

CHARLOTTE GERTRUDE SCHOWALTER, :

Complainant. :

versus :

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

EDWARD R. SCHOWALTER, PRESTON J. :
SCHOWALTER, and ALICE ELSA :
SCHOWALTER, :

Respondents. :

Sub

IT IS HEREBY AGREED by and between the solicitors of
record in the above entitled cause that the depositions of:

Mrs. W. B. Curran,
Mrs. W. B. Patterson,
Dr. C. G. Godard,
Mrs. Charlotte G. Schowalter, and
Mr. Rittenhouse M. Smith

may be taken, on behalf of the complainant in said cause, before
Lillie B. Grandahl, as commissioner, and returned to the court
and shall be treated as if they were taken under a commission duly
issued to the said Lillie B. Grandahl, and shall be treated in all
respects as if so taken, subject only to such objections as might
be assigned to the said testimony if it had not been so taken.

Dated this the 4th day of February, 1929.

R. M. Smith
Harry Smith & Coffey
Solicitors for Complainant.

Stevens ^{*no*} *Corn* ^{*no*} *Lead* *Goale* *Turner*

Geo N Allen
Solicitors for Respondents Edward R.
Schowalter and Preston J. Schowalter.

Charlotte Gertrude Schowalter,
Complainant.

versus

EDWARD R. SCHOWALTER, PRESTON J.
SCHOWALTER, and ALICE ELSA
SCHOWALTER,
Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY.

*Published by agreement
this February 14, 1929
Harry T. Smith, Plaintiff
R. M. Smith, Solicitor for Compt.
Stevens, McCorvey, McLeod, Goode & Turner
John N. Allen
Solicitor for Respondents
Edward R. Schowalter
Preston J. Schowalter*

On the 4th day of February, 1929, came before me, at
the office of Messrs. Harry T. Smith and Caffey,

Mrs. W. B. Curran,
Mrs. W. B. Patterson,
Dr. C. G. Goard,
Mrs. Charlotte G. Schowalter, and
Mr. Rittenhouse M. Smith,

who, being by me duly sworn to speak the truth, the whole truth and
nothing but the truth in answer to all questions that might be pro-
pounded to them in the above entitled cause of Charlotte G. Scho-
walter, Complainant, versus Edward R. Schowalter, Preston J. Scho-
walter and Alice Elsa Schowalter, Respondents, the said witnesses
were examined on behalf of Charlotte Gertrude Schowalter, the com-
plainant, by Harry T. Smith, and were cross-examined by C. M. A.
Rogers, of the firm of Stevens, McCorvey, McLeod, Goode and Turner,
and John N. Allen, on behalf of the respondents Edward R. Schowal-
ter and Preston J. Schowalter, and who testified as follows:

DEPOSITION OF MRS. W. B. CURRAN.

Direct Examination by Harry T. Smith:

I am the same Mrs. W. B. Curran who was examined on a
previous occasion in this case. I stated in my former deposition
how long I had lived at Battles. I have lived there over thirty
years. I knew Mrs. Blanche Broadwood while she lived at Point
Clear. I presume she was living at Point Clear when I moved
there; I don't remember exactly how long she lived there. She was
a grown girl when I came to Battles to live. She lived there for
thirty years that I remember. I really could not say when she

left there. I would not like to say because I don't remember. They used to come and go, so that the dates would not be fixed in my mind. While she lived over there I knew her and she used to come to see me frequently when my children were small. As to the relationship that existed between Mrs. Broadwood and her brother, Dr. Schowalter, the majority of the time they were on good terms. I remember hearing him say once,- I used to ask about Mrs. Broadwood very often when he would come to visit us in sickness, because just like I would think of any sister and brother,- I asked how Mrs. Broadwood and her children were, and I remember his telling me once that he was not on speaking terms with his sister then.

Q. Is that the only time?

Ans. That is the only time I remember hearing him say anything of any quarrelling, because I just happened to ask, but I heard,--

Mr. C. M. A. Rogers:

I object to any hearsay.

Q. Was there or not a common rumor existing in that neighborhood in regard to whether or not Mrs. Broadwood and Dr. Schowalter had frequent differences?

Mr. C. M. A. Rogers:

We object to the question on the ground that it is incompetent, irrelevant and immaterial, and calls for hearsay testimony, and on the further ground that it does not cover any particular time.

Ans. I know that they had some differences over land, but at what time that was I don't remember.

Q. Is that the report that you heard about their differences?

Ans. I think so.

The witness continuing testified:

I know that Mrs. Broadwood was in the habit of visiting Dr. Schowalter's house. I have met her there frequently at Point Clear. I met her there frequently from the time of the first wife's death until they moved to Fairhope. Mrs. Schowalter and Mrs. Broadwood were there at the same time. As far as I could see they were friendly at that time, and there was nothing wrong. I

would not be able to give the date when it was that Dr. Schowalter told me that he and his sister, Mrs. Broadwood, were not speaking. I could not tell you. It was long before Dr. Schowalter's death, because it was when my children were small and my children now are twenty-three and twenty-eight years old,- one twenty-three and one twenty-eight years old. I really could not tell you how large my children were at this time. He was in the house so much, not occasionally, but nearly all of the time.

Q. I believe you testified on a previous occasion in regard to the doctor's relation with his wife, did you not. I will now ask you what were those relations?

Mr. John Allen:

We object to the question on the ground that it is not in rebuttal.

Q. What were those relations?

Ans. They were always very friendly so far as I could see or know in any way.

Q. That is the relation between Dr. Schowalter and his wife?

Ans. Yes, I have been in and out of the house all of these years, and have never seen or heard anything from either one of them that was detrimental to the other.

Q. If there was ever any interruption of their relation of man and wife, and good will towards man and wife,- did you ever hear of it?

Ans. I have never heard of any.

Gross Examination by Mr. C. M. A. Rogers:

I said that on one occasion, probably twenty or more years ago, Dr. Schowalter told me that he and his sister were not on speaking terms, but I do not know whether it was because of the land question at that time, because I remembered it distinctly and I was careful not to ask about it again. I don't remember when it was. It was none of my affairs and I kept still. I guess if I had asked him, he would have told me, but I don't pry. I am not the prying kind. Whenever I was in the home when Dr. Schowalter, Mrs. Schowalter and Mrs. Broadwood were there, over a long period of years, I did not see anything wrong.

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DEPOSITION OF MRS. W. B. PATTERSON.

Direct Examination by Harry T. Smith:

My full name is Pattie Heustis Patterson. I am the wife of W. B. Patterson, who is in the lumber business in Mobile. I live in Mobile. In years back I was in the habit of visiting Point Clear. I have been going to Point Clear ever since I can remember, but the last time I went over there for the summer was sixteen years ago. I have been over every summer and have known Mrs. Schowalter ever since she came South. I was a visitor to Dr. Schowalter's home quite frequently while I was over there. I was there some time during every week of my stay. During those visits I had occasion to observe the family relations that existed in Dr. Schowalter's home. It was just like anybody else. Everybody seemed happy and perfectly friendly, and on friendly terms while I was there. Dr. Schowalter's sons lived in the home at that time. Dr. Schowalter's sons and Mrs. Schowalter seemed to be perfectly friendly. She seemed to think a great deal of them, and they thought a great deal of her, so far as I could observe while I was over there and in the house. Of course they were little boys then. I knew of their financial condition at that time. They did not have very much. They were very poor at that time. They were perfectly contented but they did not have much money, contented but no money absolutely. They had no servants.

Q. Mrs. Patterson, do you know whether or not there was any common rumor prevailing at Point Clear as to the relation between Dr. Schowalter and his sister, Mrs. Broadwood?

Mr. C. M. A. Rogers:

We object to that as incompetent, irrelevant and immaterial, and because it calls for hearsay, and because no time is fixed, if any, when the rumors were heard.

Q. Can you tell us?

Ans. I was never there when there was any quarrel, but I had heard of them frequently.

Q. During what period of time did you hear of these quarrels between Dr. Schowalter and his sister?

Ans. I could not name any particular period, but I have heard of them.

Q. I am not asking you to state exactly when they were but I want to get a general idea of during what period?

Ans. I did not hear it at any particular time, but there was just a general rumor that one time they were on good terms and the next time they were not speaking.

Q. I am trying to find out whether it was last year or fifteen years ago, or when they were living at Point Clear, or when?

Ans. It was when they were at Point Clear, and when Mrs. Broadwood moved to Mobile. It was a good many years ago. I was not particularly interested, so I don't remember.

I remember that it was while I was living at Point Clear. I knew Dr. Schowalter before he married the present Mrs. Schowalter. I don't remember whether or not these reports extended back before that time. I heard these reports back and forth, and I would never know when they were speaking and when they were not.

Cross-Examination by Mr. C. M. A. Rogers:

So far as I know these reports only came into being after Dr. Schowalter married the present Mrs. Schowalter. Of course I never knew of them except in a general way, but I have heard all of my life that they did not get along well and you would never know when they were on good terms. That was just pure hearsay with me, but it came from pretty good authority, from people who were pretty good friends of theirs. I never saw them quarrel. Mrs. Broadwood some evening would probably come by my home with Dr. Schowalter when he would be attending my family at Point Clear. I testified that when I was in their home they were perfectly pleasant and friendly. I sometimes spent the day there and they all seemed to be just like anyone else. The relationship insofar as I could see when with me was friendly. Of course I don't know what went on when I left, but as far as I know they were perfectly friendly.

It is a fact that the last summer I spent in Point Clear was about the summer of 1909 when I occupied the Dumont cottage, and since then I have been going down to Biloxi for the summer, but I have seen both Mrs. Schowalter and Dr. Schowalter frequently since then. In fact I frequently would see them on the streets in Mobile. I saw Dr. Schowalter frequently on the streets in Mobile and would stop and chat with him and sometimes he would come out to the house, and everything, so far as he and Mrs. Schowalter were concerned, seemed to be all right. They seemed to be on the very best of terms. I would meet them on the street, and if I did not meet them together I would always inquire about the other, and they always seemed to be very happy and friendly.

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DEPOSITION OF DR. CLAUDE G. GODARD.

Direct examination by Harry T. Smith:

My name is Dr. Claude G. Godard. I am a physician and surgeon, and am practicing in Baldwin County, and have practiced there since March 1916. I live on Fairhope Avenue, second west of Summit Street in Fairhope. I was acquainted with Dr. V. McR. Schowalter, and had known him since back in 1906. I remember when he moved to Fairhope. Since the time that he moved to Fairhope I have lived second door from where he lived during all of those years. Dr. Schowalter and I were very friendly. I was in the habit of visiting his home, and for periods I visited his home every day and then sometimes I would go a week without going in there, but I was there almost every day. I knew Mrs. Schowalter. Dr. Schowalter lived in Point Clear but he maintained an office in Fairhope for about three months before he moved up there, and he occupied an office where my house is now, and I

afterwards bought the place, and he rented from me a month before he moved into where the house is now. That was in 1916. He lived there up to the time of his death. That was in 1916 and I bought my place in 1917.

Q. During all of this period, have you or not had ample opportunity of observing the family relations between Dr. Schowalter and his wife and his daughter?

Mr. John M. Allen:

We object to the question on the ground that it calls for the conclusion of the witness.

Mr. C. M. A. Rogers:

And also because it is not in rebuttal.

Ans. Yes, sir.

Dr. Schowalter referred to his wife in conversation with me, but only in an affectionate way. I could not state how frequently he referred to her, but very often he spoke of her.

Q. When Dr. Schowalter spoke to you of his wife, I wish you would state whether or not what he said was affectionate and appreciative of her, or otherwise?

Mr. C. M. A. Rogers:

We object to the question ^{calling for} as/incompetent, irrelevant and immaterial, testimony, and upon the further ground that it calls for the conclusion of the witness, and further on the ground that it is not in rebuttal.

Ans. He always spoke in very nice terms of his wife in every way, and the fact of her being at home there with him and doing things for him, and then he also spoke of his wife staying home and answering the telephone while he was out. He always spoke of the different ways that his wife was good to him, such as looking after his interests. Dr. Schowalter was a stout man, and more or less of sloven appearance, and his wife always looked to see that he kept his clothes in good condition and was careful to see that he looked as if he had just come out of a band-box. He spoke of the interest that she took in him in that respect. I don't know whether this would count or not, but in regard to Dr. Schowalter's religion, - he was a Protestant and when his first wife died, she requested him to be a Catholic. Then after he moved to Fairhope, he changed from the Catholic religion and finally he went back to the Protestant religion and joined the Masons, and his wife said: "If that is good enough for Mac, it is good enough for me", and she quit the Catholic Church and went to the Protestant Church. They seemed to be congenial in that respect.

Their treatment of each other in their home life was very friendly. I never heard of any disturbance between them. Their daughter was there some part of the time, and the relation between the daughter and the father, and the daughter and the mother was just as any other parents would be. They were always friendly.

Q. Would you say that Dr. Schowalter and his wife during the time that you have known them lived together happily or unhappily?

Mr. C. M. A. Rogers:

We object to that question as calling for the conclusion of the witness, and on the further ground that it is not in rebuttal.

Ans. Happily.

Q. Dr. Schowalter told you that his wife was very helpful to him?

Ans. Yes, sir.

Q. From your own observation of her treatment toward him, I wish you would state whether or not she was helpful to him?

Mr. C. M. A. Rogers:

We object to the question because it calls for the conclusion of the witness.

Ans. She was very helpful to him. She stayed at home, answered the telephone, looked after his practice in general, and I really think she sacrificed a whole lot when his office was in the house, for she would entertain his patients and keep them from leaving there until he could return home.

Mr. C. M. A. Rogers:

We object to the witness stating what he thinks.

The witness:

Well, I know that.

From my observation as an outsider, I would say that she was a helpful wife. My intimacy with Dr. Schowalter extended ever since he moved to Fairhope and up to the time of his death. I knew his sons. Ned did not visit the home much on week-ends, but Preston would come over quite often. I think I saw Ned there one time. I was at the Schowalter home during Preston's visits, but I was never there during Ned's visits. I would say that the relation that existed between Mrs. Schowalter and Preston during those week-

end visits was mighty affectionate. They looked more like mother and son than anything else. They would go up-town together, clean up the yard together, trim the hedge, and would be just like mother and son together.

CROSS EXAMINATION BY C. M. A. ROGERS:

Mrs. Schowalter made the statement that if the religion which Dr. Schowalter subsequently adopted was good enough for him, that it was good enough for her; she told me that,- that if it was good enough for the doctor, it was good enough for her. They changed about the same time. Mrs. Schowalter's religion now is Episcopal. I am a Southerner, native-born and reared in Mobile, Alabama. So far as I know Dr. Schowalter was a native Southern gentleman. So far as I know the family has lived down here for a good many years and for several generations. I have never heard of any negro blood in Dr. Schowalter's family. Dr. Schowalter stood in the highest as a practitioner in Baldwin County. He was always received by the best people. From my observation of him I would say that he was a man who had pride in his family traditions. He frequently talked about the Schowalter family. It is a fact that most of the time since I have lived in Fairhope and Dr. Schowalter moved to Fairhope that his son Edward Schowalter has resided at considerable distance from Mobile and from Fairhope. From having seen Dr. Schowalter with his sons, I would say that the relation between them was always friendly, and one of affection. He evidenced great pride in his sons and discussed them with me. He talked of what they were doing and what he thought of them. He always expressed great pride in his boys and as to the way they were getting along and making out in life. He also discussed Miss Alice and how she was getting along. He expressed pride and satisfaction as to the way she was getting along in her work. In fact I believe he went up there once or twice to see her, made a couple of trips to Cincinnati to see her. He spoke of

the position that she held in her profession, and boasted of her as an anesthetist. He told me that she was a very experienced and skillful anesthetist.

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DEPOSITION OF MRS. CHARLOTTE G. SCHOWALTER.

Direct examination by Mr. Harry T. Smith:

I am Mrs. Charlotte Gertrude Schowalter, the complainant in this case. My husband referred to our daughter, Alice Schowalter, as Boots or Bootsie. I have examined the four letters handed to me, and they are letters written by my husband, Dr. Schowalter, to his daughter, Alice. I will attach them to my deposition and now hand them to the commissioner to be marked for identification.

Letters handed to commissioner and marked for identification as follows:

Exhibit CGS - Number 1 - Letter dated August 25, 1908.

Exhibit CGS - Number 2 - Letter dated May 22, 1925.

Exhibit CGS - Number 3 - Letter dated December 17, 1922.

Exhibit CGS - Number 4 - Letter dated April 23rd, 1924.

Mr. John Allen:

We object to the witness attaching the letters as a part of her deposition on the ground that they are incompetent, irrelevant and immaterial, and not in rebuttal.

Mr. C. M. A. Rogers:

We object to them if and when they are offered in evidence.

The witness continued:

I have examined the letter handed to me dated September 16, 1926, and signed "Preston" and addressed "Dear Mama", and this is a letter received by me from Mr. Preston Schowalter, one of the defendants in this case. It was received through the mail about the time it is dated. I attach this letter to my deposition and hand it to the commissioner to be marked for identification.

Letter handed to commissioner and marked for identification as follows:

Exhibit CGS - Number 5 - Letter dated Sept. 16, 1926.

The witness continued:

Prior to the time of the filing of the bill of complaint in this case to construe this will, neither of Dr. Schowalter's sons had shown any animosity towards me. They had made no charges against me such as they have testified to, prior to that time. I have heard what Dr. Godard said about Preston's visits to our house up to the time of Dr. Schowalter's death. I do not think his visits discontinued as soon as his father died; I think he made one or two visits after that. I am not sure. There had been no friction between Mr. Preston Schowalter and I prior to that time. There had been no friction between Mr. Ned Schowalter and I prior to that time. During the time that Mrs. Broadwood lived at Point Clear, she and her husband both lived there most of the time. They both lived at Point Clear. He was away a great deal of the time. He was away a good deal. They did live separate, one living over the bay and one in Mobile, sometimes for months at a time. I do know that Mrs. Broadwood has called Dr. Schowalter to her home on account of disturbances between herself and her husband.

Q. When was that?

Mr. C. M. A. Rogers:

We object to this line of questioning because it calls for incompetent, irrelevant and immaterial testimony, and has absolutely no bearing on this case and is hearsay.

Ans. I know this to be a fact that he had been called down there to settle these disturbances and consult with his sister about her difficulties with her husband.

The witness continued:

I was nineteen years old when I was married. Prior to that time I lived in Bradford, Pennsylvania. My husband was thirty-five years old when we were married. We were married in Bradford, Pennsylvania, from the Catholic Church. I believe that Mrs. Broadwood lived at Point Clear two or three winters if I remember correctly. She generally lived there in the summer. Some summers she was a very frequent visitor in my house, and some summers she was not. I think during my early married life she was a frequent visitor at the house. The frequency of her visits stopped after we had some little disturbance. I don't remember just what it was about now, but some difference between she and I. The relations which existed between Mrs. Broadwood and my husband were not uniform. They varied. They were not always on speaking terms. There were times when they were very friendly, and then some little dispute or difficulty would come up. I don't think that Dr. Schowalter ever refused to speak to his sister. They just did not come in contact with each other. They stayed away from each other by mutual agreement. Dr. Schowalter never in his life charged me with infidelity. There was never any question, and never a suggestion or word of it. I never heard of it until I heard of it in this evidence. If I remember correctly Dr. Schowalter changed his religion from the Catholic Church after we moved to Fairhope. I am not positive about that, but there was something in the newspaper, something I remember reading in the newspapers one day about some bill the Catholic Church was trying not to have passed, and he said, "Well that finishes me", and there were several other things. I remember distinctly the day that he got in his buggy and went off and joined the Masons, and he said that he was through with the Catholic Church forever. I think we were

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The witness continued:

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living at Fairhope, or it was shortly after we moved there. I never did threaten to kill Mrs. Broadwood.

Q. I wish you would state whether Mrs. Broadwood was a person of quiet temperament, or was turbulent.

Mr. C. M. A. Rogers:

We object to the question because it calls for incompetent, irrelevant and immaterial testimony, and calls for the conclusion of the witness, and this witness has not been qualified as an expert to testify as to temperament.

Ans. Of turbulent disposition.

Q. Do you remember the time that she and her husband separated?

Mr. C. M. A. Rogers:

We object to the question on the ground that it assumes that she and her husband separated.

Ans. Mrs. Broadwood told me when Mr. Broadwood left for England this last time that he was going and never intended to come back.

Q. Do you remember when that was?

Ans. One Christmas I spent Christmas day with her and I also stayed over night, and we had a long talk about her affairs, and we stayed up until about two o'clock in the morning and she was telling me of all her troubles.

The witness continued:

I remember hearing the testimony of Mr. Edward Schowalter and Mr. Preston Schowalter in reference to my mistreatment of one of the sons of Dr. Schowalter in regard to some accident that he had while sick, which is not true. No such thing occurred. I read Mr. Ned Schowalter's statement in regard to my making him cook for the other children. As to the assignment of work to these boys, there were times when there was a great deal to be done. We had a large house, milk to look after, wood to be brought up nine feet from the ground, and sometimes water to be brought up, and I was not in good health, and we all had an assignment of the chores. The boys were sometimes asked to go in the kitchen, make a fire, and sometimes put things on for a meal and get things started, and sometimes they were obliged to cook it when I was ill. I never put either of these boys in the kitchen to do the entire cooking for an extended period. At the time the boys were required to go in the

kitchen my husband was not able to employ servants to do this work. There was nothing that I knew of the matter with these boys that they should not help with the family work. They were good, strong, healthy boys. There were six in the family at the time, between six and seven. Doctor's grandmother lived with us for years. She was an invalid and eighty-three years old and not able to do anything. My little girl was born in 1904. I expect the boys were obliged to do the cooking off and on most all of the time. Not all of the time, but when I was ill, they were obliged to go in and do things like that. My husband did not object to his boys helping do the work. In fact he was the one that insisted upon them doing it lots of times. The boys did not at that time take the position that it was my duty to do the work. They would sometimes object, but as a general rule they would be pretty nice about it. There was a mutual working agreement that we all helped. I was reared in Bradford, Pennsylvania. Our family was not very large. I had older sisters. Up to the time I was married, I never had done any work and did not know when water boiled. I would always help my mother and sisters whenever they would allow me to. I have always been an energetic worker. Perhaps it would be a good thing to state that while the boys were working like that I was doing the family washing and all the work like that too.

Q. Mrs. Schowalter, Mrs. Broadwood referred to having received a letter from you sometime ago, which she said she thought she had and would attach to her deposition, but which she has not produced, will you tell us the substance of that letter?

Ans. Mrs. Broadwood had always brought all of her worries and business affairs to Dr. Schowalter to discuss whenever she could not settle them when they were on friendly terms. She would come over and he would not be very busy and he would talk to her, but in later years he maintained an office in Mobile and was coming back and forth and he was very busy and she would come over with her difficulties and tell him she was having a great many family disturbances, and so forth and so on, and all this seemed to worry Dr. Schowalter. He would object to it a great deal and he said that he wished Blanche would stop telling him of all her troubles, and all like that, that he had a great many worries of his own without her inflicting any more on him, so I wrote Mrs. Broadwood a letter and told her that Dr. Schowalter was a very busy man. I don't remember exactly what I wrote.

Q. What was the substance?

Ans. I just asked her please not to worry us with her troubles any more; that we had a great many ourselves; that she had money and might employ a lawyer to take care of her affairs; that she had never helped us in our troubles. She wrote me a letter and thanked me for this letter and said that I was the first person who had ever told her the truth about herself, and she was sure it would do her a lot of good, and that she would try to abide by some of the advice in it.

Q. I asked you about the occurrence that was stated by Mr. Ned Schowalter, and I think by Mr. Preston Schowalter in regard to the treatment of Rightor, when was the first time you ever heard of that?

Ans. Here, when I heard it in your office when I was asked about it in the evidence.

The witness continued:

I heard it mentioned that Mr. Brodbeck had testified as to his having heard such a rumor. The first time I ever heard of such rumor was when I heard it here in this office in the testimony in this case. The most humiliating thing that I did to Rightor on account of his having soiled himself was I believe I made him wash out his underwear and hang it up out in the yard. The boys were punished when an occasion warranted. Their father gave the most severe punishment. These boys did not always agree with each other, they were like ordinary boys. They used to fight a little bit. They were punished for fighting. I remember an occasion when Preston cut Ned's head with a dipper. Dr. Schowalter sewed it up. Their father was in the habit of punishing the boys. He used to have a switch and the boys used to have to go out and cut the switches. Dr. Schowalter never threatened to send me home. I remember one time going down on the wharf and sitting there a while after a quarrel. That is the nearest approach to a separation that ever occurred. I could not tell the exact year when this occurred, but it was when Mrs. Broadwood and I had had some trouble about some furniture and she had accused me of stealing. I imagine it was along about in 1907 or 1908, as near as I can remember. I could not say just when. Mrs. Broadwood had bargained

to sell her Point Clear home furnished with the exception of a suite of mahogany furniture, and she made me a present of a brass bed which was amongst this furniture, and she asked me to store several other articles she wanted to take out of the house and keep and she sent them to the house and I stored them for her. One day, I have forgotten just how it came about,- but anyway, she wanted this furniture and she accused me of trying to keep it when I had not said anything about keeping it. I was storing it for her and some of it was really in my way. She wrote me two insulting letters accusing me of stealing this furniture and trying to take this bed, which she insisted upon my having, so I went in the house and took the bed, springs and everything down by myself and called this dray and sent it to her home. I discussed it with Mac and told him I thought it was very unkind and uncalled for, that he knew as well as I did that it was uncalled for, and that I felt Mrs. Broadwood owed me an apology, and that I thought he should go down there and ask her what it was that she meant. He went down there and came back without the apology. My feelings were very much hurt, for I thought that she should have at least sent me some kind of an apology. I went down to the bath-house and stayed down there until about eleven o'clock,- no, I stayed down there until about two or three o'clock, and he came down there and I told him I was going home in the morning. He came down and persuaded me not to go. That is absolutely the most serious difficulty my husband and I ever had. I have never been to Fish River in a boat in my life. I never went to Fish River with the Glass boys. The Glass boys were sons of Mr. and Mrs. Adam Glass. They had a summer home at Point Clear. One morning I took a ride to Fairhope with them. I don't remember how old they were, just young men. We got back about one or one-thirty. My husband and I did not quarrel over this. We had broken down and dinner was delayed. He was a little put out about it, but I don't remember that he was very much disturbed. He never charged me with any infidelity at the time. He absolutely did not. I think when my sister was visiting me we used to ride up and down the bay with the

Glass boys in their boat. I was with them in a boat on one occasion when we rode up and down between Stone's Spring and Point Clear, and one time we went to Fairhope. Willie and Arnold Glass, my sister, Olive, and myself went along. My husband did not object to this. My husband never charged me with any wrong connected with going with them. My sister spent nearly a year with us. This was with the consent of my husband. That was when Alice was quite young, about one or two years old. It was between 1905 and 1906 as near as I can remember. At that time my sister was about twenty-five, twenty-six or twenty-seven years old. She was fond of society, and used to attend the dances at the hotel with an escort. I remember the occasion when my sister returned home. She had been with us about a year, and she had spent all of her money buying things for Alice and I, and I told her I would possibly be able to repay her. She was about ready to go home then, and she said if she had the money, she believed she would go home. So Mac said, Well, Olive, if you want to do that I will give you the money. There had been no quarrel. My husband was very fond of my sister and he corresponded with her right up to the time of his death. She came down with the expectation of attending his funeral, but she got there afterwards, because in the North it is customary to keep them longer than it is here. She lived in Philadelphia. When Ned and Preston went to work, they knew shorthand and typewriting. I taught it to them. They knew shorthand so that they were able to take a position when they came to Mobile. They had no teacher of shorthand other than myself that I know of. I think Ned attended Springhill College about two years. The year before Ned came to Mobile to live we were living at Point Clear, and at that time my husband's financial condition was very poor. We were very poor. We had had extraordinary expenses. One year in particular we had heavy expenses. I remember there were three deaths. My father and grandmother died, and baby John died. John had been born that

year. Preston had had appendicitis, John, my second child, died, Dr. Schowalter had appendicitis, and I had appendicitis. That was all within about a year or a year and a half. In speaking of "grandmother", I mean Dr. Schowalter's grandmother, not my grandmother. His grandmother had broken her hip and was an invalid. When Ned first came to Mobile to live he boarded with Mrs. Adolph Danne, a very dear friend of his father. I used to come to Mobile and whenever I came to Mobile I used to go around there and have dinner with them on nearly every occasion when I came to Mobile. While Ned was working in Mobile he would come over just as frequently as he could afford to come over, and was in the habit of bringing me presents. I think the first money he earned he brought me some china from Kresses, - a pickle dish and a celery dish. They were of very poor china and a simple present, but they were the best he could afford at the time. I think I still have them. When Preston came over it was his custom to bring me a box of candy. He did not do that as much as Ned, but Preston at Christmas time always gave me presents. I wish to say that Preston was always generous. He would do lots of nice little things for Alice and I both. I do not remember any particular incident or incidents that occurred at the time that Preston came to Mobile, or what brought his coming to a point, except that he just came over to get work. He was very anxious to get started. I don't remember how old he was, but about sixteen or seventeen years of age. When Ned came to Mobile, I think possibly that was the time we had to work pretty hard and maybe he had to go a little cooking. He wanted to go out into the world and get started, for he had finished his shorthand and he wanted to get a position. He came over to Mobile, tried to get work, and talked it over with me, and I gave him suggestions as to the best way of approaching business men. I think my husband paid about \$2000.00 for our home in Fairhope. He paid for it in monthly installments of about \$20.00 per month. I think it was in 1916 that Rightor died. He was between seventeen and eighteen years old. He was not living at home at the time. He had been in the Navy and he

wrote to me. He wrote me a beautiful letter a day or two before he died and told me that he expected to come home. I preserved the letters I received from the boys for a long time and then I destroyed them. I think I destroyed them just after Dr. Schowalter died. I never did try to keep Dr. Schowalter away from a medical convention. When the medical conventions were close by, he attended them. I purchased the boat stock from Preston myself direct and paid for it with my check.

Q. At the time that Dr. Schowalter died, about what was the extent of his indebtedness?

Mr. C. M. A. Rogers:

We object to the question as incompetent, irrelevant and immaterial, and on the further ground that it is not in rebuttal.

Ans. Between \$15,000.00 and \$20,000.00 I should say.

I never refused to sign a deed with Dr. Schowalter. I know what property he sold. I signed the deeds with him. I never made any accusations against Preston as to his having any illicit relations with the cook. I never heard of that until I heard it in this evidence. I never even thought of such a thing. I believe there was one occasion when the boys was in the pantry and got hold of some fig preserves that had fermented, and Preston got too much and was trying to crawl over the ice-box, and we all took it as a huge joke. I don't believe I punished them. I think the doctor was there at the time. I don't think that I ever suggested to the doctor that the boys should go to work, but we all thought it was time for them to go to work. They thought so too, for the doctor was hardly able to afford to feed them. There was nothing for them to do, or any opportunity for development at Fairhope or Point Clear other than driving a delivery wagon for Brodbeck and Zundell. It is not a fact that I ever made any objection to Preston being operated on for appendicitis. The fact of the matter is that whenever the boys were ill in Mobile, I was the one that came over to look after them. When Ned

was at Springhill with the measles, I was the only member of the family who came over to see him. When Preston was ill, I came over to see him and did everything I could for him. I know about Miss Alice having a lot in or near Fairhope. She bought that lot and paid for it \$10.00 a month with money earned by her the first year she worked in Cincinnati. She paid for it out of her earnings. She paid \$225.00 or \$275.00 for it. I bought some lots in the same tract and they cost the same as hers. On different occasions I borrowed money from Preston. I repaid the money. One time I borrowed \$100.00 from him to buy Dr. Schowalter some clothes. I repaid that money with my money obtained from boat stock. I think Ned on one occasion, after he left home, borrowed about \$200.00 from Dr. Schowalter, and that was repaid. I never heard of the book known as "Every man his own Lawyer".

CROSS EXAMINATION BY MR. C. M. A. ROGERS:

It is a fact that the last time that Ned Schowalter, and Preston Schowalter came to visit me was the occasion when we had a family conference subsequent to Dr. Schowalter's death, and when Mr. Rit Smith was in my home.

Q. Is that the occasion when Mr. Smith requested of Ned and Preston that they give quit-claim deeds or releases of all of their right, title and interest in and to the estate of the late Dr. Schowalter?

Ans. I don't remember the form of the paper. I remember them being asked to sign a paper to dispose of some of the property in order to pay Dr. Schowalter's debts.

Q. It would have been a disposition of everything they owned?

Ans. I did not realize that. I don't know that it meant that.

Q. You don't know?

Ans. My idea was to dispose of some of the property so that we could pay up Dr. Schowalter's debts

Q. You and Mr. Smith had conferred about that?

Ans. Yes, he said there was some ambiguity about the will.

Q. The boys were called in to clear up that ambiguity which Mr. Smith had stated to you existed?

Ans. I just thought that the boys would consent to do whatever was necessary so that we could proceed with or settle up Dr. Schowalter's estate.

Q. In your previous testimony, on cross examination, you did state, did you not: "I remember a conference had between me, my attorney, Mr. Rit Smith, Edward R. Schowalter, Preston Schowalter, and Alice Schowalter, in Fairhope, in my home. I think it was in about July, 1926. I did seek to have Preston and Edward R. Schowalter sign a quit-claim deed to whatever interest they might have in their father's estate, but I was laboring under a misapprehension of what I was doing" - you made that statement, did you not?

Ans. If it is down there, I guess I did.

It is a fact that Mr. Broadwood is stone deaf. He was a sportsman and hunter. Before his marriage I understood that he spent a great deal of his life hunting in all parts of the world. He has hunted some since his marriage. I saw by the paper that Mrs. Broadwood has only recently returned from England. I heard that is where Mr. Broadwood went when he left the United States.

Q. Now something then did occur about Rightor in connection with some unfortunate accident connected with his childhood, didn't it?

Ans. That is the occasion I have stated, yes.

Q. So the witnesses who have testified that they heard something about your having put Rightor's nose into this mess heard something that was wholly unknown to you?

Ans. Yes, sir.

Q. And you never heard anything about that until you came here to testify?

Ans. I did not.

Q. There was a colored woman there at that time by the name of Clara Buchanan?

Ans. I don't know that Clara Buchanan was there at that time. She did cook for us.

Q. That was during the last summer that your sister was down there?

Ans. I could not say.

Q. You testified about your sister's visit here, and her having remained for a period of twelve months or a year,-- she never visited your home again until after Dr. Schowalter's death, did she?

Ans. She did not.

Q. She came to Fairhope after Dr. Schowalter died, subsequent to the time of his death, at just about the time that you held this family meeting with Edward R. Schowalter, Miss Alice, Preston Schowalter and Mr. Rit Smith?

Ans. My sister came about a day or two after Dr. Schowalter was buried.

Q. She was still down here at the time of the meeting with the people I have named?

Ans. She was.

I am acquainted with the provisions of Dr. Schowalter's will. I remember it was originally drafted with the words "upon your death or remarriage". I know that the words "or remarriage" have lines drawn through them. I think that was discussed with the late Dr. Schowalter. I am sure that it was discussed. There was not very much of a discussion. I said to Mac, "I think that is a funny thing to say, Mac," and he said, "If you don't like it, I will scratch it out". I don't remember much about whether that was done subsequent to the time the will was written. I testified that I bought Preston's boat stock with my money. As to how I obtained the money, I had boat stock which was paying a dividend. I had borrowed money from the bank to purchase my stock, and I purchased additional stock from Preston. I don't remember the date when I first purchased some of this boat stock. I don't remember exactly whether the money with which I purchased the boat stock from Preston was derived from my boat stock that I owned at that time. I was dealing in real estate. It was my money that it was purchased with. I had some income from life insurance

from my son, \$25.00 per month. My father was employed in a large steel iron plant; he was a pattern-maker. There were five in his family,- father, mother and three girls. It is true that I signed certain deeds with Dr. Schowalter from time to time when some of his property was sold. It is not true that when that property was sold it was conveyed with the idea of obtaining money with which Miss Alice should be sent to school. No part of that money was to be so used. Dr. Schowalter furnished the money to send Alice to school. He obtained the money from his profession. His earnings were sufficient to send Miss Alice to school without selling some parts of his real estate. Dr. Schowalter at first sent Miss Alice to St. Cecelia's College at Nashville, and he later had her withdrawn and sent her to the Judson at Marion. It is not a fact that this entailed an extra expense any more than one railroad fare and one tuition. No additional expense other than railroad fare and one tuition. I could not tell you whether that was before or after his break with his church. Dr. Schowalter left the church first. I could not say that Dr. Schowalter was overly religious.

Q. Was he a regular communicant of the church?

Ans. He was a lay reader in the Episcopal church.

Q. He was a regular communicant of the Catholic Church?

Ans. He used to go to church.

Q. You were a regular communicant of the church?

Ans. We went to church together.

Q. So your sympathies with the church began to fade, so to speak, before those of Dr. Schowalter?

Ans. I could not say that it did.

Q. You have testified that he was a regular communicant of the Catholic Church?

Ans. When we went to church we always went to church together.

Q. You said that he continued to go to the Catholic Church?

Ans. You asked me if he was a regular communicant?

Q. You testified that you were not a regular communicant of the church prior to the time that you left it?

Ans. I don't remember leaving it particularly. I just did not go.

Q. You testified, I believe, that Mrs. Broadwood was of a somewhat turbulent disposition?

Ans. I did.

Q. And that you had written her and asked her not to trouble her brother, Dr. Schowalter, with her domestic, financial and business trouble?

Ans. I did.

Q. Mrs. Schowalter, what about the negro taint in the Schowalter blood?

Ans. I would rather not discuss that.

Q. I must ask you to discuss it.

Ans. Well, Mrs. Broadwood's daughter went up to this camp, and while she was up there she was examined by this Boston doctor, who said that she had permanent signs of negro blood; that she had a typical negro foot, flat foot, and other features, and her older daughter became very much excited over it and wrote her mother a letter and asked her not to read it. Her mother sent this to Mac.

Q. She wrote her mother a letter and asked her not to read it?

Ans. She wrote her mother a letter telling her of what this doctor had said, and then there was another enclosure containing all of the details, and she said she would prefer that her mother not read it, but she sent this letter to her. She asked her mother not to read this enclosure. Her mother sent both letters to Dr. Schowalter.

Q. Did Dr. Schowalter discuss it with you?

Ans. About once.

Q. Did you have these letters in your possession?

Ans. I burned them.

Q. That is the letter that is referred to in the letter you wrote Mrs. Broadwood?

Ans. Yes.

Q. When did you burn up the letters that Miss Hilda wrote to her mother?

Ans. I don't know exactly.

Q. Dr. Schowalter in discussing these incidents with you, what was said?

Ans. We never discussed it very much. Mrs. Broadwood wrote to him sending him the letters, and she came over there to see him about it, and, as I remember it, she was anxious for him to go up and interview this Boston doctor and call him to time about it and Mac said there was nothing to it. There was a good deal of discussion between Mrs. Broadwood and Dr. Schowalter about it. I think on one or two occasions I was present during a discussion of the subject.

Q. Did Dr. Schowalter regard it as a proven fact?

Mr. Harry T. Smith:

We object to the question as irrelevant and immaterial.

Ans. I don't think he did.

Q. Did you?

Ans. Just on the grounds of that letter.

Q. On the grounds of that letter did you regard it as a proven fact?

Ans. Just on the grounds of that letter.

Q. Is it not a fact that you wrote Mrs. Broadwood that you regarded it as a proven fact?

Mr. Harry T. Smith:

We object to the question because it calls for the contents of the letter, and as being a mere bantering of the witness.

Ans. I don't remember what I wrote Mrs. Broadwood.

Q. You have no recollection of what you wrote Mrs. Broadwood?

Ans. No, not a clear recollection.

Q. This letter was written comparatively recently?

Ans. A couple of months ago.

Q. Was written during the month of December?

Ans. I don't remember, possibly it was.

Q. I will ask you to recall as well as you can the contents of the letter written to Mrs. Broadwood.

Mr. Harry T. Smith:

We object to the question and advise Mrs. Schowalter that it is not her duty to undertake to recite the contents of the letter which counsel withholds from inspection.

Mr. C. M. A. Rogers:

I wish to state in this connection that I am asking Mrs. Schowalter to state the contents of the letter which she herself has stated was written some two or three months ago, merely for the purpose of showing what her recollection is concerning incidents which have occurred in her life, and whether or not her testimony in those regards is any more accurate than her recollection of the contents of the letter.

Mr. C. M. A. Rogers:

I renew the question.

Ans. There have been a great many untruths being told in

this evidence, and I was sure that Mrs. Broadwood would probably tell some more, and I thought that if she was going to rake up all these unpleasant things which have been,-- I can't remember the letter.

Q. You don't remember the letter?

Ans. I can't remember right at this moment.

Q. And you have testified concerning other incidents during the taking of your testimony, and I ask you whether you remember these incidents any more clearly than you do the contents of the letter which you say you wrote some three or four months ago?

Ans. Yes, sir.

Q. So you can remember those incidents better than you can remember the letter you wrote three or four months ago?

Ans. I remember the letter, but I can not tell you the exact contents of the letter word for word.

Q. And this is true despite the fact that you say in closing that "if any further untruths are told or suggested against me in this testimony, I will answer by telling truths which I can prove and if it takes all I possess and carries every one I love down with me, I will publish to the world everything I know about the Schowalters past, present and future"?

Ans. You ask me if I wrote that?

Q. Yes.

Ans. I did.

Q. You remember it now since I have read it?

Ans. Yes, sir.

Q. Do you remember too that you wrote that in discussing this incident of the alleged negro taint, this fact destroyed my peace of long ago and Mac was aware of the truth while not admitting it?

Ans. I may have been hysterical when I wrote that.

Q. One other person suspects and possibly knows, but is silent also,-- were you hysterical when you wrote that?

Ans. Possibly so.

Q. So you are rather turbulent too on occasions?

Ans. Possibly so.

Q. Who is the other person referred to?

Ans. Is it necessary that I answer this?

Mr. Smith: Q. I think that it is necessary. You may answer the question, but it is not necessary that you undertake to recite the contents of the letter, but I would prefer for you to answer it.

Ans. I thought possibly Ned.

Q. How did you arrive at that conclusion?

Ans. I thought possibly he and his aunt had discussed it.

Q. Did you know that he and the doctor had never discussed it?

Ans. I thought he had. To my knowledge he never did.

Q. You did say though that if any untruths were stated in the process of the testimony here, that you would be willing to use everything that you possessed to publish to the world all you knew about the Schowalters even though it carried every one you loved down?

Ans. In that letter I said that, but I have changed my mind since.

Q. When did you change your mind?

Ans. After I wrote it and mailed it.

Q. You never wrote to Mrs. Broadwood recalling it, did you?

Ans. I never did.

Q. Still you had a change of heart?

Ans. I wrote that letter after I had been over in Mr. Smith's office and heard of all the testimony and the untruths that Dr. Schowalter's sons had testified to against me.

I have lived in the South for 25 years. I was born and reared in Bradford, Pennsylvania. I did not threaten to shoot Mrs. Broadwood on one occasion. I recall the incident when Mrs. Broadwood came to our home in regard to nursing Dr. Schowalter's grandmother or obtaining a nurse for the grandmother. I had nursed the grandmother and had had about all I could bear.

Q. What did you do?

Ans. I nursed Mrs. Broadwood's grandmother during all of her illness.

Q. I am asking what did you do on the occasion when Mrs. Broadwood came to your home on that occasion to see about a nurse?

Ans. I stood up and was going to choke her.

Q. Who intervened?

Ans. Dr. Schowalter.

Q. She left the house and never came back in the house during that summer until after the grandmother was buried?

Ans. Her grandmother died within the next day or two.

Q. Several weeks wasn't it?

Ans. No, it was not.

Q. She had come to your house to discuss the bringing of a nurse over from Mobile to aid you in nursing Dr. Schowalter's grandmother?

Ans. She came in answer to an appeal from her brother that she help with the expenses incidental to her grandmother's illness.

Q. She offered to employ a nurse?

Ans. She did not.

Q. Did Mrs. Broadwood come into your home at all after her grandmother's death, - while she was lying in state?

Ans. She came to see her grandmother every day before her grandmother had this fall and lost her mind.

Q. You stated just a minute ago that she did not come into your house after she had gotten into this tiff ^{with you} / didn't you?

Ans. I mean for several years or so.

Q. You did say that Dr. Schowalter's grandmother died a few days after that incident?

Ans. Yes, but she had been ill a long time previous to that.

Q. Let's get back to the question I asked you a moment ago - Mrs. Broadwood, you have stated, did not come to the house after this quarrel between you two?

Ans. We had no quarrel, there were no words.

Q. You were going to lay hands on her?

Ans. Yes, but we had no quarrel.

Q. So she did not come to the house after this?

Ans. I am not saying that.

Q. She did not come for years after that and did not come to the house after her grandmother's death, when her grandmother's body was lying in state so to speak?

Ans. She did not, but no-one denied her the privilege to come.

Q. That was shortly after you were going to lay hands on her?

Ans. Yes.

Q. You were going to attack her?

Ans. Yes. Dr. Schowalter's grandmother had broken her hip and had been in bed for months and months.

Q. Did you ever accuse Dr. Schowalter of having negro blood in his veins?

Ans. I did not.

Q. But you conceded all along that he knew that it was true?

Ans. No sir, not Dr. Schowalter. My testimony was about Barbara Broadwood, Mrs. Broadwood's daughter.

Q. Didn't you state in this letter that Mac was aware of the truth while not admitting it?

Ans. He seemed to think that flat feet were indications of negro blood.

Q. When will Miss Alice Schowalter complete her medical course?

Ans. She has quit studying medicine.

Q. What is she doing now?

Ans. She is nursing.

Q. Is she employed?

Ans. At Bellevue Hospital, New York City.

I do not know what wage or salary she gets. She has not written me about that. She has not written me exactly what she is receiving. She has not told me of any specific case she has been on. She has stated in her letters whether she is serving as an anesthetist. She is not serving as an anesthetist. She is capable and competent to do it.

Q. Are you planning to go to South America?

Mr. Harry T. Smith:

We object to the question on the ground that Mrs. Schowalter's plans to go to South America could not have the slightest possible influence on Dr. Schowalter's intentions in writing this will before he died.

Mr. C. M. A. Rogers:

The reason the question is asked is to throw light, if possible, on the financial condition of Mrs. Schowalter and her daughter, Miss Alice Schowalter.

Mr. C. M. A. Rogers:

I renew the question.

Ans. I told somebody that as a bait for you people.

Q. Just in what connection?

Ans. I have known that the young men have been visiting a certain place, and this lady and I were talking and I told her that, for I wanted to find out whether she was discussing my business with Ned and Preston.

Q. Just a clever ruse of yours?

Ans. Yes.

Q. Is that the only other person you discussed it with?

Ans. No, I discussed it riding in an automobile, and I knew it would get back to you all.

Q. What did you say?

Ans. I don't remember what I said. I stated the fact that I was going to South America.

Q. When did you plan to go?

Ans. I had no plans.

Q. You had no idea of going to South America?

Ans. No, sir.

Q. Just a wild dream?

Ans. Yes.

Q. Talking out in pure air?

Ans. Yes, sir.

Q. Mrs. Schowalter, you were asked when we examined you previously, if you would not obtain a statement and attach it to your testimony concerning obligations that the estate owed you?

Ans. I prepared such a statement, I think,,in the very beginning.

Q. You will attach it to your testimony before it is filed?

Ans. I was under the impression that it had already gone up to the Probate Court.

Q. I am not talking about anything to go to the Probate Court,- I am asking you to attach to your testimony a statement showing the claims that you have filed in the Probate Court so that the Judge who passes on this testimony will have the benefit of it?

Ans. I will.

Q. When you testified previously, you said,- "I will prepare and attach to my deposition a complete statement of the claims against the estate totalling about \$7000.00 that the estate owed me" -

Ans. I will make up a statement of my claims.

Q. How much does the estate owe you?

Ans. I could not say now.

Q. Who filed the claim for you?

Ans. I think Mr. Rit Smith.

Q. Have you a copy of it?

Ans. I think so.

Q. What was the greatest items in that list?

Ans. I don't remember.

Q. How did Dr. Schowalter come to owe you \$7000.00.

Ans. I would not say that was the exact amount, but anything that Dr. Schowalter owed me was for money that I had advanced him to pay different things, for money that I had loaned him.

- Q. You don't remember now any particular transaction?
- Ans. I can't remember exactly. One time he owed some notes at the Fairhope bank and I paid them out of my personal money.
- Q. You were rather surprised that the claims totalled \$7000.00?
- Ans. Whatever my claim was I swore to it to the best of my knowledge and belief.
- Q. You don't remember the amount?
- Ans. I could not say exactly what it was.
- Q. Three or four thousand dollars?
- Ans. I said I did not remember.
- Q. Now you stated in your letter to Mrs. Broadwood that you had enjoyed a short period of prosperity, that is true isn't it?
- Ans. Yes, sir, moderate prosperity.
- Q. Was that prosperity as a result of your efforts or as the result of Dr. Schowalter's efforts?
- Ans. Our united efforts.
- Q. And yet you were paying Dr. Schowalter's obligations?
- Ans. If he was short of funds, and I had funds, I gave it to him gladly.
- Q. He was giving you funds when you needed them?
- Ans. Yes.
- Q. Were you creating at that time any additional indebtedness?
- Ans. Not any more than usual, just current accounts.
- Q. Mrs. Schowalter, you can live on your income over in Fairhope, can't you?
- Ans. I have an income of \$25.00 per month.
- Q. You have more than that?
- Ans. No, I have not.
- Q. How about the boat stock?
- Ans. The boat stock has not paid a cent in two years, longer than that possibly. I had forgotten all about I even owned any.
- Q. Living in Fairhope is comparatively simple compared to living in the City?
- Ans. It is very expensive living in Fairhope.
- Q. You rent your property over there, don't you?
- Ans. I rent it possibly three months in the year. I rented it the other day. The first month I am getting \$30.00, and I paid out a plumbing bill of about \$25.00.
- Q. You rented it on one occasion to Clarence Darrow?

Ans. Yes, for six weeks or two months at \$60.00 per month.

Q. That is Clarence Darrow, the Chicago lawyer?

Ans. Yes.

Q. Is it not a fact that he paid you \$300.00 for the use of your property while he was there?

Ans. No, sir.

Q. You say that the first time you ever heard anything about your having been accused of infidelity by Dr. Schowalter was in the process of this testimony?

Ans. Yes, sir, I do.

Q. Was that the testimony that you referred to when you read Mrs. Broadwood's statements,---

Ans. Mrs. Broadwood could not testify truthfully to anything about me that could hurt me.

Q. What was it that you had in mind?

Ans. She was in the habit of telling untruths about me.

Q. Did you have this in mind?

Ans. I never dreamed that there was any such accusation.

Q. Did you have any definite thing in mind?

Ans. I knew that she was very imaginary and could make things up as she went along.

Q. So you think that she is fabricated?

Ans. Yes, sir.

Q. You heard Mrs. Broadwood testify and you were here, were you not?

Ans. I did.

Q. You heard her testify concerning conversations with her brother?

Ans. I did.

Q. Everyone of them are false and untrue?

Ans. Based on her imagination and not on the facts. I will say that they were not based on facts, that they were not true.

CROSS EXAMINATION BY MR ALLEN:

Q. You stated at the time you wrote that letter to Mrs. Broadwood that there had been a great many untruths told in this case, - who had told them?

Ans. In the testimony of Mr. Ned Schowalter and Preston Schowalter and Mr. Brodbeck and Mr. Zundell have testified to a rumor.

Q. Mr. Bredbeck and Mr. Zundell too?

Ans. I have not seen their testimony but I was told that they had testified to a rumor. I have not seen their testimony. I do not know whether their testimony is true or false. I should not have mentioned them.

Q. Then what Mr. Preston and Mr. Ned Schowalter told was absolutely untrue?

Ans. Absolutely untrue.

Q. Was there anything you have testified to untrue?

Ans. Not to the best of my knowledge and belief.

Q. Anything that any of your witnesses testified to untrue?

Ans. No, sir.

Q. Then you and all of your witnesses have told an absolute truth in this case, and the other witnesses for the respondents Edward J. Schowalter and Preston Schowalter have testified to lies, is that correct?

Ans. Yes, sir.

Q. You wrote this letter to Mrs. Broadwood with reference to the negro blood alleged to be in the Schowalter family by reason of one of the young ladies having a flat foot, - you wrote that for the purpose of putting a stop to these untruths?

Ans. I thought Mrs. Broadwood would have pride enough that she would not want that known about her daughter.

Q. You wrote in that letter to Mrs. Broadwood that you would spread it to the world, - I mean her affairs.

Ans. You mean about the negro blood?

Q. Yes?

Ans. That was combined with some other things.

Q. As a matter of fact, wasn't that all that you were referring to?

Ans. Not altogether, No.

Q. What were you referring to when you said "I will publish to the world everything I know about the Schowalters", - what were you referring to then?

Ans. Just a great many things.

Q. Your daughter, Alice, is a Schowalter?

Ans. Yes, sir.

Q. She is the daughter of Dr. Schowalter?

Ans. Yes, sir.

Q. At the time you wrote that letter, you knew that?

Ans. Possibly I forgot it at that time. I was not thinking about her when I said that.

Q. What did you mean by saying this: "Barbara and Hilda and I

now share a common skeleton in the closet in the matter of blood. This fact destroyed my peace long ago" - what did you mean by that?

Ans. It is not a pleasant thing to have rumors of that kind get out in a family.

Q. Did you regard it as a fact?

Ans. Well, I had my suspicions.

Q. Tell me whether or not you regarded it as a fact?

Ans. I would rather not discuss that.

Mr. John N. Allen:

I think that the witness should answer the question.

Mr. Harry T. Smith:

You are not required to answer, but I think you had better go on and answer the questions.

Witness:

I would rather not answer.

Q. Do you refuse to answer the question?

Ans. I do.

