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IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 801734

HERBERT CHARLES WOLFREY, JR.

Appellant

v.

MARKWOOD PENCE, ET AL.

Appellees

JOINT APPENDIX

Ronald R. Tweel
For MICHIE, HAMLETT, DONATO & LOWRY
500 Court Square, Suite 300
P. O. Box 298
Charlottesville, Virginia 22902

Counsel for Appellant

L. Quinn Kaylor
George S. Aldhizer, II
For Wharton, Aldhizer & Weaver
90 N. Main Street
Harrisonburg, Virginia 22801

Counsel for Markwood Pence, Edna P. Frank, Albert Pence and Edward Pence

Continuation of Appellees' Counsel - Inside Cover

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

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THIS CONTRACT, made and entered into this 2nd day of February, 1978, by and between MARKWOOD PENCE and ETHEL MAE PENCE, his wife, EDNA P. FRANK and ERNEST B. FRANK, her husband; ALBERT PENCE and CLARA V. PENCE, his wife; EDWARD PENCE and ANNA E. PENCE, his wife; MARY MILLER PENCE, WIDOW; CLEMMIE LAMB WOLFREY, widow; DOROTHY WOLFREY STEELE and CLARENCE L. STEELE, her husband; HAZEL WOLFREY LISKEY and JOHN N. LISKEY, her husband; CLEMMIE WOLFREY NELSON and JAMES LEROY NELSON, her husband; RUTH W. ARMENTROUT, widow; KATHLENE WOLFREY STANLEY and OREN B. STANLEY, her husband; WILLIAM T. WOLFREY, JR. and WINONA FRANCES WOLFREY, his wife, parties of the first part and HERBERT CHARLES WOLFREY, JR., party of the second part;

W I T N E S S E T H :

That for and in consideration of the sum of Ten Dollars ($10.00), and the mutual covenants and promises herein contained, the parties of the first part do hereby agree to sell, subject to confirmation by the Court, and the party of the second part does hereby agree to purchase all those certain tracts or parcels of land, containing approximately 13 acres, more or less, standing in the name of R. D. Wolfrey, together with the improvements thereon and all rights, privileges, appurtenances, easements and rights of way thereunto belonging or in anywise appertaining, situated in Linville District near Singers Glen, Rockingham County, Virginia, and being described as follows:

TRACT 1: All that certain tract of land lying about 1 mile north of New Erection in the County of Rockingham, being part of a tract of land deeded to Mary E. Messick and bounded as follows: Beginning at a corner of the Misses Millers garden N 55 1/2 W 7 20/25 poles to a stone, thence N 41 3/4° E 16 13/25 poles to a black oak, an old corner, thence

S 41 3/5° W. 40 poles to Misses Millers corner, thence with their lot N 49° W 8 18/25 poles, thence S 41 3/4 - 18 21/25 poles to the beginning, containing five acres,

and being the same property acquired by the said R. D. Wolfrey by deed dated March 1, 1899, from Mary E. Messick and William R. Messick, which deed is duly of record in the Clerk's Office of Rockingham County, Virginia, in Deed Book 65, at page 56.

TRACT 2: All that certain lot of land lying about 1 mile east of Mt. Clinton in said County being part of a tract of land deeded to John A. Weaver and bounded as follows: Beginning at R. D. Wolfrey's corner in Burtners line and with same N. 55 1/2 W. 43 1/2 poles to Showalter's corner, thence N. 41 3/4° E. 25 3/25 poles to a stone, thence S. 55 1/2 E. 31 6/25 poles to a stone J. A. Weavers corner, thence N. 41 3/4° E 21 9/25 poles to Weavers corner, thence S 53 1/2 E. 12 7/25 poles to a corner thence S 41 3/4° W. 45 22/25 poles to the beginning, containing 3 acres, 1 rood and 27 poles; LESS AND EXCEPT, HOWEVER, a parcel of land, containing 1 acre, 1 rood and 14 poles, about 1 mile east of Mt. Clinton, conveyed to John A. Weaver, by deed dated April 1, 1904 from R. D. Wolfrey and Martha J. Wolfrey, said deed being of record in the Clerk's Office aforesaid in Deed Book 85, at page 64,

and being the same property acquired by the said R. D. Wolfrey, by deed dated April 1, 1904, from John A. Weaver and Lillie S. Weaver, which deed is duly of record in the Clerk's Office aforesaid in Deed Book 82, at page 227.

TRACT 3: All that certain tract or parcel of land 8.9 poles long by 10 feet wide adjoining David Donovan, formerly Wm. H. Burtners land, R. D. Wolfrey and John G. Heatwoll,

and being the same property acquired by R. D. Wolfrey, by deed dated September 16, 1913 from Emma Miller, which deed is duly of record in the Clerk's Office aforesaid in Deed Book 122, at page 273.

The further terms and conditions of this contract are as follows:

1) That the party of the second part shall institute, and pay all costs incident to, a suit in the Circuit Court of Rockingham County, Virginia, asking the Court to decree a sale of the interests of the said R. D. Wolfrey's heirs at law in said real estate.

2) That upon said order being entered by the court ordering such a sale, the party of the second part does hereby agree to pay, upon the delivery of a good and sufficient deed containing the usual warranty of title conveying said property free and clear of encumbrances, the sum of Sixteen Thousand One Hundred Dollars ($16,100.00)

3) That said $16,100.00, if approved, shall be held by the court's Special Commissioner and then dispersed to the parties hereto as their respective interest shall appear.

4) That until the delivery of said deed all risk of loss remains on the sellers.

5) That the real estate taxes for the current year shall be paid by the party of the second part.

6) It is specifically understood and agreed by and between the parties hereto that this contract shall be expressly binding upon the heirs, devisees, personal representatives and assigns of all the respective parties hereto.

WITNESS the following signatures and seals:

Markwood Pence (SEAL)
Markwood Pence

Ethel Mae Pence (SEAL)
Ethel Mae Pence

Edna P. Frank (SEAL)
Edna P. Frank

Herbert Charles Wolfrey (SEAL)
Herbert Charles Wolfrey, Jr.

William T. Wolfrey, Jr. (SEAL)
William T. Wolfrey, Jr.

Winona Frances Wolfrey (SEAL)
Winona Frances Wolfrey

E. B. Frank (SEAL)
Ernest B. Frank

Albert B. Pence (SEAL)
Albert Pence

Clara V. Pence (SEAL)
Clara V. Pence

Edward C. Pence (SEAL)
Edward Pence

Anna E. Pence (SEAL)
Anna E. Pence

_____ (SEAL)
Mary Miller Pence

_____ (SEAL)
Clemmie Lamb Wolfrey

_____ (SEAL)
Dorothy Wolfrey Steele

_____ (SEAL)
Clarence L. Steele

_____ (SEAL)
Hazel Wolfrey Liskey

_____ (SEAL)
John N. Liskey

_____ (SEAL)
Clemmie Wolfrey Nelson

_____ (SEAL)
James Leroy Nelson

_____ (SEAL)
Ruth W. Armentrout

_____ (SEAL)
Kathleen Wolfrey Stanley

_____ (SEAL)
Oren B. Stanley

STATE OF PENNSYLVANIA

COUNTY OF Tioga, to-wit:

The foregoing instrument was acknowledged before me this 5th day of ~~February~~ April, 1978, by Markwood Pence and Ethel Mae Pence, his wife.

My commission expires _____.

Notary Public

STATE OF VIRGINIA

COUNTY OF ROCKINGHAM, to-wit:

The foregoing instrument was acknowledged before me this 17th day of ~~February~~ March, 1978, by Edna P. Frank and Ernest B. Frank, her husband.

My commission expires Feb 12, 1982.

Notary Public

STATE OF VIRGINIA

COUNTY OF ROCKINGHAM, to-wit:

The foregoing instrument was acknowledged before me this 3rd day of ~~February~~ March, 1978, by Albert Pence and Clara V. Pence, his wife.

My commission expires Feb. 13, 1982.

Notary Public

STATE OF VIRGINIA

COUNTY OF ROCKINGHAM, to-wit:

The foregoing instrument was acknowledged before me this 3rd day of ~~February~~ March, 1978, by Edward Pence and Anna E. Pence, his wife.

My commission expires February 12, 1982.

Notary Public

STATE OF VIRGINIA

CITY OF RICHMOND, to-wit:

The foregoing instrument was acknowledged before me this _____ day of February, 1978, by Mary Miller Pence, widow.

My commission expires _____.

Notary Public

STATE OF VIRGINIA

COUNTY OF ROCKINGHAM, to-wit:

The foregoing instrument was acknowledged before me this 3rd day of ~~February~~ March, 1978, by Clemmie Lamb Wolfrey, widow.

My commission expires [illegible].

My Commission Expires March 30, 1980

Notary Public

STATE OF VIRGINIA

COUNTY OF ROCKINGHAM, to-wit:

The foregoing instrument was acknowledged before me this 13th day of ~~February~~ March, 1978, by Dorothy Wolfrey Steele and Clarence L. Steele, her husband.

My commission expires February 12, 1982.

008

Notary Public

STATE OF VIRGINIA

COUNTY OF ROCKINGHAM, to-wit:

The foregoing instrument was acknowledged before me this 24th day of February, 1978, by Hazel Wolfrey Liskey and John N. Liskey, her husband.

My commission expires Feb. 12, 1980.

Susan W. Mathias
Notary Public

STATE OF MARYLAND

COUNTY OF Prince George, to-wit:

The foregoing instrument was acknowledged before me this 15th day of February, 1978, by Clemmie Wolfrey Nelson and James Leroy Nelson, her husband.

My commission expires July 1, 1978.

[illegible]
Notary Public

STATE OF FLORIDA

COUNTY OF DeSoto, to-wit:

The foregoing instrument was acknowledged before me this 18th day of April, 1978, by Ruth W. Armentrout, widow.

My commission expires [illegible] Fire & Casualty Company.

Katherine [illegible]
Notary Public

STATE OF FLORIDA

COUNTY OF Polk, to-wit:

The foregoing instrument was acknowledged before me this 14th day of ~~February~~ April, 1978, by Kathleen Wolfrey Stanley and Oren B. Stanley, her husband.

My commission expires [illegible] Company.

Lou Hathaway

STATE OF FLORIDA

COUNTY OF DeSoto, to-wit:

The foregoing instrument was acknowledged before me this 14th day of April 1978, by William T. Wolfrey, Jr. and Winona Frances Wolfrey, his wife.

My commission expires _____.

Notary Public

STATE OF MARYLAND

COUNTY OF Prince George, to-wit:

The foregoing instrument was acknowledged before me this 15th day of February, 1978, by Herbert Charles Wolfrey, Jr.

My commission expires July 1, 1978.

Notary Public

VIRGINIA:

IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF ROCKINGHAM COUNTY.

MARKWOOD PENCE, ET ALS, Complainants

vs.

PERRY EDWIN WOLFREY, Incomp., et als Defendants

To John N, Crist, Attorney:

You are hereby notified that you have been appointed, pursuant to ~~[illegible]~~ the Code of Virginia, Guardian ad Litem to defend the interest of Perry Edwin Wolfrey, Incomp. and Betty Sue Pence, infant

defendants in the above-styled suit.

Attest: Donna Lockhart, Deputy Clerk.

I consent to act in the above capacity. Given under my hand this 30th day of November, 1979.

John N. Crist, Attorney.

Nov 30, 1978.

TO THE HONORABLE JOSHUA L. ROBINSON, JUDGE OF SAID COURT:

Your complainants respectfully represent unto Your Honor as follows:

1) That Richard Daniel Wolfrey departed this life intestate in 1916, seised and possessed of three certain tracts or parcels of land, containing approximately 13 acres, more or less, together with the improvements thereon and all rights, privileges, appurtenances easements and rights-of-way thereunto belonging or in anywise appertaining, situate in Linville District near Singers Glen, Rockingham County, Virginia, and being described as follows:

> TRACT 1: All that certain tract of land lying about one (1) mile north of New Erection in the County of Rockingham, being part of a tract of land deeded to Mary E. Messick and bounded as follows: Beginning at a corner of the Misses Millers' garden N 55 1/2 W 7 20/25 poles to a stone, thence N 41 3/4° E 16 13/25 poles to a black oak, an old corner, thence S 41 3/5° W. 40 poles to Misses Millers' corner, thence with their line N 49° W 8 18/25 poles, thence S 41 3/4 - 13 21/25 poles to the beginning, containing five acres,

and being the same property acquired by the said R. D. Wolfrey by deed dated March 1, 1899, from Mary E. Messick and William R. Messick, which deed is duly of record in the Clerk's Office of Rockingham County, Virginia, in Deed Book 65, at page 56.

> TRACT 2: All that certain lot of land lying about one (1) mile east of Mt. Clinton in said County being part of a tract of land deeded to John A. Weaver and bounded as follows: Beginning at R. D. Wolfrey's corner in Burtners line and with same N. 55 1/2 W. 43 1/2 poles to Showalter's corner, thence N. 41 3/4° E. 25 3/25 poles to a stone, thence S. 55 1/2 E. 31 6/25 poles to a stone J. A. Weavers corner, thence N 41 3/4° E 21 9/25 poles to weavers corner, thence S 53 1/2 E. 12 7/25 poles to a corner

thence S 41 3/4° W. 45 22/25 poles to the beginning, containing 8 acres, 1 rood and 27 poles; LESS AND EXCEPT, HOWEVER, a parcel of land, containing 1 acre, 1 rood and 14 poles, about one (1) mile east of Mt. Clinton, conveyed to John A. Weaver, by deed dated April 1, 1904 from R. D. Wolfrey and Martha J. Wolfrey, said deed being of record in the Clerk's Office aforesaid in Deed Book 85, at page 64,

and being the same property acquired by the said R. D. Wolfrey, by deed dated April 1, 1904, from John A. Weaver and Lillie S. Weaver, which deed is duly of record in the Clerk's Office aforesaid in Deed Book 82, at page 227.

TRACT 3: All that certain tract or parcel of land 8.9 poles long by 10 feet wide adjoining David Donovan, formerly Wm. H. Burtners land, R. D. Wolfrey and John G. Heatwole,

and being the same property acquired by R. D. Wolfrey, by deed dated September 16, 1913 from Emma Miller, which deed is duly of record in the Clerk's Office aforesaid in Deed Book 122, at page 273.

2) That at his death Richard Daniel Wolfrey was survived by his widow, Martha J. Wolfrey, and the following named children: Lula V. Wolfrey Pence, Georgia A. Wolfrey, Oscar Brown Wolfrey, John N. Wolfrey, Herbert Charles Wolfrey, Nancy M. Wolfrey and William Thomas Wolfrey; the said Martha J. Wolfrey died in 1935; the said Lula V. Wolfrey Pence died in 1920, her husband Hugh Pence also being deceased, leaving the following named children as her heirs at law: Markwood Pence, Edna P. Frank, Albert Pence, Edward Pence and Golden Pence; the said Golden Pence died in June, 1977 survived by his widow Mary Pence and an infant daughter, Betty Sue Pence; the said Mary Pence died in November, 1977; the said Herbert Charles Wolfrey died January 21, 1948, survived by Clemmie T. Lamb Wolfrey, his widow, and the following named child-

ren: Dorothy Wolfrey Steele, Richard Donald Wolfrey, Hazel Wolfrey Liskey, Clemmie Wolfrey Nelson, Perry Edwin Wolfrey, Herbert Charles Wolfrey, Jr.; the said William Thomas Wolfrey died September 11, 1952, survived by his widow, Frances Baker Wolfrey Coppage and the following named children: Ruth W. Armentrout, Kathlene Wolfrey Stanley and William Thomas Wolfrey; the said John N. Wolfrey died March 3, 1943, leaving his widow, Augusta Wolfrey, as his sole heir at law, the said Augusta Wolfrey died and by her will which was filed August 5, 1943 in Washington, D.C., left all of her property, both real and personal, to Mary Schaeffer; the said Georgia A. Wolfrey died in 1914, having never been married nor born any children; the said Oscar Brown Wolfrey died in 1978, having never been married nor fathering any children; the said Nancy M. Wolfrey died in 1921, having never been married, nor born any children.

3) The aforementioned real estate is now owned by the hereinbefore enumerated heirs as follows:

Markwood Pence, 1/20 undivided interest
Edna P. Frank, 1/20 undivided interest
Albert Pence, 1/20 undivided interest
Edward Pence, 1/20 undivided interest
Betty Sue Pence, 1/20 undivided interest
Mary Schaeffer, 1/4 undivided interest
Clemmie T. Lamb Wolfrey, dower in 1/4 interest
Dorothy Wolfrey Steele, 1/24 undivided interest
Richard Donald Wolfrey, 1/24 undivided interest
Hazel Wolfrey Liskey, 1/24 undivided interest
Clemmie Wolfrey Nelson, 1/24 undivided interest
Perry Edwin Wolfrey, 1/24 undivided interest
Herbert Charles Wolfrey, 1/24 undivided interest
Frances Coppage, dower in 1/4 interest
Ruth W. Armentrout, 1/12 undivided interest
Kathleen Wolfrey Stanley, 1/12 undivided interest
William Thomas Wolfrey, 1/12 undivided interest

4) That the said real estate is so located in such a nature that it is not susceptible to partition in kind.

5) That it will be to the advantage and interest of all parties concerned that said real estate be sold as a whole in order to effect a partition and the proceeds of the sale be divided

among the parties as their respective interest may appear, after the payment of all liens binding said real estate, should there be any such liens.

6) That on the 2nd day of February, 1978, your complainants herein entered into a written contract whereby they agreed to sell, subject to the confirmation by the Court, to Herbert Charles Wolfrey, Jr., the the said Herbert Charles Wolfrey, Jr., agreed to purchase, the real estate hereinbefore described for the sum of Sixteen Thousand One Hundred ($16,100.00) Dollars. The contract is hereto attached and made a part hereof, marked "Exhibit D".

