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Clerk, Supreme Court of Appeals
Richmond, Va.

209 VA 811

Record No. 6901

In the Supreme Court of Appeals of Virginia at Richmond

JAMES T. COLLEY

v.

IRIS BURGESS COX, in her own right and as Executrix, etc., et al.

FROM THE COURT OF LAW AND CHANCERY OF THE CITY OF ROANOKE

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. 6901

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 28th day of February, 1968.

JAMES T. COLLEY, Appellant,

against

IRIS BURGESS COX, IN HER OWN RIGHT AND AS EXECUTRIX OF THE WILL OF PEARL TATE COLLEY, DECEASED; STANFORD J. COLLEY; BRIDGET LEE TATE, AN INFANT; DR. DEWEY J. BAILEY, JR.; JUNIOR ELMORE; VIRGINIA COLLEY PORTER; PATTI TATE; WANDA BEVINS; AND SALLIE TATE, Appellees.

From the Court of Law and Chancery of the City of Roanoke
Stanford L. Fellers, Judge

Upon the petition of James T. Colley an appeal is awarded him from a decree entered by the Court of Law and Chancery of the City of Roanoke on the 30th day of August, 1967, in a certain chancery cause then therein depending, wherein Iris Burgess Cox, in her own right and as Executrix, etc., was plaintiff and Fred Johnson, the petitioner and others were defendants; upon the petitioner, or some one for him, entering into bond with sufficient security before the clerk of the said Court of Law and Chancery in the penalty of $300, with condition as the law directs.

RECORD

* * * * *

page 1 }

* * * * *

To the HONORABLE S. L. FELLERS, Judge of the Court of Law and Chancery for the City of Roanoke, Virginia.

Your Plaintiff respectfully represents as follows:

That PEARL TATE COLLEY died in the City of Roanoke, Virginia, testate on the 16th day of January, 1965. Her Will bearing date of November 30, 1964, was duly probated in the Court of Law and Chancery for the City of Roanoke, page 2 } Virginia, on the 1st day of February, 1965, and recorded in Will Book 29, at Page 538 of said Court, and IRIS BURGESS COX, the Executrix named in said Will duly qualified as such and gave her personal Bond in the penalty of $30,000.00 with no surety, a copy of said Will, the Order of probate and Qualification of the Executrix are herewith filed as Exhibits 1, 2 and 3.

That at the time of the death of the said PEARL TATE COLLEY, her Estate consisted of the following Bank accounts:

Peoples National Bank, Rocky Mount, Virginia, $535.14. First Federal Savings & Loan Association, Roanoke, Virginia, $2,716.35.

The Colonial-American National Bank, Roanoke, Virginia, Savings Account Number 10747 in the name of Pearl Tate Colley or J. T. Colley, $10,000.00, and the following Real Estate:

Interest in 33 acres, more or less, which Pearl Tate Colley Inherited from H. B. Tate and Nancy J. Tate.

Property located at 523—10th Street S. W. Roanoke, Virginia, appraised at $7,450.00, and personal property set forth in the legacies of her Will.

That on the 23rd day of February, 1965, STANFORD J. COLLEY, husband of the said Testatrix, PEARL TATE COLLEY, filed in this Court a renunciation dated February 15, 1965, in which he waived and renounced the bequest to him as set forth in said Will and elected to claim such share of the Estate of the said PEARL TATE COLLEY, real, personal and mixed, as he would have had she died intestate, said renunciation being referred to herein as Exhibit 4, and is

recorded in Law and Chancery Court Will Book 30, at Page 47.

Your Plaintiff in her individual right and the Defendants are all of the beneficiaries mentioned in the said Will of PEARL TATE COLLEY and all are over the age of Twenty-one years, except BRIDGET LEE TATE an infant under the age of ..... years.

Your Plaintiff as Executrix of said Will of PEARL TATE COLLEY has paid all of the debts of the said PEARL TATE COLLEY as well as her funeral expenses.

page 3 } Your Plaintiff as Executrix of the Will of the said PEARL TATE COLLEY has not made any dispositions of the real estate mentioned in said Will nor has she made disposition of the bequests set forth in said Will, because of the renunciation filed by the said STANFORD J. COLLEY, and she is at a loss as to how to proceed to administer the Estate of the said PEARL TATE COLLEY, in view of said renunciation.

Your Plaintiff, therefore, prays that the Will of the said PEARL TATE COLLEY be construed; that the rights of all parties in interest be determined; that a Guardian *ad Litem* be appointed for the Infant Defendant BRIDGET LEE TATE; and that your Executrix be instructed as to how to proceed to administer the Estate of the said PEARL TATE COLLEY;

And your Plaintiff will ever pray.

Respectfully,

IRIS BURGESS COX, in her own right and as Executrix of the Will of PEARL TATE COLLEY, Deceased.

Filed in the Clerk's Office the 7th day of Feb., 1966.

Teste:

WALKER R. CARTER, JR., Clerk
RUTH DILLARD

* * * * *

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EXHIBIT E

LAST WILL AND TESTAMENT
of
PEARL TATE COLLEY

I, PEARL TATE COLLEY, do make, publish and declare this instrument to be my Last Will and Testament hereby revoking all other Wills by me at anytime heretofore made.

I direct my Executrix, hereinafter named, to pay all of my just debts and funeral expenses as soon after my death as shall be practicable, said payments to be first paid out of any funds that I may have in Bank, but in the event such funds are insufficient, then the remainder of my debts and funeral expenses shall be paid from the proceeds of the funds derived from the sale of my real estate as hereinafter provided.

I direct my Executrix to select a Metal Casket at a price not to exceed Twenty-five Hundred Dollars, which shall include my funeral expenses, and a Steel "Clark" Vault.

I direct that John M. Oakey, Jr., prepare me for my burial and conduct my funeral.

I direct that my body be taken to the Bethany Methodist Church in Lebanon, Virginia, for funeral services and that the same be interred in my Lot in the Cemetery in Lebanon, Virginia. It is my desire that the Reverend Marvin Kinchloe conduct my funeral services (he can be located through Emory and Henry College).

I give, bequeath and devise unto FRED JOHNSON, of Lebanon, Russel County, Virginia, my share of the 33 acres, more or less, which I inherited from H. B. Tate and Nancy J. Tate, as well as all rents due on same since the passing away of Nancy J. Tate on April 29, 1949.

I give and bequeath unto DR. DEWEY J. BAILEY, Jr., the sum of $500.00.

I give and bequeath unto JUNIOR ELMORE (colored) the sum of $500.00, as well as my double bed, springs
page 5 } and mattress, and lamp in the attic.

I give and bequeath unto IRIS BURGESS COX the sum of $500.00.

I give and bequeath unto BRIGETT LEE TATE the sum of $100.00.

I give and bequeath unto my son, JAMES THOMAS COLLEY, the sum of $1,000.00, and my wedding band.

In the event my estate is not sufficient to pay the above legacies in full, then I direct my Executrix to prorate such funds as she may have, among the above named beneficiaries.

I give and bequeath the following personal property to the hereinafter named persons:

To VIRGINIA COLLEY PORTER, the bedroom suite I purchased for her when she finished High School.

To IRIS BURGESS COX, my sterling silver.

To PATTI TATE, my niece, all other silver that I may possess at the time of my death, my lace table cloth and all of my furniture not otherwise herein disposed of, as well as my diamond ring and pearls, also small tan china lamp, as well as my china.

To JAMES THOMAS COLLEY, my antique sugar bowl and cream pitcher, 2 cake plates, fruit bowl, pure linen table cloth, blanket chest, cover lid, and one parlor china reproduction lamp.

To WANDA BEVINS, my shoes, dresses and bags; WANDA BEVINS and SALLIE TATE to get remainder of my jewelry to be divided between them.

I hereby direct my Executrix, to sell my real estate located in Roanoke, Virginia, and deposit the proceeds thereof, remaining in her hands after all debts, funeral expenses and legacies have been paid, on interest in some Bank selected by her and, if SALLIE TATE or STANFORD J. COLLEY,

page 6 } or both, shall become in need of financial assistance then either or both shall have the use of the interest accuring on said fund and if said interest is insufficient to meet their needs they may receive as much of the corpus as may be necessary to meet their needs. Any residue of such fund shall be offered to my son, JAMES THOMAS COLLEY, and if he is not in need of same then said residue shall be paid to PATTI TATE to be used by her to further her education or maintenance and support.

I hereby authorize my Executrix to sell my Roanoke property at public or private sale, at such time and place and for such price and upon such terms as she, in her discretion, shall deem proper, and I hereby authorize her to make all conveyances that may be necessary for the execution of this power.

All the rest and residue of my property not otherwise disposed of, I hereby request my Executrix to sell as above authorized and to deposit the proceeds thereof, with the same fund that was received from the sale of the Roanoke property.

I hereby nominate and appoint IRIS BURGESS COX, Executrix of this my Last Will and Testament and direct that she be not required to execute a Bond or give Security for the faithful performance of her duties as such Executrix.

IN WITNESS WHEREOF, I have hereunto subscribed my

name and affixed my Seal to this my Last Will and Testament, this the ..... day of November, 1964.

PEARL TATE COLLEY (SEAL)

The above signature of PEARL TATE COLLEY, the Testatrix, was made and the foregoing and attached Will was acknowledged to be her Last Will and Testament by the said Testatrix, in the presence of us, two competent witnesses, present at the same time, and we, the said witnesses do hereunto subscribe the said Will on the date last above written, in the presence of the said Testatrix and of each other, at the request of the said Testatrix, who was then of sound mind and over the age of twenty-one years.

.....
Name

.....
Address

.....
Name

* * * * *

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* * * * *

ANSWER OF DR. JAMES THOMAS COLLEY:

* * * * *

Now comes one of the defendants, Dr. James Thomas Colley, for Answer to a certain Bill in Chancery exhibited against him and others now pending in your Honors Court by Iris Burgess Cox, Executrix, etc.

