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Clerk, Supreme Court of Appeals
Richmond, Va.

Record No. 5035

In the Supreme Court of Appeals of Virginia at Richmond

HENRY M. TAYLOR, ET AL.

v.

FRANCES PARROTT WOOD, ET AL.

FROM THE CORPORATION COURT OF THE CITY OF CHARLOTTESVILLE

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. 5035

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 16th day of June, 1959.

HENRY M. TAYLOR, ET AL., Appellants,

against

FRANCES PARROTT WOOD, ET AL., Appellees.

From the Corporation Court of the City of Charlottesville

Upon the petition of Henry M. Taylor, Franklin M. Taylor, Lucy Ann Taylor, George Keith Taylor, Maria Louisa Smith, Sarah M. Johnson, Charles E. McMurdo and A. Keith McMurdo an appeal is awarded them from a decree entered by the Corporation Court of the City of Charlottesville on the 6th day of January, 1959, in a certain chancery cause then therein depending wherein Peoples National Bank of Charlottesville, Executor under the will of James Oscar Thurman, deceased, was plaintiff and Henry M. Taylor and others were defendants; upon the petitioners, or some one for them, 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

* * * * *

BILL.

To the Honorable George M. Coles, Judge of said Court:

Your Complainant respectfully represents:

1. That Complainant is Executor under the will of James Oscar Thurman which was admitted to probate in your Honor's Court on September 11, 1957 and spread in the Clerk's Office of said Court in Will Book 8, page 88, a certified copy of said will and the first codicil thereto being herewith filed marked "Exhibit A."

2. That under the terms of said will and the first codicil thereto after the payment of debts James Oscar Thurman gives, devises and bequeaths all the rest and residue page 2 } of his property, both real and personal, to Mrs. Frances Parrott Wood, widow of George Elwin Wood, and to Mrs. Sally Watson Hopkins, share and share alike, as their own absolutely. The said Mrs. Sally Watson Hopkins is believed to be Mrs. Sally Watson Hopkinson, one of the defendants named in this proceeding.

3. That by an instrument dated July 23, 1935, a copy of which is herewith filed marked "Exhibit B," James Oscar Thurman and Maria M. Thurman, his wife, agreed with Lucy M. Taylor and Sarah M. McMurdo as follows:

"That J. Oscar Thurman and Maria M. Thurman, his wife, may continue to live on the said farm (Edgemont Farm, Rivanna Magisterial District of Albemarle County, Virginia) for their life time or until it can be sold at a price satisfactory to each owner. For this privilege J. Oscar Thurman and Maria M. Thurman agree that he or she, whichever may live longest will give by his or her will all the property he or she may own at time of death to Lucy M. Taylor and Sarah M. McMurdo in equal parts or to their heirs dividing each of their parts as they see fit. If said farm is sold during the life of J. Oscar Thurman and Maria M. Thurman this agreement is cancelled."

4. That the said Maria M. Thurman died June 8, 1947 following the execution of said agreement dated July 23, 1935 and several years after her death the said farm, known as

"Edgemont" in Albemarle County, Virginia, was sold by the said James Oscar Thurman, and others.

5. That the said Lucy M. Taylor died prior to the death of James Oscar Thurman leaving as her sold heirs at law her children, namely: Henry M. Taylor, Franklin M. Taylor, Lucy Ann Taylor, George Keith Taylor and Maria Louisa Smith.

6. That the said Sarah M. McMurdo died prior to the death of said James Oscar Thurman, leaving as her sole heirs at law her children, namely: Charles E. McMurdo and Sally McMurdo Johnson, and her husband, A. Keith McMurdo.

7. That Complainant does not know whether the residue of the Estate of James Oscar Thurman should be distributed to the said Frances Parrott Wood and said Sally Watson Hopkinson (and Complainant requests a ruling that Sally Watson Hopkinson is the same person as Sally Watson Hopkins named in the first codicil to said will) or
page 3 } whether the aforesaid agreement dated July 23, 1935 has not been cancelled and is still effective and all of the Estate of James Oscar Thurman, after payment of debts, should be distributed to the heirs of Lucy M. Taylor and Sarah M. McMurdo and if so in what proportion said Estate should be so distributed to said heirs.

Wherefore Complainants prays that the said Henry M. Taylor, Maria Louisa Smith, Lucy Ann Taylor, George Keith Taylor, Maria Louisa Smith, Charles E. McMurdo, Sally McMurdo Johnson, A. Keith McMurdo, Frances Parrott Wood and Sally Watson Hopkinson be made parties defendant to this suit; that the will of James Oscar Thurman and the aforesaid agreement between James Oscar Thurman and his wife and Lucy M. Taylor and Sarah M. McMurdo dated July 23, 1935 be construed; that Complainant be instructed as to the distribution of the Estate of James Oscar Thurman; and a reasonable and proper fee may be allowed to Complainant's Counsel for services in instituting and prosecuting this suit and that Complainant may have such further and general relief in the premises as the nature of the case may require or to equity may seem meet.

PEOPLES NATIONAL BANK OF
CHARLOTTESVILLE, EXECUTOR
UNDER THE WILL OF JAMES
OSCAR THURMAN, DECEASED
By JUNIUS R. FISHBURNE
Trust Officer.

RICHMOND AND VIA
Counsel for Complainant
240 Court Square
Charlottesville, Virginia.

page 4 } EXHIBIT A.

I, JAMES OSCAR THURMAN, of the City of Charlottesville, Virginia, being of sound and disposing mind and memory, do hereby make, publish and declare this to be my last will and testament, hereby revoking all wills and codicils by me at any time heretofore made:

I. I desire that all of my just debts and funeral expenses be paid as soon after my death as is practicable.

II. All the rest and residue of my property, both real and personal, I give, devise and bequeath to my Trustee hereinafter named to be held by it in trust for the following uses and purposes:

(1) I direct that the income from said funds be paid quarterly to Mrs. Frances Parrott Wood, widow of George Elwin Wood, so long as she shall live, and, at her death, I direct my Trustee to divide my estate among my heirs at law as if I had died intestate.

(2) I empower the Executor and/or Trustees herein named to borrow money, to renew existing obligations, to mortgage and pledge any and all securities, and to enter into obligations (including leases and mortgages of real estate) for any length of time they deem advisable.

I also empower the Executor and/or Trustee herein named to keep the estate coming into its hands invested as at the time of its receipt, regardless of the character of said investments or whether they be such as are authorized by law for investments by fiduciaries, and to sell, mortgage, exchange, or otherwise dispose of all or any part thereof, real or personal, and, with absolute and uncontrolled discretion, to invest and reinvest all of the funds in its hands as it may deem best, without being restricted to those securities expressly approved by law for investment by fiduciaries, and to change investments from realty to personalty and vice versa.

I also empower the Executor and/or Trustee, in its discretion, to participate in or oppose, through pro-
page 4A } tective committees or otherwise, any plan or plans for the consolidation, merger or reorganization of any corporation, trust or other enterprise in which my estate or any part thereof may be interested; and to partici-

pate in any plan for the pooling or transfer of voting rights of any of the stocks, bonds, or other securities belonging to my estate or to any share therein, and for such purposes to pledge or deposit any stocks, bonds, or other securities pursuant to or in opposition to any such plan or plans; to vote any stocks, bonds or other securities held by them at any meeting of stockholders, bondholders or other security holders and to delegate the power to so vote to attorneys in fact or proxies under powers of attorney, whether restricted or unrestricted.

When a division of securities of my estate is necessary, I authorize the Executor and/or Trustee to select and deliver to the legatees such securities belonging to my estate as it shall deem best at the market value thereof on the date of such delivery, and I direct that the judgment of the Executor and/or Trustee as to the true market value of said securities be deemed conclusive and final.

I also empower the Executor and/or Trustee to execute any instrument necessary to carry out the powers conferred by this will, and no purchaser shall be required to see to the application of the purchase money.

(3) All estate and inheritance taxes shall be paid as soon after my death as is practicable and shall be charged against the corpus of my estate as a whole, so as not to be paid out of the individual shares as such, but from the total estate. The Executor is empowered and directed to make compromise settlements in accordance with the law.

page 4B } III. I hereby constitute and appoint The Peoples National Bank of Charlottesville, Charlottesville, Virginia, Executor and Trustee of this, my last will and testament.

GIVEN under my hand and seal this 31st day of March, 1953.

/s/ JAMES OSCAR THURMAN (Seal)

We, the undersigned, do hereby certify that James Oscar Thurman has signed, sealed, acknowledged and declared the foregoing paper as and for his last will and testament in the presence of us, three competent witnesses, who, in his presence and at his request and in the presence of each other, all present together at the same time, have hereunto subscribed our names as attesting witnesses this 31st day of March, 1953.

MILDRED B. PURVIS, Charlottesville, Virginia.
DAVID J. WOOD, JR., Charlottesville, Virginia.
DAVID J. WOOD, Charlottesville, Virginia.

page 4C } I, James Oscar Thurman of the City of Charlottesville, Virginia, being of sound and disposing mind and memory, do hereby make this first codicil to my will dated March 31, 1953.

I hereby revoke the trust set up in Paragraph 2 of my last will and testament and in lieu thereof I give, devise and bequeath all the rest and residue of my property, both real and personal to Mrs. Frances Parrott Wood, widow of George Elwin Wood and to Mrs. Sallie Watson Hopkins, share and share alike, as their own absolutely.

In all other respects I hereby confirm my last will and testament dated March 31, 1953.

Given under my hand and seal this 9th day of September, 1954.

/s/ JAMES OSCAR THURMAN (Seal)

We, the undersigned, do hereby certify that James Oscar Thurman has signed, sealed, acknowledged and declared the foregoing paper as and for a first codicil to his last will and testament in the presence of us, three competent witnesses, who, in his presence and at his request and in the presence of each other, all present together at the same time, have hereunto subscribed our names as attesting witnesses this 9th day of September, 1954.

WALLACE W. McDOWELL, Charlottesville, Virginia.
W. D. WILLIAMS, Batesville, Virginia.
E. L. TURNER, Charlottesville, Virginia.

page 4D } EXHIBIT B.

We the undersigned owners of "Edgmont Farm situated in Rivanna Magisterial district of Albemarle Co. Va. hereby make this agreement.

To-wit: That J. Oscar Thurman and Maria M. Thurman his wife may continue to live on the said farm for their life time or until it can be sold at a price satisfactory to each owner. For this privilege J. Oscar Thurman and Maria M. Thurman agree that he or she, whichever may live longest will give by his or her will all the property he or she may own at time of death to Lucy M. Taylor and Sarah M. McMurdo in

equal parts or to their heirs dividing each of their parts as they see fit. If said farm is sold during the life of
page 5 } J. Oscar Thurman and Maria M. Thurman this agreement is cancelled.

Given under our hands and seals this 23rd day of July 1935.

SARAH M. McMURDO (Seal)
J. OSCAR THURMAN (Seal)
MARIA M. THURMAN (Seal)
LUCY M. TAYLOR (Seal)
A. K. McMURDO (Seal)

State of Virginia,
County of Albemarle, to-wit:

I, L. A. Flannagan, a Notary Public in and for the County aforesaid, State of Virginia, do hereby certify that J. Oscar Thurman and Maria M. Thurman, his wife, whose names are signed to the above writing, bearing date on the 23rd. day of July, 1935, have and each has acknowledged the same before me in my County aforesaid.

My commission expires September 10th, 1935.
Given under my hand this 23rd day of July, 1935.

L. A. FLANNAGAN,
Notary Public.

State of Virginia,
City of Richmond:

I, H. S. Lafoon, a Notary Public for the City of Richmond, State of Virginia do hereby certify that Lucy M. Taylor whose name is signed to the above writing bearing date on 23rd day of July 1935 has acknowledged the same before me this 24th day of July 1935 in my city and state aforesaid.

Given under my hand this 24th day of July 1935.
My commission expires August 8, 1938.

H. S. LAFOON, Notary Public.

State of Montana,
County of Park:

On this Thirty First day of July Nineteen Hundred Thirty Five, before me Paul Working, a Notary Public appeared

Sarah M. McMurdo and A. K. McMurdo whose *named* are signed above and acknowledged the same.

PAUL WORKING,
Notary Public for State of
Montana Residing at .....

My commission expires July 25, 1937.

(on back)

Bill filed and subpoenas issued January 16th 1958.

C. E. MORAN, Clerk.

* * * * *

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* * * * *

ANSWER.

Come now the respondents, Francis Parrott Wood and Sally Watson Hopkinson, and for answer to the bill for guidance exhibited against them in this cause, answer and say:

(1) That Maria Magruder Thurman was the paternal aunt of Sally Watson Hopkinson and the sister of Sarah Magruder McMurdo and Lucy Magruder Taylor, and the wife of James Oscar Thurman, decedent whose estate is sought to be settled;

(2) That respondent, Sally Watson Hopkinson, (which is the correct spelling of her name), alleges that she is one and the same person as Mrs. Sallie Watson Hopkins, beneficiary under the first codicil of the will of James Oscar Thurman, her uncle by marriage, and that she knows of no person of similar names, whether kin to James Oscar Thurman or not; that her identity is further established by the fact that the testator, James Oscar Thurman, wrote a second codicil to his will, which was not probated for lack of attestation, in which he referred to her as Sallie Watson Hopkinson.

(3) These respondents further allege that the instrument referred to in Paragraph (3) of said bill for guidance, dated July 23, 1935, and filed with said bill as "Exhibit B," is unenforceable for two reasons: (a) Said instrument is vague, in that it provides for the survivor of J. Oscar Thurman and

Maria M. Thurman to give, by his or her will, all of the property he or she may own at time of death to Lucy M. Taylor and Sarah M. McMurdo in equal parts, or to their heirs, dividing each of their parts as "they" see page 7 } fit, without specifying who the "they" refers to, and, therefore, the election of division is impossible to determine; (b) The instrument, by its own terms, was cancelled if said farm was sold during the life of J. Oscar Thurman and Maria M. Thurman, and said farm was sold during the life of J. Oscar Thurman. Said instrument shows upon its face that when the term "Lifetime of J. Oscar Thurman and Maria M. Thurman" is used, it recognizes that one will, or may, survive the other, and the provision is, therefore, fulfilled by cancellation because of the sale of Edgemont during the lifetime of J. Oscar Thurman;

(4) That J. Oscar Thurman acquired a 1/4 interest in the property known as Edgemont by deed of August 20, 1935, which is recorded in the Clerk's Office of the Circuit Court of Albemarle County in D. B. 228, p. 551, and acquired a 1/4 interest in said property by the will of Maria Magruder Thurman probated June 13, 1947, and spread in W. B. 38, p. 32. Charles E. McMurdo acquired a 1/4 interest in said property by the will of his mother, Sarah Magruder McMurdo, probated November 8, 1948, and spread in W. B. 38, p. 282, in said Clerk's Office. Lucy Ann Taylor acquired a 1/4 interest in said property by the will of her mother, Lucy M. Taylor, probated January 12, 1946, and spread in W. B. 37, p. 486, in said Clerk's Office, thus vesting the entire title to Edgemont in J. Oscar Thurman, Charles E. McMurdo and Lucy Ann Taylor;

(5) That by deed dated April 22, 1950, acknowledged May 17, 1950, and recorded the same day in said Clerk's Office in D. B. 289, p. 181, James Oscar Thurman conveyed to George Worthington his 1/2 interest in Edgemont, and by deed dated May 10, 1950, acknowledged May 15, 1950, and recorded May 17, 1950, in said Clerk's Office in D. B. 289, p. 183, Charles E. McMurdo and Lucy Ann Taylor joined to convey their respective 1/4 interests in Edgemont to George Worthington. For their respective conveyances, James Oscar Thurman received and accepted $10,200.00 and Charles Ed- page 8 } ward McMurdo and Lucy Ann Taylor received and accepted $5,000.00 each. These respondents allege the concerted action of James Oscar Thurman, Charles Edward McMurdo and Lucy Ann Taylor, as shown by these recorded deeds, shows conclusively that over seven (7) years ago, these parties considered that the instrument referred to as "Exhibit B" allowed for a sale of Edgemont during the

lifetime of James Oscar Thurman, even though his wife, Maria Magruder Thurman, had previously died on June 8, 1947, and by their conveyance as aforesaid and the receipt and acceptance of $5,000.00 each, Charles E. McMurdo and Lucy Ann Taylor are barred and prohibited from now contending for any construction of said "Exhibit B" inconsistent with their actions in selling for profit their respective 1/4 interests in Edgemont, and from making any claim to any portion of the estate of James Oscar Thurman. These respondents further allege that the remaining respondents, Henry M. Taylor, Franklin M. Taylor, George Keith Taylor, Maria Louisa Smith, A. Keith McMurdo and Sally McMurdo Johnson are barred and prohibited from contending that the instrument known as "Exhibit B" was not cancelled by the aforesaid sale to George Worthington, because of their laches in not asserting any rights that they may claim during the years intervening since said sale to George Worthington;

(6) Said respondents further allege that the instrument of July 23, 1935, filed as "Exhibit B," shows on its face that the parties thereto intended to limit all of the agreements contained therein to interests in Edgemont Farm only, and not to apply to any other property, and that the provision in said instrument that J. Oscar Thurman or Maria M. Thurman would leave "all the property he or she may own at time of death" actually referred only to such interests in Edgemont as he or she may own, and would not affect other property belonging to either of them.

(7) Your respondent, Frances Parrott Wood, alleges that for at least the last nine and one-half (9-1/2) years
page 9 } of his lifetime, James Oscar Thurman lived in the home of said Frances Parrott Wood, during which time said respondent waited upon, and ministered to, the needs and comforts of James Oscar Thurman, and was a natural object of his beneficence.

Wherefore, the respondents, Frances Parrott Wood and Sally Watson Hopkinson, pray that Sally Watson Hopkinson be determined to be the same person as Mrs. Sally Watson Hopkins, a beneficiary in the first codicil of the will of James Oscar Thurman, and that the instrument dated July 23, 1935, filed as "Exhibit B," be determined to be void and unenforceable, and that these said respondents are entitled to all of the estate of James Oscar Thurman, to be shared equally, after the payment of the debts and expenses of administration of the estate of James Oscar Thurman.

Respectfully submitted,

FRANCES PARROTT WOOD and
SALLY WATSON HOPKINSON
By Counsel.

H. E. BELT, p. d.
203 Fifth Street, N. E.
Charlottesville, Virginia.

I do hereby certify that copies of the foregoing pleading was mailed this 24th day of January, 1958, to Henry M. Taylor, Jr., c/o Florance, Gordon and Brown, Mutual Building, Richmond (19) Virginia, counsel of record for all respondents except Sally Watson Hopkinson and Frances Parrott Wood, and to Richmond and Via, 240 Court Square, Charlottesville, Virginia, counsel for complainant.

H. E. BELT.

(on back)

Filed January 24, 1958.

C. E. MORAN, Clerk.

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ANSWER.

Come now the respondents, Henry M. Taylor, Franklin M. Taylor, Lucy Ann Taylor, George Keith Taylor, Maria Louisa Smith, Charles E. McMurdo, Sally McMurdo Johnson and A. Keith McMurdo, and for answer to the bill for guidance exhibited against them in this cause, answer and say:

1. That these respondents admit the allegations contained in Paragraphs 1, 2, 3, 4, 5 and 6 of the Bill.

2. That James Oscar Thurman and his wife, Maria M. Thurman, lived on the farm in Albemarle County, Virginia, known as Edgemont from 1919 until Mrs. Thurman's death in 1947. James Oscar Thurman lived on the place for more than a year thereafter.