Q. Mrs. Schowalter, the real property that Dr. Schowalter left at the time of his death, or that he owned, that he owned at the time of making his will, - he inherited that property from his ancestors?

Ans. I think that he bought the property that his Point Clear Home was on. My understanding is that he did. He bought it from the Lesesnes, or someone. That is my impression and I think that I have heard Dr. Schowalter say so.

Q. That is the Point Clear property?

Ans. Yes.

Q. Part of which he sold after making his will?

Ans. Yes. I may be mistaken but that is my impression.

Q. Don't you recall, Mrs. Schowalter, that that was Dr. Schowalter's share of the beach property of his father's estate, that Percy Schowalter got his share, Mrs. Broadwood her share and that this constituted Dr. Schowalter's share of the estate?

Ans. I am not positive about that. My impression is that there was some transfer of Dr. Schowalter bought it or transferred it just before he was first married. I am not clear on that. I could not testify to that.

Q. You have heard that that was his share of the estate?

Ans. I could not say. I have heard all of this discussed but I never paid much attention to it.

Q. In other words, you don't know where it came from?

Ans. No, I could not say.

RE-DIRECT EXAMINATION BY HARRY T. SMITH:

Q. You said something about that \$25.00 per month coming from insurance on the life of Rightor? He kept up that policy for your benefit?

Ans. Yes.

Q. Did he take it out in your name?

Ans. Yes, sir.

Q. How old was he?

Ans. Seventeen or eighteen, about sixteen when he enlisted.

Q. Do you know when the insurance was taken out?

Ans. Shortly after he went in the Navy.

Q. Was it taken out at your request?

Ans. No, sir, I had nothing whatever to do with it.

Q. Did he write you that he had taken it out in your name?

Ans. If he did, I don't remember. I could not say whether or not he did.

Q. Did he correspond with you?

Ans. Rightor wrote me regularly.

Q. Now you said you burned the letters to which you had reference in your letter to Mrs. Broadwood, that you burned them on the same day?

Ans. Yes, the same day they were given to me. Mac handed them to me to read and I burned them within the next twenty-four hours.

Q. You spoke of your husband's appealing to Mrs. Broadwood to bear a part of the expense of the last illness of their grandmother,- do you know whether she responded to that?

Ans. She did not. She told us of a colored woman we might get, but she did not say anything about helping to pay for it.

Q. You say you had some trouble with Mrs. Broadwood in which you without saying anything started to lay hands on her,- what was it she said?

Ans. She told Mac she could tell him lots of things about me. She said, I could just tell you lots of things about Charlotte that you don't know.

Q. You were at that time pregnant?

No, I was not,

Ans. / I think I had a right young baby just a few months old.
My second child, John, was just a few months old.

RE-CROSS EXAMINATION BY MR. C. M. A. ROGERS:

Q. This insurance policy that Rightor Schowalter took out merely came to you automatically as a matter of law?

Ans. I don't know.

Q. Did this policy name you as beneficiary?

Ans. Yes, sir.

Q. Did you ever see the policy?

Ans. It came ~~and~~ my husband handled all of that when it came.

Q. All that you know about it is that you received information from Washington that you were the beneficiary of an insurance policy taken out by your step-son, Rightor Schowalter?

Ans. Yes, sir.

RE-RE-DIRECT EXAMINATION BY HARRY T. SMITH:

Q. How is this \$25.00 per month paid to you?

Ans. By check from Washington, from the United States Government at Washington.

Q. Made out in your name?

Ans. Yes.

.....

DEPOSITION OF RITTENHOUSE M. SMITH.

Direct Examination by Harry T. Smith:

I am Rittenhouse M. Smith and am a practicing lawyer. I was Mrs. Schowalter's attorney in this matter and was representing her. I associated Mr. Harry T. Smith. That is the situation. My recollection is that the bill had been filed at the time Mr. Harry T. Smith was associated. I know it was. Before the bill was filed I had advised Mrs. Schowalter that the will was ambiguous. Mrs. Schowalter told me what the doctor's intentions were after I had told her that the will was ambiguous, and she told me that she knew that there would be no trouble with the boys; that the boys and she were on excellent terms and that she knew the boys would be glad to clear up any doubt by giving her anything that they might possibly have. I prepared a paper and sent it to Mrs. Schowalter. It was a paper conveying to Mrs. Schowalter any interest, present or future, that they might have in the doctor's estate, wherever it was ^{of} or/whatever character. It was a quit-claim. I then went over the bay and was present at the time that Mr. Ned Schowalter and Mr. Preston Schowlater were at Mrs. Schowalter's house and they were considering whether or not they would sign the quit-claim conveyance. My recollection is that Mrs. Schowalter presented the quit-claim conveyance to them for their signature. I had a copy of the will. My recollection is that just a discussion came up and Mr. Ned Schowalter did the talking on behalf of the two boys and asked me to let him see a copy of the will. I showed him a copy of the will and he told me that it was his idea that they did have an interest in the estate, and my recollection is that he said he would consider the matter further and would see me in Mobile. Mr. Preston Schowalter was present, and my recollection is that he kept out of the conversation except at the last and he said he would talk the matter over with Ned and let me hear from him. I explained to these gentlemen that I had advised Mrs. Schowalter that the will was ambiguous, and that I wanted to clear up any ambiguity.

They did not decide that day whether they would sign it or not, because Mr. Edward Schowalter or Ned called by my office and told me they would consider the matter further and my recollection is that he said he would take it up with his attorneys, and a few days afterwards he wrote me that it was his opinion that it gave the boys an interest in the estate and that they would fight it out. Mrs. Schowalter and Miss Alice Schowalter were present at the time but I could not state exactly what they said. I have ready the testimony of Mr. Ned Schowalter and Mr. Preston Schowalter in this case, and I read the remark that one of them testified to, or both, in regard to Mrs. Schowalter's statement that she was sorry she ever came South. No such statement was made by her in my presence. I do not recall that statement at all. I do not recall anything of that kind. I know that Mrs. Schowalter was very much surprised that the boys had refused to sign.

NO CROSS EXAMINATION.

.....

STATE OF ALABAMA :
:
COUNTY OF MOBILE :

I, LILLIE B. GRANDAHL, hereby certify that under and pursuant to the agreement between the solicitors of record in the above entitled cause, which is hereto attached, I caused the above-named witnesses:

Mrs. W. B. Curran,
Mrs. W. B. Patterson,
Dr. C. G. Godard,
Mrs. Charlotte G. Schowalter, and
Mr. Rittenhouse M. Smith,

to come before me at the time and place mentioned above, and they, having been, by me, first duly sworn to speak the truth, the whole truth, and nothing but the truth, in answer to all questions which might be propounded to them, testified as set out in the foregoing answers.

I FURTHER CERTIFY THAT the answers of the said witnesses to said questions were reduced to writing by me as near as might be in the language of the witness; that the signatures of the said witnesses to their depositions were waived; that I am not of counsel or of kin to any of the parties to the cause, nor am I in any manner interested in the result thereof.

Dated this the 4th day of February, 1929.

Lillie B. Grandahl
Commissioner.

Commissioner's Fees: \$31.60

Not Paid.

Lillie B. Grandahl
Commissioner.

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA;

CHARLOTTE GERTRUDE SCHOWALTER, Complainant,

vs.

DEPOSITION.

EDWARD R. SCHOWALTER, PRESTON J. SCHOWALTER,
AND ALICE ELSA SCHOWALTER, Defendants.

The deposition of Alice Elsa Schowalter, taken before me, David J. Wood, Commissioner, pursuant to notice hereto annexed, in the above entitled cause, on the 8th day of June, 1928, at the office of David J. Wood, Attorney-at-Law, in the City of Charlottesville, Virginia, beginning at 10:15 A. M., to be read in evidence in the above entitled cause, pending in Baldwin County, Alabama.

Present: David J. Wood, Commissioner.

W. E. Duke, Attorney for
Defendants.

Judge T. Munford Boyd, At-
torney for Complainant.

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA:

CHARLOTTE GERTRUDE SCHOWALTER, Complainant,

vs.

EDWARD R. SCHOWALTER, PRESTON J. SCHOWALTER,
AND ALICE ELSA SCHOWALTER.

DEPOSITION.

On the 8th day of June, 1928, the witness, Alice Elsa Schowalter, came before me at Charlottesville, Virginia, and testified as follows, after being first duly sworn:

DIRECT EXAMINATION:

By Mr. Wood:

1. To the first direct interrogatory she says:

Alice Elsa Schowalter; twenty-three; Fairhope, Alabama.
His daughter.

He is dead.

He died, I think it was June 28, 1926, at Fairhope, Ala.
Yes.

I was born of his marriage with Charlotte G. Schowalter.
By his former wife. These were all children by his

first marriage: Edward R. Schowalter, Preston J. Schowalter, Rightor Schowalter, and John McReynolds Schowalter. Rightor and John are dead. Those were his children by his first marriage.

I had a brother, John Schowalter, who is dead.

2. To the second direct interrogatory she says:

Well, that was my residence. When I wasn't in school, that's where I lived. I had lived there ever since they had-- for about nine years. Prior to that time they had lived at Point Clear, and I lived with them there. I have lived with them all my life.

*Published by agreement
this February 14, 1929*

*A. M. Smith
Henry F. Smith Claffey
also for Comptroller
McLeod, Goode + Turner*

Stevens Carey

*John N. Allen
Sols for Respondents*

*Edward R. +
Preston J. Schowalter*

No, they didn't. Mr. E. R. Schowalter had lived in New Orleans for about two years prior to my father's death, and Mr. Preston Schowalter in Mobile for about ten or twelve years prior to my father's death. My oldest brother, Mr. Edward R. Schowalter, was in school when the War broke out; then he was in the Navy until 1920, I think it was. In the year of 1920 he went to New Orleans, and has been there ever since. When he first went away to go to school, he came home for vacations, because he went to college in Mobile. He went there for two years. Then he went to Valparaiso University in Indiana for two years. My oldest brother, Mr. Edward R. Schowalter, has been living away from home about thirteen years--in the neighborhood of twelve or thirteen years. Mr. Preston Schowalter has been living away from home for about thirteen years too. Those figures are just approximate.

Mr. Edward Schowalter is a lawyer. He was Assistant Attorney-General for Louisiana at the time of my father's death. Mr. Preston Schowalter is working for the Texas Oil Company, and I do not know what position he occupies.

Mr. Edward Schowalter is thirty-two, and Mr. Preston Schowalter is thirty. Mr. Edward Schowalter is married; Mr. Preston Schowalter is single. Yes, they were prosperous and independent.

3. To the third direct interrogatory she says:

Well, the domestic relations were very happy between my mother and father. Yes, they lived happily as man and wife.

They had always lived together happily, as far^{back}/as I can remember. The relations between my father and me were particularly close. He was a particularly affectionate father to me. And my mother was very affectionate in her relations to me. My father and I had always been particularly devoted to each other. I was the only girl in the family, and I usually went every place that

he went. When he went out and paid his calls in the morning, I usually went with him. He was always particularly devoted to me, rather than to any of the other children. He always gave me every thing I wanted. He never refused me anything. He was always my very best friend.

The relations between my mother and I have been just what one would expect between a mother and daughter. We were very much devoted to each other.

4. To the fourth direct interrogatory she says:

At the time my father made the will, I had a lot at Volanta, and I was making \$70.00 a month, but my resignation was in from the work that I was doing, at my father's request, which was effective July 1, 1925. I had been drawing that salary from about the first of March to the first of July. I didn't possess any independent means beyond a lot at Volanta, Alabama, which wasn't entirely paid for. It was worth about \$1500.00. About \$200.00 or \$300.00 was owed on it.

I possessed nothing at the time of my father's death. I was entirely dependent upon him.

I was dependent upon my father at the time of the execution of his will. I wasn't dependent on him to a full extent, but I was dependent upon him, nevertheless. At the time of his will, I was making a small amount of money, not enough to support me, though.

I became confused about the two years, 1925 and 1926, and I'd like to say it over again. When my father made his will in June, 1925, I was dependent on him to some extent. My father gave me about \$600.00 in the year 1925. In June, 1925, my independent means were a lot at Volanta, Alabama, not entirely paid for, whose value was perhaps \$1500.00. I was making a salary of \$75.00 a month, which did not support me without help from my

father. My resignation from this position, paying me \$75.00 a month, was in, to be effective July 1, 1925. I made this resignation at my father's request. At the time of his death I was absolutely dependent upon my father for everything. I was not working at that time. From July 1, 1925 until the time of his death, I was absolutely dependent upon my father.

I have stated that.

I owned this lot at Volanta. I had no independent means.

I have been, since his death, wholly dependent upon my mother until this year. I have earned a very small part of my expenses by some part-time work at the University Hospital, which gave me my meals and \$25.00 a month.

In 1919 I went to St. Cecilia's Academy in Nashville for about three months, at my father's expense. I came home about Thanksgiving, and I was tutored at home, at my father's expense, until February of the same year, which was 1920. In February, I went to Judson Academy, at Marion, Alabama, from which place I was graduated from high school in June, 1920, at my father's expense. In October, 1920, I went to the School of Nursing and Health, of the University of Cincinnati, at which place I was from October, 1920 until about February 28, 1924, at my father's expense during the entire period. From February, 1924 until June, 1924, I attended the Liberal Arts College at the University of Cincinnati, at my father's expense. I graduated from College last June. From September, 1925 until June, 1927, I attended Carthage College, in Carthage, Illinois. From September, 1925 until June, 1926, I attended Carthage College at my father's expense. In June, 1926, I came to the University of Virginia Summer School, at my father's expense, and I had been here a week when he died. From September, 1926 until June, 1927 I attended

Carthage College at my mother's expense. I attended Summer School at the University of Virginia in 1927, at my mother's expense. I attended Medical School at the University of Virginia from September, 1927 to June, 1928, at my mother's expense.

I was away eleven months in 1923. In 1924 I was away eleven months. In 1925 I was away seven months. In 1926 I was away nine months. In 1927 I was away about eleven months. In 1928 I have been away six months.

All the time that I wasn't away at school, I was at my father's home in Fairhope. I was there during the vacation periods of my school year.

5. To the fifth direct interrogatory, she says:

In July, 1925, I was at home, at my father's particular request, to make the final arrangements to attend Medical School--not Medical School, but college, as I had to go to college before going to Medical School. I had told my father that I wouldn't go to Medical School unless he would finance my education entirely, to which he agreed. Most of our discussions took place at the table. At the time one of these conversations regarding this matter took place, he said I could go to college and Medical School with the assurance that he would pay for my education. He just said, by way of passing, that if anything happened to him, he had left everything to my mother, and she, of course, would provide for my education. There were other occasions like that, but nothing during that summer but repetitions of that kind.

During the Easter vacation of 1926, when I was home, there were several occasions when my father mentioned a disposition of his property. Neither one of my brothers had been home for a long while. Mr. E. R. Schowalter hadn't been home since Christmas Holidays of 1924-1925, and my father was at a great loss to explain his attitude, and was very much embittered by the treatment

of his two sons; and one time I was driving with him when he was going to pay a call, and he made the statement that he was tired of sentiment, he had lived on sentiment for over thirty years, and that he was through with sentiment, and that he was going to enjoy some of the fruits of his hard work himself, and that if he didn't live to enjoy it himself, he was going to leave it to my mother, to do whatever she pleased with it--that he had left it for her to do with what she pleased. He didn't say that he would leave it, but that he had left it to her. The occasion was particularly impressed on my memory, because he got so excited about it that he almost ran into a pine tree.

During the same period, when I was at home, I said to my father, in a joking way, for him to make plenty of money, and I would come home and help him spend it, and he said: "Nothing doing, young lady, your mother and I are going to enjoy that." And my mother said, "Do you see that, Mac? I believe my own child would make trouble over money if anything happened to you"; and he said, "No, she won't. She couldn't. I have left everything air-tight to you, to do with as you please. If you want to sell it and go to Canada, nobody can stop you."

Those are about the only occasions I recall just now.

6. To the sixth interrogatory, she says:

I have answered this in Question No. 5.

7. To the seventh interrogatory, she says:

During the Christmas holiday of 1925, while Mr. E. R. Schowalter was at home, at the dinner table the matter was brought up by my mother asking Mr. E. R. Schowalter if he didn't want to have the silver which had been his mother's. He had announced his intention of being married about the following summer, and he said, "No, he didn't want it right then. My father mentioned

that there were several pieces of furniture that had been in the family for a very long time, that he expected to go to his oldest son when he died, and my mother said that she hoped he didn't mean that she wasn't to have the use of it if he died before she did. He said no, that he had left everything to her outright, but that he relied on her sense of fairness to see that these particular articles would go to the oldest son when she died. My father had another will at the time, which was practically the same as this one. Mr. E. R. Schowalter just laughed, and said he had no sentiment about anything like that, and no one need ever worry about his making trouble about a few sticks of furniture and some silver, that he could always buy what he needed.

8. To the eighth interrogatory, she says:

My father, on a good many occasions stated to me that he had left everything to my mother outright. I have given the details of the conversations of which I am sure and remember the time, place, and circumstances. I remember that he made these other statements, but I don't remember the exact time and circumstances. He made those statements several times, in the presence of both of my brothers, Mr. E. R. Schowalter and Mr. Preston Schowalter.

9. To the ninth interrogatory, she says:

My mother, Mrs. Charlotte Gertrude Schowalter, possessed practically none, except a small pension of insurance of \$25.00 a month, which was to last over a period of ten or twelve years. The pension was for some insurance that my brother, Mr. Rightor Schowalter, had left to her. I believe, in June, 1925, she had an option on some property. I was away at the time, so I can just approximate the exact details. It wasn't paid for, and I don't believe that she had paid very much on this property.

Whether she bought the property she owns now after June, 1925, or when she completed paying for it, was before my father's death. That was after he drew up this will, in June, 1925. I think it was in the following winter there was this large real estate boom at home, and she had an option on this property, and she sold real estate, and she paid for some of this property out of her commissions.

There was no income whatever from this property. It was an unimproved tract of land.

10. To the tenth interrogatory, she says:

In June, 1925, he owned a house, surrounded by--I don't know how many acres of land, facing on Mobile Bay. It was in this house we had lived prior to moving to Fairhope, Alabama. It was rented only during the summer months, from the middle of June to the first of September, and as I remember the rent was about \$200.00 a month, and taxes, painting, and upkeep ate up all of the rent money, so there was no income from that. That reminds me that my mother did own the house that we live in in Fairhope. I don't remember what date it was that my father made the deed over to her. My mother made that house practically pay for itself. That's why she has it. My father gave this house in Fairhope to my mother, because, when we first moved to Fairhope, we rented this house, and my father paid one month's rent, and said he would buy it, that he wouldn't pay any more rent; but he didn't have the money to buy it outright. My mother said that she would do her own work. She had a school teacher, and sometimes more than one, rooming with her. My father simply took the money that she saved by doing all of her own work--cooking, washing and ironing, and house work--towards making payments on this house, until it paid for itself. That's the reason he gave her this house, because she paid for it.

My father owned forty acres of unimproved land on the Greeno Fish River Road. He owned forty acres on, I think it is, the Cowpen Branch of Fish River. This property was unimproved, and brought in no income, other than turpentine rights, and I don't know whether it was on both or one of those pieces of property, which didn't amount to more than taxes, and I think turpentine rights were given every three years. All of that land is in Baldwin County.

11. To the eleventh interrogatory, she says:

He owned a medical library, and he made very large additions to this just before his death. At the time he made his will, he had some medical books and a good many surgical instruments, and my mother owned most of the furniture that we had. He didn't own any stocks and bonds, that I know of.

I have studied medicine since my father's death.

In the year 1926-1927, I took academic at Carthage College, and I took academic at the University of Virginia during the summer quarter of 1927, and medicine at the University of Virginia in 1927-1928.

His instruments were quite extensive. The selling value of things like that would be practically nothing; I mean what you can get for it, you can't say. You can have very valuable instruments, and the selling value will be practically nothing. I should say that you couldn't get more than \$75.00 for the whole lot, because there is no demand for the instruments that he has. He has a regular hospital equipment of instruments, and most doctors wouldn't consider putting out that much money.

When I said books and instruments, that, of course, includes office equipment. He owned no stocks and bonds, that I know of. I don't know of any other personal property he owned, except an automobile.

12. To the twelfth interrogatory, she says:

He sold the house at Point Clear, with one-half of the lot facing on the Bay, after executing the will. He retained one-half and all of the property back of it, and still owned this at his death.

\$9,000.00. I believe he made the sale the latter part of the summer of 1925, or the early fall, to Mr. Albert Bush, of Mobile.

Yes, he did. He reinvested it in the two houses in Mobile, paying for them in part, and giving a mortgage for the remainder, and I do not know what he paid for them.

I believe he simply paid by dividing the money in half, and putting half on one house and half on the other. That's approximately what he did.

No, the income is not sufficient to carry the property along with the mortgages, the upkeep, and the taxes.

CROSS-EXAMINATION.

By Mr. Duke:

1. To the first cross-interrogatory, she says:

I was born August 25, 1905. Yes, I finished high school, at Judson Academy, Judson College, Marion, Alabama, 1920. I remained with my father and mother from the date of my graduation until October, 1920, when I went back to school. In October, 1920, I went to the School of Nursing and Health, at the University of Cincinnati. It wasn't a hospital. It was a school.

I entered training in October, 1920, at the School of Nursing and Health, University of Cincinnati. I graduated June,

1924 from the University of Cincinnati. I was furnished with my room, my board, but none of my personal clothing. A good deal of the clothing that I wore on duty, and all of that that I wore when I wasn't on duty, was purchased by my father. I didn't earn anything while I was in training. When I entered training, my father had to pay a State registration fee, and some tuition fees, and I earned nothing. I received a diploma from the University of Cincinnati. Yes, I was a duly graduated, registered nurse, and a practicing anaesthetist.

During that year, I was a student anaesthetist. There is no school of anaesthesia there. This was simply a period of apprenticeship in anaesthesia. From June, 1924 to July 1, 1924, I was a graduate nurse on general duty in the Cincinnati Hospital, drawing a salary of \$70.00 a month. My resignation was effective July 1, 1924. I went home to Fairhope, Alabama, spent my vacation, and returned to Cincinnati, August 1, 1924, all of this at my father's expense, railroad fare, living expenses, and everything; and I returned to Cincinnati, August 1, 1924, and started giving anaesthetics, and it was several months before I drew any salary at all, and then I drew \$75.00 a month from that time until July 1, 1925. My father contributed at least \$300.00 to my support that year, while I was drawing a salary. My father, Dr. Schowalter, certainly knew what I was earning, and that I wasn't earning enough to support me. He apparently didn't consider it adequate to support me, because, at the end of the year, he paid bills of \$200.00 or \$300.00 while I was working. He paid my railroad fare back and forth home while I was working. He knew the salary that I made that year. He also knew that if I returned to that position the following year, I wouldn't be drawing any higher salary. I had told him fully all about my opportunities

and earnings.

I was offered a position, after I graduated, as Head Nurse, by the Cincinnati General Hospital. The position paid very poorly, and my father was not willing for me to do that type of work. I was offered a position as anaesthetist--not a nurse--by the Department of Surgery of the Medical School, through Dr. Heuer, but by no one else. And the Cincinnati General Hospital offered me the position of Head Nurse, drawing a salary of \$75.00 a month. At the time Dr. Heuer offered me this position, and I accepted it, there was some doubt as to whether I should draw any salary for six months. I accepted with my father's consent, he knowing that he would have to support me entirely until I would earn some money. They didn't hold forth any propositions to my future. They said, when I resigned, that if I returned, I could probably travel for a year, learning the methods of anaesthesia used in the different hospitals, but that wasn't with any increase of salary. When I graduated in June, 1924, to July, 1924 I was employed as graduate nurse on general duty, at \$70.00 a month. I don't recall just what day my salary began, as I did not receive any for several months after going back. From that time until June, 1925, I was earning \$75.00 a month as an anaesthetist. This employment and salary was known to my father. I left my position as graduate nurse, on general duty, July 1, 1924. I left my position as an anaesthetist July 1, 1925.

There was no proposition made me by Dr. Heuer, who employed me. One of Dr. Heuer's associates told me that Dr. Heuer wanted to send me traveling for a year to the different hospitals, observing methods used in the different large hospitals of the country, but there was nothing sure about this, for whether he could send me or not depended upon whether he could get

it from the Hospital. There was no salary mentioned. My father knew about that, and was not willing for me to accept it.

I had nothing to do with Dr. Heuer's practice. Dr. Heuer was one of the foremost surgeons of Cincinnati, with a large private practice, but I never gave an anaesthetic for Dr. Heuer in his private practice. I never drew any fees from Dr. Heuer for any operations, and I only gave anaesthetics for Dr. Heuer as Professor of Surgery in the General Hospital, which is the City Hospital. Yes, he was one of the most noted surgeons of Ohio and the United States.

On June 11, 1925, I was employed by the Department of Surgery, Cincinnati General Hospital, as an anaesthetist, at \$75.00 a month. At this time my resignation was in, to be effective July 1, 1925; and from July 1, 1925 until September 15, 1925, I was entirely dependent upon my father. From September, 1925 until June 10, 1926, I earned my own tuition, board, and room as school nurse for Carthage College. From June 10th to June 28th I had no position, and my father paid my room, board, and tuition at the University of Virginia, and all of my traveling expenses. I have stated that above. I didn't earn any salary during the above period except one-half a month, at \$75.00 a month. I was employed as school nurse by Carthage College, for which I received my room, board, and tuition. I went to this college of my own accord, because I could earn my tuition, room, and board, but my father was very much disappointed that I did not go to the University of Alabama for this period. I left my employment because my father asked me to, and told me that he would support me.

About the 16th of July, 1926, while motoring with my brother, Mr. Preston Schowalter, between Fairhope and Daphne, I

stated to him that if I had accepted the proposition which I heard might have been made me, to observe the methods of anaesthesia in the different hospitals, for about a year, that at the end of that time I might have been in a position to draw a good salary. I didn't make any statement in figures. No one had offered me employment of that kind--anything approximating those figures. I have answered that above. I have answered that several times. When I first started, I didn't make any money, but I don't remember what date my salary began, and then it was \$75.00 a month. I have already stated what I said to him on that occasion, and, as I remember, I never said anything to him at any other time.

2. To the second cross-interrogatory, she says:

The mere fact that I wasn't maintaining myself answers that question. Prior to June, 1925, I was not entirely self-supporting. I was an anaesthetist and a graduate nurse. The fact that I could not support myself was bound to have been known by my father, because he contributed to my support at the time I was working as a graduate nurse and an anaesthetist.

3. To the third cross-interrogatory, she says:

I think it was in 1918 that we moved from Point Clear to Fairhope, in the fall of that year.

They always lived together happily and harmoniously in their home at Point Clear. The only trouble, while my father and mother lived at Point Clear, was made by my father's relatives. No, there were not numerous quarrels between my mother and father over her alleged mistreatment of Edward R. Schowalter, Preston J. Schowalter, and Rightor Schowalter. I remember only one thing in the nature of a quarrel between my mother and father, which was occasioned by my father's brother, Mr. Percy Schowalter,

who was a ne'er-do-well, who wouldn't work, and had numerous bad habits, and who frequently descended on my father, expecting to be put up in the house and given money, and my mother objected to my father keeping him in our house among the children, due to his physical condition. My father suggested sending him to a boarding house, paying for his room and board there. My mother objected to this, for the children's sake, because my father was practicing in a very poor section of the country, and was able to collect only a small portion of his fees, and she didn't think it was right for him to give a grown man, who could make his own living, money, when it was needed so badly for the children, and she absolutely put her foot down on my father's having him in the house or giving him any money. At this time, she was caring for my father's grandmother, who was a total invalid, senile, and very difficult to get along with. That's the only quarrel that my mother and father have ever had while I was at home. No, there wasn't considerable discord. There were occasions when some outsider would remind my brothers that my mother was their stepmother, and not their real mother, at which times they would come home and act a little mulish; but my father always disciplined them without any interference from my mother. As a matter of fact, their discipline was in my father's hands entirely.

On one occasion, Mr. Edward R. Schowalter told my mother that he never thought of her as anything but his own mother, until a lady told him that she was his stepmother, and tried to find out if she was mistreating him. My father was a very stern disciplinarian, and kept after them about little things, and often my mother would take their part. I remember one occasion, when they fought over the Sunday funny paper, and became so violent and noisy that my father took it away from them, and

said they couldn't have it at all; but my mother went and asked him to give it back to them, and he did.

4. To the fourth cross-interrogatory, she says:

I have answered the question and the circumstances in direct interrogatory number 5.

To which counsel for respondents state that they think it material and proper that Miss Schowalter's statement that she could not remember the exact words, but that when she knew that this difficulty would arise, in December, 1926 she had put down on paper the conversation, as nearly as she recollected it; and that they think that, after refreshing her recollection with this paper, ^{and stating when and under what circumstances the memorandum was made} she should give the substance of the conversation, in as close to Dr. Schowalter's exact language as possible.

Miss Schowalter answered this question by saying that she had already stated that she had answered this question in direct interrogatory number 5, as fully as she knew how.

The Commissioner replies, to clear the record as far as possible, that Miss Schowalter, when asking whether she should refresh her memory from a paper which she had, written sometime ago, was speaking to the Commissioner, and was not answering the question, but thought that her question to the Commissioner was off the record, and did not refresh her memory by this paper; and stated that she had answered the question as fully as she knew how in answer to question 5 of the direct interrogatories.

.....

At this point the deposition was adjourned for lunch, and to permit Miss Schowalter to employ counsel.

.....

Counsel for complainant further replies to the objection by the Attorney for the defendants, that Miss Schowalter's answer to Question No. 5 was not based on any written memorandum which she may have had; that there is no evidence in the record

that she did have such memorandum; and that if, indeed, she did have any such memorandum, the same would not be evidence, but could be used simply for the purpose of refreshing the witness' memory; and if, as in this instance, the witness did not use such memorandum, then it has no further bearing on this case, and, indeed, is irrelevant.

To which counsel for respondents reply that Miss Schowalter is the witness in this case, for the purpose of testifying to the whole truth, and that if she did write down the exact language of the conversation, as nearly as she could remember it, it was her duty to refresh her recollection.

To which counsel for complainant reply that, when Miss Schowalter asked the question of the Commissioner, she was unrepresented by counsel, and was simply seeking an explanation relating to the method of procedure, and in no sense attempting to evade or withhold any evidence in her possession.

5. To the fifth cross-interrogatory, she says:

It is in answer to the sixth direct interrogatory.

My father was riding toward Fly Creek, going to visit one Monroe Smith, and he said, as nearly as I remember, that sentiment was all right, that it had its place, but that he had lived on sentiment for thirty years, and he was through with sentiment; that the way my brothers had treated him had embittered him toward sentiment, that he felt no obligation to them, that he was going to cash in on his sentiment and enjoy life himself, that if he didn't live to enjoy it himself, he had left it to my mother, in her own right, to do with as she pleased; that if she wanted to sell it all and go to Canada, she could, and no one could stop her.

6. To the sixth cross-interrogatory, she says:

I remember two occasions. I can recall those instances right now, but I am just all mixed up.

I don't remember which incident or incidents I recited in answer to direct question number 7, but I would like to repeat the different instances. Question Number 7, on being read to me, gives me no clue as to what followed at that time, but since I gave two or three instances of conversations between my father and me as to the disposition of his property, and what portion of it should go to my mother, I feel that the only thing I can do is to repeat all three of them.

During the summer of 1925, when I was at home, and we were discussing arrangements whereby I was to go to school, I asked my father if he felt perfectly able and perfectly willing to finance my education, and he said that I was not to worry about that, that he would pay for my education both in college and the medical school, and that if anything happened to him, my mother would carry on, that he had given her full instructions of what he wanted her to do in regard to my education.

And another time, during the Easter vacation of 1926, I was riding with him on his professional rounds, when he said that he had been living on sentiment for thirty years, that he was tired of sentiment, and that he was going to cash in on his sentiment and sell everything he owned and enjoy life; that if he didn't live long enough to enjoy it himself, that he had left it to my mother, as her own, to do with as she pleased.

I also gave the instance of the Christmas Holidays of 1924-1925, when Mr. E. R. Schowalter and I were at home for Christmas vacations. My mother asked him if he didn't want his mother's silver. He was expecting to be married. He said he

didn't want it right then. The silver suggested to my father the idea of some furniture that had been in the family for sometime, that he wanted his oldest son to have, and he made the statement that when he died the oldest son was to have this furniture, and my mother asked him if he meant that he was to have it before she died, if my father died before she did. He said no, that he had left everything to her outright, and was relying on her to see that the oldest son got it when she died.

Another instance: In the Spring of 1926, while I was home, one day at the table I told my father that if he would make lots of money, I would come home and help him spend it. He said for me not to depend too much on that, that he and my mother were going to enjoy that themselves; so my mother said that simply pointed out how mercenary people could be, and that she bet I wouldn't be above making trouble over some things, if anything happened to my father; and he said, "Don't you worry about that. I have fixed up everything air-tight. I have left everything to you outright, and you can do as you please with it. I have instructed you to see that Alice gets her medical education."

I don't know which of those instances I recited in answer to direct question number 7. I have no way of knowing.

To which counsel for respondents reply that as both Questions 6 and 7 were again read fully at this point, it should have been possible to answer the questions as asked.

Counsel for complainant replies that the Attorney for the defendants objected to the reading of the answer given to direct question number 7, and that it was accordingly not done, and that from the phraseology of question number 7 no indication was given the witness which incident was related. Moreover, in her

answer to cross-question number 6, the witness not only repeated the incident related under question number 7, but all the others, going even further than counsel for defendants could have required her to go in her answer.

7. To the seventh cross-interrogatory, she says:

Yes, my father did, subsequent to June 11, 1925, state to me that he had left all of his property to my mother absolutely.

8. To the eighth cross-interrogatory, she says:

I gave that incident where Mr. E. R. Schowalter was present, but other than that, in these instances that I have quoted there was no one else present. My father never mentioned a word about any of us.

No, my father never told me that he had provided in his will that if my mother re-married, his estate would go to me and my half-brothers.

He didn't advise me, but I knew that he had changed it.

He never discussed the change that was made in the will, regarding my mother's re-marriage, before or after he changed it. That is the only change there was.

9. To the ninth cross-interrogatory, she says:

Well, in these conversations he said that he had left it, he didn't say he executed it, in those words.

No, he never showed me his will, and never discussed the provisions, except as I have testified. By saying that he did not discuss the provisions of his will, I mean that, he did not discuss the provisions when showing me the will. He discussed the provisions of the will as I have testified.

He didn't show me that will, but I had seen it.

No, my father never told me he had consulted an attorney with reference to writing his will.

I'd like to say that, just before he made this will, he said something about going to a lawyer to make it, but he was too busy and didn't go.

He never consulted any attorney.

10. To the tenth cross-interrogatory, she says:

No, I didn't say anything, as I remember, about these conversations, because the interview that took place on that Sunday noon was not of a nature to bring out these matters. I remember my mother asking Mr. Preston Schowalter, or rather telling him that if he wanted to he could remember an instance when my father had told him what the provisions were. Practically all the conversation was between E. R. Schowalter and Mr. Rit Smith, because the conference broke up in disorder, due to the fact that Mr. E. R. Schowalter's attitude towards my mother was so very insulting that she began to cry and couldn't go on.

I don't know whether they were quit-claims, or what they were, but Mr. Smith thought that these papers would clear up the ambiguity that was in the will--clear up any trouble that might arise in the sale of this property where there was a will with ambiguity in it.

It was the intention to present all of the descendants of my father with one of these papers, and I would have been offered one if my brothers had signed theirs. None was ever presented to me, but it was suggested to me that one would be presented to me.

11. To the eleventh cross-interrogatory, she says:

It was all of the real property owned by him at that date.

The property that he owned he had inherited from his father, and we all knew that he owned it, because he pointed it out as his property at different times. We had hunted on different parts of it, as his property, without getting a permit. We had discussed turpentine, stumping, etc.

I learned the rental value of the Point Clear property in June, 1925, from my father.

I learned about the income from my father, and I learned of the rental from my father.

I have no idea what the insurance on the property was in June, 1925, but I heard my father say that the insurance and taxes and repairs ate up all the rental.

I don't know how much the property at Point Clear was assessed for in the tax year of 1925, nor do I know the amount of taxes on such assessment for that year.

I didn't learn that.

The repairs on the Point Clear property were: Repainting of the house, which closely followed another repainting, which was mildewed because too much turpentine was put in; the furniture repainted; cleaning; and clearing up the lot and the fences; and general repair in keeping it in condition. I don't know what the costs of the repairs were.

My father told me about the repairs, and I don't know how much the cost was. It was a matter of common knowledge in the family.

My acquisition of such knowledge was in the daily routine of family life.

12. To the twelfth cross-interrogatory, she says:

Yes, I know of all personal property owned by my father in June, 1925.

The personal property that I mentioned I meant to be inclusive. I meant it to include everything that he had. It included everything I knew about.

I don't know whether those were my exact words to Mr. Preston Schowalter. I told him that I had finished going over them, and that nothing was missing, that they were complete, and they were invaluable, meaning that if you bought them new it would take a lot of money to buy them, and they would be invaluable to anyone who was practicing medicine. I was at that time urging him to study medicine, and giving that as one of the reasons.

13. To the thirteenth cross-interrogatory, she says:

As I remember, when he was considering buying a house in Mobile and was looking at houses, I was at home, and I used to go with him when a real estate man showed him property in Mobile. I was at home the day my father and mother went to Mobile and bought the property. They were discussing it that evening. Therefore, I learned the details.

I don't know the purchase price of each house, or the deferred payment.

Each house rented for \$75.00 a month immediately after he bought it.

I don't know about the mortgage or the interest.

I don't know anything about the taxes or the assessed value.

I don't know that either.

After my father purchased these houses, there were extensive repairs, but I don't remember in detail what they were, and I don't think he would either. His agents had them repaired, and sent him the bill.

I don't know what the vacant property was assessed for, nor the amount of taxes.

Most of that I knew because my father told me, discussed it. He discussed it by letter, and while I was at home.

14. ^{gross-}To the fourteenth/interrogatory, she says:

My being dependent upon my mother since my father's death has been the result of my taking up the study of medicine at the University of Virginia.

I am at the present time a medical student at the University of Virginia.

I don't have any money. I work, and my small salary is applied to my board and a few minor expenses.

My mother has paid my expenses. I can only approximate the amounts paid. My mother paid my tuition, which was either \$292.00 or \$392.00. She has bought my clothes, my books, furnished part of my spending money, my room rent, and incidentals. Before I obtained this part-time work at the Hospital, she made me an allowance of \$60.00 a month. Subsequent to that time there has been no definite amount. That allowance was in addition to paying my tuition. My tuition was \$292.00 or \$392.00. My room was \$15.00 a month. My board was \$35.00 a month. I don't know how much my clothes were. My books came to about \$40.00. When I ran short, I called on her for more. I don't remember when I started working for the Hospital--about two months after the beginning of the school term, I think. Since that time I have been getting around \$30.00 or \$40.00 a

ing real estate, to be making much money, and she had not been making considerable money in that occupation prior to that time, I know for a certainty.

I don't have any idea as to how much money my mother made selling real estate prior to June 11, 1925.

I don't recall that she had ever bought and sold any real estate prior to that time.

RE-DIRECT EXAMINATION.

-or-

REBUTTING INTERROGATORIES PROPOUNDED BY THE
COMPLAINANT TO THE WITNESS, ALICE ELSA SCHOWALTER.

1. To the first rebutting interrogatory, she says:

When I made the statement that I had gone over his instruments, and there was nothing missing, and they were invaluable, I meant that they were invaluable to a person engaged in the practice of medicine, and not invaluable from the price they would bring; and I think that, at the time of his death, they could have been sold for--I find it hard to give a figure. They could have only been sold by the price that someone would have been willing to offer for them, and that would have been determined by the particular use that they would have had for them; and there wasn't a great enough demand for instruments he had that were the most valuable, to have brought even one-tenth of their value. I don't know what they would have cost new. I think that \$1200.00 would have been a very successful figure to have sold the entire collection for; but if they had been sold, you couldn't have gotten away with the entire collection--just a few pieces here and there.

2. To the second rebutting interrogatory, she says:

The domestic relations of my mother and father were particularly happy. There was no discord about the manner in which she treated my three half-brothers, and when they were children they seemed to be very affectionate toward her. Of later years, since they have been away from home, there has been a change of attitude in my brothers towards my mother and my father. The change was first noticed in my brother, Mr. E. R. Schowalter, who, when he was a young boy, growing up, seemed to be very devoted to my mother. In fact, anything that the other three of us would do, he would tell my mother about it. He was always telling on us. When my brother, Mr. E. R. Schowalter, first went to work, and would come home for the week-end, he would always bring my mother some small present, and was very pleasant with all of the family. During the War, while he was in the Navy, he started saying sarcastic things in his letters, more directly to hurt my father than to hurt Mother, which my father attributed to a change in religious affiliation on his part.

Most of this time, during the War, Mr. Preston Schowalter was in Mobile and Houston, and Fort Morgan. He came home very nearly every week-end, and appeared very contented with the reception he received at home. About three or four years ago, there was a misunderstanding between Mr. Preston Schowalter and my mother, which arose in the following manner: He came home for a short vacation, and while he was there, our cook was sick; the weather was very hot; and my mother and I did all of the work, cooking, and washing, and ironing. We did a lot of extra work, trying to make his stay at home particularly agreeable. On one very hot day, my mother and I had a particularly hard working day,

and hadn't finished with the household routine until about four o'clock in the afternoon. Mr. Preston Schowalter had been down at the Bay all day, and about five o'clock my mother and my father, Mr. Preston Schowalter and I, were sitting on the front porch. My mother said that we needed some bread for supper. Mr. Preston Schowalter didn't offer to go get it, so my mother said that she would go get it, and said: "Preston, you help Alice set the table, while I go get the bread." He got very angry, jumped up, and said that if he wasn't welcome in his own home, he would go where he was welcome. We, of course, were simply amazed at the outcome of such a simple matter as being asked to help set the table. He packed his suitcase and went and stayed at a hotel. He didn't come home at all that winter. Neither we nor his father heard from him at all. One day my father saw him in Mobile, and asked him why he got so upset at being asked to set the table, and he said he thought a man shouldn't ever be asked to do any housework. My father was very much upset about the matter; but one day, months later, without any previous announcement, the door opened, and he appeared smiling, making no further comment on what had gone before, just as if nothing had happened. He came back and visited us after that, and nothing was ever said about the matter. My mother felt very strongly that he had acted in an ungrateful manner, and she wouldn't have put up with such conduct from me for a minute; but, being his stepmother, she was willing to put up with it from him. His father always considered he had a very peculiar disposition anyway. So apparently things were smoothed over from that time. The year 1924-1925, he came home hardly at all--just one or two visits, although he was living just fourteen miles from his mother and father. He didn't write to them, and Christmas of 1924-1925, when Mr. E. R. Scho-

walter came home, we were expecting him to come also, and had made preparations for him. He didn't come home, and he didn't send any word, or Christmas card or greeting. He sent word by Mr. E. R. Schowalter that he had to work and couldn't come; but, as I remember, shortly after that, someone had seen him at one of the New Year Balls in Mobile. He had come home for a New Year's Ball, but he didn't come to see his father. This cut my father terribly. We all sent him Christmas presents that Christmas, which were never acknowledged by word or note. The year of 1926 he didn't come home until the spring of 1926, and then he stayed a few days. That was the last time he was home. But when he did come home, he acted agreeably enough, and seemed well enough pleased with the attitude towards him.

Mr. E. R. Schowalter last visited home, as I remember, during Christmas Holidays of 1924-1925. I think it was August, 1925 that Mr. E. R. Schowalter was married in New Orleans. He had a church wedding, and was entertained afterwards rather extensively. It was a month later until his father, or any of his family, knew that he was married at all, which upset his father considerably, as he could conceive of no explanation of such conduct on his part. During the year 1925-1926, while I was at Carthage College, my father frequently wrote that he wished that Ned and Preston would come home. In fact, the matter became so acute that I wrote to Mr. E. R. Schowalter, and asked him especially to go home, to which he answered that he and his wife had agreed to disagree, and that he didn't want to go home and tell my father about it. About three weeks before my father died, I wrote to Mr. E. R. Schowalter again, and asked him to go home; but I received no reply. After my father died, a day or so after the funeral, I asked him why he hadn't gone, and he said that he was

coming for the Fourth of July.

My mother was always very kind in her treatment toward my half-brothers.

As I have said before, but not in detail, the change in my brothers' attitude, Mr. E. R. Schowalter especially, my father attributed, during his lifetime, or he said so, to the fact that my father went back to the Episcopal Church, which he had belonged to during the first part of his life. My mother made no change in her religious affiliation. My father was a member of the Episcopal Church until the time my half-brothers' mother died, at which time she asked him to join the Catholic Church, in order that they would be reared in the Catholic Church. When he went back to the Episcopal Church, there seemed to be a change of attitude in Mr. E. R. Schowalter toward him. Mr. P. J. Schowalter didn't seem to pay much attention to it.

My mother never mistreated my brothers.

I don't remember there being any difficulties of large enough proportions to indicate my father's attitude.

My mother and father lived together very happily. They had no quarrels or disagreements. They agreed beautifully. Their most serious disagreement was a heated argument as to whether my father should get a new suit or not. He would say he didn't need one, and she would say he did.

And further this deponent saith not.

Continued to such time and place as may be determined by local counsel.

Alvin E. Schowalter

On the 20th day of June, 1928, at 4:45 P. M., the answers to the interrogatories having been reduced to writing by the stenographer, the witness, Alice Elsa Schowalter, came before me at Charlottesville, Virginia, and after reading the answers, dictated the following corrections:

In answer to the fourth direct interrogatory: In answer to what independent means I possessed at the time of the execution of my father's will, on July 1, 1925, I said that I possessed a lot at Volanta, Alabama, which was not entirely paid for, and was worth about \$1500.00. I would say that I based my valuation on its present sales value, rather than its value at that time. I do not know what it would have brought at that time, but I only paid three hundred and some dollars for the lot; and in dictating my answer to this interrogatory, I said I still owed \$200.00 or \$300.00 on it, which figure is high for the price I paid for it, as it was probably one-half paid for.

In answer to the tenth direct interrogatory: In answer to the amount of rental produced by the house at Point Clear, facing on Mobile Bay, I said \$200.00, meaning \$200.00 for the season; but it was taken down as \$ 200.00 a month.

Alice E Schowalter

STATE OF VIRGINIA,
COUNTY OF ALBEMARLE,
CITY OF CHARLOTTESVILLE, to-wit:

This day personally appeared before me, David J. Wood, Commissioner, Alice Elsa Schowalter, who certifies that the statements contained in the foregoing deposition are true.

Given under my hand this 8th day of June, 1928.

David J. Wood
Commissioner.

H

CHARLOTTE GERTRUDE SCHOWALTER)

VS.)

EDWARD R. SCHOWALTER, ET ALS.)

IN THE CIRCUIT COURT OF BALDWIN
COUNTY, ALABAMA.
IN EQUITY.

The task immediately confronting the Court is to ascertain and give effect to Dr. Schowalter's intention as expressed in his will. To accomplish this, the Court had hoped, from a study of the voluminous evidence, to place itself in Dr. Schowalter's position at the date the will was written, as nearly as it was possible to do so, by a consideration of the evidence relating to the then existing circumstances, the condition of his estate, and the condition and general situation of the members of his family who were the objects of his bounty. After wading hour after hour through a mire of testimony--in the main, irrelevant--I confess a sense of disappointment, not unmingled with disgust.

The will has been before the Supreme Court on demurrer to the amended bill of complaint, and by that Court pronounced ambiguous. (217 Ala. 418; 116 South. 116) This pronouncement of ambiguity in the will appears from a careful reading of the opinion to have been predicated not alone upon the face of the paper itself, but largely upon the then (and still) unproven allegations of the bill of complaint.

It is claimed that the complainant and her deceased husband, Dr. Schowalter, had lived happily together as man and wife for many years, but the testimony of respondents sharply disputes this allegation. Whatever may at one time have been the true facts as to this, it is certain from the terms of the will itself that Dr. Schowalter had the welfare of his wife uppermost in his mind when he wrote his will. The only question is: To what extent did he actually go in making provision for her? He, of course, knew at the time he wrote the will that his wife enjoyed an income of Twenty-five (\$25.00) Dollars per month from an insurance policy on the life of one of his deceased sons.

He also knew that she would derive some Four Thousand (\$4000.00) Dollars proceeds of his own life insurance. His further solicitation for making ample provision for her comfort is shown by the fact that shortly prior to executing his will he deeded her in fee simple their dwelling house--the home. The evidence shows that at the time this conveyance was made he had under consideration the terms of his will. If he had intended so framing his will as to empower his wife to dispose of his property as she saw fit, why did he arrange to exempt the home from the provisions of the will, by making a separate conveyance of this property? No mention is made of this in the bill, or of the further fact that the wife owned One Thousand (\$1000.00) Dollars in stock in a transportation company, which had in the past paid large dividends, but was at that time of doubtful earning capacity, because of the construction of the bay bridge; nor is there any mention of the fact that the wife owned several valuable lots near Fairhope, which, however, were not income producing.

It is further stated that the daughter, Alice, twenty-one years of age, lived with her mother and father, and was without property or earnings. The evidence shows that this daughter had been given exceptional advantages; had attended high school at Fairhope, Judson College, some school in Nashville, and had graduated as a trained nurse at the University of Cincinnati. Her mother testified that she had been self-supporting prior to that time for about nine months. At the time of the Doctor's death she was studying medicine at the University of Virginia, and was not self-supporting. While he was most solicitous for her future, he made no special provision for her in her will. There is absolutely no charge on the property conveyed to the wife; no words even of a precatory nature.

It is not unreasonable to believe that at the time the will was written the testator believed that his two houses and lots in Mobile would soon be fully paid for and bringing in a handsome monthly income to be used by his wife during her lifetime.

He was evidently very enthusiastic about the prospects. It is possibly true that he was over-sanguine; that he displayed poor business judgment; that his widow and children will not enjoy the income from his property that he then hoped, chiefly for the reason that death overtook him before he could clear his Mobile property of debt. But Courts are not authorized to correct business mistakes, or substitute its judgment for that of the testator.

On the present submission, the complainant, to support her interpretation of the will, relies heavily upon the testimony of several most reputable and estimable ladies and gentlemen of Baldwin County as to decedent's declarations prior to and after the execution of the will, with reference to what he intended by the will. As a general rule, since testator's intentions are to be ascertained from the will as written, (in view of the surrounding circumstances), his parol declarations as to his own understanding as to the meaning of his will are not admissible for the purpose of aiding in its interpretation. An exception is made in cases of latent ambiguity.

73 Ala. 235;
127 Ala. 328;
210 Ala. 174;
212 Ala. 50;
199 Ala. 30;
213 Ala. 579;
28 R. C. L. 280.

Frankly, it appears to me that whatever of ambiguity exists here is ambiguity apparent on the face of the paper, but the opinion of the Supreme Court indicates to the contrary. However, this may be, and conceding the admissibility of decedent's declarations as to his own understanding of the meaning of his will, such evidence must be received with caution, and is in its very nature unsatisfactory.

In regard to the value of such testimony, Brickell, C. J. says in 65 Ala. 570:

"Where there is no reason to apprehend fabrication, there is such danger of mistake, or imperfection, in the repetition of the mere oral statements of another--so much of uncertainty as to the clearness with which his meaning was

expressed, or whether he was understood by the witness as he intended to be understood, that in its own nature the evidence is unsatisfactory."

Our Supreme Court, in 84 Ala. 605; 4 South. 417, again refers to the value of such evidence, in the following language:

"This evidence, consisting as it does in the mere repetition of oral statements, is subject to much imperfection and mistake; the party himself either being misinformed, or not ~~clearly~~ having clearly expressed his own meaning, or the witness having misunderstood him. It frequently happens, also, that the witness, by unintentionally altering a few of the expressions really used, gives an effect to the statement completely at variance with what the party actually did say."

This applies with equal force to declarations offered by respondents to prove a contrary intention. A careful reading of the testimony purporting to repeat these declarations illustrates the wisdom of the quoted statements. For instance; One witness said on direct examination that the deceased had told him "he had fixed everything so that if he died his wife could handle things." In response to a leading question by complainant's solicitor the witness said that the Doctor had told him "he had fixed his will so that at his death his wife could do as she pleased with everything he left." He had no clear recollection of having been told anything of provisions in the will affecting the disposition of the property in the event of the -re-marriage or death of the widow. This provision does not seem to have been mentioned to any of the witnesses by the decedent. He seems to have told other witnesses that he had left everything to his wife with no strings tied to it. To others he said he had left everything at his wife's "disposal". Another quoted him as saying he "had left his wife in full control of his property." In answer to suggestive and leading questions this witness said the wife was to have full power of disposition. These declarations fall so far short of an approximate description of the will under consideration that one wonders if they have reference to this or an entirely different will. If these witnesses have correctly quoted the decedent in saying he had left his property at the disposal of his wife, it is strange that he did not employ

some such usual and ordinary word in his will to express this intention.

