

26-608 1004

Record No. 1632

In the
Supreme Court of Appeals of Virginia
at Richmond

VAN B. TRUSLOW, &c., Appellant.

v.

LUCY TRUSLOW BALL, ET ALS., Appellees

FROM THE CIRCUIT COURT OF THE COUNTY OF SPOTSYLVANIA

"The briefs shall be printed in type not less in size than small pica, and shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed records along with which they are to be bound, in accordance with Act of Assembly, approved March 1, 1903; and the clerks of this court are directed not to receive or file a brief not conforming in all respects to the aforementioned requirements."

The foregoing is printed in small pica type for the information of counsel.

M. B. WATTS, Clerk.

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IN THE
Supreme Court of Appeals of Virginia
AT RICHMOND.

Record No. 1632

VAN B. TRUSLOW, &c., Appellant,

versus

LUCY TRUSLOW BALL, ET ALS., Appellees.

IN CHANCERY.

To the Honorable Judges of the Supreme Court of Appeals of Virginia:

Your petitioner, Van B. Truslow, single, in his own right and as Executor of Silas B. Truslow, deceased, respectfully represents that he is aggrieved by a decree of the Circuit Court of Spotsylvania County, Va., entered in this case on June 11, 1934 (M. R., p. 207), by which decree the Court adjudged, ordered and decreed that Lots Nos. 29-30-31, Block 7, lying in Spotsylvania County, Va., Northwest of Fredericksburg, on the State Highway from Fredericksburg to Falmouth, and particularly described on Plat filed in this cause (M. R., p. 38A), were devised by Silas B. Truslow, father of your petitioner, Van B. Truslow, to his sister, Lucy Truslow Ball, and in adjudging, ordering and decreeing that the true intent, meaning and purpose of the last will and testament of the said Silas B. Truslow was to devise unto and vest fee-simple title to the said three lots, Nos. 29-30-31, Block 7, in his daughter, Lucy Truslow Ball, and in further decreeing that the said Van B. Truslow should pay unto his sister, Lucy Truslow Ball, the sum of \$75.00 per month or \$900.00 per year as a fair rental for the aforesaid Lots Nos. 29-30-31,

Block 7, from the 20th day of March, 1928, until the date of the entering of the aforesaid decree on June 11, 1934, namely, the sum of \$5,600.00, with interest thereon at 6% per annum from June 11, 1934, until paid, and in entering judgment against the said Van B. Truslow in favor of his sister, Lucy Truslow Ball, for the aforesaid sum of \$5,600.00 as of June 11, 1934 (M. R., p. 207), and in granting the prayers contained in complainant's bill filed in this cause (M. R., p. 33) and in refusing to grant the prayers contained in answer and cross-bill of Van B. Truslow filed in this cause (M. R., p. 40), from which said decree your petitioner, Van B. Truslow, prays an appeal and *supersedeas*.

The transcript of the record is herewith presented as a part hereof, from which the facts hereinafter set forth may be seen, the errors complained of, as shown by the said record, being set forth in detail in this petition.

STATEMENT OF FACTS.

The facts as shown by the record in this case are, that Silas B. Truslow, a resident of Spotsylvania County, Va., living near the City of Fredericksburg, Va., on the State Highway from that City to Washington, D. C., died August 26, 1925, testate, leaving a last will and testament, entirely in his own handwriting, which was duly probated in the Clerk's Office of the Circuit Court of Spotsylvania County, Va., January 30, 1929 (M. R., p. 37). The said Silas B. Truslow died leaving the following heirs surviving him, namely: his widow, Susan J. Truslow, who died September 28, 1932, sometime before the institution of this suit; and the following children, namely: Van B. Truslow, Lucy Truslow Ball, Thomas Truslow, Clay Truslow, Gracie Truslow Haddock, Mack Truslow, Claudie Truslow and Beulah Truslow Ashby, all of whom, together with their respective husbands or wives, are parties to this suit. At the time of his death, and for more than ten years prior thereto, the said Silas B. Truslow, father of your petitioner, Van B. Truslow, was seised and possessed of real estate in Spotsylvania County, Va., consisting of 35 lots in Block 7, described in Map filed herein (M. R., p. 38A) and a small amount of personal property, as shown by the record. Your petitioner, Van B. Truslow, duly qualified as Executor under the last will and testament of his father, Silas B. Truslow, deceased, in the Circuit Court of Spotsylvania County, Va., on the 30th day of January, 1929 (M. R., p. 37).

The facts in this case will show that at the time Silas B. Truslow purchased the 35 lots in Block 7, more than ten years prior to his death, August 26, 1925, he made a small cash

payment thereon and agreed with his son, Van B. Truslow, that if he (Van B. Truslow) would help to pay for the said lots that the said Silas B. Truslow would give him (Van B. Truslow) a one-half interest in the said lots; that at this time your petitioner, Van B. Truslow, was working in the City of Richmond, Va., and that he sent home regularly each month to his father, Silas B. Truslow, the sum of \$40.00 to apply on the purchase price of said lots. Later, when your petitioner, Van B. Truslow, was called into the Army, he made an allotment of \$20.00 per month to his father, Silas B. Truslow, and to his mother, which was applied on the purchase price of the said lots by the said Silas B. Truslow. That after the War your petitioner, Van B. Truslow, secured employment in Washington, D. C., and continued to contribute \$40.00 each month to his father, Silas B. Truslow, to pay for the said lots. That later on the said Silas B. Truslow offered to make a deed to his son, Van B. Truslow, for his one-half of the said 35 lots and that your petitioner, Van B. Truslow, agreed with his father, Silas B. Truslow, that he would not take title to the one-half interest at that time, but that his father, Silas B. Truslow, would leave this interest in the said lots to the said Van B. Truslow by will.

The facts in this case will also show that sometime after the last will of Silas B. Truslow was written, March 5, 1916, the said Silas B. Truslow desired to build a filling station on Lots Nos. 29-30-31, Block 7, on the State Highway from Fredericksburg to Washington, D. C. That the said Silas B. Truslow did not have sufficient money to erect said filling station and to do the necessary concrete work around it, and that your petitioner, Van B. Truslow, agreed with his father, Silas B. Truslow, to furnish money for the erection of the filling station and to help his father, Silas B. Truslow, complete the said work in consideration of Van B. Truslow having a half interest in the said lots and filling station during the life of the said Silas B. Truslow and to be given them by will of said Silas B. Truslow. That at this time the said Silas B. Truslow was in failing health and on that account his son, Van B. Truslow, returned home to help his father, Silas B. Truslow, run this filling station. That your petitioner, Van B. Truslow, stood in the closest personal relationship and confidence with his father, Silas B. Truslow, and relying on the said agreement contributed sums of money for the construction of the filling station from time to time, and that in September, 1924, the said Van B. Truslow sent a Cashier's Check in the sum of \$500.00 on the Mount Vernon Savings Bank of Washington, D. C., to his father, Silas B. Truslow (M. R., p. 151—depositions of Van B. Truslow) (M.

R., p. 169—depositions of Joseph L. Savage). That the said check for \$500.00 was payable to Silas B. Truslow and was deposited by him in the Commercial State Bank of Fredericksburg, Va., on the 30th day of September, 1924 (M. R., p. 169). And that the \$500.00 proceeds of said check was used by the said Silas B. Truslow under agreement with his son, Van B. Truslow, in the building of the filling station on Lots Nos. 29-30-31, Block 7; that owing to the bad condition of the health of his father, Silas B. Truslow, your petitioner, Van B. Truslow, gave up his position in Washington, D. C., and returned to his father's home near Fredericksburg, in Spotsylvania County, Va., a short time after the said Silas B. Truslow had commenced to operate the said filling station in March, 1925; and that the day after the said Van B. Truslow returned to his father's home to operate the filling station, his father, Silas B. Truslow, was taken ill and was never able to look after the filling station after that time. That there was a valid agreement between the said Silas B. Truslow and your petitioner, Van B. Truslow; that these two parties would operate the filling station in partnership during the life time of the said Silas B. Truslow and that after his death your petitioner, Van B. Truslow, should have the filling station and Lots Nos. 29-30-31, Block 7 on which the filling station was located, for the money advanced by the said Van B. Truslow for its construction. That the said Van B. Truslow purchased certain tires, tubes and accessories for the said filling station and conducted it from the time of his father's illness in March, 1925, until the death of his father on August 26, 1925, and thereafter conducted the said filling station for the benefit of his father's estate and particularly for the benefit of his mother, Susan J. Truslow, up to the time of her death, September 28, 1932, and that these facts were well known to all parties to this suit, and particularly to his sister, Lucy Truslow Ball, and that all of these parties agreed and consented that the said filling station should be conducted by your petitioner, Van B. Truslow, for the benefit of his father's estate and for the benefit of his mother, Susan J. Truslow; and that no demand for settlement of his father's estate or the closing of the said filling station was made by any of the parties hereto until this suit was filed on account of this fact.

The facts further show that your petitioner, Van B. Truslow, was put in charge of the filling station by his father, Silas B. Truslow, under the agreement as above set forth, of which they were to be partners during the life time of his father, Silas B. Truslow, and that the said Van B. Truslow was to have the filling station and 17½ lots, including Lots Nos. 29-

30-31, Block 7, at the death of his father, Silas B. Truslow; and that the said Van B. Truslow worked at the said filling station continuously from March, 1925, up to the time of the institution of this suit, save and except a six months period, during which time his mother, Susan J. Truslow, ran the said filling station; and that from the proceeds of the said filling station Van B. Truslow contributed to the support of his mother, and to the support of his younger sisters for some time after the death of his father, Silas B. Truslow; and that all of the parties to this suit, and particularly Lucy Truslow Ball, agreed to and acquiesced in this agreement and arrangement for nearly eight years, namely, from the time of the death of Silas B. Truslow, August 26, 1925, until the institution of this suit on March 20, 1933.

The facts further show that Susan J. Truslow, widow of Silas B. Truslow, was in ill health from the time of the death of her husband, Silas B. Truslow, and was bed-ridden for nearly a year before her death, was cared for and the necessary money for her physicians, medicines and support was supplied by your petitioner, Van B. Truslow, from the returns from the said filling station and from the returns from a loan of \$500.00 to the said Van B. Truslow (M. R., p. 158) all of which was used for the support of the said Susan J. Truslow during her last years, and all of which was known to and acquiesced in by the parties to this suit, and particularly by Lucy Truslow Ball.

The facts further show that the petitioner, Van B. Truslow, has also paid out of his own funds on debts due by his father, Silas B. Truslow, and for the support of his mother, more than the value of the 6½ lots, which he was authorized by the last will and testament of his father, Silas B. Truslow, to dispose of for the support of his mother.

The record further shows that notwithstanding the fact that Lots Nos. 29-30-31, Block 7, face on Hunter Street and run back in a northerly direction between parallel lines, with only Lot No. 29 having its side of length on the State Highway from Fredericksburg to Washington, D. C., that by a strained construction of the will of Silas B. Truslow, under which construction the description of the aforesaid lots was transposed from the regular or legal description by which the said three lots had always been described and conveyed, so that the East or Northeast side of the three lots on the State Highway was considered as the front or facing of the said three lots; and under this strained construction of the aforesaid three lots Nos. 29-30-31, Block 7, with filling station thereon were awarded to the said Lucy Truslow Ball, and judgment in the sum of \$5,600.00 entered against your petitioner, Van B.

Truslow; and by decree entered in this cause on June 11, 1934, the relief prayed for by the plaintiffs was granted, and the relief prayed for by your petitioner in his answer and cross-bill was denied him.

Your petitioner, Van B. Truslow, objected to the findings in the Commissioner's Report (M. R., p. 54) filed in this cause, and to the entrance of the aforesaid decree on June 11, 1934, and specifically assigns as error, the following grounds:

FIRST ASSIGNMENT OF ERROR.

That the Court erred in refusing to construe the last will and testament of Silas B. Truslow, that "Van B. Truslow shall have 17½ lots where he shall wish them except 3 lots to the house". The facts in this case showing that Van B. Truslow, son of the Testator, Silas B. Truslow, stood in the closest personal relationship and confidence with his father, Silas B. Truslow, and that it was the evident intention of the Testator, Silas B. Truslow, from the evidence in the case showing this relationship and confidence between father and son, that the son, Van B. Truslow, should have lots 29-30-31, Block 7, with the filling station thereon, as part of the 17½ lots to be selected by him, and that the Court erred in decreeing that Lots Nos. 29-30-31, Block 7, were devised by the said Silas B. Truslow to his daughter, Lucy Truslow Ball. (Exception No. 1 to Master Commissioner's Report—M. R., p. 204.) That it was the evident intention of the Testator, Silas B. Truslow, that his son, Van B. Truslow, should have 17½ lots in Block 7 "where he shall wish them except the 3 lots to the house". The House and the 3 lots adjacent, which are devised Gracie Truslow and Beulah Truslow, daughters of Silas B. Truslow, are identified as Lots Nos. 26-27-28, Block 7 (M. R., p. 82; depositions of John W. Allison) (Plat M. R., p. 38A).

The evidence shows that Van B. Truslow, while working in Richmond and Washington and while serving in the Army, contributed certain sums of money to his father, Silas B. Truslow, under agreement between them, for the sole purpose of building the filling station on Lots Nos. 29-30-31, Block 7, and that Van B. Truslow gave up his position, which he held in Washington, on account of his father's failing health, and returned to Fredericksburg to run this filling station as a partner with his father and conducted the filling station up to the time of his father's death. Silas B. Truslow, the Testator, was an illiterate man, who could scarcely read and write. This fact is conclusively shown by his last will and testament. It is also evident from the language of the last will and testament of Silas B. Truslow that his son, Van B.

Truslow, stood in a much closer relation to the Testator, Silas B. Truslow, and enjoyed his confidence to a much greater extent than any of his other children. (M. R., p. 36.) This is shown by the fact that the Testator named his son, Van B. Truslow, as his "administrator over all the property and affairs and not to give bond". It is further shown by the language of the last will of Silas B. Truslow; "if the place is not paid for my oldest son, Van, to do what he sees fit" and by the language used by the Testator, Silas B. Truslow, after the devise of "3 lots to the house" to his daughters, Gracie Truslow and Beulah Truslow, "to do as they like except to sell if they wish to sell shall sell to my son Van and no one else". It is, therefore, submitted that the Court erred in construing the last will and testament of Silas B. Truslow to the effect that Lucy Truslow Ball was devised the three lots upon which the filling station was built, Lots Nos. 29-30-31, Block 7. It can scarcely be conceived that it was the intention of the Testator, Silas B. Truslow, after his son, Van B. Truslow, had contributed certain sums of money for the building of the filling station and had helped his father, Silas B. Truslow, to run it for a considerable length of time and stood in the closest personal relationship and confidence with his father, to divest the son, Van B. Truslow, of the title and possession of the filling station with the three lots adjacent, Nos. 29-30-31, Block 7, and to devise these three lots, and turn the possession of the filling station over to his daughter, Lucy Truslow Ball, with whom the record shows that he had no business relations and with whom he did not have the same close personal relationship and confidence.

The construction of the last will and testament of Silas B. Truslow, that Lucy Truslow Ball was devised Lots Nos. 29-30-31, Block 7, with the filling station thereon, was evidently arrived at by the *attempt* to identify said Lots Nos. 29-30-31, Block 7, as facing "N. E. and S. E." to fit the description used by the Testator, Silas B. Truslow, in his last will and testament.

The Plat filed in this cause (M. R., p. 38A) shows that Lots Nos. 29-30-31, Block 7, front on the North side of Hunter Street and run back between parallel lines in a northerly direction 105 ft. to Lot No. 28, Block 7, and of these three lots only Lot No. 29, Block 7, at the Northwest corner of Hunter Street and the State Highway from Fredericksburg to Washington, D. C., has any direction or point of the compass, which might, under the most strained construction, be termed a N. E. direction and this construction can be made only by transposing the legal description by which Silas B. Truslow knew these lots and by which they were conveyed him, so that the

East side of Lot 29, Block 7, on the State Highway is considered as the front of these three lots. Plat of Block 7 filed with the Record shows that Lots Nos. 32-33-34, Block 7, are nearer the description used by the Testator in the devise of three lots to his daughter, Lucy Truslow Ball, namely, on the S. side facing N. E. and S. E.; the three lots Nos. 32-33-34, Block 7, facing on the N. side of Hunter Street with a S. E. direction and running back in a N. W. direction. It is, however, respectfully submitted that the three lots devised by the Testator, Silas B. Truslow, to his daughter, Lucy Truslow Ball, can not be designated or ascertained from the description of Block 7 owned by the Testator. It is more probable that it was the intention of the Testator, Silas B. Truslow, to devise Lucy Truslow Ball Three lots on the S. side of Germania Street facing the house in which the said Lucy Truslow Ball resides on the North side of Germania Street, these lots facing in a direction slightly west of N. and running back between parallel lines in a direction E. of South. It is also respectfully submitted that the designation or identification by the Court of Lots Nos. 29-30-31, Block 7, with filling station thereon, under the construction of the will of Silas B. Truslow, was arrived at by the consideration of the depositions of John W. Allison and L. R. Curtis, Surveyor, in attempting to explain the description or to identify these three lots. The lots upon which the dwelling house of Silas B. Truslow is situated, devised his daughters, Gracie Truslow and Beulah Truslow, are identified by John W. Allison as Nos. 26-27-28, Block 7 (M. R., p. 82). Lots Nos. 29-30-31, Block 7, facing on the North side of Hunter Street, immediately South of Lots Nos. 26-27-28, Block 7, upon which the Truslow dwelling is situated, are described by John W. Allison as "facing South and running back North". (M. R., p. 82.) Particular attention of the Court is also called to Exhibit 1, letter, envelope in which letter was mailed and copy of Map of Block 7 with depositions of Mrs. Beulah Truslow Ashby (M. R., pp. 193-4), and the depositions of Ruth Olds (M. R., p. 196). It is evident from the testimony of Mrs. Beulah Truslow Ashby that this envelope with the unsigned letter and copy of Map of Block 7 was mailed from Washington, D. C., at the instance of John W. Allison to "Misses Grace and Bulah Truslow, c/o Mr. Geo. A. Ball, R. F. D. #1, Fredericksburg, Va.", and that they were received by Mrs. Beulah Truslow Ashby in due course through the mails at this address. It is also evident from the testimony of Ruth Olds that this copy of Map of Block 7, was made by her for John W. Allison. From the language used in this letter and from the manner in which it was mailed to Grace and Beulah Truslow and from other evidence

in this case showing the close friendship between John W. Allison and Lucy Truslow Ball, it can not be successfully contended that John W. Allison was an unbiased witness in Mrs. Ball's behalf. It is highly probable that without the questions and answers objected to by the Appellant's Counsel and without giving great weight to the testimony of John W. Allison in behalf of Lucy Truslow Ball that no conclusion could have been arrived at as to the description of the lots devised Lucy Truslow Ball by her father, Silas B. Truslow (M. R., p. 205—Exception No. 3 to Master Commissioner's Report).

In reply to questions as to the lots between the Truslow dwelling and the corner towards Fredericksburg (Hunter Street) John W. Allison described these three lots (29-30-31) as "facing S. and running back North". (M. R., p. 82.) In his depositions filed in this cause John W. Allison testified, over objections of Appellant's Counsel, attempting to locate the lots devised Lucy Truslow Ball, as Lots 29-30-31, Block 7 (M. R., p. 90). John W. Allison also testified, over objections of Appellant's Counsel, as to purported statement made him by the Testator, Silas B. Truslow, as to his intention to leave Lots Nos. 29-30-31, Block 7, to his daughter, Lucy Truslow Ball. Particular attention of the Court is called to this testimony objected to by the Appellant's Counsel (M. R., p. 90). It is evident from the confusion of testimony in the Record, in this cause, as to the description of the three lots devised Lucy Truslow Ball by her father, Silas B. Truslow, that great weight was given to this illegal testimony of John W. Allison and Lucy Truslow Ball.

SECOND ASSIGNMENT OF ERROR.

The petitioner, Van B. Truslow, assigns as error the action of the Court in refusing to grant the prayers of the petitioner in his answer and cross-bill and in overruling Exception No. 2 to the Master Commissioner's Report (M. R., p. 204), in awarding the said Lots Nos. 29-30-31, Block 7, to Lucy Truslow Ball and in holding that the said Lucy Truslow Ball was entitled to recover rent at the rate of \$75.00 per month or \$900.00 per year, from March 20, 1928, to the date of the decree entered in this cause June 11, 1934, and in entering judgment in favor of the said Lucy Truslow Ball against your petitioner, Van B. Truslow, in the sum of \$5,600.00.

The evidence in this case shows that Van B. Truslow acting under agreement with his father, Silas B. Truslow, advanced certain sums of money to his father, Silas B. Truslow, to build the filling station on Lots Nos. 29-30-31, Block 7, while

the said Van B. Truslow was working in Richmond, Va., in the service of the United States Army and later, while working in Washington, D. C., and that these various sums of money were advanced to the said Silas B. Truslow under a partnership agreement with his son, Van B. Truslow; that the filling station and Lots Nos. 29-30-31, Block 7, upon which the said filling station is situated, were to go to Van B. Truslow after his father's death, and that the said Van B. Truslow lived up to his part of the aforesaid contract and performed it to such extent that he was entitled to have a court of equity decree specific performance on the part of the said Silas B. Truslow, or his heirs, and for this reason Lots Nos. 29-30-31, Block 7, and the filling station thereon should have been awarded or decreed your petitioner, Van B. Truslow (M. R., p. 151—depositions of Van B. Truslow) showing payment of certain sums of money by the said Van B. Truslow, under this agreement to his father, Silas B. Truslow, and testifying in regard to the agreement, particularly as to the \$500.00 by Cashier's Check on the Mount Vernon Savings Bank of Washington, D. C. (M. R., p. 169. Depositions of Van B. Truslow and Jos. L. Savage), and by the further fact that the said petitioner, Van B. Truslow, borrowed \$500.00 on his real estate for the purpose of running the said filling station after he took charge of it and for the defraying of certain expenses and bills due by his father, Silas B. Truslow, during his last illness. (M. R., p. 158.)

Under this Exception, the attention of the Court is also called to the testimony of Mrs. Beulah Ashby, a daughter of the Testator, Silas B. Truslow, and a sister of the petitioner, Van B. Truslow and Lucy Truslow Ball. (M. R., pp. 149-50.) The testimony of Mrs. Beulah Ashby as pointed out in the record, together with the testimony of Van B. Truslow, as to the partnership agreement with his father, Silas B. Truslow, and the fact that Silas B. Truslow had agreed that the petitioner, Van B. Truslow, should have Lots Nos. 29-30-31, Block 7, with filling station thereon, after the death of his mother, and the relationship and confidence in which the said Van B. Truslow was held by his father, Silas B. Truslow (M. R., p. 64, Paragraph 1—Master Commissioner's Report) show conclusively that Silas B. Truslow had entered into this agreement with his son, Van B. Truslow, and that the agreement had been fully performed on the part of the petitioner, Van B. Truslow, and your petitioner, Van B. Truslow, respectfully submits that the Court erred in refusing to decree that the said petitioner, Van B. Truslow, was entitled to the three lots (29-30-31, Block 7) with the filling station thereon, and that the said lots with the filling station thereon should

have been decreed him and assigns the action of the Court in refusing to decree the aforesaid lots, with filling station thereon to your petitioner, and in decreeing that the said Lucy Truslow Ball was entitled to the said three lots (29-30-31, Block 7) and the rent therefor, as set forth above, from your petitioner, as error.

THIRD ASSIGNMENT OF ERROR.

This assignment of error is intended to cover Exceptions Nos. 5-6-7-8 to Master Commissioner's Report (M. R., p. 205) each of which were overruled by action of the Court in entering the decree in this cause on June 11, 1934.

The petitioner, Van B. Truslow, submits that even if the Court should hold that the said Van B. Truslow is not entitled to recover the said Lots Nos. 29-30-31, Block 7, with filling station thereon, as set out in Record in this case, that he should have credit for the sums of money, together with interest thereon, advanced to his father, Silas B. Truslow, from time to time to pay for the filling station and work thereon, as shown by the record in this case in the depositions of Van B. Truslow and Jos. L. Savage, referred to above, and for certain sums paid by the said Van B. Truslow for taxes on the real estate owned by Silas B. Truslow from the time of the said Silas B. Truslow's death, August 26, 1925, through the year 1933, and should have further credit for \$152.04 for which the estate of Silas B. Truslow was indebted to the said Van B. Truslow and for the sum of \$50.00 covering amounts to Thomas Truslow and Clay Truslow. Your petitioner, Van B. Truslow, assigns as error the action of the Court in refusing to allow your petitioner, Van B. Truslow, credit for the aforesaid payments or amounts.

FOURTH ASSIGNMENT OF ERROR.

The petitioner, Van B. Truslow, assigns as error action of the Court in overruling Exception No. 9 to Master Commissioner's Report (M. R., p. 206) and submits that even if the Court should decree that Lucy Truslow Ball is entitled to the ownership and possession of Lots Nos. 29-30-31, Block 7, with filling station thereon, as of the date of Silas B. Truslow's death, August 26, 1925, and that your petitioner, Van B. Truslow, should be charged with rent for the said filling station property, that the amount of rent decreed against him for the said property, \$75.00 per month or \$900.00 per year, and the entrance of judgment against him in favor of Lucy Truslow Ball in the sum of \$5,600.00 is

excessive and not justified by the evidence in the record. Your petitioner, Van B. Truslow, submits that the testimony in this cause shows that the returns from the said filling station and the value of the said filling station or the running thereof, was largely due to the personal service and efforts of your petitioner, Van B. Truslow, and that without the personal services and efforts of the said Van B. Truslow the rental of the said filling station property would have been very small.

The depositions of Nelson A. Ashby, who has been engaged in the automobile and filling station business for the past 10 to 12 years, and of E. E. Brooks, real estate agent for many years past, fixes a rental value for the property at \$40.00 per month. (M. R., pp. 179 and 191) (depositions of Nelson A. Ashby and E. E. Brooks.) The evidence of R. M. Brady, who is the Commission Agent for the Texas Oil Company, testified that the filling station with Van B. Truslow as operator was worth \$100.00 per month, but that the Operator was worth 75% of the rent and that in his opinion, \$25.00 per month would be a fair rental value for the Truslow filling station property (M. R., p. 184). Notwithstanding the fact that one of these two experienced oil men (Nelson A. Ashby) testified that a fair rental for the filling station property was \$40.00 per month, and the other one (R. M. Brady) testified that a fair rental value was \$25.00 per month, the Court accepted the highest rental figure testified to by John W. Allison and A. B. Young, Real Estate partners in Fredericksburg, and fixed the monthly rental of the filling station at \$75.00 per month and entered judgment against your petitioner, Van B. Truslow, in favor of his sister, Lucy Truslow Ball, on this monthly rental basis for the sum of \$5,600.00.

It is respectfully submitted that this action of the Court, in fixing the rental value of the filling station at \$75.00 per month, is excessive and not in accord with the evidence in this case and that even if the Court should decree that Lucy Truslow Ball is entitled to recover rent from your petitioner, Van B. Truslow, that the amount of rent decreed against him should not, in any event, exceed the sum of \$25.00 to \$40.00 per month, as shown by the evidence in this case, and this action of the Court is assigned as error by your petitioner, Van B. Truslow.

FIFTH ASSIGNMENT OF ERROR.

Under this head your petitioner, Van B. Truslow, assigns as error to the action of the Court in overruling Exception No. 10 to Master Commissioner's Report (M. R., p.

206), and in refusing to allow your petitioner, Van B. Truslow, credit or compensation for the money expended for the improvements put upon the filling station property on Lots Nos. 29-30-31, Block 7, by the said Van B. Truslow (M. R., p. 134). Your petitioner, Van B. Truslow, respectfully submits to the Court that as he was in possession of the filling station property on Lots Nos. 29-30-31, Block 7, under a title believed by him to be good, and acquiesced in by the plaintiff, Lucy Truslow Ball, that he should be allowed compensation for permanent improvements made thereon under the terms of Section 5491 (Code 1930), and he, therefore, assigns as error the action of the Court in overruling his Exception under this head to the Master Commissioner's Report (M. R., p. 206).

SIXTH ASSIGNMENT OF ERROR.

Your petitioner, Van B. Truslow, excepts to the findings of the Court and the overruling of Exceptions to Master Commissioner's Report filed in this cause on the further ground that in the depositions of John W. Allison and Lucy Truslow Ball, each of these parties was asked, over the objections of the Appellant's Counsel, to state whether they had ever heard the Testator, Silas B. Truslow, make any statement as to his intention to leave certain lots to the plaintiff, Lucy Truslow Ball, and each of these deponents gave answers in the affirmative, over the objections of the Appellant's Counsel. Your petitioner assigns as error the action of the plaintiff, Lucy Truslow Ball, by counsel, in interrogating these witnesses, as to the intention of the Testator, Silas B. Truslow, and in the giving of their answers, which were objected to by Appellant's Counsel, upon which said evidence it is apparent that the Master Commissioner based his Report, and upon which said Master Commissioner's Report the Court entered decree in this cause on June 11, 1934.

Your petitioner, Van B. Truslow, files as part of the transcript of the Record in this case, a brief in his behalf, which the Court is asked to read as part of this petition. (M. R., pp. 21, 32.) The Appellant, Van B. Truslow, desires to rely upon this petition and adopt the same as his opening brief; and he desires to be heard orally upon this petition for the purpose of obtaining an appeal and *supersedeas*, if this is deemed necessary, and states that he did, on the 19th day of November, 1934, deliver a copy of this petition, to Wm. W. Butzner, Esq., the attorney of record for the Appellees. For the reasons aforesaid and others appearing on the face of the record, your petitioner prays that an appeal and *super-*

Supreme Court of Appeals of Virginia.

sedeas may be allowed him from the said decree; that all errors may be corrected; that the said decree of June 11, 1934, may be reviewed and reversed; and that a decree may be entered in this cause granting your petitioner, Van B. Truslow, the relief prayed for in his answer and cross-bill filed herein.

VAN B. TRUSLOW,
By G. B. WALLACE,
WM. K. GOOLRICK,
His Counsel.

G. B. WALLACE,
WM. K. GOOLRICK,
Counsel for Petitioner.

I, C. O'Connor Goolrick, Wm. K. Goolrick, an attorney at law, practising in the Supreme Court of Appeals of Virginia, do hereby certify that in my opinion the decree complained of in the foregoing petition, should be reviewed and reversed by the Supreme Court of Appeals of Virginia.

C. O'CONOR GOOLRICK,
WM. K. GOOLRICK.

Rec'd November 20, 1934.

M. B. WATTS, Clerk.

January 28, 1935. Appeal and *supersedeas* awarded by the court. Bond \$7,000.00.

M. B. W.

APPELLANT'S BRIEF

Law of the Cases

FIRST ASSIGNMENT OF ERROR.

(Construction of Wills.)

The testator, Silas B. Truslow, used the following language in his will, namely: "Van B. Truslow shall have 17½ lots where he shall wish them except the 3 lots to the house." * * * The facts in regard to this assignment of error are set forth under the First Assignment of Error in Appellant's Petition. The question is, therefore, what the testator, Silas B. Truslow, intended to devise his son, Van B. Truslow, by this language.

See: Harrison on Wills and Administration (1927), Vol. 1, Section 193 (1).

"Nothing is better settled than that in the construction of a will, all parts of it must be examined and the intention of the testator ascertained, not from one clause only, but from the entire instrument. An isolated clause taken from its context may present an entirely different meaning than when read as a part of the entire instrument. Besides, wills may be of great obscurity and the entire instrument can alone show the true intent of the testator. It is, therefore, laid down in a number of cases that 'the rule which controls all others in the interpretation of wills is that the intention of the testator must be gathered from the entire will'."

