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Clerk, Supreme Court of Appeals
Richmond, Va.

Record No. 6858

In the Supreme Court of Appeals of Virginia at Richmond

WILLIAM T. GRASTY, EXECUTOR, ETC.

v.

N. HOLMES CLARE, EXEC., ETC., et al.

FROM THE CIRCUIT COURT OF FAUQUIER 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. 6858

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday the 4th day of December, 1967.

WILLIAM T. GRASTY, EXECUTOR IN ACCORDANCE WITH THE WILL OF ROBERT VANDERPOEL CLARK, JR., DECEASED, AND THE ORDER OF THE CIRCUIT COURT OF FAUQUIER COUNTY ENTERED ON MARCH 15, 1965, Appellant,

against

N. HOLMES CLARE, EXECUTOR IN ACCORDANCE WITH THE WILL OF ROBERT VANDERPOEL CLARK, JR., DECEASED, AND THE ORDER OF THE CIRCUIT COURT OF FAUQUIER COUNTY ENTERED ON MARCH 15, 1965, ELIZABETH D. CLARK AND SUZANNE D. CLARK, Appellees.

From the Circuit Court of Fauquier County
Rayner V. Snead, Judge

Upon the petition of William T. Grasty, Executor in accordance with the will of Robert Vanderpoel Clark, Jr., deceased, and the order of the Circuit Court of Fauquier County entered on March 15, 1965, an appeal and *supersedeas* is awarded him from a decree entered by the Circuit Court of Fauquier County on the 15th day of November, 1966, in a certain chancery cause then therein depending, wherein N. Holmes Clare, Executor, etc., was plaintiff and the petitioner and others were defendants; no bond being required.

RECORD

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BILL OF COMPLAINT

* * * * *

TO THE HONORABLE RAYNOR V. SNEAD, JUDGE OF SAID COURT:

Your complainant respectfully represents as follows:

1. Robert Vanderpoel Clark, Jr. died testate, a resident of Fauquier County, Virginia, on or about the 4th day of October, 1964.

2. A true copy of the Will of the said decedent (herein after sometimes referred to as the "Will") is herewith filed and *market* Exhibit "A."

3. Article TWENTY-FIRST of the Will provides, among other things, that the ". . . Will and testamentary dispositions in it and the trusts set up shall be construed, regulated and determined by the laws of the State of New York, and that this Will be offered for probate in the State of New York."

4. In accordance with the foregoing direction and with the knowledge and consent of all of the respondents, the Will was probated in the Surrogate's Court of the County page 2 } of New York of the State of New York on or about October 19, 1964. True copies of the said consents and of the Order of the said Surrogate's Court admitting the Will to probate are herewith filed and marked Exhibits "B", "C", "D", and "E", respectively.

5. In paragraph (A) of Article FIRST of the Will the decedent appointed "N. HOLMES CLARE and THE CHASE MANHATTAN BANK, a corporation organized under the State of New York, the executors of this Will for all my assets, with the exception of my Virginia assets which shall consist only of any real property which I may own in the State of Virginia, any tangible personal property situated in that State, and any funds on deposit in banks located in Virginia."

6. In paragraph (B) of Article FIRST of the Will the decedent appointed your complainant, N. Holmes Clare, a

resident of New York, and respondent William T. Grasty, a resident of Virginia, as executors of the Virginia assets of the said decedent; and as the successor of either of them State-Planters Bank of Commerce and Trusts of Richmond, Virginia. In their capacity as the executors of said Virginia assets your complainant and respondent William T. Grasty are referred to in the Will and are hereinafter sometimes referred to as the "Virginia Executors."

7. On February 1, 1965, the Will was probated in this Court; and on March 15, 1965, your complainant, N. Holmes Clare, and William T. Grasty, one of the respondents, were qualified in this Court as executors in accordance with the Will, A true copy of the order of this Court entered March 15, 1965, is herewith filed and marked Exhibit "F".

8. Respondents Elizabeth D. Clark and Suzanne D. Clark are, respectively, the widow and the mother of the decedent, Robert Vanderpoel Clark, Jr. and are parties interested in this matter, they being the principal beneficiaries under the Will. The decedent, Robert Vanderpoel Clark, Jr., page 3 } left no issue him surviving.

9. Article SECOND of the Will provides as follows:

"I direct my Virginia Executors, at such time or times and at such prices as they consider reasonable, to sell my Virginia real estate which is not specifically devised and all tangible personal property located in Virginia and not specifically bequeathed, and after first paying all my debts for which claims may be filed and allowed in the State of Virginia and all expenses of administration (not including any estate or inheritance taxes) in that state, to transmit the net proceeds of sale and any net balances on deposit in banks located in Virginia to my New York Trustees."

10. The powers, responsibilities and authority of the Virginia Executors extend only to the Virginia assets of the decedent as defined in paragraph (A) of Article FIRST of the Will and the Virginia Executors are limited thereby to performing such acts as may be required to carry out the provisions of Article SECOND of the Will; and your complainant in his capacity as one of the Virginia Executors and the said respondent William T. Grasty, as one of the Virginia Executors, have no other authority, power or responsibility; and it was the intention of the decedent, set forth in the Will, that the powers, responsibilities and authority of the Virginia Executors be thus limited.

11. The respondent William T. Grasty has refused to accept the aforesaid limitations set forth in the Will, and assets that he possesses powers and authority and is charged with responsibilities beyond those set forth in the Will; he has asserted that as one of the Virginia Executors he has title to and general responsibility for the whole personal estate of the decedent, wherever located, as well as the real estate in Virginia which the Virginia Executors are empowered to sell under the terms of the Will, and has refused to cooperate with your complainant, N. Holmes Clare, in his capacity as a Virginia Executor and with the executors of the said decedent duly qualified in New York thereby interfering with the orderly administration of the estate of the decedent and making such administration more expensive and burdensome all in derogation of the fiduciary duties of the respondent William T. Grasty.

page 4 }

WHEREFORE, your complainant prays that the respondents, William T. Grasty, executor in accordance with the Will of Robert Vanderpoel Clark, Jr., and the Order of this Court entered March 15, 1965, Elizabeth D. Clark and Suzanne D. Clark, be made parties to this bill and be required to answer the same but not under oath, answer under oath being hereby waived; that the Will of Robert Vanderpoel Clark, Jr. be construed; that it be adjudged and decreed that the proper construction to be placed upon the said Will is that the powers, responsibilities and authority of the Virginia Executors extend only to the Virginia assets of the decedent as defined in paragraph (A) of Article FIRST of the Will, and the Virginia Executors are thereby limited to performing such acts as may be required to carry out the provisions of Article SECOND of the Will.

And your complainant prays for such other and further relief as to this Court may seem just and proper under the circumstances.

Filed Oct. 13, 1965. W. D. HARRIS, Dep. Clerk

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CROSS-BILL

* * * * *

Your Cross-Complainant, William T. Grasty, by counsel, respectfully represents that in this chancery cause N. Holmes

Clare, the non-resident domiciliary co-executor of the Estate of Robert Vanderpoel Clark, Jr., Deceased, filed a Bill of Complaint herein against him and others. In his Bill of Complaint, N. Holmes Clare alleges, among other things, that Cross-Complainant, as the resident domiciliary co-executor of this Estate under the Will of the deceased, has sought to usurp fiduciary powers and responsibilities not legally vested in him and that he has thereby interfered with the orderly administration of this Estate making such administration more expensive, all in alleged derogation of the Cross-Complainant's fiduciary duties.

But your Cross-Complainant respectfully represents:

1. The deceased Robert Vanderpoel Clark, Jr. was a resident of and domiciled in Fauquier County, Virginia. He died testate on October 4, 1964, leaving an estate valued at many millions of dollars, consisting of real property, tangible and intangible personal property held by the deceased testator in Virginia and intangible personal property held by the deceased testator in New York.

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2. The original will of the deceased testator was probated and recorded in Virginia and by Order of this Court dated March 15, 1965, your Cross-Complainant, William T. Grasty, Esq. was qualified as the resident domiciliary co-executor and the Cross-Respondent, N. Holmes Clare, was qualified as the non-resident domiciliary co-executor of the estate of the deceased in accordance with the will of the deceased. The deceased's will was also probated and recorded in New York and the Cross-Respondent, N. Holmes Clare, and Chase Manhattan Bank were qualified as co-executors of the estate of the deceased in New York in accordance with the will.

3. At the time the original will was offered for probate in this Court, the intangible personal property held by the deceased in New York was represented by the Cross-Respondent, N. Holmes Clare, to be valued at $19,128,000 and the real estate, tangible and intangible property held by the deceased in Virginia to be valued at $320,000 for a total value of the estate of $19,448,000. This Court assessed the probate tax in the amount of $25,930.67, on the basis of the value of the whole estate being $19,448,000.

4. The only two named beneficiaries who take under the testator's will are his widow Elizabeth D. Clark and his mother Suzanne D. Clark, both being residents of and domiciled in Virginia. The deceased testator left no issue.

5. Shortly after his qualification your Cross-Complainant, William T. Grasty, set about to discharge his fiduciary duties

in Virginia under the will and under the governing statutes and law of Virginia, as the resident domiciliary co-
page 24 } executor of the estate. To this end he sought the cooperation and collaboration of the Cross-Respondent, N. Holmes Clare, as the non-resident domiciliary co-executor of the estate in the joint discharge of their fiduciary responsibilities under Code of Virginia (1950) §26-59. But the Cross-Respondent, in derogation of his fiduciary duties and in violation of the governing law and statutes in Virginia, has wrongfully refused to cooperate and collaborate with the Cross-Complainant in the joint discharge of their fiduciary duties in the following respects:

a. The Cross-Respondent has refused to cooperate and collaborate with the Cross-Complainant in the joint preparation and filing with the Commissioner of Accounts of this Court of the inventory of this estate required by Code of Virginia (1950) §p6-12, in that he has wrongfully refused to include in said inventory any schedule of the intangible personal property held by the deceased in New York, of which the Cross-Respondent has full knowledge and information, the Cross-Respondent has also wrongfully refused to make available to the Cross-Complainant the necessary information concerning this intangible personal property, which constitutes the bulk of the estate, to enable the Cross-Complainant to prepare a full, fair and itemized statement of inventory of said intangible personal property for filing with the Commissioner of Accounts.

b. The Cross-Respondent has refused to cooperate and collaborate with the Cross-Complainant in the joint preparation and filing with the Department of Taxation of Virginia of the income tax and estate tax returns for this estate as required by Code of Virginia §26-59; 58-119; 58-166, in that the Cross-Respondent is illegally attempting to usurp and arrogate to himself, to the complete exclusion of the Cross-Complainant, the preparation and filing of all such tax returns. In addition, the Cross-Respondent has refused to make available to Cross-Complainant the necessary
page 25 } information concerning the intangible personal property held by the deceased in New York to enable the Cross-Complainant to prepare said tax returns.

c. The Cross-Respondent has refused to cooperate and collaborate with Cross-Complainant in the joint preparation and filing with the United States Treasury Department, Internal Revenue Service of the income and estate tax returns for this estate as required by Internal Revenue Code (1954) §2002 (26 USCA §2002); and §6012(b) (26 USCA §6012(b))

and Federal Tax Regulations §§20.2002-1; 20.6001; 20.6018-2; 1.6012-3(a)(3) in that the Cross-Respondent is illegally attempting to usurp and arrogate to himself, to the complete exclusion of Cross-Complainant, the preparation and filing of all such tax returns. In addition, Cross-Respondent has refused to make available to Cross-Complainant the necessary information concerning the intangible personal propertly held by the deceased in New York to enable the Cross-Complainant to prepare said tax returns.

6. The widow of the deceased has duly filed her renunciation of the will and election to take her statutory share of the deceased's estate with the Clerk of this Court. She has thus exercised her absolute and paramount right under the law of Virginia to renounce the will and to take her statutory share of the whole estate, and no provision in the will or in the laws of New York can limit, condition or deny her this right. On information and belief the Cross-Complainant alleges that the Cross-Respondent is seeking to deny condition or limit this right of the widow to renounce the will and to take her statutory share on the basis of provisions in the Will and in the statutes of New York. Such action on the part of the Cross-Respondent is in violation of the laws of Virginia and in derogation of his fiduciary duties thereunder, it being the responsibility of the Cross-Complainant and the Cross-Respondent as the domiciliary co-executors of the estate of the deceased to marshall and deliver to the widow her
page 26 } statutory share of the whole estate, including the intangible personalty held by the deceased in New York.

