224 Va. 113

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SUPREME COURT OF VIRGINIA
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4

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 800529

G. DALE PIGG,
Appellant

v.

EVA F. HALY, et. al.,
Appellees

JOINT APPENDIX

N. Carr Stogner, Jr., Esquire
John McNally, Esquire
MURPHY, McGETTIGAN,
McNALLY & WEST, P.C.
921 King Street
Alexandria, Virginia 22314

Counsel for Appellant

Reginald H. Pettus, Esquire
Attorney at Law
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Keysville, Virginia 23947

Counsel for Appellee

LAWYERS PRINTING COMPANY 7th & Franklin Bldg. Richmond, Virginia 23219 (804) 648-3664

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Filed in the Clerk's Office the 5th day of June, 1979

Writ Tax $ 5.00 Teste: Stuart B. Falls, Clerk

Fees 25.00

Total Paid $ 30.00 _____, D.C.

Atty's Check for $1.25 payable to Sf. Co. of Fairfax, attached

BILL OF COMPLAINT

TO THE HONORABLE J. R. SNODDY, JR., JUDGE OF SAID COURT:

Plaintiffs, by their attorneys, complain of defendant named herein and all persons unknown claiming any right, title, estate, lien or interest in the real property described herein, and for a cause of action allege :

1) Plaintiffs reside in Charlotte County, Virginia.

2) Defendant resides in Springfield, Fairfax County, Virginia.

3) Edward F. Haley, husband of Plaintiff Eva F. Haley, died on or about July 13, 1977, seized and possessed in fee simple absolute of an undivided one-half interest in 151.57 acres of land in Walton Magisterial District, Charlotte County, Virginia. A full and accurate description of these premises is presented in the attached marked Exhibit "A".

4) Plaintiff Eva F. Haley also owned an undivided one-half interest in that same 151.57 acres of land in Walton Magisterial District, Charlotte County, Virginia as is described in Exhibit "A".

5) The decedent, Edward F. Haley, died testate and his will is on record in the Clerk's Office of the Circuit Court of Charlotte County, Virginia, in Will Book ~~17~~ 23, at page ~~328~~ 696. By this will, a copy of which is attached and marked Exhibit "B", the said Edward

F. Haley devised his one-half interest in said property to Eva F. Haley be held by her in fee simple during her life with an absolute power of disposition and consumption.

6) On May 19, 1979, Plaintiff Eva F. Haley entered into a contract with Plaintiffs Donald L. Haley and Betty R. Haley for the sale of thirty (30) acres of this land. This land is described in the contract of sale which is marked Exhibit "C".

7) Plaintiffs Donald L. Haley and Betty R. Haley claim an equitable fee interest in the thirty (30) acres mentioned in the above contract marked Exhibit "C".

8) Defendant claims title to this land adverse to plaintiffs; defendant's claim is without any right whatsoever, and defendant has no right, estate, title, lien or interest in or to the property, or any part thereof.

9) Defendant bases said claim on a certain agreement which he and Plaintiff Eva F. Haley signed on July 26, 1977. Said agreement was prepared by Preston Lancaster, an attorney engaged by them at the suggestion of R. A. Wilmoth who had handled certain financial matters for the Haleys. The agreement conveyed "all personal property, both tangible and intangible, of the estate of Edward F. Haley" to Plaintiff Eva F. Haley. Furthermore, the agreement stated "the interest in any real estate that Edward F. Haley died seized and possessed of in Charlotte County, Virginia, shall be construed as to give his wife, Eva F. Haley, a life estate therein exclusively, with the remainder over to Garland D. Pigg, upon her death, in fee simple and absolutely." A copy of this contract is attached and marked Exhibit "D".

10) Defendant's claim of title through the said contract constitutes a cloud on both the legal and equitable title to the land which is the subject of the contract of sale between the Plaintiffs (see Exhibit "C").

11) In light of circumstances surrounding Defendant's agreement with Plaintiff Eva F. Haley, the agreement is unenforceable.

Wherefore, the plaintiffs pray judgement quieting title in their favor; that Plaintiff Eva F. Haley's agreement with defendant be declared null and void; that defendant be adjudged to have no right, title, or interest in or to said property; for costs of suit; and for such other and further relief as may to the Court seem proper.

Eva F. Haley
Donald L. Haley
Betty R. Haley

By Edward S. Graves

Counsel

R H Pettus

Counsel

Edward S. Graves
Counsel for Plaintiffs
EDMUNDS, WILLIAMS, ROBERTSON, SACKETT, BALDWIN & GRAVES
P. O. Box 958
Lynchburg, Virginia 23941

R. H. Pettus
Counsel for Plaintiffs
P. O. Box 75
Keysville, Virginia 23947

E X H I B I T "A"

All that certain tract or parcel of land situate, lying and being in Walton Magisterial District, Charlotte County, Virginia, containing ONE HUNDRED FIFTY-ONE AND FIFTY-SEVEN HUNDREDTHS (151.57) ACRES, but sold by the gross and not by the acre, and described as follows:

All that certain tract or parcel of land situated in Walton Magisterial District, Charlotte County, Virginia, containing 265 acres, more or less, lying on the Keysville - Charlotte Court House Road, adjoining the lands of R. E. Pettus, Eppes Breedlove and others, and being the same land that was conveyed to Lona E. Baldwin as L. E. Baldwin, by deed from W. M. Shook and wife, dated December 11, 1919, and of record in the Clerk's Office of Charlotte County in Deed Book 73, at page 326, and being also the identical land that was conveyed to the Federal Land Bank of Baltimore, Maryland, a body corporate, by mortgage deeds from Lona E. Baldwin and John T. Baldwin, dated October 29, 1921, and January 9, 1924, respectively, and both also of record in the Clerk's Office of the Circuit Court of Charlotte County in Deed Book 77, at page 24, and Deed Book 80, at page 459, respectively, to which said deeds reference is here made for a more particular description of said land.

EXCEPTING AND RESERVING from the above described tract, all that tract or parcel of land containing 113.43 acres, more or less, and described by metes and bounds in a deed recorded in the aforesaid Clerk's Office in Deed Book 104, at page 147.

SAID 151.57 acres is a part of the same land that was conveyed to said Federal Land Bank of Baltimore by deed from J. Kent Early, Special Commissioner, dated July 12, 1927, and of record in said Clerk's Office in Deed Book 87, at page 6, and being also the identical land as that conveyed to D. S. Gaulding, Jr., et als, by deed from The Federal Land Bank of Baltimore, dated July 30, 1940, and of record in the said Clerk's Office in Deed Book 104, at page 147, and being also the identical land as that conveyed to Edward F. Haley and Eva F. Haley, by deed of Marion B. Gaulding, et als, dated August 2, 1940, and recorded in the said Clerk's Office in Deed Book 104, at page 149. SAVE AND EXCEPT conveyances to the Commonwealth of Virginia for improvements to State Route 653 and State Highway 40 by deeds recorded in the said Clerk's Office in Deed Book 151, at page 57, and Deed Book 163, at page 721.

EXHIBIT "B"

In the name of God the Father, God the Son, and God the Holy Ghost, Unity in Trinity, Trinity in Unity, I Edward F. Haley of Keysville, Charlotte County, Virginia being in perfect health and of sound and disposing mind and memory, but realizing it is appointed to all men once to die, do therefore make and ordain this, to be my last Will and Testament in manner and form as followeth!

First: Whereas my nephew Wm. F. Haley owes me a sum of money, now therefore whatsoever he shall be owing me at the time of my decease shall be cancelled and considered as paid.

Second: Whereas my grand niece Judith also owes me a sum of money, now therefore whatsoever she shall be owing me at the time of my decease shall be cancelled and considered as paid.

Third: Whatever land I may own, ~~or interest in land~~ including buildings, furniture, farming equipment of all kinds, livestock of every description, automobiles, money in hand, or in banks, or owing to me, shall immediately upon my decease become the property of my wife, Eva F. Haley, to be used for her decent support during her natural life.

Fourth: It is my will and desire that upon the death of my said wife whatever residue of my estate either real or personal which she has not consumed or disposed of shall become the property of Garland D. Fry.

Fifth: I direct that my body be buried in the family plot in the County of Patrick unless my wife and I agree upon some other spot prior to my decease.

Sixth: I hereby appoint my wife Eva H. Haley Executrix of this my last will and testament, and direct that no security be required of her to administer the estate.

Witness my hand and seal this 22nd day of September in the year of our Lord Christ one thousand nine hundred and sixty-four.

Witnesses:

1-

2-

Edward F. Haley (Seal)

8

E X H I B I T "C"

REAL ESTATE CONTRACT

THIS CONTRACT, Made and entered into this 19th day of May, 1979, between EVA F. HALEY, hereinafter called Seller, and DONALD L. HALEY and BETTY R. HALEY, husband and wife, hereinafter called Buyers, provides:

(1) Recitals. Seller is the owner of the below described property in fee simple absolute. Buyers agree to buy and Seller agrees to sell that real estate described and designated as follows:

> All that certain tract or parcel of land situated in Walton Magisterial District, Charlotte County, Virginia, containing THIRTY (30) ACRES, more or less, bordered on the East by State Highway 653, bounded by the land of Lillian Hanmer on the North, the land of Garland D. Pigg on the West, and other land of Eva F. Haley on the East.

(2) Purchase Price. The Total purchase price shall be TWELVE THOUSAND DOLLARS ($12,000.00) of which Five Hundred Dollars ($500.00) will be paid by the Buyers to the Seller when this contract is signed. The balance remaining will be secured by three (3) promissory notes which will be executed by the Buyers to the Seller upon signing this contract. The aforementioned notes will be payable on the following dates, without the right of anticipation, and in the following amounts:

(a) The first note for the amount of Five Thousand Dollars ($5,000.00) will be due and payable on December 24, 1979.

(b) The second note for the amount of Five Thousand Dollars ($5,000.00) will be due and payable on December 24, 1980.

(c) The third note for the amount of One Thousand Five Hundred Dollars ($1,500.00) will be due and payable on December 24, 1981.

(3) Possession. Possession will be given as of the date of settlement. Settlement will be in the office of Reginald H. Pettus, on or before 5:00 p.m. October 1, 1979, or as soon thereafter as title can be examined and papers prepared, allowing a reasonable time to correct any defects reported by the title examiner.

(4) Deed, Title. At settlement and upon receipt of the three (3) promissory notes, the Seller will deliver to the Buyers a General Warranty deed with the usual covenants of title, granting the property to Buyers as tenants by the entirety with right of survivorship. Said deed shall be prepared at the expense of the Seller and shall have revenue stamps as required by law affixed thereto. Buyers will pay for all other costs in connection with the sale of this property as herein set forth.

(5) Destruction of Property. If prior to closing any destruction, loss or damage occurs, the Seller agrees to bear such risk of loss. In the event of such destruction, loss or damage, the Buyers then shall have the option to declare this contract null and void and the earnest money shall be returned to the Buyers.

(6) Proration. All taxes on the property shall be prorated between the Seller and Buyers as of the date of settlement.

(7) Cloud on Title, Remedy. Seller executed an agreement with Garland D. Pigg on July 26, 1977, which gave Garland D. Pigg a fee interest in the property at her death. This aforementioned agreement constitutes a cloud on title until suit is brought and the cloud removed. In the event this cloud on title is not removed both the Seller and the Buyers, respectively, shall have the right and power to rescind this contract of sale.

(8) Merger. Upon delivery of the deed to the Buyers this contract will not merge into the deed when delivered and recorded.

(9) Entire Agreement. This contract, as written, constitutes the entire agreement between the Seller and the Buyers.

WITNESS the following signatures and seals:

Eva F. Haley (SEAL)
Eva F. Haley

_____ (SEAL)
Donald L. Haley

_____ (SEAL)
Betty R. Haley

STATE OF VIRGINIA,

COUNTY OF CHARLOTTE, to-wit:

I, the undersigned, a Notary Public in and for the jurisdiction aforesaid, whose commission expires _____, do hereby certify that Eva F. Haley and Donald L. Haley and Betty R. Haley, his wife, whose names are signed to the foregoing real estate contract bearing date of May 19, 1979, have each acknowledged the same before me in my jurisdiction aforesaid.

Given under my hand this _____ day of May, 1979.

_____
Notary Public

THIS AGREEMENT, made and entered into this 26th day of July, 1977, by and between EVA F. HALEY, a widow, party of the first part, and GARLAND D. PIGG, party of the second part.

WHEREAS, Edward F. Haley, died testate on or about July 13, 1977, as may be seen by reference to Will Book 17 page 328 in the Clerk's Office of the Circuit Court of Charlotte County, Virginia (See Exhibit A attached hereto), wherein in Paragraph "Third" it appears that he devised all of his estate to his wife, Eva F. Haley, and in Paragraph "Fourth" he indicates that whatever property, both real and personal, not disposed of, shall become the property of Garland D. Pigg.

WHEREAS, Paragraphs "Third" and "Fourth" create an ambiguity as to whether Eva F. Haley is to acquire a life interest only, or in fee simple and absolutely.

WITNESSETH: That for and in consideration of the sum of TEN DOLLARS ($10.00), and other good and valuable consideration, the receipt of which is hereby acknowledged, and the love and affection that exists between the parties of the first and second parts, the said parties to this instrument in order to resolve the ambiguity as set forth above do hereby agree as follows:

1. That all personal property, both tangible and intangible, in the Estate of Edward F. Haley, shall be the sole and exclusive property of Eva F. Haley, with complete right to dispose of the same in any manner that she might deem fit, and the party of the second part relinquishes any interest that he might acquire under the will of Edward F. Haley, in this regard.

2. That the interest in any real estate that Edward F. Haley died seized and possessed of in Charlotte County, Virginia, shall be construed as to give his wife, Eva F. Haley, a life estate therein exclusively, with the remainder over to Garland D. Pigg, upon her death, in fee simple and absolutely.

WITNESS the following signatures and seals:

Eva F. Haley (SEAL)
EVA F. HALEY

Garland D. Pigg (SEAL)
GARLAND D. PIGG

STATE OF VIRGINIA

COUNTY OF PRINCE EDWARD, to-wit:

I, E. J. Cunningham, a Notary Public of and for the County aforesaid, in the State of Virginia, do hereby certify that Eva F. Haley and Garland D. Pigg, whose names are signed to the foregoing writing, bearing date on the 26th day of July, 1977, have acknowledged the same before me in my County and State aforesaid.

Given under my hand this 26th day of July, 1977.

E. J. Cunningham
NOTARY PUBLIC.

My commission expires 6-28-80.

ANSWER

TO THE HONORABLE J.R. SNODDY, JR., JUDGE OF SAID COURT:

Defendant, Garland D. Pigg, by counsel, for his answer to the Bill of Complaint filed against him in this action states as follows:

1. Paragraph 2 is admitted.

2. Paragraph 8 is admitted in part in that defendant claims title to the real property which is the subject of this action. The remaining allegations in paragraph 8 are denied.

3. Paragraph 9 is admitted insofar as it states that defendant bases his claim to the subject real property on the agreement signed by Eva F. Haley on July 26, 1977; defendant also asserts a claim to said real property under the will of Edward F. Haley dated September 22, 1964.

4. Paragraph 11 is denied.

5. Defendant is without sufficient information to enable him to admit or deny the allegations set forth in paragraphs 1, 3, 4, 5, 6, 7 and 10, and accordingly, the allegations in those paragraphs are denied.

GARLAND D. PIGG

By Counsel

MURPHY, McGETTIGAN, McNALLY & WEST
921 King Street
Alexandria, Virginia 22314
(703) 549-5353
Attorneys for Defendant

By: _____
N. Carr Stogner, Jr.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing ANSWER was mailed by U.S. Mail, postage prepaid, this 25th day of June, 1979 to Edward S. Graves, Esquire, Counsel for Plaintiffs P. O. Box 958, Lynchburg, Virginia 23941 and R. H. Pettus, Esquire Counsel for Plaintiffs, P. O. Box 75, Keysville, Virginia 23947.

_____
N. Carr Stogner, Jr.

ENTER:

Judge

Jan 8, 1980

DECREE

This cause, which has been matured, set for hearing, and docketed, came to be heard on this 31st day of October, 1979, on the Bill of Complaint with exhibits thereto attached, duly served upon the Defendant, the answer of the Defendant, the testimony of the parties and others taken ore tenus before the Court, together with exhibits admitted by stipulation of counsel and otherwise, and was argued by counsel.

And it appearing to the Court that Edward F. Haley, the husband of Plaintiff Eva F. Haley, died on July 13, 1977, leaving a holographic Last Will and Testament, duly probated on or about July 19, 1977, before the Clerk of this Court; that by Paragraphs Third and Fourth of said will he provided as follows:

> "Third Whatever land I may own, including buildings, furniture, farming equipment of all kinds, livestock of every description, automobiles, money in hand, or in banks, or owing to me, shall immediately upon my decease become the property of my wife, Eva F. Haley, to be used for her decent support during her natural life."

"Fourth It is my will and desire that upon the death of my said wife whatever residue of my Estate either real or personal which she has not consumed or disposed of shall become the property of Garland D. Pigg";

that the said decedent owned personal property and also an undivided one-half interest in approximately 151.57 acres of land located in Walton Magisterial District, Charlotte County, Virginia, lying on the Keysville - Charlotte Court House Road, conveyed to the said decedent and his said wife by deed dated August 2, 1940, recorded in the Clerk's Office of this Court in Deed Book 104, at page 149; that said Plaintiff and the Defendant entered into an agreement dated July 26, 1977, providing that all personal property in the estate of the said Decedent shall be the sole and exclusive property of the said Plaintiff, and that the said Plaintiff should have a life estate exclusively in the said real estate of said Decedent; with remainder over to the Defendant in fee simple and absolutely upon the death of said Plaintiff; that the said agreement was entered into by the parties upon the mutual mistaken belief that the said Plaintiff did not have the power to use and dispose of the property, real and personal, disposed of by said Paragraphs Third and Fourth of said will, and was not supported by adequate consideration.

WHEREFORE, the Court doth ADJUDGE, ORDER and DECREE, first, that the effect of said Will was to vest in said Plaintiff the right to consume and dispose of, by sale, gift, or otherwise, the property of said Decedent mentioned in said Pargraphs Third and Fourth; and second, that said agreement dated July 26, 1977, is void and of no effect.

And it further appearing to the Court that by Real Estate Contract entered into between the said Plaintiff, Eva F. Haley, as Seller and the other Plaintiffs as Buyers, the Seller agreed to sell to the Buyers thirty acres of land therein described subject to the removal of the cloud on the title to said real estate created by the aforementioned agreement dated July 26, 1977, Court doth so ADJUDGE; and doth further ADJUDGE, ORDER, and DECREE that the said agreement having been held void and of no effect, the cloud on title to said thirty acres is removed, and the Seller may convey title thereto free and clear of any claim thereto by the Defendant herein.

And the objects of this suit having been accomplished, it is stricken from the docket.

We ask for this:

Edward A. Graves
Counsel for Plaintiff

Robert Pittman
Counsel for Plaintiff

Seen and objected to on grounds
fully stated to the Court:

Counsel for Defendant

Entered in Chancery Order Book #23 at page 515 on 1/8/80.

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF CHARLOTTE:

EVA F. HALEY, et als., Plaintiffs.	)	
-v-	)	T R I A L:
GARLAND D. PIGG, Defendant.	)	

A stenographic report of all evidence and other incidents of trial adduced in the trial of the above styled case in the Circuit Court for the County of Charlotte, at Charlotte Court House, Virginia, on the 31st day of October, 1979, before Honorable John R. Snoddy, Jr., Judge.

