

Record No. 5419

In the
Supreme Court of Appeals of Virginia
at Richmond

THELMA C. QUESENBERRY, ET AL.

v.

MABEL C. FUNK, ET AL.

FROM THE CIRCUIT COURT OF PULASKI COUNTY

RULE 5:12—BRIEFS.

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 5419

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 10th day of October, 1961.

THELMA C. QUESENBERY, ET AL., Appellants,
against

MABEL C. FUNK, ET AL., Appellees.

From the Circuit Court of Pulaski County

Upon the petition of Thelma C. Quesenberry and W. Eugene Quesenberry, Executor of the Estate of Walter S. Coalson, deceased, an appeal is awarded them from decrees entered by the Circuit Court of Pulaski County on February 27, 1961, and June 16, 1961, in a certain chancery cause then therein depending wherein Mabel C. Funk and others were plaintiffs and the petitioners were defendants; upon the petitioner, Thelma C. Quesenberry, or some one for her, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of three hundred dollars, with condition as the law directs, no bond being required of W. Eugene Quesenberry, Executor of the Estate of Walter S. Coalson, deceased.

RECORD

Filed in the Clerk's Office the 28th day of December, 1959.

Teste:

MARVIN G. GRAHAM, Clerk.

BILL IN EQUITY.

To the Honorable Jack M. Matthews, Judge of said Court:

Your complainants would show unto your Honor the following as a basis for the relief hereinafter prayed for:

(1) That they and each of them are children of Walter S. Coalson, late of Pulaski, Virginia.

(2) That Walter S. Coalson died testate on the 18th day of October, 1958, and that his last will and testament was admitted to probate in the Clerk's Office of this Honorable Court on October 21, 1958, a copy of which is hereto attached marked "Exhibit A."

(3) That W. Eugene Quesenberry qualified as the Executor of the estate of Walter S. Coalson, deceased, on the 21st day of October, 1958.

(4) That under clause "Seventh" of the last will and testament of Walter S. Coalson, your complainants, to-
page 2 } gether with Thelma C. Quesenberry, one of the
defendants, are named residuary legatees, equally
and jointly.

(5) That Walter S. Coalson, many years ago, the exact time being unknown to your complainants, but being sometime prior to 1946, opened up a savings account at the Pulaski National Bank of Pulaski, Virginia, and that through the years up until his death, made deposits in said savings account from time to time and that as of the date of his death the balance remaining in said savings account was \$8,037.61.

(6) That on or about May 3, 1954, as a matter of convenience, the savings account was changed to a joint savings account under the names of W. S. Coalson and Mrs. Thelma C. Quesenberry, which said joint savings account was set up by the use of a standard signature card used by the Pulaski National Bank of Pulaski, Virginia, which, in referring to the

funds therein, says; "are and shall be owned by them jointly, with right of survivorship and be subject to the check or receipt of either of them or the survivor of them and payment to or on the check of either or the survivor shall be valid and discharge said bank from liability," and that at the time of the death of Walter S. Coalson this joint savings account under the names set out above was still open; that at the time the savings account in the name of W. S. Coalson was transferred to the joint account, there was a balance in the savings account to the credit of W. S. Coalson of \$4,497.35; that deposits were made in said account from time to time by Walter S. Coalson and interest was allowed to accumulate in said account up until his death; that Walter S. Coalson made all deposits in the account and that the entire funds in the account belonged to Walter S. Coalson at the time of his death and therefore said funds are a part of the estate of the said Walter S. Coalson subject to be distributed by his Executor, W. Eugene Quesenberry, under clause "Seventh" of the will of Walter S. Coalson.

(7) That at the time the savings account at the Pulaski National Bank was transferred from the name of W. S. Coalson to the joint names of W. S. Coalson and Mrs. Thelma C. Quesenberry, the said Walter S. Coalson was ill and infirm, being unable at that time to sign his name to the signature card to set up the joint savings account, and that the transfer of said savings account from the name of W. S. Coalson to the joint names of W. S. Coalson and Mrs. Thelma C. Quesenberry was done for the purpose of convenience only and there was no intent on the part of Walter S. Coalson that Mrs. Thelma C. Quesenberry would have any interest in said account either during his lifetime or at his death; that W. Eugene Quesenberry, Executor of the estate of Walter S. Coalson, deceased, treated said funds in the joint savings account as assets of the estate and this was done with the acquiescence of Mrs. Thelma C. Quesenberry, but that some months after October 21, 1958, Mrs. Thelma C. Quesenberry claimed the funds as her own and did withdraw the same from the joint savings account together with all accumulated interest, but that she deposited the same funds in a savings account under her name and agreed with the Pulaski National Bank not to withdraw the funds from said bank without the consent of the Pulaski National Bank, or until such time as the statute of limitations should run on any possible claim of any heir of Walter S. Coalson to a share of said account.

(8) That the complainants allege that Walter S. Coalson, on May 3, 1954, was, because of his condition, incompetent to make a valid gift, and was unduly influenced in setting up said joint savings account.

(9) That pursuant to Section 64-131.1 of the Code of Virginia, 1950, as amended, Mabel C. Funk, one of the complainants, requested W. Eugene Quesenberry, Executor of the estate of Walter S. Coalson, deceased, to make a demand upon Mrs. Thelma C. Quesenberry to return the funds withdrawn by her to said Executor to be distributed under the will of Walter S. Coalson, deceased, but that Mrs. Thelma C. Quesenberry refused to do so and still refuses to do so;
page 4 } that W. Eugene Quesenberry, Executor of the estate of Walter S. Coalson, deceased, and the husband of Mrs. Thelma C. Quesenberry, does not desire, or has refused, to take legal proceedings against the said Mrs. Thelma C. Quesenberry in order to seek judicial determination as to the ownership of said funds.

(10) Your complainants allege that the amount of \$8,037.61, plus accumulated interest on said amount up until the time of final determination of this cause, is an asset of the estate of Walter S. Coalson, deceased, and as such should be administered by the Executor of the estate of the said Walter S. Coalson under clause "Seventh" of said will of Walter S. Coalson, and that under said clause "Seventh" your complainants and the defendant, Thelma C. Quesenberry, are entitled to said funds, equally and jointly.

Wherefore, being remediless save in a Court of Equity where matters of this kind are properly adjudicated, your complainants pray that W. Eugene Quesenberry, Executor of the estate of Walter S. Coalson, and Thelma C. Quesenberry be made parties respondent to this action and that they be required to answer the same, the defendant, Thelma C. Quesenberry, in her answer, setting forth the reasons for her claiming this fund and the reason for her withdrawing the same from the Pulaski National Bank; and that this Honorable Court will, by proper decree, direct the said Thelma C. Quesenberry to return the funds withdrawn by her to the estate of Walter S. Coalson, deceased, and that the defendant, W. Eugene Quesenberry, be directed to proceed to administer the same under the last will and testament of Walter S. Coalson, deceased; or that your complainants may have judgment

against the defendants in the amount of \$8,037.61, plus accumulated interest on said amount under the interest payment schedule on savings now in effect at the Pulaski National Bank at Pulaski, Virginia.

And they will ever pray, etc.

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MABEL C. FUNK
IRENE C. FARROW
ELIZABETH C. MILLS
MARY C. JACKAWAY
WALTER W. COALSON
By JOHN N. DALTON AND
PHILIP M. SADLER
Of Counsel.

PHILIP M. SADLER
of GILMER, HARMAN & SADLER
Pulaski National Bank Building,
Pulaski, Virginia

and

JOHN N. DALTON
of DALTON, POFF & TURK
Radford, Virginia

Attorneys for Complainants.

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COPY.

LAST WILL AND TESTAMENT.

I, Walter S. Coalson, of 716 Fifth Street, Pulaski, Virginia, being of sound and disposing mind and memory, do hereby make, publish and declare this to be my last will and testament, hereby revoking all other wills by me at any time heretofore made.

FIRST.

I direct that my body be decently buried in a manner in keeping with my estate and situation in life in the Oakwood Cemetery, Pulaski, Virginia.

SECOND.

I direct and authorize my hereinafter named Executor to pay all of my just and enforceable debts, except funeral expenses and a marker for my grave, as soon after my death as may be practical.

THIRD.

I give to my son, Henry P. Coalson, the proceeds from my Twelve Hundred Fifty Dollar (\$1,250.00) policy with the Railroad Relief and Pension Fund, subject to the following conditions: That my said son is to pay from the proceeds of said fund my funeral expenses, and to purchase a suitable and proper marker for my grave. After the payment of said expenses, such funds as may remain, shall be his absolutely.

FOURTH.

I give to my daughter, Thelma C. Quesenberry, of Pulaski, Virginia, my piano; and my daughter, Elizabeth C. Mills, my radio and silverware; to be theirs absolutely.

FIVE.

I give, devise and bequeath to my son, Henry P. Coalson, of Pulaski, Virginia, my property located on the South side of Fourth Street, S. W., being house number 401 of said street in the Town of Pulaski, Virginia, and consisting of a residence and two lots, and being all of the property that I page 7 } own on said Fourth Street.

SIXTH.

I give and devise to my hereinafter named Executor the remainder of my real property which consists of two houses and certain lots located on Fifth Street, S. E. in the Town of Pulaski, Virginia; which property is to be sold by him as soon as practical after my death, upon such terms and conditions as he may think most expedient and to the best advantage of my estate. In order that my Executor may carry out my wishes in this respect, I hereby authorize him to make all conveyances and execute all necessary legal writings or documents that may be required to convey the fee simple title to my property to the purchaser thereof in the same manner and to the same extent as I, myself, would do were I alive.

SEVENTH.

After the sale of my real property as herein directed and such personal property as may remain, and after the payment of my debts, with the exception of my funeral expenses and a marker for my grave, which is otherwise provided for, then I direct and authorize my Executor to divide all funds coming into his hands from whatever source, equally and jointly, share and share alike, between my children, with the exception of Henry P. Coalson, namely; Mabel C. Funk of Pulaski, Virginia; Thelma C. Quesenberry, Pulaski, Virginia, Irene C. Farrow, now in California; Elizabeth C. Mills, Radford, Virginia, Mary C. Jackaway, now in California; and Walter W. Coalson, Fort Bragg, North Carolina. In the event that any of the above named children shall predecease me, then his or her share shall be divided among the remainder of the above named children.

EIGHTH.

I hereby nominate and appoint my son-in-law, W. Eugene Quesenberry, Executor of this my last will and testament, with full power and authority to do all things necessary or proper to carry out the terms and conditions hereof.

page 8 } IN WITNESS WHEREOF I hereunto subscribe
my name and affix my seal to this my last will and
testament this the 2nd day of February, 1953.

S/ WALTER S. COALSON (Seal)

The above signature of Walter S. Coalson, was made and the foregoing will was acknowledged by him to be his last will and testament in the presence of us, and we the undersigned witnesses do hereby subscribe our names to said writing on the date last above written at the request of the said Walter S. Coalson who was then and there of sound mind and over the age of twenty-one.

S/ R. I. BROWN, Witness.

S/ IRIS SEAGLE SMITH, Witness.

* * * * *

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ANSWER.

To the Honorable Jack M. Matthews, Judge of said Court:

This respondent for answer to the bill of complaint filed against her and another says as follows:

(1) That she admits the correctness of Paragraphs 1, 2, 3, 4, and 5 in the bill.

(2) That she denies all other allegations in the bill and avers that she is the exclusive owner of the savings account mentioned in the bill.

THELMA C. QUESENBERRY,
By Counsel.

EUGENE L. NUCKOLS, of
CROWELL, DEEDS & NUCKOLS
Attorneys at Law
Pulaski, Virginia
Counsel for Respondent.

Received and filed, this the 13th day of January, 1960.

MARVIN G. GRAHAM, Clerk.

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ANSWER.

To the Honorable Jack M. Matthews, Judge of said Court:

This respondent for answer to the bill of complaint filed against him and another says as follows:

(1) That he admits the correctness of Paragraphs 1, 2, 3, 4, and 5 in the bill.

(2) That he denies all other allegations in the bill and avers that he has complied with Section 64-131.1 of the Code of Virginia, as amended, by requesting the return of the funds withdrawn by Thelma C. Quesenberry from the savings account in the joint name of his decedent, Walter S. Coalson, and Thelma C. Quesenberry.

Now having fully answered he ask that he be dismissed as a party to this action.

W. EUGENE QUESENBERRY,
Executor of the estate of
Walter S. Coalson,
By Counsel.

EUGENE L. NUCKOLS, of
CROWELL, DEEDS & NUCKOLS
Attorneys at Law
Pulaski, Virginia
Counsel for Respondent.

* * * * *

page 14-A } The following Stipulation was made and
entered into by all counsel to this proceeding:

Stipulated that there are three withdrawal slips after February 1953; one dated March 12, 1953 for \$642.67, leaving a balance of \$8,000.00 signed by "W. S. Coalson"; another dated April 5, 1953, for \$200.00, leaving a balance of \$4,800.00 signed by "W. S. Coalson," and the third dated May 4, 1954 for \$452.65 leaving a balance of \$4,497.35 signed, "W. S. Coalson or) Mrs. Thelma C. Quesenberry," and it is stipulated that this later withdrawal slip is not in the same handwriting as signed the previous two withdrawal slips.

It is further stipulated that the Inheritance Tax Return for the estate of Walter S. Coalson filled out by Alan Grose-close, Esquire, and filed on January 28, 1959, listed the savings account on Page 5, Schedule F, Intangible Personal Property and not Schedule G, Jointly Owned Property With Right of Survivorship. The return was signed by W. Eugene Quesenberry.

Filed Feb. 27, 1961.

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DECREE.

This cause came on to be heard upon the Bill heretofore filed by Mabel C. Funk and other heirs at law and devisees of Walter S. Coalson, deceased, praying that certain monies on deposit in the Pulaski National Bank be distributed as part

of the Estate of the said Walter S. Coalson, deceased, and upon the Answer of Thelma C. Quesenberry and W. Eugene Quesenberry, defendants, wherein Thelma C. Quesenberry denied the claim of the complainants to the funds involved, and in the proceedings claimed these funds as her own upon the following ground or grounds:

1. That Walter S. Coalson made a gift *inter vivos* to her of these funds in February of 1953, and that this gift was completed in 1954 when Walter S. Coalson signed a certain joint deposit card at the Pulaski National Bank.

2. That she was the owner of the funds by reason of the form of the deposit in the Pulaski National Bank which she contends made her and the said Walter S. Coalson joint tenants with the right of survivorship and that upon his death the funds became hers by reason of the survivorship clause pertaining to the funds on deposit.

After maturely considering the evidence, the briefs submitted on behalf of the parties hereto and the arguments of counsel, the Court is of the opinion from all the evidence that Thelma C. Quesenberry is not entitled to the funds but that they are a part of the assets of the estate of Walter S. Coalson, deceased.

page 16 } It is therefore, ADJUDGED, ORDERED and
DECREED that Thelma C. Quesenberry shall forthwith deliver to W. Eugene Quesenberry, Executor of the Estate of Walter S. Coalson, deceased, the funds, together with any accumulated interest, that were left in the joint savings account at the death of Walter S. Coalson and that the said W. Eugene Quesenberry, Executor of the Estate of Walter S. Coalson, shall distribute said funds as assets of the Estate of Walter S. Coalson.

Enter this Order this 27th day of February, 1961.

JACK M. MATTHEWS, Judge.

We ask for this Order:

PHILIP M. SADLER

Of counsel for the complainants.

Seen and objected to and due exceptions taken:

EUGENE L. NUCKOLS

Of counsel for the defendants.

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Received and filed, this the 3rd day of March, 1961.

MARVIN G. GRAHAM, Clerk.

PETITION.

To the Honorable Jack M. Matthews, Judge of said Court:

Your petitioner, Thelma C. Quesenberry, respectfully submits the following as basis for the relief herein prayed:

(1) That by a decree entered herein on the day of February, 1961, this court held that a savings account in the joint names of your petitioner and Walter S. Coalson was a part of the assets of the estate of Walter S. Coalson, deceased.

(2) Without waiving her original contention that the account is her sole property and without waiving her exception to the said decree, your petitioner avers that if the said account is an asset of the estate of Walter S. Coalson the instrument establishing the joint account is a valid testamentary disposition of said account as it plainly shows the decedent intended to give and bequeath said account to your petitioner.

(3) Your petitioner would further show that the said instrument was executed by the decedent and properly witnessed in full compliance with laws of testamentary disposition of the State of Virginia.

Therefore, your petitioner prays that the instrument dated the 3rd day of May, 1954, previously filed herein be admitted to probate as a codicil to the last will and testament of Walter S. Coalson, deceased.

THELMA C. QUESENBERY
By Counsel.

page 18 } EUGENE L. NUCKOLS of
 CROWELL, DEEDS & NUCKOLS
Attorneys at Law
Pulaski, Virginia
Counsel for Petitioner.

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ANSWER.

Come now Mabel C. Funk, Irene C. Farrow, Elizabeth C. Mills and Mary C. Jackaway, and for response to a Petition filed in this matter by Thelma C. Quesenberry, say:

1. That they admit that a Decree was entered by the Circuit Court of Pulaski County, Virginia decreeing that the monies held in a joint savings account were part of the assets of Walter S. Coalson, deceased.

2. They deny that the instrument setting up the joint account complies with the laws of the State of Virginia as to testamentary disposition in that it shows on its face that it was not properly witnessed as a testamentary paper, nor is there any evidence in the record showing that all persons signing the card were in the presence of each other when it was signed.

4. These respondents deny that the instrument is worthy to be probated as a Codicil to the Will of Walter S. Coalson and pray that these proceedings may be quashed and that this Honorable Court will deny the petition for probate.

MABEL C. FUNK
 IRENE C. FARROW,
 ELIZABETH C. MILLS and
 MARY C. JACKAWAY
 By PHILIP M. SADLER
 Of Counsel.

GILMER, HARMAN & SADLER
 Pulaski National Bank Building
 Pulaski, Virginia.

Received and filed, this the 22 day of March, 1961.

MARVIN G. GRAHAM, Clerk.

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Received and filed, this the 25 day of March, 1961.

MARVIN G. GRAHAM, Clerk.

ANSWER.

Comes now Walter W. Coalson, by counsel, one of the complainants in the above styled cause and for answer to the Petition filed against him and others by the defendant, Thelma C. Quesenberry, says:

1. That he admits as true numbered paragraph one of said Petition.

2. He denies that the bank signature card is a valid testamentary disposition of the bank account.

3. He denies that the signature card was executed by the decedent or witnessed in such a manner as to comply with the laws concerning testamentary disposition in the State of Virginia.

4. He denies that the signature card is testamentary in character and denies that it meets the required standards of a valid Will or codicil thereto.

5. He denies that the decedent ever intended that the signature card act as his Last Will and Testament or as a codicil thereto.

page 22 } WHEREFORE, the undersigned asks that the prayers of the Petitioner, Thelma C. Quesenberry, be denied.

Respectfully,

WALTER W. COALSON
By JAMES C. TURK
Of Counsel.

DALTON, POFF & TURK
Attorneys at Law
Radford, Virginia
Of counsel for complainant.

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Received and filed, this the 20th day of April, 1961.

MARVIN G. GRAHAM, Clerk.

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

To Marvin G. Graham, Clerk of the Circuit Court of Pulaski County, Virginia:

NOTICE OF APPEAL.

You are hereby given notice of the appeal of Thelma C. Quesenberry and W. Eugene Quesenberry, executor of the Estate of Walter S. Coalson, deceased, from the decree of the Circuit Court of Pulaski County, Virginia, entered on the 27th day of February, 1961, in the above case pending therein.

ASSIGNMENTS OF ERROR.

(1) The Court erred in failing to sustain the motion of the defendants to strike the evidence of the complainants, as contrary to the law and evidence in this case.

(2) The Court erred in entering the decree of February 27, 1961, finding that Thelma C. Quesenberry was not the owner of the funds on deposit in a savings account in her name at The Pulaski National Bank, as contrary to the law and evidence in this case, and without evidence to support it.

(3) The Court erred in entering the decree of February 27, 1961, finding that the funds on deposit in a savings account in the name of Thelma C. Quesenberry at The Pulaski National Bank are a part of the assets of the estate of Walter S. Coalson, deceased, as contrary to the law and evidence in this case, and without evidence to support it.

THELMA C. QUESENBERY and
W. EUGENE QUESENBERY,
EXECUTOR OF THE ESTATE OF
WALTER S. COALSON.

By Counsel.

page 24 } EUGENE L. NUCKOLS of
CROWELL, DEEDS & NUCKOLS

Attorneys at Law
Pulaski, Virginia
Counsel for Defendants.

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CERTIFICATION OF TRANSCRIPT.

The undersigned, counsel of record for all of the parties hereto, hereby certify that we have examined the transcript of the oral testimony and other incidents of the hearing reported and transcribed by Irene H. Robinson, Pulaski, Virginia, beginning at page 1 and ending at the bottom of page 178, and do further certify said transcript is true and correct.

JAMES C. TURK

Counsel for Walter W. Coalson
Complainant.

PHILIP M. SADLER

Counsel for Elizabeth C. Mills,
Mabel C. Funk, Mary C. Jackaway
and Irene C. Farrow, Complainants.

EUGENE L. NUCKOLS

Counsel for Thelma C. Quesenberry and
W. Eugene Quesenberry, Executor of the
Estate of Walter S. Coalson, Defendants.

I, Jack M. Matthews, Judge of the Circuit Court of Pulaski County, Virginia, do certify the foregoing referred to transcript is true and correct, and that it was presented to me on the 26th day of April, 1961, within 60 days after the decree complained of was entered, and signed by me within 70 days after the decree was entered.

JACK M. MATTHEWS

Judge of the Circuit Court of
Pulaski County, Virginia.

I, Marvin G. Graham, Clerk of the Circuit Court of Pulaski County, Virginia, do hereby certify that the aforesaid transcript was delivered to me on the 26 day of April, 1961.

MARVIN G. GRAHAM
Clerk of the Circuit Court of
Pulaski County, Virginia.

Received and filed, this the 26 day of April, 1961.

MARVIN G. GRAHAM, Clerk.

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Received and filed, this the 16 day of June, 1961.

MARVIN G. GRAHAM, Clerk.

STATEMENT OF FACTS.

The following facts are true and correct as to the petition filed herein by Thelma C. Quesenberry on the 3rd day of March, 1961, praying that the instrument involved herein executed by the decedent, Walter S. Coalson, be admitted to probate as a codicil to the last will and testament of Walter S. Coalson:

(1) That at a hearing before the court Thelma C. Quesenberry testified that Walter S. Coalson executed the instrument first and then she and John William Utt executed the instrument in Mr. Coalson's presence and in the presence of each other; that upon being advised she had previously testified she had executed the instrument before it was executed by Mr. Coalson, she admitted her previous testimony was probably correct but that she executed the instrument in the presence of Walter S. Coalson and John William Utt.

(2) That at the hearing W. Eugene Quesenberry did not testify as the court was of the opinion his testimony was not necessary but, if he had testified, his testimony would have been that the instrument was executed in his presence by his wife, Thelma C. Quesenberry, the decedent, Walter S. Coalson, and John William Utt and in the presence of each other; and that he did not recall the order of execution.

We stipulate that the aforesaid statement is true and correct.

EUGENE L. NUCKOLS

Counsel for Thelma C. Quesenberry
and W. Eugene Quesenberry, Executor of
the Estate of Walter S. Coalson,
Defendants,

page 27 } JAMES C. TURK

Counsel for Walter W. Coalson,
Complainant.

PHILIP M. SADLER

Counsel for Mabel C. Funk,
Elizabeth C. Mills, Mary C.
Jackaway, and Irene C. Farrow,
Complainants.

CERTIFICATION.

I, Jack M. Matthews, Judge of the Circuit Court of Pulaski County, Virginia, do certify the foregoing Statement of Facts is true and correct, and that it was presented to me on the 16th day of June, 1961, within sixty (60) days after the decree complained of was entered, and signed by me within seventy (70) days after the decree was entered.

JACK M. MATTHEWS

Judge of the Circuit Court of
Pulaski County, Virginia.

I, Marvin G. Graham, Clerk of the Circuit Court of Pulaski County, Virginia, do hereby certify that the foregoing transcript was delivered to me on the 16 day of June, 1961.

MARVIN G. GRAHAM,

Clerk of the Circuit Court of
Pulaski County, Virginia.

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* * * * *

DECREE.

This cause came on again to be heard upon the Petition of Thelma C. Quesenberry to admit for probate the instrument executed by Walter S. Coalson as a codicil to the last will and testament of the said Walter S. Coalson; upon the answers of Walter W. Coalson, Mabel C. Funk, Irene C. Farrow, Elizabeth C. Mills and Mary C. Jackaway; upon evidence heard *ore tenus*; and was argued by counsel.

WHEREUPON, after considering the evidence presented, the Court is of the opinion that the instrument offered for probate is not a codicil to the last will and testament of Walter S. Coalson; therefore it is ADJUDGED, ORDERED and DECREED that the petition of Thelma C. Quesenberry be, and it hereby is, denied.

Enter this 16th day of June, 1961.

JACK M. MATTHEWS, Judge.

We ask for this:

JAMES C. TURK

PHILIP M. SADLER

Of Counsel for the complainants.

Seen and objected to and due exceptions taken:

EUGENE L. NUCKOLS

Of counsel for defendants.

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NOTICE OF APPEAL AND ASSIGNMENT OF ERROR.

To Marvin G. Graham, Clerk of the Circuit Court of Pulaski County, Virginia:

NOTICE OF APPEAL.

You are hereby given notice of the appeal of Thelma C. Quesenberry and W. Eugene Quesenberry, executor of the Estate of Walter S. Coalson, deceased, from the decree of the Circuit Court of Pulaski County, Virginia, entered on the 16th day of June, 1961, in the above case pending therein.