This respondent reserving to himself the benefit of all just exceptions to said Bill of Complaint, for Answer thereto, or to so much thereof as he is advised that it is material he should answer, answers and says:

I. The allegations in the First Paragraph of Complainants Bill concerning the death of the said Pearl Tate Colley, the qualification of Iris Burgess Cox, is admitted.

II. The undersigned respondent answers and says that he is not advised whether the allegations concerning accounts in the Peoples National Bank, the First Federal Savings and

Loan Association of Roanoke, Virginia, and, therefore, neither admits or denies these allegations.

page 11 } III. However, the undersigned respondent denies that there is a Savings Account No. 10747 in the Colonial-American National Bank of Roanoke, Virginia, which is a part of the Estate of the late Pearl Tate Colley.

The undersigned respondent further answers and says that the Account No. 10747 in the Colonial-American National Bank of Roanoke, Virginia, in the name of the late Pearl Tate Colley and/or James Thomas Colley, who is one and same person as J. T. Colley, was a joint Savings Account and upon the death of the said Pearl Tate Colley all funds in said Savings Account belonged to the undersigned respondent.

IV. The undersigned respondent doth further answer and state that according to the terms of the contract entered into between Pearl Tate Colley and J. T. Colley, with the Colonial-American National Bank of Roanoke, Virginia, either one of these persons was authorized to withdraw funds from the account or transact any business on the said Savings Account. Further either one or both or the survivor could sign and it was never intended that the said Savings Account be or become part of the estate of Pearl Tate Colley, rather it was the intention of all the parties concerned at the time the account was established, from all surrounding circumstances, that at the death of Pearl Tate Colley all funds, including interest in said Savings Account, should belong and should go to the survivor, who in this case is your respondent, James Thomas Colley, who is one and same person as J. T. Colley.

The respondent herewith files a photostat of said Savings Account Agreement, entered into by the late Pearl Tate Colley, J. T. Colley and the Colonial-American National Bank of Roanoke, Virginia, and is herewith filed marked "EXHIBIT OF J. T. COLLEY".

page 12 } WHEREFORE, your undersigned respondent prays that this Court hear the evidence concerning this account *ore tenus,* and that no commissions be allowed the Executrix of the Estate on said Savings Account above specifically described, and that the Court enter an order directing the Executrix to turn over the Savings Account Book to the Colonial-American National Bank, and directing said Bank to pay the funds in said Savings Account No. 10747 to the undersigned respondent;

The undersigned respondent further prays that your Honor hear the evidence concerning the ownership of said account *ore tenus,* and direct the executrix and the Bank as aforesaid

to turn over said sum of money to said undersigned respondent, inasmuch as the Colonial-American National Bank, and the said Iris Burgess Cox has refused to relinquish the Savings Account Book to your undersigned respondent.

And your undersigned respondent will ever pray.

Respectfully submitted,

JAMES THOMAS COLLEY
(J. T. COLLEY)

BY: WILLARD R. FINNEY
Counsel

Received and filed Mar. 1, 1966.

JUANITA SIMONS, Deputy Clerk

* * * * *

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SAVINGS
JOINT ACCOUNT
PEARL TATE COLLEY OR J. T. COLLEY 10747

COLONIAL-AMERICAN NATIONAL BANK, Roanoke, Va. is hereby authorized to recognize either of the signatures below in the payment of funds or the transaction of any other business. Either one or both or the survivor to sign. The signature of either one to be sufficient for withdrawal of all, or any part of the funds standing to the credit of the above account.

Right is reserved and the bank is authorized to forward items for collection or payment direct to the drawee or payor bank or through any other bank at its discretion and to receive payment in drafts drawn by the drawee or other banks, and except for negligence, this bank shall not be liable for dishonor of the drafts so received in payment, nor for losses thereon.

Sign here—Pearl Tate Colley
Date Phone No.
Address—523—Fourth St. S. W. Di 4-1944
Sign here—J. T. Colley
Date—8/26/62 First Deposit
Employed by Phone No.

COPY

"Exhibit of J. T. Colley"

* * * * *

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* * * * *

DECREE OF REFERENCE

This cause which has been regularly matured, set for hearing and docketed, came on this day to be heard upon the Bill of Complaint, the separate answers of James Thomas Colley, Stanford J. Colley and Bridget Lee Tate, by her Guardian *ad Litem,* and process duly served upon the above named respondents as well as upon, Dr. Dewey J. Bailey, Jr., Junior Elmore; Patti Tate; Sallie Tate; Virginia Colley Porter; Fred Johnson; Wanda Bevins; who did not file Answers; and who are not represented by Counsel of Record; and was argued by Counsel.

On consideration whereof the Court doth, ADJUDGE, ORDER and DECREE as follows:

That the papers in this cause be referred to ERNEST W. BALLOU, Shenandoah Building, Roanoke, Virginia, a Commissioner in Chancery of this Court, who is directed to inquire into and report to the Court upon the following:

1. Whether or not all the parties in interest are properly before the Court.

2. The real estate of which PEARL TATE COLLEY died seized and possessed.

3. The liens of record, if any, against said real estate, including all taxes, together with their priorities and the amounts of said liens, if any, as well as any debts owing to any one by the estate of PEARL TATE COLLEY, Deceased.

page 38 } 4. Take evidence and report on the ownership of Savings Account Number 10747 in the Colonial-American National Bank of Roanoke, Virginia, and determine who shall pay the inheritance tax, if any, on same.

5. Take evidence and determine the value of the various legacies set forth in the Will of PEARL TATE COLLEY, Deceased.

6. Take evidence and determine that portion of the Pearl Tate Colley estate due Samuel J. Colley and its value.

7. The said Commissioner will also report any other matter deemed pertinent by him or which he may be asked by any of the parties in interest to report.

Before proceeding to execute this Decree the Commissioner shall give notice as required by law.

I request the entry of this Decree
THOMAS M. DARNALL
Attorney for Complainant

I have seen this Decree
WILLARD R. FINNEY
Attorney for James Thomas Colley

TOM STOCKTON FOX
Attorney for Samuel J. Colley

T. L. PLUNKETT, JR.
Guardian *ad Litem* for
Bridget Lee Tate

ENTER: 8/17/66. S. L. F., Judge

* * * * *

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EXCEPTIONS TO REPORT OF COMMISSIONER

* * * * *

Now comes JAMES T. COLLEY, one of the defendants in the above styled Chancery cause and files this as his exceptions to the report of Ernest W. Ballou, Commissioner in Chancery to whom this cause was referred by Decree made herein on the 17th day of August, 1966, and which report bears date of January 19, 1967;

FIRST EXCEPTION: The undersigned excepts to the conclusion of law made by the Commissioner under "Inquiry No. 4", in that the Commissioner found that the deposit in the Colonial-American National Bank, Roanoke, Virginia in Savings Account No. 10747 was an asset of the Estate of Pearl Tate Colley and that the same was not the sole property of James T. Colley. The undersigned respectively submits that this finding of the Commissioner which is contained on Pages 3-10 of the report is clearly in error and should be overruled by the Court.

SECOND EXCEPTION: That the said Commissioner did not consider all of the evidence in arriving at his conclusion as to the ownership of the above savings account. Thus the undersigned excepts to the Finding of Facts by the Commissioner.

Wherefore, the undersigned defendant both except to the said report of said Commissioner and prays that his said exceptions may be sustained; and that the said report page 41 } may be corrected in the manner indicated herein; and that this Court enter a decree, that said funds described belong to and is the property of James T. Colley.

And the undersigned defendant prays that this Court hear further evidence of the witnesses and any other witnesses that may be summoned on matters pertaining to said savings account.

JAMES T. COLLEY

BY: WILLARD R. FINNEY
Counsel

Received and filed Jan. 26, 1967.

JUANITA SIMMONS, Deputy Clerk

* * * * *

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MOTION

* * * * *

Now comes one of the defendants by Counsel and moves the Court as follows:

That this Court enter an Order dismissing the portion of the bill in Chancery filed by the executrix of the estate of Pearl Tate Colley which request that the savings account on deposit at the Colonial-American National Bank of Roanoke, Virginia, in the name of the late Pearl Tate Colley and James T. Colley, the survivor, be paid or transfer to the estate of said Pearl Tate Colley;

This motion is made inasmuch, as Section 64-131.1 of the 1950 Code of Virginia as amended to date provides that fiduciaries charged with the administration of estates shall

be under no obligation unless requested in writing by someone in interest to assert a claim on behalf of their decedent's estate to any funds on deposit in any bank in the name of the decedent and one or more other persons when the same is payable to either of such persons or (2) to a named survivor or survivors;

Inasmuch, as no such request has been made the undersigned respectfully moves the Court that an Order be entered dismissing the allegation of the bill on page 2 of same that the estate consisted of savings account No. 10747, in the name of Pearl Tate Colley and James T. Colley.

Respectfully submitted this the 8 day of March, 1967.

JAMES T. COLLEY

BY: WILLARD R. FINNEY
Counsel

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* * * * *

Filed March 9/67. S. L. F.

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* * * * *

AFFIDAVIT OF JAMES T. COLLEY, BY COUNSEL:

* * * * *

ONE OF THE DEFENDANTS JAMES T. COLLEY, BY COUNSEL MAKES OATH AS FOLLOWS:

That he is one of the defendants in the above chancery cause now pending in the Court of Law and Chancery for the City of Roanoke;

One of the primary issues to be decided by this Court is whether a certain savings account (now on deposit at the Colonial-American National Bank of Roanoke, Virginia in the name of Pearl Tate Colley and James T. Colley, the later being the survivor as described on the savings account card, a copy of which is filed with the suit papers in this cause) is the property of the said survivor James T. Colley or whether the same should become part of the estate of Pearl Tate Colley.

