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Richmond, Va.

209 VA 537

Record No. 6802

In the
Supreme Court of Appeals of Virginia
at Richmond

HOWARD N. ROBERTS, ET AL.

v.

C. C. YANCEY

FROM THE CIRCUIT COURT OF MECKLENBURG 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

Record No. 6802

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.

HOWARD N. ROBERTS AND J. E. ROBERTS,
Plaintiffs in error,

against

C. C. YANCEY, Defendant in error.

From the Circuit Court of Mecklenburg County
Gus E. Mitchell, Jr., Judge

Upon the petition of Howard N. Roberts and J. E. Roberts a writ of error and *supersedeas* is awarded them to a judgment rendered by the Circuit Court of Mecklenburg County on the 8th day of March, 1967, in a certain motion for judgment then therein depending, wherein C. C. Yancey was plaintiff and the petitioners were defendants; upon the petitioners, or some one for them, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of $3,000, with condition as the law directs.

RECORD

* * * * *

page 1 }

* * * * *

MOTION FOR JUDGMENT

* * * * *

1. The plaintiff, C. C. Yancey, acting by and through Frank M. Slayton of Easley, Vaughan and Slayton, his attorney, hereby moves the Circuit Court of Mecklenburg County, Virginia, to enter judgment in his favor against the defendant, jointly and severally, in the amount of TEN THOUSAND DOLLARS ($10,000.00) for the damages and wrongs hereinafter set forth.

2. That the defendants have leased from the plaintiff that certain building situated on the westerly side of Main Street in the Town of Clarksville, Virginia, for a period of 20 years and have indicated to the plaintiff their intention to terminate the lease in September, 1966.

3. That the defendants have removed the restaurant business operated by them from the premises leased to them by the plaintiff and in so doing have caused extensive damage to the premises owned by the plaintiff contrary to the terms and provisions of the said lease, a copy of which is attached hereto and marked "Exhibit A".

4. That the defendants have stripped permanent attachments and improvements from the structure of the building owned by the plaintiff, thereby seriously damaging the same; that they removed plumbing fixtures and other permanent attachments which have extensively damaged the premises of the plaintiff.

5. The premises of the plaintiff leased to the defendants is situated in Mecklenburg County, Virginia, and the wrongs herein complained of occurred in Mecklenburg County, Virginia.

6. WHEREFORE, the plaintiff moves the Court to enter judgment in his behalf in the amount of TEN THOUSAND DOLLARS ($10,000.00), plus the cost of this proceeding.

page 2 }

* * * * *

Filed in the Clerk's Office the 3 day of Aug., 1966.

Teste:

N. S. HUTCHESON, Clerk
S., D.C.

* * * * *

page 4 }

* * * * *

PETITION FOR AN INJUNCTION

* * * * *

Comes now the petitioner in the above styled matter and moves the Court for a temporary injunction against the respondents by reason of the following facts and circumstances:

1. Your petitioner, C. C. Yancey, is the owner of a certain building in the Town of Clarksville, Virginia, in which the respondents have conducted a restaurant business for approximately 20 years in the lower portion of the said building and have rented apartments in the upper portion of the building for a like period of time.

2. That the respondents have constructed a new restaurant building and have communicated to your petitioner their plans to vacate the premises owned by the petitioner as of September 1, 1966.

3. That the petitioner and the respondents entered into a lease on October 26, 1960, which was to run for a five-year period from September 3, 1961, until September 3, 1966.

4. As part of the aforesaid lease the lessees agreed to make no structural changes on the leased premises without the written consent of the lessor and that condition notwithstanding the respondents have moved or caused to be removed from the premises permanent improvements to the premises and

have expressed their intention to remove in the future showers, tubs, cabinets, sinks, wall cabinets, plumbing fixtures, commodes and other permanent improvements and attachments which are a part of the real estate and which when moved will cause irreparable damage to the premises of the petitioner.

WHEREFORE, Your petitioner prays that the Court may enter an injunction restraining the said Howard N. Roberts and J. E. Roberts from in any way removing per-
page 5 } manent improvements, fixtures and attachments from the premises owned by him in the Town of Clarksville, Virginia, until the further order of this Court and further that the Court will grant Your petitioner such other further and general relief as the equities of his case may require.

* * * * *

Filed Aug. 3, 1966.

N. G. HUTCHESON, Clerk

* * * * *

page 8 }

* * * * *

DECREE FOR TEMPORARY INJUNCTION

* * * * *

Upon the prayer of the within bill an injunction is granted the Petitioner, C. C. Yancey, enjoining and restraining the Respondents, H. N. Roberts and J. E. Roberts, from removing any plumbing fixtures, hot water heaters, shower stalls, walls, panelling, ceilings, *comodes,* wiring, lighting fixtures, heating and cooling systems from the building owned by the Petitioner on the westerly side of Main Street in the Town of Clarksville until the further order of this Court. This injunction shall be effective from August 23, 1966 until November 23, 1966 at which time it shall stand dissolved unless prior thereto it be enlarged or further injunction granted; but this order shall not become effective until the Petitioner shall enter into a bond before the Clerk of this Court in the sum of $500.00 conditioned according to law.

ENTER: This 23 day of August, 1966.

G. E. M., JR., Judge

* * * * *

page 11 }

* * * * *

BILL OF PARTICULARS

For his bill of particulars the plaintiff relies upon all of the allegations contained in the motion for judgment and also in addition thereto says that the damage caused to his property by the defendants or their agents consisted of the following:

1. Removal of the ceiling and light fixtures from the premises leased to the defendants by the plaintiff.
2. Removal of the paneling and sheet rock from the walls in the restaurant portion of the building leased to the defendants.
3. Removal of sinks and plumbing fixtures in the kitchen and toilets of the premises leased to the defendants.
4. Damage to the floors, walls and plumbing as a result of the removal of the stoves, sinks and heating units in the premises leased by the defendants.
5. Damage to the walls, floors, ceilings, doors and windows caused by the excessive accumulation of grease and dirt over an extended period of years rendering the premises unfit without the expenditure of a large sum of money.

* * * * *

Filed Sept. 3, 1966.

N. G. HUTCHESON, Clerk

* * * * *

page 13 } THIS CONTRACT OF LEASE, made this the 26th. day of October, 1960, by and between C. C. Yancey of Clarksville, Virginia, hereinafter referred to as LESSOR, party of the first part, and J. E. Roberts and Howard N. Roberts, of Clarksville, Virginia, hereinafter known as LESSEES, parties of the second part:

WITNESSETH.

That for and in consideration of the premises and other considerations hereinafter mentioned, it is agreed between the Lessor and the Lessees, as follows:

THIS LEASE OF REAL ESTATE described as follows is to become operative or effective or to begin on September 3rd. 1961, this being the first day after the expiration of the present contract between the said parties bearing date of September 2nd. 1956, wherein the said Lessor leased to the said Lessees the hereinafter described real estate, a copy of the present lease is hereby referred to for clarification of this lease

The said Lessor doth hereby lease to the said Lessees that certain real estate (second floor included in this lease) located at the corner of Virginia Avenue and 3rd. Street, Clarksville, Mecklenburg County, Virginia, well known as "ROBERTS GRILL, in which the said Lessees are doing a restaurant and rooming business in the business name of Robert's Grill, this lease is upon the following terms and conditions:

1. This lease shall be for a period of five (5) years from September 3rd. 1961, and the said Lessees shall have the right and privilege of extending this lease upon the same terms and conditions as herein set out for an additional five (5) years upon giving the Lessor, his heirs, executors or assigns, notice in writing by registered mail at least three months before the expiration of this lease shall be considered as sufficient notice that this contract will be extended or continued for an additional five years.

2. The rental for the leased premises shall be
page 14 } the sum of $165.00 per month payable on the first
day of each and every month during the life of this lease and/or any extension of same.

3. The said Lessees are to make no structural changes on the leased premises without the written consent of the Lessor.

4. The said Lessees are not to use the leased premises in such a manner or conduct such a business therein that will injure or is calculated to injure its value as business property.

5. The Lessees are to return the leased premises to the Lessor at the expiration of this or any extended lease under this Contract of Lease in as good condition as received, the usual depreciation, acts of God, and conditions over which they have no control excepted.

6. In the event this property should be destroyed or damaged to such an extent that it would not be feasible to repair same all parties hereto shall be released from the conditions and obligations of this Contract of Lease.

WITNESS the following signatures and seals, this the day, month and year first above written:

C. C. YANCEY (SEAL)
LESSOR.

HOWARD N. ROBERTS (SEAL)
LESSEE

J. E. ROBERTS (SEAL)
LESSEE.

* * * * *

page 16 } THIS CONTRACT OF LEASE made and entered into this 2nd. day of September, 1946, by and between C. C. Yancey of Clarksville, Virginia, party of the first part, and J. E. Roberts and G. T. Roberts, partners, trading as Roberts Grill, Clarksville, Virginia, parties of the second part:

WITNESSETH.

The party of the first part and the parties of the second part hereby agree as follows, to-wit:—

The said party of the first part doth hereby lease to the said parties of the second part the following described property, located on Virginia Avenue, Clarksville, Mecklenburg County, Virginia, well known as the annex to the property now occupied by the parties of the second part, in which they are now doing a restaurant business in the name of Roberts Grill, and all of the rooms on the second floor of the building in which said parties of the second part are doing said business, except the rooms now leased to the Home Telephone Co., Inc., the leases are to be for a period of five years from date, and the parties of the second part shall have the right at the end of the five year period to extend this lease upon the same terms and conditions as hereinbefore and hereinafter set out, on condition that they give to the said party of the first part notice that they have elected to extend the said lease, in writing, at least sixty days before the expiration of the initial five years lease.

The said parties of the second part agree to pay to the said party of the first part the sum of $33.00 per month for the said annex, and in addition, the sum of $25.00 per month for the second floor, all rents payable on the first of each and every month hereafter during the life of this lease. The

parties of the second part are not to use the leased premises in such a manner or for such a purpose as to injure same and to return the said property to the said party of the first part at the expiration of this lease in as good condition as received the usual depreciation excepted.

The said party of the first part further agrees with the said parties of the second part, that at the expiration page 17 } of that certain contract of lease in which the said party of the first part leased the Roberts Grill property to J. B. Gill, that he will lease the said property, therein leased to J. B. Gill, to the said parties of the second part for the sum of $40.00 per month payable at the first of each and every month thereafter until October 31, 1951, however, the said parties of the second part shall have the right to also extend this lease for an additional five years upon the same terms and/or conditions as hereinbefore and hereinafter set out by giving notice that it is their desire to so extend the lease at least sixty days before the expiration on Oct. 31, 1951, said notice to be given in writing.

* * * * *

page 18 } THIS CONTRACT OF LEASE OF REAL ESTATE made this 2nd. day of September, 1956, by and between C. C. Yancey of Clarksville, Va., hereinafter referred to as LESSOR, party of the first part, and J. E. Roberts and Howard N. Roberts of Clarksville, Va., hereinafter referred to as LESSEES, parties of the second part:

WITNESSETH.

That for and in consideration of the sum of ten dollars, cash in hand paid by the said Lessees to the said Lessor, at and before the signing, sealing and delivery of this LEASE, the receipt whereof is hereby acknowledged and also in further consideration of the lease money hereinafter mentioned, and the re-newal of a lease between the parties hereto whereby the said Lessees agreed to lease the *the* basement and ground floor of the building known as ROBERT'S GRILL, located on the N.E. corner of Virginia Avenue and 3rd. Street, Clarksville, Mecklenburg County, Virginia, for a period of five years from Sept. 2nd. 1946, upon the terms and conditions contained in said contract of lease, the said LESSOR doth hereby LEASE unto the said J. E. Roberts and Howard N. Roberts, LESSEES for a period of three years from the 1st day of October 1958 (that being the expiration date of that certain Contract for the lease of the identical property by the Lessor

to J. Roberts and H. N. Roberts, Lessees this being, as a matter of fact, an extension of that contract of lease for an additional three years with the same terms and/or conditions, except the rental price after Oct. 1st. 1958 is to be $61.00 per month instead of the present price of $76.00 per month)

Said lease shall be upon the following terms and/or conditions, to-wit:—

1. The said Lessor doth lease to the said Lessees for a period of three years from October 1st. 1958 (rent
page 19 } to begin and possession to be taken under this lease at the expiration of the said former lease on October 1st. 1958) the second story above Robert's Grill, except the part thereof leased to the Home Telephone and Telegraph Co., of Virginia, of the building located at the corner of Virginia Avenue. and Third Street, Clarksville, Mecklenburg County, Virginia, well known as ROBERT'S GRILL PROPERTY.

2. The said Lessees agree to pay to the said Lessor the sum of $61.00 per month for the said second story as and for the rent of same, payable monthly.

3. The said Lessees are to use and operate a business in the part of the said building hereby leased in such a manner as not to injure or interfere in any way with any business conducted on the first floor of said building.

4. The said parties of the second part shall have the right to remove from the leased premises (2nd floor) certain fixtures furnished by them, but no fixture shall be removed that the removal thereof will injure the real estate, however, it is understood that the removal of the heating fixtures will cause injure to the said premises, therefore the lessor shall have the right to purchase these fixtures at valuation at the expiration of this contract. The lessees shall have the right at the expiration of this contract of lease to remove the window and door screens.

The Lessees agree to return the property to the Lessor at the expiration of this lease in as good condition as received usual depreciation and acts of God and conditions over which they have no control excepted.

* * * * *

page 21 } THIS CONTRACT OF LEASE, made and entered into this the 2nd. day of September, 1956, by and between, C. C. Yancey, hereinafter referred to as LESSOR, party of the first part, and J. E. Roberts and Howard N. Roberts, hereinafter referred to as LESSEES, parties of the second part:

WITNESSETH.

The party of the first part doth hereby lease unto the said parties of the second part, as follows:—

The said lessor doth hereby lease to the said lessees that certain real estate (except second floor mentioned in another contract of lease of even date herewith between the parties to this lease) located at the corner of Virginia Avenue and 3rd. Street, Clarksville, Mecklenburg County, Virginia, well known as ROBERT'S GRILL, and in which the said parties of the second part are now doing a restaurant business in the name of Robert's Grill, said lease is upon the following terms and/or conditions, to-wit:—

1. The said lease shall be for a period of five years from September 2nd. 1956 at a monthly rental price of $109.00 per month, payable monthly.

2. The said lessees are to make no structural changes in the real estate without the consent of the lessor.

3. The said lessees are not to use the leased real estate in such a manner or conduct such a business therein that will injure the building or injure its value as a business building.

4. The lessees are to return the leased premises to the lessor in as good a condition as received the usual depreciation, acts of God and conditions over which they have no control excepted.

* * * * *

page 40 } FROM—A. S. Tuck
Buffalo Jct. Va.

Sept. 21, 1966

TO—Mr. Charlie Yancey
ADDRESS—Clarksville, Va.
CITY—
ESTIMATE

Estimate on repair of old Roberts Grill.	6,280.00
New Ceiling,	
Replace Sheet rock,	
New Tile on floor,	
2 outside doors,	
replace paneling,	
Fasten stairway rail and painting	

Kitchen

Replace Sheet rock,
2 doors,
Painting,
Roof work,
Wiring & plumbing
Moving junk out of basement & moving junk from under Porch

page 41 } INSTRUCTION NO. 1

The Court instructs the jury that waste as used in these instructions is an abuse or destructive use of property by one in rightful possession.

Granted. G. E. M., JR.

page 42 } INSTRUCTION NO. 2

The Court instructs the jury that under the law of Virginia a tenant who, through fault or negligence, commits waste to the property of the owner in his possession is liable to the owner for damages.

Granted. G. E. M., JR.

page 43 } INSTRUCTION NO. 3

The Court instructs the Jury that the defendant's promise in the lease to return the premises to the plaintiff in as good condition as received, usual depreciation, acts of God, and conditions over which they have no control excepted, does not mean that the building must be returned in the *same* condition as it was received with the exception of normal wear and tear. The promise means that the building cannot be returned in any worse condition than when it was received, unless usual depreciation, acts of God, and conditions over which they have no control have put it in worse condition.

The Court further instructs the Jury that if they believe from the evidence that defendant made certain improvements, which were firmly attached to the building so as to become a part thereof, and which could not be removed without material injury to the freehold, that plaintiff is entitled to the improved value of the building even though it may result in returning the building to plaintiff in better condition than it

was received; and if you believe from the evidence in this case that defendant removed any such improvements and caused material injury to the freehold, you shall find for the plaintiff in an amount that will reasonably compensate him for the damages done to his building by such removal.

Granted. G. E. M., JR.

page 44 } INSTRUCTION NO. 4

The Court instructs the Jury that a fixture substituted by a tenant for another fixture which was upon the premises at the time of the making of the lease becomes the property of the owner of the building.

Granted. G. E. M., JR.

page 45 } INSTRUCTION NO. 5

The Court instructs the jury that if you believe from the evidence and the other instructions of the Court that the plaintiff is entitled to recover, you shall fix his compensatory damages at that sum which you believe from the greater weight of the evidence will necessarily be expended in placing the property in substantially the same condition it was in before the waste was committed, less the normal wear and tear by the use of the premises.

Granted. G. E. M., JR.

page 46 } INSTRUCTION 6 D

The Court instructs the jury that if you find from the evidence that the restaurant rooms in the lease in this case were returned to the plaintiff at the expiration of the lease in as good condition as it was before the waste, if any, was committed by the tenants, usual depreciation, acts of God and conditions over which the parties had no control excepted, you will return a verdict for the defendants.

Granted. G. E. M., JR.

* * * * *

page 50 } INSTRUCTION 11 D

The Court instructs the jury that if they find from the evidence that C. C. Yancey leased to the defendants the room or rooms in the building, the alleged injury to which is the cause of this suit, for the purpose of conducting a restaurant business therein, the plaintiff assumed the risk of all ordinary wear and tear resulting to the said building from the reasonable and proper operation of the business and the use of the said room; and that unless you find from the evidence that the property of the plaintiff was used or damage in a wrongful manner, improper or negligent manner, you must find for the defendants.

Granted. G. E. M., JR.

page 51 } INSTRUCTION 1 D

The Court instructs the jury that if you believe from the evidence that Howard N. Roberts and J. E. Roberts, tenants of the plaintiff, during the term of their lease, and at the cost and expense of the tenants, installed in the room or rooms leased as a restaurant, ceiling and light fixtures, paneling and sheetrock on the walls, sinks and plumbing fixtures in the kitchen and toilets of the leased premises, and such materials were removed by the tenants during the term of the lease, and you further find that there was an absence of any specific agreement between the parties as to the character of the fixtures placed on the premises, and you further find from the circumstances existing at the time, and the facts surrounding the installation, that it was the intention of the defendants, Howard N. Roberts and J. E. Roberts, that such fixtures should not become a part of the building, but would remain the property of the tenants who installed and owned the same, you will find that the defendants had the right to remove such fixtures from the premises at any time during the term of the lease.

Refused. G. E. M., JR.

page 52 } INSTRUCTION 2 D

The Court instructs the jury that in determining if it was the intention of the defendants in this case that the fixtures installed by them on the premises should remain the property of the tenants and not become a part of the building, you

should take into consideration in determining this intention all the facts and circumstances surrounding the installation; the purpose for which the property was used; the ownership of the property; the circumstances of the parties at the time of the installation of such fixtures; any acts of the parties at the time of the installation which would tend to show their intention at that time.

Refused. G. E. M., JR.

page 53 } INSTRUCTION 3 D

The Court instructs the jury that if you find from the evidence, under the rules set forth in Instructions 1 D and 2 D, that it was the intention of the defendants that the fixtures placed in the building by them should remain their property, and that the same would not become a part of the building, then the defendants had a right to remove such fixtures at any time during the term of the lease, and you should find for the defendants in any matters in this case involving the removal of such fixtures.

Refused. G. E. M., JR.

page 54 } INSTRUCTION 4 D

The Court instructs the jury that whether the fixtures were actually attached to the building, regardless of how they were attached, is a circumstance which you may consider in determining the intention of the owners of the fixtures at the time they were attached, but the mere fact that the fixtures were in some way attached to the building itself can be considered by you only as a circumstance determining the intention of the parties at the time the same were attached.

Refused. G. E. M., JR.

page 55 } INSTRUCTION 5 D

The Court instructs the jury that the adaption of the fixtures to that part of the building to which they were attached is a circumstance which you may consider in determining the intention of the parties at the time the same were attached. That is to say that if you find from the evidence that the fixtures were necessary to the tenants for the purposes for which they leased the real estate, and not necessary to the

Landlord for his use of the building leased, then this is a circumstance which you may consider in determining the intention of the parties.

Refused. G. E. M., JR.

* * * * *

page 70 } THIS CONTRACT FOR THE LEASE OF REAL ESTATE, made and entered into this 31st. day of October, 1953 by and between C. C. Yancey of Clarksville, Virginia, party of the first part, and J. E. Roberts and H. N. Roberts, partners trading as Roberts Grill, of Clarksville, Virginia, parties of the second part:

WITNESSETH.

The said party of the first part and the said parties of the second part, for and in consideration of the considerations hereinafter mentioned, to hereby agree as follows, to-wit:—

The said party of the first part doth hereby lease to the said parties of the second part for a period of five years from October 1st. 1953 (rent to begin and possession to be taken of the leased premises on Oct. 1st. 1953, the second story, except part now leased by Home Telephone Co., of Virginia, of the Roberts Grill Building, located on the corner of Virginia Avenue and 3rd. Street, Clarksville, Mecklenburg County, Virginia.

(2) The said parties of the second part are *are* to pay to the said party of the first part the sum of $76.00 per month as and for rent for the said premises, payable monthly.

(3) The said parties of the second part are to use the leased premises in such a manner as not to injure same or interfere with any business conducted on the first floor of the building. The said party of the first part is not to make any improvements or repairs to the leased premises. This contract is to take the place of any other contract between the parties hereto in reference to the premises (2nd floor) hereby leased.

(4) The said parties of the second part shall have the right to remove from the leased premises (2nd. floor) certain fixtures furnished by them, but no fixture shall be removed that the removal thereof will injure the real estate. It is understood, however, that the removal of the heating fixtures will cause some injury to the premises. The said party of

the second part shall have the refusal of the purchase of these heating fixtures at the expiration of this contract. The parties of the second part shall have the right to remove the window and door screens.

* * * * *

page 72 } THIS CONTRACT OF LEASE, made this the 26th. day of October, 1960, by and between C. C. Yancey of Clarksville, Virginia, hereinafter referred to as LESSOR, party of the first part, and J. E. Roberts and Howard N. Roberts, of Clarksville, Virginia, hereinafter known as LESSEES, parties of the second part:

WITNESSETH.