In attempting to correctly interpret this will we should bear in mind the fact that the testator was a graduate of the University of Alabama, a linguist, and a man of exceptional native ability. It is possible that he may not have known the technical meaning of the word "remainder", but his choice of this word directly following the word "residue", and coupled with "my estate", is suggestive that perhaps the technical meaning of "remainder" is not as mysterious to the educated layman as the lawyer might suppose. What was ⁱⁿ the mind of the testator when he provided that at the remarriage of his widow, "my estate" to be equally divided among his children? Evidently, "remarriage" and "death" were on the same footing, or basis. Had the words "or remarriage" not been stricken it could not be contended that the happening of this contingency would not have absolutely terminated the interest or estate of the widow. To hold that Dr. Schowalter intended to say by his will: "I give my wife absolute power of disposition of my property, but if she remarries my estate to be divided among my children", is to attribute to him both lack of foresight and discretion, for he must have known that such absolute power of disposition conferred upon the wife a fee simple estate (if she chose to convey the property), and rendered vain, if not foolish, any provision for a remainder for his children, provided the widow saw fit in the future to circumvent his wishes with respect to a remainder interest in the sons. Had the testator intended to confer upon his wife a life estate with absolute power of disposition, it is difficult to understand why a man of his intelligence and education should have failed altogether to employ some appropriate words indicative of such intent or desire. If he has been correctly quoted by the witnesses, he certainly knew the appropriate word to use. The clear provision that the widow's estate should terminate upon the remarriage is utterly repugnant to the idea that he intended to give her a fee simple estate,

or what amounts to one. True, the words, "Or remarriage", are stricken, but their use in the alternative with "at her death", and being of equal potency to divest her estate, are most persuasive to the conclusion that the testator intended to grant a limited rather than an absolute estate. Had Dr. Schowalter intended that his widow might both use, and, if desired, consume his estate as her needs or whims required or suggested, ~~it is~~ not highly probable that a man of his education, intelligence and experience would have expressed such intention more clearly? He did not use the words, "remainder of my estate" in the first sentence of the fourth item of the will to designate, or describe, that which would remain, or be left over, after the payment of the specific bequests to his children, but employed the more apt and technical words, "residue of my estate", evidencing a discrimination in the use of words. To my mind, there is nothing, either in the will or the testimony, of sufficient force to overcome the presumption that the words "remainder of my estate" were used in their legal sense. On the contrary, I am convinced from a careful study of the testimony that Dr. Schowalter intended to give his wife a life estate in all his property with remainder over to his children equally. If financial loss to the estate should result from this construction of the will (which does not necessarily follow), this does not constitute a reason, or justification, for altering the will, or substituting our business judgment for his.

The Register will enroll the following

D E C R E E.

CHARLOTTE GERTRUDE SCHOWALTER,)	
Complainant,)	
)	IN THE CIRCUIT COURT OF
VS.)	BALDWIN COUNTY, ALABAMA.
)	IN EQUITY.
EDWARD R. SCHOWALTER, ET ALS.,)	
Respondents,)	

This cause is submitted for final decree on the pleadings and proof, and from a consideration thereof, the Court is of the

opinion that the prayer contained in both the original bill, and cross bill, seeking a construction of the will, should be granted.

The Court is further of the opinion that by the terms of said will of V. McR. Schowalter, his widow and complainant, Mrs. Charlotte Gertrude Schowalter, took a life estate in the real and personal property of testator, after the payment of testator's lawful debts and the specific bequests of Five Dollars (\$5.00) each, to his children, Edward R. Schowalter, Preston J. Schowalter and Alice Elsa Schowalter, with remainder over at the death of said Charlotte Gertrude Schowalter to said children in fee simple.

It is, therefore, the order, judgment and decree of the Court that the said Charlotte Gertrude Schowalter, under and by virtue of the terms of the last will and testament of said V. McR. Schowalter is the owner of a life estate in all the real and personal property owned by the said V. McR. Schowalter at the date of his death, subject to the payment of the lawful debts of said testator, and the specific bequests of Five (\$5.00) Dollars each to Edward R. Schowalter, Preston J. Schowalter and Alice Elsa Schowalter, with remainder over at her death in fee simple to said three last named parties.

The Court is further of the opinion that the prayer of cross complainants that the administration of this estate be removed from the Probate Court to this Court should be overruled and denied.

It is, therefore, the order, judgment and decree of the Court that the prayer that the administration of this estate be removed from the Probate Court of Baldwin County, Alabama, into this Court be, and same hereby is, overruled and denied.

It is further ordered, adjudged and decreed that the costs of this proceeding be taxed against the estate of said V. McR. Schowalter, and that execution may issue for same.

Done at Chambers, Monroeville, Ala., this June 10, 1929.

F. W. Hare

Judge.

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Schmaltz
PS

Schwaeter

Decree contain-
ing will

Filed June 21, 1929

T. W. Richmond
Register

RECORDED

CHARLOTTE GERTRUDE SCHOWALTER,

Complainant.

-vs-

EDWARD R. SCHOWALTER, PRESTON J.
SCHOWALTER AND ALICE ELSA SCHO-
WALTER,

Defendants.

IN THE CIRCUIT COURT
OF BALDWIN COUNTY,

ALABAMA.

IN EQUITY.

The opinion of Judge Leigh and that of the Supreme Court of Alabama in this case are conclusive that this will is ambiguous, that is to say, that it cannot be told from the face of the paper itself, whether Dr. Schowalter intended to confer upon his wife a life estate only, without power of sale, and to give the specific property which he owned at the time of his death to his children after the death of his wife, or whether he intended to give all of his property to his wife with the privilege of disposing of and using such portions as she thought proper, but giving whatever she did not dispose of during her life to his children. There is, of course, no evidence so conclusive as to what a testator intended by ambiguous language, as the statement of the testator himself.

Vandiver v. Vandiver, 115 Ala., 328.
 National Jewish Hospital for Consumptives v. Coleman, 191 Ala., 150.
 Achelis v. Musgrove, et al., 212 Ala., 47.
 Hanson v. First Nat. Bank, 217 Ala., 426.
 In Re: Dominici's Estate, 90 Pac., 448.
 Ellis v. Harrison, et al., 16 S. W., 198.
 Lemp v. Armengol, et al., 26 S. W., 941.
 Beason v. Kurz, 29 N. W., 230.
 Hubbard v. Moore, et al., 32 Atl., 465.
 Bartels v. Brain, 44 Pac., 714.
 Manchester Paper Co. v. Moore, 10 N. E., 861.
 Greenwood v. Marvin, et al., 19 N. E., 228.
 McDonald v. Dana, 27 N. E., 993.
 Steeps v. Smith, 100 Mass., 63.
 Aultman, Miller & Co. v. Clifford, 56 N. W., 593.
 Jenkinson v. Monroe Bros. Co., 28 N. W., 663.
 Coates v. Sulau, 26 Pac., 720.
 Metsinger v. State, 24 N. E., 342.
 In Re: Curtis, et al., 30 Atl., 769.
 Fayter v. North, et al., 83 Pac., 742.
 Grant v. Bannister, et al., 118 Pac., 252.

With the exception of two witnesses, Brodbeck and Zundel, neither of which testified to anything except that there was a rumor prevalent in Point Clear, some twenty years before this will was written, to the effect that Mrs. Schowalter was not kind to Dr. Schowalter's little sons, and with the further exception of Mrs. Broadwood who was the testator's sister, and whose testimony related entirely to some family differences alleged to have occurred between Dr. Schowalter and his wife some twenty years before the making of the will, the only disinterested witnesses in this case testified on behalf of the complainant. In other words, outside of the immaterial testimony of these three witnesses, the defendants Ned Schowalter and Preston Schowalter, rely entirely upon their own statements, which consist wholly of personal abuse of the complainant. The daughter, on the other hand, testified entirely on behalf of the com-

plainant. In this situation it seems to us that we might dispose of the whole case, simply by saying that five respectable citizens of standing in Baldwin County, who were wholly disinterested in the result of this case, testified positively and emphatically that Dr. Schowalter told them, and each of them, shortly after writing this will, that his purpose in writing the will which is here under dispute, was to confer upon his wife his entire estate with full power of disposition thereof, and to confer upon his children only such portions of his estate as his wife might not see fit to dispose of during her life. There is no denial whatever that Dr. Schowalter made these statements and it seems to us that this is conclusive of the entire question. The witnesses referred to were Dr. and Mrs. R. C. Macy, Mr. and Mrs. W. B. Curran, Captain Joseph Posq., all of whom were very close personal friends of the Doctor, and all of whom are people of unimpeachable character and standing, and all of whose statements are wholly uncontradicted.

The defendants in this case have seen fit to crowd this record with the most extravagant abuse of the complainant, but laying aside the rumors testified to by Brodbeck and Zundel, which relate merely to a rumor of a particular instance of alleged mistreatment of Dr. Schowalter's sons, it will be observed that these sons and Dr. Schowalter's sister, are the only witnesses who are used for the purpose of providing a basis for this denunciation, and that every disinterested witness testified quite to the contrary. Dr. Schowalter had three

sons and one sister. One of these sons named Reighter died some years before his father. The testimony of Broadbeck and Zundel and much of the abuse which the son Ned and the son Preston heap upon the head of this lady is based upon an alleged incident of Mrs. Schowalter's mistreatment of Reighter on an occasion on which she is said to have punished Reighter in a very disgusting manner about twenty years before this will was written. If we are to believe the testimony of Ned, Preston and their Aunt, Mrs. Broadwood, this incident has reoccurred in the hearts of these boys for twenty-five years, and constitutes the chief reason for insisting that Dr. Schowalter did not intend by his will that which he himself declared that he did intend. Another illustration of the extreme meanness which these boys attributed to their step-mother, is laid in the claim that she required the oldest one of the boys to do the cooking for the family for a while. Perhaps their ace of spades is the statement of Dr. Schowalter's sister, Mrs. Broadwood, that her husband on one occasion, something like twenty years before the will was written, declared that he had evidence of her infidelity and had threatened to send her home. All this talk about cruelty in making the son Ned do the cooking for a while, seems to us to demonstrate beyond peradventure, that all the criticism of Mrs. Schowalter is unjust and was worked up for the occasion. It is said that Mrs. Schowalter required Ned to do the cooking for the family for some months. Mrs. Schowalter's testimony is quite to the contrary, but we would like to know why such a requirement of the oldest son, under the circumstances existing in this case, should be looked upon as the basis of criticism. This lady,

it will be remembered, taught both of these young men short hand and typewriting, and thereby laid the foundation for their ability to make a livelihood. She believed in work. She, as a very young girl, had married a man very much older than herself, and gone into his home in the country, and she found there three brawny boys, and shortly thereafter there came the husband's grandmother, demented and confined to her bed with a broken hip. The cows had to be milked; the house had to be cleaned; the grandmother had to be waited on; the wood had to be cut and brought up from the yard up nine feet to the floor of the house; the water had to be toted; the cooking had to be done; the washing had to be done; the mending had to be done, and the Lord knows what all. There were no servants. The parties to this case take an entirely different view of this subject. The view of Ned and Preston who plume themselves upon their high order of manhood, is that this young wife with her baby in her arms, should have done all this work and they complain most bitterly about her twenty odd years thereafter, that during this time of need, the eldest son was required to do the cooking while the mother waited on the grandmother; cleaned the house, did the mending, did the washing and in fact did everything else, which seems to us to be within the limit of human endurance. But this young gentleman nevertheless presents to the court the idea that because he was required to help by doing the cooking for a while, (and even this is denied) it is natural to suppose that twenty years thereafter her husband should have left her pennyless in resentment. The idea is that the Doctor should have resented the conduct of his wife in making this boy help do the work so

vehemently as to make it unnatural to suppose that he would have provided for her a livelihood, in his will twenty years thereafter. If any contention could be more extreme or rest on a less sufficient basis, we are not able to visualize what it might be.

"Oh wad some power the giftie gie us
To see oursel's as others see us!"

However, if all this were true, it would be utter bosh to present it as a reason for denying that this man intended (as he declared to his neighbors that he intended) to give his estate to his wife, with the power of sale or disposition. No matter how unhappy these two people might have been during their early married life (and the stories in regard thereto are utterly incredible) the undisputed evidence shows, that for at least ten years prior to Dr. Schowalter's death, he regarded his wife with the greatest affection, their family relations were wholly in-exceptionable; she played the part of a capable assistant to him, and in fact, he owed her his transmission from a poverty stricken failure in his profession, piddling around amongst the poorest class of constituents to a position of moderate prosperity and professional prominence in Fairhope, the principal town of his County, and in Mobile, Alabama, where he maintained an office. That the family relation between Dr. Schowalter and his wife for many years prior to his death, was that of affection, and that he regarded her as a thoroughly good wife, and capable assistant, is denied by no one except his two sons, and his sister, and is proven by the testimony of a large number of his neighbors and

associates, Miss Virginia Thomas, Mrs. W. B. Paterson, Dr. and Mrs. Macy, Mr. and Mrs. Curran; Captain Pogg and his next door neighbor, Dr. Goddard, all testify clearly and distinctly to these facts and no matter what the relation between these people was in their early life, we know that for the last ten years of Dr. Schowalter's life, they lived a life of a devoted husband and wife.

As we have already said, Dr. Schowalter's intention in writing this will fully appears from his own statements, but the allegations of the bill and the opinion of the Circuit Court and of the Supreme Court show that the same conclusion would necessarily follow from the facts and the circumstances in this case even if Dr. Schowalter had not declared his own purpose to so many witnesses. At the time that this will was written, his estate consisted of his home at Fairhope for which he paid \$2,000.00; the old house in which he lived at Point Clear and a vacant lot adjoining it, and of several vacant lots in Baldwin County. To this there may be added his surgical instruments and library, which were of little value. \$20,000.00 would be a full estimate of his property that he owned at that time, and the income therefrom was substantially nothing. The house at Point Clear was rentable for only a period during the summer, and there was nothing else that brought in any income at all. If it had been necessary to retain this property during his widow's life, she not only could not have realized anything therefrom, but it would have been necessary for her to pay out a large sum each year, far and above the income in taxes. Her entire income was \$25.00 a month. The necessary result would have been that

the property would have been sold for taxes and neither his wife nor his children would have realized any benefits therefrom. Subsequent to the making of this will and before his death, Dr. Schowalter sold off the house and one-half of his lot at Point Clear and invested the proceeds in two houses in Mobile, upon each of which he had paid one-half of the purchase price and given a mortgage for the balance, so that at the time of his death, the situation was still more desperate, that is to say, that if his will had provided only a life estate to his wife, with the remainder to his children, so that his wife had no power of disposition, there would have been no way in which to pay off the mortgage indebtedness; the mortgages would have been foreclosed and his whole investment wasted. In other words, if the will was construed as the defendants insist upon it being construed, neither the wife nor the children would realize any benefit out of this estate, and the opinion of the Supreme Court in this case strongly puts forth the views that no such construction could be given to this will under these circumstances. It is unnecessary for us to expatiate at length upon this situation. The reading of the amended bill and of the opinions already rendered in this case are conclusive, and there is no dispute in the testimony whatever as to the situation upon which these conclusions are predicated.

It is, therefore, respectfully submitted that wholly irrespective of the truth or falsity of the charges against Mrs. Schowalter upon which the defendants base their whole case, it clearly appears that Dr. Schowalter repeatedly construed the will

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himself, in conversations with other persons, just as the complainant understands it, and independent of this, the undisputed conditions necessitate the irresistible conclusion that Dr. Schowalter intended that his wife should have the power of disposition during her life time. Indeed, any other construction would be to suppose that Dr. Schowalter intended to waste his whole estate without benefiting either his wife or his children.

Down to this point we have discussed this matter as if there was some room to believe that in the early years of Dr. and Mrs. Schowalter's married life, Dr. Schowalter and his wife had certain differences and that she had been indiscreet and that her indiscretion had aroused his resentment; that he had threatened to send her home on this account, and because of her unkindness towards his sons, but an impartial examination of this record will show that there is no truth in these charges, and that they are based solely upon a vindictive desire to injure this lady because her husband having very little, preferred to provide for her rather than for his two sons, both of whom are prosperous and capable men doing unusually well in the world, and entirely capable of making their own living which their father permitted them to do from an early age. We say this because we do not believe that any one really supposes for one moment, that the testimony which has been introduced in this case, as to the family disturbances which occurred more than twenty years before the will was written, could have any real influence in the decision of this matter. However, as we have

said, we do not believe that any one who examines this record will suppose that there is a word of truth in all this vilification. To start with, the greatest sin with which this lady is charged, is having been cruel to the son, Reighter, by punishing him in a very nasty and disgusting manner, without serious fault on his part. The story is in itself so disgusting and extreme, as to bear upon its face the stamp of fabrication. The character of Mrs. Schowalter's friends and associates who have testified to her kindly and efficient administration over her husband's home is enough to dispell these slanders. However, the young gentleman towards whom this step-mother is said to have directed her cruelty, went to war and when he did so, he insured his life for the benefit of this same lady and throughout his absence conducted the most affectionate correspondence with her. He has since died and this lady is today living on \$25.00 per month afforded by this insurance, which is her only income. If Mrs. Schowalter had ever punished this boy in the disgusting manner to which his brothers testify, and which she emphatically denies, it is at least certain that the boy himself bore no resentment, but that he insured his life for her benefit when he went to war and corresponded with her always. Nor is there any difficulty in making it perfectly clear that the bitter resentment expressed in the testimony of Ned and Preston Schowalter was born since this litigation began. Dr. Schowalter was very poor and his boys came to town and went to work when very young men, years before the making of this will, and the undisputed testimony in this case shows that Preston spent most of his week ends in his

father's home at Fairhope and in close and affectionate association with this lady, whom he has grown to hate only when disappointed in receiving a share of his father's estate.

Dr. Goddard, who lived second door from Dr. Schowalter from the time he moved to Fairhope until the time of his death, testified to this relation, and there has been introduced in evidence a letter from this young man to his step-mother; ~~no~~ man who reads this letter addressed to "Dear Mamma" can possibly believe that the resentment evidenced in his testimony existed at the time this letter was written, which was just before this suit began.

As to Ned Schowalter it appears that he moved away from Mobile a long time before his father's death, but that he constantly sent his step-mother small remembrances such as a box of candy, and the like, and this fact is shown by Dr. Schowalter in one of the letters to his daughter, which have been introduced in evidence.

It may be conceded that these young men now hate their step-mother, and are willing to malign her to the limit, but the conduct of Reighter in taking out insurance for her benefit and the letters to which we have referred will not permit any one to doubt that this venom has been born of their disappointment in their inheritance, and the affectionate references to his wife which are found in the letters from Dr. Schowalter to his daughter, Alice, completely belie all of the stories which Mrs. Broadwood tells us as to Dr. Schowalter's early differences with his wife.

The references by Dr. Schowalter to his wife as contained in these letters cannot be reconciled with the testimony of Mrs. Broadwood, nor can the testimony of Mrs. Broadwood

be reconciled with anything else except in part with the testimony of the two young men, Ned and Preston. And now as to the testimony of Mrs. Broadwood and as to what weight is to be given to it. If it were all true, it would establish that Dr. Schowalter and Mrs. Schowalter quarreled during their early married life something over twenty years before the will was written. This would be wonderful, would it not?

A man thirty-five years of age marries a young girl nineteen and takes her to Point Clear, Alabama, the most desolate of all places, except for two or three months in the summer. She enters a home of poverty and during the next few years, while bearing two children of her own, she is called upon to nurse, sew for and tutor his three boys and at the same time to do the cooking, washing, ironing, cutting the wood and toting it up nine feet to the level of the floor, hauling the water a portion of the time, doing the house work and in her leisure moments nursing the husband's grandmother who was confined to her bed, and trying to educate the three boys, and to take care of her own children, we find this young woman not only confronted with these responsibilities, ^{but} we find that she bore them so well that both of the boys who lived with her became prosperous men of parts and the only one of her own children who lived became a young lady of marked ability and character, as is shown by this evidence. Human endurance is limited and so far as we are concerned, we find no occasion whatever to wonder or to blame her if there were at times, complaints and sighs. However, it may be said to the credit of

this lady, that throughout it all, she was an active assistant to her husband in the practice of his profession that she inspired him with ambition and practically dragged him from poverty and obscurity at Point Clear into prosperity and prominence in Fairhope and in Mobile, and it is shameful that the sons for whom she did so much, should turn upon her and attempt to blacken her good name, by reciting all of her short comings in the early years of her married life, if their story is true, and by misrepresenting and maligning her, if, as seems to be more probable, their story is utterly false. But be their story true or false, it throws no light upon the question which is here involved, and its telling reflects more shame upon them than upon their victim.

Of the witness, Mrs. Broadwood, the Doctor's sister, we have little to say. She poses as a most amiable and considerate sister. Mrs. Curran tells us of having personal knowledge of at least one occasion when she and her brother were not on speaking terms. Mrs. Paterson tells us that this was her general reputation, and the complainant herself pictures Mrs. Broadwood a very turbulent woman. What is the truth about Mrs. Broadwood? Let her own family relations answer the inquiry. In the first place, she is separated from her husband. He lives in England and she lives in Mobile, and we learn from her testimony that he left her. Why? She is the mother of two daughters, and she and her oldest daughter have nothing whatever to do with each other. Why? We know too that at times at least, she was not upon speaking terms with her brother. Why? Where there is so much smoke there must be some sort of a fire.

There is only one feature of this case which we regret and it has nothing to do with the merits of the case. Mrs. Schowalter attended the examination of Mr. Ned Schowalter and of Mr. Preston Schowalter and she listened to them raketogther and gloat over a lot of nasty stuff with which they have attempted to besmear her. She knew two things; in the first place, she knew that these statements were false and in the second place, she knew that if they were true, it would require the most distorted imagination, to suppose that such occurrences could have a possible influence upon the construction of a will written more than twenty years thereafter, and she, therefore, naturally felt, as we confess we feel, that all this stuff was being dragged into this record by Dr. Schowalter's two sons, purely for the gratification of a malicious hatred, predicated upon a disappointment as to inheritance, and upon nothing else. The result of such treatment of a woman is frequently hysteria, and it so resulted in this case as is evidenced by the very foolish letter that Mrs. Schowalter wrote to Mrs. Broadwood threatening to expose certain matters if Mrs. Broadwood continued the course which had been set by the two nephews of making false statements simply for the purpose of blackening her reputation. Mrs. Schowalter being affected by this excitement, yielded to the temptation of threatening Mrs. Broadwood with exposure if she testified to any similar falsehoods. This letter, of which the defendants make so much, appears from our standpoint to be very silly. It exaggerates into a matter of importance some remarks made by a doctor in examining Mrs. Broadwood's youngest

daughter preparatory to her entering a girls' college as to the girl's physical peculiarities being similar to those which are common amongst the negroes of the south. It seems that when the Doctor expressed this opinion, the oldest daughter became very much excited and wrote to her mother, and Dr. Schowalter, exaggerating the Doctor's remark into a terrible stigma. Mrs. Schowalter tore her hair, and Dr. Schowalter threatened to kill the doctor, and the whole bunch acted very absurdly. The remarks were, of course, unwise; to say the least of them, they were not tactful, but the exaggeration of their importance was not the work of Mrs. Schowalter. The flag was hoisted by Mrs. Broadwood's oldest daughter; Mrs. Broadwood was rampant and Dr. Schowalter according to Mrs. Broadwood wanted to kill the doctor, and it is not very unnatural that Mrs. Schowalter should have joined in the excitement, and attached more importance to this incident than it deserved. Of course, it was foolish for Mrs. Schowalter to threaten Mrs. Broadwood with exposure of this so-called scandal, if she swore to any more falsehoods in regard to her character, but we do not think that any one likes to have their character misrepresented and maligned and however unwise it may be, it is not at all unnatural that she should have used the only weapon that she possessed or thought that she possessed. We do not approve of Mrs. Schowalter's letter to Mrs. Broadwood, but the writing of this letter cannot possibly throw the slightest light upon the proper construction of Dr. Schowalter's will which was written about three years before. It is said that this letter is persuasive because it tends to show that Mrs. Schowalter was

not as devoted to her husband as the testimony in this case would indicate, otherwise she would not have threatened an exposure which would reflect upon him. There are several answers:

First. The letter was ^a silly bluff, pure and simple. Mrs. Schowalter had no intention of making any such revelation; second, the incident did not involve Dr. Schowalter in the slightest though it did reflect upon his sister; third, to have made such an exposure would have been as inconsistent with her devotion towards her daughter Alice, as it would towards her husband, and no one doubts her devotion to Alice. Let the testimony of Alice speak for itself; fourth, if any one can tell what a woman will do when she has hysteria, as a result of which she regards as an attack upon her, they have a great deal more ability in this line than the writer. There is only one thing of which we can be perfectly certain under these circumstances, and that is, that whatever action they take, will be erratic, and that they are wholly irresponsible. We do not say that this is as it should be, but we do say that it is.

We, therefore, respectfully submit that it is perfectly manifest from the circumstances in this case that Dr. Schowalter really intended to give this property to his wife with the power of disposition. We submit that this conclusion results from the fact that a life estate without power of disposition would have been a burden upon her instead of a blessing, and that a remainder estate would have been of no value as the property would have been consumed by taxes during the life of the widow. We respectfully

submit that the testator in this case construed his own language for himself; that this appears from the unbiased testimony of five disinterested witnesses, as well as from the testimony of the daughter. We submit that the testimony in this case overwhelmingly established that Dr. Schowalter was devoted to his wife and regarded her as responsible for his transmission from poverty to success, and that she really was so, and finally we submit that all this abuse which this record contains, which is directed towards Mrs. Schowalter for some alleged infraction more than twenty years before this will was written, represents nothing but cruel and unfounded resentment, put forward without any real hope of influencing the construction of the will, but purely with the hope of mortifying and distressing and punishing the complainant, for seeking to have this will construed by the courts of justice.

RESPECTFULLY SUBMITTED

HARRY T. SMITH AND CAFFEY
AND RIT M. SMITH.

SOLICITORS FOR COMPLAINANT

Charlotte Gertrude Schowalter,
Complainant,

-vs.-

Edward R. Schowalter, Preston J.
Schowalter and Alice Elsa
Schowalter,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY.

It becomes the duty of this Court to discover the true construction of the last will and testament of the late Dr. Volney McReynolds Schowalter. In arriving at that construction the Court will be guided by the terms of the will, the testimony of the witnesses, and the rules of law applicable to the will and that testimony.

At the outset we wish to enunciate certain principles of law relative to wills which we believe to be controlling in this matter.

1. The mind of the testator is the law of the will, unless unlawful in purpose.

Schowalter vs. Schowalter, 116 So. 116.

2. In construction of a will legal terms are presumed to be used in their legal sense.

Schowalter vs. Schowalter, 116 So. 116.

3. The testator's intent must be gathered from the whole will when all the facts are construed in relation to each other.

Ralls vs. Johnson, 200 Ala. 178, at page 180,
75 So. 926.

4. Declarations of a testator are admissible to explain the meaning of ambiguous terms, but it is never admissible to show terms the testator intended to use.

Achelis vs. Musgrove, 212 Ala. 47, at page 50,
101 So. 670.

5. If there is conflict between two clauses which cannot be reconciled, the later clause must prevail.

Fowlkes vs. Clay, 205 Ala. 523, at page 525,
88 So. 651.

6. In endeavoring to construe a will according to the intention of the testator the Court will put itself as far as possible in the position of the testator by taking into consideration the circumstances surrounding him at the time of the execution of the will.

Fowlkes vs. Clay, 205 Ala. 523, at page 525,
88 So. 651.

7. A devise to one as long as she remains unmarried, or as long as she remains the widow of the testator, creates a life estate in the widow only, subject to be cut off on her re-marriage.

Rose vs. Hale, 56 NE 1073;
Cowman vs. Glos, 255 Ill. 377, 99 NE 586;
Brunk vs. Brunk, 137 NW 1065.

The will, omitting formal parts, reads:

"1st. After all my lawful debts are paid and discharged I give \$5.00 to my son Edward R. Schowalter. 2nd. To my son Preston J. Schowalter \$5.00. 3rd. To my daughter Alice Elsa Schowalter \$5.00. 4th. To my beloved wife, Charlotte Gertrude Schowalter, I give, devise and bequeath the residue of my estate, both real and personal. At her death ~~or re-marriage~~ the remainder of my estate to be equally divided between my children, Edward R. Schowalter, Preston J. Schowalter and Alice Elsa Schowalter. I hereby constitute and ap-

point my said wife, Charlotte Gertrude Schowalter, to be the sole Executrix of this my last will and testament, hereby revoking all former wills by me made, and I direct that my Executrix be not required to give bond." (Duly signed, attested, and dated June 11th, 1925.)

There is a codicil to this will dated October 30th, 1925, which reads:

"The erasure of the words 'or re-marriage' were erased by me October 30, 1925."

There is a great mass of testimony in this cause, much of which is wholly irrelevant. This statement is applicable with equal force to a mass of the testimony offered by the complainant, Charlotte Gertrude Schowalter, as well as to much of the testimony offered by the respondents, Edward R. Schowalter and Preston J. Schowalter. But we believe out of the mass of testimony certain facts emerge with unmistakable clearness, and among these are that the second marriage of Dr. Volney McReynolds Schowalter was a marriage of convenience; that it was not a happy marriage; that no matter what the testimony of outsiders may be the testimony of those closest to Dr. and Mrs. Schowalter shows unmistakably that their married life was not happy but that it was filled with constant turmoil and bitterness. This is shown by the testimony of Mrs. Broadwood, who came to testify concerning the relations existing between her brother and his wife despite the fact that Mrs. Schowalter had threatened her with a revelation of certain scurrilous matter which, we submit, has no vestige of proof, but which to the mind of Mrs. Schowalter was definitely proven, and, if the statements of her letter are to be believed, was to her truth.

This letter grieves our able opponents; they say in their brief that they regret this incident, but quickly add, "It has nothing to do with the merits of the case." We respectfully submit that it has much to do with the merits of the case; that it shows the attitude of Mrs. Schowalter not only to her immediate family but to life in general; that it shows that she is a wilful, determined woman; and that she will rule or ruin in matters vital to her. Our opponents would have us believe that Mrs. Schowalter made the allegations contained in her letter in a moment of hysteria, but she was not hysterical when she testified in rebuttal and she reiterated that she made these statements, and on cross-examination she flatly refused to say whether she believed the statements true or untrue although she was urged by her counsel to do so. We cannot pass this incident as lightly as our opponents do, because we believe it gives us an insight into the true character of Mrs. Schowalter. Her statements in that letter show her to be a shrewd, coldly calculating, greedy individual who, to establish her contention concerning her husband's property, would be willing to publish to the world that not only did the Schowalters, according to her statement, have a proven taint of negro blood, but that her own daughter was also afflicted with this taint. The only charitable thing that can be said about Mrs. Schowalter in this connection is that she is not Southern-born and, not having the traditions of her husband's family imprinted in her mind, she did not realize the horror of the charges made by her in the letter directed to Mrs. Broadwood.

Mrs. Broadwood was not stayed by this horrible accusation but appeared before a commissioner and gave her testimony quietly and calmly, revealing to the Court the ends to which Mrs. Schowalter is willing to go in her efforts to win her cause. We submit that Mrs. Schowalter knew that Mrs. Broadwood knew that Dr. Schowalter had definite proof of Mrs. Schowalter's infidelity. Mrs. Broadwood testified to this, and Mrs. Schowalter, in an effort to avoid having this testimony brought before the Court, had said to Mrs. Broadwood that she would publish facts about the Schowalter family which would ruin their standing in the community in which they lived and would drag down with her everyone connected with the incident.

This same Mrs. Schowalter is the same person who our opponents would have this Court believe was a much-abused and persecuted individual because she happened to marry Dr. Schowalter at a time when his finances were in bad condition and because she had to do certain household work over a period of some years.

Our opponents say, however, that these things occurred so long ago that they are not entitled to consideration by this Court. We wish to point out, however, that Mrs. Broadwood testified that in conversations had with her brother not long prior to his death he told her that he did not value life and that if death came to him he would be united with his first wife in peace and happiness. The respondent Preston J. Schowalter testified that he went home frequently after both he and his brother had left home and that conditions had not changed at all. He stated that after having worked nine years he went home and stayed

for about two days and that after that "things got to where I could not stand them any longer, and I left and went up to a hotel in Fairhope." The witness continued that on the next day his father "came down where I was on the beach and told me just the position he was in, that he could not help it, as it was not his fault, and I assured him that I appreciated the predicament he had always been in."

We respectfully submit that a man of Dr. Schowalter's pride would not have worn his heart on his sleeve for the world to see, but that he would have hidden away his chagrin and humiliation and would have done his best to convince the world that his family relations were pleasant. It would be most unnatural for a husband and wife while their neighbors were in their home to indulge in disputes or disagreements, but we submit that it would be entirely natural for a brother to go to his sister and tell her of his unhappiness or for him to go to his son and let him know the true state of affairs in the home. In this connection the testimony of Miss Alice Schowalter is of interest. She quotes her mother as having said on one occasion when they were discussing the final disposition of his property, "Do you see that, Mac? I believe my own child would make trouble over money if anything happened to you." If this conversation is to be believed, it shows that Mrs. Schowalter had at that time an idea that her own child might attempt to deprive her of some material thing her husband might leave her. This, we submit, of itself shows a very pleasant and charming relation between Dr. and Mrs. Schowalter and their own children. There is an old saying to the effect

that when poverty comes in the door love flies out of the window, and we believe that it can be paraphrased to read more truly that when greed enters into the family relation it chokes out affection.

Mrs. Schowalter shows by her testimony that it was her idea she was to have her husband's property even though she re-married. When asked about the occasion of his erasing the words "or re-marriage", she admitted that that had been done at her request. Mrs. Schowalter states she told the doctor that that, in her opinion, was a funny thing for him to do. Dr. Schowalter, apparently hoping to avoid unpleasantness, attempted to eliminate this feature of his will which had proven objectionable to his exacting wife.

Upon reading the brief filed on behalf of the complainant, we are at once forced to conclude that the complainant has entirely abandoned the matters and things upon which she relies in her original bill and amendments in support of her construction of the will in this cause. This is very significant; in fact, it strikes us as an admission by the complainant that she has failed to establish the allegations of her bill upon which she relied to support her construction of the will. The Court will readily perceive, upon a reading of the allegations of the bill and amendments in this case, that the complainant sought originally to establish the following facts and circumstances, viz:

(1) That the complainant, at the time Dr. Schowalter executed his will, was practically penniless; in other words, that she had no property or income in her own right.

(2) That the daughter of the complainant and Dr. Schowalter

had been reared in luxury and idleness and was entirely without property, earnings or means of support.

(3) That Dr. Schowalter was more devoted to his daughter, Alice Elsa Schowalter, than to his two sons, Edward R. and Preston J. Schowalter, and that she was the first object of his consideration and bounty.

(4) That unless the doctor had intended his wife should have power to dispose of his property as she saw fit, that a life estate would impose upon the estate a burden rather than a benefit and would result ultimately in the loss of the estate for non-payment of debts, taxes, etc.

In the first place, the testimony of Mrs. Schowalter on cross-examination shows that she was possessed of considerable separate property and means of earning money; in fact, as shown by her testimony, together with that of the respondent Preston J. Schowalter, she was so much better off financially than her husband that we find she loaned him several thousand dollars during the several years preceding the making of the will which is the subject of this litigation. (See items of claim of Mrs. Schowalter against the estate, attached to the deposition of Preston J. Schowalter.) We have Mrs. Schowalter's word for it that she loaned to Dr. Schowalter the amount of money set out in her claim against the estate, and it naturally follows that in order to make these loans, it was necessary that she be possessed at least of the amount which she actually loaned, and it also follows that Dr. Schowalter, to whom the loans were made, must have known that his wife possessed considerable separate property and finances in

her own right. We shall refer in more detail to Mrs. Schowalter's separate property at another point in this brief.

Insofar as the daughter, Miss Alice Elsa Schowalter, is concerned, we find from the evidence in this case that instead of being a young lady who was raised in luxury and idleness she was, in fact, at a rather early age sent to a hospital in Cincinnati, Ohio, for the purpose of spending four years in training to become a professional nurse, and thereby to fit herself to earn a livelihood. The evidence shows that she graduated as a trained nurse in June of 1924, about one year before Dr. Schowalter wrote his will, and that thereafter she specialized in administering anaesthetics, in which latter field of work she was offered lucrative employment. Furthermore, the evidence shows beyond peradventure that Dr. Schowalter knew that Miss Alice Elsa Schowalter was fully capable of earning her own living at the time he wrote his own will, as there is attached to the deposition of Mr. E. R. Schowalter a letter from Dr. Schowalter to this son, written some six or eight months before June, 1924, when Miss Alice graduated, in which the doctor stated to his son, Edward, that Alice would graduate in June and that from February to June, while still in training, she would receive \$80.00 per month. That Miss Alice was not raised in luxury or idleness, but that, on the contrary, she was trained to fit herself for the battle of life, are facts so conclusively shown by the evidence in this case that we deem it unnecessary to make any further reference to them.

We also deem it unnecessary to comment at length on the degree of affection that Dr. Schowalter bore this daughter as

compared with that which he bore his sons, for when he made his will he did not distinguish between them, but provided that each of them should share equally in his estate. When he made his will he must have realized the uncertainties of this life, and if he did, then we know he must have realized that his wife might not only die within five minutes after his death, but that she might even precede him, and under such circumstances it would certainly seem that he would make more than equal provision for his daughter should he hold her in greater esteem than he did his sons. The whole truth of the matter is, that Dr. Schowalter loved all of his children equally, and loving them equally, he provided for them equally even though one of the three was a girl, because he knew that she was fully capable of supporting and maintaining herself in her position as a graduate trained nurse and anaesthetist.

It is true that at the time Dr. Schowalter executed his will practically all of his real property consisted of vacant lands (and right here we wish to call the Court's attention to the fact that although Mrs. Schowalter has very modestly claimed that the doctor had nothing whatever until she married him, we find from the evidence in the case that every parcel of real property which he owned at the time of the execution of the will was inherited by him from his ancestors,- not the ancestors of Mrs. Schowalter). However, even though the lands were vacant and unproductive at the time of the execution of the will,- excepting the house at Point Clear which rented for about \$300.00 each summer season,- it will be noted from the testimony of Edward R. and Preston J.

Schowalter, as well as from the testimony of Mrs. Schowalter herself, that it was the doctor's intention at the time of and prior to the execution of his will to sell off all of his real property and invest the proceeds in Mobile real estate or in interest bearing bonds. That such was his intention cannot be denied, for we find that within a very few weeks after the will was executed he did in fact sell off one-half of the Point Clear property (the half on which the house was situated) for \$9,000.00. It is often said that the best way to ascertain what a man intends to do is to find out what he actually does, and that he did sell off his property and invest the proceeds in income producing property in accordance with his previously expressed intention shows conclusively what his intentions were. With this \$9,000.00 he bought two houses and lots in Mobile, giving mortgages to secure the deferred portions of the purchase prices thereof. Our opponent, in his argument of this cause upon the submission as well as in his brief recently filed, makes a great ado over the possibility that these mortgages might be foreclosed and the property lost entirely to the estate. This is strange, indeed, in view of the fact that each parcel of the Mobile property rents for \$75.00 per month, and that the taxes on each piece are somewhere around \$150.00 or \$175.00 per annum, while the taxes on the Point Clear property are very small, indeed, being based on an estimated value of about \$2,000.00 or less.

In connection with the probabilities of this Mobile property, it is interesting to note what Dr. Schowalter himself thought the property would produce, as stated in his letter of August 26th,

1925, to his son, Edward R. Schowalter, part of which is set out on page 28 of the deposition of Edward R. Schowalter, and which reads as follows:

"Bought place on West side of Joachim second south of Government, slate roof, frame, lot 60 by 121. Also nobbiest little place I ever saw on Michigan Avenue on Glennon's advice, paying one-half on each. Rents will carry deferred payment, interest, and taxes and leaves a bonus, will occupy lower floor of the Joachim St. property office same place."

Furthermore, it seems to us that our opponent has entirely overlooked the fact that the Courts are always open to sell off part of an estate for the purpose of paying the debts of the testator, and we see no reason why, if the necessity should ever arise, that part of the Schowalter property could not be sold off to pay these mortgages and the other debts of the estate.

Therefore, having failed to establish by the evidence that Mrs. Schowalter was penniless at the time of the execution of the will, and that Alice Elsa Schowalter was dependent at said time, our opponent has chosen to direct his attack upon what he is pleased to assume as a failure on our part to establish that the relations between the doctor and his wife were unpleasant. Pretermitting, for the time being, the question of whether or not the relations between the doctor and complainant were pleasant, we shall now address ourselves to the only other allegation of the bill upon which our opponent relies to sustain his contention of the correct construction of this will, viz., that the doctor, during his lifetime, construed it as the complainant contends. In attempting to sustain complainant's contention, they have produced the testimony of Mr. Joe Pose, Mr. and Mrs. Buck Curran, and Dr.

and Mrs. Macy, in addition to the testimony of Mrs. Schowalter and her daughter, Alice.

The substance of the testimony of Captain Joe Pose is to the effect that Dr. Schowalter told him that he had made his will and had fixed everything so that if he died his wife could handle things; that he wanted to give his daughter, Alice, an education; and said that he had things so fixed that Charlotte could go on and do just as she wanted and educate the girl. This witness testified that Dr. Schowalter looked happier and more prosperous after he came to Fairhope and that his general appearance was that of a very prosperous man. On cross-examination this witness said that he had not discussed with Dr. Schowalter the disposition of his property in the event of his wife's death or in the event of his wife's re-marriage. This witness did make an effort and finally said that he did have some faint recollection to the effect that if there was anything left at his wife's death it was to be divided equally, but he added, "I am not positively sure about it. I do not know as I would want to swear to that, but it seems that I have some recollection in my mind that there was something mentioned about that." This statement, we believe, definitely eliminates from our consideration anything which this witness might have said in that connection.

In connection with this witness' testimony, it strikes us as very significant that on direct examination he testified very positively and readily in attempting to uphold Mrs. Schowalter's contentions, and that his mind seemed as clear as a bell with reference to anything and everything he thought was helpful to

Mrs. Schowalter's cause. But it is equally significant, and, we think, also very strange, that on cross-examination his memory became very hazy with reference to all matters and things concerning which he was interrogated by the solicitors for the respondents. For instance, he states on page 9 of his testimony that he does not remember clearly whether he discussed this conversation with Mrs. Schowalter since the doctor's death. In fact, he jockeys back and forth and does not say anything definite in this connection, and it is quite apparent that his answers were altogether evasive. Again, on page 10, he states, "No, I do not remember that Mrs. Schowalter, since her husband's death, has come to me and asked me whether or not I knew anything about the will or had any conversation with Dr. Schowalter about it prior to his death. I will answer that by saying no, she did not. She did not ask me that question. I do not know how she knew anything about it. As to how I came to be called up to Mr. Smith's office, I think it must have been from a conversation sometime back in regard to the will. As to whether Mrs. Schowalter called on me and asked me about it, or I called on her and told her about it, I do not remember how it was." (Underscoring ours.) We respectfully submit that any witness who testifies as clearly and positively on direct examination as did Mr. Pose, and whose testimony was so doubtful, uncertain and evasive on cross-examination is most certainly a prejudiced witness in favor of the complainant. In other words, we charge and believe that this witness has deliberately testified to conclusions of his own which he believed to be favorable to Mrs. Schowalter, and we need no better proof

of the correctness of our conclusion than the witness' own statement found on page 11 of his own testimony, where he states, "Why, certainly. I was always willing to go the limit for Mrs. Schowalter; to do anything I could for her, and help her out." (Underscoring ours.)

The testimony of both Mr. and Mrs. William Buck Curran was to the effect that Dr. Schowalter said to them that he had left everything to his wife "with no strings tied to it." We submit that even though Dr. Schowalter may have said this, he left strings very tightly tied to his disposition to his wife, as the proceedings in this Court and in the Supreme Court amply prove. We submit, further, that his statement to the effect that he had left everything to his wife with no strings tied to it is altogether reconcilable with our contention that Dr. Schowalter left Mrs. Schowalter a life estate and the remainder at her death to be divided equally among his three children.

Dr. and Mrs. R. C. Macy next testified. Mrs. Macy said that Dr. Schowalter said to her that he had given his wife the absolute disposal of his property. She said: "In talking to us he did not use the words 'remainder of his estate' at all. He used the words 'absolute', 'absolute disposal', but never said anything about remainder." It is difficult to reconcile this language with the terms of the will because nothing is said in the will about Mrs. Schowalter having the absolute disposal of any property and the word "remainder" certainly is a part of that will. These two thoughts are the ones which have given us, and which we believe will give this Court, most trouble. Did Mrs.

Schowalter have the right to dispose of the property? What is meant by the word "remainder"? But Mrs. Macy states that Dr. Schowalter said his wife was to have the absolute disposal of the property, not mentioning anything about the remainder. This is not inconsistent with the idea Mrs. Schowalter was to have a life estate only. Is it not queer that if Dr. Schowalter had said this to Mrs. Macy he would not have included some such term in his will? We are seeking for a light to guide us in the construction of this will, but we do not find it in the testimony of Mrs. Macy. Insofar as her testimony is concerned, we are given nothing and must return to the words of the will itself to find out what Dr. Schowalter meant.

The fact that this witness testified so positively that Dr. Schowalter used the words "absolute" and "absolute disposal" in speaking with reference to Mrs. Schowalter's power over his property, and the further fact that neither of these words are found in his will as written by him, shows one of two things, viz.: that he did not use these terms in speaking of his will or the disposition of his property in the presence of Mrs. Macy, or that he said something he did not mean. We do not mean to infer that the doctor would mislead anyone maliciously, but when we take into consideration the fact that Mrs. Schowalter raised an objection to the re-marriage clause in his will and influenced him to strike it out, it does not require a great stretch of imagination to assume that the doctor would not want any of Mrs. Schowalter's friends to learn he had written his will so that the corpus of his estate would be preserved for his children.

Dr. Macy's testimony is not to the same effect as the testimony of Mrs. Macy. He says that Dr. Schowalter said "that he had made a will,- whether he said that on that occasion or a previous one I don't remember,- but he said he had left his wife in full control of his affairs,- of his property rather, I should have said." We have never disputed that he left his wife in full control of his property, but we have insisted, and do insist, that this control was limited originally to the death or re-marriage of Mrs. Schowalter and when she discovered that the doctor had limited it to her re-marriage she had had that proviso eliminated. This statement is clearly reconcilable with our contention that Dr. Schowalter left Mrs. Schowalter a life estate with the remainder to his children.

Our opponent, realizing this, asked the following leading question: "Do you recall his having used the language, 'left her full power of disposition?'" Of course, the respondents objected to this question as leading, but Dr. Macy, answering the question, said: "Yes, since you mention it, I think he did use that word 'disposition'." Our opponent, having done his best to prove by this witness that Mrs. Schowalter was given the full power of disposition, and having failed,- because anyone who reads the question and the answer will agree that, while the witness has testified that Dr. Schowalter used the word "disposition", he has not testified that Mrs. Schowalter was to be given the full power of disposition, as counsel for the complainant intended,- thereafter abandoned the attack. Mrs. Macy had said that the doctor had given his wife absolute disposal, but her husband would

not testify to that. Moreover, he says that Dr. Schowalter said nothing about having given Mrs. Schowalter a life estate or life interest, nor at that time did he mention the remainder of his property. This same witness testified later that he was prepared to swear that Dr. Schowalter used the word "disposition" and then later took that back and said that he should not have said "disposition" at all but that he should have said "disposal". This is not inconsistent with the idea that Mrs. Schowalter was to have a life estate. If she were given a life estate, as we contend, it was at her disposal, - her absolute disposal. She could sell her life estate; she could dispose of it absolutely. These, then, are the witnesses by whom our opponents would attempt to show Dr. Schowalter meant to give his wife everything and his children nothing. We respectfully submit that their testimony does not prove this and that we must return again to the will and interpret it in the light of law and reason.

As to the relationship between these two witnesses and Mrs. Schowalter it will be seen from the evidence, page 3, of Dr. Macy's testimony that Dr. Macy and his wife had been extremely friendly with Mrs. Schowalter and that there existed a reason for courting her friendship and favor, viz.: that Dr. Macy was endeavoring to procure Mrs. Schowalter's permission to use Dr. Schowalter's name and reputation in promoting a new patent medicine which Dr. Macy was endeavoring to place upon the market. He denies, at first, that he had been negotiating with Mrs. Schowalter in this connection, but it will be noted he finally admits that if he succeeded with the patent medicine, after all possible danger

of loss was overcome, he would be glad to let Mrs. Schowalter invest in it and share the profits derived therefrom.

Miss Alice Schowalter has testified that her father told her on one occasion that he had left everything air-tight to her mother to do with as she pleased. She says that her father told her that if she wanted to sell it and go to Canada nobody could stop her. She says further that her father told her that he had left everything to her mother outright. These statements, if Dr. Schowalter made them, cannot be reconciled with the terms of the will. We are not interested here in making new terms for the will under consideration. We are interested in construing the language Dr. Schowalter employed. "Declarations are admissible to explain the meaning of ambiguous terms, but they are never admissible to show terms the testator intended to use." The terms of this will are fixed, and Dr. and Mrs. Macy do not help us any when they talk about "absolute disposal", nor does Miss Alice Schowalter help us any when she says that her father had stated that he had left his property air-tight to Mrs. Schowalter or that he had left everything to her outright. The short answer to this testimony is that he did not.

To our minds, the most significant thing that can be said about the testimony of Miss Alice Schowalter, as well as the testimony of Mr. and Mrs. Curran, is that their testimony with reference to Dr. Schowalter's statements as to how he would dispose of his property is so entirely contradictory to the will as actually written by him as to be of little or no aid to this Court.

We respectfully request the Court to turn to the testimony

of Edward Schowalter, beginning on page 19 of the depositions of Messrs. Brodbeck, Zundel, Edward R. Schowalter, and Preston J. Schowalter, and read the conversation which Edward Schowalter had with his father about the drawing of his will. The witness relates the incidents which occurred at that meeting in so convincing a manner as to make the reader feel as if he were present when this conversation occurred. The father and his son were discussing the disposition of the father's property, and he told him how he wished his property disposed of. In speaking of the conversation, the son says his father said: "I have had this house (referring to the house on the main street there in Fairhope, in which he died) - I want this house to be Mrs. Schowalter's. I have had it transferred to her a couple of months ago. You boys are old enough to earn your own living, and you do not need anything now, and I am going to leave everything to Mrs. Schowalter to use as long as she lives, but at her death everything I have will be distributed among you equally." Continuing his testimony, the witness there says: "He turned to the subject of the respect due to a man's will, and he cautioned me against any family rows or litigation, and I told him that his will so written as he had explained it to me would not be contested by me, that I would respect that intention, because I thought it was a just intention."

This conversation which Dr. Schowalter had with his eldest son throws light on the conversations he had with Captain Pose, Mr. and Mrs. Curran, and Dr. and Mrs. Macy. We believe that this conversation establishes our contention that in the conversation with these persons Dr. Schowalter merely meant to convey to them

the impression that he had left all of his property to Mrs. Schowalter for her life. Of course, he had given it to her absolutely, for life; of course, he had given her a life estate and no strings were tied to that life estate; but we respectfully submit that the good doctor did not mean to give any one of them the impression he had given his wife the property so that she might sell it and deprive his children of their inheritance.

Let us turn now to the conversation which Dr. Schowalter had with Preston Schowalter. This conversation is to be found on page 34 of the testimony of the gentleman named hereinabove. Dr. Schowalter called his son, Preston, on the telephone and asked him to come over because he had an important matter he wished to take up with him. Mr. Preston Schowalter went to his father's home and his father told him about a heart attack he had had while in swimming several days prior to their meeting, and he told his son that there was no telling when something might happen to him. He stated to Preston that he wanted him to know how he desired his property disposed of in event of his death. Preston Schowalter states that his father said: "I will not leave much, but I want to leave Mama a home. I want her to have this house. I want her to have the use of everything else as long as she lives, and when she dies everything to be divided among you children." Mr. Preston Schowalter states that his father told him that most of his holdings were real property and he wanted to sell out everything and put it into bonds. This conversation was a natural one between a father and a son, when we consider that the father was a physician who realized the

seriousness of the heart attack he had just had and when we consider, further, that it is the desire of every man to know that his property is in as good condition as he can leave it when he dies. Shortly after Preston Schowalter had this conversation with his father the home at Fairhope was conveyed to Mrs. Schowalter, and the fact that he did so convey the home to Mrs. Schowalter just a short time before he executed the will is but another of the many things which go to show that he did not intend that his wife should have the power to dispose absolutely of any part of his property, because, if he had so intended, it would not have been necessary for him to place the title to the home in Mrs. Schowalter,- in fact, it would have been utterly foolish to do so.

In writing his decision affirming the ruling of the lower court in overruling our demurrer to the original bill of complaint in this same cause, Mr. Justice Bouldin said: "The mind of the testator is the law of the will, unless unlawful in purpose." This, of course, is one of the cardinal rules of construction. Mr. Justice Bouldin, in commenting on the language of the Schowalter will, said:

"It is entirely clear that in the mind of the testator there would or might be a 'remainder' upon the death or re-marriage of his widow. In his thought such remainder was dealt with as a part of his estate,- 'my estate to be divided' is his expression. This is not consistent with the idea that he had given an unqualified fee to his wife, and was undertaking to control the descent of her property. The original will calls for a division among the children on her death or 're-marriage'. In either of the events named the testator's declared purpose is that each of his three children shall share equally, that his daughter shall not take all the 'remainder' to the exclusion of his sons."

Again, Mr. Justice Bouldin says: "It is the law that legal terms are presumed to be used in their legal sense." We join to this the idea that in this particular case it would not only be the law that the legal term "remainder" is used in this will in its legal sense, but it would also be the law of reason and of common sense. When Dr. Schowalter first wrote his will he gave his property to his wife with the remainder at her death or re-marriage to his three children. We have seen that the provision relative to the re-marriage of Mrs. Schowalter was eliminated (Was it eliminated? We shall discuss this later.) at her request. If when he drew his will he intended to give a legal remainder to his three children in the event of his wife's re-marriage, then when he struck out that proviso he still intended his children to have a legal remainder at the death of his wife, because his original intent, we submit, held true. His intention was not changed by the attempted elimination of the words "or re-marriage". He still meant that at the death of Mrs. Schowalter his children were to have his property in equal parts, - the life estate of Mrs. Schowalter having dropped.

If he did not mean this, we must make Dr. Schowalter say that he first drew his will leaving Mrs. Schowalter everything, giving her the absolute power of disposition. She was not required to sell the property if the construction of the will our friends contend for is adopted as the true construction by the Court. Indeed, she might give the property away, and it is altogether conceivable that a woman of Mrs. Schowalter's years might re-marry and prior to her marriage, if our opponents are to be

believed, might make her prospective husband a deed of gift of everything Dr. Schowalter earned or owned during his life. We do not believe Dr. Schowalter intended such an absurdity, nor do we believe that this Court will fall into it. Dr. Schowalter meant, and it is legally presumed that he meant, that in the event of the re-marriage of his wife his children were to have the legal remainder of his estate to be divided equally among them.

