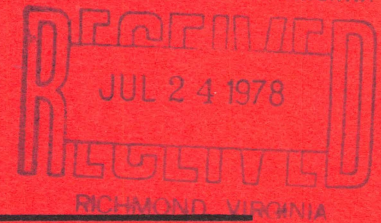


220 VA 553

220 VA 553

CLERK  
SUPREME COURT OF VIRGINIA



---

IN THE  
**Supreme Court of Virginia**  
AT RICHMOND

---

780402

---

VERNON E. MCINTOSH  
AND  
JOAN A. MCINTOSH

.....Appellants

v.

CHINCOTEAGUE VOLUNTEER FIRE CO.,

.....Appellee

---

APPENDIX

---

MAPP & MAPP  
William King Mapp, Esq.  
J. Nicholas Klein, III, Esq.  
Box 138  
Keller, Virginia 23401

Counsel for Appellants

FEARS & NORTHAM  
Wescott B. Northam, Esq.  
Fears Building  
Accomac, Virginia 23301

Counsel for Appellee



## INDEX

	<u>Page</u>
Bill of Complaint . . . . .	1
Answer . . . . .	3
Objection to Trial by Jury . . . . .	5
Jury Instructions: . . . . .	6
Number 1 . . . . .	6
Number 2 . . . . .	6
Number 3 . . . . .	7
Number 4 . . . . .	7
Number A . . . . .	8
Letter from Judge to Counsel . . . . .	10
Final Decree . . . . .	12
Assignments of Error . . . . .	15
Assignments of Cross-Error . . . . .	15
Exhibits:	
Plaintiffs' Exhibit One . . . . .	16
Plaintiffs' Exhibit Two . . . . .	24
Plaintiffs' Exhibit Three . . . . .	24
Plaintiffs' Exhibit Four . . . . .	26
Plaintiffs' Exhibit Five . . . . .	27
Plaintiffs' Exhibit Six . . . . .	30
Plaintiffs' Exhibit Seven . . . . .	40
Plaintiffs' Exhibit Eight . . . . .	32
Plaintiffs' Exhibit Nine . . . . .	34
Plaintiffs' Exhibit Ten . . . . .	35

Transcript of Evidence . . . . .	41
Index of Original Transcript . . . . .	42
Vernon McIntosh . . . . .	44
Helen Davis . . . . .	64
Mazie Koedornick . . . . .	73
Vernon McIntosh (Recalled) . . . . .	80
Joan McIntosh . . . . .	83
Ronald L. Beebe . . . . .	89
Herman M. Lewis . . . . .	107
Georgie Lewis . . . . .	126
Norris Bloxom . . . . .	145
Wilson Thornton . . . . .	154

Filed May 20, 1977

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF ACCOMACK

Vernon E. McIntosh and Joan A.  
McIntosh,

Complainants

vs.

Chincoteague Volunteer Fire Company, Inc.

Serve on: Wilson M. Thornton, Registered Agent  
Chincoteague, Virginia,  
Respondent

BILL

6777

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

Your complainants respectfully represent unto your Honor as follows:

1. That your complainants acquired a certain parcel of real estate,  
situated in the town of Chincoteague, Accomack County, Virginia, from Daisey  
M. Litchkofski, widow, by deed dated February 1, 1972, a copy of said deed  
being hereto attached, marked "Exhibit A", and prayed to be taken and read  
as a part of this Bill of Complaint.

2. That your complainants and their predecessors in title have actually  
held and possessed all of the land described in said deed exclusively, notor-  
iously and continuously, under claim of right, and with color of title for  
more than fifteen years next preceding the date of the filing of this bill.

3. That by deed dated December 6, 1976, Georgie E. Lewis et vir  
attempted to convey to the respondent a parcel of the real estate presently  
owned by the complainants, as aforesaid, said deed being now of record in the  
Clerk's Office for the County of Accomack in Deed Book 379, at pge 550, a  
copy of same being hereto attached marked "Exhibit B" and prayed to be taken  
and read as a part of this bill.

4. That said deed from the said Georgie B. Lewis et vir constitutes a cloud on the title to the real estate owned by your complainants, as aforesaid.

5. That during May, 1977, after being advised not to do so, the respondent, through its agents, servants and employees, committed acts of trespass upon the land owned by your complainants by going upon same and removing articles of personal property owned by them and damaging same and said real estate, and has threatened to continue to commit various and sundry and numerous acts of trespass in the future.

6. That your complainants have no adequate remedy at law save in a court of equity.

Wherefore, your complainants pray that the respondent, its agents, servants and employees be temporarily and permanently restrained from trespassing and entering upon the above described lands of your complainants; that the cloud on the title to the lands owned by your complainants created by virtue of the aforesaid deed from Georgie B. Lewis et vir to the respondent be removed; that the respondent be compelled to pay unto your complainants a sum sufficient to take care of any damages, which had resulted from said trespasses, and that your complainants may have such other relief as the nature of their case may require.

VERNON E. MCINTOSH AND JOAN A. MCINTOSH

By Counsel

W. H. Ray Mayo p. 9.  
Keller, Virginia

Filed June 9, 1977

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF ACCOMACK

VERNON E. McINTOSH and JOAN A.  
McINTOSH,

Complainants,

vs.

CHINCOTEAGUE VOLUNTEER FIRE COMPANY, INC.,

Respondent.

IN CHANCERY

A N S W E R

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

Your respondent, Chincoteague Volunteer Fire Company, Inc.,  
for answer to the Bill of Complaint, answers and says as follows:

1. That it admits that the complainants by deed dated  
February 1, 1972, recorded in Deed Book 312, at page 567, copy of  
which is filed marked "Exhibit A," were conveyed certain real  
estate; however, said deed is void as to all real estate purported  
to be conveyed on the Southwest side of a certain boundary line  
designated "N - 39°-58'-W" for a distance of 267.08 feet on a  
certain plat entitled "Survey of Property for Chincoteague  
Volunteer Fire Co., Inc. & Georgia Bunting Lewis, Chincoteague  
Accomack County, Va.", dated June 23, 1976, by R. L. Beebe, C.E.,  
recorded in Plat Book 21, at page 68, a copy of which is filed  
herewith marked "Exhibit C."

2. That it denies each and every allegation contained in  
paragraph 2 of the complainant's bill.

3. That it alleges that the deed dated December 6, 1976, recorded in Deed Book 379, at page 550, by Georgia B. Lewis, et vir, to Chincoteague Volunteer Fire Company, Inc. actually conveyed the real estate so described therein and shown on the aforesaid plat marked "Exhibit C" and identified thereon as "Georgia B. Lewis 0.148 Ac."

4. That it denies that the complainants own any part of the real estate designated "Georgia B. Lewis - 0.148 Ac." on the aforesaid plat marked "Exhibit C."

5. That it admits that it is using the real estate conveyed to it by Georgia B. Lewis, et vir, and here states that any use of the same by the complainants constitutes a trespass.

WHEREFORE, your respondent prays that the Bill be dismissed and that it may be awarded all costs incurred by it in defending this suit, including such reasonable attorney's fees, witness fees, engineering fees, and other costs as the Court shall determine and allow.

CHINCOTEAGUE VOLUNTEER FIRE  
COMPANY, INC.

By *Wescott B. Northam*  
Of Counsel

Wescott B. Northam, p. d.  
P. O. Box 247  
Accomac, Virginia 23301  
Attorney for Respondent

Filed October 21, 1977

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF ACCOMACK

VERNON E. McINTOSH and  
JOAN A. McINTOSH,

Complainants,

vs.

IN CHANCERY

CHINCOTEAGUE VOLUNTEER FIRE  
COMPANY, INC.,

Respondent.

OBJECTION TO TRIAL BY JURY

TO THE HONORABLE N. WESCOTT JACOB, JUDGE OF THE CIRCUIT COURT FOR  
THE COUNTY OF ACCOMACK:

The respondent objects to trial by jury since there is no  
issue of fact genuinely in dispute and raised as required by  
Code of Virginia, Section 55-153; and, there will be no  
irreconcilable conflict in the testimony of the complainants and  
the respondent, that the Chancellor will have no difficulty in  
determining the issue by a preponderance of the evidence, and the  
issue to be tried, being one solely of law, should be heard  
and determined by the Court sitting without a jury.

CHINCOTEAGUE VOLUNTEER FIRE COMPANY,  
INC.

By 

Of Counsel

Wescott B. Northam, p. d.  
P. O. Box 247  
Accomac, Virginia 23301



JURY INSTRUCTIONS

INSTRUCTION NUMBER 1

THE COURT INSTRUCTS THE JURY:

That no person shall make an entry on any land, unless within fifteen years next after the time at which the right to make such entry shall have first accrued to such person or to some other person through whom he claims.

INSTRUCTION NUMBER 2

THE COURT INSTRUCTS THE JURY:

That for purposes of adverse possession, a party need not enter into possession under a deed or some other form of writing. The entry is sufficient if he takes possession of the land with the intention to appropriate and use the land as his own, to the exclusion of all others, irrespective of any semblance of title or legal title.

INSTRUCTION NUMBER 3

THE COURT INSTRUCTS THE JURY:

That if you believe by a preponderance of the evidence that the plaintiffs, Vernon E. McIntosh and Joan A. McIntosh, and their predecessors in title, have had actual, exclusive, hostile, open and notorious possession of the land in question, accompanied by a bona fide claim of title against that of all other persons, continuously for a period of fifteen years or more, prior to the filing of this suit, then they have acquired the land in question by adverse possession, and even though you may believe their chain of legal title is defective, you shall return a verdict in favor of the plaintiff.

INSTRUCTION NUMBER 4

THE COURT INSTRUCTS THE JURY:

That the complainants, Vernon E. McIntosh and Jean A. McIntosh, rely on the doctrine of adverse possession and the burden of proof is on them to produce clear and satisfactory evidence in order to prevail.

All of the following elements must be proved by a preponderance of the evidence:

(1) Such possession must be actual occupation of the land in such a manner as is calculated to give notice to the true owner; that is, it must be exclusive, visible and of such notoriety that the true owner may be presumed to know of it;

- (2) It must be hostile;
- (3) It must be under a claim of right;
- (4) Such adverse possession must be continuous and unbroken for a period of at least fifteen (15) years.

Unless you believe by a preponderance of the evidence that the complainants and their predecessors in title have so held the land defined in their deed from Daisy M. Litchkopski, then your verdict shall be for the respondent, Chincoteague Volunteer Fire Company, Inc.

INSTRUCTION NO.   A  

THE COURT INSTRUCTS THE JURY:

That the complainants, Vernon E. McIntosh and Jean A. McIntosh, rely on the doctrine of adverse possession and the burden of proof is on them to produce clear and satisfactory evidence in order to prevail.

All of the following elements must be proved by a preponderance of the evidence:

- (1) Such possession must be actual occupation of the land in such a manner as is calculated to give notice to the true owner; that is, it must be exclusive, visible and of such notoriety that the true owner may be presumed to know of it;

(2) It must be hostile;

(3) It must be under a claim of right;

(4) It must be under color of title, that is, a deed or written instrument which clearly identifies the land in controversy with such certainty that the boundaries can be ascertained by the application of the general rules governing the location of lands conveyed by a deed; and,

(5) Such adverse possession must be continuous and unbroken for a period of at least fifteen (15) years.

Unless you believe by a preponderance of the evidence that the complainants and their predecessors in title have so held the land defined in their deed from Daisy M. Litchkowski, then your verdict shall be for the respondent, Chincoteague Volunteer Fire Company, Inc.

*Advised  
by J. J. J. J.*



*Commonwealth of Virginia*



ROBERT S. WAHAB, JR.  
PHILIP L. RUSSO  
AUSTIN E. OWEN  
HENRY L. LAM  
GEORGE W. VAKOS  
RESIDENT JUDGES  
CIRCUIT COURT  
CITY OF VIRGINIA BEACH  
PRINCESS ANNE  
VIRGINIA BEACH, VIRGINIA 23456

**SECOND JUDICIAL CIRCUIT**

December 21, 1977

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

William King Mapp, Esquire  
Attorney at Law  
Keller, VA 23401

Wescott B. Northam, Esquire  
Attorney at Law  
Accomac, VA 23301

Re: Vernon E. McIntosh, et ux v.  
Chincoteague Volunteer Fire Company, Inc.

Gentlemen:

I have reviewed the evidence and Memorandums  
filed in the above matter.

The plaintiffs, Vernon E. McIntosh and wife, have owned the property since 1972 so if they are to recover title by adverse possession it must be on the strength of the claim of their predecessor in title, Kendall J. Bunting, Jr. The evidence in this case shows that Kendall J. Bunting, Jr., used the property for a period of years beginning in 1929. There has been no showing, however, that Kendall J. Bunting, Jr., ever made a hostile claim of title to this tract of land. The fact that the possession was accompanied by an actual hostile claim of title must be made manifest by the evidence before title by adverse possession can be said to be established.

Most importantly, it must be noted that the adverse possession claimed in this case was made by Kendall J. Bunting, Jr., against his father, Kendall J. Bunting, Sr. As a general rule, an adverse possession cannot be predicated on the possession of a child against its parent. The owner must have had some clear, definite or unequivocal notice of

Commonwealth of Virginia



ROBERT S. WAHAB, JR.  
PHILIP L. RUSSO  
AUSTIN E. OWEN  
HENRY L. LAM  
GEORGE W. VAKOS  
RESIDENT JUDGES  
CIRCUIT COURT  
CITY OF VIRGINIA BEACH  
PRINCESS ANNE  
VIRGINIA BEACH, VIRGINIA 23456

SECOND JUDICIAL CIRCUIT

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


Page 2  
December 21, 1977

the adverse claimant's intention to assert an exclusive ownership in himself. The evidence in this case falls far short of showing such notice was ever given to Bunting, Sr.

For these reasons I feel compelled to set aside the verdict of the jury and to enter judgment for the defendant. To hold otherwise would allow adverse possession by a child against its parent upon the mere showing of possession of the real estate involved. I do not feel that this is the law.

I will ask Mr. Northam to prepare an order to this effect.

Yours very truly,

  
N. Wescott Jacob

NWJ/md

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF ACCOMACK

VERNON E. McINTOSH, ET UX,	)	
Complainants,	)	
vs.	)	IN CHANCERY
CHINCOTEAGUE VOLUNTEER FIRE	)	NO. 6777
COMPANY, INC.,	)	
Respondent.	)	

FINAL DECREE

This cause came on to be heard upon the Bill of Complaint, the Answer filed thereto, the Motion for a Trial by Jury, which Motion was granted; the evidence heard ore tenus by the Court and the jury on October 24, 1977, and arguments of counsel.

IN CONSIDERATION WHEREOF, the jury returned the following verdict:

"We, the Jury, find in favor of the plaintiffs,  
Vernon E. McIntosh, et ux."

Whereupon the Court discharged the jury and the respondent moved the Court to set aside the verdict on the ground that it was contrary to the law and the evidence, and the matter was taken under advisement to provide counsel for the complainants and the respondent time to file written memoranda with the Court, which were accordingly filed.

Upon consideration thereof, the Court doth ADJUDGE, ORDER and DECREE that the verdict of the jury be, and the same hereby is, set aside, and doth enter judgment for the respondent, Chincoteague Volunteer Fire Company, Inc., for reasons set forth in the Court's

opinion, dated December 21, 1977, and filed herein.

Proceeding further, it is ADJUDGED, ORDERED and DECREED that the deed from Georgie B. Lewis and Herman E. Lewis, her husband, to Chincoteague Volunteer Fire Company, Inc., dated December 6, 1976, now of record in Deed Book 379, at page 550, does not constitute a cloud on the title to a parcel of real estate conveyed by Daisy M. Litchkofski, widow, to Vernon E. McIntosh and Joan A. McIntosh dated February 1, 1972, now of record in the Clerk's Office for the County of Accomack in Deed Book 312, at page 567, and that the parcel of real estate described in said deed from Georgie B. Lewis, et vir, to Chincoteague Volunteer Fire Company, Inc. is the land of the said Chincoteague Volunteer Fire Company, Inc. and not the land of the said Vernon E. McIntosh and Joan A. McIntosh.

Further reference also may be had to the plat entitled "SURVEY OF PROPERTY FOR CHINCOTEAGUE VOLUNTEER FIRE CO. INC. & GEORGIA BUNTING LEWIS CHINCOTEAGUE, ACCOMACK COUNTY, VA." dated June 23, 1976, by R. L. Beebe, C.E., marked "Exhibit 7," said plat also being recorded in Plat Book 21, at page 68, for the boundary line between the land of Vernon E. McIntosh and Joan A. McIntosh and the land of Chincoteague Volunteer Fire Company, Inc.

It is ORDERED that the Clerk of this Court record a copy of this decree among the land records of the County of Accomack, indexed in both the names of the complainants and the name of the respondent, and place a notation along the margin of said deed, dated February 1, 1972, Deed Book 312, at page 567, to the effect:



"See decree entered in Chancery No. 6777 styled  
Vernon E. McIntosh et ux vs. Chincoteague Volunteer  
Fire Company, Inc. recorded in Deed Book ,  
at page ."

Whereas, counsel for the complainants have expressed an  
intention to make application for an appeal, pursuant to Rule 5:9(a)  
of the Rules of the Supreme Court of Virginia, the Court doth  
direct that the transcript of the evidence taken by Margaret Donn,  
Court Reporter, when filed herein, is a part of the record of this  
case.

Enter this Decree this 11 day of  
January, 1978:

N. Wescott Jacob  
N. WESCOTT JACOB, JUDGE

I ask for this:

Wescott B. Northam  
Wescott B. Northam, p.d.

Seen and objected to:

William King Mapp  
William King Mapp, p.q.

ASSIGNMENTS OF ERROR

1. That the Court erred in setting aside the verdict of the Jury in favor of the Appellants and entering final judgment in favor of the Appellee.

2. That the Court erred in finding and holding that there was no evidence of an actual hostile claim of title upon which the Jury could base its verdict in favor of the Appellants.

ASSIGNMENTS OF CROSS-ERROR

1. That the Court erred in overruling the Objection to Trial by Jury filed on behalf of the appellee on October 21, 1977.

2. That the Court erred in granting Instructions 1, 2 and 3 and refusing Instruction A as originally submitted.

PLAINTIFF'S EXHIBIT ONE

This Deed, made this 25th day of June, A. D. 1908, between Kendall J. Bunting and Mary A. Bunting, his wife, of the one part, and William C. Bunting and Mary A., his wife, of the second part, all of the County of Accomack and State of Virginia, Witnesseth; that whereas the said parties to this deed, as heirs at law of John W. Bunting, deceased, are seized in fee simple of and have equal shares as tenants in common in certain tracts, pieces, parcels and lots of land, lying and being on Chincoteague Island in the County of Accomack and more fully described below; and Whereas, it is now the desire of the said Kendall J. Bunting and William C. Bunting to make partition between themselves of the tracts or parcels of land contained in this deed. Now, therefore, to the end and intent that a perfect partition may be had and made between the said Kendall J. Bunting and William C. Bunting of the tracts, pieces, parcels or lots of land they, the said Kendall J. Bunting and William C. Bunting, by their own mutual consent and agreement have and do hereby make partition of the same in the manner following: The said Kendall J. Bunting shall have for his part and portion of the said tracts, lots, pieces or parcels of land the following more fully described and bounded as follows:

(1st.) A tract or parcel of land situate on said Island, containing One Hundred and Six acres, more or less, and bounded on the North, by the lands of the said Kendall J. Bunting; East, by the lands of Miles Thornton, Thomas Northam and the tract hereinafter assigned to William C. Bunting; South, by the lands of James G. Daisey; and West, by Chincoteague Channel; it being the tract of land formerly belonging to Randall Mason.

(2nd.) One store house and lot on said Island with a frontage on the main county road of Sixty-six (66) feet and extending back between parallel lines to the Channel, and bounded on the North, by the land hereinafter assigned to William C. Bunting; East, by the main county road; South, by the county road called "Bunting Road"; and West, by said Channel.

(3rd.) One tract of land containing six (6) acres, more or less, situate on said Island and known as the "Ed. Brinny" land, and bounded on the North, by the land hereinafter assigned to the said Kendall J. Bunting; East, by the land of John T. Thornton; South, by the lands of Harriet Brinny's heirs; and West, by the said Chincoteague Channel.

(4th.) One tract of land known as the "Wilson Crippen Land" situate on said Island; containing six (6) acres, more or less, and bounded on the North, by the land of



George Cherricks; East, by the land of Aldred Hudson's heirs; South, by the lands of George O. Clayville's heirs and John T. Thornton; and West, by main county road.

(5th.) One tract of land known as the "Cyrus P. Baker" land, situate on said Island, containing two (2) acres, more or less, and bounded on the North by the land of George Cherricks; East, by the land of John Brinny; South, by the land hereinafter assigned to K. J. Bunting; and West, by said Chincoteague Channel.

