

21353
190-457

Record No. 3560

In the
Supreme Court of Appeals of Virginia
at Richmond

W. C. HALL, ADM'R, ETC.

v.

J. K. BRIGSTOCKE, ET AL

FROM THE CIRCUIT COURT OF LOUDOUN COUNTY

RULE 14.

¶5. NUMBER OF COPIES TO BE FILED AND DELIVERED TO OPPOSING COUNSEL. Twenty copies of each brief shall be filed with the clerk of the court, and at least two copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

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

M. B. WATTS, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

190 VA 459

RULE 14—BRIEFS

1. **Form and contents of appellant's brief.** The opening brief of the appellant (or the petition for appeal when adopted as the opening brief) shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned, and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the record where there is any possibility that the other side may question the statement. Where the facts are controverted it should be so stated.

(d) Argument in support of the position of appellant.

The brief shall be signed by at least one attorney practicing in this court, giving his address.

The appellant may adopt the petition for appeal as his opening brief by so stating in the petition, or by giving to opposing counsel written notice of such intention within five days of the receipt by appellant of the printed record, and by filing a copy of such notice with the clerk of the court. No alleged error not specified in the opening brief or petition for appeal shall be admitted as a ground for argument by appellant on the hearing of the cause.

2. **Form and contents of appellee's brief.** The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate reference to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this court, giving his address.

3. **Reply brief.** The reply brief (if any) of the appellant shall contain all the authorities relied on by him, not referred to in his petition or opening brief. In other respects it shall conform to the requirements for appellee's brief.

4. **Time of filing.** (a) *Civil cases.* The opening brief of the appellant (if there be one in addition to the petition for appeal) shall be filed in the clerk's office within fifteen days after the receipt by counsel for appellant of the printed record, but in no event less than thirty days before the first day of the session at which the case is to be heard. The brief of the appellee shall be filed in the clerk's office not later than fifteen days, and the reply brief of the appellant not later than one day, before the first day of the session at which the case is to be heard.

(b) *Criminal Cases.* In criminal cases briefs must be filed within the time specified in civil cases; provided, however, that in those cases in which the records have not been printed and delivered to counsel at least twenty-five days before the beginning of the next session of the court, such cases shall be placed at the foot of the docket for that session of the court, and the Commonwealth's brief shall be filed at least ten days prior to the calling of the case, and the reply brief for the plaintiff in error not later than the day before the case is called.

(c) *Stipulation of counsel as to filing.* Counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

5. **Number of copies to be filed and delivered to opposing counsel.** Twenty copies of each brief shall be filed with the clerk of the court, and at least two copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

6. **Size and Type.** Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and names of counsel shall be printed on the front cover of all briefs.

7. **Non-compliance, effect of.** The clerk of this court is directed not to receive or file a brief which fails to comply with the requirements of this rule. If neither side has filed a proper brief the cause will not be heard. If one of the parties fails to file a proper brief he cannot be heard, but the case will be heard *ex parte* upon the argument of the party by whom the brief has been filed.

OLIVER
SUPREME COURT OF APPEALS



RICHMOND, VIRGINIA

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IN THE
Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 3560

WILBUR C. HALL, ADMINISTRATOR, D. B. N. C. T. A.
OF ROBERTA LECKIE RITTENHOUSE, ET AL.,
Appellants,

versus

J. K. BRIGSTOCKE AND THE PEOPLES NATIONAL
BANK OF LEESBURG, VIRGINIA, A CORPORA-
TION, EXECUTORS OF THE LAST WILL AND TES-
TAMENT OF ELIZABETH CLAGETT MEADE, ET
AL., Appellees.

PETITION FOR AN APPEAL AND *SUPERSEDEAS*.

*To the Honorable Chief Justice and Justices of the Supreme
Court of Appeals of Virginia:*

Your petitioners are aggrieved by the entry of a decree by the Circuit Court for Loudoun County, Virginia, on the 30th day of December, 1948, in the Chancery cause of Wilbur C. Hall, Administrator d. b. n. c. t. a. of Roberta Leckie Rittenhouse, et al., Appellants, *versus* J. K. Brigstocke and The People National Bank of Leesburg, Leesburg, Virginia, a corporation, Executors of the last will and testament of Elizabeth Clagett Meade, et al., Appellees.

To the end that said errors might be corrected, the peti-

tioners respectfully pray that this Honorable Court may
 2* award *them an appeal and *supersedeas* to said decree;
 that said proceedings may be reviewed; that the said
 decree may be set aside and a final decree entered in behalf of
 petitioners.

The parties will be referred to as "Appellants" and "Appellees."

The question presented by this appeal involves the validity of the will of Roberta Leckie Rittenhouse, written in her own handwriting and dated October 13, 1946. A photostatic copy of this will, which was duly admitted to probate by the Clerk of the Circuit Court of Loudoun County, Virginia, on January 2, 1948, is filed with this petition and a copy thereof appears in the record as Exhibit C (R., p. 15), but for the convenience of the Court, the will is now set forth as written by the testatrix:

"Roberta Leckie Rittenhouse

Written by myself October 13th 1946

My Will

I leave to my Cousin James Bradshaw Beverley
 \$5,000

I leave to my Cousin, John Gray Beverley
 \$5,000.00

I leave to my dear friend, Mrs. Anna F. Rogers
 \$20,000

I leave to my kind friend Mr. Nevil Bradfield
 \$2,000

I leave the rest of my money which I wish
 given to St James Episcopal Church Leesburg
 Loudoun Co Virginia

My two diamond Rings I leave to Westwood
 Beverley Byrd—

3* *My gold Bracelet To Go to Mrs. Mary Gray
 Lewis

The few things I have left to be given to
 Mrs Harry F Byrd

This is My last Will and Testament"

THE PLEADINGS.

Wilbur C. Hall, Administrator d. b. n. c. t. a. of the estate of Roberta Leckie Rittenhouse, sometimes known as Roberta L. Rittenhouse; James Bradshaw Beverley; John Gray Beverley; Anna F. Rogers; H. C. Littlejohn, W. T. Thomas, and Frank Saunders, Trustees of St. James Episcopal Church, Leesburg, Virginia, an unincorporated religious denomination; and Anne Douglas Beverley Byrd, sometimes known as Mrs. Harry F. Byrd; and Westwood Beverley Byrd, filed their bill in equity in the Circuit Court for Loudoun County, Virginia. From the facts alleged in the bill of complaint it will appear that Roberta Leckie Rittenhouse, a life-long resident of Loudoun County, died December 9, 1946, at which time she was 84 years of age. No will was found and under the belief that she had died intestate, E. N. Bradfield qualified as the Administrator of the estate before the Clerk of the Circuit Court for Loudoun County on December 14, 1946. He proceeded to collect the assets of the estate, amounting to approximately \$89,000.00, and to administer the same. Roberta Leckie Rittenhouse left as her heirs at law Elizabeth Clagett Meade, a sister, Thomas H. Clagett, a brother, and Mary Gray Lewis, Elizabeth C. Stork and C. Warner Stork, Jr., children of a deceased sister. Elizabeth Clagett Meade died before receiving her distributive share of said estate, so that

4* the *same was paid over to her personal representatives, J. K. Brigstocke and The Peoples National Bank of Leesburg. Thomas H. Clagett received his distributive share, but he has since died testate and E. N. Bradfield has duly qualified as the executor under his last will and testament. Mary Gray Lewis, Elizabeth C. Stork and C. Warner Stork, Jr. are beneficiaries under the will of Elizabeth Clagett Meade and Mary Gray Lewis and Elizabeth C. Stork are the principal beneficiaries under the will of Thomas H. Clagett. E. N. Bradfield filed his final account as Administrator of Roberta Leckie Rittenhouse, but neither the estate of Elizabeth Clagett Meade nor Thomas H. Clagett has yet been disbursed.

Sometime in the late fall of 1947, the will of Roberta Leckie Rittenhouse was discovered among her papers. It was dated October 13, 1946, less than two months before her death, and was written wholly in her own handwriting. This will was duly probated before the Clerk of the Circuit Court for Loudoun County on January 2, 1948, and Wilbur C. Hall qualified as Administrator, *de bonis non, cum testamento annexo*.

From the prayer of the bill of complaint it will further appear it is the position of the complainants that the distribution by E. N. Bradfield as administrator of the estate of

Roberta Leckie Rittenhouse was erroneous and, accordingly, that the funds in the hands of J. K. Brigstocke and The Peoples National Bank of Leesburg, as executors of the estate of Elizabeth Clagett Meade, and in the hands of E. N. Bradfield as executor of the estate of Thomas H. Clagett are im-
 5* pressed with a *trust in favor of the legatees and distributees under the will of Roberta Leckie Rittenhouse and that such a trust be established and recognized accordingly.

Thereupon, J. K. Brigstocke, The Peoples National Bank of Leesburg, the executors of the last will and testament of Elizabeth Clagett Meade and E. N. Bradfield, executor of the last will and testament of Thomas H. Clagett, and Elizabeth C. Stork, C. Warner Stork, Jr. and Mary Gray Wright, sometimes known as Mary Gray Stork Lewis, filed their several demurrers to said bill.

This cause came on to be heard on said demurrers and on the 30th day of December, 1948, the Circuit Court for Loudoun County, Virginia, decreed that the paper writing of Roberta Leckie Rittenhouse, wholly in her handwriting, was not a valid last will and testament and that the demurrers should be sustained and the bill of appellants dismissed, to which action of the Court appellants by counsel excepted and asked leave to amend their bill of complaint, which motion was likewise denied and appellants excepted.

Appellants thereupon gave a suspending bond in conformity with decree of the Court. The decree further provided that the original will of Roberta Leckie Rittenhouse might be certified to this Court with the petition for an appeal.

ASSIGNMENT OF ERRORS.

1. The will is not subject to collateral attack.
2. The holographic will of Roberta Leckie Rittenhouse is a valid last will and testament and constitutes her true last will and testament.

6*

*ARGUMENT.

I. The Will is Not Subject to Collateral Attack.

Appellants contend that under the established procedure in Virginia, a will is not subject to collateral attack. When a will is once proved and finally probated the question of its validity cannot be raised collaterally. Appellees could only raise the question of the validity of the will by an appeal

from the order of probate by the Clerk of the Circuit Court of Loudoun County, Virginia, in whose office the will was probated on the 2nd day of January, 1948.

