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Record No. 5049

In the Supreme Court of Appeals of Virginia at Richmond

CLEON W. HILL, ET AL.

v.

CECILE H. LUCK

FROM THE CIRCUIT COURT OF ROANOKE COUNTY

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. 5049

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Thursday the 18th day of June, 1959.

CLEON W. HILL, ET AL., Appellants,

against

CECILE H. LUCK, Appellee.

From the Circuit Court of Roanoke County

Upon the petition of Cleon W. Hill and Verna S. Hill an appeal is awarded them for a decree entered by the Circuit Court of Roanoke County on the 5th day of January, 1959, in a certain chancery cause then therein depending wherein Cecile H. Luck was plaintiff and Erskin L. Hill and the petitioners were defendants; upon the petitioners, or some one for them, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of three hundred dollars, with condition as the law directs.

RECORD

* * * * *

page 2 }

* * * * *

BILL OF COMPLAINT.

To the Honorable Fred L. Hoback, Judge of said Court:

Your complainant, Cecile H. Luck, respectfully represents that:

(1) She is a sister of the defendant Erskin L. Hill, sometimes hereinafter called "Erskin Hill" or "Erskin," and of the defendant Cleon W. Hill, sometimes hereinafter called "Cleon Hill" or "Cleon." The defendant Verna S. Hill, sometimes hereinafter called "Verna Hill" or "Verna," is the wife of Cleon Hill.

(2) By deed dated February 18, 1927, and recorded April 18, 1927, in the Clerk's Office of the Circuit Court of Roanoke County, Virginia, in Deed Book 162, page 507, Erskin Hill and others acquired title to a parcel of land in Salem Magisterial District, Roanoke County, Virginia, containing approximately 1.8 acres, locally known as "Bonnie Brook," and hereinafter more particularly described. By means of other conveyances, Erskin Hill subsequently acquired complete fee simple title to said real estate.

page 3 } (3) For many years Erskin Hill and his wife, Irene Lindamood Hill, lived at "Bonnie Brook." She died on or about July 15, 1957, and he is still living there.

(4) For many years Erskin Hill was employed by the Norfolk and Western Railway Company in its Car Record office at Roanoke, Virginia. As a very young man he became interested in military activities and was for many years a member of one or more of local military companies organized under the laws of the State of Virginia and of the United States. He saw military service in the Mexican Campaign and in World Wars I and II and was mustered out of active service in World War II as a Lieutenant Colonel after distinguished service and returned to his employment by the Norfolk and Western Railway Company.

(5) In the year 1948 or thereabout Erskin Hill suffered a cerebral hemorrhage which totally disabled him from gainful

employment and rendered him helpless for all practical purposes. In an effort to get medical relief he was taken to the McGuire Hospital in Richmond, Virginia, where he stayed for approximately six weeks and from there he was taken to the Veterans Facility Hospital in Roanoke County, Virginia, where he stayed approximately nine months, after which he returned to his home at "Bonnie Brook" in Roanoke County, Virginia, where he has continued to live.

(6) His wife was Irene Lindamood Hill, whom he married in 1923. Many years ago she became an alcoholic and during recent years she stayed intoxicated for long periods of time. Every encouragement and effort was made by Erskin Hill and his family to dissuade her from the excessive use of alcoholic beverages but with no success.

(7) Your complainant, Cecile H. Luck, is a widow. Her husband died in July, 1950, survived by no children. He left a very small estate. Consequently, she was faced with the necessity of rearranging her own life and making definite plans for her future.

(8) Shortly after her husband's death the complainant, no longer faced with the necessity of taking care of page 4 } him, became keenly aware in September or October of 1950 that her brother Erskin and his wife were desperately in need of assistance, as had already been known to his family. The individual members had sought to help, but each had his own commitments and responsibilities and therefore was not in a position to give systematic and daily attention to Erskin Hill and his wife. Various women, white and colored, and at one time a colored man, had been employed to take care of them, prepare their food and keep the house in order, but it was quite plain to the Hill family that this was very inadequate attention under the circumstances and that both Erskin Hill and his wife needed much more personal care and help than they were receiving. Both needed physical attention, clean clothes, clean bedding and personal sanitary care. Under the circumstances, your complainant began to look after both Erskin and his wife and to do those things for them which were not being done by the employed help. She would take her brother Erskin out in her car at least three times a week so as to get him away from home and to arouse his interest in other matters. His wife was always invited to go too but she generally refused to go, stating that she did not like to drive, but usually it was because of her condition.

(9) In the fall of 1950 Erskin Hill and his wife wanted to go to Florida and requested your complainant to drive them. This she did and spent two months there, expenses being split

three ways. In 1951 your complainant continued to look after her brother and his wife, and while she did not live in the home, she made almost daily visits to it, supervised the help, washed the Hills' personal clothing, bathed her brother and his wife, and put the house in order. She continued taking her brother, and his wife when she would go, out driving at least three times a week and generally four times, the first time being usually on Sunday.

(10) Her attention to her brother Erskin and his wife continued, but in August, 1953, your complainant decided to move to Florida and reside there permanently. There were several reasons activating her, among them being the warmer climate and a better opportunity for suitable employment.

page 5 } After your complainant had packed her trunk and completed her plans to move, she informed her brother Erskin and his wife. They were greatly upset and stated that they had no one to take care of them as she had been doing; that it was plain that both of them were going to need attention as long as they lived; that they had no children, and that if she would remain in Roanoke and continue to take care of them as she had done, that they would draw wills providing that she get at their death "Bonnie Brook" and whatever else they owned. Your complainant was not anxious to enter into such an agreement, because she was well aware of the problems involved. Your complainant's family did not encourage her to change her plans to move to Florida and especially was your complainant's mother opposed to the suggestion of her son and daughter-in-law. However, your complainant was in this situation: Her brother Erskin and his wife needed care and needed it badly. There was no one else in a position to render this help. After considering the matter most carefully, she agreed with her brother and his wife to look after them, as she had previously done, and they in turn agreed that at their death "Bonnie Brook" and whatever else they owned would be hers in compensation. The complainant realized that this would not be adequate compensation if it were placed upon a compensatory basis, but the members of the Hill family have always been very close to each other and her affection for her brother was the deciding influence.

