

1905  
181-882

# Record No. 2688

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In the  
Supreme Court of Appeals of Virginia  
at Richmond

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TESSA LEWIS, ADM'X, ETC.,

v.

JENNIE BURRUS STROEBEL

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FROM THE CIRCUIT COURT OF PRINCESS ANNE COUNTY.

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## RULE 14.

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

¶6. SIZE AND TYPE. Briefs shall be printed in type not less in size than small pica, and shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed records. The record number of the case shall be printed on all briefs.

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

M. B. WATTS, Clerk.

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

181 VA 882



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IN THE  
**Supreme Court of Appeals of Virginia**

AT RICHMOND.

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**Record No. 2688**

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TESSA LEWIS, ADMINISTRATRIX OF THE ESTATE  
OF G. F. STROEBEL, DECEASED, Appellant,

*versus*

JENNIE BURRUS STROEBEL, Appellee.

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PETITION.

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*To the Honorable Justices of said Court:*

Your petitioner, Tessa Lewis, Administratrix of the Estate of G. F. Stroebel, deceased, respectfully represents that she is aggrieved by a decree of the Circuit Court of the County of Princess Anne entered on the 7th day of August, 1942 (R., p. 26), in a chancery suit in which Mrs. Jennie Burrus Stroebel was plaintiff and Tessa Lewis, Administratrix of the Estate of G. F. Stroebel, deceased, was defendant. A transcript of the record of the suit is herewith filed to which reference is made.

Page references herein are to the pages of the transcript of the record, p. being used to indicate page thereof, with the respective numbers following.

**FACTS:**

G. F. Stroebel died intestate on December 11th, 1939, and Tessa Lewis qualified on the estate as administratrix, with surety in the Clerk's Office of the Circuit Court of the County of Princess Anne.

2\* \*Stroebel, the defendant, had marital difficulties with his wife, Jennie Burrus Stroebel. In an endeavor to settle his property rights, Stroebel executed two agreements. One agreement in substance was for sixty dollars (\$60.00) per month for a short period of time and forty dollars (\$40.00) per month thereafter with the disposal of certain Building and Loan papers that belonged to Stroebel as well as a diamond stud pin, and for the conveyance of certain real property (R., p. 51).

Another agreement was executed on the 27th day of September, 1938, which is the subject matter of this suit (R., pp. 37, 9, 10, 11 and 12). This agreement specifically provided that the same "*was subject to confirmation*" by the Circuit Court of the City of Norfolk.

On December 4, 1939, the Circuit Court of the City of Norfolk awarded Stroebel a decree *a vinculo matrimonii* and said contract was *not* confirmed (R., pp. 47, 48).

On March 5, 1941, Jennie Burrus Stroebel filed a Notice of Motion for a judgment of eleven thousand dollars (\$11,000.00), in that one thousand (1,000) shares of stock of the Peoples Building and Loan Association of Atlantic City, New Jersey, had been given to the plaintiff and the plaintiff was asking a judgment "for the value of said one thousand (1,000) shares of stock".

All of the evidence introduced by the plaintiff consists of a deposition on R., pp. 6, 7 and 8, and the testimony 3\* of one \*John P. Decker, R., pp. 39, 40, 41, 42, 43, 44 and 45.

Mrs. Stroebel testified that her original contract had been lost. On cross examination in answer to whether the stock was turned over to her she testified "*I do not think he did*" (R., p. 7).

On further examination she testified as follows:

"Q. He turned it over to you when you were divorced?

"A. I do not think he did.

"Q. Didn't you have the certificate in your possession at that time?

"A. I can't answer that.

"Q. Did you have your nephew, Norman O. Burrus, write some letters for you?

"A. Yes.

"Q. Did he or not send that stock to the Peoples Building and Loan Association at Atlantic City?

"A. I do not know."

The other deposition is that of Norman O. Burrus, who is

a nephew of Jennie Stroebel, and he stated that he never saw the certificates of stock and in fact knew nothing about it (R., p. 8).

The third and last witness in the case for the plaintiff was John P. Decker, whose testimony was the market value of the stock of the Peoples Building and Loan Association as of the date of the trial, July 30, 1942.

On cross examination Decker testified that the value of the stock that he inquired about was common stock and no other (R., p. 42).

4\* The administratrix produced in behalf of the estate disinterested witnesses to the effect that all matters between the plaintiff and the decedent had been settled and that no demand for any such amount of stock was ever made, and that the said claim was an afterthought.

Mr. P. A. Agelasto, Jr., a local attorney associated with W. R. Ashburn of this city, testified that one S. J. Woodhouse had requested Mr. Willard R. Ashburn of his office to represent Jennie Burrus Stroebel in 1940, and that they made a preliminary investigation and that there was no Building and Loan stock (R., p. 35).

A further analysis of the testimony indicates that Mr. Agelasto, associated with Mr. Ashburn, wrote Mrs. Burrus and closed their files.

Mr. Russell T. Bradford, practicing attorney of this city, who represented the plaintiff, stated that he wrote a letter to Mrs. Lewis making demand on her for only two and one-half (2½) shares of stock which stock was in fact in the name of G. S. Stroebel, the deceased, and that he never made any demand for one thousand (1,000) shares of stock.

Ralph H. Daughton, attorney of this city, who represented the deceased in his lifetime, emphatically testified that all matter of property rights had been settled when the decree was entered. The attorney stated in his testimony that they were settled and used the term "absolutely" (R., p. 52).

5\* On further questioning, the witness Daughton testified that there was no guess or speculation about it having been settled.

Tessa Lewis testified that all property matters had been settled prior to the death of the decedent and prior to the entry of the final decree of the Circuit Court; that in fact Stroebel never owned any one thousand (1,000) shares of stock.

This witness was familiar with the affairs of Mr. Stroebel and worked for him for two years prior to his death (R., pp. 76, 77).

S. J. Woodhouse was called by the defendant as an ad-

verse witness who testified he had sold fifteen hundred dollars (\$1,500.00) worth of stock, which consisted of fifteen (15) shares of Equitable Building and Loan Stock and ten (10) shares of Peoples Building and Loan stock. He stated that he represented Mrs. Stroebel and requested a copy of the agreement which is the subject matter of this suit, and which contract he consulted Mr. Ashburn. He further testified that he had made a claim against the estate and for a settlement and division of the real property and money. His claim was as follows:

“Forty trips from Third Street (Stroebel’s store) to Norfolk, Virginia, and return talking to his creditors, negotiating loan, getting up information relative to Wolfco, Inc. Ten of these trips made interviewing his former wife Jennie Stroebel relative to division of bonds, real property and 6\* personal \*things in their residence in Edgewater. These ten trips to see Mrs. Stroebel made the agreement possible which was signed by Mr. and Mrs. Stroebel in Alfred Anderson’s office and finally approved by the Court which also made their divorce possible. Three of the ten trips to Mrs. Stroebel’s were spent in dividing furniture, books and other household property. I personally supervised this as well as the division of real property and money.”

“During the forty trips to Norfolk we spent practically the whole day seeing various people and going to and from the city. I figure this as \$10.00 per trip \$400.00. Trip to Atlantic City, N. J., when I sold \$5,000.00 worth of Building and Loan stock \$100; total \$500. Expenses to Atlantic City, N. J., and return, \$40; credit merchandise from Stroebel’s store \$34.38; \$10 advanced for expenses to Atlantic City, New Jersey. Check to me from proceeds of Building and Loan Stock in Atlantic City, New Jersey, \$100; cash handed me in Norfolk, Virginia, \$70; cash advanced me by J. F. Woodhouse for Stroebel \$25; total credit \$239.28, balance due \$300.72.” (R., p. 69.)

He further stated that he sued Mr. Stroebel in his lifetime for his personal services in settling their affairs. Upon further investigation of the witness Woodhouse he testified that he received the enclosed letter:

“Burlington, Iowa, 12/21/39.

“Dear Mr. Woodhouse:

“Have been very, very ill, hence my long silence.

"I do hope the late Mr. Stroebel paid what was due you. Just had word of his passing. Wish I had *my* machine 7\* and jewelry. \*I have a very small income, and getting along best I can, but would be glad to have *my* things from that creature he lived with. Am I right?

"I will not soon forget the great kindness you and Mr. Anderson have shown me. I will duly appreciate any information regarding his affairs, *and if I can claim anything else he had left.*

"I hope you have all success in the future, and a merry Christmas and happy New Year.

"Thanking you in advance, I remain,

"Yours sincerely,

"MRS. JANE BURRUS

"Nee Stroebel."

"I have resumed my family name of Burrus, Ad. 422 Columbia Street."

In this letter it will be noted that Mrs. Stroebel, the complainant, wanted to know "if I can claim anything else that he had left".

He then stated that he started the litigation but called on Mr. Ashburn and thereafter Mr. Bridgers. He further stated that he knew that Mr. Bradford was in the case and making a claim for only 2½ shares of stock but that "he is just a cheap lawyer" and stated further that he would not trust him.

By agreement of counsel, it was stipulated that Honorable Paul W. Ackiss, Commonwealth's Attorney for Princess Anne County, who represented Mr. Stroebel in his lifetime in an action instituted by Woodhouse for commission, and that the

Trial Justice Court denied him a recovery (R., p. 75).

8\* \*Depositions were taken in behalf of the defendant in Atlantic City, New Jersey, after counsel had agreed to accept service and then refused to do so.

The depositions stated that on October 6, 1938, fifteen (15) shares of Peoples Building and Loan stock and ten (10) shares of Equitable Building and Loan stock were sold and were standing in the name of Fred or Jennie Stroebel and bought by Robert B. Cadwallader for fifteen hundred dollars (\$1,500.00).

That Walter Parker, secretary of the Peoples Building and Loan Association, testified that all the stock owned by Fred Stroebel or Jennie Stroebel were fifteen (15) fully paid



shares of stock owned by them; that James W. Cullen, secretary of the Equitable Building and Loan Association, stated that there were 12½ shares of stock in the name of G. F. Stroebel and that ten (10) of the shares had been sold to Cadwallader and that there had remained 2½ shares of stock on the books at this time.

On this evidence, having stricken a great portion of the same, the Court entered its decree of August 7th, 1942, and awarded the complainant a judgment of eleven thousand dollars (\$11,000.00).

### ERROR ASSIGNED.

The error assigned is that the Circuit Court erred in entering the decree of August 7th, 1942, in awarding the complainant a judgment of eleven thousand dollars (\$11,000.00).

9\*

### \*ARGUMENT.

The argument will be quite brief as we submit the statement of facts constitute a very strong argument. The case depends upon three (3) clean-cut points, to-wit:

(a) Whether the evidence of the complainant is sufficiently corroborated.

(b) Ought the court to have stricken from the evidence the depositions and the evidence to which the defendant excepted?

(c) Ought the court to have granted a continuance where the cause had not matured?

Treating these questions separately we submit:

(a) That the evidence of the plaintiff is not corroborated.

Section 6209 of the Code of Virginia provides as follows:

“In an action or suit by or against a person who, from any cause, is incapable of testifying, or by or against the committee, trustee, executor, administrator, heir; or other representative of the person so incapable of testifying, no judgment or decree shall be rendered in favor of an adverse or interested party founded on his uncorroborated testimony; and in any such action or suit, if such adverse party testifies, all entries, memoranda, and declarations by the party

so incapable of testifying made while he was capable, relevant to the matter in issue, may be received as evidence."

In *Timberlake v. Pugh*, 158 Va. 397, 163 S. E. 402:

In construing this section, the court said:

"This section is designed to prevent fraud and for that reason may not be whittled away."

10\* \*In *White v. Pacific Life Insurance Company*, 150 Va. 849, 143 S. E. 340, the court said:

"In order to establish a contract with a deceased person under this section there must be *disinterested testimony pointing with reasonable certainty to and corroboration of, the material evidence given by an interested witness, or witnesses.*

"In *Trustow v. Ball*, 166 Va. 608, 614, 186 S. E. 71, the court held that under the provisions of this section there must be corroborative evidence of the agreement, when as in this case, it appears that one of the parties is dead."

All of the facts and circumstances indicate by (1) Attorney P. A. Agelasto, Jr., (2) Attorney Ralph H. Daughton; (3) the letter from Jennie Stroebel to S. J. Woodhouse; (4) the action of S. J. Woodhouse against the deceased; (5) the testimony of Russell T. Bradford; (6) Tessa Lewis; (7) the depositions of witnesses in Atlantic City; and (8) the decree of the Circuit Court, that the property rights had been settled.

Certainly the decree of the Circuit Court of the City of Norfolk on December 5, 1939, did not confirm the agreement or that anything had to be done between the parties. It cannot be imagined that a lawyer such as the late Alfred Anderson would permit a decree *a vinculo matrimonii* to have been entered without a provision or confirmation of what had to be done, if the property had not been settled.

Furthermore, the testimony of Jennie Stroebel is lacking in certainty, not convincing, and subject to a belief and opinion.

11\* Her letter to Woodhouse is the strongest sort of evidence that this claim is purely afterthought and is inconsistent and contradictory in every respect. Moreover, other counsel, P. A. Agelasto, Jr., W. R. Ashburn and Russell T. Bradford, never made any such claim. Could it be

conceived that such counsel would overlook a claim of this sort?

The court said in *Varner v. White*, 149 Va. 177, 140 S. E. 128, the following:

“ \* \* \* the feature of this section which requires corroboration, in the class of cases to which it applies, is a wise one, and its observance is necessary for the protection of the estates of decedents.”

In *Burton v. Masson*, 142 Va. 500, 129 S. E. 356, the court said:

“Where defendants in an action by an executor to recover on a bond made by defendants, payable to the executor’s decedent, alleged that the bond had been paid and the chief witness for the defense was one of the defendants, such witness falls within the designation of this section as an adverse and interested party and must be corroborated.”

Jennie Stroebel is in the same category.

(b) Ought the court to have stricken from the evidence the depositions and the evidence to which the defendant excepted; and,

(c) Ought the court to have granted a continuance where the cause had not matured?

The record indicates that on the 30th day of June, 1942, the court granted both of the litigants a new trial and set the same down for trial on July 15th, 1942. This order 12\* was \*entered by the court without any agreement for the date of the trial. On the 16th day of July, 1942, the court transferred the litigation to the chancery side of the court and set the same for trial for July 30th, 1942.

There was no delay on the part of counsel—(within nine (9) days)—on the 25th day of July, 1942, the administratrix filed her answer and cross-bill. The court would not permit the defendant to introduce any evidence in this behalf, that the answer and cross-bill of the defendant was returnable to the first August rules; that there was no haste about the matter because the administratrix of the estate had given proper bond with sufficient surety and should have been allowed to develop the case for the estate as much as possible. Certainly, where an estate is involved, and realizing the difficulties necessary to produce evidence for a decedent, the courts are prone to grant a continuance.

The answer to the petition was filed on July 30, 1942 (the date of trial).

In fact, there never has been any answer filed by the plaintiff to the answer and cross-bill of the defendant.

It is respectfully submitted that there was no necessity for immediate trial (see R., pp. 29, 30, 31). The defendant should have been given an opportunity to show that instead of the contract being for one thousand shares (1,000) of capital stock, it should have been one thousand dollars (\$1,000.00) of Building and Loan stock.

See sections 6074, 6084, and 6097 Code of Virginia.

