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Clerk, Supreme Court of Appeals
Richmond, Va.

214 Va. 452

Record No. 8244

In the

Supreme Court of Virginia

at Richmond

C. H. JONES, JR., et al.,

Appellants,

v.

CHARLES L. JONES, et al.,

Appellees.

APPENDIX

FOR

RECORD NO. 8244

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VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Tuesday the 1st day of May, 1973.

C. H. JONES, JR., et al., Appellants,

against Record No. 8244

CHARLES L. JONES, et al., Appellees.

From the Corporation Court of the City of Newport News

Upon the petition of C. H. Jones, Jr., Elsie E. Jones, Ann Jones, Louise R. Rowe, R. E. Rowe, C. E. Jones, Jeannie Jones, Mabel P. Jones, J. W. Jones and Louise T. Jones an appeal is awarded them from a decree entered by the Corporation Court of the City of Newport News on the 6th day of September, 1972, in a certain chancery cause then therein depending, wherein Charles L. Jones and another were plaintiffs and Frances J. Newell and others were defendants; upon the petitioners, or some one for them, entering into bond with sufficient security before the Clerk of the said court below in the penalty of $300, with condition as the law directs.

A copy,

Teste:

H. Turner, Clerk

(R1)

BILL OF COMPLAINT

I

Your Complainant, Charles L. Jones, shows unto Your Honor that C. Houston Jones, Sr., his father, departed this life intestate in November, 1965.

II

That the said C. Houston Jones, Sr. left as his sole heirs and distributees, his widow and nine children, as follows:

1. Mabel P. Jones, his widow
2. Frances Jones Newell, whose spouse is J. W. Newell
3. C. H. Jones, Jr., whose spouse is Elsie E. Jones
4. J. W. Jones, whose spouse is Louise T. Jones
5. G. M. Jones, whose spouse is Claudia T. Jones
6. Charles L. Jones, whose spouse is Mary C. Jones
7. Ann Jones, single
8. Roberta J. Coates, whose spouse is A. W. Coates, Jr.
9. Louise J. Rowe, whose spouse is R. E. Rowe
10. C. E. Jones, whose spouse is Jeannie Jones

That all of said parties are over the age of twenty-one years and sui juris.

III

That at the date of the death of the said C. Houston Jones, Sr. he was seized and possessed of a one-half undivided

interest in the following described real estate:

> All that certain piece or parcel of land, situate, lying and being in the City of Newport News, Virginia, containing by survey 15.02 acres, more or less, as shown and designated on that plat entitled "Plat Showing Property of C. Houston Jones, Sr. Estate & Charles L. Jones", dated March 22, 1966, made by S. J. Glass & Associates, a copy of said plat and deed being attached hereto and by reference made a part hereof.

IV

That your Complainant is seized and possessed in a one-half undivided interest by virtue of a deed from Charles E. Carr, et ux, dated October 23, 1948 and duly of record in the Clerk's Office of the Hustings Court of the City of Newport News, Virginia, a one-eighteenth undivided interest by virtue of a deed from Albert W. Coates, et ux, dated July 1, 1970 and a one-eighteenth undivided interest as an heir of C. Houston Jones, Sr. The latter two-eighteenths interest being subject to the dower interest of his mother, Mabel P. Jones.

V

Your Complainant and the said Defendants are the co-owners in fee simple of said property and the object of this suit is to procure a partition thereof in some method prescribed by law. The property is not susceptible to partition in kind and the parties are unwilling or unable to agree to sell the property and divide the proceeds.

VI

Wherefor your Complainant prays that a partition of the real property be made by this Court in the cause in one of the modes prescribed by law and if such be impracticable that

the property be sold by the Court in this cause and the proceeds divided amongst those entitled thereto and that a reasonable attorney's fee be allowed counsel for Complainant for services rendered to the parceners unrepresented by counsel.

CHARLES L. JONES
MARY G. JONES

(R5) DEED

THIS DEED, made this 23rd day of October, 1948, by and between Charles E. Carr and Ina Mae Carr, his wife, and Ina Mae Carr and Charles E. Carr, her husband, parties of the first part, and C. Houston Jones, Sr. and Charles L. Jones, parties of the second part.

WITNESSETH: That for and in consideration of the sum of Three Thousand Dollars ($3000.00) paid and to be paid as follows, to-wit: One Thousand Seven Hundred Forty Six Dollars and Twenty Nine Cents ($1746.29) cash in hand paid, the receipt of which is hereby acknowledged at and before the signing, sealing and delivery of this deed, and the assumption of the unpaid balance in the sum of One Thousand Two Hundred Fifty Three Dollars and Seventy One Cents ($1253.71) on a Deed of Trust made by the parties of the first part herein to secure the Merchants National Bank of Hampton, Virginia, said Deed of Trust being originally made to secure the payment of One Thousand Six Hundred Fifty Dollars ($1650.00), dated June 14, 1946, and recorded in the Clerk's Office for the Circuit Court of Warwick County, Virginia, in Deed Book 110 at page 294, said

assumption being evidenced by the signatures of the parties of the second part hereto, the said parties of the first part do grant and convey, with General Warranty, unto the said parties of the second part, the following described property, to-wit:

> All that certain tract, piece or parcel of land, with the buildings and improvements thereon, situate, lying and being in Denbigh Magisterial District, Warwick County, Virginia, containing fifteen (15) acres, more or less, and sold in gross and not by the acre and bounded and described as follows: Beginning at a galvanized iron pipe on the Southerly side of the Menchville County Road, where the land hereby conveyed joins the land of R. H. Mingee and running thence along said road in an Easterly direction 238 feet, more or less, to a point on said road; thence S 25° 15' W 710 feet to a point marked by a stake; thence S 65° 31' E 318.25 feet to a point marked by a stake; thence S 1° 05' W 936.75 feet to a point marked by a stake; thence S 63° 21' W 669.9 feet to a point marked by a pipe monument; thence N 11° 26' W. (as of December 8, 1931) 2120 feet along the line of R. H. Mingee to the point of beginning on said Menchville Road; and bounded on the North by said Menchville County Road; East by the land formerly George M. Hostetter and James Mast; South by a reserved Road; and West by the land of R. H. Mingee. It being the same property conveyed to the parties of the first part herein by Deed dated December 5, 1944, from J. J. Rowell, widower, which said deed is recorded in the Clerk's Office of Warwick County, Virginia, in Deed Book 102, at page 532.

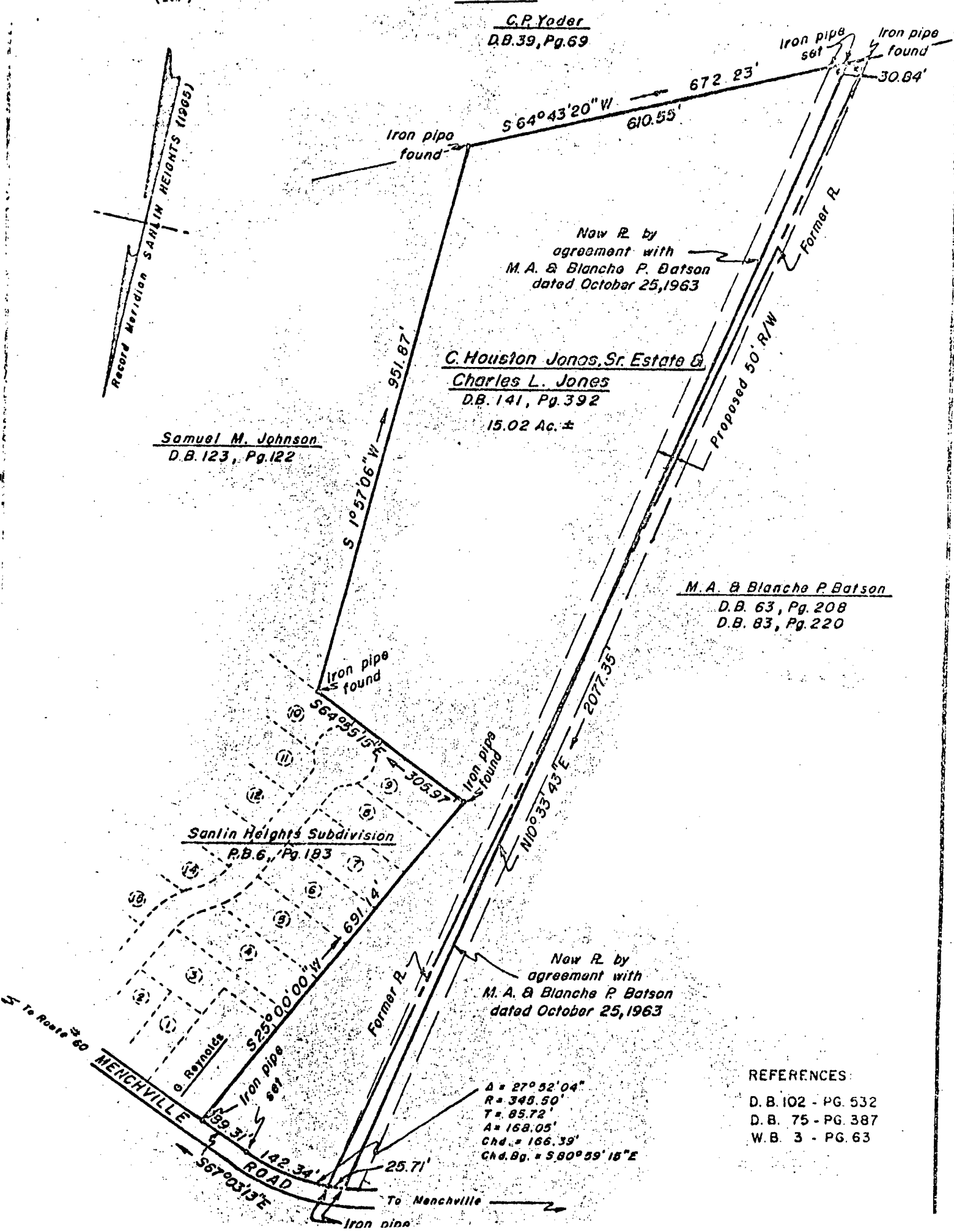
The said parties of the first part covenant that they have the right to convey the said land to the grantees; that they have done no act to encumber the said land; that the grantees shall have quiet possession of the land, free from all encumbrances, and that they, the said parties of the first part, will execute such further assurance of the said land as may be requisite.

Witness the following signatures and seals:

CHARLES E. CARR
INA MAE CARR
C. HOUSTON JONES, SR.
CHARLES L. JONES

(R7)

PLAT



REFERENCES

D.B. 102 - PG. 532
D.B. 75 - PG. 387
W.B. 3 - PG. 63

(R21)

A N S W E R

Comes now the undersigned in further answer to the above styled action, and states as follows:

1. That they admit the allegations of Paragraph I.

2. That they admit the allegations of Paragraph II except to state that the name of "Jeannie" Jones is Jeane Jones.

3. That they admit the allegations in Paragraph III.

4. That they admit all of the allegations of Paragraph IV except the allegation that the complainant is seized and possessed of a one-eighteenth undivided interest by virtue of a deed from Albert W. Coates, et ux, which they neither admit nor deny but call for strict proof of.

5. The allegations of Paragraph V are denied for the reason that the defendant's name in the caption of the suit did not include J. W. Jones and his wife, Louise T. Jones, who properly should have been named defendants to this action and therefore the allegations of Paragraph V to the effect that the complainants and defendants are co-owners in fee simple of the said property and the object of this suit cannot be true. It is further denied that the property is not susceptible to partition in kind since it is apparent that there are three major dwellings on the 15.02 acres which is the subject of this suit, and since all of your defendants state that they desire that all of their interest be alloted in one portion to them as tenants-in-common and further your defendants would state that it is the desire of all of them, including the owner of

the dower interest, Mabel P. Jones, that a one-third portion of the real estate be set aside in kind for the use of the said Mabel P. Jones, during her lifetime, and that this one-third interest include the dwelling house of Mabel P. Jones which was formerly the dwelling house of Mabel P. Jones and her deceased husband, C. Houston Jones, Sr. In this connection, your defendants would state there had been protracted negotiations between the parties concerning prospective methods of dividing the property in kind. However, there has not been any agreement to sell the property and divide the proceeds nor are any of your defendants willing to proceed in such fashion but to the contrary, all of your defendants desire that the property, or at least a portion of it, be alloted in kind for a specific purpose of providing a homeplace for Mabel P. Jones, the mother of your defendants, and the widow of C. Houston Jones.

6. All of your defendants would pray that the prayer of the petition that the property be sold by the Court and the proceeds divided among those entitled thereto, be not granted but to the contrary, pray that the dower interest of Mabel P. Jones be set aside in kind for the said Mabel P. Jones to live on for the rest of her life, and that said dower interest include the present dwelling house of the said Mabel P. Jones in which she and her husband have resided for some seventeen years, and further that the interest of all your defendants other than the said Mabel P. Jones be alloted out of the real estate in a single parcel to be held by them as tenants-in-common,

and further that the interest of Charles L. Jones and his wife, Mary G. Jones, be set aside, in kind, and that it include the present dwelling house of the said Charles L. Jones in which he has resided for some number of years. Your defendants would respectfully pray that the interest alloted to your defendants in a single parcel as aforesaid include a small structure currently occupied by one of your defendants, C. E. Jones and his wife, Jeane Jones, on a rental basis. It is pointed out that this particular piece of property has a structure on it that was constructed through the individual efforts of the father of your defendants, C. Houston Jones, Sr., just prior to his death and that it is currently returning a rental of $100.00 per month which has, up to the present time, been donated by the children of C. Houston Jones, Sr., deceased, and Mabel P. Jones, his widow, to the said Mabel P. Jones, for her sustenance.

7. All of your defendants vigorously contest the awarding of any attorney's fees out of the value of the real estate above mentioned for counsel for the complainant, and would point out in this regard that the complainant owns, according to his statement, considerably more than fifty per cent of the real estate involved and should bear the major portion of all expenses. Your defendants, in the alternative, pray that their attorney be awarded reasonable attorney's fees out of any proceeds of any sales of any lands which might take place as a result of this suit but your defendants would state

that they would prefer that they pay their own attorney's fees out of their own resources and that the land remain unencumbered, and intact insofar as is possible under the prayer of the petition and all of the answers herein.

