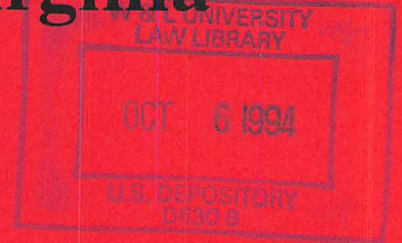

IN THE
Supreme Court of Virginia

RECORD NO. 930788



DOROTHY BLACK, et al.,

Appellants,

V.

**RICHARD EDWARDS, Executor of the Estate of
JAMES G. KEENE, Deceased, et al.,**

Appellees.

JOINT APPENDIX

**Harry J. Kostel
Attorney at Law
Suite 2
11847 Canon Boulevard
Newport News, Virginia 23606
(804) 873-3243**

Counsel for Appellants

**Louis J. Richman, Jr.
Attorney at Law
227 28th Street
Post Office Box 537
Newport News, Virginia 23607
(804) 245-1516**

Counsel for Appellees

Table of Contents

Page Number

| | |
|--|----|
| Amended Bill of Complaint filed 11-18-92 | 1 |
| Defendants' Answer and Grounds of Defense to Amended Bill of Complaint filed 11-24-92 | 5 |
| Transcript of Trial Heard before the Honorable Walter J. Ford on 1-20-93 | 8 |
| Testimony of Gerald D. Robertson | 18 |
| Testimony of Cynthia Dale | 33 |
| Testimony of Richard Edwards | 37 |
| Testimony of Lala Bee Wright Hicks | 44 |
| Final Decree entered 3-9-93 | 61 |
| Assignments of Error | 63 |
| Cross Error | 64 |

Exhibits

Plaintiff's No.:

| | |
|--|----|
| 1 - Unexecuted Proposed Last Will and Testament of James G. Keene | 65 |
| 2 - Unexecuted Proposed Last Will and Testament of Rebecca T. Keene | 68 |
| 3 - Copy of Last Will and Testament of James G. Keene | 71 |
| 4 - Inventory of the Estate of James G. Keene (Page 1) | 75 |

Defendant's No.:

| | | |
|-----|---|----|
| 1 - | Sections 20-149 and 20-155, Code of Virginia, 1950, as amended | 76 |
|-----|---|----|

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF HAMPTON, PART III

DOROTHY BLACK,
LALE BEE HICKS,
LARRY J. WRIGHT
CURTIS J. WRIGHT
and
CHARLES O. WRIGHT

Plaintiffs,

v.

Chancery No. 30436

RICHARD EDWARDS, Executor of the
Estate of James G. Keene, deceased,
JEANETTE HOLLOMON,
RITA SMALL,
AUDREY PHENIX,
DOROTHY THOMPSON,

JAMES G. KEENE, JR.
c/o Nancy Boatwright
32 W. 132nd Street, Apt. 1-E
New York, New York 10037

and

RICHARD GRAHAM
c/o Delk
940 Carnegie Avenue
Plainfield, New Jersey 07060

Defendants.

AMENDED BILL OF COMPLAINT

Come now the plaintiffs, Dorothy Black, Lale Bee Hicks, Larry J. Wright, Curtis J. Wright and Charles O. Wright, by counsel, and move that this honorable court declare the last will and testament of James G. Keene, dated September 10, 1991, and probated on November 15, 1991, null and void and of no effect and place in its stead the last will and testament of James G. Keene dated June 27, 1991, and in support thereof, says as follows:

1. That Rebecca T. Keene, deceased and James G. Keene, deceased, were husband and wife and until their respective deaths lived together at their home at 11 Pickett Street, Hampton, Virginia.

2. That on or about June 27, 1991, Rebecca T. Keene and James G. Keene agreed that their respective estates, which consisted primarily of a house and lot located at 11 Pickett Street, Hampton, Virginia, owned by them as "tenants by the entirety with the right of survivorship as at common law" should be devised and bequeathed equally to certain relatives of each.

3. That to that end, on or about June 27, 1991, Rebecca T. Keene and James G. Keene executed mutual and reciprocal wills leaving their respective estates to the survivor of each of them at their death, but agreeing that upon the death of the survivor of Rebecca T. Keene and James G. Keene, their respective estates would be divided equally among plaintiffs Dorothy Black, Lale Bee Hicks, Larry J. Wright, Curtis J. Wright and Charles O. Wright all being brothers and sisters of Rebecca T. Keene and defendants Jeanette K. Hollomon, Rita Small, Audrey Phenix and Dorothy Thompson. The said Audrey Phenix and Rita Small being sisters of James G. Keene and Jeanette K. Hollomon and Dorothy Thompson being his nieces.

4. That Rebecca T. Keene died on September 7, 1991 and pursuant to her last will and testament James G. Keene inherited her estate.

5. That by a last will and testament dated September 10,

1991, James G. Keene left his estate as follows:

- "(a) One-sixth (1/6) to my sister, Audrey K. Phenix;
- (b) One-sixth (1/6) to my sister Rita G. Small;
- (c) One-sixth (1/6) to my niece, Jeanette K. Hollomon;
- (d) One-sixth (1/6) to my niece, Dorothy K. Thompson;
- (e) One-sixth (1/6) to my son James G. Keene, Jr.,
who is missing; and
- (f) One-sixth (1/6) to my son, Richard Graham.

In the event that my son James G. Keene, Jr. is not found within six (6) months of my death, I hereby bequeath and devise his share of my estate to my son, Richard Graham" and nominated the defendant Richard Edwards as Executor under his will with power of sale over the real estate at 11 Pickett Street, Hampton, Virginia.

6. That James G. Keene died on November 7, 1991 and the last will and testament dated September 10, 1991 was admitted to probate in the Clerk's Office of the Circuit Court on November 15, 1991 and the defendant Richard Edwards qualified as executor.

7. That the will of James G. Keene deceased dated September 10, 1991 violates the agreement made with his wife that each of them would execute mutual and reciprocal wills which they in fact executed on or about June 27, 1991 and the proper devisees and legatees should be those devisees and legatees designated in his will of June 27, 1991 and who are all of the plaintiffs and the defendants Jeanette K. Hollomon, Rita G. Small, Audrey Phenix and Dorothy Thompson.

WHEREFORE, plaintiffs pray that this honorable court will enter an order decreeing that the will of James G. Keene dated September 10, 1991, and admitted to probate on November 15, 1991, be declared null and void and of no effect and that the will dated June 27, 1991, or a copy thereof if the original cannot be produced be admitted to probate and that the estate of James G. Keene be administered and distributed in accordance with the said will of James G. Keene dated June 27, 1991.

DOROTHY BLACK, LALA BEE HICKS, LARRY J. WRIGHT, CURTIS J. WRIGHT and CHARLES O. WRIGHT

By Harry J. Kostel
of Counsel

Harry J. Kostel
Attorney at Law
729 Thimble Shoals Blvd., Suite 1-E
Newport News, Virginia 23606
(804)873-8429

CERTIFICATE

I hereby certify that on October 19, 1992, I mailed a copy of the foregoing Amended Bill of Complaint to L. J. Richman, Jr., Post Office Box 537, Newport News, Virginia, 23607, counsel for the defendants.

Harry J. Kostel
Harry J. Kostel

16 Nov 18 PM 1992

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF HAMPTON, PART II

DOROTHY BLACK, et al

Plaintiffs

vs.

RICHARD EDWARDS, Executor of
the Estate of James G. Keene,
Deceased, et al

Defendants

Chancery No. 30436

ANSWER AND GROUNDS OF DEFENSE
TO AMENDED BILL OF COMPLAINT

Comes now the defendants, by counsel, and state as follows:

1. The allegations of paragraph 1 of the Bill of Complaint are admitted.

2. The allegations of paragraph 2 of the Bill of Complaint are denied so far as any agreement between Rebecca T. Keene and James G. Keene, and your defendants call for strict proof thereof.

3. The allegations of paragraph 3 of the Bill of Complaint are denied, and the defendants call for strict proof thereof, especially as James G. Keene's two sons by a previous marriage are not mentioned in the purported Wills, according to the allegations of the plaintiffs.

4. The allegations of paragraph 4 of the Bill of Complaint are admitted, except that Rebecca T. Keene died on August 31, 1991.

5. The allegations of paragraph 5 of the Bill of Complaint are admitted.

6. The allegations of paragraph 6 of the Bill of Complaint are admitted, except that James G. Keene died on November 6,

6

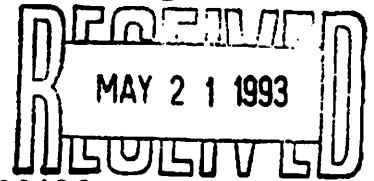
Attorney at Law, 729 Thimble Shoals Blvd., Suite 1-E, Newport
News, Virginia, 23606, counsel of record for the plaintiffs.


_____.p.d.

LAW OFFICES
LOUIS J. RICHMAN, JR.
227 - 28th STREET
P.O. BOX 537
NEWPORT NEWS, VIRGINIA
23607

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF HAMPTON,
PART TWO

930788
CLERK
COURT OF APPEALS OF VIRGINIA



DOROTHY BLACK, ET AL

V.