WHEREFORE, your Cross-Complainant prays:

1. That the Cross-Respondent, N. Holmes Clare be summoned and given notice in the manner provided by law to answer this Cross-Bill.

2. That the will of Robert Vanderpoel Clark, Jr., deceased, and the governing statutes set forth hereinabove be construed and that it be adjudged and decreed that the proper construction to be placed upon the will and the aforesaid statutes is that:

a. The Cross-Complainant, William T. Grasty, and the Cross-Respondent, N. Holmes Clare, are the domiciliary co-executors of the estate of Robert Vanderpoel Clark, Jr. in accordance with the deceased testator's will; that their qualification as domiciliary co-executors under the will and under Code of Virginia (1950) §26-59 was joint and not several and that under this statute they must act jointly and not severally

in the discharge of all their fiduciary duties in Virginia in connection with the administration of this estate.

b. That in the discharge of their fiduciary duties in Virginia, under Code of Virginia (1950) §§ 26-12 and 26-59 they must jointly prepare and file with the Commissioner of Accounts a full, fair and itemized statement of inventory which shall include the intangible personal property held by the testator in New York and, in this connection, the Cross-Respondent shall make available to Cross-Complainant all his information, facts, files and records necessary for this purpose.

c. That in the discharge of their fiduciary duties in Virginia under Code of Virginia (1950) §§26-59; 58-119 and 58-166 they must jointly prepare and file with the

page 27 } Department of Taxation of Virginia all income tax and inheritance tax returns for this estate and in this connection the Cross-Respondent shall make available to Cross-Complainant all his information, facts, files and records necessary for this purpose.

d. That in the discharge of their fiduciary duties in Virginia under Code of Virginia (1950) §26-59 and under Internal Revenue Code (1954) §§2002 (26 USCA §2002) and 6012(b) (26 USCA §6012(b)) and Federal Tax Regulations §§ 20.2002-1; 20.6001; 20.6018-2; 1.6012-3(a)(3) they must jointly prepare and file with the United States Treasury Department, Internal Revenue Service, all Federal income tax and estate tax returns, and in this connection the Cross-Respondent shall make available to the Cross-Complainant all his information, facts, files and records necessary for this purpose.

e. That in the discharge of their fiduciary duties in Virginia under Code of Virginia (1950) §§26-59; 64-16; 64-27 and 64-32 they must jointly marshall and deliver to the widow of the deceased, Elizabeth D. Clark, pursuant to her renunciation of the will and election to take her statutory share of the estate, one half of the surplus of the deceased's personal estate, including the intangible personal property the deceased held in New York, and a life interest in one-third of all the real estate of which the deceased testator died seized and possessed.

3. That your Cross-Complainant may receive all such other, further and general relief as to equity may seem meet and just.

WILLIAM T. GRASTY
Domiciliary Co-Executor
Estate of Robert Vanderpoel
Clark, Jr.
Deceased

by BOLLING R. POWELL, JR.
GEORGE A. HORKAN, JR.
Counsel

Filed Nov. 1, 1965. H. L. PEARSON, Clerk

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ANSWER OF RESPONDENT WILLIAM T. GRASTY, THE RESIDENT DOMICILIARY CO-EXECUTOR OF THE ESTATE OF ROBERT VANDERPOEL CLARK, JR. DECEASED

Reserving to himself the benefit of all just exceptions to the Bill of Complaint filed in this cause, for answer there to the Respondent says:

1. For answer to Paragraph "1" the Respondent admits the allegations thereof.

2. For answer to Paragraph "2" the Respondent admits Exhibit "A" is a true copy of the Will of the decedent.

3. For answer to Paragraph "3" the Respondent admits that Article Twenty-First reads, in part, as quoted in Paragraph "3".

4. For answer to Paragraph "4", the Respondent admits he signed and acknowledged a "Waiver and Consent" in the form attached as Exhibit B. The Respondent is without knowledge as to the other allegations contained in Paragraph "4" and demands strict proof thereof.

page 30 } 5. For answer to Paragraph "5" the Respondent admits Article First (A) reads, in part, as quoted in Paragraph "5".

6. For answer to Paragraph "6" the Respondent admits he is a resident of *an* domiciled in Virginia, and that Article First (B) of the Will reads as follows:

"For my Virginia assets I appoint as Executors my counsel N. HOLMES CLARE and WILLIAM T. GRASTY. If either (or both) does not survive me, does not qualify, or is unable to act for any cause, resigns or dies I appoint in his (or their) place and stead STATE PLANTERS BANK OF COMMERCE & TRUSTS of Richmond, Virginia.

Respondent has no personal knowledge of what State N. Holmes Clare resides in and demands proof thereof. Respondent denies all other allegations in Paragraph "6".

7. For answer to Paragraph "7", the Respondent denies the allegations thereof. The Respondent further alleges in answer to Paragraph "7" that by Order of this Court entered February 1, 1965, the aforesaid Will was adjudged to be the decedents last Will and was ordered to be probated and recorded as such upon payment of the Virginia probate tax under Code of Virginia §58-66 to 58-70, which tax was assessed upon the then stated value of the entire estate of the decedent, including all the intangible personalty that had been held by the deceased in New York; that the Complainant N. Holmes Clare refused to pay the probate tax thus based on the entire estate contending the tax should be based only on the assets held by the decedent in Virginia, and, accordingly, the Will was not probated and recorded on February 1, 1965. The Respondent further alleges that the probate tax and recording fees thus assessed in the amount of $25,946.67 were not paid by the Complainant N. Holmes Clare until March 15, 1965, at which time the Will was probated and recorded and by Order of this Court of that date the Complainant, N. Holmes Clare was qualified as the non-resident domiciliary co-executor and the Respondent was qualified as the resident domiciliary co-executor, pursuant
page 31 } to Code of Virginia (1950) §26-59, in accordance with the will of the decedent.

8. For answer to Paragraph "8" Respondent admits that Respondents Elizabeth B. Clark and Suzanne D. Clark are, respectively, the widow and mother of the decedent Robert Vanderpoel Clark, Jr., and that they are the named beneficiaries in the Will who would take thereunder. The Respondent also admits that the decedent left no issue surviving him. The Respondent further alleges in answer to Paragraph "8" that both the widow and the mother of the decedent are residents of and domiciled in Virginia and that the decedent's widow Elizabeth D. Clark has duly renounced the Will both in Virginia and in New York and elected to take her statutory share of the estate of the decedent.

9. For answer to Paragraph "9" the Respondent admits that Article Second of the Will reads as alleged.

10. For answer to Paragraph "10" Respondent denies the allegations contained therein and alleges that his powers, responsibilities and authority as the resident domiciliary co-executor of the estate of the decedent are not only set forth and defined in the entire Will of the decedent but also in the applicable statutes and law of Virginia.

11. For answer to Paragraph "11" the Respondent denies the allegations set forth therein and alleges that at no time since his qualification as the resident domiciliary co-executor of this estate has he undertaken or asserted any authority or responsibility beyond that set forth in the Will and in the applicable statutes and law of Virginia, governing his authority and responsibility as the resident domiciliary co-executor of this estate.

12. For further and affirmative defense to the Bill of Complaint herein, the Respondent alleges that the complainant, N. Holmes Clare, in his capacity as the non-resident domiciliary co-executor of this estate under the Will, has interfered with the orderly and efficient administration
page 32 } of the estate, making such administration more expensive and burdensome in derogation of his fiduciary duties as set forth in the Will and in the governing statutes and law of Virginia all as more fully set forth in the Cross-Bill of the Respondent filed herewith and incorporated by reference in this Answer.

WHEREFORE, now having fully answered the complainants Bill of Complaint, the Respondent prays to be dismissed with his costs in this behalf expended.

BOLLING R. POWELL, JR.
GEORGE A. HORKAN, JR.
Attorney for William T. Grasty as Resident Domiciliary Co-Executor of the Estate of Robert Vanderpoel Clark, Jr., Deceased.

Filed Nov. 1, 1965. H. L. PEARSON, Clerk

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DEMURRER TO CROSS-BILL

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The Cross-Respondent says that the Cross-Bill is not sufficient in law, especially for the following reasons:

1. The Cross-Bill does not allege facts sufficient to show that Cross-Respondent has acted, as alleged in a conclusion of law in the Cross-Bill, "in derogation of his fiduciary duties and in violation of the governing laws and statutes in Virginia . . .".

2. The Cross-Bill does not allege facts sufficient to show that Cross-Respondent has violated any duties to Cross-Complainant.

3. The Cross-Bill does not allege facts sufficient to show that the Cross-Complainant is entitled to the relief sought or to any relief.

4. The Cross-Bill is not a proper pleading in the above entitled proceeding. It bears a different caption from the Bill of Complaint herein; and the purported Cross-Complainant "William T. Grasty, Domiciliary Co-Executor of the Estate of Robert Vanderpoel Clark, Jr., Deceased," is not a party to this proceeding in that alleged capacity since the Bill of Complaint names as a Respondent William T. Grasty, "Executor in accordance with the Will of Robert Vanderpoel Clark, Jr., Deceased, and the Order of this Court entered March 15, 1965."

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N. HOLMES CLARE

By LEWIS B. GREENBAUM
Of Counsel

BATTLE, NEAL, HARRIS, MINOR & WILLIAMS
1400 Ross Building
Richmond, Virginia

Filed Nov. 22, 1965. H. L. PEARSON, Clerk

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MOTION TO STRIKE OUT ANSWER

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The Complainant moves to strike out the answer of Respondent William T. Grasty on the following grounds:

1. The answer is not a proper pleading in the above entitled proceeding. It bears a different caption from the Bill of Complaint herein; and the purported Respondent "William T. Grasty, the resident domiciliary Co-Executor of the Estate of Robert Vanderpoel Clark, Jr., Deceased," is not a party to this proceeding in that alleged capacity since the Bill of Complaint names as a Respondent William T. Grasty "Executor in accordance with the Will of Robert Vanderpoel Clark, Jr., Deceased and the Order of this Court, entered March 15, 1965."

2. The answer contains evasive, impertinent, unresponsive, immaterial and irrelevant matter, and is not a proper answer, as follows:

a. Paragraphs 5 and 6 thereof do not respond to, and evade admitting or denying allegations contained in,
page 41 } paragraphs 5 and 6 of the Bill of Complaint.

b. Paragraphs 7 (other than the first sentence), 8 (other than the first two sentences), 11 (following the word "therein" in line 2), and 12 thereof set forth allegations which are neither relevant nor material to the said Bill of Complaint or to the paragraphs thereof to which said paragraphs of the answer purport to respond; further, such allegations are not a proper part of a defensive pleading, tending only to confuse and obscure the issues raised in the Bill of Complaint.

c. Paragraph 12 of the answer purports to set out and allege in the guise of an "affirmative defense", an affirmative cause of action and "incorporate by reference" a subsequent pleading, the "Cross-Bill" of William T. Grasty as to which Complainant has demurred. Such allegation and incorporation is improper, impertinent, tends only to confuse and obscure the issues raised by the Bill of Complaint, and fails

to allege facts sufficient to constitute a defense to the Bill of Complaint.

N. HOLMES CLARE

By LEWIS B. GREENBAUM
Of Counsel

BATTLE, NEAL, HARRIS, MINOR & WILLIAMS
1400 Ross Building
Richmond, Virginia

Filed Nov. 22, 1965. H. L. PEARSON, Clerk

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ANSWER

For answer to the cross-bill filed in this cause, Elizabeth D. Clark, widow of Robert Vanderpoel Clark, Jr., answers and says:

1. Paragraph 1 of the cross-bill is admitted.

2. The allegations of Paragraph 2 are admitted with the exception of the pleading of the word, "domiciliary", as to which it is alleged this Court has made no determination.

3. Paragraphs 3 and 4 of the cross-bill are admitted.

4. It is not known whether the allegations of Paragraph 5 of the cross-bill are true and strict proof is accordingly required. However, it is further stated that, by the express terms of the Will of Robert Vanderpoel Clark, Jr., the preparation of all tax returns was and is the duty
page 45 } of the Executors named in the State of New York.

5. The allegations of Paragraph 6 with respect to renunciation of the Will by Elizabeth D. Clark are admitted. However, it is denied that it is the duty or responsibility of cross-complainant to marshall and deliver to the widow her statutory share of the entire estate, including the intangible personalty held by the decedent in New York, the duty of the Virginia executors being confined solely to the marshalling and delivering to her of her share of the Virginia assets, and it is further affirmatively alleged that the widow has neither sought nor desires that the cross-com-

plainant undertake such duties which will only result in additional and unnecessary expense and delay to the Estate.