The undersigned affiant further states that this case is rendered extremely doubtful by the conflicting evidence of the Complainant and the undersigned defendant as to whether it was the intent of the depositor the late Pearl Tate Colley whether the money on deposit as aforesaid mentioned should belong at her death to the said James T. Colley or whether the amount was changed to both names with the right of survivorship merely for the convenience of the depositor;

For the reasons stated above the outcome of this case is rendered doubtful by conflicting evidence and

page 47 } makes it absolutely doubtful on which side the preponderance of evidence lies and an issue out of chancery ought to be ordered;

And the undersigned by Counsel respectfully prays that the same be issued.

JAMES T. COLLEY

BY: WILLARD R. FINNEY
Counsel

* * * * *

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* * * * *

ORDER:

* * * * *

This cause came on again this day to be heard upon the papers read, upon the Bill in Chancery filed by the executrix and upon the answer of James T. Colley, one of the defendants and upon the report of the Commissioner in Chancery dated January 19, 1967, and upon the exceptions to the report of the Commissioner in Chancery filed by James T. Colley, including additional exceptions filed by James T. Colley, and upon argument of Counsel and further upon the Motion dated March 8, 1967, by James T. Colley and further upon the affidavit requesting an issue out of chancery also dated March 8, 1967, filed by James T. Colley, all of which was argued by Counsels;

Upon due consideration of same, the Court doth overrule the Motion of March 8, 1967, filed by James T. Colley wherein the said defendant moved the Court to dismiss the portion of the Bill in Chancery filed by the executrix which requested

a certain savings account in the name of the deceased and the survivor be paid or transferred to the estate of Pearl Tate Colley; the Court doth overrule the said motion on the grounds that Section 64-131.1 of the Code of Virginia of 1950 is not mandatory;

The Court doth also overrule the Motion of James T. Colley of March 8, 1967, wherein the said defendant requested an issue out of Chancery, on the ground that the report of the Commissioner in Chancery to whom this *cuase* was referred indicated that the matter was thoroughly litigated before him and he has passed upon the same and exceptions have been filed to his ruling;

page 50 } To the ruling of which the said defendant James T. Colley, doth except;

And the Court doth permit the defendant James T. Colley, and any other defendants who so desire, ten days from March 29, 1967, in which to file a Brief based on the exceptions to the report of the Commissioner in Chancery and Counsel will furnish Counsel for interested parties a copy of said brief, and they shall have five days in which to reply thereto.

And this cause is continued.

Enter this the 17 day of April, 1967.

S. L. F., Judge

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FINAL ORDER

* * * * *

This cause came on again this day to be heard upon the papers formerly read, upon the Bill in Chancery filed by the Executrix, upon the answer of James T. Colley, upon the answer of Bridget Lee Tate, by T. L. Plunkett, Jr., Guardian *ad Litem* for said infant defendant, upon the report of the Commissioner in Chancery, dated January 19, 1967, upon the exceptions to the report filed by James T. Colley, including additional exceptions filed by James T. Colley and further upon the motion dated March 8, 1967, made by James T. Colley, with affidavit attached requesting an issue out of chancery and upon the brief filed on behalf of James T.

Colley as permitted in the Order entered on April 17, 1967, all of which was argued by counsel;

Upon due consideration whereof the Court is of the opinion that the report of the Commissioner in Chancery is correct, and the same is hereby confirmed in its entirety. It is further ORDERED and DECREED that the said savings account in the Colonial-American National Bank of Roanoke, Virginia, be and the same is hereby part of the estate of the said Pearl Tate Colley, and the same shall be paid to the executrix of said estate free of the claims of the said James T. Colley, whose name appeared on the deposit slip as described in the evidence and the exhibits in this cause;

The Court makes reference to a previous order entered on April 17, 1967, wherein two other motions made by said James T. Colley were overruled.

page 53 } To all of which the defendant, James T. Colley, by Counsel doth accept.

ENTER this 30th day of August, 1967.

S. F. F., Judge

* * * * *

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* * * * *

NOTICE OF APPEAL AND ASSIGNMENT OF ERROR:

* * * * *

One of the defendants, James T. Colley, in the above style case, by counsel, hereby gives notice of appeal from an Order entered by the Court of Law and Chancery for the City of Roanoke, on August 30, 1967, and sets forth the following as assignments of error:

I. That the Court erred in holding that the savings account in the name of the late Pearl Tate Colley or James T. Colley, with the right of survivorship, in the Colonial-American National Bank of Roanoke, was part of the estate of Pearl Tate Colley.

II. The Court erred in holding that the executrix of the estate could file a claim on behalf of the estate for a survivor bank account when no one in interest had requested that the savings account be paid to anyone other than the survivor named on the card.

III. The Court erred in not directing an issue out of chancery.

JAMES T. COLLEY

BY: WILLARD R. FINNEY
His Counsel

Received and Filed October 19, 1967.

PATSY TESTERMAN, Deputy Clerk

* * * * *

page 2 } DEPOSITIONS taken before Ernest W. Ballou, Commissioner in Chancery for the Court of Law and Chancery for the City of Roanoke, at the law offices of Ernest W. Ballou, Shenandoah Building, Roanoke, Virginia, on September 29, 1966, in the above captioned matter, pursuant to notice to take said depositions.

APPEARANCES:
Thomas M. Darnall, Esq., Vinton, Virginia, Counsel for Plaintiffs;
Tom S. Fox, Esq., Roanoke, Virginia, Counsel for Stanford J. Colley;
W. R. Finney Esq., Rocky Mount, Virginia, Counsel for James Thomas Colley;
T. L. Plunkett, Jr., Esq., Roanoke, Virginia, Guardian *Ad Litem* for Bridget Lee Tate.

Dep.

page 3 } IRIS BURGESS COX, a witness called in her own behalf, and as Executrix of the Estate of Pearl Tate Colley, Deceased, after being first duly sworn, deposed as follows:

DIRECT EXAMINATION

By Mr. Darnall:
Q. Is your name Iris Burgess Cox?
A. Yes, sir.
Q. Did you bring this suit in your own right and as Executrix of the will of Pearl Tate Colley, deceased?
A. Yes.

Iris Burgess Cox

Q. Did you have anything to do with having this will prepared?
A. Not very much.
Q. Did you contact anyone at the request of Mrs. Colley?
A. Yes, I did.
Q. Who was that person?
A. That was you.
Q. Where was Mrs. Colley at the time?
A. She was at her home and she was sick.

Dep. page 4 } Q. When the second will was drafted—there was a second will drafted, wasn't it?
A. Well, she had one before this one.
Q. And now she wanted that changed, didn't she?
A. Yes, sir.
Q. And where was she at the time that one was changed?
A. She was at home sick.
Q. Wasn't she in the hospital?
A. Yes, she was.
Q. She was in the Roanoke Memorial Hospital, wasn't she?
A. Yes.
Q. I'll ask you if this is a copy of the will that was made?
A. Yes, sir.
Q. That will was probated, was it not?
A. Yes, sir, it was.
Q. Did you qualify as Executrix of that will?
A. Yes, I did.
Q. Have you your authority showing that?

Dep. Commissioner: That's all right, Mr. Darnall, we admit that. All of that is of record now and are Exhibits 1, 2 and 3, which are on file in the Clerk's Office.

page 5 } Mr. Darnall:
Q. Did Mrs. Colley make any statement to you about how she wanted her funds as she stated in this will; did she make any remarks about these funds at all?
A. Yes. On several occasions she has told me that she was sick and that she wanted to have her card changed at the bank.
Q. What card was that?
A. To change her savings account.
Q. Do you remember what savings account that was?
A. At Colonial-American.
Q. What did she say that she wanted to do?

Iris Burgess Cox

A. Well, her son's name is on the card and she wanted to have it changed. She didn't tell me how she wanted to have it fixed or anything.

Q. Did she make any statement about why she wanted it changed?

A. Well, other than she just wanted it changed, she said that she wanted to make other arrangements, she did not want his name on there.

Dep. page 6

Q. She did not want his name on there. Did she make any statement about whether or not he had contributed anything towards that fund?

A. She did. She said he had not.

Q. Does that constitute the bulk of the personal property of the estate; is that the largest portion?

A. Yes, it is other than checking and it's very small.

Q. What was that checking account, do you remember?

A. It is $1,099.00 as of September 1st.

Q. How many disbursements have you made out of the fund that you originally received?

Mr. Darnall: Excuse me, gentlemen, I'll show it to you. Will you accept this, instead of putting it in there item by item?

Mr. Finney: What is that?

Mr. Darnall: That is the disbursements that she has made since she has been Executrix.

Tom, O.K. it please, will you, both of you. Just that "I've seen it" is all that I want to say.

(Messrs. Fox, Finney and Plunkett all initial list of disbursements.)

Dep. page 7

Commissioner: I am going to admit this list of disbursements dated September 6, 1966, as Plaintiff's Exhibit A.

Mr. Darnall:

Q. Do you know anything about the valuation of any of the property in here, Mrs. Cox?

A. No, I don't.

Q. Other than the fact the property on—what is it, Eighth Street?

A. Tenth Street.

Iris Burgess Cox

Q. Tenth Street had been appraised by an appraiser, and what is the amount that is given there?
A. $7,450.00.

Mr. Darnall: Have you all any objections to that appraisal?
Mr. Finney: No, sir.
Mr. Darnall: Have you any objections Tom, or T. L.?
Mr. Plunkett: No, sir.
Commissioner: This is the appraisal of W. J. "Moe" Powell of Cox-Cundiff, dated June 23, 1966, for $7,450.00, and will be Plaintiff's Exhibit B.

Mr. Darnall:
Q. Mrs. Cox, do you have any funds with which to pay these legacies unless the amount in the bank in savings can be brought into the estate?
Dep. page 8 } A. No, sir.
Q. Have you been able to carry out the wishes of the testator because of a renunciation filed by Mr. Stanford J. Colley?
A. Yes, sir.