RICHARD EDWARDS,
EXECUTOR OF THE ESTATE OF
JAMES KEENE, DECEASED

CHANCERY #30436 RICHMOND, VIRGINIA

Stenographic report of all the testimony,
together with all the motions, objections and exceptions on
the part of the respective parties, the action of the Court
in respect thereto, and all other incidents during the trial
in the above-styled cause, heard in the Circuit Court for
the City of Hampton, Part Two, at Hampton, Virginia, on
January 20, 1993, before the Honorable Walter J. Ford, Judge
of said Court.

PRESENT:

Mr. Harry J. Kostel,
Attorney for the Plaintiffs

Mr. L. J. Richman, Jr.,
Attorney for the Defendants

JOAN D. BULLOCK
SCHNEIDER AND ASSOCIATES
107 TELFORD DRIVE
NEWPORT NEWS, VIRGINIA 23602

I-N-D-E-X

| PLAINTIFFS' WITNESSES: | DIRECT | CROSS | REDIRECT | RECROSS |
|-----------------------------|--------|-------|----------|---------|
| GERALD ROBERTSON ----- | 11 | 17 | 24 | 25 |
| CYNTHIA DALE ----- | 26 | 28 | | |
| RICHARD EDWARDS (ADVERSE) - | 30 | | | |
| LALA B. W. HICKS ----- | 37 | | | |
| PLAINTIFFS REST ----- | 41 | | | |
| DEFENSE RESTS ----- | 46 | | | |
| COURT'S RULING ----- | 52 | | | |

| PLAINTIFFS' EXHIBITS: | PAGE |
|-----------------------------|------|
| NO. 1 ----- WILL ----- | 7 |
| NO. 2 ----- WILL ----- | 7 |
| NO. 3 ----- WILL ----- | 8 |
| NO. 4 ----- INVENTORY ----- | 42 |

1 (The Court Reporter was duly
2 sworn.)

3 THE COURT: All right. Is the
4 plaintiff ready to proceed?

5 MR. KOSTEL: Plaintiff is ready,
6 Your Honor.

7 THE COURT: Is the defendant ready
8 to proceed?

9 MR. RICHMAN: Defendant is ready,
10 Your Honor.

11 THE COURT: Are all the parties
12 properly represented in this case and before the Court?

13 MR. KOSTEL: At this time they
14 are, Judge.

15 THE COURT: Okay.

16 MR. RICHMAN: Yes.

17 THE COURT: All right. All right.
18 Let's bring up all the witnesses. Let's start with the
19 plaintiff's witnesses. And the defendant's witnesses.

20 (The witnesses were called
21 forward and duly sworn.)

22 THE COURT: Is everybody here, the
23 witnesses of these parties? Is there a motion for
24 separation of the witnesses?

25 MR. RICHMAN: Yes, there is, Your

1 Honor.

2 THE COURT: Is everybody here a
3 party? All right. Everybody except Dorothy Black, Lala Bee
4 Hicks, Larry Wright and Curtis Wright, Charles Wright,
5 Richard Edwards, Jeanette Hollomon, Rita Small, Audrey
6 Phenix, and Dorothy Thompson -- Everybody except those
7 people, please go to the witness room and have a seat.

8 MR. KOSTEL: I think all the rest
9 can stay.

10 (The witnesses were
11 excluded from the courtroom.)

12 THE COURT: All right. Mr.
13 Kostel, do you desire to make an opening statement?

14 MR. KOSTEL: Yes, sir, Your Honor.
15 Your Honor, as I read the pleadings, the only issue in this
16 case is whether or not James Keene and Rebecca Keene made
17 and executed mutual and reciprocal wills. That is alleged
18 in the bill of complaint and it's denied as strict proof is
19 demanded. And I assume that's the only issue.

20 Rebecca Wright, who later became
21 Rebecca Keene, was born in May of 1929 in Charleston, South
22 Carolina. She became a registered nurse, worked in
23 Charleston, worked in the Richmond, Petersburg area.

24 In 1963, she married James G.
25 Keene. She was about thirty-four years old at the time and

1 it was her first marriage. James G. King -- Keene had been
2 previously married before. He had two sons by a previous
3 marriage.

4 He lived in New York. She went up
5 there when she married him and went to work as a registered
6 nurse. He was forty-four back in 1963. He was ten years
7 older than she was.

8 He worked for a while, but he
9 became disabled about three years after the marriage. So,
10 in about 1966, the only member of the family that did any
11 work was Rebecca.

12 In 1973, in order for Mr. Keene to
13 be closer to some relatives, they moved to Hampton,
14 Virginia, and bought a home. Mrs. Keene continued to work
15 as a registered nurse and worked at Hampton General Hospital
16 for some sixteen years.

17 In August of 1989, or thereabouts,
18 she was stricken with cancer. And she began to realize that
19 her illness was terminal. So, early in 1991, she and Mr.
20 Keene consulted Gerald Robertson about preparing wills.

21 They talked in Mr. Robertson's
22 office about how they wished their estates to go. And they
23 wanted the survivor of the two of them to inherit their
24 respective estates, but at the death of the last one, they
25 wanted it to go equally to their respective families.

1 So, Mrs. Keene named some of her
2 brothers and sisters as beneficiaries of her will if she
3 survived. Mr. -- And Mr. Keene named some nieces or nephews
4 -- nieces and nephews, four of them, who would be the
5 survivors, who would be beneficiaries upon the death of the
6 last one of them.

7 Each will had the same reciprocal
8 provision. Mr. Robertson explained to these people, the
9 evidence will show, that this is a contract whereby each
10 party agrees that this is the way the estate will go upon
11 the death of the last party.

12 And Mr. Robertson explained to
13 them that once one of the parties dies, then the other party
14 cannot change the mutual will, the mutual and reciprocal
15 will, he's bound by the terms of it.

16 On June 27th, 1991, Mr.
17 Robertson -- Mrs. Keene was hospitalized at Riverside. So,
18 they called. And Mr. Robertson prepared the wills and took
19 up a will for Mrs. Keene and for James Keene, who wasn't in
20 the hospital, but he was there visiting his wife.

21 And at that time, they signed
22 these two wills, which we would go ahead and offer now.

23 THE COURT: Any objections?

24 MR. RICHMAN: If Your Honor,
25 please, I don't believe that either one of them were in the

1 hospital when they signed these wills.

2 MR. KOSTEL: Well, I mean, that's
3 what I intend to prove. I don't know what --

4 THE COURT: Well, this is opening
5 statements. The question is right now, do you have any
6 objections to these wills being entered into evidence?

7 MR. RICHMAN: No, not to that part
8 of it. I am not agreeing by that to the last statement.

9 THE COURT: There are two
10 documents to be entered as Plaintiffs' Exhibits 1 and 2.

11 (Plaintiffs' Exhibit Number 1
12 and 2 were entered into evidence.)

13 THE COURT: You may continue or
14 are you through?

15 MR. KOSTEL: Sir?

16 THE COURT: Do you have anything
17 further?

18 MR. KOSTEL: Yes, sir.

19 THE COURT: Okay. You may
20 continue.

21 MR. KOSTEL: Those wills were
22 executed in the presence of Mr. Robertson and his secretary
23 and, I believe, some employee at the hospital, Mr.
24 Robertson will tell the Court.

25 Mrs. Keene recovered enough to go

1 home after the execution of that will, but later she was re-
2 admitted to Riverside Hospital and died on August 27th,
3 1991, Your Honor.

4 Mrs. -- Mr. Keene was not in good
5 health at the time of the execution of those wills either.
6 And he was hospitalized shortly after his wife's death. He
7 was hospitalized, I believe, in early September, 1991.

8 While in the hospital, Mr. Keene
9 decides he wants to change his will. And on September the
10 10th, 1991, he executes a will, which eliminates any of Mrs.
11 Keene's family from receiving the estate and he adds his two
12 sons, which were not in the June 27th, 1991, will.

13 Mr. Richman has told me, and I
14 don't want to call counsel for background facts, but Mr.
15 Richman has told me that Mr. Keene was in the hospital,
16 called him to come up there. And he prepared the will and
17 Mr. Keene's son was there at the time of the execution of
18 this will.

19 THE COURT: Any objection?

20 MR. RICHMAN: No.

21 THE COURT: All right. It will be
22 admitted as Plaintiffs' Exhibit 3.

23 (Plaintiffs' Exhibit Number 3 was
24 entered into evidence.)

25 MR. KOSTEL: So, I submit to Your

1 Honor, that if the plaintiff proves that the June 27th --
2 June 27th, 1991, wills were executed with the intent that
3 they would be joint, mutual, and reciprocal between the
4 parties, then the will executed on September 10th, 1991,
5 becomes inoperative and the terms of Mr. Keene's will of
6 June 27th, 1991, becomes operative to carry out the intent
7 and promise of the parties, which was sealed by the
8 execution of those wills in the statutory form.

9 And I would ask the Court render
10 judgement if satisfied the evidence so proves.

11 THE COURT: Mr. Richman, do you
12 wish to make an opening statement?

13 MR. RICHMAN: I do, if Your Honor
14 please. Counsel has missed the whole point of this case.
15 Even in the bill of complaint it's alleged that the real
16 estate owned by the parties is owned by tenants by the
17 entirety.

18 So, the wills have nothing to do
19 with the real estate, number one, regardless of any other
20 findings. But regardless, I had some objections about what
21 evidence is proper to try and prove. Certainly, it's
22 alleged it's a joint, reciprocal will. It's certainly not
23 joint wills because there are two pieces of paper as
24 introduced by the plaintiff.