Wherefore, it is prayed that this Court deny the relief sought by the cross-complainant and that this Court enter a Decree in confirmity with the obvious intent and purpose of the Testator, recognizing the validity of the renunciation heretofore executed by the widow in Virginia, and its controlling effect as the renunciation by a resident of the State of Virginia, but further recognizing that the duty of the Virginia executors to marshall and distribute to the widow her share of the estate of the decedent is limited by the Will to those assets designated in the Will of the decedent as Virginia assets; that the duty to marshall and deliver to the widow her share, as provided by the statutes of the State of Virginia, of all other assets is by the terms of the Will of Robert Vanderpoel Clark, Jr., delegated to the New York executors only; and that such delegation is effective to limit the functions and responsibilities of the Virginia executors.

DEMURRER

Now comes Elizabeth D. Clark, widow of Robert Vanderpoel Clark, Jr., and demurs to the cross-bill and
page 46 } adopts as her reason therefor those reasons set forth in the demurrer to cross-bill filed by the cross-respondent, N. Holmes Clare.

ELIZABETH D. CLARK

By THOMAS V. MONAHAN
Counsel

HALL & MONAHAN
Attorneys at Law
Leesburg, Virginia

Filed Dec. 30, 1965. H. L. PEARSON, Clerk

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MOTION OF RESPONDENT AND CROSS-COMPLAINANT WILLIAM T. GRASTY TO SETTLE PLEADINGS AND FRAME ISSUES IN BILL OF COMPLAINT AND CROSS-COMPLAINT IN ADVANCE OF PRE-TRIAL ORDER; TO HOLD A PRE-TRIAL CONFERENCE ON CROSS-BILL AND ANSWER THERETO; TO CONSOLIDATE BILL OF COMPLAINT AND CROSS-COMPLAINT FOR HEARINGS; AND TO ADVANCE THE MATTER ON THE COURT'S CALENDAR

The Respondent and Cross-Complainant William T. Grasty, by counsel moves the Court:

1. To hear and adjudicate complainant's Motion To Strike Out Answer and Complainant's Demurrer To Cross-Bill and to order, if the Court deems necessary, the filing of an amended answer and cross-bill, and to order the filing by the complainant of an answer to the Cross-Bill in advance of entering any pre-trial order.

2. To hold a pre-trial conference on Cross-Bill and answer to be filed thereto.

3. To consolidate the Bill of Complaint and the Cross-Bill for hearings on the pleadings, on pre-trial and on the merits.

4. To advance the hearings on the pleadings, on pre-trial and on the merits on the Court's calendar.

The following grounds are assigned for this motion:

page 48 } 1. Orderly judicial procedure requires that the pleadings on the Bill of Complaint and on the Cross-Bill should be settled and the issues thereby framed before there be any attempt to stipuate facts, documents, records and like matters in a pre-trial order.

The framing of the issues will require that answers to the Bill of Complaint and to the Cross-Bill be filed.

The attempted stipulation of facts, documents and records in a pre-trial order before the issues are framed by answers to Bill of Complaint and Cross-Bill is a pointless procedure. Until the issues are framed it is impossible to determine what facts, documents, records and other evidence are pertinent, relevant, competent and material.

2. Under Rule 4:1 of the Rules of the Supreme Court of Appeals, William T. Grasty, as cross-complainant, is entitled to move the Court for a pre-trial conference for the purposes stated in the Rule. Cross-complainant submits that a joint pre-trial on both the Bill of Complaint and Cross-Bill and

the respective answers thereto, after such answers have been filed, is required for efficient judicial procedure in this cause.

3. The Bill of Complaint and Cross-Bill should be consolidated for hearings on the pleadings, on the pre-trial and on the merits as this is the only efficient way to secure in one proceeding a full and complete determination of all issues which arise out of, or which are connected with, the subject matter of the original Bill of Complaint. This is the primary purpose of the Cross-Bill under the rules of the Supreme Court of Appeals (Rule 2:13 2:14)

4. Time is of the essence in concluding this proceeding both on the Bill of Complaint and on the Cross-Bill in order that the responsibility of the co-executors qualified page 49 } by this Court be adjudicated with respect to the following areas of the administration of this estate:

a. The filing of the inventory with the Commissioner of Accounts of this Court, which filing is now past due and delinquent, and for which delinquency the complainant and cross-complainant have been cited by the Commissioner of Accounts.

b. The filing of the estate tax return with the United States Internal Revenue Service, the filing of the inheritance tax return with the Department of Taxation of Virginia and the filing of income tax returns, both federal and state. The filing of the foregoing returns is now past due. Late filing penalties may, and interest charges will, be incurred by the executors for the failure to file in accord with the requirements of the respective statutes and regulations of the United States and the State of Virginia.

c. The widow of the deceased testator, having renounced the will and elected to take her statutory share of the estate, both in Virginia and in the State of New York, there should be a prompt adjudication by the Court as to the responsibility of the complainant and cross-complainant to see that her statutory share is distributed to her, particularly in view of the fact that the New York executors have stated they propose to reject and defeat her right of renunciation in New York and to give no effect to her renunciation in Virginia, the domiciliary State.

Respectfully submitted

BOLLING R. POWELL, JR.
Counsel

Filed Feb. 4, 1966. B. B. BUNCH, D.C.

* * * * *

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ANSWER TO CROSS-BILL

* * * * *

The Cross-Respondent, N. Holmes Clare, for answer to the Cross-Bill filed in the above-captioned cause, states as follows:

FIRST: The allegations of paragraph 1 of such Cross-Bill are admitted, except that they are denied to the extent they imply that the decedent owned no tangible personal property outside the State of Virginia at his death.

SECOND: The allegations of paragraph 2 of such Cross-Bill are denied, except that it is admitted that the decedent's will was originally probated in New York; that N. Holmes Clare and The Chase Manhattan Bank were qualified as New York executors in accordance with the said will; that subsequently thereto, the said will was probated in this Court; and that N. Holmes Clare and William T. Grasty were qualified as Virginia executors in this Court in accordance with the said will.

THIRD: The allegations of paragraph 3 of such Cross-Bill are admitted.

FOURTH: The allegations of paragraph 4 of such Cross-Bill are denied, except that it is admitted that the
page 56 } decedent left no issue and that Elizabeth D. Clark and Suzanne D. Clark are given beneficial interests under the decedent's will.

FIFTH: The allegations of each and every part of paragraphs 5 and 6 of such Cross-Bill are denied.

SIXTH: Cross-Respondent denies that Cross-Complainant is entitled to any relief sought in paragraphs 1; 2-a, b, c, d. and e; and 3 of the prayer to the Cross-Bill, or to any relief whatsoever.

WHEREFORE, having fully answered the Cross-Bill filed against him, Cross-Respondent prays that such Cross-Bill be dismissed and that he may have his proper costs instant thereto.

Filed Apr. 26, 1966. W. D. HARRIS, Deputy Clerk

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PRETRIAL ORDER

A pretrial conference in this cause, pursuant to Rule 4:1, Rules of the Supreme Court of Appeals of Virginia, was held on April 29, 1966, and was attended by counsel for the complainant and cross-respondent, N. Holmes Clare; for the respondent and cross-complainant, William T. Grasty; and for Elizabeth D. Clark and Suzanne D. Clark, Intervenors.

After due consideration of the matters discussed and agreed to by counsel at the pretrial conference it is hereby

page 112 } ORDERED, that the following shall control the subsequent conduct of this case on both the Bill of Complaint and Answer thereto and on the Cross-Bill and Answer thereto and on the pleadings of the intervenors, unless modified before or at the trial or hearing to present manifest injustice:

A. *Statement of Issues.* The issues raised by the bill and the cross-bill, and the only issues to be decided herein, are the following (transcript of pretrial conference held April 29, 1966, at pages 13, 15, 16 and 30):

Issue No. 1: What was the intent of the testator, Robert Vanderpoel Clark, in appointing New York executors to handle his New York estate and appointing Virginia executors to handle or settle his Virginia estate as spelled out in the Will?

Issue No. 2: If the Court determines that the testator, Robert Vanderpoel Clark, Jr., desired that his New York assets, set forth in his Will, be administered, handled only by his New York executors, and that his Virginia assets be administered only by the Virginia executors, as set forth in the Will; is there any Virginia statute or law that would prevent that policy being carried out in all phases of the administration of the estate?

B. *Stipulations.* The following facts are admitted or stipulated:

(1) Robert Vanderpoel Clark, Jr., Deceased, died on October 4, 1964, in the twenty-fourth year of his life, in New York, New York.

(2) The said decedent was a resident of and domiciled in Fauquier County, Virginia at the time of his death.

(3) The said decedent died testate. Exhibit "1" hereto

is a true copy of the said decedent's Will. The said Will, dated January 26, 1962, is referred to herein for convenience as the "Will". The Will was drawn by the com-
page 113 } plainant and cross-respondent, N. Holmes Clare, as counsel for the Testator, and the original executed copy of the Will was in the possession of N. Holmes Clare in New York at the time of the death of the Testator.

(4) On or about October 13, 1964, N. Holmes Clare offered the original Will for probate, and the original Will was admitted to probate, in the Surrogate's Court of New York County, New York (hereinafter referred to for convenience as the "Surrogate's Court"), on October 16, 1964. Exhibit 5 hereto is a true copy of the decree of the Surrogate's Court admitting the original Will to probate in the Surrogate's Court. The Chase Manhattan Bank and N. Holmes Clare qualified as executors and trustees in the Surrogate's Court in accordance with the Will on or about October 19, 1964. The Chase Manhattan Bank is not qualified to do business in Virginia and its principal place of business is in New York City.

(5) On or about October 5, 1964, the Testator's widow, Elizabeth D. Clark, and his mother, Suzanne D. Clark, executed at the request of N. Holmes Clare, waivers of service of citation and consents to probate of the Will in the Surrogate's Court of the County of New York, New York, true copies of which are attached hereto as Exhibits 2 and 3, respectively. On or about October 7, 1964, N. Holmes Clare was in Middleburg, Virginia, and requested that William T. Grasty execute a waiver of service of citation and consent to probate of the Will in the Surrogate's Court of the County of New York. A true copy thereof is attached hereto as Exhibit 4. Mr. Grasty executed and acknowledged this waiver and consent on or about October 7, 1964.

page 114 } (6) Complainant N. Holmes Clare is a resident of and domiciled in the State of New York, practicing law in that state, and respondent William T. Grasty is a resident of and domiciled in Fauquier County, Virginia, practicing law in that State.

(7) On December 23, 1964 on the application of N. Holmes Clare, the original Will was ordered by the Surrogate's Court to be transmitted to the Circuit Court of Fauquier County. A true copy of the application and order is annexed as Exhibits 6 and 6A hereto. On February 1, 1965, the original Will was adjudged by this Court to be the decedent's last will and ordered to be recorded in the office of the Clerk of this Court on payment of probate costs. A true copy of the

said order is annexed as Exhibit 7 hereto and a true copy of the letter of the Clerk advising Mr. Clare of the amount of the Probate Tax payable is attached hereto as Exhibit 8.

(8) On March 15, 1965, the original Will was admitted to probate and recorded in the office of the Clerk of this Court and complainant N. Holmes Clare, and respondent William T. Grasty qualified in this Court as executors as provided in the Will and in the Order of this Court, a true copy of which is annexed as Exhibit 9 hereto. The probate tax was computed and paid on the value of the entire estate of the Deceased passing by his Will, and of all real estate of the Deceased situated in Virginia, all in accordance with Sections 58-66 and 58-67 of the Code of Virginia.

(9) Respondents Elizabeth D. Clark, (sometimes referred to as Elizabeth Dunn Clark) and Suzanne D. Clark (sometimes referred to as Suzanne de Lasalle Clark) are, respectively, the widow and the mother of the Decedent, page 115 } are the principal beneficiaries under the Will, and are residents of and domiciled in Virginia.

(10) The Decedent left no issue surviving him.

(11) On April 1, 1965, respondent Elizabeth D. Clark filed an instrument in the Surrogate's Court electing to take against the Will. A true copy of such instrument is annexed as Exhibit 10 hereto. The Chase Manhattan Bank and N. Holmes Clare as executors under the Will qualified in the Surrogate's Court deny that said Elizabeth D. Clark has the legal right to elect to take against the Will under New York law.