(6th.) One tract of land known as the "Durfey" tract, situate on said Island, containing three (3) acres, more or less, and bounded on the North, by the land of George Cherricks; East, by the tract of land known as the "Cyrus P. Baker" tract, above described; South, by the land hereinafter assigned to Kendall J. Bunting; and West, by said Channel.

(7th.) One tract or parcel of land, situate on said Island, known as "The Old Hotel Property," containing acres, more or less, and bounded on the North, by a private road owned jointly by the said Kendall J. Bunting, and the Jr. O. U. A. M., said private road separating this tract from the land now owned by said Jr. O. U. A. M.; East, by the land of Ann L. Bloxom; South, by the county road known as "Mumford's Road;" and, West, by the land of Hattie L. Bunting and the tract of land hereinafter assigned to William C. Bunting;

on this tract is located "The Old Hotel Building" and also two dwelling houses.

(8th.) One lot of land situate on the said Island, on the West side of the county road known as "Bunting's Dock" with a frontage of Fifty (50) feet on the main county road, and extending back to the channel with a width of Thirty (30) feet, along the shore, and bounded on the North, by the land hereinafter assigned to William C. Bunting; East, by the main county road; South, by the land of W. J. Adams, Thomas Beebe and Ezra Adams; and West, by said Channel; it being the intention of the said parties to this deed to divide the dock, as owned by the late John W. Bunting, equally between the said Kendall J. Bunting and William C. Bunting, or as nearly so as said tract will permit.

(9th.) A tract of land known as "The William C. Thornton Land", situate on said Island, containing Fourteen (14) acres, more or less and bounded North, by the lands of Thomas Beebe and H. Wise Birch; East, by the lands of H. Wise Birch and Assateague Channel; South, by the land of William B. Thornton's heirs; and, West, by the land of Thomas Melvin; in severalty and divided from the portion of the said William C. Bunting. And the said William C. Bunting shall have for his part and portion of the said tracts, lots, pieces or parcels of land the following

more fully described as follows:

(1st.) A tract of land known as "The Homestead Tract," the late residence of the said John W. Bunting, situate on said Island, consisting of the Harriet Brinny lands, Edward Brinny lands, Richard Carpenter lands, Jacob Godwin lands and the George Birch lands, containing Forty-four (44) acres, more or less, and bounded on the North, by the land of George Booth, Maria Whealton, William D. Adams and Crippen Bowden; East, by the lands of D. J. Whealton and Thomas Beebe; South, by the lands of John E. McGee, Miles Thornton, Maria Whealton, James Steelman, Philip P. Daisey, Leah Hudson and the county road known as "The Bunting Road," and West, by the land above assigned to Kendall J. Bunting and known as "The Storehouse Lot" and the said Chincoteague Channel, but the cemetery on this tract of the length of Two Hundred and Five (205) feet and a width of Seventy-seven (77) feet, as now enclosed with an iron railing is hereby reserved for the use and benefit of the heirs of the late John W. Bunting.

(2nd.) One house and lot known as "Church Lot," situate on said Island, containing One Half ( $\frac{1}{2}$ ) acre, more or less, and bounded on the North, by the land of William Hill; East and South, by the land of William Jeffries, and West, by the main county road.

(3rd.) One tract of land known as "The Charles Jester Land," situate on said Island, with a width of One Hundred (100) feet on the main county road and extending back between parallel lines to Chincoteague Channel, and bounded on the North, by the land of Thomas Jester; East, by the main county road; South, by the land of E. A. Jeffries; and, West, by said Chincoteague Channel.

(4th.) A tract of land known as "The John Caulk Land," situate on Church Street, on said Island, upon which is located two dwellings, containing One Half ( $\frac{1}{2}$ ) acre, more or less, and bounded on the North, by the county road called "Church Street;" East, by the land of Robert L. Marshall; South, by the land of George R. Colburn; and West, by the land of the Jr. O. W. A. M. and D. J. Whealton.

(5th.) A tract of land known as "The Comfort Holstein Land" situate on said Island, being Seventy-four feet long and Forty-five feet wide, and bounded on the North, by the lands of R. L. Marshall and the Methodist Episcopal Church Lot; East, by the land of S. J. Mumford; South, by the land of George Booth and Ann L. Bloxom; and West, by the land of George R. Colburn.

(6th.) A tract of land known as "The William Whealton Land and the George Clayville Land," situate on the main county road, on said Island, upon which is located one



storehouse and a dwelling house and a shop, the latter being owned by George R. Colburn, and bounded on the North, by a private road; the property of said William C. Bunting and the Jr. O.U.A.M., which said private road separates this tract from the land of the said Jr. O.U.A.M. on the North; East, by the land above assigned to Kendall J. Bunting known as "The Old Hotel Property;" South, by the land of Hattie L. Bunting and the said W. C. Bunting, known as "The Hudson Land;" and West, by the main county road.

(7th.) One lot of land situate on the West side of the main county road, on said Island, known as "The Bunting Dock," with a frontage of Forty-five (45) feet Five (5) inches on the main county road and extending back to the Channel with a width of Thirty (30) feet along the shore, and bounded on the North, by the land of Josephine Whealton's heirs; East, by said county road; South, by that portion of the dock above assigned to the said Kendall J. Bunting, and West, by said Channel; it being the intention to divide the dock, as owned by the late John W. Bunting, equally between the said Kendall J. Bunting and William C. Bunting or as nearly so as practical, in severalty and divided from the portion of the said Kendall J. Bunting.

The remainder of the land of the said John W. Bunting situated on said Island, and not heretofore described,

to continue to be held by the said Kendall J. Bunting and William C. Bunting jointly, and the said William C. Bunting and Mary A. Bunting, his wife, in consideration of the provisions contained in this deed do grant unto the said Kendall J. Bunting, with special warranty of title, the said nine (9) tracts, pieces, parcels or lots of land first above described, and the said Kendall J. Bunting and Mary A. Bunting, his wife, in consideration of the provisions contained in this deed do grant, with special warranty of title, the seven (7) tracts, pieces, parcels or lots of land, second above described. Witness the following signatures and seals the day and year first above written.

/s/ Kendall J. Bunting (seal)  
/s/ Mary A. Bunting (seal)  
/s/ Wm. C. Bunting (seal)  
/s/ Mary A. Bunting (seal)

PLAINTIFF'S EXHIBIT TWO

This Deed made this 25th day of february 1920 Between Kendall J. Bunting of the first Part and Mary A. Bunting his wife does sell and Convey with General Warranty of Title unto Kendall J. Bunting Jr son of Kendall J. & Mary A. Bunting his wife the Following Peice of Land known as the Ed Briney Land and containing the Following amut of feet Fronting the Main County Road Ninety four feet and Three hundred and Fifty seven feet running back from County Road and thence to Chincoteague Channel land bounded as follows on the North East by ten foot Road belonging to the above Kendall J. Bunting East by Land of K. J. Bunting South by land of Elizabeth Scarborough west by Chincoteague Chanell, containg by estimation one and one half acres more or less sold by the foot and not by the acre consideration Fifty dollars Paid by the aforesaid Kendall J. Bunting Jr. to me to have and to hold the same Given under our hands and Seals this Twentyfifth day of february 1920.

Kendall J. Bunting Sr. SEAL

Mary A. Bunting SEAL

PLAINTIFF'S EXHIBIT THREE

THIS DEED, made this 4th day of January, 1950, between Kendall J. Bunting, Jr. and Nellie L. Bunting, his wife, parties of the first part, and Kendall J. Bunting, Jr. and Nellie M. Bunting, h's wife, parties of the second part.

WITNESSETH: That the parties of the first part, for and in consideration of the sum of One Dollar (\$1.00) and the love and affection which the parties have for each other, in hand paid by the parties of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell assign and convey, with general warranty of title unto Kendall J. Bunting, Jr. and Nellie M. Bunting, parties of the second part, jointly, with the right of common law survivorship, the following lot or parcel of land situate on Chincoteague Island, Accomack County, Virginia, and more particularly bounded and described as follows, to-wit: Having a frontage on Main Street of ninety-four feet (94 ft.) & three hundred fifty-seven feet (357 ft.) running back from Main Street and thence to Chincoteague Channel and bounded: Northeast, by a 10 foot road-way now owned or previously owned by Kendall J. Bunting; East, by the land now owned or previously owned by Kendall J. Bunting; South, by the land now owned or previously owned by Elizabeth Scarborough; West, by Chincoteague Channel-- said lot or parcel of land herein conveyed containing by estimation one and one-half ( $1\frac{1}{2}$ ) acres more or less:-- it being the same lot or parcel of land conveyed from Kendall J. Bunting and Mary A. Bunting, his wife, to Kendall J. Bunting, Jr., dated February 25, 1920 and recorded in Deed Book 119, page 166, and to which said deed reference is hereby made for a more particular description hereof.

TO HAVE AND TO HOLD, the said hereinabove conveyed real estate unto the said Kendall J. Bunting, Jr. and Nellie M. Bunting, in fee simple, jointly, with right of common law survivorship, together with all the appurtenances thereunto belonging or in anywise appertaining.

Witness our hands & seals this 4th day of January, 1950.

Kendall J. Bunting, Jr. (SEAL)

Nellie M. Bunting (SEAL)

PLAINTIFF'S EXHIBIT FOUR

This is my last Will and Testament.

I swear I am in my Sound and right mind, the time I am writing this will

1 First I leave my Sister Daisy M Litchkofski my home at 559 South Main St Chincoteague, Va. My land is 94 ft front, and running back on Davis St to the land of William & Mary Elizabeth Laws land. the land running on the East to the land of Connors, and on the Southly Connors, 94 feet width not one foot of land is to be sold that goes with my home on Main St.

2nd one lot 60 ft front on Davis St on South joint the land of William & Mary Elizabeth Law on Southly the land of Connors, on the East by land of Nellie M. Bunting.

3 My Sister Daisy M. Litchkofski is to have my land and lot in next to my house at 108 Davis St also my house at 108 Davis St, land on West of Nellie M. Bunting land running back to the Cornival grounds on Eastly the land of the Carnival on the South by land of the Carnival.

4 My Money in Bank at Phila PS.F.S. Twelfs 12 and Market St. Money in Bank of Chincoteague Va. Money in Bank Wyoming & Trust 5, Wyoming Ave Phila. Pa

5 My part of Home at 538 West Luray St Phila, Pa, I also give to her. My Sister Daisy M. Litchkofski.

6 I appoint My Sister Daisy M Litchkofski the executor of My Estate

Nellie M. Bunting

PLAINTIFF'S EXHIBIT FIVE

THIS DEED, made this 1st day of February, 1972, by and between Daisy M. Litchkofski, widow, party of the first part, and Vernon E. McIntosh and Joan A. McIntosh, his wife, parties of the second part.

WITNESSETH: That the said party of the first part, for and in consideration of the sum of Eight Thousand Dollars (\$8,000.00), and other good and valuable consideration to her in hand paid, at and before the sealing and delivery of this instrument, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey, with GENERAL WARRANTY

of title, and with English covenants of title, unto the said Vernon E. McIntosh and Joan A. McIntosh, his wife, AS TENANTS BY THE ENTIRETY WITH RIGHT OF SURVIVORSHIP AS AT COMMON LAW, the following-described real estate, to-wit: All that certain lot or parcel of land situate in the Town of Chincoteague, in Islands Magisterial District, Accomack County, Virginia, and more particularly described as follows: Commencing at a certain iron stob situate on the southwestern side of Davis Street on the line between the lot herein conveyed and the land of John W. Tarr and Mary Elizabeth Tarr; thence running along the southwestern side of Davis Street in a southeasterly direction a distance of 120 feet, more or less, to a certain iron stob situate on the line between the lot herein conveyed and the land of the Chincoteague Volunteer Fire Company; thence turning and running in a straight line in a southwesterly direction along the line between the lot herein conveyed and the land of the Chincoteague Volunteer Fire Company a distance of 150 feet, more or less, to the land of the Town of Chincoteague; thence turning and running in a straight line in a northwesterly direction along the line between the lot herein conveyed and the land of the Town of Chincoteague a distance of 65 feet, more or less, to a certain iron stob situate on the line between the lot herein conveyed and other lands of the Chincoteague Volunteer Fire Company, being the lot formerly owned by James M. Conner; thence turning and running in a straight line in a northeasterly direction along the line between the lot herein

conveyed and the land of the Chincoteague Volunteer Fire Company a distance of 76 feet, more or less, to a certain post, said post marking the northwestern corner of the Conner land now owned by said fire company; thence turning and running in a straight line in a northwesterly direction along the line between the lot herein conveyed and the land of the Chincoteague Volunteer Fire Company to a certain iron stob situate on the line between the lot herein conveyed and the lot of the said John W. Tarr and Mary Elizabeth Tarr; thence turning and running in a straight line in a northeasterly direction along the line between the lot herein conveyed and the lot of John W. Tarr and Mary Elizabeth Tarr a distance of 89 feet, more or less, to the point of beginning. The herein conveyed lot is bounded on the Northeast, by Davis Street; on the Southeast, by the land of the Chincoteague Volunteer Fire Company; on the Southwest, by the land of the Town of Chincoteague and by the land of the Chincoteague Volunteer Fire Company known as the Conner land; and on the Northwest, by the lot of John W. Tarr and Mary Elizabeth Tarr. Said lot is conveyed together with all buildings and improvements thereon, and all rights, privileges and appurtenances thereunto belonging or in anywise appertaining - it being a part of the land devised by the last will and testament of Nellie M. Bunting to her sister, Daisy M. Litchkofski, said will having been probated in the Clerk's Office of the Circuit Court of Accomack County, Virginia, on the 26th day of November, 1971, and is of record therein in Will Book , at page .



The party of the first part will pay all taxes up through the year 1971 and taxes for the year 1972 are to be pro-rated between the parties as of the date of delivery of this deed.

The parties of the second part are to have immediate possession of the above-described real estate.

WITNESS the following signature and seal:

Daisy M. Litchkofski (SEAL)

PLAINTIFF'S EXHIBIT SIX

THIS DEED, dated this the 22nd day of November, 1967, by and between Georgia B. Lewis and Herman E. Lewis, her husband, parties of the first part, and Chincoteague Volunteer Fire Company, Incorporated, a corporation organized and existing under the laws of the Commonwealth of Virginia, party of the second part.

WITNESSETH: That the parties of the first part, for and in consideration of the sum of Ten Dollars (\$10.00), and other good and valuable consideration, cash in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell and convey, with GENERAL WARRANTY of title, in fee simple, unto the said party of the second part, all that certain lot or parcel of land situate in Chincoteague,

Islands Magisterial District, Accomack County, Virginia, being a part of the Brinney Tract and described as follows: Bounded on the North, by Davis Street for a distance of eighty-six feet (86 ft.), more or less; on the East, by the land of Alfred Brinney, Jr. for a distance of one hundred fifty feet (150 ft.), more or less, on the South, by the Chincoteague Carnival Grounds for a distance of eighty-six feet (86 ft.), more or less; and, on the West, by land of Nellie M. Bunting for a distance of one hundred fifty feet (150 ft.), more or less; this being a part of the land formerly owned by Kendall J. Bunting, a part thereof having been conveyed to Albert Brinney by deed dated May 5, 1943, and recorded in the Accomack Circuit Clerk's Office in Deed Book 168, at page 212, to which deed reference is hereby made for a more particular description. The grantor, Georgia B. Lewis was bequeathed this property by the Will of Mary A. Bunting, wife of Kendall J. Bunting, said Will being recorded in the Clerk's Office of the Circuit Court of Accomack County, Virginia, in Will Book 27, at page 160.

Together with all the buildings, privileges, rights, tenements, hereditaments, appurtenances and rights of way thereunto belonging or in anywise appertaining.

The parties of the first part covenant that they have the right to convey said property to the party of the second part; that they have done no act to encumber said property; that the said parties of the second part shall have quiet

possession of the said property free from all encumbrances;  
and, that they will execute such further assurances of said  
property as may be requisite.

WITNESS the following signatures and seals.

Georgia B. Lewis (SEAL)

Herman E. Lewis (SEAL)

PLAINTIFF'S EXHIBIT EIGHT

THIS DEED, made this the 6th day of December, 1976,  
between Georgia B. Lewis and Herman E. Lewis, her husband,  
parties of the first part and the Chincoteague Volunteer  
Fire Company, Inc., party of the second part.

WITNESSETH: That the said parties of the first part  
for and in consideration of the sum of ten dollars (\$10.00)  
the receipt whereof is hereby acknowledged, do hereby grant  
with general warranty of title unto the said party of the  
second part, the following described piece or parcel of land  
situated on Chincoteague Island, Accomack County, Virginia  
and being a part of the Edward Brinney Tract.

Beginning at a concrete marker in the  
northeast line of the Town of Chincoteague  
Municipal Park, said marker being on a  
bearing of S-39°-58'-E two hundred sixty  
seven feet (267') from a concrete marker  
placed on the southeast side of the side-  
walk on the southeast side of Main Street,  
thence with the property of the Chincoteague

Volunteer Fire Co., Inc. N-52°-31'-E for a distance of seventy six feet (76') to a concrete marker, thence turning and running with the Vernon McIntoch property S-39°-58'-E for a distance of eighty five feet (85') to a concrete marker, thence turning and running with the property of the Chincoteague Volunteer Fire Co., Inc., S-52°-31'-W for a distance of seventy six feet (76') to a concrete marker, thence turning and running with the Town of Chincoteague Municipal Park property N-39°-58'-E for a distance of eighty five feet (85') to the point of beginning; all bearings being magnetic and the parcel containing a calculated area of 0.148 acres more or less,

This description being more particularly shown on a plat entitled "Survey of Property for the Chincoteague Volunteer Fire Co., Inc. and Georgia Bunting Lewis", dated June 23, 1976, surveyed by R. I. Beebe, C. E. and being made a part of this deed.

TO HAVE AND TO HOLD the above described piece or parcel of land with its privileges and appurtenances unto the said Chincoteague Volunteer Fire Company Inc., its heirs and assigns forever.

Witness the following signatures and seals the day and year first above written.

Georgia B. Lewis (SEAL)

Herman E. Lewis (SEAL)

PLAINTIFF'S EXHIBIT NINE

I, Mary A. Bunting, widow of the late Kendall J. Bunting, a resident of the Island of Chincoteague, County of Accomack, State of Virginia, do hereby declare and publish this instrument as and for my Last Will and Testament:

Item 1- I desire all my debts paid including my funeral expense; and

Item 2- I give, devise and bequeath all of my estate, real and personal, to my daughter, Georgie T. Lewis, in fee simple.

I am not unmindful of my obligations to my other six children now living but I am giving my said property to my said daughter, Georgie T. Lewis, in appreciation of the courtesies and kindnesses shown me and her father, the late Kendall J. Bunting.

Witness the following signature and seal this the 20th day of February, 1947.

Mary A Bunting (SEAL)

PLAINTIFF'S EXHIBIT TEN

Chincoteague Island Va

Oct 2 1946. This my last will and Testament. in my own Hand Writing i will to my wife Mary a Bunting all my Property Money in bank, and Personal Property to with it as she Pleases except my Homestead Consisting of four acres more or less one lot of Woodland Bunded as follers West by Ray Beeby North by Canall, East by W<sup>m</sup> H. Thrntons land south by James G. Daisy land, the Homestead is hers as long as she Lives at her death to Georgie T. Lewis Estella May Watson Chrrix and Mary Elizabeth Acock at her mothers death i leave to my children as follers Elizabeth Scarbrugh heirs one dollar each Laura Savage heirs one dollar each. Mary C Bunting Emory G. Bunting K J Bunting Susie Cherix each one dollar this my last will signed by me

Kindall J Bunting sr

(Witnesses)

COURT ORDER INTERPRETING WILL OF KENDALL J. BUNTING, SR.

This cause, which has been regularly matured, set for hearing and docketed, came on this day to be heard upon the Bill of Complaint taken for confessed as to Flossie Northam, Irene Bowden, Willye Bunting, Billie Rose Scholl, Nellie M. Bunting, Susie Cherrix and Mary Anne Bunting, resident defendants who have been regularly served with process, twenty-one days having elapsed since said service and they still failing to appear, plead, answer or demur, upon the proof of the due execution of the

order of publication against Mary Elizabeth Aycock, John Scarborough, Arthur Scarborough and John W. Bunting, non-resident defendants, ten days having elapsed since the completion thereof, and they still failing to appear, upon the answer of Georgie T. Lewis, upon the demurrer of Mary B. Watson and Estelle Cherrix to paragraph 9 of said answer, the said answer being in the nature of a cross-bill, upon the plea of the statute of frauds filed by Estelle Cherrix to paragraph 10 of said answer, and upon the motion of the said Georgie T. Lewis to reject said plea, and was argued by counsel.