MABEL P. JONES
LOUISE J. ROWE
ROBERT E. ROWE
C. E. JONES
JEANE JONES
ANN JONES
FRANCES J. NEWELL
J. W. NEWELL
C. H. JONES, JR.
ELSIE E. JONES
J. W. JONES
LOUISE T. JONES

(filed 10/20/70)

(R25) A N S W E R

I. We hope to cooperate in this matter to the mutual advantage of all parties concerned. Our purpose is to maintain communications with all parties in an appropriate settlement of this estate property.

II. My primary interest is for my Mother's care during her remaining years and her tranquillity at her present residence, which has been her home for a number of years prior to my father's death.

III. We are also interested in funds for taxes and any additional expenditures for which she might have need.

IV. It is clear the two houses my father built with his own skills and resourcefulness with full knowledge of my brother we believe should be divided only among his heirs with equal equity.

V. As this case proceeds we request to be fully informed and heard personally by Your Honor to expand on these and other issues.

Respectfully submitted this
21st day of October, 1970.

(filed 10/22/70) G. M. JONES

(R26) A N S W E R

I will support my husband on his undertakings. It is hoped that proper settlement will be made to the best interest of all.

This 21st day of October, 1970.

(filed 10/22/70) CLAUDIA T. JONES

(R30) DECREE OF REFERENCE

This cause which has been regularly matured, set for hearing and docketed, came on this day to be heard upon the Bill of Complaint and exhibits filed therewith, and Answer in proper person of Mabel P. Jones, Louise J. Rowe, Robert E. Rowe, C. E. Jones, Jeannie Jones, Ann Jones, Frances J. Newell, J. W. Newell, C. H. Jones, Elsie E. Jones, J. W. Jones and Louise P. Jones, taken as confessed as to C. M. Jones and Claudia T. Jones, who have been regularly served with process, twenty-one days having elapsed since service and they still failing to appear, plead, answer or demure.

ON CONSIDERATION WHEREOF, this cause is referred to Neal J. Patten, one of the Commissioners in Chancery of this

Court who shall ascertain and report to the Court as follows:

1. Whether the facts and statements in the Bill of Complaint are true.

2. Whether all parties or persons in interest in the real estate in this cause are properly before the Court.

3. Who are the owners, and in what proportion, of the real estate described in the Bill of Complaint.

4. An account of all delinquent taxes, if any, on said real estate and all other liens of record, if any, binding on said real estate, their amounts and the order of their priorities.

5. What is the fee simple and annual rental value of the real property.

6. Whether the property is susceptible to partition in kind among the parties entitled thereto.

7. Whether the interest of those entitled to the subject or its proceeds will be promoted by a sale of the entire subject and division of the proceeds.

8. What is a reasonable fee to counsel to be paid out of the unrepresented share of C. M. Jones and Claudia T. Jones.

9. To report all matters deemed pertinent by said Commissioner in Chancery and such matters concerning which he is requested to report by any party in interest, if the same be pertinent to the issues in this cause.

And the said Commissioner shall report to the Court.

Enter: 2/4/71

(filed 2/4/71) D. M. SMITH, Judge

(R34) O R D E R

Upon motion of complainants, C. L. Jones and Mary G. Jones, after due notice to the defendants who have duly answered, leave is granted to said plaintiffs to file an amended bill in this cause and the same is accordingly filed; and this cause is again referred to Commissioner Neal J. Patten who is directed to take the following additional account:

> An account of the monies which C. L. Jones may be entitled to, as set forth in the amended complaint and the exhibits attached thereto, together with the interest thereon.

But the Commissioner is directed not to take said accounts until due notice has been served on the new defendants, Charles L. Jones, Administrator of the Estate of C. Houston Jones, Sr., deceased, and upon J. W. Jones and his wife, Louise T. Jones.

Dated: 7/28/71 D. M. SMITH, Judge

(filed 7/28/71)

(R35) AMENDED AND SUPPLEMENTAL BILL

Now comes your complainant, Charles L. Jones, and asks leave of the Court to amend his original bill, duly filed herein on July 17, 1970, as follows:

1. Complainant here incorporates by reference the

original bill of complaint and all the proceedings thereon, to have the same force and effect as if here set out *in haec verba*.

2. In addition to the matters and things set forth in the original complaint, plaintiff alleges that Charles L. Jones was duly appointed Administrator of the Estate of C. Houston Jones, Sr., on the 24th day of May, 1971, and that the said Administrator should be made a party defendant to this bill.

3. Plaintiff alleges further that J. W. Jones, a son of the said C. Houston Jones, Sr., and his wife, Louise T. Jones, residing at 315 Brightwood Avenue, Hampton, Virginia, should also be made parties to this bill.

4. In addition to the foregoing, plaintiff alleges that during the year 1950, he purchased $431.56 worth of materials which were used for the benefit of 44 Menchville Road, the property described in these proceedings. An itemized account of said expenditures is attached hereto as Exhibit No. 1 and to be considered a part thereof.

5. That during the year 1951, he purchased $318.90 worth of materials which were used for the benefit of 44 Menchville Road, the property described in these proceedings. An itemized account of said expenditures is attached hereto as Exhibit No. 2 and to be considered a part thereof.

6. That during the year 1952, he purchased $1,125.07 worth of materials which were used for the benefit of 44 Menchville Road, the property described in these proceedings. An

itemized account of said expenditures is attached hereto as Exhibit No. 3 and to be considered a part thereof.

7. That during the year 1953, he purchased $554.29 worth of materials which were used for the benefit of 44 Menchville Road, the property described in these proceedings. An itemized account of said expenditures is attached hereto as Exhibit No. 4 and to be considered a part thereof.

8. That during the year 1954, he purchased $59.17 worth of materials which were used for the benefit of 44 Menchville Road, the property described in these proceedings. An itemized account of said expenditures is attached hereto as Exhibit No. 5 and to be considered a part thereof.

9. That during the year 1955, he purchased $37.98 worth of materials which were used for the benefit of 44 Menchville Road, the property described in these proceedings. An itemized account of said expenditures is attached hereto as Exhibit No. 6 and to be considered a part thereof.

10. That during the year 1956, he purchased $453.22 worth of materials which were used for the benefit of 44 Menchville Road, the property described in these proceedings. An itemized account of said expenditures is attached hereto as Exhibit No. 7 and to be considered a part thereof.

11. That during the year 1957, he purchased $1,094.60 worth of materials which were used for the benefit of 44 Menchville Road, the property described in these proceedings. An itemized account of said expenditures is attached hereto as

Exhibit No. 8 and to be considered a part thereof.

12. That during the year 1958, he purchased $651.54 worth of materials which were used for the benefit of 44 Menchville Road, the property described in these proceedings. An itemized account of said expenditures is attached hereto as Exhibit No. 9 and to be considered a part thereof.

13. That during the year 1959, he purchased $648.06 worth of materials which were used for the benefit of 44 Menchville Road, the property described in these proceedings. An itemized account of said expenditures is attached hereto as Exhibit No. 10 and to be considered a part thereof.

14. That during the year 1960, he purchased $1,893.34 worth of materials which were used for the benefit of 44 Menchville Road, the property described in these proceedings. An itemized account of said expenditures is attached hereto as Exhibit No. 11 and to be considered a part thereof.

15. That during the year 1961, he purchased $1,528.83 worth of materials which were used for the benefit of 44 Menchville Road, the property described in these proceedings. An itemized account of said expenditures is attached hereto as Exhibit No. 12, and to considered a part thereof.

16. That during the year 1962, he purchased $270.86 worth of materials which were used for the benefit of 44 Menchville Road, the property described in these proceedings. An itemized account of said expenditures is attached hereto as Exhibit No. 13, and to be considered a part thereof.

17. That during the year 1963, he purchased $2,007.48 worth of materials which were used for the benefit of 44 Menchville Road, the property described in these proceedings. An itemized account of said expenditures is attached hereto as Exhibit No. 14, and to be considered a part thereof.

18. That during the year 1964, he purchased $363.24 worth of materials which were used for the benefit of 44 Menchville Road, the property described in these proceedings. An itemized account of said expenditures is attached hereto as Exhibit No. 15, and to be considered a part thereof.

19. That during the year 1966, he purchased $51.61 worth of materials which were used for the benefit of 44 Menchville Road, the property described in these proceedings. An itemized account of said expenditures is attached hereto as Exhibit No. 16, and to be considered a part thereof.

20. That during the year 1967, he purchased $211.87 worth of materials which were used for the benefit of 44 Menchville Road, the property described in these proceedings. An itemized account of said expenditures is attached hereto as Exhibit No. 17, and to be considered a part thereof.

21. That during the year 1968, he purchased $56.09 worth of materials which were used for the benefit of 44 Menchville Road, the property described in these proceedings. An itemized account of said expenditures is attached hereto as Exhibit No. 18, and to be considered a part thereof.

22. That during the year 1969, he purchased $31.05

worth of materials which were used for the benefit of 44 Menchville Road, the property described in these proceedings. An itemized account of said expenditures is attached hereto as Exhibit No. 19, and to be considered a part thereof.

23. That during the year 1971, he purchased $930.01 worth of materials which were used for the benefit of 44 Menchville Road, the property described in these proceedings. An itemized account of said expenditures is attached hereto as Exhibit No. 20, and to be considered a part thereof.

24. That the plaintiff holds receipts or documentary evidence in connection with the items listed above, but in addition to said expenditures for the benefit of the said property at 44 Menchville Road, plaintiff expended $790.67 for materials that were used for the benefit of said property, for which he holds no receipt or other like voucher. Plaintiff also alleges that the following items embraced in said sum were paid to R. T. Morris Building Supplies, 11246 Jefferson Avenue, Newport News, Virginia:

1 front door and side lights	225.00
1 hinges and lock for front door	11.48
1 garage door, hinges and lock	45.00

and that Ceramics Tile Company, Hampton, Virginia, was paid the amounts set opposite the items set out below for said items, which were used for the benefit of the premises at 44 Menchville Road:

Jet Ceramics Tile	59.15
Tile cement	29.58
Kentile Solid Vinyl Tile	171.05
Tile cement	42.21
Red broken tile - labor & material	207.20

25. Plaintiff purchased and paid for out of his own means for the benefit of 42-B Menchville Road, on February 17, 1951, from Yorktown Ice & Storage Corporation, material for said premises at a cost to complainant of $249.90, and on June 3, 1971, he purchased from C. L. Jones Electric, electrical material for said premises amounting to $171.68.

26. Complainant, C. L. Jones, expended for the benefit of the property held jointly by him and C. Houston Jones, Sr., deceased, $1,340.40, as evidenced by the following statement:

April 27, 1960 - Raymond Parrish	180.00
May 5, 1960 - Raymond Parrish	291.90
April 17, 1967 - surveying land	650.00
Feb. 20, 1970 - James C. Mabe	175.00
April 11, 1959 - Moores Wholesale	29.00
June 12, 1959 - Moores Wholesale	7.25
July 23, 1960 - Moores Wholesale	7.25

27. That your complainant paid taxes as follows on the said property owned jointly by him and the said C. Houston Jones, Sr., deceased:

Nov. 17, 1953	59.80	
Nov. 30, 1954	108.40	
Nov. 27, 1955	150.40	
Nov. 9, 1956	164.40	
Dec. 2, 1957	164.40	
Dec. 1, 1958	164.40	
Dec. 3, 1959	181.20	
Nov. 30, 1960	199.80	
Dec. 4, 1961	199.80	
Nov. 30, 1962	394.20	
Dec. 2, 1963	436.20	
Dec. 2, 1964	564.60	
Dec. 3, 1965	640.20	
Nov. 29, 1966	640.20	
Dec. 5, 1967	520.00	
June 4, 1968	277.75	
Dec. 5, 1968	93.75	
June 5, 1969	148.75	5,108.25

Less taxes refunded to Charles L. Jones by C. H. Jones, Jr., Feb. 14, 1968	75.00	5,033.25
Add taxes paid to Roberta Coates when her share of property was sold to Charles L. Jones	50.00	5,083.25

28. In summary, plaintiff alleges that on account of and for the benefit of the property here involved, he paid the following amounts:

Interest	289.47
Lawyer's fees for transferring from Carr to Jones	33.00
Material purchased for 44 Menchville Road	12,718.77
Material purchased for 44 Menchville Road	790.67
Material purchased for 42-B Menchville Road	421.58
Money paid out other than taxes and buildings	1,340.25
Taxes	5,083.25
	$20,677.14

29. Plaintiff alleges further that on July 1, 1970, he acquired by deed of conveyance the one-ninth undivided interest of Albert Coates, Jr. and Roberta Jones Coates in the one-half undivided interest to the said property formerly owned by C. Houston Jones, Sr., as shown by the deed conveying said property to complainant duly of record in the Clerk's Office of the Hustings Court of the City of Newport News, Virginia, according to the certificate of the Clerk of said court dated May 26, 1971.

30. Plaintiff, C. L. Jones, further alleges that he is entitled to reimbursement with appropriate interest for at least one-half of the amounts he has paid out on account of the items described in this amended complaint.

IN CONSIDERATION WHEREOF, and for as much as your complainants are without relief except by the aid of a court of equity, they pray that the defendants in the original bill be made parties to this amended bill and that Charles L. Jones, Administrator of the Estate of C. Houston Jones, Sr., be made a party to these proceedings and duly served with process; that J. W. Jones, a son of the said C. Houston Jones, Sr., and his wife, Louise T. Jones, likewise be made parties to these proceedings, and that they can be duly served with process; that the case be again referred to Commissioner Neal J. Patten; that in addition to the matters and things he was required to ascertain and report to the court by the former decree, he also be required to take an account of the monies which C. L. Jones may be entitled to, as set forth in the amended complaint and the exhibits attached thereto, together with the interest thereon.