JACQUELINE E. SCRUGGS
REGISTERED PROFESSIONAL REPORTER
CULLEN, VIRGINIA 23934
PHONE: 542-5465

I N D E X

WITNESS:	EXAMINATIONS: Direct:	Cross:
Eva F. Haley	5-Pettus 56-Pettus	35-McNally
(Rebuttal)	136-Pettus	141-McNally
Garland Dale Pigg	62-McNally	77-Graves
Rebecca Anderson Pigg	91-McNally	98-Graves
R. A. Wilmouth	109-Stogner	116-Pettus
E. Preston Lancaster, Jr.	120-Stogner	128-Graves

JACQUELINE F. SCRUGGS
REGISTERED PROFESSIONAL REPORTER
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BY: MR. EDWARD S. GRAVES

REGINALD H. PETTUS
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KEYSVILLE, VIRGINIA 23947

BY: MR. REGINALD H. PETTUS

COUNSEL FOR THE DEFENDANT:

N. CARR STOGNER, JR.
921 KING STREET
ALEXANDRIA, VIRGINIA 23214

BY: MR. N. CARR STOGNER, JR.

MURPHY, MCGETTIGAN, MCNALLY
& WEST
608 QUEEN STREET
ALEXANDRIA, VIRGINIA 22314

BY: MR. W. JOHN MCNALLY

THE COURT: Gentlemen, the matter we have in court this morning is Eva F. Haley, Donald L. Haley and Betty R. Haley versus Garland D. Pigg. Is the plaintiff ready?

MR. PETTUS: Yes, sir, Your Honor.

THE COURT: Is the defense ready?

MR. MCNALLY: Yes, sir, Your Honor.

THE COURT: All right, gentlemen, I'll be glad to hear from you all. All I know about this matter is I read the papers in the case, and I'll be glad for any of you all to give me a brief synopsis.

MR. PETTUS: Would you like an opening statement from me, a bird's eye view?

THE COURT: Yes, I would.

(Whereupon, brief opening statements were rendered by Mr. Pettus and Mr. McNally, after which the following was had:)

THE COURT: All right, gentlemen:

JACQUELINE E. SCRUGGS
REGISTERED PROFESSIONAL REPORTER
CULPEPER, VIRGINIA 23934
PHONE 542 5465

1 MRS. EVA F. HALEY, being first duly sworn,
2 testifies as follows:
3
4 MR. PETTUS: May it please the Court; we
5 have suggested that Mrs. Haley------this is very
6 complicated-----that she make notes; and I think in
7 order to keep it in chronological order, she may
8 refer to these.
9 THE COURT: I doubt that anybody has any
10 objection to that.
11 MR. MCNALLY: No, Your Honor.
12
13 DIRECT EXAMINATION
14 BY MR. PETTUS:
15 Q Mrs. Haley, you may refer to your notes and go
16 into detail and tell the Court this entire matter in detail,
17 and look right at the Judge and talk right to him.
18 A Thank you.
19 Q And speak loud enough so this court reporter can
20 take it down.
21 A On June 26th of 1977 my husband had a serious
22 heart attack, and he was taken to Farmville Hospital. On July
23 13th he suffered a fatal attack.
24

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CULPEPER, VIRGINIA 22934
PHONE 542-5465

1 MR. MCNALLY: Excuse me, Your Honor; I'm
2 having trouble hearing the witness already.
3 THE COURT: You may pull your chair around
4 here if you like.
5
6 WITNESS CONTINUING:
7 A. During the time he was a patient, he told me,
8 and during a conversation that we were having, that he had no
9 will. Am I being heard, please?
10
11 MR. MCNALLY: Yes; thank you.
12
13 A. I discussed this with Mrs. Lelia Hoy, who is an
14 attorney, and she told me that she would go to the hospital and
15 write a will for him, but Mr. Haley was a very, very ill man,
16 and I felt that the experience of having him do this will would
17 be a traumatic, would be very traumatic, and I did not feel that
18 I could ask her to do it; so it was not done.
19 The funeral was held on July 15th, which was on a
20 Friday. The first of the following week, while going through
21 some papers of his in his desk, I discovered a will which was
22 typewritten, and this will was taken to Mrs. Lelia Hoy, an
23 attorney, and she informed me that this will could not be
24 probated; it had not been witnessed.

JACQUELINE E. SCRUGGS
REGISTERED PROFESSIONAL REPORTER
CHARLOTTE, VIRGINIA 23934
PHONE 542 5465

1 Mr. Haley did genealogical research, and he had been
2 doing genealogical research ever since I had known him, which
3 was in 1929; and even prior to that he had done genealogical
4 research. His notes were voluminous, and he would write his
5 notes on a legal pad, which is this size (indicating); and they
6 were written out in longhand, and he would copy them with
7 the typewriter, and then he would x through the page with a
8 pencil. And I was hoping that I was going to find this will
9 that had been written in longhand and that was x'ed through.
10 And Mr. and Mrs. Pigg were there with me; they were
11 assisting me; they were my friends, and they were helping me.
12 We started going through the papers, and we had searched for
13 quite a long while, and Mrs. Pigg said to me; she said, "I
14 have something". She read it through; she passed it to me,
15 and this was not a copy of the typewritten will. It was another
16 will, and it was the will that was duly probated, and I don't
17 have the date here, I believe; but it was duly probated. But
18 before it was probated, it was taken to Mrs. Lelia Hoy. And
19 after the will was probated, she said to me----------
20
21 MR. MCNALLY: Your Honor, I'm going to
22 object to the hearsay testimony.
23 THE COURT: Just state what you know of,
24 yourself. However, it's a very important thing. I

JAC JOSEPHINE S. SCRUGGS
REGISTERED PROFESSIONAL REPORTER
FAIRFAX, VIRGINIA 22314
PHONE 547-5465

1 think it's important for her to state what her
2 advice was in this matter.
3 MR. MCNALLY: So long as it's not being
4 admitted for the truth of the statement.
5 THE COURT: I understand it's not being
6 admitted for the truth.
7
8 WITNESS CONTINUING:
9 A. Mrs. Hoy said to me after the will was probated,
10 "You own nothing; you will be privileged to have interest from
11 the certificates or the money, and you will be privileged to
12 use proceeds from the farm."
13 Q. If you will look at the Judge and talk right to
14 him. Go ahead.
15 A. Thank you. I had no knowledge of this will. In
16 fact, I had no knowledge of either will. The news of this was
17 overwhelming, combined with my grief. And I was physically
18 ill. I had a severe cold and developed a bronchitis which
19 lasted me about six (6) weeks.
20 Q. Tell the Court the relationship of your husband,
21 the property you owned and how it was acquired; your job, your
22 income, his income, et cetera. I'll ask you the question: When
23 were you married?
24 A. In July of '37.

JACQUELINE E. SCRUGGS
REGISTERED PROFESSIONAL REPORTER
CULPEPER, VIRGINIA 23934
PHONE 542-5465

1 Q And you and your husband lived together continuous-
2 ly from that time?
3 A We were husband and wife for forty (40) years
4 minus a very few days.
5 Q Did you have any children?
6 A We had no children.
7 Q Where did you first live?
8 A Our first home was in Sweet Water, Alabama. He
9 was teaching, and that was our first home in Sweet Water,
10 Alabama.
11 Q How did you come to Charlotte County?
12 A Well, he was a Virginian, and there was no other
13 place in the world to live but in Virginia according to him.
14 And we just migrated back to the State of Virginia.
15 Q Did you buy property in Charlotte County?
16 A Yes.
17 Q And how much did you first buy?
18 A How much did we first buy?
19 Q Yes.
20 A We bought a farm, which was a hundred and fifty-
21 one (151) acres.
22 Q Did you buy property here in the county before that?
23 A No.
24 Q Did you buy the Osborne tract?

A The Osborne tract, which was a timber tract of seven hundred and nineteen (719) acres, I believe was the acreage, was contracted for at the time we bought the farm. We had no money to pay for this, because we had paid for the farm when we bought it, and this was bought with borrowing money.

Q Tell the Court, then, how you came to buy this property, and who suggested it and all your financial transactions, et cetera.

A I'm not sure I understand.

Q When you bought the Osborne tract, whose idea was that; yours or Mr. Haley's?

A It was my suggestion that we contract for the Osborne tract.

Q Did you dispose of it at a profit?

A We did; we doubled the money on the Osborne tract.

Q Then, what did you pay for the property on which you're now living?

A Twenty-one hundred. You're speaking of our home property?

Q Right. Now, had that been improved, or did you build on it, so forth?

A We have replaced every building that is on, we have replaced every building that is on the farm except one outbuilding which was an antique smokehouse. It is put together

with wooden pegs, and had been moved from a site which was down in the middle of the farm, and brought up to its present location.

Q Whose money bought the farm?

A Whose money bought the farm? Our money bought the farm.

Q And what did you do?

A I was an RN.

Q Were you always employed?

A I was employed most of the time; yes, sir.

Q What was Mr. Haley doing then?

A Mr. Haley was a teacher.

Q Where did he teach?

A He taught in the high school; he taught in Sweet Water for one year, and we were in Albertville, which was----- This was in Alabama.

Q After you arrived in Charlotte County------

A He was there for two (2) years.

Q -----what did Mr. Haley do in Charlotte County?

A Mr. Haley farmed after-----We moved to the farm in 1945, and he farmed, and he was a representative of Mutual of Omaha Insurance.

Q Now, during that time, did you nurse?

A Yes, I did.

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Q Did you comingle your assets or your income, or how did you handle your business?

A Well, the assets were used as the need arose regardless of to whom they belonged. Each was contributing.

Q Did you build a house on this property?

A Yes, we did.

Q Who contributed; how was that built, or who contributed to the building of that, financially?

A The money we had when we sold the timber tract; and the money that we obtained from the timber tract was the money that built the house.

Q Money off the profit of the Osborne tract?

A The money from the Osborne tract built the house.

Q Now, the other money that you used to build the house or to work on the farm, and so forth, did you use your money or what money?

A We used the money that was available from either of us.

Q Was there much income off of a farm in 1940, off that farm?

A Very little income; in fact we grew tobacco, and we had started a herd of Angus cattle. The income was very limited, because the herd was gradually built up; it was a gradual increase.

1 Q All right; all during these years, you continued
2 nursing?
3 A I was nursing. I wasn't nursing all of the time
4 during our building period. I was actually working on the farm
5 alongside Mr. Haley. We worked together. I suppose if it would
6 not shock you too much, I could say that I was a farm laborer.
7 Q Did you help physically in the building of the
8 home?
9 A Yes, I helped in the building of the home. We
10 had purchased a brick wall that was a part of the tobacco
11 steaming plant, and we took these brick; we would remove these
12 brick from the wall; we'd clean them, and that is what we built
13 our house with.
14 Q Did you work in that process?
15 A I did work in that process; yes.
16 Q You and Mr. Haley did it with your own hands?
17 A We cleaned them, yes.
18 Q Now, what year was this?
19 A Well, it extended over quite a period of time, the
20 building of the home; perhaps the late------let's see-----we
21 moved in '45; it would have been, perhaps, '48 and '49 when we
22 were building the home. The home that we were living in was
23 barely habitable.
24 Q And did Mr. Haley during that time sell life

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1 insurance on the side?

2 A. Yes, he did.

3 Q. And farmed?

4 A. He wasn't required to devote his full time to the

5 insurance at that time.

6 Q. Did he read and write history at that time?

7 A. He did quite a bit of research in the county,

8 clerk's office, and he had a large clerestory, and quite fre-

9 quently he would combine the research with the selling of the

10 insurance.

11 Q. Was the research very profitable?

12 A. The research was something of a hobby with him.

13 It was not profitable. I don't think he went into it with the

14 idea of it being profitable.

15 Q. When did Mr. Garland Pigg come into your life?

16 A. Mr. Garland Pigg came into our life when-----I

17 think I have my dates a little bit mixed-----it's probably there

18 on my notes.

19 Q. You may refer to them.

20 A. I don't have my notes with me; they're on the

21 corner of the desk.

22

23 THE COURT: If you can approximate it.

24 BY MR. PETTUS: (Continuing)

1 Q How old was he when he came into your life; what
2 age boy was he?
3 A His family had been discovered by Mr. Haley during
4 his-----He was teaching at the Hargrave Military Academy at
5 this time, and he had been told, he was doing research in the
6 clerk's office in Chatham, and he had been told about the Pigg
7 family that lived nearby. And he went out to their farm and
8 visited them, and it was at this time that he discovered Mr.
9 Pigg and Mrs. Pigg at that time. I would roughly estimate he
10 was either seven (7) or eight (8) years old.
11 Q In other words, he discovered his relationship
12 at that time doing genealogical research?
13 A That's right.
14 Q Now, what relation is Mr. Pigg to Mr. Haley, if
15 you know?
16 A If my genealogical information is correct, my
17 husband's great grandmother was a Pigg, which would in all
18 probability, he would be a fourth (4th) cousin.
19 Q All right; did Mr. Haley then invite him to come
20 visit you all, or when did you first get to know Mr. Pigg?
21 A I did not know Mr. Pigg until about four (4) years
22 later. I think it was about four (4) years later.
23 Q Now, after you got to know him, what happened?
24 A Well, he was a young boy at the time; and he would

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1 come to visit us occasionally. And this was his mode of
2 transportation (indicating); he thumbed his rides. We did not
3 know when he was coming, and we did not know when he was going.
4 He came; he stayed for a while, and then he would go home.
5 Of course, this was only during summer months, because he was in
6 school the other time.
7 Q Did he ever live with you?
8 A Yes; he did live with us, but this was much later
9 in life.
10 Q When was that?
11 A That he lived with us?
12 Q When was that?
13 A And if I might bring in something; before that I
14 would like to bring in something before that.
15 Q You just tell the story as you can. I'm asking
16 you questions, but you may bring it out as it developed.
17 A He had finished high school, and he came to us and
18 said if he didn't get into college that he was going to have to
19 go into the army. And this was the time when I was nursing in
20 Longwood; and he came rather late in the evening, if I remember
21 correctly, and I said to my husband; I said, "I have to get up
22 early in the morning". And he didn't like to get up early. I
23 said, "I'll get up early, and you take Mr. Pigg to Ferrum and
24 see if you can enroll him at Ferrum, in college at Ferrum.

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1 Mr. Haley had graduated from Ferrum, and he had
2 taught at Ferrum for one year, and he had good relations with the
3 President, who was at that time a Mr. Arthur.
4 He took Mr. Pigg to Ferrum; he talked to Mr. Arthur,
5 and Mr. Pigg was duly enrolled in college. And he also arranged
6 for him to have a scholorship at this time.
7 Q All right; then did Mr. Pigg finish college at
8 Ferrum?
9 A At this particular time Ferrum was a two-year,
10 was what you call a junior college, was a two-year college, and
11 he did finish.
12 Q Did he ever go to any other school?
13 A Yes, he did; and he went to Union; and I am not
14 exactly clear where Union is; whether it is Tennessee or Kentucky;
15 but I believe it's in Kentucky; Union College in Kentucky.
16 Q Did you and Mr. Haley help him financially during
17 this time or any time?
18 A I don't think that we did help him; might have
19 helped him some. We did not help him a great deal. We were
20 not in a position to help him too much at this time. But he did
21 come; after he had been to Union, there were some subjects that
22 he felt he needed that he didn't get there; and he came to our
23 home and lived in the home and went to school at Longwood.
24 Q How did he get to Longwood?

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A For a period of one semester-----I was working at Longwood------he used my car, and we would go together; and there were some days when I was not going, and he was permitted to use my car.

Q Did he pay room and board or anything?

A No, he did not; there was no charge for him living there.

Q Now, about what year was this?

A This was in the late fifties (50's), I guess, approximately; sometime in the fifties (50's). I don't recall the date.

Q All right, after he finished college, what did he do?

A He taught at the Military Academy in Staunton after he finished, to the best of my memory.

Q All right; did you see much of him from time to time then?

A Not then, no; he was not coming by very often.

Q When did he start coming by to see you?

A He started visiting us more frequently after he and Mrs. Pigg were married.

Q And approximately what year was that?

A I don't exactly know what year he was married; I don't have that. I don't have that information; but it was

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1 sometime after he was teaching at the Military Academy, to the
2 best of my memory. This is not all exactly clear in my mind.
3 Q Now, the will that was apparently probated, was
4 written in '63 or '64, in September of '64, apparently. What
5 was the relationship with Mr. Pigg and your family at that time,
6 your husband, in '64? Had he visited you much then?
7 A We were friends; we were friends.
8 Q Well, Mr. Haley had across the street from him a
9 brother, did he not?
10 A Yes.
11 Q And the brother had children?
12 A Yes.
13 Q So, his nephews were his closest kin after you?
14 A Yes.
15 Q All right, now; in '64 when he wrote this will,
16 the association with Mr. Pigg, you said, was simply a friendship
17 there?
18 A I would term it so.
19 Q Did Mr. Haley later assist Mr. Pigg in buying
20 some property adjoining your property?
21 A Yes, he did.
22 Q Do you know how that was arranged; how the finances
23 were arranged?
24 A This was a hundred and thirty (130) acre tract of

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1 land that was for sale. And my husband aided him financially
2 in purchasing this tract of land.
3 Q Do you know approximately what it cost?
4 A The cost of land was Twelve Thousand ($12,000), and
5 to the best of my memory Mr. Haley loaned him ten.
6 Q Your husband loaned Mr. Pigg Ten Thousand ($10,000)
7 to buy a Twelve Thousand ($12,000) Dollar tract of land adjoining
8 your property?
9 A That's right.
10 Q Has that enhanced in value since that time?
11 A About seven (7) times, I would imagine. I would
12 almost be certain in saying that.
13 Q Does Mr. Pigg own that property today?
14 A To the best of my knowledge he does.
15 Q Did he reimburse your husband that Ten Thousand
16 ($10,000) Dollars?
17 A Yes.
18 Q Do you know whether he paid interest?
19 A No, I'm sure it was a minimum, if any.
20 Q You're sure it------
21 A I'm positive he would not have charged excessive
22 interest on the money; it would have been the current rate.
23 Q Did Mr. Pigg then begin visiting you more frequently?
24 A Yes; I feel that he did come more frequently.

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Q Did he come uninvited or did you invite him?

A Well, apparently they had the understanding or the feeling that they could come at any time that they were free. They were both teaching; they had frequent holidays, time off in the summer.

Q Well, you and your hsuband, just the two of you, did they come uninvited, or did you anticipate it; what effect did it have on your home life?

A Well, I would hesitate to say that they were------ They were always made welcome in the home------and in all probability, had they not come as often as they did, we would have had other people in, or we would have gone somewhere.

Q Did they come during your holidays?

A Yes.

Q Who prepared the meals and all that during those visits?

A Well, I was the homemaker, and it was my responsibility.

Q Did they pay anything, contribute anything to those visits?

A No.

Q Now, of what year are we talking about when those visits were; is that after that will is made, after '64?