Harrison on Wills, Volume 1, Section 126, page 228, is authority for the above proposition and specifically says:

“When once proved and finally probated, the validity of the will cannot be afterwards questioned collaterally, while, unless probated, it can never be received in any Court without being proved anew.”

This question is no longer open in Virginia. The case of *Avant v. Cook*, 118 Va. 1, is the leading case on the question. In that case the facts were as follows: Priscilla Gross died in 1887 leaving a will which was duly executed and proved before the County Court of Botetourt, and ordered to be recorded as the true last will and testament of the testatrix. In an action of ejectment by the heirs at law of Priscilla Gross against those holding under her will, there was a judgment for the defendants. The principal question raised in the case was as to the validity of the will of Priscilla Gross. The

court held that the will, having been duly proven and 7* *admitted to record by a court of competent jurisdiction, could not be attacked in a collateral proceeding; that it could only be attacked in the mode prescribed by law. In this case the Court reviewed all the Virginia authorities on this question as follows:

“From an early day, in this jurisdiction the established doctrine has been that the sentence of a court of probate of competent jurisdiction, admitting a will, or writing in the nature of a will, to probate cannot be denied in any collateral proceeding touching the will; that its validity can be tested only by resorting to the means provided by law for that specific purpose.

“In *West v. West*, 3 Rand. (24 Va.) 373, 386, Judge Green, in discussing a case instructive in this connection, uses this pertinent language: ‘The will, however, ought not to have been admitted to probate generally, for that might have the effect of giving it validity as a will of lands, although a probate is not necessary, with us, to give effect to a will of land, yet, when admitted to probate as a will of lands, it cannot afterwards be questioned in any way but that prescribed by the act of Assembly.’

“In *Nalle v. Fenwick*, 4 Rand. (25 Va.) 585, in considering whether a will was so proved as to pass lands, the court, after adverting to the statute prescribing the time in which

wills could be contested, said: 'Can we now call in question the probate of this will or disturb it in any way? The laws says not. It says that no party appearing within seven years to contest the will, the probate shall be forever binding; and so say the decisions of this court.'

"In *Vaughan v. Green*, 1 Leigh (28 Va.) 316, which was an action of ejectment, it appeared that the will of William Boyd had not been executed so as to be valid as a will of lands, but it had been admitted to probate generally, and 8* not having been contested in the time *prescribed by law, it was held to be a complete will of lands. In that case, as in the instant case, it was claimed that as the will was not a valid will of lands when executed, its probate could not enable it to pass the title which the testator had to the land. The court said: 'The proper court of probate, in 1785, admitted the paper, purporting to be the will of William Boyd, to full probate, had it recorded, and granted administration under it; There has never been any bill filed, or attempt made in any other form, to impeach it. And in 1823, thirty-eight years after the probate, it is objected that this will shall not be introduced in evidence in a contest about the lands held under it. I do not think this objection can be sustained on any ground. In *Bagwell v. Elliott*, 2 Rand. (23 Va.) 189; *West v. West*, 3 Rand. (24 Va.) 373, and *Nalle v. Fenwick*, 4 Rand. (25 Va.) 585, this court decided that a will, admitted to probate by the proper court, could only be contested by bill; and that no party appearing within seven years to contest the will, 'the probate shall be forever binding.' "

"In the case of *Parker v. Brown*, 6 Gratt. (47 Va.) 554, Sally Parker failed to execute her will so as to make it a valid testamentary disposition of her real estate. The Court held that, inasmuch as the will had been admitted to probate generally as her last will and testament, and no appeal from the sentence of probate had been taken, and no bill filed to disturb the will as a good will of real or personal estate, under such circumstances the probate of the will operated to give it effect as a will of lands, and that its validity as a well executed and proved will of real estate could not be impeached. See also *Street v. Street*, 11 Leigh (38 Va.) 521, and *Schultz v. Schultz*, 10 Gratt. (51 Va.) 358, 60 Am. Dec. 335.

"The case of *Robinson v. Allen*, 11 Gratt. (52 Va.) 785, on the question we are now considering, is very similar to 9* the case at bar. In that case, just as in *the instant case, the suit was brought by the heirs at law against the personal representative and legatee of the testatrix, claiming that the will of Catherine Bradford, who was a married

woman, was void because a married woman could not make a will. The will had been admitted to probate, and in disposing of the case the court said: 'It is suggested, however, by the appellee's counsel, in the argument here, that inasmuch as it appears on the face of the paper that Catherine Bradford was a married woman at the time of executing it, it cannot have the effect of a will, and that she must be regarded as a dead intestate. This objection could have had no force in this suit, even if made in the court below; for it is well settled by the decisions of this court, that the sentence of a court of probate, of competent jurisdiction, admitting a will, or writing in the nature of a will, to probate, is conclusive evidence of the due making thereof, and that it cannot be denied in any collateral proceeding touching the will; that its validity can be tested only by resorting to the means provided by law for that specific purpose.'

In *Ballow v. Hudson*, 13 Gratt. (54 Va.) 672, where a like question was involved the court said: 'This court has decided very frequently that if a court of competent jurisdiction shall admit a will to probate as a will of lands, which appears upon its face, or upon the record of the probate, not to have been duly executed as a will of lands, still the sentence is binding upon all concerned in interest, and upon all courts, as long as the sentence remains in force. That such is the law is regarded as well settled.'

"In *Norvell v. Lessueur*, 33 Gratt. (74 Va.) 222, it is held to be a settled rule of law in Virginia, 'that the admission of a will to probate generally is conclusive of its validity, both as a will of realty and personalty, which cannot be drawn in question except on an issue *devisavit vel non* within the 10* time and in the mode *prescribed by the statute.' See also *Bryan v. Nash*, 110 Va. 329, 66 S. E. 69.

"In the recent case of *Saunders v. Link*, 114 Va. 285, 76 S. E. 327, William A. Huffman died in 1908, survived by a widow and leaving as his heirs at law adult children and infant grandchildren. Prior to his marriage Huffman made a will giving his entire estate to Mary F. Saunders, whom he subsequently married, and appointed her his executrix. This will was duly admitted to probate and the widow qualified as executrix. One of the adult children brought suit, praying that the will might be treated as a nullity and that it might be adjudged that Huffman, died intestate, upon the ground that the subsequent marriage of the testator absolutely revoked the will under the terms of the statute. (Code 1904, sec. 2517.) The circuit court granted the relief asked and upon appeal by the widow this court reversed the circuit

court and affirmed the binding effect of the order admitting the will to probate, holding the settled doctrine in this State to be, 'that the sentence of a court of probate having jurisdiction of the subject is a judgment *in rem*, and until reversed binds not only the immediate parties to the proceeding, but all other persons (though infants at the time) and all courts.'

"In the light of these authorities we are of opinion that the disposition made by Priscilla Gross in her will of *her* estate cannot now be questioned. Her will was admitted to probate generally, and not having been contested within the time prescribed by law, it is now forever binding as a complete will, passing title to such lands and personal property belonging to her as the testatrix disposed of by the same."

11* *The suit of *Avant v. Cook*, *supra*, has been cited with approval by the Virginia court as recently as 1937 in *Rosser v. Atlantic Trust & Security Co.*, 168 Va. 389.

In the case of *In Re: Bentley*, decided in 1940 in 175 Va. 456, the Court relied on *Avant v. Cook*, *supra*. In this case, the principal question was whether or not a second will could be offered for probate after the order admitting the first will to probate had become final and the time for appeal had expired and the court held that it could. But on the point as to the probate of the earlier will, the Court followed *Avant v. Cook*, *supra*. On this point, the Court reaffirmed the holding of *Avant v. Cook*, at page 460, as follows:

"It is well settled in this State and elsewhere that the judgment of a probate court of competent jurisdiction admitting a paper to probate is in the nature of a judgment *in rem*, and as long as it remains in force binds conclusively all parties and all other courts. (Citing authorities.) Such a judgment of probate cannot be collaterally attacked and can only be assailed in the manner provided by statute. (Citing authorities.)

The Court then went on to state that the conclusiveness of the judgment or probate of an earlier will does not preclude the probate of a later will.

Therefore, it is respectfully submitted that the validity *of the will of Roberta Leckie Rittenhouse cannot be attacked in this suit, and that the decree of the Circuit Court of Loudoun County should be reversed and the case remanded.

II. *The Holographic Will of Roberta Leckie Rittenhouse is a Valid Last Will and Testament, and Constitutes Her True Last Will and Testament.*

A. The Virginia Statute and Decisions.

1. The mode of executing a will in Virginia is governed and controlled by Section 5229 of Michie's 1942 Code of Virginia, which provides:

"No will shall be valid unless it be in writing and signed by the testator, or by some other person in his presence and by his direction, *in such manner as to make it manifest that the name is intended as a signature*; and moreover, unless it be wholly in the handwriting of the testator, the signature shall be made or the will acknowledged by him, in the presence of at least two competent witnesses, present at the same time; and such witnesses shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary. If the will be wholly in the handwriting of the testator that fact shall be proved by at least two disinterested witnesses." (Italics supplied.)

2. The history of Section 5229 of the Code of Virginia, briefly stated, is as follows: Our Statute of Wills was borrowed from the Statute 29, Charles II, with the exception that it dispenses with the attestation of witnesses where the will is altogether written by the testator. The Statute of 29, Charles II, required that the will should be in writing signed by the deviser, or some other person in his presence, and by his direction; and that it should be attested and subscribed by three or more credible witnesses. *A 13* holographic will is unknown in England and in some of our states. About four years after the passage of the statute of 29 Charles II, it was determined in the case of *Lemayne v. Stanley*, 3 Levintz 1, where the court had under consideration a will wholly in the handwriting of the testator, duly attested before three witnesses, but in which his name appeared only in the exordium, that since the statute did not point out whether a will should be signed on the top, bottom, or margin, signing in any part was sufficient. The leading case in Virginia, prior to the enactment of our present statute, was the case of *Waller v. Waller*, 1 Gratt. 455, decided in 1845, in which the court upheld the doctrine of *Lemayne v. Stanley*, *supra*. In 1850 the present statute, Section 5229 Michie's 1942 Code of Virginia, was enacted.