WHEREFORE, your complainants respectfully pray:

a) That a competent and discreet attorney at law may be appointed as guardian ad litem to represent the interests of Perry Edwin Wolfrey, incompetent and Betty Sue Pence, infant;

b) That the guardian ad litem so appointed may be required to answer this bill of complaint;

c) That an order of publication may be issued as notice to Richard Donald Wolfrey and Mary Schaeffer, whose whereabouts are unknown;

d) That the sale made by your complainants may be accepted, approved and confirmed in order that a partition of said real estate may be effected, or that said real estate may be partitioned in some manner prescribed by law, but preferably by acceptance of the said contract of sale;

e) That a reasonable and proper attorney's fee may be allowed to complainants' attorney;

f) That your complainants may have all such other, further and general relief in the premises as the nature of their case may require, or to equity shall seem meet.

Respectfully submitted,

MARKWOOD PENCE
ETHEL MAE PENCE
EDNA P. FRANK
ERNEST B. FRANK
ALBERT PENCE
CLARA V. PENCE
EDWARD PENCE
ANNA E. PENCE
CLEMMIE LAMB WOLFREY
DOROTHY WOLFREY STEELE
CLARENCE L. STEELE
HAZEL WOLFREY LISKEY
JOHN N. LISKEY
CLEMMIE WOLFREY NELSON
JAMES LEROY NELSON

Filed in the Clerk's Office
Rockingham County, Va.

DEC 5 1978

Deputy Clerk

A N S W E R

That answer of PERRY EDWIN WOLFREY, incompetent, and BETTY SUE PENCE, an infant, by John N. Crist, their guardian ad litem, and the answer of John N. Crist, guardian ad litem for PERRY EDWIN WOLFREY, incompetent, and BETTY SUE PENCE, an infant, to a petition filed by Markwood Pence, et als, in the Circuit Court of Rockingham County, Virginia, and to that end the following is set forth:

(1) That the said PERRY EDWIN WOLFREY, incompetent, and BETTY SUE PENCE, an infant, say that they are not capable of knowing their true interests in relation to the subject matter of said petition and further do not know whether the statements contained therein are true or not. They confide the protection of their interest to the Court, and ask that no decrees be entered to their prejudice.

(2) John N. Crist, guardian ad litem for the said PERRY EDWIN WOLFREY, incompetent, and BETTY SUE PENCE, an infant, for answer to said Petition, says that he knows nothing as to the truth or falsity of the statements in the Petition and prays full protection for said defendants.

PERRY EDWIN WOLFREY, incompetent

By John N. Crist
Guardian ad Litem

BETTY SUE PENCE

By _____
Guardian ad LItem

_____
John N. Crist
Guardian ad Litem

_____
John N. Crist
MOORE, JACKSON, GRAVES & RALSTON
312 Virginia National Bank Building
Harrisonburg, Virginia 22801

C E R T I F I C A T E

I hereby certify that a copy of the foregoing Answer was mailed to Jack F. DePoy, Esquire, Lapsley & DePoy, 509 Virginia National Bank Building, Harrisonburg, Virginia 22801, counsel for Complainants, this 5th day of December, 1978.

_____
John N. Crist

IN CHANCERY
DEPOSITIONS
#3678

DEPOSITIONS TAKEN ON BEHALF OF COMPLAINANTS

Harrisonburg, Virginia
January 17, 1979

Appearances:

Jack F. DePoy, Attorney for Complainants.

John N. Crist, Guardian ad Litem.

Herbert C. Wolfrey, Jr.

Dorothy W. Steele

Hazel W. Liskey

No appearance for remaining defendants.

Depositions of Herbert C. Wolfrey, Jr. and others, taken before Susan W. Mathias, a Notary Public of and for the County of Rockingham, State of Virginia, pursuant to notice, in the office of Jack F. DePoy, 509 Virginia National Bank Building at 10:30 a.m. on January 17, 1979, and are to be read as evidence on behalf of the complainants in the above styled chancery cause.

S T I P U L A T I O N

Signatures of all witnesses are waived.

HERBERT CHARLES WOLFREY, JR.

a witness of lawful age, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DEPOY:

Filed in the Clerk's Office
Rockingham County, Va.

JAN 25 1979

Deputy Clerk

Q. State your name please.

A. Herbert Charles Wolfrey, Jr.

Q. Where do you live Mr. Wolfrey?

A. 4919 49th Avenue, Hyattsville, Maryland.

Q. Are you the party who is interested in purchasing the subject property that resulted in the brining of this suit?

A. I am.

Q. Who was the original owner of this property, one of your ancestors?

A. Yes, sir, my grandfather, Richard D. Wolfrey.

Q. He was the owner of the property?

A. Yes sir.

Q. And do you know about when he died?

A. Approximately 1916.

Q. At the time of his death, in 1916, was he survived by children?

A. Yes sir.

Q. Do you know how many?

A. Six, I think.

Q. Was his widow living at that time?

A. Yes sir.

Q. What was her name?

A. Martha Wolfrey.

Q. Has she since departed, has she since died?

A. Yes sir.

Q. Let's start with the children. Name the children living at the time of his death.

A. The oldest was Lula V. Wolfrey. She married a Pence and was Lula V. Wolfrey Pence.

Q. Is she still living?

A. No sir, she died in 1920.

Q. What was the next child?

A. The next child was Georgia A. Wolfrey.

Q. How about the third in order?

A. It was a son, Oscar Brown Wolfrey.

Q. How about the next in order?

A. It was John N. Wolfrey.

Q. And the next?

A. My father, Herbert Charles Wolfrey.

Q. And the next?

A. Nancy M. Wolfrey.

Q. And the next?

A. William Thomas Wolfrey.

Q. At that time, at the time of your grandfather's death, did he have any children who had predeceased him who had surviving children?

A. No sir.

Q. He did not?

A. No sir.

Q. Were these seven children that you have just mentioned his only children?

A. Yes sir.

Q. He had none who had previously died or anything of this nature?

A. He had one daughter, I think that had died previous to him and she was not married.

Q. Do you know her name?

A. Yes sir, it was Georgia Wolfrey.

Q. That's Georgia A. Wolfrey?

A. Yes sir.

Q. That is one of the children that you had mentioned. I believe that she was second in order?

A. Yes sir.

Q. So those seven were his only children?

A. Yes sir.

Q. Now, are they all living at this time?

A. No sir, they're all dead.

Q. All of them are dead?

A. Yes sir.

Q. Let's back up then and start with the individual that you named as being the first born, Lula V. Wolfrey. Do you know when she died?

A. 1920.

Q. Now, I believe, that prior to her death, she was married to a Mr. Pence?

A. Yes sir.

Q. Does he survive, is he living?

A. No sir. He's dead.

Q. At the time of her death in 1920 did she have living children?

A. Yes sir, she did.

Q. How many did she have?

A. Five children.

Q. Did she have any children who had predeceased her, died before she did?

A. I'm not sure, I don't think so.

Q. If they did, if she did, let's say that she had had one or two children who died before she did, if they did, did they have surviving children? In other words were their children living at the time of their grandmother's death?

A. No sir, not that I know of.

Q. Would you please name her five children and whether they are living or not?

A. Markwood Pence.

Q. Is he living?

A. Yes sir, in Pennsylvania. Do you know his spouse's name? It's not necessary if you don't know.

A. No sir, I don't believe that I do.

Q. Who else. Who was the second?

A. Edna Pence Frank. She married a Frank.

Q. Is she still living?

A. Yes sir.

Q. Who else?

A. Albert Pence of Elkton.

Q. Is he still living?

A. Yes sir. Edward Pence.

Q. Is he still living?

A. Yes sir.

Q. Who else?

A. Goldie Pence. He died recently in June of '77.

Q. Golden?

A. Golden.

Q. So the fifth of Lula V.'s children has died, is that correct?

A. Yes sir.

Q. At the time of his death was he survived by children?

A. Yes sir, they had one child.

Q. What's that child's name?

A. Betty Sue Pence.

Q. Do you know her approximate age?

A. She's approximately 10 years old.

Q. Is her mother living?

A. No sir, she died one month after her husband.

Q. What was the second child born to your grandfather as indicated by your previous testimony was Georgia A. Wolfrey, is this correct?

A. Yes sir.

Q. Is she living or dead?

A. She's dead.

Q. Do you know the approximate time of her death?

A. Approximately 1914.

Q. At the time of her death was she married?

A. No sir, she was unmarried.

Q. Was she survived by any children?

A. No sir.

Q. Oscar Brown Wolfrey is the third one in line. Is he living or dead?

A. Oscar is dead.

Q. When did he die?

A. February 26, 1968.

Q. At the time of his death was he survived by any children?

A. No sir.

Q. Just briefly, tell me what you did in the course of trying to find anything in regard to the probate on his estate.

A. Well, I had to go to the main Courthouse and search the records.

Q. When you went to the Courthouse to look, did you get the assistance of someone in the Clerk's Office?

A. Yes sir, I was sent by a clerk to difference places in the Courthouse and received help from personnel there.

Q. Did you, in the course of your search, go any place other than the District of Columbia Courthouse?

A. Yes sir, I had to go to Suitland, Maryland to the Bureau of Statistics.

Q. Now, did you search turn up any evidence in regard to the death of John N. Wolfrey?

A. Yes sir, I found in the statistics where he had died, the record only of his death.

Q. In other words you had just found the death certificate?

A. Yes sir.

Q. And that's how you got the date, 1943?

A. Yes sir.

Q. There was no list of heirs, no will, no nothing of this nature?

A. No sir, there was no will.

Q. Insofar as his surviving widow at that time, I believe that she was from a foreign country, is this correct?

A. Yes sir, she was Hungarian.

Q. Was he survived by a widow?

A. No sir, he was unmarried.

Q. Unmarried with no children?

A. Yes sir.

Q. Now, the fourth one in line is John N. Wolfrey, is he living or dead?

A. John Wolfrey is dead.

Q. When did he die?

A. March 3, 1943.

Q. At the time of his death was he survived by a widow or children?

A. Yes sir. He was survived by a widow.

Q. A widow?

A. No children.

Q. No children. What was, this was in 1943?

A. Yes sir.

Q. Now, what was his widow's name?

A. Augusta Wolfrey.

Q. In the course of your research in attempting to clear the title to this property did you have an occasion to check and determine on the probate, if any, on the estate of John N. Wolfrey?

A. Yes sir.

Q. Where was he living at the time of his death?

A. He was living in Washington, D. C. He was a resident of Washington.

Q. District of Columbia, is this correct?

A. Yes sir.

Q. And he had married her sometime during the war or prior to the war?

A. Yes sir.

Q. Did you find a will for her?

A. I did.

Q. Was that will filed and made a part of this bill of complaint?

A. It was.

Q. I believe in that will she left all of her property to her dear friend, Mary Schaeffer?

A. Yes sir.

Q. Now, let's go on to Nancy M. Wolfrey, is she living or dead?

A. Nancy Wolfrey is dead.

Q. When did she die?

A. She died in 1921.

Q. At the time of her death was she married?

A. No sir, she was unmarried.

Q. Did she have any children?

A. No children.

Q. The next one, William Thomas Wolfrey.

A. William Thomas Wolfrey is dead.

Q. When did he die?

A. September 11, 1952.

Q. At the time of his death was he survived by a widow or children?

A. Yes sir.

Q. Both?

A. Both.

Q. What was his widow's name?

A. His wife's name then was Frances Baker Wolfrey.

Q. Do you know whether or not she's still living?

A. Yes sir, she is.

Q. How many children did he have?

A. He had three children but not by her.

Q. But he did have three children?

A. Yes sir.

Q. What were their names?

A. Ruth Hensley Wolfrey, not living. I'm sorry, Ruth Hensley Wolfrey was his wife who is deceased. His oldest daughter was Ruth . . . .

Q. His first wife had died, the lady that you just mentioned, Ruth, and he had remarried and was married to the woman that you mentioned at the time of his death?

A. Yes sir.

Q. And what was her name, Baker?

A. Frances Baker Wolfrey.

Q. So he was married to her at the time of his death. But he had three children by a prior marriage?

A. Yes sir.

Q. And what were their names?

A. Ruth W. Armentrout, Kathleen Wolfrey Stanley and William Thomas Wolfrey.

Q. Are they all living?

A. Yes sir.

Q. What was the date of his death, William Thomas Wolfrey's death?

A. He died September 11, 1952.

Q. That leaves us only one and that being your father, Herbert Charles Wolfrey, is he living or dead?

A. He's dead.

Q. When did he die?

A. January 21, 1948.

Q. At the time of his death was he survived by a widow?

A. Yes sir.

Q. Is she now living or dead?

A. She's living.

Q. She is living? What is her name?

A. Clemmie T. Wolfrey.

Q. This being your mother?

A. Yes sir.

Q. How many children did the couple have at the time of their death?

A. Six children.

Q. Are they all living?

A. Yes sir.

Q. Did they have any children who had died prior to the death of your father leaving surviving children or were there just the six of you?

A. No sir, there was no children living that left children prior to his death.

Q. No children that died prior to his death leaving children?

A. Right.

Q. What are the names of the six children of your father who are still living?

A. The oldest is Dorothy Wolfrey Steele of Harrisonburg; Richard Donald Wolfrey, his address is unknown; we're not sure whether he is deceased or just disappeared; the third is Hazel Wolfrey Liskey of Harrisonburg; then Clemmie Wolfrey Nelson of Upper Marlboro; then Perry Edwin Wolfrey of Broadway and myself, Herbert Charles Wolfrey.

Q. Now, in regard to Richard Donald Wolfrey, when was the last time when a member of the family heard from him, to your knowledge?

A. Approximately 12 to 14 years ago.

Q. I think he just simply disappeared at that time and that even though several members of the family had attempted in many ways, including yourself to contact him or find out his whereabouts, you just simply haven't been able to do so, is this correct?

A. Yes sir.

Q. To your knowledge, was he ever married?

A. Yes sir. His wife died approximately 10 years ago.

Q. She died?

A. Yes sir.

Q. Did they ever have any children?

A. Yes sir. They had one daughter.

Q. Is she living?

A. She is.

Q. What is her name?

A. Jacqueline.

Q. Have you had a chance to talk to her?

A. I have.

Q. Did she know anything about her father, whether he's living, dead or otherwise?

A. No sir, she hasn't seen or heard anything from her father in about 12 years.

Q. Herbert, of all of the people that you have indicated have died including your grandfather and your uncles and aunts, to your knowledge other than Augusta, did any of them have wills?

A. No sir, not to my knowledge.

Q. The property in question, your bill of complaint alleges, that it is approximately 13 acres, is this correct?

A. Yes sir.

Q. Where is it located?

A. It is west of Harrisonburg, approximately 5 miles.

Q. On what road? Let me ask it this way. Is it just off of the road to Singers Glen, from Harrisonburg to Singers Glen?

A. Yes sir, it is just off of Mt. Clinton Pike.

Q. I believe that you turn back left and go approximately a mile, a mile and a half off of that road.

A. Yes sir.

Q. In that neighborhood.

A. It's approximately a mile off of Mt. Clinton Pike towards Mt. Clinton.

Q. I believe that there is an adjoining tract of land that was owned by your father and it actually adjoins to this piece, is that correct?

A. Yes sir, there's a tract of land that lays in front of it.

Q. Of approximately how many acres?

A. It's a little over an acre.

Q. I believe that that tract comprises the road frontage in front of the house that is on the 13 acre tract, the subject tract, is that correct?

A. Yes sir.

Q. What are the improvements on the 13 acre tract?

A. There's a house and two outbuildings.

Q. What is their general condition?

A. They're in rather poor condition.

Q. Do you know approximately when the house was built?

A. It was built approximately 1900. 1890 to 1900.

Q. How long has it been since anyone has lived in it as their permanent residence?

A. It's been approximately 3 years.

Q. Any work that has been done out there recently, I believe, has been done by you, is that correct, inasfar as mowing and maintaining and this type thing?

A. Yes sir. I've tried to keep the thing mowed, some of the trash mowed down around the house so it didn't grow up too much.

Q. I believe that the part on which the house is located is approximately 1/2 to 3/4 of an acre and most of that is fairly well cleared and mowable, is that correct?

A. Yes sir.

Q. I believe that the balance of the land which does have some road frontage, the balance of the land is, you could almost describe it as a jungle, it was formerly cleared farm land that has just simply grown up in a maze of underbrush and young trees, is this correct?

A. True. Honeysuckle and briars and stuff, you can't even, with hunting clothes you can't even hardly walk through it.

Q. I described it to some people I told about it that it was one of the best looking rabbit patches I've ever seen, do you think that adequately describes it?

A. There are definitely a lot of rabbits.

Q. I believe that the house itself is in a, needs a lot of repair even to make it liveable, is this correct?

A. Yeh, part of it is termite eaten and the windows is open, it would just almost be impossible to live there without

quite a bit of repair. No water and no bathroom facilities, no running water or anything.

Q. Herb, you believe that with all of the interests, varying interests of the respective owners of that property out there, that it would be possible to divide the property so that everyone would receive their fair and equitable share out of it and by that what I mean, do you think it would be possible to divide it so that you were given your share in land and everybody else was given their share in land?

A. No sir. That would be practically impossible.

Q. Has anyone else in the family other than yourself shown any particular interest in trying to keep the property up or to get it in a position so that it can be disposed of?

A. No one other than my sisters.

Q. Do you feel that it's in the best interests of Perry Edwin Wolfrey who I believe is related to you and Betty Sue Pence, the two incompetent persons involved in this case, that their interests in the property be sold?

A. Yes, I think that in my brother's interest, his best interest would be that I purchase the property.

Q. Now, I believe that you have entered into a contract to purchase the property, is that correct?

A. Yes sir.

Q. Now, I believe that your agreement to purchase it provides that you will pay $16,100.00 which was the amount of the appraisal by Mr. Paige Gordon plus all of the costs incident to the bringing of this suit and bringing about a sale of the property, is that correct? EXHIBIT I ATTACHED.

A. Yes sir.

Q. Do you stand ready and willing to perform, to complete that contract should the Court confirm the sale to you?

A. Yes sir, I do.

Q. In regard to all of the people that we have gone over with the exception of the four named defendants, being Perry Edward Wolfrey, Richard Donald Wolfrey, Mary Schaeffer and Betty Sue Pence, has everyone else signed this agreement to sell the property to you?