A We are talking about the period of, I would say

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1 from about, I retired from my position at Longwood College in
2 1972; and it was a long period prior to my retirement when they
3 came to visit us frequently.
4 Q Did those visitations become less frequent or
5 more frequent with the years?
6 A More frequent; more frequent.
7 Q And after they had children, did they bring their
8 children?
9 A Yes.
10 Q When you would have your dinners and your meals,
11 and so forth, what did Mr. and Mrs. Pigg participate in the
12 preparation or washing of the dishes, and so forth; or did you
13 have servants?
14 A I have never had servants. The meals were
15 generally my preparation. It was occasions when she would
16 prepare the table for the meal; and when the children were young,
17 most of the time I did the cleaning up after the meals.
18 Q When they would stay, how long a period did they
19 visit?
20 A Well, their visits with us were combined with a
21 visit to his home and to her home; perhaps maybe one night, two
22 niguts.
23 Q Did you and Mr. Haley visit them?
24 A No.

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1 Q What------Did their visits seem to affect him or
2 inconvenience him at all?
3 A Well, Mr. Haley was a person who liked quiet
4 surroundings, and children were not inducive to him to be able to
5 be quiet in the home, and it did bother him. The crying of
6 children did bother him. He remarked about it several times;
7 but it was tolerated.
8 Q Now , you have attempted, apparently, to convey or
9 sell a portion of your property to Mr. Donald Haley and his
10 wife, Betty Haley. What relation are they to Mr. Edward Haley,
11 your husband?
12 A Donald Haley is a nephew; he's the son of my
13 husband's brother who died several years ago.
14 Q Did Mr.Donald Haley and your husband ever have
15 business relations, and so forth?
16 A Yes; they did. They farmed together for a period
17 of about five (5) years or better. This period was from about
18 '70 to maybe '75.
19 Q And what happened to that business relationship?
20 A The business relationship was more or less ended
21 because of the economic situation. Donald was helping him with
22 the animals, and the price of animals went so low that it was no
23 value.
24 Q Was there any affection between your husband and the

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1 members of his family? When I say the family, the Haley family?

2 A. Was there------

3 Q. Was there any affection of your husband and the------

4 A. Oh, yes; they had relations.

5 Q. I'm talking about the Haley family, his brother or

6 children?

7 A. You're asking me if my husband and my husband's

8 brother had good relations?

9 Q. Right.

10 A. Yes, they did have.

11 Q. And his brother's children?

12 A. And his brother's children.

13 Q. Why have you attempted to sell the property to

14 his brother's son?

15 A. Well, he would be, I think, a logical one to sell

16 the property to. My husband had often said that he would like

17 for our farm to remain in the Haley family.

18 Q. All right; did your husband display affection

19 towards this particular nephew?

20 A. Yes; he was very fond of his nephew.

21 Q. Was the affection equal to that of Mr. Pigg?

22 A. I would say yes, or perhaps more.

23 Q. Why did you think that your husband left no will?

24 Why did you try to get the will written after his illness?

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A. Would you ask me the question again?

Q. Why did you think that your husband had no will, and why did you attempt to have a will written during his illness?

A. I really did not attempt to have a will written during his illness. It was mentioned, but-------

Q. But why did you see Mrs. Hoy about writing a will?

A. Well, I guess I went to Mrs. Hoy more for advice than anything else, and then I decided it was too traumatic an experience for him to be subjected to. He had had a extremely severe heart attack.

Q. Had he ever indicated whether or not the property would go to you at his death, or did he say one way or the other about that?

A. Well, it was understood between us. Why should it go to someone else other than to me?

Q. Well, were you aware at the time or even as late as the time of your husband's death, or at the time of making this agreement with Mr. Pigg, that you owned a half-interest in that property?

A. Not really; Mr. Haley took care of all of the papers. I don't recall reading the deed particularly; no.

Q. Well, were you ever aware of the fact that the deed did not carry a survivorship clause or the deed was in your name and his name jointly?

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A. No, I don't think I was.

Q. Well, what did you think you were working for and building and saving? How did you anticipate survival after his death?

MR. MCNALLY: Your Honor, I'm not sure of the relevance of any of this testimony; particularly the questions being asked now.

MR. PETTUS: All right, I withdraw that question.

BY MR. PETTUS: (Continuing)

Q. Suppose we begin now, and you look right at the Judge, please, because you're talking to him; and tell what happened from the time of Mr. Haley's death and finding the will, and so forth, and what you did?

A. Perhaps I should start with the probated will, and I was informed by Mrs. Hoy--------

MR. MCNALLY: I'm sorry; I can't hear the witness.

THE COURT: Speak up.

BY MR. PETTUS: (Continuing)

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1 Q You look at the Judge, and speak loudly so this man
2 can hear you, please.
3 A I mentioned that the time that we're really
4 concerned with at the moment, the way I understand it, is when
5 the will was probated; and Mrs. Hoy said to us, "You own nothing".
6 And this has been mentioned before; "You own nothing; you have
7 the use of the property, the use of the farm, the proceeds of
8 the farm until you die; and you have the interest from the
9 money until you die."
10 Q Was Mrs. Pigg present when she said that?
11 A Yes.
12 Q Go ahead then from that point on. Then what did
13 you do? And tell the story without my questions.
14 A Well, we went to Farmville to see a Mr. Wilmouth,
15 who has been filling out income tax reports for Mr. Haley, for
16 us, rather, for a number of years. And he more or less re-
17 iterrated the same. He said, "You have---------I would like to
18 go back for just a moment, because on the way over I mentioned
19 to Mr. and Mrs. Pigg that I had the feeling that I had been
20 sabotaged; that when the will was written Mr. Haley and I did
21 not have any money. We had purchased an annuity in 1951, and
22 the time for the annuity was a ten-year period. And for us, the
23 payments on this annuity were rather large. And we had more or
24 less finished the payments on the annuity in 1964 or 1961, I

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1 guess it was; but it left us stranded as far as money was
2 concerned. We had very little. I made the remark that we
3 had no money at the time this will was written. And Mr. Pigg
4 was very indignant over the remark that I made. He said
5 something; it wasn't so much of what he said; it was his tone of
6 voice. He did not have a complete sentence in his remark to
7 my statement that I felt I had been sabotaged. We went on to
8 Farmville and saw Mr. Wilmouth, and apparently he used the same
9 interpretation of the will that had been given by Mrs. Hoy.
10 He said, "You will receive the interest from the
11 money, and you will have the proceeds from the farm". And it
12 was somewhere along in this area that Mr. Pigg made the remark,
13 "Well, now; that isn't so bad, is it?" It is very difficult to
14 remember all of the details; the shock of realizing that all
15 that you have ever worked for all your life is suddenly gone is
16 very disturbing. It's been a very disturbing experience.
17 Q All right, what did you then do?
18 A Well, Mr. Wilmouth mentioned a Mr. Lancaster, who
19 would probably be able to help us. And we saw Mr. Lancaster.
20 He felt that the will was more or less an ambiguous will, to
21 the best of my memory; he may have mentioned that. And no
22 settlementwas mentioned or no arrangement was made on this
23 particular day.
24

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1 MR. MCNALLY: Excuse me; I'm not sure what
2 the witness is talking about, whether Mr. Lancaster
3 said or Mr. Wilmouth said------
4 THE COURT: She's talking about what Mr.
5 Lancaster said now, I believe.
6
7 WITNESS: (Continuing)
8 A. Yes; I'm sorry. We were with Mr. Lancaster at
9 this time. Nothing was done the first day. He told us to come
10 back the next morning, and we did. We came back the next
11 morning.
12 Q. Go ahead.
13 A. And the agreement was dictated to his secretary
14 and duly signed. This was agreed to on my part because I felt that
15 I was losing everything that I had, and it was an attempt to
16 salvage some of my property.
17 Q. Did he advise you, Mr. Lancaster, to your know-
18 ledge?
19 A. Not to my knolwedge. Mr. Lancaster did not inter-
20 pret the will to me; not to my knowledge did he advise me.
21 Q. Now, who suggested this agreement, then, if he
22 didn't?
23 A. The agreement was brought about by attempting to
24 salvage some property for myself.

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1 Q So, was it your suggestion?

2 A It must have been my suggestion.

3 Q Must have been your suggestion?

4 All right, who paid the attorney?

5 A I paid the attorney.

6 Q Was there any transfer of money between you, or

7 any consideration between you and Mr. Pigg, to your knowledge?

8 A No.

9 Q And then everything was written by Mr. Lancaster

10 and was more or less at your suggestion, you think?

11 A Yes.

12 Q Do you recall?

13 A I don't think I realized the full significance of

14 it.

15 Q Do you recall whether or not he advised you to have

16 the Court interpret it?

17 A I don't recall that he told me to have the Court

18 interpret it.

19 Q You do not recall that?

20 A No.

21 Q Did Mr s Hoy ever suggest that? Did anyone ever

22 suggest that, to your knowledge?

23 A No.

24 Q All right, now; at that time you made that agreement,

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1 were you aware of what ownership you had in the land?

2 A. No, I don't think so.

3 Q. Did you think the agreement gave Mr. Pigg all of

4 the land at your death?

5 A. Yes, I probably did.

6 Q. All right, describe to the Court, then, your frame

7 of mind; your husband had been dead how many days then?

8 A. What was the date of the agreement; do you have

9 that?

10 Q. It was the 26th of July; your husband died------

11 A. My husband had been dead nineteen (19) days. He

12 died on the 13th.

13 Q. Did any time elapse between the time you and Mr.

14 Pigg first saw Mr. Wilmouth and Mr. Lancaster and the time the

15 agreement was drawn? Did any time elapse?

16 A. Yes; one day.

17 Q. Did you see Mr. Lancaster a week or more before?

18

19 THE COURT: I think she already testified

20 that she went back the next day, the next morning.

21 MR. PETTUS: Well, I think she's confused,

22 because apparently the agreement is drawn on the

23 26th. She first went to see Mrs. Hoy on a Monday.

24

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1 BY MR. PETTUS: (Continuing)

2 Q You saw Mr. Wilmouth on a Monday; you did not see

3 Mr. Lancaster on that date?

4 A No.

5 Q Which is a Monday after the 19th?

6 A To the best of my knowledge.

7 Q Then you went to Mr. Lancaster the following

8 Monday or Tuesday, a week or more later?

9 A Perhaps.

10 Q Well, did Mr. Pigg remain at your home during that

11 time, or did he go away and come back from the time the will was

12 probated?

13 A I think I should consult my notes on that a little

14 bit, because there was a period of time in there that they did

15 go away to Chatham, and they came back.

16 Q All right, describe to the Court, then, your

17 feelings, your emotions, and so forth, at the time of this

18 occasion?

19 A Well, there would be no way that you could

20 describe your feelings. They were one of grief, and I was

21 concerned about losing, I was concerned about losing the property.

22 Q When you say you were concerned about losing the

23 property; what property?

24 A Well, I had been told that I had nothing; I had

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1 been told by an attorney that I had nothing. I had at that
2 time no alternative but to believe that I was being told the
3 truth.
4 Q Do you recall talking to Mrs. Pigg prior to
5 making the agreement?
6 A Well, they left me for about, they left and went
7 home on the------I have it here somewhere; let me see.
8 Q I will try to help you, ask you this question:
9 Mr. Haley was buried on Friday, and you went to Charlotte Court
10 House the following Monday.
11 A That's right.
12 Q After you went to Charlotte Court House, did you
13 immediately that day or the next day go to see Mr. Wilmouth?
14 A I think that we went by to see Mr. Wilmouth after
15 we had probated the will, and I believe it was on the same day.
16 I am not absolutely sure.
17 Q That's the Monday after your husband's burial on
18 Friday?
19 A I'm not absolutely certain; but Mr. and Mrs. Pigg
20 left on July, it was either the 21st or the 22nd, which is
21 either Thursday or Friday; and they returned to my home on the
22 first part of the following week. And Mrs. Pigg and I were
23 together on the lawn, and Mr. Pigg was walking over the farm, to
24 the best of my knowledge. I think he said he was walking over

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1 the farm. And I said to Mrs. Pigg, I said, "We need to have a
2 serious conversation regarding the property". And her remark
3 to me was, "Yes, this sort of thing can destroy good relations",
4 but no discussion was had.
5 Q. Was that after they had gone to Chatham?
6 A. That was after they had gone to Chatham and came
7 back.
8 Q. And was that-------
9 A. And that was after that that we returned to
10 Farmville.
11 Q. And saw Mr. Lancaster?
12 A. And Mr. Wilmouth referred us to Mr. Lancaster;
13 and I might have had my dates mixed up; I'm sorry.
14 Q. Describe your emotions, your condition, mental
15 condition, et cetera,on the second trip to Mr. Lancaster, or
16 second trip to Farmville after the Piggs came back from Chatham,
17 when you made the agreement?
18 A. Well, it's very difficult to describe emotions.
19 I was naturally, I'm sure I was perhaps, I know I was grieved;
20 I know I was upset about what I felt about losing my property.
21 I felt it was unfair, but I felt that I had really no alterna-
22 tive but to attempt to salvage some of the property, and that was
23 the only method that I knew that I could use to do it.
24

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1 MR. PETTUS: May it please the Court;
2 could we have about a five minute recess?
3 THE COURT: Court will recess for five
4 minutes.
5
6 (Brief recess)
7
8 THE COURT: All right, is everyone ready?
9 MR. PETTUS: If it pleases the Court, we
10 have no more questions of Mrs. Haley at the moment.
11
12 CROSS-EXAMINATION
13 BY MR. MCNALLY:
14 Q Mrs. Haley, I'll try to be as brief as possible.
15 Let me clarify some matter at the outset. I believe you have
16 previously testified in this case, have you not, at your
17 deposition?
18 A I'm not hearing you; I'm sorry.
19 Q All right; can you hear me now?
20 A Yes; thank you.
21 Q Mrs. Haley, you have previously testified in this
22 case, have you not, at your deposition?
23 A I have in my deposition; I have given a deposition.
24 Q And at that time, the time you gave your deposi-

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1 tion, you have testified that there has been no coercion,
2 undue influence of any sort practiced upon you by Mr. Pigg
3 which would have induced you to enter into this agreement; is
4 that correct?
5 A Not directly.
6 Q Well, you testified, if you may recall, that there
7 was no undue influence?
8 A Uh-huh.
9 Q Practiced upon you; is that correct?
10 A That's correct.
11 Q There were no threats by Mr. Pigg?
12 A No threats.
13 Q That caused you to sign the agreement?
14 A No threats.
15 Q Did he defraud you in any way, trick you into
16 signing the agreement?
17 A No.
18 Q He did not? Are you hesitating? I just want to
19 clarify.
20
21 MR. PETTUS: If it pleases the Court; I
22 don't think she can answer that question. She doesn't
23 know.
24 MR. MCNALLY: I'm asking the witness to

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1 testify whether or not--------

2

3 WITNESS:

4 A. Not to my knowledge.

5 Q. All right; and I believe you have also testified

6 that at the time you signed the agreement you were not incompe-

7 tent to sign it; you did not consider yourself incompetent; is

8 that correct?

9 A. That's correct.

10 Q. You considered yourself competent to sign the

11 agreement?

12 A. I have considered myself competent all along.

13 Q. All right, thank you. Now, you have testified at

14 some length about the relationship of your deceased husband

15 and Dale Pigg; the name you go by; he goes by the name of

16 Dale Pigg, not Garland?

17

18 MR. PETTUS: All of these call for a legal

19 conclusion.

20 THE COURT: He asked about the relation.

21 He hasn't asked the question yet.

22 MR. PETTUS: No, the earlier question about

23 whether or not he had practiced fraud and so forth.

24 THE COURT: Mr. Pettus, I'll take it for

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1 what it's worth. I understand.

2 MR. PETTUS: Excuse me.

3

4 BY MR. MCNALLY: (Continuing)

5 Q My last question to you was whether or not Mr.

6 Pigg goes by the name of Dale; he doesn't go by the name of

7 Garland, does he?

8 A To me he's known by the name of Dale.

9 Q And he was known to your husband by the name of

10 Dale?

11 A Yes.

12 Q Now, would it be fair to describe the relationship

13 between your deceased husband and Dale Pigg as a very close

14 one, would it not?

15 A Reasonably close, I suppose.

16 Q You, yourself, had remarked on occasions as to

17 the remarkable similarity of the two people; that is, your

18 deceased husband and Dale, in terms of their outlook on life,

19 have you not; you felt they were very much alike; is that

20 correct?

21 A Not particularly.

22 Q In any event, your testimony is that your deceased

23 husband and Mr. Pigg were reasonably close. Were you aware of

24 any facts--------

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A. Well, he visited; yes; he came to our home frequently, and he was a guest.

Q. And your husband assisted him in getting into college, and he assisted him in purchasing this land?

A. Yes, he did.

Q. And the Piggs, Mr. and Mrs. Pigg and their children have visited you almost every Thanksgiving and Christmas since they've been married, have they not; and they visited you in the summer?

A. Yes, they visited.

Q. They were the first people who you called to come and assist you after your husband died, were they not?

A. They were available to me. Yes, I called them.

Q. And they came and assisted you with the burial of your husband?

A. They were there.

Q. And they were there?

A. They were there.

Q. Mrs. Haley, I want to go back for a moment to your conference or conferences with Preston Lancaster. Now, your testimony is there were two conferences; is that correct; two meetings?

A. Two meetings; yes.

Q. Was there any discussion in the first meeting?

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A Would you explain to me just what information you would like to have regarding conferences?

Q Well, I would like to have you tell the Judge what you, yourself, and Dale Pigg and Mr. Lancaster discussed during either your first or your second meetings with Mr. Lancaster, or both meetings to the extent that you recall this discussion?

A Well, we had been sent to Mr. Lancaster by Mr. Wilmouth.

Q You had been referred to Mr. Lancaster?

A We had been referred to Mr. Lancaster by Mr. Wilmouth.

Q For what purpose?

A For the purpose of he aiding us in the, I suppose you would say it was the arrangement of some, just could be the beginning of what later came out as the agreement.

Q Well, I'm afraid I don't understand you. My question formerly is this: Did Mr. Wilmouth tell you to go to Mr. Lancaster and tell you to do a certain thing with Mr. Lancaster?

A No.

Q What did Mr. Wilmouth say to you in regard to going to Mr. Lancaster? Just tell us what he said to you?

A He said he would be able to help us.

Q He said he would be able to help you?

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1 A. To the best of my memory that was the instruction,
2 or the words that he used; to the best of my memory that would
3 be the meaning of the words.
4 Q. Okay; Mr. Wilmouth did not purport to give you a
5 legal opinion as to what this will meant, did he; or did he?
6 A. As I have stated before, he said to me, "You will
7 have the interest from the money; you will have the proceeds
8 from the farm".
9 Q. Well, my question is similar to this: Was it your
10 understanding Mr. Wilmouth was rendering a legal opinion,
11 construing the will for you? Did he purport to act as a lawyer?
12 A. I think he was reitterating what had already been
13 said by Mrs. Hoy.
14 Q. Now, going back to my earlier questions; he sent
15 you to Mr. Lancaster for what purpose?
16 A. I felt that I had answered this question. I
17 feel that I have answered this question previously.
18 Q. Well, what was your answer?
19 A. That we were upset; or advised, sent or advised
20 to go to Mr. Lancaster to be, for Mr. Lancaster to advise us
21 what we might do to perhaps come to some agreement.
22 Q. Did Mr. Wilmouth suggest to you that you and Mr.
23 Pigg should enter into an agreement?
24 A. I'm sorry?