3. That during this period James Oscar Thurman and Maria M. Thurman paid no rent to the other owners of the property, nor paid them any share in the profits of the operation of said farm.

4. That in 1935 Sally Watson Hopkinson, one of the parties to this suit, and her sister, Elizabeth M. Henshaw, conveyed to James Oscar Thurman and Maria M. Thurman as joint tenants with right of survivorship the 1/4 undivided interest of said farm inherited from their father, Franklin

page 11 } M. Magruder.

5. That because of the insecurity felt by Maria M. Thurman, knowing that the other owners, Sarah M. McMurdo and Lucy M. Taylor, might seek their shares of the farm which she could not afford to purchase, Maria M. Thurman drew in her own handwriting the agreement dated July 23, 1935, and requested her sisters to sign it. By this agreement Maria M. Thurman and James Oscar Thurman received the security of knowing that they were protected in their occupation of the farm for the rest of their lives against a demand for an accounting or the threat of partition and sale.

If a sale of the farm was made during the joint lives of Maria M. Thurman and James Oscar Thurman, then the agreement would be cancelled. On the other hand, Sarah M. McMurdo and Lucy M. Taylor, or their heirs received the assurance that if they did not force a sale they would receive the estates of Maria M. Thurman and James Oscar Thurman in lieu of rent and a share in the profits during the long period of occupancy by the Thurmans.

6. That said agreement was based on valid and substantial consideration and is clear in its terms and purpose. These respondents allege, however, that if any doubt or question exists as to the meaning of said agreement or any of its terms, or if interpretation of it or any part of it is necessary that it be strictly construed against Maria M. Thurman and James Oscar Thurman and their successors in interest since they were the beneficiaries of said agreement and since it was drawn by Maria M. Thurman and signed at her request.

7. That they deny that said agreement was cancelled, and they allege that it is still in effect and binding.

8. If for any reason the Court should determine that these respondents are not entitled to the entire whole

page 12 } Estate of James Oscar Thurman, deceased, under the agreement of July 23, 1935, since these respondents relied on said agreement for fifteen years to their hurt, a Court of Equity should at last restore the parties to their original rights and require the Estate of James Oscar

Thurman to account to these respondents for the rents and profits of said farm from July 23, 1935 to May 17, 1950.

9. That for the last few years of his life, James Oscar Thurman lived in the house of Mrs. Frances Parrott Wood, one of the parties to this suit, that she was amply paid by him, and that the attempted bequest to her is a mere gratuity and the result of the undue influence exercised upon him in his declining years by Mrs. Frances Parrott Wood.

Wherefore, these respondents pray that the agreement dated July 23, 1935, be declared valid and binding, that the attempted bequests in the will and codicil of James Oscar Thurman, deceased, to Mrs. Frances Parrott Wood and Mrs. Sallie Watson Hopkins (Hopkinson) be declared void and inoperative, and that Peoples National Bank of Charlottesville, Executor under the will of James Oscar Thurman, deceased be directed specifically to perform said Agreement of July 23, 1935, and to pay over to the heirs of Sarah M. McMurdo and Lucy M. Taylor, your respondents herein, the Estate of James Oscar Thurman in such order and amounts as may be determined by the Court either under the contract or *quantum meruit* for the rents and profits.

HENRY M. TAYLOR, FRANKLIN M. TAYLOR, LUCY ANN TAYLOR, GEORGE KEITH TAYLOR, MARIA LOUISA SMITH, CHARLES E. McMURDO, A. KEITH McMURDO AND SALLY McMURDO JOHNSON
By Counsel.

HENRY M. TAYLOR, JR., p. d.
FLORANCE, GORDON & BROWN
605 Mutual Building
Richmond 19, Virginia.

page 13 } I do hereby certify that copies of the foregoing pleading were mailed this 4th day of February, 1958, to H. E. Belt, 203 Fifth Street, N. E., Charlottesville, Virginia, counsel for respondents, Sally Watson Hopkinson and Frances Parrott Wood, and to Richmond and Via, 240 Court Square, Charlottesville, Virginia, counsel for complainant.

HENRY M. TAYLOR, JR.

(on back)

Filed Feb. 5th 1958.

C. E. MORAN, Clerk.

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DECREE.

This cause came on this day to be heard upon the Bill of Complaint filed by Peoples National Bank of Charlottesville, Executor under the will of James Oscar Thurman, upon answers duly filed on behalf of all respondents, upon the depositions of witnesses duly taken, certified and filed as required by law, upon evidence taken *ore tenus* at Goochland Courthouse by agreement of all parties, and was argued by Counsel.

WHEREUPON, after mature consideration, the Court is of the opinion and doth decide:

That Sally Watson Hopkinson is one and the same person as Sallie Watson Hopkins named as beneficiary under the first codicil under the will of James Oscar Thurman.

That it was the intention of Maria M. Thurman, who prepared the agreement dated July 23, 1935, filed as "Exhibit B" in this cause, and the intention of all of the parties executing the same that the interest of J. Oscar Thurman and Maria M. Thurman, husband and wife, should be treated as a unity of title, that is, an entirety of interest or estate, and said agreement should be cancelled if the property known as "Edgmont" was sold during the lifetimes of Maria M. Thurman and J. Oscar Thurman or during the lifetime of either of them. That the property known as "Edgmont"
page 16 } was sold for a satisfactory price to the parties subsequent to the death of Maria M. Thurman, but during the life of J. Oscar Thurman, and said agreement was thereby cancelled and became of no effect. That the said agreement being the only attack made by the opponents of the Will against the probated Will of James Oscar Thurman, which is "Exhibit A" in this cause, said Will is declared valid and the Executor thereof is instructed and ordered to make distribution of the net estate of James Oscar Thurman to Frances Parrott Wood and Sally Watson Hopkinson in

accordance with the terms of the first codicil of said Will. To this ruling of the Court, Counsel for the opponents of the Will, duly excepted and assign the following grounds: that said ruling is contrary to the law and the evidence.

That the Executor of the Will of James Oscar Thurman shall refund to Counsel for the proponents and opponents of the Will respectively, the cost of the transcript of the evidence from the assets of the Estate of James Oscar Thurman, the amount of $135.67 to Henry M. Taylor, Jr. and $135.68 to Henry E. Belt; that this cost was assessed against the Executor because the Court deemed it necessary to have the transcript of the record in order to pass upon the complainant's Bill of Complaint, to which ruling of the Court Counsel for the Complainant excepted upon the grounds that the complainant had no interest in the transcript of evidence and that this was not a proper cost to be borne by the Estate of James Oscar Thurman.

That Richmond and Via, Attorneys for the Complainant, be, and they hereby are allowed a fee of $150.00 for their services in instituting this suit, said fee to be paid out of the Estate of James Oscar Thurman.

(on back)

C. CHAMPION BOWLES, Judge Designate.

Seen:

H. E. Belt, counsel for Sally Watson Hopkinson and Frances Parrott Wood.

Richmond & Via, counsel for complainant by Joseph W. Richmond.

Seen and objected to:

Henry M. Taylor, Jr., counsel for Henry M. Taylor, Franklin M. Taylor, Lucy Ann Taylor, George Keith Taylor, Maria Louisa Smith, Charles S. McMurdo, Sally McMurdo Johnson and A. Keith McMurdo.

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NOTICE OF APPEAL AND ASSIGNMENT OF ERRORS.

To C. E. Moran, Clerk of said Court:

Counsel for Henry M. Taylor, Franklin M. Taylor, Lucy Ann Taylor, George Keith Taylor, Maria Louisa Smith, Charles S. McMurdo, Sally McMurdo Johnson and A. Keith McMurdo, respondents in the above styled case hereby gives notice of appeal from the order entered in this case on January 6, 1959, and sets forth the following assignment of error:

That the ruling in this case is contrary to the law and the evidence.

HENRY M. TAYLOR, JR.
Counsel for Henry M. Taylor, Franklin M. Taylor, Lucy Ann Taylor, George Keith Taylor, Maria Louisa Smith, Charles S. McMurdo, Sally McMurdo Johnson and A. Keith McMurdo
605 Mutual Building
Richmond 19, Virginia.

page 18 } I certify that a copy of the foregoing Notice of Appeal and Assignment of Error was mailed to Richmond and Via, 240 Court Square, Charlottesville, Virginia, Counsel for Complainant, and Henry E. Belt, 203 Fifth Street, N. E., Charlottesville, Virginia, Counsel for respondents, Frances Parrott Wood and Sally Watson Hopkinson, on February 2, 1959.

HENRY M. TAYLOR, JR.

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Dep.
April 29, 1958
page 2 }

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THIS MATTER came regularly on for hearing for the taking of the depositions of A. KEITH McMURDO and SALLY McMURDO JOHNSON, pursuant to Notice to The Peoples National Bank of Charlottesville to take the depositions of A. Keith McMurdo and Sally McMurdo, at Pocatello,

Idaho, on Tuesday, April 29th, 1958, between the hours of nine o'clock a. m. and five o'clock p. m., said Notice being given by Henry M. Taylor, Franklin M. Taylor, Lucy Ann Taylor, George Keith Taylor, Maria Louisa Smith, Charles E. McMurdo, A. Keith McMurdo and Sally McMurdo Johnson, by Counsel: Henry M. Taylor, Jr., Florance, Gordon & Brown, 605 Mutual Building, Richmond, Virginia; and acceptance of service of said Notice to Take Depositions being made Henry E. Belt, counsel for Frances Parrott Wood and Sally Watson Hopkinson for Frances Parrott Wood and Sally Watkins Hopkinson; and Joseph W. Richmond, Attorney for The Peoples National Bank of Charlottesville; and present at the taking of said depositions were Ben W. Davis, Esquire, of Pocatello, Idaho, appearing for Henry M. Taylor, Franklin M. Taylor, Lucy Ann Taylor, George Keith Taylor, Maria Louisa Smith, Charles E. McMurdo, A. Keith McMurdo and Sally McMurdo Johnson; and R. Don Bistline, Esquire, of Pocatello, Idaho, appearing for Frances Parrott Wood and Sally Watson Hopkinson;

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Whereupon, the following proceedings were had, to-wit:

Mr. Davis: These depositions are taken pursuant to Notices to The Peoples National Bank of Charlottesville, and service has been accepted by Henry E. Belt for Frances Parrott Wood and Sally Watson Hopkinson,—that is who you represent, Mr. Bistline?

Mr. Bistline: What are the names?

Mr. Davis: Frances Parrott Wood and Sally Watson Hopkinson?

Mr. Bistline: Yes.

Mr. Davis: And I am representing the parties represented by the firm of,—

Mr. Bistline: You might show the chief attorney on my side of the case is Henry E. Belt.

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Mr. Davis: Yes, his acknowledgment is on there. And I appear for Henry M. Taylor, Jr., Franklin M. Taylor, Lucy Ann Taylor, George Keith Taylor, Maria Louisa Smith, Charles E. McMurdo, A. Keith McMurdo and Sally McMurdo Johnson, and they are represented by Florance, Gordon & Brown.

Will you be sworn please, Mr. McMurdo?

Whereupon,

A. KEITH McMURDO,

called as a witness, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, deposed and testified as follows:

DIRECT EXAMINATION.

By Mr. Davis:

Q. Will you state your name, please, Mr. McMurdo?

A. A. Keith McMurdo.

Q. And where are you presently living?

A. Presently?

Q. Yes.

A. Well, I am staying now with my daughter up on Fir Street in Pocatello.

Q. What is your age, Mr. McMurdo?

A. Eighty years old.

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Q. And you were the husband of Sarah Magruder McMurdo during her lifetime?

A. I was.

Q. And when did Mrs. McMurdo pass away?

A. October 15th, 1948.

Q. Now, are you familiar with an agreement that is marked Exhibit "B" in the pleadings in this case, an agreement signed by Sarah McMurdo and Oscar Thurman, Maria M. Thurman and Lucy Ann Taylor and A. K. McMurdo?

A. I am.

Q. Now, who was Sarah M. McMurdo?

A. She was my wife.

Q. And who was Maria M. Thurman?

A. She was Sarah's sister.

Q. Your wife's name was Sarah?

A. Yes, sir.

Q. Now, were you familiar with the place known as "Edgmont Farm?"

A. I was.

Q. And you have been familiar with that how long?

A. Oh, probably sixty years.

Q. And do you know of your own knowledge what interest your wife, Mrs. McMurdo, received from her grandmother in this Edgmont Farm?

A. An undivided one-quarter interest.

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Q. And she had two sisters and a brother; is that right?

A. Yes; that is right.

Q. And one of her sisters was Mrs. Thurman?

A. Keith McMurdo.

A. Yes.

Q. And her other sister, what was her name?

A. Lucy Ann Taylor.

Q. And what was the brother's name?

A. Franklin Minor Magruder.

Q. Now, do you know when, about when your wife's mother died?

A. I am not so sure about that,—not the exact date.

Q. Was it about 1919?

A. Somewhere around there.

Q. And with reference to Edgmont, who occupied that farm prior to your wife's mother's death, and afterwards? Do you understand that?

A. Well, my wife's mother lived there, and her daughter Maria lived with them, and Oscar Thurman married Maria, and they lived with them from about,—well, I forget now about the date. I can't tell you, but they lived there quite a while.

Q. After your wife's mother's death then who occupied the farm?

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A. Mr. and Mrs. Thurman.

Q. And did your wife ever occupy it after that time?

A. Never.

Q. Did your wife ever receive any rent, or anything, from that farm, in any way?

A. No, not at all, nothing.

Q. Now, where were you and your wife living when you signed this agreement that I referred to as Exhibit "B"?

A. We were living in Montana.

Q. Now, are you familiar with what took place before the agreement was signed? That is, how was the agreement arrived at? By correspondence?

A. Yes, there were several letters, and correspondence, between them.

Q. And who drew the agreement?

A. Maria drew it in her own handwriting.

Q. Now, do you remember how long the agreement was in your and in your wife's possession before it was signed?

A. I should judge it was about two or three weeks.

Q. Yes. Now, why was it kept two or three weeks after it was mailed to you?

A. Keith McMurdo.

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A. Well, I didn't exactly understand it, and I didn't like the agreement the way it was drawn up.

Q. So what did you do then?

A. Well, my wife, she wanted,—she didn't want to have any trouble with her sister, any hard feelings, so she said, Let's sign it and send it to them. I think it will be all right."

Q. Yes. Now, in the letters,—are those letters in existence now?

A. Not that I know of.

Q. You have no idea where they are?

A. No.

Q. Since your wife pased away you have been living in different places, Mr. McMurdo?

A. Yes.

Q. And you recently have been where? In California?

A. Well, I was in California this winter; yes.

Q. And you have no idea what became of the letters?

A. Oh, no.

Q. Do you have a recollection, an independent recollection of what was in the letters leading up to this agreement?

A. Well, I read them all. I think I have a pretty good idea.

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Q. Now, what was the purpose of the agreement, and why was it entered into?

A. Well, Mr. and Mrs. Thurman were living on the place, and when their mother died they wanted to continue living on the place. They had lived there all their lives and they wanted to live there. So they wrote up an agreement and said that they would give all their property at their death if we would,—if Sarah and Lucy, that is the two sisters, would let them live there during their lifetime.

Q. Now, in the agreement it is stated, "If the farm is sold during the life of J. Oscar Thurman and Maria M. Thurman this agreement is cancelled." Do you remember that part of the agreement?

A. Yes, sir.

Q. Now, did you have any correspondence—do you recall any, or anything that Mr. Oscar Thurman wrote to your wife as to whether or not that cancelling of the agreement would cancel the portion of the agreement that provided they would will all of their property?

A. Yes; they said that wouldn't affect it in any way, that

A. Keith McMurdo.

they would,—that the heirs would get their property any way.

Q. Regardless of whether the agreement was cancelled as to Edgmont?

A. Yes; that is what the understanding was when we signed it.

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Q. Now, do you know what became of the stock and the machinery and the shrubbery on the place?

A. Well, they sold it all. They,—every once in a while they would write a letter and say what they sold.

Q. Now, when you say "they," whom do you mean?

A. Maria and,—well, Maria did most of the writing.

Q. Yes. That was Mr. Thurman's wife?

A. Writing to her sister.

Q. Now, did your wife ever receive anything from any of that?

A. No, nothing.

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Q. What I am trying to get at is this: What was the consideration for your wife Sarah giving up and allowing the Thurmans to have Edgmont, and her not receive anything?

A. Well, the agreement was drawn up with the intention of letting them stay there all the rest of their lives without paying any rent, or anything,—any compensation, and that they would will all their property to Sarah and Lucy. That was the idea.

Q. Now, Mr. McMurdo, these letters, when I asked you about that, all of the letters that came, and all of the correspondence, it isn't in existence any place?

A. Oh, no.

Q You can't get it?

A. No.

A. Keith McMurdo.

Q. You are testifying,—
Dep. A. Just from what I read.
April 29, 1958 Q. You are testifying from what you read
page 13 } in those particular letters?
A. Yes, sir.

Q. Now, what became of your wife's brother Frank's interest in the property?

A. Well, they had an equal interest with my wife and Lucy, and Frank's two children, their one-fourth interest, Oscar bought that out,—bought them out of it altogether.

Q. By "Maria and Oscar" you mean Maria and Oscar Thurman?

A. Thurman; yes.

Mr. Davis: I believe that is all, Mr. Bistline.

CROSS EXAMINATION.

By Mr. Bistline:

Q. Now, Mr. McMurdo, you signed this agreement?

A. I did.

Q. That Mr. Davis referred to?

A. I did.

Q. And your wife signed it?

A. Yes, sir.

Q. And where were you at the time it was signed?

A. I was in Montana.

Q. And your wife was in Montana?
Dep. A. Yes, sir.
April 29, 1958 Q. And the whole transaction was handled
page 14 } by mail; is that correct?
A. Yes.

Q. You never personally discussed the matter with any other signer than your wife?

A. That is all.

Q. You didn't discuss the matter with Lucy Taylor?

A. Not verbally, but just,—

Q. Just by mail? And you didn't discuss it with the Thurmans" except by mail?

A. Yes, sir.

Q. And that was mail addressed to your wife and not to you; is that correct?

A. Yes, it was addressed,—well, to both of us. It generally said both of us.

Q. And only you and your wife were present when you

signed this agreement? You *did't* see the other people sign it, or know when they signed it?

A. No.

Q. Now, you are the A. K. McMurdo,—that is the same as A. Keith McMurdo?

A. Yes.

Q. And you say that your wife signed that and said it would be satisfactory?

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A. She thought it would be. She didn't know they were going to double-cross her.

Q. You protested it yourself; is that right?

A. I didn't protest it so much, but I kind of hesitated a long time.

Q. It actually didn't concern you, because it wasn't your property that was involved?

A. I was just as much concerned as anybody; it was my wife's.

Q. It was your wife's property? It wasn't an inheritance to you. It was something she was receiving as an inheritance?

A. Yes.

Q. Now, there were four heirs to that property, weren't there?

A. Yes, sir.

Q. Now, the only persons that wanted to live on that property were the Thurmans; isn't that right?

A. That is right.

Q. You and your wife didn't want to live there?

A. No.

Q. And Lucy Taylor didn't want to live there, so far as you know?

A. I don't know anything about that.

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Q. And the other heir I believe you said was a brother by the name of Frank?

A. He was passed away.

Q. His two children didn't want to live there?

A. No.

Q. So that the only persons desiring to live on the Edgmont farm were the Thurmans?

A. Yes, sir.

Q. Do you know of your own knowledge, Mr. McMurdo, whether in May, 1950, J. Oscar Thurman, Charles E. McMurdo and Lucy Ann Taylor sold the property to a third party?

