

(In Two Volumes)

Record No. 5274

In the
Supreme Court of Appeals of Virginia
at Richmond

ROBERT R. EASON, ET AL.

v.

CAMILLUS F. EASON, ET AL.

FROM THE CIRCUIT COURT OF NORFOLK COUNTY

RULE 5:12—BRIEFS.

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

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

HOWARD G. TURNER, Clerk.

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

Samuel W. Eason.

A. No, but I have a fairly good memory. I remember things that go on.

Q. All right, sir. So that the purpose of this thing—

A. I can't remember every word that was said, but in a general way, I mean, that was what occurred.

Q. Well, she told you time and time again in the letters what the purpose of it was for doing it, it's in your letters all through—

A. Yes.

Q. No question about that being a delusion, was it?

A. She wanted us to take care of the place.

Q. Well, I say it wasn't any delusion that she told you in her letters she wrote to you that was the purpose of turning over to you all the property?

A. She wanted to do it, period.

Q. Yes. All right. Now, at that time did you not tell her this: That if she wanted her property back at any time after this trouble blew over you all would be perfectly

Vol. II willing to convey it to her?

page 234 } A. Nope.

Q. Well, you would have told her that?

A. I didn't.

Q. Well, I say you would have?

A. Well, I didn't tell her that.

Q. Well, she said not once but 25 or 50 times in her letters that you did tell her that.

A. That was one of her delusions. I never told her that.

Q. It was a delusion on her part?

A. You bet.

Q. Well, you finally did turn it back to her, Doctor?

A. I did, yes, sir.

Q. And we will come to the reason for that a little later.

A. All right.

Q. Now, she was upset, very much upset in 1955 over the circumstances of LaSalle's wife, the trouble she was having with her, wasn't she?

A. Yes.

Q. She had absolute confidence in you and Robert at that time, did she not?

A. She did.

Vol. II Q. And you went over and had a deed prepared,
page 235 } and I believe you say you were present over in
Mr. McBryde Webb's office?

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A. And so was she at the same time. She went along with us.

Q. Yes, sir, the three of you?

A. The three of us.

Q. And in that deed there was a reservation of certain life interest and timber rights on her part?

A. For her protection.

Q. Now, later on, when she started talking about selling that timber you all took an interest in that, didn't you, about the sale of that timber?

A. Yes, we had an interest in the sale of it, sure.

Q. And your interest was such that finally on March the first, 1956 a second deed was conveyed to you conveying the timber rights?

A. Yes, sir.

Q. And at that time you told us a moment ago she was incompetent?

A. She was incompetent.

Q. That a purported consideration of \$52,000.00 was paid evidenced by nonnegotiable notes which you all gave her?

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page 236 }

A. Correct.

Q. Now, I ask you, Doctor, if you did not tell her on that occasion that if she did not sign that deed you were going to see that she went to the asylum?

A. No, sir.

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By Mr. Garrett:

Q. I have before me the sworn bill of complaint of Mary Frances Eason filed in this court subscribed and sworn to on April the 27th, 1956, and I will ask you if this is correct:

Vol. II

(Reading) "That on or about the 1st day of page 237 } March, 1956, your complainant," and that is Mary Frances Eason, "by virtue of duress, coercion and undue influence exerted upon and against her by the said defendants, was caused and forced to sign and execute a proposed deed conveying all of the standing timber on the real estate above mentioned to the said defendants for a supposed consideration of \$42,000.00, said deed being duly of record in the Clerk's Office of the Circuit Court of Norfolk County in Deed Book 1205, Page 276, reference to which is hereby made;

Samuel W. Eason.

that in order to secure the signature of your complainant to said deed, the said defendants, and each of them, among other things, threatened to have your complainant committed to an asylum unless she sign and execute the said deed."

Now, I ask you: Did you make such a statement as that to her?

A. No, I did not.

Q. Well, this is already in evidence so we will offer it to contradict you at this time.

Now, Doctor Eason, let me ask you this question. When did you—
Vol. II tion. When did you—
page 238 }

A. May I say one thing there?

Q. Yes, sir.

A. She was in Mr. Willcox' office when that thing was signed, and Mr. Thomas Willcox, Sr. came in at the same time and was nothing said about any asylum or anything else. That was one of her delusions.

Q. Anything that is against you getting the property is a delusion, isn't it, Doctor, briefly stated?

A. She had that property already.

Q. Mary Eason's signature is on that paper?

A. Yes, sir, that is her signature.

Q. All right, sir, it's in evidence. Now, when was it that you were taking her around the people to find out if she was competent?

A. That was, I think that was in the fall of 1955.

Q. Wasn't it around the time—

A. Wait a minute—you make your statement, then it will probably make my—

Q. No, sir.

A. As far as I can remember it was in 1955 or thereafter.

Q. Or thereafter. Well—

A. Shortly thereafter.

Q. Well, I suggest to you it was around 1956
Vol. II when you were about to get this timber deed?

page 239 }

A. Well, I say shortly thereafter. I knew it was sometime along in that time, exactly the date, I couldn't fix.

Q. What you were doing was because you wanted to be doubly sure that you got a good deed from her, wasn't it, on the timber?

A. Mr. Willcox thought it was wise to do that.

Q. Now, you went to Dr.—

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A. And so I told Aunt Mary, I said "Mr. Willcox thinks it is the right thing to do to go around and get these statements at your age so we can go ahead and sell this timber which is falling down because the bugs were eating it," and so she went with us to do it.

Q. Well, now, you went—

A. She knew exactly what we were up to.

Q. Well, tell me when you are finished and I will—

A. I'm through.

Q. Are you finished?

A. Yes.

Q. You took her out to Dr. Harrington, did you not?

A. Yes.

Q. And is he a competent practicing physician
Vol. II as far as you know in this area?

page 240 } A. A very fine reputation.

Q. And he did not find her suffering from any
paranoia or any incompetency, did he?

A. That question wasn't brought up.

Q. He has testified in this case with you sitting in the
courtroom?

A. He said nothing.

Q. He said nothing?

A. He didn't say she was incompetent or paranoid either,
or he didn't say she was competent.

Q. Where is that statement he gave you?

A. I haven't got it. It was given to Mr. Wilcox.

Q. But you were the one that wanted the evidence of her
competency, why would you not have such an important
paper such as that in your hands?

A. When we got the paper we took them back to Mr. Will-
cox. That is the last I saw of them.

Q. All right, sir. So you went to Dr. Harrington and got
a statement from him that in 1956 or thereabouts she was
competent, is that correct?

A. That is correct.

Q. You went down to Elizabeth City, North Carolina and
got a statement from the banker down there that
Vol. II she was competent, did you not?
page 241 } A. That is correct.

Q. Is that correct? You went to Mr. Harry
Fruitt over here connected with the bank and got a statement
that she was competent, is that correct?

A. That's correct.

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Q. Now, who else did you go to?

A. That's all.

Q. But all this time you as a physician knew that there was a lady who was incompetent and you go around getting statements from people to the contrary, is that correct?

A. That is correct.

Q. Well, that was a sort of little subterfuge, wasn't it, Doctor?

A. No, not on my part.

Q. Well, you were going to get the timber, whose part is it?

A. I went around to get those letters because Mr. Willcox thought it was the wise thing to do.

Q. But you knew it wasn't the truthful thing though, didn't you?

A. It was the truth then as far as I am concerned, yes.

Q. When you say that you knew she was not
Vol. II competent and you go around to a banker and you
page 242 } go around to a doctor to give you a statement to
show she was competent, you say that is being a
truthful presentation?

A. That was for her protection also. She was in the family.

* * * * *

By Mr. Garrett:

Q. How were you protecting her by taking title to the timber in your name for a purported consideration of \$42,000.00?

A. She was given notes for that protection.

Q. Well, the notes that you gave her, Doctor, were non-negotiable?

A. No, they were just protecting her.

Q. Well, the note you gave her, she could not go
Vol. II down the street and borrow the money on them or
page 243 } hypothecate them. They were non-negotiable.

A. She wasn't supposed to do that carrying them around and cash them as checks.

Q. Well, it was her money, wasn't it?

A. It was her money, but she told us what to do, to go ahead and use it, make up a trust fund, anything we wanted to do with it.

Q. All right, sir. So, you gave these notes which were

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non-negotiable to her payable at some future time, and in exchange for that you got this timber deed, is that correct?

A. (Pause) I think that was about the same time, yes.

Q. All right, sir. Now, you remember a suit was brought here. I read you part of the bill of complaint against you?

A. Yes, I remember.

Q. Remember that?

A. Yes. That was the one in April or May, the same time.

Q. That was April, 1956, after you advertised the timber for sale under that circular. You've got that. You remember that, don't you?

A. Unh-huh.

Vol. II Q. And you remember that later the timber was
page 244 } sold for \$57,000.00 and the money was impounded
 by the court?

A. Correct.

Q. You remember that, don't you?

A. Yep.

Q. You remember that we came in this very court and that a settlement was reached whereby Miss Eason was to get that \$57,000.00 minus the expenses?

A. Correct.

Q. Remember that?

A. Correct.

Q. And an order was entered by this court directing the payment of \$41,650.00 to Miss Mary Eason?

A. Correct.

Q. Which was paid by this court. Did you at any time tell the Judge of this court or anybody that she was incompetent to receive \$41,650.00?

A. No, it was out of my hands entirely.

Q. Well, come, Doctor, here is an aunt of yours who was incompetent, and you are in this court and she is paid by check \$42,650.00 and you never once raised your voice for her protection and tell the court she is not competent?

A. (No response) I said nothing at that time.

Q. You said nothing, but you were in this court?

A. I was here, yes.

Vol. II Q. And she was in this court?

page 245 } A. Yep.

Q. Well now, how do you square that with your statement that she was incompetent if that is not too general a question to you?

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A. Look the lawyers' fees over.

Q. We will get to the lawyers' fees in just a minute. She blamed you for that, didn't she, Doctor?

A. How could she blame me for that?

* * * * *

By Mr. Garrett:

Q. She got no part of the money until the suit was filed in this court and was ordered to be paid?

A. After settlement.

Q. Yes, sir. Now, let's come down here to the counsel fees that were in this case. This order provided that Mr. Allen, who was your attorney, got \$5,000.00 out of it, didn't he?

A. Correct.

Vol. II Q. It provided that Mr. Thomas H. Willcox,
page 246 } who was your attorney, get \$2,500.00 out of it?

A. Correct.

Q. And that I as Miss Mary's attorney get \$5,000.00?

A. They are the figures.

Q. Yes, sir. Now, I ask you if she does not in her letters tell you that you were responsible for having this \$10,000 or \$12,000 in lawyers' fees to come out of her money?

A. She did not.

Q. She never referred to it?

A. She never referred to it. I mean she never told me that I was responsible. She intimated that I stole it from her.

Q. Well, Doctor Eason, whether somebody stole it or how they got it her funds were diminished by that much money, wasn't it?

A. Yes, that's right.

Q. And that was diminished on account of that litigation, wasn't it?

A. Correct.

Q. Now, you told us that she was incompetent in 1956. Were you writing letters to her to just kid her along about she knew what she was doing, or did you mean it?

* * * * *

Vol. II (Document shown to Mr. Allen for examina-
page 247 } tion.)

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A. Can I see the letter?

By Mr. Garrett:

Q. Yes, sir, I am going to hand it to you in just a second. Is that your handwriting?

(Handed to witness for examination.)

A. Yes, that is my handwriting.

Q. Well, what is the date of that?

A. 5/15/56.

Q. May the 15th, 1956?

A. That's right.

* * * * *

Vol. II

page 248 } Q. How did you describe her in the letter about the second line there?

A. (Reading) " * * * I am sure you are a very smart and practical business woman * * *" Shall I read the rest?

Q. No, you can read it for them if you want later on. So, you were sure that she was a very smart and practical business woman in 1956?

A. That is what I wrote at that time.

Q. Well, I know you wrote it in the letter, but did you mean it or just saying something—

A. I was just saying something.

Mr. Garrett: Just saying those things. We would like to that to be marked as Proponents' Exhibit.

* * * * *

By Mr. Garrett:

Q. All right, go ahead.

Vol. II

page 249 } The Court: Read the whole thing, Doctor.
The Witness: (Reading) "May 15, 1959.

"Dear Aunt Mary,

"Regardless of what is going on in the business world, I think of you daily * * *"

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Mr. Allen: Think what?

The Witness: "I think of you daily."

(Continuing) "I am sure you are a very smart and practical business woman. Have you stopped to ask or think what your very expensive lawyers are going to charge you if your present case is pursued? We could get together and save all this unnecessary expense if you will listen to the ones who really have your interest at heart. You have let someone turn you to bitter hatred towards me on unnecessary and unfounded grounds. You are being played to the hilt. Let me know.

"Love,

SAM."

By Mr. Garrett:

Q. Now, who was playing her to the hilt; was that the lawyer that you are talking about?

A. That is what it said, somebody was playing her to the hilt.

Vol. II Q. It was not impersonal. You wrote that page 250 } letter.

A. I wrote it.

Q. Were you saying that I was playing her to the hilt?

A. No, no, not personally at all.

Q. Well, Doctor, as a result of that suit she got 41,600 and some dollars that she wouldn't have gotten, didn't she?

A. If she had listened to my advice she would have saved all that too.

Q. Well, let's search your memory a little bit on that. Didn't you suggest even while that suit was going on that you take that money and put it in a trust and let her have the income from it?

A. Certainly I did.

Q. So that your proposal of giving her the income from her own money was supplemented by order of this Court giving her the money, wasn't it?

A. It was later on, yes. I mean that was the suggestion I made to her at that time to make a trust fund out of it and she can spend the income from it. It was a question of dissipating the whole thing. It was one of those trust funds you can dissolve at your own wish.

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Q. But you don't make those agreements to give back property at your own wish, do you?

Vol. II A. What do you mean?

page 251 } Q. Just what I said.

 A. This particular trust fund could be dissolved any time she wanted.

Q. Well, Doctor, would you mind telling me what business it was of yours whether she got all of her money or you put it in a trust so she could only get the income from it?

A. It was none of my business, but the suggestion was made. After all she had been taking all this money out of these banks and keeping it all around the house, so she said; because she was afraid of banks. I was trying to only suggest some approach to her where she could do something constructive to save the stuff.

Q. Why couldn't she put the money in the bank in her name?

A. She should have done anything she wanted to.

Q. If she could get it?

A. There was no question of getting it. I offered to put it in a trust fund, not an irrevocable trust fund. It could have been revoked.

Q. Why would you want your Aunt Mary to take her money and put it in a trust fund and let her have the income from it. Don't you think that it would rub her?

A. It didn't seem to rub her.

Q. It didn't rub her?

Vol. II A. No, she listened to all these things. She
page 252 } never heard of a trust fund before.

Q. Well, you suggested it, didn't you?

A. Certainly I did. I told her something about trust funds.

Q. Well, do you think that she threw her \$41,000 away or she still got it?

A. I don't know. I haven't any idea what she did with it.

Q. Doctor, was Miss Mary Eason competent on October the 24th, 1955 when she made a will leaving all property to you and Robert?

A. (Pause) October what?

Q. What date? October 24th, 1955.

A. I thought the will—

Q. Well, it was handed to me by somebody at your counsel's table. I presume it purports to be a copy of something. That was the one introduced in evidence.

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Mr. Allen: No, there was one introduced in evidence here.

Mr. Garrett: Well, I got this from you, Mr. Allen, because I sure didn't have it before.

Mr. Allen: Let me look at it. It is not the one Vol. II that was introduced in evidence.
page 253 } I think that is a copy of the original that was introduced in evidence here last week.

Mr. Garrett: Yes, I think it is.

By Mr. Garrett:

Q. Are you familiar with that will of October 24th, 1955?

A. Nope.

Q. It was drawn over in Mr. Willcox' office, I understood.

A. I wasn't there and don't know nothing about it.

Q. Never saw it?

A. I never saw it.

Q. Now, you said that—assuming that this was made because your counsel has introduced it in evidence—you say that her reference in the '59 will to LaSalle was a delusion. May I read you what she said in this will and see if you can make this out as a delusion:

(Reading) "I am making no provision—"

Mr. Bangel: I don't think he ought to put the question that way—"See if you can make it out."

By Mr. Garrett:

Q. Well, see what comment you have got to make on it. You have commented—

Vol. II

page 254 } The Court: It is proper cross examination.

By Mr. Garrett:

Q. You say the '59 provision for LaSalle is a delusion, what she had done for him. Now, I want to read this one that was drawn from what we can understand, in Mr. Willcox' office, in which you and your brother and your family did get everything, and compare this with what she said about LaSalle and see if you can give us any distinction.

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(Reading) "THIRD: I make no provision for my brother, JAMES L. EASON, by way of gift in this will as I have provided him comforts in the past, and he is also receiving a War Veteran's pension." Would you consider that paranoid there?

A. She had the same delusion about him all along.

Q. Well, Doctor, do you deny that she had provided him with comforts in the past?

A. I don't think she provided too many.

Q. Well, you don't think she provided too many?

A. Except to feed him.

Q. Well, you were here just occasionally, Doctor.

A. Just occasionally.

Q. Was he just fed?

Vol. II A. And got a little place to live.

page 255 } Q. That is not providing comforts? That is a delusion?

A. No, but the same delusion carried out in 1959 is entered in that will there, and she wrote that will specifically because of what had happened the year before in the marriage. That was the reason for that. She was still angry with them.

Q. But this will was prepared over there in Mr. Willcox' office?

A. Yes, the original.

The Court: The original is Contestants' Exhibit 4, October 24th, 1955, which was in Mr. McBryde Webb's office.

Mr. Garrett: All right, sir, I'm sorry.

By Mr. Garrett:

Q. In J. McBryde Webb's office, the attorney there?

A. Yes.

Q. You're not suggesting that he in any way tried to influence her thinking on that paragraph?

A. Nope.

Q. As a matter of fact he started—

Vol. II A. It was her own idea, her own delusion; no-
page 256 } body else.

Q. Well, why is it a delusion if you say you are not making any provisions because you have provided many comforts for him in the past?

A. You realize she was angry at him in 1954. She wanted

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Robert and I in 1955 to take care of everything. That was still anger. He was still married to this woman.

Q. You think that if you are angry with anybody that is a delusion?

A. Oh, no, not necessarily, but if you carry this anger over without any foundation to it, well, then you get to the delusion stage.

Q. Well, Mr. McBryde Webb, who apparently drew this will, started out in this case as one of your lawyers, didn't he?

A. He wrote the will. I wasn't around. I knew nothing about it.

Q. I didn't ask you if you were around, but he started out in this case as a lawyer for you?

A. He was one of our lawyers, yes.

Q. And now he is a witness?

A. Now he is a witness.

Q. Did you ever have any sharp words with your Aunt Mary?

A. (Pause) Any sharp words?

Vol. II

Q. Yes, sir.

page 257 }

A. (Pause) Well, I might have gotten a little angry at her at one time. I might have said a few things, but nothing that anyone can be offended at, I will put it that way.

Q. Do you remember one time coming from the airport in which Albert Ahlgren and Turner White were in the car that you told her to stay out of the woods and not cut any timber in there?

A. Nope.

Q. Do you deny that?

A. I deny that.

Q. I expect to contradict you, Doctor. Now, about this fraternity pin. You have had it the whole time, haven't you, since she gave it to you?

A. Yes, sir.

Q. Why did you write her a letter that you had mailed it to her?

A. She kept asking for that fraternity pin at all times. I write this letter and told her I had mailed it to her, but then I thought better of it and brought to her and when I went to give it to her she said "keep it."

Q. Well, Doctor, in the letters she wrote you on numerous occasions she referred to the fraternity pin, and she says in one letter that you hadn't sent it to her and would see the

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Post Master and prove it, and did you write back
Vol. II and say you were tracing it?
page 258 } A. I probably did.

Q. Why in the world would you mislead an old woman like that to think that you had sent her brother's fraternity pin back to her?

A. I told her that simply because I wanted to protect the fraternity pin, and later on when I did see her I offered to give it to her personally.

Q. But you did write her two letters telling her that you had sent it?

A. Yes, I remember that.

Q. And because—it wasn't any delusion on her part when she wrote back and told you she hadn't gotten it, was it?

A. No, that's right.

Q. Now, insofar as these people that were annoying her there at the property, you don't know of your own knowledge if people were coming there at night on her property and interfering with her and shining lights and creating trouble, do you?

A. Only by letters she wrote.

Q. But you have no knowledge that that is not true, do you?

A. (Pause) Well, from what I have heard from the witnesses I have heard here, I'd say that is a delusion.

Q. I am not talking—

Vol. II

page 259 } The Court: From your own knowledge.
The Witness: From my own knowledge?

By Mr. Garrett:

Q. I didn't ask you about what you have heard. I say of your own knowledge.

A. About people shining lights, you mean?

Q. Coming on the property molesting, shouting, making noise in front of the house and various things of that kind. Is that what she wrote you about?

A. No.

Q. You don't know whether somebody has tried to run her off the road, do you?

A. No.

Q. So when you call that a delusion you don't know whether it is a fact, do you?

A. Nope.

Q. Well, you could have found out very easily by asking,

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say Turner White or somebody that lived on the property, couldn't you?

A. (Pause) I could have but I didn't see him.

Q. Well, you were in the car with him at one time coming from the airport that time that I just called your attention about the alleged statement about not going into the timber, weren't you?

Vol. II
page 260 } A. I was in the car with him but I don't know, I don't remember what conversation went on.

Q. Now, Doctor, you recall that Miss Mary wrote you a letter and she wrote Robert a letter sometime between '56 and '57? I will fish through there if you don't remember. And asked you for one acre of land on that farm to build a little house on. Do you remember that?

A. Yes.

Q. And your reply and Robert's reply was you would not give it to her?

A. She had 500 acres to live on to do as she pleased, so—

Q. But Doctor, she only had a life interest at that time. Don't you remember that?

A. Yes, she did.

Q. If she went out and put a house on it that automatically went to you, didn't it, under that deed?

A. She wanted a certain amount of acreage.

Q. She wanted one measly acre, Doctor, isn't that true?

A. But she didn't say where she wanted it.

Q. Oh. She wrote you a pitiful letter and told you that the house was leaking and it was in bad shape and she wanted an acre of ground to build a little place for her and LaSalle, isn't that true?

Vol. II
page 261 } A. She wanted to build a house. I don't know about LaSalle. That might have been. It was only for herself to my recollection.

Q. All right. Did you write this letter? Can you identify it?

A. I did.

Q. What is the date on it?

A. 4/12/57.

Q. Read it to the jury and the court, please?

A. (Reading) "Dear Aunt Mary.

"I wrote to Robert about you acquiring the lot to build on. He refused your request. There is nothing more I can do about it. Received your last letter. I am sorry bitterness remains in your mind. I think it is for the best that I stop writing or phoning. Best wishes, Sam."

Samuel W. Eason.

Mr. Garrett: Will your Honor mark that in evidence?

The Court: Proponents' Exhibit 5.

(Received and marked in evidence by the Court as Proponents' Exhibit Number 5.)

By Mr. Garrett:

Q. April the 12th, 1957. And at that time, Doctor, Vol. II you had the first deed of May which gave you the page 262 } property and left the life interest in her, correct?

A. Correct.

Q. You had the timber deed of March 19th, 1956 which purportedly gave you the timber, is that correct?

A. Correct.

Q. She was asking you for one acre of land off that property there that she could put a house on and you tell her Robert says she can't have it?

A. Correct.

Q. Was it Robert's idea or yours?

A. (Pause) She did not say that. She said she wanted one acre of land.

Q. Well, let's look down at the bottom. Whose writing is that on the bottom of your letter?

(Shown to the witness.)

A. "I wanted to fix a little home for my brother. This is his reply."

Q. Who wrote that on there; whose handwriting is that?

A. Maybe mine or maybe hers.

Q. Doctor, you know it is not your handwriting.

A. It's hers, I think.

Q. Well, look at it closely so you won't have to think.

Vol. II Mr. Bangel: Well, he says it's hers.

page 263 } Mr. Garrett: Well, he hasn't until this minute.

A. If you care to compare this with some of the other letters, it doesn't look quite familiar. I will admit it is hers.

Q. At the bottom of this letter that you wrote refusing her request she wrote in her handwriting: "I wanted to fix a little home for my brother. This is his reply." Referring to your letter, wasn't it?

A. Referring to my letter.

Samuel W. Eason.

Q. Yes. Now, isn't it any wonder in April, 1957, that Aunt Mary felt bitter towards you and Robert?

A. She felt bitter then, but she felt bitter before.

Q. Well, before and afterwards, but let's see if we can stick—

A. She did at that time; yes.

Q. Is it any wonder to you that she would feel bitter towards you?

Mr. Bangel: If your Honor please, I object to "Is it any wonder to you." We submit that is not a question, that is argument.

Mr. Garrett: Well, now, wait. He is talking about delusion and why people are angry. I have a perfect right

Vol. II to—

page 264 } The Court: Overrule the objection.

Mr. Bangel: We save the point.

By Mr. Garrett:

Q. May I repeat the question. You as a physician and having particular knowledge of people's physical and somewhat mental makeup, is it any wonder to you that your Aunt Mary felt bitter and resentful to you in April of 1957 getting such a letter as that from you?

A. She did.

Q. Yes, Well, Doctor, from that time on the letters that you got from Aunt Mary were predominantly with one idea, namely, that you were to deed back to her her real estate?

A. And give back her money.

Q. Yes, Well, you got some money from her—

A. I—

Q. —and if she felt you had been ungrateful there was nothing wrong in asking you to give it back—

A. She gave it of her own free will.

Q. Yes, she gave it of her own free will. She put her real estate in your hands, didn't she?

A. She did.

Q. Did you promise to give her real estate back to her?

Vol. II A. She got it back but there was no promise
page 265 } about it.

Q. We are going to get to when she gets it back in just a few minutes but the point is in April of 1957 you still had the deed to the real estate and she had a life interest in it and that was all?

Samuel W. Eason.

A. That was all.

Q. All right, sir, And from that time on virtually every letter you got, or every other letter you got was a plea, a threat or a demand that you convey back her home and her property?

A. The same idea about the same things, the deep suspicion about the same thing.

Q. Doctor, from that time on there was constant pleas and requests and threats against you?

A. Unfounded threats, totally unfounded.

Q. We will see if they are unfounded. You finally got a letter from a Norfolk lawyer, did you not?

A. Yes.

Q. And she got her deed back and a release?

A. That's right.

Q. Now, you told us a while ago it was your conscience that made you do this thing or that it was the promise to deed it back. Now, I am going to suggest to you that it was the threat to come to Summit, New Jersey and sue you right in your home town that got the deed back—

Vol. II A. It was my conscience, and then she com-
page 266 } menced threatening. That was towards the latter
part of the situation.

Q. Your conscience started working a little bit when she wrote you a letter and told you that she was going to Summit, New Jersey and tell the whole story in your neighborhood?

A. Well, I had a good reputation in my neighborhood, and if she had ever come up there, why I would have had some individuals to look her over before she ever got to it.

Q. You would *get* a brother doctor—

A. Oh, no, I would have had a neutral bunch of doctors to look her over.

Q. You got one doctor to look her over to say she was all right, but you say she was incompetent?

A. Yes.

Q. Didn't you, sir?

A. What was that question?

Q. I say you got one doctor there to look her over to say she was all right when you are telling us she was incompetent.

A. I had a note to that effect, yes.

Q. Yes. And, anyway, you got a letter from a Norfolk lawyer named Mr. Lipkin, didn't you?

A. Correct.

Vol. II Q. And Mr. Lipkin told you that unless you
page 267 } conveyed this property back you were going to be
sued up in your home town?

Samuel W. Eason.

A. That's right.

Q. And it wasn't very long before the letter came back from you telling him that Mr. Willcox would take care of it?

A. I did.

Q. And then it was—

A. I sent the letter to Mr. Willcox.

Q. Yes. And then it was that you conveyed Miss Mary's property back to her free of this life or this reservation of title to you and an agreement to make a will?

A. What was the timber value?

Q. The timber value between what your letter—

A. Mr. Lipkin's letter and mine.

Q. Well, I think we can find that out for you.

(Document shown to opposing counsel for examination.)

Q. Did you write this letter?

(Handed to the witness for examination.)

A. Yes.

Q. What is the date of it?

A. 7/14/57.

Q. And what was the date of the communication you got from the lawyer?

Vol. II A. It must have been July the 12th, I guess.

page 268 } Q. So two days after you got the letter from this lawyer you replied to it and referred it to Mr.

Willcox?

A. Yes.

Q. Is that right?

A. Do you want me to read it?

Q. Yes.

A. (Reading) "Dear Mr. Lipkin,

"Your letter of July 12th, 1957 has been received." My impression is that Robert Eason received a somewhat similar letter. "... I have instructed Mr. Tom Willcox, Jr., who I think is in the same building as you are to take care of this situation. You will in the future confer with Mr. Willcox.

"Respectfully yours,

"SAM W. EASON."

Samuel W. Eason.

Mr. Garrett: Mark that an exhibit, if your Honor please.
The Court: Proponents' Exhibit Number 6.

(Received and marked in evidence by the Court as Proponent's Exhibit Number 6.)

By Mr. Garrett:

Q. Dr. Eason, you finally, after receipt of this Vol. II letter from Mr. Lipkin on November the 11th ex-
page 269 } ecuted what is known here as Exhibit 14 releasing
this property from any claim that you had?

A. Correct.

Q. All right, sir.

The Court: Let's have a break, gentlemen.

(The Court recessed at 3:45 o'clock P.M. At 4:00 o'clock P.M. the trial continued as follows:)

By Mr. Garrett:

Q. Dr. Eason, I just have one or two more questions to ask you. Do you remember writing a letter to Miss Mary calling her attention to the 40 acres that she bought with a statement that you understand Albert gets it?

A. Yes, sir, I do. I think I do. I would like to read the letter.

Q. Well, may I ask you before you read any letter or anything: Were you resentful of the fact that Albert might get something?

A. No, no.

(Document shown to opposing counsel for examination.)

By Mr. Garrett:

Q. This is August the 12, 1957. Did you write that letter?

Vol. II

page 270 } (Handed to the witness for examination.)

A. I did.

Q. Now, you can read the letter if you want to, but the part I want to ask you about is the last paragraph, is what I want to refresh your memory on.

A. (Reading) "What about the 40 acres you just bought.

Samuel W. Eason.

I understand Albert gets this!! All this situation means is keeping the lawyers in a bankroll which, of course, is why they are in business.

“Love,

“SAM.”

Q. Well, now, you can read anything you want to up there, but I want to know why you put two exclamation points behind this sentence: “What about the 40 acres you just bought, I understand Albert gets this” and two big exclamation points. Were you pleased or displeased with the idea of Albert—

A. I probably was just getting along that stage where I wasn’t pleased or displeased. It didn’t make one bit of difference to me.

Q. Dr. Eason, you wrote a letter in which you referred to 40 acres that she had bought and that you understood that Albert gets it and you put two exclamation marks behind it. Why did you put those marks there, were you pleased that he was going to get 40 acres of land or not?

Vol. II A. I told you it didn’t make any difference to
page 271 } me whether he got 40 acres. It was immaterial to
me.

Q. Didn’t you threaten in the next sentence that was going to make more work for the lawyers by giving that to Albert; isn’t that the purport—

A. “All this situation means is keeping the lawyers in a bankroll.”

Q. Yes. Well, how is her giving—

A. She was insane and she was going from one lawyer to another. That was the whole pattern of her existence.

Q. We are not talking about going to lawyers now. But you have said in there—

A. “. . . which, of course, is why they are in business.”

Q. All right. Well, how do you attach anybody being kept in a bankroll with wanting to give a faithful employee 40 acres of land?

A. Because she was going from one lawyer to another spending the money, but I could have put a question mark or just an exclamation mark or period. I just put it there. There was no particular reason.

Q. What business is it of yours if Aunt Mary wanted to

Samuel W. Eason.

Vol. II give a man who worked for her forty years 40
page 272 } acres of land?

A. I don't care whether she gave him 40 acres.

Q. What did you mean when you wrote "This situation means keeping lawyers in a bankroll because she wanted to give her own employee 40 acres of land?"

A. I was kidding her along. That was just a kidding sentence.

Q. That was just a kidding sentence?

A. Oh, yes, it was. I will read this over just once more to you.

Q. Yes.

A. "All this situation means is keeping the lawyers in a bankroll which, of course, is why they are in business."

Q. You were always telling her not to get any lawyer, you could handle it for her, weren't you?

A. I could. See, she was going from one lawyer to another which was certainly expensive.

Q. And you could take care of everything and save all that expense by just getting her property, couldn't you?

A. She certainly could by staying home and not running from one lawyer to another. She was only trying to get what she thought was her rights and not any justice to anybody else.

Q. That didn't have anything to do with you
Vol. II getting anything? She was giving Albert 40 acres
page 273 } of land. You brought it up in your letter.

A. It was all right with me, I didn't care what she gave Albert.

Q. It was all right with you?

A. Yes, sure. I was giving her some good advice.

Q. You were advising her not to give Albert 40 acres?

A. She had already given it to him.

Q. You said "I understand . . ."

A. I understood. That's how I got the information.

Q. I don't care—

A. I will tell you if you want to know.

The Court: You offer this as an exhibit?

Mr. Garrett: Yes, sir.

The Court: Exhibit Number 7.

(Received and marked evidence by the Court as Propo-
nents' Exhibit Number 7.)

Samuel W. Eason.

By Mr. Garrett:

Q. The truth of the matter is you were paying right close attention to any property transfers or anything Mary did with her money; you were following that Vol. II pretty closely?

page 274 } A. I was trying to protect her the best I could 300 miles away.

Q. How about this letter she wrote and said she would give everything to Wesley. Did this sound like a delusion to you?

A. A delusion?

Q. Yes, sir.

A. I read those letters but that didn't mean she was going to do it.

Q. Well, I didn't ask you what she was going to do. You read three or four letters from the stand saying she would give Wesley, who is your son, the property. Did that sound real sensible?

A. She had written that all along and intimated that's what she should have done years ago.

Q. Oh. Weren't you a little presumptuous as to who your Aunt Mary ought to give her property?

A. She was the one that volunteered that information. I didn't do it.

Q. Doctor, you are not a specialist in psychiatry, are you?

A. Nope.

Q. You are a general practitioner?

A. General practitioner.

Vol. II Q. Yes, sir. I have here what has been intro-
page 275 } duced as Proponents' Exhibit Number 1, the will.
Is that Aunt Mary's signature on that will?

A. Yes.

Q. That is a pretty good, clear and legible signature, isn't it?

A. You can understand it.

Q. You can? Let the jury see if that is bad. Pass it around. You say you can understand it.

(Shown to the jury for examination.)

By Mr. Garrett:

Q. And that is the signature of a lady about 82 years old?

A. She was 88.

Samuel W. Eason.

Q. She was 88?

A. That's right.

* * * * *

RE-DIRECT EXAMINATION.

By Mr. Allen:

* * * * *

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* * * * *

Q. I want to know whether the trouble related to the fear that if she should suddenly die LaSalle's wife would get the property through inheritance or through LaSalle getting it?

* * * * *

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page 277 }

* * * * *

A. She said she did not want LaSalle's wife to get any of the property.

By Mr. Allen:

Q. Now, Mr. Garrett handed you a bill of complaint filed by Miss Mary Eason in which she stated in that bill of complaint and which she swore to that you all had promised to give her this property after all that trouble was over, or give it back on demand or something. Did you have anything to do with filing that bill?

A. No, sir.

Q. Did you know anything about that until it was filed in Court?

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page 278 }

A. I did not.

Q. Did you file an answer to that bill in Court?

A. Which one was that for the original?

Q. That bill of complaint that she filed with those charges in there.

A. I am sure I did not.

Samuel W. Eason.

Q. I mean—

Mr. Garrett: Well, he did; we will agree to that.

Mr. Allen: Let me see the answer.

Mr. Garrett: We will agree to that.

A. I don't think I answered any complaint.

Mr. Allen: Let me see the answer to that bill there. We filed a certified copy.

By Mr. Allen:

Q. I hand you what purports to be an answer to that bill filed by Mr. Thomas H. Willcox, Jr., and will ask you if that is his signature to the answer.

Mr. Garrett: We admit that.

Mr. Allen: All right, sir.

May I read to the jury the paragraph denying what—the paragraph which Mr. Garrett read to you, Paragraph 4 of the Complaint and the answer filed by Mr. Willcox.

Vol. II (Reading) "The allegations of Paragraph 4 page 279 } are denied. Defendants assert that the complainant did sell to them the standing timber for the sum of \$42,000.00 payable at the rate of \$6,000.00 per year for seven years. proper notes were drawn, executed and delivered to complainant in exchange for her deed to the standing timber. The entire transaction was negotiated for a period of months and was entered into voluntarily by the complainant."

By Mr. Allen:

Q. Now, Mr. Garrett asked you about these certificates of competency. I believe they were referred to, and asked you where they were and why you did not have them. I hand them to you and ask you to identify them.

(Shown to Mr. Garrett for examination.)

Mr. Garrett: I presume he gave them to you, I would guess.

Mr. Allen: He gave it to Mr. Willcox and I got them from Mr. Willcox.

Samuel W. Eason.

By Mr. Allen:

Q. I ask you to identify them. They are the ones that Mr. Garrett called for.

(Handed to the witness for examination.)

Vol. II

page 280 } A. Did you want me to read them?

Mr. Garrett: Yes, sir, we do.

A. (Reading) "Merchants and Planters Bank, Norfolk 6, Virginia, December 8, 1955. To Whom It May Concern: This is to certify that I have known Miss Mary Frances Eason for at least 20 years. About two years ago I was transferred to this branch office of the above named bank and during this time I have had the opportunity to renew our old acquaintance and take care of her banking needs. She is apparently perfectly capable of handling her affairs and it has been my observation that she is entirely able to manage her personal business affairs,

"Yours truly.

"Harry A. Fruit."

This letter is from the First & Citizens National Bank, Elizabeth City, North Carolina. (Reading) "To Whom It May Concern: This is to advise that Miss Mary F. Eason of Hickory, Virginia is a valued customer of this bank and, in the opinion of the undersigned, is of sound mind and capable of properly handling her business affairs.

"Yours very truly,

W. E. Griffin."

Mr. Garrett: His position, Doctor?

By Mr. Allen:

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Q. What is Mr. Griffin's position?

page 281 }

A. He is executive vice-president.

Mr. Garrett: Yes.

A. This is a letter from Dr. Herrington, M. D., December 8, 1955. (Reading) "This is to certify that I have known and attended Miss Mary Eason of Hickory, Virginia for several years. She is mentally able to take care of her business transactions.

M. S. Herrington."

Samuel W. Eason.

By Mr. Allen::

Q. Are they the certificates that you testified that were gotten at the instance of Mr. Thomas H. Willcox?

A. Yes, sir.

Mr. Allen: We offer them in evidence, your Honor.

The Court: All right, Contestants' Exhibit 18.

(Received and marked in evidence by the Court as Contestants' Exhibits Number 18.)

By Mr. Allen:

Q. Now, Mr. Garrett asked you about the compromise settlement in which resulted the payment of \$5,000.00 attorney's fees to me and \$2,500.00 to Mr. Willcox, and \$5,000.00 to Mr. Garrett as representing Miss Mary Frances Eason. Now, did you and Dr. Robert have negotiations directly with

Miss Eason on that occasion or were they carried
Vol. II on by her attorney?

page 282 } A. They were carried on by the attorneys.

Q. Did you have any word to say to her at all during that hearing about a compromise?

A. No, nothing about it, nothing about the compromise.

Q. You were asked about instances in which it was alleged that people had run her off the road and all those sorts of things. I will ask you if you made any investigation to determine whether any of those things written in those letters were true.

A. No, I can't say as I did.

* * * * *

RE-CROSS EXAMINATION.

By Mr. Garrett:

Q. This answer that you filed here was filed by your attorney, Mr. Willcox, and you, of course, subscribed to the answer. I mean you agreed with the answer?

A. Oh, yes, sure.

Mr. Allen: We admit that.

Vol. II

page 283 } By Mr. Garrett:

Q. Well, you told us a while ago, if I understood you, that this \$57,000.00 from the timber that you were

Samuel W. Eason.

going to keep that and put it in trust for Miss Mary; did I understand you—

A. I think that was one of the recommendations I made.

Q. Yes. Well, now, I want to read in your answer in here what you said with that Paragraph 4.

(Reading) The allegations of Paragraph 4 are denied. Defendants assert that complainant did sell to them the standing timber for the sum of \$42,000.00 payable at the rate of \$6,000.00 per year for seven years. Proper notes were drawn, executed and delivered to complainant in exchange for her deed to the standing timber. The entire transaction was negotiated over a period of months and was entered into voluntarily by the complainant." You did not say anything about giving any money back to setting up any trust there, did you?

A. I might say that she gave us that timber to sell though.

Q. I say in your answer you did not represent to the Court that you held any money for her benefit or willing to give any money back. You said you bought the timber and

Vol. II paid for it?

page 284 } A. She gave us the timber to sell.

Mr. Garrett: Yes. All right sir.

RE-DIRECT EXAMINATION.

By Mr. Allen:

Q. Did any conversations take place about any trust funds prior to that?

A. Oh, I think one was suggested. She wanted to know—I can't recall the time but one of the things she wanted to know before this controversy came up when the timber was to be sold, she said, "Well, what would I do with the money." "Well, I said, one of the things is I can make a trust fund out of it," and that was that conversation.

Mr. Allen: That is all.

Mr. Bohannon: Just one question, Doctor, if we may.

RE-CROSS EXAMINATION.

By Mr. Bohannon:

Vol. II Q. This answer that you filed in 1956, how old
page 285 } was Miss Eason then?

A. In '56?

Roan P. Simeone.

Q. She was close to 80 then, wasn't she?

A. How much?

Q. Close to 80?

A. If she had been—my Uncle LaSalle is about 85 or 6 years old, and she would be now—I mean she is two years older than he was. She was 88 years old when she died.

Q. She died in '59.

A. Well, that would make—still make her 87 years old, along that neighborhood, around 86 or 7.

Q. During '56 she was 87?

A. About four years, 84 approximately the best I can guess. I am just guessing.

Q. And the deal that you made her in your answer with this lady who was 84 or 5 years old was that, if you carried it through, she wouldn't get all the money till seven years had passed?

A. Well, those notes were for inheritance, to save income tax, and she knew that at the time.

Q. She would get the money after she was over 90 years old?

A. Suppose she died and left it before, you would have to pay the Government money, inheritance money.

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ROAN P. SIMEONE,
called as a witness on behalf of the Contestants, having been
first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Bangel:

Q. State your name, please, ma'am?

A. Roan P. Simeone.

Q. And Mrs. Simeone, where are you employed?

A. I am employed by Mr. Henry Bowden, attorney at law.

Q. And how long have you been so employed there?

A. 16 years.

Vol. II Q. In what capacity?

page 287 } A. Legal secretary.

Q. And do you know Miss Mary F. Eason?

Roan P. Simeone.

A. I did know her, yes, sir.

Q. And did she have any occasion to come to the office of Mr. Henry Bowden, the lawyer?

A. Yes, sir.

Q. Did you engage in conversation with her?

A. On several occasions.

Q. Do you recall what she went in there for?

A. She went in—she was interested in the divorce, the support, nonsupport and possible divorce action of her brother's.

Q. Mr. LaSalle Eason?

A. Yes, sir.

Q. And you say you engaged in conversation with her on that occasion?

A. Yes, I did.

Q. Would you mind telling us what she said and did?

A. Well, she was very much interested in this case, and outside of this discussion of this case, she seemed—we got into some other types of conversation and while she was waiting at various times, and she seemed to have a feeling

Vol. II } that people were picking on her and that they were
page 288 } trying to run her off of her property, and she told
me about the fact she had hidden her money and
so forth in a strong box and only she and the hired man knew
where it was and that people were taking potshots at her
house and tried to run her off the road and flashing headlights
from the car into the house. So, she decided to carry a loaded
gun from then on.

Q. Did she show you that loaded gun?

A. Yes, we went to Juvenile Court on the nonsupport hearing. After the hearing was all over she showed me a .32 or a .38. She said she kept this loaded and carried it with her. She had taken it with her to Court.

Q. Did she say anything about the type of room she was occupying?

A. She described the fact of her house and said something about—I believe she said something about it being isolated, and she said that she had fixed her room and had it barricaded in so that she could see out the windows and one thing or another, and she could tell when people were driving in. She indicated to me at different times that she felt people were trying to push her off the land, and she mentioned someone by the name of Warren. All the time the Warren's, whoever they were, were out to get her.

Roan P. Simeone.

Q. Did she tell you who it was that she said took potshots at her home?

Vol. II A. She said it was someone. Each time she
page 289 } would say "Those Warrens." I asked her once
 how she knew because it was dark when it hap-
pened. She said she knew it was the Warrens.

Q. Did she say who it was that took potshots at her home?

A. If she said it, I don't recall.

Q. Did she say anything about any dogs?

A. She wanted Mr. Bowden to come over on one occasion. She said she didn't know whether we could get in the yard or not because she had a vicious dog to keep people off the land.

Q. Did Mr. Bowden go to her home or not?

A. He went over once, I believe, because he mentioned something about the dog made up to him, but she said she needed protection, and so we advised her then to go to Mr. Branch. She later had an argument with him in the office.

Q. Did you hear that argument?

A. Mr. Bowden wasn't there, but I heard that argument. Mrs. Eason was already there, I think, to discuss the final matter in the case, and Mr. Branch came in and he spoke very pleasantly to her but she lit into him with a lengthy tirade. There were other people in the office, and she called him down and told him he had overcharged her, he was taking advantage of widows and so forth. It was a long emotional tirade.

Vol. II

page 290 } Mr. Bangel: Witness with you.

CROSS EXAMINATION.

By Mr. Garrett:

Q. You don't know about who came on her property down there at night or what they did; you weren't there?

A. No, sir, I have never been on her property.

Q. So what she told you about people annoying her and shooting around there and carrying on those things you have no knowledge of your own whether it is true or not true?

A. That is true. That is what she told me.

Q. But she came there to see you on business. Her brother was involved in a nonsupport case with some elderly woman he had married in Norfolk?

A. That's right.

Q. And she came over there to transact that business with your office?

Roan P. Simeone.

A. Yes, sir.

Q. She transacted that business with your office, did she not?

A. Yes, sir.

Vol. II Q. Did she pay the fee for it?

page 291 } A. As far as I recollect, yes.