Citing *Hurt, et als., v. Brooks, et als.*, 89 Va. 496, at page 500, the Court says:

"In construing this will, it must be remembered that wills are construed to operate according to the intention of the parties, if by law they may, and, if they cannot in one form, they shall, if possible, operate in that which the law will effectuate the intention. And in later times the judges have gone farther than formerly, and have had more consideration for the substance, to-wit, the passing of the estate according to the intention of the parties—than to the mere manner of passing it. So legal presumptions and rules of construction which would otherwise yield to an intention satisfactorily expressed in the instrument itself, and, indeed, in the face of such expression of intent have no application. It

is not allowable to interpret what has no need of interpretation, nor will the law make an exposition against the express words and intent of the parties. In short, where there is a manifest general intent, the construction should be such as to effectuate it, though by that construction some particular or subordinate intent may be defeated, or the literal import of the words would be departed from."

"It is not admissible, by adhering to the letter, to defeat the manifest object and design of the instrument. Minn. Inst., 949, 950, 951; 3 Lom. Dig. 197. The construction should be upon the entire instrument, and not merely upon disjointed parts of it, so that every part of it, if possible, may take effect."

Judge Lyons said, in *Tebbs v. Duval*, 17 Gratt. 361: "Legal presumptions and rules of construction, yield to the intention of the testator apparent in the will, and have no application where the intention thus appears." *Randolph v. Wright and Wife*, 81 Va. 612; *Shelton v. Shelton*, 1 Va. 53; *Kennon v. McRoberts*, *Id.* 99.

See also:

Morris, et als., v. Bernard and others, 114 Va. 630, at pages 634 and 636:

"It is proper to observe, however, that all rules of construction have but one object, and that is to ascertain the intent of the parties to the instrument to be construed, and that intent when ascertained, if it controverts no rule of law or of public policy, becomes the law of the case, and full effect must be given to it."

As was said in *Hurt v. Brooks*, 89 Va. 496, 16 S. E. 358:

"Where there is a manifest general intent, the construction should be such as to effectuate it, though thereby some particular or subordinate intent may be defeated, or the literal import of the words be departed from."

See also:

Jones v. Brown, 151 Va. 622, at page 631:

As said by Professor Graves, in his valuable and much quoted paper on the subject:

“What the judicial expositor seeks to ascertain in the interpretation of doubtful expressions in a will, is not the meaning of the words alone nor the meaning of the writer alone, but the meaning of the words as used by the writer. It is not the meaning of the words in the abstract for the meaning of the words varies with the circumstances under which they are used; and not the meaning of the writer apart from his words; for the question is one of interpretation, and what the writer meant to have said, but did not, is foreign to the inquiry; * * * We must seek the meaning of the writer, but must find it in his words; and we must seek the meaning of the words, but it must be the meaning of his words—of the words as he has used them—the meaning which they have ‘in the mouth of this party, * * * .’”

In *Waters v. Trefouret*, 117 Va. 186, 83 S. E. 1078, the court quoted from the case of *Copenhagen v. Schuler*, 2 Paige (N. Y.) 122, 21 Am. Dec. 73, as follows: “The great and leading principle in the construction of wills is that the intention of the testator, if not inconsistent with the rules of law, shall govern and that intent must be ascertained from the whole will taken together; * * * When the words of one part of a will are capable of a two-fold construction, that should be adopted which is most consistent with the intention of the testator as ascertained by other provisions in the will; and when the intention of the testator is incorrectly expressed, the court will effectuate it by supplying the proper words.”

See also:

Harrison on Wills, Section 221, page 453:

“We have seen, in discussing the general rules of construction, the reluctance with which a court will declare a testamentary disposition void. If the intent of the testator can be discovered from the will and surrounding circumstances with reasonable certainty, it will be effectuated. These general rules apply, of course, to all features of the will, but they are especially applicable to the descriptions of the property disposed of in the will. Accuracy of the description in every particular is not essential to the identification of the property, and where there is sufficient description for identification, the court can effectuate the intent. Of course, if the description is *so vague and uncertain*, whether in the deed or will, that identification is impossible, the court has no other recourse but to declare the will void. Thus, a deed for ‘a piece of land near Bacon Quarter Branch’ was too vague

when the surrounding circumstances disclosed no particular land to which reference must have been made. While this is the case of a deed, the same principle applies to a will. We have already seen that an erroneous description does not vitiate the gift, rejecting the false description, enough remains for identification. Where there are repugnant descriptions, that description is adopted which the court finds most nearly expresses the intention of the testator, and the other is rejected."

That a will speaks from the death of the testator. See: Sec. 5236 Code of Va.

See also:

Vol. 9, Va.-W. Va. Digest (Michie), Sec. 103, page 1101.

"The fundamental rule in the construction of wills is, that the intention of the testator, if not inconsistent with some established rule of law, must control."

Citing numerous cases.

See also:

Sec. 105, page 1103: "If there be doubt as to the meaning then the auxiliary or subordinate rule to be first applied and one of the most usefulness and importance is for the court to place itself as nearly as possible in the situation of the testator at the time of the execution of the will."

Citing *Blankenship v. Early*, 132 Va. 408, and other Virginia cases.

See also:

Edward Arvin, et als., v. Mollie A. Smith's Ex., et als., 142 Va. 680, at page 687, the Court says: "In the construction of ambiguous expressions, the situation of the parties may very properly be taken into view: the ties which connect the testator with his legatees; the affection subsisting between them; the motive which may reasonably be supposed to operate upon him and to influence him in the disposition of his property, are all entitled to consideration in expounding doubtful words."

See:

Waring and Wife v. Bosher's Admr., 91 Va. 286, at page 289. The Court says: "The object of the courts in construing wills is to arrive at the true intent of the testator, but that intent is to be gathered from the language used. 'Conjecture,' it has been said, 'cannot be permitted to usurp the place of judicial conclusion,' nor supply what the testator has failed sufficiently to indicate." *Wooten v. Redd*, 53 Va. 296. "The intention must be collected from the words of the will, for the object of construction is not to ascertain the presumed or supposed, but the expressed intention of the testator, that is, the meaning, which the words of the will correctly interpreted, convey." *Hatcher v. Hatcher*, 80 Va. 171. "A clearly expressed intention in one portion of the will is not to yield to a doubtful construction in any other portion of the instrument." Redfield on Wills, 434; Schouler on Wills, Section 498.

It cannot be doubted from the facts set forth in this petition and shown in the Record in this case, that the testator, Silas B. Truslow, desired to make his son, Van B. Truslow, the chief beneficiary under his will. That Van B. Truslow was to have "17½ lots where he shall wish them except the 3 lots to the house" was clearly the intent of the testator, Silas B. Truslow. The testator, Silas B. Truslow, devised his son, Claudie Truslow, two lots, "on the west side South east corner" and "above him North west 3 lots to my son, Mack-duff Truslow" and the "3 lots to the house" devised Gracie Truslow and Beulah Truslow after the death of the testator's wife, can be located from the descriptions given by the testator, Silas B. Truslow, in this will.

It is evident from this will, that Van B. Truslow was to have 17½ lots which he might select where he desired, after the devises of 2 lots to his brother, Claudie Truslow, 3 lots to his brother, Mack-duff Truslow, and the 3 lots to the house to his sisters, Gracie Truslow and Beulah Truslow. The testator, Silas B. Truslow, devised to his daughter, Lucy Truslow Ball, 3 lots "on the southside facing North East and South East". By the introduction of oral evidence by the Plaintiff, Lucy Truslow Ball, and by oral testimony as to the testator's intention, she endeavors to locate the lots devised her as Lots Nos. 29-30-31, Block 7, with filling station thereon and in this way seeks to take from Van B. Truslow the right to select these 3 lots as among the 17½ lots devised him by his father, Silas B. Truslow. It is shown from the facts in this Record that without the oral evidence of

John W. Allison and Lucy Truslow Ball as to the *intention* of the testator in regard to the devise of these three lots to Lucy Truslow Ball, that neither the Master Commissioner nor the Court could have arrived at any solution as to the correct location of the three lots so devised.

In *Coffman's Admr. v. Coffman, et als.*, 131 Va. 456, the question of admission of evidence to show the testator's intention is discussed:

"It is contended that the court excluded 'all evidence relating to the situation and declared purposes and intentions of the testator in the disposal of his property'. We do not understand that the Court went this far. *It excluded evidence of the testator's declarations of intention*, but not evidence of his situation, and this ruling was in accord with the law as applied to the facts of this case. The proper use of extrinsic evidence in aid of the interpretation of wills may be regarded as reasonably well settled."

Prof. Graves divides the extrinsic evidence which may be offered in aid of the interpretation of a will into two classes and says: "Of these the first consists of material facts, and these may concern the testator, his property, his family, the claimant or claimants under the will, their relations to the testator, &c. The second class, on the other hand, is confined to direct evidence of the testator's actual intention, such as his declarations of intention, his informal memoranda for his will, his instructions for its preparation, and his statements to the scrivener or others as to the meaning of its language. And this division of extrinsic evidence not only exists in the nature of the case, but is of the utmost practical importance in the interpretation of wills, as the rules for the admissibility of the two kinds of evidence are not the same. Let us call the first kind the facts and circumstances, and use the expression declaration of intention to describe all extrinsic statements by the testator as to his actual testamentary intentions, i. e., as to what he has done, or designs to do, by his will, or as to the meaning of its words as used by him."

"Having made this classification, Professor Graves proceeds to show that evidence of the first kind, 'the facts and circumstances' is always admissible in a case of disputed interpretation."

"The primary consideration and rule of construction is to determine the intention of the testator from the language

which he has used. If the meaning of that language is plain, the will must be given effect accordingly. This rule is familiar and elementary, and to it all others are subordinate and subservient. If there be doubt as to the meaning, then the auxiliary or subordinate rule to be first applied, and the one of most usefulness and importance, is for the court to place itself as nearly as possible in the situation of the testator at the time of the execution of the will."

"With reference to the second of the two classes of extrinsic evidence dealt with in the paper by Professor Graves, 'testator's declarations of intention' he says: 'There is but one situation in which the judicial expositor has the right to invoke the aid of declarations of intention, and that is where the words in the will describe well, but equally well, two or more persons or two or more things, and such declarations are offered to show which person or which thing was meant by the testator, i. e., by the words in the will as used by him.' This situation he described as a case of 'equivocation' and his conclusion with respect thereto, is fortified by citation of authorities, and is followed by a most constructive and interesting discussion and explanation of what will constitute equivocation, and the reasons why the evidence of the testator's declarations as contrasted with evidence of the facts and circumstances surrounding him is so narrowly restricted in its use."

"In the instant case there is no 'equivocation' involved, but there is a use of language which failed to make the testator's meaning altogether clear, with the result that the widow on the one hand and the heirs and distributees on the other, represented before us by able and reputable counsel, take diametrically opposing views as to what the testator meant by the language which he used. It follows that his declarations so far as they purported to describe the intention he meant to express in the will were inadmissible, but that evidence of facts showing his situation, including in particular the character and value of his property, his family and family relationships, the claimants under the will and his attitude with reference to them, was admissible for the purpose of determining his probable intent."

"The declarations of intention were properly ruled out, and the balance of the extrinsic evidence when duly appraised and weighed, can not be held to have gone further than to show his affection and solicitude for his wife, the number and names and situation of his next kin, and the amount and kind of his property, and of that owned by the other parties to this litigation."

See also:

28 Ruling Case Law, Sec. 251, page 280:

"The general rule is that parol testimony is not competent to prove a testator's *declarations* prior to or after the execution of his will to aid in its construction. Nor are such declarations admissible even if made at the very time of execution. Since the testator's intention is to be ascertained from his written will, his parol declarations of his understanding of the meaning of his will are not admissible for the purpose of interpreting his testament. It is obvious that if verbal declarations were admitted, wills might be overthrown which expressed the intention of one who could not dispute evidence of his declarations, nor give any explanation of them, and thus grave evils would result."

Citing *Read v. Payne*, 6 Va. 225; *Wilkins v. Allen*, 18 Howard 385; 14 U. S. Law Ed. 396, and numerous other cases.

SECOND ASSIGNMENT OF ERROR.

(As to Agreement between the Testator, Silas B. Truslow, and Van B. Truslow.)

The following authorities are cited under this Assignment of Error:

See:

Burdine v. Burdine's Ex'or., 98 Va. 515; at page 519, the Court says:

"Strictly speaking, an agreement to dispose of property by will cannot be specifically enforced, not in the lifetime of the party, because all testamentary papers are from their nature revocable; not after his death, because it is no longer possible for him to make a will, yet courts of equity can do what is equivalent to a specific performance of such an agreement by compelling those upon whom the legal title has descended to convey or deliver the property in accordance with its terms, upon the ground that it is charged with a trust in the hands of the heir at law, devisee, personal representative, or purchaser, with notice of the agreement, as the case may be. 3 Parsons on Contracts, Section 406 (6th Ed.); *Hale v. Hale*, 90 Va. 728, 730."

See also:

Fizzell, et als., v. Clarence G. Fizzell, 149 Va. 815, at page 822, the Court says:

“Since, therefore, a consideration is alleged for the promise sought to be enforced in the instant case, and there is some evidence tending to support that allegation, we do not think the contract now under consideration comes within the inhibition of the above mentioned statute (Sec. 5141, Code of Va. 1930), as did the contract in *Wohlford v. Wohlford* (121 Va. 699), but it belongs to that class of cases to which the rules of law pertaining to the specific performance of contracts for the sale of land are applicable.”

See also:

Burruss against Nelson's Ex., 132 Va. 17, “Where an aunt had agreed with her nephew that if he would care for her and manage her estate in her declining years, she would, upon her death, leave him a certain farm, and the plaintiff sought to have the agreement enforced, the Court says: “The alleged contract was by parol. Its enforcement in equity depends upon clear and convincing proof.”

In *Hale v. Hale*, 90 Va. 728, at page 730, the Court says:

“There is no doubt, notwithstanding a will is in its nature ambulatory until the testator's death, and cannot be made irrevocable, that a person may by a certain and definite contract bind himself to dispose of his estate by will in a particular way, and that such a contract, in a proper case, will be specifically enforced in equity; that is to say, the property will be held charged with a trust in the hands of the heir at law, devisee, personal representative, or purchaser, with notice of the agreement, as the case may be, and a conveyance or accounting directed in accordance with the terms of the agreement. 3 Pas. Cont. 407; *Schuler Wills*, Sec. 451; *Izard v. Middleton*, 1 Desau. 116; *Rivers v. Rivers*, 3 *Id.* 190; *Parcell v. Stryker*, 41 N. Y. 480; *Mundorf v. Kilburn*, 4 Md. 459; *Johnson v. Hubbell*, 10 N. J. Eq. 332.”

In a note to the last-mentioned case in 66 American Decisions, where the cases are collected, the annotator (at page 784), says: “It is not only in harmony with sound principle that a person may make a valid agreement binding himself to dispose of his property by last will and testament, but it is

supported by an almost unbroken current of authorities, both English and American;" and substantially the same principle was recognized in *Rive v. Hartman*, 84 Va. 251.

Hale v. Hale, *supra*, at page 732:

"Not only is it a cardinal feature of a will that it is ambulatory until the testator's death, but acts of part-performance by the party seeking specific execution, to take a case out of the statute, must be of such an unequivocal nature as of themselves to the evidence of the existence of an agreement; as, for example, where, under a parol agreement to sell land, the purchaser is put into possession, and proceeds to make improvements, 2 Min. Insts. (4th Ed.) 853; 3 Pom. Eq., Sec. 1409. In the language of Lord Hardwicke, the act of part-performance 'must be of such as could be done with no other view or design than to perform the agreement'. *Gunter v. Halsey*, Amb. 586. 'The principle of the cases,' said Sir William Grant in *Frome v. Dawson*, 14 Ves. 387, 'is that the act must be of such a nature that, if stated, it would of itself infer the existence of some agreement; and then parol evidence is admitted to show what the agreement is.'"

See also:

Fowlkes v. White, 138 Va. 438; *Bright v. Channels*, 92 W. Va. 93; 114 S. E. 513; *Blagg v. Van Sickle*, 90 W. Va. 351; 110 S. E. 816.

Timberlake v. Pugh 158 Va. 397, as to evidence necessary to establish agreements.

THIRD AND FOURTH ASSIGNMENTS OF ERROR.

(Credits for Money Paid and Advanced.)

The Third Assignment of Error is as to credits for certain sums of money, with interest, advanced by Van B. Truslow to his father, Silas B. Truslow, as set out in the Record, covered by Exceptions 5, 6, 7, 8 to Master Commissioner's Report (MS. R., p. 205).

The Fourth Assignment of Error is to the amount of rent allowed Lucy Truslow Ball for the use of the filling station by her brother, Van B. Truslow—if the ruling that Lucy Truslow Ball is entitled to the filling station as of the date of the death of her father, Silas B. Truslow—and covers Exception No. 9 to Master Commissioner's Report (MS. R., p. 206).

It is submitted under the Fifth Assignment of Error that the burden of proof is upon the plaintiff, Lucy Truslow Ball, to show what is a fair rent for the filling station while occupied by her brother, Van B. Truslow, and that the finding of \$75.00 per month or \$900.00 per year is excessive and is not justified by the evidence; as to the question of burden of proof.

See:

Fudge v. Payne, 86 Va. 303; *Smyth Bros. v. Beresford*, 128 Va. 137; *C. & O. v. Catlett*, 122 Va. 232; *Moore v. Heat Co.*, 65 W. Va. 552; 64 S. E. 721.

FIFTH ASSIGNMENT OF ERROR.

(Credits for Permanent Improvements.)

Section 5491, Code of Virginia (1930).

See:

Wood v. Krebbe, 74 Va. 685, at page 689, the Court says:

“Before examining the provisions of the statute, upon this point, it may be useful to enquire what are the doctrines of courts of equity upon the subject of permanent improvements by a *bona fide* holder of land, claiming under a defective title. It seems to be well settled, that where the legal title is in one person who has made improvements in good faith, and the equitable title is in another, who is compelled to resort to a court of equity, in support of his equitable claim, that court acting upon the principle that he who seeks equity, must himself do what is equitable, will require as a condition of such relief, that the true owner shall make compensation for such improvements. And so, where the owner asserts a claim for rents, and profits, and an account is ordered, any permanent improvement made by the purchaser will be allowed as a set-off against the rents and profits; or if the owner is guilty of fraud in permitting such improvements, with a knowledge of the claim, and without giving notice to the possessor, or is guilty of gross laches in asserting his claim after he is apprised of it, he will not be permitted to recover, except upon making compensation. 2 Story Eq. Jur. 799, 1237; *Morris v. Terrell*, 2 Rand. 6 (23 Va.); *Walker v. Beauchler*, 27 Gratt. 511 (68 Va.).”

See:

Effinger v. Hall, 81 Va. 94, at page 103, the Court says: “And it seems never to have been decided until a compara-

tively recent period, that one who has made beneficial improvements on land, even though a *bona fide* possessor, is entitled to be reimbursed for his expenditures, unless brought into equity as a defendant at the suit of the owner praying an account of rents and profits, or other equitable relief, in which case the principle is applied that he who seeks equity must himself be willing to do what is equitable; or, where the owner by fraud, acquiescence or laches has precluded himself from questioning the occupant's claim for improvements; in which case compensation is allowed the latter, as in cases of partition between tenants in common where one has made improvements for which, *ex. equo et bono*, he ought to be compensated."

See also:

Flanary v. Cain, 102 Va. 547; *Kian v. Kefalgiannis*, 158 Va. 129.

SIXTH ASSIGNMENT OF ERROR.

(Admission of Testator's Statements of Intention.)

Under this Assignment of Error the petitioner, Van B. Truslow, assigns as error the admission of certain evidence on the part of John W. Allison and Lucy Truslow Ball objected to by petitioner's counsel.

See:

Coffman's Admr. v. Coffman, et als., 131 Va. 456.

28 Ruling Case Law, Sec. 251, page 280.

Read v. Payne, 6 Va. 225; *Wilkins v. Allen* (U. S.), 18 Howard 385; 14 Law Ed. 396; and cases cited.

It is, therefore, respectfully submitted, that from the facts as set forth herein and from the law as cited and applied thereto, that the Court erred in granting the relief prayed for by the plaintiff, Lucy Truslow Ball, and in refusing to grant the prayers contained in cross-bill and answer of your petitioner, filed in this cause and specifically assigned as errors herein.

Respectfully submitted,

VAN B. TRUSLOW,
By G. B. WALLACE,
WM. K. GOOLRICK,
Counsel for Petitioner.

RECORD

VIRGINIA:

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

Be it remembered that heretofore, to-wit, on the 20th day of March, 1933, came Lucy Truslow Ball, et als., and filed their bill, with exhibits herein, against Van B. Truslow, et als., which bill and exhibits therewith are in the following words and figures:

page 33 } In the Circuit Court of Spotsylvania County, Virginia.

BILL.

Lucy Truslow Ball and Geo. Ball, her husband, Plaintiffs,

v.
Van Truslow, single, in his own right and as Executor of Silas B. Truslow, dec'd; Thomas Truslow and Nettie Truslow, his wife, Clay Truslow and Margie Truslow, his wife, Gracie T. Haddock and Lawrence Haddock, her husband, Mack Truslow and Pauline Truslow, his wife, Claudie Truslow, single, Bulah T. Ashby and *eldoow* Ashby, her husband, Defendants.

To the Hon. Frederick W. Coleman, Judge of said Court:

Humbly complaining your Complainants, Lucy Truslow Ball and George Ball, her husband, respectfully represent:

That Silas B. Truslow died August 26, 1925, a resident of Courtland District, Spotsylvania County, Va., testate.

That he was seized and possessed of certain real estate in Courtland Magisterial District, Spotsylvania County, Va., located immediately northwesterly of the City of Fredericksburg, on the State public highway leading from said City to Falmouth, consisting of thirty-five lots according to the plan and survey of Von Schon and Garner, of the Fredericksburg Development Co., which lots are located in Block 7 on said plot and comprise the entire Block 7 with the exception of one lot, No. 20, which was owned by Van Truslow (a diagram of said lots being herewith filed as a part of this bill, marked Exhibit 1).

That the said Silas B. Truslow left a last will and testament, being a holograph will, which was duly probated in the Probate Court of Spotsylvania County, Va., on Jan. 30, 1929, a copy of which is herewith filed as a part of this bill, marked Exhibit 2.

That the said Van Truslow qualified as Executor, giving bond in the sum of \$650.00, and immediately thereupon the said Van Truslow as executor took possession of all of the personal effects of the said Silas B. Truslow, deceased, but has never inventoried or appraised the same, and has never rendered an accounting of the receipts and disbursements, and has never made any distribution of the same.

That the said Silas B. Truslow's widow, Susan J. Truslow, survived him and departed this life, intestate, September 28, 1932.

That the following children survive the said Silas B. Truslow, viz.: Van Truslow (single), a resident of Spotsylvania County, Va., Lucy Truslow Ball (whose husband is Geo. Ball), a resident of Spotsylvania County, Va., Thomas Truslow (whose wife is Nettie Truslow), residence 225 R. St. N. E., Washington, D. C., Clay Truslow (whose wife is Margie Truslow) residence 616 Third Street, Lyndhurst, N. J., Gracie Truslow Haddock, (whose husband is Lawrence Haddock), a resident of Spotsylvania County, Va., Mack Truslow (whose wife is Pauline Truslow) a resident of 225 R. St. N. E., Washington, D. C., Claudie Truslow (single), a resident of Spotsylvania County, Va., and Bulah Truslow Ashby (whose husband is Elwood Ashby), a resident of Spotsylvania County, Va.

That the said Susan J. Truslow never remarried after the death of Silas B. Truslow, her husband. That all of the said real estate of Silas B. Truslow was paid for at the time of his death, and no debts or liens existed thereon.

That under said last will and testament Van Truslow was given 17½ lots of said real estate, the will providing "Where he shall wish them except the three lots to the house" (which are designated as 26, 27 and 28 on said plot) upon the death of Susan J. Truslow were devised to Gracie Truslow (now Gracie Haddock) and to Bulah Truslow (now Bulah Ashby) in fee simple; the will providing "except to sell if they wish to sell shall sell to my son Van and no one else the property given to them must not go out of the family".

That the will further gave "on the south side facing North East and South East 3 lots to my daughter Lucy Ball Truslow (meaning "my daughter Lucy Truslow Ball) and no one else at her death to do as she please with them", which gave to Lucy Truslow Ball, the complainant herein, the three lots

in fee simple, and are designated on said plot as Lots 29, 30 and 31 in said Block 7, and they are the only three lots complying with said description as set out in said will, they being located on the South side of the block and facing northeast and southeast. That on this property the decedent erected a filling station and the same was there at the time of his death; that the same Van Truslow has occupied the same, used it for his own purposes from the death of the said Silas B. Truslow up to the present time without yielding to your complainant, the owner, any rent or anything for the use of said property, and he declines to give possession to your complainant; that your complainant is entitled to have the court require the said Van Truslow to vacate and surrender said property to your complainant and account to her for the use and occupancy thereof at a fair and reasonable price; that he is defiant and has declined to show any consideration for your complainant and her rights under her father's will.

That the said will gave to Claudie Truslow two lots on the west side, southeast corner, which constitute Lots 35 and 36 in Block 7.

That the said will gave to Mack Truslow three lots described as "above him (Claudie's lots) northwest three lots"; that this constitutes Lots 1, 2 and 3, in Block 7.

That the balance of $6\frac{1}{2}$ lots belong to Van Truslow under said will:

That Clay Truslow under said will is given \$25.00; that Thos. Truslow is given \$25.00.

That the said Van Truslow takes the position that your complainant is not given anything under the will of her father, Silas B. Truslow; therefore your complainant is entitled to have the court construe said will, to have the said Van Truslow settle his accounts under direction of the court as executor of Silas B. Truslow, showing what came into his hands, what bills he has paid, and require him to make a distribution of the residue, yielding one-sixth unto your complainant; that complainant is entitled to have the court adjudicate due her the property devised to her under said will, and to have Van Truslow to vacate said three lots belonging to your complainant, and to have the said Van Truslow account for the use and occupancy of said property since the death of said Silas B. Truslow to the present time.

page 35 } Now in consideration whereof and inasmuch as your complainants are remediless in the premises, save in a court of equity where matters of this kind are properly cognizable and relievable your complainants pray that they may file this their bill; that the said Van Truslow, in

his own right and as Executor of Silas B. Truslow, deceased, Thos. Truslow, Nettie Truslow, his wife, Clay Truslow, Margie Truslow, his wife, Gracie T. Haddock and Lawrence Haddock, her husband, Mack Truslow and Pauline Truslow, his wife, Claudie Truslow, Bulah T. Ashby and Elwood Ashby, her husband, may be made parties defendant hereto and be required to answer the same though answer under oath is expressly waived as to each of them; that proper process issue against said defendants; that the court construe the will and have apportioned to the respective parties what is due thereunder; to have confirmed unto your complainant, Lucy Truslow Ball, the three lots, Nos. 29, 30 and 31 in Block 7, which were devised to her by her father, Silas B. Truslow; that the other heirs and distributees have allotted to them and possession given to them of the property devised to them under said will; to have Van Truslow account for all moneys and property coming into his hands as executor and to distribute unto those entitled thereto their respective parts and one-sixth thereof to your complainant Lucy Truslow Ball; to have the said Van Truslow vacate and surrender possession of the property belonging to complainant and to account for a fair rental of the said three lots and filling station from the death of the said Silas B. Truslow to the present time; and that he be enjoined and restrained from continuing to interfere with the possession, occupancy and rights of your complainant in and to said real estate; and that reasonable counsel fees may be awarded to complainants' counsel in this suit; and that all proper accounts be had, inquiries made, and reports taken as the case may exact and that your complainant may have all such other and more general relief in the premises as the nature of the case may require or to equity shall seem meet and proper. And your complainant will ever pray, etc.

LUCY TRUSLOW BALL,
GEORGE BALL,

By Counsel.

WM. W. BUTZNER, p. q.

State of Virginia,
City of Fredericksburg, to-wit:

Personally appeared before me the undersigned Commissioner in Chancery in and for the Corporation Court of Fredericksburg, Virginia, Lucy Truslow Ball, who being duly sworn makes oath that the last known address and place of

residence of Thomas Truslow and Nettie Truslow, his wife, is 225 R., St., Northeast, Washington, D. C.; that the last known address and place of residence of Mack Truslow and Pauline Truslow, his wife, is 225 R., Street, N. E., Washington, D. C.; that the last known address and residence of Clay Truslow and Margie Truslow, his wife, is 616, Third street, Lyndhurst, New Jersey, and that all of said parties are not residents of the State of Virginia.

Given under my hand this March 16th, 1933.

M. L. BAILEY,
Commissioner in Chancery Corporation
Court, Fredericksburg, Va.

page 36 } S. B. TRUSLOW, LAST WILL.

This is my will this fifth day of March nineteen hundred and sixteen of our Lord if my property be paid for at my death my wife Susan J. Truslow is to live in the house as long as she doth live if she stay single if she gets married she shall have one hundred dollars and disposest of any thing else my son Van Truslow to pay her the hundred dollars if the place is not paid for my oldest son Van to do what he sees fit but if paid for Van B. Truslow shall have seventeen and a half lots where he shall wish them except the 3 lots to the house at the death of my wife if she stay single go to Gracie Truslow my daughter and Bulah Truslow my daughter to do as they like except to sell if they wish to sell shall sell to my son Van and no one else the property tiven to them must not go out of the family, on the southside facing North East and South East 3 three lots to my daughter Lucy Ball Truslow and no one else at her death to do as she please with them on the west side South east corner I give two lots to Claudy Truslow my son and above him North west 3 lots to my son Mack-duff Truslow the remainder of six lots and a half is to be sold to pay my debts if any is owing and if none to be given over to my son Van B. Truslow to dispose of as he may see fit only to go to looking after his mother and taking care of her. To my son Clay Truslow twenty-five dollars in money and no more and to Thomas Truslow my son twenty-five dollars a toom stone at my hede and foot and my grave looked after and my son Van Truslow to be the administrator over all the property and affairs and not to give any bond writen this 5 day of March 1916 by my own hand and in my own handwriting S. B. Truslow.

S. B. TRUSLOW (Seal)
Spotsylvania County, Va.

page 37 } Virginia:

In the Office of the Clerk of the Circuit Court of Spotsylvania County on the 30th day of January, 1929.

It appearing that S. B. Truslow died on the 26th day of August, 1927, in Spotsylvania County, Virginia, and at the time of his death had a mansion house and known place of residence in said County; and a writing signed by the said S. B. Truslow, but without any subscribing witnesses thereto, bearing date on the 5th day of March, 1916, and purporting to be the true last will and testament of the said S. B. Truslow, deceased, having been this day produced for probate before me A. H. Crismond, Clerk of said Court, and proved according to law by the oaths of W. F. Harding and Judge Howdershelt, who being called and duly sworn severally deposed that they were well acquainted with the handwriting of the said S. B. Truslow, deceased, thereto signed, to have been written wholly by the said S. B. Truslow, deceased, whereupon it is ordered that said writing be, and the same is hereby established, proved and admitted to record as and for the true last will and testament of the said S. B. Truslow, deceased.

Now on the motion of Van. B. Truslow, the executor named in said will, he is permitted to qualify as such, and has this day appeared in person in the Clerk's Office of this Court, before me A. H. Crismond, the Clerk thereof, and taken oath that the writing admitted to record contains the true last will and testament of the said S. B. Truslow, deceased, so far as he knows and believes and that he will perform the duties of his office according to the best of his judgment and given bond, as required by law, in the sum of \$650.00 without security, the will requiring none, which said bond being signed, sealed and acknowledged by the obligor is ordered recorded; certificate is accordingly granted the said Van B. Truslow for obtaining letters of executorship upon the said estate in due form.

Now on the further motion of the said Van. B. Truslow, executor it is ordered that W. F. Harding, Judge Howdershelt, J. W. Allison, W. W. Butzner and G. B. Wallace, or any three of whom may act, after first being duly sworn for that purpose, do inventory and appraise such of the goods and chattels of the said S. B. Truslow, deceased, as may be produced before them and sign and return their appraisement under their hands as the law directs.

Teste:

A. H. CRISMOND, Clerk.

Virginia:

In the Circuit Court of Spotsylvania County on the 5th day of June, 1933.

