150.00 a month when he stayed there.
Q. How do you know that?
A. Because I wrote the check.
Q. You did?
page 49 } A. Yes.
Q. You wrote it out of a joint checking account?
A. Yes.
Q. Who told you to write that much?
A. Papa did.
Q. He directed you to pay Dr. Graybeal and others?
A. At times he did, and sometimes I did.
Q. At times he came to the bank and transacted some business, and sometimes you did?
A. Yes.
Q. How long had you had this joint account, Mrs. Haynes?
A. Soon after he come to my house.
Q. After he came from Florida to stay with you the twenty months period he was with you, shortly thereafter he set up a joint bank account in your name and his name?
A. When he come—few days after he come he had to go to the hospital. He was in the hospital that time about three weeks, and I imagine it was after that. I was concerned with him and the care of my own family and didn't think I would have reason to have to remember.
Q. I am not questioning that. I know you cannot remember every thing he did, but it was after he was sick in the New Altamont Hospital he set up this joint account with you?
A. The checking account.
Q. Checking account, yes. Had you ever had a joint checking account with your father?
A. No. I had not been with Papa a great deal.
page 50 } Q. You knew he had had joint checking accounts with the other children, especially L. Q. and Rufus?
A. No.
Q. Did you know he had joint accounts with any of them?
A. No, to my knowledge, he did not.
Q. What was your father's physical condition when he came to your home?

A. For a man his age he was in fine physical condition. I think the doctors can tell you more than I. He was able to walk and get around. When he come to my house he had pneumonia and a heart condition, and Dr. Graybeal come to the house and made arrangements to put him in the hospital in Roanoke. Then when he come back from the hospital he was quite sick, then he bounced back from that and done real well, and I took him on trips to West Virginia and places. Then when winter come on—He had spent twelve winters in Florida and it was rough, and when spring come on he felt better.

Q. He at that time was a man past eighty?

A. Yes.

Q. Needed some help in transacting business, and got you to do it?

A. I wouldn't say that. Papa knew exactly what was going on in his business. He didn't need any help at all. My mother did things for him all her life, and my step-mother was so good to care for him, and he wanted to do work for me, but still he kept track not only of his accounts but he wanted to know how many pumps we had sold, and—

page 51 } Q. Mentally he was alert, but physically infirm and not able to do all the things a younger man was able to do, and especially while he was in the New Altamont Hospital?

A. He was not in the New Altamont Hospital.

Q. Which hospital?

A. He was in the Roanoke Hospital.

Q. Roanoke Hospital. Did you talk with him any about the transaction he had with the Orange Trading Company, in Florida?

A. When? In the twenty months he was with me naturally it was mentioned.

Q. You knew that property was being sold?

A. It was sold when he come to my home.

Q. But the notes evidencing the sale of the property, weren't they handled here in Christiansburg?

A. No, no notes were handled here. It was all done in Florida before he come to my house.

Q. Did you own that land?

A. No.

Q. Who owned the land?

A. It was in my father's name.

Q. What became of the proceeds of the sale of that land?

A. Well, his wife was in the hospital quite awhile before

she died and he paid hospital bills for almost two years. I don't have the record of that especially. I didn't go around after Papa saying what have you paid out.

Q. How much of that money was transferred to you, Mrs. Haynes?

page 52 } A. Not any transferred to me. Oh, you mean—the debt was transferred.

Q. What debt?

A. I am not too familiar with these terms. The way I understand it he sold the property before he come to my house.

Q. That is right. It was his property in Florida?

A. Yes. And any he didn't collect, I suppose, of the outstanding note on the property was a deed of trust, in either name, either or survivor.

Q. How much of that money went to the account, either or survivor?

A. You didn't ask me to bring any records and I don't know. You have seen it more than I have.

Q. I have?

A. Not more than you have seen it, but I don't have it with me.

Q. Where did you put that money?

A. Here in the bank.

Q. In whose name?

A. I didn't put it in. Papa did.

Q. In whose name?

A. Put it in either or survivor.

Q. How much.

A. Naturally different amounts, different times—I told you I don't know.

Q. Was that the money he got from the sale of this property in Florida?

page 53 } Q. What part of it was? Where did the other come from?

A. I better back up a bit. I better say that money Papa put in the either or survivor account—prior arrangements he made before coming to my house, I don't know. He come up there once a year usually.

Q. That is true, but money he put in your name after the sale of the property in Florida and after he came here to stay with you on the 30th day of January, 1962, how much money did he put in your name?

A. I don't know.

Q. Do you have any record to show us?

Ruth Hurt Haynes

A. I would have only what you know and what was put in the bank.

Q. Well, I don't have access to the bank.

A. You did.

Q. I have not. I didn't have access to the bank. I have had the man summoned here, but I can't say what was in the bank any more than you can, or anybody else.

A. Before any legal proceeds was instituted about the matter this paper come out with some numbers of certificates, and I don't know how they would have been gotten if you didn't get them.

Q. I got them from what your brother gave us here.

A. I have a letter from my brother saying he didn't know.

Q. I may have gotten the numbers of the certificates.

A. His excuse from his letters was to find out.

page 54 } Q. That is true, and you are the only person can tell us, unless we do get the bank officials up here.

A. Well—

Q. I have a statement acknowledging from the bank it was put in, but don't have the numbers, and you are in a position to tell us how much if you wish to do so.

A. I don't know.

Q. Do you mean to tell us you don't know how much your father put in your name?

A. No. I guess I am an optimist and thought Papa would live a long while and it would come to the place when he would need extra money, and he was a big man and hard to handle, and my husband works out all day and he is a little fellow, and when I saw how hard it was to get him up, I thought if the time come he would need help—I thought he would outlive what money he had and use it all, and I think often he thought so too, and likely he just didn't—

Q. It wasn't any concern of yours because it was his money?

A. No, I was concerned with Papa.

Q. You were not concerned if he used all of his money?

A. If he used his part, yes.

Q. Wasn't all this money his, come from Florida?

A. Yes, if it come from Florida.

Q. If it come from the sale of that property in Florida, it was his?

page 55 } A. Yes, as long as he was living and taking care of it. But I did put some at his request in with it.

Q. How much?

A. Well, put some back in each month in the checking account.

Q. How much?

A. I don't know. Different times, different amounts.

Q. You don't mean to tell us part of this money that was put in the joint account was your money, do you?

A. There was two notes put together.

Q. What notes do you have reference to?

A. The savings certificates—I call them notes.

Q. At the First National Bank?

A. Yes.

Q. How much money did that represent?

A. You mean all together?

Q. Individually, and I can add them together if you tell us.

A. You mean any amount I put in?

Q. Yes. Any amount you put in, and any amount your father put in.

A. I just don't have the record of that now.

Q. Do you have it at home?

A. No. I gave it to my sister. Papa asked me to turn over the things I had to her.

Q. That is Mrs. Wood, in West Virginia?

A. Yes.

page 56 } Q. Does she have those papers?

A. She should have.

Q. Those papers, if she should have them—

A. I don't know the actual amount—different dates and how much was put in—but be so much easier to get it from the bank because they keep records there.

Q. You said a few minutes ago you had some records at home.

A. I didn't say "home".

Q. What did you say?

A. Read and see. Actually I didn't keep a record of it—As I say, I didn't just put down a description of everything happened. I just didn't do that.

Q. You were trying to help your father out, you said. Trying to take care of him and help him out?

A. There was not anyone else to do it and I was proud to take care of him.

Q. He wanted to do things for your convenience and make life easier?

A. Obviously.

Ruth Hurt Haynes

Q. That is the reason he put the checking in your name so you could handle things and write the checks for him?

A. That is not correct.

Q. Why did he put it in your name?

A. Well, he talked to lawyers, he said, and had things fixed just like he wanted, and he fixed it that way.

Q. What reason did he give those lawyers?

A. I don't know.

page 57 } Q. Do you know any reason why he should put this money in your name?