W. Eugene Quesenberry.

ASSIGNMENT OF ERROR.

(1) The Court erred in denying the petition of Thelma C. Quesenberry to probate as a codicil to the last will and testament of Walter S. Coalson, deceased, the instrument offered herein, as contrary to the law and evidence in this case.

THELMA C. QUESENBERY AND
W. EUGENE QUESENBERY,
EXECUTOR OF THE ESTATE OF
WALTER S. COALSON,
By Counsel.

EUGENE L. NUCKOLS of
CROWELL, DEEDS & NUCKOLS
Attorneys at Law
Pulaski, Virginia
Counsel for Defendants.

Received and filed, this the 16 day of June, 1961.

MARVIN G. GRAHAM, Clerk.

* * * * *

W. EUGENE QUESENBERY,
a witness of lawful age, having been duly sworn, testified as follows:

By Mr. Sadler:

Q. You are W. Eugene Quesenberry?

A. Yes, sir.

Q. And you live here in Pulaski?

A. Yes, sir.

Q. I believe you are the son-in-law of Walter S. Coalson, who died in 1958, is that correct?

A. Yes, sir.

Q. What month of the year did he die in?

A. 18th of October, '58.

Q. And I believe upon his death somebody found a Will among his personal effects—his Last Will and Testament. Is that correct?

A. My wife did, yes, sir.

Q. And I believe she produced that—it was offered for probate here in the Clerk's Office?

W. Eugene Quesenberry.

A. That's correct.

Q. And in that Will you were named to administer or the Executor of his estate. Is that correct?

A. That's correct.

Q. I'll show you here what is supposed to be a copy of that Last Will and Testament and ask you if that is a true copy of Mr. Coalson's Will. You might read it over fully page 2 } if you want to so that you can testify that that is a copy of his Will.

A. It's just a copy of his will?

Q. It's not certified.

A. Yes it is.

If it please the Court, I believe there's a certified copy in the file—we'd like to use this as we go along.

The Court: Very well.

By Mr. Sadler:

Q. Mr. Quesenberry, this Will I believe was taken to the office of Mr. Groseclose, opened, and he read the Will to you, and to your wife, Thelma Quesenberry, together with some of the other children. Was that the day after your father-in-law's funeral?

A. Yes.

Q. Then when did you go to the Clerk's Office with this Will and qualify as Administrator of this estate?

A. I believe I went directly from the lawyer's office over to the Clerk's office.

Q. At that time Mr. Quesenberry, did you went to the Clerk's office, had you investigated—did you know generally the estate that Mr. Coalson had at his death?

A. No, sir, I'd never read it.

Q. I don't mean his Will, do you know what page 3 } property, houses and lots—

A. Yes, sir.

Q. Stock or bonds or money in the bank? You knew generally what he had?

A. Generally, yes.

Q. And was there delivered to you as Executor a Pass Book from the Pulaski National Bank showing a savings account there?

A. Was it presented to me?

Q. Was it delivered to you as Executor?

A. Yes, sir.

W. Eugene Quesenberry.

Q. Mr. Groseclose, I believe, was advising you on administering the estate?

A. That's right.

Q. And you took that to him?

A. Yes, sir.

Q. Let me show you the Clerk's memorandum which you signed, which is dated the 21 day of October, 1958—the day you went in to qualify, is it not?

A. Yes.

Q. And this is your signature on the—

A. That's right.

Q. You have listed here as the, for the purposes of giving a bond, you have listed his estate value of real estate, \$15,000.00, value of tangible personal property, \$500.00, and value of decedent's intangible personal property \$8,000.00, page 4 } representing a total estate of \$23,500.00. That is correct, isn't it?

A. Yes, sir.

Q. That's the information you gave the Clerk?

A. Yes, sir.

Q. Was your wife with you at the time you went to the Clerk's Office? Mr. Quesenberry?

A. Pardon?

Q. Was Mrs. Quesenberry present when you went to Mr. Graham's office to qualify?

A. Yes, sir.

Q. This \$8,000.00 that you have listed here as intangible personal property, that represents approximately the value of the balance in the savings account in the Pulaski National Bank, does it not?

A. That's a joint account.

Q. I understand, but the \$8,000.00 you have listed here was approximately the balance in that joint account?

A. Yes.

Q. And you listed that as part of the estate of W. S. Coalson?

A. Yes, sir.

Q. I believe then, perhaps the next day, Mr. Quesenberry, or within a couple of days thereafter, that you went to the Pulaski National Bank with the Pass Book and withdrew from that joint account of \$1,000.00. Is that correct?

page 5 } A. Yes.

Q. Will you tell the Court the reason you withdrew the \$1,000.00 out of that account as executor.

W. Eugene Quesenberry.

A. That was to pay the funeral expenses and different things that come up.

Q. That was to pay the expenses of Mr. Coalson's estate?

A. Yes, sir.

Q. And I believe you also filed a State Tax Return for the State of Virginia. Mr. Groseclose prepared it for you and you signed it. Is that correct?

A. Yes, sir.

Q. And you paid the Inheritance Tax on this estate?

A. It hasn't been paid yet I don't think.

Q. But you filed a return?

A. I filed the return, yes, sir.

Q. And in that return you listed as a part of his estate the money in that joint account, did you not?

A. Yes, sir.

Q. And I believe that Mr. Groseclose advised you as Executor—he was advising you, was he not? He was your legal advisor?

A. Yes, sir, he was—he kinda taken over—the way it worked out.

Q. I believe you are aware of a letter he wrote page 6 } to all of the children of Mr. Coalson. Some few months after Mr. Coalson's death. He wrote them a letter—a letter dated March 6, 1959 and Mr. Coalson died in October, 1958. On March 6, 1959, Mr. Groseclose, as your advisor, wrote all the children of Mr. Coalson this letter. I'll ask you if you have seen this letter or know of its existence.

A. Yes, sir, I believe I read that.

Q. And it shows that your wife, Thelma Quesenberry, got a copy of it. Did she in fact get a copy of it?

A. Yes, sir.

Q. If it please the Court, we'd like to offer this as exhibit of his testimony, or we can offer it for Mr. Groseclose, either one.

By Mr. Nuckols: Who received this particular one?

By Mr. Sadler: Walter W. Coalson. We can do it either way. We'll prove it by somebody.

Q. Mr. Quesenberry, this letter sets out that—something about the appraisal of the estate and an insurance policy and then it says that the remainder of the estate is to be divided equally and that this includes \$8,337.61 and a joint account in the Pulaski National Bank. That was what the letter said, was it not?

W. Eugene Quesenberry.

A. I forgot what was in it—it's been quite a while.

Q. Well, let me ask you this Mr. Quesenberry. Acting as executor of Mr. Coalson's estate and advising Mr. Groseclose, you took this pass book to this account—you listed these funds as part of Mr. Coalson's estate—the children were page 7 } advised that it was part of his estate—would be distributed equally even as late as March, 1959. When were you first put on notice that Thelma C. Quesenberry claimed these funds as hers?

By Mr. Nuckols: Mr. Quesenberry, before you answer—Your Honor, I would like to object to all of these questions in that I believe the ownership of this property—this bank account—the contract under which it's owned by Mrs. Quesenberry is clear and without any doubt as to its meaning and the parol evidence as to the ownership of this particular item cannot be considered because the instrument which gives her title to this property is clear and has no language which could be misunderstood and the parol evidence is not admissible to change the clear, the obvious meaning of this contract. We want to object to any evidence presented as to the ownership of this property.

By Mr. Sadler: If it please the Court, the landmark case in Virginia is the case of *King, Ex'x. v. Merryman, Adm'x.* 196 Va. 844—has been quoted and followed, I believe, in a couple of cases since then which clearly sets out that under the Virginia law such an account as set up here, actually says that there is a presumption that this account was set up for the convenience of the deceased and that the presumption is that it was his money. It also goes into the fact clearly that parol evidence can be admissible under the Statute because Mrs. Quesenberry is adverse against the estate. Any statments of the deceased going into his intent can be shown. The Statute was amended in 1956, Virginia Statute, page 8 } which said that in case of a joint bank account between husband and wife that the balance went to the survivorship—went to the wife, but it did not change the general law such as set up here where there is a presumption otherwise actually the one Mr. Nuckols set out—it clearly says that it is parole evidence impact.

By the Court: I'll overrule the objection for the time being.

By Mr. Nuckols: I except.

W. Eugene Quesenberry.

By Mr. Sadler:

Q. Mr. Quesenberry, would you answer the question which was generally, when did you first know—when did it first come to your attention as executor, that Thelma C. Quesenberry claimed the funds in this joint account.

A. Well, I knew that it was made out in survivorship. Yet still I wanted to see it come out you know.

Q. Wasn't it sometime more than a year later actually, that Mrs. Thelma Quesenberry made a claim—actually made a claim saying it was her money.

A. Something like a year, yes, sir.

Q. And I believe you advised Mr. Groseclose of that as soon as you learned of this and he immediately wrote a letter to the other children saying that that had come up. I believe that letter of Mr. Groseclose's was written on November 4, 1959, which was just a little more than a year after Mr. Coalson's death. Is that right?

A. That's about right.

page 9 } By Mr. Nuckols: Mr. Quesenberry, I'm just going to ask you questions concerning what Mr. Sadler has questioned you about. Your Honor, I would like to be able to call him back later.

Q. Mr. Quesenberry, this \$8,000.00 that you listed the day that you went over to the Clerk's Office—why did you list that?

A. Well, because his name was on the book. That's why I did.

Q. Did you have any discussion with your wife concerning it?

A. I don't believe I did, no, sir.

Q. Your wife didn't agree to it, is that correct? You had no discussion with her?

A. Well, it seemed to me like there was something said about it, but there was nothing done about it.

Q. Were you advised by your counsel that this account should be listed with the estate? Were you advised by Mr. Groseclose that it was supposed to be part of the estate?

A. Well, I don't remember that exactly. I don't suppose he knew.

Q. Did you discuss it with him?

A. Well, I don't think the money part was brought up.

Q. In your discussion with him?

W. Eugene Quesenberry.

A. Yes, sir.

Q. Did you confer with your wife at the time you withdrew the \$1,000.00—about withdrawing the \$1,000.00?
page 10 } A. Yeh, we talked it over about paying the; funeral expenses.

Q. At that time, had you and your wife discussed the ownership of this account at all?

A. Yeh, it was talked about between us.

Q. What was your wife's decision about it at that time when you withdrew this \$1,000.00. Did she claim ownership or did she deny she had anything to do with it?

A. No, she claimed it.

Q. At the time you withdrew the \$1,000.00?

A. Yes, sir.

Q. How soon after your father-in-law's death was this was the \$1,000.00 withdrawn.

A. I don't remember exactly—I guess the book would show.

Q. Do you recognize this book?

A. Yes, sir.

Q. What day was it withdrawn? The \$1,000.00?

A. Looks like November—what is that—23?

Q. Looks like to me a "10." 10-22-58. Is that the date you had Mr. Sadler. Is that October 22, 1958?

A. Yes.

Q. And that was just a few days after your father-in-law passed away?

A. Yes, sir.

Q. Did you discuss this withdrawal with your wife?

A. Yes, sir.

page 11 } Q. Mr. Quesenberry, when did you first tell Mr. Groseclose that your wife was maintaining that this was her account? Do you recall?

A. About the time I think when we was getting ready for the settlement—after the property was sold.

Q. You say that was approximately a year later? After your father-in-law's death?

A. Yeh, approximately—maybe not hardly so long, I don't remember.

Q. So you and your wife then had discussed her claim to the ownership of this since at least the 22nd of October, 1958, up to this time, which was almost a year. Is that correct?

A. Yes, sir.

Q. That's all the questions we want to ask.

W. Eugene Quesenberry.

By Mr. Sadler:

Q. Mr. Quesenberry, who gave you this bank book? This pass book?

A. My wife gave it to me.

Q. Your wife gave it to you?

A. Yes, sir.

Q. And you had that bank book when you went down to the Clerk's Office to qualify, did you not?

A. No sir, I don't think I did. I don't think I had it.

Q. You had it when you went to consult Mr. Groseclose, did you not?

A. No, I think she kept it in her possession.

page 12 } Q. When did she turn it over to you?

A. Well, actually it hasn't been turned over to me outside of just drawing out that \$1,000.00.

Q. She turned it over to you as executor to withdraw the \$1,000.00 and you did that yourself?

A. She wasn't willing for me to.

By Mr. Nuckols: I didn't catch what he said there.

By Mr. Sadler: He said she was not willing.

Q. Yet you say you never advised Mr. Groseclose, your legal advisor, of this for over a year after Mr. Coalson's death?

A. How's that?

Q. You say that you never advised Mr. Groseclose or told him about your wife's feelings for over a year after Mr. Coalson died?

A. I don't remember whether I talked it over with him or not. So many different things come up.

Q. But your'e sure that your wife was present in the Clerk's Office when you listed \$8,000.00 in the joint account as part of Mr. Coalson's estate, aren't you?

A. Yes sir.

Q. She turned over the bank book to you to make the withdrawal, didn't she?

A. Yes sir, I had to have it to do that.

Q. Did your wife ever discuss with you or you with her the letter that she received from Mr. Groseclose saying this money was to be divided equally as part of the estate.

page 13 } A. We talked about it all along, but my hands was tied, I couldn't do anything.

W. Eugene Quesenberry.

Q. I understand but you knew what you were going to do with it, didn't you?

A. I don't know about that.

Q. Well, she knew you were listing it as part of the estate, didn't she. She knew that you proposed to divide it equally as the estate, didn't she. When she got that letter?

A. Just the property—not the money.

Q. The money was mentioned in that letter, was it not? Let me ask you to read the third paragraph of this letter Mr. Quesenberry to see—

A. Is that the letter Mr. Groseclose wrote?

Q. Yes sir. This paragraph here (Indicating). It does say this bank account is to be divided equally, didn't it?

A. I didn't write the letter.

Q. I understand. But you knew that it was written and your wife received a copy of it. That was March 6, 1959. That's all.

By Mr. Nuckols:

Q. Mr. Quesenberry, when your wife received that letter, did both you and your wife agree that this savings account was going to be divided.

A. We never did agree on it.

Q. You were the Executor. Did you ever tell your wife that this account was going into your hands as
page 14 } administrator of the estate and that you were going to divide it up. Did you ever tell her that?

A. I was supposed to have.

Q. Did you ever tell her or did Mr. Groseclose tell her? In that letter?

A. I think—it seemed that Mr. Groseclose told her in the letter, didn't he.

Q. This \$1,000.00 that was withdrawn—you say your wife didn't agree to it. Was there any understanding about what was to be done with that \$1,000.00. Was it to be repaid or what?

A. She brought it up later that it was to be repaid.

Q. She objected to it at the time?

A. Yes sir.

That's all.

By Mr. Sadler:

Q. Your wife knew that Mr. Groseclose was advising you, did she not?

Mary Louise Coalson Jackoway.

A. Yes sir.

Q. In fact, she went with you when you took the Will to him and she knew that you were advising with him, did she not?

A. Yes, sir.

Q. And you were advising with him as Executor of the estate of W. S. Coalson?

All right.

page 15 } By Mr. Sadler:

If he can prove that this is a joint account and show the Court the language on the basis of this testimony, then Mr. Nuckols can proceed with his claim.

The Court recessed for 5 minutes.

MRS. MARY LOUISE COALSON JACKOWAY,
a witness of lawful age, having been duly sworn, testified as follows:

By Mr. Sadler:

Q. What is your name?

A. Mary Louise Jackoway?

Q. Speak up a little louder so the Judge can hear you.

A. Mary Louise Jackoway.

Q. And where do you live at the present time?

A. I live in Swarthmore, Pennsylvania.

Q. You, I believe, are the daughter of the late Walter S. Coalson?

A. Yes, I am.

Q. It was testified here that he died in October, 1958. That is correct, isn't it?

A. Yes it is.

Q. How old was he at the time he died, Mrs. Jackoway?

A. 75 years old.

Q. And I believe that he had worked for the railroad?

A. He had worked for the railroad 44 years.

page 16 } Q. What was his status—working status at the
he died?

A. He was an ill man—he was unable to work.

Q. Was he retired?

A. He was retired from the railroad.

Q. I believe that you are a Registered Nurse, are you not?

A. Yes, sir.

Mary Louise Coalson Jackoway.

Q. And have practiced nursing for some time?

A. Yes sir, for 10 years.

Q. Would you tell the Court, beginning back with your father's first illness generally his state of health, what illnesses he had and when the best that you can recollect.

A. Well, in 1951, my father had his first heart attack and cerebral hemorrhage when he was on a train. I believe he was in Galax. He was taken off the train at Galax and taken to the hospital and at that time he was struck blind. He couldn't see and he was in the hospital in Galax until he was able to return to Pulaski. But he had many cerebral hemorrhages—some of them were mild and some of them were severe. From that time up until the one that caused his death.

Q. Did he return to work for the railroad after the initial attack? in 1951?

A. No sir—he didn't even miss the railroad too much because of the damage the cerebral hemorrhage had caused.

Q. Was he physically able to retire?

A. No sir, he was never able to retire.

Q. Now you mentioned his eye sight—how had page 17 } his eye sight been up to that time? Did he wear glasses or—

A. He had glasses and he could see alright. He filled out his time table and he would bring the train in each day. He wrote letters to us from time to time.

Q. After that how many more major or minor strokes did he have?

A. Well, I was home each summer. I brought the children and usually my husband came with me except the one summer when he was unable to leave the Navy and sometimes he'd have an attack before I came—sometimes while I was there he'd have an attack. He had two very severe attacks while I was at home.

Q. Will you tell us about his eye sight. Did it improve or—

A. Sometimes from time to time. After he would have a hemorrhage sometimes afterwards his eye sight was very bad that he couldn't see at all. Then his eye sight would get better where he could see. He would sit on the porch and point to a train going down the hollow at least a mile away.

Q. How about the rest of his body. Was he able to use it or use the numbers of his body normally?

A. From time to time he would require a great deal of care, which my brother Henry gave him that and Henry's wife.

Mary Louise Coalson Jackoway.

Q. How about writing letters. Did he ever write you any letters after 1951?

A. No sir, he didn't. He would send us a present at Christmas, but he would have Thelma send that to us. It was usually a check that he would send to us each Christmas to give to the children.

page 18 } Q. Do you know whether or not he could, over this period of time until his death, sign his name?

A. Yes, sir, he did sign his name for me to get a passport to go out of the United States to go with my husband to the Netherlands, West Indies.

Q. When was that?

A. 1955 and he signed the papers sent from Washington—I don't mean Washington, I mean Richmond, Virginia, and I was able to get a birth certificate.

Q. Let me ask you this. Shortly after he had a minor stroke when you say his eye sight was bad—could he at that time write his name—

A. Not after an attack. He would talk about it and then sometimes he would know you and sometimes he wouldn't know you.

Q. Now did you see him in 1954?

A. Yes sir, I was home in 1954 and he told me sitting on the porch one day that Thelma and Gene had signed papers to give all the furniture to brother. He said he wanted to give it to Henry, but Henry said he didn't want anything in the house, but he said he wanted Agnes to have the stove—her stove. He had given it to her, but he did say he wanted brother to have all the furniture because they were expecting another child.

Q. Now when you say him, do you remember the month and year?

A. I'm pretty sure it was in July. We tried to
page 19 } get our vacation in July or August to come home.
It was the end of July or the first of August.

Q. What was his physical condition generally that summer that you were here? Could you tell from year to year any improvement or—

A. No sir, from year to year he seemed to get worse and he would say, "Bear with me"—because he couldn't remember things. He would start telling me something and he'd then start talking about box cars or something that had nothing to do with your conversation.

Q. During that time was he able, or did he make trips, say downtown to Pulaski, by himself?

Mary Louise Coalson Jackoway.

A. Not that I know of. He never made a trip to Pulaski while I was in his home. He walked over to Thelma's once that I remember and my daughter went with him.

Q. Then would you say his condition generally was that he was under home confinement?

A. Yes sir, he spent most of the time lying on the bed.

Q. If he did come to town, which you say he didn't that you know of, would it be your thought that somebody would have to come with him?

A. I think that Thelam brought him down to have his hair cut from time to time.

Q. In the summer of 1954 when you saw him, of course knowing the history of his condition—would you call it hardening of the arteries, Mrs. Jackoway?

page 20 }

• • • • •

A. Well, I'd say that hardening of the arteries had set in following his—the condition in the vascular system of his body.

Q. You knew he wasn't going to get any better, didn't you?

A. Yes sir, I knew that he wasn't getting better.

Q. And you say you saw changes for the worse—

A. Yes sir, each year my husband and I noticed it.

That's all that we have at this time Mr. Nuckols. We expect to call her later.

By Mr. Nuckols:

Q. Mrs. Jackoway, you said you were just in for a month or so every year, is that correct?

A. Yes, sir.

Q. You arrived here in May of 1954, were you?

A. I wasn't here in May, but I was here in July.

Q. Were you here in February, 1953, when your father executed the will?

page 21 } A. No sir, I was not here.

Q. Do you recall after your father had his stroke in Galax, your father working in the garden after that?

A. Not while I was here. My husband was going out to Korea—the Korean waters and I brought my daughter and stayed that summer with my father and he was a sick man that summer.

Q. This was the summer—

Henry Paul Coalson.

A. This was the summer afterwards.

Q. His attack?

A. Yes, but he was sick—his mind was not bad at that time.

Q. In 1958, what were these papers that you sent in? What papers did you send in for your father to sign?

A. Papers to get my birth certificate. I was going out of the United States with my husband.

Q. Were they papers furnished by the U. S. Government.

A. They were furnished by the Vital Statistics Department in Richmond, Virginia, where all of our births had been listed.

Q. How long a form was it, Mrs. Jackoway?

A. It had to list every one of my brothers and sisters—their birthdays and where they were born.

Q. And you sent this to your father?

A. I sent that to him.

Q. This was in 1958?

A. Yes, 1958.

That's all.

page 22 } HENRY PAUL COALSON,
a witness of lawful age, having been duly sworn,
testified as follows:

By Mr. Sadler:

Q. Your name is Henry Paul Coalson?

A. Yes, sir.

Q. And you live here in Pulaski, do you not?

A. Yes, sir.

Q. And how old are you?

A. The 27th day of this month I'll be 51 years old.

Q. You are the son—the oldest son of W. S. Coalson?

A. That's right.

Q. I believe you are not a party to this proceeding?

A. That is correct.

Q. A part of the will I believe, gave you the home place and left you out of the other part of his estate?

A. Well, not the home place—the house and—

Q. The house that you live in here, is that right?

A. Yes.

Q. I believe that your father lived with you for several years prior to his death in your home, is that right?

Henry Paul Coalson.

A. That's right, in his home.

Q. In his home?

A. Yes.

Q. And you lived there with him and your wife?

A. It's always been my home but—

Q. And you and your wife took care of him?

page 23 } A. Yes sir.

Q. I assume that you were closer to him in that you saw him more every day and every week—

A. I'm sure I was.

Q. You heard your sister, Mrs. Jackoway, testify as to this stroke and heart attack in 1951. Where were you at that time?

A. I was staying with him at that time. We were batching it.

Q. That was before you were married?

A. I was married at that time, but my wife was working in Kentucky and she wanted to work a while longer.

Q. You stayed there with him at that time and did you continue to live there in the house with him from that time up until he died?

A. Yes, he said we could go over in that house and live there or we could see it or do anything I wanted to—rent it, but he says "I'd rather you stay here with me."

Q. In other words, you did stay there with him?

A. Yes.

Q. Now would you tell the Court generally what your father's physical condition was from 1951 when he had his first stroke up until the time he died.

A. Well, in 1951, he recovered very well from that attack. In fact he farmed about 3 acres of corn in the hottest of weather. I tried to keep to him out of it, but he wanted to retire and farm—he wanted to retire from the railroad. Of course he was 68 years old and had had that at-
page 24 } tack and his best days were gone and it went on then until—for several years and his health was pretty good. I forget now when he had the other attack. I believe it was 1954—something like that.

Q. How many more attacks did he have that you know of?

A. Well, he was in the hospital at that time and he recovered from that very well. He always knew when he'd get well just where the bathroom was, where the table was, where he ate, where he slept and he could get in out of the house and he'd read. At times he could ready a little bit and he finally

Henry Paul Coalson.

gave it up and he wanted me to read the obituary columns to him. Of course on up to the last couple of 3 years several of his friends came to see him that had died. We wouldn't tell him because we were afraid it would cause another attack.

Q. Did he try to read himself with glasses?

A. Yes he did—he wanted to get fitted up, but he couldn't. Seemed like his eye sight would come and go.

Q. When his eye sight would come and go, is it true that the use of the rest of his body would come and go?

A. No sir, he could get around. He really wasn't crippled. He had a spell after that. He couldn't use his left hand you know and I'd set beside him and hold it up in bed and he could feed himself all right and he finally got to where he could go to the bathroom and get in and out and—

Q. How about signing his name? Were there times when he could sign his name?

A. I told Mary when he was feeling good—

Q. Don't say what you told—just—

page 25 }

A. Yes, he could sign his name.

Q. Well, were there times when he couldn't sign his name?

A. There were times when he couldn't. At least he wouldn't you know.

Q. Tell us about his mind. What shape was his mind in after he would have one of these attacks. How was his memory?

A. Well, there was times he didn't know, you know, where he was, where he was at you know. There was other times he did. His mind would come and go like that you know. And there were times when the minister would visit him and he wouldn't know him and there were other times he did know him and he would say he was the minister from down at our church, he'd say.