A. Keith McMurdo.

A. Well, I think they did. I know they sold it.

Q. And you noted in that agreement at the time you signed it that it provides that "said farm if sold during the life of J. Oscar Thurman and Maria M. Thurman, this agreement is cancelled?"

A. Yes, during their both lifetimes.

Q. You understood that to mean both of them?

A. The two of them.

Q. Both of them?

A. Yes; both of them.

Q. Who died first? J. Oscar Thurman, or Maria Thurman?

A. Maria died first.

Q. When did she die? Do you know?

Dep. A. I don't know the date of it.

April 29, 1958 Q. Was it prior to 1950?

page 17 } A. Yes; I think it was.

Mrs. Sally McMurdo Johnson: In 1947, I believe.

Mr. Bistline: (Continuing)

Q. And it was after her death then that the farm was sold?

A. Yes, sir.

Q. And while Mr. J. Oscar Thurman was still alive?

A. Yes, sir.

Q I believe your wife was dead at that time, too, wasn't she? Didn't you say she died on October 15th, 1948?

A. In 1948; yes.

Q. Were you called upon to participate in that sale in any way?

A. No.

Q. Did you know of it being made?

A. Well, I knew they were making a deal back there, but I wasn't in it. I didn't know anything about it.

Q. Did you assert any claim against it at that time?

A. No.

Q. On your own behalf, or on behalf of your wife's estate?

A. No.

Dep. Q. You never made any claim against it?

April 29, 1958 A. No.

page 18 } Q. Although you have known for some seven or eight years the property was sold at that time?

A. Yes, sir.

Q. Is that correct?

A. Keith McMurdo.

A. Yes, sir; I knew the property was sold, yes, that is, the Edgmont Farm.

Q. And that the Thurmans no longer had an interest in it; is that right?

A. And who?

Q. That the Thurmans no longer had an interest in it?

A. Well, I don't know anything about that. I don't think they did.

Q. They sold it in 1950; isn't that right?

A. Yes.

Q. And you have known about it ever since that time?

A. Yes, sir.

Q. Or some time shortly afterwards?

A. Yes.

Q. And your wife at the time of the making of this agreement and up to the time of her death never desired to live on that property?

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A. Oh, no.

Q. Have you lived in Montana, more or less, since 1935 when you made that agreement?

A. Well, I left there in 1936, so I lived there about a year afterwards.

Q. As I understand it now, your claim against this estate is based upon this agreement; is that right?

A. Well, certainly.

Mr. Davis: He doesn't have any claim.

By Mr. Bistline: (Continuing)

Q. You don't have any claim yourself?

A. No; I don't have any claim there at all.

Mr. Bistline: I wasn't sure on that.

Mr. Davis: No.

Mr. Bistline: (Continuing)

Q. It is your daughter?

A. My daughter, through my wife's will. My wife willed all her property to my daughter and son.

Q. Now, Mr. McMurdo, the only person that could corroborate your testimony with regard to the understanding at the time of the making of this agreement would be your wife; is that right? And the letters that she received?

A. Yes; that would be the only way.

Q. And the letters are not available?

Sally McMurdo Johnson.

A. No.

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Q. And your wife is deceased?

A. I am the only one who knows anything about it.

Q So your testimony is uncorroborated.

Mr. Bistline: At this time we would like to make a motion that all of his testimony be ruled inadmissible, as not being corroborated as required by the laws of the State of Virginia. I believe that is all I have.

RE-DIRECT EXAMINATION.

By Mr. Davis:

Q. Mr. McMurdo, I think it is amply covered here, but you didn't claim any interest in Edgmont at the time it was sold at all?

A. None at all.

Q. And you didn't know anything about the transaction leading up to the sale?

A. I did not.

Q. And all you ever knew about it was by hearsay, or by virtue of hearing the Court proceedings down there?

A. Yes.

Q. You didn't know a thing about it?

A. No.

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MRS. SALLY McMURDO JOHNSON,

called as a witness in her own behalf, having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, upon examination, deposed and testified as follows:

DIRECT EXAMINATION.

By Mr. Davis:

Q. Will you state your full name please, Mrs. Johnson?

A. Sally McMurdo Johnson.

Sally McMurdo Johnson.

Q. And where do you live?
A. In Pocatello, Idaho.
Q. And you are married?
A. Yes.
Q. Do you have a family?
A. No.
Q. Just you and your husband?
A. Yes, sir.

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Q. Now, you are the daughter of Mr. A. Keith McMurdo who just testified in the taking of his deposition?
A. Yes, sir.
Q And you are the daughter of his wife, Sarah, who is now deceased?
A. Yes, sir.
Q. And you are one of the parties interested in the J. Oscar Thurman estate in Virginia?
A. Yes.
Q. Now, Mrs. Johnson, do you know of the interest that your mother had in what is known as Edgmont, the farm or land, in Virginia?
A. Yes.
Q. Do you know what her interest was in that?
A. Yes; one-quarter.
Q. Now, in 1935 how old were you then, Mrs. Johnson?
A. I was twenty-six.
Q. Twenty-six in 1935?
A. Yes, sir.
Q. Now, did you have occasion to be at your mother's and father's home at any of the time during which there was correspondence during the signing of this agreement that has been referred to as Exhibit "B"?
A. Yes; I read all the correspondence.

* * * * *

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Q. All right. Now, do you have any independent recollection, and do you know anything about the correspondence that you remember and read yourself prior to the time the agreement was signed?
A. Yes.
Q. All right.

* * * * *

Sally McMurdo Johnson.

Mr. Davis: Yes; it is understood the objection that counsel just made goes to this.

Mr. Davis: (Continuing)

Q. Now, tell us what you know about that.

A. My uncle and aunt wanted to live on at Edgmont. They couldn't afford to buy the place, and they made this,—wanted to make this agreement so that they could live on there. They didn't want to move. They made this agreement saying that they would give us, that is my mother and her sister, or their heirs, all their property if they would allow them to live there the rest of their lives.

Q. Now, do you know anything about anything being written by Mrs. Thurman concerning the Magruder estate and how it should go,—what the intention was?

* * * * *

Mr. Davis: Yes.

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page 27 } A. Yes

Mr. Davis: (Continuing)

Q. Tell us what you know about that.

A. Well, shortly before my aunt died she wrote my mother and told her,—I saw the letter,—saying that she and her husband, Oscar Thurman, had been to a lawyer, and had made out their wills in accordance with the agreement.

Q. Now, do you know whether your mother ever received any rent or any pay of any kind,—any income, from Edgmont?

A. She never received a cent.

Q. Now, I call your attention, Mrs. Johnson, to,—I have a photostatic copy of an answer here filed on behalf of Frances Parrott Wood and Sally Watson Hopkinson, and I am calling your attention to an allegation in Paragraph Five thereof in which it is alleged generally that Sally McMurdo Johnson is barred and prohibited from contending that the instrument known as Exhibit "B" was not cancelled by the sale to George Worthington because of your laches in asserting any right that you might claim during the intervening years since the

Sally McMurdo Johnson.

sale to George Worthington. Now, you know what I have in mind by that?

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A. Yes.

Q. Now, Mrs. Johnson, did you know anything about it at the time that this property was sold to Worthington,—that Edgmont was sold to Worthington? Did you know when it was sold?

A. I knew about when.

Q. Yes. Now, did you know prior to 1950,—

Mr. Davis: I was mistaken in that date, 1950. I will withdraw it.

Mr. Davis: (Continuing)

Q. Mrs. Johnson, did you know or understand that the sale of Edgmont in any way affected your interest as your mother's heir in the property of Oscar Thurman and his wife?

A. No, I did,—

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A. No, I don't.

Mr. Davis: (Continuing)

Q. Now, Mrs. Johnson, as quickly,—no; when did you first know that J. Oscar Thurman's will had not been drawn in accordance with the agreement?

A. After his death.

Q. Yes. Did you then immediately take steps to protect your interest in the matter?

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A. Yes: I did.

Q. And you are now represented by counsel in this matter?

A. Yes, I am.

Q. In Virginia?

A. Yes.

Q And did you ever at any time waive any of your rights in the matter in any way?

A. No.

Q. And were you ever asked to?

A. No.

Q. And were you ever consulted anything about any sale?

A. No.

Lyttelton Waddell.

Q. How did you know,—did you actually know of your own knowledge when this sale was made?

A. No.

Q. A minute ago you said you understood something about it. Did you know when it was sold?

A. I knew they were planning it. I didn't know exactly when. I heard about it afterwards.

Q. How did you hear about it?

A. Through mail from my brother.

Q. From your brother. Do you know how long afterwards that was?

Dep. April 29, 1958 page 30 } A. Oh, probably several months.

Q. Now, you have never received any rent or income of any kind from Edgmont?

A. Not a thing.

Q. Nor anything from any other source from Mr. or Mrs. Thurman?

A. Not a cent.

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DEPOSITION.

The deposition of LYTTELTON WADDELL, taken before Eleanor M. Christian, a Notary Public in and for the State of Virginia at Large, on the 17th day of June, 1958, at 3:00 o'clock p. m., in the Albemarle County Court House, Charlottesville, Virginia, by agreement of counsel; to be read as evidence in the above styled cause now pending and undertermined between the parties.

Appearances: Henry Magruder Taylor, Jr., Esq., Richmond, Va. Counsel for Henry M. Taylor, Franklin M. Taylor, Lucy Ann Taylor, George Keith Taylor, Maria Louisa Smith, Charles E. McMurdo, Sally McMurdo Johnson, A. Keith McMurdo.

Dep. June 17, 1959 page 2 } Henry Easley Belt, Esq., Charlottesville, Va. Counsel for Frances Parrott Wood and Sally Watson Hopkinson:

Richmond and Via, Esqs., Charlottesville, Va. Counsel for Complainant (No appearance.)

Charles Edward McMurdo, a Respondent.

LYTTELTON WADDELL,

a witness of lawful age, being first duly sworn, deposes as follows:

Lyttelton Waddell.

DIRECT EXAMINATION.

By Mr. Taylor:

Q. You are Judge Lyttelton Waddell?

A. That's right.

Q Judge Waddell, did you practice law in the City of Charlottesville before you went on the Bench?

A. Yes, sir.

Q. During the years that you practiced law in Charlottesville, sir, did you happen to know J. Oscar Thurman?

A. Yes, sir.

Q. Did you represent Mr J. Oscar Thurman during the years 1949 and 1950, during negotiations for the sale of a place on the Stony Point Road known as Edgemont?

Dep. June 17, 1959 page 3 } A. Yes, sir, I think I handled practically all of that transaction. Our firm represented Mr. Thurman and Mrs. Thurman before her death. Sometimes I did the work and sometimes Mr. Walsh, but I believe in that particular transaction I handled the whole thing.

Q. Do you remember, sir, writing a letter to Miss Lucy Ann Taylor and Mr. Charles McMurdo, advising them that Mr. Thurman wished to sell the land, or wished to sell Edgemont?

A. I can't say I remember it, no, sir. I remember that there were some negotiations with respect to selling, but I don't remember any details of it.

Q. Judge, I hand you a letter dated April 14, 1949, on the stationery of Waddell and Coles and ask you if you recognize that letter, sir?

A. I don't recognize the letter but I signed it. I don't recall it. (Reading letter.) After reading it I believe I have some recollection of it, yes.

Note: Letter mentioned above, dated April 14, 1949, is now introduced in evidence and marked Respondents' Henry M. Taylor, et al., Exhibit No. 1.

Q. I gather, sir, that—Was a partition suit contemplated by your client and was he advised by you in the event that the three owners of the property, J. Oscar Thurman, Lucy Ann Taylor, and Charles E. McMurdo, could not agree on a

Lyttelton Waddell.

private sale?

Dep. June 17, 1959 page 4 } A. I don't understand the question. I don't think you completed it. From this letter it appeared that we did talk about a partition suit. I, frankly, don't have a clear recollection of doing so, but I suppose we did.

Q. Does not the letter mention three alternatives, sir, a sale to a third party, buying out one of the parties by two of the others or some of the others, or a third possibility of a partition suit?

A. It does.

Q. Did the initiative for the sale begin with Mr. Thurman?

A. I don't think that would be a privileged communication. This letter indicates that it did, I think. It has already been disclosed that it was his initiative. Yes, that's true.

Q. Are you familiar with an agreement dated July 23, 1935, between Mr. and Mrs. Thurman, Mrs. Sally McMurdo and her husband, and Mrs. Lucy M. Taylor?

A. Yes, sir.

Q. Do you remember the terms of this agreement, sir?

A. Substantially. I have a copy of it.

Q. Do you recall after your letter of April 14th, in connection with the discussion of a possible sale of Edgemont, any further communications with either Miss Taylor or Mr. McMurdo?

Dep. June 17, 1959 page 5 } A. I do remember talking to Mr. McMurdo about it by phone, but I don't remember what the conversation consisted of.

Q. Do you remember a telephone conversation with Mr. McMurdo in late April of 1949, some time after your letter was written, sir?

A. I remember a conversation. I can't tell you when it was.

Q. Do you recall that if at that time you made a statement to Mr. McMurdo that if the property known as Edgemont was sold that the agreement would not be cancelled, the agreement of July 23, 1935?

A. I don't recall making that statement.

Q. Can you say, sir, that you did not make that statement?

A. It is very hard to be very definite about it because I don't think I would have made the statement, because I don't think that was my opinion.

Q. Well, do you recall if Mr. McMurdo and Miss Taylor

were at the time of your conversation willing to sell their interest in Edgemont?

A. As I recall they were reluctant to do so.

Q. You do not recall a statement to Mr. McMurdo over the telephone some time in April of 1949 that if he and Miss Taylor agreed to sell that the agreement would not be cancelled and would still be binding?

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A. No, sir, I don't recall any such statement. I don't think that I had any authority to make such a statement, and I don't believe that I made it in that form.

Q. Could you suggest, sir, as to what form you possibly could have made the statements?

A. I think I probably, if my memory serves in the matter, told Mr. McMurdo that in my opinion if the property were partitioned there would be a very serious question as to whether the agreement was or was not terminated.

Q. Judge, do you remember a conference with myself, Mr. McMurdo, and Mr. Henry Taylor on or about October 12, 1957, in your office at approximately this same time in the afternoon?

A. Yes.

Q. Do you recall, sir, if at that time whether you made a statement substantially as follows: that you did not recall making a specific statement that the agreement of July 23, 1935 would not be cancelled, but that it is not inconceivable that you could have made that statement and that such a statemen was in line with your thinking at that time?

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A. I am frank to admit that I don't recall, don't so recall the conversation. As I recall I told you at that time that I didn't remember what I had told Mr. McMurdo and that I didn't think I could contradict anything he might say that was said because I had no recollection.

The only reason I undertook to say that I didn't think I made the statement about which I was asked was because it was not in accordance with my opinion that I had at the time. I do recall the question coming up.

Q. Did you write a will for Mr. Thurman at approximately this time, sir?

A. Yes, I think I did.

Lyttelton Waddell.

Q. Did you inform Mr. McMurdo—or can you recall if you indicated to Mr. McMurdo in this same telephone conversation that this will was drawn in accordance with the agreement?

A. No, sir.

* * * * *

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A. I think the will to which I referred when I talked to Mr. McMurdo was dated in '46. I drew a will for Mr. Thurman—I will say this. I drew wills for Mr. Thurman and his wife and then after Mrs. Thurman's death I drew a will, and that will is in '46. I drew wills for Mr. Thurman and his wife in '46. I believe her will was probated.

I drew a will for him after her death. This next will that I drew for Mr. Thurman, as far as my records show, or my recollection is, was in November of 1950.

* * * * *

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CROSS EXAMINATION.

By Mr. Belt:

Q. Judge Waddell, do I understand that when you wrote Miss Lucy Ann Taylor and Mr. Charles McMurdo on April 14, 1949, you were then familiar with the agreement of July 23, 1935, with is Exhibit B in the Bill in this case?

A. Yes, indeed.

Q. And I believe you said that you advised Mr. Charles E. McMurdo that if a partition suit were the proceeding that became necessary for the sale of Edgemont there would be, in your opinion a doubt as to whether or not—

A. I didn't say I advised him that. I said that I thought it was more likely that I advised him that than that I would have advised him that a sale would not terminate the contract. And I said that was because that was my opinion at the time, but if there was partition there would be consider-

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ably more doubt as to whether the contract were terminated than if there was a sale. That was the opinion which I had at that time.

Q. Did you advise him or did you hold the opinion that if there were a sale, voluntary sale by all of the then owners, that the contract of July 23, 1935, would be canceled by its own terms?

A. You asked me if I advised Mr. Thurman, what I told him about that?

Q. I asked you if you advised him that it was your opinion.

A. Mr. Thurman?

Q. No, not Mr. Thurman—Mr. McMurdo.

A. I can't remember what I told Mr. McMurdo The only reason I say that I don't think that I told him outright that if the property was sold—certainly, I don't think I told him that if the property was sold voluntarily that the contract would not be terminated.

Q. Would not be terminated?

A. I don't think I told him that.

Q. Was it your opinion that if it were sold by private sale and agreement of all the owners that the contract would be terminated?

A. I didn't know.

Q. You didn't know?

A. I didn't know.

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Q. You didn't have any opinion on that?

A. I had an opinion but it wasn't a certain opinion. There was doubt about that, too, in view of the terms of the contract, sold during the lifetime of Maria and Oscar Thurman—I didn't know whether that meant the joint lifetime or the lifetime of either of them.

Q. You hadn't determined to advise Mr. McMurdo on that score at all?

A. No, because I didn't know what the answer to that was. I still don't

Q. However, under the contract of 1935 you did proceed to arrange for Mr. Thurman and the other two owners of Edgemont to sell it in May of 1950?

A. Yes, sir.

Q. And do you remember that each or either received due consideration for his or her share in the property?

A. I remember that there was a sale and that there were some provisions of some kind, but I couldn't tell you what the terms of it were.

Sally Watson Hopkinson.

Q. Did you draw a will for Mrs. Maria Magruder Thurman dated June 10, 1946, which she signed and was later probated?

A. Yes.

Q. Will you state for the record whether that will was in accordance with the agreement of July 23, 1935?

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page 13 }

A. I thought it was.

Q. And that, of course, was prior to the sale of the property by any one of these particular owners?

A. And, since I had already told Mr. McMurdo of the existence of the will I drew at the same time for Mr. Thurman, I don't think there was any other disclosure being made of any confidential relationship when I said that the two wills were drawn at the same time and they were, in fact, cross wills.

* * * * *

Appearances: Henry M. Taylor, Jr., Esq., Walker Florance, Esq., Attorneys for Henry M. Taylor, Franklin M. Taylor, Lucy Ann Taylor, George Keith Taylor, Maria Louisa Smith, Charles E. McMurdo, Sally McMurdo Johnson and A. Keith McMurdo.

Henry Easley Belt, Esq., Attorney for Frances Parrott Wood and Sally Watson Hopkinson.

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MRS. SALLY WATSON HOPKINSON,
a proponent, after being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Belt:

Q. You are Mrs. Sally Watson Hopkinson, one of the respondents in this suit, are you not?

A. I am.

Q. Mrs. Hopkinson, depositions have been filed in this case by which it is undertaken to show that Mr. J. Oscar Thur-

Sally Watson Hopkinson.

man, who I believe is your uncle by marriage, and
page 27 } his wife had sold off shrubbery and stock, and
so forth, from the Edgemont farm. Would you tell the Court how long you have been familiar with the Edgemont farm?