(11) In keeping with their agreement Erskin Hill executed a will dated September 23, 1953 and his wife, Irene L. Hill, executed a will dated September 22, 1953. The effect of these two wills being that at the death of the survivor the joint estate of the two would go to your complainant; that she knew of the execution of these wills and the originals were made

accessible to her. Copies of both wills are attached hereto as Exhibits 1 and 2 and made a part hereof by reference thereto.

(12) At the time of Mrs. Hill's death, July 15, 1957, the will dated September 22, 1953 was in full force and effect but she died without an estate and survived by her husband, Erskin Hill.

(13) On June 5, 1957, Erskin Hill and his wife,
page 6 } Irene L. Hill, as Grantors, conveyed to his brother,
Cleon W. Hill, and his wife, Verna S. Hill, husband and wife, as tenants by the entirety with right of survivorship, the real property known as "Bonnie Brook," which deed is recorded in Deed Book 576, page 72, in the clerk's office of Your Honor's court. A certified copy of said deed, containing a metes-and-bounds description of the property, is attached hereto as Exhibit 3 and made a part hereof by reference thereto. The consideration was recited as $5 and "natural love and affection." There was actually no consideration for this conveyance but by it Erskin Hill and his wife breached their agreement to your complainant as herein stated and put it beyond themselves to carry it out. At the time of the execution of this deed Irene L. Hill was mentally incompetent and did not have mental capacity to enter into the transaction involving the conveyance. Defendant Erskin Hill at the same time was in no mental condition to enter into the transaction, as he was easily subject to persuasion, domination, and the overriding of his will. Your complainant alleges that Erskin Hill is not now aware that he executed the deed and she alleges that he did not intend to do so and that neither her brother nor his wife would knowingly have violated their agreement with her.

(14) Cleon Hill and his wife, during the years that Erskin Hill has been totally disabled and his wife almost equally disabled but for different reasons, paid little attention to them. Occasionally Cleon Hill would do a little yard work, such as cutting grass; and on one occasion he and a friend painted what is known as a "dance pavilion." And last year a house generally occupied by the colored help needed some Cellotex put on it, so Cleon helped your complainant do the work. But, basically, from time to time he has done nothing in the nature of helping to take care of Erskin Hill and his wife. Consequently, there was no obligation on the part of Erskin Hill and his wife to execute the deed of gift to Cleon and his wife; and, your complainant alleges that Erskin and his wife did not actually intend to execute the deed and did not know that they were doing so, as Irene Hill was not

mentally competent to do so and was on her death-
page 7 } bed, as the date of the deed was June 5, 1957, and
she died July 15, 1957; and Erskin Hill has since stated that he did not know that he was executing the deed but thought it was some other kind of instrument, the character of which he does not know. Erskin Hill becomes easily fatigued and mentally tired and was not capable of protecting himself against importunities of Cleon and his wife. The whole idea of having the deed executed came from them and not from Erskin Hill and his wife, and legally and factually said deed was an act of Cleon W. Hill and his wife and not that of Erskin and his wife for the reasons stated herein.

(15) The deed was executed without any knowledge on the part of your complainant or any members of her family except Cleon and his wife. It was procured secretively, and your complainant likely would not now know of said deed had not a friend of the family noticed a newspaper item describing conveyances recorded and made inquiry if the family knew about the deed from Erskin Hill and his wife to Cleon W. Hill and his wife. Immediately your complainant called Cleon W. Hill to inquire as to the accuracy of the information, because she did not believe he and his wife would be guilty of such an act; and he stated that the information was true and that the "Bonnie Brook" property had been deeded to them and recorded, and he asked, "Don't you read the paper?".

(16) Cleon W. Hill and his wife, Verna S. Hill, had full knowledge of the agreement which your complainant had with Erskin and his wife; namely, that if she gave up her trip to Florida and looked after them, they would will to her "Bonnie Brook" and all other property which they had in part compensation for her services. This information was common knowledge in the Hill family, and Erskin Hill and his wife stated the agreement to various persons, including members of the family and persons who were not members of the family.

(17) Erskin Hill and his wife received no consideration for the deed to Cleon Hill and his wife. As heretofore stated, the deed recites $5 consideration and "natural love and af-
fection." And the conveyance was in violation of
page 8 } the contract and agreement between your complain-
ant and her brother Erskin and his wife, Irene. The sole purpose that Cleon Hill and his wife had was to acquire "Bonnie Brook" for themselves to the advantage of themselves and in fraud of your complainant. As heretofore stated, Erskin Hill has a pension of approximately $380

a month by reason of his war service, which is adequate to maintain and care for him; so, there was no occasion or need to sell or transfer "Bonnie Brook" in order to provide funds for his maintenance and support even if "Bonnie Brook" had been sold for consideration, and certainly there was no justification for the conveyance based upon love and affection.

(18) If this deed is permitted to stand, then the labor of your complainant goes unrewarded because the assets of Erskin Hill outside of "Bonnie Brook" are very limited. Words cannot adequately describe the services which your complainant has rendered pursuant to her agreement with her brother Erskin and his wife. They can be known only from actual experience. To strangers to whom she had no obligations she would not have entered into such agreement, but for her brother and wife, who had no children to look after them and no one in a position to do so except your complainant, she was persuaded to enter into the agreement by the pleadings and persuasions of her brother Erskin Hill and his wife. She has faithfully performed her obligations under the agreement, but her brother Erskin and his wife have violated their agreement as herein set out. And your complainant is informed that a court of equity can give her relief, as she does not have a complete and adequate remedy at law.

(19) By virtue of the foregoing facts, the aforesaid deed from Erskin Hill and wife to Cleon Hill and wife is invalid, and your complainant is entitled to have this court set aside said deed, as it violates the agreement between your complainant on the one hand and Erskin Hill and Irene L. Hill on the other hand, and it is inequitable for Cleon Hill and wife to have the property under the existing circum-
page 9 } stances.