Q. What were his usual daily activities? Where did he go and where did he stay?

A. In warm weather he would stay out on the porch part of the time. We had one of those gliders there, but he would sit on the porch the biggest part of the time. He'd walk around. He could get around without a cane and he'd walk over to my sister's quite often by himself. He'd go by himself. Nobody had to go with him.

Q. Did he ever walk as far as downtown Pulaski by himself?

A. No, not that I know of. He went to church several times. In fact, he had one of those real bad attacks, cerebral

Henry Paul Coalson.

hemorrhages and I'd pick him up at dinnertime—he'd be waiting there—he'd be talking to some friends.

page 26 } Q. What I mean, you would take him?

A. Yes sir.

Q. You wouldn't let him try to go to church by himself?

A. No, never when I was there would I let him go by himself.

Q. Generally he was what you might call—his condition was such that he was generally confined to the home or the general neighborhood of the home.

A. That's right. From my home over to my sister's home—back and forth.

.

By Mr. Nuckols:

Q. Mr. Coalson, I believe you said your father recovered very well after the '51 attack, is that correct?

A. Oh yes, yes he did. He was able to work in the cornfield. It was hard work—he could work as hard as I could.

Q. Do you remember when his next one was. You said in '54, but do you remember what—

A. They have the records there at the hospital. I just don't remember myself, but it was several years.

Q. After that did he read on some occasions?

A. Just—mostly the headlines. He could get a little bit on that. He had glasses fitted. They bought him glasses. He said when he tried them on he could see good, but when he got glasses he couldn't see and he got disgusted and gave

it up. Then they got him a magnifying glass. He
page 27 } would read just a few little things that he could see.

Q. Did he understand what he read?

A. He sure did. He made corrections in the obituary columns. I kidded him about keeping his name out of it.

Q. Do you recall when your sister sent this paper here in 1958 for your father to sign?

A. Well, prior to her trip down to Aruba, she sent a man and she came down and I hadn't yet had it filled out and I told her I would just as soon as I could and I think it was the next day or two. Well, anyway, I had those papers filled out and he signed them and I had him sign his name on another piece of paper there and I believe I have the last time that he ever signed his name on anything that was valuable papers at home. It was notarized in lawyer Brown's office.

Henry Paul Coalson.

Q. Did he know what he was signing?

A. Yes sir, he sure did. He spelled his name correctly.

Q. I believe your father got a railroad retirement check every month, is that correct?

A. Yes and another one—a supplementary one—there was two checks he got.

Q. Did you see him sign these checks?

A. Well, I wasn't interested in his financial affairs back there. I never noticed. Well, he got checks from houses he rented and I don't know, I think he did sign them. Sometimes Aust would bring the groceries and he'd let him cash them. I wouldn't say definitely now.

Q. Who took care of those checks for him?
page 28 } A. He told me he had it arranged so that his hospital bills would be paid and that they could use his checks, he marked it some way that they could handle his money.

Q. Whose "they"? You mean Mrs. Quesenberry?

A. He understood and didn't complain about them—he thought everything was alright. He said he had everything fixed all right.

Q. Mrs. Quesenberry was the one that was handling it—that's the one you mean? Is that what you understood?

A. That's what I understood.

Q. And even after '54—the attack in '54—did your father walk over to Mrs. Quesenberry's—your sister's house?

A. Oh yes.

Q. Go to church?

A. He had been to church several times since then. He visited Mable—ate dinner with her since then and he could get around as far as going you know, but he would rather stay at home.

Q. I think you said that he'd take spells—wouldn't be feeling as well and wouldn't know much.

A. That's right—there were times when he was ill you see. Those spells didn't last too long. He had several hemorrhages there that they didn't take him to the hospital. My wife and I sat up with him all night. She part of the night and me part of the night—we knew what it was—it was mild. He recuperated from it and still taking doctor's medicine—4 or 5 different kinds of pills every day.

Q. These were roughly short spells?

page 29 } A. Yes sir, he had several short spells.

Q. Would you say that the majority of the year that he was perfectly well. I mean not perfectly well, but he

Henry Paul Coalson.

would know what he was doing and he would get about by himself and etc.

A. The last few years I don't know whether it was the majority or half the time or what. But he appreciated good food. The last dinner he ate he thanked my wife and said that was a good dinner and I appreciate it. There were lots of things he knew and just seemed to be alright. Other times he didn't.

Q. No further questions.

By Mr. Sadler:

Q. He was under constant—what I mean by constant, he was under the care of a doctor from 1951 until he died?

A. Not 1951—there was a spell in there that he just quit taking his medicine altogether.

Q. Generally during that time he was taking medicine prescribed by Dr. Thornhill?

A. Dr. Hickam. He believed he was getting better without it, and he did and he was getting along alright and he didn't take any.

Q. That was the summer he put out three acres of corn?

A. Yes.

Q. That was the summer after 1952.

A. In 1952 it took him—that first spell—it pulled him down a lot and he didn't fully recuperate from that a year or so.

Q. That was the summer of 1953—that he put page 30 } out the 3 acres?

A. It was somewhere right along there.

Q. He had medicine to take. In other words the doctors had prescribed medicine for him to take?

A. Yes, he had medicine, but he quit taking it.

Q. Did the doctors come there to the home to see him or was he taken to the doctor's office?

A. Well, I believe one time he went up there for a check-up himself at the hospital and stayed a while.

Q. Did the doctor's ever come to his home to see him?

A. Oh yes, they visited him there at home. They run tests on him you know, and later on when he was in the wood shed with my little boy—he was 2 years old then—he fell in there. My little boy—two years old—came to the house and said “granddaddy” and thats when they took him to the hospital. That was the first attack he had after '51.

Q. These times that you told Mr. Nuckols that he was getting along pretty well—he didn't take his medicine—he was

Mary Louise Coalson Jackoway.

feeling good—at that time he could sign his name, could he not?

A. Yes sir. I told him I hoped he lived to be a 100 years old. We even went to homecoming at Foster Falls.

Q. At that time he could sign his name and could read pretty well?

A. Well now his eye sight wasn't too good. He could some-
thing he could see. He never read the paper too
page 31 } much. He read the Bible quite a bit before the
attack and he read the paper a little. Now I just
don't know—things he could see—he'd spell the words, you
know.

Q. There was a question whether at the time he seemed to be better, he could sign his name?

A. Oh yes, he could sign his when he was better.

Q. That's all.

The Court recessed until 1 o'clock.

MRS. MARY LOUISE COALSON JACKOWAY,
recalled to the stand.

By Mr. Sadler:

Q. Mrs. Jackoway, you testified this morning concerning the physical condition of your father. Let me ask you if your father ever discussed with you on your visits here, his money matters—who was taking care of his finances and why and that sort of thing.

A. Yes sir, he discussed that right after his first cerebral hemorrhage back in 1951. He said that Thelma and Gene were taking care of it for him but they weren't getting paid for it. He said they are handling it for me as they are close by and I need them and he thought they were happy to do this for him.

Q. He said they were not charging him for this?

A. He said they would get nothing for what they were doing for him. He did not understand. He did not have a great deal of education and he didn't understand I don't think even about an executor taking so much because he said, "Oh No, Gene will get nothing and Thelma will get nothing. They are just doing this for me". And he felt they were happy to do it for him.

page 32 } Q. Did he say why he had asked them to do this?

A. He said they were over there—they were the closest ones.

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Q. And *you* father did have in addition to his regular railroad retirement pay, he had houses that he rented, is that correct?

A. Yes sir he had two houses that he rented.

Q. Did you know anything about any money that he had in the bank, Mrs. Jackoway?

A. Yes sir, when I came home in 1951, when he asked me to come and help him that summer and to stay with him, he said that he had sold the old Christley place which joined our place for either 4 or 5 thousand dollars and he said, "I want to give each one of you one thousand dollars—I want to give it to you as a gift to all of you". My husband and I—we didn't want to take his money but he said, "It's a gift—I don't care what you do with it—I want the 6 of you—not Henry, because I am giving Henry this house. He said I want to give the 6 of you this thousand dollars to do whatever you want as a gift. You can have it—just say when you want it and I'll get it".

Q. Did he ever tell you or say to you how his money, if he had any, how it was to go at his death? Did he ever tell you he had made a will or—

A. Oh yes, he discussed his will with all of us. It was no secret at all. He discussed it with every child that came home exactly that Henry was going to get the bungalow—the other would be sold. He said it was his wish that the land across from our house would be cut up into lots.

page 33 } By Mr. Nuckols: Your Honor, I would like to object to that—the will speaks for itself. I don't think Mrs. Jackoway can testify as to what the will says. We got a will here. It's as plain—

By the Court: I'll overrule for the time being.

By Mr. Nuckols: Excepted.

By Mr. Sadler:

Q. Go ahead Mrs. Jackoway.

A. Well, he just wanted to let us know that he felt the same about all of us—not any particular one, but he wanted Henry to have a little more because he helped him grub up the place when he was a little boy. They first moved up there when it was all mountain and he said that Henry deserved to have a little more than the rest of you and he felt the house would bring more than what we would get from the money in the bank and the sale of the property. He *he* talked freely about it to every one that came what his plans were.

Mary Louise Coalson Jackoway.

He just seemed to want to talk about it from time to time.

Q. Did he discuss with you after May 4, 1954—did he discuss with you after that—that's the time this money account was set up—did he discuss after that anything about the way he wanted his estate divided or what was going into the bank?

A. Yes, sir, he did. It was in 1956. I spent 3 weeks at home taking care of him and he was in very good shape that summer I was there and I asked him many questions how he was getting along—was he happy with conditions at home
page 34 } and he was very happy with my brother, his wife and their two little children. He missed the children—he cried at night when they went away to visit my sister-in-law's father, who was very ill. He said he was so attached to them, but sitting out on the front porch, he told me this which I didn't know anything about, but I should have. He said there is something that I want you to do for me as soon as I die. He said I want you to go to a lawyer because I believe that Thelma and Gene are going to cheat you all out of something. He said I know you are going to say Thelma is my daughter and she is not going to cheat—she wouldn't do that, but he said I feel certain Gene would cheat me and he said I feel that Thelma is going to cheat all of you and he told me and he said please go to a lawyer as soon as I die. I said, "Poppa, why can't we take care of that now"? Let's go to a lawyer now and he said, "no, I'm old and I'm sick and they are living right over there and he said I might need them sometime, but he said I feel they are going to cheat you and he said "I want the lawyer to check" because he said, "I have a hundred dollars a month that Thelma is supposed to be putting in the bank account for all of you and I want you to check and be sure she has put that in each month." And that he asked me to do, but I said I don't think Thelma would do that Poppa, and when I came up from Aruba—

By the Court: I think we are going rather far afield with this Mr. Sadler.

By Mr. Sadler: Well, that was not in response to my question, Judge.

page 35 } Q. He told you that Thelma was supposed to put one hundred dollars—

Mary Louise Coalson Jackoway.

A. Of money in the bank that was supposed to go to all of us.

Q. To go to all of you. Did he ever at any time tell you that he had set up a joint account?

A. No, sir.

Q. When did you first learn of that?

A. I learned of that when I received a letter from Mr. Groseclose saying that.

Q. That was about a year after?

A. A year after. We knew nothing like that at all.

Q. You received Mr. Groseclose's letter saying that everything would be divided equally including the bank account?

A. That's right.

Q. Did you *every* talk to your sister Mrs. Quesenberry about this joint bank account?

A. No, sir, I didn't. He thought that they were taking care of his business up until this time that he began to have a fear that they were going to cheat us and that was back in 1956.

By Mr. Nuckols:

Q. Mrs. Jackoway, sometime back in 1955 or 1956 when you were down here, did you try to get some money from your father—try to get him to give you some money?

A. No, sir. He didn't have it. He always said I'd love to give you something—I'd like to give you a little
page 36 } gift, but I don't have it.

Q. Didn't you try to get three hundred dollars from *you* father in 1955 or 1956 and try to get Mrs. Quesenberry to intervene for you to get that money?

A. No, sir, no siree.

Q. You had a brother living there all this time, did you not?

A. That's right.

Q. And don't you have a sister who lives in town, Mrs. Funk?

A. That's right.

Q. There are a lot of other people other than Mr. and Mrs. Quesenberry related to your father living here?

A. Yes.

Q. And they were here—did they live here from 1951 until the time your father died?

A. Many people.

Q. Your brother and your sister live right here in this town?

Mary Louise Coalson Jackoway.

A. Yes, sir.

Q. Did your father ever ask them to run his affairs? That he didn't trust Mr. and Mrs. Quesenberry?

A. I don't know. He trusted them at first until he asked me to do this in 1956 when he said they were going to cheat him.

Q. You're worried about that thirteen hundred dollars, aren't you Mrs. Jackoway?

A. About what?

Q. You're worried about that thirteen hundred page 37 } dollars that you feel you are going to be cheated out of?

A. Now?

Q. Uh huh.

A. No, sir. My husband is dying of cancer and we have insurance. He's in the hospital now and he would love to be here and testify because he didn't like the treatment my father got from the family.

Q. Did you at that time offer your father to get one of your brothers or sisters to take care of his account?

A. I wanted to go to a lawyer to do it and he said "No, he was old and sick" and he didn't want me to do anything about it until he passed away, but then go right away and I felt I would never want Thelma to know that he realized that—

Q. You said this to yourself?

A. Yes.

Q. You did not try to get your father to give you three hundred dollars?

A. Not in 1955, no, sir.

Q. Did you ever from the time he was sick until the time he passed away, ask him to give you some money or ask Mrs. Quesenberry to help you get some money from him?

A. When he sent me a thousand dollars until my husband could send money back from the Korean war, I was putting money on a house and I asked him for five hundred—for a loan of it and then my husband wired when I was all set up to buy the house in Swarthmore, my husband said the ship was coming back to San Diego and don't get the house—I returned the five hundred dollars to Mrs. Quesenberry. This was in 1951.

page 38 } Q. That's when you got one thousand—

A. When he wanted to give us all a thousand, but Thelma didn't want it.

Q. And from that time on you never sought to get any money from him?

Elizabeth C. Mills.

A. No, sir, I never had need to. My husband made plenty of money to support us in our way of living.

Q. That's all.

The witness stands aside.

MRS. ELIZABETH C. MILLS,
a witness of lawful age, having been duly sworn, testified as follows:

Q. Your full name is Elizabeth C. Mills?

A. Yes, sir.

Q. And I believe you are a daughter of the late Walter S. Coalson?

A. Yes, sir.

Q. And you live in Roanoke?

A. Yes, sir.

Q. Mrs. Mills, have often did you visit *you* father from 1951 until the time he died?

A. I think quite often. Once a month. Sometimes 2 or 3 months would go by.

Q. Would you state generally the condition of his health and physical ability at the time when you visited him. It's been testified to already, but—

A. Well, sometimes he would know me and sometimes he wouldn't.

page 39 } Q. Did he ever discuss with you any of his finances, who was taking care of his affairs for him?

A. He always told me that he would keep his money as long as he lived and when he was gone all of his money would go to all of the children.

Q. Go to all his children?

A. With the exception of Henry, but it was understood that his share would be that small house.

Q. Did he ever tell you that Mrs. Quesenberry was handling his finances for him?

A. She told me that she was taking care of his finances for him—he wasn't able to.

Q. Mrs. Quesenberry said that to you?

A. My father.

Q. Your father said that to you? That she was handling them that he wasn't able to?

A. That's right—he wasn't able to look after them.

Q. Did he explain to you why he wasn't able to?

Mrs. Henry Coalson.

A. His health—he was sick.

Q. Did he say anything to you about having to go to the bank?

A. No, sir.

Q. Did you know about this joint account until after your father died?

A. No, sir.

Q. Your witness.

page 40 } By Mr. Nuckols:

Q. Mrs. Mills, you said that the only thing your father told you concerning his business was that Mrs. Quesenberry was taking care of it.

A. He said she was taking care of his money—he wasn't able to take care of it himself.

Q. Were you ever there when any of his checks came in?

A. No, sir.

Q. You don't know anything about what happened to those?

A. No, sir.

Q. Do you know from your own personal knowledge that Mrs. Quesenberry paid his bills and took care of his business—did you know that she did those things?

A. He said that she was taking care of his money and paying the bills.

Q. That's all.

The witness stands aside.

MRS. HENRY COALSON,

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

By Mr. Sadler:

Q. State your full name.

A. Agnes Coalson.—Lula Agnes Coalson.

Q. Lula Agnes Coalson. I believe you are the wife of Henry Coalson, who testified this morning?

A. That's right.

page 41 } Q. When did you come to Pulaski to live with your husband Mrs. Coalson—what year was it?

A. In '51.

Q. And where did you all live after you came here?

A. We lived in his father's home.

Mrs. Henry Coalson.

Q. Did you consent to live there up until the time his father died?

A. Yes, sir.

Q. And who took care of Mr. Coalson from 1951 up until the time he died?

A. Well, we did. We stayed there.

Q. Did he ever stay with any of the other children for any length of time?

A. Not for any length of time. He did go down to his daughter's, Mrs. Funk, and stay 4 or 5 days one time.

Q. Just state generally his condition, physically and mentally. You were there with him constantly, were you not?

A. Yes, sir.

Q. What condition was he in say from 1951 until the time he died, generally?

A. Well, his condition was very good for the first 3 or 4 years and from then on he began having those *hemorrhages* and of course his condition began getting worse and on until the later years his memory would come and go and sometimes he would know what he was going and other times he wouldn't.

Q. In your opinion, would he have been able to handle his own business affairs say from 1954 on? That is, receive his checks, deposit them and go to the bank and make
page 42 } withdrawals?

A. Not at all times.

Q. Some of the time you think he would have been?

A. Well, not in the last year could he have done that, at all, but as I said, it just came and went with him.

Q. When did you learn that Mrs. Quesenberry was handling her father's business?

A. That is something I don't know too much about. The business affair I didn't mess with at all. It was all a secret from me. Of course I knew she did that. I knew she bought his medicine and paid all the bills, but I don't remember what year she started doing that. I think it was around '54.

Q. Did Mrs. Quesenberry ever tell you why she was doing that?

A. No, sir.

Q. Did Mr. Coalson ever tell you why she was handling it?

A. Well, he said that he wasn't able and he felt like his condition was serious and he talked a lot when he knew what he was doing and that he wouldn't last long and he wanted her to do it because sometimes he felt that he wouldn't be able.

Mrs. Henry Coalson.

Q. You didn't know anything about this joint bank account that we're having this controversy about, did you?

A. No, sir, I did not.

Q. Who received the rent money from his houses there, do you know? How those checks came?

A. Not us.

Q. Did Mr. Coalson received that money or what?

A. He received the money from the little house page 43 } that was by the side of him for the first few years, I don't remember the dates, but he received that money for awhile and then they finally took it over.

Q. Tell the Court whether or not during the years 1951 until his death, at all times, or during that time, whether or not he could sign his name, whether he could read or—

A. Yes, we could catch times when he could sign his name and he read the first few years a little and he finally got to where he could just read the headlines in the paper and he would look over the paper, but he couldn't see anything but the headlines and he finally quit that and we would read some things to him that he wanted to know, but we didn't tell him—he always wanted to know about the deaths and things like that, but we finally got to where we couldn't tell him things like that. But we could catch times when he could sign his name alright. There were lots of times when I seen him pick up a pencil and just write his name. He would do that you know.

Q. Just to be doing something?

A. Yes.

Q. Did you ever see him write more than his name?

A. I don't believe I did, not in the later years.

Q. When he would have one of these spells we're talking about—after those spells, could he at that time see or write his name?

A. No, sir, he couldn't see maybe for a day or two. He couldn't—he would talk about his eyes you know—he couldn't see and he didn't know maybe for weeks and then it would come back to him you know—just gradually come page 44 } back to him.

Q. Did he ever say anything to you that Mrs. Quesenberry was supposed to put some money in the bank for him—so much a month or something like that?

A. Well, I didn't talk too much with him about his business because I wasn't interested in it and it didn't concern me about his money, but he would talk sometimes and I would break it off because I didn't want him to worry about his business and I would usually turn it off and tell him that they

Mrs. Henry Coalson.

were taking care of it. I would change the subject and tell him that they were taking care of it.

Q. You don't know what understanding from statements from him—what understanding they had?

A. That was all kept a secret.

By Mr. Nuckols:

Q. Mrs. Coalson, I believe you said at times you could catch your father-in-law when he could sign his name. Do you also recall him signing his name with an "X"?

A. Well, I didn't have any reason to see him sign his name with an "X." I never saw him, I don't think.

Q. How often did you see him sign his name?

A. Well, I don't know. I varied. I just remember seeing him pick up a pencil you know and I have seen a tablet there when he had in drawer that he would sign his name on—he would be just sitting around with nothing to do.

Q. Did you ever see him endorse his checks that would come in every month?

A. No, sir, I never did.

page 45 } Q. You didn't—

A. I wasn't in on that at all. I never saw those after she took them over. Of course I did see his checks while he was getting them and he would always have me to count his two checks—he wanted to know how much he was getting and I would add the checks up for him, but that was all I knew about it and show him how much it was. He would just ask me to add his railroad checks. He tried to keep up with what he was getting and I would add those two checks together and he would maybe stick it in his pocket and then he would forget about it.

Q. I believe Mr. and Mrs. Quesenberry lived right next to the house that your father-in-law owned that you and your husband were living in, is that correct?

A. Yes, sir.

Q. Did Mr. Coalson go over to the Quesenberry house very often during the 7 years after his attack?

A. Well, the first year yes. He could walk over there good. He would go across the road by himself, but of course in the last year or two, I don't recall him going over there very often.

Q. You say in the last year or year and a half that he didn't go over there on very frequent occasions?

A. No, sir, I didn't keep up with any dates.

Mrs. Henry Coalson.

Q. Before this last year or two, did he go over there fairly often?

A. Yes, sir, he would go over there because he could get around and he had nothing else to do and he would walk over there.

page 46 } Q. Would he be going over there every day or several times a day?

A. Oh no—he didn't go every day.

Q. Did Mr. and Mrs. Quesenberry come over to see him very often?

A. Well Mrs. Quesenberry would come maybe once or twice a week or when he was sick she could come—

Q. More often?

A. A little oftener.

Q. Other members of the family come over?

A. Oh yes, all the other family came.

Q. I mean members of her family? Her daughters?

A. Well sometime they would come in the room with her—in his room.

Q. What about Mr. Quesenberry?

A. He would come in the first part of the years but in the last years, he was working and I didn't see much of him.

Q. You say he was reading the first three of four years after his heart attack in 1951?

A. I think he would read the headlines and maybe he could read a little of the newspaper.

Q. Did he discuss with you folks the news of the day?

A. I don't—sometimes he would see the headlines and would ask me to read it to him.

Q. Could you talk with him and he could understand—he could carry on a conversation with you?

A. At times, yes, sir.

page 47 } Q. You say at times—how much of the time could he not carry on a sensible conversation with you?

A. Well in the last year, of course it was worse.

Q. Let's say the first four years after his attack in 1951?

A. That was according to the attacks that he would have. They would always stay with him a little while. Right after those attacks of course he couldn't. It took him a while to get over them.

Q. Do you recall how often during that period of time he was in the hospital from those attacks?

A. How often?

Q. Uh huh.

A. Well, he was in the hospital twice I think.

Mrs. Henry Coalson.

Q. You mean twice in addition to the time he was in in Galax?

A. Yes, sir.

Q. Twice?

A. Yes, sir.

Q. Before he died?

A. Yes, sir. He was in there when he had this attack in '54 he went to the hospital and then when he died, he died in the hospital.

Q. So they were the two times between 1951 and 1958 that he was in the hospital?

A. Yes and the other times he stayed at home.

Q. They were mild—the other attacks, is that page 48 } right?

A. No, sir, he had some severe attacks.

Q. Oh he did—at home?

A. Yes, at home. One or two of them I recall when he lost the use of his leg and it took him several months to learn to walk.

Q. The usual attacks that he had—how long was he laid up—I mean get about—was it a week or two weeks or what?

A. Well, some of them would be a week—some of them would be 2 weeks—some of them would be weeks before he would get back to knowing how to find his bed.

Q. What would he have—a couple of those attacks a year?

A. Sometimes he would and sometimes he would have more. Sometimes he would have mild ones and maybe they wouldn't last quite as long.

Q. That's all.

By Mr. Sadler:

Q. Mrs. Coalson, let me ask you about carrying on a conversation and comprehending things when Mr. Coalson was in that condition—during that time would he have in your opinion been able to sign his name?

A. When he had one of those attacks?

Q. No, after he had the attack and when he became rational and carried on a normal conversation?

A. Oh yes.

Q. Would he have been able to sign his name?

A. Yes—you could catch him—I mean he did anyway, because she sent her papers and passport and Henry
page 49 } waited until he was able to sign them and he told him what it was and asked him if he could sign

Mrs. Henry Coalson.

them because she had to have them signed by him and he picked up a pencil and signed them.

Q. You waited until he got in condition to understand?

A. Yes, we waited until he was in condition to sign it and caught him in a good manner—you know.

Q. All right.

By Mr. Nuckols:

Q. This was in 58 that these papers were sent him, is that correct?

A. Yes, sir, just before she went to Aruba she sent her passport.

Q. And at that time your father-in-law's condition had deteriorated quite a bit, isn't that right?

A. Yes, sir.

Q. And his spells where he was not able to do much were quite longer during this year of 1958, is that correct?

A. In the last year.

Q. Now, during the early years after the '51 attack when he would have these milder attacks where he would be laid up for a week or three weeks—would his hand be shaking after the attack? Is that the reason he couldn't sign his name? Or what would be the reason?

A. Well, a time or two his hand would be stiff. It was almost paralyzed.

Q. Could you talk to him then?

page 50 } Q. Could he talk to you then? Even though his hand was stiff?

