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IN THE SUPREME COURT OF VIRGINIA

At Richmond

JOHN R. EDWARDS, INDIVIDUALLY AND  
AS EXECUTOR OF THE ESTATE OF  
MARGARET L. JONES; BETTY BELLE  
BRANCH, INDIVIDUALLY AND AS EXECUTRIX  
OF THE ESTATE OF MARGARET L. JONES;  
HENRY P. CUSTIS, JR., EXECUTOR OF  
THE ESTATE OF MARGARET L. JONES;  
BRUCE E. EDWARDS, JILL E. GODWIN,  
AND JACKIE L. SPICER,

Appellants

v.

Record No. 810989

BEVERLY E. BRADLEY,

Appellee

APPENDIX

Daniel Hartnett, Esquire  
AYRES, HARTNETT & CUSTIS  
Court Green  
Accomac, Virginia 23301



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VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF ACCOMACK

Beverly E. Bradley,

Complainant

vs.

7404

John R. Edwards  
Melfa, Virginia  
Individually and as Executor of  
the estate of Margaret L. Jones

Betty Belle Branch  
Greenbush, Virginia  
Individually and as Executrix of  
the estate of Margaret L. Jones

Henry P. Custis, Jr.  
Accomack, Virginia  
Executor of the estate of Margaret  
L. Jones

Bruce E. Edwards  
Star Route 1  
Slanesville, West Virginia

Jill E. Godwin  
RFD Parksley, Virginia

Jackie L. Spicer  
Onancock, Virginia,

Respondents

BILL

To the Honorable N. Wescott Jacob, Judge of the Circuit Court  
of the County of Accomack:

Your Complainant respectfully represents unto your  
Honor as follows:

1. That Viva Parker Lilliston died testate, a resident  
of Accomack County, Virginia, seized and possessed of intangible  
and tangible personal property, and what is known as the Parker  
Farm, situated near Locustville, Accomack County, Virginia,  
a copy of her will being hereto attached, marked Exhibit "A"

and prayed to be taken and read as a part of this Bill of Complaint.

2. That as will appear from a mature consideration of the will of the said Viva Parker Lilliston read in its entirety, it was the intention of the testator that the gifts to the said Margaret L. Edwards were to be held by her during her lifetime, free from encumbrances and without any attempt on her part to encumber same or sell her interest for her lifetime, with remainder in fee simple to her grandchildren, your complainant, Beverly E. Bradley, and the respondents, Betty Belle Branch, John R. Edwards, Bruce C. Edwards, Jill A. Edwards, who is now Jill E. Godwin, and Jackie L. Edwards, who is now Jackie L. Spicer, in equal shares, with the further proviso that should the said Margaret L. Edwards attempt to dispose of her interest in the gift or devise, then her interest would cease and terminate, and immediately be vested in her above named children.

3. That the said Margaret L. Edwards, who later became Margaret L. Jones, did attempt to encumber or sell her interest acquired in the estate of the said Viva Parker Lilliston, and in her effort to do so requested her children, including your complainant, to execute a writing, authorizing and permitting her to do so, which your complainant refused to execute.

4. That the said Margaret L. Jones died testate on October 7, 1980, a resident of Accomack County, Virginia, and in her will dated November 2, 1979, probated in the Circuit Court of the County of Accomack, attempted to dispose of said Parker Farm to the exclusion of your complainant.





EXHIBIT A

I, Viva Parker Lilliston, residing at Onancock, in the County of Accomack, State of Virginia, do publish and declare this instrument as and for my last will and testament, hereby revoking all wills heretofore made by me.

Item One: I desire that all my just debts be paid; and

Item Two: I give and bequeath unto my daughter, Margaret Lilliston Edwards, all of my clothing, my jewelry, her baby picture, brother Will Parker's picture, my sewing machine, my long side-board, my walnut dining table and leaves, my bookcase and books therein, my father's large picture and one-half of all my linens; and

Item Three: I give and bequeath to my son, Edwin T. Lilliston, my large hand painted picture (trees and water scene), my iron safe, two antique candle sticks (white and blue), one long frame mirror, one club cooking aluminum set, one sewing machine, my electric stove, my best electric refrigerator and one-half of my linens; and

Item Four: I give and bequeath unto my son, Andrew W. Lilliston, one oblong marble top table, the Parker Family Bible, my folding washstand (mirror in lid), the oval picture of his father, his father's diploma, five pieces of maple furniture used in connection with the following mentioned bed, one four poster bed, together with springs and mattress and all pillows and blankets used with said poster bed; and

Item Five: I give and devise to Edwin T. Lilliston all of my right, title and interest in law or in equity, in remainder or reversion, in and to that certain lot or parcel of land situate in

the Town of Onancock, Accomack County, Virginia, fronting on Market Street and running back between parallel lines to the land of Olevia Drummond's heirs, known as the "Old Funeral Place"; and

Item Six: I give and devise unto my two sons, Andrew W. Lilliston and Edwin T. Lilliston, equally, all of my right, title and interest, in law or in equity, in remainder or reversion, the same being a one-half fee simple interest, (the other one-half being owned by my said sons, Andrew W. Lilliston and Edwin T. Lilliston), in and to all that certain lot or parcel of land situate in the Town of Onancock, Accomack County, Virginia, with a frontage of Ninety-three Feet, (93 ft.), on Market Street and extending back Three Hundred Nineteen Feet, (319 ft.), with a width of One Hundred Eight Feet, (108 ft.) on the line, and known as the late "A. W. Lilliston Homestead" and later known as the "Homestead of A. Irving Lilliston," my late husband, and now occupied by me; and

Item Seven: I give and devise unto my son, Andrew W. Lilliston in fee simple, the house and lot situate on North Street, in the Town of Onancock, Accomack County, Virginia, known as the "Carlton Wessells lot"; and