25 MR. KOSTEL: I think that's right;

1 mutual and reciprocal. You're right about that.

2 MR. RICHMAN: But, what they
3 forget is our legislature, in its infinite wisdom, has
4 decreed that they would pass a law governing pre-marital
5 agreements and post-marital agreements for the disposal of
6 property to cover the disposition of property upon
7 separation, marital dissolution, death or the occurrence or
8 non-occurrence of any other event. The making of a will,
9 trust or other arrangement to carry out the provisions of
10 the agreement. And then, they have said that married persons
11 may enter into agreements with each other for the purpose of
12 settling the rights and obligations of either or both of
13 them to the same extent, with the same effectg as a pre-
14 marital agreement.

15 This is, Your Honor, a post-
16 marital agreement, according to him, to dispose of their
17 property. And formalities requiring, Section 20-149 of the
18 Code says: A pre-marital agreement shall be in writing and
19 signed by both parties. Such agreement shall be enforceable
20 without consideration and shall become effective upon
21 marriage.

22 And the same thing is true for a
23 post-marital agreement because it says that it has to be the
24 same conditions as a pre-marital agreement. And there is no
25 such thing.

1 So, even if we get past the hurdle
2 that they verbally made an agreement, there is no written
3 agreement as required by the Code, Your Honor.

4 THE COURT: Call your first
5 witness.

6 MR. KOSTEL: Mr. Robertson.
7

8 - - -
9

10 GERALD D.ROBERTSON,
11 being duly sworn, called as a witness on behalf of the
12 Plaintiffs, testified as follows:
13

14 DIRECT EXAMINATION

15 BY MR. KOSTEL

16 Q State your name, age, address and
17 occupation, please.

18 A Gerald D. Robertson, 22 Paula
19 Maria Drive, Newport News, Virginia, forty-nine years old.
20 I'm an attorney.

21 Q And are you a practicing attorney
22 in the City of Newport News?

23 A Yes.

24 Q And how long have you been
25 practicing?

1 MR. RICHMAN: We'll stipulate that
2 Mr. Robertson is a practicing attorney and qualified to
3 practice law in the State of Virginia.

4 MR. KOSTEL: Will you stipulate he
5 is qualified to advise and draft and prepare wills?

6 MR. RICHMAN: That's a little
7 different stipulation.

8 MR. KOSTEL: All right. Let me
9 finish then. Don't interrupt me, please.

10 BY MR. KOSTEL:

11 Q How long -- You've been practicing
12 how long in the City of Newport News?

13 A Since 1969.

14 Q And what does your practice
15 include, Mr. Robertson?

16 A It's a general practice.
17 Includes, basically, general practice of law; I do most
18 everything.

19 Q Have you had any experience in
20 advising people on drafting last wills and testaments?

21 A Yes.

22 Q And have you drafted last wills
23 and testaments?

24 A Yes.

25 Q That you represented

1 administrators, executors or other fiduciaries in the
2 administration of estates?

3 A Yes.

4 Q Approximately how many wills have
5 you drafted in the last twenty years, twenty-five years?

6 A Hundreds.

7 Q Did there come a time when James
8 G. Keene and Rebecca Keene consulted you about disposition
9 of their estate?

10 A Yes.

11 Q When was that, sir?

12 A In May of 1991, as I recall. May
13 or June.

14 Q What do you remember? Did they
15 come to your office?

16 A Yes.

17 Q And what do you remember about it?

18 A They both came to my office. I
19 recall that he was -- Well, my notes reflect he was seventy-
20 two, she was sixty-two years old. He seemed to be in poor
21 health and she as well.

22 And they wanted to do a will to
23 dispose of all of their property. I explained to them what
24 generally I do when you have a married couple and each would
25 leave their estate to each other and then the final survivor

1 would dispose of the estate.

2 They were concerned about that
3 because, as I recall, they had no children of their
4 marriage. They had married late in life. And they didn't
5 want the final survivor -- heirs, to get all of the property
6 that the two of them had accumulated during their marriage.

7 And based on --

8 Q Was there -- Was there a
9 resolution to that problem --

10 A Yes. They --

11 Q -- you discussed?

12 A They each agreed that they -- a
13 will would be drawn whereby each of --

14 MR. RICHMAN: Your Honor, I object
15 to this testimony because I think it violates the statute of
16 wills, the statute of frauds, the dead man's statute. And
17 the wills are clear in their import.

18 I don't think there's need of
19 anything to explain anything that's ambiguous, parole
20 evidence rule. And possibly, an attorney-client
21 relationship. And I would object to this evidence on those
22 grounds.

23 THE COURT: All right. Overruled.

24 MR. KOSTEL: Please proceed. I
25 think the question --

1 MR. RICHMAN: I note my exception.

2 BY MR. KOSTEL:

3 Q Did you discuss -- what did you --
4 Did you discuss a resolution of the problem? What you're
5 saying is there were two separate families? Is that what
6 you're saying?

7 A That's right. They had married --
8 It was understanding they married late in life. They had no
9 children that they felt comfortable with ultimately leaving
10 the entire estate to when the final person, the last
11 survivor, passed away.

12 And they gave me -- each divided
13 the total estate in half. Mrs. Keene gave me four of her
14 heirs, who ultimately became beneficiaries under the terms
15 of the wills. And Mr. Keene gave me four.

16 Q All right. Did you discuss the
17 efficacy of mutual and reciprocal wills with Mr. and Mrs.
18 Keene?

19 A They told me that -- what they
20 had, as I recall, which wasn't much in personalty. They had
21 a house. I explained to them that upon the death of the
22 first one, the house would pass to the survivor. And then
23 that final survivor would make the disposition of their
24 property. And --

25 Q Did you explain to them the

1 enforceability of mutual and reciprocal wills?

2 A I explained to them that this
3 would be a contract between the two of them, that they would
4 each, the ultimate survivor, would agree to leave the
5 property as the wills were originally drawn.

6 Q Did you have occasion to explain
7 to them that the ultimate survivor would be bound by that
8 will once the first one of the two died?

9 A I told them it was a contract
10 between the two of them.

11 Q Did they seem to understand that?

12 A I explained that to them in my
13 office and, as I recall, when we ultimately had the wills
14 executed, it was in the hospital and both of them were
15 present. And I went over in the presence of the witness,
16 who was a nurse, and the secretary in my office, who was
17 going to notarize the wills, this with them again.

18 Q Was that on June 27th, 1991?

19 A When the wills were executed.

20 Q All right. And who was the girl
21 in your office that you took with you?

22 A Cindy. She's here today.

23 Q Her last name?

24 A I don't know. She's married. I'm
25 not --

1 Q Okay. She's here today?

2 A Yes.

3 MR. KOSTEL: Answer Mr. Richman.

4

5 CROSS EXAMINATION

6 BY MR. RICHMAN:

7 Q On how many occasions did you meet
8 with Mr. and Mrs. Keene before you drew up the wills on June
9 27th, 1991?

10 A One time, as I recall.

11 Q And how long did you meet with
12 them on that occasion?

13 A I don't really remember, Mr.
14 Richman, the exact time.

15 Q And who was present when you met
16 with them?

17 A As I remember, it was just the two
18 of them. Maybe somebody brought them.

19 Q And who else was present when the
20 wills were executed?

21 A The only person that was present
22 in there -- There was somebody -- I think a niece of one of
23 the parties who called me and told me I needed to come to
24 the hospital, she was there. She was not in the room when
25 the wills were executed; only the parties, the Keenes and

1 the girl in my office and myself and the nurse.

2 Q Now, wasn't it a fact that these
3 wills were executed in your office, Mr. Robertson?

4 A No, it was not.

5 Q You're certain of that?

6 A I'm positive. I have a very clear
7 recollection of going to the hospital and the urgency of the
8 fact that Mrs. Keene was on her death bed.

9 Q When did she die?

10 A I don't know when she died. I
11 wasn't involved in anything but getting the will executed.
12 But I have a very clear recollection --

13 Q Have you represented either of
14 them before?

15 A I don't know how it was they came
16 to me, whether I had done a real estate closing for them
17 or --

18 Q I just asked you, do you know or
19 had you represented either of them before?

20 A I don't remember that, no.

21 Q Who called for the appointment?

22 A I don't know whether it was them
23 or someone on their behalf.

24 Q Did you ask either of them if they
25 had children by a previous marriage?

1 A I don't remember.

2 Q And you didn't ask them whether
3 Mr. Keene wanted to leave anything to his two sons by a
4 previous marriage?

5 A I asked them how they wanted to
6 dispose of their property. It was -- I do remember this,
7 that Mrs. Keene gave me the four people that she wanted and
8 Mr. Keene had to think about how he was going to come up
9 with his four people.

10 Q When did -- Why didn't you make a
11 joint will instead of two wills?

12 A Well, I don't know. I thought
13 that the people were -- had a clear understanding of -- and
14 no problem with what they were going to do. Never indicated
15 to me any hesitancy in doing it this way. And as a matter
16 of fact, both wanted to see to it that each of their
17 families divided each of the estate that the two of them had
18 accumulated during their marriage equally. And I --

19 Q Why did -- Why didn't you state in
20 their wills that they contracted to make these with each
21 other?

22 A Because I didn't think that was a
23 problem. Each of the parties had, in my -- in my feeling,
24 had a clear understanding of the -- how the ultimate
25 beneficiaries would take the property. And had one of them

1 not changed it, that would have taken place.