A. Well no, he could talk after awhile that came back to his hand—the use came back to his hand.

Q. But could he talk to you?

A. Not right at the time, no.

Q. After the illness was over when his hand was still stiff?

A. Oh yes, he got to where he could talk.

Q. And you could carry on a conversation with him?

A. Yes, sir.

Q. But he couldn't sign his name because his hand was stiff, is that correct?

A. No, that wasn't it. I mean he could sign his name. We waited until his hand wasn't stiff. We would wait until we could catch a time. We did for those papers.

Q. I realize that. But I mean before he would have an attack and would get over the attack, it would be awhile before his hand—

Lucille Amos.

A. That was his left hand.

Q. That time? But could he talk to you and carry on a conversation with you even though his hand was stiff?

A. Well, yes he would finally get to where he could talk.

Q. Did you ever have him sign any papers, Mrs. Coalson?

A. No, sir, I did not. I had no reason for him to sign any papers.

page 51 } Q. When did you see him sign anything other than this time when you came in and saw him signing something on a little pad?

A. I don't know as I saw him sign anything at all.

Q. That's all.

The witness stands aside.

MRS. LUCILLE AMOS,

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

By Mr. Sadler:

Q. Please state your name?

A. Lucille Amos.

Q. Where are you employed?

A. Pulaski National Bank.

Q. What is the title of your job?

A. Teller.

Q. You work at the window and wait on the customers?

A. Yes, I do.

Q. Do you know Mrs. Quesenberry sitting here?

A. Yes, I know her.

Q. I show you here Mrs. Amos a card which has the following signatures on it: Mrs. Thelma C. Quesenberry and A. W. Utt and it says W. S. Coalson and on the back it has May 3, 1954, day opened and address 409 Baskerville Street. Tell the Court whether or not you gave that card to Mrs. Quesenberry to open up an account with her and her father at your bank?

A. I gave it to Mrs. Quesenberry to have it made joint with her father.

page 52 } Q. Was her father in the bank at the time?

A. No, he was ill.

Q. How do you know that he was ill?

A. Well, she said he was and I'm sure he was. The account was in his name and as he was ill and not able to come to the

Lucille Amos.

bank and do his banking. She wanted the card so she could make it a joint account in order that she could make withdrawals for him during his sickness.

Q. And that's what she told you the reason she wanted the card?

A. As I recall it.

Q. Did you fill the card out or part of it?

A. Yes, I wrote Mr. Coalson's name and showed her where to have him make his mark and a witness to his mark.

Q. Did she advise you he was so ill he couldn't sign his name?

A. As I recall she did.

Q. And you showed her where to have him make his "X" and have it witnessed.

A. That's right.

Q. And did she then take the card out of the bank?

A. Yes.

Q. Did she bring it back to you? Or do you recall?

A. I don't recall whether she brought it back to me or not.

Q. And she said she wanted to change the account, is that what you recall?

A. To make it a joint account.

page 53 } Q. The reason she wanted to make it a joint account was that her father was sick and couldn't come to the bank and she could make withdrawals for him?

A. That's right.

* * * * *

Q. Mrs. Amos, let me show you some ledger sheets or whatever you call them from your bank, under the name of W. S. Coalson, Box 572, Pulaski, Virginia. Are these sheets from your Savings Account Department and they represent savings accounts in your bank?

A. Yes, sir.

Q. Would you tell the—how far back the savings account in the name of W. S. Coalson goes according to that record there.

page 54 } A. According to this it was opened up February 2, 1946.

Q. And would you generally look over the balances in that account from 1946 up to May 4, 1954—I mean the 3rd, and tell us *the* generally whether the account was the same or whether it was increased or decreased over those years.

Lucille Amos.

A. Well, there have been right many deposits and also several withdrawals on it.

Q. What is the highest amount this account reached between 1946 and May 3, 1954?

A. \$6,043.00.

Q. And what was the balance in that account on May 3, 1954 when it was changed to a joint account?

A. \$4,950.00.

Q. And that account up to that time was carried in the name of W. S. Coalson—Walter S. Coalson, is that correct?

A. Yes, sir.

Q. Subject only to his withdrawal?

A. Thats right.

* * * * *

Q. What was the balance in the joint account of W. S. Coalson and Thelma Quesenberry on October 21, 1958?
page 55 } A. October—what date?

Q. October 21, 1958.

A. It was \$8,037.61.

Q. And does this account show a withdrawal of the next day or a few days thereafter of \$1,000.00?

A. October 22nd, a thousand dollars.

Q. Do you know who withdrew the thousand dollars?

A. No, sir.

Q. Is that the only withdrawal that has been made from that account except when it was closed out?

A. Do you have another sheet to it.

Q. This?

A. No, that's not the same thing.

Q. Maybe this is it.

A. Now what did you ask me?

Q. The thousand dollar withdrawal was the only withdrawal from October 21, 1957 up until the time the account was closed?

A. Yes.

Q. All right—that's all. Mr. Nuckols may have some questions.

I will not offer these in evidence Mr. Nuckols.

By Mr. Nuckols:

Q. Mrs. Amos, identify that please.

A. It's Mr. Coalson's savings pass book.

Q. And is that savings book show on there—the pass book

Lucille Amos.

I mean—does it show the same information that you received off this card?

page 56 } Q. About the date the account was changed?

A. That's right.

Q. May 3, 1954?

A. Yes.

Q. And Mrs. Quesenberry's name is added to it?

A. That's right.

Q. Your sure that Mrs. Quesenberry got this card and brought it back to her or was it her husband?

A. No, Mrs. Quesenberry got the card and I don't know who brought it back.

Q. You don't know who brought it back?

A. No, sir.

Q. And you put the W. S. Coalson there yourself?

A. That's right and I wrote "His Mark" and told her to have him make his mark and a witness to that.

Q. Now did you handle any of the deposits that went into this savings account?

A. Well, I don't recall, but I presume I did.

Q. What about some of his checks—did you ever handle any of his checks? You know how many were signed on the back?

A. Which checks?

Q. His railroad retirement checks that he got in each month?

A. Well, I'm sure I have.

Q. You don't recall how they were signed?

A. Not any particular one, no.

Q. You discussed this case with Mr. Sadler any?

page 57 } A. No, I haven't, except that he told me I would have to come down here.

Q. You haven't discussed it with him at all?

A. No.

Q. You remember this happened in 1954 about this card, but you can't remember the checks that came in every month, Mrs. Amos?

A. I don't think Mr. Coalson had been in the bank for several years.

Q. And his checks come through—and his checks that somebody else would have brought in?

A. I don't recall how they were—I imagine they were—probably somebody had signed them and the witness to his mark, which was customary.

Lucille Amos.

Q. Before this 1954 you say Mr. Coalson had been in the bank for a good long time?

A. I don't know how long it had been.

Q. Well, you don't recall seeing him for a long time do you?

A. No.

Q. Do you recall seeing him after that?

A. After '54?

Q. Uh huh.

A. No I do not.

Q. You didn't think anything unusual about Mr. Coalson having somebody take something to him concerning his account?

A. No, sir.

Q. That's all.

page 58 } By Mr. Sadler:

Q. There in the bank the people who handle the deposits—there are others?

A. That's right.

Q. So necessarily any deposits for Mr. Coalson wouldn't necessarily come to your hands, would they?

A. No, they could come to any of the other tellers.

Q. All right.

By Mr. Nuckols:

Q. Just a moment. Speaking of that, how do you indicate on the pass book that you received the account?

A. "A."

Q. Is this your "A"?

A. Yes, sir.

Q. \$150.00 in November, '56, is that correct?

A. Yes.

Q. Is this your "A"—June 21, 1956 of \$100.00?

A. Yes.

Q. And here is your "A" in October and November of '58, is that correct?

A. Yes.

Q. You don't remember any of these, is that correct?

A. Slightly, I do.

Q. I thought this might refresh your memory.

By Mr. Sadler:

Q. Since May 3, 1954, can you testify from these records

Walter Wooling Coalson.

how many deposits of exactly \$100.00 were made
page 59 } into this account?

A. From when, now?

Q. From May 4, 1954.

A. Of exactly \$100.00?

Q. Of exactly \$100.00.

By Mr. Nuckols: Before she answers that, I would like to object to the question. This is not a bill to falsify surcharges—accounts. They brought up the fact that Mrs. Quesenberry is supposed to put \$100.00 a month into the account, but they certainly have not had any accounting or anything else concerning this thing. They certainly can't do it here now.

By Mr. Sadler: That is not the purpose of this—

By the Court: I overrule the objection.

By Mr. Nuckols: I accept.

A. There are 6—\$100.00 deposits I think.

By Mr. Sadler:

Q. 6 of an even \$100.00?

A. Yes.

Q. All right—that's all.

The witness stands aside.

WALTER WOOLING COALSON,

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

By Mr. Sadler:

Q. Please state your name.

page 60 } A. Walter Wooling Coalson.

Q. How old are you Mr. Coalson?

A. I am 37, sir.

Q. And where are you living at the present time?

A. At the present time—801 McPherson Avenue, Fayetteville, North Carolina.

Q. Fayetteville, North Carolina?

A. Yes, sir.

Q. Where were you living in the year 1951?

A. To the best of my knowledge, I was in the army at that time. I was stationed on base at Fort Bragg, North Carolina.

Q. You were stationed at Fort Bragg, North Carolina?

Walter Wooling Coalson.

A. Yes, sir.

Q. Were you there at the time of your father's first heart attack?

A. I can't recall whether I was or whether I was on maneuvers.

Q. Do you recall long after your fathers first *hemmorage* that you came to Pulaski?

A. No—I've been searching my mind—I'm not too good on dates, but I believe it was possibly the next year. I do recall that the next time I saw my father—well I was standing down at the porch of the house and I saw him sitting upon the porch and he had greyed and thinned out so much that I hardly recognized him from that distance.

Q. Do you remember what year that was?

A. I believe that was 1952—I can't be sure.

page 61 } Q. What condition was he in at that time?

A. Well, at the time that I saw him he was very poorly—he had lost a lot of weight.

Q. Did you carry on a conversation with him?

A. Every time I saw him I talked to him. He and I usually talked religion and also I must confess that I had asked him many times to help me. I wanted to get a house bought for my family. So he never would help me on it.

Q. Did you request his financial *assitance*?

A. Yes, sir.

Q. And he never would help you?

A. He never would help me. I think I sent him several letters. I felt that being away from home and all, I felt that he might help me and being human I called upon him for assistance—but it never came.

Q. How many children are there?

A. There are 7 of us.

Q. And where do you stack up in that seven?

A. I'm the baby.

Q. You're the baby?

A. Yes, sir.

* * * * *

page 62 }

* * * * *

By Mr. Davis:

Q. Have you ever received special treatment by virtue of your age?

Walter Wooling Coalson.

A. No, I haven't. I've heard rumors that he was going to help me from the family.

Q. I didn't catch your answer. What was it please?

A. I have heard rumors in our family in that I was the baby that the home place was going to me. During our conversations there was no talk of that and the talk was that all of us would share equally.

Q. You grew up there with the rest of the kids did you, with your father, is that right?

A. For me yes, and when I was seventeen years old I took a job working in Marion, Virginia, in the Piggly-Wiggly store there cutting meat and since that time I have been away from home since that time.

Q. What was your father's attitude toward the children.

A. He wasn't partial to any one of us. He loved us all and wanted to see us all be Christians—the right kind of people and I don't ever recall him showing any favoritism. He told me at one time he was thinking about giving us all a piece of money—a thousand dollars, but that is one reason I asked him again to help me out on getting a house.

page 63 } Q. That was on your home down in Carolina?

A. That's right—that was just before I got my house. Later on we were able to save enough money and got this house.

Q. During your lifetime there with the other children and your father—do you ever recall your father giving one child special treatment that he would not give to the other?

A. No, sir, I think that we got fair and just treatment—everyone of us—no favoritism.

Q. No favoritism at any time?

A. No, sir.

* * * * *

Q. You say that you are now living in North Carolina and were at the time of your father's first *hemorrhage*. Have you made periodic visits back and forth to your father's home?

A. Yes, sir, I have.

Q. On these visits you recall whether he had just had an attack or not. What I'm getting at right now is when you spoke with your father when you were in his presence, were you ever there when an attack had just taken place or when he was in ill health?

Walter Wooling Coalson.

A. No, sir, except when he was in the hospital in page 63 } a coma.

Q. What year was that?

A. That was before he died, in 1958.

Q. Just before he died?

A. I had many conversations with him and I thought that he knew—knew everything that we were talking about and I never wanted to give up the idea that he didn't, but as time went on we'd be talking about some religious subject or some subject and he'd be talking about so and so's house—something that wouldn't even be related to it and then I said to myself that he—

Q. When did these mix-ups in the conversation take place when he would go off on a tangent—do you know what year that was?

A. I've searched my mind and I can not be absolutely certain.

Q. You don't recall?

A. No, sir.

Q. Did he ever discuss with you his arrangements on his bank account and as to the paying of the bills?

A. No, I thought that Henry was taking care of it and I came up in later years—it was in the wintertime there—and they didn't have coal and I asked them why don't you order a ton of coal or two or three tons and they mentioned to me that they couldn't get it paid for—that Thelma wouldn't pay for it and then I realized—as far as the best of my recollection—that they didn't have control of the money as to the bills and things, but it was Thelma and I told him to go ahead and order

a couple tons of coal anyway and go tell them page 64 } about it—that you got it and you need it. As I recall that was the first time that I knew that she

was taking care of the money. He never did tell me exactly the arrangements he had, but that he had everything taken care of. He had money in the bank, but I never knew whether he had two hundred dollars or what. One time, if I may say so, I came up—I saw our house—the paint was coming up on it and it was falling down around the top. I went over and talked to Thelma and Gene about it—rather Gene left and went back to his filling station and I asked Thelma. I said Thelma, if Poppa has any money in the bank, certainly the house should be painted, repaired. She seemed to get very sore at me so without saying anything else about it or making

Walter Wooling Coalson.

her sore or anything, I invited her and Charlotte to go over and walk around the house and if they determined if it was falling down around Poppa and needed repairing and had the money—to go ahead and have the necessary repairs because our daddy would want that because the property was depreciating— would depreciate so much and I understand it never was painted and then after Poppa died it went for a year—it grew up around there—

By Mr. Nuckols: Your Honor, I believe we are going real far afield here, I hate to—

By Mr. Davis:

Q. One segment of your conversation—when you went over to talk to Thelma about it—about fixing up your home, what was the health of your father at that time?

A. As I recall he was—he wasn't too bad—he was a very sick man, but he was able to walk around in the
page 65 } house and *and* I sat on the porch with him and talked.

Q. Was he able to fix up the house himself?

A. Sir?

Q. Was he able to do the repairs and painting on the house himself?

A. No, sir, he certainly wasn't.

Q. He needed somebody to look out for that for him?

A. Yes, sir—no question about it.

By Mr. Nuckols:

Q. And your father never discussed his finances, is that it?

A. You speaking of the money in the bank? No, sir.

Q. Did you ever discuss who was paying the bills and etc. other than this one time you related now?

A. I don't remember he and I ever discussing the bills.

Q. Who was living in the house at the time when this was supposed to have occurred—no coal and your father was in there with no heat?

A. Henry and his wife Agnes and the children and my daddy.

Q. Who was paying the bills over there, you know?

A. I assume that my brother and sister were helping to run things around there, but they told me when I asked them about the coal that Thelma and Gene wouldn't pay for the coal and then—as far as I know—that's when I first realized they

Walter Wooling Coalson.

weren't managing things—but she was administering things—that's to the best of my knowledge.

Q. Your brother—was he paying any of the bills—the one that was living in the house? It wasn't his house, was it?

A. No, sir, it certainly wasn't. He told me he was buying lots of groceries and things, but they were giving him \$7.50—to the best of my recollection—that was all that he was getting and that wasn't even enough to sustain one man—not even my father—and they were receiving no other compensation at all for looking after my father and I couldn't understand things around there.

Q. You say you had tried to get some money from your father on numerous occasions?

A. Yes, sir.

Q. You didn't like being refused, did you?

A. I don't think we ever are—sometimes we go off on wild things.

Q. Did you kind of resent the fact that you couldn't get any money from your father?

A. I guess I did to a certain degree.

Q. Did you ever have any words with him about it?

A. No, not face to face. I might have written remarks of mine about it.

Q. Did you ever write after you knew Mrs. Quesenberry was paying bills and all—had control of the money? Did you ever try to borrow any money after that?

A. I don't recall. I might have.

Q. Did you ever get your sister, Mrs. Quesenberry, to help you get some money?

A. Not as I recall sir.

Q. Did you ask *you* sister at this time about the coal?

A. I don't recall—I seriously don't remember whether I did or not.

Q. What else do you remember except this one fact about this thing? Do you remember anything else? Did you talk to them at all this time?

A. I remember one other thing we talked about. I don't know whether it was at this time or not. When I would come up and go over to Thelma's and Gene's—Thelma would tell me something about it—Henry and Agnes wasn't treating him just right. I didn't know what the score was or which one to trust—to trust them or the other—and she suggested it might be best to put Poppa in a rest home. Not being able to know which one to trust, I think I remarked to her one time,

Walter Wooling Coalson.

"Maybe that would be best." But as time went on I was surely convinced that my brother Henry and his wife were doing a service for Poppa that I don't believe any of the rest of us could do. I hope I would have, but they did a wonderful service for him. Then I thought I realized what his trouble was.

Q. This time about the coal, you never did anything other than ask them about it, is that it, and you told them you'd pay for it if necessary.

A. I believe I remarked to them that I would pay for it. I believe I said that a while ago. Henry might be able to tell you more about that.

page 68 } Q. How far away did your sister, Mrs. Quesenberry, live from the house?

A. Estimating distance, I would say 125 yards.

Q. Had you ever had any trouble with your sister up until that time?

A. Personally?

Q. Uh huh—just what the usual brother and sister have?

A. Not that I recall, sir.

Q. You wouldn't have had any hesitancy about talking to your sister, is that right?

A. I never did. I came up all the time and I knew something was wrong. I kept remarking to Thelma and Gene that I wished we could all come to love each other more. That was the theme of my talk with them and they will surely bear me out on that.

Q. But you never asked about getting his coal, yourself, or why she didn't get the coal?

A. I don't remember that sir.

* * * * *

page 69 } Q. Up until about the last two years of your father's life when you'd come in and talk with him—could he carry on a conversation with you alright?

A. The last few years?

Q. All except the last years.

A. All except the last years? We always had conversations about different things. Just the year I noticed he didn't have exactly the presence of mind. I can't say what year that was though.

Q. You mean that was close to the end. You mean it was a year or so before—

John William Utt.

A. I wouldn't say it was close to the end. I'd say it was several years before he died. I could say that.

Q. You were just in for a week or something like that?

A. It might possibly have been when I was in for a week end.

Q. You noticed on that one occasion that his mind kinda wandered, is that it?

A. One time at the hospital, I thought I detected that. At home on several other occasions when we were talking his mind would wander.

The witness stands aside.

page 70 } WALTER S. COALSON ESTATE

MR. JOHN WILLIAM UTT,
a witness of lawful age, having been duly sworn, testified as follows:

By Mr. Nuckols:

Q. What's your full name sir?

A. John William Utt.

Q. Where do you reside?

A. 2410 Stanton Avenue, N. W., Roanoke.

Q. How old are you sir?

A. 50.

Q. 50?

A. 50.

Q. And where are you employed sir?

A. I am employed with the Norfolk & Western now.

Q. In May of 1954 were you working in Pulaski?

A. I was. I was furloughed from the railroad and I was driving for the General Motor line.

Q. Did they have an office here?

A. Yes sir, we had an office in the basement where Gene's office is upstairs.

Q. Were you living here then?

A. Yes sir, I lived at 15—Fourth Street, S. E.

Q. Mr. Utt, do you recognize that card?

A. Yes, sir.

Q. Is that your signature here on the bottom?

A. Yes sir.

page 71 } Q. Were you present when the "X" was put on there.

A. Yes sir, I was present when the "X" was put on there.

John William Utt.

Q. Where did that take place?

A. Over at Mr. Coalson's home.

Q. And had—why had you gone to the home?

A. Mr. Quesenberry had asked me to go along and witness this sign.

Q. This sign?

A. Yes.

Q. Do you recall whether this date is the date that you were over there or approximately the same—May 3, 1954?

A. I know it was in May.

Q. The first part of May?

A. Yes sir, something like that.

Q. Did you talk to Mr. Coalson at that time?

A. Yes, sir.

Q. How long were you in his presence?

A. I'd say 40 or 45 minutes. We talked a good bit.

Q. You talked a good bit?

A. Yes—we discussed this card and all.

Q. You discussed that card?

A. Yes.

Q. Where was Mr. Coalson—was he in the bed or up in a chair or where?

page 72 } A. He was in a chair.

Q. He was in a chair?

A. Yes sir, he was in a chair.

Q. Did you talk to him any at all before that card was signed by him?

A. Yes, sir.

Q. Do you recall whether or not Mr. Coalson took the card into his own hands and examined it?

A. Yes sir, he had it in his hands. He read it and I read it too. I think it was read out loud in fact.

Q. Did you read it out loud to him?

A. I believe I did. Yes sir.

Q. Was there any other discussion of the card other than you reading it?

A. Well, he discussed about—he wanted it so Mrs. Quesenberry could take care of his bills, his needs—whatever come up.

Q. Did he say anything else about the account than for her to have it while she was taking care of his bills?

A. He said he wanted everything taken care of and he passed on he wanted her to have whatever was left after all the bills was paid.

John William Utt.

Q. Mr. Utt, I'm going to read you part of this card and I want to ask you whether or not Mr. Coalson was aware of these words in this card at the time that he signed it.

"The undersigned joint depositors hereby agree each with the other, and with the above bank, that all sums
page 73 } now on deposit, heretofore or hereafter deposited,
by either or both of said joint depositors with said bank to their credit, as such depositors, with all accumulation thereon, or and shall be owned by them jointly."

Q. Do you know whether or not Mr. Coalson read those words or they were read to him and discussed—that the account would be owned by them jointly?

A. It was discussed and he seemed to understand it.

Q. He seemed to understand it?

A. Yes.

Q. And then the following words, "with right of survivorship". Was that discussed with him?

A. That was discussed too.

By Mr. Davis: We would like for the whole card to be read.

Mr. Nuckols: We can get the rest of it in.

Mr. Davis: Will you go ahead and read it.

Mr. Nuckols: You want me to read it now?

Mr. Davis: Yes.

Mr. Nuckols: All right.

Mr. Davis: "After survivorship"

page 74 } Mr. Nuckols: Let me find it now. "with right of survivorship and be subject to the check or receipt of either of them or the survivor of them and payment to or on the check of either or the survivor shall be valid and discharge said bank from liability. Each of the undersigned appoint the other attorney, with power to deposit in said joint account moneys of the other and for that purpose to endorse any check, draft, note or other instrument payable to the order of the other or both said joint depositors. Payment to or on check of the survivor shall be subject to the laws relating to inheritance and succession taxes and all rules and regulations made pursuant thereto. The rights or authority of the bank under this agreement shall not be changed or terminated by said depositors or either of them except by written notice to said bank which shall not affect transactions

John William Utt.

heretofore made. It is agreed that the clause on the reverse side is a part of this contract. Each depositor agrees to the rules and regulations of the above named bank governing the type of account or accounts used and such alterations as may be made without further notice to each or either of them, and it is further agreed that this bank is authorized to change the account or accounts with a service charge in accordance with its rules."

Mr. Nuckols: Whew!

Q. Mr. Utt, did you and Mr. Coalson talk about anything else at the time you were there?

A. We talked about the weather and other things like you naturally would. We talked about his condition and all.

Q. Could he carry on an intelligent conversation with you?

A. Yes, sir.

Q. Was there any deficiency that you could notice in his capacity to talk or discuss or think at the time that you were in his presence?

A. No sir, didn't seem to be—he seemed to be very alert.

Q. What about his physical condition—what was page 75 } it at the time?

A. He seemed pretty weak, I wouldn't know exactly how to express it, but he didn't seem like he was able to get around too much—seemed like he was sitting around in the chair mostly.

Q. When he put his "X" to that card, what was the condition of his hand when he signed it—when he put the "X" on there?

A. It seemed like it was kinda stiff like and shaky.

Q. Was there any impediment in his speech at all—was there any thickness of the tongue or any other impediment of his speech?

A. No sir.

Q. Had you known Mr. Coalson before?

A. No sir.

Q. Did you have any interest in this matter?

A. None whatever.

Q. Did Mr. Coalson discuss anything else with you now other than the weather and the contents of this card that you recall?

A. Just like I told you before, he said he wanted her to take care of all his business and keep the bills and everything paid up and take care of the account and all and said after

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everything was paid up after he was gone, everything was paid up and all, whatever was left was hers.

page 76 } Q. Who was in the room at the time this was executed?

A. Mrs. Quesenberry, Mr. Quesenberry, myself and Mr. Coalson.

Q. Neither Mr. or Mrs. Henry Coalson were present, is that correct?

A. No, they wasn't there.

Q. Do you know whether they were in the home?

A. No sir, I do not. I don't remember seeing them.

Q. Did Mr. Coalson, at that time, give you in discussing it, any reason for this desire to make this account into joint names—for Mrs. Quesenberry to have it at his death?

A. He went on to say that she was the only one he could depend on and he wanted her to take care of his business for him.