"The statute in the Code of 1850 removed the difficulties in the decisions by saying that the signature must be attached in such a way as to make it apparent that it was intended to be a signature. This intent must appear upon the face of the will. Before this statute had been enacted, however, in *Waller v. Waller*, 1 Gratt. 454, it had been held that the same principle which applied to attested wills as to the location of the signature would not apply to holographic wills. The signature as before, connected the testator with the will, but there being no attestation, there was nothing to show the finality or completion of the testamentary intent. It was there held that a will which began: 'I, John Waller, do make, published, etc.,' written in the handwriting of the testator, but not signed in any other way, was not sufficiently signed. The signature of the testator was there on the will and that connected him with the paper, but there was nothing to show the finality of the testamentary intent." Harrison on Wills, Vol. 1, Sect. 103 (2), page 194.

Mr. Minor has thus clearly stated the purpose of
14* *the statute:

"It was agreed that the object in requiring the testator's signature was twofold, namely, (1) to connect him with the paper, and (2) to afford proof of the finality or completion of the testamentary intent." 4 Minor (3rd Ed.) 93.

This purpose has been adhered to by our Supreme Court of Appeals and the rule of construction based thereon has been recognized in each of the many cases decided since 1850, where the question of the validity of a will has depended on the signature.

The *animus testandi* in this case is admitted, but it is the *animus signandi* which alone is in controversy, and the argument will revolve around the latter proposition only.

4. The long line of Virginia decisions is collected in the recent case of *McElroy v. Rolston*, 184 Va. 77, decided in June, 1945. It is not believed that any purpose will be served by discussing these cases in detail. It will suffice to set forth briefly the various tests which the Court has relied on from time to time in reaching its conclusion as to whether or not the will under consideration has been signed *in such manner as to make it manifest that the name is intended as a signature*.

15* *(a) *First. The Will Must be a Complete Instrument.*

In every instance where the will bears on its face evidence that the testator did not regard it as a final and completed

act, the Court has been quick to refuse its probate. So beginning with the early case of *Waller v. Waller*, *supra*, where the date was left blank in the concluding paragraph, and the signatures of attesting witnesses were missing, although obviously intended, this Court held that evidence of finality was lacking. In those cases where the testator's signature has appeared only in the exordium the Court has said the name was inserted there of necessity to make sense to the document and not to give authenticity to the then ensuing provisions. *Ramsey v. Ramsey*, 13 Gratt. 664; *Roy v. Roy* 16 Gratt. 418; *Warwick v. Warwick*, 86 Va. 596; *Meany v. Priddy*, 127 Va. 84; *Hamlet v. Hamlet*, 183 Va. 453. Again in cases where the testator's name has appeared in his own hand on a covering envelope, the court has held that such a signing indicated a mark or label to distinguish it from other papers, or has held it was a draft for further consideration. *Roy v. Roy*, *supra*; *Meany v. Priddy*, *supra*. But where the testator's name is followed by non-essential words (*Diming v. Diming*, 102 Va. 467), or where it is merely misplaced and appears along with the attesting witnesses, such are not sufficient to counterbalance what otherwise appears to be a completed instrument. *Murguiondo v. Nowlan*, 115 Va. 160; *Presbyterian Orphans Home v. Bowman*, 165 Va. 484.

16* *Second. Evidence of Finality on the Face of the Will.

Extrinsic evidence is not admissible to either prove or disprove a will. Whether or not a signing is manifestly intended as a signature must be determined from the face of the will itself. (*McElroy v. Rolston*, *supra*; *Fenton v. Davis*, 187 Va. 463.)

The court on many occasions has found evidence within the four corners of the will itself which has enabled it to hold that the name was manifestly intended as a signature. Thus finality of intent is established where the testatrix calls on witnesses to attest her will, although she signed the same in the margin and not at the foot or end. *Murguiondo v. Nowlan*, *supra*; Also the fact that the will as written comes almost to the lower edge of the paper may be considered as evidence to explain the failure to sign at the foot or end. *Forrest v. Turner*, 146 Va. 734. The completeness of the document, that is whether it disposes of all the testator's property, contains a residuary clause, and the care used in its preparation constitute *indicia* of the *animus signandi*.

17* *B. The Will of Roberta Leckie Rittenhouse is Signed in Accordance with the Mandate of the Statute.

1. *It is a Completed Instrument.*

Roberta Leckie Rittenhouse's will makes an orderly and complete disposition of all her property. It contains a residuary clause as to both tangibles and intangibles. It shows that it was prepared with thought and thoroughness, naming the parties and the amount of property she desired each to receive. From nothing said or left unsaid could it be argued that this was a draft laid aside for future consideration. The name of the testatrix does not appear in the exordium, but at the very top of the instrument. Its presence there is not necessary to the sense of the will. It has but one purpose and one purpose only—to identify Roberta Leckie Rittenhouse with the will and to stamp the document with the authenticity and finality she desired and which is naturally desired by every person in the performance of this important act.

2. *The Concluding Paragraph is Conclusive Evidence of Finality.*

While the will in question was not attested, it is submitted that the closing paragraph, "This is my last will and testament" affords all the finality which could be supplied by an attestation clause.

Murguiondo v. Nowlan, 115 Va. 160, is the leading Virginia case on the effect to be given an attestation clause. In this case the will was written on several sheets of paper, on the margin of each of which appeared the name of the testatrix.

In the presence of witnesses, she affixed her name in the 18* margin of *the last page. The attestation clause is in the usual form and signed by two witnesses. In holding that this signing was in compliance with the requirement of the Statute, the Court said, at page 165:

"The finality of an attested will is established by the attestation and publication. No man publishes an instrument as his last will and testament, and calls on witnesses to attest the fact, until he has completed the act. * * * To the act itself the law attaches testamentary intent that it is a concluded instrument, and if the party is under no restraint, acts freely and is of sane mind, no further proof is necessary to sustain the instrument as a will."

In the ordinary attestation clause, such as the one found in the *Murguiondo* case, to which the courts attach such importance as evidence of finality, the testator, after signing

the instrument, informs the witnesses that it is his will. Yet from this simple act the courts conclude finality, or to use the language of the Court, "To the act itself the law attaches testamentary intent that it is a concluded instrument." In the case at bar, the testatrix has done this very thing. She declared the finality of her testamentary intent not to two witnesses but to the whole world.

The very form of the will shows finality. It begins with the signature of the testatrix, comprising a single line, not a part of a sentence or paragraph. It then tells us it is written by herself and it is dated. We are then told it is the "will" of the testatrix, Roberta Leckie Rittenhouse. Then follows a complete disposition of her property, after which with satisfaction and finality the solemn statement is made, "This is my last will and testament." It is perfectly ap-

parent that the *testatrix did not think any further sig-
 19* nature necessary. She had identified herself with the paper and the purpose for which it was written. She designated it at the beginning and at the very end as her will. By the last two lines she adopted her signature at the top of the instrument as well as the disposition made by her of her property. The will is complete and harmonious in all its parts. There is nothing equivocal or uncertain about it.

It is respectfully submitted that this concluding paragraph is alone sufficient to supply the evidence or explanation found lacking by the Court in the McElroy case, and to enable the case at bar to be distinguished therefrom.

3. *The Place of Testatrix's Signature as Evidence of Finality.*

The actual position of the testator's name is recognized by the court as evidence of the utmost importance. It was held in the very earliest case under the Statute that the signing in the exordium alone was not sufficient. Indeed, the Waller case, which brought forth the Statute, was one in which the only signature appeared in the exordium. But beginning with the Waller case and continuing down to the present, the Court has been careful to state that it does not mean to be understood to hold a signing at the foot or end is necessary. The signing must be such as appears to have been intended to give the will authenticity. It should be remembered that the reaction of the English Parliament to *Lemayne v. Stanley*, *supra*, was to amend the Statute to require the signature for wills to be "at the foot or end."

Our Legislature, on the other
 20* hand, did not go so far, *and as pointed out by Judge Allen in the Waller case, the rule as we now have it is

much safer, because it is much more flexible. And the reason for this is obvious: it is not the purpose of the Statute to defeat testamentary disposition of property, nor should the courts do anything to increase the difficulty of making wills to the point where the right of the uninformed to dispose of his property is destroyed. The Virginia statute was designed, as stated by the Court in *Dinning v. Dinning*, *supra*, "To furnish a rule in respect to a signature, which would let in wills, though not signed at the foot or end, if signed in such manner as to afford internal evidence of authenticity equally convincing."

The Court should bear in mind that Section 5229 of Michie's 1942 Code of Virginia merely requires that the will be signed in such manner as to make it manifest that the name was intended as a signature. It does not require that it be subscribed, which is, of course, a signing, at the foot. Funk & Wagnall's New Standard Dictionary of the English Language defines "signed" thus: "To affix one's signature to; append one's name, initials, seal, or mark to, as a document, picture, etc., as a method of acknowledgment", while it defines "subscribed" thus: "To write below a documentary statement; as 'he subscribed a false name'; to write or inscribe something, as a name, below or underneath."

There can be no complaint with the rule that excludes wills signed only in the exordium. Such a signing of a holographic will is patently not intended as a signature, but is present of necessity to give sense to the particular sentence.

21* *But it is submitted that this same reasoning is not applicable to the signature in the case at bar. The name of Roberta Leckie Rittenhouse is not necessary to the sense of the language following. That it connects the testatrix with the document cannot be denied. The only question is whether it lends authenticity or finality to the whole document. Its position for this purpose is certainly much stronger than if it appeared only in the margin. It cannot be denied that it gives much more authority to the instrument than if it appeared only on the back, as in *Forrest v. Turner*, *supra*. Therefore, it is submitted that the instant case is the strongest case which has yet been presented to this court for decision.

To deny the validity of the will in this case would amount to an amendment to Section 5229 of Michie's 1942 Code of Virginia, to the effect that wills should be "subscribed" rather than "signed" and would defeat the purpose of this Section of the Code and all of the cases decided by this Court since its enactment.

22* *It should be pointed out here that the instrument as written comes nearly to the bottom of the page. While it could be argued that the testatrix may have had space to subscribe her name, still the fact that very little room is left at the bottom, is evidence to explain the signing elsewhere.

Judge Allen in *Waller v. Waller*, *supra*, supposes a similar case in his justification of the flexibility of the Virginia rule.

“A testator may not have left himself room to subscribe his name at the end of the instrument; a signing under such circumstances at some other place, appearing upon the face of the document to have been a signing to authenticate the instrument would be a sufficient signing. Other cases may be supposed.”