Q. And she went to court?

A. She went to court. I don't remember what she testified—I don't think she testified, she just went as a witness.

Q. She told you that there were people annoying her and she thought were the Warrens. Did she ever mention Peebles to you?

A. No. If I had my notes—I had made notes of the time, it is customary, and I reviewed the notes that I had made at the time of the interviews. I have those in the file.

Q. At any rate you or Mr. Bowden was sufficiently impressed to recommend to her to hire a detective to go out there?

A. No, we did not recommend it. We told her we did not do that type of work. If she wanted anything like that she should go to a detective agency.

Q. Well, I thought you said "We advised her to go to Mr. Branch?"

A. If I said "advised" I did not mean it that way.

Q. Well, I think you did say that.

A. I may have.

Vol. II Q. In any event you discussed it and either
page 292 } advised or suggested or intimated or whatever
it was and Mr. Branch was employed?

A. As far as I know. We did not employ him, she did.

Q. Well, this argument she had with Mr. Branch, do you know what he actually charged her?

A. No, I don't.

Q. For going out there? You don't have any idea?

A. The money did not come through our office. She paid him directly.

Q. Well, then you don't know if she was justified for telling him she had been overcharged?

A. It is hard to say whether she did or not. It was a right emotional tirade. She could have said the same thing.

Q. Of course, she was an elderly woman? She was elderly?

A. Yes, she was elderly.

Q. Yes. She never had any trouble with you, did she?

Henry Bowden.

A. No, none at all.

Q. Never had any trouble with Mr. Bowden?

A. No, she liked us all right as far as I know.

Vol. II Q. You treated her all right?

page 293 } A. I tried to.

Q. She paid the bill whatever it was with no complaint?

A. Un-huh.

Q. And that was when?

A. That was during September, around about September of 1955.

Mr. Garrett: Thank you.

Mr. Bohannon: Just one question, please.

The Witness: Yes, sir.

CROSS EXAMINATION.

By Mr. Bohannon:

Q. Mr. Bowden is a good lawyer on domestic affairs and divorce matters. He is a right competent lawyer, is he not?

A. I think he is most competent barring any of those who are present.

Mr. Bohannon: That is all.

RE-DIRECT EXAMINATION.

Vol. II

page 294 } By Mr. Bangel:

Q. You were summons over here, were you not?

A. Yes, sir.

Mr. Bangel: That is all.

Mr. Henry Bowden.

HENRY BOWDEN,

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

DIRECT EXAMINATION.

By Mr. Bangel:

Q. State your name, please?

A. Henry Bowden.

Henry Bowden.

Q. Mr. Bowden, you are an attorney at law, are you not?

Vol. II A. What?

page 295 } Q. You are a lawyer?

 A. Yes.

Q. And you have been for how many years?

A. Oh, 50 some, exactly how many is none of your business.

Q. Now, your office is located where?

A. In the Kresge Building in Norfolk.

Q. Mr. Bowden, did you have an occasion to see and talk to one Miss Mary Frances Eason?

A. Yes, sometime ago, I guess about five years ago.

Q. Where did you see her?

A. She came to my office.

Q. Who was she with, do you recall?

A. She was there several times. I think she came there with her brother.

Q. That is LaSalle?

A. What did you say?

Q. That was LaSalle Eason, her brother?

A. Yes.

Q. And she retained you to represent him?

A. Yes.

Q. Now state, if you will, whether on any of those occasions Mr. LaSalle Eason had to go to court.

Vol. II A. Had to go to court?

page 296 } Q. Did he have to go to Court?

 A. Yes, Juvenile and Domestic Relations Court.

Q. Did anyone go with you and him to Court?

A. Yes, his sister, Miss Eason.

Q. Is that Miss Mary F. Eason?

A. Yes.

Q. Now, state whether or not she had with her a weapon of any kind.

A. Well, I did not know till after we got back, but she was sitting at the desk talking about the case after we had gotten back and she did mention the fact that she had a revolver in her handbag and she pulled it out to show it to me, something of that kind, snubnosed. It looked like a Colt Cobra with a one-inch barrel.

The Court: A revolver or an automatic?

The Witness: A revolver, if I remember correctly. I took it to be one of these Colt Cobras they call it which has a little one-inch barrel. I am quite sure that was what it was.

Annie E. Braswell.

By Mr. Bangel:

Q. Did she say it was loaded or unloaded?

Vol. II A. I didn't inquire. I told her to put the thing
page 297 } back in there. At a glance I couldn't say of my
own knowledge whether it was loaded or not.

Q. Do you know at the time she had taken it to Court with her?

A. No, I didn't know that she had anything of that kind. No occasion for it so far as I know.

Q. Now, did she say any thing to you at all about being threatened by any persons?

A. About being threatened?

Q. Yes.

A. No, sir. I can't say that she had ever been threatened by anybody. She was apprehensive of people bothering her saying the house had been shot at, I believe, was the reason she carried a gun. She said, I believe, the Warren boys, who were notorious, she thought were after her. That was what she said. She lived somewhere down there in the County. I don't know where.

Q. Did you go to her home, Mr. Bowden?

A. (Pause) It seems to me I drove there once, yes. I'm quite sure I did.

Q. Did you see any signs of anybody shooting at that house or anything like that?

A. No, I did not examine it for that purpose to be frank with you.

Mr. Bangel: Witness is with you.

Mr. Garrett: No questions.

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ANNIE E. BRASWELL,
called as a witness on behalf of the Contestants,
having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Bangel:

Q. State your name, please, ma'm?

A. Annie E. Braswell.

Q. Where do you live?

A. Hickory.

Q. How long have you lived there?

Annie E. Braswell.

A. All my life.

Q. Did you know Miss Mary Frances Eason?

A. Yes, sir, I did.

Q. How long had you known her?

A. Well, every since I have been able to know anything.

Q. And how often did you see her in the last ten

Vol. II years of her life?

page 299 } A. Well, I didn't see her too often. I guess I
saw her in the latter years more than I did the
first part.

Q. And during the latter part of the year did you have any
conversations with her?

A. Yes, I did.

Q. Well, now, take the conversations in the last year or two
of her life. Do you mind relating some of the things she said
to you?

A. Well, I guess it was not more than two months before
she died I saw her on the street, and she was raving about
this thing and that thing, about the people of the church
wasn't any good and that nobody—well, there was a lady
down the road that she was interested in, and she was
saying the people of the church had not done anything for
that lady because—well, in other words if the people of the
church had done something for her, why the church would
be all right, but she was against the church because they
hadn't done anything for her.

Q. Well, then tell us, if you will, all the conversation you
had in that connection.

A. Well, she was quitting going to church because they
hadn't done anything for her, and she wanted some people
of the lunchroom turned off so this lady could be given a job.

Q. Did you check to find out what the condition was in re-
gards to this lady that she was talking about?

Vol. II A. Oh, yes, she wanted this lady to have a job.
page 300 } We checked into it and had a job available for
this lady, and we went back and told her and she
said, "Well, forget her."

Q. That was Miss Mary Eason who said "Forget her"
when you told her?

A. "Well, forget her," just like that.

Q. Well, did you have any other conversations with her
about this abnormal condition?

A. Well, that was—I saw her—

Annie E. Braswell.

Mr. Garrett: I object to this abnormal condition. I don't think this is so abnormal. People have arguments and fall out. I object to this characterization.

By Mr. Bangel:

Q. Well, tell us about the argument or falling out there. Tell us—

A. Well, I think the day I talked to her there was something wrong. Anybody under normal circumstances wouldn't talk like that, I don't believe.

Q. Well, now, you say you have been knowing her over a period of years?

A. Yes, sir, she was a relative of mine. I have known her through the years.

Q. Now, you say you spoke to her shortly before her death?

Vol. II page 301 } A. (Witness nodded head affirmatively.)

Q. Well, now, knowing her over a period of years and the conversations you have had with her, the contacts you have had with her and the personal knowledge of her conduct, what would you say was her mental condition the last time you spoke to her?

Mr. Garrett: If your Honor please, I don't think any foundation has been laid for any impression of her mental condition. I suppose there is no particular objection to expressing an opinion, but certainly there hasn't been any foundation laid that I know of.

The Court: I think it would be admissible.

Mr. Garrett: All right, sir.

The Court: That would go to the weight.

A. What was your question?

By Mr. Bangel:

Q. I said based upon your conversations over the years, your contact with her, your personal knowledge of her conduct, your conversations you had with her on the last shortly before her death, I will ask you what would you say was her mental condition when you last talked to

Vol. II her.

page 302 } A. Well, I would say she wasn't normal.

Q. And you spoke to her last—how long prior to her death?

Annie E. Braswell.

A. Well, I was up to see her after she was confined to the bed.

Q. How long before her death, would you say, before the death.

A. Well, it was, I would think not more than five days before she died.

Mr. Bangel: Witness with you.

CROSS EXAMINATION.

By Mr. Garrett:

Q. Did you ever have any business dealings with Miss Mary?

A. No, I did not.

Q. Did you ever go to the bank with her?

A. No.

Q. Did you ever go with her when she was buying or selling anything?

A. No, sir.

Q. Were you ever with her when she was preparing any papers, deeds, wills and anything of that sort?

Vol. II A. No, sir.

page 303 } Q. So, you don't know anything at all about her capacity to transact business with other people of your own knowledge?

A. Well, I have known her through the years, but I mean not that personal contact.

Q. And through the years she has been very much of an independent lady, has she not?

A. Well, I don't know whether she was independent but she was peculiar. I don't know.

Q. She had rather strong opinions of her own about things, did she not?

A. (Pause) They were strong in the way she thought but not the way the average person thinks.

Q. Well, of course, can you define an average person and tell us what is normal?

A. No, I couldn't say what is normal, but I know she wasn't like the average person.

Q. She had thought differently from you about a lot of things. What is the difference in you all's ages approximately? I withdraw that, I didn't mean to ask you—

A. Well, that doesn't hurt my feelings, I will tell you my age.

Annie E. Braswell.

Q. I don't mean to pry, but certainly you were
Vol. II an attractive person much younger than Miss
page 304 } Mary. There was a good deal of difference in your
ages?

A. I guess you could say that.

Q. And, of course, that affects your outlook and your attitude to some degree, wouldn't you say?

A. Well, with some people it wouldn't and with some people it would.

Q. Well, you would say it would to some people and some it wouldn't?

A. Sure.

Q. Now, you say you were at the house about five days before her death?

A. Well, approximately five days.

Q. Well, she died on a Thursday. Could you think back and say whether it was in that week that she had died or the preceding week or what?

A. Well, I would say it was within the week that she died, but I can't be definite about it because I just don't remember.

Q. Well, you don't know what day it was; you have no way of recalling that?

A. No.

Q. She drove her car right on up almost to the time of her death, her last sickness?

A. Well, I don't know that.

Vol. II Q. Well, you saw her frequently, didn't you see
page 305 } her driving down the road?

A. I have seen her drive the car but I don't know how long before she was taken sick.

Q. How long did you see her before she was taken sick, on October third?

A. I saw her on the street approximately two months before she died, and then I saw her twice at home after she was taken sick one time before. She was in bed, and the next time she was in bed.

Q. Was Miss Mary a pretty regular attendant at church?

A. Well, she had been until she got out with the church, and that was—I don't imagine it was more than three or four months before she died.

Q. Three or four months before she died?

A. I think.

Q. She was also a substantial contributor, was she not?

A. Well, I can't tell you that.

Q. Who was this lady that she wanted to help?

Annie E. Braswell.

A. It was Mrs. Parrish that lived down the highway and she was all alone, and she said she didn't have anything to eat or that she was in financial need.

Q. Well, did you find out that she was in need
Vol. II or—
page 306 } A. Well, yes, I'm sure she was.

Q. Well, Miss Eason was discerning enough to be able to let you know that there was a fellow creature down the road who needed some help?

A. But the church members had been helping her.

Q. Had been helping her?

A. Yes, Some of them had been helping her, but she was just raving that day. She was quitting the church because nobody in the church had done anything for her, that they were just a bunch of hypocrites in the church.

Q. In any event there was some basis for her statement to you that the woman needed some help?

A. Well, not necessarily, because she hadn't been helping her herself. I don't see why she should say anything.

Q. She hadn't been helping her?

A. I don't think she had, and she was criticizing others in the church.

Q. Well, you were resentful toward her because she was being critical?

A. Why should I be resentful?

Q. You said you didn't see why she should say something.

A. Well, I don't see why but I wasn't resentful.

Q. Well, you were no particular friend of Miss
Vol. II Mary, were you?
page 307 }

A. Well, I don't know what to say to that.

Q. I mean you didn't go around with her to places. You didn't go to Norfolk with her?

A. No, no.

Q. Or drive around with her to carry on business affairs or anything of that sort?

A. No.

Q. You just see her passing casually or saw her at church?

A. I have visited the home.

Q. Well, there wasn't any ill feeling between you. She treated you all right, didn't she?

A. Well, sure.

Mr. Garrett: All right, that is all.

Mr. Bohannon: Just one question, please.

Florence Spencer.

CROSS EXAMINATION.

By Mr. Bohannon:

Q. You were related to her, you say?

A. That's right.

Vol. II Q. In what way?

page 308 } A. Well, her father—I mean my father and she
 were first cousins. That would make me her second
 cousin, I guess.

The Court: Does anybody know whether it is actually a second or third cousin?

The Witness: Well, I have heard it too, so I don't know which it is.

A. And on that day on the street she also promised to give me a pin she had on her dress. She says "You all see this pin?" She says, "I'm going to give that to you and that is not all I got for you," but I never got anything.

Q. You didn't get anything, did you, Miss Braswell?

A. No, sir.

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FLORENCE SPENCER,

Vol. II called as a witness on behalf of the Contestants,
page 309 } having been first duly sworn, was examined and
 testified as follows:

DIRECT EXAMINATION.

By Mr. Bangel:

Q. State your name, please, ma'm?

A. Florence Spencer.

Q. And Mrs. Spencer, where do you live?

A. Hickory, Virginia.

Q. And how long have you lived at Hickory?

A. Oh, since I was three years old.

Q. Do you mind giving us your age?

A. 50.

Q. Mrs. Spencer, did you know Miss Mary Frances Eason?

A. Yes, I did.

Q. How long had you known her?

A. All my life.

Florence Spencer.

Q. Did you have occasion to visit her and talk to her and otherwise meet her from time to time?

A. Yes.

Vol. II Q. When was the last time you saw her before
page 310 } her death?

A. Well, I was there approximately six months.

Q. Six months before her death?

A. Yes.

Q. Well, now, during the time that you spoke to her would you mind telling us whether or not she discussed her affairs or things of that type. Do you mind telling some of the things she said to you?

A. Well, usually I always asked her if she had heard from Dr. Sam and Dr. Robert, and sometimes she would say yes and she would talk normally, then other times she wouldn't.

Q. And did she indicate to you the last time you talked to her what she intended to do with her property, if anything?

A. Well, no, not then. I have heard her say many times she wanted the doctors to have her property, Dr. Sam and Dr. Robert.

Q. Was that during her latter part of life?

A. I don't remember.

Q. Now, you say that sometimes she was not normal. What do you mean by that she wouldn't speak normal?

A. Well, one time, for instance, she saw this man going down the road and she said "See that man?" I said, yes. She said, "Well, he tried to run me in the ditch the other day," and things of that sort.

Vol. II Q. Knowing her all your life and of the many
page 311 } conversations you have had with her and your
 contact with her and your personal knowledge of
her, what would you say her mental condition was when you last saw her and spoke to her?

A. Well, I would say she was mentally ill in my observation.

Mr. Bangel: Witness with you.

CROSS EXAMINATION.

By Mr. Garrett:

Q. You saw her the last time six months before her death?

A. Yes. I couldn't be positive.

Q. Well, approximately that?

A. Before she was taken ill, I would say.

Florence Spencer.

Q. Well, do you know whether or not she had any trouble with somebody trying to run her off the road?

A. Well, no, I didn't see any, she just said so.

Q. Well, she didn't say anybody was doing it at that time. She said it had happened before?

A. Yes.

Vol. II Q. Well, you don't know whether anybody had
page 312 } tried to cut across her car or tried to run her off
 the road, do you?

A. No, sir, that is what she told me.

Q. Was Miss Mary a generally truthful person?

A. Well, I couldn't say. She told some fantastic things that I didn't believe were true.

Q. Did you go to school with her?

A. No, sir, I didn't. I went to the school where she taught but she didn't teach me.

Q. But you were not any particular close friend of hers?

A. Well, I'd say yes, I have been knowing her all my life, and she visited in my home and I visited her in her home.

Q. Well, you hadn't seen her for six months before she died?

A. Well, no.

Q. Did you ever go with her to transact any business of any kind?

A. No, I didn't.

Q. Did you ever go to the bank or post office or to the store with her?

A. No, sir.

Q. Well, you did very little traveling with Miss Mary?

A. Yes, I did.

Vol. II Q. Very little?

page 313 } A. Well, we ran this service station where she
 bought her gas, not all of them, but some of her
gas from us.

Q. Did she pay you for it?

A. Yes, sir.

Q. Did she know what she was doing, what she was buying?

A. I think so.

Q. And transacted the business there with you satisfactorily?

A. Yes.

Q. You did not hesitate to do business with her as such?

A. No, sir.

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Vol. II

page 314 }

ALMA L. RIDDICK,

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

DIRECT EXAMINATION.

By Mr. Bangel:

Q. State your name, please?

A. Alma L. Riddick.

Q. And Mrs. Riddick, where do you live?

A. Hickory, Virginia.

Q. And how long have you lived in Hickory?

A. All my life.

Q. Do you mind giving me your age?

A. I am approximately 50 years or over.

Q. Now, Mrs. Riddick, did you know Miss Mary Frances Eason?

A. Yes.

Q. And how long had you known her?

A. 50 years approximately. All my life.

Q. Did you ever engage in conversation with her?

A. Yes, sir, many times.

Q. Did you ever engage in conversation with
Vol. II her in regard to her two nephews, Robert Eason
page 315 } and Sam Eason?

A. Well, the only conversation that I had with
her about them was oh, about two or three occasions. She
approached me one Sunday morning and asked me would I
come up to her house after I had my lunch. And I had gone
up there, I thought on some particular business she wanted,
but I discovered she was just going through the regular
routine that she was just a poor old lady and she mentioned
they had mistreated her or something like that, and lots of
times it would just be something else. She talked about my
own family about something that happened which was insigni-
ficant so far as I was concerned.

Q. And were you able to see anything unusual or out of
order?

A. What, recently, had I noticed anything recently?

Q. Yes.

A. Well, when I first noticed anything out of order was
around the last of September. I was returning home from
work—

Q. Of what year, last year?

Alma L. Riddick.

A. Last year, September, '59. It was the very last of September. And she was out to the mailbox, and I had missed her at church for two or three Sundays. She and I went to the same church. And I stopped, of course, to ask her why she hadn't been to church, and she told me that she was sick. She had been sick for two or three weeks, and we engaged in a conversation, and just then I noticed that—and I thought at first she had maybe a slight stroke because she had seemed she didn't talk coherently. In fact I was driving a blue Plymouth car about a 1953 model, and she told me she says: "That car you are driving," she says, "Don't drive it any more." I said, "Why, it is just an old car about worn out." She says, "I know, but you will get shot if you drive that car because it was a liquor car in Norfolk County," and she said "The people who drove that car see you practically everyday," she says, "and you will get shot. Don't ever drive that car again." I didn't argue with her about it because I knew that it was bought as a brand new car by the Norfolk County Welfare Department which I had gotten brand new. So, I knew she wasn't talking—I knew she—what she was telling me was certainly untrue. But she said she knew the person who owned that car and that was a liquor car and she said "He will shoot you the next time he sees you." I just simply did not argue with her because I had heard of things she had done and I didn't want any argument with her.

So, she went on to tell me other things that I thought were very queer, so I was just wondering if her illness was a slight stroke the way she was talking.

She asked me to call the tree surgeon to trim her trees, which I did not do because I thought I might get into trouble in case—because I had been hiring him for years, and he would make the trip out there and then she sent him back home, so I didn't call the tree surgeon.

Q. Well, now, based upon your contact with her, your personal knowledge of her conduct, the conversations you had with her, what would you say was her mental condition when you last spoke to her in 1959?

A. Well, I had spoken to her since September, '59.

Q. Well, all right, after that as well, what would be your knowledge. What would be your—

A. I mean that was my first real notice of her disturbance.

Q. You say you spoke to her after that?

Alma L. Riddick.

A. Oh, yes.

Q. Tell us what conversation was had after that.

A. Well, on October the 13th she had a person call, I can't recall the name, but I was to visit her home on October the 13th. The reason I remember is because it was my first day off on annual leave that I started, at that time I was home very busy and got a telephone call, and she told me she had just left the home of Miss Eason and she wanted me to go to her home immediately, and I was just wondering what was up. I knew she was sick, so I thought I had better go and I did go. So, when I walked in the house Dr. Rohm

Vol. II } was there in the room with her where she was sick.
page 318 } And I waited out in the hall upstairs until Dr.

Rohm came out and went on down the steps and then I went in and told her that I got a telephone call to go to her home and I was wondering if I could help her. She said, "Yes, I want you to take over everything here and do for me like I was your mother. I knew your mother and I knew that you did a good job of caring for her during her illness and I want you to do the same for me." I told her, I says, "Well, I will do the best I can. I can't take over. I haven't been appointed by the court to take over your business yet," I said, "but anything I can do I will be glad to." She says, "Well, I want you to go see Fanny Brown, she is a colored practical nurse who nursed my mother," and she said, "Will you go see her and see if she will come and take care of me." I said "I certainly will, and it was raining. I says "She lives up the lane about a mile, I will have to walk up there, I can't drive the car because it is too muddy. I will go tomorrow, it is too late." She said "Tomorrow will be fine."

So, the next day I went to see Fanny Brown. I walked up that lane because I *couldn't* drive, and I asked and told Fanny what I wanted—and she said to come and not let the money give me any concern because she had the money. She told me before I left her "Now, I've got the money to pay help and

I want somebody here to take care of me because
Vol. II } I sit in this rocking chair day in and day out, so
page 319 } I won't be alone here." But Fanny wouldn't go.

So I went back to her home and told her that I couldn't get Fanny. I said, "Now, who else do you want me to contact?" "I don't want you to contact anybody unless it was someone who nursed your mother and that you know." I says, "Well, they are not living, they have all passed away

Alma L. Riddick.

since that time, she is about the only one." So, I went home and I called Dr. Rohm and told him—

Q. Well, you can't relate the conversation you had with—

A. What's that?

Q. Who did you talk to. You say you called. Who did you—

A. I called her physician, to let him know what my position was because she had asked me to take over and, of course, I told him that she had called me and that I went to see this practical nurse and I couldn't get her and I wanted him to know that I didn't think I could get anyone if she needed nursing care. I just wanted him to know so he could send her to the hospital if he thought she needed nursing care or if she required that, and he made—can I make the statement of what he told me?

Mr. Garrett: We object to that. No foundation has been laid for any such—

By Mr. Bangel:

Q. You can't say what the doctor said to you.

Vol. II

page 320 } Mr. Garrett: He is not here.

A. But I told him—and I gave him my telephone number and told him if I can help her in any way please let me know, that I want to help her.

Q. Was she ever sent to the hospital to your knowledge?

A. No, she wasn't.

Q. Was any lady in that house at all with her when you were there?

A. No, sir.

Q. Was she confined to her bed?

A. Yes, sir.

Q. How did she look?

A. Well, I thought she was right bad looking to me. She was in bed with a sweater and some coats or something and had a cap. I really and truly thought she needed someone there with her, and I talked around but I couldn't get anyone.

Q. Did you say anything to her about going to the hospital?

A. Yes, I did. She said "I rather remain in my home and have someone here to care for me in my own home." And I told her, "Well, you know that is a premium today," I said.

Alma L. Riddick.

“You know you can’t get them.”

Vol. II Q. Now, Mrs. Riddick, based on your personal
page 321 } knowledge of her conduct and of your conversations with her and contact with her, what would you say was her mental condition?

A. Well, I thought she appeared to me to be a depressed person who seemed to be afraid, and she just had reached the point that she seemed to have a lot of fear.

Q. A lot of fear?

A. And depressed. And I thought she seemed emotionally upset and disturbed.

Q. You say she appeared to be emotionally upset and disturbed?

A. Yes. She had several crying spells. I visited her three or four times before she passed away and she would always cry each time I went in.

Q. Now, I don’t think I asked you, Mrs. Riddick, what your occupation is.

A. I am a social worker for Norfolk County Welfare Department.

Q. And you have been employed with the Norfolk County Welfare for some time, have you not?

A. 23 years.

Q. 23 years?

A. Yes.

Mr. Bangel: Witness with you.

Vol. II

page 322 }

CROSS EXAMINATION.

By Mr. Garrett:

Q. Mrs. Riddick, in this conversation that she had with you, she recollected your mother, did she not?

A. Yes, she did.

Q. She recollected—was your mother still living at that time?

A. No.

Q. How much earlier had she passed away?

A. My mother passed away in 1946.

Q. So she recollected back in 1946 that your mother had a certain person looking after her?

A. Yes.

Alma L. Riddick.

Q. And then she asked you to go get a particular person that she had confidence in, Fanny Brown?

A. (Witness nodded head affirmatively.)

Q. Is that correct?

A. Well, she asked me to get Fanny Brown and I guess—

Q. Well, then, she had a pretty good recollection of people and events when she was talking to you, did she not?

A. Well, she remembered that, but I don't know
Vol. II about the events because—

page 323 } Q. Well, you never had any business trans-
actions with her to test what she did know about
business?

A. She taught me in school years ago.

Q. She taught you in school?

A. Yes.

Q. But you have never been to any banks or to any business institution or anything of that kind?

A. She asked me to take over her business that day and treat her as a daughter. I told her that I couldn't do that, that I could not be legally responsible for any of her business. I told her that—

Q. Well, she was sick in bed and not able to attend to her affairs. That was the situation, was it not?

A. No, it wasn't that situation. I wouldn't have done that because I did not feel like that. I did not have the feeling that she was responsible at that time. I preferred her to have someone who was legally responsible.

Q. Well, she was alert to the fact that she knew her own deficiencies and was talking about getting somebody to take care of her, wasn't she?

A. Yes, she was.

Q. She knew what she was doing. She knew she needed help, right?

A. But she knew she had relatives who was near.

Q. Did you call any of her relatives?

Vol. II A. No, I did not. I—

page 324 } Q. When was that now that she spoke to you
about—

A. As I told you I called her physician.

Q. I understand that, but this was October the 13th, and you knew her relatives. Did you call any of them and tell them that Miss Mary was not well?

A. No, I called her physician instead.

Q. I know, you told us that.

Alma L. Riddick.

A. I intended to call the relatives after the conversation with him, but I felt it was best not to.

Q. I see. All right, so you did not call them. Did you go back from time to time and talk to her?

A. I did.

Q. Well, was she being ministered to?

A. I did not see any ministering to her other than this man who was in the home there. At the time I was there there was nobody in the room at that time.

Q. You never saw any physician there or any nurse?

A. No, just Dr. Rohm.

Q. You were just there for a short period of time. You did not make it a point to stay any length of time?

A. I stayed thirty or forty minutes when I
Vol. II visited.

page 325 } Q. Do you know Dr. Samuel Eason and Dr.
Robert Eason?

A. Yes, sir.

Q. Know them very well?

A. Well, I don't know them very well. I have known them but I haven't been associated with them at all.

Q. Well, I mean by that you are sympathetic with their position in this case, are you not?

A. Well, I wouldn't say that because they have been away so long. I know them and they know me.

Q. You don't know anything about the circumstances under which the will was executed, who was present or anything of that sort, do you?

A. No, the only thing I know about her is I went to the same school, I have been going to the same church with her and living a mile of her house for 37 years, and she always told me that she lived from day to day and that her business was up to date so that if she passed away there will be no trouble. She has always told me that over a period of years.

Q. And you did not notice anything out of the way until September, 1959, I believe you told us?

A. I had noticed for the last year that she was failing.

Q. Well, I thought you said—

Vol. II A. And the last of September I did notice it
page 326 } definitely, because I knew some of the things—

Mr. Bangel: What was that?

The Witness: I said I noticed it the last of September when

Alma L. Riddick.

I stopped to ask her how she was. I noticed she had failed a lot since I had seen her.

By Mr. Garrett:

Q. Well, you knew she was suffering from some illness, did you not, which turned out to be heart disease?

A. I don't know what it was because the doctor didn't tell me.

Q. You didn't know that?

A. The doctor told me nothing.

Q. You say you didn't know what she was suffering from. You were telling us about her mental condition and I thought you had a peculiar way of noticing these other things.

A. I told you she was depressed and—

Q. Well, anybody sick is going to be depressed, aren't they. If she was sick in bed you don't expect her to kick her heels up and that sort of thing, do you?

A. No.

Q. She told you that she would rather remain in her home than go to the hospital?

A. She did, on the 13th, yes.

Vol. II Q. Well, you know in dealing with the Welfare
page 327 } Department a lot of people are afraid of hospi-
 tals, don't you?

A. Well, it doesn't make any difference whether they are afraid of hospitals or not. My position is when a person is ill—

Q. I am not asking you about your position.

Mr. Bangel: If your Honor please, he can let her answer it.

By Mr. Garrett:

Q. Go ahead, answer it, but I'm coming back to the question.

A. I usually like to consult their physician if they have one first.

Q. All right. Now we can come back to the question I asked you. You know that in dealing with people a lot of people are afraid of going to a hospital. You know that is true, do you not?

A. Yes, I know that is true.

Arthur L. Nichols.

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page 328 }

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ARTHUR L. NICHOLS,
called as a witness on behalf of the Contestants, having been
first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Bangel:

Q. State your name, please, sir?

A. Arthur L. Nichols.

Vol. II Q. And Mr. Nichols, where do you live?

page 329 } A. I live right near Hickory within about four
miles of Hickory.

Q. And how long have you lived there?

A. Well, to be exact right close to 62 years.

Q. And your business, please, sir?

A. Beg your pardon?

Q. What is your business?

A. I am in the Virginia Division of Forestry. I am chief
warden for the County.

Q. And did you know Miss Mary Frances Eason?

A. Yes, very well.

Q. How long had you known her?

A. Fifty years.

Q. Did you ever engage in conversation with her?

A. Many many times, yes.

Q. Did you ever visit in her home?

A. Many times.

Q. Mr. Nichols, during the last few years of her life did you
engage in conversation with her?

A. I did.

Q. Tell us, if you will, some of the things that she said to
you.

A. Well, I can remember very distinctly on two occasions I
was there, I was called one time approximately
Vol. II midnight. She asked me to come over, she was
page 330 } having trouble. I went and she said that there
were cars driving by her house and she was being

Arthur L. Nichols.

molested and they were trying to mine uranium from under her house.

Another time I was called at night and she said that they were taking the plastering from the walls and she wanted me to take and help her, so I said okay, and I can't recall how long, but I did stay awhile with her.

Q. Was there any truth in the plaster being torn from the walls?

A. Mr. Bangel, none whatever.

Q. When you were sent for at midnight and she said she was being molested by people there trying to mine uranium from under the house, did you ever find evidence of that?

A. No, sir, I did not see any signs of anything being out of order.

Q. Now, Mr. Nichols, you say you have known her for some 50 years?

A. Approximately, sir.

Q. Well, now, based upon your contact with her and your observation of her conduct and your conversations with her, what would you say was her mental condition?

A. My personal observation of her mental condition in her last days was very bad.

Q. What do you mean by that?

A. I mean that she was mentally sick.

Vol. II

page 331 } Mr. Bangel: Witness with you.

CROSS EXAMINATION.

By Mr. Garrett:

Q. When did you last see her, Mr. Nichols?

A. Mr. Garrett, I saw her last August.

Q. August of 1959?

A. That is correct.

Q. You and Miss Mary had a few arguments, didn't you?

A. I never had an argument with her.

Q. How about that seed tree business where you threatened to have her arrested if she cut the seed trees off the property?

A. I never threatened to have her arrested.

Q. Didn't you go to the Commonwealth Attorney?

A. I did not, sir.

Q. Who did you go to?

Arthur L. Nichols.

A. Mr. Bartholomew went.

Q. Is he in your department?

A. He is my boss.

Vol. II Q. He is your boss?

page 332 } A. That's true.

Q. So, Miss Mary was trying to cut some trees down there and you or Mr. Bartholomew went to the Commonwealth Attorney and wanted to prosecute her for cutting some trees?

A. Mr. Bartholomew went, I didn't, sir.

Q. Didn't you make the investigation?

A. Well, along with him.

Q. Yes. Well, do you remember getting \$900.00 for counting trees to be cut in '56?

A. \$900.00?

Q. Yes.

A. I don't know just what they paid the state but that was money paid to the State for marketing the timber.

Q. Miss Mary paid it?

A. I don't know who paid it. I have no right to say who paid it. The State was compensated because we marked every foot of it that was sold.

Q. That was on her property?

A. That was on—at that time it belonged to the boys.

Q. Yes, sir. That belonged to who?

A. It belonged to Dr. Sam and Robert.

Q. Did you see the deed that they got?

A. They had a deed.

Vol. II Q. When was that?

page 333 } A. I don't remember what year.

Q. What year was it?

A. I can't recall just when it was, '55, '56, somewhere back there. I didn't keep all those things, Mr. Garrett, in my head, it's impossible.

Q. You remember some things right good. That is right down your yolk, isn't it?

A. Well, I can't remember all those things, because we make thousands of tests for people, and we do the same thing for anybody that asks for tests to be made.

Q. Did you carry on an intelligent conversation with Miss Mary?

A. I have talked with Miss Mary on numerous occasions, not in the past. I wouldn't call the conversations I have

Arthur L. Nichols.

had with her in the last four or five years—I wouldn't say that they were—

Q. They were what?

A. He couldn't say that she talked about things that if she had been in her right mind, don't think she would have said a lot of things she said.

Q. In the last four to five years?

A. Four to five years.

The Court: Four to five?

By Mr. Garrett:

Vol. II Q. Excuse me. How many years?

page 334 } A. Mr. Garrett, I'm not positive of this, from '55 on.

Q. Anybody suggest '55 to you?

A. No, sir.

Q. Nobody said anything to you about that particular year '55?

A. Nobody suggested anything.

Q. You just thought that up?

Mr. Bangel: He answered "four or five years," and you made it "four to five."

The Court: He didn't say "four or five."

Mr. Garrett: He said "four to five." My antenna didn't pick it up. You said four or five?

The Witness: Yes, sir.

By Mr. Garrett:

Q. All right, sir. Now, what was it in 1955 that you recall so vividly?

A. I don't know if it was in '55 or '56. I remember about this trouble they were having.

Q. Well, you knew she was having some trouble with her nephews?

A. Well, not at that time she was not.

Vol. II Q. In 1956 she wasn't having trouble?

page 335 } A. It maybe '55. I don't remember those dates. I told you I didn't remember those dates, and I can't recall those dates.

Q. You all came right to it when I asked you, and you said it was '55?

A. I told you then '55 or '56.

Arthur L. Nichols.

Q. Well, you would have remembered just as well if it was '55, '56 or '57?

A. I don't know.

Q. You don't know. You know Robert and Sam pretty well, don't you?

A. Very well, sir.

Q. You consider them friends of yours?

A. I do. I hope they are.

Q. And you hope by your coming here you will help them?

A. I wouldn't, no, only come here to help them. I would help anybody else, Mr. Garrett.

Q. Well, of course, you haven't said anything to help anybody but they that I have heard. Is that just a coincidence?

A. Beg your pardon?

Q. You don't remember any time in all the years you have seen Miss Mary that you saw her talk sensibly or
Vol. II conduct herself properly. Can you remember any
page 336 } of those occasions?

A. Yes, yes, she taught me in school.

Q. You pick out two times here, and yet you don't tell anybody about any other times that you have had a pleasant and sensible conversation with her over the past years. Did you have such?

A. (Pause).

Q. Did you have such?

The Witness: Your Honor—

The Court: Answer it.

A. I have told you, Mr. Garrett, right plainly that I did not since '55. I can't recall of any conversations that I had with her—

Q. Well, she knew who her relatives were?

A. Yes, sir, I presume she did.

Q. She knew what property she owned, didn't she?

A. (Pause) I suppose so.

Q. Well, do you have to suppose it, couldn't you draw that conclusion seeing her? Did she ever say anything to indicate she didn't know she owned that farm down there?

A. I don't know.

Q. You don't know. Did you ever go with her
Vol. II to attend to any of her business affairs?
page 337 }

A. No, I didn't.

Q. Did you ever go with her buying or selling anything?

Robert C. Barclay, III.

A. No, sir.

Q. Well, you don't know much about how she conducted her business affairs, do you, Mr. Nichols?

A. (No response.)

Mr. Garrett: All right, sir, that's all.

RE-DIRECT EXAMINATION.

By Mr. Bangel:

Q. Mr. Nichols, you say that you were friends of Dr. Robert and Dr. Sam Eason. Would you come here and take the witness stand and make a statement under oath to help them in any way?

A. No, sir.

* * * * *

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CROSS EXAMINATION.

By Mr. Bohannon:

Q. Who have you discussed this case with?

A. I haven't discussed it with anybody in particular. It has been discussed all over the County, I suppose, sir, but not by me but by hundreds of other people, but so far as what anybody has told me what to say it just hasn't happened.

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ROBERT C. BARCLAY, III,
called as a witness on behalf of the Contestants, having been
first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Bangel:

Q. State your name, please, sir?

Robert C. Barclay, III.

A. Robert C. Barclay, III.

Vol. III
page 340 } Q. Mr. Barclay, you are a member of the firm of Barclay and Barclay, are you not?

A. That is right.

Q. You are engaged in the practice of law with your father?

A. Yes, sir, I am.

Q. You have been practicing law for how long?

A. 16 years.

Q. Now, Mr. Barclay, at my request did you check the chain of title to the property known as the Cornick Farm in Norfolk County?

A. Yes, I did.

Q. Who owned that property?

Mr. Garrett: If your Honor please, I wonder if we could have some discussion in chambers to the relevancy of this?

The Court: All right, gentlemen.

(Whereupon the Court and counsel for both sides retired into chambers where the following took place:)

Mr. Garrett: If your Honor please, I thought it would be appropriate to raise the question of the relevancy of this evidence outside of the jury's hearing as to title to the property and so forth.

Vol. III
page 341 } The only issue, I understood, was whether this will was her will and if so what property she had or didn't have would be affected accordingly, and title to the property is not a subject matter for this case.

Mr. Allen: The relevancy, if it please your Honor, is this, and if necessary I can give you citations, and we certainly anticipate that your Honor will give the instruction which is given in almost all of these cases where the property is taken out of the family and left to strangers as it is here.

The jury have a right to consider the natural justice of the case. Now, we want to show as relevant to that, that this property was always handed down through the family, and this old lady did not work and earn for this property. She says in the letters she inherited it from the ancestors and got it that way and was kept in the family, and then she goes and gives it to strangers, which is relevant on the theory of whether that is natural justice.

Vol. III
page 342 } The Court: What case do you have on that?

Mr. Bangel: In addition to that, if your Honor please, she has set forth she worked and paid

Robert C. Barclay, III.

for it, and we want to show the truth or falsity of it. That is an elusion.

Mr. Garrett: She paid off the mortgages on it. She paid the taxes on it, and she paid off the debts.

Mr. Allen: If the Court please, I should like to read the instruction Number 5 reported in 117 Va., 55.

Now, that natural justice comes into it in various and sundry ways. We have shown that this old lady gave this property to these people, in fact two or three times in several different ways. And then they had one deed, as you recall, was an absolute deed, and then they had one deed which was a life estate deed. They could have recorded the absolute deed but they didn't.

The Court: They didn't get it until after they got the other one.

Mr. Allen: Still they could have recorded it.
Vol. III And then there is testimony here that they went
page 343 } ahead on the basis of all of that and had the land
seeded. We have not introduced all the evidence,
and we have the bills for reseeding the property introduced
by Robert Eason, and we think on the whole picture, certainly
after hearing Mr. Willcox' testimony, that the question of
natural justice will certainly come in.

Mr. Bohannon: Natural justice relates only to the giving of property to relatives or not. None of the cases, I don't think, relate how she got the property, whether she worked for it or not.

The Court: I think you would be going off a wild tangent here on that. I don't quarrel with that case at all, but I don't think it goes into the question as to tracing the chain of this title back because we are like the English. Every individual has got a right to break it off at any time, but I don't think natural justice means that. I don't think they are going to consider it anyway whether you are going to instruct them or not, but as to having this chain of title traced here,
Vol. III I don't see it has any bearing at all.

page 344 } Mr. Allen: It is not actually the chain of title.
It is just showing that the property came down
to her through inheritance.

We think we ought to take exception to your Honor, and I think we can shorten it. No question about how it came, I should say.

Mr. Garrett: I am not certain how it came. I do know she paid off a lot of bills. She said she did, and the fact the prop-

Robert C. Barclay, III.

erty may have come that way does not tell the whole story if you don't know what she had to pay to get it. She said she did, and Mr. Bryan says there is a receipt in the papers for \$13,500.00 from the County Treasurer.

The Court: Yes, according to this he had some mortgage or something on this. That has come out in the evidence.

Mr. Bohannon: Her father lost several farms she enumerated and this property she saved.

Mr. Allen: We will take our exception. The only thing is let the witness testify in the absence of the jury.

The Court: You want your exception. You want that in the record?

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page 345 }

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(Whereupon the witness was called into chambers and testified as follows outside of the hearing of the jury:)

By Mr. Bangel:

Q. You say you did at my request examine the chain of title to the Cornick Farms, did you?

A. I checked the chain.

Q. All right, give us what you found, please, sir?

The Court: While we are at this point, the Cornick Farm is how many acres?

Mr. Bangel: 470 acres.

Vol. III The Court: Is that the big one, the one she
page 346 } lives on?

Mr. Bryan: No, sir, the one she was living on was the C. F. Eason Farm.

A. Let me explain something to you. It is all the Cornick Farm.

By Mr. Allen:

Q. Go right ahead. Give us the chain.

A. I. N. Eason conveyed to Narcissus C. Eason by deed dated September 15th, 1893, and recorded the same day in Deed Book 181, Page 456, 70 acres known as the Cornick Farm. N. C. Eason later conveyed off two pieces to Dr.

Robert C. Barclay, III.

Camillus F. Eason. The first she conveyed off contained 60 acres. It was by deed dated June 15, 1915 which wasn't recorded till May 13th, 1937 in Deed Book 636, Page 220. By another deed dated September the 11th, 1926 and recorded May the 13th, 1957 she conveyed another piece containing 40 acres to Dr. Eason. These two pieces were more or less right out the middle of the Cornick Farm and divided it into two more sections.

Then by deed dated December the 4th, 1926 and recorded October the 8th, 1927 in Deed Book 570, Page 481, she made a deed of gift to Sarah Eason and Mary F. Eason, all of the Cornick Farm she had left.

Q. How much was it she had left?

A. Well, she described it as all rights, title and Vol. III interest in the Cornick Farm, 470 acres, then the page 347 } boundaries and named the parties, with the exception of conveyance of one acre to the man by the name of Faulkner, and conveyance to Camillus F. Eason. She doesn't say what is left.

The Court: That is to Mary F. Eason and Sarah?

A. And Sarah. They are two sisters.

The Court: I understand that. Were there any mention of incumbrances on the property or any consideration at all?

The Witness: That was a deed of gift. On the first deed in 1913 Dr. Eason, it recites consideration of \$3,500.00. The second cites a consideration of \$5.00. The deed to the two Eason sisters is a deed of gift.

Now, Dr. Eason, by deed dated May 4, 1938 and recorded June the 10th, 1942, gave the property and conveyed it to his two sisters, Mary and Sarah Eason with the right of survivorship. That is the 40 and 60 acre tracts with other property which she owned.

The same day that the deed was recorded there Vol. III was also a will of Dr. Eason's recorded which left page 348 } everything to his two sisters. Sarah Eason made a deed to Mary F. Eason dated December 6th, 1946 and recorded September the 2nd, 1952 in Deed Book 1072, Page 208 conveying to her all her interest in the 470 acre tract known as the Cornick Farm. On that same day there was a will probated, that is, September 2nd, '52, in the

Robert C. Barclay, III.

Clerk's Office of the Circuit Court of Norfolk County in Will Book 22, Page 303, leaving all her property to her sister Mary F. Eason.

Mr. Bangel: The deeds and will were recorded simultaneously?

The Witness: The deeds and will in each instance were recorded simultaneously.

By the Court:

Q. Did you make any list of the adverse conveyances?

A. No, sir, I did not.

Q. Did you find out what was paid off or—

A. I did not go into that.

The Court: One other thing, it wouldn't give a complete picture.

Mr. Bangel: It would give a picture of the Vol. III chain and that is all we are interested in.

page 349 } Mr. Allen: We won't argue with the Judge's ruling. We except with deference, your Honor, and except to it upon the ground this is relevant in view of the law. The jury have the right to consider natural justice and that enters into the natural justice of the picture.

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page 350 }

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Mr. Allen: We are going to offer Mr. Webb and Mr. Willcox.

The Court: What are they going to testify to?

Mr. Allen: They are going to testify relative to all these papers that the testimony shows were prepared and executed in the presence of Mr. Webb and Mr. Willcox, and in explanatory of the papers, and for instance, Mr. Webb will testify that the deed which he wrote reserving the life estate to Mary Eason and giving the property to these people, the remainder, there was nothing said by it about any promise for them to convey the property or anything of that kind.

Mr. Bohannon: Our objection would be to any testimony

in the nature of any privileged communication between her and counsel.

Mr. Allen: Yes.

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page 352 }

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The Court: That is the same case I found here, and it looks like substantially the same set—I mean the contest between the two same sets of people.

Mr. Allen: That's right. In that case the Court has testimony, I think, they had made a will but they did not let them disclose the contents.

Mr. Garrett: Of course, that is a very different situation from this. Mr. Webb is not being called on to testify as to this will. I think he knew nothing about the

Vol. III will, he was not present; he was not a witness on page 353 } it.

What they are going to try to do in this case is to have him testify to conversations, I assume, that he had with Miss Mary in his office and various things she discussed and talked about, and I submit that is pure confidential relationship, hasn't got any bearing on this will, and her lips are sealed by death and he ought not to be permitted to come here now and tell what she told him in confidence, in particular in view of the fact he started out in this case as attorney for these contestants. That is an added factor that ought to shift the scale if there is any doubt about it, and now he comes here as a witness, and if they propose to put him on the stand and have him delineate discussions he had with her over the years, I submit they are privileged communications and they ought not to be made for the benefit of somebody who is contesting what purports to be her last will in this case.

