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# Record No. 4766

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In the  
Supreme Court of Appeals of Virginia  
at Richmond

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**VIRGIE L. EVERTON**

v.

**WALTER R. ASKEW**

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FROM THE CIRCUIT COURT OF NORFOLK COUNTY

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## RULE 5:12—BRIEFS.

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

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

H. G. TURNER, Clerk.

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









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

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**Record No. 4766**

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VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 11th day of June, 1957.

VIRGIE L. EVERTON,

Appellant,

*against*

WALTER R. ASKEW,

Appellee.

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From the Circuit Court of Norfolk County.

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Upon the petition of Virgie L. Everton an appeal and *supersedeas* is awarded her from a decree entered by the Circuit Court of Norfolk County on the 13th day of February, 1957, in a certain chancery cause then therein depending wherein Walter R. Askew was plaintiff and the petitioner and others were defendants; upon the petitioner, or some one for her, entering into bond with sufficient security before the clerk of the said Circuit Court in the penalty of three hundred dollars, with condition as the law directs.

## RECORD

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This day came the parties by counsel on the motion of the defendants to strike the complainant's evidence and upon argument of counsel;

It appearing to the court that the said motion should be overruled.

It is accordingly ordered, adjudged and decreed that the said motion be, and the same is, hereby overruled, to which action of the court the defendants duly excepted.

Enter July 11, 1956.

E. L. OAST.

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## DECREE.

This cause came on this day to be heard on the bill of complaint, the joint answers of Virgie L. Everton, the executrix, and Willard J. Moody, Executor, of the Estate of Ruby Askew, deceased, and of Virgie L. Everton, individually, and upon the depositions and exhibits duly taken and filed herein, and upon the argument of counsel; and,

It appearing to the Court that the complainant is entitled to the specific relief prayed for in the bill of complaint.

It is, accordingly, ordered, adjudged and decreed that the complainant, Walter R. Askew, is entitled to the legal title and ownership of all real estate owned and titled in the name of Ruby Askew, deceased, at the time of her death, which real estate is more particularly described as follows:

1. All that certain lot, tract or parcel of land, lying, situate and being in Pleasant Grove Magisterial District of the County of Norfolk, Virginia, on the west side of Great Bridge Boulevard, which is designated as Virginia State Highway

No. 27, and more particularly bounded and described as follows:

Beginning at a point on the west side of said Great Bridge Boulevard, at the southern line of a certain road running westerly therefrom, which said road is the northern boundary line of the property of G. W. Commander and Myrtle B. Commander, his wife, running thence westerly, along the southern boundary line of said road, approximately three hundred forty (340) feet to a bend in said road; running thence southerly, along the eastern line of said road, and approximately parallel with the said Great Bridge Boulevard about two hundred thirty-three (233) feet to a ditch, running thence easterly, along said ditch, and approximately at right angles to the said Great Bridge Boulevard, about four hundred thirty-seven (437) feet to the western line of the said Great Bridge Boulevard, and thence running northerly, along the western line of said Great Bridge Boulevard, approximately one hundred forty-four (144) feet to the point of beginning; containing about two (2) acres, the same being conveyed, however, in gross and not by the acre; it being the same property which was conveyed to Ruby Askew by W. R. Askew by deed dated the 19th day of August, 1935 and recorded in the Clerk's Office, Circuit Court of Norfolk County, in Deed Book 624, Page 228.

2. All that certain tract, piece or parcel of land lying, situate and being in Washington Magisterial District of the County of Norfolk, Virginia, and more particularly bounded and described as follows, to-wit:

Beginning at an iron pipe in the southern side of the public road known as the Old Swamp Road, leading from Norfolk to Butts Station (which said road is now a state highway), which point is distant in an easterly or southeasterly direction, along the southern line of said Old Swamp Road, three hundred twenty-eight (328) feet from the northwest corner of the tract of land conveyed to the said J. C. Commander and G. W. Commander by A. W. Stanton et ux by their deed bearing date of the 6th day of April, 1928, and duly of record in the office of the Clerk of the Circuit Court of the County of Norfolk, Virginia, in Deed Book 576, at Page 344, and which point of beginning is the northeast corner of the tract of land conveyed by the said J. C. Commander and G. W. Commander and their respective wives to Gerleen Dixon by their deed bearing date of the 20th day of January, 1933, and from said point of beginning running in a southerly or

southeasterly direction, along the southern line of said Old Swamp Road, approximately one hundred thirty-seven (137) feet to a point; thence in a southerly direction approximately two hundred sixty-seven (267) feet to a point in the center of a ditch; thence in a westerly direction, along the center of said ditch, approximately one hundred three (103) feet to a point in the eastern boundary line of the land conveyed to the said Dixon; and thence in a northerly direction, along the eastern line of the said property conveyed to the said Dixon, approximately three hundred sixty-seven (367) feet to the point of beginning; it being the same property which was conveyed to Ruby Askew by deed of J. C. Commander et ux and G. W. Commander, widower, dated the 2nd day of April, 1936 and recorded in the Clerk's Office, Circuit Court of Norfolk County, in Deed Book 628, Page 543.

3. That certain tract, piece or parcel of land lying, situate and being in Washington Magisterial District, in the County of Norfolk, Virginia, more particularly bounded and described as follows, to-wit:

page 21 } Beginning at an iron pipe in the southern side  
of the public road known as the Old Swamp Road,  
leading from Norfolk to Butts Station, which point is distant  
in an easterly or southeasterly direction along the southern  
line of said Old Swamp Road two hundred and thirty-five  
(235) feet from the northwest corner of the tract of land conveyed to the said J. C. Commander and G. W. Commander by A. W. Stanton et ux, by their deed bearing date of the 6th day of April, 1928, and duly of record in the office of the Clerk of the Circuit Court of the County of Norfolk, Virginia, in Deed Book 576, Page 344, and which point of beginning is distant in an easterly or southeasterly direction along said southern line of said Old Swamp Road eighty-two (82) feet from the northeast corner of a parcel of land conveyed by the said J. C. Commander and G. W. Commander to H. V. Moulton, Jr., et al by deed bearing date of the 8th day of July, 1932, and duly of record in said Clerk's Office, and from said point of beginning running in a southerly or southeasterly direction along the southern line of said Old Swamp Road, approximately ninety-three (93) feet to an iron stake; thence in a southerly direction approximately three hundred seventy-two (372) feet to a point in the center of a ditch, which said point is distant in an easterly direction approximately one hundred twenty-eight (128) feet from the southeast corner of the said parcel of land conveyed to the said H. V. Moulton, Jr., et al, thence in a westerly direction, along the center

of said ditch, approximately sixty-six (66) feet seven (7) inches to an iron stake, which stake is distant in an easterly direction approximately sixty-one (61) feet three (3) inches from the southeast corner of the said parcel of land conveyed to the said H. V. Moulton, Jr., et al; and thence running in a northerly direction, in a straight line, four hundred thirty-seven and one-half ( $437 \frac{1}{2}$ ) feet, more or less, to the point of beginning aforesaid; it being the same property which was conveyed to Ruby Askew by deed of Girlene Dixon *et vir* dated the 12th day of October, 1936 and recorded in the Clerk's Office, Circuit Court of Norfolk County, in Deed Book 631, Page 535.

4. All that certain tract, piece or parcel of land, with buildings and improvements, thereon, situate, lying and being in Washington Magisterial District, in the County of Norfolk, Virginia, and described on a certain plat, entitled "Survey Made for S. Murphy Southside of Great Bridge-Kempsville Road, November 19, 1941, by C. R. McIntire, Engineer", which said plat is recorded in the Clerk's Office of the Circuit Court of Norfolk County, Virginia, in Map Book 25, Page 82, described as follows:

Beginning at an iron pipe on the southern side of the Great Bridge-Kempsville Road where the same intersects the western side of a 20 ft. private road adjoining the Norfolk-Southern right of way, as shown on said plat and running thence along the Great Bridge-Kempsville Road South  $63^{\circ} 41'$  west 208.4 ft. to an iron pipe in the southern side of said Great Bridge-Kempsville Road; thence south  $28^{\circ} 21'$  east 255.2 ft. to an iron pipe; thence north  $57^{\circ} 29'$  east 236.5 ft.

to an iron pipe in the western side of said 20 ft. private road; thence along the western side of said 20 ft. private road north  $35^{\circ} 10'$  thence along the western side of said 20 ft. private road north  $35^{\circ} 10'$  west 232.2 ft. to the point of beginning; it being the same property that was conveyed to Ruby Askew by deed of George W. Swink and Helen Jennings Swink by deed dated the 14th day of April, 1944, and duly recorded in the Clerk's Office, Circuit Court of Norfolk County, Virginia, in Deed Book 769, Page 244.

5. All that certain lot, piece or parcel of land, lying, situate and being in Princess Anne County, Virginia, being shown as Lot FIVE (5) on the "Survey of Property of L. D. Duntun, Shore Drive, Nr. Little Cr.," made the 25th day of June, 1941, by C. R. McIntire, Engineer, which plat is recorded in the Clerk's Office of the Circuit Court of Princess Anne



County, Virginia, in Map Book 14 at Page 35; said property fronting fifty (50) ft. on the southern side of a thirty (30) foot lane, and extending back between parallel lines two hundred (200) feet, its northeastern corner being two hundred and seven and fifty-six one hundredths (207.56) feet, as measured along the southern side of said thirty (30) foot lane, west of the southwestern intersection of said thirty (30) foot lane and Shore Drive, as shown on said plat; it being the same property which was conveyed to Ruby Askew by deed of W. R. Askew dated the 11th day of January, 1952 and recorded in the Clerk's Office, Circuit Court of Princess Anne County, in Deed Book 296, Page 74.

6. All the certain piece or parcel of land situated in Kempsville Magisterial District of the County of Princess Anne, Virginia, near Beechwood Station of the Norfolk Southern Railroad, described as follows:

Beginning at an iron pipe in the eastern boundary line of Pleasure House Road at a point 1641.9 feet in a northerly direction from the intersection of the said eastern boundary line of Pleasure House Road with the Shore Drive, and extending thence in a northerly direction along the said eastern boundary line of Pleasure House Road for a distance of 225 feet to an iron pipe; extending thence South 68 degrees 30 minutes East for a distance of 395 feet to an iron pipe; extending thence South 21 degrees 31 minutes West for a distance of 16.3 feet to an iron pipe; extending thence South 15 degrees 19 minutes West 92.1 feet to a stake; extending thence North 84 degrees 41 minutes West along the center line of a ditch 440 feet to an iron pipe indicating the point of beginning, containing in all one and one-half (1 1/2 acres, more or less, as show on a plat marked "Survey east side Pleasure Ho. Rd., C. R. McIntire, Eng." bearing date of the 1st day of June, 1940, and recorded in the Clerk's Office of said County in Map Book 13 at Page 67; it being the same property which was conveyed to Ruby Askew by deed of William A. Bailey, unmarried, dated the 2nd day of August, 1954 and recorded in the Clerk's Office of the Circuit Court of Princess Anne County in Deed Book 367, Page 300.

page 23 } It is further ordered that Earl W. White and James N. Garrett be, and they are, hereby appointed Special Commissioners for the purpose, and they are hereby ordered to convey by appropriate deed all of the foregoing described real estate to the said Walter R. Askew, and make their report as to how they shall have executed this decree; to all of which the defendants except. Defendants having in-

icated their intention to appeal to the Supreme Court of Appeals of Virginia, it is Ordered that the execution of this decree be suspended for a period of ninety days upon the execution of a bond of \$300.00 with surety approved by the Clerk of this Court and conditioned according to law.

Enter this 13th day of February, 1957.

E. L. OAST, Judge.

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# NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

Virgie L. Everton, respondent, hereby gives notice pursuant to Rule 5:1, Section 4, of the Rules of the Supreme Court of Appeals of Virginia that she appeals from the final decree entered in this cause February 13, 1957 and sets forth the following assignments of error:

1. The Court erred in entering the order July 11, 1956 overruling the motion of respondent to strike the evidence of complainant.
2. The court erred in entering the final decree February 13, 1957, in which it "ordered, adjudged and decreed that the complainant, Walter R. Askew, is entitled to the legal title and ownership of all real estate owned entitled in the name of Ruby Askew, deceased, at the time of her death" and in which it appointed Special Commissioners and ordered them to convey the land of Ruby Askew to the complainant.
3. The court erred in failing to dismiss the complainant's bill.

VIRGIE L. EVERTON, respondent.  
By GEORGE H. GRAY, Of Counsel.

Filed in the clerk's office the 21 day of March, 1957.

Teste:

MAJOR M. HILLARD, Clerk.  
By M. J. EVANS, D. C.

\* \* \* \* \*

*Walter R. Askew.*

page 2 } (The witnesses were sworn, and excluded on motion of counsel for the defendants.)

WALTER R. ASKEW,  
the complainant, having been first duly sworn, testified as follows:

Examined by Mr. Garrett:

Q. Will you please tell us your name?

A. Walter R. Askew.

Q. Mr. Askew, what is your age?

A. 80 the 12th day of this past March.

Q. Are you the widower of Ruby S. Askew?

A. Yes, sir.

Q. When and where were you and Ruby S. Askew married?

A. At a place called Gibbs, in Carolina.

Q. In what year were you married?

A. 1916.

Q. Mr. Askew, are there any living children of your marriage?

A. No, sir.

Q. What were their ages when they died?

A. The oldest one was 15 and the smallest one was 4.

Q. Where do you live at the present time?

A. Well, I should say 170.

Q. Is that State Highway 170?

page 3 } A. Yes, State Highway 170. That is my home.

Q. Is that in Norfolk County?

A. Yes, sir.

Q. About how long have you lived in Norfolk County?

A. About 25 years.

Q. Where did you and your wife live before her death?

A. We lived up here on the state highway, at the place I am living now.

Q. When did she die?

A. She died—I have forgotten the date now, to tell you the truth. It was in August. I have forgotten the date.

Q. What year?

A. 1916.

Q. I am not talking—

A. 1955.

Q. She died in 1955?

A. Yes.

Q. In August?



*Walter R. Askew.*

A. Yes, sir. I have forgotten the date.

Q. All right, sir. Mr. Askew, did you and your wife have any kind of agreement in reference to your property that was made before her death?

A. Yes, sir.

Q. Approximately when was that agreement made?

A. That was made in '35.

page 4 } Q. In 1935?

A. 1935.

Q. Do you remember the month?

A. I think it was August.

Q. Tell the Court what was the agreement or contract that you and your wife made at that time.

A. She asked me would I turn this property over to her since she was much younger than I was, and I told her that I would turn it over to her provided she would make a will and will it back to me. She said she would do that.

Q. What property are you referring to?

A. The property up on the highway—the store property.

Q. Did you have reference to any other property besides that?

A. All property that we got in our possession was to be turned over to her.

. . . . .

page 5 }

. . . . .

By Mr. Garrett:

Q. Now, Mr. Askew, as to this agreement you spoke of, at that time was the real estate in your name or in your wife's name?

A. In my name.

Q. And who bought that real estate?

A. I bought it.

Q. After you had this conversation with your wife what did she do to carry out the agreement?

A. Well, she made a will.

Q. And who drew the will?

A. She drew it in '35.

Q. What did she provide in the will?

A. She provided that she would turn all the property back

*Walter R. Askew.*

to me—will it back to me; that at her death everything would go back to me.

Q. When that will was signed was anybody present?

A. Yes, sir.

Q. Who do you recall was present at that time?

page 6 } A. Mr. Doughtie and my nephew, Bob Askew, were in the building at that time, and my niece, Lillian Simpson and her husband.

Q. Your niece, Lillian Simpson, and her husband signed it?

A. Yes, sir.

Q. What is your niece's name today?

A. Lillian Askew.

Q. After that will was made by your wife and signed by these witnesses, what was done with it?

A. We taken the will and put it into a fruit jar and put it in the wardroom, and it stayed there until the next one was drawn.

\* \* \* \* \*

By Mr. Garrett:

Q. Mr. Askew, following this agreement with your wife and the drafting of the will, did you deed her any property?

A. Did I deed it to her?

Q. Yes, sir.

page 7 } A. I deeded her all the property as we taken it in. As we bought it I deeded it all to her.

Q. When was the first piece deeded to her?

A. I have forgotten that date.

Q. Was it before the will was made or after?

A. The first piece, it was '35.

Q. Yes, sir. Was it deeded to her before this will was made or after it was made?

A. After it was made.

Q. Do you know about how long afterwards?

A. Well, it wasn't very long. It was, maybe, a couple of weeks; something like that.

Q. Would you have deeded this to her but for the agreement that you all had made?

A. Certainly I wouldn't. We made the agreement that I was to have everything after her death.

Q. I have in my hand a deed dated August 19, 1935, of W. R. Askew to Ruby Askew, conveying certain property on the

*Walter R. Askew.*

Great Bridge Boulevard. Is that the first piece that you conveyed to her?

A. Yes, sir.

\* \* \* \* \*

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\* \* \* \* \*

By Mr. Garrett:

Q. Mr. Askew, before this will was made that she drew, herself, had you conveyed any property to her before that time?

A. Before that time, no, sir.

Mr. Garrett: I would like for the record to show that this deed I just mentioned is recorded in Deed Book 624, Page 228.

By Mr. Garrett:

Q. Mr. Askew, after this deed of 1935 there was a piece of property, according to the records of the Clerk's Office of Norfolk County, conveyed to your wife by G. W. Commander on April 2, 1936, in Deed Book 628, Page 543. Did you buy that property?

A. Yes, sir, I bought it.

Q. And the title was taken in your wife's name as shown by the record?

A. Yes, sir.

Q. According to the records in the Clerk's Office there was a conveyance of Girlene Dixon, et al. to Ruby Askew on October 12, 1936, which is recorded in Deed Book 631, Page 535. Did you buy that property?

A. Yes, sir, I did.

page 9 } Q. And you permitted that title to go to your wife, also?

A. Yes, sir, I did.

Mr. Koteen: I object to the statement that counsel has just made, to the effect that he permitted that deed to be made to his wife.

By Mr. Garrett:

Q. Who paid for that property, Mr. Askew?



*Walter R. Askew.*

A. I paid for it.

Mr. Koteen: What is the man's name?

Mr. Garrett: Girlene Dixon and husband.

By Mr. Garrett:

Q. Now, Mr. Askew, I will ask you if a second will was executed by your wife in the year 1939?

A. Yes, sir.

Q. I will ask you how that came about?

A. Well, the first will—the will that was made in '35—I did not think it was sufficient. Her education was not very good, and I wasn't exactly satisfied with it. I asked her to go to a lawyer and make another will which I thought would be sufficient. I was afraid that wasn't satisfactory, the first one.

Q. Did she go to a lawyer?

A. Yes, sir. She went over here. She got Mrs. Dail and Mrs. Turner and came over here and got Mr. Bar-  
page 10 } clay to draw the will. They came back home, and she read it to me. I said, "I guess it is O. K.," and I put it in a fruit jar and put it in the wardrobe. It stayed there until she died.

Q. Now, Mr. Askew, that will which you are referring to is a will which is dated November 2, 1939, and which you offered for probate on the 16th of August of this year in the Clerk's Office?

A. That is right.

Mr. Garrett: Mr. Koteen, can it be agreed that this is a photostatic copy of the will on record?

Mr. Koteen: Yes.

Mr. Garrett: The original, of course, is in the Clerk's Office.

Mr. Koteen: That was copied from the original?

Mr. Garrett: It was photographed from it. I purchased it over there. The original is there if there is any contention. I don't have it.

By Mr. Garrett:

Q. Now, Mr. Askew, following the execution of this will in 1939 did you convey, or cause to be conveyed, other real estate to your wife?

A. I conveyed all that I had.

Q. I direct your attention to a parcel conveyed by George

*Walter R. Askew.*

W. Swink to Ruby Askew, dated April 14, 1944, and recorded in the Clerk's Office in Deed Book 769, Page 244.  
page 11 } Who paid for that property?

A. I paid for it, except \$500.00.

Q. What was the total purchase price for it?

A. \$4,000.00.

Q. And Mrs. Askew put up \$500.00 of that?

A. And I put up the remainder of it.

Q. Did you direct that title be put in her name?

A. Yes, sir.

Q. Another parcel I noted of record was that conveyed by W. R. Askew to Ruby Askew, dated January 11, 1952, and recorded in the Clerk's Office of Princess Anne County in Deed Book 296, Page 74, in which you conveyed a parcel of land to your wife?

A. Yes, sir.

Q. Who paid for that property?

A. I paid for it.

Q. A deed of William A. Bailey to Ruby Askew, dated the 2nd day of August, 1954, recorded in the Clerk's Office of Princess Anne County, in Deed Book 367, Page 300. Who paid for that property?

A. I paid for it.

Q. Did you direct that that be conveyed to your wife?

A. Yes, sir, I did.

Q. Mr. Askew, would you have conveyed these  
page 12 } parcels to your wife but for the agreement that  
you had with her?

A. I would not have. She agreed to will it all back to me if I would do that.

Q. Did you rely on that agreement?

A. Yes, sir, I really did, and do yet.

Q. In short, all of the real estate that you acquired or that you owned was put in your wife's name?

A. Yes, sir.

Q. What was the difference in your ages?

A. She was 57 and I am 80 the 12th day of this past March.

Q. There was 23 years' difference in your ages?

A. About 23, yes, sir.

Q. In her last illness, Mr. Askew, did she ever make any statement to you that she had not kept this agreement or that she had made any different will?

A. No, sir. She never mentioned anything to me about it.

*Walter R. Askew.*

Q. Did you have any knowledge of the execution of a supposed will at the hospital, until afterwards?

A. No, sir. I did not until mine was presented in the Clerk's Office. Later on I got a notice that there was another will presented.

Q. In other words, you offered your will for probate on the 16th of August, 1955?  
page 13 } A. That is correct.

Q. And you were notified on the afternoon of the same day that another will had been offered?

A. I think it was another two days later.

Q. That you were notified?

A. That I received the notification, yes, sir.

Q. Did Mrs. Askew come back home before her death?

A. Yes, sir—but not the last time she was in. The second time she was there she came back home. The last time she was in the hospital she died.

Q. Did you attend her in her last illness?

A. Yes, sir.

Mr. Garrett: I would like to offer in evidence at this time the original deeds and a photostatic copy of the will alluded to, as complainant's exhibits, and ask that the reporter so mark them.

The first is the deed of August 19, 1935, W. R. Askew to Ruby Askew, recorded in Deed Book 624, Page 228, in the Clerk's Office of Norfolk County.

(Received and marked Complainant's Exhibit 1.)

Mr. Garrett: The deed of J. C. Commander, et al, to Ruby Askew, dated April 2, 1936, of record in the Clerk's Office of Norfolk County in Deed Book 628, Page 543.

(Received and marked Complainant's Exhibit 2.)

page 14 } Mr. Garrett: The deed of Girlene Dixon, et al, to Ruby Askew, dated October 12, 1936, of record in the Clerk's Office of Norfolk County in Deed Book 631, Page 535.