A. Yes sir.

Q. I believe that Perry is a minor, is that correct? It is Perry Edward Wolfrey. He's the incompetent?

A. Yes sir.

Q. Brother?

A. He's the incompetent brother.

Q. Betty Sue Pence is an infant, is this correct?

A. Yes sir.

Q. Mary Schaeffer is the lady that may have inherited some of the property as a result of your brother's dying and leaving and then his wife Augusta leaving it to this Mrs. Schaeffer in her will?

A. Yes sir.

Q. And the other is another brother of yours, Richard Donald Wolfrey, that we do not know whether he is living or dead, is this the only four people who have not signed this agreement?

A. Yes sir.

Q. I believe that there is one other individual, Frances V. Coppage, who has not signed the contract. She would have a dower interest, is this correct?

A. Yes sir.

Q. While you may or may not know it, I have corresponded with her attorney and they have permitted us to join them as a party plaintiff to the suit to bring about a sale of the real estate and she is agreeable to accept her interest based on the $16,100.00.

CROSS-EXAMINATION

BY MR. CRIST:

Q. Mr. Wolfrey, I would like to ask you a couple of questions with regard to your incompetent brother, whom the Court has appointed me to represent. It is my information that he is now living in the Pleasant View Home in Broadway, is that correct?

A. Yes sir.

Q. Is he at all aware or has anyone spoken to him about these proceedings?

A. Yeh, I talked with him from time to time about it.

Q. Would he be able to understand the nature of it? In other words . . .

A. No, not really. If it was asked or if he was asked he would tell you that he wanted me to have the property so that he could come and stay there.

Q. Does he understand that he ownes part of it? Would he have any comprehension of the fact of what that means because of his grandfather dying and the things that are going on, that he owns part of that land, would he understand that?

A. Yes, I think that he understands that he would have part.

Q. That he has a share in it?

A. Yes.

Q. Have you visited him recently?

A. Yes sir.

Q. Let me ask you, do you personally know Betty Sue Pence, the infant involved in this matter?

A. No, I don't.

Q. You say that you think that she's about 10 or so years old?

A. Yes, she's approximately 10 years old.

Q. I think that's all the questions I have.

And further this deponent saith not.

HAZEL WOLFREY LISKEY,

a witness of lawful age, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DEPOY:

Q. State your name please.

A. Hazel Wolfrey Liskey.

Q. Where do you live, Mrs. Liskey?

A. Route 8, Box 65, Harrisonburg.

Q. Are you related to Herbert Liskey, Herbert Wolfrey?

A. Yes sir.

Q. What is your relationship?

A. I'm his sister?

Q. You have been present during the taking of these depositions?

A. Yes.

Q. And you have heard the testimony in regard to the death of Daniel, Richard Daniel Wolfrey, I believe, was your grandfather?

A. Yes.

Q. YOu heard the family tree laid out so to speak in regard to the number of children that he had and what has happened to them, etc.?

A. Yes sir.

Q. Did you also participate and help Herbert in gaining this information?

A. Yes sir.

Q. Have you seen the list of the family tree that has been prepared for this case?

A. Yes.

Q. Now, in following the testimony, is the testimony that you have heard today in regard to everyone's death and births and their heirs, to the best of your knowledge, true and correct?

A. Yes, it is.

Q. It is as complete a family history, in your knowledge, as exists in other words?

A. Yes sir.

Q. To your knowledge have any of the persons which we have referred to as being dead die leaving a will?

A. Not to my knowledge.

Q. You are familiar with this land?

A. Yes sir.

Q. And approximately how many acres is it?

A. Approximately 13 acres.

Q. I believe that it is just off of the Mt. Clinton Pike, about 4 or 5 miles from Harrisonburg, is this correct?

A. Yes sir, that's right.

Q. Would you describe the improvements on it?

A. There's a house and several outbuildings.

Q. What is their state of repair?

A. Very poor.

Q. How much of the land is cleared? Approximately, would you say?

A. Well, I'd say approximately an acre.

Q. Now, the remaining twelve acres, could you describe what it looks like?

A. Well, it's very growed up and the fences, there's hardly any fences and it's big growed up and bushy.

Q. Isn't it true that if you just pulled up along side of the road and got out and started walking through there, you have some difficulty getting through, is that correct?

A. Yes, that's correct.

Q. Now, I believe the land does have some road frontage, is that true?

A. Yes. Yes, it does.

Q. But the road frontage immediately in front of the house, approximately an acre to an acre and a half, I belive, was previously purchased by your father and is not a part of the subject tract, is that correct?

A. That's correct.

Q. So that tract comprises a good part of the road frontage of the whole of the land?

A. Yes, it does.

Q. Now, to your knowledge knowing the heirs, all of the respective interests of the heirs, could this property be equitably divided so that each one of you would receive your share in land as opposed to money?

A. No, I think that that would be impossible.

Q. You are aware, of course, of the condition of your brother, Perry Edwin Wolfrey, are you not?

A. Yes.

Q. Do you believe that he is competent or incompetent at this time?

A. He's incompetent.

Q. Now your other brother, Richard Donald Wolfrey, you've heard the testimony in regard to, well, in effect, it's just simply unknown whether he's living or dead at this time, is that correct?

A. That's correct?

Q. And I believe that he had the one daughter, Jacqueline?

A. Yes.

Q. Now, in regard to the infant, Betty Sue Pence, do you know her personally?

A. I know her when I see her.

Q. Approximately how old is she?

A. I would say approximately ten to twelve.

Q. Now, speaking for these three individuals, do you feel that it would be in their best interests if this property be sold at this time and they receive their share in money?

A. I think it would be in their best interest as far as keeping the property up; otherwise, it's going to run down more so.

Q. So you feel at this particular time it would be in their best interest that this matter was concluded and the property sold?

A. Yes sir, I guess so.

Q. Now, you are aware of, I guess, mainly because you signed it, the contract existing between Herbert and all of the adult competent heirs to this property providing for his buying the property, are you not?

A. Yes sir.

Q. I believe, is it your understanding that he has agreed to pay $16,100.00 plus all of the costs incident to the bringing of this suit and everything to clear the title?

A. Yes sir.

Q. Do you yourself feel that this is a fair and equitable price for the property under the circumstances?

A. Yes sir.

Q. Do you yourself want to see your brother own this land?

A. Yes sir.

Q. Why is that?

A. Well, we'd just like to keep it in the family.

Q. Do you feel like the amount of money being paid is fair to the incompetent persons involved in this case?

A. Yes sir.

CROSS-EXAMINATION

BY MR. CRIST:

Q. Mrs. Liskey, I note on the bill of complaint that the incompetent, Perry Edwin Wolfrey, is listed as living with you. I understand that your brother Perry, comes to visit you at certain times, you and your sister, at certain times.

A. That's correct.

Q. Has this matter ever been discussed with him, to your knowledge, regarding the sale of the property?

A. Yes sir.

Q. Do you feel like he is able to understand what is going on in this proceeding?

A. Well, I think that we have talked to him and he knows that he and mother can no longer live there, that something has to be done with the property. It can't just stand there and I think he would like for his brother, Herbert, to own the property and then he could go there to spend some time. That's his home.

Q. Do you or any of his other brothers and sisters live near the property?

A. No, my sister lives in Harrisonburg and I live about a mile from Harrisonburg. Out 33 west.

Q. What I'm getting at is how much contact he has with the property now?

A. Only when my brother is home from Maryland and he goes there and visits and stays with him at the home.

Q. He, of course, I assume was raised in the home that your father bought the tract of land in front of this, is that correct?

A. There isn't a house on that tract of land.

Q. Where was his home at?

A. He was raised in this home that belonged to my grandfather.

Q. That's all.

DOROTHY WOLFREY STEELE,

a witness of lawful age, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DEPOY

Q. State your name please.

A. My name is Dorothy Wolfrey Steele.

Q. Where do your live, Mrs. Steele.

A. I live in Harrisonburg,

Q. Are you related to Herbert Wolfrey?

A. He's my brother.

Q. Did you participate and have anything to do with the researching the family tree prepatory to bringing this suit?

A. Well, I sat in on discussions before in preparing this suit.

Q. You have heard the testimony here today in regard to the death of your grandfather, Richard Daniel Wolfrey, and outlining the family tree since that time, is that correct?

A. Yes sir.

Q. Have you also had an opportunity to look over the family tree that's been prepared for the bringing of this suit in regard to all of the various family heirs to the property?

A. Yes sir.

Q. To your knowledge is not only the testimony but what you saw insofar as the family tree list, is that a true and accurate account of your family's history from the date of your grandfather up till today?

A. To my knowledge it is correct.

Q. To your knowledge have any of the parties who have died, either your grandfather or brothers or sisters or even their children, have any of those individuals left a will, to your knowledge?

A. Not that I know of.

Q. So this property has descended then to intestate succession down to the present owners, is that correct?

A. That's correct.

Q. You've heard the description of the property, of it being approximately 13 acres, a mile or so off of the Mt. Clinton Pike, about 4 to 5 miles from Harrisonburg, is this true to the best of your knowledge and belief?

A. Yes, that's true.

Q. You have heard the description in regard to the house and outbuildings, is this true?

A. That's true.

Q. I believe that you yourself grew up at this house, is that correct?

A. Well, when I was ten was when my family moved out there, after my grandmother died. I was there a few years.

Q. You have stayed in touch with the property since that time?

A. Yes.

Q. It's been described that the house itself as being in a fairly poor state of repair, needing a lot of work, is this correct?

A. Yes.

Q. And that it has no indoor plumbing or running water, things of this nature, is that correct?

A. That's correct.

Q. You have also heard the description of the remaining land other than that cleared around the house and buildings as being in a very grown up state, I guess you'd say.

A. It also has a deep hollow down through it that hasn't been mentioned.

Q. I believe that while there is some road frontage through the tract it runs up along the top, toward the top of a hill, is this correct?

A. That's correct.

Q. And while it's not real steep it certainly is on an incline?

A. Yes sir.

Q. Now, do you feel that the best interests of your incompetent brother and of the infant in this case would be served by the sale of this property at this time and their receiving their interests in money as opposed to property?

A. Yes, I feel it would be.

Q. Do you feel like it would be possible to divide this property so that each of you would receive an equal, equitable share in land as opposed to money?

A. No, I don't see how that would be possible.

Q. In other words you feel that the only way this property can be divided equally among all of the owners is to have it sold and the money divided as opposed to dividing the property?

A. That's true, yes.

Q. Do you feel like the agreement which you have signed providing for the property to be sold to Herbert, your brother, for $16,100.00 is a fair and equitable sale of the land?

A. Yes, I do.

Q. Would you ask the Court to confirm the sale selling the land to your brother at this figure?

A. Yes.

Q. Do you feel that selling the property to your brother as provided for in the contract would be in the best interests of your incompetent brother and the infant, Betty Sue?

A. Yes, I do.

Q. After the signing of this contract were you aware

Q. I believe that while there is some road frontage through the tract it runs up along the top, toward the top of a hill, is this correct?

A. That's correct.

Q. And while it's not real steep it certainly is on an incline?

A. Yes sir.

Q. Now, do you feel that the best interests of your incompetent brother and of the infant in this case would be served by the sale of this property at this time and their receiving their interests in money as opposed to property?

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Q. Do you feel like it would be possible to divide this property so that each of you would receive an equal, equitable share in land as opposed to money?

A. No, I don't see how that would be possible.

Q. In other words you feel that the only way this property can be divided equally among all of the owners is to have it sold and the money divided as opposed to dividing the property?

A. That's true, yes.

Q. Do you feel like the agreement which you have signed providing for the property to be sold to Herbert, your brother, for $16,100.00 is a fair and equitable sale of the land?

A. Yes, I do.

Q. Would you ask the Court to confirm the sale selling the land to your brother at this figure?

A. Yes.

Q. Do you feel that selling the property to your brother as provided for in the contract would be in the best interests of your incompetent brother and the infant, Betty Sue?

A. Yes, I do.

Q. After the signing of this contract were you aware

that Mr. Paige Gordon, a local realtor, had appraised the property?

A. Before I signed it?

Q. Right.

A. Yes.

Q. Were you yourself somewhat surprised at the appraisal?

A. Well, in a way, yes, because it had been appraised before and it wasn't appraised at that.

Q. When it was appraised before how long ago was that?

A. Well, that's been ten or twelve years ago.

Q. What was it appraised for at that time?

A. Four thousand dollars.

Q. So your surprise was in the fact that Mr. Gordon had appraised the property at such a high figure?

A. Well, yes.

Q. And you yourself are very satisfied that this is a fair figure for the property?

A. Yes, I think it's a fair figure.

And further this deponent saith not.

STATE OF VIRGINIA

COUNTY OF ROCKINGHAM, to-wit:

I, Susan W. Mathias, a Notary Public of and for the County aforesaid in the State of Virginia, whose commission will expire on the 12th day of February, 1982, do hereby certify that the foregoing depositions of Herbert Charles Wolfrey, Hazel Wolfrey Liskey and Dorothy Wolfrey Steele, having first been duly sworn,

were taken before me, and reduced to writing, in my County, and for the purpose stated in the caption hereto. I further certify that I am not related by blood or by marriage to any of the parties to this cause.

Given under my hand this 23rd day of January, 1979.

Notary Public

MEMORANDUM FOR FILE

Re: Markwood Pence, et als

Vs. In Chancery #8678

Perry Edwin Wolfrey, et als

Mr. Crist if he is so advised will file a Supplemental Guardian Ad Litem answer stating the circumstances under which he concurs in Mr. DePoy's decree or his objection to the decree and if he objects to it, we will probably have to refer the case to a Commissioner. If Mr. Crist in his answer concurs in Mr. DePoy's draft decree, Mr. DePoy will prepare and leave with Donna an order setting forth the proposed distribution of the purchase price and directing that he settle his account before the Commissioner appointed pursuant to § 8.01-617 of the Code.

OP Matters 2/19/79

ORDER
Chancery #8678

This cause came on this _____ day of February, 1979, to be heard upon the complainants bill and exhibits filed therewith, upon the depositions of witnesses, the answer of the infant and incompetent defendants by their guardian ad litem, John N. Crist and was argued by counsel.

Upon consideration whereof, the Court determines that the interest of the late John N. Wolfrey, who died intestate on March 3, 1943, descended to his brothers and sisters in equal interests as opposed to going to his wife, Augusta Wolfrey and subsequently to Mary Schaeffer and accordingly, it is DECREED that the real estate of the late Richard Daniel Wolfrey, consisting of 13 acres, more or less, situate in Linville District near Singers Glen, Rockingham County, Virginia, the partition of which is sought in this cause, is owned as follows: The heirs of Lula V. Wolfrey Pence, a one-third interest divided as follows:

Markwood Pence, a 1/15 undivided interest
Edna P. Frank, a 1/15 undivided interest
Albert Pence, a 1/15 undivided interest
Edward Pence, a 1/15 undivided interest
Betty Sue Pence, a 1/15 undivided interest

The heirs of Herbert Charles Wolfrey, a one-third interest divided as follows:

Clemmie T. Lamb Wolfrey, dower in 1/3 undivided intere
Dorthy Wolfrey Steele, a 1/18 undivided interest
Richard Donald Wolfrey, 1/18 undivided interest
Hazel Wolfrey Liskey, a 1/18 undivided interest
Clemmie Wolfrey Nelson, a 1/18 undivided interest
Perry Edwin Wolfrey, a 1/18 undivided interest
Herbert Charles Wolfrey, Jr., a 1/18 undivided interes

The heirs of William Thomas Wolfrey, a one-third interest divided as follows:

Frances Baker Wolfrey Coppage, dower in 1/3 undivided interest
Ruth W. Armentrout, a 1/9 undivided interest
Kathlene Wolfrey Stanley, a 1/9 undivided interest
William Thomas Wolfrey, a 1/9 undivided interest.

It appearing to the Court that the complainants have a clear right to demand partition of said real estate as prayed for in their bill of complaint, and it being shown to the satisfaction of the Court that partition in kind cannot conveniently be made among the owners thereof, the Court is therefore of the opinion and it does decide, that it is necessary and to the advantage of said parties to decree a sale of said real estate as a whole in order to effect a partition thereof and to divide the proceeds of said sale among the parties according to their respective rights and interests, and it does so ADJUDGE, ORDER and DECREE.

It appearing from the bill of complaint, and the exhibits and depositions filed in this cause that on the 2nd day of February, 1978, Herbert Charles Wolfrey, Jr. agreed to purchase the real estate described in the bill of complaint and the exhibits for the sum of Sixteen Thousand One Hundred Dollars ($16,100.00), and it appearing to the satisfaction of the Court that the price so offered is adequate and that it is clearly to the advantage of all parties in interest that said offer should be accepted; it is accordingly

ADJUDGED, ORDERED and DECREED that the said offer of the said Herbert Charles Wolfrey, Jr. be, and the same is hereby, accepted, approved and confirmed.

It is further ADJUDGED, ORDERED and DECREED that

Jack F. DePoy be, and he is hereby appointed Special Commissioner of the Court for the purpose of receiving from said purchaser the purchase price stated above, and as such Special Commissioner is hereby authorized, empowered and directed to prepare and execute a deed conveying to Herbert Charles Wolfrey, Jr., the said real estate upon the payment of said agreed price of Sixteen Thousand One Hundred Dollars ($16,100.00), said Commissioner to convey said land with Special Warranty of Title. Before receiving any money hereunder, said Jack F. DePoy, as Special Commissioner, shall give bond before the Clerk of this Court in the penalty of $16,100.00, conditioned according to law.

TO WHOM IT MAY CONCERN:

Re: Mark Wood Pence, et al v. Perry Edwin Wolfrey, et al, Chancery Suit No. 8678, Circuit Court of Rockingham County, Virginia

Dear Sirs:

I have no ownership interest or standing in the pending litigation under the above styled case in the Circuit Court of Rockingham County, Virginia.

I have long been interested in acquiring the real estate which is the subject matter of this pending suit. I understand this real estate contains approximately 13 acres and situate in Linville District, near Singers Glen, Virginia, and that an offer is outstanding for its purchase at a price of Sixteen Thousand One Hundred Dollars ($16,100.00), plus all costs incident to a suit in the Circuit Court of Rockingham County to complete a decree of sale.

If it can be considered, I am prepared and do hereby agree and bind myself to an offer to purchase the real estate which is the subject matter of this suit at a purchase price of $ 19,000.00, plus all costs incident to the pending suit, providing that the same results in a decree of sale whereby marketable title may be transferred in the property to myself, my heirs or assigns.