A. Well, I have been familiar with it, I guess, since I was born there in 1906, and so far as I know they never sold any shrubbery.

Q. How long did you live on the farm?

A. I lived there until 1916, I went to St. Ann's to school, and we used to spend the summers there after that quite a few years.

Q. Have you seen the place recently?

A. About 3 years ago I was out there.

Q. Have you noticed any difference in the shrubbery, outside of growth? Is there any shrubbery missing that was there in 1935?

A. Not that I can recall.

Q. Those depositions also attempted to show stock had been sold off the place.

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Q. To your knowledge, Mrs. Hopkinson, what stock was on the Edgemont farm belonging to your grandmother, I reckon it would be, Mrs. Sally Minor Magruder, also known as Sarah Minor Magruder, in 1935, in July, 1935?

A. Well, very little stock, I should say.

Q. Very little stock?

A. Very little stock.

Q. Your grandmother, I believe, died August 1st, 1925, according to the statement made by Mr. Taylor. Is that correct?

page 29 } A. That is correct.

Q. At the time of her death, what stock was on the farm? Do you know?

A. Well, I would say very little stock at that time.

Q. Would you explain to the Court what you mean by "very litle stock"?

A. Maybe 3 or 4 cows and a horse or 2. She may have have had some sheep at one time, many years ago.

Sally Watson Hopkinson.

Q. How many sheep?

A. I don't recall the number, but I know we did have sheep there.

Q. And that was at the time of her death, in 1925?

A. Yes.

Q. Would you remember whether any of that stock was alive 10 years later, the same stock?

A. I wouldn't imagine so, but I don't know definitely.

Q. Do you know of any sale of stock made by the Thurmans that had belonged to your grandmother?

A. No, I don't.

Q. How about machinery on the place? Was there much machinery on Edgemont when your grandmother

page 30 died in 1925?

A. Well, I wouldn't say there was a great deal. We probably had wagons and plows and what was necessary to do the farming at that time.

Q. Do you have any knowledge of the Thurmans having sold any of the machinery?

A. No, I don't.

Q. Mr. and Mrs. Thurman lived on the farm, I believe, from 1935 and prior thereto for some years until Mrs. Thurman's death.

A. That's right.

Q. Was Edgemont a farm in the usual sense of the word? Did they grow crops or anything of that kind?

A. No, I don't think so.

Q. They did not?

A. No.

Q. During any of that time?

A. They might have had a garden.

Q. Any wheat or corn or tobacco or anything of that kind for sale?

A. Not that I know of. I don't imagine so.

Q. Have you ever seen any crops grown there by the Thurmans for sale?

A. I don't think so.

Q. Do you know any profits he made out of operating the farm?

page 31 A. I imagine he went in the hole.

Q. Did he have any source of operation of the farm that would profit him?

A. No, I don't think so.

Q. Were you familiar with the agreement we are talking

about, Exhibit B, made between the Thurmans and Mrs. Thurman's sister on July 23rd, 1935?

A. I have heard of the agreement.

Q. When did you first hear of it?

A. Well, like the time we sold our interest in Edgemont.

Q. To whom did you sell your interest?

A. We sold it in 1935 to Maria Thurman and J. Oscar Thurman.

Q. Mrs. Hopkinson, did you and your sister, Elizabeth D. Henshaw, have a contract with J. Oscar Thurman and Maria Magruder Thurman dated the same day as the agreement, July 23rd, 1935, in effect saying they would buy the one-fourth interest of you and your sister for $3,000.00 provided a concession which they were requesting of the other heirs of the property was granted?

A. We did.

Q. Is this the agreement?

A. It is.

Mr. Belt: We offer this in evidence.

page 32 } (Note: The paper referred to was filed in evidence and marked Sally Watson Hopkinson Exhibit A.)

By Mr. Belt:

Q. At the time of the agreement which Mr. and Mrs. Thurman had with the other heirs and the agreement which they had with you, did Mr. J. Oscar Thurman own any other real estate, that is, on July 23rd, 1935?

A. I think so.

Q. Where was it located?

A. On Stony Point Road.

Q. On Stony Point Road in Albemarle County?

A. Yes.

Q. Was it any considerable distance from Edgemont Farm?

A. Right across the road.

Q. Were you familiar with the property?

A. Yes.

Q. Do you know how many acres it had in it?

A. Around 125.

Q. Did it have a house on it?

A. It did.

Q. What size house?

A. Five or six rooms, I should say. I don't know exactly.

Sally Watson Hopkinson.

Q. Was it in good repair?
page 33 } A. So far as I know.
Q. Would it have furnished suitable living quarters for Mr. Thurman and his wife?
A. I imagine so.
Q. Did he later sell the property?
A. Yes, he did.
Q. When?
A. In 1936.
Q. Now you, of course, are familiar with the house that is on the Edgemont property itself, are you not?
A. Yes.
Q. Would you tell the Court how large that house is?
A. Well, I think it is 7 bedrooms and living room, dining room, kitchen and pantry, and bathroom. There is another room we used in the summertime for a dining room.
Q. Was it or was it not large enough and so arranged that the other sisters and their families could have lived there with their families with the Thurmans, if they so desired?
A. I thought so.
Q. Were you very familiar with the place?
A. Yes, indeed.
Q. Were you ever there for any extended length
page 34 } of time when several families did live there?
A. In the summertime.
Q. How many people lived there in the summertime?
A. I would say 10 or 12 or more of us were there at one time.

* * * * *

A. I heard that—

Mr. Taylor: I object to what she heard.
The Court: Sustained.

By Mr. Belt:
Q. Did Mr. Oscar Thurman make any statements to you about the sale of it?
A. About the sale of the farm?
Q. Yes, ma'am, in 1950?
A. When it was sold?
Q. Yes.
A. Yes.
Q. In any of his conversations with you about
page 35 } that time did he make any mention of whether or not the contract of July 23rd—

Sally Watson Hopkinson.

Mr. Florance: I object to the leading question.

The Court: Objection sustained as to the form of the question. It is leading.

Mr. Belt: If Your Honor please, I think I am entitled to bring out any declarations of the decedent.

The Court: Just don't ask leading questions to do it.

By Mr. Belt:

Q. Did you have any conversations with Mr. J. Oscar Thurman concerning the agreement of July 23rd, 1935, with the other heirs of Edgemont, after the sale of the property in 1950?

A. Yes.

Q. Did he tell you his feelings on the cancellation of the contract?

A. He did.

Mr. Florance: I don't think his feeling is material.

By the Court:

Q. Did he make any statement to you about the contract?

page 36 } A. Yes, he said he had been advised by his attorney that after the sale of Edgemont the contract was cancelled. He told me that on several occasions.

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page 37 } CROSS EXAMINATION.

By Mr. Taylor:

Q. Mrs. Hopkinson, as I understand from your testimony, you and your sister sold the interest you inherited from your mother to Mr. and Mrs. Thurman in 1935?

A. That is correct.

Q. Excuse me. I believe you inherited your interest from your father.

A. Yes.

Q. Was the sale of your interest to them dependent upon the contract of July 23rd with the other owners being signed?

A. I imagine so.

* * * * *

Frances Parrott Wood.

page 38 } MRS. FRANCES PARROTT WOOD, a proponent, after being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Belt:

Q. You are Mrs. Frances Parrott Wood?

A. Yes, I am.

Q. Mrs. Wood, how long did you know Mr. J. Oscar Thurman before his death?

A. Well, from the time he came to my house in 1947 until his death in 1957. I never knew him before he came there.

Q. And did he stay there at your house during that time?

A. Yes, he did.

Q. What age man was he at the time he came there?

A. He was 84 when he died, and he had been there 10 years.

Q. He then was living at your house in the spring and summer of 1950?

A. Yes.

Q. Did Mr. J. Oscar Thurman ever make any statements to you concerning the agreement that he had with the other heirs of Edgemont?

page 39 } A. Well, I heard him saying that he had a contract but that by the sale of his property that contract would be cancelled.

* * * * *

By the Court:

Q. As I understand it, Mr. Thurman made the statement to you it was his understanding that when the sale of the property was made, that cancelled the contract?

A. That cancelled the contract. I heard him say that in talking with me. I heard him say it several times.

Q. Do you know to what sale he was referring?

A. To the sale of Edgemont.

Q. When? Was that after the sale in May, 1950, had been consummated?

A. Yes. He said that after the sale the contract would be no good after the sale of the property.

Q. Now do you know whether or not Mr. Thurman paid taxes and insurance on the Edgemont property during the time he lived at your home?

Frances Parrott Wood.

A. Yes, I think he did. I am sure he did, and he
page 40 } also had a repair bill which was right much. A tree
fell across the house.

Q. We don't need to go into detail. Did he make any statements to you about paying taxes and insurance?

A. I would hear him say he had to pay the taxes on the place. I don't know how much taxes he paid or anything.

CROSS EXAMINATION.

By Mr. Taylor:

Q. Did you know Mr. Thurman had made a will?

A. No, I didn't know when he made his will, and I didn't know anything about the will.

Q. When was the first time you knew he had made a will?

A. When Mr. Turner came out to get a little memorandum that Mr. Thurman wanted to write about his furniture he had in his room.

Q. When was that, do you remember?

A. I would say that was more than a year before he died, and I knew then that he had a will. In fact, I heard Mr. Turner say so.

Q. But you didn't know what was in the will?

A. No, I didn't.

Q. Didn't you draw in your own handwriting a
page 41 } codicil to Mr. Thurman's will leaving 6 wooden seat
chairs and a bureau to Mrs. Hopkinson and the balance of the estate to you?

* * * * *

A. No, I didn't write a codicil to the will. Mr. Thurman's eyes had gotten very bad—

The Court: Who is Mr. Turner?

Mr. Taylor: He is the Trust Officer at the Peoples National Bank.

The Court: I see.

A. (Continuing) Mr. Thurman's eyes had gotten very bad, and he didn't see well, and he asked me to write a memorandum for him, which I sat down and wrote just what he told me to write on a sheet of tablet paper, and he picked his glasses up and read it over and signed it and asked me to call

page 42 } Mr. Turner, which I did, and Mr. Turner came out and he gave it to him and Mr. Turner suggested if he didn't need the furniture, which was just a few pieces he brought from Edgemont, he give it in his lifetime and that would do away with anything pertaining to the will. It was not in the will, of course. I never saw the will, didn't know what was in the will.

By Mr. Taylor:

Q. I will ask you if the memorandum you wrote for Mr. Thurman didn't read as follows:

"I give to Sallie Watson Hopkinson my six wooden seat chairs and my bureau if she wants it, and the rest to Mrs. Frances Parrott Wood.

Signed J. O. Thurman, May 6, 1956."

A. Yes, I did, and he signed it.

Q. You wrote that in your own handwriting?

A. Yes, I had done his writing for him for quite some time.

Q. Do you know whether or not this memorandum was probated with his will?

A. No, I think not, because the will, as I understood it, was then in Mr. Turner's hands.

Q. Do you know why this memorandum was not probated?

page 43 } A. It wasn't witnessed. It was something he wanted to dispose of the few pieces of furniture he had, but he decided to give it in his lifetime, which he did.

Q. Mrs. Wood, what arrangements for payment did Mr. Thurman have with you when he first came to live with you?

A. He paid me $35 a month.

Q. How long did he pay you $35 a month?

A. Until he was taken sick, which was about, I think, in 1955, he was taken sick.

Q. And what did he pay you after that?

A. Well, I think the first was $100 or maybe $150—one time it was $150 and then it would go back to $100—and then in his last illness when he became so helpless, I was paid $200 a month.

Q. Who set those charges he paid you?

A. Mr. Turner suggested that would be a fair price to pay.

Q. Was that price agreeable with you?

A. Yes.

Frances Parrott Wood.

Q. Did you consider that this price was in return for your services provided to him?

A. Well, in a way I wouldn't say it was.

Q. Did Mr. Thurman pay for an addition to your home in Charlottesville?

A. Pay for an addition? No, indeed, he did not.

page 44 } Q. Did you add an extra bedroom and bathroom to your home within the last 8 years?

A. Yes, I did, in 1950, for my mother and father who were very old, and my mother was an invalid in a wheelchair, and I had no bath on the first floor.

Q. And who paid for that addition?

A. I did myself.

Q. Do you recall if this addition was built after or before the sale of Edgemont was consummated?

A. This was started in the fall of 1949. The building was started then and finished in the spring of 1950.

Mr. Taylor: No further questions.

RE-DIRECT EXAMINATION.

By Mr. Belt:

Q. Mrs. Wood, was Mr. Turner acting for you or for Mr. Thurman at the time he was talking to you about the furniture?

A. I think he was acting for Mr. Thurman. He had Mr. Thurman's business in hand.

Q. He was Mr. Thurman's business advisor?

A. Yes, and he was the one who had the property.

Q. Let's go back to this so-called codicil you wrote out.

page 45 } (Reading) "I give to Sallie Watson Hopkinson my six wooden seat chairs and my bureau if she wants it, and the rest to Mrs. Frances Parrott Wood."

Did I understand you to testify that referred only to the furniture he had?

A. That was only the furniture in his room.

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Henry M. Taylor.

By Mr. Belt:

Q. Did Mr. Thurman explain to you what was to be disposed of by this writing?

A. Yes, he did. He had a chest of drawers that came from his mother's and father's home, and six wooden seat chairs that came from the man that lived on his place and died there and gave Mr. Thurman the chairs, and he had a metal bed, with white ends on it, a very cheap bed, and a little oak desk all to pieces, propped up against the wall. They were the pieces of furniture he had in his room.

Q. Did he make any statement to you that was what was affected by this or not?

A. No, sir; he just said to give Mrs. Hopkinson the chairs and dresser and I could have the rest.

Q. Rest of what?

A. The desk and the bed. His mattress he used until his death, and that was disposed of.

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HENRY M. TAYLOR,
an opponent, after being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Taylor:

Q. Are you Henry M. Taylor of Richmond, or Henrico County, Virginia?

A. I am.

Q. What is your occupation, Mr. Taylor?

A. I am retired, but I was formerly statistician
page 49 } for the United States and Virginia departments of agriculture.

Q. How long were you in that position?

A. From 1919 to last September.

Q. Are you the son of Lucy Magruder Taylor?

A. I am.

Q. Are you familiar with the farm known as Edgemont?

A. Yes. I was born there and lived there a greater part of my life until 1919.

Q. Did you ever actively farm the place yourself?

Henry M. Taylor.

A. My uncle, Franklin Magruder, died in 1913, and I took over the management of the farm and continued to manage it until maybe sometime in 1915 when my brother Frank completed the agricultural course at V.P.I. and we farmed it together, and then he had a heart attack the following spring, so I took it over while I was teaching in Charlottesville.

Q. Do you recall what the profits of the farm were during the period you managed it?

A. From 1913 to 1917 when I was actively in the management of the farm, we were gradually building up the livestock, and during the years 1916 to 1917 our sales were about $1,000.00 from hogs and about $1,000.00 from cattle

page 50 } and $1,000.00 from apples and then miscellaneous sales from sheep and wool and wheat, 500 or 600 bushels of wheat, so that would make total sales between $4,000.00 and $5,000.00 during those years.

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page 52 } Q. Where did Oscar and Maria Thurman live after their marriage?

A. They lived at Edgemont.

Q. Did Oscar Thurman farm Edgemont from the time he moved there?

A. Yes, he was farming when he moved there and continued to farm.

Q. Do you remember the date of the death of Sarah Gilmer Minor Magruder?

A. I refer to the chart, which is accurate. It was August 1, 1925.

Q. Were Oscar and Maria Thurman living at Edgemont at the time?

A. They were.

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Q. Where did Oscar and Maria Thurman live after the death of Sarah Gilmer Minor Magruder?

A. They continued to live at Edgemont.

Q. What occupation was Mr. Thurman engaged in from the time that Mrs. Magruder died in 1925?

Henry M. Taylor.

A. He continued to farm.

Q. Do you know what stock and equipment was on the farm in 1925, of your own knowledge?

A. Well, there was considerable livestock and the usual farm equipment for general farming, horse-drawn

page 54 } equipment.

Q. What were the buildings that were on the farm at that time?

A. The residence and farm buildings. The residence was approximately 11-room dwelling, part brick and part frame.

Q. Let me interrupt you. Did the residence contain a bathroom?

A. I am not sure whether the bathroom was there in 1925 or not.

Q. All right. Go ahead.

A. The outbuildings—there was a small 2-story frame building in the yard which was used as a kitchen and sleeping quarters above for the cook, and a fully equipped farm shop with equipment you would find in a shop, bellows, and anvils, and tools, horse-shoeing equipment; there was a large stable with 12 or 14 stalls with a hayloft above; there was a carriage house and a farm implement house with hayloft above it.

Also a cattle barn which would hold approximately 100 head of cattle with a silo, a pit silo underneath it and hayloft above; a corn house and a large barn which was in 3 stories, used for storing small grains and then a large hay house.

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Q. Any other buildings?

A. There were 2 small tenant houses, but I don't believe they were occupied at that time. I suppose they housed the farm labor.

Q. Do you know whether or not Oscar Thurman farmed Edgemont after 1925?

A. Yes, he continued to farm it. He had a tractor. He had a man living there in the kitchen, and he had cattle, and he cut hay.

Q. What was the general financial status of Oscar Thurman

Henry M. Taylor.

and Maria Magruder Thurman after 1925, if you know of your own personal knowledge?

A. Well, they had very little, if any, income. Maria Thurman inherited some money from her mother, but it was a small amount, and they were largely dependent on the

page 56} income from the farm at that time.

Q. Do you recall the purchase of the interest of Sally Watson Hopkinson and Elizabeth D. Henshaw by the Thurmans?

A. In 1935?

Q. Yes.

A. I have very little recollection of that. At that time I was working in Washington 5 days a week and trying to keep my own office in Richmond on Saturdays, so I didn't have very much time. I don't recall, except I do remember some general discussion about the fact Mr. and Mrs. Thurman were going to buy the interest of Sally Watson Hopkinson and Elizabeth D. Henshaw.

Q. Do you remember the agreement of July 23rd, 1935?

A. I do not.

* * * * *

Q. Did you visit Edgemont after you went in the service in 1919?

page 57 } A. Yes, when I returned in 1919 until my grandmother's death in 1925 I frequently visited the farm.

Q. Were you familiar with the status of the farm and the condition of the farm in 1935?

A. Well, I had not been visiting the farm regularly after my grandmother's death. I did go occasionally, but in 1935 I do not recall the condition of the farm. I have a general impression from my visits around that time that there was still some farming activity going on.

Mr. Taylor: This is an old map of Edgemont which is not suitable for submitting in evidence, but with your permission, Mr. Belt, and that of the Court, I would like to let the witness look at it to refresh his memory and testify from it.

Mr. Belt: What did you say about it not being adequate?

Mr. Taylor: In its condition I would prefer not to place it into evidence but just give it to the witness for reference.

Mr. Belt: All right.

Henry M. Taylor.

By Mr. Taylor:

Q. Mr. Taylor, I hand you this map. Do you know how many acres of land the farm Edgemont consisted of in 1935 or around that time?

page 58 } A. As I understand it, this map was made by Henry Minor Magruder. It does not show the date, but I am of the impression it was made between 1880 and 1890, but the boundaries of the farm remained as they are shown on this map in 1925, and in 1935 this field here (indicating on map), which was known as the "cross-the-road field," consisting of about 45 acres, was sold. I don't know exactly the date, but it was sometime in mid-summer of 1935, I believe, but the rest of the farm consisting of approximately 340 acres was continued. Now there was that 90-acre tract which came from the Ridgeway Estate. At that time that 90 acres was in the Edgemont farm.