Aside from the ethical concept of it from his Vol. III standpoint, which he apparently is not going to page 354 } make any contention on that from the discussion he had back here in the back room, he is quite ready, willing and able to shift from an attorney for the contestants to a witness for the contestants, and I submit if it is a close question this is the sort of a case where he ought not to be permitted to come in and unfold the numerous and various conversations he had with her through the years, and

no doubt they are going to pin him down on her mental capacity and all such stuff as that gathered out of confidential communication and discussions that she had with him as her attorney.

I submit it is improper to permit that. It would violate every concept of ethical procedure.

Mr. Allen: Are you finished? One other reason I think I should state to your Honor clearly, because we do not want to rely on that entirely because it wouldn't cover the whole picture, the evidence will show that when this deed, I believe it was, was written by Mr. Webb, all three went Vol. III there together, and Mr. Willcox' testimony will page 355 } show that practically all of his transactions were with all three. Of course there is no privilege attached to that.

The Court: Yes.

Mr. Allen: But we don't want the ruling to be made on that on our basis. We think that under this Virginia case here that this question of privileged communications does not apply in will cases unless there is a claim being made by someone against the estate.

Mr. Bohannon: Well, you have got in the record the testimony of the contestants, the two Drs. Eason about the visit to Webb's office and to Willcox' office. I believe you've got—

Mr. Allen: We have got a right to corroborate by Mr. Willcox and Mr. Webb.

Mr. Garrett: Mr. Allen, I am not so sure that Mr. Webb doesn't have a claim in this case. He starts off as an attorney of the contestants. I presume he expected to get paid for it. There is no proof that he is relinquishing Vol. III any contention there.

page 356 } Mr. Allen: He has been paid for his services up to that time by the heirs.

Mr. Garrett: Well, then he has had an interest in the matter then?

Mr. Allen: But not the estate. He had a claim against the heirs and they paid it.

Mr. Garrett: Well, who paid him for coming into this contest? As he told the Judge here the other morning he was the attorney in it and filed the papers.

Mr. Allen: We paid him up to the time he withdrew, but I was associated in the case. I realized that both Mr. Webb and Mr. Willcox have to testify and I called Mr. Bangel and discussed it and we took it up with Mr. Webb. The only thing to do was to pay Mr. Webb for his services to date and let him

withdraw because we couldn't permit him to stay in the case and testify.

Mr. Garrett: Do you mind telling us how much you paid him?

Mr. Allen: I wouldn't mind it myself but that is his business and you can ask him if you want to.

Vol. III Mr. Bohannon: I think it is highly improper for
page 357 } an attorney to be in on a case and then put him
 on for confidential communications that arose and
he switched as counsel for the contestants and then the very
first day he withdraws from the case and then comes in as an
ordinary witness like some of these others that have testified
and on her conversations and disclosures made to express an
opinion.

The Court: Are you going to get him to testify, or attempt to get him to testify as to her mental processes?

Mr. Allen: I do not think we are going to ask him about that. We are going to let him testify to transactions and the jury can be the judge of that.

Mr. Garrett: Well, you don't have to ask him, it's in the record, then. He could be so positive in relating possible idiosyncrasies and statements and things she made it would be self-evident it wouldn't be necessary to ask him.

I do not think, if your Honor please, when a
Vol. III person goes to a lawyer's office and employs him
page 358 } that we have to run the risk of him later coming
 into court and telling what they told him in that
office and placing his construction on it, it seems to me, unless
there is an illegal venture of some kind afoot that the privilege
exists there.

Now, this is different where you are trying to prove whether a man witnesses a will and where there is a question of the will that is destroyed. That has an air of somebody doing away with a will, and obviously secondary evidence is always admissible where the primary evidence is gone, but that was holding what he has read in this case there, and they qualified it by saying at least when he is a witness to the will.

You haven't got the situation there in any sense that exists here. This was a case in which there was a prior will written and for some reason that will disappeared and there was no showing as to how it disappeared and this lawyer got on the stand and said, "Yes, I wrote the will, I was an

Vol. III attesting witness to it," and the question was
page 359 } whether he was permitted to say what was in the
 will. That is an entirely different situation from
what exists here.

This man gets on the stand and has had her complete confidence, knowing her for years. She might say things to him that she might not say to myself or anybody else in this room which isolated from the whole conversation could be made the subject matter of some adverse comments just like some other things that may be made in this case.

Certainly when she goes to him and employs him and pays him and rests her affairs in his hands and he gains her confidence, for him to come here now and to switch as an attorney for the contestants over to a witness in this case, I submit it is highly improper to permit that privilege to be violated.

And the law profession is thought badly enough as it is; they think we will all shift and turn and switch for

Vol. III a dollar or two to our interest.

page 360 } This is a classic case which will confirm the public judgment if that means anything to the Courts or to we who are practicing. And if the rule has any validity it certainly hasn't any application here. It is just going to lead to a sharp cross examination of this man. It is going to reflect on him, it is going to reflect on the profession and everybody else, and there isn't any need to permit that to come about when he obtained this through privilege, that she paid him for his services, and for him to come here now and to make comments such as they are going to try on her soundness of mind, I submit would be breaching every concept—

Mr. Bohannon: There is no contest as to what he and Mr. Willcox did as far as writing wills and deeds and so forth.

Mr. Garrett: No, there is no question about that. They can come in and say there was \$42,000.00 worth of notes; Mr. Willcox can do that. That has been brought out that papers were drawn.

Vol. III If Mr. Webb wants to say he drew a will for
page 361 } her in 1955 when the doctor says she was crazy, he can go ahead and do that, he witnessed that one, any of those papers. But they are not going to be content with that. They are going to use their superior means of contact with this woman to get over to the jury that she was not competent, and I say that it is information obtained under privileged circumstances.

The Court: Well, in *Culpepper against Roby* they dealt a little sharply with an attorney in Suffolk named Holland participating in the case but for different reasons.

My original reaction was very strongly against the attorney testifying on account of that privilege. There has been certain factors that have been brought out here about papers

being drawn and all that. I think they would have a right to testify to that, but I do not think they have a right to come in here and testify on competency at a time when they drew these papers and all that. If that isn't privileged, I don't know what it is.

Vol. III I am going to have to rule that they cannot go
page 362 } any farther than testifying as to the facts that we
are talking about.

Mr. Allen: Now, Judge, at this point, we think it is right vital, and we have got to get in the record what these witnesses will testify to, because as your Honor knows, we couldn't avail ourselves of the point either on motion to set aside the verdict or in the Court of Appeals.

The Court: And I think probably if I ruled on the individual questions and answers in chambers I can do it better than by making a broadside ruling on the whole thing.

Mr. Allen: You would rather get the witness in here?

Mr. Bangel: Would it be better, if your Honor please, in view of the number of attorneys in here and the closeness of the place, to let the jury go out and we can go out in the courtroom?

The Court: As I understand this question of privilege where everybody was in there talking to the attorney, then if it isn't a purely attorney and client relationship
Vol. III there is no privilege that exists anyhow.

page 363 } Mr. Allen: Well, that's right; you're right.

Where all of the parties go in there together and employ the lawyer as they did Mr. Willcox and as they did Mr. Webb, matters coming out and relating to that employment and what they did under it are not privileged.

Mr. Bohannon: The two doctors just employed Mr. Willcox and Mr. Webb, didn't they?

Mr. Allen: No, sir, the testimony is going to be that Miss Eason, all three, employed them and all three went to Mr. Webb's office and all three discussed the matter with Mr. Willcox in his office at the time.

The Court: If all three were in there my ruling does not apply. As to those parties it wasn't a privilege.

* * * * *

The Court: If it was a conversation when all
Vol. III of them was present I don't think it is privileged.
page 364 } Mr. Allen: Well, some of it where probably
all three were not present, we have to get that in

the record, of course. We are perfectly willing to let them go on outside of the presence of the jury and then your Honor can rule on it, which is admissible and which is not.

* * * * *

Mr. Allen: Your Honor understands that where Vol. III we differ and rely on this Hugo case is that the page 365 } principle is not applicable where the heirs are on one side and devisees on the other, and the contest is over validity of the will.

The Court: That is true but is not about competency of the testator. That is the distinction between the cases.

Mr. Garret: Suppose, for instance, somebody came to me and they were in a highly excited condition or agitated. I am handling their affairs and they say to me things. They exaggerate them a bit or what not. They know I am on their side, and what they tell me when that door is closed is between us.

Now, could a man be permitted to come here now and express an opinion taking into consideration what he had gotten from me in confidence knowing he was completely disarmed when I was talking knowing if I exaggerated or whatever I did. I was in friendly arms there and maybe got it off my chest or something. Isn't that what we are getting into in this thing?

The Court: I am going to rule you can't put it in. That is my opinion. That is one of the sacred relationships.

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Vol. III The Court: Ladies and gentlemen of the jury, page 367 } I am going to ask you to step outside in the jury room while we take up this witness. We will call you in later on.

(Whereupon the jury were excluded.)

J. MCBRYDE WEBB,
called as a witness on behalf of the Contestants, having
been first duly sworn, was examined outside of the jury pres-
ence, and testified as follows:

DIRECT EXAMINATION.

By Mr. Allen:

Q. Mr. Webb, will you state your name, please?

A. J. McBryde Webb.

Q. What is your profession?

A. Attorney.

Vol. III Q. Attorney at law. How long have you been
page 368 } practicing law?

A. About 45 years.

Q. What is the nature of your practice?

A. Oh, general practice.

Q. General. Did you know Miss Mary Frances Eason?

A. Very well indeed.

Q. How long did you know her?

A. Well, I should say around about 40 years.

Q. Did you have occasion to draw a deed for her bearing
date of the second day of May, 1955, which I hand you for
purposes of identification? Just answer it yes or no.

(Handed to the witness for examination.)

A. Yes; that is my signature.

Q. I understand you drew that deed?

A. I did.

Q. Now, who was present when that deed was drawn?

A. Well, that was drawn by my secretary. I can't say who
was present at the time it was typed. But before that deed
was drawn Miss Mary and the two doctors came over my
house. That was, I think in all probability, on Saturday
before the deed was drawn, or Sunday. And then I was asked
to go to the Clerk's Office and run down the lines

Vol. III of the property.

page 369 } There was, I think, two farms. I don't remem-
ber. One was the Cornick Farm, and the question
was the number of acres, I think, that I was to ascertain.

Q. Well, who was present when you were to ascertain those
lines?

A. How's that?

Q. Who was present when you were asked to ascertain those
things?

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A. All three of them.

Q. And did you ascertain them?

A. I did.

Q. Then when the deed was signed by Miss Mary Eason and acknowledged before you, who was present?

A. They all were present.

Q. All three?

A. Yes.

Q. And to whom did you give the deed?

A. Now, I think in all probability I took the deed to be recorded.

Q. What did you say?

A. I think that I took the deed to have it recorded.

Q. At whose direction?

A. Aunt Mary's direction. And I might say, too,
Vol. III that it was Mary who paid me my fee for drawing
page 370 } the deed and also for the recording fees and the
stamps.

Q. Well, now, was anything said at that time as relating to any promise of any kind about the doctors to reconvey to her the property under any conditions?

A. No, no words at all. I told them afterwards—

Q. Now, you can't testify as to what you told the doctors afterwards or what you told her afterwards either yet. But we are only concerned now with what took place at the time this deed was written and who was present.

A. The three were present.

Q. And nothing was said—

A. Nothing was said about any gift or anything at all.

Q. I am asking you about whether anything was said about—

A. —or promise to giving it—

Q. —conveying the property under certain conditions.

A. No, not one word.

Q. Was any pressure brought upon Miss Mary by anybody to execute this deed?

A. No, I might say I don't know exactly whether it has any bearing, but you drew the will of her mother,
Vol. III and I have a diary of everything that happens in
page 371 } my office, and that is recorded in that diary. That
diary starts from the time I started practicing
law.

Q. Well, we are not concerned with that, sir.

A. And I want to say that I drew the will of Mary's mother, and it was strange to follow after the will was drawn for her

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mother later on a similar deed was given by Miss Narcissus Eason, and I drew that deed. In other words the deed took the place of the will, and then this followed more or less the same form that her mother followed, and, of course, I said, "Well—

The Court: Gentlemen, I think we will just stop that now.

By Mr. Allen:

Q. Well, I didn't ask you that, sir.

The Court: We are not concerned with that.

By Mr. Allen:

Q. Now, Mr. Webb, can you briefly state the number of transactions you had with Miss Mary over the years, roughly speaking?

A. Well, I have taken up from '54. There is the carbon copy there, on the other side.

Q. You want me to hand this to counsel?

A. Well, you might. I have no objection. That was taken from my diary every day that she was in there.

Vol. III Q. Now, have you got a copy before you?

page 372 } A. I have not, but there is a copy there.

Q. Wait a minute, there is an original and a copy here.

A. I think there is just one copy there; there might be two.

* * * * *

Mr. Garrett: No, that's all right, we are just glancing through it.

Of course, Judge, this is a memoranda of confidential discussions he has had with this lady over a period of years, and obviously I don't think it would be admissible unless it is waived by her interest. Every time she

Vol. III page 373 } came in he has got a note of what took place or some limited note, which obviously isn't the whole conversation. He has got a line or two each time, and it starts back in 1955. I don't know why he picked that date but he picks that date in '55.

The Witness: I can go back further. I can go back further for 25 years or more.

* * * * *

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page 374 } By Mr. Allen:

Q. Now, may I have my memorandum? Now, the memorandum you have in your hand, as I understand it, was taken from your books and you are just using that merely to refresh your memory?

A. That's right.

Q. All right. Now, can you give us the dates of the various conversations you have had with her beginning with April 30th, '55? Not the subject of the conversation now, but the dates.

A. Starting with April the 30th, "Dr. Sam Eason and sister was in about deeding home place to Dr. Robert and Sam Eason, they were also at my house Sunday, May 1."

The Court: Better talk a little louder.

Mr. Garrett: He is refreshing his memory by reading every word that is on that?

Mr. Bangel: If your Honor please—

The Witness: I have a book here covering some of these. I could have brought them over, the original entry.

Mr. Garrett: He is reading it.

Mr. Bangel: Well, if your Honor please, that's Vol. III all right. We submit this is outside of the presence page 375 } of the jury and the memorandum was made by him.

The Court: Well, he can have notes to refresh his memory, but he is reading a typewritten memorandum, Mr. Bangel; this is typewritten.

Mr. Allen: If your Honor please, the law in Virginia is certain upon that. There is no limit to the use a man may make of a memorandum to refresh his memory.

It doesn't make any difference who made the memorandum or where it came from, if it refreshes his memory.

And in one case a man undertook to testify and it was a lot of details exactly like that, and he said "I can't possibly remember unless I look at a memorandum." I can give you the name of the case; and the Court virtually permitted him to read the memorandum. He was allowed to read it and he actually read that memorandum to the jury.

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Now, I take it under that and numerous other authorities
he can take that memorandum before him and look
Vol. III at it and look up and testify or virtually read it
page 378 } if the items are so numerous and deals with the
dates that he cannot carry in his head.

The Court: The best evidence rule is his recollection, Mr. Allen.

Mr. Allen: Well, the best evidence rule has no application to the rule of refreshing your memory. All he is trying to do is refresh his memory.

The Court: He is reading it verbatim.

Mr. Allen: Well, he looks down and gets the date and then resumes and looks up and testifies; but in the case I have just read, the Nottingham case, they held in view of the complexities the man could virtually read his memorandum.

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The Court: I previously ruled that this type of testimony is not admissible. This witness is being examined on it just for the record.

Mr. Allen: That's right.

The Court: So that the purpose we have here is to make this record complete. Do you wish to introduce that as an exhibit subject to the objection?

Mr. Garrett: I think it would shorten it, Judge.

The Court: I think it would.

Mr. Allen: Does your Honor mean to introduce it as an exhibit and not ask him any questions concerning the transactions? I know he could not do it before the jury, but I mean for purposes of completing the record.

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The Court: Only as an offer of proof that he
 Vol. III would testify to what is in that memorandum for
 page 380 } the purpose of saving your point in the case, yes.

I say it should come in because I have ruled it is not admissible and you excepted to the ruling. That, in effect, is what you are going to prove by this witness.

Mr. Allen: Well, what I was asking is we expect to prove by this witness more than just the mere items. These items are put here for purposes of refreshing his memory. He can give testimony as to how she acted and what she said and what she did on each occasion and what business he transacted.

Mr. Bohannon: Can't it be an addendum to the memorandum to shorten the matter? You mean you may have a dozen questions in addition to what he would say in that memorandum?

Mr. Allen: Well, if you want me to stipulate and shorten it you can say whether you will agree to it or not. Would you like for me to do that?

Mr. Bohannon: We are not agreeing to what
 Vol. III he says.

page 381 } Mr. Allen: I know you are not agreeing.

Mr. Bohannon: But you say that he is going to say something in addition to that memorandum. That is a four or five-page typewritten memorandum, and I suggest that he pick out something that he has got to say in addition to what he has written. Maybe that will help, I don't know.

Mr. Allen: Don't you think that when the Court excludes testimony that it is not only the attorney's right but his duty to put in the record what would be the testimony if allowed?

Mr. Bohannon: That's right.

Mr. Allen: Otherwise we have no standing in Court.

Mr. Bohannon: We are just talking about procedure, how to handle it.

Mr. Garrett: Judge, Mr. Allen is entirely correct on this point in the event any appeal should be taken in the matter. We are not contending that Mr. Allen cannot introduce in

evidence as to statements made in the presence
 Vol. III of others which would not involve the privilege.
 page 382 } We are not contending that Mr. Allen does not have the right to show any deeds or papers or transactions that were drawn leaving aside any confidential statements made by the client to him.

Now, this long list of comments by Mr. Webb has just been handed to us. If there are any instances in that which encompass those items, statements she made in the presence of

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others and in the presence of her attorney and transactions, we have no objection to those. It is only to the comments in there which he makes when she comes in and talks to him in private about something and he writes it down in the book.

I submit that is privilege and only to that extent should it be excluded.

Mr. Allen: The Judge already ruled they are privileged communication. We can't introduce them to the jury.

The Court: That is what I previously ruled, just like in the Drs. Eason transaction that if they were all there together there was no privilege. I don't know any other way, gentlemen, except go up piece by piece.

Vol. III Mr. Allen: Let me make this suggestion now
page 383 } and see if it will shorten it. We certainly do not
want to take any more time than necessary.

I can take each item and state in substance generally what we expect to prove under that item and vouch for it and then except to your Honor's ruling it out, then let it go at that, if you want to do that.

Mr. Bangel: That is the quickest way.

The Court: Go ahead.

Mr. Garrett: Can we follow you on that with anything?

Mr. Allen: Well, yes, he will not be having any use for that now, just let him have that copy.

Mr. Garrett: Thank you.

Mr. Allen: Now, if your Honor please, I have in my hand a memorandum of about six pages, part of the pages are not full, consisting of dates of occasions on which Miss Mary Eason came to the office of Mr. Webb and he transacted business with her.

I understand that there is no objection to this
Vol. III being introduced just like it is, but the objection
page 384 } is as to what I am going to say about it?

Mr. Garrett: Of course, there is objection.

Mr. Allen: I know there is objection before the jury.

Mr. Garrett: Oh, well, an objection is an objection. We are not waiving the right to object to it.

Mr. Allen: All right. We expect to prove that on April 30th, Dr. Sam Eason and his sister was in Mr. Webb's office about deeding the home place to Dr. Robert and Dr. Sam Eason, that they were also at his house on May the first, and I take it your Honor will allow that under your ruling if they were together.

On May 17th Miss Mary Eason was in his office again about the property at which time she signed over to her doctor

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nephews, thinking they may have a right to move her off the farm and dispell her doubts.

By Mr. Allen:

Q. On that occasion were the doctors with her?

A. No.

Vol. III Mr. Allen: They were not. We take it that will page 385 } be out under your ruling, and we expect to prove discussions had there bearing upon her competency showing whether she was competent or not and what her intentions were and what she wanted to do.

By Mr. Allen:

Q. On June the 7th Miss Mary Eason came in to discuss her estate and about making a will.

Mr. Bohannon: Alone.

By Mr. Allen:

Q. I take it that she was alone on that occasion?

A. She was.

Mr. Allen: Is that true? We expect to show, sir, that Miss Mary discussed her affairs in detail with Mr. Webb covering them back and forth and referring to the doctors, what she wanted them to have and that her transactions and conversations with him on that occasion bear on her competency.

Mr. Allen: Now, on October the 24th we expect to show that Miss Mary Eason, Dr. Sam and Dr. Robert Eason were in and he drew a will and an agreement between the Easons for the sale of the timber and how the check was Vol. III to be made, and also drew up a paper that the page 386 } business of the timber was to follow.

By Mr. Allen:

Q. Now, I take it they were all three present there and that would be admissible?

A. They were.

Mr. Allen: On October the 27th, Miss Mary was in to see Mr. Webb about people calling her crazy, also with reference to sale of the timber. We expect to prove—

Mr. Garrett: Go ahead, don't stop reading.

Mr. Allen: You want what he said there?

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Mr. Garrett: Yes, yes, this is all what he said.

Mr. Allen: We are going to prove more than this, you know.

Mr. Garrett: Just read it to the Judge, the other line.

Mr. Allen: I will read it before I leave that paragraph.

Mr. Garrett: That is the last thing in the paragraph.

Mr. Allen: We expect to prove Miss Mary was Vol. III in his office with—about people calling her crazy, page 387 } also with reference to the sale of the timber, and that he had conversations with her on the subject and about her affairs and—

Mr. Garrett: You're not reading from that. Go ahead and finish reading that line, Mr. Allen.

Mr. Bangel: We're trying to shorten it.

Mr. Garrett: I mean read it, it's only one line.

Mr. Allen: I was just going to read it. I was starting to read it. Then it's the last thing—

Mr. Bangel: If your Honor please, we, in addition to that, expect to show certain facts which we are vouching for. The witness is here and we are trying to shorten it. If they prefer to—

Mr. Garrett: Mr. Bangel, it's not but ten words.

Mr. Allen: I was starting to read it when you stopped me.

The Court: Gentlemen, we are going to end up Vol. III by wasting more time than save time. page 388 } Mr. Allen: (Reading) "I insisted on her moving from the Eason Farm." That is the last sentence he is talking about.

We expect to show that she discussed various and sundry things about the matter, some of which has been testified to here, and he thought she ought to move off the farm under the circumstances if those things were true.

Now, on November the 4th she was in his office again with Albert to see about stopping proceedings in divorce case of her brother, afraid it may lead to suit of alienations.

We expect to show there that he had considerable conversation with her and had an excellent opportunity to determine her state of mentality and will testify to it.

"On November the 21st, '55, Miss Mary came into his office with a check for \$5,000 and cash from the Seaboard Bank, cashed the check, cashed notice; between four and five thousand, of which money we placed in a rented lock box, she taking both keys to the lock box with her."

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Vol. III By Mr. Allen:

page 389 } Q. Were either of the doctors with her on that occasion?

A. They were not.

Mr. Allen: We expect to show that her affairs were considerably discussed there.

"On November the 22nd Miss Eason was in and spent some time with her in the matter of obtaining travelers checks which we delayed until Friday. I am hoping that she will take a vacation in Florida."

He again discussed many business matters with her there, and matters in connection with the travelers checks which have been mentioned in evidence here.

"On November 25th, Miss Eason was in and went and bought \$5,000 worth of travelers checks, she will be in next week again."

"On December 5th, Miss Eason came in to see about arrangements to go to Florida." He discussed matters with her at that time considerably.

"December 27th, Miss Eason came in to check and see if money given by her to the Virginia Conference Orphanage of \$5,000 has been received by them, and he told her he would check into that. Evidence will show there that she had given the Virginia Conference Orphanage \$5,000 and she was inquiring if he had forgotten it, and considerable conversation passed there in connection with her affairs which dealt with the subject of her mentality.

"On January the 3rd, Miss Eason was in today and is preparing to motor to Florida, she will hire a chauffeur to drive her brother LaSalle Eason who was in later, and talked the same subject over with him. Also Miss Eason wishes me to go to the Bank and check her bank account for her."

On this occasion there was considerable talk about her transactions which gave him an opportunity to pass on her mentality.

"January the 4th, went to the Seaboard Bank for Mary Eason and Mrs. Harrel said the check was in storage, will call me on same as soon as possible. Called Mary about same."

By Mr. Allen:

Q. I don't understand what is meant by "check was in storage."

Vol. III A. You want me to explain that?

page 391 } Q. Yes.

A. Well, the bank has a place of storing their

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old checks. In other words Mary bought one of the cashier's checks, and of course that check would come back to the bank. So, all those old checks were stored in a vault by the bank and it takes several days and all to find them. It had been previously cashed.

Q. It had been previously cashed?

A. Yes, it had been previously cashed.

The Court: All right.

By Mr. Allen:

Q. Were they her checks or cashier's checks?

A. Cashier's checks, yes. She bought a cashier's check.

Mr. Allen: "On February 13th, Mary Eason was in about her checks to the Hermitage."

By Mr. Allen:

Q. Is that the Hermitage Home in Richmond?

A. Yes, that's right.

Q. And you talked to her about that, I take it, on that occasion and other business transactions?

A. That is right.

Mr. Allen: "February 21st, Mary Eason came in and wants me to check a deed."

Vol. III By Mr. Allen:

page 392 } Q. What deed was it that she wanted you to check Mr. Webb?

A. That deed, I think, was one dealing with Albert.

Q. I take it—

Mr. Allen: We expect to show that he had conversations with her on that occasion, and had occasion to observe her and judge her mentality.

"February 23rd, went to Portsmouth for Mrs. Mary Eason to see if her brother's sons Sam Eason and Robert had made any conveyances. I found more."

We expect to show that she came to him and asked him about that, had conversations about her brother's sons Robert and Sam and her relationship with them and what she wanted to do for them and all that.

"February the 24th, Mary Eason came in and I went to Portsmouth with a savings check which she gave to the

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Methodist Conference. Talked over various things and people spying on her."

We expect to show that he had a lengthy conversation with her on that subject about various things as he says here among which were that people were spying on her and he had a fair opportunity to judge her mentality.

"March 13th, Mary Eason was in, showed me her will Willcox drew. Talked about her two brothers."

We expect to show that she was thoroughly satisfied with that will which, I think, is the one we have offered in evidence here.

"March the 19th, Mary Eason was in to see about letter she has written to Sam and Robert to keep off the place, also about her brother LaSalle." And there was considerable conversations about that.

"April the 6th, Mary Eason was in and called her brother LaSalle Eason in St. Petersburg, Florida. She will pay for call later."

Now, I have gone through April the 6th, and these items run several more pages, and in order to shorten this matter I would like to say that on each of the occasions mentioned here down to and through July the 5th, 1958, Mr. Webb had the conversations earmarked in these items and the conversations in each instance were much broader than indicated here. These are mere earmarks, and on all those conversations he had the best opportunity of anybody who has testified to pass on her state of mentality. And that—well, strike that.

By Mr. Allen:

Q. According to your memorandum the last time you saw her was August the 5th, 1958, is that right?

A. I would have to refresh my memory by going to another paper, but I think in all probability that was—

Q. Well, if you have something to refresh your memory I would like to know the last time you saw her.

A. I haven't got one of those memoranda before me. Does it refer to me signing a bond? The last time she was in my office I signed a bond. It seems as if she lost some of her pension checks and he had to give a bond. So, I willingly signed this bond she had.

Mr. Allen: We vouch from all of these conferences and

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transactions that he had with her that he will testify that she was mentally ill.

The Court: Well, then I will make the ruling to cover that whole phase of it right now. Any conversations he had with her privately that he not be permitted to testify as

Vol. III to her mental competency.

page 395 } Mr. Allen: As I take it then, your Honor, under that ruling we can show the occasions that she came to the office with her two nephews?

The Court: And any conversations that were not in private with her. When they were there then that is not privileged.

Mr. Allen: Now, we don't want to have another argument unless it is necessary, about Mr. Willcox' testimony. I take it the same ruling would apply to his testimony.

The Court: Yes.

Mr. Allen: Although my recollection is his testimony principally will cover transactions with all three of them.

The Court: If all of them were there he can testify.

Mr. Allen: Well, we, of course, except to your Honor's ruling on the ground we do not think the law of privilege applies in a will case where the contest is between the heirs and the devisees as it is here.

The Court: Well, we understand I may be in Vol. III error, but the case you cited did not go to the com-
page 396 } petency of the person who was executing the will, and the testimony was not offered to her mental competency. It was offered to prove the execution and so on of the will, the validity. In that sense to get the record straight you refer to the Hugo case. Hugo against Clark is distinguishable in this case.

Mr. Bangel: May the jury come back now then on that one point, on the two things your Honor allowed?

The Court: Yes.

Mr. Allen: We offer this as an exhibit.

The Court: Contestants' Exhibit Number 19.

(Received and marked in evidence by the Court as Contestants' Exhibit Number 19.)

The Court: Now, you want the jury back? You are ready for them now?

Mr. Allen: Yes, sir.

The Court: Bring them in.

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(The jury were recalled into the jury box and the trial continued as follows:)

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page 397 } By Mr. Allen:

Q. Mr. Webb, will you state your name for the record, please?

A. J. McBryde Webb.

Q. What is your profession?

A. Attorney at law.

Q. How long have you been practicing law?

A. About 45 years.

Q. Did you know Miss Mary Frances Eason?

A. Very well indeed.

Q. How long did you know her?

A. Oh, I should say for 40 years.

Q. I have before me what has been marked as Contestants' Exhibit Number 2, being a deed dated the second day of May, 1955, between Miss Mary Eason and Dr. Samuel W. Eason and Dr. Robert R. Eason, written on your paper with your name on the back of the deed. I will ask you if you wrote that deed.

(Handed to the witness for examination.)

A. I did.

Q. Who was present—no, strike that. Did you have any conversations jointly with Miss Eason and Dr. Robert Eason and Dr. Sam Eason previous to writing that deed?

A. Yes.

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Q. Who was present when the deed was signed?

A. All the parties were present.

Q. Well, just name them, please?

A. Dr. Robert Eason, Dr. Sam Eason and Mary Frances Eason.

Q. Was any promise made on that occasion of any kind by either Dr. Robert or Dr. Samuel W. Eason to reconvey the property to her?

A. Never.

Q. Under any conditions?

A. Never, no promise to it at all.

Mr. Allen: That is all. Excuse me, I forgot to ask him about the will, if you will excuse me while I ask him about the will.

Mr. Garrett: No, go ahead.

J. McBryde Webb.

By Mr. Allen:

Q. Now, answer this question yes or no before you go into any details at all. I hold in my hand a will introduced in evidence marked Contestants' Exhibit Number 4, and I will ask you to look at it and see if you wrote it.

(Handed to the witness for examination.)

A. I did.

Q. Was anybody other than Miss Mary Eason present when that will was signed?

Vol. III A. It was signed in the presence of Mr. Randall,
page 399 } one of the three witnesses. We were all present at
 the same time and in the presence of the testator.

Q. What I want to know is whether Dr. Robert Eason or Dr. Sam Eason were there.

A. Oh, what is the date of that will now?

Q. That will is dated, I think, August 24th, '54. Look at it and see on the last page. The date of it is on the last page.

A. No, they were not.

Q. They were not.

Mr. Allen: That is all.

Mr. Garrett: Let me see that will, will you please?

(Handed to opposing counsel.)

CROSS EXAMINATION.

By Mr. Garrett:

Q. Mr. Webb, for purposes of refreshing the jury, is this what we are talking about, this will which is dated October 24th, 1955 and was drawn by you?

A. That's right.

Vol. III Q. And it was witnessed by you, correct?
page 400 }

A. That is correct.

Q. And also Mr. V. C. Randall?

A. Former Clerk.

Q. And Mrs. Evelyn W. Tatem?

A. That's right.

Q. In reference to the deed of April the 2nd, 1955, you say that Miss Mary and her nephews came to your office?

A. That's right, first to my home and then to my office.

J. McBryde Webb.

* * * * *

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* * * * *

By Mr. Garrett:

Q. Did Dr. Sam Eason and his sister come to your home on Sunday, May the first about this deed?

A. Yes.

Q. And his sister—who is Dr. Sam Eason's sister?

A. Miss Mary—no, I mean the niece, yes, the
Vol. III niece.
page 402 }

Q. Now, which is it now. What is the relation-
ship?

A. Dr. Sam and Dr. Robert was the nephews.

Q. Well, then it wasn't a sister?

A. No.

Q. Now, when they came to your office about drawing the deed on May the 2nd, they came together?

A. They did.

Q. The two doctors had obviously been in town from the preceding Sunday until the day they came to your office to draw the deed?

A. I don't know when they came to town.

Q. Well, you know they came to see you with Miss Mary?

A. Yes.

Q. About the deed and then you know they came back together when the deed was drawn?

A. That's right.

Q. So, you were not with them during the time they went back and forth from your office?

A. Oh, no.

* * * * *

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* * * * *

SHERIFF HODGES,

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

DIRECT EXAMINATION.

By Mr. Allen:

Q. How much of the time have you been in the courtroom during this trial?

A. Right much of the time, Mr. Allen.

Q. Did you know that you were going to be called as a witness?

Vol. III A. No, sir.

page 406 } Q. Now, I will ask you if you called either of the nephews, Robert or Sam in reference to Miss Mary Eason.

A. I did, sir, some four or five years ago. I don't recall exactly how long it was.

Q. Robert or Sam. Well, now, were any complaints made to your office as sheriff by Miss Mary Eason?

A. Miss Mary came to my home and talked to me several time and, of course, I heard rumors that were going around too, and as a result of my conversations with her and with the rumors that came to me, my attention and from the people in the community I felt it was necessary and my duty to call her nephews, because they were her closest relatives.

Q. What was the nature of the complaints that were being made to you by her?

A. Well, Miss Mary thought there was someone sitting in the bushes to waylay her, people shooting in her house, people going through her house and stealing. I stationed police officers there on some two or three occasions until I convinced myself that—

Mr. Garrett: If your Honor please, I object to what he convinced himself.

The Court: Sustain the objection.

By Mr. Allen:

Q. Did your office make any investigation as to the truth or falsity of the complaint she was making?

Vol. III page 407 } A. Yes, sir, she went there.

* * * * *

LaSalle Eason.

By Mr. Allen:

Q. Well, I will ask you this question. Did you institute any prosecutions following those complaints and the investigation of them?

A. No, sir.

Vol. III Q. You did not?

page 408 } A. No, sir.

Mr. Allen: That's all.

By Mr. Allen:

Q. I will ask you this. Did either the doctors come down here in response to your call?

A. (Pause) Yes, sir, I believe both of them came down.

* * * * *

LASALLE EASON,

called as a witness on his own behalf, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

Vol. III By Mr. Allen:

page 409 } Q. Will you state your name, please?

A. LaSalle Eason.

Q. How old are you, Mr. Eason?

A. 86 the 5th of last March.

Q. What relationship were you to Miss Mary Frances Eason?

A. Brother.

Q. Do you know how old she was when she died?

A. I think she was from one and a half to two years older.

Q. Than you?

A. (Witness nodded head affirmatively.)

Q. Where have you been living all these years?

A. Well, a large part, most of my life, around Hickory. Well, a good part of it, I better say.

Q. Where are you living now?

A. Down in Miami, Florida.

Q. Where were you living for the last several years before the death of Miss Mary Eason?

A. Down in the same place at the Tropic Hotel.

Q. In Florida?

A. Yes, sir.

LaSalle Eason.

Q. Yes. Well, now, when did you last live at
Vol. III Hickory?
page 410 } A. It was in the year — It was 1958, I think
it was.

Q. You last lived there in '58?

A. Yes, sir.

Q. What part of '58?

A. What's that?

Q. What part of '58, the first, middle or last?

A. I think it was the middle, I really haven't got the dates
right as to the months at least.

Q. Well, did you live in the home or in Miss Mary's home
or some other—

A. At a cottage a little further down about a fifth of a mile,
most of the time.

Q. Did you ever live in the—under the same roof with
her?

A. Well, only temporarily.

Q. When was that?

A. That was before I went down to Florida for one thing.
One time I was sick in the Norfolk General Hospital and
when I got out I was then around a month or two in her home.

Q. When did you go to Florida to live?

A. You mean in Miami?

Q. Yes.

A. That was in 1958.

Vol. III Q. Well, while you were living in Florida did
page 411 } you come back here to see her at all?

A. No, sir, I didn't have the opportunity.

Q. Did she come to Florida to see you?

A. No, sir, not in Miami.

Q. Well, anywhere while you were living in Florida?

A. No, sir.

Q. Did you live in any other place in Florida besides
Miami?

A. Well, one time in 1956 for a whole year I was in St.
Petersburg, Florida.

Q. Did she come to see you while you were living there?

A. Yes, sir, once or twice.

Q. Now, in this will referred to as Proponents' Exhibit
Number 1, which is the will of Miss Mary Frances Eason,
which was signed by her and witnessed on the 26th day of
October, 1959, did you see her during that year at all?

LaSalle Eason.

A. No, sir, in fact she never told me anything about her business.

Q. In this will, Paragraph Third, she says: "Being mindful of my brother, JAMES L. EASON, but having already sufficiently provided for him in this world, I hereby give, devise and bequeath unto him the sum of

Vol. III } One Thousand (\$1,000.00) Dollars, which sum
page 412 } shall be placed in trust in the National Bank of Commerce, Norfolk, Virginia, to be used for his burial expenses. I direct my said Executors to place this sum in such an account in said bank so that it will draw the maximum amount of interest and upon the death of my said brother, if said sum shall exceed a sufficient amount for his burial expenses, I direct that said excess be paid unto his estate."

Now, she states there "* * * having already sufficiently provided for him in this world * * *." What provision, if any, had she made for you in this world?

A. None whatever.

Q. What, if anything, did you have to live on?

A. Well, a pension, a U. S. pension. I was a Spanish War veteran.

Q. What was the amount of it?

A. Sir?

Q. What was the amount of that pension?

A. \$101.59 per month.

Q. That is all you had to live on when this will was written?

A. Yes, sir.

Q. And that is all you have to live on now?

A. That's right.

Vol. III } Q. Did you have any money? Did you have any
page 413 } money?

A. Well, only from the pension.

Q. Yes. Do you have any real estate, stocks or bonds?

A. No, sir.

Q. Can you tell us about any conversations you had with Miss Mary Eason during the several years previous to her death and what she said in some of them?

A. Yes, sir, I can do that. I have a list right here.

Q. Do you have any memorandum for the purpose of refreshing your memory?

A. I have this memorandum.

Q. Well, just look at it and then look up and tell us what your recollection is about those things.

LaSalle Eason.

A (Witness produced document) I can remember a good deal but I might not get all of it.

Q. Tell us what you remember and then look down and refresh your memory.

A. Sister Mary had her house at Hickory, Virginia and she said to me: "LaSalle—"

By the Court:

Q. When?

A. Well, I don't know, Judge. I don't know really the date to tell you the truth.

Vol. III Q. Can you tell us the year?

page 414 } A. Well, that ought to be—I am thinking it ought to be in 1958, I'm not positive as to the dates. I never took notice.

By Mr. Allen:

Q. Just give us the conversation.

Mr. Garrett: When now?

By Mr. Allen:

Q. For the last three or four years.

Mr. Garrett: May I interrupt, excuse me a second. If your Honor please, I think it would be proper to know when that memorandum was made. It is obviously made on legal paper, and I just wonder if he could state when he made that memorandum.

The Witness: I am poor on dates.

Mr. Garrett: Well, you can tell us when it was made.

By the Court:

Q. When did you make the notes that you have there?

A. Oh, that was made this year.

Q. You made the notes this year?

A. Yes, sir, that's right, I had. Do you want me to read it?

Vol. III Mr. Garrett: I submit that is not a proper
page 415 } memorandum.

The Court: I sustain the objection.

Mr. Allen: Let me ask him a few questions, your Honor.

LaSalle Eason.

By Mr. Allen:

Q. Has either of counsel for you and the nephews seen that memorandum?

A. Yes, sir.

Q. When did I first see it?

A. When what?

Q. Have you ever read it to me?

A. Well, I have shown it to you.

Q. Have you ever read it to me; have I ever read it; have you ever given it to me to read?

A. No, sir.

Q. How about Mr. Bangel?

A. Yes, he has read it.

Q. Yes. Now, did you make that memorandum yourself?

A. Yes, sir.

Q. Well, does that memorandum refresh your memory about these *convversations*?

A. Well, I will read it.

Q. Well, no, you can't read it yet. I am just asking does that memorandum refresh your memory about these conversations?

A. Yes, sir.

Q. Yes. Did anybody suggest to you what should be put on that memorandum?

A. No, sir.

Q. Mr. Bangel or myself or anybody else?

A. No, sir.

Q. Was anybody present when you made that memorandum?

A. No, sir.

Q. And you state that the memorandum will actually refresh your memory?

A. Yes, sir.

Q. Is that right?

A. (Witness nodded head affirmatively.)

Mr. Allen: I think, sir, that the memorandum—he should be allowed to refer to it, and in view of his age and difficulties in recollecting, I think, sir, he should be allowed to read from it now, your Honor.

The Court: Probably he could use it to refresh his memory, but he could not read from it any more than a person can

LaSalle Eason.

give written testimony in any case.

Vol. III Mr. Allen: We save the point upon the grounds
page 417 } that I have stated, your Honor.

Mr. Garrett: Now, Judge, may I ask could we determine whether he wrote this after he came up here from Florida?

Mr. Allen: Certainly, I don't know when he wrote it.

By the Court:

Q. When did you write it, Mr. Eason; you say this year.

A. I really, Judge, I don't know. I just couldn't keep recollect the dates.

Q. I understand.

A. It was done comparatively recently.

Q. In the last few weeks?

A. Well, I might put it down, Judge, as a month.

Q. Within the last month?

A. Something like that, yes.

The Court: If his recollection is good enough to write notes within the last month then he can testify from the stand.

Mr. Allen: Let me—

The Court: I do not think that falls within the category of a memorandum.

Mr. Allen: Let me ask him one question, your Honor.

Vol. III

page 418 } By Mr. Allen:

Q. Did you write that memorandum before you came up here from Florida?

A. No, sir.

Q. Did you write it after you got here?

A. After I got up here.

Q. How long have you been up here?

A. Well, I got up here on the 23rd of May. Today is June?

Q. Yes.

Mr. Bohannon: A week ago.

The Court: May the 23rd. He remembered since he came up here, so it has been within the last week.

Mr. Allen: Well, now, I want to be sure that I understand your Honor's ruling without repeating it. I would rather

LaSalle Eason.

your Honor state the ruling again, because I might state it—

The Court: There is objection to this gentleman refreshing his memory from these notes that he made. I have already ruled that he could not read those notes.

Mr. Bohannon: If your Honor please, we object in the sense that if a witness makes a memorandum just prior to coming into court which is in this case the memorandum is no good. His memory should be just the same yesterday as it is today.

The Court: I am going to sustain the objection.

Mr. Allen: All right, sir, we save the point, if your Honor please.

The Witness: How's that?

Mr. Allen: Wait a minute, you just keep out—we save the point upon the ground that any memorandum which refreshes the memory of a witness makes no difference when made or by whom made. The point is does it refresh his memory. He may use it for refreshing his memory. That is our ground of objection. We save the point. I think that rule applies in most cases.

I respectfully submit that is the law, sir.

The Court: All right, I disagree with you, Mr. Allen.

Mr. Garrett: If your Honor please, I made an assertion which is not a fact in the record, but I would like to establish as a fact that he is reading from what we call a legal pad paper there, the yellow thing that he has got. I stated it but I would like to fix it in the record as a fact.

Mr. Bangel: We permitted the witness to put it in the record and the jury can see it.

Mr. Garrett: I just want it stipulated that it is not written on a piece of tablet paper. It was written on a piece of legal pad, yellow paper. That is all I want to stipulate because it is a fact he has got it in his hands. Will your Honor so hold that it is what he has in his hands?

Mr. Bangel: We will offer it and let it go in the record, so—

Mr. Garrett: I'm not asking you to offer it in. We stipulate it.

The Court: I would state that the Court has observed that the paper held in the hands of the witness is what is commonly termed a legal pad, a yellow legal pad.

LaSalle Eason.

Mr. Bangel: And if your Honor please, the
Vol. III memorandum is written in his own handwriting
page 421 } made by him.

The Court: Yes.

Mr. Allen: All right, sir. Now, for the purpose of the
record may we file that, your Honor, so that the Court would
know what we are talking about; not before the jury, I mean.

The Court: Well, it will not be admitted.

Mr. Allen: But will your Honor identify it?

The Court: Being it is not in the same category as a
memorandum.

Mr. Allen: Your Honor will identify it as being offered
and rejected?

The Court: Yes. That will be Contestants' Exhibit Num-
ber 20, offered and refused.

(Marked by the Court as Contestants' Exhibit Number 20
refused.)

By Mr. Allen:

Q. Now, Mr. Eason, tell us what you can from memory with-
out any reference to any memorandum.

A. Well, one day she said: "LaSalle, there are
Vol. III men hiding over there in the weeds in the farm,
page 422 } come and I will show you." To please her I says
"All right." I went on the back porch. "I don't
see any men there." She said nothing.

At another time she said cars were converging against her
in all directions. Crazy as a bed bug was about the size of it.

Mr. Garrett: If your Honor please, I move to strike it out
as highly improper.

The Court: Yes, that will be stricken from the record.
The witness can state his conclusions in the usual way as to
competency.

By Mr. Allen:

Q. Now—

A. And another time—

Q. Wait a minute now. Were these cars converging on her
in all directions?

A. No, siree.

Q. All right, go ahead.

LaSalle Eason.

A. At another time she said: "I heard Albert—he was the Swede—"I heard Albert holler as they were carrying him off in the car." I said "I'll ride down there to the other house." I said "Albert, my sister said she heard you holler when they were carrying you off." Albert said, "No." At another—

Vol. III Q. Well, was anybody carrying Albert off?
page 423 } A. Sir?

Q. Was anybody carrying Albert off?

A. No, siree, he said, no, he was down at the other house.

Q. Yes.

A. She had a way of talking that made me and Albert believe her. She had me crawling on my knees by the window over her house so the cars and the folks couldn't see me. Well, I was just a big enough dunce, and Albert too, to believe that. And another time she got Albert and me, we believed the same. She had that way of talking. She had me hide down there in the further house upstairs and he brought food to me.