On consideration whereof, the court doth find that all parties who might possibly have an interest in the estate of Kendall J. Bunting, Sr., and in the interpretation of his Will are before the court, and the court being of the opinion that under the Will of the said Kendall J. Bunting, Sr., said testator devised all of his property, real and personal, after payment of the small legacies provided for in said Will, to his wife, Mary A. Bunting, in fee simple and absolute property, with the exception of Tracts 1a and 1b described in the complainants' Bill, and being further of the opinion that said testator in his said Will devised said Tracts 1a and 1b to his wife, the said Mary A. Bunting, for the term of her natural life, with remainder at her death to the following persons in the following manner, to wit, an undivided one-third interest in fee simple to Mary B. Watson, an undivided one-third interest in fee simple to Estelle Cherrix, and an undivided one-third interest to Georgie T. Lewis for her life with remainder at her

death in said undivided one-third interest to her daughter, Mary Elizabeth Aycock, in fee simple, the court doth accordingly adjudge, order and decree that the said Mary B. Watson under the Will of said testator is seised of an undivided one-third interest in said Tracts la and lb in remainder in fee simple subject to the life estate of Mary A. Bunting; that the said Estelle Cherrix under said Will is seised of an undivided one-third interest in said Tracts la and lb in remainder in fee simple subject to the life estate of the said Mary A. Bunting; and that the said Georgie T. Lewis is seised of an undivided one-third interest in said Tracts la and lb for life, following the life estate of her mother, the said Mary A. Bunting, and that the said Mary Elizabeth Aycock under said Will is seised of an undivided one-third interest in remainder in fee simple subject to the life estates of the said Mary A. Bunting and the said Georgie T. Lewis; said tracts la and lb being bounded and described as follows, to-wit:

(la) A lot or parcel of land, known as the Homestead, situate in or near the Town of Chincoteague, Island Magisterial District, Accomack County, Virginia, containing four acres (4 A.), more or less, by estimation, bounded on the South, by the land of Verona Keyam; on the West, by Chincoteague Channel; on the North, by the lands of William P. Daisey and Sam Taylor; and on the East, by the land of Fred Bowden.

(lb) A certain lot or parcel of woodland, situate as aforesaid,



containing by estimation approximately twelve acres (12 A.), more or less, bounded on the West, by the land of Ray Beebe; on the North, by the Canal; on the East, by the William R. Thornton land; and on the South, by the land of James G. Daisey.

And the Court proceeding further is of the opinion that paragraph 9 of the answer of the respondent, Georgie T. Lewis, is insufficient in law, and doth accordingly sustain the demurrer filed to said paragraph 9 by the complainants, Mary B. Watson and Estelle Cherrix, but leave is granted to the respondent, Georgie T. Lewis, to withdraw her joinder in said demurrer and to file an amended answer within twenty-one days from the entry of this decree if she shall be so advised.

And the court proceeding further deems it unnecessary at this stage of the proceedings in this cause to pass upon the motion to reject the plea of the statute of frauds filed by Mary B. Watson and Estelle Cherrix to paragraph 10 of the answer of the respondent, Georgie T. Lewis, and leave is granted to the complainants to file such additional pleadings as they may be advised to the amended answer of the respondent, Georgie T. Lewis, should she elect to file one, said pleadings to be filed within twenty-one days from the date of the filing of said amended answer.

It is further ordered that the Clerk of this Court do make the following notation on the margin of the Will Book in his office in which the Will of the said Kendall J. Bunting, Sr. is recorded: "For construction of this Will see decree

entered in the chancery suit of Mary B. Watson et al v. Georgie  
T. Lewis et als on the 6 day of December, 1956, recorded in  
Chancery Order Book 195-416—, page 362."

And the court reserves further consideration.

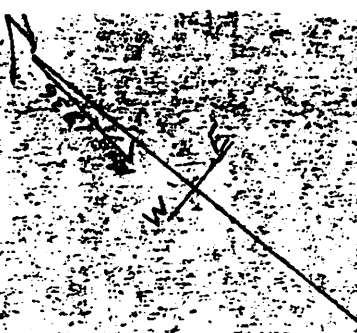
Office, December 21 A. D. 1976  
 part of Deed from Georgia B. Lewis  
Chincoteague Volunteer Fire

in Deed Book No. 379, Page 550

in Ayres

Clerk

RECORDED  
 INDEXED  
 FILED  
 JAN 14 1977



Helen C Davis

Mazie

Roeborn, K.

Mable Proctor

DAVIS STREET

S-40°-02'-E

SOUTH MAIN STREET

Formerly R. J. Bunting, Jr. DB 119 P. 166  
 C. Lee Savage  
 DB 319 P. 936

John W. Tarr  
 DB 274 P. 150  
 Vernon McIntosh  
 DB 312 P. 567

Chincoteague  
 Volunteer  
 Fire Co. Inc.

Chincoteague Volunteer Fire Co. Inc.  
 Formerly Florida Fire Co. Inc.

TOWN OF CHINCOTEAGUE MUNICIPAL

PLANNING EXHIBIT SEVEN

1 VIRGINIA:

2 IN THE CIRCUIT COURT FOR THE COUNTY OF ACCOMACK.

3

4 VERNON E. McINTOSH, et al, :

5 Complainants, :

6 v. :

RECORD.

7 CHINCOTEAGUE VOLUNTEER FIRE :

8 COMPANY, INC., :

9 Respondent. :

9

10

11

12

Before Hon. N. Wescott Jacob, Judge and Jury

13

Accomack County, Virginia

14

October 24, 1977

15

16

17

18

19 APPEARANCES: Messrs. Mapp and Mapp  
20 (Mr. William King Mapp and  
21 Mr. J. Nick Klein, III),  
22 attorneys for the complainants.

21

Messrs. Fears and Northam  
(Mr. Wescott B. Northam),  
attorneys for the respondent.

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

WITNESSES

DIRECT

CROSS

REDIRECT

RECROSS

McIntosh, V.	12	20	29	
Davis, H.	32	38	41	
Koedornick, M.	41	45	48	
McIntosh, V. (Rec.)	49	51		
McIntosh, J.	52	55	57	
Beebe, R. L.	58	72		
Lewis, H. E.	76	86		
Lewis, G.	95	102	112	112
Bloxom, N.	114	119		
Thornton, W.	123	126	127	128

EXHIBITS

DESCRIPTION

PAGE

Plaintiffs' Exhibit 1	Deed dated 6/25/08, from Kendall J. Bunting, et.ux, to William C. Bunting, et ux	
" " 2	Deed dated 2/25/20 from Kendall J. Bunting, et ux, to Kendall J. Bunting, Jr., et ux	
" " 3	Deed dated 1/4/50, from Kendall J. Bunting, Jr., et ux, to Nellie M. Bunting, et vir	
" " 4	Will of Nellie M. Bunting dated 7/23/70	
" " 5	Deed dated 2/1/72, from Daisy M. Litchkofski to Vernon E. McIntosh, et ux	

I N D E X (Cont.)

<u>EXHIBITS</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
Plaintiffs' Exhibit 6	Deed dated 11/22/67 from Georgia B. Lewis, et vir, to Chincoteague Volunteer Fire Company, Incorporated	
" " 7	Plat	
" " 8	Deed dated 12/6/76 from Georgia B. Lewis, et vir, to Chincoteague Volunteer Fire Company, Incorporated	
" " 9	Will of Mary A. Bunting dated 2/20/47	
" " 10	Will of Kendall J. Bunting dated 10/2/66	
" " 11	Diagram of property purchased in 1972	
" " 12	Letter dated 9/17/76 to Mr. and Mrs. Vernon McIntosh from Mr. R. Norris Bloxom	
Defendant's Exhibit A	Letter dated 1/25/72 to Mr. Vernon E. McIntosh from Mr. R. Norris Bloxom	

1           VERNON MCINTOSH, a plaintiff, called as a witness  
2 on his own behalf, having been first duly sworn, was examined  
3 and testified as follows:

4  
5                               DIRECT EXAMINATION  
6

7 BY MR. MAPP:

8                   Q       Mr. McIntosh, will you state your name and  
9 place of residence, please.

10                  A       Vernon McIntosh, 108 Davis Street,  
11 Chincoteague, Virginia.

12                  Q       And you and Mrs. McIntosh are the plaintiffs  
13 in this case; is that correct?

14                  A       That's correct.

15                  Q       Mr. McIntosh, did you acquire a parcel of  
16 real estate from Mrs. Litchkofski by deed dated February 1,  
17 1972?

18                  A       Yes, I did.

19                  Q       And I hand you here what's been marked as  
20 Exhibit Number 5 and will ask you if this describes the  
21 property that you acquired from Mrs. Litchkofski? Is that  
22 the property that you acquired?

23                  A       It is.

24                  Q       I hand you here a diagram and will ask you  
25 if you prepared this and is this a diagram of the property

1 that you acquired in that deed?

2 MR. NORTHAM: Your Honor please, I would  
3 object to the introduction of a diagram.  
4 Mr. McIntosh is not a surveyor. We have a plat  
5 of record here.

6 THE COURT: Could I see the --

7 MR. MAPP: Yes, sir.

8 THE COURT: All right. The diagram will  
9 be introduced as Plaintiffs' Exhibit 11.

10 Members of the jury, this diagram prepared  
11 by Mr. McIntosh who is not a surveyor is not to  
12 scale. It is not purported to be to scale. We  
13 don't know that the lines are made correctly. It's  
14 merely to show you the measurements that are in his  
15 deed.

16 MR. MAPP: That's correct.

17 MR. NORTHAM: For the record, I would like  
18 to object to the introduction of Exhibit 11 on the  
19 grounds that Mr. McIntosh is not a surveyor. It  
20 does not accurately depict the land in question.

21  
22 BY MR. MAPP:

23 Q Mr. McIntosh, I hand you Plaintiffs' Exhibit  
24 Number 11 and ask you if this is a diagram that you prepared?

25 A It is.



1           Q       In preparing this diagram, did you follow  
2 the description in the deed to you and Mrs. McIntosh from  
3 Mrs. Litchkofski?

4           A       I did.

5           Q       Suppose you come over here before the jury.  
6 Now, in trying to get our bearings straight on this,  
7 Mr. McIntosh, where is Main Street on Chincoteague? Does  
8 that appear on that map or not?

9           A       No, it does not.

10          Q       Will you point out Davis Street.

11          A       Davis Street is this one.

12          Q       And Davis Street is to the north of this  
13 property; is that correct?

14                   THE COURT: In order to try not to confuse  
15 the jury, let's turn one of them around so this  
16 will be in line with this.

17

18 BY MR. MAPP:

19          Q       This is Davis Street over here? This is  
20 correct, is it?

21          A       Yes.

22          Q       Now, who owns the property over here that  
23 you have marked "Fire Company"? Is that Chincoteague  
24 Volunteer Fire Company?

25          A       They use it so I assume they own it.

1 Q Right here?

2 A Right.

3 Q And the fire company owns the property over  
4 here?

5 A Yes, they do.

6 Q And the Town of Chincoteague owns the land  
7 south of it; is that correct?

8 A Town of Chincoteague or carnival ground or --

9 Q This is known as the carnival ground?

10 A Yes.

11 Q Now, will you take this pen and put a dotted  
12 line to distinguish so that we can show the jury the land  
13 that is in dispute?

14 A Starting at the corner marker and going --

15 Q Well, just put a dotted line. Put it so  
16 it shows on there.

17 A (Witness complied.)

18 Q All right. Suppose you put a "D" there so  
19 to designate the part that is in dispute. Just put a "D"  
20 in the center of it.

21 A (Witness complied.)

22 Q It's this piece of property right in here  
23 that's in dispute that you marked with a "D"?

24 A (Witness nodding head affirmatively.)

25 Q All right. You can have a seat back there.

1 When did you move to Chincoteague, Mr. McIntosh?

2 A 1967.

3 Q How did you happen to come there? Were  
4 you in the service or just selected Chincoteague as a place  
5 to live?

6 A I was in the Coast Guard.

7 Q Were you stationed at Chincoteague?

8 A Yes, I was.

9 Q Talk so the ladies and gentlemen can  
10 understand you. When you moved to Chincoteague, where did  
11 you live?

12 A At 103 Davis Street.

13 Q Was that on this property or near this  
14 property?

15 A Near that property.

16 Q How near was it?

17 A Diagonally fifty to one hundred feet across  
18 the street.

19 Q When did you -- did you rent the property  
20 before you lived there, the property we're now talking about?

21 A No, I did not.

22 Q Who owned it at that time?

23 A Mrs. Nellie Bunting.

24 Q Do you remember about when she died?

25 A 1971, I think.

1 Q Did you talk to her about buying this  
2 property?

3 A No, I hadn't.

4 Q Now, suppose you come over here again just  
5 a moment.

6 Was there a dwelling on the property that  
7 you ultimately bought?

8 A There was a house right here.

9 Q Suppose you put about where the house was  
10 and put an "H".

11 A (Witness complied.)

12 Q Now, this is where the house was?

13 A It's still there.

14 Q As a matter of fact, that's your home at  
15 the present time, is it not?

16 A It is.

17 Q All right. When did you first talk to  
18 anyone about buying this property?

19 A Sometime around the end of '71 or first part  
20 of '72.

21 Q To whom did you talk?

22 A To Ms. Daisy Litchkofski.

23 Q Now, to get the relationship correct, what  
24 relation was Ms. Litchkofski to Mrs. Nellie Bunting?

25 A Her sister.

1 Q And I think from the evidence introduced  
2 here she acquired all of Mrs. Nellie Bunting's property on  
3 Chincoteague, did she not, by will?

4 A I think so.

5 Q Now, in your talks with this lady, she is  
6 the one that gave you the deed?

7 A Ms. Litchkofski?

8 Q Right.

9 A Right.

10 Q According to that, you acquired that in '72.  
11 Did you go on the property after you bought it to live there?

12 A Yes, I did.

13 Q About when? Do you remember how long after  
14 your deed before you moved on it?

15 A Approximately thirty days.

16 Q And what did you do when you got on the  
17 property?

18 A Started cleaning it up.

19 Q And tell us how you cleaned it up? What  
20 did you do?

21 A I started cutting down bushes, cleaning up  
22 the yard area of the house.

23 Q How long had you been on the property before  
24 anyone raised any question about the ownership of it?

25 A Almost a year.

1 Q Had you cleaned it up within that year?

2 A Sixty or seventy percent of it.

3 Q What was the first thing said to you in  
4 relation to the property?

5 A I had put a temporary hothouse for the wife  
6 to get an early start on some flowers and Mr. Lewis notified  
7 us by phone that we were on their property.

8 Q Was that the first notice you had had that  
9 anyone else was claiming the property?

10 A Yes, sir.

11 Q Did you continue to use the property?

12 A Yes, sir.

13 Q Did you continue to use it right up to the  
14 time that suit was filed?

15 A Yes, I did.

16 Q And did you have any talks with Mrs. Lewis  
17 about it?

18 A Just her husband.

19 Q Did you ever talk to her about it?

20 A No, I didn't.

21 Q Did she ever talk to you?

22 A Only when I went there the first time that  
23 they told me I was on their property.

24 Q Well, what was said then?

25 A Well, I can't really remember. They brought

1 out a handwritten deed to where Mr. Bunting, her father,  
2 owned everything on the Island. I really didn't make heads  
3 nor tails of it.

4 Q Had they seen you when you started cleaning  
5 up the property? They live right by there, don't they?

6 A They should have because they had a daughter  
7 that lived right next to it.

8 Q Which daughter was that?

9 A Mary Elizabeth Tarr.

10 Q Carter?

11 A Tarr.

12 Q I see.

13 MR. MAPP: All right. That's all.

14 Answer Mr. Northam.

15

16 CROSS-EXAMINATION

17

18 BY MR. NORTHAM:

19 Q The lady, Mrs. Litchkofski, the lady from  
20 whom you bought this, she lived in Philadelphia, did she not?

21 A Yes, she did.

22 Q Was she not an elderly person at the time  
23 you started negotiating with her for the purchase of that  
24 land?

25 A Yes, she was.

1 Q Well, when she signed this deed, was that in  
2 Philadelphia or was that in Accomack County?

3 A I couldn't tell you.

4 Q Well, if you look at the deed, I think you  
5 will see that it was in Philadelphia or in Pennsylvania  
6 that she signed the deed. I have forgotten the exhibit, but--

7 THE COURT: Exhibit 5.

8  
9 BY MR. NORTHAM:

10 Q I hand you Exhibit 5 and if you will look at  
11 the notary certificate and tell the jury what that states.

12 A State of Pennsylvania. Do you want me to  
13 read the whole thing?

14 Q No, you don't have to read it.

15 A She signed it.

16 Q Who prepared this deed for Mrs. Litchkofski?

17 A I think Norris Bloxom.

18 Q In fact, didn't you go to Mr. Bloxom with  
19 the dimensions and tell him how to write the deed with a  
20 sketch?

21 A I went to him with a sketch.

22 Q And who prepared the sketch?

23 A Well, I prepared the sketch.

24 Q What did you prepare the sketch on?

25 A Just a piece of paper like I had right there.



1                   Q       Excuse me. That's my vagueness there. I  
2 will make myself a little clearer. You have a detailed deed  
3 here. Looking at your deed and reading from your deed, says,  
4 "Commencing at a certain iron stob situate on the southwestern  
5 side of Davis Street on the line between the lot herein conveyed  
6 and the land of John W. Tarr and Mary Elizabeth Tarr." Did  
7 you give Mr. Bloxom that starting point for your sketch?

8                   A       Yes.

9                   Q       My question is Where did you get this  
10 information to put on the sketch to give to Mr. Bloxom to  
11 write the deed?

12                  A       Because that's where Mr. Tarr's landmark  
13 was at and that's where he assumed and I assumed mine started.  
14 We had no dispute over it.

15                  Q       There is no dispute at all with regard to  
16 your line between Mr. Tarr and where your property starts on  
17 Davis Street; is that correct, that being this point right  
18 here?

19                  A       Right.

20                  Q       Now, your deed says commencing at that point  
21 and going one hundred twenty feet along Davis Street to a stob  
22 situate on the line between the lot herein conveyed and the land  
23 of the Chincoteague Volunteer Fire Department. I believe it  
24 would be easier if you came up here so the jury can see it.  
25 In other words, you had your sketch and you said one hundred

1 twenty feet from here down to here; is that correct?

2 A Well, I didn't have no footage in this  
3 sketch. The only thing we started was right here and he  
4 prepared it all except this line right there by the will.

5 Q Didn't you put on your sketch one hundred  
6 fifty feet from here to here?

7 A No, I did not.

8 Q You deny doing that?

9 A Right.

10 Q Well, just tell the jury what you did give  
11 Mr. Bloxom to prepare this deed.

12 A I drew something just like this right here  
13 and told Mr. Bloxom that right there the two parties owned  
14 this one and myself if I bought it we would agree on this  
15 stob that he had there at the time. I don't think it's  
16 there now.

17 Q Actually, there was no iron stob there, was  
18 it? You say to an iron stob there.

19 A I didn't put to an iron stob there.

20 Q Your deed says to an iron stob.

21 A I know it does.

22 Q But there was no iron stob there?

23 A Not that I have ever found.

24 Q Where did the word iron stob come from?

25 A Started right there. We put a piece of pipe.

1           Q       But it says, "...thence running along the  
2 southwestern side of Davis Street in a southeasterly direction  
3 a distance of one hundred twenty feet, more or less, to a  
4 certain iron stob..." so that would have to be right in there,  
5 would it not?

6           A       It would have to be in that area.

7           Q       But you say there is no iron stob there?

8           A       I couldn't tell you because at the time I  
9 purchased, I never looked.

10          Q       My question is Where did you get the word  
11 "iron stob" if you took a sketch to Mr. Bloxom? Do you know  
12 where he got it?

13          A       I didn't put no iron stob. We had a pipe  
14 right here. He made up a whole thing except for this line.  
15 He called me back a week or so later and said, "How far is  
16 that across there?" I said, "I don't know." He said,  
17 "Check with the fire company." I made a couple of calls.  
18 I told him I didn't know the line. He said, "How far do  
19 you think it is across the back?" I said, "It is probably  
20 sixty-four feet, maybe seventy." I don't know.

21          Q       Was there any discussion about this  
22 distance from here to here?

23          A       I don't know.

24          Q       In fact, didn't he write you a letter tell  
25 you that you did not own this land?

1 A No, he did not.

2 Q You never got a letter from Mr. Bloxom  
3 stating that the diagram you had furnished him was more than  
4 Mrs. Nellie Bunting or Ms. Litchkifski could sell?

5 A No, sir.

6 Q You deny that?

7 A Yes, sir.

8 Q You're saying that you gave Mr. Bloxom a  
9 diagram something like this with no dimensions on it?

10 A Yes, sir.

11 Q Did you go to talk with Mr. Herman Lewis at  
12 any time and offer to buy this property from Mr. and  
13 Mrs. Lewis?