(Received and marked Complainant's Exhibit 3.)

Mr. Garrett: A photostatic copy of the last will and testament of Ruby Askew, bearing date of November 2, 1939, which was offered for probate in the Clerk's Office of Norfolk



*Walter R. Askew.*

County on August 16, 1955, the original of which said will is lodged in the Clerk's office.

(Received and marked Complainant's Exhibit 4.)

Mr. Garrett: A deed of W. R. Askew to Ruby Askew, his wife, dated January 11, 1952, which is of record in the Clerk's Office of Princess Anne County in Deed Book 296, Page 74.

(Received and marked Complainant's Exhibit 5.)

Mr. Garrett: A deed of William A. Bailey, unmarried, to Ruby Askew, dated August 2, 1954, which is of record in the Clerk's Office of Princess Anne County in Deed Book 367, Page 300.

(Received and marked Complainant's Exhibit 6.)

Mr. Garrett: Also I would like to offer an original deed dated February 9, 1932, between G. W. Commander and wife to W. R. Askew, which is also joined in by T. D. page 15 } Savage, Trustee, and J. C. Commander, as third and fourth parties for purposes of release, which deed is recorded in the Clerk's Office of Norfolk County in Deed Book 604, Page 77.

(Received and marked Complainant's Exhibit 7.)

Mr. Koteen: I object to the introduction of the deed from Commander to W. R. Askew until after the property is identified as to whether that piece of property had ever been conveyed to Ruby Askew.

Mr. Garrett: Mr. Koteen, for purposes of clarifying the record, that is the deed, the contents will so disclose, wherein Mr. Askew secured the piece of property which was conveyed to Mrs. Askew in 1935. I should have put that in at the beginning, I suppose, but I didn't.

By Mr. Garrett:

Q. Mr. Askew, just a couple of more questions. As to this first will that your wife drew in her hand, what happened to that after the second will was drawn?

A. After she made the second will she tore it up and threw it away.

Mr. Garrett: You may examine, Mr. Koteen.

*Walter R. Askew.*

CROSS EXAMINATION.

By Mr. Koteen:

Q. Mr. Askew, when you were married to Ruby  
page 16 } Askew what were you doing for a living?

A. I was farming.

Q. Where was the farm at the time?

A. It was at Willow Grove, in Norfolk County.

Q. Was that leased property or purchased property?

A. That was my own property.

Q. What did you pay for it?

A. I paid \$650.00 for the property.

Q. Where did you get the money?

A. I worked for it at public work.

Q. What?

A. I say, I worked at public work to get the money to  
buy the farm with.

Q. Public work?

A. Yes. I worked for the ferry company four years—Norfolk County Ferry—as a carpenter.

Q. And you had saved up as much as \$650.00?

A. Yes, sir.

Q. How long did you farm?

A. Well, I sold out, I think, the next year after we were married.

Q. What did you get for it?

A. I got \$4,000.00.

Q. What did you do with the money?

A. Well, I used the money. I put a part of it  
page 17 } back in another farm.

Q. How much did you use, and how much did you  
put in another farm?

A. Well, I put about \$3,000.00 into the other place for repairs, and the farm, also. We had to repair the house when I bought it. Around \$3,000.00 it cost me after I got through with the repairs.

Q. You used \$1,000.00 for living expenses and put \$3,000.00 in another farm?

A. Yes, sir.

Q. And where was the other farm?

A. In Blackwater, Princess Anne County.

Q. What did you do with that farm?

A. I sold it.

Q. When did you sell it?

*Walter R. Askew.*

A. I have forgotten the date, Captain. I don't remember the date, but it has been a long time ago. I have forgotten the date that we sold it.

Q. How long did you keep it before you sold it?

A. We kept it about 11 years.

Q. What did you get for it.

A. I got \$825.00. That is what I got for it.

Q. And you lost on the deal?

A. I lost a whole lot of money, yes, sir.

Q. What did you do after you got the \$825.00?

page 18 } A. What did I do then? Just a minute. Let me study. We left there, and I bought this property, this little store—that land there and built this little store up on 170.

Q. Is that Butts Station?

A. No; on State Highway 170, up beyond Great Bridge. I bought that piece of ground there.

Q. Highway 170?

A. 170, going to North Carolina, two miles up beyond Great Bridge.

Q. You bought a store beyond Great Bridge?

A. Yes, sir.

Q. And you paid \$825.00 for it?

A. Sir?

Q. You paid \$825.00 for it?

A. No. I say that I sold the farm for \$825.00 down in Princess Anne.

Q. I know that. You say then that you bought a store?

A. Yes. Well, I bought the ground and built the property—built the places on it.

Q. You bought the ground?

A. I bought the ground.

Q. And what did you pay for the ground?

A. I paid \$250.00 for the piece of ground.

page 19 } Mr. Garrett: I want the record to show that Mr. Askew is testifying to all of these figures without a scrap of memorandum or notes of any kind.

Mr. Koteen: I want to state in response to that that was the reason why I objected to counsel for the complainant leading his witness.

By Mr. Koteen:

Q. You said that you had bought—

*Walter R. Askew.*

A. —bought the land.

Q. And built the store?

A. Built the improvements on it, yes, sir.

Q. Is that piece of property one of the pieces of property which your wife owned at the time of her death?

A. Yes.

Q. Is that the store where one of the tenants was a man by the name of Wadsworth?

A. There have been several there since we have owned the property, yes.

Q. Was that one of them? I just want to identify the store. Do you recall when you bought that lot and built the store on it?

A. Captain, I don't remember the date, I will tell you the truth. It has been sometime ago, though, but I don't remember the date. It is on the deed, but I just don't remember the date that we bought it.

page 20 } Q. Did you take title to that property yourself, or was title taken in the name of your wife?

A. Myself.

Mr. Garrett: Mr. Koteen, if it will help the record any at this point, I introduced that deed of Commander to Askew, recorded in Deed Book 604, Page 77.

By Mr. Koteen:

Q. Then you are mistaken when you say that you had taken title in your own name.

Mr. Garrett: He is not mistaken. The deed so says, Mr. Koteen.

A. I bought the property—

By Mr. Garrett:

Q. Just a minute.

Mr. Garrett: He hasn't been mistaken in anything. I just handed you the deed. You are holding the deed in your hand at the moment. Read the grantor and the grantee.

By Mr. Koteen:

Q. When did you convey this property to your wife?

A. The last will—'39.

*Walter R. Askew.*

Q. I repeat: When did you convey the property which you have just testified to as having purchased the lot and built the store on it?

A. Well, the first one was in '35 and the other page 21 } in '39.

Q. I am not asking you about the dates of the wills.

Mr. Garrett: He is not telling you the dates of the wills. He is telling you the date of the deed. It is right here, Mr. Koteen. I will give it to you. I put all of these things in evidence. Here is the deed right here.

Mr. Koteen: Don't tell it.

Mr. Garrett: What?

Mr. Koteen: Don't mention any dates. He is under cross examination, and I am asking him.

Mr. Garrett: I submit that the record is the best evidence as to when a conveyance was made.

Mr. Koteen: That is correct, but I have a right to ask the witness the question as to when he conveyed that property to his wife.

Mr. Garrett: You hold the deed in your hand. I don't see why you have to ask him.

By Mr. Koteen:

Q. Again I am asking you, Mr. Askew, as to when you conveyed this lot that you claim you purchased for \$250.00, and built a store on it, which is on Virginia State Highway—

A. —170.

page 22 } Q. 170? When did you convey that to your wife?  
In '39—'35 and '39.

Q. Did you have to convey it to her twice?

A. No. The first will was in '35 and the next was in '39.

Q. Mr. Askew, I am not asking you as to the dates of the two wills. I am asking you when did you convey to your wife the lot you purchased for \$250.00, which is situated—

Mr. Garrett: Just call it the store property, Mr. Koteen.

By Mr. Koteen:

Q. —a couple of miles beyond Great Bridge on which the store was built? When did you convey that to your wife?

A. I told you, in 1935—

*Walter R. Askew.*

Mr. Garrett: I want the record to show that Mr. Koteen has in his left hand the deed.

By Mr. Koteen:

Q. What did it cost you to build the store on the lot?

A. Well, the house, the store and the land only cost about \$750.00. Everything was cheap. I went in the woods and cut the trees down and hauled it to the mill and got it in a cheap way. It only cost us about \$750.00, the whole thing.

page 23 } Q. \$750.00 with the lot?

A. The whole thing, my getting it like I did get it. I went in the woods and cut the trees down and carried them to the mill and had them sawed. I nearabout built it, myself.

Q. And you have been collecting all the rents from the store?

A. Yes, sir.

Q. In 1935 how many pieces of property did you own in your name, and how many pieces of property did your wife own in her name?

A. At that time?

Q. Yes.

A. She did not own anything.

Q. How many pieces of property did you own then?

A. At the time we stayed at the store?

Q. Yes.

A. We did not own any but the store property when we first went there. That was all then.

Q. That is the only piece that you owned?

A. At that time, yes.

Q. At that time?

A. At that time.

Q. You say that you and your wife had an agree-  
page 24 } ment that you would convey this store property to her?

A. Yes.

Q. If she made a will devising the property to you?

A. That is correct, which she did.

Q. You are sure that that was the agreement?

A. That was the agreement, yes, sir. It would not have been done if we had not agreed.

Q. What was the reason, if she agreed to devise the property to you upon her death, for you to convey the property to her by a deed?



*Walter R. Askew.*

A. Well, she was right much younger than I was, and I always give way and she went ahead more so than I did. That is why I did it. I had confidence in her that it would be mine if she was to happen to die; that everything was all right.

Q. Why didn't you then leave the property to her for life, if you expected it back after her death?

A. Well, she did have it for life.

Q. Didn't you know that this deed you made on the 19th day of August, 1935, was a deed conveying the property to her absolutely and forever, and was not a life interest?

A. Certainly, it was forever, as long as she lived. When she died it went back to me. After her death it was to go to me.

Q. Why didn't you leave that to her for life page 25 } instead of leaving it absolutely forever?

A. Well, because I wanted it turned back to me, is the reason I didn't leave it for life. After her death I wanted the property to come back to me, just as it was willed back to me.

Q. So instead of leaving the property to her for life you conveyed the property to her absolutely forever on the supposition that the will that you claim she had made at that time was one that devised the property to you after her death?

Mr. Garrett: I doubt if a lawyer could answer that, much less an 80 year old witness. That is about four questions in one.

Mr. Koteen: I will simplify it by stating the question in this form:

By Mr. Koteen:

Q. You preferred to convey this piece of property to her absolutely? I will break into the continuity of the question by asking you if you know the meaning of "absolutely"?

A. It means "right," doesn't it?

Q. It means forever, doesn't it?

A. Forever.

Q. You then preferred to convey to her the property forever if you got a will from her devising it back to you?

A. She was to get the property for her lifetime, page 26 } and after her death it was to come back to me. If she had not been interfered with it would have come back to me.

*Walter R. Askew.*

Q. Was it your niece that interfered with it?

A. Nobody has interfered with it—none of my people have interfered with it. My people have not interfered with it.

Q. You are sure that it wasn't your niece, the one you are living with, that is interfering with it?

A. I am sure she has not interfered or had anything to do with it, whatsoever—no more than you have; not as much.

Q. You are living at the home of your niece?

A. I am staying down there at the present, yes, sir.

Q. You have been staying there since your wife died?

A. Because I did not want to stay up there at my place. It is too lonesome. I still don't want to stay up there.

Q. Your lawyer asked you on direct examination at the very start as to where you were living, and you told him that you were living at the same place where you were living at the time of her death.

A. Living now at the same place?

Q. Yes.

A. I haven't moved anything. The furniture  
page 27 } and everything stayed in the house.

Q. But you are not living there?

A. I just go and come. I stay down there with her. I get my meals there and stay down there mostly.

Q. No one is living in that house?

A. No, not at present.

Q. And no one has been living there since your wife's death?

A. No, sir.

Q. So you did not mean then to say that you had been living there, when you did say it?

A. I don't know as I said I had been living there since my wife died. I had lived there until she died. Since she died I don't stay down there because it is so lonesome. There was nobody to do nothing for me, so I simply went down there and stayed with her. I go there once or twice a week. I have cats and things there to take care of.

Q. Do you remember, Mr. Askew, at the time your wife died, when Mrs. Everton offered to give you a home as long as you pleased?

A. She has never offered to give me no home. She may have told my wife that, but she hasn't told me. Even if she had, I wouldn't have went, if she had offered it to me.

*Walter R. Askew.*

Q. I want to warn you that I will contradict you, page 28 } and give you another opportunity to refresh your memory as to the time that Mrs. Everton offered you a home and you declined it.

A. She hasn't offered it to me. She has never offered it to me. She has never offered me any home.

Q. When did you buy the second piece of property that you claim you purchased and bought in the name of your wife?

A. I did not buy it in the name of my wife. I bought it in my name.

Q. Maybe you didn't understand my question. You answered awhile ago that the store, about which you have been testifying, was the only piece of property in 1935 that either one of you had owned. I have asked you—

Mr. Garrett: Just a minute. He did not testify to that.

A. It was in 1939 that I said we owned one piece of property. It wasn't '35; it was '39. Isn't that right?

\* \* \* \*

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\* \* \* \*

By Mr. Koteen:

Q. Mr. Askew, if I am wrong in my supposition as to what you have testified, you are at liberty to tell me so. I must again ask you what I did awhile ago in order to keep within the chronological order of events that took place in your married life. A while ago I asked you about the lot you purchased near Great Bridge for which you paid \$250.00 in 1935, and on which lot you said you built a store costing you \$500.00, or a total of \$750.00 altogether.

I believe I asked you whether there was any other property that either you or your wife owned, and it is my recollection that you replied that the piece of property was the only one that you owned at the time.

A. In 1939.

\* \* \* \*

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\* \* \* \*

*Walter R. Askew.*

By Mr. Koteen:

Q. Now, the piece of property, Mr. Askew, that you bought in 1932 you conveyed to your wife by a deed dated the 19th day of August, 1935. Is that correct?

A. That is correct.

Q. Now I am asking you how many pieces of property did you own in 1935 after this deed was signed by you conveying it to Ruby Askew on the 19th day of August, 1935?

A. How many pieces of property did I own at that time?

Q. Yes.

A. In 1935? I don't know, but it is on them page 32 } deeds. I don't know. It is on the deeds. I can't keep everything in my head.

Q. Mr. Askew, did you own another piece of property besides that store at the time you conveyed the store to your wife?

A. I don't remember; I don't remember. It is on them deeds. All the property is there. But, I just don't remember when I conveyed that to her. I have forgotten.

Q. Will you say that you owned any more than that one?

A. I would not say directly what I owned. I don't remember. I can't remember what I owned at that time, but it is on them deeds what I owned at that time. I have forgotten. I can't remember dates and things.

Q. Who operated or occupied the store at Great Bridge after it was built?

A. My wife and myself did; she and myself.

Q. How long did both of you remain there?

A. I think around ten years.

Q. How many days?

A. Around ten.

Q. Ten years?

A. I don't remember just how many—nine or ten.

• • • • •

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• • • • •

By Mr. Koteen:

Q. During those ten years did you accumulate any money?

A. Not so much; a little. We did not accumulate much. We made a living.

*Walter R. Askew.*

Q. Did you save any money during those ten years?

A. We did not have much to save. We used about all we taken in. We did not have very much to save.

Q. A deed was introduced in evidence by your counsel, which is marked Exhibit 2, and is dated the 2nd day of April, 1936, and it is from J. C. Commander and Margaret A. Commander and G. W. Commander to Ruby Askew, your wife. Who paid for that property?

A. I paid for it.

Q. How much?

A. How much? Well, do you want the land and houses? How do you want it? How do you want me to answer it?

Mr. Koteen: (Addressing reporter) Will you page 34 } repeat my question for him, please?

(Read by the reporter.)

A. You want the whole thing? We did not build it all at one time. The first house was \$700.00. Everything was done cheap. The second house was \$1,200.00. The small house I think was around \$650.00, if I am not mistaken.

By Mr. Koteen:

Q. Mr. Askew, I don't believe you understood my question. I am not asking you what you paid for any one of those houses. What I am asking you is: What did you pay for the property described in the deed dated the 2nd day of April, 1936, from J. C. Commander, and others, to your wife, Ruby Askew.

Mr. Garrett: Tell him where the property is located, Mr. Koteen. A deed number and book number don't mean anything to a layman.

By Mr. Koteen:

Q. This property is situated in the Washington Magisterial District, and it is on the southern side of the public road known as the Old Swamp Road, leading from Norfolk to Butts Station. What did you pay for that property?

A. You mean the lot?

By Mr. Garrett:

*Walter R. Askew.*

Q. That is what he means, yes.  
 page 35 } A. I think it was \$150.00, if I am not mistaken.  
 I think that is what I paid for the lot.

\* \* \* \* \*

By Mr. Koteen:

Q. Did you build on that lot?

A. Yes, sir.

Q. What did it cost you to build?

A. I just said about \$800.00 is what that house cost on that lot.

Q. Where did you get the money?

A. We worked and made it. I did not steal it.

Q. Didn't you just say a while ago that what you got out of the store, when you and your wife were operating it, was—

A. Excuse me just one minute. I will go back now. I made a mistake, myself. I had a little farm down in  
 page 36 } Princess Anne County. I got the money out of that farm. I sold that farm and got the money to build that first house.

Q. Didn't you say that the money that you had gotten for the farm in Princess Anne you used for the purpose of buying the lot in the Great Bridge section and built a store on it?

A. I don't remember saying where I got that money that I got from that.

Q. If the record shows that you did say that, do you wish to correct that statement?

A. Yes, I wish to correct it, because I don't remember saying that: that I got the money to pay for that building, or anything, out of that place. I had the cash money to pay for that first property I bought. I didn't get the money from nowhere, only my labor. I had cash money to pay for it. I worked and made the money.

Q. So you claim that the property that was conveyed to Ruby Askew by J. C. Commander, and others, by the deed dated the 2nd day of April, 1936, and the store built thereon, was bought with funds that you received from the sale of the farm in Princess Anne?

A. No; you are wrong. I had the cash money to buy that property—that store property—with. I did not get it anywhere except from my cash money that I worked for. That is where it come from.



*Walter R. Askew.*

page 37 } Q. Do you remember stating, when I asked you whether you saved anything from the operation of the store at Great Bridge, that you replied no, that you were just making a living?

A. I did not save very much.

Q. I asked you whether you saved anything, and you said no, that you did not save hardly anything, "except we made a living"?

A. I said we did not save very much.

Q. How much did you save?

A. I don't know. You are asking me a question that I can't answer.

Q. Your counsel has introduced in evidence a deed dated the 12th day of October, 1936—

A. '35.

Q. —1936, which is marked Exhibit 3, and is from Girlene Dixon to Mrs. Ruby Askew. The property is located in Washington Magisterial District in a section known *was* Old Swamp Road. Who paid for that property: You or Mrs. Askew?

A. I paid for it, myself. I bought it and paid for it.

Q. What did you pay for that?

A. I think it was \$150.00. I really have forgotten. I believe that is what I paid for the lot. I bought it  
page 38 } from the Dixons. They were in Gloucester County.

Q. Where did you get the \$150.00 from?

A. I worked for it.

Q. Where did you work?

A. I worked at my business.

Q. Who paid you?

A. Who paid me? I collected money from my laboring, and so on. Nobody did give it to me.

Q. From whom did you collect?

A. I collected from first one and then the other. We sold stuff in the store and made a little money. We did not stay there for nothing.

Q. Who took care of the money?

A. Both of us. She used the money if she wanted to and I did the same, if we had any.

Q. So you took \$150.00 out of the drawer in the store?

A. I don't say out of the drawer, but the money that we were taking in, I did, yes.

Q. Did you keep a checking account in the bank?

A. No, we didn't have any bank account.

*Walter R. Askew.*

Q. You say you paid \$150.00 for the lot?

A. If I am not mistaken, yes, sir, I think so. I won't say directly, but I think that is it. I can't remember all of these little things.

page 39 } Q. What did you do with the lot?

A. I built a house on it.

Q. How much did it cost you?

A. It cost us, I reckon, about \$500.00 or \$600.00; just a small house. Things were very cheap then. A man could build it for \$150.00.

Q. And you took that out of the store, too?

A. As we made it we taken it. As I made it I taken it and bought things with it, yes. I wasn't working anywhere else at the present time. We were keeping the store.

Q. You say "We"?

A. I said my wife and myself were keeping the store, certainly.

Q. How did you divide your profits from the store?

A. No special way. She taken what she wanted and I did the same.

Q. And when this transaction was closed you actually paid the money over to the seller?

A. Yes, I did.

Q. When you said that you and your wife operated that store for ten years—

A. I suppose so. I don't remember exactly.

Q. —you said that you were not in a position to save much money?

A. Not so much, no.

page 40 } Q. But you were able to get enough money to pay for those two pieces of property?

A. Yes.

Q. Why did you have to give up the business after ten years?

A. Just because we got tired and worn out, that is why.

Q. And you had those three pieces of property at the time?

A. Yes.

Q. You commenced to collect rents from the three pieces of property?

A. That is correct.

Q. And you lived on those rents?

A. No. We collected from the store and the rents.

Q. When you gave up the business you say you were in the store, too?

*Walter R. Askew.*

A. We were in the store and quit—sold it out.

Q. Then all you did then was to collect the rents?

A. No. We went to Butts Station and kept a store one year after we sold out there.

Q. And when you went to Butts Station, when did you build that store at Butts Station?

A. We did not build no store there. The old buildings were already there when we got it.

page 41 } Q. It was a house?

A. An old store.

Q. An old store?

A. And a house—a dwelling house and a store.

Q. And that is where you stayed for one year?

A. Yes, sir.

Q. Did you make anything there?

A. A little; not much. I made a little.

Q. Why did you give it up?

A. We wasn't able to take care of it. My wife was sick. We had to give it up.

Q. What year was that?

A. I forget. It has been about ten years ago, I reckon.

Q. '45 or '46?

A. Something like that.

Q. And you say you collected rents from that store, too, when you gave it up?

A. Oh, yes. There was mighty little we could get. Sometimes you get a little and then again you get none, the way it is.

Q. That was the fourth piece of property that you owned?

A. Yes.

Q. You have introduced in evidence a deed from  
page 42 } yourself to your wife, Ruby Askew, dated the 11th  
day of January, 1952, conveying property known  
as Lot 5 on some survey of property situated in Princess  
Anne County. It is a piece of property which you purchased  
from a man named Scarborough and wife. Where did you  
get the money to pay for that property?

A. I worked for it.

Q. What kind of work?

A. Any kind.

Q. How much did you pay for that?

A. \$4,000.00.

Q. You got \$4,000.00 from 1946 to 1952?

A. I worked a couple of years for the Carva Food people.

*Walter R. Askew.*

I got \$125.00 a month. I was night watchman. I worked two years.