At another time she caused me to back my car back in the woods and Albert thought it was also, and he brought food.

Q. To whom had he brought food?

A. I was foolish enough to believe her, but she had such a way of talking. And another time—well, different times she said that some men were trying to drive her, to run into her on her side. She had to get off of the highway, they were trying to run into her. She seemed to think they were her enemies.

Well, Mrs. Emma Thrasher, who is a friend to
Vol. III both of us, wanted to get her to go out west. It
page 424 } seemed from what I could understand it was to do
away with her. That is what sister thought. That
was in her imagination.

Q. Can you think of anything else?

A. Yes. I'm sorry to say her imagination went this way. She said Dr. Sam Eason went up into one of her rooms and took the bank key and went up into one of the banks, I don't know just which, and took out \$20,000.00, and took \$10,000.00 for himself and she gave Dr. Robert \$10,000.00. I mean he gave—Dr. Sam gave to Dr. Robert ten thousand. At other times she said sister—I mean Dr. Robert was a thief several times, and sometimes she would say concerning my second wife she is going to sue me and get—well, I says "She has no hold on you." I had to tell her that several times. I don't think she ever got that out of her head.

LaSalle Eason.

I believe that is pretty all I can remember right now.

Q. Did your second wife ever threaten to sue her?

A. Why, no, sir, it was in her imagination, Mr. Allen.

Q. Anything else you can think of?

A. (Pause) Right now, I can't do it.

Q. Well, now, from your associations with her and conversations with her over the years such as you have related what have you to say as to her mentality?

Vol. III A. Well, over a long course of years, of course
page 425 } it was different, but I mean within comparatively
recent times, Mr. Allen.

Q. Yes.

A. Then she was really crazy that I have just recited. I think I have recited most of it. I won't guarantee it.

Mr. Allen: All right, witness is with you.

CROSS EXAMINATION.

By Mr. Garrett:

Q. Mr. Eason, you were married around about 1954, were you not?

A. You mean—no, well the first marriage was to Miss Mary Ellen Whitehurst in 1920.

Q. I am not speaking about that marriage. I am speaking of your marriage in 1954. You married some lady in Norfolk?

A. That's right, that was 1954 in November.

Q. Yes. Did your second wife at any time come over there and live on the property?

Vol. III A. No, sir, sister Mary and my second wife were
page 426 } enemies, I think, and my enemy too. My sister—
this second wife was a persecutor.

Q. And Miss Mary and your second wife didn't get along too well?

A. That's right.

Q. Miss Mary said some right sharp things about her?

A. Well, I would certainly think so.

Q. You think they were justified too, wouldn't you?

A. Sir?

Q. You think they might be justified too?

A. That sister Mary be justified, you mean?

Q. In saying some things about your second wife.

A. No, I don't say so.

Q. You don't say so?

LaSalle Eason.

A. I don't say so.

Q. At any rate this second wife of yours had you in court over there in Norfolk, didn't she, for alimony?

A. This second wife attempted to get alimony and Judge Page wouldn't grant it to her.

Q. Who hired the lawyer for you?

A. How's that?

Q. Who hired the lawyer for you?

Vol. III A. Lawyer?

page 427 } Q. Yes.

A. Lawyer Bowden.

Q. But I say who hired him for you, Mr. Bowden?

A. I can't think of his name, and Judge Page wouldn't grant him any alimony.

Q. Yes, well—

A. If you want to know about the alimony Miss Ann Calevas—

Q. Well, I don't—

A. —didn't bring Preacher Stuart and others at all and, of course, the judge listened to opposing attorney and said he would have to think that that side was right, just because she failed to bring Preacher Stuart and others.

Q. Yes, sir, I understand. Well, now, getting back to what I asked you, who paid for your lawyer then?

A. Sister Mary.

Q. Sister Mary. And did Sister Mary go to court with you when you went?

A. You mean each time, yes.

Q. When you went over there on the support case?

A. Oh, yes. And also—well, Sister Mary thought it was a frame up on the part of—I mean meanness on the part of Miss Ann Calevas. She didn't bring any evidence, any witnesses at all as I just said.

Vol. III Q. Well, she went to court with you. Sister
page 428 } Mary was with you and tried to help you?

A. Yes, sir.

Q. She paid the lawyer?

A. And also Judge Page.

Q. Now, you remember at that time that your nephew Sam prepared an affidavit that she was physically and mentally incapable of doing anything?

A. No, he never made any such thing.

Q. He did not? I have to refresh your memory of that?

LaSalle Eason.

A. I'm sure of it. Certainly I don't know anything about it, and I don't believe he does.

Q. You don't believe he does. Well, we will dig it out here in a minute. Was Miss Mary crazy when she was paying your bills for your lawyer and defending you and went to court with you?

A. You mean at the time?

Q. Yes.

A. Before Judge Page?

Q. Yes.

A. Well, I wouldn't say so.

Q. In other words—

A. I don't think she was.

Q. She wasn't always crazy then?

Vol. III A. Well, no, sir, a good art of her life she was
page 429 } not.

Q. You hadn't seen her since 1958?

A. Well, I went down to Florida in 1959, I believe, wait a minute. I was six months down in Florida and trying to get a divorce from this second wife. That took up six months. Then there was some other time before that and she died, sister Mary died last year, October the 26th, at 4:00 P. M.

Q. Well, who paid for your lawyer down there?

A. Well, she paid all except \$75.00 which I paid.

Q. You wrote her letters and she responded by sending you a check to pay your lawyer's bill?

A. Yes, that's right. Well, I forgot to say, Mr. Allen, that she told the manager of the hotel down there in Florida that she had given me \$50,000.00 in a Norfolk bank, and I went around there and there is none of it. And another time she said she was going to put \$15,000.00 in the bank and none of that. And another time she said that she had bought the tract of land close to Turner White, the colored man, and that was not sold. And another time she says I am building a house close by and there was none of that. And that's the way she would do.

Q. Did you know that she did buy a tract of land?

A. No, sir, she bought nothing of the kind.

Vol. III Q. Now, are you sure of that, Mr. Eason?

page 430 } A. I am sure of it, because she never said anything more about it afterward.

Q. Well, we are going to have the man that handled that here this afternoon. I want you to consider that before you make that statement.

LaSalle Eason.

A. To be sure, as far as I know she never said anything more about it, and she was going to build a house there on the wood land close to the colored man Turner White. That was not done, and neither was the house built close to Mr. Sidney Charlin.

Q. Well, you knew she tried to get an acre of land. You heard that in court from the—

A. She told me that she bought this but that was all there was to it. I am only trying to tell things as I know.

Q. But you don't know whether she bought it or not?

A. Well, I have all reason to think she didn't, Mr. Garrett.

Q. You don't know that she actually bought a tract of land for Albert Ahlgren?

A. I forgot to say about him. She gave him—she wouldn't give anything to me, to help me, but she gave him \$10,000.00 and a house and farm over on another road. Be-
Vol. III sides he's dead now.

page 431 } Q. Well, when you were living here you were living on the farm, were you not?

A. (Pause).

Q. Did you pay any rent there?

A. No, sir.

Q. Did you pay anything for the food she furnished there?

A. No, sir. Oh, just one thing I forgot to say. She wrote down there to me in Florida that she considered me a very rich man. She might have told the gate post that.

By the Court:

Q. She might have told him what?

A. Well, I was just jokingly saying she might have told anything. I just said that in a joking way, Judge.

The Court: I just didn't hear what you said.

The Witness: She wrote down in Florida and said she considered that I was a very rich man, Judge.

The Court: Well, what did she say, I'm not—

The Witness: I forgot to say that she sent down to Florida \$25.00 that looked like a will of spite. And Albert
Vol. III Ahlgren, this Swede who's dead, told me "That
page 432 } is all you will get." I'm sure he must have known
the will. That's pretty all I can remember right
now.

Mr. Garrett: I think that's all.

Mr. Allen: Since they brought out about the divorce in

Thomas H. Willcox, Jr.

Florida, I have a certified copy of your decree by which you got your divorce in Florida.

(Document shown to opposing counsel for examination.)

Mr. Garrett: I don't know what that has got to do with it, but that's all right.

The Court: We've got everything else in the record, we might as well—

The Witness: I will have to put on my glasses.

Mr. Garrett: If his attorney says that it is we will stipulate it.

Mr. Allen: All right.

The Court: Very well. Contestants' Exhibit Number 21.

Vol. III (Received and marked in evidence by the Court
page 433 } as Contestants' Exhibit Number 21.)

RE-DIRECT EXAMINATION.

By Mr. Allen:

Q. Do you know anything about whether your sister carried a pistol? Don't tell what you heard.

A. Well—

Q. You can tell what she said.

A. I heard her firing it for one thing. I asked her what she was doing. She says "I'm practicing." And one time she said that it was a colored man on the sidewalk, I guess it was in South Norfolk. And another colored man was poking fun at her at the window of the car and she shoved the pistol out at him.

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Vol. III
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THOMAS H. WILLCOX, JR.,

Vol. III called as a witness on behalf of the Contestants,
page 435 } having been first duly sworn, was examined and
testified as follows:

Thomas H. Willcox, Jr.

DIRECT EXAMINATION.

By Mr. Allen:

Q. Mr. Willcox, will you state your name, please?

A. Thomas H. Willcox, Jr.

Q. How old are you?

A. 34.

Q. What is your profession?

A. Attorney at law.

Q. What firm are you with?

A. Willcox, Cooke, Savage and Lawrence.

Q. Did you know Miss Mary Frances Eason?

A. Yes, sir.

Q. Do you know also Robert Eason and Samuel W. Eason?

A. Yes, sir.

Q. There has been testimony here that you did some business for the three jointly in connection with the farm and deeds and wills and tax problems and things like that. I want you to tell when you had those transactions and Vol. III what they were. Confine yourself to the trans-
page 436 } actions for the three and not to any private individual business for Miss Mary that had no connection with these transactions, and I will ask you about those later.

A. Well, we had represented Miss Mary Eason prior to 1955, so that I knew her, and in the latter part of 1955, she came to me—I have to ask instructions. You said concerning the three of them. You mean when only three were present?

The Court: The other will be dealt with separately. Now is only the time when all three were there, when there was more there than just Miss Mary.

A. Well, this particular transaction began with the visit from Miss Mary alone, but at, I think, two other times in 1955, in December, 1955 just before the end of the year they were all there present. and the problem was how to transfer Miss Mary's assets to her two nephews, I believe they were, at the least tax cost, primarily inheritance was her concern, at the same time protecting her for her life time. And at that time she had already made a deed to the boys, to the two nephews, which had been recorded transferring to them the farm reserving a life estate in herself and all growing crops and so forth. And one of the chief assets involved was the

Thomas H. Willcox, Jr.

standing timber on the farm and there was some
Vol. III question as to whether or not the standing timber
page 437 } was included in her reservation of all growing
things.

I believe that deed was made in May of 1955, but I'm not sure. But it was recorded.

By Mr. Allen:

Q. Who drew that deed?

A. I think Mr. J. McBryde Webb, but I'm not sure.

Mr. Garrett: That is correct.

By Mr. Allen:

Q. All right.

A. And we discussed the various means whereby the transfer of her assets to her nephews could be accomplished at the least tax cost. In order to protect her life interest we outlined several possibilities satisfactorily, but my suggestion was that since she had reserved the timber rights or she had reserved the growing rights, and I felt it included the timber rights in this earlier deed, that she still owned that in fee. Insofar as the land itself she had already made a gift in the earlier deed which we couldn't change one way or the other, so our suggestion was that she sell the timber to her two nephews for a fair price, something near its true market value as best we can estimate it, and that they pay her for it with a series of notes. Again my recollection—I could check it for sure—but I think each of them were to give her seven notes for \$7,000.00, which would mean a total of \$40,000.00 payable over a seven-year period, and she
Vol. III 000.00
page 438 } would then sell the timber to them in exchange for those notes, that that would have the effect of giving them a basis in the timber of \$42,000.00 so that if they later sold it their gain, if any, would be the difference between the sale price and the \$42,000.00, whereas if she sold it and then gave them the timber so it didn't cost them anything they would have had a tremendous income tax to pay if she had sold the timber herself.

And it also meant that she would spread her income over a seven-year period instead of paying it all at one time, and the notes were calculated in \$3,000.00 increments because she felt that she probably had enough to live on and it was at least possible that she would give them the notes which she would do

Thomas H. Willcox, Jr.

in \$3,000.00 increments without tax consequences. We calculated all those, what it would mean in dollars and cents and wrote a letter to the people involved and they accepted our suggestion, and we prepared the gift tax returns, and I think she had also given them some cash during that year. She had given each of her nephews a substantial amount of seven or eight thousand dollars, I don't know exactly how much, but something more than pocket money and as well as the farm, and we had the farm appraised and prepared the gift tax returns for the farm portion, prepared the deed, I think, involving the timber transaction and the notes which Vol. III were executed by the nephews and delivered to her, page 439 } and at that stage that was a completed transaction as far as I know to everybody's satisfaction.

Now, later on, in early '56, I guess it was, it was determined to sell the timber, and at that stage Miss Mary objected and employed Mr. Garrett to block the sale of the timber, or at least look into it, and he brought suit in this court to set aside the whole transaction. I believe after the suit was filed that we all agreed that the price for the timber was a good price and the sale consummated and the money deposited in this case to be later determined as to who was entitled to it.

Miss Mary, during that period prior to the employment of Mr. Garrett, and after, as a matter of fact, continued to write a great many letters saying in one that she had been robbed of everything and the other she was completely happy with the transaction.

The suit came on for trial, as I recall I was about in this seat at that time when it was disposed of by agreement which, I think, is a matter of record.

Q. That is all a matter of record and the papers have been introduced in evidence here. Now, can you state whether or not the Doctors paid the gift tax that you referred to on the transaction?

A. The gift tax was paid but it was paid by Miss Mary's money, she being the donor, and as a matter of Vol. III fact she executed the returns, I think, sometime in page 440 } March, '55, several months after the transaction was itself handled, before the end of the year, '55.

Q. Then you stated Mr. Garrett was her lawyer, and you, I believe, represented the Drs. Easons and you withdrew on account of having to testify?

Thomas H. Willcox, Jr.

A. Correct.

Q. And then you testified and, I believe at the end of your testimony on the witness stand that was when the thing was settled?

A. That's correct.

Q. Now, after that, did you get any letters from Miss Mary cussing you out or bracing you or—

Mr. Garrett: I object to him leading the witness.

Mr. Bangel: He is just directing his attention to it.

Mr. Garrett: Yes, "directing."

The Court: I overrule the objection.

A. I continued to get both visits and letters from Miss Mary for a couple of years thereafter. As a matter of fact the check that she got as a result of the settlement she took to the Bank of Commerce to cash, and she told them she wouldn't take their check because I represented the bank and she thought that I owned the bank of Commerce, Vol. III which I was flattered for, and frequently she came page 441 } in and, as a matter of fact, I think that I discussed with her several times after that redrawing her will and which she also discussed with many other lawyers. I am confident she saw Mr. Gordon and Mr. Goldblatt and Lipkin, and I assume Mr. Moss and Mr. Bryan, and she named my father as executor of the will.

• • • • •

By Mr. Allen:

Q. I am not concerned about the nature of the—

A. I had many conversations and letters from her some of which she blasted me out and some she said everything was fine, my father was still her executor and so forth.

Mr. Allen: That is all.

CROSS EXAMINATION.

Vol. III

page 442 } By Mr. Garrett:

Q. Mr. Willcox, let's examine this little tax

Thomas H. Willcox, Jr.

matter a little bit. When she came over to your office with her two nephews you were trying to contrive some way that they could get this property and save themselves some taxes?

A. No, sir, we were trying to save Miss Mary some taxes, not themselves some taxes. At first I had very little to do with Sam and Robert.

Q. Well, I said when the nephews came over there. I will put it that way.

A. All right. When the nephews came over it was in furtherance of the plan they had already gotten from Miss Mary. Miss Mary wanted to transfer her estate to them at the least tax cost.

Q. Yes, sir. Now, when you talk about saving somebody taxes you are talking about saving the nephews taxes because she kept the property till she decided she didn't have to pay any taxes, did she not?

A. She wouldn't have had to pay any estate or inheritance taxes prior to her death, no.

Q. No, sir. So that you were really looking out for these two nephews with respect to getting the property at her death?

A. She had already given them the property
Vol. III before she came to me, Mr. Garrett. She had given
page 443 } them the land by deed prepared by someone else
and recorded six months prior.

Q. You told us that.

A. The question was how to handle it with the best tax advantage, and also if the timber was to be sold, as I recall, it was some sort of tax that the seller would have to pay, and in the future she would have paid a whopping income tax on the sale of the timber.

Q. Mr. Willcox, I don't want to shock you, but do you know there was no tax imposed on that sale on the returned filed in 1956 from my office?

A. No.

Q. You do not. Well, we will establish it presently. There are ways and means of capital gains that you can take the value of the property and not pay it at the present time, are there now?

A. This entailed \$57,000.00 and I don't see how you can and pay no taxes on it.

Q. Well, for your information it will be produced here presently it was done in 1956.

Thomas H. Willcox, Jr.

Vol. III
page 444 }

Q. You recommended it with the view of saving taxes for the nephews, not Miss Mary, is the question.

A. The answer to that is, no. I did not know either of the nephews prior to the time they arrived in company with Miss Mary, and I have seen her many times.

Q. You don't have to know the nephews to know the purport of a plan to avoid taxes. I ask you again, wasn't the effect of what you did or were doing is that if they should get the property after her death it would have minimized the amount of taxes they would have to pay?

A. (Pause) Mr. Garrett, I conceded it is perfectly obvious that a dead person doesn't pay taxes. It comes out of the estate because he's gone, or she's gone, but I deny it was plan by which I was employed by the two doctors because I did not know either one of them before they arrived in company with her, and I worked with her for several weeks on the subject prior to their arrival.

Q. You came here in court in '56 and were representing them with Mr. Allen in the case?

A. I came here in court in 1956 representing them doing just exactly what I am trying to explain what we had done in a tax way.

Vol. III
page 445 } Q. No, just a minute, let me ask you a question about this. Didn't you come in here in 1956 as counsel of record for the two nephews and I asked you the question will you testify in the case, and you said you did not know whether you would or not and you were put on the stand?

A. Correct. And it was as a result of my testimony that that was the end of it.

Q. Well, now, what do you mean as a result of your testimony?

A. As a matter of fact I was the only one who testified.

Q. Miss Mary got \$41,640.00 as a result of the testimony, didn't she?

A. Yes, she did, which she already held.

Q. Now, let's talk about the notes a minute. This tax ar-

Thomas H. Willcox, Jr.

rangement that you set up, the nephews did not pay her any money for the timber, correct?

A. No cash, correct.

Q. And you drew \$42,000.00 worth of notes payable to her order, I believe you said, over a period of seven years?

A. Right.

Q. How old was she then?

A. I would be guessing, but well along.

Q. Well, her life expectancy wasn't too great
Vol. III at that particular time, was it, Mr. Willcox. You
page 446 } don't know about that, all right.

A. I didn't know how old she was.

Q. You had \$42,000.00 worth of notes payable in seven years, and they didn't draw any interest, did they?

A. Nope, they didn't draw any interest.

Q. They weren't negotiable, were they?

A. No.

Q. She couldn't take them down to the bank or borrow anything on them or sell them to anybody, and that is the transaction in which she signed the timber deed over to give them the rights to sell \$57,000.00 worth of her timber?

A. Mr. Garrett, this was at a stage, so far as I know, a completely friendly transaction. I must confess that it was not the first time an older relative left something to a younger relative or have a transaction in which they deferred income. I didn't see anything unusual about the transaction at that stage.

Q. I am trying to find out the effect of it.

A. All right.

Q. You drew notes that were not negotiable, they did not draw interest and were payable over a period of seven years for which she signs a deed and give them a right to sell the timber, isn't that correct?

A. That's correct, she would have received \$6,000.00 a year income for seven years.

Q. She would have received it and, of course,
Vol. III page 447 } the timber would have been cut and that money
would have gone to the nephews?

A. That is correct.

Q. Right?

A. But the notes were good so far as I know.

Q. The notes were good if you live long enough to collect them.

Thomas H. Willcox, Jr.

A. It was at the time her object to get the most cash at that moment as far as I understood it.

Q. All right, sir. You say she came back and objected to that arrangement claiming it was her timber?

A. She came back in several months after, in the spring of '56.

Q. And insisted it was her timber and she didn't want these notes for it, she wanted the timber, right?

A. Right.

Q. And they didn't see it that way; they weren't willing to take the notes back and said they were going to take the timber and we had to come over here and ask for an injunction?

A. You brought suit.

Q. Well, how did you manage when she was the one that owned the timber and she was the one that you say came to see you, how did you manage to come in here and
Vol. III start representing the nephews when an argument
page 448 } started between them as to that transaction?

A. Well, she had employed you, Mr. Garrett, at that stage. She had not come to me, other than to try to work out which we had discussed, and at that stage it was—I saw no reason why I should not tell exactly what I am telling as to what the transaction was, that there was no force involved so far as I know on anybody's part.

Q. But you did not come here to tell what happened, you came here as counsel of record advocating one side, and was marked of counsel of record; isn't that true?

A. That is correct, and became a witness at your—

Q. And you became—

A. —insistance.

Q. I put you on the stand because I said you weren't going to sit in here and listen to what went on and I called you as a witness.

A. But you put me on the stand. I don't know what you said but you put me on the stand.

Q. Now, who paid you for your services in that case?

A. I was paid from the funds in court as you were.

Q. You got \$2,500.00 from the funds in court from Miss Mary although you were representing the nephews
Vol. III at that time?

page 449 } A. As a result of settlement in which you concurred.

Thomas H. Willcox, Jr.

Q. That's right, but I am asking wasn't that the result of it?

A. Yes, sir, and you were paid from the same funds as was Mr. Allen.

Q. Well, I think that is pretty well established. I feel like I rendered some service in it, don't you?

A. No, sir, I don't.

Q. You don't. Getting \$41,000.00 of her money wasn't any service?

A. I don't think anybody benefited from it, Mary or the nephews, it just split up the family.

Q. Well, now, just a minute, Mr. Willcox. You mean when we came in court and brought suit to get her money back and she gets \$41,000.00 back that she had not benefited by it?

A. I don't think it gave her any pleasure or produced any good result.

Q. You don't think it did. Well, she went over to the bank and tried to get her money, didn't she?

A. She did.

Q. Do you know what she did with it?

A. Nope, I don't. I don't think—

Vol. III Q. I haven't asked you anything, Mr. Willcox.
page 450 } A. I beg your pardon.

Mr. Garrett: All right, that's all.

RE-DIRECT EXAMINATION.

By Mr. Allen:

Q. Mr. Willcox, was there anything connected with the transaction to show that those notes could not be enforced against these nephews and they made to pay so much a year as provided for?

A. No, sir, the notes were perfectly good so far as I knew. They were practicing physicians, which I consider right good evidence of solvency.

Q. How long have you been practicing law?

A. 12 years.

Q. Where did you get your legal training?

A. At the University of Virginia Law School.

Q. And thereafter with whom were you associated in Norfolk?

A. I was originally associated with the firm of Willcox,

Thomas H. Willcox, Jr.

Cooke and Willcox, and became a partner in the firm of Willcox, Cooke, Savage and Lawrence later.

Vol. III Q. And the late Thomas H. Willcox, Sr. is your
page 451 } father?

A. Yes, sir.

Mr. Allen: That is all.

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CROSS EXAMINATION.

By Mr. Bohannon:

Q. These notes were signed by Dr. Robert Eason and Dr. Samuel Eason?

A I think each signed \$3,000.00 notes for each year. I don't think they were both makers of the same. I could be wrong. My recollection is that each one of them gave her seven notes for \$3,000.00 each.

Q. And I understand they were non-negotiable notes, not interest bearing notes?

A. I am confident that is correct. I know they were non-negotiable, and I think they were noninterest bearing.

Q. And Dr. Sam Eason lived in New Jersey?

A. Dr. Sam Eason lived in Jersey and Dr. Robert lived in Buena Vista.

Q. And if she wanted to collect that note from
Vol. III him she would have to go to New Jersey, wouldn't
page 452 } she?

A. If there had been any force involved, but they were down here frequently.

Mr. Bohannon: That is all.

Mr. Allen: That is all.

The Witness: May I be excused, your Honor?

The Court: Let's see, gentlemen, did you want Mr. Willcox any further?

Mr. Allen: I don't see any reason for delaying him for vouching certain matters. We all understand what it is and we can put it in the record later and vouch for what he would say as to these other matters.

The Court: All right.

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DR. ROBERT R. EASON,

Vol. III recalled as a witness on his own behalf, having
page 453 } been first duly sworn, was examined and testified
as follows:

* * * * *

DIRECT EXAMINATION. (Rec)

By Mr. Allen:

Q. Doctor, Miss Mary Eason in several of her letters refers to having paid for your education. Was that true or false?

A. No, sir, Aunt Mary did not pay for my education.

Q. Who paid for it?

Vol. III A. I had an endowment at Randolph Macon, and
page 454 } I had a fund that my father sent Aunt Mary to
pay for my medical education at different times
he would give her a certain amount of money and she would
put it in the savings bank and she would send me a check for
my medical education.

Q. What do you mean by an endowment, a scholarship?

A. It was an endowment scholarship at Randolph Macon College.

Q. And she also made statements in those letters concerning the payment of your father's hospital and doctors bills, and ask you if those statements were true.

A. She did at his last illness in Norfolk, but—

Q. She said that you did not pay anything at all on account of—

A. Beg your pardon?

Q. She said in some of those letters that you did not pay at all on account of your father's illnesses and hospital bills and so forth.

A. I paid for his hospital illness when he was sick in Camden, New Jersey.

Q. She said in one letter that she had been offered \$300,000.00 for the timber. Is there any truth in that?

A. Not that I know of, sir. I didn't hear anybody offer her that amount of money.

Vol. III page 455 } Q. And she said in one of the letters about you
not paying the funeral expenses of your father.
What about that?

A. I understand that that was paid out of his own funds, and the receipt from the funeral parlor, there is a statement on there "Paid out of own funds," and I think the funeral parlor director signed it.

Dr. Robert R. Eason.

Q. I hand you what purports to be such a statement. I will ask you to look at it and see if that is the statement.

(Shown to opposing counsel for examination, thence to the witness.)

A. Yes, this is. This was sent to me after my father's death in Jersey City.

Mr. Allen: We offer that in evidence, if your Honor please.

The Court: Exhibit 22.

(Received and marked in evidence by the Court as Contestants' Exhibit Number 22.)

By Mr. Allen:

Q. I now hand you a batch of checks and receipts purporting to be hospital and doctor's bills for your father, and I will ask you to look at them and identify them.

Vol. III (Shown to opposing counsel for examination, page 456 } thence to the witness.)

By Mr. Allen:

Q. Did Miss Mary pay any of it?

A. No, sir, not to my knowledge.

The Court: Contestants' Exhibit Number 23.

(Received and marked in evidence by the Court as Contestants' Exhibit Number 23)

By Mr. Allen:

Q. Now, some reference has been made here to planting seed trees on this farm in question. I hand you what purports to be a receipt and ask you if that is the receipt for planting of those seed trees.

(Shown to opposing counsel for examination thence to the witness.)

The Court: Exhibit 24.

Dr. Robert R. Eason.

(Received and marked in evidence by the Court as Contestants' Exhibit Number 24.)

By Mr. Allen:

Q. I am not certain, Doctor, if I asked you this before. I did ask you one or two questions, I know. Did I Vol. III ask you when you were on the stand before whether page 457 } you ever accused Miss Mary of being crazy or attempt to send her to the asylum or anything of the kind?

A. No, sir, I did not. You did not ask me that.

Q. Well, I ask you that now.

A. No, sir, I did not attempt to send her to any asylum, no, sir.

Q. She referred in one of her letters to you she testifying in court and taking out some sheets of her letters. Is that true?

A. No, sir, not that I know of, sir. I don't know what she was talking about.

Mr. Garrett: You said she or he testified?

Mr. Allen: I said she.

Mr. Garrett: To him?

Mr. Allen: Testifying in some case and taking out or removing some of the sheets of the letters that she had written.

Mr. Garrett: I don't remember—well, we can look through the papers.

By Mr. Allen:

Q. Did you do any such thing?

A. No, sir.

Vol. III Q. Now, she referred to numerous times to your page 458 } wife having written her something about wishing she would bleed in a sweater she was getting her. Any such thing as that?

A. No, sir, it was no such word like that, Mr. Allen. "I hope you like the sweater" is what my wife wrote. It wasn't anything like "bleed." That was her idea of the thing. Certainly nobody would say anything like that.

Q. In another letter she referred to you taking her to a beer joint. Did you ever take her to a beer joint?

A. I took her and Albert—I don't know it was a beer joint—we went into a restaurant and there was a bar in there, yes, sir.

Dr. Robert R. Eason.

Q. She said in another letter that you took \$10,000.00 from her and promised to give it back. Is there anything to that?

A. I did not take any money from her. She sent me \$8,100.00 and she put it in a savings bank in Elizabeth City and sent me the bank book.

Q. Did you know anything about it before you got the savings bank book?

A. No, sir, I certainly did not.

Q. And she refers in some of those letters to paying for your college education. Did she pay for your college education?

Vol. III A. No, sir, not in Randolph Macon or medical
page 459 } college, so far as I know. The checks she sent me
were from the fund that my daddy sent her for
me. You see my mother died in my second year at Randolph
Macon and Aunt Mary more or less took me under her wing
if I may express it like that.

Q. Now, she said also in one of the letters that you never came to see your father while he was sick. How about that?

A. Well, I just seen him at short intervals several months before that every weekend at the hospital where he had been for a broken hip, and he wanted to go down to see his sisters and I took him down to see his sisters.

Q. That was down here in Hickory?

A. Hickory.

Q. Who put him in the hospital in Charlottesville?

A. I did. He broke his hip at my house while he was visiting me.

Q. How long did he stay in your house in Buena Vista?

A. He just arrived on a visit a very few days. He hadn't been there very long.

Q. In one of the letters in April, '59, she said that she sold the old farm. Was that true?

A. As far as I know it was not. I don't know,
Vol. III Mr. Allen. She just said that in the letter, sir.
page 460 }

Q. And she said again that she was selling the doctor's home for \$20,000.00. Was that true?

A. Well, she said that in the letter. I wouldn't know myself whether she sold it or not, sir.

Q. Well, you know whether or not it was still there?

A. It was still there when she died, yes, sir.

Q. Did you ever undertake in any way, shape or form to put her off of the place or intimate to her that you wanted her to get off?

Dr. Robert R. Eason.

A. No, sir.

The Court: Gentlemen, one of the jurors is gone to take some anacin.

Go ahead.

Mr. Allen: All right, sir.

The Court: Go ahead.

By Mr. Allen:

Q. Now, she refers to some travelers checks and writes you for the travelers check numbers or the travelers checks, I forget which. Anyway, whichever it was, tell us about that whether there was any truth to it or not.

A. Yes, sir. she had \$6,000.00 in checks, travelers checks, and on my—one of my visits to her she gave me one or two—I think it was just one \$100.00 travelers check, and I suggested to Aunt Mary to let me keep the numbers
Vol. III of these checks for her, in case “you lose them
page 461 } you will have some record of it, someone would
have some record of it.” I took the numbers, I did not take the checks. She intimated in one of her letters that I had taken the checks but I didn’t take the checks.

Q. And in one of the letters she said you have disgraced your father’s name. What had you done to disgrace your father’s name?

A. Nothing that I know of, sir. I don’t know. I tried to be awfully nice to my folks.

Q. And in another letter she said when you all went out to dinner that she paid for the meal and you kept the change. Any truth to that?

A. No, sir, I don’t remember that. I have to be honest with you. She may have paid for the meal but I did not keep the change; no, sir.

Q. Did you have anything to do with trying to take her permit from her to carry a pistol?

A. (Pause) I never have seen a permit that she had, Mr. Allen, no, sir.

Q. I am asking you though if you had anything to do with taking the permit from her.

A. No, sir.

Q. Now, she says in the letter of July the 18th that her sister paid your college bills?

Vol. III A. Aunt Sarah paid some of my board bills
page 462 } but not my college bills. I think it was twenty or
thirty-five dollars a month for several months,

Dr. Robert R. Eason.

maybe a year or two, we'll say. That was just the board though. The scholarship was the tuition and administrative part of the education.

Q. She said something in her letter of October the 28th, 1956 about LaSalle: "... I took LaSalle to Florida to get him out of both of your way so he would not be beaten up any more. They had to sew his head up, took four stitches. What have you done to us." Had you done anything in the way of beating up LaSalle?

A. No, sir, I certainly had not.

Q. And that is the letter in which—

Mr. Bohannon: What date is that letter?

Mr. Allen: That is the letter of October 28th, 1956.

By Mr. Allen:

Q. And that is the letter in which she says too, "I hope you can read this. Don't take out every other sheet of paper and then date it." That one was offered in the courtroom.

Mr. Garrett: But she didn't say he ever testified like you said a minute ago.

Mr. Allen: She said "Don't take out every
Vol. III other sheet."
page 463 }

By Mr. Allen:

Q. And did you do anything such as—

A. I don't recall doing anything like that. I really don't, Mr. Allen.

Q. Now, in her letter of November the 11th, 1955 she says, and there is a note on the back of it, I believe: "Robert told me to fix gutters and scrape house. This is gutter bill. I spent over \$2,000.00 on the yard and outhouse. I spent all my money and they didn't pay me one penny after they told me they would." What about that?

A. Mr. Allen, it's my recollection that we were going to fix the house up after we received the timber money, and why she started on the repairing of the house before then, I don't know, sir. I don't know.

Q. Well, how was all that repairing to be paid?

A. It was my understanding that we were to pay it out of the timber money, if we received the money, which we didn't, of course. That is the way I recall it, sir.

Dr. Robert R. Eason.

Q. Now, in a letter of January the 20th, 1957, she says you hope I will bleed in the sweater which Robert sent. "I never stole or taken anything from anyone. A person who steals from another and keep the goods is also a thief. Had you stolen anything from her in any way, shape

Vol. III or form?

page 464 } A. Not that I could figure out, sir. I never stole anything from anybody.

Q. She refers time and again all the way through these letters about you taking "my home from me, taking money from me," taking and selling her timber. Had you ever done anything in that direction except in connection with the transactions that have been testified to here?

A. No, sir, I haven't taken anything from her at all.

Q. And she says in her letter of August the 17th, 1957 again "You took money, travelers checks."

A. I didn't take the checks from her.

Q. Any truth in that?

A. No, sir, she gave me one check, possibly two. I believe it was just one, sir.

Q. She says again there in the same letter "after you had taken farm, money, travelers checks, lots of things from home." Had you taken anything from the home?

A. No, sir, no more than what she gave me, sir. She gave me a flower stand, an umbrella stand, and a nice round urn, a flower urn.

Q. How long does your recollection go back in connection with your associations and transactions with Miss Mary?

A. (Pause) Well, I went to high school down Vol. III there, if you want me to go back that far.

page 465 } Q. Now, on leaving the high school period and college period and after you got through and started to practicing medicine what were your associations with her after that?

A. After practicing medicine?

Q. And after you commenced practicing medicine and located in Buena Vista?

A. We would take our vacation at Virginia Beach and I would also go out to see Aunt Mary in the summertime.

Q. Did you come to see her between times?

A. No, sir, no, sir.

Q. How far is Buena Vista?

A. 225 miles from Norfolk.

Q. About how often during the year would you see her?

Dr. Robert R. Eason.

A. In the summertime on my vacation.

Q. How long would you stay with her in her home on those occasions?

A. (Pause) Well, I would say an hour or two, just a friendly visit, sir, my wife and myself.

Q. You spent the night there on any of those occasions?

A. No. On one or two occasions when we were going to Florida we spent the night there.

Vol. III Q. Did you ever prescribe for her?

page 466 } A. She asked me to send her medicines now and then, vitamins. I did send them to her, yes, sir.

Q. What medical school did you graduate from?

A. Medical College of Virginia in Richmond.

Q. And how long have you been practicing?

A. 24 years, sir.

Q. What is the nature of your practice?

A. General practice.

Q. What size place is Buena Vista?

A. Around 6,000.

Q. Doctor, in view of your conversations and transactions with her and visits to her home what have you to say with reference to her competency the last time you saw her?

A. (Pause).

Mr. Bohannon: When was the last time you saw her?

The Witness: The last time I saw her was August of '58, the latter part of August, '58. I had my little four-year old boy with me, an adopted child. And I was mostly attending to him, and Miss Eason talked to my wife on that particular trip, 95 percent of the conversation. We spent at least an hour and a half there. We had gone out to her

Vol. III home but she wasn't there. We were at Virginia
page 467 } Beach and we just happened to see her in a little
open air market right at Great Bridge High
School. We just happened to see the car there and we stopped
and chatted. "Elizabeth, she said, I want to talk to you,"
so I took the little boy and went over in the playground at
Great Bridge and Mabel talked with her for about an hour
or an hour and a half, quite a long conversation.

Now, I did not talk to her very much at that particular time, no sir.

By Mr. Allen:

Q. Now, having in view the letters you received from her and your various transactions with her over the years and

Dr. Robert R. Eason.

your associations with her; you remember the transactions in connection with the Willcox transaction and all that?

A. Yes, sir.

Q. Thinking of all your transactions with her and your association with her and your conversations with her in consideration what have you to say as to her mentality?

A. Well, Mr. Allen, I have been to her home several times previous to this last visit, you see.

Q. Yes.

Vol. III A. But you were speaking of our last visit?
page 468 } Q. I mean all of the visits there.

A. Well, I remember on one occasion we were riding in the car and she said, "Robert, watch out, that man is going to run me off the road." Well, we had plenty of room, her car had plenty of room. There wasn't anybody going to run her off the road. Another time in the living room of her home she said "Come and see the plaster that has all fallen down" and she went and looked up the chimney, and as I recall she thought some explosion had taken place. And I said, "No, Aunt Mary, that is just plaster falling off the wall. It's either damp or has dried out. That is not any explosion."

Q. Now, tell us what you have to say about the soundness or unsoundness of her mind.

A. Well, now, in all the letters she would write about these people trying to persecute her and the Warren gang and the Peebles and Branch, I certainly thought that there must have been something wrong with Aunt Mary to wander during the last two or three years, maybe, in the starting of all this. No one would act and write letters like she did, no sane woman, no, sir. I just can't get that through my mind.

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By Mr. Allen:

Q. Have you indicated who is the nearest of kin of Mary Frances Eason?

A. No, sir.

Q. Who is the nearest of kin?

Dr. Robert R. Eason.

A. Her brother, LaSalle, her nephew, Sam Eason, and I'm her nephew, Robert Eason.

* * * * *

Vol. III Q. Yes. I understand the other brothers and sis-
page 471 } ters died without leaving any children?

A. That is right, sir.

Mr. Allen: That is all.

CROSS EXAMINATION.

By Mr. Bohannon:

Q. Dr. Eason, I understood you to say that the last time you saw Miss Mary was in August, 1958?

A. Yes, sir.

Q. You all had—by you all, I mean you and Dr. Samuel Eason had settled your differences in October, 1957?

A. Yes, sir.

Q. And it was your custom and practice that when you came to Virginia Beach in the summertime you would call upon her?

A. Yes, sir.

Q. And on this last occasion in August, '58, you called at her house and she was not home?

A. Yes, sir.

Q. You probably thought that she would be
Vol. III home?

page 472 } A. Yes, sir. We tried to call her if I remember correctly, and her phone had been taken out.

Q. You had no appointment or prearrangement?

A. No, sir.

Q. And accidentally you met her at Great Bridge?

A. Yes, I saw her car.

Q. And on that occasion you did not talk to her but your wife Mabel did?

A. I did not talk to her very much, Mabel did, yes, sir.

Q. I mean it was just a casual conversation of short duration and your wife talked to her?

A. Yes, sir.

Q. And following your practice you probably would have seen her the next summer when you came to Virginia Beach?

A. In 1959?

Q. I mean ordinarily you would have?

A. Yes, ordinarily, yes, sir.

Dr. Robert R. Eason.

Q. Did she ever visit your home in Buena Vista?

A. We invited her several times but she never would come for a visit, no, sir.

Q. Did she ever visit Dr. Samuel Eason to
Vol. III your knowledge at his home?
page 473 }

A. Not to my knowledge, sir.

Q. You lived with her up through high school?

A. The last two years of high school at Hickory, yes, sir.

Q. At her home?

A. Yes, sir.

Q. And except for the tuition money and this fund that you speak about that belonged to your father she paid your board bill?

A. Aunt Sarah paid my board bill in Randolph Macon.

Q. I thought you said Miss Mary.

A. No, sir.

Q. Miss Mary didn't pay it?

A. Not to my knowledge.

Q. That was, of course, before Miss Sarah died?

A. Yes, sir.

Q. Doctor, you heard Dr. Samuel Eason state that he had quite a voluminous series of typewritten notes that he had made. Did you have a similar system of typewritten notes that you had made?

A. No, sir, I had no written notes.

Q. You didn't have it, he had the notes?

A. Yes, sir.

Vol. III Q. This farm that Miss Mary lived on, Doctor,
page 474 } was out in the country in Hickory?

A. Yes, sir.

Q. And how far was the house back from the road. Do you recollect?

A. From the main highway?

Q. Yes.

A. (Pause) I would judge a quarter of a mile, maybe less. It's not very far. You can see the highway and the cars on the highway from her home.

Q. It was a quarter of a mile approximately?

A. I'm not sure. I'm not a very good judge of distance, but it's not very far. The land is cleared and you can see the highway.

Q. And she lived there by herself?

A. By herself and Mr. Albert Ahlgren.

Q. Ahlgren was the Swedish man on the place?

Dr. Robert R. Eason.

A. Yes, sir.

Q. And she had a helper too, didn't she, this man here?

A. Oh, yes, Turner White lived in the tenant house down below.

Q. Did she live there like that alone except for Ahlgren and Turner?

A. Yes, sir.

Vol. III Q. From the time that Sarah died?

page 475 } A. Yes, sir.

Q. And you attended the funeral?

A. Oh, Aunt Mary's funeral?

Q. Yes.

A. Yes, sir.

Q. When did you learn about the will, the last will?

A. (Pause) When I learned of Aunt Mary's death I went to see Mr. Webb, knowing that that was her last lawyer she had when she came with him to Buena Vista.

Q. Was this before her funeral?

A. Yes, sir.

Q. You went to see Mr. Webb to inquire about her will?

A. Yes, sir.

Q. Then it has been testified that the will was probated, filed in Court on November the second, and also on record that you filed a protest or contest of the will on November the tenth?

A. I think that is correct, sir.

Q. Did you handle that or Dr. Sam Eason?

A. No, I handled that, sir.

Q. What?

A. I handled that, sir, yes.

Vol. III Q. Did you handle it together; you said you
page 476 } handled it alone?

A. (Pause) Sam was not with me. I'm not sure whether I called him or not the night of her—

Q. Were you the one who engaged counsel to contest the will or Sam or both?

A. (Pause) I think I was, sir. I don't think Sam—

Q. Were you the one?

A. I went to Mr. Webb's office.

Q. I understood Dr. Samuel Eason to state that he called Mr. Garrett about the matter; is that correct? Do you know?

A. That he called Mr. Garrett? No, sir, I went to see Mr. Garrett. I went to see Mr. Garrett after the funeral. Mr. Art Nichols took me to Mr. Garrett.

Dr. Robert R. Eason.

Q. And that was for the purpose of filing a contest?

A. Yes, sir, I would think so. I asked for his services and he said he had been a lawyer for Miss Mary and couldn't very well—

Q. Did—

Mr. Bangel: Let him finish.

A. (Continuing)—go against her wishes and represent me when he had represented Miss Mary, and I Vol. III can see that. I remarked I could see that. I did page 477 } not know the ethics of anything like that.

Q. When did you know the exact contents of the will?

A. Only when Mr. Bangel sent it to me, sir, in a round about way, after Mr. Garrett—

Q. Was that after November the tenth, would you know, or after the contest was filed?

A. Yes, sir.

Q. And an appeal—

A. Yes, sir. I received a copy of the will in the mail from Mr. Bangel's office.

Q. I said that was after the appeal was taken, the contest is what we call it.

A. Yes, sir, I'm sure that is right, sir.

Q. But you did know that you all were not in it so to speak?

A. Yes, sir, that is correct.

Q. You did not know any of the other details of it prior to that time?

A. Only that she had left a lot to charity, sir. I did not know any of the minute details.

Q. She left most of her estate to charity?

A. Yes, sir, that was—

Q. By that do you mean, or did you know that it Vol. III was the Methodist Home? page 478 }

A. Not until I had gotten the will that the Methodist Home had received it.

Q. In her previous letters to you she had mentioned being interested in the Methodist Home, had she not?

A. I don't recall that, sir, honestly, I don't.

Q. You knew that she had given some money to the Methodist Home?

A. To the Methodist Children's Home—

Dr. Robert R. Eason.

Mr. Allen: A little louder.

A. She gave some to the Methodist Children Orphanage, but I don't remember hearing—

By Mr. Bohannon:

Q. I mean she was familiar with the Methodist Home. Of course you know that, don't you, and had some interest in it in that she had given some money to it before?

A. No, sir, she hadn't given any to the Hermitage that I know of.

Q. Had she given any to the Orphanage?

A. Yes, sir.

Q. One is for children and one is for old people?

A. Yes, sir.

Q. So she had given some money to the Orphanage before and then you learned afterwards, after this con-
Vol. III test was filed that she had given the bulk of her
page 479 } estate to the Methodist Home for the aged?

A. Yes, sir.

Q. Did you make any inquiry, Doctor, before her death—I mean before her funeral when you were visiting Mr. Webb to inquire what she did and prior to the time that Mr. Bangel filed a contest here as to the circumstances surrounding the making of this last will?

A. (Pause) Yes, sir, I think we tried to get in touch with her administrator. We couldn't get him on the phone, his phone wouldn't answer. Mr. Webb tried, and I talked with him the night of Aunt Mary's death about the situation.

Q. Doctor, you never actually talked to anyone connected with the preparation of this will or the witnesses, did you?

A. No, sir, no witnesses; no, sir.

Q. You didn't talk to Camillus F. Eason sitting here?

A. I talked to him on the phone the night of Aunt Mary's death.

Q. Did you talk to him about any part of the will or—

A. (Pause) I believe I may have asked him that question, sir, he said he didn't know. I may have asked him

Vol. III that question.

page 480 } Q. So you didn't get any information?

