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Clerk, Supreme Court of Appeals
Richmond, Va.

Record No. 4988

In the Supreme Court of Appeals of Virginia at Richmond

WILLIAM MERRITT PARKER, JR.

v.

SUSIE MAE PARKER HARCUM, ET AL.

FROM THE CORPORATION COURT OF THE CITY OF NORFOLK

RULE 5:12—BRIEFS.

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

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

HOWARD G. TURNER, Clerk.

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

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 4988

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 28th day of January, 1959.

WILLIAM MERRITT PARKER, JR., Appellant,

against

SUSIE MAE PARKER HARCUM, ET AL., Appellees.

From the Corporation Court of the City of Norfolk

Upon the petition of William Merritt Parker, Jr., an appeal is awarded him from a decree entered by the Corporation Court of the City of Norfolk on the 2nd day of September, 1958, in a certain chancery cause then therein depending wherein Grover C. Franklin, Administrator of the Estate of William M. Parker, deceased, was plaintiff and the petitioner and others were defendants; upon the petitioner, or some one for him, entering into bond with sufficient security before the clerk of the said corporation court in the penalty of three hundred dollars, with condition as the law directs.

RECORD

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* * * *

DECREE DETERMINING HEIRS AT LAW AND DISTRIBUTEES.

This cause came on upon the 28th day of July, 1958, to be heard *ore tenus* by the Court upon the merits, upon the bill of complaint of Grover C. Franklin, administrator of the estate of William M. Parker, deceased, upon the separate answers of William Merritt Parker, Jr., and Ava Virginia Parker Franklin, upon the joint answer of Paul Dalton Parker, Frank Talmage Parker, Gordon Vann Parker, Susie Mae Parker Harcum, Louise Parker Bunch, and Edward C. Parker, upon the evidence taken in open Court, and was argued by counsel.

Upon consideration whereof, it appeared to the Court that that certain written instrument dated October 17, 1949, filed with the bill of complaint as "Exhibit A" is not witnessed by two witnesses, nor is it wholly in the handwriting of the decedent; that possession and control of the $5,000.00 in Full Paid Share Certificates of the Mutual Federal Savings and Loan Association of Norfolk was retained by

page 24 } the said William M. Parker, deceased, after the execution of the aforesaid written instrument; that by a decree of the Circuit Court of the City of Norfolk, Virginia, entered on the 21st day of June, 1932, Lucille H. Davis Parker, now Lucille Davis Giddings, was divorced from the bond of matrimony from the deceased, William M. Parker; that the burden of proof on the claim of William Merritt Parker, Jr. that he is the son of the deceased William M. Parker, that the said decedent acknowledged the said William Merritt Parker, Jr. as his son, and that he is entitled to the balance of the estate of the decedent is upon the said William Merritt Parker, Jr., and the Court is of opinion that he has failed to sustain said burden; that at the time of his death, the said William M. Parker was survived by six brothers and five sisters, namely, Raleigh C. Parker, James Leonard Parker, Paul Dalton Parker, Edward Carlton Parker, Frank Talmage Parker, Gordon Vann Parker, Etta Parker Redd, Susie Mae Parker Harcum, Louise Parker Bunch, Ava Virginia Parker Franklin and Mary Ethel Parker Ball, all of whom are now living; that the decedent, William M. Parker, was predeceased by his father, James Cornelius Parker, and his

mother, Alexzena Riddick Parker, and by the only other brother and sister he had, Lloyd Parker and Myrtie Frances Parker, and that the said deceased brother and sister died without ever having been married and without issue; that the decedent, William M. Parker, never married anyone other than the aforesaid Lucille Davis, and was unmarried at the time of his death; that the aforesaid William Merritt Parker, Jr., has failed to establish that the decedent acknowledged his as his son; and that the decedent never had any other child.

page 25 } It is accordingly ADJUDGED, ORDERED and DECREED:

1. That the instrument executed by deceased, William M. Parker, dated October 17, 1949, is not a will and the said deceased died intestate as to his entire estate.

2. That the written instrument executed by deceased, dated October 17, 1949, did not amount to a gift to Ava Virginia Parker Franklin of $5,000.00 in stock of Mutual Federal Savings and Loan Association of Norfolk, and the said stock was a part of the deceased's estate at the time of his death.

3. That Lucille Davis Giddings is not entitled to any amount by inheritance from the deceased.

4. That William Merritt Parker, Jr., by reason of his failure to carry the burden of proof upon him to prove that he is the son of the deceased, William M. Parker, and that said deceased acknowledged him as his son, is not an heir-at-law and distributee of the deceased and, therefore, is not entitled to any amount by inheritance from the deceased.

5. That the heirs-at-law and distributees of the deceased, William M. Parker, are his brothers and sisters living at the time of his death, namely, Raleigh C. Parker, James Leonard Parker, Paul Dalton Parker, Edward Carlton Parker, Frank Talmadge Parker, Gordon Vann Parker, Etta Parker Redd, Susie Mae Parker Harcum, Louise Parker Bunch, Ava Virginia Parker Franklin and Mary Ethel Parker Ball, in the proportion of one-eleventh (1/11) each and Grover C. Franklin, administrator of the Estate of William M. Parker, deceased, is authorized and directed to pay unto each of the said heirs-at-law one eleventh (1/11) of the bal-

page 26 } ance of the estate of decedent after the payment of all proper debts of the decedent or of the estate and all proper costs and expenses of administration.

And as to all findings and rulings adverse to him, the defendant, William Merritt Parker, Jr., objects and excepts.

And the said Administrator shall report to the Court his actions hereunder.

Enter Sept. 2, 1958.

H. LAWRENCE BULLOCK.

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

To the Clerk of the Corporation Court of the City of Norfolk, Virginia:

Pursuant to Section 4 of Rule 5:1 of the Rules of the Supreme Court of Appeals of Virginia, the defendant, William Merritt Parker, Jr., hereby gives notice of his appeal from the final decree entered in this cause on September 2, 1958, determining that the brothers and sisters who survived William M. Parker are his heirs at law and distributees.

The Defendant, William Merritt Parker, Jr., sets forth the following assignments of error:

1—That the trial court erred as a matter of law and fact in finding and holding that the defendant, William Merritt Parker, Jr., failed to carry the burden of proof upon him to prove that he is the son of William M. Parker, deceased, and that said deceased acknowledged him as his son.

page 31 } 2—That the trial court erred as a matter of law and fact in finding and holding that the defendant, William Merritt Parker, Jr., is not an heir at law and distributee of William M. Parker, deceased, and, therefore, is not entitled to receive any amount by inheritance from said deceased.