Item Eight: I give and devise to Edwin T. Lilliston, in fee simple, my lot in Duncan Manor, situate between the Town of Onley and Onancock, Accomack County, Virginia; and

Item Nine: I cancel all obligations which Edwin T. Lilliston, my son, may owe me at the time of my death, whether represented by note, bond or open account: and

Item Ten: I hereby direct my Executor and Executrix hereinafter designated in this, my last will and testament, to sell at public auction, all of my tangible personal property not bequeathed herein, and convert the same into cash. I also direct my Executor and Ex-



ecutrix, hereinafter named, to sell at public auction so much of my woodland, located on the Seaside, near Locustville, as is located South of the public road which run from Hailey's corner to the Seaside. For purposes of such sale I authorize my Executor and Executrix, hereinafter named, to execute a deed conveying good fee simple title to the purchaser or purchasers. The cash derived from sale of personal and real property, described in this clause, to be used, so far as necessary, for payment of debts and costs of administration; and

Item Eleven: I hereby give and bequeath all the rest and residue of my personal estate, not heretofore given, including cash and all moneys derived from the sale of intangibles and tangible estate, after payment of my debts, funeral and testamentary expenses, and other expenses incident to the settling of my estate, including a joint tombstone for the graves of my late husband and myself, in one stone, with an appropriate foot marker at my grave, (a foot stone has heretofore been placed at the foot of my husband's grave), as follows: one-fourth (1/4) thereof to Andrew W. Lilliston; one-fourth (1/4) thereof to Margaret L. Edwards upon the conditions set forth in Item Fourteen; one-fourth (1/4) thereof to Edwin T. Lilliston; and one-fourth (1/4) thereof to Margaret Lilliston Edwards, Trustee for the purposes etc. fully set forth in Item Thirteen of this my last will and testament; and

Item Twelve: I give and devise my farm situated on the Seaside from Locustville, in the County of Accomack, State of Virginia (except the woodland located South of the public road and specifically referred to in Item Ten) to my daughter, Margaret Lilliston Edwards, upon the conditions, set out in Item Fourteen, and to Margaret L. Edwards, Trustee for the purposes, etc. fully set forth

in Item Thirteen. The part intended for Margaret L. Edwards, personally, to be the main house and that portion of the land lying to the East of a line extending straight across the narrowest part of the cleared land, from a point near the head of the drain or ditch which makes up from the marsh on the North side of the farm, to the South side of the farm. That portion of the land, including the smaller house and balance of the woodland, lying to the West of this line is intended to be held by Margaret L. Edwards, as Trustee, for the purposes set out in Item Thirteen. It is my intention and desire that a right of way 25 feet wide, for the use and benefit of the land to the East of aforesaid line, shall be given over the land to the West of said line, out to the public road; and

That portion of the farm devised to Margaret L. Edwards, Trustee, for the purposes, set out in Item Thirteen, I authorize and empower the said Trustee, or her successor, to sell at public auction to the highest bidder, whenever, in the discretion and judgment of the said Trustee, it is deemed advisable to do so and to convert same into cash for the purposes set out in Item Thirteen, and for purpose of sale I authorize the said Trustee to Execute a deed conveying good fee simple title to the purchaser. Until such time as the Trustee decides to make sale the said Trustee is authorized to rent the land and house, and , after payment of taxes, insurance and necessary repairs, to use the surplus for the purposes set out in Item Thirteen.

Item Thirteen: All of the property which I have devised under Items Eleven and Twelve of this instrument, to Margaret Lilliston Edwards, Trustee, I give, devise and bequeath the same to her as Trustee and to her successor or successors, as such Trustee, in trust upon con-



dition that the income therefrom and such other sums of the principal as my said Trustee shall think proper, for the support, maintenance and care of my son, Irving Parker Lilliston, without being subject to his liabilities or to alienation by him. The said Margaret Lilliston Edwards, Trustee as aforesaid, is hereby authorized and empowered to invest the funds derived by her as such Trustee under items Eleven and Twelve of this instrument, to collect the income and interest from the same, pay all taxes, necessary maintenance charges as set forth above, and expenses of administering the trust, and shall pay the income arising thereunder and such other sums of the principal as said Trustee shall deem proper and necessary to the said Irving Parker Lilliston, it being my intention to create a "Spendthrift Trust" under and pursuant to Section 55-19 of the Code of Virginia, 1950. If the said Trustee has any funds in her hands at the death of the said Irving Parker Lilliston, I desire all of said funds to be distributed in fee to his heirs-at-law; and

Item Fourteen: all gifts made to my daughter, Margaret L. Edwards, individually and personally, under Items Eleven and Twelve of this Will, whether personal estate or real estate, are conditioned upon the said Margaret L. Edwards keeping the gift or devise herein free from encumbrances of every description, and in the event the said Margaret L. Edwards shall attempt to encumber same or sell her interest, or in the event any creditor or creditors of said Margaret L. Edwards shall attempt to subject her interest in the gift or devise herein made to the payment of the debts of the said Margaret L. Edwards, then and in that event the interest of said Margaret L. Edwards therein shall immediately cease and determine, and the gift or devise shall at once become vested in her children, viz: Betty Belle Branch, Beverly Bradley, John R. Edwards, Bruce

C. Edwards, Jill A. Edwards and Jackie L. Edwards, in equal shares in fee simple; and

Item Fifteen: Any real estate acquired by me since the writing of my Will and which I may own at my death, (this clause is not intended to apply to my real estate specifically mentioned in my Will), I hereby authorize and direct my Executrix and Executor to sell at public acution to the highest bidder, upon such terms as they may deem fit and proper, and out of the proceeds arising therefrom, after payment of all costs of sale and legal commissions thereon, I direct the balance to be distributed by my Executrix and Executor as follows: One-half (1/2) to my son, Andrew W. Lilliston; and one-half (1/2) to my son, Edwin T. Lillilson; and

Item Sixteen: I hereby designate and appoint my daughter, Margaret Lilliston Edwards, and my Counsel, B. T. Gunter, Jr., Executrix and Executor, respectively, of this my Last Will and Testament.