By Mr. Sadler:

Q. You said you have never seen Mr. Coalson before?

A. That's right.

Q. How long had you been working for General Motors Trucking Company at that time, May 3, 1954?

A. I believe it was in March.

Q. And this was in May?

A. Yes, sir.

Q. You knew Gene Quesenberry real well, did you not?

A. I had lived in Pulaski since the 30th of May, page 77 } 1950.

Q. Did you know Mr. Quesenberry before your company starting this place up there to store those trailers?

A. Yes, sir.

Q. You saw him frequently while you were working for this company, did you not?

A. Oh yeh—I had my office downstairs and he had his downstairs.

Q. Did you see Mrs. Quesenberry often? Did you visit in their home?

A. No sir. She would come to the service station sometimes.

Q. Was she with you the day you and Mr. Quesenberry went up to Mr. Coalson's home?

A. Yes, sir.

Q. Did she go up there with you?

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A. We went from the filling station over to the home and I believe she got in the car with us there and went over.

Q. And Mr. Coalson was there by himself as far as you know?

A. I didn't see no one else.

Q. Didn't you think it right strange that a man of his physical condition would be there in the house by himself.

A. They could have been back in the kitchen or somewhere or another.

Q. Did you knock on the door?

page 78 } A. It seemed to me like Mrs. Quesenberry went on in. I don't know whether the door was open or not.

Q. You were there 40 or 45 minutes and you didn't hear anybody else in the house or see anybody else the whole time you were there?

A. I didn't see them—I wouldn't say I didn't hear them—like I say, I wasn't listening for them.

Q. Hear any children in the house?

A. I don't remember seeing any.

Q. Mr. Utt, I assume that you thought that this man couldn't sign his name—couldn't read or write. Is that correct?

A. No sir, I didn't know whether he could or not. I figured he could because he was bound to because he was a conductor on the railroad and they had to keep all kinds of forms filled out and they have to be signed.

Q. Did you think it was strange that he was making a mark then rather than signing his name?

A. I never give that a thought myself. Look like he couldn't write. He was kinda stiff in his hand.

Q. Left hand?

A. I don't know which hand he wrote that with.

Q. Did he get up and move around any while you were there?

A. No, he didn't get out of the chair.

page 79 } Q. Not having known the man, Mr. Utt, never having seen him before—not being acquainted with his general health long before he got sick, you are not in a position to say how bad off he was at that time, are you?

A. Well, no sir—I couldn't tell how bad off he was.

Q. Who presented the card to him to sign?

A. I believe Mrs. Quesenberry.

Q. I believe you told Mr. Nuckols that he said the reason

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he was putting this account in his daughter's name was that he wasn't able to handle his money, make withdrawals or pay his bills and Mrs. Quesenberry was going to do that for him. Is that correct?

A. Going to take care of his business.

Q. Going to take care of it?

A. Yes.

Q. And the card was filled out already when you saw it wasn't it?

A. He put the "X" on it and I witnessed it.

Q. Was his name already written on the card?

A. Yes sir, it was already on there.

Q. Mr. Utt, did you think it strange or not that somebody didn't witness his signature that knew him better than you—or known his signature? Did you think anything about that one way or the other?

A. Well, I never thought nothing about it.

Q. Did you think one way or the other why—
page 80 } whether or not it wouldn't have been better for
you to have gone to the bank when you signed this
card. Did you think anything about that?

A. Well, I hadn't give it much thought.

Q. They just told you they wanted you to witness the signature and you went there for that purpose?

A. That's right.

Q. And you did that?

A. That's right.

Q. Now you don't tell the Court that you read all that's on this card, do you?

A. It was discussed there and—

Q. You tell the Court that you read him this print on this card?

A. Yes, sir.

Q. All of it?

A. I don't know whether every word was read on it, 'cause it was wrote on the back and everywhere else and the biggest majority and the contents of it was discussed.

Q. You take it then that he couldn't read it himself. Is that your impression?

A. If you wanted to discuss something you'd have to read it to get everybody to knowing what it was about.

Q. Who read the card to him, you?

A. I read it.

Q. You read it?

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A. Yeh.

page 81 } Q. You take it he couldn't read it himself?

A. Well, I was—I didn't know what it was myself until I read it.

Q. Have you ever seen one before?

A. Yes, sir.

Q. Do you know whether Mr. Coalson had?

A. I don't know whether he had or not?

Q. Do you understand the language of this card, Mr. Utt?

A. No sir, I wouldn't think I do.

Q. That's lawyer language isn't it? You don't pretend to tell the Court that you understand it, the language this is written in.

Q. Who requested that you read this card to Mr. Coalson?

A. I don't remember who done the requesting, but we was—we were just discussing it and what it was and how it was and what it meant.

Q. Are you saying now that the card was not read to him or what?

A. I said it was.

Q. You said it was? You read it?

A. Yes sir.

Q. Mrs. Quesenberry read some of it to him too?

A. I reckon she explained some of it.

Q. I'm talking about reading it now, word for word. Were you the only one that did any reading of the card?

A. I don't know whether she read any of it or
page 82 } not—seems like to me she did read part of it.

Q. At whose request did you read the card?

A. I wanted to know what it was about myself.

Q. You say now you don't know what it was about after you read it, is that right?

A. It's true there's a whole lot of terms in there that can mean a whole lot of different things. You'd have to have a book to figure out what it would be.

Q. Then you can't tell the Court that Mr. Coalson in his condition understood what was on this card, can you?

A. Well, we tried to explain it to him.

Q. The best you could?

A. That's right.

Q. The best you understood it, you tried to explain it to him?

A. That's right.

Q. But you can't tell the Court that he understood what was on this card, can you?

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A. No, that would be impossible, 'cause you might take one meaning and I might take another.

Q. That's right. But he told you he wanted Mrs. Quesenberry to handle his money because he knew she'd take care of it?

A. That's right.

Q. From all your conversation, that was the—from everything that happened, the request was that he wanted Mrs.

Quesenberry to handle his money because he knew
page 83 } she would take care of it that he wasn't able to
handle it himself, isn't that true?

A. That's right, he talked like he wasn't able to go to the bank or nothing to take care of it and wanted her to take care of the bank business and look after his needs.

Q. All right.

By Mr. Nuckols:

Q. Mr. Utt, there was an additional understanding as to what the money was to be—how the money was to be held, wasn't it—other than to just take care of his needs? Did you not previously state then it was to be hers?

A. It was to be hers after he was dead and gone—it was to be hers after expenses were paid, what was left.

Q. Now Mr. Utt, let me ask you this. You understand what joint depositors are, don't you?

A. Yes.

Q. And you understand what "hereby agree" means, don't you?

A. Yes sir.

Q. Do you understand what "shall be owned by them jointly" means?

A. Yes sir.

Q. Did you explain that and discuss that with Mr. Coalson?

A. It was discussed with all three of us and him too.

Q. And the right of survivorship. Was that dis-
page 84 } cussed with him?

A. It was.

Q. You don't recall what those things meant, do you? It's been a long time—do you recall what you told him they meant?

A. No, I don't recall, but—

Q. But you read those words to him and you discussed them with him?

A. Yes, they were discussed.

Q. And you know what they mean?

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A. With a reasonable amount of knowing what they meant.
(Laughter)

Q. I imagine you figured that was up to the Court to interpret this, instead of you, is that correct?

A. That's right.

Q. Do you recall whether you read as far down to him as "It is agreed that the clause on the reverse side is a part of this contract"?

A. It was read—the whole thing.

Q. You know what they would be referring to if they said "This Contract", don't you?

A. That's the bank account.

Q. Did he understand that at the time?

A. Yes sir.

page 85 } Mr. Sadler: We object to that question about
whether or not he understood it. I don't think this
witness is qualified to say that.

Mr. Nuckols: I'm through with this witness now.

Mr. Sadler: I forgot to ask him this question. How did you happen to go to Mr. Coalson's house? Were you in the filling station or where?

A. Yes sir, I was at the filling station.

Q. What did Mr. and Mrs. Quesenberry tell you they wanted you to do?

A. Wanted me to witness and sign this card.

Q. Did you witness this signature?

A. Yes, I did.

Q. Did you know what was on it at that time? Had you read it at that time?

A. When he said he wanted me to go along and just witness it?

Q. Yes.

A. No, but he told me it was kinda of a card to transfer a checking account—a savings account, so that either one could use it.

Q. Or withdraw from?

page 86 } A. Yes.

Q. Was that on the way to Mr. Coalson's house or before you started?

A. I don't remember exactly whether it was down here at the office or whether it was in the car going over there.

Q. I thought you said awhile ago you didn't know what you were going to sign, until you got to his house.

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A. I didn't see the card until I got over there. I guess Mrs. Quesenberry had it, but I didn't read none of it.

Q. Now Mr. Utt, isn't it true that if you had read this whole card to Mr. Coalson, you'd had to wake him up and say do you understand that now. This thing puts a person to sleep, don't you think?

Mr. Nuckols: It didn't put me to sleep and I read it.

Mr. Sadler: I tried to get you to stop. (Laughter)

Q. I'll ask you, you don't know whether you understood it or not.

A. Well, there's a possibility don't neither one of us understand it.

Q. All right sir. That's all Mr. Utt.

The witness stands aside.

WILLIE MABLE COALSON FUNK,

page 87 } By Mr. Sadler:

Q. State your full name.

A. Willie Mable Coalson Funk.

Q. Are you the daughter of the late Walter S. Coalson?

A. Yes.

Q. His oldest child, I believe?

A. Yes.

Q. Where do you live?

A. I live at 612—5th Street, N. E., of this city.

Q. Do you work or are you a housewife or—

A. I work and I keep house too.

Q. Your father, in the testimony here, had a stroke—a cerebral *hemorrhage* in 1951. Please state at that time whether he was able to work—that is, any gainful employment?

A. No sir. He did regain his strength and he loves to farm and he did do a little work for the next couple of years, but he really should not have worked after having that heart attack and *hemorrhage*, but he would work a little.

Q. How often did you see him Mrs. Funk, from 1951 up until the time he died?

A. Nearly always once a week and then twice a week, I'd say.

Q. I believe he suffered some other attacks before his death over that period of something like seven years?

Willie Mable Coalson Funk.

A. Yes, he had several of them.

Q. Several of them. Just describe to the Court what his condition was, if you recall, in 1954.

page 88 } A. Well, at that time he was not well—that first attack was in '51 and in '54 he was certainly not well.

Q. Do you know whether or not he was partially paralyzed so that he couldn't write his name or not?

A. For a while after these attacks he could not write his name. He would mark it with an "X", but as he got better there were times he could write his name.

Q. What about his eyesight. Would you tell us about that.

A. Well, it was not good.

Q. Could he read, or do you know?

A. To the best of my knowledge, for several years he had not—he probably did that first two years after he recovered from the first attack.

Q. In talking to him, was he able to carry on a normal conversation, or would his mind wander?

A. It would wander.

Q. I believe the testimony is that he was better off at times than he was at other times?

A. Yes.

Q. Is that the way you found him to be?

A. Yes, between these spells when he would recover from them, but he still was not rational at all times.

Q. What income did your father have, Mrs. Funk, that you know about?

A. After he retired from the railroad?

Q. Yes, from 1951.

page 89 } A. Well, there were two checks—one was small—the other one—they were both \$150.00 or in that territory and also the rent of two houses.

Q. Do you have any idea what his total monthly income was? Could you give us your best guess.

A. It would have been \$200.00 or more.

Q. Who took care of your father from the time he had this attack in 1951 until his death?

A. My brother and his wife. They lived in my father's home and they took care of him.

Q. That's your brother Henry?

A. Yes.

Q. Did your father ever stay in any one else's home for any length of time—any of the other children's home?

A. No, only after he returned home from the hospital in

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Galax, he did stay with Thelma—I think about three weeks. I don't know exactly the time. Until he got able to go over to his home.

Q. Were you situated so that you could take care of him while you worked?

A. No, I worked and he did come to my home and stay, as well as I remember, 3 or 4 days, but I think that was in 1956.

Q. Was his condition such, Mrs. Funk, when you saw him at least once a week—was his condition such that required somebody to be with him all the time?

A. Yes, he was never left alone.

Q. And Henry or his wife one, assumed that responsibility?

A. That's right.

page 90 } Q. Now when did you—let me ask you Mrs. Funk, did you know anything about your father's business affairs—how much money he had in the bank, if any, and what accounts he had. Did you have any knowledge of that?

A. Well, I knew he had a bank account, but as for the amount I did not know the exact amount. I did not ask him any questions about his business as he was old and sick, but I did talk to Thelma.

Q. You knew during this period of time—some time that your sister, Mrs. Quesenberry, was taking care of your father's financial affairs, did you not?

A. Yes.

Q. Do you remember about when that was you learned about that?

A. Well, pretty soon after she took over. That was in 1954.

Q. In taking over she collected the rents and get the pension checks and handle the whole thing?

A. Yes.

Q. When did you actually know of his joint savings account. Do you know anything about that?

A. Well, I did not know until the time she claimed the money that it was a joint account. It was my understanding that she could have the authority to look after his business, take care of his money and deposit the right checks, withdraw it for hospital bills or any expenses.

Q. In talking, you say you talked to Mrs. Quesenberry often did you, about your father's financial condition?

A. There were several times that we did talk about that.

Q. Was that after 1954?

A. Yes, it was. The first time would probably be 1954.

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Q. In talking to Mrs. Quesenberry about it, what statements did she make to you concerning the money—your father's money—how it would go at your father's death and that sort of thing.

A. Well, she told me several times that she was only to look after his business when he could not do it himself and we were both sitting in her dining room one day and she was at the end of the table and she had this book where she kept a record of what she took it and paid out in there on the table, and I was on the side of the table and it dawned upon me right there—I wondered if she would get any more for doing that and I asked her if she would and she said, "I'll get just what the rest of you do".

Q. You wondered if she were getting paid for handling it?

A. Yes.

Q. Did she tell you anything about that she was putting money in the bank for your father?

A. Yes, I knew she was doing that.

Q. And she told you in response to your question that she would get exactly what the rest of you got?

A. That's right.

page 92 } Q. Was she talking then about after the death of her father or during his lifetime?

A. At his death. That was my understanding.

Q. I believe you were in touch by correspondence with Mr. Groseclose, you were in touch with Mr. Quesenberry, after he qualified to administer the estate?

A. Yes sir.

Q. And when did you first learn that Mrs. Quesenberry was claiming the balance of this joint account?

A. Well, it was a little over a year after my father's death—it was given in as one of the assets of the estate.

Q. It was turned in as an asset of the estate

A. Yes.

Q. And did you receive correspondence from the administrator—Mr. Quesenberry, or his attorney, to the effect that this money would be divided under the will equally?

A. Yes sir.

Q. You say you never discussed with your father any of his financial affairs after he got sick?

A. No sir, he was old and sick?

Q. Did he ever say anything about he wanted Henry to have the house that he was living in or how he would want his property to pass at his death.

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A. I cannot recall. We all understood that Henry would get the house and two lots and it was alright with all of us.

Q. You understood that, but you don't know whether you got that directly from your father or not?
page 93 } A. I cannot recall.

Q. During his lifetime, did your father ever show any partiality or preference of treatment to one child or another?

A. Never. He would have done anything for one as quickly as he would have for the other.

Q. You think he loved all the children the same?

A. Absolutely.

Q. I assume he knew that some of the children had certain capabilities and some didn't have and that sort of thing?

A. Of course as a father I assume he did.

Q. Did you ever talk to Mrs. Quesenberry after the death of your father concerning the money?

A. Well, time went on and I couldn't learn anything, I couldn't find out anything and I would ask her what was going to be done and she said, "I don't know anything". Well, I said when I ask about it, no one seems to know anything—won't anyone tell me anything and she said for me to ask him about it, he was the administrator.

Q. She never made any statements to you after your father's death about dividing the money?

A. No, nothing.

Q. Your witness.

By Mr. Nuckols:

Q. Mrs. Funk, I believe you said this account was turned in as an asset of the estate. Did you know the appraisal of the estate does not list this account?

A. A letter that I received listed it as part of the estate, from Mr. Groseclose, and told us how much each
page 94 } of us would receive of that amount in the bank.

Q. Do you know the appraisal as listed in the Clerk's Office downstairs in Will Book 23, Page 393, on the page of your father's estate, signed by the three appraisors, certified to by the executor, inspected and approved by Mr. Moore, the Commissioner of Accounts, does not list this \$8,000.00, as part of the estate?

A. It was in a letter that I received, as I say, it was listed as part of the estate.

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* * * *

Q. From the attorney, Mr. Groseclose, he told you that it was part of the estate, is that right?

A. In that letter it was always my understanding that it was a part of the estate.

Q. Do you realize, or did anybody ever tell you that a joint account or a jointly owned house with right of survivorship, that when one of the owners dies—part owners, when they die, that that property has to be reported—has to be listed with the State Department of Taxation on the Inheritance Tax Returns? Were you ever told that?

A. No, sir, I didn't know anything about it being a joint account.

Q. Did anybody ever tell you—did any attorney ever tell you that because of the laws in Virginia concerning taxes from property jointly owned by people, and one of page 95 } them dies and it has the right of survivorship clause in the deed or contract or whatever the instrument is, that it has *go* to be listed and declared to the Department of Taxation. Were you ever told that?

A. Well, I knew about inheritance tax and that it all had to be done in a legal way.

* * * *

Q. Mrs. Funk, you know whether this property that was sold after your father's death, do you know how much it brought?

A. Sure.

Q. How much?

A. The land brought \$10,100.00.

Q. Is that the house Walter said was about to fall down on your father's head?

A. Yes.

Q. It brought over \$10,000.00?

A. And some land.

Q. Were you of the opinion that the house was about ready to fall in Mrs. Funk?

A. Well, it was certainly in a run-down condition, going down those last few years.

Q. It was going down, but it wasn't ready to fall down on anybody's head?

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- A. It did need repair.
- page 96 } Q. Now your brother and his wife were living in the house owned by your father. Is that correct?
- A. Yes.
- Q. This is not the house your father gave them under the Will?
- A. No sir.
- Q. He gave them another home?
- A. That's right.
- Q. And during the time your brother was living there with your father and probably taking care of his personal needs since he was sick, is it not correct that your father took care of most of the expenses of the house.
- A. Yes he did, the light bill, the phone bill—most of that—he had always said he wanted to maintain a home while he lived. He helped some on the groceries, of course he did not cover it all.
- Q. He carried on most of the business?
- A. Yes.
- Q. And that continued up until his death, did it?
- A. Yes sir.
- Q. Mrs. Funk, when your father would have these spells, sometimes you'd have the doctor up there and three times he was in the hospital. Is that correct?
- A. Yes, that's right.
- Q. One time in Galax, one time in 1954 and when he died?
- A. Yes, I know it was three times.
- Q. And the other occasions you'd have the doctor to him?
- page 97 } A. Yes.
- Q. Now on these occasions when he would be sick and released from the hospital, when they released him, could you talk to him then? Would they release him before you could talk to him—before he could understand?
- A. Well, you could talk to him, but he wasn't rational at all times.
- Q. Wasn't rational at all times. Well now, would this last a day or so or week, or what?
- A. Most of his attacks would last for several weeks. Usually it did.
- Q. For several weeks, you say?
- A. Yes.
- Q. And during this several weeks he would be rational sometimes and irrational sometimes. Is that it?

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A. More irrational.

Q. More irrational. Now during this period of time from 1951 until your father's death in 1958, how much of the time would you say he was irrational because of his illness—percentage-wise? Would it be a third of the time or half of the time, or a fourth of the time or two months out of the year or what?

A. Well, after—you say '51?

Q. Yes, after that.

A. After the first attack, it took him some time to recover from that. There was a period of time in there between '54 that he seemed to get along pretty good page 98 } and was very rational, but after the next attack, each one gradually grew worse.

Q. Now after the '54 attack when he was in the hospital, after that, did the attacks come more often?

A. Yes.

Q. Do you know when it was that *you* father was in the hospital?

Q. Well, I knew it was in '54, but the exact month I don't know. I believe that was the time he was in the shed and the little boy found him. I forget whether it was in the spring or fall. I believe it was in the spring.

Q. I believe you said Mrs. Quesenberry and her husband took care of him the first three weeks after the Galax attack?

A. Yes sir.

Q. After he returned?

A. Yes sir.

Q. Do you know of any other occasions he went over to their house after these attacks?

A. No, not for any length of time. He was in and out when he was able to walk over there.

Q. That's all.

By Mr. Sadler:

Q. Mrs. Funk, one more question. From 1951 up until the time your father had this second attack, did he handle his own finances up until that time?

A. Yes, I think he did.

Q. Was it after his second—

A. He realized his condition was growing worse page 99 } and that the time would come when he could not look after himself and that's how come he got her to handle his business.

Q. All right.

MR. COALSON.

recalled to the stand.

By Mr. Sadler:

Q. Mr. Coalson, you testified yesterday generally along the lines of the physical condition of your father over the years and you lived there with him day by day, was your father ever left *along* in this house from 1951 until his death?

A. Oh yes, he might have stayed there a few nights by himself. Oh he made several trips to town—probably walked to *down*—he did as I recall it now.

Q. After the first attack?

A. After the first attack.

Q. What about after the second attack?

A. Well after the second attack I think it kinda comes back to my memory, I think it was in March. He came home. I don't know how long he stayed up there—two or three weeks I believe and it took him quite a while to get where he could get to walk you know. Had to feed him in bed for quite a while and it got to where he could get up and come to the table and that took several months and he got where he wanted to go to church and we would take him to church.

Q. After that his condition was such that somebody should have been with him?

A. After that attack—we had to stay with him—one of us all the time.

page 100 } Q. Did your father discuss with you his financial affairs?

A. Yes, many times. I knew what he had in his Will. He practically put it in my hand. He said I want you to read it—I'm going to take it over to Thelma's and let her keep it. He told me what was in it and I gave it back to him. I said, "I won't read it—I'll take your word for it". And he spoke of how many lots he would have and about 3 acres back where I live and between 4 or 5 acres between the home place and the house and he said with what that will bring, and with what money I already have in the bank—I think you all will get about equal.

By Mr. Nuckols: I would like to object to the question as to what the Will said and what it meant. The Will speaks for itself. It's here. A copy of the Will. Mr. Coalson can not interpret the Will and decide what it says and I don't think it's admissible as evidence—his father's explanation of whats in the Will.

By The Court: This witness can not interpret the Will but I do not understand that to be the purpose of the question.

Mr. Coalson.

I admit the answer for the time being.

By Mr. Nuckols: All right.

By Mr. Sadler:

Q. As I understood, your answer was the disposition of the house and acreage in the Will and the money that everybody would come out about equal—all of his children?

A. Except me. He said that little bungalow might be worth a little more. He said I had done more for him page 101 } and I and I deserved it.

Q. It would be a little more than the rest of them?

A. That was understood with all of them.

Q. Let me ask you this. Do you know what your father's income was monthly? About the time he retired from the railroad?

A. Well, I did know. The houses weren't rented at all times. When they were both rented it would run around \$200.00 a month.

Q. That was his retirement pay?

A. Yes, and a supplementary pay—something like that—a check he got for about \$17.00. I believe the others were \$130.00 or \$131.00 or something like that.

Q. When did you know that Mrs. Quesenberry that he had asked her or they had an agreement or something about handling his—

A. Well, sometime in—after he got back home from that attack in '54. I knew that he had to have some arrangements to pay his hospital bills and he made those very shortly after he got back home. The only way I knew it was he said they were going to take care of them and it was understood and nobody objected to it. It was alright with us.

Q. Did he tell you why he was asking her to take—

A. Well, we knew why—I understood later on about him marking "X" on his checks and taking the checks and pay his bills.

Q. Did you ever talk to Mrs. Quesenberry about any kind of a bank account or did you know he had a joint page 102 } bank with Mrs. Quesenberry?

A. I didn't know that until he said that everything was all right and he spoke many times about his bank account. I didn't know that until the others told me she had withdrawn that money.

Q. That's the first time you knew he had a joint bank account?

Mr. Coalson.

A. That's right. I never knew what the arrangements was, as I figured we wouldn't have any trouble. I figured it would be done fair the way he wanted it.

Q. Did your father ever show any preference Mr. Coalson, during his life time from one child to the other?

A. Well, when we was all in need he was willing to help—any of us.

* * * *

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* * * *

Q. The question was, did Mrs. Quesenberry or your father either one, ever discuss with you whether or not she was getting paid for handling your father's money?

A. No—yes, I mentioned to him one time that if she would get a commission for handling it and he said "No", I didn't know that". He said he had helped them and he says I want to have a talk with them and I don't want that. They are supposed to be doing it free because they are getting an equal amount and I tried to get him to draw it up in plans and pass enough money between the two of them to make it legal and he never did as I know of.

Q. You tried to get him to do that?

A. Yes sir, I tried to get him to do that.

Q. His view was that they were not to get paid for handling the money?

A. That was the understanding right there.

Q. Did you ever discuss this with Mr. or Mrs. Quesenberry about this after you talked to your father?

A. I don't know as I ever spoke to them. They come in the house and would slip in and out and they would never say "Hello, how are you", or nothing.

page 104 } Q. I wanted to ask you about that. You heard Mr. Utt testify yesterday that he was in the home there where you were staying—for some 45 minutes and saw nobody. What room in the house did your father stay?

A. You enter the house in the hall way and go back a little ways and turn right. It was his room—a front room. There was a door there and a dining room, another door and the kitchen. Many times we would be back in the kitchen there—just see the door go shut and we knew somebody was in there and figured it was them.

Mr. Coalson.

Q. Mrs. Quesenberry felt free to go see your father without knocking or you all knowing that she was there?

A. Yes.

Q. You said something about your father's hearing. You say his hearing was bad?

A. Yes, it had been bad for years before he ever had a stroke—the first one in '51. He had been hearing bad for years.

Q. Did he have a hearing aid or anything?

A. No, I don't think so—I know quite a few had wrote to him—he never had one as far as I knew—not while I was around.

Q. Well now, did you have to speak close for him to hear?

A. Pretty loud—like I'm talking now—normal talk you; know.

Q. Did these strokes seem to affect his hearing—could he hear better after a stroke or before?

A. Well, it didn't seem to get worse—it didn't
page 105 } get better.

Q. How about carrying on a normal conversation—was his presence of mind so that he could carry on a long conversation, or would his mind—

A. Yes, especially if you talked to him about religion or the railroad. He would talk to you for hours about the railroad.