Dated: March 5, 1979.

Tendered 3/5/79 By [illegible] Atty for L.E. Kuykendall

Filed 3/5/79

M E M O

Jack DePoy appeared for the complainants, John Crist, Esquire as Guardian ad Litem and Steve Bradshaw, Esquire appeared on behalf of Isley F. Knupp and made a private offer, which has been filed and made part of the record. Mr. Crist perceives a possible conflict between his 2 wards. He will immediately tender a resignation to the Clerk on behalf of one of the wards and ask the Clerk to appoint another Guardian ad Litem for the one for whom he resigns and Mr. Crist will confer with that Guardian ad Litem and ask him to promptly file an answer taking a position in the matter and Mr. Crist will file a supplemental answer taking a position with respect to the respective offers on behalf of the incompetent.

When an order is finally prepared the order will show the resignation of Mr. Crist for one of the incompetents, the appointment of a new guardian ad litem for that incompetent and give them leave to file their answers. The order will also show the appearance of Mr. Bradshaw and the offer of his client. The Court suggests to Mr. Bradshaw that his client amend his offer so that it is for a definite figure rather than $22,000.00 plus all of the costs incident to the suit, because that amount could conceivably be indefinite, it is not clear to me from the terms of that offer whether it includes the Special Commissioner's fee, so I assume that Mr. Bradshaw can advise his client as to what he anticipates will be the cost of the suit and let his client amend his offer to a straight figure and if he is in doubt as to what the cost of the suit will be he can serve a request on Mr. DePoy to advise him as to what his estimate of the costs will be so that we may have a definite figure and the complainants, of course, can do the same thing, so that they are offering a definite

figure. If counsel present a decree of sale, then the decree should provide that the opening bid at the sale would be the amount of Mr. Bradshaw's client's bid, unless somebody else comes in and makes a higher offer of opening bid, when the supplemental guardian ad litem answers are filed then counsel can come back and either present a decree of public sale or a private sale or a decree of reference to a commissioner. Mr. Bradshaw's appearance as counsel is noted and his client is now party of these proceedings.

Chancery Suit No. 8678

NOTICE OF APPEARANCE

This day came V. Stephen Bradshaw, Attorney, of Clark, Bradshaw, Smith & Harrison, 92 North Liberty Street, Harrisonburg, Virginia, and made an appearance as attorney for Isley F. Knupp in the above referenced matter. The purpose of the appearance was in order to tender to the Court an offer to purchase the 13 acres, more or less, which constitutes the subject matter of this partition suit.

Dated March 5, 1979.

V. Stephen Bradshaw, Attorney
OF CLARK, BRADSHAW, SMITH & HARRISON
92 North Liberty Street
Harrisonburg, Virginia
Counsel for Isley F. Knupp

CERTIFICATE

I hereby certify that I have mailed a copy of the above Notice of Appearance to Jack Depoy, Counsel for Mark Wood Pence, et al, Virginia National Bank Building, Harrisonburg, Virginia, and a copy to Mr. John Crist, Guardian ad Litem for Perry Edwin Wolfrey, et al, Virginia National Bank Building, Harrisonburg, Virginia, this 5th day of March, 1979.

V. Stephen Bradshaw, Attorney
for Isley F. Knupp

Filed in the Clerk's Office
Rockingham County

MAR 5 1979

Deputy Clerk

March 12, 1979

M E M O

To: Steve Bradshaw
To: Jack DePoy
To: John Crist

Re: Mark Wood Pence, et al
Vs: Harry Edwin Wolfrey, et al
Circuit Court of Rockingham County
In Chancery # 3678

The attention of counsel is invited to Austin, etc., et al v. Dobbins, et al, 219 Va. ____ March 2, 1979, Record No. 770875.

I will leave a copy of the 10 page slip opinion with Ms. Funkhouser on 3/13/79.

Joshua L. Robinson, Judge
Twenty-Sixth Judicial Circuit

JLR/zjm

AMENDED BILL OF COMPLAINT
Chancery #8678

TO THE HONORABLE JOSHUA L. ROBINSON, JUDGE OF SAID COURT:

Your complainant respectfully represent unto Your Honor as follows:

That paragraphs 2 and 3 of the original bill of complaint should read as follows:

2) That at his death Richard Daniel Wolfrey was survived by his widow, Martha J. Wolfrey, and the following named children: Lula V. Wolfrey Pence, Georgia A. Wolfrey, Oscar Brown Wolfrey, John N. Wolfrey, Herbert Charles Wolfrey, Nancy M. Wolfrey and William Thomas Wolfrey; the said Martha J. Wolfrey died in 1935; the said Lula V. Wolfrey Pence died in 1920, her husband Hugh Pence also being deceased, leaving the following named children as her heirs at law: Markwood Pence, Edna P. Frank, Albert Pence, Edward Pence and Golden Pence; the said Golden Pence died in June, 1977 survived by his widow, Mary Pence and an infant daughter, Betty Sue Pence; the said Mary Pence died in November, 1977; the said Herbert Charles Wolfrey died January 21, 1948, survived by Clemmie T. Lamb Wolfrey, his widow, and the following named children: Dorothy Wolfrey Steele, Richard Donald Wolfrey, Hazel Wolfrey Liskey, Clemmie Wolfrey Nelson, Perry Edwin Wolfrey, Herbert Charles Wolfrey, Jr.; the said William Thomas Wolfrey died September 11, 1952, survived by his widow, Frances Baker Wolfrey Coppage and the following named children: Ruth W. Armentrout, Kathlene Wolfrey Stanley and William Thomas Wolfrey; the said John N. Wolfrey died March 3, 1943, leaving the following brothers and sisters as his heirs at law: Oscar Brown Wolfrey, Herbert Charles Wolfrey, William

Thomas Wolfrey, Markwood Pence, Edna P. Frank, Albert Pence, Edward Pence; the said Georgia A. Wolfrey died in 1914, having never been married nor born any children; the said Oscar Brown Wolfrey died in 1978, having never been married nor fathering any children; the said Nancy M. Wolfrey died in 1921, having never been married, nor born any children.

3) The aforementioned real estate is now owned by the hereinbefore enumerated heirs as follows:

Markwood Pence, 1/15 undivided interest
Edna P. Frank, 1/15 undivided interest
Albert Pence, 1/15 undivided interest
Edward Pence, 1/15 undivided interest
Betty Sue Pence, 1/15 undivided interest
Clemmie T. Lamb Wolfrey, dower in 1/3 interest
Dorothy Wolfrey Steele, 1/18 undivided interest
Richard Donald Wolfrey, 1/18 undivided interest
Hazel Wolfrey Liskey, 1/18 undivided interest
Clemmie Wolfrey Nelson, 1/18 undivided interest
Perry Edwin Wolfrey, 1/18 undivided interest
Herbert Charles Wolfrey, 1/18 undivided interest
Frances Coppage, dower in 1/3 interest
Ruth W. Armentrout, 1/9 undivided interest
Kathleen Wolfrey Stanley, 1/9 undivided interest
William Thomas Wolfrey, 1/9 undivided interest

WHEREFORE, your complainants pray that this amended bill of complaint be read as a part of these proceedings.

Respectfully submitted,

MARKWOOD PENCE
ETHEL MAE PENCE
EDNA P. FRANK
ERNEST B. FRANK
ALBERT PENCE
CLARA V. PENCE
EDWARD PENCE
ANNA E. PENCE
CLEMMIE LAMB WOLFREY
DOROTHY WOLFREY STEELE
CLARENCE L. STEELE
HAZEL WOLFREY LISKEY

JOHN N. LISKEY
CLEMMIE WOLFREY NELSON
JAMES LEROY NELSON
RUTH W. ARMENTROUT
KATHLENE WOLFREY STANLEY
OREN B. STANLEY
WILLIAM T. WOLFREY, JR.
WINONA FRANCES WOLFREY
HERBERT CHARLES WOLFREY, JR.
VELDA B. WOLFREY
FRANCES B. COPPAGE

By Counsel

Jack F. DePoy
509 Virginia National Bank Bldg.
Harrisonburg, Virginia
Counsel for Complainants

SEEN:

JNC

Chancery Suit No 8678

TO WHOM IT MAY CONCERN:

RE: Markwood Pence, et als vs. Perry Edwin Wolfrey, et als, Chancery Suit No. 8678, Circuit Court of Rockingham County, Virginia

Dear Sirs:

This letter is written to supplement my previous letter and offer dated March 5, 1979.

I have been advised that the costs for filing suit, service of process fees, order of publication fees, deposition fees, attorney's fees, and guardian ad litem fees amount to $837.65. I am prepared and do hereby agree and bind myself, my heirs or assigns, to an offer to purchase the real estate which is the subject matter of this suit upon my initial bid of $22,837.65, provided, only that marketable title to the property may be transferred to myself, my heirs or assigns. It is understood that this will be a binding and non-withdrawable opening bid at the public offering of this property to be held as soon as the same can be advertised.

Dated: June 28, 1979

Foley F. Knapp

Filed in the Clerk's Office
Rockingham County, Va.

JUL 5, 1979

Marlow Kiser, C.C. Clerk

Commonwealth of Virginia

JUDGES

ROBERT K. WOLTZ
COUNTY COURTHOUSE
WINCHESTER, VIRGINIA 22601
(703) 667-1580

JOSHUA L. ROBINSON
P. O. BOX 46
LURAY, VIRGINIA 22835
(703) 743-6536

DUNCAN C. GIBB
P. O. BOX 1597
FRONT ROYAL, VIRGINIA 22630
(703) 635-3850

TWENTY-SIXTH JUDICIAL CIRCUIT

CIRCUIT COURTS OF

COUNTY OF PAGE
COUNTY OF CLARKE
COUNTY OF WARREN
CITY OF WINCHESTER
COUNTY OF FREDERICK
COUNTY OF ROCKINGHAM
COUNTY OF SHENANDOAH

July 16, 1979

M E M O

To: Mr. DePoy
To: Mr. Crist
To: Mr. Bradshaw

Re: Pence, et als v. Wolfrey, et als
Chancery No. 8678

I am unable to ascertain what happened to the interest of Mary Shaffer; the bill having alleged that she was entitled to a one-fourth interest, it would appear that she was entitled to rely on that without making any appearance. Perhaps there was something in the earlier proceedings that I overlooked.

Joshua L. Robinson, Judge
Twenty-Sixth Judicial Circuit

JLR/zjm

Re: Markwood Pence, et als
Vs: Perry Edwin Wolfrey, Incompetent, et als
In Chancery No. 8678

Mr. DePoy and Mr. Crist will resubmit this decree omitting the findings with respect to the interest of various parties. He will present an order giving him leave to file an Amended Bill of Complaint, reciting that it having come to the attention of counsel after filing of the bill, that Mary Schaeffer has no interest in the property and the order will further recite that since the previous Order of Publication was returned by the Post Office would serve no useful purpose to public in a newspaper that the motion to give him leave to file an Amended Bill will dispense with the Order of Publication pursuant to §8.01-317. He will then file an Amended Bill alleging that Mary dosen't have any interest in the property and praying that the proceeds of sale be distributed as stated in his draft order. He will then have the Clerk issue an Order of Publication without publication in the newspaper returnable not less than 50 days after it is entered and that 50 days should be about the same time as the Commissioner presents an order for confirmation of the sale and we can at that time enter an order adjudicating the interest of the various parties.

ORDER
CHANCERY #8678

This matter came on to be heard this 4 day of September, 1979, on the motion of Jack F. DePoy, attorney for the complainants, asking leave of this Court to file an amended Bill of Complaint.

It appearing to the Court that in the preparation of the original papers in this matter that Mary Schaeffer was made a party defendant to this matter showing that she was entitled to an interest in the subject real estate; but that, in fact, the interest of John N. Wolfrey reverted to his brothers and sisters, under the effective laws at the time of his death. Therefore, leave is hereby granted for the filing of an amended bill of complaint eliminating any interest held by the said Mary Schaeffer.

It further appearing to the Court that the original papers in this matter were served on the said Mary Schaeffer by an order of publication, that no appearance was made on her behalf and that those papers mailed to her last known address were returned It is therefore the opinion of this Court that there would be no useful purpose in again publishing notice of these proceedings on Mary Schaeffer but ORDERS the Clerk of this Court to mail a copy of these proceedings to the last known address of Mary Schaeffer and that a copy be posted at the door of the Court House for 50 days pursuant to Section 8.01-317 of the Code of Virginia.

I ask for this:

Jack F. DePoy

Seen:

John [illegible]

Recorded In
Chancery
Order Book 50 Page 333
Teste

Paid [illegible] 1/4/79

(23)

O R D E R
Chancery #8678

This cause came on this 4th day of September, 1979, to be heard upon the complainants' bill and exhibits filed therewith, upon the depositions of witnesses, the answer of the infant defendant and incompetent defendant by their guardian ad litem, John N. Crist, the agreement filed by Isley F. Knupp, submitting the opening bid on the subject real estate, upon the orders formerly entered in this matter and was argued by counsel.

It appearing to the Court that the complainants have a clear right to demand partition of said real estate as prayed for in their bill of complaint, and it being shown to the satisfaction of the Court that partition in kind cannot conveniently be made among the owners thereof, the Court is therefore of the opinion and it does decide, that it is necessary and to the advantage of said parties to decree a sale of said real estate as a whole in order to effect a partition thereof and to divide the proceeds of said sale among the parties according to their respective rights and interests, and it does so ADJUDGE, ORDER and DECREE.

It appearing from the bill of complaint, and the exhibits and depositions filed in this cause that on the 2nd day of February, 1978, Herbert Charles Wolfrey, Jr. offered to purchase the real estate described in the bill of complaint and the exhibits for the sum of Sixteen Thousand One Hundred Dollars ($16,100.00), plus the costs incident to this suit and it further

appearing that Isley F. Knupp has now filed an offer in the amount of Twenty Two Thousand Dollars ($22,000.00), plus Eight Hundred Thirty Seven and 65/100 Dollars ($837.65) costs incident to this suit for the purchase of said real estate and it appearing to the Court that there is interest in the property, possibly by a number of individuals and therefore, it may be in the best interest of all concerned parties that the subject real estate be sold at public auction using Isley F. Knupp's bid in the amount of Twenty Two Thousand Eight Hundred Thirty Seven and 65/100 Dollars ($22,837.65) as a starting bid.

It is further ADJUDGED, ORDERED and DECREED that Jack F. DePoy be, and he is hereby appointed Special Commissioner of this Court for the purpose of selling said real estate, after advertising the time, terms and place of sale for three times durin a period of two successive weeks in the Daily News-Record, a newspaper with general circulation in Rockingham County and the City of Harrisonburg, Virginia. The terms of sale shall be 10% cash on day of sale and the balance in cash on delivery of a deed, but the said Commissioner shall not proceed to the execution of this decree until he shall have executed bond before the Clerk of this Court in the penalty of $ 30,000 with good security to be approved by the said Clerk, conditioned according to law.

ENTER: _____
Judge

Ask For:
_____

Seen:
_____

Recorded In
Chancery
Order Book 70 Page 336
7/4/79

Chancery #8678

REPORT OF SPECIAL COMMISSIONER

TO THE HONORABLE JOSHUA L. ROBINSON, JUDGE OF SAID COURT:

The undersigned Special Commissioner, duly appointed as such by decree entered in the above entitled chancery cause on September 4, 1979, to make sale of the real estate described in the papers of this cause, namely, a tract consisting of 13 acres, more or less, situate in Linville District, near Singers Glen, Rockingham County, Virginia, standing in the name of R. D. Wolfrey, respectfully represents to the Court that on November 7, 1979, after having advertised the time, terms and place of sale in the Daily News Record, a newspaper having general circulation in the City of Harrisonburg and County of Rockingham for three successive weeks, offered for sale the real estate which is the subject of this suit, and at said sale Herbert C. Wolfrey, Jr. was the last and highest bidder at the sum of Thirty Nine Thousand ($39,000.00) Dollars, said purchaser having complied with the terms of said sale by paying 10% of the purchase price in cash to said bonded special commissioner.

It is the opinion of the Special Commissioner and he so recommends, that he be allowed to sell the subject real estate at last bid price of Thirty Nine Thousand Dollars ($39,000.00.

Jack F. DePoy
Special Commissioner

Filed in the Clerk's Office
Rockingham County, Va.

NOV 27 1979

Deputy Clerk

ORDER #8678

This cause came on this 17 day of December, 1979, to be further heard upon the proceedings heretofore had, the Report of Sale by Jack F. DePoy, Special Commissioner, and was argued by counsel.

It appearing to the Court that said Special Commissioner after first advertising the time, place and terms of sale, as provided by the decree of September 4, 1979, offered the real estate which is the subject of this suit for sale, which said real estate is situate in Linville District, Rockingham County, near Singers Glen, Virginia. Said sale was held at the south door of the Court House in Harrisonburg, Virginia on November 7, 1979, at which sale the highest bid for said real estate was Thirty Nine Thousand Dollars ($39,000.00), the high bidder being Herbert C. Wolfrey, Jr., said purchaser having complied with the terms of said sale by paying 10% of the purchase price in cash to said bonded special commissioner, and it further being made to appear to the Court that the purchase price represents the fair market value of said real estate, it is ADJUDGED, ORDERED and DECREED that said sale and said report be, and the same are hereby, ratified, approved and confirmed and that the Special Commissioner convey title to said real estate with Special Warranty of Title, to the said Herbert C. Wolfrey, Jr. upon his paying to said Special Commissioner the balance of the purchase price in cash.

It is further ORDERED that the Special Commissioner shall receive a fee of $30.00 for preparation of said deed, and that the Special Commissioner be allowed a fee of $ 500.00 as Attorney for the Complainants, which shall be deducted pro

from the shares of those parties represented by him.

It is further ORDERED that John N. Crist, Guardian ad litem for Perry Edwin Wolfrey and Betty Sue Pence, be allowed a fee of $ 400.00.

It is further ORDERED that the Special Commissioner make and file a settlement of his accounts before the Commissioner of Accounts to whom this cause is referred for that purpose.