2 Q And this was a post-marital
3 agreement between the parties of how they would dispose of
4 their property; is that right?

5 MR. KOSTEL: I object to that,
6 Judge. I think that's -- He's putting words -- He's putting
7 words in the witness's mouth. That's a matter for the Judge
8 to --

9 THE COURT: Well, what he's asking
10 him is in his opinion did he consider it as a post-marital
11 agreement. I think that's what the question -- really is.
12 So, I'm going to allow it.

13 THE WITNESS: Well, it was an
14 agreement that came after the marriage.

15 BY MR. RICHMAN:

16 Q And it was how they were going to
17 dispose of their property; is that right?

18 A That's right.

19 Q You said you made how many wills?

20 MR. KOSTEL: He said hundreds.

21 MR. RICHMAN: Hundreds. Okay.

22 BY MR. RICHMAN:

23 Q How many of these wills have you
24 made for a husband and wife, say, in the last five years,
25 both?

1 A Fifty to a hundred.

2 Q How many of them were reciprocal
3 wills?

4 A I don't really remember in the
5 last five years any exactly like this, because in most
6 instances of the wills I've done, it's husband and wife and
7 they have a child or some child of the marriage that they
8 don't have any objection to being the ultimate beneficiary
9 of all of their estate.

10 Q Well, most of them have left it to
11 the same people; is that correct?

12 A That's right.

13 Q Separate wills, but left the same
14 beneficiaries?

15 A Ultimate beneficiaries, right.

16 Q But you can't remember any other
17 one but this one where they were a contract or whether they
18 were -- you say they felt bound by each other to leave it?

19 A No, I haven't. No.

20 Q Do you know why her will was not
21 probated?

22 A No. All I did was do the wills.
23 I don't know -- although she was sick. I had the wills
24 executed. And the first I heard of this afterwards is here.

25 Q Your specialty is real estate law;

1 isn't it not, Mr. Robertson?

2 A I'd say that, yes.

3 Q And did you explain to them that
4 tenency by the entirety property is not passed by will?

5 A I explained to them that when the
6 first one died, that property would pass to the ultimate --
7 I explained to them when the first one died, the beneficiary
8 of the property would be the survivor. And then that person
9 could dispose of the property.

10 Q And tenency by the entirety
11 property does not pass under a will, does it?

12 A It wouldn't pass -- It would pass
13 ultimately under the will as I had drawn them, had they not
14 changed them.

15 Q Well, I didn't ask you that.

16 A No, they did not in the first
17 instance.

18 Q Tenency property does not pass
19 under a will is your understanding?

20 A In the first instance, it would
21 not.

22 Q And most everything else they had
23 was jointly owned, was it not, with survivorship?

24 A As I recall. That was the main
25 thing they had to dispose of was their real estate. And it

1 was my feeling that they could have either done it, I guess,
2 by -- they could have done it by changing the terms of the
3 deed or doing it by some will.

4 Q Well, did you put in the will --
5 why didn't you put in the will that they were not revokable?

6 A At the time they came in, they
7 were both very sick. They both seemed very, very agreeable
8 as to -- it wasn't, as sometimes people come in, not sure
9 how they want to leave something.

10 They both were very satisfied with
11 the idea of whomever they were leaving it to, half going to
12 Ms. Keene's family and half going to James Keene's family.
13 So, I didn't recognize that as a problem.

14 Q Now, in your suit, Curtis J.
15 Wright is mentioned as a plaintiff.

16 A In my suit?

17 MR. KOSTEL: No. It's my suit.
18 He's not a plaintiff.

19 THE COURT: Mr. Kostel's suit.

20 MR. KOSTEL: He's not a proper
21 plaintiff.

22 BY MR. RICHMAN:

23 Q Curtis J. Wright is a plaintiff.
24 Is he in any way mentioned in the wills?

25 A I think he may have been --

1 MR. KOSTEL: That's a misnomer,
2 Your Honor. We withdraw Curtis Wright. He is not a proper
3 party.

4 MR. RICHMAN: I have no other
5 questions.

6
7 REDIRECT EXAMINATION

8 BY MR. KOSTEL:

9 Q Mr. Robertson, let's assume it was
10 a post-marital agreement between the parties. Was that
11 agreement reduced to writing?

12 A Yes.

13 Q And are Plaintiffs' Exhibits 1 and
14 2 evidence of that writing?

15 A Yes.

16 Q And are you telling His Honor,
17 under oath, that they were executed under the statutory
18 formalities --

19 A Yes.

20 Q -- on June 27th, 1991?

21 A That's correct.

22 MR. KOSTEL: Thank you.

23 THE COURT: Anything further?

24

25 RECROSS EXAMINATION

1 BY MR. RICHMAN:

2 Q Is there any one agreement signed
3 by --

4 THE COURT: Wait a minute; Mr.
5 Kostel, anything further?

6 MR. KOSTEL: No.

7 THE COURT: All right.

8 BY MR. RICHMAN:

9 Q Is there any one agreement signed
10 by the parties?

11 A I don't know what you mean.

12 THE COURT: Is there any other
13 agreement.

14 THE WITNESS: No. Other than --

15 MR. KOSTEL: Any other agreement
16 -- is that the question?

17 THE WITNESS: No.

18 BY MR. RICHMAN:

19 Q So, does that piece of paper say
20 that it's an agreement, that will?

21 A Are you asking my opinion?

22 Q Yes.

23 A It doesn't have agreement typed at
24 the top of it, but it was my feeling that it was an
25 agreement between them as to how they were going to dispose

1 of their property.

2 Q Well, there is no written, signed
3 agreement, is there, Mr. Robertson?

4 MR. KOSTEL: Well, Your Honor,
5 he's arguing with the witness.

6 THE COURT: I'll sustain the
7 objection.

8 MR. RICHMAN: I have no further
9 questions.

10 THE COURT: May the witness be
11 excused?

12 MR. KOSTEL: Yes, sir. Call Cindy
13 -- we don't know her last name; she's only been working for
14 Jerry for ten years.

15

16

- - -

17

18

CYNTHIA DALE,

19 being duly sworn, called as a witness on behalf of the
20 Plaintiffs, testified as follows:

21

22

DIRECT EXAMINATION

23

BY MR. KOSTEL:

24

Q

What is your name?

25

A

Cynthia Dale.

1 Q And how old are you?

2 A Twenty-two.

3 Q What is your occupation?

4 A I'm a legal secretary for Gerald
5 Robertson.

6 Q And how long have you been a legal
7 secretary for Gerald Robertson?

8 A Almost five years.

9 Q All right. I'm going to hand you
10 what have been introduced as Plaintiffs' Exhibits 1 and 2.
11 Plaintiffs' 1 is last will and testament of James G. Keene.
12 Do you have any independent recollection of being involved
13 in the execution of this will?

14 A Yes.

15 Q What do you remember?

16 A I went with Mr. Robertson to the
17 hospital to have both Mr. and Mrs. Keene execute their
18 wills.

19 Q Were both hospitalized?

20 A No, just Mrs. Keene.

21 Q And did Mr. Keene execute this
22 will in your presence and Mr. Robertson's presence?

23 A Yes.

24 Q Any other present?

25 A There was one nurse.

1 Q Present?
2 A Yes.
3 Q As a witness?
4 A Yes.
5 Q And is your testimony the same for
6 Plaintiffs' Number 2, Rebecca Keene?
7 A Yes.
8 Q Why do you remember this, Cindy?
9 A It's very unusual that we go to a
10 hospital. It's only the second time I've every gone up
11 there.
12 Q Was Mrs. Keene a black female?
13 A Yes.
14 Q And Mr. Keene a black male?
15 A Yes.
16 MR. KOSTEL: That's all I have.

17
18 CROSS EXAMINATION

19 BY MR. RICHMAN:

20 Q You don't know anything about any
21 agreements between the parties, do you?
22 A No.
23 Q Who else was the other signatory
24 on the will?
25 A What do you mean, the witnesses or

1 --

2 Q Uh-huh.

3 A It was me and Mr. Robertson and a
4 nurse.

5 Q And a nurse?

6 A Uh-huh.

7 Q On what floor? Do you know what
8 ward or --

9 A I can't remember. I just remember
10 she was in a private room at the end of the hall, but I
11 don't remember what floor. Second or third.

12 Q And you don't know anything about
13 the circumstances at all of them making the wills?

14 A No.

15 MR. RICHMAN: I have no further
16 questions.

17 MR. KOSTEL: Thank you, ma'am.
18 You may be excused.

19 THE COURT: You are free to go.

20 MR. KOSTEL: Call Mr. Edwards,
21 please, as an adverse witness.

22

23 - - -

24

25

RICHARD EDWARDS,

1 being duly sworn, called as an adverse witness by the
2 Plaintiffs, testified as follows:

3

4

DIRECT EXAMINATION

5

BY MR. KOSTEL:

6

Q Good morning, sir.

7

A Good morning.

8

Q Do you want some water?

9

A No, thank you.

10

Q What is your name and address?