13\*   \*The issues of fact to be determined were:

1. Whether the evidence is sufficient, or corroborated under section 6209 to entitle the complainant to any relief.

2. If the plaintiff made out a *prima facie* case, whether the property rights of the parties had been fully settled.

3. Whether the contract in fact was for one thousand shares or one thousand dollars.

4. Whether the same had been paid.

Most of the evidence that the defendant introduced was stricken by order of the chancellor.

Moreover, without adding to the authorities, it is perfectly obvious that a trial cannot be had on all the issues in a suit unless the suit has been matured for hearing, or service of process accepted. In this case (1) the hearing for the answer and cross-bill had not matured; (2) Service of process was not accepted.

See sections 6074, 6084, and 6097 of the Code of Virginia.

It was therefore prejudicial to the decedent's estate to force a trial at this stage.

This petition is adopted as the opening brief and will be filed in the office of the Clerk of the Supreme Court of Appeals of Virginia in the City of Richmond, along with a transcript of the record and a check for one dollar and fifty cents (\$1.50) payable to the Clerk, and oral argument for granting the appeal is requested before Justice John W. Eggleston.

14\*   \*Copies of this petition were delivered to counsel for the appellee on the 2nd day of December, 1942.

Your petitioner prays that the decree of the lower court in this case should be reversed insofar as the judgment of eleven thousand dollars (\$11,000.00) against the defendant is concerned; that a decree should be entered for the defendant on the evidence in the case, or a new trial granted as the Court of Appeals may conclude proper.

## Supreme Court of Appeals of Virginia

For the foregoing reasons assigned we respectfully pray that an appeal may be awarded pending a review of this record by this court.

Respectfully submitted,

TESSA LEWIS,  
Administratrix of the Estate of  
G. F. Stroebel, deceased,  
By LOUIS B. FINE, Counsel,  
600 National Bank of Commerce Building,  
Norfolk, Virginia.

December 1st, 1942.

I, Louis B. Fine, the undersigned, an attorney duly qualified to practice in the Supreme Court of Appeals of Virginia, state that in my opinion the decree complained of in the foregoing petition ought to be reviewed.

LOUIS B. FINE,  
600 National Bank of Commerce Building,  
Norfolk, Virginia.

Received December 5, 1942.

M. B. WATTS, Clerk.

January 13, 1943. Appeal awarded by the Court. No bond required.

M. B. W.

**RECORD****VIRGINIA:**

Pleas before the Circuit Court of Princess Anne County on the 7th day of August, 1942.

Be It Remembered, that heretofore, to-wit: on the 5th day of April, 1941, came the plaintiff, Mrs. Jennie Burrus Stroebel, and filed her Notice of Motion against Tessa Lewis, Executrix of the estate of G. F. Stroebel sometimes known as W. F. Stroebel, in the words and figures following, to-wit:



Mrs. Jennie Burrus Stroebel, Plaintiff,

v.

Tessa Lewis, Executrix of the Estate of G. F. Stroebel sometimes known as W. F. Stroebel, Defendant.

### NOTICE OF MOTION.

To: Tessa Lewis,  
Third Street and Shore Drive  
Princess Anne County, Virginia

TAKE NOTICE, That on the 7 day of April, 1941 or as soon thereafter as Counsel may be heard, Mrs. Jennie Burrus Stroebel will move the Circuit Court of Princess Anne County, Virginia, in the Courtroom thereof for a judgment against Tessa Lewis, Executrix of the Estate of G. F. Stroebel for an award of judgment and execution against you for the sum of Eleven Thousand Dollars (\$11,000.00) together with interest from the 27th day of September, 1938, together with the cost and execution in these *proceedings*, to-wit:

1. That on the 27th day of September, 1938, G. page 2 } F. Stroebel entered into an agreement that he would pay the above stated sum to your plaintiff as follows: One Thousand Dollars (\$1,000.00) to be paid your plaintiff for her interest in the properties designated as 1101 S. Third Street, Burlington, Iowa.

2. Contained in the same agreement G. F. Stroebel agreed to deliver to your plaintiff 1,000 shares of the Capital Stock of the Peoples Building and Loan Association of Atlantic City, New Jersey, to-wit: the value of \$10,000.00 with interest at the rate of six per cent (6%) per annum from the 27th day of September, 1938.

The plaintiff avers that none of the agreements heretofore set out as contained in the agreement entered into on September 27, 1938, have been performed, that heretofore Tessa Lewis qualified on the Estate of G. F. Stroebel who died December 11th, 1939, in the Circuit Court of Princess Anne County, Virginia.

Wherefore, judgment therefore will be asked at the time and place of the said Court as hereinbefore set forth.

Given under my hand this 1st day of March, 1941.

JENNIE STROBEL BURRUS  
JENNIE STROBEL BURRUS  
By Counsel

And the return of the Sheriff of Princess Anne County, Virginia, on the foregoing notice of motion is as follows:

Executed in the County of Princess Anne, Va., this 5 day of March 1941 by serving a copy hereof on Tessie Lewis, Executrix of the estate of G. F. Stroebel some times known as W. F. Stroebel, IN PERSON.

page 3 }

GUY M. SALMONS,  
Sheriff of the County of Princess  
Anne, Va.

And at another day, to-wit: on the 7th day of April, 1941, the following order was entered:

This day came the plaintiff by her attorney, and the defendant appeared by Louis B. Fine, her attorney, and pleaded the general issue, to which the plaintiff replied generally and upon which plea issue is joined, and on motion of the defendant leave is given her to file special pleas within ten days from the date hereof and the plaintiff is required to file a bill of particulars of her claim within five days from the date hereof, and on motion of the plaintiff the defendant is required to file the grounds of her defense within ten days from the date hereof.

And at another day, to-wit: on the 14th day of May, 1941, the following order was entered:

THIS DAY the defendant suggested the non-residence of the plaintiff and demanded security for costs.

Whereupon it is ordered that the said plaintiff execute a bond before the Clerk of this Court, in the penalty of \$200.00, conditioned to pay all costs that may be incurred in the event of a judgment against the plaintiff, pursuant to Section 3519 of the Code of Virginia.

And it appearing that the defendant, by her attorney, moved to require the plaintiff to file a more particular statement of the nature of the allegations contained in the Notice of Motion and of the facts the plaintiff expects to prove at the trial, it is ordered that the plaintiff file a  
page 4 } more particular statement of her claim, and of the facts expected to be proved at the trial within fifteen days from this date.

And at another day, to-wit: On the 13th day of February,

1942, the following bill of particulars was filed by the plaintiff:

The plaintiff for her additional Bill of Particulars set forth:

1: That the Notice of Motion sets forth the claim of the plaintiff in this action.

2: That the \$1,000 mentioned in paragraph one has been paid in *pursuant* to agreement of the 27th day of September, 1938, between G. F. Strobel and said Jennie B. Strobel.

3: That no part of said agreement of 27th day of September, 1938 so far as it provides for the delivery of 1,000 shares of capital stock of the Peoples Building and Loan Association of Atlantic City, New Jersey, to the said Jennie B. Strobel has been given her, and the plaintiff is asking a judgment for the value of said 1,000 shares of stock which was agreed by the said G. F. Strobel to be returned over to the said Jennie B. Strobel, his wife, along with other considerations in full for all claim of alimony and support money on her part.

That the basis for this Notice of Motion is set out in said contract between G. F. Strobel and Jennie B. Strobel under date of September 27, 1938 and that the deceased, G. F. Strobel, had a duplicate of said contract duly executed and that the defendant, or her attorney, the plaintiff is advised, is in possession of said duplicate.

JENNIE B. STROBEL  
By Counsel.

And at another day, to-wit: On the 13th day of April, 1942, the following order was entered:

This day came the plaintiff by her attorneys, and it appearing by affidavit, that a certain writing, to-wit: an agreement dated September 27th, 1938, between Jennie Burrus Stroebel and G. F. Stroebel, is in the possession of Tessa Lewis, Administratrix of the Estate of G. F. Stroebel, the defendant in the above entitled action, or Louis B. Fine, her attorney, and that the said writing is material and proper to be produced before this Court; it is thereupon ordered that the Clerk of this court do issue a subpoena *duces tecum* to compel the said Tessa Lewis, Administratrix of the estate of G. F. Stroebel, and Louis B. Fine, her attorney to

*Jennie Burrus Strobel.*

produce said record before this court on the 14th day of May, 1942, at 10:30 o'clock A. M.

And at another day, to-wit: On the 14th day of May, 1942, the following depositions were filed:

The depositions of Mrs. Jennie Burrus Strobel and Norman O. Burrus, taken before Henry L. Hirsch, a Notary Public in and for the City of Burlington, State of Iowa, pursuant to Personal Service in the law office of Edward L. Hirsch, 506 Tama Building, Burlington, Iowa, on the 10th day of April, 1942, at ten o'clock A. M.

The deposition of Mrs. Jennie Burrus Strobel to page 6 } be read in evidence on behalf of the complainant in the above styled cause pending in the Circuit Court of Princess Anne County, Virginia; and the deposition of Norman O. Burrus to be read as evidence on behalf of the defendant in said cause.

Present: Edward L. Hirsch, counsel for complainant; and Harold J. Wilson, counsel for defendant.

JENNIE BURRUS STROBEL,  
being first duly sworn, deposes and sayeth in answer to interrogatories by Edward L. Hirsch as follows:

Question 1. What is your name?

Answer. Jennie Burrus Strobel, but I dropped the name of Strobel when I got my divorce.

Q2. Are you the same person described as Mrs. Jennie Burrus Strobel in the suit against the executrix of the G. F. Strobel Estate?

A. I am.

Q3. I hand you a paper marked Exhibit "A", and ask you if that is a copy of a contract you made with your former husband in settlement of your affairs when the divorce proceedings were pending.

A. It is.

(Exhibit "A" is offered in evidence)

Q4. Where is the original contract?

A. It has been lost. I made a thorough search but could not find it.

Q5. There is a statement in that contract that you were

*Jennie Burrus Strobel.*

to receive one thousand shares of the capital stock of the Peoples Building and Loan Association of Atlantic City, N. J. Did you ever receive that stock?

A. No.

Q6. Did you receive any payment for it?

A. Never.

Q7. Was the equivalent of money value for these shares paid to you?

A. No.

Q8. Has that part of the agreement relative to the sale of the Rolfe Avenue property and the property in page 7 } Burlington, Iowa, been complied with?

A. Yes.

CROSS EXAMINATION.

By Harold J. Wilson:

Q9. Isn't it a fact that this stock was in both your names?

A. Yes.

Q10. So you had just as much interest in the stock as your husband?

A. I certainly did.

Q11. He turned it over to you when you were divorced?

A. I do not think he did.

Q12. Didn't you have the certificate in your possession at that time?

A. I can't swear to that.

Q13. Did you have your nephew, Norman O. Burrus, write some letters for you?

A. Yes.

Q14. Did he or not send that stock to the Peoples Building and Loan Association at Atlantic City?

A. I do not know.

Q15. Did you ever write to the company asking them to transfer it to your name?

A. I never did.

Q16. Did you have Mr. Norman O. Burrus do that for you?

A. No. If he did it, I know nothing about it.

Q17. Didn't you know he was trying to get it transferred for you?

A. I can't remember much about it.

Q18. How old are you?

A. Seventy-five.



*Norman O. Burrus.*

RE-DIRECT EXAMINATION.

By Edward L. Hirsch:

Q19. Could there have been other stock held by you in another loan association in Atlantic City?

A. I think there was. I think David O. Lord was the Secretary of this building and loan association.

JENNIE BURRUS STROEBEL

Subscribed and sworn to before me by Jennie Burrus Strobel this 10th day of April, 1942.

HENRY L. HIRSCH  
Notary Public

Notarial Seal affixed.

page 8 }            NORMAN O. BURRUS,  
the witness produced by defendant, being first duly sworn, deposes and sayeth in answer to interrogatories propounded by Harold J. Wilson as follows:

Question 1. What is your name and where to you reside?

Answer My name is Norman O. Burrus and I live in Burlington, Iowa.

Q2. Are you related to Jennie Burrus Strobel, the complainant?

A. Yes. She is my aunt.

Q3. Did you ever act as her agent?

A. I wrote letters for her.

Q4. Do you know anything about any stock held in the name of G. F. Strobel or Jennie Burrus Strobel issued by the Peoples Building and Loan Association of Atlantic City, N. J.?

A. I understood there were one thousand shares of stock issued to them.

Q5. Did you ever see this stock?

A. I do not think I ever saw the certificates of stock, and I am not sure just how it was issued.

Q6. What, if anything, did you do with reference to that stock.

A. I had the National Bank of Burlington write a letter of inquiry for me, but do not know if any reply was received.

Q7. What else did you do?

A. I wrote to a friend of mine who is connected with a bank in Philadelphia, Pennsylvania, and asked him to find out the value of the stock.

Q8. What did he say?

A. I think he said it was worth about forty cents on the dollar.

NORMAN O. BURRUS

Subscribed and sworn to before me by Norman O. Burrus this 10th day of April, 1942.

HENRY L. HIRSCH,  
Notary Public

Notarial Seal Affixed.

page 9 } State of Iowa  
County of Des Moines, ss

I, Henry L. Hirsch, a Notary Public in and for Des Moines County, Iowa, do hereby certify that the foregoing depositions of Mrs. Jennie Burrus Strobel and Norman O. Burrus were duly taken, and subscribed to before me in the City of Burlington, Des Moines County, Iowa, at the time and place and for the purpose mentioned in the caption of this deposition; the same being pursuant to the annexed notice.

The Exhibit attached hereto was shown to and identified by the witness as stated in said deposition.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at Burlington, Des Moines County, Iowa, this 10th day of April, 1942.

HENRY L. HIRSCH  
Notary Public

Notarial Seal

My Commission expires July 4, 1942.

EXHIBIT A

HENRY L. HIRSCH  
Notary Public

THIS AGREEMENT, Made and entered into by and between G. E. Strobel, of the City of Norfolk, State of Virginia, party of the first part, and Jennie B. Strobel, of the City and State aforesaid, party of the second part.

page 10 } WHEREAS, the said parties hereto are husband and wife; and,

WHEREAS, there is now depending in the Circuit Court of the City of Norfolk, Virginia, divorce proceedings between the said parties which have not yet been adjudicated and determined; and

WHEREAS, the said parties hereto desire to contract and agree, subject to confirmation of said Court in said proceedings as to a division of their property rights;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration to each of the parties and the mutual covenants and agreements herein contained, the said party of the first part agrees that the said party of the second part is to have and receive by proper deed of conveyance, to be executed and delivered by him to the said party of the second part, title to property heretofore occupied by the parties hereto as a home designated, according to the present system of numbering houses in the City of Norfolk, Virginia, as 5226 Rolfe Avenue, subject to a deed of trust thereon securing a balance of principal of \$3,000.00; that the said party of the first part, in consideration of this agreement of settlement, cancels his claim to a certain note evidencing a loan to a brother of the said party of the second part in the principal sum of \$1,000.00; as well as to all accrued interest thereon; that the said party of the second part is to have outright and as her own property all of the household effects and furnishings in said property designated as 5226 Rolfe Avenue, with the exception of all furniture and effects in the room heretofore occupied by the said party of the first part, together with one new bed and new dresser, also two chairs now in the living room of said house and two runners; a cedar chest, all books,  
page 11 } and certain garden tools which are to be the properties in fee of the said party of the first part.