Q. How much acreage was there in the Edgemont tract itself in 1935 or 1936, after the sale of the property across the road?

A. 300 acres less this approximately 45 acres—that would be about 250 to 255 acres.

Q. Do you know of your own knowledge what the distribution or use of this acreage was at that time?

A. Most of the farm with the exception of this area here (indicating on map) was in—

Q. This is in 1935 or thereabouts.

A. It was open land.

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"Q. Do you know of your own knowledge what the distribution or use of this acreage was at that time?"

The Court: If you know, you may answer.

A. I had visited the farm within 2 years of 1935, it may have been 1934 or in 1936, or it may have been in 1935. I don't remember exactly. Most of the land at that time was still open land. It was crop land or pasture land. However, some of the fields were beginning to show the growth of pines

Henry M. Taylor.

and cedar. You could still see some hay fields in
page 60 } those years, around 1935.

By Mr. Taylor:

Q. Was there an orchard on the place?

A. An old orchard of about 4 acres and then my uncle, Franklin Minor Magruder, set out an orchard of about 8 acres in 19—I think about 1905. In 1935 there were some trees left, but I don't know if they had been getting a great deal per acre, but they could have produced some apples at that time.

Q. How much acreage was in timber around that time?

A. Well, I have made a rough calculation, by subtracting the crop land and the pasture land from the total acreage, and I think it was about 70 acres of timber land and then some of these other fields were growing up into pines and cedar and locust.

Q. Did Maria Thurman, to your knowledge, receive any legacy in 1935 and before her death?

A. Yes. Her aunt, my great aunt, Mrs. Sallie Magruder Stuart, died in 1941 and left her considerable property. I don't know the exact amount, but it was generally reported to be around $35,000.00. Then in 1946 or 1947, Edward Watson Magruder died and left Mrs. Thurman a part of his estate.

Q. Do you remember the date of Mrs. Thurman's
page 61 } death?

A. Mrs. Thurman? Referring to the chart, and I have a copy of that here, it was June 8th, 1947.

Q. To your own personal knowledge, did your mother, Lucy M. Taylor, ever receive any income from Edgemont from 1935 on?

A. No.

Q. Have you ever received any income from Edgemont since 1935?

A. No.

Q. Do you know of your own personal knowledge whether any of your brothers and sisters have received any income from Edgemont since 1935?

A. Not to my knowledge.

Q. Did Oscar Thurman ever make an offer to you for your interest in the contract of July 23rd, 1935?

A. Yes, in December, 1949, I think it was, I received a letter from him offering me $100.00 for my interest in the contract.

Henry M. Taylor.

Q. Did you accept that offer?
A. No, I did not.

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page 62 } CROSS EXAMINATION.

By Mr. Belt:

Q. Mr. Taylor, I understood you to say that Mr. Oscar Thurman married his wife in 1918 and farmed Edgemont and continued to farm Edgemont. Is that correct?

A. I didn't get your question.

Q. I understood you to say Mr. Oscar Thurman married his wife in 1918 and moved on Edgemont and farmed it and continued to farm it.

A. Yes.

Q. How long did he continue to farm it?

A. As far as I know, he was farming it up to the time he left.

Q. Do you know that?

A. From our relations I know he was carrying on some farming operations, cutting hay, and so forth.

Q. You stated you were working in Washington and Richmond around 1935. How long prior to that time were you working both in Washington and in Richmond?

A. I started about 1935, at the time of the taking of the 1935 census of agriculture.

Q. And from that time you didn't have any knowledge what was going on at Edgemont?

A. Yes. We would go back from time to time, maybe once a year.

page 63 } Q. Did you go over the farm then or make any observation as to whether or not it was being farmed as you had farmed it?

A. You could stand at the house and look over the farm and see all the fields, and they were still cutting hay there.

Q. I understood you to say there was an old orchard on the place that was not being well tended about that time.

A. In 1935, yes.

Q. Did the orchard improve then under Mr. Thurman's care?

A. Everything went down under his care.

Q. In 1935 you say there was some hay but the fields were beginning to grow up?

Henry M. Taylor.

A. Yes, some of the steep hillsides, he let them grow up.

Q. Did that condition improve or get worse as time went on?

A. Well, I think that he farmed less and less as time went on.

Q. Actually from 1935 on Mr. Thurman did practically no actual farming, then, did he?

A. My observation was he was still cutting a considerable quantity of hay.

page 64 } Q. Were you there during hay-cutting season?

A. Well, you could see whether the hay fields had been cut or had not been cut six months after it is cut, and I have been there and seen bales of hay in the field.

Q. You said in 1925, I believe, there was considerable livestock and equipment on the farm?

A. There was.

Q. That was at the time of this agreement with Mrs. Thurman's sisters, but 10 years later that particular livestock would not be on the farm, would it?

A. No, it would be a turnover, of course. There may have been a horse left on the farm, but that would have been about all.

Q. How about the equipment?

A. There was a good deal of equipment still left there, horse-drawn equipment. It was in the sheds.

Q. Didn't the equipment wear out in 10 years?

A. No. We used a binder for 25 years.

Q. It would certainly deteriorate in value, would it not?

A. You have these sales, and sometimes you can get more for things than the original cost, with inflation going on.

Q. Mr. Taylor, I believe you said also that most of the land was pasture land and these old orchards.

page 65 } A. I didn't say that. I said crop and pasture.

Q. I beg your pardon. I understood you to say pasture land and orchards. Your contact with Edgemont became less and less after 1935, did it not?

A. I wouldn't say less and less after 1935 because my aunt and also Mr. Thurman would visit us, and Mr. Thurman usually came down for the fair and would stay with us, and we were invited up there.

Q. You continued to know about the farm, so you must have known Mr. Thurman was farming it less and less.

A. Yes. I said he was farming it less and less.

Henry M. Taylor.

Q. Was any complaint made by you or your mother or her sisters about the way he was handling the farm?

A. After 1935 we considered it their farm, after the agreement with my mother.

Q. I thought you said you weren't familiar with that agreement.

A. I didn't hear my mother make any complaint, I say.

Q. Do you know of any complaints made by any of the heirs?

A. I do not.

Q. You stated to your knowledge neither your mother nor any of the heirs got any income from the place. Do you know that they did not get it?

page 66 } A. Yes, they did not.

Q. You know of your own knowledge none of them got any income from the place?

A. Yes.

Q. Did they make any complaint about not getting the income?

A. No.

Q. Were any of the other heirs denied the right to come live on the place by the Thurmans at any time?

A. Well, they considered it Thurmans' home and they went when they were invited. I didn't go until my aunt invited me.

Q. How would you know what was in other people's minds?

A. I didn't say what was in other people's minds.

Q. You said they considered it the Thurmans' home. Of whom were you speaking?

A. Myself and my sisters and brothers.

Q. How would you know what they considered?

A. We discussed it in the family. We would go up when we were invited.

Q. Were you under the impression it was the Thurmans' home because of the agreement in evidence here between the Thurmans and Mrs. Thurman's sisters?

page 67 } A. I didn't know about the agreement, but my mother and my sisters who were familiar with the situation had told me that was their home, and I observed it as their home.

Q. They didn't tell you they couldn't live there or that you couldn't live there, did they?

A. I never asked if I could live there. There wasn't any occasion for them telling me.

Henry M. Taylor.

Q. In December, 1949, I believe you said Oscar Thurman offered you $100.00 for your interest in the contract.

A. Yes.

Q. I assume you were referring to the contract of July, 1935, between the Thurmans and Mrs. Thurman's sisters?

A. Yes.

Q. Were you familiar with the contract at that time?

A. No. I wrote and told him I was not familiar with it and asked him to please send me a copy, which he did.

Q. And you then became familiar with the contract?

A. Yes.

Q. After you looked at the contract, what was your impression of his right to live there after his wife's death—Mr. Thurman I am speaking of?

page 68 } A. What impression are you referring to?

Q. Your interpretation of his right under the contract. In other words, did you think Mr. Oscar Thurman had a right to continue to live at Edgemont after the death of his wife?

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page 69 }

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A. I understand the question now. When I received a copy of the contract, I understood that the contract was still binding.

By Mr. Belt:

Q. What I asked you was did you feel, now that Maria Thurman was dead, that Mr. J. Oscar Thurman had a right to continue to live on the property the balance of his life if he so chose under that contract?

A. Yes.

Q. Were you familiar with the fact that the property known as Edgemont was sold in May, 1950?

A. Yes.

Q. After May, 1950, Mr. Oscar Thurman never offered you anything for your interest in the contract, did he?

A. No.

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E. L. Turner.

By Mr. Belt:

Q. One other question, Mr. Taylor. Are you familiar with the place Mr. Oscar Thurman owned across Stony Point Road from Edgemont?

A. Yes.

Q. I believe he owned it at the time he was married, did he not?

A. Yes.

Q. Do you know when he sold it?

A. Sometime in the early 30's, I believe.

Q. Did he own it at the time he made this agreement in 1935?

A. I think so, because he put a deed of trust on it.

Q. How big a place was it?

A. Approximately 126 acres.

Q. It had a livable house on it?

page 72 } A. Yes, sir.

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page 82 } E. L. TURNER,

a witness called by and on behalf of the opponents, after being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Taylor:

Q. Are you Mr. E. L. Turner of Charlottesville, Virginia?

A. That's right.

Q. What is your occupation, Mr. Turner?

A. I am trust officer of the Peoples National Bank.

Q. How long have you been connected with the Peoples National Bank in your capacity as trust officer?

A. Since 1950, as trust officer.

Q. What was your capacity before that time?

A. Assistant trust officer.

Q. Did you in your capacity as assistant trust officer and trust officer of the bank know J. Oscar Thurman?

A. I did.

Q. How long did you know him, sir?

A. I would estimate Mr. Thurman came to my office about 1945 probably. I may have known him casually before that time. I can't say.

E. L. Turner.

Q. Did Mr. Thurman give to your care an agree-
page 83 } ment in ink dated July 23rd, 1935, signed by himself and Mrs. Thurman and various other owners of Edgemont?

A. No, he did not give it to me for my safekeeping. Not that document. That document was found in his safe deposit box.

Q. Do you have that document with you?

A. I do have the document, yes.

Q. Would you get that, please?

A. It is right here.

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The Court: This is dated July 23rd, 1935, signed by Sarah M. McMurdo, J. Oscar Thurman, Maria M. Thurman, Lucy M. Taylor and A. K. McMurdo. This can be treated as an exhibit on behalf of the respondents you represent. It is filed with the bill by the bank.

By Mr. Taylor:

Q. Are you familiar with the signature of J. Oscar Thurman?

A. Yes, I am.

Q. Would you say whether the signature on this agreement is or is not his signature?

A. That is his signature, yes.

Q. Did you know about this agreement before it was found in Mr. Thurman's effects?

A. Yes, I did. Mr. Thurman showed me the agreement some years ago.

Q. Did you have photostat copies made of it
page 85 } prior to his death?

A. I don't recall that we did. We may have. I don't recall.

Q. Did Mr. Thurman have an agency account or similar type of account with your bank?

A. Yes, he did. He had what we call a custodial and management account.

Q. Explain what type of account that was?

A. He turned over to us his securities, cash, stocks and

bonds, for us to manage and invest and to pay him the income at certain intervals, and in case of his illness to pay for his maintenance, his upkeep and maintenance.

Q. Did you make payments for Mr. Thurman from his custodian account to Mrs. Frances Parrott Wood?

A. Yes.

Q. Do you have a record of those payments you made?

A. Yes, I made up the record our book showed we paid. Our records show we paid a total of $4,350.00 to Mrs. Wood for board, room, and maintenance.

Q. What were the dates those payments were made?

A. I haven't got the exact dates. We started about 1955 and maintained the payments up until his death.

Q. Mr. Turner, were there any papers found with Mr. Thurman's will which were in the form of a will or

page 86 } the disposition of property?

A. Well, we found a writing signed by Mr. Thurman. The writing was not in his hand and was not witnessesd, so it was not testamentary and therefore was not probated.

Q. Do you recall where that paper was found?

A. That paper was folded up in the same envelope with his will.

Q. Do you have that paper with you at this time?

A. Yes, I have it.

Mr. Taylor: I would like to introduce this as Henry M. Taylor, et al., Exhibit No. 3.

Note: The document produced by the witness was so marked and filed in evidence.

By Mr. Taylor:

Q. Did your bank manage the estate of Mrs. Maria Magruder Thurman after her death?

A. Yes, we qualified as Administrator c. t. a.

Q. Can you say from your administration what the net amount paid to Mr. Thurman was or the net value of Mrs. Thurman's estate that Mr. Thurman received?

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E. L. Turner.

A. Mrs. Thurman's estate was appraised at $37,945.00, of which $9,500.00 was real estate, so the amount of personal property distributed to Mr. Thurman was approximately $26,000.00.

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Q. Mr. Turner, I hand you Exhibit Henry M. Taylor, et al., No. 3, which reads:

"I give to Sallie Watson Hopkinson my six wooden seat chairs and my bureau if she wants it, and the rest to Mrs. Frances Parrott Wood."

This is dated May 6, 1956. You say, I believe, that you found that with Mr. Thurman's will?

A. That's right.

Q. After his death?

A. That's right, with his will.

Q. Do you know who put it there, Mr. Turner?

A. Yes, I put this writing in the will envelope with his will.

Q. Did he discuss making that statement there with you before he made it?

A. Yes, he did. As a matter of fact, he made it somewhat on my instructions.

Q. Can you tell the Court what it was supposed to cover?

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A. (Continuing) I don't mean to imply I told him what to write. I had in mind if he got rid of these personal effects, it would simplify the administration of his estate. Of course, I didn't tell him who to give the chairs to or anything like that. It was none of my business.

By Mr. Belt:

Maria Louisa Smith.

Q. Was that intended to be a part of this will?
A. No, I don't think it was thought to be a part of his will.
Q. Was it to affect any of the estate except the furniture?
A. Only the personal effects like these chairs and the bureau.

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page 93 } MRS. MARIA LOUISA SMITH,
a witness called by and on behalf of the opponents, after being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Taylor:
Q. You are Maria Louisa Smith?
A. Yes.
Q. Do you live in Glen Allen in Henrico County?
A. Yes.
Q. Are you a daughter of Lucy Magruder Taylor?
A. Yes.
Q. Are you familiar with the place known as Edgemont?
A. Yes. I was the only child of my mother, Lucy Taylor, who was not born at Edgemont, but it was more or less of a family place. I knew that when I put anything there, it would be there the next year or whenever I returned. We did move around some, my family moved around, but Edgemont was always home base, so to speak.
Q. How often did you visit Edgemont?
A. Until my grandmother died I went there every summer, and one Christmas I can remember, but that is the only Christmas. After that, I visited there several times. My aunt, Mrs. Thurman, was very fond of my oldest
page 94 } child, and they called her their grandchild, and she stayed there quite a bit.
Q. What kind of relationship was there between the three daughters, Maria Thurman, Lucy Taylor, and Sarah McMurdo?
A. I don't imagine there are many sisters any closer. I know I knew what was happening at Edgemont, what crops were growing—not what crops, but was was coming in the vegetable garden; who came to see them, and all that. When my aunt lived in Oregon and Montana, they wrote practically

Maria Louisa Smith.

every week and wrote long letters, and after I went away from home, she would enclose them in my letters.

Q. Do you know of your own personal knowledge how Mrs. Thurman felt about Edgemont?

A. Well, I think she was a little frantic at the thoughts of moving. I don't know whether you would say frantic or not, but it was just fear, and I think my mother felt she would like to keep it in the family. She left it to my sister so it wouldn't be as many people involved in it, that it would be easier to keep in the family.

Q. How long did Maria Thurman live at Edgemont?

A. All of her life.

Q. Did she ever live anywhere else?

A. No, and I don't think she ever went to school anywhere else.

page 95 } Q. When did your father die?

A. 1932, in January.

Q. Do you know of your own personal knowledge what your mother's, Lucy Magruder Taylor's financial condition was after your father's death?

A. Well, she had the house she lived in and before I was married I stayed there and I paid her board, and when my sister was there, she paid board, and she had a very small amount coming in a month. I don't know how much, but she could not have managed without our support.

Q. Do you know if your mother could have afforded to purchase Edgemont?

A. No.

Q. Do you know anything of your own personal knowledge about the financial situation of Maria Thurman between the years 1925 and 1935?

A. Well, they didn't have very much. I know that she was very pleased she could make the curtains in the living room. She learned at the home demonstration, and that was really before people did that so much as they do now. She saved right much. She wasn't as bad as my Aunt Sadie, but she saved everything, thinking it would come in handy maybe some day.

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Maria Louisa Smith.

By Mr. Taylor:

Q. When did you first learn of the contract of July 23rd, 1935?

A. I don't know. I had just been married and I don't remember too much about it. I just remember that there was confusion and a great deal of relief after it was settled, that Edgemont would not have to be sold.

Q. On whose part was the relief that the place would not have to be sold?

A. My mother and my aunt.

Q. Who is your aunt?

A. My mother, Mrs. Taylor, and my aunt, Mrs. Thurman.

By the Court:

Q. Mrs. Smith, under that contract as I recall the farm could be sold, couldn't it? Didn't that contract provide in case it was sold that it would cancel and make void the contract?

A. Well, I know they wanted to keep it in the family if they possibly could.

Q. But it provided it could be sold, didn't it, or said, "if it is sold"?

page 99 } Mr. Florance: It could be sold if all agreed. No one could force the sale during the life of Oscar and Maria, no one party could force a sale, according to the agreement, but if somebody said, "We will give you $100,000 for it," and they all agreed it was a good sale, they could do it.

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By Mr. Taylor:

Q. Have you ever received any income from Edegmont?

A. No.

Q. To your knowledge did your mother ever receive any income from Edgemont?

A. Not to my knowledge.

Q. To your knowledge did your brothers and sisters ever receive any income from Edgemont?

A. No.

Maria Louisa Smith.

By the Court:

Q. Mrs. Smith, you are one of the respondents in this suit?

A. Yes.

Q. And the bank brought this suit for interpre-
page 101 } tation of the will?

A. Yes.

Q. So they could administer the estate, and they made you and the other heirs parties. You don't claim that you have any interest, or do you, from the proceeds of the sale of the farm? What you are interested in—you straighten me out if I am in error—you feel that due to the contract entered into in 1935 that you as one of the heirs would be entitled to share in the other porperty?

A. Yes.

Q. The other property?

A. Yes.

Q. And not in the farm or the proceeds of the farm itself?

A. Yes, that is my position.

Q. Because the farm was sold and the deed was signed by the proper parties, the owners?

A. Yes, sir.

Q. You don't contest that deed at all?

A. No, I don't.

Q. It is the other property that you feel you have an interest in as an heir?

A. Yes, sir.

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By Mr. Taylor:

Q. I hand you the agreement dated July 23rd, 1935, and ask you if you recognize the handwriting?

A. This is Mrs. Thurman's handwriting.

Q. I direct your attention to the first signature at the end of the contract that purports to be the signature of Sarah M. McMurdo.

A. Yes.

Q. Do you recognize that signature?

A. Yes.

Maria Louisa Smith.

Q. Whose signature is that?
A. My aunt, Mrs. McMurdo.
Q. How about the second signature?
A. J. Oscar Thurman.
Q. And the third signature?
A. My Aunt Maria, and next is my mother, and the next—I don't know Mr. McMurdo's signature.

page 109 } CROSS EXAMINATION.