(20) Moreover, as an alternative cause of action, your complainant avers that if Erskin Hill and Irene L. Hill were mentally competent and realized what they were doing when the deed was executed, and knowingly violated their agreement with your complainant, then, she, as their creditor who will not otherwise be paid, is entitled to have the conveyance set aside under Section 55-80 of the 1950 Code of Virginia as amended, and this would be true even if the said Cleon Hill and wife were purchasers for a valuable consideration, which is hereby expressly denied, as Cleon Hill and wife were familiar with the facts and of the intent of their grantors.

(21) Moreover, as another alternative cause of action, your complainant avers that the conveyance from Erskin Hill and wife to Cleon Hill and wife was not based upon consideration deemed valuable in law and your complainant as a creditor of

Erskin Hill and wife, who will not otherwise be paid, and whose debt was contracted prior to the time of the aforesaid conveyance, is entitled to have said conveyance set aside under Section 55-81 of the 1950 Code of Virginia as amended.

(22) Your complainant avers that she is entitled to an injunction enjoining Cleon Hill and Verna S. Hill from disposing of "Bonnie Brook" or from encumbering it or changing the legal statute as to title until the issues raised in this suit have been disposed of.

(23) Erskin L. Hill is a resident of Roanoke County, Virginia and lives at "Bonnie Brook." Cleon W. Hill and Verna S. Hill are residents of the City of Roanoke, Virginia, and live at 2315 South Jefferson Street. Your complainant is a resident of the City of Roanoke. The real property involved in this suit is located in Salem Magisterial District, Roanoke County, Virginia.

IN CONSIDERATION WHEREOF your complainant prays that:

(a) Erskin L. Hill, Cleon W. Hill, and Verna S. Hill may be made parties defendant hereto and required to answer same, but not under oath, answer under oath being expressly waived;

(b) That an injunction may be issued enjoining
page 10 } Cleon W. Hill and Verna S. Hill from disposing
of "Bonnie Brook" or from encumbering it, or from changing its legal status as to title until all issues in this suit have been decided;

(c) That a decree may be entered herein setting aside the deed from Erskin L. Hill and Irene L. Hill, his wife, to Cleon W. Hill and Verna S. Hill, his wife, and the property reconveyed to Erskin L. Hill, and

(d) That your complainant may have such other relief, both general and special, as may be proper.

Respectfully,

CECILE H. LUCK.

WOODS, ROGERS, MUSE & WALKER
301 Boxley Bldg., Roanoke, Va.,
Attorneys for Complainant.

Filed in the Clerk's Office the 19 day of September, 1957.

Teste:

RAY K. BROWN, Clerk.

• • • • •

page 11 } EXHIBIT I.

I, ERSKINE L. HILL, of the County of Roanoke, in the State of Virginia, for the purpose of making that disposition of my entire estate, real and personal, which I wish to have take effect at my death, do make, publish and declare this to be my Last Will and Testament, and do hereby revoke all former Wills and Testamentary dispositions heretofore at any time made by me.

CLAUSE I. It is my will and I direct that all my just debts, including the expenses of my last illness and funeral expenses, shall be paid by my Executor, hereinafter named, as soon as may be after my decease without undue sacrifice of my estate. I direct that the cost of any marker for my grave shall be treated as a debt of my estate and shall be paid for accordingly. I hereby exercise the power of appointment granted to me under the will of my wife, IRENE L. HILL, if such power is necessary for the payment of my debts and funeral expenses.

CLAUSE II. I give and bequeath to my wife, IRENE L. HILL, as her free and absolute property, all of my household furniture, pictures, silver, books, china, jewelry, and personal effects, together with all equipment used in connection with our home, including any automobile or automobiles that I may own at the time of my death.

CLAUSE III. I give, devise and bequeath to THE COLONIAL-AMERICAN NATIONAL BANK OF ROANOKE, Roanoke, Virginia, as Trustee, all the rest, residue and remainder of my estate, real and personal, and the said Trustee shall hold the same upon the trust and for the uses and purposes hereinafter expressed that is to say:

CLAUSE IV. I direct the Trustee to collect the income derived from the Trust Estate and from such income, the Trustee shall pay the costs and expenses of the Trust Estate which are normally payable out of income, including the reasonable compensation of the Trustee. The remainder of the income, hereinafter called Net Income, shall be

Signed for identification ERSKIN L. HILL.

page 12 } distributed as is hereinafter provided.

(a) The entire Net Income of the Trust Estate shall be

paid out and distributed in convenient installments (at least quarterly) to my wife, IRENE L. HILL, for the balance of her life.

In addition to the payments of income as set forth above I authorize my wife, IRENE L. HILL, in her sole discretion to withdraw and use so much of the principal of this Trust Estate as she in her sole discretion, may from time to time request. My Trustee shall be under no duty to inquire into the purposes and uses which my said wife may have for the withdrawal of any amounts of principal or corpus of said Trust Estate. This power to request and withdraw principal of the Trust Estate as set forth above shall be a continuing power to be exercised at any time and from time to time.

(b) This Trust Estate shall terminate upon the death of my wife, IRENE L. HILL, and she is specifically authorized by her will to appoint any person, persons, organization or organizations, specifically including her estate to receive the principal of this Trust Estate, together with any accrued or accumulated income then in the hands of the Trustee. If the said IRENE L. HILL, shall predecease me, should leave no will or if her will should be set aside, or if for any reason she fails to exercise the power of appointment given to her herein, then I give, devise and bequeath all my property, real and personal, to my sister, CECILE F. (MRS. A. C.) LUCK, in fee and absolutely.

CLAUSE V. POWERS OF MY EXECUTOR AND TRUSTEE.