Mr. Darnall: A copy of that is on file in the office. Do you all want to see it?
Mr. Fox: You go on and file a copy of it.
Mr. Darnall: This has already been filed.
Commissioner: It's in the papers.
Mr. Darnall: That's as far as I can go.
Commissioner: Mr. Finney.

CROSS EXAMINATION

By Mr. Finney:
Q. Mrs. Cox, Mrs. Colley according to your testimony made three wills all told, is that correct?
A. Well, one, she first had one I know. And then she had this last one made.
Q. So she just had two as far as you know?
A. Two as far as I know.
Q. And as far as you know in either one of those wills did she make any mention of disbursing or doing anything with the fund which was at the Colonial-
Dep. page 9 } American National Bank, did she? In those wills it is not mentioned, is it?

Iris Burgess Cox

A. No.

Q. As a matter of fact, in her last will in which you are Executrix it is three pages long on legal paper, isn't it?

A. Yes, sir.

Q. And despite that, there is no indication in here as to what was to be done with that savings account, is there?

A. No.

Q. None whatsoever. As a matter of fact, the will, which I am sure you are familiar with since you're Executrix of it, is long and it is detailed, isn't it?

A. Yes.

Q. It gives specific items to certain people, isn't that correct?

A. Yes.

Q. There is some mention about the amount of the estate and on page one of the will I believe she mentioned about her sharing in thirty-three acres of land, you don't know the value of that piece of land, do you?

Dep. page 10 } A. No, sir.

Commissioner: That land is located in Russell County. There is nothing in the record to show it.

Mr. Finney:

Q. And in addition to that there are various specified legacies or devises to different persons mentioned throughout the will, is there not?

A. Yes, it is.

Q. You don't know when the fund was set up at the Colonial-American National Bank in the name of Pearl Tate Colley and J. T. or James T. Colley; you don't know when that was made?

A. No, I don't know what date.

Mr. Darnall: You have the book there, don't you?

A. Yes, I have the bank book.

Mr. Darnall: Let me see it. It says March 15, 1962, is the beginning of it.

Mr. Finney:

Q. But what I am getting at, you don't know the date that it was changed on the card, do you? It was in '62 wasn't it?

And as a matter of fact, this $10,000.00 account was put in her name and her son's name and was

Dep.

page 11 } changed from her own account over to this special account, wasn't it? Changed from her savings account over to another account, wasn't it?

A. Now what's that again?

Q. My question is, the account which was set up was not a new account; it was set up taking money out of her own funds and putting money over into another account, wasn't it?

A. This is what she had through the years.

Q. It was a new account made up of another account, is what it was as far as you know?

A. As far as I know, yes.

Mr. Darnall: Excuse me, let's identify this account.

Mr. Finney: This is Account No. 70747, in the name of Mrs. Pearl Tate Colley or J. T. Colley on the savings book.

Commissioner: If you like I could take a picture of that and file it as an exhibit.

Mr. Darnall: All right.

Mr. Finney: If you please, Mr. Commissioner, we have already filed the card too.

Dep. page 12 } Commissioner: This would be a history of it with the account along too.

Let me say that I am going to admit this as Exhibit C. Exhibit C is a photostat of Account 10747 at the Colonial-American National Bank, and is a photostat of the bank transactions of that account from the time it was established to the present.

Mr. Darnall: Yes, sir.

Mr. Finney:

Q. Mrs. Cox, after you had had various conversations or talked to Mrs. Colley, she never did go to the bank and she never did send anyone to the bank to change the account in any way, did she?

A. No, she didn't; she was waiting to get able to go, she said.

Q. Do you know about the last time that you might have talked to her?

A. Well, it was during her last illness that she mentioned it to me. But as far as giving a specific date I don't recall it.

Q. But there was never any change made?

A. No, sir.

Q. She didn't ask you to go to the bank and make any changes?

Iris Burgess Cox

Dep. A. No, sir.
page 13 } Q. Were you helping her with her personal affairs at that time in any way?

A. Yes. I done for her what I could do, and she had this Junior Elmore who went to the bank on several occasions for her.

Q. Junior Elmore did a lot of her banking for her?

A. Uh huh.

Q. He was waiting on her all this time too, wasn't he?

A. At times, uh huh.

Q. I mean at times when he would come in and help her with anything she needed done.

A. That's right.

Q. In fact, he did right up until her death, didn't he?

A. Yes, sir.

Mr. Finney: That's all I have, Mr. Fox.

By Mr. Fox?

Q. Mrs. Cox, what relation were you to Mrs. Colley?

A. Just a very close friend.

Q. You say that she was the one that went to the bank and made this deposit in the present account?
Dep. page 14 } A. Yes.

Q. Do you know if at that first entry on March 15, 1962, if Mrs. Colley was in ordinary health considering her age at that time?

A. Yes, I believe so, other than these different sick spells that she would have.

Q. About normal for a person of her age?

A. I would think so.

Q. Who kept this bank book?

A. She kept it.

Q. At the time that she made this deposit, opened this account, was she handling her own affairs?

A. Yes.

Q. Did I understand that she had Junior Elmore run errands for her, but she continued to handle her own affairs?

A. Yes, sir.

Q. Did Dr. Colley handle any affairs for her as far as you know?

A. As far as I know he didn't. I just don't know.

Q. Did Mrs. Colley live here in Roanoke?
Dep. A. Yes, sir.

Iris Burgess Cox

page 15 } Q. And did she have other money in the bank besides this?

A. Yes, she had an account at First Federal and at the time of her death we had to draw it out, and the money at Rocky Mount to pay for her bills.

Q. They stood in her name alone?

A. Yes, sir.

Q. Do you know the amounts of those accounts?

A. I've got it here. At First Federal it was $2,716.35; and at Peoples it shows on the bank stub $535.14.

Q. Did she have any checking accounts at any banks?

A. At the Colonial-American we had it changed over to the Colonial-American because it was close and convenient in Vinton.

Q. How much at the time of her death did she have there?

A. Well she just had her savings account at Colonial, and then we had it all transferred to pay her bills.

Mr. Darnall: She added that to the other and
Dep. transferred it to the Colonial.

page 16 } Mr. Fox:

Q. You mean, in other words, prior to her death she didn't run a checking acocunt?

A. She had a checking account at Peoples in Rocky Mount and the First Federal.

Q. When you said Peoples, I was thinking of Peoples Federal.

A. Peoples National Bank in Rocky Mount.

Q. That was the $535.00.

A. Uh huh. Right.

Mr. Fox: I believe that's all.

By Mr. Finney:

Q. Mrs. Cox, this account which was put in Dr. Colley's name originally, was set up after Mrs. Colley had a heart attack, wasn't it?

A. I'm not sure. I believe it was before she had this trouble, sickness.

Q. Are you sure?

A. No, I'm not positive.

Q. She had these attacks before August of '62, didn't she?

A. Well, I'm not sure when she had the first one. I'd rather not say.

Iris Burgess Cox

Dep. Q. She had more than one?
page 17 } A. Yes, some several.
Q. You say that she had a checking account over at Peoples National Bank in Rocky Mount that she used?
A. Yes, sir.

Mr. Darnell: This will was signed in the hospital.
Mr. Finney: The will was written while she was in the hospital?
Mr. Darnall: Yes, and signed too. No, I wrote two wills for her. I made a correction. I wrote the first will at home, and then we made a correction in it, and then is when she was sick in the hospital.
Did you send me word, or did she send it?

A. If you recall we went up to her house. That was the first time.
Q. That was the first time, and then we made a correction?
A. Yes.
Q. And then she was in the hospital, and I went out there and the will was executed in the hospital at the time.
Dep. A. Yes.

page 18 } Mr. Finney:
Q. How long after the will was executed before her death; about how long?

Mr. Darnall: She died when?
A. The 16th of January, 1965.
Mr. Darnall: This will was executed in November before.
Mr. Finney: The will was executed in November of '64, and then she died in January 16, 1965?
Mr. Darnall: That's right.

Commissioner:
Q. Mrs. Cox, do you know anything about the value of these small items of personal property that she left?
A. No, I don't.
Q. I've been directed to ascertain the value of it.

Mr. Darnall: The only way I know is to let some regular appraiser appraise it, go up there and appraise it. It's pretty expensive. Nobody knows what it is.

Commissioner: You will have to get it to file the tax returns. Will you get somebody to do it?

Dep. page 19 } Mr. Darnall: Yes, I will. I had an extension made on filing this.

Commissioner: Were Mr. and Mrs. Colley estranged?

A. Yes.

By Mr. Fox:

Q. Mrs. Cox, what income during her last years did Mrs. Colley have, what did she live on?

A. She has an apartment downstairs that she rents. In fact, the tenants are still in there. And then I believe she was getting Social Security at the time. And then her husband was sending her some money each month.

Q. Do you know who paid her hospital bills when she was in the hospital?

A. When she was in it?

Q. Uh huh.

A. I think her husband. She told me at one time that he had a policy on her. And then at the last I paid $87.58.

Q. That was in her last illness?

A. Uh huh.

Q. Do you know who bought the house, paid for the house that she lived in and rented?

Dep. page 20 } A. She told me that she bought it. Her and her daughter, I believe, at the time. I'm not positive on that.

By Mr. Finney:

Q. Her son paid the drug bills, Dr. Colley, he paid all of her drug bills?

A. I'm not sure of that either.

Mr. Finney: That's all.

Mr. Darnall: Mr. Commissioner, you're going to take judicial knowledge of the fact that there were certain disposition made of monies here?

Commissioner: Whatever the will said.

Mr. Darnall: Two bequests to Dr. Colley.

Commissioner: Yes, sir.

Are you through, sir?

Mr. Darnall: Yes, sir.

Commissioner: You have any other witnesses?

Mr. Darnall: No, sir, I don't.

We will have to have that property appraised. That's the only way to get anything done with it.

And further this deponent saith not.

Dep. page 21 } Commissioner: Mr. Finney, you want to go ahead.