Given under my hand and seal this 12 day of January, 1957.

W. A. Lilliston (SEAL)

Witness:

Paul L. Thomas  
E. W. Fisher Gunter



I, Viva Parker Lilliston, hereby constitute this instrument of writing as a Codicil to my Will bearing date July 12, 1957.

1. In connection with the real estate devised to my son, Edwin T. Lilliston, and described in Item Five of my Will, I give a right of way, for the use and benefit of this property, over the real estate, described in Item Six.

I require that the real estate, described in Item Six of my Will, devised to my sons, Andrew W. Lilliston and Edwin T. Lilliston, be subject to this right of way for the use and benefit of the real estate described in Item Five and devised to my son, Edwin T. Lilliston.

2. I cancel all obligations which my son, Andrew W. Lilliston, may owe to me at the time of my death, whether represented by note, bond or open account.

3. I require that one-fourth (1/4) of all costs of administration and indebtedness, incident to the settlement of my estate, be paid out of the gifts, devises and bequests made to my daughter, <sup>now Margaret Jones</sup> Margaret L. Edwards, and one-fourth (1/4) be paid out of the devises, bequests and gifts made for the benefit of my son, Irving Parker Lilliston. It is my intention that all costs and indebtedness which is necessary to be paid by my personal representatives shall be borne equally by my four children.

4. I revoke Item Eleven of my Will; in lieu thereof I substitute the following:

I hereby give and bequeath all the rest and residue of my personal estate, not heretofore given, including cash and all moneys derived from the sale of intangibles and tangible estate, after payment of my debts, funeral and testamentary expenses, and other expenses incident to the settling of my estate, including a joint tomb-

stone for the graves of my late husband and myself, in one stone, with an appropriate foot marker at my grave, (a foot stone has heretofore been placed at the foot of my husband's grave), as follows: one-half thereof to my son, Andrew W. Lilliston, and one-half to my son, Edwin T. Lilliston to be theirs absolutely in fee simple.

5. The width of the right of way, mentioned in Item Twelve, shall be 20 feet wide instead of 25 feet.

6. It is my intention that the lot owned by me in the Mt. Prospect Section of the Town of Onancock be included in Item Fifteen.

I hereby ratify and affirm each and every provision of my Will bearing date July 12, 1957, except in so far as it has been modified and changed by the provisions of this Codicil.

Given under my hand and seal this 11th day of July, 1958.

Viva Parker Lilliston (SEAL)

Witnesses

Bulah Lane Mason  
Ellen Fisher Gunter

Virginia:-In the Office of the Clerk of the Circuit Court for the County of Accomack, before said Clerk, on the 3rd day of December, A.D., 1969.

This Last Will and Testament of Viva Parker Lilliston, deceased, bearing date January 12, 1957, was proved by the oath of Ellen Fisher Gunter, a subscribing witness thereto, who made oath



that the said Viva Parker Lilliston signed and acknowledged the said Will in her presence and in the presence of Beulah Lowe Mason, another subscribing witness thereto, who being present at the same time, subscribed the said Will in the presence of and at the request of the said Testatrix, who was then over the age of twenty-one years, of perfect sense and memory, and capable of making a Will.

And a Codicil to said Last Will and Testament, bearing date July 11, 1958, was likewise proved by the oath of Ellen Fisher Gunter, a subscribing witness thereto, who made oath that the said Viva Parker Lilliston signed and acknowledged the said Codicil in her presence and in the presence of Beulah Lowe Mason, another subscribing witness thereto, who being present at the same time, subscribed the said Codicil in the presence of and at the request of the said Testatrix.

Whereupon, it is ordered that the said Will and Codicil thereto, be admitted to record as the true Last Will and Testament of Viva Parker Lilliston, deceased.

And thereupon, B. T. Gunter, Jr., the Executor nominated in said Will, by a writing under his hand this day filed, has relinquished his right to qualify. Whereupon, on the motion of Margaret Lilliston Jones, being the same person as Margaret Lilliston Edwards, who was nominated in said Will as Executrix, taking oath and giving bond conditioned according to law in the penalty of Four Thousand Dollars (\$4,000.00), with Fidelity and Deposit Company of Maryland, surety therein, said surety signing and acknowledging said bond by William H. Chandler, its Attorney-in-Fact by virtue of a Power of Attorney duly recorded in the Clerk's Office of said Court, - Certificate is granted unto her, the said

Margaret Lilliston Jones, for obtaining probate of the said Will in due form. And the said bond having been acknowledged by the obligors therein, it is ordered that the same be recorded.

Teste: J. Fulton Ayres, Clerk

by Bulah Lee Mason, Dy.

A Copy-

Teste: J. Fulton Ayres, Clerk

by John H. Godwin, Dy.

Virginia:

In the Circuit Court for the County of Accomack

Beverly E. Bradley,	)
	)
Complainant	)
	)
v.	)
	)
John R. Edwards, Betty	)
Belle Branch, Henry P.	)
Custis, Jr., Bruce E.	)
Edwards, Jill E. Godwin,	)
and Jackie L. Spicer,	)
	)
Respondents	)

ANSWER

Now come the respondents, John R. Edwards and Betty Belle Branch, individually and as Executors of the Estate of Margaret L. Jones, Henry P. Custis, Jr., as Executor of the Estate of Margaret L. Jones and Bruce E. Edwards, Jill E. Godwin and Jackie L. Spicer, individually, by counsel and for answer to the Bill formerly filed herein answer and say:



(1) That they admit the allegations contained in Paragraph No. 1 of the Bill.