A. Yes.

Q. What reasons did he have?

A. I would have to think a little bit—uh—I just don't like to bring out family matters.

Q. Well, we don't either, but this has come out a family affair, and we have to get to the bottom of it. Bound to have been some reason. He loved the other children, and there must have been some reason. If the reason he gave was to make it easier, must have been—

A. Papa had a residence in West Virginia, and Florida, and I don't know the picture there and other places. You wrote me a letter mentioning bonds and different things, and I don't know Papa's transactions at other places. You are just talking little corners here.

Q. Well, let's take the little corner here. What was the reason for putting and/or in your name?

A. He had survivor, made the arrangement before he come to my house, and I didn't go into that with him.

Q. Would you say then you don't know why?

A. I cannot say that. He sat up lots of nights—I don't know what was on his mind.

Q. Tell us why he put it in your name and not in Rufus', or somebody else.

A. When my sister was here in which I was supposed to do all things—Well, he told me when he first come to

page 58 } my house he had told the boys he didn't want any more borrowing money, any more requests, nor telephone calls, anything that kind. He had fixed his affairs like he wanted them, and if there were any requests, or anything, he just wasn't going to honor them, because it was left up to—would be in Jessie's and my hands, anything we might wish—

Q. So in order to keep the boys from borrowing money from him—

A. Some of the boys—That was one of the things he told me.

Ruth Hurt Haynes

Q. One reason it was put in your name was because the boys—

A. No, he said he had spent money on many things he didn't approve of, because he was a conservative man—whiskey and women—

Q. Well most men do.

A. Not Papa. He had earned his money by hard work. He didn't have anything as far as I know but the house, and I think he did want it—and then my sister and I had not had very much of the money through the years that others had had, in business transactions and so on.

Q. You thought this would be a good time to get your share?

A. No I didn't, Mr. Hite.

Q. Isn't it a fact when your father sold out the funeral home business in West Virginia he did have considerable money?

A. I don't know how much.

page 59 } Q. Well, isn't it a fact at that time he went into business with two or three of your brothers?

A. I know Rufus owed him $10,000.00 he couldn't pay, and and he gave him the bus line, which was going broke, and Papa lost a whole lot more money. I am not saying this was Rufus' fault—

Q. Were your father and Rufus and one other brother in partnership?

A. I don't know about the legal arrangements of their working together.

Q. They did operate a bus business?

A. Rufus had these busses, and then the one he operated together I understand, the Blue Ribbon Bus Line, one part of the whole—and he was to hire Lawrence and one other to run it. I don't know how they were involved, don't know for sure how.

Q. They lost money in that transaction?

A. Papa said he never knew how much he lost.

Q. Then after what happened he moved to Florida?

A. Yes, he lived in Florida.

Q. Had your mother died at that time?

A. Mother died a long time ago.

Q. Then he married another lady and moved to Florida. Do you have any way that you could ascertain the amount of money placed in your name and your father's name jointly, and the amount of money placed in your name and Mrs. Wood's name jointly?

A. I could not now.

Q. Can you tomorrow or next day?

A. I don't know.

page 60 } Q. Do you have any papers that would help you ascertain the amount?

A. I can get them from the bank.

Q. Will you request the bank to bring them?

A. Were you subpoened to bring them?

Q. I didn't have a subpoena *duces tecum.*

A. Their name is on the one I got.

Q. I didn't subpoena the books, but can get them. Now, your sister, Mrs. Wood, does she have the same amount put in her name as put in your name?

A. You will have to ask Mrs. Wood.

Q. Do you have the same amount in yours?

A. I wouldn't think so.

Q. Could you give us a rough amount?

A. No, I don't think I should give a rough amount. It wouldn't be of any help.

Q. Then you will have to tell us if you know.

A. I don't know.

Q. Was the money placed in your sister, Mrs. Wood's name?

A. To my knowledge no money was put in her name. The only thing I know is what Papa told me.

Q. You told us the papers were sent to Mrs. Wood. Why were they sent to her if she was not interested?

A. She was interested, because Papa told me I didn't have to account to anybody but my sister. She is the oldest one of us. She is a teacher, and her son-in-law is a lawyer, and he said I didn't have to talk to anybody but her.

page 61 } Q. Why did you have to account to Mrs. Wood?

A. So I would have someone to know what was what.

Q. Well, if no one had any interest in it, what difference would it make what was what?

A. You will have to ask Papa that.

Q. Well, it is your contention, and your answer here, your father had no money.

A. I didn't say that. He told me he didn't have any estate.

Q. Well, is there any distinction in your mind between money and estate? What do you think of when I ask you about his estate?

A. I thought you meant something supposed to be held in his estate.

Q. Didn't mean money?

Ruth Hurt Haynes

A. In my mind, no. It was either/or survivor.

Q. Then you claim all the money in this joint account with you, and it didn't belong to the estate?

A. No it didn't belong to the estate.

Q. And you do claim it as yours?

A. Yes.

Q. Do you claim all of it as yours?

A. Absolutely.

Q. None of it belongs to either of your brothers?

A. No.

Q. Or your sister?

A. I would be free to do with it as I please.

page 62 } Q. But you do feel you had to account to your sister? Why was that?

A. Because Papa told me to do that.

Q. Have you read your father's Will?

A. No, he told me he had Wills as most people did, but it didn't apply to anything I had.

Q. Did you ever get a copy?

A. No.

Q. You didn't know your father said in his Will he wanted all his property to go equally to his children?

A. He said to me that—Because he didn't have an estate.

Q. Your position is, the money he put in your name is money, but it became yours by the mere fact he put it in your name because, as you said, for convenience?

A. I didn't say convenience.

Q. To pay his bills. He certainly didn't say, "I give it to you." Did he?

A. Naturally he had to use it as he needed it.

Q. And he did use as he needed it?

A. He could have, and I could have too.

Q. You didn't use any of it up until he died, for your benefit, did you?

A. I didn't, no.

Q. Because you said you put some he paid you back in.

A. I put it in checking too.

Q. Did you have a savings and checking account too?

A. No.

page 63 } Q. What did you have?

A. Checking and certificate of deposit.

Q. And you still can't tell us how much that certificate of deposit was?

A. There were several of them, and I don't know how much.

Q. Where are they now?

Ruth Hurt Haynes

A. I don't have them now.
Q. Well where are they?
A. I don't have any certificates of deposit.
Q. Where are they?
A. I cashed them.
Q. Where is the cash then?
A. Right here.
Q. What did you do with the money?
A. That is one of the things Papa told me not to—
Q. Told you not to what?
A. I didn't have to account to anybody for.
Q. I thought you said you had to account to your sister?
A. I mean didn't have to account to anyone but her.
Q. Did he ever write you a letter to that effect?
A. No.
Q. And you still tell the court, under oath, and these depositions are to go to the court, Mr. Jacque Pierce is the Commissioner and it will go to the court—You still say you don't know how much those certificates were for?
A. Yes. At the time I compared them on that paper I think that was very nearly correct — I don't have that exact.

page 64 } Q. Could you tell us roughly?
A. I would rather not. I don't mind saying—Until I look it up. I wasn't told—I thought I could look it up later.
Q. How are you going to look it up if your sister has the papers?
A. She isn't too far.
Q. I wonder why you sent the papers to your sister?
A. She has a safe deposit box. I don't trust banks. Papa always said not to trust the bank. My brother found out some things he couldn't possibly have known if the bank had not told him.
Q. Why did you send your sister the money?
A. I didn't say I sent my sister the money.
Q. What did you send?
A. I didn't send anything. I have seen her a good many times since this thing.
Q. You first said you sent her some things, and now you say you didn't. It is apparent you are hedging.
A. I can't catalogue everything.
Q. I know, but you have a good mind. If you want to tell us you can, but if not, we have ways of getting it. Do you want to tell us the whole transaction? We can get it, and we will, but you can tell us if you want to.