Q. How about anything else?

A. Well, if it interested him he would, otherwise he never did talk much. He'd rather be laying down resting. That's the way it was.

Q. Could he comprehend things better after one of these attacks would pass off?

A. Well, actually when they'd pass off, why it left him with one of his eyes being bloodshot and we could tell it and we would watch him and he was never better, you know, as far as his physical condition—

Q. I'm talking about his mental condition—his capacity to comprehend things—if he could carry on a normal conversation—was that ability affected by these strokes?

A. Oh yes, after or towards '56 somewhere—the last two years that he was living or something like that—everytime the children would come there and he wouldn't know them.

Q. So his brain was affected by these strokes—as well as his body?

A. Well now, his body didn't—it didn't seem to affect his body as much as it did his brain because he recuperate and

Mr. Coalson.

one time we wanted to get him a wheel chair, but the doctor
was afraid he'd fall over backwards and he'd
page 106 } hurt himself and he'd walk around by holding to
things and it got to where he could walk and get
around by himself.

Q. He was determined to help himself?

A. I don't know—he was a little stiff getting in and out
of the bathtub—I'd have to help him, you know. Of course
his age—

Q. Well, he required almost constant care by you or either
your wife, either one?

A. Yes, we wouldn't leave him—when we did we'd call
Mrs. Quesenberry and he'd want to know if we had got any-
body. Only thing we had any authority to do was to get some-
body to stay with him. She wanted to know if we'd call Ethel,
or Mable, his sister. That was like the blind leading the blind
when you had them two together.

Q. Mrs. Quesenberry would want to see that there was
someone capable to stay with him when you all weren't there,
is that right?

A. Well, she wasn't too much interested in that. I've seen
him walk from her house over to our house and leave him
there and he'd walk on over there.

Q. Who paid the utilities on the house you were living in—
Mrs. Quesenberry pay the light bills?

A. Yes, she took care of that with his money and got a
little money for groceries. Of course everything I made and
what we had saved—we have enough to furnish a home. I
didn't make very much, but it was all I could get.

Q. I believe you are a brickmason?

A. Yes sir.

Q. All right, sir.

page 107 } By Mr. Nuckols:

Q. Mr. Coalson, this house that you father lived
in—well—how much is it worth?

A. I don't know—I think somewhere around \$4,500.00 is
the appraised value.

Q. In your opinion is that pretty close to it's value, \$4,-
500.00?

A. Well, I imagine—of course the house cost about half of
that to build it at the time and the depreciation an all—it's
very much run down and I'm not too much familiar with the
price of real estate.

Q. Now you say after 1956, or beginning about 1956, when

Mr. Coalson.

the other children would come in—out of State or out of town, your father would have trouble knowing them or recognizing them, is that correct?

A. Oh yes, he would. There were times when I'm sure he didn't recognize them.

Q. But before that, most of the time he would recognize them, is that it?

A. Unless it was like the attack in '54—it took him quite a while to recuperate from that.

Q. Now in the year '51, after your father returned from Galax—when your father was well enough to go home—up until '54, you say your father was well enough that he would spend nights alone—you folks would be out of town for some particular reason?

A. Yes, he has spent nights there, I'm pretty sure, by himself.

Q. And then even later when you and your wife and family would go someplace, you would call on Mrs. Quepage 108 } senberry to watch out for him while you were gone?

A. Yes—or get somebody to stay with him. He paid the bills. She paid his bills and we just let her look after—

Q. Your father did pay most of the bills of *runing* the household?

A. Of running the house, but no upkeep. The plaster fell off the bathroom so you know how bad it was—that's what you call falling in on your head isn't it?

Q. That's right—it is. I'm talking about bills for electricity and the telephone and heat—he paid most of those is that correct?

A. Well, he had some timber there—the first few years there—he helped me saw wood when I wasn't working and one time I had a lot of slabs. He helped me saw them up. That was in '54—shortly after he had that attack, I believe.

Q. That was in the winter of '54, you say?

A. Yes, of course I fired a lot of wood all the time—that's what we used all the time. I furnished the wood for year—fuel for upstairs.

Court recessed for lunch at 11:55 A.M. Trial was resumed at 1:00 P.M.

By Mr. Nuckols:

If it please the Court, I'd like to make a motion at this time. The children in their action alleged in Paragraph #8,

that on the 3rd day of May, 1954, that W. S. Coalson was incompetent and was unduly influenced in setting up a joint savings account. I would like to make the motion that the evidence that the complainants have presented concerning this allegation be struck from the record as it in no wise shows any undue influence. The only thing concerning the competency of Mr. Coalson was that

page 109 } he was sick a number of times, none of these times were at the time this transaction took place. They had the burden of proving with convincing evidence and that there was undue influence exerted and that he was incompetent. I don't feel the evidence is convincing as to any undue influence or as to incompetency. Now, as to the signature. There is nobody to deny that this was the signature of Mr. Coalson. There is no denial on their part whatsoever that that was his "x". Therefore, the evidence as presented concerning the ownership of this account, in my opinion, is inadmissible as there has been no showing of fraud or mistake or agreement and unless there has been allegation of that—they can not put on in parole evidence to vary the terms of this contract or agreement. Unless this thing is not clear in what it means. They have not tried to show what it means. I believe if the Court would like to go over one of these while I'm discussing it, I would appreciate it. This is the Peoples National Bank. Maybe I'd better get one—it's the very same wording. Here's the one that was introduced. "This contract", which is the very word in this instrument here which

I handed to Your Honor. On the fourth line from page 110 } the bottom line—it speaks of this contract and this contract is one by its own terms—its one between three different parties—the joint depositors—that's Mr. Coalson and his daughter, Mrs. Quesenberry, and the bank and in it is says that "all deposits and accumulations shall be owned by them jointly with right of survivorship". Now if the mere contention was to do this for a convenience—to change this account for convenience—I would say that the wording would have to be quite different from this contract here. Now the contract speaks quite frequently in several places of the joint deposit and that they shall be the owners of it jointly—with the right of survivorship. Now the case which complainants have cited, King v. Merriman, which they say is the authority in Virginia concerning these accounts. The statement which is signed by the decedent in this particular case—this is directed to the bank—signed by the decedent only, "You are hereby authorized and requested to change the savings account number 533 now standing in my name as A. D. Dotson, to a joint account to read A. D. Dotson

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or Mrs. Lottie King and subject to the check of either of us or the survivor". This was signed by Mr. Dotson only as Your Honor can plainly see, with this card here and these few words here, we got an entirely different case. In this Meriman case, the Court in discussing the right of survivorship section of the Code, and the language of this particular request changed to a joint account, says that the statement does not contain language from which a presumption of an intention to create a joint tenancy with the instant of right of survivorship might flow and then it goes on to say in Section 55-20 of the Code—survivorship was abolished except as to a estate devised or conveyed to persons in their page 111 } own where it manifestly appears from the tenor of the instrument that it was intended the part of the one dying should then belong to the other and that in speaking of bank accounts in conjunction with this particular section—it seems that it says "It seems to be well settled that a bank account may be so fixed that two persons shall be joint owners thereof during their lives and the survivor can take on the death of the other—this might depend upon the terms of the deposit—that is the contract with the bank or for the intention of a deposit that is disclosed by the declaration oral or written." In this instance the contract as the Court said here, "the contract is the thing that controlled". They said that the words in this particular case did not say anything about the survivorship after the death of one of the owners, where this card does. This instrument—this contract does and it's very clear. That is the basis for our motion that the entire evidence presented by the complainant be struck at this time.

By The Court: I'm going to overrule the motion for the time being. Put on your evidence.

By Mr. Nuckols: All right sir.

MRS. THELMA C. QUESENBERRY,
a witness of lawful age, having been duly sworn, testified as follows:

Q. Please state your name.

A. Thelma C. Quesenberry.

Q. Thelma Coalson Quesenberry?

A. Yes.

Q. You are one of the defendants, is that correct?

Thelma C. Quesenberry.

A. Yes.

Q. And you are the daughter of the late Walter S. Coalson?

page 112 } A. Yes.

Q. Mrs. Quesenberry, how close do you live to your father? To the home that your father lived in? Before he died?

A. It's a street and two lots between our house.

Q. How long have you lived that close to your father?

A. Ever since we were married.

Q. And how long has that been?

A. 34 years this month.

Q. You've been living there right at your father's home for 34 years?

A. This fall—in September it will be 34 years.

Q. Did any of the other children other than your brother Henry, who lived in the house with your father—did any of the others live close by?

A. No, only one sister lives in Pulaski.

Q. Mrs. Quesenberry, I hand you a book thats entitled "Savings Department, Pulaski National Bank, Pulaski, Virginia." Would you identify that.

A. Well, it's the one that was my fathers', W. S. Coalson, that he brought to me.

Q. When did your father bring that to you?

A. He brought it to me the day that he brought the Will and handed it to me and said, "I'm giving this to you".

Q. Now Mr. Quesenberry, this Will that you are speaking of—I believe it's dated the 3rd of February, 1953—did your father bring you the Will at that time?

A. Yes.

Q. How soon after the Will was made did he
page 113 } bring it to you?

A. Well, I suppose it was the same day.

Q. And is that the same day this book was brought to you?

A. Yes.

Q. What did your father state to you when he brought you this book and this will?

A. He told me a little about the will and says, I'm giving that to you and I'll go with you anytime to the bank and get the proper papers fixed with your name on it so that it would be mine.

Q. Now, had this been discussed any time before, or did you discuss it any time after this particular day?

Thelma C. Quesenberry.

A. Yes, numbers of times.

Q. When was it first discussed?

A. In a few days we were talking about it and he said that he wanted me to have it and—to use for whatever I wanted to.

Q. He said that?

A. Yes—so then I told him I won't use any of it for myself while you live because something might come up that you'd need it and then it went on and it was talked numbers of times and he said you can get Gene to go to the bank for you.

Q. Who is Gene?

A. My husband.

Q. This gentlemen right here?

A. Yes, and he could get the proper papers fix it so it will have my name on it and give it to me—it was a gift to me.

page 114 } Q. Now when did your father actually sign this card—the card which has been presented in the evidence?

A. It was talked about, as I said, at different times, it was about the card and it was signed on the 3rd of May,

Q. 1958?

A. 1958,—1954.

Q. 1954, yes. Mrs. Quesenberry, that card right there—did you see your father make the “x” on it?

A. Yes, I did.

Q. When did you put your name on the card?

A. I had put my name on it before and then he “x’d” it.

Q. Who was there when he made that “X”?

A. This Mr. Utt—also before in talking Gene said we could bring a witness and witness it.

Q. You say your father said that?

A. Yes, so then I talked to Gene and Poppa talked to both of us about it and Gene said Mr. Utt would be a good reliable man to witness this and that is when it was done.

Q. When your father discussed this account with you, even before this was signed, was anybody else in the room or in your presence? Husbands or daughters or brothers or sisters?

A. When this was being signed?

Q. No, any of the times when you and father were discussing this account?

A. Well, Gene would be—he would talk it with Gene and I.

Thelma C. Quesenberry.

Q. Now at the time this card was signed, where was your father?

page 115 } A. He was at his home in his room.

Q. Which is across the street and 2 lots down from you?

A. Yes.

Q. Where was he in the room—was he in bed or standing, setting up at the table, in a chair or what?

A. He was sitting in a chair.

Q. What was done with the card when it was brought to him? Was it presented to him?

A. Yes, it was and we told him about it and he looked at it and he said, 'Yes, I know', and he knew what it was all about.

Q. Did anyone in the room read over that card out loud to your father?

A. Yes, Mr. Utt did.

Q. Mr. Utt did?

A. Yes, sir.

Q. Do you recall whether you read the entire front of the card here?

A. Yes, I'm sure it was all read and he knew and understood all about it.

Q. I believe your father had been in the hospital this spring, had he not?

A. Yes.

Q. Before this? Do you remember when it was that he was in the hospital?

A. Well, he went up the last of March—about the 24th and got home the 12th of April.

Q. He was home on the 12th of April?

page 116 } A. Yes.

Q. So this was three weeks later that this card was signed?

A. Yes, sir.

Q. During that three weeks time, had you and your father had any discussion about getting that card or the account?

A. Yes, we had.

Q. Was this the day you discussed it when your father suggested bringing a witness?

A. Yes, well, even before that—he thought it would be best.

Q. Mrs. Quesenberry, your father had been sick for quite a while, I understand—since '51. Since his sickness who had taken care of him and his affairs?

Thelma C. Quesenberry.

A. He lived at his home, but the business part of it was put in my care—and Gene, and we looked after that and seen that he had things.

Q. Did you look after any of the personal needs?

A. What do you mean?

Q. Did you provide food for him or did you provide when he was sick—did you provide him medicine for him or anything like that?

A. Yes, if he got a doctor, I had to call the doctor—go get his medicine and I seen that he had money for his food and he maintained his home in every way—his bills were all paid by me of his money.

Q. And did this start shortly after he had his attack in '51?

A. Yes.

page 117 } Q. I believe Mrs. Funk testified that your father stayed with you for about three weeks after he returned from Galax, is that correct?

A. He was there two weeks and he came and stayed at my house until the last of May—almost three months and then he went home and he walked back and forth to my house and took his meals all summer—ate at my house.

Q. Is this when you started taking over the business?

A. Yes—of course there was some of it he did look after at times, but the main things I did.

Q. Mrs. Quesenberry, who took this card and the book back to the bank after your father signed it?

A. Gene took them back to the bank.

Q. That's your husband?

A. Yes.

Q. What was done with the book when it was returned?

A. Well, we showed it to Poppa and he saw it and he said it was all right and he was pleased that it was over with and he wanted it done.

Q. Did your father at any time make any statements in your presence directly to you concerning the reason why he made this account the way he did—why he transferred it and put it in both of your names—with the right of survivorship?

A. Well, different things was talked over in that line. I told him that I wouldn't use any of it for myself in case something would come up that he would need it and he said that whatever would be left would be yours.

page 118 } Q. You say your father brought you this Will that had been prepared—did he say anything to you concerning the contents of the Will?

A. Well, some.

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Q. Do you recall what he said?

A. He spoke of that Henry would get the house and after the sale if there was anything it would be divided amongst the others from the profit.

Q. Did he say anything with relation to the account and the Will itself?

A. He said that's not in the Will—I'm giving this to you—he just said that.

Q. And this was in February, '53?

A. Yes, sir.

Q. Mrs. Quesenberry, you said that you took care of your father's affairs—what checks came to you made out to your father, W. S. Coalson—what monthly checks did you receive?

A. Well, there was one from the U. S. Treasury Department—a supplemental, one was \$179.00, one was for \$131.00, which was increased a little later to \$145.00, and also the rent from one house up through '55. Sometimes I wouldn't have a renter in there for a month or two. The rent from this other house was paid to me.

Q. Mrs. Quesenberry, did *you* father execute these checks—did he sign them?

A. He signed them with his "X."

Q. Signed them with his "X"?

A. Yes, sir.

page 119 } Q. Did he do this all the time, or just on occasions?

A. No, he started doing that when he got his checks from sick benefit he started out with his "X". We read them—Gene did and I explained it he could either sign his name or put an "X." and have two witnesses and he decided himself that he would use an "X." He said "I won't sign anything else no other way but with my "X" and that's the way he did.

Q. Did he continue to sign these checks prior to the 6 or 7 years before he died?

A. Yes, he did, with his "X."

Q. During this entire six year period?

A. Yes, sir.

Q. At the time your father told you to use the money and you said you wouldn't do it while he was living—did he tell you to use just a certain amount of the money or did he tell you—what did he tell you about using the money?

A. He said it would be mine and I could use it any way I

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wanted to and I told him I wouldn't use any of it on myself as long as he lived—which I didn't.

Q. Mrs. Quesenberry, when Mr. Utt was up there and this card was read to your father, do you recall whether or not Mr. Utt discussed with your father the words in this agreement, "Shall be Owned By Them Jointly"?

A. Yes, sir.

Q. You say he did?

A. Yes, sir.

Q. Did *you* father enter into the discussion with him concerning this?

page 120 } A. Well, some, but that was the time when we went to the bank to get papers—it would be mine.

Q. Well now, at the time that this *occured*, what was your father's condition as far as his physical and mental condition—what was his condition at that time?

A. Well, he had had this sick spell—he was weak in ways, but he was mentally alert for a long, long time.

Q. Was his physical condition, other than just being weak, was there any stiffness about him or anything?

A. Why I don't think so.

Q. How soon after this did your father get up and get about? Do you recall?

A. After this was signed?

Q. Or had he been up and about?

A. Oh, he was up. Yes, and getting around.

Q. Oh, he was up and about before this card was signed?

A. Yes, he was.

Q. And how long was it before he had another sickness?

A. A long time—that was—he had no real bad spells for quite a while—several months or longer.

Q. Mrs. Quesenberry, in 1958—the latter part—after your father died, I believe your husband qualified as Executor of your father's estate, is that correct?

A. Yes.

Q. Were you with your husband at the time he qualified downstairs here?

page 121 } A. Yes, sir.

Q. What was said at that time concerning this savings account?

A. Well, when he was asked if there was any money or bonds or anything like that, well then Gene told them this amount, but I told him, I said now what about that.

Thelma C. Quesenberry.

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A. I was sitting beside of Gene and I said, "Well, what about the money—we know about that, of it going to me at his death. He said, "Well, we'll tell that it was made in inheritance, or something like that. It should be reported and which he did.

Q. I believe in March of 1959, you and your brothers and sisters received a letter from Mr. Groseclose in which he said that this account belonged to everybody. Is that correct?

A. Yes.

Q. Well, at that time had you agreed with anybody or had you told anybody that you were considering it a part of your father's estate?

A. Well, Gene knew it that I hadn't said anything to anyone else—also Mr. Groseclose saw the thing there and he said he talked with him about it. He says, "Yes, I saw that—yet he mailed out those reports.

Q. Had you told Mr. Groseclose that this savings account belonged to the estate?
page 122 } A. No, I hadn't.

Q. Had you ever agreed with anybody that it belonged to the estate?

A. No, I hadn't.

Q. I believe shortly after that you came to see me about it, is that correct?

A. Yes.

By Mr. Davis: When did she come to see you?

By Mr. Nuckols: I'll have to look in my file. Whether I can find out right away, I don't know. I'll put this in the record. The best that I can recall was the latter part of the summer, but I couldn't say for sure—of '58.

By Mr. Sadler: You mean '59, don't you?

By Mr. Nuckols: '59, yes, but I wouldn't say for certain about it.

Q. Now, Mrs. Quesenberry, when your husband brought this book back to you, gave it to you, you say you took it over to your father?

A. Yes, I did.

Q. What did your father do with the book?

A. He looked at it and he knew about and he says I'm glad its finished and over with.

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Q. Well, did he take the book and keep it himself, or what did he do with it?

A. He handed it back to me and he says, "It's page 123 } yours, you keep it"—which I then took it.

Q. Where has the book been since that date?

A. It's been in my care.

Q. You had it the whole time?

A. Yes, I did.

Q. What about this \$1,000.00 that was drawn out by your husband—how was that done?

A. Wasn't that \$1,500.00?

Q. No, a \$1,000.00 in October 22, 1958, that I believe your husband *testified* was used for some expenses of the estate. This was after your father died.

A. Oh yes, well it was after he asked what money he was going to use to pay whatever expenses would come up until after this was settled and he asked if he could use that. A \$1,000.00 and I said, "Yes, but you'll have to put it back—pay it back—it would be lending it to the estate for things as they come up to be paid and which it was and later—

Q. And later he paid it back?

A. Yes, sir.

Q. And this book was given to him at that time?

A. Yes.

Q. What happened to it after that—did he return it to you?

A. Yes he did.

Q. And have you had it in your possession ever since that day?

A. Yes, I have.

Q. We'd like to make this Exhibit "A."

page 124 } By Mr. Sadler:

Q. I believe your father worked for the railroad for a number of years, is that correct?

A. Yes, sir, for over 46 years.

Q. He worked hard—for how many years?

A. For over 46 years.

Q. He was a frugal man and during that time he accumulated some money in the bank and bought some property here in Pulaski, had he not?

A. Yes.

Q. And he worked hard for his family, did he not, wasn't that the purpose he was working and trying to save?

Thelma C. Quesenberry.

A. He worked for his family.

Q. And he from time to time helped all of you children to try to get a start in life and to own your own homes, did he not?

A. Yes.

Q. And he helped one about as much as the other, didn't he if he had the opportunity?

A. Yes, he would help.

By the Court:

Q. The question was, he helped one about as much as he helped the other, is that correct?

A. Yes.

By Mr. Sadler:

Q. And up until the time he had this stroke, he was still working for the railroad and he rented some property and had some income from that. Is that correct?

A. Yes.

page 125 } Q. Was he living by himself at the time he had this first attack?

A. No, Henry was there.

Q. Henry was there in the house with him at that time?

A. Yes.

Q. Was Henry married at the time that happened?

A. I don't know.

Q. His wife was not there, is that correct?

A. No.

Q. After he had the attack he was no longer able to work, he continued, did he not, to try to take care of his money, to collect his rent and to put some in the bank if he had some left over?

A. Well, that year he was on the sick list—he felt like he might be able to go back to work and then he decided that attack and his age, it would be best to retire.

Q. He could have done either one—it was his option?

A. Yes, sir, he felt that he was able to work.

Q. At that time he felt that his children were pretty much self-supporting, did he not and there wasn't any use in him working any longer for the railroad, because he had enough to live on the rest of his life? Isn't that true?

A. Well, I guess that is true.

Q. Now what income did he have specifically, from his retirement check and from the rental on his house here?

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A. Well, the house rent at times would maybe be different amounts.

page 126 } Q. How much did he get from his retirement—his pension check?

A. Well, one was \$17.90 and one was \$131.00 and a year or two later it was increased to \$145.00—maybe a few cents. Sometimes it would be a month or two when there wouldn't be anyone renting the house—we couldn't get anyone.

Q. When he had them rented, his income per month would be over \$200.00?

A. Yes.

Q. And when neither were rented, it would be about \$160.00.

A. Yes.

Q. Let me ask you again. I don't believe you answered. After he had the first attack, he recovered sufficiently, you say he thought about going back to work?

A. Yes.

Q. At that time he was collecting his own rent money and making his own deposits, paying his own bills, was he not?

A. I was looking after that for him except the house that was next to his home. I didn't start collecting the rent from that until the latter part of 1955.

Q. Was the other house—you were looking after it as early as 1951?

A. Yes.

Q. Did he request you to start looking after that house for him—or how did that come about?

A. Yes, he did. He come to us about a week before he had this first heart attack and he asked us if he had any sickness or if anything happened, if we would take over
page 127 } and look after it, which we did.

Q. In other words, he wanted to know if he got sick and couldn't look after his affairs, he wanted to know if you and Gene together would look after his affairs?

A. Yes, sir.

Q. And you told him you would?

A. Yes, we would do what we could for him.

Q. Did he say anything about paying you for doing it or not, or was that discussed at all?

A. No, he use to tell me that if there was anything I wanted I could have used the money, but I didn't.

Q. Now, you say in 1953, when he made his Will, up to the time he made his Will, you were only looking after one house—

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you were taking care of his home and pension checks, were you not?

A. I was looking after the pension checks and one house.

Q. Were you making deposits for him?

A. Yes, after medicine or bills—he maintained his own home and if there was any left a couple of months accumulated, I took it and deposited it in the bank.

Q. Now all this money that was deposited in the Pulaski National Bank in this account either before or after it was changed from his name to both of your names—that money was his money, was it not—it came in to him for rent or pension or whatever it was. That is correct, is it not?

A. It was coming to him.

Q. Now you say in 1953 he brought you this bank book that Mr. Nuckols showed you here.

page 128 } A. The day that he brought the Will he had come from Mr. Brown's and he told me it was mine.

Q. He told you that it was yours?

A. That he was giving that to me.

Q. And he had already told you that if anything happened to him he wanted you to handle his business affairs?

A. Yes.

Q. Now he was a man who wanted his bills paid—he was a scrupulous man and wanted bills paid on time, didn't he?

A. Yes, just as soon as anything would come in and I'd pay it.

Q. When he got sick and went to the hospital and he had a doctor bill or hospital bill, he wanted that paid, didn't he? Right then, as soon as it was made?

A. When he told me to see about that—he didn't worry about it because he knew I would pay it.

Q. I'm talking about your father himself—he wanted everything paid right on time, didn't he?

A. Everything was paid right up to date.

Q. He had done that all his life?

A. All the time.

Q. And he gave you this book—are you contending now Mrs. Quesenberry, that at that time he made you a gift of the money in the bank at that time in 1953?

A. Yes, he did.

Q. He gave you that money at that time?

A. That's when he handed it to me and said, "Thelma, I'm

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giving it to you." I'll go with you to the bank at any time and get the proper papers fixed and get your page 129 } name on it so it will be yours.

Q. And you say you held that book from that time up until the time he died?

A. Yes.

Q. But it was not changed over to your name until 1954, which was about a year later?

A. Yes, almost a year. This was talked all along.

Q. Over a year. I believe the Will was made in February, 1953, and the account—joint account was made in May, 1954?

A. Yes.

Q. So all that time you had the book—all that time?

A. Yes.

Q. It was only in his name? Could you tell us how the withdrawals were made—one on March 12, 1953 for \$642.67, one on April 15, 1953, for \$200.00. How were those withdrawals made from that account?