Q. How much of it did you give to your wife, and how much did you retain for yourself?

A. The money that I made?

Q. Yes.

A. I used what I wanted to and gave her what I wanted to.

Q. In what proportion was the division?

A. We handled what we got betwext us as we wanted to. If she had a dollar, she used it, and if I had one, I used it.

Q. You say that in that manner you saved up page 43 } \$4,000.00 to pay for this property?

A. Yes, with my work. I worked a couple of years.

Q. A couple of years?

A. A couple of years for The Carva Food people.

Q. In two years you made \$145.00 a month?

A. \$125.00.

Q. \$125.00 a month?

A. Yes.

Q. That is \$1,500.00 a year?

A. Yes.

Q. \$3,000.00 for two years?

A. Yes.

Q. And you say she used what she wanted and you used what you wanted?

A. Yes, sir.

Q. And even with that condition you had \$4,000.00 to pay for this property in Princess Anne which you conveyed to her by this deed, marked Exhibit 5?

A. Yes.

Q. Isn't it a fact that your wife was the one who saved her own money and she paid for it?

A. There was no separation, whatever—no separation. She used what she pleased and I done the same out of what was made.

page 44 }

\* \* \* \* \*

By Mr. Koteen:

Q. Mr. Askew, in your bill of complaint you allege that on the 14th of April, 1944, certain property in Norfolk County

*Walter R. Askew.*

was conveyed to your wife by George W. Swink. How much did that property cost you?

A. \$4,000.00.

Q. So you had \$8,000.00 to buy property with?

A. She paid \$500.00 of that out of her own money.

Q. \$500.00 and you paid \$3,500.00?

A. Yes.

Q. Are you sure?

A. Yes, sir, I am sure.

Q. I want to give you warning that I will contradict you on that fact. I ask you to try to refresh your memory.

Mr. Garrett: What fact, Mr. Koteen?

Mr. Koteen: That his wife contributed \$500.00 and he contributed \$3,500.00.

By Mr. Koteen:

Q. As a matter of fact, isn't it true that she paid all of it?

A. No, she did not pay all of it; no, she didn't.

A. Where did you get \$7,500.00?

page 45 } A. I worked for the money.

Q. You just testified that you worked a couple of years on a salary of \$125.00 a month. Is that the source from which you saved \$7,500.00?

A. I did not say I did not save any money when we were in the store. I said we saved a little. I did not say how much. I was doing just like you are doing: saving all you can.

Q. But you don't know how much you saved?

A. No, I did not take notice.

Q. Didn't you wife keep you posted?

A. As to how much was saved?

Q. Yes.

A. No.

Q. Why didn't she?

A. Simply because she did not want to; that is why.

Q. Was there any trouble existing between you and your wife?

A. No trouble between me and my wife, no, sir. There never had been.

Q. You were on good terms?

A. We had always been, and I can prove it.

Q. How did you feel toward her people—the same way?

*Walter R. Askew.*

A. I haven't got no harm in other peope.

Q. You were on good terms with them?

page 46 } A. Certainly. Not a one in the world that I was  
against. I am on good terms with everyone, so far  
as I know.

Q. Is it or not a fact that you never wanted to visit your  
wife's mother or any of her people?

A. I never wanted to visit? I always visited when I got  
ready to. If I wanted to, I did.

Q. Isn't it also a fact that whenever she visited her people  
you stayed in the car and would not go in?

A. When my wife visited her people? Who told you that?

Q. I ask you.

A. They told a lie, I don't care who told it.

Q. I ask you—

A. No. I stayed in the car if I wanted to sometimes. I got  
tired of staying around the bunch, and I would go and sit  
in the car. I do that plenty of times. I do that right now.  
You ask them and see if I don't get to myself once in a while  
now. Sometimes I would go and sit in the car. I would stay  
in the house some and then I would sit in the car some. A  
lot of times right now I want to be by myself, and I get by  
myself. It was not because I was mad with the people. I  
haven't got nothing against the people.

Q. When you stated that you had built a store—

page 47 } A. I have done told you enough about it, I guess.  
I am getting tired now answering the questions  
over and over. I have answered about all I am going to. I  
am not going to answer much more.

\* \* \* \* \*

By Mr. Koteen:

Q. If you had an agreement with your wife, which you claim  
you had, that she would leave a will devising what property  
she would acquire to you upon her death, why didn't you have  
a written agreement to that effect?

A. Well, because I wanted it fixed like it should be fixed.  
That is why. I wanted everything right. I thought I did.

Q. You did not think it was necessary to have a written  
agreement to that effect?

A. It should be.

Q. Why then didn't you ask her for a written agreement  
if it should be?



*Walter R. Askew.*

A. Because I wanted a written agreement that I should get all of this property back again. I wanted it that way.

Q. You know the difference between a written agreement and a will?

page 48 } A. There are a lot of things that I don't know.

I am not educated. I can't explain a lot of questions that you ask me. There are a lot of words that I can't explain. I will be plain with you. I ain't got no education.

Q. The will that she made devising all property that she had then owned, dated the 2nd of November, 1939, was four years after you conveyed the first piece of property to her on the 19th of August, 1935.

Mr. Garrett: The record shows that, Mr. Koteen. Why should we go into what is a matter of record?

A. You asked me that two or three times. I am not going to answer it any more.

By Mr. Garrett:

Q. That is all right, Mr. Askew. Don't become provoked. If you are tired we can recess, if need be. It is up to the Court to determine how many times you will have to answer the same question.

By Mr. Koteen:

Q. When you and your wife were operating the store together who remained in the store to wait on customers?

A. Both of us at times.

Q. When you say "at times" you mean every day in the week?

A. No. Sometimes I would go to town to get  
page 49 } groceries, first one thing and another. Sometimes  
she would be there and then again I would be there.  
That is the way that worked. We weren't in there all the time, both of us together, no.

Q. You did not do that much business, did you, to require both of you there?

A. No, sir, we didn't.

Q. So one of you was sufficient?

A. At times, yes.

Mr. Koteen: That is all.

## LILLIAN ASKEW,

called as a witness on behalf of the complainant, having been first duly sworn, testified as follows:

Examined by Mr. Garrett:

Q. Will you tell His Honor your name and your place of residence?

A. Lillian Askew; Post Office Box 171, Bayside, Virginia.

Q. Mrs. Askew, how long have you resided in Norfolk County, or near Norfolk County?

A. I live in Princess Anne.

Q. How long have you resided in this area?

A. Five years; about five years.

page 50 } Q. Where did you reside prior to your present address?

A. Sewell's Point Road. That was in Norfolk County at the time.

Q. When I ask you how long have you resided in this area, I don't mean your present house address, but this general area?

A. All of my life.

Q. How old are you?

A. 51.

Q. In 1935 what was your married or single name at that time?

A. Simpson.

Q. Mrs. Askew, I would like to direct your attention, if I may, to an occurrence which allegedly occurred in 1935. I will ask you if you were present at or around that time at the store of Mr. Askew when anything was done or said by the late Mrs. Ruby Askew in connection with the execution of a will?

A. Yes.

Q. You knew Mrs. Ruby Askew—

A. Yes, sir.

Q. —who passed away this year?

A. Yes, sir.

page 51 } Q. Can you tell us briefly, but substantially, what took place at that time?

A. Well, I usually went to see them frequently.

Q. Who is "them"?

A. My husband and I.

Q. Who is "them"?

A. My uncle and Ruby.

*Lillian Askew.*

Q. That is Mr. Walter R. Askew and Mrs. Ruby Askew?

A. Yes. So this time it was in the summertime. She says to me and my husband, she says, "I want you to come in here and do something for me." I said, "What?" She said, "Well, I have got a will that I have got fixed out for the interest of my husband, that in the event anything should happen to me the property and all would go to my husband, Raleigh Askew; nobody else but him." My husband, Roy Simpson, who is deceased now, and myself signed it.

Q. Was anybody else on the premises or near at the time?

A. Yes, there was.

Q. Who was that?

A. It was Bob Askew and Mary and Mr. Doughtie.

Q. Who requested you to witness a will?

A. She did, Mrs. Askew.

Q. Did you read it, or just rely on what she said?

A. I glanced at it. It was in will form. I could not tell you the exact words.

page 52 } Q. Was it typewritten or handwritten?

A. It was handwritten.

Q. And you signed it as a witness?

A. Yes, I did.

Q. Can you give us approximately when that was?

A. It was around the first of August, I am sure. An event like this I remember so well because that was my first signing of anything like that.

Q. What year was that?

A. '35.

Q. Did you have the conversation with Mrs. Askew in the place, or partly in the place, or outside, or where did you have it?

A. When we would go in, Mrs. Askew and my uncle were running a store and they would have customers in and out. She said that while we were there she wanted us to witness—I mean, to sign—this will that she had made for the interest of her husband in the event of her death.

Q. Did Mrs. Askew give you any reason as to why she wanted the will executed?

A. Yes; that he was going to convey his property over to her; that she was much younger than him. That was the reason; and that she handled most of the transactions of business.

*Lillian Askew.*

Q. After that will was signed there did you see page 53 } it after that time?

A. No, I did not see it after that was signed, but I saw another one that was made out in '39. She told me about it. She said that Uncle Raleigh wasn't satisfied with that one; that she had one made out by Mr. Barclay, which I saw. When she entered the hospital she asked me if I would see that that will was on record in twenty-four hours after her death, "because if it is not he will go all to pieces." She asked me when she entered the hospital would I do that, and I told her that I would.

Q. Approximately when was that?

A. She entered the hospital in May.

Q. Of what year?

A. This year.

Q. '55?

A. Yes, sir.

Mr. Garrett: You may cross examine, Mr. Koteen.

## CROSS EXAMINATION.

By Mr. Koteen:

Q. Mr. W. R. Askew is your uncle?

A. Yes, sir.

Q. He is living at your home?

A. Yes, sir.

Q. And has ever since his wife died?

A. Yes.

page 54 } Q. When he interviews the tenants in the homes  
that his wife owned at the time of her death, you  
drive him around?

A. Yes, sir.

Q. Has he made any promises to you?

A. None, whatsoever. If I have got to do anything to get anything that way, I would not want nothing. No promises, whatsoever.

\* \* \* \* \*

By Mr. Koteen:

Q. You say that you and Mrs. Ruby Askew had a conversation regarding your acting as a witness to the will?

*Lillian Askew.*

A. Yes, sir.

page 55 } Q. And you acted as a witness to a will in 1935  
and to a will in 1939?

A. I wasn't a witness. I saw the will in '39.

Q. You were not a witness to that will?

A. No, sir. After she went to Mr. Barclay she showed it to me and told others, everybody all through the years of this will that she had made for her husband to leave him everything at her death.

Q. She told that to everybody she knew?

A. Everybody practically, yes, sir.

Q. She even told you that at the time she was sick in the hospital?

A. Yes, sir.

Q. And she told you to see to it that the will was probated?

A. Yes, sir.

Q. Was it one day or one week before she died?

A. This was in May, and she did not die until August the 16th.

Q. And she told you that in May?

A. Yes.

Q. Did you have any discussion with her between May and August?

A. No, I didn't. The woman was in a bad condition. She was very ill. I did not want her mind to be on  
page 56 } anything but to be happy if she could, because I  
realized she had only a little time to live on earth.

Q. Did you visit her?

A. Yes, sir.

Q. How often?

A. Very often.

Q. You say that after she entered the hospital she told you that?

A. Yes, sir.

Q. Was it the first day she entered the hospital that she told you that?

A. Yes, sir.

Q. And since that time she made no statement to you, whatsoever?

A. Yes, sir; that she had a will for my uncle to get everything at her death. She told my husband. Like I say, she would tell everybody that.

*Walter R. Askew.*

Q. Did you ever have any discussion with her prior to her entrance in the hospital?

A. What do you mean?

Q. About the will or about any wills?

A. That wasn't any of my business, what she had done. That was her business, the will that she had. She just told me about it.

Q. So prior to her going to the hospital you and page 57 } she did not discuss anything at all about any wills?

A. No.

Q. You say that you and your first husband were called in as witnesses to the will that she made in 1935?

A. Yes, sir.

Q. Who drew that will in 1935?

A. She made it, herself, so far as I know.

Mr. Koteen: That is all.

Mr. Koteen: Before you call anyone else in I want to ask Mr. Askew one question. I can call him back as a witness, myself, as far as that is concerned. I do want to ask him a question that I did not ask him.

Mr. Garrett: I don't know what it could have been, but all right.

WALTER R. ASKEW,  
being recalled, further testified as follows:

By Mr. Koteen:

Q. Under the will that your wife made, with Mr. Moody and Mrs. Everton as executors, you have a life interest, have you not?

A. Yes, I suppose so.

Q. You are collecting all the rents?  
page 58 } A. Yes.

Q. What is the income from the property?

A. I don't know, because part of the time I have got tenants and then again I haven't. They are Negro tenants that are down at Butts Station. Sometimes I have some in there, and then again there are not any in there. I can't hardly keep a record of it the way it is.

Mr. Garrett: Won't the will speak for itself?



*Robert T. Askew.*

Mr. Koteen: I am speaking of the income.

A. If it was regular I could tell you, but I can't tell you because they are in and out. Some weeks I will get a little something, and then some weeks maybe I don't get anything. That is the way that works.

By Mr. Koteen:

Q. But since she died, for three months couldn't you state the average income you have as a life tenant?

A. I don't know, because as I told you, some weeks I get a little and then again I get nothing out of those colored people.

Q. Would you say you are getting as much as \$700.00 a month?

A. No; no, my Lord. What is the matter with you, Man? Not half of it.

Q. Are you getting \$500.00?

A. No.

page 59 } Q. \$400.00?

A. No.

Q. \$300.00?

A. Maybe like it stands. I don't know; not over \$300.00, I don't reckon, like it is.

Mr. Koteen: That is all.

ROBERT T. ASKEW,

called as a witness on behalf of the complainant, having been first duly sworn, testified as follows:

Examined by Mr. Garrett:

Q. Mr. Askew, you are the husband of Mrs. Lillian Askew who has just testified?

A. That is right.

Q. In 1935 you were not married to her?

A. No.

Q. I will ask you if in the summer of 1935 you had occasion to be present at Mr. Askew's store when any transaction took place in reference to the signing of a will?

A. Yes.

Q. Tell us as best you can recollect who was present at the time.

A. I stopped in to see Mr. and Mrs. Askew. My wife now—

*E. R. Doughtie.*

her name was Simpson then—and her husband  
page 60 } then were there. So Mr. Raleigh Askew's wife said  
he was going to will the property over to her and  
she was going to make a will. She had them to sign it. So,  
they signed it and that is all that was said about it. Me and  
my wife and Mr. Doughtie were in there.

Q. Was the will executed at that time? Was the will signed  
at that time?

A. Yes, signed while we were standing there.

Q. Did you read it or just see it on the table?

A. I saw it on the table.

Q. Do you know whether it was typewritten or handwritten?

A. It was handwritten.

Q. Who requested that it be signed? Who made the re-  
quest?

A. Mr. Askew's wife, Ruby.

Q. Did she or not make any statement as to her reason for  
having the will drawn?

A. She only said that he was going to will the property to  
her.

Q. That he was going to will some property to her?

A. And she was going to give him a will for it.

Q. There was only one will there at the time that you saw?

A. That is all I saw.

page 61 } Mr. Garrett: You may examine.  
Mr. Koteen: No questions.

**MR. E. R. DOUGHTIE,**

called as witness on behalf of the complainant, having been  
first duly sworn, testified as follows:

Examined by Mr. White:

Q. Mr. Doughtie, did you have occasion to stop in the  
Askews' place in the summer of 1935?

A. Yes, I did.

Q. What was the occasion?

A. I stopped in there to get me a drink. I had been fishing.  
It was Saturday afternoon.

Q. Who was there?

A. Well, I don't know all the people. As far as I knew,

*E. R. Doughtie.*

Mrs. Askew, the lady who just came in here, and her husband was in there.

The Complainant: And his wife.

Mr. Garrett: Just a minute, Mr. Askew.

A. I don't know whether it was his wife or who it was. There were four or five people. My wife and I were in there. We stopped in to get a drink.

By Mr. White:

Q. Did you hear any conversation by Mrs. Askew page 62 } with reference to a will?

Mr. Garrett: Mrs. Ruby Askew.

A. Yes.

Mr. Koteen: One minute. I object to the form of the question, because it implies what sort of answer to give. Let counsel ask him what he heard said.

By Mr. White:

Q. During that visit there what conversation, if any, did you hear, and what was done?

A. Well, there was a conversation brought up about a will that was drawn. It was drawn on a piece of paper; just an ordinary tablet. It was lined. It was read, and I looked at it. They wanted me to sign it. I said, "I don't think I have any right to sign it. Somebody else can sign it." So, I did not sign it. I heard it read. The will read that the property that was signed over to her by Mr. Askew would go back to him at her death, or something like that. I don't remember the whole thing.

Q. Whose will was it?

A. Mr. Askew's will.

Q. Who?

A. Mrs. Askew's will.

Q. Mrs. Askew's?

A. Yes, sir.

page 63 } Q. What was her conversation when that question was brought up?

*Jack K. Moulton.*

A. Well, she just said, "I want everything to go back to him." I can't remember the exact words that were said, Mr. White. Of course, I had been knowing Mr. Askew and Mrs. Askew a long time. I was just passing through. That is about all I know about it, see. I did not sign the will, but I did hear it read.

Q. Do you know when that was?

A. It was in August; sometime in August 1935.

Q. You delivered oil there at their store?

A. I did after that, but at this particular time it was on Saturday afternoon.

Q. But you had known them intimately for a long time?

A. About 30 or 35 years, yes, sir. Mr. Askew and my daddy grewed up together.

Mr. White: You may inquire.

Mr. Koteen: No questions.

JACK K. MOULTON,

called as a witness on behalf of the complainant, having been first duly sworn, testified as follows:

Examined by Mr. White:

Q. State your full name, Mr. Moulton.  
page 64 } A. Jack K. Moulton.

Q. What is your occupation?

A. I am an attorney at law.

Q. Did you at any time hear a conversation between your mother and Mrs. Ruby Askew with reference to a will?

A. Yes, sir, I have.

Q. State just what that conversation was.

Mr. Koteen: Mr. Phlegar, will you read the question again?

(Read by the reporter.)

By Mr. White:

Q. Will or real estate. State just what you heard.

A. Well, it is a little bit difficult because I have heard it discussed two or three times. I can't put my finger on any specific instance. I have heard Mrs. Askew say that there was a will; that she had made a will leaving everything to her husband. There were several discussions between her and

*Jack K. Moulton.*

my mother on different occasions that I have over-heard. I can't tell you exactly what was said specifically. If you will ask me, I can tell you whether or not I overheard the particular conversation. But, I would be listening and possibly not paying any attention to specific things. I can't put my finger on anything specific that was said, other than the fact

I have heard her say that there was a will made  
page 65 } and that Mr. Askew was to get everything. I have  
heard talk about a fruit jar. I don't know whether  
I heard her say that or whether that was someone else.

Q. And that is all you can remember?

A. (No answer).

Q. Was this conversation between your mother and Mrs. Askew, or you?

A. Between my mother. I had very little conversation with Mrs. Askew. I have heard some talk about some real estate between them, as to who owned it. I will tell you, my father and my mother, both, have talked to Mr. Askew on several occasions. My father's property adjoins their property. The shape of the land is very odd to the road. It runs at an angle like this (illustrating) and the road runs in this direction. I have heard my father and my mother ask Mr. Askew and Mrs. Askew several times to either sell us that property in front of the house or else allow us to give them so much in the back to straighten out these lines. Mr. Askew was willing to go along with it, I think, and Mrs. Askew said it was not his to sell; that he had no right to say anything about it. They would get in a conversation about it. I thought Mr. Askew owned the land.

Q. Do you recall any conversation with reference to the ownership of the land?

Mr. Koteen: That is leading. I object to the  
page 66 } form of the question.

A. Do you wish that I answer the question?

By Mr. White:

Q. Yes.

A. I can elaborate on the last question as to the ownership. As I say, when we would ask to buy this particular piece, Mr. Askew said, "All right, I will discuss it with my wife,"

*Rena Moulton.*

or something like that, or "It is all right with me." Then his wife would come down and she would be outraged and say that he did not have anything to sell; that he had no right to do it; that it wasn't his yet, and all of this.

Mr. White: That is all.

### CROSS EXAMINATION.

By Mr. Koteen:

Q. How recent or how long ago was that supposed conversation?

A. Mr. Koteen, I can't tell you. I would say it was sometime within the past five or six years. As I say, I have heard it on and off over this ten-year period that they lived there next to us. I heard my mother talking with Mrs. Askew about the property, and so forth. As to exactly what was said, I can't repeat everything. If you ask me specifically, I can tell you I think whether or not a particular thing was said.

page 67 } Mr. Koteen: That is all.

### RENA MOULTON,

called as a witness on behalf of the complainant, having been first duly sworn, testified as follows:

Examined by Mr. Garrett:

Q. Will you please state your name?

A. Rena Moulton.

Q. Mrs. Moulton, where do you live?

A. I live on Route 170.

Q. How long have you lived there?

A. Since 1932.

Q. Is your property near the store of Mr. Askew or near his home?

A. Yes. We are not even a block apart, his home and my home.

Q. His home and yours?

A. Yes. We can talk in our yards.

Q. How long have you all lived down there next to each other?

*Rena Moulton.*

A. I would say around ten years, offhand.

Q. Mrs. Moulton, did you have occasion to talk with Mrs. Ruby Askew from time to time prior to her death?

A. Well, not right at her death.

page 68 } Q. I say, prior to it, which means before?

A. Yes, yes, yes.

Q. Those conversations would take place where?

A. In my home, and at the store, and on my front porch. She was a frequent visitor in my home.

Q. In the course of those conversations did she ever make any reference to the existence of a will that she had made?

A. Yes.

Mr. Koteen: I object to the question as leading.

By Mr. Garrett:

Q. You may answer, Mrs. Moulton.

A. I asked her, I said, "What are you doing with all the property in your name?" She said, "Well, I am a good bit older than my husband."

Q. "A good bit older than her husband"?

A. "A good bit younger," I mean—"A good bit younger than my husband. He told me that I could have the property in my name if I would will it back to him, if anything happened to me."

Q. Did she tell you whether she had made such a will?

A. Yes. She said she had made a will; that she was looking out for her husband.

Mr. Koteen: Again I object to the leading question. page 69 }

By Mr. Garrett:

Q. The conversation of this nature that you had with her, was it one time or a number of times?

A. A number of times we talked.

Q. Over what period would you say those conversations extended? I don't mean how long they lasted, but from what day to what day would they be? Over what period of months or years would you say that she made references of this kind to you?

A. She said it so many times that I just would not know.

Q. Was it over a period of a number of years?

*Rena Moulton.*

A. Yes, she did.

Q. Mrs. Moulton, are you related by blood or marriage to Mr. Askew?

A. No, sir.

Q. How many years have you known Mr. Askew?

A. I visited in Mr. Askew's home in 1927 when he lived at Blackwater.

Q. Do you know his general reputation for truth in the community in which he lives?

A. Mr. Askew, to my way of thinking—

Q. Do you know his general reputation for truth?

A. Yes, sir. I think it is good.

page 70 } Mr. Garrett: You may examine.