The said parties hereto further agree that certain real properties designated as 1101 South Third Street, Burlington, Iowa, now jointly owned by said parties hereto are to be sold, and out of the proceeds therefrom the said party

of the first part is to pay the said party of the second party the sum of \$1,000.00 in cash.

It is further agreed that the said party of the second part is to receive one thousand shares of the capital stock of the Peoples Building and Loan Association of Atlantic City, New Jersey, owned by them.

The said party of the second part covenants and agrees that the said party of the first part is to have as his individual property, in fee, properties designated as 113 North Delavan Avenue, Atlantic City, New Jersey, together with one additional lot located in said city.

It is further understood and agreed that the said party of the first part is to pay taxes for the year 1938 on the property designated as 5226 Rolfe Avenue, and the said party of the second part is to pay all taxes, together with any unpaid repair bills for the year 1938 on the property designated as 1101 South Third Street, Burlington, Iowa.

It is the mutual understanding and agreement of the parties hereto that, subject to confirmation by the Circuit Court of the City of Norfolk of this agreement, to be determined by the laws governing such matters, the said parties hereto covenant and agree the one with the other that page 12 } they relinquish all rights, title and interest or claims whatsoever by virtue of the estate of curtesy or dower in and to the respective properties of the parties hereto, or of any other properties which either may acquire in the future.

WITNESS the following signatures and seals this 27th day of September, in the year 1938.

(s) G. F. STROEBEL (Seal)  
(s) JENNIE B. STROEBEL (Seal)

Virginia:

In the Circuit Court of the County of Princess Anne

Mrs. Jennie Burrus Strobel, Complainant,

v.

Tessa Lewis, Executrix of the Estate of G. F. Strobel, sometimes known as W. F. Strobel, Defendant.

## NOTICE TO TAKE DEPOSITIONS.

To: Tessa Lewis, Lynnhaven, Virginia.

TAKE NOTICE, that on the 10th day of April, 1942, in the offices of Edward L. Hirsch, Attorney at law, 506 Tama Building, in the City of Burlington, Iowa, between the hours of 10 A. M. and 6 P. M. of that day, I shall proceed to take the depositions of myself and others to be read as evidence in my behalf in a certain cause now pending in the Circuit Court of the County of Princess Anne, Virginia, whereon I am the complainant and you are the defendant; and if for any cause the taking of the said depositions be not commenced, or if commenced, be not concluded on that day, the taking will be adjourned from day to day, or from time to time, at the same place and between the same hours, until the same shall be completed.

page 13 }      Respectfully Yours,

JENNIE BURRUS STROBEL  
By Counsel

The return of the Sheriff of Princess Anne County, Virginia, on the above notice, is as follows:

Executed in the County of Princess Anne, Va. this 1st day of April, 1942, by serving a copy hereof on Tessa Lewis, Executrix of the Estate of G. F. Strobel, IN PERSON.

GUY M. SALMONS,  
Sheriff of the County of Princess  
Anne, Va.

page 14 }      And on the same day, to-wit: On the 14th day of May, 1942, the following order was entered:

This day came again the parties by their attorneys, and the defendant moved for a continuance, which motion the Court overruled. And thereupon came a jury, to-wit: Robert B. Taylor, John H. James, Littleton T. Keeling, Ernest F. Miner, Vernon H. Batten, Edwin P. Ives and James G. Darden, who were duly sworn the truth to speak upon the issue joined, and after having heard the plaintiff's evidence, the defendant moved to strike which motion the Court overruled; and having heard all the evidence and argument of counsel, retired to their room to consider of a verdict, and



after sometime returned into Court with the following verdict: "We the Jury find for the plaintiff and fix the damages at \$3,000.00".

Whereupon, the Court receiving said verdict directed the jury to return on the 21st day of May, 1942, and whereupon counsel for the plaintiff asked leave to have the Jury amend the verdict which motion the court overruled, to which action of the Court Counsel excepted. Whereupon counsel for the plaintiff moved the Court to set aside the verdict and enter judgment in the amount of \$30,000.00, and if the Court refuses to do so, to grant her a new trial upon the grounds that the same is contrary to the law and the evidence; and the defendant, by counsel, moved the Court to set aside the verdict of the jury and grant her a new trial, upon the grounds that the same is contrary to the law and the evidence, the hearing of which motions are continued.

page 15 } And on another day, to-wit: On the 30th day of June, 1942, the following order was entered:

This day came again the parties, by their attorneys, and the Court having fully heard and considered the motions made herein on the 14th day of May, 1942, doth overrule the motion of the plaintiff to set aside the verdict and enter judgment for the amount of \$30,000.00, to which action of the Court the plaintiff by counsel excepted. Whereupon, the plaintiff asked leave to amend the Notice of Motion so as to claim the amount of \$30,000.00 instead of \$11,000.00, which leave is granted; and the Court doth sustain the motion of the defendant to set aside the verdict and grant a new trial on the grounds that the same is contrary to the law and the evidence. Whereupon, it is ordered that a new trial be had herein, which trial is set for the 15th day of July, 1942.

And on another day, to-wit: On the 16th day of July, 1942, the following petition was filed:

To the Honorable B. D. White  
Judge of the aforesaid court:

Your petitioner respectfully represents as follows:

1. There is now pending an action at law in the Circuit Court of the County of Princess Anne—an action for Eleven Thousand Dollars (\$11,000.00) for damages.

2. That the alleged agreement mentioned in the said Notice of Motion has been complied with by the defendant's decedent in his lifetime and the plaintiff was required by said agreement to convey unto the decedent her undivided one-half interest *into* certain real property located in the State of New Jersey, all of which appears in said page 16 } agreement.

3. That before any right of action could be had, the plaintiff should comply with her part of the agreement.

4. In fact the defendant has complied with the agreement and the plaintiff has failed to do so.

5. That the action of the plaintiff is in fact an accounting and whereas the defendant prays that the plaintiff be required to convey the property as set out in said agreement.

6. That the present action at law is inadequate to compel the plaintiff to transfer the said property.

7. That unless this Honorable Court transfer this action to the equity side for compliance by the plaintiff, your petitioner is remediless to compel the plaintiff to comply with the agreement in that a judgment would not compensate the estate of W. F. Stroebel, deceased, and that chancery suit is a proper forum.

8. That the said agreement is cognizable in equity and will give both the parties such rights as they may have.

WHEREFORE YOUR PETITIONER PRAYS that this Honorable Court transfer said action at law to the equity side of the court, and that the pleadings be amended to conform to said chancery practice in conformity with Section 6084 of the Code of Virginia.

And your petitioner will ever pray, etc.

TESSA LEWIS  
By LOUIS B. FINE  
Counsel

And on the same day, to-wit: On the 16th day of July, 1942, the following order was entered:

THIS DAY the defendant moved the court for page 17 } transfer of the above action to the chancery side of the court after notice to counsel for the plaintiff, and filed a petition in support of said motion.

AND THE COURT HAVING considered said petition is of the opinion that the said motion should be granted, that

the said action at law is transferred to the chancery side of the court, with the privilege unto the plaintiff to amend the pleadings in conformity with chancery practice, and this cause shall be heard on the 30th day of July, 1942.

And on another day, to-wit: On the 25th day of July, 1942, the following answer and cross-bill was filed by the defendant:

THE ANSWER OF TESSA LEWIS, ADMINISTRATRIX OF THE ESTATE OF G. F. STROEBEL, DECEASED, TO A NOTICE OF MOTION FILED AGAINST HER IN THE CIRCUIT COURT OF THE COUNTY OF PRINCESS ANNE, BY MRS. JENNIE BURRUS STROEBEL WHICH WAS SUBSEQUENTLY TRANSFERRED TO THE CHANCERY SIDE OF THE COURT.

This Respondent, reserving to herself the benefit of all just exceptions under said Notice of Motion, for answer thereto, or to so much thereof as she is advised it is material that she should answer, answers and says:

1. That the defendant administratrix is not indebted to the plaintiff in any amount whatsoever, but on the contrary the said plaintiff received her one thousand dollars (\$1,000.00) for her interest in properties in Burlington, Iowa, and that she received all the stock of the Building and Loan that she was entitled to.

2. That no demand whatsoever has been made by the decedent for any stock of the Peoples Building and Loan Association.

page 18 } And now this Respondent for further answer to said Notice of Motion, which has been transferred to the Equity side, in setting up a claim to affirmative relief against the said plaintiff, in answering says: That the plaintiff has two and one-half (2½) shares of Building and Loan Stock, which is in an income share certificate number 1195 issued September 9th, 1926, from the Equitable Building and Loan Association of Atlantic City, New Jersey, and that the same is in her possession; that this defendant is able, ready, and willing to endorse said stock over to the plaintiff provided she will convey her undivided one-half interest in said real estate known as Lot 7, Block 304 B of the location known as Delavan in Margate City, New Jersey, as well as a lot known as number 12 located at Claremont, the lot being as-

sessed for three hundred and ten dollars (\$310.00), and the house and lot assessed for thirteen hundred ninety dollars (\$1,390.00); that the said defendant has refused to convey her interest in said real estate, whereas this defendant is willing to transfer the interest in said Building and Loan stock to the plaintiff upon tender of a deed.

That although the contract calls for one thousand (1,000) shares of stock, said stock was meant to be one thousand dollars (\$1,000.00) worth of stock, as this defendant never owned and never had any one thousand (1,000) shares of stock.

The defendant therefore prays that Jennie Burrus Stroebel may be made a party defendant to this action setting up affirmative relief, and be required to answer the same; that the defendant may have conveyed unto the estate of G. F. Stroebel the interest that Jennie Burrus Stroebel may have *into* said real estate; that the said plaintiff be required to tender a deed before maintaining any further proceedings; that the plaintiff be enjoined from any further proceedings and from taking any further action in connection with this proceeding, and that the cloud on the title be removed; that the alleged agreement between the parties be reformed, that the same be interpreted, that the rights of the parties be adjudicated; that the said defendant may be dismissed with her costs as to the plaintiff's action, and grant unto the defendant such other relief as the nature of her case may require or to equity may seem meet, and this defendant will ever pray, etc.

TESSA LEWIS,  
Executrix of the Estate of G. F. Stroebel  
sometimes known as W. F. Stroebel,  
Deceased,

By LOUIS B. FINE  
Counsel

And on another day, to-wit: On the 29th day of July, 1942, the following depositions were filed:

State of New Jersey,  
Atlantic County, ss.

Hiram Steelman, of full age, being duly sworn according to law, upon his oath, deposes and says:

That he, as a Supreme Court Commissioner of the State

of New Jersey, will faithfully, fairly and impartially execute the Commission herein to the best of his ability and understanding.

HIRAM STEELMAN

Sworn and Subscribed to before me this 28th day of July, 1942.

JOSEPH BERNARD KAUFFMAN  
Master in Chancery of N. J.

page 20 } ON NOTICE TO TAKE DEPOSITIONS.

REPORT AND DEPOSITIONS.

To the Judge of the Circuit Court of the County of Princess Anne in the State of Virginia:

The Undersigned, Hiram Steelman, a Supreme Court Commissioner of the State of New Jersey, respectfully reports that, pursuant to a Notice to Take Depositions in the above entitled cause and issuing out of the Circuit Court of the County of Princess Anne, I did, on the 28th day of July, 1942, at the hour of 1 o'clock in the afternoon, at the law offices of Harcourt & Steelman, Real Estate and Law Building, Atlantic City, New Jersey, proceed to take the depositions of James W. Cullen, Walter Parker and Robert B. Cadwallader; each of the said witnesses was first duly sworn by me, was examined by me concerning the matters within their knowledge, and their testimony was reduced by me to writing, which I caused to be signed by each of said witnesses. Said depositions are attached hereto and made a part hereof in accordance with the provisions of the statute thereto pertaining.

I further certify that there was delivered to me, through the United States Mails, objections, in writing, by Raymond B. Bridgers, Esquire, Counsel for Jennie Burrus Stroebe!, which objections I herewith attach to this, my Report.

HIRAM STEELMAN  
New Jersey Supreme Court  
Commissioner.

Dated: July 28th, 1942.

page 21 } State of New Jersey  
Atlantic County, ss.

Robert B. Cadwallader, of full age, being duly sworn according to law, upon his oath, deposes and says:—

1. I am a Real Estate Broker of the State of New Jersey, and also deal in securities.

2. On or about October 6th, 1938, I purchased twenty-five (25) full-paid shares of stock of the Equitable Building and Loan Association and of the Peoples Building and Loan Association, both of Atlantic City, in the name of Fred or Jennie Stroebel, and paid therefor the sum of \$1,500.00.

3. It is my personal recollection that fifteen (15) shares of this stock were in the Peoples Building and Loan Association and that ten (10) shares were in the Equitable Building and Loan Association.

4. The prevailing price of this stock at the time of the purchase was approximately 30 cents on the dollar.

ROBERT B. CADWALLADER

Sworn and Subscribed to before me this 28th day of July, 1942.

HIRAM STEELMAN

Supreme Court Commissioner of N. J.

State of New Jersey  
Atlantic County, ss.

Walter Parker, of full age, being duly sworn according to law, upon his oath, deposes and says:—

1. I am the Secretary of the Peoples Building and Loan Association, of Atlantic City.

page 22 } 2. Prior to October 6th, 1938, there were, according to the books of said Association, fifteen (15) full-paid shares of stock standing in the name of Fred or Jennie Stroebel. The record discloses that said stock was sold on or about this date to Robert B. Cadwallader.

3. The market value of said stock at that time was approximately 30 cents on the dollar.

WALTER PARKER

Sworn and Subscribed to before me this 28th day of July, 1942.

HIRAM STEELMAN  
Supreme Court Commissioner of the  
State of New Jersey.

Mrs. Jennie Burrus Stroebel, Plaintiff

v.

Tessa Lewis, Executrix of the Estate of G. F. Stroebel, sometimes known as W. F. Stroebel, Defendant.

### OBJECTIONS.

Raymond B. Bridgers and V. H. Kellam, counsel for Jennie Burrus Stroebel objects to the taking of the deposition in the above entitled cause pursuant to the attached notice, and for grounds for objections that the said notice was not sufficient in law as required in Section 6229 of the Code of Virginia, and the said Jennie Burrus Stroebel, being a non-resident of the State of Virginia and having as her place of residence Burlington, the State of Iowa.

Counsel for said objections to each and every person propounded and to the witnesses and each of them for the grounds that the subject of this controversy is a page 23 } written agreement and that oral evidence is inadmissible to vary or contradict a written instrument, and further grounds that the agreement, the subject of this controversy, is a contract between G. J. and Jennie Burrus Stroebel, that the said G. J. Stroebel made no objections to said agreement in his lifetime and that now G. F. Stroebel being dead, the executives cannot introduce any evidence in an attempt to vary or contradict the agreement.

And further objections that the said agreement the subject of this controversy, so far as Jennie Burrus Stroebel is concerned was never objected to in the lifetime of G. J. Stroebel, and that it is now under the rules of equity G. J. Stroebel being dead the estate seeks alteration and changes in the aforesaid agreement.

And further objections to each and every question propounded to witnesses your complainant objects on the grounds that none of the witnesses know anything pertaining to the above referred to agreement and that each question is *crevellant* and improper.