(filed 6/15/71) CHARLES L. JONES and MARY G. JONES

EXHIBITS

May 27, 1971

(R44)

Material purchased for 44 Menchville Road by Charles L. Jones:

1950	Purchased From	Price
Sept. 2	County of Warwick, Va. Building Permit	$1.00
Sept. 5	Cinder Block Co. Cinder Blocks	$112.08
Sept. 11	Cinder Block Co. Cinder Blocks	$111.00
Oct. 7	Yorktown Ice & Storage Co. Sand, Mortor, ties & concrete	$44.08
Oct. 2	Southern Materials Co. Sand	$10.50
Oct. 2	K. F. Wilson Sand	$4.00
Oct. 12	Phelps Hardware Wood seal	$3.95
Nov. 1	Saunders Brothers Pine & windows	$134.95
Nov. 6	Yorktown Ice & Storage Corp. Mortor	$5.00
Oct.	Yorktown Ice & Storage Corp. Motor	$5.00
Sub - Total		$431.56

Exhibit No. 1

May 27, 1971

Material purchased for 44 Menchville Road by Charles L. Jones

1951	Purchased From	Price
May 5	Yorktown Ice & Storage Corp. Cement	$12.00
July 21	Ranhorne & Granger Inc. Mortor	$2.20
Aug. 17	Firth Bros. Iron Works Iron	$11.69
Aug. 18	County of Warwick No. 1804 Plumbing permit	$3.00
Aug. 21	Budlong & Gregg Plumbing Material	$88.77
Aug. 27	Budlong & Gregg Plumbing Material	$4.15
Aug. 28	Budlong & Gregg Plumbing Material	$1.00
Sept. 7	L. W. Sweat Fill sand	$4.00
Sept 12	Budlong & Gregg Plumbing Material	$26.79
Sept. 22	Ranhorne & Granger Cement	$6.25
Nov. 9	Shaldon Lumber Co. Lumber	$29.50
Nov. 28	Cinder Block Co. Cinder Blocks	$52.25
Oct. 8	Yorktown Ice & Storage Co. Material	$65.00
Oct. 15	Ranhorne & Granger Material	$12.50
Sub - total		$318.90

Exhibit No. 2

May 27, 1971

Material purchased for 44 Menchville Road by Charles L. Jones:

1952	Purchased From	Price
Feb. 22	Benson Phillips Co. Flu lining & thimbles	$13.23
Feb. 31	Benson Phillips Co. T. C. Pipe	$2.40
March 1.	Sheldon Lumber Co. Lumber	$144.19
March 4	M. A. Batson Lumber	$18.75
March 17	E. A. Harper & Co. Inc. Mortor	$2.20
March 24	Penninsula Hardware Material	$24.00
March 25	G. S. Barnes, Inc. Material	$4.00
March 28	Johnsons Inc. Flooring	$123.48
April 5	W. T. Patrick & Sons Nails & Felt	$7.67
April 7	N. W. Going Venetian blinds	$60.00
April 7	Saunders Bros. Windows & Doors	$126.32
April	M. A. Batson Lumber	$8.75
April 8	W. T. Patrick & Sons Hardware	$6.14
April 21	M. A. Batson Lumber	$5.00
April 24	W. T. Patrick & Sons Nails	$ .64
May 26	Ranhorne & Granger Rock lath	$18.43
May 17	Newport News Waterworks Co. Service Fee	$ 10.00
May 13	Centralite Supply Co. Hot Water Heater	$97.95

Exhibit No. 3 (3 pages)

 May 27, 1971

Material purchased for 44 Menchville Road by Charles L. Jones:

1952	Purchased From	Price
July 12	Saunders Bros. Lumber	$4.39
July 15	Noland Co. House Paint	$4.70
Aug 11	Ranhorne & Granger, Inc. Material	$9.22
Aug. 7	W. T. Patrick & Sons Bolts & screws	.76
Oct. 13	Ranhorne & Granger Arches & Hath	$5.84
Oct. 16	Sears Roebuck & Co. Insulation	$16.38
Oct. 16	Ranhorne & Granger Inc. Material	$1.18
Oct. 17	Noland Co. Fuel Oil Tank	$33.20
Oct. 29	Noland Co. Plumbing Material	$ 2.91
Oct. 29	Noland Co. Plumbing Material	$10.85
Sept. 12	Tidewater Hardware Nails	$9.10
Sept. 18	G. S. Barnes, Inc. Nails	$17.50
Nov. 5	N. N. S. D. D. Co. Bathroom fixtures	$20.00
Nov. 4	Ranhorne & Granger Lath	$3.25
Nov. 6	Penninsula Health Districk Septic Tank permit	
Nov. 7	Sears Roebuck & Co. Insulation	$24.57
Nov 10	Noland Co. Plumbing Material	$25.02
Nov. 11	Noland Co. Galv. Coupling	$ .50

(R48) May 27, 1971

Material purchased for 44 Henchville Road by Charles L. Jones

1952	Purchased From	Price
Nov. 11	Elmer C. Morris Plastering House	$117.50
Nov. 18	Gallop Linoleum Carpet Co. Cement for tile	$6.00
Nov. 15	Gallop Linoleum & Carpet Co. Tile	$68.61
~~Nov. 14~~	~~[illegible]~~ ~~Plumbing Material~~	~~$ [illegible]~~
Nov. 20	Noland Co. Plumbing Material	$7.19
Nov. 28	Benson-Phillips Cement	$1.50
Nov. 29	Saunders Bros Door & trim	$16.18
Oct. 10	Ranhorne & Granger, Inc. Material	$47.57
Sub - total		$1,125.07

May 27, 1971

Material purchased for 44 Menchville Road by C. L. Jones:

1953	Purchased from	Price
Jan 12	Budlong & Gregg Plumbing Material	$99.73
Jan. 29	Budlong & Gregg Plumbing Material	$2.41
Feb. 20	N. N. S. & D. D. Co. 1 gal vorsol	$4.00
Feb. 27	Saunders Bros Lumber	$13.75
March 11	Ranhorne & Granger, Inc Gravel & sheet rock	$28.80
May 5	Ranhorne & Granger Cement	$7.50
May 6	City of Warwick Permit	$2.50
May 25	Yorktown Ice & Storage Concrete (Check No. 2 - May 25,1953)	$165.00
June 10	Peninsula Block Corp/ Cinder blocks	$112.65
June 13	Ranhorne & Granger Sand	$15.00
July 4	Epperson Brothers Window Screens	$43.38
Aug 25	Ranhorne & Granger Sand	$14.70
Sept. 15	Peninsula Supply Co. Inc. Lumber	$1.98
Sept. 12	Peninsula Supply Co. Inc. Lumber	$28.10
Sept. 8	Saunders Bros. Lumber	$4.00
Nov. 17	Benson-Phillips Co. Cement	$1.25
Oct. 11	R. F. Pyle (Engineer) Checking deed & Plat of property	$5.00
April 20	G. H. Carey & Son Lumber (invoice No. 1758)	$4.54
Sub - total		$554.29

Exhibit No. 4

(R50)

May 27, 1971

Material purchased for 44 Benchville Road by Charles L. Jones :

1954	Purchased From	Price
Feb. 20	E. A. Harper & Co. Inc. 3 bags mortor	$3.45
March 9	Renhorne & Granger, Inc. Gravel	$20.00
June 28	Renhorne & Granger, Inc. Gravel	$20.00
Nov. 16	Warwick Materials Co. Inc. Lumber	$5.02
Dec. 11	Cary Lumber Co. Lumber	$10.70
Sub - total		$59.17

Exhibit No. 5

(R51) May 27, 1971

Material purchased for 44 Menchville Road by Charles L. Jones:

1955	Purchased From	Price
May 13	Warwick Materials Co, Inc. Lumber	$6.40
May 20	Warwick Materials Co, Inc. Lumber	.80
June 6	Yorktown Ice & Storage Corp. Reinforced steel rod	$6.40
Sept 19	H. E Yoder Sewing Lumber	$20.04
Sept. 19	M. A. Batson Hauling lumber	$2.50
June 30	Crane Co. Material	$1.64
Feb. 26	Epperson Bros. Nails	.20
Sub - total		$37.98

Exhibit No. 6

(R52) May 27, 1971

Material purchased for 44 Monchville Road by Charles L. Jones

1956	Purchased From	Price
March 1	N. N. S. & D. D. Co. Steel	$3.24
March 27	N. N. S. & D. D. Co. Steel	$6.45
Aug. 2	Cary Lumber Co. Dressing lumber	$22.81
Aug. 2	M. A. Batson Lumber (No.33 Aug. 18, 1956) Check	$100.52
Aug. 2	City of Warwick, Va. Building Permit	
Sept. 25	Southern Material Co. Inc. Contrete (Check No. 35-Sept.25,1956)	$111.60
Nov. 26	Southern Material Co. Inc. Sand	$2.10
Dec. 5	M. A. Batson Lumber & hauling lumber (Check No46) (Dec. 5, 1956)	$72.07
Dec. 20	Doughuty Bros. Cinder block mortor	$87.09
Dec.28	Southern Materials Co. Inc. Material	$12.75
Nov. 26	Cary Lumber Co. lumber	$26.25
June 24	Smiths Plumbing Plumbing Material	$1.55
July 24	Crane Co. Plumbing Material	$1.87
Aug. 2	City of Warwick Bldg. Permit	$5.00
Sub-total		$453.22

Exhibit No. 7

Material purchased for 44 Monchville Road by Charles L. Jones

1957	Purchased From	Price
Jan. 10	W. L. Gleason Co. Inc, termite chemical	$17.50
Feb. 5	E. A. Harper & Co, Inc. Paint	$10.20
June 21	E. A. Harper & Co. Inc. Mortor mix	$4.80
June 22	Southern Material Co. Inc. Sand (Check No. 53-June 22, 1957)	$33.60
July 3	G. H. Carey & Son Lumber (No. 54 July 4, 1957) Check	$259.08
July 8	Southern Material Co, Inc. Contrete	$14.05
July 15	Peninsula Block Corp. Cement	$1.43
Aug. 23	Gleason Co. Inc. 5 gal timtietox	$17.50
Aug. 27	Carey & Son Lumber Co. Lumber (Check No.51-Sept.18,1957)	$137.01
Sept 24	Carey & Son Lumber Co. Lumber (Check No. Oct. 16, 1957)	$90.53
Oct. 5	Epperson Hardware Nails	$2.40
Oct. 8	Goodman Hardware Nails	$21.70
Nov. 4	Cary & Son Lumber Lumber (Check No. 59-Nov. 7, 1957)	$445.87
Nov. 5	Carey & Son Lumber Co Lumber	$23.52
Nov. 1	Goodman Hardware Co, Nails	$10.75
Nov 9	Moores Wholesale Building Supply Alum. Thershold & shingles	$19.53
Feb. 20	E. A. Harper & Co. Inc. Paint	$5.10
Sub- total		$1,094.60

Exhibit No. 8

Material purchased for 44 Menchville Road by Charles L. Jones

1958	Purchased from	Price
Feb 8	Southern Material Co. Inc. Gravel	$26.40
Feb 8	Southern Material Co. Inc. Gravel	$52.80
April 2	Shenk Millwork & Cabinet Shop Kitchen Cabinet (Check No. 62)	$130.50
July 10	Saunders Supply Co. Lumber (Paid by Check No.) (July 11, 1958)	$310.90
Sept. 5	Saunders Supply Co. Lumber (Paid by Check No.) (Sept. 20, 1958)	$113.04
Nov. 1	Moores Building Supply Nails	$17.90
Sub - total		$551.54

Exhibit No. 9

May 27, 1971

Material purchased for 44 Menchville Road by C. L. Jones

1959	Purchased From	Price
Jan.10	Wholesale Building Supply Felt	$35.20
Feb. 13	Moores Wholesale Building Supply Felt	$8.40
Feb. 2	Moores Wholesale Building Supply Windows	$90.80
June 1	Moores Wholesale Building Supply Windows	$92.50
June 1	Moores Wholesale Building Supply Windows	$91.10
June 12	Moores Wholesale Building Supply Window	$13.55
June 21	Moores Wholesale Building Supply Roof shingles	$143.28
July 20	Moores Wholesale Building Supply Door Hardware	$5.02
Sept. 25	Moores Wholesale Building Supply Felt	$2.20
Oct.	Nice Brothers Building Supply Nails	$8.00
Oct. 27	Cell Bros. Bldg. Supplies Lumber (Check No.14- Oct. 28,1959)	$95.00
Nov. 3	Johnston, Inc. Lumber (Check No.15-Nov. 3, 1959)	$19.17
Nov. 4	Moores Wholesale Building Supplies Nails	$9.40
Nov. 11	Moores Wholesale Building Supply Material- felt, shingles	$8.44
Nov. 13	N. N. S. & D. D. Co. Paint	$4.00
Dec. 22	Moores Wholwsale Building Supply Closet Seat	$3.25
Dec. 28	Southern Material Co. Inc. Gravel	$18.75
Sub - total		$648.06

Exhibit No. 10

(R56)

June 5, 1971

Material purchased for 44 Menchville Road by C. L. Jones:

1960	Purchased From	Price
July 26	E. A. Harper & Co., Inc. Insulation & paint	$11.95
July 27	E. A. Harper & Co., Inc. Paint	$10.40
July 28	Moores Wholesale Plywood & cedar	$71.30
Aug. 8	Moores Wholesale Plywood & cedar	$87.80
Aug 22	Moores Wh olesale Cedar	$46.20
Aug 29	Moores Wholesale Oak, cedar lining, & felt	$135.00
Aug. 30,	Moores Wholesale Oak	$97.70
Sept. 10	Moores Wholesale Felt	$2.20
Sept. 10	Nice Building Supply Corp. Nails	$1.90
Sept. 10	Moores Wholesale Oak , cedar lining	$107.40
Sept. 16	E. A. Harper & Co., Inc. Insulation (Check No. 38) (Sept. 16, 1960)	$131.82
Sept. 17	Moores Wholesale Rock lath	$63.30
Sept. 20	Moores Wholesale Rock lath & staples	$40.70
Oct. 10	Moores Wholesale Rock lath & staples	$41.40
Oct. 20	Moores Wholesale Rock lath	$10.80
Oct. 21	Moores Wholesale Storm windows, doors & tub enclosures (Check No. 57 - Oct. 21, 1960)	$423.42
Oct. 19	E. A. Harper & Co. Insulation (Check No. 42-Oct. 19, 1960)	$ 50.00