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1 Q Did Mr. Wilmouth suggest to you or to Mr. Pigg
2 that the two of you should enter into an agreement subsequent to
3 this will?
4 A I do not recall that he did.
5 Q Did he simply tell you to go to Mr. Lancaster, and
6 Mr. Lancaster would help you? I'm simply trying to find out
7 what happened. If you don't remember, you can simply say you
8 don't remember.
9 A I don't recall the details.
10 Q All right, let us go to your meeting with Mr.
11 Lancaster. Let us go to the first meeting, the first conference,
12 whatever you want to call it. Tell the Judge, tell me what
13 happened at that meeting; tell him what you said, what Mr. Lan-
14 caster said, what Mr. Pigg said, if anything?
15 A To the best of my memory, Mr. Lancaster stated that
16 there was an ambiguity in the will.
17 Q Mr. Lancaster told you there was an ambiguity
18 in the will; is that right?
19 A To the best of my recollection.
20 Q Did you hand the will to Mr. Lancaster and say,
21 "What does this mean?" And he looked at it and said, "There is
22 an ambiguity"; is that how it happened?
23 A No, I am sure that it did not happen in this
24 particular way.

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1 Q Well, can you tell us how it did happen?

2 A It's very difficult to remember all of the details.

3 Q Well, simply tell us what you remember.

4 A We were told to come back; he didn't make a

5 decision on this first visit, and we were told to come back on

6 the next morning.

7 Q Were you told by Mr. Lancaster to come back the

8 next morning?

9 A Yes, we were.

10 Q And this was after he told you that the will was

11 ambiguous; is that correct?

12 A That's correct.

13 Q Do you recall any statements you made to Mr.

14 Lancaster at this time or any directions?

15 A I do not recall at the moment.

16 Q Do you recall any statements that Mr. Pigg made to

17 Mr. Lancaster at this time?

18 A I believe that Mr. Pigg-----this was probably the

19 next morning, next day, I'm sorry; this was probably the next

20 day that Mr. Pigg asked Mr. Lancaster when he was discussing the

21 agreement, would this mean that his heirs would inherit the

22 land.

23 Q Had there been prior statements made before Mr.

24 Pigg saw the agreement and had this response? In other words,

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1 did you say anything in the second meeting to Mr. Lancaster
2 indicating your wishes in regard to this agreement?
3 A. I'm sorry; but I didn't get your question.
4 Q. Did you tell Mr. Lancaster what you wanted him to
5 do? Did you say, "Mr. Lancaster, I want you to draw up an
6 agreement, and in the agreement I want you to do this and that"?
7 A. No.
8 Q. Did you say anything like that?
9 A. I think that it would-----I was going to Mr.
10 Lancaster for advice and for help, and I think it would have
11 been, I am not that knowledgeable that I would say this, to Mr.
12 Lancaster to do thus and so.
13 Q. I'm not asking you what you would have done, but
14 what you remember doing and saying. If you don't remember, say
15 you don't remember.
16 A. Not in detail.
17 Q. Tell me what you do remember.
18 A. I feel that I have told you all that I remember.
19 Q. In other words, your testimony is that you do not
20 recall any other statements that you made to Mr. Lancaster at
21 either of these meetings; is that correct?
22 A. I do not recall at the moment.
23 Q. You do remember that in your direct examination and
24 direct testimony testifying that you told Mr. Lancaster what

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1 you wanted; isn't that correct, or words to that effect? You
2 suggested the terms of the agreement, did you not?
3 A. Perhaps.
4 Q. Does that mean yes or no? If you don't remember,
5 you should say you don't remember.
6 A. Yes.
7 Q. In other words, you dictated the terms of this
8 agreement to Mr. Lancaster, and he translated them into legal
9 terms for you; isn't that right?
10 A. I do not recall dictating the terms to Mr.
11 Lancaster.
12 Q. Well, let me be less technical. You told Mr.
13 Lancaster what you wanted; isn't that correct?
14 A. It wasn't what I wanted: that was being executed.
15 It was a problem, or an effort on my part to have some solution
16 to the problem.
17 Q. I understand your explanation that you've already
18 given as to your motivation for doing so at the time. But my
19 question is much simpler. Did you or did you not tell Mr.
20 Lancaster what you wanted to do in this agreement?
21 A. As I have said before, wanting to---------
22 Q. You can simply say yes or no.
23
24 THE COURT: I think she already indicated

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1 that she indicated to him what the problem was
2 and what she wanted to do about it.
3 MR. MCNALLY: If that's clear, Your Honor.
4 THE COURT: That's clear to me.
5
6 BY MR. MCNALLY: (Continuing)
7 Q Now, Mrs. Haley; it's clear to you today, is it,
8 that this contract which is, this agreement which is the subject
9 of this litigation, dealt only with your husband's, deceased
10 husband's part of the farm?
11 A I'm not, I did not hear your question.
12 Q It is clear to you today that the agreement which
13 we're discussing today deals only with your deceased husband's
14 half of the farmland; isn't that correct? It doesn't deal with
15 your half; isn't that right? You understand that, don't you?
16 A No.
17 Q You haven't discussed this with your lawyers?
18 Mrs. Haley, my question is; have you discussed this
19 specific question with your attorneys? I'm not asking for their
20 response. You can simply say yes or no?
21 A Well, my attorney and I have, I have discussed the
22 question; but I don't know that we went into intricate detail on
23 this particular question.
24 Q Now, Mrs. Haley, your testimony has been that Mr.

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1 Lancaster said this will is ambiguous, is that correct?

2 A He aid there was ambiguity in the will.

3 Q Do you know what ambiguity means?

4 A Well, my definition of ambiguity is that it isn't

5 clear.

6 Q I'm sorry?

7

8 THE COURT: That it isn't clear.

9 BY MR. MCNALLY: (Continuing)

10 Q And was that the same understanding you had at

11 that time?

12 A Well, that has been my definition of ambiguity.

13 Q That has always been your definition; in other

14 words, when you saw Mr. Lancaster and discussed this with him,

15 he told you the will was not clear; is that right?

16 A He stated to me that he felt there was an ambiguity

17 in the will.

18 Q Did you consider at that time asking Mr. Lancaster

19 or any other attorney to research this will and interpret its

20 provision for you?

21 A No.

22 Q You did not request him to do this, did you?

23 A No.

24 Q And you did not consult any other attorney for

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1 another opinion, did you?

2 A. No, I did not.

3

4 MR. MCNALLY: May I have the Court's

5 indulgence for just a moment?

6 THE COURT: Yes.

7

8 BY MR. MCNALLY: (Continuing)

9 Q. I have one other question with Mr.Lancaster, Mrs.

10 Haley; did Mr. Lancaster ever state to you during either of

11 these meetings that he recommended to you that the Court be

12 petitioned to construe this will, to interpret its provision

13 for you?

14 A. I am certain that he did not; and if he had I

15 feel sure I would have remembered it.

16 Q. Okay.

17 A. Because I was clutching at straws.

18 Q. Now, it's clear that the holographic will, the

19 handwritten will, post-dated this typewritten will you're talking

20 about? The handwritten will was written after the typewritten

21 will you referred to?

22 A. Yes.

23 Q. And it was the handwritten will which is probated,

24 and it's the handwritten will which is the subject of this litiga-

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tion; is that right?

A The question again, please?

Q It was the handwritten will which was probated; right?

A Yes.

Q And there is no question that your husband wrote this handwritten will, right?

A No.

Q Okay; there is no question --------

A There is no question that my husband did not know that this will was among his papers, and there is no question in my mind that it was a will that was intended to be probated.

Q You have received the benefit under this agreement, the agreement which is the subject of this law suit, have you not? In other words, you have been renting this property and receiving the rents from it; is that right?

A I have.

Q Approximately how much money have you taken under this agreement? It's over a Hundred Thousand ($100,000) Dollars, isn't it?

A I'm sorry.

Q How much money did you realize free and clear absolutely under this agreement that you entered into with Mr. Pigg?

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1 MR. PETTUS: May it please the Court, she
2 cannot answer that question, because that is a
3 question of law.
4 THE COURT: That's a legal question; no
5 doubt about that. You can ask her how much money
6 she's gotten from the farm.
7 MR. MCNALLY: My question is different from
8 that.
9 THE COURT: I understand; but you're asking
10 for a legal opinion, whether or not this agreement
11 is good. That's what I'm here for.
12 MR. MCNALLY: Perhaps I should rephrase the
13 question.
14
15 BY MR. MCNALLY: (Continuing)
16 Q What I'm asking, Mrs. Haley, is in light of the
17 recitations and the agreement which you can read there; it is
18 clear that you take personal property of your deceased husband
19 free and clear; is that right?
20 A Ask the question again, please.
21 Q Mrs. Haley, my question is this: It is clear that
22 under the agreement you took all of your deceased husband's
23 personal property free and clear of any claim on the part of
24 Mr. Pigg. That was your understanding; is that right?

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A. Yes.

Q. And he has never made any claim on any of this personal property, is that right?

A. No.

Q. My question is this: Do you have any idea, factually, as to the value of this personal property?

A. Ask me the question again?

THE COURT: Do you have any idea how much the value of the personal property has been?

WITNESS: Not right-off.

THE COURT: Well, some idea.

WITNESS: I have it listed somewhere. It's in the yellow pages.

MR. MCNALLY: If the witness doesn't know----

THE COURT: She stated she doesn't know exactly, but if you do have some idea-------

WITNESS: Well, it wasn't a great amount of money. He had a '72 Chrysler Newport car that the Blue Book value was $1,395.00; and that was the most valuable of his personal property.

THE COURT: How much money? Personal property is money also.

WITNESS: ABout a hundred thousand ($100,000)

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1 dollars.

2 MR. PETTUS: That's not correct.

3 THE COURT: All right.

4 MR. MCNALLY: That's what we're trying to

5 establish, Your Honor, and the witness just testified---

6

7 BY MR. MCNALLY: (Continuing)

8 Q Mrs. Haley, I want to ask you about your conver-

9 sation with Mr. and Mrs. Pigg either going to Mr. Wilmouth's

10 office or coming from his office; now you mentioned that you

11 felt you had been sabotaged; is that correct? These were your

12 words?

13 A They were my words.

14 Q Did you feel you had been sabotaged by your hus-

15 band or sabotaged by Dale Pigg or by someone else?

16 A I think in all probability, I had no one in mind

17 when I made that remark; it was a general all-over feeling,

18 that of extreme frustration.

19 Q Well, who were you frustrated with; anyone in

20 particular?

21

22 THE COURT: I think she just stated it was

23 a general over-all feeling, Mr. McNally. I gather

24 from her testimony she has never said anything about

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1 Mr. Pigg trying to undermine or sabotage her in any
2 manner. I don't gather that from her testimony.
3 She was just upset; lost her husband thirteen (13)
4 days before, and she was faced with the fact she
5 didn't know what she had. In fact, rather, she had
6 lost everything she had.
7 MR. MCNALLY: If that's Your Honor's
8 understanding.
9 THE COURT: That's my understanding.
10 MR. MCNALLY: If I could have the Court's
11 indulgence just a moment.
12
13 BY MR. MCNALLY: (Continuing)
14 Q Mrs. Haley, you testified previously in this case
15 that your husband wrote a genealogical book which you caused
16 to have published after his death; is that correct?
17 A Mr. Haley left a completed genealogical manuscript.
18 Q And did you cause that to be published?
19 A I did.
20 Q You published it under your own name?
21 A Not necessarily under my own name.
22 Q Well, you list yourself as the author?
23 A It was listed that way, and it wasn't at my
24 instructions that it was done in that particular manner. It was

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1 the publisher's idea of what was the correct thing to do
2 regarding the manuscript. I talked to the publisher about it.
3 I was a little distressed over the fact that Mr. Haley's name
4 was not on the front of the book.
5
6 MR. MCNALLY: Your Honor, let me show you
7 an exhibit that we would ask be marked as Defendant's
8 Exhibit 3.
9 THE COURT: I take it, you gentlemen have
10 seen this?
11 WITNESS: Yes, they have seen it.
12 (Whereupon, Exhibit #3 was marked for identification.)
13 BY MR. MCNALLY: (Continuing:
14 Q You are listed as the author, and your photograph
15 appears in it, does it not?
16 A No, I'm not considered the author.
17 Q But you are listed as the author. Where did the
18 publisher get this information which is about the author; and
19 I'll give you a copy of this?
20 A What bearing does this have on the situation?
21 Q I'm asking you the question.
22 A What is your question?
23 Q My question is; how does the publisher get this
24 information about the author? You can look at the exhibit.

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A Well, that was sent to the publisher.

Q Did you send it to him?

A Yes.

Q You provided the information about yourself?

A I'm having trouble hearing you. I'm sorry.

THE COURT: You provided the information about yourself?

WITNESS: Yes.

BY MR. MCNALLY: (Continuing)

Q And you gave permission to the publisher to list yourself as the author of this book, did you not?

A No.

Q Did he do it without your permission?

MR. PETTUS: May it please the Court? This book has no bearing on this.

Your Honor, apparently at this point it might be wise to go into the details of how the book was published. Do you mind?

MR. MCNALLY: I'd prefer to ask the questions.

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1 WITNESS:

2 A. The publisher of this book did this book in what
3 I felt, I trusted his knowledge on this. He is a publisher;
4 he knew my husband was deceased. He knew that my husband had
5 written the manuscript, but it has not been any question about
6 that. It has no bearing on this.

7

8 MR. MCNALLY: I have no further questions.

9 MR. PETTUS: Are you through?

10 MR. MCNALLY: Yes, I am.

11

12 REDIRECT EXAMINATION

13 BY MR. PETTUS:

14 Q. Mrs. Haley, following that line of questioning,
15 what did you pay the publisher to publish this book?

16 A. What did I pay the publisher?

17 Q. Yes.

18 A. Around Twenty-one Thousand ($21,000) Dollars for
19 a thousand (1000) copies.

20 Q. Why did you do it?

21 A. I did it in memory of my deceased husband. It
22 was a manuscript that he had left, and I felt the only thing
23 that I could do was to have it published.

24 Q. Did you employ Mrs. Garland Pigg, or pay her in

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respect to this?

A. Mrs. Garland Pigg volunteered to edit the manuscript, for which I paid her, and I paid her well.

Q. How much did you pay Mrs. Garland Pigg?

A. I paid Mrs. Garland Pigg a Thousand ($1,000) Dollars to edit the manuscript. The manuscript was essentially finished. The only thing, my husband said to me; he said, "It's essentially finished. It does need a little bit of polishing". What she did was perhaps to do some corrections on the manuscript from an English standpoint.

Q. Why did you employ her and give her a Thousand ($1,000) Dollars?

A. Why?

Q. Yes.

A. Well, it was just sort of habit. I really don't know.

Q. All right; he's asked about your credibility here, he says, because you didn't write the book; yet you said you didn't; so that's what he's jumping on. Why did you say the book was by you?

A. I did not say at any time that I wrote the book.

Q. Whose idea was it to put by Eva F. Haley?

A. It was the publisher of the book.

Q. Did he encourage you to publish it and pay him

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Twenty Thousand ($20,000) Dollars?

A The publisher?

Q Yes.

A Do I need to answer that?

MR. PETTUS: I have no further questions about that.

BY MR. PETTUS: (Continuing)

Q Let me ask you this: I have here an inventory of your estate, and I'll ask you if it's correct.

A Yes, you do, and if you don't have it, it's in my notes, right on the end of the page there; right on the end of the table there. (Indicating) The yellow sheets in the back would be the inventory, Mr. Graves. That's it right there.

Q Look at that inventory and read it off to the Court, the inventory, what assets you had.

A The personal property listed in the name of Edward Franklin Haley; 1972 four-door sedan, Five Hundred ($500) Dollars; a farm tractor and equipment Three Hundred ($300) Dollars; a Shasta camping trailer, which was in reality mine, but he had the license on it, and it was listed under here for some reason I don't understand, but it was in this amount.

Q How much?

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A. Two Hundred ($200) Dollars.

Q. Keep going; what else?

A. Well, for the First National Bank in Farmville, was a hundred and fifty certificate.

Q. Hundred and fifty what?

A. Hundred and fifty ($150) dollars.

Q. Keep going; list the assets that you have there?

A. Six Thousand.

THE COURT: From whom?

A. It was a certificate that was Six Thousand ($6,000) Dollars; it was from the First National Bank.

THE COURT: Were these certificates in his name alone, or in both of your names?

WITNESS: This was in his name alone.

BY MR. PETTUS: (Continuing)

Q. Read what was in his name alone, is what I'm trying to do.

A. Oh, yes; the Hundred Fifty ($150) Dollars, Six Thousand ($6,000) Dollars, and Fifteen Thousand and Eight Hundred ($15,800) Dollars, which made a total of Twenty-two Thousand Nine Hundred and Fifty ($22,950) Dollars.

Q. Is that all of the personal property?

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A. Yes.

Q. Now, when you referred to a Hundred Thousand ($100,000) Dollars; were you including the real estate? When you said a Hundred Thousand ($100,000) Dollars a while ago, are you talking about the real estate?

A. It was the money.

Q. Is that all the money you have, what you listed there?

A. This is the money that was in Mr. Haley's name only.

Q. Right; now; that's all that Mr. Haley had only?

A. To the best of my knowledge.

Q. And anything else that he had was real estate or joint money; is that right?

A. Yes.

Q. All right; do you know what the real estate was worth, appraised at? You can look at your paper. Don't you have it written on that?

A. The real estate was----------

MR. MCNALLY: Your Honor, I object to her testifying to the document unless it's based on her knowledge.

THE COURT: Is this document written by you?

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WITNESS: No, it is not; it's written by Mrs. Pigg.

THE COURT: It's written by Mrs. Pigg?

Do you know what the property------You had to fix up an estate tax, didn't you?

WITNESS: Yes.

THE COURT: Do you know what the real estate was appraised at?

WITNESS:Ninety-six Thousand ($96,000) Dollars.

THE COURT: Ninety-six Thousand?

MR. PETTUS: I have no further questions.

MR. MCNALLY: I have no further questions, Your Honor.

THE COURT: All right; you may step down now.

THE WITNESS STANDS ASIDE:

MR. PETTUS: We rest, Your Honor.

THE COURT: All right.

MR. MCNALLY: Your Honor, at this time I would reserve my motion on the part of the defendant to strike the plaintiff's evidence, and reserve that

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until the conclusion of the defendant's testimony.

THE COURT: All right.

MR. MCNALLY: With Your Honor's permission, we'll go ahead and call the first witness; Dale Pigg.

GARLAND DALE PIGG, having been first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. MCNALLY:

Q Mr. Pigg, I'm going to ask you to speak up and speak directly to the Judge. State your name and address, please.

A Garland Dale Pigg; 6412 Endwood Drive, Springfield, Virginia.

Q What is your occupation?

A I teach school.

Q All right; I want you to describe to the Judge in your own words what the nature of your relationship with Frank Haley was. Tell how you met him, and so forth.

A The first time I remember meeting Uncle Frank was when he came to my home in Chatham when I was very small. And I believe Mrs. Haley reminded me of what took place. He made

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1 the statement that he'd like for me to go home with him. And
2 as you might suspect, I was just a small boy, and the next thing
3 she said she remembered was that I came downstairs with my
4 suitcase in my hand ready to go.
5
6 MR. PETTUS: I don't follow that, Your
7 Honor.
8 THE COURT: When did she say that?
9 WITNESS: This was speaking to me; not
10 here in court.
11
12 WITNESS: (Continuing)
13 A. Okay; and I did go home, maybe not that time, but I
14 spent time with him, quite a bit of time. I guess we had a lot
15 of things in common. We agreed on a lot of things, and he had
16 a lot of influence on some of the things I did.
17
18 BY MR. MCNALLY: (Continuing)
19 Q. Your own father had died sometime around this time,
20 had he not?
21 A. A little bit later.
22 Q. Did that intensify your relationship with Frank
23 Haley?
24 A. Yes. I would come down to see Uncle Frank, and

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1 most time I would come down I would catch a ride, or if he
2 happened to be there at that time, when he was teaching at
3 Hargrave Military Academy; and I felt very close to him, because,
4 I guess, after my father's death, he was a father image for me.
5 And we worked on the farm together when I would come down.
6 It was kind of a understood thing that a job that needed to be
7 done, maybe he didn't particularly want to do, this type of
8 thing; when I came down, he would save it until I came down,
9 and we'd do this together.