Mr. Finney: All right.

JAMES T. COLLEY, a witness called in his own behalf, after being first duly sworn, deposed as follows:

DIRECT EXAMINATION

By Mr. Finney:

Q. You are James T. Colley?

A. Yes.

Q. And I believe you are the son of the late Pearl Tate Colley?

A. That's right.

Q. Where do you live?

A. Rocky Mount, Virginia.

Q. Do you practice medicine there?

A. Yes, sir.

Q. For how long have you been practicing in Rocky Mount?

A. Twenty-one years.

Q. Were you the only son of the late Pearl Tate Colley?

A. Yes.

Dep. page 22 } Q. How many sisters do you have?

A. One sister.

Q. What's her name?

A. Virginia Colley.

Q. Dr. Colley, I show you here a photostat of a savings account, joint account No. 10747 Colonial-American National Bank, Roanoke, Virginia. This has already been filed as an exhibit. And I will ask you if that's your signature on it?

A. Yes, sir, it is.

Q. Are you asking the Court to turn this fund over to you?

A. Yes, sir.

Q. Let me ask you this: how long did your mother live here in Roanoke, Dr. Colley, approximately?

A. Roughly twenty years. I don't know exactly.

Q. During the last years of her life did you look after any of her business for her?

A. No, I did not.

James T. Colley

Q. Did you write any checks for her or pay any of her bills?

Dep. page 23 } A. No, nothing other than the drug bills, and her drug bills were mailed directly to me as a charge account and I paid those. But to use any of her money to pay anything I did not.

Q. You didn't use any of her money to pay any of those bills?

A. No, sir.

Q. The drug bills you say you paid those, and as I understand you paid those from your own pocket?

A. Yes.

Q. You didn't pay them from her funds?

A. No, no.

Q. And she would mail those to you?

A. The drug store did.

Q. Did you know that she had an account at the Peoples National Bank at Rocky Mount?

A. I did not.

Q. You didn't deposit and didn't know it was there until after her death?

A. No. I never did, no, sir.

Q. Were you consulted in any way about setting up that account; did she talk to you about it?

A. No.

Dep. page 24 } Q. Did you help her in her financial business dealings in any way whatsoever?

A. We would talk about them occasionally, about repairs to the house and various things that came up, but that's as far as it went. She handled it all.

Mr. Finney: That's all.

CROSS EXAMINATION

By Mr. Darnall:

Q. Dr. Colley, during the latter part of Mrs. Colley's life you all were estranged, were you not?

A. For the last year to some extent, yes, sir.

Q. When you did meet you met under such circumstances that weren't agreeable at all, didn't you?

A. The last time. That was the only time.

Q. During the time that she was in the Roanoke Memorial Hospital did you go to see her?

A. The last time you're talking about?

Q. Yes, sir.

A. No, sir, because she died within about just a few hours from the time she was admitted.

Q. To the Roanoke Hospital?

Dep. page 25 } A. Yes, sir, Roanoke Memorial. She was admitted late that night and died very early the following morning.

Q. But she was there before that when she executed this will in November, did you go see her then?

A. I didn't see her at that hospitalization, no, sir. I didn't see her that time.

Q. And you didn't know she was dead until after she was dead, did you? You didn't visit her the second time she went to the hospital?

A. No. I say, she died within about five or six hours.

Q. So at no time did you ever visit her while she was in the hospital?

A. Oh, yes.

Q. When?

A. I don't remember exactly.

Q. Did you visit her during the time she was in the hospital when she wrote this will?

A. No, sir. I visited her prior to that.

Mr. Darnall: All right.

RE-DIRECT EXAMINATION

By Mr. Finney:

Dep. page 26 } Q. Did she ever come over to Rocky Mount to see you?

A. Oh, yes.

Mr. Finney: That's all.

And further this deponent saith not.

ALICE F. JONES, another witness called on behalf of the Defendant, James T. Colley, after being first duly sworn, deposed as follows:

DIRECT EXAMINATION

By Mr. Finney:

Q. You are Mrs. Alice F. Jones?

A. Yes, I am.
Q. And your address now is what, Mrs. Jones?
A. 931 Skycoe Drive, Salem.
Q. That's here in Roanoke County?
A. Uh huh.
Q. Were you formerly employed by the Colonial National Bank here in Roanoke?
A. Yes.
Dep. page 27 } Q. How long were you employed by this Bank?
A. Forty-two years.
Q. And you're now retired, I believe?
A. Yes.
Q. What was your job there, Mrs. Jones?
A. What was my job?
Q. Yes, ma'am.
A. I did most everything in the bank. I was bookkeeper, teller, and I ended up as savings manager.
Q. Did you as savings manager know the late Mrs. Pearl Tate Colley?
A. Yes, I did.
Q. When she would come to the bank would she usually come to see you?
A. Always.
Q. Did she have a savings account there at the bank?
A. Yes, she did.
Q. Did she ever have that savings account changed?
A. Yes, she did.
Q. In whose name did she have it changed to?
Dep. page 28 } A. She had it changed to her son's name.
Q. I show you here savings account #10747, which has already been introduced in evidence, and ask you if that is the account card?
A. That is the account card.
Q. Why was that change made, do you know? Why was it made to the joint account?
A. She just wanted her son's name on the account.
Q. Did she tell you that?
A. Yes, she did. She asked me to send her the card.
Q. Let me ask you this at this point: was this after she had had some serious illnesses?
A. Yes.
Q. Was it a heart attack that she had?
A. Yes.
Q. And wanted his name on the card?

Alice F. Jones

A. Yes.

Q. And what did you do as a result of that telephone call?

A. I sent her the card. I don't recall whether it was a telephone call, I mean, whether I mailed the card, or whether she sent Sidney Elmore in to get the card. But it was one of the two, I either mailed her the card or he came in and picked up the card for them to sign.

Dep. page 29

Q. Did you give instructions for both of them to sign?

A. Yes.

Q. And they did sign?

A. Yes.

Q. And that was returned to the bank?

A. Yes.

Q. Let me ask you this, Mrs. Jones: did Mrs. Colley have any other accounts there at the Colonial-American other than this savings account which she had run over a long period of time; did she have any checking account?

A. Not that I know of. This was the only account she had in savings.

Q. This was transferred from her regular savings account over to this joint account, is that correct?

A. We didn't transfer; we just added his name to the account and she signed the card. It was in her name originally.

Q. I see. But it was then put in hers and the son's name?

Dep. page 30

A. Uh huh. This was made joint on August 26, 1962.

Q. Mrs. Jones, I'll ask you this: under what circumstances ordinarily, or what instructions do you ordinarily get before you set up a joint account like this?

A. What instructions?

Q. Yes, as distinguished from a Power of Attorney. Why do you put this one on a joint account rather than a Power of Attorney?

A. A Power of Attorney is only good while the person is living, and upon death then the Power of Attorney is no good. But this account is a survivorship clause.

Q. The survivorship clause is written in the body of the card?

A. Either one or both, or the survivor to sign.

Q. I show you here another card in blank "Power of Attorney" of the Colonial-American, and ask you if this one is the one you use there for Power of Attorney?

A. Yes. And this one is no good after the death of the person.

Dep. page 31 } Q. Yes, I understand that. Under what circumstances would you use this Power of Attorney?

A. Just in case they wanted someone to take care of their bills or their banking for them.

Q. Was there any indication to you at the time this joint account was set up that Mrs. Colley wanted anybody to pay her bills, or wanted Dr. Colley to pay her bills or look after her business in any way?

A. No, she didn't say anything to me in regards to that.

Mr. Finney: If it please your Honor, this card—Power of Attorney, has not been admitted in evidence. I don't know how you're going to mark it.

Commissioner: Mark it Exhibit D, Power of Attorney card.

Mr. Finney:

Q. Did you hear her speak of her son, Dr. James Colley in Rocky Mount?

A. Yes, she spoke very highly of him to me. She was very proud of him and talked to me very often about him.

Dep. page 32 } Q. She talked to you very often about her son?

A. Yes.

Q. Did there seem to be any ill feelings between the two as far as you could determine?

A. No.

Mr. Finney: I believe that is all. You answer any of Mr. Darnall's and Mr. Fox's questions.

CROSS EXAMINATION

By Mr. Darnall:

Q. You never knew who contributed anything other than Mrs. Colley?

A. No.

Q. Now you said this was signed on August 26, 1962, for this account here, do you know whether that was a convenience assignment, or whether it was for survivorship? Did this have any blanks on the back of it?

A. Any blanks?

Q. Yes, I mean, any writing on the back of it?

Alice F. Jones

A. No. This is a copy.

Q. And that's all that was in the bank?

A. Oh, no. We have the original card.

Q. I mean, the original card is a duplicate of this, isn't it?

Dep. page 33 } A. Oh, yes.

Q. With nothing on the back of it.

A. Yes, I think we have this. This is on the back if you want a single account and this is for the joint account.

Q. Let me see that just a minute. You know whether this one was executed or not?

A. No, I don't know.

Q. In other words, all you know is that this account here is what it says on the face of it, and you don't know what's on the back of it; whether there was anything on the back of it or not?

A. I'm sure it was, they only made a copy of the signature, but I'm sure the signature card is for a joint account and for a single account, and it is like the one you have in your hand—your right hand.

Q. This doesn't say anything about the survivor, does it?

A. Yes, up here. Either one or both, or the survivor to sign.

Q. It's so small a print that you can't see it hardly.

But you don't know, and you can't testify as to whether or not this was an account of convenience

Dep. page 34 } or whether it was specially intended that the survivorship get the full benefit of it?

A. What I gathered from her it was for him. Because she did not make it for convenience. She never used that account at all except to draw the interest, and it still remained the $10,000.00. And she had other sources that she would send in.

Q. But she did make all of these deposits herself?

A. Oh, yes. She made them or either sent the boy in, the colored boy in to make them for her. But I think at that time she was making her own deposits.