I grant to my Executor and Trustee power to do everything that it deems advisable, even though it would not be authorized or appropriate for a fiduciary (but for this power) under any statutory or other rule of law, including in this grant (without impairing its plenary nature) power to:

Signed for identification ERSKIN L. HILL

page 13 } (1) acquire by purchase or otherwise, and retain temporarily or permanently, any kind of realty and personalty—even stocks and unsecured obligations, undivided interest, interests in investment trusts and discretionary common trust funds—all without diversification as to kind or amount;

(2) sell or otherwise dispose of realty and personalty, publicly or privately, wholly or partly on credit; (make executory contracts and grant options binding upon my estate);

(3) pay general legacies, and divide or distribute principal, in kind or in money, or partly in each, or by way of undivided interest, even if shares be composed differently and for such purposes their valuation shall be conclusive;

(4) determine whether or to what extent expenditures should be charged against principal or income, and what other adjustments should be made between principal and income;

(5) delegate discretionary powers to agents, remunerate them and pay their expenses;

(6) renew, assign, alter, extend, compromise, release with or without consideration, or submit to arbitration, obligations or claims, including taxes, held by or asserted against them or which affect estate assets;

(7) hold property in the name of nominees, or in the name of the fiduciary, without mention of the estate or trusts, or so that title will pass by delivery.

CLAUSE VI. I nominate and appoint THE COLONIAL-AMERICAN NATIONAL BANK OF ROANOKE, Roanoke, Virginia, as Executor and Trustee of and under this my Last Will and Testament, and direct that no bond or other security be required of my said Executor and/or Trustee.

Signed for identification ERSKIN L. HILL

page 14 } WITNESS my signature and seal to this, my Last Will and Testament, dated the 23 day of September, 1953. For the purpose of identification I have signed my name at the bottom of the preceding page of this my Last Will and Testament.

ERSKINE L. HILL (Seal)

The foregoing instrument was at the date thereof subscribed by the Testator, ERSKINE L. HILL, in our presence and was at the time declared by him to be his Last Will and Testament and we at the same time, in his presence, at his request, and in the presence of each other, have hereunto subscribed our names as witnesses. And we do hereby certify that at the time of the execution of said Will, the Testator was of sound and disposing mind, memory and understanding.

WITNESS: CLEON W. HILL
WITNESS: AUDREY OWEN HILL
WITNESS: W. O. HOLLOAY

page 15 } EXHIBIT 2.

I, IRENE L. HILL, of the County of Roanoke, in the State of Virginia, for the purpose of making that disposition of my entire estate, real and personal, which I wish to have take effect at my death, do make, publish and declare this to be my Last Will and Testament, and do hereby revoke all former Wills and Testamentary dispositions heretofore at any time made by me.

CLAUSE I. It is my will and I direct that all my just debts, including the expenses of my last illness and funeral expenses, shall be paid by my Executor, hereinafter named, as soon as may be after my decease without undue sacrifice of my estate. I direct that the cost of any marker for my grave shall be treated as a debt of my estate and shall be paid for accordingly. I hereby exercise the power of appointment granted to me under the will of my husband, ERSKINE L. HILL, if such power is necessary for the payment of my debts and funeral expenses.

CLAUSE II. I give and bequeath to my husband, ERSKINE L. HILL, as his free and absolute property, all of my household furniture, pictures, silver, books, china, jewelry and personal effects, together with all equipment used in connection with our home, including any automobile or automobiles that I may own at the time of my death.

CLAUSE III. I give, devise and bequeath to THE COLONIAL-AMERICAN NATIONAL BANK OF ROANOKE, Roanoke, Virginia, as Trustee, all the rest, residue and remainder of my estate, real and personal, and the said Trustee shall hold the same upon the trust and for the uses and purposes hereinafter expressed, that is to say:

CLAUSE IV. I direct the Trustee to collect the income derived from the Trust Estate and from such income, the Trustee shall pay the costs and expenses of the Trust Estate which are normally payable out of income, including the reasonable compensation of the Trustee. The remainder of the income, hereinafter called Net Income, shall be

Signed for identification IRENE L. HILL.

page 16 } distributed as is hereinafter provided.

(a) The entire Net Income of the Trust Estate shall be

paid out and distributed in convenient installments (at least quarterly) to my husband, ERSKINE L. HILL, for the balance of his life.

In addition to the payments of income as set forth above I authorize my husband, ERSKINE L. HILL, in his sole discretion to withdraw and use so much of the principal of this Trust Estate as he in his sole discretion, may from time to time request. My Trustee shall be under no duty to inquire into the purposes and uses which my said husband may have for the withdrawal of any amounts of principal or corpus of said Trust Estate. This power to request and withdraw principal of the Trust Estate as set forth above shall be a continuing power to be exercised at any time and from time to time.

(b) This Trust Estate shall terminate upon the death of my husband, ERSKINE L. HILL, and he is specifically authorized by his will to appoint any person, persons, organization or organizations, specifically including his estate to receive the principal of this Trust Estate, together with any accrued or accumulated income then in the hands of the Trustee. If the said ERSKINE L. HILL, shall predecease me, should leave no will or if his will should be set aside, or if for any reason he fails to exercise the power of appointment given to him herein, then I give, devise and bequeath all my property, real and personal, ot my sister-in-law, CECILE F. (MRS. A. C.) LUCK, in fee and absolutely.

CLAUSE V. POWERS OF MY EXECUTOR AND TRUSTEE.

I grant to my Executor and Trustee power to do everything that it deems advisable, even though it would not be authorized or appropriate for a fiduciary (but for this power) under any statutory or other rule of law, including

Signed for identification IRENE L. HILL

page 17 } in this grant (without impairing its plenary nature) power to:

(1) acquire by purchase or otherwise, and retain temporarily or permanently, any kind of realty and personalty—even stocks and unsecured obligations, undivided interest, interests in investment trusts and discretionary common trust funds—all without diversification as to kind or amount;

(2) sell or otherwise dispose of realty and personalty, pub-

licly or privately, wholly or partly on credit; (make executory contracts and grant options binding upon my estate);

(3) pay general legacies, and divide or distribute principal, in kind or in money, or partly in each, or by way of undivided interest, even if shares be composed differently and for such purposes their valuation shall be conclusive;

(4) determine whether or to what extent expenditures should be charged against principal or income, and what other adjustments should be made between principal and income;

(5) delegate discretionary powers to agents, remunerate them and pay their expenses;

(6) renew, assign, alter, extend, compromise, release with or without consideration, or submit to arbitration, obligations or claims, including taxes, held by or asserted against them or which affect estate assets;

(7) hold property in the name of nominees, or in the name of the fiduciary, without mention of the estate or trusts, or so that title will pass by delivery.