Ruth Hurt Haynes

A. When my sister is present. Papa told me not to do anything without her.

Q. Are you willing to make a confession and tell us what happened?

page 65 } A. I don't have any confession to make.

Q. Your sister is a defendant here. When is she coming into Court? She filed an answer. Her attorney is here.

A. Yes certainly, but there is another meeting.

Q. What do you understand by another meeting?

A. Be a meeting at a later date when we present our evidence.

Q. I want to talk with Mrs. Wood too, and we are going to. What day, what month did you have these certificates cashed here in this bank?

A. I don't know that.

Q. Do you remember what year?

A. Yes, I remember what year it was.

Q. What year?

A. '65.

Q. What month?

A. Oh,—What month was it when I come to see you? (To Mr. Price, her Attorney). You said you had been away.

Q. It was long after this suit was brought? Was there a suit then?

A. I don't know—This year—Can't remember just when you—

Q. Can you remember when we brought the suit?

A. I can't remember anything unless I have notes—It was February 1965.

Q. It was after that when you had the money transferred, was it?

page 66 } A. I expect it was right around that, near the first of the year.

Q. You still cannot remember how much money, and you won't tell me approximately how much?

A. It would be easier to get a better idea of the exact amount than to guess.

Q. Will you get us that exact amount?

A. I don't know if I can get the exact amount or not. I will try.

By Mr. Price:

We will go back and determine those amounts, and when I put on my evidence we will get it in the record. I believe that would be the best thing to do.

By Mr. Hite:

Yes, I agree with you, and I thought she would bring them today.

By Mr. Price:

She said what should she do about the records, and I told her not to bother. There was a notice for some people from the banks. I have no objection. It is a pertinent matter, and we will get it in the record.

By Mr. Hite:

All right.

Q. I believe your father spent two winters here with you?

A. He come in February.

Q. And spent all the next winter, and went to your brother in Florida when?

page 67 } A. First part of September or October.

Q. Why did he go?

A. I think he stated about the warmth. He spent twelve winters in Florida. Then too, I want to be fair, I said he spent $150.00 a month, and another brother not here now, very often off a job and on the lam a lot, he went along to help lift him because it was too much for one person.

Q. Do you tell us your father went because of his health?

A. It would be easier on him. It was cold here. He had arthritis, and flu—winter before, pneumonia.

Q. Isn't it a fact, Mrs. Haynes, you wrote your brother Quinton, told him something had to be done about your father. He had become such a burden on you you couldn't keep him any longer?

A. No, Quinton was at my house in the summer, said he didn't know how I took care of Papa. He was such a large man. He was not discarded by me at all. The two of them was finding it difficult to do what I had done all the time, and Rufus had took him on a trip to West Virginia, and he also said he didn't see how I handled him.

Q. Isn't it a fact you did call or write your brother and tell him you couldn't take care of your father?

A. No, no, not at all. He said, "Why don't you come down for the winter?" Papa thought that sounded good. He had a check-up by Dr. Graybeal and we talked it over and thought it would be a good idea. He talked about going to a nursing home—

Q. If your brother, L. Q. Hurt, testified you did call him

page 68 } and tell him something had to be done and you couldn't keep your father any longer, would you deny that?

A. No, I didn't tell him that.

Q. You didn't discuss it with your brother Quinton?

A. Papa and Quinton talked on the phone. I was there. Quinton asked him to come down, and then wrote me a letter he would be glad for Papa to come and he would find somebody to look after him. And we all realized the time had come I could not any longer handle Papa under the circumstances I had done.

Q. What were the circumstances?

A. My home, I just had four rooms, and when Papa come we opened the upstairs and made room for the two boys. There was not room for a hired person to stay in, and Papa didn't want to go among strangers. He just wanted to go for the winter.

Q. His physical condition did have something to do with him wanting to go?

A. He had spent twelve winters there.

Q. You were unable to take care of him at home?

A. I had not given up hope of taking care of him. We had a colored man working for us, had discussed him coming in and helping out.

Q. Hadn't you reached the point where somebody else would have to take care of him?

A. No.

Q. Why did you discuss it with Quinton?

A. I didn't discuss it with Quinton.

Q. Well Quinton testified under oath you did send your father down and he took care of him. Said you couldn't do it any more.

page 69 } A. That is not correct.

Q. Do you remember the occasion here when your father signed some papers down in this bank?

A. Yes.

Q. Do you know what those papers were?

A. It was a paper he had prepared in Florida and brought with him. He had told me he had in mind what he wanted, and his wife had died, she—

Q. She died before he went up here?

A. She died in January and he come to my house in February. He come to my sister's house in West Virginia and stayed awhile. His step-son took him back to Florida, I suppose it must have been two or three weeks, and I went

from here to the funeral, then I come on back home and he went to Florida, he told me later to transact some business he didn't get done. He told Quinton be sure to remind me to get this fixed, so he come on with the papers and we took it down to the bank to Sue Atkinson and we had it fixed.

Q. (producing paper) Who signed your father's name to that?

A. (examining paper) He did.

Q. Is that your father's signature?

A. Yes, bound to me.

Q. It is his name, but did he write that?

A. He wrote that. I couldn't write like that.

Q. Were you present there that day?

A. Yes.

page 70 } Q. I want to file this as an exhibit (Filed Complainant's Exhibit B). May I ask you this, is Mrs. Wood planning to appear here in person in this case?

By Mr. Price:

Yes, Mr. Hite. She is a non-resident but having filed an answer, she will appear.

By Mr. Hite:

Q. Now, Mrs. Haynes, your family was a rather close-knit family, you and your father and brothers and sister?

A. We were scattered out.

Q. Got along beautifully? Everybody happy and congenial?

A. Like an average family, yes.

Q. Do you remember calling Rufus and telling him you would have to do something about your father, put him in a nursing home?

A. Rufus had been to my house and we discussed how sick he was getting—You mean before Papa left our house?

Q. Yes.

A. No, I never mentioned a nursing home.

Q. What did you call him about?

A. I called Rufus several times to come to see Papa.

Q. Did you ever talk with Rufus about putting your Father in a nursing home?

A. Not before he left my house.

Q. Did you ever after?

A. I was talking about his condition in Florida, and Quinton said he had just about had it, and there we were caught in the middle of winter in Florida, thought he

page 71 } would talk to him about nursing home. I was

certainly not going to put Papa in a nursing home if he wanted to come back here in the winter.

Q. Did you ever talk to Rufus, say you were worn out and would have to put Papa in a nursing home?

A. Rufus said he would have to pay for someone to care for him if he come to his house.

Q. Did you call Rufus?

A. I didn't say, "Rufus, we will have to put Papa in a nursing home." I didn't demand.

Q. You did discuss that before your father went down to Florida to stay with Quinton?

A. No, not a nursing home.

Q. Did you discuss some additional help before he went to Florida?

A. It was not a matter urgent enough to call. I might have just mentioned it.

Q. Did you just mention it then?

A. I don't know, could have.

Q. How long was it before your father left in the fall of '63, I believe, how long was it you had been discussing or feeling you couldn't take care of him any longer?

A. I didn't make it an object of discussion, but he was obviously sick, I would soon have to call in extra help to care for him.

Q. When did you reach that conclusion?

A. I didn't reach any conclusion.

page 72 } Q. You certainly reached it before he went to Florida. Wasn't that the reason he went to Florida, because you couldn't keep him any longer?