## CROSS EXAMINATION.

By Mr. Koteen:

Q. Mrs. Moulton, are you a widow?

A. Yes, sir.

Q. You say that you had a number of conversations with Mrs. Ruby Askew?

A. Yes, sir.

Q. Was it on the subject of a will, or any other subject?

A. Well, we have talked on the subject many times.

Q. On what subject?

A. Of the will.

Q. What was the occasion of speaking a number of times on the will?

A. Well, she would just be telling me about her property. She was a very talkative woman, and she wanted to tell you about all of her affairs.

Q. Having told you once about her having made a will and leaving the property to Mr. Askew, did you bring up the subject again?

A. I don't believe so.

Q. You mean to say that she voluntarily repeated the same thing that she had told you a number of times?

A. Well, relative to that she would, the same  
page 71 } thing.

She would tell me over. She would tell me she was looking out for her "Old Man;" that she had things in her house to protect him.



*Rena Moulton.*

Q. Did you ever tell her that you had heard it several times from her?

A. Tell it where?

Q. When she would repeat a thing several times to you, have you ever called attention to it and said, "Now, Mrs. Askew, I have heard that several times"?

A. Yes, I imagine I did say that.

Q. You reminded her that you had heard it many times before?

A. No. I told her this: I would say, "You told me that before." But, she would go on telling me.

Q. Was she a person that was not well-balanced mentally?

A. Well, I would say that she was.

Q. That she was?

A. That she wasn't well-balanced at times.

Q. She wasn't well-balanced at times? According to your opinion, she needed medical attention, would you say?

A. Well, I would not say that.

Q. But you would say that it would seem rather strange for her to repeat it to you, about a will that she left for her husband?

A. She was rather radical.

page 72 } Q. Was she known to be radical around the neighborhood where she lived?

A. I would say she was.

Q. Would you think she was not capable of conducting business in the store?

A. Well, she did.

\* \* \* \* \*

page 73 }

\* \* \* \* \*

By Mr. Koteen:

Q. Were you and Mrs. Ruby Askew on good terms?

A. Yes, sir.

Q. Were Mr. and Mrs. W. R. Askew on good terms?

A. Who are Mr. and Mrs. W. R. Askew?—(Pointing) Oh, yes.

Q. He and his wife were on good terms?

A. Oh, yes. I think so, I never saw differently.

*Rena Moulton.*

Q. Has he ever complained about her?

A. Not to me.

Q. Wasn't she known to be a very capable person—a business woman?

A. Well, my husband did her paper work for her for a long time.

Q. As an accountant?

A. No. He did her notary work.

Q. Notary work?

A. Yes.

Q. So you considered her to be rather capable, didn't you?

A. Not in my estimation.

Q. Do you think she was capable, that she had her mentality when she made her will to Mr. Askew, her husband?

A. Well, that I don't know.

page 74 } Q. And you were a neighbor of theirs for many years?

A. Yes.

Q. And each one of you would visit each other?

A. Yes.

Q. And she would talk to you more about the will than she would anybody else, wouldn't she?

A. I would not say that.

Q. Would Mr. Askew, himself, confide in you?

A. Mr. Askew was not in the business—not in her business—and he was not there at the time she was talking to me.

Q. Who was the principal one operating the business?

A. Well, I did not go into Mr. Askew's business very many times. I have a business of my own, and I was employed there.

Q. You would like to see Mr. Askew recover the property if he could, wouldn't you?

A. I just want to see justice done.

Q. Wouldn't you like to see him get it?

A. Do I have to answer that?

By Mr. Garrett:

Q. He is asking you for an opinion. Answer the question if he wants your opinion.

A. It doesn't matter to me.

page 75 } Mr. Koteen: That is all.

**FRANK HUGHES, SR.**

called as a witness on behalf of the complainant, having been first duly sworn, testified as follows:

Examined by Mr. Garrett:

Q. Will you tell the Court your name, please?

A. Frank Hughes, Sr.

Q. Mr. Hughes, where do you reside?

A. I am living now at Robbins Corner, right across the road from Lakeview Park.

Q. Do you know Mr. Walter R. Askew who sits in here?

A. Yes, sir. I have been knowing him for around 30 years.

Q. Did you know his late wife, Mrs. Ruby Askew?

A. Yes, sir. I knew her since 1912, I believe it was, when my father moved in that neighborhood.

Q. Mr. Hughes, did you have occasion to visit at the Askew premises or be in the presence of the late Mrs. Ruby Askew on a number of occasions prior to her death?

A. Yes. We knew each other well, and she came to our house quite often. If I remember right, it was about two years ago that we had dinner with them. They were over at our church, and one of us promised to have a meal  
page 76 } with them. I think it was about two years ago that we had dinner with them one Sunday.

Q. In the course of the occasions that you were in the presence of Mrs. Ruby Askew, I will ask you whether or not she made any statements concerning any property that she owned, or concerning any will that she had made and, if so, what they were?

A. All I know about that was I heard her make a remark many times that all she had she was going to give to Mr. Askew; that it would all go to him; and that if she lived the longest, then she would have it.

Q. Did you ever hear her express any opinion concerning her relatives—other relatives in the family?

A. I have heard her say a lot of times that she wasn't going to give anything to her relatives.

Q. From any conversation that you had with her did you ascertain whether she had made a will leaving any property to Mr. Askew?

A. Only to that effect. I understood that she had a will made that way.

Q. From whom did you understand that?

A. From her; that what she had would go to him if she were to die first.

*Frank Hughes, Sr.*

Q. Was Mr. Askew present during those times?

A. Yes. That has been told—I could not tell you  
page 77 } the number of times—but even that day while we  
were at the table she made that remark.

Q. From your observation did Mr. and Mrs. Askew get along well together?

A. I don't think you would find a couple that was more devoted to each other than they were. I don't think you would.

Q. Was there any disagreement of any kind between them prior to her death, that you know of?

A. If there was, I never knew it.

Mr. Garrett: You may examine.

### CROSS EXAMINATION.

By Mr. Koteen:

Q. Mr. Hughes, when did you say was the last time you saw the Askews together?

A. Now, I would not give you the exact date. It was just before she was taken sick this last time that she was in church—in our church. I think it was about two years ago that we had that dinner with her.

Q. You say two years ago you had dinner with her. Did you see them after you had dinner with them?

A. Since that time?

Q. Yes.

A. Yes. I have seen them a number of times. They called  
me not long before she was taken sick to tell me  
page 78 } about some lots in Indian River—wanted me to  
buy them. I went over and talked with them then.

Q. When was that?

A. I could not give you the date, but it has been about a year ago, I think, when that was done.

Q. Have you seen them since that time?

A. Yes.

Q. When was that?

A. I could not give you the date because I wasn't expecting to keep no record of that.

Q. How old are you, Mr. Hughes?

A. I will be 60 in March.

Q. You say you don't remember when the last time was that you saw her?

*Frank Hughes, Sr.*

A. I could not give you the exact date, but it was just before she went to the hospital the last time, because—

Q. If she—

Mr. Garrett: Let him finish, Mr. Koteen.

By Mr. Koteen:

Q. If she went in the hospital in May, how long before that did you see them together?

A. I could not give you the date. I could not tell you the exact date, and I would not want to tell anything that wasn't right.

Q. Would you say it was during 1955 or the latter page 79 } part of 1954?

A. I don't think it was too long from the date that they were over at our church that she went to the hospital.

Q. Well, you said the day she was over at your church was over a year ago?

Mr. Garrett: I don't remember his saying that, Mr. Koteen.

A. No, I did not give the exact date. I said I did not know the exact time, but I said it was somewhere near just before she went to the hospital the last time. I could not tell you what date she went to the hospital, because I don't remember.

\* \* \* \* \*

Mr. Koteen: I thought it was in May.

By Mr. Koteen:

Q. If it was in August, would that help you to determine as to when you saw her prior to her going to the hospital?

A. It must have been last summer—this past page 80 } summer—because we had not been in the new building very long. It was this past summer.

Q. When she was in church did she talk to you about her business?

A. No, we did not talk about business in there. I went back there and greeted them and told them how glad we were to have them.

Q. When was the last time she discussed or talked with you regarding her affairs—her real estate affairs?

*Frank Hughes, Sr.*

A. No, I could not give you that date, either.

Q. When was the last time she talked with you—did she ever talk to you about any wills?

A. Only that she had made it; that she had it fixed that way—

Mr. Garrett: You did not let him finish. He was going to say something.

By Mr. Garrett:

Q. Finish what you were going to say.

A. She was going to see that he would get what she had, and then if she lived the longest she was to have it. That is the way she said she had the will fixed. That is all I would know about it. I wasn't interested in it.

page 81 } By Mr. Koteen:

Q. When was it that she told you that?

A. I could not give you that date, because I have heard her make that same remark so many times.

Q. What was the occasion for her making that same remark many times?

A. Now I could not tell you that.

Q. You say "many." Would you say once or twice or three times or four times—how many times?

A. If you were to talk to the people in the neighborhood around where she lived, they would all tell you that they have heard her say it so many different times.

Q. Then you mean that she had spoken to others besides you, and you maintain that because of that fact she had spoken on the subject many times?

A. That is right.

Q. But so far as speaking a number of times to you, it was not directly to you, but it was to everybody?

A. To all that were listening.

Q. But she only spoke to you once?

A. More than that.

Q. Was there any reason for her making reference to that?

A. I did not see any reason. It was just like any other conversation that comes up. She would tell us how  
page 82 } much she thought of her "Old Man," and how good  
he was, and that she was going to do for him.

Mr. Koteen: That is all.

MRS. FRANK HUGHES,

called as a witness on behalf of the complainant, having been first duly sworn, testified as follows:

Examined by Mr. Garrett:

Q. Please state your name and your place of residence.

A. Mrs. Frank Hughes; Route 1, Box 372, Norfolk, Virginia.

Q. Mrs. Hughes, do you know Mr. Walter R. Askew who sits on the sofa to your left?

A. Yes.

Q. About how many years have you known him?

A. I have been knowing him ever since I was big enough to know him.

Q. About how many years would that be?

A. I don't know. I could not say how many years, but a long time. I knew him before Ruby and him were married. I have been knowing him all the time.

Q. You speak of Ruby. You are referring to his late wife?

A. Yes.

page 83 } Q. How long did you know her prior to her death, approximately?

A. We went to school together.

Q. Mrs. Hughes, prior to the death of Mrs. Ruby Askew did you have occasion to be in the company of Mrs. Askew and Mr. Askew a number of times over a period of years?

Mr. Koteen: It is a leading question. I object to it.

Mr. Garrett: All right. Let's break it down.

By Mr. Garrett:

Q. Did you have occasion to be in the presence of Mr. and Mrs. Askew prior to her death?

A. You mean while she was sick?

Q. No; during her lifetime?

A. Oh, yes, I was in her presence. She used to visit me and I used to go to see her.

Q. Over a period of approximately how many years prior to her death would you say you had occasion to be in her company?

A. You mean after she was taken sick?

Q. No, Mrs. Hughes. I am trying to find out approximately over what period of years you knew or visited with or were in the presence of Mrs. Askew before she died?

*Mrs. Frank Hughes.*

A. You mean how many years I had been visiting and seeing her?  
page 84 }

Q. That is right, approximately.

A. Oh, I don't know. I had been knowing her and seeing her on different occasions. But, since she moved down here closer, I had been seeing her more. I reckon it has been about 15 or 20 years.

Q. 15 or 20 years prior to her death?

A. Yes. I had been seeing her occasionally.

Q. During the opportunities that you had to be with her or in her presence, I will ask you if she ever made any statements to you concerning the property that she held, or concerning any will that she made or was going to make in reference to the disposal of that property?

Mr. Koteen: Objected to as leading.

By Mr. Garrett:

Q. Please tell us if any such conversations were had?

A. Well, I heard her say that she had it fixed so that he had given everything to her, you know, because he was older than she was, but in the meantime she promised to fix it all back to him before she died, to make a will, and she did so.

Q. She told you that?

A. Yes, she did so.

Mr. Garrett: You may examine.

page 85 }

#### CROSS EXAMINATION.

By Mr. Koteen:

Q. Mrs. Hughes, you are the wife of the gentleman who was just here who testified?

A. Yes.

Q. You say that you have talked with Mrs. Ruby Askew from time to time, and that she in the course of that period of time told you that she would leave her property to her husband?

A. Yes. I always heard her say that. She told everybody that.

Mr. Koteen: That is all.



LAURA DOXEY,

called as a witness on behalf of the complainant, having been first duly sworn, testified as follows:

Examined by Mr. Garrett:

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

A. At present?

Q. Yes.

A. Mrs. Laura Doxey; Route 4, Box 211, Norfolk, Virginia.

Q. Is that in Norfolk County?

page 86 } A. It is in Princess Anne County.

Q. Mrs. Doxey, do you know Mr. Walter R. Askew who sits in the room?

A. Yes, sir. I have known him for many years.

Q. Approximately how many years would you say you have known him?

A. Well, Mr. Askew—

Q. You must not ask him. You search your own recollection.

A. I have known Ruby for 50 years, his wife.

Q. You knew the late Mrs. Ruby Askew for at least 50 years?

A. Yes.

Q. You have known him since their marriage, I take it?

A. Yes, since the marriage. I don't know how long exactly.

Q. Mrs. Doxey, prior to the death of Mrs. Askew did you have occasion to be in her presence or with her a number of times?

A. Oh, yes, many times.

Q. During the times you were with Mrs. Askew I will ask you whether or not she ever made any statements to you concerning the property that she had, or any will that she had made in connection with Mr. Askew?

page 87 } Mr. Koteen: I object to that as leading.

A. I always heard her say that Mr. Askew would get what she had; that if either one died first, the other would get what was left.

By Mr. Garrett:

Q. How did Mr. and Mrs. Askew seem to get along together?

*Laura Doxey.*

A. I never knew anybody that got along any better than they did.

Q. Mrs. Askew passed away this summer—August of this summer—I believe?

A. Yes, I believe it was.

Q. Do you recall when was the last time you saw her or talked with her before her death?

A. Well, the last time I saw her and talked with her—we went to see her when she came from the hospital. My daughter and I went to visit her.

Q. Had you been in her company frequently over different intervals of time until the time of her death?

A. Oh, yes.

Mr. Koteen: I object to that as leading. You used the word “frequently.”

Mr. Garrett: You may cross examine.

page 88 } CROSS EXAMINATION.

By Mr. Koteen:

Q. Mrs. Doxey, are you a widow?

A. Oh, yes.

Q. When was the time that she spoke to you on the subject of leaving the property to her husband?

A. The last time was when I went to visit her this summer when she was sick. I saw her many times, but that was the last time.

Q. You mean in August 1955?

A. Yes.

Q. What was the occasion of her telling you that?

A. Well, I don't know that there was any occasion. She was a great one for bringing things up like that and speaking about them. That is all. I did not ask for it.

Q. She just volunteered the information?

A. Yes, she just volunteered. I did not ask for nothing about it.

Mr. Koteen: That is all.

MRS. DEAN K. POLK,

called as a witness on behalf of the complainant, having been first duly sworn, testified as follows:

Examined by Mr. Garrett:

Q. Please state your name and place of residence.

A. Mrs. Dean K. Polk; Route 4, Box 211, Norpage 89 } folk. It is on the Kempsville Road.

Q. Mrs. Polk, do you know Mr. Walter R. Askew who sits on the sofa to your left?

A. I do.

Q. Approximately how long have you known him?

A. All of my life.

Q. Would you be reticent about stating your age?

A. I am 47.

Q. Mrs. Polk, how long had you known Mrs. Ruby Askew prior to her death, approximately?

A. We were brought up at the same place, down in Carolina. She lived about two miles from us.

Q. Prior to the death of Mrs. Ruby Askew did you or not have occasion to be in her company?

A. I did.

Q. Could you give us an idea as to how frequently you might be in her company over a period of years prior to her death?

A. Well, we used to visit there quite often, especially when she lived at Butts Station. It was near where I lived. We used to go down there quite often to see her.

Q. During the occasions that you were in the presence of Mrs. Ruby Askew I will ask you whether or not page 80 } she ever made any statements to you concerning her property, its disposition and so forth, or anything in connection with a will, or anything in connection with Mr. Askew. If you can give us any information as to any statements she made—

Mr. Koteen: I object to it as leading.

Mr. Garrett: I made it as general as I can.

A. I think she told everybody that she wasn't going to leave her money to nobody but her husband; and when he turned it over to her she said she had made the will prior to that, and it was understood that if she died first he would get all of her property.

*A. O. Lynch.*

By Mr. Garrett:

Q. How often would she make a statement of that kind to you or in your presence?

A. She said it every time I was in her company, because she would always tell people like that things.

Q. Are you related by blood or marriage to Mr. Askew?

A. No.

Q. How did Mr. and Mrs. Askew get along together as husband and wife from your observation while she was living?

A. They got along fine. She would always say how good he was to her, and she did not know what she would do if she did not have him, and how well he had attended to her while she was sick, and all.

page 91 } Mr. Garrett: You may examine.

## CROSS EXAMINATION.

By Mr. Koteen:

Q. Mrs. Polk, when was the last time she spoke to you on the subject?

A. It has been the last year; within the last year.

Q. Did she mention that to you once or fifty times?

A. I should say fifty times altogether.

Q. And maybe more than fifty?

A. Yes.

Q. As a matter of fact, every time she talked with you she would touch upon that subject?

A. No, not every time she talked with me, but I used to see her quite frequently.

Q. Did you visit her when she was sick in the hospital?

A. No, I did not go to the hospital.

Mr. Koteen: That is all.

page 92 }

A. O. LYNCH,

called as a witness on behalf of the complainant, having been first duly sworn, testified as follows:

Examined by Mr. Garrett:

Q. Will you please state your name?

A. A. O. Lynch.

Q. Mr. Lynch, are you connected in any official capacity with Norfolk County?

*Eva DeBaun.*

A. At present I am Treasurer of Norfolk County.

Q. Prior to that time you served as Commonwealth's Attorney, I believe, for approximately 27 years?

A. 26 and a half years.

Q. You live in Norfolk County?

A. Yes, sir.

Q. I believe you were born in Norfolk County?

A. That is right.

Q. Mr. Lynch, do you know Mr. Walter R. Askew, the gentleman who sits on the sofa to your left?

A. Yes, sir. I have known him for a number of years.

Q. Do you know his general reputation for truth and veracity in the community in which he resides?

A. I think so, Mr. Garrett. I have never heard it ever questioned. I would say that his reputation for truth and veracity is very good.

page 93 } Mr. Garrett: You may examine.  
Mr. Koteen: No questions.

EVA DeBAUN,  
called as a witness on behalf of the complainant, having been first duly sworn, testified as follows:

Examined by Mr. Garrett:

Q. Will you please state your name and where you live?

A. My name is Mrs. Eva DeBaun. I am a widow, and I live in South Norfolk.

Q. I believe your late husband was Garrett DeBaun?

A. Yes, sir.

Q. Mrs. DeBaun, do you know Mr. Walter R. Askew, the gentleman who sits on the sofa to your left?

A. Yes, sir.

Q. Approximately how many years have you known Mr. Askew?

A. Well, I would say very near 50 years.

Q. Did you know the late Mrs. Ruby Askew, his wife?

A. Yes.

Q. Approximately how long did you know her?

A. Well, I have known her since she was a child.

Q. Mrs. DeBaun, did you or not have occasion to be in the company of Mrs. Askew prior to her death for a number of years back?

page 94 } A. Yes.

*Eva DeBaun.*

Mr. Koteen: I object to that as leading. You say, "a number of years." If you cut out the "number" I would not object to it.

By Mr. Garrett:

Q. Over what period of years would you say from time to time you had been in the company of Mrs. Askew?

A. Well, we would ride out Sunday afternoons. I would say we would see her, maybe, six or seven times a year, something like that.

Q. About how many years prior to her death?

A. I reckon about 30 years; every since they have been around those parts.

Q. Mrs. DeBaun, during the time you were in the presence of Mrs. Askew for a period prior to her death did she ever make any statements to you or in your presence concerning her property, or will, or anything in connection with Mr. Askew?

Mr. Koteen: I object to that as leading.

A. She did.

By Mr. Garrett:

Q. You may state, if you can recall, substantially what she said.

A. She said that she wanted Mr. Askew to have page 95 } what remained after she was gone, and that she had made a will.

Q. Did she or not make any statement as to why she had made the will?

Mr. Koteen: I object to that as leading.

By Mr. Garrett:

Q. You may answer.

A. Will you repeat that again, please?

(Read by the reporter.)

A. She made it so that there would not be any confusion, she said, after she was gone.

*Roland DeBaun.*

By Mr. Garrett:

Q. Did she make the statement to you about the property and the will on one occasion, or more than one occasion?

A. On more than one occasion.

Q. From your observation of the marital relationship between Mr. and Mrs. Askew, how would you say they got along as husband and wife?

A. Just as good as anybody you ever knew.

Q. You have been knowing Mr. Askew, I believe you said, for about 50 years. Do you know his general reputation in the community in which he resides for truthfulness?

A. Yes, sir.

Q. What is that?

A. He is an honest, upstanding man in his community.

page 96 } Mr. Garrett: That is all. You may examine.  
Mr. Koteen: No questions.

ROLAND DeBAUN,

called as a witness on behalf of the complainant, having been first duly sworn, testified as follows:

Examined by Mr. Garrett:

Q. Mr. DeBaun, where do you live?

A. South Norfolk.

Q. Do you know Mr. Walter R. Askew here?

A. Yes, sir.

Q. Did you know his wife, Ruby, prior to her death this summer?

A. Yes, sir.

Q. Had you or not been in the company of Mrs. Ruby Askew at any time or times prior to her sickness or death?

A. Yes, sir.

Q. How frequently would you say over the years prior to that you had been in her company?

A. Over the years before she was sick?

Q. Yes. From the time of her death back, about how often would you say you had been in her company or been around her?

A. I would say about once a month, anyhow.

page 97 } Q. At any time that you were in her company  
I will ask you whether or not she ever made any  
statement in your presence concerning her prop-  
erty, or any will, or anything of that sort?

*J. A. Hodges.*

Mr. Koteen: I object to that question as leading.

By Mr. Garrett:

Q. Go ahead.

A. She said that whoever lived the longest—if the “Old Man” died first, she would have it, and if she died first, she wanted him to have it. Most of the time that was what she talked about.

Q. Did you observe how they got along as husband and wife? Did they seem to get along all right or not?

A. They were a very ideal married couple.

Q. How long have you known Mr. Walter R. Askew?

A. Ever since I can remember.

Q. How old are you?

A. 39.

Q. Do you know his general reputation in the community in which he resides for truthfulness?

A. I can't say a word against him.

Q. Do you know his reputation for truthfulness in the community?

A. Perfect.

page 98 } Mr. Garrett: You may examine.