(2) That they deny the allegations contained in Paragraph No. 2 of the Bill and here state that it was the intention of Margaret L. Jones Viva Parker Lilliston to give/fee simple title to all real estate devised Margaret L. Jones under her last will and testament and to likewise give good title to Margaret L. Jones for all tangible and intangible personal property bequeathed her under said will.

(3) That they deny the allegations contained in Paragraph No. 3 of the Bill and further state that Margaret L. Jones never attempted to encumber or sell her interest in any part of the estate devised and bequeathed to her under the will of Viva Parker Lilliston.

(4) That they admit the allegations contained in Paragraph No. 4 of the Bill.

(5) That they deny the allegations contained in Paragraph No. 5 of the Bill and here state that Margaret L. Jones had fee simple title to all real estate devised under her last will and testament and good title to all tangible and intangible property bequeathed under her will.

WHEREFORE, your respondents pray that said Bill be dismissed and that they be awarded costs and attorney's fees in their behalf expended.

JOHN R. EDWARDS, BETTY BELLE BRACH,  
HENRY P. CUSTIS, JR., BRUCE E. EDWARDS,  
JILL E. GODWIN AND JACKIE L. SPICER

By Counsel

AYRES, HARTNETT & CUSTIS

By Henry P. Custis

Court Green  
Accomac, Virginia 23301

COUNSEL

CERTIFICATE

This is to certify that on the 10th day of November, 1980,  
I mailed a true copy of the foregoing Answer to William King  
Mapp, Esquire, Keller Virginia, counsel of record for the com-  
plainant.

Henry P. West /  
Of Counsel

FILED November 10 A.D., 1980  
Teste: J. Fulton Ayres, Clerk.  
By Eric Underwood, Dy.

FILED. V. DET. INDEX 3  
Bradley to Edwards  
DATE 2/5/81

## Last Will and Testament

I, MARGARET L. JONES, of Locustville, Accomack County, Virginia, do hereby make, publish and declare this to be my last will and testament, hereby revoking all former wills and codicils heretofore made by me.

ITEM 1 - It is my desire and I request that my remains be cremated immediately after my death.

ITEM 2 - I direct my Executors, hereinafter named, to pay as a cost of the administration of my estate (i) all my just debts, expenses of last illness and funeral expenses, including the cost of a suitable marker for my grave, and (ii) all estate, inheritance and other death taxes assessed by reason of my death, whether or not the property with respect to which such taxes are imposed passes through the hands of my Executors. I also direct that my Executors shall not require that any part of such taxes be apportioned among the recipients of such property.

ITEM 3 - I give and bequeath to my daughter, Beverly E. Bradley, the sum of One Dollar (\$1.00).

ITEM 4 - I give and bequeath to my daughters, Jackson E. Spicer and Jill E. Godwin, my collection of old money, share and share alike. This does not include any money commonly used in circulation at the present time.

ITEM 5 - I give and bequeath to my son, Bruce C. Edwards, all of my guns with the exception of the antique gun hanging on the wall in my home on the "Parker" Farm.



ITEM 6 - I give and bequeath to my daughter, Betty Belle Branch, any camper, travel trailer or mobile home that I may own at the time of my death.

ITEM 7 - I give and bequeath to my son, Bruce C. Edwards, any automobile that I may own at the time of my death.

  
Margaret L. Jones

ITEM 8 - I give and bequeath to my daughters, Jackson E. Spicer and Jill E. Godwin, all of my remaining items of tangible personal property wheresoever situate, share and share alike.

ITEM 9 - I hereby direct my Executors to release any and all claims and demands which I may have against my son, John R. Edwards, at the time of my death for loans or advances at any time made by me to him and to surrender all evidence of such indebtedness, if any there be, to him or his personal representative, it being my desire that he shall not be called upon to pay back any sum that he may apparently owe me.

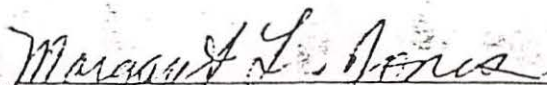
ITEM 10 - I give and bequeath to my daughter, Jackson E. Spicer, any leasehold for oyster grounds leased from the State which I may hold at the time of my death.

ITEM 11 - I direct my Executors hereinafter named to sell my farm known as the "Parker" Farm situate near Burton's Shore, Lee Magisterial District, Accomack County, Virginia, at public auction with Ten Thousand Dollars (\$10,000.00) being paid in cash on the date of sale and the remaining balance due 30 days from date of sale.

The proceeds of said sale shall be divided equally among my children, Betty Belle Branch, John R. Edwards, Bruce C. Edwards, Jill E. Godwin and Jackson E. Spicer, on a per stirpes basis.

In the event that one of my aforesaid children, to-wit: Betty Belle Branch, John R. Edwards, Bruce E. Edwards, Jill E. Godwin and Jackson E. Spicer, purchases said "Parker" Farm, then in that event, I give that child the right to finance the purchase price as follows:

Ten Thousand Dollars (\$10,000.00) per year with interest at the rate of 5½% on the outstanding balance, the first principal payment of Ten Thousand Dollars (\$10,000.00) being due and payable on the day of sale and a like payment on the same day of each year thereafter until said principal and interest are fully paid. In the further event one of the aforesaid children, to-wit: Betty Belle Branch, John R. Edwards, Bruce E. Edwards, Jill E. Godwin and Jackson E. Spicer, purchase said farm, then the purchase price shall be

  
Margaret L. Jones

evidenced by a note upon the aforesaid terms payable to the four remaining aforementioned children, specifically to the exclusion of Beverly E. Bradley and secured by a purchase money deed of trust. In the event one of those children dies prior to the purchase price being paid in full, then in that event his or her annual share shall be payable to his or her children, per stirpes.