A. No.

Q. You deny that?

A. Yes.

Q. Do you deny you didn't tell your brothers something had to be done?

A. I didn't just tell them. No doubt I did talk with them as brothers, I would have to get help if I take care of him.

Q. But you couldn't take care of him as you were?

A. Something had to be done. I had the facilities though.

Q. And he had the money too, didn't he? But sometimes money isn't the answer to take care of old people. Are you familiar with your father's handwriting? (presenting paper)

A. Yes.

By Mr. Price:

What part, Mr. Hite? Obviously that is not all written by the same person.

Ruth Hurt Haynes

By Mr. Hite:

Q. Is that his handwriting (pointing)?

A Yes.

Q. Those his initials?

A. Yes. I never knew him to put his initial. He always put his name. His name meant a lot to him. This initial really don't look like Papa. I don't think it is. But this is his writing. (pointing to another section)

page 73 } Q. I will read just what you have point out there—"Credit money placed in Blue Ribbon—" Will you read that?

A. This does not look like his writing. This is not his. I would say that is not his signature. That amount doesn't look like Papa's figures—It could be.

Q. Would you read it so the secretary could copy it?

A. (Mrs. Haynes hands the paper to the Secretary; and Mr. Hite take it and reads)

By Mr. Hite:

"Credit money placed in Blue Ribbon $1600.00. Part of the $1600.00 paid direct to creditors from Fayette Bus Lines account. Credit from sale of house on Central Avenue, $4,-975.00. J. C. H."

Q. You think everything is all right except "J. C. H."?

A. And the $1600.00, whatever it is.

Q. I believe your father left a Will which is probated here in the Clerk's Office, and you say you haven't seen a copy of it?

A. No.

Q. During your father's lifetime isn't it a fact that he treated all the children alike, fairly and squarely?

A. In what way?

Q. In every way.

A. In money matters?

Q. Yes.

A. No.

Q. Which did he prefer?

page 74 } A. I don't know that he preferred—but it wasn't alike.

Q. Did he have any preferences?

A. I wouldn't know.

Q. Did he show a preference for anyone of his children, even you? He never showed any preference to you, did he, over your sister?

A. No.

Ruth Hurt Haynes

Q. And the only child he might have had a preference for is the unfortunate brother in West Virginia?

A. No.

Q. Didn't he want to take care of him?

A. No.

Q. You apparently have not read the Will at all.

A. I mean, not above those that are well.

Q. Didn't your father show great concern for that brother, wanted to take care of him?

A. In what way? He is a ward of the state. Papa didn't pay for anything for him.

Q. That is true. West Virginia does not have a law like we have requiring you to pay. Would you be surprised if he made a special request in this Will for this brother?

A. What would he do with money?

Q. Just to see that he is properly buried and cared for.

A. His grave is in the cemetery, place for his grave, and he made arrangements with the funeral director that he sold out to.

Q. Do you remember whether your father at any time had ever placed money in a joint account with you, or any of your brothers, or your sister?

page 75 } A. No, I don't know.

Q. You just don't know how he had handled his affairs? Until he came to live with you you don't know how he handled his affairs?

A. No.

Q. And you had not been in business with him, contributed any to his success or failure?

A. No.

Q. Are you employed?

A. No.

Q. How many children do you have?

A. Five.

Q. What does your husband do?

A. He is a well driller.

Q. You have never been employed since you have been married?

A. When I lived in Roanoke five years.

Q. How many years has it been since you have been employed?

A. Four years.

Q. I will now rest, reserving the right to recall her after having heard what her sister and the bank have to say.

Ruth Hurt Haynes

CROSS EXAMINATION

By Mr. Pierce:

At this particular time I have no questions, but would like to reserve the right to ask her some questions later.

By Mr. Graybeal:

Q. Mrs. Haynes, you say your father talked with some attorneys and especially the attorney who prepared this paper which has been presented as Exhibit B here. Do
page 76 } you know if he consulted any Virginia attorneys after he came to live with you?

A. No. I think I would have known.

Q. You were not present when they prepared the papers in Florida?

A. No.

Q. Were you present at the time he prepared his Will, or do you know the date of the Will?

A. No.

Q. He didn't prepare one after he got here?

A. No.

Q. I thought you said you thought your father said this money would not be in his estate?

A. That is right.

Q. He made the statement it would not be in his estate?

A. Yes.

Q. When did he make that statement?

A. Sometime while he was living with me. I don't know any exact time.

Q. He made the statement also that things were fixed the way he wanted them?

A. Yes.

Q. After he went back to Florida did you receive any information about the Will or the monies which he had?

A. No.

Q. After he went back you did send some money to your brother?

A. Yes.

page 77 } Q. At whose request was this sent?

A. It was pre-arranged before he left.

Q. Did you send any other money other than what was pre-arranged before he left?

A. $125.00 was the amount arranged, but Quinton wrote his grocery bill had gone higher and his utility bill, and by telephone Papa asked me to make the next check $150.00.

Q. Did he direct from what source you would get this money?

A. He knew where I would get it.
Q. He didn't specify where you would get the $150.00?
A. No.
Q. Did he transfer any money to Florida?
A. No, he didn't want any of it there.
Q. Did he take any legal papers or personal papers with him?
A. No.
Q. Didn't ask to take any with him?
A. No.
Q. Didn't ask for the savings certificates?
A. No.
Q. How long after he got here was the bank account set up?
A. When he got here.
Q. Did he ever go to the bank himself toward the latter part of his stay here?
A. No, not toward the latter part.

page 78 } Q. Could he use the telephone?
A. He used it — in transacting business. He didn't hear very well.

Q. Did he ever specifically say that he didn't intend for the boys to have any of his money?
A. No.
Q. He didn't say that. Did he ever say that he didn't want the boys to have any of this money?
A. He said he had it fixed like he wanted it.
Q. And he had consulted with attorneys in Florida prior to this?
A. Yes.
Q. Do you give the secretary permission to sign your name to your deposition, when it is written up?
A. Yes.

(And further this deponent saith not.)

RUTH HURT HAYNES

BY LOUISE C. JOYNER
Secretary

By Mr. Hite:
For the sake of the record I would like to put Mr. Rufus Hurt back on and introduce this.

Rufus C. Hurt

RUFUS C. HURT, who had previously testified in this case, is recalled to the stand, and deposes as follows—

DIRECT EXAMINATION

By Mr. Hite:

Q. Mr. Hurt, I hand you a trust deed note page 79 } dated June 28, 1950, in the sum of $6,844.35, and ask you what that is, what that note represents? (Complainant's Exhibit C)

A. It represents a sum of money I owed my father, which was previously testified to both by myself and my sister, Mrs. Haynes, together with a trust deed against the home I owned at Oak Hill to secure any money I owed him if he would lose anything in this bus transaction. That is his writing on the back.

Q. Whose initial is that?

A. It is my father's, and I think anybody could prove that also.

Q. Did you see him write that?

A. Yes.

Q. Who wrote this below his initial?

A. I did.

Q. All above his initial is his?

A. Yes.

Q. I ask you to file this as Complainants' Exhibit C. We have some copies of a deed and mortgage note here I would like to get in the record. They are some copies that came up from Florida, and we would like to introduce them, certified copies there. We will find these as Complainant's Exhibit D and E.

By Mr. Price:

For what purpose are you filing them? Has it been established who signed them, Mr. Hite?

By Mr. Hite:

They are the basis for this transaction in page 80 } Florida. I want to show he owned the property in Florida and how it was handled. It all culminated in this here. Warranty deed by J. C. Hurt—at that time his wife was dead—deed dated January 30, 1962. And note dated January 30, 1962 from the Orange Trading Company, Florida. Did you ever have a joint certificate, borrow with your father, have a joint account?