### CROSS EXAMINATION.

By Mr. Koteen:

Q. Is your community and his community the same community?

A. Well, there is about five miles' difference.

\* \* \* \* \*

page 2 }

J. A. HODGES,

called as a witness on behalf of the complainant,  
having been first duly sworn, testified as follows:

Examined by Mr. White:

Q. Mr. Hodges, state your name, please.

A. J. A. Hodges.

Q. What is your occupation?

A. Sheriff of Norfolk County.

Q. Do you know Walter R. Askew?



*Eugene P. Wadsworth,*

A. Yes, sir.

Q. How long have you known him?

A. Roughly I would say about twenty years.

Q. Do you know his reputation for truth and veracity?

A. Yes, sir.

Q. Is it good or bad?

A. Good. I have never heard it questioned.

Q. Would you believe him on oath?

A. I would.

Mr. White: Your witness.

### CROSS EXAMINATION.

By Mr. Bangel:

Q. Sheriff, you also know Mrs. Virgie L. Everton, do you not?

A. Yes, sir, but I don't know her nearly as well as page 3 } I do Mr. Askew. I only know her. I don't know anything about her reputation. So far as I know it is all right. I have never heard it questioned.

Q. You have never heard anyone question her veracity or integrity?

A. No, sir.

Q. And, so far as you know, it is good?

A. Yes, so far as I know.

**EUGENE P. WADSWORTH,**

called as a witness on behalf of the complainant, having been first duly sworn, testified as follows:

Examined by Mr. White:

Q. State your name, Mr. Wadsworth.

A. Eugene P. Wadsworth.

Q. What is your occupation?

A. I am a merchant in Norfolk County.

Q. Are you a member of the Board of Supervisors of Norfolk County?

A. Yes, sir, I am.

Q. Do you know Walter R. Askew and the late Ruby Askew?

A. Yes, sir, I do.

*Eugene P. Wadsworth.*

Q. Did you have occasion to purchase a stock of  
page 4 } merchandise and lease a store from them?

A. Yes, sir, in February 1947.

Q. Will you please state just what conversation you had  
with them with reference to the ownership of the property  
and merchandise?

\* \* \* \*

A. When I began to make arrangements to purchase this  
business from the Askews I found that the stock and fixtures  
in the store belonged to Mr. Askew. In making a five-year  
lease for the building I had to do business with Mrs. Askew—  
Ruby Askew. I had to get all of that information together  
for my lawyers to make up a bill of sale for the merchandise  
and a bill of sale for the lease. Of course, I wanted to know  
if both of them were to sign the lease, and if both of them  
were to sign the bill of sale. I found out that I had to do  
business with each one individually in regard to those things.  
Of course, I did want to know why. She said that since she  
had done a charge account business there, they agreed to  
separate their business dealings from their real estate hold-  
ings, and so forth, so that if anything went wrong  
page 5 } in the business their property would not suffer that  
loss. She so advised me to do the same thing. That  
is all I know about it.

Q. Was there any discussion about the ownership of the  
property, or why it was owned by either one of them—the  
real estate?

\* \* \* \*

A. Yes. I just told you that they agreed to separate it.  
She said that he willed the property to her and kept the busi-  
ness in his name so that if anything happened in their busi-  
ness, their property would not suffer that loss, that it would be  
separate. That is what she advised me to do.

By Mr. White:

Q. Was any mention made of any wills?

A. Yes. She said—

\* \* \* \*

*Eugene P. Wadsworth.*

A. —that she had her husband to will the houses and the store to her so they would not get involved with the business, if the business happened to fail. As I say, that is what she advised me to do. She said that she had done that, and she had willed it back to him so neither one of them would be hurt in the event one passed on before the other.

By Mr. White:

Q. Was any mention made with reference to their ages?

A. I don't recall that there ever was, sir.

Mr. White: That is all.

page 6 } CROSS EXAMINATION.

By Mr. Koteen:

Q. Mr. Wadsworth, do you remember a conversation you had with Mr. Moody and me?

A. I remember a conversation with you, sir, in my store one day.

Q. Do you know Mr. Moody when you see him, this gentleman sitting back there?

A. No, sir, I don't believe I do. I might have seen him.

Q. Do you recall his being with me at the time?

A. I don't recall who was with you. I have known you for several years, Mr. Koteen, and I could not forget that you were there, but I don't remember talking to Mr. Moody.

Q. Do you recall the conversation you and I had with reference to the one who was most active in that business?

A. Yes, sir.

Q. What did you say?

A. I said that Mrs. Askew took care of the business.

Q. Did you say anything relative to the matter of real estate?

A. No, sir, I don't recall that I did.

Q. You recall my asking you if you knew anything else about the matter, and you stated that that was all you knew about it?

page 7 } A. I told you that I had bought the business from them, and I did not know anything pertaining to their personal affairs.

Q. Do you remember the purpose of my interviewing you on the subject?

*Jack K. Moulton.*

A. Well, at the time you were there I did not know the exact purpose, but I thought, Mr. Koteen, that it was for the benefit of straightening out some of the business affairs as a result of the passing of Mrs. Askew.

Mr. Koteen: That is all.

RE-DIRECT EXAMINATION.

By Mr. White:

Q. How much did you pay for the stock of merchandise?

A. I paid \$3,500.00 cash.

Q. And you bought that from Mr. Askew?

A. I bought that from Mr. Askew.

Mr. White: That is all.

JACK K. MOULTON,

being recalled, further testified as follows:

Examined by Mr. White:

Q. You previously testified in this case, I believe. Have you had occasion to read over your former testimony page 8 } mony?

A. Yes, I have.

Q. Can you add anything to that?

A. Well, after reading that—and I also read my mother's I can add that I do recall my mother and Mrs. Askew having a conversation with regard to some real estate. I can't tell you all of the details, but I do remember a conversation to this effect: that my mother would ask her, "Well, I did not think that real estate was yours. I thought it was Mr. Askew's." She said, "No. It is my real estate." She would ask her, "How did you get the real estate? Where did you get it? I thought it was originally his." Then she proceeded to tell her that Mr. Askew had deeded it all over to her; that she was going to deed it back to him, or she had a will made and he was to get it all at her death. She had made a will, and that is when I heard her talk about a fruit jar; that the will was home in a fruit jar, something like that, down in the house.

Q. Is that all?

*Edwin C. Kellam.*

A. Well, there was a lot of conversation. I had some conversation with the woman, myself, but it wasn't about any real estate. She ordered me off of her real estate one time.

Q. I don't think that is material.

Mr. White: You may take the witness.

page 9 } CROSS EXAMINATION.

By Mr. Bangel:

Q. Mr. Moulton, that was how many years ago?

Mr. Bangel: This is without waiving our objection.

A. I guess it has been between five and eight years, I reckon, sir. I can't give you the year.

Mr. Bangel: That is all.

EDWIN C. KELLAM,

called as a witness on behalf of the complainant, having been first duly sworn, testified as follows:

Examined by Mr. White:

Q. State your full name, Mr. Kellam.

A. Edwin C. Kellam.

Q. You are practicing law with your brother as Kellam & Kellam, attorneys in Norfolk?

A. Yes, sir.

Q. How long have you been practicing?

A. About fifteen years.

Q. Do you know Walter R. Askew and Ruby Askew?

A. Yes, sir.

Q. Did they apply to you for a loan on a piece of real estate sometime in the Fifties?

A. Yes, sir.

page 10 } Mr. Bangel: We object to this as being irrelevant and immaterial.

By Mr. White:

Q. You say they did?

A. Yes, sir.

*Edwin C. Kellam.*

Mr. Bangel: Can it be understood, so that I won't have to object, that the objection goes throughout his testimony?

Mr. White: That is all right.

By Mr. White:

Q. Would you state what conversation you had with the Askews when they applied for this loan?

A. Yes. They came in early one morning before the stenographers had gotten there, about 8:30 in the morning, and they had a deed with them and they wanted to borrow some money on the property. Mr. and Mrs. Askew were together, as best I can remember it. They gave me the deed with which to search the title and prepare a deed of trust.

In observing the deed I noted that the property was in the name of Mrs. Askew. I asked them why it wasn't in their joint names, and pointed out to them the effect of the property with the right of survivorship, and suggested that they put it in their names with survivorship. At that time Mrs. Askew stated to me, as best I can recall it, that the property

had been in her husband's name, and that because  
page 11 } she was younger than he was and she expected to  
live longer than he did, it had been put in her  
name at her request, with the understanding that at her death, if she predeceased her husband, she would leave it to him, and she had made a will to that effect. I suggested to her that she bring the will in and let me look at it to see that it was properly drawn.

Several days thereafter, as well as I can recall, I think Mrs. Askew came in alone—I would not be positive about it, but that is to the best of my recollection—and brought me two wills, one of them which was written in somebody's handwriting, which I think she told me as her own handwriting—I am not sure about that—and one that was typed. She told me that the will that was in the handwriting had been drawn first, and that afterwards they had gotten a lawyer to prepare a will for them, and she showed me the two wills. One of them, I believe, was prepared by Mr. Barclay. In that will I believe she left everything to her husband in case of her death. I said to her at that time, "I would suggest that you destroy the will which you have that is in the handwriting so there won't be any confusion about it in case of death," and I handed her back both of the wills.

*Edwin C. Kellam.*

Q. Do you recall whether this is the will she submitted to you as the last one drawn?

A. As best I can remember, that is the will.

Q. And you say you told her that this will superpage 12 } seded the previous will?

A. Yes, I did, and suggested that she destroy it.

Mr. White: This will is marked "Exhibit 4" that Mr. Kellam identified.

### CROSS EXAMINATION.

By Mr. Bangel:

Q. Mr. Kellam, the paper writing that was handed to you purporting to be a will, is dated November 2, 1939. Your conversation with these people was how many years ago?

A. I think the conversation I had with them was in 1950, as best I can remember it. I am not positive on that, but I believe that is correct.

Q. And they were there then to get a loan?

A. That is right.

Q. Mr. Kellam, did you know that Mrs. Askew purchased through your office a piece of property for which she paid \$1,500.00 in cash of her own money?

Mr. White: Her own money?

Mr. Bangel: Yes.

Mr. White: I object to that. He wouldn't know.

A. I am not sure about that, Mr. Bangel. I will tell you, I represented the Askews sometimes when they came in—looked after their business for them—and Richard looked after their business sometimes when they came in. Whether I  
page 13 } represented them at the time that was done or not,  
I really don't know.

Mr. Bangel: All right, sir.

Mr. White: We rest.

Mr. Bangel: Gentlemen, we will not go forward with our evidence at this time, because it is our opinion that the evidence offered by the complainant in this case is insufficient as a matter of law to sustain any right of relief sought in the

*Essie Edwards.*

bill of complaint. We feel that we should, now that you have rested, appear before the Judge of the Circuit Court and have him hear argument on whether or not our position is sound; namely, that you have not proved your case and are not entitled to the relief sought. Docket call is on Monday. I will be there on that day and we can ask the Judge to fix a date for hearing.

\* \* \* \* \*

page 2 }

ESSIE EDWARDS,

called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Examined by Mr. Koteen:

Q. State your name, age and residence.

A. Essie Edwards. I am 60 years old. My address is Mars Hill.

Q. Is that in Virginia?

A. No. That is in North Carolina.

Q. Are you in any way related to either Mrs. Virgie L. Everton or to Walter R. Askew?

A. No, sir, I am not.

Q. Are you familiar with Mrs. Virgie L. Everton? Are you acquainted with her?

A. Yes, sir. I have been knowing her about eight years.

Q. Did you know her late sister, Ruby Askew?

A. Yes. I have been knowing her about eight years.

Q. Have you ever talked with Mrs. Ruby Askew regarding her personal affairs?

A. Well, she talked to me one day when I was over at her home last summer.

Q. Relate the nature of the conversation she and you had.

A. Well, she was telling me about how she got her start. She said that she took her money that she got from her mother's estate and bought at Butts Station. She

page 3 } said that was where she got her start. She said, "You know, when I die I want to will what I have to my sister." She said, "My husband, I am not going to neglect him. He has enough to take care of him as long as he lives, because his income is from \$600.00 to \$700.00 a month." She said, "That is enough to take care of him." She said, "You know, blood is thicker than water, and at my death I



*Essie Edwards.*

want my sister to have what I have." She said, "I know that Mr. Askew will want his niece to have it," but she said that she really did not need it like her sister did.

Mr. White: I want to object to this line of testimony on the ground that it is not responsive to the issue, and I move the Court to strike it out.

By Mr. Koteen:

Q. How often had you and Ruby Askew seen each other during your acquaintanceship with her?

A. Well, I had seen her every summer, except about two summers or three summers when I wasn't down here, in the eight years. I usually spend about three months down here during the summer. I did last summer and this summer.

Q. Where was this conversation had?

A. At her home.

Q. Were you visiting her at the time?

A. Yes. She invited Mrs. Everton and I over there for lunch that day.

page 4 } Q. And you state that she told you how she made her start?

A. Yes, sir. She told me that is where she started from.

Q. In what month of the year did that conversation take place?

A. Well, it was the last of July or the first of August. I just don't remember which.

Q. Of what year?

A. Of last year, last summer.

Q. 1955?

A. Yes.

Mr. Koteen: You may inquire.

**CROSS EXAMINATION.**

By Mr. White:

Q. Did you stay overnight at the Askew home?

A. No, sir. I haven't ever spent the night with them. They tried to get me to, but I was visiting my daughter and she would not let me off.

Q. Who else was present when this conversation was had?

*Essie Edwards.*

A. Well, myself and my daughter and my sister was there, Mrs. Burnette. She is from Mars Hill. Let's see who else. There was another lady or two visiting that I did not know, that lived around here. I don't know who they  
page 5 } were.

Q. She voluntarily made that statement?

A. Yes, sir, she sure did.

Q. And that ended the conversation?

A. Yes, sir.

Q. Do you know what Mrs. Askew's mother left her?

A. No, sir, I don't.

Q. You don't know anything about it?

A. No, sir. She did not tell me how much.

Mr. White: That is all.

#### RE-DIRECT EXAMINATION.

By Mr. Koteen:

Q. Was Mrs. Everton present at the time or not?

A. Yes. I believe Mrs. Everton was sitting there, wasn't she?

Mrs. Everton: I was there.

A. She invited us all down for lunch that day.

By Mr. Koteen:

Q. Do you mean to infer that while you were there that happened to be the only conversation you had with her on that subject? Did you have any other kind of conversation?

A. No, sir.

Q. How long did you stay there?

A. We had other conversations, but she did not mention anything else about that.

page 6 } Q. I understand. So you did have other conversations?

A. Sure. We went to spend the day and had lunch with her. We had lots of conversations.

*Essie Edwards.*

RE-CROSS EXAMINATION.

By Mr. White:

Q. What relation is Mrs. Willie Mae Scott to you?

A. She is my daughter. That is who I am visiting down here now.

Q. She is a very close friend of Mrs. Everton, is she not?

A. Yes. They have been friends for a long time, and Mr. and Mrs. Askew, too.

RE-DIRECT EXAMINATION NO. II.

By Mr. Koteen:

Q. Mrs. Edwards, did you visit Mrs. Askew when she was at the hospital?

A. Yes, sir.

Q. Did you stay there very long?

A. No, sir, not but just a little while.

Mr. Koteen: That is all.

RE-CROSS EXAMINATION.

By Mr. White:

Q. Were you down here visiting someone else  
page 7 } when you went to the hospital to see her?

A. Yes. I was visiting my daughter.

Q. How long were you here on that visit?

A. Three months. I spend three months down here. I work nine months and I spend the rest of the time down here with my daughter and son.

Q. And you went over to the hospital with your daughter to see Mrs. Askew?

A. Yes, I did.

Q. Who else was present?

A. Mrs. Askew, and Miss Lillian was down there a time or two, and my daughter was with me, and Mrs. Everton was with me.

Q. Did you drive over in a car?

A. Yes. My daughter drove, or Mrs. Everton, one. I don't know which one drove.

*Dr. C. C. Smith.*

Q. In other words, you and your daughter and Mrs. Everton went over to the hospital to see her?

A. Yes.

Q. And that was on one occasion only?

A. That is all. She never even spoke to me, except to ask me if I had a nice vacation. She was too sick then.

\* \* \* \* \*

page 2 } Mr. Garrett: I move that the witnesses be excluded.

(The witnesses were excluded.)

Mr. Bangel: I offer as an exhibit the will of Ruby Askew, dated May 18, 1955, which has been probated in the Circuit Court of Norfolk County as the last true will and testament of Ruby Askew, and ask that it be marked "Defendants' Exhibit 1."

\* \* \* \* \*

(Photostatic copy of the will was received and marked "Defendants' Exhibit 1.")

DR. C. C. SMITH,  
called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Examined by Mr. Bangel:

Q. State your name, please, sir.

A. Dr. C. C. Smith.

Q. You are a practicing physician and surgeon, are you not?

A. I am.

Q. Your office is located where?

page 3 } A. 504 Medical Arts Building.

Q. In the City of Norfolk, Virginia?

A. Yes.

Q. You have been practicing for how long, Doctor?

A. Since 1913.

Q. Doctor, did you have occasion to administer to Mrs. Ruby Askew of Great Bridge?

*Dr. C. C. Smith.*

A. I did.

Q. I hand you a will which was probated in the Circuit Court of Norfolk County Clerk's Office on the 16th day of August, 1955, and ask you if one of the attesting witnesses to this will is you?

A. That is my signature.

Q. You were one of the attesting witnesses?

A. That is correct.

Q. Doctor, prior to the execution of this will by Mrs. Askew, and witnessed by you and others, was any statement made by Mrs. Askew to you or in your presence as to what she intended to do with her estate?

\* \* \* \* \*

page 4 }

\* \* \* \* \*

By Mr. Bangel:

Q. Doctor, answer the question. If you don't recall it, I will have the court reporter read it back to you.

(Read by the reporter.)

A. I remember that Mrs. Askew made a statement in my presence—not directly to me—that she was anxious to get this thing straight because she wanted her sister to have her money after her husband died.

\* \* \* \* \*

page 5 } By Mr. Bangel:

Q. Doctor, did she say what sister she had in mind?

Mr. Garrett: I object to that as leading.

By Mr. Bangel:

Q. Go ahead and answer.

A. I don't recall the details to that extent.

Q. Do you have any interest in this case?

A. None, whatsoever.

*Dr. C. C. Smith.*

Q. You were subpoenaed to be here tomorrow, and being unable to be here tomorrow you volunteered to come today?

A. That is correct.

Q. Doctor, was Mrs. Virgie L. Everton present when that statement was made to you by Mrs. Askew about desiring her estate to go to her sister?

A. As well as I remember she was, yes.

Mr. Bangel: All right.

### CROSS EXAMINATION.

By Mr. Garrett:

Q. Doctor, at the time of the execution of this supposed will Mrs. Askew was a patient in the hospital, was she not?

A. That is right.

Q. At what hospital was she?

A. DePaul.

Q. From what was she suffering?

page 6 } A. Suffering from cancer.

Q. How long, to your knowledge, had she been suffering from that disease?

A. Well, I know she was suffering with it at the time I saw her on her admission on the 12th of August. I also saw her on May 12th, at which time she had symptoms in retrospect that I think were due to the cancer.

Q. Could you express any opinion based on either your observations of her on those stated occasions, or any prior occasions, or any autopsy that might have been performed, as to how long she had been suffering from that disease?

A. That is very hard to answer with any accuracy, whatsoever. I think I can safely say that she did have it in May.

Q. Of what year?

A. Of that year, '55.

Q. When this will was executed was she in bed in the hospital?

A. She was.

Q. Who was present at the time you signed this will?

A. I don't even recall the legal representative that was there. The two witnesses are the only ones I remember, and Mrs. Everton.

Q. Mrs. Everton was there?

A. Yes.

*Dr. C. C. Smith.*

page 7 } Q. Was there any legal representative?  
A. There was somebody that took the deposition,  
or took what she said, and presented the paper to me  
to sign.

Q. Do you know who that was?

A. I have no idea.

Q. Who were the other witnesses that were there?

A. I don't recall their names, even.

Q. Did you know them before that day?

A. No.

Q. Had they signed this will before you came in the room,  
or after, or when?

A. No. We all witnessed each other's signature. I remember that.

Q. How long were you in the room on that occasion?

A. Ten or fifteen minutes.

Q. About ten or fifteen minutes?

A. I would say so.

Q. When did Mrs. Askew die?

A. From my records I have got that she died on the 16th  
at 5:40 A. M.—August 16th.

Q. Did you administer any sedatives or any medicines to  
relieve her pain from the time you began treating her?

A. Yes.

Q. Was that done during the time she was in the hospital?

A. Yes.

page 8 } Q. Did Mrs. Virgie Everton contact you before  
you witnessed this supposed will?

A. Well, I imagine she probably did. Somebody contacted  
me that morning, but it was only after I came to the hospital  
that day that I was contacted in regard to it.

Q. You think that Mrs. Everton did contact you that day?

A. I think probably she did.

Q. And requested you to witness a will?

A. Yes.

Q. What time of day approximately did you affix your name  
to this paper?

A. I imagine it was in the morning, but I have no idea what  
time of day it was.

Q. You have no idea of the time of day?

A. No.

Q. Did you read this will at that time?

A. No.

*Dr. C. C. Smith.*

Q. Did you hear it read?

A. No.

Q. Do you know who took possession of the will after it was executed?

A. No.

Q. You don't remember the date independently of the paper, itself, do you?

page 9 } A. You mean the date that the will was signed?

Q. Yes, sir.

A. No, I do not.

Q. Had you treated Mrs. Askew prior to the 12th of May, 1955?

A. Yes. I treated her in August 1951.

Q. How many times would you say you treated her from August '51 up until '55?

A. I don't think I treated her at all except to follow up the operation I did in August of '51, probably for six weeks or eight weeks.

Q. You were in contact with her six to eight weeks during that time in '51?

A. I imagine so; and maybe probably at intervals after that, because she had a malignancy at that time, and I naturally would follow it up.

Mr. Garrett: All right, sir.

#### RE-DIRECT EXAMINATION.

By Mr. Bangel:

Q. Doctor, when you heard her make the statement that she wanted her sister to have her estate, was she of good, sound mind?

A. I am of the opinion she was, yes, sir.

Mr. Bangel: That is all.

page 10 } RE-CROSS EXAMINATION.

By Mr. Garrett:

Q. Doctor, did you hear any of the discussion that went on—I am not asking you what it was, but I am asking you did you hear any of the discussion that went on between her and Mrs. Everton and the lawyer before you signed the will?



*Nellie Zimmerman.*

A. If I did I paid no attention to it.

Q. You paid no attention to it?

A. No.

Mr. Garrett: I believe that is all at this time. I want to move to strike out of the record the statements of the doctor concerning the soundness of the mind of the decedent, Ruby Askew, on the ground that that is not relevant testimony in this case; that this is not a suit involving attack on the will as such.