By Mr. Belt:
Q. Mrs. Smith, how old are you?
A. 52.
Q. I believe you said you were married in 1935?
A. 1934, November.
Q. Do you know where Mrs. Thurman went to school?
A. At Edgemont.
Q. Mrs. Thurman never went to school anywhere but at Edgemont?
A. To the best of my knowledge.
Q. Was there a school at Edgemont?
A. They had governesses.
Q. Do you know how high she went in school, the equivalent of what grade?
A. I don't know anything about her, but I know my mother—
Q. I am asking you about Mrs. Thurman.
A. I don't know, but my mother could read Latin and Greek.
Q. Wait a minute. I am asking about Mrs. Thurman. You don't know about Mrs. Thurman?
A. No.
Q. You made the statement in 1935 when this
page 110 } agreement was signed Mrs. Thurman was frantic over having to move from Edgemont.
A. She was very upset.
Q. Was your mother frantic, too?
A. She was upset, yes.
Q. How about Sarah McMurdo? Was she frantic about it?
A. Well, of course, I didn't see her, but knowing how she felt about the place, I would say she was.
Q. Well, now, at that time Mrs. Maria Magruder Thurman and Mr. Thurman purchased her brother Franklin's interest from Mrs. Hopkinson—

Maria Louisa Smith.

A. From the Henshaws and the Hopkinsons.

Q. And that left them owning one-half interest and your mother owned one-fourth interest, and Sarah McMurdo owned one-fourth interest. Isn't that right?

A. Yes.

Q. Then kindly tell the Court who was pushing these people to sell, if all the owners got frantic about it?

A. Mrs. Hopkinson and Mrs. Henshaw wanted their share of the estate.

Q. And the Thurmans bought it?

A. Yes.

Q. What was there to be frantic about?

page 111 } A. They thought they wouldn't be able to get the money to pay them.

Q. Who is "they"?

A. Mr. and Mrs. Thurman thought they would have to sell Edgemont to divide the estate.

Q. Do you know that?

A. To the best of my knowledge they didn't know how much money they could raise.

Q. When was this?

A. About the time that they requested their money.

Q. About the time they signed this agreement, the time they bought the Hopkinson and Henshaw interest?

A. That is what I am talking about.

Q. And they did buy it about then, and the four of them owned all the interest in Edgemont, did they not?

A. Yes.

Q. Who was going to put them out? Your mother wasn't, was she?

A. No.

Q. And Mrs. Sarah McMurdo wasn't, was she?

A. No.

Q. Who was going to put them out?

A. They were afraid they were not going to be able to raise the money.

page 112 } Q. We are conceding that, but—

A. That is what I told you.

By the Court:

Q. What Mr. Belt is asking you, after the Thurmans raised the money and bought this interest, then did they have any further fears, after that?

A. Oh, no, everything was very peaceful and calm then.

Q. In other words, so far as your mother and aunt were

concerned, you had no reason to think they would put the Thurmans out?

A. No.

By Mr. Belt:

Q. Are you indicating or do you know of your own knowledge that either Mrs. Hopkinson or Mrs. Henshaw threatened to put them out?

A. No, they did not threaten to put them out. They wanted the estate settled, their father's estate settled.

Q. Where did you get that information? Did either one of them tell you that?

A. Well, that was just what I heard. I don't know who said it.

Q. You don't know anything of your own knowledge about what the reasons or intentions of Mrs. Hopkinson
page 113 } and Mrs. Henshaw were with reference to selling out, whether they wanted to sell or whether the Thurmans wanted to buy?

A. They wanted their share of their father's estate.

Q. I want to know how you know that. I understood you to say you just heard it. How do you know that?

A. How do you know anything?

The Court: A very good question.

Mr. Belt: A real good question, but we have to have rules to go by.

A. (Continuing) I am sorry. I don't know.

By Mr. Belt:

Q. You didn't hear it from either one of them, did you?

A. You mean, Mrs. Hopkinson or Mrs. Henshaw?

Q. That's right.

A. I didn't see too much of them at that time.

Q. The question isn't how much you saw of them, but the question is did you hear from either one of them they were anxious to do anything about disposing of their interest in Edgemont?

A. If I saw them, I heard it.

Q. You see Mrs. Hopkinson now, don't you? Do you hear her say anything about what her intentions were about disposing of her share of the estate?

page 114 } A. No.

Q. How can you make such a statement, then?

Maria Louisa Smith.

A. (The witness does not answer.)

* * * * *

By the Court:

Q. Let me get this straight. Who did Mr. Thurman acquire this one-fourth interest from? His wife had one-fourth interest. Who did Oscar Thurman acquire his one-fourth interest in the farm from?

A. Well, to the best of my knowledge, there was something to do about his place.

Q. Who did he get it from?

A. His place he got from his father.

Q. I am speaking about this one-fourth interest.

A. You see, when they paid Mrs. Henshaw and page 115 } Mrs. Hopkinson.

Q. That is who he got it from, Mrs. Henshaw and Mrs. Hopkinson?

A. Yes, he more or less bought their share.

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By Mr. Belt:

Q. Mrs. Smith, do I understand you are familiar with the contract of July 23rd, 1935, which was just shown you?

A. Well, I don't know that I ever saw the contract, but I have heard about it.

Q. From what you heard you knew that the contract provided that Mr. and Mrs. Thurman would be able to live on the farm as they saw fit and if it were not sold, page 116 } during the lives of each of them, did you not?

A. I never thought of it being sold. I knew they wanted to keep it in the family.

Q. What did you think would happen if Maria died?

A. I didn't think.

Q. You didn't think?

A. Well, no. I would have thought she had fixed it so—the both of them together had fixed it so the place could stay in the family if it was possible.

Q. That isn't the question. The question is: If Maria died, under your interpretation of what you heard about her intentions, wouldn't Oscar have the right to live on there the rest of his life?

A. Yes.

Q. And if he died first, Maria would have the right to live there the rest of her life?

A. Yes.

Q. And that was Maria's understanding of it, as explained to you, I believe you said?

A. Yes.

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page 117 } LUCY ANN TAYLOR,

an opponent, after being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Taylor:

Q. You are Miss Lucy Ann Taylor of Richmond, Virginia?

A. Yes.

Q. You are the daughter of Lucy Magruder Taylor?

A. Yes.

Q. What is your occupation, Miss Taylor?

A. I teach in the public schools of Richmond.

Q. Are you familiar with the place known as Edgemont?

A. Yes, I was born there and spent my summers there as a child and spent a great deal of time with both my grandmother and my aunt, Mrs. Thurman.

Q. Did you visit Edgemont after the death of your grandmother, Sarah Minor Magruder?

A. Yes.

Q. Are you familiar with the relationship among the three sisters, Lucy Magruder Taylor, Sarah Magruder McMurdo, and Maria Magruder Thurman?

A. Yes.

Q. What type of relationship was it?

page 118 } A. They were very fond of each other and wrote to each other often, and my mother would visit my aunt and Mrs. Thurman would visit us. Mrs. McMurdo was so far away we didn't see much of her.

Q. After your grandmother died, how often did you visit Edgemont?

A. Quite often. I would think 2 or 3 times a year. I don't recall exactly, but I would say I went quite often.

Q. How long would you stay?

A. Sometimes a weekend and sometimes in the summer I would stay a month.

Lucy Ann Taylor.

Q. Before 1935 was there a bathroom in Edgemont?
A. No.
Q. Was there any running water in the house?
A. There had been some running water in the kitchen, but something happened, and it broke down, and they were hauling water in a wagon with barrels.
Q. Do you know of your own personal knowledge what the financial situation was of Oscar Thurman and Maria Thurman during the period between the death of Sarah Gilmer Minor and July, 1935?
A. I don't know about specific dates, but they were not very well off.

Mr. Belt: I object because she did not answer
page 119 } whether she knew of her own knowledge.
The Court: Sustained.

* * * * *

Q. Do you know of your own knowledge?
A. I have stayed there, and I know they were not well off.
Q. Are you familiar with the contract of July 23rd, 1935?
A. Yes.

* * * * *

Q. The contract between the various owners, the three sisters and their husbands, in regard to Edgemont?
A. Yes, I was there at Edgemont and I was there when the contract was signed, and I think my aunt showed me her pencil copy of it before she wrote it in ink. I can't remember.

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Q. I show you a contract dated July 23rd, 1935, and ask you if you recognize the handwriting?
A. Yes, Mrs. Thurman's handwriting.
Q. I direct your attention to the signatures—

Mr. Belt: In the interest of saving time, I object to the

Lucy Ann Taylor.

repetition. I am not contesting the fact it was written by Mrs. Thurman. We have all agreed on that, and to keep on having witnesses verify the signatures is a mere waste of time.

The Court: I thought your position was you couldn't deny it.

Mr. Belt: I told you I couldn't deny it and therefore I would concede it.

The Court: All right. It is in the record counsel concedes it.

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By the Court:

Q. Miss Taylor, did you know the circumstances surrounding the execution of this agreement?

A. Well, I certainly knew them. Like my sister, I don't know how.

Q. Your testimony is you knew the circumstances surrounding this agreement?

A. Yes.

Q. To your knowledge did others of the family know them or not?

A. Of course, I know my mother knew and my cousins, Elizabeth Henshaw and Sally Watson Hopkinson, and I don't know which others of the family knew, but Sally Watson Hopkinson and Elizabeth Henshaw knew.

Q. They knew the circumstances?

A. No. I think I am mistaken. They probably didn't know the circumstances. They wanted the money from their father's estate.

Q. But you knew the circumstances?

A. Yes.

Q. And your mother knew the circumstances?

A. Yes.

Q. What were the circumstances surrounding it?

A. That there was this request that the girls
page 126 } have their money and it looked as if it was going
to mean that the place had to be sold in order to get the money, and Mr. and Mrs. Thurman felt if they could raise the money to buy them out, they would like to do it.

Lucy Ann Taylor.

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A. (Continuing) I am not sure I know what the difference is. I knew there was a question of the bathroom. Mrs. Charles Thurman wanted to put in a bathroom, but she didn't want to put it in unless the place would not be sold and my aunt would get the benefit of the water in the house. She wanted to be sure nobody else would bring a sale.

By the Court:

Q. Who is Mrs. Charles Thurman?

A. Mrs. Thurman's sister-in-law, who was very devoted to my aunt and wanted to do something for her, and she thought running water would be the best thing she could do.

page 127 } Q. Mrs. Thurman's sister-in-law?

A. No, Mr. Thurman's sister-in-law. They were very dear friends. The agreement was in order that this would not happen again, if they could raise the money this time, they would have some written document instead of just a family understanding.

* * * * *

By Mr. Taylor:

Q. Do you know what the purpose of this agreement was?

A. It was to assure Mr. and Mrs. Thurman they would have a home at Edgemont as long as they wanted it and it would give my mother and my aunt, Mrs. McMurdo, some recompense for that assurance.

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By the Court:

Q. Did you consider that Mr. and Mrs. Thurman, after signing that agreement, could not sell their interest in Edgemont?

A. I thought it had to be agreed among everybody.

Q. Your understanding was they couldn't sell their interest

Lucy Ann Taylor.

in the farm unless it was agreed to by the others holding an interest in the farm?

A. Yes, that was my understanding.

Q. Agreed to by the others holding an interest in the farm?

A. Yes.

Q. Did you also understand Mr. Thurman didn't have any right to sell his interest after his wife's death without the consent of the others that had an interest in the farm?

A. That is what I thought.

Q. And that's what happened, isn't it?

A. Yes.

Q. So you don't consider that Mr. Thurman, in making sale with the consent of the others who owned an interest with him, violated the agreement?

page 129 } A. I decided that he did, but I was wrong.

Q. You thought up to that time he did have a right to do it?

A. No, that he did not have a right to sell. I didn't think he did.

Q. I understood you to say you understood the parties to the agreement, or that Mr. and Mrs. Thurman could not sell their interest in the farm without the consent of the others who held an interest.

A. Yes.

Q. And you also felt after Mrs. Thurman's death, Mr. Thurman could not sell without the consent of the others having an interest in the farm?

A. Yes, that's what I thought.

Q. And you still think so now?

A. Yes.

Q. Then I ask you this: If he didn't have the consent of the others holding an interest in the farm when he sold, why you did nothing to prevent the sale?

A. My mother left her share of the place to me, and several times he asked me and my cousin, Charles McMurdo, about selling, and we didn't agree, but then he sold his without consulting us.

Q. And then you sold yours?

A. Yes.

page 130 } Q. I see. Pretty shortly after that?

A. It was very soon afterwards.

Q. You were a joint tenant with him, were you not?

A. Yes.

Q. And you didn't think at the time he sold his interest he had a right to sell it?

Lucy Ann Taylor.

A. I didn't think so.

Q. But you did nothing to try to prevent him from it?

A. I went to a lawyer, and he advised me I had better sell. In fact, at that time I was told—I understood that he said he thought he could sell but that the other part of the agreement still held, whatever he had was to be given—

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CROSS EXAMINATION.

By Mr. Belt:

Q. I believe you said you are familiar with this agreement between the Thurmans and Mrs. Thurman's sisters. You read it over?

A. Yes.

Q. More than once?

A. Yes.

Q. You said you knew the purpose of it. I call your attention to this sentence: "That J. Oscar Thurman
page 132 } and Maria M. Thurman, his wife, may continue to live on the said farm for their lifetime or until it can be sold at a price satisfactory to each owner."

Did you understand if one of the Thurmans died, the other could continue to live on there until his subsequent death, unless it was sold at a satisfactory price?

* * * * *

A. Yes, I thought he did.

Q. You thought if she died first, he had a right to live on there for the rest of his life if he wanted to?

A. Yes.

Q. Or until it was sold?

A. At a satisfactory price.

Q. But after his wife's death, if it were sold at a price satisfactory to all owners, that was all right, too?

A. Yes, that's the way I understood it.

Q. That's exactly what happened, isn't it? After the wife's death, he and you and Mr. McMurdo were the sole owners?

A. No.

Lucy Ann Taylor.

Q. You all sold at a price satisfactory to the
page 133 } owners, did you not?
A. I sold under protest.
Q. Who did you protest to?
A. I sold because I was told if I didn't sell, I would be in an extended lawsuit.
Q. Who told you that?
A. My lawyer.
Q. And you took his advice and went on and sold?
A. Yes. I didn't think he had a right to sell before that. He sold before we did.
Q. You all sold it to whom?
A. Mr. Worthington.
Q. You knew Mr. Worthington didn't want to buy a part interest in the farm and face a lawsuit himself, did you not?
A. He didn't seem to mind.
Q. Didn't he make a condition he would get all the interests together before he bought?
A. No.
Q. Miss Taylor, you and Mr. McMurdo signed a deed May 10th, 1950, did you not?
A. It must have been around then.
Q. And it was acknowledged May 15th, 1950, and recorded May 17th, 1950?
A. I don't remember that. It sounds like it is
page 134 } right.
Q. Now you and Mr. McMurdo were in Richmond?
A. Yes, we were.
Q. And Mr. Thurman was in Charlottesville?
A. Yes.
Q. And that is where the deal was to be closed, Charlottesville?
A. At Charlottesville, yes. We went up to Charlottesville to see our lawyer.

* * * * *

Q. The last part of this agreement says, "If said farm is sold during the life of J. Oscar Thurman and Maria M. Thurman, this agreement is cancelled." What do you think the purpose of that was?

Lucy Ann Taylor.

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A. I don't think I ever thought of that, what would happen if one of them died.

Q. Well, you were familiar with the fact it states quite definitely, "If said farm is sold during the life of J. Oscar Thurman and Maria M. Thurman, this agreement is cancelled"? You were familiar with that fact, were you not?

A. Yes.

Q. What was the purpose of putting that in there? Do you know?

A. I think the purpose was if the farm was sold by consent that this would not be valid anymore. They would not have to make their wills like that.

page 136 } Q. You mean, while Maria and Oscar were alive?

A. Yes.

Q. But if one or the other were dead, he couldn't join with the rest of the owners and agree to sell?

A. I thought we could all agree to a price.

* * * * *

Q. Did you accept $5,000.00 for signing the deed?

A. Yes.

Q. Do you not call that agreeing to the price?

A. I call agreeing when we would get together and decide on the price.

Q. I ask you if you agreed to sell at that price?

A. My idea of agreeing is when we three would agree together.

Q. You thought you all three had to get to-
page 137 } gether and agree?

A. That was my thought.

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Lucy Ann Taylor.

Q. As I understand you to say, the first reference to the lifetime of the two Thurmans is for their lifetime and you considered that to be one of them could live there after the other had died. Is that correct?

A. As I say, that's what I thought.

Q. But at the end of the agreement, you construe that to mean that both of them would have to be alive at the same time in order to sell?

A. No. I thought he could have sold if we three had agreed to the sale.

Q. Even after Mrs. Thurman's death?

A. Yes.

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Q. Since the time of the sale in May, 1950, has anybody, so far as you know, who now claims to be an heir or is claiming a share in the estate of J. Oscar Thurman made any complaint about you three selling the property?

A. No.

Q. Your family is rather close, isn't it?

A. Yes.

Q. But you haven't heard any complaint from anybody?

A. No.

Q. Did you tell the others about your reluctance to sell?

A. I think I told them the circumstances. I think I talked it over with my brother.

Q. You say Mr. Thurman was threatening a partition suit?

A. Yes. I am not good at remembering details. I am not sure whether he said it or not, but I think he wrote us a letter, which I didn't keep.

Q. Did Mr. Thurman write the letter or did his lawyer write the letter?

A. I think it was Mr. Thurman.

Q. Did you just have one letter from him?

page 140 } A. I had more than one letter, but I don't think it was but one about the partition suit. I am not even sure of that.

Q. Did you have any letters from his attorney, Mr. Waddell?

A. I think so.

Q. But you are not certain?
A. I am not certain.
Q. Did you feel he had a right to sell the property by partition suit?
A. No, I didn't feel so, not by the terms of that contract.
Q. He was threatening you with a right he couldn't enforce?
A. I didn't think so by the terms of the contract, but I didn't know much about it.

* * * * *

page 141 } CHARLES E. McMURDO,
an opponent, after being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Florance:
Q. You are Charles E. McMurdo?
A. Yes, sir.
Q. The son of Sarah Magruder McMurdo?
A. Yes, Sarah Magruder McMurdo and A. Keith McMurdo.
Q. As shown by the chart here?
A. Yes.
Q. Where were you in 1935 when this agreement that we have been talking about all day was prepared? Do you recall?
A. I was living in Richmond, working there and living in Richmond.
Q. Were you familiar with the goings-on in the family?
A. Yes, through letters from my mother and close contact with my aunt, Lucy Magruder Taylor.
Q. Did you see this agreement at that time?
A. No, sir.

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Q. From your common knowledge of the goings-on in the family, what was the precipitating cause of this contract?
A. Well, after 10 years nothing had been done to settle the

estate, and Sally Watson Hopkinson and Elizabeth Henshaw wanted what was rightly theirs and threatened to take some action to get it, and that is what brought it about.

Q. Do you know who was executor of the will of
page 143 } Sarah Gilmer Minor Magruder?

A. I think Maria Magruder Thurman was executor under her mother's will.

Q. And in 10 years she did nothing to wind up the estate except live there?

A. That's right.

Q. And so when they asked for their share that was the precipitating cause of this contract?

A. That's right. I think they all could have used their share of the money, and Maria felt she was not doing her duty in not going ahead and settling the estate. No effective work was done except disposing of some property, some stocks and bonds and disposing of a piece of land, but nothing else was done towards settling the estate.