Our learned opponents say it makes no difference what Dr. Schowalter may have thought,- he did eliminate the words "or re-marriage". But it is our contention and conviction that, although this Court may hold that the words "or remarriage" were properly eliminated, Dr. Schowalter nevertheless held to his intention that the remainder he was leaving was a legal remainder and not a fantastic thing which might or might not exist at the time of Mrs. Schowalter's death as she saw fit.

Dr. Schowalter, we believe everyone admits, was not a stupid man. Would he not have been stupid, in view of the relations existing between his wife and his children, to have left property to his wife at her absolute disposal but with a proviso to the effect if she did not see fit to dispose of it absolutely it was to be divided among the three children? We take it there could be no objection to Mrs. Schowalter conveying all of the property left her by Dr. Schowalter to her daughter, if our friends' construction of the will is declared to be the true construction. How useless, then, is the direction that upon the death or re-marriage of Mrs. Schowalter the remainder of the Schowalter estate

be divided among the three children! Can there be any doubt in the mind of anyone who reads this testimony and who learns of the relation existing between Mrs. Schowalter and her stepsons as to what course she would adopt? We believe that this Court will agree with us that Dr. Schowalter was a man of sense, and we respectfully submit that if the contention of our opponents is to be adopted he must be considered a very guileless individual, to say the least.

In this connection let us turn again to the opinion of Mr. Justice Bouldin. He stated: "We think the will not free from doubt as to the meaning of 'remainder of my estate' in the connection used."

All of the decisions on the point are unanimous in saying:

"In endeavoring to construe a will according to the intention of the testator, the Court will put itself, as far as possible, in the position of the testator by taking into consideration the circumstances surrounding him at the time of the execution of the will, look to the mode of testator's thought in living, and his relations to or associations with the objects of his bounty, and their age, condition, dependence, and the like; and it is presumed that the testator had in view the interests of the legatees who are the objects of his bounty (citing numerous cases)."

Fowlkes vs. Clay, 88 Sou. 651.

If we put ourselves in the position of Dr. Schowalter, who knew of the relation existing between his wife and his sons, we cannot escape the conclusion that he meant to refer to a legal remainder. The law is that it is presumed that the testator had in view the interests of the legatees who are the objects of his bounty, but we have pointed out, and we believe successfully, that if our opponents' contention is to be adopted there was ab-

solutely no sense in Dr. Schowalter making what must be considered in the light of the circumstances a nonsensical attempt to give his sons something.

It is argued that Dr. Schowalter in giving his wife a life estate has given her a burdensome rather than a profitable thing. We cannot agree with our opponents in this. Examination of the testimony will show that Dr. Schowalter owned very valuable property at the time of his death. He knew that his wife was to receive a policy of insurance of \$4,000.00; he knew that she was receiving and would continue to receive \$25.00 per month from a policy of the United States Government taken out by Rightor Schowalter; he knew that she owned certain valuable lots at Volanta; he knew that he had given her the home at Fairhope just a short time before he executed his will; he knew she owned boat stock which was producing handsome dividends, and, finally, he knew that Mrs. Schowalter was capable of earning considerable money, because she had already earned handsome commissions as an agent in the sale of real property in Baldwin County. He must have known also that Mrs. Schowalter possessed considerable cash, for, as before stated, it is shown by her claim filed against the estate in the Probate Court of Baldwin County that she loaned her husband, Dr. Schowalter, some several thousands of dollars before he executed his will. In other words, he not only knew that upon his death Mrs. Schowalter would receive considerable money in her own right, but he knew that she already possessed considerable money and other personal property, and that she was fully capable of earning money.

The testimony shows that the earlier part of the lives of Dr. and Mrs. Schowalter had been spent practically in poverty. We must look at the doctor's estate not through our spectacles or those of our opponents but through his own,- in other words, we must do as the Supreme Court directs,- we must put ourselves in the position of Dr. Schowalter. At the time of his death he was in his own view of himself a prosperous man. He had invested in Mobile real estate, and he figured that this investment was a splendid one and, to employ his own language, would "yield a bonus". Very few people die with as much property as did Dr. Schowalter, and when we recall that all of this property had come to him by inheritance we cannot wonder that he wished to provide in his will that it should descend to his sons and daughter after the death of his wife. Too much has been said of the poverty of the Schowalters and too little of their prosperity. If Dr. Schowalter's estate would yield net \$12,000.00 after all the property had been sold and all debts paid, we respectfully submit that it would not be an unreasonable interpretation which would give this property to the widow for her life and the remainder to Dr. Schowalter's children, Twelve thousand dollars is a mere pittance to the Morgans, Goulds or Vanderbilts, and, possibly, to our esteemed opponents, but most of us would regard it as a fortune if it were placed in our hands all at one time. We respectfully submit that most of us would regard it as a heaven-sent gift if we were to have the use of so much money or its equivalent value in property for a lifetime. All of this talk about the inheritance of this amount being a burden is so much

bosh, as there are any number of people who would very willingly and gladly assume the burden which our opponents paint in such pathetic colors.

Did Dr. Schowalter revoke so much of his will as related to the re-marriage of his widow? This question has interested us very much. The will has been probated, but the mere fact that it has been does not determine whether any of its provisions have been revoked. The Code provides methods of revocation, and we do not see that any of the methods prescribed by the Code were adopted by Dr. Schowalter in his effort to revoke the words "or re-marriage". Section 10600 of the Code of Alabama of 1923 provides as follows:

"10600. Revocation of wills; how made.- Except in the cases provided in the preceding article, a will in writing can only be revoked by burning, tearing, cancelling, or obliterating the same, with the intention of revoking it, by the testator himself, or by some person in his presence, and by his direction, or by some other will in writing, or some other writing subscribed by the testator, and attested as prescribed in the first section of this article; and when any will is burned, torn, cancelled, or obliterated by any person other than the testator, his direction and consent thereto, and the fact of such burning, cancelling, tearing or obliteration, must be proved by at least two witnesses."

A reading of this section will show that our law does not contemplate a partial revocation, and it has been our idea all along that the words "or re-marriage" are still a part of the will of the late Dr. Schowalter and must be considered a part of his will. If we are correct in this contention, then certainly Dr. Schowalter meant to give his wife a life estate only with a remainder to his children, because, as has been suggested several times in this brief, we do not believe this good man

would have wished to give his property to his wife in such manner as to enable her to make a prospective husband a deed of gift, cut out their own daughter and the testator's sons from their inheritance, and then marry the beneficiary of her generosity.

We have not chosen to discuss at length the bitternesses which doubtless exist between the members of the Schowalter family. We have preferred rather to submit our case in the light of reason and the law.

Reverting to the main issues in this case we respectfully submit that even the testimony of the friends of Mrs. Schowalter who have stated their conclusions of what the doctor meant by his will, gleaned from conversations said to have been had with him during his lifetime, is not, we submit, of such force and clearness as would justify the Court in using the same as a basis for the construction of this will. And so, as we have said, we must at last come back to the language of the will itself to aid us in ascertaining the intention of Dr. Schowalter. Of course, we do not mean to imply, as our opponent will doubtless charge, that the will itself is the only criterion for ascertaining Dr. Schowalter's intentions, but we do say that the will itself in connection with all the other testimony in the case must be looked to to ascertain his true intentions.

Turning to the will itself and viewing it in the light of all the testimony in this cause, we know that Dr. Schowalter considered the possibility that his widow would re-marry after his death, and that he did not wish her to have any part of his property in the event she did marry some other man who, of course,

would be legally and morally charged with the duty of supporting her. This must be certain, for otherwise there would be absolutely no reason whatever to impose such a limitation. In other words, were he not dubious that his children would get what he desired them to get of his property, he would simply have turned it over to his wife in toto without limitation of any sort, and rest secure in the belief that the wife would handle everything justly and properly after his death. It cannot be argued with reason that Dr. Schowalter trusted his widow not to dispose of any more of his estate than she might consider absolutely necessary, for if he had trusted her that far, he would necessarily have trusted her to the limit. In other words, there could not be the partial trust of her without full trust, because the partial trust would, in this case, carry the power to dispose of everything if the widow so desired. This same thought was very aptly put by one of the complainant's own witnesses, Mr. W. B. Curran, who, on page 18 of his testimony says, "I have two children, one boy and one girl; I have given my property to my wife absolutely and have made no mention of my children whatever. I have confidence enough in my wife to know that she will do the right thing by the children. If I did not, I would make it otherwise." (Underscoring ours.)

Therefore, this lack of confidence caused him to place a re-marriage limitation in his will. Finding it there, the question immediately arises, "Why did he use the re-marriage limitation in the will and for what purpose?" Considering it in connection with the question of whether or not the widow has the right to dispose of the property as it might suit her fancy, can it possibly be

supposed that any man of intelligence would intend by such a limitation that his wife might dispose of his estate as she saw fit up to the very moment of her re-marriage, but not thereafter? Surely no person with a grain of common sense or ordinary judgment would do anything so utterly foolish. Would he not know that if his wife wished to re-marry, but still wished to have the benefit of his estate, there would be nothing in the world to prevent her from first selling or otherwise disposing of all the property and then re-marrying immediately thereafter, thereby cutting off all possibility of the estate descending to the testator's children?

Considering the doctor's intentions viewed in the light of the codicil whereby he struck out and cancelled the limitation of re-marriage on his widow's interest but retained therein the limitation for life, we think that if there could be any possible doubt of his real intentions after a thorough consideration of the original inclusion of the re-marriage limitation, that all remaining doubt must necessarily be set aside entirely upon consideration of the codicil.

We think it well to here and now point out that, if the widow was clothed with the right of disposition before the execution of the codicil, the same right existed after execution of the codicil; in other words, if the doctor intended she should have the right to dispose of his property before her re-marriage he intended by his codicil that she should have the same right after her re-marriage. The removal from the will of the words "or re-marriage" merely enlarged her interest to a life estate, and the only effect it has on the question whether the widow has

the right of disposition is to show conclusively that Dr. Schowalter never did intend his widow to have such right. We make this statement only after thoughtful consideration of this will from every angle. If the striking of this limitation does not prove that he was merely being generous enough to extend a contingent life estate into a life estate certain, then we must conclude that Dr. Schowalter was such an unnatural father and man as that by his codicil he was not only giving approval (consenting) to the future re-marriage of his widow, but was potentially presenting the widow and her new husband with the unqualified right to sell off all of his property just as it might suit their whims or fancies, and this to the absolute exclusion of his own children, his own flesh and blood, including the only daughter to whom our opponents allege he was passionately devoted. Personally, we cannot imagine any father in his right mind evidencing a preference over his own children in favor of his widow and any man she might marry in the future, but when it is sought to impute such motive and intent to a man of the splendid type of Dr. Schowalter, who dearly loved his children, who desired that each child should share equally, and who set out with the idea and purpose of preventing any future husband of his widow from enjoying the fruits of his life efforts, it is so contrary to human nature as to be utterly ridiculous on its face,- in fact, it is shocking to the conscience. The very idea is insulting to the memory of a man situated as was Dr. Schowalter, and who wrote a will such as he left. And yet, this most unfatherly, unnatural and ridiculous intent must be attributed to Dr. Schowalter unless it is held

tended for by the complainant. So, therefore, there is nothing inconsistent in our contention regardless of the sense in which it may be held the word was used.

We sincerely believe and respectfully submit that in the light of testator's intent clearly shown by the original imposition of the two limitations on the widow, coupled with the fact that he subsequently withdrew one limitation and kept the other limitation in his will, this Court cannot and, we firmly believe, will not ever say that Dr. Schowalter intended his widow should have the right to dispose of his estate as she might see fit after becoming the wife of another man, thereby cutting off his own children, his own flesh and blood, particularly our clients, the step-children of complainant.

In conclusion we respectfully submit that the complainant has merely a life estate in the property of Dr. Schowalter, without power of disposition, contingent on her widowhood, unless it be held that the partial revocation by codicil was properly made, in which event the complainant would be entitled to a life estate certain, without power of disposition.

Respectfully submitted,

Stevens ^{Mc}*Conroy* ^{Mc}*Leod* *Goode & Turner*
Chas Rogers
John W Allen
 Solicitors for Respondents Edward R. and
 Preston J. Schowalter.

CHARLOTTE GERTRUDE SCHOWALTER,
Complainant,

vs.

EDWARD SCHOWALTER, PRESTON J.
SCHOWALTER AND ALICE ELSA
SCHOWALTER,
Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY.

IT IS HEREBY AGREED by and between the solicitors for the Complainant and the Solicitors for the Respondents Edward Schowalter and Preston J. Schowalter, that the depositions of Messrs. Edward Brodbeck, Otto E. Zundel, Edward R. Schowalter and Preston J. Schowalter may be taken on behalf of the above named Respondents before O. H. Swinson, without the necessity of any commission issuing to him. It is further agreed that the above named witnesses, all of whom reside out of Mobile County, are not required to remain to read and sign their depositions, their signature being hereby expressly waived. And the said depositions when so taken, shall be returned to Court, and shall be treated, in all respects, as if they had been taken under a regular commission issued out of the Court to the said O. H. Swinson.

Am signed
Harry Smith & Co.
Solicitors for Complainant.

Stennis Carey Lead Goode + Turner

John N. Allen
Solicitors for Respondents.

Published by agreement
This the 14th day of February
1929 Stennis Carey Lead Goode + Turner
John N. Allen
Edward R. + Preston J. Schowalter
Harry Smith & Co.
Sol'rs for Respondents
also for court

CHARLOTTE GERTRUDE SCHOWALTER,
Complainant,

vs.

EDWARD R. SCHOWALTER, PRESTON J.
SCHOWALTER AND ALICE ELSA SCHOWALTER,
Respondents.

NO. _____

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
IN EQUITY.

DEPOSITION OF
MR. EDWARD BRODBECK,

a witness examined on behalf of
Respondents Edward R. Schowalter
and Preston J. Schowalter.

Mr. Edward Brodbeck being first duly sworn to speak the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION
By Mr. Rogers.

I am Mr. Edward Brodbeck, and live at Point Clear. I have been living there about fifty years. I knew the late Dr. Schowalter during his lifetime, and knew him since he was about eight or nine years old. I do not know exactly how old he was when he died, but I do not think he was sixty. I knew him about fifty years, and he was about eight or nine years old when I first knew him. He happened to be in my store most every day. I knew the first Mrs. Schowalter. I knew her as long as she stayed in Baldwin County, - must have been, I don't recall, but eight or nine years. I knew her from the time he married her until she died, and she died in Baldwin County. She and Dr. Schowalter had four children, Ed, Preston, Rightor and Mack. He was a boy, the last one. Rightor and Mack are both dead. Mack drowned. I do not know how old he was but he was a little youngster about seven years old. Rightor, at the time of his death was older, because he was in the Navy at that time, and he must have been probably eighteen years old, I could not say. I had an opportunity to observe the relationship existing between Dr. Schowalter and his sons Edward and Preston and Rightor. That relationship was good, every time he talked of his boys he used to cheer right up. The Doctor has talked to me about the disposition of his property after his death and told me that it was to be equally divided among his children. I knew the second Mrs. Schowalter. Dr. Schowalter had two children by the second Mrs. Schowalter. One of them died, - the daughter is still living. I

do not know exactly how old his daughter is at the present time, but she must be right around thirty, probably better, I could not say, I know she is a grown young lady. The occasion of the conversation I had with Dr. Schowalter and the circumstances surrounding it was this: It happened a while before when he was very sick and had to be brought to Mobile to be operated on for appendicitis. Nobody was present at the time of this conversation but I and the Doctor. He took very sick and it was right after the storm and the Bay Queen was tied to the wharf, and Capt. Curran and myself went to see him and the Captain said it was impossible for the boat to turn loose because it was very rough, and we did not know what to do, and all at once I saw the Steamer "Magnolia" come up, for which I was Manager, out of Fish River, and Captain Curran and myself went right up to Dr. Schowalter and told him there would be a good chance to get him over here. I did not come over with him, but I was with those who put him in the boat. That was around, somewhere in 1906, that was when we had the storm.

Q. 1906 or 1910 -

Complainant objects to arguing the witness out of his testimony.

Q. Well now, I will ask you, in order to refresh your recollection, whether it was not about 1910 that Dr. Schowalter was operated on for appendicitis?

Complainant objects to informing the witness as to what he is to testify.

That was the time when we put him aboard the Steamer "Magnolia", I did not keep any account of it. When he was put on the Steamer "Magnolia" was the time time he was operated on. The operation was about 1910. This was the time I had the conversation with him about the disposition of his property. As I have stated, I knew Dr. Schowalter for about fifty years. We were good friends and he spent a good deal of his time in my house. He would go and come just as a member of the family and would eat at our dinner table. In those days I saw him most every day. He would come by the store and stop in there and he would come and visit us and see how everybody was. I did not know much about the relationship existing between Dr. Schowalter and the second Mrs. Schowalter.

Q. Did you know anything about Mrs. Schowalter and her treatment of Rightor Schowalter when he was a child?

A. Well, that was hearsay I heard that rumor talked about.

Complainant objects to the statement that the witness has heard a rumor talked about, that is hearsay testimony.

Q. What was that common talk?

Complainant objects to the question, in the first place because the counsel puts in the mouth of the witness the words "common talk" without the witness having so testified, and in the second place because, as we all know, hearsay testimony is wholly incompetent and inadmissible.

Question withdrawn.

Q. Now, I will ask you Mr. Brodbeck, whether or not the rumor that you have referred to was or was not common talk around the neighborhood there at the time it occurred?

Complainant objects to the question because the witness has already expressed his own thought and this is a question that informs the witness, in effect, that it is desirable that he should say that it was a common rumor, instead of a statement of his own.

A. Yes sir, it was common talk.

Q. What was that rumor, Mr. Brodbeck?

Complainant objects to the question as calling for incompetent, irrelevant and immaterial testimony.

A. What I heard was that the boy was sick and done something in the bed and she rubbed his nose in it.

Complainant moves to exclude the hearsay statement of the witness as incompetent, irrelevant and immaterial.

I was in that vicinity over there at the time of the boom.

I knew that Dr. Schowalter sold his Bay front property there at Point Clear. As much as I recall, he must have got about eight or nine thousand dollars for it.

Q. I will ask you whether or not this boom you have referred to was in the year 1925?

Complainant objects to the question as leading.

A. Yes sir.

Q. I will ask you whether or not that boom was going on in June, 1925?

Complainant objects to leading.

A. Yes, it was on then, but not as good as at first. As good as it had been.

Q. Mr. Brodbeck, you testified that whenever Dr. Schowalter's sons were mentioned to the Doctor that he seemed to cheer right up and become interested in the conversation, - I will ask you whether or not that

display of affection continued up until the time of his death?

Complainant objects to the question, in the first place because it is leading, and second because it calls for this witness to state the emotions of Dr. Schowalter.

- A. Yes, it was not two months before that that Dr. and I was in the office, and I asked about the boys, and he was just as proud of his boys as he ever was.

ON CROSS-EXAMINATION
By Mr. Smith.

I was not approached as to becoming a witness in this case except when Mr. Preston Schowalter asked if I knew anything about his father, that is all. That was, I suppose, three months ago, something like that. He just asked me what I knew about his father. I did not tell him these things I have testified here, I just told him I liked his father and thought a lot of his sons. He thought a lot of all of them. That was all the talk between us, that he liked his boys. About this conversation I had in 1906 or 1910, when his father came to the City here, the conversation in regard to what he wished to do with his property, I don't know when I told him about that. I do not recall the time. It was when Preston was over there, that must have been in August or September, some time along there. That is the time I told him about it. The conversation I first swore was in 1906 and when my lawyer intimated it was 1910 changed it was at the time the storm was when they took him to Mobile, there was a storm and other boats would not come out, I think it was 1906 but maybe that was not the one. I do not know whether the storm was in 1906 or 1910. Whether we had a storm in 1910 or 1916 I don't recall. At any rate it has been eighteen or twenty years ago. That was the time he was sick and put on a boat to be brought across the bay. At that time he did not talk anything, much, he was too sick. It was just a hard time to get him to talk, because he was near gone. That one statement was all the talk I had at that day, at that time. I did not say anything to him about it at that time. He was talking to me and said if anything happened to him, to take charge of his affairs. At the time we were bringing him over here he did not say anything on the subject, he was too sick a man.

- Q. Why did you swear a while ago that he did tell you on that occasion something about that his property was to be divided equally -

Respondents object

Q. And now I understand you to say he was too sick to talk?

Respondents object to the question on the ground that it calls for incompetent, immaterial and illegal testimony, and on the ground that he is arguing with the witness, and on the further ground that the witness has testified in the course of his direct examination that the conversation occurred one or two days prior to the time the Doctor was brought to the City of Mobile, and that the gentleman is now asking him about a conversation which he apparently supposes took place on the day that the Doctor was brought to Mobile or on the way to Mobile.

I did not come across with the Doctor, just come aboard, I did not come to Mobile with the Doctor. I testified a while ago that it was a few days before, on that occasion, that he was sick and made that statement to me. When they took him to the boat he didn't care for anything because he was such a sick man we had a time getting him aboard. A few days before that he just remarked to me that if anything happened he wanted me to take care of his estate and see that it was equally divided. That was all the talk there was. He said that to me because he was sick at the time and wanted to get somebody to take care of it, he had no will made. He was sick at the time, when he took that spell of sickness. That might have been a day or two before, as close as I could recall it. I told him I would do the best I could. He asked me first. We were not discussing his affairs before that, he just came right out with it, without any introduction, and said that if anything happened to him he wanted me to see that his property was equally divided. It seems like he felt like he was very bad off. That was all the conversation we had. When I say I heard a common rumor, I mean I heard people talking about it. I could not tell the names of the people I heard making that statement, as I didn't pay enough notice to it when it happened. The name of one was Otto E. Zundell. He is a nephew of mine and is in business with me. He lives at Point Clear. There were so many people I don't know, hardly, the women talked mostly, I didn't pay much notice to it. I do not know what year this rumor was in, I know it was when the boy was a little fellow. I suppose he was about four or five years old, that is my judgment.. That was long after the conversation I was speaking of having. I do not know, exactly, whether this rumor I was talking of was twenty years or more ago or not, but it has been a long time, because the boy has been dead for five years.

When I said the conversation was in 1906 or 1910 I mean it was in 1910. The conversation I spoke of was not a very long time before that, but a short time, I can't tell exactly. I can't tell you whether it was a long time or a short time, I didn't make any note of it. I was talking about Rightor, the one that went in the Navy. I think it must have been fourteen or fifteen years ago that he went into the Navy, if I am not mistaken. I do not know what year he went into it. The rumor I spoke of was before the conversation I had with the Doctor, because he was a little fellow then. Ed was the oldest of Dr. Schowalter's children, Preston was the next, and I judge Preston is now 24 or 25 years old. I think he must have been two or three years older than Rightor.

Q. So now, according to my mathematics, unless I am mistaken, Rightor was then five years old about twenty-eight years ago, is that correct?

Respondents object to the question on the ground that it is incompetent, irrelevant and immaterial, that it is clearly an argument with the witness as to the age of a person a number of years ago, and the witness has testified, according to his best recollection the child was four or five years old at the time of the incident, and further because his attempt to elicit testimony is argumentative pure and simple as to a mathematical proposition.

He was about five years old at this time. He was two or three years younger than Preston.

Q. And Preston is now 34 or 35?

Respondents object to the question, the witness did not state 34 or 35 years old but 24 or 25.

Q. Which did you say?

A. 24 or 25.

I am not accurate in that statement about Preston's age being 24 or 25, I am just judging that. Edward is the one that is living. I could not swear to any age, but I have known him since he was a little fellow. I suppose he is two or three years older than Preston, - it is a hard matter to keep a record of a neighbor's children.

ON RE-DIRECT EXAMINATION
By Mr. Rogers.

Q. Mr. Brodbeck, you have been asked to tell about Mrs. Schowalter's treatment of Rightor, did you ever have any opportunity to observe her treatment of Edward, Preston and Mack?

Complainant objects to the question.

A. No sir.

CHARLOTTE GERTRUDE SCHOWALTER,

Complainant,

vs.

EDWARD R. SCHOWALTER, PRESTON J.
SCHOWALTER AND ALICE ELSA SCHOWALTER,

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.

IN EQUITY.

DEPOSITION OF

MR. OTTO E. ZUNDEL,

a witness examined on behalf of
Respondents Edward R. Schowalter
and Preston J. Schowalter.

Mr. Otto E. Zundel being first duly sworn to speak the truth, the whole truth and nothing but the truth, testified as follows:

ON DIRECT EXAMINATION
By Mr. Rogers.

My name is Otto E. Zundel; I am 54 years of age, and knew Dr. V. McR. Schowalter during his lifetime. I was a bosom friend of his, and that friendship continued during his whole life. He lived at Point Clear, and I would see him very near every day, several times a week and we were very intimate friends. Dr. Schowalter did ask me for a loan of \$200.00 in the fall of 1912. He said that it had become so at his home that living was not pleasant with his wife, that she didn't agree with his children, and that they could not get along, and she was going off, presumably on a visit, and would not return again. He didn't say anything about a separation, only that his wife was going home on a visit, and presumably she would not return.

Q. Mr. Zundel, what was Mrs. Schowalter's treatment of her step-children, Edward, Preston and Rightor, during the time these step-children lived with their father and her, up until the time they left home.

Complainant objects to the question because it calls for this witness to give his conclusions, and not for any instances that he has personal knowledge of.

A. My general impression was that she was very rude and crude to the children and mistreated them.

Complainant moves to exclude the answer because this gentleman can not be permitted to testify as to impressions of other people, and such statements are not competent evidence.

Q. How did you get that impression?

A. The general talk was that she mistreated his children.

Complainant moves to exclude the statement for the same reasons given as ground for such motion to the other answer.

Q. Mr. Zundell, do you know of your own knowledge what the Doctor's feelings were toward his sons, - toward Edward and Preston Schowalter.

Complainant objects to the question on the ground that no man can testify as to the general feelings of another man, and because it calls for the mental operations of another person to which no man can make oath, and calls for incompetent testimony.

Question withdrawn.

Q. Mr. Zundell, did you ever hear Dr. Schowalter speak of his sons Edward and Preston during his lifetime?

Yes sir, he praised them, he just felt loving towards them, he was very fond of them and was proud of them. I heard him say things like that during the boys school days, very often when he spoke of his children he would tell you how proud he was of them. I heard him speak of them after they had left home and had gone out into the world, and he spoke of them in the same nature. He never said anything against them that I ever heard. I never knew of any breach whatever between the sons and the father.

ON CROSS-EXAMINATION
By Mr. Smith.

I am the nephew of Mr. Brodbeck, who testified here yesterday. I was associated with him in a general mercantile business at Point Clear, and have been in that business ever since I was 21 years old. When Dr. Schowalter was living at Point Clear they of course traded with us. I do not know that I could tell you when they moved to Fairhope, but it was about ten years ago, as well as I can remember, and they have not traded with us since. It was in the fall of 1912 that Dr. Schowalter asked me for that loan, but I did not lend him the money. In the fall of 1912 he was pretty hard up, and in fact he was hard up all the time he continued to live at Point Clear. He told me that living with his wife was not pleasant at the time he wanted me to make this loan, in the fall of 1912. He has two living sons.

Q. And they are both prosperous young men?

A. Yes sir.

Respondents object to the question as calling for the conclusion of the witness.

Q. One of them is Assistant to the Attorney General in Louisiana?

Respondents object to the question on the ground that it calls for the conclusion of the witness, as to the pros-

perity and ability of the two gentlemen

Q. I didn't ask about their ability, I asked if he wasn't assistant to the Attorney General in Louisiana.

If he knows that, it will be all right, go ahead and answer.

The Plaintiff in this case objects to counsel representing the defendants giving any instructions whatever to the witness that is being cross-examined.

Yes sir, I understand that he is Assistant to the Attorney General in Louisiana. Dr. Schowalter never mentioned that fact to me, he told me that he was proud of them when they were out for themselves, he told me he was proud of the way the boys were getting along. He told me they were doing well, both of them. I do not know what business the other one is engaged in at the present time. I know what business he used to be engaged in, - he was working for an oil company in Mobile, and subsequent to that he went to New Orleans, I don't know whether he was with the same company or not.

Q. They were highly intelligent boys?

Respondents object to the question as calling for the conclusion of the witness as to whether or not they were highly intelligent boys.

A. I should think they are.

I do not know their ages, Ned is probably 32 and the other, I could not answer, time slips by pretty quick to remember boys birthdays, how old they are. Their daughter, Miss Alice Schowalter, by his present wife, I guess to be about 22 or 23 years old.

ON RE-DIRECT EXAMINATION
By Mr. Allen.

The Schowalters stopped trading with me when they went to Fairhope. Fairhope is a larger community than Point Clear, and there are a number of mercantile stores, etc. there. Dr. Schowalter was my personal and family physician, and he continued to be my personal friend and family physician after he moved to Fairhope, until the time he died. I did not see him as often after he moved to Fairhope as before, only once in a while. The distance from Fairhope to Point Clear is about five miles. They are separate communities and there are communities in between Fairhope and Point Clear. I guess you would say my store is located in the South end of Point Clear. The Post Office is the extreme south end of Point Clear, I am the Post Master. As a matter of fact, the community South of

My name is Edward Rightor Schowalter. I was born at Point Clear, Alabama, so my father told me, on the 28th day of August, at 1:30 P. M., 1895. My father was Volney McReynolds Schowalter and my mother was Olive Elise Rightor, daughter of Judge Nicholas Rightor, of the Civil District Court of New Orleans. It is the will of my father which is the subject of this suit. I recall very distinctly when my mother died, although I was only a lad some seven years old. I was staying at the house of Mr. Wm. Street, a neighbor living on the farm adjoining the Johnson farm, where my father and mother were then living. My father remained unmarried, after the death of my mother something, a little beyond twelve months, - my mother died the latter part of October, 1903, and my recollection is that my father remarried Mrs. Charlotte McGraw Schowalter in the early part of November, 1904. Five children were actually born of my father's marriage with my mother. My mother died in bearing the last child, which also died un-named. The others that were born lived a considerable space of time, - myself, my brother John Preston Schowalter, Nicholas Henry Schowalter and V. McR. Schowalter, Jr. At the time of the marriage of my father to Miss McGraw, I, Preston and Rightor were living, but Mack was not, he was drowned on the 4th day of July, 1904. Mack was drowned subsequently to the death of my mother some ten months. When my father married Miss McGraw, I, my brother Preston and my brother Rightor were living. At that time I was eight years old, and Preston was a year and eleven months younger than I, and I

DEPOSITION OF
EDWARD R. SCHOWALTER,
a witness examined in his own behalf.
Mr. Edward R. Schowalter being first duly sworn to speak the truth, the whole truth and nothing but the truth, testified as follows:
ON DIRECT EXAMINATION
By Mr. Rogers.

Point Clear is known as Zundells, and my place and store is in what is known as Zundells. I and the Doctor were not very intimate after he got up to Fairhope for the reason I didn't see him so often.

would say there was between three and four years difference between Rightor and myself. There was about the same space between the birth of me and my brother/^{Preston}as there was between him and Rightor. I would say that I lived at my father's home after his marriage to Miss McGraw some eight years, as I left home in the latter part of October, 1912. I had first hand means of observing the domestic relationship existing between my father and the second Mrs. Schowalter during the eight years that I lived entirely under my father's roof. Subsequently there- to I visited my father's home, which was only some eighteen miles across the Bay from where I was working, in the City of Mobile, I should say eight or nine times in the course of a year up until 1915, when I re-entered school in Valparaiso, Indiana. I was away from home from 1915 continuously until May, 1920. From 1920 I visited my father on an average of twice a year. The last time I saw him was in December of 1924. From the observations which I made as a member of my father's family, and I had occasion to observe a number of very, which I would conceive, very serious quarrels between my father and his second wife. The first quarrel my father had with his wife was in the summer of 1905, when Miss Olive McGraw, his second wife's sister was visiting us, and Mrs. Schowalter and Miss McGraw, in company with Mr. Arnold Glass and Mr. Willie Glass had been taking frequent launch trips to Fish River. On the occasion on which the particular ill feeling arose, Mrs. Schowalter had been gone all day, and that left her child, Alice, at home, who was less than a year old, and she did not return until dusk, and I distinctly remember my father telling her that these launch trips had to discontinue, and I know, as a matter of fact, no more launch trips were taken. She was volcanic on that occasion. The following summer, - her sister had remained with us during the winter, and the following summer there was an incident at the Point Clear Hotel, in which her sister was involved. I know this because my father told it to me, - the outcome of which was that father made Miss Olive McGraw leave his roof. He and Mrs. Schowalter had quite a disturbance over that. The next fuss father had was some two years after that. He had intended attend-

ing a Medical Convention, and there was some difference of opinion between him and Mrs. Schowalter as to whether he should attend it or not, and he over-rode her opinion, and so my father told me, she threw his clothes out of his grip, and at that time he threatened to send her back to her home. My father did not make that threat good at any time. My father was a man of high temper but of a very charitable and forgiving disposition, and he was not a man that bore his wrath beyond the setting of the sun. Another unpleasant instance, in fact it was prior to the one I have just related, was in the month of June, 1905, when my brother, Rightor Schowalter, who was a lad then between four and five years old, he would have been five at his next birth-day, the 8th of August, had some looseness or trouble with his bowels, and unavoidably soiled the floor, and Mrs. Schowalter, in the presence of myself and Preston Schowalter, and a mulatto girl by the name of Clara Buchanan, wiped that child's face in his accident. My father, when he heard of it was in a rage.

Q. Now was this the occasion, or do you recall, that your father went to Mr. Zundell, the witness who has testified here this morning, and attempted to obtain money to send Mrs. Schowalter home?

Complainant objects to the question.

Question withdrawn.

On this occasion I heard my father tell Mrs. Schowalter that if she ever abused another one of his children to that extent that he would either kill her or send her home; that they were his own flesh and blood, and he did not intend to see them abused. I recall the incident concerning myself, which Mr. Zundell has testified about, in the early fall or winter of 1912. The year before I had been at Spring Hill College, and when college was out that year Mrs. Schowalter discharged the negro cook and placed me in the kitchen as cook. I cooked the family meals, with some assistance from Mrs. Schowalter, until the early fall or until the late fall or early winter. At that time I was cooking a breakfast for my brother Preston Schowalter, who was attending Daphne State Normal School, and serving it at 5:30 in the morning. Rightor and Alice were attending public school at Point Clear, and I served them their breakfast at a quarter of eight

each morning. On this particular morning Alice had not gotten up for breakfast, and came out about twenty minutes after eight and insisted that I set the table and serve her breakfast. I told Miss Alice, - she was a child some eight years old then, - that I had previously served her breakfast, and that if she could not eat breakfast at the same time Rightor had breakfast she would have to get her own breakfast or her mother would have to get it, that I didn't mind being a servant, but I did object to being a slave. Mrs. Schowalter got out of bed and came in and ordered me to serve her child breakfast, which I refused to do. There ensued then an argument between Mrs. Schowalter and her husband in my presence. My father justified my position, and Mrs. Schowalter then declared that if he did not send his children out of that house that she was going to leave, and my father responded then: "Madam, these children were in this house when you came, and if you can't live under the same roof with them, I will have to send you back to your mother." I left the house for about a day and a half. I slept in the barn. Finally father came to me and told me that he had made arrangements to send Mrs. Schowalter back to her mother, and he told me that although he believed he was right, it was mighty hard on him to think that he had to send his daughter back to Pennsylvania with her mother, that she was his child. I told my father that I would help him out of that situation, that it would not be necessary to send Mrs. Schowalter back to Pennsylvania, that if he would give me ten dollars I would go to Mobile and there would be no more friction in the house, and I came to Mobile the following morning. At the time this quarrel took place between my father and step-mother she went over to Mrs. McCains and stayed all day, I think until about nine o'clock at night, because that evening father took Preston, Rightor and myself and went out riding into the woods with us and talked the thing over, and when he returned someone came over to the house and informed father that his wife wanted to see him. I had already told papa that I had solved the problem by going to Mobile, so he went over and brought her back. I recall at that

time that she had packed her trunk and got ready to go.

I am not qualified as an expert on domestic relations, but aside from the detailed accounts that I have given of unpleasantnesses and quarrels which occurred between my father and my stepmother, and judging from my recollection of my father's relation with my own mother, I would say that from 1904 until 1912 the relationship between my father and stepmother was beneath the standard of ordinary domestic felicity. I would say it was intermittently pleasant and unpleasant. I have recounted an instance of her flagrant abuse of Rightor Schowalter, and I would say that during that period of time she did everything in her power to destroy father's love and confidence in us. I say that because father came to me one day and told me that Mrs. Schowalter had informed him that she was fearful lest my brother Preston was engaging in some illicit relationships with the negro domestic in the house, and on other occasions, - Preston was then only 14 or 15 years old, - that she feared that he was drinking, and father would ask me to let him know if Preston was doing any of these things, and I, of course, knew there was no more truth in it than there was in Annanias' body. Alice Elsa Schowalter and an infant, John Schowalter, were born of Dr. Schowalter's second marriage. Miss Alice Elsa Schowalter is still living, that is my last information. She was born on the 25th day of August, 1905. John, the infant I referred to, died in December or November, 1910, I believe, I do not recall the exact year, - I recall the occasion but do not recall the year. At the time of his death he was either exactly a year, or slightly less than a year, about one year old. I left my father's home in Point Clear in the year 1912, and I first visited my father after that unpleasantness in Easter, but I might explain my apparent lack of resentment by the fact that in January, 1913, my father came to Mobile and called me up at the Jerome Sheip Lumber Company, at Choctaw Point, where I was then working, and asked me to come up to the City, and we had lunch at DeBrier's old Coffee Shop. Father told me my attitude in staying away from home was making life miserable, that Mrs. Schowalter was ding-donging him about it, and he asked me if I would not, from

time to time come over to see him, and I told him that if he put it on that ground, to make his life pleasant, I could not refuse him, that as long as he lived I would, from time to time, visit him in his home, and after that I did visit him. When I was working in Mobile I dare say I visited him about nine times a year. I heard Mrs. Schowalter testify that I purchased a small piece of china or something of that kind for her with the first money I earned after I came to Mobile, and that I presented her with that gift, but that is an act of charity which I do not merit. I did not purchase any china or anything else with the first money I earned. I recall the following Christmas I went home, in pursuance of the understanding between my father and myself, I took her some token, but it was not a piece of china.

I left home in the early winter or late fall of 1912, and I first returned in Easter of 1913, the following Spring, at my father's request and insistence, and only for that account.

Q. Why didn't you go back sooner, Mr. Schowalter?

Complainant objects to the question as calling for the gentleman's mental and secret purpose, and as being incompetent evidence, he can not testify as to reasons.

A. There were possibly two reasons why I did not go back sooner. First, because of the unpleasantness, father having insisted that I immediately return to the house, - and another substantial reason why I did not go over the Bay was because the first few months I was working it took all the money I made to live on.

There was a period, between 1915 and 1920 when I was not at my father's home, over the Bay at all. I was in school in Indiana, and in the summer I worked, sold books, etc., to provide funds for my education the following winter, and in 1917 I entered the service, and was not demobilized from the Submarine Service until February of 1920, and I remained out on the Pacific Coast two or three months, and then returned to Alabama in May of 1920. When I say the Service I mean I went into the service of the United States Government, in the Navy, during the war. Since I left home in 1912, with the exception of the \$10.00 that father advanced me, I have been self-supporting, and have received no financial aid or assistance from him. I might say that at one time my father tendered me some financial assistance, but I told

him that I had hooded my row that far, and I wanted to be able to say I was a self-made man, and I got by without his assistance. I was graduated from the Evening Law School of Loyola University in June of 1923. I paid for my schooling. I owed some \$1,400.00 and that fact was known to my father because I borrowed \$250.00 of that sum from him, which amount, of course, I repaid to him.

Q. Mr. Schowalter, will you please relate your educational experiences, briefly, and tell just how you managed to acquire your education, what part of it, if any, was paid for and provided by your father, and what part, if any, was the result of your own efforts.

Complainant objects to the question because it is irrelevant and immaterial to this matter. We do not object to a general statement of this gentleman as to having educated himself, but do not like to fill this record with a detailed statement of his schooling, it is a creation of an unnecessary expense.

Q. Give a brief account, Mr. Schowalter?

A. Previously to going to work for the Mobile & Ohio Railroad, in 1912, father had sent me to Spring Hill College for a year. I saved my money the three years I worked for the Mobile & Ohio Railroad, and I went North and completed my academic education with these funds and the addition of such monies as I made on Saturdays unloading coal, washing windows and selling books in the summer time. I went to Valparaiso University, at Valparaiso, Indiana, and I left Valparaiso in February of 1916.

I was graduated in my law course from Loyola Law University, in New Orleans. I took a partial law course when I was out in California. My duties before I was sent across permitted me some three or four hours leisure, and every day I attended law lectures at the University of California, at Berkley. On the completion of my law education I was in debt around \$1,400.00, and this fact was known to my father because we discussed it.

Relative to my half-sister, Alice Elsa's earning power, I only know what my father has told me and written me. My father told me, in December, 1924, that Alice was perfectly capable, and was in fact earning her own living as an anaesthetist. She had written me in the winter of 1923 that she was drawing some \$80.00 a month salary with the Cincinnati General Hospital. That was before she had specialized in anaesthetics. This letter, dated November 4th, 1923, is the letter I referred to in my

testimony as having been written by my father to me, in which he referred to the fact that Miss Alice Schowalter would shortly go on a salary at \$80.00 per month. Subsequent to that, in December, 1924, he told me that Alice had specialized in anaesthetics, and would from then on do very nicely. He told me that she was a special anaesthetist for Dr. Heuer, a celebrated surgeon in Cincinnati, and that he expected that Alice would make some handsome anaesthetist fees with Dr. Heuer. I do not know whether or not she was on a salary. I know that she was then acting as a special anaesthetist.

I received this letter from my father in due course of mail, it is in his hand-writing.

Respondents offer in evidence letter dated November 4th, 1923, from the late Dr. V. McR. Schowalter, signed "Dad", and identified by the witness as having been forwarded by his father, Dr. Schowalter.

The letter is marked by the Commissioner "Exhibit A" and attached to the witness' deposition.

I do not know anything about my sister's earning power, just prior to or at the time of my father's death, other than what my father wrote me in 1923 and what developed from his conversations in December of 1924. I believe my father's will was written on the 9th day of June, 1925, on the 9th or the 11th, I have that date confused with the date of another document. As to the relationship which existed between me and my father, he always referred to me as his first born. Father taught me Latin, so much so that I was able to take advanced standing in Spring Hill College. He taught me practically all the philosophy I know. Through familiar association with my father, I might say that I got almost a liberal education, and from the time I was ten years old, up until his death I believe my father consulted me almost in regard to everything of any serious import. I have had no ill will between my father and me. The last time I was at home he actually picked me up off the ground, - he was larger than I, - and embraced me, and I reminded him at the time that he was getting too old for such demonstrations of affection. It was my father's custom to write me on my birth-day and my custom to write him on his birth-day, and I do not think we ever omitted observing such an occasion. I know I wrote him and made him a

present on his last birthday, and one of the most cherished possessions I have is a letter he wrote me on my twenty-first birthday, and each year he would write me on the occasion of my birthday such a letter as a loving father would write to his son. I have even compared father's letters to me with those of Lord Chesterfield to his son. They are just as high and inspiring as any letters ever written by a father to his son.

Complainant moves to exclude the statements just made as applied to any letter which is not produced in evidence.

Q. We are going to introduce the letter. That is the one we are going to introduce first,- I show you a letter here dated August, 26th, 1916.

The letter that you have just handed me is a letter dated August 26th, 1916, addressed to me by my father, when I was working in Hildreth, Nebraska, during the summer, and was written to me on the occasion of my twenty-first birthday.

Respondents offer in evidence this letter identified by the witness, and the same is marked Exhibit "B" and attached to this deposition.

This letter, dated April 16th, 1923, was addressed to me by my father, Dr. V. McR. Schowalter, and was received by me in due course of mail.

Respondents offer this letter in evidence, and the same is marked Exhibit "C" and attached to this deposition.

I received this letter, dated July 12th, 1923, which was written to me by my father, and I presume it was written by him on the date shown thereon.

Respondents offer this letter in evidence, and the same is marked Exhibit "D" and attached to this deposition.

This letter, dated June 9th, 1925, is a letter written to me by my father.

Respondents offer this letter in evidence, and the same is marked Exhibit "E" and attached to this deposition.

It is admitted between the solicitors of record that in a letter written by Dr. Schowalter to his son, Edward, on August 2nd, 1925, he made the following statement:

"I have a fairly good practice here, a little better than \$5,000.00 per year, so it looks like it will be best for me to stand pat."

The witness continued:

The most recent discussion I had with my father relative to

the disposition of his property in the event of his death was in December of 1924. The occasion was that we were all seated at the supper table and Mrs. Schowalter began to mention the distribution of certain pieces of mahogany furniture. I recall Alice had expressed a desire to have a mahogany bureau, and she wanted, I believe a mahogany sideboard, and she wanted to know what pieces I had a preference for. This was mahogany that some of it had been in the family for three and four generations. I told Mrs. Schowalter that at that time I was not married, and I could not see why the mahogany could not remain with her. Father spoke up and said, "Ned, you are a lawyer now, what is the best form of a will." I had only been practicing law a little more than a year then. I had been practicing law in Louisiana, and in view of the fact that I had not begun to take my legal shaving any too seriously, I told my father that a holographic will was the best will. I told him that was so because it seemed to prove a disposing intention, and almost precluded any alteration. He seemed to take that very seriously, and the next morning I had had time to reflect over it, and I realized that it was presumptuous, if not impertinent, to venture to give legal advice in jurisdictions in which I knew nothing about the law of that State, and when I went to father he was seated in his office, and I told him that he should not be guided by my advice, but that the best thing that he could do was to consult an Alabama lawyer, and I suggested that he see Mr. Joseph Rich, who I believe was a class-mate of my father at the University of Alabama. Father looked at me very much surprised, and he said: "Don't you know how to draw a will", and I told him "Yes, in Louisiana". Well, he said the drawing of a will was very simple, and he picked up a small volume, and if I recall rightly it was entitled "Every man his own lawyer", and I remarked to father that lawyers had a saying among them, that when a man said he was his own lawyer, he had a fool for a client, which seemed to enrage father until I explained to him just what that meant, and he said: "I have read Percy's Blackstone" referring to his brother Percy, and I told him: "Yes father, but you are still not lawyer enough to draw your own will." He said "Well, I will see about it." He turned to me and said: "I want to tell you how I want my

property to go." He said: "I have had this house (referring to the house on the main street there in Fairhope, in which he died) - I want this house to be Mrs. Schowalter's." He said: "I have had it transferred to her a couple of months ago." He said: "You boys are old enough to earn your own living, and you do not need anything now, and I am going to leave everything to Mrs. Schowalter, to use as long as she lives, but at her death everything I have will be distributed among you equally, because I love all three of you children equally", and then he turned to the subject of the respect due to a man's will, and he cautioned me against any family rows or litigation, and I told him that his will so written as he had expressed it to me would not be contested by me, that I would respect that intention, because I thought it was a just intention.

Q. Well, as you understand it, have you respected your father's intention?

Complainant objects to the question as to whether he has, as calling for the opinion of the witness as to his own conduct.

Q. I will ask you if you entered any contest, so far as this will is concerned, of your own bringing.

A. I brought no suit to contest this will. As a matter of fact when Mr. Rittenhouse Smith, who represented, and I suppose still represents Mrs. Schowalter, met me in the Schowalter home, he asked me to submit him an offer of compromise.

Complainant objects to the gentleman undertaking to introduce in evidence negotiations for a compromise on the following grounds: It is not responsive to the question, in the second place it is well established that testimony as to that which transpired in regard to a compromise is inadmissible, and never to be mentioned in the trial of a case, and because the testimony is incompetent, irrelevant and immaterial.

Mr. Rogers: If agreeable to counsel for the complainant, it will be agreeable to us to have the answer of Mr. Schowalter relative to any compromise stricken from the record.

Q. Now Mr. Schowalter, did you, after your father's death return to your home, and did you have any conversation with Mrs. Schowalter at that time about the disposition to be made by your father of his property?

Complainant objects to the question as being incompetent, irrelevant and immaterial.

A. I remained at home the day following my father's funeral, expecting that the will would be published. Nothing was said about it. I returned to New Orleans, and I think it was July 15th, or the middle part of July that my brother Preston and myself were summoned to come to Alabama about an important matter connected with the estate.

Q. Who summoned you?

A. Mrs. Schowalter summoned us by long distance. Miss Alice Schowalter met me at the boat -

Complainant objects to the transactions between this gentleman and Miss Alice Schowalter as being incompetent, irrelevant and immaterial testimony.

with a Chevrolet car and drove me to the Schowalter home. Immediately I arrived there, I say immediately, I mean within a space of three to five minutes, - Mrs. Schowalter arrived with Mr. Rittenhouse Smith, and immediately called me into Dr. Schowalter's office and study. She also called Alice and Preston Schowalter, and Mr. Rittenhouse Smith -

Complainant objects to any statement by Mr. Rittenhouse Smith, because it is incompetent, irrelevant and immaterial testimony.

Mr. Rittenhouse Smith presented me with what I believe to be a general quit-claim, in the nature of a fee simple devise from me to Mrs. Charlotte Gertrude Schowalter, transferring and assigning all of my right, title and interest in and to the estate of Dr. V. McR. Schowalter. I was, of course, taken by surprise, and I asked Mr. Smith for a copy of the will, which he presented to me, and upon perusal I told him that I knew nothing about Alabama law, but I believed that I had a remainder estate, according to that will, and having that right, I could not sign an instrument of that nature.

Q. What did Mrs. Schowalter say on that occasion?

Complainant objects to the question as calling for incompetent, irrelevant and immaterial testimony.

A. Mrs. Schowalter entered into a rage. She deplored the fact that she had ever come South, and said that she knew there was going to be a contest over the will, and that we were making fools out of ourselves, and if she could not get it all she did not want anything.

That was the occasion on which she said that the greatest mistake she had ever made in her life was in coming South. I want to say this now, in justice to Mr. Rittenhouse Smith, that this statement I have made is no criticism of counsel. I feel that he

took that action upon the assurance of his client, and I am reinforced in that impression because Mr. Rittenhouse Smith stated: "I understand that everything your father died possessed of was acquired by the savings effected by his second wife and himself", and when I told him that every inch of land that my father owned was either the actual land received from his father, or the reinvested revenue from the sale of lands received from his father, he seemed greatly surprised. Immediately after this meeting broke up, she was seated in the parlor, and I was in the parlor, and on that occasion she said she had gone through Hell with my father, and she hoped to God that she never opened her mouth. Those were her exact words. That was about July 15th, immediately following the family meeting that I have just referred to.

I have testified as to unpleasant instances connected with my father's second marriage at the time I was living with them. In 1920, when I returned in May, father and I drove out into the country and father began to reminisce. He stated to me that the only reason that he had married the second time was because when little Mack was drowned he realized he needed to have someone over his children. That he had met Mrs. Schowalter through a matrimonial agency, and had not seen her until he went up there to marry her, and that he felt that he had married beneath his equality. He referred again to the happiness between my mother and himself, and he made this statement, - that he had several times thought that he would have to send Mrs. Schowalter back to her mother, but he thought he would be like the Spartan youth, and keep the fox under his tunic. In 1924 he told me that he was very much mortified that Mrs. Schowalter had written a letter to his sister, Mrs. Broadwood, to the effect that as long as Dr. Schowalter did the right thing by her she was going to stay with him, but the minute he did not she was going to leave him. I know from my own personal knowledge, while I lived in the house, that it was the custom of my father to give my stepmother, Mrs. Schowalter, money from time to time for her expenses and the expenses of the house, and I might say that in 1922, no in 1921, when I was home, he happened to pull one of those old purses that only open by pressing a certain number of nobs on them, out of his pocket, and it appeared he had

something over a hundred dollars, a large amount of money, and he told me: "Son, don't let mama know I have got this money on me, because there would never be any peace until she gets it."

I have perused this account which purports to be a copy of the account filed by Mrs. Schowalter against the Estate of the late Dr. Schowalter, and I have seen it before. This purported account between Mrs. Schowalter and the Estate of Dr. Schowalter sets out various items of expense alleged to have been paid by Mrs. Schowalter.

Q. Now, I will ask you whether or not on that account, as shown there Mr. Schowalter, there are items showing payments made various clothing stores, groceries, taxes, automobile concerns, repairing watches, and various other items of this nature?

Complainant objects to the question, first because it is incompetent for a witness to tell the court what is contained in a paper, most of the Judges can read, and in the second place, the contents of a paper made up since Dr. Schowalter's death could not possibly throw any light on Dr. Schowalter's intent and purpose in making a will, and therefore is incompetent, irrelevant and immaterial.

A. From reading this account it would appear, sir, that the items on there are as recited by you.

By Mr. Rogers: Now, with the understanding that this paper will be identified as a true copy of the accounting filed by Mrs. Schowalter against the Estate of Dr. Schowalter, - I just want to state here that we will later offer that paper in evidence.

ON FURTHER DIRECT EXAMINATION
By Mr. Allen.

When I left Point Clear to go out in the world to make my own living I was sixteen years old. The extent of my school education at that time was seven years in Point Clear Graded School and I went to Spring Hill College from Point Clear before I left home. I went to Spring Hill College in the years of 1911 and 1912, that was one year. That was the only time I attended Spring Hill College. My Father paid for that. When I went to Spring Hill College I was able to enter the Freshman year in College, because, as I have previously testified, my father had taught me Latin, and Miss Eloise Nelson, daughter of Charlie Nelson, had taught me Greek.