The court in *Forrest v. Turner*, *supra*, makes a pertinent observation with reference to the failure of the testator to sign at the bottom:

“Upon a careful examination of the original paper—we find that it was barely possible, certainly not natural, for the testator to attempt to write his signature or add anything in conclusion on that page, as the words on the last line almost touch the lower edge of the paper. The fact that the writer deemed it essential to add anything, or to sign his name only, is some evidence that he intended to make the will complete, and to do so he was obliged to write upon the other side of the piece of paper, or he thought so.” * * *

* * * * *

“In the instant case the name is placed so as to manifest beyond question that it was intended as a signature * * *

“In the instance case the *animus testandi* is manifest, and in our opinion is that the *animus signandi* is fairly clear. We think the subscription made by the testator, while out of its usual place, sufficiently appears to have been made by him as a signature to his last will and testament, and was so
23* intended by him, when *we consider the facts which we have recited and the meaning, intent and purpose of the words immediately above the signature.”

The case of *McElroy v. Rolston*, *supra*, is not controlling on the case at bar. In that case the court found “not a word of explanation in the paper before us which in any way indicates that Alice Wright intended her name at the top of the page to be her signature to the will * * * her name so placed

is aided by no evidence or explanation on the face of the paper showing that it was used for the purpose of ratifying and authenticating the contents of the instrument, or that it imported a finality of her testamentary intent." That language cannot be fairly applied to the will of Roberta Leckie Rittenhouse. The evidence found within the will itself is ample to show that the name was manifestly intended as a signature. While the evidence necessary to establish this fact need not be conclusive and the court has taken occasion to point out that it need only be "fairly clear" (*Forrest v. Turner supra*) yet it is submitted that the evidence available on the face of the Rittenhouse will comes as close to proving the authenticity and finality of the instrument as is possible from the unspoken word. The will is first and foremost a final, completed document, disposing of all the testatrix's property, containing no blanks nor any indication that it is anything other than "my last will and testament". The name appears at the top of the paper, not in the exordium, not in any place where any other purpose can be ascribed to it than that it is the intended necessary signature. There is hardly room 24* at the bottom of the page to *put the signature, which is yet further evidence that the name at the top is intended as the authenticating signing. If further evidence is necessary, the concluding paragraph supplies it. Indeed this paragraph alone is sufficient to establish conclusively that the will in this case is final and complete. It speaks with all the authority of an attesting clause, and publishes the will as effectively as if done in the presence of witnesses. This clause would not be in the will if it were not a completed act. And as the law concludes a will with an attestation clause to be a final testamentary document, so the court now must find that the concluding paragraph affords conclusively the evidence of authenticity and finality lacking in the will of Alice Wright.

III. *Pertinent Cases Outside of Virginia.*

The cases from other jurisdictions are numerous. They are collected in two extensive annotations found in L. R. A. 1916E 140, and 29 A. L. R. 389. The case of *Re: Estate of Elizabeth R. McMahon* (Cal.), 163 Pac. 669, L. R. A. 1917 D 778, is the closest case on the facts that counsel for the appellants have been able to find. In that case, the will of Elizabeth R. McMahon was written in her handwriting. This will opens as follows: "This is the last will and testament of Elizabeth R. McMahon" and it concludes: "I do hereby publish and declare the foregoing, entirely written, dated and

signed by my own hand, to be my last will and testament, 25* this 2nd day *of January, 1912." No signature of the testatrix appeared in any other place upon the instrument. On these facts the Court entered a decree admitting the same to probate. In the course of its opinion the California court held:

"The language of the instrument here in question is much more definite and convincing [than that used in *re: Manchester*, wherein the court held that a will signed only in the exordium and concluded with 'whereunto I hereby set my hand this 14th day of January, 1914,' was at least equivocal relying on *Waller v. Waller*, 1 Gratt. 474] to the effect not alone that the testatrix believed her will to be duly executed, which would, of course, have no controlling weight in the consideration of the question as to whether or not it was in law duly executed, but to the effect that she has sufficiently in law, on the face of the instrument, adopted the signature written by herself in the exordium of her will as her signature in execution of it. If she has done this and with sufficient exactitude has state the fact, she has, in legal effect, declared that she had adopted her signature as written in the body of the will as being the signing of it in execution of it within the meaning of the Code provision, and this would be sufficient to entitle the instrument to probate.

"We hold that the testatrix in this case has sufficiently accomplished the object indicated. An absolute precision of execution is not expected in the case of holographic will. What is required is a clear showing upon the face of the instrument of its execution in conformity with the law. In this case the difficulty arises over the fact that the signature is not found in the usual place at the bottom of the instrument. But the language last employed by the testatrix clearly indicates that the testatrix had concluded her writing and thus had completed the expression of her testamentary intent, and it is a most reasonable construction of that language to say that she adopted her signature in the exordium as her signature in execution of the will when she declares that 'the foregoing, entirely written, dated and signed by my own hand' is her last will and testament."

This case is particularly applicable in view of the fact that the rule of the California court and of the Virginia 26* court *are identical as pointed out in the A. L. R. annotation cited above.

In the recent California case of *In Re: Gardner's Estate* (Cal.), 190 P. (2d) 629, decided March, 1948, where the Court

had under consideration a holographic will which began "I, Mrs. Estelle Gardner of 433 West Laurel Street, do make, devise and bequeath", etc., and concluded "My only last will and testament signed this 10th day of March, 1947, Compton, Calif. 433 West Laurel St.". It held this to be a valid will and said:

"If placed elsewhere, it is for the court to say, from an inspection of the whole document, its language as well as the form, and the relative position of its parts, whether or not there is a positive and satisfactory inference from the document itself that the signature was so placed with the intent that it should there serve as a token of execution. If such inference thus appears the execution may be considered as proven by such signature."

* * * * *

"Whenever it has appeared that a holographic testamentary instrument was a completed declaration of the decedent's desires, such an instrument has been admitted to probate although the decedent wrote his name only in the beginning of the declaration. This has been so even where there was no expression by the testator affirmatively adopting the name so placed as his signature to the will. Completeness alone has been held sufficient evidence of the adoption of the name so placed as the authenticating signature of the testator and as a compliance with the statute which requires the will to be 'signed'."

In Re Estate of Kaminski, 45 Cal. App. (2d) 779, 115 P. (2d) 21, the only place in which the decedent's name occurs is in the opening words of the document as follows: 'Last will and testament of Belle Kaminski, December 8, 1937, of Los Angeles, Calif.' She then set forth various bequests. An order admitting the instrument to probate as an holographic will was upheld, the court stating 'The writing here involved was written with studied care, and appears to be a complete testamentary expression of testatrix's desire. It was 27* so found by the *trial court.' "

"In the instant case, a probate court has found that the document was 'signed' by the decedent and it cannot be said that the determination is without support in the evidence. There is no space left for a signature between the body of the instrument and the concluding words 'signed' and the date and the address of the decedent. Additional space, however, did remain on the paper sufficient to include additional writing, if the decedent intended any further dec-

laration. As held in *Re Estate of Kinney, supra*, this is some evidence of finality. Furthermore an inspection of the document shows it to have been written with care and that it is a complete declaration of the desires of the testatrix."

CONCLUSION.

In conclusion, we submit that not to uphold the will in the instant case would be in direct conflict with Section 5229 of Michie's 1942 Code of Virginia. The statutory requirement is that the will must be signed in such a manner as to make it manifest that the name was intended as a signature. To refuse to recognize the will in this case would be to write into the Statute the word "subscribed" in the place of "signed", especially when coupled with the fact that it is a complete will, with a residuary clause, written at the top in three lines, as follows:

"Roberta Leckie Rittenhouse
Written by myself October 13th 1946
My Will"

And at the bottom of the page:

"This is my last will
and Testament."

This surely shows a final and complete testamentary intent.

28* *As was said by the Court in *Presbyterian Orphans Home v. Bowman, supra*, quoting Judge Crump in *Forrest v. Turner, supra*:

"We should not seek to defeat the testamentary disposition of his (testator's) property, which a person plainly intended should take effect." He then quotes with approval this statement of the law from *Re: Field's Will*, 204 N. Y. 448, 97 N. E. 881, 39 L. R. A. (N. S.) 1060 Ann. Cas. 1913C 842: 'The evil of fraudulent changes in wills is rare, while the evil of defeating wills altogether in the manner suggested is common. Hence, we think we have gone far enough in the direction of rigid construction and that the doctrine of certain authorities should not be extended, lest in the effort to prevent wrong we do more harm than good.' The patient is not helped by a remedy which carries him off."

Petitioners, therefore, submit that the will in this case should be upheld and the decree of the Circuit Court for Loudoun County, Virginia, should be reversed.

Petitioners rely upon this petition as their opening brief and allege that copies of this petition were mailed to Gardner L. Boothe, Esquire, and Edwin E. Garrett, Esquire, Attorneys for Appellees, this 23d day of March, 1949.

Counsel for petitioners request an opportunity to state orally the reasons for reversing the action of the Trial Court complained of.

This petition will be filed in the Clerk's Office of the Supreme Court of Appeals of Virginia at Richmond.

WILBUR C. HALL,
CHARLES PICKETT,
JAMES KEITH,
Attorneys for Appellants.

29*

*CERTIFICATE.

We, Charles Pickett and James Keith, of Fairfax, Virginia, attorneys practicing in the Supreme Court of Appeals of Virginia, do hereby certify that in our opinion the judgment complained of in the foregoing petition should be reviewed by the Supreme Court of Appeals of Virginia.

CHARLES PICKETT,
Fairfax, Virginia.

JAMES KEITH,
Fairfax, Virginia.

Received March 24, 1949.

M. B. WATTS, Clerk.

Appeal allowed. No bond required. April 15, 1949.

ABRAM P. STAPLES.

Received April 15, 1949.

M. B. W.

1* *In the Supreme Court of Appeals of Virginia

At Richmond

Wilbur C. Hall, Administrator d. b. n. c. t. a. of the estate of Roberta Leckie Rittenhouse, sometimes known as Roberta L. Rittenhouse, and James Bradshaw Beverley, John Gray Beverley, Anna F. Rogers, H. C. Littlejohn, W. T. Thomas and Frank Saunders, Trustees of St. James Episcopal Church, Leesburg, Virginia, an unincorporated religious denomination, Anne Douglas Beverley Byrd, sometimes known as Mrs. Harry F. Byrd, and Westwood Beverley Byrd, Appellants,

v.