A. No, sir.

Q. Did you talk to Lloyd Eason?

A. Yes, sir, only at the funeral. I think I met him at the funeral.

Dr. Robert R. Eason.

Q. You didn't get any information about the execution of this will?

A. No, sir.

Q. Did you talk to Mr. Stanley Bryan?

A. No, sir.

Q. Did you talk to James White or Edgar White who witnessed the will?

A. I talked to Turner White. You mean the witnesses, no, sir.

Q. Yes, sir.

A. No, sir.

Q. Doctor, on what occasions did you invite Miss Mary to your home, do you remember?

A. No, sir, it was several occasions. We always would ask her to come to see us. It would be the normal thing to do. She was a person that never did do very much visiting away from her—too far away from her home, I should say.

Q. Just before her death she wrote you, Doctor, Vol. III that she would like very much to see a familiar page 481 } face and hear a kind voice, didn't she?

A. Yes, sir, she also wrote and told me not to come, sir, in several of her letters.

Q. That was prior to that time.

A. I wouldn't be able to say without referring to all those many letters.

Q. I am talking about '59, Doctor, around April, 1959. She never visited you at Christmas?

A. She?

Q. Yes.

A. No.

Q. Did she ever get an invitation to visit?

A. Did she ever get one from me?

Q. Yes.

A. I wouldn't say, I'm sure we have asked her from time to time, sir, to visit us. Now, I wouldn't say it was absolutely on Christmas or not.

Mr. Bohannon: That is all, Doctor, as far as I am concerned.

Mr. Garrett: Doctor, I just have two or three questions, we have been over with them with your cousin Sam.

The Witness: Yes, sir.

Dr. Robert R. Eason.

CROSS EXAMINATION.

Vol. III

page 482 } By Mr. Garrett:

Q. In this transaction in 1956 about this \$42,000.00 worth of notes, the basic idea, Doctor, there was to keep you all from having to pay any taxes if you eventually got the property at her death?

A. I think it was the basic idea, to preserve the estate, Mr. Garrett.

Q. So you and your cousin Sam would be the principal beneficiaries of any note transaction.

A. That is the normal course of things, I would judge.

Q. Now, I will ask you if you did not write her letters and point out the deadly tax effects and so forth unless something like this was done.

A. Well, we are all tax conscious nowadays, I suppose I did, sir.

Q. Didn't you state in one of them even that it would cost her \$20,000.00 taxes if she took the money instead of you all?

A. (No response.)

Q. Remember that?

A. I think so, sir.

Q. Yes. Here is a letter apparently dated April the 21st; it looks like 20th, then you put 1 over it, April 21st, 1956. Did you write that letter?

Vol. III
page 483 } A. Yes, sir.

Q. Read that letter to the jury.

A. (Reading) "My Dear Aunt Mary,

"I enjoyed talking to you over the phone and was so happy to know you are feeling fine and never felt better in your life.

"Your lawyers have never told you how much income tax you would have to pay on \$40,000. I looked it up for you and it would be \$20,000 or more. The tax men always check on big transactions like this. When they do they would go into all your farm income and do it from year to year. You would gain more if we paid you \$6,000 a year, in fact you would pay no income tax hardly at all on \$6,000. You see if you would only believe us we are trying to look after your welfare, your lawyers are only doing what you ask them, they don't have your interests at heart.

Dr. Robert R. Eason.

"This is the last time I am going to ask you to listen to us. Please let things go as you, Sam and I planned. Why have you had such a change in heart recently?"

"All send love,

"Devotedly, your little nephew, Robert.

"P. S. Check with your lawyer on your income tax, ask him to show you the U. S. income tax return schedule.

"Again, causing so much confusion about the Vol. III sale and if the buyers learn of it, they will not page 484 } come to the sale. You see, we bought the timber from you with the notes, and if we paid them off all at once, you would pay income tax on the whole \$40,000 or so. Please study this carefully."

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Vol. III
page 485 }

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By Mr. Garrett:

Q. The question I asked was did you honestly believe she would have to pay \$20,000.00 worth of taxes?

A. I remember looking it up for her. I'm no tax expert and it was my estimate of it, Mr. Garrett. I really did.

Q. You are not a tax expert but you were telling her that her lawyers did not have her interest at heart. What reason did you have to put that in the letter?

A. No reason at all, sir.

Q. Sir?

A. No reason at all.

Q. What reason did you have to impugn the integrity of the lawyers that were representing her by any such statement as that. What I want to know is did you have any reason for it?

A. No, sir.

Mr. Garrett: I would like to offer this in evidence, if your Honor please.

(Letter offered to the Court as an exhibit for Proponents.)

Dr. Robert R. Eason.

By Mr. Garrett:

Vol. III Q. Now, Doctor, there was some reference in
page 486 } Aunt Mary's letter about folks wanting her to give
 them money. Did you ever write and ask her to
send you any money?

The Court: Proponent's Exhibit 8.

(Received and marked in evidence by the Court as Proponents' Exhibit Number 8.)

A. I did one time. She promised to pay for the education of my two children. She promised to give fifteen or twenty thousand dollars and Mrs. Eason wrote for it; yes, sir.

Q. So when she said in her letter that your wife had been asking her for fifteen to twenty thousand dollars she was telling the truth?

A. Yes, sir, she certainly was.

Q. And that letter was written shortly after she got possession of the \$41,000.00, was it not?

A. Yes, sir.

Q. Did you know your wife wrote the letter?

A. Yes, sir.

Q. Did she tell you she was going to write it?

A. I'm sure she did.

(Letter shown to opposing counsel.)

Vol. III Mr. Garrett: I am going to read what I want.
page 487 } Mr. Bangel: Let me see it, sir, in the interest
 of saving time.

Mr. Garrett: Well, you're not saving time when all I want to establish is two points.

Mr. Bangel: I know, but I want to read it.

Mr. Allen: What is the date of that, Mr. Garrett?

Mr. Garrett: November 4th, 1956.

By Mr. Garrett:

Q. Is that your wife's handwriting?

(Letter shown to the witness for examination.)

A. Yes, sir.

Dr. Robert R. Eason.

Q. Would you start reading there on page 2 referring to the matter I asked you.

* * * * *

Vol. III

page 488 } A. (Reading) "I want more than anything to give each one of them a wonderful education. As you know everything has advanced so much in price and as things are not going too well with us I don't see how we can educate these children in the 'Eason tradition.' So I am asking you to please let me have 15 or \$20,000 or whatever you will in order that I may know that our children will be educated as well as the Eason ancestors. Robert knows nothing at all about this letter and please never tell him that I told you he is struggling very hard each month to pay off a \$14,000 note—he borrowed this amount to pay for his office * * *."

By Mr. Garrett:

Q. Now, she says you did not know anything about it and yet you told us a minute ago that you did know about it. What was it, a sort of arrangement between you all that she was to ask for it and pretend you did not know?

A. (Pause) I don't recall any arrangement, Mr. Garrett, really I don't.

Q. All right, sir.

A. I don't recall any arrangement being made, no, sir.

Mr. Garrett: We would like to offer the letter in evidence.

Mr. Allen: Now will you read the entire letter, Vol. III please?

page 489 } The Court: Proponents' Exhibit Number 9.

(Received and marked in evidence by the Court as Proponents' Exhibit Number 9.)

The Court: All right, read that Exhibit 9.

A. (Reading) "November 4, 1956,

Dr. Robert R. Eason.

“Dear Aunt Mary,

“It is Sunday night and here I am sitting alone quietly in my bedroom just meditating over what will become of these two precious children I have just put to bed. Little Elizabeth knelt down beside her bed and said such a sweet prayer—she always includes you in her prayer—and this precious ‘Little Robert’ is at the cooing stage and is so sweet. He is so angelic looking lying in his basket fast asleep and smiling every once in a while in his sleep. I want more than anything to give each one of them a wonderful education. As you know everything has advanced so much in price and as things are not going too well with us I don’t see how we can educate these children in the ‘Eason tradition’ So I am asking you to please let me have 15 or \$20,000 or whatever you will in order that I may know that our children will be educated as well as the

Eason ancestors. Robert knows nothing at all
Vol. III about this letter and please never tell that I told
page 490 } you he is struggling very hard each month to pay
off a \$14,000 note—he borrowed this amount to
pay for his office. Robert has too much pride to ever tell you this fact but with me ‘pride goeth before a fall.’ What more living memorial could you have for yourself than for you and us to say that ‘Aunt Mary educated these wonderful children.’? And what a relief it would give me to know that we can do all this for them. As things go with us now it will be utterly impossible for us to do it. Please keep all this a ‘great secret’ between you and me—please promise never to tell Robert the above information. But I give you my word of honor that every word is true. I shall tell you more later on. I am enclosing a snap shot of Elizabeth and Little Robert and I shall send you another one or others as soon as I get them developed.

“I do hope and pray that you are feeling well—Don’t ever forget that should you get sick or anything that I shall be glad to come and wait on you and do everything in the world that I can do for you. Please always remember that fact and that I love you very dearly. You are a wonderful person and I admire you very much.

“Robert is at the hospital now and will be back most anytime now—I must put this letter away and slip down and mail it in the morning while he is on calls.

Dr. Robert R. Eason.

Vol. III "Please use the street address when writing to
page 491 } me and your answer will be delivered to me here at
 } home.

"Take good care of yourself and please write soon—

"All my love,

"MABEL."

"This is the letter that Robert Eason's wife wrote asking for 15 or 20 thousand dollars after they took my home and 10 thousand dollars.

"MARY EASON,

"May 13th, 1957."

Mr. Garrett: That is Miss Eason's writing on the back of it?

The Witness: Yes, sir.

By Mr. Garrett:

Q. You never got 15 or 20 thousand dollars from her, did you?

A. I beg your pardon?

Q. You never got 15 or 20 thousand dollars?

A. No, sir.

Q. Well, now, Doctor, this letter was written in November and in October of the same year Miss Mary had just been paid from this court \$41,640.00?

A. Yes, sir.

Q. So within a month after she got the \$41,640 this request for 15 or 20 of it came to her which would be about
Vol. III half of the money?

page 492 } A. Well, Mr. Garrett, she had always promised
 } to educate these children.

Q. I didn't ask you that, Doctor. I said within a month after she was paid out of this Court by order of this Court \$41,000.00—

A. That is correct, sir.

Q. —this confidential letter, very touching, would you say, a very fine plea, came to her for 15 or 20 thousand dollars in a matter of within a month, isn't that correct?

Dr. Robert R. Eason.

A. That is correct, sir.

Q. She later wrote a letter, I believe—you heard it read here—that you could get up off your rear end and go to work, didn't you?

A. Yes, sir, that was said about my wife. She didn't say that about me.

Q. She said about Robert.

A. No, sir, I don't believe so, Mr. Garrett, I don't believe so.

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page 493 }

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By Mr. Garrett:

Q. Well, you read the advice that she gave about requesting the money, didn't you? I mean you heard it read in the Court; you have seen it?

A. (Pause) I don't quite follow you.

Q. Well, we will move to something else then. Let me see the suit papers. Now, Doctor, I believe you stated that you arranged for counsel in this matter, did you not, arranged for an attorney?

A. In the will case?

Q. Yes.

A. Yes, sir.

Q. I am now looking at some of the grounds, eleven in number that was filed by your attorneys in this matter, and I am going to ask you what information you gave to support these allegations.

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Vol. III
page 495 }

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By Mr. Garrett:

Q. Doctor, it is alleged in this bill of particulars that the will was revoked. Do you have any knowledge that this will was ever revoked, that has been introduced in evidence?

Dr. Robert R. Eason.

A. Not that I know of.

Q. That is news to you?

A. Yes, sir.

Q. It says the will was not signed by Mary Frances Eason. Do you have any knowledge that that is not her signature on the will?

A. No, sir.

Q. It says it was not attested according to the laws of the State of Virginia. Do you know anything about that?

A. No, sir.

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page 496 }

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By Mr. Garrett:

Q. So, as to the things I have asked you you know nothing about any such contention as that?

A. No, sir, I—

Q. It is made in your behalf in this suit. Now, I believe you said that you came down here in the summer and saw her for a couple of hours, on your trip down here in 1959, was it?

A. '58; yes, sir.

Q. You didn't make any special trip down here to see your Aunt Mary, you were going to the beach and
Vol. III stopped by to see her while you were going or
page 497 } coming?

A. Well, I was at the beach and I came out here to see Aunt Mary, yes, sir.

Q. Well, how about the preceding years, did you see her in 1957?

A. Yes, sir, I'm sure I did, sir.

Q. When?

A. (Pause) I remember I brought the car to her in 1957 right after she came to Buena Vista with Mr. Webb.

Q. In 1957?

A. Yes, sir.

Q. Well, you saw her in the summer of '58, and you saw her when in '57, in October?

A. I believe it was in November, soon after Mr. Webb—Mr. Webb was there around October the 17th, I believe.

Dr. Robert R. Eason.

Q. When did you see her prior to that?

A. Prior to that?

Q. Yes.

A. (Pause) I'm sure it was in the summertime of '57.

Q. In the summer of '57?

A. Yes, sir, each summer when we vacationed at Virginia Beach we would run over to see Aunt Mary.

Vol. III Q. How much did she ever give you in cash
page 498 } money?

A. \$8,100.00, sir, and a few dollars and cents.

Q. Well, you have told us a minute ago there were some checks you got, one or two of those travelers checks?

A. Oh, travelers checks. One travelers check or possibly two.

Q. Yes. Did you have access to her lock box?

A. No, sir.

Q. Sam had the key and not you?

A. Yes, sir.

Q. When the car was brought here what did you get at that time or approximately that time?

A. What did I get, sir?

Q. Yes.

A. I didn't get any money.

Q. You did not get any money, stock or anything?

A. No, sir.

Q. No cash?

A. No, sir, I certainly did not.

Q. This statement about a pistol permit that you mentioned you and Sam told her not to carry the pistol, didn't you?

A. Without a permit, I think, Mr. Garrett.

Q. Well, I say you told her not to take it?

Vol. III A. Yes, sir.

page 499 } Q. Whether it was in the car or otherwise?

A. I think that is correct, sir.

Q. And so she got from that that you did not want her to have that pistol in the car with her and got from that the idea that you were opposed to her having it; that would be a reasonable assumption, wouldn't it?

A. I guess so, yes, sir.

Q. You did not spend any nights out there in that home out there in the woods and know what went on around there, did you?

A. I spent a few nights out there, yes, sir, during the course of years, certainly.

Dr. Robert R. Eason.

Q. A few nights; but mighty few except when you came down here in '55 about the deed and you came down about the timber, and you came down about the timber deed in '56 and litigation in '56. They were the principal times that you came down here in that period, were they not?

A. No, sir, there were several times in between there, Mr. Garrett.

Q. Well, you were on your way to Florida once and you spent the night?

A. It's hard to remember those dates.

Q. I say you were on your way to Florida and spent the night there?

Vol. III A. Yes, sir.

page 500 } Q. But you haven't spent too many nights in that home in the past year since you left here?

A. (Pause) Only on those visits. We would come down for a day or two.

Q. So that you don't know what went on there during the times that she was complaining about being molested?

A. No, sir, only what she told me at the time and wrote the letters, sir.

Mr. Garrett: That is all, thank you.

RE-DIRECT EXAMINATION.

By Mr. Allen:

Q. Doctor, Mr. Bohannon asked you about the contest and who initiated it. Did Sam join you in the contest proceedings?

A. Yes, sir, he agreed over the phone. I called him after I had made the arrangements is the way I remember it, sir.

Q. Yes. Well, now, with reference to Camillus F. Eason, did you know him before?

A. No, sir.

Vol. III Q. Did you ever hear of him before the death of
page 501 } Miss Mary?

A. Only in one or two of Aunt Mary's letters he was mentioned, yes, sir.

Q. So, so far as you know is he any kin to the Easons, your family, the Easons, and Miss Mary's family, the Easons?

A. Not that I know of, sir. He is a fourth or fifth cousin from South Mills, the way I understand it.

Dr. Robert R. Eason.

Q. When did you first meet him?

A. At the funeral, I believe it is.

Q. At the funeral. Now, you were asked about the car that you gave her and you said you brought it down in '57. Do you know what part of '57?

A. It was right after that last transaction and visit Mr. Webb made. That was in October; I imagine this was around the first of October.

Q. After you had signed that paper releasing her of her obligation to give you the property?

A. Yes, sir.

Q. By will. Did she have that car when she died?

A. No, sir.

Q. What had become of it?

Vol. III A. I think she had sold it to Mr. Turner White
page 502 } here.

Q. Do you know when she sold it to him?

A. No, sir.

Q. Do you know what condition the car was in when she got rid of it?

A. (Pause) I thought it was in good condition. I wouldn't know, Mr. Allen.

Q. Well, what was its condition when you took it to her in the latter part of October, '57?

A. It was as a brand new car.

Q. Now, something was said about you telling her not to take the pistol without a permit. What did you say to her about that?

A. (Pause) Well, I had heard she had been shooting around in the neighborhood and I just told her she ought not to take that pistol out without getting a permit.

Q. Without getting a permit?

A. Yes, sir.

Q. Did you undertake to keep her from getting a permit?

A. No, sir.

Q. Now, the few nights that you did spend there that you had referred to a moment ago, did anything of the kind that she had been writing about go on?

A. No, sir.

Vol. III Mr. Allen: That is all.
page 503 } Mr. Bohannon: Just one.

Dr. Robert R. Eason.

RE-CROSS EXAMINATION.

By Mr. Bohannon:

Q. Doctor, you stayed at home by yourself?

A. Do I?

Q. Alone?

A. Have I stayed at home?

Q. Yes, sir.

A. Yes, sir; not very often but I have.

Q. It is not unusual in a person at home by himself they hear things and creaking noises and are suspicious, are they not?

A. (Pause) Not the way Aunt Mary described it, no, sir.

Q. She was a lady of the old school, was she not, Doctor?

A. She was.

Q. She was 20 some years old at the turn of the century, wasn't she?

A. Yes, sir.

Vol. III Q. Doctor, you are familiar with the will we are
page 504 } talking about, this latest will we are scrapping
 over?

A. (Witness nodded head affirmatively.)

Q. In this will Miss Mary had a very good recollection of what her property was, did she not?

A. She seemed to.

Q. And she outlined in detail the manner of distribution, did she not?

A. She certainly did.

Q. And she knew the objects of her bounty, did she not; who would receive her estate?

A. (Pause) Well—

Q. She knew—

A. —she left her poor brother out of the will, which I don't think is correct. I don't see how anybody could do that. I don't see how anybody could do that, sir.

Q. She mentioned the people that she mentioned in this will she knew very well, didn't she?

A. I would certainly think so.

Q. In other words, Doctor, you would substitute your wishes and judgment for what Miss Mary did?

A. (Pause) Well, after Miss Mary had taken care of that

Dr. Robert R. Eason.

man all these years and all of a sudden leave him out that sounds mighty strange to me.

Vol. III Q. That is a matter of opinion and interpreta-
page 505 } tion, isn't it, Doctor. You just said she had taken
care of him, looked after him all his life?

A. Then suddenly leave him penniless.

Q. He had caused her a lot of expense, didn't he?

A. Not too much. That man is a gardener and raised gardens for the folks on the farm.

Mr. Bohannon: That is all, Doctor.

RE-CROSS EXAMINATION.

By Mr. Garrett:

Q. Doctor, there was introduced in here by your attorneys somewhat earlier a will dated October, 1955. Do you remember that? You were on the stand, I believe at the time?

A. Yes, sir.

Q. This will, I believe, that you identified?

A. Yes, sir, yes, sir. That's right.

Q. Mr. J. McBryde Webb, V. W. Randall and Evelyn Tatem witnessed it?

A. Yes, sir.

Vol. III Q. Read to this jury Paragraph Third in that
page 506 } will where you all got all the property.

(Document handed to the witness.)

A. (Reading) "Paragraph Third: I am making no provisions for my brother J. LASALLE EASON by way of gift in this will, as I have provided many comforts for him in the past, and he is also receiving a war veterans pension."

Q. It didn't shock you back in 1955, did it, Doctor, that she had left him anything. You were shocked today over it, but I ask you whether you were shocked in 1955 when everything went to your family and Sam's family and he was left out. Were you shocked then?

A. Aunt Mary always asked us to look out for Uncle LaSalle. I am a man of my word, and I certainly would have.

Q. So you do make necessary agreements over and above the written papers with each other?

Dr. Robert R. Eason.

A. Now, if my memory serves me correctly, I did not have anything to do with that will, Mr. Garrett.

Q. I didn't say you had anything to do with it.

A. No, sir.

Q. You were shocked because in 1959 she left him out, and I am showing you one she executed in 1955 that she left him out. Would that shock you then?

A. Well, it does, yes, to leave that old fellow Vol. III out; yes, sir.

page 507 } Q. It does?

A. Yes, sir, it does.

Mr. Garrett: That is all.

RE-DIRECT EXAMINATION.

By Mr. Allen:

Q. Mr. Garrett asked you to read the paragraph in the will of October, 1955 with reference to LaSalle, which is Third. Now, I ask you to refer to the paragraph Third in the will of October the 26th, 1959. Just read those two paragraphs.

Mr. Allen: If your Honor please, the one in the last will he hadn't read all of it.

By Mr. Allen:

Q. Read the entire Third paragraph and—

A. (Reading) "I am making no provisions for my brother J. LaSalle Eason by way of gift in this will as I have provided many comforts for him in the past, and he is also receiving a war veterans pension."

Q. Now read the first part of the Third paragraph in the next will.

A. (Reading) "Being mindful of my brother Vol. III James L. Eason, but having already sufficiently page 508 } provided for him in this world I hereby give, devise and bequeath unto him the sum of \$1,000.00."

Q. That is as far as I want you to go there. Do you know of any provisions—she says she already provided for him sufficiently in this world—do you know of any provisions she had made outside of the will?

A. No, sir.

Q. That is all.

Dr. Robert R. Eason.

By Mr. Garrett:

Q. All you know is you just heard him—

The Court: Wait a minute, he has some more.

Mr. Allen: I mean that is all about that.

Mr. Garrett: Excuse me, Mr. Allen.

Mr. Allen: That's all right.

By Mr. Allen:

Q. I notice in one of those wills that Lloyd Eason is referred to, that last Lloyd Eason is referred to. Did you ever hear of him?

A. Lloyd Eason?

Q. Yes.

A. No, sir, I met him at the funeral.

Vol. III

Q. Do you know whether or not he is related to page 509 } your Eason family?

A. No, sir, I don't.

Mr. Allen: That is all.-

RE-CROSS EXAMINATION.

By Mr. Garrett:

Q. Doctor, you were comparing the two wills. In the will of 1959 she left a thousand dollars to go for the burial expenses and anything left over to the estate, didn't she?

A. Yes, sir.

Q. So she actually left him more in the last will than she did the first one, didn't she?

A. Well, he can't use that thousand dollars now, Mr. Garrett.

Q. I understand he can't use that, but it is for his benefit. You say she never done anything or provided for him in this world. Didn't he live down on the farm and eat down on the farm?

A. He worked on the farm too.

Q. Well, I didn't say whether he worked or not. I said didn't he live down on the farm?

Vol. III

A. Yes, sir.

page 510 } Q. Did you hear him testify she had paid the expenses in the suit with his wife over here in Norfolk?

A. Yes, sir.

Dr. Robert R. Eason.

Q. Did she send him money down in Florida?

A. She sent him \$75.00 and \$25.00 to my knowledge.

Q. I suppose you sent the rest of it down to him?

A. No, sir.

Q. Well, you felt so sorry for him you send him anything down there or help him in any of these problems he had about his divorce or his litigation?

A. (Pause) I wasn't asked. I would have.

Mr. Allen: That's what, did you say?

The Witness: I wasn't asked. I would have if I had been asked to sir.

By Mr. Garrett:

Q. Well, the answer is you didn't; isn't it?

A. (No response.)

Mr. Garrett: All right, sir, that's all.

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(The Court and counsel for both sides and the reporter retired into chambers where the following occurred:)

Mr. Bohannon: Motion is made to strike the evidence of the contestants to this will, and in support of the motion I would like to make the following brief statement in argument.

The Court: You mean strike the evidence as to all phases? Is that what you are talking about?

Mr. Bohannon: Yes, sir.

The Court: Go ahead.

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John D. Norfleet.

we submit that the evidence so far is not sufficient to break this will.

The Court: Do the executors wish to be heard on this or not?

Mr. Bryan: I would like to join in the motion, Judge, for the reasons stated.

The Court: All right, I think it is a jury question here, gentlemen. They are matters of instructions to the jury. They have got to make certain findings of the fact. I think it is a jury question.

Mr. Garrett: We except.

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JOHN D. NORFLEET,
called as a witness on behalf of the proponents, having been
first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

Vol. III
page 515 } By Mr. Garrett:

Q. Will you please tell his Honor and members
of the jury your name?

A. John D. Norfleet.

Q. Mr. Norfleet, you just arrived here, I believe?

A. Yes, sir.

Q. You haven't been in during the proceedings?

A. No, I haven't.

Q. Where do you live?

A. At Hickory, Virginia.

Q. And how long have you lived down there?

A. About 25 years approximately.

Q. What is your occupation?

A. Real estate broker.

Q. Did you know Miss Mary Eason, who lived at Hickory
for many years?

A. Yes, sir, I did.

Q. And how long did you know her?

John D. Norfleet.

A. Approximately 20 years.

Q. During that 20 years that you knew her did you have opportunity to be in her presence or talk with her, or to have any dealings with her?

A. Yes, I did.

Q. Mr. Norfleet, in any of the conversations or Vol. III dealings that you ever had with her, will you tell page 516 } the members of the jury how she conducted herself or attitude was?

A. Well, she always acted like a lady to me, very business like.

Q. When did you last see her approximately?

A. I guess it was about a month before she died.

Mr. Allen: I didn't hear that, sir, what was it?

The Witness: Somewheres around twenty or thirty days, I forget now, before she died.

By Mr. Garrett:

Q. And where did you see her?

A. The last time I saw her was at her home.

Q. And what was the occasion for you to go there?

A. To notarize a car title.

Q. Who requested you to come there?

A. She did. She sent a note to me.

Q. She sent a note?

A. That's right.

Q. By whom?

A. This colored fellow, Turner White.

Q. And did you go there to her home?

A. Yes, I did.

Q. Did you talk with her?

A. Yes, for a very short while.

Vol. III Q. What was her condition in reference to page 517 } knowing what you talked about and understanding matters and so forth at that time?

A. Well, she was just as spry. I mean she was just as if she knew what she was doing in my opinion. I mean she summons me there to sign a title and she did.

Q. And did you notarize the title to an automobile?

A. Yes, sir, I did.

Q. Who did she convey it to?

A. Turner White.

John D. Norfleet.

* * * * *

By Mr. Garrett:

Vol. III Q. Now, Mr. Norfleet, in addition to this—you
page 518 } are a notary public, I believe you said?

A. Yes, I am.

Q. In addition to this occasion that you went to her home then, had you had any other business dealings with her in the years prior to her death?

A. Yes, I have. I have notarized a number of papers for her, letters and what have you.

Q. In addition to that have you been connected with any transactions concerning the sale of real estate?

A. Yes, I have.

Q. Now, would you refer to your file and tell us when that occurred?

A. (Referring to file) Well, on July 30th of 1957 she contracted to buy from Mr. B. F. Conte 28.75 acres of land across from her property, and she conveyed that; she signed the contract herself and so did Mr. Conte. Mr. H. D. Martin, attorney in Norfolk, was the one that handled the transaction, closed the deal for them.

Q. You were the broker, were you?

A. I was the broker in this case.

Q. Was that transaction closed and a deed passed?

A. Yes, sir, it was.

Q. Do you remember what the consideration for it was?

A. \$4,300.00. She paid in cash.

Vol. III Q. Do you recall any other transactions or busi-
page 519 } ness dealings with her prior to that specifically?

A. Well, the only time was notarizing some letters for her.

Q. In the conversations that you had with her on those occasions—strike that. Did you ever talk to her other than those times?

A. Well, yes, I greeted her every time I saw her, at the post office or stores or wherever she and I might have met.

Q. Mr. Norfleet, as a consequence of the various times that you may have talked to her and the two business transactions that you were with her, will you tell the Court and jury whether from your observation she was capable of handling her affairs?

A. I always thought so.

John D. Norfleet.

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By Mr. Garrett:

Q. Take the transaction of the real estate purchase. Can you tell the Court and jury as to her alertness or capacity in that connection?

A. She always seemed to me to be like I say, a business like woman. She conducted herself that way.

Q. From your observations and discussion with her could you tell us whether or not she knew what real estate she owned?

A. What she had?

Q. Yes.

A. I think she always thought that. I am—I mean she had a good idea what she owned and what she thought she owned.

Q. Based on your observation and dealings with her would you tell us whether or not in your opinion she had sufficient mental capacity or alertness to attend to her business affairs?

A. On every occasion that I talked with her I thought she did. She certainly conducted this transaction very business like and she seemed to know what she was doing.

Q. You have no interest in the outcome of this case, do you, Mr. Norfleet?

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page 521 }

A. None whatsoever.

Mr. Garrett: All right, sir, you may examine.

CROSS EXAMINATION.

By Mr. Bangel:

Q. Mr. Norfleet, the title to that property was taken in whose name?

A. She contracted to buy the property but she wanted me to put it in the contract that she had the right to convey it to anyone that she pleased, and she did that.

Q. I see. Isn't that unusual for a person to say what right to convey to whomever they please, if she was paying for it she would have that right as a matter of right under the law?

John D. Norfleet.

A. Well, she was reserving that right.

Q. Well, is it necessary to reserve that right in law if I buy a piece of property and pay for it cash, don't I have the right to convey it to whomever I please?

Mr. Garrett: That is a question of law, if your Honor please.

A. Yes.

Vol. III By Mr. Bangel:

page 522 } Q. Well, why would she want to reserve a right that she had under the law?

A. Well, what she did was she signed the contract herself to buy the property, but the property was never conveyed to her. It was conveyed to Albert Ahlgren.

Q. I see. What she did was she paid \$4,300.00 for a piece of property and had conveyed it to Albert Ahlgren?

A. That's right.

Q. Well, that right she would have without reserving it in the contract by putting it in the deed whomever she wanted; she would have that right?

A. Yes.

Q. Didn't you think it was unusual to say that I am buying a piece of property and paying for it in cash and reserve the right to transfer it to whomever I please? Isn't that an unusual matter?

A. Well, I guess from what I gathered from her she wanted the seller to go along in the fact that she wanted to convey it to someone else.

Q. Well, did she think she would have to have that in writing, or did you tell her she had that right?

A. No, I didn't tell her.

Q. She thought she would have to put that in the contract to have that right, is that right?

Vol. III A. Apparently she did. She thought it would
page 523 } be wise to do that.

Q. Then she went ahead and directed the deed to be made to Albert Ahlgren?

A. Albert Ahlgren.

Q. Now, you say that you had notarized letters for her. Did she tell you that cars were converging on her?

A. That cars were?

Q. Yes, sir?

John D. Norfleet.

A. No, sir.

Q. Did she tell you that people were threatening to kill her?

A. No.

Q. She never told you that? Did she tell you that she had been threatened and that she thought her nephews were going to kill her?

A. Not kill her. She never told me that they threatened to kill her.

Q. She didn't tell you any of those things?

A. No.

Q. Well, then she didn't talk to you very long, did she?

A. Well, all I did was notarize the letters.

Q. Well, isn't it unusual to notarize a letter? Have you ever notarized a letter for anybody else before in

Vol. III your life?

page 524 } A. Yes, I have.

Q. A letter?

A. Yes, sir, I have.

Q. How many letters did you notarize for Miss Mary Frances Eason?

A. I notarized to my recollection two handwritten letters.

Q. Written by her name?

A. Yes, sir.

Q. And did she say anything in those letters about somebody threatening to kill her?

A. Not that I recall.

Q. Do you recall what was in those letters?

A. Well, the best of my memory is that she asked both doctors to return her property to her. That is about the gist of the whole letter.

Q. So she wrote a letter to them and had you notarize it asking that they return the property to her?

A. That's right.

Q. Well, now, did you know she carried a pistol?

A. No, I did not.

Q. You didn't know that?

A. No, sir.

Q. Did you see the car that she sold?

Vol. III A. Oh, yes.

page 525 } Q. What was the condition of it?

A. Good condition.

Q. What was the sale price for that car?

A. I don't know.

John D. Norfleet.

Q. You mean to say that you notarized a paper without reading it?

A. I notarized the title. I don't know what the consideration was.

Q. Don't the title show the consideration?

A. No.

Q. It didn't?

A. Titles don't.

Q. Then the title itself—you say the title does not show the consideration?

A. No, sir.

Q. Doesn't it show whether it is paid for in cash or paid for on conditional sales contract?

A. It does.

Q. Well, did that show it was paid for in cash?

A. It showed it was paid in cash.

Q. Did it show how much?

A. No, sir.

Q. Did she tell you how much she sold it for?

A. No, sir, she did not tell me.

Vol. III Q. Where was she when you notarized the title
page 526 } certificate?

A. She was at her home.

Q. Was she in bed?

A. Yes, she was.

Q. And how did you get to her bedroom?

A. Through upstairs.

Q. Who took you there?

A. Tuner White was there.

Q. Any ladies in the house?

A. Not that I know of.

Q. Well, was there any nurse there?

A. I didn't see one.

Q. Was she lying in bed?

A. Yes, she was.

Q. That was how long before her death?

A. Well, it was shortly after she was taken ill. I don't remember the exact number of days.

Q. How did she look at that time?

A. Well, she looked sort of pale and that was all.

Q. Did she ever discuss with you how much property she had?

A. Not to any extent, no, sir.

John D. Norfleet.

Q. So when you told counsel that she knew what
Vol. III property she had you were sort of guessing at that,
page 527 } weren't you?

A. Well, I think she—I always thought that
she—I don't know whether she really did or not.

Q. But she never told you?

A. Not exactly.

Q. She was the type of person who kept things to herself,
wasn't she?

A. Well, as far as I know she did.

Q. Were you one of the people that were advising her and
telling her things?

A. Well, not too much. She only came to me when she
needed some service.

Q. Well, was there anything in the letter that you notarized
saying "I have listened to others but no more." Remember
that being in one of those letters?

A. (Pause).

Q. "I have listened to others but no more?"

A. I don't recall that.

Q. You didn't read the contents of the letter?

A. I glanced over it but I did not read it.

Q. Did you ask her the purpose for having it notarized?

A. I don't—she said it would make it official.

Q. Do you mean to say that a paper writing, a
Vol. III letter signed by a person and notarized makes it
page 528 } official?

A. Apparently she thought so.

Q. Well, how, how about yourself?

A. (Pause) Well, I guess she wanted them to know that
she did sign it.

Q. Well, she wanted you to notarize a paper saying that
she signed it and you charged her for that?

A. No, sir, I never did charge her any notary—

Q. So she was coming to you and getting you to notarize
a paper without any charge?

A. Well, I didn't charge her. She would have been glad
to pay, I'm sure.

Q. Well, on any of the visits that you made to her or she
made to you did she tell you that people were shooting in the
house?

A. No, she never told me.

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MRS. ROBERT JORDAN,
called as a witness on behalf of the proponents,
having been first duly sworn, was examined and testified as
follows:

DIRECT EXAMINATION.

By Mr. Garrett:

Q. Will you tell his Honor and members of the jury your name?

A. Mrs. Robert Jordan.

Q. And Mrs. Jordan, where do you reside?

A. On Seaboard Avenue in South Norfolk, 1400 Seaboard Avenue.

Q. And that is in South Norfolk?

A. That's right.

Q. And how long have you lived there?

A. About 20 years.

Vol. III Q. Mrs. Jordan, did you know Miss Mary
page 530 } Frances Eason?

A. Yes, I did.

Q. How many years did you know her?

A. Well, I have known her real close about ten years, and I have met her about, I'd say, about 26 or 28 years ago.

Q. Now, during the years that you have known her and particularly with reference to the last ten years, have you or not had occasion to be in her company at frequent times?

A. Yes, indeed.

Q. For the last, shall we say, five years, how often would you estimate that you had been with her or in her company?

A. Well, at least once a week, and most of the time twice.

Q. And where would you be with her?

A. Well, I visited her home and she visited in mine.

Q. Do you recall the last occasion that you talked with Miss Mary?

A. Yes, I can't be definite on the date but it was just about a week before her death. I went out to see her and was talking to her in her own bedroom.

Q. And prior to that had you seen her again while she was home in her last sickness?

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page 531 }

A. Yes.

Q. About how long prior to that?

A. (Pause) Well, I would say about a week before that and possibly a week previous to that.

Mrs. Robert Jordan.

Q. So that the last three or four weeks of her life you saw her about once a week during that period?

A. That's right, I visited her about once a week after she let me know that she was in bed.

Q. How did she let you know that?

A. Well, through my mother-in-law.

Q. Well, now, when you went down on the last visit that you had there about a week before her death, about how long were you in the room with her approximately?

A. Well, I'd say about two and a half hours.

Q. And on the occasions prior to that were you in there that length of time or less or what?

A. No, it would have been less then because my husband went with me, and also my children, and we did not stay as long.

Q. Now, in addition to visiting her in her last illness there did you all have occasion to take any trips together?

A. Yes, I carried Miss Mary to St. Petersburg to visit her brother after one of his illnesses.

Q. Do you remember when that was?

Vol. III A. I believe it was the last part of November of page 532 } '57, but I wouldn't say for sure; '57 or '58. I don't remember exactly.

Q. At any rate you drove the car, did you?

A. That's right.

Q. And how long were you with her on that trip going and coming and staying down there?

A. Well, we left home Monday morning. We came back Friday afternoon the same week.

Q. So, approximately a week you were constantly associated with her?

A. That's right.

Q. Now, in addition to that trip had you made any other trips of short duration or visits or excursions with her locally or otherwise?

A. Well, I carried her to see Dr. Robert Eason at one time at his home.

Q. Now, Mrs. Jordan, in your conversations that you had with her and from your observation of her demeanor over that time, can you tell his Honor and the members of the jury what her capacity was for understanding matters and particularly in reference to any business transactions?

A. Well, I would say it was excellent. She carried on all her business affairs perfect. Her personal affairs I don't

Mrs. Robert Jordan.

Vol. III know. She saw the work was done on the farm.
 page 533 } Q. In your conversations with her on these
 numerous trips and all that you have had did she
 ever make any wild or unfounded statements that
 you know of?

A. No indeed.

Q. Did she have a right good sense of humor?

A. Very good.

* * * * *

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By Mr. Garrett:

Q. Mrs. Jordan, what have you to say in reference to Miss Eason's personality or sense of humor or anything of that sort?

A. Well, I mean like a majority of people she could joke along with you if the occasion calls for it. She could be very serious when the occasion called for it. She was well read. She discussed all items that was of current interest to mostly anyone. She was very interested in everything that went around, I would say.

Q. Based on your conversations and observation of her, particularly in reference to the last time you saw her and the others—

A. That's right.

Q. —will you tell the Court and members of the jury whether she appeared to have the capacity to understand the making of a will?

A. Well, I see no reason why she wouldn't. She discussed her every day affairs with me; she discussed a relative of hers that had just passed away; she also mentioned the fact she was sorry we hadn't been able to make the trip

Vol. III she was planning because her health hadn't en-
 page 535 } abled her to go—and let's see what else she did.

She discussed every day topics, the school situation for one thing. She was very interested in things of that type.

Q. She was a former school teacher, wasn't she?

A. That's right.

Mrs. Robert Jordan.

Q. Well, up until the time of her last illness was she driving her own car?

A. Yes, sir, she was; she certainly was.

Q. Now, Albert Ahlgren was the man that had been on the farm for about how many years, to your knowledge?

A. Oh, she told me that her father had raised him from a young man or at least he had been with them since he was a young man, and to my knowledge he had been there ever since I have been visiting in her home.

Q. Do you know how long Turner White had been there on the farm?

A. I could not tell you in length of time. I have heard her speak of him real often.

Q. When she spoke of him in what manner was it?

A. Well, just that she had gotten him to do different things for her around the farm. She had to call on him to do just ordinary things that would go on all the time, that he helped her with the work, anything she wanted done.

Mr. Garrett: You may cross examine.

The Court: Cross examine, gentlemen?

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CROSS EXAMINATION.

By Mr. Bangel:

Q. Mrs. Jordan—

A. Yes, sir?

Q. —I understand you to say that Albert Ahlgren had been there ever since you had known her?

A. No, since the latter years, since I visited in her home.

Q. And that she told you that Albert Ahlgren was a young man that was raised by her father?

A. Well, I don't know that you would call he was raised particularly but he went there as a young man and he stayed with the family.

Q. And she particularly referred to the fact that he was practically raised by her father?

A. (Pause) Well, I don't know as you would say that. I think he was a young man that went to the farm, the way I understood it, and her father took him in to the farm because he had no family in this country.

Q. And that is what she told you?

A. That is the way I understood it.

Mrs. Robert Jordan.

Q. Did you know her father?

A. No, sir.

Vol. III Q. Do you know how long her father had been
page 537 } dead?

A. No, I don't.

Q. So you did not question the correctness of that statement at all?

A. No, sir.

Q. You assumed she knew what she was talking about and was telling you a fact?

A. I did.

Q. Well, did she tell you that people had been taking pot-shots at her home?

A. I have heard it referred to.

Q. Did she also tell you that cars were converging on her in all directions at the house?

A. No.

Q. She didn't tell you that?

A. No.

Q. Well, did she tell you that people were running her off the road?

A. She told me that she felt like they were.

Q. And did she also tell you that she carried a pistol?

A. Nope.

Q. Well, do you know whether she had carried a pistol or not?

Vol. III A. Not to my knowledge.

page 538 } Q. Well—

A. (Continuing) She had one in her home but to my knowledge she had not carried one.

Q. Do you know she had a pistol in her home?

A. No, I don't.

Q. Well, did she tell you that on one occasion 17 men broke into her home and she had killed 4 of them and that 13 had gotten away?

A. No, sir.

Q. Well, did she tell you people were hiding around the house?

A. No indeed.

Q. Didn't she tell you that someone was after LaSalle, that she had hid him, her brother LaSalle, that she had hidden him in the woods?

A. No, sir.

Q. She didn't say anything about that?

Mrs. Robert Jordan.

A. No, sir.

Q. Who was she referring to when she said people tried to run her off the road?

A. Well, she didn't know that I know of.

Q. Well, did she tell you someone was trying to kill her?

A. She said she fears for her life.

Q. And who was she afraid might take her life?

Vol. III A. Well, she didn't have anybody definitely in
page 539 } mind that I know of.

Q. Well, in the course of that conversation didn't you say "Well, if you are afraid someone is going to kill you who is that someone that you fear?"

A. Well, she didn't come out and call their names. It wouldn't have any meaning to me, but she said just different ones in the neighborhood.

Q. And didn't she give you the name of anyone! Did she name a person by the name of Peebles?

A. Who?

Q. Mr. Peebles trying to kill her?

A. No, sir.

Q. Did she say Mr. Branch tried to kill her?

A. No.

Q. Do you know if she had Mr. Branch around there to look and keep a watch out for her to see who it was trying to break in her house?

A. No, sir.

Q. She didn't discuss that with you?

A. No, sir.

Q. Did she tell you that she kept Mr. Branch out there to keep people from taking potshots at her?

A. I can't recall her calling the name that I
Vol. III can recall.

page 540 } Q. Well, did I understand you to say that you
were there about two and a half hours about a week
before she death?

A. I said it was a week—I couldn't be sure whether it was a week before or the week before that. I know it was close to the end of her life.

Q. And she was confined to her bed?

A. Yes, sir.

Q. Did she have a nurse?

A. No, sir, she did not.

Q. Was that in the wintertime or summertime?

A. Well, the morning I was there it was raining, it was cold.

Mrs. Robert Jordan.

Q. And was there any heat in the house?

A. Yes, sir.

Q. How was the home heated?

A. By oil.

Q. You mean a stove in it?

A. A furnace.

Q. A furnace. And was there anyone in the house besides you?

A. No.

Q. Did she have a dog?

A. She had several dogs.

Q. How did you get by those dogs?

Vol. III Q. How did I get by?

page 541 } Q. Yes.

 A. Well, I went in the main door up the steps, because Albert let me in.

Q. Albert was there?

A. He was outside; he wasn't in the house.

Q. Did you ask her why she wasn't in the hospital?

A. No, she told me that the doctor had told her to go to bed for bed rest for thirty days, but she didn't have any idea of ever being able to get up. She just thought it was the end of her time.

Q. And she was just laying there without any lady or nurse to tend to her; she was waiting to die?

A. No, she had someone that came in to do for her during the mornings.

Q. Who was it, do you know?

A. I believe it was Turner White's wife.

Q. Turner's White's wife came there?

A. Yes.

Q. Did you ever see her?

A. No, I did not see her. She told me she had been there. Her bed was straightened up and all the things were picked up in her home, so evidently someone had been there.

Q. Was there any lady there at all during the
Vol III time that you were there the two and a half hours?
page 542 } A. Not that I know of, not while I was in the
 house.

Q. Wasn't a doctor there during the two and a half hours you were there?

A. No.

Q. Did you suggest to her going to the hospital where she could get proper medical care and proper nursing care?

Mrs. Robert Jordan.

A. I did.

Q. What did she say?

A. She said she just didn't want to go.

Q. Did she tell you why she didn't want to go to the hospital?

A. No.

Q. Did she tell you she was afraid of being killed if she went to the hospital?

A. No.

Q. Did she show any dislike for hospitals?

A. I don't think so.

Q. Did you look in the icebox to see whether there was any food there?

A. No, sir, I did not go in her kitchen.

Q. Was she fed at all while you were there?

A. She said she couldn't eat because it both-
Vol. III ered her, that it hurt her stomach to eat, and she
page 543 } was living mainly on milk.

Q. So she wasn't eating and living mainly on milk?

A. That's right.

Q. Well, a person who was so sick that she could not eat and lived on milk, as a friend, wouldn't you insist on her going to the hospital where she could be looked after knowing her financial condition?

A. Well, to me that is her own privilege to stay where she wanted to. I didn't insist. I didn't think it was my place to insist. She was much older than I and I thought she knew what she wanted and she could do what she wanted to do.

Q. Well, while you were there during the two and a half hours did she tell you there was some men hiding in the bin?

A. Hiding where?

Q. Hiding in the bin?

A. She said nothing about anyone hiding any place.

Mr. Bangel: That's all.

Mr. Garrett: Thank you, Mrs. Jordan.