I direct my executors hereinafter named to require fire insurance in at least the amount of the purchase price to be carried on the premises in the event that one of my children purchases and

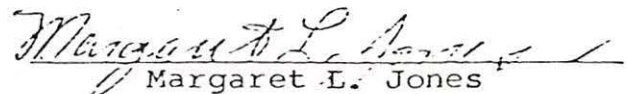
finances as aforesaid. I further direct that child to keep the home place on the property in a good state of repair.

ITEM 12 - All the rest and residue of my estate of every kind, character and description and wheresoever situate, I give, devise and bequeath to my children, Betty Belle Branch, John R. Edwards, Bruce C. Edwards, Jill E. Godwin and Jackson E. Spicer, or such of them as survive me, share and share alike.

ITEM 13 - I direct that any bank account or certificate of deposit which is owned jointly by any of my children and myself with right of survivorship, shall become the property of such child in the event such child survives me, and to that end, I give, devise and bequeath to such child all my right, title and interest in such jointly held account or certificate of deposit.

ITEM 14 - I hereby nominate and appoint John R. Edwards, Betty Belle Branch and Henry P. Custis, Jr., Executors of this my last will and testament. I request that no surety be required on the bond of any of them.

In the event that either John R. Edwards or Betty Belle Branch charges a commission for acting in their capacity as executors, then I direct that any distributive share they receive pursuant to the terms of this will will be debited the amount of said commission.

  
Margaret L. Jones

ITEM 15 - If any person, legatee or devisee shall directly or indirectly contest or dispute any provision in this will either before a probate court or before any judicial body that this is not my last



will or call in question before any Court or tribunal the provisions of any legacy, devise or provision herein, then I revoke all provisions in this will made in his or her behalf and declare the same void and of no effect and give said legacy, devise or provision so revoked to my residuary estate.

ITEM 16 - I hereby confer upon my Executors all the powers and provisions set forth in Va. Code Ann. § 64.1-57 (Repl. Vol. 1973) as in force as of the date of the execution of this my last will and testament.

IN WITNESS WHEREOF, I have hereunto set my hand and seal to this my will consisting of four typewritten pages on this 11<sup>th</sup> day of April, 1979.

Margaret L. Jones (SEAL)  
Margaret L. Jones

The foregoing signature of the testatrix was made and the foregoing will was acknowledged by her to be her last will and testament in the presence of us, three competent, witnesses, present at the same time, and we, the said witnesses, do hereunto subscribe the said will on the date last above written, in the presence of the said testatrix and of each other, at the request of the said testatrix, who was then of sound mind and over the age of eighteen years.

Will E. Godwin

Parkview Va.

James E. Bell

Lee Mount Va.

Henry P. Cook

Overbrook Va.

Witnesses

Addresses

#### CODICIL

I, the herein named Margaret L. Jones, do make this codicil to my last will and testament which is to be taken as a part thereof.

ITEM 1 - I hereby revoke the first paragraph of Item 11 of my last will and testament and change it to read as follows:

I direct my Executors hereinafter named to sell my farm known as the "Parker" Farm situate near Burton's Shore, Lee Magisterial District, Accomack County, Virginia, either at public auction or privately, with Ten Thousand Dollars (\$10,000.00) being paid in cash on the date of sale and the remaining balance due 30 days from date of sale.

In all other respects I do hereby reactnowledge and reaffirm my said will dated April 11, 1979.

Given under my hand and seal this the 12<sup>th</sup> day of June, 1979.

Margaret L. Jones (SEAL)  
Margaret L. Jones

The above signature of the testatrix was made and the foregoing codicil was acknowledged by her to be a codicil to her last will and testament in the presence of us, three competent witnesses, present at the same time; and we, the said witnesses, do hereunto subscribe the said codicil on the date last above written, in the presence of the said testatrix and of each other, at the request of the said testatrix who was then of sound mind and over the age of eighteen years.

B. Hammond Jones

Accomack Va. 23301

David A. Miller

Accomack Va. 23301

James D. Kennedy

Accomack Va. 23301

Witnesses

Addresses

#### CODICIL

I, the herein named Margaret L. Jones, do make this codicil to my last will and testament which is to be taken as a part thereof.

Item I - I hereby revoke Item 3 of my last will and testament and change it to read as follows:

I make the following specific monetary bequests to my children: Five Thousand Dollars (\$5,000.00) to Jackson E. Spicer, Three Thousand Dollars (\$3,000.00) to Jill E. Godwin, One Thousand

Dollars (\$1,000.00) to Bruce C. Edwards and One Dollar (\$1.00) to Beverly E. Bradley.

In all other respects I do hereby reacknowledge and reaffirm my said will dated April 11, 1979.

Given under my hand and seal this the 1 day of <sup>November</sup>~~October~~, 1979.

Margaret L. Jones (SEAL)  
Margaret L. Jones

The above signature of the testatrix was made and the foregoing codicil was acknowledged by her to be a codicil to her last will and testament in the presence of us, three competent witnesses, present at the same time; and we, the said witnesses, do hereunto subscribe the said codicil on the date last above written, in the presence of the said testatrix and of each other, at the request of the said testatrix who was then of sound mind and over the age of eighteen years.

Henry P. Custis, Jr.  
Susan Satchell  
Henry P. Custis, Jr.  
Witnesses

Accomack, Virginia  
Accomack, Virginia  
Accomack, Va  
Addresses

Virginia: In the Office of the Clerk of the Circuit Court for the County of Accomack, before said Clerk, on the 10th day of October, A. D., 1980.