And at another day, to-wit, on the 5th day of June, 1933, the following order was entered, which said order is in the following words and figures:

page 39 } Virginia:

In the Circuit Court of Spotsylvania County on the 5th day of June, 1933:

Lucy Truslow Ball

v.

Van B. Truslow, et als.

ORDER.

This day the defendant appeared by counsel and asked leave to file his answer and cross bill in the above cause, which leave is granted and the answer and cross bill accordingly filed.

Virginia:

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

And at another day, to-wit, on the 5th day of June, 1934, came the defendant, Van B. Truslow, and filed his answer and cross-bill with exhibits therein referred to, which answer and cross bill is in the following words and figures:

page 40 } Virginia:

In the Circuit Court of Spotsylvania County.

Lucy Truslow Ball

v.

Van B. Truslow.

In Chancery.

The separate answer of Van B. Truslow in his own right and as Executor of S. B. Truslow, deceased, to a bill of complaint exhibited against him and others in the Circuit Court of Spotsylvania County by Lucy Truslow Ball and George Ball, her husband.

In response to the complainants' bill this defendant says it is true that S. B. Truslow departed this life a resident of Spotsylvania County, Va., August 26th, 1925, leaving a last will which was probated in the Clerk's Office of Spotsylvania County, Va., and this respondent qualified in the said Court as his executor, and it is also true that at the time of the death of the said S. B. Truslow 35 lots in Block 7, according to the plat and survey of Von Schon and Garner, stood in the name of the said S. B. Truslow. S. B. Truslow purchased these lots more than ten years prior to his death, making a small cash payment and told this respondent that he would like for this respondent to help pay for the lots and that he would give this respondent one-half interest in the lots if he would help with the payments, and as this respondent was working in Richmond at that time he regularly sent home every month \$40.00 to his father, S. B. Truslow, to apply on the purchase price of the said lots. Later when this respondent was called into the Army he made an allotment to his father and mother of \$20.00 per month from his pay which was applied on the purchase price of the said lots, and after the War this respondent secured employment in Washington and continued to contribute \$40.00 each month to help his father pay for the said lots. When the lots were paid for in full the said S. B. Truslow offered to make a deed to this respondent for one-half of the lots realizing that
page 41 } this respondent had paid fully half the purchase price. However, this respondent told his father that he did not want him at that time to convey the lots to him, but that he could provide in his will for this respondent to have one-half the lots.

However, after the last will of the said S. B. Truslow was written and before his death he wanted to build a filling station on Lots 29, 30 and 31 in said Block 7. After commencing the building, S. B. Truslow realized that he did not have sufficient money to erect the building and lay the concrete necessary for the filling station and after talking the matter over with him, your respondent who had been working in Washington for several years, agreed to put some money in the filling station enterprise to help his father complete it. The said S. B. Truslow told this respondent that his health was failing and that he would like for this respondent to return home and help him look after the filling station. This respondent contributed sums of money for the construction of the filling station; in September, 1924, he sent a cashier's check for the sum of \$500.00 payable to S. B. Truslow, which the said S. B. Truslow endorsed and cashed and used the proceeds in the building of the said filling station. Finally

this respondent notified his employer in Washington that he would give up his job at the end of the month, and did give up his job according to the notice, and returned to his father's home in Spotsylvania County just after S. B. Truslow had commenced to operate the filling station, about March 10, 1925. On the day following the return of this respondent, S. B. Truslow was taken ill, went to bed and was never able to look after the station any more. There was an agreement between S. B. Truslow and this respondent that they should operate the filling station in partnership during the life of S. B. Truslow, and the said S. B. Truslow stated to this respondent that his will provided that upon his death this respondent should have the filling station and lots on which it was located for the money advanced by him for its construction, and the said S. B. Truslow offered at page 42 } several times in his life to make this respondent a deed for the filling station and one-half of the 35 lots, but this respondent told him that it would be satisfactory to give it to him in his will.

At the time this respondent returned to help his father with the filling station the said S. B. Truslow had no automobile accessories in stock except a few tires and tubes which had not been paid for, nor had the gas in the tanks been paid for. This respondent proceeded to sell the gas in due course of business and paid the Oil Company for it. After collecting for the sale of it this respondent also bought automobile accessories and other stock for the filling station out of his own funds, operated the filling station and out of the proceeds took care of his father, who was then ill, as well as his mother and several younger children. The said S. B. Truslow lingered until the 26th day of August, 1925, when he died. At the time of his death the said S. B. Truslow had no personal property other than his household and kitchen furniture, a few fowls, a horse and a one horse wagon and plow. Soon after the death of his father this respondent sold the horse, wagon and plow to Stuart Sullivan for \$50.00, collected the money and used it in supporting and taking care of his mother.

This respondent's conversation with his father during his life time led him to believe that the 17½ lots "where he shall wish them" devised to him in the will, included the three lots on which the filling station was built and he had proceeded in that belief from the time of his father's death until shortly before the filing of this bill when Mrs. Lucy Truslow Ball notified him that she claims the lots and this respondent is now firmly convinced, as he has always been, that it was his father's intent that the three lots which contain the filling sta-

tion should go to this respondent at the death of the said S. B. Truslow, that this respondent has spent eight years of his life since 1925 in keeping up the property, supporting his mother and his two younger sisters; has footed the page 43 } bills for the entire household until after the death of his mother, Susan Truslow, who died September 28th, 1932.

This respondent was put in charge of the said filling station by S. B. Truslow under the arrangement above outlined by which they were to be partners during the life of the said S. B. Truslow and this respondent was to have the filling station and 17½ lots at the death of the said S. B. Truslow; that this respondent has worked diligently and faithfully not only to make the filling station business a success but also to provide for the wants of his mother after she became a widow and also for his younger sisters, one of whom was in school a year or two after her father's death, and now it would be inequitable and unjust to permit Mrs. Lucy Truslow Ball, after acquiescing for nearly eight years, during which time this respondent has made a success of the filling station business, to come and claim the filling station and the three lots on which it is built merely because under a strained construction of the will of S. B. Truslow she might hope to get it. Not only did this respondent contribute the amounts of money above set out but also he paid doctors' bills and other expenses of his mother, whose health was very feeble from the time of the death of the said S. B. Truslow until her death seven years later. In fact, she was bedridden for practically one year and needed constant nursing and attendance; that in order to pay up the debts owing by S. B. Truslow at the time of his death and other expenses, this respondent raised the sum of \$500.00 by a loan from Willis and Willis of Fredericksburg, Va., secured by a deed of trust on certain lots standing in the name of this respondent instead of disposing of the 6½ lots which the will directed to be sold and the proceeds to go to looking after and supporting S. B. Truslow's widow, Susan Truslow. This respondent avers that since the death of S. B. Truslow he has paid out of his own funds for the debts of the said S. B. Truslow and for the support of his mother, Susan Truslow, a great deal more than the value of the 6½ lots which he was authorized by the will of the said S. B. Truslow to dispose of for the support of his page 44 } mother, and he also claims the 17½ lots including the filling station and other improvements thereon by virtue of the arrangement made with the late S. B. Truslow by which this respondent was to help to pay for the lots and have half of them and also the arrangement by which he

was to help to build the filling station and to get it under the will of his father, the late S. B. Truslow.

In exercise of the privilege of selecting $17\frac{1}{2}$ lots conferred upon this respondent by the will of S. B. Truslow this respondent hereby selects the following $17\frac{1}{2}$ lots as those devised to him by the will of the said S. B. Truslow, deceased, to wit: Lots 29, 30 and 31 in Block 7; 6 lots in said block fronting on Excelsior Streets, Nos. 19 to 25 inclusive and 8 lots in said block fronting on Germania Street, Nos. 11 to 18 inclusive, and one-half of Lot No. 11 on Charles Street.

This respondent prays that this may be treated as an answer to complainant's bill and also as a cross bill and that Lucy Truslow Ball, Geo. Ball, her husband, Thos. Truslow, Nettie Truslow, his wife, Clay Truslow, Margie Truslow, his wife, Grace T. Haddock, Lawrence Haddock, her husband, Mac Truslow, Pauline Truslow, his wife, Claudie Truslow, single, Beulah T. Ashby, and Elwood Ashby, her husband, may be made parties defendant to this bill and be required to answer the same, answer under oath being hereby expressly waived; that proper process may issue against the resident defendants and an order of publication against those who are non-residents, that all proper orders and decrees may be had and references granted, and that the agreement between S. B. Truslow and V. B. Truslow as set out herein may be construed in conjunction with the will of S. B. Truslow, deceased, and that the Court in the proper manner may determine how much is due to V. B. Truslow for expenditures made by him in supporting his mother, Mrs. Susan Truslow, and that judgment be entered in his favor against the estate of

page 45 } S. B. Truslow for such amount, and that the $6\frac{1}{2}$

lots devised by S. B. Truslow for the support of his widow may be subjected by the Court to the payment of any such amount found due to V. B. Truslow and in case the Court should eventually find that V. B. Truslow is not entitled to the three lots on which the filling station is built that he may be reimbursed for the money expended by him in the buildings thereon; that the Court may determine which lots go to each of the respective children of S. B. Truslow and finally close up and wind up the real property belonging to the estate of the said S. B. Truslow; that such other, further and general relief may be granted as is conformable to equity and good conscience and adapted to the nature of this respondent's cause. And he will ever pray.

VAN B. TRUSLOW,
By G. B. WALLACE, Atty.

page 46 } In the Circuit Court of Spotsylvania County, Virginia.

Lucy Truslow Ball

v.

Van B. Truslow and others.

ANSWER.

The joint and separate answer of Lucy Truslow Ball, George Ball, her husband, Gracie T. Haddock, Lawrence Haddock, her husband, Bulah T. Ashby and Elwood Ashby, her husband, to the answer and cross-bill filed herein by Van B. Truslow in the Circuit Court of Spotsylvania County, Virginia. These parties, for convenience, will be referred to as respondents in connection with the answer and cross bill; but the said Lucy Truslow Ball is the complainant in the original bill and the said Gracie T. Haddock and Bulah T. Ashby are defendants but filed their answer admitting the allegation of the said bill.

These respondents admit that S. B. Truslow departed this life a resident of Spotsylvania, and that his will was duly probated as set out in the bill of complaint; but these respondents deny each and every allegation in the said answer and cross bill which are inconsistent with the allegations of the original bill of complaint, and for strict proof.

Respondents further allege that Van B. Truslow acting as the personal representative of the late Silas B. Truslow, has not accounted for the property that came into his hands as such fiduciary, has rendered no accounting, and has applied the same to his own use.

Respondents further emphatically deny there page 47 } was such agreement between S. B. Truslow and V.

B. Truslow as alleged in said answer and cross bill; and deny that he is entitled to the relief prayed for in said answer and cross bill. And now having fully answered insofar as they are advised, pray that the relief asked for in the original bill be awarded; and they will ever pray, etc.

page 48. } In the Circuit Court of Spot. County, Virginia.

Lucy Truslow Ball and Geo. Ball, her husband, Plaintiffs,

v.

Van Truslow (single), in his own right and as Executor of Silas B. Truslow, dec'd, Thos. Truslow and Nettie Truslow, his wife, Clay Truslow and Margie Truslow, his wife,

Gracie T. Haddock and Lawrence Haddock, her husband, Mack Truslow and Pauline Truslow, his wife, Claudie Truslow (single); Bulah T. Ashby and Elwood Ashby, her husband, Defendants.

ANSWER.

The answer of Bulah Truslow, Ashby and Elwood Ashby, her husband, Gracie T. Haddock and Lawrence Haddock, her husband, to a bill in chancery filed against them and others in the Circuit Court of Spot. County, Virginia, by Lucy Truslow Ball, et als.

These respondents, insofar as they are advised it is necessary, answer and say: that the allegations in the bill in this cause are true; that Lots 26, 27 and 28, described in said bill were devised to Gracie Truslow (now Gracie Truslow Haddock) and to Bulah Truslow (now Bulah Truslow Ashby); that since their mother's death Sept. 28, 1932, up to the present time the said Van Truslow has occupied and retained possession of said lots and the buildings thereon and has declined to surrender possession thereof to your respondents, and that he has never yielded to your respondents any rental therefor; that he should be charged up and be required to pay to these respondents a fair rental for the use and occupancy of said property and be required to surrender the possession thereof to these respondents; and respondents join in the prayer of the said bill and further ask that the court may confirm unto them the said lots and improvements thereon, so devised to them by their father, and that these respondents may be awarded a judgment against the said Van Truslow for a fair rental for the use and occupancy of the said premises belonging to the said respondents, and that the said Van Truslow be required to vacate said premises and surrender the same and the possession thereof to these respondents; and that these respondents may be awarded general relief. And now having fully answered, etc.

GRACIE T. HADDOCK,
LAWRENCE HADDOCK,
BULAH T. ASHBY,
ELWOOD ASHBY,

By Counsel.

page 49 } In the Circuit Court of Spotsylvania County, Virginia.

Lucy Truslow Ball

v.

Van B. Truslow and others.

SPECIAL PLEA.

Now come Lucy Truslow Ball and George Ball, her husband, complainants, and Bulah T. Ashby and Elwood Ashby, her husband, Gracie T. Haddock and Lawrence Haddock, defendants to said bill, and file this the plea of the statute of limitations to the claims asserted by respondent Van B. Truslow, in his answer and cross-bill; and they say that any and all claims asserted in said answer and cross bill by the said Van B. Truslow, if any existed against his father, Silas B. Truslow, deceased, are barred by the statute of limitations and have not arisen within the past three years; that the said Silas B. Truslow departed this life August 26, 1925, and that the said Van B. Truslow from said date to the year 1933, a period of 8 years, never asserted nor pretended to assert any of the claims in his cross bill and answer described; and further that prior to his father's death he never asserted, nor pretended to assert, any such alleged claims, and that said claims are not only barred by the statute of limitations in such cases made and provided but said Van B. Truslow is guilty of laches and his alleged claims should not be countenanced by a court of equity. And these things the said complainants and respondents are ready to verify.

State of Virginia—

City of Fredericksburg, to wit:

Personally appeared before me, M. L. Bailey, a Notary Public at large for the State of Virginia, Lucy Truslow Ball, who, being duly sworn, makes oath that the facts and things stated in the foregoing special plea are true to her best knowledge and belief.

Given under my hand this 16 day of January, 1934.

/s/ M. L. BAILEY,
Notary Public.

Virginia: In the Circuit Court of Spotsylvania County.

And at another day, to-wit, on the 16th day of January, 1934, the following decree was entered; which said decree is in the following words and figures:

page 50 } In the Circuit Court of Spotsylvania County, Virginia, on January 19th 1934.

Lucy Truslow Ball, and George Ball, her husband, Plaintiffs,

v.

Van Truslow (single) in his own right and as Executor of Silas B. Truslow, deceased; Thomas Truslow and Nettie Truslow, his wife; Clay Truslow and *and* Margie Truslow, his wife; Gracie T. Haddock and Lawrence Haddock, her husband; Mack Truslow and Pauline Truslow, his wife, Claudie Truslow (single), Beulah T. Ashby and Elwood Ashby, her husband, Defendants.

DECREE.

Process having been duly issued, executed and returned by the Sheriff of Spotsylvania County, Virginia, as to Claudie Truslow, Beulah T. Ashby, Elwood Ashby, Van Truslow, Gracie Haddock and Lawrence Haddock, resident defendants; and affidavit having been duly filed according to law and order of publication having been duly issued, posted, mailed to the respective parties at their last known place of residence and address, and the same having been published as is required by law and the certificate of the Clerk showing the same having been duly filed as required by law as to Thomas Truslow, Nettie Truslow, his wife, Mack Truslow, Pauline Truslow, his wife, Clay Truslow and Margie Truslow, his wife non-resident defendants. And the plaintiffs, Lucy Truslow Ball and George Ball, having duly filed their bill, with exhibits; and Van B. Truslow, in his own right and as executor of S. B. Truslow, having filed his answer in the nature of an answer and cross bill, and process having issued thereon and having been served on

Lucy Truslow Ball and George Ball, plaintiffs and
page 51 } upon Gracie T. Haddock, Lawrence Haddock, Beulah T. Ashby and Elwood Ashby. And Gracie T. Haddock and Lawrence Haddock, her husband, Beulah T. Ashby and Elwood Ashby, her husband, having filed their

joint and several answers to the bill of the complainant. And Lucy Truslow Ball and George Ball, her husband, Beulah T. Ashby and Elwood Ashby, her husband, Gracie T. Haddock and Lawrence Haddock, her husband, having filed their Special Plea to said answer and cross bill, and also their answer to said cross-bill.

Now this cause coming on to be heard on the bill of the complainants, upon the answer thereto of Gracie T. Haddock, Lawrence Haddock, Beulah T. Ashby and Elwood Ashby, upon the answer, in the nature of an answer and cross bill, of Van Truslow, upon the Special Plea thereto and the answer thereto; and the case is set for hearing as to said non-residents.

And was argued by counsel.

Upon consideration whereof the court doth adjudge, order and decree that this cause be, and the same is hereby referred to, one of the Master Commissioners in Chancery of this Court, who is directed to inquire into, ascertain and report.

1. Whether all proper parties are before the Court?
2. What property, real and personal, Silas B. Truslow died, seized and possessed?
3. What debts, if any, he owed, giving their priorities?
4. A settlement of the accounts of Van Truslow as Executor of Silas B. Truslow, deceased, showing what assets came into his hands and what distribution he has made, and what remains in his hands as such fiduciary?
5. What liens, if any, exist against the real estate of which Silas B. Truslow died seized?
6. What lots passed to the respective parties under the last will and testament of Silas B. Truslow?
7. What personal property, and to whom the same passed under said last will and testament?
8. What is a fair rental of the filling station located on the three lots, Nos. 29, 30, and 31, in Block 7, annually from the death of the said Silas B. Truslow to the present time?
9. Who has occupied said filling station and lots?
10. What would be reasonable counsel fees to be awarded to complainants' counsel in this suit?
11. Whether or not a fair rental for the occupancy of the said filling station and three lots should be adjudged due to Lucy Truslow Ball?
12. And and all other matters requested to be reported by any party interested herein and pertinent to this case.

Virginia:

In the Circuit Court of Spotsylvania County.

And at another day, to-wit, on the 30th day of May, 1934, the following Master Commissioner's report was filed, which said report is in the following words and figures:

page 53 } Virginia:

In the Circuit Court of Spotsylvania County.

Lucy Truslow Ball and George Ball, her husband,

v.

Van Truslow, in his own right and as Executor of Silas B. Truslow, deceased, et als.

To Lucy Truslow Ball, George Ball, Van Truslow, Thomas Truslow, *Thomas Truslow*, Nellie Truslow, Clay Truslow, Margaret Truslow, Grace L. Haddock, Lawrence Haddock, Mark Truslow, Claudie Truslow, Beulah T. Ashby, Elwood Ashby.

Take Notice:

That the undersigned, a Master Commissioner in Chancery to whom the papers in the above styled cause were referred by decree entered in said cause on the 16th day of January, 1934, will proceed to hear evidence in regard to the inquiry as set forth in said decree on the 13th day of February, 1934, at Room 25, Law Building, Fredericksburg, Virginia, at 10 o'clock A. M.

Given under my hand this 26th day of January, 1934.

S. B. COLEMAN,
Master Commissioner.

page 54 } Virginia:

In the Circuit Court of Spotsylvania County.

Lucy Truslow Ball, et als.,

v.

Van Truslow, in his own rights, and as Executor of Silas B. Truslow, deceased, et als.

REPORT.

To the Honorable Frederick W. Coleman, Judge of said Court:

This cause having been referred to the undersigned, S. B. Coleman, one of the Master Commissioners of the Circuit Court of Spotsylvania County, Virginia, by decree entered on the 16th day of January, 1934, by which said decree the undersigned was directed to make the inquiries as set forth in said decree.

Acting in accordance with the directions of the decree of January 16, 1934, the undersigned gave notice of the time and place that he would proceed to execute the directions of said decree. A copy of the notice is attached hereto, acceptance of service endorsed thereon. The hearings were continued from time to time at the place named in the notice by agreement of Counsel, until the complainant and defendants announced that all evidence had been introduced.

From the pleadings filed, exhibits and testimony introduced, and from an examination of the records of the Clerk's Office of the Circuit Court of Spotsylvania County, Virginia, the undersigned submits the following as his findings and conclusions in response to the inquiries set out in said decree.

page 55 } (1) "Whether all proper parties are before the Court."

"Answer. It appears that Silas B. Truslow departed this life on the 26th day of August, 1925, testate. A copy of his will and testament having been filed in this cause."

It further appears that Susan J. Truslow, wife of Silas B. Truslow survived him, but died intestate on the 29th day of September 1932. The following named persons were the children of Silas B. Truslow, who survived him and all are now living:

Van Truslow, Fredericksburg, Virginia.

Lucy Truslow Ball, Fredericksburg, Virginia.

Thomas Truslow, 225 R. St., N. E. Washington, D. C.

Clay Truslow, 616 3rd St., Lyndhurst, N. J.

Gracie Truslow Haddock, Fredericksburg, Virginia.

Mack Truslow, 225 R. St., N. E. Washington, D. C.

Claudie Truslow, Fredericksburg, Virginia.

Bulah Truslow Ashby, Fredericksburg, Virginia.

Each and all of the children of Silas B. Truslow are named in his will. His widow was given only a life interest in his home and she having died, the estate of Silas B. Truslow is to be divided in accordance with his will if such a division can be made.

All of the parties named above together with the husbands and wives of those who are married are properly before the Court.

The complainant, Lucy Truslow Ball and her husband, George Ball, filed their Bill praying that the Will of Silas B. Truslow be construed and that a complete and final settlement of his estate in accordance with the true meaning of his will be had. Process was duly returned executed as to Claudie Truslow, Bulah Ashby, Elwood Ashby, Van Truslow, Gracie Haddock and Laurence Haddock. An order of publication was duly published, posted and mailed to each of the following named defendants' last known place of address, as the law directs. Each and all of them are non-residents of the State of Virginia.

page 56 } Thomas Truslow and Nettie Truslow, his wife;
Mack Truslow and Pauline Truslow, his wife;
Clay Truslow and Margie Truslow, his wife;

The parties named above are all persons who have any interest in this suit. It is submitted, therefore, that all proper parties are properly before the Court in this suit and the undersigned so reports.

(2) Of what property, real and personal, Silas B. Truslow died, seised and possessed?

Ans.: At the time of the death of Silas B. Truslow, he was seised and possessed of thirty-five lots in Block 7, as follows: Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, as shown by plat made by Von Schon and Garner for The Fredericksburg Development Company.

This property is located in Courtland District on the west side of the highway leading from Fredericksburg to Falmouth, and was conveyed unto Silas B. Truslow by B. P. Willis, Special Commissioner, by deed dated October 4, 1910, and recorded in the Clerk's Office of the Circuit Court of Spotsylvania County, Virginia, in Deed Book 78, at page 22.

It further appears that in addition to the lots described above, Silas B. Truslow owned lot 31 in Block 18. This lot was conveyed to Silas B. Truslow by W. W. Butzner, Trustee, by deed dated March 28, 1922, and recorded in the Clerk's Office aforesaid in Deed Book 94, at page 458. This lot is also a part of the estate of Silas B. Truslow.

The above described property constitutes all of the real property owned by Silas B. Truslow at the time of his death.

Personal property which passed into the hands of Van Truslow as Executor of his father's estate is as follows:

Two horses of doubtful value.

One small lot of farm implements of little value.

page 57 } Household furniture.

Insurance

\$250.00

From W. W. Butzner & John W. Allison

383.89

Amount in bank

18.27

The above is all of the personal property which may properly be chargeable as having been possessed at the time of Mr. Truslow's death, and your Commissioner so reports.

(3) What debts, if any, he owed, giving their priorities?

Ans.: It does not appear from the testimony or from the records of the Clerk's Office of the Circuit Court of Spotsylvania County, that Silas B. Truslow was indebted to any one at the time of his death.

(4) A settlement of the accounts of Van Truslow as Executor of Silas B. Truslow, deceased, showing what assets came into his hands and what distribution he has made, and what remains in his hands as such fiduciary?

Ans.: Van Truslow has never filed an account of his acts as Executor of his father's estate. From the testimony it appears that the following is approximately correct.

Receipts.

Two horses of little value.

One lot of farm implements of little value.

Household furniture.

Money from insurance

\$250.00

W. W. Butzner & John W. Allison

383.00

Amount in Bank

18.27

\$652.16

Disbursements.

Funeral expenses

\$280.00

R. L. Stone, Plumbing

100.00

E. M. Young

300.00

page 58 } Dr. S. L. Scott

\$125.00

Total Disbursements

\$805.00

It was agreed that the bill to E. M. Young and R. L. Stone were for repairs to the home and these payments were made with the approval and consent of all parties.

(5) What liens, if any, exist against the real estate of which Silas B. Truslow died, seised and possessed?

Ans.: An examination of the records disclosed no liens of any kind on the property of which Silas B. Truslow died, seised and possessed.

(6) What lots passed to the respective parties under the last will and testament of Silas B. Truslow?

Ans.: As has been stated hereinbefore, Silas B. Truslow owned thirty-five lots in Block 7, as shown by a copy of the plat of Von Schon and Garner filed with the bill in this cause. Mr. Truslow certainly attempted to dispose of these lots by his last will and testament, a copy of which has been filed in this cause and it now becomes necessary to examine this will, which is holograph and inexpertly drawn, with the object of determining, if possible, its true intent and meaning.

Before discussing the will itself, however, the undersigned deems it pertinent to here set out briefly the facts as appeared from the record in reference to Mr. Truslow's ownership of this property and then the contentions of the contesting litigants to this proceeding.

First: This property was acquired by Mr. Truslow on the 4th day of October, 1910.

Second: The will in question was drawn on the 5th day of March, 1916.

Third: The Filling Station was constructed in the fall of 1924.

Fourth: Mr. Silas B. Truslow died on the 26th page 59 } day of August 1925.

Fifth: The last will and testament of Silas B. Truslow was admitted to probate in the Clerk's Office of the Circuit Court of Spotsylvania County, on the 30th day of January 1929.

Sixth: Van Truslow qualified before the Clerk of the Circuit Court of Spotsylvania County, as Executor of the estate of Silas B. Truslow on the 30th day of January 1929.

Seventh: The complainant, one of the devisees under the will, filed her bill alleging that under the true meaning of the will the "three lots devised to her, are those lots numbers 29, 30 and 31". The Filling Station is located on these three lots.

Eight: One of the defendants, Van Truslow, filed his answer, asking that it be treated as a cross-bill, alleging (1)

an agreement between himself and Silas B. Truslow to the effect that in consideration of his helping in the payment of the purchase price of the lots, his father agreed to give him one-half of the thirty-four lots; and (2) an agreement between himself and Silas B. Truslow that in consideration of his helping in the outlay for the construction of the filling station, he, Van Truslow, was made an equal partner in the filling station business during the life of his father, and was to be the sole owner after the death of Silas B. Truslow; and (3) that he, Van Truslow, has spent considerable more, in taking care of his mother, than the six and one-half lots, allotted for the purpose by the last will of his father, are worth, and asks judgment against the estate for amounts by him so expended; and (4) that in accordance with the true meaning and intention of his father's will lots 29, 30 and 31, on which the filling station is located, were not devised unto Lucy Truslow Ball, but are three of the seventeen and one-half lots devised to him, Van Truslow.

Ninth: Bulah T. Ashby, and Gracie T. Haddock filed their answer admitting the allegations of the original bill, but denying these of the cross-bill.

Tenth: Lucy T. Ball, Bulah T. Ashby and Gracie T. Haddock filed a special plea of the act of limitations
page 60 } to all claims of Van Truslow against their father's estate.

The Commissioner's Conclusions in reference to the Contentions set out above.

(1) The alleged agreement (1) & (2) between Silas B. Truslow and Van Truslow will now be considered.

(a) In reference to agreement No. (1) it has been established that Silas B. Truslow purchased and received a deed in which he was the grantee for the thirty-five lots in Block 7, from B. P. Willis, Special Commissioner, on October 4th, 1910. On the same date Mr. Truslow and his wife executed a deed of trust to secure the payment of the purchase price of these lots. This deed of trust was released February 4th, 1918.

The allegation in Mr. Van Truslow's answer in regard to this agreement is as follows:

"S. B. Truslow purchased these lots more than ten years prior to his death, making a small cash payment and told this respondent that he would like for this respondent to help pay

for the lots and that he would give this respondent one-half interest in the lots if he would help with the payments."

Then after setting forth that the respondent did help pay for the lots at the rate of \$40.00 per month, the answer contains this allegation:

"When the lots were paid for in full the said S. B. Truslow offered to make a deed to this respondent for one-half of the lots, realizing that this respondent had paid fully half the purchase price. However, this respondent told his father that he did not want him at that time to convey the lots to him, but that he could provide in his will for this respondent to have one-half of the lots."

The foregoing constitutes the respondent's allegation in regard to agreement number (1).

The undersigned is of the opinion and so reports, that the only manner by which such an agreement between Silas B. Truslow and Van Truslow as is set out above could possibly effect Van Truslow in a division of his father's estate, would be by construing the alleged agreement to give Van Truslow a one-half interest in the Thirty-five page 61 } lots rather than one-half of the thirty-five lots, or seventeen and one-half lots.

If there was such an agreement it positively appears that Mr. Van Truslow, himself, understood it to mean that he was not to have a one-half undivided interest in the thirty-five lots as a whole, but rather seventeen and one-half lots of the thirty-five.

The part of Silas B. Truslow's will which appears to be in accord with the alleged agreement is as follows:

"* * * Van Truslow shall have seventeen and one-half lots where he shall wish them except three lots * * *."

At page 14 of Volume 2 of the depositions, Mr. Van Truslow after testifying as to the agreement was asked this question:

Q. "Well, was that provision in your father's will that you should have seventeen and one-half lots made in pursuance to the agreement you were speaking of?"

A. "Yes."

It further appears from the answer of the respondent, Van Truslow that he claims, not a one-half interest in the thirty-

five lots as a whole, but seventeen and one-half lots out of the thirty-five and sets them out by number.

It follows, therefore, that even if the agreement is admitted a Court could not construe it more favourable in favor of the respondent, Van Truslow, than his testimony allows.

In *Massie v. Trimstone*, 134 Va. 450, Kelley, P., in delivering the opinion of the Court at page 462, said:

“No litigant can successfully ask a court or jury to believe that he has not told the truth. His statements of fact and the necessary inference therefrom are binding upon him. He cannot be heard to ask that his case be made stronger than he makes it, where, as here, it depends upon facts within his own knowledge and as to which he has testified.”

It is submitted, therefore, that even though there was an agreement between Silas B. Truslow and Van Truslow whereby the former agreed to give the latter one-half of the lots purchased, it could in no way effect the outcome of this case.

(b) The second contention of the respondent, Van Truslow will now be considered

Can it be said that the pleadings in this case set page 62 } up, and the evidence established such a parol agreement between Silas B. Truslow during his life time and Van Truslow, that would justify a Court of Equity in decreeing specific performances of the same.

It is admitted that the last will and testament of Silas B. Truslow was drawn on the 5th day of March, 1916. It is also admitted that the filling station was erected on lots 29, 30 and 31 in the autumn of 1924.

The answer of the respondent, Van Truslow, after stating that Mr. Silas B. Truslow obtained a considerable amount of money from the respondent to be used in erecting the filling station, contains this statement:

“There was an agreement between S. R. Truslow and this respondent that they should operate the filling station in partnership during the life of S. B. Truslow, and the said S. B. Truslow stated to this respondent that his will provided that upon his death this respondent should have the filling station and lots on which it was located for the money advanced by him for its construction, and the said S. B. Truslow offered at several times in his life to make this respondent a deed of the filling station and one-half of the thirty-five lots, but this

respondent told him that it would be satisfactory to give it to him in his will."