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TURNER WHITE,

called as a witness on his own behalf, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Garrett:

Q. Tell us your name.

A. Turner White.

Q. And where do you reside?

A. At Hickory.

Q. And do you live by yourself there?

A. No, sir, with me and my family.

Q. And who is in your family?

A. My wife and five kids.

Q. You live on Miss Eason's property don't

Vol. III you, down there?

page 545 } A. Yes.

Did you work for her during her life time?

A. For nine years.

Q. And how far is your home from where she was living?

A. I would say about approximately three blocks.

Q. Can you raise your voice a little? About three blocks?

A. About three blocks, maybe three and a half. I don't believe it's no more than that, three and a half blocks I would say.

Q. And what was your principal occupation there?

A. I farm, sir.

Q. And how much land were you farming?

A. Well, the last year I didn't tend but 45 acres. The year before that I tended about 106.

Q. You have some arrangement with Miss Mary about sharing in the crops?

A. Yes, sir.

Q. Over the years that you worked there, the last ten years did you have frequent occasion to come in contact with Miss Mary and talk with her?

A. Yes, sir. Well, the last couple of years I was in and out of the house right much.

Q. Did you have occasion to come in town with

Vol. III her at any time?

page 546 } A. Well, I brought her to town lots of times and different places like that.

Q. Now, would you tell the Court and the jury what you observed in reference to any peculiar things going on around her property at night.

Turner White.

A. Well, I noticed—I know lights would get between my house and hers and they would stop and shine the spotlight back and forth like that, and from that, maybe, you know, some boys were over in the field, something like that, and things of that kind. Maybe somebody would pass, you know, by the house and probably cut the switch and the car would backfire, and things of that kind.

Q. Well, did you observe those things on a number of occasions or just one time?

A. Well, lots of times. Once in a while it was pretty rough and then it seemed to cool down.

Q. Did you know of anybody trying to drive back there on her property at night?

A. Oh, yes, lots of times.

Q. What effect did this have on Miss Mary?

A. Well, it would keep her nervous all the time. She seemed to think that somebody was doing it on purpose.

Q. Do you remember one occasion when she
Vol. III had you to go under the house?
page 547 }

A. Yes, sir.

Q. What was the purpose of going under there, what did she tell you and what did you find?

A. Well, I was going up the field and she stopped me and come out and talked a while like she usually do, and she said to me, she said: "I got a little job for you." I say "What's that, Miss Mary?" "Well, it won't take long, something ain't right under my house, I want you to check what is wrong." I said "Maybe there is a pipe leaking," you know, or something like that. She say: "No, the dirt don't look to suit me." So, as long as she wanted me to go under there and check it I got down and went under there, and it looked like hilly piles under there and looked like somebody might have been under there and I seen a few tracks. I told her that I didn't know, there were hilly piles under there and I seen a few tracks. So I come up just about the time Albert come and she asked if he might have been under there before then. It could have been his tracks and then it couldn't have been.

Q. Did she give any explanation as to what she thought they might have been doing under the house?

A. She believed they might have been looking for money because she had heard some time that some of the people thought she had money hidden around there, so if it was

Turner White.

any digging there she believed they was looking
Vol. III for money.

page 548 } Q. Was anything said about any uranium or
anything of that sort?

A. I didn't hear nothing like that.

Q. Did Miss Mary ever say anything to you about anybody trying to force her off the road?

A. Yes, sir, she did.

Q. And what, if anything, did you do in that connection and what did you observe?

A. Well, at one time I told her I would come to town with her, and she stopped by the end of the field just coming out from my house and was telling me about it and asked me would I ride along with her, you know, and she would show me just what she meant by trying to run her off the road, and you know, they were cutting in and out, I would say short in front of a person driving like that in my opinion.

Q. They would cut in and out?

A. They would cut in kind of short, they wouldn't come right straight, you know, but they wouldn't hit the car before they pulled in.

Q. Did they do anything else on that occasion when they cut in?

A. Well, one time one fellow passed like and cut his switch off and made it backfire.

Q. Do you know who it was that was in the car?

Vol. III A. No, sir, I didn't pay too much mind. I figured
page 549 } somebody was just pranking.

Q. Now, there was a lady testified in this case named Mrs. Cotsimoupolos. You were in here when she testified weren't you?

A. Yes, sir.

Q. Had you ever seen that lady at Miss Mary's home in your life?

A. No, sir, not that I can remember.

Q. Now, Mrs. Mitchell that testified here, did you know her?

A. Well, not personally, but I know her by seeing her coming up there.

Q. Well, now, she said that she was there, I believe, right at the last at Miss Mary's place. Did you see her there?

A. I seen her at the gate. I didn't see her go in the house.

Q. Did she go in the house?

A. Not while I was there, the time I was there she didn't.

Turner White.

Q. Did you see anybody do anything, Albert or anybody do anything?

A. Well, I was just down the path just as far from here —this is the sidewalk, and Albert went in the house. She stood at the gate and he come out with something under his arm. It was kind of brownish looking from the distance I was, and so when she got in the car he handed it to her and she pulled off just about half a block, so I went along there and asked Albert—

Q. Well, you can't say what you asked Albert, but did you later learn from Miss Mary what it was?

A. So, I went in the house shortly after and she was telling me, she asked me who was coming up the step. I told her it was me, and so she said "Albert give Miss Mitchell the coat I told him to give her.

Q. She gave her a coat?

A. That's right.

Q. Now, during Miss Mary's sickness did your wife go over there from time to time and help her?

A. She went every morning.

Q. She went over every morning?

A. Yes, sir.

Q. Now, do you remember when Mr. LaSalle Eason was sick out there in the farm?

A. Yes, sir.

Q. There was something said in the will that left you \$500.00 about your consideration or kindness toward him. Can you tell this jury what she might have had in mind when she said that?

Vol. III A. Well, all I can refer to is the times, you
page 551 } know, before he got sick, why I would always ride him out and take him up to South Norfolk and carry him to the garage and different places, and stopped and helped him fix, you know, different things and odd jobs, a lot of things. When he got sick I went over in the morning and shaved him and straightened out his bed and all those. That is the only thing.

Q. You never asked Miss Mary to leave you any money, did you?

A. No, sir, I did not.

Q. Or try to influence her?

A. No, sir, I didn't know anything about she was leaving me any money. I still don't know for sure. All I know is what

Turner White.

people say. I haven't been in the court house and check. I couldn't swear to that.

Q. Now, before she died it has been testified by Mr. Norfleet that she gave you the automobile?

A. That's right.

Q. Did she make any statement to you when she gave it to you as to why she was doing it?

A. Well, the first morning she drove it up I was going with a fellow to work and Albert come to the gate and stopped me and said to come on down a minute. So, I started in the house and she was in the garage so I went back to
Vol. III the garage.

page 552 } Q. When was this?

A. That was in '57—where the car was, and so she asked me did I know anything about it. I told her "A little bit." Well, she said, I want you to show me how to handle it, come on, we will ride up the field." So, I backed it out of the garage for her and then got out. She got under the wheel and I showed her how to handle it, so we went up the field and started on back and she was saying how nice a car it was, but she didn't like it as good as she did the Buick, so she asked me how I liked it. I say I like it fine. I say it is a nice car. She says "You really like it?" I say "Yes, I like it." She say, "Well, you keep on and be nice to me like you have been and I will give it to you later on." I said "All right, I certainly would appreciate it."

From time to time I start mowing the yards and all, she would tell me we will let this go on what we was talking about. I said all right. So, a little before she died she called in one morning and she told me she was going to give it to me, so I taken it.

Q. Were you in there when Mr. Norfleet took and notarized her signature?

A. Yes, sir.

Q. Will you tell us whether she knew what she
Vol. III was doing at the time?

page 553 } A. Yes, sir, she seemed to know to me. She knowed that morning. That wss a couple of hours later. I didn't see any difference from the time that I went over there and she stopped me down at Great Bridge attending some things for her.

* * * * *

DR. WALTER B. MARTIN,
Vol. III called as a witness on behalf of the proponents,
page 554 } having been first duly sworn, was examined and
testified as follows:

DIRECT EXAMINATION.

By Mr. Garrett:

Q. Doctor, will you please state your name?

A. Walter B. Martin.

Q. And Doctor, what is your profession?

A. I am a practitioner of medicine.

A. And how many years have you been engaged in that practice?

A. About 44 years.

Q. I wonder if you would speak up just a little louder.

Mr. Garrett: Can you ladies hear?

The Court: Talk a little louder.

A. 44 years.

By Mr. Garrett:

Q. And your office is in Norfolk, Virginia, is it?

A. Yes, sir.

Vol. III Q. And where were you educated, Doctor?

page 555 } A. At the Johns Hopkins Medical School.

Q. Do you specialize in any particular branch of medicine?

A. What is known as internal medicine and diagnosis.

Q. Doctor, did you know Miss Mary F. Eason of Hickory, lately of Hickory?

A. Yes, sir.

Q. And was she at any time a patient of yours?

A. Yes, she was for a number of years, since 1946 till the summer of 1959.

Q. Over that period of time did you have occasion to examine her or treat her?

A. I examined her on a number of occasions and treated her on a number of occasions.

Mr. Allen: Doctor, I can't hear you.

The Witness: I examined her on a number of occasions and treated her on a number of occasions.

Dr. Walter B. Martin.

By Mr. Garrett:

Q. Could you allude to your records and tell us the last time that you saw her or treated her?

A. (Referring to records) July the 31st, 1959.

Vol. III Q. And did you see her at any time immediately
page 556 } prior to that or near that time before?

A. I saw her in February, 1959, and January the 19th, 1959; during the past year and a half I saw her on several occasions.

Q. Doctor, what were the basic difficulties that she was suffering from in these treatments that you administered?

A. Well, she consulted me for various things, some minor, some of them more important; but essentially she was pretty robust and healthy kind of an individual.

Q. Now, Doctor, could you estimate how many times from your records that you saw her over the period of years prior to July 31, 1959, back some years that you treated her?

A. Well, it started in April, 1946. At that time I gave her a very complete examination. I did the same thing in 1953 and on various times I made complete studies of her heart, her kidneys, cardiograms and various diagnostic studies. I would say that I saw her on an average of two or three times a year over a period of from '46 to '59, over a period of 15 years.

Q. Doctor, in those occasions that you conducted your examination and all did you have occasion to talk with her?

A. Yes, naturally I had to talk to her a good
Vol. III deal in discussing her problems by asking her
page 557 } questions and spent quite a little time with her
over a period of ten to fifteen minutes probably.

They generally do.

Q. How long?

A. Probably at each interview.

Q. Each interview. Your conversations and observations of her from the 31st day of July, 1959 back what could you tell the Court and jury as to her alertness?

A. As to what?

Q. Her alertness.

A. She was quite alert.

Q. What could you tell the Court and jury as to her capacity to understand or to discuss matters?

A. I think the understanding was very good. We talked sometimes about the farm and the living arrangements and so forth and she had a normal understanding of matters of common concern.

Dr. Walter B. Martin.

Q. Doctor, based on your observation of her in July of 1959 will you tell whether or not in your opinion she had sufficient capacity to execute a will?

A. I would. In my opinion she would.

Q. That she could?

A. Yes.

Q. Now, in July, '59, did you go out of town for a while then? Did you go away?

Vol. III A. I was away—let me see. I usually go away on
page 558 } vacation the last Saturday in July.

Q. Yes, sir. Now—

A. I don't remember whether I did that year or not, but—

Q. But that is your custom?

A. Yes.

Q. Doctor, in addition to being in the medicine and specialist in your field, have you held any positions in the medical profession either locally or otherwise?

A. Yes, I have a number of them. President of the Norfolk County Medical Society, the State Medical Society, and the National Medical Society.

Q. You have been president of the National Medical Society?

A. Yes. And the American Medical Association.

Q. And the American Medical Association?

A. Yes, sir.

Mr. Garrett: You may examine, gentlemen.

CROSS EXAMINATION.

By Mr. Allen:

Vol. III Q. Doctor, I understand you are a general prac-
page 559 } titioner in internal medicine?

A. I confine my practice in internal medicine.

Q. Yes. You are not a psychiatrist?

A. No, I am not a psychiatrist.

Q. So you did not give this old lady any examination from a psychiatric standpoint?

A. Well, I think I examined her and every patient with somewhat psychiatric standpoint in determining—in talking to them to determine their general mental condition. I am not a psychiatrist.

Q. Well, do you know the essentials or approach of a psychiatric examination?

Dr. Walter B. Martin.

A. I think I do, I took courses in psychiatry while I was a student. I had touch or brush I might say.

Q. Sort of like I am. That has been a long time since we studied as a student?

A. Yes, sir.

Q. But you have not followed that specialty?

A. No, I have not.

Q. Now, if you are going to examine a person from a psychiatric standpoint one of the things you want to find out is whether she communed with the spirits or not, isn't it?

A. Well, that might be sort of an odd variant on them.

Q. Then in order to approach that you ask
Vol. III } them about when their mother died, when their
page 560 } father died, and whether they had been thinking
about each of them since the death or not, and
that is the way you sort of approach that sort of examination,
don't you?

A. You are probably as much a psychiatrist as I am.

Q. Sir?

A. You are probably as much a psychiatrist as I am. I don't know the answer to that one.

Q. I am just asking about how you approach it.

A. Yes.

Q. Well, now, did you encourage her to talk freely with you?

A. I gave her full opportunity to talk and sometimes she liked to talk and would tell me about the farm and so forth.

Q. Did you ask her about the members of her family?

A. Not specifically, no.

Q. And their relationship to her, their approximate ages or anything like that?

A. No, I did not go into any details about it.

Q. Did you ask her about her feelings towards members of her family looking particularly for evidence of paranoia or delusion trends and unreasonable prejudices?

Vol. III } A. I had no reason to look for paranoia.

page 561 } Q. Well, a psychiatrist would pursue that course, wouldn't he?

A. If casual questioning would make him think there was paranoia I think he would, but I don't think he would go into that phase with every individual at all.

Q. Well, you did not ask any questions along that line of this old lady to determine whether she had any of these trends, did you?

Dr. Walter B. Martin.

A. I had no occasion to.

Q. Then you did not ask her. That is the answer to the question, isn't it?

A. No.

Q. Yes. Now, did you ask her whether she owned her home, or not?

A. I may have. I knew Dr. Eason very well but I did not ask her anything about whether she owned it. I assumed she did because she was still living in the old home.

Q. Did you ask her how much the taxes were on her home?

A. Certainly not.

Q. What the property was assessed?

A. Why should I?

Q. Well, you just did not ask her?

Vol. III A. No, why should I?

page 562 } Q. Did you ask her about whether she owned any automobiles?

A. No.

Q. Or any other personal property like stocks, and bonds?

A. No, I had no occasion to bring in her personal affairs. She came to see me—

Q. Did you ask her about the acreage in her farm?

A. No, I knew there was a lot of farm because I have been on it.

Q. Did you ask her any questions to determine whether she was living in poverty or wealth?

A. I didn't understand that.

Q. Did you ask her any questions relating to whether she was living in poverty or in wealth?

A. No, I did not ask her that. We sent her bill; she always paid it.

Q. Did you ask her any questions to determine whether any person or any organization seemed to have any hold on her affection or had any interest in her?

A. No, I did not ask her any personal questions about her personal affairs.

Q. Did you learn how old she was?

A. I think I have the age recorded. Her age as given to me in '46 was 73.

Vol. III page 563 } Q. 73 in '46?

A. And 79 in '53.

Q. Did she give you that?

A. I presume she did, I had no other source of getting it.

Q. Well, in making these several examinations of her did you keep a record of all of your findings?

Dr. Walter B. Martin.

A. Well, I wouldn't say all. I kept all that I thought was important.

Q. You stated that she was competent to execute a will. Have you seen this will that she signed?

A. No.

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Q. July 31, 1959 was the last time you saw her?

A. Yes.

Q. Sir?

A. That was the last time I examined her.

Q. Yes. Well, she died on October the 29th, 1959, and she signed this will on October the 26th, 1959. You did not see her along about that time then at all?

A. I did not see her after July the 31st, 1959.

Q. Well, now, you commenced to see her, I believe you said, in 1946?

A. That's right.

Q. Was her condition from '46 to '59 getting better or worse?

Vol. III A. Well, I thought considering the age and the
page 565 } lapse of years she was doing remarkably well.

Q. But you still didn't answer my question: Was she better or worse. Was she in better shape in 1959 or in 1946 or was she—

A. I can't answer that specifically because I did not put them side by side; but I felt that a woman of her age and her vitality and ability to get around and understanding that she was relatively as good in 1959 as she was in 1946. She was an extraordinary individual from the standpoint of her general energy and—

Q. I don't suppose that any of these matters that there were people who were trying to run her off the road and shooting at her and 17 men coming in her home and she killing three of them and 14 getting away, you did not know anything about that, any of that sort of thing?

A. No, I hadn't heard anything about it.

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Vol. III

page 566 }

TURNER WHITE,

recalled as a witness on his own behalf, having been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION (Cont'd)

By Mr. Garrett:

Q. Do you know anybody named Peebles or Peeble that lived down that way?

A. No, sir, not personally. I know him when I seen him.

Q. Did you ever see anybody named Peebles over at Miss Mary's house?

A. I seen them over there about twice; just about twice.

Q. Were you ever present at any time when any conversation was going on as to his purpose in being over there?

A. Only once.

Q. And what was the conversation or the purpose of him being there?

A. Well, he was asking about buying the property. He wanted to buy the property from her.

Q. Did Miss Mary want to sell it to him?

A. Not at that time, she didn't.

Vol. III Q. And to your knowledge how many times did page 567 } he come there?

A. I seen him once more after that.

Q. Once more after that time?

A. But I didn't hear any conversation between them.

Q. Did she tell you anything about what he wanted that day?

A. She mentioned that he was still running back and forth but she didn't know why he keeps coming back.

Q. Did she say whether she was going to sell it to him or not?

A. No, sir, she didn't.

Q. Now, the name of Warren has been mentioned in here. Had you seen anybody on that property named Warren?

A. No, sir, I didn't.

Q. Will you tell us up until her last sickness in October of '59 whether she carried on her business affairs and conducted her business?

A. It seemed to me she did. She farmed and all. I would run different errands for her out to the store and different places and get different people, like that.

Mr. Garrett: You may examine.

Turner White.

CROSS EXAMINATION.

Vol. III

page 568 } By Mr. Bangel:

Q. The automobile was a new car at that time, in the latter part of 1957?

A. Yes, sir, as far as I know it was.

Q. And in 1959 she gave you the automobile?

A. Yes, sir.

Q. How many miles did that car have on it?

A. I don't rightly know exactly how many miles it was. It was 14 some, I don't know exactly.

Q. Did she tell you that was the car that had been given to her by her nephew Robert Eason?

A. Yes, sir.

Q. Did she say anything to you about the car, that it was to go back to Dr. Robert Eason?

A. I didn't understand.

Q. Did she say anything about wanting to give the car back to Dr. Eason?

A. No.

Q. Did she ever tell you that there were people under the house?

A. Yes, sir.

Q. Have you ever seen any person under that house?

A. No, sir.

Vol. III Q. Did she ever tell you people were taking pot-
page 569 } shots at her?

A. Not potshots.

Q. Or shooting at her?

A. No, she said she believed they were shooting at her. She didn't say potshots. She said they was shooting at her.

Q. You never saw anybody shoot at her, did you?

A. No, sir, I didn't see anybody shoot at her.

Q. What kind of pistol did she carry?

A. I don't rightly know. I seen it but I didn't look at it close.

Q. Where did you see this pistol?

A. At her house.

Q. And when she would go she would take the pistol with her?

A. I don't know, sir.

Q. Did she tell you that people tried to run her off the road?

A. Yes, sir.

Turner White.

Q. Have you ever known anybody to try to run into her or harm her, have you?

A. No, sir, they would kind'a cut short to my opinion but to run her right off the road I didn't see that.

Q. Can you tell us if you were there when she
Vol. III employed Detective Branch?
page 570 }

A. Was I there?

Q. Yes.

A. I don't think so, not when she employed him.

Q. Did you ever see Detective Branch there?

A. I seen the fellow that looked like the one that testified there but I couldn't swear that was him at that time.

Q. Well, you were there, weren't you?

A. I was on the farm; I wasn't at the house.

Q. I see. Did she tell you why she had Detective Branch there?

A. Yes.

Q. What did she tell you?

A. She said somebody was around the house and she had a hired detective to find out who it was.

Q. And did you find anybody around that house?

A. I didn't look.

Q. Have you ever seen anybody prowling around that house?

A. Yes, sir.

Q. Who have you ever seen?

A. I don't know them. I didn't get a close enough look, I just seen them. I didn't get close enough to talk to them around there.

Q. Did you tell her that you had seen any-
Vol. III body?
page 571 }

A. No, sir, I didn't tell her anything about it.

Q. Did she tell you that someone had hired someone to kill her?

A. No, sir.

* * * * *

By Mr. Bangel:

Q. I asked you if she carried a gun around in her pocket-book.

A. No, sir.

Q. How long had she been sick?

Turner White.

A. How long had she been sick? I don't know,
Bol. III sir, the exact date. I didn't keep up with the date
page 572 } how long she had been sick.

Q. Well, how long was she flat on her back in bed?

A. I don't know that exactly. I don't know exactly the date how long she was in bed. I didn't keep up with the dates.

Q. Who was living in the house with her?

A. Albert Ahlgren.

Q. He was the man who had been employed in and around the place?

A. As far as I know he had.

Q. Did she have any dogs there too?

A. Yes, sir.

Q. Did you talk to her while she was in bed?

A. Yes, sir.

Q. How did she look to you?

A. All right.

Q. She looked all right to you?

A. Yes, sir.

Q. Did she tell you she had had a visitor, her brother Camillus and her brother Isaac to come see her?

A. No, sir.

Q. Did you know she had two brothers by that name that were dead?

A. I didn't know for sure, no more than what
Vol. III she told me.

page 573 } Q. Well, did she tell you that at that time?

A. Not at that time. She told me sometime before then that she had two brothers.

Q. Well, did she tell you that while she was sick; at any time while she was sick that those two brothers had visited her?

A. Not while she was sick she didn't.

Q. Well, when did she discuss her brothers with you?

A. That was way before she got sick she used to tell me about all her brothers. She didn't tell me much after she got sick. I always discussed the farm. I never discussed her family affairs.

Q. She was flat on her back, was she not?

A. One time.

Q. She couldn't get out?

A. At one time, yes.

Q. Well, now, who took care of her when nature made a demand on her?

Turner White.

A. I didn't understand what you mean.

Q. Well, when nature made a demand on her who looked after her when she went to the rest room?

A. Oh, my wife would go over there in the morning and stay about three hours and then she would come back
Vol. III and Albert would be there and the doctor and the
page 574 } nurse would come and stay.

Q. What nurse was there?

A. The doctor's nurse would be with him sometimes.

Q. That is the doctor's nurse and she would leave with the doctor, wouldn't she?

A. And my wife would go over there and stayed in the morning until they get through. Most of the times she would leave a little before the time to have the doctor.

Q. The doctor's nurse and the doctor would only stay there a few minutes, wouldn't they?

A. Most of the time I seen him he stayed a right good while in my opinion.

Q. Who stayed there at night?

A. Albert.

Q. Was there any lady in the house there at all at night?

A. I don't know. See, I didn't go over there at night.

Q. Did you say anything to her about going to the hospital?

A. Me?

Q. Yes, sir?

A. No, sir.

Q. Did she mention going to the hospital to
Vol. III you?
page 575 } A. Not to me.

Q. Did she tell you who she thought it was that was shooting at her?

A. No, sir, she said she didn't know exactly who it was. She always tell me she didn't know exactly who it was. She thought it was somebody but she didn't know exactly who it was.

Q. Did she tell you she thought it was the hooligan gang?

A. She didn't tell me that.

Q. She didn't tell you it was the hooligan gang?

A. No, she didn't.

Q. Well, do you know Mr. LaSalle Eason?

A. Yes, sir.

Q. Was he living there?

A. At one time he was.

Q. Was he living in the same house or was he occupying another house on the farm?

Turner White.

A. Well, he stayed in the house with her while she was sick at one point, and at one point before she was sick he stayed there only a short while.

Q. And then where did he live?

A. He lived up the farm there from where she lived at.

Vol. III Q. Did she tell you that she had hid him because
page 576 } she thought some people were after him?

A. No, sir, she didn't.

Q. Did she tell you that?

A. No, sir.

* * * * *

RE-DIRECT EXAMINATION.

By Mr. Garrett:

Q. Did Miss Mary ever have a bell or anything she used to summons anybody?

A. She had a small bell.

Q. How big a bell?

A. I guess the bell is just about that high and I guess a little small handle to catch hold of it.

By the Court:

Q. Did you ever hear the bell as far as to your house?

A. No, sir, not as far as my house. You could hear it out as far as the street when she rang it. You couldn't hear no further than that.

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page 577 }

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RE-CROSS EXAMINATION.

By Mr. Bangel:

Q. You said she gave you the car in 1959?

A. Yes, sir.

Q. What part of the year was it, do you recall?

A. When she give it to me?

Q. Yes.

Mrs. Marvournum Bryan.

A. October.

RE-DIRECT EXAMINATION.

By Mr. Garrett:

Q. Also, Turner, didn't she also give you your interest in the crop?

A. Yes, sir.

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page 578 }

Q. For this year?

A. Last year.

Q. Last year?

A. Yes, sir.

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Vol. III

page 579 }

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MRS. MARVOURNUM BRYAN,
called as a witness on behalf of the proponents, having been
first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Garrett:

Q. Will you please tell his Honor and members of the jury your name?

A. Marvournum Bryan.

Q. And Mrs. Bryan, you are the wife of Mr. Stanley Bryan who sits beside me?

A. Yes.

Q. I believe you were a witness to the will of Miss Mary Eason?

Vol. III A. Yes, I was.

page 580 }

Q. Were you all married at that time?

A. No, we were not.

Q. Mrs. Bryan, do you remember—strike that, Mr. Reporter. There has been introduced in evidence as Proponent's Exhibit 1 what purports to be the last will and testament of Mary Frances Eason. Did you sign that as a witness?

A. Yes, I did.

Q. Did Miss Eason sign the same?

A. Yes, she did.

Mrs. Marvournum Bryan.

Q. And the two other witnesses. Were you all present at the same time?

A. Yes, sir.

Q. When you signed it and when she signed it?

A. Yes.

Q. Now, Mrs. Bryan, how did you happen to be a witness to this will?

A. Well, my fiance, we had a date that night, I guess, and we just went over and carried the will and while on the way over he asked me if it was agreeable with her would I be a witness, and I told him that I would, so I presume that Mrs. Eason requested that I be a witness.

Q. Well, when you went to Miss Eason's home did you go right upstairs or did you stay downstairs or what?

Vol. III A. No, I did not.

page 581 } Q. And how long were you downstairs before you were requested to come up and sign the will?

A. Well, I will say from thirty to forty-five minutes

Q. And during that time Mr. Bryan was upstairs?

A. Yes.

Q. You were not present when he may have read or discussed the will with her?

A. No.

Q. Now, when you went in to witness the will did you know the other two witnesses that came in?

A. No, I didn't know them. I had heard Stanley speak of them but until that night I hadn't met them before.

Q. Were you introduced to them at that time?

A. Yes.

Q. Do you recollect any conversation that Miss Mary had with anyone, the witnesses to the will or you at all?

A. When we came in the room Stanley introduced us to Miss Eason and when he introduced James and Edgar White to her, she said, "Oh, I know these boys," and she talked to Edgar, I believe was the one, and asked him about his mother, I believe.

Q. Did she carry on an intelligent and normal conversation with you?

Vol. III A. Yes, so far as I was concerned she did.

page 582 } Q. You had never met Miss Mary Eason before?

A. No.

Q. Did you see her sign the will?

A. Yes, I did.

Q. Did she sign it without any assistance from anybody?

A. Yes, she did.

W. H. Eason.

Q. Did she make any statement in your presence as to what she was doing?

A. When we came in the room after we were introduced she told us this was her will, that she wanted us to witness her will and she elaborated a little bit on the fact that she was leaving her property to—there was so much suffering in the world—that she was leaving most of her property to charity, and other than that she just mentioned that it was her will. In other words she tried to impress it was her will and that was the way she wanted her property to go.

Q. After the will was executed did you stay in the room or did you leave or what?

A. Well, after we signed the will then we left and she wanted to talk to Mr. Bryan and all of us left except him.

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page 583 }

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W. H. EASON,
called as a witness on behalf of the proponents, having
been first duly sworn, was examined and testified as follows:

Vol. III
page 584 } DIRECT EXAMINATION.

By Mr. Garrett:

Q. Will you please tell his Honor and the members of the jury your name?

A. W. H. Eason.

Q. Mr. Eason, where do you reside?

A. South Mills, North Carolina.

Mr. Allen: Where?

The Witness: South Mills, North Carolina.

Mr. Allen: South Mills, North Carolina?

The Witness: Yes.

By Mr. Garrett:

Q. Mr. Eason, did you know Miss Mary Frances Eason?

A. Yes.

Q. And about how long did you know her?

IV. H. Eason.

A. Well, I have known her for years. I mean maybe for ten or fifteen years I have known her.

Q. Are you related to her in any way?

A. Yes, sir, some. I wouldn't know exactly, about a second or third cousin probably.

Vol. III Q. Over the period of ten or fifteen years that
page 585 } you have known her, will you state approximately
 how often would you see her during that time?

A. Well, maybe I'd say I'd see her three or four times a year and in later years, the last 7 or 8 years maybe oftener than that.

Q. Where would you see her?

A. Well, I would see her at her home most of the time. She was at my home a couple of times.

Q. Do you recall the last time that you saw her?

A. Yes, sir.

Q. When was that?

A. Well, it was the Saturday before she died on Thursday; I believe she died on Thursday.

Q. And where did you see her?

A. In her bedroom. She was in her bed sick.

Q. Did you talk with her on that occasion Mr. Eason?

Q. Approximately how long were you in there?

A. Well, I saw her twice during her sickness, and the first time probably I stayed in her room ten minutes, maybe, and talked with her.

Q. And how long the last time?

Vol. III A. The last time I was in there we didn't stay
page 586 } in there but a few minutes, I would say five
 minutes, maybe, or something.

Q. Now, on these times that you had visited her home previously and she had visited yours, how long would those visits be?

A. Well, she was not very long. She was down home a couple of times there a year or two ago, and she probably stayed around half an hour and she would sit there and talk and carried on and, now, when I would go to her home, I don't know that I ever made a special call to her home. I would be riding out Sunday morning driving around and on the way we would stop and chat with her and go on.

Q. Now, the last time you saw her, which was, I believe the Saturday before her death, were you able to observe her as to what her condition was as to mental alertness?

W. H. Eason.

A. Well, I never saw any difference in her. She was just as alert then as she had ever been as far as I noticed.

Q. Did she carry on an intelligent conversation with you?

A. Yes, sir.

Q. How about the other time that you visited there during her sickness?

A. I just didn't see any difference in her. She was just perfectly normal apparently.

Vol. III page 587 } Q. Did she ever make any fantastic statements to you about seeing visions and all such mess as that?

A. No, sir.

Q. Well, based on your observation of her on those occasion, particularly the last time you were there, could you tell the Court and jury whether or not from your observation she had enough intelligence or mentality to make a will or know what she was doing?

A. Well, my way of seeing it if she ever had she had it then.

Q. Well, did she have it before or—

A. Yes, sir.

Q. You are not named in the will as a—

A. No, sir.

Q. —recipient or anything of that sort?

A. No, sir.

Q. What is your occupation, Mr. Eason?

A. Well, I work over here at the Navy Yard. I am a Government employee.

Q. How long have you been employed over there?

A. About ten years.

Q. How old are you?

A. I'm near 70. I will be 70 on my next birthday.

Vol. III

page 588 } Mr. Garrett: You may examine, Mr. Bangel.

CROSS EXAMINATION.

By Mr. Bangel:

Q. Mr. Eason, what relationship, if any, is Camillus Eason to you?

A. He is my son.

Q. And he is the man who is devised under this will a considerable part of the estate; you know that, don't you?

W. H. Eason.

A. Well, I guess he is what you would call an administrator.

Q. Well, isn't he in addition to being administrator a devisee of a large part of her estate?

A. How's that now?

Q. If this will is permitted to stand won't your son profit by a big part of this farm?

A. I guess so.

Q. Now, what was the name of Miss Mary Frances Eason's father?

A. His name was Isaac.

Q. Isaac. What was her mother's name?

Vol. III A. What?

page 589 } Q. What was her mother's name?

A. I don't know.

Q. How many children, brothers and sisters did she have?

A. (Pause) Well, I just don't know exactly.

Q. Do you know how many of them died?

A. No, I can't say that I know exactly about that.

Q. Do you know the names of any of those who have passed away leaving no children?

A. Leaving no children?

Q. Yes, sir; of her brothers and sisters?

A. No.

Q. So, you say you are a distant relative but you don't know to what extent. Did you ever tell her that you and your son was some relative of hers?

A. Tell her what?

Q. Did you ever tell Miss Mary Frances Eason that you were a relative and your son was a relative?

A. Well, she knew it.

Q. How would she know it if you didn't tell her?

A. Well, now, that is a little bit far. I wouldn't exactly know how to answer that. She knew the family. She knew my father, she knew my grandfather, and she

Vol. III knew my people.

page 590 } Q. She knew your people but you didn't know her people?

A. Well, I knew them in a way.

Q. Well, did you know Dr. Robert Eason?

A. I never saw Dr. Robert Eason till this court or when she died, I believe it was the first time I ever saw him.

Q. You saw him for the first time at the funeral?

A. That's right.

Q. And that is the first time he ever met your son?

W. H. Eason.

A. I don't know about that.

Q. Did you ever know Dr. Sam Eason?

A. That was the first time I saw him was at the funeral.

Q. And so you don't know them and they don't know you?

A. No, those two boys don't.

Q. And you don't know how many brothers she had who died, their names, or when they died?

A. Well, I knew Dr. Eason very well.

Q. I am talking—

A. Dr. Camillus Eason, I knew him very well.

Q. Well, did you know any others?

Vol. III A. I knew cousin Sarah Eason very well.

page 591 } Q. You knew her very well?

A. Yes, sir.

Q. When did you first meet her?

A. What?

Q. When did you first meet her?

A. Well, I have known her practically all my days far as that goes, but we lived thirty or forty miles apart there and we just didn't visit together much. But they would come over there. They were there to the funeral of some of my people that died and they were right there. They would come over there.

Q. They would come over when some of your people died?

A. They came over when their uncle died and they came over when my brother died.

Q. Well, did she ever tell you—you say you visited her twice during her last illness?

A. Yes.

Q. Did your son go with you?

A. No, sir, he didn't go with me.

Q. Did you know your son had been over there?

A. I think he was up there at one time when I drove up there.

Vol. III Q. And was your son sort of a protector for her? What is your son's occupation, Camillus?

page 592 } A. He is with the police force.

Q. Yes. And—

A. I don't know exactly what it is.

Q. And did she tell you she had met Camillus Eason who was on the police force and who was going to protect her from these people who were threatening her?

A. No.

W. H. Eason.

Q. Did she ever tell you that somebody was threatening her?

A. No.

Q. Did she ever tell you she carried a pistol?

A. No, sir.

Q. Did she ever tell you that people had been *shotting* at her?

A. No.

Q. Did she tell you she had had visits from her brother who was dead, her sister and two brothers who were dead; didn't she tell you that?

A. No.

Q. How long did you talk to her?

A. I talked to her many times at different times for a little while at a time, maybe half an hour at a time, but I never talked about anything such as that.

Q. She didn't say anything like that to you?

Vol. III A. No, sir.

page 593 } Q. Well, had you heard that she had been shooting at people?

A. No, sir.

Q. You heard that?

A. No, sir.

Q. You never discussed that with her?

A. No, sir.

Q. Mr. Eason, I understand you to say that you were there about five minutes the last time?

A. That's right, just a little while.

Q. Just probably five minutes?

A. That's right.

Q. And on that occasion what did she look like to you?

A. What did she look like?

Q. Did she look like she was healthy, strong and robust?

A. No, sir, she looked all right. She was sitting up there in the bed so far as that is concerned. She looked all right, and acted as normally as I ever saw her.

Q. And that was the Saturday preceding her death?

A. That's right.

Q. And she was sick sitting up and acting and

Vol. III behaving as a normal person would be?

page 594 } A. Sitting up, propped up in the bed.

Q. And she didn't appear to be ill to you?

A. No, sir, not to me she didn't.

Q. Well, was there anyone in the house with her?

W. H. Eason.

A. Well, Paul Eason went up there with me that day.

Q. You happened to meet him there? He didn't know you, did he, you just happened to meet him there that day?

A. He drove up there just ahead of me. He hadn't got in the house before I drove up and we went upstairs to her room together.

Q. And Paul Eason that testified in this Court here the other day is the one you are talking about?

A. I suppose so, I don't know. I suppose so.

Q. And you happened to come up there when he was there?

A. That's right.

Q. Well, then, when you went up there then she was sitting up there propped up and acting all right?

A. She was.

Q. Well, were you in there while Paul Eason was in there?

A. Was I in there?

Vol. III

Q. Yes?

page 595 }

A. When he was, yes.

Q. Of course you didn't hear his testimony, did you?

A. No, sir.

Q. Her condition was such that you didn't think that she should be confined to a hospital?

A. How's that?

Q. Her condition was such that you did not think to make her go to the hospital?

Mr. Garrett: I don't believe—

Mr. Bangel: You can cross examine.

A. Well, I don't know whether she needed to go or not for that matter. She acted all right. She was talking and all.

By Mr. Bangel:

Q. Did you say anything to her about going to the hospital?

A. No, sir.

Q. Did you see a nurse there?

A. No, sir.

Q. Did you ask her whether she had a nurse?

A. I don't recall that I did.

Q. Did you see a lady around that house?

Hassell S. Tarkington.

Vol. III A. Well, I don't think there was a lady in the
 page 596 } room with us.
 Q. Did you see one there?

 A. Mrs. Seaford was around there, because she
 came out on the walk when we were leaving.

 Q. Was she in the house while you were there?

 A. She came from somewhere I reckon.

 Q. Did you see her in the house?

 A. No, I didn't see her in the house.

 Q. Well, did you say anything to her about the necessity
 of having a nurse there?

 A. No, sir.

* * * * *

Vol. III
 page 597 } HASSELL S. TARKINGTON,
 called as a witness on behalf of the proponents,
 having been first duly sworn, was examined and testified as
 follows:

DIRECT EXAMINATION.

By Mr. Garrett:

 Q. Will you please tell his Honor and the members of the
 jury your name?

 A. Hassell S. Tarkington.

 Q. Mr. Tarkington, I believe you have got some throat
 trouble, but if you will just talk up a little so the folks up
 here can hear you. Where do you live, Mr. Tarkington?

 A. Hickory.

 Q. How long have you lived there?

 A. Off and on 36 years.

 Q. Were you engaged in any business down there, Mr.
 Tarkington?

 A. That's right.

 Q. Sir?

 A. Yes, sir. I own the Hickory Service Station.

 Q. Was there a market in connection with that
 Vol. III station over there?

page 598 } A. Yes, sir.

 Q. Did you know Miss Mary Frances Eason?

 A. Yes, sir.

 Q. And how many years did you know her?

Hassell S. Tarkington.

A. 36 years.

Q. Was she at one time a school teacher?

A. Yes, sir.

Q. Were you ever one of her pupils?

A. No, sir.

Q. Have you had occasion to see, be with or talk to Miss Mary Eason over the past years?

A. Yes, sir.

Q. How often would you say that you were in her company in the last five or six years; how frequently would you be in her company?

A. Well, I would say, Mr. Garrett, she averaged once every two weeks at least coming to our store.

Q. Do you remember approximately when it was that you last saw her?

A. No, sir, I don't. It was about three or four weeks before she died, on a Saturday.

Q. Mr. Tarkington, did she trade in your store?

A. Yes, sir.

Q. When she came there to make purchases or do business did you talk with her?

Vol. III
page 599 }

A. Yes, sir.

Q. What sort of manner of talk did she have with you?

A. No more than anyone else, Mr. Garrett, except asking what she wanted, maybe carry on a conversation while in the neighborhood during the week.

Q. Did she carry on a normal intelligent conversation with you?

A. I would think so, yes, sir.

Q. Now, in addition to trading in your store had you had any other business dealings with her in the last year?

A. Yes, sir.

Q. And what was that?

A. It was logging and lumbering and we bought timber from her, some pine timber.

Q. Do you remember approximately when it was?

A. That was in 1956 we bought. We started cutting in '57.

Q. Did you all have an agreement at that time?

A. Yes.

Q. Did she collect her money?

A. Yes, sir.

Hassell S. Tarkington.

Vol. III Q. And looked after her affairs?
page 600 } A. Very well.
 Q. Did she check on your cutting and so forth?
 A. Yes, sir, every week.

Q. From your observation of her and your conversations with her could you tell the Court and jury whether or not she was capable of managing her affairs at that time?

A. Yes, sir, I would say so; yes, sir.

Q. Did she know what property she owned?

A. Yes, sir.

Q. Did you have occasion to discuss that when you were discussing the timber?

A. She showed me the lines.

Q. Did she ever tell you any fantastic tales about shooting anybody or anything of that sort?

A. No, sir; no, sir.

Q. Having seen her three weeks before she died, Mr. Tarkington, as of the time that you saw her would you state whether or not in your opinion she was capable of making or understanding a will?

A. I would say so; yes, sir. The Saturday I saw her, yes, sir.

Q. Did she appear to know her relatives, who they were?

A. She knew me, Mr. Garrett, and I just came up from Carolina.

Vol. III Q. Were you related to her in any way?

page 601 } A. No, sir.

 Q. Well, did she in her conversations give an indication that she knew who her relatives were, who was related to her?

A. Yes, sir.

Mr. Garrett: You may examine.

CROSS EXAMINATION.

By Mr. Bangel:

Q. Did she ever talk to you about a man named Camillus Eason?

A. No, sir.

Q. She never mentioned that name to you?

A. No, sir.

Q. At any time?

A. No, sir.

Hassell S. Tarkington.

Q. Do you know a Camillus Eason?

A. No, sir.

Q. Had you ever seen Camillus Eason?

A. No, sir, not without looking at him.

Q. So at no time did she ever mention him to you as any relative?

Vol. III A. No, sir.

page 602 } Q. Now, do you know Mr. LaSalle Eason?

A. Yes, sir.

Q. Was he attentive to his sister?

Mr. Garrett: Was he what?

A. Repeat that.

By Mr. Bangel:

Q. Was he and Mary Frances Eason close?

A. I couldn't answer that.

Q. You mean you don't know?

A. No, sir.

Q. Do you know where LaSalle was living?

A. At the time of Miss Mary's death?

Q. Well, within two or three years of the time of her death.

A. At times he lived up at Gravel Road on the other side of Dr. Eason's place.

Q. Do you know who was looking after him?

A. No, sir.

Q. Did Miss Mary Frances Eason tell you who was looking after him?

A. (Pause) Well, I tell you, he bought his own stuff from us in the store.

Q. He did?

A. Yes, sir.

Vol. III Q. So she was not buying groceries for him?

page 603 } A. Mr. Eason bought his own from me.

Q. You mean LaSalle?

A. Yes, sir.

Q. Did you know that he was married?

A. No, sir, I didn't know.

Q. Did Mary Frances Eason tell you that LaSalle was married?

A. (Pause) I wouldn't say yes or no to that.

Q. Did she say anything about his wife to you?

Mrs. L. Eason.

A. No, sir.

Q. Did she say anything about her two nephews?

A. She said she had two nephews.

Q. She told you she had two nephews, Dr. Sam and Robert?

A. Yes, sir.

Q. Did she tell you their names?

A. I knew both of them.

Q. Did she speak well of them?

A. Yes, sir, that was in the store.

Q. This is conversation in the store. And she spoke well of them?

A. Yes, sir.

Q. She was proud of her two nephews, was she not?

A. She didn't discuss that.

* * * * *

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page 605 }

* * * * *

MRS. L. EASON,
called as a witness on behalf of the proponents, having been
first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Garrett:

Vol. IV Q. Will you please state your name?

page 606 } A. Louray Eason.

Q. And Mrs. Eason, you are the wife of Camillus F. Eason who sits here?

A. Yes, sir.

Q. And when were you and Mr. Camillus Eason married?

A. October 29th, 1955.

Q. And where do you reside?

A. At 266 South Blake Road.

Q. And what is your occupation?

A. School teacher.

Q. At what school?

A. Granby Elementary.

Q. How many years have you taught school?

A. About 15 years in the City of Norfolk.

Mrs. L. Eason.

Q. Mrs. Eason, were you acquainted with the late Miss Mary Frances Eason of Hickory?

A. Yes, sir.

Q. And when did you make her acquaintanceship?

A. In the spring of 1956.

Q. You did not know her prior to your marriage to Mr. Camillus Eason?

A. No, sir.

Q. Well, from the spring of '56 until the time
Vol. IV of her death how often would you estimate that
page 607 } you would see her?

A. About every four or five weeks.

Mr. Allen: I didn't get that.

The Witness: Every four or five weeks.

By Mr. Garrett:

Q. And where did you see her?

A. At her home.

Q. What was the occasion for you to go, were you invited or did you just drop in or what?

A. We would often go for a ride Sunday afternoon and we would ride out and see her for about an hour or two. Sometimes we would be coming back from South Mills, his home, and we would stop by to see her.

Q. On those occasions approximately how long were you in her company?

A. Sometimes an hour, sometimes two, hardly ever any longer than that.

Q. Do you remember the last such occasion that you were at her home?

A. Yes, sir.

Q. When was that?

A. It was the latter part of September, because it was after school had started.

Q. The latter part of September of what year?
Vol. IV A. '59.
page 608 }

Q. In the conversations that you had with Miss Eason over the period of some three or four years that you visited her, can you tell the Court and jury what sort of conversation you had, whether it was sensible conversation or what?

A. It was very sensible. I enjoyed talking with her.

Mrs. L. Eason.

Naturally she talked about school a great deal. She was fond of fifth-graders. She had taught the fifth grade for years. We had many discussions on United States history because that is the course of my curriculum, U. S. history, and geography.

Q. Will you state whether or not those visitations and conversations with her were pleasant or unpleasant?

A. Very pleasant.

Q. Did she ever manifest any peculiarities or violent speech or anything of that sort towards you or your husband when he visited there?