Q. Was the Freshman year you had at Spring Hill College what is known as University Work, or High School Work?

Complainant objects to the question -

Q. I will ask you if it was a Grade A University?

You can not compare the curriculum with that of any other institution. For instance I read Homer's Illiad, St. John Chrysstone's Eis Eutropeos, and St. Luke's Gospel in Greek in that year in college. I went there one year. When I went North after that I went to Valparaiso University. I went to Valparaiso in the fall of 1915 and re-entered in the fall of 1916, and left in the early part of 1917. I might say the Valparaiso University is not a Grade A school, because they would let you take as much work as you can carry. I stayed there practically a year and a half. I paid for that myself, every cent of it. Then my legal education which followed was in New Orleans, at a night school of law. In 1920 father and I got to talking about his land, and when I left Alabama he had preserved all the land that he had inherited from his father intact. He had told me that when it became necessary to educate Alice that he would sell off a tract of land and I looked surprised, and he told me that he would have done as much for Preston and myself, but that Mrs. Schowalter would not have signed the deed.

ON CROSS EXAMINATION
By Mr. Smith.

I do not speak to my stepmother, Mrs. Schowalter at the present time. I have not spoken to Mrs. Schowalter since the time that she caused her attorney to present me with this general quit-claim and transfer. All through my examination I have referred to my sister as Miss Schowalter or Miss Alice. I would speak to her if I saw her. I bear her no ill will. For the purpose of this litigation I regard her as Miss Alice Schowalter. Socially she is my sister.

Q. Now do you belong to any church?

Respondents object to the question on the ground that it calls for incompetent, irrelevant and immaterial testimony, and object on the further ground that it is an attempt to prejudice the Court or judicial tribunal on religious grounds, and the matter has been specifically referred to in the opinion of the Baldwin County Court, when the matter was formerly before it, and I think it has no part or place in this record.

- A. I suppose if I belong to any Church, sir, I belong to the Roman Catholic Church, because that was the Church in which I was baptized. Unfortunately I am not a communicant of that church at the present time.

I do not waste my time attending any Christian Church at this time. I can not say positively that Mrs. Schowalter, the present Mrs. Schowalter, my father's second wife, has any religion at all now. The last time I heard she was a New Thought. She was born and raised in the Roman Catholic Church.

- Q. Can you tell us when she ceased, severed -

Respondents object to the question on the same grounds previously assigned to the first question along these lines.

- A. I could not answer that sir.

- Q. Do you remember hearing of that?

- A. No sir, I could not answer that question.

- Q. Did your father remain a Roman Catholic to his death?

Respondents object to the question on the same grounds.

My father was originally baptized in the Presbyterian Church, his mother's church. He later attended the Episcopalian Church, and I might say that in my own mother's time the most often visitor to our house was Dr. Gardner Tucker. I sat in that Reverend gentleman's lap many a time, and father, after becoming a Roman Catholic, was not able to subscribe to all the dogmas of that religion, and in moral, spiritual honesty he returned to the Episcopal Church. I have a letter from him on that subject, if you care to see it, sir. I can not be sure when he returned to the Episcopal Church, but it was following the death of Rightor Schowalter. There was some misunderstanding about his burial, due to the fact that the communication between Baldwin County and Mobile had been suspended, and the body was brought over by a special boat, and a Priest from Mobile failed to accompany the body, and the lad had to be buried by an Italian Priest who could not speak English, and father took that as a personal affront to him by the Bishop, and I believe that that was one of the motivating causes of his returning to his own original faith, but the main reason was the fact that his own independent thought did not accord to the dogma and principles of the Roman Catholic Church, and he

was spiritually brave enough to return to the Episcopal Church.

Q. After your father's death did you visit your father's home, your mother-in-law and your sister?

A. After my father's death I visited my father's grave two or three times, but since, as I have before testified, since what I considered to be an unconscionable act attempted to be practiced upon me, I naturally, out of ordinary human resentment, did not go back there for a second dose.

Q. Answer the question?

A. I did not, no sir.

Q. Why didn't you answer the question in the beginning?

Respondents object to arguing with the witness, object to bulldozing, the question is apparently for the obvious purpose of making the witness mad.

I answered the question as I thought it should be answered, it stands upon the record, sir, and if it is not responsive, I judge that you know the proper remedy.

Miss McGraw, my father's second wife, was, from her statements to me, and my father's statement, from Bradford, Pennsylvania. Miss Olive McGraw, her sister, was immediately from Philadelphia, where she was employed in some hospital, she was a trained nurse.

I told my father, when he told me how he proposed to make his will, that there would be no contest to it if he adhered to his purposes as stated. When these disturbances between my father and my step-mother that I have spoken of, five of which I have mentioned, occurred it was not necessary to make any memorandum of them, I did not anticipate there would be any trouble. I did not make any memorandum at all. I have had some sickness, I will say that my general health has been good. I was threatened with tuberculosis in 1920, and spent some four months in Nebraska, and I have had pneumonia and malaria fever. My general health is good. I have had no ill feeling between Alice and myself. She has not written to me, I wrote her the last letter. I wrote her a letter sometime between father's death and that incident I referred to. She was present at that incident, at the family meeting. I was admitted to the bar in June of 1923, but I did not actually begin the practice of law then. I became an Assistant Attorney General in Louisiana in August, 1924. My father knew of the position I retained. I have kept that position ever since. The first time

that my father told me, verbally, that Alice was capable of earning a living was in December of 1924, but he had previously written me in November, 1923. I was aware of the fact that she subsequently went to the University of Virginia to study medicine. I learned that to be accurate in July of 1925 when she was attending - I learned it for the first time in June, 1926, when she was attending summer school, taking some special courses, in Chemistry, preparatory to the study of medicines. At the time of my father's death she was pursuing the studies I have just referred to in summer school, at the University of Virginia. I do not know what she was doing before he made his will, I presume she was an anaesthetist at the Cincinnati General Hospital. She was not at the University of Virginia at that time. My brother Preston Schowalter left home in April or May of 1913. I left home in 1912, and he left home some six or seven months after I left home. There was a year and eleven months difference in our ages. When he left home the first thing he did was to seek employment, and in those days it took him about thirty days, and he went to work for McGowin-Lyons Hardware Company as bill clerk. He was there in 1915 when I left to go North. I understand that shortly after I left, in 1915, he took a position with the Texas Oil Company. He is not with that Company now. He was there at the date of the will and at the date of my father's death, and has since been with that Company in New Orleans. His occupation now is a student, in the last year of law school. In later years his position with the Oil Company was in charge of the office there, I think the designation was chief clerk, or something of that sort. He was not chief clerk of the general offices of the Texas Oil Company, he was chief clerk at what they call the terminal, where the tanks are. Where he was he was chief clerk, there was he and another clerk, I believe. At the date of my father's will he was employed in New Orleans by the Texas Oil Company. He was chief clerk then, and I know he got around \$200.00, I do not recall exactly. Approximately \$200.00 a month. So far as I know he was single. At the date of the will I was single. The letters that I have produced are not the only letters received during the period covered by those letters,- they

are letters that I thought were illustrative of my father's relations with me. I have a number of others. I attended my father's funeral. I remained there until 5 o'clock the day following. I had understood in common law jurisdictions, as a part of the last ceremonies, a man's will would be read.

RE-DIRECT EXAMINATION
By Mr. Allen.

I have had a conversation with my father with reference to what he intended to do with his property, what disposition he intended to make of his real property. Father and I were talking over the condition of his estate. That was the first conversation in 1922, and the second conversation, the last time I was home, in December, 1924. Father had the idea of selling off all of his back lands and investing them in Bay Front property, and I told father that I thought that at his age he should not speculate, that he should invest, and I told him that if he were a client of mine, I would have him invest in Mobile property for the return of revenue. He said he thought that was a good idea, and if he could get the right price for his property he would invest it in Mobile. I believe he did that. In fact, I know he did it, and he wrote me a letter to the fact he did it, and that the return, the rent from these houses was sufficient to pay the interest and the taxes, retire the loan, and a bonus. I have a letter here *

It is admitted between counsel that on August 26th, Dr. Schowalter wrote to his son Edward, a letter in which he stated:

"Bought place on West side Joachim second South of Government, slate roof, frame, lot 60 by 121. Also nobbiest little place I ever saw on Michigan Avenue on Glennon's advice, paying one-half on each. Rents will carry deferred payment, interest and taxes and leave a bonus, will occupy lower floor of the Joachim St. property office same place."

Q. Mr. Smith asked if you made a memorandum of the occurrences of the disturbances in your home which you stated led to unpleasantness in the household while you were there. You said you did not make a memorandum. I will ask you if they made an impression on your mind that you still have?

Complainant objects to the question as to whether they left an impression on the gentleman's mind. That is a mental operation and not the subject matter of competent testimony.

A. I answered Mr. Smith's question in the negative, because I inferred he meant a pencil or pen memorandum or record. Of course I made a mental note of those facts.

I testified that my sister, Miss Alice, first went to Virginia to study medicine in the summer school of 1926, and my mind is very clear on that point. I testified that I was single at the time my father executed his will. I had told father that I was engaged to a young lady. I brought a letter from that young lady to him and showed it to him in December, 1924. That was before he executed his will, and he knew I was engaged.

ON RE-CROSS EXAMINATION
By Mr. Smith.

I did not follow the result of the investment in this real estate I spoke of, only what Mrs. Schowalter has testified to, and what father had previously stated to me in his letter, the part that was read in this evidence. I did not follow the rentals as to how father came out, whether fathers predictions panned out or not as under the circumstances and the relationship existing between Mrs. Schowalter and myself I thought that injecting myself in it would have been impertinent. I did not follow it, except to the extent that the other night I saw both places were inhabited, but so far as the actual monetary return, I do not know about it.

DEPOSITION OF

PRESTON J. SCHOWALTER,
a witness examined in his own behalf.

Mr. Preston J. Schowalter being first duly sworn to speak the truth, the whole truth and nothing but the truth, testified as follows:

ON DIRECT EXAMINATION:
By Mr. Allen.

I am Preston J. Schowalter. I am the son of Dr. V. McR. Schowalter, whose will is under consideration in this case. At the present time I am a student at Loyola University. I was born June 27th, 1897, at Point Clear, Alabama, and am now 31 years old. I am a brother of the other defendant, Edward R. Schowalter. I first received my grammar schooling at Point Clear District School, which is a public school, for which there is no tuition charge. I went through the seventh grade there. After that I went to Daphne State

Normal School for about six months. I think the tuition there was about \$11.00 a year. I paid that tuition and expense. I got the money selling newspapers and carrying laundry during the summer months. I left Point Clear in April or May, 1913. That was all the education I had up to that time. When I left in 1913 I came to Mobile. I had no further education whatever after coming to Mobile. The only academic education I had was seven years in the District School in Point Clear, and six months' normal schooling at Daphne, except what I have done myself. That was the only schooling I had had. I, of course, have now had several years in Law School, about three years. Mobile is approximately eighteen miles Northwest of Point Clear on the opposite side of Mobile Bay. When I left my father's home and came to Mobile I had less than ten dollars, five of which my father gave me. I have been self-supporting since that time, and at no time since I left home have I received any assistance whatever from my father, either for educational or living expenses. The circumstances attending my leaving my father's home in 1913, when I was fifteen years old, were that things had just gotten to be almost unbearable, both for myself and my father too.

Complainant objects to the statement of the gentleman as a mere matter of conclusion, as far as his father is concerned, a statement of his father's mental condition.

I mean, by becoming unbearable, that I was trying to study short-hand and typewriting myself, after I left Daphne State Normal School, because I didn't have any further means, and I had no time to study because of the fact that I was required to do so many duties at the house, washing dishes and cooking. These things embarrassed my father terribly, he was just in hot water all the time, and the only way I saw was to get out. My father married the present Mrs. Schowalter November 3rd, 1903, - one year and three days after my mother died. Mrs. Schowalter was from Bradford, Pennsylvania. My father had never been to Bradford, Pennsylvania prior to marrying her, during my life.

Q. Mr. Schowalter, I wish you would please state what was the condition of affairs in your home from the time your step-mother came there until the time you left home.

Complainant objects to the question as calling for incompetent, irrelevant and immaterial testimony.

Q. State the personal relations and condition.

When she came there, there were three children living by his former marriage, and in the course of about a year a child was born of the second marriage. Dating from that time on there were discriminations on the part of the wife in favor of the children of the second marriage to the prejudice of the children of his first marriage, and it was unbearable.

There was discord constantly. The children of his first marriage were provided with practically no clothing, no shoes and nothing but a shirt and a pair of trousers. The child of his second marriage was always dressed well, and the contrast between the two was so noticeable that the public commonly -

Complainant objects to the gentleman undertaking to testify what the public commonly thought, on the ground that he can not have personal knowledge of that, and because the testimony is incompetent, irrelevant and immaterial.

My mother had a piano which my father bought her, and naturally we children wanted to see that equipment preserved. Alice was about one year old, and her mother would put her up on top of the piano and let her walk on the keys and kick the keys, and we children naturally resented that, and to spite us children it was done more and more. She was constantly trying to influence my father's mind to show corruption on our part, to show that we would never amount to anything. She even intimated that I had been having illegal relations with the negro cook. Also on one particular instance she accused me of having drunk intoxicating liquors. At this time I was about 12 or 13 years old. Another instance, at one time, on this occasion, we had to milk at least two cows and attend to at least two horses, and sometimes, especially in stormy weather, cows get very nervous and kick the milk over immediately after finishing milking, and it would be no fault of ours if the milk was kicked over and we had no milk to bring to the house. On this particular evening she made the statement that she did not see "why your father does not kick you little snots out." I heard my brother, Edward Schowalter, testify here this morning about my little brother Rightor's bowels having emptied on the floor and Mrs. Schowalter rubbing his nose in it. That was true, I was present

in the room. My father told her that if that ever happened again he was going to send her home. I heard my brother testify that Mrs. Schowalter had, by reason of some fuss she had with him, Edward, stated to my father that either his children had to leave or she would, and that he told her that they were there before she came and that they would have to stay, and she left home for a while and went to Mrs. McCains, a next door neighbor. That was a fact, she told him he would have to choose between her or the children, and in response he told her that we were there before she came, and she would have to choose between staying there or going home.

Q. You heard what your brother had to say in his testimony -

Complainant objects to the course being pursued of having one witness testify as to the other witness' statements being true, and on the ground that testimony of this character is not admissible, is not competent, it is most distasteful, and is not a statement of facts -

Q anything that occurred with reference to Alice, that you recall.

I recall an instance when a certain thing took place at the Point Clear Hotel, tending to defame the Schowalter name and reputation. A party to that was Miss Olive McGraw, a sister of my stepmother, and my father made her leave the house and go back home. That instance caused a great deal of turmoil in the house, it was very disagreeable to everybody.

These things I have enumerated, referred to in detail are not the only evidences of discord, it was constant. Something was coming up all the time, constant nagging on her part, criticizing the children of his first marriage. That continued up until the time I left home. Since I left home, when I was 15, I have had conversations with my father in which he contrasted his second marriage with his first marriage. On these occasions he would say to me that his second marriage had been very unhappy to him, because he was kept in hot water all the time, and he said he knew that we children of the first marriage realized his position that he was in and that she just kept things in a turmoil. I assured him that we did realize the situation he was in. I went home frequently, while I was in Mobile, after both I and my brother had left home, and conditions had not changed at all. In fact, my presence on the

week ends just seemed like pouring oil on a fire. Despite that fact my father insisted I come home every week. I always stayed there when I went home, except when I took my vacation. After having worked nine years I went home and stayed, I believe two days, and things got to where I could not stand it any longer, and I left and went to a hotel, in Fairhope. The next day he came down where I was on the beach and told me just the position he was in, that he could not help it, as it was not his fault, and I assured him that I appreciated the predicament he had always been in. That was in 1922, in the summer time. Another occasion that I recall very distinctly, in 1908, I was eleven years old, and was stricken with appendicitis. My stepmother, about a year previously, had been operated on for appendicitis, and while I was lying in bed, before they diagnosed my case as to whether or not it was actually appendicitis, they were going to call in some other doctors,- there was a medical convention on at the time, of Baldwin County Doctors,- and my stepmother said to my father: "What are you going to do if you find out he has appendicitis." He threw out his chest and said: "Why, I am going to take him to town and have it cut out." She said: "My God, are you going in debt further?" My stepmother said that, and he said "I am going to have the appendix cut out, whatever is necessary I am going to do." Another instance I recall is when my stepmother and her sister had gone down to Fish River with Willie Glass and his brother, the two Glass boys, and they did not return until after dusk, and my father naturally resented that. X I remember that threw the household in a turmoil considerably. I mean the wrangling on the part of my stepmother, resenting the just and due criticism of my father. She had Alice, she was very young at that time, and should have been nursed by her mother, and when she went on these trips we children, we boys, had to take care of Alice, and whether or not Alice got the right kind of milk, or was fed when she was supposed to have been fed was left up to us children, and he criticized her along these lines. That created discord. When I mentioned those trips, I was not referring to trips with men all the time, but visits which she would make, and this particular instance where she came in late that night. I recall, very dis-

tinently, conversations with my father in which he stated what he intended to do with his estate. In September, 1924, I was still working in Mobile. He called me up over long distance 'phone and he said: "Son, be sure and come over this week end, because I have got something important to tell you," and I assured him that I would be over without fail, and I went over, and sitting in the house at Fairhope, he told me about having had a heart attack while in swimming some several days previous, and he said he could not tell when something might happen to him, and explained to me that a man of his weight, and the Doctors had some years before diagnosed his heart as having an insufficiency of certain muscular action, and he told me how he wanted his property to be disposed of in the event something happened to him, and he said I am sorry I haven't more to leave, but it is not my fault. He said "I will not leave much, but I want to leave mama a home. I want her to have this house." He was referring to the house at Fairhope in which we were sitting. He said "I want her to have the use of everything else as long as she lives, and when she dies, everything to be divided among you children," Alice, Ned and myself. He went ahead to point out that most of his holdings were real property, and he wanted to sell out everything and put it in bonds. He asked me what I thought of it, and I told him I did not know how much they would yield, but that they were the safest thing in the world he could put his money in, State bonds.

Again, in February, 1926, I went home and stayed about three or four days. One Sunday afternoon my stepmother took his car and drove Mrs. Hutchins and Miss Grace Hutchins up to Daphne, North of Fairhope, to look at some lots. My stepmother was at that time selling real estate on a commission basis, and she had told me that up until then she had made a little over \$1,300.00, and was thinking of buying a Chevrolet, and she asked what I thought of it. She could not use my father's car like she wanted to in the real estate business, because he had to have it in his practice. I told her that it seemed to me like there was no reason why she could not continue to make money in the real estate business like she had been, and I thought it would be a very good investment, that it would pay for itself. While she had gone out to show these lots, my father, sitting in his office, brought up the question of a ring,

a wedding ring that my mother placed on his hand when he married her. It was an old fashioned ring, - sort of a two in one affair, a ring I have never seen one like it. He said there is enough gold in this ring to make two rings, and my idea was to give one part of this ring to you and one part to Ned. He said he made the offer to Ned, and Ned wrote him that he thought as long as he lived that ring should stay in his possession, should be one of the nearest things to him, and he said he appreciated that attitude but he said the ring would not fit his finger. He said: "Now I will give it to you, if you want it" and I said: "I will be glad to take it, take care of it, not that I ever intend to marry, but would be glad to keep it but I have no place where I can keep it, will you keep it for me?" He said: "Yes, I will place it right here in this drawer," the middle drawer of his desk, in which he kept things under lock and key, in which he incidentally told me was the only place he could keep things in. He said: "If you had not accepted this ring, I was going to put a codicil on my will, providing that at my death that ring shall be placed in the lefthand vest pocket, right over my heart, when I am buried." He then proceeded to tell me again how he wanted his property to go. He said "I want mama to have this place, I want to leave her a home and the use of everything else as long as she lives, and when she dies, everything is to be divided equally among you three children". He made no distinction between the children of his first and second marriage. I learned this past September that my father actually conveyed this home in Fairhope to my step-mother, that he conveyed it to her September 17th, 1924, which was not more than a week after he talked to me in Fairhope, when he stated that he wanted her to have this house, it could not have been a week in between. I had a conversation with my stepmother during one of my visits to Fairhope as to what property she had, and as to what she was doing in 1923, in August. The three shares of stock in the Fairhope Transportation Company which I owned, my father asked me to sell it to him, and I let him have it, and he placed it in her name. The face value of that stock was \$100.00 a share, but they were worth considerably more than face value. I was offered \$155.00 outside. The name of the Transportation Company was Fairhope Transportation Company.

My father explained to me that he wanted these three shares in order that my stepmother would have an even thousand dollars of stock in that Company, that was boat stock, the Bay Queen that plied between Mobile and Fairhope. It was known as the Bay Boat, and carried passengers and freight, and automobiles between Mobile and the Eastern shore. That stock has paid in dividends, to my understanding, over a period of four or five years, about 600%. Mrs. Schowalter had other stock besides that three shares, and they made an even ten shares, \$1,000.00. I sold them at face value. I discussed with my father the effect of the building of the Bay Bridge upon this stock and the bay boats, and he told me that he realized that it would just put the Bay boats out of business, but the other advantages that would come from it, the benefits to the Eastern Shore, he could not conceive of it. That conversation about the effect the bridge would have took place as late as February, 1926. As late as that, he died in June, 1926, that was my last visit home before he died. That was about the time of the Bay Bridge talk. Mrs. Schowalter has told me she owned several lots up in Volanta, just North of Fairhope, and a few lots in Daphne. She told me she had paid \$590.00 for the lots, and had refused \$1,660.00 for the lots. She told me that in the early part of 1926. As I have previously testified, she told me she had made, up until February, 1926, over \$1,300.00 selling property over there. She was still engaged in that business, and she wanted to consult me as a lawyer when I had had just a few months law schooling, about some differences she had with real estate men, she had commissions, there were several hundred dollars that had not been paid her. That was in February, 1926, and she had been engaged in real estate trading then about four or five months. The condition of Baldwin County real estate about that time and prior thereto was almost at a boom. She continued in that business up until the time of my father's death. Whether she continued in it afterwards I am not in position to state. Prior to my father's death she had a school teacher boarding with them in the winter time, and she received rent from the school-teacher. Another thing that I would like to mention here is, one night my father stayed in Mobile, at the Battle House. He was

coming to a medical convention, and I was with him that night in his room, and he explained to me how sorry he was that he had not been able to send me through medical school, that the only way he could have done it previously he said would have been to sell some of his lands, but he said mama would not sign ^{the} (the deeds, and in Alabama it is necessary that she sign them. He said: "However, I want you to go to the University of Alabama no later than next year, if there is any possible way for me to raise money otherwise than by selling these lands, because I could not do that." Father always picked me out to be a surgeon. He told me my hands were worth a fortune to a surgeon, and that he actually felt that he had done humankind an injustice by not educating me as a surgeon. I heard my brother state a while ago that I was chief clerk for the Texas Company in New Orleans at the time my father made his will. That was at, the Post Office was Marrero, Louisiana. This plant was very small, it was nothing more than a fueling station. I was one of two men in the office, one other man and myself. I was over the other man, that was the extent of my authority. The Superintendent was over me. Just the three of us were employed there in the office. Of course we had the total pay roll, never over fifteen men, but I had nothing to do with them. I attended my father's funeral in Fairhope. That same evening, right after the funeral we were all having dinner together, Ned, Alice, my step-mother and myself, and she went ahead to say how much my father thought of his children, how devoted he was to them, and said that he thought worlds of all of his children, and she said, "Preston, I want to tell you that you were his favorite," that when he said Preston, it meant something more. After I had returned to Mobile from the funeral, Mrs. Schowalter and Alice later summoned me over long distance 'phone, and I went over. Over long distance 'phone she told me to be sure and come over and bring Ned with me, that there was something about the Estate, that she had some papers we had to sign. I told her I did not know whether Ned could get away or not, I could not answer for him, but for myself, I would positively be there, and I was reasonably sure Ned would be with me. Ned could not leave until the following day after I left. I got in Fairhope Saturday afternoon, and had not been at the house two

minutes, a short time, when she called me in my father's office and handed me a bunch of papers, typewritten matter, and said that we had to sign that, so I proceeded to read the thing, and she went all up in the air, and said "Are you going to sign it or are you not going to sign", and I said: "Mama, I would like to read this thing before I sign it, Ned will be over here tomorrow, on the noon boat, and both can sign it together if we are going to sign it." I told her "there could be nothing gained by me signing it now." I could see in the document the common law expressions "fee simple", and I realized pretty well what the thing was, and I did not sign it. Ned came over the next day on the noon boat, and she had arranged to have her attorney there, Mr. Rit Smith, and went down to Magnolia Beach, rather at Battles, and got him, and when Ned got there all were invited there, and he didn't recognize Mr. Smith at first, but thought he was Mrs. Schowalter's brother, her sister was down there, and he thought her brother was there, so the thing was just put up to him like that, she tried to get him to sign it right off the bat like she did me. My brother asked for a copy of the will and Mr. Smith gave him a copy of the will and he read it, and he said "The will seems to agree with what my father told me, and I know that we have an interest in this Estate", and Mr. Smith told him that he thought he should sign it. Well, we thought we should not sign it, it would be going against our father's will. Mr. Smith wanted to make a proposition and invited him to come by his office and see him. I did not sign and my brother did not sign. Mrs. Schowalter started to crying, and said that she knew the greatest mistake she ever made in her life was when she came South, and that she had gone through Hell in living with my father, and she hoped to God that she would never open her mouth.

Q. Mr. Schowalter, did you at any time, or any time prior thereto and subsequent thereto, ever have a conversation with your half-sister, Miss Alice Schowalter, about what she was doing, what she had been doing, etc.

Complainant objects to undertaking to introduce testimony as to anything Miss Schowalter might have said on the ground that it is incompetent evidence, and no proper predicate has been laid to impeach the witness.

By Mr. Rogers: I would like it noted that a predicate for this question has been laid in cross-interrogatories propounded by the

defendants, Edward R. and Preston J. Schowalter to the cross-respondent, Miss Alice Elsa Schowalter, but that as yet neither answers to the direct and cross interrogatories have ever been filed in Court, and it is also to meet an allegation from the pleadings of the complaint.

A. Yes, I did.

It was Saturday afternoon, in July, 1926, when I came over in response to the telephone request, at the time Mrs. Schowalter wanted me to sign that paper. Alice and I took a ride up to Daphne

Complainant objects on the same grounds as above assigned.

in the car, and Alice told me about her going to study medicine, she was going to study that fall. She said "I am giving up a \$4,000.00 job to study medicine, and she asked me why I didn't give up my job and go study medicine. I said I had no means. Alice told me that for a while she was assistant chief anaesthetist at the Cincinnati General Hospital. The chief anaesthetist was taken ill, her health failed her, lung trouble, and Alice was promoted to that position. She told me she was giving up this \$4,000.00 job to study medicine. She was employed in that hospital at the time my father made his will, in June, 1925. At the time my father made his will she was a duly licensed and registered trained nurse, and had specialized in giving anaesthetics. The reason I recall it so distinctly, that she had graduated, is because before I left Mobile I sent her a telegram congratulating her on the occasion of her graduation, and I left Mobile in 1924. I sent her that some time before I left. My sister, Alice, owned either three or five lots up in Volanta. That is the same location where my stepmother owned some lots. My stepmother told me in February, 1926, that Alice could sell these lots for \$3,500.00, which would be almost enough to educate her, and said that was what she was counting on for her education. Since my father's death I have examined the Court file of his Estate, in the Probate Court of Baldwin County. I looked through the entire file for claims filed against his estate. I found there a claim filed by Mrs. Charlotte G. Schowalter, the complainant in this cause, the widow of Dr. Schowalter. I made a typewritten copy of the claim she filed, an exact copy of it. The paper that has been handed me is an exact typewritten copy of the

claim of Mrs. Charlotte G. Schowalter against the Estate of V. McR. Schowalter, Deceased. I made this myself, copied it from the original claim filed by the Complainant.

Respondents offer in evidence this paper which has been testified to, and the same is marked Exhibit "1", and attached to this deposition.

Complainant objects to its introduction as being incompetent, irrelevant and immaterial.

From looking at this paper and refreshing my recollection, the total amount of the claims filed, Mrs. Schowalter's claim against the Estate is \$2,245.12 plus \$852.69. This other paper which has been handed me is a claim filed against the Estate. A copy of the claim taken from the original claim filed by Miss Alice Elsa Schowalter, in the total amount of \$672.65, against her father's Estate. I saw the original. All of the claims were properly signed. I haven't got the signature, it is not an exact copy to that extent.

Q. She did have claims filed to the extent of \$672.65,- what did those claims consist of?

Complainant objects to the gentleman being called on to explain to the Court what is plainly written.

A. On the assumption of an indebtedness of my father to Radio Specialty Co., Loxley, Ala.,- my father had purchased -

Q. We do not care anything about that, just state what the claim was.

A. Assignment of notes of P. D. Beville Supply Company, \$476.65, that was the balance due to P.D. Beville Supply Co. by my father on the purchase price of a Chrysler automobile, and notes assigned to Alice Schowalter by the Bank of Fairhope, \$120.00.

CROSS-EXAMINATION

By Mr. Smith.

Q. These claims you have spoken of represented the indebtedness of your father that Mrs. Schowalter and Miss Alice had purchased since his death to prevent the sacrifice of the property, don't they?

A. I do not subscribe to anything of the sort, Mr. Smith,- to the contrary I think they are padded.

Q. Just a minute, I did not intend to call for your opinions at all, what I wanted to know, and I modify the question,- what I want to know is if these claims do not represent indebtednesses due by your father to third persons which were bought by your step-mother and your sister.

A. I insist that they do not sir, and propose to contest it.

I testified on direct examination that the indebtedness on which Miss Alice's claim was based was on claims filed against my father's estate. I testified on direct examination that Miss Alice's claim represented money due by my father at the time of his

is the extent of my knowledge on the subject. I did not make a copy of the item of June 12th, 1926, of the note to the Bank of Fairhope, note and interest \$143.14. The apparent taint of fraud suggested itself in my mind by this fact, - there was a certain juggling of figures there I can find no purpose for, I could not swear that that note was not an indebtedness of my father. I do know this in regard to that item, that when I sold these three shares of boat stock to my father he borrowed, so he told me, money from the Bank of Fairhope to pay for that stock, and my impression is that that note has just constantly been renewed. I could not state what the several notes due by him to the Bank, one June 12th, 1926, \$143.14, another June 4th, 1926, \$55.49, another May 6th, 1926, \$30.83, another March 5th, 1926, \$131.79, another January 8th, 1926, \$25.00, another December 5th, 1925, \$150.00, another March 4th, 1924, \$58.00, are for, I would have to make a thorough audit of the Administratrix' accounts. I do not know now. I really have no information or knowledge about these items at all. This other item due the Bank of Fairhope of \$802.67, I know that my father told me, in February, 1926, that he bought these lots which Alice owned, and which my stepmother owned, and borrowed the money from the Bank of Fairhope. I do not know that Miss Alice Schowalter bought these lots out of monies she saved out of her own earnings and paid \$237.00 for, that was positively contrary to what my father told me. My father said this: That he figured-

Q. I did not ask you what your father told you, and it is not competent testimony, the attorneys on the other side can ask you -

A. It relates to the note.

Q. I haven't asked you what your father told you, I asked what you have personal knowledge of -

Respondents object to stopping the witness after bringing out testimony about the notes -

By Mr. Smith:

I decline to ask the witness anything in regard to conversations with his father in regard to this matter, and I deny the right of the commissioner to report testimony given upon cross-examination other than in response to my interrogatories, and I give notice that if he insists on that course I shall abandon the cross-examination and move to suppress the deposition. I understand it to be my right to conduct the cross-examination and require the witness to answer my questions, and confine himself to answering them.

By Mr. Rogers:

Respondents also have the right to make objection when they think it to the interest of their clients to do so.

I have not received a \$100.00 check from Mrs. Schowalter since my father's death, on September 16th, or about September 16th, 1925. Before my father's death I did not receive Mrs. Schowalter's check for \$100.00 that I had loaned my father. The hostility on my part, -my resentment of ill treatment, began when the ill treatment began. I said that was when Alice was a year old. All of Mr. Schowalter's children by his first wife resented her ill treatment then. I have never been hostile, my resentment began when the mistreatment began. I do not call resentment of mistreatment hostility, I was not the aggressor. I sold these three shares of stock to my father, in the Fairhope Transportation Company. I have no knowledge as to whether, when they put the bridge over across the bay, it destroyed the value of that stock, as since I sold the stock I have not checked up on it. I spoke of my stepmother having gone down to Fish River with somebody. She went with the two Glass boys, Adam Glass' sons, Willie Glass and his brother. They were young men, about twenty years of age. I testified she got back late that night, I would say it was about seven. It was in the fall of the year. The Adam Glass boys had a little launch. They had been down to Fish River, below Point Clear, some eleven miles, on an outing. My father was not at home at the time she left, he was out making his calls. They left, I would say, about nine o'clock in the morning. That was in 1907 or 1908. My age at that time would be a matter of mathematics. I am now thirty-one years old.

Q. You said your father told you that he was very unhappy with his second marriage and knew you appreciated it, when did he say that?

Respondents object to the gentleman stating that Dr. Schowalter stated to the witness that he was unhappy and that he knew the witness would appreciate it, on the ground that we contend the witness did not state that.

Q. Just to learn the cross-examination is confined to plaintiff's understanding is interesting - did you or not say that?

I did not say that sir, if you want me to answer it, that he knew that we appreciated his position. That conversation took place on several occasions. The first occasion developed when Alice was very young. As nearly as I can give it, 1905 was the first

occasion, the first conversation I had on that subject was when we were riding in a buggy to church up in Battles, about 1910. When I said 1905, that was a particular occasion, 1905 is when it started. In 1905 he drew the contrast between the conditions in his marital life with his second wife to the former wife. He told me, in substance, that he knew I appreciated his position, that it was not his fault. I was then about eight years old. The second time he made that statement, or the substance of it, was each time there was a violent rupture of domestic relations, and he always said to me that he was very unhappy in his living, and he knew that his children knew his position. He always made that statement every time there was a violent eruption, and I testified on direct examination that an eruption was constantly going on. By the expression of eruption, I mean the apex of the numerous discords. I do not recall the exact date he made that statement to me the second time. He never made that statement to me more than once a week, and not every week, and not every month. I would say he made that statement twice a year. The first occasion in 1905, was down at the home at Point Clear.

Q. So about twice a year from that time, you were about eight years old, your father would talk to you and tell you that he was very unhappy with his second wife, and he knew his children appreciated his position?

A. When the situation got to where it would just almost break him up, and the children almost ready to leave.

He would always make that statement to me, in substance.

My father positively stood there, while I was ill with appendicitis, and in my presence, stated that he was going to have my appendix cut out.

ON RE-DIRECT EXAMINATION
by Mr. Allen.

Q. Mr. Schowalter, with reference to one of the items of this account, I believe it is on this account, anyway Mr. Smith asked you whether or not at any time since your father's death Mrs. Schowalter had sent you a check for \$100.00 that you had loaned to your father, and you answered no, and he then asked you whether or not she sent you a check for \$100.00 before your father's death for \$100.00 that you had loaned your father and you answered no. I will ask you if Mrs. Schowalter did not send you a check for \$100.00 that you had loaned to her?

Complainant objects to the question, because it is not a question, but a statement to the witness as to how you want him to testify.

Q. Did you ever get a check from Mrs. Schowalter for \$100.00?

I did. It was before my father's death. It was for \$100.00 cash I loaned her, personally. She requested the loan and my father knew nothing about it.

APR 17 1930

THE STATE OF ALABAMA - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1929-30.

1 Div. 576.

Charlotte Gertrude Schowalter

v.

Edward R. Schowalter, et als.

Appeal from Baldwin Circuit Court.

THOMAS, J.

The first appeal is reported in 217 Ala. 418.

In that decision it was indicated that Dr. Schowalter's will may be properly construed by the courts as to the ambiguity or doubtful import of the terms employed, -- "remainder of my estate"; and that parol evidence may be employed to enable the courts to assume the position

2.

of the testator, in order that the intent of testator as expressed in the will be declared. - First National Bank v. Sheehan, 83.

It is recognized by the courts that while parol evidence is permissible in the matter of an ambiguity, to explain its meaning, it is not permissible to show the terms the testator intended to use, -- that is, inadmissible to show intent not deducible from terms employed or in contradiction of the will. - Achelis v. Muggrovs, 212 Ala. 47, 50.

The rules of testamentary construction are well understood. - Hiller v. Hall, 216 Ala. 453; First National Bank v. Sheehan, 83; Halle v. Johnson, 200 Ala. 178. Where a will is susceptible of construction the decisions are uniform to the effect that the courts, by way of parol evidence, will put itself, as far as possible, in the place of the testator, and in so doing, take into consideration the circumstances surrounding testator at the time he prepared and executed the will; look to the mode of testator's thought and living, his relations to or associations with the objects of his bounty and their conditions and needs, as age, condition, dependence or the lack thereof, the condition of his family, the amount, character and productivity of his property, and the like. - Fowles v. Clay, 205 Ala. 523; First National Bank v. Sheehan, *supra*; Steele v. Grate, 208 Ala. 2; Blake v. Hawken, 98 U. S. 515, 25 L. ed. 139; Smith v. Bell, 6 Pet. 68, 6 L. ed. 322. Thus may the interpreter be placed in the position of the testator when he made the will, and from that standpoint discover what was intended by the terms he employed in his will.

3.

And of necessity each will presents its specific inquiry for intent and fact.

In Smith v. Bell, 6 Peters 55, 8 L. Ed. 325,

Mr. Chief Justice Marshall said:

"The first and great rule in the exposition of wills (to which all other rules must bend) is that the intention of the testator expressed in his will shall prevail, provided it be consistent with the rules of law. (Doug., 322; 1 Black. Rep. 672) This principle is generally asserted in the construction of every testamentary disposition. It is emphatically the will of the person who makes it, and is defined to be 'the legal declaration of a man's intentions, which he wills to be performed after his death.' (2 Black. Com., 499) These intentions are to be collected from his words, and ought to be carried into effect if they be consistent with law.

"In the construction of ambiguous expressions, the situation of the parties may very properly be taken into view. The ties which connect the testator with his legatees, the affection subsisting between them, the motives which may reasonably be supposed to operate with him and to influence him in the disposition of his property, are all entitled to consideration in expounding doubtful words and ascertaining the meaning in which the testator used them."

See City Bank v. McGee, 213 Ala. 579.

It is further established in Lewis v. Clay, 205 Ala. 535, as follows:

"The testator's intention (if legal), being the law of the instrument, must be gathered from the whole instrument, and all of its parts, after taking due consideration of the manifest scheme of the testator, to ascertain its spirit rather than its letter; and, if possible, to make it 'form one consistent whole,' where the general and primary interest prevails over a special or secondary interest to the contrary."

4.

That then is the general and primary interest that prevails over any secondary interest to the contrary (Twiss v. Clay; Smith v. Bell; Hall v. Johnson, supra) in the use (by a layman) of the words: "Know all men by these presents that I, V. McR. Schowalter, M.D., of the above mentioned Town, State, and County, being of sound and disposing mind and memory, do therefore, make, ordain, publish and declare this Instrument in writing to be my last will and testament, that is to say, First after all my lawful debts are paid and discharged, I give five dollars (\$5.00) to my son Edward R. Schowalter, Second to my son Preston J. Schowalter, five dollars (\$5.00) third, to my daughter Alice Elsa Schowalter five dollars (\$5.00), Fourth, to my beloved wife, Charlotte Gertrude Schowalter I give devise and bequeath the residue of my Estate both real and personal; at her death the remainder of my Estate to be Equally divided between my children, Edward R. Schowalter, Preston J. Schowalter, and Alice Elsa Schowalter. I hereby constitute and appoint my said wife Charlotte Gertrude Schowalter to be the sole Executrix of this my last will and testament hereby revoking all former wills by me made, and I direct that my Executrix be not required to give bond.

"In witness whereof I have hereunto signed my name and affixed my seal the 11th day of June, 1925.

(Attested by) M. E. Green

H. G. Bishop

V. McR. Schowalter, M.D. (SEAL)

of date of June 11th, 1925; and those of October 30, 1925, as follows:

5.

"Codicil No. 1. October 30, 1925. The erasure of the words 'or remarriage' were erased by me October 30, 1925.

V. McR. Schowalter (SEAL)

(Attested by) Henry H. Henkel, Fairhope, Ala. (SEAL)

E. E. Green, Fairhope, Ala. (SEAL)?"

The testator was not a lawyer; wrote his own will; was not skilled in the use of legal phraseology, as evidently was the case in Smith v. Bell, 6 Pet. 67, 8 L. Ed. 322. What did he mean by the use of the words or phrases: (1) "to my beloved wife, Charlotte Gertrude Schowalter I give devise (devise) and bequeath the residue (residue) of my Estate both real and personal"; and (2) "at her death (or-remarriage, interpolated as 'erased' by the codicil) the remainder of my Estate to be Equally divided between my children," etc.?

It is true that the instant will is not greatly different, in some of its phraseology as to the "remainder", in respects to that construed in Smith v. Bell, supra. In one a layman prepared his own will; in the other it was evidently prepared by an attorney at law, -- the respective preambles and general structure of the wills show such fact; and this is shown by the evidence as to the instant will. In the Schowalter will there was the gift of the nominal sums in money to the respective children; in the Goodwin will there was the gift of two pieces of personal

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property from or in use at the homestead of testator. In the instant will there was required of payment the debts and small or nominal sums to each of testator's children; thus creating what testator called the "residue (residus) of my (his) estate," which he "gave, devised (devised) and bequeathed" to his wife: in the Goodwin will he gave and bequeathed unto his wife all his personal estate "to and for her own use and benefit and disposal absolutely." In the Schowalter will it is further provided that "at her death the remainder of my estate to be equally divided between my children," etc.; and in the Goodwin will the final provision was that "the remainder of said estate, after her decease, to be for the use of the said Jesse Goodwin," who was the son of testator. In the Schowalter will the wife was made executrix without bond, and in the Goodwin will the wife as executrix was not so exempt. In one there was no codicil, in the other there was an erasure by way of a codicil of the words "or remarriage" after the word "death". It was held in the Goodwin will that the wife had a life estate in the personal property, -- a family of negroes, -- and that "said estate" was vested by way of remainder to the only son, who would come into possession thereof on the death of said life tenant Elizabeth. A substantial difference in the two cases is that the instant will was by a layman and the terms employed in the Goodwin will were those prepared by an attorney who knew the accepted, legal meaning of the word "remainder."

7.

And the gift to each child of the named sum of \$5.00 in the Schewalter will evidenced the unmistakable intent of testator to exclude said legatees from technical "remainder" in the estate. - Acholis v. Musgrove, 212 Ala. 47; Walls v. Walls, 218 Ala. 147. In Jordan v. Hingstiff, 213 Ala. 512, it is declared that the gift and devise of balance of property was intended as a residuary clause, in the absence thereof.

We may again say, that courts exercise caution in considering evidence as to declarations of a grantor or a testator as to ambiguous devises or grants; but when their interpretation of an ambiguous word or clause is ascertained, it will be accepted and applied. - Sadler v. Madeliff, 215 Ala. 498, 503; Brooks v. Bank of Wetumpka, 210 Ala. 639; Montgomery Enterprise v. Empire Theatre Co., 204 Ala. 566, 572.

In construing wills a clear gift is not to be cut down by anything which fails to indicate, with reasonable certainty, that such was the intention of the testator. - Code, §6900; MacCreight v. Porter, 210 Ala. 56; Foukes v. Clay, 205 Ala. 523; Fearce v. Fearce, 199 Ala. 491, 498; O'Connell v. O'Connell, 196 Ala. 224; Pitts v. Campbell, 173 Ala. 604. That is to say, courts lean to the construction which would vest in the first devisee a fee simple title to the land, in the absence of a clear implication and limitation to the contrary to be found in the succeeding language. - Spira v. Frankel, 210 Ala. 27; Powell v. Pearson, 126 So. 59.

8.

The word "remainder" as employed in the will construed in Smith v. Bell, 6 Pet. 67, 8 L. ed. 322, had the technical meaning of an estate which is dependent upon a particular prior estate created at the same time and by the same instrument, and limited to arise immediately on the determination of that estate, and not in abridgment of it. - 4 Kent. Comm. 197; 2 Bl. Comm. 164.

The words "remainder of my estate", as employed by the layman-testator in the ordinary sense, are by way of description or designation that which may remain undisposed of by the wife at the time of her death, -- the person to whom the residue of his (testator's) estate or property is first devised.

We have indicated that where the use of the word "remainder" followed a devise which, standing alone, amounted to or was a fee, the word "remainder" so used is generally construed as referring to the property unconsumed or undisposed of by devisee, and not as limiting the estate of the first taker, as would be the fact of a remainder in the legal sense. - Schewalter v. Schewalter, 216 Ala. 418; Sara v. Fowledge, 198 Ala. 172.

Many of the questions now discussed at length were propounded, considered, or decided on first appeal. And that opinion concluded as follows:

"Dr. Schewalter had all the normal affection and sense of obligation to his widow and daughter remaining at home. Did he give his wife a fee for the purpose of disposition in providing for herself and daughter while their status continued, with remainder to his three children in any portion of the estate, property, or its proceeds remaining unconsumed? He trusted his wife in naming her as executrix without bond. If indeed the condition of his estate known to him was such that a life estate merely would be useless, valueless, and a burden to those who in the normal relations of life were the

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first objects of his care, we may well hesitate to approve the interpretation of his will asserted by appellants." - Schwalter v. Schwalter, 217 Ala. 481.

The voluminous evidence has been carefully considered, and we are of opinion that testator gave his wife a fee in and to what he termed "residue of my estate," for the purpose of use, enjoyment, or disposition for value and in good faith, in providing for herself and in her station in life, and while the estate continued, -- with remainder, in the generally or commonly accepted meaning, to his three children, in that portion of the estate, property or proceeds thereof which is unconsumed at the death of the wife. - Joseph E. Bralley v. Robert E. Spragens, et al., 49, MS.

It is unnecessary to discuss the evidence in detail. The case was carefully briefed and presented in oral argument, and we are convinced that such was testator's intention, when that instrument is illustrated by the parol testimony introduced at the trial.

Reversed and Remanded.

Anderson, C.J., Sayre and Brown, JJ., concur.

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1 Div., No. 576

Charlotte Gertrude Schowalter, Appellant,

vs.

Edward R. Schowalter et al, Appellee, 5

From Baldwin Circuit Court.

The State of Alabama,
City and County of Montgomery.

I, Robert F. Ligon, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages, numbered from one to 9 inclusive, contain a full, true and correct copy of the opinion of said Supreme Court in the above stated cause, as the same appears and remains of record and on file in this office.

Witness, Robert F. Ligon, Clerk of the Supreme Court of Alabama, at the Capitol, this the

17 day of April, 1930

Robert F. Ligon
Clerk of the Supreme Court of Alabama.

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 1929-30

To the Register of the Circuit Court of

Baldwin County, Greeting:

Whereas, the Record and Proceedings of the Circuit Court of said county, in a certain cause lately pending in said

Charlotte Bertrude Schowatter, Appellant,

and

Edward R. Schowatter et als, Appellee,

wherein by said Court, at the Term, 1929, it was considered adversely to said appellant, were brought before our Supreme Court, by appeal taken, pursuant to law, on behalf of said appellant:

Now, it is hereby certified, That it was thereupon considered by our Supreme Court on the 17th day of April, 1930, that said decree of said Circuit Court be reversed and annulled, and the cause remanded to said court for further proceedings therein; and that it was further considered that the appellee pay

the costs accruing on said appeal in this Court and in the Court below

Witness, Robert F. Ligon, Clerk of the Supreme Court of Alabama, at the Capitol, this the

18th day of April, 1930, Robert F. Ligon, Clerk of the Supreme Court of Alabama.

CHARLOTTE GERTRUDE SCHOWALTER,

Complainant.

-VS-

EDWARD R. SCHOWALTER, PRESTON J.
SCHOWALTER and ALICE ELSA SCHOWALTER,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY.

IN EQUITY.

It is hereby agreed by and between the solicitors of record that Robert H. McConnell may act as Commissioner to take the ^{oral} deposition of the complainant, Mrs. Charlotte G. Schowalter, in the above entitled cause, without the necessity of obtaining any commission; that the deposition shall be taken orally by Mr. McConnell, precisely as if he were acting under commission, regularly issued for this purpose, and shall be treated in all respects as if Mr. McConnell had been duly appointed as Commissioner and acted as such.

Dated this the

day of May, 1928.

R. M. Smith
Harry Frank Wolfe
SOLICITORS FOR COMPLAINANT.

James M. Allen
Stevens McConner *McLeod* *Gooder Turner*
SOLICITORS FOR DEFENDANTS.

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA, IN EQUITY.

Charlott Gertrude Schowalter,
Complainant,

v.

Edward R. Schowalter, Preston
J. Schowalter and Alice Elsa
Schowalter, Defendants.

*Published by
Agreement of
February 14 1929
Harry T. Smith & Caffey
Attorneys
for Complainant
Stevens & Company
Solicitors
for Defendants
Preston J. Schowalter
&
Alice Elsa Schowalter*

Deposition of Mrs. Charlotte Gertrude Schowalter, taken before Robt. H. McConnell, as Commissioner, by agreement of counsel, herewith returned.

The deposition was taken at the office of Messrs. Harry T. Smith & Caffey, June 1, 1928, at ten o'clock, A. M.

Mr. Harry T. Smith and Mr. R. M. Smith appeared for the Complainant, and Mr. John Allen and Mr. Max Rogers appeared for the defendants.

The witness, having first been duly sworn by the Commissioner, testified as follows:

DIRECT EXAMINATION, by Mr. Harry T. Smith:

My name is Charlott Gertrude Schowalter, and I was the wife of Volney McR. Schowalter. We were married on November 3, 1903, at Bradford, Pennsylvania. That was my first marriage, but my husband, Dr. Volney McR. Schowalter, had been married before. His former wife had died. I lived with Dr. Schowalter after the time of our marriage to the time of his death. We resided as man and wife from the time of our marriage until the time of his death, at Point Clear, Alabama, and Fairhope, Alabama. We lived at Point Clear from the time of our marriage until, I think it was, in 1917, then we moved to Fairhope. Point Clear is the old Schowalter home, and we lived in the old home. That place faces on the Bay Mobile Bay. It ran back to the back road, and then there was some acreage in the back. I think the frontage on the bay was 199 or 201 feet. I think the frontage on the back road was the same, then it extended a little beyond the adjoining lot. I

do not know what the depth is from the bay to the road. The house at that time set back in the middle of the front lot. It was afterwards moved. I think the house was moved between one and two years before we moved to Fairhope. It was moved down to the left side of the front lot. It always faced the bay. We lived in it after we moved it. I can not just recall how long we lived in the house after it was moved, but I think it was between a year and a year and a half. It was a one-story house. No other improvements were on the lot except the barn. It was a one-story house with a large hall going through the middle and two rooms on each side. It was about nine feet from the ground. At the time Dr. Schowalter made his will, it had been moved down to the left side of the lot. I can not remember whether it had been painted then or not, - yes, it had been newly painted. It did not have a good roof on it. After we moved out, it had been rented three summers, I think, before Dr. Schowalter died. It was not rented in the winter. It could not be rented in the winter, very well. I think it brought \$300.00 rent in the summer; I am not sure about that; it was either \$250.00 or \$300.00. I think it was \$300.00. As to the annual income of that property, I figured that up the other day, if I may refer to my notes: I figured up that in the last ten years there was collected about \$950.00, made an average of about \$180.00 a year income on it. Previous to 1925 it averaged \$180.00. The taxes were \$79.15, and the insurance was \$24.26 yearly. As to the repairs, in the five years I think we had spent over \$500.00 on it. It had been painted twice, the sidewalks had been repaired, the fences built and the yard cleaned. All those different things, I am sure it was over \$500.00. Dr. Schowalter did not own that place entirely at the time of his death; he owned half of it; that is, half of the front lot and the acreage in the rear. He owned the half of the lot that was vacant, not the half with the house on it. No improvements were on the acreage in the rear. No, I could not say what the value of that acreage was. I think, although I am not quite sure, that there were between five and seven acres of the

acreage.

Q. Do you know approximately what it was worth?

Counsel for defendants objects to any examination as to whether the witness knows anything about the value of the property, when she has already testified she does not know.

Q. State approximately what the value of that acreage was.

Defendants renew their objection on the same ground.

A. At the time of the making of the will?

Q. Yes.

A. \$7,000. We would have been glad to get \$7,000.00 for the whole thing.

Q. Including the front lot, house and all?

A. Yes, sir.

Defendants move to exclude the answer as not responsive to the question.

Witness continued:

Dr. Schowalter had offered the property for sale at \$7,000.00; he had given an option on it for that. The option was to Fearn and Willis, the real estate dealers. I think Fearn and Willis held that option between two and three years. They never got anybody to look at it that I know of. My husband sold half of the front lot with the house on it before he died. He sold it for \$9,000.00 to Mr. A. P. Bush. With the proceeds of that place he invested in two places in Mobile, one on Joachim Street and one on Michigan Avenue. He did not own any real estate in Mobile prior to that time. Both of the places which he purchased in Mobile with the proceeds of the sale of the Point Clear property were subject to mortgage. The property at Point Clear which is left brings in no revenue whatever. One of the places in Mobile which he purchased is at 505 Michigan Avenue. We purchased it for \$8,500.00, paying \$4,250.00 cash and carrying a mortgage of \$4,250.00, bearing interest at seven per cent. It is a lot with a residence on it. That property is supposed to rent for \$75.00 per month. It has not been rented; it rents for \$75.00 per month when it rents. The first year we bought it, it was rented for the entire year; this past year it has not been rented one month. The gross

amount received from that property since its purchase is \$1755.00. That is from August 11, 1925, until May 24, 1928, I believe. The taxes on it are \$196.00 yearly. That includes the City taxes as well as the State and County. The insurance has cost \$49.00. The taxes amount to more than \$300.00, but say \$300.00. Interest on the notes is \$297.50 yearly, and the mortgage, each time it is renewed, costs \$22.50 fee. The other piece of property we purchased is also a residence. It is at 108 Joachim Street, and we paid \$8,000.00 for it. We paid \$3500.00 cash and placed a mortgage on it of \$4500.00, at seven per cent. The gross collections from this property from the time we bought it until the present time are \$1716.80; the interest on the mortgage notes is \$315.00 yearly; the taxes are \$185.00; the insurance is \$49.00, approximately. The repairs on this property from the time we bought it until the present date are \$922.00. The Joachim street property was rented through an agent the first year we bought it and this past year, ~~and~~ during 1927, I rented it myself. Five per cent commission had to be paid the agents. At the time Dr. Schowalter made his will, the maturity dates of the mortgages were August 1, 1927 for the Michigan Avenue property and September 23, 1926 for the Joachim Street property.