10 Every Thanksgiving we would have our annual Thanksgiving
11 dinner, which went on until; the first Thanksgiving I missed, my
12 mother was very sick at that time, and I couldn't make it.

13 As I said, we worked on the farm some together when
14 I was there, and--------

15 Q You have heard Mrs. Haley's testimony as to some of
16 the things you and Frank Haley and Eva Haley did together. Is
17 that essentially correct, as far as when?

18 A Some things I think maybe that she stated one
19 way that maybe Uncle Frank saw a different way, or maybe the
20 communication between the two was not, were not real open.
21 In other words, they were two individuals, very strong-willed
22 people; and it was several things that I saw in a different way
23 than she mentioned. I don't know; I don't remember specifically
24 right off, but some I might be able to recall.

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1 Q You considered yourself close to him, and he
2 considered himself close to you; is that fair to say?
3 A Yes.
4 Q Did this closeness continue after your marriage
5 to Becky?
6 A Yes.
7 Q In other words, she and you would make certain
8 visits to the house?
9 A Yes.
10 Q Did you continue to visit the Haley farm on
11 Thanksgiving and Christmas, Easter and other holidays?
12 A Yes.
13 Q Was this something that you felt in any way that
14 Frank Haley begrudged you; that he didn't want you to be there?
15 A No.
16 Q That you were imposing on him?
17 A No, I felt welcome in his house, as welcome in
18 his house as in my own house.
19 Q Was he welcome to see you?
20 A Yes.
21 Q Was he happy to see you?
22 A Yes.
23 Q I'm going to the point of Frank Haley's death.
24 Tell the Court what happened beginning at the time you got down

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to Keysville.

A. From the time we got the call and--------

Q. Right.

A. I believe I was working in the back yard, and Becky, my wife, came out and said that Uncle Frank had passed away.

Q. She had been called by Mrs. Haley; is that correct?

A. Right.

Q. Okay, going over the business of getting down to Keysville; tell the Court what happened after you got down here.

A. This is after his death?

Q. Right; why were you called down there?

A. Well, we had been------if I can go back a minute--- when he had his first heart attack, Mrs. Haley called us and let us know, and we came down. I don't recall for sure whether I came by myself that time and my wife took the children to Chatham to their grandmother's; but, anyway, we were called and got down there, and she was at the hospital.

Q. Well, did Eva Haley or Frank Haley ever, usually call you in times of need?

A. Yes, any time.

Q. They had no children, right?

A. Right; and they knew that any need that they had, I would be glad to help them with.

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1 Q All right, now; going back to the time that you
2 learned of Frank's death, and you were down there in Keysville,
3 can you tell the Judge very briefly what you did? Did you
4 participate in the burial of Mr. Haley?
5 A Yes, I went to the funeral home with Aunt Eva
6 and picked out the casket, or helped pick out the casket.
7 Q Were you basically responsible for doing that?
8 A Both of us were.
9 Q Were you and your wife, or Mrs. Haley?
10 A Aunt Eva.
11 Q After the burial, did you assist in looking for his
12 will, a will?
13 A Yes, while he was in the hospital before his
14 death, he was in intensive care at the time, and you could go
15 in for a few minutes and talk to him, and he mentioned something
16 that Aunt Eva had said something to him about writing a will,
17 or to that effect. And he seemed to be upset about that, or
18 quite a bit so; and he told me that there was a will; that it was
19 in the top drawer of his desk. And he said not to say anything
20 to Aunt Eva, because she would be very upset about it; and that
21 was the extent of it.
22 Q You assisted in the search for this will, did you
23 not?
24 A Yes.

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1 Q And you were present when the handwritten will was
2 found?
3 A Right.
4 Q Tell the Court what happened when you found the
5 will? You were present with Mrs. Haley and your wife; what did
6 you do?
7 A Well, we-------
8 Q I'm talking about the handwritten will.
9 A Okay; we passed it around and read it; and I
10 guess after that we were glad to find it, first, because we had
11 been looking for quite a while for it. Then we brought it to,
12 I guess it was the next day, I'm not sure what day we found it;
13 but the next day we brought it into---------
14 Q Did either of you, you, your wife or Mrs. Haley,
15 have any understanding what the handwritten will meant; who got
16 what?
17 A Say that again?
18 Q Did either you or your wife or Mrs. Haley under-
19 stand what you took under that will at that time when you first
20 found it and read it?
21 A No, not exactly.
22 Q Okay; and then you went to see------
23 A ----Mrs. Hoy.
24 Q Tell the Judge what happened.

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A. Well, we brought the will in, and they asked us if we wanted it probated, or asked Aunt Eva if she wanted it probated, and she said yes. And so we went over to wherever you probate it, the Clerk's Office; and he probated the will for us that day; the best of my remembrance, that day.

Q. Did you have any discussions with Mrs. Hoy after that, or were you present when you had any discussions?

A. Not really discussion. We stayed, lingered just a minute talking to the gentleman right here; I'm not sure what his title is. And we lingered just a minute talking to him, and Aunt Eva went on out with Mrs. Hoy. And everything seemed to be, you know, pretty well okay; and then Aunt Eva and Mrs. Hoy were going on down the sidewalk in front of us. And Mrs. Hoy said good-bye, and we went on to our house. And after that, Aunt Eva seemed to be quite upset.

Q. You weren't present when Mrs. Haley had a discussion with Mrs. Hoy?

A. No.

Q. Your wife was?

A. No, I don't recall Becky being present during any discussion. Now, before we had probated it, we talked to her about it, and she said it was a legal will.

Q. Mrs. Hoy at that time did not purport to tell you what was in the will or what the will meant, did she?

1 A. No; she didn't say the will means this or that.

2 Q. All right, now; after you left the Court House,

3 did you go directly to Mr. Wilmouth's office, or was there a

4 break?

5 A. Yes.

6 Q. You went directly to his office?

7 A. Uh-huh.

8 Q. All right; tell us what happened either on your

9 way there or when you got there. Did you have a conversation

10 with Mrs. Haley at that time?

11 A. Yes; she seemed to be very upset at that time about

12 evidently what had exchanged between her and Mrs. Hoy, and seemed

13 more hostile, I guess, towards whatever the discussion had been.

14 And she made the statement that she had been sabotaged, and

15 the feeling was that I got from that, she was talking directly

16 to me; that I felt like she was indicating that I was trying to

17 sabotage her; and that Uncle Frank and I had done something

18 together; I don't know what.

19 Q. Uh-huh.

20 A. To try to take things away from her or sabotage her.

21 I don't know exactly what she meant by that statement.

22 Q. You had no discussion with her about what she

23 meant, did you?

24 A. It was rather difficult to discuss, when you've

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1 been more or less accused, or I took it I was being accused, of
2 trying to take something from her when I wasn't.
3 Q Did you have any discussion with her at that time,
4 what you thought Frank would have wanted as disposition of his
5 property?
6 A Yes; I recall one statement she made, and it was
7 more or less she was doing the talking then and I was doing the
8 listening; I guess is one way to put it.
9 Q Your wife was present?
10 A Yes; she was in the back seat, and I was driving.
11 And she more or less indicated that Uncle Frank and her had
12 meant for me to have the farm and property but not the money.
13 Q So, her conern was over the money at that time?
14 A It seemed to me. See, I didn't know what Mrs.
15 Hoy had said, so I really didn't know exactly; but my feeling was
16 that she felt like she didn't have any money at all.
17 Q Uh-huh; but you do recall her making that state-
18 ment?
19 A She said that"Uncle Frank and I always wanted you
20 to hve the farm, and we didn't intend for you to have the money".
21 Q Tell us what happened when you got to Mr. Wil-
22 mouth's office.
23 A Well, we went in, and we had the will with us, I
24 believe, or a copy of it; and we were going there strictly for

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1 tax purposes, to find out what we needed to do to settle the
2 estate or whatever needed to be done there.
3 Q Well, did Mr. Wilmouth look over the will, and did
4 he interpret the will?
5 A I recall he looked over it, but he did not in-
6 terpret it. It was more or less, the only interpretation was
7 that of the tax thing, you know, the way, if this is true, then
8 this is true. It wasn't any interpretation from a legal form
9 whatsoever, that I took it.
10 Q Well, do you recall any statements made by Mr.
11 Wilmouth concerning Mr. Lancaster? Did he refer you to Mr.
12 Lancaster?
13 A Yes; I think it came up in the conversation to
14 talk to a lawyer, and he mentioned Mr. Lancaster.
15 Q He, in other words, suggested that you go to see a
16 lawyer?
17 A Yes.
18 Q And he mentioned Mr. Lancaster's name?
19 A Now, I'm not sure; I believe we brought up the
20 idea of, you know, to see a lawyer.
21 Q Who is we?
22 A And asked if he knew one that he would refer us
23 to.
24 Q Did you bring up the idea, or did Mrs. Haley bring
up the idea?

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A. I think Aunt Eva did.

Q. And he recommended Mr. Lancaster?

A. Right.

Q. Now, when was it that you saw Mr. Lancaster?

A. If I recall, we went by his office that afternoon, and he was not in; and I'm not sure whether we saw, I believe we saw his secretary that day and set up an appointment.

Q. All right; was the appointment for the next day or sometime after that?

A. I believe it was sometime after that.

Q. Okay.

A. About a week, if I recall.

Q. All right; were you present at the meeting with Mr. Lancaster?

A. Yes.

Q. Okay; tell the Judge what happened at that meeting from the time you walked in the door until the time you signed the agreement, to the best of your recollection.

A. Well, we went in, and Aunt Eva said that we wanted to draw up an agreement.

Q. Did she say this to pu or to--------

A. ------to Mr. Lancaster. If I recall, we were in the room together, my wife and I and Mr. Lancaster and Aunt Eva.

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1 Q. Had there been any prior discussions between you
2 and Mrs. Haley concerning the drawing up of an agreement? Did
3 she mention to you this was the purpose of going to Mr. Lancaster?
4 A. I recall sometime in between that she had wanted
5 to change it, to clarify the will or whatever it was; change
6 the implication of the will. And evidently-----I'm not sure on
7 this, whether Mrs. Hoy had said that she could draw up an agree-
8 ment to this effect or not-------but anyway, she came up with
9 the idea to draw up an agreement.
10 Q. It was her idea?
11 A. Right; in fact, it was several days that this was
12 more or less in the air thing about it; because at that time
13 this seemed to be the main thing on her mind, this drawing up of
14 an agreement.
15 Q. So, when you came back------Well, after you left
16 Mr. Wilmouth's office and stopped by Mr. Lancaster's office and
17 made the appointment to see him several days after, did you stay
18 with Eva Haley or go back to Chatham or what?
19 A. We stayed, I'm not sure whether it was that night
20 after we had seen him; but we did go back to Chatham, because
21 the children had been there with their grandmother, and it had
22 been several days we had been away from them.
23 Q. So, when did you come back; a couple days after
24 that?

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A. Two (2) or three (3) days.

Q. Did you have any discussion with Eva Haley at that time or either before you went to Mr. Lancaster's office, about what the agreement should contain?

A. The only thing that I can recall is that she wanted to draw the agreement up; and again, she mentioned what she did before, going to Farmville from Court House, here; said, "We both wanted you to have the property", and also included the two tenant houses; they felt whoever had that house should have the property next door. And she said, "We both wanted you to have the farm".

Q. But what did she say about the money?

A. That she wanted control of the money.

Q. Well, did you agree with her that this was an appropriate disposition?

A. Yes; I told her if that's what she wanted, you know; she seemed to be dwelling on this quite a bit; if that's what she wanted, we could go ahead and do it.

Q. So, then you went to see Mr. Lancaster?

A. Yes.

Q. Now, again; tell the Judge what happened at that meeting.

A. Well, when we went in, as I said, we were all in the room together; and Mr. Lancaster looked over the will, and

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1 he asked Aunt Eva what she wanted, you know, what kind of agree-
2 ment she wanted drawn up. And she told him again, just what
3 she had said before; that she wanted, they wanted me to have the
4 farm, and she wanted control of the money.
5 Q Would it be fair to say that she had dictated
6 the terms of the agreement to Mr. Lancaster, told him what she
7 wanted?
8 A She told him what she wanted, yes.
9 Q Did you tell Mr. Lancaster what you wanted? Did
10 you and Eva present this together?
11 A She did most of the talking about this; and I more
12 or less agreed with her. I had one question asked that con-
13 cerned me a little. I was concerned about my children, whether
14 they would be entitled to anything under an agreement like that
15 or not. And that was the conversation, more or less. But Mr.
16 Lancaster was very explicit about saying if this is what you
17 want. After he would take it, you know, write it down, or the
18 secretary, I'm not sure; but he was very definite about the
19 agreement.
20 Q Well, did he write it all down and have it typed
21 up that day?
22 A I'm not sure whether he wrote it down or his
23 secretary, but he had it written down, and we left the office
24 with the agreement.

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Q So, he had it typed up, finally, and you signed the agreement, and Eva signed it; is that right?

A Yes.

Q Let me show you a document that's marked as Defendant's Exhibit 2.

MR. MCNALLY: This is the agreement, Your Honor.

(Continuing)

Q Will you look that over and look over the signatures on that, Mr. Pigg? Is this the agreement that you and Eva Haley signed on July 26th in Mr. Lancaster's office?

A Yes.

Q It is?

A Uh-huh.

MR. MCNALLY: I have no further questions, Your Honor.

CROSS-EXAMINATION

BY MR. GRAVES:

Q Mr. Pigg, let me ask you a few questions to get the chronological order here. In what year were you born?

A 1934.

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1 Q And your age when you went to Ferrum was what?

2 A I believe it was seventeen (17).

3 Q Seventeen (17)? In other words, you went there in

4 1951; would that be correct?

5 A '51 or '2; something like that.

6 Q And then, after that you attended Longwood Col-

7 lege; did you do graduate work?

8 A No, I went to Union College in Kentucky after that;

9 and then the second semester Longwood had a very good history

10 department, and I was running low on finances at that time, so

11 I moved back, and Uncle Frank said, "Come on back and stay

12 here, and I'll let you work on the farm and help to pay for your

13 staying here".

14 Q Trying to get the date; do you have the date?

15 A It would have been about '56.

16 Q 1956; and then you graduated from Union College,

17 did you?

18 A Yes, sir.

19 Q And that was in 1956 or 1955?

20 A It would have been the year after that; '57 and '8,

21 I guess it was.

22 Q 1957 or '8 you graduated from Union. I see; you

23 just went to Longwood for one semester?

24 A Yes, sir.

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Q What was the date of your marriage?

A Date of what?

Q Your marriage?

A My wife's present.

Q Your anniversary; I expect you remember your anniversary.

A August 11th.

Q And do you remember what year?

A It would have been 1962 if it was seventeen (17) years; that would be about right.

Q Well, Mrs. Pigg can correct you if you're wrong.

A I'm sure she will.

Q What was your relationship to-----I don't mean your demeanor towards each other-------but what kin were you to the decedent, Mr. Haley?

A I believe according to his records, it was fourth (4th) cousin; not blood; his grandmother was a Pigg.

Q Then, your calling him Uncle and Mrs. Haley Aunt is because of courtesy ?

A Well, no, I wouldn't say just courtesy. I always felt a warm feeling toward both of them, and I think Uncle Frank mentioned it first, that I call him uncle. And this was when I was small. I'm not sure about that.

Q I believe you confirmed Mrs. Haley's testimony as

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1 to her being upset when the will was probated; is that correct?

2 A. To a degree; I think she was more, probably mad

3 about the will, the way it was, or what Mrs. Hoy had told her,

4 than anything else.

5 Q. I see; and what was your understanding of what

6 Mrs. Hoy had told her? You heard her testimony. Was that your

7 understanding also?

8 A. At that time, no; I did not know what Mrs. Hoy

9 had said to her; but the implication on the way over was that

10 Aunt Eva felt like the will more or less took everything from

11 her; but I did not know exactly what had passed between Aunt

12 Eva and Mrs. Hoy at that time.

13 Q. All right; and you never did hear Mrs. Hoy's

14 interpretation of the will; but your understanding was that the

15 will took everything from her; was Mrs. Haley's understanding?

16 A. Evidently; yes.

17 Q. You had read the will, had you, yourself?

18 A. Yes.

19 Q. Did you say anything to Mrs. Haley about your

20 understanding?

21 A. Well, we just more or less read it and looked at

22 it, and I think we all felt it was unclear in exactly what it

23 meant in it, or if not unclear, there was one place it looked

24 like he gave something; and then we just weren't real sure.

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1 Q I see. Well, did you attempt to explain ------
2 Have you studied law?
3 A No.
4 Q Did you attempt to explain the will to Mrs. Haley?
5 A No.
6 Q Was it your understanding-------You were talking
7 about you were interested in the welfare of your children, what
8 your children got, would have, would have with relationship to the
9 farm; was it your understanding that the will covered the farm
10 as a whole?
11 A That was my understanding at the time; yes.
12 Q And it was your understanding that upon Mrs.
13 Haley's death, then you would get the entire farm?
14 A Uh-huh.
15 Q Did you ever consult a lawyer other than Mr.
16 Lancaster; did you consult Mr. Lancaster?
17 A No.
18 Q You did not consult Mr. Lancaster? You were
19 present, however, when you went in to have that agreement made
20 up. Did you consult any other lawyer?
21 A No.
22 Q Did you and Mrs. Pigg discuss the will, yourselves?
23 A We discussed it; but it was kind of like it was
24 before; we were still uncertain in exactly what it said.

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1 Q Did you read the will?

2 A Uh-huh.

3 Q How many times do you reckon you read it?

4 A I don't know. We read it over two (2) or three

5 (3) times, I guess.

6 Q Did you read the will to Mrs. Haley?

7 A I don't recall exactly; but if I didn't read it

8 to her, we passed it around and read it, ourselves; and then

9 we talked about it or discussed it.

10 Q Well, didn't you feel a sense of solicitude from

11 Mrs. Haley, also? Here she felt she had lost everything.

12 What did you do, if anything, to try to reassure her?

13 A Well, I wasn't aware at that time that that's the

14 way she felt, on the way to Farmville.

15 Q Well, when did you become aware of the way she

16 felt?

17 A I knew when she was up, she was upset to some

18 degree then; but I wasn't really sure what had upset her at

19 that time.

20 Q But you said that you were aware that she felt

21 she had lost everything?

22 A Not at that time.

23 Q When did you become aware of that?

24 A When I read the deposition is the first time I

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1 really knew what Mrs. Hoy said, Aunt Eva's deposition.

2 Q And when did you read those?

3 A That was last week, I guess it was.

4 Q And at no time during this period until you read

5 the deposition did you realize that Mrs. Haley felt the way she

6 did?

7 A I knew she was upset at the loss of her husband,

8 but it wasn't my understanding that------In other words, the

9 situation here was that she felt like everything should be

10 hers, and the way the will was written, she was unaware of this,

11 unclear about it; and she was upset about that, I think.