(12) On October 4, 1965, respondent Elizabeth D. Clark filed an instrument in the office of the Clerk of this Court renouncing the Will. A true copy thereof is annexed as Exhibit 11 hereto.

(13) For purposes of computing the probate tax, the real estate, tangible personal property and bank accounts held by the deceased in Virginia, were estimated to have a value of $320,000 and the intangible personal property held by the deceased in New York was estimated to have a value of $19,128,000.

(14) Since their qualification as executors in New York, N. Holmes Clare and the Chase Manhattan Bank have exercised exclusive and plenary authority over substantially all intangible personal property of the Testator except his bank accounts with Virginia banks. This intangible personal property at the time of the death of the Testator was substantially as follows:

A custody account maintained by the Testator at Chemical Bank New York Trust Company

Value (estimated by Mr. Clare) $8,200,000

Remainder interests in certain trusts created in New York by the Testator's great uncle Frederick Ambrose Clark

Value (estimated by Mr. Clare) $10,000,000 to $15,150,000

page 116 } *Inter vivos* trust created by the Testator, with Testator, Chase Manhattan Bank of New York and N. Holmes Clare as trustee

Value (estimated by Mr. Clare) $2,000,000

Reversionary interest in *inter vivos* trust created by Testator for benefit of his mother with Testator and N. Holmes Clare as trustee

Value (estimated by Mr. Clare) $ 700,000

Note from trustees of Testator's *inter vivos* trust for mother

Face value stated by Mr. Clare $ 213,000

Testator's New York City bank accounts $ 10,000

(15) To the best of the knowledge, information and belief of respondent and cross-complainant, William T. Grasty, and complainant and cross-respondent, N. Holmes Clare, all creditors who might be entitled to file claims in Virginia against the estate of Robert Vanderpoel Clark, Jr., deceased, have been paid, and all expenses of administration in Virginia have been paid or provided for.

C. Exhibits 1 through 11 hereto are hereby admitted into evidence in these proceedings.

D. The caption of the Answer and Cross-Bill of William T. Grasty and all other pleadings herein shall be deemed amended to conform to the caption of this pretrial order.

E. There being no objection thereto, the Petition To Intervene With Respect To The Cross-Bill, filed by Elizabeth D. Clark, was granted, and her Demurrer to the Cross-Bill and her answer to the same were received.

F. Respondent and cross-complainant, William T. Grasty, offers each of the following documents (annexed as Exhibits 12 through 53 hereto) into evidence herein; it is stipulated and agreed that each such document is a true copy of the document of which it purports to be a copy (save for any underscoring of certain portions thereof and the handwritten notations and other markings on Exhibit 24 placed

page 117 } thereon by counsel for said respondent and cross-complainant); and it is stipulated and agreed

that the originals of such documents, such copies of which purport to be signed or executed by or on behalf of any person or acknowledged, were in fact thus signed, executed or acknowledged; and each such document will be admitted into evidence unless any objection thereto, on grounds other than authenticity, made by or on behalf of complainant and cross-respondent, N. Holmes Clare, or by either of the respondents and cross-respondents, Elizabeth D. Clark and Suzanne D. Clark, shall be sustained.

(1) Exhibit 12 (letter dated July 8, 1965 from Powell, Horkan & Powell to Wallace N. Tiffany, Commissioner of Accounts).

(2) Exhibit 13 (letter dated July 12, 1965 from Wallace N. Tiffany, Commissioner of Accounts to Powell, Horkan & Powell).

(3) Exhibit 14 (letter dated August 9, 1965 from Powell, Horkan & Powell to Wallace N. Tiffany, Commissioner of Accounts).

(4) Exhibit 15 (letter dated August 11, 1965 from Wallace N. Tiffany, Commissioner of Accounts, to Powell, Horkan & Powell).

(5) Exhibit 16 (letter dated August 20, 1965 from Powell, Horkan & Powell to Wallace N. Tiffany, Commissioner of Accounts).

(6) Exhibit 17 (letter dated September 11, 1965 from Battle, Neal, Harris, Minor & Williams to Powell, Horkan & Powell).

(7) Exhibit 18 (letter dated September 20, 1965 from Wallace N. Tiffany, Commissioner of Accounts, to Battle, Neal, Harris, Minor & Williams).

page 118 } (8) Exhibit 19 (letter and summons dated September 21, 1965, from Wallace N. Tiffany, Commissioner of Accounts, to Mr. S. S. Hall, Jr., Sheriff of Fauquier County).

(9) Exhibit 20 (letter dated September 21, 1965, from Wallace N. Tiffany, Commissioner of Accounts to Powell, Horkan & Powell and Battle, Neal, Harris, Minor & Williams).

(10) Exhibit 21 (letter dated September 28, 1965, from Powell, Horkan & Powell to Battle, Neal, Harris, Minor & Williams).

(11) Exhibit 22 (letter dated October 6, 1965, from Battle, Neal, Harris, Minor & Williams from Powell, Horkan & Powell).

(12) Exhibit 23 (letter dated October 12, 1965, from Powell,

Horkan & Powell to Battle, Neal, Harris, Minor & Williams).

(13) Exhibit 24 (letter dated October 11, 1965, from Battle, Neal, Harris, Minor & Williams to Powell, Horkan & Powell; form of "Certificate of Fiduciaries" and inventory enclosed with such letter, prepared by counsel for Complainant and Cross-Respondent N. Holmes Clare, and handwritten notes placed thereon by counsel for Respondent and Cross-Complainant William T. Grasty; together with a copy of the said "Certificate of Fiduciaries" enclosed with said letter; and together with a copy of the inventory enclosed with Exhibit 17, prepared by counsel for said Complainant and Cross-Respondent.

(14) Exhibit 25 (letter dated October 21, 1965, from Battle, Neal, Harris, Minor & Williams to Wallace N. Tiffany, Commissioner of Accounts, and a copy of the certificate of fiduciaries and inventory prepared by Battle, Neal, Harris, Minor & Williams).

(15) Exhibit 26 (letter dated October 21, 1965, from Powell, Horkan & Powell to Battle, Neal, Harris, Minor & Williams).

page 119 } (16) Exhibit 27 (letter dated October 21, 1965 from Powell, Horkan & Powell to Wallace N. Tiffany, Commissioner of Accounts, with inventory prepared by Powell, Horkan & Powell).

(17) Exhibit 28 (letter from Wallace N. Tiffany, Commissioner of Accounts, to Battle, Neal, Harris, Minor & Williams and Powell, Horkan & Powell and the report of Mr. Tiffany to the Fauquier County Circuit Court).

(18) Exhibit 29 (letter dated March 25, 1965 from Powell, Horkan & Powell to Virginia Department of Taxation).

(19) Exhibit 30 (letter dated April 14, 1965 from Powell, Horkan & Powell to Mr. R. M. McCarty, Commissioner of Revenue, Fauquier County).

(20) Exhibit 31 (letter dated June 15, 1965 from Powell, Horkan & Powell to Virginia Department of Taxation).

(21) Exhibit 32 (letter dated June 15, 1965 from Powell, Horkan & Powell to Virginia Department of Taxation).

(22) Exhibit 33 (letter dated July 20, 1965 from Virginia Department of Taxation to Powell, Horkan & Powell).

(23) Exhibit 34 (letter dated August 3, 1965 from Powell, Horkan & Powell to Virginia Department of Taxation).

(24) Exhibit 35 (letter dated August 27, 1965 from Powell, Horkan & Powell to Virginia Department of Taxation).

(25) Exhibit 36 (letter dated April 14, 1965 from Powell, Horkan & Powell to Internal Revenue Service).

(26) Exhibit 37 (letter dated April 23, 1965 from Powell,

Horkan & Powell to Battle, Neal, Harris, Minor & Williams).

(27) Exhibit 38 (letter dated May 13, 1965 from Powell, Horkan & Powell to Battle, Neal, Harris, Minor & Williams).

page 120 } (28) Exhibit 39 (letter dated May 17, 1965 from Battle, Neal, Harris, Minor & Williams to Internal Revenue Service).

(29) Exhibit 40 (letter dated May 17, 1965 from Battle, Neal, Harris, Minor & Williams to Powell, Horkan & Powell).

(30) Exhibit 41 (letter dated June 11, 1965 from Powell, Horkan & Powell to Internal Revenue Service).

(31) Exhibit 42 (letter dated June 15, 1965 from Powell, Horkan & Powell to Internal Revenue Service).

(32) Exhibit 43 (letter dated June 18, 1965 from Internal Revenue Service).

(33) Exhibit 44 (letter dated June 29, 1965 from Powell, Horkan & Powell to Internal Revenue Service).

(34) Exhibit 45 (letter dated August 27, 1965 from Powell, Horkan & Powell to Internal Revenue Service).

(35) Exhibit 46 (letter dated September 29, 1965 from Internal Revenue Service to Powell, Horkan & Powell).

(36) Exhibit 47 (letter dated November 2, 1965 from Powell, Horkan & Powell to Internal Revenue Service).

(37) Exhibit 48 (letter dated November 8, 1965 from Battle, Neal, Harris, Minor & Williams to Internal Revenue Service).

(38) Exhibit 49 (letter dated November 23, 1965 from Powell, Horkan & Powell to Internal Revenue Service).

(39) Exhibit 50 (letter dated November 29, 1965 from Battle, Neal, Harris, Minor & Williams to Internal Revenue Service).

(40) Exhibit 51 (letter dated December 16, 1965 from Internal Revenue Service to Battle, Neal, Harris, Minor & Williams).

(41) Exhibit 52 (letter dated January 17, 1965 from Internal Revenue Service to Powell, Horkan & Powell).

page 121 } (42) Exhibit 53 (letter dated February 7, 1966 from Powell, Horkan & Powell to Internal Revenue Service).

G. Complainant and cross-respondent, N. Holmes Clare, offers each of the following documents (annexed as Exhibits 54 through 56 hereto) into evidence herein; it is stipulated and agreed that each such document is a true copy of the document of which it purports to be a copy; and it is stipulated and agreed that the originals of such documents, such copies of which purport to be signed or executed by or on

behalf of any person or acknowledged, were in fact thus signed, executed or acknowledged; and each such document will be admitted into evidence unless any objection thereto, on grounds other than authenticity, made by or on behalf of respondent and cross-complainant, William T. Grasty, or by either of the respondents and cross-respondents, Elizabeth D. Clark and Suzanne D. Clark, shall be sustained:

(1) Exhibit 54 (letter dated March 14, 1966 from counsel for William T. Grasty to Edward J. Fitzgerald, Jr., District Director, Internal Revenue Service, New York, New York).

(2) Exhibit 55 (letter dated March 14, 1966 from counsel for William T. Grasty to C. H. Morrissett, State Tax Commissioner, Commonwealth of Virginia).

(3) Exhibit 56 (letter dated August 27, 1965 from C. H. Morrissett, State Tax Commissioner, to counsel for William T. Grasty).

H. (1) If any one or more of Exhibits 29 through 32, and 34 and 35 shall be admitted into evidence, then complainant and cross-respondent, N. Holmes Clare, offers into evidence the letter dated August 17, 1965 from counsel for Clare to Virginia Department of *Tazation* (annexed as Exhibit 57 hereto).

(2) If any one or more of Exhibits 41 through 45 shall be admitted into evidence, then complainant and cross-respondent, N. Holmes Clare, offers into evidence the

page 122 } following (marked Exhibits 58, 59 and 60, respectively):

(a) Letter dated August 19, 1965 from counsel for Clare to the Internal Revenue Service, Richmond, Virginia (Exhibit 58).

(b) Letter dated August 27, 1965 from the Internal Revenue Service, Richmond, Virginia to counsel for Clare (Exhibit 59).

(c) Letter dated September 16, 1965 from counsel for Clare to the Internal Revenue Service, Richmond, Virginia (Exhibit 60).

(3) Complainant and cross-respondent, N. Holmes Clare, offers into evidence the following marked Exhibits 62 and 63, respectively, if any one or more of Exhibits 12 through 27 shall be admitted into evidence, and thus offers Exhibit 61 if Exhibit 37 shall be thus admitted:

(a) Letter dated April 1, 1965 from counsel for N. Holmes Clare to counsel for William T. Grasty (Exhibit 61).