Exhibit No. 11 (2 pages

Material Purchased For 44 Menchville Road by C. L. Jones

1960	Purchased From	Price
Nov. 3	Moores Wholesale Rock lath	$10.00
Nov. 7	E. A. Harper & Co. Insulation	$10.14
Nov. 15	Moores Wholesale Cornerbead	$10.10
Nov. 17	Moores Wholesale Cornerite	$13.50
Nov. 17	E. A. Harper & Co Insulation	$5.07
Nov. 20	City of Newport News Plumbing Permit	$5.00
Nov. 23	Moores Wholesale Plumbing material	$89.16
Nov. 23	Moores Wholesale Plumbers lead	$2.40
Nov. 28	Peebles Supply Corp. Plumbing material	$6.12
Nov. 28	Peebles Supply Corp. Plumbing material	$ 78.65
Nov. 28	Moores Wholesale Plumbing Material	$ 104.95
Nov. 30	Moores Wholesale Plumbing material	$9.59
Dec. 6	Moores Wholesale Rock lath & cornerbead	14.24
Dec. 6	Yorktown Materials Corp. Arches	4.70
Dec. 5	Peebles Supply Corp. Plumbing Material	11.85
Dec. 13	Mr. N. B. Taylor Plumbing labor (check No. 45 46 Dec. 13, 1960 13	$202.85
Sub-total		$1,910.81
Jan. 28,	Moores Wholesale Pipe insulation	$2.07
Sub-total		$1,912.88
Nov. 28	Moores Wholesale (credit Memo)	19.54
Sub-total Nov. 28, 1960		$1,893.34

(R58) May 27, 1971

Material Purchased for 44 Menchville Road By C. L. Jones:

1961	Purchased From	Price
Jan. 16	Phil T. Rutledge & Co. Inc. Septic tank Material (No. 48-Jan24,1961) Check	$443.00
Jan. 16	Benson Phillips Co. Inc. Material	$11.25
Feb. 17	Moores Wholesale Cornerite & cornerbead	$7.83
March 22	O. B. Clarkson Plastering House	$300.00
March 21	Moores Wholesale White Oak Flooring	$55.50
March 21	Moores Wholesale Felt	$1.95
March 10	Supply Service Plaster Material	$138.38
March 16	Supply Service Plaster Material	$15.40
April 6	Moores Wholesale Window	$9.67
June 16	Moores Wholesale Singles for Roof	$63.01
June 21	B. A. Harper & Co. Insulation	$20.28
Sept. 2	Moores Wholesale Material	$38.63
Sept. 6	Moores Wholesale Roofing	$11.80
Sept. 9	Moores Wholesale Felt	$2.12
Sept. 19	Moores Wholesale Material	$2.70
Sept. 22	Moores Wholesale Felt	$4.24
Oct. 5	Moores Wholesale Storm Door Alum.	$22.95
Oct. 5	Moores Wholesale Roof Felt	$4.24
April 15,	Cooks Floor Service Sand, wax and finish floors	$132.00

Exhibit No. 12 (2 pages

(R59)

May 27, 1971

Material purchased for 44 Menchville Road by C. L. Jones

1961	Purchased From	Price
Oct. 5	Moores Wholesale Galv. Trap.	$2.50
Oct. 5	W. F. Smith Plumbing Material	$18.67
Nov. 5	Moores Wholesale Material	$99.73
Nov. 6	Moores Wholesale Calking compound	$3.00
Sub - total		$1,528.83

Material purchased for 44 Menchville Road by C. L. Jones

1982	Purchased From	Price
Jan. 12	Moores Wholesale Material	$.83
July 14	Moores Wholesale Alum. Flashing	$5.65
Nov. 9	Moores Wholesale Fiberglass Insulation	$202.50
Nov. 28	Peninsula Supply Co. Lumber	$34.00
Nov. 30	Moores Wholesale Felt, tirangle louver	$27.88
Total		$270.86

Exhibit No. 13

 May 27, 1971

Material purchased for 44 Menchville Road by C. L. Jones:

1963	Purchased From	Price
Aug. 31	Bens Church Sand Co. Sand	$18.40
Sept. 3	Moores Wholesale Wall ties	$4.29
Sept. 4	N. N. S. & D. D. Co. Steel	$4.26
Sept. 9	Peninsula Supply Co. Inc. MortorBrick (paid on account)	873 82
Sept. 23	Atlantic Supply Co. Inc. Louvers	$20.80
Sept. 25	Peninsula Supply Co. Motor	$8.00
June 19	Smith Plumbing Plumbing Material	$10.25
Sept. 13	Jefferson Johnson (Brick layer) Labor (Check No. 83-Sept.13,1963)	$500.00
Sept. 27	Jefferson Johnson (Brick layer) Labor (Check No. 84-Sept.27,1963)	$518.16
Sept. 20	Peninsula Supply Co. Mortor	$22.00
Sept. 11	Peninsula Supply Co. Material	$27.50
Sub - total		$2,007.48

Exhibit No. 14

Material purchased for 44 Menchville Road by Charles L. Jones

1964	Purchased From	Price
June 24	Paul B. Spencer, Inc. Cement	$41.10
June 25	E. A. Harper & Co. Inc. Termitox	$42.00
June 26	Paul B. Spencer, Inc. Cement	$84.90
June 27	Paul B. Spencer, Inc. Cement & expansion joint	$90.75
Oct. 12	Moores Wholesale Door, Door hardware	$60.45
Oct. 12	Mountcastle Lumber Co. Doors	$60.00
Nov. 14	Yorktown Materials, Corp. Concrete, Pipe	$25.00
Nov. 18	Moores Wholesale Plywood	$3.89
Sub - total	(Nov. 18, 1964)	408.09
Nov 12	Moores Wholesale Credit Memo	44.85
Sub - Total	(Nov. 12, 1964)	$363.24

Exhibit No. 15

May 27, 1971

Material purchased for 44 Menchville Road by C. L. Jones:

1966	Purchased From	Price
Feb. 28	Phil T. Rutledge & Co. Septic Tank work (Check No.124) (March 3, 1966)	$20.00
May 3	Nice Bros Building Supply Corp. Door Hinge	.77
Sept. 6	Mountcastle Lumber Co. Lumber	$24.84
Sept. 24	L. W. Sweat Fill dirt	$6.00
Sub - total		$51.61

Exhibit No. 16

May 27, 1971

Material purchased for 44 Menchville Road by C. L. Jones:

1967	Purchased From	Price
June 12	Moores Supper Stores, Inc. Galv. Pipe	$10.28
July 8	Moores Supper Stores, Inc. Roof fiber	$6.16
July 12	Goodman Hardware Co. Nails & Building paper	$57.55
July 20	Cash Nails	.99
July 22	Lowes Material	$7.53
Sept. 30	Moores Supper Stores, Inc. Door Jams	$12.73
Aug. 13	E. A. Harper Paint Co. Termitox	$45.32
March 27	Michigan Bulb Co. Shrubs for yard (Check No. 138) (March 27, 1967)	$14.05
Aug. 3	E. A. Harper Paint Co. termatox	$43.26
Nov. 28	Penninsula Supply Co. Door Jams	$34.00
Sub - total		$211.87

Exhibit No. 17

 May 27, 1971

Material purchased for 44 Manchville Road by C. L. Jones:

1968	Purchased From	Price
Jan 2	Moores Supper Stores, Inc. Weather strip	$15.40
Dec. 26	Lowes Lumber	$2.53
Dec. 31	E. W. Muller Contractor Gravel	$18.16
July 7	Raymond Budlong (Plumber) Plumbing Material (Check No.164-) (July 7,1968)	$20.00
Sub - total		$56.09

Exhibit No. 18

(R68)

June 5, 1971

Material purchased for 44 Manchville Road by C. L. Jones:

1969	purchased from	Price
April 4	A to Z Rental Sewer tape	$2.60
July 2	Lowes Material	$3.45
Nov. 7	Phil T. Rutledge Co. Pumping septic tank	$25.00
Sub - Total		$31.05

Exhibit No. 19

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(R67) May 27, 1971

Material purchased for 44 Henchville Road by C. L. Jones:

1971	Purchased From	Price
March 19	Southern Material Gravel for septic tank	$5.20
March 19	Southern Material Gravel for septic tank	$37.08
Feb. 9	A to Z Rental Rent for water pump	$5.20
Feb. 18	A to Z Rental Rent for water pump	$ 3.12
June 5	C. L. Jones Electrical & General Contractor Electrical Material (From 1960 to 1971)	$879.41
Sub - total		$930.01

Exhibit No. 20

(R70) ANSWER OF J. W. JONES AND LOUISE T. JONES

Comes now J. W. Jones and Louise T. Jones in answer to Amended and Supplemental Bill, your defendants' state as follows:

1. They have heretofore filed an answer in this cause, and they adopt same as their answer.

As to the additional matter in the Amended and Supplemental Bill, your defendants state that there has not been entered in this cause an Order allowing the amendment of the Bill and that therefore, they are not required to answer same.

2. Your defendants would further state, in the alternative, that if they are in error concerning paragraph two above, that they know nothing of the matters alleged in addition to the original Bill, in the Amended and Supplemental Bill, and require strict proof thereof; denying, each and every material allegation therein.

(filed 6/25/71) J. W. JONES AND LOUISE T. JONES

(R71) ANSWER TO AMENDED AND SUPPLEMENTAL BILL

Comes now, the defendants, J. W. Jones, Louise T. Jones, Robert E. Rowe, Louise J. Rowe, Mabel P. Jones, C. E. Jones, Jeane Jones, Ann Jones, Frances J. Newell, J. W. Newell, C. H. Jones, Jr., Elsie E. Jones, in answer to the Amended and Supplemental Bill, your defendants state that each of them have

contributed over a long period of years for the upkeep and maintenance and payment of taxes on the property which is the subject of this suit. Each of your defendants denies each and every material allegation of the Amended and Supplemental Bill in paragraphs: two, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, ninteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, and thirty, and call for strict proof thereof.

In addition, your defendants all adopt their original answer filed in this cause to the original Bill of Complaint to have the same force and effect as if here set out.

Your defendants further state that they are all entitled to reimbursement with appropriate interest for all the monies they have heretofore expended for the upkeep, maintenance, of the property which is the subject of this suit, and for the payment of real estate taxes.

Your defendants would further state that C. L. Jones is entitled to nothing by way of reimbursement or monies paid out to improve the real estate over the past years, as a matter of law. Since these monies, if expended at all, were expended to improve property in which he, at that time, owned a one-half undivided interest.

In like manner, your defendants would state that if the Court should decide that the complainant, Charles L. Jones,

is entitled to such reimbursement, then a full accounting should be had for the improvements put on the property by C. Houston Jones, Sr., deceased, during his lifetime.

J. W. JONES, LOUISE T. JONES, ROBERT E. ROWE, LOUISE J. ROWE, MABEL P. JONES, C. E. JONES, JEANE JONES, ANN JONES, FRANCES J. NEWELL, J. W. NEWELL, C. H. JONES, JR., ELSIE E. JONES

(filed 7/12/71)

(R78) STIPULATION

It is stipulated by and between counsel for complainants and counsel for respondents that C. Houston Jones died without leaving any personal estate of any consequence so far as we know.

GEORGE E. ALLEN, Counsel for complainants
PHILIP L. AVIS, Counsel for all respondents except Glen Jones

(R83) REPORT OF COMMISSIONER IN CHANCERY

TO THE HONORABLE DOUGLAS M. SMITH, JUDGE OF SAID COURT:

Neal J. Patten, one of the Commissioners in Chancery of this Honorable Court, to whom the above entitled cause was referred by Order entered herein on the 4th day of February, 1971, reports as follows:

Pursuant to the Decree mentioned above, your Commissioner in the office of the Commissioner, located at 210-25th Street, Newport News, Virginia, did, on the 16th day of September, 1971, and on the 23rd day of November, 1971,

proceed in this matter to make inquiries required by said Decree, taking such evidence in the form of depositions of witnesses as was necessary for that purpose.

Your Commissioner, before proceeding to take evidence as aforesaid, gave notice to all necessary parties, of the time and place of the taking of such evidence as will be shown by a Notice attached to your Commissioner's report.

The depositions, and Notice thereof, exhibits of the Complainants and Defendants and other witnesses, together with the certificate of title of the Commissioner regarding the examination of the title to the property are filed herewith.

The parties to this matter agree that C. Houston Jones, Sr. died intestate on November 25, 1965, seized and possessed of a one-half undivided interest in real property consisting of three (3) dwelling houses located on 15.02 acres located in the City of Newport News as shown on a plat attached to the Bill of Complaint.

The said C. Houston Jones, Sr. left surviving him, his widow Mabel P. Jones and nine (9) children, Frances Jones Newell, C. H. Jones, Jr., J. W. Jones, G. M. Jones, Charles L. Jones, Ann Jones, Roberta J. Coates, Louise J. Rowe, and C. E. Jones.

The parties further agree that the Complainant, Charles L. Jones is the owner in fee simple of the other one-half undivided interest in said real property together with a one-ninth (1/9) undivided interest which he inherited from his father, the said C. Houston Jones, Sr. The Complainants are

the owners of an additional one-ninth (1/9) interest which they acquired from Roberta J. Coates. The remaining undivided interest in the said property is owned by the Defendants subject to the dower interest of the said Mabel P. Jones, with the exception of the said Roberta J. Coates, who conveyed her interest to the Complainants as aforesaid. The parties agree that the dower interest of Mabel P. Jones should be assigned to her and she should be permitted to live in the residence which she and her husband, the said C. Houston Jones, Sr., occupied at the time of his death.

Your Commissioner now proceeds to report to this Honorable Court his finding and recommendations with regard to the inquiries set forth in the Order of Reference and Subsequent Order of the Court.

(1) Whether the facts and statements in the Bill of Complaint are true?

(2) Whether all parties or persons in interest in the real estate in this cause are properly before the Court?

(3) Who are the owners, and in what proportion, of the real estate described in the Bill of Complaint?