A. A good many years ago, yes.

Q. I hand you a certificate dated September 17, 1948 (Mr. Price examines papers) for three share loan notes here September 17, 1948, $3,000.00, October 8, 1948, $1,000.00, and August 1, 1948 $2,300.00, signed by you and J. C. Hurt. Was that your father?

A. Yes.

Q. What were those notes for?

A. They represented the money I owed my father. The reason I brought them they show these particular accounts in the name of J. C. Hurt or Lawrence Hurt, joint survivorship, all three of them.

Q. They all show that was the pattern of his life. (above described share loan notes filed, Complainant's Exhibit H)

A. I might add my brother testified he didn't consider that money his even if they did have joint survivorship. There was always somebody on—It was the pattern of his life.

CROSS EXAMINATION

By Mr. Graybeal:

Q. I believe you said these last three evidences debts you owed your father?

page 81 } A. Yes. I gave him a deed of trust on my home at Oak Hill to secure that debt, and on the back it shows it paid.

Q. Does the survivorship account which you set up exceed the amount you owed on the note?

A. I didn't set up any account. I looked through my old records and found those. My father set that particular account up at the First Federal Savings and Loan, and in his name and Lawrence's, and it did exceed the amount I had borrowed.

Q. You had the proceeds of this note with survivorship with your father?

A. Exhibit F set up a loan in his name and my name. We were in business jointly at that time. That is self-explanatory. You will note this, "Loan secured by pledge share account book No. S296, J. C. Hurt et al. Present value of $15,983.94." Refers to this joint survivorship. And this Exhibit H. Those things say a whole lot.

Q. This was, then, money that you had borrowed from your father?

A. Yes, sir.

Rufus C. Hurt

Q. In the event of his death you would have held the note which you had signed payable to him. You would have succeeded to it?

A. Yes.

Q. Did he ever intend, as far as you know, that in the event of his dying before you, in effect this would be a cancellation of your note?

page 82 } A. I don't know what he intended. It wasn't what I intended.

Q. That would have been automatically cancelled.

A. I always pay my debts.

Q. I am trying to get a distinction.

A. It could have in the event of his death I would not have been liable to pay it perhaps, because the names were jointly, but I knew that I owed it.

Q. I am just trying to get a distinction between the various transactions on which we have documents here.

RE-DIRECT EXAMINATION

By Mr. Hite:

Q. These last exhibits, Exhibit H, in three parts, shows your father had set up an account in the name of J. C. Hurt and Lawrence Hurt.

A. All three of those documents state that very clearly.

Q. And the documents you had signed and your father had signed?

A. Yes. I didn't know they existed till I looked through some old documents and found them.

Q. Exhibit C shows you had already paid it.

A. Yes.

Q. Exhibit C is the trust note evidencing the debt you owed your father?

A. Which I voluntarily gave him, and which is recorded at the courthouse and released.

page 83 } Q. On the back of which is the release in your father's handwriting.

A. Yes.

RUFUS C. HURT

BY LOUISE C. JOYNER
Secretary

The taking of these depositions is continued to a future date to be agreed upon.

Filed in Clerks Office Circuit Court of Montgomery County 21 day of Sept. 1965.

A. B. CORRELL, Clerk

page 84 } January 13, 1966

The continuance of the depositions which were continued to this date, January 13, 1966, by agreement of all parties concerned, which depositions are to be read on behalf of the plaintiffs in the case of Rufus C. Hurt Et Als vs. Ruth Hurt Haynes Et Als.

Present:
Rufus C. Hurt in person, and by his attorney Bentley Hite.
Ruth Hurt Haynes and Jessie Hurt Wood in person, and by their attorney, Jay A. Price.
J. P. Graybeal, Guardian *ad Litem* for Dallas Kemper Hurt, Incompetent.
Jacque W. Pierce, Special Commissioner.

RUTH HURT HAYNES, being duly sworn, deposes and says—

DIRECT EXAMINATION

By Mr. Price:
Q. Mrs. Haynes, there has already been introduced a photocopy of a certain deed of trust made by your father in Florida, and the attorney for the respondents in this matter has the original. I would like to introduce on behalf of the respondents a true copy, since this is the only evidence of the debt, and hand you this copy, and will you state if that is a true copy of the paper made by your father?
A. Yes. (examining paper)
page 85 } Q. I would like to introduce that as Respondents' Exhibit I (so filed). Mrs. Hurt, at the time your father died, in February, 1964, there were to your knowledge certain funds in existence. Would you state the amounts and how listed—that is, checking or savings? And for the record, I hand you a letter I wrote for you to the bank, and their reply.

Ruth Hurt Haynes

A. I wrote Mr. Harlow, said, (reading from letter) "My lawyer needs to know the amount of savings and what form it was in at the time of Papa's death in February 1964. The hearing is tomorrow and I am not sure of these exact amounts. I would like also to have the amount deposited by Papa which he transferred from Florida in February or March, 1962. This was the J. C. Hurt, Ruth Hurt account as you remember.

Thank you for your kindness,
Ruth Hurt Haynes."

I would like to say he didn't ask me that question, but I couldn't answer. Shows $1500.00.

Q. That is $1500.00 what was put in the First National Bank of Christiansburg in 1962, is that correct?

A. The joint checking account.

Q. At the time of his death what was in the checking account?

A. It was around $100.00.

Q. In response to your inquiry about the amount of money in savings at the time of his death, what was the bank's reply?

A. There was a time certificate of $3300.00.

page 86 } Q. What money do you now have in your possession, or have control over, as a result of those funds?

A. $3,658.00.

Q. I believe that is all I have.

CROSS EXAMINATION

By Mr. Hite:

Q. Mrs. Haynes, that would be $4,900.00 that apparently was transferred from your father to you—I mean, transferred by your father here to this bank?

A. No, he received payment before he died on the place.

Q. You have listed the total transfers amounting to $4,900.00?

A. There wasn't a transfer. He had received—He was at my house over two years.

Q. Did you receive anything else from your father?

A. Yes.

Q. What other transfer of money did you receive?

A. My sister has that.

By Mr. Price:
That is the reason I am going to put her on.

By Mr. Hite:
All right. Before your father left your home here, just prior to his death, and went back to Florida, I believe he was partially paralyzed in his right side and right arm?
A. Yes, he was.
Q. You said "Yes" to both?
page 87 } A. Yes.
Q. How long had he been paralyzed, or partially paralyzed?
A. I don't know really, but it was—I can find the date here. I think perhaps—It was a gradual process of course. He had arthritis.
Q. Had been growing worse gradually over a period of several years?
A. Not several years—months.
Q. Months then, and he became almost totally incapacitated and unable to take care of himself just before he left?
A. Yes, physically.
Q. Physically. You say you have now $3,658.00 in your control?
A. Yes.
Q. Did your father transfer any more money from Florida or West Virginia to your joint account, other than the $1500.00, the $100.00, and the $3300.00?
A. No.
Q. Total of $4,900.00 then was all he transferred to your account?

By Mr. Price:
The $100.00 she spoke of at the time of his death would be inclusive in the amount she spoke of.

By Mr. Hite:
$4,800.00 then.

By Mr. Price:
Yes.
page 88 } A. I didn't follow you on the figures there but I am sure you are right, when he had the $1500.00 transferred to his account.

Ruth Hurt Haynes

By Mr. Hite:

Q. How about the payment for certain lands he sold in Florida?

A. That was set up on a 5-year basis, which has not been paid yet.

Q. Did you receive any of that money?

A. Oh, yes.

Q. How much?

A. I don't know whether I have it broken down that way. $3560.00 is what he received anyhow. That was here after he come to my house.