CLAUSE VI. I nominate and appoint THE COLONIAL-AMERICAN NATIONAL BANK OF ROANOKE, Roanoke, Virginia, as Executor and Trustee of and under this my Last Will and Testament, and direct that no bond or other security be required of my said Executor and/or Trustee.

Signed for identification IRENE L. HILL.

page 18 } WITNESS my signature and seal to this, my Last Will and Testament, dated the 22 day of September, 1953. For the purpose of identification I have signed my name at the bottom of the preceding pages of this my Last Will and Testament.

IRENE L. HILL (Seal)

The foregoing instrument was at the date thereof subscribed by the Testatrix, IRENE L. HILL, in our presence and was at the time declared by her to be her Last Will and Testament and we at the same time, in her presence, at her request, and in the presence of each other, have hereunto subscribed our names as witnesses. And we do hereby certify that at the time of the execution of said Will, the Testatrix was of sound and disposing mind, memory and understanding.

WITNESS: GLENNA G. PARRACK
WITNESS: VERA K. UPDIKE
WITNESS: WILLIAM M. PIERCE

page 19 } EXHIBIT 3.

Deed Book 57.. Page 72.

#2214.

This deed made and entered into this 5th day of June, 1957, by and between Erskin L. Hill and Irene L. Hill, parties of the first part, and Cleon W. Hill and Verna S. Hill, husband and wife, as tenants by the entireties, with common law rights of survivorship, parties of the second part.

WITNESSETH

WHEREAS, the parties of the first part desire to retain possession of said follow*ign* hereinafter described property as long as they shall live and intend to reserve a life estate therein.

THAT FOR AND IN CONSIDERATION of ($5.00) FIVE DOLLARS, CASH IN HAND PAID, receipt whereof is hereby acknowledged, and natural love and affection, the said parties of the first part do hereby bargain, sell, grant and convey, with Covenants of General Warranty of Title, reserving unto the parties of the first part, exclusive right of possession as long as both or either of them shall live, unto the said Cleon W. Hill and Verna S. Hill, husband and wife, parties of the second part, as tenants by the entireties, with rights of survivorship as at common law and recognized in Section 55-21 of the Code of Virginia 1950, and all that certain parcel of land as described hereinafter, to-wit:

Lying and being on the east side of the macadom road running from Salem to Catawba in Salem Magisterial District, to-wit. Beginning at a point on the east side of the macadom road, being 22 foot distance from the center line of said road and in line due east from a concrete culvert over a small branch and running thence parallel to the center line of the abovesaid road, due North 389 feet to an electric light post, No. 168 which is 22 feet of center line of aforesaid road, thence North 45° 120′ feet to Mason's Creek, thence in a southerly direction down the center of the aforesaid creek, as it meanders to a point in the center of said creek, opposite and due east of a point of beginning, thence due west 85 feet to the point of beginning *containing* to road center 1.8 acres,

and being the same property conveyed to E. L. page 20 } Hill et al. by Earnest G. Baldwin et ux by Deed dated February 18, 1927 and of record in the Clerk's Office of Roanoke County, Virginia, Deed Book 162, Page 507.

TO HAVE AND TO HOLD the real estate hereby conveyed unto the second parties, as husband and wife with the right of survivorship, theirs heirs and assigns forever.

This conveyance is made expressly subject to all recorded conditions, reservations, easements, and restrictions effecting title to the property herein conveyed.

The parties of the first part covenant that they have the right to convey said land to the grantees, that the grantees shall have quiet and peaceable possession of said land free from all emcumbrances, that they have done no act to encumber same, and that they will execute such further assurances of title to said land as may be requisite.

WITNESS the following signatures and seals:

ERSKIN L. HILL (Seal)
IRENE L. HILL (Seal)

City of Roanoke,
State of Virginia, to-wit:

I, Annetta C. Whitmire, a Notary Public in and for the City and State aforesaid, do certify that Erskin L. Hill and Irene L. Hill, whose names are signed to the foregoing deed dated this 5th day of June, 1957 have this day personally appeared before me in Roanoke County and State aforesaid and acknowledged the same.

Given under my hand this 5th day of June, 1957.

ANNETTA C. WHITMIRE
Notary Public.

Seal of Annetta C. Whitmire, Notary Public, Roanoke, Va.

My commission expires: October 28, 1960.

Tax	$18.00
Fee	3.00
Transferl.	1.00
Total	22.00

In the Clerk's Office of the Circuit Court for the County of Roanoke, Va., this 21 day of June 1957 this deed was presented, and with the Certificate of acknowledgment
page 21 } thereto annexed, admitted to record at 8:40 o'clock A. M.

Having affixed thereto duly cancelled United States Internal Revenue Stamps of the value of $13.20.

Teste:

ROY K. BROWN, Clerk.

A Copy—Teste:

ROY K. BROWN, Clerk
By N. C. LOGAN, Dep. Clerk.

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DEMURRER.

The demurrer of Erskine L. Hill, Cleon W. Hill and Verna S. Hill to the Bill of Complaint heretofore filed against them in the Circuit Court of Roanoke County by Cecile H. Luck.

These defendants say that said Bill of Complaint is insufficient in law and especially in this:

1. That said Bill of Complaint fails to allege any contract between the complainant and Erskine and Irene Hill; that is, said alleged agreement as set forth in the Bill of Complaint is not complete as to its terms and is vague and indefinite as to the undertakings of the parties; and is not subject of enforcement.

2. That as to the alternative cause of action set forth in paragraph (20) of said Bill of Complaint, said Bill is insufficient in law in that it fails to allege that "Bonny Brook" was conveyed to the defendants, Cleon W. Hill and Verna S. Hill, with the intention to delay, hinder or defraud the complainant.