14 A The piece in dispute?

15 Q Yes, sir.

16 A Yes, I did.

17 Q If you felt that you owned it, why did you  
18 go and offer to buy it?

19 A Under our lawyer's advice.

20 Q Did you make an offer?

21 A No, sir. He made it for me.

22 Q Pardon?

23 A No, sir.

24 Q Who advised you to go make an offer to buy  
25 it?

1           A       Do you want me to start from the front, from  
2 the beginning?

3           Q       Just answer my question.   Was that  
4 Mr. Bloxom?

5           A       Yes, but the way he put it --

6           Q       Just answer my question.

7           MR. MAPP:   I think he has a right to  
8 explain.   He asked him the question why he said it.

9           THE COURT:   I will allow him to answer it.

10          A       (Continuing)   I went to Mr. Bloxom about  
11 it.   He said, "Well, it's your property."   He kept telling  
12 me this for three years and then when I finally went to him  
13 the last time he said, "If you go to Mr. Lewis and ask them  
14 if they think they own it how much do they want for it."

15

16 BY MR. NORTHAM:

17          Q       Mr. McIntosh, didn't you go to see  
18 Mr. Beebe immediately after you got home from overseas and  
19 went over all of this and Mr. Bloxom was in this at the same  
20 time and you were told that you did not own it?

21          A       Well, Mr. Bloxom never told me.   I did go  
22 see Mr. Beebe about it.   Mr. Beebe said it was his opinion  
23 that maybe I didn't own it and I would go see Mr. Bloxom and  
24 he said, "Well, you do own it."

25          Q       And you say you never got a letter from

1 Mr. Bloxom saying you didn't own it?

2 A No, sir, I have not.

3 Q Did you send this deed to Ms. Litchkofski  
4 or did Mr. Bloxom send it to her for her signature?

5 A Mr. Bloxom must have.

6 Q You did not see it after it was done by  
7 Mr. Bloxom?

8 A Not until the day it was turned over to me.

9 Q And you're telling the jury that the only  
10 thing you put on your sketch was a first starting point and  
11 Mr. Bloxom furnished the rest of it?

12 A I guess he must have. It came up from  
13 somewhere.

14 Q Now, when you bought this property, wasn't  
15 it all grown up in bushes and brush and trees and what have  
16 you in the back part, this piece that is in dispute?

17 A The biggest part of it was, yes.

18 Q And at some point and time, you say a year,  
19 Mr. and Mrs. Lewis came to you and told you that you did not  
20 own that property; is that correct?

21 A Right.

22 Q And what was the nature of that conversation?

23 A That's about all there was of it. We went  
24 to their house and they read me some kind of deed that I  
25 didn't understand or tract of land that I didn't understand.

1 Q Wasn't that the deed of Kendall Bunting to  
2 Kendall Bunting, Jr. that said ninety-four feet by three  
3 hundred fifty-seven feet? That's not too difficult to  
4 understand, is it?

5 A I don't know whether it was or not because  
6 all I seen was one little section in there. He read one  
7 little section in there about something being bounded by  
8 something. There was no mention of footage in there.

9 Q Well, your own exhibit, Mr. McIntosh, from --  
10 that you or your counsel introduced for you refers very  
11 specifically to the footage, doesn't it? Is this the deed?  
12 Isn't this the deed that Mr. and Mrs. Lewis showed you?

13 A I couldn't tell you.

14 Q Well, that's the deed from --

15 A I never got to look at it that close. He  
16 had it laid out on the table. He was reading it and I was  
17 trying to picture in my mind what he was reading.

18 Q Have you ever seen any deed that showed that  
19 Kendall Bunting or Mrs. Nellie Bunting ever owned anything  
20 wider than ninety-four feet?

21 A No, sir, I can't say that I have.

22 Q How is it that you feel that you own  
23 something one hundred fifty feet deep when the widest part  
24 of the land that Nellie Bunting owned was ninety-four feet?

25 A Because my deed calls for it.

1 Q Even though your deed calls for it, it  
2 can't exceed what the person owned.

3 A Well, I don't know what the person owned.  
4 All I know that's what my deed calls for and that's what I  
5 think I should own.

6 Q And you prepared the sketch for the lawyer  
7 to draw the deed?

8 A No. He asked me what the property looked  
9 like and I told him in an L shape so he said, "Draw it out,"  
10 so I drew it out.

11 Q And he wrote the deed based on what you  
12 drew up?

13 A I guess he based it on her will. I  
14 couldn't tell you.

15 MR. NORTHAM: That's all.

16  
17 REDIRECT EXAMINATION

18  
19 BY MR. MAPP:

20 Q Before I forget it, is Mrs. Litchkofski  
21 still living?

22 A No, sir, she's not.

23 Q And when did she die?

24 A This past year. Couple months ago.

25 Q Will you come over here just a second,



1 please. Now, Mr. Northam was asking you about the deeds in  
2 your record title. I have here the will of Mrs. Nellie  
3 Bunting, July 23, 1970, described as Tract Number 3.  
4 "My sister, Daisy M. Litchkofski, is to have my land and lot  
5 next to my house at 108 Davis Street." Is that the property  
6 you now own?

7 A That's the property I now own.

8 Q "Also my house at 108 Davis Street, land on  
9 the west by Nellie M. Bunting." Now, where was the Nellie  
10 M. Bunting land she's referring to there? Can you show  
11 it on this diagram?

12 A It would be this little lot here, I guess.

13 Q That's the place that the Tarrs own now; is  
14 that right?

15 A They own next to that.

16 Q Running back to the carnival grounds? Now,  
17 where are the carnival grounds on that?

18 A Back here.

19 Q On the east by the lands of the carnival  
20 grounds. Where would that be?

21 A Here.

22 Q And on the south by the carnival grounds.  
23 Where would that be?

24 A That would be here.

25 Q So in your chain of title this property as

1 you outlined it here is described, is it not?

2 A Yes, it is.

3 MR. MAPP: That's all.

4 THE COURT: Let me just ask one question  
5 to be sure the jury understands. It could be  
6 confusing. The land here is owned by Chincoteague  
7 Volunteer Fire Company?

8 THE WITNESS: Yes.

9 THE COURT: And the land back here is  
10 owned by the Chincoteague Fire Department?

11 THE WITNESS: Yes, sir.

12 THE COURT: All right, sir.

13 MR. MAPP: That's all I have.

14 THE COURT: Do you have any other questions?  
15 All right, sir. You may stand down.  
16  
17

18 -----oOo-----  
19  
20  
21  
22  
23  
24  
25

1           HELEN DAVIS, called as a witness on behalf of the  
2 complainant, having been first duly sworn, was examined and  
3 testified as follows:

## DIRECT EXAMINATION

7 BY MR. KLEIN:

8 Q Now, Ms. Davis, I will get real close so  
9 you can hear me. Would you state your name for the jury,  
10 please.

.11	A	Helen Davis.
-----	---	--------------

12 Q And where do you live?

18	A	Chincoteague.
----	---	---------------

14 Q Where exactly on Chincoteague do you live?

15	A	557 South Main Street.
----	---	------------------------

16 Q Now, how far is that from the piece of  
17 property that's in dispute today?

18                   A           Well, I couldn't exactly tell you how far,  
19 but it's just one house between me and them.   They are on the  
20 other side of the street from me.

21 Q You can see the property from where you live?

22 A I sure can.

23 Q And how long have you lived there where you  
24 live?

25                   A           Ever since February 2, 1929.

1 Q Now, do you remember Kendall J. Bunting, Jr.,  
2 and Nellie Bunting? Did you know them?

3 A Very well. Very well.

4 Q They are both dead now?

5 A Both dead.

6 Q Do you remember where they lived?

7 A Yeah, right there where Mr. McIntosh lives.

8 Q At 108 Davis?

9 A Yes.

10 Q Now, what buildings were on that property  
11 back when you remember?

12 A It was a house -- what Mr. McIntosh has got  
13 now, but it wasn't like it is now, and they used that back  
14 land. They had chicken coops on it and had their toilet  
15 out there. They didn't have no toilet in the house, the  
16 Bunting man didn't.

17 Q I'm going to show you a diagram of  
18 Mr. McIntosh's property. Now, this is Davis Street right here.

19 A Yeah.

20 Q This is where the house is now?

21 A Yeah.

22 Q This is the property back here that's in  
23 dispute. Now, where did they have these chicken coops and  
24 outhouses, et cetera, can you show the jury?

25 A Is this the back?

1 Q This is the back that's in dispute.

2 MR. NORTHAM: Your Honor, I don't think

3 Mr. Klein --

4 A They had on this back land?

5

6 BY MR. KLEIN:

7 Q Right.

8 A They had a toilet about middleway of that  
9 land.

10 Q What else did she have back there?

11 A She had her chicken coops. She raised  
12 setting hens. She didn't have no incubator. Just for her  
13 own use. She had her chicken coops out there on that.

14 Q When you say "she" who are you talking about?

15 A Nellie Bunting. And he had a fence right  
16 between him and the carnival racetrack. They used to race  
17 horses out there when they first started the carnival and they  
18 had a racetrack there and Jim Conners (sic) joined that  
19 racetrack and they would get in on his garden and so he put  
20 some more fence there to his garden.

21 Q Where do you mean; where did he put this wire?

22 A This ain't Jim Conner's property. They  
23 bought that before. Anyway, I used to go through there and  
24 go on that racetrack to the Greenwood Cemetery and Ken had a  
25 fence right across the back there, and he had cultivated

1 blackberries on it. I used to always notice it when I went  
2 through and he joined that racetrack with this fence back  
3 there.

4 Q And that racetrack was right over here?

5 A Yes, then.

6 Q I'm going to hold that up a little bit so the  
7 jury can see and I want you to point out again where he had  
8 his fence.

9 THE COURT: Where who had their fence?

10  
11 BY MR. KLEIN:

12 Q Who had the fence, now?

13 A Young Ken.

14 Q Is that Ken Junior?

15 A Yeah, Ken Junior.

16 Q Show them one more time. Point to the fence  
17 for the judge and the jury. Where was the fence again?  
18 Point to it for me.

19 A Right across there.

20 MR. KLEIN: Let the record show the boundary  
21 line between the property in dispute and the Town  
22 of Chincoteague property.

23 A (Continuing) They went to Philadelphia after  
24 that and Ken worked in Philadelphia a long time and then when  
25 he come home he added rooms onto his house and put a bathroom

1 in the house, but they still used that and still kept that  
2 fence across the back.

3  
4 BY MR. KLEIN:

5 Q They still used the back part?

6 A Yeah.

7 Q When do you first remember seeing this  
8 toilet in -- when do you first remember seeing this?

9 A I don't remember the last of it, but I  
10 remember it was there for years and years, but I think it  
11 just rotted and fell down. After that Ken built a house out  
12 front and he rented that out all the time. He let it go up  
13 in weeds and briars and when Mr. McIntosh bought it it was  
14 nothing but weeds and briars in the back lot and he had had  
15 it filled up and a lot of work done to it in the back since  
16 he bought it.

17 Q But in 1929 when you moved there was there  
18 some of this stuff back there at that time, the toilet and  
19 the chicken coops?

20 A Yeah.

21 Q About how many years did it stay there?

22 A Oh, I don't know. It stayed until it rotted  
23 down, the toilet did. Fell over. It was still there, I  
24 think, when Ken left and went out front to live, and she  
25 raised chickens as long as she stayed there, but they built

1 out front. They didn't live out front very long, not a year  
2 or two before he died.

3 Q Okay. When did he -- they move out front  
4 to Main Street?

5 A Well, I couldn't exactly tell you the year,  
6 but he died in 1950, Ken did.

7 Q And he died you said about a year or two  
8 after they moved?

9 A Yeah.

10 Q And he rented the house out to different  
11 people, that house where Mr. McIntosh had gone?

12 A Yes.

13 Q What do you remember of these people that  
14 lived there that rented?

15 A Well, they were most service people. They  
16 had two or three different service people there, but it was  
17 a fellow named Mapp that lived there and I tell you the truth  
18 I don't know the other people because I stayed away a lot of  
19 the time. My sister was sick and I was away a lot. I  
20 don't know what their names were, but Mapp was the last one  
21 that lived there before Mr. McIntosh bought it.

22 MR. KLEIN: Mr. Northam will ask you some  
23 questions now, okay?

24

25



CROSS-EXAMINATION

BY MR. NORTHAM:

Q Ms. Davis, Ken Junior who owned this property and lived back here where you're talking about, he was the son of Kendall Senior; is that correct?

A You have to talk loud to me. I'm hard of hearing.

Q Ken Junior who lived back in this house that you just described, he was the son of Ken Senior?

A Ken Senior?

Q That's right. Ken Senior was his father?

A Yeah.

Q And it was Ken Senior who gave Ken Junior this piece of land from Main Street that went back three hundred and fifty-seven feet; is that right?

A I don't know if he give it to him or whether he bought it.

Q I think the deed says a deed of gift, but I'm not certain of that but, anyway, it was transferred or conveyed to his son, Junior, by his father so if Ken Junior used this piece of land in the back of his house for a garden and chickens and an outhouse, it wouldn't be anything unusual about his father using it for that, would it? In other words, you don't think Ken Senior would object to his son --

1 A I don't know about that, but his wife told  
2 me --

3 Q I object to what his wife told you.

4 A They paid for it, but --

5 Q What I'm saying, there is nothing unusual  
6 about a father letting a son use part of his land for a  
7 garden or outhouse?

8 A Well, I guess not.

9 Q And Ken Junior after he moved out of this  
10 house moved up here on the corner; is that right?

11 A Yeah.

12 Q Where Lee Savage bought?

13 A Yeah.

14 Q And as soon as Ken Junior moved out, the  
15 outhouse fell down and the garden grew up and burs and weeds;  
16 is that correct?

17 A But the fence still stayed across the back.  
18 That was --

19 Q That fence was actually put up by the fire  
20 company, was it not? Wasn't there a racetrack up beside  
21 there?

22 A It was put up by Ken or somebody. Ken's  
23 fence.

24 Q There was only one fence there, wasn't there?

25 A Yeah. At that time it joined the racetrack

1 when he put that fence there. They hadn't bought Jim  
2 Conner's property.

3 Q I understand that, but what I'm saying is  
4 this fence was put up by the fire company so they could have  
5 a racetrack around the carnival ground --

6 A Oh, the racetrack was, yeah.

7 Q And that was that fence that I'm talking  
8 about?

9 A And that joined that racetrack. They didn't  
10 own the part where Jim Conner lived.

11 Q Right. I understand, but what I'm saying  
12 is after Mr. and Mrs. Ken Bunting, Jr. moved up here on the  
13 corner -- that's backwards -- up here on the corner,  
14 everything grew up and --

15 A And briars and weeds. Whoever lived there  
16 didn't --

17 Q And nobody used it after they moved up to  
18 the corner?

19 A It grew up in weeds. Of course they used  
20 it if they wanted to.

21 Q I understand that, but my question is that  
22 nobody used it?

23 A No.

24 MR. NORTHAM: Okay. Thank you, ma'am.

25

REDIRECT EXAMINATION

BY MR. KLEIN:

Q Let me ask you one more time now. Who put that fence up in the back by the carnival ground?

A Ken Bunting. Young Ken Junior.

MR. KLEIN: Thank you.

THE COURT: All right. Thank you, ma'am.

-----o0o-----

MAZIE KOEDORNICK, called as a witness on behalf of the complainant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MAPP:

Q Will you state your name and place of residence, please.

A Mazie Koedornick, 103 Davis Street, Chincoteague.

Q I hesitate to ask you this.

1 Do you mind stating how old you are?

2 A I will be sixty-seven in January.

3 Q How long have you lived on Davis Street?

4 A I went there in '34.

5 Q Have you lived there continuously since that  
6 time?

7 A No. I left and remarried in Delaware for  
8 a while.

9 Q About when was that?

10 A That was 1950 I went to Delaware.

11 Q And have you been back there since then?

12 A Back five years.

13 Q Are you familiar with the property in  
14 question?

15 A Yes, I am.

16 Q And you, of course, knew Kendall Bunting,  
17 Jr., I take it, and his wife, Mrs. Nellie Bunting?

18 A Yes.

19 Q Do you recall when they lived where  
20 Mr. McIntosh is living now?

21 A I do. We were neighbors.

22 Q How near did you live?

23 A I lived across the street. Near about across  
24 the street from them.

25 Q Now, when you were there in '34, of course,

1 they were both living at that time?

2 A They were both living, yes.

3 Q And what use did they make of this property?

4 A Well, it was growed up and it did have a  
5 fence in the back, but it was an old outhouse that they used  
6 for a toilet just about middleway and they did have chicken  
7 coops there for chickens.

8 Q You remember the fence?

9 A I do.

10 Q And who raised the chickens there?

11 A Nellie Bunting.

12 Q I see. Was that the condition when you  
13 moved there in 1934?

14 A Yes, it was.

15 Q Did anyone else use the property?

16 A Well, after they died, the house was rented  
17 out.

18 Q But during their lives?

19 A No, they used it theirselves.

20 Q Now, Mrs. Lewis was living at that time was  
21 she not?

22 A As far as I know.

23 Q I see. Well, how near did she live to this  
24 property?

25 A I don't know. I couldn't tell you.

1 Q I see. I think according to the records  
2 here that Mr. Kendall Bunting, Jr., died around 1950. Did his  
3 widow, Mrs. Nellie Bunting, continue to occupy the property?

4 A Yes, she did.

5 THE COURT: I don't understand. What  
6 property did she continue to occupy?

7 THE WITNESS: She was living out front when  
8 she died in a new home.

9  
10 BY MR. MAPP:

11 Q Do you know about when they moved to the  
12 new home?

13 A Well, I imagine -- see, my husband died in  
14 '48 and I was in right smart trouble because I was several  
15 months pregnant. I don't remember the exact date because  
16 I didn't pay the exact attention.

17 Q Well, did Nellie Bunting -- did she continue  
18 to use the property in the manner that you have outlined until  
19 the time that she left?

20 A Yes.

21 Q Until she moved into her new home?

22 A Yes.

23 Q Now, following that, I understood you to say  
24 that she rented the property?

25 A Yes, she did.

1 Q To different people from time to time?

2 A (Witness nodding head affirmatively.)

3 Q So as far as you know did the people that  
4 rented it from her have access to the entire property?

5 A As far as I know.

6 Q They could make whatever use they wanted of  
7 it, couldn't they?

8 A As far as I know.

9 Q The house, I take it, by that time had  
10 inside plumbing?

11 A Yes.

12 Q Do you have any interest in the world in  
13 this case?

14 A No, I don't.

15 MR. MAPP: Answer Mr. Northam.

16

17 CROSS-EXAMINATION

18

19 BY MR. NORTHAM:

20 Q Ms. Koedornick -- is that how you pronounce  
21 that?

22 A Yes.

23 Q When is it -- I didn't quite get those  
24 dates straight -- that you moved from Chincoteague?

25 A I moved from Chincoteague in 1950 and --



1 the beginning of 1950.

2 Q All right. And how long was it that you have  
3 been away from Chincoteague?

4 A Around eighteen years.

5 Q So it was around 1968 or '67 then that you  
6 moved back to Chincoteague?

7 A Well, I moved back. I married a man from  
8 New Jersey. I didn't like New Jersey and we moved back to  
9 Chincoteague. We lived a year at my home on Davis Street  
10 and he didn't like Chincoteague so then we bought a home in  
11 Pocomoke.

12 Q Well, what were those dates then that you  
13 came back --

14 A '51

15 Q And then you were on Chincoteague about a  
16 year and then moved to Pocomoke?

17 A Yes.

18 Q So you don't really know what was going on  
19 on that property from the time you left Chincoteague until  
20 the time you got back?

21 A Well, I came back -- see, the McIntoshes  
22 was living in my home and I used to come there -- go there  
23 and I knew they had renters into the house across the street.

24 Q But you didn't go out the back of the  
25 property and look --

1           A       I can see.    It's right across the street  
2 from me.

3           Q       But wasn't it all grown up at that time?

4           A       Yes, but it was grown up more after they --  
5 the toilet was still there.

6           Q       No one was using the toilet were they?

7           A       Not as I know of.

8           Q       It was just an old abandoned toilet that was  
9 sitting out there falling down?

10          A       Uh-huh.

11          Q       So from the time you left Chincoteague then  
12 until the time you moved back, you really don't know what was  
13 going on in back of that property, do you?

14          A       No, only when I visited.    It was rented,  
15 that's all I know.

16          Q       And at that time it was all grown up --

17          A       I didn't pay no attention to it.

18          Q       Mrs. Bunting at that time had moved up  
19 front on Main Street?

20          A       Yes.

21                   MR. NORTHAM:    Thank you.

22

23

24

25

1           VERNON McINTOSH, a complainant, recalled as a  
2 witness on his own behalf, having been previously sworn,  
3 resumed the stand and testified as follows:

4  
5                               DIRECT EXAMINATION (Rec.)  
6

7 BY MR. MAPP:

8           Q           Mr. McIntosh, Mr. Northam asked you about  
9 a letter that you had received from Mr. Bloxom. I hand you  
10 here a letter dated August 17, 1976, and will ask you if  
11 you received this letter from Mr. Bloxom?