That for and in consideration of the premises and other considerations hereinafter mentioned, it is agreed between the Lessor and the Lessees, as follows:

THIS LEASE OF REAL ESTATE described as follows is to become operative or effective or to begin on September 3rd. 1961, this being the first day after the expiration of the present contract between the said parties bearing date of September 2nd. 1956, wherein the said Lessor leased to the said Lessees the hereinafter described real estate, a copy of the present lease is hereby referred to for clarification of this lease

The said Lessor doth hereby lease to the said Lessees that certain real estate (second floor included in this lease), located at the corner of Virginia Avenue and 3rd. Street, Clarksville, Mecklenburg County, Virginia, well known as "ROBERTS GRILL, in which the said Lessees are doing a restaurant and rooming business in the business name of Robert's Grill, this lease is upon the following terms and conditions:

1. This lease shall be for a period of five (5) years from September 3rd. 1961, and the said Lessees shall have the right and privilege of extending this lease upon the same terms and conditions as herein set out for an additional five (5) years upon giving the Lessor, his heirs, executors or assigns, notice in writing by registered mail at least three months before the expiration of this lease shall be considered as sufficient notice that this contract will be extended or continued for an additional five years.

2. The rental for the leased premises shall be the page 73 } sum of $165.00 per month payable on the first day of each and every month during the life of this lease and/or any extension of same.

3. The said Lessees are to make no structural changes on the leased premises without the written consent of the Lessor.

4. The said Lessees are not to use the leased premises in such a manner or conduct such a business therein that will injure or is calculated to injure its value as business property.

5. The Lessees are to return the leased premises to the Lessor at the expiration of this or any extended lease under this Contract of Lease in as good condition as received, the usual depreciation, acts of God, and conditions over which they have no control excepted.

6. In the event this property should be destroyed or damaged to such an extent that it would not be feasible to repair same all parties hereto shall be released from the conditions and obligations of this Contract of Lease.

* * * * *

page 75 }

* * * * *

January 18, 1967

Mr. Frank M. Slayton,
Attorney at Law,
South Boston, Va.

Mr. Jesse R. Overstreet,
Attorney at Law,
Clarksville, Va.

Mr. James W. Blanks,
Attorney at Law,
Clarksville, Va.

Re: Injunction, Yancey v. Roberts

Gentlemen:

It is my opinion that the Danville Holding Corp., et al vs. Clements, 178 Va 223; 16 S.E. 2d 345, and the agreement between the parties as cited by Mr. Blanks in his brief, give the guide-lines as to whether the chattels in question became fixtures or remained personalty. The items that are necessary in the operation of the apartments, those that were made and *fitted* into the particular apartments, those that are attached to the building and would damage the building, or apart-

ments, by their removal are permanent fixtures and remain with the building. We have an example of what the parties considered fixtures in their lease.

The parties themselves by agreement have said that the gas heaters and equipment are fixtures. The gas hot water heater is attached and in the same category as the gas heaters. The *comodes* and tanks, the kitchen sinks and fixtures, the shower stall with fixtures and the showers over the bath tubs with fixtures including the shower doors are all fixtures. The base cabinets with formica tops were *fited* in the particular apartments and would be of very little value elsewhere so were intended as fixtures. To remove the wall cabinets that are attached to the walls would be damaging to the premises so are a fixture.

I did not see the Divider formica finished bar or the *the* two metal base cabinets with black rubber tops. I would think from the information I have that the Divider Bar is built into the room and is a part of the building. That the two cabinets are stock pieces unattached to the building and should be removed. If either of the parties differ with this I will stop in passing the view these pieces.

Mr. Slayton or Overstreet will please draw the proper order, have it indorsed, and hand it to me for entry.

With best personal regards, I am

Sincerely,
G. E. Mitchell, Jr.

page 76 }

* * * * *

JUDGMENT ORDER

* * * * *

This cause having been duly docketed and set for trial on October 27, 1966, came on that day to be tried and it having appeared to the Court that all of the necessary pleadings were duly filed and that the parties hereto were ready for trial, the Court proceeded to impound the jury according to law and the following jurors were selected to try the issues between the parties hereto. The jury consisting of the following, to-wit: N. W. Ashworth, Jr., J. Randolph Blalock, W. H. Granger, J. D. Hatchell, W. J. Hall, C. H. Morgan and E. D. Nash, were sworn to try the issues joined between the plaintiff and defendants.

And the jury having heard the evidence of witnesses and the arguments of counsel, and having observed the exhibits introduced by the parties hereto, retired to their room to consider a verdict and after a period of time returned to the Courtroom and rendered the following verdict:

"We, the jury, on the issues joined find for the plaintiff, C. C. Yancey, and fix his damages at $2,500.00. C. H. Morgan, Foreman."

Whereupon, the Court inquired of counsel as to whether they had any motion to make before the jury was discharged and counsel indicated they had none to make at that time, and the jury was discharged. The Court then inquired of counsel as to whether or not they desired to make any motion after the jury had been discharged and counsel for the defendants indicated to the Court that he wished to file a written motion to set the verdict of the jury aside.

Whereupon, counsel for the defendants moved the Court to set the jury's verdict aside as being contrary to the law and evidence and without evidence to support it, and requested the Court's permission to file herein a written motion setting forth more fully his grounds for the motion, which request the Court granted and ordered the defendants to file a written motion herein.

page 77 } Whereupon, on March 7, 1967, counsel for the defendants filed herein a written motion to set the verdict of the jury aside and enter a verdict for the defendants, or in the alternative grant a new trial, which motion the Court doth overrule and to which action of the Court, counsel for the defendants duly excepted.

And the Court, proceeding to enter judgment on the jury's verdict doth adjudge and order that the plaintiff recover $2,500.00 from the defendants, plus his cost expended herein.

And counsel for the defendants having stated to the Court that a petition for an appeal from the adverse judgment against the defendants would be filed by them in the Supreme Court of Appeals of Virginia, it is further ordered and directed that the said judgment be suspended for a period of sixty (60) days from the date of this order, upon proper bond being given by the defendants or someone for them with surety thereon to be approved by the Clerk of this Court, in the penal sum of $3000.00, to be executed before the Clerk of this Court within five (5) days from the date hereof, and conditioned according to law.

And the Court having heard the evidence and having taken into consideration the temporary injunction herein entered

restraining the defendants from moving certain goods and fixtures installed by them in the second floor of the building mentioned in this cause, and the Court having rendered its decision by letter dated January 18, 1967, making the said injunction permanent, the Court doth adjudge and order that the said injunction be, and the same is hereby made permanent. To which action and judgment of the Court counsel for the defendants duly excepted, and filed herein a written motion to reverse the decision of the Court in the matter of the injunction, which motion the Court doth overrule, to which action of the Court, counsel for the defendants duly objected and excepted.

And counsel for the defendants having stated to the Court that the defendants intended to file their petition in the Supreme Court of Appeals of Virginia for a writ of error and *supersedeas* as to the judgment of the Court on the jury verdict, and as to the decision of the Court in its

page 78 } letter opinion of January 18, 1967 it is ordered that the motion to set the verdict of the jury aside and the motion to overrule the Court's letter opinion of January 18, 1967 is overruled.

And counsel for the defendants having stated to the Court that they expect to file a petition in the Supreme Court of Appeals of Virginia for writ of error and *supersedeas* in this cause, it is ordered that both the judgment on the jury's verdict and judgment as to the permanent injunction be suspended for a period of sixty (60) days, provided bond is duly posted as hereinbefore required.

ENTER this the 8 day of March, 1967.

G. E. M., JR., Judge.

We ask for this order.
JESSE R. OVERSTREET, JR.
FRANK M. SLAYTON
Counsel for the Plaintiff

We have seen this order and object to its entry.
JAMES W. BLANKS
THOMAS J. RUSSELL
Counsel for the Defendants

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MOTION

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Come now the defendants, Howard N. Roberts and J. E. Roberts, and move the Court to set aside the verdict of the jury rendered herein, and enter a judgment for the defendants or, in the alternative grant a new trial upon the following grounds:

1. That the verdict returned by the jury is contrary to the law and the evidence, and without evidence to support it.
2. The action of the Court in admitting in evidence, over the objection and exception of the defendants, the pictures filed herein marked Exhibits 1-17.
3. The refusal of the Court to strike the evidence of witness Algie Tuck over the objection and exception of the defendants.
4. The action of the Court in admitting in evidence over the objection and exception of the defendants a letter from C. C. Yancey addressed to the defendants dated May 28, 1966.
5. The action of the Court in eliminating from the evidence the series of leases in this cause, and limiting the evidence of the condition of the freehold to the date of the last lease.
6. The action of the Court in granting Instructions 1 and 2 offered by the plaintiff, over the objection and exception of the defendants.
7. The action of the Court in granting Instruction 3 as amended, and offered by the plaintiff, over the objection and exception of the defendants.
8. The action of the Court in granting Instruction 4 as amended, and offered by the plaintiff, over the objection and exception of the defendants.
9. The action of the Court in granting Instruction 5 as amended, and offered by the plaintiff, over the objection and exception of the defendants.

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10. The action of the Court in refusing to grant Instruction 6 D offered by the defendants and in granting Instruction 6 D as amended, over the objection and exception of the defendants.
11. The action of the Court in refusing to grant Instruction 11 D offered by the defendants and in granting Instruction 11 D as amended, over the objection and exception of the defendants.

12. The action of the Court in refusing to grant Instruction 1 D offered by the defendants, over the objection and exception of the defendants.

13. The action of the Court in refusing to grant Instruction 2 D offered by the defendants, over the objection and exception of the defendants.

14. The action of the Court in refusing to grant Instruction 3 D offered by the defendants, over the objection and exception of the defendants.

15. The action of the Court in refusing to grant Instruction 4 D offered by the defendants, over the objection and exception of the defendants.

16. The action of the Court in refusing to grant Instruction 5 D offered by the defendants, over the objection and exception of the defendants.

And the defendants move the Court to set aside the ruling by the Court in its opinion dated January 18, 1967, holding that the injunction herein granted should be made permanent on the following grounds:

1. Refusal of the Court to recognize the agreement between the plaintiff and defendants providing for the removal of the chattels placed in the second floor of the building as set forth in the lease dated the 2nd day of September, 1956.

2. That the ruling is contrary to the law and evidence and without evidence to support it.

Filed 3/9/67. G. E. M., JR., Judge

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ASSIGNMENT OF ERROR

* * * * *

The defendants in support of their application for writ of error and *supersedeas* file this their assignment of error.

1. That the verdict returned by the jury is contrary to the law and the evidence, and without evidence to support it.

2. That the decision of the Court in its letter decision of January 18, 1967, is contrary to the law and evidence and without evidence to support it.

3. That the Court committed error in admitting in evidence, over the objection and exception of the defendants, the pictures filed herein marked Exhibits 1-17.

4. That the Court committed error in its refusal to strike the evidence of witness C. H. Newton over the objection and exception of the defendants.

5. That the Court committed error in admitting in evidence over the objection and exception of the defendants a letter from C. C. Yancey addressed to the defendants dated May 28, 1966.

6. That the Court committed error in eliminating from the evidence a series of leases in this cause and in limiting the evidence of the condition of the freehold to the date of the last lease.

7. That the Court committed error in granting Instructions 1 and 2 offered by the plaintiff, over the objection and exception of the defendants.

8. That the Court committed error in granting Instruction 3 offered by the plaintiff, over the objection and exception of the defendants.

9. That the Court committed error in granting Instruction 4 offered by the plaintiff, over the objection and exception of the defendants.

page 84 } 10. That the Court committed error in granting Instruction 5 offered by the plaintiff, over the objection and exception of the defendants.

11. That the Court committed error in refusing to grant Instruction 6 D offered by the defendants and in granting Instruction 6 D as amended, over the objection and exception of the defendants.

12. That the Court committed error in refusing to grant Instruction 11 D offered by the defendants and in granting Instruction 11 D as amended, over the objection and exception of the defendants.

13. That the Court committed error in refusing to grant Instruction 1 D offered by the defendants, over the objection and exception of the defendants.

14. That the Court committed error in refusing to grant Instruction 2 D offered by the defendants, over the objection and exception of the defendants.

15. That the Court committed error in refusing to grant Instruction 3 D offered by the defendants, over the objection and exception of the defendants.

16. That the Court committed error in refusing to grant Instruction 4 D offered by the defendants, over the objection and exception of the defendants.

17. That the Court committed error in refusing to grant Instruction 5 D offered by the defendants, over the objection and exception of the defendants.

* * * * *

Filed March 10, 1967.

N. G. HUTCHESON, Clerk

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page 1 } S. W. GILL, a witness for the plaintiff, first being duly sworn testifies as follows:

* * * * *

Q. Did you ever rent or lease the building owned by Mr. Yancey on Main Street in Clarksville where Roberts Grill was previously located?

A. Yes, sir.

Q. When did you occupy the building?

A. I think it was in 1943, I believe.

Q. How long were you there?

A. About two years. It might have been '42. I don't remember the exact date but it was approximately two years.

Q. Prior to your moving into the building, what was it used for?

A. I am told it was used for a clothing store.

Vol. I Q. What did you use the building for?

10/28/66 A. Restaurant.

page 2 } Q. How long did you operate the restaurant there?

A. About two years.

Q. What was the condition of the building when you went there?

A. What do you mean? On the inside?

Q. Yes, sir. The inside.

A. That shelving was a loss. Especially it had been used as a clothing store—shoes and what not.

Q. Did you remove the shelves?

A. Yes, sir.

Q. What did you do to the walls after you removed the shelves?

A. Well, as I remember, we put up sheetrock. We covered it but whether it was sheetrock or some other material, I don't know. I think it was sheetrock, as well as I remember.

Q. After you put the sheetrock up, did you paint it or cover it with paper or—

A. It was papered, as well as I remember.

Q. Was the building heated?

A. No, sir.

Q. Did it have lights in it?

A. Well it had—yeah, it had electricity in it but I had to put in my particular lights in the ceiling.

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Q. When you left or went out of the restaurant business what did you do with that property?

A. I sold it to Mr. J. E. Roberts.

Q. Is that the father?—What did you say you did with it?

A. Huh?

Q. What did you say you did with it?

A. I sold the restaurant—the fixtures—the entire business to Mr. Roberts.

Q. What was the general condition of the building when you went there?

A. Well, it was a building that had been used for a long time for a clothing store. There were shelves on both sides, as well as I remember. I know there were shelves on one side and I think there were shelves on both sides. I'm not positive about that, but I know they were on the left side as you go in. And it needed painting—it was just an old building.

Q. And was that work done? Painted and cleaned up?

A. Well I had to cover the walls and as well as I remember, I painted the ceiling.

Q. Now, have you seen the building in the last few days? Or month or so?

A. About three or four weeks ago.

Q. How is the condition now compared to the condition it was in when you left it?

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A. Well, I don't know exactly what you mean but I just noticed that there was a lot of places that the sheetrock was torn off and there was still prints of the old shelving on the wall in one place I know.

Q. When you left it—when you moved out of the building was it in the condition it's in up there now?

A. No, sir.

Q. Was it—

S. W. Gill

A. It was in first class condition at that time, I would say.

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Q. Was the wooden ceiling and the wooden walls on there like they are now?

A. You mean when I went there?

Q. Yeah, when you rented it.

A. (first words inaudible) I stood behind the curb and the stone wall, I don't know.

Q. I see. Now, there's apparently no wooden ceiling on it now but a celotex ceiling on it. Did you put that celotex ceiling on it there?

A. I don't think so. I don't know. I don't remember.

Q. You don't think so?

A. I remember painting it when I first went there.

Q. You painted?

A. I remember something about the dust was falling down through and look like we covered it with something but whether we papered it or fixed celotex or what we did to it.

Q. You remember when you first went there and the two years that you operated the dust would fall down through the ceiling?

A. Yes, sir.

Q. Did you do anything to correct the situation?

A. We did something but what we did, I don't know, it's been twenty-two or three years ago.

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Q. You think you wall papered it but you wouldn't be sure?

A. Yes.

Q. You might have just painted it?

S. W. Gill

A. Oh, I know we painted it at first but then I noticed that we had some—everytime somebody was walking upstairs they would knock some dust down. We put something on it but what we put—whether it was celotex or sheetrock or wall paper, I don't remember. But we did something to—

Q. But you did something to try to correct the condition of the dust falling down on your customers?

A. That's right.

Q. But you don't remember what you did do?

A. No, I can't remember about that.

Q. Now you say you put celotex or something on the walls? Did you put it all over the walls?

A. We covered the entire walls.

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Q. You didn't? Did you have a large back bar back there?

A. Back bar there, yes.

Q. You did?

A. Yes.

Q. You didn't put any cellophane back there—I mean any celotex back there, did you?

A. I didn't put any celotex back there but we covered it.

Q. I see. So you just put some celotex on the exposed walls? And you don't remember what you did to the ceiling?

A. I couldn't swear to what I put on the walls now.

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Q. But did you put the same thing on the walls that you did on the ceiling? Did you do the same thing for the walls that you did for the ceiling?

A. No.

S. W. Gill

Q. Huh?
A. No.
Q. You did something different?
A. Yes.
Q. What did you do to the walls?
A. We put either sheetrock or some other material on the walls.
Q. On the walls?
A. Then we papered.
Q. All right. Now, at the present time there is sheetrock on the walls. Is that the sheetrock that you put on there? In 19—
A. I don't know.

* * * * *

Vol. I 10/28/66 page 9 } Q. But Mr. Roberts says that he put that ceiling up there and that he put that sheetrock on the walls—you'd have no reason to doubt it?
A. No, sir. He could have certainly done it. I don't know what he's done in twenty years.

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Q. The basement, if you've been down there, has been fixed up and has a—some sort of attractive flooring in it. Was that fixed up at that time?
A. Not as it is now. We fixed part of it. The Lions Club fixed part of it.
Q. Did you use it when you were there?
A. Beg pardon?
Q. Did you use it when you were there?
A. Yes.
Q. Used the basement?
A. Half of it.
Q. For what purpose did you use it?
A. For banquets. The Lions Club fixed it up. It was the Lions Club room mostly. They used it as their meeting area twice a month.

S. W. Gill

Q. So that basement was fixed up while you were there?
A. Part of it.
Q. Part of it was. Well now, what part of it was fixed up? It just seems now to be just one large room—do you mean you fixed up part of the room?
A. When I first went there it was a lot of dirt under there. There was only about three feet up at the front of the building that was—went down so the Lions Club didn't have anywhere to meet so they wanted to fix up a place. So they did that on their own hook. They came in and moved all the dirt—they furnished all the material and built the room down there.

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Q. Mr. Gill, what kind of floor was in that building when you were?
A. Wooden floor.
Q. Huh?
A. Wooden floor.
Q. Wooden floor. No covering on the floor?
A. No.

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Q. Well what damage do you see to the property that has occurred since you were there?
A. I just went down looking for Mr. Norwood the other day and they told me he was in the building. I didn't pay any particular attention to it, other than I noticed that the sheetrock on the wall was pulled off and I noticed that the print of the old shelving was on the original wood over there and that was the biggest extent that I noticed it. I know I wouldn't like to rent it in the condition that it's in now. I know that. That's the only thing I can say now.

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S. W. Gill

Q. Now, with the exception of the cleanliness and improvements that you—the way that you conducted your business there—do you know of any deterioration in that building other than normal wear and tear over twenty years that is there now?

A. Well I noticed that where they took the pictures down that it looks in bad shape but naturally you've got to remove your fixtures?

Q. They moved some fixtures out? And what you are talking about is the hole in the asphalt tile. Is that it?

A. I didn't notice the tile.

Q. Huh?

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A. I didn't pay any attention to the tile.

Q. Well what are you talking about their moving some fixtures?

A. In the wall. I just happened to notice one place as I went in that the old shelf mark showed up there. I guess it has been twenty years or more and it was still there.

Q. But those shelf marks were up there when you went there.

A. And were there years before I went there probably.

Q. You are responsible for them being there cause you took them down.

A. Yes, that's right.

Q. So Mr. Roberts couldn't be responsible for those shelf marks being up there, could he?

A. I don't see how he could possibly be.

Q. Huh?

A. He wasn't around there in that part of the country at that time, how could he be?

Q. In other words, they were there when he rented it?

A. That's right.

Q. Now what else did you find there that you thought had hurt this building during the twenty years of occupancy?

A. To be perfectly frank with you, I didn't find anything but Mr. Norwood. He was the man I went in there looking for and I just happened to glance at this other part over there and I just know that there was quite a conglomeration of stuff on the floor and hanging around. That was just the *heighth* of my going down there. I went there looking for Mr. Norwood and I didn't inspect the building.

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H. N. ROBERTS, the defendant, first being duly sworn, testifies as follows:

DIRECT EXAMINATION

Vol. I By Mr. Slayton:
10/28/66 Q. State your name, please.
page 19 } A. Howard N. Roberts.
Q. Well, what is your address, Mr. Roberts?
A. Clarksville.
Q. What is your occupation?
A. Restaurant.
Q. How long have you been engaged in that business?
A. Twenty years.
Q. Before you moved to your new location how long were you engaged in the restaurant business in the building owned by Mr. C. C. Yancey?
A. A little over 19 years.
Q. When you occupied that building was it on a lease basis or did you rent it on a month to month basis?
A. Lease.
Q. For what periods of time did you lease it?
A. Five and five.
Q. Five years? When did you lease it for the last time?
A. In '61.
Q. Your writing titled "Contract of Lease" dated October 26, 1960, and I ask you to look at that, please, sir. (Long pause.) Is that an active copy of the last lease agreement entered into between Mr. Yancey, you and your father?
A. It appears to be.
Vol. I Q. What was the rent per month on that prop-
10/28/66 erty, Mr. Roberts?
page 20 } A. On the last lease?
Q. Yes, sir.
A. $165.
Q. One hundred sixty-five dollars per month?
A. Right.
Q. Was that figure to include the entire building?
A. Yes.

H. N. Roberts

Q. Now, paragraph 3 of that lease says what?

A. (Answer inaudible if he answered.)

Q. Paragraph 3 says that no structural changes on the leased premises are to be made without the written consent of the lessor or the owner. Isn't that right?

A. Uh-huh.

Q. And then paragraph 4 said that you were to use the building in such a manner that it would not injure its value as a business property. Isn't that about what that is?

A. (Answer inaudible.)

Q. Then paragraph 5 of the lease says the lessee, that would be you and your father, are to return the leased premises to the lessor, that's Mr. Yancey, at the expiration of this or any extended lease under this contract or lease, in as good condition as received. The usual depreciation, acts of God, conditions over which they have no control excepted. Isn't that right?

Vol. I
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page 21 } A. Right.

Q. Now, when did you move your business from this building?

A. To the new location?

Q. Yes, sir.

A. I don't know. May 31st, I think. May 31st.

Mr. Slayton: Your Honor, I would like to introduce this lease as plaintiff's Exhibit number one.

The Court: Accepted.

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Vol. I
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page 23 } The Court: But he's still entitled to make his records you see, and the pictures are the only thing that would fill the record except so far as he can describe it by words.

Mr. Blanks: We object to its inception on that grounds.

The Court: Oh, yes, well, I'll overrule that particular. It's otherwise proper. I mean he's got to bring in the photographer in and show that they are the correct pictures, and all that.