Q. During the last year of her estrangement did she say anything about her son then?

A. No.

Q. Never said anything about him?

A. She didn't say anything about it to me. I didn't know there was an estrangement.

Mr. Darnall: All right.

By Mr. Fox:

Q. Mrs. Jones, did I understand you to say that you discussed with her the difference between the single account or Power of Attorney account and the survivorship account?

Dep. page 35

A. Did I discuss it with her?

Q. Yes, ma'am.

A. No, she only asked me to make it a joint account.

Q. Did you all actually discuss what a joint account was and that it would be a survivorship account?

A. I didn't go into details on that. She just wanted her son's name on the account, and that's what I did for her.

Q. Did you discuss with her what would happen on a survivorship account?

A. No, I never do that.

Q. In other words, she said she wanted it in both of their names and that's the card you sent her?

A. That's right.

Mr. Fox: That's all.

RE-DIRECT EXAMINATION

By Mr. Finney:

Q. Mrs. Jones, let me ask you this just to get the record straight:

Dep. page 36

I believe there are three different types of accounts that you can have there at the Colonial-American, one is this individual firm account, which is on the back of the joint; number two, a person could have a joint savings account with survivorship, which is the one that has been introduced as an exhibit here; or number three, you could have a Power of Attorney account, is that correct?

A. Yes.

Q. Those are the three different kinds that you can have?

A. Yes.

Q. And both of them signed this and returned it to you as a joint account?

A. Yes.

Q. And as far as you know you mailed this to Mrs.—or gave it to Mrs. Colley or sent it to Mrs. Colley directly?

A. Yes.

RE-CROSS EXAMINATION

Ny Mr. Darnall:

Q. Mrs. Jones, you stated just now to Mr. Fox that you never explained those situations to her as to the various accounts. She said she wanted his name on the card, and you sent her the one that you thought was appropriate and she signed it and sent it back?

Dep. page 37

A. She wanted to make a joint account.

Q. A joint account, yes.

A. Uh huh. And that's the only thing we have for a joint account.

Mr. Darnall: All right.

RE-RE-DIRECT EXAMINATION

By Mr. Finney:

Q. Was there any indication whatsoever during your conversation with her that she wanted this account set up so that Dr. Colley could draw off of it and write checks off of it?

Mr. Darnall: You have introduced that card and the card says that.

Mr. Finney: Yes, but she said it was not for the convenience of the parties.

Mr. Darnall: She doesn't know that it was.

Mr. Finney: That's all.

Commissioner:

Q. Mrs. Jones, do you know whether Mrs. Colley knew whether you had such a thing as a Power of Attorney account?

A. No, I don't know whether she did or not.

Q. That's the first time I ever heard of it.

A. The first time you ever heard of a joint account?

Dep. page 38

Q. Power of Attorney account.

And further this deponent saith not.

Sidney Elmore, Jr.

SIDNEY ELMORE, JR., another witness called on behalf of James T. Colley, after being first duly sworn, deposed as follows:

DIRECT EXAMINATION

By Mr. Finney:

Q. Would you state your full name for the record please, Junior?

A. Sidney Elmore, Jr.

Q. You're one and the same person as Junior Elmore, aren't you?

A. Yes, sir.

Q. How old are you, Junior?

A. I'm twenty-five.

Q. Where do you live?

A. 116 Harrison Avenue, N. W.

Q. And what's your occupation, Junior?

A. I work in the shipping department of Johnson-Carper Furniture Company.

Dep. page 39 } Q. Did you know Mrs. Pearl Tate Colley?

A. Yes.

Q. Just go ahead and tell the Commissioner about how long did you know Mrs. Colley, Junior?

A. I've known Mrs. Colley since I was about nine years old.

Q. How did you happened to get acquainted with her?

A. My grandmother used to work for her, and I went to work for her.

Q. When you were about nine?

A. I went out there with my grandmother. And then I would go out and cut her grass and do things for her.

Q. And you were acquainted with her from the time you were nine years old up until the time of her death?

A. Yes, sir.

Q. That would be a period of how many years?

A. A period of about sixteen years.

Q. Sixteen years. Would you tell us just what work you did for Mrs. Colley, Junior; what type of work did you do for her?

Dep. page 40 } A. In the beginning I would cut her grass, wash windows, do her floors and things of this sort. And in later years after she became ill I would make groceries for her, pay her bills, take money to the bank for her and have her check cashed, and I would cook, and wash for her and did other things.

Sidney Elmore, Jr.

Q. Did you take care of depositing money and taking money out of the bank for her too?

A. I would deposit money and also get some.

Q. And I believe you would pay her bills, that is, you would take the checks and pay the bills?

A. Yes, I would take the checks and pay the bills.

Q. You paid the bills downtown here at the clothing stores?

A. Downtown, different clothing stores, Pugh's and other department stores where she had accounts.

Q. Did she have some heart attacks in some later years?

A. Yes, she did.

Q. You know about what years, Junior, she first started getting sick?

A. I would say '60 when she started.

Dep. page 41 } Q. Any time after she started having these attacks did she mention to you anything about setting up an account for her and her son?

A. After she first had her bad heart attack she mentioned to me that she ought to have her account at the Colonial-American Bank changed to James' name on it so that he would be able to get the money out of the bank.

Q. Under what circumstances would he be able to get it, did she say?

A. No, she told me that she was putting it in his name so that he could have the money. That's exactly what she said.

Q. So that he could have the money?

A. So he could have the money.

Q. And was this after she had had the heart attack?

A. After she had the first bad attack.

Q. Now as far as you know did Dr. Colley take any money out of that account, or did he use that account in any way?

A. No, as far as I know he didn't.

Q. As far as you know the account is there today just like she set it up?

Dep. page 42 } A. As far as I know just like she set it up.

Mr. Finney: That's all.

CROSS EXAMINATION

By Mr. Darnall:

Q. Junior, you don't know what year that was she had her first attack, do you?

A. I couldn't say. No, sir, I couldn't.

Q. How many did she have after that?

A. I'd say about three or four after that, but not as serious after that.

Q. Did she have an attack and was in the hospital in Roanoke Memorial in November, 1964, wasn't she?

A. Yes, sir.

Q. And then she came out and went back in January, 1965 with a fatal attack?

A. That's right.

Mr. Darnall: All right.

RE-DIRECT EXAMINATION

By Mr. Finney:

Q. Let me ask you this, Junior: Did you deposit any money in this joint account for her?

A. When I first started depositing money in the joint account it was in her name, it was just in her name, and it was about seven or eight thousand dollars then, and when the sum became ten thousand she would have me take the interest off of the money and put it in her other account over at the First Federal Bank. Whenever the interest time come around she would have me withdraw the interest and deposit it in her other savings account.

Dep. page 43

Q. But she never touched the principal?

A. No, she never touched the principal.

Q. And I understood you to say a minute ago it was after she had the second bad heart attack that she set up this joint account?

A. I'm pretty sure it was. I couldn't be positive, but I'm pretty sure it was.

Q. She had it set up so that if anything happened to her it would be his, is that correct?

A. She was in bed at the time and she told me that she was going to notify Miss Jones at the bank to mail her out a card so that she could have it set up in a joint account so that James, Dr. Colley, could get the money.

Q. She was in bed at the time?

A. Three or four days.

Q. Was she confined to the bed?

A. No, she wasn't confined, she was just laying down.

Dep. page 44

Q. I see.

A. And about a week or so after that she told me that she had had her account changed so that Dr. Colley's name would be on it and he would get the money.

Q. And he would get the money?

A. Yes.

Mr. Finney: That's all.

RE-CROSS EXAMINATION

By Mr. Fox:

Q. You say that after it reached $10,000.00 then she would draw the interest?

A. Each time the interest time would come around she would have me withdraw the interest and put it in her other savings account.

Q. Did she discuss with you, Junior, that she was limiting that amount that she was giving the Doctor the ten thousand, or is that what she indicated?

A. No, she didn't indicate that she was limiting that amount, but you see, the bank insured up to ten thousand dollars, and each time she would just have me take the interest off. I don't know why.

Dep. page 45 } Mr. Darnall: That was the answer right there. You have any more?
Mr. Fox: No.

And further this deponent saith not.

IRIS BURGESS COX, being recalled for further examination, having been previously sworn, deposed as follows:

DIRECT EXAMINATION

By Mr. Darnall:

Q. Mrs. Cox, you said just now that you had discussed the matter of this account with Mrs. Colley during her last illness, is that true?

A. Yes, it's true.

Q. And the time you discussed it with her what statement did she make regarding the account?

A. Well, as best that I remember she mentioned to me upon several times that she wanted to have the card changed

at the bank and take her son's name off of it. She said he didn't need it; and she never did tell me how she was going to have it fixed but she said she wanted to. I think they had had their differences.

Dep. page 46 } Q. They had differences?
A. Uh huh.

Q. Did she say whenever they met their relations were friendly or not?

A. Well, I believe the last time they wasn't very friendly.

Q. Now after she told you that she was going to have it changed did her health permit her to go to the bank and have it changed?

A. Well she kept having these spells and she wasn't able to go.

Mr. Finney: I object.

A. At different times—I don't know—

Commissioner: When did she make the statement?

A. When did she?

Q. In November, '64 when she was ill?

A. She kept having these different attacks, and upon different times that I would be talking to her she would get into the subject that she would want to have it changed when she got able to take care of it.

Q. And she never got able?

A. She never did have it done or was able enough to look into it.

Dep. page 47 } Q. Did she keep the pass book all the time?
A. Yes, she did as far as I know.

CROSS EXAMINATION.

By Mr. Finney:

Q. Mrs. Cox, it has been in evidence here, and it has been uncontradicted, that at one time she wanted this account changed from her name to her name and her son's name, that is correct, isn't it?