3. As to cause of action set out in paragraph
page 26 } (21) of the Bill of Complaint, said Bill is insufficient in that it fails to allege facts sufficient to show that at the time of the conveyance of "Bonny Brook"

to these defendants, the complainant was a creditor of Erskine and Irene Hill.

ERSKINE L. HILL
CLEON W. HILL
VERNA S. HILL
By Counsel.

Filed in the Clerk's Office Circuit Court of Roanoke County Va., Oct. 10, 1957.

Teste:

RAY K. BROWN, Clerk.

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PLEA OF STATUTE OF FRAUDS.

The plea of Erskine L. Hill, Cleon W. Hill and Verna S. Hill to a Bill of Complaint filed against them in the Circuit Court of the County of Roanoke.

For their plea to said Bill of Complaint and to the whole and every part thereof, and to all and every the relief therein prayed for, these defendants say that the alleged agreement, if any there be, set forth in numbered paragraph (10) of said Bill of Complaint, the enforcement of which is the gravamen of said Bill of Complaint, was an agreement for the sale of real estate, and no promise, contract, agreement, representation, assurance or ratification, nor any memorandum or note thereof, was or is in writing signed by any party to be charged thereby, or by any agent for any such party, and that, therefore, by reason of the statute for such cases made and provided, the complainant's suit may not be maintained.

WHEREFORE, these defendants pray the judgment of this court whether they shall be compelled to make page 28 } further answer to said Bill of Complaint, and pray that they be hence dismissed with their reasonable costs in this behalf expended.

ERSKINE L. HILL
CLEON W. HILL
VERNA S. HILL
By Counsel.

Filed in the Clerk's Office Circuit Court of Roanoke County Va., Oct. 10, 1957.

Teste:

ROY K. BROWN, Clerk.

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DECREE.

This cause came on this day to be heard on the bill of complaint and the demurrer and plea of statute of frauds filed thereto by the defendants and was argued by counsel. And the court having duly considered the demurrer and plea of statute of frauds doth ADJUDGE, ORDER, and DECREE that the same be, and they hereby are, overruled to which action the defendants duly excepted and fully assigned their reasons and the defendants are given until and including May 5, 1958 to file their responsive pleadings. And by agreement of counsel the court fixed Thursday, May 8, 1958, at 9:30 a. m. to hear the evidence *ore tenus.*

And this cause is continued.

We request the entry of this decree.

WOODS, ROGERS, MUSE &
WALKER
301-319 Boxley Building
Roanoke, Virginia
Attorneys for the plaintiff.

We have seen this decree.

EVANS B. JESSEE
ARTHUR E. SMITH, by E. B. J.
Shenandoah Building
Roanoke, Virginia
Attorneys for the defendants.

Enter April 24, 1958.

F. L. HOBACK, Judge.

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* * * * *

ANSWER.

The answer of Erskine L. Hill, Cleon W. Hill, and Verna S. Hill to the bill of complaint heretofore filed against them in this Court by Cecile H. Luck on the 19th day of September, 1957:

(1) The allegations of Paragraphs (1), (2), (3), (4), (5), and (23) of said bill of complaint are admitted by these defendants to be true.

(2) These defendants are not advised as to the truth or falsity of the allegations of paragraphs (6), (7), and (12) thereof and accordingly are denied.

(3) The allegations of paragraphs (8), (9), (10), (15), (16), (17), (18), (19), (20), (21), and (22) of said bill of complaint are denied.

(4) The allegations of Paragraph (11) thereof are denied except that these defendants admit the existence of the documents therein referred to.

(5) The allegations of paragraph (13) thereof are denied except that these defendants admit the execution and delivery of the deed therein referred to.

(6) The allegations of paragraph (14) thereof are denied except that these defendant admit that the allega-
page 42 } tions thereof insofar as they describe services and assistance rendered by Cleon Hill to Erskine and Irene Hill; and these defendants, in that regard, affirmatively allege that the defendants, Cleon W. Hill and Verna S. Hill did in fact continually render valuable services and assistance to Erskine and Irene Hill over the past ten years, equal to or greater than those rendered by the complainant, Cecile H. Luck.

Wherefore, these defendants, having fully answered the said bill of complaint, or as much thereof as they are advised they should answer, pray that they *he* hence dismissed from this suit with their reasonable costs expended in the premises.

Respectfully,

ERSKINE L. HILL
CLEON W. HILL
VERNA S. HILL
By Counsel.

Filed in the Clerk's Office Circuit Court of Roanoke County Va., May 5, 1958.

Teste:

N. C. LOGAN, Dep. Clerk.

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MOTION.

The defendants, Cleon W. Hill and Verna S. Hill, hereby move the court to strike from the evidence in this cause the following testimony heretofore heard *ore tenus* by the court:

1. The testimony of any and all witnesses insofar as it relates to or describes any alleged statements, admissions, or declarations of Irene L. Hill, on the ground that such testimony is hearsay and is consequently inadmissible.
2. The testimony of any and all witnesses insofar as it relates to or describes any alleged statements, admissions, or declarations, whether made by an alleged indication of assent or otherwise, of Erskine L. Hill, on the ground that at the time when such statements, admissions, or declarations were allegedly made, said Erskine L. Hill, as shown in the evidence before the court, was then and is now incapable of testifying and was likewise so incapable when this suit was instituted, as well as on the day when such testimony was offered to the court; and that such testimony is inadmissible both under the general rules of evidence and in particular under Section 8-286 of the Code of Virginia of 1950 as amended.

Respectfully,

CLEON W. HILL
VERNA S. HILL
By Counsel.

Filed 1/5/59.

F. L. H.

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DECREE.

This cause came on this day to be heard on the papers formerly read, the decree heretofore entered, and on the testimony heard *ore tenus* by the court on May 8 and 9, 1958, Briefs of Counsel and was argued by counsel.

Thereupon, the defendants Cleon W. Hill and Verna S. Hill, after first obtaining leave of court, filed a motion to strike from the evidence in this cause the following testimony:

(1) The testimony of any and all witnesses insofar as it relates to or describes any alleged statements, admissions, or declarations of Irene L. Hill, on the ground that such testimony is heresay and is consequently inadmissible.