11

A Richard Edwards, 5007 Cay Street,

12

Newport News.

13

Q How old are you, sir?

14

A Seventy.

15

Q You were a close friend of the

16

Keenes, Mr. Keene and Mrs. Keene?

17

A Yes, I was.

18

Q How long had you known them?

19

A Oh, I had known them about forty

20

years.

21

Q Forty years?

22

A Just about. Because I've been --

23

My wife is his cousin.

24

Q Your wife is Mr. Keene's cousin?

25

A Yes. And we have been married

1 forty years and we knew them in New York.

2 Q All right. Is it true that Mr.
3 Keene became disabled shortly after the marriage?

4 A Well, gee, I didn't know very much
5 about him being disabled or anything because I worked every
6 day and the only time I saw him was when he come --

7 Q After he moved to Hampton in 1973,
8 did you know he was disabled?

9 A Yeah, I knew back then. Yes.

10 Q Okay. And did you know that Mrs.
11 Keene worked at Hampton General Hospital as a registered
12 nurse?

13 A Right.

14 Q And apparently you were close
15 enough to Mr. and Mrs. Keene to be named executor in their
16 wills dated June 27th, 1991?

17 A Yeah.

18 Q Are you familiar -- Look at these
19 wills, Mr. Edwards, and tell me what you know about them.

20 MR. RICHMAN: I object to the
21 question, tell me what you know about them.

22 BY MR. KOSTEL:

23 Q Well, do you know anything about
24 these wills? Are you familiar with these wills or are you
25 seeing them for the first time?

1 A I've seen them before.

2 Q Okay. When did you have occasion
3 to see them, Mr. Edwards?

4 A Let me see. I don't exactly
5 remember, but I know I was given the wills and I tried to
6 probate Mrs. Keene's will.

7 Q You did?

8 A Yes, I tried to. After her death,
9 I took it to -- And I was told that that will could not be
10 probated because she had no estate.

11 Q Well, anyway, you saw the wills
12 after they were executed; is that correct?

13 A I saw them, yeah. I saw these.

14 Q And who gave them to you?

15 A Where did I get them from?

16 Q Who showed them to you? Maybe I
17 ought to ask it that way.

18 Let me ask you this; what I'm
19 getting at is, you knew these people well enough for them to
20 tell you, we've done our wills and you're the executor.
21 Isn't that what happened?

22 A No.

23 Q Well, how did you see them?

24 A Because I think Mr. Keene gave
25 them to me.

1 Q All right. And were they signed
2 and witnessed, both wills?

3 A No. Only one was that I saw.

4 Q Just hers. Whose was signed and
5 witnessed?

6 MR. RICHMAN: Mr. Kostel has a
7 threatening demeanor --

8 MR. KOSTEL: Well, I'm not trying
9 to be threatening, but the man -- he said he saw the will
10 and --

11 MR. RICHMAN: Objection to the
12 tone of your voice --

13 MR. KOSTEL: All right. I'll
14 moderate my tone -- Mr. Edwards.

15 BY MR. KOSTEL:

16 Q Mr. Edwards, all I'm trying --

17 THE COURT: Wait a minute.

18 MR. KOSTEL: Yes, sir.

19 THE COURT: Do you have any other
20 objections?

21 MR. RICHMAN: No, sir.

22 BY MR. KOSTEL:

23 Q Mr. Edwards, I'm not trying to be
24 hostile. Are you saying that when you saw the wills, only
25 one was signed?

1 A Yes.

2 Q And you don't know which one?

3 A I don't know which one it was.

4 Q Well, did you believe -- strike
5 that. Why did Mr. Edwards -- Mr. Keene change the terms of
6 his will?

7 MR. RICHMAN: I object, Your
8 Honor. He's asking for the thoughts of a testator.

9 MR. KOSTEL: He may know, Judge.

10 THE COURT: You're right. I'll
11 overrule the objection.

12 BY MR. KOSTEL:

13 Q Why did Mr. Keene change his will?
14 Why did he change his will?

15 A Can I confer with Mr. Richman?

16 Q I don't think that's a good idea.

17 THE COURT: No, sir.

18 BY MR. KOSTEL:

19 Q Why did he change his will, Mr.
20 Edwards?

21 A Well, the two of them went to Mr.
22 Robertson's office to make out a will. And myself and Ms.
23 Rita Small took them to Robertson's office. In there they
24 made out a will. What it consisted of, we didn't know.

25 And it was such a long time coming

1 back, that Mr. Keene threatened to take it someplace else.
2 Then Mr. Robertson told him that their wills was -- was
3 misplaced and he had to make up a new one.

4 Now, getting back to your question

5 --

6 Q That's right. I'd like to get
7 back to that.

8 A Getting back to your question.
9 Mr. Keene changed his will because his two sons was left off
10 of the will and he wasn't very happy with that. That's why
11 he changed it.

12 Q Well, why did he take off Mrs.
13 Keene's relatives?

14 A I guess for the simple reason she
15 left off his two sons.

16 Q She died on August 27th, 1991; is
17 that correct?

18 A August.

19 Q Mrs. Keene?

20 A 31st.

21 Q 31st. And that will -- I'll
22 strike that. This will, Plaintiffs' Exhibit Number 3,
23 provides that in the event that my son James G. Keene,
24 Junior, is not found within six months of my death, I hereby
25 bequeath and devise his share of my estate to my son Richard

1 Graham.

2 A Right.

3 Q Where was -- How come he didn't
4 know where he was?

5 A Didn't know -- He didn't --

6 Q How come Mr. Keene didn't know
7 where his son James, Junior, was; do you know?

8 A None of us knew where he was.

9 Q How long had it been since Mr.
10 Keene had heard from him?

11 A Well, that, I don't know. Yes,
12 too. The last time we saw him, wasn't that the time at his
13 mother's death. That was one of the last times we saw
14 James.

15 Q Do you know when his mother died?

16 A I think his sister can tell you.
17 I don't know exactly.

18 Q That would have been prior to
19 1963, wouldn't it?

20 A Who? What would have been prior
21 to 1963?

22 Q When James' mother died?

23 A Oh, she died here in Hampton just
24 before they did.

25 Q Okay.

1 A You can get the dates from --

2 Q All right.

3 A -- his sister there.

4 Q She was divorced from James; is
5 that right? James Keene, Senior, was divorced from his
6 first wife?

7 A Oh, yes.

8 MR. KOSTEL: I believe that's all
9 I have.

10 THE COURT: Do you wish to cross
11 examine at this time?

12 MR. RICHMAN: I have no questions.

13 THE COURT: All right. Step down,
14 Mr. Edwards.

15

16

- - -

17

18 LALA BEE WRIGHT HICKS,
19 being duly sworn, called as a witness on behalf of the
20 Plaintiffs, testified as follows:

21

22 DIRECT EXAMINATION

23 BY MR. KOSTEL:

24 Q What is your name?

25 A My name is Lala Bee Wright Hicks.

1 Q Where do you live?

2 A I live at 2609 White Oak Drive,
3 Decatur, Georgia.

4 Q How old are you?

5 A I am fifty-five years of age.

6 Q And are you the sister of the late
7 Rebecca Keene?

8 A Yes, I am.

9 Q Was your sister a registered
10 nurse?

11 A Yes, she was.

12 Q And where did she work?

13 A She worked in Charleston,
14 Virginia, New York, and back to Virginia.

15 Q Back to Hampton?

16 A Back to Hampton.

17 Q When did she marry James Keene?

18 A She was married to James Keene in
19 '63.

20 Q And where did they live when they
21 were married?

22 A They lived in New York.

23 Q All right. And when did they move
24 to Hampton?

25 A They moved to Hampton in '73.

1 Q What was Mr. Keene's condition
2 when they moved to Hampton?

3 A He was disabled. He was not
4 working.

5 Q And was Mrs. Keene able to work
6 after they moved --

7 A Yes, she was.

8 Q Where did she work?

9 A She worked at Hampton General.

10 Q And when did she become ill with
11 her last illness?

12 A '89.

13 Q For the record, when was she born?

14 A She was born in 1929.

15 Q Did you visit Rebecca Keene in
16 Riverside Hospital in June --

17 A Yes, I did.

18 Q Well, let me finish the question.
19 Did you visit Mrs. Rebecca Keene in Riverside Hospital in
20 Newport News in June of 1991?

21 A Yes, I did.

22 Q And did she go home after that
23 hospitalization?

24 A Yes, she did.

25 Q And did she have to return to

1 Riverside Hospital?

2 A Yes, she did.

3 Q And did she die at Riverside
4 Hospital?

5 A Yes, she did.

6 Q And when did she die?

7 A She died in '91.

8 Q What day and what month?

9 A August 31st.

10 Q 1991?

11 A 1991.

12 Q Was James G. Keene hospitalized at
13 the time of her funeral or burial?

14 A He was hospitalized when she died.

15 Q What did you know, if anything,
16 about what your sister and her husband were going to do
17 about their wills?

18 A I was told by my sister and James
19 in June and in July --

20 Q Of what year?

21 A Of '91. That an agreement had
22 been made between the two.

23 MR. KOSTEL: Okay. Answer Mr.
24 Richman.

25 MR. RICHMAN: I have no questions

1 of this witness.