3—That the trial court erred as a matter of law and fact in finding and holding that the heirs at law and distributees of William M. Parker, deceased, are his brothers and sisters living at the time of his death and in authorizing and directing Grover C. Franklin, Administrator of the estate of William M. Parker, deceased, to make distribution of the distributable estate to them.

WILLIAM MERRITT PARKER, JR.
By BRADEN VANDEVENTER
Of Counsel.

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GROVER CORNELIUS FRANKLIN,
the complainant, having been first duly sworn, testified as follows:

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CROSS EXAMINATION.

By Mr. Watkins:

Q. Mr. Franklin, did William M. Parker live at your home?

A. When I—before I was married, when I lived with my parents, we lived in the same home.

Q. How long did you all live in the same home together?

A. Oh, it must have been 15, 20 years.

Q. And you had never heard of the existence of William M. Parker, Jr.?

A. Never.

Mr. Watkins: All right, sir.

MRS. MARY PARKER BALL,
called as a witness on behalf of the complainant, and having been first duly sworn, testified as follows:

Examined by Mr. Boswell:

Q. Please state your name and residence.

A. Mary Parker Ball, 609 West 36th Street, Norfolk, Virginia.

Q. You are a sister of William M. Parker, deceased, are you not?

A. That is right.

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* * * * *

Q. Are you familiar with the marriage of William M. Parker to Lucille Davis?

Mary Parker Ball.

A. Yes, sir. I am familiar with it but I wasn't there.
Q. You were not there?
A. No, sir.

Mr. Boswell: I think that is all.
Mr. Vandeventer: No questions.

CROSS EXAMINATION.

By Mr. Watkins:
Q. Mrs. Ball, just a moment. Your home is here in Norfolk?
A. You mean where I live now?
Q. Yes.
A. I live in Norfolk, 609 West 36th Street.

page 17 } Q. How often did you see William Merritt Parker prior to his death?

A. Oh, well, I lived in the house with him for about ten years, while I was at business at Ames & Brownley's. We boarded at the same place. He boarded with Mrs. Franklin and I boarded there too, or lived like a family but we did pay her, of course, to live there.

Q. Did the subject of his marriage to Lucille Davis ever come up?

A. Yes. It was a sore subject. We didn't discuss it very much. It was one of those things where a young man was brought in and we always felt that it was just kind of a bad thing to happen. And it was never recognized in the family or by him, but we knew about it, of course.

Q. Did you ever hear William Parker acknowledge this child as his?

A. He always said it wasn't his. I have heard him say so repeatedly, it wasn't his.

Q. Do you know of your own knowledge,—just tell us if you don't know—whether he ever contributed to the support of this child?

A. I know he never did because he didn't recognize it. He paid $500 that day.

Q. What day?

A. The day that he was married, that they forced him to get married.

page 18 } Q. Paid $500?

A. Yes, to her, because the court—it seems the attorney or somebody wouldn't get any money and he had to pay some money to—it was thrown out of court. It wasn't—they didn't find him guilty; it was thrown out of court, but he

paid her on advice of somebody just so she would have the money.

Mr. Christian: If Your Honor please, unless the witness can show she actually knows these facts as facts, rather than something she had heard, I think this ought to be—

The Witness: I know that to be a fact, that he paid the money.

By Mr. Watkins:

Q. You say you know this to be a fact?

A. I know it to be a fact because I will tell you why. He didn't have that much money and he had to get my brother, Lloyd, who now is dead, to furnish the money to pay it, that day. That is why I knew about it.

Q. Did you ever see him in the company of Lucille Davis?

A. No, sir. I never met the young lady.

Q. Do you know of your own knowledge whether or not they ever corresponded?

A. To my knowledge I would think not, but I don't know.

Q. How long did you all board in the same house?

page 19 } A. Oh, ten years or more.

Q. When did that begin?

A. Oh now, honestly, it would be—let me see. My child was eleven years old. It was about—it is since that thing happened in Suffolk. You have the date there. It was ten years since this time until I went housekeeping; and I have been housekeeping now about 20 years. So it would be prior to that and it was about 10 years.

Q. Then, shortly after this trial in Suffolk, for the next ten years—

A. Yes, shortly after but not right the next day after or anything because he was in business in Suffolk and I think he sold his business after that and came to Norfolk to live.

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MRS. LUCILLE DAVIS GIDDINGS,

called as a witness on behalf of the defendant William Merritt Parker, Jr., and having been first duly sworn, testified as follows:

Lucille Davis Giddings.

Examined by Mr. Christian:

Q. Mrs. Giddings, will you state your full name, your residence and your occupation?

A. Lucille Davis Giddings; 2019 Newman Road, Richmond, Virginia; housewife.

By the Court:

Q. 2019?

A. —Newman Road.

By Mr. Christian:

Q. Mrs. Giddings, what was your maiden name?

A. Lucille Hattie Davis.

Q. Are you the Lucille Hattie Davis who was married to William Merritt Parker, Sr., who is the decedent whose estate is involved in this suit?

page 23 } A. Yes, sir.

Q. Mrs. Giddings, when did you first meet Mr. William M. Parker, Sr.?

A. Well, I met him in 1925. He and his brother-in-law, Mr. Allan Redd, operated a grocery store. He told me he was part owner in that store, Four Point Grocery Store in Suffolk, Virginia. My mother and father dealt there. So that was the way I met him.

Q. Were you living in Suffolk at that time?

A. Yes, sir.

Q. Did you see Mr. Parker frequently or infrequently after that?

A. Well, I saw him practically every night. It started out a date maybe once or twice a week. Then it was every night.

Q. Until how long did you have frequent dates with Mr. Parker?

A. Well, just a very short time before the baby came.

Q. Approximately how long before the baby came was that?

A. Well, I met him in 1925 and the baby came in 1927, July 9, 1927.

Q. Did you inform Mr. Parker that you were going to have a baby?

A. Well, I told—wrote—wanted to see him so I called him on the phone several times and I was told that he

page 24 } wasn't there. And then I wrote him and told him that I had something very important that we had to talk over and I wanted to see him. But I—

Q. Did he come to see you?

A. No, sir.

Lucille Davis Giddings.