J. K. Brigstocke of Baltimore, Maryland, and The Peoples National Bank of Leesburg, Leesburg, Virginia, a corporation, Executors of the last will and testament of Elizabeth Clagett Meade, and Elizabeth C. Stork, C. Warner Stork, Jr., Mary Gray Wright, sometimes known as Mary Gray Stork Lewis, E. N. Bradfield, Executor of the last will and testament of Thomas H. Clagett, and E. N. Bradfield, in his own right, Appellees.

SUPPLEMENT TO PETITION FOR AN APPEAL AND *SUPERSEDEAS.*

To the Honorable Chief Justice and Justices of the Supreme Court of Appeals of Virginia:

By way of compliance with Rule 9 of this Court, as amended, Appellants supplement their Petition for an Appeal and
2* **Supersedeas* heretofore filed and upon which an appeal has been allowed, to show the names of the appellants, who were complainants in the Court below, and the appellees, who were defendants in the Court below, to be as follows:

Wilbur C. Hall, Administrator d. b. n. c. t. a. of the estate of Roberta Leckie Rittenhouse, sometimes known as Roberta L. Rittenhouse, and James Bradshaw Beverley, John Gray Beverley, Anna F. Rogers, H. C. Littlejohn, W. T. Thomas and Frank Saunders, Trustees of St. James Episcopal Church, Leesburg, Virginia, an unincorporated religious denomination, Anne Douglas Beverley Byrd, sometimes known as Mrs. Harry F. Byrd, and Westwood Beverley Byrd, Appellants,

v.

J. K. Brigstocke of Baltimore, Maryland, and The Peoples

National Bank of Leesburg, Leesburg, Virginia, a corporation, Executors of the last will and testament of Elizabeth Clagett Meade, and Elizabeth C. Stork, C. Warner Stork, Jr., Mary Gray Wright, sometimes known as Mary Gray Stork Lewis, E. N. Bradfield, Executor of the last will and testament of Thomas H. Clagett, and E. N. Bradfield, in his own right, Appellees.

3*

*Respectfully submitted,

WILBUR C. HALL,

Administrator d. b. n. c. t. a. of the estate of Roberta Leckie Rittenhouse, sometimes known as Roberta L. Rittenhouse, and James Bradshaw Beverley, John Gray Beverley, Anna F. Rogers, H. C. Littlejohn, W. T. Thomas and Frank Saunders, Trustees of St. James Episcopal Church, Leesburg, Virginia, an unincorporated religious denomination, Anne Douglas Beverley Byrd, sometimes known as Mrs. Harry F. Byrd, and Westwood Beverley Byrd,

By CHARLES PICKETT,

Of Counsel for Appellants.

CERTIFICATE OF MAILING.

I, Charles Pickett, of counsel for the appellants in the above entitled cause, do hereby certify that I mailed a copy of this Supplementary Petition to Gardner L. Boothe, Esquire, and Edwin E. Garrett, Esquire, counsel for Appellees, on the 21st day of April, 1949.

CHARLES PICKETT,
Fairfax, Va.

RECORD

VIRGINIA:

Pleas at the Court House of the County of Loudoun before the Circuit Court on the 30th day of December, 1948.

Be it Remembered that heretofore to-wit: At Rules held in the Clerk's Office of said Court on the 7th day of June, 1948, came W. C. Hall, administrator d. b. n. c. t. a. of the estate of Roberta Leckie Rittenhouse, sometimes known as Roberta L. Rittenhouse and James Bradshaw Beverley, John Gray *Berrley*, Anna F. Rogers; H. C. Littlejohn, W. T. Thomas and Frank Saunders, Trustees of St. James Episcopal Church, Leesburg, Va. an unincorporated religious denomination, Anne Douglas Beverley Byrd, and Westwood Beverley Byrd, by Counsel and filed their bill against J. K. Brigstocke and The People National Bank of Leesburg, Leesburg, a corporation, Executors of the last will and testament of Elizabeth Clagett Meade; Elizabeth C. Stork, C. Warner Stork, Jr., and Mary G. Wright sometimes know as Mary Gray Stork Lewis and E. N. Bradfield, executor of the last will and testament of Thomas H. Clagett, deceased, which Bill and exhibits therewith filed are in words and figures following to-wit:

BILL.

To the Honorable J. R. H. Alexander, Judge of the Circuit Court of Loudoun County, Virginia:

Your complainants, Wilbur C. Hall, Administrator d. b. n. c. t. a. of the estate of Roberta Leckie Rittenhouse, sometimes known as Roberta L. Rittenhouse, and James Bradshaw Beverley, John Gray Beverley, Anna F. Rogers, H. C. Littlejohn, W. T. Thomas and Frank Saunders, Trustees of St. James Episcopal Church, Leesburg, Virginia, Anne Douglas Beverley Byrd, sometimes known as Mrs. Harry F. Byrd, and Westwood Beverley Byrd humbly complaining, sheweth unto Your Honor the following grounds of their complaint:

1. Complainants aver that Wilbur C. Hall duly qualified as Administrator d. b. n. c. t. a. of the estate of Roberta Leckie Rittenhouse, sometimes known as Roberta L. Rittenhouse, before the Clerk of the Circuit Court of Loudoun County, Vir-

ginia on the 10th day of May, 1948, as will appear
 page 2 } from a certificate of the Clerk of said Court, marked
 "Complainants' Exhibit A," and prayed to be read
 as a part of this bill.

2. Complainants aver that Roberta Leckie Rittenhouse died on the 9th day of December, 1946, and under the belief that she died intestate, E. N. Bradfield qualified as the Administrator of her estate in the Clerk's Office of the Circuit Court of Loudoun County, Virginia, on the 14th day of December, 1946, and proceeded to collect the assets of said estate and to administer the same. By his account, a duly certified copy of which is filed herewith, marked "Complainants' Exhibit B," and prayed to be read as a part of this bill, it will appear that the said E. N. Bradfield, as such Administrator, paid under said Account the following amounts to the following persons:

To Thomas H. Clagett:

116 shares of Winchester Cold Storage of the value of	\$ 1,265.00
130 shares of National Fruit Product Company 5% preferred, of the value of	13,390.00
Blanket chest of the value of	20.00
Chest of drawers of the value of	50.00
Mahogany desk of the value of	50.00
Fur coat of the value of	225.00
Cash,	13,745.69
To the estate of Elizabeth C. Meade: (said Elizabeth C. Meade having survived Roberta Leckie Rittenhouse but having died before said estate was closed)	28,745.69
To Mary Gray Lewis, now known as Mary Gray Stork Wright (Also turned over to said Mary Gray Stork Wright a blanket)	9,620.51
page 3 } To Elizabeth C. Stork, cash,	\$ 9,420.00
together with a diamond ring valued at	225.00
To C. Warner Stork, Jr., cash	9,809.14

Complainants aver that said sums of money and property were turned over under the belief that said Roberta Leckie Rittenhouse had died intestate and that the parties receiving the same were entitled thereto as her heirs at law.

3. Complainants aver that some time in the fall of 1947, a will of the late Roberta Leckie Rittenhouse was found among her papers, which will was duly probated in the Cir-

cuit Court of Loudoun County, Virginia, on the 2nd day of January, 1948, a duly certified copy of which will is filed herewith, marked "Complainants' Exhibit C," and prayed to be read as a part of this bill, and by which said will the said Roberta Leckie Rittenhouse truly bequeathed her estate as follows:

"I leave to my cousin James Bradshaw Beverley
\$5,000.

I leave to my Cousin John Gray Beverley
\$5,000.

I leave to my dear friend—Mrs. Anna F. Rogers
\$20,000.

I leave to my kind friend—Mr. Nevil Bradfield
\$2,000

I leave the rest of my money which I wish given to St. James Episcopal Church, Leesburg, Loudoun County, Virginia.

My two diamond Rings I leave to Westwood Beverley Byrd—

My gold Bracelet to go to Mrs. Mary Gray Lewis.

The few things I have left to be given to Mrs. Harry F. Byrd."

4. Complainants aver that they are advised that page 4 } the said E. N. Bradfield, who administered on the estate of Roberta Leckie Rittenhouse, does not intend to make any claim for the \$2,000.00 bequest made to him under said will, because he feels that he has received commissions amounting to \$4,890.22, which commissions far exceed the bequest to said E. N. Bradfield in said will.

5. Complainants aver that Elizabeth C. Meade died on the 11th day of January, 1947, leaving a last will and testament which was duly probated in the Circuit Court of Loudoun County, Virginia, on the day of, 19. . . . and into whose estate had passed, as hereinbefore alleged, the sum of \$28,245.69 from the estate of Roberta Leckie Rittenhouse on the theory that the said Roberta Leckie Rittenhouse had died intestate, and it will be observed that under said will of Roberta Leckie Rittenhouse, which said will has been duly probated and is a valid will, the said Roberta Leckie Rittenhouse made no bequests to her sister, the said Elizabeth C. Meade. Will filed marked Ex. "E".

6. Complainants aver that the estate of Elizabeth C. Meade is now in process of administration by J. K. Brigstocke and The People National Bank of Leesburg, Leesburg, Virginia, a corporation as Executors of the estate of the said Elizabeth

C. Meade, and they further aver that it has been brought to the attention of J. K. Brigstocke and The People National Bank of Leesburg, Leesburg, Virginia, Executors of the estate of the said Elizabeth C. Meade, by the attorney for complainants, that a valid will of the said Roberta Leckie Rittenhouse has been duly probated in the Circuit Court of Loudoun County, Virginia, and that as a result thereof any funds in their hands are impressed with a trust in favor of the complainants, who are the beneficiaries under the will of the said Roberta Leckie Rittenhouse.

7. Complainants further aver that the estate of
page 5 } Elizabeth C. Meade is a large estate and that there
is more than sufficient money in the hands of the
Executors of the estate of Elizabeth C. Meade to return to
these complainants the amount improperly paid to the estate
of Elizabeth C. Meade and to which these complainants are
entitled by virtue of the will of Roberta Leckie Rittenhouse,
as aforesaid.

8. Complainants further aver that Thomas H. Clagett, who,
as hereinbefore alleged, had received cash, chattels and securities of the value of \$28,745.69 and who was bequeathed no part of the estate of the said Roberta Leckie Rittenhouse, died on the 24th day of November, 1947, leaving a last will and testament which was duly probated in the Circuit Court of Loudoun County, Virginia, on the day of, 19..., and under *who* said will E. N. Bradfield was named Executor and duly qualified as such Executor. A duly certified copy of the will of the said Thomas H. Clagett is filed herewith, marked "Complainants' Exhibit D," and prayed to be read as a part of this bill.