RAYMOND B. BRIDGERS



## NOTICE TO TAKE DEPOSITIONS.

To: Jennie Burrus StroebeI,

TAKE NOTICE: That on the 28th day of July, 1942, at the law offices of Harcourt and Steelman, Room 49 Real Estate and Law Building, Atlantic City, New Jersey, between the hours of 9:00 A. M. and 5:00 P. M., I will proceed to take the depositions of James W. Cullen, Walter Parker, R. B. Cadwallader, and others, to be used as evidence in my behalf, in a certain suit pending in the Circuit Court of the County of Princess Anne, State of Virginia, wherein I am the defendant and you are the complainant, and if for any cause the taking of the said depositions be not commenced, or if commenced, be not concluded on that day, the taking thereof will be adjourned from day to day or from time to time, at the same place and between the same hours, until the same shall be completed.

TESSA LEWIS,  
Executrix of the Estate of G. F.  
StroebeI, sometimes known as  
W. F. StroebeI,  
By LOUIS B. FINE,  
Counsel

Served July 24 1942 at 10-10 A. M.

By MR. CARMINE.  
V. H. K.

State of New Jersey  
County of Atlantic, ss.

James W. Cullen, of full age, being duly sworn according to law, upon his oath, deposes and says:—

1. I am the Secretary of the Equitable Building and Loan Association, of Atlantic City.

2. Prior to October 5th, 1938, there were according to the books of said Association, ten (10) full-paid shares of stock in said Association standing in the name of G. F. StroebeI. The record discloses that said stock was sold on or about this date to Robert B. Cadwallader.

3. In addition to the aforesaid stock, there were two and one-half (2½) shares of stock appearing on the books in the name of G. P. StroebeI. This stock, according to the

records of the Association is still in this name. A  
page 25 } request has been received to transfer this to the  
Executrix of the Stroebel Estate.

4. I have no knowledge of the value of the stock at the time of said transfer and do not know for what price it was sold.

JAMES W. CULLEN.

Sworn and Subscribed to before me this 28th day of July, 1942.

HIRAM STEELMAN  
Supreme Court Commissioner of the  
State of New Jersey.

And on another day, to-wit: On the 30th day of July, 1942, the following answer was filed by the plaintiff:

To the Honorable B. D. White, Judge of the aforesaid court:

Your petitioner respectfully represents as follows:

The answer of Jennie Burrus Stroebel, or to so much therefore, as she advises that it is necessary for her to answer, to a petition filed in the above entitled cause, the defendant answers and says.

(1) That it is true that it is pending in action in the Circuit Court of the County of Princess Anne, between Jennie Burrus Stroebel, Plaintiff and Tessa Lewis, Defendant.

(2) The plaintiff denies the allegations contained in paragraphs 2, 3, 4, 5, 6, 7 and 8.

The plaintiff *alleges* that this matter, the subject of the action at law is strictly a matter to be decided on the law side of the court, and that the said action should not be transferred to the equity side as the defendant has a  
page 26 } complete and adequate remedy at law.

That the defendant is not entitled to equitable relief for the further reason that the defendant has been guilty of gross and indifferent *negligiance* in setting up an equitable defense as when she has, and equity aids the diligent and not the indifferent.

The said Jennie Burrus Stroebel prays that the petition of said Tessa Lewis be *defied*.

JENNIE BURRUS STROEBEL  
By Counsel

And on another day, to-wit: On the 7th day of August, 1942, the following order was entered:

This cause, which was transferred to the Chancery side of the Court upon the petition of the defendant, was again heard upon the papers formerly read and upon the answer and cross-bill of the defendant filed in this cause, and the answer to said cross-bill and replications to said answers, on the 27th day of July, 1942; upon testimony of witnesses taken in open Court; the depositions of witnesses, and was argued by counsel. Upon consideration whereof the Court doth adjudge, order and decree that the defendant pay the Complainant the sum of Eleven Thousand Dollars, with interest thereon, from the 27 day of September, 1938, until paid, together with the cost. The Court doth further order and decree that the said Jennie Burrus Stroebel execute and deliver, within 30 days from the entry of this decree, to the Clerk of this Court a Deed for her interest in certain property in the State of New Jersey, at Atlantic City, page 27 } which said property is referred to in the contract between the said Jennie Burrus Stroebel and G. F. Stroebel, said deed to be made to G. F. Stroebel and to be with special warranty, and that the Clerk shall hold the same and deliver the said deed to the defendant in this case or her Attorney when the aforesaid judgment shall have been paid.

And the defendant having expressed her intention of applying to the Supreme Court of Appeals for an appeal from this decree, the execution hereof is suspended for a period of sixty days from the entry hereof.

page 28 } In the Circuit Court of Princess Anne County,  
Virginia.

Mrs. Jennie Burrus Stroebel

v.

Tessa Lewis, Executrix of the Estate of G. F. Stroebel, sometimes known as W. F. Stroebel.

### RECORD.

Stenographic report of all the testimony, together with all the motions, objections and exceptions on the part of the respective parties, the action of the Court in respect thereto, and all other incidents of the trial of the cause of Mrs. Jennie Burrus Stroebel v. Tessa Lewis, Executrix of the Estate of G. F. Stroebel, sometimes known as W. F.

Stroebel, before Hon. B. D. White, Judge of the 28th Judicial Circuit, pending in the Circuit Court of Princess Anne County, Virginia.

Present: Messrs. Raymond B. Bridgers and V. Hope Kellam, Attorneys for the complainant.

Mr. Louis B. Fine, Attorney for the defendant.

Phlegar & Tilghman,  
Shorthand Reporters,  
Norfolk-Richmond, Va.

Mr. Fine: If your Honor please, for the purpose 29 } poses of the record: I have moved time and again for a continuance on the ground that we have been unable to satisfactorily prepare the defense in this case and give the Court a review of the circumstances, and I want to state them as follows:

There was a motion for a new trial in this case, which was pending in the Circuit Court of Princess Anne County, which motion was set for July 15, 1942. That motion, as your Honor will recollect, was sustained without argument. I was not present.

On the 15th day of July your Honor transferred this cause to the equity side of the court, and definitely stated that this case would have to be tried on July 30th.

At that time counsel for the complainant stated to the Court that he would accept service on the taking of depositions. We were not able to file our answer and cross-bill returnable for the same day. We have filed an answer and cross-bill asking for relief. That, if your Honor please, is returnable for the Rules in August. I have given my friends a copy.

It does not seem proper, if your Honor please, that we should take two bites at the cherry when one full, adequate hearing would take care of it all.

I have given my friends a copy of the answer and cross-bill, and they stated that they would not be able page 30 } to take care of it. The answer and cross-bill are the outgrowth of this proceeding.

Secondly, they have objected to my taking the deposition in New Jersey.

The Court: Is it here?

Mr. Fine: It is in the papers, and it is here.

Mr. Kellam: We accepted it—

Mr. Fine: (Interposing) I want to state another ground.

*P. A. Agelasto, Jr.*

The Court: All right.

Mr. Fine: They definitely stated that they would accept service. I did not go to Atlantic City, but I retained counsel in Atlantic City to take the deposition. They had an equal opportunity, and they knew exactly what I wanted to prove in Atlantic City. Certainly it was practically an impossibility to get to Iowa to examine this lady between July 15 and July 30th. Frankly, I had a case in the Court of Law and Chancery of Norfolk, and, by accommodation of counsel, the case went over.

Now, if your Honor please, on those grounds I would like to ask for a continuance.

The Court: I think the motion should be overruled for this reason: The day you all were over here counsel accepted service, and I think that was predicated on the idea that the depositions should be taken at once. I think you page 31 } wanted to take a vacation in Wisconsin, probably, or wherever it was. This case has been pending in this court for nearly two years, and possibly more, and I think it should be determined, regardless whether it is a law suit or a chancery suit, and your motion is overruled. You can make exception.

Mr. Fine: I except, if your Honor please.

The Court: There are witnesses here who are busy, and want to get away. You can examine them.

P. A. AGELASTO, JR.,  
was then duly sworn:

Mr. Fine: If your Honor please, in examining Mr. Agelasto I want to do so without waiving my exceptions and my other motions in the case to quash the deposition of the complainant herself.

Also, if your Honor please, I want to make a motion to strike the complainant's evidence at the proper time because no case has been made.

The Court: I understand you reserve all your rights.

Examined by Mr. Fine:

Q. You are Mr. P. A. Agelasto, are you not?

A. That is correct.

Q. Mr. Agelasto, you are a practicing attorney in the City of Norfolk, are you not?

A. Yes.

*P. A. Agelasto, Jr.*

Q. And you have offices associated with Mr. W.  
page 32 } R. Ashburn?

A. That is correct.

Q. You were present, were you not, at the sale of the assets of the Stroebel estate, at London Bridge, were you not?

Mr. Kellam: I object to that, if your Honor please. What relevancy has it to this case?

The Court: I don't know. I will strike it out, if necessary.

Mr. Kellam: I object as irrelevant and immaterial.

The Court: I overrule it at this time, but you can take it up later.

A. I was at a place called Town Hall sometime in May, 1940, at which a sale took place.

By Mr. Fine:

Q. And, at that time, you made representations that you represented Mrs. Stroebel, did you not?

A. No, sir. I made no representation that I represented Mrs. Stroebel. I may have said I was there making an investigation on her behalf.

Q. You were making an investigation on her behalf; is that correct?

A. I was not employed by her.

Q. But were you making an investigation on her behalf?

A. No, sir. In order to cut the whole examination as short as possible, sometime during the month of May, I think around the middle of the month of May, Mr. S. J. Woodhouse requested that our office make some investigation in behalf of Mrs. Jennie Burrus.  
page 33 }

Q. Then it was Mr. S. J. Woodhouse—

A. (Interposing) As the result of that request,—

Q. Mr. Agelasto, I don't want to cut you off, but I would like for you to answer this: You went there at the suggestion of Mr. S. J. Woodhouse; is that correct?

A. At his request.

Q. And you never did have any personal contact with Mrs. Stroebel?

A. I did not even know Mrs. Stroebel. What I state applies also to Mr. Ashburn. Mr. Woodhouse talked to Mr. Ashburn.

Q. And you all were associated together, and Mr. Ashburn

*P. A. Agelasto, Jr.*

turned this matter over to you for investigation; is that correct?

A. I think that is correct.

Q. Did you, on behalf of Mr. Woodhouse or Mrs. Stroebel, make any claim to me, as counsel for the estate, or to the executrix for any stock?

A. Carrying my answer to a question awhile ago, as the result of Mr. Woodhouse's request, we made a preliminary investigation of the situation as put up to us, which, as I recall, consisted mainly of determining what this sale was. As the result of that, we wrote to Mrs. Burrus—

page 34 } Q. Mrs. Stroebel?

A. Mrs. Burrus.

Q. Jennie Burrus Stroebel?

A. Jennie Burrus.

Q. Her name is Stroebel.

A. No; we wrote to Mrs. Jennie Burrus, whether her name was Stroebel, or not. We never received any—

The Court: (Interposing) Why don't you let him answer the question?

Mr. Fine: I want to bring out that Jennie Burrus is the same as Jennie Burrus Stroebel.

The Court: Do you know that?

Witness: No, sir.

By Mr. Fine:

Q. Go ahead.

A. We wrote Jennie Burrus with respect to our prospective employment in her behalf, but we never heard anything from her, and, accordingly, closed our files. We never represented her.

Q. That is all you know about it?

A. That covers everything I have before me.

Q. Do you have anything in your file with regard to stock?

Mr. Kellam: I move to strike the evidence.

The Court: You object to all of it, I understand.  
page 35 } I will pass on it later. If it is not relevant, I will rule it out, and, if it is relevant, it will stay in.

A. Mr. Fine, there is nothing in my file relative to any stock which I can find other than possibly the stock of a company called Wolfco Inc.

*P. A. Agelasto, Jr.*

By Mr. Fine:

Q. There is nothing about any Building & Loan stock, is what I am speaking of?

A. I don't know anything about any Building & Loan stock.

Q. You know nothing about it?

A. No.

Q. And when did you investigate that? Will you give us the approximate date, please?

A. Approximately during the month of May, 1940.

Q. All right, sir. Off the record—

A. It would be between the month of May and not later than June 3, 1940.

Mr. Fine: Answer these gentlemen, Mr. Agelasto.

Mr. Bridgers: I renew the motion to strike it from the record.

The Court: It may be relevant later on. I will pass on it later on.

Mr. Bridgers: No questions.

page 36 } Mr. Fine: If your Honor please, I move to strike the evidence of the complainant herself.

Again, if your Honor please, I would like to bring to the Court's attention the pleadings in the case, the bill of particulars, the grounds of defense, so that your Honor will understand this matter thoroughly, if I may.

I will read the entire notice, and I will make it brief, but I do want to cover my point, and I think your Honor will agree with the defendant in this case when we get through.

You need not put this in the record, Mr. Phlegar.

(Discussion and argument off the record.)

The Court: The motion is overruled and exception noted.

Mr. Fine: I save the point.

Mr. Kellam: If your Honor please, we asked for grounds of defense, which, we think, were never filed.

The Court: Have you any other evidence to introduce?

Mr. Bridgers: We want to introduce one witness.

Mr. Fine: Wait a minute. If your Honor please, my friend says that he doesn't have the grounds of defense in this case: As a matter of fact, we have stated to them orally and filed an answer and cross-bill in this case on July 25, and I gave you a copy of it. You came to my office—



Mr. Bridgers: I didn't know that it was filed.

The Court: What is your contention on that?  
page 37 } Mr. Fine: If my friend is taken by surprise in  
this case, I will be glad to join in a motion for a  
continuance.

Mr. Bridgers: Nothing surprises me in this case.

The Court: All right. Is there any other testimony?

Mr. Kellam: I don't know that we have any testimony  
as to the value of the property.

The Court: Mark this contract as an exhibit.

(The document referred to was filed as "Exhibit No. 1,  
July 30, 1942", and is as follows:

*"THIS AGREEMENT*, Made and entered into by and be-  
tween G. F. STROBEL, of the City of Norfolk, State of  
Virginia, party of the first part, and JENNIE B. STROBEL,  
of the City and State aforesaid, party of the second part.

*"WHEREAS*, the said parties hereto are husband and  
wife; and,

*"WHEREAS*, there is now depending in the Circuit Court  
of the City of Norfolk, Virginia, divorce proceedings be-  
tween the said parties which have not yet been adjudicated  
and determined; and,

*"WHEREAS*, the said parties hereto desire to contract  
and agree, subject to confirmation of said Court in said  
proceedings as to a division of their property rights;

*"NOW, THEREFORE*, in consideration of the premises  
and other good and valuable consideration to each of the  
parties and the mutual covenants and agreements herein con-  
tained, the said party of the first part agrees that the said  
party of the second part is to have and receive by proper deed  
of conveyance, to be executed and delivered by him to the  
said party of the second part, title to property heretofore oc-  
cupied by the parties hereto as a home designated,  
page 38 } according to the present system of numbering  
houses in the City of Norfolk, Virginia, as 5226  
Rolfe Avenue, subject to a deed of trust thereon securing  
a balance of principal of \$3,000.00; that the said party of the  
first part, in consideration of this agreement of settlement,  
cancels his claim to a certain note evidencing a loan to a  
brother of the said party of the second part in the principal  
sum of \$1,000.00, as well as to all accrued interest thereon;

that the said party of the second part is to have outright and as her own property all of the household effects and furnishings in said property designated as 5226 Rolfe Avenue, with the exception of all furniture and effects in the room heretofore occupied by the said party of the first part, together with one new bed and new dresser, also two chairs now in the living room of said house and two runners; a cedar chest, all books, and certain garden tools which are to be the properties in fee of the said party of the first part.