Q. How much?

A. $3560.00.

Q. And that was in addition to the $4800.00?

A. No, this was in addition to the $1500.00 that he brought with him.

Q. In addition to the $1500.00 he brought with him?

A. Yes.

Q. What else did he give you?

A. In February '64 I brought the things I had to Attorney Price here and he wrote the company, and they wrote him back for his death certificate I think, and so on, and I think it was about March before this amount was received, $3,472.00.

page 89 } Q. $3,472.00?

A. Yes.

Q. Was that included in any money you heretofore listed? Was that in addition to this other?

A. Yes.

Q. And that makes a total of a little over $8,000.00. Have you received any money in addition to that?

A. Another payment. I think that was $3,432.00.

Q. All right, that would make roughly $11,500.00. Have you received any monies in addition to those you have just mentioned

A. No.

Q. Is that all you have received?

A. Yes.

Q. What sums do you have in your hands now—$3,658.00?

A. We will have the total amount for you when my sister testifies.

Q. That is what you say you have in your hands?

A. Yes.

Q. What became of the difference between $11,500.00 and $3,600.00 in '58?

Ruth Hurt Haynes

A. It is deposited. My sister will testify to it.
Q. That is deposited with your sister?
A. That is money—I mean she has the exact figure.
Q. Did you transfer it to your sister, or how did she get it?
A. Yes.
page 90 } Q. Do you have the dates you transferred it?
A. No, but it was—No, I don't have.
Q. I believe your sister is Mrs.—What is her name?
A. Mrs. Jessie Hurt Wood.
Q. Mrs. Jessie Hurt Wood, and they live in West Virginia?
A. Yes.

By Mr. Pierce:
No questions.

RE-DIRECT EXAMINATION

By Mr. Price:
Q. Mrs. Haynes, in the original bill of complaint it is alleged in Paragraph 8 that John Calvin Hurt had $2,000.00 in Government bonds. Do you have any knowledge of the existence of such bonds?
A. No, I have not.

RE-CROSS EXAMINATION

By Mr. Hite:
Q. How much more is owing in Florida?
A. $6,200.00. Two more payments. Of course, there is some interest on each. The first payments were larger because of the interest, of course.
Q. Do you know when they are due?
A. Yes, January 30, this coming January 30, and the following year.
Q. '66 and '67?
A. Yes.

page 91 } By Mr. Pierce:
Do you permit the secretary to sign your name?
A. Yes.

Jessie Hurt Wood

(And further this deponent saith not.)

RUTH HURT HAYNES

BY LOUISE C. JOYNER
Secretary

JESSIE HURT WOOD, being duly sworn, deposes and says—

DIRECT EXAMINATION

By Mr. Price:

Q. Mrs. Wood, you are also a respondent named in this suit, and I ask you, as alleged in Paragraph 8 of the bill of complaint that said John Calvin Hurt has $2,000.00 in Government bonds held by Ruth Hurt Haynes and *Jessis* Hurt Wood. Do you know anything about such bonds?

A. I never saw any bonds, but I heard them mentioned by my brothers at times.

Q. You never knew he had any such bonds.

A. No, and he kept some of his papers in my lock box.

Q. What amount of money do you have that come from Ruth Hurt Haynes?

A. $7,200.00.

Q. Since you received that have you made any payments from that sum?

A. No. There are some things supposed to have been taken care of, but I was away over the summer and just put it off.

page 92 } CROSS EXAMINATION

By Mr. Hite:

Q. Mrs. Wood, you say you have $7,200.00?

A. Yes.

Q. Cash?

A. Well, it is on deposit—Guess you would call it cash.

Q. That is right. It is the best kind. Which bank?

A. Fayette County National Bank, Fayetteville, West Virginia.

Q. Mrs. Wood, how did the money come to be transferred to you?

A. Well, we had an understanding. My Dad said he wanted to leave the money to my sister and me, and that he put it in her name because he was staying with her, and we were

to take care of things, decide together what we wanted to to. We made some promises, some things he wanted done. And I thought he was in such good condition, man of his age would live ten years, and I expected him to use the money. I never had gotten any money from him. Never occurred to me.

Q. He wanted the money used for his own benefit.

A. He wanted to use it if he wanted to.

Q. Assume he would live ten years?

A. It would probably been used up and he would probably be staying at my house.

Q. He wanted the money used for his benefit that was the reason he put it that way?

page 93 } A. I don't quite understand your question.

Q. You just said it was to be used for his benefit if he had needed it.

A. Certainly. I think anyone in the family would tell you he would have done what he wanted.

Q. It was all money, the $7,200.00, that came from your father through your sister, after he died?

A. Yes.

Q. How long after he died?

A. I am not sure. I didn't look at the date. I can find that and let you know.

Q. But it was sometime after he died?

A. Yes, after we began to get some of it.

Q. Do you know how many months after his death?

A. No.

Q. Didn't you know he left a Will?

A. He told me he didn't have a Will. We had a steel box at home and he had one there, and I brought it to him, he wanted to fix it up. And I brought it to him and he tore it up. He always kept some papers in our strong box.

Q. When did he tell you he was going to destroy the Will?

A. After he sold this property. He said he was not going to leave any estate. He told every one that come that would listen about it.

Q. Could you give us any idea about when it was?

A. Well about every time I saw him—when he sold in Florida—and when he had some dental work done he received—

page 94 } Q. What year?

A. In '62, January '62 and in July '62.

Q. Told you then he was not going to leave a Will?

Jessie Hurt Wood

A. He said he was leaving no estate, and as far as I knew he had all the Wills destroyed.

Q. When did you learn he did leave a Will?

A. Well, sometime after he had been dead, sometime, I understood my brother found one but he didn't tell us at first.

Q. Did you inquire about a *Well,* to see if it had been probated?

A. I didn't inquire if it had been probated, just asked when it was made and who were the witnesses, like anybody else would.

Q. Did you try to find out when it was written and when probated?

A. Well, my sister told me I think.

Q. She told you shortly after your father died the Will had been probated here in Montgomery County, didn't she?

A. I think it was in March after he died in February.

Q. That was long before she transferred that money to you, wasn't it?

A. Yes. I suppose so. I wasn't in any hurry.

Q. She told you the Will was probated. Didn't she send you a copy?

A. No. I have never seen a copy of it yet.

page 95 } Q. She told you the Will had been probated here in Montgomery County, and she told you the Will provided the property be divided equally between the children?

A. No, I don't remember. He told me he wasn't leaving an estate. I hadn't worried about a Will.

Q. But that was more than a year before he died he told you that?

A. He didn't make this Will after that time, did he?

Q. Did you inquire when he made the Will?

A. I know it was a long time ago.

Q. After you found there was a Will and it had been probated, you never made any effort to find out how the Will provided his property to go, but you accepted from your sister $7,200.00 knowing it was money that had been your father's?

A. I never gave it any thought, because I knew I was supposed to have some of this, the way he had it set up. The Will wasn't bothering me.

Q. The Will wasn't bothering you. You thought it was your money?

A. Yes, he told me it would be mine. He had some things to take care of he wanted me to do.

Jessie Hurt Wood

Q. If you thought it was yours why did you put it aside?
A. I didn't need it right then. I teach school and have a husband.
Q. Did you put it in the bank in your name?
A. Have it in a joint account.
page 96 } Q. With whom?
A. With my sister, Ruth Haynes.
Q. If you thought it was yours why did you put it in a joint account?
A. I am a busy woman and just don't have much time for that sort of thing.
Q. But you had time to inquire about this Will?
A. I didn't think it was necessary. I have never had any experience in that kind of thing.
Q. You merely took the money and put it in a joint account with your sister who had sent you the money. Didn't you know at the time there was going to be a question raised about the money?
A. No, not in particular.
Q. You did not in particular? Didn't Mrs. Haynes tell you your brothers were questioning about the money?
A. They were asking about bonds, and a lot of things he didn't have.
Q. Didn't Mrs. Haynes tell you I wrote her early in February 1964, told her her brothers were asking the question about how much money she got? Didn't she tell you I wrote her?
A. I think she sent me some copies my brothers wrote wanting a strict accounting, or something.
Q. Didn't you answer?
A. No.
Q. Why not?
A. They were not to me. They were copies.
page 97 } Q. In March 1964 did you have a conversation with your sister, Mrs. Haynes, about your father's estate?
A. In March?
Q. Yes, March 1964, shortly after he died?
A. I don't know. I might have had. I don't see her very often.
Q. Do you know attorneys T. A. Miles, Miles and Miles, in Fayetteville?
A. Yes, I do.
Q. They were your father's attorneys when he was in business in West Virginia?