Mr. Blanks: Well, we except to The Court's ruling on that.

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Mr. Blanks: Better let me look at them. We object to the introduction of these pictures. Actually the jury has been over there and seen this problem. They represent, they plainly represent, that it is in the same condition now that it was when the tennant left it. Now, what they have done in these pictures, they have taken pictures of portions of the premises. Some of it, some of the restaurant, had nothing to do with the business at all. Such as, the back of the building,—open space. It's highly prejudicial to put these parcels of scenes in the records and we object to their interception. We think that the best evidence is the fact that the jury has been over there and seen this building and exactly what's there. And this is nothing more than argument of counsel pointing out particular things that they claim as property damage. Now we don't think any of them ought to—

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Q. All right. Now, I hand you a photograph which is marked Exhibit Three and I call your attention to the paneling over the top of the front door. Now there's a screen there. What is behind that screen?

A. A speaker.

Q. A speaker? And in photograph number eight you removed that, didn't you?

A. Right.

Q. And also you took out this line of lights, and this shelf above the—each side of the building, didn't you?

A. Yes, sir.

Q. Why did you take that out?

A. It was put there for decoration and when I removed it it went with all the rest of the equipment. These lights—so I took it out.

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Q. How did you put it up there?

A. How did I put it up?

Q. Yes.

A. It was put up there in '51.

H. N. Roberts

Q. Well wasn't it built to the wall with the shelves?

A. Yes, sir. It was attached to the wall.

Q. And this part back here is where you had the lights recessed and over that bar was attached to the wall too, wasn't it?

A. Yes.

Q. Did you have a contractor come in there and build that?

A. Yes.

Q. And in photograph twelve shows that you have removed that, doesn't it?

A. That's right.

Q. How did you get the wiring into those lights?

A. Some lights on that side of the building through on top of that shelf.

Q. Now, if you look at photograph number eight, which is looking out of the front door, you didn't take that improvement down did you?

A. No.

Q. Now, that one was attached just like the others were, isn't it?

Vol. I 10/28/66 page 30 } A. Well, the difference is, there was a shelf up here originally when I went there. Rather than to take it down, I let them partition that part up there.

* * * * *

Q. Is this attached like these lights—like the counter on the side was and this part over the bar in the back? Is that attached in the same manner?

A. No, that was attached to the sheetrock—to the stripping. The stripping was on the sheetrock and the paneling was actually attached to the stripping.

Q. Then you also removed the sheetrock from these walls in addition to the paneling, didn't you?

A. Yes.

Q. Why did you take the sheetrock off?

A. My lease says that I should return the building in the same condition it was when I was there other than normal wear and tear. I put the sheetrock up there so I took it down.

Q. Mr. Gill says he put the sheetrock up there before he sold the business to your father.

Mr. Blanks: I object. Mr. Gill didn't testify to that. He said he thought maybe he did, but he didn't remember what he did.

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H. N. Roberts

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* * * * *

Q. Well, you weren't in this business initially, were you? Didn't your father and your brother operate it to begin with?

A. My brother and my father operated it for about six months.

Q. Was it a going business when you came into it?

A. Yes.

Q. There were booths in there?

A. Right.

Q. And the walls were covered and the room made generally a pleasant appearance, didn't it?

A. Not too pleasant, no.

Q. Well, it was in good enough condition for you and your father and your brother to conclude it to be presentable to the public at that time, wasn't it?

A. No.

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Q. Well, you were operating as a going business, weren't you?

A. I started to make the improvements. I had to make the improvements in order to stay in the building.

Q. What improvements did you make?

A. I put a tile floor on it, put sheetrock on the walls, some celotex on the walls—on the ceiling to keep the dust from coming down. Then as soon as I got able, I put the sheetrock on all the walls.

Q. Now, when these improvements were made, Mr. Yancey would pay for them, wouldn't he?

A. No, sir.

Q. Isn't it a fact that from time to time, you would get Mr. Yancey to do certain things there?

A. No, sir.

Q. At his expense?

A. You are talking about two different things now.

Q. All right. Tell me the difference in them.

A. You talking about the decorations on the inside or are you talking about the front on the building? Or the addition —the annex to the kitchen? Are you talking about the basement? Two entirely different things.

Q. All right.

A. We entered into a contract. First there was built on the annex at cost plus 12% for ten years.

H. N. Roberts

Vol. I Q. And that was added to the rent?
10/28/66 A. Right. That was added to the cost plus 12%
page 33 } for ten years.
Q. All right. When that was entered into what work was done.
A. Built on the annex to the kitchen. The kitchen annex.
Q. Did they put in light fixtures?
A. Yes.
Q. Did they put in plumbing?
A. Yes.
Q. Sink so that you could use the plumbing?
A. No.
Q. Didn't it have any sink in there?
A. You talking about the kitchen—for kitchen sinks or what are you talking about now?
Q. Yes. Kitchen sinks.
A. You talking about the restaurant use? We use regular sinks in the kitchen.
Q. I'm talking about whatever sinks that were in the kitchen—
A. I put the sink—the restaurant equipment sink in myself.
Q. All right.
A. With the pipes that they put in.
Q. O.K. Did you put in any fixtures back there?
Vol. I A. No. Nothing. No heat.
10/28/66 Q. When you went into the building, it had
page 34 } electricity in it, didn't it?
A. Right.
Q. And it was heated, I mean it had lights in it.
A. Right.
Q. Now, you had taken all of those light fixtures down, haven't you?
A. None of them. I added to it.
Q. You took all of the light fixtures out of the dining room, didn't you?
A. No. We were in the kitchen. I thought you were still in the kitchen.
Q. All right. In the kitchen—you didn't take any of those light fixtures down when you moved?
A. I added to the lights. There was only two bulbs—two fixtures put in there to begin with. Since that time I put two lines of them—of florescent lights in there. And left them in there.

H. N. Roberts

Q. Now, is it your understanding that you were to strip this building so it would—try to put it back into condition that it was in twenty years ago? Is that your—

A. That's what the lease said.

Q. Where does the lease say that?

A. My original lease.

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Q. You signed a lease in 1960, didn't you?

A. The one you showed me?

Q. Yes, sir.

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Q. So my point is then, Mr. Roberts, these pictures and the condition of that building as it stands today doesn't reflect the condition of that property when you signed that lease in 1960 does it?

A. It's an entirely different thing. You move the equipment out of any building—you move it out of here and it would look bad. But that doesn't necessarily mean that you've damaged the building.

Q. When you moved the equipment out of the building—

A. The equipment makes the picture. It's not the building that makes the picture.

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Q. Was it necessary to strip the sheetrock off both sides of the wall to do that?

A. I was going to put it in the same condition as it was when I had it,—when I got it.

Q. In which year?

A. In 1946. Certainly no wear and tear, other than normal wear and tear, happened to the building—if anything the building is worth far more today than it was twenty years ago. With the improvements that have been put on it.

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H. N. Roberts

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Q. What improvements did you make there?

A. I put the celotex ceiling on. I put the tile flooring on all the main floor. I put tile two or three different times in both the bathrooms. I put tile on the toilet walls. I replaced the commodes and sinks in both the toilets that had become worn out and broke.

Q. That's usual wear and tear, isn't it?

A. What?

Q. I say that's normal wear and tear that we're talking about.

Vol. I 10/28/66 page 42 } A. Well, they were replaced over a period of time.

Q. All right.

A. That's downstairs. Of course, I did a lot of other things up stairs. I put hot water in the building. I put heat in the building.

Q. The building was heated when you went there, wasn't it?

A. Yes. It had a furnace and a hot water blower.

Q. And the building had water in it didn't it?

A. Cold water.

Q. And of course it had a furnace. And we were talking about the kitchen and before we got away from the kitchen—what was in this area?

A. A walk-in box.

Q. And what caused the damage to the ceiling up there? According to the picture?

A. It wasn't anything. It never was sealed. This was never sealed either but that's the way the building was built when it was built. There was no ceiling up here at all. This sheetrock, I put up there. I just never put it that far because the walk-in box come in.

Q. And what was under those cabinets and that sort of thing?

A. This?

Vol. I 10/28/66 page 43 } Q. (Answer inaudible.)

A. A drainboard.

Q. And what knocked those holes—

Mr. Blanks: Your Honor? Your Honor, please, I want to renew my objection to these pictures. Here is the situation that has arisen. In one of these pictures that shows an apparent defect in the ceiling. There never was any ceiling there.

The Court: Well, Mr. Roberts has explained that.

Mr. Blanks: I think the pictures themselves are highly prejudicial.

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Q. I asked you why you left this place in such mess?

A. Well, in the first place I was going to finish cleaning it up till Mr. Yancey filed the suit against me and The Court ruled me not to move anything else out of there.

Q. That's not what The Court told you is it?

A. It is.

Q. Weren't you told that you couldn't take any listed toilet fixtures and things of that kind out of there. Isn't that right?

A. Right. Anything—heating, air conditioners, electrical and so forth.

Q. What about the debris shown in picture seven—seventeen?

A. This was paper boxes.

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Q. How did that kitchen get in the condition it's in now?

A. What are you talking about? What part you talking about?

Q. I'm talking about the filth and the general condition of it's uncleanliness.

A. Anywhere that you move a piece of equipment—you let a refrigerator sit at home for five years and move it, it is going to be dirty as the devil in the back of it. It's impossible to keep it clean unless you're going to move it out every week.

Q. Well, look at that picture. Now what caused this?

A. This part here was covered by an aluminum hood—from here up to this and across and over here. It was used for an exhaust. Of course, this wasn't exposed until the hood was removed.

Q. Now, that's not the condition that the building was in when you got it.

A. Oh, no.

H. N. Roberts

Q. But that's the condition that you returned it back to this man in. Is that right?

A. You don't expect of this for twenty years, do you? You expect it to be freshly painted like it was when it was built? What are you going to do with what you paid him for the use of the building?

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Q. You didn't lease it for twenty years though, did you? You had a five year lease.

A. We had five and five and five and five.

Q. Right. And they were renewed every five years. Now, when you decided that you were going to move. You went to Mr. Yancey and asked him to renew the lease for one year. Isn't that right?

A. I asked him would he do it.

Q. Uh-huh.

A. No, I asked him for two years.

Q. But uh—

A. I had plans for building and he knew it. But he refused me the two years and said he would give me one year. This was—I believe it was last fall. I don't know.

Q. But anyway you wanted two years and he said he would lease it to you for one year.

A. You mean—what are you talking about? Now are you talking about 50—'61.

Q. Last fall.

A. Last fall.

Q. Yes.

A. I asked him for two. He said he wouldn't do it but he would consider leasing it to me for one year.

Q. And you didn't want it for one year, did you?

A. No. I refused it. I decided to go ahead and build.

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Q. And now, isn't that why—let me ask you this before I ask that—you took the booths out of there and you put part of them in your new location.

A. Right.

Q. And then this paneling and other wood and debris that you got out of there, you moved across the street in the Grace Hotel there. So you didn't have any use for it in your new building, did you?

A. Oh, I used the biggest portion of it there. There's no paneling there in the hotel.

Q. Isn't it a fact that you left this building in this condition because you knew that Mr. Yancey was going to rent it to someone else to be used as a restaurant?

H. N. Roberts

A. I don't know what Mr. Yancey's intentions are.

Q. At the time you decided to leave this building the way it is now—that's why you took all this stuff out, isn't it?

A. Why I took it out? No. I used the biggest portion of the equipment and a lot of the paneling.

Q. You didn't use the sheetrock and all you took off the walls, did you?

A. No, I threw that away.

Q. You threw that away? How long did it take them to get all of this stuff out of there?

A. All of what?

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Q. The sheetrock, to cut the lights down and to take out the paneling.

A. Well, we moved in three days if that's what you're *refering* to. I don't know what you're *refering* to.

Q. Well, after you moved, how long did the men work in there disassembling the rest of the interior?

A. I have no idea.

* * * * *

Q. And there was an air conditioner in there that had to have a tower on the roof, didn't it?

A. Right.

Q. Who took the tower off the roof?

Mr. Blanks: Now, Your Honor, please, we object if they bring in the air conditioner. They filed a bill of particulars in this—

Mr. Slayton: I'm not—let me say this and maybe it won't bother you. Taking the tower off the roof caused the roof to leak.

Mr. Blanks: You're not claiming that the air conditioner belonged to Mr. Yancey?

Mr. Slayton: No, sir.

Mr. Blanks: And shouldn't have been removed?

Mr. Slayton: No, sir.

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C. C. YANCEY, the plaintiff, first being duly sworn, testifies as follows:

DIRECT EXAMINATION

By Mr. Slayton:

Q. State your name.

A. C. C. Yancey—Clarksville, Virginia.

Q. Mr. Yancey, do you own a building in Clarksville on Main Street that was rented from you for a number of years by Mr. Roberts and his family?

A. Yes, sir.

Q. When did you first lease that building to Mr. Roberts?

A. I couldn't say. I wouldn't say definitely but I imagine that it was something like twenty-one or two years ago. Now, I'm not sure of that. But I'm guessing.

Q. When did Mr. Roberts move?

A. When did he move?

Q. That's right.

A. Now, I couldn't answer that question cause I had it rented to the Gills and the Gills—Wes and Doc Gill—they first rented it and Roberts wanted to rent it and they came to me and asked me would it be all right for them to sublease it to Roberts. Now, what time it was, now, I couldn't tell you. I thought it was all right.

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Q. Now, when you had it leased to the Gills, what were they using the building for?

A. A cafe.

Q. When did Mr. Roberts move out of your building and move to the new location he's in now?

A. It must have been—I don't know when the lease expired—my contract, have you got the contract, I don't. I imagine that it was the last of August or the first of September.

Q. All right.

A. Now that's my guess. The contract would show from them.

Q. The lease expired on September 3rd, I believe.

C. C. Yancey

A. Yes. That's right.
Q. Did he move before the lease expired?
A. Yes, Yes. He moved before the lease expired.
Q. How much rent did he pay you for this property?
A. Hundred and sixty-five dollars a month.
Q. Now, has he paid you all the rent?
A. No. He owes one month.
Q. Have you been able to rent this building to any body else in the condition it's in?

Vol. I 10/28/66 page 59 } A. I've had two applicants but I told them I couldn't tell them a thing cause the building wasn't in any shape to show or rent to anybody. And I couldn't tell them anything until after this suit.

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Q. Before Mr. Roberts moved from the place, had there been any disagreement between the two of you?
A. Not a bit. We hadn't had any cross words or misunderstandings or anything of the sort.
Q. Did you have any idea that he was going to take the paneling and take the sheetrock and everything off?
A. No, but there's a letter—he got a letter—there's a letter there that shows that he had warning for him not to do it but he wouldn't accept it.
Q. Did you write that letter to him?
A. No. I got Mr. Bedinger to write it.
Q. Well, did you mail the letter to Mr. Roberts by Certified Mail?

Vol. I 10/28/66 page 62 } A. Yes.
Q. Did he pick up that letter?
A. No. It stayed down there for two weeks, I reckon it was. And they finally give it to me saying that he wouldn't accept it. It had never been opened.

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Mr. Slayton Continues:

The letter is addressed to Mr. J. E. Roberts and Mr. Howard N. Roberts. "Gentlemen: In view of the fact that you have currently planned to move out of the premises in the town of Clarksville at the corner of Third and Main Streets, this being the property which you currently occupy under a lease from me which expires on September 2, 1966, I think it might be well to point out to you that certain articles in the said premises have become permanently affixed to the building and should not be removed by you." Then he lists those articles that he didn't want them to remove. Says, "I also wish to call your attention to the provisions of the lease which specify that the premises shall be left in as good condition as they were at the beginning of the lease. Our relations have been most pleasant during the years that you have leased this property from me and I certainly hope that there will be no misunderstanding between us when you surrender possession. With kind regards, I remain, Sincerely, C. C. Yancey".

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The Court: Let's see. Have you read in the record what's on the outside of the letter? The address and so on?

Mr. Slayton: The face of this envelope shows that it was addressed to Messrs. Howard and N. J. A. Roberts, Clarksville, Virginia. But it has the return address of C. C. Yancey, Box 515, City. And letter is stamped "Returned—Notice Issued—Article Not Called For" and it was sent by Certified Mail—Certificate number 903621. On the back it has the notation "Second Notice—June 4, 1966". The letter was post marked May 30th, 1966.

The Court: We'd like to introduce that article to the jury and make it Exhibit of course for the record but not for the jury. You're just going to make it Exhibit "X"?

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Q. Now, Mr. Yancey, when Mr. Roberts re-

modeled this place this last time and he put in the new booths, did he talk to you about it before he did it?

A. Yes.

Q. Who paid for the booths that he put in there?

A. He paid for them, I reckon. I didn't pay for them.

Q. Now, did you know that he was going to take the paneling off the walls when he moved?

A. You mean, when he moved out?—No. If I did, I'd have been down there before daybreak. If I had known it.

Q. When did you first learn of the condition of your building?

A. Well, the lady that's keeping house for me went down the street and she passed by this place and she came back and she told me—said "there's somebody in that building tearing it to pieces".

Q. Now, don't say what she said just tell us what happened after you found out about it.

A. After I found out? I went down there.

Q. Did you try to get the people to stop taking it apart?

A. No. No, I didn't try to get them to stop. Because it won't no need.

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Q. Why?

A. Because all of it had been torn out.

Q. Right. Now—

A. Few—a few pieces of sheetrock left. And the boy was tearing that down. I didn't say nothing, I just thought he might as well go ahead and tear the whole thing down.

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Q. When was the ceiling put up in the dining room part of the restaurant?

A. I'm sorry, but I can't tell you.

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Q. Mr. Yancey, what I want you to do is to start over again and tell these gentlemen what you did when you made these repairs and how you arranged—who was going to pay for what was done, you see.

A. Well, I'll tell you. It was worked this a way. We'd get somebody to bid on it and find out what it would cost and add 10 or 12—it started out with 12% but it got down to 10%. The last work, I think, was 10% and we'd know what—both of us would know what the rent was going to be before the work was ever done and I've paid for everything. I paid for the basement, I paid for the basement, I paid for the rear, fixing that thing, and I paid for the front—paid for the front twice.

Q. All right, now, when you'd do this work would you increase the rent 10 or 12%?

A. Ten or 12%. In other words, say if it cost $5,000.00 12%—that would be $600.00 wouldn't it?

Q. That's close enough.

A. That would be $50.00—no that would be $25.00 extra wouldn't it?

Q. Well, is that the way you worked it? You just added on to the rent for the month?

A. Yeah.

Q. Until the—until you got your money back?

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A. No. No, I don't know anything about getting the money back. I never have figured out how the money got back. I was renting it that way. I don't know when the money got back.

Q. But each time you spent this money and the rent was changed was the rent figured into these leases that you all signed over a period of years? In other words, each time you signed a new lease that the rent was different, did you change that part of it?

A. Yes. It would go up. Now, I spent—do you want me to tell this?

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C. C. Yancey

CROSS EXAMINATION

By Mr. Blanks:

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* * * * *

Vol. I
10/28/66 Q. That's what I'm trying to get around to. It
page 90 } was your business to maintain that building?
A. That's right.

Q. If something happened to the building, it was your bad luck and not Ned Roberts?

A. Yes.

Q. So when the front cracked up or what ever happened to it, anyway some money had to be spent on it?

A. Yes.

Q. It was your business to do it?

A. Yes.

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Q. Now, Mr. Yancey, did you know, you of course, knew what Ned Roberts was going to do with this building? And what he'd done with it for the last twenty years? Run a restaurant?

A. Yes.

Q. You also knew that he was going to construct a kitchen for his restaurant in that back room.

A. Yes.

Q. Did you know, when he put these fixtures in here, in there, that they were his fixtures? Did he pay for them?

A. Yes. I reckon he did. I didn't pay for them.

Vol. I Q. You didn't pay for them?
10/28/66 A. No. He must have paid for them. I didn't
page 91 } pay for them.

Q. Now, you didn't pay for a single fixture that was in that place did you?

A. I don't know. There might have been some sinks and *lavatorys* in there that I fixed and stools.

C. C. Yancey

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A. The electric fixture was there but what kind they were, I don't know.
Q. They weren't these, were they?
A. I don't think they were.
Q. You don't think they were?
A. I believe he put new fixtures in there. I think he did.

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Q. Now, Mr. Yancey, you see these booths along here?
A. Yes.
Q. Now, these tables, along here? And this seat along on this side? Have they been removed? From the building?
A. Well,—there ain't nothing in there. I reckon they have.
Q. They have been removed. Have they?
A. Well, there's nothing in there. I'll put it that way and you can take it however you want to. There's nothing in there but you can take it whatever way you want to.
Q. Those things have not been removed?
A. They're not in there. I can tell you that.
Q. All right. Now, then if, you do not claim or have not claimed those particular items as your property, have you?
A. No. I don't think so.
Q. Why?
A. Huh?
Q. Why didn't you claim them as your property?
A. Well—he could move those couldn't he? Were they nailed down or screwed down?

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Q. I don't know, sir, I'm asking you.
A. Well, I don't know. I'm going to tell you, I don't know.

C. C. Yancey

Q. All right. You've made no claim to them though?

A. No. No, I don't think I've made any claim. All I want —I'm after the building put back in the same condition that he received it. That's what I'm after.

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The Court: If they're attached to the building—they become a part of the building. The question is whether what was in there really is part of the building.

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A. Well, he come to me and wanted so much work done and he asked me what—would I do it or let him do it and I found out some of what the cost would be—I told him, I said, well you go ahead and do it. I said I'll stay out of the picture so he went ahead and done it. So now, what it cost him to do that work, I don't have one bit of an idea whatever of—

Q. He told you what he wanted done and you told him that you didn't want to do it—for him to go ahead and do it?

A. Yes.

Q. And you—

A. I said now, wait a minute. I don't whether I told him—in other words, he said that he would do it. Now whether I told him that he could go ahead and do it, I don't know, but I know he said he'd go ahead and have it done.

Q. He said he would do it?

A. Yes.

Q. And you knew it was being done?

A. Yes. That's what I was going down there for.

C. C. Yancey

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Q. You would go down there and watch the construction, wouldn't you?

A. Yes. I went down there several times. Yes.

Q. And you never objected to anything he was doing, did you?

A. No. He was improving it.

Q. Well, now, this walnut—this paneling around there, that is in contention here, do you know whether that paneling extended from the ceiling to the floor or not?

A. No.

Q. Why do you think that you own that paneling?

A. I haven't said I own it.

Q. You do in your papers. Yes, I know, you personally haven't said so but you do in the papers, in this case. You are suing for the paneling.

A. Well, I don't know. Well, he made a fool of himself. He should have gone in and taken that other paneling down so nobody could have seen it, but he left it there so people could see what was there before. You understand what I'm talking about?

Q. No.

A. Well, part of the paneling up there, what you're talking about, and it's pretty and all, he left that there—left part of it there. Well, if he'd been smart he'd have taken it all down so nobody—a jury or nobody else—could have seen what was up there.