12           A           Yes, I did.

13                       MR. NORTHAM: May I take a look at it?

14                       MR. MAPP: Yes.

15                       If Your Honor please, we would like to  
16 offer this in evidence.

17                       THE COURT: All right, sir. The letter  
18 from Mr. Bloxom to Mr. and Mrs. McIntosh dated  
19 August 17, 1976, is marked Plaintiffs' Exhibit 12.  
20

21 BY MR. MAPP:

22           Q           Mr. McIntosh, will you read this to the  
23 jury, please.

24           A           "Dear Mr. and Mrs. McIntosh: When you were  
25 in the office some time ago, we could not locate my file

1 which contained the information from which I prepared the  
2 deed from Mrs. Litchkofski to you. I now have this file  
3 and can tell you that I drew the deed from a sketch which was  
4 prepared in your presence and discussed with you. I also  
5 sent a copy of the sketch to Lee Savage, who represented  
6 Mrs. Litchkofski, for his approval. My letter to you of  
7 January 25, 1972, which included a sketch, stated that same  
8 was prepared from the County Map, but that 'this County Map  
9 might not be accurate'. In my letter, I asked you to  
10 check the boundaries with the adjoining landowners before  
11 I drew the deed. My letter to Mr. Norman Mason who was the  
12 attorney for the bank and for you in this matter, stated that  
13 I had had considerable difficulty locating some of the  
14 boundary lines. As you are aware, I did not represent you  
15 in the action, but rather represented Mrs. Litchkofski. I  
16 have recently discussed the matter with Ronny Beebe, and it  
17 is his opinion that you do not own the area which is now  
18 being questioned.

19 "As stated above I prepared the deed from  
20 the best available information. If you would like to discuss  
21 this further I would be happy to do so, and I hope that you  
22 are able to work out some agreement with the lady who is  
23 now claiming a part of this lot. Very truly yours, R. Norris  
24 Bloxom."

25 MR. MAPP: Thank you. That's all.

CROSS-EXAMINATION (Rec.)

BY MR. NORTHAM:

Q Wait a minute, Mr. McIntosh. Wasn't there other letters before this?

A No, sir, none that I received.

Q Well, Mr. Bloxom has indicated that he was having trouble establishing the boundaries and didn't he at one time, and I ask you again, tell you you did not own this part or Mrs. Litchkofski did not own this part which you wanted included in the boundary lines?

A Not until 1976.

Q Didn't you go to Mr. Bloxom and tell him that you had cleared everything with the adjoining landowners and it would be all right to write the deed according to the way it's written now?

A No, I did not.

MR. MAPP: That's all. Thank you.

I take Mrs. McIntosh.

-----oOo-----



1 proper for her to go into all this conversation  
2 with Mr. Bloxom.

3 THE COURT: She cannot testify to what  
4 Mr. Bloxom told her.

5  
6 BY MR. MAPP:

7 Q After talking to Mr. Bloxom, what did you  
8 do?

9 A I told Mr. Beebe not to put the marker  
10 there. He stated it did not determine who owned the land,  
11 it was just to determine who -- where the line was.

12 Q The line we're talking about, is this line  
13 right here; is that correct? Is that the one you objected  
14 to his running?

15 A Yes. This one right here and this one  
16 here.

17 Q Suppose you put just a little "X" there.

18 A (Witness complied.)

19 Q So from your evidence you did not agree to  
20 this line being run there?

21 A No, I didn't.

22 Q When you and Mr. McIntosh acquired this  
23 property in 1972, was Mrs. Lewis living in Chincoteague at  
24 that time?

25 A Yes, she was.

1 Q What did you do after you acquired the  
2 property to it, if anything?

3 A To the property itself?

4 Q Yes.

5 A My husband went out and cleared a lot of the  
6 shrubbery up and trees and things and cleared it all off and  
7 put fill in it. He was planning on building a garage out  
8 there is what we were getting it ready for.

9 Q And how long did that go on before there was  
10 any objection to it?

11 A About a year.

12 Q Mrs. Lewis lives there in the vicinity, I  
13 take it?

14 A Yes. Down the street on Main Street she  
15 lives.

16 Q How far had you proceeded in getting it  
17 cleared up before an objection was raised?

18 A We had quite a bit of it cleared. As he  
19 stated, he was building me a small hothouse to start some  
20 seeds with. That's when we got the phone call stating that  
21 we were building something on their property.

22 Q Was that the first notice you had had of  
23 any adverse claim to your property?

24 A Yes, sir.

25 MR. MAPP: Answer Mr. Northam.



CROSS-EXAMINATION

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BY MR. NORTHAM:

Q Mrs. McIntosh, do you recall when it was that Mr. Beebe was on the property surveying it?

A What the date was?

Q I don't mean to the day. Say a year -- I mean the year?

A I'm not -- no, I can't exactly tell you what year it was. It's not been too long ago, though.

Q Who was present when you said you told him not to put any markers down? Who was present at that time?

A Mr. and Mrs. Lewis was out there, but they were not where Mr. Beebe was standing. Him and I were standing on the corner there when I told him.

Q Didn't you have a conversation with Mrs. Lewis at that time and offer to buy the property from her?

A Yes. As Mr. Bloxom had stated --

Q You hadn't consulted Mr. Bloxom at that time? Nobody even knew there was a dispute?

A Yes. We had consulted Mr. Bloxom when he was surveying. I had called him that morning.

Q Had Mr. Bloxom suggested to you if you could buy it you had better buy it?

1           A       He said to ask them if they owned it what  
2 they planned on doing with it.

3           Q       Why did you make an offer to buy it?

4           A       He figured since there is so much land  
5 dispute on Chincoteague it would have been the easiest way if  
6 Mrs. Litchkofski was willing to do it this way.

7           Q       Let's go back again. I'm not quite clear  
8 on why you offered to buy it when Mr. Beebe was on the site --  
9 when Mrs. Litchkofski was there with Mr. Beebe.

10          A       As I stated that Mr. Bloxom told us to  
11 ask them this. If they thought they owned it what they had  
12 planned on doing with it.

13          Q       In other words, you had already consulted  
14 Mr. Bloxom before Mr. Beebe got there; is that correct?

15          A       Mr. Beebe was out there when I talked to  
16 Mr. Bloxom on the phone.

17          Q       Had you consulted Mr. Bloxom before that?

18          A       Yes. When they stated that they owned it  
19 we had talked to Mr. Bloxom.

20          Q       And was there an offer to buy it at that  
21 time?

22          A       Not at that time, no.

23          Q       When were the offers to buy it made?

24          A       When it was started to be surveyed.

25          Q       When you and Mr. McIntosh bought the

1 property, was it not completely grown up in underbrush?

2 A Most of it was, yes.

3 Q It was not being used for anything at that  
4 time?

5 A Not to my knowledge.

6 MR. NORTHAM: That's all. Thank you.

7

8 REDIRECT EXAMINATION

9

10 BY MR. MAPP:

11 Q Prior to that time it had been occupied by  
12 tenants, had it not?

13 A Yes. It had been occupied by tenants.

14 Q I take it the tenants didn't have any need  
15 for the outhouse or anything of that nature, did they?

16 A No, they didn't have none of that stuff out  
17 there, no.

18 MR. MAPP: That's our case.

19 (The respondent's witnesses were called up  
20 and sworn.)

21 MR. NORTHAM: Take Mr. Beebe, first.

22

23

24

25

-----oOo-----



1 Institute?

2 A Yes.

3 Q What was your degree?

4 A Civil engineering.

5 Q As part of your job as a civil engineer,  
6 did you have any training in surveying?

7 A Yes, sir.

8 Q As part of your work as an engineer, do you  
9 do surveying work?

10 A Yes, sir.

11 Q How long have you been doing surveying work?

12 A Twenty years.

13 Q Have you ever had occasion to testify in  
14 court as an expert witness regarding land disputes and  
15 surveys?

16 A Yes, sir.

17 MR. NORTHAM: Your Honor please, I would  
18 offer Mr. Beebe as an expert witness.

19 MR. MAPP: No objection.

20 THE COURT: All right. So recognized.

21

22 BY MR. NORTHAM:

23 Q And, Mr. Beebe, when was the first time that  
24 you were consulted with regard to this property for which you  
25 have made a survey? First, let me ask you, Exhibit Number 8,

1 if you have prepared this survey?

2 THE COURT: 7 is the plat.

3 MR. NORTHAM: 7. Excuse me, Judge.

4 A Yes, sir, I prepared that plat.

5  
6 BY MR. NORTHAM:

7 Q And when was the first time that you were  
8 asked to make a plat or survey of this particular land?

9 A Well, in 1963 I was asked by Mrs. Georgia  
10 Lewis to survey the property from which she inherited from  
11 the will of her mother, but --

12 Q Now, who was her mother?

13 A Mrs. Mary Bunting.

14 Q Mary Bunting?

15 A Yes.

16 Q And her father was Kendall Bunting?

17 A Senior; yes, sir, and at that particular  
18 time the property was so growed up and all and it was right  
19 after the '62 storm and property wasn't -- value wasn't too  
20 high on Chincoteague and after doing the research and spending  
21 a forceful day there in the field, I suggested to her to  
22 wait until it became more valuable because it wasn't worth  
23 a survey bill.

24 Q Showing you this area here marked .148 acres  
25 which is in dispute, is that the same area as Plaintiffs'

1 Exhibit 11 marked D? Is that the 1. -- excuse me -- .148  
2 acres as shown on your plat?

3 A Yes, sir. One and the same.

4 Q What was the condition of this specific area  
5 that I'm referring to there?

6 A It was all grewed up very heavily with  
7 underbrush and -- at that time that I was there in '63.

8 Q Now, while you were preparing all this plat,  
9 did you do any work for anyone else in that time, specifically  
10 Mrs. Nellie Bunting?

11 A No. I did have a conversation with Nellie  
12 Bunting at that time that I was there, the first time to  
13 make sure that her deed was correct to ninety-four foot front.  
14 Extended back 357 feet.

15 Q Would you come over here and explain  
16 Mrs. Nellie Bunting's property.

17 A Mrs. Nellie Bunting and Ken Bunting were  
18 deeded the property in this creek 94 feet wide up and  
19 including Davis Street and back 357 feet which it also  
20 included the sidewalk and by the time you take five feet off  
21 the walk, leaves 352 feet deep. After that the Buntings,  
22 along with Mary Bunting, who inherited from Kendall Senior  
23 and along with Mrs. Mabel Gordy who is Mabel Proctor now  
24 entered into a deed deeding Davis Street to the Town of  
25 Chincoteague twenty feet wide so twenty feet has come off that

1 front since the time that it was first deeded into Ken  
2 Bunting, Jr. and Mrs. Elizabeth Scarborough, daughter of  
3 Kendall Bunting, have been deed seventy-six feet wide by  
4 272 feet deep minus five feet for sidewalk which left 267  
5 feet deep, therefore, leaving an L-shaped piece of property  
6 between the two parcels and what had been deeded off  
7 Mr. Al Briney -- colored man --

8 Q Who sold Al Briney his --

9 A By Mr. Kendall Bunting, Sr. and the balance  
10 of this tract -- a piece had been given to the colored  
11 Baptist Church for their use as a church, fifty feet by  
12 150 feet which left this L-shaped piece and this piece  
13 labelled Georgia B. Lewis came down under Ken Senior's will  
14 to Mary A. Bunting and then on in by Mary A. Bunting's will to  
15 Georgia B. Lewis and these two parcels is what was left.  
16 At that time I was there in '63 there was no dispute at all  
17 in this property and I didn't pick the dispute up until  
18 January 10, 1975, when I was doing Mrs. Helen Davis'  
19 property and Mrs. Mabel Proctor's property because I was going  
20 on across the street to do these properties and, in talking  
21 with Mrs. McIntosh, she said there was a deed overlap so I  
22 told her I would check the records the next time I was to  
23 Accomac. She stated at that time that her husband was  
24 overseas so I checked the records and did find that there was  
25 a deed overlap and tried to get to the root of it by talking



1 with Mr. Norris Bloxom who prepared the deed and I waited a  
2 year before going back and preparing this plat which was done  
3 in '76 so that I could talk to Mr. McIntosh after he came  
4 from overseas because the easiest way to handle anything  
5 is the best way in my opinion without getting into a  
6 courthouse.

7 Q Now, when you discussed with Nellie Bunting  
8 her land -- not within the conversation, but was there any  
9 claim to any land other than this ninety-four feet by 357  
10 feet?

11 A Not at the time I talked with her in '63.

12 Q Now, Mr. Beebe, you state you were born on  
13 Chincoteague and grew up on Chincoteague. Did you ever have  
14 occasion to go on this property as a child and, if so, what  
15 was the nature of your visits?

16 A After the fire department bought -- not the  
17 fire department, but the Town of Chincoteague bought the  
18 land next to it from municipal park and the fire company  
19 rented the land to put their carnival grounds on, they built  
20 a racetrack and all of us kids used to race horses and there  
21 was an opening in the fire company fence on this Ken Bunting  
22 -- or this Ken Bunting, Sr. property of what's in dispute  
23 right now where we used to tie our horses on the inside or  
24 -- or outside of the racetrack.

25 Q What period would this be?

1 A This was in the late forties.

2 Q Okay. Now, tell the jury where this  
3 opening was that you-all tethered your ponies?

4 A Mr. Connors owned this piece of property at  
5 that time and he had a garden fenced in in this area and we  
6 had a gate right here that we could take our horses and tie  
7 them on the inside over here so that we would be off the  
8 racetrack. The racetrack fence was right down here. The  
9 fire department had fenced this racetrack all the way around  
10 the carnival ground and the judges' stand was right across  
11 the street -- across the track from this particular piece  
12 of property.

13 Q Was there any other fence along this area  
14 here other than the fence that was put up by the fire  
15 department for the racetrack?

16 A That's the only one that I saw.

17 Q The building running in this direction?

18 A The only one that I have ever known is the  
19 one that was put up by the fire department along here.

20 Q Was there another fence anywhere on this --  
21 around this area right in here?

22 A Well, this fence that Mr. Connors had  
23 fencing his garden off was here, coming across this line and  
24 then Mr. Al Briney he had his property fenced down these two  
25 lines.

1 Q During this time that you were growing up  
2 in this area, was Ken Bunting, Jr. -- did he live on Davis  
3 Street?

4 A Yes, sir, he lived in the big house over  
5 here and then in the late forties -- very late forties -- he  
6 moved out front to a new bungalow he built out here.

7 Q Did Mr. Ken Bunting, Jr. have a garden at  
8 that time when you were on this property?

9 A Well, in the mid-forties when you were  
10 doing any racing I never did see a garden back here. There  
11 was an old outhouse back here, but I never did see a garden.

12 Q Was there a garden anywhere else in the area?

13 A Like I say, it was a garden in this area and  
14 it was a garden up here close to Davis Street, but I assume  
15 that was Mr. Connor's. I don't know who that one was.

16 Q Would you pinpoint on this plat where the  
17 garden was that you saw.

18 A The garden that I saw --

19 Q Put a "G" on --

20 A Right here. That was Mr. Connor's.

21 Q Now, where else was there a garden in the  
22 area?

23 A There used to be one up here.

24 Q Did you see any other gardens anywhere else  
25 on the --

1           A       Mr. Al Briney, he used to have on on his  
2 property back here.

3           Q       Okay.   Now, when you went on the property  
4 in 1975 to start putting your markers down, would you tell  
5 the jury what occurred on the site, who was present and what  
6 occurred?

7           A       On January 10, 1975, is when I talked to  
8 Mrs. McIntosh like I just explained and she told me about  
9 this deed overlap that she owned behind the house so I  
10 waited until her husband came home so I could talk with him  
11 and I talked with him after he came home.   He came up to  
12 see me and I told him the best I could determine out of the  
13 records he didn't own the property.

14                   MR. MAPP:   We object to what Mr. Beebe told  
15 him about ownership of the property.

16                   THE COURT:   Mr. Beebe is testifying.

17                   MR. MAPP:   I know it, but I don't think it's  
18 fair for him to inject -- he can say anything  
19 Mr. McIntosh told him about it, but he's giving  
20 his opinion that --

21                   THE COURT:   He can testify to what he told  
22 Mr. McIntosh.   It's certainly not hearsay.

23                   MR. MAPP:   Allow us an exception, please,  
24 sir.

25           A       (Continuing)   So I told Mr. McIntosh that

1 I felt that there was a dispute in ownership there and  
2 suggested that he contact his lawyer and try to work it out  
3 because I was supposed to survey property for the fire  
4 company and I was supposed to survey the balance of Georgia  
5 Lewis' property and I would like to get it ironed out before  
6 I went there so I talked to him on two different occasions  
7 and it seemed like he had resolved to the fact that he  
8 didn't have any claim to the property because when I went  
9 there in June 22, 1976, and cut the lines that needed to be  
10 cut, there was no objection but on June 23, I requested that  
11 Mr. Herman Lewis and his wife, Georgia, be there present  
12 and Mrs. McIntosh, she was there. Mr. McIntosh, he was  
13 in the service and he was gone and they were all present  
14 when I put these markers down because I wanted all parties  
15 present in case there was a dispute or so on and so forth.

16  
17 BY MR. NORTHAM:

18 Q All right, and what, if anything, did  
19 Mrs. McIntosh say at that time?

20 A Well, Mrs. McIntosh she did come out and  
21 tell me that she had been in touch with Mr. Bloxom on the  
22 phone and that he'd rather that I not put any markers down.  
23 I said it was a poor time to tell me not to put it down  
24 there if we had been hashing it over for a year. I thought  
25 we had things resolved and I said -- I did mention the fact

1 to her that the markers would determine the lines, but if  
2 there was a dispute on ownership and it went to court then  
3 it would be a court decision on determining the ownership of  
4 the property and when I finished -- well, before I put the  
5 markers down, she turned around to Mrs. Georgia Lewis and  
6 wanted to know if Mrs. Lewis would sell her the property and  
7 Mrs. Lewis made the statement, she said, "Well, it's like  
8 this: As high as inflation is getting, top dollar I'm  
9 holding out for" and that was the end of the conversation.

10 Q Now, in your examination of the records,  
11 Mr. Beebe, are you familiar with the will of Nellie Bunting?

12 A Yes, sir.

13 Q Directing your attention to the will of  
14 Nellie Bunting, Mr. Beebe, would you step over here to the  
15 plat and explain to the jury how this will fits in as best  
16 you can with this plat taking it item by item. Start down  
17 here.

18 MR. MAPP: The only one we're really  
19 concerned with is Item 3 there.

20 MR. NORTHAM: I think you have to look at  
21 the will as a whole, Mr. Mapp.

22  
23 BY MR. NORTHAM:

24 Q All right. Now, first read it and then  
25 point it out on the plat where it is.

1 A "My land is 94" --

2 Q Start off from the beginning.

3 A "1. First I leave my sister, Daisy M.

4 Litchkofski, my home at 559 South Main Street, Chincoteague,  
5 Virginia."

6 Q What is the exhibit number?

7 A I think this is Exhibit 4.

8 Q Where is that, 559 South Main Street?

9 A That would be the home out front here.

10 "My land is 94 foot front," -- therefore she never deducted  
11 the 20 foot deeded for Davis Street. "My land is 94 foot  
12 front, and running back on Davis Street to the land of  
13 William and Mary Elizabeth" -- they have Laws here, but it  
14 should be Tarr. And this is the piece she sold John W. and  
15 Mary Elizabeth Tarr.

16 Q When you say she sold, is that --

17 A Mrs. Nellie Bunting sold this piece.

18 Q Okay. Go ahead.

19 A "... the land running on the east to the  
20 land of Connors" --

21 Q Now, that is a correct description here?

22 A Not to the east. Connors is to the south  
23 and on the southerly by Connors.

24 Q Is that a correct description?

25 A That is correct on the south by Connors.

1 BY MR. NORTHAM:

2 Q In your search of the records, have you  
3 found anything to indicate that Nellie M. Bunting ever owned  
4 that piece in dispute?

5 A No, sir.

6 MR. NORTHAM: All right. Answer Mr. Mapp.  
7

8 CROSS-EXAMINATION  
9

10 BY MR. MAPP:

11 Q Mr. Beebe, this will of Mrs. Bunting, the  
12 way she described it, right or wrong, wouldn't that indicate  
13 to you that she did think she owned it?

14 A She could have gone on over to the carnival  
15 grounds. She certainly indicated that in that will.

16 Q At least she thought she owned it whether  
17 she did or not; that's correct, isn't it?

18 A If you feel better putting it that way; yes,  
19 sir.

20 Q Well, is there any other interpretation you  
21 can get on it?

22 A Only by what my conversation was with her  
23 in '63 and maybe what she thought that the carnival ground  
24 had already been bought because they had been cleaning up  
25 around here.



1 Q Now, you referred to in 1940 when they had  
2 the racetrack there adjoining this property. How old were  
3 you then, Mr. Beebe?