This Last Will and Testament of Margaret L. Jones, deceased, bearing date April 11, 1979, was proved by the oath of Henry P. Custis, Jr., a subscribing witness thereto, who made oath that the said Margaret L. Jones signed and acknowledged the said Will in his presence and in the presence of Jill E. Godwin and Susan Satchell two other subscribing witnesses thereto, who being present at the same time, subscribed the said Will in the presence of and at the request of the said Testatrix, who was then over the age of eighteen



years, of sound and disposing mind and memory and capable of making a Will.

And a Codicil to said Last Will and Testament, bearing date June 12, 1979, was proved by the oath of Faith A. Miller, a subscribing witness thereto, who made oath that the said Margaret L. Jones signed and acknowledged the said Codicil in her presence and in the presence of B. Drummond Ayres and Sandra D. Kennedy, two other subscribing witnesses thereto, who being present at the same time, subscribed the said Codicil in the presence of and at the request of the said Testatrix, who was then of sound and disposing mind and memory and capable of making a Will.

And a Codicil to said Last Will and Testament, bearing date November 2, 1979, was proved by the oath of Henry P. Custis, Jr., a subscribing witness thereto, who made oath that the said Margaret L. Jones signed and acknowledged the said Codicil in his presence and in the presence of Kathryn J. Lilliston and Jackson Spicer, two other subscribing witnesses thereto, who being present at the same time, subscribed the said Codicil in the presence of and at the request of the said Testatrix, who was then of sound and disposing mind and memory and capable of making a Will.

Whereupon, the said Will and Codicils thereto being deemed sufficiently proved, it is ordered that the same be recorded as the True Last Will and Testament of the said Margaret L. Jones, deceased.

And thereupon, on the motion of John R. Edwards, Betty Belle Branch and Henry P. Custis, Jr., the Executors nominated in said Will, taking oath and giving bond conditioned according to law in the penalty of Sixty Five Thousand Dollars (\$65,000.00), there being no surety required of them in accordance with a provision of

the said Will, - Certificate is granted unto them, the said John R. Edwards, Betty Belle Branch and Henry P. Custis, Jr., for obtaining probate of the said Will in due form. And the said bond having been acknowledged by the obligors therein, it is ordered that the same be recorded.

Teste: J. Fulton Ayres, Clerk

by Iris Underwood, Dy.

A Copy -

Teste: J. Fulton Ayres, Clerk

by Paul S. Lilliston, Dy.

Commonwealth of Virginia



PHILIP L. RUSSO  
AUSTIN E. OWEN  
HENRY L. LAM  
GEORGE W. VAKOS  
KENNETH N. WHITEHURST, JR.  
BERNARD G. BARROW  
RESIDENT JUDGES  
CIRCUIT COURT  
CITY OF VIRGINIA BEACH  
PRINCESS ANNE  
VIRGINIA BEACH, VIRGINIA 23456

SECOND JUDICIAL CIRCUIT

March 9, 1981

N. WESCOTT JACOB  
RESIDENT JUDGE  
CIRCUIT COURTS  
ACCOMACK COUNTY  
NORTHAMPTON COUNTY  
ONANCOCK, VIRGINIA 23417

William King Mapp, Esquire  
Keller, Virginia 23401

Henry P. Custis, Jr., Esquire  
Ayres, Hartnett & Custis  
Accomac, Virginia 23301

Re: Bradley v. Edwards

Gentlemen:

After hearing the evidence in this matter on February 5, 1981, I have reviewed the authorities referred to in your memorandums.

The issue in this case is whether the will of Viva Parker Lilliston devised to her daughter, Margaret Lilliston Edwards, a life estate or a fee simple interest, in certain lands located near Locustville, Virginia. Un-



fortunately, Item 12 of the Lilliston will, which devises the land in question to Mrs. Edwards, does not use the words, life estate or fee simple. There is no question that the intention of the testator is the polar star governing the interpretation of wills. We must, therefore, attempt to discover the intention of the testator from reading the will as a whole.

The will in question is not a holographic will nor a will prepared by a layman as is true in many of the cases where the Courts are called upon to make an interpretation. Rather, this will was prepared by an able and experienced attorney. It is interesting to note that the will and the codicil there-to contain the words, "fee simple", at least seven times. This would certainly indicate that if Mrs. Lilliston intended her daughter to have a fee simple interest in the lands in question the will would have expressly so stated. This seems particularly true since the property was devised to Mrs. Edwards upon conditions set out in Item 14 of the will and these conditions are repugnant to a fee simple estate. Unlimited alienation is an essential incident of a fee simple estate and, of course, the will prohibits Mrs. Edwards from any attempt to encumber or sell her interest in the property. On the other hand, freedom of alienation is not one of the incidents of an estate for life and there is, therefore, no repugnancy in a condition prohibiting it.

I also find quite persuasive the argument offered by the complainant regarding a creditor of Mrs. Edwards who waits until after her death to proceed against the property. If the theory of the respondents was accepted Mrs. Edwards would

PHILIP L. RUSSO  
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HENRY L. LAM  
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RESIDENT JUDGES  
CIRCUIT COURT  
CITY OF VIRGINIA BEACH  
PRINCESS ANNE  
VIRGINIA BEACH, VIRGINIA 23456

Commonwealth of Virginia



SECOND JUDICIAL CIRCUIT

N. WESCOTT JACOB  
RESIDENT JUDGE  
CIRCUIT COURTS  
ACCOMACK COUNTY  
NORTHAMPTON COUNTY  
ONANCOCK, VIRGINIA 23417

Page 2

March 9, 1981

have died with a fee simple interest in the property. A creditor could then bring a creditor's suit to have the land sold for the satisfaction of their debt which is contrary to the conditions set forth in Item 14. Certainly it could not be contended that Mrs. Lilliston intended any such result.