At the time Dr. Schowalter made his will, the other property that he owned was two forty-acre pieces in Baldwin County, and two very small lots in Pensacola, Florida. None of that property is improved in any way. None of it brings any income, except one of the forty acres, I think, brought \$200.00, which he collected before he died, for turpentine. That was not annually, that was the lump sum. We have not been able to sell the forty acre tracts. Dr. Schowalter offered it for sale at, I think, \$50.00 an acre for one tract, ~~and~~ \$40.00 or \$50.00 and ~~and~~ for the other one I think he would have taken \$10.00 an acre for it. He could not get a purchaser.

Those Pensacola lots are just lots. They are about two lots removed from the Pensacola Highway coming to the ferry. That is not in the City limits, but in the suburbs. As to the

character of the neighborhood, there is just a little group of houses around there. They are not mansions, they are shanties. Dr. Schowalter paid \$150.00 each for these lots. I think he bought two of them previous to the time he made his will. He bought these two, and two more, and I own half of the other two. He owned a half interest in two other lots; that is, he bought two lots, and then later on he bought two more in which I owned a half interest. He bought those two after he made his will. They were not bought from the proceeds of the Point Clear property; in fact, they were not paid for. We borrowed the money to buy the other two lots which we bought together. My husband did not at that time have any other real estate. He had some life insurance. The insurance premiums were paid quarterly. He had \$4,000.00 life insurance. It was payable to me. He did not leave \$10.00 in money on hand when he died. He left no other securities of any kind. He left a Chrysler automobile, which was not paid for entirely. He paid about \$500.00 on the automobile. I think he had had the machine just about a year. He owned some surgical instruments and office equipment. They were surgical instruments that he used in his profession. I have not had any offer for those surgical instruments.

Q. Have you any information as to the reasonable value of those surgical instruments that he left? Ans. I wouldn't say.

Q. Can you approximate it?

Counsel for defendants object to the question because the witness has said she wouldn't say.

A. I would say about \$400.00 would cover the whole thing; I would be glad to get that for them.

Witness continued:

As to the professional library he left, there were about six small shelves of medical books. About two of those shelves were new. He paid in the neighborhood of \$200.00 for those shelves. The balance were just books that he had had. As to the approximate value of the whole of his professional library, I would be very glad to get about \$150.00 for all of it. I think I would be doing well.

Counsel for defendants move to exclude the statement of

the witness "I would be very glad to get about \$150.00 for all of it; I think I would be doing well," as incompetent, irrelevant and immaterial.

Q. I didn't ask you what you would be glad to get: Give us an approximation of its value.

Counsel for defendants object unless it is shown that she ~~was~~ is familiar with the value of it and what means she has of so knowing.

A. \$150.00.

Counsel for defendants move to exclude the answer on the ground that she is not shown to be qualified to testify as to value.

Witness continued:

Two children were born of our marriage. One of them was living at the time Dr. Schowalter made his will. The other died at eleven months old. The child that survived Dr. Schowalter, born of our marriage, is a girl. Her name is Alice Elsa Schowalter. Alice's home was supposed to be with us at the time Dr. Schowalter executed his will; her home was with us. She was twenty-one years old at the time Dr. Schowalter executed his will. She had been self-supporting prior to that time for about nine months. She had been to school. At the time my husband executed his will, she had graduated from the University of Cincinnati, training school for nursing, and I am not sure she had started giving anesthetics at the time this will was made or not, but it was around that time; whether before or after, I don't know. Her education had not been completed at that time. It has not been completed yet; she is still at school. She is in the University of Virginia. She was not self-supporting at that time, but we were assisting her. My daughter did not possess any individual means. As to my individual means, I have \$25.00 a month from an insurance policy and a small dividend from \$1,000.00 of boat stock that I own. I do not mean I have \$1,000.00 a year, but the income from that. It fluctuates. The net income from that \$1,000.00 was about \$150.00 a year. I said I had \$25.00 a month from an insurance policy; it is a war risk insurance policy. That does not last as long as I live; I think it runs twenty years. That was my only source of income independently from my husband. The house

that we lived in at Fairhope, that property was in my name. It is a residence on leasehold land. I bought the house already built. My husband bought it and gave it to me. I am still living in that home. I think we paid \$2,000.00 for that place. We bought it in 1919.

My husband had some children by his former wife. Some of them were living at the time he executed his will. My husband died June 25, 1926. The children by his former wife who were living at the time he executed his will are Edward R. Schowalter and Preston J. Schowalter. Edward was then thirty-three and Preston about thirty-one or thirty-two, I am not sure. They were not living at home at that time. I think Edward was then living in New Orleans and Preston in Mobile. Preston was chief clerk of the Texas Oil Company. I donot know how much salary he drew. He has not married, so far as I know. He had not married at that time. He subsequently moved to New Orleans. I believe he has the same occupation now. Edward R. Schowalter was assistant Attorney General of Louisiana at the time my husband executed his will. He had been practicing law before that a matter of a few months. I could not say whether he still retains that position.

At the time my husband died, he had accounts on his books for professional services. He held no mortgages or securites whatever, other than that. Those accounts amounted to about \$1500.00. I mean the face value. I have made an effort to collect those accounts since his death, and have realized about \$200.00. They are just accounts for medical services. Those accounts were accumulated from 1921 to the time he died.

I had no means whatever except the rents for taking care of the mortgage indebtednesses of my husband. As to whether I have been engaged in business, I sold a little real estate for a few months during the year of 1925. I earned at that time about \$800.00. I was engaged during the year 1925 and earned about \$800.00 during that year. Those are the only earnings I have made from my own efforts. I worked in conjunction with a real estate man and happened to make certain sales. I sold on

commissions and split commissions. That was in Baldwin County. I have never earned any other money during my married life by working. I earned something by juggling the little income I had. I refer to the income of which I have already spoken. I do not know how to answer as to what my earnings were from the manouvreing of my income. I bought the boat stock of which I spoke, and then I mortgaged the boat stock to buy the few lots that I own, so I never had any real money in my hands. I do not refer to the two lots that Dr. Schowalter and I bought together. I bought a few lots at Volanta. I think they all came to about \$500.00. That was out of the proceeds of my boat stock, the earnings from the boat stock. I have had no personal earnings other than the commissions which I received in selling real estate. I have had had no means of paying the taxes, insurance and repairs on the property of my husband other than the income from his property.

My daughter had been self-supporting for about nine months, after he made his will. She had not been self-supporting before he made his will. I am not altogether sure about that, because I can not recall just when she did this work at Cincinnati. I am unable to say now whether she did that work before or after he made his will. Those were the only earnings that she had earned prior to his death. During that time she was not entirely self-supporting. My husband bought her clothes and sent her railroad fare. My daughter went through the training school for nurses. She was educated at the Fairhope High School, the Judson College and the University of Cincinnati, at that time. She graduated at Judson from the academy. The University of Cincinnati is a professional school. She is studying medicine in the University of Virginia. She will graduate four years from now, - she hopes to.

My husband's father was a doctor, but I think he was a man of leisure for the last years of his life. At any rate, he had been a doctor. My husband had been a professional man since his young manhood. My husband and our family, and myself, moved among the best educated people and people of high social standing.

Q. Now, I wish you would state whether or not your husband and your family and yourself moved amongst the best ~~people~~ educated people and people of high social standing.

Defendants' counsel object to the question because it calls for the conclusion of the witness.

A. We did.

Witness continued:

My husband's association was amongst professional people and the best people of the community in which he lived, and in Mobile. My husband practiced medicine in Baldwin County and maintained an office in Mobile. He spent two days each week in Mobile. Dr. Schowalter's sons are men of education and men of ability. At the time of his death Dr. Schowalter owed the First National Bank \$750.00, the Fairhope Bank \$1634.00, and two mortgages, one for \$4250.00, another one for \$4500.00, and about \$7,000. in accounts.

The most ideal and affectionate relationship existed between Dr. Schowalter and his daughter Alice in his lifetime.

Q. Was he proud of her or not?

Defendants' counsel object to the question on the ground that it calls for the conclusion of the witness ~~and~~ and irrelevant, immaterial and incompetent testimony. It also calls for the witness's testimony as to the mental operations of the child's father.

A. He was exceedingly proud of her.

Defendants' counsel move to exclude the answer on the same grounds as stated in the objection to the question.

Witness continued:

Dr. Schowalter so expressed himself in my presence many times. I was present when Dr. Schowalter made a statement to my daughter Alice as to what disposition he had made of his property in his last will, as to what provision he had made for me in that will. He said that he had made his will and left everything to mother, and at her death, anything she had not used to be divided among the three children; that anything she didn't use or dispose of was to be divided among the three children.

My husband and I occasionally had differences of opinion, or such differences as normal married people have. As to the extent of our differences, when some of his sisters or his father dis-

turbed the waters for me, I objected. When his sisters or grandmother came in and made a disturbance, I objected strenuously. Yes, I have got mad with Dr. Schowalter at times. I expect he also got mad with me at times. He never showed it very much, if he did. I never remember of his being angry with me.

Q. Did the differences that you speak of ever reach the point of any permanent disagreement, or were they simply such slight differences as every man and his wife have?

Defendants' counsel object to the question because it assumes that every man and his wife have differences; because it assumes that every man and his wife have slight differences; because it calls for incompetent, irrelevant and immaterial and illegal testimony, and because it is leading.

Mr. Smith:

I have assumed that every man and his wife occasionally have,--

Defendants' counsel object to any statement by counsel as to what he has assumed, other than in questioning the witness.

Mr. Smith:

I have assumed that every man and his wife have, from time to time, slight differences of opinion; that every couple that denies the truth of that lies, but in order to meet that objection I will simply ask you what was the extent or nature of the disagreements that you speak of.

Mr. Rogers:

We move to exclude the testimony of Mr. Harry T. Smith on the ground that he has not been sworn; that he is not a witness in the case; that he has testified that anybody who states that he never had a difference with his wife is a liar; that any statements made by him for the purpose of this record are illegal, immaterial and irrelevant, and we move that the statement of counsel be stricken, on the same grounds as the objection to the statement at the time he started it. We also object to the question now asked Mrs. Schowalter on the same grounds as previously interposed.

Answer:

I had a crying spell and was in bed for a few hours, -- angry rather.

Witness continued:

Dr. Schowalter did not have a crying spell

at the same time; he tried to console me. That was the extent of the differences that I had with Dr. Schowalter. I only remember two differences that amounted to anything.

Q. What did they amount to?

Defendants' counsel object to "what they amounted to," stating that there would be no objection as to what they were about and their cause and the circumstances surrounding them, but that what they amounted to calls solely for the conclusion of the witness, as to her idea of the extent.

A. Well, they amounted that we were,--: Let me see: I couldn't say that they amounted to anything much.

Defendants' counsel move to exclude the answer on the same grounds as stated in the objection to the question.

Witness continued:

As to how long the discussion lasted in each instance, a half hour one time, and another time maybe a day or a night. As to the nature of the subject matter about which we differed, is it necessary for me to tell that? It is in a general way? There was never a serious rupture in my relations with my husband. The differences that I speak of were while we were living at Point Clear. Our relations as man and wife were never interrupted at all; I had no difference with my husband that occasioned a temporary separation.

CROSS EXAMINATION, by Mr. Allen:

At the time I married Dr. Schowalter and went to live with him, he had three sons by a first marriage, Edward, Preston and Rydor. It is not a fact that the presence of these three sons in my husband's household at the time I married him and until the time that each of the three boys left home, was a source of constant irritation to me and unpleasantness between me and my husband. I bore no ill will or antipathy whatever towards the sons. It is not true that on one occasion, when Rydor was about five or six years old, I imposed on him such an indignity that Dr. Schowalter told me that if anything like that ever occurred again he would send me back to my mother. Rydor was going on six years of age when I married Dr. Schowalter. I do not recall it, if I did, that when Rydor was about six years old and suffering from loose bowels, which went on the floor, I took

his face and rubbed it in it, and that Dr. Schowalter became so much incensed that he told me if anything like that ever happened again he would send me home to my mother. It is not true that some few years later there was a difficulty between me and my stepson, Edward Schowalter, who was at that time about sixteen years of age, which resulted in my asking Dr. Schowalter to send all of his children away from home, and that he replied that those children were in his home before I came there, and that they would remain there. I did not as the result of that threaten to go home and pack my trunk and my other belongings and go to the house of a neighbor next door and stay there the remainder of that day and part of that night. Dr. Schowalter did not, while I was at that house, send me cash or a check for railroad fare to go home. I remember that we had a neighbor by the name of Mrs. McCain, but I do not remember that I went to her house under the circumstances inquired about. Never did I send one of the McCain children over to Dr. Schowalter's home to tell him I would like to see him and have a conference with him and come back home.

I remember a conference had between me, my attorney, Mr. Ritt Smith, Edward R. Schowalter and Preston Schowalter and Alice Schowalter in Fairhope in my home. I think it was in about July, 1926. I did seek to have Preston and Edward R. Schowalter sign a quit-claim deed to whatever interest they might have in their father's estate, but I was laboring under a misapprehension of what I was doing. I was perfectly friendly with the boys, and all of these debts had to be paid, and I understood from my lawyer that I could not sell any of the property to pay these debts unless I had power to sell this property. The way in which I sought to procure power of sale was to get from them a quit-claim deed for all their interest in the estate, but I didn't realize just what that meant at that time. I was dealing through my lawyer, Mr. Ritt Smith. I do not know as I thought about the fact that they would not have any further interest in the estate if they signed the quit-claim deed. I did not realize they were quit-claim deeds. I knew they were releasing every interest they had in the estate by signing the paper, but I didn't think they had any interest.

Q. Didn't think they had any, but nevertheless you wanted them to release whatever they did have.

Complainant's counsel object to counsel undertaking to argue the question with the witness.

A. Yes, I did.

Witness continued:

I did state, in substance, when those boys refused to sign those papers, that the greatest mistake that I ever made in my life was coming south.

Q. Didn't you also make the statement, immediately thereafter, to Edward R. Schowalter, in the presence of, I think it was Alice, - make a statement to Ned in the presence of Preston and Alice that "I have suffered worse than the fires of Hell while living with your father all these years; I hope to God I never open my mouth?" Immediately after making that statement that the greatest mistake in your life was coming south, didn't you immediately or shortly thereafter in substance state to Ned Schowalter, in the presence of Preston and Alice, these words, or the substance: "I have suffered worse than the fires of Hell while living with your father all these years; I hope to God I never open my mouth."

Confidential to whom
A. I don't recall that last statement, opening my mouth, but I might have said that. I don't recall saying "open my mouth."

X Witness continued:

I believe I do remember saying that I had suffered worse than the fires of Hell.

Q. You said the whole thing? Ans. No. I said that, but I didn't mean it that way, it was the relations that caused that trouble.

Q. Will you state whether or not you made the statement, "I have suffered worse than the fires of Hell while living with your father all these years; I hope to God I never open my mouth?" Did you make that statement?

A. I don't recall making it.

Q. Didn't you just say you remembered making part of it, but you didn't mean it?

A. I don't recall making any of it.

Q. Didn't you testify a few moments ago that you made part of

that statement?

A. Whatever I was saying in regard to that would not be authentic, because all of that is hazy.

Q. What did you mean a moment ago, you did make a part of that statement, but didn't mean it?

A. I may have thought it and possibly I said it.

Q. You won't say whether or not you did say it?

A. No.

Q. Isn't it a fact you testified a few minutes ago you made part of that statement?

A. I believe I did.

Witness continued:

I think it was about 1917 when we moved to Fairhope. I think during the following year we rented the Point Clear property. I think we got \$300.00 for it. There were two or three summers after we moved out of it and before Dr. Schowalter made his will that we did not rent the Point Clear property. I am positive of that. One year a man took it, a farmer, for the whole year, but he had small pox in it, and it was vacant for the next two summers. At the time Dr. Schowalter made his will, the house had been newly painted. I said for the last five years before making the will, the house brought in \$900.00. That is as I remember it. I just remember how many years it was rented and how much we got each year. As to what that whole Point Clear property was assessed for when we left it in 1917, the old home, we were offering it for \$7,000.00, and it would be assessed for less than that. In 1917, when we left there, it was assessed around \$2,000.00. I expect that assessment changed before Dr. Schowalter made his will. I do not know whether it did or not. I do not know the tax rate in Alabama. That property was subject only to State and County taxes. There were no City taxes of any kind. I am not sure that the assessment was \$2,000.00. Insurance has been carried on that property four or five years prior to the time Dr. Schowalter made his will. The amount of insurance per annum was \$24.26. I know that because I got it off of the records yesterday. I mean I got it off of the records in the insurance office at Fairhope. We had the property

painted twice during the five years preceding the making of the will. It cost \$200.00 each time to paint it. I am sure of that and that it was within that five year period. The fences were also rebuilt and the board walk in front was put down. Mr. Mannie Pose did the painting on both occasions. It is hard to state what the reasonable market value of the Point Clear property was at the time we left it, in 1917. We had not been able to sell it for \$7,000.00. When we sold it, we sold one-half of it, with the house on it, for \$9,000.00, and still retained the other half and the acreage in the back. The depth of the piece with the house on it that was sold was about two hundred feet. Half of the front lot, from the Bay to the road, was sold, with the house. There was some property on the other side of the road, going on back, but that was not sold.

Dr. Schowalter bought the Michigan Avenue house around August 11, 1925, and he bought the Joachim Street house along in September of the same year. The amount that he paid on the purchase price of these two houses was the proceeds of the sale of half of the Point Clear lot, with the house on it. The Point Clear house was sold some time in July, 1925. I heard Dr. Schowalter say, prior to June, 1925, that he was going to sell off all the property and spend the money. He said he was going to reinvest it in a home and perhaps one other piece in Mobile and spend the rest of it. I remember when the first mortgage became due on the Mobile property that he purchased with the proceeds of the sale. The Michigan Avenue mortgage matured August 1, 1927, and the Joachim Street mortgage matured September 23, 1926. None of these mortgages has been taken up. I have had them extended from year to year. One of the mortgages has matured twice and the other has matured once. The Michigan Avenue house is in what you would consider a very fine residential section of Mobile. The Joachim Street property is located at No. 108 South Joachim, south of Dauphin Street, between Government and Church Streets. I could not say whether it is considered nice residential property or that business is growing to it. I do not know what the Michigan

Avenue house has been assessed for in Mobile County; I have perhaps seen it but haven't paid any attention to it. I could not say right now what the other property is assessed for. This property in Mobile has not increased in value since my husband bought it. In fact, the Michigan Avenue property seems to have decreased. A real estate man was sent out there to value it for one of the mortgages coming due and about to be foreclosed. He valued it at \$7,000.00, when we had paid \$8500.00 for it. That was the valuation put on it by a real estate man in connection with having the mortgage renewed or getting a mortgage. The Michigan Avenue house has been painted since Dr. Schowalter bought it. I do not remember what it cost to paint it. Luscher did the work. It was painted in 1925 or 1926, some time. Some of the rooms have also been repapered and the plumbing in it has been repaired.

The Joachim Street place has been painted twice since we bought it. It was painted right after we bought it and then it was painted just before Dr. Schowalter died. It was painted twice between July, 1925, and June, 1926. One of Luscher's bills for the painting was \$200.00 and the other \$379. and something. This was in Mr. Glennon's hands and that is the amount he gave that he paid Luscher for papering and painting. That was the Joachim Street property; that was the bill. Since then we have spent \$85.00 for repapering some of the rooms, \$21.00 for scrubbing the woodwork, and different items, - fixing the garage in the back, having the yard cleaned up. Also fixing the fences. Cleaning up the yard was about \$4.00; the garage work was fifteen or twenty dollars. The fences were fixed a couple of times. I could not tell you the cost each time, I can't remember. The flues were also fixed, window panes put in, locks put on the doors. I could not say what all those things cost. The folding doors were fixed a couple of times from the time we bought it to the present time; the electric wiring was fixed. I have the figures at home of what all those things cost. I do not remember now. The bath room was fixed several times; that is, the plumbing was attended to.

Some of the slates on the roof had to be fixed, the blinds had to be rehung. I can not give the cost of that. Some of the timbers under the house had to be replaced; the back galleries had to be repaired. I have a list of all of the repairs, but haven't got it with me.

I stated that Dr. Schowalter left some life insurance, in the amount of \$4,000.00. I can not give you the off-handed the policies and the amount of each. There were three policies. I think one was for \$2,000.00, one for \$1,000.00 and another one for \$1,000.00. That was all the insurance he left. The only cash he left in the bank was \$10.00. I don't know whether or not Dr. Schowalter had this insurance, all of it, in June, 1925, when he executed this will; I don't think so. I couldn't say that he took out one or more policies after he made the will; I couldn't say that he had or didn't have all of it before he made his will. I should not have said I did not think he had it all before he made his will, for I can not say.

I couldn't say what was the value of the Chrysler automobile. It is in Fairhope now. It is stored. It has been used since the Doctor's death; I used it. It has been stored seven months. It was stored because I wasn't using it.

I do not know the value of the office equipment that Dr. Schowalter left. I should judge that the value of his professional library was about \$150.00. As to whether I have seen any medical libraries sold, I have seen them bought. I could not say what Dr. Schowalter paid for the books that he bought. I spoke of a set he bought a short time before he died. He paid \$200.00 for that set and it was there at the time he died. I do not know the value of the surgical instruments that he bought and had on hand when he died. I do not know the value of the microscope that was among his belongings. Those things are in Fairhope now, including the microscope. I swore to the bill of complaint that was filed in this case by my attorneys. I stated in the bill of complaint that this vacant lot at Point Clear which was left after

selling off the portion of the lot on which the house was located, was \$10,000.00. Did I say in the bill of complaint that there was one hundred acres of wild land in Baldwin County? I don't think there was a hundred acres over there. I swore to the bill but I didn't notice that. If I said in the bill of complaint that the accounts that he left due from patients amounted to two or three hundred dollars, I think that was all you could collect out of them. I had not collected them at that time. The original bill appears to have been sworn to on the 29th day of October, 1926. I had not collected all of the accounts at that time.

I testified that at the time the will was executed, my daughter Alice was making her home with us and she had not branched out for herself. Her age at that time was twenty-one. Alice graduated from the Judson Academy; she did not graduate from the high school at Fairhope. She was in the second year in Fairhope; she had two more years to finish at Fairhope, then she went to Judson College. She was in Judson six months. I forgot that she had been to Nashville before that for six months, from September to Thanksgiving. She went to St. Cecilia school in Nashville. The last part of that year she went to Judson. All of that was high school work. She left Judson as soon as she graduated from the Academy. She finished high school in Judson in that six months. She was fifteen years old that August; she graduated in June; it was about 1918. After she graduated from high school, she came home and spent the summer. She then went to the University of Cincinnati; she went there to train as a nurse. She staid four years, in training to become a trained nurse. I guess it was 1924 when she finished. I do not recall the dates, when she went from one school to another. After going to Judson, she went four years to the Cincinnati General Hospital, - university work in the hospital and attended classes at the same time. I can't recall when she graduated as a nurse; I think it was June, 1925; I think it was June 5, 1925. I don't know if it was June, 1924; I couldn't say. She was furnished with her board, lodging and

uniform while she was working, or in training. She earned absolutely nothing, not one cent, while she was in training. She did not earn \$80.00 a month during the last six or seven months of her last year in training. Dr. Schowalter was not under that impression; I do not think he was under that impression. She may have earned that after she graduated, but not before. At the time she graduated, she gave anaesthetics; she was duly licensed and registered as a trained nurse. It might have been in 1924 that she graduated, I am not sure. The first six months after she graduated, she assisted the anaesthetist in Cincinnati, and when she became ill she took her position as anaesthetist. I mean when the person whom she was assisting became ill, Alice took her position. I guess she worked nearly a year in that position. I think she earned \$75.00 a month during that time; that is what I thought. She was working regularly each day. She was not doing any trained nursing at that time, she was giving anaesthetics altogether. She left that employment the same fall of the year she started, just about a year after she started. In other words, she worked at that about a year. After that, she came home. I think she spent the summer at home. I can't just remember whether this year she worked as an anaesthetist was before Dr. Schowalter made his will or afterwards. She apprised us of an offer of employment that she received after her graduation as a nurse, but I do not recall whether it was prior to the time Dr. Schowalter made his will that we received that information, or afterwards. Dr. Schowalter knew about the opportunity. I don't recall whether it was before or after the will was made. I think it was afterwards. I heard my daughter state that she had been offered employment as a nurse immediately after her graduation as a trained nurse at the Cincinnati General Hospital of Cincinnati, Ohio, by Dr. Hewr. I do not know what salary she was offered. I do not remember whether it was before or after the execution of the will that we were apprised of that offer. Dr. Hewr is a celebrated surgeon in Cincinnati. I do not know how lucra-

tive his practice was, but he was supposed to be a very noted surgeon. This surgeon offered Alice employment as his anaesthetist. I do not know whether that was before or after the execution of the will. After her employment as an anaesthetist, she was employed by a college in Carthage, Illinois, and looked after the girls; I guess it was in the capacity of nurse. She only made her board and tuition then. She received no money. She did not have any money of her own at that time. She had one lot at Volanta, but had not finished paying for it. She was paying \$10.00 a month on it during the time she worked in Cincinnati. I heard my daughter say she had given up a good position as an anestheticist in deciding to study medicine, but I never heard her say the compensation was \$4,000.00 a year. I did not hear her state any amount. I can not remember whether my daughter graduated in 1924 or 1925. If she had not graduated in 1924, she would not at that time have been capable of supporting herself as a nurse or an anestheticist because she was not a registered nurse, nor in 1925 until she graduated and was registered, but if she was graduated and registered in 1925, she was capable of supporting herself. If she graduated in 1924, she would be fully capable of supporting herself as a nurse in June, 1925, at the time the will was made, but not as an anestheticist, because she took that up after she graduated. Of course, if she graduated in 1924, in June, then in 1925, in June, she would have been working as an anestheticist and was fully capable of supporting herself as a nurse and anestheticist. All those facts were known to Dr. Schowalter, her opportunities as a nurse and anestheticist. Whether he knew that she worked as a nurse and anestheticist would depend on what year she graduated in; I mean whether he knew at the time he made his will. If she graduated in 1925, he knew she graduated. If she graduated in June, 1924, and worked as an anestheticist and a nurse, he knew she was capable of supporting herself.

Alice is my only daughter. She was born in 1904. I can't recall right now when she stopped going to school in

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THE STATE OF ALABAMA - - - JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1929-30.

1 Div. 576.

Charlotte Gertrude Schowalter

v.

Edward R. Schowalter, et als.

Appeal from Baldwin Circuit Court.

THOMAS, J.

The first appeal is reported in 217 Ala. 418.

In that decision it was indicated that Dr. Schowalter's will may be properly construed by the courts as to the ambiguity or doubtful import of the terms employed, -- "remainder of my estate"; and that parol evidence may be employed to enable the courts to assume the position

2.

of the testator, in order that the intent of testator as expressed in the will be declared. - First National Bank v. Sheehan, MS.

It is recognized by the courts that while parol evidence is permissible in the matter of an ambiguity, to explain its meaning, it is not permissible to show the terms the testator intended to use, -- that is, inadmissible to show intent not deducible from terms employed or in contradiction of the will. - Achelis v. Muggrovs, 212 Ala. 47, 50.

The rules of testamentary construction are well understood. - Hiller v. Hall, 216 Ala. 453; First National Bank v. Sheehan, MS; Hall v. Johnson, 200 Ala. 175. Where a will is susceptible of construction the decisions are uniform to the effect that the courts, by way of parol evidence, will put itself, as far as possible, in the place of the testator, and in so doing, take into consideration the circumstances surrounding testator at the time he prepared and executed the will; look to the mode of testator's thought and living, his relations to or associations with the objects of his bounty and their conditions and needs, as age, condition, dependence or the lack thereof, the condition of his family, the amount, character and productivity of his property, and the like. - Fowles v. Clay, 205 Ala. 523; First National Bank v. Sheehan, supra; Steele v. Grate, 208 Ala. 2; Blake v. Hawken, 98 U. S. 515, 25 L. ed. 130; Smith v. Bell, 6 Pet. 68, 6 L. ed. 322. Thus may the interpreter be placed in the position of the testator when he made the will, and from that standpoint discover what was intended by the terms he employed in his will.

3.

And of necessity each will presents its specific inquiry for intent and fact.

In Smith v. Bell, 6 Peters 55, 8 L. Ed. 325,

Mr. Chief Justice Marshall said:

"The first and great rule in the exposition of wills (to which all other rules must bend) is that the intention of the testator expressed in his will shall prevail, provided it be consistent with the rules of law. (Doug., 322; 1 Black. Rep. 672) This principle is generally asserted in the construction of every testamentary disposition. It is emphatically the will of the person who makes it, and is defined to be 'the legal declaration of a man's intentions, which he wills to be performed after his death.' (2 Black Com., 499) These intentions are to be collected from his words, and ought to be carried into effect if they be consistent with law.

"In the construction of ambiguous expressions, the situation of the parties may very properly be taken into view. The ties which connect the testator with his legatees, the affection subsisting between them, the motives which may reasonably be supposed to operate with him and to influence him in the disposition of his property, are all entitled to consideration in expounding doubtful words and ascertaining the meaning in which the testator used them."

See City Bank v. McGee, 213 Ala. 579.

It is further established in Lewis v. Clay, 205 Ala. 535, as follows:

"The testator's intention (if legal), being the law of the instrument, must be gathered from the whole instrument, and all of its parts, after taking due consideration of the manifest scheme of the testator, to ascertain its spirit rather than its letter; and, if possible, to make it 'form one consistent whole,' where the general and primary interest prevails over a special or secondary interest to the contrary."

4.

What then is the general and primary interest that prevails over any secondary interest to the contrary (Twiss v. Clay; Smith v. Bell; Hall v. Johnson, supra) in the use (by a layman) of the words: "Know all men by these presents that I, V. McR. Schowalter, M.D., of the above mentioned Town, State, and County, being of sound and disposing mind and memory, do therefore, make, ordain, publish and declare this Instrument in writing to be my last will and testament, that is to say, First after all my lawful debts are paid and discharged, I give five dollars (\$5.00) to my son Edward R. Schowalter, Second to my son Preston J. Schowalter, five dollars (\$5.00) third, to my daughter Alice Elsa Schowalter five dollars (\$5.00), Fourth, to my beloved wife, Charlotte Gertrude Schowalter I give devise and bequeath the residue of my Estate both real and personal; at her death the remainder of my Estate to be Equally divided between my children, Edward R. Schowalter, Preston J. Schowalter, and Alice Elsa Schowalter. I hereby constitute and appoint my said wife Charlotte Gertrude Schowalter to be the sole Executrix of this my last will and testament hereby revoking all former wills by me made, and I direct that my Executrix be not required to give bond.

"In witness whereof I have hereunto signed my name and affixed my seal the 11th day of June, 1925.

(Attested by) M. E. Green

H. G. Bishop

V. McR. Schowalter, M.D. (SEAL)

of date of June 11th, 1925; and those of October 30, 1925, as follows:

5.

"Codicil No. 1. October 30, 1925. The erasure of the words 'or remarriage' were erased by me October 30, 1925.

V. McR. Schowalter (SEAL)

(Attested by) Henry H. Henkel, Fairhope, Ala. (SEAL)

E. E. Green, Fairhope, Ala. (SEAL)?"

The testator was not a lawyer; wrote his own will; was not skilled in the use of legal phraseology, as evidently was the case in Smith v. Bell, 6 Pet. 67, 8 L. Ed. 322. What did he mean by the use of the words or phrases: (1) "to my beloved wife, Charlotte Gertrude Schowalter I give devise (devise) and bequeath the residue (residue) of my Estate both real and personal"; and (2) "at her death (or-remarriage, interpolated as 'erased' by the codicil) the remainder of my Estate to be Equally divided between my children," etc.?

It is true that the instant will is not greatly different, in some of its phraseology as to the "remainder", in respects to that construed in Smith v. Bell, supra. In one a layman prepared his own will; in the other it was evidently prepared by an attorney at law, -- the respective preambles and general structure of the wills show such fact; and this is shown by the evidence as to the instant will. In the Schowalter will there was the gift of the nominal sums in money to the respective children; in the Goodwin will there was the gift of two pieces of personal

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property from or in use at the homestead of testator. In the instant will there was required of payment the debts and small or nominal sums to each of testator's children; thus creating what testator called the "residue (residus) of my (his) estate," which he "gave, devised (devised) and bequeathed" to his wife: in the Goodwin will he gave and bequeathed unto his wife all his personal estate "to and for her own use and benefit and disposal absolutely." In the Schowalter will it is further provided that "at her death the remainder of my estate to be equally divided between my children," etc.; and in the Goodwin will the final provision was that "the remainder of said estate, after her decease, to be for the use of the said Jesse Goodwin," who was the son of testator. In the Schowalter will the wife was made executrix without bond, and in the Goodwin will the wife as executrix was not so exempt. In one there was no codicil, in the other there was an erasure by way of a codicil of the words "or remarriage" after the word "death". It was held in the Goodwin will that the wife had a life estate in the personal property, -- a family of negroes, -- and that "said estate" was vested by way of remainder to the only son, who would come into possession thereof on the death of said life tenant Elizabeth. A substantial difference in the two cases is that the instant will was by a layman and the terms employed in the Goodwin will were those prepared by an attorney who knew the accepted, legal meaning of the word "remainder."

8.

The word "remainder" as employed in the will construed in Smith v. Bell, 6 Pet. 67, 8 L. ed. 322, had the technical meaning of an estate which is dependent upon a particular prior estate created at the same time and by the same instrument, and limited to arise immediately on the determination of that estate, and not in abridgment of it. - 4 Kent. Comm. 197; 2 Bl. Comm. 164.

The words "remainder of my estate", as employed by the layman-testator in the ordinary sense, are by way of description or designation that which may remain undisposed of by the wife at the time of her death, -- the person to whom the residue of his (testator's) estate or property is first devised.

We have indicated that where the use of the word "remainder" followed a devise which, standing alone, amounted to or was a fee, the word "remainder" so used is generally construed as referring to the property unconsumed or undisposed of by devisee, and not as limiting the estate of the first taker, as would be the fact of a remainder in the legal sense. - Schewalter v. Schewalter, 216 Ala. 418; Sara v. Powledge, 198 Ala. 172.

Many of the questions now discussed at length were propounded, considered, or decided on first appeal. And that opinion concluded as follows:

"Dr. Schewalter had all the normal affection and sense of obligation to his widow and daughter remaining at home. Did he give his wife a fee for the purpose of disposition in providing for herself and daughter while their status continued, with remainder to his three children in any portion of the estate, property, or its proceeds remaining unconsumed? He trusted his wife in naming her as executrix without bond. If indeed the condition of his estate known to him was such that a life estate merely would be useless, valueless, and a burden to those who in the normal relations of life were the

7.

And the gift to each child of the named sum of \$5.00 in the Schewalter will evidenced the unmistakable intent of testator to exclude said legatees from technical "remainder" in the estate. - Acholis v. Musgrove, 212 Ala. 47; Walls v. Walls, 218 Ala. 147. In Jordan v. Hingstiff, 213 Ala. 512, it is declared that the gift and devise of balance of property was intended as a residuary clause, in the absence thereof.

We may again say, that courts exercise caution in considering evidence as to declarations of a grantor or a testator as to ambiguous devises or grants; but when their interpretation of an ambiguous word or clause is ascertained, it will be accepted and applied. - Sadler v. Madeliff, 215 Ala. 498, 503; Brooks v. Bank of Wetumpka, 210 Ala. 639; Montgomery Enterprise v. Empire Theatre Co., 204 Ala. 566, 572.

In construing wills a clear gift is not to be cut down by anything which fails to indicate, with reasonable certainty, that such was the intention of the testator. - Code, §6900; MacCreight v. Porter, 210 Ala. 56; Foulkes v. Clay, 205 Ala. 523; Fearce v. Fearce, 199 Ala. 491, 498; O'Connell v. O'Connell, 196 Ala. 224; Pitts v. Campbell, 173 Ala. 604. That is to say, courts lean to the construction which would vest in the first devisee a fee simple title to the land, in the absence of a clear implication and limitation to the contrary to be found in the succeeding language. - Spira v. Frankel, 210 Ala. 27; Powell v. Pearson, 126 So. 59.

9.

first objects of his care, we may well hesitate to approve the interpretation of his will asserted by appellants." - Schwalter v. Schwalter, 217 Ala. 481.

The voluminous evidence has been carefully considered, and we are of opinion that testator gave his wife a fee in and to what he termed "residue of my estate," for the purpose of use, enjoyment, or disposition for value and in good faith, in providing for herself and in her station in life, and while the status continued, -- with remainder, in the generally or commonly accepted meaning, to his three children, in that portion of the estate, property or proceeds thereof which is unconsumed at the death of the wife. - Joseph E. Bralley v. Robert E. Spragens, et al., 49, MS.

It is unnecessary to discuss the evidence in detail. The case was carefully briefed and presented in oral argument, and we are convinced that such was testator's intention, when that instrument is illustrated by the parol testimony introduced at the trial.

Reversed and Remanded.

Anderson, C.J., Sayre and Brown, JJ., concur.

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

1 Div., No. 576

Charlotte Gertrude Schowalter, Appellant,

vs.

Edward R. Schowalter et al, Appellee, 5

From Baldwin Circuit Court.

The State of Alabama,
City and County of Montgomery.

I, Robert F. Ligon, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages, numbered from one to 9 inclusive, contain a full, true and correct copy of the opinion of said Supreme Court in the above stated cause, as the same appears and remains of record and on file in this office.

Witness, Robert F. Ligon, Clerk of the Supreme Court of Alabama, at the Capitol, this the

17 day of April, 1930

Robert F. Ligon
Clerk of the Supreme Court of Alabama.

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 1929-30

To the Register of the Circuit Court of

Baldwin County, Greeting:

Whereas, the Record and Proceedings of the Circuit Court of said county, in a certain cause lately pending in said

Charlotte Bertrude Schowatter, Appellant,

and Edward R. Schowatter et als, Appellee,

wherein by said Court, at the Term, 1929, it was considered adversely to said appellant, were brought before our Supreme Court, by appeal taken, pursuant to law, on behalf of said appellant:

Now, it is hereby certified, That it was thereupon considered by our Supreme Court on the 17th day of April, 1930, that said decree of said Circuit Court be reversed and annulled, and the cause remanded to said court for further proceedings therein; and that it was further considered that the appellee pay

the costs accruing on said appeal in this Court and in the Court below

Witness, Robert F. Ligon, Clerk of the Supreme Court of Alabama, at the Capitol, this the

18th day of April, 1930, Robert F. Ligon, Clerk of the Supreme Court of Alabama.

CHARLOTTE GERTRUDE SCHOWALTER,

Complainant.

-VS-

EDWARD R. SCHOWALTER, PRESTON J.
SCHOWALTER and ALICE ELSA SCHOWALTER,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY.

IN EQUITY.

It is hereby agreed by and between the solicitors of record that Robert H. McConnell may act as Commissioner to take the ^{oral} deposition of the complainant, Mrs. Charlotte G. Schowalter, in the above entitled cause, without the necessity of obtaining any commission; that the deposition shall be taken orally by Mr. McConnell, precisely as if he were acting under commission, regularly issued for this purpose, and shall be treated in all respects as if Mr. McConnell had been duly appointed as Commissioner and acted as such.

Dated this the

day of May, 1928.

R. M. Smith
Harry Frank Wolfe
SOLICITORS FOR COMPLAINANT.

James M. Allen
Stevens McConner *McLeod* *Gooder Turner*
SOLICITORS FOR DEFENDANTS.

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA, IN EQUITY.

Charlott Gertrude Schowalter,
Complainant,

v.

Edward R. Schowalter, Preston
J. Schowalter and Alice Elsa
Schowalter, Defendants.

*Published by
Agreement this
February 14 1929
Harry T. Smith & Caffey
Attorneys for Complainant
Stems: no answer
Sally J. Schowalter
Preston J. Schowalter
Philip R. Allen
Max Rogers
Respondents
for the Defendants
Preston J. Schowalter*

Deposition of Mrs. Charlotte Gertrude Schowalter, taken before Robt. H. McConnell, as Commissioner, by agreement of counsel, herewith returned.

The deposition was taken at the office of Messrs. Harry T. Smith & Caffey, June 1, 1928, at ten o'clock, A. M.

Mr. Harry T. Smith and Mr. R. M. Smith appeared for the Complainant, and Mr. John Allen and Mr. Max Rogers appeared for the defendants.

The witness, having first been duly sworn by the Commissioner, testified as follows:

DIRECT EXAMINATION, by Mr. Harry T. Smith:

My name is Charlott Gertrude Schowalter, and I was the wife of Volney McR. Schowalter. We were married on November 3, 1903, at Bradford, Pennsylvania. That was my first marriage, but my husband, Dr. Volney McR. Schowalter, had been married before. His former wife had died. I lived with Dr. Schowalter after the time of our marriage to the time of his death. We resided as man and wife from the time of our marriage until the time of his death, at Point Clear, Alabama, and Fairhope, Alabama. We lived at Point Clear from the time of our marriage until, I think it was, in 1917, then we moved to Fairhope. Point Clear is the old Schowalter home, and we lived in the old home. That place faces on the Bay Mobile Bay. It ran back to the back road, and then there was some acreage in the back. I think the frontage on the bay was 199 or 201 feet. I think the frontage on the back road was the same, then it extended a little beyond the adjoining lot. I

do not know what the depth is from the bay to the road. The house at that time set back in the middle of the front lot. It was afterwards moved. I think the house was moved between one and two years before we moved to Fairhope. It was moved down to the left side of the front lot. It always faced the bay. We lived in it after we moved it. I can not just recall how long we lived in the house after it was moved, but I think it was between a year and a year and a half. It was a one-story house. No other improvements were on the lot except the barn. It was a one-story house with a large hall going through the middle and two rooms on each side. It was about nine feet from the ground. At the time Dr. Schowalter made his will, it had been moved down to the left side of the lot. I can not remember whether it had been painted then or not, - yes, it had been newly painted. It did not have a good roof on it. After we moved out, it had been rented three summers, I think, before Dr. Schowalter died. It was not rented in the winter. It could not be rented in the winter, very well. I think it brought \$300.00 rent in the summer; I am not sure about that; it was either \$250.00 or \$300.00. I think it was \$300.00. As to the annual income of that property, I figured that up the other day, if I may refer to my notes: I figured up that in the last ten years there was collected about \$950.00, made an average of about \$180.00 a year income on it. Previous to 1925 it averaged \$180.00. The taxes were \$79.15, and the insurance was \$24.26 yearly. As to the repairs, in the five years I think we had spent over \$500.00 on it. It had been painted twice, the sidewalks had been repaired, the fences built and the yard cleaned. All those different things, I am sure it was over \$500.00. Dr. Schowalter did not own that place entirely at the time of his death; he owned half of it; that is, half of the front lot and the acreage in the rear. He owned the half of the lot that was vacant, not the half with the house on it. No improvements were on the acreage in the rear. No, I could not say what the value of that acreage was. I think, although I am not quite sure, that there were between five and seven acres of the

acreage.

Q. Do you know approximately what it was worth?

Counsel for defendants objects to any examination as to whether the witness knows anything about the value of the property, when she has already testified she does not know.

Q. State approximately what the value of that acreage was.

Defendants renew their objection on the same ground.

A. At the time of the making of the will?

Q. Yes.

A. \$7,000. We would have been glad to get \$7,000.00 for the whole thing.

Q. Including the front lot, house and all?

A. Yes, sir.

Defendants move to exclude the answer as not responsive to the question.

Witness continued:

Dr. Schowalter had offered the property for sale at \$7,000.00; he had given an option on it for that. The option was to Fearn and Willis, the real estate dealers. I think Fearn and Willis held that option between two and three years. They never got anybody to look at it that I know of. My husband sold half of the front lot with the house on it before he died. He sold it for \$9,000.00 to Mr. A. P. Bush. With the proceeds of that place he invested in two places in Mobile, one on Joachim Street and one on Michigan Avenue. He did not own any real estate in Mobile prior to that time. Both of the places which he purchased in Mobile with the proceeds of the sale of the Point Clear property were subject to mortgage. The property at Point Clear which is left brings in no revenue whatever. One of the places in Mobile which he purchased is at 505 Michigan Avenue. We purchased it for \$8,500.00, paying \$4,250.00 cash and carrying a mortgage of \$4,250.00, bearing interest at seven per cent. It is a lot with a residence on it. That property is supposed to rent for \$75.00 per month. It has not been rented; it rents for \$75.00 per month when it rents. The first year we bought it, it was rented for the entire year; this past year it has not been rented one month. The gross

amount received from that property since its purchase is \$1755.00. That is from August 11, 1925, until May 24, 1928, I believe. The taxes on it are \$196.00 yearly. That includes the City taxes as well as the State and County. The insurance has cost \$49.00. The taxes amount to more than \$300.00, but say \$300.00. Interest on the notes is \$297.50 yearly, and the mortgage, each time it is renewed, costs \$22.50 fee. The other piece of property we purchased is also a residence. It is at 108 Joachim Street, and we paid \$8,000.00 for it. We paid \$3500.00 cash and placed a mortgage on it of \$4500.00, at seven per cent. The gross collections from this property from the time we bought it until the present time are \$1716.80; the interest on the mortgage notes is \$315.00 yearly; the taxes are \$185.00; the insurance is \$49.00, approximately. The repairs on this property from the time we bought it until the present date are \$922.00. The Joachim street property was rented through an agent the first year we bought it and this past year, ~~and~~ during 1927, I rented it myself. Five per cent commission had to be paid the agents. At the time Dr. Schowalter made his will, the maturity dates of the mortgages were August 1, 1927 for the Michigan Avenue property and September 23, 1926 for the Joachim Street property.

At the time Dr. Schowalter made his will, the other property that he owned was two forty-acre pieces in Baldwin County, and two very small lots in Pensacola, Florida. None of that property is improved in any way. None of it brings any income, except one of the forty acres, I think, brought \$200.00, which he collected before he died, for turpentine. That was not annually, that was the lump sum. We have not been able to sell the forty acre tracts. Dr. Schowalter offered it for sale at, I think, \$50.00 an acre for one tract, ~~and~~ \$40.00 or \$50.00 and ~~and~~ for the other one I think he would have taken \$10.00 an acre for it. He could not get a purchaser.

Those Pensacola lots are just lots. They are about two lots removed from the Pensacola Highway coming to the ferry. That is not in the City limits, but in the suburbs. As to the

character of the neighborhood, there is just a little group of houses around there. They are not mansions, they are shanties. Dr. Schowalter paid \$150.00 each for these lots. I think he bought two of them previous to the time he made his will. He bought these two, and two more, and I own half of the other two. He owned a half interest in two other lots; that is, he bought two lots, and then later on he bought two more in which I owned a half interest. He bought those two after he made his will. They were not bought from the proceeds of the Point Clear property; in fact, they were not paid for. We borrowed the money to buy the other two lots which we bought together. My husband did not at that time have any other real estate. He had some life insurance. The insurance premiums were paid quarterly. He had \$4,000.00 life insurance. It was payable to me. He did not leave \$10.00 in money on hand when he died. He left no other securities of any kind. He left a Chrysler automobile, which was not paid for entirely. He paid about \$500.00 on the automobile. I think he had had the machine just about a year. He owned some surgical instruments and office equipment. They were surgical instruments that he used in his profession. I have not had any offer for those surgical instruments.

Q. Have you any information as to the reasonable value of those surgical instruments that he left? Ans. I wouldn't say.

Q. Can you approximate it?

Counsel for defendants object to the question because the witness has said she wouldn't say.

A. I would say about \$400.00 would cover the whole thing; I would be glad to get that for them.

Witness continued:

As to the professional library he left, there were about six small shelves of medical books. About two of those shelves were new. He paid in the neighborhood of \$200.00 for those shelves. The balance were just books that he had had. As to the approximate value of the whole of his professional library, I would be very glad to get about \$150.00 for all of it. I think I would be doing well.

Counsel for defendants move to exclude the statement of

the witness "I would be very glad to get about \$150.00 for all of it; I think I would be doing well," as incompetent, irrelevant and immaterial.

Q. I didn't ask you what you would be glad to get: Give us an approximation of its value.

Counsel for defendants object unless it is shown that she ~~was~~ is familiar with the value of it and what means she has of so knowing.

A. \$150.00.

Counsel for defendants move to exclude the answer on the ground that she is not shown to be qualified to testify as to value.

Witness continued:

Two children were born of our marriage. One of them was living at the time Dr. Schowalter made his will. The other died at eleven months old. The child that survived Dr. Schowalter, born of our marriage, is a girl. Her name is Alice Elsa Schowalter. Alice's home was supposed to be with us at the time Dr. Schowalter executed his will; her home was with us. She was twenty-one years old at the time Dr. Schowalter executed his will. She had been self-supporting prior to that time for about nine months. She had been to school. At the time my husband executed his will, she had graduated from the University of Cincinnati, training school for nursing, and I am not sure she had started giving anesthetics at the time this will was made or not, but it was around that time; whether before or after, I don't know. Her education had not been completed at that time. It has not been completed yet; she is still at school. She is in the University of Virginia. She was not self-supporting at that time, but we were assisting her. My daughter did not possess any individual means. As to my individual means, I have \$25.00 a month from an insurance policy and a small dividend from \$1,000.00 of boat stock that I own. I do not mean I have \$1,000.00 a year, but the income from that. It fluctuates. The net income from that \$1,000.00 was about \$150.00 a year. I said I had \$25.00 a month from an insurance policy; it is a war risk insurance policy. That does not last as long as I live; I think it runs twenty years. That was my only source of income independently from my husband. The house

that we lived in at Fairhope, that property was in my name. It is a residence on leasehold land. I bought the house already built. My husband bought it and gave it to me. I am still living in that home. I think we paid \$2,000.00 for that place. We bought it in 1919.

My husband had some children by his former wife. Some of them were living at the time he executed his will. My husband died June 25, 1926. The children by his former wife who were living at the time he executed his will are Edward R. Schowalter and Preston J. Schowalter. Edward was then thirty-three and Preston about thirty-one or thirty-two, I am not sure. They were not living at home at that time. I think Edward was then living in New Orleans and Preston in Mobile. Preston was chief clerk of the Texas Oil Company. I donot know how much salary he drew. He has not married, so far as I know. He had not married at that time. He subsequently moved to New Orleans. I believe he has the same occupation now. Edward R. Schowalter was assistant Attorney General of Louisiana at the time my husband executed his will. He had been practicing law before that a matter of a few months. I could not say whether he still retains that position.

At the time my husband died, he had accounts on his books for professional services. He held no mortgages or securites whatever, other than that. Those accounts amounted to about \$1500.00. I mean the face value. I have made an effort to collect those accounts since his death, and have realized about \$200.00. They are just accounts for medical services. Those accounts were accumulated from 1921 to the time he died.

I had no means whatever except the rents for taking care of the mortgage indebtednesses of my husband. As to whether I have been engaged in business, I sold a little real estate for a few months during the year of 1925. I earned at that time about \$800.00. I was engaged during the year 1925 and earned about \$800.00 during that year. Those are the only earnings I have made from my own efforts. I worked in conjunction with a real estate man and happened to make certain sales. I sold on

commissions and split commissions. That was in Baldwin County. I have never earned any other money during my married life by working. I earned something by juggling the little income I had. I refer to the income of which I have already spoken. I do not know how to answer as to what my earnings were from the manouvreing of my income. I bought the boat stock of which I spoke, and then I mortgaged the boat stock to buy the few lots that I own, so I never had any real money in my hands. I do not refer to the two lots that Dr. Schowalter and I bought together. I bought a few lots at Volanta. I think they all came to about \$500.00. That was out of the proceeds of my boat stock, the earnings from the boat stock. I have had no personal earnings other than the commissions which I received in selling real estate. I have had had no means of paying the taxes, insurance and repairs on the property of my husband other than the income from his property.

My daughter had been self-supporting for about nine months, after he made his will. She had not been self-supporting before he made his will. I am not altogether sure about that, because I can not recall just when she did this work at Cincinnati. I am unable to say now whether she did that work before or after he made his will. Those were the only earnings that she had earned prior to his death. During that time she was not entirely self-supporting. My husband bought her clothes and sent her railroad fare. My daughter went through the training school for nurses. She was educated at the Fairhope High School, the Judson College and the University of Cincinnati, at that time. She graduated at Judson from the academy. The University of Cincinnati is a professional school. She is studying medicine in the University of Virginia. She will graduate four years from now, - she hopes to.

My husband's father was a doctor, but I think he was a man of leisure for the last years of his life. At any rate, he had been a doctor. My husband had been a professional man since his young manhood. My husband and our family, and myself, moved among the best educated people and people of high social standing.

Q. Now, I wish you would state whether or not your husband and your family and yourself moved amongst the best ~~people~~ educated people and people of high social standing.

Defendants' counsel object to the question because it calls for the conclusion of the witness.

A. We did.

Witness continued:

My husband's association was amongst professional people and the best people of the community in which he lived, and in Mobile. My husband practiced medicine in Baldwin County and maintained an office in Mobile. He spent two days each week in Mobile. Dr. Schowalter's sons are men of education and men of ability. At the time of his death Dr. Schowalter owed the First National Bank \$750.00, the Fairhope Bank \$1634.00, and two mortgages, one for \$4250.00, another one for \$4500.00, and about \$7,000. in accounts.