4 A When I was racing horses I was in the  
5 neighborhood of thirteen, fourteen years old.

6 Q And, of course, you weren't a surveyor at  
7 that time?

8 A No, sir, had nothing in mind about a  
9 surveyor.

10 Q And I take it your mind was naturally more  
11 on ponies and horses than it was in gardens and fences and  
12 lines?

13 A Yes, sir. The only thing I say we put them  
14 on the other side of that fence and I just remember what we  
15 saw around there because a lot of times when you saw a short  
16 -- that was the starting point and ending point. A lot of  
17 times when you say, "Halt" he ran two laps and he would want  
18 to go in that gate. I got thrown there a lot of times,  
19 that's why I remember it so well.

20 Q You have no idea as to what the conditions  
21 were there in '29 --

22 A No, sir.

23 Q -- when Mrs. Davis testified?

24 A No, sir, I wasn't born then.

25 Q And your first recollection would commence

1 in 1940?

2 A Mid-forties.

3 Q When they had the races there and you were  
4 about thirteen then?

5 A Fourteen.

6 Q And that was the mid-forties you say?

7 A That's right.

8 Q Do you remember the outhouse? Was that  
9 there?

10 A Yes, sir, I remember the old outhouse that  
11 was out there.

12 Q Could you show us on the plat about where  
13 that was?

14 A Yes, sir. I think I pointed that out  
15 before. It's back here.

16 Q Suppose you make an "X" there and put an  
17 "O". O for outhouse.

18 A Approximately.

19 Q Now, in the course of your title examination  
20 of the property, did you run across a deed dated November 22,  
21 1967, from Mr. and Mrs. Lewis to the Chincoteague Volunteer  
22 Fire Company?

23 A Yes, sir.

24 Q You did?

25 A Yes, sir.

1 Q That is on record then?

2 A Yes, sir.

3 Q I take it if I understand it correctly that  
4 you arrived at your opinion and ideas based upon your  
5 examination of the deed, wills and legal title to this  
6 property; is that correct?

7 A That's correct. That's the only way I  
8 know how to run lines.

9 Q In other words, any adverse possession or  
10 things of that nature would be out of your line?

11 A That's just what I told Mrs. McIntosh, if  
12 it were --

13 Q Your advice to them which is good advice if  
14 you could possibly settle it among themselves they should do  
15 it?

16 A That's what I advised them.

17 MR. MAPP: That's all.

18 THE COURT: Anything further?

19 MR. NORTHAM: No, sir.

20 Mr. Lewis.

21

22

23

-----oOo-----

24

25

HERMAN E. LEWIS, called as a witness on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. NORTHAM:

Q Would you state your name, please.

A Herman E. Lewis.

Q Are you married to Georgia Lewis?

A I am.

Q     You and Mrs. Lewis are the people who conveyed this particular lot in dispute to Chincoteague Fire Company?

**A. Yes.**

Q Mr. Lewis, since Mrs. Lewis has owned the land or the land that she inherited from her mother, what has been the condition of that land? What was it like?

A            The piece of land that we sold to the fire  
company?

Q Right.

A That was always grewed up. Nothing but bushes. It was never used.

Q How old are you, Mr. Lewis?

A I'm seventy years old.

1                   Q       And how long have you lived in the  
2 neighborhood, you and Mrs. Lewis?

3                   A       Ever since 1932.    She's lived longer than  
4 I have there.

5                   Q       Now, do you remember when it was that you  
6 first discovered that Mr. and Mrs. McIntosh were claiming  
7 this land?

8                   A       I certainly do.

9                   Q       And how did it come about that you discovered  
10 this?

11                  A       I said when he acquired the land that I  
12 commenced to know.    I was down here to the courthouse  
13 checking some deeds.   That's when I run across his deed and  
14 according to his deed he was overlapping the land there so  
15 being he was in the service I had to wait my time when I  
16 could call him and have him to come down to the house so I  
17 had him to come down to the house and I explained to him --  
18 showed him the deed.    I have a deed there.   My wife has  
19 the deed of Ken Bunting, Jr.'s deed.   I showed him the  
20 deed, then I drew it out.

21                  Q       Now, first is this the deed that you're  
22 referring to that's been introduced as Exhibit 5?   Let me  
23 see if I can find it and let you take a look at it.

24                           THE COURT:   Exhibit 5 is the deed from  
25       - Mrs. Litchkofski to the McIntosh's.   Which deed

1 are you referring to?

2 THE WITNESS: Deed to Ken Bunting, Jr. from  
3 K. J. Bunting, Sr.

4 THE COURT: That's Exhibit 2.

5

6 BY MR. NORTHAM:

7 Q Take a look at that carefully and see if  
8 that is the deed you're referring to.

9 A This is the one.

10 Q All right. Would you read that to the  
11 jury, please.

12 A "This Deed made this 25th day of February,  
13 1920, between Kendall J. Bunting of the first part and Mary A.  
14 Bunting, his wife, does sell and convey with General Warranty  
15 of title unto Kendall J. Bunting, Jr., son of Kendall J.  
16 and Mary A. Bunting, his wife, the following piece of land  
17 known as the Al Briney land and containing the following  
18 amount of feet fronting the main county road 94 feet and  
19 357 feet running back from county road and fence to  
20 Chincoteague Channel bounded as follows: On the northeast  
21 by ten foot road belonging to the above Kendall J. Bunting,  
22 east by land of K. J. Bunting, south by land of Elizabeth  
23 Scarborough, west by Chincoteague Channel, containing by  
24 estimation one and one half acres more or less sold by the  
25 foot and not by the acre. Consideration fifty dollars paid

1 by the aforesaid Kendall J. Bunting, Jr."

2 Q Now, it refers to Elizabeth Scarborough.  
3 Was she a daughter of Kendall Bunting?

4 A May I say something here? On this piece  
5 of land here it doesn't read to the deed that I have home.

6 Q Well, you might be also referring to the  
7 deed that Mr. and Mrs. Bunting -- when they put it in their  
8 name by the tenants by the entirety.

9 THE COURT: All right. That's Exhibit 3.  
10

11 BY MR. NORTHAM:

12 Q Take a look at that deed and see if that  
13 is the one you're referring to.

14 A Yeah, this is the one.

15 Q Well, read that deed then.

16 A "This Deed, made this 4th day of January,  
17 1950, between Kendall J. Bunting, Jr., and Nellie M. Bunting,  
18 his wife, parties of the first part, and Kendall J. Bunting,  
19 Jr., and Nellie M. Bunting, his wife, parties of the second  
20 part. WITNESSETH: That the parties of the first part,  
21 for and in consideration of the sum of One Dollar (\$1.00) and  
22 the love and affection which the parties have for each other,  
23 in hand paid by the parties of the second part," -- this is  
24 K. J. Bunting's Jr.'s deed.

25 Q That's right.

1           A       But this is what I was talking about,  
2 K. J. Bunting, Jr.'s deed. These is two different deeds.

3           Q       Well, Mr. Lewis, just read the descriptions  
4 in it and let the jury decide --

5           MR. MAPP: He's already read two  
6 descriptions. The jury can read the deed, too.

7           A       This is the one I wanted to read.

8  
9 BY MR. NORTHAM:

10          Q       Well, I think that is the one you read.

11          A       This other one I don't know nothing about  
12 this one.

13          Q       Which one are you referring to now? What  
14 exhibit is it so the record will know what you're talking  
15 about?

16          A       This is the one here.

17          Q       Let the record show he's reading from  
18 Exhibit 2.

19          A       Yeah, this is the one.

20          Q       Now, is that the one you discussed with  
21 Mr. McIntosh?

22          A       That's right. This is the one right here.

23          Q       Now, read the whole thing and going all over  
24 it again. What are the dimensions in that deed?

25          A       "Following amount of feet fronting the main



1 county road 94 feet and 357 feet running back from county  
2 road and fence to Chincoteague Channel and bounded as follows:  
3 On the northeast by ten foot road belonging to the above  
4 Kendall J. Bunting, east by land of K. J. Bunting, south by  
5 land of Elizabeth Scarborough, west by Chincoteague Channel,  
6 containing by estimation one and one half acres more or less  
7 sold by the foot and not by the acre."

8 Q Okay. Now, Elizabeth Scarborough was she  
9 a daughter of Kendall Bunting, Sr.?

10 A That's right.

11 Q Now, Mr. Lewis, since your wife has owned  
12 this and she acquired it by will from Mary A. Bunting, what  
13 was the land like back there?

14 A Well, I told you once it was all growed up  
15 in brush. Now, on the other side K. J. Bunting's house  
16 there was a pond back there. That was all water back on  
17 the other side and that's where he raised ducks and things.

18 Q Now, was anyone to your knowledge or your  
19 wife's knowledge claiming this land?

20 A No, not as I know of.

21 Q Was anyone using the land?

22 A No.

23 Q Now, there has been some reference to a  
24 fence along the racetrack. Are you familiar with that  
25 fence?

1           A       I think so cause I happened to be in the  
2 house when the fire company come down and asked Mr. Bunting  
3 could they run a fence.

4           THE COURT:   Excuse me.   Which Bunting are  
5 you talking about, now?

6           THE WITNESS:   K. J. Bunting, Sr.

7           A       (Continuing)   They asked if it was all  
8 right with him.   They might get on him one way or the other  
9 and not know it.   He said, "Go ahead and use it.   It's  
10 perfectly all right with me," and they run a fence around  
11 there.

12  
13 BY MR. NORTHAM:

14           Q       Where was this fence?   Can you look at this  
15 plat and get yourself oriented as to where the fire company  
16 put this fence?

17           A       I think so.   They have acquired this land  
18 from them.   In here is the Town of Chincoteague, but the  
19 fire company had it -- used it for a horse track.

20           Q       Would you just write on the plat where the  
21 horse track is.   Just put "horse track".

22           A       Right along here and they circled right  
23 around.

24           Q       And where was the fence?

25           A       Fence?   Right along here.   Right along this

1 line. Could be -- there was a circle here. Come around  
2 this way. There was a circle here on down and then, of  
3 course, the fence ended down here somewhere because it had a  
4 road to it right here.

5 Q And you were present when the fire company  
6 talked with Ken Bunting, Sr., about putting that fence up?

7 A That's right.

8 Q Did you know Ken Bunting, Jr.?

9 A I certainly did.

10 Q Did he at any time ever indicate that he  
11 owned this piece of land that is owned by your wife or that  
12 you think is owned by your wife?

13 BY MR. MCINTOSH: No.

14 Q Now, did Mr. McIntosh ever come to you again  
15 or on any other occasions about buying this property?

16 A Well, that's what I wanted to say awhile  
17 ago, but it got fouled up in that thing there. Well, I  
18 had him down to the house the first time and told him he  
19 didn't own it. I let him have the deed and I sit down and  
20 drew it out for him how the survey would go.

21 Q At that time no survey had been made?

22 A No survey had been made, but we had already  
23 in 1963 engaged Ronnie here to survey it, but being at the  
24 time it was he didn't survey it so then I approached him  
25 again to survey it, but I told him exactly how that piece of

1 land would go if it was sold. He didn't own that land. All  
2 I could get out of him was, "I own it." That was it.

3 Q Did you ask him how he had arrived at his --

4 A I sure did. I asked him how he arrived --  
5 where he got his figures.

6 Q And what figures are you referring to?

7 A His land the way it overlapped. I asked  
8 him where did he get his figures from. He said, "I measured  
9 it."

10 Q Could you ever get any more details than  
11 that from him?

12 A That's all I got from him at the time.  
13 "I own it and I measured it."

14 Q Did he make any offer to buy it from you at  
15 that time?

16 A No, sir, that he didn't. I told him I  
17 would have it surveyed and he would know where his land was.

18 Q Did he ever offer to buy it at any other  
19 later date?

20 A Oh, yes, him and his wife come down and  
21 wanted to know about it and I showed him the plat and he said  
22 to me, "That's the first time I understood it," and I quoted  
23 him a price and he never said yes or no and I left him and  
24 his wife.

25 MR. NORTHAM: Okay. Answer Mr. Mapp.

1 THE COURT: Just a minute. Let me get one  
2 thing straight. Your wife, Georgia B. Lewis, is  
3 she a sister of Kendall J. Bunting, Jr.?

4 THE WITNESS: That's right.

5 THE COURT: And where is it that you live?  
6 You live on Willow Street?

7 THE WITNESS: No, I live on South Main  
8 Street, 719.

9 THE COURT: Is that south or north of this?

10 THE WITNESS: South.

11 THE COURT: South of this particular  
12 property?

13 THE WITNESS: Yes.

14 THE COURT: How far?

15 THE WITNESS: Oh, I would say about a half  
16 mile.

17 THE COURT: All right, sir, answer Mr. Mapp,  
18 please.

19 MR. NORTHAM: Excuse me, Your Honor. Just  
20 one other question.

21  
22 BY MR. NORTHAM:

23 Q When was it -- you say you went down here  
24 and were searching the records on something else and you ran  
25 across Mr. McIntosh's deed?

1 A That was in late '72. Late '72.

2 Q And that is when you first approached  
3 Mr. McIntosh?

4 A That's when I could get ahold of him. I  
5 couldn't get ahold of him because he was away in the service.  
6 I had to find out he was home before I could call him.

7 MR. NORTHAM: Okay.

8  
9 CROSS-EXAMINATION

10  
11 BY MR. MAPP:

12 Q When did he come home?

13 A When did he come home?

14 Q Yes, sir.

15 A He come home in late '72. I couldn't tell  
16 you the day.

17 Q It was the same year then?

18 A Same year, right.

19 Q I mean it wasn't any long time?

20 A No, it wasn't a year or so.

21 Q Now, let's see. Mr. Lewis, you and  
22 Mrs. Lewis conveyed this property to the fire company with a  
23 General Warranty deed I take it?

24 A Yes.

25 Q So you are interested in this litigation?

1           A       That's right. We wouldn't have sold it  
2 if we didn't think we owned it.

3           Q       You have heard the evidence here about the  
4 outhouse. Was there an outhouse on the property?

5           A       I couldn't tell you whether there was or  
6 wasn't.

7           Q       Well, you lived about, what, a half mile  
8 from it?

9           A       Yeah. Probably was. I don't know what the  
10 outhouse would be for if it was in his backyard.

11          Q       You heard where Mr. Beebe marked it on  
12 there?

13          A       No, I didn't know where he marked it. I  
14 hear him marking it, but if it was, it was right close to  
15 his house.

16          Q       How about the chickens and the --

17          A       Well, the chickens and the garden was on the  
18 west side and not the east side because on the east side of  
19 his house there was a pond there where he had his ducks.

20          Q       He had his ducks there?

21          A       Yes.

22          Q       He didn't have chickens, but he had the  
23 ducks?

24          A       He had chickens on this side in the pen.

25          Q       And the ducks were on the other side where

1 the pond was?

2 A That's right.

3 Q And whose ducks were they?

4 A They were his.

5 Q Who's his?

6 A K. J. Bunting, Jr.

7 Q And you have heard Mrs. Bunting's will read  
8 today, haven't you?

9 A I sure have.

10 Q And that would describe -- include this  
11 piece of property, too, would it not?

12 A No, sir.

13 Q How do you explain the fact -- you say it  
14 doesn't, why doesn't it?

15 A The simple reason, the way his deed reads  
16 it overlaps.

17 Q I'm talking about not his deed, but  
18 Mrs. Bunting's will?

19 A I have never read her will.

20 Q Have you been in court while it's been read  
21 this morning?

22 A Yeah, but I wasn't paying no attention to it.

23 Q Well, this is the way she describes it.

24 "My sister, Daisy M. Litchkofski, is to have my land and lot  
25 next to my house at 108 Davis Street..., land on west of



1 Nellie M. Bunting, land running back to the carnival grounds  
2 ...." The carnival grounds is where they had the racetrack,  
3 isn't it?

4 A Carnival ground?

5 Q Yes, sir.

6 A That all depends on what part of the carnival  
7 grounds you call it.

8 Q I'm going by what Mr. Beebe said. I don't  
9 know.

10 A It couldn't go back to the carnival ground  
11 because Elizabeth Scarborough comes in there.

12 Q I'm just telling you what's in the deed.

13 A I know, but it's wrong.

14 Q You say the will is wrong?

15 A Yeah, that part is because on the south  
16 there the carnival ground is on the other side of Elizabeth  
17 Scarborough's tract.

18 Q That's your contention, then, isn't it?

19 A Yes. That plat will show you what's right.

20 Q I wonder if you would be so kind as to come  
21 over here a moment. Now, this is the piece of property of  
22 the Chincoteague Volunteer Fire Company?

23 A That's right.

24 Q Did you all sell that, you and Mrs. Lewis,  
25 to the Chincoteague Volunteer Fire Company?

1 A Certainly did. It was sold to her daughter.

2 Q Sold to who?

3 A To her daughter and they sold it to the fire  
4 company.

5 Q Now, here is where the pond was right along  
6 in here.

7 A Here's Al Briney's here. Right in here.

8 Now, if there was an outhouse here, it was right along in here.

9 Right along in here. They had one right along here. It  
10 was never back in here.

11 Q So you disagree with Mr. Beebe? He put it  
12 right back in here.

13 A I don't think it was there. I can be  
14 wrong. I would put it right along in here. All this was  
15 growed up.

16 Q But there were chickens or ducks there?  
17 There was something there?

18 A Yes. There were ducks there over in this  
19 corner. See, this has all been filled in by the fire company.

20 Q Is this the piece you-all sold the fire  
21 company?

22 A Yes.

23 Q All right. Now, you and Mrs. Lewis gave  
24 the deed for it; is that right?

25 A That's right.

1 Q In other words, November 22, 1967; is that  
2 correct?

3 A Uh-huh.

4 Q All right. Now, will you read to the jury --  
5 here are your boundaries.

6 A This boundaries here was put together.

7 Q Suppose you read it.

8 A I want to tell you before I read it. This  
9 here is on the west side. Is not going to include this  
10 piece of property back here.

11 Q Suppose you read it.

12 A All right. I will read it to you. "This  
13 deed dated this" --

14 Q You needn't read the whole deed.

15 THE COURT: Just the description.

16 A "Bounded on the north by Davis Street for a  
17 distance of eighty-six feet..."

18  
19 BY MR. MAPP:

20 Q Now, this is Davis Street up here, isn't it?

21 A Yeah. Right here. "... more or less;  
22 on the east, by the land of Alfred Brinney, Jr..."

23 Q That's over here, isn't it?

24 A Yeah. "... for a distance of 150 feet  
25 more or less, on the south by the Chincoteague Carnival

1 Grounds..." That's here. Here's the carnival grounds here.  
2 That's Al Briney. "... for a distance of eighty-six feet,  
3 more or less; and, on the west by land of Nellie M. Bunting  
4 for a distance of 150 feet, more or less..." This is wrong.

5 Q You signed it, didn't you?

6 A "... this being a part of the land formerly  
7 owned by" -- I didn't read it. I'm going to tell you where  
8 that was made a mistake when they wrote it.

9 Q Is that your signature?

10 A That's my signature, right.

11 Q That's Mrs. Lewis' signature, isn't it?

12 A Right.

13 Q In your deed you describe this line as  
14 being 150 feet and Nellie Lewis owned it, didn't she?

15 A No, Nellie didn't own it. She didn't own  
16 it.

17 Q That's what this says.

18 A I can't help what that says. I didn't write  
19 that deed.

20 THE COURT: Let me ask you one thing.  
21 You claim that your wife owns this piece of land  
22 right here that's in this deed.

23 THE WITNESS: That's right.

24 THE COURT: Now, do you remember when her  
25 brother, Kendall J. Bunting, Jr., lived where

1 Mr. McIntosh lives now?

2 THE WITNESS: I certainly do.

3 THE COURT: When was that?

4 THE WITNESS: That was in -- she died in  
5 1950. He was living out on the front -- let's  
6 see, '48. Yeah, he was living in the back there,  
7 I would say, around forties.

8 THE COURT: In the forties?

9 THE WITNESS: Yes, sir, in the forties.

10 THE COURT: When do you claim your wife  
11 became the owner of this here?

12 THE WITNESS: When she got the deed from  
13 her mother.

14 THE COURT: Deed or will?

15 THE WITNESS: It was willed to her from  
16 her mother.

17 THE COURT: What year was that?

18 THE WITNESS: Let's see.

19 THE COURT: Maybe Mrs. Lewis can answer  
20 that.

21 THE WITNESS: She can answer the question  
22 better than I can.

23 MR. NORTHAM: I think that's an exhibit,  
24 Your Honor.

25 MR. KLEIN: Number 9, Your Honor.

1 MR. MAPP: It's Number 9, I think, Your  
2 Honor.

3 THE COURT: Dated 20th day of February,  
4 1947.

5 All right, sir. What I'm getting at,  
6 Mr. Lewis, your wife was not the owner of that when  
7 Mr. Kendall Bunting lived where Mr. McIntosh lives  
8 now; is that correct?