Jessie Hurt Wood

A. The firm of Mayhan—He changed several times, but through the years when he was undertaking business, and when he was at my house, he usually had Mr. Mayhan.

Q. In May 1964 did your sister write you or contact you with regard to your father's estate?

A. I don't know that she ever made any special contact with me about her trip or anything. We might have mentioned it when we would see each other, but I don't remember any particular date, or reason.

Q. Would it not have been some difference to you if you had known your father left a Will?

A. No, I don't think so, because I was going by what he said.

Q. You realize wills are such as of the date a man dies. They become effective the date a man dies?

A. No, I didn't know that.

page 98 } Q. Certainly on the date your father died you had no money in your hands that belonged to him, or might have belonged to him, on that date, did you?

A. No, I didn't.

Q. And he had not placed any money in savings account or joint bank account with you on that date?

A. No.

Q. So anything he might have owned on the day he died would have been controlled by his Will?

A. I don't know that. I have no experience with that kind of thing.

Q. You had never had any money belonging to him in your joint account?

A. No, never.

Q. He had never had any land in your name jointly with his?

A. No.

Q. The only money you have not is the $7,200.00 forwarded to you several months after your father died, by your sister Mrs. Ruth Haynes?

A. Yes.

Q. You put it in your account and are holding it for yourself and Mrs. Haynes?

A. Yes.

Q. Have you spent any of it?

A. No.

page 99 } Q. You are relying on it solely for the reason your father told you a year and a half or two years before he died—

A. He told me all the time, would go over and over that, said he felt he had done enough for the boys, and what little money he had he wanted to give to us.

Q. Is that the reason you think you should hold the money?

A. Yes, certainly.

Q. When did he first start telling you that? How many years prior to his death?

A. Two. He told me when I come to see him. He would kindly always go over things like that with you. It was much in his conversations.

Q. Did you see him after he returned to Christiansburg to live with your sister, after he returned from Florida?

A. Oh, I saw him several times. I made a special effort to come to see him.

Q. Was he partially immobilized or incapacitated when he came—Wasn't he?

A. The last time he came to my house—He was there on Memorial Day before he went to Florida—He came to my step-brother's funeral just before he left for Florida.

Q. Are you speaking of his first time to Florida, when he went to live with your brother in Florida?

A. I saw him before he made the last trip. He always came to my house. I am the oldest and after our mother died all the family made that their headquarters.

page 100 } Q. When he was staying with Mrs. Haynes did you see him?

A. Yes, I saw him quite often.

Q. How long did he stay with Mrs. Haynes?

A. He came in February and stayed all the time until he went to Florida.

Q. When did he go to Florida?

A. In October of the year before he died—'63, wasn't it?

Q. He stayed here about eight months, with Mrs. Haynes?

A. Oh, nearly two years. That first year he was very active. Went places. She took him up home, trip to Florida by plane—It was just that last he didn't want to move around.

Q. He became partially paralized in his right side, I believe?

A. Yes. He was at my home a number of times.

Q. Was he able to use his right hand and right arm?

A. He could move some. My nephew came to visit, and after he come back he said he seemed more like himself.

Q. Then he went back in October '63, before he died in '64?

A. Yes.

Q. And he stayed with whom?

A. Quinton Hurt, my youngest brother.
Q. And he stayed with him, and died with him?
A. Yes.
Q. Did you see him after he left here and went back to Quinton's?
page 101 } A. No.
Q. You didn't pay any money for him while he was sick?
A. No, just gifts, write to him, send him papers, things to read. When he lived here he knew everyone, and I could do more good for him by telling him about what people were doing, that sort of thing.

By Mr. Pierce:
Q. Mrs. Wood, this $7,200.00 is in a joint account with you and your sister at present?
A. Yes.
Q. If something happened to either one, suppose something happened to your sister, who would the money belong to then?
A. It is in a joint account, would belong to the other.
Q. If your sister died, would you claim the $7,200.00?
A. I would claim it, and then if she told me what to do I would do it.
Q. You said your father told you he was not going to leave any estate?
A. Yes.
Q. Did he ever specifically tell you he wanted you and your sister to divide it up, what he had left?
A. Yes.
Q. He did? When he told you that were you the only one *where,* or were you together?
page 102 } A. I knew it before my sister knew it. When my step-mother died he stayed there awhile afterwards. That was when he talked about it. He talked to all my family, anyone who wanted to listen. But I really didn't think too much about it.
Q. Did he tell you at the time the property was sold, or for a number of years?
A. No, just—
Q. Year or two before he died?
A. Yes.
Q. Did he tell you he wanted you and your sister to divide it equally?
A. Not exactly that.

Q. What did he say?

A. He wanted to do something for us because he never gave us any money and had helped the boys in different ways. Said he had helped the boys.

Q. Suppose the joint account with Ruth and your father, suppose she hadn't given you any?

A. I knew her well enough I didn't have to worry.

Q. She could have.

A. Yes, but that didn't bother me.

Q. Did your father tell you he had told Ruth?

A. We both knew. He might have told us when we were together.

Q. The boys were not with you at the time?

A. No.

page 103 } Q. Do you know whether he said anything like that when the boys were around?

A. I don't know. I wasn't with him when the boys were around.

Q. That will be all.

By Mr. Hite:

Q. All you have is what he told you in the presence of other people, that he didn't expect to leave any estate?

A. I could find enough witnesses, I suppose.

Q. Who are they?

A. I have a husband. I have children. I have neighbors.

Q. Who heard him say that other than Ruth?

A. My husband, E. B. Wood, Sr. My sister. My son, E. B. Wood, Jr.

Q. Said he was not going to leave any estate?

A. Yes.

Q. But never made any gifts to you, never gave you anything before he died?

A. No.

RE-DIRECT EXAMINATION

By Mr. Price:

Q. When you went to deposit the money in bank, was it refused for not having the proper parties there to endorse any of the instruments?

A. No.

page 104 } Q. When Mr. Hite speaks of "estate", do you know what we mean by "estate"?

A. I think when you leave property that could be divided.

This trust deed, I think that goes to the person it is made to. He was not leaving any property or anything anybody could divide.

RE-CROSS EXAMINATION

By Mr. Hite:

Q. Did you know he left some property in Florida?

A. He didn't leave any that I know of. I hope there would be an estate.

Q. Haven't you heard of some people owing him some money in Florida?

A. No.

Q. Hasn't your sister told you some people owe him some money in Florida?

A. No.

Q. As far as you know, nobody owes him anything in Florida?

A. No—Oh, you mean that trust deed? I know that, certainly. Knew that all the time. I knew he was going to fix it like that because he told me.