In speaking of the essentials required to be alleged and proved in this type of case, Judge Christian, in delivering the opinion of the Court in *Wright v. Puckett*, 22 Gratt. 370, at page 374, said:

"From the numerous decisions on the subject the following principles may be extracted and briefly stated as follows: 1st. The parol agreement relied on must be certain and definite in its terms. 2nd. The acts proved in part performances must refer to, result from, or be made in pursuance of the agreement proved. 3rd. The agreement must have been so far executed that a refusal of full execution would operate a fraud upon the party, and place him in a situation which does not lie in compensation."

To the three essentials enumerated by Judge Christian, a fourth must be added, namely: There must be corroborative evidence of the agreement. *Va. Code* (Michie 1932), Section 6209.

The testimony of Van Truslow on this point may be found on page 16, Volume 2 of the depositions. Mr. Truslow there testified that he sent him twenty-five or thirty-dollars at various times and at one time he sent his father \$500.00
page 63 } to be used in constructing the filling station, he was then asked this question on direct examination:

Q. "Did you or your father have any agreement about the filling station at the time you made this contribution to its costs?"

A. "Well, we were at that time completing it, and the station was supposed to be half mine."

The question and answer quoted above constitutes the only positive testimony of Van Truslow, as to an actual agreement about this filling station entered into by him and his father, Silas B. Truslow.

As had been set out hereinbefore in this report, the filling station in question was erected in the autumn of 1924. It was shown by the records of the Commercial State Bank of Fredericksburg that a check in the amount of five hundred dollars was deposited by Silas B. Truslow in September 1924. This evidence supported Mr. Van Truslow's testimony that he sent his father five hundred dollars to be used in erecting the filling station.

Mrs. Bulah T. Ashby testified as a witness for the respondent and was asked the following question in regard to the filling station:

Q. "Before your father's death did you ever hear him say anything about what should be done with the filling station?"

A. "Yes, sir, while he was sick he was talking to Mama one day and he told her every thing was fixed up but the filling station, and she didn't want him to talk about things like that, because she thought it worry him. He told her every thing was fixed but the filling station, and that he wanted her to have that as long as she lived, and at her death to go to Van."

It was further shown that Mr. Silas B. Truslow operated this filling station alone from November 1924, when it was completed, until March 1925, when he became ill. It was at this time that Van Truslow was called home, and took charge of the affairs of his fathers.

It does not appear positively that this act on his part was the result of or grew out of any agreement had with his father in reference to the ownership of the filling station, but rather, because of the respect and devotion of an eldest son to his father.

It might well be said here that this record discloses a trust and relationship between Mr. Silas B. Truslow and Van Truslow that does not appear to have existed between the father and any other of his children.

It may further well be said that the record discloses that Van Truslow was never deaf to a call for assistance from his father or mother.

The principles laid down as essential to establish contracts of this kind, for which courts of Equity will grant specific performances, in *Wright v. Puckett*, *Supra*, have been followed by the Supreme Court and re-announced in most cases involving this question down to the present day.

It is submitted therefore that in view of the foregoing, and also from an examination of many cases on this question which have been decided by the Supreme Court of Appeals, the agreement alleged by the respondent, Van Truslow, in regard to the filling station, has not been established, and the undersigned so reports.

It might be suggested that this case is governed by the decisions of *Timberlake, Administrator, v. Pugh*, 158 Va. 397, and *Cannon v. Cannon*, 158 Va. 12.

It will be found from an examination of these cases, that the rule announced in *Wright v. Puckett*, *supra*, was followed,

and that in both of these cases the testimony of the contestants established *contracts definite* and *certain* in their terms, and further that statements of the deceased in both cases were proven, showing an intent on the part of each of the deceased to do that which would have been a compliance with such a contract had the intent been carried out.

WILL.

Having disposed of the alleged contracts, the undersigned will next consider the last will and testament of Silas B. Truslow with the object of determining, if possible, what lots passed to the respective parties named in said will.

page 65 } As will be seen from an inspection of the will of Silas B. Truslow, he devised to Van B. Truslow seventeen and one-half lots and gave Van the privilege of selecting these seventeen and one-half lots from those owned by the testator in Block 7, save and except three lots on which his home was located, which the testator devised to Gracie Truslow and Bulah Truslow, two of his daughters; Three lots he gave to his daughter, Lucy Truslow Ball; two lots to Claudis Truslow *Truslow*, one of the testator's sons, and three lots to MacDuff Truslow another son.

It seems perfectly clear that Silas B. Truslow intended to and did devise specifically certain lots unto each of the above named children and that it was his intention, that exclusive of the lots specifically devised, Van was given the power to select seventeen and one-half lots from the remaining twenty-four lots.

A plat, which is admitted by all parties, to be correct, was filed with the bill in this cause and was also introduced in evidence to prove what property the testator owned and where located.

When this plat is examined in connection with the will there can be no question as to the lots which were devised to Gracie Truslow and Bulah Truslow, Claudie Truslow and MacDuff Truslow.

(a) In reference to Gracie Haddock and Bulah Ashby, the will contains this provision:

“* * * three lots to the house at the death of my wife, if she stay single, go to Gracie Truslow, my daughter and Bulah Truslow, my daughter, to do as they like, except to sell, if they wish to sell, shall sell to my son, Van, and no one else the property given to them must not go out of the family.”

It has been shown and has not been contradicted that the house and its enclosure is located on lots numbered 26, 27 and 28 on the plat fixed in this cause.

The undersigned reports that lots 26, 27 and 28 passed to Bulah Truslow Ashby and Gracie Truslow Haddock in equal shares, and that they are the joint owners of these three lots and improvements thereon.

page 66 } The undersigned further reports, in connection with these lots, that the restriction on the sale of these lots which is set out in the will is void, because it constitutes a *restraint* upon the alienation of an absolute and fee simple estate. This is so well settled that the citation of authorities in support thereof, is deemed unnecessary.

(b) The next devise to be considered is that to Claudie Truslow.

This language is used in the will:

“* * * the west side southeast corner, I give two lots to Claudie Truslow, my son * * *.”

The evidence developed that at the time the testator drew his will, he owned no property other than the lots in Block 7. It is self evident, therefore, that the lots devised must necessarily be located in this block.

In order to determine what lots, if any, answer the description of being on the west side, southeast corner, we must again refer to the plat. The only two lots which could answer this description are lots 35 and 36. These lots taken together constitute the southeast corner and are on the west side of Block 7.

The undersigned reports, therefore, that lots 35 and 36 in Block 7 as shown on the plat filed, passed under the will of Silas B. Truslow to his son, Claudie Truslow, absolutely and in fee simple.

(c) The devise to MacDuff Truslow may also be identified by use of the plat.

The language of the will as follows:

“* * * and above him (Claudie Truslow) northwest, three lots to my son, MacDuff Truslow * * *.”

The only three lots in Block 7, which fit the description in the will are lots 1, 2 and 3.

The undersigned, therefore, reports that lots 1, 2 and 3 in Block 7, passed under the will of Silas B. Truslow to MacDuff Truslow absolutely and in fee simple.

page 67 } (d) We now arrive at the real issue in this case,
to-wit:

Are the three lots devised to Lucy Truslow Ball (called Lucy Ball Truslow) by Silas B. Truslow sufficiently described in the will as to be actually identified, and if so, what are the numbers of these lots on the plat.

The language of the will in regard to the devise to Mrs. Ball is as follows:

“ * * * on the south side facing northeast and southeast, three lots to my daughter, Lucy Ball Truslow and no one else at her death to do as she please with them * * * .”

The complainant contends that the three lots described as being on the south side facing southeast and northeast are lots 29, 30 and 31 in Block 7. It happens that these three lots are the ones on which the Truslow Filling Station, which was erected in 1924, is located.

In support of her contention, Counsel for complainant introduced in evidence, the plat of Block 7 and witnesses who testified that lots 29, 30 and 31 in Block 7, if taken as a whole, answered the description given in the will, to-wit: three lots on the south side facing northeast and southeast.

The introduction of this testimony was objected to by Counsel for the respondent on the ground that the object of such testimony is to have the witnesses construe the will instead of the Court, and also because the will and the plat were the best evidence, and oral evidence to explain or contradict them is inadmissible.

Counsel for complainant then cited the case of *Parsons v. Fitchett*, 148 Va. 322, in support of his contention.

The decision of the case cited not only sustains the admissibility of oral evidence to identify the property devised, but the facts and pleadings in that case are strangely similar to those of the case at bar.

The next question which presents itself:

Did the Testator consider the three lots as separate and distinct lots or did he consider the three lots as a whole, or in other words, as actually one lot defined by the
page 68 } outside boundary of three lots lying together?

If it was the intention of the Testator to devise

three lots as separate and distinct lots, then the devise must necessarily fail, for there is only one lot which was owned by the Testator, which actually faces northeast and southeast. If on the other hand, if it was his intention to include three lots in one, as it were, and to describe them as one, the property may be identified by oral testimony.

It is well established that courts do not look with favor upon intestacy. *Parsons v. Fitchett, supra*. If the intention of the Testator can be ascertained, not necessarily from any one clause only, but from the wording of the entire will, the courts will enforce it.

In *Harrison, Wills and Administration*, section 187, the learned author stated the rule as follows:

“When the judicial expositor comes to read the will, he must place himself in the same situation as the Testator. He is entitled to consider all the surrounding facts and circumstances as they surrounded and affected the testator at the time he wrote his will. * * *, when the language of the will is doubtful, the judicial expositor places himself in the shoes of the testator and under the influence of the same circumstances he takes the will by the four corners and reads it. If then the will is intelligible, the Court enforces it. But if the meaning is unsolvable, there is nothing left for the Court to do but to discard it altogether.”

In all cases the intention of the Testator, at the time he wrote the will, is the guiding star. It is never a question of what he intended to say, but what was his intention, as disclosed by what he did say. See *Snidow v. Day*, 145 Va. 721; *Oakes v. Dickerson*, 141 Va. 726.

And in arriving at the testator's intention from the wording of his will it is not the meaning of the writer apart from his words. The language of the Testator must control, but the final inquiry is what the words as used by him mean. *Swan v. Swan*, 136 Va. 496.

With these principles in mind let us take the will of Silas B. Truslow, turn back the years to 1916, and there read it surrounded by the condition and circumstances as page 69 } then surrounded him.

At this time the record discloses that Mr. Truslow, the Testator, owned the thirty-five lots in Block 7. There were no building on these lots save and except his dwelling and curtilage; no filling station had been erected on lots 29, 30 and 31, and at that time there could have been no reason to expect that one would ever be built, for no highway bordered these lots as it does today.

It is evident that the Testator was a man careful and just in his dealing, but one who was not as precise as some in the use of written words to convey his intention. This man then, on the 5th day of March, 1916, with the intention in mind to dispose of these thirty-five lots among certain of his children and his wife, wrote the will, a copy of which is filed in this proceeding.

It is to be noted that the Testator did not anywhere in his will refer to any lot by number. Either by choice or for some other reason he determined to locate the lots by the points of the compass, and it must be said, that he appeared to have each and all parts of his property exactly located in this manner in his own mind. It cannot be construed, other than, that it was the intention of the Testator to devise unto Van Truslow seventeen and one-half of his thirty-five lots to be selected by this devisee, except the *nine* lots, which he devised to Lucy, Bulah, Gracie, Claudie, and MacDuff. The words used in the will can have no other meaning than that the Testator had in mind certain specific plots of land which he wanted each of his children to have at his death, and it was with this idea that he proceeded to draw his will. The devise to Claudie Truslow is as follows:

“ * * * on the west side southeast corner, I give two lots to Claudie Truslow, my son * * * .”

It is perfectly evident that the Testator intended Claudie Truslow to have a certain amount of land on the southeast corner of Block 7, and it is equally evident that he intended to give him an area on the southeast corner comprising two of the thirty-five lots the Testator owned.

Now turning the devsie to Lucy Truslow Ball.
page 70 } At the time this will was written this daughter was married, while remaining two daughters of the testator were single and living in their father's home. The testator devised to the single daughters is home including the three lots on which his dwelling was located, and devised to Mrs. Ball three lots which he described as being on the south side, facing northeast and southeast.

It is practically admitted that lot 29 in Block 7, when considered separately and a part, faces northeast and southeast. From a glance at the plat of Block 7, it is readily seen that lot 29, is a corner lot and abuts lot 28, which is one of the three allotted to Gracie and Bulah jointly.

Now keeping in mind the fact that at the time this will was written, March 5, 1916, there was nothing to indicate that the location of any particular lot in Block 7 would increase in

value over any other lot in this block to any great extent, we again examine the plat with reference to the will and we find that the three lots devised to MacDuff are adjacent to the two lots devised to Claudie, the last two forming the southeast corner. The fact that the Testator gave these two sons lots adjacent would certainly appear to be a circumstance to be considered along with other facts in the case for it appears from the will that in each devise the Testator considered the property given as a whole in his description and used the word lots as a measure of quantity, rather than in the sense of separate and distinct lots.

The parol testimony introduced by the complainant bears out this theory.

John W. Allison in addition to testifying as to the location of the property devised on the plat further testified to statements of the deceased, made prior to the time the filling station was built. See depositions of John W. Allison, volume 1, pages 12 and 13; depositions of Lucy Truslow Ball, Volume 1, page 30.

The witnesses introduced on behalf of the complainant positively located the property devised to Mrs. Ball, as being lots 29, 30 and 31, on the plat filed herein, stating page 71 } that these three lots, if considered as a whole, answered the description given in the will.

For the reasons stated hereinbefore, it is submitted that such was the Testator's intention and that lots 29, 30 and 31 of Block 7, of the map and plat of the Fredericksburg Development Company, prepared by Von Schon and Garner, passed to Lucy Truslow Ball under and by virtue of the last will and testament of Silas B. Truslow.

DEVISE TO VAN TRUSLOW.

(a) With the exceptions of the lots devised to Lucy Truslow Ball, Bulah Ashby, Gracie Haddock, Claudie Truslow and MacDuff Truslow, it is plain and apparent that seventeen and one-half of the remaining twenty-four lots in Block 7, passed under the last will of Silas B. Truslow to Van Truslow and these lots are to be selected from the remaining twenty-four by Van B. Truslow. It is therefore submitted that as soon as Van B. Truslow selects seventeen and one-half lots by number they vest absolutely and in fee simple in him.

(b) The remaining six and one-half lots were included in the will in the following words:

“ * * * the remainder of six lots and a half is to be sold

to pay my debts if any is owing, and if none to be given over to my son, Van B. Truslow to dispose of as he may see fit only to go to looking after his Mother and taking care of her."

It is established that Silas B. Truslow was not indebted to anyone at the time of his death. His wife, the mother of Van B. Truslow, is now dead and the lots have not been disposed of. Who then are the rightful owners of these lots under the will of the Testator?

It seems clear that it was the intention of the Testator that Van B. Truslow should see that his mother was taken care of. It might be said that under the wording of this clause of the will that it was mandatory upon Van Truslow to page 72 } dispose of these six and one-half lots and to use the proceeds only for the care and support of his mother, any excess over and above the sums so expended reverting to the estate. The undersigned does not so interpret this clause however.

It is submitted that the real meaning of this clause is that the Testator devised the lots to his son Van Truslow to dispose of them as he saw fit upon the condition that Van looked after and took care of his mother or saw to it that she was looked after and taken care of.

It is to be noted that the Testator did not give these lots to his wife for her use, he gave them to Van and stated that Van might dispose of them as he saw fit and at any time, under the express wording of the will.

From the depositions it appears that Van, after his father's death, lived in the home with his mother, paid the grocery bills, medical bill, and did look after and care for his mother until her death. It is true that no definite and specific amounts have been shown to have been expended by Van, yet it has been shown that he, more or less, took his father's place as head of the family and cared for his mother until her death.

A devise somewhat like the one in this case was passed on by the Supreme Court of Appeals in *Burdis v. Burdis*, 96 Va. 81. The devise in question in this case was as follows:

"I leave and bequeath to my wife, Martha A. Burdis, the homestead and five acres around the house, during her natural life, with the understanding that my son Albert will support and take care of her, and at her death said homestead and land shall return to my son, Albert as compensation therefor, But in event of her marrying, I desire her to get \$125.00 in money, and none of my real estate."

In this case the wife predeceased the testator and the Court held the devise to be one dependent upon a condition subsequent and that therefore the son took an absolute estate upon the death of the Testator.

It is therefore submitted that the remaining six and one-half lots vested in Van B. Truslow at the death page 73 } of the testator, and that the condition attached of taking care of his mother having been fulfilled, he is the owner in fee simple of these lots.

LOT 31 IN BLOCK 18.

There being no residuary clause in the will in question and lot 31 in Block 18 having not been disposed of, it appears that Silas B. Truslow died intestate as to this lot and that it passed to the children of Silas B. Truslow by virtue of the statute of descents and distributions.

7. "What personal property, and to whom the same passed under the said last will and testament?"

Ans.: There was no appraisal of the estate and the same must be taken from the evidence in this case; which is approximately as follows:

Money.

Life insurance proceeds	\$250.00
From J. W. Allison & W. W. Buztner	383.89
Deposit in bank	18.27
Household furniture (not valued)	
Farm implements (not valued)	
Two horses (not valued)	
Total amount of money	\$652.16

Bequests.

To Clay Truslow	\$25.00
To Thomas Truslow	25.00

No other bequests having been made it appears that the remainder after payment of debts and costs should be divided equally among the children, exclusive of Clay and Thomas Truslow.

8. "What is a fair rental of the filling station located on

the three lots, No. 29, 30 and 31, in block 7, annually from the death of the said Silas B. Truslow to the present time?"

Ans: A number of witnesses appeared on this page 74 } question and they have placed a rental value on this property from twenty-five to one hundred dollars per month.

It is an established fact, however, that the Texas Oil Company paid sixty dollars per month rent for this station for about four years and since that time has been paying one hundred dollars per month, which last amount is being paid at present.

Mr. Brady, distributor for this Company, testified that the rental paid for the property was to a great extent due to the fact that Mr. Van Truslow was the operator. However, when these things are considered the fact that the operator is paid on an average of $2\frac{1}{2}$ cents per gallon for gasoline sold and 40% of the proceeds from oil sold, which amounts must necessarily be taken in consideration. The amount derived from gas and oil alone appears to have been considerable.

From the testimony taken the undersigned believes that a fair annual rental for this property from the date of Mr. Truslow's death to the present time, is nine hundred dollars per year.

9. "Who has occupied said filling station and lots?"

From the testimony taken it appears that Van B. Truslow has been occupying the filling station and lots since the death of his father, with the exception of about six months when his mother and sisters occupied it, shortly after the death of his father. The allowances for rental, if allowed, should be against Van B. Truslow individually.

10. "What would be reasonable Counsel fees to be awarded to Complainant's Counsel in this suit?"

Ans.: \$250.00.

page 75 } 11. "Whether or not a fair rental for the occupancy of the said filling station and three lots should be adjudged due to Lucy Truslow Ball?"

Ans.: In regard to this inquiry, it is evident that if lots 29, 30 and 31 belong to Lucy Truslow Ball, she acquired ownership by virtue of her father's will. This property having passed to her under the will of her father the title to it vested in Mrs. Ball upon the death of her father.

While there appeared to be passive acquiescence on the part of Mrs. Ball in reference to the use of this property by her brother, Van, it cannot be said that there was any agreement to which she was a party, by which her brother Van occupied it.

It is submitted therefore that Mrs. Ball is entitled to recover the fair rental value of the property for a period of five years prior to the institution of this suit, and until a final decree is entered in this suit, from Van B. Truslow, Va. Code 1932, sections 5493, 5481. These sections expressly limit recovery for a period of more than five years prior to the institution of the suit, but until the decree is entered.

As has been stated hereinbefore (Inquiry 8) the fair rental value of this property since the Testator's death to the present time is nine hundred dollars per year, or seventy-five dollars per month.

It has been alleged and shown that Van B. Truslow placed certain permanent improvements on this property after his father's death. It is submitted, however, that the costs of these improvements cannot be considered as a partial set-off against the rental of the property for the following reasons:

At common law all buildings and improvements in the way of fixtures annexed to the freehold became a part of it and inured to the benefit of the owner of the land. This was true even though the person making the improvements page 76 } did so under color of title and acted in a *bona fide* belief of ownership. *Graeme v. Cullen*, 23 Gratt. 266.

This has been changed to some extent by statute *Va. Code* 1932, sections 5483, 5491. A defendant can now recover for permanent improvements, when and only when he makes the improvements while, "holding the premises under a title believed * * * to be good". The Courts have held *that this section has no application to one who is not a bona fide purchaser, and that a person with notice actual or constructive, of infirmity in his title, cannot recover*, *Smith v. Woodward*, 122 Va. 356; *MacDonal v. Rothgeb*, 112 Va. 749; *Mixdurf v. Blant*, 111 Va. 127.

In interpreting these sections, it is also held that they apply only to actions of ejectment or to cases in which a judgment or decree is entered against the *defendant* for land. *Elanny v. Kane*, 102 Va. 547. And that they do not apply in suits to enforce parol contracts to convey real estate, *Branhan v. Artrip*, 115 Va. 314.

It cannot be said that Van B. Truslow held this property under a color of title, nor can it be said that a decree can be

entered against Van B. Truslow for land in this proceeding. Mr. Truslow appears to have been holding the property by virtue of an alleged parol agreement with his father and appears to come squarely within the scope of *Branham v. Artrip, supra*.

12. The undersigned has not been requested to report on any matter not covered in this report, but he deemed it advisable to report to the Court what appears to be a fair market value of the property considered in this report as disclosed by the evidence.

From the testimony it appears that lots 29, 30 and 31, devised to Mrs. Ball, have a fair market value of approximately six thousand dollars, the property devised to Van B. Truslow has a fair market value of approximately ten or twelve thousand dollars, the property devised to MacDuff Truslow, six hundred dollars; and the property devised to Bulah Ashby and Gracie Haddock, approximately five thousand dollars.

page 77 }

SUMMARY.

1. All proper parties are before the Court in this cause.
2. Silas B. Truslow died, seised and possessed of 35 lots in Block 7, and lot 31 in Block 18, and personal property of value about six hundred dollars.
3. Silas B. Truslow owed no debts at the time of his death, save doctors' bill of one hundred and twenty-five dollars.
4. See report for account of Executor.
5. No liens existed on the property of Silas B. Truslow at the time of his death.
6. Under the will of Silas B. Truslow, lots 29, 30 and 31 passed to Lucy Truslow Ball. 26, 27 and 28 passed to Bulah Ashby and Gracie Haddock (jointly). 35 and 36 passed to Claudie Truslow. Lots 1, 2 and 3 to MacDuff Truslow. Lot 31 in Block 18 did not pass under the will.
7. For personal property see report.
8. A fair rental for lots 29, 30 and 31 is seventy-five dollars per month.
9. Van B. Truslow has occupied the Filling Station since his father's death.
10. \$250.00 would be a reasonable counsel fee.
11. Lucy Truslow Ball is entitled to a fair rental for the Filling Station for a period of five years next, prior to the institution of this suit and until a decree is entered.

Respectfully submitted,

S. B. COLEMAN,
Master Commissioner.

page 78 }	Stenographer.	
	Two days @ \$10.00	\$20.00
Ninety-five pages @ 25c		24.00
		<hr/>
		\$44.00

The above amount was paid by the Commissioner.

To M. L. Bailey	
Two hours	\$2.00
Twenty-eight pages	7.00
	<hr/>
	\$9.00
Commissioner's fee	\$275.00

page 79 } Virginia:

In the Circuit Court of Spotsylvania County.

Lucy Truslow Ball, et als.,

v.

Van Truslow, et als.

DEPOSITIONS OF LUCY TRUSLOW BALL, ET ALS.

Pursuant to notice given to all parties, acceptance of service endorsed thereon by W. W. Butzner, p. q., counsel for the complainant and also for Gracie T. Haddock, Lawrence Haddock, Beaulah T. Ashby and Elwood Ashby, and G. B. Wallace, attorney for the remaining defendants, the following depositions of Lucy Truslow Ball, John W. Allison and others, were duly taken, subscribed and sworn to this the 21st day of February, 1934; the said hearing having been adjourned by agreement from the 13th day of February, 1934, said depositions to be read in evidence in the above-styled cause now pending in the Circuit Court of Spotsylvania County, Virginia.

Present: W. W. Butzner, Counsel for the complainant, Mrs. Haddock and Mrs. Ashby; G. B. Wallace, Counsel for the executor and the remaining defendants.

page 80 } JOHN W. ALLISON,
a witness of lawful age, being introduced on behalf
of the complainant, deposes as follows:

DIRECT EXAMINATION.

By Mr. Butzner Counsel for the complainant, Mrs. Haddock
and Mrs. Ashby:

Q. State your age, residence and occupation?

A. Age, 62; residence, Fredericksburg, Virginia; occupa-
tion, real estate agent.

Q. How long have you lived in Fredericksburg?

A. Forty-six years in Fredericksburg, and sixteen years
in Spotsylvania County.

Q. The sixteen years you refer to, where did you live?

A. In Spotsylvania County, Bunker Hill, just outside the
corporation limits.

Q. And when did you leave Bunker Hill and come to Fred-
ericksburg—approximately?

A. I think it was in 1928.

Q. How far was your home at Bunker Hill from the prop-
erty of Mr. Silas B. Truslow?

A. We had adjoining property with exception of Hunter
Street dividing us.

Q. Was the corner of your property just across the street
from Mr. Truslow's property?

A. About 60 feet.

Q. Did you know the late Silas B. Truslow?

A. Yes.

page 81 } Q. How long did you know him?

A. About sixteen years.

Q. And are you familiar with Silas B. Truslow's property
and real estate?

A. You mean his home property?

Q. Yes?

A. Yes.

Q. Where was his home property located?

A. Just north of my property.

Q. Was it in lots or a subdivision, or was it a farm land?

A. It is a subdivision of Vonschon & Garner, known as
"Fitzgerald Subdivision". If my recollection is right it is in
Block 7.

Q. Was that the plat of the old Fredericksburg Develop-
ment Company holdings back some forty years or more ago?

A. Yes, sir, shown on the map of a plat in the Clerk's Of-
fice, Fredericksburg, and also Spotsylvania County.

Q. Do you know how many lots that Mr. Truslow owned in Block 7?

A. He owned the entire block, I think about thirty, but I could not say positively without looking at the map.

Q. Did he own all the lots in Block 7?

A. Yes, he owned all the lots in Block 7. It is possible that one lot was owned by Mrs. Susie Tyler. It may have been sold to Van Truslow instead of Silas Truslow, with that exception he may have owned them all and possibly that one.

Q. Did Mr. Truslow have a dwelling house located on any of these lots?
page 82 } A. Yes, sir.

Q. How many lots are there between his dwelling and curtilage and the corner towards Fredericksburg?

A. There are no lots between the house tract and the corner, except the lots facing the south and running back north, which adjoins my tract.

Q. I here hand you a plat (hands witness plat) filed as an exhibit in the bill, and ask you to look at it and state which lots in Block 7 on which is located the Truslow dwelling and curtilage?

A. 26, 27 and 28.

Q. Then what lots by number on the plat are between these three lots you have just named and Hunter Street?

A. 29, 30, 31 and 32.

Q. Are you familiar with the points of the compass with reference to this property?

A. Yes, sir.

Q. Mr. Silas B. Truslow appears to have left his last will and testament, which was probated in the Clerk's Office of the Circuit Court of Spotsylvania County, Virginia, on January 30, 1929, in which he says: "This is my will this fifth day of March nineteen hundred and sixteen of our Lord if my property be paid for at my death my wife Susan J. Truslow is to live in the house as long as she doth live
page 83 } if she stay single if she gets married she shall have one hundred dollars and disposeth of any thing else my son Van Truslow to pay her the hundred dollars if the place is not paid for my oldest son Van to do what he sees fit but if paid for Van B. Truslow shall have seventeen and a half lots where he shall wish them except the 3 lots to the house at the death of my wife is she stay single go to Gracie Truslow my daughter and Bulah Truslow my daughter to do as they like except to sell if they wish to sell shall sell to my son Van and no one else the property given to them must not go out of the family, on the southside facing North East and South East 3 three lots to my daughter Lucy Ball

Truslow and no one else at her death to do as she please with them on the west side South east corner I give two lots to Claudy Truslow my son and above him North west 3 lots to my son Mack-duff Truslow the remainder of six lots and a half is to be sold to pay my debts if any is owing and if none to be given over to my son Van B. Truslow to dispose of as he may see fit only to go to looking after his mother and taking care of her." Turn to that plat filed with the bill and tell me what three lots as designated on the plat fits the description in the Will in which he says: "The three lots to the house"?

Note: Question and answer objected to because he seeks to have the will construed by witness and not by the Court.

page 84 } A. 26, 27 and 28.

Note: Answer objected to as above stated.

Q. Are there any other lots in that Block 7 except the three you have named that will fit the description in the Will?

A. In my judgment, there is not.

Note: Question and answer objected for the same reasons aforegiven.

Q. Turn to the plat and state, if you can, point out and locate the property in the Will described as, "on the south side facing northeast and southeast three lots to my daughter Lucy Ball Truslow".

Note: Objected to because their object is to have the witness construe the will, instead of the Court, and also because the Will itself and the plat showing the lots and the location of the same are already in the record in this case, and they are the best evidence, and oral evidence to explain or contradict them is inadmissible.

Note: By counsel for the plaintiff. The question of the admissibility of this question has been determined by Court of Appeals in Virginia, in the case of *Parsons v. Pritchett*, 148 Va. 322.

A. They would be lots 29, 30 and 31. It would be a matter of impossibility to select any other three lots to fit this description, that is, in Block 7.

Q. Do those lots face northeast and southeast?

A. They do.

page 85 } Q. Are they located on the corner on the plat mentioned formed by the intersection of the highway and Hinton Street?

A. They are.

Q. Do you know of any other lots that Mr. Truslow himself owned that faced northeast and southeast except these three lots you have mentioned?

Note: Question and answer objected to for the same reasons aforegiven.

A. I do not.

Q. Are there any other lots in that block except those three you have mentioned that fit the description in this Will?

A. Most positively there is not.

Q. Mr. Silas B. Truslow speaks of, "my daughter, Lucy Ball Truslow", is that her correct name?

A. As far as I know it is.

Q. Is her name Lucy Ball Truslow or Lucy Truslow Ball?

A. Her name now is Lucy Truslow Ball.

Q. Then she was a daughter of Mr. Truslow and married a Ball, is that correct?

A. Yes.

Q. How many daughters did Mr. Truslow have?

A. I only knew three.

Q. Give their names, please?

page 86 } A. Lucy, Gurley and Grace, they are the names I know them by. Mrs. Ball is generally called by her people "Sis".

Q. Who is Beulah Truslow?

A. That is Gurley.

Q. Then do I understand that Beulah was also known as "Gurley"?

A. Yes, sir.

Q. Who did she marry?

A. She married Ashby.

Q. Who did Gracie marry?

A. Mr. Haddock.

Q. Turn to the plat filed with the bill and state, if you can, from that plat what lots fit the description used in the Will, "on the west side southeast corner I give two lots to Claudie Truslow, my son".

Note: Counsel for defendants object to question and answer because it is practically asking the witness to construe the Will.

A. Lots 35 and 36 in Block 7.

Q. Are there any other lots in that block except those you have mentioned that fits that description?

Note: Counsel for defendants object to question and answer for the same reasons aforegiven.

A. No other lots will fit this description.

Q. Turn to the same plat and state, if you can, what lots on the plat fit the description in the Will, "above page 87 } him northwest three lots to my son, Mack-duff Truslow"?"

Note: Counsel for the defendants object to question and answer for the same reasons as aforegiven.

A. Three lots above Claude Truslow's lots would be lots 1, 2 and 3, Block 7.

Q. Do they fit the description, "above him northwest"?"

Note: Counsel for the defendants object to question and answer for the same reason.

A. There are no other lots that would fit the description except these.

Q. Do you know of any other lots that stand in the name of Silas B. Truslow except those in Block 7?

A. I know of no other lots owned by Mr. Truslow that would fit the description according to his Will or the question that has been asked.

Q. I was trying to get from you what information you have as to whether or not Mr. Silas B. Truslow owned any lots in his own name except Block 7?

A. Not to my knowledge.

Q. In your judgment, what is a fair value of the dwelling house and the three lots on which the dwelling is? I will put it on or about 1925, which was the year Mr. Truslow died?