A. Yes.

Q. But she never did have it changed back to her name, did she?

A. No.

Iris Burgess Cox

Q. And you were helping her at that time with her personal affairs?

A. Yes.

Q. And Junior Elmore was still helping her with her personal affairs?

A. Yes.

Mr. Fralin: That's all.

Dep. And further this deponent saith not.

page 48 } I, Eunice M. Sprinkle, Court Reporter, do hereby certify that the foregoing depositions before Ernest W. Ballou, Commissioner in Chancery for the Court of Law and Chancery for the City of Roanoke, in the chancery cause styled Iris Burgess Cox, in her own right and as Executrix of the Will of Pearl Tate Colley, Deceased, vs. Fred Johnson Et Als, on September 29, 1966, were reported by me and that the foregoing is a true and correct transcript of the evidence made from my shorthand notes and electronic recording taken at the time.

Given under my hand this 2nd day of January, 1967.

EUNICE M. SPRINKLE
Court Reporter

Fee to Court Reporter:	
Reporting depositions	$25.00
Transcript	45.90
	$70.90

* * * * *

VIRGINIA:

IN THE COURT OF LAW AND CHANCERY
FOR THE CITY OF ROANOKE

IRIS BURGESS COX, in her own right
and as Executrix of the Will of
Pearl Tate Colley, Deceased.
Plaintiff

v.

FRED JOHNSON, ET AL
Defendants

COMMISSIONER'S REPORT

TO THE HONORABLE STANFORD L. FELLERS,
JUDGE OF SAID COURT:

PRELIMINARY STATEMENT

The undersigned Commissioner in Chancery reports to the Court that pursuant to the decree of reference entered in the above-styled cause on August 17, 1966, he gave notice to the parties of the time and place fixed for the taking of evidence by mailing notice of the same to all counsel of record, and that at said time and place, your Commissioner took the evidence of witnesses, which evidence was reduced to writing and is filed herewith.

Upon consideration whereof, your Commissioner finds and reports to the Court as follows:

INQUIRY NO. 1

Whether or not all the parties in interest are
page 2 } *properly before the Court.*

All parties in interest are properly before the Court, all having been made parties and been served with process or having accepted service of process.

INQUIRY NO. 2

The real estate of which PEARL TATE COLLEY died seised and possessed.

Pearl Tate Colley died seised and possessed of interests in two parcels of real estate as follows:

PARCEL I
Fee Simple Interest

BEGINNING on the west side of A or 10th Street, 250 feet north of Ferdinand Avenue; thence in a westerly direction 140 feet to an alley; thence in a southerly direction with said alley 37½ feet to a point on same; thence in an easterly direction 140 feet to "A" Street or 10th Street; thence in a northerly direction 37½ feet to the place of BEGINNING, and being a portion of Lots Two (2) and Three (3), Dr. Wilmer Hodgson Map; and

BEING all of the land conveyed to Pearl Tate Colley and Virginia Charlotte Colley by William Raymond Eanes and Phyllis B. Eanes, husband and wife, by deed dated September 8, 1947, of record in the Clerk's Office of the Hustings Court for the City of Roanoke, Virginia, in Deed Book 754, page 402; the said Virginia Charlotte Colley having conveyed her interest therein to Pearl Tate Colley by deed dated March 21, 1951, of record in said Clerk's Office in Deed Book-852, page 292.

PARCEL II

An undivided one-sixth (1/6) interest in 33 acres of land in Russell County, Virginia, which Pearl Tate Colley inherited from H. B. Tate and Nancy J. Tate. The fee simple value of this acerage is appraised at $10,000.00, and Pearl Tate Colley's interest thereon would be one-sixth (1/6) thereof, or $1,666.67.

Your Commissioner has not examined the records in Russell County but has accepted the appraisal of W. S. Boster and W. F. Mays and their statement that Pearl Tate Colley owned a one-sixth (1/6th) interest therein at the time of their death, statement and appraisal of W. S. Boster and W. F. Mays filed herewith.

page 3

INQUIRY NO. 3

The liens of record, if any, against said real estate, including all taxes, together with their priorities and the amounts of said liens, if any, as well as any debts owing to any one by the estate of PEARL TATE COLLEY, Deceased.

There are no liens of record against Parcel I described under Inquiry No. 2 hereinabove. Taxes are paid through the year 1966 and are now assessed in the name of Iris Burgess Cox, Executrix, etc.

Your Commissioner is not advised as to any liens of record against Parcel II and has not examined the records in Russell County.

Iris Burgess Cox qualified as Executrix of the estate of Pearl Tate Colley. The Executrix has filed an accounting herewith showing the balance on hand, excluding the savings account hereinafter reported under Inquiry No. 4, in the net amount of $1,099.68. So far the evidence shows there are no debts of Pearl Tate Colley other than those shown by the Executrix's accounting in the amount of $3,393.68, all of which have been paid.

INQUIRY NO. 4

page 4 } *Take evidence and report on the ownership of Savings Account No. 10747 in the Colonial-American National Bank of Roanoke, Virginia, and determine who shall pay the inheritance tax, if any, on same.*

In the year 1962, Pearl Tate Colley suffered a serious illness and during said illness—or soon thereafter—on August 26, 1962, she added the name of J. T. Colley, also known as James T. Colley, her son, to her Savings Acocunt No. 10747 at The Colonial-American National Bank of Roanoke, Virginia. The balance in the account at that time was $9,018.07, and at the time of her death $10,000.00. At all times, Mrs. Colley retained possession and control of the passbook, and James T. Colley never had possession or control of the passbook. There was no discussion between Pearl Tate Colley and James T. Colley concerning her action or intention in changing the savings account. At that time and until her death on January 16, 1965, Pearl Tate Colley lived alone in Roanoke, Virginia, and her son lived in Rocky Mount, Virginia. All the money in the account was that of Mrs. Colley, and the son had contributed nothing to the account. Apparently, the son's principal financial assistance to his mother was payment of all her drug bills. The son and mother were on good terms until about a year before her death when their relationship became estranged, and their last meeting was not agreeable. Mrs. Colley and her husband, Samuel J. Colley, were estranged and had been so for several years prior to her death.

The signature card creating the account states that the bank:

. . . is hereby authorized to recognize either of the signatures below in the payment of the funds or the transaction
page 5 } of any business. Either or both or the survivor to sign. The signature of either one to be sufficient for withdrawal of all, or any part of the funds standing to the credit of the above account.

At the time of her death, Mrs. Colley, had the following bank accounts to which she had contributed all the money.

The Colonial-American National Bank of Roanoke (with son J. T. Colley—account in question):	$10,000.00
First Federal Savings & Loan Association—individually:	2,716.35
Peoples National Bank of Rocky Mount—individually:	535.00
	$13,251.35

The question is whether the savings account was a joint account with survivorship or was one of convenience for Mrs. Colley.

A number of Virginia cases have considered the question here presented. *Deal's Administrator* v. *Merchants & Mechanic's Savings Bank, et al,* 120 *Va.* 297, 91 *S.E.* 135 (1917); *King* v. *Merryman,* 196 *Va.* 844, 86 *S.E.* 2*d* 141 (1955); *Wrenn* v. *Daniels,* 200 *Va.* 419, 196 *S.E.* 2*d* 126 (1958); *Quesenberry* v. *Funk,* 203 *Va.* 619, 125 *S.E.* 2*d* 869 (1962); *Stevens* v. *Sparks,* 205 *Va.* 128, 135 *S.E.* 2*d* 40 (1964); and *Wilkinson* v. *Witherspoon,* 206 *Va.* 297 (1965).

From these cases, it is clear that the law in Virginia is that whether an account in two or more names is one of survivorship or is for the convenience of one of the parties and the rights of the parties are to be determined by rules pertaining to the interpretation of contracts and
page 6 } the wording of the signature card creating the account shall be given due consideration. The Court cites Section 55-20, *Code of Virginia,* which abolishes survivorship between joint tenants, and *Code* Section 55-21, which provides that Section 55-20 shall not apply where it manifestly appears from the tenor of the instrument that survivor-

ship is intended. In addition, the intention of the depositor is extremely important.

However—

. . . where the deposit by a person is in the name of himself and another, not his wife, the presumption is that it was done for the purposes of convenience only, and this presumption is strengthened by the illness or infirmity of the depositor.

38 *C.J.S.* Gifts, paragraph 50. "Deposit in name of donor or donee," *King* v. *Merryman,* supra, and *Wilkerson* v. *Witherspoon,* supra.

This case is most similar to the Virginia case of *King* v. *Merryman,* supra, wherein the directions to the bank authorized the bank to credit the funds to the joint account of depositor and daughter and that it would be made subject to check of either or the survivor. The Court held that the wording of the directions signed by the depositer and daughter did not create a survivorship account.

In the present case, this is all that Mrs. Colley requested of the bank, i.e., that her signature, or the signature of J. T. Colley, or the survivor, be recognized in drawing on the account. The directions to the bank in both cases
page 7 } follows *Code of Virginia,* Section 6-55 (now 6.1-72) which protects the bank against liability in the event the money is withdrawn by either one of the parties or the survivor. Section 6-55 in no way attempts to determine ownership. It in no way attempts to create a joint account with right of survivorship. In addition, the signature card fails to comply with Section 55-21 in that it does not manifestly appear from the card that a survivorship account was intended.

Now, as to the intent of the depositor, the evidence shows that Mrs. Iris Burgess Cox, a close friend of Mrs. Colley and named executrix in her will, testified that when Mrs. Colley was sick in 1964 that ". . . she wanted to have her card changed at the bank," meaning her savings account at The Colonial-American National Bank. She gave no reason for wanting to make the change other than that ". . . she did not want his name on there," meaning her son's name on the account. (Record page 5.) This transpired in 1964, not too long before Mrs. Colley's death and during her last illness. She was not able to go to the bank to make this change, but she could have sent someone to do that for her.

Mrs. Cox also testified at pages 45 and 46:

By Mr. Darnall:

Q. Mrs. Cox, you said just now that you had discussed the matter of this account with Mrs. Colley during her last illness, is that true?