9 THE WITNESS: No, sir.

10 THE COURT: She was not?

11 THE WITNESS: No.

12 THE COURT: Who do you claim was the owner  
13 of it?

14 THE WITNESS: Mr. K. J. Bunting, Jr.

15 THE COURT: Anything further?

16 MR. NORTHAM: I have no further questions.

17 THE COURT: All right, Mr. Lewis. You  
18 may stand down.

19 It's one o'clock. Suppose we recess for  
20 lunch. We will recess for lunch. It's a little  
21 after one by my watch. Be back about ten minutes  
22 after two, please. I caution you again, please do  
23 not discuss the case with anyone or allow anyone  
24 to discuss it with you. Be back at ten minutes  
25 after two.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

(The court recessed for lunch at 1:00 p.m.  
The court reconvened at 2:05 p.m.)

THE COURT: Gentlemen, we have seven jurors.  
Will you waive polling the jury?

MR. MAPP: Yes.

MR. NORTHAM: Yes, sir.

THE COURT: All right, sir, call your next  
witness, please.

MR. NORTHAM: Mrs. Lewis.

THE COURT: Have a seat right up here,  
Mrs. Lewis. Take your time.

-----oOo-----

GEORGIA LEWIS, called as a witness on behalf of  
the respondent, having been first duly sworn, was examined  
and testified as follows:

DIRECT EXAMINATION

BY MR. NORTHAM:

Q Would you state your name, please.

A Georgia Lewis.

1 Q What is your husband's name?  
2 A Herman Lewis.  
3 Q He's the gentleman who just testified --  
4 A That's right.  
5 Q -- before lunch? What was the name of  
6 your mother, Mrs. Lewis?  
7 A Mary A. Bunting.  
8 Q And what was the name of your father?  
9 A Kendall J. Bunting, Sr.  
10 Q And what was the date of your mother's  
11 death, if you recall?  
12 A 1955.  
13 Q Do you remember the exact date?  
14 A It was in November 3, 1955.  
15 Q And what was the date of the death of your  
16 father, if you remember?  
17 A 1947. January 31.  
18 Q 31?  
19 A That's right.  
20 Q 1947?  
21 A That's right.  
22 Q Now, if I can find it, there is a will of  
23 your mother in here leaving you everything.  
24 THE COURT: Will of Mary A. Bunting is  
25 Exhibit 9.



1 BY MR. NORTHAM:

2 Q I show you that Exhibit 9 and ask you if  
3 that is the will of your mother?

4 A Uh-huh.

5 Q And without reading all of the will, would  
6 you just read Item 2.

7 A "Item 2. I give, devise and bequeath all  
8 of my estate, real and personal, to my daughter, Georgle T.  
9 Lewis, in fee simple."

10 Q Now, Mrs. Lewis, your father you stated  
11 was Kendall Bunting. Did he own all of the tract that was  
12 known as the Ed Briney tract?

13 A Yes, he did.

14 Q And did he give part of that to your  
15 brother, Kendall Bunting, Jr.?

16 A That's right.

17 Q Now, there has been some discussion about  
18 the use of this land to the south of your brother's land.  
19 What do you remember -- and more specifically I will show you  
20 the plat. This is the part that you last sold to the fire  
21 company. Do you remember this piece of land? First, let  
22 me ask you if you recognize this plat? We're referring to  
23 Plaintiff's Exhibit 7.

24 A Uh-huh.

25 Q Now, do you know the part that you sold to

1 the fire company?

2 A Yes, I do. Right here.

3 MR. NORTHAM: Now, let the record show that  
4 that is the part in dispute on that check over  
5 there which is Exhibit 11 and also identified on  
6 this plat as .148 acres, Georgie B. Lewis. Do  
7 you recall your brother, Kendall Bunting, Jr., ever  
8 using any part of this land?

9 THE WITNESS: Yes, he used all he wanted to.  
10

11 BY MR. NORTHAM:

12 Q Was this with the consent of everyone?

13 A Sure.

14 Q Did you ever object to him using it or  
15 anybody else using it?

16 A No, I didn't. It was undeveloped. It  
17 grew up and if they wanted to use it, let them use it.

18 Q Was it brought to your attention that  
19 Mr. McIntosh had bought a piece of property from your --  
20 would that be your sister, Mrs. Litchkofski?

21 A No, my sister-in-law's sister. It would  
22 be her sister.

23 Q Did it come to your attention?

24 A It did.

25 Q Did it come to your attention that

1 Mrs. McIntosh was claiming part of your land?

2 A Yes.

3 Q How did this come to your attention?

4 A Well, they come and told me that he was  
5 putting stuff back there. Looked like he was going to  
6 build a garage or something. See, his house was here and  
7 he was going clean back to the firemen's land.

8 Q All right, and what did you do when you  
9 received this information?

10 A Well, we called him on the telephone and  
11 asked him to come down and when he come down we talked to  
12 him and told him he didn't own it. We had talked to  
13 Mr. Beebe prior to that like he testified before and he was  
14 to survey it and he started.

15 Q When did you first contact Mr. Beebe to  
16 survey it?

17 A Back in 1962 or '63, one or the other.

18 Q Was this right after --

19 A The flood.

20 Q March storm up there?

21 A Uh-huh.

22 Q And what was the condition of the property  
23 at that time?

24 A Well, it was all grown up with underbrush  
25 and everything, you know, and it would cost more to have it

1 cleared off than it would to pay for a survey so we  
2 suggested to wait awhile, but he gave me sort of a rough  
3 calculation about how it would run. You know, how the  
4 land would run, see.

5 Q So this was prior to your learning -- prior  
6 to Mr. McIntosh ever acquiring the land?

7 A That's right. Buying it.

8 Q Do you remember any fence along the  
9 boundary line of this property that was owned by your mother?

10 A Yes. Mr. Jim Connor, his land had a fence  
11 in back of it on account of the racetrack, the horses getting  
12 in his garden, but I know my father gave the firemen consent  
13 to go in there and run a fence so they could have a  
14 racetrack.

15 Q All right. First, you are referring to  
16 Mr. Connor's fence. Where is that?

17 A Mr. Jim Connor would be right here.  
18 Chincoteague Volunteer Company owns it now. That was  
19 formerly the Elizabeth Scarborough land.

20 Q Was Elizabeth Scarborough your sister?

21 A Sister, right. There was a fence there  
22 like to keep his property -- but this fence that was down  
23 here was put by the fire company.

24 Q And that would be along where it shows on  
25 here as horse track?

1 A Horse track; that's right.

2 Q You don't have anything to write on there.

3 MR. NORTHAM: Mr. Mapp, would you object  
4 if I wrote "fence" there for Mrs. Lewis?

5 MR. MAPP: (No response)  
6

7 BY MR. NORTHAM:

8 Q I have written "fence" here. That is the  
9 fence you're referring to that Mr. Connor put up to --

10 A Yeah, to keep the horses out of his garden;  
11 that's right, and this was all grown up and bushes and trees.

12 MR. NORTHAM: Ladies and gentlemen of the  
13 jury, so there is no confusion as to what Mrs. Lewis  
14 is referring to, I have just written the "fence"  
15 right here along this line on the plat saying  
16 north 52 degrees, 31 minutes east 76 feet.  
17 That's what we're talking about. Now, do you  
18 recall any conversation with -- between you and  
19 Mrs. McIntosh sometime in 1975 or '76 about buying  
20 the property?

21 THE WITNESS: Yes. When Mr. Beebe come  
22 down to take us up to show us where the line was  
23 going to be -- the line of the property -- she come  
24 up just like she testified. The lawyer told him  
25 not to put the marker there so then she said to me,

1 "Will you sell it to me in preference to the  
2 firemen because I don't want the firemen in my  
3 backyard?"

4  
5 BY MR. NORTHAM:

6 Q All right.

7 A I said, "I won't commit myself because I  
8 want to sell it to the one I can get the most money from."  
9 That's what I said.

10 MR. NORTHAM: Answer these gentlemen.

11  
12 CROSS-EXAMINATION

13  
14 BY MR. MAPP:

15 Q Now, did she know, Mrs. Lewis, that you were  
16 selling it to the fireman?

17 A She knew I was going to sell it to her or  
18 to the firemen, one or the other.

19 Q How did she happen to know about it?

20 A I guess maybe she surmised it. The only  
21 people it would do any good for were the firemen for a  
22 parking lot or her because it adjoined her property.

23 Q I'm still not really clear. She just came  
24 out and said, "Sell it to me instead of the firemen"?

25 A Sure. That back land, what I sold to the

1 firemen, it was in back of her lot where Ronnie Beebe had  
2 put the marker, as far as her lot went, and the rest was mine.

3 Q She didn't know that?

4 A No, but she didn't want me to sell it to the  
5 firemen. Why, I don't know.

6 Q You don't know how she happened to know it?

7 A No, I don't.

8 Q Well, had you already agreed to sell it to  
9 the firemen at that time?

10 A Yeah, when it was surveyed the first time,  
11 but I didn't get it surveyed because just like I say, it was  
12 after that flood and property was at a low ebb so I decided  
13 to hold it. I knew that I would give them the priority.  
14 If I sold it to anybody I would give it to the fire company.

15 Q And the values on Chincoteague didn't pick  
16 up until '76 when you actually sold it?

17 A That's right. That's when the property  
18 began to go up.

19 Q In '76?

20 A Prior to that when the building boom came  
21 in on Chincoteague.

22 Q There has been a boom over there ever since.

23 A That's right, there's been a boom ever  
24 since.

25 Q Mrs. Lewis, you say you didn't object to the

1 use that they put of this property?

2 A No, indeed.

3 Q And that's your brother, Mr. Kendall J.  
4 Bunting, Jr.?

5 A That's right.

6 Q And his wife and later his widow, Nellie  
7 Bunting?

8 A Yes.

9 Q And they did have chickens?

10 A Yes, the chickens would be between -- bring  
11 it here and I will show you where she had her chickens.

12 See, this right here? That's Al Briney. That's a colored  
13 fellow. All right. Right here. The Chincoteague Volunteer  
14 Fire Company owns that now, but that was a ditch. That's  
15 where he had -- his house was up here. That's where he had  
16 ducks and chickens.

17 Q That didn't belong to the volunteer fire  
18 company?

19 A That was sold after he died.

20 Q Where were the chickens and ducks?

21 A Be along in here between Al Briney and then  
22 it was my brother -- I mean my sister-in-law. Right in  
23 through here.

24 Q Where -- you got marked on here "Chincoteague  
25 Volunteer Fire Company". That's where they were?



1           A       That's right because when the firemen bought  
2 this land I gave it first to my daughter and then she sold  
3 it to the fire company. Well, the fire company had to fill  
4 that all in, see, because it was just like a grade and all  
5 built up and my daughter bought a piece of land over here from  
6 Nellie.

7           Q       Mr. Lewis testified that the chickens were  
8 over here on the other side of the property.

9           A       What, here?

10          Q       Yes, sir.

11          A       Before he ever went to Philadelphia, he did  
12 keep them there. He had a garden there where John W. Tarr's  
13 land is and also he let the ducks here use this ditch, pond,  
14 whatever you want to call it. He had a garden like there  
15 on this side.

16          Q       On the Tarr land?

17          A       Before he went to Philadelphia.

18          Q       How long has Mr. Tarr had it?

19          A       Well, I don't know. A good many years  
20 because now he's sold it, but my brother went to Philadelphia  
21 during the war -- second war.

22          Q       Where was the toilet?

23          A       The toilet? If the toilet was anywhere,  
24 the toilet would be back here.

25          Q       Put an "X" where you say the toilet was.

1           A       Somewhere back here on this land because she  
2 had the use of it.

3           Q       It's the land that is in question?

4           A       That's right.   It would be my land now.  
5 If it was anywhere, it would be back there because he had the  
6 use of it.

7           Q       And you didn't object to it?   You knew  
8 about it?

9           A       I didn't care.

10          Q       You knew about the toilet on this property?  
11 You didn't mind that?

12          A       No, it was unusable property.

13          Q       When your brother died his widow kept right  
14 on with it, didn't she?

15          A       No, she didn't keep on when he died.   She  
16 moved up front and she didn't use that property at all.   She  
17 rented it out.   They didn't use the toilet.   They had a  
18 bathroom put in.

19          Q       They used it?

20          A       As they wanted to with no complaint.

21          Q       When did they go there?

22          A       Well, they come back from Philadelphia and  
23 then they built their house out to the front -- to the  
24 shore front.

25          Q       All right.   When did they first move in

1 this house?

2 A That they built?

3 Q Yes.

4 A My father gave it to them.

5 Q Where Mr. McIntosh lives now?

6 A My dear, I don't know. I'm seventy. I  
7 wasn't but a child.

8 Q You were there before you remember?

9 A Sure.

10 Q As far as you know they were using it then?

11 A Certainly they used it.

12 Q Your brother got a deed for it in 1920?

13 A That's right. My father and mother.

14 Q And so as far as you know they had chickens  
15 there?

16 A Ducks, garden, anything they wanted because,  
17 see, the land all around them they used.

18 Q Something was said about the fence. I'm  
19 not real clear around the fence. A racetrack is round,  
20 as I recall, isn't it?

21 A Yes, but wait a minute. The fire company  
22 owns that land there. The fire company didn't own it here  
23 where the racetrack was, but they do back here. See, they  
24 come back here --

25 Q What I'm getting at, if you have a fence

1 around a racetrack, where would it be?

2 A The fence would be coming right along in  
3 here and would go right along.

4 Q Was it along this line?

5 A Yes, right along this line. In other  
6 words, right along this line. See, what it was, the  
7 racetrack come this away and then it come around on the other  
8 side of the carnival.

9 Q Oh, it was a circle, it wouldn't be on a  
10 straight line?

11 A It would be on that property, but not on  
12 their property because they own the back, the firemen did.

13 Q Oh, I see. You're familiar with your  
14 sister-in-law, Mrs. Nellie Bunting's will, aren't you?

15 A Well, I have never seen it.

16 Q Well, you have heard it referred to?

17 A I have heard it read, yes.

18 Q And you have heard the description that she  
19 set forth in this, haven't you?

20 A Yes.

21 Q And that would embrace the piece of land  
22 that's in question, would it not?

23 A No, it wouldn't unless she put it in there  
24 herself or had it put in because she knew she didn't own it.

25 Q But that still would embrace it?

1 A Would embrace it, yes, uh-huh.

2 Q You and Mr. Lewis sold to the Chincoteague  
3 Volunteer Fire Company the property right adjoining this,  
4 didn't you?

5 A That's right. No, my daughter sold that  
6 to them.

7 Q Your daughter?

8 A Uh-huh.

9 Q Mrs. Georgia B. Lewis?

10 A No, that's me. I sold that to them in back  
11 of McIntosh's property, but on the other side of him my  
12 daughter sold it.

13 Q I'm talking about the piece that you sold.

14 sister-in-law. Yes, right in back of Mr. McIntosh's land.

15 Q And you describe this as being bounded on  
16 the west by Nellie M. Bunting for a distance of 150 feet.

17 THE COURT: I think, Mr. Mapp, the witness  
18 is confused. The deed you're reading from is not  
19 the piece that she has in mind. The piece she has  
20 in mind is in back of McIntosh.

21 Mrs. Lewis, to clarify this, the piece that  
22 was first sold to Chincoteague Fire Company is  
23 between the McIntosh property and the Al Briney  
24 property?

25 THE WITNESS: That's right.

1 THE COURT: You say you had first sold that  
2 to your daughter?

3 THE WITNESS: I gave it to my daughter and  
4 she sold it.

5 THE COURT: Well, is it possible, though,  
6 when you gave it to your daughter you didn't give  
7 her a deed to it and when she sold it you and your  
8 husband signed the deed?

9 THE WITNESS: We signed it, yes. We  
10 signed the deed, uh-huh.  
11

12 BY MR. MAPP:

13 Q And the deed you signed was dated November  
14 22, 1967; that's right, isn't it?

15 A That's right.

16 Q And in this, Mrs. Lewis, I notice that you  
17 describe it as being on the west by the lands of Nellie M.  
18 Bunting for a distance of 150 feet.

19 A Well, the land had never been surveyed and  
20 the lawyer who wrote that deed was Bill Fears and he wanted  
21 to know who the adjoining properties were like north, east,  
22 south and west so I told him the best we knew.

23 Q And the best you knew that Nellie Bunting  
24 owned it?

25 A She did on the upper side.

1 Q And you told him the best you knew it was  
2 150 feet?

3 A Practically, I guess I did.

4 Q Well, 150 feet, of course, that would run --  
5 according to this plat, that would run from Davis Street all  
6 the way back to the Chincoteague Municipal Park, wouldn't it?

7 A From Davis Street right straight back, yes.  
8 That's right.

9 Q And you say Mr. Fears prepared the deed?

10 A Yes, he did.

11 Q And from information you and Mr. Lewis had  
12 given him?

13 A Yes.

14 Q And, of course, Mr. Fears is Mr. Northam's  
15 partner?

16 A Yes.

17 Q So he prepared it the way you told him to  
18 prepare it?

19 A Yes.

20 MR. MAPP: That's all I have. No further  
21 questions.

22

23

24

25

REDIRECT EXAMINATION

BY MR. NORTHAM:

Q Did you actually know at that time where --  
how wide your property was?

A No. I just give guesswork about it.

Q At that time had it been properly surveyed?

A Hadn't been properly surveyed, no, because  
I knew it joined Nellie Bunting and Al Briney. That's all.  
I knew, and the carnival ground in the back of it, see.

RECROSS-EXAMINATION

BY MR. MAPP:

Q Well, actually, Mrs. Lewis, the part in  
dispute is seventy-six feet and the part that is not in  
dispute is seventy-three feet so it's about half then, wasn't  
it?

A Half of what?

Q Well, I mean what you're -- the part that's  
not in dispute is about half of the whole where you have 150  
feet?

A I still don't get you. Come here. Bring  
it here.

Q In other words, this is seventy-six feet, is



1 it not?

2 A Uh-huh.

3 Q And this is seventy-three feet?

4 A Seventy-two, yeah. It goes back. Uh-huh.

5 Q And yet, of course, the figure you gave  
6 embraced both of those?

7 A (Witness nodding head affirmatively.)

8 MR. MAPP: That's all I have. No further  
9 questions.

10 Your Honor, may we approach the bench?

11 THE COURT: All right, sir.

12 (A side-bar conference was held by the court  
13 with counsel for both sides out of the hearing of  
14 the jury and the court reporter.)

15 MR. MAPP: Allow us an exception, please.

16

17

18

-----o0o-----

19

20

21

22

23

24

25

NORRIS BLOXOM, called as a witness on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. NORTHAM:

Q Would you state your name, please.

A        Norris Bloxom.

Q What is your occupation, Mr. Bloxom?

**A      Attorney.**

Q Where is your office?

**A Accomac.**

Q Mr. Bloxom, I show you a deed from Daisy

Litchkofski to Mr. and Mrs. Vernon McIntosh --

**THE COURT:** Exhibit 5.

BY MR. NORTHAM:

Q       -- Exhibit Number 5 and ask you if you will  
look at this and tell me if you prepared that deed?

A        Yes, sir, that's my work, and I have a copy  
in the file, that's how I can identify it.

Q Now, Mr. Bloxom, who was your client in this matter?

**A I represented the estate of Nellie M. Bunting**

1 who had died in Philadelphia, I believe, and she had left  
2 this property to Mrs. Litchkofski so I prepared the deed for  
3 the attorney for Mrs. Litchkofski who was a Philadelphia  
4 attorney.

5 Q Did you in any way represent Mr. and  
6 Mrs. McIntosh?

7 A No, I don't think I represented Mr. McIntosh.  
8 I talked to him about this, but I did not represent him as  
9 my client, no. I knew that -- and my reason for that is  
10 this: That he was borrowing from the Bank of Chincoteague  
11 and Mr. Norman Mason was doing the title work on this  
12 property and, consequently, I did not do the title work  
13 because I knew that Mr. Mason was going to be doing it and  
14 there was no point in doubling up the expense to Mr. McIntosh.

15 Q You have written a very specific deed  
16 giving metes and bounds and directions and distances. How  
17 did you get those figures?

18 A Well, from the beginning there was a  
19 question in my mind as to the boundaries and as to the  
20 dimensions.

21 Q There was a big question in your mind?

22 A Yes, there was a big question in my mind.  
23 That's true. I talked to Mr. McIntosh about it. I  
24 examined the records in the clerk's office. I talked with  
25 at least one person from Chincoteague that I thought was

1 familiar with the land. I called Mr. Norman Mason who was  
2 doing the title work. I called it to his attention there  
3 was a question as to the boundaries. I called it to the  
4 attention of the Philadelphia attorney there was a question  
5 as to the boundaries. I did all this before I drew the  
6 deed.

7 Q In fact, didn't you write Mr. McIntosh a  
8 letter in 1972 telling him there was a question about the  
9 boundaries?