For these reasons, I find that the Lilliston will intended to devise to Mrs. Edwards a life estate with remainder in fee simple to the six children of Mrs. Edwards named in the will.



I would ask Mr. Mapp to prepare a decree consistent with the above ruling,  
ask Mr. Custis to endorse same and present to me for entry.

With kind regards, I am

Sincerely,

*N. Wescott Jacob*  
N. Wescott Jacob

NWJ:chm

FILED March 9 A D., 1981  
Teste: J. Fulton Ayres, Clerk.  
By Chris Woodman, Dy.

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF ACCOMACK

Beverly E. Bradley,

Complainant

vs.

No. 7404

John R. Edwards  
Melfa, Virginia  
Individually and as Executor of  
the Estate of Margaret L. Jones

Betty Belle Branch  
Greenbush, Virginia  
Individually and as Executrix of  
the estate of Margaret L. Jones

Henry P. Custis, Jr.  
Accomac, Virginia  
Executor of the estate of Margaret  
L. Jones

Bruce E. Edwards  
Star Route 1  
Slanesville, West Virginia

Jill E. Godwin  
RFD Parksley, Virginia

Jackie L. Spicer  
Onancock, Virginia,

Respondents

FINAL DECREE

This cause having been duly matured, came on to be heard on February 5, 1981, upon the evidence heard ore tenus of the of the complainant, Beverly E. Bradley, Andrew W. Lilliston, and the Exhibits filed, and was argued by Counsel.

After mature consideration for reasons set forth in letter dated March 9, 1981, to Counsel incorporated in this decree by reference, the Court doth find and hold that under the will of Viva Parker Lilliston probated in the Circuit Court for the County of Accomack, Margaret L. Jones, who was the same person as Margaret L. Edwards referred to in said will, obtained a life estate in a certain farm situated near Locustville, Accomack County, Virginia, and not a fee simple interest; that upon the death of the said Margaret L. Jones on October 7, 1980, her interest in said parcel of real estate automatically expired, and the disposition of said real estate in the will of the said Margaret L. Jones, probated in the Circuit Court of the County of Accomack was null and void, and of no effect whatsoever; and that it was the intention of the said Viva Parker Lilliston expressed in her said will, to devise the said lands to the said Margaret L. Jones for the term of her natural life, with remainder in fee simple to the children of the said Margaret L. Jones, who are Betty Belle Branch, Beverly E. Bradley, John R. Edwards, Bruce C. Edwards, Jill E. Godwin, who was Jill A. Edwards, and Jackie L. Spicer, who was Jackie L. Edwards, equally and jointly, share and share alike.

IN CONSIDERATION WHEREOF, it is hereby adjudged, ordered and decreed that the interest of the said Margaret L. Jones in

and to said lands referred to as the Parker Farm, situated near Locustville, Accomack County, Virginia, expired upon her death on October 7, 1980; that her children, namely, Betty Belle Branch, Beverly E. Bradley, John R. Edwards, Bruce C. Edwards, Jill E. Godwin and Jackie L. Spicer, under the will of the said Viva Parker Lilliston, acquired said lands, in fee simple, upon the death of the said Margaret L. Jones, as tenants in common.

To the action of the Court in so finding and holding, the respondents, by Counsel, duly objected and excepted, and upon his motion, it is further ordered that the transcript to be hereinafter filed be made a part of the record .

The Clerk of this Court shall record a copy of this decree properly indexed among the land records for Accomack County.

Nothing further remaining to be done, it is finally adjudged, ordered and decreed that this cause be, and the same hereby is, dismissed from the trial docket. Costs as taxed by the Clerk to be paid by the respondents.

We ask for this:

Wm. H. May  
Counsel for Beverly E. Bradley

Entered in Chancery Order

Book 39 Page 281

Seen and objected to:

Henry P. Custis, Jr.  
Counsel for John R. Edwards, Betty Belle Branch, individually and as Executors, etc., Henry P. Custis, Jr., Executor, etc., Bruce E. Edwards, Jill E. Godwin and Jackie L. Spicer

March 25, 1981

Enter this Decree.

N. W. Seal

Judge of the Circuit Court of the  
County of Accomack



Virginia:

In the Circuit Court for the County of Accomack

Beverly E. Bradley,

Complainant

v.

John R. Edwards, individually and  
as Executor of the estate of  
Margaret L. Jones; Betty Belle  
Branch, individually and as Executrix  
of the estate of Margaret L. Jones;  
Henry P. Custis, Jr., Executor of  
the estate of Margaret L. Jones;  
Bruce E. Edwards, Jill E. Godwin,  
and Jackie L. Spicer,

Respondents

NOTICE OF APPEAL

To J. Fulton Ayres, Clerk of the Circuit Court for the  
County of Accomack:

Counsel for the respondents in the above styled matter  
in the Circuit Court for the County of Accomack hereby files  
notice of appeal from the decree entered herein on the 25th  
day of March, 1981, said decree having been entered in the  
Circuit Court for the County of Accomack, Virginia.

The aforesaid decree, dated the 25th day of March, 1981,  
made the transcript to be filed herein a part of the record.