(b) Letter dated September 15, 1966 from counsel for William T. Grasty to Wallace N. Tiffany, Commissioner of Accounts (Exhibit 62).

(c) Letter dated September 17, 1965 from counsel for N. Holmes Clare to Wallace N. Tiffany, Commissioner of Accounts (Exhibit 63).

It is stipulated and agreed that each of the foregoing documents (Exhibits 57 through 63) is a true copy of the document of which it purports to be a copy; that the originals of such documents, such copies of which purport to be signed or executed by or on behalf of any person or acknowledged, were in fact thus signed, executed or acknowledged; and if offered as hereinbefore provided, each such document will be admitted into evidence unless any objection thereto, on grounds other than authenticity, made by or behalf of respondent and cross-complainant, William T. Grasty, or by either of the respondents and cross-respondents, Elizabeth D. Clark and Suzanne D. Clark, shall be sustained.

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I. (1) Counsel for each of the parties hereto is to give notice to all counsel of record, on or before June 1, 1966, of the persons he wishes to examine upon deposition. Such notice shall be either delivered by hand, or mailed so as to reach its destination in the due course of mails, on or before such date.

(2) Such depositions as are designated pursuant to paragraph (1) shall, unless otherwise agreed by the parties, be taken at the offices of Messrs. Battle, Neal, Harris, Minor & Williams, 1400 Ross Building, Richmond, Virginia, commencing at 10:00 a.m. on June 9, 1966.

(3) Memoranda of law by counsel for each of the parties hereto shall be submitted to the Court, and to each counsel of record, on or before July 15, 1966. Such memoranda shall be either delivered by hand, or mailed so as to reach the Court and counsel in the due course of mails, on or before such date; reply memoranda of law shall be so submitted and delivered on or before July 25, 1966.

(4) Argument on the merits will be heard before the Court on September 14, 1966; one hour each shall be allowed to counsel for Complainant and Cross-Respondent N. Holmes Clare, to counsel for Respondent and Cross-Complainant William T. Grasty, and to counsel for Respondent and Cross-Respondent Elizabeth D. Clark and Suzanne D. Clark.

ENTER: May 24, 1966.

RAYNER V. SNEAD, Judge

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MOTION TO VACATE, SUPPRESS AND QUASH

Comes now the Complainant and Cross-Respondent herein, by counsel, and moves the Court to vacate, suppress and quash: the notice (set out in the letter from Bolling R. Powell, Jr., to Lewis B. Greenbaum, dated May 31, 1966, attached hereto as a part hereof, and mailed "June 1, p.m., 1966" in the attached envelope) to take the depositions of N. Holmes Clare, William T. Grasty, Mrs. Nancy Harrison, Wallace Tiffany, James P. Boyle, IRS, S. M. Long, Jr., IRS, S. Thomas Amato, IRS, and W. J. Powell, Jr.; such depositions, if any, as may have been taken at the time page 148 } this Court rules upon this Motion; and such summonses, subpoenas and other process, if any, as may have been issued and served herein in connection with the aforementioned notice and depositions.

The Complainant and Cross-Respondent assigns as grounds therefore, the following:

1. The summons requiring the Complainant and Cross-Respondent to produce documents is not authorized by, and there has not been compliance with, §§ 8-324 and 8-325 of the Code of Virginia (1957 Replacement Volume).

2. The depositions thus noticed, and the documents described in the orders for the issuance of subpoenas *duces tecum* entered by this Court on or about June 6, 1966, and in the affidavits referred to in such orders, are irrelevant and immaterial and otherwise inadmissible into evidence.

3. The documents described in the aforementioned orders for subpoenas *duces tecum* and affidavits may not be properly or lawfully produced, or are privileged, or in the case of the Complainant and Cross-Respondent are not in his control, as the case may be, except as follows: the documents to be produced by Mrs. Nancy Harrison and Wallace Tiffany and the following documents to be produced by the Complainant and Cross-Respondent: the accountant's inventory and appraisement as of the date of death of the testator covering the accounts receivable of The Saddlery and all correspondence between Mr. Clare and the manager of The Saddlery with reference to these accounts receivable; and the two inventories and appraisements filed by Mr. Clare with the Com-

missioner of Accounts of the Circuit Court of Fauquier County.

4. The notice of the depositions and the request for the production of the aforementioned documents violate the pretrial order of this Court entered May 14, 1966 and the instructions of this Court given to counsel on April 29, 1966.

page 149 } 5. The depositions noticed and the request for the issuance of summonses to produce documents are oppressive and constitute an abuse of the deposition procedure.

WHEREFORE, the Complainant and Cross-Respondent moves the Court to vacate, suppress and quash: the notice to take the depositions of N. Holmes Clare, William T. Grasty, Mrs. Nancy Harrison, Wallace Tiffany, James P. Boyle, IRS, S. M. Long, Jr., IRS, S. Thomas Amato, IRS, and W. J. Powell, Jr.; such depositions, if any, as may have been taken at the time this Court rules upon this Motion; and such summonses, subpoenas and other process, if any, as may have been issued and served herein in connection with the aforementioned notice and depositions; and for such other and further relief as to the Court may seem just and proper.

N. HOLMES CLARE

By LEWIS B. GREENBAUM
Counsel

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DECREE

* * * * *

This cause, having been set for hearing and docketed, came on to be again heard on October 11, 1966, upon the following pleadings and proceedings filed and had herein:

The Bill of Complaint of the complainant and cross-respondent, N. Holmes Clare (hereinafter for convenience sometimes referred to as the Complainant);

The Answer and the Cross-Bill of the respondent and

cross-complainant, William T. Grasty (hereinafter for convenience sometimes referred to as the Respondent);

The Complainant's Answer to the Cross-Bill;

The Answers to the Bill of Complaint and to the Cross-Bill of the respondents and cross-respondents, Elizabeth D. Clark and Suzanne D. Clark (said respondents and cross-respondents being hereinafter for convenience sometimes referred to as the Beneficiaries);

page 167 } The Pre-Trial Order entered herein May 24, 1966 (wherein among other things, this Court framed the issues herein in lieu of ruling upon the Complainant's and the Beneficiaries' demurrers to the Respondent's Cross-Bill and their motions to strike the Respondent's Answer);

The hearings held herein on April 29, May 24 and June 9, 1966, and the depositions of Nancy Crocket Harrison taken June 9, 1966, and of the Complainant taken July 27, 1966, transcripts of such hearings and depositions having been filed in the Clerk's Office;

And all matters other than those dealt with in this decree having been heretofore finally concluded;

And the cause and the issues therein raised having been argued fully both by briefs and orally by counsel for all parties hereto (Messrs. McGuire, Woods & Battle on behalf of the Complainant, Messrs. Powell, Horkan & Powell on behalf of the Respondent, and Messrs. Hall & Monahan on behalf of the Beneficiaries);

And the Court having considered the foregoing, including the aforementioned depositions, and the exhibits thereto and to the Pre-Trial Order, offered by the Respondent, deems it unnecessary to rule on the objections of the Complainant and of the Beneficiaries to such depositions and exhibits, and reserves until the final accounting its ruling on the request of the Complainant and of the Beneficiaries, made in connection with their motions to vacate, suppress and quash the aforementioned depositions, to assess against William T. Grasty the reasonable costs of such depositions, including counsel fees;

And the Court being of the opinion that it was the intention of the testator, Robert Vanderpoel Clark, Jr., that all of his assets be administered in, and under the law of, the State of New York by N. Holmes Clare and The Chase

page 168 } Manhattan Bank as his executors qualified in New York, except his Virginia assets as defined in Article FIRST (A) of the Will and that the said testator

intended that the Complainant and the Respondent administer such Virginia assets only; that there is no statute or law of the Commonwealth of Virginia which prohibits such intention from being carried out; and that the relief sought by the Respondent in his Cross-Bill should be denied;

The Court doth accordingly FIND, ADJUDGE, ORDER and DECREE as follows:

A. In addition to the matters stated in the said Pre-Trial Order, it appears to the Court, and the Court doth FIND:

1. That with respect to Issue No. 1 as framed by this Court in the Pre-trial order, it was the intention of the testator, Robert Vanderpoel Clark, Jr.:

(i) that N. Holmes Clare and The Chase Manhattan Bank qualify in the State of New York as the Executors of, and administer there in accordance with the laws of New York, all of the testator's assets, with the exception of those assets which the testator referred to in his Will and which are hereinafter referred to as the Virginia assets (for convenience the testator's Will being sometimes referred to herein as the Will and the said bank as the Bank);

(ii) that such Virginia assets consist only of the testator's real property, tangible personal property, and funds on deposit in banks, located in Virginia;

(iii) that the Complainant N. Holmes Clare and the Respondent William T. Grasty qualify in the Commonwealth of Virginia as executors of such Virginia assets only;

(iv) that the powers, responsibilities and authority of the Complainant and the Respondent as executors of
page 169 } such Virginia assets extend only to such Virginia assets and to performing such acts as may be required to carry out the provisions of Article SECOND of the Will, including as contemplated in said Article SECOND, distributing to the testator's widow, the respondent and cross-respondent, Elizabeth D. Clark, the tangible personal property specifically bequeathed to her in Article THIRD of the Will.

2. That the Will was admitted to probate in the Surrogate's Court of New York County, New York, on October 16, 1964, with the consent of the Respondent and of the Beneficiaries, and the said N. Holmes Clare and The Chase Manhattan Bank qualified in the said Surrogate's Court as such executors under the Will and are administering in New York all of the testator's assets other than his said Virginia assets; and

that said N. Holmes Clare and said Bank as such executors have not appeared herein and are not parties hereto.

3. That the rights of creditors of the testator and of his estate and the rights of the Commonwealth of Virginia and of the United States will not be affected adversely by carrying out the testator's intention as expressed in the Will.

4. That the Virginia and federal income tax returns of the testator's estate and the final returns of the testator, the Virginia inheritance tax return, and the federal estate tax return have been filed, all taxes shown to be due on the face of all such returns have been paid, and such returns and payment have been accepted by the Virginia and federal tax authorities notwithstanding the objections thereto filed by the Respondent with the Virginia and federal tax authorities.

page 170 } 5. That the items, and the values of the items, set out in the inventories certified and filed by the Complainant and by the Respondent with the Commissioner of Accounts of this Court in October of 1965 are identical, and such inventories are identical in substance and substantially identical in form, the inventory filed by the Respondent being substantially a copy of that filed by the Complainant.

6. That as shown by the said inventories: the value of the testator's entire estate was over $21,000,000; the value of the said Virginia assets was $321,841.58, of which $200,000 consisted of realty and $34,890 of personalty which the testator specifically devised and bequeathed to the testator's widow; and the value of the balance of the said Virginia assets which the testator directed be administered by the Complainant and the Respondent as provided in Article SECOND of the Will was $86,951.58 of which $56,214.02 consisted of realty and personalty used in connection with the operation of The Saddlery, a retail store in Middleburg, Virginia, owned by the testator and sold by the Complainant and Respondent in December of 1965.

7. That the beneficiaries under the Will (sometimes referred to herein as the Beneficiaries) are the respondents and cross-respondents, Elizabeth D. Clark, and Suzanne D. Clark, respectively the widow and the mother of the testator; the Beneficiaries desire that the relief prayed for by the Complainant in his Bill of Complaint be granted and the relief prayed for by the Respondent in his Cross-Bill be denied; the testator's said widow, who has filed an instrument in the Office of the Clerk of this Court renouncing the Will, has elected to pursue in New York by counsel of her choice what-

ever rights she may have with respect thereto
page 171 } pursuant to such renunciation filed in the said
Clerk's Office and to the election filed by the said widow in New York pursuant to the laws of that State to take against the Will (without prejudice to pursuing by counsel of her choice in Virginia whatever rights she may have with respect to the testator's Virginia assets); she opposes all claims by the Respondent that he is responsible for marshalling and delivering to her pursuant to such renunciation any part of the testator's estate, other than those Virginia assets, or the proceeds from the sale of those Virginia assets, to which she may be entitled, and she has relieved the Respondent from any responsibility which he may claim to have with respect to the foregoing.

B. And the Court being of such opinion doth ADJUDGE, ORDER and DECREE:

1. That with respect to Issue No. 2 as framed by this Court, there is no Virginia statute or law which would prevent the testator's intention, expressed in his Will and as heretofore found, from being carried out in all phases of the administration of the testator's estate.