A. No, sir, she seemed to enjoy our visits very much.

Q. Your husband is connected with the police department of the City of Norfolk?

A. Yes, sir.

Q. And what is his position there?

A. He is in the Youth Bureau. He is a sergeant in the Youth Bureau.

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page 609 }

* * * * *

CROSS EXAMINATION.

By Mr. Bangel:

Q. Camillus is the beneficiary of a substantial part of this estate in the event it is probated?

A. I didn't understand you.

Q. Then it is your husband who will profit by a very large part of the estate if the will is probated?

A. Yes, a part of the estate.

Q. Did he ever say anything to her about being a namesake of her brother?

A. No, sir.

Q. Not in your presence?

A. No.

Q. You say that you stopped by on your way from North Carolina?

A. A few times, yes, sir.

Q. And what part of North Carolina were you?

A. South Mills.

Mrs. L. Eason.

Q. And coming from South Mills in the City of Norfolk, that wouldn't take you by her home, would it?
Vol. IV A. Well, no, but we made a special trip by
page 610 } there.

Q. So, your husband then was trying to be very attentive to Miss Eason?

A. Not too much.

Q. To go out of the way to go by her house?

A. Occasionally.

Q. And did she ever say anything to you about her nephews or her brother?

A. Yes, sir.

Q. Was that discussed in the presence of your husband?

A. Yes, sir.

Q. And was there anything said by you or your husband that would inflame her mind against her nephews and her own brother?

A. Absolutely not.

Q. Was there anything said that would indicate that she had no love for her brother or her two nephews?

A. She was worried with them, they had upset her.

Q. She was worried with them?

A. Yes, she was.

Q. And was there anything said by you or your husband to set her mind at ease as to her two nephews and her brother?

Vol. IV A. I did not know a great deal about the situa-
page 611 } tion until after the trial started.

Q. You did not know anything about it till after it was offered?

A. I did not know a great deal before the trial, very little.

Q. So she did not discuss that phase with you?

A. Not a great deal, she just casually mentioned it.

Q. Just casually mentioned the fact that she had a nephew who was a son of her brother, a doctor by the name of Dr. Robert Eason, and one by another brother whose name is Dr. Samuel Eason?

A. Yes, I knew she had two nephews and her brother.

Q. Well, who told you that?

A. She did.

Q. So, she did have some discussion with you about her two nephews?

Mrs. L. Eason.

A. Yes, sir, but not a great deal.

Q. Did you ever meet anyone of them?

A. No, sir.

Q. Did you ever meet her brother LaSalle?

A. No, sir.

Vol. IV Q. Was your husband present when Miss Mary
page 612 } Eason discussed her nephews and her brother?
 A. Yes, sir.

 Q. I understood you to say the last time you
saw her was September, 1959?

A. (Witness nodded head affirmatively.)

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CAMILLUS F. EASON,
called as a witness on his own behalf, having been first duly
sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Garrett:

Vol. IV Q. Will you state your name?

page 613 } A. Camillus F. Eason.

 Q. Where do you reside?

A. 266 South Blake Road, in Norfolk.

Q. And how long have you lived in Norfolk?

A. Since 1942.

Q. What is your age?

A. 42 years old.

Q. Mr. Eason, what is your position with the City of
Norfolk?

A. Sergeant in the Police Department. Now I am working
in the Youth Bureau in the office.

Q. And how long have you been connected with the City?

A. It will be 15 years in November.

Q. Mr. Eason, you knew the late Miss Mary F. Eason?

A. Yes, sir.

Q. Do you know what relationship, if any, you are to her?

A. Not exactly, Mr. Garrett. We are cousins so I have been
told. Of my own knowledge I don't know exactly.

Q. Did you ever discuss it with her?

A. Not very much.

Camillus F. Eason.

Q. Mr. Eason, when did you first have any contact with Miss Mary Eason?

Vol. IV A. I would say it was around 1953.

page 614 } Q. Do you remember the occasion for the first contact that you had with her?

A. To the best of my recollection, Mr. Garrett, I either went to visit her or she called me to come out there, I don't know. I just don't remember now, it has been so long. But anyway she asked me at that time if I would like to come out there and live and take over that farm. Nothing was said about her giving it to me or anything like that, but she wanted me to farm for her. Of course, I had too many years in the police department, I didn't want to give up what I had in Norfolk, so I told her I couldn't do it.

Q. Your name "Camillus F. Eason," I believe is the same name that her brother had?

A. Yes, sir.

Q. Did she ever mention that fact to you?

A. She has on occasions, yes, sir.

Q. Well, from '53 when you had your first—strike that. Had you ever heard of Miss Mary Eason from your family before you met her or known of her?

A. Oh, yes.

Q. She was no stranger to you?

Mr. Bangel: If your Honor please—

Mr. Garrett: All right, I will change it around if you want to object to it.

Vol. IV

page 615 } By Mr. Garrett:

Q. Your first personal contact with her was in 1953?

A. That is the first time, yes, sir.

Q. All right, sir. Well, now, after you had talked with her did you have any further contact with her over the years and if so how was it brought about?

A. Part of the time they would be just by visits on Sunday afternoon, part of the time she would write me a little note asking me to come out to see her.

Q. Well, were the conversations that you had with her pleasant or unpleasant?

A. Very pleasant.

Q. Now, I believe you were married to Mrs. Eason in '55?

Camillus F. Eason.

A. That is correct.

Q. This predated the time of your marriage to your wife?

A. My first wife died in 1954.

Q. Now, when you used to visit with her did she display any abnormality or any outlandish conduct in your presence?

A. No, sir.

Q. Were the visits that you had with her pleasant or otherwise?

Vol. IV page 616 } A. They were pleasant.

Q. Did she seem to enjoy them?

Mr. Bangel: If your Honor please, I object to that.

A. Very much so.

The Court: All right, I sustain the objection.

By Mr. Garrett:

Q. All right. What was her reaction to your visits?

A. She seemed to enjoy our visits very much.

Q. Now, Mr. Eason, there is some suggestion here, insinuations through some questions that had been asked by counsel. Did you ever try to prevail on Miss Eason to give you anything or do anything for you?

A. No, sir, I didn't.

Q. Did you try to pry into her affairs and about her nephews or injure them in any way?

A. I did not.

Q. In all the visits you ever made there did you ever see either one of those nephews there?

A. No, sir.

Q. Now, aside from people that she had to come and drop in and see her, was there anybody living there on the farm other than Albert and Turner White here that you know of?

Vol. IV page 617 } A. Not that I know of, no, sir.

Q. This house that she lived in, was it off the main road?

A. Yes, sir.

Q. Do you know approximately how far that house sits back from the highway, Highway 168?

A. (Pause) I imagine about a quarter of a mile, possibly not quite that far.

Q. It has been suggested in some questions asked by coun-

Camillus F. Eason.

sel here that you portrayed yourself as a protector of her. Did anything such as that happen?

A. No, sir.

Q. Did you pretend to go out there to guard the house or go out there nights or anything of that sort?

A. No, sir, I was never there at night unless I was there in the afternoon late and it was dark when I left.

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page 618 }

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By Mr. Garrett:

Q. Mr. Eason, you spoke of getting requests to come to see Miss Mary by a note. Did you have any requests otherwise?

A. By telephone.

Q. Yes.

A. By telephone calls.

* * * * *

Vol. IV Q. Now, Mr. Eason, at any time that you were
page 619 } there and visiting Miss Eason did she make any
 other statements to you in reference to giving you
 any part of the property?

A. In 1958 she did, yes, sir.

Q. And what was the statement, what did it relate to?

A. She asked me if I wanted Dr. Eason's farm. I said, "Yes, Ma'm, I would sure like to have it." She said "Well, I am going to give it to you."

Q. Well, now, what—do you know what that consisted of at that time, or did you know—

A. Only what she told me.

Q. What did she tell you?

A. She carried me out in the yard and she pointed out a ditch on the back of this property that she said was the line ditch, and she told me it ran up to the highway in the front of it, and just gave me a general outline of it at that time from the yard.

Q. I believe in this will you were left 100 acres of—approximately 100 acres of land?

Camillus F. Eason.

A. Yes.

Q. Out of the 500 or 600?

A. Yes, sir.

Q. Is that what she indicated to you at that time?

A. She said it was around 112 acres is what she
Vol. IV told me.

page 620 } Q. Now, were you present at any time that she
discussed a will with Mr. Bryan or anybody else
or when she drew a will?

A. No, sir.

Q. Now, did you receive a call or message to come to see her
around September or October of last year?

A. Yes, sir.

Q. And did you go?

A. I did.

Q. Did you have a conversation with her?

A. Yes, sir.

Q. And what was it in reference to?

A. Let's see (pause). Now, I had two or three calls, but
now which time are we—?

Q. Well, were you able to go when she called each time?

A. Yes, sir.

Q. I am referring to the time, if I can refresh your memory,
when she gave you some papers.

A. Oh, yes, sir, that was on a Tuesday. She died the Thurs-
day week from that. I got a telephone call to come out there.
She gave me some papers.

Q. What papers did she give you?

A. It was some deeds, plats, a will, and I be-
Vol. IV lieve that was about it, sir.

page 621 } Q. What did she tell you to do with them?

A. She wanted me to take them home and keep
them for her.

Q. Did she state any reason for giving them to you?

A. She said she was afraid something might happen to them
at her house.

Q. Now, this paper that she gave you as a will, was that
prepared by her or by a lawyer, do you know?

A. I don't know, sir.

Q. Was it in her handwriting?

A. It appeared to be in her handwriting, yes, sir.

(Document shown to opposing counsel for examination.)

Camillus F. Eason.

By Mr. Garrett:

Q. Mr. Eason, is this the will that you alluded to in the handwriting that she handed you?

A. Yes, sir.

Q. What is the date of that?

A. December the 2nd, 1957.

Q. Were you present when this was drawn by Miss Eason?

A. No, sir.

Vol. IV Q. Did you have anything to do with what she
page 622 } wrote in it?

A. No, sir.

Q. Or any provisions in it?

A. No, sir.

Q. And did you know that it existed until she gave it to you shortly prior to her death?

A. No, sir, I did not.

Mr. Garrett: If your Honor please, I would like to read this if I may.

The Court: All right, sir, you want me to mark it first?

Mr. Garrett: Yes, sir.

The Court: Proponents' Exhibit Number 11.

(Received and marked in evidence as Proponents' Exhibit Number 11.)

Mr. Garrett: (Reading) "This is my last will and testament revoking all other wills I have made.

"I desire all of my debts to be paid, funeral expenses. I desire that my brother J. L. Eason and myself to be buried in the family burying ground located on Charles

Vol. IV Eason's farm now deceased.

page 623 } "I give and bequeath to Albert Ahlgren all of
my furniture and house equipment in Dr. C. F.
Eason home and all farm equipment furniture in my old home
known as the N. C. Eason's home I now own.

"MARY FRANCES EASON,

"(Seal)

"December 2, 1957."

And written down the bottom: "For my executor C. F. Eason."

Camillus F. Eason.

"I give to my brother James L. Eason the sum of one thousand dollars (\$1000)for his burial expense to be placed in the National Bank of Commerce Norfolk, Va. by my executor C. F. Eason on interest for his burial expense. My brother James L. Eason has already been provided for.

"MARY FRANCES EASON,
"December 2, 1957."

"I give to Turner White a tenant on my farm five hundred dollars for his kindness to my brother J. L. Eason.

"I give to my nephew Dr. Sam Eason of Summit, N. J. the sum of five dollars (\$5.00). Dr. Sam Eason Vol. IV took out of my lock box Merchant and Planters page 624 } Bank Berkley, Va. now taken over by the National Bank Norfolk Va. a big sum of money, also from Southern Bank of Norfolk, Va. over eight thousand dollars (\$8000).

"I give to my nephew Dr. Robert Eason the sum of five dollars (\$5.00) as he has a large sum of money of my estate which he took from Va. Bank, Norfolk, Va.

"MARY FRANCES EASON,
"December 2, 1957."

"I direct that my executor C. F. Eason here and after named to pay over one thousand dollars (\$1000) to be placed in National Bank of Commerce, Norfolk, Va. on interest to Elva Eason which sum he shall be permitted twenty dollars per year, beginning six months after my death, for the care and upkeep of the family burying ground located on Charles Eason's farm now deceased.

"MARY FRANCES EASON

"December 2, 1957."

"I give to Albert Ahlgren the sum of ten thousand dollars (\$10,000) to be placed in the National Bank of Commerce, Norfolk, Va. by my executor Camillus Eason here Vol. IV and named after to pay over fifty dollars (\$50.00) page 625 } per month ten days after my death.

"I give to Albert Ahlgren his mortgage of five thousand dollars I hold on his farm about 30 acres.

Camillus F. Eason.

"I direct that my executor C. F. Eason here and named to sell Albert Ahlgren farm, and money to be placed in National Bank of Commerce, Norfolk, Va.

"I give to Camillus F. Eason of Norfolk, Va. namesake of Dr. Camillus F. Eason of Hickory, Va. the farm situated in Norfolk County, Va., Pleasant Grove District known as the Dr. C. F. Eason's farm over one hundred acres all land west of Highway 170, also all land (Tenant House) also known as (Turner White house), all buildings, house, parks, etc.

"MARY FRANCES EASON

"(Seal)

"December 2, 1957."

The word "Seal" is written on there, members of the jury. It is not a seal.

(Reading) "I devise and give to my executor Camillus F. Eason of Norfolk, Va. two years time to settle my Vol. IV estate after my death.

page 626 } "I direct that my executor look after my brother and Albert Ahlgren.

"Knowing my executor as I do, his fine disposition, I leave these two old men in his care.

"MARY F. EASON.

"Seal.

"November" was stricken out and "December 2, 1957."

(Reading) "I give to the Trustee of the General Hospital, Norfolk, Va. my land known as the Beech Woods situated in Norfolk, County, Va., Pleasant Grove District on Highway 170 about one hundred acres of land a part of what is known as the Cornick Farm not to be sold for any commercial value.

"This gift is a memorial gift for the heart fund in the name of Dr. Camillus F. Eason, Hickory, Norfolk County, Va., son of I. N. and N. C. Eason.

"MARY F. EASON

"(Seal)

"December 2, 1957."

"I direct that my executor Camillus F. Eason here and

Camillus F. Eason.

Vol. IV named if Albert Ahlgren wishes to go to his home
page 627 } in Sweden, he is to see that all of his money is sent
 } to his home in Sweden.

 "In event he does not return to his native home
Sweden, then my executor is to see that he gets his allowance.

 "In the event of Albert Ahlgren's death after burial ex-
penses residue goes to the Salvation Army.

"MARY FRANCES EASON,

"(Seal)

"December 2, 1957."

 "In conclusion after my debts and taxes are paid, I give
to the Trustees of the Methodist Home for the Aged (Her-
mitage) of Richmond, Va. money after my debts are paid.

 "I give my farm situated in Norfolk County, Va., Pleasant
Grove District, known as the N. C. Eason farm about three
hundred and fifty acres.

 "I give my executor named here and after Camillus Eason
the power to sell farm and money to be given to the Trustees
of the Methodist Home for the Aged (Hermitage), Richmond,
Va.

"MARY FRANCES EASON

"(Seal)

Vol. IV
page 628 }

"December 2, 1957.

 "This gift is a memorial gift to my mother and father, Mr.
and Mrs. I. N. Eason," and on the back: "Executors, Camil-
lus Eason, Leon Eason." And then below that "Bank of
Virginia, Southern, National Bank Commerce, Atlantic Per-
manent, Elizabeth City, Berkley, Seaboard."

By Mr. Garrett:

Q. Mr. Eason, after this paper and others were delivered to
you by Miss Eason did she have any further contact with you
prior to her death?

A. Yes, sir.

Q. Did you receive a message or did you go or what?

A. I received a phone call.

Q. And pursuant—did you go there pursuant to the phone
call?

Camillus F. Eason.

A. Yes, sir.

Q. Did you talk with her?

A. Yes, sir.

Q. What request, if any, did she make?

A. (Pause) On Tuesday is when I got those papers and brought them home. On Friday night was when I received the phone call.

Vol. IV
page 629 } Q. You received a phone call?

A. Yes, sir.

Q. And did you receive a message? You can't tell us what it is, but did you receive a message?

A. Yes, sir.

Q. And pursuant to that message what did you do?

A. I called Mr. Bryan, who was recommended to me by someone.

Q. Well, who did you first call?

A. Mr. Merrick Campbell.

Q. He is an attorney in the City of Norfolk?

A. Yes, sir, he had done some work for us, for my wife and I closing a house.

Q. And for what purpose were you calling him?

A. Can I tell what Aunt Mary wanted?

Q. Well, you can tell what she talked to you about later, but at this stage what was your purpose in calling Mr. Campbell?

A. To ask him to go with me to her house.

Q. All right, was he able to go?

A. No, sir.

Q. Did he recommend anybody else?

A. Yes, sir.

Q. And who was that?

Vol. IV
page 630 } A. Mr. Stanley Bryan.

Q. Did you know Mr. Bryan at all before this time?

A. I never heard his name before, no, sir.

Q. Did you contact Mr. Bryan?

A. Yes, sir.

Q. And when was that that you contacted him?

A. On Friday night.

Q. Was it the Friday night of the week before her death?

A. Yes, sir.

Q. Did he go down to Miss Mary's?

A. Yes, sir.

Camillus F. Eason.

Q. And when did he go?

A. Saturday morning.

Q. That is the next morning?

A. The next morning.

Q. And did you go down with him?

A. Yes, sir.

Q. What happened to these papers, this will and any papers you had?

A. I carried them to her, to cousin Mary, and gave them to her.

Q. Now, when you took them back to her and Mr. Bryan came down, did she make any statement to you as to what she intended to do and why she had you page 631 } there?

A. She wanted me to be sure—she told me she wanted to be sure that all of her papers and business was in order. She wanted to discuss it with a lawyer.

Q. What did you do with the papers that you had?

A. I gave them to her.

Q. And then what happened?

A. When I went in the room I introduced her, she and Mr. Bryan. She asked me to leave the room.

Q. Did you leave the room?

A. I did.

Q. Was there anybody else in there at the time you were asked to leave?

A. Albert Ahlgren. She asked both of us to leave.

Q. And were you out of the room during the time that Mr. Bryan talked with her?

A. Yes, sir, I was out in the yard.

Q. Do you know approximately how long he was up there talking to her on Saturday morning?

A. I would say around between an hour and two hours. An hour and a half and two hours.

Q. After he came out from talking with Miss Mary did he have these papers here, this will, or do you know what he had?

Vol. IV A. I don't know what he had.

page 632 } Q. Well, he can testify to that. All right, sir. Then you returned to Norfolk, did you?

A. I went back upstairs and told her that I would see her later, just, you know, said my goodbyes. I told her I would

Camillus F. Eason.

see her later and I come on back downstairs and we came to Norfolk.

Q. All right, sir. Then do you know when the will was executed; were you present?

A. Not of my knowledge, no, sir; I was not present.

Q. Were you even at the home at the time the will was signed?

A. No, sir, I might add that that was the last time I saw her, Mr. Garrett, was that Saturday morning.

Q. The last time you saw her was on Saturday before death?

A. That's right.

Q. Did you see any will that she had drawn with Mr. Bryan until her death?

A. No, sir, I did not.

Q. Did you have possession of it?

A. No, sir, I did not.

Mr. Garrett: All right, gentlemen, you may cross examine.
Answer Mr. Bangel.

Vol. IV

page 633 }

CROSS EXAMINATION.

By Mr. Bangel:

Q. Mr. Camillus Eason, is it?

A. Yes, sir.

Q. Mr. Camillus—I didn't know how to pronounce it.

A. Not many people do.

Q. Mr. Eason, who is Mr. Lloyd Eason?

A. He is my brother-in-law.

Q. Brother-in-law?

A. Yes, sir.

Q. And he is not related to Miss Mary Frances Eason, is he?

A. No, sir.

Q. Well, now, you say that you first met her in 1953. Your first contact with her, the first time you met her was in 1953?

A. Yes, sir.

Q. And you say on that occasion you received a telephone call?

A. To the best of my recollection, Mr. Bangel.

Q. But she wanted to talk to you about what?

Camillus F. Eason.

A. If I remember right that was the time she
Vol. IV asked me if I would come out there and farm for
page 634 } her.

Q. And was that the time she said to you "I
want to give you this farm?"

A. No, sir.

Q. Well, when did she say "I want to give you this farm?"

A. She told me that—the first time she told me that was in
1958, I would say sometime in 1958, I don't know exactly what
date.

Q. How did she get your name to get you to come out there
to farm for her?

A. Well, I think she has known my people for many many
years as far as I know, Mr. Bangel, I don't—

Q. But weren't you in the Police Department at that time?

A. Yes, sir.

Q. And—well, now, isn't it true that she was fearful of
someone trying to harm her and that was the first time she got
you, and you got in contact with her?

A. No, sir, that is not true.

Q. Well, did she tell you that people tried to run her off the
road?

A. She told me that somebody tried to run her off the
road.

Vol. IV Q. Did she tell you that people were shooting at
page 635 } her?

A. No, sir.

Q. Did she tell you that hoodlums there had put three
bullets in her car?

A. No, sir, she did not.

Q. Did she tell you that Dr. Robert Eason and Dr. Sam
Eason, her nephews had stolen from her?

A. No, sir.

Q. Well, then is it fair to say when she offered you the op-
portunity of farming for her you declined that invitation?

A. That is correct.

Q. Well, when did you see her again after that?

A. Well, I can't say exactly, maybe a month, maybe two
months.

Q. Well, did you go up to see her?

A. Yes, sir.

Q. And you say you continued those visits until the Satur-
day morning before the Thursday that she died?

Camillus F. Eason.

A. That is correct.

Q. And that was periodic visits, were they?

A. Periodic, yes, sir.

Q. Well, during those visits did she say anything to you about people being in the bushes there, in the weeds hiding?

A. No, sir.

Vol. IV Q. She did not tell you anything about that?

page 636 } A. No, sir.

Q. Did she tell you she had employed Detective Branch to come up there and watch over her and see that the people did not kill her?

A. No, sir, she did not.

Q. Well, you were making periodic visits there, were you not?

A. Yes, sir.

* * * * *

Vol. IV

page 637 }

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The Court: If I understood this witness correctly he didn't say that. He said that she did say something about people running her off the road.

By Mr. Bangel:

Q. Well, did you discuss that part of it with her?

A. I did not pursue it, no, sir.

Q. Why not?

A. (Pause) I had no reason to.

Q. Well, when she told you that did you believe it was true?

A. If she said so.

Q. You believed then her statement to you that people tried to and therefore you didn't pursue it?

Vol. IV A. No, sir.

page 638 } Q. Well, then—and you say that nothing else was said about anyone trying to harm her?

A. No, sir, not that I can recall.

Q. Are you positive of that?

A. Yes, sir.

Camillus F. Eason.

Q. Did she ask you to come out there and protect her in any way?

A. No, sir, she did not.

Q. Now, in 1957, you said that she offered to give you the farm?

Mr. Garrett: That's not what he said. He said in 1958.

By Mr. Bangel:

Q. In '58; was it '58?

A. Yes, sir.

Q. And where were you when she offered to give you the farm?

A. In her home.

Q. Did you take it?

A. (Pause) No, sir, I did not take it then.

Q. Did she ever actually draw a deed and give you the deed to the property?

A. No, sir.

Q. Did you ask her why she did not draw that deed?
Vol. IV deed?
page 639 } A. No, sir.

Q. You did not pursue that any further?

A. I did not.

Q. Then you say that you received a message to come out there on Friday night preceding her death?

A. (Pause) I received a message on Friday night; yes, sir.

Q. Did you go out there Friday night?

A. No, sir.

Q. When did you go out?

A. On Saturday morning.

Q. And about what time did you get there?

A. (Pause) I don't know exactly. I would say it was around maybe ten o'clock.

Q. In the morning?

A. Yes, sir.

Q. Did you have the papers with you then?

A. Yes, sir.

Q. That she had given you?

A. Yes.

Q. Did you take them out with you?

A. Yes, sir.

Camillus F. Eason.

Q. Where had you had them from the time she gave them to you till that morning?

A. At my home.

Vol. IV Q. What reason did you have for taking them
page 640 } with you on that occasion?

A. Because she asked me to.

Q. She asked you to bring the papers?

A. She wanted me to, yes, sir.

Q. Did she ask you to return the deeds?

A. Yes, sir.

Q. Did she ask you to return that paper writing that she gave you?

A. She asked me to return all of her papers.

Q. Now, was that—those papers sealed in an envelope or not?

A. No, sir.

Q. Then you read it when she gave them to you?

A. (Pause) I might have looked over them, yes.

Q. Do I understand now that you did not read them sufficiently well to know the contents of those papers?

A. Not all of it, no, sir, I did not.

Q. Well, they were open and could be read?

A. Sure.

Q. And in spite of that you did not read them?

A. I said I looked over them.

Q. Well, did you see any provision in there that named you?

A. Yes, sir.

Vol. IV Q. Did you see the other provisions?

page 641 } A. Yes, sir.

Q. Well, you did read them?

A. I said I looked over them.

Q. Well, I asked you did you read them sufficiently well to know what was in it?

A. Yes.

Q. All right. And then, of course, you put them where?

A. I put them in a drawer someplace in the house. I don't know, I can't tell you exactly now.

Q. Well, where do you keep your valuable papers?

A. My valuable papers are in a lock box.

Q. Why weren't they kept in the lock box?

A. Because I hadn't had time to get them in there.

Q. You had them Tuesday until Saturday morning and you had not had an opportunity—

A. No, sir, I had not.

Camillus F. Eason.

Q. And you can't tell us where they were in the house?

A. Not exactly, no.

Q. And you don't recall where you got them the morning that you went out to her home?

A. From my house.

Vol. IV Q. What part of your house?

page 642 } A. I don't know exactly.

Q. Well, when you arrived out there you gave them back to her?

A. Correct.

Q. Who was with you?

A. Mr. Stanley Bryan.

Q. So he went out there with you that morning?

A. Yes, sir.

Q. Well, did you know that she had been represented by Mr. Webb at that time?

A. (Pause) No, sir.

Q. Did you know that she had been represented by Mr. Willcox?

A. No, sir.

Q. Did you know that she had been represented by Mr. Henry Bowden prior to that time?

A. No, sir.

Mr. Garrett: I thought Mr. Bowden represented her brother.

Mr. Bangel: Well, she brought him in, she paid him.

By Mr. Garrett:

Q. And she had Mr. Garrett represent her; did you know that?

Vol. IV A. No, sir.

page 643 } Q. She didn't tell you about any previous lawyers she had?

A. She mentioned their names; yes, sir.

Q. Well, why didn't you bring them out instead of—

A. It could have been in a general conversation at some-time or another, I don't know.

Q. You had no independent recollection of her having told you that she had been represented by those lawyers?

A. No, sir, I did not.

Q. You know those lawyers; do you know those lawyers, the four that I have named?

A. I know of them, yes, sir.

Camillus F. Eason.

Q. But instead of getting any of those lawyers that she may have casually mentioned—you said she said something about them—but instead of getting any of those lawyers you decided you would call on Mr. Campbell, Merrick Campbell?

A. That is correct.

Q. Who was your lawyer?

A. He had done—he had closed a house deal for us.

Q. Well, being with the police department you come in contact with right many lawyers, don't you?

Vol. IV A. Sometimes, yes, sir.

page 644 } Q. And you knew many lawyers?

A. I knew of a lot of them.

Q. And you selected Mr. Merrick Campbell because he was your lawyer? Isn't that true?

A. The only reason I called Mr. Campbell was because he had closed a house deal for us. We bought a house and he closed the deal. That is the only time he was our lawyer.

Q. And he told you that he couldn't go out to see her at that home?

A. That is correct.

Q. And then he suggested to you that you get Mr. Stanley Bryan?

A. Correct.

Q. When did you call Mr. Bryan?

A. Friday night.

Q. Now, where did you get him?

A. I believe he was at his home.

Q. At his home?

A. Yes, sir.

Q. Don't you know whether you got him at his home?

A. That is correct, he was at his home.

Vol. IV Q. You said you believed he was; you either
page 645 } know it or you don't.

A. He was.

Q. You called him at his home?

A. Yes, sir.

Q. And did you make an appointment with him the next day?

A. Yes, sir.

Q. Did you tell him what you wanted with him?

A. I told him I wanted him to go with me out to her house, that she had some business she had to discuss with him.

Q. Did you know what that business was?

A. Other than what she told me.

Q. What did she tell you?

Camillus F. Eason.

A. She told me that she wanted her papers and everything in order. She wanted to discuss it with a lawyer.

Q. So that she wanted to see whether they were in order?

A. Yes, sir.

Q. Well, do you know—well, did you think she meant a will at that time or what did she indicate to you?

A. I don't know.

Q. You didn't know what she wanted. Well, you know the only way you can get title to real estate is by deed,

Vol. IV don't you?

page 646 } A. I suppose that's right, yes, sir.

Q. Or a will. Well, you had the deeds that you had. Did she intend for you to own that property, these papers?

A. She didn't say that.

Q. Well, what did you think she gave you those papers for?

A. To keep for her.

Q. Now, you spoke to Mr. Bryan that night?

A. Yes, sir.

Q. And did you show them to him, did you show him those papers?

A. No, sir.

Q. The next morning?

A. No, sir, I gave Mr. Bryan, I believe, the papers when we got in the car. I just gave them all to him.

Q. Why would you give it to him instead of giving it to the person who you got them from?

A. We were in the car together.

Q. Did you want him to read them before he got in that house?

A. No, sir.

Q. Well, did he read them?

A. No, sir, he did not read them.

Vol. IV Q. Well, when you gave them to him what did
page 647 } he do with them?

A. He just held them, that's all.

Q. He held them?

A. Yes, sir.

Q. Did he look at them?

A. I don't recall.

Q. Well, you were right there, were you not?

A. I was driving the automobile.

Q. Well, why did you give them to him?

A. Him and I were in the front seat, and the logical thing to do, I suppose, just to hold them.

Camillus F. Eason.

Q. Well, the papers that you had wouldn't have taken any more room than if you had put them in your pocket would it?

A. Well, I wouldn't want that big bunch of papers in my pocket. I couldn't get them all in my pocket.

Q. How many deeds were there?

A. I really couldn't say how many there were, sir.

Q. Can you tell us if there were one, two or three?

A. No, sir, I can't.

Q. Well, what were they besides the deeds and the paper writing that you have produced?

A. (Pause) I believe that was all.

Vol. IV Q. And you can't tell us the number of deeds
page 648 } there were?

A. No, sir.

Q. You can't say whether it was one, two or three?

A. No, sir.

Q. Were there so many that you couldn't get them in your pocket?

A. Yes, sir.

Q. What?

A. Yes, sir.

Q. Were they in a package of any kind; were they tied?

A. They were in some kind of a brown envelope, I don't—

Q. Were they sufficiently small to go in a brown envelope?

A. They were in there.

Q. And you mean that that brown envelope couldn't be put in your pocket?

A. Not the way it was, no, sir.

Q. Well, what do you mean the way it was?

A. Well, it was thick.

Q. Do you have that brown envelope?

A. No, sir, I don't have it.

Vol. IV Q. Do you know what happened to it?

page 649 } A. I do not.

Q. Was it one of those envelopes that close like an accordion?

A. I believe it was, Mr. Bangel, to the best of my recollection. I believe it was.

Q. And your recollection on that is very poor at this time?

A. Yes, sir.

Q. Well, that morning you went in there and you introduced Mr. Bryan to Miss Eason—

A. Yes, sir?

Q. —she had never met him before and he had never met her?

Camillus F. Eason.

A. Not to my knowledge.

Q. To your knowledge?

A. No, sir.

Q. And what was her condition, was she in bed or was she walking around?

A. She was in bed.

Q. What was her color?

A. She was normal color.

Q. She was not pale then, she was normal color?

A. No, sir, she wasn't pale, I mean no more than usual.

Q. And was there anyone in there besides you
Vol. IV and Albert Ahlgren let you in. You couldn't get
page 650 } in unless he let you in, could you?

A. Albert went upstairs and told her we were downstairs. He came back down and carried us up.

Q. She wouldn't let you in; you couldn't get in unless Albert Ahlgren allowed you to come, could you?

A. Well, I wouldn't say that.

Q. Have you ever walked in there without his permission?

A. I have been in there lots of times when Albert wasn't there.

Q. Well, now, were you ever there when she was confined to her bed when he was not there?

A. No, sir.

Q. Could you get in without him opening the door and letting you go on in when he was there?

A. When he was there?

Q. Yes, sir.

A. Well, now, will you explain that now just how you want it?

Q. Well, what did you do if Albert was there, would you open the door and walk in?

A. No, sir, I never opened the door and walked in, it has a doorbell.

Vol. IV Q. Well, would you ring the doorbell?

page 651 } A. Yes, sir.

Q. And who would open the door?

A. She would.

Q. She would?

A. If she was there.

Q. Well, now, she was sick; who would let you in then?

A. Albert.

Q. And were there any dogs there?

A. Yes, sir, she had about five, I think.

Camillus F. Eason.

Q. Did you meet any members of her family while you were there on Saturday?

A. No, sir.

Q. Well, you say that then you and Mr. Bryan went to her bedroom along with Mr. Ahlgren and she told you and Mr. Ahlgren to leave the room

A. That's correct.

Q. You didn't hear the conversation?

A. No, sir.

Q. Well, where were those papers then?

A. Where were they then?

Q. Yes.

A. She had them.

Q. Who gave them to her?

Vol. IV A. They were laid on the bed, I believe.

page 652 } Q. By whom?

 A. (Pause) Evidently Mr. Bryan had them and he just laid them on the bed.

Q. You mean then that you had given them to him and he did not return them to you but put them on her bed?

A. To the best of my recollection.

Q. Well, do you know what was in those papers?

A. I don't know, not of my own knowledge.

Q. Did you tell him?

A. No, sir.

Q. Then did you see them read by him?

A. No, sir.

Q. And then, of course, he laid them on the bed and you and Mr. Ahlgren went out?

A. Yes, sir.

Q. You didn't hear the conversation?

A. None at all.

Q. You don't know what was said, if anything?

A. No, sir.

Q. And then you say—well, do you know who Mr. Bryan's secretary was at that time?

A. No, sir.

Q. You had never met her?

A. No, sir.

Vol. IV Q. Before or since?

page 653 } A. His secretary?

 Q. At that time, yes, sir, that Saturday morning.

A. No, sir.

Camillus F. Eason.

Q. Did you go to his office?

A. No, sir.

Q. Where did you meet him?

A. When?

Q. Saturday morning.

A. I met him at the Southern Shopping Center.

Q. Did you drive there?

A. Yes, sir.

Q. And you had a prearranged meeting at the Shopping Center?

A. That is correct.

Q. Well, now, when you brought him back where did you take him?

A. To the same place.

Q. Where was his car?

A. At the Southern Shopping Center.

Q. So he did not meet you in his office that morning at any time?

A. No, sir.

Q. Now, you say that you brought him back. Did he tell you what he was going to do?

Vol. IV A. No, sir.

page 654 } Q. Did you ask him?

A. No, sir.

Q. There was nothing said about what was to be done?

A. No, sir.

Q. By either you or he?

A. No, sir.

Q. Did you see any of those papers that you had given to Mr. Bryan after they had been laid on the bed?

A. No, sir.

Q. When did you see it for the first time before today after it was laid on the bed?

A. After she died.

Q. Where did you find them?

A. Those papers? (Pause) Albert had them locked up. They were locked up in the bedroom.

Q. In the bedroom?

A. Albert had the key.

Q. So they were not torn up?

A. No, sir.

Q. And the paper writing that was supposedly made by Mr. Bryan which you knew nothing about at all, you say, was seen by you when for the first time?

Camillus F. Eason.

A. That was seen by me for the first time when
Vol. IV it was brought over here and put on probate, I
page 655 } guess that is what you call it.

Q. Now, she died on October 29th, 1959. It was
put on probate two or three days later, wasn't it?

A. (Pause) I don't know the date, Mr. Bangel.

Q. Well, suppose the record shows November the 2nd.

Mr. Garrett: Whatever the record shows that's it.

A. That was it then.

By Mr. Bangel:

Q. So that was two days there after it was made after she
died. The third day after she died?

A. (Pause) That's more than two days.

Mr. Garrett: Let's get the thing.

By Mr. Bangel:

Q. It was October 29th. There are 31 days in October?

A. I don't know what date—

The Court: 31, I believe; yes.

By Mr. Bangel:

Q. Well, it was within four or five days after she died?

A. Possibly; yes, sir.

Q. Well, now, when did you learn she had died?
Vol. IV A. (Pause) Possibly thirty minutes after she
page 656 } died.

Q. Did you communicate with either of her
nephews?

A. (Pause).

Q. Telling them of her death?

A. Not right then, no, sir.

Q. Well, did you do it at anytime before her death or did
they communicate with you?

Mr. Garrett: How could he tell them before her death?

Mr. Bangel: I asked him whether he communicated with
them.

Mr. Garrett: You ask some of the clearest questions.

Mr. Bangel: It may not be clear to you but I asked him—

Camillus F. Eason.

By Mr. Bangel:

Q. I asked you if you notified them of her death.

A. When I got back home that night Dr. Robert had called my house already and I returned his call. I told him of her death.

Q. That was on the date of her death?

A. Yes, sir.

Vol. IV Q. Do you know when she died, was it on Friday
page 657 } or Thursday?

A. It was on Thursday.

Q. Thursday night?

A. When I returned Dr. Robert's call.

Q. Did you notify her brother?

A. No, sir.

Q. Mr. LaSalle?

A. Later on that night I did; yes, sir.

Q. Later that night you notified him?

A. Yes, sir, I sent him a telegram.

Q. Did you find the other papers that you said that had been given to you, the deeds?

A. Did I do what now?

Q. Find any of the other papers that you spoke of?

A. I found them all.

Q. Where, altogether?

A. Yes, sir.

Q. Did you find—

A. She had them altogether.

Q. —any other papers?

A. Yes, sir.

Q. Do you have them with you?

A. I don't have them, no sir.

Vol. IV Q. What did you do with them?

page 658 } A. I turned them over to Mr. Bryan.

Q. Mr. Bryan has them so far as you know?

A. As far as I know.

Q. He is the last one who had them?

A. Yes, sir.

Mr. Bangel: Witness is with you.

RE-DIRECT EXAMINATION.

By Mr. Garrett:

Q. Mr. Eason, these papers that they are talking about, the deeds, they were old recorded deeds, were they not?

Camillus F. Eason.

A. Yes, sir, to the best of my knowledge.

Q. No deeds to you or to anybody else?

A. No, sir.

Q. Just old recorded deeds that had been on record?

A. That's right.

Q. And among them were these two releases on the property that the nephews executed?

A. That is correct, yes, sir.

Q. I would like to ask you one more question in this matter,

Mr. Eason. You are an executor in this case?

Vol. IV A. That is correct.

page 659 } Q. And Mr. Bryan is an executor?

A. Yes, sir.

Q. And Mr. Eason here?

A. Yes, sir, Leon—

Q. Leon or Lloyd Eason?

A. Yes, sir, that is correct.

Mr. Bangel: Lloyd?

Mr. Garrett: Lloyd Eason. She called him Leon in one of the papers.

By Mr. Garrett:

Q. Mr. Eason, I am attorney in this matter only representing the executors under this will?

A. That is correct, sir.

Q. I don't *reprpresent* you individually?

Mr. Bangel: If your Honor please, the record shows that.

Mr. Garrett: I know, but I want it to be clear.

By Mr. Garrett:

Q. I don't represent you individually or Turner White or anybody else, any of the beneficiaries. I have no contract or remuneration whatever?

A. None whatsoever.

* * * * *

Vol. IV

page 660 }

* * * * *

W. L. EASON,

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

DIRECT EXAMINATION.

By Mr. Garrett:

Q. Please state your name?

A. W. L. Eason.

Q. And you are also known as Lloyd?

A. Lloyd.

Q. Mr. Eason, where do you reside?

A. 139 Old Mill Road, Deep Creek.

Q. How long have you lived down there?

Vol. IV A. Since '54, November, '54.

page 661 } Q. Mr. Eason, you are named as one of the
executors under the last will of Miss Mary
Frances Eason?

A. Yes, sir.

Q. How long had you known her?

A. I have known her since about May of '55.

Q. Had you had any contacts with her from that time up until the time she died? If so, how frequently and where?

A. (Pause) We have visited at her place approximately once a month from about August of '55 up until her death.

Q. Go ahead.

A. And different times she would drive by our place and stop and visit us for a short time, maybe once or twice a year.

Q. And you say "our place." You mean your home in Deep Creek?

A. Yes, sir.

Q. Well, on the occasion that you visited Miss Mary at her place and she came by your home in Deep Creek, did you talk with her?

A. Yes, sir.

* * * * *

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* * * * *

By Mr. Garrett:

Q. Your wife's name is Mary?

A. Mary L. Eason.

Q. And is she related to Camillus Eason?

W. L. Eason.

A. She is his sister.

Q. Now, you are not related to Miss Mary yourself?

A. Not in any way, as I know.

Q. Now, on these visits that you made to her home, did anybody go with you?

A. My wife always went with me.

Q. Did you all have conversation with Miss Mary when you visited her down there?

A. Yes, sir.

Q. And how long would you say that you would stay there and chat with her?

A. We would visit on an average of about an hour or an hour and fifteen minutes, sometimes it was longer and sometimes it was shorter.

Vol. IV Q. When she came to your home there and
page 664 } visited around about how long would she stay? I
 know you don't know exactly. Give us some idea.

A. She would stay sometimes fifteen minutes, sometimes—I think one time she stayed about thirty minutes.

Q. Now, in these conversations that you had with her did she ever make any statements that Mr. Bangel asked? You heard him ask these witnesses about different things out of the ordinary. Did she ever talk to you about anything like that or make any wild statements to you?

A. No, she did not.

Q. What was her—as far as you could observe in talking to her, could you give the jury any idea as to her alertness?

A. I found Miss Mary to be very alert.

Q. When she came to your home was she driving or was somebody driving her?

A. On some occasions she would be driving and on other occasions Albert would be driving.

Q. Now, when is the last time that you saw her?

A. I saw her the Saturday before she died on the following Thursday.

Q. Do you know about what time it was or approximately it was?

A. It was shortly after twelve noon.

Vol. IV Q. Did you see Mr. Bryan; was he there at the
page 665 } time that you came or—

A. Mr. Bryan was there. He was standing in the yard,

* * * * *

W. L. Eason.

My Mr. Garrett:

Q. So, did you see Miss Eason on that occasion?

A. Yes, I did.

Q. Who was in the room at the time you went in?

A. There was no one. My wife went in with me and Albert opened the door and he let us go up to see her. He told us we could see her for a few minutes.

Q. What was Miss Mary's condition at the time that you saw her, was she in bed or up?

A. She was lying in bed and she had two pillows under her shoulders and head that raised her up kind of on an incline on the bed.

Vol. IV Q. Did you all have any conversation while you page 666 } were in there?

A. Yes, we did.

Q. Was there any thing out of the ordinary about the conversation?

A. Not anything at all.

Q. Did she make any statement to you about a will or anything of that sort?

A. If I remember correctly she assured me that day that I would be made one of the executors.

Q. That you would be made an executor?

A. Yes, sir.

Q. Did you agree to act as such?

A. I told her that I would do the best of my ability so help me God. That is the very words I told her.

Q. Were you left anything in the will?

A. No, sir.

Q. Do you remember Miss Mary making any remarks about Mr. Bryan, who had been in to see her?

A. She questioned me about Mr. Bryan. She asked me what I thought of him, and I told her that I did not know anything about him.

By the Court:

Q. What date was this, Mr. Eason, is that the Saturday before her death on Thursday.

A. The Saturday before her death on Thursday.

Vol. IV
page 667 } Mr. Garrett: That was the 24th, I believe. Yes, Monday was the 26th.

By the Court:

Q. Did you see Miss Mary after that, Mr. Eason?

W. L. Eason.

A. No, I did not.

Q. When did you first see the will that was presented for probate?

A. On the morning that it was put on record.

Q. Over here in the Clerk's Office?

A. Yes, sir.

Q. Was the will sealed, do you recall?

A. Yes, sir, I believe the secretary opened the seal.

Q. Who opened the seal?

A. I believe the lady that had taken care of the work broke the seal.

Q. In the Clerk's Office?

A. In the office, yes, sir.

By Mr. Garrett:

Q. Mr. Eason, this has been identified as the will. Is this the envelope that it was in?

(Handed to witness for examination.)

A. Yes, it is.

Q. And whose name is signed over the flap of that, what name is written over that?

Vol. IV A. "Mary F. Eason."
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Mr. Garrett: You may examine.

CROSS EXAMINATION.

By Mr. Allen:

Q. Mr. Eason, I understand that you knew Miss Mary Frances Eason from about the middle of '55 until practically until her death, and that during that period of time you saw her on an average of about once a month during those two years or a little more, is that correct?

Mr. Garrett: Was that more than two years?

Mr. Allen: Four years, I beg your pardon.

A. Yes, sir.

By Mr. Allen:

Q. Yes. Did she engage you in conversation on the subject of her two nephews, the doctors?

W. L. Eason.

A. She referred to them on only two occasions.

Q. Could you tell us whether on those occasions it was during the first part of the period that you know of or the latter part or the middle or about what time?

A. The way she referred to them one day she was talking about the family tree, and she was telling us who Vol. IV. the different ones were, and she did not quite page 669 } understand about my side of the family, and I did not know and I couldn't explain it to her. The only thing that I could tell her was that we came from different parts of the country, and she referred to Dr. Sam and Dr. Robert as being her brother's children, that each had one child.

Q. Did she give the names of the brothers?

A. Yes, she did.

Q. And did she say which one was the child of which?

A. Well, up until I met Dr. Sam and Dr. Robert at her funeral I had never seen them. The only thing that I can go upon was the names she had given me, and I could not distinguish between who was who until I, you know, could see them and tie them together that way.

Q. I am asking though did you get from her which one was the son of which?

A. I knew both of them were doctors, and I knew both of her brothers—she said one of them was a minister and one of them was a lawyer, and that is as far as the conversation went.

Q. Still, during the four years that you knew her visiting her on an average of once a month you couldn't get from her then which one was the son of which?

Vol. IV Mr. Garrett: Well, if your Honor please—
page 670

A. I wasn't interested.

Mr. Garrett: —that is not very fair, "you couldn't get from her. . . ."