2 MR. KOSTEL: Plaintiff rests.

3 Judge, let me offer this stipulation, though, Mr. --

4 MR. RICHMAN: I would object to
5 the admissability of the last statement, Your Honor, on the
6 grounds that it's a self-serving statement and there's no
7 evidence otherwise to back it up that she knows of, but
8 other than that --

9 MR. KOSTEL: What the parties told
10 her.

11 THE COURT: You said you want to
12 stipulate --

13 MR. KOSTEL: That Mr. Richman went
14 to the hospital with Mr. Keene's will, which is Exhibit
15 Number 3, and that it was executed in the hospital and one
16 of his sons was present.

17 MR. RICHMAN: No, his son wasn't
18 present.

19 MR. KOSTEL: Oh, excuse me.

20 MR. RICHMAN: I made the son leave
21 when I talked to him.

22 MR. KOSTEL: All right. His son
23 was in the hospital.

24 MR. RICHMAN: He was at the
25 hospital. I made him leave and I just discussed it with him

1 with a witness present.

2 MR. KOSTEL: All right. And I
3 would offer this inventory of his estate, James Keene.
4 Plaintiffs' 4.

5 (Plaintiffs' Exhibit Number 4
6 was entered into evidence.)

7 MR. KOSTEL: I wonder if I could
8 have about a two-minute recess.

9 THE COURT: Court will be in
10 recess for a few minutes.

11 (A recess was taken.)

12 THE COURT: All right.

13 MR. RICHMAN: If Your Honor
14 please, I make a motion to strike the evidence on several
15 grounds. Number one is Section 20-155 of the Code of
16 marital agreements that pertain to the right to buy, sell,
17 use, transfer, manage and control property; the disposition
18 of property upon separation or marital dissolution, death or
19 occurrence or non-occurrence of any event; The making of a
20 will, trust or other arrangement to carry out the provisions
21 of the agreement.

22 And it says that a post-marital
23 agreement or agreements entered into or by married persons,
24 which this certainly is, this is a post-marital agreement,
25 must be in writing and signed by both parties. We have

1 nothing in evidence that is in writing or signed by both
2 parties.

3 Second of all, we have no evidence
4 that anything or any property was not held in joint tenency
5 with right of survivorship. And if that is the case, then
6 nothing would have passed under the will anyway.

7 As evidently the executor named in
8 the will said he was told not to probate it, was nothing
9 there to probate. Everything, evidently, was in joint right
10 of survivorship. There's no evidence to the contrary.

11 And if there is, then nothing
12 would pass under the will in any event. So, on either
13 argument, the evidence of the complainant or plaintiff
14 should be struck in this case, if Your Honor please.

15 Chapter 8 of the Code, 20-150 and
16 20-155 are also dispositive of this case, if Your Honor
17 please, without a doubt.

18 Not that it makes any difference,
19 but the Uniform Probate Code, Section 2-701 says: With
20 joint and mutual wills there's no presumption of a contract
21 not to revoke the will. A contract can only be established
22 by provisions of the will stating no revocation, or material
23 provisions of the contract, or writing evidencing the
24 contract.

25 These two wills when they were

1 drawn, if they were reciprocal, they certainly weren't joint
2 as alleged in the motion. It could have been put in there.

3 But regardless of that there is no
4 written agreement signed by both parties; and under the
5 Code, the plaintiff's case must fail.

6 MR. KOSTEL: If Your Honor please,
7 counsel said I was missing the point in opening statement.
8 I don't think I'm the one. I think the point is being
9 missed, but I don't think I'm the one that's missing the
10 point.

11 First of all, the answer and
12 grounds of defense deny the existence of reciprocal and
13 mutual wills. And they call for strict proof thereof. And
14 then it says, especially, that is James G. Keene's two sons
15 by a previous marriage are not mentioned in the purported
16 wills, according to the allegations of the plaintiff.

17 Well, that was -- the evidence
18 discloses that that was Mr. Keene's own election not to
19 mention his two sons in that will. So, what he's raising
20 now is an affirmative defense, which wasn't raised in the
21 pleadings, but I'll go ahead and deal with it anyway.

22 This Code section that he cites
23 deals with property settlement agreements, pre-nuptial and
24 post-nuptial agreements dealing with the rights of husband
25 and wife in and to each other's property. Not how they're

1 going to leave it after the last one dies.

2 This is a domestic relation
3 section, Your Honor. It has no applicability to this
4 situation. Section 20-148, premarital agreement is defined.
5 It means an agreement between prospective spouses made in
6 contemplation of marriage and to be effective upon marriage.

7 It defines the rights of parties
8 who are going to be married or who are married in and to
9 their respective property. It doesn't cover disposition of
10 the property upon the death of the last one.

11 And the same is true on his
12 survivorship argument. Mr. Robertson has testified, without
13 dispute, without contradiction, that he explained to these
14 people that this property would pass, the last survivor
15 would own all this property. And it would pass in
16 accordance with the mutual and reciprocal wills.

17 And that evidence is undisputed.
18 Your Honor, I think this is a very clear case. And the
19 court -- the Supreme Court of Virginia has upheld the
20 doctrine of mutual and reciprocal wills.

21 In the case of Spinks versus
22 Wright, 180 -- Rice, 187, Virginia 730. It's just not fair
23 to do what Mr. Keene did. And that's why the law is the way
24 it is. You can't do that.

25 His wife, if she had lived longer

1 than her husband, would have been bound and had to share her
2 estate with these four beneficiaries that he named.

3 It's quite reasonable that he
4 didn't name that son that he hadn't seen for many, many
5 years. That's understandable. Mr. Robertson said he had to
6 think about who he wanted to share in his side.

7 And I submit to Your Honor that
8 the evidence is clear that the beneficiaries in the first
9 two wills are entitled to share the estate as the testators
10 agreed and reduced to writing.

11 MR. RICHMAN: Would you like to
12 see the statute, Your Honor?

13 THE COURT: No, sir. The Court is
14 familiar with the statute. Overrule your motion. Note your
15 exception. Plaintiff rests.

16 MR. RICHMAN: If Your Honor
17 please, we're in a rather peculiar position. We don't have
18 any witnesses as to the making of the will to call. And we
19 would rest and renew our motion and, maybe, the Court will
20 consider it in a different light with a different burden of
21 proof after considering --

22 THE COURT: All right. Well,
23 certainly it has to be considered in a different light.
24 There's no question about that. That is the law. You may
25 release all the witnesses. Any argument?

1 MR. KOSTEL: The evidence is still
2 overwhelming, Your Honor, that they executed joint -- I mean
3 -- He is right about the joint, but the Supreme Court says,
4 it talks in the context of joint, comma, mutual, comma, and
5 reciprocal wills.

6 And the evidence is still
7 overwhelming that this is what happened and this is what
8 they agreed to. Let me read from page 738 that has -- 187
9 Virginia 730, reading it at page 738.

10 In Williams versus Williams,
11 Supra, which is 123 Virginia 643, the writing constituted a
12 joint and mutual will which had been actually executed by
13 both makers as required by statute.

14 In addition, it contained mutual
15 obligations on the part of the makers thereof. After death
16 of one of the makers and receipt of benefits under the will
17 by the other, the surviving maker undertook to revoke and
18 did revoke the instrument as his will.

19 Upon resort to equity by the
20 parties who were to receive estate from the co-testator, who
21 undertook to and did revoke his part of the will, it was
22 concluded that the contractual and mutual obligations
23 between the co-testators, which became fully executed on the
24 part of the one first to die, by the other receiving and
25 obtaining the benefits thereof, effectively bound him to his

1 contractual obligations. And a trust was established on
2 behalf of the beneficiaries thereunder.

3 That such wills constituted a
4 mutual contract between the parties which could not be
5 rescinded by the survivor after the death of one on the
6 theory that first that dies carries his part of the contract
7 into execution.

8 Mr. -- Mr. Keene, I don't know
9 whether he got mad or not. Mr. Edwards said he got mad, but
10 regardless of the reason, he couldn't do it. And he elected
11 not to put his two sons in.

12 There's no evidence that he was
13 influenced, coerced, threatened in any way. And I submit
14 that the evidence, after I rested, is overwhelming. It's
15 still overwhelming after defense rests. And I submit that
16 we're entitled to judgement.

17 MR. RICHMAN: I would like to
18 rebut his statement, if Your Honor please. Williams versus
19 Williams is 123 Virginia 643, 96 Southeast 749, it's a 1918
20 case, if Your Honor please.

21 It's a case where there was a suit
22 for specific performance and there was a joint will and
23 mutual agreement as to disposition of the will. The Court
24 stated that wills are in their nature ambulatory, are
25 revokable and cannot be made otherwise, even by the most

1 expressed terms.

2 This inherent quality revocability
3 belong to all wills which do not partake the nature of a
4 contract. And I'm skipping a little bit.

5 A different rule applies where a
6 contract is disguised under the name and appearance of a
7 will. In the footnote in section 455, Schoule, on wills --
8 this is in the case -- and it says: Or the joint
9 consideration may relate to a disposition in favor of a
10 third person; however, here Courts are not so well disposed
11 to enforce the cumbrous arrangement.

12 There was sufficient consideration
13 for contractual element in the will, assuming the contract
14 itself is established. This case refers only to joint
15 wills. And goes on to say, undoubtedly proof of agreement
16 consideration must be clear and satisfactory.