12

13 THE COURT: Didn't you state a little earlier

14 about going over there in the car, she said she felt

15 she had lost everything? That's as I recall it.

16 WITNESS: Maybe I did; but I didn't know

17 exactly what she meant by everything.

18 THE COURT: All right.

19

20 BY MR. GRAVES: (Continuing)

21 Q Didn't Mr.Wilmouth say the same thing to her; all

22 she had was a interest of the farm, or produce from the farm, or

23 a life time interest; didn't he say the same thing?

24 A I don't recall exactly him saying this; but the

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1 indication we got from Mr. Wilmouth was, it was not real clear.
2 What he said, more or less, was, if this is true, you know, on
3 the taxes, then he advised us on how to figure the taxes, and
4 you know; Aunt Eva still seemed to be concerned about it, and
5 she asked if he knew a good lawyer, or if he knew a lawyer that
6 he could recommend.
7 Q What advice did he give you about the taxes?
8 Was it the idea that if you let her have all the personal
9 property, then that would be subject to the marital deduction;
10 or what was it?
11 A No; he didn't really discuss this as far as the
12 will, itself.
13 Q Well, what was his discussion about the taxes?
14 A I think the new widow's tax was one thing that was
15 brought out. I'm not sure in detail what was discussed on it,
16 but I do remember I think that was one thing.
17 Q What is the new widow's tax?
18 A I'm not sure exactly, except it raised the amount
19 a widow would be exempt from paying taxes on. I don't know; I
20 don't recall exactly the amounts involved.
21 Q Now, is that all your understanding, all you
22 understand about the widow's tax?
23 A Well, I understand why it came about; at least, I
24 think I do; that the widows were, when inflation came about, the

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value of property went up; and a lot of people were losing, a lot of widows were paying more inheritance tax than they should be.

Q Was it your understanding if Mrs. Haley got only a life estate, then this widow's tax provision would not be available?

MR. MCNALLY: Your Honor, to the extent that this calls for a educated or legal opinion------

THE COURT: He's just asking what he thought.

MR. GRAVES: I'm not asking for a legal opinion.

MR. MCNALLY: You're getting close to it.

MR. GRAVES: I'm trying to find out what went on between him and Mr. Wilmouth. Go ahead.

WITNESS:

A As I said, Mr. Wilmouth just advised that we see a lawyer if we had any questions about it, you know, if it was a question about the understanding of the will.

BY MR. GRAVES: (Continuing)

Q Well, now, going back to the question I just asked you; was it your understanding that if Mrs. Haley got only a

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1 life estate, there would be no deduction under the widow's tax?

2 A. I'm not sure I understand that.

3 Q. Well, what was your understanding?

4 A. It was unclear at that time; I really hadn't

5 made an understanding one way or the other on it. That's the

6 reason we went to see Mr. Wilmouth on it, because he was ad-

7 vising us on the taxes. In other words, at that time we were

8 not sure about the tax part of this, the estate.

9 Q. And do you have any more understanding of this

10 than what you have given us?

11 A. No.

12 Q. Let me ask you once more; what is your understand-

13 ing of the widow's tax? How do you get the benefit of the

14 widow's portion in determining the tax; what is your understand-

15 ing of this?

16 A. I'm not really that sure.

17 Q. Do you have any knowledge of it at all?

18 A. No; not that I could really put out, you know;

19 not that I could really say and be definite about it.

20 Q. I see. Were you concerned about the amount of

21 tax that Mr. Haley's estate would have to pay?

22 A. Yes.

23 Q. Well, what was your understanding of how the tax

24 would be determined under the will as written?

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A. I really didn't have an understanding on that, because that's why we were there to see Mr.Wilmouth.

Q. And did Mr. Wilmouth give you any advice about that?

A. The only advice I remember him giving me is saying if this was left a certain way; but I feel like that he was not making a definite statement on the will, himself; and that's when we decided, Aunt Eva asked him if he knew a lawyer.

Q. I see; but he didn't advise you with relation to the widow's tax; didn't give you any information?

A. If he did; he could have, but I don't recall right off.

Q. Now, when you went to Mr. Lancaster's office, I believe you said there was an interval of about a week between the first meeting with Mr. Lancaster and the second?

A. Several days, there; yes; I don't know whether it was a full week or not.

Q. Is Mrs. Haley incorrect in saying the meetings were on successive days?

A. I don't recall them being one day and the next day; because if I recall, we went back to Chatham in between the time we first saw Mr. Lancaster and the second time, you know.

Q. Do you remember what day of the week you went back

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to Chatham?

A. No, I don't.

Q. Do you remember what day of the week it was that you signed the agreement?

A. No.

Q. You have read the agreement that you signed with Mrs. Haley?

A. Uh-huh.

Q. And who dictated this agreement?

A. You mean who told the lawyer what we wanted; or I'm not sure what you mean by dictating? When we went in, Aunt Eva told him what she wanted as far as the, you know, herself. She didn't dictate the legal terms and this type of thing. Mr. Lancaster put those in whatever way he wanted them to do.

Q. I'm using the term your counsel used in asking if Mrs. Haley dictated the will; I mean the agreement; excuse me.

A. Yes; she told Mr. Lancaster what she wanted, and her words, and I recall very strongly,"We always wanted him to have the farm, and I want control of the money".

Q. And that's the extent to which she dictated the agreement?

A. Other things were said, yes; but I distinctly remember that statement.

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Q Do you remember anything else?

A Sir?

Q Do you remember anything else?

A Mr. Wilmouth asked her several times----------

Q I'm talking about in Mr. Lancaster's office.

A I mean Mr. Lancaster asked if both of us understood the agreement and these were the terms that we wanted; and Aunt Eva said yes; and I said, "If that's what she wants, that's okay with me".

Q And your understanding was that she got all of the personal property, and then she had the real estate for life time, and you had the entire real estate at her death?

A That was the understanding at that time.

Q But as far as the writing of the agreement was concerned, of course, that was done by Mr. Lancaster?

A Right.

Q He was the one that dictated it?

A That's what I misunderstood.

Q Very well; I just wanted to clarify what you meant by dictated.

Q The agreement says "For and in consideration of the sum of Ten Dollars ($10.00), and other good and valuable consideration, the receipt of which is hereby acknowledged"; was there any consideration paid either by you to Mrs. Haley or by

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1 Mrs. Haley to you?

2

3 MR. MCNALLY: Objection; I think that calls

4 for a legal conclusion.

5 THE COURT: I think you're asking if there

6 was any money that passed hands; is that what you're

7 getting at?

8 MR. GRAVES: Yes; I'll change the question.

9

10 BY MR. GRAVES: (Continuing)

11 Q Did any money pass between you?

12 A Not that I recall, no.

13 Q And Mr. Lancaster said that the will did create

14 an ambiguity, did he not?

15 A That was my understanding, yes.

16 Q Of what he said?

17 A Uh-huh.

18

19 MR. GRAVES: No further questions.

20 MR. MCNALLY: No further questions, Your

21 Honor.

22 THE COURT: You may step down, sir.

23

24 THE WITNESS STANDS ASIDE:

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THE COURT: Gentlemen, it's now twenty-five of 1:00. I don't know; there are several other witnesses.

MR. MCNALLY: Three (3) others.

THE COURT: I feel we'd better break for lunch now, and we'll be back here in an hour.

(Lunch recess, after which the following was had:)

MR. MCNALLY: I would like to call the next witness; Becky Pigg.

REBECCA ANDERSON PIGG, being first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. MCNALLY:

Q Mrs. Pigg, state your name, address and occupation for the record.

A Rebecca Anderson Pigg, 6412 Endwood Drive, Springfield, Virginia; and I'm a teacher in the public school system.

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1 Q Mrs. Pigg, you heard Mrs. Haley and your husband
2 testify, so far. I'd like you to tell the Judge what you can
3 to enlighten him on the relationship of Frank Haley and your
4 husband that would supplement what your husband has said or
5 what Eva Haley has said. What we're interested in is the rela-
6 tionship and any incidents you can relate.
7 A The first week I met Mrs. Haley was a week or two
8 before my husband and I were married, 1962. My husband had
9 known the Haleys for some time and had a very good relation
10 with them. Mr. Haley was to be in our wedding; he was an
11 ushur, and my husband suggested he come up and meet me.
12 After the time we were married, as my husband said,
13 we did spend a part of all of our holidays there. He and I are
14 both teachers. We do have holidays; Thanksgiving, Christmas
15 and Easter and time during the summer. My mother is a widow,
16 and my husband's mother is a widow. We have to divide our
17 time. Having two children we're very busy during the school
18 year. We welcome the holidays to have a little rest. But we're
19 close to our families, and we feel this is a time we want to
20 spend with them. And we also felt-------
21 Q You've heard Mrs. Haley's testimony that occasionally
22 Frank Haley felt opposed to your presence there. Is that
23 important to your experience?
24 A We never felt that way. I was very surprised to

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1 hear that, because it was always our feeling that they wanted
2 us to come; that the times that we spent there, they welcomed
3 our visits. In fact, they would say, "When are you coming
4 again; and do you have to leave so soon?" So, I really was
5 surprised when she said that, because I just did not have that
6 feeling before.
7 I might add that there were times during the school
8 year that we would visit. Mrs. Haley was a nurse at Longwood
9 College, and because of that, sometime she would be working
10 late in the evening. Mr. Haley, selling insurance, could also
11 be working late; and on a few occasions we would get there
12 before or shortly around the time that either one arrived.
13 We did have a house key to their house that we could use to
14 let ourselves in, make ourselves comfortable until they arrived.
15 I might add, also, that on the times that we visited,
16 I did my very best to try to help out. I've always done this
17 wherever I go. I try to help prepare the meals or do what I
18 can to help in the kitchen. And I think that as my children
19 got older, it was easier for me to do that, and they also
20 helped out in setting the table and making dinner preparation.
21 Q If you had to describe the relationship between
22 your husband and Frank Haley, what would you say, if you had
23 to summarize it?
24 A I would say they were very, very close since my

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1 husband's father died when he was, I guess around sixteen (16)
2 or seventeen (17). He and Mr. Haley enjoyed a lot of the same
3 things. I think they identified with each other. I think, as
4 he said, he did have a lot of influence on his life and the
5 values that he held.
6 Q Let me direct your attention to the period of
7 time that you, Mrs. Haley and your husband were searching for a
8 will. You were present during that search, were you not?
9 A Yes, I was.
10 Q Let me show you a document which is marked
11 Defendant's Exhibit 1.
12
13 MR. MCNALLY: Your Honor, this is a copy
14 of the will, itself.
15 THE COURT: We've already got Defendant's
16 Exhibit Number 1; we put the book in.
17 MR. MCNALLY: I think we had previously
18 marked some of the exhibits and maybe got mixed up
19 on them.
20 THE COURT: I'll put on this, Defendant's
21 Exhibit 3.
22 (Defendant's Exhibit Number 3 was
marked for identification)
23
24

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1 BY MR. MCNALLY: (Continuing)

2 Q Will you look at Defendant's Exhibit 3, Mrs. Pigg?

3 A This is the will you're referring to?

4 Q Yes; this is -----Is this the handwritten will

5 that you've heard testimony about today?

6 A Yes, it is.

7 Q This is the one that you all found among Frank

8 Haley's papers; is that correct?

9 A Yes, sir.

10

11 MR. MCNALLY: Your Honor, I move it be

12 submitted into evidence at this time.

13 THE COURT: All right.

14

15 BY MR. MCNALLY: (Continuing)

16 Q Were you present when Mrs. Haley discussed the

17 substance of the will with Mrs. Hoy? Were you present during

18 any of these discussions?

19 A Well, as I think they both stated, we did go to

20 Mrs. Hoy's home to show her the will, and she asked Mrs. Haley

21 if she wanted to probate the will, and she said, "Yes, I do."

22 And I don't really recall any interpretation or discussion at

23 that point. We did come over to the Clerk's Office. The will

24 was probated. As we left the Clerk's Office, Mrs. Haley and Mrs.

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1 Hoy walked out together in front of us. My husband and I
2 walked behind them down a ways. They were talking. We had no
3 idea what the discussion was about.
4 Q You were not present during that discussion?
5 A No, I was not.
6 Q Were you present at any subsequent discussion
7 with Mrs. Hoy?
8 A After that date?
9 Q Yes; between Mrs. Haley and Mrs. Hoy.
10 A No, I was not.
11 Q I have one last series of questions. Directing
12 your attention to the meeting with Preston Lancaster at his
13 office at which time the agreement was signed, can you tell the
14 Judge what happened there, the beginning of the meeting until
15 the agreement, itself, was signed? And be as brief as you can.
16 Q Okay. Well, as I recall-----I think I already
17 stated, it was already stated------we went into Mr. Lancaster's
18 office, and Mrs. Haley explained the purpose of our visit,
19 which was to clarify the will, which she felt and we felt too,
20 we didn't understanding the meaning of it. Mr. Lancaster did
21 at one point in time in the discussion mention to her that a
22 Court interpretation might even be necessary. He indicated
23 that because it was ambiguous. He did tend to give her something
24 in one paragraph and take it away in the next; and it might be

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1 possible a interpretation of the Court would be necessary.

2 Q After this discussion took place, did there take

3 place another discussion concerning the agreement?

4 A On that same date?

5 Q Yes.

6 A Yes.

7 Q How did that come about?

8 A Well, again; as I think they've mentioned; Mrs.

9 Haley indicated that it was her desire that; that it was her

10 desire and Mr. Haley's desire that the property would some day

11 come to us; and that she wanted to clarify; that she did want

12 us to have the property, but she did not want us to have any of

13 the money or any control of the money.

14 Q Well, did she make this clear to Mr. Lancaster?

15 Did she discuss this with him? Was he present?

16 A Yes, he was. I felt it was clear. He did ask

17 several times, and he asked my husband, "Do you realize that;

18 do you realize that you're giving up something in this agreement?"

19 Q Did your husband respond to that?

20 A Yes; he said, "If this is the way she wants it,

21 if this is her wish, then we're willing to go along with what-

22 ever she wants".

23 Q After that, was the agreement drafted?

24 A Yes, Mr. Lancaster dictated it to his secretary,

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1 and his secretary transcribed it.

2 Q Did Mrs. Haley read it and your husband read it?

3 A Yes.

4 Q Did they sign it?

5 A Yes.

6

7 MR. MCNALLY: I have no further questions.

8

9

10

11 CROSS-EXAMINATION

12 BY MR. GRAVES:

13 Q What did Mr. Lancaster indicate to your husband

14 that he was giving up?

15 A Well, because of the ambiguity in the will, he

16 was indicating that, 'You realize you could be giving up personal

17 property, or that you are in fact giving up personal property

18 in exchange for real property".

19 Q Was that statement made in the presence of Mrs.

20 Haley?

21 A Yes; we were all there together during the whole

22 discussion.

23 Q You and Mr. Pigg and Mrs. Haley?

24 A And Mr. Lancaster; the four (4) of us.

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1 Q Did you approve that statement? Did you approve
2 of that statement that Mr. Lancaster made to Mrs. Haley? Did
3 you and your husband do anything to indicate that that statement
4 was correct or incorrect? Did you make any comment about it?
5 A Which statement?
6 Q The statement you just made, that Mr. Pigg was
7 giving up personal property. Did you realize that you were
8 giving up personal property?
9 A Yes. Would you repeat the question again?
10 Q Did you make any comment on that at all to Mrs.
11 Haley?
12 A Well, Mr. Lancaster asked my husband the question,
13 and my husband replied to Mr. Lancaster.
14 Q What did he say?
15 A Yes. Well, I don't remember his exact words.
16 Q Do you remember the effect of it?
17 A The general effect of it would be yes, "I realize
18 there is some doubt as to what the will really means; yes, I
19 realize that I am giving up"-------
20 Q Personal property?
21 A Uh-huh.
22 Q He made that statement in the presence, did he, of
23 Mrs. Haley?
24 A We were all there together; yes, sir.

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1 Q Did you comment on that statement at all? Did
2 you have anything to say?
3 A I really didn't say anything. I don't know whether
4 I made any comment at all during the whole thing. I was there
5 with them, with my husband.
6 Q Your husband; going back to the time when you were
7 driving from Mrs. Hoy's office, your husband confirmed Mrs.
8 Haley's statement that she felt as if she had been sabotaged.
9 Did you hear her make that remark too?
10 A Yes.
11 Q What was the reason for her making that remark?
12 A I can't honestly tell you that, because I don't
13 know. At the time that we came to the Court House to probate
14 the will, we were good friends, everything seemed to be fine.
15 We were here to help her. After we got back into the car, her
16 attitude seemed to have changed. We didn't know what had
17 really upset her. We could only assume that something in her
18 discussion with Mrs. Hoy had upset her.
19 Q Now, did it come to your knowledge that Mrs. Haley
20 had been given to understand that she got nothing under the
21 will except for the interest on the money and the right to live
22 on the farm and the produce from the farm?
23 A Well, there again, after she made the statement
24 that she felt she had been sabotaged, my husband nor I either one

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1 understood what she meant by the fact that she had been
2 sabotaged. As far as saying, did I feel---------
3 Q No, read the question to her again.
4
5 (Whereupon, the previous question was read
6 by the reporter.)
7
8 A Well, I would say there was some indication that
9 she had a feeling that she really didn't know what was her's and
10 what wasn't her's.
11 Q When was that indication first made to you?
12 A Well, not specifically until the day that we met
13 with Mr. Lancaster and she brought out at that time that she
14 wanted to have an agreement written up in the effect that we've
15 dated before. That was the first time I can honestly say that
16 I had that complete feeling from her.
17 Q But you were not given this indication after she
18 had made the remark that she had been sabotaged?
19 A In the ride over, on the way over?
20 Q The ride from Mrs. Hoy's office.
21 A Well, I'll be very honest in saying that she was
22 very upset at the time. It was not a time that we could really
23 talk. She said, "You don't feel that this is fair, do you?"
24 Well, I didn't really know what she meant was fair, what is fair.

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1 I don't know how to say it any further than that.

2 Q. But the first time that you came to the realiza-

3 tion of Mrs. Haley's understanding was in Mr. Lancaster's

4 office, you say?

5 A. Well, I said the full understanding of what she

6 was trying to say and what she did. She did make the statement,

7 as my husband said. She said, "You don't feel it's fair, do

8 you?" She said, "We wanted you to have the farm, but we didn't

9 want you to have the money". So, I could only assume by that

10 that she----She never came out and said, "Mrs. Hoy told me this"

11 or "Mrs. Hoy told me that", that I can remember. It was just

12 the implication, "We want you to have the farm; we didn't want

13 you to have the money"; that there was a question in her mind

14 as to what was what.

15 Q. Let me carry you back to the search for the will.

16 I believe Mr. Haley died on July 13th, did he not?

17 A. Yes, I believe that's correct.

18 Q. And the funeral was then on the 15th, which was

19 a Friday?

20 A. Yes.

21 Q. When did you first begin to look for a will,

22 according to your recollection?