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Q. What difference would that have made if it belonged to you? If it belonged to you he shouldn't have taken it down—if it belonged to him, he had a right to take it down. Whether the jury saw it or not.

A. That's what I'm talking about. Why he didn't take it down. That's the reason I'm saying why he didn't take that down.

Q. All I asked you, Mr. Yancey, is are you claiming that paneling for the part of your building?

A. I'm claiming for the building to be put back like it was. That's what I'm claiming.

Mr. Slayton: We're claiming—

Mr. Blanks: Wait just a minute. For this building to be put back like it was then this paneling wasn't in there when you rented it to him was it?

A. Yes, it was in there. He fixed it. It was our understanding what he was going to do.

Q. I thought you told us a minute ago, Mr. Yancey,—I think you've forgotten—that all this work was done after that 1960 lease was signed.

A. Well, I think it was in progress. I wouldn't say to that. I wouldn't say positively whether—

Mr. Slayton: Whether it was or not, Your Honor, has got nothing to do with the legal question—

Mr. Blanks: It's got a lot to do with it.

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Mr. Slayton: If it was attached and became a part of the real estate, it doesn't make any difference whether it was there or not or when it was put there.

Mr. Blanks: These gentlemen, themselves, have raised the issue that Mr. Roberts has got to return this building to him according to the 1960 lease. Now whether this stuff was in there when this lease was signed is—.

The Court: If he turned the building over to him when he got out—

Mr. Blanks: Sir?

The Court: I say, Mr. Roberts turned the building back to him whenever he got out and they are contending that the condition then as it was—

Mr. Blanks: As I understand Mr. Slayton, what they are contending is that this building should be returned to them as it was when the 1960 lease was signed. Now whether this stuff was in there when the lease was signed is most important.

The Court: No, if anything in there was replaced like those light fixtures or anything else, they claim that they are *entlted* to those fixtures—

Mr. Blanks: Your Honor, we've talked about the light fixtures. We're talking of the paneling now.

The Court: All right, the paneling. They are entitled to a wall is what they're contending and if that was the wall then they're entitled to it.

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Mr. Blanks: But if their position is correct—now, I don't think it is—but considering for this argument that it is correct, they are contending that the building is to be put back according to what it was when the 1960 lease was signed. And I'm just trying to find out what condition of the building was in 1960 when the lease was signed.

The Court: And they are contending that they are entitled to it, not in 1960 when the lease was signed, but they are entitled to it with the usual wear and tear as it should have been—

Mr. Blanks: That's not your contention, is it?

Mr. Overstreet: No. The lease does not say in the exact condition that it was in in 1960. It says in the lease "in good condition". In other words, mainly, that he couldn't tear the building up but if he added something to it that became a part of the real estate he can't go back and strip it down to make it equal 1960. He might get it back in better condition. And that's exactly what The Court has stated—in a little different words.

Mr. Blanks: That fact has altered their proposition.

Mr. Overstreet: No we're not. They—

The Court: It could be anything—

Mr. Blanks: They're blowing cold and blowing hot.

The Court: I say anything that's attached to it is a part of the building. It goes with the building.

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Mr. Blanks: Well, I think we're entitled to show whether or not it was a part of the building in 1960.

The Court: If he had moved today it was a part of the building at that time.

Mr. Blanks: All right. We except—

The Court: Unless it was some rug * * * or something like that.

Mr. Blanks: We except to the ruling of the Court.

* * * * *

Q. When did your lease with Mr. Roberts expire, Mr. Yancey?

A. The last one?

Q. Yes.

A. I think it was September the 1st.

Q. We have a record that it was September the 3rd.

A. Well 3rd then—I—

Q. That's immaterial.

A. Yes.

Q. But you wrote him this letter on May the 28th.

A. Well I was giving him time so he wouldn't go there and tear things to pieces.

Q. Well how did you know he was going to move anything out?

C. C. Yancey

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A. He had told me. He had told me he was going to move.

Q. But he hadn't moved anything out of there

A. I know that but he'd told me.

Q. Oh, he told you he was—

A. Yeah, he'd told me. My nephew, Your Honor, will vouch for it. I told him not to move anything off the walls that was attached to the walls and he said he was going to do it. I said well your contract is different from mine. He said, well I've got a different contract from yours.

Q. Well now, you told him that you objected to him moving anything that was attached to the walls?

A. I don't know whether it was that words or—

Q. But that's what you said.

A. Well, maybe I said it. Maybe I said it.

Q. Well do you remember now, just what you did say?

A. I've got records of it. You can see that. Instead of me, you can see the record, and it can explain it better than I can tell you.

Q. I'm not trying to confuse you, Mr. Yancey, I'm just trying to get at the facts. If I understood what you said, you had a conversation with Ned Roberts prior to writing this letter. Is that right?

A. Yeah, I think. Yes, because I told him not to move stuff.

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Q. And that was the time that he told you he was going to move it?

A. Yeah.

Q. Well, he had not, at that time, moved out?

A. No.

Q. And did you first go to him and tell him not to move it?

A. Yeah. I told him not to move things off that floor. And if anything was attached to the walls—not to move it. And he said that he was going to move.

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* * * * *

Q. I understood you to say that when you first leased the property to the Roberts that there was no heat in it?

C. C. Yancey

A. No. There wasn't any heat. The Roberts asked me to put heat in it and I asked a man to come from South Boston, I believe it was South Boston to put heat in and it went on for several years and for some reason, I reckon they let the thing freeze up or burst, or something, I don't know what happened, and they took it out —did away with it and put in gas heat.

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Q. Well when—

A. I didn't pay nothing on the gas heat. I didn't pay anything on it. They put that in themselves.

Q. What sort of heat was that, originally, that you put in?

A. Well it was a hot water heat.

Q. Hot water?

A. Yes. A radiator.

Q. And—

A. It used coal. It didn't use oil cause folks wasn't using oil much then.

Q. And where was the furnace then?

A. In the basement.

Q. In the basement?

A. Yeah.

* * * * *

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* * * * *

Q. Can you state approximately when they took this coal furnace out?

A. No. I couldn't tell you. I imagine, I'm guessing now. Don't get say I said so and so—I guess they took it out seven or eight years ago. I reckon, now, I'm—

Q. Well, anyway, it's been a right good while ago?

A. Yeah. It's been a right good while.

Q. And they replaced it at their own cost?

A. Yes.

Q. When they—

A. Now listen, Jimmy, I had heat in it and it went to the bad. They let it burst or something and they put this heat in. They didn't ask me anything about it. About putting it in.

Q. Then it was satisfactory with you for them to substitute this heat—this gas heat—

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A. It was all right with me because I didn't use it.

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Q. Mr. Yancey and we were talking about the board—the sheetrock that is on the side. You say Mr. Gill put that on?

A. The sheetrock. He put the sheetrock up there, I know that. That is one thing I do know.

* * * * *

Q. All right. What kind of lights were in this building prior these fancy lights that are shown in this picture?

A. I couldn't tell you. I don't know.

Q. You don't know what type of lights they were?

A. No. I don't know.

Q. Do you know whether any lights at all were in there?

A. Oh, yes. Lights were because how in the world the folks that run it for a cafe for fifteen or twenty years and you know darn well it had lights in it.

Q. But you don't know what kind of lights?

A. No. I couldn't tell you. Electric lights is all I can tell you.

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JOSEPH B. CHANDLER, JR., A witness for the plaintiff, first being duly sworn, testifies as follows:

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DIRECT EXAMINATION

page 115 By Mr. Slayton:

Joseph B. Chandler, Jr.

Q. State your name, please.
A. Joseph Beal Chandler, Jr.
Q. What is your occupation, Mr. Chandler?
A. Photographer.
Q. Where are you located?
A. South Boston, Virginia.
Q. What kind of photography do you do?
A. Everything. Commercial—have a Studio.

Mr. Blanks: How about — —? He's the gentleman who took these pictures.
Mr. Slayton: That's what I was going to say. Yes, sir. Mr. Slayton Continues:

Q. Will you agree that these—

The Court: Let the record show that he's fully qualified as a photographer. There's no question about that.
Mr. Blanks: So far as I'm concerned, Judge,—I don't know Mr. Chandler—
The Court: He takes a lot of pictures for us.
Mr. Blanks: Of course, we've been using him a lot right recently.
Mr. Slayton: I just want to be sure that there's no question about the accuracy of the pictures.
Vol. II 10/28/66 The Court: Let him state the date that he took the pictures, then. He did take them?

page 116 } Mr. Slayton Continues:
Q. Will you look at these please?
A. Yes. I took all of them. Now, other than these three —these were taken on September 15, 1966. These three I believe, were taken in 1961, I believe. These were the ones that were taken on September 15, 1966.

CROSS EXAMINATION

By Mr. Blanks:
Q. These of the complete building were taken in 1961? I think that's right.
A. The complete room.
Q. Yes, sir. And these sectional ones were taken—
A. September 15, 1966. Yes, sir.
Q. That's the true representation of what the—
A. Yes, sir. That's right.

Q. Are all of those pictures sections of that Roberts restaurant buiding?
A. Yes, sir. Inside and one of the back alley.

* * * * *

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* * * * *

MR. CHARLIE H. NEWTON, a witness for the plaintiff, first being duly sworn, testifies as follows:

(the question is not on the tape.)

A. unstopping the lines, repairing them, and so forth.
Q. Well, what is the other plumbing besides a double sink?
A. I don't have a list of every item on the plumbing.

Mr. Blanks: We object to the * * * *asses* to the plumbing. We think we're entitled to an itemized list, of what these gentlemen think the cost is, because—
Mr. Overstreet: If it please The Court—
Mr. Blanks: —some of these items—there is no question about the fact that they shouldn't go in. We've got to take them down and find out and we don't want any general statement as to what they are going to cost. I was going to ask him, back here, we have two gas heaters. I don't know how much each one of them cost. But they cost approximately one half of what he's got down here—$250.00 a piece.

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The Court: I see. Of course, you've got to cross examine him.
Mr. Blanks: Are they correct?
Mr. Newton: Yes, sir.
The Court: Well let's see now. The sink and other plumbing—how much does the sink cost to put in?
Mr. Newton: Well, I don't have a breakdown of the separate items. I had the total of the plumbing in the kitchen and I when I had the girl to type it up I didn't put down like you needed a cut off or to replace this trap.—
Mr. Blanks: We object to this part of his testimony.

Mr. Charlie H. Newton

The Court: All right. We'll straighten these things out, I mean after—

Mr. Overstreet Continues:

Q. Is that included in the permanent fixtures in the lavatories?

A. This was to include all the plumbing that I was supposed to do and I don't have a detail on every item of the plumbing. I mean, I just included it.

Q. What other items do you have there?

A. All right. I have another item of cleaning the floors and general cleaning and straightening up and rubbish and things like that. I had an item of $75.00 for that.

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Mr. Blanks: Thirty-five dollars?

Mr. Newton: Seventy-five. — I had another item here to remove a partition in the kitchen and to build a new partition all the way across. This is the cost of the materials—in taking it down, it wouldn't be worth trying to repair the walls. They have deteriorated so I figured on a basis of removing the partition and putting in a new partition. The next item was to strip—

Mr. Blanks: How much was that expense?

Mr. Newton: I'm sorry. $342.00.

Mr. Blanks: Three hundred and forty-two dollars?

Mr. Overstreet Continues:

Q. Just a minute, I'd like you to point out to the jury just what partition that is in the kitchen there. There are so many pictures here. Picture number 9 in the kitchen area. Would you tell the jury whether or not that is the partition—

A. This is the partition across here.

Q. All right, sir. Go ahead.

A. The other walls and the ceiling are, I figured it would be cheaper to try to strip them and put in a new wall—sheetrock wall—rather than trying to clean and repair the ones that were in there. And I figured mine on the basis of stripping the walls and ceilings, the rest of the kitchen and—stripping the walls and ceilings—that was $280.00 and then to sheetrock the same walls and ceilings—tape it and seal it—and sand it was $280.00.

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Mr. Blanks: Now wait a minute. You're going to strip these walls in the kitchen and ceiling out

of the kitchen and then you're going to put on new sheetrock?

Mr. Newton: Yes, sir. All of that, yes, sir.

Mr. Overstreet: Now, by stripping, do you mean—you don't mean strip it off—what you mean is nailing it up with (the balance of the question and the answer is inaudible.)

Q. And that was $280.00?

A. It was $280. for the sheetrock and $206.80 for the stripping.

Mr. Blanks: Two eighty-six for the stripping?

Mr. Newton: No. Two hundred six-eighty. Two hundred and six dollars and eighty cents.

Mr. Blanks: And that's for stripping the walls and ceiling?

Mr. Newton: And the sheetrock was $280.00, to hang the sheetrock, fill it, sand it and tape it. Then to paint out the entire kitchen and the storage room combined, or what ever they call it, anyway the room that was being divided by this partition—to paint that out—two coats, all the woodwork and the walls was $275.00.

Mr. Blanks: Do you know whether those walls had ever been painted or not?

Mr. Newton: I can say that the walls in the kitchen part had, but the other part it was—I don't know. I'm not sure. This is inside of the kitchen part anyway.

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Mr. Blanks: I thought that's what you were talking about.

Mr. Newton: Well, it's another room behind there.

Mr. Blanks: Then this painting is the room behind there?

Mr. Newton: It's both the kitchen and the storage room, I suppose it was. Anyway—

Mr. Blanks: Had the walls ever been painted?

Mr. Newton: I don't know if those rooms have or not. I couldn't say because—

Mr. Blanks: They just told you they wanted those painted and you put them in?

Mr. Newton: Sir? They asked me to give them a price on this in the beginning I gave them a price like if you call me and ask me to give you a bid on a new home—that's exactly what I done here.

Mr. Blanks: How much was painting the walls? On the kitchen and the—

Mr. Charlie H. Newton

Mr. Newton: Two seventy-five.

Mr. Blanks: Two seventy-five. And that includes the room behind the kitchen?

Mr. Newton: Yes, sir. Now the next item is two outside doors. This is jams, doors, hardware, labor—$132.87.

Mr. Blanks: How much?

Mr. Newton: One hundred thirty two—eighty-seven. That was the total.

Vol. II
10/28/66 Mr. Overstreet Continues:
page 122 } Q. Did you allow anything for getting this odor out of this building?

A. No, I didn't. I'm really not in that kind of business and the only thing I figured was the work to be done. This I would accept at this bid—this contract price on my part of it.

Q. Do you think it would be cleared up by this general cleaning, fixing the walls and painting?

A. Yes.

Q. You think that would get rid of the—

A. Well, I had an item in here for cleaning the floors and removing the—

Mr. Blanks: Some of them would have to be scraped.

Mr. Overstreet Continues:

Q. And is that your last item?

A. Yes.

Q. And you've already given us the total on that, I believe. That's all, soon as Mr. Blanks asks some questions.

CROSS EXAMINATION

By Mr. Blanks:

Q. You don't know, of course, whether any of these items that you are talking about putting in this building, were deteriorated because of age and use or whether somebody took them out, do you? The door and jams, for instance, are they outside doors and jams?

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page 123 } A. Yes, sir.

Q. Can you state whether or not they are deteriorated because of conditions due to rotting out or due to somebody pulling them out?

Mr. Charlie H. Newton

A. Well I would have to say that if the doors had been there very long that part of it would have to be to wear and tear or deterioration.

Q. Well, the evidence here—

A. I was only asked to give a cost of replacing these doors. It would be up to somebody else to decide if they should be.

Q. All right. That's all.

* * * * *

Mr. Blanks: We ask that The Court rule on * * * that under this paragraph in the 1960 lease that the defendant had returned this leased property in as good a condition as was received in 1960 but—

The Court: It would have to be at least that. Now anything that is attached to the premises or anything of that kind that was permanently fixed, I think it would be based on the time when he actually moved out. He's entitled to have it as it was at that time. The usual wear and tear, of course, could be it.

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Mr. Blanks: The property has to be returned like it was in 1960.

The Court: At least that good.

Mr. Blanks: Not as it was in 1946 or 1956 but like it was in 1960?

The Court: In 1960.

Mr. Blanks: And everything that had been done structurally to the property, prior to 1960, would be out. Is that it?

The Court: That's right. The year to the advantage of Mr. Yancey, if you want to put it that way. I mean, it started over again in 1960. That was the new lease.

Mr. Blanks: The plaintiff can't have the cake and eat it too, and it's limited to that is one defense and if it's not limited to that it's another defense and we'd like to know certainly, if that is what The Court has ruled.

The Court: I think we can do this. I think we can start with that 1960 lease as that includes all the property, the basement and the restaurant in that, and I think we can start with that as the beginning of the lease as far as any of the property is concerned.

Mr. Blanks: Now, of course, The Court, has not as yet ruled, and probably won't rule on the chattels that are attached to the * * * and whether or not you could remove them.

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page 125 } The Court: So, we want to see what the evidence is in regard to those things.

Mr. Blanks: What could be ruled on that? The base to the building as it was in 1960 less usual wear and tear—I believe Judge Tisdale uses the word, depreciation—

The Court: Well, whatever you want.

Mr. Blanks: is to be returned.

The Court: Yes. And anything, of course, it is—became a part of the building goes to Mr. Yancey. What I'm talking about is anything that sticks to the building—made a part of the building.

Mr. Blanks: Here's what I meant. Lets assume that prior to 1960 a hole was cut in a building to put in a piece of machinery or equipment. Now that condition exists in 1960.

The Court: Well, if the hole was put in the wall, that machinery might become a part of the premises because it would be attached to it, you see. The building was altered so as to take care of that situation.

Mr. Blanks: Of course, but that's a legal question an *arguement* with which we do not agree with that consensus of law. What I mean is, if he put a piece of equipment in there prior to 1960 and in putting the equipment in there it was necessary to make or cut a hole in the wall or maybe cut a hole in the floor or something, I'm not taking that as a specific instance but just using that in effect, and that was done prior to 1960, then, we are to return this building with that hole in it. That's right, isn't it?

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The Court: Well no, I don't know that that is right, unless whoever filled that hole—the hole that * * * goes along with the building. And that might be a question but we'll wait until we get to specific instances. Before I could pass on that, I think we would have to do that.

Mr. Blanks: Now, Judge, you're using a bevel edged sword against the man. Now if you want to open this thing up we'll be glad to go back to 1946 and show the history of this building and what's happened to it that's all right. You pay for it. We've got all that information, as a matter of fact, we've got all the information that exists and they don't have any but *but* you can't hold that both ways. Now, what I want to know is which way The Court is going to give us. The Court going to hold us under this 1960 lease—

The Court: The 1960 lease is the lease between us.

Mr. Blanks: Sir?

The Court: I say the 1960 lease is the *least* between us. The premises are supposed to be returned at least as good as they were when they received it in 1960.

Mr. Blanks: That's right. Then if the hole was in there in 1960 when this lease was signed granted it is not the tennants responsibility. He's returning the building to him with the hole there as it was in 1960. Now that's what I'm trying to get at.

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The Court: Yes but you run into the fact as to what that hole was stopped up with—what he cut it for, you see. That may have attached the machine or whatever it might have been to the building you see, and would become part of the building. You wouldn't—you just wouldn't cut a hole in the floor—

Mr. Blanks: Assuming that the hole was cut in there—just any chattel that there would be no question about it's moving out. He's got a right to move that. And when he moves it out the hole is left there but it was there prior to 1960. That's what I'm talking about.

The Court: Well, if it was a * * * I think it would be all right but he just can't leave the premises in a condition that they weren't there—they weren't operable or that they couldn't be used or in as good a condition as they were in 1960 when they made that lease. Now, you see, the machine or whatever they had in that hole, I don't know what it is. We're just talking on theory, I suppose, but whatever the hole was made for in the wall or in the floor or where ever it was made, was made for a machine or for something to be attached to the building or become a part of the building to be used with the building. And that he might have to replace. To stop up that hole and that would be cheaper to him if he stopped the hole than it would to give up the machine if he's already taken it out.

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Mr. Blanks: Now, Judge, I don't know.

The Court: Those things, I'm going to have to pass on as it comes up.

Mr. Blanks: Well, I don't know, about any old cuts. But prior to 1960 Mr. Yancey was the * * * that approved everything that had been done. Now that's what you're holding us—

The Court: That's the lease. The lease date.

Mr. Blanks: Sir?

The Court: I say the lease date.

Mr. Blanks: Then prior to the lease date he's approved everything that has been done.

The Court: That would be my idea. We've got to have a beginning date and I think had he moved in certainly on a third * * * it would have been somebody else other than Mr. Roberts.

* * * * *

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page 129 } H. N. ROBERTS, the defendant, who remains under oath from previous questioning, testifies as follows:

DIRECT EXAMINATION

By Mr. Blanks:

* * * * *

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* * * * *

Q. Would you tell The Court, what, if any, improvements or how you and Mr. Yancey operated, with reference to what improvements were made on the property during the time you leased it.

Vol. II
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page 133 } A. Well, soon after I went there, the floors were wood with oil on it, you know and slick so I had—put asphalt tile on the floor.

Q. This asphalt tile that is shown in the pictures, is that the asphalt tile that you put down?

A. Yes, sir.

Q. Has that asphalt tile been on the floor since 1946 or whenever you put it on there?

A. Yes.

Q. You mean it has lasted twenty years?

A. No. It had heavy traffic. I replaced it, I reckon, as many as fifty times in places where it had heavy traffic.

Q. So the first thing that you did to that building was to put asphalt tile floor in?

A. Right.

Q. Now what is the next thing you did to the building?

A. Well the next thing I done was to put celotex *ceiling*.

Q. You did. I believe Mr. Yancey testified yesterday in his testimony that he paid for the celotex ceiling.

A. I put it up and paid for it. I don't know if he paid for it a second time or not.

Q. You put it up and paid for it?

A. Right.

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Q. Before you put the celotex ceiling up there, what kind a ceiling was there?

A. There was nothing there except two inch boards that were the same that was in the walls coming down.

Q. Could that be the type of board that we saw on the walls there?

A. The very same. They were on the roof all the way down to the floor, on the side of the walls.

Q. Was there anything when you went in there on the walls at all except that—

A. No. The only thing on the walls when I went there was on the left hand side going in—

Q. I'm not worried about Mr.—here's a picture of this building. Mr. Roberts, this picture was made in 1951 or so. Would you show the jury on that picture the condition of the bar back there that you are talking about?

A. Well going into the front door, on the left hand side down about two-thirds of the building was a long counter. In back of this counter was a back guard—called a back guard—and up about seven foot—in other words you'd have a shelf and then the back guard to set things on and then you'd go up from here up the wall up to about seven foot high was a four inch ply wood. Now this is what Mr. Gill put on there. Above that it was a three inch moulding that finished that off at the top. Above that was just painted from there up to the ceiling. There was nothing on there.

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Q. Behind this seven foot back guard, what was there on that wall?