**NELLIE ZIMMERMAN,**

called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Examined by Mr. Bangel:

Q. Mrs. Zimmerman, where do you live?

A. 3129 Lyons Avenue.

Q. Is that in the City of Norfolk, Virginia?

page 11 } A. Yes, it is. It is in Fairmount Park.

Q. How long have you lived in the State of Virginia?

A. Ever since about 1914.

Q. Did you know Mrs. Ruby Askew?

A. I had met her on several occasions.

Q. How long had you known her prior to her death?

A. Oh, I would say probably about four or five years.

Q. Do you know Mrs. Everton?

A. Very well.

Q. State whether or not you had met Mrs. Ruby Askew in her home.

A. In her home—in Mrs. Askew's home?

Q. Yes.

A. Yes, I had.

Q. Was there anything said at that time about what, if anything, she wanted to do with her estate after her death?

\* \* \* \* \*

A. Yes. It was about three and a half years ago that Mrs. Everton and I went to visit her sister. I heard her talking—  
page 12 } in fact, we three were sitting there, and we were  
all talking together. She made the remark that they were getting enough rentals from the prop-

*Nellie Zimmerman.*

erty that they were renting out to keep them the rest of their life, that they did not have anything to worry about. She said that they were getting between \$600.00 and \$700.00 a month rental. She said that after her death she wanted whatever she left to go to her sister, Mrs. Everton, as she was the only sister she had; that there would be enough rental coming off of their property to take care of her husband the rest of his life.

\* \* \* \* \*

By Mr. Bangel:

Q. Was that statement made by Mrs. Ruby Askew voluntarily?

A. Yes, it was.

\* \* \* \* \*

page 13 }

\* \* \* \* \*

By Mr. Bangel:

Q. How often did you visit Mrs. Askew's home?

A. That was the only time I ever visited her in her own home.

Q. Did you ever meet Mrs. Askew in the home of Mrs. Everton?

A. Yes, I have.

Q. Once or more?

A. I would say possibly four or five times I have met her there.

Q. During those visits did she engage in conversation with her sister, Mrs. Everton, and you?

A. No, nothing out of the ordinary; just general talk.

Q. The question of the disposition of the property was not mentioned other than the one time you speak of?

A. That is the only time.

Q. About three and a half years ago?

A. That is right.

Mr. Bangel: The witness is with you.

Mr. Garrett: I have no questions.

page 14 }

GEORGIA FROST,

called as a witness on behalf of the defendants,  
having been first duly sworn, testified as follows:

Examined by Mr. Bangel:

Q. Give us your age and where you live, Mrs. Frost.

A. I am 66 years old. I live near Great Bridge.

Q. How long have you been an actual resident of the State of Virginia?

A. Well, practically all my life.

Q. Are you related to Mrs. Virgie L. Everton?

A. Yes, sir. She is my half sister.

Q. Then, of course, you would be related to the late Mrs. Ruby Askew?

A. That is right.

Q. In what way?

A. Well, my mother was married twice, and she was by her last husband.

Q. Would she be a full sister or half sister to you? Would Mrs. Askew be a full or half sister to you?

A. Well, a half sister.

Q. You say that Mrs. Ruby Askew was married twice?

A. No, sir. My mother was married twice.

Q. I see. How many children were born of the first marriage of your mother?

A. She had four, and two dead.

Q. How many by her second marriage?

page 15 } A. She had four and two dead.

Q. Mrs. Ruby Askew and Mrs. Virgie L. Everton, were they half sisters or full sisters?

A. They were full sisters.

Q. Do you know whether or not Mrs. Ruby Askew inherited an estate?

A. Well, yes, sir.

Q. From whom did she inherit it?

A. Her father owned this property before he married my mother. Of course, they lived together a number of years. She inherited this property from her father and mother.

Q. I see. She was one of several children then that inherited the property?

A. Yes, sir.

Q. Did Mrs. Askew die possessed of the property which she had inherited from her parents, or had she sold it?

A. When she died?

Q. Before she died.

*Georgia Frost.*

A. She had sold it.

Q. Had you received your proportionate part of the estate?

A. Yes, sir.

Q. Do you know what Mrs. Askew did with the money that she received from her father and mother's estate?

A. She told me that she bought property at Butts page 16 } Station.

Mr. Garrett: I object to this as being irrelevant to any issue in the case, and hearsay.

By Mr. Bangel:

Q. Do you know what happened to the real estate that she bought at Butts Station?

A. What happened to it?

Q. Yes.

A. I don't know. She sold it, I guess, so far as I know.

Q. Was that part of her estate at the time of her death?

A. Yes, sir.

Q. Now, Mrs. Frost, did Mr. and Mrs. Askew live happily together?

A. Well, as far as I know. Of course, they had a few arguments, just like the rest of us, you know, have.

Q. Aside from the small, minor arguments, they lived happily, did they not?

A. Yes, sir.

Q. Do you know whether Mrs. Ruby Askew made any statement in your presence as to what she wanted done with her estate after her death?

A. No, sir.

Q. She made no statement to you or in your presence?

A. No, sir.

page 17 } Q. Did Mr. and Mrs. Askew operate a store at Butts Station?

A. Yes, sir.

Q. For how many years?

A. It was quite a few years; probably about eight or nine years, I guess.

Q. During the time that store was operated who managed it?

A. She was at the head of it. They both worked in there, but she was at the head of it.

Q. They were both running it?

A. Yes, sir.

*George Swink.*

Q. Did she serve the trade or not?

A. She did.

Q. Did he serve the trade or not?

A. I don't think so.

Q. Do you know whether Mrs. Askew felt kindly or unkindly toward her full sister, Mrs. Everton?

A. Yes, sir, I think she did.

Q. You think she did what?

A. I think she did feel close to her.

\* \* \* \* \*

page 2 }

GEORGE SWINK,

called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Examined by Mr. Bangel:

Q. State your name, please, sir.

A. George Swink.

Q. Where do you live, Mr. Swink?

A. My address is Fentress, Virginia, R. F. D. 1.

Q. How long have you lived in Norfolk County, Virginia?

A. Forty-four years.

Q. Did you know Mrs. Ruby S. Askew and Mr. Walter R. Askew?

A. Not personally, but only through business.

Q. Did you have occasion to sell to them, or either of them, a store and a piece of land?

A. Yes, sir.

Q. Do you recall when that was?

A. It has been about 13 years ago, but I don't know just exactly the date.

Q. What property was that?

A. It was a store and a house at Butts Station.

Q. Who paid you for that property?

A. Mrs. Askew handed out the money.

Q. Was that given to you in cash or by check?

A. Cash.

Q. And the deed was made by you and your wife  
page 3 } to her, as shown by the record?

A. Well, I don't remember whether it was to her or to him, or both. I don't remember that.

Q. You and your wife signed a deed?

A. A deed. I don't remember who it was made to.

Mr. Bangel: The witness is with you.

*George Swink.*

CROSS EXAMINATION.

By Mr. Garrett:

Q. Mr. Swink, you don't know where the money came from?

A. No, sir.

Q. Was Mr. Askew present?

A. He was always present.

Q. Mr. Askew was always present?

A. Yes, sir.

Q. In the negotiations?

A. Yes, sir. Both of them were always together.

Q. Did you convey it to both of them, or one of them?

A. Well, they were both together. When the lawyer made out the deed, and so forth, I don't recall who it was made out to. All I know, they were both together, and both always came together.

Mr. Garrett: That is all. Thank you, Mr. Swink.

page 4 } RE-DIRECT EXAMINATION.

By Mr. Bangel:

Q. I want to ask you one other question that I failed to ask you. How often did you see Mr. and Mrs. Askew, would you say?

A. Well, before this transaction I would not see them over once every six months, just stopping in the store. When they came about the business, I would say possibly they might have come there ten times over a period of every three or four days.

Q. Mr. Swink, did you at any time ever hear Mrs. Ruby S. Askew say that she had agreed to will her property to Mr. Walter S. Askew because he conveyed property to her?

A. No. There was nothing ever mentioned about a will.

Q. You never heard her make that statement?

A. No.

RE-CROSS EXAMINATION.

By Mr. Garrett:

Q. There wasn't any occasion for her to discuss her private affairs with you, was there, Mr. Swink?

A. No.

Q. You were a comparative stranger?

A. That is right.

*Helen Swink.*

Q. You were only interested in selling a piece of  
page 5 } property and securing what you conceived to be a  
fair price for it?

A. That is correct.

Q. As to any arrangement between them, it was utterly im-  
material to you?

A. That is correct.

Q. You were not a personal friend of theirs?

A. No.

Q. And you were not in their company on too frequent  
occasions?

HELEN SWINK,

called as a witness on behalf of the defendants, having been  
first duly sworn, testified as follows:

Examined by Mr. Bangel:

Q. State your name, please.

A. Helen Swink.

Q. Mrs. Swink, that was your husband who just left the  
room, who testified?

A. Yes.

Q. Did you know Mrs. Ruby S. Askew and her husband,  
Walter R. Askew?

A. Yes.

page 6 } Q. Did you and your husband have occasion to  
sell them a grocery store and a piece of land?

A. Yes.

Q. Who paid that money?

A. She laid the money on the desk.

Q. Do you know where she got the money from?

A. No, I do not.

Q. Did she bring it there?

A. I don't know. When we walked in she was counting  
her money in piles around the desk.

Q. And that was in payment of the grocery store and the  
land?

A. Yes.

Q. You and your husband then made a deed?

A. I suppose so.

Q. Do you recall to whom that property was conveyed?

A. No, I don't.

*Helen Swink.*

Q. Mrs. Swink, how many times did you see Mrs. Askew?

A. No.

A. Well, I had never seen her until she came in the store about buying the store. Then after that I saw her about a couple of times in church.

Q. Did you talk to her?

A. Well, it was just a greeting, that is all.

Q. Had you ever heard her make any statement to the effect that she had agreed to will her property to her  
page 7 } husband because he had conveyed certain property  
to her?

A. No.

Mr. Bangel: The witness is with you.

#### CROSS EXAMINATION.

By Mr. Garrett:

Q. Mrs. Swink, on the occasion that this money was passed, Mr. Askew, her husband, was present also?

A. Yes, sir.

Q. You were not considered close friends of the Askews?

A. No.

Q. The only actual connections you had with them was this business transaction of selling the store?

A. That is all.

Q. As far as you know there was no occasion for her to confide to you any of her personal affairs with her husband?

A. No.

Mr. Garrett: Thank you.

#### RE-DIRECT EXAMINATION.

By Mr. Bangel:

Q. I failed to ask you this: Do you recall the amount of money that was paid for the purchase of the grocery store and the land?

A. No. It was either \$3,500.00 or \$4,000.00. I  
page 8 } don't know which.

Mr. Bangel: Thank you.



HARVEY T. BOYD,

called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Examined by Mr. Bangel:

Q. State your name, please, sir.

A. Harvey T. Boyd.

Q. Where do you live, Mr. Boyd?

A. 1920 Scotie Drive.

Q. Did you know Mrs. Ruby S. Askew and Mr. Walter R. Askew?

A. Yes, sir; thirty-five years, I guess; ever since I was big enough to know anybody, and I am 45 now.

Q. You knew them for the past thirty-five years?

A. Yes, sir.

Q. Did you see them often?

A. Yes, sir. They used to come to my house three or four times a month and stay all day. They would either eat dinner or supper.

Q. Were you related to them in any way?

A. No, sir; only she was my mother's sister.

Q. She was your mother's sister?

page 9 } A. That is right.

Q. You mean that Mrs. Ruby S. Askew was—

A. —my mother's sister.

Q. And your aunt?

A. That is right.

Q. Have you ever heard Mrs. Ruby S. Askew say that she had agreed to will her property to Mr. Walter S. Askew because he had conveyed certain property to her?

A. No, sir.

Q. And you would see her often?

A. Three or four times a month. Sometimes she would come more often than that.

Q. Have you ever heard Mr. Walter R. Askew make any such statement?

A. No, sir.

Q. Have you ever heard Mrs. Askew say to him that she wanted her property to go—

Mr. Garrett: I object to that as leading and immaterial.

A. I heard her say on a lot of occasions that when she died she was going to leave her husband enough to take care

*Harvey T. Boyd.*

of him until he died, and when he died she wanted everything to go to her sister, because her sister was nearer to her than anybody else.

page 10 } By Mr. Bangel:

Q. Did she say which sister that was?

A. This lady right here.

Q. What is her name?

A. Virgie Everton.

Mr. Bangel: The witness is with you.

### CROSS EXAMINATION.

By Mr. Garrett:

Q. When did you hear her say that?

A. Several times.

Q. When?

A. A long time before she died. Two or three or five years; more than that, I guess.

Q. Let's stop guessing.

A. In a five-year period she said that she was going to give everything to her sister.

Q. In the last five years?

A. If she would come up out of the ground today, she would do the same thing.

Q. You are an unbiased witness in this case, I take it?

A. In other words, I know she would do it, because I have been around her. I stayed around her. She has been to my house several times. I knew the woman thirty-five years.

Q. Let's get back to the question I asked you.

page 11 } In what year did you hear her make such a statement?

A. I will say as much as two years ago.

Q. As much as two years ago you heard her make the statement?

A. Yes, sir, several times.

Q. That would be 1954?

A. I don't know what year it was now. I did not put it down on paper, or look at the calendar and mark the calendar as to what year it was, but I heard her say so out of her own mouth. She certainly had plenty of sense. She knew what she was talking about.

*Harvey T. Boyd.*

Q. Mr. Boyd, let's exercise ourselves with a little arithmetic. What year is this?

A. '56.

Q. Two years ago would be what year?

A. '54.

Q. So we agree it was '54?

A. '53 or '54. I said five years back. That would be 1951. I said in a period of five years. I did not say what date, because I did not mark it on the calendar. But, she made these statements at my house.

Q. Then it was from 1951 to the present date?

A. It was a long time before she died. That was her request.

Q. You are very friendly with Mrs. Everton, page 12 } aren't you, one of the defendants in this case?

A. The same thing; she is no more to me than she was. In other words, she is my aunt, and the other was my aunt. She come to my house just like the other one did.

Q. Mrs. Everton is related to you, and Mr. Askew is not?

A. Only by marriage. In other words, this lady here and Mrs. Askew are my mother's sisters—own dear sisters.

Q. And Mr. Askew is not your own dear uncle except by marriage?

A. That is all. But, Mrs. Askew thought more of her than she did any of the rest of them. She has a brother that she didn't visit at no time.

Mr. Bangel: He is pointing to Mrs. Everton.

A. In other words, every time she would get the stomach ache she would go to the telephone and call her up to come out there. She did not call me or her brother. She would only call her.

By Mr. Garrett:

Q. Were you there when she got the stomach ache and called somebody?

A. I know she went there.

Q. How many times did she get the stomach ache and call her?

A. I don't know. What I know, she said out of page 13 } her own mouth, and she certainly had plenty of sense until she died. When she died she wanted her sister to have everything she had.

*Harvey T. Boyd.*

Q. You have told us that three or four times.

A. I would swear to that anywhere in the world. I know if she would come out of the ground today she would do the same thing today that she did before.

Q. You say you will swear to that?

A. Yes, sir. I would raise my right hand to God. If I was going to leave this world right now, I would say so.

Q. You are swearing right now, Mr. Boyd.

A. She said it out of her own mouth.

Q. When were these occasions that she had the stomach ache so many times and would have to call Mrs. Everton in to assist her?

A. I don't know. I wasn't out there. I could not tell when she had the stomach ache, or the headache, or backache, or something like that. All I know is what she said out of her own mouth right in my presence. She certainly did have plenty of sense when she said so.

Q. Has anybody suggested that she did not have plenty of sense, Mr. Boyd? Have you been told that?

A. She knew how to make a dollar, and she knew how to save one.

Q. Have you been told that anybody said Mrs. page 14 } Ruby Askew did not have any sense?

A. I have not heard anybody say so. I am 45 years old, and I reckon I have plenty of sense. I believe she had plenty of sense when she put her "John Henry" on the will, saying that she wanted her sister to have it. She willed me \$5.00. I am satisfied, because that is all she wanted me to have. Why should I go and get a lawyer and go to court and say I want more money? That is all her will was for me to have, and that is all I want.

Q. In other words, you are very much incensed over the fact that there is any suit about this matter at all?

A. She did not want me to have any more than that. If she had wanted me to have any more, she would have given me more.

Q. I gather from your speeches or statements which you are making that you are incensed over the fact that there is any litigation about this at all.

A. I ain't got a thing in the world to do with it. I am just telling you what she said out of her own mouth in my presence.

Q. What do you do for a living?

*Melvin Boyd.*

A. I am a crane operator at Lone Star Cement plant. I have been there twenty some years.

Q. You have been knowing Mr. Walter Askew how many years?  
page 15 }

A. Just as many years practically as I have her.

Q. Do you know his reputation as a truthful and honest man?

A. As far as I know.

Q. It is what?

A. He was a good fellow, I guess, as far as I know. In other words, he was a fellow of this type: He liked his people and he did not like her people.

Q. Let's get back to the question I asked you. Do you know how he was generally regarded in the community for truthfulness?

A. Well, I don't know that. I have heard a lot of people say that he was a bad fellow to get along with. This was a fellow who lived close to him. I did not pay no attention to that. It went through this ear and out the other. It wasn't nothing to me.

Q. So you don't think his reputation for veracity was good?

A. I know one thing, he is all for himself. As long as you let him skin you, he will get along with you.

Q. On the contrary, Mrs. Everton, for whom you testified, is not all for herself? She is very generous and kind?

A. She is my aunt. I go to her house and she  
page 16 } comes to my house, just like you go to your brother's and your brother comes to your house, or you go to your sister's and she comes to your house.

Mr. Garrett: Thank you, sir.

*MELVIN BOYD,*

called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Examined by Mr. Bangel:

Q. State your name, please, sir.

A. Melvin Boyd.

Q. Where do you live, Mr. Boyd?

A. 3019 Bapaume Avenue.

Q. Is that in—

A. —Norfolk.

Q. Norfolk, Virginia?

*Melvin Boyd.*

A. Yes, sir.

Q. Did you know Mr. Walter R. Askew and Mrs. Ruby S. Askew?

A. I did.

Q. How long have you known them?

A. All my life.

Q. Are you related to them in any way?

A. Yes, sir.

page 17 } Q. In what way?

A. She is my aunt.

Q. How often did you see her during her lifetime?

A. About two or three times a month.

Q. Did you see her husband often?

A. He always come there with her.

Q. They would come together?

A. Yes, sir.

Q. Did they live friendly and happily together or not?

A. So far as I know.

Q. They did?

A. Yes, sir.

Q. Have you ever heard Mrs. Ruby S. Askew say that she had agreed to will her property to Mr. Walter R. Askew because he had conveyed certain property to her?

A. What do you mean by "conveyed"?

Q. Had you ever heard her say that she had agreed to convey her property to her husband?

Mrs. Everton: Give it to her husband.

Mr. Garrett: I want the record to show that Mrs. Virgie Everton is interrupting here and used the words "give it to her husband," in order to assist the witness.

Mr. Bangel: She was trying to correct me.

page 18 } Mr. Garrett: Mr. Bangel, don't make such a statement. She said it for the witness and was looking at the witness.

Mr. Bangel: Anyway, the record speaks for itself.

Mr. Garrett: It speaks for itself, but I don't think you ought to make any such statement as that.

Mr. Bangel: I was the one asking the question.

Mr. Garrett: Mr. Bangel, without trying to excuse your client for breaking in, I think it would be in order to admonish her not to assist you or the witness. I do not think you need any assistance.

*Melvin Boyd.*

By Mr. Bangel:

Q. Mr. Boyd, did you ever hear Mrs. Ruby S. Askew say in her lifetime that she had agreed to will her property to her husband because he had put certain property in her name?

A. She willed her property to her husband—

Q. No. I am trying to make it as plain as I can. Have you ever heard her say that she had agreed to will her property to her husband because he had turned over certain property to her? Have you ever heard her say that?

A. Her?

Q. Yes.

A. Yes.

Q. What did she say?

A. That she was going to give it to him, and after his death it would go to Mrs. Everton.

page 19 } Q. That is what you heard her say?

A. Yes, sir.

Q. How often did you hear her say that?

A. Oh, I would say about six months or seven before she died.

Q. Had you ever heard of any contract or agreement that she had with her husband of any kind? Had you ever heard of anything like that?

A. No.

Q. Did Mrs. Ruby S. Askew feel kindly toward Mrs. Everton?

A. Yes, sir.

Mr. Garrett: I object to that. That calls for an opinion.

By Mr. Bangel:

Q. Were they friendly or not?

A. They were.

Mr. Bangel: The witness is with you.

CROSS EXAMINATION.

By Mr. Garrett:

Q. When did you say you heard this conversation?

A. About six months or seven before she died.

Q. Where?

A. At Mrs. Everton's home.

page 20 } Q. You are a nephew of Mrs. Everton?

A. I am.

*John Everton.*

Q. You were requested by her to come here today?

A. I was.

Q. To testify?

A. I was.

Q. In her behalf?

A. I was.

Mr. Garrett: All right, sir.

JOHN EVERTON,

called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Examined by Mr. Bangel:

Q. Please state your name, sir.

A. John Everton.

Q. Where do you live, Mr. Everton?

A. 3021 Bapaume Avenue.

Q. Is that in Norfolk City?

A. That is right.

Q. Are you related in any way to Mrs. Virgie L. Everton?

A. I am her husband.

Q. How long have you all been married?

page 21 } A. 37 years; a little better.

Q. Did you know Mrs. Ruby S. Askew and her husband, Walter R. Askew?

A. Yes, sir.

Q. How long have you know them?

A. I would say 38 years, anyway.

Q. She recently died?

A. Yes, sir.

Q. How often did you see Mr. and Mrs. Walter R. Askew?

A. Well, on an average of about two or three times a month.

Q. Where would you see them?

A. At my home.

Q. Have you ever heard her say that she had agreed to will her property to her husband, Walter R. Askew, because he had conveyed property to her?

A. Not anything even pertaining to it.

Q. Have you ever heard her say how she wanted her property to go?

A. Yes, sir.

Q. What did she say?



*John Everton.*

A. She said she wanted her sister to have it after her husband's death.

Q. Was there anything said about the income from the property?

page 22 } A. Well, yes, sir, there was.

Q. What did she say about that?

A. She said that it amounted to approximately five and a half or \$600.00 a month.

Q. Who was to get the income from that property during her husband's lifetime?

A. Her husband.

\* \* \* \* \*

CROSS EXAMINATION.

By Mr. Garrett:

Q. Mr. Everton, when did you hear Mrs. Ruby Askew make the statement that you have just mentioned?

A. Well, I heard that on a couple of occasions. I don't remember the exact dates, of course.

Q. It would not have any particular significance to you?

A. No.

Q. The fact that your wife might become heir to  
page 23 } thousands of dollars' worth of property would not  
make you remember that it was any particular  
occasion, would it?