Q. I believe you stated that you called him. Did he respond to your calls?

A. I couldn't reach him by telephone.

Q. Mrs. Giddings, where was your baby born?

A. It was born in—known then as the Protestant Hospital in Norfolk, Virginia; known now as the General, I think.

Q. In relation to when the baby was born, how long prior thereto did you enter that hospital?

A. You mean how long before I had seen him?

Q. No. How long before the baby was born did you enter that hospital?

A. I went into the hospital on a Thursday, as I recall it, and he was at the hospital—he came to the hospital on Friday night.

Q. Whom do you mean "he"?

A. William M. Parker, Sr. And it was well after twelve o'clock on a Friday night when the nurse brought him into my room. And I said, "Well, do you know why you are here?" And he said, "Yes, the baby." And I said, "Well, whatever you do now"—then first he said, "Why didn't you page 25 } get in touch with me sooner?" And I said, "Well, I tried by telephone and letter and I got no response from you at all." And he says, "Well, I wish I could"—

Mr. Watkins: Your Honor, I object to this conversation which she alleges she had with the decedent. We have no way of cross examining anybody but her as to it.

The Court: Well, I think his declarations would be admissible.

Mr. Watkins: I think they would be self-serving on the part of this witness, Your Honor.

The Court: But as to the probative value of it when coupled up with this prosecution and so on, that is up to the person passing on it, myself.

Mr. Christian: Will you read back just a little where she was so she can pick up her train of thought, on that answer.

(The record was read by the reporter as follows:)

"A. And I said, 'Well, do you know why you are here?' And he said, 'Yes, the baby.' And I said, 'Well, whatever you do now'—then first he said, 'Why didn't you get in touch with me sooner?' And I said, 'Well, I tried by telephone and letter and

I got no response from you at all.' And he says, 'Well, I wish I could' "—

page 26 } By Mr. Christian:

Q. Will you continue from there.

A. He said, "Well, if I had known—I wish I could—we could have fixed the papers up all legal." That is the way he phrased it. I said, "Well, you just didn't come to me and there is nothing I can do now." I said, "Whatever you do, don't let me down now. Whatever happens thereafter, you are free to do but please stick by me now and see me through this." And he says, "I will be here tomorrow night without fail and we will be married." And he says, "And don't you worry." And I didn't see him any more after that at all. And if it is permissible to say so, I understand he did skip town and I never did see anything more of him.

Q. Now, Mrs. Giddings, what is the name that you have given to the child that was born?

A. To my son?

Q. Yes.

A. I gave him his name because he is his son and he—I wanted him to have his name. I loved—I loved Mr. Parker who has deceased. I don't think of this as a cheap thing on my part. I loved him and I wanted him to have his name.

Q. And you gave him then the name of William Merritt Parker, Jr.?

A. Yes, sir.

Q. Mrs. Giddings, who is the father of your son,
page 27 } William M. Parker, Jr.?

A. The son of my father as God is my witness is William M. Parker, William Merritt Parker, Sr., deceased.

By the Court:

Q. I notice counsel's question just preceding the last one, that you gave him the name of William M. Parker, Jr. The certificate recites William Merritt—

A. William Merritt Parker.

Q. Isn't this the certificate of birth? William Merritt Davis?

Mr. Watkins: Davis, that is what it says. I intend to go into that.

The Court: I just mentioned that.

Mr. Christian: Yes, sir.

The Court: You may go ahead.

Lucille Davis Giddings.

By Mr. Christian:

Q. Mrs. Giddings, what happened after your child was born as far as your connections with Mr. William M. Parker were concerned?

A. Well, of course, the marriage came about, the trial.

Q. Tell what led up to the marriage, starting after the child was born, and tell the events that transpired leading up to your marriage to Mr. Parker.

A. What do you mean? That he skipped town?

Q. Yes. Well, start right back. Was any criminal
page 28 } prosecution instituted against him?

A. Well, my father pursued that. He was—I think a warrant was served on him and he skipped out of the city.

Q. Was he found and ever brought back?

A. Yes, he was found in Winston-Salem, North Carolina.

Q. Was he brought back for trial?

A. To—yes, sir.

Q. About how long a period transpired between the time the criminal prosecution was begun and the time that he was brought back for tarial? Do you recall?

A. Well, from the time that my son was born until February 28, 1929.

By the Court:

Q. Who was Eugene R. Davis?

A. That was my father.

Q. Who was E. B. Rambler?

A. I am afraid I don't know. The name is not familiar to me.

The Court: That is all.

By Mr. Christian:

Q. Mrs. Giddings, there has already been filed in evidence a transcript of the criminal proceedings, which shows that it was a criminal proceeding against Mr. William Merritt Parker for seduction. Did you testify as a witness at that trial?

page 29 } A. Yes, sir.

Q. Tell briefly what happened during that trial.

A. Oh, heavens. Well, I don't know where to start, hardly, it was such a long drawn-out thing.

Q. Well, I think I can cut it short. How long prior to the time that you and he were married did the trial start?

Lucille Davis Giddings.

A. Well, it was well over a year.

Q. No, I mean the actual trial of the case. Well, the record shows, the transcript shows that the trial started on February 27 and you were married on February 28, is that correct?

A. Yes, sir. It was drawn out to—much more than a day; about a day and a half.

Q. Where were you married and under what circumstances?

A. In—it was in the courthouse in Suffolk, Virginia.

Mr. Christian: Your witness.

Mr. Boswell: No questions.

CROSS EXAMINATION.

By Mr. Watkins:

Q. Mrs. Giddings, you mentioned that William M. Parker skipped out of town and it was so long. Isn't it a matter of fact that your father got the first warrant in the city of Suffolk and that that case was dismissed by the Commonwealth's Attorney? Isn't that right?

A. Well, do you want me to answer you truth-
page 30 } fully?

Q. Yes, ma'am.

A. I am afraid I am not too well versed on that. I was under stress.

Q. You were there, weren't you?

A. I was there and I know a warrant was gotten out for his arrest.

Q. In the City of Suffolk?

A. In the City of Suffolk, naturally. We lived there.

Q. Let me ask you if that case was not dismissed in the Municipal Court on August 22, 1927?

A. Well, I do not recall that it was dismissed. I wouldn't tell you that it was. I don't recall.

Q. Well now, this trial that occurred that took a day and a half, was that in the City, or County of Nansemond?

A. In the County Courthouse.

Q. That was in the County of Nansemond, then?

A. Yes, sir.

Q. What happened to the first case?

A. Well, because this event did not take place in the city.

Q. Well then, the first case was dismissed against William M. Parker, was it not?

A. Yes, of course, because it didn't happen in the city, it

happened in the county. He couldn't be tried for something in the city that happened in the county.

page 31 } Q. Now, that was August of 1927. Your father did not secure another warrant until October 1928, did he?