By Mr. Pierce:

Q. Do you give the secretary permission to sign your name?

A. Yes.

(And further this deponent saith not)

JESSIE HURT WOOD

BY LOUISE C. JOYNER
Secretary

DIRECT EXAMINATION

page 105 } FRANK K. MAYHAN, being duly sworn, deposes and says—

DIRECT EXAMINATION

By Mr. Price:

Q. State your name, age and occupation please.

A. Frank K. Mayhan, 44 years old, Fayetteville, West Virginia, Attorney at Law, Banker.

Frank K. Mayhan

Q. Mr. Mayhan, has John Calvin Hurt had any type of accounts in the bank in which you are connected?

A. Yes sir, he has in years past.

Q. What type of accounts?

A. In the twenty-five years immediately preceeding his death it is shown he and his wife Rachel kept accounts in the Fayette County National Bank, savings and checking.

Q. At any time during those twenty-five years was there a joint checking or savings account with anyone?

A. Mr. Hurt never had a joint account in that bank with anyone other than he and his wife. Both had separate accounts.

Q. Do you have personal knowledge generally of Mr. Hurt other than just business matters?

A. Yes, I married Mr. Hurt's granddaughter. Knew him all my life, lived just across the street from him when I was a youngster.

Q. Did Mr. Hurt ever talk to you about his financial arrangements?

A. I never represented Mr. Hurt. My father did on occasion.

page 106 } By Mr. Hite:

Object to anything he might have told you. Would be hearsay in this case.

By Mr. Price:

I would like to ask the difference between evidence being put on now when like statements were made by the complainants.

By Mr. Hite:

The evidence given by the parties, complainants and defendants, is different from the evidence of an outside witness, which is purely hearsay.

By Mr. Price:

Q. When was that he talked to you, Mr. Mayhan?

A. Ever since I married his granddaughter. I was fairly close to him because I enjoyed his company so much. I am quite a bit of an historian, and Mr. Hurt loved Fayette County history. On various occasions he would discuss with me some of his personal family and financial problems.

Q. Did he talk to you around the end of '61 or '62 about any finances?

Frank K. Mayhan

A. I believe on the occasion of his wife's death, January '62, I am not sure of the month, he was in Fayetteville for several days, and I talked with him on one occasion and he—

By Mr. Hite:

Mr. Commissioner, I object to the testimony as purely and simply hearsay.

page 107 } By Mr. Price:

Your objection is in the record, Mr. Hite. I don't *thing* it is necessary—

By Mr. Hite:

I want to emphasize my objection. I am sure the Judge wouldn't read it, and don't *thing* you will.

A. He told me he was selling his property in Florida, and that, I believe—Don't remember the date in January—but he did tell me the State was taking his property for the highway and he was going to sell it, and all his life he had taken care of the boys and never done anything for the girls and wanted them, if anything happened to him, for them to have the money from that property. And he asked my suggestions, and I did suggest a note payable to himself and the daughters secured by a deed of trust payable to them and the survivors. He didn't indicate to me whether he would take my suggestion, I know he did sell his property later.

Q. Did he make any suggestion if one would have it, or he wanted the other to have it?

A. No. He just said he wanted to do something for the girls.

CROSS EXAMINATION

By Mr. Hite:

I renew my objection and ask the evidence be stricken. Without waiving my objection, I will ask Mr. Mayhen—

page 108 } Q. Do you know Mr. John H. Toler?

A. Yes. He was my high school and grade school principal.

Q. Do you know Mr. W. H. Cunningham?

A. No.

Q. G. W. Bennett?

A. I know Woodrow Bennett who is presently the town policeman.

Q. Would you recognize Mr. Tolar's signature?
A. I doubt it, not having seen it for a good many years.
Q. Mr. Tolar was living in 1951, wasn't he?
A. He is still living, isn't he?
Q. Yes, I think he is. He was the school principal there a good many years?
A. Yes. He is advanced in age now. In '51 I think he was principal in Kingston, Fayette County.

By Mr. Price:
Q. Do you give the secretary permission to sign for you?
A. Yes sir.

Mr. Commissioner, the respondents will rest at this point, subject to the condition that if additional testimony is put on we will reserve the right of rebuttal.

By Mr. Hite:
All right. Suppose we continue to one week from this date.

page 109 } By Mr. Price:
I can't come on that day.

By Mr. Hite:
May I ask Mr. Mayhan a few more questions?
Q. Are you actively connected with the bank?
A. I am president of Fayette County National Bank.
Q. Do you know how Mr. Hurt handled his accounts in the Eau Gallie banks?
A. No.
Q. You don't know how he handled his accounts in other banks?
A. No sir. I understand he did have an account with *O*. Q. while he was in Eau Gallie.
Q. Do you also know about with G. Lawrence Hurt?
A. Not in the Fayette County National, no sir.
Q. How about Eau Gallie?
A. I don't know. I have no way of knowing about things down there.
Q. But you did know he had one with one of his sons?
A. With Quinton.
Q. I believe you married Mrs. Wood's daughter?
A. Yes.
Q. You all live there in Fayetteville?
A. Yes.

(And further, this deponent saith not.)

FRANK K. MAYHAN

BY LOUISE C. JOYNER
Secretary

page 110 } RUFUS *L.* HURT, takes the stand—

DIRECT EXAMINATION

By Mr. Hite:

I would like to introduce this. You are Mr. Rufus Hurt?

A. Yes.

Q. And have been sworn here before. Would like to introduce this. Tell us what this is.

A. A photostat account of J. C. Hurt or G. Lawrence Hurt, and the address shows Eau Gallie, Florida. But this is with the Fayetteville Building & Loan, Fayetteville, West Virginia.

Q. I ask you to file that as an exhibit for the complainants.

(Filed, marked Complainant's Exhibit I)

CROSS EXAMINATION

By Mr. Price:

The dates 1947 through 1950—were there any business transactions in which Mr. J. C. Hurt and Mr. Lawrence Hurt were involved in that time?

A. Not at that time. They were shortly after that. I have a copy of an agreement which my father went into with the Blue Ribbon Bus Company, but at the time that was set up they had no business connections.

Q. When did they enter into an agreement with this bus company?

page 110-A } A. It was the 19th day of June 1948 when my father bought my interest in the Blue Ribbon Bus Company.

Q. So if the note of June 2, 1948, shows the transfer, that would be the date they entered into the agreement with the bus company?

A. Apparently.

Q. So that is the date there?

A. As of June 19, 1948, that is the date for the contract.

Q. So there would be no way of knowing?

A. I think we filed a previous document there. I have got it set up that way. My father bought my interest in the Blue Ribbon Bus Company, which made him partners with my brother.

Q. Unless there are other exhibits—There has been no evidence here introduced this was set up jointly in September 6, 1947.

A. If those documents do not say that, I think I can find documents that will show it didn't exist in that way at the time that was set up, and he had no business connection with me when he made that Will.

Q. When did you sell your interest in the Bus Line, Mr. Hurt?

A. I just stated that previously.

Q. What was the date of that, please sir?

A. June 19, 1948.

Q. You were familiar with the operation of a bus line and aware of the problems connected with a bus line?

page 111 } A. I would like you to be more specific.

Q. A man wanted you to represent him before the Public Service Commission of the State of West Virginia, would want a man familiar with a bus line, wouldn't he?

A. Yes, very definitely.

RUFUS C. HURT

BY LOUISE C. JOYNER
Secretary

By Mr. Hite:

I don't think we are going to put on anything else, but there is one witness I may want to put on for about ten minutes.

By Mr. Price:

Might say 10:00 o'clock on the 22nd.

(22nd January at 10:00 A.M., agreed upon to put on witness for complainants, if their attorney is so advised.)

LOUISE C. JOYNER
Secretary

Cost of recording and transcribing depositions $114.00

Filed in Clerks Office Circuit Court of Montgomery County 26th day of Jan. 1966.

A. B. CORRELL, Clerk

By RANELDA TURMAN, D.C.

A true copy of the evidence before this Court in this case.

Apr. 18, 1967 W. S. JORDAN, Judge

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

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