A. Just the wood.

Q. Just the wood. Now, when was that back guard taken out?

A. That was taken out in '61.

Q. In 1961. Was it taken out before or after this last rental contract was signed on the 30th of December, 1960?

H. N. Roberts

A. After.

Q. So up to the time that this contract was signed there was nothing on that space of the wall except the plain wood. No one had put anything on it up to then, had they?

A. No. In later years I put sheetrock from the top of the * * * to the ceiling to eliminate the dust.

Q. I'm talking about behind the back guard. You said the back guard was seven * * * tall.

A. Right.

Q. Now from that seven feet down to the floor—

A. There was nothing.

Q. And as long as the back guard was. How long was the back guard? Approximately?

A. Well I'd say it was about two-thirds the length of the building.

Q. Two-thirds the length of the building?

Vol. II 10/28/66 page 136 } A. Yes, sir. The back guard was. Now this ply wood went all the way around the building.

Q. What ply-wood?

A. This quarter inch ply wood that Mr. Gill put on.

Q. I see. But we're talking about behind the back guard.

A. There was nothing behind the back guard.

Q. There was nothing behind the back?

A. No.

Q. From seven feet in *heigth* and two-thirds of the building —the length of the building—

A. Right.

Q. —there was this back guard and there was nothing behind that at all? Except this wood that is over there now*Z*? Is that right?

A. That's right.

Q. Now what was on the balance of the walls? I believe you said something about Mr. Gill having put some ply wood there?

A. Well, now, there was at the ends of the counter on to the end of the building and around to the back where the two doors go into the kitchen and the two doors go into the rest rooms. There was ply wood—quarter-inch ply wood with a moulding at the top of it.

Q. In other words, that would extend from the ceiling to the floor?

A. No, no. Seven foot. The same height as the back guard.

Vol. II 10/28/66 Q. Oh. Seven foot.

page 137 } A. Now, above that there was nothing. Except it was painted when I went there.

Q. Let me understand that now. Mr. Gill put the quarter inch ply wood on the wall clean around the building?

A. Right. Except in the front of the building.

Q. Except in the front of the building.

A. Right.

Q. Seven feet high?

A. Right.

Q. Seven feet high all the way around the building?

A. Right. He went across the back and went up where the *boothes* were up the side of the building on the other side of the building. The right hand side—going in.

Q. On the western wall, that's the wall that the back bar was on, did—was there anything between the seven—how tall—what's the pitch of that building, do you know?

A. It's about twelve foot.

Q. Now, the difference in the twelve feet and the seven feet—this ply wood that Mr. Gill put on there—what was there?

A. Nothing.

Q. Nothing but the wood.

A. Right.

Vol. II 10/28/66 Q. Now that ply wood did that run the whole of one-third of the west wall, all of the back wall, and all of the eastern wall of that building?

page 138 } A. Answer inaudible.

Q. Now, Mr. Roberts, how long did that situation exist?

Mr. Slayton: Your Honor, do you think all of this is relevant? If you nail up a wall—well, if you put the thing there—

Mr. Blanks: This was put there before 1960.

Mr. Slayton: —it's a part of the building and you can't move a wall without substantiality damaging the property itself and it becomes a part of the real estate and no matter who put the thing up there—

The Court: I read what is in the record about it though. The back wall was moved in '61 and the lease was made in '60 so it was removed after the lease was made.

Mr. Slayton: Well, I made particular reference to these—to this ply wood that Mr. Gill put up there. It was nailed to the wall and of course, it's not there now. That's the whole question, as I see it.

H. N. Roberts

The Court: Well, if he put sheetrock back in the place of that or something to improve it then he would like to say it.

Mr. Slayton: But it doesn't make any difference what he did. Because he took it down when he left, you see? I mean he could have fixed the finest wall in the world when he took down what was there but the question for the jury is—there's nothing there now, don't you see? This is the point.

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The Court: Yes. I understand that. Of course, it's a question for the jury just what he owes, if anything, for damage that he's done in moving part of the building or some fixtures that was attached to it—the building or something of that kind. In leaving those spaces blank. They were not blank in 1960 at the time the contract was signed.

Mr. Slayton: Sir?

The Court: I think it's all right for the jury to have the whole facts before them if they don't go into too much detail because that would take time but I think a reasonable—

Mr. Slayton: Well we're not trying to—

The Court: A reasonable estimation of what was there and what was removed by this gentleman and all of this should be brought before the jury.

Mr. Blanks Continues:

Q. Now, Mr. Roberts, this situation of the ply wood being up seven feet around the building except behind the back guard. How long did it stay there? Or is it there now?

A. The ply wood?

Q. Yes.

A. I removed the plywood.

Q. You did not move the ply wood? Is it still there?

A. I did remove it. Yes.

Q. I didn't get that. Well when did you remove it?

A. In '61.

Q. In '61.

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A. Now the part that was behind the counter, I removed in '61.

Q. The part that was behind the counter.

A. The other was—no I removed it all then because—before '61 though, I put up sheetrock.

Q. Now, that's what we're trying to find out.

A. All right.

Q. When you put up the sheetrock, did you remove this * * *

A. Yes.

Q. You did. Now, when did you do that, do you know? Or you did it prior to 1960? Didn't you?

A. Oh, yes. Let me see, I put sheetrock all the way, in other words, from the booth top, to make it match, all the way to the ceiling.

Q. You took the ply wood that Mr. Gill had put up down prior to 1960—'61 or '60, and you put sheetrock all the way from the floor to the ceiling?

A. No, no.

Q. All the way around?

A. In 1960—in 1952 and 1953—it had wood *boothes* in there. I took the wood *boothes* out and bought new *boothes* and in order to make the redecorating—to make it look presentable to people, I took this down and run the sheetrock from the ceiling down to where the paneling on the booth is just behind there. I didn't go all the way to the floor.

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Q. Now let's get back to when you took this ply wood down, that Mr. Gill put up. Did you take that down prior to 1960?

A. Oh, yes. A long time before that.

Q. A long time prior to 1960. Now, when you took that down, what did you put in place?

A. Sheetrock.

Q. Sheetrock. What did you—where was the sheetrock? Was it all over the wall or did—

A. The sheetrock only come down to just below the equipment. An example—on the *boothes*—the *boothes* were seventy-two inches high.

Q. You mean it came down to the top of these *boothes?*

A. It come here. That's right, just below that—just three inches below that.

Q. Suppose I show the jury on that. There is how far that sheetrock came down.

(Mr. Roberts shows the jury the picture and explains it to them.)

The Court: Is that the same item that Mr. Newton was talking about when he referred to * * * to ceiling? Is that what he was talking about?

Mr. Roberts: Yes, sir.

Mr. Blanks: What we are trying to do now is to show the Court and the jury what the building was in 1960 when this last lease was * * *.

H. N. Roberts

Mr. Blanks: Continues:

Vol. II 10/28/66 page 142 } Q. Mr. Roberts, I hand you here a picture that was introduced yesterday, as the back of that property when that picture was taken. Is there any change in that particular scene between 1960 and now?

A. Yes.

Q. This is Exhibit number 14. Now Mr. Roberts, I hand you Exhibit number 8 which purports to be a scene of the front of this building taken from the rear. Will you state to the jury what, if any, difference in that building as it existed in 1960 and now?

A. The only difference is that I had this rail built and installed because it was a railing there before I redecorated it last time. It was necessary to take it out on account of the equipment.

Q. That railing was in there before 1960?

A. Right.

Q. And you took it out?

A. Right.

Q. And did you replace it?

A. I replaced it with a new one.

Q. And that is the only difference? Of course, Mr. Roberts, this paneling that you show here in the front, that was done in the 1960 decoration?

Vol. II 10/28/66 page 143 } A. Right.

Q. I hand you Plaintiff's Exhibit number 5 which seems to represent the * * * eastern walls. Will you tell the jury what difference there is, if any, in the condition of that wall in 1960 when you signed this last contract and now?

A. The only difference is that the sheetrock was from these shelf liners are here above. (Balance inaudible.)

Q. The sheetrock came down to there and you put that sheetrock in and you took it out?

A. Right.

Q. I hand you Plaintiff's Exhibit number ten which purports to represent a part of the kitchen, I think.

A. That's a part of the stockroom.

Q. A part of what?

A. The stockroom.

Q. Stockroom?

A. Yes.

H. N. Roberts

Q. Will you tell the jury what is the difference in that particular scene now and in 1960, if there is any difference?

A. There is actually no difference. When the kitchen was made, as you can see, these exposed two by fours which are behind the two toilets. I mean that was the way it was made and finished and that was never sealed or finished to begin with. And then the stockroom on top, there was never any sheetrock or anything put on it. The exposed rafters were up there which you can see here. Now later on in years, I put the sheetrock to here and the reason that hole shows in there is because this was underneath the walk-in box which was 8 by 8 by 6 foot high.

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Q. What do you mean by walk-in box, Mr. Roberts?

A. A walk-in refrigerator box. Refrigeration.

Q. One of these * * *?

A. Right.

Q. All right, go ahead.

A. And of course, I finished it up to there and installed these—well they were already in there—those florescence lights—but actually the building is just like—

Q. The building shown in this picture—that part of the building shown in this picture was exactly like this in 1960?

A. Right.

Q. And there is no change at all?

A. No, sir.

Q. Mr. Roberts, I hand you Plaintiff's Exhibit number 6 which is purported to show a scene of the main restaurant room, taken from front to back. Will you tell the jury what's the difference in the way that looks as it is now and the way it was in 1960?

A. Well the ony thing I done, I put the—

Q. I'm talking about the way it was in 1960.

A. Well, the sheetrock was on the wall down to top of the *boothes*. The *boothes* were back on this side and the back guard was on this side.

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Q. The wall were just like you described the walls before. They were down to seven foot.

A. Oh, no. Forty-two-*two* inches. Seven foot on the bar side.

Q. Now, right up above this left hand—right hand—left hand corner there is a little dark spot in there and I believe your attention was called to it yesterday. What is that?

A. That's just where pieces of the celotex fell off.

Q. They fell out? Did you take it out?

A. No.
Q. How long had that celotex been up there?
A. It was put up there about '47 or '48 I think.
Q. It's been up there more than fifteen years then?
A. Oh, yes. Soon after I went there.
Q. I see. Now, when did that fall out?
A. I don't know.
Q. I believe when you remodeled in 1960 you put some sort of box decoration over that portion of the ceiling?
A. Right.
Q. When you took that down, this had already fallen out?

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A. Yes.
Q. So with the exception of that block of celotex and like this celotex up there, that fell out sometime after 1960, that scene in there is exactly as it was in 1960. All right, Mr. Roberts, I hand you Plaintiff's Exhibit number 11—

Mr. Slayton: Your Honor, this is sort of a *rediculous* line of questioning to take these pictures right here and say this building looked like this thing in 1960?
The Court: This is reasonable. The jury knows they've got certain wear and tear and things of that kind.
Mr. Slayton: These pictures look like this thing had a major fire in it. He gives him this picture and says this is Exhibit 5 and says did that building look like that in 1960?
Mr. Blanks: He said it.
Mr. Slayton: He said it looked like this in 1960?
Mr. Blanks: He said with the exception that the celotex fell off—not celotex—plywood

Mr. Blanks Continues:
Q. Mr. Roberts, I hand you Plaintiff's Exhibit number 11 which, I don't know what that shows. What does that show?
A. That shows the kitchen looking from the back to the front of the building.
Q. The kitchen looking from the back to the front of—
A. From the back door. Small portion of the kitchen looking from the front door.

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Q. Now, what is the difference, if any, between that building as shown in that picture and the building as it existed in 1960?
Q. The only difference is this white block right here. I had cut out a hole to put in an exhaust

fan there which all of this area from here up to the ceiling was covered by the hood for ventilation purposes. Naturally being covered for a longer period of time it wouldn't be the color since I had painted the kitchen once every year. The color is going to be different from the other part because when I took the hood down, of course, naturally this * * * would show a lot more dirt it would normally on the others walls. I filled this in back with cinder block just like it was when I took it out.

Q. That's that white spot there?

A. That's right. That's this white spot here.

Q. And you knocked that out of the wall to put in an exhaust fan?

A. That's right.

Q. And you put it back?

A. And I put it back like it was. Now this window here was put in new. I put this one portion of the pane got broke so I had Davis Hardware install all new window in this front window. And other than that, it's the same.

Q. Exactly like it was in 1960?

A. Except for those hood * * *.

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Q. Now, I hand Plaintiff's Exhibit number 9. It looks like it is also a part of the kitchen. Tell the jury what that represents and what the difference is, if any, in the condition it is now and the condition it was in 1960, when you signed this contract.

A. There's none. Other than moving the eqiupment out.

Q. None? Where did you move—So there is absolutely no difference in that building except the equipment has been moved out than it was in 1960?

A. No.

Q. Except normal depreciation. Sorry gentlemen that this is so tedious but the plaintiff introduced these pictures and we want to—I hand you Plaintiff's Exhibit number 12 *wit* which purports to show a western corner of the restaurant room. Tell the jury what the difference in what's shown on that picture and the condition of that building in 1960, if any.

A. That sheetrock above that—you know that back guard, which the back guard come down to here.

Q. Is that where the back bar—

A. That's the back guard—

Q. Go over there and show the jury where the back guard was and tell them where the sheet rock came down to.

H. N. Roberts

(Mr. Roberts describes the picture to the jury pointing out the back guard and the sheetrock. To the jury he answers some questions put to him by Mr. Blanks.)

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Q. Mr. Roberts, I hand you now Plaintiff's Exhibit number 13, what does that represent?

A. That's the southeast or the right hand side as you go in the door. And that shows the box overhang that was in it.

Q. That's the box that you were talking about that you was originally caused because it—the two windows on each side that Mr. Yancey fixed?

A. Right.

Q. And that box is still * * * there?

A. Right.

Mr. Slayton: Don't lead him but just so much.

Mr. Blanks Continues:

Q. And it was there in 1960?

A. Right.

Mr. Slayton: Well, I can lead your witness, but you can't lead him.

Mr. Blanks: You did a right good job yesterday, leading your witness.

Mr. Slayton: Well, I object to any further leading questions, Your Honor.

Mr. Blanks Continues:

Q. Mr. Roberts, I hand you Plaintiff's Exhibit 4. Can you tell the jury what that represents and what the difference, if any, there is in that particular scene now and in 1960?

A. No, sir. The only difference is that the sheetrock * * * down from here down the *boothes* coming up to this point. These are the two doors going into the rest rooms. (Balance of statement inaudible.)

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Q. Mr. Roberts, I hand you plaintiff's exhibit number 16. I believe this also represents the front and that box that we talked about. Now it seems to me to be a hole in that box up there. A window or something. What—did that exist in 1960 or is that supposed to be there?

A. Yes. The hole was put in there when they remodeled the front for several reasons was for service. *One* one occasion they had to go back up there and re-brace it. The

telephone company put in a lot of new equipment up there and caused it to sag.

Q. You mean the telephone company had an office upstairs above that?

A. Telephone exchange. And they put in so much heavy equipment up there it caused this box to sag, from the weight of it. So they had to go back in there and re-brace this more. Of course, this was put in there when this was built and of course, I had a grill over top of there and a speaker behind it for music.

Q. Did Mr. Yancey do that work on the front and fix this thing that was sagging. It wasn't at your expense and you had nothing to do with it?

A. Well, I don't know if he paid for this—the part sagging. I think the telephone company did.

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Q. You think the telephone company did. But you didn't do it?

A. I didn't do it.

Q. And it was done at his direction?

A. Oh, yes.

* * * * *

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* * * * *

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Q. You put that flooring in it. Mr. Roberts, *did* you leased this property in 1960, did Mr. Yancey know that you were going to renovate the inside?

A. Yes.

* * * * *

A. I told Mr. Yancey, I said now, either I was going to build or redecorate the place and if I was going to redecorate the place I would want an extended five year lease. And that was the reason that it was.

Q. Did you have in mind, at that time, building your own place?

A. Yes.

Q. What preparation, if any, had you made to build your own place?

A. Well, I had contacted the Corps of Engineers about the

land and the S. B. A. in Richmond about the loan. But I was undecided as to what to do and—

Q. Where were you going to build it?

A. Right down between the bridge and the Lake motel.

Q. Had the plans been drawn for the lights and things to be done at that time?

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A. No. But the tenative plans had been drawn for the building but not the complete plans. That's the reason I asked for the lease because, in other words, if I couldn't work out any agreement with Mr. Yancey then I would continue on with my building.

Q. Were you anticipating building your own place? Why were you anticipating building your own place.

A. Times and conditions change and you have to keep up with times if you're going to be progressive in business and I needed parking space mainly and this location, of course, didn't have parking space.

Q. You didn't have any parking space?

A. No.

Q. Did you finally move?

A. Yes.

Q. Do you have parking space at your new building?

A. Oh, yes.

Q. And do you have as much space—more space than you had in your other building?

A. Oh, yes. Three times as much. Well, it was a problem up there because I didn't have sufficient space and I didn't banking, meeting and banquet facilities.

* * * * *

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* * * * *

Q. Now, Mr. Roberts, that's a picture of this redecorated room that was taken from the front to the back. Do you see this round thing here? What is that for? Was that put in there when you redecorated?

A. This was laid in to match the counter. In other words, this counter was made in kind of a circle—

Q. You mean this kind right here?

A. This was put in to match the counter this original surface and to lower these lights. These lights wouldn't have the same efficiency if they were hanging from the ceiling.

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Q. All right now. What does this * * * here represent?

A. It was put in to match this. In other words, the whole scheme of the whole thing—the modern time is to have direct lighting over the facility that you're eating at. Of course, you'd have the other lights too but this is what was being done at that particular time. So this was lowered so that we could place these lights over these tables.

Q. Now, is this semi-circle thing right here—is that what is shown on one of these pictures that we've had before that is kind of a lighter space?

A. Right.

Q. Is that what that was?

A. Yes.

Q. Now what connection, if any,—Let me ask you this first. Did the other side of this room have a symbol, sort of?

A. Yes, sir.

Q. Was that built down to the—

A. Same level as this.

Q. Same level as that. For the same purpose?

A. Same purpose, yes.

Q. Now, is this—these things that you've built in here in 1961 this semi-circular * * *, have any connection with the ply wood that you put on the walls? Did they have any connection with your * * *?

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A. Well, if two companies know that all this equipment in here, the counters and all this, the cash register stand, the display cases the front of the counter, the top of the counter, and the finish on it all formica, and all of the paneling in here is * * * against the ply wood. Then either company, if you had the ply wood, they make it and then formica in turn, will make formica to match that particular wood. In other words, this is what it is. In other words, formica will match it. These two companies work hand in hand, so that somebody can have equipment that will match the grain in the wood of the paneling that is on the wall. Of course, that was the whole scheme. The table tops were of the same formica tops as was the equipment, the counter, were all made to match the paneling that was put on the wall.

H. N. Roberts

Q. Now, Mr. Roberts, at the time that you did this re decorating did you get these *boothes* and new tables?

A. Yes.

Q. And the decoration of the room, as I understood you to say, was to conform in color and design—

A. Right.

Q. —with the decorations of the room.

A. Yes.

Q. I believe you have testified on cross examination that you put some ply wood around the walls of that room. The front room. Would you tell The Court just where that ply wood was and how much of it it was and where it was put?

A. Well, I didn't put any plywood. I put paneling.

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Q. Well, it was plywood paneling wasn't it?

A. Yes.

Q. Well—

A. The paneling was from the shelf or the overhang down just past the top of the *boothes* or the equipment, which ever the case might be. And that was only put in there, in other—

Q. Did the plywood paneling extend up above the bottom of these things that were built around there? The circle and the things around there?

A. Yes.

Q. How much drop would that be from the ceiling?

A. I would say about five foot.

Q. About five feet from the ceiling?

A. Right.

Q. Now, it came down—the plywood came down how far?

A. It came from the over-hang of the shelf down to just below the equipment of these * * * that had been moved over to the other side.

Q. How high was that from the floor?

A. Forty-two inches.

Q. Forty-two inches. So this plywood that we're talking about now was forty-two inches from the floor and three feet or thirty-six inches down from the ceiling of the building.

A. Farther than that from the ceiling.

Q. Well how far from the ceiling?

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A. Well I'd say it was about five foot from the ceiling to where the shelf was.

Q. Does this plywood have any connection with your decorating scheme?

H. N. Roberts

A. Well the whole basis was the matching of that with the equipment.

* * * * *

Vol. II
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page 160 } Q. Mr. Roberts, after you put your equipment in there, that is, your chairs, seats and *boothes,* you had this plywood paneling on the walls five feet from the ceiling and forty-two inches from the floor. And that was all the paneling that was ever put in there?

A. Right.

Q. But you had previously put wall board—sheetrock—on there.

A. Right.

Q. In other words the sheetrock—

A. Above that.

Q. Sir?

A. Above that.

Q. Above it?

A. Yes.

Q. Was the sheetrock all over the wall?

A. It was down to the old *boothes,* yes. Down below the old *boothes.* I know which side you're talking about.

Q. It was down to the old *boothes?*

A. Right.

Q. Then how much space in there between the floor and the *boothes* that there never was any sheetrock?

A. About forty-two inches.

Vol. II Q. About forty-two inches?
10/28/66 A. Yes.
page 161 } Q. But that sheetrock extended to the ceiling?
A. Right.

Q. And what became of that sheetrock?

A. I took it down.

Q. You took it off?

A. Yes.

Q. When did you take it off?

A. When I moved out.

Q. In 1961—when you moved out?

A. Yes, when I moved out.

Q. Was this on this wall behind this plywood paneling?

A. Yes.

H. N. Roberts

Q. All right. What else was behind that plywood paneling? What else was behind the sheetrock?

A. Just the stripping.

Q. Sir?

A. The stripping that went over top of the sheetrock that held that paneling.

Q. I see. The * * * stripping. All right. Was there anything between this wooden wall that was originally in this building and the sheetrock?

A. No. Not between the wall and the sheetrock.

Q. The sheetrock was attached directly to the wall?

A. Right.

Vol. II 10/28/66 page 162 } Q. Now this paneling, as I understand it, had a strip in there between it and the sheetrock?

A. Yes. Two inch stripping, fit on the sheetrock and then the—

Q. A two inch stripping? Along the sheetrock?

A. Right.

Q. And to what was that nailed? Was it nailed?

A. Yes.

Q. And what was it nailed to?

A. The sheetrock.

Q. Nailed to the sheetrock?

A. Yes.

Q. Then on top of that was this walnut colored paneling. Now what was that nailed to?

A. That was attached to the stripping.

Q. That was nailed to the stripping?

A. Right.

Q. So, in 1960, what was on there was sheetrock?

A. Right.

Q. There was no walnut plywood paneling on there at all?

A. No.

Q. Did you take this paneling out?

A. Yes.

Q. What did you do with it?

A. Used some of it in the new place.

Vol. II 10/28/66 page 163 } Q. In the new building?