"The said parties hereto further agree that certain real properties designated as 1101 South Third Street, Burlington, Iowa, now jointly owned by said parties hereto are to be sold, and out of the proceeds therefrom the said party of the first part is to pay the said party of the second part the sum of \$1,000.00 in cash.

"It is further agreed that the said party of the second part is to receive one thousand shares of the capital stock of the Peoples Building and Loan Association of Atlantic City, New Jersey, owned by them.

"The said party of the second part covenants and agrees that the said party of the first part is to have as his individual property, in fee, properties designated as 113 North Delavan Avenue, Atlantic City, New Jersey, together with one additional lot located in said City.

"It is further understood and agreed that the said party of the first part is to pay taxes for the year 1938 on the property designated as 5226 Rolfe Avenue, and the said party of the second part is to pay all taxes, together with any unpaid repair bills for the year 1938 on the property  
page 39 } designated as 1101 South Third Street, Burlington,  
Iowa.

"It is the mutual understanding and agreement of the parties hereto that, subject to confirmation by the Circuit Court of the City of Norfolk of this agreement, and to be determined by the laws governing such matters, the said parties hereto covenant and agree the one with the other that they relinquish all rights, title and interest or claims whatsoever by virtue of the estate of curtesy or dower in and to the respective properties of the parties hereto, or of any other properties which either may acquire in the future.

"WITNESS the following signatures and seals this 27th day of September, in the year 1938.

G. F. STROEBEL

(Seal)

JENNIE B. STROEBEL

(Seal)"

JOHN P. DEKKER,

having been first duly sworn, testified as follows.

Examined by Mr. Bridgers:

Q. Please state your name?

A. John P. Dekker.

Q. What is your occupation, Mr. Dekker?

A. Broker—investment broker.

The Court: Where?

Witness: In Norfolk.

By Mr. Bridgers:

Q. Are you familiar with the value of the stock of Peoples Building & Loan Association of Atlantic City, New  
page 40 } Jersey?

A. As of what time?

Q. As of today?

A. Yes.

Q. What is its market value?

Mr. Fine: I object.

The Court: Overruled.

Mr. Fine: Exception.

A. Thirty cents on the dollar.

By Mr. Bridgers:

Q. Did you have occasion to ask for a quotation on any stock supposedly owned by G. F. Stroebe?

A. It was told me that it belonged to Stroebe.

Mr. Fine: I object.

Witness: I was asked, about two years ago, by a gentleman connected with Abbott, Proctor & Paine, Norfolk City, to get a quotation on Peoples Building & Loan Association, of Atlantic City, New Jersey, and I gave their quotation.

By the Court:

Q. What is it?

A. Thirty cents on the dollar, the same as today. It has not changed at all.

Mr. Bridgers: Answer Mr. Fine.

*John P. Dekker.*

CROSS EXAMINATION.

By Mr. Fine:

Q. You, yourself, don't know anything about page 41 } the value of Peoples Building & Loan Association stock, or do you?

A. I know it from the officers themselves.

Q. Have you ever sold any Peoples Building & Loan Association stock?

A. No; but it doesn't make any difference; I was only asking—

Q. I didn't ask you that, but do you know anything about the value of it?

A. I do not, because in our profession, when we ask for a bid, we take the officers' statements.

Q. When you say the value of this Building & Loan Association stock was thirty cents on the dollar, you base that on what the officers of the company told you?

A. The market value. I didn't only ask the officers of the company.

Q. Whom did you ask?

A. I went through a New York and a Philadelphia concern.

Q. What concern did you ask the value of it?

A. West & Company, in Philadelphia.

Q. When did you contact West & Company, of Philadelphia?

A. That was about two years ago.

Q. Is that when you contacted them?

A. Yes; that is right. I had never sold it and had never bought it—at the time; I just asked for them to make a quotation.

page 42 } Q. For whom did you ask that?

A. I asked it for Mr. Bud Wales. His name is W. H., I believe. He lived at the Beach, and, at that time, he was connected not with Abbott, Proctor & Paine, but with Dyer, Hudson & Company.

Q. Do you know whether this was preferred stock, or whether it was common stock, of the Peoples Building & Loan Association?

A. I can only say the capital stock—the common stock.

Q. Do you know whether it was capital stock, or Building & Loan running stock? There are three kinds.

A. I asked for common stock.

Q. You didn't ask for running stock?

*John P. Dekker.*

A. No.

Q. Didn't you ask for Mr. Stroebe?

A. No, sir.

Q. And that was about two years ago?

A. Yes, sir.

Q. That would be in 1939, would it?

A. I think in that neighborhood. I don't know exactly the date, because those things come and go. It was around September.

Q. Have you learned anything about the value of the stock today?

A. Yes.

page 43 } Q. Where did you make inquiry about the stock?

A. Today?

Q. Yes, or yesterday?

A. I called them up this morning.

Q. Whom did you call up this morning?

A. The officers of the company—the Peoples Building & Loan Association.

Q. With whom did you talk?

A. I talked to the secretary, a lady, and she told me this—you asked the question, and let me explain; I have nothing to hide. She told me the stock has not changed in market value. The company is in liquidation, a different organization in the town; Building & Loan Association combined in order to get the stockholders to agree to take a certain amount of their stock now, and later on liquidate it as the company progressed. That has not been accomplished, and the stock has still sold at thirty cents on the dollar.

Q. Did she tell you it was worth thirty cents on the dollar today?

A. Yes.

Q. She told you it is worth that today?

A. Yes.

Q. That is all the information you have?

A. All I know and all I care to know. If people come to me for a quotation, I try to give it right.

page 44 } Q. In other words, you base your testimony on your conversation with West & Company, which was about two years ago?

A. That is right.

Q. And one telephone conversation this morning?

A. That is all.

Q. How many shares are involved?

*Ralph H. Daughton.*

A. I understood, at the time Mr. Wales told me, there were a thousand shares.

Q. Mr. Wales told you there were a thousand shares?

A. Yes.

Q. At that time?

A. Yes.

Q. You don't know for certain?

A. I have not seen the stock?

Q. Why did Mr. Wales contact you about that?

Mr. Bridgers: I object to that.

The Court: The objection sustained.

By Mr. Fine:

Q. So you have no personal knowledge of the value—

The Court: (Interposing) He has already answered the question, Mr. Fine. He has answered it three times, really. All right; you can go.

Mr. Fine: I move to dismiss the complainant's testimony again on the ground that it is not corroborated—

The Court: You move to strike?

page 45 } Mr. Fine: Yes, sir; to strike on the ground that it is not corroborated under the statute; (2) it is purely speculative; (3) there is no testimony that they own it jointly pursuant to that agreement, or that the agreement was ever confirmed; and (4) it is a guess.

The Court: I overrule the motion, to which action of the Court you except.

Mr. Fine: Yes, sir.

RALPH H. DAUGHTON,  
having been first duly sworn, testified as follows:

Examined by Mr. Fine:

Q. You are Senator Ralph H. Daughton, and you are a practicing attorney of the City of Norfolk, are you not?

A. That is correct.

Q. How long have you been practicing?

A. Since 1911.

Q. Senator, I believe you were counsel for G. F. Stroebel in his lifetime?

A. That is correct.

Q. And you instituted a divorce suit in his behalf in the

*Ralph H. Daughton.*

Circuit Court of the City of Norfolk on January 17, 1938, did you not?

A. I don't recall the date.

page 46 } Mr. Kellam: If your Honor please, the record speaks for itself.

Witness: The decree was entered, as I recall, in 1939.

By Mr. Fine:

Q. Senator, I hand you an agreement dated 27th day of September, 1938, between G. F. Stroebel and Jennie Burrus Stroebel; was that contract ever confirmed—

The Court: The record will show.

By Mr. Fine:

Q. (Continuing) —confirmed by the Circuit Court of the City of Norfolk.

Mr. Kellam: I do not think that question is proper.

A. As I recall, and I think my recollection is correct, this did not enter into the divorce proceedings in any way, shape, form or fashion; it was a property settlement effected between the parties. I think Alfred Anderson represented Mrs. Stroebel, and both of them were in their seventies. I know that he tried and I tried to effect a reconciliation because of the ages of the parties. The case dragged on and dragged out, and it was a most peculiar case.

By the Court:

Q. How old was he?

A. Either sixty-nine or seventy.

Q. It is in testimony that she was seventy-five.

page 47 } A. They were both in their seventies, as I recall. They were mismated. She was his second wife.

By Mr. Fine:

Q. When this decree was entered in the case, was there any claim by Mr. Stroebel, or her counsel, of any property due them?

A. No, there was not, except some discussion, as there always is, about some trivial matter. I think Mr. Stroebel spent hours talking about an *abstruse* Mrs. Stroebel had

*Ralph H. Daughton.*

stolen, which she refused to return, a little piece of jewelry which belonged to the first Mrs. Stroebel.

Q. Of course when this decree was entered by Judge Hanckel, it was endorsed by her lawyer, Mr. Alfred Anderson?

A. That is correct.

Mr. Fine: I would like to introduce it with leave to withdraw it.

The Court: If you want to make the record up.

Witness: I think I have the original decree, which was in my file.

Mr. Fine: Fine. I would like to introduce it.

The Court: That is all right.

(The document referred to was filed marked "Exhibit No. 2, July 30, 1942", and is as follows:

"Virginia:

"In the Circuit Court of the City of Norfolk, on the 4th day of December, in the year, 1939.

page 48 } "G. F. Stroebel, Complainant,

v.

Jennie B. Stroebel, Defendant.

# IN CHANCERY.

"This cause came on this day to be heard upon the complainant's bill, and the depositions taken before a Notary Public and filed on behalf of the complainant, and was argued by counsel.

"On consideration whereof, it appearing to the Court that process in this suit was regularly served on the said defendant by an officer authorized to serve the same, and it further appearing to the Court, independently of the admissions of either party in the pleadings or otherwise, that the said parties were lawfully married on the 14th day of September, 1916, and are of the white race; that the said defendant did, in the spring of 1934, wilfully, voluntarily and without justification desert the said complainant, and that the said desertion has been continuous and uninterrupted for a period of more than two years next prior to the commencement of this suit; that the said defendant is domiciled in, and is, and



*Ralph H. Daughton.*

has been an actual *bona fide* resident of the City of Norfolk, and State of Virginia, for at least one year next preceding the commencement of this suit.

"The Court doth adjudge, order and decree that the said G. F. Stroebel be and he is hereby granted a divorce *a vinculo matrimonii* from the said Jennie B. Stroebel.

"And nothing further to be done it is ordered that this cause be removed from the docket.

"A Copy, Teste:

CECIL M. ROBERTSON, Clerk.

"By W. R. HANCKEL, D. C.

"RALPH H. DAUGHTON, p. q."

Witness: This case was drawn out and dragged out; there was some property here and some in Iowa, some in Atlantic City and some building stock; a little was owned page 49 } by Fred Stroebel and some jointly by Fred Stroebel and his wife. She said that she had been in the office of the Building & Loan and put her name on it without his consent.

The Court: You don't know anything about how much it was?

Witness: No; but she got the majority of that Fred Stroebel had, and wanted to get out of the picture.

By Mr. Fine:

Q. Did he ever own a thousand shares of Building & Loan Association stock, either personally or jointly?

A. Fred Stroebel was not a wealthy man; I came in contact with him by being attorney for the Southern Brewing Company; he was brew master for the Southern Brewery.

By the Court:

Q. Do you know how much there was of this Building & Loan Association stock?

Witness: No; but I am positive there was not a thousand dollars of stock.

By Mr. Fine:

Q. Senator, I believe you stated you are almost positive

*Ralph H. Daughton.*

he never had a thousand shares of Building & Loan Association stock?

A. I was intimately acquainted with Mr. Stroebel; he had been in my office quite frequently—

Mr. Kellam: We object unless he knows.

The Court: You don't know how much he had?

Witness: No; but my recollection is that it was page 50 } not near that amount.

By Mr. Fine:

Q. That would make him worth nearly \$100,000; he was not worth that, was he?

A. No. I think Stroebel only had an equity in his home over in Edgewater. The home here in Norfolk went to his wife.

Q. His wife got the home at Edgewater in settlement?

A. Yes.

Q. The decree entered the 4th of December, 1939—was there anything that she got in it?

A. No. There was no alimony there.

The Court: The decree speaks for itself.

By Mr. Fine:

Q. Did Mrs. Stroebel or Mr. Alfred Anderson, her attorney, ever come to you and ask for anything else in this case?

A. Neither one of them. Mrs. Stroebel frequently visited my office and complained of Mr. Stroebel. There was never any demand by Mrs. Stroebel on me for anything.

Q. Was there any dispute about this property, when this decree was entered, December 4, 1939?

A. No.

Q. Wasn't there, as a matter of fact, a prior agreement to this one between the parties?

A. Yes.

Mr. Bridgers: I object to a prior agreement.

Mr. Fine: They had several agreements, if your page 51 } Honor please, and all of them were concluded before this decree was entered in December, 1939.

Mr. Bridgers: I object.

The Court: Mr. Fine wants to get it into the record. The Court sustains the objection.

*Ralph H. Daughton.*

Witness: Am I to answer it?

The Court: For the purposes of the record.

Witness: There was an agreement covering alimony, and that was in 1937.

Mr. Fine: I would like to introduce it for the purpose of the exception.

Mr. Bridgers: We object.

The Court: It is for the purpose of getting it into the record.

(The paper referred to was filed marked "Exhibit No. 3, July 30, 1942", and is as follows:)

*"THIS AGREEMENT*, Made and entered into this 9th day of July, 1937, between FREDERICK G. STROBEL and JENNIE B. STROBEL, husband and wife, of Norfolk, Virginia.

*"WITNESSETH*: That for reasons known to themselves, not necessary to be stated herein, the said parties hereto agree to temporarily separate, that is to say, the said JENNIE B. STROBEL agrees to promptly, as soon as the said FREDERICK G. STROBEL provides the necessary transportation expenses, to go and visit with her people in Burlington, Iowa, and other places, for a period of at least six months, and longer if she so decides, and the said FREDERICK G. STROBEL does now deposit with Alfred Anderson, Attorney for the said JENNIE B. STROBEL the sum of \$50.00 for travelling expenses for the said page 52 } JENNIE B. STROBEL to Burlington, Iowa, and does agree to pay to the said JENNIE B. STROBEL the sum of \$60.00 per month, beginning on the 1st day of August, 1937, and to continue during her visit, and further agrees, upon her return, that he is to pay to the said JENNIE B. STROBEL the sum of \$40.00 per month for her use and benefit, with the understanding that the two of them will either live together in peace, or else the said parties will permanently separate, and either or both will be free to apply to a court for divorce.

*"And with the further understanding that the said JENNIE B. STROBEL will deliver to the said FREDERICK G. STROBEL his diamond stud which she had and certain Building and Loan papers and all other papers which she has in her custody and which belong to him.*

*Ralph H. Daughton.*

"It is further understood that the said parties hereto agree to convey to O. M. Burruss, or to whomsoever he may direct, the Burlington, Iowa, property belonging to them jointly, and to divide equally between them the net proceeds therefrom.

"It is further agreed that when the said JENNIE B. STROBEL leaves she shall have the right to close and lock her room, and that said room, nor any of her personal effects left therein, shall be opened or disturbed in any manner by the said FREDERICK G. STROBEL, or by any one under his direction, or request.