(4) An account of all delinquent taxes, if any, on said real estate and all other liens of record, if any, binding on said real estate, their amounts and the order of their priorities.

(5) What is the fee simple and annual rental value of the real estate?

(6) Whether the property is susceptible to partition in kind among the parties entitled thereto?

(7) Whether the interest of those entitled to the subject or its proceeds will be promoted by a sale of the entire subject and division of the proceeds?

(8) What is a reasonable fee to counsel to be paid out of the unrepresented share of G. M. Jones and Claudia T. Jones?

(9) To report all matters deemed pertinent by said Commissioner in Chancery and such matters concerning which he is requested to report by any party in interest, if the same be pertinent to the issue in this cause.

(10) An account of the monies which C. L. Jones may be entitled to, as set forth in the Amended Complaint and the exhibits attached thereto.

Your Commissioner reports on the inquiries set forth in the Order of Reference and Subsequent Order in the order in which they appear.

(1) Whether the facts and statements in the Bill of Complaint are true?

Your Commissioner found that the facts and statements in the Bill of Complaint are true except to the extent that the Complainants and Defendants disagree that the property is susceptible to partition in kind which matter will be hereinafter discussed under inquiry numbered six (6).

(2) Whether all parties or persons in interest in the real estate in this cause are properly before the Court?

Your Commissioner found that with the addition of J. W. Jones and Louise T. Jones as party Defendants, with service made on them, all proper parties or persons in interest in the real estate in this cause are properly before the Court.

(3) Who are the owners, and in what proportions, of the real estate described in the Bill of Complaint?

The examination of title to the property and evidence adduced in the case show the owners of the property to be as follows:

(A) Mabel P. Jones - widow's dower - 1/3 interest for life in the undivided one-half of the real property owned by said C. Houston Jones, Sr. at the time of his death.

(B) Charles L. Jones - 1/2 undivided interest in the entire real property.

(C) Charles L. Jones - 1/9 undivided interest in one-half of the real property which was inherited by him from C. Houston Jones, Sr. subject to life estate of Mabel P. Jones.

(D) Charles L. Jones and Mary G. Jones - 1/9 undivided interest in one-half of real property acquired from Roberta J. Coates and husband, subject to dower of Mabel P. Jones.

(E) Frances Jones Newell - 1/9 undivided interest in one-half of the real property subject to dower of Mabel P. Jones.

(F) C. H. Jones, Jr. - 1/9 undivided interest in one-half of the real property subject to dower of Mabel P. Jones.

(G) J. W. Jones - 1/9 undivided interest in one-half of real property subject to dower of Mabel P. Jones.

(H) G. M. Jones - 1/9 undivided interest in one-half of real property subject to dower of Mabel P. Jones.

(I) Ann Jones - 1/9 undivided interest in one-half of real property subject to dower of Mabel P. Jones.

(J) Louise T. Rowe - 1/9 undivided interest in one-half of real property subject to dower of Mabel P. Jones.

(K) C. E. Jones - 1/9 undivided interest in one-half of real property subject to dower of Mabel P. Jones.

(4) An account of all delinquent taxes, if any, on said real estate and all other liens of record, if any, binding on said real estate, their amounts and order of their priorities.

The records in the office of the Clerk of the Hustings Court and Treasurer of the City of Newport News disclosed that all real estate taxes against the said property had been paid.

There are no other liens against the said property except the following:

(A) Possible lien for estate and inheritance tax.

(B) Such exceptions as enumerated in the certificate of title filed with the papers in this cause.

(5) What is the fee simple and annual rental value of the real property?

Mr. Percy Smith, a local real estate broker, developer and appraiser testified that the unimproved acreage consisting of 13.5 acres was worth $4500 per acre as presently zoned for single family residences. (R.9-16-71, 21, 22) He further testified that if the acreage could be rezoned for multiple family dwellings it would be worth considerable more per acre.

Mr. James G. Mabe, another local real estate broker and appraiser testified that he appraised the property in 1970. His written appraisal dated February 19, 1970 was admitted in evidence (Complainant's exhibit 4). This written appraisal showed and Mr. Mabe testified that he had originally appraised

the entire property at $104,251. He stated that he had placed a value of $3500 per acre for the fifteen acres of land for a total land value of $52,500 and had placed a value on the three dwelling houses of $51,751. (R. 11-23-71, 10). Mr. Mabe further stated that the entire property had increased in value by ten percent (10%) since his appraisal. This would increase his appraisal for the land and buildings to $114,565 (R. 11-23-71,11)

The evidence disclosed that the acreage had no rental value and one of the houses was being occupied by the Complainants and another by Mabel P. Jones, widow of C. Houston Jones, Sr. The third house was being rented to one of the Defendants for annual rent of Twelve Hundred Dollars ($1,200).

(6) Whether the property is susceptible to partition in kind among the parties entitled thereto?

Your Commissioner has concluded from the evidence, exhibits, and stipulations filed in this matter that the real property is not susceptible to partition, in kind, so that all of the parties in interest will receive the fair and equal share to which they are entitled. An examination of the plat filed with the Bill of Complaint reveals the real property to be a parcel 15.02 acres of irregular shape, bounded on the north by Menchville Road; on the east by the Sanlin Heights subdivision and property now or formerly owned by Samuel M. Johnson; on the south by the property now or formerly owned by C. P. Yoder; on the west by a 25 foot right-of-way between the subject property and the property formerly owned by M. A. and Blanche

P. Batson and now owned by Blackmon. There are three dwelling houses located on the property, two of which are accessible from Menchville Road and the third located approximately 135 feet south of Menchville Road and to the rear of one of the other houses. These houses are identified by numbers 42, 42-B, and 44 Menchville Road. Number 42 is occupied by Mabel P. Jones, 42-B is rented to one of the Defendants by Mabel P. Jones, and number 44 is occupied by the Complainants, Charles L. Jones and Mary G. Jones. There is limited access to number 42-B. The acreage is presently zoned single family residential which is the best and highest use for the said property under the present zoning. There is presently only a 25 foot right-of-way affording access to the rear acreage. There was introduced in evidence an instrument dated October 25, 1963 between M. A. Batson and wife and C. Houston Jones, Sr. and wife, in which the parties purportedly agreed on a right-of-way between the subject property and the property of Batson on the west. The efficacy of this agreement is certainly questionable. Your Commissioner is of the opinion, however, that adequate access can be provided from Menchville Road to the rear acreage so that the property can be utilized for its highest and best use.

Mr. S. J. Glass, a qualified civil engineer and land surveyor testified that there were several ways to subdivide the rear acreage without affecting the value of the houses located on the property. (Complainant's exhibit 12).

The evidence disclosed numerous claims against the

estate of C. Houston Jones, Sr., being asserted by the parties to this action. It has been stipulated by counsel for the Complainants and counsel for the Defendants that the said C. Houston Jones, Sr. died without leaving any personal estate of any consequence (See Stipulation). If those claims are to be paid they must necessarily be paid from a sale of the real estate in that the rent therefrom is inadequate to pay the same.

Counsel for the Complainant Charles L. Jones advised your Commissioner by letter dated March 31, 1972, that the said Charles L. Jones preferred that the entire property be sold instead of allocating the one-half interest to him in accordance with the memorandum signed by his father during his lifetime. This memorandum which was admitted in evidence purported to identify the part of the real estate to which the said Charles L. Jones was entitled. In view of the Complainant's desire to sell the entire property it becomes unnecessary to determine the consequence of this memorandum.

The parties agree that Mabel P. Jones should be permitted to continue to occupy the dwelling house which she occupied with her husband until his death.

Your Commissioner therefore recommends that the said Mabel P. Jones, widow, have her dower assigned in the dwelling house numbered 42 Menchville Road with a lot, the size of which is shown on Complainant's exhibit 12. The assignment of dower as aforesaid would be an entire life estate in

the aforesaid house and lot. Any monetary difference in the value of the dower interest thus assigned to her and her dower interest in the whole property as reflected by the sale of the same would be paid to her in cash at the closing of the sale.

Your Commissioner recommends that the balance of the property be sold in three separate parcels, either at private sale or public auction. The first parcel to consist of number 44 Menchville Road with a lot, the size of which to be the approximate size of the lot as shown on Complainant's exhibit 12. The second parcel to be number 42-B with a lot, the size of which is to be the approximate size as shown on Complainant's exhibit 12. The third parcel to consist of the acreage together with a right-of-way fifty (50) feet in width affording access from Menchville Road. Your Commissioner understands however that access to the rear acreage would be provided in connection with the developments of the adjacent property on the west. The preliminary plan for such development has been submitted to the City of Newport News for approval.

Your Commissioner understands that several parties to this matter desire to submit private bids for the purchase of this property and it is believed that offering the property for sale in the above manner will assist the parties in this regard. Your Commissioner further believes that prospective subdividers of the acreage would not ordinarily be interested in the existing dwelling or at least would not pay as much as

someone who desired to purchase the same for a home.

(7) Whether the interest of those entitled to the subject of its proceeds will be promoted by a sale of the entire subject and division of the proceeds?

Your Commissioner is of the opinion that the interest of those entitled to the subject or its proceeds will be promoted by a sale of the entire subject and division of the proceeds for the reasons stated above.

(8) What is a reasonable fee to counsel to be paid out of the unrepresented share of G. M. Jones and Claudia T. Jones?

The only Defendants not represented by counsel are Glen M. Jones and Claudia T. Jones, who appeared in person and represented themselves. Your Commissioner is of the opinion therefore that no attorneys fees should be allowed in regard to the share of these Defendants.

(9) To report all matters deemed pertinent by the said Commissioner in Chancery and such matters concerning which he is requested to report by any party in interest, if the same be pertinent.

Your Commissioner believes that the pertinent matters are herein reported and no other matters have been requested by any party in interest except the matter hereinafter reported in inquiry numbered ten (10).

(10) An account of the monies which C. L. Jones may be entitled to as set forth in the amended Complaint and the exhibits attached thereto, together with interest thereon.

Your Commissioner will also report any sums to which any of the Defendants may be entitled as disclosed by the

evidence.

It was stipulated by and between counsel for the Complainants and counsel for the Defendants that such claims as the Commissioner recommended for payment would be non-interest bearing (R. 9-16-71, page 78).

It is the contention of the Defendants that the Complainant, Charles L. Jones, who was a tenant in common in the subject property with his father, C. Houston Jones, Sr., should not be reimbursed for real estate taxes paid by him prior to the death of his father. The parties agree that reimbursement should be allowed for real estate taxes paid after the death of the said C. Houston Jones, Sr.

The recent case of Jenkins v. Jenkins, 180 SE 2d 516, 211 Va. 797, cited in the Complainant's brief held that a co-tenant who discharges an encumbrance upon the common property is entitled to ratable contribution from his co-tenants.

Cancelled checks and tax receipts introduced by the Complainants and Defendants showed that the Complainants had paid real estate taxes on the subject property in the amount of $5,083.25 and the Defendants had paid real estate taxes on the said property in the aggregate amount of $3,057.14. Your Commissioner recommends that disbursement be allowed accordingly.

It was disclosed by the evidence that Alice J. Rowe, the daughter of C. Houston Jones, Sr., had loaned her father during his lifetime, the sum of $510.00. She testified the loan was made to her father just prior to his death and was evidenced by a promissory note, a photostat of which was introduced in evidence as Defendant's exhibit N. Your Commis-

sioner recommends that said note be paid.

The Complainants and Defendants paid a total of $4,028.66 for last illness and funeral expenses (including expense of grave stone) in connection with the last illness and death of the said C. Houston Jones, Sr. All of the payments were evidenced by cancelled checks which were introduced in evidence showing total individual payment as follows:

(1)	Charles L. Jones	exhibit 6	855.00
(2)	Alice J. Rowe	exhibit E	600.00
(3)	Frances J. Newell	exhibit F	641.34
(4)	Clarence E. Jones	exhibit G	763.66
(5)	James W. Jones	exhibit H	548.66
(6)	C. H. Jones, Sr.	exhibit L	620.00

It is the contention of the Complainant, Charles L. Jones, that reimbursement for the above payments should not be allowed in that they are barred by the three (3) year statute of limitations. The said Charles L. Jones qualified in the Clerk's Office of this Court on May 24, 1971, as Administrator of the estate of his father, C. Houston Jones, Sr. It is his position that he is under a legal duty to plead the statute. An examination of the cancelled checks show that all payments were made in the year 1966 except two (2), one of which was made on February 11, 1967 and the other on July 16, 1970 in the amount of $12.36. It appears that all of the above payments were voluntarily made. None of the creditors had filed suit for the administration of the assets nor were any

of the claims proven before the Commissioner of Accounts.

There was no personal estate of any consequence as stipulated by counsel. However, the real estate of the Decedent C. Houston Jones, Sr. was an asset for the payment of his debts and could have been subjected thereto by the creditors in a proper proceeding. (Va. Code, Sec. 64-10181). The creditors have one (1) year from the date of the death of the Decedent to subject the real estate to the payment of their claims during which time no conveyance of the real estate would be valid against creditors of the estate. Any conveyance made thereafter would be valid providing no suit was commenced. (Va. Code, Sec. 64-1-183). The persons who receive the assets of the estate, in this case the heirs, continue however to be personally liable to the extent they have received the assets. The real estate in the hands of the heirs continues to be liable as long as the debt can be enforced. In this case over three (3) years has elapsed since the debts were made and paid by the heirs. These claims would not become an encumbrance on the real estate until they were properly proven. Thus the heirs discharged the same at their peril and are not entitled to the protection afforded by the case of Grove v. Grove, 100 Va. 556, which held that a co-tenant who discharges an encumbrance upon the common property is entitled to ratable contribution from his co-tenants. It will be noted that most of the heirs in this case paid approximately an equal amount toward the last illness and funeral expenses except Charles L. Jones who paid the greater amount. It is he

who asserts that reimbursement should not be allowed because the claims are barred by the statute of limitations.

Your Commissioner is of the opinion that the claims are indeed barred by the statute and reimbursement for same should be denied.