Filed 12/19/79

ENTER: [signature]

I ask for this:

[signature]

Seen:

[signature]

Recorded In
Chancery
Order Book 50 Page 705
12/17/79

MOTION TO WITHDRAW

TO THE HONORABLE JOSHUA L. ROBINSON, JUDGE OF SAID COURT:

COMES NOW, Jack F. DePoy, as attorney for the Complainants, Herbert C. Wolfrey, Jr., and Special Commissioner in this matter and respectfully states the following:

1) That the real estate which is the subject of this suit was offered for sale by your Special Commissioner on November 7, 1979, at which time the property was sold to Herbert C. Wolfrey, Jr.

2) That on the day of sale, the said Herbert C. Wolfrey, Jr., complied with the terms of the sale by paying to your Special Commissioner, ten per cent (10%) of the sale price.

3) That according to the terms of the sale the balance of the sale price was to be paid within thirty days (30) of the sale in exchange for a deed to the subject property. Dispite repeated requests to the said Herbert C. Wolfrey, Jr., the balance of the sale price to this date has not been paid.

4) That by order of this Court on the 3rd day of March, 1980, the said Herbert C. Wolfrey, was ordered to appear before this Court on the 17th day of March, 1980 to show cause, if any he can, why the sale of the subject real estate should not be set aside and resold at his risk.

5) That your Special Commissioner and Attorney for the Complainants feels that a conflict has arisen in this suit and it would be in the best interests of all parties that he no longer represent the said Herbert C. Wolfrey, Jr.

WHEREFORE, the said Jack F. DePoy, prays that he be allowed to withdraw as attorney for Herbert C. Wolfrey, Jr. and

that the said Herbert C. Wolfrey, Jr. pay to him a reasonable fee for his time and effort expended on his behalf.

Jack F. DePoy

C E R T I F I C A T E

I hereby certify that a copy of the foregoing Motion to Withdraw was mailed to John N. Crist, Guardian ad litem, Virginia National Bank Building, Harrisonburg, Virginia, Herbert C. Wolfrey, Jr., 4919 49th Avenue, Hyattsville, Maryland 20781, and Francis X. Gaegler, Jr., Gaegler & Hopewell, 3704 West Street, Hyattsville, Maryland 20785, attorney for Herbert C. Wolfrey, Jr. this 18th day of March, 1980.

IN CHANCERY #8678

3/5/80

PRAECIPE

The Clerk is respectfully requested to place the above-styled case on the Docket for the Motions Day of the Court to be had on the 17th day of March, 1980, for the following purpose (s):

Pretrial Conference _____

Argument on Pleadings _____

Entry of Order, etc. X

Motion: (Specify briefly) _____

Other: (Specify briefly) _____

Counsel's estimate of time required 10 minutes

Dated this ~~26th~~ 3rd day of ~~February~~ March, 1980.

(Signed) _____

Counsel for complainants

Jack F. DePoy
509 Virginia National Bank Bldg.
Harrisonburg, Va.

I certify that a copy of the foregoing was mailed to Francis X. Gaegler, Jr., Hyattsville, MD. John N. Crist, Va. Nat'l Bank Bldg. Harrisonburg, Va. this 25th day of February 1980, Counsel of Record for Herbert C. Wolfrey and Guardian ad Litem.

_____

CONTESTED

CHANCERY NO. 8678

O R D E R

This cause came on again to be heard this 17th day of March, 1980, upon the proceedings heretofore had and the order entered herein on the 3rd day of March, 1980.

It appearing that there is no Sheriff's return of service on Herbert C. Wolfrey, Jr. of the order entered herein on the 3rd day of March, 1980, these proceedings are continued until the 7th day of April, 1980, and the Clerk shall place this cause on the Motions Docket for 20 minutes.

Let the Clerk certify copies of this order to Herbert C. Wolfrey, Jr. 4919 49th Avenue, Hyattsville, Maryland 20781 and to Francis X. Gaegler, Jr., Esquire, Gaegler & Hopewell, 3704 West Street, Hyattsville, Maryland 20785.

ENTER: _____

ATTEST:

~~Xxxxxx~~/In Chancery No. 8676

TO: Jack E. DePoy, Esquire, ~~xxx~~
John Crist, Esquire
V. Stephen Bradshaw, Esquire, ~~xxx~~
Francis Gaegler, Jr., Esquire

NOTICE TO APPEAR

Please take notice that the Clerk is respectfully requested to place the above styled case on the Docket for the Motions Day of the Court to be had on the 23 day of April, 19 80, for the following purpose:

To enter the decree

Estimate of time required: 10 minutes

It is required that counsel be present.

Dated this 7th day of April, 19 80.

JUDGE

By: _____
Deputy Clerk

cc: Clerk of the Circuit Court of Rockingham County.

Copy delivered to
H. Walter Hofer

TO: Jack Depoy, Esquire, P.Q.

John Crist, Esquire XXXXXX

NOTICE TO APPEAR

Please take notice that the Clerk is respectfully requested to place the above styled case on the Docket for the Motions Day of the Court to be had on the 19th day of May, 1980, for the following purpose:

Present schedule of distribution

Estimate of time required: 10 minutes

It is required that counsel be present, unless the order is previously presented.

Dated this 18th day of April, 1980.

JUDGE

By: _____
Deputy Clerk

cc: Clerk of the Circuit Court of Rockingham County.

cc: Gaegler

cc: Herbert C. Wolfrey, Jr.

MEMO FOR FILE

MARKWOOD PENCE, ET ALS
V.
PERRY EDWIN WOLFREY

CHANCERY NO. 8676

On April 7, 1980, Mr. DePoy was present and withdrew his motion for leave to withdraw as counsel for Herbert Wolfrey, Jr. Mr. Herbert Wolfrey, Jr. is present in person with Francis S. Gaegler, Jr., Esquire and John Crist is present as Guardian ad litem for an infant, an incompetent defendant, and Steve Bradshaw is here as amicus curiae, having represented the previously unsuccessful upset bidders.

The parties present are all in agreement and Mr. DePoy will present a decree along the following lines.

That Herbert C. Wolfrey, Jr. indicated his intention of complying with the terms of the decree confirming the sale and asked leave that he be permitted to do so within 10 days from the date of entry of the order. The order will be that Mr. Wolfrey pay the additonal sum of $16,000.00 to the Special Commissioner, and it appearing that Mr. Herbert Wolfrey, Jr. will be entitled to have a considerable portion of the fund refunded to him, which amount is not ascertainable at this time, he agrees to pay any additional sum that may be required to the Special Commissioner within 10 days after demand by the Special Commissioner. The decree will provide that in the event of Mr. Wolfrey's default that the Special Commissioner may re-advertise

the property at Mr. Wolfrey's risk. The decree will further provide that after all of the proceeds of sale are in the hands of the Special Commissioner he will present a decree setting forth a schedule of distribution for approval of the Court before disbursement to any of the parties entitled thereto.

ORDER #8676

On the 7th day of April, 1980, pursuant to certain motions filed by Jack F. DePoy, Special Commissioner, the following persons appeared: Jack F. DePoy, Special Commissioner, Herbert C. Wolfrey, Jr., present in person and accompanyed by Francis X. Gaegler, Jr., Esquire, John N. Crist, guardian ad Litem for an infant and an incompetent defendant, and V. Stephen Bradshaw appeared as amicus curiae on behalf of a previous unsuccessful bidder.

Herbert C. Wolfrey, Jr. announced to the Court his intention to comply with the terms under which he purchased the property at public auction on November 7, 1979. Mr. Wolfrey further represented to the Court that he was presently able to comply with said terms; whereupon, Jack F. DePoy asked leave to withdraw his motion previously filed, wherein he had asked to withdraw as counsel of record for Mr. Herbert C. Wolfrey, Jr.

Upon consideration whereof the Court permitted the said Jack F. DePoy to withdraw his motion and further ORDERED that within a period of ten (10) days after entry of this order Mr. Herbert C. Wolfrey, Jr. pay to the said Jack F. DePoy, Special Commissioner, the additional sum of Sixteen Thousand ($16,000.00) Dollars and within the ten (10) day period pay any additional sum of money to said Special Commissioner which might be requested by him as being necessary to complete his obligation to purchase the

property under the terms of the sale.

The Court further ORDERED that should Herbert C. Wolfrey, Jr. fail to pay either the said amount of $16,000.00 within the ten (10) days alotted or any additional sum requested by the Special Commissioner within the ten (10) days alotted that the said Herbert C. Wolfrey, Jr. would be deemed to be in default of the terms of said sale and that the Special Commissioner proceed immediately to readvertise and resell the property, the costs of any such sale as well as any deficiency in the sale price of the property to be the obligation of Herbert C. Wolfrey, Jr.

It was further ORDERED by the Court that upon compliance by Mr. Wolfrey of the sums paid to said Special Commissioner, a decree shall be presented setting forth a schedule of distribution of the proceeds for approval of the Court before disbursement to any of the parties entitled thereto.

DATED: 4/21/80

I ask for this:

Seen:

LAW OFFICES OF
LAPSLEY AND DEPOY
VIRGINIA NATIONAL BANK BUILDING
HARRISONBURG, VIRGINIA 22801

NORVELL A. LAPSLEY
JACK F. DEPOY

AREA CODE 703
TELEPHONE 434-6741

April 28, 1980

Mr. Herbert C. Wolfrey, Jr.
4919 49th Avenue
Hyattsville, Maryland 20781

Dear Herb:

The Judge entered our order of the proceedings of April 7, 1980 on April 21, 1980. We will expect from you your check in the amount of $16,000.00 within the ten days as set forth in the order.

Yours very truly,

Jack F. DePoy

SWM

SPECIAL COMMISSIONER'S
REPORT
CHANCERY #8676

The Undersigned duly appointed Special Commissioner respectfully reports to this Honorable Court as follows:

1) That subsequent to the entry of this Court's order under date of the 7th day of April, 1980, wherein Herbert C. Wolfery, Jr., the purchaser of the subject property, at the previously held Special Commissioner's sale, was ordered to pay the undersigned the further sum of Sixteen Thousand Dollars ($16,000.00) within ten (10) days from the entry of said order.

2) That the said Court order was entered on the 21st day of April, 1980, by this Court.

3) That the undersigned has not received the sum of Sixteen Thousand Dollars ($16,000.00) from Herbert C. Wolfrey, Jr. as ordered.

4) That the undersigned, pursuant to the order of this Court, is proceeding to readvertise and resell the subject property.

5) That a copy of the advertisement for this resale is attached hereto and a copy is being served on the said Herbert C. Wolfrey, Jr. by mailing the same to him by certified mail.

RESPECTFULLY SUBMITTED

Special Commissioner

Jack F. DePoy
Special Commissioner
509 Virginia National Bank Building
Harrisonburg, Virginia

Filed in the Clerk's Office
Rockingham County, Va.

081 MAY 23 1980

Deputy Clerk

SPECIAL COMMISSIONER'S
REPORT
Chancery #8676

The undersigned duly appointed Special Commissioner respectfully reports to this Honorable Court as follows:

1) That following the preparation but prior to the appearance of the notice of resale of the subject property, V. Stephen Bradshaw, Esquire, attorney for Isley F. Knupp, submitted to the undersigned a written bid to purchase the property for Thirty Five Thousand Dollars ($35,000.00).

2) That the undersigned and the guardian ad litem for the infant and incompentent defendants, John N. Crist, feel that this is a fair and reasonable offer and in the best interests of the parties concerned.

3) That on the 18th day of June, 1980 the bid of Isley F. Knupp in the amount of Thirty Five Thousand Dollars ($35,000.00) will be submitted to this Court for its approval.

RESPECTFULLY SUBMITTED,

Special Commissioner

Jack F. DePoy
509 Virginia National Bank Building
Harrisonburg, Virginia
Special Commissioner

MOTION TO WITHDRAW
Chancery #8676

TO THE HONORABLE JOSHUA L. ROBINSON, JUDGE OF SAID COURT

Comes now, Jack F. DePoy, as attorney for the Complainants, Herbert C. Wolfrey, Jr., and Special Commissioner in this matter and respectfully states the following:

1) That the real estate which is the subject of this suit was offered for sale by your Special Commissioner on November 7, 1979, at which time the property was sold to Herbert C. Wolfrey Jr.

2) That on the day of sale, the said Herbert C. Wolfrey, Jr., complied with the terms of the sale by paying to your Special Commissioner, ten per cent (10%) of the sale price.

3) That according to the terms of the sale the balance of the sale price was to be paid within thirty days (30) of the sale in exchange for a deed to the subject property. Dispite repeated requests to the said Herbert C. Wolfrey, Jr., the balance of the sale price to this date has not been paid.

4) That by order of this Court on the 3rd day of March, 1980, the said Herbert C. Wolfrey, was ordered to appear before this Court on the 17th day of March, 1980 to show cause, if any he can, why the sale of the subject real estate should not be set aside and resold at his risk.

5) That by order of this Court under date of April 7, 1980 and entered on the 21st day of April, 1980 the said Herbert C. Wolfrey was to pay the balance of the sale price for the subject real estate within ten (10) days from the entry of the order which sum has not been received as of this date.

6) That your Special Commissioner and Attorney for the Complainants feels that a conflict has arisen in this suit and it would be in the best interests of all parties that he no longer represent the said Herbert C. Wolfrey, Jr.

WHEREFORE, the said Jack F. DePoy, prays that he be allowed to withdraw as attorney for Herbert C. Wolfrey, Jr. and that the said Herbert C. Wolfrey, Jr. pay to him a reasonable fee for his time and effort expended on his behalf.

Jack F. DePoy

Jack F. DePoy

C E R T I F I C A T E

I hereby certify that a copy of the foregoing Motion to Withdraw was mailed to John N. Crist, guardian ad litem, Virginia National Bank Building, Harrisonburg, Virginia; Herbert C. Wolfrey, Jr., 4919 49th Avenue, Hyattsville, Maryland 20781; Francis X. Gaegler, Jr., Gaegler & Hopewell, 3704 West Street, Hyattsville, Maryland 20785, attorney for Herbert C. Wolfrey, Jr. and V. Stephen Bradshaw, 92 North Liberty Street, Harrisonburg, Virginia, attorney for Isley F. Knupp this 3rd day of June, 1980.

Jack F. DePoy

CHANCERY #8675

PRAECIPE

The Clerk is respectfully requested to place the above-styled case on the Docket for the Motions Day of the Court to be had on the 18th day of June, 1980, for the following purpose (s):

Pretrial Conference _____

Argument on Pleadings _____

Entry of Order, etc. X

Motion: (Specify briefly) _____

Other: (Specify briefly) _____

Counsel's estimate of time required 10 minutes

Dated this 3rd day of June, 1980.

(Signed) _____

Counsel for Complainants

Jack F. DePoy
509 Virginia National Bank Bldg.
Harrisonburg, Virginia

I certify that a copy of the foregoing was mailed to Francis X. Gaegler John N. Crist and V. Stephen Bradshaw, this 3rd day of June 1980, Counsel of Record for _____.

_____

CONTESTED

N O T I C E
In Chancery #8676

TAKE NOTICE, that on the 21st day of July, 1980 at 9:30 a.m. or as soon thereafter as the same may be heard the Circuit Court of Rockingham County, Virginia will consider the motion of Ronald W. Tweel, attorney for Herbert C. Wolfrey, Jr., that Jack F. DePoy be relieved as counsel of record for all of the complainants, a motion to which Jack F. DePoy has not objected.

MARKWOOD PENCE, ET ALS
By Counsel

Jack F. DePoy
509 Virginia National Bank Building
Harrisonburg, Virginia

C E R T I F I C A T E

I hereby certify that the foregoing Notice was mailed to John N. Crist, Esquire, Guardian ad Litem; V. Stephen Bradshaw, Esquire, 92 North Liberty Street, Harrisonburg, Virginia; Ronald W. Tweel, Esquire, 500 Court Square, Charlottesville, Virginia, counsel for Herbert C. Wolfrey, Jr., Markwood Pence, RFD 2, Box 468, Palmyra, Pennsylvania 17078; Mrs. Edna P. Frank, Route 1, Linville, Virginia; Mr. Albert Pence, Route 2, Elkton, Virginia; Edward Pence, Route 4, Harrisonburg, Virginia; Oren B. Stanley, Route 1, Box 470, Arcadia, Florida; Ruth W. Armentrout, c/o William T. Wolfrey, Route 1, Box 399, Arcadia, Florida; William T. Wolfrey, Route 1, Box 399, Arcadia Florida and Mrs. Frances Baker Coppage, c/o Willard L. Broms, Esquire, Bell Building, Leonardtown, Maryland 20650 this 23rd day of June, 1980.

J. F. DePoy

This cause came on again to be heard on the papers heretofore read, the orders heretofore entered, the Special Commissioner's Report filed on May 23, 1980, the petition of Isley F. Knupp filed June 2, 1980, upon the motion of Jack F. DePoy, Esquire filed June 3, 1980 for leave to withdraw as counsel for Herbert C.Wolfrey, Jr., and upon the Special Commissioner's Report filed June 3, 1980, and was argued by counsel, John N. Crist, Esquire appearing as guardian ad litem for certain incompetent defendants, V. Stephen Bradshaw, Esquire appearing for Isley F. Knupp, Edward Pence appearing in proper person, and Ronald R. Tweel, Esquire moved for leave to appear as counsel of record for Herbert C. Wolfrey, Jr., which motion is sustained and the motion of Jack F. DePoy, Esquire for leave to withdraw as counsel for Herbert C. Wolfrey, Jr. is granted.

Upon consideration of the motion of counsel for Herbert C. Wolfrey, Jr. that Jack F. DePoy, Esquire withdraw as counsel of record for the other complainants, Mr. DePoy not objecting to said motion, the Court takes the motion under consideration. Whereupon, the guardian ad litem and Jack F.DePoy, Esquire as Special Commissioner only,moved that the Court accept the offer of Isley F. Knupp, and counsel for Herbert C. Wolfrey, Jr. objected to the same, but Edward Pence in proper person joined in the motion of the Special Commissioner and the guardian ad litem, and the Court takes the motion under consideration until the 21st of July, 1980, the Court noted that Knupp has the right to withdraw the offer at any time until it is accepted by the Court. Jack DePoy,

Esquire shall forthwith notify each of the other complainants of his motion for leave to withdraw as their counsel in order that they may retain other counsel before July 21, 1980 at which time the Court will rule on the motion.