9. Complainants aver that the said Thomas H. Clagett left a considerable estate and that his Executor has in his hands money and property far in excess of the amount improperly paid to him under the theory that Roberta Leckie Rittenhouse died intestate. It will be further observed from the will of the said Thomas H. Clagett that he bequeathed his entire estate to his two nieces, Mary Gray Lewis, sometimes known as Mary Gray Stork Lewis, and Elizabeth C. Stork, in equal shares, and complainants aver that the estate of said Thomas H. Clagett has not been fully and completely administered and that the funds in the hands of his said Executor are impressed with a trust by virtue of the property improperly turned over to him from the estate of Roberta Leckie Rittenhouse.

page 6 } 10. Complainants further aver that it is the
bounden duty of E. N. Bradfield, the Administrator
of the estate of Roberta Leckie Rittenhouse, to make proper

claim for refund of inheritance taxes paid to both the Federal Government and the Commonwealth of Virginia, since, in view of the will of Roberta Leckie Rittenhouse there would be a great difference in these inheritance taxes.

11. Complainants aver that they are entitled to receive complete and full restitution from both the estate of Elizabeth C. Meade and from the estate of Thomas H. Clagett for the property and sums of money erroneously turned over to the said Elizabeth C. Meade or her estate or to the said Thomas H. Clagett or his estate.

12. Your complainants aver and charge that the funds now in the hands of the defendants, J. K. Brigstocke and The Peoples National Bank of Leesburg, Leesburg, Virginia, and E. N. Bradfield, Executors of the estates of Elizabeth C. Meade and Thomas H. Clagett, respectively, are impressed with a trust in favor of the complainants and that the said J. K. Brigstocke and The Peoples National Bank of Leesburg, Leesburg, Virginia, and E. N. Bradfield are Trustees of the funds in their hands and should impress with a trust to the extent necessary any other monies or estate of any character or kind in the hands of J. K. Brigstocke and The Peoples National Bank of Leesburg, Leesburg, Virginia, Executors of the estate of Elizabeth C. Meade, and E. N. Bradfield, Executor of the estate of Thomas H. Clagett, belonging to the defendants, Elizabeth C. Stork, C. Warner Stork, Jr. and Mary Gray Stork Lewis.

Wherefore, the premises considered, your complainants pray that a trust in their favor may be established and recognized by this Court; that the defendants, J. K. Brigstocke of Baltimore, Maryland, and The Peoples National Bank of Leesburg, Leesburg, Virginia, a corporation, Executors of the last will and testament of Elizabeth Clagett Meade, Elizabeth C. Stork, C. Warner Stork, Jr. and Mary Gray Wright, sometimes known as Mary Gray Stork Lewis, and E. N. Bradfield, Executor of the last will and testament of Thomas H. Clagett, may be required by this Court to pay unto the complainants the amount of the trust so established; that the said defendants, J. K. Brigstocke and The Peoples National Bank of Leesburg, Leesburg, Virginia, and E. N. Bradfield, Executors of the estates of Elizabeth C. Meade and Thomas H. Clagett, respectively, may be joined and restrained from distributing the estates of the said Elizabeth C. Meade and Thomas H. Clagett until the purposes of this suit can be accomplished; that all proper orders may be entered, accounts stated, and inquiries directed, and that your complainants may have such other, fur-

ther and general relief as the nature of the case may require.
 An as in duty bound, your complainants will ever pray, etc.

WILBUR C. HALL

Administrator d. b. n. c. t.a. of the Estate
 of Roberta Leckie Rittenhouse

JAMES BRADSHAW BEVERLEY

JOHN GRAY BEVERLEY

ANNA F. ROGERS

H. C. LITTLEJOHN

FRANK SAUNDERS

W. T. THOMAS

Trustees of St. James Episcopal Church,
 Leesburg, Virginia

ANNE DOUGLAS BEVERLEY BYRD

WESTWOOD BEVERLEY BYRD,

By Counsel

page 8 } HALL & HALL
 CHARLES PICKETT
 JAMES KEITH
 Compls Sols

Filed 1st June Rules, 1948.

E. O. RUSSELL, c. c.

page 9 } EXHIBIT A.

Before the Clerk of the Circuit Court for said County, IN VACATION, May 10, 1948, Wilbur C. Hall having made oath as administrator w. w. a., and executed bond, with approved security, in the penalty of Five Hundred..... DOLLARS, conditioned according to law, certificate was granted him for obtaining letters of administration on the estate of Roberta Leckie Rittenhouse deceased: Therefore, I, E. O. RUSSELL, Clerk of said Court, by virtue of the said certificate, and pursuant to the Act of Assembly, in such case made and provided, do issue these letters of administration, and do hereby authorize and empower the said Wilbur C. Hall well and truly to collect and administer all and singular the goods, chattels and credits of the said Roberta Leckie Rittenhouse, deceased, in all matters and things concerning the same according to law; hereby requiring the said administrator to exhibit in our said Court, a true and perfect inventory of the said goods, chattels and credits and to make a just and true

account of his acting and doings therein, according to law. And said appointment is still in full force and effect.

Given under my hand and the seal of the said Court of Leesburg, Va., this 10th day of May, 1948.

E. O. RUSSELL, Clerk.

A copy—Teste:

Seal

E. O. RUSSELL, c. c.

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EXHIBIT B.

ESTATE OF ROBERTA L. RITTENHOUSE

IN ACCOUNT WITH

E. N. BRADFELD, ADMINISTRATOR

1946

Dec. 18	By balance in the Peoples National Bank of Leesburg, Leesburg, Va.	865.00
18	" 8 rights American Telephone and Telegraph Company sold	18.79
18	To E. O. Russell, c.c., qualification costs	103.50
23	By Div. on Standard Oil Co. of N. J.	31.60
23	" " " Southern Railway Co.,	18.75
23	" " " Kennecott Copper Corp.,	25.00
23	" " " Winchester Cold Storage Co.,	33.00
23	" " " General Motors Corp.,	7.50
23	To E. O. Russell, c.c., 11 cts. of qual	5.50
23	" The Peoples National Bank, postage, etc., on securities sent for col.	.67
27	By \$1000.00 Columbia Gas & Electric Co., 5% bond due 1/15/61 called 7/15/46—102	1,020.00

	30	To Anna F. Rogers, amount paid by request of beneficiaries, to be charged to Eliz. C. Meade & Thomas H. Claggett	1,000.00	
	30	To Lloyd Slack, funeral expenses	501.20	
	30	" Hall & Hall, premium on bond	320.00	
1947				
Jan.	2	By Div. on Union Carbide & Carbon Corp.		3.75
	2	" Int. " \$5,000.00 Series G Bonds		62.50
	2	" Div. " National Fruit Products Co.,		162.50
	2	To Bureau of Vital Statistics, two death certificates	1.00	
	3	By Int. on \$2000 Baltimore & Ohio RR Co., S. W. Division		35.00
	10	To E. O. Russell, CC, 9 ctf. of qual.	4.50	
	13	" The Peoples National Bank, postage etc., on 64M series G bonds redeemed	11.30	
	16	By Div. on American Tel. & Tel. Co.		18.00
	25	" " " General Electric Co.,		4.00
	27	To T. Frank Osburn, appraisal fee	10.00	
	27	To Louis Titus " "	10.00	
	27	To R. J. Mitchell, " "	5.00	
	30	" E. O. Russell, CC, record inventory	2.20	
Feb.	1	By Int. on \$1000.00 Canadian Nat. Rwy. Co.,		25.00
	1	" " " \$5000.00 Series G Bonds		62.50
	4	" \$1000 Canadian National Rwy. Co., 5% due 2/1/70 sold @ 114 1/4		1,136.47
	4	" Int. on above bond		.56

4	"	\$1000 Bell Telephone Co., of Canada 5% due 5, 1, 60 sold @ 114	1,135.97
4	"	Int. on above bond	13.06
4	"	\$1000 Southern Railway Co., 6% Series A. due 4/1/56 sold @ 115 1/2	1,148.47
4	"	Int. on above bond	20.67
4	"	To Postage etc. on above se- curities	1.20

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Feb.	5	By \$1000 Southern Railway Co., 6% Series A due 4/1/56 sold @ 115	1,144.47
	5	" Int. on above bond	20.83
	8	To Collector of Internal Reve- nue, 1946 income tax	100.25
	8	By 8 shares American Tel & Tel. Co. sold @ 174 1/2	1,387.67
	8	" 2 shares Consolidated Nat. Gas. Co. sold @ 49 3/8s	95.60
TOTALS carried forward			2,076.32 8,496.66
RECEIPTS brought forward			8,496.66
DISBURSEMENTS brought forward			2,076.32

1947

Feb.	8	By 10 shares General Electric Co., sold @ 39 1/4	383.74
	8	" 15 shares General Motors Corp. sold @ 63	936.76
	8	" 25 shares Kennecott Cop- per Corp., sold @ 49	1,213.78
	8	" 5 shares Ligett & Myers Tobacco Co., sold @ 94 1/8	462.80
	8	" 25 shares Southern Rail- way Co., sold @ 46 3/4	1,157.67
	8	" 20 shares Standard Oil Co. of N. J., sold @ 68	1,350.47
	8	" 5 shares Union Carbide & Carbon Corp., sold @ 95 1/8	467.62

	15 To Loudoun Times Mirror, creditor's notice	2.40	
	15 " R. J. Mitchell, notary fees	3.00	
Mar.	1 By Int. on \$20,000 Series G bonds		250.00
	3 " \$30,000 Series G Bonds re- deemed		30,000.00
	5 " Int. on \$1000. Western Union Telegraph Co.,		25.00
	6 To Dr. Edgar Snowden, doctor bill	25.00	
	14 By Contingent int. due 5-1-47 on \$2000 Baltimore & Ohio RR Co., SW Div. 5% bonds of 1950		30.00
	14 " Contingent int. due 5-1-47 on \$1000 Baltimore & Ohio RR Co., Series C 6% bond of 1995		47.00
Apr.	1 " Div. on National Fruit Products Co.,		162.50
	1 " \$1000 Western Union Tele- graph Co., 5s due 3/1/60 sold @ 84		834.48
	1 " Int. on above bond		4.31
	1 " " \$12,000 Series G Bonds		150.00
	2 " \$12,000 Series G Bonds re- deemed		12,000.00
	4 To The Peoples National Bank, postage etc. on se- curities sold, etc.	2.00	
	9 By \$1,000 Baltimore & Ohio RR Co., Series G 6% bond of 1995 sold @ 74		742.97
	11 " \$1,000 Baltimore & Ohio RR Co., S W Div. 5s of 1950 sold @ 80 1/2		809.01