The most ideal and affectionate relationship existed between Dr. Schowalter and his daughter Alice in his lifetime.

Q. Was he proud of her or not?

Defendants' counsel object to the question on the ground that it calls for the conclusion of the witness ~~and~~ and irrelevant, immaterial and incompetent testimony. It also calls for the witness's testimony as to the mental operations of the child's father.

A. He was exceedingly proud of her.

Defendants' counsel move to exclude the answer on the same grounds as stated in the objection to the question.

Witness continued:

Dr. Schowalter so expressed himself in my presence many times. I was present when Dr. Schowalter made a statement to my daughter Alice as to what disposition he had made of his property in his last will, as to what provision he had made for me in that will. He said that he had made his will and left everything to mother, and at her death, anything she had not used to be divided among the three children; that anything she didn't use or dispose of was to be divided among the three children.

My husband and I occasionally had differences of opinion, or such differences as normal married people have. As to the extent of our differences, when some of his sisters or his father dis-

turbed the waters for me, I objected. When his sisters or grandmother came in and made a disturbance, I objected strenuously. Yes, I have got mad with Dr. Schowalter at times. I expect he also got mad with me at times. He never showed it very much, if he did. I never remember of his being angry with me.

Q. Did the differences that you speak of ever reach the point of any permanent disagreement, or were they simply such slight differences as every man and his wife have?

Defendants' counsel object to the question because it assumes that every man and his wife have differences; because it assumes that every man and his wife have slight differences; because it calls for incompetent, irrelevant and immaterial and illegal testimony, and because it is leading.

Mr. Smith:

I have assumed that every man and his wife occasionally have,--

Defendants' counsel object to any statement by counsel as to what he has assumed, other than in questioning the witness.

Mr. Smith:

I have assumed that every man and his wife have, from time to time, slight differences of opinion; that every couple that denies the truth of that lies, but in order to meet that objection I will simply ask you what was the extent or nature of the disagreements that you speak of.

Mr. Rogers:

We move to exclude the testimony of Mr. Harry T. Smith on the ground that he has not been sworn; that he is not a witness in the case; that he has testified that anybody who states that he never had a difference with his wife is a liar; that any statements made by him for the purpose of this record are illegal, immaterial and irrelevant, and we move that the statement of counsel be stricken, on the same grounds as the objection to the statement at the time he started it. We also object to the question now asked Mrs. Schowalter on the same grounds as previously interposed.

Answer:

I had a crying spell and was in bed for a few hours, -- angry rather.

Witness continued:

Dr. Schowalter did not have a crying spell

at the same time; he tried to console me. That was the extent of the differences that I had with Dr. Schowalter. I only remember two differences that amounted to anything.

Q. What did they amount to?

Defendants' counsel object to "what they amounted to," stating that there would be no objection as to what they were about and their cause and the circumstances surrounding them, but that what they amounted to calls solely for the conclusion of the witness, as to her idea of the extent.

A. Well, they amounted that we were,--: Let me see: I couldn't say that they amounted to anything much.

Defendants' counsel move to exclude the answer on the same grounds as stated in the objection to the question.

Witness continued:

As to how long the discussion lasted in each instance, a half hour one time, and another time maybe a day or a night. As to the nature of the subject matter about which we differed, is it necessary for me to tell that? It is in a general way? There was never a serious rupture in my relations with my husband. The differences that I speak of were while we were living at Point Clear. Our relations as man and wife were never interrupted at all; I had no difference with my husband that occasioned a temporary separation.

CROSS EXAMINATION, by Mr. Allen:

At the time I married Dr. Schowalter and went to live with him, he had three sons by a first marriage, Edward, Preston and Rydor. It is not a fact that the presence of these three sons in my husband's household at the time I married him and until the time that each of the three boys left home, was a source of constant irritation to me and unpleasantness between me and my husband. I bore no ill will or antipathy whatever towards the sons. It is not true that on one occasion, when Rydor was about five or six years old, I imposed on him such an indignity that Dr. Schowalter told me that if anything like that ever occurred again he would send me back to my mother. Rydor was going on six years of age when I married Dr. Schowalter. I do not recall it, if I did, that when Rydor was about six years old and suffering from loose bowels, which went on the floor, I took

his face and rubbed it in it, and that Dr. Schowalter became so much incensed that he told me if anything like that ever happened again he would send me home to my mother. It is not true that some few years later there was a difficulty between me and my stepson, Edward Schowalter, who was at that time about sixteen years of age, which resulted in my asking Dr. Schowalter to send all of his children away from home, and that he replied that those children were in his home before I came there, and that they would remain there. I did not as the result of that threaten to go home and pack my trunk and my other belongings and go to the house of a neighbor next door and stay there the remainder of that day and part of that night. Dr. Schowalter did not, while I was at that house, send me cash or a check for railroad fare to go home. I remember that we had a neighbor by the name of Mrs. McCain, but I do not remember that I went to her house under the circumstances inquired about. Never did I send one of the McCain children over to Dr. Schowalter's home to tell him I would like to see him and have a conference with him and come back home.

I remember a conference had between me, my attorney, Mr. Ritt Smith, Edward R. Schowalter and Preston Schowalter and Alice Schowalter in Fairhope in my home. I think it was in about July, 1926. I did seek to have Preston and Edward R. Schowalter sign a quit-claim deed to whatever interest they might have in their father's estate, but I was laboring under a misapprehension of what I was doing. I was perfectly friendly with the boys, and all of these debts had to be paid, and I understood from my lawyer that I could not sell any of the property to pay these debts unless I had power to sell this property. The way in which I sought to procure power of sale was to get from them a quit-claim deed for all their interest in the estate, but I didn't realize just what that meant at that time. I was dealing through my lawyer, Mr. Ritt Smith. I do not know as I thought about the fact that they would not have any further interest in the estate if they signed the quit-claim deed. I did not realize they were quit-claim deeds. I knew they were releasing every interest they had in the estate by signing the paper, but I didn't think they had any interest.

that statement?

A. Whatever I was saying in regard to that would not be authentic, because all of that is hazy.

Q. What did you mean a moment ago, you did make a part of that statement, but didn't mean it?

A. I may have thought it and possibly I said it.

Q. You won't say whether or not you did say it?

A. No.

Q. Isn't it a fact you testified a few minutes ago you made part of that statement?

A. I believe I did.

Witness continued:

I think it was about 1917 when we moved to Fairhope. I think during the following year we rented the Point Clear property. I think we got \$300.00 for it. There were two or three summers after we moved out of it and before Dr. Schowalter made his will that we did not rent the Point Clear property. I am positive of that. One year a man took it, a farmer, for the whole year, but he had small pox in it, and it was vacant for the next two summers. At the time Dr. Schowalter made his will, the house had been newly painted. I said for the last five years before making the will, the house brought in \$900.00. That is as I remember it. I just remember how many years it was rented and how much we got each year. As to what that whole Point Clear property was assessed for when we left it in 1917, the old home, we were offering it for \$7,000.00, and it would be assessed for less than that. In 1917, when we left there, it was assessed around \$2,000.00. I expect that assessment changed before Dr. Schowalter made his will. I do not know whether it did or not. I do not know the tax rate in Alabama. That property was subject only to State and County taxes. There were no City taxes of any kind. I am not sure that the assessment was \$2,000.00. Insurance has been carried on that property four or five years prior to the time Dr. Schowalter made his will. The amount of insurance per annum was \$24.26. I know that because I got it off of the records yesterday. I mean I got it off of the records in the insurance office at Fairhope. We had the property

Q. Didn't think they had any, but nevertheless you wanted them to release whatever they did have.

Complainant's counsel object to counsel undertaking to argue the question with the witness.

A. Yes, I did.

Witness continued:

I did state, in substance, when those boys refused to sign those papers, that the greatest mistake that I ever made in my life was coming south.

Q. Didn't you also make the statement, immediately thereafter, to Edward R. Schowalter, in the presence of, I think it was Alice, - make a statement to Ned in the presence of Preston and Alice that "I have suffered worse than the fires of Hell while living with your father all these years; I hope to God I never open my mouth?" Immediately after making that statement that the greatest mistake in your life was coming south, didn't you immediately or shortly thereafter in substance state to Ned Schowalter, in the presence of Preston and Alice, these words, or the substance: "I have suffered worse than the fires of Hell while living with your father all these years; I hope to God I never open my mouth."

Confidential to whom
A. I don't recall that last statement, opening my mouth, but I might have said that. I don't recall saying "open my mouth."

X Witness continued:

I believe I do remember saying that I had suffered worse than the fires of Hell.

Q. You said the whole thing? Ans. No. I said that, but I didn't mean it that way, it was the relations that caused that trouble.

Q. Will you state whether or not you made the statement, "I have suffered worse than the fires of Hell while living with your father all these years; I hope to God I never open my mouth?" Did you make that statement?

A. I don't recall making it.

Q. Didn't you just say you remembered making part of it, but you didn't mean it?

A. I don't recall making any of it.

Q. Didn't you testify a few moments ago that you made part of

painted twice during the five years preceding the making of the will. It cost \$200.00 each time to paint it. I am sure of that and that it was within that five year period. The fences were also rebuilt and the board walk in front was put down. Mr. Mannie Pose did the painting on both occasions. It is hard to state what the reasonable market value of the Point Clear property was at the time we left it, in 1917. We had not been able to sell it for \$7,000.00. When we sold it, we sold one-half of it, with the house on it, for \$9,000.00, and still retained the other half and the acreage in the back. The depth of the piece with the house on it that was sold was about two hundred feet. Half of the front lot, from the Bay to the road, was sold, with the house. There was some property on the other side of the road, going on back, but that was not sold.

Dr. Schowalter bought the Michigan Avenue house around August 11, 1925, and he bought the Joachim Street house along in September of the same year. The amount that he paid on the purchase price of these two houses was the proceeds of the sale of half of the Point Clear lot, with the house on it. The Point Clear house was sold some time in July, 1925. I heard Dr. Schowalter say, prior to June, 1925, that he was going to sell off all the property and spend the money. He said he was going to reinvest it in a home and perhaps one other piece in Mobile and spend the rest of it. I remember when the first mortgage became due on the Mobile property that he purchased with the proceeds of the sale. The Michigan Avenue mortgage matured August 1, 1927, and the Joachim Street mortgage matured September 23, 1926. None of these mortgages has been taken up. I have had them extended from year to year. One of the mortgages has matured twice and the other has matured once. The Michigan Avenue house is in what you would consider a very fine residential section of Mobile. The Joachim Street property is located at No. 108 South Joachim, south of Dauphin Street, between Government and Church Streets. I could not say whether it is considered nice residential property or that business is growing to it. I do not know what the Michigan

Some of the slates on the roof had to be fixed, the blinds had to be rehung. I can not give the cost of that. Some of the timbers under the house had to be replaced; the back galleries had to be repaired. I have a list of all of the repairs, but haven't got it with me.

I stated that Dr. Schowalter left some life insurance, in the amount of \$4,000.00. I can not give you the off-handed the policies and the amount of each. There were three policies. I think one was for \$2,000.00, one for \$1,000.00 and another one for \$1,000.00. That was all the insurance he left. The only cash he left in the bank was \$10.00. I don't know whether or not Dr. Schowalter had this insurance, all of it, in June, 1925, when he executed this will; I don't think so. I couldn't say that he took out one or more policies after he made the will; I couldn't say that he had or didn't have all of it before he made his will. I should not have said I did not think he had it all before he made his will, for I can not say.

I couldn't say what was the value of the Chrysler automobile. It is in Fairhope now. It is stored. It has been used since the Doctor's death; I used it. It has been stored seven months. It was stored because I wasn't using it.

I do not know the value of the office equipment that Dr. Schowalter left. I should judge that the value of his professional library was about \$150.00. As to whether I have seen any medical libraries sold, I have seen them bought. I could not say what Dr. Schowalter paid for the books that he bought. I spoke of a set he bought a short time before he died. He paid \$200.00 for that set and it was there at the time he died. I do not know the value of the surgical instruments that he bought and had on hand when he died. I do not know the value of the microscope that was among his belongings. Those things are in Fairhope now, including the microscope. I swore to the bill of complaint that was filed in this case by my attorneys. I stated in the bill of complaint that this vacant lot at Point Clear which was left after

Avenue house has been assessed for in Mobile County; I have perhaps seen it but haven't paid any attention to it. I could not say right now what the other property is assessed for. This property in Mobile has not increased in value since my husband bought it. In fact, the Michigan Avenue property seems to have decreased. A real estate man was sent out there to value it for one of the mortgages coming due and about to be foreclosed. He valued it at \$7,000.00, when we had paid \$8500.00 for it. That was the valuation put on it by a real estate man in connection with having the mortgage renewed or getting a mortgage. The Michigan Avenue house has been painted since Dr. Schowalter bought it. I do not remember what it cost to paint it. Luscher did the work. It was painted in 1925 or 1926, some time. Some of the rooms have also been repapered and the plumbing in it has been repaired.

The Joachim Street place has been painted twice since we bought it. It was painted right after we bought it and then it was painted just before Dr. Schowalter died. It was painted twice between July, 1925, and June, 1926. One of Luscher's bills for the painting was \$200.00 and the other \$379. and something. This was in Mr. Glennon's hands and that is the amount he gave that he paid Luscher for papering and painting. That was the Joachim Street property; that was the bill. Since then we have spent \$85.00 for repapering some of the rooms, \$21.00 for scrubbing the woodwork, and different items, - fixing the garage in the back, having the yard cleaned up. Also fixing the fences. Cleaning up the yard was about \$4.00; the garage work was fifteen or twenty dollars. The fences were fixed a couple of times. I could not tell you the cost each time, I can't remember. The flues were also fixed, window panes put in, locks put on the doors. I could not say what all those things cost. The folding doors were fixed a couple of times from the time we bought it to the present time; the electric wiring was fixed. I have the figures at home of what all those things cost. I do not remember now. The bath room was fixed several times; that is, the plumbing was attended to.

selling off the portion of the lot on which the house was located, was \$10,000.00. Did I say in the bill of complaint that there was one hundred acres of wild land in Baldwin County? I don't think there was a hundred acres over there. I swore to the bill but I didn't notice that. If I said in the bill of complaint that the accounts that he left due from patients amounted to two or three hundred dollars, I think that was all you could collect out of them. I had not collected them at that time. The original bill appears to have been sworn to on the 29th day of October, 1926. I had not collected all of the accounts at that time.

I testified that at the time the will was executed, my daughter Alice was making her home with us and she had not branched out for herself. Her age at that time was twenty-one. Alice graduated from the Judson Academy; she did not graduate from the high school at Fairhope. She was in the second year in Fairhope; she had two more years to finish at Fairhope, then she went to Judson College. She was in Judson six months. I forgot that she had been to Nashville before that for six months, from September to Thanksgiving. She went to St. Cecilia school in Nashville. The last part of that year she went to Judson. All of that was high school work. She left Judson as soon as she graduated from the Academy. She finished high school in Judson in that six months. She was fifteen years old that August; she graduated in June; it was about 1918. After she graduated from high school, she came home and spent the summer. She then went to the University of Cincinnati; she went there to train as a nurse. She staid four years, in training to become a trained nurse. I guess it was 1924 when she finished. I do not recall the dates, when she went from one school to another. After going to Judson, she went four years to the Cincinnati General Hospital, - university work in the hospital and attended classes at the same time. I can't recall when she graduated as a nurse; I think it was June, 1925; I think it was June 5, 1925. I don't know if it was June, 1924; I couldn't say. She was furnished with her board, lodging and

uniform while she was working, or in training. She earned absolutely nothing, not one cent, while she was in training. She did not earn \$80.00 a month during the last six or seven months of her last year in training. Dr. Schowalter was not under that impression; I do not think he was under that impression. She may have earned that after she graduated, but not before. At the time she graduated, she gave anaesthetics; she was duly licensed and registered as a trained nurse. It might have been in 1924 that she graduated, I am not sure. The first six months after she graduated, she assisted the anaesthetist in Cincinnati, and when she became ill she took her position as anaesthetist. I mean when the person whom she was assisting became ill, Alice took her position. I guess she worked nearly a year in that position. I think she earned \$75.00 a month during that time; that is what I thought. She was working regularly each day. She was not doing any trained nursing at that time, she was giving anaesthetics altogether. She left that employment the same fall of the year she started, just about a year after she started. In other words, she worked at that about a year. After that, she came home. I think she spent the summer at home. I can't just remember whether this year she worked as an anaesthetist was before Dr. Schowalter made his will or afterwards. She apprised us of an offer of employment that she received after her graduation as a nurse, but I do not recall whether it was prior to the time Dr. Schowalter made his will that we received that information, or afterwards. Dr. Schowalter knew about the opportunity. I don't recall whether it was before or after the will was made. I think it was afterwards. I heard my daughter state that she had been offered employment as a nurse immediately after her graduation as a trained nurse at the Cincinnati General Hospital of Cincinnati, Ohio, by Dr. Hewr. I do not know what salary she was offered. I do not remember whether it was before or after the execution of the will that we were apprised of that offer. Dr. Hewr is a celebrated surgeon in Cincinnati. I do not know how lucra-

tive his practice was, but he was supposed to be a very noted surgeon. This surgeon offered Alice employment as his anaesthetist. I do not know whether that was before or after the execution of the will. After her employment as an anaesthetist, she was employed by a college in Carthage, Illinois, and looked after the girls; I guess it was in the capacity of nurse. She only made her board and tuition then. She received no money. She did not have any money of her own at that time. She had one lot at Volanta, but had not finished paying for it. She was paying \$10.00 a month on it during the time she worked in Cincinnati. I heard my daughter say she had given up a good position as an anestheticist in deciding to study medicine, but I never heard her say the compensation was \$4,000.00 a year. I did not hear her state any amount. I can not remember whether my daughter graduated in 1924 or 1925. If she had not graduated in 1924, she would not at that time have been capable of supporting herself as a nurse or an anestheticist because she was not a registered nurse, nor in 1925 until she graduated and was registered, but if she was graduated and registered in 1925, she was capable of supporting herself. If she graduated in 1924, she would be fully capable of supporting herself as a nurse in June, 1925, at the time the will was made, but not as an anestheticist, because she took that up after she graduated. Of course, if she graduated in 1924, in June, then in 1925, in June, she would have been working as an anestheticist and was fully capable of supporting herself as a nurse and anestheticist. All those facts were known to Dr. Schowalter, her opportunities as a nurse and anestheticist. Whether he knew that she worked as a nurse and anestheticist would depend on what year she graduated in; I mean whether he knew at the time he made his will. If she graduated in 1925, he knew she graduated. If she graduated in June, 1924, and worked as an anestheticist and a nurse, he knew she was capable of supporting herself.

Alice is my only daughter. She was born in 1904. I can't recall right now when she stopped going to school in

tive his practice was, but he was supposed to be a very noted surgeon. This surgeon offered Alice employment as his anaesthetist. I do not know whether that was before or after the execution of the will. After her employment as an anaesthetist, she was employed by a college in Carthage, Illinois, and looked after the girls; I guess it was in the capacity of nurse. She only made her board and tuition then. She received no money. She did not have any money of her own at that time. She had one lot at Volanta, but had not finished paying for it. She was paying \$10.00 a month on it during the time she worked in Cincinnati. I heard my daughter say she had given up a good position as an anestheticist in deciding to study medicine, but I never heard her say the compensation was \$4,000.00 a year. I did not hear her state any amount. I can not remember whether my daughter graduated in 1924 or 1925. If she had not graduated in 1924, she would not at that time have been capable of supporting herself as a nurse or an anestheticist because she was not a registered nurse, nor in 1925 until she graduated and was registered, but if she was graduated and registered in 1925, she was capable of supporting herself. If she graduated in 1924, she would be fully capable of supporting herself as a nurse in June, 1925, at the time the will was made, but not as an anestheticist, because she took that up after she graduated. Of course, if she graduated in 1924, in June, then in 1925, in June, she would have been working as an anestheticist and was fully capable of supporting herself as a nurse and anestheticist. All those facts were known to Dr. Schowalter, her opportunities as a nurse and anestheticist. Whether he knew that she worked as a nurse and anestheticist would depend on what year she graduated in; I mean whether he knew at the time he made his will. If she graduated in 1925, he knew she graduated. If she graduated in June, 1924, and worked as an anestheticist and a nurse, he knew she was capable of supporting herself.

Alice is my only daughter. She was born in 1904. I can't recall right now when she stopped going to school in

Fairhope. I know we moved to Fairhope and she went to school there, I think two years. We moved up there in 1917. I remembered at the time when she graduated as a nurse, but I do not recall right now definitely. I can find out. I have her invitation to the commencement exercises. I do not know how long she had been working before her father died.

(By Mr. Rogers).

I have stated repeatedly that I do not recall the year of my daughter's graduation as a nurse. As near as I can remember, she graduated in 1924; that is my best recollection. I do not know it, I could not swear to it now.

Q. That is your best recollection? Ans. I have no,---

Q. Didn't you say a moment ago that is your best recollection?

Counsel for complainant objects to the question, because it is not cross-examination at all, but arguing with the witness.

A. Yes.

Witness continued: (By Mr. Allen).

As to when my daughter started in the University of Virginia, she went to summer school there last summer. She started to study medicine in 1927, in September. Her father, Dr. Schowalter, died in June, 1926. From the time of her father's death until September, 1927, she went to Carthage, Illinois, spending two years there. The year she went back to Carthage, after her father died, she got her board and tuition free for her services as nurse. She did not get anything else. I supported her otherwise. I do not remember how much I gave her during that year. It wasn't much, the least she could get by on. I do not know about how much; I couldn't say approximately. As to whether I had any means of checking up data, I didn't know you were going to ask me that question. I do not know all these other questions were going to be asked me. As to how I came to check them up, I presumed he (Mr. Smith), would want to know about those mortgages. I can not give you any idea at all what I gave her the year she was in Carthage, after her father died.

Alice did not come home from Carthage last summer. She did not come home at all; she went to summer school, starting in June, 1927. I paid her tuition there; I supported and maintained her fully; I gave her all of her clothes and spending money and tuition. I do not remember how much I gave her this last summer; I haven't any idea. No, I do not think it was as much as \$150.00 a month. I couldn't say whether it was \$125.00 a month. I couldn't say whether it was less than \$100.00 a month. I haven't the slightest idea what I gave her for her summer school training last summer, in 1927. She started in September, 1927, at the University of Virginia, and she is still there. Since she entered the University of Virginia, I have paid her tuition; I have paid for her room, and she gives anaesthetics at the hospital there, which gives her her board and laundry. She gives anaesthetics on Saturday and Thursday afternoons when she is not in school. I think she gets \$15.00 a month for that, too. I can not say now what tuition I paid this last year, but I think it was in the neighborhood of two or three hundred dollars. Her room cost \$15.00 a month. I paid for her tuition and room and also gave her clothes. I did not spend much on her clothes, maybe \$75.00 altogether, or something like that. This money I have been giving my daughter since her father died was my money; none of it belonged to the estate. It was my money. Is it necessary for me to state how I got the money? I haven't any private income except the \$25.00 a month. Is it anybody's business but mine where I got the money I have been giving my daughter? Well, I borrowed it, and then I had some life insurance. I had \$4,000.00 life insurance. I have been using that also for myself.

Q. How much did you borrow?

A. I would like to ask my lawyer whether it is necessary for me to go into all that or not.

Mr. Smith:

My opinion is that it is not, but I would much rather you would go on and answer the questions. I would have to have a long fight, as to whether the deposition would be sup-

pressed or not, and a lot of work in connection with it.

Witness:

I can't say exactly how much I borrowed for her.

Witness continued:

As to how much I have borrowed personally, I will answer that if I am obliged to, but I can't say exactly. Everything I have borrowed for the support of myself and Alice amounts to \$3500.00. I borrowed this from the Fairhope Bank; No, it has not been all of that; I made an error, because I have been carrying a mortgage that the estate owed on that, so that would be about \$1500.00 I borrowed, as near as I can remember. I borrowed all that from the Fairhope Bank. The name of that bank is "Fairhope Bank." I have not borrowed from any other source. Yes, I have borrowed something as executrix of the estate, but I don't just recall how much. The money that I borrowed has been to carry the interest notes on these mortgages and the redemption from the sale, as the property was sold in 1925 for taxes. The money was not used for any other purpose. I could not say exactly how much I borrowed as executrix. It took \$302.07 to redeem from the tax sale; that was on the Joachim Street property. That was what it cost to redeem that from the tax sale. The other property was not sold for taxes. That was what I borrowed, and the First National Bank had been carrying the notes that became due on the Michigan Street property, that has not been rented. Then there was money borrowed; Dr. Schowalter owed \$750.00 and the interest; I signed notes for that and the interest that was due, so that they would not sell the property. I want you to understand that I did not go there and borrow any money; just as the interest notes became due, the bank had me sign a note for that.

✓
On June 11, 1925, I owned about six or eight lots at Volanta. I do not believe there was any boom in real estate at Volanta in June, 1925. There was a boom that extended along the eastern shore, and I expect it did include Volanta. I paid \$175.00 each for some of those lots. Dr. Schowalter

did not give me the money to buy that property; I borrowed the money from the bank, the Fairhope Bank. I have paid that back. It was not before Dr. Schowalter died; I paid some of it back before he died, but not all of it. I do not know, I can not say, what the value of those lots was on or about June 11, 1925. I never had an offer for them. I believe I did put them on the market for a price, at \$50.00 a front foot. The front of those lots was 66-2/3 feet each. At that time I was asking \$50.00 a front foot. I also owned the leasehold at Fairhope on June 11, 1925. We leased the land for ninety-nine years, and owned the improvements. I do not know how long the lease had been running on June 11, 1925. The lease was transferred to me. I do not know how many years it had run. I have no idea whether there are provisions in that lease for renewal at its expiration. I paid \$2,000.00 for that home. Dr. Schowalter bought that for me; we bought it by paying rent every month. Dr. Schowalter put it in my name. I do not remember when I got the lease. I do not recall that it was about seven or eight months before he made his will that he put that in my name; I think it was longer than that, but I am not sure. I expect that it is recorded at Bay Minette. I think the value of that house and lease on June 11, 1925, was about \$3500.00. I never had any offer for it; I have not had it up for sale. I think the lots in which I bought a half interest with Dr. Schowalter in Pensacola were bought after June 11, 1925. I think I have stated all the property I own. At that time I owned \$1,000.00 worth of Bay boat stock; I have never owned \$1500.00 worth. That was paying about ten per cent at that time; that would be \$100.00 a year. I don't remember whether I had a bank account June 11, 1925. The first year that I owned that Bay boat stock, it did not pay a hundred per cent; it paid about twenty-five per cent; I am not sure about that; I can't remember. I don't remember whether I had a bank account on June 11, 1925; I don't remember whether I had cash anywhere else. I was getting \$25.00 per month from the United States Government under a policy on the life of Rydor Schowalter, who died while in service. I don't remember when he died; he

died during the war. He was my stepson; I think he made out this policy to me himself. I did not tell the Government to make it payable to me after he died; I made no application for it, nor did my husband in my behalf. I do not remember when I was engaged in selling real estate in Baldwin County; I was engaged about a year, I guess; it was several months. I did not sell any real estate after that. I do not remember that I told Preston Schowalter in February, 1926, in Fairhope, Baldwin County, Alabama, that so far that year I had made something over \$1300.00 selling real estate. I do not remember whether I had made that much money; I don't remember how much I made. As to whether I was keeping boarders at the house on June 11, 1925, or any time prior thereto, I had a school teacher stay with me a couple of winters. I derived about \$20.00 a month from that, for board and lodging. I also at that time owned a life insurance policy on my mother's life. The amount of that was \$500.00. I was a stenographer at one time for about three months. That was prior to the time I married Dr. Schowalter. I was employed by Mr. Strong; I do not recall his first name. That was in Bradford, Pennsylvania. I was not also a private secretary at that time. As to whether it is a fact that my daughter Alice, on June 11, 1925, owned lots 11 and 12 in block 8, and also that portion of lot or block C lying directly in front of the lots described, according to a map of Volanta, I know she owned a lot up there, but I don't remember whether it was before or afterwards; you might call it one beach lot; one lot in front and one directly in the back of it. The frontage was 66-2/3 feet and the depth about 250; that included both of them; went back to the back road. As to what Alice was asking for them at the time, she did not want to sell them. She was offered nothing for them that I am aware of. I think it is true that in December, 1924, I and Dr. Schowalter and either Preston or Ned went to look at these lots in Volanta, together. I don't remember whether that was before he executed his will. I disremember whether it was in December, 1924. We went up there one Christmas time, I don't recall the date.

The Supreme Court of Alabama

October Term, 1929-30

1 Div., No. 576

Charlotte Gertrude

Schwalter

VS.

Edward R. Schwalter

et al

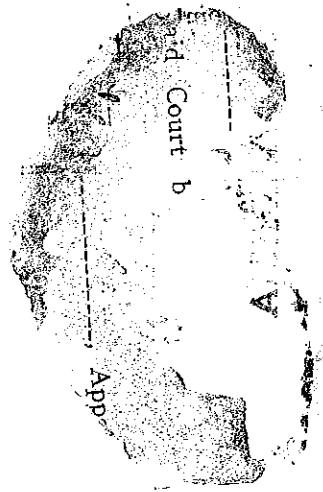
Appellee.

From Baldwin Circuit Court.

COPY OF OPINION

BROWN PRINTING CO., MONTGOMERY, 1929

Filed Apr 19th 1930
J. M. McNeill
Clerk



THE SUPREME COURT OF ALABAMA

October Term, 1929-30

1st Div., No. 576

Charlotte Gertrude
Schowatter
Appellant,

v.

Edward R. Schowatter
et al.
Appellees

By Baldwin Circuit Court.
in Equity

DECREE OF REVERSAL

Alabama, } Filed
in _____ County.

of April 30, 1930

between
_____ vs. _____
Circuit Court.

between

I never knew that Alice had an offer of \$3,000.00 for those lots, nor did Dr. Schowalter know it. There was a great deal of talking about that boom over there; what they expected to get and what they got was quite a different thing. Alice started out to buy those lots herself by paying \$10.00 a month, and Dr. Schowalter finished paying for them. That was during that year she was working.

As to whether within sity days after we went to look at those lots I got a deed for Lots 1, 2, 7 and 8, in Block 9, and Lots 1, 2, 3, 6 and 7 in Block 8, and also part of Blocks C. and D. lying directly in front of the lots mentioned, and having a front of 265 feet on Mobile Bay and being according to a map of Volanta, I will say that I owned some property at Volanta, but I don't recall the description of them. I do not remember that I bought them after we went to look at the property; I owned some lots before Dr. Schowalter died. I did not refuse an offer of \$5,000.00, or approximately, on this Volanta property prior to the time my husband made his will, nor subsequently thereto. Dr. Schowalter was never under that impression, that I know of. I have not bought any property since my husband's death. I did not buy any from J. D. Baldwin located at Possum Neck, Baldwin County. I traded some, but it was not at Possum Neck. I traded ^{an automobile} ~~xxxxxxx~~ for a forty acres on the Greenville-Marlowe Road. That was my personal automobile. I partly owned it at the time Dr. Schowalter died; still owed some money on it. I don't remember whether I owned it at the time he made his will. It was a Chevrolet landau automobile. This property that Dr. Schowalter owned at the time of his death, I don't know whether or not he inherited all of that property from his ancestors. I do not remember any time he bought it.

I said that Dr. Schowalter moved in the very best society in the community in which he lived. As a doctor has to, as a doctor is obliged to, he was of a very democratic temperament and associated with practically everybody he came in contact with. He did not do that in a social way. If he met them

on the street he would talk to them, but he did not crony with almost anybody he ran into. He never paid any social calls; his were professional calls. Of course, he did make some social calls to people on the beach at ~~Fairhope~~ Point Clear. He never visited any one else, not what you call just calling; he might have stopped by to get a drink of water and talk to them, something like that. He used to stop by and eat meals with anybody where he happened to be in the neighborhood; he did not always do it, but he used to do it some times. I do not call those social calls; that was a necessity; somebody probably owed him a big bill and probably thought he would get it.

I stated that there was a debt of the estate to the First National Bank of Mobile for \$750.00. I think that was just a loan without a note. I do not know when he borrowed that money; he had been owing the bank for years. He had been owing the Fairhope Bank ever since I can remember; he would pay some, and it would go down, and then it would go up again. He started out with his note, secured by the Point Clear property, and then after his death they were not willing to handle it any longer, and I transferred it to my Fairhope property, so they would not foreclose on the Point Clear lot.

I stated that there are \$7,000.00 in claims against the estate. It may be that a hundred dollars or so of that amount are personal claims of mine against the estate, but that is all. That is for money I loaned Dr. Schowalter the year before he died, when he was sick and had some notes coming due; and, also, Dr. Schowalter owed some money on his automobile, which they would have taken, and I paid the balance on that; that is, loaned Alice the money to pay it, \$400.00. That was to take over this claim on the automobile. She took it over. She paid that to Beville, P. D. Beville of Mobile.

Q. What claims have you filed against the estate other than money you loaned Dr. Schowalter when he was sick at that time?

Complainant's counsel objects to the question as

utterly irrelevant and immaterial; Mrs. Schowalter having filed claims against the estate can throw no light upon Dr. Schowalter's intentions.

A. I don't recall what they are now. They are filed.

Witness continued:

I do not recall just now what those claims are. If Alice has filed any claims against the estate other than the claim she bought from P. D. Beville, they are filed, and I can not recall right now. I am executrix of the estate. I do not remember how much she paid Beville for that claim. The \$7,000.00 of claims are made up otherwise of bills for surgical instruments, office equipment, medical books, bills of long standing. These claims have been filed against the estate; they amount to \$7,000.00. At least, I have sent notice to all these people to file them; I have sent them personal notices.

I stated that the relations between Dr. Schowalter and Alice were affectionate. As to who was his favorite child, I do not know, it is hard to answer. I think his daughter Alice was nearer to him than any of the children. I think she was his favorite child. I do not remember telling Preston Schowalter, my step-son, in my home in Fairhope, Alabama, on the day following the burial of Dr. Schowalter, in June or July, 1926, in the presence of Edward R. Schowalter and Alice Schowalter, that he, Preston, was his father's favorite son. I do not remember saying that. I think Preston was his favorite of the boys. I did not make the statement that he was the father's favorite child. I am saying now that he was his father's favorite son. I do not remember making that statement the day after the burial. My belief is that of the two living boys, he was the favorite.

As to the exact words of Dr. Schowalter when he made the statement to Alice with reference to having executed his will and what he provided for me, he said he did not have much to leave; that he was sorry there was not more, because he had made his will and was leaving everything to mother, and at her death what she had not used he knew she would divide it

among the three children equally. I do not just recall when that was; it was after he made his will. I can not remember whether it was in the fall or winter. I do not remember whether it was in the fall, spring, ~~or~~ winter or summer. It might have been in the summer, might have been in the winter, I have no recollection. He told me that in the presence of Alice. I remember him telling it at the table when other children were present. I think that was one time when one of the other children was at home; that was Preston. He said he had made his will and left everything to mother; that he was sorry it was not more; there wasn't anything to fight over; that it was not much to leave, but he had left it all to mother, and at her death she was to divide what she had not used among the three children. I do not remember when that conversation was. I do not remember whether that was before or after he had made that statement to Alice. I did not take these things seriously at that time. Alice and I have not been corresponding about any of those conversations. We have had no correspondence whatever about it.

(By Mr. Rogers).

Edward R. Schowalter left his father's home to go to work, to find work. I believe I recall the circumstances leading up to that. He had reached the age where he would be going out to find something; we were in a very impoverished condition. I do not recall how old he was then; I think he was somewhere around seventeen years old. I never objected to Ned being in the home. He did not leave home shortly after a dispute between his father and me about his being in the home there. As to whether he left home very shortly after I and his father had had a dispute, I don't think you could call that a dispute. We talked it over, and the Doctor was very anxious for Ned to start to teaching school, or something; he could not afford to send him to school; he had been to Spring Hill for one year. He was not cooking that year for the family at Point Clear, not unless some member of the family was sick. We had a cook some times and I cooked myself. I don't think Ned ever took

charge of the cooking in his life. It is absolutely not a fact that I discharged the cook who did the cooking for the family, not unless it was absolutely necessary for me to discharge the cook.

It is absolutely not true that this was the occasion I went over to McCain's house and spent a day and night, and finally came back home, after this dispute: I never spent a night in McCain's house in my life. I did not spend any time in their house. I never took my troubles to Mrs. McCain. It has been a long time ago and I can not recall just what was said at the time leading up to Ned leaving home. There was nothing unpleasant, it could not be called a family dispute. We were so poor we did not know where our next meal was coming from. We owed Brodbeck and Zundell's a grocery bill of about five or six hundred dollars, may be more, and there was no money coming in, and I thought it was time for Ned to be going out and doing something. Ned was educated in the Point Clear school, which was very good, and he went one year to Spring Hill. The boys have educated themselves in their professional education; Ned's father loaned him some money at one time. That has been repaid. I think it was \$300.00.

Alice has earned her education, part of it; we have sent her clothes and a little bit of money. She has not had any bed of roses by any means. I have contributed what I could to her education. I can not recall how much. I said I could not recall what I contributed; I did not indicate any amount at all. I know that I contributed something. I have no idea at this moment how much I contributed.

At the time Dr. Schowalter discussed the provisions in his will, there was nothing said to me or to Alice about the provision in his will, to the effect that on my death or remarriage the property was to go to the children. He never discussed that feature of it with me at all. After he wrote this will, he had it witnessed and brought it and handed it to me. I kept it. I read it. I did ask him something about it. I asked him if everything was fixed up so that

after his death the family would not have to go through a lot of controversy like he had had to do after his father's death.

Dr. Schowalter had inherited some land from his father. I could not say that he had inherited practically everything he left at the time of his own death. I do not think you could say that he had inherited practically everything he had from his father and had added little or nothing to it, because if it had not been for his own efforts he would not have been able to retain this land. I do not know if it is a fact that from 1915 to 1920 he sold off about half of the real estate that he owned. He sold a few acres of raw farm land; whether it was half or not, I don't know. It is a fact that he was gradually selling his property whenever he could get an advantageous offer for it, for some time prior to his death. It was his plan to sell the property and take it a little bit easy.

When I was testifying as to the disputes and disagreements I had had with my husband, the reason I hesitated was because I did not know whether it was necessary or not to go into all the family history for the benefit of the public, but the only disputes that ever amounted to anything in our home was over his sister and his grandmother, things they would stir up. I could not say what they would stir up, but they were always coming in and starting something or other. One time his sister sent a lot of furniture up there for us to store, and insisted on my taking it; she had a bed, and insisted on giving it to me; I had wanted to buy it at the beginning, but she wanted to give it to me. One time she thought she would send for this furniture, and she wrote me a very insulting note, as much as to say I was trying to hold it. In fact, it was inconveniencing me to ~~hold it~~ store it in the house. I resented that very much. That was Mrs. Broadwood. That incident caused me a lot of unhappiness. Then the Doctor had a brother there who was badly infected with syphilis, and he insisted on one or two occasions about coming and staying at our house. He was absolutely penniless, and he felt like he could come and sleep in our beds, and all, and I refused to let him come, and we had an

argument about that. That brother was Percy. The Doctor wanted his brother to come. As to whether as a medical man the Doctor thought it was all right for him to come, I do not think you could look at it that way, - a man covered with syphilis all over his face and hands. The upshot of that disagreement was that I cried ~~all day~~ for about a day, and he finally sent his brother down and paid his board at Mrs. Smith's, when that money should have been paid to help support his family. It was not my money he was using for that purpose, as I had no money, but he was using money that rightly belonged to his creditors at that time. I told him so, and I objected to his brother sleeping in our beds, for the step-children's benefit as well as my own.

The property which was sold for taxes was sold for taxes during Dr. Schowalter's lifetime, and I did not know it.

I first met Dr. Schowalter in 1908 in Bradford, Pennsylvania. I do not recall the occasion of my meeting him. Mrs. Schowalter, the first, was not living at that time. I do not remember the first meeting that I had with Dr. Schowalter. All I know is that I met him; I don't remember the facts connected with it. As to what jewelry I owned at the time Dr. Schowalter executed his will, in June, 1925, I had a diamond engagement ring, which is the ring I have on. I also own another ring; I do not know its value. I would not say that it is a valuable ring. Aside from mortgages, the estate owes about \$7,000.00; that is what he owed at the time of his death; the estate has been adding debts. I have a list of the indebtednesses filed with Mr. Harry T. Smith; I filed it with him. These claims were presented through the mail. I did not buy all of them up; I paid a few of the current bills around Fairhope and took transfers. I do not recall how much I took in transfers, but it was not very much. I think the claims are filed of record in Baldwin County against the estate.

.. I will prepare and attach to my deposition a complete statement of the claims against the estate, totalling about

\$7,000.00. I understand that you want the claims that were owed up to the time of Dr. Schowalter's death and that ~~these~~ you are not interested in anything afterwards. I will also furnish a statement of how many claims are owned by me, with a list of them, and also a list of those owned by Alice Schowalter. (Hereto attaches/ as Exhibits A, B, C and D).

I could not say how much money I have drawn from Rydor Schowalter's insurance; I could not say how long I have been drawing it. I have been drawing it ever since it was first issued; I could not say that that was during the war. I do not remember if it was 1917 or 1918. It has been \$25.00 per month. There is no marker or tombstone on Dr. Schowalter's grave that I know of.

REDIRECT EXAMINATION, by Mr. Harry T. Smith:

I have been asked on cross-examination in regard to a request on my part that I made to Dr. Schowalter's sons to execute a quit-claim deed to the property left by Dr. Schowalter. As to whether at that time I had been advised by my counsel as to the effect of the will, I took the will to Mr. Rit Smith, thinking it was just as Dr. Schowalter stated he had intended, and Mr. Smith stated that he thought that was correct, but there was an ambiguity in the will, and I said I was very anxious to pay off this indebtedness and get things straightened up; I had been under this terrible strain so long, and he said ~~I was~~ he was sure that I had the right to do it, but I might have difficulty in selling it to some one else, and that in order to make that clear, I would be able to dispose of it if we could get the boys to agree to this. That is the way I came to approach them. I don't recall whether I approached them in person or wrote them a letter; I think I wrote them a letter. I haven't a copy of that letter. I never gave it a thought; I thought they would be willing to pay their father's debts. The debts that I was asked about, which I paid, taking transfers, were Dr. Schowalter's debts, and I paid them out

of my insurance money.

I was asked about making a statement to the effect that I had suffered hell during the time I was living with Dr. Schowalter. I never made any statement that I was living in hell with Dr. Schowalter; it was far from hell. As to the conditions under which we lived, I would not say that Dr. Schowalter was ever successful in earning a living prior to the time he removed from Point Clear to Fairhope. As to the means my husband had when we moved from Point Clear to Fairhope, he had \$30.00 in cash; he owed the grocer at that time between five and six hundred dollars, perhaps more; we owed at that time everybody that would give us credit. As to whether he had ever been able to provide his family with comforts, you could not call them comforts; we probably would have gone hungry many a time had Brodbeck and Zundalls not carried us for years and years. Point Clear was a place which at that time was very desolate in the winter time, and occupied by a few summer people in the summer. I spoke a while ago of people on the beach; those were Mobile people that owned summer homes. Those houses on the beach were deserted in the winter. During those years the people who made up Dr. Schowalter's patients were very poor farmers and fishermen located around Point Clear. Dr. Schowalter never in his life was unkind to me. The occasion when I cried all day was when I objected to his bringing his brother who was infected with syphilis in the house. I believe that was the most severe difficulty I ever had with my husband, that and the occasion when his sister accused me of trying to steal her furniture. We were at outs on that occasion, I think, half of the night. There was a reconciliation after that, and there was a reconciliation after I cried all day about his brother. During those occasions, Dr. Schowalter was perfectly quiet. Dr. Schowalter's grandmother was living in the house when I moved in, and she remained there until she died. She suffered ill health; she had an attack of appendicitis, and she

fell down and broke her hip, and was in bed for a year or so, and finally got up at nights, and fell and cut her head open, and was raving for about ten days. During all this time the grandmother was in that condition, I waited on her. Along about three or four days before she died, we had an old lady come in and help us a little bit. I think she was in bed for a year when she broke her hip the first time. Then she lost her mind. During all this time I had the exclusive care of her. I prepared her meals and carried them to her. As to whether she was pleasant or unpleasant, you couldn't call it pleasant. As to how she treated me, she was very disagreeable at times. She was a great sufferer.

Dr. Schowalter's clientele was made up of very poor people during the winter months, until we moved to Fairhope. Fairhope is a single tax colony, and is a larger, more progressive place than Point Clear. After we moved to Fairhope, Dr. Schowalter's condition gradually changed for the better. After he had been in Fairhope for some time, he had a good practice; that was the last few years of his life. That was the period in which I said he had an office in Mobile and was practicing in Mobile. While he was practicing in Point Clear, we were very poor. His patients came constantly to our home for treatment. Such operations as he performed while living at Point Clear were done in our home. I am speaking now of Point Clear. I acted as his assistant and nurse in his treatment of his patients. When he had an operation, I cleaned up the mess of it. Dr. Schowalter's son, Preston, had appendicitis. Dr. Schowalter had a third son; he died during the war. The Doctor himself had appendicitis. I remember the big storm we had, and Dr. Schowalter crossed the Bay to be operated on in the midst of the storm. That was in 1910. We crossed the Bay in the storm of 1910, just as it was going down, after all the waters were down. I brought the Doctor across the Bay under those conditions; that was about four months before our child was born. During that same time, I lose one of my children, my baby.

During that same time I lost my father. All those things happened within a year or a year and a half. 2

During that same time we were indebted to everybody and had to live on borrowed money. If I made any statement in regard to having suffered hell during part of the time I was living with my husband, my statement had reference to the conditions under which we all lived.

Point Clear is five miles from Fairhope. As to how far ~~it~~ is from the nearest settlement of educated people in the winter time, there were about three families at Battles, about three miles up the beach. Battles is the next settlement; has three or four families there.

Alice and I did every thing in the way of house work that was required to be done, washed, ironed, scrubbed and cooked, and I painted floors, and painted the outside of the house on an occasion, painted it myself. I washed the car, washed the laundry from the operations, washed my husband's linen suits, washed the boys' clothes when they came home on occasions.

I had no experience in legal matters prior to my husband's death.

I do not remember telling Preston that he was his father's favorite son. I said that I would think he was the favorite of the two boys, when I testified on cross-examination. I do not remember how old Edward was when he went to work; it was just about that time, when he was around seventeen. There was no work at Point Clear that a young man could get, except driving a delivery wagon. My husband and I had a debate about whether he ought to try to do something in life. We did not have a disagreement about that, it was just a discussion.

Q. You expressed the idea that a young man seventeen years old, under those circumstances, ought to try to do something?

Respondents' counsel objected to leading the witness.

A. Yes, sir.

Witness continued:

My husband was of the same opinion, but he was in favor of his teaching school in the country, and I think Edward Schowalter knew at the time, I think he was of the opinion, it was best for him to go out and work, too. I don't remember who decided the question. I think it was a mutual agreement between the three of us, if I recall correctly. I think we had to go to Brodbeck and Zundells and borrow the ten dollars to let him go to Mobile with, to come over and stay in Mobile looking for work. He got work and has been earning a living ever since. After that time, he visited the house. I think he brought me two little plates with the first money he earned; I still have them. After he went to work, he visited the home whenever he could come over. He worked in Mobile for a while, and I think he went off, was up in Chicago and out west, and finally went in the Navy, but he came home whenever he could when he was in Mobile. That was Mr. Edward Schowalter.

Preston left when we got to the place where we could not afford to send him to school any longer. He was younger than Edward. I do not remember when he came to Mobile. I do not remember how old Preston was at that time. The difference in the ages of the two boys was about a year or a year and a half, I believe. He went to work at about the same age that Edward did, along about that time. After he came to Mobile and went to work, he visited the home, and that continued as long as he was in Mobile.

I testified as to a statement that my husband made about selling the property, investing a part of it, and spending the balance. I think that was during this real estate boom over there, and things were breaking a little better for Dr. Schowalter, and he felt very much encouraged. Alice was at home at the time, and he was telling her of his plans, what they would do to make money. He said he was going to make some money, he had been poor all of his life, and he felt like it was in him, and he could make it as well as anybody else. She laughed and said, "You make a whole lot of money and I will

show you how to spend it." He said, "Young lady, don't you plan on anything like that, because mother and I have had a hard struggle all these years, and whatever I make we are going to enjoy, and what we don't need you three children can have." He said, "I am tired of living on sentiment." I spoke of a boom; there was not a boom in real estate at Point Clear, but there was at Fairhope, around the eastern shore; you could say along the eastern shore. That would include Point Clear. For a short period of time, for a few months, Point Clear property went way up. I know the Stone place.

Q. Have you got any idea of the value of the Stone place prior to that boom?

Respondents' counsel object as incompetent, irrelevant and immaterial; the value of the Stone place can throw no light on the question involved in this case.

A. I know it increased in value for a little while.

Objection withdrawn.

Witness continued:

The Stone place sold for \$20,000.00 during that boom.

Q. Do you know what it was worth before the boom started?

Respondents' counsel object as incompetent, irrelevant and immaterial; it has no bearing on the question at issue.

A. Yes, sir.

Q. What was its value?

A. I think it was a very slight value.

Witness continued:

It was during that boom that my husband sold a half interest in the lot at Point Clear that I have testified about. Values since that time have not held up at Point Clear. That was the time I spoke of my husband becoming very much encouraged and thinking he was going to make a lot of money.

I have never made any statement to any one to the effect that I and my husband had not lived happily together or that I had been mistreated or had serious difficulties with my husband at any time. There was never any serious difficulty between us two.

I never spent a night with Mrs. McCain in my life. I know Mrs. McCain. She was our neighbor at Point Clear, a northern woman who bought the place next door to us. I don't remember when she bought it. It is on the right side. I never spent a night in her house. I was never on very intimate terms with her. She used to live there in the winter as well as in the summer. I never discussed my family relations with my husband with Mrs. McCain. She had had a stroke of paralysis since she moved there. As a matter of fact, I never did leave my husband at any time and go to anybody's house. The farthest I ever went was to the bath house for a few hours. That is the bath house right out in front of our place: My husband never did tell me to leave his home; he was always afraid I was going to leave. He never threatened to give me money and tell me to go back to my mother's house. Absolutely, he did not.

Charlotte G. Schwanter.
Charlotte Gertrud Schwanter.

EXHIBIT D to deposition of Mrs. Charlotte Gertrude Schowalter.

CLAIMS AGAINST ESTATE OF V. Mc R.
SCHOWALTER OWNED BY ALICE E. SCHOWALTER.

P. D. Beville Motor Co.	\$ 476.00
Bank of Fairhope	120.00 .
New Orleans Credit Association	76.00
	<hr/>
	\$ 672.00 .

EXHIBIT C to deposition of Mrs. Charlotte Gertrude Schowalter.

CLAIMS AGAINST ESTATE OF V. Mc R.
SCHOWALTER OWNED BY CHARLOTTE G. SCHOWALTER.

The Sanitary Meat Market	\$ 10.70
P. Kamper	16.17
Town of Fairhope Electric Light Department	17.25
Peoples Co-operative Store	5.90
Bank of Fairhope	802.67
	<hr/>
	\$ 852.69

EXHIBIT A to deposition of Mrs. Charlotte Gertrude Schowalter.

LIST OF CLAIMS WHICH HAVE BEEN FILED IN THE
PROBATE COURT OF BALDWIN COUNTY, AGAINST THE
ESTATE OF V. Mc R. SCHOWALTER, DECEASED.

Walter H. Mask, Claim File	\$ 345.75
Baldwin Buick Company	80.55
C. J. Gayfer & Co.	168.57
Fairhope Courier	14.60
J. J. Damrich	47.50
Charlotte G. Schowalter	3097.81
First National Bank of Mobile	1310.35
Alice E. Schowalter	672.00
First National Bank of Gulfport, Miss.	4250.00
Powers Electric Shop	13.75

EXHIBIT B to deposition of Mrs. Charlotte Gertrude Schowalter.

LIST OF CLAIMS FILED WITH CHARLOTTE G.
SCHOWALTER, AS EXECUTRIX OF THE ESTATE
OF V. Mc R. SCHOWALTER, DECEASED.

The Martin and Hoyt Company	\$ 28.00
L. Hammel Dry Goods Co.,	842.08
Julius Goldstein	12.00
Fairhope Meat Market	19.05
Doster Northington Inc.,	2.83
E. H. Britton	25.10
Paul B. Hoeber, Inc.,	4.00
Bank of Fairhope	1754.00
A. Russell	10.30
Wm. Ruffles	5.30
B. Luscher & Sons Paint Co., Inc.	6.00
Klumpp Motor Co.,	110.59
Ralph E. Keller	17.50
Van Antwerp Drug Corp	30.87
Frank Stoll	7.50
Reiss Mercantile	116.90
W. F. Prior Co., Inc.	25.00
	<hr/>
	\$3017.02

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA, IN EQUITY.

Charlott Gertrude Schowalter, :
Complainant, :

v. :

Edward R. Schowalter, Preston :
J. Schowalter and Alice Elsa :
Schowalter, Defendants. :

Depositions of witnesses for the complainant taken on July 18, 1928, before Robert H. McConnell, as Commissioner, under agreement of counsel, returned herewith. *left out*

Joseph Pose, a witness for the complainant, having been duly sworn by the commissioner, testified as follows:

DIRECT EXAMINATION, by Mr. Harry T. Smith:

My name is Joseph Pose and I live in Baldwin County near Fairhope. I am living now within a mile and a half from where I was born; I have lived there all my life. I am forty-five years old.

I knew Dr. V. McR. Schowalter during his life. I had known him all of my life. He was my physician and my friend as well. Our relationship was very close. I belonged to the same Masonic Lodge with Dr. Schowalter. As stated, he was my family physician and intimate friend. I knew Dr. Schowalter during the time that he lived at Point Clear. I knew him before he moved to his home in Point Clear, that is, the house on the beach.