A. I would say a fair market value would be \$4,500.00.

Q. What would you say is the present value in 1933?

A. Due to the present depression I would say page 88 } the market value would be about the same.

Q. Has there been a building development in that section in the past six or eight years?

A. There has been considerable development.

Q. Is it or not a fact that the greater portion of that has been between Fredericksburg and the Fair Ground has built up during the past eight or ten years?

A. It has.

Q. Then, as I understand you, notwithstanding the unprecedented depression that we are passing through in the past three or four years, that still you think that this property is worth as much at the present time as it was in 1925?

A. I consider it worth as much, and if conditions became normal it would be worth considerable more.

Q. Do those three lots where the dwelling is located front on Route No. 1, known as the Richmond-Washington Highway?

A. It does.

Q. What would you say those lots are worth each without the buildings?

A. \$1,500.00.

Q. Are there any improvements on any of the three lots on the corner known as 29, 30 and 31 in the plat?

A. There are some improvements.

Q. State *their* nature of such improvements?

page 89 } A. There is a frame building used as a filling station and a store room, a frame building in the rear of the filling station used as a wareroom or a warehouse.

Q. Were these improvements on those three lots placed there prior to Mr. Truslow's death?

A. The filling station and the store room was, but the warehouse was not.

Q. About how long before Mr. Truslow's death did he build the filling station and store room?

A. My recollection is in the fall of 1924.

Q. Did Mr. Silas B. Truslow place those improvements on those three lots?

A. He placed the filling station and the store room on the lots.

Q. Did he have those improvements put there by a contractor or did he do the work himself under his own supervision?

A. My recollection is that he did the work himself with a helper—with the help of several other parties—I think George Ball and some of the other men in the neighborhood helped him, but I don't remember who the others were.

Q. Is George Ball the husband of Mr. Truslow's daughter, Lucy?

A. He is.

Q. How often would you see Mr. Truslow on an average while you were living there at Bunker Hill?

A. Three or four times a day.

page 90 } Q. Prior to Mr. Truslow's death, did you know to whom he was going to leave these lots between the home property and the corner formed by Hunter Street and the highway?

Note: Counsel for the defendants object to question and answer for the reason one man can't possibly know what another one was going to do in the future.

A. Mr. Truslow, I would say possibly a year before he built this filling station, told me that he was going to leave Mrs. Ball some lots on the corner and pointed to the lots that are now occupied by the filling station and warehouse.

Q. Where was he when he pointed out these lots and made that statement?

A. He was sitting up against the house on the southside facing the lots in Fredericksburg, smoking his pipe.

Note: Counsel for the defendants object to question and answer because they tend to clear up any ambiguity in the Will.

Q. What did he call his daughter, Mrs. Ball?

A. Sis.

Q. In pointing out these lots on that occasion, just what did he say as near as you can recollect?

Note: Counsel for the defendants object to question and answer for the reason stated in the foregoing question.

page 91 } A. He pointed out the lots which are now occupied by the filling station and stated that he was going to leave Sis some lots on that corner, it being the corner now occupied by the filling station and warehouse, on the southeast corner of the said block.

Q. What would you say in 1925, the year in which Mr. Truslow died, was a fair value of the three lots known as 29, 30 and 31, in the plat mentioned, with the improvements then on them?

A. Property at that time were in considerable demand due to the fact that the highway had been recently opened and at that time I am satisfied he could have sold the station and three lots for at least \$7,500.00.

Q. What would you say, in your judgment, at that time, the structures on those lots cost?

A. The filling station and store room, as formerly stated, was built by Mr. Truslow and some men I didn't consider expert carpenters, and the structure was very poor indeed,

and was built by only fair material, and I am reasonably sure the buildings could not have cost him over six or seven hundred dollars.

Q. Did he lay any concrete in front of the filling station?

A. He did.

Q. Did he supervise that work himself?

A. He supervised it himself and the work was done by Mr. Baker. I remember when he put it down and called
page 92 } Mr. Truslow's attention to the fact that he was making a mistake and he had better get someone that knew the business and get some specifications as to grades, and he said the grade was all right—that was Sunday morning—and I poured a bucket of water about the highway line and the water line to the door of the filling station to prove to him that he was getting a bad job.

Q. In other words, he was putting down the concrete so that he was drawing the water to the front door of his establishment?

A. Yes, sir, this was the only way I could convince him he was getting a bad job.

Q. At present is that filling station and corner one of the most attractive in that section as a business location?

A. I wouldn't say that the building itself was one of the most attractive, but would say that its reasonably attractive and one of the best locations in that section.

Q. Is this filling station just across the road from the Stratford Hotel property?

A. Yes.

Q. What would you say is a fair valuation of those three lots and buildings at the present time, in your judgment?

A. If the property belonged to me I would not offer it for sale at this time, but I am satisfied if it was a place of mine for sale I could get around about \$8,000.00 and possibly more.

Q. How long have you been in the real estate business located in Fredericksburg?

page 93 } A. Over thirty years continuously.

Q. Has the development in this section where is located this property and these surroundings taken place during this period you have been in the real estate business?

A. It has.

Q. Then you have more or less grown up with it or it has grown up with you?

A. You might say it has grown up with me. When Mr. Truslow and myself lived there at his home and my home there was no highway there and no streets.

Q. At the present time are the streets opened and surfaced?

A. The highway is surfaced and the side streets have been

treated with gravel and tar and they are very good. There is an excellent State Highway with traffic roundabout 4,000 cars or more a day passing by on the highway.

Q. What would you say is a fair value of lots 35 and 36 in Block 7?

A. \$500.00 for the two lots would be a fair market value.

Q. Do you mean a piece?

A. No, the two.

Q. What would you say is a fair value of lots 1, 2 & 3 in Block 7?

A. \$200.00 apiece.

Q. Are they worth as much now as they were in 1925?

A. They are worth more now than they were in page 94 } 1925.

Q. What were those two lots worth, in your judgment, in 1925?

A. I would say a fair value of \$500.00 each.

Q. What have you to say as to the present value of lots 1, 2 & 3 on this plat in Block 7?

A. \$200.00 each.

Q. What would you say were the value of these lots in 1925?

A. About \$100.00.

Q. You mean each?

A. Yes, each.

Q. Look on the plat now and tell me what you think is a fair value of the balance of lots in Block 7 that front on Charles Street, designated as Nos. 4, 5, 6, 7, 8, 9 and 10?

A. \$200.00 apiece.

Q. In 1925 what was their value?

A. About \$100.00 each.

Q. What do you, in your judgment, value at the present time, lots 11, 12, 13, 14, 15, 16, 17, 18 in Block 7, those that front on Germania Street?

A. I would say \$7,500.00 a fair value.

Q. What would you say was a fair value of those lots mentioned in 1925?

A. Not over \$100.00 each.

Q. What, in your judgment, is a fair value at the present time of lots 19—I'm skipping lot 20—so I am asking you about lots 19, 21, 22, 23, 24 and 25, those of them front-page 95 } ing on the highway No. 1?

A. I would say \$7,500.00 a fair value.

Q. What would you say as to the value of those six lots in 1925?

A. I would say at that time those lots are approximately worth about what it would bring today under the present market value, due to the present depression.

Q. Those lots fronting the public highway then were made quite valuable by reason of the highway?

A. They were.

Q. As far as you know are there any building restrictions as to these lots?

A. No building restrictions.

Q. As you approach Fredericksburg from this property in Block 7, do you pass through what is known as the "Brulle Subdivision"?

A. You do.

Q. Are there building restrictions and limitations on many of those lots in the Brulle Subdivision?

A. Building restrictions on all lots in the Brulle Subdivision with the exception of possibly ten or twelve that were sold before the subdivision was put on, and if my recollection serves me correct, that only two that front on the highway.

Q. You mean only two fronting on the highway are free from restrictions?

A. Yes, sir.

page 96 } Q. Do those restrictions referred to prevent business buildings and locations?

A. The deeds recite to those who buy the lands that no business of any kind be conducted on the said lots—I think it was a period of fifteen years from the time that they put the sale on.

Q. Does that fact cause the lots on Block 7, which have no business or building restrictions, to be more valuable?

A. It does.

Q. Did Mr. Silas B. Truslow along with you and myself buy any property and sell any property in this immediate section between Fredericksburg and Falmouth Bridge and Fair Grounds?

A. Yes, sir.

Q. In whose name was title taken to those lots?

A. Title was taken in W. W. Butzner's name in order to avoid having so many signing the deeds when the lots were sold. The property was owned equally between Truslow, Butzner and Allison.

Q. Approximately how many were handled in this way? I don't mean exactly, approximately?

A. Possibly about two hundred, more or less.

Q. Have all of those been disposed of?

A. They have.

page 97 } Q. Who was the one that drew the checks distributing the profit from these lots handled in the way you have described?

A. Mr. Butzner.

Q. Are you familiar with the signature of the late Sila B. Truslow?

A. I think I am.

Q. In the business transaction have you seen him sign his name?

A. Yes, sir.

Q. Did we three that you have named handle the subdivision near the Block 7 known as the Jones property?

A. It was known as the Jones property and was subdivided into lots known as Bunker Hill subdivision.

Q. When that property was bought did Mr. Truslow then have an interest along with you and myself?

A. Yes, sir.

Q. Did he afterwards sell out his interest to us?

A. He did.

Q. I here hand you a check dated October 3, 1924, drawn on the Commercial State Bank, payable to the order of Silas B. Truslow for \$950.00, stating, "In full for his interest in the Jones Property, Cedar Lane", and ask you to state if that check bears the true signature of the late Silas B. Truslow. (Hands witness check.)

A. It does.

page 98 } Q. Was that \$950.00 for his profit in the Jones property?

A. It was.

Q. Then that was his net profit?

A. Yes, sir.

(I herewith file the check as an exhibit No. "1".)

Q. After he received that do I understand he no longer had an interest in the Jones subdivision, and that this check paid him in full for his interest in this subdivision?

Q. You started to volunteer some information, now go ahead and tell whatever you had in mind?

A. Mr. Truslow came to me to know if he could borrow a \$1,000.00, which was unusual for him to ask for any credit or a loan, and I asked him what in the world he wanted with a \$1,000.00, and he said he wanted it to finish paying for his filling station and for laying cement, and I told him that I would see what could be done and if he really had to have it I would help him in getting it. In a few days he came back and wanted to sell his interest in the Bunker Hill Subdivision, and I advised him not to sell it, that I was sure we could get more money out of it if he would hold his interest, but he said he wanted to get out of debt and was willing to sacrifice some of his interest to get the money at that time, and

if my recollection serves me correctly, Mr. Butzner advanced him \$1,000.00, and he still continued to want to sell
page 99 } and I'm sure we purchased Mr. Truslow's interest for a \$1,000.00, and this check, I am sure, was to cancel that debt or part of it.

Q. Prior to 1924, did we three handle some other lots that we owned and the title of which was in my name?

A. We did.

Q. I here hand you a check dated September 13, 1923, for \$150.00, payable to Silas B. Truslow, marked one-third of dividend \$450.00, and ask you to state whether or not it carries the true signature of Silas B. Truslow as endorsed on the check?

(Hands witness check.)

A. That is Mr. Truslow's signature.

(The check is introduced, marked Exhibit "2".)

Q. I hand you another of July 23, 1922, payable to Silas B. Truslow, \$100.00, marked dividend, and ask you to state whether it carries the signature of Mr. Truslow as endorsed?

(Hands witness check.)

A. It is Mr. Truslow's signature.

(Check filed, marked Exhibit "3".)

Q. I hand you another dated July 31, 1924, for \$100.00, payable to Silas B. Truslow, marked dividend, and ask that you state whether it carries his endorsement?

(Hands witness check.)

A. It does.

(Check filed, marked Exhibit "4".)

page 100 } Note: Counsel for the defendants object to the foregoing questions, to the foregoing answers and checks on the grounds that they have no bearing on any issue raised in the pleadings in this case.

Q. I hand you another dated July 10, 1925, payable to Silas

B. Truslow, \$42.64, marked to date, and ask you whose endorsement is on the back of that check?

A. I am not positive that this is Mr. Truslow's signature, but it looks like it from his other, and possibly it may be his.

(Check is filed, marked Exhibit "5".)

(It is agreed by all parties that Silas B. Truslow died August 26, 1925.)

Q. After the death of Mr. Truslow did you and I clean up the balance of the lots that were owned together, and in which title stood in my name, and remit to the estate by depositing the money in the Commercial Bank?

A. We did.

Q. Did you figure up along with me the amount that was due and then deposit the money and address a letter to Mrs. Truslow and children?

A. Yes, sir.

Q. I here hand you a letter dated July 24, 1928, addressed to Mrs. Silas B. Truslow and children, signed by me, which purports to be a copy of such letter referred to, and ask you to state if you had me to write such a letter to make the deposit in the Commercial Bank of \$388.89, therepage 101 } in referred to?

(Hands witness letter.)

A. I did.

Q. Did this deposit and the checks that you have filed, pay out to Mr. Silas B. Truslow all of his interest in the lots we handled together, the title to which was taken in my name?

A. Yes.

(It is agreed that Mrs. Susan J. Truslow, the widow of Silas B. Truslow, died September 28, 1932.)

CROSS EXAMINATION.

By Mr. Wallace, Counsel for executor and defendants:

Q. Mr. Allison, looking at the plat of the lots in Block No. 7, what would you say is the present value of lots 32, 33 and 34 on Hunter Street?

A. I would say a fair market value for 32, 33 and 34 would be \$250 each, but if sold in connection with 29, 30 and 31, I have every reason to believe it would bring considerable more.

Q. What was their value in 1925?

A. In 1925, I would say about the same price, and if sold at that time along with 29, 30 and 31, I have every reason to believe it would bring considerable more.

Note: Counsel for the defendants not waiving his objection to the testimony of this witness on direct examination, further questions him.

page 102 } Q. Mr. Allison, do lots 32, 33 and 34 face the same direction as lots 29, 30 and 31 in Block 7?

A. No, sir, because they face south and southeast.

Q. What direction do 29, 30 and 31 face?

A. Northeast and southeast, partly south.

Q. How many of those latter three face northeast?

A. One.

Q. One?

A. Yes, sir.

Q. Well, do you mean to say the other two don't face northeast?

A. Yes, sir, I mean to say they don't. They face west, and the corner lot northeast and southeast.

Q. In describing the lots he leaves to his daughter, Mrs. Ball, Mr. Truslow described these lots as on the south side facing northeast and southeast. How many of the three near the corner answer that description?

A. If you take them separately the corner lot would face northeast on the highway, and the other two would face southeast and south, but as a whole the three lots would be located to the northeast and the southeast on the south side of Block 7.

Q. Well, is the corner up where Germania Streets intersects with the highway the northeast corner of this Block?

A. Be the northeast and the northwest corner and fronting on the highway.

page 103 } Q. How did you make the same corner the northeast and the northwest corner?

A. If you refer to lot 18 in Block 7, in my judgment, this lot would be known as facing northeast and northwest.

Q. So according to your idea all three of the lots would have to be on the corner then to face northeast and southeast?

A. If you run your compass across the corner lot it would face northeast and southeast.

Q. As a matter of fact 30 and 31 only touch with one end above the street and the other three sides are joined by other lots?

A. Agreed.

Q. Well, they face no street except Hunter Street, do they?

A. Yes.

Q. And that is southeast?

A. That would be southeast. Yes, sir, that is right.

Q. Well, do lots 32, 33 and 34 face southeast on Hunter Street just like 30 and 31?

A. They do.

Q. Nevertheless you stated that you are positive that 29, 30 and 31 are the only lots answer in the description given in Mr. Silas B. Truslow's will of the lots he intended to leave Mrs. Lucy Ball?

A. Absolutely, as a whole.

page 104 } Q. In your view of the matter, then the testator started out by disposing of the three lots on which the filling station was built, to Mrs. Ball in his will, skipped 32, 33 and 34, then proceeded to give 35 and 36 to his son Claudie?

A. He did.

Q. And lots 1, 2 and 3 adjoining 34, 35 and 36 to his son Mack Truslow?

A. If my memory serves me correctly, after hearing the Will read, Mr. Truslow started out in the Will to give Mr. Van Truslow certain lots and his two daughters the house and three lots, and then his daughter, Lucy Ball, three lots, then Claudie Truslow three lots, then Mack Truslow three lots.

Q. You seem to understand his view very full, why did he fail to give 32, 33 and 34 to any of his children specifically?

A. If I understand the Will correctly, all the lots were disposed of, certain lots going to Van Truslow, and then there is an exception to some of the other lots which, if I understand correctly, cover the entire number of lots.

Q. Did Mr. Truslow ever tell you that his son Van helped him any in building the filling station?

A. No, sir, he did not.

Q. He did not?

A. No, sir.

Q. Did he ever refer to Van as being one of the boys he depended on in looking after his business?

page 105 } A. No, he did not. In fact I didn't see very much of Van to know him like I knew the balance I named, until about the time his father was taken sick. I have known him very intimately since.

Q. What do you attribute to the value you do to the filling station property?

A. You mean the present value?

Q. Yes?

A. Due to the fact that I have from time to time secured options on similar property and I am governed by prices according to what other property can be purchased at at this time.

Q. Is it your idea that the filling station business is a profitable business now?

A. No, some men are making considerable at filling stations and some not making so much.

Q. Did you ever try the operation of a station in the vicinity of Mr. Truslow's?

A. For a short time, yes, sir.

Q. How did it prove as a financial venture?

A. It was very satisfactory and brought in good revenue for the amount of money I invested.

Q. How long did you operate it?

A. I couldn't say exactly, possibly one year and maybe two years—I don't remember exactly.

Q. About what time was that?

A. I won't say positive, but I think it was round about 1923 or 1924.

page 106 } Q. Then that was before Mr. Truslow built his station?

A. I gave the wrong answer above, Mr. Truslow, I think, built in the fall of 1924, and I built sometime in the neighborhood of the year after.

JOHN W. ALLISON,
By the Commissioner.

Note: It is stipulated that of record in the Clerk's Office of Spotsylvania County, in Deed Book 78, at page 22, deed dated October 4, 1910, B. P. Willis, Special Commissioner, in *Colphens, Guardian, v. Colphens, et als.*, in consideration of \$1,800.00, conveyed to Silas B. Truslow 35 lots in Block 7, being designated as 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36; also in said Clerk's Office, in Deed Book 24, at page 24, deed of trust dated October 4, 1910, Silas B. Truslow and Susan, his wife, conveyed to F. M. Chichester and G. B. Ware, Trustees, the same 35 lots to secure \$1,800.00. This deed of trust was released February 4, 1918.

Also in said Clerk's Office, in Deed Book 78, at page 16, deed dated October 4, 1910, S. R. Tyler conveyed to Van B. Truslow lot 20 in Block 7.

page 107 } LUCY TRUSLOW BALL,
a witness of lawful age, being introduced on part
of the plaintiff, deposes and says:

DIRECT EXAMINATION.

By Mr. Butzner, Counsel for the *complainant*, Mrs. Haddock and Mrs. Ashby:

Q. State your name, age, residence and occupation?

A. Name, Lucy Truslow Ball; age, 42; residence, Fredericksburg, Virginia; occupation, Housewife.

Q. Are you the wife of George Ball?

A. Yes.

Q. Are one of the daughters of the late Silas B. Truslow?

A. Yes, sir.

Q. How many children did your father have who survived him?

A. Eight.

Q. Well, name them?

A. Van, Lucy, Tommie, Clay, Mack, Beulah, Grace and Claudie.

Q. When you speak of Beulah, was she also known as Gurley?

A. Yes, sir, we called her that name when she was a child.

Q. Are you the oldest daughter?

A. Yes, sir.

Q. What did your father call you?

A. Sis.

Q. Where do you now live with reference to Block 7 referred to?

A. I live right across the street from Van's 17 lots from my father's place right across the street from the station.

Q. Is your home located on the corner where
page 108 } Germania Street intersects with the Main highway, *Rout 1*?

A. I don't know where Germania Street is at.

Q. Is your home located on the corner in the block along the main highway north of your father's property?

A. Yes.

Q. Did you build your home there before your father built the filling station or afterwards?

A. Indeed I don't know. I can't say positive, but I think we built there before papa built the filling station.

Q. Where did you and George live before you moved into your new home?

A. Lived with papa.

Q. Was your father then living in the home place in Block 7?

A. Yes, sir.

Q. Did you and George pay any board to your father when you lived there?

A. Yes.

Q. What board did you pay?

A. Paid \$20.00 per month.

Q. Who helped your mother about the housework?

A. I did and the other two girls.

Q. How long was your father sick before his death?

A. He was sick from March to August.

Q. Was any nurse or help employed to nurse him?

A. No, sir.

page 109 } Q. Who nursed him in his last illness?

A. Van helped himself, mamà and the two girls and the other two girls.

Q. After his death how long was your mother sick before her death in September, 1932?

A. For three years.

Q. Who nursed your mother in her illness?

A. Three girls.

Q. You mean you three children?

A. Yes, sir.

Q. Was any help employed to help nurse her?

A. No, sir.

Q. Did you know that your father was going to leave you any lots before his death?

A. Yes, sir, he told me he had left me three lots, and before we bought this place that we built on, he told me I could build on the lots that he left me.

Q. Did he tell you where those lots were?

A. He said lots was over there next to Mr. Allison's place on the corner.

Q. Is that the corner where the filling station is?

A. I guess it is, I can't say positive.

Q. Is there any other corner over towards Mr. Allison's except the corner on which is the filling station?

page 110 } A. No, sir.

Q. When did his son Van come to live with your father?

A. He came home after father was taken sick, I don't remember the month.

Q. You stated your father was taken sick in March in the year in which he died, do I understand that Van came somewhere about that time?

A. No, I think it was after Christmas he came. I don't think he came as soon as papa was taken sick.

Q. Well, then do I understand that he came sometime between when your father was taken sick and the time of the death of your father?

A. Yes, sir.

Q. Do you know where your father owned in his own name any lots or land except Block 7?

A. I didn't know until I heard my brother Van say that he did.

Q. How many did Van inform you your father owned?

A. One.

Q. Did your brother Van run the filling station after he came there until your father's death?

A. Yes, sir.

Q. Did any of you seven children stay there and help in running the filling station?

A. He hired my brother Claudie.

page 111 } Q. Did Van run the filling station from the time of the death of your father until your mother's death?

A. Yes.

Q. And since your mother's death in September, 1932, has he occupied and used the filling station up to the present?

A. Yes, sir.

Q. Did your father have any insurance or money coming to the estate from any lodge?

A. Yes, he had \$250.00.

Q. Who collected that?

A. I think they paid it to Van. I don't know whether they paid it to Van or to the undertaker.

Q. According to your best information it was paid either to Van or to the undertaker for the burial expenses?

A. Yes, sir.

Q. Did your mother remain unmarried from the time of your father's death until her death?

A. Yes, sir.

Q. Was your father's property paid for at the time of his death?

A. Yes, sir.

Q. Has your sister Grace and Beulah, who you call Gurley, lived in the home place ever since your mother's death to the present time?

A. No, sir.

page 112 } Q. Following your mother's death, who lived in the home place?

A. Van, Claudie and Beulah.

Q. Where did your sister Grace, Mrs. Haddock, live?

A. She lived across the street in Van's house.

Q. Where do your sisters Grace and Beulah now live?

A. Back at the old home place.

Q. Since your mother's death Beulah lived at the old home place continuously?

A. No, sir.

Q. Where did she live when she was away from the home place?

A. She lived with my sister Grace.

Q. When did your sisters Grace and Beulah go back to the home place and make it their home?

A. Beulah went back in August, I think, and my sister Grace went back, I believe it was in October. I am not positive, I don't know.

Q. This suit was started in March nearly a year ago, did your two sisters move back to the home place after this suit was started?

A. One of them moved back. No, my sister was gone before I started this suit.

Q. You mean both of them?

A. Yes.

Q. Then they both moved back after you started this suit?

A. My sister Grace was married and she lived across the street in Van's house, and my sister Beulah got married after mother died around Thanksgiving and she left then.

Q. What I want to know is if both of the girls, those two sisters, returned to the home place after you started this suit?

A. Yes, sir.

Q. Do they now live with their brother Van in the old home place?

A. Yes, sir.

Q. Does Claudie also live there?

A. Yes, sir.

Q. Where does Mack live?

A. Washington.

Q. Reference was made to a warehouse located on the property known as the filling station lots, was that built by your father?

A. No, sir.

Q. Who built that warehouse?

A. Van.

Q. How long ago?

A. I guess it has been six months.

Q. Was that built there since you started this suit last March?

A. No, sir.

Q. The warehouse was built there before you brought the suit?

A. Yes, sir.

Q. What became of the household furniture?

A. It is there.

Q. You mean in the old home?

page 114 } A. Yes, sir.

CROSS EXAMINATION.

By Mr. Wallace, Counsel for the defendants:

Q. You said that after Van returned home and was running the filling station somebody hired Claudie, who hired Claudie?

A. Van.

Q. Was that when your father was sick?

A. After my father died.

Q. Do you know how much your father's burial expenses amounted to?

A. Near as I can remember it was \$280.00 or more.

Q. That has been paid hasn't it?

A. Yes, sir.

Q. You stated when our two sisters returned to live at the old home place, please state how long Mrs. Ashby was away from the old home place?

A. She was married Thanksgiving.

Q. Which year?

A. Last year.

Q. Around *Thansking* 1933?

A. Yes, I think she came back in August, I'm not positive.

Q. You know August came before Thanksgiving 1933?

A. I mean she was married Thanksgiving and she came back that following year.

Q. Then she must have been married about
page 115 } Thanksgiving 1932?

A. Yes.

Q. How long did Mrs. Haddock remain away from the home place?

A. As well as I can remember about three years.

Q. And where did she live at that time?

A. She lived in my brother's house.

Q. Do you know what rent she paid?

A. I don't think she paid any rent.

Q. Do you remember when your father worked in Richmond?

A. Yes, sir.

Q. Who looked after the work on the place up there while he was away?

A. My brother.

Q. Which one?

A. Van.

Q. At that time did your father farm a good deal on Amerett Farm?

A. He raised garden stuff.

Q. Did he not have quite a crop of corn next to the fair ground one or two years?

A. I don't remember.

Q. Do you know whether Van helped your father to pay half this deed of trust of \$1,800.00 that was given on the lots he purchased in Block 7?

A. My father told my brother if he helped him page 116 } to pay for the place he would give him one-half of it, that was why he gave him money.

Q. Did you hear your father say that he would give him one-half?

A. I did.

Q. Did you ever know of your father offering to give Van a deed for any portions of Block 7 before your father's death?

A. No, sir, I do not.

Q. Did you ever hear your father say that Van helped him?

A. No, sir.

Q. Which portion of the 35 lots did he say he would give to Van if he helped to pay for that?

A. The seventeenth one from my house there.

Q. It started then at the street in the front of your house and ran right down the highway?

A. Yes, sir.

Q. Did your father say anything about one lot *all ready* belonging to Van?

A. Yes, sir.

Q. He did?

A. Yes, sir.

Q. And Van was to get 17½ besides the one *all ready* his?

A. I never heard my father say that.

Q. You merely heard him say he would give page 117 } him one-half of the lots?

A. Yes, sir.

Q. Where were you when you had the conversation with your father in which he told you that you could build your house on Block 7 in one?

A. Out in the yard.

Q. Did he then tell you he would give you a lot?

A. He told me he would give me three lots.

Q. And he pointed towards the corner you say?

A. He says on the corner next to Mr. Allison's.

Q. Was that before your father built the filling station or after?

A. It was before.

Q. Was your father's home added to after his death?

A. Yes, it was.

Q. How large addition was made to it after his death?

A. Five rooms and a bath.

Q. Was that improvement made during your mother's life?

A. Yes.

Q. How was that paid for?

A. My sister paid, I think it was \$1,800.00, and Van paid \$400.00 out of my father's money.

Q. Which sister paid \$1,800.00?

A. Mrs. Haddock.

Q. How do you know Mrs. Haddock paid \$1,-
page 118 } 800.00 on the addition to the house?

A. Because she told me and she had checks to show for it.

Q. You didn't see the checks did you?

A. No, but can show them.

Q. How do you know that Van paid \$400.00?

A. I remember him coming in saying there was \$400.00 owing on the house and he said that my father had \$400.00 in the bank, and if we would agree for him to put it in the house, so we agreed for him to put the \$400.00.

Q. Do you know where the money came from that was there in the bank?

A. Yes.

Q. Where?

A. Mr. Allison and Mr. Butzner had wrote us a letter that they had put it there.

Q. They had put it in the bank?

A. Yes.

Q. Do you *no* whether or not Van paid any more on the house than this \$400.00 you refer to?

A. No, sir.

Q. After your mother's death, she and the single girls who were living with her needed additional room in the house before your father's death and the boys who were living with her, did they not?

A. No, sir, they had plenty of room.
page 119 } Q. Why did you all agree to spend this \$400.00
in adding to the house if they *all ready* had plenty
of room?

A. Because my married sister knew the house was hers and she wanted to enlarge it herself.

Q. And you agreed to it?

A. To what?

Q. To apply that \$400.00 to that purpose?

A. Yes.

Q. Who furnished the groceries and the other necessities for the family after your father's death?

A. It came out of the money from a filling station.

Q. Your mother was attended by a physician during the time she was sick, was she not?

A. Yes, sir.

Q. Who paid for the doctors who doctored her?

A. She paid part herself and my brother paid part.

Q. Which brother?

A. Van.

Q. Did your mother have any money at the time of your father's death?

A. She might have had fifteen or twenty dollars.

Q. As a matter of fact they all went over to the filling station and got what was wanted in the way of necessities for the family?

A. No, sir.

Q. Well, how did they get it?

page 120 } A. Well, my sister worked part of the time.

Q. Where did she work?

A. Montgomery & Wards.

Q. Do you know whether she spent the money she made in working in paying for groceries and other bills for the household?

A. No, she didn't have to, because papa had left enough to take care of his children.

Q. What did your father have at his death in addition to the real estate in Block 7 and the one lot across Charles Street, and the interest in these lots he had with Mr. Butzner and Allison?

A. You mean what did he have?

Q. Yes.

A. Had two horses, cows and some other farming things I won't mention, and I don't know whether he had any money or not.

RE-DIRECT EXAMINATION.

By Mr. Butzner, Counsel for the *complainant*, Mrs. Had-dock and Mrs. Ashby:

Q. After your mother died did your brother Van pay you any rent for the filling station?

A. No, sir.

Q. Before you brought this suit did you ask him for a settlement of your father's affairs?

A. No, not since mama died I didn't, before mama died I mentioned it to him.

Q. Did he render you any statement showing page 121 } what he took in at the filling station prior to your mother's death?

A. No, sir.

Q. When you asked him about a settlement did you get any satisfaction from him in reference to a settlement?

A. Well, he offered me \$600.00 for my lots and I told him I wanted to keep them because I would wait a while longer. I didn't know what might happen.

Q. In other words, he wanted to buy your three lots where he has located his filling station by giving you \$600.00?

A. Yes, sir.

Q. And you declined to accept it?

A. Yes, sir.

Q. Had Van read your father's will and did he know that your father had given you the three lots down at the filling station?

A. Yes, sir.

Q. Who took your father's Will to the Court House and had it recorded?

A. Van.

Q. Where did he get your father's Will from, do you know?

A. My mother give to him.

Q. Do I understand it was possession and after your father's death, she delivered it to your brother Van?

A. No, papa made the Will and he put it in page 122 } the bible in his trunk and told my Mother where the Will was at.

Q. Well, after your father's death, did your mother get it and turn it over to Van?

A. I couldn't say positively which one got it. I know Van was the only one that had it.

Q. And it was after your father's death that Van wanted to buy these three lots where he has located a filling station by paying you \$600.00?

A. Well, he never said anything about it, but I asked him to settle the Will up and he said that he would give me \$600.00 for my part.

Q. Was that before your mother's death or after her death?

A. Before mama died.

Supreme Court of Appeals of Virginia.