17 The case quoted the Commissioner
18 as saying, where parties execute the same instrument, it is
19 not probable that such course could be adopted without some
20 previous understanding or agreement between them.

21 But this was a case of a joint
22 will. We do not have that here. And that is
23 distinguishable.

24 In numerous cases like Salley
25 versus Burns, 220 Virginia, 123, 255 Southeast, 2nd, 512, a

1 1979 case. That was a bill to remove cloud on real estate
2 caused by a joint will.

3 The precatory language was held to
4 be an intent to devise property of children, share and share
5 alike, and couldn't sell without the written consent of the
6 other was held to be precatory.

7 The Court held that only if there
8 was a doubtful meaning could extrinsic evidence which is
9 evidence outside of the will is such as uncertainty is not
10 resolved by the will as a whole, the judicial expositor may
11 properly consider admissible extrinsic evidence, quote,
12 to place himself in the atmosphere of the testator at the
13 time of making his will so as to see things as the testator
14 saw them.

15 Citing McCabe versus Cary's
16 Executor, 135 Virginia 428, 434, 116 S.E. 485, 487, 1923.

17 And Story versus Hargrave, 235,
18 Virginia 563, 369 Southeast 2nd 669, 1988 case, in which
19 Judge Godwin of Suffolk was reversed, which was a contract
20 to make a will for services, which reversed Judge Godwin in
21 that case.

22 And, of course, I guess I should
23 really put Section 20-155 and 20-149 in evidence, if Your
24 Honor please.

25 MR. KOSTEL: I don't think you

1 have to put statutes in evidence.

2 THE COURT: If he wants it part of
3 the record, I have no problem. It will be all right.

4 MR. RICHMAN: And I think that,
5 Your Honor, is controlling in this case, and we have no
6 joint agreement signed by the parties in this case. That's
7 our summation.

8 THE COURT: All right.

9 MR. KOSTEL: Very briefly, Your
10 Honor. Those cases that he cites are not on point.
11 Williams versus Williams, what he read to the Court is
12 applicable and he read right there. He said absent any
13 agreement, a will is revokable.

14 But here we have an agreement
15 which has been proved by not just clear and convincing
16 evidence, but by overwhelming evidence. What Mr. Richman
17 urges the Court to say is Mr. and Mrs. Keene should have
18 signed an agreement in Mr. Robertson's office to the effect
19 that we're going to make mutual and reciprocal wills and
20 leave our property this way upon the death of the last one
21 of us.

22 And then, at the same time, sign
23 the will to that effect. It makes no sense. The will
24 executed under the statutory requirements is the necessary
25 writing and that is what the statute is all about.

1 THE COURT: All right. The Court
2 finds from the evidence that it is not sufficient to
3 establish a reciprocal will in the matter and I find for the
4 defendant.

5 I think that the testimony of Mr.
6 Robertson, he has no notes. There's nothing in writing to
7 indicate that it was supposed to be a reciprocal will. Just
8 the two wills themselves and his memory.

9 I find the evidence does not rise
10 to the level that it should to establish the contract in
11 this case. I find for the defendant. This Court is
12 adjourned.

13 (The hearing was concluded.)

14 - - - oOo - - -
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF COURT REPORTER

I, Joan D. Bullock, hereby certify that I, having been duly sworn, was the Court Reporter in the Circuit Court for the City of Hampton, Part Two, at Hampton, Virginia, on the 20th day of January, 1993, at the time of the hearing herein.

I further certify that the foregoing transcript is a true and accurate record of the testimony and other incidents of the hearing herein.

Given under my hand this 7th day of April, 1993.

Joan D. Bullock
Court Reporter

- - - o0o - - -

JUANITA F. GUPTON
CLERK OF CIRCUIT COURT
1993 APR 14 AM 10:46
BOOK # _____ PAGE # _____
CITY OF HAMPTON, VA

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF HAMPTON, PART II

DOROTHY BLACK, et al.

Plaintiff,

v.

Chancery No. 30436

RICHARD EDWARDS, Executor of
the Estate of James G. Keene,
Deceased, et al.

Defendants.

DECREE

This cause came to be heard upon the Bill of Complaint, the Answer thereto, the Amended Bill of Complaint and Answer thereto, the plaintiffs and defendants all appearing in proper person or by counsel, and after hearing evidence of the plaintiffs and the exhibits admitted into evidence, the plaintiffs rested and the defendants moved to strike the evidence of the plaintiffs, to which motion was overruled.

Thereupon the defendants entered into evidence an exhibit, rested and renewed their motion to strike the plaintiffs' evidence and after argument of counsel for the plaintiffs and counsel for the defendants, the Court does rule that the plaintiffs have not proved that the wills executed on or about the 27th day of June, 1991, by Rebecca T. Keene and James G. Keene were reciprocal wills and they are therefore not entitled to the relief sought in their Bill of Complaint.

Accordingly, it is ADJUDGED, ORDERED and DECREED that judgment is granted the defendants and their costs are awarded

against the plaintiff.

Plaintiffs having indicated an intention to appeal this judgment to the Virginia Supreme Court, it is ORDERED that the Executor Richard Edwards, a defendant herein, is enjoined and restrained ^{FROM} ~~from administering or~~ distributing the estate until such time as a judgment for the defendant in this case is or may become final.

Plaintiffs have duly noted their objections and exception to granting judgment to the defendants on the grounds that based on the evidence and exhibits plaintiffs should have been granted their requested relief.

ENTER: This 4th day of March, 1993.

Walter J. Ford
Judge

~~I ask for this:~~

L. J. Richman, Jr. p.d.
L. J. Richman, Jr.

Plaintiffs object and except to entry of this Decree

Harry J. Kostel p.g.
Harry J. Kostel

ASSIGNMENTS OF ERROR

- I. THE TRIAL COURT ERRED IN FAILING TO AWARD JUDGMENT TO THE APPELLANTS BECAUSE AS A MATTER OF LAW, THE EVIDENCE ADMITTED AT TRIAL WAS SUFFICIENT TO ESTABLISH A CONTRACT BETWEEN THE LATE JAMES G. KEENE AND THE LATE REBECCA T. KEENE UNDER WHICH THE APPELLANTS WERE BENEFICIARIES.

- II. THE TRIAL COURT ERRED IN FAILING TO AWARD JUDGEMENT TO THE APPELLANTS BECAUSE THE BENEFICIARIES WERE ENTITLED TO A CONSTRUCTIVE TRUST GIVING EFFECT TO THE TESTAMENTARY AGREEMENT.

REPLY TO ASSIGNMENTS OF ERROR

- I. THE TRIAL COURT PROPERLY CONCLUDED THAT THE EVIDENCE WAS NOT SUFFICIENT TO ESTABLISH A RECIPROCAL WILL BETWEEN THE LATE JAMES G. KEENE AND THE LATE REBECCA T. KEENE.
- II. THE TRIAL COURT DID NOT ERR IN FAILING TO AWARD JUDGMENT TO THE APPELLANTS BASED ON A CONSTRUCTIVE TRUST, AS THIS ISSUE WAS NOT RAISED AT TRIAL.

WILLIAMSON, VA.

1-20-93

Plaintiff EXHIBIT # 1
WALTER J. FORD
JUDGE

LAST WILL AND TESTAMENT

OF

JAMES G. KEENE

I, James G. Keene, of the City of Hampton, Virginia, being of sound and disposing mind and memory, do hereby declare this to be my Last Will and Testament, hereby revoking any and all Wills heretofore made by me.

ARTICLE ONE

Payment of Expenses, Debts and Taxes

I direct that my funeral expenses and all my just debts be paid as soon as possible after my death.

ARTICLE TWO

Residuary Estate

I give, devise and bequeath all the rest and residue of my estate, of whatsoever kind and wheresoever situated, to Rebecca T. Keene, if she survives me if she predeceases me, then to the following people to be divided equally among them, Dorothy W. Black of Savannah, Georgia, Lala Bee Hicks of Decatur, Georgia, Larry J. Curtis, Charleston, S.C., Charles O. Wright of Anchorage, Alaska, Jeanette K. Holloman of Newport News, Rita G. Small of Newport News, Audrey K. Phoenix of Montgomery, Alabama and Dorothy K. Thompson of Brooklyn, New York.

ARTICLE THREE

Appointment of Executor

I hereby nominate and appoint the said Richard Edwards as Executor of this Will and request that no surety be required of him upon his bond as such.

IN WITNESS WHEREOF, I have hereunto affixed my signature and seal to this, my last Will and Testament, this 27th day of June, 1991.

JAMES G. KEENE (SEAL)

WITNESSES:

STATE OF VIRGINIA,
City of Newport News, to-wit:

Before me, the undersigned authority, on this date personally appeared James G. Keene and Gerald D. Robertson and _____, known to me to be the testator and witnesses, respectively, whose names are signed to the attached or foregoing instrument; and, all of these persons being by me first duly sworn, James G. Keene, the testator, declared to me and to the witnesses in my presence that said instrument is his Last Will and Testament and that he had willingly signed or directed another to sign the same for him, and executed it in the presence of said witnesses as his free and voluntary act for the purposes therein expressed; that said witnesses stated before me that the foregoing Will was executed and acknowledged by the testator as his Last Will and Testament in the presence of said witnesses who, in his presence and at his request, and in the presence of each other did subscribe their names thereto as attesting witnesses on the day of the date of said Will, and that the testator, at the time of the execution of said Will, was over the age of eighteen (18) years and of sound and disposing mind and memory.