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Apr.	11 By \$1000. Baltimore & Ohio RR Co., S W Div. 5s of 1950 sold @ 78 1/2		789.11
	15 " Sapphire ring sold Chas. Pickett		65.00

25	"	Diamond ring sold to Ethel L. Adams		300.00
May 1	"	Int. on \$15,000 Series G bonds		187.50
2	"	\$15,000-Series G bonds redeemed		15,000.00
6	To	Treasurer of Virginia, inheritance taxes	1,854.30	
June 2	By	Int. on \$7000 Series G bonds		87.50
4	"	\$7,000 Series G bonds redeemed		7,000.00
July 12	To	S. H. Hall, atty., attorney fee	25.00	
June 27	By	Div. on Winchester Cold Storage Co.		33.00
July 1	"	" " National Fruit Product Co.		162.50
12	To	Collector of Internal Revenue for Federal Estate tax per Form 706	3,293.21	
12	"	E. N. Bradfield, commissions	4,890.22	
" 12	"	Reserve for Court costs, taxes etc. (Unexpended balance to be distributed)	800.00	
12	"	Cash in hand for distribution	70,177.93	
			83,149.38	83,149.38

SUMMARY OF ASSETS IN HAND FOR DISTRIBUTION

Cash in hands of Administrator from page 2	\$70,177.93
Amount paid Anna F. Rogers 12-30-46	1,000.00
Virginia Inheritance taxes paid 5-6-47	1,854.30
11 shares Winchester Cold Storage Co., par \$100 appraised @ 115	1,265.00
130 Shares National Fruit Product Co., Par \$100 appraised @ 103	13,390.00
Diamond ring appraised at 225	225.00
Gold bracelet " " 25	25.00
Blanket chest " " 20	20.00

Chest of drawers	"	"	50	50.00
Mahogany desk	"	"	50	50.00
Fur Coat	"	"	225	225.00

TOTAL assets in hand for distribution	\$88,282.23
---------------------------------------	-------------

SCHEDULE OF DISTRIBUTION

TO THOMAS H. CLAGETT 1/3 \$29,427.41

11 shares Winchester	
Cold Storage Co. @	
115	1,265.00
130 Shares National	
Fruit Product Co.,	
5% pfd. @ 103	13,390.00
Blanket chest	20.00
Chest of drawers	50.00
Mahogany desk	50.00
Fur Coat	225.00
Va. inheritance tax	
paid	681.72
page 13 } 1/2 amount paid	
A. F. Rogers	500.00
Amt. advanced 3-31-47	1,000.00
Cash to balance	12,245.69
	<u>29,427.41</u>

TO ESTATE OF ELIZABETH C.

MEADE 1/3	\$29,427.41
Va. inheritance tax paid	681.72
1/2 amount paid A. F.	
Rogers	500.00
Cash to balance	28,245.69
	<u>29,427.41</u>

TO MARY GRAY LEWIS 1/9 \$ 9,809.13

Va. inheritance tax paid	163.62
Gold bracelet	25.00
Cash to balance	9,620.51
	<u>9,809.13</u>

TO ELIZABETH C. STORK 1/9 \$ 9,809.14

Va. inheritance tax paid 163.62

Diamond ring 225.00

Cash to balance 9,420.52

9,809.14

TO C. WARNER STORK, JR., 1/9

Va. inheritance tax paid 163.62

Cash to balance 9,809.14

\$88,282.23 \$88,282.23

STATEMENT OF COMMISSIONS

Total cash receipts, see page 2 \$83,149.38

11 shares Winchester Cold Storage Co. 1,265.00

130 shares National Fruit Product Co. 13,390.00

TOTAL \$97,804.38

Total receipts of \$97,804.38 @ \$4,890.22

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Commissioner's Office

Leesburg, Va.

July 18, 1947.

Having posted the foregoing Fiduciary at the front door of the Court house in Leesburg, Va. on the first Monday in July, 1947, I proceeded to state and settle the foregoing account which is sustained by proper vouchers and the securities listed have been exhibited to your Commissioner,

Respectfully,

W. A. METZGER

Com'or. Accts. Loudoun Ct. Ct.

A copy—Teste:

E. O. RUSSELL, c. c.

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EXHIBIT C.

Roberta Leckie Rittenhouse

Written by myself October 13th 1946
My WillI leave to my Cousin James Bradshaw Beverley
\$5,000I leave to my Cousin John Gray Beverley
\$5,000I leave to my dear friend Mrs Anna F Rogers
\$20,000I leave to rest of my money which
I wish given to
St James Episcoble Church
Leesburg Loudoun Co VirginiaMy two diamond rings I leave to
Westwood Beverley Byrd
My gold bracelet
To go to Mrs Mary Gray LewisThe few things I have left to
be given to Mrs Harry F ByrdThis is my last will
and Testament

A copt—Teste:

E. O. RUSSELL, c. c.

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EXHIBIT D.

COPY.

I, Thomas H. Clagett, of Leesburg, Loudoun County, Virginia, being of sound and disposing mind and memory, do hereby make, publish and declare this to be my last will and testament, hereby revoking all wills by me at any time heretofore made.

FIRST—I desire all my just debts to be paid.

SECOND—I give, devise and bequeath all the rest, residue and remainder of my property of every kind and character whatsoever and wherever located, and any property over which I might have the power of appointment to my two nieces, Mary Gray Lewis and Elizabeth C. Stork, both of Philadelphia, Pennsylvania, in equal shares to be theirs absolutely and in fee simple.

THIRD—I hereby nominate and appoint E. N. Bradfield, Executor of this my last will and testament, and I direct that no security be required of my said Executor.

Given under my hand and seal this 26th day of August, 1947.

/s/ THOS. H. CLAGETT (Seal)
THOMAS H. CLAGETT

The above signature of the testator was made and the foregoing will was acknowledged to be his last will and testament by the said testator, 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 testator and of each other, at the request of the said testator, who was then of sound mind and over the age of twenty-one years.

WILLIAM P. FRAZER
CHARLES D. PRATHER
G. H. MUSGRAVE

A copy teste:

E. O. RUSSELL, c. c.

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EXHIBIT E.

COPY.

I, ELIZABETH CLAGETT MEADE, widow, of Leesburg, in the State of Virginia, do hereby make, publish and declare this as *an* for my last Will and Testament, hereby revoking any and all former wills or other testamntary dispositions that may have been made by me.

ITEM ONE

I direct my Executors, hereinafter named, to pay my just debts and funeral expenses as promptly as possible after my death. I direct my Executors to have a suitable stone erected at my grave and authorize them to expend for the same and for my funeral expenses such sums as they *may* deem fitting and proper, without regard to any limit that may be prescribed by law and without the necessity of obtaining the approval of any probate or orphans' court in respect thereto.

ITEM TWO

I give and bequeath to such of my brother and sisters as may be living at the time of my death off of my books, pictures, silverware, jewelry, household furniture and furnishings and articles of like kind absolutely, but with the request that they divide the same among the members of my family as they think best.

ITEM THREE

All real and leasehold property owned by me at the time of my death, wheresoever situate and howsoever acquired, and especially my fee simple property on Cornwell Street in Leesburg, Virginia, I give devise and bequeath unto my brother, THOMAS HAWKING CLAGETT, if then living, but if he predecease me, then I give, devise and bequeath the same unto my sister, ROBERTA HENDRICK RITTENHOUSE.

ITEM FOUR

page 18 } I direct that all inheritance, succession or estate taxes of the United States, Federal or State, in respect to the property and estate passing under my will or in respect to any devise or bequest under my will, shall be paid out of the principal of my estate at the time of my death.

ITEM FIVE

All the rest, *reside* and remainder of my estate, wheresoever situate and howsoever acquired, I direct my Executors to divide and distribute as follows:

Unto my *niece*, ELIZABETH CLAGETT STORK, two-sevenths thereof.

Unto my nephew, CLINTON WARNER STORK, one-seventh thereof.

Unto my niece, MARY GRAY STORK LEWIS, one-seventh thereof.

Unto H. BARTON LEWIS, Son of my said *niece*, Mary Gray *Sork* Lewis, one-seventh thereof.

Unto THOMAS CLAGETT LEWIS, Son of my said niece, Mary Gray Lewis, one-seventh thereof.

Unto MARY GRAY LEWIS, daughter of my said niece, Mary Gray Stork Lewis, one-seventh thereof.

ITEM SIX

I nominate and appoint Mr. J. K. Brigstocke, of Baltimore, Maryland and People's National Bank of Leesburg, Virginia, as my Executors. In the event either or both of my said Executor predecease me or fail to qualify as my personal representatives for any other reason whatsoever, or having qualified subsequently die or resign, *the* I direct that the vacancy or vacancies thus created shall be filled in the following manner, that is to say: I authorize and empower the person who shall at the time of such vacancy or vacancies be the President of the Safe Deposit and Trust Company of Baltimore to name the successor or successors to fill the same by filing

page 19 } a written request to the probate court wherein my estate may be administered suggesting the name of such successor or successors, and this power shall continue to reside in the from time to time Presidents of said Company until my estate shall have been fully administered.

I confer upon my Executors qualifying as such, or their successors, full power and authority to sell or otherwise dispose of or deal with any part of my estate, real or personal (not specifically bequeathed) whenever they shall deem such sale or other disposition to be for the benefit and advantage of the persons interested in my estate or necessary to effectuate an division or other purposes contemplated by this my will, without application to any orphans' court or probate court for such authority.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix my seal, this 9th day of July, in the year Nineteen Hundred and Forty-One.

ELIZABETH CLAGETT ^{her} X MEADE (Seal)
mark

Signed, sealed, published and declared by ELIZABETH CLAGETT MEADE, the above name Testatrix, as and for her last will and testament, in the presence of us, who at her request, in her presence, and in the presence of each other, hereunto subscribe our names as witnesses.

/s/ ROBERTA H. RITTENHOUSE
Leesburg, Va.