2. The Respondent has no power or authority over, or responsibility or accountability for, the testator's assets other than the said Virginia assets and, in addition, the following intangible assets of the testator, the physical evidences of which are located in Virginia and which have been administered by the Complainant and the Respondent with the consent of all of the parties; $4,445.46 in accounts receivable of The Saddlery and $5,000.00 receivable from William T. Grasty, plus interest at the rate of 6% per annum from December 18, 1963, which were listed among the assets of the testator in the aforementioned inventories; and the parties having stipulated that counsel for the Respondent has in his
possession, and has had since April 11, 1966, a
page 172 } promissory note payable to the testator made
by William G. Waters, dated February 20, 1964, in the original principal amount of $7,000.00, and bearing interest on the unpaid principal balance at the rate of 6% per annum, on which the unpaid principal balance on October 4, 1964 (the date on which the testator died) was $6390.44 plus accrued interest from August 15, 1964, and the unpaid principal balance on March 15, 1965, the date on which the Complainant and the Respondent qualified in this Court, was $5762.35 plus accrued interest at the rate of 6% per annum

from February 24, 1965, such unpaid balance and the interest thereon evidenced by the said note (hereinafter called the Waters Note) shall be included among the assets of the testator for which the Complainant and the Respondent are accountable.

3. The Complainant and the Respondent have no duty or responsibility to attempt to obtain the transfer to Virginia of the assets being administered by the Executors of the testator duly qualified in New York; and the complainant and the Respondent are responsible only for performing such acts as may be required to carry out the provisions of Article SECOND of the Will and as provided herein.

4. The Complainant and Respondent are not responsible for marshalling and delivering to the said widow of the testator, pursuant to her renunciation of the Will filed in this Court or her election to take against the Will filed in New York, any part of the testator's estate, other than those Virginia assets, or the proceeds from the sale of those Virginia assets, to which she may be entitled.

5. The Respondent is not responsible to the estate or the Beneficiaries for the preparation and filing of the Virginia and federal income tax returns of the testator's page 173 } estate and the final returns of the testator, the Virginia inheritance tax return, and the federal estate tax return, or for the payment of such taxes; subject, however, to the obligations of the Complainant and the Respondent set out in §§ 58-871 and 58-872 of the Code of Virginia (1950) as amended and in 31 U.S.C. § 192.

6. The inventories filed with the Commissioner of Accounts of this Court by the Complainant and the Respondent, collectively constitute a joint inventory sufficient in form and substance to comply with the requirements of § 26-12 of the Code of Virginia (1950) as amended; and an appropriate notation reflecting the indebtedness evidenced by the said Waters Note shall be added to the said inventories.

C. Pursuant to the foregoing findings and conclusions, the Court doth further ADJUDGE, ORDER and DECREE that the relief prayed for by the Bill of Complaint, wherein the Beneficiaries have joined, is hereby granted, and the relief prayed for in the Respondent's Cross-Bill is hereby denied.

D. It is further ORDERED that, except as they may be required for use in any appeal herefrom:

(i) The Clerk of this Court shall place all copies of the Virginia inheritance and income tax returns and of the

United States estate and income tax returns, produced and filed herein, in a sealed file and such file shall not be opened nor made available to any person without an order of this Court entered after reasonable notice to the parties herein and an opportunity for them to be heard.

(ii) The Respondent and Cross-Complainant, William T. Grasty, and counsel for the said Respondent, shall maintain in confidence and shall not without a prior order of this Court, entered after reasonable notice to the parties herein and the opportunity for them to be heard, disclose to any-
page 174 } one nor use in any fashion the information set out in the Virginia inheritance and income tax returns and the United States estate and income tax returns filed on behalf of the testator and his estate; they shall make no copies of such tax returns and shall forthwith deliver all copies of said returns as are in their possession or subject to their control to this Court to be placed by the Clerk in such sealed file.

E. It is further ORDERED that all questions concerning the assessment of costs and attorneys' fees be reserved for the final accounting of the executors.

ENTER: November 15, 1966.

RAYNER V. SNEAD, Judge

We ask for this:
McGUIRE, WOODS & BATTLE
by LEWIS B. GREENBAUM
Counsel for Complainant and Cross-Respondent,
N. Holmes Clare

HALL & MONAHAN
by THOMAS V. MONAHAN
Counsel for Respondents and Cross-Respondents,
Elizabeth D. Clark and Suzanne D. Clark

Seen and objected to:
POWELL, HORKAN & POWELL
by G. A. HORKAN, JR.—BOLLING S. POWELL, JR.
Counsel for Respondent and Cross-Complainant,
William T. Grasty

* * * * *

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* * * * *

MOTION FOR *SUPERSEDEAS*

Comes now William T. Grasty, Executor, the Respondent and Cross-Complainant herein, by counsel and, pursuant to the provisions of Code of Virginia (1950) Sections 8-465 and 8-477 moves the Court for an order:

(1) Suspending its final Decree entered herein under date of November 15, 1966, and the execution thereof, for a period of sixty days and thereafter until his petition for an appeal is acted on by the Supreme Court of Appeals of Virginia and, if said appeal is allowed, thereafter until the Supreme Court of Appeals enters its final adjudication on the appeal; and

page 178 } 2. Relieving him, as an Executor of this Estate, from giving a *supersedeas* bond and an appeal bond.

This Motion is based upon the following grounds:

1. The Respondent and Cross-Complainant William T. Grasty, as Executor desires to present to the Supreme Court of Appeals his petition for an appeal from this Courts final Decree of November 15, 1966.

2. Said appeal is proper to protect the Estate of the deceased Robert Vanderpoel Clark, Jr., of which the Respondent and Cross-Complainant William T. Grasty is an Executor, because in said appeal an adjudication by the Supreme Court of Appeals will be sought on questions of law not previously adjudicated by that Court as to the proper construction of the testator's will; whether the will as construed is contrary to the law and public policy of Virginia; what is the authority and responsibility under the will and law of Virginia of the domiciliary executors qualified in Virginia as to (a) The administration of the intangible personalty, the physical evidence of which was held by the testator in New York, (b) The preparation and filing of tax returns, (c) The preparation and filing of an inventory and (c) The receipt by the widow, who has renounced the will, of her Virginia statutory share of the whole estate; what is the authority of executors qualified in New York to conduct acts of administration of this Estate in Virginia; and is it necessary that the resident and nonresident domiciliary executors in Virginia act jointly in all acts of administration of this Estate in Virginia, the resolution of all these questions

page 179 } of law by the Supreme Court of Appeals being necessary for the guidance of the executors qualified in Virginia in order to administer this large estate properly under the law of Virginia.

3. At the time of the entry of said Decree of November 15, 1966, counsel for William T. Grasty, Executor, stated of record their request for a suspension and *supersedeas* without bond and the Court stated it would hear this request later. The Decree of November 15, 1966, is still within the breast of the Court and may be modified or amended by the order of suspension and *supersedeas* without bond requested in this motion.

Respectfully submitted,

BOLLING R. POWELL, JR.
GEORGE A. HORKAN, JR.
Counsel for William T. Grasty,
Executor, the Respondent and
Cross-Complainant

* * * * *

Filed Nov. 29, 1966.

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* * * * *

The 29th day of November, 1966, this matter having been set for hearing on the Motion for *Supersedeas* filed by William T. Grasty, Executor, the Respondent and Cross-Complainant, came the parties by counsel and the matter was argued.

Upon due consideration, it is adjudged and ordered that said Motion for *Supersedeas* be, and the same is, denied, to which counsel for William T. Grasty, Executor, objected and excepted.

This decree is final.

Enter this 29 day of Nov., 1966.

RAYNER V. SNEAD, Judge

* * * * *

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* * * * *

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

Counsel for William T. Grasty, Executor in accordance with the Will of Robert Vanderpoel Clark, Jr., deceased, and the Order of this Court entered March 15, 1965, the Respondent and Cross-Complainant in the above styled case, hereby gives Notice of an Appeal from the final judgment and decree entered herein on November 15, 1966.

The said William T. Grasty, Executor, will petition the Supreme Court of Appeals of Virginia for an Appeal and *Supersedeas* with respect to said final judgment and decree, and hereby sets forth his Assignments of Error, as follows:

1. The Court erred in ruling that under the Will of Robert Vanderpoel Clark, Jr., deceased, and Code of Virginia (1950) §64-131 the respondent and cross-complainant,
page 184 } William T. Grasty, as the Virginia resident domiciliary co-executor, had no authority or responsibility to administer well and truly the whole personal estate of the decedent, including the intangible personal property of the decedent, the physical evidence of which he held in New York.

2. The Court erred in ruling that under the Will of Robert Vanderpoel Clark, Jr., deceased, and Code of Virginia (1950, as amended) §26-59 the complainant and cross-respondent N. Holmes Clare, as the non-resident domiciliary co-executor qualified in Virginia, and the respondent and cross-complainant William T. Grasty, as the resident domiciliary co-executor qualified in Virginia, are authorized to act separately and severally in administering the estate of the decedent in Virginia and that they are not obligated to act jointly.

3. The Court erred in ruling that under the Will of Robert Vanderpoel Clark, Jr., deceased, and Code of Virginia (1950, as amended) §26-59; 26-12; 26-12.1 and 64-131, the complainant and cross-respondent N. Holmes Clare, as the non-resident domiciliary co-executor qualified in Virginia, and the respondent and cross-complainant, William T. Grasty, as the resident domiciliary co-executor qualified in Virginia are not obligated to jointly prepare and file with the Commissioner of Accounts a complete and itemized inventory of all real estate and of all personal property of the decedent, including the intangible personal property, the physical evidence of which was held by the testator in New York.

4. The Court erred in ruling that under the Will of Robert Vanderpoel Clark, Jr., deceased, and Code of Virginia (1950, as amended) §§ 26-59; 58-119; 58-122; 58-166 and 64-131 the complainant and cross-respondent, N. Holmes Clare, as the non-resident domiciliary co-executor qualified in
page 185 } Virginia, and the respondent and cross-complainant, William T. Grasty, as the resident domiciliary co-executor qualified in Virginia are not obligated jointly to prepare and file with the Department of Taxation of Virginia the Virginia income tax returns for the last year of the life of the testator and for the estate during the administration thereof, and the Virginia inheritance tax return for the estate and to pay from estate assets all such income and inheritance taxes due the Commonwealth of Virginia.

5. The Court erred in ruling that under the Will of Robert Vanderpoel Clark, Jr., deceased, and Code of Virginia (1950, as amended) §26-59; 58-166 and 64-131 the complainant and cross-respondent, N. Holmes Clare, as the non-resident domiciliary co-executor qualified in Virginia, is separately authorized to prepare and file with the Department of Taxation the inheritance tax return and to pay the inheritance tax due as shown by his return, and that the respondent and cross-complainant, William T. Grasty, as the resident domiciliary co-executor qualified in Virginia, has no authority and no responsibility to the estate, its vested or contingent beneficiaries or creditors or the heirs, devisees or distributees thereof, jointly with said non-resident co-executor qualified in Virginia to prepare and file said tax return and to pay the inheritance tax due.

6. The Court erred in ruling that under the Will of Robert Vanderpoel Clark, Jr., deceased, and Code of Virginia (1950, as amended) §§ 6-9; 26-59; 58-119; 58-122; and 64-131 a corporate executor qualified as a co-executor of the estate in New York but not qualified as an executor of the estate in Virginia and not qualified or authorized to do business in
Virginia as a corporation, is authorized to pre-
page 186 } pare and file with the Department of Taxation the Virginia income tax returns and to pay the income taxes shown to be due by such returns, and that the respondent and cross-complainant, William T. Grasty, as the resident domiciliary co-executor qualified in Virginia, has no authority and no responsibility to the estate, its vested and contingent beneficiaries or its creditors or the heirs, devisees or distributees thereof, jointly with N. Holmes Clare, as the non-resident co-executor qualified in Virginia to pre-

pare and file said tax returns and to pay the income taxes due.

7. The Court erred in ruling that under the Will of Robert Vanderpoel Clark, Jr., deceased, and under Code of Virginia (1950, as amended) §§ 26-59 and 64-131 and under the United States Internal Revenue Code (1954, as amended) §§ 142 (26 USCA §142); 641 (28 USCA §641); 821 (26 USCA §821); 822 (26 USCA §822); 2002 (26 USCA §2002) and 6012 (b) and under United States Internal Revenue Service Regulations §§20.2002-1; 20.6001; 20.6018-2 and 1.6012-3(a)(3), the respondent and cross-complainant, William T. Grasty, as the resident domiciliary co-executor qualified in Virginia, has no authority and no responsibility to the estate, its vested and contingent beneficiaries, or its creditors or the heirs, devisees or distributees thereof, jointly with N. Holmes Clare, as the non-resident co-executor qualified in Virginia, to prepare and file the United States income tax returns for the last year of the life of the testator and for the estate during administration and the United States estate tax returns and to pay the taxes due.