A. Yes.

Q. Did you take all this equipment out?

A. Yes.

Q. What did you do with that?

A. I used most of it. In the new restaurant. I ordered it for that purpose.

Q. The same equipment that you used in this building was usable in your other building?

A. Right.

Q. Now, Mr. Roberts, who paid for this equipment?

A. Mr. Chandler.

Q. I see. Mr. Yancey d'dn't pay for any part of it?

A. No, sir.

Q. Did Mr. Yancey know—did you discuss with him what you were going to do or tell him what you were going to do or did he ever come down to see you?

A. Yes. He was in there. He came down there while we were redecorating and putting in the new equipment. He come in several times.

Q. Did he come down frequently? To keep up with it?

A. He was in several times.

Q. Now, Mr. Roberts, do you carry insurance on your equipment?

A. Yes.

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Q. Did you put any other equipment in there, in 1960 other than what was put in that front room there—the paneling and all that decorating?

A. Any new equipment?

Q. You said you didn't put any new equipment in the building other than what was in that front room?

A. No. Not in the dining room.

Q. You put in all new equipment?

A. No. All that was put in was put in the dining room.

Q. Was put in the front room?

A. Right.

Q. How much insurance prior to 1960 prior to the time when you all this stuff in there did you carry on your equipment?

A. I think it was $40,000.

Q. Forty thousand?

A. Yes. That's on everything now. That included the kitchen equipment—everything.

Q. Did you raise your insurance any after you redecorated?

A. Yes.

Q. How much did you raise it?

A. Ten or fifteen thousand. I can't remember which.

The Court: Well, what does the insurance have to do with it? Whether he intended it to be personal property or attached to the building wouldn't make any difference. It's a personal loss.

Vol. II 10/28/66 page 165 } Mr. Blanks: This man owned no interest in the real estate.

The Court: Well, that's right.

Mr. Blanks: Other than the lease.

The Court: If he was mistaken on what was real estate and what was personal property—then that's a matter of law.

Mr. Blanks: Now, the question of whether he could move this stuff out—

The Court: Insurance wouldn't have anything to do with it. If anybody collected on it it had burned when he moved it out.

Mr. Blanks: Well The Court feels such as that. The Court feels that * * * the defendant of intentionally plotting to put it in there. As to whether he can take it out or not. I don't know.

The Court: Well, I think that would be a question—

Mr. Blanks: (first part of statement inaudible.) There is no more concise law laid down in Virginia than that.

The Court: How much further do you want to go into this insurance business? Have you discussed it as far as you—

Mr. Blanks: I want to ask him if he increased his insurance and I want to put on the insurance agent and show how much it's worth.

The Court: You'd better get that question of law straightened out first, I expect.

Vol. II 10/28/66 page 166 } Mr. Blanks: Sir?

The Court: I say, you'd better get that question of law straightened out before we take that time to—

Mr. Blanks: Well Your Honor—

Mr. Slayton: I don't see what Mr. Roberts has lost.

Mr. Blanks: It was just a part of the improvements. This man has no intention in the world of—

The Court: Well, we're not charging him with that. Motive or anything like that. What he intended to—

Mr. Blanks: Well, what he intended to do is what controls whether or not it was annexed—whether it became a part of the real estate.

The Court: If Mr. Yancey agreed with that and if there hadn't been an advance that probably would be true but Mr. Yancey wasn't in on that.

Mr. Blanks: That's not the law of Virginia.

The Court: What was that?

Mr. Blanks: That's not the law in Virginia. The law in Virginia is that a *tennant* who puts attachments to real estate to the knowledge of his landlord. If he did not intend—if he can show by matters outside of his own declaration that it was not his intention that would ever go to the landlord or go as a part of the real estate then that is the *controling* issue. Case on it, sir.

* * * *

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* * * * *

A. Either ten or fifteen thousand. I don't remember now. I think it was ten.

Q. Mr. Roberts, at the time you made these improvements did you, when you redecorated, did you intend that these improvements become a part of the real estate?

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A. No, sir.

Q. Did you intend to use them for a purpose?

A. I intended to use the *boothes,* the counters, the show cases and everything in my new building. And I am using them.

Q. In your new building? Is the decoration in your new building approximately the same color scheme and that sort of thing?

A. Yes.

Q. Now, when you went in the building, let say in 1960, what sort of light were in this building? Light fixtures?

A. There were four two-light fixtures.

Q. You mean these *florescent* lights?

A. Four two-tube lights. In each fixtures.

Q. They were in the ceiling?

A. Right. Attached to the ceiling.

Q. And did they go from front to back?

A. No. They were spaced two like this and two in the back.

Q. Two in front and two in back?

A. Right.

Q. And how long a bulb did they have on them?

A. Just like those. * * * I think they call them.

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Q. * * *. Was the light like that?

A. No, no. It was an open light. They didn't have a strip—

Q. Open light? They had a reflector on them didn't they?

A. No.

Q. Didn't have anything to reflect the light?

A. No.

Q. Just a—one of these—

A. Two bulbs in it.

Q. —two bulbs stuck on a metal frame?

A. Well, it was a metal box with the * * * on the inside of it.

Q. I see. There were no decorations there and there were no reflectors. Just the bare—

A. Bare lights.

Q. And there were four of those?

A. Right.

Q. What type of lights was in that property before you—when you first went in?

A. They were the type.

Q. The same thing?

A. Yes.

Q. Now what happened to those lights?

A. I took them down.

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Q. You took them down?

A. Yes.

Q. Why did you take those down?

A. Because I had to change to this other.

Q. You didn't take those lights down until 1960?

A. That's right.

Q. That's right.

A. I replaced them at times, but—

Q. But from the time you first went in there until 1960 this room, this restaurant room had two lights in it—two lights in front and two lights behind and that's all the lights in there.

A. Right.

Q. Now, I notice that on these pictures that there are some light fixtures—seems to be a good many of them—in the center and along the sides. Are those the light fixtures that you put in in 1961 or whenever you remodeled.

A. After I remodeled.

Q. Have they any connection with your other equipment in there?

H. N. Roberts

A. Yes. This is what was recommended to go with the whole color scheme. Everything was finished in a gold finish. The lights, this railing in the middle, the base to the stools were finished in this gold—brass—which ever you want to call it. That was what was recommended to us from the architect to carry out the scheme of this whole decoration to blend in with the walls and the tables and chairs.

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Q. These lights in the color scheme were all a part of your redecorating in 1961?

A. Right.

Q. Do you know how many lights were there?

A. After I redecorated?

Q. Yes.

A. No. I'd have to count them up.

Q. Well, that's all right. There were a good many there. What did you do with those lights? Did you take them out?

A. Yes.

Q. And what did you do with them?

A. I'm using them in my new building.

Q. Do they fit in with your color scheme and decorations in your new building?

A. Sure.

Q. Are they in your new building now?

A. Yes.

Q. Now, Mr. Roberts, there has been some testimony here about this place being dirty. The record shows that your contract expired on September 3, 1966. The record also shows that this suit was filed on August 3rd, 1966. That's thirty days before the expiration of your lease, while you have possession of it. Why didn't you clean that place up?

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A. Well, I was it up. That's the reason that it looks like it does, on the walls where I was taking down the sheetrock and what I was going to do was take down the sheetrock and paint the walls and clean the kitchen up and Mr. Yancey filed this suit against me so I went to the lawyer and asked him what to do and he said don't do nothing. Just leave everything just like it is. That's the reason it's like it is now. If he hadn't ever filed the suit, I'd a had plenty of time to have cleaned it up, painted the walls. I had done some of these things—like the railing, the windows —I had fixed those and I was in the process of cleaning it all up. He told me to stop—not to do anything else.

H. N. Roberts

Q. So you stopped doing anything to this building when the suit was filed on August 3rd?

A. That's right.

Q. It is also in evidence, Mr. Roberts, that Mr. Yancey wrote you a letter on May the 28th, 1966. I believe Mr. Bedinger *wrote* the letter asking that you leave your equipment up there. When did you move in your new building.

A. Started moving on May 29th. Now wait a minute. May 31st, I think. Anyway, I opened up on June 3rd and I was moving three days.

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Q. Was this letter before you had moved your equipment or after you'd moved your equipment?

A. I never seen the letter.

Q. The 28th of May. That would have been before you moved your equipment out.

A. I had—people told me on the street that I was going to get a letter or something to the effect that Mr. Yancey's but I never got the letter.

Q. Well, the only reason that you didn't get the letter is because you wouldn't take it out of the Post Office. But the letter was—is in evidence here is dated 1928—on May the 28th. What I am trying to find out is was that before or after you moved this equipment?

A. I didn't start moving anything until—it was Tuesday after Memorial Day. I don't know what that date is.

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Q. Mr. Roberts, this * * * in this case, I haven't got much evidence about it they say that they claim damage for the removal of sinks and plumbing fixtures in the kitchen and toilet of the premises leased to you. Did you move any sinks and if so, what kind of sinks and where did you move them?

A. I moved all the sinks that I put in there. One glass washer sink. A stainless steel three compartment sink. I moved one what you'd call a pot and pan sink made for commercial use—it's stainless steel.

Q. Where were those?

A. In the kitchen.

Q. In the kitchen? And you moved them both?
A. Oh, yes.
Q. Were they something specially made for restaurants?
A. Yes.
Q. Did you put them in there at your own expense?
A. Yes.
Q. Did Mr. Yancey pay any part of putting them in there?
A. No, sir.

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Q. When did you put them in there?
A. Well, I can't say. They were put in way back when I first went into business.
Q. They were put in there before 1960?
A. Oh, yes.
Q. And did you also have a stove in there?
A. Yes.
Q. How were these sinks connected with that?
A. They were connected by a hot and cold water line but I had to put them in. In other words, I had to run that hot and cold water line from the basement around the wall and that's what shows in those pictures which look so bad. Those lines were put in by me because there was no provision made when the building was put in. The only provision was that it had drains in the floor. One drain in the floor for a floor drain and it had a sewage drain.
Q. Isn't there a floor drain in the floor now?
A. Yes.
Q. It was built in?
A. Yes, sir.
Q. And that was put in there when the building was constructed, wasn't it?
A. The drains?
Q. The floor drain.
A. Yes, sir.

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Q. The only connection that this sink had with the building or these two sinks had with the building was their connection with the pipe? Is that right?
A. That's right.
Q. They were not nailed to the wall at all?
A. No. They were sitting on legs.
Q. They were sitting on legs?
A. Yes.
Q. And their only connection was with the pipes.
A. Right.
Q. And the pipes you put in.

A. Yes.

* * * * *

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* * * * *

Q. Now, Mr. Roberts, there are several places on the floor of this building in the asphalt tile. For instance, as shown on this picture here around this * * *. What caused those holes in that tile?

A. I put the holes in there.

Q. The holes? What did you put them in there for?

A. To hold the stools up to the counter.

Q. The stools were * * * to that—

A. Through the holes—right.

Q. And there were holes through that?

A. Right.

Q. So are there any other holes in that asphalt tile area with similar purposes?

A. None. No holes in there except up at the window on the right hand side as you go in the door. The floor has rotted out and they give way and they broke a piece off about so big.

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Q. That was because the floor rotted out?

A. Right.

Q. You didn't do that, did you?

A. No, sir. The building has always leaked in the front because when it runs down from the front it runs down in the basement and all those walls in the back you can take a thing and stick through them—through the plywood right now, and in order to correct this, on one occasion Mr. Yancey come down there and took what was down and restripped it and put some stored dry wood back up there.

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* * * * *

CROSS EXAMINATION

By Mr. Slayton:

Q. Mr. Roberts, you've been in business for over twenty years, haven't you?

A. Almost twenty.

Q. Now, in all fairness, can you say that that building that you have left up there for Mr. Yancey to try to rent is in as good condition as you got it in 1960?

A. Yes.

Q. You can say that that building that these jurors saw yesterday is the way you got it in 1960?

A. I said that the building is worth more—could bring a lot more rent to Mr. Yancey today then it would twenty years ago by two or three times as much.

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Q. Well, a dollar is worth half as much as it was twenty years ago.

A. I know that. The building was originally rented for thirty dollars a week—a month, too. And I was paying one hundred and eighty five.

Q. But it was constantly improved as those twenty years went on and up until 1961 it was continually improved but when you moved you tried to reduce the building to the state it was in 1946 by taking all of this stuff out, didn't you?

A. I only took out what I put in there.

Q. I didn't ask you that. I asked you when you took this stuff out you took it out so you could reduce the building to what you considered its value to be in 1946, didn't you?

A. No, sir.

Q. You weren't trying—now you testified yesterday that the building today is the way it was when you got it in 1946.

A. I only testified as to the walls. That I was going to reduce the walls—that I was going to take the things off the walls that I put on, to where it was in 1946 when I got it. I didn't say anything about the overall building.

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Q. So the walls in that building today are not as they were in 1960 or '61 when this lease became effective but the walls are now the way they

page 184 } were in 1946 when you went in there for the first time. Isn't that right?

A. The only exception is that I took the sheetrock off.

Q. Now, you told this jury that you left this place in the mess it's in because the suit was started.

A. Right.

Q. All right, a letter was mailed to you in—on May 28th, 1966, and even though you didn't pick the letter up you knew Mr. Yancey was complaining about the way you were going to take this building apart, didn't you?

A. No, sir.

Q. Now—

A. Mr. Yancey didn't tell me about it. I never saw the letter so how did I know?

Q. Don't you generally get your mail?

A. Yes, sir.

Q. Did you get other mail during this time or is the only letter that was sent to you in May?

A. I get bills every day.

Q. Well, why is it that you picked up all the other mail except this one letter?

A. Because I heard it on the street—street gossip.

Q. All right.

Vol. II 10/28/66 page 185 } A. People come to me and said what was in the letter. I don't know how they found out what was in a registered letter but I didn't know anything about it. I hadn't even received the letter. I hadn't been notified that the letter was at the Post Office. I had no reason to get a registered letter from Mr. Yancey in the first place. My lease didn't expire until September the 3rd.

Q. But you knew there was a letter that other people were talking to you about and the notation on the back of the envelope says that you were notified twice.

A. I was notified that there was a registered letter there. I didn't see the letter.

Q. Well why didn't you go get it?

A. I didn't want it. Why did I want it? I had no reason to accept anything from Mr. Yancey.

Q. Well you had some idea that he was complaining about what you proposed to take out of that building, didn't you?

A. No. Why should I? He hadn't told me.

Q. All right now. Mr. Blanks called your attention to the fact that this suit was filed on August 3rd, 1966, and you went

on to tell the jury what he said to you but it's a fact also, isn't it, that my law firm wrote you a letter on July 31, asking to discuss this matter with you before the suit was filed. Did you get that letter?

A. I remember getting the letter. I don't remember the date. I turned it over to Jimmy.

Vol. II 10/28/66 page 186 } Q. All right. And that was also done before the suit was filed, wasn't it?

* * * * *

Q. Now, you and your family operated this place over twenty years—well, for about twenty years and it had lights in it. So when you moved you cut down all of the lights in the dining room, didn't you?

A. Took down all the lights that went with the decorating scheme that I had put up in '61 and I'm using them—I had to because I'm using them in my new building.

Q. Well, he doesn't have any lights in this building though, is the point, does he?

A. Answer inaudible.

Q. And where did you use this part of your decoration that ran down the length of the building on both sides in which those lights were situated?

A. Where did I use them?

Q. In your new building?

Vol. II 10/28/66 page 187 } A. I only used the lights. I didn't use that. I wasn't nothing but two by fours with celotex on it.

Q. Well, it was nailed to the wall.

A. Yes.

Q. These pieces here on both sides. Where did you use those in your new building?

A. I didn't use those.

Q. Why did you take them out?

A. Because I put them up there.

Q. And you don't think it caused any damage to the building when you pulled them out?

A. No. Why would he want them in there if it was built for a restaurant?

Q. Maybe he could rent it to somebody else for a restaurant.

A. Well now, that is—

Q. Isn't that why you took this stuff out?

A. No.

H. N. Roberts

Q. You didn't care whether he rented to anybody else as a restaurant?

A. It is immaterial to me what Mr. Yancey wanted to do with the building after I got out.

Q. Where did you use this piece here that went over that bar?—And around, in your new building?

A. I didn't use that.

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Q. What did you do with all that stuff? Just throw it away?

A. Yes.

Well, why did you take that out if you didn't have any use for it?

A. Well, I've got this—a lot of this stuff is stored over at my house.

Q. But you didn't have it in your new building.

A. I used some of the paneling in my new building.

Q. Well, now, hasn't this adversely affected and damaged his building as shown in paragraph twelve because you put that thing up there? Look at the top there. Look at *athat* ceiling and look at the wall in the back. Hasn't that been damaged because you nailed this thing up?

A. Well, at the time the difference in the painting had caused this.

Q. It's still been damaged, hasn't it?

A. Well, it all depends. What was up there was only wood when I went there.

Q. In your judgment as a reasonable business man, would anybody rent that building in the condition that it's in today?

A. I don't know whether they would or not. It depends on what they want it for, in the first place and as I told you, I never finished cleaning up. If I had cleaned it up and painted it like I told you it would have looked as good as it did the day I went in there.

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Q. Well, let me ask you this—

A. It would have looked better because it had a ceiling and a floor and it didn't have that when I went there.

Q. Have you ever made a—have you or anyone in your behalf ever made a statement to Mr. Yancey or anybody who represents him that you intended to clean up—clean that place up and paint it after you moved out?

A. Have I made a statement?

Q. Have you, before you testified here just a minute ago, ever told Mr. Yancey or anybody who represented him, that

you intended to clean this place up, paint it and to get it in good shape?

A. I don't know as I told him. I told Jimmy, but I don't know why I should go tell him. He didn't ask me.

Q. He's concerned about his building.

A. Well why didn't he ask me then? If he concerned about it—he knows where I am.

* * * * *

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* * * * *

Q. Who was the contractor who put up this sheetrock?

A. Johnny Hite.

Q. You're saying that Mr. Gill was—

A. Wait a minute now. The sheetrock up? I thought you were talking about the paneling. I think it was Lewis Yancey.

Q. When was it put up?

A. It was put up probably—I'd say about '48. Of course, I can't remember.

Q. There was sheetrock already there too, wasn't there?

A. No.

Q. Mr. Gill said that he put up sheetrock.

A. No. He said he didn't know what he put up. What he put up — he up this plywood up — quarter-inch plywood. You see—up above this whole line—in other words from the bar line—the top of the bar line all the way around, he followed it out to make it look good, he put this moulding at the top which, I would say, was about seven foot high all the way around on the front and back and side, I mean the back end of the building and the two sides, and he followed that all the way around. Well, when I put up the sheetrock, I put sheetrock from below the booth line—the equipment line all the way to the ceiling and at that time I took the plywood down.

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Q. Well, we've come now, back to the fact that when you took all of this stuff out you didn't reduce the buiding to its condition in 1946 when you went in there as you intended to do but you've gone even further back because you didn't put the plywood up. The plywood was already up so you've taken all of that out too, haven't you?

A. No, no. Because we bought that. All the equipment and the plywood and all of one side was built on to the back guard which was bought from the Gills. That was part of the equipment cost.

* * * * *

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* * * * *

JAMES W. WILSON, a witness for the defendant, first being duly sworn testifies as follows:

DIRECT EXAMINATION

By Mr. Blanks:

Q. Did you do any carpentry work for Ned Roberts in his restaurant building?

A. Yes, I did.

Q. What did you do there?

A. I took down some paneling, that they had on the wall.

Q. Paneling? Which room there?

A. It was in the dining room.

Q. The big restaurant room?

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A. Yes.

Q. Mr. Wilson, is that a picture of that restaurant room?

A. Yes, yes. That's it, that's it. Yes, but this is a ceiling that was below the original ceiling and this paneling came from this ceiling down to the top of the *boothes* which was about four foot.

Q. Now, come over here and show the jury that.

Mr. Wilson explains to the jury and he and Mr. Blanks discuss the walls and ceiling with the jury.

A. This is the lower ceiling right here that came down from the wall maybe about one-half from the * * *, I'd say.

Q. Did you take that down?

A. Yes. And then the cherry paneling was about from that ceiling down from the top of the *boothes*.—Just about four foot.

Q. You mean this paneling is about four feet?

A. In length, yes.

James W. Wilson

Q. Now, what was under this * * * ceiling?
A. It was sheetrock.
Q. Do you know whether that ceiling is still in there?
A. No, I don't. When I left there, I left the * * * and was taking the paneling down and I haven't been back there since.

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Q. You didn't take these things down?
A. Yeah, I taken the ceiling down and the paneling.
Q. You took this round thing around the counter down and you took this down and you took the paneling down?
A. Yes.
Q. And the wood ceiling under this—this—
A. There was a wood ceiling back of that.
Q. You're talking about the ceiling?
A. Yes, under this false ceiling, I would call it, had celotex under it.
Q. Celotex under there? Was that removed?
A. Yes, sir.
Q. Did you take off the celotex?
A. Yes.
Q. Is there any celotex still on?
A. No, I taken it down. I taken this ceiling down.
Q. Oh, you took this ceiling down. I'm talking about what's under it. You didn't take that down, did you?
A. Not up here no.
Q. That's what I'm talking about.
A. No.
Q. This is the celotex.
A. No, that's the * * *. The celotex is under this ceiling.

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Q. But you didn't take this down?
A. No, I didn't bother with this ceiling.
Q. You just took down the suspended ceiling?
A. That's right.
Q. And you just took down the four feet of paneling. Is that all the work you did there?
A. Yes.
Q. How was this ceiling attached to the building where it was built out?
A. I would say one by three strips was nailed to the sheetrock and then this paneling was nailed to the strips with a small finishing nail.
Q. The paneling was nailed to a strip?
A. That's right.

James W. Wilson

Q. And what sort of strip was that?

A. It was just maybe a one by three pine strip—pine board.

Q. What sort of nails were used—

A. That paneling was nailed on there with a four * * * finishing nail which was maybe a little over an inch long.

Q. I see. That's all. Answer Mr. Slayton.

CROSS EXAMINATION

By Mr. Slayton:

Q. This paneling was attached to this wall in the ordinary manner in which paneling is put up in an old building, wasn't it now?

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A. Well, the strips were nailed over the sheet-rock and the paneling was attached to the strips.

Q. And in putting paneling in buildings that are remodeled, you always strip it before you put the paneling up don't you?

A. I would think so. I would think that's the general idea.

Q. And this was done in the approved manner that carpenters use in construction and remodeling of buildings, wasn't it?

A. Yeah. I would think so.

* * * * *

RE-DIRECT

By Mr. Blanks:

Q. Mr. Wilson, let me ask you this. Did that paneling come down below the seats?

A. No. It just came down to the top of the *boothes*.

Q. If you had of move it—moved the seats and the *boothes* without moving the paneling, what would have been there?

A. You see, the *boothes* were moved when I went in there.

Q. They were moved?

A. They were moved, yes, and from the end of the paneling to the floor was just a wide board ceiling coming parallel with the place.

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Q. From the end of the paneling to the flooring was a wide—and how wide was that space?