By Mr. Allen:

Q. Well, did you get it from her?

A. I didn't try.

* * * * *

W. L. Eason.

By Mr. Allen:

Q. I am just trying to get from you, Mr. Eason, whether during the four years that you knew her and you visited her on an average of once a month and engaged in conversation with her, did you find out from her, Vol. IV page 671 } whether you tried or whether you didn't, did you learn from her which one was the son of which?

A. I did not give it any thought, Mr. Allen, I wasn't concerned. I knew she had two nephews that were doctors and that's about the limit.

Q. Did you learn from her during all those visits and conversations about what her attitude was over the years towards these two nephews?

A. (Pause) She expressed to me how close her family ties were. She commented about how both of them at one time had lived in her home, and she referred to them—she seemed to be proud of them.

Q. Can you tell us whether the conversation of that type were had during the early part of your acquaintance with her or during the latter part?

A. (Pause) It occurred in the early part.

Q. Did she ever make any statement to you to the effect that her brothers had taken money from her, taken property from her or stolen anything from her?

The Court: Do you mean brothers?

By Mr. Allen:

Q. I mean nephews; her brothers' children?

A. No, sir.

Q. What was the nature of the conversations in Vol. IV general that you had with her over those four page 672 } years?

A. Well—

Q. Five years, wasn't it?

A. We talked mostly about the farm because I came off the farm, and she lived on the farm and we had two things in common to discuss.

Q. Now, when you went there on the Saturday before her death, I believe you said she was in bed but she was sort of propped up on two pillows under her shoulders is that right?

A. Yes, sir.

Q. Do you know whether she was reading?

Stanley B. Bryan.

A. Reading?

Q. At any time that you were there?

A. I did not notice her reading any.

Q. Did you know whether she was propped up that way because of any difficulty in getting her breath?

A. No.

Q. You don't know why though she had those pillows under her shoulder?

A. No, I don't.

* * * * *

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* * * * *

STANLEY B. BRYAN,

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

DIRECT EXAMINATION.

By Mr. Garrett:

Q. Please state your name?

A. Stanley G. Bryan.

Q. And Mr. Bryan,, what is your profession?

A. I am an attorney.

Q. And what is your age?

A. I am thirty years old.

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Q. When did you commence the practice of law?

A. I graduated in 1953, a couple of months in between that I had to go in service, so the fall of '55 you would say I actively engaged in the practice of law.

Q. What school or schools did you attend?

A. I went to William and Mary and took my undergraduate work there, then I entered law school and got my law degree and undergraduate work both from William and Mary.

Q. Your office is in the City of Norfolk?

A. Yes, it's in the Board of Trade Building and I am a general partner of the firm of Moss and Bryan.

Q. Where do you reside?

A. I *know* reside in Norfolk County?

Q. In what area?

Stanley B. Bryan.

A. In the Deep Creek area.

Q. I believe you reside on Route 17, do you not?

A. On Route 17 about 2.7 miles south of the Deep Creek bridge.

Q. At the time of the will that we are speaking of here was executed where did you reside?

A. I resided in the City of Norfolk in Ballentine Place.

Q. And I believe since that time you and your wife, Mrs. Bryan, who testified, have been married and now
Vol. IV reside in Deep Creek?

page 675 } A. I was married shortly afterwards and I now reside in Deep Creek.

* * * * *

By Mr. Garrett:

Q. Mr. Bryan, answering Mr. Bangel's question which got to me, his statement from his seat, was she your secretary?

A. No, she was not my secretary nor has she ever been my secretary.

Q. All right, sir. Now, did you know Miss Mary Eason before you came into this matter in reference to preparing her will?

A. I did not know her. I never saw her until
Vol. IV that Saturday before she died.

page 676 } Q. And who communicated with you in reference to going down there to see her?

A. Mr. Camillus Eason called me at home, my home on Friday night. I think it was about 8:00 o'clock.

Q. Well, you can't say what he said. As you know as a lawyer you may not recite as a witness. Anyhow, pursuant to this telephone call did you go down to Miss Mary's home?

A. Yes, I met him the following morning, which was Saturday, at the Southern Shopping Center. I did not know exactly where she lived and it was rather a hard place to try to explain to anybody how to get to if you are not familiar with that part of the county. So, I met him at the Southern Shopping Center and parked my car and got in his car and we drove down there.

Q. Did you know Mr. Camillus Eason before that date?

A. I had never heard of him or seen him before.

Q. Did you ever have any business of any kind or nature with him?

A. None whatever.

Stanley B. Bryan.

Q. All right, sir. Then in his company you all, I believe you stated, drove down to Hickory?

A. That's right.

Vol. IV Q. Did you see Miss Mary?

page 677 } A. When we got to Hickory I met Albert Ahlgren. He went up to the room and escorted us up there. He went up there to see if she would see us or something to that effect, or tell her that we were there.

I went into the room and Mr. Camillus Eason introduced me to Miss Mary. Mr. Eason had a packet of papers. It was in a brown Manila envelope which he had handed me on the way down to Miss Eason's place. I did not read it exactly, I looked through it. It contained probably six or eight very old deeds that had been recorded, some of them dating back as much as 1890, in the very early part of the century, to various persons named Eason. I don't remember whether I gave him those papers or not, but I believe I did; I'm not sure.

We walked into the room; he introduced me to Miss Mary and either he gave her the papers or I gave them to her; I don't remember. I had them in my briefcase on the way down but I can't remember whether he gave them to her or whether I did. She then asked Mr. Eason to leave the room, and Albert had come in at the same time he did and he was sitting in a rocking chair across from the bed. So Mr. Eason proceeded to leave the room and she said "You too, Albert, close the door when you leave."

So, after they had gone out as I said, she asked me to open the door and see if they were downstairs, so
Vol. IV I opened the door to see if they were downstairs
page 678 } and then closed it and sat down in a rocking chair there.

Well, there was a great big Doberman pinscher there in the room and he came up and kept nudging me with his nose and so forth, so she asked me to holler for Albert to come up and get the dog. Well, before I could holler she grabbed a big school bell and started ringing it back and forth. Albert came and she told him "Get this dog out of here," and he took the dog out. So, then I sat down there and she began to ask me all kinds of personal questions.

Q. Well, just tell us.

A. How old I was, whether I was married, who my father was, how long I had been practicing law, where my office was

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and others right offhand I can't remember; more or less questions about my background.

After that, after she asked me questions for I don't know how long, maybe 20 minutes, she handed me the will that has been introduced here.

Q. Let's make certain we know what that is. That has been introduced as Proponents' Exhibit Number 11 in her handwriting, is that correct?

A. Yes, she handed me this bunch of papers which I said I had glanced over before. I did not know the exact contents. I think I had read maybe two or three pages of it scanning it. I did not know exactly what she Vol. IV wanted to talk to me about at the time, so I didn't page 679 } go into the papers in detail. She told me to read it. So, I read it over which didn't take too long, and then she asked me, she says: "Is that a good will?" I advised her that I was of the opinion that it was a valid will, but to avoid any confusion and if she expected any that she should write a new will and have it properly witnessed so there would be no contest as to whether this was her handwriting or not.

So, she said all right, then that is what I want to do. So, I began to ask her how she wanted her property to go. She said, "Well, I want it to go somewhat like this instrument." I don't remember exactly, so I began to take it in the first step using this as a guide. I kept this the whole time.

The first step was about her debts and funeral expenses which the will I drew contain the same provision. The second provision in this will pertain to her furniture and farm equipment located on the farm. I had read through this and she told me that she wanted Albert who had been with her for 40 years to be provided for and she wanted to leave him ten thousand dollars to be set up so that he would get \$50.00 a month for life, and I believe, starting ten days after her death he was to get \$50.00 a month for life, and if he went to his home in Sweden that upon his arrival in Sweden she wanted all his money sent to him in full if he

Vol. IV requested it. So, at that point I stopped her and page 680 } I said, I asked her why did she want to make Albert go to Sweden. I tried to explain to her that by putting the provision in here where he couldn't get but \$50.00 a month but he could get it in full if he went to Sweden that she was going to make him get on the boat, plane or something and go to Sweden so he could get his money

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and come right back. So, she told me that all his life he had talked about returning back to Sweden to see a brother or sister that he had over there, and this way he would have the opportunity to go and that she wanted it just that way and she didn't want it any other way.

So, then we went on through the will, and we got to, I think, the burial ground, so I asked her one provision about that, the thousand dollars. I told her the thousand dollars will last quite a while, what happens if Elva Eason dies in a few years. "Well, the bank will appoint somebody, never mind. I want the thousand dollars to take care of the family--

The Court: What happens if what?

The Witness: Elva Eason. He was the one that she had appointed for the burial ground.

By Mr. Garrett:

Q. Yes. Now, in reference to that, she had also provided for Albert in this will?

A. Yes, she provided that Albert's farm well,
Vol. IV she had bought and given to him, she told me, a
page 681 } piece of land containing approximately 30 acres
and had taken back a mortgage on it so that if
anything happened to Albert that she would get the land by
foreclosing the mortgage, and she wanted a provision put in
her will so that mortgage would be released upon her death.
And she also in this will had a provision in there that she
wanted her executor to sell Albert's farm, so I told her that
legally it was his farm and the executor could not sell it with-
out his say so, and she said, well what she meant was she
wanted her executor to help him sell it if he desired to. I ad-
vised her that since that had no real force and effect that we
not put it in the will and she thought about it and finally
agreed not to put that in the new will.

Now, Turner White, she provided for Turner White in
this will, and she said that Turner had been very kind to her
and her brother and worked on the farm for quite some while
and she wanted him to have \$500.00 in cash upon her death.
She also told me that she had given him the automobile a few
days before that or a week or so, I don't remember the exact
time, because she realized that she would probably never
be able to drive again and had no use for the automobile.

She also told me that she had given Turner White her por-
tion of the crop for that year. She told me it was on a one-

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third basis that she were sharing and she had told him to keep her one-third of the crop for that year.

Vol. IV As for her brother LaSalle, she gave him one
page 682 } thousand dollars in this will to bury him. It made
no provision for what should happen to the
thousand dollars if it was more than enough to bury him, and
I asked her well what do you want done with the balance if
it is more than enough to bury him. I explained to her that
interest might accumulate or something to that effect, and
she says "Well, you know good and well there is not many
funerals that will cost less than a thousand dollars," she says,
"but if you want to have it paid to his estate." So, that was
agreeable with her, so we had it made payable to her estate.

Q. Her estate or his estate?

A. His estate. Now, when we got to her nephews she
stopped at that point and she began to tell me about her two
nephews, Dr. Sam and Robert Eason. She told me that the
two boys, Dr. Sam and Robert Eason, had been almost like
sons to her, that she had practically raised them, that she
and her sister Sarah, I don't know whether she told me she
had provided the education for both, but I know she said one
of them; I don't remember which one that she and Sarah
had provided education for one of them. That LaSalle, her
brother, had married a woman which she called "an under-
world woman." She said that LaSalle married this woman
and hardly knew her name. That she had been married on

several other occasions and that he had disgraced
Vol. IV her and embarrassed her family and she said that
page 683 } she had said something or had been talking about
LaSalle's wife and LaSalle's wife had threatened
to sue her, and when she threatened to sue her she told me
that some lawyer in the Arcade was the one that LaSalle's
wife had been talking to and that she was going to sue her
for \$50,000.00.

She said that she called—I don't know which. I don't
remember whether it was Dr. Sam or Dr. Robert, one of the
nephews, and talked to him and they advised her to transfer
all of her property over to them and that they would give
it back after the trouble blew over, and that if the suit went
against her or she was successful that she wouldn't be able
to get any money.

So, she said she drew up the necessary papers and trans-
ferred all of her property to the two nephews. She then

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told me it wasn't many months after that before people were down looking at her timber and telling her that it was going to be sold; that she then went over and employed Mr. Garrett to bring a suit to get her property back. And she told me that it was compromised out of court and that she got her property back and that she gave Mr. Garrett \$5,000.00 for doing it.

She also told me at that time Sam and Robert had control of all of her property including her safe deposit boxes and that they had taken out over \$8,000.00 out of her boxes, and

she mentioned various banks—I believe the Mer-
Vol. IV chants and Planters Bank was one of them—and
page 684 } she wanted the provision in her will—incidentally,

when she told me about these two boys the tears just streamed down her eyes. She said they had hurt her so bad that she just did not know what to do. She also told me that she had tried within her heart to forgive these boys but she just couldn't find it to forgive them and she didn't want them to have anything of hers when she died.

Furthermore, she said she did not even want them to be notified the day she died. So, I suggested—and she also told me just like she told Dr. Rohm that these nephews were going to make trouble and try to break her will and that she had certain papers and letters and documents that she wanted put in order and kept straight so that if any contest arose that the jury, as she put it, of Norfolk County would know just what she wanted—so I suggested that if these two nephews were going to make a contest for her will that she leave them each \$500.00 with a provision in there that if they contested the will or participated in any way that they forfeit the \$500.00 and receive nothing.

She said, no, she didn't want them to have anything, and furthermore they wouldn't stop for \$500.00, there was much more involved than \$500.00. So she wouldn't go along with my suggestion on that.

I then suggested that legally she did not have
Vol. IV to give them anything, and she said, no, she
page 685 } wanted to mention in there—she had heard all

her life that as long as you gave them \$5.00 then it was adequately provided for and she wanted them to have \$5.00 and nothing more.

So, then it went on through the rest of this will and the provisions for her brother LaSalle. In this will she left a thousand to bury him with, and she told me that she had

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already provided for LaSalle to the extent that she had done all she ever was going to do for him insofar as she had paid his hospital bill, she had clothed him, she had fed him, she kept him on the farm, and she had even been sending money to him in Florida and had sent him money for a divorce, and when his wife sued him for nonsupport she said she had paid a lawyer for him then and that she was not going to leave him anything in her will because he had a pension which would take care of him and he probably wouldn't live many more years anyway.

Now, in this will she never did come right out and say "I hereby appoint so and so as an executor of my estate." I pointed that out to her and she said "Well, how many executors do you think I should have." I told her she could have as many as she wanted, so she says "I want Camillus Eason to be my executor because he is a fine man and he is strong and got a good character, and when this will is contested he will fight hard that—to see that it is

Vol. IV upheld."

page 686 } So, then I questioned her in this will as to who Leon Eason was. She told me Leon Eason lives down the road, it's Mary Lewis' husband. I said, "Well, who is he?" "Well, I call him Leon but his real name is Lloyd." Well, I had met him on one occasion and I knew of him; I did not know him personally. So, I asked her did she want Lloyd Eason to be her executor. She then said, "Yes, that will be two. I think I ought to have a third one, who would you suggest." I said, "Well, you have left two trust funds to the National Bank of Commerce, would you like the National Bank of Commerce to serve as the third executor?" She says "What about you, will you do it?" So, I asked her—I agreed to be her executor.

Now, after appointing the executors, I told her, I said, "Now, Miss Eason, if you have confidence in your executors you can save your estate a considerable sum of money by directing that no surety bond be posted by them." I told her that surety bonds usually ran about \$15.00 per thousand of the estate, and from what she had told me, I told her it would probably amount to as much as \$22,000.00 which would go to her residuary legatee, the Hermitage. So, she thought about it a while and then she said "All right, I don't want anybody to have to spend any money for a surety bond."

As far as what she left Camillus, in talking to her Miss

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Eason was a very proud intelligent woman. She
Vol. IV was very proud of the fact that her brother was
page 687 } Dr. Camillus Eason and that she felt that she
was very prominent in the community and had
a very prominent family tree, and she left Camillus F. Eason
in this will exactly what was in the other will to the extent
it was the old home place of Dr. Camillus F. Eason, and she
left that to him telling me that he was a fine man, that he
was a distant cousin and that she wanted him to have it be-
cause he was the namesake of Dr. Camillus F. Eason.

Now, the beech woods which was located—she pointed them
out to me on the other side of the highway, she left to the
General Hospital in this will putting a restriction in it that
it was not to be sold for any commercial value. I advised
her that perhaps it would be better if she would allow her
executors to sell this property and turn over the proceeds
to the General Hospital, and her reply to my suggestion was
this: "There are more trustees on the Board of Directors
of the General Hospital than there are executors in my will
and more heads are better than three. I want to leave the
woods to them and let them sell it and set up a memorial
fund," a heart fund, I believe, that was for her mother and
father.

I wasn't familiar with this property and so I had to ques-
tion her as to where it was, and she pointed it out through
the window the beech woods across the highway.

The provisions for Albert, as I told you,
Vol. IV were substantially the same, I believe. I don't
page 688 } think there was any changes in that. As a matter
of fact she wouldn't take my suggestion rather, of
not making him go to Sweden. She still put in her will that
I drew for her that for him to get the money in full he would
have to go to Sweden. I might say that she was a very head-
strong old lady and when she told you something she wanted
something that was exactly the way she wanted it, because
these suggestions I made, she did not pay a whole lot of
attention to all of them.

I made one other suggestion. I explained to her the diffi-
culties with land titles rather briefly, and I told her, I thought
it would be a good idea if she put a provision in her will that
anybody buying from her executors wouldn't be chargeable
with seeing that the money was applied to her wishes in the
will, and she considered that and then agreed that that be
put in her will.

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Now, everything that was to be left over, including all her money and all her land that she had not given away which, principally, was the N. C. Eason farm she wanted to go to the Methodist Hermitage Home in Richmond. She explained to me she and her sister Sarah had talked this over before her sister Sarah's death, and that they both agreed that when they died she would leave the Methodist Hermitage Home a large gift, and in the will here, just like in the one she drew before, that I have drawn one that was probated, Vol. IV she left all the residue of her estate after making page 689 } the gift to Albert, Camillus, Turner White, the burial expense for her brother, the burial yard, she left all the residue to the Methodist Hermitage as a memorial fund. I believe that was in memory of her mother and father—I have to look at the original will—I believe that was in memorial of her mother and father, I don't remember.

The Court: The original will?

The Witness: I mean the final will that was probated.

* * * * *

By Mr. Garrett:

Q. Let me see that.

A. Oh, yes, there was one other thing in this will. She had a provision in there which said "Having full confidence—"

Q. Well, suppose you find what you are referring to, which probably would be better than stating it out of mind.

A. (Reading) "I direct that my executor look after my brother and Albert Ahlgren. Knowing my executor as I do, his fine disposition, I leave these two Vol. IV page 690 } old men in his care."

Now, I explained to Miss Eason that that had no enforceable effect and it was just words in her will, and we talked about that for some little while, and I told her that if she expected any legal obligation other than what she had given in this will that she would have to spell it out. So, she thought about it and she says "No, just leave it out then because I have given them all I want to give them." And that was left out of the original draft after her request.

By The Court:

Q. The final draft?

Stanley B. Bryan.

A. The final draft.

By Mr. Garrett:

Q. Now, Mr. Bryan, having gone over what appears to be the holographic will here with her on Saturday, did you return to your office Saturday to draw any will or anything of that sort?

A. No, I did not. I did not return to my office until Monday morning. Ordinarily, unless I can't help it, I usually don't work Saturdays.

Q So that you returned to your office on Monday and prepared the will which has been introduced here, the probated will?

A. Yes. I might add that her concern she told Vol. IV me at that meeting on Saturday, she says, "I am page 691 } an old woman, I have a very bad heart, I could die at any minute." Well, she didn't look that sick. When I was preparing this will I was trying to get Albert's business straight. She has Albert's in three different places in this will, so I said "You left Albert \$10,000.00." And she says "Well, I also left him my furniture and so forth." And I said, "No, you didn't leave that." "Yes, I did, you read it a little further." So, I flipped a couple of pages, I said "No, Ma'm, it's not here." So, she says "Give it to me." I handed it to her and she sat up in bed without any support at all and she thumbed through it and got to some pages back in there and she said "Here it is right here." She didn't have any glasses on or anything and I was rather surprised that she could read that well with no glasses being as old as she was.

Q. Now, Mr. Bryan, when you left there did Mr. Camillus Eason drive you back in town?

A. Yes, he did, he drove me back to the Southern Shopping Center where I parked my car.

Q. Did you reveal to him the conference, the nature of the conference or the substance of the conversation that you had with Miss Mary?

A. I did not. At that time when I talked to Miss Mary she said to me "Promise that you won't tell anybody what is in that will," and I assured her that it would Vol. IV not be revealed. And also she was concerned, as page 692 } I started to tell you, that she might pass away before I had this will drawn, so she asked me would I hurry back with the will as soon as possible because

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she wanted to have her affairs and papers in order before she should pass away, and I told her that I couldn't get back any sooner than Monday evening, would that be convenient. She said, yes, and asked me what time I thought I could get there. I told her I could not get there before seven o'clock.

Q. Well, now Mr. Bryan, when Mr. Camillus Eason drove you back to town did you reveal to him the conversation you had in private with Miss Mary or what she had discussed with you?

A. I did not.

Q. Did he make any effort to find out?

A. He did not at that time; however, he called me, I believe on a Tuesday and asked me had Miss Eason taken care of her affairs and I promptly told him that I could not tell him what Miss Eason had done, that it was all confidential between Miss Eason and myself.

Q. Had Mr. Camillus Eason paid you anything or offered to pay you anything for your services?

A. No, sir.

Q. You were looking to Miss Mary?

A. Yes, sir.

Vol. IV. Q. Now, when you drew this will on Monday, I
page 693 } believe you said, you went back out there Monday
evening?

A. I arrived there about 7:15.

Q. Who was with you?

A. My fiancée at that time, now my wife.

Q. Who has testified already?

A. Yes. I knew about this Doberman pinscher that I told you, and it was extremely dark. The yard is covered with large trees and it is so dark you can hardly see how you are walking through the yard. It's a great big yard and it sits back from this little side road and quite some distance from the main highway. So, I told my fiancée—

Q. Well, you can't say what you told her. All right.

A. My fiancée stayed in the car until I went up on the porch and Albert came to the door. I then got my fiancée and we went in the house. My fiancée stayed downstairs with Albert while I went upstairs. Albert went up and told her I was there and evidently she agreed to see me because I went up there.

Albert, when he took me up there, again sat down in the rocking chair and Miss Eason said "Albert, leave the room." I might as well tell you this now before I forget. On Satur-

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day when I was discussing the will with her Albert came in with a glass of water on a tray and she says
Vol. IV “Albert, I didn’t ring for you to bring me any-
page 694 } thing, you get out of here,” and chased him out
 again.

Q. In other words the conversations you had with her were in the privacy of you and she?

A. Right.

Q. All right, sir. Now, when you got in there on Monday night did you have with you the will that has been introduced in evidence here?

A. Yes, I had the will with me and I naturally, when I first went in the first thing I asked her, I asked her how she was feeling, and she told me about the same, that she was nauseated, she had been nauseated that day and felt a little sick in her stomach. So, I sat down in the rocking chair beside her bed and I handed her the will.

Q. Now, you say the will; do you mean the typewritten will?

A. The typewritten will which I had prepared at her request. I handed her the will and she looked at it and she said “You read it to me.” So, I read the will and every once in a while she would stop me and she would say “Read that again.” Some provision, the exact ones I don’t remember, she made me read as many as three times, and each time she would say “That is just the way I want it.” I do remember one provision she made me read three times, and
Vol. IV that was the provision about her two nephews, and
page 695 } she said twice that “That is exactly how I want
 it.”

After I read the will to her I explained to her that we needed at least two witnesses but that usually I always got three. So she said “All right, who shall we get?” She said “How about a darkie?” I said “Who do you have in mind?” “Turner and his wife.” I said Turner is a party to the will, you better have some independent party.” She says “What about his wife?” I said, well, she would do but she is down the road or something to that effect and how are you going to get her. “Well, I will send Albert after her.” So I said “I have my fiancée with me, if it is agreeable with you I am sure she would act as a witness.” So she said all right.

Well, I had known on the next farm James and Edgar White many years back. I hadn’t seen them for some while but I knew they did live down there just one farm away by

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passing their farm, so I spoke to Miss Eason, I asked her did she know James and Edgar White and she said "Yes, they are fine boys, they live over on the farm" and she pointed toward the Norfolk side. I said "Would you like for them to witness your will?" She says "They are good honest boys, if they will come I will send Albert or Turner," I forget which one, "after them." Well, I says "I know them, I will drive over there and get them." So I handed her the will and told her to look it over while I Vol. IV was gone to see if it was exactly what she wanted, page 696 } and that I would go see if the two white boys would witness her will.

I took my fiancée with me and we went over to James and Edgar White, which is just a little ways down the road, I told them—

Q. You can't say what you told them. Anyway you went—

A. Anyway—

Q. —did you go over there and did they come back with you?

A. They came back with me and this was about, I guess it was about 8:15 or maybe 8:30, I don't know the exact time, but it was about 8:30, and we went into the room.

I introduced the White boys. "Yes, I know them," and she inquired as to—she was talking to Edgar, I believe. She inquired as to his mother and I introduced my wife. And I don't believe she had anything to say to my fiancée then. And she said "Boys, this is my will, it is the way I want my property to go." She says "There is so much suffering in the world I am going to leave it where it will do the most good." And that was about the extent of the conversation.

She had the will. I then proceeded to hand her a fountain pen. She says "No, I have one in the drawer," and she reached over the drawer and got an old black Vol. IV fountain pen that looked quite ancient and tried page 697 } to write with it but it wouldn't write. So, then I handed her my fountain pen and my briefcase. She put the briefcase under the will and without any assistance from anyone she signed her name just as you see it on the will. Mr. Garrett has it in his hand.

At the time she signed it my wife, who was then my fiancée, was in the room, James White was in the room, Edgar White was in the room, Albert was sitting in the rocking chair over on the far side of the bed, and I was in the room. Each

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signed it and then—the witnesses signed it after Miss Mary signed it all in the presence of each other.

Q. Now, Mr. Bryan, after the execution of this will did you have this folder down there with you?

A. Yes, after she signed the will she told me, she says “I want to talk to you a minute,” so everybody stepped out of the room and I closed the door. She says “You know I told you there is going to be trouble when I pass away. My two nephews are going to make trouble.” She says, “I think you are a good honest boy and I want you to do everything in your power to uphold my will and see that it is not broken.” I promised her that I would. I then asked her what she wanted to do with this will. She says “Well, somebody might steal it or it might get lost, will you keep it?” I said “Yes, I will be glad to put it Vol. IV in a safe deposit box, I have several others in page 698 } safe deposit boxes.” So I then in her presence sealed it up and asked her if she would sign her name across the back flap here (indicating) which she did. I then told her I would take it and she said “Also take these papers,” and she handed me the packet of papers which had all those will and so forth in it. However, it did not at that time have the will in it because I already had that.

Q. You are referring to the holographic will?

A. The written will, I had already taken that to the office, but she handed me the additional papers which contained old recorded deeds and plats and said “Keep these with you.” I then took the papers and the will and on my way out the last thing she told me, she said “Now that I have gotten my affairs in order I won’t be here many more days,” and I left, and I did not see her, Miss Eason, after that.

Q. Was—did anybody go down there with you except you and your fiancée that night?

A. No one.

Q. Was Camillus Eason there at any time during the execution of that will?

A. He was never there other than the first Saturday, and while I was talking with Miss Mary, he was not in the room or in the hall.

Q. Mr. Bryan, was this her free and voluntary act in executing this paper?

Vol. IV A. Yes, sir.

page 699 } Q. From your observation of her and her conversation with you was there anything to indicate to you that she was not competent to execute a will?

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A. No, sir, she was a rather remarkable alert old lady. I only hope that I am as intelligent and alert as she was when I get to be her age. I might add that I asked her her age, and she looked at me and grinned and said "I'm over 21."

Q. Now, when this will was taken back by you, I believe, and I am referring to the will that was probated, Proponent's Exhibit 1, was that kept in your possession until it was delivered to the Clerk's Office?

A. Yes, sir, I kept that will and had the papers in the safety deposit box. I never did put them in there, I was in the process. I received that will on Monday night and she died, the best I know I received a telephone call, I don't remember from whom.

Q. Well, it's immaterial, but you were notified?

A. I was notified about Thursday—I just got home, I think about 5:30 or quarter to six. I received a telephone call telling me Miss Mary had passed away.

Q. Well, now, when this will was offered for probate did you bring it over here?

A. I brought this will over for probate and I Vol. IV handed Miss Emory that will in the envelope page 700 } sealed up with Miss Eason's signature across the flap, and in the presence of myself, Mr. Camillus Eason, Mr. Lloyd Eason and my fiancée, the will was opened and offered for probate.

Q. Miss Emory that you referred to is the deputy clerk downstairs?

A. Yes, sir.

Q. Mr. Bryan, it has been called to my attention while you have been trying to recite all these things from memory when you spoke of the residue going to the Methodist Home in the will that was probated, it is also true, is it not, under paragraph TENTH that there is a specific devise to the Methodist Home of 350 acres of land?

A. Yes, she wanted the Methodist Home to have the tract of land that was known as the N. C. Eason tract. As best she could explain it to me this whole tract of land at one time, I believe was the Cornick Farm and that it had either been divided up through financial difficulties and been put back together by she and her sister Sarah and Dr. Camillus Eason, and the N. C. Eason tract was a division that belonged to N. C. Eason. The Camillus F. Eason tract is another tract but she had put it all back together by some means and it was one farm.

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Mr. Garrett: All right, sir, you may examine.

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CROSS EXAMINATION.

By Mr. Allen:

Q. Mr. Bryan, I believe you say you are a graduate from Washington and Lee?

A. No, sir, I went to William and Mary.

Q. You went to law school elsewhere, didn't you?

A. No, sir.

Q. I beg your pardon.

A. I spent the whole time at William and Mary.

Q. That's all right, that's a good law school. I misunderstood you. And you have been practicing how long.

A. Actively since 1955. I passed the bar in January of 1953 and graduated the following June.

Q. Have you had much experience in writing wills?

A. I would say a fair amount. I write quite a few wills.

Q. Probably you have, say a dozen, fifteen, twenty, twenty-five?

A. I would go further than that. I have written quite a few. Probably, it would be a guess, I'd say somewhere between 50 and a hundred.

Q. Yes. Now, I understand you had this holographic will before you as sort of a guide and you talked with her and you two together wrote the will and showed you how she wanted it written?

Vol. IV
page 702 } A. Yes. As you notice the holographic will where she speaks of the provisions for, say Albert, she had that in three different places, I believe, and that was what I mentioned. I had that somewhat as a guide.

Q. And the holographic will was written on December 2nd, '57, all of the pages, I believe?

A. Well, it was dated. I mean I don't know.

Q. Dated that day, yes. The pages are numbered consecutively, I believe?

A. Not all of them.

Q. Well, no, the last one is not numbered, the next to the last is not numbered, and that one is not numbered. Only the first four or five are numbered, I believe. Did you inquire of her as to whether she wrote all of these memoranda?

Stanley B. Bryan.

A. I asked her did she write that will and she said yes. I was rather amazed at a person without legal training could write such a will.

Q. Do you know whether or not she had any old forms of other wills before her?

A. No, I don't know that she did. I know she had made previous wills. She told me she had but she said she had torn it up.

Q. Yes. Did you come into possession of all Vol. IV the papers and letters and all that you found page 703 } there?

A. They were delivered to me.

Q. Yes. Among them were many letters from the two nephews?

A. Yes, it had letters from Dr. Sam and Robert.

Q. About how many?

A. It wasn't very many.

Q. Did you ask her whether all of these papers were written at the same time or not? They are all dated the same day.

A. No, I did not ask her that.

Q. On page 4 of this holographic will I notice she states: "I give my nephew Dr. Sam Eason of Summit, New Jersey the sum of \$5.00. Dr. Sam took out of my lock box Merchants and Planters Bank, Berkley, Virginia now taken over by the National Bank of Norfolk a big sum of money, also from Southern Bank, Norfolk, Virginia over \$8,000.00." Did you make any inquiry as to whether that was true?

A. What did you mean, at that time or did I check on it later?

Q. Did you check on it before she signed the final draft of the will to see whether that was so or not?

A. No, I didn't check.

Q. You did not?

A. I had no reason to.

Vol. IV Q. Now, she also states on the same page: I page 704 } give to my nephew Dr. Robert Eason the sum of \$5.00 as he has a large sum of money of my estate which he took from Virginia Bank of Norfolk." Did you check on that to see whether there was any truth in it?

A. Mr. Allen, I did not check on that.

Q. So the result of it is you carried those provisions to that effect in the final draft of the will without knowing whether or not those statements were true?

A. I made the final draft of the will as she wanted it.

Stanley B. Bryan.

Q. But that wasn't the question I asked you.

A. Well, I carried the provisions that she told me to put in it.

Q. Well, you wouldn't knowingly put a will on record, a false statement of anybody if you knew it, would you?

A. No, sir, I don't think I would if I actually knew it was false.

Q. Certainly if you had known that a statement of that kind was false you wouldn't have put it in the will, would you?

A. Not unless she insisted.

Q. Well, even if the writer of a will was trying to give the true intent and picture of a will you would

Vol. IV not?

page 705 } A. If my client insisted that I put it in there I would put it in. I would try to discourage him, but if they insisted I would put it in there.

Q. So you are saying then that you would write a will for a person, a last will and testament based on a false statement?

A. No.

Q. Are you saying that?

A. If you insisted that I put it in there. I would do it unless I knew that she did not know what she was doing.

* * * * *

REDIRECT EXAMINATION.

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page 706 }

By Mr. Garrett:

Q. Mr. Bryan, I failed to ask you that after you took the original will if there was any copy of the will.

A. Yes, I left her a copy of the will telling her that if she desired to make any changes in it to have Albert, Turner or somebody call me and I would come down there.

Q. Was that unsigned?

A. It was an unsigned copy, a carbon copy of the original. She took that will and put it in a night table beside her bed.

Q. When you say that "will" you mean that copy?

A. Yes. And that copy was delivered to me with these papers that Mr. Allen asked me about.

Q. That was after her death?

A. After her death.

Allen J. Gordon.

Mr. Garrett: All right, sir, come down.

If your Honor please, there is a letter here from Samuel W. Eason to Miss Mary Frances Eason dated October 24th, 1956 which is stipulated can be introduced in evidence.

The Court: It will be Proponents' Exhibit Number 12.

Mr. Garrett: This letter is dated October the Vol. IV 24th, 1956 from Dr. Samuel W. Eason:
page 707 }

(Reading) "Dear Aunt Mary,

"I am glad the controversy is over and settled in your favor. If there is anything that I can do for you I will be glad to do so. I am returning the pin you wanted under separate cover.

"As ever,

"Sam.

"Incidentally, your pastor Reverend Gardner is a wonderful man."

At the bottom in Miss Mary's writing are the words: "He never returned my pin or anything. This is just one of his lies, can be proved by postmaster."

Mr. Gordon, will you go up and take the stand?

If your Honor please, I have stipulated between counsel that while he was in the courtroom the only questions that will be directed to him would be in connection with a tax return.

Mr. Allen: That is all right.

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page 708 }

ALLEN J. GORDON,

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

DIRECT EXAMINATION.

By Mr. Garrett:

Q. Please state your name?

A. Allen J. Gordon.

Q. And Mr. Gordon, what is your profession?

A. Attorney.

Q. And how long have you been practicing?

A. I have been a member of the bar since 1953. In 1953 I went into the service for three years. After that I did graduate work at Columbia University and received a mas-

Allen J. Gordon.

ters in law in taxation from New York University and did postgraduate work towards a Doctorate of juridical science in taxation.

Q. Did you get your undergraduate or bachelor of laws degree?

A. I got my undergraduate degree. I received an AB from the college of William and Mary and I received my law degree from William and Mary College at Williamsburg, Virginia.

Q. Mr. Gordon you have been associated with Vol. IV my office how long?

page 709 } A. Since, I think, May or June of 1956.

Q. Did you prepare the 1956 tax return for Miss Mary Eason for the year 1956?

A. Yes, sir.

Q. It has been claimed in this case, and in the letter of Dr. Robert Eason, or suggestion that she would have had to pay a tax of \$20,000 on the sale of that timber; is that true?

A. No, sir.

Q. Did you prepare her return?

A. Yes, sir.

Q. Was it necessary to pay any tax?

A. She owed no tax whatsoever. She did not pay any state income tax or federal tax on the transaction because of the basis she had for the property.

Q. Was it not treated as a sale of capital assets?

A. Yes, on a decreaseive basis.

Mr. Garrett: All right, sir you may examine.

CROSS EXAMINATION.

Vol. IV My Mr. Allen:

page 710 } Q. Has that income tax return been reviewed by the Revenue Department and approved?

A. You want to get into hearsay?

Q. No, I am asking you.

A. Well, it's hearsay. I can't answer it. You are asking me something that I have to relate hearsay to.

Q. Well, now, I will ask you this. You and Mr. Garrett represent the executors?

A. Yes, sir.

Q. Have the Internal Revenue men come to your office or

Allen J. Gordon.

to the executors? If you know. If you don't I will ask Mr. Garrett. And reviewed that tax return?

A. No, sir.

Mr. Allen: That is all.

REDIRECT EXAMINATION.

By Mr. Garrett:

Q. That was filed in 1957?

A. Yes, sir.

Q. And no contest or question has ever been raised about it, has it, Mr. Gordon?

A. It was filed January, 1957, very early in Vol. IV '57 for the 1956 income.
page 711 } Mr. Garrett: All right.

RE-CROSS EXAMINATION.

By Mr. Allen:

A. Are you a tax lawyer?

A. Yes, sir.

Q. Isn't it true that the Internal Revenue Department comes around once every three years?

A. The statute of limitations is three years so the three year period has already expired.

Q. Yes, but that isn't true as to a person dying, is it?

A. Yes, sir, the only extension is if there is an understatement of income by 25 percent, and here we stated all the income. It is extended to six years. Unless there is fraud, then it is extended forever.

Q. No limitation as to fraud?

A. No limitation as to fraud. But here there was full disclosure of the transaction showing \$57,000.00, showing your fee of \$5,000.00, Mr. Garrett's fee of \$5,000.00, and

Mr. Willcox' fee of \$2,500.00 and her basis for Vol. IV the property, how she acquired it and so forth.
page 712 } Q. And you haven't heard anything from the returns?

A. Yes, sir, I have talked to somebody about it since.

Q. I don't mean hearsay. You haven't—

Mr. Garrett: Well, how can you hear something unless it is hearsay.

Dr. Robert R. Eason.

By Mr. Allen:

Q. You haven't had any official notice one way or the other about it, is that right?

A. I mean I made inquiry about it.

Q. I asked you if you had had official notice.

A. No, sir, I haven't.

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Mr. Garrett:

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Would your Honor mark these two checks as exhibits?

The Court: Exhibits 13 and 14, Proponents.

(Received and marked in evidence by the Court as Proponents' Exhibits 13 and 14.)

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DR. ROBERT R. EASON,

a contestant, recalled as a witness on his own behalf, having been previously sworn, in rebuttal, was examined and testified as follows:

DIRECT EXAMINATION (Rebuttal)

By Mr. Allen:

Q. Dr. Eason, in this exhibit marked Proponents' Exhibit Number 11, which is Miss Mary Frances Eason's holographic will, I believe it is referred to as such, there is a statement over her signature under date of December the 2nd, 1957: "I give

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page 715 }

Dr. Robert R. Eason.

to my nephew Dr. Robert Eason the sum of \$5.00 as he has a large sum of money of my estate which he took from Virginia Bank, Norfolk, Virginia." Is there any truth in that statement?

A. No, sir.

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page 716 }

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(IN CHAMBERS).

Mr. Garrett: May it please the Court, on behalf of the executors for the will we respectfully move that the evidence be stricken on the part of the *constestant* on the grounds that there is not sufficient evidence before the jury which would justify the jury in holding that the will offered for probate is not the last will and testament of Mary Frances Eason.

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The Court: I understood yesterday afternoon that you are not contending any undue influence.

Mr. Allen: No, we are not going to ask that.

The Court: Fraud, the same thing; no evidence of fraud here.

Mr. Allen: No evidence of fraud.

The Court: And no evidence of non-execution of the will.

Mr. Allen: No, sir.

The Court: Those three things.

Mr. Garrett: And no evidence of revocation of the will.

The Court: No, none on revocation.

Mr. Garrett: That is our motion, if your Honor please.

The Court: Well, I understand the contestants concur in

part of the part I named, that the evidence as to the matters that I named there should be struck.

Mr. Allen: We stipulate that the only issue Vol. IV here is her competency and, of course, that would page 720 } include whether she had made it under delusion.

The Court: Well, yes. Well, the motion is overruled except as to revocation of the will, as to execution of the will, as to undue influence and as to fraud. In those respects the motion is sustained. As to all others it is overruled.

Mr. Garrett: We except to the action of the Court.

Mr. Allen: I want to put in the record a statement in connection with Mr. Willcox. On yesterday the question arose as to the competency of Mr. J. McBryde Webb to testify to confidential communications between himself and Miss Mary Eason. After some discussion of the matter, as the record will show, the Court ruled that Mr. Webb could only testify to transactions and conversations where the three of them were present and overruled the contentions of contestants that no privilege existed between attorney and client in will contest cases where no claim against the estate was involved.

During the course of that discussion it was Vol. IV stated that Mr. Willcox, Mr. Thomas H. Willcox, page 721 } Jr., who was to be called as a witness, and the same would arise, and the Court, as we understand it, stated that his ruling would be the same. Mr. Webb was placed on the witness stand and testified only as to the matters which the Court had ruled were admissible, and then the subjects which contestants claimed they expected to show was stated in open Court by counsel and a list of the subject concerning which Mr. Webb would testify about was filed in open Court in the absence of the jury.

We understood that at some later time we would be permitted to state what Mr. Willcox was expected to testify to and we now ask the privilege of stating that if permitted Mr. Willcox would have testified that he saw Miss Mary Eason for the last time about the middle of the year 1958; that following the compromise agreement in this Court testified she came to see him numerous times and consulted him

and that he had an opportunity to observe her Vol. IV demeanor and also her capacity to enter into busi- page 722 } ness transactions. He, many times following the compromise agreement down to the middle of 1958 discussed matters of a business nature with her and was of the opinion that she was not competent to enter into

any business transactions of importance such as disposing of her large estate.

The Court: It is true that the Court ruled in regard to Mr. Webb, attorney, that he could not testify as to matters of privilege between him and Miss Eason; and it is also true that the Court indicated that the same ruling would be made in the case when Mr. Willcox was called to testify. However, at no time did the Court preclude counsel for the contestants from offering the testimony of Mr. Willcox in the absence of the jury for the sake of completing the record.

For that reason I think that the opportunity has been lost to counsel for the contestants to complete the record.

Mr. Garrett: Your Honor then will sustain a motion that that be stricken as any part of this record?

Vol. IV The Court: I am bound to insofar as I am page 723 } able.

Here is my point, Mr. Allen. When Mr. Willcox left here yesterday you and Mr. Bangel conferred. I was anticipating that you would then ask for your offer of his testimony in the absence of the jury. No such request was made and I assumed that you had for reasons of your own decided it was inadvisable.

Mr. Allen: Judge, I don't want to disagree with you at all, but I was certainly under the impression—now, how I got under it, I don't know. Well, you all were in a hurry to get on with the case. I was under the impression that I did not have to do that at that moment but I could do it at some later date. All I was going to do was do exactly what I did with Mr. Webb, to vouch what he testified to.

The Court: Mr. Webb himself had this memorandum and there was a whole lot to do about that, and Mr. Willcox had his own memorandum. He stated he had nothing except his recollection.

Vol. IV Mr. Garrett: Judge, I am trying to get a page 724 } word in here to correct the statement made by Mr. Allen, which I'm sure he did not make intentionally. He said you had ruled that the three of them had to be present each time that any conversation was had. You only ruled, as I recall it, that any conversation that she had in the presence of any other person with the attorney would be admissible.

The Court: That's right.

Mr. Allen: Oh, well, I'm wrong.

The Court: I think you intended—

Mr. Allen: Sure, I'm wrong about that. Your ruling was

that if any other person was present then the privilege was destroyed.

Mr. Bangel: If your Honor please, in view of the fact that there seems to be an honest misunderstanding between the Court and counsel would your Honor bear with us while we have Mr. Willcox come over here and testify in Court not in the presence of the jury as to what Mr. Allen said he vouches for?

The Court: After the case is submitted to the Vol. IV jury and while the jury is considering the case, page 725 } if counsel desire to complete the record with Mr. Willcox they can offer it then. I am not going to delay anything now.

Mr. Bangel: Would your Honor do this. Allow us to file an affidavit of Mr. Willcox among the papers being things he would testify filed by way of an affidavit in the papers?

The Court: Well, it might be that counsel for the other side would want to cross-examine Mr. Willcox even though it is not part of the record. But if the Court of Appeals would determine that is should be in the record then they would want that cross-examination in there, so I wouldn't allow the affidavit. That is as far as I can go.

Mr. Allen: We want to save the point because we are not certain we can get Mr. Willcox. I have to try. I haven't spoken to him.

The Court: You had him here yesterday.

Mr. Allen: I know, but I let him go under mis- Vol. IV apprehension, honest motive or anything else. I page 726 } can only go by what I had in my mind. I'm surprised.

OBJECTIONS AND EXCEPTIONS TO THE INSTRUCTIONS.

Mr. Allen: Counsel for the contestants object and except to the action of the Court in granting Instruction Numbered P-7 concerning the peculiar weight to be given to the witnesses present at the execution of the will upon the ground that the evidence of those witnesses themselves is not sufficient to justify such an instruction. The two White boys had not seen the lady for sometime and did very little talking to her at the time.

Mr. Bangel: The contestants object and except to the Court granting Instruction Number 5 on the ground that

singling out part of the evidence and telling the jury that the part of the evidence so singled out should be given great weight.

Vol. IV Mr. Allen: Counsel for contestants object and except to the action of the Court in refusing Instruction 3-B offered by contestants upon the ground that the evidence of the attesting witnesses is such that this instruction is necessary in connection with the instruction given at the instance of the proponents in order to enable the jury to fairly appraise this particular testimony.

None of the attesting witnesses showed sufficient familiarity with the testatrix, nor stated that they had sufficient conversations with her to really judge her mentality at the time or capacity to make a will.

(Whereupon the Court and counsel for both sides returned into the court room. The Court instructed the jury; counsel for both sides made their closing arguments to the jury; the jury retired to consider their verdict and returned with the following:)

Vol. IV. “We, the jury find that the paper writing offered page 728 } in evidence dated October 26, 1959 is the true last will and testament of Mary Frances Eason, deceased,

(Signed) “WADE E. LONG,
“Foreman.”

(Whereupon counsel for the contestants made a motion to set aside the verdict as contrary to the law and the evidence. The Court denied the motion, to which action of the Court counsel excepted.)

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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