The parties to this matter seek reimbursement for payments made by them for labor and materials for the three dwelling houses located on the property. Their counsel have agreed that reimbursement should be allowed only for permanent improvement made to the dwelling houses or improvements made that were essential to maintain the structures. (R-9-16-71, pages 10, 11). G. M. Jones and Claudia T. Jones who represented themselves made no objection to this agreement.

A detailed list of materials and amounts paid therefor was introduced in evidence to support the claim of Charles L. Jones. It was generally agreed that he had completely built the residence at 44 Menchville Road. (Complainant's exhibit 7). The list shows materials purchased by Charles L. Jones from September 2, 1950 until June 5, 1971. They all appear to be materials for the original construction of the residence and permanent in nature. They total $12,738.77 (R - 11-23-71, pages 28, 29, 30, 31). The defendants object to reimbursement. They contend they were voluntarily made without authority from the rest of the heirs. (R - 11-23-71, pages 29, 30).

The facts in this case relative to this matter are similar to those in the case of Ballou, et al. v. Ballou, 94 Va. 350. It was stated by the Court in that case at page 351

as follows:

> "The question thus raised is whether or not one joint tenant who improves the common property at his own expense can, in a partition suit, have compensation for such improvements."

continuing on page 352, the Court further said:

> "The result of a decided preponderance of the authorities is that where one tenant in common lays out money in improvements on the estate, although the money so paid does not in strictness constitute a lien on the estate, yet a Court of equity will not grant a partition without first directing an account, and a suitable compensation. To entitle the tenant in common to an allowance on a partition in equity, for the improvements made on the premises, it does not appear to be necessary for him to show the assent of his co-tenants to such improvements, or a promise, on their part, to contribute their share of the expense, nor is it necessary for him to show a previous request to join in the improvements, and their refusal. The allowance of compensation for improvements is, in all cases, made not as a matter of legal right, but purely from the desire of the Court to do Justice, and therefore the compensation will be estimated so as to inflict no injury on the co-tenant against whom the improvements are charged."

This case was cited with approval in Newton v. Newton, 199 Va. 654, page 660.

Your Commissioner recommends that Charles L. Jones be reimbursed out of the proceeds of the sale of the property the sum of $12,738.77.

Mabel P. Jones, the widow of C. Houston, Sr., has continued to occupy the dwelling house which she and her husband occupied at the time of his death. This dwelling has been identified as 42 Menchville Road. The dwelling house known as 42-B Menchville Road has been rented by the widow, for

which she received rent in the amount of $100.00 per month.

There was introduced in evidence various invoices and cancelled checks to support the claim of Mabel P. Jones for reimbursement for payment made in connection with both of the above dwellings. (R. 9-16-71, page 77, 78, exhibit D). The total reimbursement claimed was $1,131.63.

Counsel for the Complainants, while admitting the correctness of the amount, objected to an allowance for reimbursement. It was asserted that the widow, being a life tenant, was under an obligation to make repairs to the property occupied by her and to the property for which she was receiving rent.

There was no testimony offered as to the nature of the expenditures or whether they were made for improvements permanent in nature. It cannot be accurately ascertained for which of the houses the expenditures were made. An examination of the invoices indicated small purchases of materials from time to time. There is no way to ascertain if the materials were used for anything other than repairs.

In the case of Simmons v. Lyles, 32 Gratt (73 Va.) 752, the Court considered the question of whether a widow was entitled to be paid for improvements made by her prior to the assignment of her dower. The Court stated as follows:

> "The next question is whether the appellant is to be paid for the improvements upon the property she claims to have made during the time of her occupancy.
>
> There is no doubt that these improvements were of some advantage to the property, and probably contributed to its increased value. The appellant appears to have paid over $700 in that way, principal and interest.

> An examination of the several items of the account will, however, show that the expenditures were of such a character as the occupying tenant might well make in the way of repairs in consideration of the use and enjoyment of the property and although she was not bound to make them, they contributed to her own beneficial enjoyment and comfort. We are therefore of the opinion she is not entitled to be repaid these outlays."

Your Commissioner is of the opinion that the expenditures for which Mabel P. Jones seeks reimbursement are similar in nature to those made in the above cited case and recommends to the Court that reimbursement be denied.

C O N C L U S I O N

YOUR COMMISSIONER RECOMMENDS AS FOLLOWS:

(1) That Mabel P. Jones have assigned to her a whole life estate in the dwelling house now occupied by her at 42 Menchville Road together with the lot, the size of which is shown on Complainant's exhibit 12. Any monetary difference due her be paid, when the remainder of the real property is sold.

(2) That the remainder of the real property be sold in three parcels at private or public sale in the following manner, giving the heirs a reasonable opportunity to submit offers therefor:

(a) Sale of dwelling house known as 44 Menchville Road together with lot as shown on Complainant's exhibit 12.

(b) Sale of dwelling house known as 42-B Menchville Road together with lot as shown on Complainant's exhibit 12.

(c) Sale of remaining acreage together with adequate ingress and egress from Menchville Road as shown on Complainant's exhibit 12.

(3) That the following persons be reimbursed for payment of real estate taxes paid by them either before or after the death of the Decedent:

(a)	Charles L. Jones	5,083.25
(b)	C. H. Jones, Jr.	1,060.30
(c)	Alice J. Rowe	883.00
(d)	Frances J. Newell	758.44
(e)	James W. Jones	390.31
(f)	Clarence E. Jones or Jeannie C. Jones	865.09
(g)	Reimbursement for such additional taxes and assessments as accrue and are paid to time of sale	

(4) That the promissory note be paid as follows:

Alice J. Rowe	510.00

(5) That reimbursement for construction of the dwelling house at 44 Menchville Road be allowed as follows:

Charles L. Jones	12,738.77

(6) That cost of suit be paid.

(7) That the appraiser and civil engineer be paid as follows:

(a)	James G. Mabe	300.00
(b)	S. J. Glass & Associates	390.00

(8) That Linda Dean and Leslie F. Jollie be paid for taking and transcribing the evidence or reimbursement be allowed to person paying the same.

(9) That your Commissioner having spent over 70 hours in connection with this case be allowed a Commissioner's fee of $2,800.00.

(10) That after the payment of the foregoing, the residue be divided among the following parties in the proportion set opposite their names:

(a)	Charles L. Jones	eleven-eighteenths
(b)	C. H. Jones, Jr.	one-eighteenth
(c)	Frances J. Newell	one-eighteenth
(d)	G. M. Jones	one-eighteenth
(e)	Ann Jones	one-eighteenth
(f)	Louise J. Rowe	one-eighteenth
(g)	C. E. Jones	one-eighteenth
(h)	J. W. Jones	one-eighteenth

Respectfully submitted,
NEAL J. PATTEN
Commissioner in Chancery

(R105) O R D E R

Upon consideration of the Petition of Philip L. Avis, counsel for various defendants in the above captioned matter that he be permitted an extension of time for the filing of objections to the Commissioner's Report in the above captioned matter, it is the opinion of the Court that the prayer of his Petition should be granted and he is hereby granted leave to file objections to the Commissioner's Report on or before the 1st day of July, 1972.

Enter this Order this 22nd day of June, 1972.

D. M. SMITH, Judge

(R106) OBJECTIONS TO COMMISSIONER'S REPORT

Comes now, Philip L. Avis, counsel for the defendants in the above styled cause and for his objections to the Commissioner's

Report would state as follows:

1. Beginning on page fifteen (15) of the Commissioner's Report is a summary of evidence presented by Charles L. Jones to the effect that over a twenty-one (21) year period he did furnish materials for the construction of a residence at 44 Menchville Road. The record will reveal that almost all of this construction was done prior to the death of his co-tenant, C. H. Jones, Sr. The record will also reveal that prior to the death of C. H. Jones, Sr., C. H. Jones, Sr. constructed another residence over a long period of time. The present appraised value of this residence is slightly in excess of the amount of materials furnished to build 44 Menchville Road.

This is not a case of one co-tenant improving the property without the contribution of another co-tenant. Both co-tenants over the twenty-one (21) year period worked together to build and improve upon the property. The Commissioner cited the case of Ballou v. Ballou, 94 Va. 350, as follows:

> "The allowance of compensation for improvements is, in all cases, made not as a matter of legal right, but purely from the desire of the Court to do Justice, and therefore the compensation will be estimated so as to inflict no injury on the co-tenant against whom improvements are charged."

It would be unjust to allow one co-tenant to collect from the various successors in interest of another co-tenant who has also added substantial value to the whole real estate

but who are unable to prove with any particularity how much was spent because their successor in interest is now deceased. It is also of record that Charles L. Jones had exclusive possession of the premises known as 44 Menchville Road and that the co-tenant now his successors in interest have never collected any rent and in fact, of late, have paid his taxes. If justice is to be done within the meaning of Ballou v. Ballou, Charles L. Jones should have had charged against him a fair rental value upon the property he has exclusively occupied at least since the death of his father on November 25, 1965. One of the heirs is now occupying 42-B Menchville Road and paying a rental of ONE HUNDRED AND 00/100 DOLLARS ($100.00) per month to his aged and infirm mother who is also the aged and infirm mother of Charles L. Jones.

The case of Ballou v. Ballou, 94 Va. 350, cited by Mr. Allen in his Memorandum and by the Commissioner also holds as follows at page 351:

> "The Commissioner further found that Charles H. Ballou's estate was entitled to credit for the excess of improvements he had put upon the lot over that expended by his co-tenant, Isaiah Ballou, and that said estate was also entitled in the same proportion to the rents arising from said property from and after the death of Charles H. Ballou." (underlining supplied)

2. Regarding the matter of funeral expenses, since there was no personal estate the real estate of C. H. Jones, Sr. was answerable for his funeral expenses. It is curious that the Administrator, Charles L. Jones, would raise the defense as to the Statute of Limitations as to this item while

not raising the defense against himself individually regarding bills as much as twenty (20) years old expended to build a house for the exclusive use of himself and his family. It would appear from the Commissioner's Report and the Memorandum filed, that Charles L. Jones, individually, has no objection to reimbursing individuals for funeral expenses, but that Charles L. Jones, Administrator, does. Since all of the parties to this suit are in agreement according to the record that the funeral expenses should be paid back to the children who contributed there is no reason why this cannot be done since there are no adverse parties represented and since all creditors have been paid.

Respectfully,

FRANCES J. NEWELL, J. W. NEWELL, C. H. JONES, JR., ELSIE E. JONES, ANN JONES, LOUISE J. ROWE, R. E. ROWE, C. E. JONES, JEANNIE JONES, MABEL P. JONES, J. W. JONES, LOUISE T. JONES

(filed 6/22/72)

(R111) D E C R E E

This cause came on this day to be again heard upon the papers formerly read; the report of Commissioner Neal J. Patten filed on the 26th day of May, 1972; the exceptions thereto filed by Frances J. Newell and J. W. Newell, C. H. Jones, Jr. and Elsie E. Jones, G. M. Jones and Claudia T. Jones, Ann Jones, Louise J. Rowe and R. E. Rowe, C. E. Jones and Jeannie Jones, Mabel P. Jones, J. W. Jones and Louise T.

Jones and the petition of Charles L. Jones this day filed by leave of Court; the depositions taken and filed on behalf of complainants and defendants, and exhibits filed therewith, all returned with the Commissioner's Report: And was argued by counsel.

UPON CONSIDERATION WHEREOF, the Court doth overrule the exceptions of the said defendants to said report and confirm the same, and in order to carry out the recommendations of said Commissioner, doth appoint Philip L. Avis and Geo. E. Allen Special Commissioners to solicit bids for the said property herein described in accordance with the recommendation of the said Commissioner and report to the Court for confirmation or rejection any offers received either privately or by public auction and that the property assigned to the widow as and for her dower not be sold until the death of the widow. It having been represented to the Court that the parties have agreed to reimburse themselves for funeral and expenses of last illness it is so ordered.

Since the Commissioners will collect no money under this decree, no bond is required of them.

ENTER: 6/29/72

(filed 6/29/72) D. M. SMITH, Judge

(R113) MOTION TO REHEAR

Comes now Philip L. Avis, counsel for the following persons and prays that a rehearing be granted in the above styled matter for the following causes to-wit: The Decree of

the Court dated June 29, 1972 allows $12,500.00 to be paid to Charles Jones because of materials expended in the construction of a residence property at 44 Menchville Road. Prior to the death of the intestate, the intestate constructed two residence properties with a present valuation of approximately $32,000.00 total. This was all done subsequent to the time that Charles Jones purchased a one-half undivided interest in the undeveloped land. At the time of his purchase there was a small residence property located on the premises which was torn down to make room for 42A Menchville Road. If a partition had been had between Charles Jones and his father prior to his father's death and if Charles Jones had insisted on being given credit for either the then present value of his house, approximately $22,000.00 then in equity his father should have been allowed to be given first credit for the two residence properties he constructed at his expense to-wit: $32,000.00. This point was not fully argued to the Court heretofore.

The rights of all the persons here involved are derivative from their father or from the deed conveying a one-half undivided interest to Charles Jones was made and recorded prior to the building of the $32,000.00 worth of improvements by the intestate. This being the case the heirs ought to, in equity, share prorata their interest in the $32,000.00. Charles Jones owns a two-ninths interest of this $32,000.00 and all of the $22,500.00 if this formula is adopted. Failing this, the heirs should be permitted to present evidence as to the amount of money which it took to construct the two residence properties

at 42A and 42B Menchville Road just as Charles Jones, over the objections of the undersigned, was allowed to present evidence that he spent $12,500.00 over a twenty-five (25) year period for the construction of his house.

The undersigned would also like to reargue the matter concerning payment of rent by Charles Jones, at least since the death of the intestate. A fair rental value, $200.00 per month, for a seven year period would more than overweigh the $12,500.00 worth of improvements which he put upon the property if we accepted the formula that improvements are to be allowed only for actual monies expended for materials.

Respectfully submitted,

FRANCES J. NEWELL, J. W. NEWELL, C. H. JONES, JR., ELSIE E. JONES, ANN JONES, LOUISE J. ROWE, R. E. ROWE, C. E. JONES, JEANNIE JONES, MABEL P. JONES, J. W. JONES, LOUISE T. JONES

(filed 7/19/72)

(R115) MOTION TO VACATE OR MODIFY DECREE

Comes now, Philip L. Avis, counsel for defendant's, and move the Court that its previous decree dated June 29, 1972, be vacated or modified, for the following reasons, to-wit:

The Decree above referred to ordered the payment of $12,500.00 as a first charge to be paid to the complainant in this action for the reason that this amount of money was expended by him over a 20 year period in the construction of his residence property upon land owned in common by him and his father, now deceased. The new appraised value of the

property is $22,000.00.