(2) The testimony of any and all witnesses insofar as it relates to or describes any alleged statements, admissions, or declarations, whether made by an alleged indication of assent or otherwise, of Erskine L. Hill, on the ground that at the time when such statements, admissions, or declarations were allegedly made, said Erskine L. Hill, as shown in the evidence before the court, was then and is now incapable of testifying and was likewise so incapable when this suit was instituted, as well as on the day when such testimony was offered to the court; and that such testimony is inadmissible both under the general rules of evidence and in particular under Section 8-286 of the Code of Virginia of 1950 as amended.

And the court, having duly considered the motion, doth ADJUDGE, ORDER and DECREE that the same be, and it hereby is, overruled, not having been timely made and sufficient corroboration existing in the court's opinion, to which action the defendants Cleon W. Hill and
page 50 } Verna S. Hill duly excepted and fully assigned their reasons, and the court doth further ADJUDGE, ORDER and DECREE that at all times material to this cause it has not been shown to its satisfaction that the said Erskine L. Hill was incapable of testifying within the meaning of Section 8-286 of the Code of Virginia of 1950, as amended.

Thereupon, the defendants moved the court to strike all of the evidence of the complainant on the ground that the said

evidence shows clearly that the Statute of Frauds, plead by the defendants, prohibits the granting of the relief sought, and the court, having considered the motion, doth ADJUDGE, ORDER and DECREE that the same be, and it hereby is, overruled, to which action of the court the defendants duly objected and excepted.

The court, having maturely considered the cause on its merits, including testimony heard *ore tenus* and transcribed before final argument, doth make the following findings of fact: (1) a valid agreement was made between the complainant and Erskine L. Hill and Irene L. Hill, his wife, whereby the latter persons promised to devise to the complainant a parcel of land known as "Bonnie Brook," in the Salem Magisterial District, Roanoke County, Virginia, and whatever else they should own at their death in consideration of the complainant's promise to remain in Roanoke and take care of them for the rest of their lives; (2) the testimony of the complainant as to the execution and existence of this agreement has been fully corroborated; (3) this agreement was certain and definite in its terms; (4) the complainant has performed her obligations under the agreement in pursuance thereof and in reliance thereon; (5) a refusal of full execution of the agreement would operate a fraud upon the complainant and place her in a situation which does not lie in compensation; (6) the conveyance of "Bonnie Brook" from Erskine L. Hill and Irene L. Hill to Cleon W. Hill and Verna S. Hill was, without consideration, a fraud upon the complainant, and an anticipatory breach of the said agreement; and (7) complainant is equitably entitled to the relief sought; the court doth also ADJUDGE, ORDER and DECREE.

page 51 } The court doth further ADJUDGE, ORDER and DECREE that the aforesaid conveyance from Erskine L. Hill and Irene L. Hill, his wife, to Cleon W. Hill and Verna S. Hill dated June 5, 1957, and recorded in Deed Book 576, page 72, of the records of the clerk's office of this court, be, and the same hereby is, set aside, and the said Cleon W. Hill and Verna S. Hill, his wife, are ORDERED and DIRECTED to forthwith reconvey by proper deed the parcel of land known as "Bonnie Brook" to Erskine L. Hill, and that the complainant do have and recover her costs in this behalf expended.

To all of which action of the court the defendants by counsel excepted on the grounds previously noted and on the further grounds that the court's action is contrary to the law and the evidence.

Thereupon, the defendants, having indicated their intention to petition the Virginia Supreme Court of Appeals for an

appeal, moved the court to stay execution of this decree pending appeal. And the court, having duly considered the motion, doth ADJUDGE, ORDER and DECREE that the execution of this decree be stayed pending appeal on condition that the defendants furnish within ten days from the date of this decree bond in the penalty of $500.00, with corporate surety, for the payment of costs.

And the court, having been advised that a notice of *lis pendens* was filed by the complainant on September 19, 1958, in the Clerk's Office of this court, which notice has been spread of record in Deed Book 581, page 280, and to which notice reference is hereby made for a more particular description of the property in controversy in this matter, the court doth ADJUDGE, ORDER and DECREE that said *lis pendens* be continued, and the court doth further ADJUDGE, ORDER and DECREE that a copy of this decree be spread of record by the Clerk of this court in the current deed book and that the same be indexed in the names of all of the defendants as grantors and in the name of the complainant as grantee.

Enter Jan. 5, 1959.

F. L. HOBACK, Judge.

page 52 } We request the entry of this decree.

WOODS, ROGERS, MUSE &
WALKER
301-319 Boxley Building
Roanoke, Virginia
Attorneys for the plaintiff.
We have seen this decree.

EVANS B. JESSEE
ARTHUR E. SMITH
Shenandoah Building
Roanoke, Virginia
Attorneys for the defendants.

F. L. H.

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page 60 } The following evidence is introduced on behalf of the plaintiff.

By Mr. Muse: Your Honor, I would like to call Mr. J. M. Barrett and put him on a *littl* out of order so he may go.

MR. J. M. BARRETT,

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

DIRECT EXAMINATION.

By Mr. Muse:

Q. State your name, please, sir?

A. J. M. Barrett.

Q. What is your occupation?

A. I am an attorney.

Q. With offices—

A. In the Colonial American National Bank Building.

Q. In you capacity as attorney, did you prepare wills for Erskin L. Hill and Irene L. Hill?

A. Yes, sir, I did.

Q. Which of the two conferred with you?

A. Mrs. Hill.

Q. Had you previously known her?

A. No, sir, I had not. Mr. Hill had had some work done by Mr. John D. Copenhaver, my law partner, and when Mrs. Hill came in to my office, or came into our offices, rather, Mr. Copenhaver was away for that day, and I asked her if there was anything I might do to help her; whereupon she stated her business and I took care of her in conjunction with Mr. Copenhaver and under his direction, shall I say.

page 61 } Q. What conversation did you have with Mrs. Hill with reference to the type of wills her husband and she wanted?