23 A. It must have beeneither Sunday night or Monday,

24 because my husband had gone back to Chatham to take his mother

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1 and his brother and our daughter back to Chatham. I stayed
2 there with Mrs. Haley. This was on Saturday. And I think he
3 came back on Sunday afternoon; and it was either Sunday night
4 or sometime on Monday that we started the search, and she was
5 anxious to get as much cleared away as she could.
6 Q Describe the room that you searched. Did this
7 room have a desk in it, and did it have some shelves with papers
8 on them?
9 A Yes, it did.
10 Q Go ahead and describe to the Judge what it was.
11 A It was Mr. Haley's office in which he worked. His
12 desk was in there. He had, as I remember, two (2) book shelves
13 on which he kept a lot of papers that he was working on, and
14 which there were many, many, many legal pads of notes that he had
15 taken on genealogical research and whatever else, I don't know.
16 Q Well, when was the first will found; do you recall?
17 A I believe that was found on Monday.
18 Q And that was in the desk, was it?
19 A Yes.
20 Q And then you took that to Mrs. Hoy?
21 A Yes, we did.
22 Q And who went on that trip?
23 A My husband and Mrs. Haley and I.
24 Q And Mrs. Hoy advised you that that will could not

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1 be probated?

2 A. That's correct.

3 Q. And under that will, everything, at least the

4 bulk of the estate was left to whom?

5 A. I don't really remember. I don't have a copy of

6 that will. I only saw the will once.

7 Q. Did you read it?

8 A. Yes, I probably read over it. I think we all

9 three (3) read over the will before we brought it up here.

10 Q. Well, then, was Mrs. Haley's testimony correct

11 that when you found the will couldn't be probated, you came to

12 search for a handwritten copy of the will?

13 A. Yes; that's correct.

14 Q. Well, you were familiar enough with the will to

15 know what you were looking for, were you not, the typewritten

16 will?

17 A. I'm not sure what you mean by that.

18 Q. You were looking for a handwritten copy of the

19 typewritten will?

20 A. Well, we thought that perhaps he might have

21 handwritten the will before it was typed, because he generally

22 did handwrite things and then type them.

23 Q. You knew what you were looking for?

24 A. Well, we were looking for a will; that's all I

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1 can say. We didn't know exactly what we were looking for other
2 than a will.
3 Q But I'm talking about at this initial effort, you
4 were looking for a handwritten version of the typewritten will;
5 is that correct?
6 A Yes.
7
8 MR. MCNALLY: Your Honor, I think she's
9 already answered the question.
10 MR. GRAVES: Did you answer the question?
11 WITNESS: Would you repeat the question,
12 please?
13 THE COURT: I believe she said that she
14 knew he usually wrote things in handwriting and then
15 typed them, and that was her understanding. That's
16 what I understand. I just hate to hear this three
17 or four times.
18
19 BY MR. GRAVES: (Continuing)
20 Q Now, what was the next thing that happened in
21 the search for the will?
22 A After we came to the Court House and Mrs. Hoy said
23 that we could not probate the first will?
24 Q Yes.

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A. Then we returned home, I guess that was on Monday afternoon, as best I remember, and Mrs. Haley said, "There might be a handwritten will among his notes". So, we took his notes from the shelf; we each took a stack of legal pads, and we started looking. As I was going through a legal pad, right in the middle of the pad, in no order of arrangement, but it was attached in the pad, was the handwritten copy that we brought to probate.

Q. Did you continue to look through the pads after that?

A. No, I didn't. I said, "I think I found something", after I had just looked at something to see that it had his name at the bottom and saw it did look like a will. And I handed it to Mrs. Haley, and then she read it, and I believe she passed it to my husband.

Q. To your knowledge, was there ever a complete search of the legal pads in Mr. Haley's office?

A. Well, I can't answer that. To my knowledge, no.

Q. In other words, the search stopped when you found------

A. It stopped with the three (3) of us at the present time. Now, I can't say beyond that. My husband and I never searched through them.

Q. Were there other pads of Mr. Haley's that you did not look at?

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1 A Yes.

2 Q I believe you were here when Mrs. Haley testified
3 to a conversation that she had with you when your husband was
4 not present, when you made a remark----I can't quote it exactly---
5 but to the effect that, "This is the sort of thing that could
6 cause trouble in the relations between people". Do you recall
7 that occasion?

8 A Okay; I don't think that's exactly what I said,
9 but that may have been the gist of it. We had just returned
10 from Chatham, I don't remember the exact date that we went back
11 to Chatham; but it was about, maybe the same evening after we
12 had been to visit Mr. Wilmouth. And then we came back, I think
13 on a Sunday or a Monday to Keysville. And as soon as we got
14 there, my husband went walking around the farm. Mrs. Haley and
15 I sat down in the yard, and after the conversation we had had
16 on the way to Keysville and the relationship did seem,you know,
17 very strained, we were upset too, over his death. A lot had
18 gone on; we were exhausted, as I'm sure she was too. And she
19 said to me, "We have to have a serious talk". And I said, "Well,
20 we feel that there is a strain on the relationship between us".
21 And this is when she brought up the agreement, and said that
22 this is something that could be done to clarify this will;
23 and that's when she suggested that we enter into the agreement
24 with her.

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Q And you didn't make the remark----------

A ------that it causes for bad relations? I don't remember saying that specifically. I said, "I realize there is a strained relationship between us now."

Q I see. Okay, let me take you back to your education. Are you a graduate of college?

A Yes, I am.

Q Which college did you graduate?

A Madison College.

Q When?

A When? 1962.

Q The year of your marriage?

A Yes.

Q And have you done graduate work since then?

A Yes, I have.

Q What is your field?

A Business education.

Q In the course of that, do you have any training in law?

A I had one course of business law as a junior in college in 1961. I would say it's about that much (Indicating).

Q You don't learn too much law in this course, do you?

A No; that's the extent.

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MR. GRAVES: I have no further questions.

MR. MCNALLY: I have no further questions.

THE COURT: You may step down.

THE WITNESS STANDS ASIDE:

R. A. WILMOUTH, having been first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. STOGNER:

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

A. R. A. Wilmouth, Farmville, Virginia.

Q. And your occupation, sir?

A. Sir?

Q. Your occupation, sir?

A. I operate a bookkeeping tax service.

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1 Q And did you have a relationship with the decedent,
2 FRank Haley, prior to his death?
3 A I didn't catch that. You'll have to come over.
4 Q Did you have a relationship with the decedent
5 prior to his death, a business relationship? I'll come closer.
6 Did you have a business relationship with the decedent, Frank
7 Haley, prior to his death?
8 A Yes, sir.
9 Q What was the nature of that relationship?
10 A I prepared his income taxes for years.
11 Q And you knew Mr. Haley very well; is that correct?
12 A Yes.
13 Q And you knew his wife, Eva F. Haley?
14 A Yes, sir.
15 Q Did you have any relationship whatsoever with the
16 defendant in this case, G. Dale Pigg, or his wife, prior to
17 the death of Mr. Haley?
18 A No.
19 Q Have you ever seen this document, Defendant's
20 Exhibit Number, I believe it is 3 instead of 1, now; the
21 holographic will;of what purports to be the holographic will of
22 Frank Haley?
23 A Yes, sir.
24 Q When did you first see that document?

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A. July 19th in 1977.

Q. Would you tell us what the circumstances were that gave rise to your reviewing that document?

A. Well, they came to my office. I think probably Mr. and Mrs. Pigg were with Mrs. Haley at that time; and discussed about making up the inheritance report on it.

Q. You understood that to be the principal purpose of their trip to you, was the preparation of the general inheritance tax report, right?

A. Right; and that was on the 19th, and I spent a hour and a quarter with them; and on the 25th, Mrs. Haley was back in the office for a half hour. And probably at that time she was advised to see an attorney in regard to her will, because I had read the will; it only left her her support during her life time.

Q. Did you render what you would consider to be a legal opinion at that time?

A. No, sir.

Q. What was the purpose-----When you say what you would consider to only be support during your life time, what did you mean?

A. That was in relation to filing the tax return, inheritance report.

Q. Would you explain with respect to the marital

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1 deduction or whatever, how that came to be an issue, why that
2 was important?
3 A. Well, in a case of a federal report, of course,
4 it would have to be a marital deduction; the will would have to
5 be written so there could be a marital deduction. And in this
6 case I didn't see where it was a marital deduction, because the
7 only thing it left was her support during her life-time.
8 Q. And do you know what that's referred to in the tax
9 law? Is that referred to as a terminal interest?
10 A. No, it meant she would live on the income from
11 the estate for the period of time she was living.
12 Q. Are you saying it does not require to eliminate
13 the marital deduction; does that not require that you give the
14 legal opinion?
15 A. It only gave her a Five Thousand ($5,000) Dollar
16 exemption as being the widow of the decedent; that was the only
17 deduction that was actually applicable. Of course, after the
18 agreement was drawn up, then the property, in the fact that she
19 had all of the personal property, which was attached to her, plus
20 a life interest in the real estate; and the way I filed it was
21 that---------I have a memorandum, had a memorandum on the work
22 paper at the time-------real estate 150 acre, originally deeded
23 jointly to Mr. and Mrs. Haley; fifty percent ownership to Mr.
24 Haley and fifty percent ownership to Mrs. Haley; and question

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1 mark; life interest; fifty percent or a hundred percent. And,
2 of course, by the fact that Mrs. Haley had worked all of her
3 life, all of her married life, let's say, on the property;
4 helped Mr. Haley, too; if he bought any property after they were
5 married, she would have had an interest in it. So the inheritance
6 tax report was filed, with fifty percent under one-half un-
7 divided interest in the 150 acres. That was put under the real
8 estate schedule. And, of course, her part was not taxed. The
9 other part was taxed life interest to her and the balance to Mr.
10 Pigg.
11 Q Uh-huh; now-------
12 A I have a copy, a penciled copy of my report that
13 I made up.
14
15 THE COURT: You have a copy of the will
16 in there, don't you?
17 WITNESS: Yes, sir; that was mailed to me
18 by Mr. Pettus just a day or two, because all of my----
19 I think probably I gave Mrs. Haley the one copy that
20 I had and also the copy of the agreement.
21 THE COURT: I just saw it.
22 WITNESS: That's right; it was just mailed
23 to me just a few days ago.
24

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1 WITNESS CONTINUING:

2 A. But on the inheritance report, I have under the
3 schedule of the distribution in which Mrs. Haley's share was------
4 if I'm at liberty to give the amount.

5 THE COURT: Go ahead.

6 WITNESS: Am I at liberty to give the
7 amount?

8 THE COURT: Yes, sir.

9 A. All right; just reviewing it this; one-half un-
10 divided interest in the 150 acres with the improvements was
11 $65,730.00 less one one-half owned by wife; $32,865.00.

12

13 BY MR. STOGNER: (Continuing)

14 Q. You have listed there one-half undivided interest
15 in the real estate?

16 A. Right.

17 Q. Did you discuss at the time Mrs. Haley came to you
18 the fact that she had an undivided one-half interest; not jointly
19 with right of survivorship, but a one-half undivided interest
20 in the real estate, and Mr. Pigg? You must have known that from
21 what you're saying; you had to file a tax return, and you listed
22 it on there a one-half undivided interest presumably as a tenant
23 in common rather than survivorship?

24 A. Yes, sir.

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1 Q Because if it was a survivorship, it would have
2 made a different tax delegation?
3 A Would have gone under a different schedule,
4 which would have been all of her's at that time.
5 Q Did you discuss with Mrs. Haley she had a one-half
6 undivided interest?
7 A As I just read this question to you; I have a
8 notation I put on the paper; real estate 150 acres, originally
9 deeded jointly to Mr. and Mrs. Haley; fifty percent ownership
10 by Mrs. Haley and fifty percent by Mr. Haley; and I had a question
11 mark; life interest fifty percent or a hundred percent. So,
12 therefore, by the fact that she had worked and had earned, I
13 put it under the real estate with one-half undivided interest
14 rather than under the survivorship.
15 Q But you rendered no legal opinion to her at that
16 time?
17 A No.
18 Q Or Mr. Pigg?
19 A I refrained from that entirely.
20
21 THE COURT: He gives very little of that.
22 I've known him for years.
23
24 WITNESS CONTINUING:

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1 A The other thing was, the way the will was written,
2 I felt like she needed legal advice to determine what her status
3 was.
4 Q What did you do at that point?
5 A I recommended she see Mr. Lancaster.
6 Q Did you call Mr. Lancaster?
7 A I may have called and asked if he could help her.
8 Q But you did not suggest at any time what she should
9 do in the agreement?
10 A No, I didn't know what steps could be taken to
11 correct it if it was any way to do it; but she was in my office
12 on the 25th; and the next day the agreement was signed between
13 she and Mr. Pigg.
14
15 MR. STOGNER: Okay; thank you. I have no
16 other questions.
17
18
19 CROSS-EXAMINATION
20 BY MR. PETTUS:
21 Q Mr. Wilmouth, you filed no federal tax return?
22 A Right.
23 Q You did not?
24 A No, sir.
Q Then, why was the marital deduction important?

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A. It wasn't a marital deduction; there was no indication of any marital deduction here at all; because I didn't file a federal return; and the state is a little different; you only get a $5,000.00 exemption for a close relative, and then it's graduated on down the line.

Q. Since Virginia does not have a marital deduction, why was that important to you?

A. Since what?

Q. Since Virginia does not have a marital deduction, why was it important to you to discuss the marital deduction?

A. I didn't discuss the marital deduction.

Q. I thought you did?

A. It was never mentioned, anything about the marital deduction. The point is, the will, as you read it this morning; I did catch that; that she was left all the property during her life time for her needs; directing her that she had a right to do anything she wanted with it; but after she had deceased, after she had been taken care of in a decent way, which she had been accumstomed to living, then the balance of it went to Mr. Pigg, according to the will.

Q. That's what you explained to her that day?

A. Well, she brought the will to me. She knew what was in the will before I ever looked at it.

Q. And you interpreted it to mean that?

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A. That's what I interpreted it meant. She was in trouble as far as her rights were concerned, and as far as being a wife to Mr. Haley.

Q. You did not know then, when they first came to you that first day, that the property was jointly owned? You found that out later?

A. No, sir; I didn't know it until I viewed the deed.

Q. And that was much, much later?

A. She might have had them all with her that day; because on this, on my information sheet here---------

Q. When did you first determine that the property was held jointly? When did you first find that out?

A. The first day she was there, on July 19th; because here is where I have information as to when they were married and what her earnings were and where she worked and----------

Q. When did you take those notes?

A. This is on the day that she first came to my office. We determined how much cash she had, how much personal property and real estate, and then I had a question down below in regard to the real estate; whether she had a survivorship property or whether she had a joint ownership. And I treated it as joint ownership in view of the fact that she had worked during her married life.

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1 THE COURT: From what he said before, and
2 what I gather, the first time you didn't know, when
3 you all talked, you didn't know whether it was joint
4 or not, and that was a question that you had to get
5 straightened out. But you assumed it was joint
6 because they worked together all the time?
7 WITNESS: That's right. And, of course,
8 the deed stated that it was jointly owned.
9 THE COURT: Yes. When you got the deed.
10 MR. PETTUS: No further questions. You
11 may step down.
12 THE COURT: May he be excused?
13 MR. PETTUS: Let me ask him one other
14 question, please.
15
16 BY MR. PETTUS:
17 Q I believe you did tell me, or did you tell me,
18 that she was right distraught that day, the first day she came
19 in?
20 A Well, I don't know; I don't think she's the type
21 of woman that gets that way. I think she faces the situation,
22 what it is. And it was a case of my filing it with the will
23 properly.
24 Q Well, did she appear somewhat unusual because she
had been left out of the will?

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A Yes; that's right; most unusual. You just most, hardly ever see one like that.

THE WITNESS STANDS ASIDE:

E. PRESTON LANCASTER, being first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. STOGNER:

Q Would you state your name for the record, Mr. Lancaster?

A E. Preston Lancaster, Jr.

Q What is your occupation?

A Lawyer.

Q And the town you live in?

A Farmville.

Q Have you ever had occasion to meet either the plaintiff in this case, Eva F. Haley, or the defendant, G. Dale Pigg, before?

A I remember Mrs. Haley. Mr. Pigg is somewhat vague in my mind.

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1 Q Would you tell us what contact you remember
2 Mrs. Haley in?
3 A Mrs. Haley and another lady, who I would assume
4 at this point would be Mrs. Pigg, but I'm not positive, and
5 perhaps Mr. Pigg, I can't exactly remember, came to my office.
6 Q And what was the purpose of that visit?
7 A For me to look over a will that was a holographic
8 will of Mr. Haley, Mrs. Haley's husband.
9 Q The copy of Defendant's Exhibit Number 3; would you
10 look at that? Is Defendant's Exhibit Number 3 the same will
11 you were asked to look over when they came to see you? Do you
12 remember the date, first of all, that they came to see you?
13 A No, I don't.
14 Q Do you know possibly whether it was in July of
15 '77?
16 A To my memory it was in 1977, but I couldn't tell
17 you what month or anything about it.
18 Q Okay; that's fine. Would you take a look at
19 Defendant's Exhibit Number 3 and tell me if that is a holographic
20 will that you were asked to review?
21 A It appears to be.
22 Q And who did you understand your client to be when
23 you were asked to review that will?
24 A Well, when they came in, they didn't line up on

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1 one side of the room or the other, as they are today. I took
2 the impression that I was working generally for the whole group,
3 and no one specific person.
4 Q Did anyone in the group-------the group, I assume,
5 being by your recollection--------
6 A I can swear to two, but I can't swear to three.
7 Q Okay.
8 A Two ladies and possibly a man.
9 Q Did either of the two ladies seated here today
10 give you any directions or express any desires at that meeting?
11 First of all, let's go back a step. Did you give-----After you
12 reviewed the will, what advice did you give them about the will?
13 A Well, I read the will, and, you know, I haven't
14 seen this thing-----Mr. Pettus first sent this thing to me a
15 week or so ago.
16 Q Take your time and review it.
17 A It's the first time I've seen it since 1977, and
18 I looked at it again. This one is awfully hard to read, but if
19 I remember correctly, the problem lies in my mind between
20 paragraphs third and fourth.
21
22 THE COURT: Here is the original.
23 A Yes; that's the one.
24 BY MR. STOGNER: (Continuing)

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1 Q Do those paragraphs create a question in your mind
2 as to property?
3 A Yes. My advice, first of all, was that to settle
4 the property issue, they should have gone and seeked the aid
5 and direction of the Court to have the will interpreted. And
6 then I said, that they possibly could resolve the problem
7 between themselves.
8 Q Was there any response to the first advice you
9 gave them about seeking the aid and direction of the Court?
10 A They didn't want to do that.
11 Q Who is they? Who specifically said that? Did
12 any one express that feeling any more than the other?
13 A You know, I really can't say that.
14 Q Okay.
15 A It's difficult to remember.
16 Q With regard to the second advice that you gave
17 them, that they should resolve it between themselves, what did
18 you mean by that specifically; they could resolve it among
19 themselves?
20 A Well, to come to some amicable agreement as to what
21 to do with the estate. I'm sure I told Mrs. Haley that she
22 stood, in fact, in a stronger position. But I remember very
23 distinctly there was no disagreement among the people. Everybody
24 was very friendly. All they wanted to do was settle it.