The Commissioner's report makes no comment concerning the facts revealed in the record to the effect that the intestate over the same period of time as Charles H. Jones, was constructing his residence property now worth $22,000.00, that the intestate constructed two residence properties now valued at approximately $32,000.00 total. No work was done on any of the property subsequent to the death of the intestate. The Commissioner's report did not recommend nor did the Decree above mentioned order that any charge be made against Charles H. Jones for the fair rental value of the residence property he has occupied.

Your petitioner would state that he verily believes that the factual circumstances above mentioned and contained in the record to this cause were not fully argued to the Court heretofore.

Your petitioner would further state that he has information that Attorney for the complainant, George E. Allen, Sr., of Richmond, Virginia, is in the hospital and unable to be contacted so that his views concerning modification of the decree or a consent order allowing a rehearing on this point cannot now be obtained.

Your petitioner would further state that the Honorable Douglas M. Smith, is not as of the present date in office, but is on vacation and unable to be contacted as of this moment.

Your petitioner would therefore pray that the above Decree either be vacated until such time as a hearing on the

above matter can be scheduled or that it be modified so that it will not become effective until August 10, 1972, at which time the Honorable Douglas M. Smith is expected to be in office.

Respectfully submitted,

(filed 7/19/72) By: Philip L. Avis, Counsel

(R117) O R D E R

Upon consideration of the Motion of Philip L. Avis, Counsel for the defendants herein, and the Court being of the opinion that because of the absence of The Honorable Douglas M. Smith, the Judge who heard the above case and because of the unavailability of counsel for the complainant who is confined in the hospital, that the Motion of the defendants to delay the effectiveness of the Decree in certain respects herein mentioned entered June 29, 1972 until August 10, 1972, at which time the Honorable Douglas M. Smith is expected to be in office, ought to be granted.

It is accordingly, ADJUDGED, ORDERED and DECREED that the Decree entered June 29, 1972, in the above styled cause be modified to read as the last paragraph thereof "This Decree not to be effective until August 10, 1972 only insofar as it confirms the Commissioner's report allowing reimbursement for construction of the dwelling house at 44 Menchville Road to be allowed in the amount of $12,738.77, and wherein the Court as a part of its order that the parties reimburse themselves for funeral and last illness expense, but in all other respects to remain in

full force and effect".

Enter this Order this 20th day
of July, 1972.

S. R. BUXTON, JR., Judge Designate

(R118) MOTION

TO THE HONORABLE S. R. BUXTON, JR., JUDGE DESIGNATE:

Complainants respectfully move, pursuant to Rule 1:1, and Rule 2:19, to modify the order entered herein July 20, 1972, by postponing the effective date of the decree of June 29, 1972, insofar as said decree provided that the property assigned to the widow as and for her dower not be sold until the death of the widow, and to confirm said order of July 20, 1972 in all other respects, upon the grounds that:

(1) Plaintiffs' counsel, George E. Allen, Sr., died on July 21, 1972, and prior thereto was unable to give personal attention to the motion to rehear mailed to him by counsel for defendants July 18, 1972, and the motion to vacate or modify the decree mailed to him by counsel for the defendants July 19, 1972, despite the fact that counsel for defendants made every effort to convey relevant information to him by conversation with George E. Allen, Jr., son of counsel for complainants and member of his law firm.

(2) The point upon which further modification is desired is considered by the said George E. Allen, Sr. to still be within the breast of the Court on June 30, 1972, when he mailed a memorandum on the subject to the court, which,

unknown to said counsel had one day prior thereto, on June 29, 1972, entered the decree covering said point.

(3) Had said George E. Allen, Sr. been physically able to consider the reopening of said point concerning the widow's dower at the time counsel for defendants proposed modification of said June 29, 1972 decree in the respects carried out by this court's order of July 20, 1972, it is believed that he would have sought to have had the point covered by this motion incorporated in said order of July 20, 1972.

Respectfully submitted,

(filed 7/27/72) CHARLES L. JONES

(R120) O R D E R

On motion of complainants, after due notice to all defendants or their counsel, it appearing proper to do so under the circumstances, it is ORDERED that the order entered herein July 20, 1972, be amended by adding thereto the following:

The decree of June 29, 1972, also shall not be effective until August 10, 1972, insofar as it provides that the property assigned to the widow as and for her dower not be sold until the death of the widow.

ENTER: 7/26/72 S. R. BUXTON, JR., Judge Designate
Nunc Pro Tunc 7/20/72

(R121) O R D E R

Upon motion of the complainants and the defendants by counsel, and it appearing proper to do so under the circumstances of the case it is ordered that the Amended Order entered herein July 20, 1972, as further amended by Order dated the 26th day of July, 1972 and made Nunc Pro Tunc to the 20th day of July, 1972 be further amended in the last paragraph as follows:

> This Decree not to be effective until the 22nd day of September, 1972 only insofar as it confirms the Commissioner's report allowing reimbursement for construction of the dwelling housing at 44 Menchville Road to be allowed in the amount of $12,738.77 and wherein the Court ordered as part of its Order that the parties reimburse themselves for funeral and last illness expense and wherein it provides that the property assigned to the widow as and for her dower not be sold until the death of the widow.

Nunc Pro Tunc 8/10/72
Enter this Order this 28th day of August, 1972.

D. M. SMITH, Judge

(R122) D E C R E E

1. The death of George E. Allen, Sr., being suggested,

IT IS ORDERED that Granville R. Patrick, Esquire, be appointed in his stead as counsel for complainants and that Granville R. Patrick be appointed as special commissioner in the stead of said George E. Allen, Sr., to serve with Philip L. Avis in the manner directed in the Court's order of June 29, 1972.

2. The report of the special commissioner, having been maturely considered by the Court, is confirmed in all respects except as set out in this order.

3. Said special commissioners shall seek offers for sale of all said land by private or by public auction, including the fee simple remainder in that property assigned to the widow as and for her dower, subject, however, to the widow's life estate in the property so assigned to her as dower and further subject to a credit of the commuted value of dower.

Enter: September 6, 1972

D. M. SMITH, Judge

(R123) NOTICE OF APPEAL

Defendants, Frances J. Newell, J. W. Newell, C. H. Jones, Jr., Elsie E. Jones, Ann Jones, Louise J. Rowe, R. E. Rowe, C. E. Jones, Jeannie Jones, Mabel P. Jones, J. W. Jones, and Louise P. Jones, appeal to the Virginia Supreme Court from the decree entered herein on September 6, 1972.

ASSIGNMENTS OF ERROR

1. The Court erred in its decree of September 6, 1972, in decreeing that the property assigned by agreement of

all the parties to the widow as her dower be sold subject to her dower rights.

2. The Court erred in its decree of September 6, 1972, where it, in confirming the Commissioner's report, allowed reimbursement for the construction of a dwelling at 44 Menchville Road in Newport News to be allowed in the amount of $12,738.77 to Charles L. Jones.

3. The Court erred in its decree of September 6, 1972, in confirming the Commissioner's report over the objection to the Commissioner's report heretofore filed wherein it allowed the co-tenant Charles L. Jones to be compensated for his expense in building a dwelling house but did not allow to Charles L. Jones co-tenant's successors in interests compensation for the construction of two (2) other dwelling houses on the same property to the extent that these dwelling houses enhance the value of the total property.

4. The Court erred in overruling the objections to the Commissioner's report heretofore filed in its decree of September 6, 1972, wherein it did not allow a fair rental charge to be exacted against Charles L. Jones for his occupancy for a 21 year period of the residence property for which he is to be first compensated for the construction thereof as outlined in the Assignments of Error above.

5. The Court erred in sustaining the Administrator's, Charles L. Jones, plea to the Statute of Limitations concerning reimbursement of funeral expenses and at the same time allowing

Charles L. Jones individually to ask for reimbursement for expenses for the construction of his dwelling house which were as much as 20 years old and in all cases more than three (3) years old.

6. The Court erred in not sustaining the agreement of all of the parties that funeral expenses should be reimbursed to the parties.

Respectfully,

FRANCES J. NEWELL, J. W. NEWELL, C. H. JONES, JR., ELSIE E. JONES, ANN JONES, LOUISE J. ROWE, R. E. ROWE, C. E. JONES, JEANNIE JONES, MABEL P. JONES, J. W. JONES, LOUISE T. JONES

(filed 10/5/72)

(Tr7) OPENING STATEMENT OF COUNSEL
(Transcript of September 16, 1971)

* * *

MR. AVIS: I represent the widow, Mrs. Mabel Jones, who has an outstanding dower interest in a one-half undivided interest in the whole. She now occupies the house that she and her husband occupied for many years. That would be at 42 Menchville Road. I also represent the interests of all of the outstanding heirs with the exception of the plaintiff and Roberta J. Coates and Glenn Jones and their husbands and wives; that is to say, we represent Mr. and Mrs. Robert E. Rowe, Mr. and Mrs. J. W. Newell, Mr. and Mrs. J. W. Jones, Jr. and Mrs. C. H. Jones, Jr., Miss Ann Jones, Mr. and Mrs. C. E. Jones and Mrs. C. H. Jones, Sr., the widow.

Now, the land consists of four separate portions, and I'll refer to them as Parcels A, B, C and D. Parcel A is 44 Menchville Road. That is currently occupied by the plaintiff, Mr. Charles L. Jones.

(Tr8) MR. ALLEN: And his wife.

MR. AVIS: And his wife and children. Parcel B is 42 Menchville Road. It's currently occupied by the widow, Mrs. C. H. Jones, Sr., and had been occupied by her and her husband for many years. Parcel C is to the rear of both of these portions, both of which are contiguous to Menchville Road, a small cottage which was completed by Mr. C. H. Jones, Sr. just prior to his death. That is rented out currently to Mr. and Mrs. C. E. Jones, but it's rented and they pay the rent to the widow. In addition, there is Parcel D, which consists of approximately 13.5 acres, the total tract being approximately 15.02 acres. The cottage is sometimes referred to as 42-B Menchville Road and I'll try to keep referring to it as Parcel C. Parcel D is the larger portion of undeveloped land to the rear of all of these. That consists of 13.5 acres, approximately, access to which can be had through either Sanlin Drive, cul-de-sac off Sanlin Drive, or, and informally, not of record at the present time, along the westerly lot line.

MR. ALLEN: No improvements on that land?

MR. AVIS: There are no improvements on the land, with exception of a few fences and maybe a shed or two, nothing of significance. It's got a pony running in the field.

(Tr9) Now, this large undeveloped tract is contiguous to other undeveloped tracts. To the west is Batson and to the south is Yoder and to the east, I think it's Mrs. Pitt. She has about 25 acres. Yoder has a huge tract, maybe 150 acres or so, and Mr. Batson, I think has maybe about 35 acres, 30 or 35 acres. We will show that the area is zoned R-1-B.

MR. ALLEN: You mean the land?

MR. AVIS: That's right. That means that you can build only single family dwellings at the present time, but that you have to maintain a 9,000 square foot lot size. That would be 75 x 150.

It is our position that the property is susceptible to partition in kind and, in fact, that would be the only economic thing to do with it. I would state from the outset that the widow's position is she will not have her dower commuted. She desires to retain the mansion house, the value of which fortunately happens to be about one-third of the total estate, by an old appraisal made February 1970, which we do not admit has any relevancy at this time.

Essentially, the heirs I represent desire to be alotted Parcel C in common, their motives being perhaps not relevant, but should be expressed. That particular piece of property was built by, as I said, the deceased just prior to his death with the avowed purpose, we understand, of providing a rental income for his wife should she become a widow, and

(Tr10)

that's what has been done with it for the last five, six years and they wanted to maintain that status. I would point out in that conjunction that it's apparent from an examination of the plat that Parcel C has absolutely no use to a developer of Parcel D because of its location and the peculiar topography.

Various heirs, according to their means, have been paying the taxes over the last years and some have not contributed, because of their particular situations, and various heirs paid various sums on funeral expenses and, of course, this ought to be considered.

MR. ALLEN: Some of the heirs have paid something on permanent improvements, have they not?

MR. AVIS: Yes, and it will be our position that none of this should be recouped except things that were absolutely necessary to maintain the property, absolutely necessary to maintain the property. We would also take the position that the sums calculated and when you calculate taxes and improvements, that this doesn't go against the widow at all in any way.

MR.ALLEN: That's right. We agree on that.

* * *

(Tr92) TESTIMONY OF FRANCES J. NEWELL
(Transcript of September 16, 1971)

FRANCES J. NEWELL, after being duly sworn, testified in behalf of the Defendants, as follows:

DIRECT EXAMINATION

BY MR. AVIS:

Q State your name, please.

A I'm Frances J. Newell. About six weeks before my father died, he was concerned over several people that he felt had contributed quite a bit to his being able to build these houses. One was Louise, and the other, Glen, who hadn't been feeling well, and he was concerned over some things I had put into the house. I told him it didn't matter about mine, but I did feel that Louise and Glen should have some coverage. So he said something about what would he do about it. I said, "Well, Daddy, you always was very good on notes." I said, "Give them a note. A note is as good as the money." So the next thing I heard, he had made two notes. Now, one is to Louise for $500.00, and I don't know what happened to Glen's. It was for a hundred and something, I think. Everybody contributed to the building of these two houses in numerous ways, of work or help or something. I, myself, put money into them. The only way that seems to me -- Daddy built a house over what we thought was his lot. Charles built a house over his lot. The little house was being built in case something happened to Daddy, he wanted Mother covered with something for security. The big house, he made house, he made an upstairs hallway that would be converted into a kitchen and she could rent that, too, if she needed it. But he wanted Mother secure, and that's what we would like to see, Mother secure.