A. Oh, I would say roughly somewhere three and one-half to four foot. Somewhere in that territory. I didn't measure it.

Q. Did that go all around the building? All around the room, I mean?

A. Well, it went all around where the *boothes* were on the east side.

* * * * *

The witness stands aside

A. B. CHAPPELL, a witness for the defendant, first being duly sworn, testifies as follows:

DIRECT EXAMINATION

By Mr. Blanks:

* * * * *

Vol. II
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page 204 } The Court: Was this personal property, specified in there as to what was covered or did you just cover all the personal property that happened to be in—

Mr. Chappell: I think it was described in this fashion as furniture, fixtures, equipment, and supplies.

The Court: And you didn't undertake to separate what was supplies, what was fixtures or what was part of the building really?

Mr. Chappell: Well, yes, sir, it's different.

The Court: And you've specified as to the coverage on each one of those things, say the *boothes* and the chairs and what not?

Mr. Chappell: They go as fixtures.

The Court: All right. And all the fixtures are covered?

Mr. Chappell: Yes, sir.

The Court: All right. Now, as to paneling and things of that kind, do you mention that particularly in the policy?

Mr. Chappell: Not the paneling, no, sir. But it's a part of the furnishings and fixtures. It could be identified as either.

The Court: There is no specification in the policy—there is no particular coverage on these particular items?

Mr. Chappell: Yes, sir. I think there would be.

Vol. II Mr. Slayton: Where is the policy?

10/28/66 Mr. Chappell: Mr. Roberts has it.
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* * * * *

Q. Mr. Chappell, did you carry the insurance on Mr. Roberts' furniture and fixtures and equipment? In that restaurant?

A. Yes, sir.

Q. Prior to 1960?

A. Yes, sir.

Q. Do you remember when he redecorated that restaurant room?

A. Yes, sir.

Q. At the time that he decorated that restaurant room did he make any change in his insurance coverage?

Vol. II A. Yes, sir.

10/28/66 Q. Tell The Court just what change, if any, at
page 206 } that time that he was in this redecorating, what change he made in his insurance coverage. Let me ask you this, preface it by this, he didn't carry any insurance on the building, did he?

A. No, sir.

Q. He didn't own the building. All right. Now what change was made?

A. At the time he made this modification he increased his insurance by $25,000.—fire insurance.

Q. How much insurance was he carrying before that?

A. I was carrying $15,000.

Q. You were carrying $15,000.? Was anybody else carrying any insurance?

A. I can only answer you that I think they were.

Q. Doesn't it show on your policy "other insurance"?

A. It doesn't show. No, sir.

Q. But you think they were? So the increase at the time he made the change in his equipment, he increased his insurance $25,000.?

A. By $25,000. He increased it by $25,000.

Q. And how much insurance was that that he was carrying?

A. With my agency, he was carrying $40,000.

Q. $40,000.?

Vol. II A. Yes, sir.

10/28/66 Q. Now, Mr. Chappell, tell The Court just what
page 207 } was covered by that insurance policy or policies? Was it all in one policy?

A. No, sir. There are different policies.
Q. How many policies were there?
A. Now I think there are, with my agency, I believe there are five.

Mr. Slayton: Your Honor, we object to what it is now.
Mr. Blanks: What we are interested in is what happened in 1960 when he redecorated this place.

Mr. Blanks Continues:
Q. How many policies were there then that constitute this $40,000. insurance?
A. Well, there were three policies that constitute the $40,000.—two $15,000. and one $10,000.
Q. Now, what was the coverage? Fire Insurance?
A. Yes, sir. Fire and extended coverage.
Q. Fire and what is extended coverage?
A. That's wind storms, smoke damage, and things of that nature.
Q. I see. Now, specifically, what was covered? In this insurance?

Mr. Overstreet: Your Honor, I think they would have to produce the policy show that anyway.
Vol. II 10/28/66 page 208 } The Court: That would be the best evidence. They evidentally don't have it. I don't see any objection to his answering that.

Mr. Blanks Continues:
Q. Do you have a copy of that policy in your office?
A. Yes, sir.
Q. Will you go to Clarksville and get it?

The Court: We don't want to have to wait for that.
Mr. Blanks: Sir?
The Court: I say, we don't want to have to wait for him to go to Clarksville and get it. What did you want—
Mr. Blanks: It's a right important item, Judge, and in our appeal in the case it's a real important item.
The Court: Well, he told us what it covered. He said it covered fixtures and furniture and two or three other things. Do you want to restate that? Is that what you want?

Mr. Blanks Continues:
Q. Well, let's see Mr. Chappell, tell us as well as you can recall exactly policy of $20,000. insurance covered.

A. B. Chappell

A. Well, it covered the modification that Mr. Roberts made, such as his *boothes*. It covered his utensils and that he cooked with and it covered his dishes that he served with. It covered the produce as it was brought into his restaurant to be prepared into food, it covered his fixtures, whatever they might be, whether they be *boothes* or tables or lights or anything. In other words, the entire contents of the cafe were covered under that policy.

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Q. In other words, it covered all the property in there that belonged to Mr. Roberts? Is that what was covered?

A. Yes, sir. That was my idea.

Q. And any other insurance would have been on the real estate itself? That's all.

CROSS EXAMINATION

By Mr. Slayton:

Q. Did you go down and make an itemized list before you issued this policy?

A. No, sir.

Q. He just called you up and said give me $25,000. more insurance. You can do that?

A. Answer inaudible.

Q. Well, it's rather odd isn't it that you increased the coverage $25,000. when he only spent $13,000.

A. Well, now that's entirely up to Mr. Roberts as what he insures it for. I don't want to deviate, but I had a person from two of the companies that I represent come in and review this to establish a value before I would write it.

Q. The value that this—the amount of the insurance coverage has nothing to do with the value of the work that was done?

A. Very much so. Very much so.

Q. So you insured it—you increased the—you doubled the coverage over what was spent in making the last improvement?

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A. I increased his insurance by $25,000.

Q. Do you know what it cost to make these improvements?

A. I didn't ask Mr. Roberts that.

Q. All right. Thank you.

Thomas W. Pool

RE-DIRECT

By Mr. Blanks:

Q. Mr. Chappell, you said a representative of your company would come down and inspect the place before they would write the additional $25,000?

A. Well, I thought it well to let them look at it because after all, and this is no reflection on the restaurant business, one company wouldn't like to carry it all so we put it in different companies.

Q. And they did come down and inspect?

A. Yes, sir.

Q. The representatives of the companies?

A. Yes, sir.

Q. And they approved it?

A. Yes, sir.

Q. And you wrote it?

A. Yes, sir.

Q. I see. That's all.

The witness stands aside

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THOMAS W. POOL, a witness for the defendant, first being duly sworn, testifies as follows:

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DIRECT EXAMINATION

By Mr. Blanks:

Q. Mr. Pool, would you state your name?

A. Thomas Wilkes Pool.

Q. And where do you live?

A. Clarksville.

Q. What's your business?

A. Repeat.

Q. What's your business?

A. Electrician.

Q. How long have you been in the electrical business?

A. * * *

Mr. Overstreet: Your Honor, we admit that Mr. Pool is a duly qualified electrician.

The Court: All right. The record will so show.

Thomas W. Pool

Mr. Blanks Continues:

Q. Mr. Pool, have you looked at this property that was formerly occupied by Mr. Roberts as a restaurant? With a view to estimating the cost of restoring lights that are not there now?

A. I haven't seen the building since he moved.

Q. You haven't seen the building since he moved? Well have you made an estimate of what it would cost to—

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Mr. Overstreet: Your Honor, we object. If he hasn't seen the building, he can't testify to what it would cost.

Mr. Blanks: Wait just a minute.

Mr. Blanks Continues:

Q. Did you take the lights out of this building—the lights in the ceiling before the building was redecorated in 1960?

A. I took some out, yes.

Q. How many did you take out?

A. As well as I remember, it was three in the ceiling in the dining room.

Q. And what kind of lights were they?

A. They were forty watt fixtures with two lights as well as I can remember.

Q. What sort of fixtures were they? I mean, those things have to have a frame. What sort of a frame did they have?

A. Well, just a metal frame.

Q. I know. But what shape? That up there has a very complicated looking frame. Did it look like that?

A. No, I don't think it had a grill on it. It was just a plain fixture.

Q. How many bulbs did it have in it?

A. There were two. As well as I can remember.

Q. You took these three lights out?

A. Yes.

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Q. What were their condition when you took them out.

A. Well, they were in operation.

Q. They were in operation?

A. Yes.

Q. Did you take them out when Ned Roberts was redecorating?

A. Yes.

Q. While the work was going on?

Thomas W. Pool

A. Well, when it was necessary to take them out when they turned the new ones on.

* * * * *

A. Well, I gave Mr. Roberts an estimate on what it would cost to replace three lights on existing oval circuits.

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Q. Is the old circuit still in there?

A. So far as I know. They weren't touched when the all new circuits were run when they remodeled.

Q. Did you put in the new circuits?

A. Yes, sir.

Q. All right. Did you take the old circuits out?

A. No, sir.

Q. Now when you're talking about a circuit you're talking about—you mean a wire that runs—

A. The switch panel.

Q. Yes. And when you left there—when you took these lights off the only thing you took off was the three fixtures and the circuit is still there?

A. So far as I know, yes, sir.

Q. All right. Did you re-wire the whole building for this new circuit?

A. All of the new equipment that was installed, yes.

Q. That's what I mean. Here's a picture of this thing. Did you fix the wires that put in all those lights in there?

A. Yes, sir.

Q. All right, sir. How much would it cost to put these three similar lights back? Like you took out?

A. Forty-eight dollars.

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RE-DIRECT

By Mr. Blanks:

Q. Mr. Pool, let me ask you this question. When you left there, I understand you haven't been back in the building since so when you left there and took these two fixtures

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off, did you leave the wire there so all you would have to do is hook up—

A. That's right, yes, sir.

Q. That's all.

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H. N. ROBERTS, the defendant, first being duly sworn, testifies as follows:

DIRECT EXAMINATION

By Mr. Blanks:

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* * * * *

Q. Now, Mr. Roberts, when you leased the upstairs to this building from Mr. Yancey, for what purpose did you lease it?

A. I leased it to rent it out as apartments—rooms.

Q. Did you rent it out?

A. Yes.

Q. Have you ever lived there yourself?

A. Yes.

Q. You did live there yourself?

A. Well, now, this was back before I started renting it out.

Q. Was that before this 19—lease?

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page 3 }

A. Yes. (In the length of it.)

Q. But you haven't lived there since around—since you put this material in it?

A. No.

Q. Now, you put the material in it for the purpose of renting it out?

A. Yes.
Q. In apartments?
A. Right.
Q. And have you had them rented since then?
A. Yes.
Q. Now, Mr. Roberts, will you tell The Court, apartment by apartment, just what materials you put in this apartment at your own expense and under the terms of this lease?
A. Well, in the front apartment, the one that was *formerally* occupied—
Q. Was that the one that was *formerally* the telegraph—the telephone office?
A. The telephone office.—The telephone section. I put a lot of things in there along the furniture line but these things that were put in were a matter of *permenance.*

The Court: Well, that's the only part I'm interested in.

Mr. Blanks Continues:
Q. All the furniture had been moved out, hadn't it?
A. Right.
Vol. III Q. These are the things that are still in there
11/9/66 that were put in there by me so that it would
page 4 } improve the property so I could use it.

The Court: Some things that you want to move out?
Mr. Roberts: Right. Well these—yes, these are the—
The Court: All right, we'll get to those.
Mr. Roberts: All right. The vinyl floor covering was put in the front apartment—when I took over the apartments the floor was torn all to pieces, left by the telephone company, so it was necessary because it couldn't be sanded so that I could use it and rent it out so I had to cover it so I put this vinyl covering over the entire floor and the bath.
The Court: All right. Now, what's the date of that?
Mr. Roberts: That was put in in '61, I think.
The Court: 1961?
Mr. Roberts: I think. I'm not sure. And the radiant gas heaters and thermostat—Shower stalls and glass doors in the two apartments—Shower stalls, glass doors, forty gallon hot water gas heater, commode, sink, wall cabinets in kitchen, base cabinets with formica tops with built-in kitchen sink.
The Court: How about the cabinets up on the wall?
Mr. Roberts: Well that's the wall cabinet
The Court: Wall cabinets.

H. N. Roberts

Vol. III Mr. Blanks Continues:
11/9/66 Q. Now, Mr. Roberts, could you have used this
page 5 } telephone room for the purpose for which you rented it without these fixtures?

A. No, sir.

Q. Did Mr. Yancey know when you rented the telephone room, that you were going to put these fixtures in there?

A. Yes, sir. He had to know it. He knew what I was going to do with it.

Q. I see. In other words you told him what you were going to do with it?

A. Yes. Certainly.

Q. And he knew you were going to put these things in there so you could rent it?

A. Well I had to put them in there if I rented it.

Q. All right. When you rented it what was the condition of that room. How did it look and what was the condition of the walls, the floors and ceilings.

A. Well, as I have already stated once that the floors when they took all this equipment out—this telephone equipment which was heavy banks of equipment—they damaged the floor and there were holes in the floor as much as five foot long and maybe a foot wide where they took out this cable.

Vol. III Q. You mean there were holes in the wooden floor?
11/9/66 A. Right. And then in the ceiling there were
page 6 } places as much as twenty foot where all the plastering had fallen off and on the ceiling was the same way.

Q. Now, did you do anything, at your expense—I'm not talking about what Mr. Yancey did at his expense—did you do anything at your expense to repair these holes in the floor?

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* * * * *

A. Not in that one room. Now, there's a separate room that—by the toilet and a little hall part is and when I went there it was an old commode in there. It had frozen up—

busted—and there was a sink there but—neither one of which was working or neither one of which I could use. I put in a new sink, a new commode and it didn't have no hot water in it so I installed a forty gallon hot water heater in this front apartment and I put vinyl floor. The floor in there was in the same condition as the other and all the windows were—part of the windows were knocked out and water had come in and wraped the floor and it was in a terrible condition. Now, this wasn't the part of Mr. Yancey. This was the part of the telephone company which had been leasing it. However, I agreed to take it and of course, I—in order to take it and rent it out as an apartment which he agreed that I could do—I had to make these repairs to be able to—

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Q. You agreed to take it in the condition it was?

A. Yes.

Q. And you did make these improvements to the basic building itself?

A. Right.

Q. All right. Now, in addition to making those improvements to the basic building itself, did you pay for any fixtures in the front room?

A. The only thing that I put in there was the kitchen sink.

Q. The kitchen sink?

A. The kitchen sink and the wall cabinets.

Q. And wall cabinets. Well did you put any heat in there?

A. Well the heat was put in there, yes.

Q. Radiant gas heat?

A. Radiant gas heat.

Q. And did you put a shower stall in there?

A. Well, now that's to the part where the bath is. Yes, I put that in at the same time I put in the commode and the sink.

Q. I see.

A. And I tiled that part of the floor too.

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Q. You put this commode and sink and this was the toilet for this front room. Is that right?

A. Right.

Q. And the wall cabinets. And base cabinets. What are base cabinets?

A. Base cabinets. That's just the part that's used at the bottom with doors on it that you store things in. That's all I can tell you.

Q. Who built those cabinets and how are they fixed in there?

A. Well now, that base cabinet and the trunk. Actually

the part of the base cabinet is built in there but it all comes to the sink.

Q. Part of the sink?

A. Yes. And the other two apartments—

Q. You mean the sink is just kind of a trough that fits down in to this base cabinet?

A. No. Not in the front apartment. The front apartment is made all into one piece. There's two doors with three or four doors running underneath the sink and that's all in one piece. Now, in the other two apartments it was built with formica tops with a recessed sink built into it and that was built by Davis Hardware. And it fit that * * *.

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Q. I see. And in addition to that you built a wall cabinet?

A. Above the sink. Just for storage—for dishes.

Q. Were those things just put in there or built or were they built in there?

A. Well they were built in Mr. Davis' shop and installed on the wall.

Q. And they were installed in there?

A. Yes. That's right.

Q. Now, this was all done in 1960 after this 1958 lease?

A. Right.

Q. Well, now, the heating system that's in this front room. Is that connected with the heating system in the other rooms?

A. No. Each is a separate unit.

Q. Each heating system is a separate unit?

A. Right. They only take care of one apartment.

Q. Now—

A. Separate thermostat on each one of them.

Q. The other two apartments you have up there—there are three apartments?

A. Right.

Q. They were under this 1958 lease, weren't they?

A. Yes.

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Q. And what did you put in those two apartments?

A. Well I put—

Q. Well now let's get back further. What were the condition of those rooms when you rented them in 1958?

A. Well, they were all right. The only thing I did, I put vinyl flooring in the kitchen and I installed the equipment—the wall cabinets above and the base cabinets put the base cabinets in with a built-in sink and a formica top and of

course, I added the glass sliding doors to the tub which was already there. The tub was put in by Mr. Yancey.

Q. Now the tub was put in by Mr. Yancey.

A. Right. I added the glass sliding doors.

Q. The glass sliding doors to make a curtain—a shower curtain out of?

A. Right.

Q. Those glass sliding doors—they're not connected with the building are they?

A. Yes. They're connected to the building.

Q. How are they connected with the building?

A. Screws. They are screwed at each end of the tub.

Q. Screwed in. You mean a rod across?

A. No. It's the rack. The racks go down the wall and then the doors slide in between. In other words, it's two doors.

Q. And they are screwed into the wall?

Vol. III A. Right.

11/9/66 Q. On each side?

page 13 } A. Right. And sealed at the bottom.

Q. All right. Now, what else did you put in—are these two apartments just alike?

A. All just alike.

Q. Right. Now, what did you put in those two apartments besides the—

A. Well, I said the vinyl floors, the radiant gas heat, the wall cabinets, the base cabinets, the sliding doors—both of them are the same.

Q. I see. Now, did you pay for all of those yourself?

A. Yes.

Q. Did Mr. Yancey pay any part of it?

A. No.

Q. Mr. Yancey, as I understand it, put in the tub and the commode and sink and the water system upstairs in the two back rooms?

A. Right.

Q. And you put in the shower thing and the cabinets and the heating system.

A. Right.

Q. How about light fixtures?

A. No. There were light fixtures.

Q. I see. Was it necessary for you to put these

Vol. III in in order to rent it?—Rent the apartments?

11/9/66 A. In the front apartment it was necessary. To

page 14 } put fixtures in? Yes, it was.

H. N. Roberts

Q. Mr. Roberts, aren't there some air conditioning units up there?
A. Yes.
Q. Do you all contend that they—

The Court: They aren't contending for the air conditioning units.
Mr. Slayton: Yes, sir. We are.
Mr. Blanks: Sir?
Mr. Slayton: Right.

Mr. Blanks Continues:
Q. Are there some air conditioning units?
A. Two air conditioning units. One in the telephone part and one in the northeast apartment.
Q. I see. And how are they connected, if at all, with the building?
A. They are not connected at all. They are just in the window.
Q. Just sitting in the window?
A. Yes.
Q. And they were plugged into the electric lights?
A. Yes.
Q. There are two of those?
Vol. III A. Right.
11/9/66 Q. One in the front and one in the—
page 15 } A. Northeast apartment.

* * * * *

CROSS EXAMINATION

By Mr. Slayton:
Q. Mr. Roberts, what was this upstairs place used for before you leased it in 1958?
A. Well, originally—go back to 19—
Q. That would be in 1953.
A. In 1948 it was four rooms there and I don't remember the exact time but it was changed from four rooms to six rooms and that went on for awhile and that seemed unprofitable and so I asked Mr. Yancey and he agreed that we could change it into apartments. Now, this didn't take in the front apartment at the time. But we changed the east three rooms which made up the two apartments.

H. N. Roberts

Q. Before these apartments were put in there you were renting individual rooms up there, weren't you?

A. Right.

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Q. And so, it was not necessary to put in this other equipment to rent the property, in as much as you had been renting it before, isn't that right?

A. No. It was necessary at the time because I couldn't rent them. In other words, so it was necessary from a financial point of view to change them to apartments. I wasn't renting out rooms and that was the reason, of course, there was more demand for apartments, so I had to go to apartments and after I put it into apartments I kept them full all the time.

Q. Well now from 1948 until 1953 though, you did rent this same space as either four or six individual rooms?

A. Right.

Q. How many bathrooms were up there?

A. There were three.

Q. Three bath rooms were there. And what did those rooms have in them?

A. They had a tub and a commode.

Q. And a sink?

A. No sink.

Q. How were those floors covered?

A. They were covered with tile.

Q. When they were rented as individual rooms?

A. No covering on them at all. Just wood floors.

Q. Well, why did you cover those floors?

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A. Well I covered those floors in the kitchen mainly because it would be a kitchen.

Q. Well, what about the bathroom? Why did you cover those floors?

A. I didn't cover them. They were already covered. Now except for the front apartment. There was nothing on the front apartment.

Q. Now you are a reasonable man, are you telling the Judge that it will not damage this property to remove this tile—this vinyl tile—from the floor?

A. I didn't say that. No.

Q. Well it will damage the property if you take that tile floor up, won't it?

A. I didn't say anything about taking the tile floor up. I said; that we installed the tile floor.

Q. So you're not asking to take the floor up?

H. N. Roberts

A. I didn't say that I don't want to take the floor up, I said that we installed it and that, I thought, was the basis of what you wanted to prove.

Q. Well, I want to find out here today what you want to take out of the upstairs now. Now I will concede that you did all of this—put in all of these things that you've testified to, so the only question here now, as I understand it, is what you contend you can take out of there.

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A. I don't think you could take the tile floor out, if that's what you wanted to know, without damage to the property, however, the tile that I put in the front apartment, if you took it out you would be back to where I was when I started, which would be in foul condition. In fact it was unrentable at the time. I'm not contending to take the tile floor out. Naturally, it would hurt the property.

Q. Now, turning to this front apartment, was there water in that apartment? Water and sewage facilities?

A. There was water connections prior to the time I went up there and as I said they had froze up and busted the pipe. You see what happened, in this section where the toilet was the telephone company didn't use it and the windows had broke out because of the exposure to the weather and so of course, they never done anything about it and of course, there was no point in Mr. Yancey doing anything about it because he an agreement with them so this is how it got in pretty foul condition. I don't know how long the telephone company was up there but over a long period of time. No one worked up there. This was all just automatic equipment.

Q. Was the kitchen sink put in the room where the plumbing was in *existance?*

A. No. There was no plumbing in the front part. That wall where the sink is on is the back wall to where the toilet is and the sewer and the water was run through the wall into where the base of the—where the sink is—in the front *p* part.

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Q. Did you have to cut holes in the walls and everything to get the necessary plumbing in that room where you put this kitchen sink?

A. It would be hard to get it in there without doing it, I think.

Q. So you are saying, then, that you can take the kitchen sink out without doing any damage to the real estate, is that right?

A. Take the kitchen sink out? Of course, you're going to

have exposed pipes where you cut them off.