"WITNESS the following signatures and seals:

FREDERICK G. STROEBEL (Seal)  
JENNIE B. STROEBEL (Seal)"

If my recollection is correct, that agreement was prepared in the office of Alfred Anderson.

By Mr. Fine:

Q. Can you state with certainty that all matters had been settled between the parties when this decree was entered?

A. Absolutely.

page 53 } Q. Was that guess, or speculation, or positive assurance?

A. There is no guess or speculation. I lived through it three or four years, and when this decree was entered we knew it until Mr. Stroebel died. He would come in to see about making a will, but it was never made. I have no other paper.

#### CROSS EXAMINATION.

By Mr. Kellam:

Q. I understand from you that the agreement between Jennie Burrus Stroebel and G. F. Stroebel, in reference to their property rights, is comprised in the paper copy or original of which was handed to you; is that correct?

A. I didn't read the original.

Q. Will you read it?

The Court: Did you ever see the contract?

*Ralph H. Daughton.*

By Mr. Kellam:

Q. That is Mr. Stroebel's signature, is it not?

A. Yes, sir. I saw it at the time, if your Honor please, but a lot of water has gone over the dam?

Q. That was the agreement to settle their property rights; is that correct?

A. Yes.

Q. And you don't know whether the terms of that agreement and its provisions have been carried out since, do you?

Mr. Fine: He has answered it.

page 54 } Mr. Kellam: I don't think he has.

A. I will say this, that Mrs. Strobel was represented by very able counsel.

By Mr. Kellam:

Q. Was Mr. Stroebel?

A. I thank you. I represented Frederick Stroebel, and, at the time this divorce decree was entered, Alfred Anderson was satisfied everything had been done as called for in that agreement; otherwise, the decree would not have been entered. It does not call for alimony. I have no personal feeling in this matter; I felt very friendly towards Mrs. Stroebel.

Q. You don't know, do you, I presume, whether, at the time this agreement was signed and the decree entered, the property in the City of Norfolk had been sold?

A. At the time that—

Q. At the time the agreement was entered into and the decree signed?

A. No; I would not say that.

Q. You don't know whether the Burlington, Iowa, property had been disposed of, do you?

A. No.

Mr. Fine: I raise the objection that the property in Norfolk had been conveyed.

The Court: That is not the question. He asked if he knew, and he said no.

Witness: Repeat the question.

page 55 } By Mr. Kellam:

Q. Do you know whether, at the time the decree was entered, the Norfolk property had been sold and the Burlington, Iowa, property had been sold?

A. No. At the time the decree was entered my hands were washed of the whole affair. This agreement was entered into sometime prior to that. Whether Fred Stroebel and Mrs. Stroebel joined in a deed and they sold it and she got it, or whether they split it up, I don't know, but I know that these were the terms agreed upon, and I know there was no alimony agreed upon.

Mr. Fine: For the purposes of the record and for the enlightenment of the Court, the properties had been transferred, and we can stipulate that.

Mr. Kellam: Hold on, now.

Mr. Bridgers: There is no evidence of that.

Mr. Fine: My friends are blowing hot and cold, and I don't think that they ought to do it, and here is what I mean by that: In the notice of motion they claim there is a thousand dollars not turned over to Mrs. Stroebel, and then they come and say, yes it has already been turned over; thirdly, they say the contract had been complied with in all respects. My notice is for the purposes of the record—

The Court: (Interposing) What is the motion? I didn't catch exactly what you are getting at. Are you page 56 } willing to strike the evidence as to that?

Mr. Fine: I am asking the Court to do this—

The Court: Are you through with Mr. Daughton?

Mr. Fine: One more question.

The Court: Ask the question, and get through with him. I want to get rid of it. It is a hot day. Are you gentlemen through?

Mr. Kellam: Yes, sir.

By Mr. Fine:

Q. I believe you say that all property rights had been determined as of that time?

The Court: Yes; he stated that.

Mr. Fine: All right.

The Court: Is there any other testimony?

Mr. Fine: Yes, sir; a lot of it. Leaving off the family part of it—

Mr. Kellam: (Interposing) Before you leave that, we want to object to the introduction of that testimony. Our motion is based upon Section 6229 of the Code, and I would like to see if we can find the original of those depositions,

Mr. Fine. (Mr. Kellam read Section 6229 of the Code.) Attached to the deposition is copy of a notice that was served on me as one of counsel, on July 24, 1942, at 10:10 A. M.

Mr. Fine: And we took them on the 28th—five page 57 } days later.

Mr. Kellam: We wrote to the attorneys who were supposed to take them, and immediately dispatched to the attorneys this letter:

“Raymond B. Bridgers and V. H. Kellam, counsel for Jennie Burrus Stroebel, object to the taking of the deposition in the above entitled cause pursuant to the attached notice, and for grounds for objections that the said notice was not sufficient in law as required in Section 6229 of the Code of Virginia, and the said Jennie Burrus Stroebel, being a non-resident of the State of Virginia and having as her place of residence Burlington, the State of Iowa.

“Counsel for said objections to each and every person propounded and to the witnesses and each of them on the grounds that the subject of this controversy is a written agreement and that oral evidence is *admissible* to vary or contradict a written instrument, and further grounds that the agreement, the subject of this controversy, is a contract between G. J. and Jennie Burrus Stroebel, that the said G. J. Stroebel made no objections to said agreement in his lifetime and that now G. F. Stroebel being dead, the executives cannot introduce any evidence in an attempt to vary or contradict the agreement.

“And further objections that the said agreement the subject of this controversy, so far as Jennie Burrus Stroebel is concerned, was never objected to in the lifetime of G. J. Stroebel, and that it is now under the rules of equity G. J. Stroebel being dead the estate seeks alteration and changes in the aforesaid agreement.

“And further objections to each and every question propounded to witnesses your complainant objects on the grounds that none of the witnesses know anything pertaining to the above referred to agreement and that each question is irrelevant and improper.”

If your Honor please, I do not think, with all page 58 } due respect to the ability of my friend on the opposite side, if you eliminate entirely the question of agreement to accept, that there is any question about the notice being so short that you can send a letter by ordinary

course of mail and get a reply. (Mr. Kellam further argued.)

Mr. Fine: Your Honor set this case definitely on the 30th of July if counsel would accept service. To accept service, as I understand, is not that you wait any definite time. I called Mr. Bridgers on the 23rd and asked if he would accept service, and he said "That will not suit me." I said, "I will have to ask for a continuance," and he said that he would object. The case was set for the 30th, and they were taken on the 28th and were in the Clerk's Office on the 29th.

I did not know any counsel in Atlantic City, but I got the name out of Martindale. They could have done the same thing. The Code says, if your Honor please, if papers are served, you should have opportunity to mail from one place to another, and there was plenty of time to do it in five days. I gave six days.

What I prove by the depositions is that they never had a thousand shares of stock.

I know that your Honor is sitting as a chancellor in the case, and I am representing a dead man and he page 59 } cannot talk.

If your Honor says that this is not proper testimony, you can give them the right to cross-examine later. These people are disinterested, and are not here at all.

I want to read the testimony to show the facts.

Mr. Kellam: Before he reads the testimony, I would like to be heard on another question.

Mr. Fine: Let me finish my argument. On page 3 is the testimony of Robert B. Cadwallader; it is in three sections:

"(1) I am a real estate broker of the State of New Jersey, and also deal in securities.

"(2) On or about October 6, 1938, I purchased 25 full-paid shares of stock of the Equitable Building & Loan Association and of the Peoples Building & Loan Association, both of Atlantic City, in the name of Fred or Jennie Stroebel, and paid therefor the sum of \$1,500.00.

"(3) It is my personal recollection that fifteen shares of this stock were in the Peoples Building & Loan Association and that ten shares were in the Equitable Building & Loan Association.

"(4) The prevailing price of this stock at the time of the purchase was approximately thirty cents on the dollar." Those are the facts in this case, and there is nobody hurt by it.

The Court: I do not think the depositions can be read



or heard by the Court. I have heard them and I have read them, as a matter of fact. I sustain the motion page 60 } of the complainant to strike them out. You can except.

Mr. Fine: I am placed in a most particularly bad position about being forced into the trial of this case. I was told by counsel that they would accept service.

The Court: You have already stated that, Mr. Fine.

Mr. Fine: If your Honor please, I subpoenaed here today Mr. Russell Bradford, who was also counsel in the case and was counsel for Mrs. Jennie Burrus Stroebel, who definitely stated what she claimed before this big fraudulent (I claim) suit was filed. He was notified to come here; he had a case or suit in Suffolk, and he stated that he would get here as quickly as he could. However, I can state what I want to prove by Mr. Bradford, and, if they want to agree to it, we can proceed.

Mr. Kellam: Did you have a subpoena for him?

Mr. Fine: I asked for a subpoena in five days. Have you the papers?

The Court: I haven't got them.

Mr. Fine: "July 24."

The Court: For the sake of the record, state what you expect to prove by him.

Mr. Kellam: If your Honor please, we asked for grounds of defense; so far as we know, they were never filed until the answer and cross-bill in another proceeding page 61 } was filed. If my friend is trying to rely on either a mistake or fraud in this case to contradict or vary that contract, then the law is plain that they have to set out in full in any pleading not only that the subject of the controversy was fraudulent, but have to allege what that fraud consisted of, and, in this particular case, so far as I know, there is no allegation, nothing filed in the original action as grounds of defense, which would give us any intimation that the defendant expected to rely on fraud, and certainly did not set out with any particularity what the fraud consisted of.

The same thing would apply, but not as strongly, in case of mistake. If equity is asked to intervene on the ground that there has been a mistake and an action at law would be inadequate, then certainly something in there must give the complainant notice of what defense, or items of defense, they expect to set up.

When your Honor was asked to remove this case, here

There is nothing in there that the agreement should be reformed.

The Court: Is that the ground of defense?

Mr. Kellam: That is his petition for removal. I can't find the grounds of defense. There is an answer and cross-bill filed in the Circuit Court of Princess Anne page 62 } County on the 25th of July, 1942.

The Court: Let us see what the testimony is. What do you expect to prove by Mr. Bradford?

Mr. Fine: That Mr. Bradford wrote a letter to Mrs. Tessa Lewis, the executrix of this estate, which letter we will introduce in evidence, asking the executrix to come in to see about the matter. That letter was referred to Mrs. Lewis' counsel, and I talked with Mr. Bradford, who informed me that he had had a claim on behalf of Mrs. Jennie Burrus Stroebel, the complainant in this case—not for one thousand shares of stock but for two and a half shares of stock, and here is the letter that was addressed to him from the nephew of Mrs. Stroebel. I will read it—

The Court: Are you going to put it into the record?

Mr. Fine: Yes, sir.

Mr. Kellam: We object to the reading of the letter.

The Court: It doesn't bind you. Let it go into the record. Is that Mr. Bradford's letter?

Mr. Fine: Yes, sir; I have it. (Reading):

“Burlington, Iowa, March 5, 1940.

“Mr. A. F. Anderson,  
National Bank of Commerce Building,  
Norfolk, Virginia.

“Dear Sir:

“I am enclosing an assignment for transfer of page 63 } stock on the company books which it will be necessary to have the administratrix sign before they will transfer the stock on the books of the company. This stock was given to her (my aunt Mrs. Stroebel) before her husband's death and was in both their names. The stock is in her possession also. Would you please see if the Tessa J. Lewis mentioned will sign the enclosed paper, and return same to me. Whatever the charge is you may also send to me. If you are unable to secure the signature, will you please return the papers to me.

“Yours truly,

N. O. BURRUS.”

(By Mr. Fine) Also a letter from the National Bank of Burlington, dated March 1, 1940—

The Court: There is no testimony as to the relationship.

Mr. Fine: I will be glad to have him here.

The Court: Go ahead and read it.

Mr. Fine: (Reading)

“Burlington, Iowa,  
“March 1, 1940

“Mr. Norman O. Burrus  
1816 Louisa Street  
Burlington, Iowa

“Dear Mr. Burrus:

“We are today in receipt of assignment covering transfer of stock from the estate of George Frederick Stroebel, deceased to Jennie Louise Stroebel.

“It will be necessary that the administratrix of this estate sign this assignment and if you care to drop in the bank and pick up the assignment for the signature, we will hold same here for you.

page 64 }

“Very truly yours,

THOMAS L. DYER  
Cashier.”

Mr. Fine: Here is the certificate from the Equitable Building & Loan Association, dated the (blank) day of March, 1940:

“Know all Men by these Presents, That I, TESSA J. LEWIS, administratrix of the Estate of GEORGE FREDERICK STROEBEL, DECEASED, for value received, have bargained, sold, assigned and transferred, and by these presents do bargain, sell, assign and transfer unto JENNIE LOUISE STROEBEL Two and one-half Income Shares of stock of the EQUITABLE BUILDING AND LOAN ASSOCIATION standing in my name on the books of the Association, Series . . . ., Certificate 1195, and do hereby constitute and appoint James W. Cullen, Secretary, my true and lawful attorney, irrevocable for me and in my name and stead, but to assignee's use, to sell, assign, transfer and set over, all or any part of the said stock, and for that pur-

*S. J. Woodhouse.*

pose to make and execute all necessary acts of assignment and transfer, and one or more persons to substitute with like full power, hereby ratifying and confirming all that said Attorney shall lawfully do by virtue hereof.

"IN WITNESS WHEREOF I have hereunto set my hand and seal the .... day of March, 1940.

ESTATE GEORGE FREDERICK  
STROEBEL, DECEASED,

By .....  
Administratrix  
SHAREHOLDER SIGN HERE."

Mr. Fine: Here is a letter dated March 15, 1940, from Mr. Bradford to Mrs. Lewis: "It will be very much appreciated if, when you are next in town, you will drop by my office, or give me the name of your attorney page 65 } in order that I may get in touch with him. Thanking you for your attention, I am, Very truly yours, Russell T. Bradford."

(By Mr. Fine) I want to show further that there has never been any claim for a thousand shares of stock, but that is the only claim of two and a half shares of Equitable Building and Loan Association; that he has never gotten out of the case, and he has never been refused the transfer of the stock. If my friend does not agree to have him testify—

Mr. Kellam: He told me he had never communicated with you regarding it.

Mr. Fine: If necessary, we can take his evidence by Mr. Phlegar, and send it to you.

[K] , . . . . S. J. WOODHOUSE,  
having been first duly sworn, testified as follows:

Examined by Mr. Fine:

Q. Your name is Mr. S. J. Woodhouse?

A. Yes; that is it.

Q. And you knew Mr. Stroebel in his lifetime, did you not?

A. Very distinctly.

*S. J. Woodhouse.*

Q. Did you, or not, sell Building and Loan page 66 } stock for Mr. Stroebel in his lifetime?

Mr. Kellam: I object to that.

The Court: Let him go ahead. I will sustain the objection.

Mr. Fine: I would like to put it into the record.

The Court: Yes.

By Mr. Fine:

Q. Did you sell stock to Mr. Stroebel in his lifetime?

A. A little bit of stock; yes.

Q. Didn't you sell the stock that was mentioned in these depositions?

A. I sold—

By the Court:

Q. What did you sell, Mr. Woodhouse, as a matter of fact?

The Court: I take it that your objection applies to his testimony *in toto* and to each and every question?

Mr. Kellam: Yes.

A. I sold \$1,500 worth of stock.

The Court: What was it? What stock was it, do you know?