8. The Court erred in refusing to rule upon the authority and responsibility of the complainant and of respondent, as the domiciliary co-executors qualified in Virginia, to the Commonwealth of Virginia and the United States for

page 187 } filing income, inheritance and estate tax returns and for paying taxes due under the Virginia Statutes and the United States Statutes and Regulations cited above in Assignments of Error "5", "6" and "7", and the Will of Robert Vanderpoel Clark, Jr., deceased.

9. The Court erred in ruling that under the renunciation of the Will of Robert Vanderpoel Clark, Jr., deceased, by his widow, a resident of Virginia, and under Code of Virginia (1950, as amended) §§26-59; 64-16; 64-27; 64-32 and 64-131 the complainant and cross-respondent, N. Holmes Clare, and the respondent and cross-complainant, William T. Grasty, as the domiciliary co-executors qualified in Virginia, have no authority and are not responsible jointly or severally to marshal and deliver to the widow of the testator her Virginia statutory share of the whole estate, including the intangible personal property, the physical evidence of which was held by the deceased in New York.

10. The Court erred in not ruling that under the renunciation of the Will of Robert Vanderpoel Clark, Jr., deceased, by his widow, a resident of Virginia and under Code of Virginia (1950, as amended) §§64-16; 64-27 and 64-32, the widow's right to renounce is controlled by the law of Virginia, where it is paramount and unconditional, and not by

the law of New York, where it is not paramount and unconditional, and that she is entitled to the Virginia statutory share of the entire estate, including the intangible personal property, the physical evidence of which was held by the deceased in New York.

11. The Court erred in not hearing and ruling up the demurrers to the respondent's, William T. Grasty, cross-bill filed by the complainant and by the intervening respondents.

page 188 } 12. The Court erred in not hearing and ruling upon the complainant's and intervening respondents' motions to strike the answer of the respondent William T. Grasty.

13. The Court erred in entering the Pre-Trial Order herein in which the Court framed the issues without first ruling on the demurrers and motions to strike and thereby settling the pleadings which framed the issues.

14. The Court erred in not hearing and ruling upon the complainant's and the intervening respondents' motions to vacate, suppress and quash the depositions taken herein and to assess against the respondent, William T. Grasty, the costs of such depositions, including counsel fees, and in reserving its ruling thereon until the final accounting.

15. The Court erred in ruling that under the Will of Robert Vanderpoel Clark, Jr., deceased, and Code of Virginia (1950, as amended) §§26-59 and 64-131 the complainant and respondent as the domiciliary co-executors qualified in Virginia, have no duty or responsibility to attempt to obtain the transfer to Virginia of the assets of the estate now being administered by the New York executors, upon the completion of that ancilliary administration, and that said Virginia executors must transfer to the New York trustees named in the Will the net estate remaining in Virginia after the completion of the domiciliary administration in Virginia.

16. The Court erred in ruling that under the Will of Robert Vanderpoel Clark, Jr., deceased, and Code of Virginia (1950, as amended) §§26-12; 26-12.1; 26-59 and 64-131 the separate inventories of this estate filed with the Commissioner of Accounts by the complainant and by the respondent comply with the requirements of said statutes.

page 189 } 17. The Court erred in finding as a fact that the co-executors qualified in New York have not performed acts of administration of the estate in Virginia, said finding not being supported by the evidence of record herein.

18. The Court erred in finding as a fact that rights of Vir-

ginia creditors of the testator and of his estate and the rights of the Commonwealth of Virginia and of the United States, will not be affected adversely by the administration procedures being carried out separately by the non-resident domiciliary co-executor qualified in Virginia and by the New York executors to the exclusion, and over the objection, of the respondent and cross-complainant, William T. Grasty, as the resident domiciliary co-executor qualified in Virginia, said finding not being supported by the evidence of record herein.

19. The Court erred in finding as a fact that all tax returns, both Virginia and Federal, filed by the New York executors and by the complainant, as the non-resident domiciliary co-executor qualified in Virginia, have been accepted by the Virginia and Federal tax authorities, said finding not being supported by the evidence of record herein.

20. The Court erred in finding as a fact that the separate inventories filed with the Commissioner of Accounts are identical in substance and substantially identical in form and that the inventory filed by the respondent and cross-complainant, William T. Grasty, is substantially a copy of that filed by the complainant, said finding not being supported by the evidence of record herein.

21. The Court erred in finding as a fact that the intervening respondent, Elizabeth D. Clark, has elected to pursue in New York by counsel of her choice whatever statutory rights she may have with respect to this estate as the result of her renunciation of the testator's Will and that she has relieved the respondent and cross-complainant, William page 190 } T. Grasty, as the resident domiciliary co-executor qualified in Virginia, of all responsibility for her statutory share of the intangible personal property, the physical evidence of which is held in New York, said finding not being supported by the evidence of record herein.

22. The Court erred in finding as a fact that the accounts receivable of the Saddlery and the receivable from William T. Grasty have been jointly administered by the complainant and respondent with the consent of all the parties, said finding not being supported by the evidence of record herein.

23. The Court erred in granting the relief prayed in the complaint and in denying the relief prayed in the cross-bill for the foregoing reasons.

24. The Court erred in imposing the limitations contained in Paragraph "D" of its Decree as to tax returns upon the respondent—cross-complainant as the resident domiciliary co-executor qualified in Virginia, said limitations not being included in the relief prayed in the complaint, no evidence

having been heard thereon by the Court and there being no evidence of record supporting it and said limitations impairing the ability of said co-executor to discharge his responsibilities under the Will and foregoing statutes in the administration of the estate.

25. The Court erred in denying the Motion for Supersedeas of the respondent and cross-complainant, William T. Grasty, for the reasons stated therein as grounds for said Motion.

Dated this 5th day of December, 1967.

BOLLING R. POWELL, JR., Counsel
for William T. Grasty, Co-Executor,
Respondent and Cross-Complainant

Filed Jan. 6, 1967. H. L. PEARSON, Clerk

* * * * *

TRANSCRIPT OF RULING OF THE COURT

Warrenton, Virginia
October 11, 1966

Before:

Honorable Rayner V. Snead, Judge

10/11/66
page 2 } The Court: The Court has considered the pleadings in this case and the evidence, as well as the memoranda and the argument of counsel. The Court is ready to give a brief ruling in this case.

The Bill of Complaint was filed by the complainant, N. Holmes Clare, asking the Court to construe the will of Robert Vanderpoel Clark. The defendant, Mr. William Grasty, the co-executor, has filed an answer to this bill, and the two principal beneficiaries under the will have also filed answers, and they join in the prayer of the Bill of Complaint filed by Mr. Clare.

The cross-bill was filed by the co-executor, Mr. Grasty. This was answered. The defendants have filed certain motions and demurrers.

The issues in the case have been defined by pre-
10/11/66 trial order, which sets forth two issues to be decided
page 3 } by the Court. The first: What was the intent of of the testator in appointing New York executors to settle his New York estate, appointing Virginia executors to settle his Virginia estate, as spelled out in the will?

Second: If the Court determines that the testator desired that his New York assets be administered only by his New York executors, and that his Virginia assets be administered only by his Virginia executors, as set forth in the will, is there any Virginia statute or law that would prevent that policy from being carried out in all phases of the administration of the estate.

The Court has considered these issues, and it determines that the first issue has practically been agreed upon by counsel. Not altogether, but it is apparent that there is really no dispute. The will speaks for itself. The polar star in construing the will is to determine what is the intent of the testator; and in this case, the intent is plain. It may be given in the four corners of the will, in the very language of the will itself, without regard to any construing evidence. It is obvious that the testator intended as to the disposition of his estate from the very language that he used. He intended, of course, as the will said, that all of his asests would be administered under the law of New York,
10/11/66 except for the Virginia assets, which he defined.
page 4 } Now, as to issue No. 2, the two arguments that counsel for Mr. Grasty made, that the doctrine of *mobilia sequuntur personam* should be followed, and that 64-131 of the Virginia Code governs the disposition of this case.

Now, these two arguments are answered quite ably by the plaintiff's reply brief. Reference is made to his reply brief. Reference is made to 10 through 16, the cases that are cited.

Now, the primary purpose of the administration of an estate, it seems to me, is to pay the debts, taxes of the decedent, to pay a balance over to the beneficiaries of the testator, as set forth in his will; and counsel for the co-executor, Mr. Grasty, is arguing that the rights of the widow, the Commonwealth of Virginia, the United States will be adversely affected if his position is not upheld.

It seems a complete answer to this is that, first, the widow is very ably represented by counsel, and she is able to state through her counsel what she wants, what her desires are. The Court sees no reason why it should not respect those wishes and desires.

As to the Commonwealth of Virginia, the Commonwealth of Virginia is not adversely affected by this ruling, as I see it; and the Commonwealth of Virginia is quite able
10/11/66 to protect its interest in this respect. The evidence
page 5 } is that the Tax Department is quite satisfied with the tax returns that have been filed. That same statement would seem to apply to the United States Govern-

ment. It is not a party to the proceedings, and it is quite able to protect its own interest. And the Court has to decide the rights of parties that are before the Court, and the issues that are presented. We cannot adjudicate issues that are not before the Court—cannot adjudicate the rights of parties who are not before the Court.

As to jointly filing the inventory, the Commissioner of Accounts is an officer of the Court. The inventory as directed by him, which is not in conflict with the ruling made here, should be acceptable to an officer of the Court.

Now, the Virginia executor is, naturally, concerned to see that the estate is properly settled and all parties in interest are protected. The Court is convinced that this case—that the evidence and the records show that the estate should be settled in accordance with the will of the testator and the wishes of the beneficiaries. It is apparent that if this is done, that no creditor or other person can be heard to complain.

So counsel for the complainant and for the de-
10/11/66 fendants, Clark, may present a decree in accordance
page 6 } with this rule.

The exception of the defendant?

Mr. Horkan: Yes, sir. We wish that our exception be noted.

The Court: Yes, sir.

(Whereupon, the hearing was concluded at 1:50 p.m.)

VIRGINIA:

IN THE CIRCUIT COURT OF FAUQUIER COUNTY
N. HOLMES CLARE, Executor
vs
WILLIAM T. GRASTY, Executor
et als

CHANCERY
NO. 3183

Pursuant to Rule 5:1 Section 5 (c) of the Rule of the Supreme Court of Appeals of Virginia, I certify that Transcript of Ruling of the Court—October 11, 1966 is an original transcript and other incidents of the trial of the herein styled case.

Witness my signature this 13 day of January 1967.

H. L. PEARSON, Clerk.
Circuit Court—Fauquier County,
Virginia

page 1 }

* * * * *

Tuesday, November 29, 1966.

The above-entitled matter came on for hearing before Judge RAYNER SNEAD, in Chambers, at 10:00 o'clock, A.M.

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The Court: I think we have reached a solution. The *supersedeas* will be denied.

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The Court: That is right. My ruling is it isn't necessary to grant any *supersedeas,* and it isn't granted.

Mr. Powell: As I understand the ruling of the Court, it isn't necessary because the decree of November 15th does not foreclose Mr. Grasty from pursuing any legitimate remedy or day in Court which I may have.

The Court: That is what I stated.

* * * * *

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* * * * *

NANCY CROCKET HARRISON was sworn and deposed on behalf of Respondent Grasty, as follows:

Nancy Crocket Harrison

DIRECT EXAMINATION

By Mr. Horkan:

Q. Would you please state your name and address?

A. Nancy Crockett Harrison, Middleburg.

Q. It is your understanding that a subpoena *duces tecum* was issued for your appearance today?

A. Yes, sir.

Q. Mrs. Harrison, were you associated with the Middleburg saddlery from the time of Robert V. Clark, Jr.'s, death in October of 1964, until the sale of the saddlery in late 1965?

A. Yes, sir, I was.

Q. What was your function?

A. Well, I was managing, running the saddlery.

Dep. 6/9/66 page 92 } Mr. Greenbaum: Before we go any further, I would like to have a continuing objection to all of this testimony as being completely irrelevant and immaterial to the issues as defined in the pretrial order.