Q. Did he offer to buy out *in* of the other children?

A. He told my sister Grace if she would give him a deed for her part in the home place that he would give her a deed for his house, and my sister refused.

RE-CROSS EXAMINATION.

By Mr. Wallace, Counsel for the defendants:

Q. Mrs. Ball, did you ever after your father's death offer to sell Van the three lots left to you by your father's Will for the price of \$500.00?

A. I don't remember. I know he offered me page 123. } \$600.00, but I can't say that I offered it to him for \$500.00.

RE-DIRECT EXAMINATION.

By Mr. Butzner, Counsel for the complainant, Mrs. Haddock and Mrs. Ashby:

Q. Anyway, he never bought your interest, did he?

A. No, sir.

It is stipulated that on March 28th, 1922, the books of W. W. Butzner show that Silas B. Truslow purchased lot 31 in Block 18 from the property belonging to Butzner, Allison and Truslow, and that Mr. Truslow paid for the lot and got a deed.

And further this deponent saith not.

LUCY TRUSLOW BALL,
By the Commissioner.

page 124 } Counsel for the complainant called for Mr. Van Truslow to be sworn and take the stand as a witness as an adverse party to the proceeding to be cross-examined pursuant to the statute.

VAN B. TRUSLOW,
a witness of lawful age, first being duly sworn, deposes as follows:

CROSS EXAMINATION.

By Mr. Butzner, Counsel for the *complainant*:

Q. You are the Van B. Truslow referred to as the son of the late Silas B. Truslow, aren't you?

A. Yes.

Q. What is your age?

A. 45, and was born the 20th of September, 1889.

Q. There was a check filed, dated July 10, 1925, for \$42.64, state if it bears your endorsement?

A. Yes, sir.

Q. Is the other signature Silas B. Truslow's that of your father?

A. Yes, sir.

Q. That was written shortly before his death?

A. Yes, sir.

Q. Did you draw the money?

A. Yes, sir.

Q. There was also deposited in the Commercial Bank to the credit of Silas B. Truslow's estate, on July 24, 1928, \$383.89, as appears from the statements shown in the letter filed as exhibit "c", what became of that money?

A. The checks are in the bank now. One that page 125 } Mr. Smith drew himself and I signed my name to, and a check in the Commercial State Bank for the sum of I don't know how much. The check is still in the bank to Edgar M. Young. That's what became of the money that's in the bank.

Q. You had seen that letter advising that the money has been placed in the bank, didn't you?

A. No, sir, I don't remember.

Q. Is not it a fact that you found in the bank to the credit of Silas B. Truslow the \$383.89 referred to and an additional sum of \$18.27, making a total of \$402.16, and didn't you on March 2, 1929, draw two checks, one for \$300.00, payable to E. M. Young, and another check for \$100.00, payable to R. L. Stone?

A. I don't remember the Stone check. No, sir.

Q. Didn't Mr. Stone do some plumbing in connection with the Truslow residence?

A. Yes, sir.

Q. If such a check was drawn for the \$100.00 to Mr. Stone it went into the home place, didn't it?

A. Yes, sir.

Q. Where did you get your father's Will from?

A. My mother gave it to me. I don't know where they got it from.

Q. You took it to the Court House and had it probated and recorded, didn't you?

A. Yes, sir.

page 126 } Q. And you qualified as executor under that Will?

A. Yes, sir.

Q. How much Lodge money or insurance was paid at your father's death?

A. It was \$250.00.

Q. Did you draw that?

A. No, sir.

Q. To whom was that paid?

A. Wheeler & Thompson.

Q. Was that paid direct by the Lodge to Wheeler & Thompson?

A. It was paid to me and I turned the check over to Wheeler and Thompson.

Q. Then you did receive the check and applied it towards paying your father's funeral bill?

A. Yes, sir.

Q. Did that pay the bill in full?

A. I don't think it did. I don't remember, but I don't think it did.

Q. Have you been running the filling station ever since your father's death?

A. Yes.

Q. At the time of your father's death, what amount monthly did the Texas gas people pay you for the filling station?

A. \$60.00.

Q. That was a monthly rental, wasn't it?

page 127 } A. No, sir, it wasn't a rental, it was a conditional rental.

Q. The condition was that they would pay this monthly rental if he would handle solely their product. Isn't that right?

A. Now *your* talking, that is right.

Q. And in addition to this monthly rental, how much per gallon for gas was he to receive for all gas distributed at this station?

A. It varied from 3, 3½ to 4c.

Q. That arrangement continued with you after your father's death?

A. Yes, sir, for awhile.

Q. For how long?

A. I think it was three years that is, the first lease was for for three years.

Q. Did that extend beyond your father's death?

A. Yes. I don't know whether it did or not. Yes, it did, because he did the first year I came home and he *all ready* had the lease drawn up in November.

Q. After your father's death you received all monies that

came in to the filling station for the business conducted there, didn't you?

A. Yes, sir.

Q. What gallonage of gasoline did you average per week or month under that three year lease?

A. I couldn't tell you, sir.

page 128 } Q. You kept no account of it?

A. No, sir.

Q. On the expiration of this three year lease, what happened?

A. I think I worked three years for nothing. I was in a hole.

Q. Did you enter into another lease with the Texaco people?

A. Yes, sir.

Q. For how long?

A. Five years.

Q. What rental did it pay to you in addition to the profit on the gallonage?

A. Paid me \$100.00 per month.

Q. And that was for five years?

A. Yes, sir.

Q. What profit or how much per gallon in addition to the \$100.00 per month did they agree to give you?

A. 3c.

Q. Then under that agreement you drew \$100.00 per month, plus 3c for each gallon of gas?

A. Yes.

Q. Did you handle that company's oil and grease?

A. Yes, sir.

Q. What profit did they allow you by the gallon on oil and per lb. on grease?

A. Oil run about 40c profit, but very little grease handled.

We had no outfit for grease.

page 129 } Q. Can you tell me what the weekly or monthly or yearly *galonage* of gas amounted to in this five year contract?

A. No, sir. I can not.

Q. You kept no account of that?

A. No, sir.

Q. After the expiration of that five years contract, what happened?

A. It ain't out yet, ain't got that for.

Q. Then at the present time you are drawing \$100.00 per month, plus 3c profit?

A. Yes, sir.

Q. From what you say there was about a year that inter-

vened between the three year lease and the present lease, what did you draw during that year?

A. \$60.00 per month.

Q. In other words, you followed under the first lease?

A. Yes.

Q. In the past year what has been your gallonage of gasoline handled at this station?

A. I can't tell you the exact figures. I get the exact figures from the company when I got to get license they get me the exact figures. No *ue* for me to fool with it.

Q. Then, as I understand you, after your father's death, you drew for three years a rental at \$60.00 per month, which is \$2,140.00, and under the lease for five years, you drew \$100.00 a month for nearly five years?

A. About four years.

Q. Then that would be \$4,800.00, wouldn't it?

A. Yes, sir.

Q. Then the \$2,140 and the \$4,800.00 makes approximately \$7,000.00?

A. Yes, sir, in how many years.

Q. Seven?

A. About \$1,000.00 year.

Q. And in addition to that you drew a profit on a gallon of gas and a profit on the oils distributed at your station?

A. Yes, sir, that I collected for. I think Mr. Coleman could tell you where some of it went.

Q. Well if you sold on credit to people who wouldn't pay, that was simply your own business error?

A. That was just too bad for me.

Q. You rendered no accounting to your sister Lucy nor did you pay her any rent for this property up to the present, have you?

A. No, sir.

Q. Did you build the warehouse back of the filling station since your father's death?

A. Yes, sir. I had it built about two years ago.

page 131 } Q. You built that after you had recorded your father's Will?

A. Yes, sir.

Q. What did that structure cost you?

A. About \$150.00.

Q. It's just a small warehouse in which the White Truck Company rented, wasn't it?

A. Yes, a small warehouse, mostly for convenience if a truck come through and a package had to be delivered in

Fredericksburg after closing house I would accommodate them and put this goods in the warehouse until their return.

Q. What rent have you drawn from this warehouse?

A. The White Company at present is paying \$10.00 per month.

Q. For how long have they been paying that?

A. To the best I know of one year or something like that.

Q. Did you draw any rental or revenue from this structure prior to a year ago?

A. No, sir.

Q. After your father's death, how long was it that your mother delivered to you your father's Will?

A. As near as I can remember, about three or four weeks.

Q. Your father died in August, 1925, and you probated this Will at the Court House on January 30, 1929, which was about 3½ years. Why did you keep the Will page 132 } so long before you probated it?

A. I didn't pay any attention to the Will at all. I was working at home as same as my father was working, taking care of everything the best that I could until my mother advised me to have the Will probated and recorded for the reason that it might be destroyed.

Q. As soon as your mother delivered you the Will in some four weeks after your father's death, of course you read it?

A. Yes, sir.

Q. You then knew that you were named the administrator?

A. Yes, sir.

Q. What did you do with the Will until you carried it to the Court House?

A. It was left in my mother's care.

Q. At the time you received from your mother the Will shortly after your father's death, no one asked you not to record it, did they?

A. No, sir, and no one asked me to have it recorded.

Q. Isn't it a fact that in 1920 there was deposited *there was deposited* this money in the bank in July, which made about \$400.00 in the bank that you couldn't use that money without probating the Will, and that was one of the reasons for probating it?

A. No, sir, that was not the reason.

Q. There was no one hired or employed to help page 133 } nurse your father, but that you and your mother and sisters did the best you could for him. Isn't that true?

A. That's true, with the help of the other people around—the neighbors.

Q. No one was employed to help?

A. No, not anybody.

Q. Your mother was sick some several years before her death, wasn't she?

A. Yes.

Q. And was no help hired to nurse and care for her?

A. No, for one reason, there was two daughters there that I was taking care of and supporting the family, that didn't require any hired help.

Q. Mrs. Ball also helped nurse your mother, didn't she?

A. As what you might call once-in-a-while visitor.

Q. Isn't it a fact that your sister Lucy was in that home practically daily during your mother's illness?

A. When she was not out on a pleasure trip.

Q. Your sister Grace and Gurley, called Beulah, also helped nurse your mother?

A. Yes, sir.

Q. What Doctor's bills did you pay for your father's illness?

A. I can't say exactly, just of my knowledge was \$125.00.

Q. Who was the Doctor?

page 134 } A. Dr. Scott that was to him, and there was other Doctors I paid outside of that.

Q. Who?

A. Some specialist in Richmond and Dr. Barney.

Q. What Doctor's bill did you pay for your mother after your father's death?

A. I did not create any more Doctor's bills for my mother for one reason, that I thought that my father's Doctor's bill was more than I should have paid, so that when my mother was sick I paid the Doctor or someone at the house did, at each visit.

Q. In other words, you mean to say that—

A. In other words, I did not want the Doctor's bill \$125.00.

Q. You thought it was a poor policy to let the bill run up like that?

A. Yes, sir.

Q. Could you give me any approximate amount that you paid out for medical attention for your mother?

A. Well, it would be a matter of impossibility. I have known Doctors to be called three times in one day for my mother.

Q. Who was her attending physician?

A. Dr. Scott and Dr. Dew was there once or twice.

Q. At the time of your father's death there was no debt or lien against this property that you knew of, was there?

A. No, sir.

page 135 } Q. Your mother never re-married after your father's death, did she?

A. No, sir.

Q. Up to this time you have never married, have you?

A. No, sir.

Q. After your father's death did you put on any addition to the filling station and store room other than the warehouse?

A. Yes.

Q. What was the addition?

A. It was a small addition and water put in the house and filling station—toilets and bath.

Q. You put rest rooms in the filling station?

A. Yes, sir.

Q. How long after your father's death was that done?

A. Well, think it was done the same year that Mr. Allison built his filling station. You heard him testify this morning when he built it.

Q. That was paid for from proceeds taken in at the filling station, wasn't it?

A. Partly.

Q. What did those improvements cost?

A. The water cost \$480.00, and the toilets, to the best of my knowledge, cost \$275.00, and the building about \$50.00, I guess.

Q. Have you paid your brother, Claudie Truslow, low the \$25.00 given him by your father's will?

A. No, sir.

Q. Why?

A. For one reason, he owes me and I haven't paid him.

Q. You balance accounts and credit his account?

A. Yes, sir, that's it.

Q. Have you paid your brother, Thomas Truslow, the \$25.00 given to him by his father's will?

A. The same question and answer will answer that.

Q. What stock of goods and supplies were in the filling station at the time of your father's death?

A. He had a few tires, now I don't know what you call it, they were placed there on consignment, and the oil and gas was put there one day and paid for the next after it was sold.

Q. Did the same apply to the grease?

A. Well, the grease there wasn't but very little. We didn't get a box a year.

Q. The oil company owned the tanks and pumps, did they?

A. Yes, sir.

Q. Were there any supplies such as food stuffs, nicknacks, etc., carried in your store?

A. Well, there might have been about \$5.00
page 137 } worth, and I don't think that they were paid for,
because I got a bill from Mr. Garner showing
afterwards that they were still owing for.

Q. Was there carried at the filling station any repairs
termed nowadays as accessories for automobiles, or electric
equipment for automobiles?

A. No, there wasn't.

VAN B. TRUSLOW,
By the Commissioner.

The further taking of these depositions is continued until
further notice by consent of all parties by counsel.

page 138 } The taking of the depositions in the suit of Lucy
Truslow Ball, et als., v. Van Truslow, et als., was
begun the 21st day of February, and continued by agreement
of counsel until such date as would be agreed on, and it hav-
ing been agreed by counsel, it was resumed on the 26th day
of April, 1934, the same was begun at 10 o'clock a m., at
the place as set out in the caption of notice heretofore given.

Present: W. W. Butzner, Counsel for the complainants,
Mrs. Haddock and Mrs. Ashby; G. B. Wallace, Counsel for the
executor and the remaining defendants.

MR. L. R. CURTIS,
another witness of lawful age, introduced on behalf of the
complainant, after first being duly sworn, deposes as follows:

DIRECT EXAMINATION.

By Mr. Butzner, Counsel for the Plaintiffs:

Q. State your age, residence and occupation?

A. 44 years of age; residence, Falmouth, Vir-
page 139 } ginia; occupation, Surveyor.

Q. How long have you been surveying?

A. Fourteen years.

Q. Were you at one time Commonwealth's Attorney of
Stafford?

A. Yes, sir.

Q. Are you familiar with the property located between
Fredericksburg and the fair grounds, on the left hand side or
west side of the big highway, known as Block 7?

A. Yes, sir.

Q. The record shows that the late Silas B. Truslow owned

all the lots in Block 7, with the exception of one, which is lot 20, and that belongs to Van B. Truslow. It also is in record that this property was platted off in lots by Vonschon & Garner for the Fredericksburg Development Company many years ago, about 1890 or 1892. Are you familiar with that plat from your experience?

A. Yes, sir. I have had quite a lot of experience running out lots platted by those people.

Q. Mr. Silas B. Truslow left a will in which this language is used: "On the southside facing northeast and southeast, three lots to my daughter, Lucy Hall Truslow, and no one else." Will you please state what lots by number, in Block 7, meet that description?

A. They are described as facing the northeast and the southeast?
page 140 } Q. On the southside facing northeast and southeast?

A. Now, there are four corners to this block. There is only one corner in which the lots would face northeast and southeast, and that would be the corner formed by the junction of the highway and Hunter Street, lots 29, 30 and 31.

Q. Are there any other lots in that block, except those three you have mentioned, that will meet the description which I have read to you from this Will?

A. No, sir, that's the only corner.

Q. Are there any other lots irrespective of that corner that could meet that description?

A. No, sir.

Q. Do these three lots that you have mentioned tally up and fit that description?

A. Yes, sir. These three lots as a whole face the northeast and the southeast. There's no other lots on the whole block.

Q. Are they also located on the southside of the block?

A. Yes, sir.

Q. Now, looking at that property, this language is used: "On the west side, southeast corner, I give two lots to Claudie Truslow, my son". What lots on this block fit that description?

A. 35 and 36.

Q. Are there any other lots in the block except these two that fit that description?

A. No, sir.

page 141 } Q. Further we find this language in the Will:
"And above him northwest three lots to my son, McDuff Truslow." What lots on that block fit that description?

A. Lots 1, 2 and 3.

Q. As surveyor, I assume that you, from experience, are familiar with the points of the compass with reference to this property, aren't you?

A. Yes, sir.

Q. How long have you known that property?

A. I have been surveying around through that section for the last six or eight years probably.

Q. Did you know the late Silas B. Truslow?

A. No.

CROSS EXAMINATION.

By Mr. Wallace, Counsel for the defendants:

Q. Mr. Curtis, what direction does lot 30 face?

A. Lot 30 faces southeast.

Q. What direction does lot 31 face?

A. Lot 31 faces southeast.

Q. Why did you say that lot 29, or do you say that lot 29 faces northeast and southeast?

A. Well, it does. Lot 29 faces northeast and southeast.

Q. Did you not say in direct examination, that lot 30 and 31 faces northeast and southeast?

page 142 } A. No, I said three lots, 29, 30 and 31, as a whole, faced northeast and southeast.

Q. Speaking of them separately as they are numbered, how would you say they were facing?

A. 29 faces northeast and southeast, 30 and 31 faces southeast.

Q. How does 32, 33 and 34 face?

A. They face southeast.

And further this deponent saith not.

L. R. CURTIS,
By Commissioner.

Note: It is stipulated that the statement marked "Exhibit Texas Oil No. 1", and the letter dated April 21, 1934, showing the gallonage of gas and oil for the years 1924 to January, 1934, furnished the Truslow Filling Station by the Texas Oil Company, is filed and made a part of the record.

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MR. J. W. ALLISON,

being recalled to the stand, after first being duly sworn, deposes as follows:

DIRECT EXAMINATION.

By Mr. Butzner, Counsel for the Plaintiffs:

Q. In addition to your real estate business, are you engaged in the rental of properties in this section?

A. I am.

Q. How long have you been connected with rentals?

A. The past thirty years.

Q. In your judgment, what do you consider a fair rental of the Truslow Filling Station annually at the time of Mr. Silas B. Truslow's death, which was August 26, 1925?

A. Do you mean the annual rental at that time or from that time to the present?

Q. I mean beginning at that time what would you consider a fair rental value of that property?

A. I would say at that time \$75.00 per month.

Q. How long following 1925 would say that was a fair rental per month?

A. I would say from 1925 to 1930 a year rental of \$75.00 per month.

Q. From 1930 to the present time?

A. \$100.00 per month.

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CROSS EXAMINATION.

By Mr. Wallace, Counsel for the defendants:

Q. Do you know what the filling station just across the highway from the Truslow's Filling Station rents for?

A. I do not.

Q. How does the Standard Filling Station compare in construction with Truslow's Filling Station?

A. I would say that the construction of the Standard is better constructed than Truslow's.

Q. Why do you think it is better?

A. Seems to be better material and a little better building.

Q. The Standard is brick, isn't it?

A. I wouldn't say whether it is brick or stucco. I think it is stucco.

Q. What does the filling station on this side of Truslow's rent for?

A. Which station?

Q. Cocke's Motor Company?

A. I couldn't tell you.

Q. Do you know the rental price of any filling station along the highway?

A. The one across on Bunker Hill south of the Standard, when sold was announced there was a lease on it for ten years at a rental either of \$75.00 a month or \$100.00. I forget exactly, but I think it was \$100.00. That's where the Shell oil is sold.

Q. What kind of a building is the one in which
page 145 } Shell oil is sold?

A. I think it is stucco.

Q. How does it compare with the Truslow Filling Station? I mean the building and construction?

A. I don't think the building would cost as much as the Truslow place.

Q. Do you know the rental of any other filling station along the highway in that vicinity?

A. Not positively, no.

Q. Then, it's more or less all a guess when you say that the Truslow Station ought to rent at a \$100.00 per month at the present?

A. I judged the rental value of the property by the volume of business that is done, and I think that the volume of business is considerably better than the other station.

Q. Do you contribute that volume of business to the management or the location?

A. Both.

Q. What portion does the management and the conduct of the business have in getting customers?

A. I imagine it has considerable to do with it. I am satisfied that if Mr. Truslow had the Shell Station he wouldn't do half as much business as he does with his.

Q. Why do you think that he wouldn't do the same business as the Shell Station?

page 146 } A. They haven't the room and the location is not as good, being inside property.

And further this deponent saith not.

J. W. ALLISON,
By Commisiscor.

page 147 } MRS. BEAULAH ASHBY,
another witness of lawful age, after first being
duly sworn, deposes as follows:

DIRECT EXAMINATION.

By Mr. Wallace, Counsel for the defendants:

Q. You are the daughter of the late Mr. Silas B. Truslow, aren't you?

A. Yes, sir.

Q. Please state your age, if you don't mind?

A. Twenty-six.

Q. Were you living with your parents at the time of your father's death?

A. Yes, sir.

Q. When did your brother Van return from Washington?

A. Around—it was about the middle of March in 1925.

Q. What did he do upon his return?

A. Well, papa was sick at the time, and he took everything in hand.

Q. The filling station had already been built then and in operation?

A. Yes.

Q. Van took charge of that, did he?

A. Yes, sir, with the help of my other brother, Claude. He was there, too.

Q. In fact other members of the family helped there?

A. Yes, sir.

Q. Did you ever work there any?

A. Yes, sir.

page 148 } Q. At the time you worked there who was running the business?

A. I worked there when Mama had it in charge, and I helped Van out when he was in charge, just whenever he needed me.

Q. During your mother's life, for whom was Van running the filling station?

A. Well, he might have been running it for mama, but she didn't get much benefit out of it, outside of this way, Van did pay the grocery bill and such things as that. As far as giving mama any part of the profit, that didn't happen.

Q. Well, do you know how much profit was derived from the business at that time?

A. No, sir, I do not.

Q. In fact you do not know whether the profit amounted to a great deal or not?

A. No, sir.

Q. Do you know whether or not Van went at any other work after your father's death, and, if so, what reason was given for it?

A. I can't remember that, maybe he did.

Q. Did he engage in the wood business?

A. Yes, sir, but he didn't have no way the business he does now.

Q. Your father never conducted any wood business on block 7, did he?

A. No, sir, except for his own use.

Q. What was Van doing when you all operated the filling station?

A. Well, I can't remember that either. I never
page 149 } paid any attention to what Van was doing. He
might have been cutting wood. I wouldn't say
positively.

Q. Did you ever hear Van say whether he got in debt running the filling station?

Note: Counsel for the plaintiffs object to this question on the ground that it seeks to give a hearsay statement of Van Truslow which is not evidence, and any answer is excepted to for the same reason.

A. Well, the only way that he ever said anything about being in debt was he came in one night and said here is the money he was not going back. He says you all can take the filling station and see what you can do with it, that he couldn't make a thing.

Note: Plaintiffs' counsel moves to strike out the question and answer for the reason set forth above.

Q. After that did you take the filling station over?

A. Well, yes, sir.

Q. How long did you operate it?

A. I can't remember exactly, but I can't remember exactly how long it was. I have no idea.

Q. Before your father's death did you ever hear him say anything about what should be done with the filling station?

A. Yes, sir, while he was sick he was talking
page 150 } to mama one day and he told her everything was
fixed up but the filling station, and she didn't want
him to talk about things like that, because she thought it
would worry him. He told her everything was fixed but the
filling station, and that he wanted her to have that as long as
she lived, and at her death to go to Van.

Note: Counsel for the plaintiff excepts to this question and answer and moves to strike it out, on the ground that it is attempting to show statements of the deceased contrary to the provisions of his last will and testament.

Q. What live stock did your father have at the time of his death?

A. He had horses. He had two horses and a cow.

Q. What became of the two horses?

A. They were sold. Van said he gave one away, but I don't know. I guess he sold them. I don't know. I wasn't interested in that.

Q. Was the one he said he gave away a valuable horse?

A. We thought so, because we liked it, but I don't know. I don't know the value of the horses, Mr. Wallace, I wasn't much more than a child.

Q. What farming implements did he have?

A. Well, I don't know that either. Nothing of much value, I don't think.

And further this deponent saith not.

BEULAH ASHBY,
By the Commissioner.

page 151 } MR. VAN B. TRUSLOW,
being recalled to the stand, after first being duly
sworn, deposes as follows:

DIRECT EXAMINATION.

By Mr. Wallace, Counsel for the defendants:

Q. Please state whether you had any agreement with your father about paying for the lots in block No. 7?

A. Yes, we agreed to buy block No. 7 and I had to assume half of it.

Q. You were to assume half of it?

A. One-half of it.

Q. Then did you pay any portion of the purchase price?

A. Well, I helped pay it all. I helped to pay for it all. I don't know how much, but I helped until it was all paid for.

Q. Do you recall any payments that you made?

A. I remember the first payment made.

Q. How much was that?

A. I can't recall now, but I think the interest and all was \$250.00 or \$350.00. I can't remember.

Q. Do you remember how much of that was interest covered by that check?

A. No, I do not.

Q. Well, was that provision in your father's Will that you should have 17½ lots made in pursuance to the agreement you were speaking of?

A. Yes.

page 152 } Note: Question excepted to by counsel for the
plaintiff on the ground that it is leading and improper.

Q. What portion of the purchase money had you paid, or what portion of the purchase money did you pay?

A. Well, I couldn't say, all I know is what I sent home and gave to him. They got all that I had.

Q. How long were you contributing that?

A. Until it was paid for.

Q. Do you remember how many years it was from the time it was purchased until you finished the payment.

A. I think it was paid for during the time I was in the war, and I sent home \$20.00 each month.

Q. Then before you went into the Army where were you working?

A. Working in Richmond.

Q. For whom?

A. I worked for John W. Allen for two years before I went to Richmond.

Q. For whom were you working in Richmond?

A. Virginia Railway and Power Company.

Q. How long did you stay in Richmond?

A. I went to Richmond in 1914.

Q. And when did you go into the Army?

A. I went into the Army in March, 1918.

Q. What position did you fill with the Virginia Railway & Power Company?

page 153 } A. Street car conductor.

Q. Where were you working at the time your father begun the filling station?

A. Working in Washington.

Q. What were you doing in Washington?

A. Street car conductor.

Q. Did you furnish any money for the construction of the filling station?

A. Yes.

Q. How much?

A. I helped to do some of the work on it, and at times I would send home \$25.00 or \$30.00, and at one time I sent him a check for \$500.00.

Q. To whom was that check payable?

A. My father, Silas B. Truslow.

Q. What sort of a check was it?

A. Cashier's check from the Mount Vernon Bank.

Q. Did you or your father have any agreement about the filling station at the time you made this contribution to its cost?

A. Well, we were at that time completing it, and the station was supposed to be half mine.

Q. How long did your father operate the station himself?

A. He opened it in November and was taken sick in March. I think the following March.

Q. Only then four or five months?

A. Four or five months.

page 154 } Q. What was done when he was taken sick?

A. I took the station.

Q. How long did he live after he was taken sick?

A. Was taken sick in March and died in August.

Q. The same year?

A. The same year.

Q. Please state what was in the filling station in the way of stock at the time you took charge?

A. There was very little there.

Q. Tell as near as you can?

A. I would say that \$50.00 would cover it.

Q. And what did these goods you say were worth \$50.00 consist of?

A. Little candy, few light bulbs, and stuff like that.

Q. Was there gas in the tanks?

A. Gas was in the tanks, but wasn't paid for.

Q. Was there tires, tubes and other automobile accessories in stock?

A. Tires and tubes were there on consignment.

Q. What did you do after you took charge of the business?

A. Well, I tried to run it under the expense it was under, and I couldn't run it. I had to borrow some money and I put my own property under a deed of trust to get the money.

Q. How much did you borrow on your own property to run the filling station?

A. \$500.00.

page 155 } Q. What did you do with that \$500.00?

A. I spent it for expenses in taking care of my father while he was sick and to pay bills that he owed while he was sick.

Q. After his death you continued the filling station, did you?

A. I tried to run it, but all of them had a hand in it. My brother was working there, my sister would come in and

work, and my mother said it belonged to her, and whatever they wanted they took it, and I couldn't get money enough to run the station, so I turned it over to my mother.

Q. How long did she run it?

A. I would say about six or eight months—something like that.

Q. Why was it you went back to the filling station?

A. Well, they all quit and there had to be something done with it. My mother was taken sick and the others were pleasuring around and I had to do the work.

Q. How was the family supported when you were running the filling station during your mother's lifetime?

A. The family was supported by what was made at the station and what I made at the woodyard.

Q. What money did you spend for your individual uses?

A. I didn't have any to use or spend.

Q. At that time you were boarding and rooming at your mother's home, were you?

A. Yes, sir.

Q. Did the family get supplies from you at the page 156 } filling station?

A. They got what they needed from the station and they ordered what they wanted from the store and I paid the bill.

Q. Of whom did the family consist then besides your mother and two single sisters?

A. One of my sisters married at that time, Mrs. Haddock.

Q. Mrs. Ball didn't live at your mother's home at that time?

A. No.

Q. Now, can you give us some idea of the expenses of operating the filling station?

A. Well, in the beginning I only worked there myself, and Claudie, my brother, took what he wanted. I don't know how much that was. After my mother and sister gave it up, I hired two boys. I paid them \$8.00 week and started one at \$15.00, and paid as high as \$22.50, and later on we were open twenty-four hours a day.

Q. When did you commence to open twenty-four hours a day?

A. That has been about four years ago.

Q. How much force did you have to employ when you were open twenty-four hours a day?

A. We had three men at that time for a year, and then they taken on four besides myself.

Q. Now, what did you pay these three?

A. Two of them \$15.00 per week and two of them \$6.00 per week.

Q. When you had three?

A. I paid one as I said before, from \$15.00 to page 157 } \$22.50, and the other one \$8.00 and his board.

Q. Now, what expense have you there now?

A. At the present time there is two paid \$15.00 per week and two paid \$6.00 per week. The water rent, if I'm not mistaken, is \$63.00 or \$64.00 year. The electric lights amount to \$40.00 or \$48.00 per month.

Q. Do you have any other expense in connection with the filling station?

A. Well, the fuel. I couldn't say what that would be for wood.

Q. How long have you been using electricity there?

A. Electricity was there when the station was built and when opened.

Q. Was the electric bill as large in the beginning when you first came there as it is now?

A. No.

Q. How much was it when you first went there?

A. It wouldn't run over \$10.00 or \$15.00 per month.

Q. Was an addition made to the dwelling house during your mother's life time?

A. Yes, sir.

Q. Did Mrs. Ball make any demand of your mother in reference to the filling station in your mother's lifetime?

A. No, sir. All Mrs. Ball ever said to me about the filling station about her part was that she offered to sell me her part for \$500.00 and I gave her this answer: That I page 158 } didn't want any of this, that I wanted them all to have their part.

Q. At the time Mrs. Ball made this offer to you, what did she claim was her part?

A. Her three lots.

Q. What three lots did she claim?

A. She didn't claim any particular lots, just claimed three lots as her part.

Q. And you say she offered to take \$500.00 for it?

A. \$500.00 for it.

Q. How much did you realize out of the filling station since your father's death, above the cost of operation?

A. I haven't got a thing out of it. It was taken all for expenses.

Q. Have you ever gotten back the \$500.00 which you raised to run the filling station by putting a deed of trust on your own house and lot?

A. No, sir, the deed of trust is still on my property.

Q. Have you ever gotten back your \$500.00 which you gave

to your father under the agreement in reference to the filling station, which you have outlined? \$500.00 and other sums of money in reference to the filling station as you have already outlined?

A. No, sir.

Q. Was it in pursuance to this agreement that you have been operating the filling station?

page 159 } Note: Plaintiff's counsel excepts to this question on the ground that it is leading and suggests the answer, and excepts to any answer to such question on the same ground.

A. I was there part of the time to try to keep it all together and take care of the family, but I did not receive any profit from it at all.

CROSS EXAMINATION.

By Mr. Butzner, Counsel for the plaintiff:

Q. I believe you own lot No. 20 in Block 7, that you took title from S. R. Tyler, October 4, 1910. That's correct, isn't it?