A. Well, your records show that, you must be right.

Q. Well, I am asking you.

A. Well, I don't recall.

Q. It was over a year later before he ever got another warrant, wasn't it?

A. Supposed to be. I am sure it was.

Q. Now, I should like to inquire the same thing that the Court was interested in, if you intended to give your son the name of William Merritt Parker, Jr., why is is that the birth certificate shows William Merritt Davis?

A. Well, simply because in your profession you should know Vital Statistics have to have the signature of two parents before they issue a birth certificate.

Q. No, ma'am, I didn't know that.

A. Well, it is true. I talked to Mrs. R. Lee Clark about it and I tried to secure—

Q. Don't tell us, please, what somebody else told you.

A. Okay. You want to know, I am telling you.

Q. Why is it that when you brought your bill for divorce it did not name your child as William Merritt Parker, Jr.?

A. Well, again I couldn't give him the name unless Vital Statistics recognized two signatures, which did not appear.

page 32 } Q. Just a moment. You filed for divorce in June 1932, did you not?

A. Yes.

Q. What did you call your child?

A. I called him by his father's name because I thought it was the appropriate thing to do.

Q. Why is it that the divorce bill did not—

A. And, on the other hand, if you remember—and I am certain that—I wasn't even well versed on that thing at all. It has been very recently that even birth certificates were required. I don't have one, but it is certainly no reason that I am not—not supposed to have one.

Q. Excuse me. I don't mean to interrupt you, Mrs. Giddings. What I am asking you is: When you filed for divorce, why did you use the name William Merritt Parker, Jr.?

A. I have always used that. I am sure if there is any deviation there, the lawyers must have done it, I didn't. Because

that was his name. It was the way it should always have been.

Q. I show you Parker Exhibit No. 8, which is bill of complaint, Lucille H. Parker against W. M. Parker, in the Circuit Court of the City of Norfolk. It is alleged in this bill of complaint, in paragraph 2 that "There was born to your complainant and said defendant one child, Parker, which said child has been in the custody and care of your page 33 } complainant since marriage." Now, you didn't mind giving him William Parker's last name; why is it that the first name doesn't appear?

A. Well, it was there and I told my doctor, Dr. Julian Rawls was my doctor and I gave him that name in the hospital.

Q. Why did it not appear in the bill of complaint?

A. Don't ask me. I didn't make those papers up.

Q. You have just told us that you didn't give it on the birth certificate because you didn't have another signature. Why did you give it the last name in this bill? The bill didn't have any signature.

A. I have always given his name, but let me tell you, when I went to get his birth certificate when he entered school I talked to Vital Statistics up there and Mrs. R. Lee Clark—

Q. Don't tell us what somebody else told you, please, ma'am.

A. Well, all right; you want me to make myself clear. How can I do it unless you are willing to listen?

Q. What I want to know is: This child was born in 1927 and this bill of complaint was filed in 1932. Why is it that it didn't contain this name that you said you were so proud to give the boy?

A. Well, I wasn't terribly proud about it. After I found out who his father was and what he was like after page 34 } he walked out on me, I wasn't at all proud of it. I had no choice.

Q. How did you find that out who his father was?

A. His father is William Merritt Parker, Sr., and I knew it, have always known it and so has he.

Q. Well, you just used the expression, "After I found out who his father was." How did you find that out, Mrs. Giddings?

A. Well, I had his baby. Can you think of a better reason? Now, I am here under protest in behalf of my son. I am not here to be insulted and I want you to distinctly understand that. I went through this. It has been 31 years. And my

life has crashed all around me. I have lived with it for 31 years, protecting my son. I have protected everybody under the sun but myself and it has not been easy. And I am not here for you to insult me. I have stuck by my son, something his father didn't have in him to do. And he knows he was his son; he has made—told different people that he was; and don't you think I don't have that in my behalf. And because this thing has happened to me and my life, I am not hanging my head in front of you or anybody. Do you want me to tell you that?

Q. Well, you have already done it.

A. I have held my head high and I plan to go on doing it.

Q. Excuse me. I don't mean to insult.

A. Well, you are trying awfully hard.

page 35 } Q. No, ma'am. I can do nothing about the facts of this case, which I have to work with.

A. I have nothing to do with Vital Statistics.

Q. Excuse me a moment, please, ma'am.

A. Not in my category.

Q. I don't mean to insult. There is nothing I can do about it.

A. No, but I am certainly being raked over the coals by you. I hope nothing like it will ever happen—

Q. This bill of complaint also alleges that William M. Parker deserted you on February 28, 1929.

A. Because the courts wanted him to—since he didn't—wasn't man enough to recognize his son. I said, "recognize."

Q. Would you please let me finish my questions, please, ma'am. This bill of complaint alleges that he deserted you on February 28, 1929. Was not that the day of your marriage to him?

A. It was.

Q. Then, William M. Parker never lived with you?

A. No. It was a manly thing to do, wasn't it? Not to live with someone that he owed his life to.

Q. Did you ever see William M. Parker again?

A. No. I saw him from a distance but I always managed to cross over on the opposite side of the street in order not to pass a thing as poisonous as that. I was afraid

page 36 } there might be a contagion there that I wasn't—I was so treated by him and so deceived by him.

Q. Mrs. Giddings, you told us on direct examination that you always have loved William M. Parker?

Lucille Davis Giddings.

A. I loved—I did. I loved the ground he walked on; but, you know, love can turn. Love can also turn into hate when you are just so terribly—

Q. Have you always loved him, or not?

A. Of course I have.

Q. But he was poisonous?

A. He was to me after he let me and my son down.

By the Court:

Q. Who paid the hospital bill for this?

A. My father did. And I want to correct something—not that it matters too much.

Q. Ma'am?

A. I want to correct some error that this—his sister seems to have made. He paid a sum of $800, not $500, because my lawyer was $500 and there was a pitiful sum of $300 which I had to support my son with.

By Mr. Watkins:

Q. Did William M. Parker ever give you any other money?

A. No indeed, he didn't.

Q. Did he ever provide any money for your child?

A. No, never did, other than the $800.

page 37 } Q. $500 of that went for your lawyer?

A. Yes-siree.

Q. Did your child ever see William M. Parker?

A. He saw him in the court.

Q. How old was he at that time?

A. He was at least 18 months old, as well as I recall.

Q. Has he ever seen him since, to your knowledge?

A. Not—I don't know; not through my knowledge he hasn't.

Mr. Watkins: No further questions.