Q. After the agreement, Oscar Thurman and Maria Thurman continued to live on the property?

A. Yes.

Q. Did your family or anyone else ever receive any income from it?

A. No.

Q. When did your mother die?

A. It was in October—October 15, 1947, I believe. No,—it was '48. I think it was '48.

Q. Her will, I believe, has been introduced in
page 144 } evidence.

A. 1948, I think.

Q. I am reading from the will of your mother, Exhibit C:

"To my son, Charles E. McMurdo, I give and bequeath my share of Edgemont farm, Albemarle County, Virginia.

"To my daughter, Sally M. Johnson, I give and bequeath my diamond ring, my linens, my bedspreads, my furniture, my stocks, and the remainder of my property not hereinbefore mentioned, and anything inherited after my death."

That will was duly probated and you and your sister took the respective shares in that will, did you not?

A. I was left her share of Edgemont and my sister was left some stocks and bonds and anything she might inherit after her death.

Charles E. McMurdo.

Q. If she takes anything under the contract of 1935, who would it go to?

A. I understand that would go to my sister, Sally M. Johnson.

Q. Then you have no interest in it?

A. I have no interest in this, the property or whatever is covered by this contract.

page 145 } By the Court:

Q. Why do you say that, Mr. McMurdo?

A. Well, my mother told me several times before I knew of her will what she was going to leave me. My wife and I were visiting in the West in 1936, which was a year after the agreement was signed, and mother told me she never expected to get anything from Edgemont during her lifetime. However, she was leaving the place to me and hoped I might get something from it some day, and anything else that might come of it she was leaving to my sister Sally. And then we visited in 1946, 10 years later—

Q. Is it your position Mr. Oscar Thurman had a right under the contract of 1935 to sell his undivided interest in the real estate?

A. That is, after the agreement was written?

Q. Yes. Do you think he violated the agreement when he sold his interest in the property?

A. I didn't know exactly whether he did or did not, but I felt the agreement was in jeopardy. It had existed a long time and it had accomplished the purpose for which it was drawn, and an attempt was now being made to force a sale, and I resisted that with every means I could in order not to throw any cloud on the agreement.

Q. In other words, when you sold your one-fourth undivided interest, you felt that agreement—did
page 146 } you feel that agreement of 1935 was cancelled?

A. No, I did not think it was cancelled because it was not sold during the lifetime of Maria and Oscar Thurman, but I could not understand it completely and nobody could tell me exactly what it said, so I resisted the sale for several reasons, and that was one of them, not to throw any cloud on the agreement, if I could help it.

By Mr. Florance:

Q. You stated you didn't see a copy of this agreement in 1935. After you inherited this property, what is the first

Charles E. McMurdo.

letter or contact you had from anybody in connection with it?

A. November 15th, 1948, which was a month after my mother's death, I received a letter from the Peoples National Bank of Charlottesville written by Mr. Turner, requesting a copy of my mother's will.

Q. That was the Mr. Turner who testified this morning?

A. Yes. He asked for a copy of my mother's will, and I told him I didn't have a copy of it.

Q. What is the next correspondence you had in connection with it?

A. The next correspondence I had came from my Uncle Oscar Thurman. It was a letter written December 7, 1948, which stated there was an agreement covering

page 147 } Edgemont but that also there was an agreement to sell at a price of 20,000.00 among my mother, Sarah McMurdo, and the other signers of the agreement who were then living. He was the only one living at that time, when he wrote the letter.

He offered to buy my one-fourth interest for $5,000.00 and stated in his opinion that would cancel the agreement, and in consideration he said he would offer me $100.00 and the others $100.00, meaning, I presume, the parties who were affected by the agreement.

Q. He offered you $5,000.00 for your share in the property?

A. For my one-fourth interest in Edgemont.

Q. And the $100.00 was for what?

A. Not that he recognized the agreement was good, but he was offering me $100.00 to cancel it.

Q. Did you accept that offer?

A. No, I did not.

Q. What was the next correspondence in connection with it?

A. The next correspondence I had was from Mr. Turner of the bank in which he stated at the request of Mr. Oscar Thurman he was enclosing a copy of the will of my mother, which he had obtained so I could determine what she left me, and I had inherited Edgemont. My mother told me, but I had not seen a copy of the will. This was 30 days

page 148 } after her death.

Q. That was from Mr. Oscar Thurman's banker?

A. Yes, and it said, "At the request of Mr. Oscar Thurman."

Charles E. McMurdo.

Q. What was the next correspondence?

A. Well, the next thing I wanted was a copy of the agreement. I didn't have a copy of the agreement.

Q. Had you ever seen it?

A. No, I had never seen the agreement. My family never had a copy, and as far as I know no one else had a copy. There was only one copy in existence, and I was concerned that something might happen to it. Generally when a contract is signed all parties to the contract receive copies of it, and I felt very much concerned that there might not at that time be any contract in existence. It might have disappeared.

So I asked Mr. Turner if he would send me a photostatic copy of the agreement, and somewhat later we made some attempts to have the agreement recorded for our protection but that's all passed. The agreement is here and we are relieved we have the agreement to go by.

Q. Were you ever able to get it recorded?

A. No. They refused or declined. It was never done. I requested of Mr. Turner on January 10, 1949, that he send me a photostatic copy of the agreement, which he did, page 149 } and also my request to him crossed his letter dated the same day in which he stated that at the request of Mr. J. Oscar Thurman he was writing to enclose copy of the agreement. I think I had told him in a telephone conversation I would like a copy of the agreement. However, it was a typed copy, and I wanted a photostatic copy, feeling it would be more protection to me.

Q. I believe you work for the Telephone Company?

A. Yes, and I have the privilege of calling long-distance without cost in reasonable amounts.

Q. What is your next written connection with the transaction?

A. Well, as I said, Mr. Turner had sent me a copy of the agreement and it crossed my letter requesting a photostatic copy, so the next correspondence was January 25, 1949, enclosing photostatic copies of the agreement.

Q. I believe we already have that. Was no offer made at that time?

A. No. I still had not answered Oscar Thurman's letter offering to buy my one-fourth interest and to cancel the agreement for $100.00.

Q. You had not answered it?

A. No. The next letter is dated February 11, 1949, from

Charles E. McMurdo.

Mr. Thurman to me.

page 150 } (Reading) "I am wondering what you are doing about the proposition I wrote to you about some time ago. I may be wrong, but it seems to me it is a fair proposition as you will never find anyone who will be fool enough to give $20,000 for 'Edgmont' but me. The real estate men all prophesy that in a short time we might have to sell for $10,000 or less instead of $20,000.

"Let me know about it before it is too late. The longer you put it off, the less we will get for it."

Q. And what was the date of that letter?

A. That was February 11, 1949.

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Note: The letter referred to was filed in evidence and marked Henry M. Taylor, et al., Exhibit No. 4.

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Q. Mr. McMurdo, did you attend the University of Virginia?

A. Yes, I went to school there from September 1924 until June of 1930—six years.

Q. Have you visited this farm during that time and after that?

A. Yes, when my grandmother was living, which was the first time I was there, I went to Edgemont on numerous weekends to visit my aunt and grandmother, Sarah Gilmer Minor Magruder and Maria Magruder Thurman, my aunt, and my Uncle Oscar Thurman.

page 152 } Q. I believe you testified your mother stated some years before she expected to leave you her interest in Edgemont?

A. I am not sure in 1925 whether she said that or not. I think she expected upon her mother's death the place would be sold and she would receive her share, and no possibility of willing it to me occurred to her at that time and certainly no agreement occurred to her at that time.

Q. After the agreement of 1935, I believe it was, she told you she expected to leave you her interest in it?

Charles E. McMurdo.

A. That came to me when we were visiting in Hepner, Oregon, in the summer of 1936. She told me she signed the agreement and Maria and Oscar could live there during their lifetime and she never expected to get anything from Edgemont, but she hoped I would and she was going to leave it to me.

Q. On February 11, 1949, did you form an opinion of what you thought the property should bring? That is the date of the letter from J. Oscar Thurman stating that he would pay you on the basis of $20,000 and you had better take it quick before the price went down.

A. Yes. I had formed an opinion that was about half of what I thought the place would bring, so I had
page 153 } several reasons for not wishing to go along with the sale or even wanting to consider it. The first was throwing a cloud on the agreement or jeopardizing it, and the second was the price, and if the price had been high enough, I would have held on to protect the agreement. The price was not a consideration, although I did feel strongly it was about half what the place was worth, and I so stated in my reply.

Q. Do you have a copy of your reply to Oscar?

A. Yes. After receiving the second letter, I was forced to reply. Our strategy was we would resist in every means we could, and I was reluctant to be hurried in it. I thought I would drag my feet as much as I possibly could, but I had to reply to him after receiving this letter of February 11th.

Q. Did you indicate that you thought the value was higher?

A. Yes. I told him it was not enough. I have this letter here. I would like to read it. It states our position at that time, or my position certainly.

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A. (Continuing) I have copies of this correspondence, because when we were finally forced into the sale, I made copies of everything to go to Mr. Allen Perkins in Charlottesville, so he would know all the circumstances involved.

Mr. Belt: All right.

Charles E. McMurdo.

A. (Continuing) This is a carbon copy inserted under the longhand I wrote to him, a direct carbon of the letter dated February 26, 1949.

(Reading) "Dear Uncle Oscar, I have been thinking about the proposition you wrote to me about, of buying my interest in Edgmont. I believe the place is worth a lot more than $20,000 at the present day prices of farms and other real estate and I would not be agreeable to selling it for that amount. Just a fairly good house alone around here will sell for $20,000 or more.

"Under the terms of the agreement written by Auntie and which we are all adhereing to, you may live at Edgmont as long as you wish. I am thinking that it would be to your disadvantage for you to take money which is well
page 155 } invested now and bringing in a good income and invest it in Edgmont, which would bring in no income at all. You would only be spending money to buy what you already have, in accordance with the agreement, as long as you wish to live there.

"I hope you have been well this winter, if you can call it winter. We have had practically no cold weather at all, which suited me fine. A damson tree and two peach trees in my back yard will be in bloom in a few more days. I hope everything won't be caught in a freeze.

"With best regards,

(Signed) Charles."

Q. Did you get a reply from your Uncle Oscar?
A. I received a reply March 19th, 1949.

* * * * *

A. (Reading) "Dear Charlie: I regret that you do not see your way clear to sell your 1/4 interest in 'Edgmont' for $5,000. I might say that I am willing to sell my
page 156 } 1/2 interest for $10,000 plus 1/2 of the cost of painting and repairing which was recently completed at a cost of $1,200, provided I am given the right to live there unmolested as long as I am able to stay there. I, of course, would pay the taxes and insurance on the property and keep same in a fair state of repair.

"If this proposition is not acceptable to you, we might

sell the property at public auction which would be fair to all.

"Please let me hear from you within the next several days.

"Your devoted uncle,

(Signed) Oscar."

Q. Did you accept any part of that offer?

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A. No, it was still left as it was, no action was taken.

Q. Who did you hear from next?

A. The next letter I received was a letter written to Lucy Ann Taylor and to myself from Waddell & Coles at Charlottesville, Virginia, dated April 14th, 1949.

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Q. This is a letter in which he gives you three alternatives, a partition suit, a buy-or-sell agreement, or an agreement of all parties to sell?

A. Yes. I will read you that part of it:

(Reading) "We have advised him that a suit for partition might be instituted in which the property might be divided or a sale ordered and the proceeds divided. The latter course would seem more likely since the residence constitutes a large part of the value of the property."

By the Court:

Q. What are the three alternatives?

A. (Continuing) "* * * Mr. Thurman has asked us to communicate with you and ascertain whether there is any

possibility of a private sale or a sale of your interest to him or a purchase of his interest by you.

"We shall be glad to consider a proposition along any of the three lines above suggested before proceeding with a partition suit."

The Court: I see.

page 160 } By Mr. Florance:

Q. I believe this is the first time you have been threatened with a partition suit?

A. Yes. To be very frank with you, the letter from Waddell & Coles shook us up considerably. We were very much disturbed. It looked like Uncle Oscar had decided on a course of action and had consulted a lawyer, and we felt we were in a very bad position. We didn't know which way to turn. For about 10 days, I think it was, I pondered the letter and discussed it with Lucy Ann Taylor and decided to call Mr. Waddell. It was convenient to call, and you can discuss things over the telephone I would be afraid to put in writing, in writing to a lawyer.

By the Court:

Q. In other words, you are careful what you say to lawyers?

A. Yes, and I was considerably upset by the receipt of this letter. I didn't know Mr. Waddell, but I knew of him, and so I prepared at the time I made my telephone call to him sort of an outline of what I was going to say. I was afraid when I got to talking to him I wouldn't remember my own name. I told him I received the letter and of course it takes time to consult with everyone and I explained to him there was an agreement. I told him my grandmother died in
page 161 } 1925 and the estate was then left to the four people which I named to him, and I told him it was covered by an agreement and I didn't believe Uncle Oscar could partition under the agreement; that we didn't want to sell, and I told him that we would prefer that the place not be sold and that the agreement—this is in a letter later concerning the telephone conversation—

Q. Why wouldn't that have been a good time to test the validity of that agreement, while your uncle was still alive and you didn't want to sell and you told Mr. Waddell you didn't think he could partition? Why wouldn't that have been a good time to assert your rights as to that agreement?

Charles E. McMurdo.

A. I didn't want to be involved in any court action. I didn't have any money to afford any expensive legal action, and I was trying to avoid it if I possibly could.

Q. One of the defenses here is that you may be guilty of laches. What date was that?

A. This was April 14th, 1949.

Q. That was 9 years ago. Then you were asserting or asserting to the lawyer you didn't think your uncle had a right to partition.

A. Mr. Waddell told me in this conversation that the agreement is good but doesn't prevent any of the parties from selling their interest. If the place is sold, it is not
page 162 } cancelled because it was not sold during the lifetime of Aunt Maria and Uncle Oscar. That is what he told me in the telephone conversation. I didn't know whether that could be accepted or not, but it was somewhat reassuring for him to tell me that, but I still was not going to go along with the sale if I could help it.

By Mr. Florance:

Q. That is Uncle Oscar's attorney reassuring you that a sale will not void the agreement?

A. That is what he told me on the telephone. I am reading from notes that were made at the time of the conversation.

Q. What did you do next?

* * * * *

A. At the time also I made a counter proposal to Mr. Waddell. I suggested that Edgemont be sold and the proceeds be put in trust; that the proceeds of the trust be distributed, that is, the income, according to the interest of the owners of Edgemont, and at that time the agreement be reaffirmed in order not to cast any doubt on the agreement by the sale.

page 163 } By the Court:

Q. Did he refuse to do that?

A. Mr. Waddell said he thought that was a fair proposal and he would mention it to Uncle Oscar.

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Charles E. McMurdo.

By Mr. Florance:

Q. What is the next problem that came up?

A. The next letter came from Mr. B. E. Wheeler & Company of Charlottesville, in which he said he understands from Mr. Turner that we own Edgemont and that Mr. Thurman states he has a half interest in the property and we have one-fourth interest, and Mr. Thurman has given him a price of $25,000.00 to sell the property provided it met with our approval.

I replied to that letter—I didn't feel compelled to go into all the details of the agreement. I thought I could answer him and say the property was covered by an agreement of the owners which would influence the sale price and that the agreement would have to be modified or amended before the place could be sold, and I further told him that I could not approve of the net price given him by Mr. Thurman because it was not enough for the property.

Q. Not enough for the property?

A. Not enough for the property. So then I received another letter from Mr. Wheeler acknowledging my reply and saying he would appreciate anytime we could agree on a definite price he would like to handle the sale.

page 165 } So then I wrote to Mr. Waddell and told him that I had received this letter from Mr. Wheeler and the price was $25,000.00.

Mr. Belt: I suggest the letter be read.

A. (Continuing) All right.

(Reading)

"Mr. Lyttelton Waddell
"Waddell and Coles
"Charlottesville, Virginia

"Dear Mr. Waddell:

"Recently I received a letter from Mr. Harry W. Wheeler, of the firm of B. E. Wheeler and Company, Realtors, at Charlottesville, Virginia, regarding the listing for sale of 'Edgmont' farm, located on the Stony Point Road about six miles from Charlottesville, in which Mr. J. Oscar Thurman, Miss Lucy Ann Taylor and I each have an interest. Mr. Wheeler stated that Mr. Thurman had given him a net price

of $25,000 to sell the property providing it met with the approval of Miss Taylor and me. I have advised Mr. Wheeler that the property is covered by an agreement among the owners which would influence the price and would have to be modified or amended before the place could be
page 166 } sold.

"As was brought out in our telephone conversation, in response to your letter of April 14, 1949, Miss Taylor and I would prefer that the place not be sold and that the agreement which has been in effect for a number of years be carried through to its conclusion. However, if Mr. Thurman feels that he is no longer able to farm the place profitably and that living at 'Edgmont' and paying the taxes, insurance and a minimum amount of maintenance is no longer attractive and wishes to sell, we would be agreeable provided that a new agreement be made or the present one amended to prevent its being canceled by the sale. The proceeds of the sale could be put in a trust fund established for Mr. Thurman's lifetime, the income from which would be divided among the owners according to their interests, and afterward be divided equally between the estates of Lucy M. Taylor and my mother as provided in the present agreement. The other provisions of the present agreement would remain unchanged except to make the wording clearer and more specific.

"We believe that this arrangement would be
page 167 } fair to the owners and would continue the provisions of the present agreement. There are doubtless other solutions which may be suggested and we would be glad to consider them in an effort to arrive at one satisfactory to all concerned.

"Very truly yours,

"(Signed) Charles E. McMurdo.

"Copy to:

Mr. J. Oscar Thurman,
Eastham, Virginia."

By the Court:

Q. Now you were writing to your uncle's lawyer, and you suggested that it should not be sold without modification of the agreement. What modification did you have in mind?

A. I was concerned about the possibility that legally the

contract might be cancelled if the place were sold.

Q. Didn't you state that in your letter? Didn't you state in your letter you considered if the property was sold it would cancel the contract?

A. It was a cloud over the agreement.

Q. Read the letter back. Didn't you state that?

A. (Reading) "* * * The proceeds of the sale could be put in a trust fund established for Mr. Thurman's lifetime, the income from which would be divided among the owners according to their interests, and afterward be divided equally between the estates of Lucy M. Taylor and my mother as provided in the present agreement. The other provisions of the present agreement would remain unchanged except to make the wording clearer and more specific."

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Mr. Florance: I think the last paragraph shows his intention very clearly:

"We believe that this arrangement would be fair to the owners and would continue the provisions of the present agreement."

Mr. Belt: Read in the second paragraph, about middleway.

A. (Continuing) "As was brought out in our telephone conversation, in response to your letter of April 14, 1949, Miss Taylor and I would prefer that the place not be sold and that the agreement which has been in effect for a number of years be carried through to its conclusion. However, if Mr. Thurman feels that he is no longer able to farm the place profitably and that living at 'Edgmont' and paying the taxes, insurance and a minimum amount of maintenance is no longer attractive and wishes to sell, we would be agreeable provided that a new agreement be made or the present one amended to prevent its being canceled by the sale."

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By the Court:

Q. What did you mean by saying that, "canceled by the sale"? You said a lawyer had told you before that he didn't think it would cancel it.

A. That was the lawyer's opinion, sir.

Q. You said in this letter to prevent a cancellation by a sale. Now then, when you did sell the property, were you of

Charles E. McMurdo.

the same opinion you were at the time you wrote that letter?

A. I should have said it would possibly be cancelled by the sale. That was my thought—the possibility of its being cancelled, not its actual cancellation.