A. It did in a way, but not to the extent of paying attention to the date—the exact date, that is.

Q. Tell us what year it was.

A. Well, that would be 1953.

Q. 1953?

A. Yes.

Q. Are you employed?

A. Yes, sir.

Q. You have a very good job, don't you, Mr. Everton?

A. Well, I make a living.

Q. How much do you make a week?

A. About \$110.00.

Q. \$110.00 a week?

A. Yes.

Q. The gentleman who just testified here, Melvin Boyd, he lives next door to you?

*John Everton.*

A. That is right.

Q. Do you know of any particular occasion or reason why either Mr. or Mrs. Askew should confide in you as to their personal affairs?

A. Other than Mrs. Askew was my wife's sister, is all.

Q. Did you confide in them as to your personal affairs?

A. Well, in a way I did, yes. I did not have any-  
page 24 } thing I wanted to hide from anybody.

Q. Did you confide in them what arrangements you and your wife had as to your wills, and that sort of thing?

A. No, for the simple reason we don't have any.

Q. Does Mr. Walter Askew bear the reputation of a honest and truthful man?

A. As far as I ever knew, yes.

Q. Mr. Everton, do you remember a period of about 14 years when there was difficultly over a child, and your wife did not even speak to Mrs. Ruby Askew?

A. I do remember it.

Q. Do you remember that there was a warrant issued against Mrs. Ruby Askew?

A. I heard something to that effect. As for knowing, I don't.

Q. For approximately 14 years, from around 1929, they did not speak to each other?

A. It was quite a while. I don't know the dates on that, either.

Q. Well, approximately?

A. Well, I would say 10 or 11 years; somewhere in that neighborhood.

Q. Do you own the home that you live in?

A. Yes, sir.

Q. In whose name is that?

page 25 } A. Mine.

Q. It is in your name?

A. That is right.

Mr. Garrett: All right, sir.

#### RE-DIRECT EXAMINATION.

By Mr. Bangel:

Q. Let me ask you one other question, Mr. Everton. Do you know whether or not Mrs. Virgie L. Everton offered to Mr. Walter R. Askew a home to live in?

A. Yes, sir, she did.

*John Everton.*

Mr. Garrett: I object to that as immaterial.

By Mr. Bangel:

Q. Was that before or after Mrs. Ruby S. Askew's death?

A. Before.

Q. Before she died?

A. That is right.

Q. Was anything said to him after her death?

A. Yes.

Q. What did she say to him?

A. She still offered him the same deal again.

Q. What was that, please, sir?

A. Sir?

Q. What was that?

page 26 } A. That he could come there and live with us  
and she would do everything in the world she could  
for him.

Mr. Bangel: The witness is with you.

RE-CROSS EXAMINATION.

By Mr. Garrett:

Q. Mr. Walter Askew did not accept that invitation?

A. He didn't, no, sir.

Q. He had a place to live, didn't he?

A. Yes, sir. He said that he was going back to his old home, but he did not go.

Mr. Garrett: All right, sir.

RE-DIRECT EXAMINATION II.

By Mr. Bangel:

Q. Where did he go?

A. He went to his niece's.

Q. What is her name, please, sir?

A. Lillian Askew at present, formerly Lillian Simpson.

Q. Is that the person with whom he is living now?

A. That is right.

*Luther Miller.*

RE-CROSS EXAMINATION II.

By Mr. Garrett:

Q. How many times have you visited there since he moved there, Mr. Everton?

page 27 } A. Not any.

Q. How many times have you seen him there?

A. Not at all.

Q. So your testimony is based purely hearsay?

A. That is right, along that line.

LUTHER MILLER,

called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Examined by Mr. Bangel:

Q. State your name, please, sir.

A. Luther Jesse Miller.

Q. Where do you live, Mr. Miller?

A. 3021 Bapaume.

Q. Is that in the City of Norfolk, Virginia?

A. Yes, sir.

Q. Are you related in any way to Mrs. Virgie L. Everton?

A. No, sir.

Q. Did you know Mrs. Ruby S. Askew during her lifetime, and Mr. Walter R. Askew, her husband?

A. Yes, sir. I have been knowing them over thirty years, anyhow.

Q. Are either of them related to you?

page 28 } A. No, sir.

Q. How often did you see them?

A. Well, I worked pretty late of a night, especially when they come around, but I would say it averaged twice a month, anyhow.

Q. Would that be over a period of one year, or many years?

A. Many years, yes, sir.

Q. During the time you have known them have you ever heard Mrs. Ruby S. Askew say that she had agreed to will her property to her husband because he had conveyed certain property to her?

A. Along in the early part of '55 I did, yes, sir.

Q. You heard what?

A. I heard Mrs. Askew say that after her husband's death

*Luther Miller.*

she wanted her sister to have her property; that she would leave enough behind to take care of her husband until her husband's death, and after that she wanted her sister to have it.

Q. Which sister did she say she wanted to have it?

A. Virgie.

Q. Is that Virgie L. Everton?

A. Yes, sir. Also I heard her state after Mrs. Askew's death that she was offering Mr. Askew a home.

Mr. Garrett: I object to that as irrelevant and page 29 } immaterial.

By Mr. Bangel:

Q. You heard that?

A. Yes, sir.

Mr. Bangel: The witness is with you.

#### CROSS EXAMINATION.

Q. Mr. Miller, you are at the same residence that the defendant, Virgie Everton, is?

A. Yes, sir.

Q. Are you a boarder there?

A. Yes, sir.

Q. You are employed, of course?

A. Yes, sir.

Q. You say that in the early part of '55 you heard this conversation?

A. That is right.

Q. Where was that?

A. In her home.

Q. Whose home?

A. Mrs. Everton's.

Q. Mrs. Virgie Everton's?

A. Yes, sir.

Q. When did you recall that you had heard this page 30 } conversation? When did it come back to you?

A. I guess you might say around sometime in February, I would say, something like that. I don't remember whether it was the latter part of January or February.

Q. That is when you say you heard the conversation?

*Luther Miller.*

A. Yes, sir.

Q. When did you remember? Who called your attention to the fact that it was said since that time?

A. Well, you might say I have heard it spoken a time or two around with several friends.

Q. I say, who called your attention to the fact? How did you happen to think of it? Did somebody come to you and ask you did you hear it?

A. I have heard it, yes, sir.

Q. Did somebody come to you and ask you did you remember that conversation?

A. Well, I have heard Mrs. Everton say so, and then I have heard several other outsiders say so.

Q. Mrs. Everton came to you, did she not?

A. I was there, you might say, with her husband and friends talking. I have heard the conversation spoken of.

Q. Mrs. Everton came to you in reference to it, did she not?

A. No. You might say I was living in the house, and with the conversation going on I just overheard it.

page 31 } Q. Who called your attention to it since that time, or requested you to come here?

A. Well, you might say as far as that, and all, why, Mrs. Everton, I guess, was the one that asked me to come up.

Q. You would consider yourself a friend of Mr. and Mrs. Everton, would you not?

A. I would, yes, sir.

Q. You are good friends?

A. And also I still hope I am a good friend of Mr. Askew. I have been knowing him between 30 and 40 years.

Q. I don't believe I asked you that. I will get to that in a moment.

A. O. K.

Q. You are a very good friend of Mrs. Everton in whose home you have resided for many years?

A. That is right.

Q. Turning to Mr. Askew, does Mr. Walter Askew have a reputation of being a honest and truthful man?

A. Yes. You might say, as far as I know, that the man is in pretty good shape—friends and stuff like that. I will say one thing about Mr. Askew. I don't think he approved of his wife going to see her people too much. I will say that. Otherwise, Mr. Askew, why, I will say is a very nice fellow.

*Hazel McDowell.*

Q. In other words, he wasn't a particular friend  
page 32 } of Mrs. Everton?

A. If you want to call it that way, that is the way  
it looked to me.

Q. Regardless of how I call it, you agree that is a fair statement?

A. That is right.

Mr. Garrett: All right, sir.

## RE-DIRECT EXAMINATION.

By Mr. Bangel:

Q. Do you know whether Mr. or Mrs. Askew were friendly with Mrs. Moulton?

A. Well, I can't, you might say, say too much about that, only what I heard from the remarks said in Mrs. Everton's house.

Q. By Mrs. Askew or Mr. Askew?

A. Both.

Q. What was it?

A. Mr. Askew even asked me, as well as asked the family, I might say, not to buy anything from over there at the store. He said he would rather drive, I think it was five miles, if I ain't badly mistaken, to get anything instead of buying anything from the store.

Mr. Bangel: That is all.

page 33 } HAZEL McDOWELL,  
called as a witness on behalf of the defendants,  
having been first duly sworn, testified as follows:

Examined by Mr. Bangel:

Q. State your name.

A. Hazel E. McDowell.

Q. Mrs. McDowell, are you related in any way to Mrs. Ruby S. Askew?

A. I was her niece.

Q. Are you related to Mrs. Virgie L. Everton?

A. She is my mother.

Q. Then, of course, you knew Mr. and Mrs. Walter R. Askew?

*Hazel McDowell.*

A. Oh, yes.

Q. For years?

A. Yes, all my life.

Q. Were you friendly with them?

A. Oh, yes.

Q. Did they visit you?

A. Yes, they did.

Q. Did you visit them?

A. Yes.

Q. Have you ever heard Mrs. Askew say what she wanted done with her property?

A. Yes, I did. She said she wanted my mother page 34 } to have it after my uncle's death.

Q. How often did you hear her say that?

A. I can remember two occasions. You don't keep track of those things.

Q. Had she ever said that she had agreed to will her property to her husband because he had conveyed certain property to her?

A. I never heard her say it.

Q. How often did you say you came in contact with him and her?

A. I came in contact with her more than I did him, because sometimes she would go collecting rents and she would stop by my house.

Q. Who was the more active of the two?

A. She by far.

Q. Was she younger than him or not?

A. Oh, yes, she was younger.

Q. Now, Mrs. McDowell, did you ever hear Mrs. Everton offer Mr. W. R. Askew a home?

A. Yes, indeed.

Mr. Garrett: I object to this as immaterial and irrelevant.

By Mr. Bangel:

Q. Do you know with whom Mr. W. R. Askew is now living?

A. He is living with his niece, I understand. page 35 }

Q. What is her name?

Mr. Garrett: I object to her understanding, and move to strike it.

A. Lillian Askew—Mrs. Lillian Askew.

Mr. Bangel: The witness is with you.



*Hazel McDowell.*

CROSS EXAMINATION.

By Mr. Garrett:

Q. Mrs. McDowell, you are the daughter of Mrs. Virgie Everton?

A. Yes, I am.

Q. How old are you, Mrs. McDowell?

A. 36.

Q. You said you heard some conversations about wanting your mother to have this property. When did you hear those conversations?

A. Well, if you want the exact date I am afraid I can't give it to you.

Q. Give me the year.

A. 1955.

Q. 1955?

A. Yes. I talked with my aunt on the phone just prior to my baby's birth, and I talked with her for quite a long time.

Q. That was when?

page 36 } A. Well, my baby was born on June 16th, and that was prior to my baby's birth. I had called her to tell her that I could not come down and see her, because I wasn't feeling too well. She told me then about her wanting my mother to have what she had.

Q. In the telephone conversation that you had with Mrs. Ruby Askew prior to the birth of your child she volunteered a statement that she wanted your mother to have her property?

A. I talked with my aunt on any number of occasions—

Q. Let's relate it to this telephone conversation that you testified to.

A. I am going to. She was always telling me how much she thought of Mother, how much Mama had done for her. They were very close. In the course of the conversation that was what she told me.

Q. In other words, your mother and Mrs. Askew were very close sisters and had been all their lives?

A. So far as I know.

Q. What do you mean, so far as you know? Were you here?

A. I wasn't with them constantly, you know.

Q. You lived in this vicinity—

A. All my life.

Q. You visited your mother frequently during that time?

*Hazel McDowell.*

A. I still do.

page 37 } Q. Your answer is "Yes"?

A. Yes.

Q. Don't you know, Mrs. McDowell, that for a period of some 14 years Mrs. Ruby Askew and your mother never spoke to each other?

A. I certainly do. I went to see my aunt on those occasions and she told me that she still thought a lot of my mother.

Q. I don't believe I asked you what she told you.

Mr. Garrett: I am going to object to that and ask that it be stricken.

By Mr. Garrett:

Q. I ask you, didn't you know that for approximately 14 years, from approximately 1929 to the early part of the Nineteen Fifties that Mrs. Ruby Askew and your mother never spoke to each other?

A. I don't know how long it was that they did not speak.

Q. You agreed with me a minute ago that it was about 14 years, didn't you?

A. I don't remember whether I did or not. In 1929 I was nine years old, so I don't remember too much about that.

Q. Starting from the time you became an adolescent and were conscious of the existence of the relationship  
page 38 } between your mother and your aunt, you certainly would not have to be over twelve or thirteen or fourteen years of age, would you, to know?

A. To know whether there was a disagreement between the two of them?

Q. Yes.

A. I suppose not.

Q. Do you remember when they patched up their differences and began speaking again, what year that was?

A. No, I don't.

Q. Approximate it for us.

A. I am afraid I can't.

Q. Mrs. McDowell, you were visiting your aunt during the time. You knew the relationship between your mother and your aunt. Tell the Court with some degree of fairness about what year it was that they patched up their differences.

A. When was it? May I ask my mother?

Q. No, I don't think you can.

*Hazel McDowell.*

A. Would you ask her when my grandmother died? It was in the Nineteen Forties, but what year I cannot remember. I am sorry. I can guess.

Q. You have no way of establishing in your own mind when the long breach between your mother and her sister was healed? You don't know what year it was?

A. No.

Q. You have no way of establishing that?  
page 39 } A. No. I would say in the Nineteen Forties.  
Q. That allows you ten years.

A. That allows ten years, but I don't remember the exact time, no.

Q. Now, Mrs. McDowell, let's be fair. I know you want to testify—

Mr. Bangel: I submit that the witness is fair. I do not think you ought to make that statement.

Mr. Garrett: Let's see if the witness is fair.

By Mr. Garrett:

Q. You are telling this Court that you don't know within a period of ten years when your mother, who had not even been speaking to your aunt, became reconciled with her? Is that true?

Q. Would you ask my mother what year it was that my grandmother died? It was maybe a year or two after that.

Mr. Garrett: That is all.

## RE-DIRECT EXAMINATION.

By Mr. Bangel:

Q. Did you know Mrs. Moulton and Mr. Moulton?

A. I met Mr. Moulton on one occasion.

Q. Did you have occasion to talk to Mr. Walter R. Askew about Mrs. Moulton?

page 40 } A. Can I tell you about it in my own words?

Q. I wish you would.

Mr. Garrett: I am going to object to this as immaterial and irrelevant unless the materiality can be shown.

*Hazel McDowell.*

By Mr. Bangel:

Q. Now, go ahead.

A. I was going to take my aunt to the doctor and I stopped by the Moulton store. My children wanted some ice cream, and I stopped. Anyway, I talked with Mr. Moulton in the store. It was just a little country store. When I went to pick up my aunt I told her that I had stopped and gotten the children ice cream. She told me about how they had stopped her milk. It seems they told the dairy that if they brought milk to them, they would not take it at the store.

Q. Were Mrs. Moulton and Mr. Askew friendly?

A. Not then they weren't, because Uncle Raleigh told me that he would rather I did not go to the store.

Q. Uncle Raleigh is who?

A. Mr. Askew.

Q. Walter R. Askew?

A. He told me he went out of his way to get bread rather than buy any thing at the Moulton store.

Q. Do you recall how long they were angry with each other?

page 41 } A. No, I don't.

Mr. Bangel: That is all.

Mr. Garrett: Without waiving objection to the replies of the witness on the ground that they are immaterial and irrelevant—

#### RE-CROSS EXAMINATION.

By Mr. Garrett:

Q. When was it that this supposed conversation took place between you and Mr. Askew concerning the Moultons?

A. When did that conversation take place?

Q. Yes.

A. It was right after she had her first operation.

Q. What year was that?

A. Let me see. It was around 1951, I think.

Mr. Garrett: That is all.

**WILLARD J. MOODY,**

called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Examined by Mr. Bangel:

Q. State your name, please, sir.

A. Willard J. Moody.

Q. Mr. Moody, you are a practicing attorney, are page 42 } you not?

A. That is correct.

Q. And at present you are engaged in the practice of law in the City of Portsmouth, Virginia?

A. That is right.

Q. You are also a member of the legislature, are you not?

A. Yes, sir.

Q. There has been offered in evidence a will which was submitted to probate in the Clerk's Office of the Circuit Court of Norfolk County, made by Mrs. Ruby S. Askew, and which was drafted by you. You are familiar with that will, are you not?

A. Yes, I am.

Q. Did you witness the signing of that will by Mrs. Askew?

A. I did.

Q. Where did this take place?

A. It was over in DePaul Hospital. Actually it took place in what I would probably call a reception room or lobby. There were a number of chairs around and a table.

Q. Did Mrs. Askew say anything to you about how she wanted her property to go after the death of her husband?

A. She was commenting on that at the time she read the will, and she asked a couple of times about her sister, Mrs.

Everton. She wanted her to get the property after page 43 } the death of her husband.

Mr. Garrett: This, of course, is objected to as irrelevant and immaterial to the issue here.

Mr. Bangel: The witness is with you.

**CROSS EXAMINATION.**

By Mr. Garrett:

Q. Mr. Moody, what was your first contact with respect to this particular will?

A. Frankly, it is not completely clear as to whom she came in the office to see.

*Willard J. Moody.*

Q. Who is "she"?

A. Mrs. Everton, when she came there originally in connection with the writing of the will.

Q. Then I understand from you that Mrs. Virgie Everton, a defendant in this suit, came to the office?

A. That is my recollection.

Q. In connection with the will?

A. Yes.

Q. Your recollection is substantial, isn't it, Mr. Moody?

A. I think that is correct.

Q. Certainly Mrs. Ruby Askew did not come to your office?

A. That is right, she did not. She was in the hospital, of course.

page 44 } Q. What was the date that Mrs. Everton came to your office?

A. I could not tell you.

Q. The will bears a date. Could you tell us how long prior to the execution of the will she came in?

A. No, I couldn't, because I think a will was written—I am not positive about this, but I believe a will was written and read by Mrs. Askew—

Q. I object to what you think. If you know it, we can have it. Do you have a copy of the other will?

A. I do not. But, my recollection is that a will was written, and apparently it was not satisfactory to Mrs. Askew, and it came back again and the will was rewritten in accordance with her wishes. It was taken over there by me at this time and she signed that will.

Q. Who wrote the first will that was not satisfactory?

A. I believe Mr. Koteen may have written it.

Q. You did not write it?

A. I did not write it.

Q. Were you in Mr. Koteen's office at the time, associated with him?

A. I was using the same secretary and we had adjoining offices. That was the association we had.

Q. You were in the same offices there? The second will, which you stated was executed and which has been  
page 45 } offered in evidence, bears a date on it. Can you tell us approximately how long prior to the execution date of that will you were first interviewed by Mrs. Everton?

A. I really don't recall.

*Willard J. Moody.*

Q. Was it the same day?

A. No, it wasn't the same day.

Q. Was it the day before?

A. Well, of course you are trying to work me back. If I could remember, I would be glad to say, but I don't recall whether it was a week or whether it was four days, or just exactly what time element was in there.

Q. You made a charge for drawing the will, did you not?

A. Yes, a charge was made.

Q. Mrs. Everton paid you for that, did she not?

A. That was paid over at the hospital. Mrs. Everton, I don't think she paid me. I am not sure. I think it came from Mrs. Askew.

Q. Let's don't think, Mr. Moody. You were there, weren't you?

A. I was over in the hospital.

Q. And you got some money for drawing a will?

A. That is right.

\* \* \* \* \*

page 46 }

\* \* \* \* \*

By Mr. Garrett:

Q. Mr. Moody, at the time you went to the hospital Mrs. Askew was in bed, wasn't she?

A. I believe when we arrived there she was in bed, but she came up to this room that we were in.

Q. She was dressed in bed attire, was she not?

A. I don't know what you would call it. I suppose that is the same thing she had on in bed.

page 47 } Q. Who paid you the money?

A. I am going to tell you exactly what happened there to the best of my recollection. They were altogether, and the question arose later—and I knew it would come up here today as to who paid the money. But, I don't recall whose pocketbook it came out of, because they were altogether there in a group: Mrs. Askew, Mrs. Everton and the two ladies who were witnesses on the will, and the doctor. When the money came up, frankly I don't recall from whom the money came. No receipt was given at that time.

*Willard J. Moody.*

Q. Who employed you?

A. Mrs. Everton came to the office.

Q. Mrs. Everton came to the office and told you what to put in the will?

A. That is correct.

Q. You did not interview Mrs. Askew before you drew that will?

A. No.

Q. You drew it pursuant to Mrs. Everton's directions, and you went to the hospital, carried the will, and the will was executed, and I believe you are a witness on it?

A. I believe I am, too.

Q. I believe you are also named as a coexecutor?

A. That is correct.

Mr. Garrett: I think that is all.

page 48 } RE-DIRECT EXAMINATION.

By Mr. Bangel:

Q. Mr. Moody, did Mrs. Ruby S. Askew read that will?

A. She must have read that will at least twice. She sat down with it first in a chair and read it completely through, both pages, and told me her name was not spelled correctly. The difference I think was between "ie" and a "y." Then she later walked around with it and came back and sat down again.

Q. Was there any statement made by her that she had agreed to will her property to Mr. Walter R. Askew because he had conveyed property to her?

A. No, indeed.

RE-CROSS EXAMINATION.

By Mr. Garrett:

Q. What time did you go to the hospital—day or night?

A. Daytime.

Q. What time?

A. I think it was around, maybe 11:00 o'clock. It was during the middle of the daytime or early afternoon.

Q. Was Mr. Walter R. Askew present at that time?

A. No, indeed.

Q. Who was present besides you?



*Mrs. Willie Mae Scott.*

Mr. Bangel: We want to object to this line of  
page 49 } cross examination on the ground that there has  
          } been no attack made upon the validity of the will,  
and this does not deal with the issue involved in these proceedings.

Mr. Garrett: This throws some light on the manner in which it was accomplished, and the circumstances under which it was accomplished, concerning which the Court might or might not be interested in knowing.

By Mr. Garrett:

Q. Who was present?

A. Well, of course the doctor and the two ladies who—I don't recall their names—the two ladies who went there to be witnesses on the will.

Q. Mrs. Everton was there?

A. Mrs. Everton was there, and Mrs. Askew was there.

Mr. Garrett: I think that is all.

MRS. WILLIE MAE SCOTT,  
called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Examined by Mr. Bangel:

Q. Mrs. Scott, where do you live?

A. 4626 Crestwood Court, Broad Creek Village.

Q. Are you related in any way to Mr. Walter R. Askew  
or the late Mrs. Ruby S. Askew or Mrs. Virgie L.  
page 50 } Everton?