RE-DIRECT EXAMINATION.

By Mr. Christian:

Q. Mrs. Giddings, I hand you a paper marked Parker Exhibit No. 10, which is the decree of divorce that was entered in the divorce action that you instituted against Mr. Parker, and I ask you if you will read—

A. Well, I am sorry but you know I told you I forgot my glasses. I left them on the radio, on television.

Q. Let me read to you, then, the next to the last paragraph

of that: "And the Court doth adjudge, order and decree that the custody of William Merritt Parker, minor child of said parties, be awarded to complainant but without right of said complainant to demand of defendant any sum for alimony." Then, in the divorce action you did refer to your child as William Merritt Parker, is that correct?

page 38 } A. Well, always, Mr. Christian, I did.

RE-CROSS EXAMINATION.

By Mr. Watkins:

Q. Did William M. Parker ever appear—

Mr. Christian: Just one second. I am not sure we are through. Go ahead.

By Mr. Watkins:

Q. Did William M. Parker ever appear? Depositions were taken in that divorce action; was he there when the testimony was taken?

A. No. He had been in the office prior to my arrival.

Q. Did he testify?

A. No.

Q. Did he ever file an answer to that case?

A. To the divorce, you mean?

Q. Yes.

A. Not that I know anything about. I wasn't in his presence.

* * * * *

page 39 } WILLIAM MERRITT PARKER, JR., a defendant, having been first duly sworn, testified as follows:

Examined by Mr. Christian:

Q. Mr. Parker, will you state your full name and your residence and your occupation, please?

A. William Merritt Parker, Jr. I live at 1523 Etheridge Drive, Richmond, Virginia. I am Assisatnt Chief Clerk, Chesapeake and Ohio Railroad Company, in Richmond.

Q. Mr. Parker, what is the date of your birth?

A. July 9, 1927.

Q. Mr. Parker, when was it that you first learned that there might be any question as to your legitimacy?

William Merritt Parker, Jr.

A. Well, actually, all my life I was led to believe that my mother and father were simply divorced, during my infancy. Back in 1952 when I was married myself, the question of my parent came up, and due to evasive answers I decided to go to Norfolk myself to inquire about my mother and father's marriage. I came to Norfolk and looked into the divorce records on file here and read something that I didn't like very much. I located my father and went to the place he was working and asked him if he had a moment to see me in private. And we stepped out—he was working in a store downtown here in Norfolk at the time, and he stepped outside with me and I asked him if he knew Lucille Davis. And he said he knew a Lucille Davis that lived years ago in page 40 } Suffolk, Virginia. And I said, "Were you ever married to her?" He said yes. I said, "Did you ever have any children?" He said, "I had a son." And I said, "Well, I am William Merritt Parker, Jr." And from that he didn't—he didn't even utter a sound. He just—just stood there. And as I look back on it now I don't know whether he was just taken aback by my abrupt coming up to him and approaching him with this matter or just what his feeling was at the time. But I said something probably that I shouldn't have said, at that, because being upset over the records at the courthouse and then his attitude at the time, I just simply said that his attitude confirmed an opinion that I had already gathered due to the fact that twenty some years of that time he never made any effort to see me or anything else, and that I didn't consider him much of a man. I walked off and never had another, any other contact.

Mr. Watkins: Excuse me. I couldn't hear that last.

Mr. Christian: He walked off, never had any other contact.

Mr. Watkins: All right.

By Mr. Christian:

Q. Did you ever see your father again after that?

A. No, I never did.

Q. When you told him that you were William Merritt Parker, Jr., did he deny it or question it in any way?

A. No, he did not.

page 41 } Mr. Christian: I have no further questions.

William Merritt Parker, Jr.

CROSS EXAMINATION.

By Mr. Watkins:

Q. Mr. Parker, when was this? You came down here in 1952?

A. The summer of 1952, yes, sir.

Q. Where was William M. Parker working?

A. He was working in a place that looked like probably an Army and Navy Store or something down—is this Commercial Place? Just off of Commercial Place, down where the old Norfolk-Portsmouth ferry used to dock, down there.

Q. And you didn't identify yourself when you first—

A. No, I did not. I—I went in and I asked a gentleman that was obviously an employee there if they had a Mr. Parker working there and he said that he did. And I said, "Well, I would like to see him." He pointed to him there and then I approached him and told him that I had something of interest to myself that I would like to talk to him about if he had a moment.

Q. You all went outside?

A. And we stepped out in front of the building, yes, on the sidewalk.

Q. And that is when this conversation that you have related to us took place?

A. Yes, sir, that is correct.

page 42 } Q. Then you had not introduced yourself and you were a complete stranger to him?

A. Yes, sir, I was.

Q. And you expect us to believe that this man told a complete stranger, "I had a son better than 25 years ago"?

A. Well now, you believe what you like. I am telling you what I said. That is what the gentleman asked me.

Q. This conversation took place, you had never been introduced to the man, he didn't know who you were, and it took place on the street in front of an Army and Navy Store in Norfolk?

A. Well, I said an Army and Navy Store but now it could have been just an Army store. It looked like an Army and Navy Store to me. I wasn't too interested in the store.

Q. And that was in the summer of '52?

A. Yes, sir.

Q. You had no further conversation with him?

A. No, sir, never did.

Q. Just walked on away?

A. Yes, sir, that is correct.

D. Corbell Cotten.

Q. Did he ever get in touch with you after that?
A. No, sir, he never did.
Q. Nor you with him?
A. No, sir.
Q. To your knowledge, has he ever contributed to
page 43 } your support?
A. Not to my knowledge. He has never contributed anything.
Q. Until 1952, you thought that—you knew that Mr. Giddings was not your father?
A. Oh, yes indeed.

Mr. Watkins: All right. No further questions.

By the Court:
Q. Did you have a birth certificate when you went to school?
A. Well now, Your Honor, I don't know about that. My mother will have to answer that.
Q. What name were you enrolled in school under?
A. I was always William M. Parker, Jr.