Q. Of course, you said to prevent it from being cancelled.

A. (Reading) "We would be agreeable provided that a new agreement be made or the present one amended to prevent its being cancelled by the sale."

page 170 } Q. You were definitely of the opinion that a sale would definitely cancel the agreement?

A. I wasn't definitely of that opinion, but I was afraid it would.

Q. Had you changed your mind when you signed the deed to your interest?

A. I had decided then there wasn't anything I could do, and I would rely on Mr. Waddell's statement that the agreement wasn't cancelled and also the further statement of Mr. Waddell that he had drawn a will for Uncle Oscar, and it was in accordance with the agreement. However, as pointed out by Mr. Perkins, he could make as many wills as he wanted.

Finally we decided to sell on the basis we would hold on to the agreement and all our papers and see what the will said.

Q. Did anyone else sign that letter you wrote?

A. No, I signed it.

Q. Did you consult with Lucy Ann Taylor before you wrote that?

A. We consulted on each move.

Q. She was advised of the contents of that letter?

A. I don't know whether I gave her a copy of it or not.

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By Mr. Florance:

Q. What came of that letter?

A. Which letter were we on? This was the one I had replied to Mr. Waddell, telling him about the letter from Mr. Wheeler and giving this counter-proposal to reaffirm the agreement and setting up a trust, or coming to some other agreement which would permit the sale of the farm without jeopardizing the agreement.

Charles E. McMurdo.

Q. Had you talked to your counsel up to this time?
A. No, I had not.
Q. You had not employed counsel yet?
A. No.
Q. Did Mr. Waddell reply to that?
A. The next letter I got from Mr. Waddell was on December 21st, 1949. This other letter was in July. This reply said:

page 173 } (Reading) "Mr. Thurman tells us that he had an offer to purchase the 'Edgmont' property and his property adjoining for $25,000.00. He is willing to accept this offer and he is anxious to know whether you and your cousin would be interested in it. He feels that the property is going down rapidly and he is himself in need of funds. We should be glad to have your reaction to this proposition."

Q. What happened then?
A. So I called Mr. Waddell on January 9th, 1950, and talked with him, and I asked him about the price of $25,000.00, which was a new figure, and Mr. Waddell told me Uncle Oscar wanted $5,000.00 for his land and the price on Edgemont would be $20,000.00. I told Mr. Waddell at that time I thought the price on Edgemont was far too low. I told him I thought it should be around $40,000.00, and I amended the proposal we had made in my letter of July 14th by suggesting that a trust fund be set up—

Mr. Belt: Is this a telephone conversation?

A. (Continuing) Yes. The trust fund I mentioned before, but at this time I made the proposal that all of the proceeds of the trust fund would go to Uncle Oscar during his lifetime and after his death the trust would be dissolved and the

page 174 } money would go to my mother's estate and Lucy Taylor's estate, my mother being Sarah Magruder McMurdo, and Mr. Waddell said he thought that was a reasonable offer and he would mention it to Oscar.

• • • • •

Q. Was that offer ever accepted?
A. No, sir, he didn't accept it. I told Mr. Waddell that was far too little, and I made the proposition that the trust

fund be set up and the agreement clarified and reaffirmed so as not to be jeopardized by any sale, and Oscar could use all of the proceeds of the trust fund during his lifetime. That was our counter-proposal and no reply was received to that.

Q. Who was the next attorney you heard from?

A. The next thing I did, I heard by chance that Uncle Oscar was proceeding to sell his share of Edgemont and his attorney was Mr. David Wood, or rather, that the attorney involved in the sale was Mr. David Wood. I think it was Mr. Worthington's attorney, Mr. David Wood, who was handling the sale of Oscar Thurman's portion of Edgemont to the Worthingtons.

So then we employed counsel and we talked to Mr. Allen Perkins in Charlottesville, who agreed to rep-
page 175 } resent us, and I made a copy of all the correspondence I had with Mr. Wheeler and Oscar Thurman and Mr. Waddell and everybody and sent them to Mr. Perkins. This letter is dated April 17th, 1950, a month before the sale.

Q. The letter is to whom?

A. To Mr. Allan Perkins in Charlottesville. I told Mr. Perkins in this letter that I was enclosing a copy of the agreement concerning Edgemont farm and that the original and only signed copy was in Uncle Oscar's possession and I had requested through Mr. Turner and Mr. Waddell that it be recorded, and they were both unsuccessful in having it done.

(Reading) "In a telephone conversation with Mr. David Wood, he said that he was representing a client who was interested in buying Uncle Oscar's interest in Edgmont with the intention of either buying the interests of Miss Taylor and myself or forcing the sale of the place at auction. He stated that it was his belief that the agreement was not any good.

"Miss Taylor and I would prefer to make some arrangement with Uncle Oscar so that the agreement would not be canceled by the sale of the place and if that could be done we would be willing to sell in an open and orderly
page 176 } manner through normal unforced real estate sale procedure so as to receive the best possible price for the place. We believe that a fair arrangement would be to place the proceeds of the sale in a trust fund, the income from which would be paid to Uncle Oscar during his lifetime, which would be dissolved upon his death and divided between

the estates of Mrs. Taylor and my mother as provided in the present agreement.

"I am making copies of the correspondence I have had with Uncle Oscar, Waddell & Coles and others regarding Edgmont and will send them to you as soon as possible."

Mr. Wood had stated in his telephone conversation with me his opinion the agreement wasn't any good and that Edgemont could be sold, and that he was proceeding with the purchase of Oscar's share and would bring suit to force the sale at auction.

Q. Mr. Wood definitely told you they were going to bring suit against you for partition?

A. Yes, he told me that.

Q. Who was Mr. Wood representing?

A. Mr. Worthington, it turned out later, who was purchasing Edgemont.

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Q. As a result of your conversation with Allan Perkins, what did you and Lucy Ann decide?

A. We decided that if we were not financially able to go through a long and costly lawsuit, which could go to the Supreme Court, his advice to us as counsel was to go along with the sale and accept what was offered to us and stand on the agreement. We understood that Mr. Oscar
page 179 } Thurman's will was in accordance with the agreement. However, there was no assurance it would not be changed completely, and the only thing left for us to do was wait until the next action, which would be brought about at the time of Uncle Oscar's death.

I might add I was not at all surprised at his will and, if anything, I was relieved as it appeared to me it was completely outside the agreement and therefore posed a keen breach of the agreement. If he had left part of his estate to any of the people mentioned in the agreement, it might have been a very mixed-up situation, much more so than it was. That was my feeling.

Charles E. McMurdo.

CROSS EXAMINATION.

By Mr. Belt:

Q. Do I understand that acting upon the advice of Mr. Perkins—that is Mr. Perkins of Perkins, Battle & Minor of Charlottesville?

A. Yes.

Q. Do I understand that acting on Mr. Perkins' advice, you did go ahead and voluntarily convey your interest, along with Mr. Thurman conveying his interest, to Edgemont?

A. I take a little exception to the word "voluntarily." We didn't see any other alternative.

Q. From whatever cause that you felt, you did
page 180 } accept that course and do it, did you not?

A. We did accept that course.

Q. Nobody made you do it, did they?

A. Not physically, but I would consider that we had tried every avenue of escape and compromise and everything we could think of, and we were finally forced to it. I say "forced" in the sense we understood there was no alternative except a long expensive lawsuit which we were not prepared to go into.

Q. I ask you to read this letter from Oscar Thurman dated December 7th, 1948, to you.

A. (Reading) "Dear Charlie:

"Before your mother died, she and Lucy Taylor and I agreed to sell Edgmont at $20,000. I have not been able to sell it at that price, but I am willing to buy out your share which is a quarter at that price, paying you $5,000. There was a contract between your Aunt Maria and me and your mother and Lucy Taylor that if we hadn't sold the place in our lifetime, I would leave what I have when I die amount (among ?) your mother's children and your Aunt Lucy's children, dividing it as I please. If I buy the place, I want it
understood that the old contract is cancelled just
page 181 } as it would be if we sold it to somebody else.

"It is sort of strange that I can cut off any of you, and yet, if I cut off all of you, you would all have a claim. It seems to me like if I buy the place, the old contract should be cancelled, just as it would be if we sold to somebody else. But I want to be fair and I'm willing to pay each $100.00 to cancel the old contract if I buy out your share.

I thought you would probably not want to write to your sister and ask her to cancel the old contract when I was buy-

ing out your share. So I have written her, and (if ?) she is willing and your Aunt Lucy's children are willing to sell and cancel the contract on the same terms, I will buy you out for $5,000.00.

"Let me know if you want to do this.

"I don't mean that when I die I shall give none of you anything. But if I pay full price for the place, I want it to be as if somebody else had bought and we had divided the money.

"Your Uncle Oscar

(signed) Oscar."

Q. You understood from this, did you not, that Mr. Thurman's understanding of this contract was that if you sold that to somebody else, it would cancel the contract, and he thought it would be the same if he bought your interest?

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A. Yes, the letter contained his opinion of the contract. That was his idea of it.

Q. Didn't you think a sale by all the owners to a third party would cancel the contract?

A. No, I didn't. I didn't think it could, but I was afraid it might.

Q. I call your attention to the letter dated July 14th in which you stated you would have to amend the present agreement to prevent its being cancelled.

A. In my inexperience, I should have said possible cancellation.

Q. (Reading) "I have advised Mr. Wheeler that the property is covered by an agreement among the owners which would influence the price and would have to be modified or amended before the place could be sold."

A. That was again for protection. I didn't want to jeopardize the agreement in any way by selling, and I didn't want to sell.

Q. That was to keep the last clause of the agreement from operating? The last clause of the agreement which called for cancellation?

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A. What was the last clause? I think I recall it, but I would like to know what it was.

Q. (Reading) "If said farm is sold during the life of J. Oscar Thurman and Maria M. Thurman, this agreement is cancelled."

Charles E. McMurdo.

Is that the clause of this agreement you were afraid would operate?

A. I was afraid it might, although it didn't seem to me it would since it didn't take place during the lifetime of Maria and Oscar. I felt the agreement was locked up on the death of Maria.

Q. You mean the owners could never sell until Oscar Thurman died?

A. That was the way I felt. The agreement states that Lucy and Sarah and Maria were free to accept an offer, but I felt the agreement had served its purpose, it had practically concluded itself at the time Maria died, and therefore, since it was not sold and since Mr. Waddell had told me—

Q. What I am asking you, do I understand that after Maria Thurman died it was your thought no matter how badly you and Oscar Thurman and Miss Lucy Ann Taylor might want to sell, you couldn't sell until he died, without cancelling the agreement? Is that what I understand you to say?

page 184 } A. Yes, that was my belief, that we couldn't sell without cancelling the agreement. I am not sure I said that right either. Wait a minute. I felt if we sold it wouldn't cancel the agreement, but I didn't want to take a chance on it.

Q. You felt the only way in which the last clause of this agreement would come into effect was if Maria and Oscar Thurman during their lives would join with the other owners and sell? That could cancel it, but that only?

A. That's right. The three parties who signed the agreement could cancel the agreement if they wanted to. I didn't know whether I could cancel or not.

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"Q. You mean, if one of the sisters died, Maria and Oscar and the other sister and the other owners couldn't cancel by selling if they wanted to?"

A. I really didn't consider that. My thought was not to sell at all.

Q. Your thought was not to sell at all, to hold on in all events so as to get what Uncle Oscar had accumulated?

Charles E. McMurdo.

A. I wouldn't get it—so as not to jeopardize the interest of the other.

Q. Does the contract, in your estimation, state who was going to get it?

A. Yes, the heirs of Lucy M. Taylor and Sarah M. McMurdo.

Q. Which ones and how much?

A. In equal parts, was my understanding, in accordance with Maria Thurman's will.

Q. Do you remember this language: "* * * dividing each of their parts as they see fit"?

A. Yes, I recall that.

Q. Mr. Thurman felt that he was the one that had the right to make the choice.

page 186 } A. Yes, he thought so, but I didn't think my mother and Lucy Ann would agree to that.

Q. Was your mother alive then?

A. At what time?

Q. 1949?

A. No, she died in 1947.

Q. Who did you think was going to have the right to say what heirs would get how much?

A. I thought Lucy Magruder Taylor had covered that in her will, and my mother had covered it in her will. My sister would get what came through my mother, and Lucy Taylor's five children would get their mother's share, and it would be equal shares between my mother and Lucy Magruder Taylor.

Q. You mean, the "they" in here gave the election partly to your mother and aunt?

A. That was my feeling. I have read the agreement many times, and I am not going to say I understood it thoroughly.

Q. But Oscar's interpretation of it you don't feel is right?

A. No.

Q. But you don't know what is right?

A. That is a matter for the Court, I believe.

Q. Now in the letter of December 7, 1948, that

page 187 } you read here, Mr. Oscar Thurman said that, "Before your mother died, she and Lucy Taylor and I agreed to sell Edgmont at $20,000." Had you ever heard of that agreement before?

A. No, sir. I have a letter from my mother that states she agreed to sell the place for $30,000, and every time anybody became interested in the place it was taken off the market. I have that letter.

Charles E. McMurdo.

Q. You feel that since Mr. and Mrs. Thurman lived there a long time, you all are entitled to be paid?

A. That was the agreement they drew up.

Q. Do you feel that way now?

A. I feel there is some justification in carrying out the agreement.

Q. Suppose Oscar and Maria Thurman had lived only a week after this agreement was signed, would you feel justified in accepting their estate now?

A. That was their agreement. That was what they wanted.

Q. With you, it was a matter of a calculated risk?

A. Well, yes.

Q. And the calculated risk on your side was if the property was sold, the agreement was off?

A. Probably—I guess that is probable.

page 188 } Q. As a matter of fact, in the first part of the agreement it says that they can live on the farm during their lifetime or until it can be sold at a price satisfactory to the owners.

A. I felt that clause protected all the owners, because all they had to do was say the price wasn't satisfactory.

Q. If it was sold at a satisfactory price, the Thurmans would have to leave, but he could hang on and not agree to any price and live there the rest of his life. Is that what I understand you to say?

A. I am not sure I understand what you are getting at.

Q. Under that part of this agreement, if the property had been sold at a satisfactory price, then the Thurmans no longer had a right to live there, did they?

A. Before Lucy Taylor's death?

Q. At the time of the signing of the agreement, when it said, "J. Oscar Thurman and Maria M. Thurman, his wife, may continue to live on the said farm for their lifetime or until it can be sold at a price satisfactory to each owner"—so if it were sold at a price satisfactory to each owner two weeks later, the Thurmans would have to move?

A. Yes, that protected them.

Q. So they could block the works by not agree-
page 189 } ing to a price?

A. Yes, that was their protection.

Q. Then, Mr. McMurdo, couldn't your mother and aunt have brought a partition suit if they refused to agree to a satisfactory price? Couldn't they put the Thurmans in the same position he put you?

Charles E. McMurdo.

A. I don't know whether they could or not. I know they wouldn't have.

* * * * *

Q. Did I understand you to say there is only one copy of this contract in existence and Oscar Thurman
page 190 } had that?
A. Yes.

Q. Do you know of anything that would have prevented him from tearing it up?

A. No, I don't.

Q. Had he ever done anything to give you a reason for distrusting him in regard to this?

A. No, I don't think so. I thought well of Uncle Oscar and I always have.

Q. In other words, he kept it and abided by it until you all made sale of Edgemont in 1950?

A. Yes. Didn't Mr. Turner testify that came from Maria's papers?

Q. I understood him to say it was in Oscar Thurman's papers.

A. Maybe he did, but I did say it caused us some concern because there was only one copy and that is the reason I asked for a photostat.

Q. It was freely given you on behalf of Mr. Thurman, was it not?

A. Mr. Turner wrote that at the request of Mr. Thurman he was sending me a typewritten copy, and in response to my letter he sent me a photostat copy. That was in response to my request.

By the Court:

Q. After you signed that deed in 1950, did you
page 191 } ever approach your uncle and ask him about making a modification of this agreement to assure you that it had not been cancelled?

A. No.

Q. Why?

A. Each time we mentioned it to Mr. Waddell, we had not gotten any reply, and Mr. Perkins told us that they would not reaffirm the agreement. We mentioned that as a condition in going along with the sale of the property, that they reaffirm the agreement, right at the last before we agreed to go along with the sale, and Mr. Perkins advised us that the other

parties refused to do that, so we had to go along with the sale without any reaffirmation of any sort of the agreement, and the only thing we felt we could do was wait until the will was probated.

Q. So you had reason to believe at that time your uncle would not reaffirm it?

A. Yes. We were quite sure he was determined to break it. From the beginning of the whole proceedings in connection with the sale, I felt that one of Uncle Oscar Thurman's objectives was to get the agreement cancelled, to break it.

By Mr .Belt:

Q. From what time did you have that feeling?

A. I got a premonition of it when I got a re-
page 192 } quest for a copy of my mother's will.

Q. That was after he sent you copies of the agreement?

A. No. Copies of the agreement were sent to me several months after that.

Q. You mean to tell me that Mr. Thurman was trying to break the agreement and he had the only copy and still he was negotiating with you and sending you copies of it?

A. I think he sent me a typed copy.

Q. Mr. Turner sent you a photostat?

A. I think his letter indicated he was anxious to break it, the fact he offered $1000.00 to cancel it.

Q. And his letter also indicated that if it was sold, it would be cancelled?

A. That was his letter.

Q. And in the face of that you signed the deed and conveyed your interest in the property?

A. After going through the whole process I described.

Q. You made the statement Mr. Waddell told you on the telephone the agreement would not be cancelled if you all agreed to a sale.

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Q. A while ago you started to say something and didn't complete it. I think you were going to say something about you had taken the agreement to another lawyer, but you were

interrupted. Was that before you wrote the letter of July 14, 1949, from you to Mr. Waddell?

A. Well, I think it was after I had received it I had taken it to another lawyer.

Q. Mr. Waddell, as I understand it, wrote to you on the 14th of April, 1949, and that letter you have introduced, and then by telephone conversation you said he told you the sale would not cancel the agreement?

A. Since it wasn't sold during the lifetime of Maria and Oscar.

Q. You had a copy of the agreement then, did you not?

A. Yes.

Q. And you then took it to other attorneys?

A. My wife's brother-in-law is an attorney, and

page 195 } asked him his opinion of the agreement.

Q. And then you wrote to Mr. Waddell on July 14th, 1949?

A. Well, yes, if I wrote to him then. You have a copy of the letter.

Q. Here is the original copy that came to Oscar Thurman, I think.

A. Yes, this is the copy of it.

Q. And in that letter, after consulting counsel, that is when you made the statement you thought the agreement would have to be amended to prevent its cancellation?

A. I had not consulted counsel officially. I just showed it to him at his home, we were visiting, and asked him what he thought about it. He wasn't my counsel. It was just an offhand opinion.

* * * * *

page 196 } SALLY WATSON HOPKINSON,

a proponent, called in rebuttal, testified as follows:

* * * * *

Q. Mrs. Hopkinson, there has been some testimony by several witnesses that in their opinion you and your sister, Mrs. Henshaw, in 1935 were anxious to get your share of the property known as Edgemont and were therefore after the Thurmans to pay you, and that was probably engendered by pressure from your husband. Is any of that correct?

Sally Watson Hopkinson.

A. No. The Thurmans came to us and were anxious to buy.

Q. Were you in need of money at that time?

A. I don't think so, no.

Q. Who initiated the idea they would purchase your part of the property for $3,000.00?

A. They did.

Q. Did you ever go to them to press that suggestion?

A. No.

Q. Did Mr. or Mrs. Thurman or both come to you to press it?

A. Yes, they did.

* * * * *

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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