JOHN R. EDWARDS, INDIVIDUALLY AND  
AS EXECUTOR OF THE ESTATE OF  
MARGARET L. JONES: BETTY BELLE  
BRANCH, INDIVIDUALLY AND AS EXECUTRIX  
OF THE ESTATE OF MARGARET L. JONES:  
HENRY P. CUSTIS, JR., EXECUTOR OF  
THE ESTATE OF MARGARET L. JONES:  
BRUCE E. EDWARDS, JILL E. GODWIN,  
AND JACKIE L. SPICER

By Counsel

AYRES, HARTNETT & CUSTIS

By 

Court Green  
Accomack, Virginia 23301

COUNSEL

CERTIFICATE

This is to certify that on the 21 day of April, 1981,  
I mailed a true copy of the foregoing Notice of Appeal to  
William King Mapp, Esquire, Keller, Virginia 23401, counsel  
of record for the complainant.

Michael H. Fulton  
Of Counsel

FILED April 21 A. D., 1981  
Teste: J. Fulton Ayres, Clerk.  
By John W. Woodward, Dy.

1 Q And also to Margaret?

2 A Yes, sir.

3 Q And, as a matter of fact, Margaret was in  
4 financial difficulties at the time your mother prepared  
5 her will, was she not?

6 A Yes, sir, she was aware of that.

7 MR. MAPP: Answer Mr. Custis.

8 MR. CUSTIS: I have no questions, Your Honor.

9 THE COURT: Thank you, Mr. Lilliston.

10 MR. MAPP: That's our case.

11 MR. CUSTIS: Your Honor please, I would move  
12 to strike the complainant's evidence on two grounds:  
13 Number 1, I think the will of Viva Parker Lilliston  
14 speaks for itself. I will have to admit I think  
15 there were underlying reasons why Mrs. Lilliston  
16 conveyed the estate to Margaret Lilliston. I think  
17 that's probably obvious. She was in financial  
18 difficulty at the time. There is no question about  
19 that.

20 (The argument continues on the first ground.)

21 MR. CUSTIS: My next point will be the factual  
22 situation, which I don't think he's carried that  
23 burden.

24 (The matter was fully argued by both counsel  
25 and the Court ruled as follows:)



1 THE COURT: Well, there is certainly nothing  
2 easy about this. I'm going to say this: There is  
3 no way I can reach a decision on this this morning  
4 without reading some of these cases, giving this  
5 further study. As far as the evidence is concerned  
6 this morning, I really do not think that this was an  
7 attempt by Mrs. Edwards to sell the property. I  
8 don't think it's been shown that she attempted to  
9 sell the property. I think Mrs. Bradley's testimony  
10 sums it right up that she was getting things lined  
11 up to sell it. There is no question in my mind that  
12 she was getting things lined up to sell it. She  
13 knew under this will that she couldn't sell it unless  
14 she had all her children agree, so she was trying to  
15 get things lined up to sell, but I don't think  
16 getting things lined up to sell is an actual attempt  
17 to sell, so I don't really believe as I view this  
18 evidence now that there was an attempt to sell.

19 I appreciate Mr. Andrew Lilliston's opinion  
20 and he might know his mother well and might well be  
21 correct that if she could come back today she might  
22 want all this property divided among the six  
23 children; but, regardless of what anyone that knew  
24 her thought her intent was, the law is that we have  
25 to take her intent from the four corners of this

1 instrument, so it really boils down as far as I'm  
2 concerned to a question of law. Is the intent of  
3 this instrument that there was a life estate to her  
4 daughter, Margaret, with the remainder to the six  
5 children, or was it a fee to her daughter, Margaret,  
6 conditioned upon these facts, and since these facts  
7 did not happen, it goes to however she left her will.  
8 That's the whole question and I'm sorry that there  
9 is no case in Virginia directly on point, but I'm  
10 going to have to read these cases that you gentlemen  
11 cited.

12 Now, if you all have other cases -- I'm not  
13 asking for any formal memorandum, but if you all --

14 MR. CUSTIS: Can we make something informal  
15 and present to the Court in a certain time limit?

16 THE COURT: Sure.

17 MR. CUSTIS: In view of the Court's ruling,  
18 I don't have any evidence to offer. Mine, of course,  
19 was on the factual situation as far as the attempt.

20 THE COURT: If you want to put on any evidence  
21 for the record, I mean that's up to you. I will be  
22 glad to hear it if you have any.

23 MR. CUSTIS: We have nothing. Nothing to  
24 bear on the legal point. Our evidence was going to  
25 be totally related as to attempt.

1 THE COURT: If you want to get that on the  
2 record, of course, now is the time to get it on.

3 MR. CUSTIS: Let's dictate it into the record  
4 in view of the Court's ruling.

5 We wish to offer no evidence because our  
6 evidence was as to an attempt to dispose of the  
7 property during Margaret L. Jones's lifetime and  
8 that point is moot in view of the Court's ruling.

9 THE COURT: All right, sir.

10 (The Court adjourned.)  
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~~For these reasons, I find that the Lilliston will intended to devise to Mrs. Edwards a life estate with remainder in fee simple to the six children of Mrs. Edwards named in the will.~~

~~The respondents thereafter noted their appeal now before this Court.~~

#### ASSIGNMENT OF ERROR

The Court erred in holding that Item Twelve and Item Fourteen of the will of Viva Parker Lilliston set forth in Clerk's Record 4 constituted a life estate with remainder over rather than a fee simple condition subsequent.

#### ~~QUESTION PRESENTED~~

1. Where a devise is conditioned upon a prohibition of sale or encumbrance by a gift over to named children, does such constitute a life estate in the devisee and remainder to the children over or is such a fee simple condition subsequent?

#### STATEMENT OF FACTS

It is clear from the transcript of the evidence and the posture of the case and surely undisputed by the parties concerned that when Viva Parker Lilliston, the mother of Margaret Lilliston Edwards Jones, devised property under Item Twelve of her will and used the following language in Item Fourteen:

... all gifts made to my daughter, Margaret L. Edwards, individually and personally, under Items