/s/ THOMAS H. CLAGETT
Leesburg, Va.

A Copy—Teste:

E. O. RUSSELL, c. c.

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DEMURRER.

DEMURRER OF J. K. BRIGSTOCKE, THE PEOPLES NATIONAL BANK OF LEESBURG, EXECUTORS OF THE LAST WILL AND TESTAMENT OF ELIZABETH CLAGETT MEADE AND E. N. BRADFELD, EXECUTOR OF THE LAST WILL AND TESTAMENT OF THOMAS H. CLAGETT.

These defendants demur to the Bill of Complaint filed in the above-entitled cause and state that it is not sufficient in law and for ground of demurrer state:

That a reading of the Bill of Complaint clearly indicates that any claim which is asserted by the complainants in this cause, is based on what they contend is the last will and testament of Roberta Leckie Rittenhouse which they alleged was found some months after her death and which they allege has been duly probated in the Circuit Court of Loudoun County, Virginia on the 2nd day of January, 1948.

These defendants state that the alleged last will and testament is not a valid will and testament under the laws of the

State of Virginia and therefore that the complainants have no basis for the claims made in the Bill of Complaint.

J. K. BRIGSTOCKE
THE PEOPLES NATIONAL BANK
OF LEESBURG

Executors of the last will and Testament of Elizabeth Clagett Meade.

E. N. BRADFELD

Executor of the last will and testament of Thomas H. Clagett.

By GARDNER L. BOOTHE

Attorney for Defendants.

Filed June 19, 1948.

E. O. RUSSELL, c. c.

page 21 } DEMURRER.

DEMURRER OF ELIZABETH C. STORK, C. WARNER STORK, JR. AND MARY GRAY WRIGHT, SOMETIMES KNOWN AS MARY GRAY STORK LEWIS.

These defendants demur to the bill of complaint filed in the above entitled cause and state that it is not sufficient in law and for ground of demurrer state:

That a reading of the Bill of Complaint clearly indicates that any claim which is asserted by the complainants in this cause, is based on what they contend is the last will and testament of Roberta Leckie Rittenhouse which, they allege, was found some months after her death and which they allege has been duly probated in the Circuit Court of Loudoun County, Virginia, on the 2nd day of January, 1948.

These defendants state that the alleged last will and testament is not a valid will and testament under the laws of the State of Virginia and, therefore, that the complainants have no basis for the claims made in the Bill of Complaint.

ELIZABETH C. STORK
C. WARNER STORK, JR.
MARY GRAY WRIGHT,

Sometimes known as Mary Gray Stork Lewis

By EDWIN E. GARRETT

Attorney for Defendants.

Filed June 22, 1948.

E. O. RUSSELL, c. c.

page 22 } DECREE ENTERED DEC. 30, 1948.

This cause came on to be heard on this 30th day of December, 1948, on the bill of complaint, the exhibits filed therewith and on the demurrers filed on behalf of the defendants by their counsel and was argued by counsel.

On consideration whereof the Court being of the opinion that the paper writing introduced by them as an exhibit is not a valid last will and testament of Roberta Leckie Rittenhouse, it is adjudged, ordered, and decreed, that the demurrers be and they are hereby sustained and that the bill of complaint be and the same is hereby dismissed, to which action of the Court in sustaining said demurrers complaints by counsel excepted, whereupon complainants asked leave to amend their bill of complaint, which motion was denied and complainants excepted.

And the complainants having indicated their intention to apply to the Supreme Court of Appeals of Virginia for an appeal, it is ordered that the operation of this decree be stayed for a period of four months provided the complainants or someone for them, within ten days from this date shall enter into a bond in the penalty of Two Thousand Dollars (\$2,000.00) with approved surety, before the Clerk of this Court, conditioned as the law directs.

It is further ordered that the original alleged will of Roberta Leckie Rittenhouse may be certified to the Supreme Court of Appeals of Virginia with the petition for an appeal.

Enter:

J. R. H. ALEXANDER

Judge

Seen:

EDWIN E. GARRETT
GARDNER L. BOOTHE
WILBUR C. HALL
CHARLES PICKETT
JAMES KEITH

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BOND.

KNOW ALL MEN BY THESE PRESENTS, That we Wilbur C. Hall, Admr. d. b. n. c. t. a. as principal and H. C. Littlejohn as surety are held and firmly bound unto the Commonwealth of Virginia, in the sum of Two Thousand Dollars, to the payment whereof, well and truly to be made to the said

Commonwealth of Virginia, we bind ourselves and each of us, our and each of our heirs, executors, administrators and successors, jointly and severally, firmly by these presents. And we hereby waive the benefit of our exemptions as to this obligation. Sealed with our seals, and dated this 31 day of December one thousand nine hundred and forty-eight.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That whereas at a Circuit Court held for the County of Loudoun on the 30 day of December, 1948, in a certain suit in chancery then pending in the said Court between Wilbur C. Hall, Admr. d. b. n. c. t. a. of est. of Roberta Leckie Rittenhouse, et als., plaintiffs, and J. K. Brigstocke, of Baltimore, Md., et al., defendants. a decree was entered sustaining a demurrer and dismissing the bill of complaint and whereas, on the Dec. 30, 1948, during the same term at which the said decree was entered, the said Court, in order to allow the said Wilbur C. Hall, Admr. d. b. n. c. t. a. of said estate to apply for an appeal from said decree, made an order suspending the execution of the said decree for the period of four months from the date thereof upon the said Wilbur C. Hall, Admr, d. b. n. c. t. a. of the est. of Roberta Leckie Rittenhouse, or someone for him giving bond before the clerk of said Court in the penalty of Two Thousand Dollars, conditioned according to law. And whereas it is the intention of the said Wilbur

C. Hall, Admr, d. b. n. c. t. a. of the estate of Roberta Leckie Rittenhouse, to present a petition for an appeal from said said decree; now, therefore, if the said Wilbur C. Hall, Admr. d. b. n. c. t. a. of said estate shall pay all such damages as may accrue to any person by reason of the said suspension, in case a *supersedeas* to the said decree shall not be allowed and be effectual within the said period of four months specified in the aforesaid order of the said Court, then the above obligation to be void, or else to remain in full force. Signed, sealed, acknowledged and delivered in the presence of

WILBUR C. HALL (Seal)

admr. d. b. n. c. t. a.

H. C. LITTLEJOHN (Seal)

N. B. HAMMERLY,
E. O. RUSSELL

In the Clerk's Office of the Circuit Court of the County of Loudoun.

This day personally appeared before me E. O. Russell, Clerk of the Circuit Court of the County of Loudoun, H. C. Littlejohn and made oath that his estate, after the payment of all his just debts, and those for which he is bound as security for others and expects to have to pay is worth the sum of Two thousand Dollars, over and above all exemptions allowed by law.

Given under my hand, this 31 day of December, 1948.

E. O. RUSSELL, Clerk.

Filed 12/31/48.

E. O. RUSSELL, c. c.

page 25 } NOTICE TO ATTORNEYS.

To: Gardner L. Boothe, Esquire and Edwin E. Garrett, Esquire, Attorneys for J. K. Brigstocke and The Peoples National Bank of Leesburg, Virginia, Executors of the last will and testament of Elizabeth Clagett Meade, E. N. Bradfield, Executor of the last will and testament of Thomas H. Clagett, Elizabeth C. Stork, C. Warner Stork, Jr., Mary Gray Wright, sometimes known as Mary Gray Stork Lewis:

YOU ARE HEREBY NOTIFIED that on the 25th day of January, 1949, at 11:00 A. M., the undersigned counsel of record for Wilbur C. Hall, Administrator d. b. n. c. t. a. of the estate of Roberta Leckie Rittenhouse, sometimes known as Roberta L. Rittenhouse, and James Bradshaw Beverley, John Gray Beverley, Anna F. Rogers, H. C. Littlejohn, W. T. Thomas and Frank Saunders, Trustees of St. James Episcopal Church, Leesburg, Virginia, an unincorporated religious denomination, Anne Douglas Beverley Byrd, sometimes known as Mrs. Harry F. Byrd and Westwood Beverley Byrd, will apply to the Clerk of the Circuit Court of Loudoun County, Virginia, for a transcript of the record to accompany a petition for an appeal to be filed with the Supreme Court of Appeals of Virginia, at Richmond with respect to the final

decree entered in the above entitled cause, sustaining the demurrers of the defendants and dismissing the complainants' bill.

It will be desired to incorporate in the transcript all of the pleadings, the decree complained of, the exhibits with the bill of complaint, and the paper writing probated as the last will and testament of Roberta Leckie Rittenhouse.

page 26 } Given under our hands this 14th day of January, 1949.

CHAS. PICKETT
WILBUR C. HALL
Solicitors for the Complainants.

Legal service accepted by J. K. Brigstocke of Baltimore, Md., The Peoples National Bank of Leesburg, Leesburg, Va. a corporation, Executor of the last will and testament of Elizabeth Claggett Meade and E. N. Bradfield, Exor. of the last will and testament of Thomas H. Claggett.

By GARDNER L. BOOTHE
their attorney

Legal service accepted for Elizabeth C. Stork, C. Warner Stork, Jr. and Mary Gray Wright sometimes known as Mary Gray Stork Lewis.

By EDWIN E. GARRETT,
Atty.

page 27 } To: E. O. Russell, Clerk of the Circuit Court
Loudoun County, Leesburg, Virginia.

We hereby give you notice, as Attorneys for the Complainants in the suit of Wilbur C. Hall, Administrator WWA of Roberta Leckie Rittenhouse v. Brigstocke and others, that we desire the record copied in this case in order to apply to the Supreme Court of Appeals for an appeal.

Given under our hands this 14th day of January, 1949.

CHARLES PICKETT
WILBUR C. HALL

CERTIFICATE OF THE CLERK.

I, E. O. Russell, Clerk of the Circuit Court of Loudoun County, do hereby certify that the foregoing is a true transcript of the record in the case of Rittenhouse's administrator d. b. n. c. t. a., et als. v. J. K. Brigstocke and The Peoples National Bank of Leesburg, Leesburg, Virginia, executors of the last will and testament of Elizabeth Clagett Meade, et als.

Given under my hand this 2nd day of February, 1949.

E. O. RUSSELL,

Clerk of the Circuit Court of Loudoun
County, Virginia.

A Copy—Teste:

M. B. WATTS, C. C.

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