Q. And the shower stall, how is that installed in there?

A. It's just sitting on the floor.

Q. I see.

A. Hot and cold water pipes and a drain to it.

Q. And the drain goes down through the floor?

The Court: It goes down through the tub. It sits over the tub.

Mr. Roberts: No, no. That is a stall.

The Court: You're talking about the front apartment we didn't go in?

Mr. Blanks: It * * * the tub, as I understand it.

Mr. Roberts: The front apartment is a stall where you stand up. There is no tub involved. Just a stall a sitting there with glass doors.

Vol. III 11/9/66 page 20 } Mr. Blanks: In other words the stall isn't—excuse me, I'm just trying to get straight on it. I thought you testified that the shower stall was just a glass thing that went around on top of the tub.

A. That's in the two back apartments. The tubs were already there. I installed the glass doors to keep the water from going over on the floor.

Mr. Blanks: I see.

Mr. Roberts: But the front apartment—there was nothing there. There was no tub, there was no shower, there was no nothing. I installed a shower stall upright—

Mr. Blanks: Well we're talking about different things, I'm sorry, I got confused there.

Mr. Slayton Continues:

Q. When you put stall in there you had to make arrangements to get the drain through the bottom of the stall down into the flooring to connect into the regular plumbing system in the building, didn't you?

A. Right.

Q. And you also connected the stall to the building by the hot and cold water pipe as well as the drain pipe. And then you tiled the floor in that particular room, *didnt* you?

A. Right.

Vol. III 11/9/66 page 21 } Q. And that is tiled around the stall and not under the stall?

A. I'm not sure. I don't know whether we put the tile down first or the stall first.

H. N. Roberts

Q. All right. Where is this hot water heater located?

A. Located in the bath.

Q. And of course, that's connected to the building by the pipes necessary for it to receive the water, heat it and then despence the hot water, isn't that right?

A. It's connected with a hot and cold line.

Q. And it's wired to the building by what—a 220 volt—

A. No electricity.

Q. Sir?

A. No electricity. All gas.

Q. It's gas?

A. Yes.

Q. Where does it get it's source of energy?

A. Gas.

Q. Where do you store the gas?

A. The gas tank on the side of the building.

Q. And that's connected to the hotwater heater by copper tubing, isn't it?

A. Right.

Q. How does the tubing get through the building out to the outside?

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A. It goes up between the building and goes over the roof and drops down to the—in between the wall and then comes out right at the bottom of the tank.

Q. And installing that type system, you had to drill holes in the roofing?

A. No. The gas line or main line was already there. All we done—we went up in the attic and tapped on to that which—the gas was already there to supply the heat to—which was already there in the other two apartments. We just tapped onto the gas line which is about a half-inch galvanized pipe and went to the hot water heater.

Q. Who put that heating system in up there?

A. Mull Gas Company in South Boston.

Q. And who paid for it?

A. I did.

Q. What kind of heating did it have when you put that in?

A. None.

Q. And when that heating system was put in it was necessary to—was all of that run through the ceiling?

A. Right. Well, it was run through the attic and down

through the walls to the back of the tank—to the back of the heating unit.

Q. Well in these other bathrooms we're talking about where you have the glass doors on top of the tubs. Those doors are connected to a frame, aren't they?

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A. Yes.

Q. And the doors slide back and forth on the frame and the frame is attached to the walls of the bathroom at a number of different places, aren't they?

A. Two sides.

Q. And then the bottom of the frame is sealed to the top of the bathtub, isn't it?

A. Yes.

Q. Now, is that a shower in there?

A. Yes.

Q. Who put the shower in there?

A. I think the shower was put in there by Mr. Yancey. I'm not so sure but the trouble I had before was the curtain. The people would leave it out and the water would run over and run downstairs in the restaurant, you see, so I installed the shower doors.

Q. Now, how many bathrooms are up there now?

A. Four.

Q. There are four baths up there now?

A. Yes.

Q. There are three apartments?

A. Right.

Q. And four baths?

A. Yes, sir.

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Q. O.K. Now, these kitchen sinks are attached to the building. Sinks normally are, aren't they?

A. This is a building. This whole base cabinet was built with the sink built, the sink itself part, built on to the formica top and it was brought up there and sit right in place. It was built to fit this section of the building. And it's sitting right there on the floor and is connected by hot and cold and a drain. To my knowledge there's not really any connection to the building because it wouldn't be necessary to connect it to the building because it's not going anywhere. It can't go anywhere. The wall cabinets are.

Q. They are up on the wall. Now, you went to Mr. Yancey in 1953 and negotiated this lease that's been introduced into evidence because the people working here on the Bugg's Island Dam had begun to leave and it wasn't as easy to rent

the rooms. Isn't that one of the factors that you took into consideration?

A. I think—I don't remember the exact date but I remember that's part of it, yes, sir.

Q. When you leased this property you knew if you made the repairs then of course, you would pay for them but if he made these improvements that they would be just added on to your rent and you would pay the cost plus whatever percentage you all agreed on, didn't you?

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A. Right.

Q. Because this is the way you all dealt in the past when you wanted certain improvements made there then he increased your rent then added a percentage. Then you went ahead and paid him until he had gotten his money back. Is that the way you operated?

A. Well, no. Not until he got his money back because I continued to pay the same thing after that.

Q. Well, the property was that much more valuable though after the added money had been spent on it, too, wasn't it?

A. Well, the property is worth a whole lot more today than it was when I entered it, yes.

Q. And that's true because throughout your entire relationship, improvements have periodically been made to the property to enhance its value. Isn't that right?

A. Oh, sure.

* * * * *

A. Well, he wouldn't do it.

Q. Now—

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A. I asked him to do it and he wouldn't do it and I considered this part that I put in as fixtures anyway. In other words, this wasn't a permanent part of the building.

Q. Well, when you changed this from individual rooms to three apartments you made structural alterations to the building that were permanent in nature, didn't you?

A. Yes—to get it to where we could rent it, yes.

Q. That's right.

A. But I told Mr. Yancey that I wanted to give it up. And he said that he wouldn't give me the lease on the thing unless I took the whole thing. I said then I'll have to change it into apartments. There is more demand for apartments than it is for rooms. And so I put it into apartments and was very successful with it. I rented it and kept it rented most of the time.

Q. You were able to actually rent these—this upstairs for more than you were paying him rent for the whole building weren't you?

A. Yes.

* * * * *

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page 27 } Mr. Blanks: If Your Honor, please, they are filed in with the other papers.

Mr. Slayton: We'd like to have it then, Your Honor.

The Court: All right.

Mr. Blanks: We've got Mr. Sam Davis and Jack Watkins over here and they are awfully anxious to leave and their only testimony is that Roberts had these things put in there and paid them. Would you stipulate that and let them go or would you put them on the stand?

Mr. Slayton: We'll stipulate that Mr. Roberts paid for them.

Mr. Blanks: All right, thank you.

The Court: All right then, the record will so show that Mr. Roberts paid for them.

Mr. Slayton: Counsel for Mr. C. C. Yancey agrees to stipulate that Mr. Roberts placed in the upstairs portion of the building leased from Mr. C. C. Yancey the vinyl tile floor in the front apartment, designated as the telephone office, a hot water heater, a shower stall, a commode, a sink in the toilet, a kitchen sink, a heating unit—a gas heating unit, and air conditioning unit placed in the window. In apartment 1, the westerly side of the building, Mr. Roberts at his own expense, placed a tile floor, wall cabinets in the kitchen, base cabinets with built in kitchen sink and formica top in the kitchen, a gas heating unit, and shower stalls—shower doors, sliding, which are in the toilet. In apartment number 6 on the easterly side of the building, we stipulate that Mr. Roberts, at his own expense, put in an air conditioning unit, a heating unit which was gas, shower doors, sliding, tile flooring in the kitchen, wall cabinets, a base cabinet with a built in kitchen sink and formica top in the kitchen. O.K.

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* * * * *

H. N. Roberts

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* * * * *

Q. Well, now, you testified earlier that in 1948, when you were renting this place as individual rooms, you had no heat up there.

A. No, you asked me if there was any heat up there and it won't. I put in—had oil circulators—floor models.

Q. And did you put in this gas heat after you—

A. I put in this gas heat after Mr. Yancey changed it into six rooms. I installed the heat.

Q. When did Mr. Yancey change this into six rooms?

A. I don't remember. If I knew that I could tell you how old the units are. I bought the units new then and put them into the rooms. He put no heat into the rooms.

Q. Why did Mr. Yancey make six rooms upstairs there?

A. Why?

Q. Yes.

A. I asked him to. We agreed on a price and he agreed to do it. But I was to pay for all the heat and everything that went up there and then it was put in the lease that I could take them out or either he would buy them.

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Q. And then after that was done, you changed it again to apartments, wasn't it?

A. Yes.

Q. Were those same heating units used again?

A. Right.

Q. And you decided that it would be to your best interest to make that change from the individual rooms to apartments, didn't you?

A. Right.

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Mr. Blanks: I think maybe Mr. Slayton is a little confused about our position here right now. We take the position

we had the right to take it out whether there was anything in the lease or not, because it was the trade fixtures and we paid for it and we put it in there and—

The Court: Well, I'll overrule you on that—

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* * * * *

Q. The cabinets—the cabinets with the formica top that surround the sinks in the bathroom, and the kitchen.

A. The front ones are all metal, in the front apartment. The other two have wood at the bottom, the base of them are wood. The others, the top is formica and of course, the sink is whatever they make it out of.

Q. How did you get the plumbing into the rooms you used for the kitchen in the other apartments?

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A. Which other one are you talking about? The front apartment?

Q. No, the one on the eastern side of the building.

A. The sink is right up against the wall that was the bath and we just turned it and went through the wall the other way. It was already there.

Q. Mr. Yancey had put that plumbing in there himself?

A. Oh, yes.

Q. Now, the western side of the building had—

A. Same thing.

Q. You went through and turned—

A. Identical apartments—just one's on one side and one's on the other. Everything in them is identical.

Q. You had to knock holes in the walls to get those pipes in there so you could hook up those sinks, didn't you?

A. Yes.

Q. Now, if you take the sinks out, the pipes and all that stuff is going to be left there exposed—

A. Right. That's nothing you can help.

Q. And it wasn't there until you put the sinks in there.

A. No. The pipe was already there. In other words, the pipe that you're talking about—in other words, where I took out, all I did was take the small sink out. I put the big sink

in but the hot and cold water line was already there. I didn't change that, because they are sitting in the same place.

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Q. All you have done, in effect, is substitute a sink for one that was there.

A. Right. In other words the drain line come out of the wall. The hot and cold line come out of the wall. I took the little sink out and put the big sink in and all the sinks are there, sitting down there, that I took out.

Q. Now Mr. Blanks keeps talking about these things being trade fixtures. Is there anything extraordinary about the commode that you have put in there?

A. The only thing I know is what it's used for. They used it as a * * *.

Q. Now what about the sliding doors attached to the top of those tubs? Is there anything unusual or different about those?

A. Nothing unusual. I just had to put them there to keep water from running downstairs to the ceiling.

Q. And anybody, any place else in the country who bought a sliding door and put it in a bathroom, attached the thing to the wall and sealed it to the top of the tub, they'd have the same arrangement, wouldn't they?

A. Right. I don't know whether they would rent it for apartments but they would have the same arrangements that you'd have in your home. I've got it in my home.

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Q. A hot water heater like any 40 gallon gas operated hot water heater you'd buy, isn't it?

A. Right.

Q. The kitchen sinks are not unusual or extraordinary in any way, are they?

A. Not the sink itself, but the arrangement is. They were built to fit that particular area.

Q. And the only thing about it that makes those cabinets different is they were built for that particular area and space.

A. Right.

Q. You would agree, I guess, that you can't take the tile off the floors without damaging the building, won't you?

A. I've already said that.

Q. All right. I won't ask you any more questions about the tile and the floor then. What happened to these six sinks that were up there that you took out?

A. I only took—I took only three of them out. They are sitting down—they're down there, just like they were when they come out.

Mr. Blanks: What did you say you did with them?

Mr. Roberts: They're sitting downstairs in the main part of the restaurant.

Mr. Slayton Continues:

Q. Well, what happened to the—

A. Three of them are still in. You see, the ones that I took out are sitting downstairs. They are just sitting down there on the floor. They belong to Mr. Yancey.

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Q. What happened to the fixtures, the faucets and things that are in them?

A. They are all attached to the post. Everything is just like it was when they came out. The only thing, I disconnected the hot and cold water line and the sewer and put the kitchen sink where they were.

RE-DIRECT EXAMINATION

By Mr. Blanks:

Q. And you put those things in without cost to Mr. Yancey?

A. No, sir.

Q. Did you understand that if you put them in the building they would become his property?

A. No, sir.

Q. Did you agree that you would put them in the apartments in addition to the rent you pay?

A. No, sir.

Q. Now, these—as I understand it, Mr. Yancey had these partitions, making these things into an apartment, he had that done, didn't he?

A. No, sir. I done that.

Q. You put the partitions in?

A. He put the partitions up for the six rooms.

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Q. That's what I mean. It was originally two rooms back there, including this front room. Who put those partitions in there that made them into apartments? Did Mr. Yancey do that?

A. Are you talking about rooms or apartments? He put them in to make them into rooms.

Q. That's right. And did you put some partitions in there too?

A. No, no. I took a partition out.

Q. I see, but what partitions are in there now, Mr. Yancey put in there.

A. Yes. Except for the one I took out.
Q. The one you took out?
A. Yes. When I made them into apartments.
Q. Oh, I see. And—
A. In other words, where you've got the big part of the apartment, was two rooms. Now it's one room.

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Q. These wall cabinets—I didn't exactly understand what the wall cabinets were. They are the cabinets over the sink?
A. Yes.
Q. Now they are attached to the walls?
A. Right.
Q. And the sink cabinets? Are not attached except that the sink is screwed to the necessary pipes?
A. Right.
Q. You didn't change any pipes in any of these apartments?
A. No. I just added—took the sink out—
Q. You didn't do any changing of the pipes at all?
A. Well, I did in the front apartment.
Vol. III Q. I mean in the back.
11/9/66 A. No.

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RE-CROSS EXAMINATION

By Mr. Slayton:
Q. Mr. Roberts, let me ask you this. Now, what is the upstairs of this building best suited for now?
A. Right now? About the only thing it is suited for is apartments.
Q. And you made it into apartments, didn't you?
A. I put the necessary equipment there, yes.

Q. All right, now, if you take out the kitchen sinks and the commodes and the hot water heater, what's it going to be suitable for then?

A. I'm not concerned with that now.

Vol. III 11/9/66 Q. Well, what will it be suitable for if you take out this stuff?

page 48 } Mr. Blanks and Mr. Roberts start to say something.

Mr. Slayton Continues:

Q. Sir?

A. You could put a lot of things up there. It depends on what you want to do with it.

Q. Well now, you've got it cut off so that you can rent it for three apartments, haven't you?

A. Right.

Q. And you take out this stuff that you want to take out and it's not going to be suitable for three apartments with the stuff gone, is it?

A. No.

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GRAHAM ELLIOTT, a witness for the defendant, first being duly sworn, testifies as follows:

DIRECT EXAMINATION

By Mr. Blanks

Q. Mr. Elliott, would you state your name for us?

A. Graham Elliott.

Vol. III 11/9/66 Q. What is your occupation?

A. Plumbing and heating.

page 61 } Q. Did you install some sinks and shower stalls and commodes and sinks in the toilets of the second floor of the building occupied by Roberts Restaurant?

A. I've installed four lavatories, kitchen sink and commode and the water heater.

Q. And the water heater? Now these commodes, will you tell The Court how they are installed? How they are attached, if any, if they are attached at all?

A. The commodes, they are attached to the floor. I'm talking about lavatories, which you all call the sink.

A. No, I'm talking about the commode now, how is that attached?

A. Well, the one I replaced up there was attached with two leg screws with the leg shield under it which the shield had broke and went up under—

Q. Pardon me, pardon me, and the tank behind them. Was that attached?

A. No, that was a combination—tank sitting on top of the commode. The one that I took out was hung on the wall.

Q. Wall type was hung on the wall and the combination was not attached to the walls.

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Mr. Slayton: He said it was attached.

Mr. Elliott: The one I took out that was broken, up in the front was busted, cracked and had to replace it, completely. Now you have a combination which is the tank sits on top of boards.

Mr. Blanks Continues:

Q. The tank is not attached to the walls?

A. No, sir.

Q. Are all of the commodes up there that type that the only attachment to the property is the screws in the floor?

A. Screwed to a plank, yes, sir. All are combination commodes upstairs.

Q. Of course, it is attached to the necessary pipes, isn't it?

A. Yes, sir. The water and the drain.

Q. Sir?

A. The water and the drain.

Q. Well you have to attach it to the water pipes and the sewer pipes, don't you?

A. Yes, sir.

Q. Could you take those commodes out of there without hurting the building at all?

A. It was put back right on the original pipe that was in there and you would sho' get the town odor up there. You could put a blank in it. The pipe was originally there.

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Q. The pipe was already there.

A. That's right.

page 63 } Q. Then all you've got to do is unscrew it, is that right?

A. Well I guess that's * * * a lead pipe. That was originally in the building. The only thing we did was attach the commode to what was already sitting there. Just set the commode right over the pipe.

Q. Well, how about these forty gallon gas hot water heaters? How many of those are up there?

A. I think that's a thirty—might be a forty—but it's setting right in the corner—only one.

Q. Did you install those?

A. Yes, sir.

Q. Now, how are they attached, if at all?

A. Well, it's got a gas line to it and a cold water inlet and a hot water outlet. Now it's attached to the kitchen sink.

Q. Well the only attachment to that is the water pipe and the gas pipe?

A. Yes, sir.

Q. And what's—is it sitting on legs on the floor?

A. Yes, sir.

Q. So actually the tank itself, is not attached to the building at all?

A. No. It's sitting in the corner.

Vol. III 11/9/66 page 64 } Q. And can be removed without damaging the building?

A. Yes. Just leave the pipe there exposed.

Q. Now how about the small shower stall? Did you put the shower stall in the front?

A. Yes, I did too. I put some showers in the other apartments too, where we put some glass doors on.

Q. Well how is this shower stall in the front that you installed—how is that installed?

A. It's a 32x32 squareance with a glass door. In other words, it's square with three metal sides—the back and the two sides are metal with the door in front.

Q. Is it attached to the building?

A. It's attached to a pipe in the center of the shower.

Q. Is that the only attachment?

A. It has two water pipes coming up to the back. Hot and cold.

Q. And of course, there's a waste pipe there.

A. The waste pipe has got lead around it which goes to the sewer—town sewer. A four inch sewer upstairs.

Q. The only attachment to that shower is it's screwed to these pipes and the pipes were already in there when you put it in, weren't they?

A. Not to the shower, no.

Q. What's that?

Vol. III A. Not to the shower.

11/9/66 Q. Not to the shower?

page 65 } A. I ran those pipes to the shower.

Q. You ran those pipes to the shower?

A. Yes, sir. The water pipe and the drain.

Q. Well, now, how about the sink? In the kitchen. There has been something said that these sinks have cabinets built on to them.

A. That's a forty-two inch metal part of the sink with a left hand drain board. And they made a fifty-four but he bought that one designed for the space he had there.

Q. Well, now, did you install that in the cabinet?

A. It was in the cabinet. I just attached the drain and the water. Hot and cold water.

Q. I see. It was already in the cabinet. The cabinet was sitting there. Is the cabinet attached to the building at all?

A. I didn't attach it. The cabinet sitting on the floor—

Q. Just sitting on the floor.

A. Just like a *cobinet* sitting on the floor. You can undo the drain and the two water lines and take it on out but your pipe would still be exposed.

Q. You hooked up the drain and the two water lines. Can that be removed without hurting the build-

Vol. III ing?

11/9/66 A. Well, it would leave your hole. We don't

page 66 } knock a hole—we drill a hole to fit the pipe which is in there. You'd have to plug a hole.

Q. Well those pipes were still in there, weren't they? I mean—

A. Not to the kitchen sink.

Q. Sir?

A. Not to the kitchen sink, where the old telephone place was.

Q. You put in pipes to the kitchen sink?

A. Yes, sir.

Q. And you put the hole in the floor to put the pipes through?

A. It wasn't much trouble to get the pipe through. The telephone company had left a space where you could get through there right easy.

Q. Yes, but you did put the pipes in.

A. I did put the pipes in there.

Q. You had to install the pipes to the kitchen sink?
A. Yes.
Q. Now, that's just the sinks that have these base cabinets.
A. It's the only one up there that has the base cabinet.
Q. Sir?
Vol. III 11/9/66 page 67 } A. It's the only one up there. I've worked on all of them quite a bit.
Q. Is there only one up there with a base cabinet?
A. I mean with this particular metal—42 inch—all the rest of them—
Q. You're talking about the front?
A. Yes, sir. It's the only one I'm talking about I hooked up.
Q. How about the back? Did you put those in?
A. I don't think so. If I did, I don't remember it.
Q. All right. You didn't put those in.
A. But I put those showers over those tubs back there.

Mr. Slayton: They haven't asked for those.

Mr. Blanks Continues:
Q. Well now, how about the showers stalls—those glass doors. Tell The Court what that is and how it's put in.
A. Well, the doors are mounted in the cabinet with, I believe, five screws or six screws. And it's got a little catch on it, just open and shut, just thirty-two inch square.
Q. You mean there are five or six screws that fasten the thing to the wall?
A. Yes, sir. And it has a hinge. A swinging hinge on the door itself and the screws in it. I think it's five or six.

Vol. III 11/9/66 page 68 } Mr. Slayton: He's talking about the base cabinets now you're talking about the shower stalls.
Mr. Blanks: I'm talking about the shower stalls.
Mr. Elliott: I'm talking about the shower stalls that I installed.
Mr. Slayton: He's talking about the one in the front apartment.
Mr. Elliott: That's right. He keeps asking about a shower stall.
Mr. Blanks: Well, now I'm talking about these sliding doors that are over the shower—that kinda took the place of a shower curtain, that are over the bathtub. Did you put those in?

Graham Elliott

Mr. Elliott Continues:

A. I don't think so. I put the showers in. I remember when the showers were put up and when the glass was put up there, but I didn't install those.

Q. You didn't—

A. I installed the showers because I went there with just a hot and cold—

Q. You installed the shower in the front apartment. That's a shower stall?

A. That's a shower stall.

Q. That's a complete cabinet but you did not install these glass enclosures in the bathtub? In the back?

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A. No, but I installed—put the * * * valve and run the shower head up there to bring the water over the tub.

Q. All right, sir. You didn't put this heating system in up there, did you?

A. No, sir.

Q. I think that's all.

CROSS EXAMINATION

By Mr. Slayton:

Q. Now, Mr. Owen,—Elliott, did you make these changes to these tubs that installed the shower in there when Mr. Roberts was rearranging the rooms up there—converting it into apartments?

A. Yes. I put the shower over each tub.

Q. And can you give us your best guess of what year that was done in?

A. I can't right off hand, no.

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

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