Mr. Monahan: Same objection.

By Mr. Horkan:

Q. As the manager of the saddlery, from whom did you take instructions?

A. Well—

Mr. Greenbaum: We do have the understanding, don't we, that my objection—

Mr. Horkan: It is a continuing objection.

Mr. Greenbaum: —is to this whole line of testimony.

The Deponent: (Continuing) Holmes Clare of New York.

By Mr. Horkan:

Q. What form did these directions take?

A. Well, by telephone a lot, and by some correspondence.

* * * * *

Dep.
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* * * * *

Mrs. Harrison, would you describe briefly what the nature of the assets of the saddlery were at the time that you were operating it?

A. Well, the building and the inventory and certain fixtures in the saddlery.

Mr. Greenbaum: Since the line of testimony seems to be taking a slightly different turn, I would like to reregister my continuing objection, and also add the best evidence rule.

There is an Exhibit K here, I believe, which contains a financial statement of the saddlery, that has been offered in evidence by Mr. Powell.

Mr. Horkan: Well, we will accept your objection, Mr. Greenbaum.

By Mr. Horkan:

Q. Were there also accounts receivable in the saddlery?

A. Yes.

Dep.
6/9/66
page 95 }

Q. Did the saddlery have bank accounts?

A. Yes.

Q. Where were they maintained?

A. In the Middleburg National Bank.

Q. Now, Mrs. Harrison, did Mr. Clare give you directions as to the management of the Middleburg saddlery?

A. Do you mean what to buy, and how to sell, or anything like that? No. I did that completely on my own, at his request, actually .

Q. Did Mr. Clare give you any directions about dealing with Mr. Grasty, an executor of the estate of Mr. Clark?

A. Yes. He directed me not to show any records of any sort of the saddlery to Mr. Grasty, unless himself or his representative was present at the same time.

Q. Did you understand that Mr. Grasty was not to participate in the management of the saddlery?

Mr. Greenbaum: I think that is objectionable. For further reasons, asking for the operation of the witness' mind, as well as all the other objections heretofore noted.

Nancy Crocket Harrison

By Mr. Horkan:
Q. Well, would you go ahead and answer the question?
A. Would you repeat it, please?

Mr. Horkan: Would you read the question, please?
Dep.

6/9/66 (The following was read by the reporter:)

page 96 } "Q. Did you understand that Mr. Grasty was not to participate in the management of the saddlery?"

A. I have to say that was my understanding.

By Mr. Horkan:
Q. Well, was this understanding based upon Mr. Clare's instructions?
A. I couldn't just quote the instructions that he said, "Don't let Mr. Grasty participate in the management of the saddlery," but that is what it is based on, what the understanding is based on, was his indication that he did not want him to.

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Dep.
page 97 }

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Dep. Q. Did you ever supply Mr. Grasty with any of
6/9/66 this information that you supplied Mr. Clare with?
page 98 } A. No.
Q. Were you directed not to submit it to Mr. Grasty?
A. Yes.
Q. Was this direction to you from Mr. Clare?
A. Yes.

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Dep.
6/9/66
page 100 }

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RE-DIRECT EXAMINATION

By Mr. Horkan:

Q. Mrs. Harrison, did you ever inform—during this period did you ever inform Mr. Grasty or any of his representatives that you were under instructions not to give them information about the saddlery?

A. Yes, I did.

Q. Did you inform Mr. Grasty of this?

A. I did, yes.

Q. Did you inform any of his representatives?

A. I informed Mr. Horkan.

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Dep.
6/9/66
page 102 }

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FURTHER RE-DIRECT EXAMINATION

By Mr. Horkan:

Q. Mrs. Harrison, you may not have understood my question, but I asked you whether you had ever advised Mr. Grasty, or any of his representatives, that you were not to give them information about the running of the saddlery. I was referring to the entire period commencing with Mr. Clark's death down to the sale, and not just to the date of the settlement.

And my specific question is that, prior to the date of the settlement, had you also conveyed this understanding to Mr. Grasty?

A. Yes. Yes, I did.

Q. And this was a continuing understanding?

A. That is right. As a matter of fact, I finally told Mr. Clare that I felt that I was being put in a very

Dep. 6/9/66 page 103 } untenable position, which I still feel I am in, and that I just could not be in the middle.

There was all I could do to run the saddlery, and I asked him to write me a letter that I could put in my file saying that I was not to convey any records to Mr. Grasty; and he did that, because I asked him would he do that.

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Dep. 6/9/66 page 5 }

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Whereupon,

N. HOLMES CLARE being first duly sworn by the notary public, was examined and testified upon his oath, as follows:

DIRECT EXAMINATION

By Mr. Powell:

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Dep. 7/27/66 page 32 }

* * * * *

Q. Is it your position, Mr. Clare, that in the preparation of all of those tax returns, and in your participation in all of that correspondence, you were acting as a New York executor appointed and qualified by the Surrogate's Court in New York?

A. No. My position is that as far as Virginia is concerned, I was acting as a general executor.

As far as the Federal tax returns were concerned, I was acting as New York executor.

Q. When you say, "as a general executor" in connection with the Virginia returns, by virtue of what Court's authority were you acting as general executor?

N. Holmes Clare

A. I was the only—I was the only person who had all the knowledge; the New York executors didn't have—Strike it.

The Virginia executors never had all of the knowledge to file the returns; that I was the person in the will who had all the knowledge because of the fact I was both a Virginia and a New York executor.

Dep. 7/27/66 page 33 } Q. I take it every action that you have taken in connection with the administration of this estate has been either by virtue of your qualification by the Surrogate's Court of New York or by virtue of your qualification by the Circuit Court of Fauquier County, Virginia; is that correct?

A. Or by virtue of my being Attorney for the New York Executors.

Q. And do you mean by that that you are Attorney for the Chase Bank?

A. I am Attorney for the Chase Bank and myself as executors under the last will and testament of Robert V. Clark, Jr.

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Dep.
7/27/66
page 34-35 }

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Q. You have no further definition of the term "general executor," which I believe you used, than what you have stated?

A. That's correct.

Q. In your testimony.

Now, with respect to the preparation of the accountant's inventory, which has been marked here this morning, a number of copies covering different periods of time, the Yount & Hyde Accountants, which, as I understand it, covers the business operated by the deceased in Virginia known as The Saddlery, is that correct?—

A. That's correct.

Q. —in what capacity did you direct the preparation of those accounts which have been introduced here?

A. I just told them to prepare them, because we had to have them for tax purposes.

N. Holmes Clare

Q. In doing that, were you acting as New York executor or as Virginia executor, or, as you say, a general executor?

A. I never considered in what capacity I was acting. I just went ahead and did it because it was essential.

Dep. 7/27/66 page 36 } Q. In what capacity did you continue the operation of The Saddlery after the death of the deceased?

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Dep. 7/27/66 page 39 }

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The Witness: I could perhaps say this, subject to Mr. Monahan, that The Saddlery was actually being run before Mr. Clark's death, by Mrs. Clark and Mrs. Harrison.

Subsequently, immediately subsequent to Mr. Clark's death, and for some time thereafter, Mrs. Clark indicated that she was going to purchase The Saddlery.

Dep. 7/27/66 The Saddlery continued to be run after his death as it had been run before his death.

page 40 } By Mr. Powell:

Q. The assets of The Saddlery were assets of the estate, were they not?

A. That is correct.

Q. Then subsequent to the death—I don't believe you have answered the question, actually, that I asked, as to in what capacity—

A. The answer to that, if I may—I think I know what you want—is this: I didn't do it in any capacity. Things continued. It is like a stone going down hill. It continued as they were before. It was previously being run by Mrs. Clark and Mrs. Harrison, and it continued to be run by Mrs. Clark and Mrs. Harrison.

* * * * *

By Mr. Powell:

Q. You were aware that The Saddlery was continued in operation?

N. Holmes Clare

Dep. 7/27/67 page 41

A. I was.

Q. And these statements by the accountants, covering the operations of The Saddlery, were submitted to you?

A. That's correct.

Q. And was submitted to you shortly after they completed them?

A. That's correct.

* * * * *

Q. In connection with necessary day-to-day operations and day-to-day decisions, with respect to the operation of The Saddlery, did you at any time consult Mr. Grasty?

A. No.

Dep. 7/27/66 page 42

Q. On the basis of the documents introduced here, there were two notes, I believe—two or three notes—in which the deceased was involved either as co-signer or debtor, and these notes, the record shows, were given in Virginia and were payable in Virginia, and both—on two of the notes, the Waters and the Roberts notes, both of the makers of the notes were residents of the Middleburg area of Virginia.

Did you have those? Did you take possession of those notes after the death of the testator?

* * * * *

Dep. 7/27/66 page 43

The Witness: I don't know, because the so-called Roberts note—I presume you are referring to the one that I produced—that is a note running to the bank.

For the moment, I don't know when I got possession of that note, whether I had it before Mr. Clark's death or whether I got it after Mr. Clark's death.

By Mr. Powell:

Q. The bank you refer to in this case is the Middleburg National Bank in Middleburg, Virginia?

A. Yes, sir.

* * * * *

N. Holmes Clare

Dep.
7/27/66

page 45 } By Mr. Powell:

Q. With respect to the Roberts note, have you directed the debtor, Roberts, to make payment to the New York executors on that note?

A. Roberts is presently making payments to the New York executors—rather, sending payments to me.

Q. In your capacity as New York executor?

A. He is sending them to me.

Q. Are you depositing the payments in your New York executor's account?

A. I am sending the payments down to the Chase Bank. I believe they go in a special account.

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Dep.
2/27/66
page 49A }

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Q. With respect to the preparation of all tax returns which you have introduced copies of in these documents that have been made available by you, and with respect to all of the correspondence concerning those tax returns which you have made available, did you at any time consult—did you, or to your knowledge, Chase Bank at any time consult—Mr. Grasty with respect to the preparation of those returns or the writing of the correspondence concerning them?

A. I did not.

Q. Mr. Clare, the record in the proceeding shows that you did not qualify as an executor in Virginia until March 15, 1965, at which time. I also believe the record shows, the will was finally probated.

Subsequent to the death of the deceased and prior to March 15, 1965, did you take any action in Virginia with respect to the administration of the estate?

Dep.
7/27/66
page 50 }

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The Witness: I can't recall that I did. I am not sure. I can't think of what I could have done if I wasn't qualified.

By Mr. Powell:

Q. Did you direct the preparation of an inventory and appraisement of the estate in Virginia during that period of time?

A. I don't know.

Q. Did you direct, during that period of time, a Mr. James Skinner of the Middleburg area to prepare a schedule of inventory and appraisement of the real estate and personal tangible personal property in Virginia?

* * * * *

Dep.
7/27/66
page 58 } The Witness: I don't know when I directed Mr. Skinner. I assume that I either directed Mr. Skinner or someone else to make an appraisal. When it was, I don't know. I would imagine the record would speak for itself on that.

I might add that because we needed this for Federal tax purposes, which was the obligation in our judgment, the obligation of the New York executor.

By Mr. Powell:

Q. Did there come a time after your qualification in Virginia that by agreement with counsel for Mr. Grasty, a Mr. O'Reilly of New York, a professional appraiser, was engaged to prepare an inventory, an appraisement of the personal property located in Virginia?

A. Mr. O'Reilly was engaged to do the appraisal. Whether that was by agreement with you gentlemen, I don't remember.

Q. When did you first make a copy of that O'Reilly inventory and appraisal available to Mr. Grasty or his counsel?

A. I don't recall.

Dep.
7/27/66
page 59 } Q. Do you recall that the O'Reilly inventory and appraisement was made in the spring of May, I think—April or May—of 1965?

A. I don't recall when it was made or when I got a copy of it.

Q. Did your counsel advise you that Mr. Grasty's counsel had made repeated requests for copies of that appraisal?

Mr. Greenbaum: I object to asking what his counsel advised him. This is clearly privileged matter.

N. Holmes Clare

I renew all the previous objections made to this line of questioning.

By Mr. Powell:

Q. Do your records show when you made available a copy of the O'Reilly inventory and appraisal to Mr. Grasty?

A. I don't know, but I do know, to the best of my knowledge, that Mr. Grasty or you gentlemen have a copy of the appraisal.

Q. Did you instruct Mr. O'Reilly to deliver all copies of the inventory and appraisement that he made to you?

A. I don't recall, but I probably did.

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

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