(Witness stood aside)

* * *

(Tr95) TESTIMONY OF GLEN M. JONES
(Transcript of September 16, 1971)

GLEN M. JONES, after being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY THE COMMISSIONER:

Q For the record, would you please state your full name and your address, and perhaps your occupation?

A Yes, sir. My name is Glen M. Jones; my address is 100 Hollywood Avenue, Hampton, Virginia.

Q All right, sir. How are you related to the deceased and his property?

A I am his son.

Q All right, sir. Now, what statement do you want to make?

A Well, my sister offered a comment about certain obligations on the part of my father to this property. If I might begin by saying -- and I'll be as brief as possible, but I hope that this will shed some light on this case, in fairness to all. My wife and I, when we were first married, moved to this property shortly after it was purchased and there was a very small house there at the time. Subsequently, my brother Charles, who is, I believe, the complainant in this case, began to build a garage type of apartment. Later this became 44

Menchville Road.

Q All right, now, Mr. Jones, continue.

A You earlier asked my occupation. I believe I left that out. It's electronics.

(Tr96) Q All right.

A If I may continue, then, my wife and I continued to live in this house and my brother next door as he kept building onto that property, and it was clearly understood, I think -- in fact, I know it was clearly understood that this was to be his home. Later, my father needed the little home to live in himself while he was building the present residence at 42 Menchville Road in which my mother now resides.

Q All right. Go on, sir.

A He worked very hard in the building of this home. My brother also worked hard in the building of his home.

Q Which brother are you referring to now?

A Well, I meant my father worked very hard in the building of the residence of 42, where my mother lives, and also my brother Charles worked very hard in building the home that he lives in at 44 Menchville Road.

Q All right, sir.

A His home is not complete, the interior, and this may be due to some of his concern over the legal aspects of it. I'm sure this has some implications, at least. Prior to my father's death, my health became bad and my wife and I moved back there, with the understanding that the, what's commonly referred to as 42-B, that we would have an option to

either buy or rent this property as we wished. This agreement was made between my father and myself and was confirmed by my brother Charles. The statement was, in our discussion, that he would agree to anything that my father and I worked out, this was immaterial to him, that my father built this property and that it was his to do with as he wished. Of concern at the time was right-of-way to this property, in the event that we decided to buy this property. He gave a price on the property to us, either in the completed stage or as it was, with the interior then not completed. He told me that he had gone to each of his children for assistance in this and while they had helped him, you might say, over the years with their livelihood, my mother and father -- and I'm sure she would state this, also -- that he had felt that as he was building this property, that it was for my wife and myself. My mother also heard some of these confirmations, I'm sure. He asked me not to disclose the amount. If the Court desires for me to do so, I would be glad to do so, if it's relevant. If not, that's as the Court desires. But his reasons for this was that he felt there might be some friction among the other children, but he thought he should be able to do what he wanted to about it. During this time, he mentioned four of his children who had contributed significantly to him over the years, but it was his desire for others to share in to some extent as well. He told me that these matters would be taken care of in due time, prior to his death. It's not easy to go into these matters, but I think that it's so relevant that I must.

(Tr98) Q May I now ask you, are you contending that there was a contract that existed between you and your father with regard to the acquisition of this property?

A Yes, sir, it is.

Q Is there any such agreement in writing? Do you have such?

A This was a verbal agreement between my father and myself, and my brother Charles was aware of it.

Q When was this agreement made?

A At the time we returned to this area when I became ill.

Q What was the date of it?

A I believe this was in, during the interval of between, as I recall -- and I'll have to do this the best I can -- I believe this was the interval between perhaps April and July of 1965. I'm willing for my brother to be cross examined on this, of course. Subsequently, due to the friction over the difficulty of this property between my father and my brother, due to my illness, I became aware that I would not be able to improve my health while being in this type of environment and circumstances developed so that my wife and I had to arrange to move to the present address that I have given earlier. My mother subsequently called me on the phone and said my father still wished that we have this property. I'm bringing these points up primarily, not for any remuneration I might get, but to point up that it's a well known fact that each of these people had specific intentions of building and

maintaining these residences, that is to say, my brother at 44 Menchville Road and my father, the property at 42 and 42-A Menchville Road --

(Tr99) Q You're referring to 42-B?

A 42-B, yes.

Q All right. Go right ahead.

A For this reason, I cannot believe that it's proper that these properties be divided on an equal basis, that is to say, that half would go to my brother while half would go to my father's estate. It would appear that equity would call for the thing that I have tried to instill upon my father during his lifetime and my brother, also, and since, I've tried to persuade my brother that he should have a deed to 44 Menchville Road and my father to the other two properties, either individually or -- that is, a separate title to 44, rather, 42 Menchville Road going to my father, as well as 42-B going to my father's estate, and the land to be divided upon an equitable basis.

* * *

(Tr5) TESTIMONY OF JAMES G. MABE
(Transcript of November 23, 1971)

* * *

JAMES G. MABE, witness called by Attorney for the Complainant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

EXAMINED BY MR. AVIS:

Q Mr. Mabe, you made this appraisal, which is now in evidence, as I understand it; is that correct?

(Tr6) A Yes, sir.

Q When did you make it, sir?

A February 19, 1970.

Q Mr. Mabe, I am going to refer from time to time to Exhibits "A" and "B" here, and in Exhibits "A" and "B", you will notice that there are parcels which are marked, "A", "B", "C" and "D". Do you understand?

A Yes.

* * *

(Tr10)

* * *

Q What is your idea of the value now of parcel "A", "B" and "C"?

A I will stand on my appraisal, and I have not been requested to reappraise as of this day, but I will say that, based on the uptrend of the real estate market today, I could just file an increase of my appraisal in its entirety, by ten per cent.

Q So that you would say that 42 Menchville Road would be worth approximately $19,000 now?

A Excuse me. I would go back to my total value of all of $72,500, and add ten per cent to that figure.

Q I want to get a valuation for each of the dwelling houses on the record. Would you calculate that?

(Witness figures calculations.)

Q Mr. Mabe, have you done some calculations now?

A Yes, sir, but may I correct my other statement of $72,500? That is in error. That was the assessed value from the City. My total appraisal for the whole thing was $104,150.

Q We all agree that this appraisal is not significant so far as the value of the raw land is concerned at this time.

(Trl1) A I would say it has increased by ten per cent.

Q So you think then, that the land is worth $3850 an acre?

A Total, approximately $100,000.

Q I understand you are a little uncomfortable with that answer, because you would rather do a reappraisal?

A No, sir. I think, based on this and the uptrend, if I did one, I would be somewhere within the ten per cent market.

Q All right, sir, and what do you think the various dwellings are worth, if you will refer to them by addresses?

A Well, as of today, 42 Menchville, this is approximately $19,279; 42-B, approximately $14,534; 44 Menchville, approximately $23,108; and I stand to be corrected on my mathematics, because I did this very hurriedly.

Q Mr. Mabe, are you aware of a piece of land up near the railroad track on Menchville Road, that recently sold?

A How recent?

(Tr12) Q Mr. Mabe, as I understand it, then your appraisal was just of the houses alone, without regard to the value of the land on which they sit?

A I made the appraisal to the land separate.

Q The answer to my question would be yes?

A Yes.

Q Now, going back - I asked you if you were aware of a recent sale of 40 acres up near the railroad track on Menchville Road. I believe that was sold. Do you remember that?

A No, not from memory, no, sir.

Q Well, would you say that land up near the railroad track is not as valuable as this land, for R-1-B purposes?

A I am trying to figure - up near the railroad track - Menchville Road, near the railroad track?

Q Well, it would probably be off Menchville Road, but if it were extended.

A You are talking about right in there, the other side of the lake?

Q Yes.

A Well, I have never done any research on that particular piece of property.

* * *

* * *

(Tr14) CROSS EXAMINATION

EXAMINED BY MR. ALLEN:

Q As I understand it, you appraised the houses apart from the land?

A Yes, sir.

Q And the house at 44 Menchville Road was appraised at what?

A Well, it was appraised originally at $21,800.

Q And you go up ten per cent on it?

A Yes, sir.

MR. ALLEN: That's all.

THE COMMISSIONER: I would like to ask you a few questions, Mr. Mabe, so I will understand your testimony.

EXAMINED BY THE COMMISSIONER:

Q First, sir, may I ask you the present zoning of this property, or the zoning of the property as it existed when you made this appraisal?

A Residential.

Q And the figures you previously gave with regard to the value, or the appraisal on the three dwelling houses, are the appraisal that you are making today, having made a provision for the ten per cent?

(Tr15) A I appraised them in 1970, and on answer to a question from Mr. Avis, I stated it was my opinion they had increased, in my opinion, the real estate as a whole.

(Tr15) Q What is your valuation - and you have already answered it, but I want to be clear on it - with regard to all the land?

A When I appraised it, it was $52,500.

Q And what is it today?

A Well, this is my opinion - $57,750.

* * *

COMPLAINANTS EXHIBIT NO. 4

(Appraisal)

February 19, 1970

Mr. C. L. Jones
44 Menchville Road
Newport News, Virginia

Re: Property of Charles L. Jones and G. Houston Jones, Sr. Estate Menchville Road

Dear Mr. Jones:

I have Appraised the above mentioned property located at 42, 42B and 44 Menchville Road with three homes, located on this property, which is located on approximately 15 acres of land.

42 Menchville Road

This is a brick veneer home with four bedrooms, one and one half baths, kitchen, living room, dining room, heated by space heater, hardwood floors, public water and electricity and individual septic tank.

This house contains approximately 1791 square feet of living area and is approximately 17 years of age.

COST APPROACH TO VALUE

1791 square feet of living area at $10.00 per square foot	$17,910.00
Less: 4% physical depreciation	716.00
	$17,194.00
17 storm windows at $15.00 each	255.00
2 storm doors at $40.00 each	80.00
Depreciated value of improvements and building	$17,529.00

42-B Menchville Road

This is abrick veneer home with three bedrooms, one bath, living room, dining room, kitchen, heated by space heater, hardwood floors, public water and electricity and individual septic tank.

This house contains approximately 1340 square feet of living area and is approximately 15 years old.

continued

COST APPROACH TO VALUE

1340 square feet of living area at $10.00 per square foot	$13,400.00
Less: 4% physical depreciation	536.00
	$12,864.00
18 storm windows at $15.00 each	270.00
2 storm doors at $40.00 each	80.00
Depreciated value of improvements and building	13,214.00

44 Menchville Road

This is a brick veneer rancher containing approximately 1940 square feet of living area with attached garage, containing approximately 441 square feet, four bedrooms, living room, dining room, two baths, heated by electric heat, public water and electricity and individual septic tank.

This house is approximately 15 years of age.

My appraisal will reflect that this home be completed on the inside and the appraisal will be based upon its completion.

WORK TO BE COMPLETED:
Install all doors on bedrooms, baths, and closets.

Install trim and paint, sand and refinish hardwood floors.

Finish panneling kitchen.

TOTAL APPROXIMATE COST..... 2,500.00

COST APPROACH TO VALUE

1940 square feet of living area at $10.00 per square foot	$19,400.00
Less: 4% physical depreciation	776.00
441 square foot garage at $1.00 per square foot	1,764.00
	$20,388.00
36 storm windows at $15.00 each	540.00
2 storm doors at $40.00 each	80.00
Depreciated value of improvements and building	$21,008.00

This Appraiser has checked sales in competing areas and finds that the cost approach to value is more realistic than the market approach. This Appraiser does not believe the income approach to value is justified in this case.

Therefore, I am placing a value on the homes and all improvements, as follows:

42 Menchville Road.....$17,529.00

42-B Menchville Road.....$13,214.00

44 Menchville Road.....$21,008.00

LAND VALUE

The land consists of approximately 15 acres fronting approximately 240 feet on Menchville Road as per the attached survey dated March 22, 1966 by S. J. Glass & Associates, engineers.

It is the opinion of this Appraiser that the highest and best use for this tract of land after ample lots have been alotted to the three existing homes is for a residential subdivision.

It is to be particularly noted that this property joins Sanlin Heights Subdivision with a paved street adjoining the subject property in approximately the center.

After checking comparable sales in competing areas I am placing a value on the land of $3500.00 per acre. It is to be notes that this land does not have public sewer and it is almost impossible to subdivide any more in the City of Newport News unless you have City sewer.

15 acres at $3,500.00 per acre.....$52,500.00

Total Appraised value of all buildings, improvements and land.....$104,251.00

The City of Newport News total Appraised value for assessment purposes is as follows:

Land.....$39,700.00

Buildings.....$32,800.00

Total.....$72,500.00

JAMES G. MABE
APPRAISER
9608 Warwick Blvd.
NEWPORT NEWS,
VIRGINIA

continued

The taxes are $1,141.88 on all houses and land. This information was furnished by the City Assessor's Office, City of Newport News.

Legal, as follows:

Section 19, parcel 105, 15 acres part Reedy Branch.

Respectfully submitted,

JAMES G. MABE,
Appraiser

JGM:mj
enclosures:
Survey
Qualification Sheet

JAMES G. MABE
APPRAISER
9608 Warwick Blvd.
NEWPORT NEWS,
VIRGINIA

UNDERLYING ASSUMPTIONS AND LIMITING CONDITIONS

The information contained in this report was gathered from reliable sources, but cannot be guaranteed. Title is assumed to be clear and there are no encumbrances which cannot be cleared through regular processes. Site measurements were taken from surveys and are assumed to be correct.

CERTIFICATION

I certify that I have no interest, present or contemplated in the properties and that neither the employment to make the Appraisal, nor the compensation is contingent on the value of the property. I certify that I have personally inspected the property and that, according to my knowledge and belief, all statements and information in this report are true and correct; subject to the underlying assumptions and contingent conditions.

VALUE ESTIMATES

Based upon the information contained in this report and upon my general experience in the real estate field, it is my opinion that the value, as defined here, on the subject property as of February 19, 1970 is.....

ONE HUNDRED FOUR THOUSAND TWO HUNDRED FIFTY ONE DOLLARS
($104,251.00)

James G. Mabe, Appraiser

JAMES G. MABE
APPRAISER
-:-
9608 Warwick Blvd.
NEWPORT NEWS,
VIRGINIA

CLERK
SUPREME COURT OF VIRGINIA
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