I am acquainted with Point Clear as a place. Point Clear is more or less of a summer resort. Mobile people go there, and some of them have homes, and a number of them rent homes there for about three months in the summer. There are quite a few people there in the summer, and hardly any one in the winter. The place consists chiefly of cottages on the

beach that are unoccupied in the winter. Property on the beach is not a profitable investment to hold and rent, the season is too short. Back of the beach is a sparsely settled country, farmers mostly, very poor people. Point Clear is practically deserted in the winter. There is a hotel there in the summer; a building, of course, is there all the time, but the hotel is only operated in the summer.

Q. Would you say that real estate there at Point Clear when improved, houses on the beach, could be made to more than pay taxes, insurance and repairs?

Respondents' counsel objected to the question as leading, and because the witness was not shown to be qualified to testify as to values.

Q. I want to ask your opinion as to whether or not residential property at Point Clear could be made to pay more than taxes, insurance and repairs?

Respondents' counsel repeated the objection.

A. In my opinion it would not be profitable to own property for rental purposes at Point Clear.

Witness continued:

I knew Dr. Schowalter during the life of his first wife. My acquaintance and friendship with him continued after the death of his first wife up until the time of his second marriage, and continued after his second marriage up to the time of his death. I visited his house after he married his second wife, the complainant, Mrs. Charlott Schowalter. I knew both Dr. Schowalter and Mrs. Charlott Schowalter intimately. They seemed to have gotten along mighty well, very happily together, was my observation from personal contact with them. I know that she was helpful to him. From my observation, she was helpful to him in a domestic way and also in a professional way, and he told me that she was very helpful to him in a financial way. I did talk to Dr. Schowalter about his wife, as to whether or not she had been a good wife or otherwise. I do not

remember the date when I last talked to him on that subject, but it was just after a meeting of the Lodge at Fairhope. Dr. Schowalter and I came out of the Lodge together. That was shortly before his death. He said to me, "You are not in a hurry, are you, Joe"? I told him no, and he said, "Come on and let's sit down and talk a while," so we walked over and sat in his car. It looked to me like he just wanted to talk to some friend or someone. We talked over different things, about the town of Fairhope, and then he finally seemed like he wanted to get on the subject pertaining to his affairs, so in talking he mentioned how well he was getting along, that he had had a mighty hard time in his practice over there as a doctor, that it was a sparsely populated community around Point Clear but now he felt like he had got over the worst of it, and said that he was getting along fine and was well pleased. He mentioned his wife, and said that she had been a lot of help to him, had cooperated with him in every way, helped him to save, and helped him, as it was conveyed to my mind, to make money, and that he had arranged his affairs so that it was really a whole lot off of his mind; that he had made a will and had fixed things in the event anything should happen to him. He spoke of a man of his build and physique being uncertain of life, and for that reason he had made a will and that he had fixed everything so that if he died his wife could handle things. I knew who he was talking about, that she could go on with educating Alice. That is his daughter. He wanted to give her an education, and said he had things so fixed that Charlott could just go on and do just as she wanted, and educate the girl. He also mentioned his sons, that he was proud of them, that he had given them an education and that they were doing well. That is about the substance of the conversation.

Q. Did he say whether or not he had left his affairs so that his wife could dispose of his property as she saw fit?

Respondents' counsel objected to the question as leading.

V
A. He said that he had fixed his will so that at his death his wife could do as she pleased with everything that he left, because he wanted the girl educated, that was one of the reasons, and the boys were doing well, they were grown and he was proud of them, they were doing fine, Preston and Ned.

Witness continued:

I myself had observed before this conversation a change in his financial success after leaving Point Clear and coming to Fairhope. I noticed that Dr. Schowalter looked happier and looked more prosperous. He was dressed better, he drove a nice automobile, and his general appearance was that of a very prosperous man. At the time of this conversation he expressed a considerable degree of affection for his wife. I did not during this conversation make any reference to my personal affairs. Dr. Schowalter and I were intimate friends and we talked and chatted nearly every time we met, unless one of us was in a big hurry.

CROSS EXAMINATION, by Mr. Max Rogers:

V
I do not remember the date of the conversation with Dr. Schowalter about which I testified on direct examination. It was not so very long before Dr. Schowalter died. It was more than a few days before he died, but it was not more than a few months. It was some weeks before he died. I do not know how many weeks. It may have been a month or two. I am not clear on the time. I do not recall that he said anything about a disposition of his property made in his will in event of his wife's remarriage or in event of her death. I do not recall that anything was mentioned about her marrying or what would happen if she married. I do not remember that in this conversation

he discussed with me the disposition of the property which he had made by his will, in the event of his wife's death. I do not think he mentioned this. I do not remember that he mentioned anything about any provision he had made in his will in the event his wife died or remarried. He told me that he wanted his daughter to obtain a good education. Since you (Mr. Rogers) have been questioning me, I have been trying to think, and it seems to me, if I remember correctly, that he did say something to the effect that if there was anything left at her death, it would be divided equally, or something to that effect. It seems like I have some faint recollection of something like that being mentioned, but I am not positive. It seems to me there was something mentioned like that. It seems to me there was something mentioned, in talking about the will, to the effect that he had it fixed so Charlott could use the property or dispose of it as she saw fit, and if there was anything left at her death it would be divided among the children. I am not positively sure about it. I do not know as I would want to swear to that, but it seems that I have some recollection in my mind that there was something mentioned about that. I remember very distinctly that he said that he had made a will. That is what he seemed like he wanted to talk about, and he said that under his will Charlott would have absolute authority to do as she pleased with any property which he left, and it seems to me that in talking he mentioned that if there was anything left at her death it would be divided. I am not sure, but it seems to me there was something like that in the conversation.

As to how long ago it was when this conversation took place, I can't remember just when the doctor died, but it was sometime not so very long before his death. I do not remember whether it was in June when he died. I know I was one of the pallbearers, and I know we were all shocked over

his death, but I do not remember the month. In discussing his will, he mentioned his two sons. There were only two living at that time, Ned and Preston. He spoke of the boys, said he was proud of his two sons, that they were doing well. He mentioned their education. He said he had raised the boys up and educated them and they were doing well. I do not think that I could say that the boys had educated themselves. I think that Dr. Schowalter was a man who thought an awful lot of his children, and that he did everything for his boys that he could. I do not think that it is a fact that the boys were self-educated. Dr. Schowalter sent the boys to school. He sent Righter, the third boy, to the Daphne Normal School, and the boys attended the schools that he was able to send them to. Righter was working for Mr. Hulbert, but I used to take him back and forth on my boat to school. He did at one time work for Mr. Hulbert in a store. I did not know of any one else paying for the tuition of the boys except the father. After they got grown and went away, of course if they got any education then they paid for it. I do not know as a matter of fact that Dr. Schowalter paid for their tuition; that is, I did not see any of the checks or money paid. That is my assumption, that the doctor paid for their tuition, as a fellow would assume in living in a community and watching children growing up. The children worked after they grew up; when they were small, I am sure they were not working then. I think Righter did sell newspapers when he was small. All three of them were very industrious boys.

My recollection is clear concerning the conversation that I had with Dr. Schowalter right after that Lodge meeting. There may be some parts of the conversation that I cannot just recall at the moment, but I am very clear on the rest of it. There may be some parts of it, in a lengthy conversation of an hour

or more, that I cannot remember, every word in detail.

I have not read Dr. Schowalter's will since his death. I have discussed it with Mr. Smith here, the attorney for Mrs. Schowalter. He had me in his office one day and asked me some questions pertaining to this affair. Mr. Smith sent for me. I do not remember that at that time Mr. Smith told me anything about the provisions of the will. He asked me about the same questions that you all are asking me now, along that line. No, I do not think that Mr. Smith discussed the conversation that I had with the doctor, he presented to me many of the problems that are presented in connection with this contest of the will, the difficulties with which Mrs. Schowalter was confronted. He sent for me to come up here, and he asked me my name and where I lived, and so on. He did not tell me anything as I remember in connection with the will, because he got me in here and asked me questions, asked me how long I had known Dr. Schowalter, and about what he asked me this morning, and I asked him if that was all, and he said yes, and I got up and left. I did not hear any more about it from him or anyone else until I got a letter from Mr. Smith to be here today, and also got a letter on the same day from Mr. McConnell (the commissioner) telling me the same thing.

Dr. Schowalter did not tell me in effect, in speaking of Mrs. Schowalter, that at her death or remarriage the remainder of his estate was to be equally divided between his children, Edward R. Schowalter, Preston J. Schowalter and Alice Schowalter. He did not tell me that. Dr. Schowalter did not say that that was the provision of his will. He did not say in effect that his will provided that at the death of Mrs. Schowalter the remainder of his estate was to be equally divided between Edward R. Schowalter, Preston J. Schowalter and Alice Elsa Schowalter. He did not mention those names. I am not positively sure, but it seems to me

there was something said in the conversation by the doctor that at his wife's death what was left, if anything, or something to that effect, would be divided equally among the children. I think I have a recollection of that part of it, but he did not mention Ned or Preston or Alice in that way. He said "the children", and I took it for granted he meant his three children, his two sons and a daughter.

CROSS EXAMINATION, by Mr. Allen:

I know when Dr. Schowalter died, but I do not remember the date, or even the month. It seems to me it was warm weather. Whether it was in the early spring or late spring or early summer, I don't know. It was about two years ago. I guess that would make it in 1926. I do not know the date of his will. I do not know anything about that will except what he told me. As to the market value of property at Fairhope and Point Clear in 1926, it seems to me there was a kind of little boom in selling at that time. There had not been much of a boom the summer before. I do not remember exactly when the boom started, because I did not sell any property. I don't remember whether it started along in the spring of 1925. I know the Stone property. I remember the time it was talked that the property had been sold. That was the time the boom was on. I had a lot of conversation with Dr. Schowalter during his life. We were very close. I do not think he ever told me what he intended to do with his real property. We used to stop on the road and talk whenever we met. He was one of the best friends I ever had in my life. We always chatted about different things. I can't remember whether we discussed the boom any or not. Dr. Schowalter sold off some of his property before he died. I never heard him say that he would like to sell it all off. He sold Mr. Albert Bush part

of the property. I do not know that Dr. Schowalter put the title to the home in Fairhope in Mrs. Schowalter's name. He never discussed that with me. I do not think that he ever told me he had given his wife a deed to the Fairhope property. I do not recall whether he did or not. I could not say where Miss Alice Schowalter was in 1925-1926. She had been going off to school, been sending her off to school. I would ask him about Alice, how she was getting along, if he had heard from her, and I always asked about the boys, would ask him where they were now and then.

There are two boat companies running boats between Mobile and the Eastern Shore; in fact there are three. I operate a boat between Mobile and Daphne. Mrs. Schowalter does not own any stock in my company. I do not know whether she owns any stock in any other boat company. I never heard it stated. I do not know whether she owns any other property.

I do not remember discussing Dr. Schowalter's will with several people during the last two years. I do not remember discussing it with anybody. I may have discussed it in my own home, may have told the folks about ^{it} ~~it~~, maybe the next morning after the doctor had told me, but I do not remember that clearly. I do not tell all of my business, everything that everybody tells me. I do not remember discussing it with anybody. I do not remember clearly whether or not I have discussed it with Mrs. Schowalter since the doctor's death. It seems to me like she did mention something to me about the will, but I do not remember just what the question was. It seems to me I talked to Mrs. Schowalter on two or three occasions, and it might have been on one of those occasions there was something mentioned about the will. I do not remember the extent of the conversation. I am pretty sure it was not over once that the will was mentioned.

As to whether my recollection with reference to the conversation that I had with Dr. Schowalter after the Lodge meeting, about which I have testified, is any clearer than it is about any of these other matters I have been asked about and concerning which I have said I do not remember, I would naturally remember the conversation about the will. There are lots of people who have talked to me about things since then that I do not remember anything about. I said I would naturally remember about the will because there is something unusual in a man coming and just telling a fellow about a will. That is something a fellow does not stop and tell you about every day, and it was unusual. Folks don't always tell about wills. It was so unusual that it caused me to remember it. The fact that he talked to me about his will was an unusual thing for a man to do with another, and I appreciated the confidence he had in me in telling me,-- otherwise he would not have done it. No, I do not remember that Mrs. Schowalter since her husband's death has come to me and asked me whether or not I knew anything about the will or had any conversation with Dr. Schowalter about it prior to his death. I will answer that by saying no, she did not. She did not ask me that question. I do not know how she knew that I knew anything about it. As to how I came to be called up to Mr. Smith's office, I think it must have been from a conversation I had some time back in regard to the will. My recollection about that conversation is not clear. I did not say positively, but I said I thought I remembered some conversation about the will, but I do not remember just what the questions were they asked. I do not remember any questions that Mrs. Schowalter asked. I remember telling her about what the doctor told me about the will, in substance. As to whether Mrs. Schowalter called on me and asked about it or I called on her and told her about it, I do

not remember how that was. I used to stop by quite often, used to stop by in the doctor's life time and since his death. I do not know how often I stopped by there. I have been there three or four times possibly and talked to Mrs. Schowalter. Her husband was one of the best friends I had, and I wanted her to feel that I would do anything that I could for her, if she would call on me. Why, certainly, I was always willing to go the limit for Mrs. Schowalter, do anything I could for her and help her out.

I do not remember how the conversation with her came up about the will. I am positive I had only one conversation with Mrs. Schowalter about it since the doctor's death. If I was passing and saw her sitting on the gallery I would run in and speak to her and chat, a few minutes. I do not remember how many times I have stopped by there. I do not suppose it is more than three or four times. It is not a fact that I have on numerous occasions discussed Dr. Schowalter's will with a number of people besides Mrs. Schowalter since the doctor's death. I do not remember discussing it with anybody. I will not say that I have not discussed it with anybody; I may have discussed it with my people at home. I do not recall clearly, but I imagine I did.

(Examination by Mr. Rogers)

Dr. Schowalter and I were both members of the same Masonic Lodge. There are two branches of Masonry, one is the York and one is the Scottish Rite, but they are both branches from the Blue Lodge. The Blue Lodge is the Master Mason, three degrees, then a fellow can go either way he wants, or both. A Scottish Rite Mason is requested to make a will. I do not know anything about the York. I never went that way. I went the Scottish Rite way and the doctor went the York Rite way. I know that in the Scottish Rite at one stage in the proced--

ure you are requested to make a will, but I do not know about that in the York Rite. I do not think that it is rather more or less of a general matter for Masons of the same Lodge to discuss their wills with each other. I have never discussed my will with anybody.

Dr. Schowalter did not tell me what he had done with his will. He conveyed the idea to me that he had drafted the will himself. He did not mention getting anybody to write it. He said he had made his will or written a will, something to that effect.

RE DIRECT EXAMINATION, by Mr. Smith:

I said that I was one of the pallbearers at his funeral.

RE CROSS EXAMINATION, by Mr. Allen:

I do not remember who asked me to be a pallbearer, whether the Master of the Lodge asked me, or whether it was Mrs. Schowalter, or whether it was her sister or one of the boys, but I was a pallbearer. I know that.

I hereby certify, That under and pursuant to the commission attached to the foregoing interrogatories, and after giving due.....notice as.....required, of the time and place of taking the ~~respective~~ depositions of the ~~several~~ witnesses above named, I caused the said witnesses, who I personally know to be the identical persons mentioned in said commission as witnesses, to come before me at the time and place mentioned above, and ~~they~~ ^{she} having been, by me, first duly sworn to speak the truth, the whole truth and nothing but the truth, in answer to the several direct, cross and rebutting interrogatories attached to said commission, testified as set out in the foregoing answers.

I further certify, That the answers of the ~~several~~ witnesses to said several interrogatories were reduced to writing by me as near as might be in language of the witness, that the answers as written were then read over to the ~~respective~~ witnesses and by her signed in my presence; that I am not of counsel or of kin to any of the parties to the cause, nor am I in any manner interested in the result thereof.

David G. Wood
Commissioner.

V. McR. Schowalter, M. D.

Fairhope, Alabama

numbers in nose and throat work. I look an expert
Salpingotomy on hand to do well soon. Then
people will be encouraged to come in here for their
surgery. Last year the receipts from the Mobile Office
was \$900⁰⁰ Rent 540⁰⁰ from maintenance
\$60⁰⁰ or 100⁰⁰ net for the year. ~~But~~ this year
but not sensational. first 3 months of 24 made more
than for corresponding time of previous year growing
slowly. It would be better if I could be there all
the time which may the God send grow. At one
had some wonderful results. 3 doctors in Mobile
in sympathy - rest knowers no at doctors - Goude's going
sympathetic. other antagonistic but it is growing slowly
but steadily. No's prospects in Mo. are improving, chance
that he may get a position on attorney General's staff
much is the word. Nell Curran was married
last night - Hope she is happy. am sure that
her future being settled will be a relief to her
parents as poor old Buel's earning capacity
is small and precarious am anxious to
see how William turns out. they are

McR. Schowalter, M. D.

Fairhope, Alabama

Feb 4 - 1929

Exhibit CDD Number 4
Lillie B. Strauball
Commissioner

Fairhope Ala

April 23rd 1929

Dearest Bessie:

I have some loopy time
 this. For so we will have a little photo
 with my boy girl, I always enjoy your letters hugely
 would my dear that when we will have most a real
 doctor if he lives a thousand years - will never be able
 to furnish the true spirit or essence of the profession
 He is "yellow" to his "axis cylinders" and a yellow man
 never makes a real doctor. To think of any thing in
 the shape or likeness of a man being able to think a doctor
 and probably old enough for his father would to think of
 in the language of the famous Jack Billings, I don't
 know "there was sick" It is a safe bet that he will
 never strike a lucky man of his own age or weight.
 Well we had the pleasure of having the boys with
 us for Easter. We hoped Pro had come to stay until
 Tuesday but a business engagement made it
 necessary for him to leave Sunday Evening but he
 is looking better than ever now than the picture
 of health. I am enclosing a bill from Lewis is it
 O.K. Paid the bill paid. I have not been able to forward
 the \$2.50 for the dentist or pay the other one yet
 seriously considering employing an assistant

Feb - 4 - 1929
Exhibit 688 Number 2
Lillie B. Broussard
Commissioner

V. Mc R. Schowalter, M. D.
FAIRHOPE, ALA.

May 22 1925

Dear Boobie:

We received your letter today. Cheer up
Seyon Boobe behind the blow as the sun still shines
and, as usual, may break out any moment in
full brilliance. We will manage some way
to get you home. I will have your review
through examination, you probably have a high photostatic
index or percentage in the way of nerve disease - simply
sout worry. On Wednesday I went to Mobile - La to
on May 7 1924 signed an agents contract with the
Realty Investment Co to sell our Atlanta frontage on Bay
for 6000. Last September Mr Ford writes - that unless
it was sold by now we did not want to sell. I did
not have a copy for my guidance and there was a little
"figger" in it which called for "10 days notice" in
writing. Well several big things are brewing County
property to jump in value - so the stock acted in
bad faith by plotting negotiation. at the old price
when 10 days or so prior to the 12th I had repaid a
30 day option at \$10,000 fall 20. and it cost me
just \$1500 to kick him loose, 1500 lawyer fee
and 30000 "commission" The stock knew value had
gone skyrocketing and thought he could mulch me in
the interest of the buyer - allow him to sell for 10000
and make 5000 more Commission instead of giving me the
4000 bonus or reward - In filling five filled
blue that 300. looks like 30 cents if I do not know

V. Mc R. Schowalter, M. D.

FAIRHOPE, ALA.

Voices have gone up so we could feel out now
in Volusia at a 100% increase over previous
price. I did not do a thing but go out and
get options on Coast property which will net a
bonus + Commission - just to keep that Attention
from getting a finger in the cream pitcher.
I'm jumping on his trail, I'll never make
a dollar over here if I don't get a wife in first
and I am doing it. So I'm feeling fine. That
300 looks now like a "patch on a dollar shirt"
every minute. Just about time the Boat landed
a machine hit Spot - just shaved some hair
off his eyebrow - he tore out and I moved around and
could not find him got up until I am writing for
him - yesterday morning or about 7 am he came
in hot spent the night in a puddle of water and
was as cheffy as an English Sparrow - just minus
a little hair off an eyebrow which will grow out in a
week - mother of mine about "pick about" over it
I was sure we would never see him again -
After licking me all over he flew up stairs, jumped
on mother bed and crooned like a satisfied baby
with a tummy full of rich milk - Well he
is cool of the udder - Stays in the house as much
as he pleases - Sleeps in the auto if he wants to
and does just as he darned pleases.
Hoping him come back OK was like getting a fat

V. Mc. R. Schwaller, M. D.

FAIRHOPE, ALA.

Legacy, for I ought to bring 1000 in C. C. but
if I wouldn't get him - I've enough to go to the
legislature - I don't worry sugar babe - "Keep on hitting
the ball" - Keep up your "batting average"
nothing like it for maintaining "moral"
Yes Sugar Babe we will manage some other way so don't
worry. but you have been "on the ground" for
5 years and it will take 90 days to get you
"in tune to concert it" - I will fix you some other
I don't know to bless you. We may not be able to quite make
it by June 15th but we will make it somehow
some way. But get the 90 days. - You need
it, you are suffering from nerve exhaustion - and
need a long rest with 10-12 hours sleep and plenty
of good, wholesome - breasted food for which
you will get at home - Another thing to
not give up the ship service, I want somebody
to prove my instruments - to who will make
good use of them. So remember when things look
darkest - the light is just getting ready to "break
the clouds", I am in a bit of a quod say, I want to
go to Mobile but am in doubt as to whether
it is the best thing to do at 56 years of age and
collecting 5000 or better here and it would take me
some time to build up to that figure in Mobile
So I am finding it somewhat difficult to decide
just what is best - despite of now ^{the} backwards of years

V. Mc R. Schwallier, M. D.

FAIRHOPE, ALA.

The main thing is quit worrying. I will get busy
on the money proposition and send you 100 or
50 check - So you can count some money on starting
home on June 15th. Will get busy and run
up the "Spondulies" just don't want any sugar
Babe to worry, just ask for 90 days - a good
rest will make you feel like stepping on the
nose - Am going to write for a Virginia Cata-
logue - I am thinking may turn up yet - So
just keep on hoping we never know
what is just around the corner - just ought
to be a fairy God mother as a hobby man
you will never know how much pleasure
you gave your Dad when you wrote that
you intended to be confirmed in my Church
that was one of the things he been praying for with
all my heart, perhaps, mother will be "next"
wouldn't that be swell? I must tell you
about a most interesting case - Elizabeth Broad-
burg (ma. Astor B Strong) was confirmed on April
16 - on 19th she had a hard chill - it was then
learned that she had a suppurating toe nail
which was concealed until the nail was pulled - no
surprise indications and the practical nurse (Mrs. Tiffany)
knew it 4 weeks before I came and did not realize
its importance - well I was surprised and made

V. Mc R. Schowalter, M. D.

FAIRHOPE, ALA.

6 "smears" stained and examined - *malina* negative
 Staphylococci by the thousands - groups of 2, 3, 5
 Diplococci (*Diphlococcus* *binucleolaris* meningitidis)
 got a small dose all when I observed that the
 Poccie were developing an aggressive function
 So I got her 20 cc intravenous injection of a 1%
 Guttan Violet Solution - 2 hours later
 received normal one week when her husband
 without my permission took her on a 11 mile
 auto ride, she had been too twice to high
 I held her Aunt's carefully & slowly as I did
 in it want her shaken up - She had a chill
 as soon as she got back the shaking had proved
 loose some myelocytes Cocci into the cir-
 culation and they got busy right in our camp
 104.8 - got busy again. first the practical
 nurse got a first-aid nurse and did
 my work over again - The toe and vaginal smear
 organisms were identical which proves the meta-
 static theory - All right old Taylor Babe we
 will leave you starting home on the 15th of June
 but get the 90 days We can picture so many things
 after you get here - Having the old Blue jacket
 it will have a new dress on when you get home
 dearie Had lots more to tell you but must quote
 "Smoke up" Pipup - Stop working - God is still good
 and sunshine beautiful write
 Love
 D. J. [unclear] Dad

V. M. R. Schowalter, M. D.
Fairhope, Alabama

Fairhope Ala
December 17 1922

Feb 4-1929
Exhibit to D.D. Number 3
Lillie B. Scandall,
Commissioner

Sweet Sugar Babe:
Your letter of 14th
on which you remembered Dads 5th melon
was received. Today and was thoroughly enjoyed
although it did not give us the information we
desired most, detailed information about our baby girls
We are pleased to learn that you are feeling better
in the letter accompanying the Fluoroscopic Stereo-
scopic report you omitted to say how much weight
you had lost and how long your temperature
had been elevated for. How you feel any
stiffness of the back in Lumbar or Sacral
Spinal Region? and if so how long? The broad
shadows indicate envelope of muscles in that region
which accounts for Simms's expansion. However
but you must take exceptional and specific care
of your health. It is possible to induce recreation
and complete restoration to health, it is also
possible in the absence of meticulous care.
For I B to prosper, you will now to give up all
social amusements which keep you up late at
night such as dancing, a little thoughtfulness

V. McR. Schowalter, M. D.

B

Fairhope, Alabama

or undue exposure might develop Chronic Bronchitis
with TB as a result - and your Dad would
rather charge a battery of machine guns with
a China berry for you than have that boy
run to his Sugar Babe - frankly, Honey that report
has scared the light out of my heart and filled
it with shadows. From what you wrote
me I have the highest respect for and confidence in
Dr Morris & Hahn and both wanted to know
requesting me to notify me if my interpretation of
that report is correct - if it is and he can not have
you "conditional" light work and the best dieting
the Hospital affords, I can not pick the care of my
heart in that climate - If satisfactory arrangements
can be made as to conditions mentioned, I know
of no one whom I would rather have supervision of your
health than the Doctors mentioned. Otherwise your Dad
gets on the job himself - I know the technique
of Fluoroscope but lack the equipment to make them
and to keep up with your condition these examinations
should be made from time to time in order to know
just how you are progressing. I am looking

V. McR. Schowalter, M. D.

Fairhope, Alabama

S

as to whether your loss of weight is secondary, the
result of putrid or not. There are points in the
differential diagnosis of Thoracic or pulmonary con-
ditions which are extremely baffling. Pleurisy or
Broncho pneumonia being general, a mixed infection,
renders it extremely difficult, at times, to differentiate
it from pericarditis, and pericarditis or, pericardial
condition which are not pulmonary although they
may appear to be. R. R. & Co. Etheris nitrosi. P. P. &
Ammonia Arom. Sodium Bromide each 103. Sugar
mint water q.s. 3ij. Mix and dist. S. S. & Co.
Every 3 hours in 1/2 glass water. In some cases
where there is connective tissue between the lobules
"interlobular" the substitution of Potassium iodide
for the Bromide makes a nearly ideal combination
frequently and accuracy best to start out with R. R.
given after taking several bottles (2-3) make the
change to the Iodide. which is well borne by the stomach
I am today the first one that must go on I surround
a dose now. Honey I had a long distance
Call Wednesday and please sending you a poached
broiled Quail. So I took Betty & Son with me and

V. McR. Schwaller, M. D.

Fairhope, Alabama

6

for a wire from Dr Morris almost any hour
know but the wires were down from Mobile all
day to day. I know not, in my 54 years, have care-
lessly or intentionally per se, or discourteous to any woman
but, I must want to see, or be near, the initiator
of the sex who was responsible for your neglect last
winter, that is a wish, couched in the solemnity of
prayer and if she knew the nature and depth of
my feelings she would pray for the same thing and
pray hard. Mother will ~~regain~~ ^{regain} your ^{wool} ^{counter}
made over, bought your gowns and bloomers just
also material for a warm lounging robe to wear in
your room. Why not put dimensions of your
windows so she can get your curtains and other
"do furnishings" to make your room bright and
comfy. See Dr Morris on subject of "conditions"
ask his advice - Perhaps he is a Mason, if he is tell
him you are a Emperor's daughter and on that basis
ask him what he thinks is best for you to do, he will
advise you as if you were his own daughter. Mother
and I have no X-mas spirit left we are so anxious
about our own body so do write us fully

V. McR. Schowalter, M. D.

Fairhope, Alabama

E

Started from Albert Melsons, waded to Bishops through his fields across Section 16 into 13 - out around the woods slope then north across 16 into 9 then west one mile then south to Bishops when I reached Bishops rail fence had to break out in a dough and exclaim I'm damned if I'm not Polefied - I was so stiff after that period I was so stiff that when I straightened a leg to throw it over the fence I could not flex it again for 15 to 20 seconds and was not even able to sit except in a chair. I planned to do that if I had gone a day or two further north that I would have found 3 covies along Coe hills pasture fence - I'll keep on trying until I trade oil. How about a dozen covies to send through Dutch Grass. When I send them be sure to keep them for you & "Bunny" understand? Am going up to Reelfresh too and get a bunch up there, Am driving Inston's coupe, the Buick is in Mobile getting a new dress etc. How if I get in Mobile 8 of them Phony Covies expect additions after the holidays - Mrs Rush is ever so much better has improved from her first few days. I am now my little and feeling ever so much better - and is so appreciative. We are having lots of Dengue

V. McR. Schowalter, M. D.

Fairhope, Alabama

F

fever and the Flu again - Then one case gastric
in type with pulmonary secondary complication - In fact
chief focus in pharynx and gall bladder - an extremely
interesting case - Had to go way back among the older
writers to get the etymology of the term Dengue - I have
always been more interested in Pathology - Those people mean
"what's in a name" It is curious how the most modern authorities
ignore these questions - Austin Flint is still the master
of sympt^{mat}atologists - pursuing DeCosta & Howard, Strong & Long
write me all about yourself, remembering that you
have a dad down here proud into deers and parents about you.
Dad still misses you, would not have any thing to
do with me after you left except under compulsion
always went, by choice, to Mother - He actually wept when
he realized that you were not coming back soon - The house
is his and he permits us to occupy it with him stuffed
out in front of the fire in the living room now - About a
week ago Mother was saying "if I don't hear from Alice I will
"wire" to Bunny - Just two nights before your letter came
she woke up saying that she had dreamed about you
and cried until her bed shook took me a long time
to quiet her - Then your letter came and she had another

V. McR. Schowalter, M. D.

Fairhope, Alabama

G

expression of grief; I had to "take mine" about my own
her account but I could not lie quite glibly enough
to keep her from seeing that I had taken on a "Navy
shade of blue". So do write me anything not leaning
out a single thing. Do not omit answering my question
about a course of Vertebral Stiffness. Sent you a
little check a day or so ago, hope it has reached you.
Things are quiet here, plenty of work, but little compensa-
tion. However things are budding in a material way
not blooming but budding and if it were not for our
worry about our sugar bake we would be quite cheery
if not real "Coon". Remember my word I have written
about the "Cott" of yourself and inquire through Miss
about "Conditions" mentioned. I am wondering if some
one's malice was responsible for your change of work
and hard work. Think I see Dr. Morris' hand in
changed conditions. Want to enjoy the privilege of thanking
him in person for his kindness to my boy just, but
God knows that I never want to see the "other one".
Mama is calling me to stop and come to bed. So I guess what
the Lord says will have to go, good night and my best
and keep my sugar bake
Dorothy D. S.

2
V. McR. Schowalter, M. D.

Fairhope, Alabama

The money I lose from being in Mobile 104
days out of the year will go a long way towards
paying his salary. I am seriously handicapped here
if poor CR is about "alvin" will soon "blow up" he
also looks brown - "The Road" looks guts - gacs
all to pieces in an emergency, to such an extent
that I am afraid to risk him in an operation
besides, Loyalty is an unknown quantity to
him - I could do quite a bit of surgery if I had
an assistant on whom I could depend and
want to get away from here as soon as pos-
sible and there is no one here to whom I care
to give my professional endorsement to the
extent of turning my practice over to when Dr.
Shore a Young Hopkins man in civit
and how whether him on the subject but I
not had time to hear from him on the subject
of looking for a letter from him any day now. If
we can make satisfactory arrangements will take
him on I will then be entirely independent of
the other men and can take on lots more surgery
of the major type, then people will come in greater

V. McR. Schowalter, M. D.

Fairhope, Alabama

f

Making every sacrifice to get here through
Wright's School - I wrote the Director of the
University of Cincinnati for your "credits" and
enclosed stamp for reply but have not heard
a word. Always be sure to calculate how much
financial support you will need for your journey to
Columbus and home - If possible, mother will
go up to see you in your hop and gown
and be sure to get a properly certified list of your
Credits from the University Authorities
~~For~~ ~~her~~ brought home a nice box of Whitman's
which she sent to you and I am sure you will
enjoy it. We certainly enjoyed the boys' visit and we
were all wishing you were here - Give our love to the
Barnes when you see them - It is after 11 PM so
must close with a wave of love and a big
kiss for my baby girl. Write soon
Daddy
Dad

Exhibit 688 Number 5
Feb - 4 - 1929
Sally B. Brandell
Commissioner.

New Orleans, La., 9-16-26.
3850 Napoleon Ave.,

Dear Mama:-

Have been wondering whether or not you had made the trip to Virginia and whether or not you had yet returned; would have addressed you ere this but by the time I returned here and got things straightened around, figured you were away.

Assume you have not had any difficulty in getting Papa's accounts properly lined up; in this connection thought possibly you might want to include the small indebtedness in money that he owed me.

This was to the best of my recollection and belief about \$130⁰⁰ less an item of \$12.89; the debits being 50⁰⁰ that I wired Alice for by fee home on one occasion and 60⁰⁰ that I loaned him to pay taxes about the year 1916 and about 20⁰⁰

made up of small items such as a right angle splint for broken arm, bathing suit and shirts from Finens Clothing Co. Don't know what are legal requirements in order to substantiate a claim against an estate and it might be

er me in the matter. Understand from Ned that Judge Stevens has been away for over a month and guess will hear before long now just what will be Mr. Stevens' advice and opinion. I don't know any law but don't see from common sense why this matter can't be handled amicably and in fairness to all concerned.

Will appreciate very much if you will see about the small bill of mine, as I could use it to advantage this month in paying the release fee to start and about 35⁰⁰ for new books. - This is of course in event it won't depress you or Alice.

Also will you please give me Alice's address. want to write her in connection with the Medical School matter; think it would be wise for me to give up the idea as can't see the means in sight to complete the course.

Love and regards

Treston

P.S. By the way, did you get any "dope" on the Spanish War pension matter? Can I get anything on this for you?

better to leave out the above debit of 20⁰⁰ and
only put in the 60⁰⁰ and 50⁰⁰. Assume
you can obtain good advice from Mr. Smith on
this as I wouldn't want you as administrator
of Papa's estate to pay an item that wouldn't be
homologated by the Courts and cause either
yourself or me any trouble and give anyone
grounds for complaint. Another phase of
this too is that if putting in this bill will run
you short anyway of funds I don't want it to
go in but will to the contrary release the debt as
~~but I saw~~

~~I have been wondering if Mr. Smith has~~
arranged so that the estate could be handled
securely and so that none of it will be sacrificed
and give you a competence without diminishing
the principle. Am sure that he can arrange
the thing in an amicable manner so that no one
will ever have just cause for complaint or hold
hard feelings towards anyone. Sincerely hope
that it won't be brought into the Courts. Feb, it
seems has employed Mr. Tom Stevens to represent
him in handling with Mr. Smith, and I have
asked my good friend John Allen to speak for

RETURN AFTER 5 DAYS TO

Schwartz, M. D.
FAIRHOPE, ALA.



Miss Alice Schwartz
Nurses Home Cincinnati
General Hospital Ohio

TO: MRS. CHARLOTTE G. SCHOWALTER
FAIRHOPE ALABAMA

Exhibit 1

Each of the following items represents money paid by the claimant Mrs. Charlotte G. Schowalter, for the use and benefit of V. McR. Schowalter, at his instance and request, by way of a loan. Each payment herein mentioned as having been made to persons other than to a bank represents the payment by claimant upon an account due by V. McR. Schowalter to the person named in the item. Each payment to a bank or upon a note represents a payment on a note of V. McR. Schowalter, and all payments of taxes were upon taxes assessed against V. McR. Schowalter:

Feb 23, 1923 - Funds transferred to V. McR. S. Acct loan	\$42.00
Oct 23, 1923 - Paid Maybley & Carew Co. Acct M. McR. S.	6.00
November 13, 1923 - Paid Style Shop Acct. V. McR. S	8.50 ✓
November 21, 1923 Paid Town Taxes, Town of Fairhope 1922	28.68
November 24, 1923 Paid H P Kamper, Grocery bill V McRS	7.81
Dec 17, 1923 Check Alice, School Expenses	16.50
Dec 25, 1923 Check Alice School Expenses	2.00
Jny 28, 1924 Check V. McR. Schowalter Loan	15.00
July 24 and 31 Style Shop account payments V McR S	57.00 ✓
Sept 16, 1924 Smith Kasson Acct Cin Ohio Alice	100.00
Sept 16, 1924 Baldwin Co Bank V. McR. S. June & July Notes	164.90
Nov 22, 1924 Style Shop Acct V McR S	27.50 ✓
Nov 28, 1924 Check Drawn on my account by V McRS	450.00
Dec 12, 1924 Frank Stoll Acct Paid Acct	11.50
March 4, 1924 Bank of Fairhope Note Due	58.00
Jany 4, 1925 Klumpp Motor Acct V McR S	15.00
Sept 16, 1925 Preston Schowalter, Loan to V McR S	100.00
Oct 5, 1925 Check Drawn on my Acct by V McR S	48.10
Oct 29, 1925 Walkover Shoe Company Acct Paid	8.00 ✓
Oct 29, 1925 Style Shop, Acct Paid	49.50 ✓
Dec 3 1925 Bank of Fairhope, Note Due	90.00
Dec 5, 1925 First National Bank, Note Due	151.00
Jsny 8, 1926 Bank of Fairhope, on Note Due	25.00
Feb 10 1926 First National Bank, on Note Due	150.00
March 5, 1926 Bank of Fairhope, on Note Due & Int	31.00
March 5 1926 Bank of Fairhope on Note Due & Int	131.79
March 18 1926 Klumpp Motor V McR S	1.25
April 10 1926 Lena De Phillippi, Work McRS	3.50
April 18 1926 Klumpp Motor, V McRS	5.00
May 13, 1926 Walkover Shoe Store Acct V McRS	4.95 ✓
May 13 1926 Style Shop Acct V McRS	42.50 ✓
May 6, 1926 Bank of Fairhope, Note Due	30.83 ✓
May 13, 1926 Walkover Shoe Store Acct V McRS	10.25 ✓
May 17 1926 Klumpp Motor Co V McRS Car	1.50
May 18, 1926 do & Change	2.00
May 31 1926 L. Wheeler, Repairing watches A&M	2.65
May 31, 1926 Town of Fairhope, Town Taxes	18.90
June 4, 1926 Bank of Fairhope, Note & Int	55.49
June 8 1926 Klumpp Motor V McRS Car	2.75
June 11, 1926 Bank of Fairhope, Note & Int	68.80
June 12, 1926 Bank of Fairhope, Note & Int	143.14
June 21, 1926 Klumpp Motor, V McRS Car	1.30
June 26, 1926 C.J. Gayfer Acct	56.03 ✓
	2245.12

Each of the following items represents an indebtedness due by the said V McR Schowalter at the time of his death but which has since been transferred, set above and assigned by the creditor to this claimant for a valuable consideration and is now justly due to the claimant, that is to say, the following amounts owing by said V McR Schowalter at the time of his death to the following persons:

The Sanitary Meat Market

10.70

Exhibit A

Nov 4 1923

My dear son; Your letter
 rec'd, could not get at your typewriter last
 week but Creamer has promised to call for
 it in the morning and I will ship it by express to
 153 East 10th St. New York the family furnishing
 50.00 of it was "bawars" as you recall and I
 was that amount when I was "fretting" the 200.
 was simply a stocking gift to enable you to get what
 you need for your office - The "Cable" was simply
 unessential - Preston will be at the office tomorrow
 but did not come last week. Alice will be
 delighted to hear from you this morning good
 and will go "in white" in February which will put
 her on the payroll at 80.00 per month until June
 when she finishes and takes her examination in
 Columbus, Ohio and comes home - Glad you got started
 now every thing good come your way, all best
 love, Howard
 son Quail - must see me in the house. Mother,
 Howard

Saint Charles, Mo.
Aug 26 1916

Elizabeth B

My dear Son: James & I
recent date to home and we were all sorry to learn
that you had been ill. We thought of you daily
during the watermelon season and we frequently talk
of you, Preston & Judie's early visits to the store for "hot biscuits"
when they are especially good and Mrs. Stattel makes them
perfectly for 3 days. Now we have had a crab & shrimp
picnic got my fish this am there is a water bucket
full of fine "crabs" on the store now for a "frank-a-
loga" wish you could be here to enjoy them. Preston seems
to like his new job fine. Yesterday was Alice's 15th birth
day she had all of her little friends to a marshmallow
roast and they all seemed to have a good time.
Monday at 2 P.M. will be the 1st anniversary since you
were sent to gladden the hearts of your parents and
brighten our home and I wish you to grant a liberal
amount of thought to the fact that you have always
been a joy and comfort to us. I sincerely trust
that your natal day may dawn bright and beautiful
and be in every respect an augury of your future
we would all be so rejoiced to have you with us soon.

hot day

that we might extend our good wishes in person
Do not forget that there will be joy in Heaven
on that day and especially remember the gentle, tender
little blue eyed mother who so proudly and tenderly
cradled you in her arms as a gift from Heaven on
that August day 21 years ago and who said in parting,
without disappointment to any, "be good to 'red Papa. He is
the first born and dearest of them all" always be true to what
she expected of and hoped for you. I wish I could send you
a substantial souvenir of the occasion but I can not,
just accept the little blue spot I sent you as a gift from
us all either as a contribution to your bank account
or for a "stick pin" or any way that will give you the
greatest pleasure. Rest assured dear son that you have
the best wishes of us all, our prayers ascend daily for
you and I hope your future will be as bright and
fruitful as the the blessing which your father sent
his first born and your beloved Jack. Improve
each golden hour for this is the hardest time and
I know that you will glean well, and that you
will always cherish your ideals and in all things

times but counting James his coming. It seems
 some damned idiot, years ago saw you boys
 wiping fishes down at Paint bluff, and made
 some remark about it which come to Guston's
 ears which none of us knew which caused them
 to have a long haul of any thing of that sort,
 "domestic help" they said were which done of us. ^{My} ^{mother}
 never would look and she had she known how
 he felt about it, told me she had no idea he had
 any feeling about such things. The way I look at it
 if this is Jesus and feeling badly and I am not sure
 of my own previous work I pitch in and help her
 in some way like putting a net carrying out fishes
 etc and think nothing of it. He will get
 over it some of these days. It certainly would not
 I always liked to see him coming and hated to see him
 go. Reason I don't think I will "be around"
 but a quiet while longer and like to enjoy the
 few pleasures I have left not the least of which is my
 children, nothing the matter with me that I
 know of except a growing for tobacco which I am
 soaking right along. Must write Alice a few

I desire happiness for my children a thousand
fold more than for myself. When I met
your mother I had to choose between just
happiness in poverty or a sacred existence and of
prosperous professional accomplishment and
materially above the former and Earth
holds no treasure which could compensate
me for the loss of Memories. When you
could have I will have had and anticipated
no great difficulty in proving found in the
administration of your great grand father's
estate, I wrote two letters which were
never answered to the proper official of
Fayette Co Pa - the Prothonotary - which corres-
ponds to our Judge of Probate - I will with
data we want you to go up and look over
the records - the funds for the trip will
be provided and it must be done before
Alice & Barbara come of age or within 2
years thereof or we will be barred, trust
will be shown in the administration and
we can recover if set in final bondages

be true to your better self - for after all this
is every man's first duty in life. What class
will you be in this session? I am so glad that
your way is clear for another collegiate year, did
Reps ever reimburse you for the expense which
his carelessness cost you? Bro Miller always
asks about you likewise Sister Victoria and Mr
Gazaway, he has been sent to New Orleans
this year. All join me in love to Bro and
good bye & may the Good Lord shower his choicest
blessings on you and ever hold you in the hollow
of His hand, write whenever you can
Devotedly
Father,

Fairhope, Alabama

Fairhope

April 16 1923.

Exhibit C

My dear Sam; I am ^{fairly} awash that I had been promised in my Epistolary duties to my first-born for weeks 5 or 6 at least and I had been "going to do it" almost daily. Winter is over now and Spring once more with us - Spring time always reminds me of the Divine Parable and "Let there be life", Every thing seems so sweet fresh and clean, Every thing so apparently Co-ordinate for the good of all yet the friction so different from the promise! I often wonder if I were to take my binoculars for another voyage into the Sea of Life would "buy my Poiopas" on the same terms? A question answered yes - since the true measure of a man's value or worth, lies not in Quercus aguifolium but in that of his service to his fellow man; I quit smoking a fat night since and my weight has jumped up from 10 to 12 lbs, A boat with my Lory machine is not to be prized at as she is a most precious Goddess and loathes to see her devotees look her face. It is a most sized job to "quit cold" and considerable of a shock. Mr Brooks had a promise

yesterday all of the Zander children except Lena came
over to spend the day at Dr. Edward and his family
he has gained 15 lbs since his return from
Rochester. He had a malignant Papilloma (Cancer)
of the head and had surgical Radiation treat-
ment - all I expect him to gain is prolongation
of life with recurrence probable inside of a
year. Still Henry Bay's four Law Stud. is a fine
man he is over and you will have an opportunity
to come home for a good rest, loaf and recuperate
Alice is working hard and she inherits Pennsylvania
from her dad as she is a wretched Correspondent
made 100 on her final obstetrical Examination
and she is getting through training and if
she works to take care of herself will be
able to get an institutional position, which
will enable her to make a decent support
Dutton is working very hard and his Superintendent
is up at May's now and last Wednesday
the homing sent another man to take his place
Dutton has been doing the work for several
months during Capt. Merrill's absence

Duston is one of the least trained business men I know of any where and there are "lines" in which he could easily make \$1000 a week the money he is making now - He has a genius for detail and organization and I know a little of business that I can not help him any with advice as to how to apply his qualifications to his own greater good - but he will come into his own with a rush one of these days - I see him in Mobile every few days, he has not been home since last summer. One week end when the Moon was in a box, those for money, she put her hand enough that day to be in bed, she had garden supper ready and was on her way to the Barber to get something in that line for supper and as she duston and I to set the table while she was gone, duston remarked something about not feeling like it, mama bore down eyes and said duston you dont seem to think any body else has any feelings - He would not come in to his supper and when we were eating went upstairs for his things and went up to Mrs Cross and has not been home since but we expected him

lines so I won't write much more, I had rather
Senior Experience in Life insurance, 2 years ago they wanted
to "re-insure" me that is issue a Policy giving
a premium 6 years in advance of my age on acct of
being too weighty. As however the prospect of my
application for 12 months because I had reduced
from 260 to 208 lbs in less than a year. So I
joined the Blood Cancer Fund which pays a death
benefit of 1⁰⁰ per member, which means about 1800
dollars. Our premium $1\frac{25}{100}$ for each death paying
5⁰⁰ we fine if members die. The money
is paid to your beneficiary before your remains
are hidden from view - quick action - Shrine
dues 10⁰⁰ per year a part of which goes to the Cripples
Children's Hospital fund - Request members on
Earth - Don't think I ever enjoyed any thing as much
as seeing the other fellows put through
The Shrine is the "Big ground" of money and
one is always sure of a good hearty laugh bounding
and cold from the perspective. Will you please
write as soon as you can. God bless & keep
you
Devotedly
Father

Exhibit D

My dear Sam: Your welcome
letter received and most highly enjoyed. Hope this
reaches you before you leave and I think it
will forward an invitation to Lucia Righetti's
marriage to a son Ellis, your Cousin Lucia. There
are many things difficult to understand in life
and morning does not give a clearer view
since the "Cloud" could be aptly described by
the word selfishness. Well Sam, I would have
sent you your expenses for a trip home had you
not planned your trip gladly. There is nothing which
more money could buy which would possibly
please me as much as the sight of my
first born. You must school your self to good
against Quixotism, "Potencia" has Commercial Value
decidedly - and I have long had the impression that
you had a real, vital interest out on the Pacific
Coast. fruitful effort in the form of accomplishment
is an Asset, get this idea firmly rooted and learn
to place a higher value on your self. You are
too modest and self unconscious, I would allow
nothing to stand between me and my heart's desire

June 9th 1925

Mr W. Schowalter
New Orleans La.

Exhibit C

My Dear Son.

Yours read and read with much interest. I want to explain my offer of the ring, first it will not go beyond the first joint of my finger - otherwise it would have disappeared from the Key of man with me when our blood flow up to the grass roots. This has always been my wish. Second it was placed on my finger by your mother and was the seal of 8 years of Paradise on Earth. Neither ever having voiced a single impatient much less angry word to the other, It was offered in the spirit of transmitting, or as concrete evidence of a united spiritual paternal blessing to our Sons, I do wish you to have one of it, which would be ample & the usual size. Third as a "Holy vessel" I never wish it to fall in profane, unsympathetic or unappreciating hands. I shall write a codicil to my Will directing that it be placed in my upper left vest pocket. On your finger it now & has been a constant reminder that it is possible to live a conjugal life absolutely unmarred by the intrusion of a single, unkind, unconsidered, or uncharitable thought, word or deed. And reminder of a joint parental blessing in fact and in spirit - These were the sentiments which prompted the offer to the highest degree perennial

FAIRHOPE, ALA.

Too bad about Aunt Lucia, every woman is entitled to, and should be granted the privilege of regulating the conditions of her life along agreeable and congenial lines and not be subjected to the interference or dominion of another woman, I found it necessary to remind your just proud mother that your mother was both actual and titular Possessive of her home, now I see buyers are now begging present owner of those Volunta Lots I showed you to accept twice what they paid for them, some have been turned over at nearly 300% increase in price. It is entirely evident that "Doc" does not like to write letters as L. has not written once since his last visit home, and if there is one thing that a Father appreciates more than any other, it is neglect at the hands of a beloved child. I should have acknowledged your card which arrived at a Presidential time, but have been unusually busy - Have recently gone 60 hours without repose. Our Farmers are hit hard again - a two months drought - a few have made money but very few. The Summer visitors will, I hope make up the deficiency, my plans for the future are still somewhat nebulous - but the chances are that my next move will be down to the "Oak Ridge" My health is, I believe excellent and I bear fatigue as well as the average man of my years. Guston's fossils have given me great concern, he promised to help

FAIRHOPE, ALA.


them removed as soon as Legat settled. And it should
 be done by all means, Speculation in Realty is
 rampant on both sides of the bay. Howard mis-
 sold a place below Mobile for 21,000 for which he tried
 to get 10,000 a year ago - in less than a fortnight
 it sold for 60,000 - The Frederic place (West End)
 brought 45,000 - Prices are going high in the City
 Everything loose has been sold from Abbeville to
 Mullet Point - Birmingham syndicate has
 purchased the Caldwell holdings with $\frac{1}{2}$ mile
 frontage north of Mullet Point, Well son, it is
 unnecessary for me to tell you that I wish you
 every possible happiness and success in life and
 I am sure that you have chosen well, in fact
 with your temperaments; you could never mate
 with other than an "Honest to God woman" and
 I know that will be the kind of woman that
 she will be getting, Be sure to write when
 opportunity offers - Your letters are as a cool
 breeze to a heated brow - Alice will be
 coming home in a few days
 for the summer - with a head full of love
 for you both
 devoted
 Father

through compromise, although that word
is my stolest to me, well son
my parents are excuse and I must
be off. Hope you had a pleasant
and fraternal trip. Be sure to post
me as to your address, and write
as often as you can my my blame
attend you and see you safely
home - for the present any proof
has been given - as and look
Justly
Father

C E R T I F I C A T E:

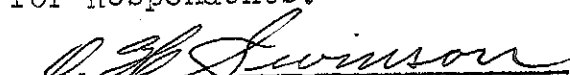
I, O. H. Swinson, the Commissioner appointed to take the depositions of Messrs. Edward Brodbeck, Otto E. Zundel, Edward R. Schowalter and Preston J. Schowalter, as per stipulation signed by the Solicitors for the Complainant and Respondents, and hereto attached, in that certain cause entitled: "Charlotte Gertrude Schowalter, Complainant, vs. Edward Schowalter, Preston J. Schowalter and Alice Elsa Schowalter, Respondents, pending in the Circuit Court of Baldwin County, Alabama, in Equity, do hereby certify that I caused the said witnesses to come before me on the 21st and 22nd days of November, 1928, at the office of Mr. Harry T. Smith, in Room No. 717 First National Bank Building, in the City and County of Mobile, State of Alabama, that the said witnesses were made known to me, and before testifying were duly sworn to speak the truth, the whole truth and nothing but the truth So Help Them God; that during said examination Mr. Harry T. Smith appeared for the Complainant and Mr. C. M. A. Rogers and John N. Allen appeared for the Respondents Edward Schowalter and Preston J. Schowalter; that the testimony of the said witnesses was taken down by me in shorthand, as the questions were asked by counsel for the parties hereto and answered by the witnesses, and is here reduced to writing in narrative form as nearly in the language of the witness as may be done in so combining the questions and answers to narrative form; that the said witnesses, living out of town, did not read over or sign their depositions, this requirement having been expressly waived by the solicitors for the parties hereto; and I further certify that I am not of counsel or kin to any of the parties to this suit; and that I am not in any manner interested in the result thereof.

Given under my hand and seal, and returned unto Court,*
this _____ day of December, 1928.



Commissioner.

Commissioner's fee
\$40⁰⁰ paid by
Stevens, McCorvey, McLeod,
Goode & Turner, Solicitors
for Respondents.



Commissioner.

IF RETURN TO
MR. SCHOWALTER, M. D.
POINT CLEAR, ALABAMA



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Mr. E. P. Schowalter

*Que lo aborras,
Carta de recomendacion
al efecto de no venuto.*

Lincoln

Nebraska

Filed 2/14/29

F. W. H. P.

Judge

per Te

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