Leave is granted to any party to supplement their pleadings heretofore filed not later than July 7, 1980, and the Clerk shall place this case on the Motions Docket on the 21st day of July, 1980 for 30 minutes for consideration of the foregoing matters, and any other matters that may be properly noticed not later than July 7, 1980.

Judge

A TRUE COPY.
ATTEST:

Deputy Clerk

MOTION

Case No: 8678

This day comes the Plaintiff, Herbert C. Wolfrey, Jr., by counsel, and moves the Court for an order enforcing on his behalf a contract dated February 2, 1978, which said contract was referred to in the original Bill of ~~Particulars~~ PARTITION filed in this Court on November 30, 1978 and he further moves the Court for an Order voiding any actions taken by this Court which are inconsistent with said Herbert C. Wolfrey Jr.'s rights as set forth in said contract.

HERBERT C. WOLFREY, JR.,

By Counsel

Ronald R. Tweel
MICHIE, HAMLETT, DONATO & LOWRY
500 Court Square, Suite 300
Charlottesville, Virginia 22902

Counsel for Herbert C. Wolfrey, Jr.

C E R T I F I C A T E

I hereby certify that a true copy of the foregoing instrument was mailed to Jack F. DePoy, 509 Virginia National Bank Building, Harrisonburg, Virginia, Counsel for Markwood Pence, et als; John N. Crist, Guardian ad litem; V. Stephen

Bradshaw, 92 North Liberty Street, Harrisonburg, Virginia; and Frank X. Gaegler, Jr., 3704 West Street, Landover, Maryland 20785 this 7 day of July, 1980.

Ronald R. Tweel

Ronald R. Tweel

O R D E R

This 21st day of July, 1980, came Markwood Pence, Edna P. Frank, Albert Pence and Edward Pence by George Aldhizer, II, Esquire, their attorney, who this day noted his appearance for these complainants, and Edward A. Pence was also present in proper person, and came Ruth W. Armentrout, Oren B. Stanley, and William T. Wolfrey, Jr. by James Sipe, Esquire, who this day noted his appearance for these complainants, and came Herbert Charles Wolfrey, Jr. by Patrick Ryan, Esquire who noted his appearance herein, came also Jack DePoy, Special Commissioner by Norvell Lapsley, Esquire, came Perry Wolfrey, incompetent, and Betty Sue Pence, infant, by John Crist, Esquire, their Guardian ad Litem, came Isley Knupp, the proposed purchaser by Holmes Harrison, Esquire, his attorney, the motion that Jack DePoy be relieved as counsel of record for such of the complainants for whom other counsel has appeared is sustained, and the Court takes under consideration the motion to relieve Jack DePoy as counsel of record for the remaining complainants.

Whereupon Markwood Pence, Edna P. Frank, Albert Pence and Edward Pence by George S. Aldhizer, II, Esquire, their attorney, Ruth W. Armentrout, Oren B. Stanley and William T. Wolfrey, Jr. by James Sipe, Esquire, their attorney, and Perry Edwin Wolfrey and Betty Sue Pence by John Crist, their Guardian ad litem moved the Court to confirm the Special Commissioner's report filed June 3, 1980, recommending that the Court accept the private offer of Isley F. Knupp to purchase the property in the proceedings prescribed for the sum of $35,000.00 cash, there being no exception to the report

except the motion of Herbert C. Wolfrey, Jr. filed July 7, 1980, which the Court reads as an exception to the report and overrules.

Whereupon Isley F. Knupp, in proper person and by his attorney ratified his offer filed June 6, 1980, and the Special Commissioner is authorized and directed to convey the said property to the said Knupp for the sum of Thirty Five Thousand ($35,000.00) Dollars cash to be paid within 10 days from the date that the Clerk certifies copies of this order to counsel of record. The said Special Commissioner shall not execute this decree until he has posted additional bond in the penalty of a total of Forty Thousand ($40,000.00) Dollars, and he shall deposit the proceeds of sale at interest in a safe banking institution and hold the same until the further order of the Court.

Leave is granted to Herbert C. Wolfrey, Jr. to file a Supplemental Bill of Complaint within 14 days from the date the Clerk certifies copies of this order to counsel of record, and all present parties shall respond thereto within 15 days from the date of filing. Herbert C. Wolfrey, excepted to the entry of this order.

On motion of the complainants who appear this day by counsel and the Guardian ad litem so much of the order heretofore entered herein on the 21st day of April, 1980, that directed that any deficiency in the resale of the property be at the risk of Herbert C. Wolfrey, Jr. is vacated; however the Court retains jurisdiction of the question of what costs, if any, of the sale and resale should be taxed against Herbert C. Wolfrey, Jr. of the Thirty-Nine Hundred ($3900.00) Dollars heretofore paid to the Special Commissioner by Herbert C. Wolfrey, Jr., the Special Commissioner shall refund Thirty-Four Hundred ($3400.00) Dollars thereof to counsel of record

for Herbert C. Wolfrey, Jr. and shall hold the balance of Five Hundred($500.00) Dollars subject to the further order of this Court for determination of what costs, if any, should be taxed against the said Herbert C. Wolfrey, Jr.

And this cause is continued.

ENTER: _____

PETITION FOR REHEARING

This day came the Plaintiff, Herbert C. Wolfrey, Jr., by counsel, and pursuant to Rule 1:1 of the Supreme Court of Virginia, petitions the Court to rehear and reconsider its denial of Plaintiff's Motion for an Order enforcing a certain contract for the sale of land dated February 2, 1978, and the Court's Order that said land be sold to Isley Knupp along with other relief as hereinafter requested. In support of this Petition, Plaintiff Wolfrey represents to the Court the following:

1. That on or before February 2, 1978, Plaintiff Wolfrey entered into a contract with the other named Plaintiffs in this suit to purchase their interests in a certain parcel of land for a price of $16,100.00. Said interests descended to the Plaintiffs as the heirs of Richard D. Wolfrey who died intestate.

2. Said contract was submitted to the Court for confirmation and for a determination of the proportionate interests of the Plaintiffs so that the purchase price could be divided.

3. This Court has determined the proportionate shares held by the Plaintiffs prior to the making of the contract; but as of the date of this Petition, the Court has not ruled on the enforceability of the contract.

4. Plaintiff Wolfrey has at all times been ready, willing and able to perform under the subject contract and has tendered full payment to the other Plaintiffs in accordance with their share of the contract price as determined by the Court.

5. Plaintiff Wolfrey has received quitclaim deeds from the following Plaintiffs and their spouses, if any: Clemmie Wolfrey Nelson, Dorothy Wolfrey Steele, Clemmie Lamb Wolfrey,

Hazel Wolfrey Lisky and Francis Baker Wolfrey Coppage.

6. Including Plaintiff Wolfrey's proportionate share and the proportionate amounts obtained as set forth in paragraph 5, he now holds a 20/90th interest in the subject land along with the dower interests of Mrs. Lamb and Mrs. Coppage.

7. Should the Court hold that the subject contract is enforceable, Plaintiff Wolfrey also holds an equitable interest in an additional 59/90th of the subject property making his total holdings 79/90ths of the whole.

8. On July 21, 1980, the Court denied Plaintiff Wolfrey's Motion for an Order enforcing the subject contract without ruling on the merits of the contract. The Court further ordered that the subject land be sold to an intervener, Isley Knupp, with this Order to be entered on July 28, 1980.

9. Plaintiff Wolfrey alleges that the subject contract is valid and enforceable.

10. Plaintiff Wolfrey alleges that the Court's Order that the subject land be sold to Knupp is premature as the exact ownership interests in said land cannot be precisely determined until the Court rules in the enforceability of the subject contract. As authority for this allegation, Plaintiff Wolfrey cites the case of Stevens v. McCormick, 90 Va. 735 (1894), which is attached to this Petition as Exhibit A.

11. Plaintiff Wolfrey further alleges that any sale of the subject land prior to the Court's ruling in the enforceability of the contract would be in violation of his right to a partition in kind under Section 8:01-83 of the Code of Virginia (1977 Replacement Volume).

WHEREFORE, Plaintiff Wolfrey prays the Court grant the following relief:

(A) That any sale or tender of deed regarding the subject land to Isley Knupp be stayed.

(B) That a rehearing be promptly scheduled on Plaintiff Wolfrey's Motion to enforce the subject contract.

(C) That a hearing be promptly scheduled on the issue of whether the Court must rule the enforceability of the subject contract prior to allowing any sale of the subject land.

(D) That leave be granted to Plaintiff Wolfrey to make any necessary amendments to the pleadings in this to facilitate the requested relief.

(E) Any other relief which the Court deems appropriate.

HERBERT C. WOLFREY,

By Counsel

Patrick L. Ryan
MICHIE, HAMLETT, DONATO & LOWRY
500 Court Square, Suite 300
Charlottesville, Virginia 22902

Counsel for the Plaintiff Wolfrey

C E R T I F I C A T E

I hereby certify that a true copy of the foregoing was mailed to Jack F. DePoy, 509 Virginia National Bank Building, Harrisonburg, Virginia 22801; John N. Crist, Guardian ad litem, 92 North Liberty Street, Harrisonburg, Virginia 22801; V. Stephen Bradshaw, 92 North Liberty Street, Harrisonburg, Virginia 22801; Francis X. Gaegler, Jr., 3704 West Street, Landover, Maryland 20785; James R. Sipe, P.O. Box 429, 250 East Market Street, Harrisonburg, Virginia 22801; George R. Aldhizer, Jr., P.O. Box 809, 90 North Main Street, Harrisonburg, Virginia 22801, this 29th day of July, 1980.

Patrick L. Ryan

C E R T I F I C A T E

I hereby certify that a true copy of the foregoing was mailed to Jack F. DePoy, 509 Virginia National Bank Building, Harrisonburg, Virginia 22801; John N. Crist, Guardian ad litem, 92 North Liberty Street, Harrisonburg, Virginia 22801; V. Stephen Bradshaw, 92 North Liberty Street, Harrisonburg, Virginia 22801; Francis X. Gaegler, Jr., 3704 West Street, Landover, Maryland 20785; James R. Sipe, P.O. Box 429, 250 East Market Street, Harrisonburg, Virginia 22801; George R. Aldhizer, Jr., P.O. Box 809, 90 North Main Street, Harrisonburg, Virginia 22801, this 25th day of July, 1980.

Patrick L. Ryan

EXHIBIT A

Wytheville.

STEVENS v. MCCORMICK.

JUNE 14th, 1894.

1. PARTITION—*Interests of parties—Sale.*—An order for sale of land in partition before ascertaining the interests of the several parties, is premature and erroneous, as they are entitled to know how they stand in order that they may bid intelligently, if they desire to bid at the sale. *Hurton v. Bond*, 28 Gratt., 815.
2. IDEM—*Creditors.*—The creditors of the parties interested in the land are not proper parties in a partition suit.
3. IDEM—*Commissioners.*—If from the facts in the record it appears that the land cannot be conveniently partitioned, there may be a decree for a sale, but it is not necessary that these facts shall appear from report of commissioners. *Zirkle v. McCue*, 26 Gratt., 532.
4. APPEAL—*Decree of sale.*—Decree for sale of land in partition suit, though interlocutory, is appealable under Code, § 3454, as it requires change of title and possession, especially where it settles the principles of the cause.

Argued at Richmond. Decided at Wytheville.

Appeal from decree of circuit court of Clarke county, rendered May 18, 1893, in a suit for partition, wherein John W. McCormick and others were complainants, and John Stevens and wife and others were defendants. Opinion states the case.

Marshall McCormick, for appellants.

Moore & Kounslar, for appellees.

LEWIS, P., delivered the opinion of the court.

This was a suit for a partition or sale of a tract of land situate in Clarke county. The land was conveyed in 1854 to Nathaniel Burwell, Jr., for the benefit of Eliza M. McGuire, wife of D. H. McGuire, and her children during their joint lives, and at her death to be divided equally among the children and their issue. Mrs. McGuire died in 1856, having had ten children, all of whom survived her. Before the institution of the present suit several of the children died intestate and without issue. In 1859 one o the daughters, Lucy, intermarried with Treadwell Smith, Jr., by whom she had two children, and after his death she intermarried with John W. McCormick by whom, also, she had two children, and afterwards died. Her surviving husband and the two last mentioned children were the complainants in the court below. About the time of her first marriage she was paid by Nathaniel Burwell, Jr., over sixteen hundred dollars, which the appellants, who were defendants below, claimed was in full satisfaction of her interest in the trust estate, though it does not appear that any conveyance of her interest was ever made by her.

The circuit court determined that the land could not be conveniently divided, and without determining the extent of the interests of the several parties, but expressly reserving that question, ordered a sale, by the decree complained of.

1. The appellants contend, and we think with good reason, that it was premature and erroneous to order a sale before ascertaining the extent of the respective interests of the parties. When a sale takes place the parties are entitled to know exactly how they stand, in order that if they desire to bid for the land they may do so intelligently, and there is no reason that we can perceive why in such a case a similar rule should not be applied to that which prevails in respect to sales of land to satisfy liens; as to which see *Cole* v. *McRae*, 6 Rand., 644, and *Horton* v. *Bond*, 28 Gratt., 815, 822.

This rule applies with peculiar force to the present case, because here there is no question that Mrs. Smith received

from Burwell over sixteen hundred dollars; and while it does not distinctly appear that this was on account of her interest in the land in question, the inference from the record is very strong that it was; and if it was, then her interest was in effect extinguished, though she may have made no conveyance of her interest, and those claiming under her would have no standing in court as complainants in the present suit.

2. It appears that some of the parties in interest are indebted, though to what extent does not appear; and the point is made by the appellants that the creditors of these parties ought to have been brought before the court. But the rule is well settled otherwise. A partition never affects the interests of third persons, and hence creditors have no concern with it; and if they are made parties to the suit, it will be dismissed as to them. 2 Rob. (old) Pr., 14; *Wotten* v. *Copeland*, 7 Johns. Ch., 140; *Agar* v. *Fairfax*, 17 Ves., 533.

3. The question has also been raised as to the proper method of ascertaining in a suit for partition whether or not the land can be conveniently divided, the statute being silent on the subject. The appellants insist that the usual and correct practice is to appoint not less than five commissioners to go upon the land, any three of whom may act, and to report their views on the subject to the court. This was not done in the present case, but the mattar was referred to a master, whose report was confirmed. In *Zirkle* v. *McCue*, 26 Gratt., 532, Judge Staples, speaking for the court, said that to warrant a decree for a sale, it must appear that partition cannot be conveniently made, and that the interests of the parties will be promoted by a sale, but that these facts need not appear from the report of commissioners, or by the depositions of witnesses. It is sufficient, he added, if the facts appearing in the record reasonably warrant the decree of sale. In other words, the matter of procedure is left to the discretion of the court.

4. Having thus reviewed the decree on its merits, it is hardly necessary to add that we do not agree with the appellees that

it is not an appealable decree. A decree of sale, as a general rule, contemplates, and, therefore, in the sense of the statute, requires, a change both of title and possession; and, besides, the decree in question settles the principles of the cause; so that upon both of these grounds the decree, although interlocutory in its nature, is an appealable decree. Code., sec. 3454; *Shannon* v. *Hanks*, 88 Va., 338.

The decree must, therefore, be reversed, and the cause remanded for further proceedings in conformity with this opinion.

DECREE REVERSED.

CHANCERY FILE
#8678

OBJECTIONS TO PETITION FOR REHEARING

This 4th day of August, 1980, comes Isley Knupp and files his objections to the Petition for Rehearing filed by Herbert C. Wolfrey.

(1) That petitioner, Herbert C. Wolfrey, has at all times since the first sale of this property at which he was the successful bidder been in default and failed to comply with the obligations he incurred. That his default has resulted in damages to all parties to these proceedings. That the Equitable doctrine of "Clear Lands" applies to Perry Edwin Wolfrey and he should not be entitled to further delay the rights of the parties in this cause.

(2) That no substantial or new matters have been raised in the Petition for Rehearing that have not been previously ruled upon by this Honorable Court.

(3) That further delays in this proceeding are inequitable to Mr. Isley Knupp who has paid the sum of Thirty Five Thousand Dollars ($35,000.00) to the Special Commissioner and is entitled to the delivery of a deed to the property and the beneficial use thereof.

(4) That any issue raised by the Petition for Rehearing deals only with the distribution of the funds held by the Special Commissioner and not to Mr. Isley Knupp's right to the delivery of a deed to the property.

(5) That Isley Knupp prays the protection of his rights in this cause and such other matters as in equity may seem meet.

ISLEY KNUPP
By Counsel

OF CLARK, BRADSHAW, HARRISON & LAYMAN, P.C.
92 North Liberty Street
Harrisonburg, Virginia
Counsel

CERTIFICATE

I hereby certify that a true copy of the foregoing was mailed to Jack F. Depoy and Norvell A. Lapsley, 509 Virginia National Bank Building, Harrisonburg, Virginia; John N. Crist, Virginia National Bank Building, Harrisonburg, Virginia; Francis X. Gayler, Jr. 3704 West Street, Landover, Maryland, 20785; James R. Sipe, P. O. Box 429, 250 East Market Street, Harrisonburg, Virginia, 22801; George S. Aldhizer, Jr., and Larry Q. Kaylor, 90 North Main Street, Harrisonburg, Virginia; Patrick L. Ryan, 500 Court Square, Suite 300, P. O. Box 298, Charlottesville, Virginia, 22902, this 4 day of August, 1980.

V. Stephen Bradshaw, Attorney

OBJECTIONS TO PETITION FOR REHEARING

COMES NOW JOHN N. CRIST, guardian ad litem for Perry Edwin Wolfrey, incompetent, and Betty Sue Pence, an infant, and files this his objections to the petition for rehearing filed by Herbert C. Wolfrey, Jr. in the above-captioned matter, and in support thereof states as follows:

(1) That by order of this Court dated April 7, 1980, the petitioner, Herbert C. Wolfrey, Jr., was ordered to pay, and did agree to pay, the additional sum of SIXTEEN THOUSAND DOLLARS ($16,000.00) to the Special Commissioner herein, that sum being less than ONE-HALF (1/2) of the balance due and owing to the Special Commissioner for the purchase of the property in question herein.