JAMES G. KEENE

Witness

Witness

Subscribed, sworn and acknowledged before me by James G. Keene, the testator, subscribed and sworn before me by Gerald D. Robertson and _____, witnesses, this 27th day of June, 1991.

Notary Public

My commission expires:

CIRCUIT COURT HAMPTON, VA.

Plaintiff 1-20-93
WILLIAM J. FORD
JUDGE

LAST WILL AND TESTAMENT

OF

REBECCA T. KEENE

I, REBECCA T. KEENE, of the City of Hampton, Virginia, being of sound and disposing mind and memory, do hereby declare this to be my Last Will and Testament, hereby revoking any and all Wills heretofore made by me.

ARTICLE ONE

Payment of Expenses, Debts and Taxes

I direct that my funeral expenses and all my just debts be paid as soon as possible after my death.

ARTICLE TWO

Residuary Estate

I give, devise and bequeath all the rest and residue of my estate, of whatsoever kind and wheresoever situated, to my husband, James G. Keene, if he survives me, if he predeceases me, then to the following people to be divided equally among them, Dorothy W. Black of Savannah, Georgia, Lala Bee Hicks of Decatur, Georgia, Larry J. Curtis, Charleston, S.C., Charles O. Wright of Anchorage, Alaska, Jeanette K. Holloman of Newport News, Rita G. Small of Newport News, Audrey K. Phoenix of Montgomery, Alabama and Dorothy K. Thompson of Brooklyn, New York.

ARTICLE THREE

Appointment of Executor

I hereby nominate and appoint the said Richard Edwards as Executor of this Will and request that no surety be required of him upon his bond as such.

IN WITNESS WHEREOF, I have hereunto affixed my signature and seal to this, my last Will and Testament, this 27th day of June, 1991.

REBECCA T. KEENE (SEAL)

WITNESSES:

STATE OF VIRGINIA,
City of Newport News, to-wit:

Before me, the undersigned authority, on this date personally appeared Rebecca T. Keene, and Gerald D. Robertson and _____, known to me to be the testatrix and witnesses, respectively, whose names are signed to the attached or foregoing instrument; and, all of these persons being by me first duly sworn, Rebecca T. Keene, the testatrix, declared to me and to the witnesses in my presence that said instrument is her Last Will and Testament and that she had willingly signed or directed another to sign the same for her, and executed it in the presence of said witnesses as her free and voluntary act for the purposes therein expressed; that said witnesses stated before me that the foregoing Will was executed and acknowledged by the testatrix as her Last Will and Testament in the presence of said witnesses who, in her presence and at her request, and in the presence of each other did subscribe their names thereto as attesting witnesses on the day of the date of said Will, and that the testatrix, at the time of the execution of said Will, was over the age of eighteen (18) years and of sound and disposing mind and memory.

REBECCA T. KEENE

Witness

Witness

Subscribed, sworn and acknowledged before me by
Rebecca T. Keene, the testatrix, subscribed and sworn before me by
Gerald D. Robertson and _____, witnesses,
this 27th day of June, 1991.

Notary Public

My commission expires:

Last Will and Testament

I, JAMES G. KEENE, residing in the City of Hampton, Virginia, do hereby make and publish this Will.

ONE: I hereby revoke all other Wills.

TWO: I hereby bequeath and devise all my estate, both real, personal and mixed, to be distributed as follows:

- (a) One-sixth (1/6) to my sister, Audrey K. Phenix;
- (b) One-sixth (1/6) to my sister, Rita G. Small;
- (c) One-sixth (1/6) to my niece, Jeanette K. Hollomon;
- (d) One-sixth (1/6) to my niece, Dorothy K. Thompson;
- (e) One-sixth (1/6) to my son, James G. Keene, Jr., who is missing; and
- (f) One-sixth (1/6) to my son, Richard Graham.

In the event that my son, James G. Keene, Jr., is not found within six (6) months of my death, I hereby bequeath and devise his share of my estate to my son, Richard Graham.

THREE: It is my desire that any real estate owned by me at the time of my death be sold by my Executor as soon as possible, without sacrifice, and that he give my sister, Rita G. Small, and my nieces, Jeanette K. Hollomon and Dorothy K. Thompson, a first right to purchase said real estate.

FOUR: If my heirs cannot agree as to a division of my estate, then said division shall be made by my Executor, and his decision shall be final and binding upon my heirs.

FIVE: In general, my Executor shall have every power and discretion in the management of my estate that he would have if, as an individual, he were the absolute owner thereof, and this general power of management shall be not limited in any way by the specific powers herein given, and I hereby give my Executor the power to sell any real estate owned by me at my death.

SIX: I hereby nominate and appoint Richard Edwards as Executor under this my Will. If Richard Edwards predeceases me, then I hereby nominate and appoint my son, Richard Graham, as Executor under this my Will. Said Executor shall not be required to furnish

J. G. Keene KMIC

any bond with surety or other security for the faithful performance of the duties under this Will and shall not be required to file an inventory and appraisement of my estate.

IN WITNESS WHEREOF, I have hereunto set my hand and seal to this Will this 10th day of September, 1991.

James G. Keene (SEAL)
JAMES G. KEENE

Signed, sealed, published and declared by the above named Testator, JAMES G. KEENE; as and for his Last Will and Testament, in the presence of us, who, at his request, in his presence, and in the presence of each other, all present together at the same time, have hereunto subscribed our names as witnesses this 10th day of September, 1991.

Richard J. Keene residing at *1000 1st St Va*
Karen M. Kolar residing at *Hampton VA.*

STATE OF VIRGINIA

City of Newport News, to-wit:

Before me, the undersigned authority, on this day personally appeared JAMES G. KEENE, LOUIS J. RICHMAN, JR., and KAREN KOLAR, known to me to be the Testator and the witnesses respectively, whose names are signed to the attached or foregoing instrument, and, all of these persons being by me first duly sworn, James G. Keene, the Testator, declared to me and to the witnesses in my presence, that said instrument is his Last Will and Testament and that he had willingly signed or directed another to sign the same for him, and executed it in the presence of said witnesses as his free and voluntary act for the purposes therein expressed; that said witnesses stated before me that the foregoing Will was executed and acknowledged by the Testator as his Last Will and Testament in the presence of said witnesses who, in his presence and at his request, and in the presence of each other, did subscribe their names thereto as attesting witnesses on the day of the date of said Will, and that the Testator, at the time of the execution of said Will, was over the age of eighteen (18) years and of sound and disposing mind and memory.

James G. Keene
JAMES G. KEENE
Louis J. Richman, Jr.
LOUIS J. RICHMAN, JR.
Karen M. Kolar
KAREN KOLAR

Subscribed, sworn and acknowledged before me by JAMES G. KEENE, the Testator, subscribed and ~~sworn to~~ ^{intended} before me by LOUIS J. RICHMAN,

JR. and KAREN KOLAR, this 10th day of September, 1991.

William R. Friend
Notary Public

My commission expires:

2-16-93

In the Clerk's Office of the Circuit Court of the City of Hampton, Virginia,
November 15th A. D. 1991.

A paper writing bearing date the 10th day of September, 1991, purporting to be the will of James G. Keene, deceased, was this day presented by Richard Edwards, the Executor therein named, and offered for probate.

It appearing that James G. Keene resided at 11 Pickett St., in the City of Hampton, within the jurisdiction of this Court, and that he died November 7, 1991; and it further appearing that the said paper writing is self-proved pursuant to Sec. 64.1-87.1 of the Code of Virginia, as amended;

Thereupon, the said paper writing dated September 10, 1991 is established and adjudged to be the last will and testament of James G. Keene, deceased, and is ordered to be recorded as such.

Thereupon, Richard Edwards, the Executor therein named, asked permission to qualify as such, whereupon, such permission being granted, he appeared, made oath as the law directs, and entered into and acknowledged a bond as such Executor in the penalty of Two hundred fifteen thousand dollars (\$215,000.00), payable and conditioned according to law, but without surety, the will requesting that none be required.

And certificate is granted Richard Edwards for obtaining a probate of the said will of James G. Keene, deceased, in due form.

Given under my hand this 15th day of November, 1991.

Juanita F. Gupton, Clerk


By Mary Mary Dep. Clerk.

WALTER J. FORD
JUDGE

(If more typing space is needed for descriptions, use additional 8 1/2 x 11 paper.)

TOTAL AGGREGATE VALUE OF SECTIONS I AND II.....\$ 119,529.62

CIRCUIT COURT, HAMPTON, VA.

Defendant 1-20-73
EXHIBIT # 1
WALTER J. FORD
JUDGE 

§ 20-149. **Formalities of premarital agreement.** — A premarital agreement shall be in writing and signed by both parties. Such agreement shall be enforceable without consideration and shall become effective upon marriage. (1985, c. 434; 1986, c. 201.)

§ 20-155. **Marital agreements.** — Married persons may enter into agreements with each other for the purpose of settling the rights and obligations of either or both of them, to the same extent, with the same effect, and subject to the same conditions, as provided in §§ 20-147 through 20-154 for agreements between prospective spouses, except that such marital agreements shall become effective immediately upon their execution. (1987, c. 41.)