A. Yes, sir.

Q. Have you put any improvements on that lot?

A. No, sir, I haven't.

Q. Has anyone?

A. My brother Mac.

Q. What improvements has your brother Mac put on your lot No. 20, in Block 7?

A. Little frozen custard stand.

Q. Is there a filling station too?

A. No, sir.

Q. All of the front is laid with concrete, isn't it?

A. No, sir. Well, there's a space about four feet wide and ten feet long.

Q. Have you put any improvements on any of the other lots in Block 7, other than your father's dwelling house?

page 160 } A. Warehouse back of the filling station, and added on a little space between the warehouse and the filling station, and I put water and toilets at two different places at the station on the property and paid for the water being brought up there.

Q. How long have you run a wood and fuel business on block 7?

A. I started the first year I came here with Howdersheldt and myself. I was here in March, the fall of 1925.

Q. In the last several years has Howdersheldt been with you in the wood and fuel business?

A. No, Howdersheldt stayed with me about two years and he said he couldn't make anything, so he quit.

Q. Who has run the fuel and wood business since then?

A. I run it myself. Keith Cook and myself run it together.

Q. How long have you and Keith Cook been together in running the fuel and wood business?

A. First of the year.

Q. This year?

A. Since January 1, 1934.

Q. The records in Spotsylvania, in Deed Book 24, at page 24, shows that your father and mother conveyed the thirty-five lots in block 7 to F. M. Chichester and G. B. Wallace, Trustees, to secure \$1,800.00, which was the same date of the deed of B. P. Willis, Special Commissioner, to your father, conveying those thirty-five lots, and this deed of trust on the records shows that it was released on February 4, 1918. That was about a month before you went into the army, wasn't it?

A. Yes, I went in the army in March.

Q. Do you know what your father did with the \$950.00 he got on October 3, 1924, as shown by the check from me?

A. No, sir, I do not.

Q. That was about the time he put up the station, wasn't it?

A. Yes, sir.

Q. Long before the station was built, your sister, Mrs. Ball, was married and lived in the home of herself and husband, apart from your father's family?

A. Yes, sir.

Q. And she never lived as a part of your father's family from that time on, did she?

A. No, sir.

Q. As far as you know she never obtained anything from the filling station?

A. Not unless they taken it like some of the others did, which I think I can prove it was.

Q. What do you think you can prove that Mrs. Ball ever took that she didn't pay for from the filling station?

A. I can prove that her husband run bills there and he would come and take his bill off the file, tore his bill up and not pay it.

Q. Do you refer to Mr. George Ball?

page 162 } A. Yes, sir.

Q. When did he ever do this?

A. I can't recall the date.

Q. What was the amount of the bill?

A. I can't recall it.

Q. Did you ever say anything to him about it?

A. I certainly did.

Q. Did you ever demand payment?

A. He paid the bill later.

Q. How much was it?

A. I can't remember.

Q. What can you tell me if anything, that your sister, Mrs. Ball, obtained from the filling station?

A. I can't tell you anything.

Q. You weren't here when the filling station was being built by your father, were you?

A. I helped lay the foundation of it. I was working in Washington at the time.

Q. I believe you bought a piece of woodland from Dick Limerick, didn't you?

A. Yes, sir, I bargained for it, and it is not paid for.

Q. When?

A. Been about two or three years ago.

Q. How many acres?

page 163 } A. Fifty some acres.

Q. Where located?

A. Stafford.

Q. Near where?

A. It's about four miles this side of Stafford Courthouse.

Q. On United States Route 1?

A. No, little to the left going north.

Q. What did you agree to pay?

A. I agreed to pay him \$100.00 a year if I got wood. Never have had it to pay that much.

Q. For how many years were you to pay \$100.00 per year?

A. No specified time.

Q. In aggregate not to exceed how much?

A. I don't understand that sir.

Q. Do you mean to say that your agreement was to pay Dick Limerick a \$100.00 a year as long as you got as much as \$100.00 worth of wood from the land?

A. From the land.

Q. How much have you paid him all together?

A. I have had \$200.00 worth of wood off the land and paid him \$200.00, and he still holds the property, it is not even deeded in my name.

Q. Did you buy an automobile since your mother's death?

A. Yes, sir.

Q. What did that cost you?

(EX. TEXAS OIL NO. 1)

	1924		1925		1926		1927		1928		1929		1930		1931		1932		1933		1934	
	Gas	Oil	Gas	Oil	Gas	Oil	Gas	Oil	Gas	Oil	Gas	Oil	Gas	Oil	Gas	Oil	Gas	Oil	Gas	Oil	Gas	Oil
Jan.			1,010	40	3,326	130	3,906	160	4,650	180	5,050	140	8,240	170	7,665	185	8,310	185	8,470	195	7,020	209
Feb.			1,215	103	2,400	110	3,500	175	4,800	200	4,330	205	6,815	160	6,835	135	9,020	170	6,820	130		
March			2,325	75	4,290	223	5,916	236	6,155	255	6,200	160	7,790	285	8,570	190	7,760	155	8,850	180		
April			3,440	135	5,522	310	6,131	290	6,155	255	6,700	225	11,070	245	10,305	232	9,895	190	10,245	200		
May			4,248	180			6,892	330			8,350	298	11,695	215	9,950	265	11,110	234	9,915	235		
June			3,836	215			6,500	340	7,621	380	7,545	250	11,085	265	11,985	250	10,000	210	10,235	181		
July			5,671	275			7,100	325	7,500	330	10,250	340	10,850	230	12,445	368	10,705	170	9,400	170		
Aug.			6,326	290			7,700	375	9,525	345	12,750	345	12,535	290	13,640	280	13,575	225	9,525	185		
Sept.			7,175	406			7,800	320	7,680	310	12,200	330	12,890	285	11,295	240	10,175	170	7,825	135		
Oct.			5,730	147			7,200	463	6,492	240	10,750	305	11,260	220	11,745	215	11,100	200	8,115	160		
Nov.	1,615	70	4,170	182			6,800	303	7,191	270	10,650	255	10,420	195	9,540	245	10,000	215	6,660	141		
Dec.	2,233	90	3,732	165			6,116	705	6,979	275	9,350	215	10,150	225	10,220	220	10,135	200	6,555	168		
Gas	3,848		48,878		15,538		75,561		74,748		104,125		124,800		248,995		126,670		102,615		7,020	
Oil	160		2,213		773		3,522		3,035		3,038		2,785		2,825		2,324		2,080		209	
	115.44		1,466.34		466.14		2,266.83		2,242.44		3,123.75		3,744.00		7,469.85		3,800.10		3,078.45		210.60	

A. I traded in one and I think the difference page 164 } was \$300.00.

Q. Have you still got it?

A. Yes, sir, but I didn't get that money from the filling station. If you want to know where I got the money I can tell.

Q. The Texas Oil Company has furnished a statement showing the gallonage of gas and oil from 1924, beginning in November to January, 1934, with the exception of eight months in 1926, during that entire time I believe you got 3c per gallon, didn't you?

A. From 1924 until 1926?

Q. Until 1934?

A. No, up until this code came in we got 2c on a gallon and 3c on a gallon.

Q. You got 2c per gallon how long?

A. Up until this code came on.

Q. And when did you get 3c per gallon?

A. When the code came in we had to charge all 3c per gallon.

Q. You remember testifying in this case when I cross-examined you the first hearing, don't you?

A. Yes, sir.

Q. On page 48 you were asked this question: "What profit, or how much per gallon, in addition to the \$100.00 per month, did they agree to give you?" Your answer is: page 165 } "3c." On page 49 you were asked: "Then at the present time you are drawing \$100.00 per month, plus 3c profit?" And your answer is: "Yes, sir." Now how long back have you been drawing the 3c?

A. That's what they allowed me to make on a gallon of gas. It was 3c all the time with the exception of courtesy cards, books and trucks. The regular amount was 3c per gallon, which I answered Mr. Butzner, but he did not ask me if I got 2c or 1c.

Q. On page 46 you were asked: "At the time of your father's death what amount monthly did Texas gas people pay you for the filling station?" You said: "\$60.00." The next question: "That was a monthly rental wasn't it?" Your answer is: "No, sir. It wasn't a rental, it was a conditional rental." The next question: "The condition was that they would pay this monthly rental if he would handle solely their product. Is that right?" Your answer is: "Now, you are talking. That's right." The next question: "And in addition to this monthly rental, how much per gallon for gas was he to receive for all gasoline distributed at this station?" Your answer is: "It varied from 3, 3½ to 4c." What have you to say as to that?

A. There's a mistake there, I couldn't say that.

Q. You were also for the oil to receive 40% profit, weren't you?

A. Well, the majority would average on oil will page 166 } run about 40%.

Q. And what was the price of the oil during that time?

A. Well, oil that we retailed by the quart averaged profit 40c per gallon. Oil wholesaled in large quantities about 5c a gallon profit.

Q. Did you keep any books showing what you sold at wholesale and when it was sold at retail?

A. No sir.

Q. Did you keep any books showing what gas you realized 3c per gallon profit? And what gasoline you sold at any other profit?

A. No, sir.

Q. From the time of your father's death to the present you have been handling the product of the Texas Oil Company?

A. Yes, sir.

Q. Both gasoline and oil?

A. Yes, sir.

Q. Immediately following your father's death, the family consisted of your mother, your sister, who now is Mrs. Ashby, and yourself and Claudie?

A. Yes, sir, and Mr. and Mrs. Haddock.

Q. How long did Mr. and Mrs. Haddock live with you?

A. I guess they lived there off and on—I couldn't say—two or three years.

Q. Who lives at the home place at present?

page 167 } A. Mrs. Ashby, Mr. Ashby, Claudie, and Mrs. Hughes boards there. I only have a room there.

Q. Did you pay Claudie any salary to help you to run the filling station?

A. No, I only paid Claudie a salary after my mother taken him out of the filling station.

Q. Did you pay your sister, now Mrs. Ashby, any salary?

A. She didn't work for me, she worked for my mother.

Q. What did you do during the seven or eight months that your mother ran the filling station?

A. I was in the woodyard and helping around the place. Anything that was to be done.

Q. Is Claudie still working for you at this time?

A. Yes.

Q. Does he help run the filling station?

A. No sir.

Q. Who are the employees about the filling station?

A. Mullen, Burtman, Carneal, and that other boy, I think his name is Pitts.

Q. Would you be surprised if I were to tell you that the books of the Texas Oil Company for the year 1931, shows that you sold 248,995 gallons of gas?

A. There's right smart sold there. I don't know whether I have sold it all or not. I might have sold it, but I haven't got the money for it.

page 168 } Q. Well, if you haven't got the money, it is because you have credited people who haven't paid you. Is that true?

A. Some of it.

And further this deponent saith not.

VAN TRUSLOW,
By the Commissioner.

page 169 } MR. JOSEPH L. SAVAGE,
a witness of lawful age, after first being duly sworn, deposes as follows:

DIRECT EXAMINATION.

By Mr. Wallace, Counsel for the defendants:

Q. Mr. Savage, what is your occupation?

A. I'm Assistant Cashier of the Commercial State Bank.

Q. How long have you worked at the bank?

A. Approximately fifteen years.

Q. Mr. Van B. Truslow has testified that he sent a cashier's check to his father, Silas B. Truslow, in September, 1924, do you know anything about this, or do your records show anything in reference to that check?

A. I have here, sir, the original records of our bank and deposit slips dated September 30, 1924, showing that on that date there was a deposit made to the credit of Silas B. Truslow for \$500.00. I also have the ledger sheet of Mr. Silas B. Truslow's account, showing that on that date this deposit of \$500.00 was credited to his account. I also have our transient ledger of the same date, September 30, 1924, showing that on that date we forwarded to our correspondent at that time, the Commercial National Bank in Washington, a check for \$500.00, drawn on the Mount Vernon Savings Bank, showing also the last endorser to be Silas B. Truslow. I might add that that account has been paid and all checks
page 170 } returned.

Q. Do you know from your records whether or not that was a cashier's check or not?

A. Our records show there it was a check drawn by the bank, drawn by the Mount Vernon Savings Bank I should have said.

CROSS EXAMINATION.

By Mr. Butzner, Counsel for the plaintiffs:

Q. Of course, you have no of the transients?

A. No, sir.

Q. Can you say to a certainty that the \$500.00 item mentioned in the transient letter is the same \$500.00 that went to the credit of Silas B. Truslow?

A. I think I'm safe in saying that, yes, our record goes to prove that. We have no entry on that day that could be confused with it in any way.

Q. The deposit slips says deposit of \$500.00?

A. Yes, sir.

Q. Couldn't Mr. Truslow have deposited my check or somebody else's check for \$500.00, without it necessarily being the \$500.00 mentioned in your transient letter, and your records be just as they are?

A. Well, on that deposit ticket, of course, it just shows a deposit of \$500.00, and so far as our records go we know of no other \$500.00 that Mr. Truslow deposited that day.

Q. Do you know that is the only check for page 171 } \$500.00 that his name appears on the back of this Mount Vernon Cashier's check?

A. I think it is natural to say that is the only check.

Q. But another situation could have taken place, couldn't it?

A. Well, I suppose any situation could have taken place, but our records don't show it. I am just relying entirely on our records. We have no records of ten years ago.

Q. This deposit of \$500.00 was on September 30, 1924, I hand you a check dated October 3, which is 1924, three days after that, endorsed by Silas B. Truslow, and ask you to state if your books show that check was deposited to the credit of Mr. Silas B. Truslow?

A. All records I have here, except this ledger sheet, ran up until September 30, including September 30th, this ledger sheet goes down to December 6th, and I see on October 4, 1924, Mr. Truslow deposited \$950.00 to his credit.

And further this deponent saith not.

JOSEPH SAVAGE;
By the Commissioner.

page 172 } MR. VAN B. TRUSLOW,
being recalled to the stand, deposes and says:

RE-DIRECT EXAMINATION.

By Mr. Wallace, Counsel for the Defendants:

Q. Do you recall any other bills that you failed to collect, bills of gas that you failed to collect?

Note: Question is excepted to by Counsel for Plaintiff, because it is irrelevant to issues in this case.

A. I have bills running from \$1.00 to \$300.00.

Q. Do you know that some of these bills can't be collected?

A. I know that some of them will never be collected. Mr. Coleman I can speak for one of them. I gave him for collection one of the bills amounting to something over \$300.00. The debtor went into bankruptcy.

Note: Plaintiff's counsel moves to strike the foregoing answer and question from the record as being immaterial to the issues in this case..

Q. Is it not a custom in the filling station business to credit certain friends, particularly those having a fleet of trucks running on the roads?

Note: Question excepted to for the foregoing reason.

A. Yes.

page 173 } Note: Motion made to strike answer from the
record by plaintiff's counsel.

Q. Did extending credit in this way increase the quantity of gasoline you sold?

A. Yes, around \$300.00 worth. That is right much gasoline.

And further this deponent saith not.

VAN TRUSLOW,
By the Commissioner.

page 174 } MR. WILLIAM J. TRUSLOW,
a witness of lawful age, after first being duly
sworn, deposes as follows:

DIRECT EXAMINATION.

By Mr. Wallace, Counsel for the defendants:

Q. Please tell your age and place of residence?

A. Spotsylvania County, and I am seventy-two years old.

Q. Did you know Mr. Silas B. Truslow in his lifetime?

A. Yes, I lived right by him for years.

Q. Do you know whether he received any assistance in making payments on the property in block 7 he bought?

A. Yes, I heard him say that Van was all his help.

Q. Did he talk with you much about the property and the payments?

A. He was a man never said but very little to anybody, but he got money from me to help keep up the interest until Van would send the money. Now that's all I know.

Q. In other words, he would borrow from you to meet his interest until Van would send the money?

A. Yes, sir.

Q. He paid you back?

A. Yes, every dollar.

Q. Did you ever hear him make any statement about what the arrangement between himself and Van was?

A. No, I never heard him say anything about that.

page 175 } CROSS EXAMINATION.

By Mr. Butzner, Counsel for the plaintiff:

Q. Mr. Silas B. Truslow was a man who was careful about paying his obligations, wasn't he?

A. Yes, sir.

Q. You knew that he was connected with Mr. Allison and myself in handling a great many lots out in the subdivision between Fredericksburg and the fair grounds, didn't you?

A. Yes.

Q. Did you ever hear him speak of any profit that was realized out of this transaction?

A. No, sir.

And further this deponent saith not.

WILLIAM J. TRUSLOW,
By the Commissioner.

The further taking of these depositions is continued until further notice by consent of all parties by counsel.

page 176 } In the Office of Wm. W. Butzner, Princess Anne
Street, Fredericksburg, Virginia, this May 15,
1934.

Pursuant to adjournment heretofore had and by agreement of counsel the further hearing of this case is resumed, before S. B. Coleman, Commissioner in Chancery.

Present: Wm. W. Butzner, p. q. G. B. Wallace, p. d.
M. L. Bailey, Stenographer.

NELSON A. ASHBY,
a witness of lawful age, first being duly sworn, deposes as follows, on behalf of the defendant:

DIRECT EXAMINATION.

By G. B. Wallace:

Q. Please state what has been your occupation in the last ten years?

A. I was in the automobile and filling station business from 1922 until about 1932, or the first of 1933.

Q. Where were you located in the automobile and filling station business?

A. Triangle, Quantico and Fredericksburg.

Q. When were you in Fredericksburg and in what part of Fredericksburg?

A. I was in the north end of Princess Anne Street, and from 1927 until the 27th of last April, that is 1933.

Q. Where were you located with reference to what is known as the Truslow filling station?

page 177 } A. I was located on both sides of the highway—
I imagine south of Truslows. I am not very familiar with directions.

Q. And how far from Truslow's filling station?

A. I don't know whether it is south or east—it is this side of Truslows, and I believe the street that separates the properties is 60 feet wide.

Q. Is there any other property between the property you occupied and the Truslow property?

A. I don't think there is any—I know of none.

Q. Do you know anything about rentals of filling station properties in that vicinity?

A. I know what I rented mine for when I owned them.

Q. At what price did you rent them?

A. I had them at different prices—I had three stations at different prices. I had a Shell Station that I had a lease on for ten years which brought \$100.00 per month.

Q. Did you have to service that?

A. I had to keep the station in repair.

Q. Well, what kind of building did you have on this Shell station?

A. I had a wood building with asphalt roof—a right nice building. I cannot tell the exact size, but it was around 40x35, or 40x50—I don't know the exact size.

Q. What did the other filling station properties rent for?

A. I rented the Cocke Motor Company one filling station (they changed the pumps in front) and the garage page 178 } rage for \$125.00 a month. That was a building 100 ft. long and 40 ft. wide, with an ell 102 ft. long and 40 ft. wide as well as I remember—it might have been wider or a little narrower.

Q. Was that a wood building?

A. And a rack about 28x38—I think it was. That was a brick building and cinder blocks. Half had asphalt shingle roof on it and the other half had a felt roof on it.

Q. Please state about what these buildings and improvements you rented to Cocke Motor Company cost you to construct them?

A. The part I rented Cocke cost me around \$12,000.00 to construct.

Q. Are you familiar with the property known as Truslow filling station?

A. I haven't been close by it for a long time, but know very well where it is located.

Q. What would you say the three lots and improvements thereon used as Truslow's filling station now are worth—I don't mean rental, I mean sale value?

A. I don't know the face of the lots.

Q. 25 ft. front, and run back, how far, Butzner, 110 feet?

Mr. Butzner: Two front 30 feet each on Hunter Street and one 25 ft. on that street, and all run back parallel with the highway 105 ft., which makes them 85x105 for the three.

page 179 } A. I imagine a sale value at present would be \$4,500.00 to \$5,000.00 at the present time.

Q. What do you think a fair rental value per month would be?

A. I do not believe it would bring over \$40.00 per month.

Q. Do you recall what the property formerly belonging to you brought when it was sold to Mr. Cocke?

A. Yes, sir, I know what it brought. Two filling stations and the garage and the wash rack and the lunch room brought \$10,000.00 in the spring of 1933.

Q. These buildings were all brick and cinder block construction?

A. Yes, sir. All the front was brick, and the back cinder block. All that faced the highway was brick.

Q. Now, you have described the buildings which Cocke rented before he bought, what other buildings were included in this sale in addition to those formerly rented by Mr. Cocke?

A. A little Acomo station sitting on a lot around 80x40, 80 ft. facing the highway and 40 ft. deep; and what is known as the Bunker Hill, a brick station that I bought from Mr. Allison; and a lunch room that was rented to Johnnie Cox.

Q. That was all?

A. That was all that I did not have rented to Cocke Motor Company.

CROSS EXAMINATION.

By Wm. W. Butzner:

Q. Following your operations of your properties near the Truslow filling station you went into bankruptcy page 180 } didn't you?

A. Yes, sir.

Q. As to your ideas of values as to rentals, if I were to tell you that the Truslow filling station at present, and for several years has been, under a contract with the Texas Oil Company by which it paid the filling station \$100.00 a month, plus so many cents per gallon in addition, would it change your idea of the rental value?

A. At the present time it would not.

Q. If I were to tell you that prior to the present contract that it paid \$60.00 a month, would that change your idea of its rental value?

A. No, sir. I based my rental that I set from what property would bring at the present time from oil concerns.

Q. In this controversy we are dealing with a fair rental of the property since Mr. Truslow's death. Following his death this filling station brought from the Texas Company \$60.00 a month for a number of years, and then brought \$100.00 a month, besides so many cents per gallon for gasoline. If that property brought those prices per month in the

past, what would you say was a fair rental during that period?

(Question objected to as unfair to the witness, because it does not indicate what personal service or labor was furnished by Truslow in return for the rent and commission per gallon he was getting on gas from the Texas Company.)

A. You were speaking of the time prior to now?

Q. Yes.

page 181 } A. I would say up until 24 months back \$60.00 would have been a very fair price up to that time, and \$45.00 at the present.

Q. Then when the Texas Company was paying \$100.00 per month plus 3c a gallon for each gallon of gas, plus oil at 40c profit, you think it was paying the station owner too much do you?

A. I said I thought \$60.00 was a fair rental. Very often oil concerns and the man that operates the station has a lot of different things we do not understand.

Q. Before that it brought \$60.00 a month plus from 3c to 3½c and 4c a gallon for gasoline. Do you think that was a fair rental at that time?

A. Before he was getting the \$10.00?

Q. When he was getting \$60.00 a month?

A. I am not in a position to say.

Q. If for the last three years, or two years, and at present—if the Texas Oil is paying \$100.00 a month, plus 3c a gallon on gasoline, do you mean to tell me they are paying too much rent?

A. How long does the contract last?

Q. What difference has that to do with it. My question involves, if they have been paying for the last two or three years \$100.00 a month, during that time are you willing to say that they were paying too much rent?

A. I am willing to say they were paying too much for the station—I think part of the rent price they were paying would be considered to the man that was running the station.

page 182 } Q. Doesn't the 3c per gallon for gasoline and the profit in the oil compensate the one who operates the station?

A. As a rule it does.

Q. What is there about this station that should remove it from the rule?

A. Well oil companies sometimes if they can get a good man to run a station they will pay him more rent for the sta-

tion than they will pay some men that is not popular with the trade to get the volume of business.

Q. The \$100.00 a month contract covers a period of five years, which means a rental of \$6,000.00 for five years for that station. Are you in position to say the Texas Oil Company paid too much rent under the contract?

A. Could I ask what date the contract started from, Mr. Butzner?

Q. It has been running for several years and yet has a period to run and is in operation now—so what difference does it make as to what is the exact date of the contract.

A. I will say they are paying too much rent for the station alone—yes, sir.

And further this deponent saith not.

NELSON A. ASHBY,
By the Commissioner.

page 183 }

R. M. BRADY,
another witness of lawful age, introduced on behalf of the defendant, first being duly sworn, deposes as follows:

DIRECT EXAMINATION.

By G. B. Wallace:

Q. Please state your occupation and place of residence?

A. Present occupation Commission Agent of the Texas Oil Company since November 1, 1930.

Q. Where do you live?

A. Rapidan, Va. I would like to put in some place that the information I give is my own opinion and does not bind the Texas Company.

Q. That is implied, Mr. Bailey. Are you familiar with the filling station on the Richmond-Washington Highway and near the Falmouth Bridge known as the Truslow filling station?

A. Yes, sir.

Q. How long have you known it?

A. Since November 1, 1930.

Q. Were you ever in the oil business before 1930?

A. Not in the retail part of it.

Q. In your business do you come in contact, or do you help to negotiate leases and make recommendations for the leasing of property for oil stations?

A. Yes, sir, I assist.

Q. Then you have become somewhat familiar with the oil prices in this vicinity?

A. Yes, sir.

Q. Please state what you think would be a fair page 184 } rental price for the Truslow oil station at present?

A. I would say \$100.00 a month with the present operator.

Q. To what extent does the personnel of the present operator figure in that \$100.00?

A. My personal feeling and the feeling of the Texas Company is that the operator is 75% of the battle, 10% location and 15% the product.

Q. Then I infer from what you say that you think the property there—that \$25.00 would be a fair rental for the property there and the other 75% does for personal service, management, etc.?

A. Yes, sir.

Q. If Van Truslow were to move away from that filling station would your company continue to pay \$100.00 a month for it?

A. If the lease were non-cancellable they would be compelled to. If not, they would attempt to cancel it.

Q. Do you know whether it is cancellable?

A. I do not. I have never seen a copy of it.

Q. Do you know something about the expense of operating a filling station such as Truslow's filling station?

A. In a general way.

Q. Mr. Truslow pays that expense does he not, all of it?

A. All except the company keeps the mechanical equipment in repair at its own expense.

Q. Of what does the mechanical equipment there consist?

A. Two electric pumps, two visible pumps, one kerosene outfit, and two Lube tanks.

page 185 } Q. What portion of the 3c a gallon, or whatever the percentage is, would you say is required to pay the expenses of operating the filling station that the operator as to pay?

A. That is very difficult to answer—it is so dependent on the amount of help at any particular filling station.

Q. You are more or less familiar with the amount of help required at that filling station, are you not?

A. I know the amount of help, but don't know what Mr. Truslow pays his help.

Q. You know the Code price he is required to pay now?

A. The Code price at his location would be \$14.00 per week per man.

Q. If he pays the Code price, what portion of the percent-

age would be profit to him after paying all the expenses that he has to pay?

A. Based on the Code price, with four men his expenses would be in labor \$56.00 per week, or approximately \$225.00 per month.

Q. In addition to this he would have his lights, water and other expenses, would he not?

A. The Texas company pays none of them.

Q. Could you form any opinion as to the quantity of business that is attracted to that place by the personal management and the quantity it gets by virtue of the location?

A. Mr. Truslow for the last ten or twelve years has been a consistent booster of Texas products. He is, I believe, the oldest—He has, I believe handled Texas products longer

than any man in this vicinity. I should say that
page 186 } practically all the trucks trade of which he has a
large proportion has been attracted to his station
through the personal contact with him. The station in its
present condition is not particularly attractive to the general
public. I think that answers the question.

CROSS EXAMINATION.

By Wm. W. Butzner:

Q. Do I understand you to convey the impression that the patronage of the Texas products is not due to the quality of the product, but due to the winsomeness of the distributor?

A. To a great extent, yes, sir.

Q. Is it possible that the Texas Company cannot meet competition on the quality of its product; but has to resort to the attractiveness of its distributors?

A. The attractiveness of the distributor and service rendered by him, as previously stated, is in my way of thinking 75% of the battle. The majority of the oil companies' products are all more or less on a comparable basis, and other companies along with the Texas Company attempt to market their products through enthusiastic dealers and agents.

Q. Still your company, the Texas Oil Company, by its advertisements, endeavors to convey to the public that its product is the best product, doesn't it?

A. I am trying to think what some of the advertisements
say—I don't think they ever use the word "best".
page 187 } I would say the Texas Company's advertisements
do intend to convey that its products are equal,
or better than its competitors' but I would also say that rival
companies' advertisements say the same thing about their products.

Q. And according to your conception of the situation the Texas Company cannot meet competition with the other companies by reason of the quality of its products, but 75% of its hope and business is actually dependent upon the attractiveness of the man running the filling station?

A. I would say in answer, in a general way yes.

Q. What is the 3c profit, 3½c or 4c per gallon, as the case may be, allowed to the distributor—for what purpose?

A. The purpose is the same as any product which is purchased wholesale and sold retail.

Q. It is to remunerate the distributor for his service, isn't it?

A. Partly.

Q. Does the site of the station, its location, have anything to do with the public patronage?

A. Location always has a certain bearing on any lease which the Texas Company makes.

Q. It considers the Truslow station well located, doesn't it?

A. Not any more so than other locations it has in Fredericksburg.

Q. How many other stations, or locations in Fredericksburg of the Texas Company pay for the location alone \$100.00 per month under a contract for five years?

page 188 } A. None.

Q. Then this is considered the best of the lot?

A. With the present operator, yes.

Q. Do you mean to say there is no other operator that could handle as much product in that location as Mr. Truslow?

A. I question it very much.

Q. You do not know, do you?

A. There is no way of knowing without trying.

Q. If the Truslow filling station in any one year in the past four years handled a quarter of a million in gallonage, and derived 3c per gallon, which would make \$7,500.00, plus \$1,200.00 a year rent, making \$8,700.00 for gasoline alone at the Truslow Station—it would be a pretty nice business for this distributor, would it not?

A. I should think so.

Q. You know as a fact that one year it did handle that much, don't you?

A. I haven't the figures in my head, but would say that that is approximately correct. There is one thing that has not been mentioned, and that is that Mr. Truslow for a period I would say of approximately one year has been operating on the spread of 2½c per gallon.

Q. Isn't it a fact that the major part of the loss or deficit

agencies began to supervise the oil companies that
page 189 } the oil companies dumped its loss back on the distributors?

A. I would say it was due almost entirely to the fact that the oil companies without exception were losing a tremendous amount of money annually, and as you express it "dumped" it back on the distributors, commission agents and their own personnel, by reducing spreads, commissions and salaries from the President of the company to the truck driver. They did that every place—it was not only Truslow's station.

Q. Isn't it a fact that the major part of the loss or deficit was dumped back on the distributors?

A. I have no way of answering that.

RE-DIRECT EXAMINATION.

By G. B. Wallace:

Q. Please state whether or not you consider it as good a location for a filling station north of the present Truslow filling station, and north of the dwelling house where Van Truslow and his sisters live, as the present station in the same block?

A. Every bit as good a location.

Q. Then I infer from your testimony that any three of the lots from 19 up to 25 inclusive in this block would be as good a location as the one where the Truslow filling station is now located?

A. Yes, sir.

Q. Then how about Lots 16, 17 and 18 on the corner—would they be as good?

A. Yes, sir.

Q. So in your opinion there is nothing in the location of this filling station that cannot be duplicated in the same block?

A. No, sir.

Q. If Van Truslow would open a filling station on some of the lots north of the dwelling house and give that his personal supervision, what, in your opinion, would the present location be worth to your company?

A. You mean from a rental value?

Q. Yes, sir?

A. Very little. If Mr. Truslow were to move his filling station the Texas Company would endeavor to move with him.

RE-CROSS EXAMINATION.

By Wm. W. Butzner:

Q. If your company moved its product from the present station that particular station might be attractive to one of your competitors, might it not?

A. Possibly.

RE-DIRECT EXAMINATION.

By G. B. Wallace:

Q. There are only how many filling stations in that neighborhood on the highway?

A. Seven.

And further this deponent saith not.

R. M. BRADY,
By the Commissioner.

page 191 } E. E. BROOKS,
another witness of lawful age, introduced on behalf of defendant, first being duly sworn, deposes as follows:

DIRECT EXAMINATION.

By G. B. Wallace:

Q. Please state your age, occupation and place of residence?

A. Age 45; occupation real estate agent, for about 20 years; live in Fredericksburg.

Q. Are you familiar with the property along the highway between the Canal bridge and Falmouth Bridge?

A. Somewhat, yes, sir.

Q. Do you know the property known as Truslow's filling station?

A. Yes, sir.

Q. What would you say a monthly rental value is?

A. I would think about \$40.00.

Q. What do you think the market value of that property is for the three lots and filling station and other improvements thereon?