(2) As stated in that order, this was allowed so that it could be determined the exact amounts due and owing the other Complainants, there at that time being some question as to exactly what interest Mr. Wolfrey himself owned, and exactly what amount was due and owing the other Complainants. Also, this was done so that Mr. Wolfrey would have ample time to file any separate suits, motions, or petitions allowing him to enforce the contract of February 2, 1978.

(3) Despite his indications of his intention to comply with the terms of that order, Mr. Wolfrey being present in person and also represented by counsel at that hearing, Mr. Wolfrey has failed to take any action in this regard, despite the lapse of almost four months. That not only has Mr. Wolfrey had ample time and opportunity to comply with the order of the Court, Mr. Wolfrey has also had ample time and opportunity to take whatever measures were necessary to have the Court make a specific ruling as to the enforceability of the contract in question.

(4) That issue is taken with Paragraph 4 of the petition for rehearing which states that Mr. Wolfrey has at all times been ready, willing, and able to perform under the contract.

(5) That the Court by testimony has already found the subject property to be unsusceptible to partition in kind.

(6) That no new or undiscovered matters are presented by the petition for rehearing which would cause the Court to grant same.

WHEREFORE, John N. Crist, guardian ad litem for Perry Edwin Wolfrey, incompetent, and Betty Sue Pence, an infant, prays this Honorable Court to deny the petition for rehearing and enforce its order of sale to Isley Knupp for THIRTY FIVE THOUSAND DOLLARS ($35,000.00)

PERRY EDWIN WOLFREY, incompetent

and

BETTY SUE PENCE, an infant

By John N. Crist
Their Guardian ad Litem

JOHN N. CRIST
Moore, Jackson, Graves & Ralston
312 Virginia National Bank Building
Harrisonburg, Virginia 22801

CERTIFICATE

I hereby certify that a copy of the foregoing Objections to Petition for Rehearing was mailed to V. Stephen Bradshaw, Esquire, Clark, Bradshaw, Harrison & Layman, P.C., 92 North Liberty Street, Harrisonburg, Virginia 22801, counsel for Isley Knupp; to Jack F. DePoy, Esquire, Lapsley & DePoy, 509 Virginia National Bank Building, Harrisonburg, Virginia 22801, Special Commissioner; to Francis X. Gayler, Jr., 3704 West Street, Landover, Maryland 20785; James R. Sipe, Esquire, P. O. Box 429, Harrisonburg, Virginia 22801; to George S. Aldhizer, II, Esquire, and L. Quinn Kaylor, Esquire, 90 North Main Street, Harrisonburg, Virginia 22801; and to Patrick L. Ryan, Esquire, 500 Court Square, Suite 300, P. O. Box 298, Charlottesville, Virginia 22902, counsel for Herbert C. Wolfrey, Jr., this 5th day of August, 1980.

John N. Crist

OBJECTION TO PETITION FOR REHEARING

Come now plaintiffs, Markwood Pence, Edna P. Frank, Albert Pence and Edward Pence, by counsel, and for their grounds of objection to the Petition for Rehearing filed herein on August 1, 1980 state as follows:

(1) The Bill of Complaint filed in this cause on November 30, 1978 in which Herbert C. Wolfrey, Jr., joined as a party complainant prayed that "the sale made by your complainants may be accepted, approved and confirmed in order that a partition of said real estate may be effected, or that said real estate may be partitioned in some manner prescribed by law...". Such additional provision in concert with the prayer for "all such other, further and general relief" clearly permitted the alternative of sale at public auction in lieu of confirmation of the contract of February 2, 1978.

(2) By Order entered September 4, 1979, it was decreed that the property be sold at public auction in light of an upset bid of Isley F. Knupp. Said Order specified the terms of sale as 10% cash on day of sale and balance in cash on day of delivery of deed. Herbert C. Wolfrey, Jr. took no exception to the entry of such order, and, in fact, said Order was endorsed by his then counsel, Jack F. DePoy.

(3) After due advertisement of the date, place and terms of sale, the property was sold at public auction to Herbert C. Wolfrey, Jr. for $39,000.00 on November 7, 1979, which sale was confirmed by Order entered on November 17, 1979, to which Order Herbert C. Wolfrey, Jr. did not object.

(4) Repeated requests of the Special Commissioner notwithstanding, Herbert C. Wolfrey, Jr. failed to comply with the terms of sale, resulting in a show cause Order heard by this Court on April 7, 1980, at which hearing Herbert C. Wolfrey, Jr., with the advice and consent of independant counsel, Frances X. Gaegler, Jr., advised the Court that he was able to comply with the terms of sale, whereupon he was ordered to pay additional sums to the Court so as to complete his obligation.

(5) Herbert C. Wolfrey, Jr. defaulted in the payments ordered by the Court on April 7, 1980, which default, pursuant to said Order, authorized readvertisement and resale of the property at public auction.

(6) Not until July 7, 1980, after the proper filing of a second upset bid, did Herbert C. Wolfrey, Jr. file any motion with respect to the enforcement of the contract of February 2, 1978.

(7) In consideration of the original prayer of the Bill of Complaint contemplating a partition of subject real estate other than by confirmation of the contract of February 2, 1978, in consideration of the Order of Sale of September 4, 1979, and the Order confirming the sale of December 17, 1979, which Orders were entered without objection by Herbert C. Wolfrey, Jr., in consideration of Herbert C. Wolfrey, Jr.'s participation at the public auction on November 7, 1979, with full knowledge of the terms of said sale, Herbert C. Wolfrey, Jr. is now estopped to insist upon a ruling as to validity or enforceability of the contract of February 2, 1978.

(8) In consideration of default of the terms of sale of the public auction by Herbert C. Wolfrey, Jr. of which terms

he had full knowledge and to which terms he acceded and in consideration of his default in the terms of the Order of this Court of April 7, 1980, despite his assurance to the contrary, he is not entitled to the relief requested in the Petition for Rehearing as he is in breach of the equitable doctrine of Clean Hands. Although he seeks equity, he fails to do equity.

(9) The upset bidder, Isley F. Knupp has delivered to the Special Commissioner the full amount of his bid, but has neither benefit of his funds nor the use and enjoyment of the subject real estate.

(10) As alleged in the Bill of Complaint and the Amended Bill of Complaint and as proven by the Depositions of Herbert C. Wolfrey, Jr., Hazel Wolfrey Liskey and Dorothy Wolfrey Steele, the interests of the parties in question were fully and correctly determined, prior to Order of Sale and, therefore, the case of Stevens v. McCormick 90 Va. 735 (1894) is inapplicable.

(11) As alleged in the Bill of Complaint and as proven by the depositions of Herbert C. Wolfrey, Jr. (at page 14), Hazel Wolfrey Liskey (at page 19) and Dorothy Wolfrey Steele (at page 24) and as found by the Court in its Order of September 4, 1979, to which Order Herbert C. Wolfrey, Jr. did not object, the parcel in question was not susceptible of partition in kind, and, therefore, Herbert C. Wolfrey, Jr. is not entitled to partition pursuant to Section 8.01-83 of the 1950 Code of Virginia (1977 Replacement Volume).

WHEREFORE, Plaintiffs, Markwood Pence, Edna P. Frank, Albert Pence and Edward Pence, pray that the Petition for Rehearing be denied, and that the Order of the Court entered July 21, 1980, be executed by the Special Commissioner as therein directed.

MARKWOOD PENCE
EDNA P. FRANK
ALBERT PENCE
EDWARD PENCE
By counsel

George S. Aldhizer, III
of Wharton, Aldhizer & Weaver
90 N. Main Street
Harrisonburg, Virginia
Counsel for: Markwood Pence, Mrs. Edna P. Frank,
Albert Pence and Edward Pence

CERTIFICATE

I hereby certify that a copy of the foregoing Objection To Petition for Rehearing was mailed to V. Stephen Bradshaw, Esquire, Clerk, Bradshaw, Harrison & Layman, P.C., 92 North Liberty Street, Harrisonburg, Virginia 22801, counsel for Isley Knupp; to Jack F. DePoy, Esquire, Lapsley & DePoy, 509 Virginia National Bank Building, Harrisonburg, Virginia 22801, Special Commissioner; to Francis X. Gayler, Jr., 3704 West Street, Landover, Maryland 20785; to James R. Sipe, Esquire, P.O. Box 429, Harrisonburg, Virginia 22801; to Patrick L. Ryan, Esquire, 500 Court Square, Suite 300, P.O.Box 298, Charlottesville, Virginia 22902, counsel for Herbert C. Wolfrey, Jr.; and to John N. Crist, Esquire, Moore, Jackson, Graves & Ralston, 312 Virginia National Bank Building, Harrisonburg, Virginia 22801, Guardian Ad Litem for Perry Edwin Wolfrey, incompetent and Betty Sue Pence, an infant.

Dated: August 5, 1980.

George S. Aldhizer, II

O R D E R

Upon consideration of the Petition for Rehearing of this Court's order of July 21, 1980, filed by Herbert C. Wolfrey, Jr., by counsel, on July 29, 1980, the written objections thereto by Markwood Pence, Edna P. Frank, Albert Pence and Edward Pence, by George S. Aldhizer, II, Esquire, their attorney, by Perry Wolfrey, incompetent and Betty Sue Pence, infant, by John Crist, Esquire, their guardian ad litem, by Isley Knupp, by V. Stephen Bradshaw, Esquire, his attorney, and the oral objection of James Sipe, Esquire on behalf of the parties for whom he has heretofore been noted as counsel of record, and upon oral argument of counsel by telephone conference call this day with Patrick Ryan, Esquire, James Sipe, Esquire, John Crist, Esquire, V. Stephen Bradshaw, Esquire, and L. Quinn Kaylor, Esquire on behalf of George S. Aldhizer, II, Esquire.

It appearing to the Court that the first decree of sale on September 4, 1979, was on motion of Herbert C. Wolfrey, Jr., and others, that he was the successful bidder at such sale, that although he was given ample opportunity, including extensions of time, upon his representation to the Court that he would comply with the terms of sale, he failed to comply with the terms of sale, that the private offer of Isley Knupp is a substantial increase over his private offer rejected by the Court before the first decree of sale, that all other parties heretofore requested that the private offer of Knupp in the amount of Thirty-Five

Thousand ($35,000.00) Dollars be accepted, without prejudice to the rights of any party to pray for distribution under the alleged contract of February 2, 1978, and the Court being of the opinion that it is to the best interest of the parties, especially the infant and incompetent, to accept the said private offer and Herbert C. Wolfrey is estopped to object thereto, it is ADJUDGED and ORDERED that the Petition for Rehearing be denied.

The time for Herbert C. Wolfrey, Jr. to file a Supplemental Bill praying for distribution of the proceeds of sale in accordance with the alleged contract of February 2, 1978, for which leave was heretofore granted, is extended to August 25, 1980.

Enter this 8th day of August, 1980.

JUDGE

CASE No: 8678

Filed in the Clerk's Office
Rockingham County, Va.

AUG 22, 1980

Melvin Key Clerk

NOTICE OF APPEAL

Pursuant to Rule 5:6 of the Supreme Court of Virginia, Herbert C. Wolfrey, gives Notice of his Appeal from so much of the Circuit Court of Rockingham County's July 28, 1980, Order in the above styled case which ordered that the land which was the subject of this suit be sold to Isley Knupp.

A statement of facts or other incidents of the case is to be hereafter filed.

HERBERT C. WOLFREY,
By Counsel

Ronald R. Tweel

Patrick L. Ryan
MICHIE, HAMLETT, DONATO & LOWRY
500 Court Square, Suite 300
Charlottesville, Virginia 22902

Counsel for Herbert C. Wolfrey

C E R T I F I C A T E

I hereby certify that a true copy of the foregoing was mailed to Jack F. DePoy, 509 Virginia National Bank Building, Harrisonburg, Virginia 22801; John N. Crist, Guardian ad litem, 92 North Liberty Street, Harrisonburg,

Virginia 22801; V. Stephen Bradshaw, 92 North Liberty Street, Harrisonburg, Virginia 22801; Francis X. Gaegler, Jr., 3704 West Street, Landover, Maryland 20785; James F. Sipe, P.O. Box 429, 250 East Market Street, Harrisonburg, Virginia 22801; George R. Aldhizer, Jr., P.O. Box 809, 90 North Main Street, Harrisonburg, Virginia 22801, this 22d day of August, 1980.

Patrick L. Ryan

Case No: 8678

Filed in the Clerk's Office
Rockingham County, Va.

AUG 22, 1980

Merlin Kay Clerk

SUPPLEMENTAL BILL OF COMPLAINT

Pursuant to leave granted by the Court in its Order of August 8, 1980, Complainant, Herbert C. Wolfrey represents to the Court the following:

1. That on or before February 2, 1978, Wolfrey entered into a contract with the other named Complainants in this suit to purchase their interests in a certain parcel of land for a price of $16,100.00. Said interests descended to the Complainants as the heirs of Richard D. Wolfrey who died intestate.

2. Said contract was submitted to the Court for confirmation and for a determination of the proportionate interests of the Plaintiffs so that the purchase price could be divided.

3. As of the date of this pleading, the Court has not finally determined the proportionate interests of the Complainants nor has the Court finally determined the precise status of the contract.

4. Complainant Wolfrey is presently prepared and has at all times been ready, willing and able to perform under the subject contract and has tendered full payment to the other Complainants in accordance with their proportionate shares as set out in the August 31, 1979 Amended Bill of Complaint in the cause.

5. Complainant Wolfrey has received quitclaim deeds from the following Complainants and their spouses, if any: Clemmie Wolfrey Nelson, Dorothy Wolfrey Steele, Clemmie Lamb Wolfrey, Hazel Wolfrey Lisky and Francis Baker Wolfrey Coppage.

6. According to the proportionate shares set out in the aforementioned Amended Bill of Complaint, Complainant Wolfrey held a 20/90th interest in the subject land along with the dower interests of Mrs. Lamb and Mrs. Coppage.

7. By virtue of the February 2, 1980 contract, Complainant Wolfrey obtained an equitable interest in the proportionate holdings of the remaining Complainants amounting to an additional 59/90th of the subject property.

8. Complainant Wolfrey's total interest in the subject property amounted to 79/90th of the whole.

9. On July 28, 1980, the Court ordered that the subject land be sold to an intervener, Isley Knupp, for a price of $35,000.00.

10. On information and belief, Mr. Knupp has tendered the full sale price to the Special Commissioner appointed by the Court for this matter.

11. Said $35,000.00 is currently being held by the Special Commissioner pending distribution instructions from the Court.

WHEREFORE, Complainant Wolfrey prays the Court grant the following relief:

A. That the February 2, 1980 contract be confirmed.

B. That the proportionate shares of the heirs of Richard D. Wolfrey be confirmed as set out in the Amended Bill of Complaint.

C. That Complainant Wolfrey be awarded 79/90ths of the $35,000.00 currently held by the Special Commissioner.

D. That Complainant Wolfrey be awarded his costs in this behalf expended.

HERBERT C. WOLFREY,

By Counsel

Ronald R. Tweel

Patrick L. Ryan
MICHIE, HAMLETT, DONATO & LOWRY
500 Court Square, Suite 300
Charlottesville, Virginia 22902

Counsel for Plaintiff, Wolfrey

C E R T I F I C A T E

I hereby certify that a true copy of the foregoing was mailed to Jack F. DePoy, 509 Virginia National Bank Building, Harrisonburg, Virginia 22801; John N. Crist, Guardian ad litem, 92 North Liberty Street, Harrisonburg, Virginia 22801; V. Stephen Bradshaw, 92 North Liberty Street, Harrisonburg, Virginia 22801; Francis X. Gaegler, Jr., 3704 West Street, Landover, Maryland 20785; James R. Sipe, P.O. Box 429, 250 East Market Street, Harrisonburg, Virginia 22801; George R. Aldhizer, Jr., P.O. 809, 90 North Main Street, Harrisonburg, Virginia 22801, this 22d day of August, 1980.

Patrick L. Ryan

In Chancery No. 8678

DEMURRER

Come now Plaintiffs, Markwood Pence, Edna P. Frank, Albert Pence and Edward Pence, by counsel, and demur to the Supplemental Bill of Complaint filed herein and say that the Supplemental Bill of Complaint fails to state a claim for which relief may be granted and should not be prosecuted on the following grounds:

(1) The contract of sale dated February 2, 1978, referred to in the Supplemental Bill of Complaint, is expressly "subject to confirmation by the Court . . ."

(2) On November 30, 1978, Complainant Wolfrey and others filed herein a Bill of Complaint praying "that the sale made by your complainants may be accepted, approved and confirmed in order that a partition of said real estate may be effected, or that said real estate may be partitioned in some manner prescribed by law . . ."

(3) On or about March of 1979, the Court refused to enter an order confirming the contract of sale tendered by Jack F. Depoy, Esquire, then counsel for Complainant Wolfrey and others, to which refusal there was no objection by Complainant Wolfrey or any other party.

(4) On or about September 4, 1979, Jack F. Depoy, Esquire, counsel for Complainant Wolfrey and others, prepared and tendered to the Court an order finding that "it may be in the best interest of all concerned parties that the subject real estate be sold at public auction . . ." and ordering that said real estate be sold at public auction and that the proceeds of the sale be divided among the parties

according to their respective rights and interests, which Order was entered by this Court on September 4, 1979, without objection by Complainant Wolfrey or any other party.

(5) By its refusal to enter the order confirming the contract of sale and by its Order of sale at public auction, the Court effectively refused to confirm said contract of sale and did, pursuant to the prayer in the Bill of Complaint, order partition of the real estate "in some manner prescribed by law."

(6) As of the entry of the Order of September 4, 1979, the Court was apprised of the rights and interests of the parties as alleged in the Amended Bill of Complainat filed by Jack F. Depoy, Esquire, counsel for Complaintant Wolfrey and others, filed on August 31, 1979.