Witness: It was Equitable and Peoples Building & Loan.

By Mr. Fine:

Q. You sold, did you not, fifteen shares of Equitable Building and Loan Association stock and ten shares of Peoples Building & Loan, and received for those twenty— page 67 } five shares \$1,500; is that correct?

A. Yes; \$1,500. He sent a check for \$1,400.

Mr. Fine: I want the record to show I am calling Mr. Woodhouse as an adverse witness.

The Court: You did not announce it, and you called him as your witness.

Mr. Fine: I would like, if your Honor please, to make that correction, and I want to show, if your Honor please, that he is the man who started the suit.

The Court: Please ask the question.

*S. J. Woodhouse.*

By Mr. Fine:

Q. Do you recollect coming in to see me, at my office, and telling me you represented Mrs. Stroebel?

A. Yes.

Q. And you asked me for a copy of this alleged agreement, did you not?

A. Yes, sir.

Q. And I gave you a copy of it?

A. That is it.

Q. And you had talked to Mr. Agelasto, had you not, and to Mr. Ashburn?

Mr. Kellam: I object to all questions and answers.

A. I don't know who you are talking about—Agelasto.

Mr. Fine:

Q. Did you talk to Mr. Ashburn?

A. Yes.

page 68 } Q. And Mr. Ashburn was associated with Mr. Agelasto?

A. I don't even know Mr. Agelasto.

Q. Did you get Mr. Ashburn to represent Mrs. Stroebel in this case?

A. Did I?

Q. Yes.

A. Yes.

Q. You did. Then, after that, didn't you make some claim against the estate yourself?

Mr. Kellam: Now, if your Honor please—

Witness: But that don't mean anything—

The Court: Wait a minute. The Court has to pass on the objection. The objection is sustained, to which counsel excepts.

By Mr. Fine:

Q. Did you make claim against the estate?

The Court: What has it to do with this?

Mr. Fine: That it is not based on facts.

The Court: Go ahead.

By Mr. Fine:

Q. Answer my question, please.

*S. J. Woodhouse.*

A. Yes; I made claim.

Q. And didn't you make this claim: "Forty trips from Third Street (Stroebe's store) to Norfolk, Virginia, and return talking to his creditors, negotiating loan, getting up information relative to Wolfco, Inc. Ten of these trips made interviewing his former wife Jennie Stroebe relative to division of bonds, real property and personal things in their residence in Edgewater. These ten trips to see Mrs. Stroebe made the agreement possible which was signed by Mr. and Mrs. Stroebe in Alfred Anderson's office and finally approved by the Court which also made their divorce possible. Three of the ten trips to Mrs. Stroebe's were spent in dividing furniture, books and other household property. I personally supervised this as well as the division of real property and money."—

The Court: Can't you save a whole lot of time in handing to him and asking him—

Mr. Fine: I wanted you to hear it. I want to show that they had settled their affairs.

By Mr. Fine:

Q. "During the forty trips to Norfolk we spent practically the whole day seeing various people and going to and from the city. I figure this as \$10.00 per trip \$400. Trip to Atlantic City, N. J., when I sold \$5,000.00 worth of Building and Loan stock \$100; total \$500. Expenses to Atlantic City, N. J. and return, \$40; credit merchandise from Stroebe's store \$34.38; \$10 advanced for expenses to Atlantic City, New Jersey. Check to me from proceeds of Building and Loan stock in Atlantic City, New Jersey \$100; cash handed me in Norfolk, Virginia, \$70; cash advanced me by J. F. Woodhouse for Stroebe \$25; total credit \$239.28; balance due \$300.72."

page 70 } A. I brought the money back.

Q. That is your bill that you made claim for, isn't it?

A. Yes. I charged him \$100.

Q. That is the claim you made against the estate January 29, 1940, is it not?

A. Yes, for my services.

(The document which has just been read in evidence was filed marked "Exhibit No. 9.")

*S. J. Woodhouse.*

By Mr. Fine:

Q. Didn't you, Mr. Woodhouse, sue Mr. Stroebel in his lifetime for this?

Mr. Kellam: Certainly the record is the best evidence.

The Court: It is understood that every question and answer is objected to.

A. That was for my personal service.

By Mr. Fine:

Q. And you were denied recovery in the Trial Justice Court in Princess Anne County, were you not?

A. I don't know. I never heard anything from it.

Q. Did you appeal the case?

A. No. That has nothing to do with this case.

Q. Did Mrs. Stroebel know you had sold this building and Loan Association stock?

A. No.

Q. I ask you if this is not a letter addressed from her to you? Look at it and read it, please.

page 71 } Note: The letter referred to was marked "Exhibit No. 10, July 30, 1942", and is as follows:

"Burlington, Iowa, 12/21/39.

"Dear Mr. Woodhouse:

"Have been very, very ill, hence my long silence.

"I do hope the late Mr. Stroebel paid what was due you. Just had word of his passing. Wish I had *my* machine and jewelry.

"I have a very small income, and getting along best I can, but would be glad to have *my* things from that creature he lived with. Am I right?

"I will not soon forget the great kindness you and Mr. Anderson have shown me. I will duly appreciate any information regarding his affairs, and if I can claim anything else he had left.

"I hope you have all success in the future, and a merry Christmas and happy New Year.

"Thanking you in advance, I remain,

"Yours sincerely,

"MRS. JANE BURRUS,  
"NEE STROEBEL.



*S. J. Woodhouse.*

"I have resumed my family name of Burrus. Ad. 422 Columbia Street."

By the Court:

Q. Did you receive that?

A. Yes.

Q. You received it?

A. I received that letter.

Mr. Fine: I want to show that that letter is page 72 } based on a concocted scheme. She knew the stock was sold, and she wanted to see what else she could get out of it.

Witness: That letter was taken out of my pocket—stolen.

By Mr. Fine:

Q. What did she mean when she said, "if I can claim anything else that he had left?"

Mr. Kellam: I object to that.

The Court: Objection sustained.

Witness: That was a personal letter.

The Court: When we get through, I will pass on all of them.

Witness: There is nothing to this case. The law is very simple. They are basing it on one paragraph.

By Mr. Fine:

Q. This letter was written a few days after the death of Mr. Stroebel, wasn't it? Mr. Stroebel died on December 11, 1939; this letter was written December 31, 1939; is that right?

A. I don't know. I don't know anything about that. I am not interested in when he died.

Q. You are not interested in when he died?

A. No.

Q. After you got this letter you went down and saw Mr. Ashburn; is that right?

page 73 } A. Yes.

Q. Didn't you retain Mr. Bridgers in this case?

A. After Ashburn was too busy to do the work, I retained Bridgers.

Q. And didn't you give him the copy of this purported agreement I gave you, and show it to Mr. Bridgers?

*S. J. Woodhouse.*

A. Sure I did.

Q. You did, did you?

A. Yes.

Q. Did you arrange for the bond for this lady, so she could bring this suit?

A. Yes.

Q. Then you are "the man behind the gun," are you not? What do you expect to get out of this, Woodhouse?

A. I will not answer that question.

Q. You will not answer that question?

A. No.

Mr. Bridgers: If Mr. Fine is attempting to bring in an embarrassing situation in my behalf—

Mr. Fine: I have not said a thing against Bridgers. You are relying on what has been told you.

By Mr. Fine:

Q. Now, don't you know that all the stock that is involved here is two and a half shares of Equitable Building and Loan Association stock that Mr. Bradford tried to get transferred?

page 74 } A. Two and a half shares?

Q. Do you know anything about Mr. Bradford being in the case?

A. Russell Bradford?

Q. Yes.

A. He is just a cheap lawyer.

The Court: Don't argue.

By Mr. Fine:

Q. Mr. Bradford would not make a claim for a thousand shares of stock for you, would he?

A. No; I would not trust him.

Q. You would not trust him?

A. No.

The Court: Just keep quiet, please. What is the next question?

Mr. Fine: That is all.

*S. J. Woodhouse.*

CROSS EXAMINATION.

By Mr. Kellam: Without waiving the objections?

Q. The money for the stock which you sold in New Jersey for Mr. Stroebel, what did you do with it?

A. I gave it to him.

Q. You gave it to Mr. Stroebel?

A. Absolutely.

page 75 } Mr. Fine: If your Honor please, I subpoenaed Mr. Paul Ackiss, who represented Mr. Stroebel in his lifetime in connection with the case of *Woodhouse v. Stroebel*, and by agreement with Mr. Ackiss and Mr. Kellam we have agreed that this would be his testimony.

The Court: Read it.

Note: The paper was filed as Exhibit No. 11 and is as follows:

“Virginia Beach, Virginia,

“July 29, 1942

“Mr. Louis B. Fine  
Attorney at Law  
National Bank of Commerce Bldg.  
Norfolk, Virginia

“Mr. V. Hope Kellam  
Attorney at Law  
Board of Trade Building  
Norfolk, Virginia

“Gentlemen:

“Pursuant to agreement of counsel for plaintiff and defendant, it is agreed that if present as a witness for defendant on July 30, 1942, at 10:30 A. M. in the Circuit Court of the City of Portsmouth, Virginia, I would testify as follows:

“That some two or three years ago I represented Mr. Stroebel, who was the husband of Mrs. Jennie Burrus Stroebel, before E. V. Gresham, Trial Justice of Princess Anne County, who was being sued by one Mr. Shep Woodhouse for commissions due on sale of real estate or sale of some

*Tessa J. Lewis.*

stock, I do not recall which, but the verdict of the Trial Justice Court was that he should not recover.

“Very truly yours,

P. W. ACKISS.”

page 76 } The Court: You move to strike out Mr. Woodhouse's testimony?

Mr. Kellam: Yes, sir.

The Court: Motion sustained, to which action of the Court counsel for the defendant excepted.

TESSA J. LEWIS,  
having been first duly sworn, testified as follows:

Examined by Mr. Fine:

Q. You are Tessa J. Lewis, are you not?

A. Yes, sir.

Q. You are the administratrix of the estate of G. F. Stroebel, deceased?

A. Yes.

Q. And you gave a bond, with a surety company as your surety, duly filed in the Circuit Court of Princess Anne County?

A. Yes.

Q. Were you familiar with the affairs of Mr. Stroebel?

A. Yes; I was.

Q. How long did you work for him prior to his death?

A. About two years.

Q. Are you familiar with the divorce proceedings between Mr. and Mrs. Stroebel when there was a settlement?

A. No.

page 77 } Q. You were not familiar with the divorce proceedings?

A. No.

Q. Do you remember when he died in December, 1939—the date?

A. The 11th.

Q. Prior to his death and prior to the divorce proceeding had matters between him and his wife been settled?

A. Yes; they had.

Q. How do you know that?

A. Because I heard him say they were.

*Tessa J. Lewis.*

Q. You heard him say that they were?

A. Yes, sir.

Q. Did he ever own one thousand shares of Building and Loan Association stock, either himself or jointly with anyone?

A. No, sir.

Mr. Kellam: I would make objection, but I understand I can make it later, and I will not make it now.

The Court: All right.

By Mr. Fine:

Q. Were you familiar with his business affairs?

A. Yes; I was.

Q. Did you help conduct the store down there with him?

A. I did.

page 78 } Q. Has there ever been any demand by Mrs. Stroebel, by Mr. Ashburn or Mr. Agelasto, or any other lawyer, about a thousand shares of Building and Loan Association stock?

A. No, there has not.

Q. Was first knowledge of the demand of a thousand shares when papers were served on you?

A. Yes; that is the first I knew of it.

Mr. Kellam: Your Honor, we object to the form of the question.

The Court: You want to object to every question?

Mr. Kellam: Yes, sir.

Mr. Fine: I didn't so understand it.

The Court: All right; object to each one; the objection is sustained as to that particular one.

Mr. Kellam: Yes, sir.

The Court: And note an exception each time, Mr. Phlegar.

By Mr. Fine:

Q. Does Mr. Stroebel owe Mrs. Stroebel anything?

Mr. Kellam: Objected to.

The Court: Objection sustained. Answer the question.

A. The nearest of my ability, all agreements have been paid.

*Tessa J. Lewis.*

The Court: What did she say?  
 page 79 } Mr. Bridgers: She said "The nearest of my  
 ability all agreements have been paid." I don't  
 know what she means by that.

By Mr. Fine:

Q. When the Building and Loan stock was sold by Mr. Woodhouse, did Mrs. Stroebel know about it?

Mr. Kellam: How in the world can she say that?

A. They both voted under that agreement.

By Mr. Fine:

Q. Do you know that of your own knowledge?

A. Because Mr. Woodhouse sometimes had the paper made out so he could go up there and sell the bonds.

Q. The Building and Loan Association stock was in both names?

A. Yes.

Mr. Kellam: We object.

Mr. Fine: The depositions so indicate it.

Mr. Bridgers: The depositions may, but this witness can't testify to it.

By Mr. Fine:

Q. Do you know that they were in both names?

A. Yes.

Q. Did she get her share of it?

A. Yes, sir.

Mr. Kellam: We object.

The Court: If she knows it, I think she can testify to it.

page 80 } By Mr. Fine:

Q. Now, in the lifetime of Mr. Stroebel, wasn't he also represented by Mr. McBain?

A. Yes, sir.

Mr. Kellam: I object to that.

The Court: I sustain the objection.

By Mr. Fine:

Q. And these two and a half shares of stock now outstand-

*Tessa J. Lewis.*

ing, did or did not Mrs. Stroebe! think that stock was sold?

Mr. Kellam: Objected to.

The Court: Sustained.

A. He wrote about it.

By Mr. Fine: For the purposes of the record:

Q. And did he, or not, write to the Building and Loan Association?

A. Yes; he did.

Mr. Kellam: We object to that.

The Court: Objection sustained. It has nothing to do with this case.

By Mr. Fine:

Q. And did not Mr. Woodhouse state that that certificate had been misplaced? Is that a letter (handing paper)?

A. Yes.

Mr. Kellam: We object to that, if your Honor please.

Mr. Fine: I will read the letter for the purposes of the record.  
page 81 } The Court: You can file it. I have sustained the objection.

Note: The letter referred to is filed marked "Exhibit No. 12, July 30, 1942," and is as follows:

"EQUITABLE  
BUILDING AND LOAN ASSOCIATION

1421 Atlantic Ave.  
Atlantic City, N. J.

September 17, 1938

"Willard P. McBain, Esq.,  
411 Board of Trade Building  
Norfolk, Virginia.

*Re: G. F. Stroebe!*

"Dear Mr. McBain:

"In response to your letter of September 15, 1938 and

*Tessa J. Lewis.*

supplementing our own letter of June 24, 1938, we enclose you herewith a clipping from the Atlantic City Daily Press financial section in which you will find the names of several persons who might be interested in purchasing the shares of your client, Mr. G. F. Stroebel.

"With our letter of June 24, 1938, we enclosed you a new certificate, No. 3526, in the amount of \$2,000 in the name of G. F. Stroebel, rewritten from Certificate No. 737. Our records also show as outstanding in the name of G. F. Stroebel a Certificate No. 1195 for 2½ shares in the face amount of \$500.

"We would appreciate it if you will advise Mr. Stroebel that Certificate No. 3536 is in your possession, since a Mr. S. J. Woodhouse of London Bridge, Virginia, advised this office on September 13 that Mr. Stroebel had misplaced this certificate.