* * * * *

page 44 } D. CORBELL COTTEN,
called as a witness on behalf of the defendant William Merrit Parker, Jr., and having been first duly sworn, testified as follows:

Examined by Mr. Vandeventer:
Q. Mr. Cotten, would you please tell the Court your full name and your home address?
A. David Corbell Cotten, Chuckatuck, Virginia.
Q. That is in Nansemond County, sir?
A. Nansemond County, yes, sir.
Q. What is your occupation, sir?
A. Real estate broker.
Q. Now, Mr. Cotten, during your life have you ever had occasion to serve as a juror in the Circuit Court of Nansemond County?
A. Many and many a time.
Q. Can you recall whether or not you ever served during the year 1929?
A. '29? Yes, sir.
Q. Will you please state whether or not you served on

a jury involving the criminal trial of a William M. Parker in that court?

A. Yes, sir. I was foreman of the jury at that time.

Q. You were the foreman of the jury?

A. Yes, sir.

Q. Can you recall the names of any others of the
page 45 } members of that jury, sir?

A. Well, I recall Mr. Lee Vann and Mr. Presley Smith.

Q. Now, can you recall who was in the courtroom on that day, who was present at that trial?

A. Well, Charlie B. Godwin was prosecuting attorney and I don't know that I remember the defense. And then, of course, Judge McLemore; the Circuit—I mean the County Clerk. Well, it is quite a good while. I can't say I remember many there.

Q. Do you remember seeing the defendant, Mr. William M. Parker, there?

A. Yes, sir; yes, sir.

Q. And—

A. And a Miss Davis I believe she was at one time, but I remember at that time it was a Miss Davis and Mr. Parker were the two that I have reference to—

Q. Yes, sir.

A. —at the trial.

Q. Now, Mr. Cotten, as well as you can remember, would you please tell the Court here what occurred in that courtroom on that day in 1929?

A. Well, yes. There was a Mr. Parker and Mrs. Davis were present; and after the jurors were all—jurors, all the evidence was in, the judge's instructions, we were asked to retire and bring in a verdict, which we did; which we—

page 46 } Q. Let me interrupt just a minute, sir. Can you recall the offense which was being tried in the court that day?

A. It was Mr.—Miss Davis I think it was if I remember the name correctly and Mr. Parker, that was the—constituted the two participants.

Q. The what, sir?

A. That constituted the two that were bringing this suit.

Q. Do you know what the crime or the subject matter of the suit involved?

A. It was in regard to a child. I—as we understood it, the—Mr. Parker at that time was—had not admitted up to that time being the father of the child, you see what I mean.

D. Corbell Cotten.

And then when we went up to the jury room, we deliberated awhile and came to a verdict and of guilty; and during that short period there after we had taken a vote, one of the jurors said, "Mr. Foreman, I can't go along with that verdict that I have rendered, if the penalty is going to be so-and-so." So I—

Mr. Watkins: Your Honor, I haven't objected to this so far but it is hearsay now, definitely.

The Court: I think it would be hearsay, what the other juror said to him, Mr. Vandeventer.

Mr. Watkins: He can tell I think what verdict they arrived at and what they announced to the judge, that is all.

page 47 } The Witness: Well—

By Mr. Vandeventer:

Q. After this juror made this remark of whatever it was to you, sir, what did you do?

A. I then told them it was something irregular that I never anything like this ever come up before and I felt like that we should get some advice and that I think Mr. Vann and myself went down and I told Judge McLemore, I said, "Judge, I have a statement"—rather "I have a question to ask and if it will please the Court, I would like to have the prosecution and defense up at the desk so they can hear what I have to say." So I apprised the Judge of what had taken place up in the jury room. He said to me, "All right, Mr. Cotten," said, "You all go on back up and I will let you hear from me later." So we went on back up to the jury room and we had been up there about ten or fifteen minutes, probably, and the door opened and the sheriff opened the door and said, "Mr. Cotten, the Judge says if you all would like to come down witness a marriage, you can do so." So we went on down. They were married, Mr. Parker—

Q. Miss Davis and Mr.—

A. —and Miss Davis were married then, and then after—after the marriage, why—getting ready to break up, you know, we heard Mr.—Miss Davis—Miss Davis was very spunky and when she said that "I am not marrying Mr. Parker only for a name for the child and that is

page 48 } all I am. That is all I am marrying him for. So far as the support or anything that he wants to pay for the support, I don't want it. I don't care if I

never see him again." That was all she said. That is all I heard and that is all there was to it.

Q. Did Mr. Parker make any statements?

A. He did say that "Well," he said, "You have—you have gotten what you want; you got the father." Now that is all I have to say about it.

Mr. Watkins: What did he say?

By Mr. Vandeventer:

Q. He said what, sir? Would you repeat?

A. He said, "You have gotten what you wanted. You have gotten the father. I am the father of the child," you understand, "and I hope you are"—I thought he said, "I hope you are satisfied" but I didn't get the last words, but that was my impression that I got that he said to her, "I hope you are satisfied." They went out the front—he went out the front door, they went out the side door and that is all there was, all I heard about it, all I know about it.

Q. Do you recall whether Mr. Parker testified during that trial?

A. I don't recall his testifying, no, sir. He may have but I don't recall it.

Q. Do you remember Miss Davis testifying dur-
page 49 } ing that trial?

A. No.

Q. You don't remember her testifying, either?

A. I do not. I just told you what I remember about it, that is all.

Mr. Vandeventer: We have no further questions, Your Honor.

CROSS EXAMINATION.

By Mr. Watkins:

Q. Mr. Cotten—

A. Yes, sir. Sorry to trouble you but I am hard of hearing.

Q. This happened nearly 30 years ago?

A. Around twenty-five, twenty-nine, I would say something like that, twenty-nine or thirty.

Q. Mr. Parker pled not guilty, didn't he?

A. That is my understanding, yes.

D. Corbell Cotten.

Q. And Miss Davis said, "I am only marrying him to give the child a name"?

A. That is right, that is right.

Q. And then he said—

A. Then he said that—

Q. Wait a minute. That is what I want to ask you about. It was hard for me to understand you. He said, "You have got what you wanted"?

A. Yes. "I am the father and I hope you are
page 50 } satisfied."

Q. Now, where were you at that time?

A. I was about as close to him as I am from here to you.

Q. Still sitting in the box?

A. No, no. I told you that—had broken up and that is what—

Q. Did you know William M. Parker?

A. I only knew him at that time. I never knew him very much before then. I probably—he would have known me but I wasn't very well acquainted with him. And I never saw him very much after that. Probably once or maybe twice.

Q. Now, you don't remember whether or not he testified and you don't remember whether or not she testified?

A. I do not.

Q. But you do remember this thing?

A. I do that because the manner in which she stated her position was I thought very commendable.

Mr. Watkins: All right, sir.

Mr. Vandeventer: No further questions, Your Honor.