(7) Complainant Wolfrey having asked that the Court confirm the contract or order that the real estate be partitioned in some manner prescribed by law, Complainant Wolfrey having advised the Court of the rights and interests of the respective parties, the Court having declined to confirm the contract of sale, the Court having found that the land was not susceptible to partition in kind and having ordered sale of the real estate at public auction, all of which transpired with the concurrence of, or without objection from, Complainant Wolfrey, there remains nothing to be done by this Court but to Order that the proceeds of sale to Isley Knupp, be distributed among the respective parties pursuant to the interests as represented in the Amended Bill of Complaint and that the Special Commissioner file a proper accounting for said sums.

WHEREFORE, your Plaintiffs, Markwood Pence, Edna P. Frank, Albert Pence and Edward Pence, pray that the Supplemental Bill of Complaint be dismissed; that the proceeds now held by the Special Commissioner be distributed pursuant to the interests as represented in the Amended Bill of Complaint filed herein, and that the Special Commissioner account for such distribution accordingly.

MARKWOOD PENCE
EDNA P. FRANK
ALBERT PENCE
EDWARD PENCE
By Counsel

GEORGE S. ALDHIZER, II
L. QUINN KAYLOR
Of Wharton, Aldhizer & Weaver
90 North Main Street
Harrisonburg, VA 22801
Counsel for plaintiffs

CERTIFICATE

I hereby certify that a copy of the foregoing Demurrer was mailed to V. Stephen Bradshaw, Esquire, Clark, Bradshaw, Harrison & Layman, P.C., 92 North Liberty Street, Harrisonburg, VA, 22801, counsel for Isley Knupp; to Jack F. Depoy, Esquire, Lapsley & Depoy, Virginia National Bank Building, Harrisonburg, VA, 22801, Special Commissioner; to Francis X. Gayler, Jr., 3704 West Street, Landover, MD, 20785; to James R. Sipe, Esquire, P. O. Box 429, Harrisonburg, VA, 22801; to Ronald R. Tweel, Esquire and Patrick L. Ryan, Esquire, 500 Court Square, Suite 300, P. O. Box 298, Charlottesville, VA, 22902, counsel for Herbert C. Wolfrey, Jr.; and to John N. Crist, Esquire, Moore, Jackson, Graves & Ralston, 312 Virginia National Bank Building, Harrisonburg, VA, 22801, Guardian ad Litem for Perry Edwin Wolfrey, Incompetent and Betty Sue Pence, an infant.

Dated: September 9 1983

George S. Aldhizer, II

Filed in the Clerk's Office
Rockingham County, Va.

SEP 19 1980

Donna Funkhouser Deputy Clerk

STATEMENT OF FACTS

Pursuant to Rule 5:9 of the Supreme Court of Virginia, Complainant Herbert C. Wolfrey, Jr., submits the following Statement of Facts pertaining to the proceedings in the above styled case.

1. This case involves a dispute over the nature and extent of interests in three adjoining tracts or parcels of land which amount to approximately 13 acres and are located in Rockingham County, Virginia. This land was formerly owned by Richard Daniel Wolfrey who died intestate in 1916.

2. In an effort to obtain complete title to and unified ownership of the subject land and to preserve it as the family homestead, one of Richard Daniel Wolfrey's grandsons, Herbert Charles Wolfrey, Jr., made extensive efforts to ascertain, locate and contact all of the known and competent heirs of Richard Daniel Wolfrey.

3. On or about February 2, 1978, Herbert Charles Wolfrey, Jr. and 12 of the heirs and their spouses, if any, entered into a contract for the sale of their interests in the subject land to him. The heirs were to share in the agreed upon sale price of $16,100.00 in proportion to their respective interests.

4. As Richard Daniel Wolfrey's heirs also included an infant, Betty Sue Pence, an incompetent, Perry Edwin

Wolfrey, and one individual who could not be located, Richard Donald Wolfrey, as well as a possible devisee from a deceased heir, Mary Schaeffer, the contract required Herbert Charles Wolfrey, Jr. to submit it to the Rockingham County Circuit Court for approval.

5. On November 30, 1978, the contract was submitted to the Court in the form of a partition suit with Wolfrey and the heirs who signed it joining as the complainants against the incompetent, the infant, the unlocated heir, and the possible devisee. Jack F. DePoy, Esquire, of Harrisonburg, Virginia acted as counsel for Wolfrey and the other complainants.

6. The major purpose of the suit was expressed in Section d. of the prayer which reads as follows:

> That the sale made by your complainants may be accepted, approved, and confirmed in order that a partition of said real estate may be effected, or that said real estate may be partitioned in some manner prescribed by law, but preferably by acceptance of the said contract of sale.

7. The court appointed a guardian ad litem, John W. Crist, Esquire, of Harrisonburg, Virginia, for the infant and the incompetent. An answer was timely filed on their behalf on December 5, 1978.

8. The court and the complainants made reasonable efforts to locate the missing heir and to determine the validity of the possible devise to Mary Schaeffer. Based on the findings of these efforts, on September 4, 1979, the Court ruled that Mary Schaeffer had no interest in the land. The unlocated heir, Richard Donald Wolfrey, remains in the suit as a defendant.

9. Sometime in February of 1979, Mr. DePoy, on behalf of Wolfrey and the other complainants, submitted a proposed decree to the Court ordering the sale of the land to Wolfrey for the agreed upon price of $16,100.00.

10. In an undated Judge's memorandum, the Court ordered that the proposed decree be modified in respect to the interests of the heirs and that the Bill of Complaint be so amended.

11. The Amended Bill was filed in August 31, 1979 and shows the following interests descended to Richard Daniel Wolfrey's heirs:

Complainants:

Herbert Charles Wolfrey, 1/18 undivided interest

Markwood Pence, 1/15 undivided interest
Edna P. Frank, 1/15 undivided interest
Albert Pence, 1/15 undivided interest
Edward Pence, 1/15 undivided interest
Frances Coppage, dower in 1/3 interest
Ruth W. Armentrout, 1/9 undivided interest
Kathleen Wolfrey Stanley, 1/9 undivided interest
William Thomas Wolfrey, 1/9 undivided interest
Hazel Wolfrey Liskey, 1/18 undivided interest
Clemmie Wolfrey Nelson, 1/18 undivided interest
Clemmie T. Lamb Wolfrey, dower in 1/3 interest
Dorothy Wolfrey Steele, 1/18 undivided interest

Infant:

Betty Sue Pence, 1/15 undivided interest

Incompetent:

Perry Edwin Wolfrey, 1/18 undivided interest

Unlocated Heir:

Richard Donald Wolfrey, 1/18 undivided interest

12. Prior to the Court's taking any action to formally approve the sale of the land, one Isley F. Knupp, represented by Stephen Bradshaw, Esquire, of Harrisonburg, Virginia, interposed an offer to the Court on March 5, 1979 to purchase the subject land for $22,000.00. This offer was later increased to $22,837.65 on July 5, 1979 to include various costs and fees of the proceedings

13. Pursuant to the Knupp offer, the Court ordered on September 4, 1979, that the subject land he sold at public

auction using the Knupp offer of $22,837.65 as the starting bid. The sale was scheduled for November 7, 1979.

14. The Court also appointed Jack F. DePoy as Special Commissioner for the purpose of conducting the sale. At this point, DePoy was also representing Wolfrey and the other complainants.

15. On November 6, 1979, Wolfrey mailed notices to the other complainants informing them that he intended to hold them to the terms of the February 2, 1978 contract.

16. From November, 1979 to March, 1980, Wolfrey tendered payments to the other complainants based upon their proportionate interests in the land as reflected in the Amended Bill and the contract price of $16,100.00.

17. Wolfrey subsequently received quitclaim deeds from the following complainants and their spouses, if any: Clemmie Wolfrey Nelson, Dorothy Wolfrey Steele, Clemmie Lamb Wolfrey, Hazel Wolfrey Liskey and Frances Baker Coppage.

18. The public sale was held as scheduled on November 7, 1979. Wolfrey and Knupp both participated with Wolfrey submitting the final bid of $39,000.00.

19. Wolfrey deposited $3,900.00 with the Special Commissioners at the sale. However, he did not make any further payments toward the auction price.

20. On April 7, 1980, at a hearing before the Court, Wolfrey, appearing with counsel from his home state of Maryland, indicated to the Court that he intended to comply with the terms of the November 7, 1979 auction sale. At this point, Mr. DePoy represented Wolfrey, as Virginia counsel, represented the other complainants, and was acting as Special Commissioner.

21. The Court entered an order on April 21, 1980, requiring Wolfrey to deposit $16,000.00 of the auction sale price with the Special Commissioner within 10 days. The Court further ordered that the property would be resold at Wolfrey's risk if he failed to make this deposit.

22. Wolfrey did not make the required deposit. On June 2, 1980, Isley Knupp tendered an offer to the Court, through the Special Commissioner, to purchase the property for $35,000.00.

23. On June 3, 1980, DePoy also tendered a motion to the Court requesting leave to withdraw as counsel for Wolfrey.

24. The motions to accept Knupp's $35,000.00 bid and for DePoy's withdrawal as counsel were heard by the Court on June 18, 1980. Wolfrey was represented at the hearing by Ronald R. Tweel, Esquire, of Charlottesville, Virginia, who further moved that DePoy withdraw as counsel for the other complainants as well because of an existing conflict of interest.

25. The Court granted DePoy's motion to withdraw as Wolfrey's counsel and took the motions regarding Knupp's bid and DePoy's withdrawal as counsel for the other complainants under considerations. The Court also granted leave for Mr. Tweel to represent Wolfrey.

26. Pursuant to leave granted by the Court, on July 7, 1980, Wolfrey submitted a motion requesting the Court to rule on the validity and enforceability of the February 2, 1978, contract before proceeding further.

27. At a July 21, 1978 hearing, the Court granted the motion for DePoy to withdraw as counsel for the other complainants. The Court also accepted the bid of Isley Knupp to purchase the subject land for $35,000.00 upon the satisfaction of certain

conditions. The Court also denied Wolfrey's motion for a ruling on the validity and enforceability of the February 2, 1978 contract. An order setting out the above was entered on July 28, 1980.

28. Counsel for Wolfrey objected to the Court's acceptance of Knupp's bid and denial of Wolfrey's motion to enforce the contract. Counsel's grounds were that it was improper to order the sale without first conducting a hearing and ruling on the enforceability of the February 2, 1978 contract in order to determine the precise nature of the parties' interest in the land.

29. Wolfrey subsequently submitted a Petition for Rehearing of the Court's July 28, 1980 order to sell the subject land to Knupp which fully set out his objections to the order.

30. The Court denied Wolfrey's Petition for Rehearing pursuant to a conference call hearing on August 8, 1980.

31. Wolfrey subsequently filed a Notice of Appeal to the Supreme Court of Virginia on August 22, 1980 regarding the Court's July 28, 1980 order that the subject land be sold to Isley Knupp.

HERBERT C. WOLFREY, JR.
By Counsel

Ronald R. Tweel

Patrick L. Ryan
MICHIE, HAMLETT, DONATO & LOWRY
500 Court Square, Suite 300
Charlottesville, Virginia 22902

Counsel for Complainant Herbert C. Wolfrey, Jr.

SEEN:

George S. Aldhizer, II
WHARTON, ALDHIZER & WEAVER
90 N. Main Street
Harrisonburg, Virginia 22801

Counsel for Markwood Pence, Edna P. Frank, Albert Pence and Edward Pence

James R. Sipe, Esquire
P.O. Box 429
Harrisonburg, Virginia 22801

John W. Crist
MOORE, JACKSON, GRAVES & RALSTON
312 Virginia National Bank Building
Harrisonburg, Virginia 22801

Guardian ad litem for Perry Edwin Wolfrey and Betty Sue Pence

V. Stephen Bradshaw
BRADSHAW, HARRISON & LAYMAN
92 North Liberty Street
Harrisonburg, Virginia 22801

Counsel for Isley Knupp

Jack F. DePoy
LAPSLEY & DEPOY
509 Virginia National Bank Building
Harrisonburg, Virginia 22801

Joshua L. Robinson
Judge
Circuit Court of Rockingham County

NOTICE

Pursuant to Rule 5:9 of the Supreme Court of Virginia, the foregoing Statement of Facts will be presented to the Honorable Joshua L. Robinson, Judge of the Circuit Court of Rockingham County, for verification and signing not earlier than September 29, 1980 and not later than October 3, 1980.

HERBERT C. WOLFREY, JR.,
By Counsel

Ronald R. Tweel

Patrick L. Ryan
MICHIE, HAMLETT, DONATO & LOWRY
500 Court Square, Suite 300
Charlottesville, Virginia 22902

C E R T I F I C A T E

I hereby certify that a true copy of the foregoing Statement of Facts and Notice was mailed to Jack F. DePoy, 509 Virginia National Bank Building, Harrisonburg, Virginia 22801; John N. Crist, Guardian Ad Litem, 92 North Liberty Street, Harrisonburg, Virginia 22801; V. Stephen Bradshaw, 92 North Liberty Street, Harrisonburg, Virginia, 22801; Francis X. Gaegler, Jr., 3704 West Street, Landover, Maryland 20785; James R. Sipe, P.O. Box 429, 250 E. Market Street, Harrisonburg, Virginia 22801; George S. Aldhizer, II, P.O. Box 809, 90 North Main Street, Harrisonburg, Virginia 22801, this 19th day of September, 1980.

Patrick L. Ryan

PROPOSED ADDITIONS TO
STATEMENT OF FACTS
Chancery #8678

Pursuant to Rule 5:11 of the Supreme Court of Virginia, Jack F. DePoy, Special Commissioner, submits the following addition to the statement of facts filed by the complainant, Herbert C. Wolfrey, Jr. which should follow Paragraph 19 of the aforementioned statement of facts:

That on the 7th day of April, 1980, your complainant, Herbert C. Wolfrey, Jr. appeared in the Circuit Court of Rockingham County upon the previously filed motion by Jack F. DePoy to be permitted to withdraw as his attorney and to show cause as to why he should not be held in contempt of this Court for non-compliance of the terms of the sale under order of this Court dated March 3, 1980.

20) On April 7, 1980, at a hearing before the Court, Wolfrey, appearing with counsel from his home state of Maryland, indicated to the Court that he intended to comply with the terms of the November 7, 1979 auction sale. At this point, Mr. DePoy represented Wolfrey, as Virginia counsel, represented the other complainants, and was acting as Special Commissioner.

The following should be inserted into Paragraph 21 of the complainant, Wolfrey's, statement of facts:

That upon the representations by your complainant, Herbert C. Wolfrey, Jr., as set out in paragraph 20 hereof, both motions were withdrawn.

RESPECTFULLY SUBMITTED,

Jack F. DePoy
Special Commissioner

Jack F. DePoy
509 Virginia National Bank Building
Harrisonburg, Virginia
Special Commissioner

I hereby certify that a copy of the foregoing Proposed Additions to Statement of Facts was mailed to Ronald L. Tweel, Esquire and Patrick L. Ryan, Esquire, Michie, Hamlett, Donato & Lowry, 500 Court Square, Suite 300, Charlottesville, Virginia 22902, Counsel for Herbert C. Wolfrey, Jr.; John N. Crist, Esquire, Virginia National Bank Building, Harrisonburg, Virginia, Guardian ad litem; V. Stephen Bradshaw, Esquire, 92 North Liberty Street, Harrisonburg, Virginia 22801, Counsel for Isley Knupp; Francis X. Gaegler, Jr., Esquire, 3704 West Street, Landover, Maryland 20785; James R. Sipe, Esquire, 250 East Market Street, Harrisonburg, Virginia 22801; and George S. Aldhizer, II, Esquire, 90 North Main Street, Harrisonburg, Virginia, this 25th day of September, 1980.

Case No: 8678

NOTICE

Pursuant to Rule 5:9 of the Supreme Court of Virginia, the Statement of Facts of Herbert C. Wolfrey, Jr., filed with the Circuit Court of Rockingham County on September 19, 1980 will be presented to the Honorable Joshua C. Robinson for verification and signing at 9:30 a.m. on October 3, 1980.

HERBERT C. WOLFREY, JR.,

By Counsel

Ronald R. Tweel

Patrick L. Ryan
MICHIE, HAMLETT, DONATO & LOWRY
500 Court Square, Suite 300
Charlottesville, Virginia 22902

Counsel for Herbert C. Wolfrey, Jr.

C E R T I F I C A T E

I hereby certify that a true copy of the foregoing Notice was mailed to Jack F. DePoy, Esq., 509 Virginia National Bank Building, Harrisonburg, Virginia 22801; JOhn N. Crist, Esq., 312 Virginia National Bank Building, Harrisonburg, Virginia 22801; V. Stephen Bradshaw, Esq., 92 North Liberty

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Street, Harrisonburg, Virginia 22801; George S. Aldhizer, II, Esq., 90 N. Main Street, Harrisonburg, Virginia 22801; James R. Sipe, Esq., P.O. Box 429, Harrisonburg, Virginia 22801; and Francis X. Gaegler, Jr., Esq., 3704 West Street, Hyattsville, Maryland 20785, this 26th day of September, 1980.

Patrick L. Ryan

In Chancery No. 8678

ORDER

Came this 3rd day of October, 1980, Patrick L. Ryan, counsel for Herbert C. Wolfrey, L. Quinn Kaylor, counsel for Markwood Pence, Edna P. Frank, Albert Pence and Edward Pence, V. Stephen Bradshaw, counsel for Isley F. Knupp and John N. Crist, guardian ad litem, pursuant notices filed by Mr Ryan on September 19, 1980 and September 26, 1980 regarding the submission of a Statement of Facts on behalf of Herbert C. Wolfrey, pursuant to Rule 5:9 of the Rules of Court, and was argued by counsel.

It appearing to the Court that, except for depositions taken on January 17, 1979, filed January 25, 1979, which are made part of the record there were no other evidentiary hearings herein and that the proffered Statement of Facts is merely a summary of the contents of the record pursuant to Rule 5:8 and 5:9, the application for making the proffered Statement of Facts a part of the record is denied.

ENTER: [signature]
Judge

A TRUE COPY
ATTEST: [signature]
Deputy Clerk

ASSIGNMENT OF ERROR

Appellant Herbert C. Wolfrey, Jr. hereby assigns as error the following act or ommission of the Court below in that it:

1. Ordered the sale of the subject land to Isley Knupp without ruling on the validity, enforceability or effect of the February 2, 1978 contract selling the land to Appellant Wolfrey.