"Very truly yours,

"EQUITABLE BUILDING & LOAN ASSN  
"JAMES W. CULLEN, Secretary"

page 82 } Mr. Kellam: I renew my motion to strike out  
the letter.

The Court: The motion is sustained.

By Mr. Fine:

Q. Did Mr. Stroebel ever, in his lifetime, own, jointly or individually, a thousand shares of Building and Loan stock?

A. No, he has not.

Mr. Kellam: We would like to object, your Honor.

By Mr. Fine:

Q. Do you know that of your own knowledge?

A. Of my own knowledge.

Q. Did he ever own any more than the 25 shares of Building and Loan Association stock that has been cashed in, and for which we received \$1,500, and the two and a half shares that are still on the books of the Equitable Building and Loan?

A. That is all.

Mr. Kellam: We object.



*Tessa J. Lewis.*

By Mr. Fine:

Q. Are you familiar with all the records?

A. Yes.

Q. Have you made diligent search for them all?

A. Yes, sir.

Mr. Fine: That is all.

The Court: The objections are sustained and exception noted by the defendant.

page 83 } The Court: Is there any other testimony?

Mr. Fine: Yes, sir. Your Honor, I am penalized by not taking the testimony of the lady in Iowa. I think if I could take her deposition and cross-examine her it would be conclusive.

Since my friend has not agreed to Mr. Bradford's testimony, I would like to take his testimony and put it in the record, if your Honor please.

The Court: If you want to take his testimony, I will permit you to do so. I overrule your motion to continue for the purpose of taking the deposition in Burlington.

Mr. Fine: I would like to take the deposition in Atlantic City over again.

The Court: No. The case was set for today; the Court has something else to do besides continuing the matter so as to take depositions.

Mr. Fine: I was misled.

The Court: That motion is overruled. As to Mr. Bradford's testimony, you can take that.

Mr. Fine: How about my answer and cross-bill?

The Court: That is in; you have filed it.

Mr. Fine: I understood I was only going to trial on the notice of motion.

The Court: I understood the trial would be had and determined today, and I am going to do it.

page 84 } Mr. Fine: On the answer and cross-bill in equity?

The Court: Yes.

Mr. Fine: I would like to do it, but I can't do it today.

The Court: You should have had your witness here.

Mr. Fine: But counsel told me that you would not hear it today.

The Court: I can't help what counsel told you.

Mr. Fine: The matter has not matured. They have not accepted service.

*Russell T. Bradford.*

The Court: I will make them do it.

Mr. Fine: All right. You are the captain, and I will have to take my orders from you.

Mr. Bridgers: We don't know when Mr. Bradford will be available.

Mr. Fine: I have done my part to get him here.

The Court: To accommodate you, I will take a recess until half past one o'clock. If he is not here, I will set another time for his deposition, and then you can go ahead and argue your case right after dinner.

(Thereupon, at 12:50 a recess was taken until 1:30, at the expiration of which the Court reconvened with the same parties present as heretofore noted.

page 85 }        RUSSELL T. BRADFORD,  
              having been first duly sworn, testified as follows:

Examined by Mr. Fine:

Q. You are Mr. Russell T. Bradford?

A. Yes.

Q. Mr. Bradford, you have been practicing law for how many years?

A. About twenty-one years.

Q. Mr. Bradford, you are also Assistant United States District Attorney for the Eastern District of Virginia, are you not?

A. Yes.

Q. And I believe, Mr. Bradford, you were associated with Mr. Alfred Anderson for a number of years, were you not?

A. We had office space together.

Q. Mr. Bradford, I hand you Exhibit No. 8, and ask you if you did not write this letter to Miss Tessa J. Lewis, March 15, 1940?

A. Yes; that is my signature.

Q. Will you please read it, Mr. Bradford?

A. This letter is on my stationery under date March 15, 1940, addressed to Miss Tessa J. Lewis: "It will be very much appreciated if, when you are next in town, you will drop by my office, or give me the name of your attorney in order that I may get in touch with him. Thanking you  
page 86 } for your attention, I am, very truly yours." I wrote that letter.

Q. Mr. Bradford, by reference to that, did you, or not, have a conversation with Louis B. Fine?

*Russell T. Bradford.*

A. Mr. Fine, I don't remember.

Q. I hand you a letter dated March 5 from O. M. Burrus, and ask you if you did not have that matter in hand which is the subject matter contained in regard to your letter addressed to Tessa Lewis?

Mr. Kellam: I object to that for this reason: In the first place, it is not addressed to Mr. Bradford; and, in the second place, he said he and Mr. Anderson had joint offices, but he did not say that they were engaged together with their various clients.

Mr. Fine: Mr. Anderson was City Attorney, and that will come out in the evidence in time.

The Court: Let him get through.

Witness: My recollection is that Mr. Alfred Anderson became City Attorney December 1, 1939, and he turned over to me his practice. Prior to that time I had been associated with the firm of Vandeventer & Black, in Norfolk, but, when he became City Attorney, I came back to the former association that I had had. I had formerly been with Shelton and Anderson with an office arrangement, and after Mr. Shelton's death I continued with Mr. Anderson with an office arrangement, and about 1934 went with Vandeventer & Black. When he became City Attorney, Mr. Anderson gave me his practice. My recollection is, although it is not clear at all, that this letter did come to Mr. Anderson, and, according to the arrangement we had, I wrote that letter probably after having received this letter.

By Mr. Fine:

Q. Now, when you say "this letter" you refer to Exhibit No. 5, do you not?

A. That is right. All of this is very hazy in my mind.

Q. And Exhibit No. 5 is as follows: To Mr. Anderson: "I am enclosing an assignment for transfer of stock on the company books which it will be necessary to have the administratrix sign before they will transfer the stock on the books of the company. This stock was given to her (my aunt Mrs. Stroebel) before her husband's death and was in both their names. The stock is in her possession also. Would you please see if the Tessa J. Lewis mentioned will sign the enclosed paper, and return same to me. Whatever the charge is you may also send to me. If you are unable to secure the signature will you please return the paper to me. Yours truly N. O. Burrus."

*Russell T. Bradford.*

Did you, or not, receive, in company with Exhibit No. 5, Exhibit No. 6 and Exhibit No. 7?

A. I am not sure whether this was a part, or not, Mr. Fine. It may have been, but it has been quite a page 88 } few years ago, and it is a matter which did not make much impression on me, and I haven't much recollection about it. The more I think of this, I think you did come to my office about that. The facts of this are very, very vague.

Q. Didn't you hand me this letter No. 5, and No. 6 and No. 7? No. 7 is the letter from the Bank of Burlington to O. M. Burrus.

A. That may be true. I don't recollect what I gave you. It probably is true.

Q. Did you ever make demand for a thousand shares of stock?

A. Do any of these papers indicate how many shares there were?

Q. No, except two and a half shares of income stock.

A. I don't recall the number of shares.

Q. If this paper is correct and you handed it to me, it states two and a half shares; is that correct?

A. It speaks for itself.

Q. And this letter from the bank covers the assignment of the stock, doesn't it, addressed to Norman O. Burrus, from whom Mr. Anderson received the other?

A. That is a matter for the Court to determine.

Q. But they are the letters you handled?

A. I think so. I wish my recollection were clearer.

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#### CROSS EXAMINATION.

By Mr. Kellam: Without waiving objections.

Q. Were you familiar at all with an agreement alleged to have been entered into between Mr. and Mrs. Stroebel, Mr. Anderson representing Mrs. Stroebel and Mr. Ralph Daughton Mr. Stroebel?

A. I remember I came over to Mr. Anderson's office about September 1938 with the view of renewing old acquaintances then in his office prior to that, because he was leaving the first of January 1939, and I remember there were some papers drawn, and, since you mention Mr. Daughton's name, I remember that he was representing one of the parties. I was not in the drawing of the papers, but I do recollect these papers.

*Miss Tessa Lewis.*

Mr. Fine: I wish to re-introduce these papers which have already been marked.

The Court: They have already been marked.

Mr. Fine: I understand, but I want to put them in again.

The Court: As to the objections which Mr. Kellam has made, I sustain the objection.

Mr. Fine: I except.

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MISS TESSA LEWIS,  
recalled, testified as follows:

Examined by Mr. Fine:

Q. I hand you Exhibit No. 8, which is a letter from Mr. Bradford; is that the letter which Mr. Bradford wrote and which you handed me?

A. Yes.

Mr. Kellam: The same objection as to that.

By Mr. Fine:

Q. I ask you whether or not these are the letters which you handed me by Mr. Bradford, and whether the demand was for two and a half shares of stock?

A. Yes.

Q. Those are the letters which you have seen from me to you?

A. Yes.

Q. And you are referring to Exhibits Nos. 5, 6 and 7?

A. That is right.

Q. Has Mr. Bradford ever made any demand on you—

The Court: That is already testified to.

A. Only two and a half.

By Mr. Fine:

Q. And this was not seen until you got the interest in the property?

A. That is right.

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CROSS EXAMINATION.

By Mr. Kellam: Without waiving objections.

Q. Do I understand you to say you were present at Mr.

*Miss Tessa Lewis.*

Fine's office at a conference between Mr. Bradford and Mr. Fine?

A. In conference with them?

Q. Were you present at Mr. Fine's office at a conference between Mr. Fine and Mr. Bradford?

A. I was not in any conference with them.

Q. Were you there when Mr. Fine and Mr. Bradford were talking about this matter—Mr. Fine and Mr. Bradford?

A. When they were talking about these papers.

Q. Where was it?

A. When he told me—when I got this letter—

Q. Who?

A. Mr. Bradford.

Q. You got the letter from Mr. Bradford?

A. Yes.

Q. Then what did you do?

A. I went up to Mr. Fine's office.

Q. Then when did you see Mr. Bradford?

A. I saw him today.

Q. That is the first time, isn't it, since that letter? Isn't that the first time you ever saw him, Miss Lewis?

page 92 } A. I don't recall.

Q. Isn't that the first time you ever saw Mr. Bradford?

A. No; I have seen him before.

Q. Where did you see him?

A. Up at his office.

Q. At whose office?

A. Mr. Fine's office.

Q. You saw Mr. Bradford up at Mr. Fine's office?

A. Yes.

Q. When was it?

A. That was a long time ago.

Q. What did you see him at Mr. Fine's office about?

A. I went to see him about this letter that he wrote.

Q. You went to Mr. Fine's office to see about the letter Mr. Bradford wrote?

A. Yes; to find out what it was all about.

Q. And you found Mr. Bradford up there at that time?

A. I believe it was at that time.

Q. Had you told Mr. Fine when you were coming in to see him?

A. Lots of times I had appointments with him.

Q. I ask you if you told Mr. Fine you were coming in to see him about this letter of Mr. Bradford?

*Miss Tessa Lewis.*

A. Did I come to see him about this letter?

Q. About this letter Mr. Bradford wrote?

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A. Do you mean I told Mr. Fine?

it?

Q. Yes, that you were coming to see him about

A. I sent the letter to him.

Q. You sent it to him?

A. I made an appointment with him.

Q. You made an appointment with whom?

A. Mr. Fine.

Q. Then you sent it, and did not talk to him?

A. I don't remember whether I took it in or sent it to him.

Q. As a matter of fact, you don't know whether you had ever seen Mr. Bradford before today, or not?

A. Yes; I had seen him before.

Q. How often did you see him in Mr. Fine's office?

A. Once I remember.

Q. Did you ever see him more than once?

A. I don't think I did.

Q. Where was Mr. Fine's office then?

A. In the Bank of Commerce Building.

Q. How many letters did you receive in reference to this matter you are testifying about?

A. This is the first one I got.

Q. Is that the first you got?

A. Yes.

Q. Did you get any more than that?

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A. No. This one here.

Q. This is the only one here?

A. Yes.

Mr. Fine: That is Exhibit No. 8.

Witness: That was back in 1939.

By Mr. Kellam:

Q. Did you ever get this?

A. These were handed over in Mr. Fine's office.

Q. Who handed them to you?

A. Mr. Bradford.

Q. Mr. Bradford, at Mr. Fine's office, handed all those letters?

A. Yes.

Q. And you were there and saw them?

A. Yes.

page 95 } In the Circuit Court of Princess Anne County,  
Virginia.

Mrs. Jennie Burrus Stroebel

v.

Tessa Lewis, Executrix of the Estate of G. F. Stroebel, sometimes known as W. F. Stroebel.

### NOTICE OF APPEAL.

To Messrs. Raymond B. Bridgers and V. Hope Kellam, Attorneys for Jennie Burrus Stroebel:

PLEASE TAKE NOTICE that on the 2nd day of October, 1942, at 10:30 o'clock A. M., or as soon thereafter as we may be heard, at the Courtroom of the Circuit Court of the City of Portsmouth, Va., the undersigned will present to Hon. B. D. White, Judge of the 28th Judicial Circuit, who presided over the trial of the above mentioned case, which is pending in the Circuit Court of Princess Anne County, Virginia, sitting in the Circuit Court of the City of Portsmouth, Virginia, July 30, 1942, stenographic report of the testimony and other incidents of the trial in the above case, to be authenticated and verified by him.

And also that the undersigned will, at 12 o'clock noon of the same day, *place*, request the Clerk of the said Court at his offices to make up and deliver to counsel a transcript of the record in the above entitled cause for the purpose of presenting the same with a petition to the Supreme Court of Appeals of Virginia for a writ of error and *supersedeas* therein.

TESSA LEWIS,  
Executrix of the Estate of G. F. Stroebel, sometimes known as W. F. Stroebel.

By LOUIS B. FINE,  
Her Attorney.

Service accepted this 29 day of Sept., 1942.

RAYMOND B. BRIDGERS,  
V. HOPE KELLAM,  
Attorneys for the Complainant.



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## JUDGE'S CERTIFICATE.

I, B. D. White, Judge of the Circuit Court of Princess Anne County, Virginia, who presided over the foregoing trial of Jennie Burrus Stroebel *v.* Tessa Lewis, Executrix of the Estate of G. F. Stroebel, sometimes known as W. F. Stroebel, in the Circuit Court of Princess Anne County, Virginia, July 30, 1942, do certify that the foregoing is a true and correct copy and report of all the evidence and all other incidents of the said trial of the said cause, with the objections and exceptions of the respective parties as therein set forth.

And I further certify that the attorneys for the plaintiff had reasonable notice, in writing, given by counsel for the defendant, of the time and place when the foregoing report of the testimony and other incidents of the trial would be tendered and presented to the undersigned for signature and authentication.

Given under my hand this 2d day of October, 1942, within sixty days after the entry of the final judgment in said cause.

B. D. WHITE,  
Judge of the Circuit Court of Princess  
Anne County, Virginia.

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## CLERK'S CERTIFICATE.

I, William F. Hudgins, Clerk of the Circuit Court of Princess Anne County, Virginia, do certify that the foregoing is a true transcript of the records in the case of Mrs. Jennie Burrus Stroebel, Plaintiff *v.* Tessa Lewis, Executrix of the Estate of G. F. Stroebel, sometimes known as W. F. Stroebel, Defendant, lately pending in said Court.

I do further certify that the same was not made up, completed and delivered until the plaintiff had received reasonable notice thereof, and of the intention of the defendant to apply to the Supreme Court of Appeals of Virginia for a writ of error to the judgment therein.

Given under my hand this 21st day of October, 1942.

WILLIAM F. HUDGINS,  
Clerk of the Circuit Court of Princess  
Anne County, Virginia.

A Copy—Teste:

M. B. WATTS, C. C.

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