Mr. Boswell: For the sake of clarity I would like to ask one or two questions, Your Honor.

By Mr. Boswell:

Q. Mr. Cotten, when this conversation took place, I understood you initially to say that Mr. Parker had made the statement, "You have the father. I hope you are satisfied."

A. Said, "I am the father. I hope you are satis-
page 51 } fied."

Q. He said, "I am the father"?

A. "I am the father."

Q. Rather than "You have the father"?

A. And "You have a father for"—"I am the father, you have—the boy has a father. I am the father and I hope you are satisfied." Now, I am not sure whether he said, "I hope

you are satisfied'' but he said, ''I hope'' something to that—in other words, in substance.

Q. Are you sure that he used the words, ''I am the father''?

A. Yes. I am sure.

Q. Could it have been something like ''You have a father for the child''?

A. No. No. I gave it to you just like I heard it. And when you hear anything, you know anything it is the truth and there is no other way to tell it.

Mr. Boswell: All right, sir. Thank you. That is all.

The Court: Are you gentlemen all through?

Mr. Christian: That is the case.

By the Court:

Q. Had the jury been discharged at that point?

A. Yes; yes, sir.

Q. What caused them to linger for conversation with the parties?

page 52 } A. Well, it wasn't much lingering there. When we stepped right out of the jury box, they were still standing there side by side and that is when this conver—when he made the statement.

Q. But the parties to the wedding went out separate doors?

A. Yes, sir. If I remember it, one, Mr. Parker, went out the side door and the lady in company with somebody else went out the front door of the courtroom—as I remember it.

The Court: That is all the Court has.

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page 53 } MILLS A. REDD,

called as a witness on behalf of the defendant Susie Mae Parker Harcum and others, and having been first duly sworn, testified as follows:

Examined by Mr. Watkins:

Q. What is your name, sir?

A. Mills A. Redd.

Q. Were you acquainted with the deceased William Merritt Parker?

A. Yes.

Q. Were you any relation to him?

A. Brother-in-law; married his sister.

Mills A. Redd.

Q. You married his sister?
A. Married his sister.
Q. Did you ever have any business connection with Mr. Parker?
A. From '21 through '23—twenty something through '24 we were in business together.
Q. Would you speak up, please, so the folks back here can hear you, Mr. Redd?
A. All right.
Q. What sort of business were you in?
A. Grocery business.
Q. Where was that?
A. Morgan Street.
Q. In Suffolk?
page 54 } A. Yes.
Q. Were you all in business together at the time of this first warrant being issued against Mr. Parker?
A. No.
Q. The first warrant?
A. No.
Q. All right.
A. That was in '27.
Q. Where was Mr. Parker living then?
A. Living in my house.
Q. Living in your house?
A. Yes.
Q. How long had he lived there?
A. From '21 up to the present time.
Q. Did you go to the Municipal Court in Suffolk?
A. No.
Q. On the first case?
A. No.
Q. Did Mr. Parker make any statements in 1927 as to the paternity of that child?
A. No.
Q. Did he ever admit or deny or even discuss the paternity with you?
A. Never had anything to say about it and until the case came off in '29 he denied it being his and it wasn't proved in court it was his. It was born I think in '27, and page 55 } the court case was in '29.
Q. Speak up a little bit so everybody can hear you.
A. The child I think was born in '27, July, and the court

case came off in—the child, as I say, born in '27 and the court case came off in '29.

Q. Was he living in your home all that time?

A. He was living in my home excusing around about 12 to 14 months that he was in Winston-Salem.

Q. When was that? Was that before or after the trial?

A. That was before the trial.

Q. Did he ever bring Miss Davis to your home while he was living there?

A. Not to my knowing because I sleep there and eat there and work away. But he never brought her there.

Q. Did you ever see them together?

A. Oh, I saw them together in the beginning of '22, perhaps, because she was a customer at the store.

Q. That was the store you all were in partnership in?

A. We was in partnership and they were living on Cedar Street.

Q. Where did Mr. Parker live at the time of the trial?

A. Live at my house.

Q. During the trial?

A. During the trial.

Q. And for how long thereafter?

page 56 } A. And until sometime in the late '29's that he came over to Norfolk and lived with Mrs. Franklin, got him a job somewheres there on Main Street, I think, in a clothing store.

Q. Did he take all his meals with you there?

A. He taken all his meals while he was at my house.

Q. Did you all ever discuss this case?

A. Didn't have anything to discuss about.

Q. What did he say about it?

A. Well, the only thing was said about it, he said it was not his and he denied being the father of the child.

Q. Were you present when the case was tried?

A. I was in and out.

Q. Of the courtroom?

A. Of the courtroom.

Q. Were you there when he testified?

A. I was there through and after his testimony and the jury went to the room. When the jury came out it was a hung jury. Her lawyer, Mr. Sebrell—

By the Court:

Q. Sebrell, you mean?

A. Lawyer Sebrell; and William M. Crumple, Thomas L.

Woodward, was his two lawyers. They came in the back and discussed the matter.

By Mr. Watkins:

Q. Were you there?

page 57 } A. I was there.

Q. All right.

A. And said, "What we going to do? Hung jury. Go through the same thing again? Spend more money." Nobody got no money. Sebrell goes back and talks to her to get a decision what she wanted to do. He brought the message back, says, "Instead of going through court again, marry me so the child will have a name"—whether it had a name I don't know—"and give me $500"—that would go for her funds and the lawyers' funds, either one you want to take it. Came back and discussed that with Mr. Woodward, Mr. Crumpler, and says, "Redd, will you go over yonder and tell my brother or his brother to send me $500 and close the case for once and all. He goes—he go his way, she go her way and forget it." I ran out, got in the car, goes over and tells him to bring $500 in cash, no check, down to the courthouse and want it at once. So he did. When I went home that night for supper he was home, stuck his foot under the table and eat with me again. And that was the last day I ever laid my eyes on Mrs. Davis or Miss Davis at that time, until this morning. And the boy, I saw him in courtroom, he was approximately 21 months to two years old.

Q. Did William M. Parker ever acknowledge this boy to be his?

A. No.

page 58 } Q. Did he ever contribute any support to the child that you know of?

A. No.

Q. Aside from that $500. Approximately how long did he live with you after the trial?

A. He lived with me approximately from eight to twelve months after the trial.

Q. Did you ever see him after that?

A. Saw him in Norfolk with Mrs. Franklin, which is my wife's sister.

Q. Did the subject ever come up again after—

A. Never.

Q. Were you in the courtroom after the marriage was performed?

Marie K. Parker.