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1 The other thing that I remember, a problem about this
2 will, was that if they left it as it is, that upon Mrs. Haley's
3 death there would be a lot of trouble in deciding what part
4 of her assets at the time of her death would be disposed of
5 to the remainder. And actually, so far as making the decision
6 as to what was done, they did that, themselves.
7 Q You never advised Mrs. Haley? There has been
8 testimony here today, and I don't know if you were in the court
9 room or not, Mr. Lancaster---------
10 A No.
11 Q It's been testimony that an earlier attorney was
12 consulted, Lelia Hoy; and she had told Mrs. Haley, "You own
13 nothing", and this is paraphrasing, "You have interest in the
14 property and farm and interest from it until your death, and
15 that's all you have". You never advised Mrs. Haley she had
16 nothing under the will? She was in a stronger position?
17 A No; she had power of disposition; but due to the
18 draftsmanship of this particular will, I think it indicates
19 that, and that gives her a stronger position, the power of
20 disposition.
21 Q Did you elaborate on that and tell her she had
22 the power of disposition?
23 A I'm sure I said that, but I didn't elaborate too
24 much. The thing I can remember, it was a most unfortunate

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1 meeting, because I commited the error of making the comment
2 that, you know-------I shouldn't make it today-------but I made
3 the comment that if Mr. Haley had spent fifty dollars and gotten
4 a will drawn, they wouldn't have been in the office. I think
5 Mrs. Haley took offense to that, and I ultimately do remember
6 this. I apologize to the lady for that.
7 Q. Okay; do you have any recollection to anything
8 that was said about the agreement by the parties who were there
9 after you said that there could be an agreement in terms of
10 what could be incorporated?
11 A. Not exactly, no.
12 Q. Okay; can we have you look at Defendant's Exhibit
13 Number 2, I believe, the agreement? Do you recognize that
14 agreement, Mr. Lancaster?
15 A. Yes.
16 Q. Is that an agreement which was drafted in your
17 office?
18 A. It is.
19 Q. Would you read for us the provisions of paragraphs
20 one and two of that agreement and familiarize yourself with
21 them?
22 A. All right.
23 Q. Now, what caused you to draw those provisions in
24 the manner in which they're drawn?

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A. Because of the----Well, the problem is this: That you have what I consider a problem with the will, and then it was a problem with what they were going to agree to. They were apparently on very good terms, and all I remember; they told me what they wanted to do. I don't specifically remember.

Q. But you don't remember which of the two of them might have told you what should be done under the will, Mrs. Haley or Mrs. Pigg?

A. All I remember, Mrs. Haley talked to me a great deal. I do not remember Mrs. Pigg talking to me more than one or two very brief questions. I never remember Mr. Pigg saying anything, if he was there.

Q. Would you interpret for us what paragraphs one and two in your opinion provide in terms of interest to each party?

A. Well, that Mrs. Haley would have absolute disposition of all of the personal property in the estate, tangible and intangible. And the second, that she would have a life estate in all of the property, real property.

Q. Would you read me the first line of the second paragraph?

A. All right.

Q. Read that whole paragraph; one sentence.

A. Yes.

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1 Q. Would you read that loud?

2 A. That all the personal property, both tangible

3 and intangible---------

4 Q. Excuse me; I mean the second paragraph.

5 A. "That the interest in any real estate that Edward

6 F. Haley died seized and possessed of in Charlotte County,

7 Virginia, shall be construed as to give his wife, Eva F. Haley,

8 a life estate therein exclusively, with the remainder over to

9 Garland D. Pigg, upon her death, in fee simple and absolutely."

10 Q. Does that by your interpretation deal solely with

11 the interest that Edward F. Haley had in the real estate,

12 and affect only that interest?

13 A. Say that again.

14 Q. Does that language, in your opinion, deal only

15 with the interest that Edward F. Haley had at the time of his

16 death and not with the interest that anyone else might have had

17 in real estate?

18 A. Yes, I think so.

19 Q. Not real estate in general; okay. Was there any

20 discussion of the terms and conditions of this agreement in

21 terms of whether they reflected the testamentary intent of Mr.

22 Haley? Did the parties try to approximate that testamentary in-

23 tent?

24 A. Mrs. Haley did say to me at one time-----I believe

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she was there twice------that that was what her husband would have wanted, if I remember correctly.

Now, in reading this instrument, and also from a question asked me prior to trial, it would appear that this instrument perhaps was dictated in front of all of the parties, which I have done often, so everybody can hear it. It precludes having to retype it. And then my secretary typed it, and it was signed and notarized. It is very much indicative that it was all done on one date, because my secretary typed in the date which she normally would not do unless it was going to be signed that same date.

Q All right; I thank you. I have no further questions of this witness, Your Honor.

CROSS-EXAMINATION

BY MR. GRAVES:

Q The agreement is dated July 26, 1977. I know that you have no independent recollection of that; but then, also, on page 2, I believe, did you, yourself, take the notarization of it?

A Yes.

Q This was your signature, and this was on July 26th?

A That's the date on it. My secretary would have

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1 done it-----

2 Q So that was the date it was executed?

3 A I would presume so, yes, sir.

4 Q Now, I believe you were here, maybe, when Mr.

5 Wilmouth testified that he called you, according to his notes,

6 on July 25th, or sent them to see you on July 25th. Let me ask

7 you this question: Did you see these parties on successive

8 days, or was there a time interval in between, or do you

9 remember?

10 A First of all, I remember Mr. Wilmouth calling.

11 He called me for the appointment that was in apparently 1977,

12 and he called me for another appointment which was in this

13 current year. Again, I couldn't tell you what month. I know

14 that they came to my office. I have the impression that they

15 came twice; but I could be very wrong here; but that's just an

16 impression that I have.

17 Q I believe you testified earlier that you did

18 not retain the file in this matter?

19 A No. Mrs. Haley----Mr. Wilmouth, rather, called

20 and made an appointment for Mrs. Haley in 1979, and she came to

21 me saying that Mr. Pettus as Commissioner of Accounts, wouldn't

22 accept the settlement as it was, or the account; and would I

23 get in touch with him and see what I could do. I called him,

24 and he never returned my call. My secretary-----if you want to

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1 object, you can------but your question; my secretary says she
2 has the impression that Mrs. Haley came at a later date and
3 took what file I had.
4 Q. I understand; but my question was directed back
5 to the day or two days that you saw these three people in July
6 of 1977.
7 A. Oh, I thought you were talking--------
8 Q. No.
9 A. Oh, and you asked me about the file.
10 Q. Yes, I did ask you about your file later; but
11 let me direct your attention back to the days in July of 1977;
12 do you recall that you saw these people two days in July of 1977
13 or only one?
14 A. I know it was one. I said my impression was that
15 it was two, but that I could be wrong.
16 Q. Let me ask you; if it was two, do you recall
17 whether the days were successive?
18
19 THE COURT: If he said he didn't remember,
20 I don't know how he could remember whether they were
21 successive or not.
22
23 A. Mr. Graves, I reckon I do like a lot of people
24 that practice in the country. I keep no record when people

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1 come in. I keep no time sheet.

2

3 THE COURT: If you did, you wouldn't do

4 anything else.

5

6 A. And the only appointment book I ever had was the

7 small book I have in my pocket; and that's the only thing I

8 ever have.

9

10 BY MR. GRAVES: (Continuing)

11 Q. Were you called upon for, or did you have an

12 opportunity to do any research in connection with this matter?

13 A. No, I did no research.

14 Q. You did mention that you thought it was a matter

15 that should be referred to a Court?

16 A. I did; and I think that obviously if they had

17 followed my advice at that point, we wouldn't be here today.

18 I think it would be only fair that as an attorney, that that

19 would be the ultimate answer as to the construction of the

20 will; would be the Judge. And I did tell them that.

21 Q. But at the time you had no opportunity at all to

22 do any research into the case, I believe you testified?

23 A. No.

24 Q. Now, did you look into what property was involved?

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1 Did you ask Mrs. Haley to let you know what property Mr. Haley
2 had left or anything of that sort? Did they give you any
3 information about that?
4 A. No enumeration of property was given to me. I
5 do remember asking whether there was real property involved,
6 and I got an affirmative answer. I can't remember any more
7 than that. I asked that, because as in searching titles, the
8 first thing anybody would come across would be the will, and
9 that would give me some question; and that, really, was the
10 only thing.
11 Q. Do you recall thinking this was a May -v- Joynes
12 problem or anything of that sort?
13 A. I don't remember it. May -v- Joynes problem?
14 Q. May -v- Joynes.
15 A. Yes; it could be; but that's been corrected by
16 another case, or something has corrected it. I don't know; I
17 think Mr. Pettus asked me the question a few days ago. I've
18 done a little research before I came here; but that very likely
19 is the name of the case that I couldn't remember when I was
20 talking to Mr. Pettus; but it's been corrected. I know the
21 problem has been corrected in the Commonwealth of Virginia; one
22 way or the other.
23 Q. You don't recall whether by later decision or by
24 statute?

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1 A. It wouldn't make much difference, would it?

2 Q. All right, sir.

3 A. I don't mean to be smart. No, I don't remember.

4 Q. I understand. You testified that you made the

5 remark, with which I think almost all attorneys would be

6 sympathetic, that Mr. Haley should have spent fifty dollars to

7 get himself a will. Was the will handed to you during that

8 conference? I believe you testified it was.

9 A. Was it handed to me?

10 Q. Yes.

11 A. Yes, it was.

12 Q. And then did you make that remark after you had

13 examined the will?

14 A. Obviously afterwards, because I have seen some

15 holographic wills that are a lot better than lawyers write.

16 Q. And you say Mrs. Haley was obviously upset by your

17 remark?

18 A. Was something that upset her that day. I regret

19 that I said it; it was an inappropriate thing to say.

20 Q. Now, in your agreement, if you refer to it, I

21 believe that's Defendant's Exhibit------the agreement you

22 drafted----I wish you would read the second Whereas.

23 A. Uh-huh.

24 Q. "Creates an ambiguity as to whether Eva F. Haley

is to acquire a life interest only, or in fee simple and

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1 absolutely".

2 A. Uh-huh.

3 Q. Did you explain that the will was ambiguous in

4 this manner to the people?

5 A. I think that, you know, the exact words that are

6 used in the agreement could be a lot better and could be said

7 better; I think that the discussion was somewhat more than that,

8 or what I said would have been somewhat more.

9 Q. I understand. Now, you do recite, as lawyers

10 do, a consideration. Was it your understanding that any

11 payments were made by either party to the other?

12 A. None; that was just a standard ten dollars.

13

14 MR. GRAVES: All right, sir; I have no

15 other questions.

16

17 THE COURT: You may step down. You may be

18 excused.

19 MR. LANCASTER: Thank you, Your Honor.

20

21 THE WITNESS STANDS ASIDE:

22

23 MR. MCNALLY: Your Honor; we have no further

24 witnesses; and that is the defendant's case.

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1 THE COURT: All right, gentlemen. Do you
2 all have any rebuttal?
3 MR. PETTUS: Yes; just a minute.
4 MR. GRAVES: Your Honor; we would like to
5 be sure to see that the exhibits that are mentioned
6 in the Bill of Complaint are all in the record.
7 I think some of them have been introduced formerly;
8 maybe some have not.
9 THE COURT: I think everything has been;
10 the only thing I have in the record, I have the copy
11 of the will, copy of the agreement, which is called
12 a "Real Estate Contract"; that's between Mr. and Mrs.
13 Haley and Donald L. Haley and Betty R. Haley, that
14 you all talked about earlier today.
15 MR. GRAVES: Yes, sir.
16 THE COURT: And then the agreement that
17 was drawn up by Mr. Lancaster; and that's it.
18 MR. GRAVES: Can we stipulate all of those
19 are in the record?
20 MR. MCNALLY: As far as I know; there has
21 been one other exhibit that was marked Exhbit Number
22 1, the whole book.
23 THE COURT: Yes; Defendant's Exhibit Number
24 1. We have no other exhibits.

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1 MR. GRAVES: There is one further, which
2 is a document that's been mentioned, which I don't
3 believe is in the record; which is the typewritten
4 will.
5 THE COURT: No, I've never seen that.
6
7
8
9 EVA F. HALEY, a rebuttal witness, testifies
10 further as follows:
11
12 DIRECT EXAMINATION
13 BY MR. PETTUS:
14 Q Mrs. Haley, Mr. Pigg testified, I believe, that
15 when he visited Mr. Haley, he told him that he would find a
16 will in his desk drawer. Did you find a will in the desk drawer?
17 A Yes.
18 Q Do you have that will?
19 A Yes, I have the will.
20
21 THE COURT: Have you gentlemen seen that?
22 MR. MCNALLY: We have seen a typewritten
23 will, Your Honor. I suspect that is it.
24 THE COURT: Are you introducing that as

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1 Plaintiff's Exhibit Number 1?

2 MR. PETTUS: Whatever it is.

3 THE COURT: Number 1.

4

5 BY MR. PETTUS: (Continuing)

6 Q Now, that will, is that the will that was found

7 in the desk drawer, and the typewritten will that you testified

8 to earlier that was brought to Mrs. Hoy and she said it could

9 not be probated?

10 A Yes.

11 Q I believe that will leaves you the entire estate?

12 A Yes, it does.

13

14 MR. MCNALLY: Your Honor, I would simply

15 say the will speaks for itself.

16 MR. PETTUS: Right.

17

18 BY MR. PETTUS: (Continuing)

19 Q Did you later------You testified earlier that Mr.

20 Haley did not say he had a will, and then Mr. Pigg said he said

21 he did have a will------did you go to Mrs. Hoy and ask her to

22 write one for Mr. Haley?

23 A I did go to Mrs. Hoy and told Mrs. Hoy that he did

24 not have a will and talked to her about it, and she told-------

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1 Q Did she write you and confirm that in writing?
2 A She did.
3 Q Do you have that letter?
4 A Yes.
5 Q Would you just hand that to the Court?
6
7 MR. MCNALLY: Your Honor, we have not seen
8 the letter.
9 THE COURT: I'm not going to introduce it.
10 It's just, "To Whom it May Concern"; a statement.
11 MR. MCNALLY: Your Honor, I'm going to
12 object to the admission of this into evidence.
13 I know it's tendered.
14 THE COURT: I think she testified-----As
15 I recall her testimony earlier today, was that she
16 went to see Mrs. Hoy and talked to her about it,
17 and then Mrs. Hoy said she would go over and exe-
18 cute, draw the will for him at the hospital; and then
19 she thought it would be too much of a traumatic
20 experience for him and didn't go.
21 MR. PETTUS: That supports her theory.
22 Mr. Pigg said he told him he had a will.
23 THE COURT: He told him that while he was
24 in intensive care, and she was not present when he

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said that, as I recall.

BY MR. PETTUS: (Continuing)

Q Now, the will that was found in his desk drawer, then, is the will we just introduced in evidence, the typewritten will which was not witnessed?

A Yes.

Q And the other will that was finally probated was found up among his manuscripts?

A The probated will was found among the manuscript.

Q Where?

A On the shelves.

MR. MCNALLY: Your Honor, I'm going to object to this line of questioning. I think it's irrelevant. The will in question has been probated, admitted to probate over a year, and I submit it has no relevance.

MR. GRAVES: Mr. Pigg testified what the testator told him in the hospital as to where the will was; in his desk drawer.

THE COURT: I understand. That's why----- I don't think he's talking about this will, about that not being relevant.

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BY MR. PETTUS: (Continuing)

Q Mr. Pigg also testified-----and you're on rebuttal----- that you made a remark which he inferred accused him of being involved, doing something to you. Explain what you meant by that remark. Do you follow me?

A Is that the remark that I felt I had been sabotaged?

Q About that time; right.

A Yes; I would be glad to explain that. We were on our way to Farmville, and as best I recall, we were going the back way, through Hampden Sydney; and in conversation, I said that I felt as though I had been sabotaged, and he was very indignant over the remark that I made about being sabotaged. And I further explained, I said, "Well, you did not write the will".

Q Now, at that time, is that the time, or did you at that time tell the Piggs that you got nothing under the will?

A I do not recall telling them that I got nothing under the will. But I went on to say, and in my mind and memory, it was generally understood that they knew this; because I went on to explain to them that there was no money; at the time that this probated will was written, there was no money; we had no money; and I explained about the annuity that we had purchased in '51, which ran the ten (10) years, and at the end of the ten

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(10) years there was no money.

MR. PETTUS: That's all.

THE COURT: You may step down.

MR. MCNALLY: I have one question, Mrs. Haley; just one question I want to clarify some before you step down.

CROSS-EXAMINATION

BY MR. MCNALLY:

Q You do remember testifying that your husband had at least mentioned to you before his death leaving an interest in the farm to Mr. Pigg, do you not?

A Not a vivid memory, no.

Q You do remember your testimony?

THE COURT: I don't recall her testifying.

BY MR. MCNALLY: (Continuing)

Q You recall testifying at your deposition, do you not?

A Yes.

Q That your husband had mentioned to you prior to his death the possibility of leaving an interest in the farm to

Mr. Pigg?

A I don't recall saying that.

Q Let me refer the witness to the transcript of the deposition; page 54 of the transcript, fourth line down. Question of Mr. Stogner to you. "Mrs . Haley, he never discussed with you leaving an interest in the farm to Mr. Pigg at all?" Answer; this is you testifying; "Well, he might have mentioned it vaguely". Question, "What did he say about it?" "I don't recall; there was no detailed discussion".

Q Do you remember your testimony in that regard?

MR. PETTUS: Go on and read the next question.

BY MR. MCNALLY: (Continuing)

Q Did he mention that he might just leave the farm property?

A No, I don't believe I can recall; I did not recall that he said that.

Q Is it your testimony that you don't recall any such testimony, or any such statement at all?

A I don't recall.

MR. MCNALLY: I have no further questions.

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THE COURT: You may step down. All right, gentlemen, I'll be glad to hear from you.

THE WITNESS STANDS ASIDE:

MR. STOGNER: Your Honor, I have heard some four (4) hours of testimony, and happy to find that we're down to the same two issues. We've prepared for the Court a trial memorandum discussing some of the issues our colleagues have discussed, and I'd like to present that memorandum to the Court at this time, prior to my argument.

(Whereupon, closing statements were rendered by Mr. Stogner and Mr. Graves, after which the following was rendered by the Court:)

THE COURT: Gentlemen, it's perfectly clear to the Court that there was certainly a mistake of fact in this matter. Mrs. Haley had been told by an attorney, and that had been indicated of being true by her tax man; she had no reason to disbelieve anything he told her; and I'm sure that Mr. Pigg didn't have any idea as to the real construction of

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this matter here. But there is no question in my mind but that had Mrs. Haley had any idea of what she really had under this will, that she would not have entered into any such agreement.

I cannot find any real basis of consideration in this matter, because she could have gotten everything that was there; could have sold everything that was in this entire estate. She could have gotten rid of that any way she wanted to during her life, and there would have been nothing left for Mr. Pigg to get.

So I think that I would be remiss as a Chancellor if I allow this contract to be carried through. And for that reason I have to void the contract.

You all will draw up the Order?

MR. GRAVES: Yes, sir.

****

I, Jacqueline E. Scruggs, Court Reporter, do hereby certify that I was duly sworn prior to the commencement of this cause; that the proceedings herein contained were reported by me and accurately transcribed to the best of my abilities, and that the transcript of this case is a true and accurate account of all the evidence taken, motions made, exceptions and objections and other incidents of the trial of Eva F. Haley -v- Garland D. Pigg, tried in the Circuit Court of Charlotte County at Charlotte Court House, Virginia, on October 31, 1979.

Jacqueline E. Scruggs
Registered Professional Reporter.

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ASSIGNMENTS OF ERROR

1. The Court erred in holding that the agreement between Eva F. Haley and G. Dale Pigg had been entered into by the parties upon a mutual mistake of fact sufficient under Virginia law to render that agreement null and void.

2. The Court erred in holding that the agreement was not supported by adequate consideration and that it was therefore void and unenforceable.