10 A Yes, I did, in January 25, '72.

11 Q All right. Would you read that.

12 A Mr. Vernon E. McIntosh, 103 Davis Street.

13 Q What is the date of that?

14 A January 25 of 1972.

15 Q And that is prior to the date of your deed?

16 A The deed, I believe, is dated February 1st,  
17 yes, it would have been five or six days. "Dear  
18 Mr. McIntosh: Since talking with you in the office, I have  
19 been trying to reconcile the boundaries of the property as  
20 they appear on the sketch you gave me and as they appear from  
21 the county records. According to the county records, the  
22 property you wish to purchase is bounded on the east by  
23 Alfred R. Briney. Also according to the records, this  
24 property is bounded on the south by the Connor land. The  
25 county map has the Connor land as fronting seventy-six feet

1 on South Main Street and extending back between parallel  
2 lines to the Briney land. I am enclosing a rough sketch  
3 of the property as it appears on the county map; however, this  
4 county map might well be inaccurate. I do think it is wise  
5 for you to check these boundaries with Mr. Briney and James  
6 Connor. The Tarr lot fronts 75 feet on Davis Street and  
7 has a depth of 89 feet.

8 "Would you please check these boundaries  
9 so that we can proceed with the sale." Signed by me.

10 Q Before you prepared the deed, how did you  
11 get the figures that you yanked into the deed, so to speak?

12 A Mr. McIntosh --

13 MR. NORTHAM: Excuse me. I would like to  
14 offer this letter.

15 THE COURT: Do you have any objections?

16 MR. MAPP: To the letter, no, sir, none  
17 except what I have stated in the record.

18 THE COURT: Mr. Bloxom, as I understand it,  
19 at the time you were representing Mrs. --

20 THE WITNESS: Litchkofski.

21 THE COURT: -- Litchkofski?

22 THE WITNESS: Yes, sir.

23 THE COURT: I'm going to mark this  
24 Defendant's Exhibit A.  
25

1 BY MR. NORTHAM:

2 Q My question is Where did you get the figures  
3 which you used -- when I say figures -- the dimensions that  
4 you used in preparing the deed? Who furnished them to you?

5 A Well, substantially, Mr. McIntosh furnished  
6 them to me. Now, I got one dimension from the deed from  
7 Kendall Bunting and wife to the same back in 1950 and then  
8 I got --

9 Q Now, when was that?

10 A This was the 94 by 374 foot strip. Then  
11 I got second dimensions of the William Tarr lot from the deed,  
12 but the dimensions as to the back portion of the lot I got  
13 from Mr. McIntosh. I asked him specifically to go up to  
14 Chincoteague and make a sketch and to consult with the  
15 adjoining landowners and he did that and came back and gave  
16 me the sketch and the dimensions as to the back portion of  
17 their lot were furnished to me by Mr. McIntosh because I had  
18 nowhere else in the world to have gotten them from.

19 Q The back portion would be the 150 feet on  
20 the back?

21 A Yes, sir.

22 Q And the eastern portion and the southern  
23 portion?

24 A Correct, the back line and the southern line  
25 and the western line.

1 Q Eastern line?

2 A Also the eastern line, yes, 150 feet.

3 MR. NORTHAM: Answer Mr. Mapp.

4

5 CROSS-EXAMINATION

6

7 BY MR. MAPP:

8 Q Mr. Bloxom, I notice in another letter of  
9 yours that Mr. Lee Savage was representing on the ground, so  
10 to speak, Mrs. Litchkofski; is that correct?

11 A Mr. Savage, I think, was in the family and  
12 had had something to do with the negotiation for the purchase  
13 and I felt as though Mr. Savage probably had some knowledge  
14 of the boundary lines and I sent Mr. Savage -- this is your  
15 question?

16 Q Yes, sir.

17 A I sent Mr. Savage a sketch of this lot  
18 before I drew the deed and asked him if it were correct.

19 MR. NORTHAM: Now, I object to that part,  
20 what Mr. Savage might have told him.

21 THE COURT: I would sustain the objection.

22

23 BY MR. MAPP:

24 Q Was he one of the ones that -- I don't know  
25 how far I can go with my question.

1 THE COURT: You can't say anything  
2 Mr. Savage said. If he's not here to testify  
3 you can't say he did the sketch or anything else.  
4

5 BY MR. MAPP:

6 Q You sent him a copy of the sketch; is that  
7 correct?

8 A I sent him a copy of the sketch that  
9 contained the information that Mr. McIntosh had given me.

10 THE COURT: I think that's as far as he can  
11 go.  
12

13 BY MR. MAPP:

14 Q Is that the same dimensions in that sketch  
15 that you put in your deed?

16 MR. NORTHAM: I object to all of that,  
17 Your Honor.

18 THE COURT: I would sustain the objection.

19 MR. MAPP: Allow us an exception, sir.  
20

21 BY MR. MAPP:

22 Q Mr. Bloxom, are you familiar -- you say that  
23 you represented the estate of Mrs. Nellie Bunting?

24 A Yes, sir.

25 Q Then you, of course, are familiar with her



1 will?

2 A Well, I don't know about that word "familiar".  
3 I have a copy of it and I have seen it and read it on many  
4 occasions.

5 Q Will you look at Paragraph 3.

6 A Yes, sir.

7 Q And I hand you Mr. Beebe's plat which is  
8 filed here as Exhibit 7. I wonder if you would come over  
9 here before the jury for just a second. Now, the description  
10 in this is from Nellie Bunting's will. Let me see. This  
11 is the Town of Chincoteague Carnival Grounds back here.  
12 Would that go all the way back?

13 A Mr. Mapp, I don't feel like I can answer  
14 that question.

15 THE COURT: I think you're asking  
16 Mr. Bloxom something that's for the jury.

17  
18 BY MR. MAPP:

19 Q In other words, the boundary there is set  
20 forth in the will. Is this Town of Chincoteague Carnival  
21 Grounds?

22 THE COURT: Again, I think you're asking  
23 him to testify to something that's for the jury to  
24 determine, Mr. Mapp.

25 MR. MAPP: Your Honor please, I think I

1 have a right to ask him if the description that he  
2 used in the deed would embrace this property -- the  
3 description set forth in the will would embrace  
4 this property we're now talking about.

5 THE COURT: Did he draw the will?

6 THE WITNESS: No, sir.

7 MR. MAPP: He settled the estate.

8 THE COURT: If he didn't draw the will --  
9

10 BY MR. MAPP:

11 Q You didn't draw the will?

12 A No, Mr. Mapp, I certainly did not.

13 MR. MAPP: That's all I have. No further  
14 questions.

15 MR. NORTHAM: Mr. Thornton.  
16  
17

18 -----oOo-----  
19  
20  
21  
22  
23  
24  
25

WILSON THORNTON, called as a witness on behalf of the respondent, having been first duly sworn, was examined and testified as followed:

## DIRECT EXAMINATION

BY MR. NORTHAM:

Q Will you state your name, please.

**A Wilson Thornton.**

Q Where do you live, Mr. Thornton?

## A Chincoteague.

Q How old are you?

A I'm sixty-five this past October 12.

Q Are you familiar with the property that's in dispute here adjoining the Chincoteague Volunteer Fire Department's carnival grounds?

A Yes, sir.

Q Are you familiar with the racetrack that used to be here?

A Yes, sir.

**Q Who built the fence for the racetrack?**

**A     The committee on the horse committee.**

Q Were you a member of that committee?

A No, sir, I was not. We have a committee and also the rest of the firemen, they jump around and help

1 building it. In other words, we had about fifty members  
2 and we each took a hand in it after we got permission.

3 Q Do you know approximately the year this  
4 racetrack was built -- the fence for the racetrack?

5 A I would say around '43; yes, sir. 1943.

6 Q Could you come over here to the jury and  
7 tell them where this racetrack went?

8 A I tell you where it went, now --

9 Q First, get yourself oriented.

10 A This is not a circle. It's more of an  
11 oval racetrack. Now, coming to the main street it would  
12 come in a bend. I'm just going to show you this and go  
13 around the racetrack, this portion, like this.

14 THE COURT: Wait a minute, Mr. Thornton.  
15 I think you're confusing the jury. This plat  
16 shows property of various -- you can look at the  
17 plat. You're drawing a racetrack around --

18 THE WITNESS: I'm sorry. On this side  
19 here -- on this land where the town owns and the  
20 fire company got the land leased from, the  
21 racetrack come this way like this and went down in  
22 a straight angle to a certain portion and then made  
23 this bend again. Do you understand?

24 THE COURT: Yes, sir. I just didn't want  
25 you to put a racetrack around the plat.

1 THE WITNESS: Yes, sir.

2 A (Continuing) Along this land here  
3 adjoining this corner land and rest of this here. It was in  
4 a straight angle until it come to this back bend and then it  
5 went in this way. Was that what you want?

6  
7 BY MR. NORTHAM:

8 Q That's what I want. In other words,  
9 your testimony is that the racetrack was in an oval and this  
10 area here was in a straight line and that the fire company  
11 built that fence?

12 A Yes, sir.

13 Q Who did you get permission from to build  
14 the fence?

15 A They got it from the Connors and also from  
16 Mr. Bunting.

17 Q Was that Mr. Bunting, Sr.?

18 A I would presume so. I don't know. It's  
19 one of the Buntings.

20 THE COURT: Mrs. Lewis, please do not shake  
21 your head. You have already testified in this  
22 matter.

23  
24 BY MR. NORTHAM:

25 Q Now, Mr. Thornton, you say you think the

1 track was built sometime in 1943. What was the property  
2 on the other side of the fence being used for at that time;  
3 do you know?

4 A Well, the back part from the house of  
5 Connor's place in the back portion of it had a garden and  
6 probably raised some little chickens down there. Adjoining  
7 this corner tract back to this portion that's involved was  
8 a thicket. Also the portion that we bought first from  
9 Mrs. Lewis running through from Davis Street to the carnival  
10 grounds, that had a ditch. I call it a ditch. They call  
11 it a pond and it had a lot of trees and underbrush there.  
12 Now, we cleaned that off and put a lot of fill in there so  
13 we could go from one street to the other out and use it for  
14 a parking lot during the carnival.

15 MR. NORTHAM: Okay. Answer Mr. Mapp.

16  
17 CROSS-EXAMINATION

18  
19 BY MR. MAPP:

20 Q The racetrack was built in '43?

21 A Yes, sir.

22 Q You have been in court all morning?

23 A Yes, sir.

24 Q You have heard Mrs. Davis and the other  
25 lady testify about a fence that was built in '29 so we're

1 not talking about the same fence, are we?

2 A No, sir.

3 Q This was a different one you're talking  
4 about?

5 A Different one; yes, sir.

6 Q And you say you got permission from  
7 Mr. Bunting, but you're not sure whether it was the senior  
8 or junior?

9 A No, sir, I'm not.

10 MR. MAPP: That's all.

11

12 REDIRECT EXAMINATION

13

14 BY MR. NORTHAM:

15 Q When you built the fence, was there any other  
16 fence there?

17 A The only fence that was there -- Mr. Connor  
18 had a fence running down his property.

19 Q Would that be the back line of the Connor  
20 land that you're referring to? Come over here.

21 A He had a fence running down here and over  
22 here and he had the cutoff here for his chickens and garden.  
23 It was a fence down here. A wooden fence running down here.

24 Q That was the Connor fence?

25 A Yes, sir.

1 Q And how about was there a fence from this  
2 point to this point across here, the back part of the  
3 Connor land?

4 A Yes, sir.

5 Q Do you remember seeing any fence at the back  
6 part of the land in dispute when you built the fence for the  
7 fire company?

8 A No, sir, either the underbrush had gotten  
9 it or it was tore down.

10

11 RECROSS-EXAMINATION

12

13 BY MR. MAPP:

14 Q It could have been there, you just didn't  
15 see it?

16 A Well, that's possible.

17 Q Now, this land here was formerly --  
18 Mrs. Scarborough owned that, didn't she?

19 A Well, she probably did, but when we bought  
20 it at an auction it was Connor property.

21 THE COURT: It was who?

22 THE WITNESS: Connor.

23

24 BY MR. MAPP:

25 Q Isn't that -- I'm just asking for information.



1 The property that Mr. Bunting, Sr. owned, he conveyed that  
2 to Mrs. Scarborough, his daughter, did he not?

3 A I wouldn't know.

4 Q According to this it was 19 -- it was  
5 some time ago?

6 A I wouldn't know, sir.

7 Q And you-all got it at a public auction sale?

8 A Yes, sir.

9 MR. MAPP: That's all.

10 THE COURT: Any further questions,  
11 Mr. Northam?

12 MR. NORTHAM: No, sir.

13 THE COURT: That's all, Mr. Thornton. You  
14 may stand down.

15 MR. NORTHAM: That's our evidence.

16 THE COURT: All right, sir. Any rebuttal,  
17 Mr. Mapp?

18 MR. MAPP: No, sir.

19 THE COURT: All right, Mr. Sheriff, ask  
20 the jury to step into the jury room then for a  
21 while, please.

22 MR. NORTHAM: Your Honor, I move for the  
23 fire company to strike the plaintiffs' evidence  
24 on the grounds they have not shown an open,  
25 continuous, hostile possession of this land,

1 particularly a continuous possession of this land  
2 for a period of fifteen years under a claim of  
3 right, title or any other kind of claim. The  
4 only evidence that we have is that Mr. McIntosh's  
5 claim, which I submit is an open, hostile claim,  
6 under color of title and claim of right for a  
7 period since 1972, but there is no evidence that  
8 the prior owners were doing this adversely to the  
9 true owners.

10 THE COURT: All right, sir, Mr. Mapp.

11 MR. MAPP: If Your Honor please, I think  
12 the evidence of those two ladies -- one of them  
13 moved there in 1929 and the predecessors in title  
14 to Mr. and Mrs. McIntosh -- they have the outhouse  
15 on it. They had chickens there. They put up a  
16 fence. They had birds on a fence there -- on a  
17 fence they had put up. That commenced in '29.  
18 She said that condition continued until at least  
19 1950.

20 THE COURT: '47 or '8.

21 MR. MAPP: Yes, sir.

22 THE COURT: Because he moved out front two  
23 years before he died. That gives you a period of  
24 about nineteen years that they were exercising  
25 dominion over it and that is your claim for adverse

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

possession.

MR. MAPP: Yes, sir, that's certainly one of the bases of it and then I think, too, that's coupled up with the fact when this lady died right in her will she describes -- embraces this same land which embraces the part that's here in question and, furthermore, you get down to it, here comes Mrs. Lewis, their predecessors in title. She gives a deed and gives the same dimensions, the same boundaries that we're contending --

THE COURT: It's bounded on the west. Part of it is bounded on the west if Mrs. Lewis is correct.

MR. MAPP: We think it's a jury question.

THE COURT: What is the jury question?

MR. MAPP: It's whether or not the McIntoshes and their predecessor's in title have held this property openly -- continuously openly hostile --

THE COURT: You have answered the question, I think, right there. You couldn't have adverse possession.

MR. MAPP: Why couldn't you?

THE COURT: Well, as I see it, I don't think you have got any claim to adverse possession.

1 If we take your evidence, certainly -- you had  
2 four witnesses -- certainly, Mr. and Mrs. McIntosh  
3 can only testify as to what happened after 1972  
4 and as Mr. Northam points out, he has been holding  
5 openly, continuously and hostile since 1972, but  
6 we have got to go back of that so we have got to  
7 depend on Mrs. Davis and Mrs. Koedornick: Now,  
8 they say that he had an outhouse there and he had  
9 chicken coops -- raised chickens -- and he fenced  
10 it, but at that time his own father owned that other  
11 land so you can't hold something hostile against  
12 your own father, can you?

13 MR. MAPP: I think you can. You can hold  
14 it against your mother or anybody else. I don't  
15 think -- I think that would be something that  
16 should be argued before a jury.

17 THE COURT: I don't think you can.

18 MR. MAPP: I think, one, they have it  
19 there for a period of --

20 THE COURT: Aren't there some cases on  
21 that?

22 MR. MAPP: That you can hold it --

23 THE COURT: You can't hold it against your  
24 own parents?

25 MR. NORTHAM: I can't put my finger on it

1 right now. It's either in Michies or a case I  
2 had --

3 MR. MAPP: If it is, I haven't seen it.  
4 When the senior died in 19 --

5 THE COURT: Beside that, the only evidence  
6 that you have on whether or not it was hostile or  
7 not is Mrs. Lewis and she said, of course, he was  
8 using it. He was using it with permission.

9 MR. MAPP: Using it with permission to the  
10 sense they hadn't done anything about it and they  
11 should have done something about it to protect  
12 their rights.

13 THE COURT: His own father?

14 MR. MAPP: Yes, sir. I can't see how the--

15 THE COURT: Mr. Mapp, now, the law to me is  
16 very logical along this line. You build a house  
17 on a lot. Say you bought the lot from your father  
18 and your father owns the farm behind you and you  
19 say -- go to him and say, "Dad, I want to put a  
20 garage back there," and he says, "Oh, now, wait a  
21 minute, son. I wouldn't mind you using it, but  
22 you might claim that as adverse possession later on."

23 MR. MAPP: If my father told me fine, son,  
24 that would be evidence --

25 THE COURT: But isn't that what Mrs. Lewis

1 testified to?

2 MR. MAPP: Well, still we think -- in other  
3 words, her father is not here to testify. They  
4 are long since gone. What the situation was we  
5 just don't know.

6 MR. KLEIN: Isn't that a question for a  
7 jury whether or not that was either hostile or not  
8 giving her evidence?

9 THE COURT: But do you have any other  
10 evidence? What other evidence do you have?

11 MR. KLEIN: The fact of Nellie Bunting's  
12 will for one. She was evidently under the  
13 impression that she and her husband who predeceased  
14 her claimed that as her own. Left it in her will--

15 THE COURT: All right, gentlemen. I'm --

16 MR. NORTHAM: Another thing I think is  
17 important, not only the open and hostile possession,  
18 it's got to be continuous.

19 THE COURT: In other words, there was a  
20 break back in 1947.

21 MR. MAPP: It has to be continuous for  
22 fifteen years.

23 MR. KLEIN: Once your fifteen years is  
24 established, you acquire title.

25 MR. NORTHAM: What you're saying if I let

1 my children have a garden --

2 THE COURT: No question it was fifteen  
3 years. She said she lived on Davis Street since  
4 1929.

5 MR. KLEIN: They lived there previous to"  
6 this.

7 MR. MAPP: They were there when she moved  
8 there.

9 THE COURT: All right, gentlemen. Let's  
10 look -- I'm reluctant to strike the evidence in  
11 any case. I think you're on real weak grounds  
12 because your adverse possession -- to establish it,  
13 you have got to depend on a claim that this man  
14 made against his own father at the time he was  
15 living there and I don't believe that's the law.  
16 I will look at your instructions and let it go to  
17 the jury. Don't fall over out of shock if I set  
18 this aside if the jury comes in for you. I'm going  
19 to let it go to the jury.

20 MR. NORTHAM: I would like to object to  
21 Instructions 1, 2 and 3 as being contrary to the  
22 law and the evidence in the case and it's not  
23 directed to the true issue of adverse possession.  
24 I object to the deletion of Paragraph 4 in the  
25 instruction as submitted in that.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE COURT: Instruction A.

MR. NORTHAM: In that it is incumbent upon the complainants to have a color of title and no color of title has been produced for a period of fifteen years continuous for a period of fifteen years.

THE COURT: All right. Bring the jury back, please.

(The jury returned to the courtroom and the trial continued as follows:)

THE COURT: Ladies and gentlemen, if you will give me your attention I will read you the Court's instructions.

(The instructions of the Court were read to the jury.)

(A closing argument was made by Mr. Klein.)

(A closing argument was made by Mr. Northam.)

(A closing argument was made by Mr. Mapp.)

(The jury retired to consider their verdict at 3:55 p.m.)

(The jury returned to the courtroom at 5:08 p.m.)

THE CLERK: October 24, 1977, Vernon E. McIntosh, et al versus Chincoteague Fire Company, Incorporated. We, the jury, find in favor of the



1 plaintiffs, Vernon E. McIntosh. Signed foreman,  
2 Donald C. Mears. Is that so say you all, ladies  
3 and gentlemen?

4 (Jurors nodding heads affirmatively.)

5 MR. NORTHAM: I would ask that the jury be  
6 polled, Your Honor.

7 (The jury was polled.)

8 (The jury was dismissed.)

9 MR. NORTHAM: Your Honor please, I would  
10 renew my motion to strike the plaintiffs' evidence  
11 and enter a verdict for the defendant on the ground  
12 that the jury's verdict is contrary to the law and  
13 the evidence. There was no evidence that anyone  
14 was claiming under a claim of right other than  
15 Vernon McIntosh and that was not for a period of  
16 fifteen years. There was no evidence that it was  
17 a hostile claim. There was no evidence that it  
18 was a continuous possession for a period of in  
19 excess of fifteen years.

20 MR. MAPF: Your Honor please, we would like  
21 to file a brief in support of our position if we  
22 may.

23 THE COURT: All right, sir. Of course the  
24 verdict is in your favor. Mr. Northam, I suppose  
25 you should file a memorandum and then you file a