A. No, sir.

Q. You are not related to any of them?

A. No, sir.

Q. Did you know Mrs. Ruby S. Askew during her lifetime?

A. Yes, sir.

Q. And you know her husband?

A. Yes, sir.

Q. How long have you known them?

A. Eight years.

Q. Did they have occasion to visit you?

A. Yes, sir.

Q. Did you visit them?

*Mrs. Willie Mae Scott.*

A. Yes, sir.

Q. How often did you visit each other?

A. I would say at least once a month. If I did not visit her, we talked over the phone at least every other day.

Q. Did you ever hear Mrs. Ruby S. Askew say that she had agreed to will her property to her husband because he had conveyed property to her?

A. No, sir.

Q. Were you friendly with Mrs. Askew?

A. We were very good friends.

Q. Did you ever hear Mr. Askew make any such statement as that in your presence? Did you ever hear him  
page 51 } say that he had conveyed property to his wife and she agreed to will it to him?

A. No, sir.

Mr. Bangel: The witness is with you.

#### CROSS EXAMINATION.

By Mr. Garrett:

Q. Mrs. Scott, did you know that Mrs. Askew had actually willed all of her property to Mr. Askew?

A. No, sir.

Q. You don't believe that to be a fact?

A. No, sir.

Mr. Bangel: We object to whether she believes it to be a fact or not. It is whether she knows it.

By Mr. Garrett:

Q. You don't believe that was done?

A. No, sir.

Mr. Garrett: That is all.

#### RE-DIRECT EXAMINATION.

By Mr. Bangel:

Q. While you are here, Mrs. Scott, did you ever hear Mrs. Askew say anything about Mrs. Moulton?

A. Yes.

Q. What was that?

*W. E. Scott.*

A. Mr. Askew had forbidden us to even go to her page 52 } store and buy anything. We were visiting down there one afternoon. It was real hot. We wanted some Cokes. I said, "Mrs. Askew, give me some bottles and I will get us a cold drink." She said, "No, Willie. We don't have any more dealings with the Moultons. It happened over the milk situation."

Q. How long ago was that?

A. When she had her breast taken off in 1951.

Q. From then until the time she died did she have anything to do with Mrs. Moulton?

A. No, sir.

Mr. Garrett: Of course, I object to the admissibility of this. I do not see any need of pursuing the interrogation.

*W. E. SCOTT,*

called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Examined by Mr. Bangel:

Q. Mr. Scott, where do you live?

A. Broad Creek Village.

Q. Where are you employed?

A. Ford Motor Assembly Plant.

Q. Did you know Mrs. Ruby S. Askew during her lifetime?

A. Around eight years.

page 53 } Q. And you knew her husband, Walter R. Askew?

A. Yes.

Q. Did you ever hear Mrs. Askew say what she wanted done with her property?

A. Well, she used to come to my house and eat. The way I met her was through Mrs. Everton. She kept our baby when we first came back to Norfolk about eight or nine years ago. Then she got to coming over and we all became good friends. She used to go to our house to eat and we used to go to her house.

Q. When you say that she used to come, whom do you mean?

A. Mrs. Askew and her husband. She used to get on me a lot of times about how to make money, how to save money and how to make money, and telling me about the way she used to do. She used to mention about how she wanted her property to go.

*W. E. Scott.*

Q. What did she say about the way she wanted her property to go?

A. She said that as long as her husband lived she wanted him to have a good living, and at his death she wanted her sister to have it.

Q. To have the property?

A. At his death.

Q. What sister did she have reference to?

A. Mrs. Everton.

page 54 } Q. Did you hear her say that once or several times?

A. I have heard her several times. She was always on me about saving money and how to invest my money.

Q. Have you ever heard Mrs. Ruby S. Askew say that she had agreed to will her property to Mr. Walter R. Askew because he had conveyed property to her?

A. No. She was always telling me about how she invested to make money. She was always harping on that.

### CROSS EXAMINATION.

By Mr. Garrett:

Q. Mr. Scott, you have been knowing them for eight years?

A. Around eight years, yes.

Q. And you met her through Mrs. Virgie Everton, one of the defendants in this case?

A. That is right.

Q. Because Mrs. Everton used to baby sit for you at the time?

A. She used to take care of our baby.

Q. When was the first time you can recollect that you ever heard Mrs. Ruby Askew say anything about how she wanted her property to go—what year?

A. Well, I would say four or five years ago. I would not put any definite date on it, because I have heard  
page 55 } her say it several times.

Q. Give me an outside date on it.

A. I came back here in '47. I would say '49 was the first time that she was sitting at our table.

Q. 1949?

A. I would say '49.

Q. Would you say that with any degree of certainty, or is that just a date that you picked out?

*Bessie Smith.*

A. I would say it was near it.

Q. Did you know at that time that she had actually made a will leaving it all to Mr. Walter Askew?

A. No. She never said anything about it.

Q. No mention was ever made about it?

A. No.

Q. About what will she had in existence?

A. The only thing she used to mention to me was how much property she had, and how much income she had, and how she made it, and the way she would like to have it go after her death.

Q. Did you know at the very time that you state this supposed conversation took place she had a will in existence?

A. No.

Q. She never told you that?

A. No, she never did mention anything about it.

Q. She never indicated any intention to change  
page 56 } any will that she might have had?

A. No.

Mr. Garrett: That is all.

**BESSIE SMITH,**

called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Examined by Mr. Bangel:

Q. Your name is Mrs. Bessie Smith?

A. Yes.

Q. Where do you live, Mrs. Smith?

A. I live at 1325 Elder Avenue, Norfolk Highlands.

Q. That is in Norfolk County?

A. Norfolk County.

Q. How long have you lived in Norfolk County?

A. We moved out there on the 18th of April.

Q. I think your husband is a member of the Norfolk County constabulary, is he not?

A. That is right.

Q. Mrs. Smith, did you know Mr. Walter R. Askew and the late Mrs. Ruby S. Askew?

A. Yes, sir.

Q. How long had you known them?

*Bessie Smith.*

A. All my life.  
page 57 } Q. Did you visit them often?  
A. Yes, sir.

Q. Did they visit you?

A. Well, up until toward, I would say, approximately about four or five years.

Q. They did not visit you?

A. I seen her occasionally, but we moved away and we did not come in contact too often.

Q. While you were in contact with each other about how often would you see each other?

A. Approximately once a month.

Q. Did Mrs. Askew ever tell you how she wanted her property to go?

A. Well, she stated in my presence, Mr. Bangel, that she had worked hard all of her life, that she had put a lot together, and she did not have any children, and she had one sister, and she had half sisters, but when she passed away she wanted her sister to have what she had.

Q. You mean she had one whole sister?

A. Yes, sir.

Q. Who is that whole sister?

A. Mrs. Everton.

Q. Did she say anything about her husband sharing in any part of her estate?

A. No, sir.

page 58 } Q. Have you ever heard Mrs. Ruby S. Askew say that she had agreed to will her property to her husband because he had conveyed certain property to her?

A. No, sir.

Mr. Bangel: The witness is with you.

**CROSS EXAMINATION.**

By Mr. Garrett:

Q. Mrs. Smith, when was it that you heard this statement that you have testified to by Mrs. Ruby Askew?

A. Mr. Garrett, it was approximately, I would say, between six and seven years ago in my sister's store at Butts Station. She owned that piece of property.

Q. Between six and seven years ago?

A. Yes, sir.

*Bessie Smith:*

Q. So that would be around 19—

A. I would say between '49 and '50.

Q. Around 1950? How old are you, Mrs. Smith?

A. I am 38.

Q. And you say your husband is a member of the Norfolk County police force?

A. Yes, sir. At that particular time she was a Simpson—Mrs. Lillian Simpson. I also heard her say that she had been to her house to borrow money from Mr. Askew to buy into a store, and that she definitely did not want any of  
page 59 } his people to have what she had worked hard for.

Mr. Garrett: I want to move to strike that out as unsolicited testimony, not responsive to any question, as being wholly immaterial and irrelevant.

By Mr. Garrett:

Q. Now I would like to ask you, Mrs. Smith, how you happen to take an interest in this matter to appear here as a witness today?

A. They summoned me.

Q. How did they know you knew this?

A. How did they know?

Q. In 1950 you heard a statement made by Mrs. Ruby Askew that she wanted to give all her property to Mrs. Virgie Everton?

A. I have heard her say continuously, a lot of times, that she did not want the Askew side of the family to have it, because she did not get along with them.

Q. I did not ask you that.

Mr. Bangel: It is very responsive.

Mr. Garrett: Your notion of responsiveness and mine, Mr. Bangel, are at variance.

By Mr. Garrett:

Q. How did Mrs. Virgie Everton know that you had heard a conversation in 1950 of this kind? Did you go to her and tell her when this litigation started?

page 60 } A. Absolutely not.

Q. Did she come to you?

A. She came to me and told me that there was a will that her sister had left.

*Maxine Hayes.*

Q. And she called your attention to some statements that were made in 1950?

A. No, sir.

Q. She did not say anything about them?

A. No, sir, other than just she had left a will to her.

Mr. Garrett: That is all.

**MAXINE HAYES,**

called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Examined by Mr. Bangel:

Q. State your name, please.

A. Mrs. Maxine L. Hayes.

Q. Mrs. Hayes, do you know Mr. Walter R. Askew?

A. Yes.

Q. Did you know his late wife, Mrs. Ruby S. Askew?

A. Yes.

Q. How long had you known them?

A. Five years.

Q. During the time that you knew them did you  
page 61 } visit them?

A. No, I never visited in their home.

Q. Did they visit you?

A. Mrs. Askew has, yes.

Q. How often did she visit in your home?

A. She never visited me but three times.

Q. During the times that she visited you did she make any statement about how she wanted her property to go?

A. Not at that time, no.

Q. At any time did she ever tell you what she wanted to do with her property?

A. Yes. The morning that I witnessed the will, Mrs. Askew was sitting in a chair by me, and she told me at that time that that was why she wanted to make a will, to leave Mrs. Everton her money after the death of her husband; that she felt like Mrs. Everton needed it more than anybody else.

Q. Did you ever hear Mrs. Ruby S. Askew say that she had agreed to will her property to her husband because he had conveyed property to her?

A. No.

Mr. Bangel: The witness is with you.



*Maxine Hayes.*

CROSS EXAMINATION.

By Mr. Garrett:

Q. Mrs. Hayes, you were, I believe, a witness on the will at the hospital?

page 62 } A. Yes.

Q. This will-signing took place at the hospital?

A. Yes, it did.

Q. Do you remember what part of the hospital?

A. Yes; in the waiting room. Mrs. Askew had been in bed, but she came down the hall in her robe. She took the will and went back to her room and read it, and came back, and we signed the will. Every one witnessed the will at the same time.

Q. Who requested you to come there to sign the will?

A. Mrs. Everton.

Q. Mrs. Virgie Everton?

A. Mrs. Virgie Everton.

Q. Did another lady come with you?

A. Yes.

Q. She brought her, also?

A. Yes.

Q. At what time of day was it that this took place, if you recall?

A. Well, I don't believe I remember exactly. It was in the morning about—I think it was around 11:00 o'clock, if I am not mistaken.

Q. Did you see any money paid to anybody there?

A. No money.

Q. Did you come with Mrs. Everton?

page 63 } A. Yes.

Q. Did you see Mr. Moody in there?

A. Yes.

Q. An attorney?

A. Yes.

Q. Did he leave when you all left there?

A. Yes.

Q. During the time he was there did you see any money paid to him by anybody?

A. No.

Q. How big a room were you in?

A. We were in just a small waiting room at St. Vincent's Hospital—one of the waiting rooms.

*Ralph Everton.*

Q. You were all in clear sight of each other?

A. There were other people in there, too.

Mr. Garrett: I believe that is all.

**RALPH EVERTON,**

called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Examined by Bangel:

Q. State your name, please, sir.

A. Ralph W. Everton.

Q. Mr. Everton, where do you live?  
page 64 } A. 2920 Tidewater Drive, Norfolk, Virginia.

Q. Are you related to Mrs. Virgie L. Everton?

A. Yes, sir. I am her son.

Q. You are also related to Mrs. Ruby S. Askew?

A. Yes, sir. She was my aunt.

Q. You knew her during her lifetime?

A. Yes, sir.

Q. Did you know her husband, Walter R. Askew?

A. Yes, sir.

Q. How long had you known her?

A. I am 23 years old, so all of my life.

Q. Did you ever hear Mrs. Ruby Askew say what she wanted done with her property after her death?

A. No, sir.

Q. Did you ever hear her make a statement that she agreed to will her property to her husband because he had conveyed property to her?

A. No, sir.

Q. Do you know whether or not Mrs. Virgie L. Everton offered Mr. Walter R. Askew a home?

A. Yes, sir.

Q. Were you present?

A. I was a witness.

Q. You heard it, did you?

A. Yes.

Q. Did he accept it?  
page 65 } A. No, sir. I don't know if I can quote his words or not, but he said that as long as he had his health he would stay at their own home.

*Virgie L. Everton.*

Q. Did he stay at his own home?

A. No, sir.

Q. Where is he staying?

A. Lillian—what is it—Simpson? I don't know her last name.

Mr. Bangel: The witness is with you.

CROSS EXAMINATION.

By Mr. Garrett:

Q. How many times have you visited him since he has been there?

A. Mr. Askew?

Q. Yes.

A. I have not visited him at all.

Q. How many times have you driven by there and seen him there?

A. I have only been by there—not by the house, but I have been in the vicinity only one time. That was during my tour of eight hours with the Telephone Company.

Q. When was that?

A. That was last year sometime, I think.

Q. So your statement as to where he is living is page 66 } based on hearsay?

A. Yes, sir, that is correct.

Mr. Garrett: All right, sir.

VIRGIE L. EVERTON,

one of the defendants, having been first duly sworn, testified as follows:

Examined by Mr. Bangel:

Q. Your name is Mrs. Virgie L. Everton?

A. Yes, sir.

Q. Where do you live, Mrs. Everton?

A. 3021 Bapaume Avenue.

Q. How old are you?

A. I am 52.

Q. Were you related to Mrs. Ruby S. Askew?

A. Yes, sir.

Q. In what way?

A. She was my sister.

*Virgie L. Everton.*

Q. Was she your half sister or whole sister?

A. Whole sister.

Q. State whether or not you are the only whole sister living.

A. Yes, I am the only one living.

Q. Mrs. Everton, were you friendly with Mrs. Askew?

A. Yes, sir.

page 67 } Q. Had there been a misunderstanding between  
you and her prior to her death?

A. No, sir.

Q. Had you all been on speaking terms all the time?

A. Well, we were out for a while.

Q. Did Mrs. Askew ever tell you what she wanted done with her property?

A. She said she wanted me to have it after her husband's death.

Q. Did she say what income there was from the real estate?

A. Between \$600.00 and \$700.00 a month.

Q. Is that what she told you?

A. Yes.

Q. How many times did she tell you she wanted you to have her property after her husband's death?

A. She has told me that several times. I used to write her receipts out to her tenants. Every Monday she would come to my home and I would write the receipts out to her tenants. She used to say, "You will be doing this after a while."

Q. Have you ever heard her say that she had agreed to will her property to her husband because he had conveyed property to her?

A. No.

page 68 } Q. Did you ever offer Mr. Askew a home?

A. I did. The night before she died we were at DePaul Hospital sitting on the porch. I said, "Mr. Askew, Ruby is going to die. You can come and live with me and I will wait on you and do as much for you as I can." He said, "No. I am going back home to live."

Q. Did he go back home to live?

A. Not that I know of.

Q. Do you know where he is living?

A. He is living with his niece.

Q. What is her name?

A. Mrs. Lillian Askew.

Mr. Bangel: The witness is with you.

*Virgie L. Everton.*

CROSS EXAMINATION.

By Mr. Garrett:

Q. Mrs. Everton, this generous offer you made to Mr. Askew to come to live with you just prior to his wife's death—you had already had this will executed, or it had been executed leaving this property to you?

A. Yes.

Q. When did Mrs. Askew tell you that she wanted you to have this property?

A. She told me in May.

Q. Of what year?

page 69 } A. '55.

Q. May of 1955? When you arranged for the execution of this will did you inform Mr. Walter Askew what you were doing?

A. No.

Q. Mrs. Askew was in the hospital?

A. Yes.

Q. You went to see a lawyer, yourself?

A. She sent me to the lawyer.

Q. She told you to which lawyer to go?

A. To get any of them, she said.

Q. You went to a lawyer and employed him to draw a will?

A. Yes.

Q. And paid him for drawing the will?

A. Mrs. Askew.

Q. When?

A. She told me to pay him.

Q. I did not ask you who told you. I said, you paid him?

A. Sure, I did. She asked me to.

Q. How much did you pay him?

A. I don't remember now.

Q. You haven't had many wills drawn for people that you don't remember what you paid the attorney, do you?

A. I think it was \$25.00.

page 70 } Q. To whom did you pay it?

A. Mr. Koteen, I think.

Q. In his office?

A. Yes.

Q. Do you remember some difficulty about a first will that you took over there?

A. Well, I carried the will back to the hospital—Mr. Moody

*Virgie L. Everton.*

did, at least. I had not put my dead sister's children's name down there, and she said they would break it.

Q. Said who would break it?

A. Said that Mr. Askew would break it.

Q. That Mr. Askew would break it?

A. Yes.

Q. How long a period of from the time she actually signed the will did she first send you out to get the will made, would you say?

A. I think the next day.

Q. The next day?

A. Yes.

Q. So the will was drawn and brought to the hospital and signed the same day?

A. Yes. The will was drawn the same day, yes.

Q. And brought to the hospital and signed?

A. And then there was a mistake made there, page 71 } because I had not put my dead sister's children's names down there.

Q. You made it a point not to have this done when Mr. Askew was there at the hospital, did you not?

\* \* \* \* \*

By Mr. Garrett:

Q. Will you answer that, please?

A. No. She did not want him to be there.

Q. She did not want Mr. Askew there?

A. No.

Q. She told you that?

A. Yes.

Q. So that when you brought the will there and the witnesses, and all, you made certain that he was not present?

A. Sure, he wasn't present.

Q. I say, it wasn't a coincidence that he wasn't present.

You came there and would not have done it had he page 72 } been present?

A. Why, no.

Q. After this will was signed in May of 1955, what happened to the will?

A. She told me to take it home and get a deposit box to keep it in the bank until her death.

Q. You took possession of the will immediately after it was signed?

*Virgie L. Everton.*

A. Mr. Koteen had it.

Q. Was Mr. Koteen at the hospital?

A. No. Mr. Moody was at the hospital.

Q. Mr. Koteen could not get it from the hospital. Who took it from the hospital?

A. I took it from the hospital and carried it home and put it in the bank, like she asked me to do.

Q. And you kept possession of it until her death?

A. Yes.

Q. And not once during that time did you ever suggest to her husband, Mr. Walter R. Askew, that she had made the will at all?

A. No. She told me not to.

Q. She wanted to conceal it from him?

A. I guess so.

Q. Do you know it?

A. I don't know it to be sure.

page 73 } Q. She told you not to tell him?

A. Why, yes.

Q. Not to let him know anything about it; is that correct?

A. Yes.

Q. How many times have you been out to see Mr. Askew since his wife's death?

A. Well, Mr. Askew doesn't speak to me. He hasn't spoken to me since my sister's death.

\* \* \* \* \*

By Mr. Garrett:

Q. Did you ever go out to the place where he resides since his wife's death?

A. No.

Q. Now, Mrs. Everton, for a period of some years you and your deceased sister, Ruby Askew, were not friendly?

A. Yes.

Q. It was approximately in 1929 that the difficulty over the child took place, wasn't it?

A. Yes.

Q. And that extended for a period of some 12  
page 74 } or 14 years?

A. About that.

Q. That you did not even speak to each other?

A. Yes; she got mad with me.

*Virgie L. Everton.*

Q. So she certainly wasn't any close, loving sister to you during that period of time?

A. Not at that time, no.

Q. You had no conversations, whatsoever?

A. No; but she was after that.

Q. You healed your differences sometime around 1950, did you not?

A. No; after my mother died.

Q. What year was that?

A. '42.

Q. In 1942?

A. Yes.

Mr. Garrett: I think that is all.

RE-DIRECT EXAMINATION.

By Mr. Bangel:

Q. Mrs. Everton, you said your mother died in 1942?

A. Yes.

Q. Then you and your sister resumed friendly and blood relationship?

A. Yes, sir.

page 75 } Q. Did you from then until the time of her death visit each other frequently?

A. Yes, we sure did.

Q. Were you all close to each other?

A. Yes, sir.

Q. Was all the past healed?

A. Yes, sir.

Q. Did she at any time ever say to you that she agreed to will her property to her husband because he had conveyed property to her?

A. No, sir.

Q. Do you know whether she was friendly with Mrs. Moulton or not?

A. No, sir, she sure was not.

Q. How do you know that?

A. Because when Mrs. Scott used to visit my sister, Mr. Askew used to tell us not to buy anything from Mrs. Moulton, that they had treated him dirty.

Q. How about Mrs. Askew?

A. And Mrs. Askew, too. She said in '51 Mrs. Moulton



*Virgie L. Everton.*

stopped her milk from coming to her porch, and that she told the driver if he left any more milk on Mrs. Askew's porch she would stop taking it for her store.

Q. Did Mrs. Askew then become angry with Mrs. Moulton?

A. They were not speaking.

page 76 } Q. They were not?

A. No, sir.

Q. Did they speak from then until the time she died?

A. They were not speaking at the time.

## RE-CROSS EXAMINATION.

By Mr. Garrett:

Q. Mrs. Everton, you are not going to try to sit here and tell the Court that people who lived that close to each other for that number of years, when you were not present, never spoke to each other?

A. She wasn't speaking to her from '51 on up.

Q. Where were you living in '51?

A. Fairmount Park.

Q. How far is that from where Mrs. Ruby Askew lived?

A. She lived out in Great Bridge.

Q. How far is that from your place?

A. You can get there in about twenty minutes.

Q. It is about eight or ten miles, isn't it?

A. Yes.

Q. Do you mean to tell the Court that Mrs. Moulton, who lived next door, didn't she—

A. Not next door. She lived about the third door down.

Q. A few hundred feet away—that during the period from 1950 to her death she never uttered one word to Mrs. Ruby Askew?

page 77 } A. No, sir.

Q. How can you say that? You were not there.

A. My sister told me so.

Q. Your sister told you so?

A. Certainly. And, Mr. Askew forbade us from going over there and spending a penny.

Q. Mr. Askew was very much incensed with the Moultons?

A. Yes.

Q. He was an enemy of theirs; is that right?

A. Yes, sir.

*Virgie L. Everton.*

Q. And never did say anything good about them?

A. Not since '51 he did not.

Q. And the Moultons did not like him, either, did they?

A. No, sir, neither one of them.

Mr. Garrett: That is all.

\* \* \* \* \*

A Copy—Teste:

H. G. TURNER, Clerk.

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