A. What year was the *the* first one made?

Q. March 12, 1953—a withdrawal of \$642.67 was made.

A. Well, I don't know other than it was some he drew out to fix the bathroom and the house beside of his.

Q. Did he draw out some money to do that with?

A. Yes.

Q. And he had to have the book to do that didn't he?

A. Yes, I guess he did.

Q. So he had the book—

page 130 } A. This was before that date.

Q. This was March 12, 1953, according to the bank records and you say he delivered you the book on February 2, 1953. He gave you the money at that time, yet you say now he withdrew the \$600.00 of it to spend on the bathroom. Is that correct?

A. I'm not sure I understand—I know he did draw out some to fix that bathroom. He took it to the bank himself.

Q. He took it to the bank?

A. He did, but whether it's on that date or not, I couldn't say for sure.

Q. Now on April 15, 1953, it shows that \$200.00 was withdrawn. Who withdrew that \$200.00?

A. What was the date again?

Q. April 15, 1953.

A. There was \$400.00 and some dollars paid out in May.

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Q. That's right—May 4th.

A. Yes.

Q. Who made that withdrawal.

A. I believe we did.

Q. Who's "we"?

A. Gene and I paid the hospital bill.

Q. That was your father's hospital bill—the time he was in the Pulaski Hospital?

A. Yes.

Q. Now, you don't know about the \$200.00. Mr. Nuckols, that book shows—

By Mr. Nuckols: I can give it to her—see if page 131 } that might help her memory—here are the two he was asking you about there.

By Mr. Sadler:

Q. May 12, 1953 for \$642.67.

A. I think that must concern that bathroom.

Q. Now who's home was that bathroom built in—which house?

A. The one beside the house that father lived in—it was his.

Q. It belonged to your father?

A. Yes.

Q. How about the \$200.00 on April 15th? You see that there? (Indicating).

A. Yes, I see it. I don't know unless it's more than he needed for that purpose.

Q. You think that might have been the same thing?

A. I believe that it was.

Q. He made those withdrawals himself?

A. He came and got the book.

Q. Now the \$452.65, you say was to pay his hospital bill for the attack he had in March of '54?

A. Yes.

Q. He came home in April, '54?

A. Yes.

Q. Now Mrs. Quesenberry, isn't it true that your father gave you the book for safe keeping along with the Will. He could come and get it anytime he wanted it to make withdrawals, which he did at times?

A. Yes, but concerning the bathroom he did.

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Q. That was money for his benefit, was it not—
page 132 } it was his house?

A. Yes—an improvement to the house.

Q. Isn't it true on May 4th he had a hospital bill to pay, didn't he?

A. Yes.

Q. Isn't it true that the reason he had this account in both your names was that he was not at that time able to go to the bank to make the withdrawals and he wanted that hospital bill paid and he put it in your name so that you could withdraw it for him—to pay his bills?

A. No, that wasn't the purpose.

Q. Did you not tell Mrs. Amos that your father was sick and for that reason you wanted to make it a joint account so that you could withdraw from it to pay his bills. He wasn't able to come down to make withdrawals?

A. No, I don't remember telling her that.

Q. You deny telling her that?

A. I don't remember telling her a thing of the kind.

Q. You remember talking to her when you went down to get the signature card?

A. I was thinking that Gene went—

Q. Gene went to get the card, you think?

A. Maybe I did—I'm not too sure of that.

Q. And you don't remember being there, is that correct? You remember telling Mrs. Amos that your father wasn't able to sign his name and would have to sign with an "X" and that she fixed the card this way with his signature and told you it would have to be witnessed?

page 133 } A. There was something said about it being
witnessed because we knew he would sign it with
an "X."

Q. When she told you it had to be witnessed and had to be signed with an "X"—that's when you told your husband or you all decided you had to have a witness, isn't that correct?

A. We had to have a witness, but Poppa told us that it would be better if we had a witness.

Q. Can you tell the Court why you didn't get someone to witness your father's "x" that knew him—that was acquainted with him?

A. Well, Poppa had talked with Mr. Utt over there at the filling station the times that he had been in the car with me.

Q. You heard Mr. Utt testify that he had never saw him before—never talked to him before, didn't you?

A. Yes—but he was probably excited.

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Q. You think he was mistaken about that?

A. I believe he was a little excited.

Q. Do you recall making statements to your sister, Mrs. Funk, on several occasions, that you were putting this money in the bank and it was for the benefit of all of you—that you would get exactly what the rest of them would?

A. When the property would be sold if there would be anything left of that.

Q. I'm talking about the mosey?

A. I didn't tell her—talk to her about the money.

Q. Did you tell her you were putting this money in the bank—some of your daddy's money in the bank—so that you all would share equally in it?

page 134 } A. I don't think I did. Poppa told me when I had to pay anything that what was left to take it to the bank and deposit it there—even after this other—

Q. Your daddy told you that. He was interested in trying to save all the money he could, was he not?

A. He wasn't wasteful with it. He told me how to do and what to do and that's what I've done for him.

Q. You did it for him, didn't you Mrs. Quesenberry?

A. I did it for my father.

Q. That's right—you did it for—

A. With the help of Gene.

Q. You did it for him because you knew that's what he wanted done—he wanted to save his money and what he didn't need he wanted to go in this bank account, didn't he?

A. Well, he said that after we had talked about it that if anything come up that he needed that I would use it for his benefit and of course we never knew—maybe be afraid he'd fall and break a hip and may be laid up for years or something like that.

Q. Matter of fact, he was worried about being disabled and having medical bills so great that it would take everything he had to pay for it, wasn't he?

A. He said it might even take the property, he did not know.

Q. That's right, so he was anxious not to be a burden on anybody financially, wasn't he—any of his children?

A. He was interested in that way.

Q. That's right, and he wanted to make sure that his doctor bills and everything was taken care of?

A. That's right, and they were.

page 135 } Q. They were, that's right. Now, do you recall talking to Mrs. Funk about when she asked you if

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you were father was paying you for taking care of his money—what you were doing. Do you remember talking to her?

A. She knew that we were looking after things and Poppa said he had come to us—he was looking to us and he hoped that I would hold out until he died and seen that everything went along—I did the best I could—

Q. Well, I realize that. But do you remember talking to Mrs. Funk whether or not your father was paying you for taking care of his money. You remember her talking to you about that?

A. Well, he didn't pay me for—

Q. I understand that, but do you remember discussing it?

A. I don't remember talking to her that Poppa was paying me.

Q. Do you remember telling her that "No, you weren't getting a penny for it"—that you wouldn't charge your father for that sort of thing and the money you were putting in the bank was for the benefit of all of you—you were getting just what the rest of them got—do you remember making that statement?

A. I think you've got a couple of questions together.

Q. Excuse me. Well, you heard Mrs. Funk testify that—

A. I've heard them all.

Q. You heard her say that you made a statement to her that you weren't getting any more of your
page 136 } father's money than they were—you heard her
testify to that, didn't you?

A. She said it.

Q. Do you deny making that statement?

A. I don't remember telling her that I was getting paid or wasn't getting paid for it.

Q. Well, do you recall telling her that you would get just what the rest of them got?

A. Whatever was left when things were sold—all of this other business—the bank and the other Poppa talked it with me and with Gene—he didn't seem to want any of the others to know anything about it—said they wasn't interested in his welfare.

Q. They weren't interested in his welfare, is that right?

A. That is what he had told me.

Q. Now when your father died, where did you keep the Will and where did you keep this Bank Book? Do you have any other papers of your father's that you kept—deeds or anything like that?

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A. I kept the deed and all the bills I have ever paid for him. I have everyone of them.

Q. Where did you keep those?

A. In the safe.

Q. In your home?

A. Well, the last couple of years before his death, or maybe less time, I took them down to the bank.

Q. I mean before your father died—you had them down to the bank?

A. Yes.

page 137 } Q. Are those all the papers pertaining to your father's affairs?

A. Yes—the deed and the Will and a few of his requests at his death was there.

Q. Did your father have a foot locker there that he kept things in at his home?

A. Yes.

Q. Did you open that after his death?

A. Yes, we did.

Q. You said "we"?

A. He had one there that had his things in it.

Q. Who was with you when you opened that—

A. Gene and I.

Q. Just you and Gene?

A. We went over there after his death when we had to see about different things that we might—

Q. What did you find in there—do you mind telling us generally what was in the—It was locked, wasn't it—it had a padlock?

A. Yes, it was locked. We hunted everywhere—we tried everywhere to find the key—we couldn't find it. Of course we then opened it. There were old pictures—some of Poppa's people—a shirt or two—nothing of no—

Q. Any important papers or—

Q. Did he have a cedar chest that he kept thing in?

A. Not that I know of.

Q. Do you have a cedar chest which you keep things in?

A. Yes, I have.

page 138 } Q. You keep papers and things in it?

A. Yes.

Q. Now after your father died, you all went to Mr. Grose-close's office and he opened the Will and read it to all of you didn't he?

A. Yes, sir.

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Q. And then you went over to the Clerk's Office and your husband qualified to take care of your father's estate?

A. Yes, Poppa wanted him to.

Q. He named him in the Will, didn't he?

A. Yes, he did, and that's the reason he qualified.

Q. And in listing the assets—you and your husband—he knew as much about your father's financial affairs, as you did, did he not?

A. Just about.

Q. You all discussed it back and forth between you?

A. Yes.

Q. In listing those assets for the purpose of qualification, he listed as an asset of your father's estate, the sum of \$8,000.00, which represents the money in this bank account that we are talking about, did he not?

A. Did he list it?

Q. Yes.

A. Yes, he thought it had to be known. It didn't really go into his hands—it wasn't a portion of the estate—Poppa wanted me to have it as survivor.

Q. That's exactly what I'm getting at. You say that he listed it as a part of your father's estate when page 139 } actually it didn't go into his hands.

A. Well, he was new in anything like that—

Q. I believe you used the word a little while ago to Mr. Nuckols—I believe you said he was uncertain about whether or not it should be listed as part of your father's estate. Isn't that correct?

A. Yes—he was—because we was sitting beside Mr. Graham about fixing up maybe \$1,000.00 to be used to pay off things that come up which was a lot.

Q. So you both were uncertain whether it should be listed as a part of your father's estate or not, weren't you?

A. I said, "what about that," when they listed the \$1,000.00 they allotted to use for that. I said you can use it for that, but you'll have to pay it—

Q. That was sometime later, was it not? About the \$1,000.00?

A. You'll have to pay that back too.

Q. You are saying now that your husband was uncertain as to whether or not he should list this as a part of your father's estate and he did list it, did he not?

A. He let it be known. Whether it's been mislead—well, I don't know.

Q. You were with him at that time, weren't you?

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A. Yes.

Q. And you delivered to him, did you not, this book that has been introduced as evidence here—did you not deliver that to your husband as the executor of the estate. Did you not deliver this to your husband. This has been introduced as I understand.

page 140 } A. I gave it to him so he could draw out the \$1,000.00.

Q. Now isn't it true that the \$1,000.00 was drawn out at the suggestion of Mr. Groseclose after he went down to see him—after he did some figuring about some state taxes and inheritance taxes. Didn't he suggest to your husband that he would have to have about a \$1,000.00 out of this account to pay these debts?

A. If Mr. Groseclose—I don't know.

Q. Isn't it true that this book was turned over to Mr. Groseclose and he kept it for several days or several weeks?

A. Yes it was for him to do some checking up or he asked for it.

Q. You knew through your husband that he was making out inheritance taxes on it or assisting your husband in handling this estate?

A. I don't know.

Q. Mrs. Quesenberry, you received a copy of the letter from Mr. Groseclose dated March 6, 1959, did you not?

A. I have received one each time I suppose he sent them out. Of course Gene wouldn't know about them until I would get one—it was news to him.

Q. Your husband had hired him, hadn't he, to assist him in handling the matters of the estate?

A. He asked him some of the figures or a little something.

Q. Mr. Groseclose was not your attorney, was he?

A. He was assisting Gene.

page 141 } Q. That's right—in handling your father's estate—that's what he was hired for wasn't he?

A. Yes.

Q. Do you recall this letter of March 6, 1959, in the third paragraph—you got a copy of this letter, did you not? It shows a copy to you. Did you get a copy of this letter?

A. I guess I got one each time he mailed them out.

Q. You guess you got one. Do you recall the third paragraph of this letter—it says "the bank account, in the sum of \$8,037.61—the personal property was appraised at \$300.00 and real estate was appraised at \$7,400.00." Do you remember getting that?

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A. Yes, I do.

Q. He's talking about your father's estate, is he not?

Q. And he says, "the remainder of the estate is to be divided equally among the other six children." Now by other six he's leaving out Henry, is that right, because Henry was to get the house and lot. He was not named in the Will. After clearing debts and expenses this includes "a bank account, personal property not specifically bequeathed and the other real estate of Mr. Coalson." And you got that letter in March 6, 1959. At the time did you go to Mr. Groseclose and say, "Mr. Groseclose, this money is mine—this bank account." Did you?

A. No, I didn't. Gene and I talked about it and it looks like Mr. Groseclose is trying to take that away from you and after that I said I'd go and find out something about it and that's when I went to Mr. Nuckols.

page 142 } Q. That was the summer of 1959 after you got
his letter in March? Late summer, Mr. Nuckols
says. Is that true?

A. Yes.

Q. Now Mr. Groseclose wrote another letter in November, 1959, did he not. At that time he told the other heirs that you were claiming this account. That was in November.

A. Gene went over and talked to Mr. Groseclose about it.

Q. That letter came out within the next few after your husband talked to him, did it not?

A. Yes.

Q. So Mr. Groseclose wasn't talked to about this money until late October or November, 1959, was he?

A. Well, that was when Gene and I talked to him about it and he went to Mr. Jordan also, and Mr. Groseclose—

Q. He went to see Mr. Jordan first, didn't he?

A. I think he did—he went to both places.

Q. Did you go see Mr. Jordan too?

A. No, he was the administrator of it.

Q. Did he go see Mr. Jordan before or after you consulted Mr. Nuckols—do you recall?

A. I don't know—I guess it was before.

Q. Let me ask you this Mrs. Quesenberry—I'm not trying to confuse you—I'm just trying to refresh your recollection—at the time you received the letter from Mr. Groseclose in March, 1959, and at the time your husband went to talk to Mr. Jordan at the bank—at the time you went to talk to Mr. Nuckols, as attorney—all of those times Mr. Quesenberry and

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you—during those times you were uncertain as to
page 143 } whether or not that this money was part of your
father's estate, weren't you?

A. If I was uncertain—I didn't think it was a part of it.

Q. But you didn't know whether it was or not, did you?

A. When Poppa told me it was mine in 1954—that's when I accepted it and if he had needed it—if it took every cent of it for his expenses, that was the way it was going.

Q. Isn't it a fact that Mr. Jordan explained this card to you or your husband and says that it goes to the one that lives the longest—therefore it's Mrs. Quesenberrys'. Isn't that the basis of your claim to this money.

A. Mr. Jordan said that, but I still believe what Poppa had told me. If there was anything left, it was mine.

Q. Yet you permitted this money to be counted as part of the estate.

By Mr. Nuckols: I object to that. She has never said that and you're putting words in her mouth.

By the Court: Let him go ahead and ask the question. He's cross examining this lady—he has a right to and he's doing it very fairly—he's doing it just as nice as anybody. Proceed.

By Mr. Sadler:

Q. Did you see income—state tax forms that was filed by Mr. Groseclose and signed by your husband. You might not have.

A. I haven't known too much about things since Poppa's death. There was so much to see about and trying
page 144 } to get things together and etc.

Q. Well, let me ask you one last question. I understand you were upset and trying to pay the bills and trying to help your husband. You were aware, were you not, that your husband had listed this bank account as a part of your father's estate. You were aware that his attorney, Mr. Groseclose, was considering it as a part of your father's estate. You were aware of that early, were you not?

A. I'm sure Gene didn't mean it to go as that, but he thought it had to be known as it had been.

Q. There was no mistaking Mr. Groseclose's letter is there? That it was being considered and would be divided equally?

A. Well, Mr. Groseclose took it that way—Gene didn't, I didn't.

Q. He was your husband's attorney and you say after you

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received that letter you waited until late summer to see somebody about it after he talked to Mr. Jordan?

A. Well, I don't know which one he went to and talked with, but that's when I said I would talk to someone else and explain it to them and I wanted somebody to tell me and that's when I went to see Mr. Nuckols.

Q. Mr. Jordan was the one that explained it to your husband first, is that right?

A. I couldn't say exactly.

Q. Let me ask you one more question. Out of your father's estate I believe your sister, Mrs. Funk, has received \$1,500.00, is that correct?

page 145 } A. Mary Jackoway did.

Q. In other words, if this is your money that we're talking about now—if this is your money out of your father's estate, Mrs. Funk would receive \$1,500.00. Is that correct?

By Mr. Nuckols: Explain this form to her.

By Mr. Sadler:

Q. You remember getting a copy of this Mrs. Quesenberry? It's from Mr. Moore's.

A. I'm thinking about the money Mary—

Q. No, I'm talking about—

A. Yes, we would all receive \$1,500.00.

Q. All would receive \$1,500.00 except for Henry and he got property valued at \$4,500.00. Is that right?

A. I think that is what *is* was appraised at.

Q. And if this money goes to you—

A. I still owe a portion—a 14th of a portion of lower boundry of land which was Poppa's.

Q. If this money is yours your father would be giving you either during his lifetime or at his death, \$9,500.00. That's right, isn't it?

A. Yes.

Q. He would be giving Mrs. Funk \$1,500.00, your brother from North Carolina \$1,500.00, Mrs. Jackoway \$1,500.00 and Mrs. Mills \$1,500.00. That's right, isn't it?

A. But if there had been sickness there might not have been anything left, but it so happens that there was this
page 146 } amount.

Q. Well, didn't your father at one time want to give all the children \$1,000.00 apiece?

A. No, sir—not that I know of. He never told me.

Q. If, during his lifetime, Mrs. Quesenberry, your father

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had come to you and said, 'Thelma, I want this bank book back—anytime during his lifetime up to the day before he died and by a miracle he recovered and he said, "I want that bank book back," you would have given it to him, would you not?

A. I would have.

Q. You certainly would have. All right.

By Mr. Nuckols:

Q. Did your father, at any time, in discussing this bank book with you, discuss any future possibilities—possible difficulties about you keeping this money. Did your father ever say anything about any difficulties that you might have?

A. Yes, we talked about that.

Q. Well, what was said by your father?

A. I told him that some of them might not like it. Well, he says, "It's yours." "If I even thought they would have you up in Court or anything—I wouldn't leave them nothing."

Q. Is this after 1954?

A. And here I am.

Q. Was this after he gave you this money?

A. Yes. He knew what he was doing and what he was thinking.

Q. Mr. Sadler asked you concerning this letter from Mr. Groseclose in November of '54. You told him page 147 } apparently your husband had been to him a few days before. You do not know whether I had talked to him a few days before or not, do you?

A. No.

Q. And you came to me the latter part of the summer, I believe?

A. Yes.

Q. So you don't know whether that was the first time Mr. Groseclose had any knowledge of your claim or not, is that correct?

A. No, sir.

Q. Do you know anything about the Inheritance Tax form at all?

A. Well, Gene asked Mr. Groseclose about it.

Q. Do you know whether there is a section in there Mrs. Quesenberry, that says this account is yours, as you say, but it still has to be listed in Inheritance Tax forms. Do you realize there is a section for that?

A. Well, I guess anyone receiving over \$5,000.00—or below \$5,000.00—doesn't have to pay any tax?

Thelma C. Quesenberry.

Q. Did you ever agree to the Inheritance Tax form including this savings account? Did you ever tell Mr. Grose-close to include it in his statement. This \$8,000.00?

A. Include it in the estate?

Q. That's right.

A. No, sir.

Q. You never told him?

A. No, sir.

Q. In 1954, when your father gave you this book, where
were your brothers and sisters at that time?
page 148 } A. They were at their homes or where they
work. I don't know.

Q. Were they all grown and on their own at this time?

A. Yes they were.

Q. They were no longer dependant on your father, is that correct?

A. Henry and his family lived there with Poppa.

Q. They were all grown and had families and etc.?

A. Yes.

Q. They were old enough to be on their own—everybody in the family—is that correct?

A. Yes, old enough to be on their own.

Q. Now Mrs. Quesenberry, Mr. Sadler asked you if your father came up to you before he died and by some miracle had become well, and said, "Thelma, give me back my savings book"—would you have done it. Your answer was "Yes." Is that correct?

A. I would have been glad to.

Q. Would you have done anything your father asked you to do?

A. I would.

Q. Concerning any of them?

A. Yes, sir.

Q. Would you have given him any of your own?

A. Yes, I would have gladly—at any time.

Q. You knew that he had put all this in the bank, didn't you?

A. Yes.

page 149 } Q. Mrs. Quesenberry, the \$642.67 that was withdrawn in March, '53, you say you are not sure what it was used for—but think it was used for a bathroom?

A. I know it was several hundred dollars he was going to use on that and I'm not clear on this, but one time it was \$600.00 that was going to go—I think to be used for the bath-

Thelma C. Quesenberry.

room. The house would rent better. I can't say exactly about the \$200.00.

Q. And that was in 1953? Now after the 3rd day of May, 1954, when your father put his "x" on that card, where has this book been up to the date of his death?

A. I had the book.

Q. Did your father ever take it back?

A. He never took it back from me. He had looked at it and seen it a number of times up until about the last year, when he got more feeble and I carried on with the business for him as I had and I didn't want to worry him with it and didn't take it and show it to him.

By the Court: I'd like to ask you one question, Mrs. Quesenberry. On May 3, 1954, when you took Mr. Utt to witness the signature or mark of your father, you were present in the room at that time?

A. Yes, sir.

Q. Now if I recall his testimony right, he stated this: That your father wanted Mrs. Quesenberry to take care of his money, as he was not able to look after it. Is that what your father told Mr. Utt? That's what he stated. Is that the way you remembered it?

A. It seemed to me that he stated he was turning everything over to me to look after it—which all had the same page 150 } meaning and if there was anything left, it would be mine.

Q. Did he then explain it to your father or read it to him or say to him that he wanted Mrs. Quesenberry—you—to take care of his money—that he was not able to look after it. Is that the way you understood your father?

A. I believe that's about it.

Q. You think that's about right. And then he said, "to be hers after all debts are paid" Is that what your father said?

A. If there was anything left at his death.

Q. He said, "to be hers—meaning you—after all debts were paid." That's what your father told you—him. Is that the way you recall it? What I'm getting at Mrs. Quesenberry, did you understand at that time that you were to pay all the debts, his doctor bill and funeral bill and all the debts of your father out of this money before you got it?

A. Not the funeral bill, because he said that had already been taken care of, but any debts up to his death.

Q. Mr. Utt said, "be hers"—meaning you—after all debts

Thelma C. Quesenberry.

were paid. What did you understand, or did you understand it like Mr. Utt did?

A. Well, I understood it more like Poppa had talked it to me.

Q. I'm talking about the time he made his "X" or mark on the card if that is correct what Mr. Utt said he told you?

A. Would you mind repeating that question.

Q. I may not have the exact language—I think I copied it as Mr. Utt said it. If I'm correct, he said he wanted Mrs. Quesenberry to take care of his money if he is not page 151 } *abot* to do so. Do you think that's about right?

A. Yes.

Q. Then, in addition to that he said, "And to be hers after all debts are paid." Do you remember him saying that?

A. Yes, sir, that's what he said.

Q. Well, what did you understand him to mean by "all debts"?

A. Well, everything that he'd owe—that would come up to pay.

.

By the Court: I just want this lady to under-
page 152 } stand my question. I think that's the material
issue here. I want her to tell me. If Mr. Utt
didn't remember it like you did—just tell me what you re-
member him saying.

A. Well it seems now that that was what he said.

Q. You heard Mr. Utt testify.

A. Yes.

Q. Is there any difference in what he said than what you understood your father to say?

A. No.

By Mr. Sadler:

Q. I understood you to tell Mr. Nuckols that your father, even though he could sign his name, preferred to make an "x." Is that right?

A. He was able to sign his name but after he had that first attack he told us that he would sign everything with an "x"—which he did and it was witnessed.

Q. Are you saying he was able to sign his name to this card

R. I. Brown.

and didn't. He preferred to make an "x" rather than sign his name?

A. Well, that's what he done for over eight years.

Q. As far as you know he had never signed his name since you say he endorsed one check with an "x" and had to?

A. I don't think so, they were all—

Q. Any withdrawals from the bank you wouldn't know whether he signed with an "x" would you unless you were there and saw it?

A. No.

Q. I believe you started to say to Mr. Nuckols that you would have given your father this book back be-
page 153 } cause it was his. It was his money, wasn't it?

A. If he was living and able to take care of his business or asked for it, I would have gladly, because it was his.

Q. It was his money, wasn't it Mrs. Quesenberry, up until the time he died?

A. If he was living and asked for it, I would have gladly given it back to him.

By the Court: Maybe the question isn't clear. I think what Mr. Sadler wants to know is this: Sometime in '53 he gave you this money—it was yours—at that time it was yours and yet what he wants to know and what the Court wants to know, did you consider it your money or did you consider it his money and you were just using it and what was left at his death belonged to you. That's what he's asking you, I think, and that's what I want to know.

A. Well—

Q. Was it your money or was it money and you were handling it? And what was left would be yours. Now which is your understanding?

A. What was left after all his debts were paid, except the funeral expenses, would be mine.

MR. R. I. BROWN,

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

By Mr. Nuckols:

Q. State your name?

A. Robert Irwin Brown.

R. I. Brown.

Q. I believe you are an attorney at law, practicing in Pulaski?

page 154 } A. That's correct.