A. Present value about \$3,500.00.

Q. Do you know what price the Ashby property brought across the street from the Truslow property?

A. Well, you mean at auction or when sold?

Q. When finally sold?

A. I understand \$10,000.00.

Q. How do the buildings on the Ashby property compare in number, size and quality with those on the Truslow filling station property?

A. There is practically no comparison.

Q. You mean that the Ashby buildings are between page 192 } ter.

A. Far superior to the Truslow.

Q. Do the Truslow buildings add any value to the property?

A. They are detrimental to the lots.

CROSS EXAMINATION.

By Wm. W. Butzner:

Q. Then you think the three lots without any improvements are worth \$3,500.00?

A. Pretty close—yes, sir,—the location Mr. Butzner.

Q. You do not consider that the buildings and improvements add anything to the property?

A. Very little—by that it is what I would call a boxy station, or cheaply constructed.

Q. You consider the other lots facing the main highway and north of the Truslow home equally as well located for a filling station as these lots?

A. Near the dwelling, I would say yes.

Q. Then you would put those lots near the dwelling, as you term it, as being worth from \$1,000 to \$1,200 apiece?

A. Yes, sir.

And further this deponent saith not.

E. E. BROOKS,
By the Commissioner.

VAN TRUSLOW

(recalled by G. B. Wallace), deposes as follows:

DIRECT EXAMINATION.

By G. B. Wallace:

Q. Please state whether your contract with the Texas Company is cancellable or not, and, if so, on what page 193 } terms?

(Counsel for the plaintiff insists that the contract be produced as it is the best evidence, and excepts to this question.)

A. The contract has not been recorded and it is cancellable on thirty days' notice.

(Counsel for the plaintiff moved to strike out the answer for the foregoing reason.)

Q. Please state whether you at my request have looked for the contract this morning?

A. I have.

Q. Were you able to find it?

A. No, sir.

Q. If you can locate it we would like to offer it in evidence.

CROSS EXAMINATION.

By Wm. W. Butzner:

Q. Under your contract by which you were paid \$100.00 a month besides so much per gallon, you are now collecting \$100.00 a month and that contract is still in operation?

A. Yes, sir.

VAN TRUSLOW,
By the Commissioner.

BEULAH T. ASHBY
(recalled by G. B. Wallace), deposes as follows:

DIRECT EXAMINATION.

By G. B. Wallace:

Q. Please state whether you have seen before the two papers I now hand you and, if so, when?

A. Yes, I remember getting the letter through page 194 } the mail with these two papers in them, but I cannot remember just exactly when it was.

(Counsel for the plaintiff excepts to the question and any answer because it is not thus far shown to be relevant to any issue in this case and moves to strike out the answer.)

Q. Do you know what postmark was on the envelope that they came in?

(Same exception and motion as to question and answer above.)

A. Yes, sir,—Fredericksburg.

(Questions excepted to and motion made to strike out the answer.)

Q. They were unsigned?

A. Yes, sir.

(Question excepted to for the same reason stated above and motion is made to strike the question and answer out as being irrelevant.)

I thought the postmark was Fredericksburg, but I see here it is Washington. I did not take enough notice of the letter to notice it, to tell you the truth.

(Answer excepted to and motion is made to strike out as being irrelevant.)

Mr. Wallace: "The two papers, one a plat of Block 7, typewritten sheet which came with it, and the envelope in which typewritten sheet which came with it, and the envelope in which they came addressed to Misses Grace and Bulah Truslow, care of George A. Ball, Fredericksburg, Va., R. F. D. 1, hereby offered in evidence, marked "Exhibit 1-page 195 } Defendant".

Mr. Butzner: Objection is interposed to the instruction of the documents on the ground they are irrelevant to the issue.

East side

Stratford Hotel

Highway

North side

Germania Street

105	30	30	25	11	11	11	11	25	30	30	105
18								26	27	28	29
17	19	20	21	22	23	24	25	Savin + Raulah			30 Mrs. Ball
16											31
15											32
14											33
13											34
12	10	9	8	7	6	5	4	3	2	1	35
11											36
105	30	30	25	11	11	11	11	25	30	30	105

Charles Street

Hunter Street

South side

West side

Ex 1 - Defendant

(copy)

(COPY)

Enclosed find copy of your father's will with rough plot attached showing the location of the property in question.

Lots 26, 27, and 28 have been left to Gracie and Bulah to do with as they see fit during their life time.

This property absolutely belongs to you all and you should carry out your father's wishes by taking possession of the property. If you do not care to occupy it yourselves, you should rent it out and use the income from the property towards supporting yourselves. The property should rent readily at a rental of not less than \$35.00 per month, possibly more. It is your father's wishes, as you will observe from the will, and I don't think you would be treating your father's wishes after his death right by not carrying them out and taking possession of the property that belongs to you.

You will find on the same plot two lots, Nos. 35 and 36 which he left to Claudy; and Nos. 1, 2 and 3 to Mack.

You have yourselves to look out for and you would not be carrying out your father's wishes or doing justice to yourselves if you do not exercise your rights. Any reputable lawyer would tell you just what is stated herein.

"Exhibit 1—Defendant."

(Copy of envelope)

(WASHINGTON, D. C.

Jan. 4
12 P. M.
1934)

Misses Grace and Bulah Truslow
c/o Mr. Geo. A. Ball
Fredericksburg,
Virginia.

Exhibit 1—Defendant.

(Documents filed.)

Q. Are Mr. John Allison and your sister, Mrs. Ball, good friends?

A. Yes, sir.

Q. Does he go around with her frequently?

A. Yes, with she and her husband he does.

Q. Does he call at her house?

A. Yes.

CROSS EXAMINATION.

By Wm. W. Butzner:

Q. Wasn't your father and Mr. Allison close friends?

A. Yes, sir.

Q. Aren't you and Mr. Allison friends?

A. Yes, sir.

Q. Isn't it true that all three of you girls, as well as your father and mother were friendly with Mr. Allison?

A. Yes, sir.

Q. For some months before your father died, wasn't he in a mental state—that is his mind was not clear?

A. At times it was not.

Q. And it got worse up to his end, didn't it?

A. No, sir, no worse than before—he had a sun stroke once.

Q. How long was that before his death?

page 196 } A. Years.

Q. But wasn't he worse for a few months before he died than he was before that?

A. I cannot say that he was, Mr. Butzner.

BULAH T. ASHBY,
By the Commissioner.

RUTH OLDS,

another witness of lawful age, introduced on behalf of defendant, first being duly sworn, deposes as follows:

DIRECT EXAMINATION.

By G. B. Wallace:

Q. Please state whether you know who made that plat of block 7?

(Counsel for plaintiff excepts to the question and any answer on the ground it is irrelevant to any issue in this case.)

A. I made it.

(Mr. Butzner: Motion is made to strike out the answer for the same grounds.)

Q. For whom did you make it?

A. Mr. Allison.

(Mr. Butzner: Question and answer excepted to and motion is made to strike for the same reasons.)

Q. Look at the letter which is with that plat and state whether you have ever seen that before?

(Mr. Butzner: Question excepted to on same ground.)

A. No.

(Mr. Butzner: Motion is made to strike out the answer for the same reason.)

page 197 } Q. You never saw that?

A. No, sir.

(Motion is made to strike out the question and answer for the same reason.)

Further this deponent saith not.

RUTH OLDS,
By the Commissioner.

A. B. YOUNG,
another witness of lawful age, introduced on behalf of the plaintiffs, first being duly sworn, deposes as follows:

DIRECT EXAMINATION.

By Wm. W. Butzner:

Q. State your age, residence and occupation?

A. 56 years; Fredericksburg; real estate man.

Q. How long have you been engaged in the real estate business?

A. Since May 1, 1926.

Q. In conducting the real estate business do you also conduct a rental business, or department?

A. Yes, sir.

Q. Are you familiar with the three lots and structures located in Block 7 of the Fredericksburg Development Company, known as Nos. 29, 30 and 31, on which is conducted the Truslow filling station?

A. Yes, I am acquainted where the Truslow filling station is.

Q. How long have you known it?

A. Ever since I have been in the real estate business.

Q. At present and for the past several years, in
page 198 } your judgment what was a fair rental of that
property?

A. It has been worth \$90.00 to \$100.00 a month.

Q. Prior to that, as far back as 1925 in your judgment what was a fair rental value of this property?

A. I went in the real estate business in 1926—prior to that I did not pay so very much attention to those things.

Q. From 1926 up until 1932, what would you say was a fair rental value?

A. 1926 to 1932—it ought to have been worth somewhere around \$65.00 or \$75.00, I would say.

Q. Were you one of the Receivers of N. A. Ashby, Bankrupt estate?

A. Yes, sir.

Q. Did you duties as such receiver place you in contact with the filling stations of that estate located near the Truslow station?

A. Yes, sir, we had the Shell station that we had to collect rents for.

Q. What have you to say with reference to the location of the Truslow filling station as to its appropriateness for a motor fuel station and such?

A. It is well located; has apparently plenty of ground for parking—it is well located for any station.

Q. Is it located on one of the main highways?

A. Yes, sir, on Route 1.

Q. Is there any other highway that you know
page 199 } of in Virginia that equals Route 1 from the stand-
point of traffic?

A. None that I know of, Mr. Butzner—they tell me there is more travel over Route 1 than any other in the State—I cannot say just where the report comes from, but that is what is published in the papers.

Q. The fact that this filling station is located on the corner formed by the intersection of Route 1 with Hunter Street in the subdivision, and being a corner property, does that in your judgment make it more valuable than lots in the center of the block?

A. It certainly does. Most filling stations—or rather most oil companies prefer lots on a corner for filling stations.

Q. What would you in your judgment consider this property worth at present?

A. Including improvements?

Q. Yes.

A. I did not examine it thoroughly as to placing a sale value on it. I know the location of it—I don't know how good the buildings are, only just from the outside; but with its location I would think it ought to bring somewhere in the neighborhood of eight or ten thousand dollars.

Q. Mr. Elliott Brooks says he thinks the improvements on this property are detrimental to the three lots, do you agree with him?

A. I think better building, or better improvement page 200 } ments would certainly enhance the value of the property. Would make it more attractive—it is what we call an old time filling station—most of them like a modern filling station.

Q. But even at that, although the improvements may be antiquated filling station improvements, do you consider such improvements detrimental to the lots?

A. Well, I don't know that it would be detrimental to the lots except that if you bought the lots and wanted to improve you would have to destroy what is there—the lots are the principal thing, because a man could build any kind of a station he wanted on them.

Q. Do you consider that property with the improvements on it worth more than the lots without improvements?

A. Present condition just as it stands?

Q. Yes.

A. It would be worth more—certainly the buildings are worth something.

Q. What do you consider those three lots worth without the buildings?

A. Those three lots ought to be worth anywhere from \$4,500.00 to \$5,000.00.

CROSS EXAMINATION.

By G. B. Wallace:

Q. Mr. Young, how would those lots where the filling station now is located, compare with lots Nos. 19 to page 201 } 25 which are north of the Truslow *resident*, and fronting the highway, in value for filling station purposes?

A. You mean on the extreme far corner?

Q. 19 to 25 do not go to the corner, there are three other lots on the corner, Nos. 16 to 18 facing the cross street.

A. The lots inside are not worth as much as corner lots for business purposes.

Q. How would 16, 17, and 18, which are on the corner and fronting on the highway, compare?

A. The only objection to that corner as I see it—there is a little incline—it is somewhat on the hill.

Q. Does the hill commence north of Germania Street?

A. I think the incline commences this side of the street you call Germania Street—I mean south of Germania Street.

Q. What do you think a fair valuation for the improvements on the present Truslow filling station lots?

A. You understand I did not examine them thoroughly as

to value of the buildings—but I would suggest about \$4,-000.00.

Q. You are in partnership with Mr. John W. Allison in the real estate business, are you not?

A. Yes, sir.

And further this deponent saith not.

A. B. YOUNG,
By the Commissioner.

page 202 }

VAN TRUSLOW
(recalled by G. B. Wallace), deposes as follows:

DIRECT EXAMINATION.

By G. B. Wallace:

Q. Please state how the land lays in front of Lots 16, 17 and 18—that is please state how the land lays on the side of Lot 18 which has its side to the highway?

A. That would be on the upper corner?

Q. Yes.

A. The land is level. In grading that road they cut through the hill a little—made a little incline there.

Q. How deep is the cut right at the corner?

A. The cut at the corner is about 2½ feet. The land is perfectly level.

Q. Please state whether Mr. John W. Allison and Mrs. Ball have been friendly in associating with each other in the last few years?

A. Very frequently.

Q. Where did they go together?

A. He visits at her home, and they go out on fishing trips together.

Q. When they go out on trips how long do they stay?

A. I have known them to stay three or four days and nights. They taken one trip to Canada.

Q. Did Mr. Ball go along to Canada?

A. I think he did, I would not be sure.

Q. Does he go with them whenever they go out?

A. I think he does when they go fishing.

page 203 } Q. Does Mr. Allison call at the house when Mr. Ball is away from home.

A. Mr. Allison calls from two to three times a day and night.

Q. How long has that been going on?

A. I guess for five years.

(Plaintiff's counsel moves to strike out the foregoing questions and answers because they are irrelevant to the issue in this case.)

Q. Have you ever known Mrs. Allison to be looking for Mr. Allison when he was out with Mrs. Ball?

(Question and answer excepted to on the ground they are irrelevant to the issue in this case.)

A. I don't know whether he was out with Mrs. Ball or not, but he could not be located.

(Motion made by counsel for plaintiff to strike out the answer as being irrelevant.)

Q. Was Mrs. Ball in her home at the time Mrs. Allison could not locate Mr. Allison?

A. Yes, sir.

(Question and answer excepted to by counsel for plaintiff and motion made to strike out the same for the same reason.)

And further this deponent saith not.

VAN TRUSLOW,
By the Commissioner.

State of Virginia,
County of Spotsylvania.

I, S. B. Coleman, a Commissioner in Chancery for the Circuit Court of Spotsylvania County, do certify that the foregoing depositions taken in the case of Ball v. Truslow, et als., were taken at the time and place as set out in the caption, all witnesses having been first duly sworn.

S. B. COLEMAN,
Com'r in Chancery.

This 28th day of May, 1934.

Virginia:

In the Circuit Court of Spotsylvania County.

And at another day, to-wit, on the 11th day of June, 1934, came the defendant, Van B. Truslow, by counsel, and filed his exceptions to the report of Master Commissioner, S. B. Coleman, which said exceptions are in the following words and figures:

page 204 } Virginia:

In the Circuit Court of Spotsylvania County.

Lucy Truslow Ball, et als.,

v.

Van Truslow in his own right and as Executor of Silas B. Truslow, deceased, et als.

To the report of Master Commissioner S. Bernard Coleman filed in this cause the undersigned, Van B. Truslow, excepts and for grounds of exception states the following:

1. That under the provisions of the will of Silas B. Truslow that "Van B. Truslow shall have $17\frac{1}{2}$ lots where he shall wish them except the three lots to the house", Van B. Truslow selected among others Lots 29, 30 and 31, and the said Commissioner should have reported that these three lots went to Van B. Truslow in pursuance of the aforesaid clause in the will of Silas B. Truslow.

2. Van B. Truslow alleges in his answer that he made a contract with Silas B. Truslow by which Van B. Truslow was to furnish certain money to help build the filling station and was to be a partner in the said filling station with his father during his father's life and the said filling station was to go to Van B. Truslow after his father's death, and it was shown by the evidence that Van B. Truslow paid in fulfillment of this contract certain sums of money, one of which being five hundred dollars (\$500.00) sent by check to finish the filling station, that the said Van B. Truslow lived up to his part of the contract and performed it to such an extent that he was entitled to have a Court of Equity declare specific performance on the part of Silas B. Truslow and for this reason Lots 29, 30 and 31, on which the filling station is built, should have been awarded to Van B. Truslow by the Commissioner.

3. That if the lots given to Mrs. Lucy Ball by page 205 } the will of Silas B. Truslow are sufficiently described to be identified then under a proper construction of the will of the said Silas B. Truslow Lots 32, 33 and 34 are those described as "on the south side facing north-east and southeast"; as by this language he intended to distinguish between the corner of the block and those near the center, for in giving two lots to his son, Claudie, he describes them as—"on the west side southeast corner I give two lots to Claude Truslow".

4. It is only in making the selection of the lots authorized by Silas B. Truslow, said Van B. Truslow selected and claimed

17½ lots out of the 35 in which he had an undivided half interest, and if he is denied the 17½ lots selected by him, or any of them, he is still entitled to an undivided half interest in the entire 35 lots in Block 7.

5. As a part of the alternative relief asked for in the answer, Van B. Truslow should have credit for the money, together with interest, advanced to his father to help to pay for the filling station in case the Court should hold that he is not entitled to Lots 29, 30 and 31, on which the filling station is built, because this amount of money was paid to Silas B. Truslow about six months before his death and Van B. Truslow, being his Executor and standing in a fiduciary relation toward his decedent, the statute of limitation did not apply, and he is entitled to the return of the principal as well as the interest.

6. That Van B. Truslow should have had credit for the five hundred dollars (\$500.00) he raised by giving deed of trust on his individual property and used in paying the debts of Silas B. Truslow, deceased, as this was a transaction in which the estate became indebted to the Executor, and the statute of limitations does not bar his claim for either principal or interest.

7. Because no credit is given to Van B. Truslow for taxes paid by him on the estate of Silas B. Truslow from the time of the death of the said Silas B. Truslow until and including the year 1933, through the tax receipt for the year 1933 was put in the hands of the Commissioner and the amount of the taxes for every intervening year is a matter of public record, available to the Commissioner.

8. The Commissioner's statement of account shows that the estate of Silas B. Truslow was indebted to Van B. Truslow as Executor in the sum of one hundred fifty two dollars and four cents (\$152.04), but he is nowhere given credit for this amount, and to this should be added fifty dollars (\$50.00) covering the amounts paid to Thomas Truslow and Clay Truslow.

9. That the rental allowance of seventy five dol-
page 206 } lars (\$75.00) per month for the filling station is
excessive in the light of the testimony before the
Commissioner which shows that by far the larger portion of
the rental paid by the Texas Oil Company was for the personal
service of Van B. Truslow, who proved to be a very efficient
filling station manager, and the Commissioner's report in
finding that Van B. Truslow should be charged with rent for
five years did not deduct the six months, or more, during which
his mother, Mrs. Susan Truslow, managed the filling station
with the assistance of her daughter, now Mrs. Beulah

Ashby, one of the parties to this suit, although the Commissioner in his finding said that Mrs. Truslow and her daughter, Mrs. Ashby, managed the filling station six months, or more, yet he places the entire rental against Van B. Truslow.

10. That Van B. Truslow should have been allowed compensation for the improvements put upon the property since his father's death, as in fact both he and Mrs. Ball construed the will as devising to Van B. Truslow the three lots on which the filling station is built—Lots 29, 30 and 31, and Mrs. Ball offered to sell to Van B. Truslow the three lots given her under the will for the price of \$500.00 as testified to by Van B. Truslow, and on cross examination Mrs. Ball did not deny this, but merely said she did not remember.

While it is true that the question of specific performance of a parol contract is raised in this suit, nevertheless an action of ejectment might have been brought by Mrs. Ball against Van B. Truslow for the recovery of the lots on which the filling station is built, and, therefore, Section 2760 of the Code of 1904 is applicable to the instant case.

VAN B. TRUSLOW,
By G. R. WALLACE, Atty.

Virginia:

In the Circuit Court of Spotsylvania County.

And at another day, to-wit, on the 11th day of June, 1934, the following decree was entered, which said decree is in the following words and figures:

page 207 } In the Circuit Court of Spotsylvania County,
Virginia, this June 11th, 1934.

Lucy Truslow Ball, et al.,

v.

Van B. Truslow, in his own right and as executors of Silas B. Truslow, et als.

DECREE.

This Cause coming on again to be heard on the papers formerly read and upon the Report of Master Commissioner in Chancery S. Bernard Coleman, filed herein on May 30, 1934; and the ten days allowed by law for exceptions thereto to be had having elapsed and upon the exceptions thereto taken & filed by Van V. Truslow.

And was argued by counsel.

Upon consideration whereof the Court doth adjudge, order and decree that each & all exceptions to said report be & hereby overruled and said report be, and the same is hereby approved and confirmed.

And it appearing to the Court that all proper parties are before the Court in this proceeding, the Court doth so adjudge, order and decree.

And it appearing to the Court that Silas B. Truslow departed this life August 26, 1925, testate, seized and possessed of certain real estate in Courtland Magisterial District, Spotsylvania County, Virginia, near the City of Fredericksburg, and on the plat and plan of von Schon & Garner, of the Fredericksburg Development Company, said real estate is described as follows:

1. Lot 31, in Block 18;
- page 208 } 2. Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13,
14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27,
28, 29, 30, 31, 32, 33, 34, 35, and 36 in Block 7.

And it further appearing to the Court that in his last will and testament the said Silas B. Truslow provided:

“If the place is not paid for my oldest son Van to do what he sees fit but if paid for Van B. Truslow shall have seventeen and a half lots where he shall wish them except the 3 lots to the house at the death of my wife if she stay single go to Gracie Truslow my daughter and Bulah Truslow my daughter to do as they like except to sell if they wish to sell shall sell to my son Van and no one else the property given to them must not go out of the family.”

And it appearing to the Court that all of the property at the time of the death of the decedent had been paid for;

And it appearing to the Court that the three lots to the house are designated on the aforementioned plat as Lots 26, 27, and 28, in Block 7; the Court doth adjudge, order and decree that by his said last will and testament Silas B. Truslow devised and gave unto his two daughters, Gracie Truslow Haddock and Bulah Truslow Ashby, in fee simple, the said Lots 26, 27, and 28, in Block 7.

And it appearing to the Court that his widow, Susan J. Truslow, remained single and departed this life September 28, 1932, without having remarried after the death of the said Silas B. Truslow, the Court doth so adjudge, order and decree.

And it further appearing to the Court that the devise to the said two daughters was in fee simple, and that the provision in said will, "except to sell if they wish to sell shall sell to my son Van and no one else the property given to them must not go out of the family", is contrary to the gift in fee simple and therefore ineffective, and the Court doth further adjudge, order and decree that the fee simple title in and to the aforesaid three lots, 26, 27, and 28, in Block 7, vests absolutely in said two daughters, Gracie Truslow Haddock and Bulah Truslow Ashby, free of any and all conditions and limitations.

And it further appearing to the Court that page 209 } the said Testator, Silas B. Truslow, in his last will and testament provides, "on the South side facing North East and South East 3 three lots to my daughter Lucy Ball Truslow and no one else at her death to do as she please with them"; which according to its true intent, meaning and purpose devises unto his daughter Lucy Truslow Ball Lots 29, 30, and 31, in Block 7, as shown on said plat; the Court doth so adjudge, order and decree.

And it further appearing to the Court that the said three lots, 29, 30 and 31, in Block 7, are the only lots belonging to Silas B. Truslow, deceased, meeting said description, and that said description fits, designates and identifies said three lots, and that the true intent, meaning and purpose of said will was to devise unto and vest the fee simple title in and to said three lots, 29, 30, and 31, in Block 7, in his daughter, Lucy Truslow Ball, the Court doth so adjudge, order and decree; and doth further adjudge, order and decree that the said Lucy Truslow Ball is the owner of the fee simple title of said three lots, 29, 30, and 31, in Block 7, together with all improvements thereon, which includes the filling station known as the Truslow Filling Station.

And it further appearing to the Court that in said will the Testator, Silas B. Truslow, provides, "on the west side Southeast corner I give two lots to Claudy Truslow my son", which according to its true intent, meaning and purpose, devises unto Claudy Truslow Lots 35 and 36, in Block 7 according to said plat; the Court doth so adjudge, order and decree; and doth further adjudge, order and decree that Claudy Truslow is the owner in fee simple of said two lots 35 and 36, in Block 7.

And it further appearing to the Court that the said Testator, Silas B. Truslow, in his said will provides, "and above him Northwest 3 lots to my son Mack Duff Truslow", which according to its true intent, meaning and purpose devises unto

Mack Duff Truslow Lots 1, 2, and 3, in Block 7, page 210 } according to said plat; the Court doth so adjudge, order and decree; and doth further adjudge, order and decree that Mack Duff Truslow thereby is the owner in fee simple of said three lots 1, 2, and 3, in Block 7.

And it further appearing to the Court that the said Testator, Silas B. Truslow, in his said last will provides, "Van B. Truslow shall have seventeen and a half lots where he shall wish them except * * *"—"the remainder of six lots and a half is to be sold to pay my debts if any is owing and if none to be given over to my son Van B. Truslow to dispose of as he may see fit only to go to looking after his mother and taking care of her"; and it further appearing to the Court that Silas B. Truslow owed no debts at the time of his death, and that the said Van B. Truslow looked after his mother and took care of her until her death, therefore the true intent, meaning and purpose of the said two provisions devises unto Van B. Truslow the said 17½ lots and the said 6½ lots, aggregating 24 lots; the Court doth so adjudge, order and decree, and doth further adjudge, order and decree that under the last will and testament of Silas B. Truslow the fee simple title vests in Van B. Truslow to the following Lots, in Block 7:

Lots Nos. 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 32, 33, and 34.

And it further appearing to the Court that Silas B. Truslow died seized and possessed of Lot 31, in Block 18, according to the said plat of von Schon & Garner and that no disposition thereof was made under his last will and testament, the Court doth adjudge, order and decree that the said Silas B. Truslow died intestate as to said Lot 31, in Block 18, and that the same is inherited by the statute of descents and distributions by his following children: Van Truslow, Lucy Truslow Ball, Thomas Truslow, Clay Truslow, Gracie Truslow Had-dock, Mack Duff Truslow, Claudy Truslow, and page 211 } Bulah Truslow Ashby, and that said children each have an undivided one-eighth in said lot.

And it further appearing to the Court that said lot cannot be partitioned in kind and in order to have partition and division thereof it is necessary that the same be sold and the proceeds divided, the Court doth so adjudge, order and decree; and doth further adjudge, order and decree that C. B. Wallace and Wm. W. Butzner be, and they are hereby appointed Special Commissioners for the purpose, who are empowered, authorized and directed to sell said lot for cash at

public auction, in front of the Law Building, in Fredericksburg, Virginia, after advertising the time, place and terms of sale at least ten days by two insertions in the Free Lance-Star newspaper, but before said Special Commissioners shall act they, or someone for them, shall enter into a bond with approved security before the Judge of this Court in the penalty of \$100.00 conditioned for their faithful performance of the duties as such Special Commissioners.

And it further appearing to the Court that Van B. Truslow, from the time of his father's death, August 26, 1925, to the present time has occupied said filling station and Lots 29, 30, and 31, in Block 7, and has received appropriated to his own use the rents and issues therefrom and has paid nothing to his sister, Lucy Truslow Ball, the owner, and that he is chargeable with a fair rental therefor for five years prior to the institution of this suit, and that this suit was instituted on March 20, 1933;

And it further appearing from said report that \$75.00 per month, or \$900.00 per year, is a fair rental to be paid to the said owner, the Court doth so adjudge, order and decree; and doth further adjudge, order and decree that Lucy Truslow Ball do recover of and from the said Van B. Truslow the sum of \$5,600.00, with interest thereon at six per cent per annum from this date until paid; and the Clerk of this Court is directed to forthwith docket this judgment in page 212 } Lien Docket of this Court.

And it appearing to the Court that Lucy Truslow Ball is entitled to the possession of said Lots 29, 30, and 31, in Block 7, the Court doth adjudge, order and decree that Van B. Truslow do surrender unto Lucy Truslow Ball the full and complete possession of said property and improvements thereon on or before July 1, 1934, and shall pay her rental at the rate of \$75.00 per month from this date until said possession of said premises is delivered to her.

And it further appearing to the Court that Van B. Truslow as Executor of Silas B. Truslow, deceased, has not settled his accounts as such, but there has come into his hands the sum of \$625.16, he is directed to forthwith settle his accounts before S. B. Coleman, Commissioner in Chancery in this cause.

And it further appearing that there was a legacy of \$25.00 given unto Clay Truslow, and a like sum of \$25.00 given unto Thomas Truslow in the last will and testament of Silas B. Truslow, deceased, but that the same has not been paid; the Court doth adjudge, order and decree that Clay Truslow do recover of and from Van B. Truslow the sum of \$25.00 with interest thereon at the rate of six per cent per

annum from this date until paid; and the Court doth further adjudge, order and decree that Thomas Truslow do recover of and from Van B. Truslow the sum of \$25.00 with interest at six per cent per annum from this date until paid.

And the Clerk of this Court is directed to docket the afore-haid judgments in the Docket Lien Book of this Court.

And it further appearing to the Court that Wm. W. Butzner as Attorney for the plaintiff, should be awarded a fee of \$250.00 for instituting and conducting these proceedings, to be chargeable against the interests of all parties page 213 } to this proceeding; the Court doth adjudge, order and decree that said amount be paid to him and charged against the following parties in the following proportions:

Van B. Truslow,	8/16	\$125.00
Lucy Truslow Ball	4/16	62.50
Gracie T. Haddock & Bulah Ashby	3/16	46.87
Claudy Truslow & Mack Truslow	1/16	15.63

And the Court doth further adjudge, order and decree that S. B. Coleman, Commissioner in Chancery in this cause be paid the sum of \$250.00; and the Court doth further adjudge, order and decree that the said fee to S. B. Coleman, Commissioner in Chancery and the costs of these proceedings be chargeable against and paid by the parties to this proceeding in the following proportions:

Van B. Truslow,	8/16
Lucy Truslow Ball	4/16
Gracie T. Haddock & Bulah Ashby	3/16
Claudy Truslow & Mack Truslow	1/16

and that the same, together with the aforementioned fee awarded to Wm. W. Butzner be a charge and a lien against the real estate belonging to the respective parties.

The defendant, Van B. Truslow, signifying his intention of appealing herefrom, it is ordered that the execution of this decree be suspended for a period of 60 days, but before the said Van B. Truslow shall have the benefit of this order, he shall on or before June 20, 1934, file before the Clerk of this Court a suspending bond with approved security in the sum of \$6,000, conditioned as the law directs.

COPY

page 214 }

August 1, 1934

W. W. Butzner, Attorneys for Mrs. Lucy Truslow Ball,
George Ball, Mrs. Beulah Ashby, Elwood Ashby, Mrs.
Grace Haddock, Laurence Haddock:

Supreme Court of Appeals of Virginia.

Take notice that at three o'clock P. M. on Friday, August 3rd, 1934, the undersigned will apply to A. H. Crismond, Clerk of the Circuit Court of Spotsylvania County, Va., at the Clerk's Office of Spotsylvania County, for a transcript of the Record in the chancery cause pending in the Circuit Court of Spotsylvania County under the style of Lucy Truslow Ball and George Ball *v.* Van Truslow in his own right and as Executor of Silas B. Truslow, deceased, to be attached to a petition to the Supreme Court of Appeals of Virginia for the purpose of applying for an appeal from the final decree rendered by the Circuit Court of Spotsylvania County, Virginia, in said cause on or about June 8th, 1934.

VAN B. TRUSLOW,
By G. B. WALLACE, Attorney.

Service accepted:

By W. W. BUTZNER,
Attorney for Lucy Truslow Ball & George Ball.

(COPY)

page 215 } Virginia:

In the Clerk's Office of the Circuit Court of Spotsylvania County, on the 27th day of August, 1934.

I, A. H. Crismond, Clerk of the Circuit Court of Spotsylvania County, Virginia, do certify that the foregoing is a true copy of the record in the case of Lucy Truslow Ball, et als., *v.* Van B. Truslow, et als., pending in the Circuit Court of Spotsylvania County, Virginia.

I further certify that the said record was not made up and completed until the plaintiffs and Mrs. Bulah Ashby, Grace Haddock & Claudie Truslow had received due notice of the making of the same and of the intention of the defendants to apply to the Supreme Court of Appeals of Virginia for an appeal and *supersedeas* therein, the said notice having been given unto William W. Butzner, counsel of record for the plaintiffs.

Teste:

A. H. CRISMOND, Clerk.

A Copy—Teste:

M. B. WATTS, C. C.

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