A. Yes, it's true.

Q. At the time you discussed it with her, what
page 8 } statement did she make regarding the account?

A. Well, as best that I remember, she mentioned to me upon several times that she wanted to have the card changed at the bank and take her son's name off of it. She said he didn't need it; and she never did tell me how she was going to have it fixed but she said she wanted to. I think they had had their differences.

At page 46:

A. She kept having these different attacks, and upon different times that I would be talking to her she would get into the subject that she would want to have it changed when she got able to take care of it.

Alice F. Jones, Savings Manager at The Colonial-American National Bank of Roanoke in 1962 when Mrs. Colley added her son's name to the account, testified that she made the change for Mrs. Colley. The signature card was sent to Mrs. Colley after a serious illness for her and her son to sign. Mrs. Jones testified that Mrs. Colley ". . . just wanted her son's name on the account." (Record page 28). Mrs. Jones thought that this was a joint account. She further stated at page 34:

A. What I gathered from her it was for him. Because she did not make it for convenience. She never used that account at all except to draw the interest, and it still remained the $10,000.00. And she had other sources that she would send in.

She finally stated at pages 34 and 35.

By Mr. Fox:

Q. Mrs. Jones, did I understand you to say that you discussed with her the difference between the single account or Power of Attorney account *ant* the survivorship account?

A. Did I discuss it with her?

page 9 } Q. Yes, ma'am.

A. No, she only asked me to make it a joint account.

Q. Did you all actually discuss what a joint account was and that it would be a survivorship account?

A. I didn't go into details on that. She just wanted her son's name on the account, and that's what I did for her.

Q. Did you discuss with her what would happen on a survivorship account?

A. No, I never do that.

Q. In other words, she said she wanted it in both of their names and that's the card you sent her?

A. That's right.

Sidney Elmore, Jr., also known as Junior Elmore, a Negro boy who helped Mrs. Colley with her household and business chores, testified that, page 41:

By Mr. Finney:

A. After she first had her bad heart attack she mentioned to me that she ought to have her account at the Colonial-American Bank changed to James' name on it so that he would be able to get the money out of the bank.

Q. Under what circumstances would he be able to get it, did she say?

A. No, she told me that she was putting it in his name so that he could have the money. That's exactly what she said.

Q. So that he could have the money?

A. So he could have the money.

Q. And was this after she had had the heart attack?

page 10 } A. After she had the first bad attack.

And at page 43.

A. She was in bed at the time and she told me that she was going to notify Miss Jones at the bank to mail her out a card so that she could have it set up in a joint account so that James, Dr. Colley, could get the money.

Your Commissioner finds and reports, therefore, that the signature card creating the account with two names did not create a joint account with right of survivorship because it did not comply with Section 55-21, *Code of Virginia.* Further, since the two-party account was created by the depositor soon after a serious illness, with one other than her spouse, it is presumed that the account was one of convenience for the depositor. This presumption is not overcome by the evidence submitted in this case showing the intention of the depositor —that intention changed from time to time.

Accordingly, your Commissioner finds and reports to the

Court that the savings account at The Colonial-American National Bank of Roanoke is an asset of the estate of Pearl Tate Colley and is not the sole property of James T. Colley.

INQUIRY NO. 5

Take evidence and determine the value of the various legacies set forth in the Will of PEARL TATE COLLEY, Deceased.

Foster G. Sheets, local real estate broker and appraiser, was employed to appraise the personal property of Pearl Tate Colley and has submitted an appraisal which page 11 } is filed herewith. Your Commissioner is unable from this appraisal, or any other evidence submitted, to identify the specific legacies set out in the will of the deceased. However, the total appraised value of the deceased's personal property is $743.00.

INQUIRY NO. 6

Take evidence and determine that portion of the Pearl Tate Colley estate due Samuel J. Colley and its value.

Pearl Tate Colley died survived by a child and her husband. Therefore, upon renunciation of his rights under the will, Samuel J. Colley is entitled to one-third of the personal property and a curtesy interest in the real estate. *Code of Virginia,* Sections 64-11, 64-13, 64-16, and 64-20.

Pearl Tate Colley's personal estate consists of:	
Balance on hand by the executrix after payment of debts (but not expenses of administration):	$ 1,099.68
Value of personal property—appraised by J. G. Sheets & Son, Inc.:	743.00
Balance on hand at savings account in Colonial-American National Bank of Roanoke (Account No. 10747):	10,000.00
Total personal estate:	$11,842.68

Samuel J. Colley, husband of Pearl Tate Colley, would be entitled to one-third of the above personal assets, or $3,947.56.

Samuel J. Colley also has a curtesy interest in the real estate of which Pearl Tate Colley died seised and possessed and reported herein under Inquiry No. 2.

page 12 } INQUIRY NO. 7

The said Commissioner will also report any other matter deemed pertinent by him or which he may be asked by any of the parties in interest to report.

Your Commissioner makes no report under this inquiry.
Respectfully submitted:

ERNEST W. BALLOU
Commissioner in Chancery

Commissioner's fee: $200.00
Mrs. Eunice M. Sprinkle,
Court Reporter—fee: $70.90

page 13 } CERTIFICATE

This is to certify that, pursuant to Section 8-256, *Code of Virginia,* 1950, the undersigned Commissioner in Chancery gave notice of the filing of this report in the Clerk's Office of the Circuit Court for Roanoke County, Virginia, on January 19th 1967, to all the parties who appeared herein, or their counsel of record, by mailing said notice on January 19th, 1967, to their post office addresses, said counsel so notified and their post office address being:

THOMAS M. DARNALL, ESQUIRE
ATTORNEY AT LAW
118 EAST LEE AVENUE
VINTON, VIRGINIA

TOM STOCKTON FOX, ESQUIRE
ATTORNEY AT LAW
STATE AND CITY BUILDING
ROANOKE, VIRGINIA

T. L. PLUNKETT, JR., ESQUIRE
ATTORNEY AT LAW
SHENANDOAH BUILDING
ROANOKE, VIRGINIA

WILLARD R. FINNEY, ESQUIRE
ATTORNEY AT LAW
109 WEST COURT STREET
ROCKY MOUNT, VIRGINIA

Given under my hand this 19th day of January, 1967.

ERNEST W. BALLOU
Commissioner in Chancery

* * * * *

J. G. SHEETS & SONS, INC.
Realtors — Auctioneers
304 First Street, S. W.
Roanoke, Virginia 24011

October 3, 1966

Mr. Ernest W. Ballou
Special Commissioner
Shenandoah Building
Roanoke, Virginia

RE: Estate of Pearl Tate Colley

Dear Sir:

The following is an appraisal of the furnishings belonging to the above, and in an apartment located on the Second floor in residence at 523 Tenth Street, S. W., Roanoke, Virginia.

I have inspected these items and believe the fair market value would be as follows:

LIVING ROOM

Sofa	$ 30.00
Marble top coffee table	15.00
Round lamp table	20.00
Chair	10.00
Chair	15.00
Bookcase (2 shelf)	10.00
China closet and contents	40.00
Maple drop leaf	12.00
Lot of silverware	10.00
Leatherette stool	5.00
Desk with shelves	15.00
Marble top lamp table and 2 chairs	35.00
Wooden Bowl Stand	5.00
Magazine Rack	1.00
Pictures (7)	7.00
Mirror with golden frame	25.00

Rocker	3.00
Smoking stand	2.00
Punch bowl	5.00
Lot of Bric-a-brac	$ 10.00
2 tier table	10.00
Gone with the Wind lamp	35.00
Wooden lamp	4.00
HALL	
Telephone stand	5.00
Chair	3.00
Antique Chest	20.00
Table	3.00
Lamp	2.00
Mirror	7.00
Pictures	3.00
FRONT BEDROOM	
Sewing Machine	10.00
Single bed, complete	20.00
Dresser	10.00
Dresser, 6 drawer	6.00
Lamps, 3	4.00
T.V. trays, 4	5.00
Cardboard Chest	1.00
Clothes hamper	1.00
Vanity stool	1.00
Old spool chest	3.00
BACK BEDROOM	
6 piece bedroom suite, complete	40.00
Blanket chest	15.00
Ottoman	1.00
Lamps	1.00
BATHROOM	
Kenmore Washer	15.00
Ironing board	1.00
Hoover vacuum	10.00
Floor Polisher	10.00
KITCHEN	
Dinette suite	25.00
General Electric Refrigerator	75.00
Electric range	50.00
Metal cabinet	$ 3.00

Table	1.00
Utility cabinet	2.00
Step Stool	2.00
Wooden cabinet	2.00
Electric mixer	5.00
Lot of dishes, odd	5.00
Metal portable table	2.00
Electric fry pan	3.00
Electric toaster	4.00
Electric Perculator	3.00
ATTIC	
2 trunks	4.00
Fan	15.00
Bed	5.00
Cot	1.00
End table	2.00
Lamp	5.00
Chairs	5.00
TOTAL	$ 743.00

Respectfully submitted,

FOSTER G. SHEETS, Appraiser

WILLARD R. FINNEY
Attorney at Law
Rocky Mount, Virginia

HUdson 3-9488

November 10, 1966

Mr. Ernest Ballou
212-215 Shenandoah Building
Roanoke, Virginia 24011

Re: Iris Burgess Cox
vs.
Fred Johnson and others

Dear Mr. Ballou:

I am enclosing an appraisal signed W. F. Mays and W. S. Boster, on the 33 acres of land located in Dickerson County.

Although, this is an informal appraisal I trust that it will be official.

Very truly yours,

WILLARD R. FINNEY, Attorney

WRF/lab
Enclosure
cc: Thomas Darnall

We appraise this land of 33 acres at $10,000. (Ten thousand dollars.)

We appraise Mrs. Colley interest at one sixth share of the 33 (Thirty three acres).

Signed by:

W. S. BOSTER
W. F. MAYS

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

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