Q. Did you know Mr. Walter S. Coalson in his lifetime?

A. Yes, sir.

Q. Had you known him very long before his death?

A. I'd say 15 or 20 years.

Q. Had you known him very well.

A. Professionally no, with the exception of one time I did handle a domestic matter for him.

Q. Mr. Brown, in February, 1953, at Mr. Coalson's request, did you prepare a Will for him?

A. Yes, sir.

Q. Would you examine the document I hand you and identify it?

A. This appears to be a copy of the Will and is witnessed by myself and Mrs. Iris Seagle Smith, who was working for me at that time and I testified at the time the Will was probated.

Q. You testified at the time the Will was probated?

A. Yes.

Q. Mr. Brown, at the time that you prepared this document for Mr. Coalson, did you and Mr. Coalson discuss the assets that he had at that time?

A. As I stated, I was handling another matter for Mr. Coalson on a domestic question and this all took place about the same time and Mr. Coalson was in my office any number of times, both in connection with the Will and in connection with the other matter and I have a memorandum page 155 } which apparently is the first information he gave me in regard to the Will—information he gave me so I could prepare the Will. As I recall Mr. Coalson was in the office at the time the Will was dictated and I dictated the Will to my secretary and then he came back the following day and read the Will and signed it and one reason that is so plain in my mind is that he came over to the Clerk's Office here to ascertain the property he had because he wanted to make separate disposition of his real property.

Q. Did he give to you any assets other than his real estate when he was listing his assets? Did he tell you of any other assets that he owned?

A. I have a memorandum here for which I have his age,

R. I. Brown.

he was a retired railroad conductor, that he'd had two heart attacks, a brain *hemorrhage* and then I have the names of the children; Thelma C. Quesenberry, 409 Baskerville Avenue, and after that Pulaski National and then I have the names of Mrs. Funk and the name of Henry—

Q. Now Mr. Brown—

A. Repeat the question please sir.

Q. In listing his assets to you, what other asset did he speak of to you about other than the houses which you have already mentioned. Did he tell you of any other assets?

A. The money in the Pulaski National Bank.

Q. Now what did Mr. Coalson tell you about that money?

By Mr. Sadler: We object to that point. The will speaks for itself. It's not ambiguous. It's cut and clear page 156 } and any evidence and any evidence as to what his intent was as to the property covered—what disposition is immaterial—it's *heresay* and cannot be gone into.

By the Court: Go ahead and answer the question for the purpose of the record.

By Mr. Nuckols:

Q. What did he say about the money in the Pulaski National Bank?

A. He wanted Mrs. Quesenberry to have the money in the bank.

Q. What did he tell you about it?

A. The reason he wanted her to have it is that Mrs. Quesenberry had stood by him in his troubles and he wanted her to have the money in the bank.

Q. And he told you this either the second or third of February, 1953?

A. It was prior to drafting of the Will.

Q. Did he state to you whether or not he had done anything concerning this money and Mrs. Quesenberry.

A. He told me he was fixing it so that she could have it, and not to include it in the Will.

Q. If I might say, the next question is what the Court has told me is not to be considered, *by* I'm going ahead.

By the Court: Go right ahead.

By Mr. Nuckols:

Q. Now Mr. Brown, this Will—I will ask you to introduce

R. I. Brown.

as Exhibit B—would you turn to paragraph #7—page 157 } the words, “After the sale of my real estate as herein directed and such personal property as may remain.” Now Mr. Brown, when you are preparing Wills, what do you include in the words, “Personal Property”?

A. If there is any money passing under the Will I use the words, “Money, Bonds, Notes or other evidence of indebtedness.”

Q. And do you have those words in that Will?

A. I do not.

Q. And why do you not have them in that Will?

A. Because the money that Mr. Coalson had was not to pass under the Will.

Q. And he had so advised you of that?

A. That's right.

Q. Now, Mr. Brown, this matter of naming of the Executor there—please state to the Court there was any discussion between you and the Testator as to naming any other person as Executor of his estate.

A. Mr. Coalson told me that Mrs. Quesenberry had been helping him with the business and that she was familiar with his business affairs and I suggested to him that it was customary to appoint a member of the family as the fiduciary in the will, named as the Executrix or Executor of the Will and he said that he preferred to have Mr. Quesenberry named as Executor in his Will because he was giving Thelma this money and he was giving Henry the homeplace because Henry didn't have a home and he felt like he ought to give Henry a home and help him get a home and that if Thelma was named as the Executrix of the Will, that she might have trouble with the other children in settling it because she would page 158 } —she and Henry would get more from his estate than the others. And he further said that Mr. Quesenberry—Eugene—had always been able to get along with the other children and that he felt that Eugene would be able to handle the estate and explain to the other children what he wanted done with his property.

Q. Mr. Brown, have you ever represented or known Mr. and Mrs. Quesenberry before today?

A. No. I'm not sure—Mrs. Quesenberry might have testified in the domestic proceedings—I'm not sure, but I didn't know her until they came into the office here—I mean the Courthouse yesterday.

Q. That's all.

By Mr. Sadler: Now let me get the record straight, if it please the Court, we objected to all this testimony from the time that I made the objection—I understood that the Court sustained my objection—that these questions were going in just for the record.

By the Court: I sustained your objections in part. All of the last part of what he explained about this Will and what he meant was his purpose and I'm not going to consider it.

By Mr. Sadler: Instead you have not considered—you sustained our objection to that on the grounds stated.

By the Court: That's right—but not the first part.

By Mr. Sadler: That's in preparation to the page 159 } Will?

By the Court: I'm permitting that to go in—that information, what she said under the theory of this recent case.

By Mr. Nuckols: I have two more questions—it's concerning this executor named and he explained why Mrs. Quesenberry wasn't.

By Mr. Sadler: That's certainly on the same basis. He named the executor; he qualified and why—it should not be gone into.

By the Court: Go ahead—I'll consider that part of it that I think is material when I decide the case—only that part.

By Mr. Tuck: Your Honor, in behalf of the complainant Mr. Walter W. Coalson, we would like the Court to strike all the evidence of this witness and we would like to state our grounds of objection. The first grounds is this: At the time that Mr. Coalson came to see Mr. Brown it was a relationship of attorney and client. For that reason we think it is not permissible at this time. Secondly, anything that Mr. Coalson, who is now dead, told him at that time is hearsay and I know of no exception to the hearsay rule where that could come in and those reasons we would like to object and for the further grounds that he has attempted here to explain or to change the terms of the written instrument. The instrument is clear and it needs no explanation and we think it's highly improper to have this witness come in here at this time and say what the decedent intended to do—what he wanted to include or what he didn't want to include. The instrument speaks for itself

and it says all personal property coming into the page 160 } executor's hands from any source and we maintain that that would include everything. For those reasons, we would like to move that all of the evidence of this witness be *stricken*. We understand the ruling of the court is that part of it can come in and part of it can not and we

Mr. Quesenberry.

would like to accept to the ruling of the Court as to that part that can come in.

By Mr. Sadler: We join in that motion.

By Mr. Nuckols: I would like to make a short reply to that so it can be in the record. The heresay rule which has been cited by counsel as to what Mr. Coalson said—if that applies—this case would have been finished a long time ago because everybody has been talking for two days about what Mr. Coalson told them, so the evidence has been in a good long time ago and if we strike out everything Mr. Coalson said then we would have been home a long time ago.

By the Court: That was your objection in the beginning.

By Mr. Nuckols: That's right. I want to get in on both sides if I can since I was overruled I wanted to take advantage of it in case I lose.

By the Court: I understand.

By Mr. Nuckols: The other point is something that was brought to the Court's attention earlier in that if the Will speaks for itself then the contract speaks for itself page 161 } and we would be perfectly happy to rely on this and Section 55-21 of the Code of Virginia—Right of Survivorship and we will stand on that.

By Mr. Sadler:

Q. Mr. Brown, Mr. Coalson had no difficulty signing his name? To any papers that it was necessary for him to sign?

A. No, sir.

Q. All right sir.

* * * * *

MR. QUESENBERY,

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

By Mr. Nuckols:

Q. The day that your father-in-law signed this card—May 3, 1954—were you present at the time it was signed?

A. I was.

Q. At the time—who else was present at that time?

A. Mr. Utt and my wife.

Q. Why was Mr. Utt present?

A. We brought him up for a witness—it had to be witnessed and he was handy and I knew him.
No special friend.

Mr. Quesenberry.

Q. Who had suggested that you have a witness?

A. Mr. Coalson suggested that we have a witness.

Q. This "x"—did you see Mr. Coalson sign it there?

A. I did.

Q. Had you ever seen Mr. Coalson sign his name any other way within the last—within a year on either side of this date?

A. No, sir, I don't believe I did. I work seven days a week and I wasn't around too much.

Q. You run a service station, here I believe?

A. Yes, sir.

Q. Now when this card was signed by Mr. Coalson, did he ever have it in his hand other than to sign it?

A. Yes, sir, he taken it and looked at it, and it was read by Mr. Utt and explained by all of us.

Q. How long did this take?

A. Well, I suppose we was there 45 minutes.

Q. Now Mr. Quesenberry, what happened to this card after it was signed by your father-in-law?

A. I taken it to the bank.

Q. You took it to the bank yourself?

A. Uh huh.

Q. And did you take the bank book—his bank book to the bank at the time you took that card?

A. Yes, sir.

Q. What did you do with the bank book after page 163 } that?

A. I gave it to my wife.

Q. Did *you* wife—has your wife ever surrendered that book to you as executor to the estate?

A. Nothing more than to draw a \$1,000.00 out.

Q. Did you have any understanding with your wife concerning that \$1,000.00. Did you and your wife discuss it?

A. She told me I would have to put it back—it was borrowed and I'd have to put it back.

Q. And did you put it back?

A. Yes, sir.

Q. Now what was the condition of your father-in-law mentally and physically the day that he signed this card?

A. Well, he was a little weak, but he was sitting in the chair and he seemed to understand everything.

Q. Had he talked to you before on any occasion concerning this savings account of his?

A. He had talked after that, but I don't know whether he talked about it before or not—I don't believe I had.

Mr. Quesenberry.

Q. What did he say to you—or what did he say in your presence?

A. You mean when this was signed?

Q. No, about this account at any time?

A. You mean afterwards?

Q. Well, at any time, what did he say?

A. It was probably afterwards. I don't remember anything he said before but he said he was giving it to her and he wanted her to have it—it was hers.

Q. Now what did he say then—now this was afterwards you say. Now what did he say on the day that he page 164 } signed this card?

A. It was discussed and we explained to him what was in the contract and Mr. Utt read it, and he seemed to understand it. That was what he wanted.

Q. What did your father-in-law say? You say he understood it, but what did he say? To your wife, to you or to Mr. Utt or to the three of you—what did he say?

A. That was the way he wanted it.

Q. How did he understand that was the way he wanted it?

A. Well, because it was witnessed and I had the card and fixed it like he seemed to want it.

Q. Did he read the words or were these words read to him, "Shall be Owned By Them Jointly"?

A. Yes sir.

Q. Did he say anything about those words—is that what he wanted?

A. That's what he said—that's the way he wanted it.

Q. Mr. Utt testified the best he can recall they were discussing it, your father-in-law said your wife was to pay the bills—maybe the debts—I don't know exactly which words he used—before the money went to her. Do you remember him saying anything like or what do you remember concerning anything like that?

A. Before this day?

Q. On this day.

A. Well, he said he was giving it to her and anything that was left was hers.

Q. He said this on the 3rd day of May, 1954?

page 165 } By Mr. Sadler: I object to that question on the grounds that it is leading—the worst kind of misleading questions are the ones that quote what another witness said and I think he should testify as to his own memory and not be refreshed by what someone else says.

Mr. Quesenberry.

By Mr. Nuckols: Mr. Sadler, if it please the Court—the Court did the same thing and I was trying to phrase my question exactly as Your Honor did.

By The Court: I thought I was quoting Mr. Utt for this lady after you had examined her as to whether she remembered it the same as Mr. Utt, and if you will phrase your question in the same manner as I did—I'd like for you to ask him and if you don't, I will.

By Mr. Nuckols: All right sir. You wrote the words down, Your Honor. I don't have them down so I'll do that.

By The Court:

Q. Mr. Quesenberry, if I have it down correctly, Mr. Utt stated this: Mr. Utt was reading or discussing with your father-in-law the meaning of the paper he was signing. Then he said that Mr. Coalson told him that he wanted Mrs. Quesenberry to take care of his money as he was not able to look after it. Do you remember him saying that? Is that your understanding?

A. Yes sir, I heard him say that.

Q. All right sir. Then after that, he said, "To be hers after all debts are paid". Do you recall him saying that?

A. Well, it seems that it was all brought in.
page 166 } Q. Was that your understanding that Mr. Coalson said that he wanted this card signed and that was what he was doing?

A. It seems that he wanted her to have what was left.

Q. What was left was after all debts were paid?

A. Yes, but up to his death—the way I understood it, because it was taken care of in the Will.

Q. I know—I'm not talking about the over-all picture. I'm talking about just what your father-in-law said at the time he signed this card at the bank. Your father-in-law never discussed the Will at the time he signed the card, did he?

A. No sir, he didn't. I don't remember hearing it.

Q. Then you do understand that your father-in-law said that it was what he wanted—to take care of his money—he was not able to look after it—to be hers, meaning your wife—after all debts are paid. Is that correct?

A. That's the way Mr. Utt spoke it and it's about right. It's been six years and it's hard to get the right words that was used.

Q. The general meaning of it—what Mr. Utt said— was that your understanding of it?

Mr. Quesenberry.

A. Well, the way I spoke it I said—

Q. I'm talking about what Mr. Coalson did. Is that your understanding of what he said—the general meaning?

A. Yes sir, the general meaning.

Q. All right sir.

By Mr. Nuckols:

Q. Now Mr. Quesenberry, when you qualified as page 167 } executor of your father-in-law's estate, did—

I believe; you told Mr. Graham as far as money is concerned was \$8,000.00. Is that correct?

A. That's right.

Q. Did you confer with your wife at that time concerning that particular item?

A. She said something about it that—wanted to know if I had mentioned the money in the bank and I told her I thought it would be best because for taxes and etc. I should report it—I wanted to do the right thing about it. Still I was new in it—I never had anything like that to do before.

Q. I believe you qualified on the 21st day of October, 1958, is that correct?

A. Yes sir.

Q. Then on the 22 day of October, the following day is I believe, when you got that \$1,000.00 out of that account. Is that correct?

A. Yes sir.

Q. Now Mr. Quesenberry, I believe you had discussed on a number of occasions with Mr. Groseclose this account. Is that correct?

A. Yes sir. I went to him and told him that my wife was claiming it and they couldn't list it.

Q. Do you recall the inventory that was made by the appraisors of the estate?

A. I don't know the figures on it.

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page 168 }

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Q. Is that the inventory and appraisal of your father-in-law, stating that you qualified as executor for?

A. It certainly is.

Q. Now, Mr. Quesenberry, does that inventory and ap-

Mr. Quesenberry.

praisal contain the savings account which has been discussed here containing \$8,000.00?

A. No sir.

Q. The three appraisors—they signed that, did they not, certifying that that was the entire estate, both real and personal—the estate which they had appraised?

A. Approved—G. C. Hall.

Q. And what is the certification that you make? Read that to the young lady for the record.

page 169 } A. "This is to certify that the foregoing appraisal embraces all the real estate—real and personal that has come to my knowledge or possession, which is subject to my authority in my official capacity as executor of the estate of Walter S. Coalson, deceased."

Q. All right sir. And had that been inspected and approved by Mr. Moore—Commissioner of Accounts?

A. Yes sir.

Q. And what was the date of that?

A. The 1st day of November, 1958.

Q. That's within 10 days of your qualification, is that correct?

A. Uh huh.

Q. Now Mr. Quesenberry—I'll get a certified copy of this and file as Exhibit "C"—"D", I mean.

Q. Now Mr. Quesenberry, there has been a tax return filed by you as the executor of the estate of your father-in-law, has it not?

A. Yes sir.

Q. Who prepared this return?

A. Allan Groseclose.

Q. Did you have anything to do with it at all other than having it done through your attorney?

A. No sir.

Q. Did your wife have anything to do with the preparation or filing of this return?

A. No sir.

Q. That's all, Mr. Sadler.

page 170 } By Mr. Sadler:

Q. Mr. Quesenberry, I don't want to go over what I asked you yesterday. I think you admitted putting the \$8,000.00 on the sheet whereby you qualified before the Clerk—posted bond, you signed the State Tax Return, did you not—that was sent in to the State of Virginia—the Inheritance Tax Return?

Mr. Quesenberry.

A. Yes.

Q. And you signed that under oath, didn't you?

A. Well, I wasn't sworn in but I guess I was when I taken the job as executor.

Q. You were sworn to the Clerk at the time you gave him the information that's on his sheet that we had here yesterday. Did you not read the oath that you signed saying that you had made diligent search of property belonging to the estate and the instructions on this form have been carefully read and says on this, all the property real and solved upon the gross estate of the decedent''. Did you not sign this and send it in to the Inheritance Tax Division for the State of Virginia?

A. Yes, I signed it, but I don't reckon I read it all.

Q. Did you go over this return and see what was listed in it—any estate in the way of debts or matters of the estate?

A. Well, it wasn't examined too closely because I thought Mr. Moore knew what he was doing—I mean Mr. Groseclose I didn't question it.

Q. This is not the original and of course we'll ask the Court a little later on to produce the original or copy of it from the Inheritance Tax Division, but this is a page 171 } office copy. Do you recall ever seeing this Mr. Quesenberry? Do you know how this \$8,000.00 savings account is listed on this return—whether it was listed as money belonging to the deceased, Mr. Coalson, or whether it wasn't?

A. I don't know how it was broke down.

Q. Are you acquainted with the fact that in this return there is a place for jointly owned property with the right of survivorship to be listed? Are you acquainted with that?

A. No sir, it wasn't explained to me.

Q. You say now you didn't read it over, although you signed it and it was notarized?

A. No sir, I didn't read it all.

Q. This was signed on January 28, 1959, which was several months after this inventory Mr. Nuckols was talking about was signed, was it not?

A. Yeh, I don't know how long it was.

Q. Well, I'll ask you at that time, if you weren't aware at that time as executor of this estate that this bank account money was being listed as an asset of the estate of Mr. Coalson?

A. I think Mr. Groseclose had—I believe he had the bank book at that time. It was there for him to see.

Mr. Quesenberry.

Q. You left it with him for several weeks or months, didn't you?

A. I think it was there for—I don't know how long.

Q. Your wife turned it over to you and you turned it over to him? Now you said Mr. Utt read this card—the reading on this card to your father-in-law, Mr. Coalson—page 172 } are you telling the Court that he understood the language on this card?

A. Well, I think it's understandable.

Q. Did you understand it Mr. Quesenberry?

A. I think so.

Q. Let me ask you then why you went to the bank and asked Mr. Jordan what the status of that account was under this wording?

A. Well, I wanted all the information I could get on it.

Q. So you didn't know what this wording meant either, did you?

A. Yes sir, I thought I did.

Q. How did you explain it to Mr. Coalson—did you explain it to him what this meant or did Mr. Utt do the explaining?

A. I did.

Q. What explanation did you give to him?

A. Well I explained it to him that it was a joint account—survivorship clause.

Q. Joint account—survivorship clause?

A. Yes sir.

Q. And you do know of your own knowledge that Mr. Coalson had signed cards just like that before, don't you?

A. No sir.

Q. So you told him it was a joint account—a survivorship account—that this was what the bank required to be signed, that's right, isn't it?

A. That's what they gave me and that's what page 173 } we signed.

Q. You now say the first time you informed your attorney—Mr. Groseclose—that your wife was making claim on this money in the bank account?

A. Since '54.

Q. I thought yesterday in reference to these letters—the one written by Mr. Groseclose in November, 1955,—1959—excuse me—it was your recollection that you had informed him just before this letter was written, isn't that what you said yesterday, Mr. Quesenberry?

Mr. Quesenberry.

A. Before this letter was written, yes sir.

Q. Just before that letter was written?

A. I went to him that she claimed it—

Q. And he thought he had informed the rest of the children, that's right, isn't it?

A. It was his opinion, yes sir.

Q. And he wrote this letter shortly thereafter—about a week or ten days—is that correct?

A. He taken it on his own to—

Q. I say the letter came out within a week or ten days after—your wife got a copy of it, didn't it?

A. Yes sir.

Q. And that's the first time I believe you—I believe you stated that yesterday—I want to make sure that's your testimony—that's the first time you actually told Mr. Groseclose that your wife claimed this money and he told the other children? And that's after you asked Mr. Jordan at the bank who owned that money, didn't you, about the survivorship account, what it meant—didn't you ask him what this thing meant?

A. It was along about the same time.

page 174 } Q. And I believe he told you it meant that it went to the survivor, didn't he?

A. Yes.

Q. That it was Mrs. Quesenberry's money—Mr. Jordan told you that at the bank?

A. Yes sir.

Q. About the time you told Mr. Groseclose—isn't that the first time that Mr. Groseclose was told that your wife claimed this account—this money?

A. She might have told him—I don't think I did.

Q. That was the first time you told him?

A. Yes.

Q. And up until that time you knew Mr. Groseclose was treating these funds as money of Mr. Coalson's didn't you?

A. Well, I didn't know how he was handling it.

Q. Well, you got a copy of this letter that went out on—

A. I knew how he was handling it after I got the letter.

Q. March 6, 1959—you knew at that time how he was handling it?

A. Yes sir.

Q. And it wasn't until after you talked to Mr. Jordan after that, did you not?

Mr. Quesenberry.

A. I don't know whether it was before or after, but it was about the same time.

Q. But it wasn't—when this letter of March 6th went out it wasn't until late October—the middle of October, 1959, that you first told Mr. Groseclose that Mrs. Quesenberry claimed this money—was hers—that's right, isn't it?

A. I told him that she claimed it was hers—as it being hers.

Q. And yet you now say you were present when Mr. Coalson signed this card and you say you heard what he said there? I agree Mr. Quesenberry, I think it's impossible to remember exact language that long ago, but whatever was said there—what was done there—there's one thing for certain, was it not, that Mrs. Quesenberry could draw this money out on her signature. That's right, isn't it?

A. Yes sir.

Q. And that was done for the reason that Mr. Coalson was sick and unable to handle it himself, wasn't it?

A. Well, she could do that and it was understood that she could—it was her money.

Q. I mean—I'm taking it step by step. One thing was certain—she could draw it out to pay his bills, because he wasn't able to do it himself—that was the one purpose of signing it, wasn't it?

A. Yes sir.

Q. Now on the other thing—the—if it had been certain that he at that time had made a gift to your wife of the remainder—if there had been a certainty to the other part, then why was the money treated this way in the estate—or was there some uncertainty about what was said as to who this money went to.

A. I suppose he didn't want to wait until he died to tell her about these things. He wanted to tell her before he died—don't you think so?

page 176 } Q. Yes, but I'm suggesting from the language used by Mr. Coalson on that occasion that there was some uncertainty as to whether—it wasn't clear on what he intended to do with the remainder at this death.

A. I think he knew what he—he was a strong willed man and I think he knew—

Q. Yes sir, I agree with you, he knew, but I don't believe it's clear from that conversation that you all got the impression it was clear by the way you acted with the money after he died. Is that fair?

Mr. Quesenberry.

A. I wouldn't say that.

Q. You don't think that's right. You are just as certain about the gift part as you are paying the debt part?

A. Just as certain about either one? I'm certain about both of them.

Q. You were certain when you went to qualify to administer the estate and you were certain when you consulted Mr. Groseclose and signed this tax form. You were just as certain then as you are now, is that right?

A. He didn't ask me to read all of it—he just layed it out there for me to sign.

Q. You never told him that your wife claimed this money you say until the middle of October, '59?

A. It was all there—he had the books and everything.

Q. He had this joint account book—that's true. That's what you gave him, wasn't it?

A. Yes sir. I took for granted that he knew more about it than I did, because I was new at it myself.

page 177 } Q. He knew more about this bank account—
this savings account, I think. That's what you mean by what this language meant?

A. Yes, the whole thing—in general.

Q. But he didn't know about your father signing the card—who was there—you didn't tell him all that—what was said or anything like that?

A. He said he knew about it.

Q. He knew all about it?

A. Yes.

Q. All right sir.

By Mr. Nuckols: Are you though Mr. Sadler?

By Mr. Sadler: Just a minute.

Q. Mr. Quesenberry, from the conversation you had with Mr. Coalson when he signed this card—whose money was that during his lifetime? Whose money was that while he lived?

A. Up 'til he died?

Q. Yes sir.

A. Well, he had given it to her—but it could have been used on him you know—if he had needed it.

Q. Well, that would have been a gift from her then?

A. I wouldn't know.

By Mr. Nuckols: Your Honor, Mr. Sadler is trying to get this gentleman to decide the case for him.

Mr. Quesenberry.

By The Court: No, his question is perfectly page 178 } proper. He asked him from his conversation with

Mr. Coalson—his father-in-law, at the time he made his “x” and witnessed by Mr. Utt whether or not he considered that money from then on his wife’s or whether it was money belonging to Mr. Coalson until he died.

By Mr. Sadler:

You understand that question, Mr. Quesenberry?

A. Well, it was my feeling that it was her money but yet it was—it had to go through legal form to be decided, if anything come up. I wasn’t the one to settle it.

Q. Just to clarify it—your wife’s claim to the estate—did you as executor—in your opinion or from what was read there or what was done there is based on what’s on this card that Mr. Coalson signed. Is that right?

A. Well not exactly. It’s based on what I’ve heard him say.

Q. And from what you heard him say, you say, “Yes, it’s her money but—“But,” is that—You don’t know whose money it was is that right—from what Mr. Coalson said?

A. Well, that’s what they’re deciding here today.

Q. That’s all Mr. Quesenberry.

The witness stands aside.

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A Copy—Teste:

H. G. TURNER, Clerk.

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