A. When they said, "Go and get his brother and bring $500 in cash,"I go deliver the message and goes back to my place of business and continued business until closing time, 8:00 o'clock. I didn't return.

* * * * *

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* * * * *

MRS. MARIE K. PARKER,
called as a witness on behalf of the defendant William Merritt Parker, Jr., and having been first duly sworn, testified as follows:

Examined by Mr. Vandeventer:
Q. Would you please tell the Court your full name and occupation?
A. Mrs. Marie K. Parker, Chief Medical Records Librarian, Norfolk General Hospital.
Q. Do you have with you the record which is kept at the hospital of the births on July 9, 1927?
A. I do.
Q. Do you have a record of a William Merritt Parker, Jr., who was born on that date?
A. I have a certificate of birth which says, "William Merritt Parker."
Q. And who was the father listed there of the
page 61 } child?
A. William Merritt Parker.
Q. And was his home address given?
A. Yes.
Q. What is that?
A. Suffolk, Virginia.
Q. Was was listed there as the mother?
A. Lucille Davis.
Q. What is her home?
A. 206 North Broad Street, Suffolk.
Q. That was on July 9, 19—
A. July 9, 1927.

Mr. Vandeventer: Thank you, lady. Your witness.

Frank T. Parker.

CROSS EXAMINATION.

By Mr. Watkins:

Q. Mrs. Parker, you are not kin to any of these folks in this case, are you?

A. Oh, heavens no.

Q. I didn't think so. Where was this information gotten from? I mean to fill out this form.

A. From the mother.

Q. From the mother?

A. Yes, sir.

Q. I see here that Question 6 "Are parents married?" was unanswered.

A. I hadn't noticed. I haven't even looked at it.

page 62 } (Witness looking) It is not checked.

By the Court:

Q. Is that certificate the one that goes forward to the Bureau of Vital Statistics in order to record a birth in the State system?

A. This is a copy of the one that goes in to the State, yes, sir.

Q. Does that have any number insofar as your system of keeping it, as a serial number?

A. Not on our copy, no, sir.

The Court: All right.

FRANK T. PARKER,

called as a witness on behalf of the defendant Susie Mae Parker Harcum and others, having been first duly sworn, testified as follows:

Examined by Mr. Watkins:

Q. What is your name, sir, and where do you live?

A. Frank T. Parker, 1743 Gowrie Avenue, Norfolk.

Q. What is your relation to William Merritt Parker?

A. Brother.

Q. Are you familiar with the incident which occurred in Suffolk in 1929 that we have been talking about here this morning?

A. Well, I know about it. I mean I wasn't present at the time but I have heard him speak of it.

page 63 } Q. When you say "him," you are referring to William Merritt Parker?

Paul D. Parker.

A. William Merritt Parker, my brother, yes. I have heard him speak of it occasionally; mostly when maybe I would say something to him about it. Because, you know how you will just kind of say something to a fellow like that. But not too often; just occasionally.

Q. What did he have to say about the matter?

A. Well, he always told me, says, "Don't kid me about it." Says, "It is not my child." Says, "I don't even want to talk about it." That is the answer I usually got from him.

Q. How often did you see William Merritt Parker?

A. Well, I am a barber here in Norfolk. I run my own shop now. And back in those days, I used to cut his hair all the time. I guess I would see him at least every other week and sometimes once a week and sometimes maybe twice a week he would just drop by.

Q. To your knowledge, did he ever contribute to the support of this child?

A. No, sir.

Q. Did he ever live with this woman?

A. Not to my knowing, no, sir.

Q. Did he ever correspond with her to your knowledge?

A. Not to my knowledge.

Q. Did you ever hear him acknowledge this child page 64 } to be his?

A. No, sir.

Q. But you say he denied it?

A. I have heard him acknowledge it wasn't his, many a time.

* * * * *

PAUL D. PARKER,

called as a witness on behalf of the defendant Susie Mae Parker Harcum and others, and having been first duly sworn, testified as follows:

Examined by Mr. Watkins:

Q. Give the Court your name and address, please, sir.

A. Paul D. Parker, Route 2, Suffolk.

Q. What was your relation to the decedent, William Merritt Parker?

A. Brother.

Q. Were you present during the trial we have been discussing?

A. No, I wasn't.

Paul D. Parker.

Q. Did you ever discuss the matter with your brother, William Merritt Parker?

A. A few times, yes, sir.

Q. What did he have to say about it during those times?

A. He said, "The child is not mine."

page 65 } Q. To your knowledge did he ever contribute to the child's support or to the mother's?

A. No, sir.

Q. Did you ever see them together?

A. Never did, no, sir.

Q. To your knowledge did they ever correspond?

A. No, sir.

Q. Is there anything else you can tell us about it, Mr. Parker?

A. No. Just times that I saw him and he always denied that he was the father.

Mr. Watkins: Your Honor, counsel for William M. Parker, Jr., have indicated that they are willing to stipulate that Susie Mae Parker Harcum, Edward Carlton Parker and Louise Parker Bunch would testify to the same effect as the last two witnesses, Frank T. Parker and Paul D. Parker.

The Court: Very well.

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The Court is of the opinion that the burden of proof is on the claimant, your client, Mr. Parker. The Court is not satisfied that you have carried that burden with the evidence that is before it and, for that reason, I deny the relief that you seek in your answer. I hold that this is not a will. I hold that he died intestate—to all of which those that are not favored except on the record.

Mr. Christian: Note an exception.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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RULE 5:12—BRIEFS

§1. Form and Contents of Appellant's Brief. The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

§2. Form and Contents of Appellee's Brief. The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

§3. Reply Brief. The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

§4. Time of Filing. As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) If the petition for appeal is adopted as the opening brief, the brief of the appellee shall be filed in the clerk's office within thirty-five days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. If the petition for appeal is not so adopted, the opening brief of the appellant shall be filed in the clerk's office within thirty-five days after the date printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office, and the brief of the appellee shall be filed in the clerk's office within thirty-five days after the opening brief of the appellant is filed in the clerk's office.

(b) Within fourteen days after the brief of the appellee is filed in the clerk's office, the appellant may file a reply brief in the clerk's office. The case will be called at a session of the Court commencing after the expiration of the fourteen days unless counsel agree that it be called at a session of the Court commencing at an earlier time; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) With the consent of the Chief Justice or the Court, counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

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

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

§7. Effect of Noncompliance. If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.

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