A. Mrs. Hill had apparently been down to the Colonial American National Bank and had talked with them about wanting a will prepared. When she came into my office she had some notes, most of which, if not all, were in the handwriting of Mr. William M. Pierce, the then Trust Officer at the Colonial American National Bank, so she gave me those notes and I discussed them with her and made certain additions to them, and from those notes I prepared a will for Mrs. Hill and for Mr. Hill.

By Mr. Muse: A copy, Mr. Barrett, of each of those wills you prepared is filed with the bill of complaint in this case and is admitted actually to be a copy.

Q. I speak of Mr. Hill's will—the two being identical, as I understand each of those wills were indentical—speaking now of Mr. Hill's will now, the estate is put in trust for the benefit of his wife.

A. That is correct.

Q. With power of appointment by her of the residue?

A. Yes, sir, and with the additional power in Mr. Hill—or in Mrs. Hill, rather in the case of Mr. Hill's will, to withdraw and use any part of the principal of the trust estate that he saw fit, and that power was vested in him alone, not in conjunction with the trustee. In other words, he could make the request adverse to the trustee and receive the property.

Q. Did Mrs. Irene Hill make any inquiry of you as to where the property would go in the event she survived her husband but didn't make the appointment she was permitted to make by the will?

page 62 } A. Yes, sir, she did.

Q. Will you please tell what took place in that respect?

A. The provision in the will with that respect vested in the survivorship of Mr. and Mrs. Hill respectively—whichever was the longest lived, and power of appointment to dispose of the property in the trust estate, whichever trust estate was then in being, and I explained to Mrs. Hill what this power of appointment meant and explained to her with considerable care, I think—I hope, at any rate—that if she did not exercise the power that then the trust estate would go to the people designated in the respective wills. In the case of Mr. Hill's will, the person to whom the property would go in the event that he did not exercise the power, was "to my sister, Cecelia F. (Mrs. A. C. Luck) in fee and absolutely.

Q. Now, with respect to her will, does that same provision appear in her will with respect to Mrs. Luck?

A. Yes, sir, in the will of Mrs. Luck it was provided in the event that she predeceased Mr. Hill, that the property, under the power of appointment, if not exercised, would go to Mrs. Luck in fee and absolutely.

Q. When you made explanation to Mrs. Erskin Hill as to where the property would go to Mrs. Luck in the event she did not exercise the power of appointment, did she make any comment concerning that?

A. She stated that is where she wanted the property to go.

By Mr. Muse: Take the witness.

CROSS EXAMINATION.

By Mr. Smith:

page 63 } Q. Mr. Barrett, prior to your becoming—prior to your going into the active practice of law, I believe

you were the Trust Officer of the Colonial National Bank in Roanoke?

A. That is correct, yes, sir.

Q. And Mr. Pierce, whom you have just named, succeeded you when you resigned, is that correct?

A. He did not exactly succeed me; there was an interval in there when Mr. Herrenkohl was temporarily in charge; I believe it was a year, or near thereto, after I left the employ of the bank that Mr. Pierce became trust officer.

Q. And he was the trust officer on the date that Mrs. Hill and Mrs. Luck came to see you about preparing these wills?

A. Yes, sir, I believe that is correct.

Q. And they brought with them notes which Mr. Pierce had prepared from talking with them, to guide you in the making of this will?

A. Yes, sir.

Q. Now, Mr. Barrett, you have a speciality in the practice of law, I believe, dealing with estate planning and taxation, is that correct?

A. No, sir, I don't believe that could be truly said.

Q. Though you don't have a speciality dealing with estate planning and taxation, you do a great deal of it in your practice?

A. I do a great deal of it, but I dont' claim to be a specialist or expert.

page 64 } Q. In your functions as a trust officer a great deal of your time was spent in the preparation or discussion of trusts and estates?

A. Not as much as might have been expected. I had to devote the major part of my time to administrative duties.

Q. In administering estates?

A. Yes, sir, and accounting.

Q. Under wills and intestate succession also?

A. That were already in existence, with respect to which I had nothing to do.

Q. When Mrs. Irene Hill and Mrs. Luck, the complainant in this case, came into your office, they came together, did they not?

A. Yes, sir, they did.

By the Court: Who came together, I didn't quite get that?

By the Witness: Mrs. Irene Hill and Mrs. Luck, the complainant, they came together in my office.

J. M. Barrett.

Q. And they were the only two present?

A. Yes, sir.

Q. And they brought the notes that Mr. Pierce had prepared?

A. Yes, sir.

Q. Now, did Mr. Pierce, in his notes, suggest to you the power of appointment, or was that something you gathered from talking to these two ladies?

A. Just a minute, please. No, I think I will have to claim credit for that, if any.

Q. Then the inclusion in the two wills, the wills *or* Erskin Hill and of Irene Hill, was something that you decided upon after talking with these two ladiee?

page 65 } A. And I decided upon it because they stated to me that in any and all events that as between Mr. and Mrs. Hill, they wished to have the property remain for their benefit during their continues lives, that is to say—that the last survivor of the two would most surely have the benefit of whatever property the one who had predeceased that person, had left—that is why.

Q. In other words, the last survivor would control the joint property of both?

A. That is correct, yes, sir.

Q. Then the power of appointment was not necessary just to accomplish that, was it?

A. No, I would not say it was necessary.

Q. The power of appointment went further, didn't it, Mr. Barrett, and empowered the survivor to dispose of the estate of the one who would be dead?

A. Yes, sir.

Q. Either by appointment in his will, or any other method, isn't that correct?

A. Yes, although the power of appointment here contemplates its exercise by will.

Q. By will?

A. Yes, sir.

Q. In other words, any estate which Mr. Erskin Hill might have received under his wife's will, she being dead, he had the right to appoint that to anyone he pleased?

A. Yes, sir, and he had another right to which I

page 66 } insisted—I don't say against their wishes, or anything, but I mean which I strongly urged upon them, that he be allowed to withdraw and use the principal of the trust estate if he saw fit.

Q. In other words, it was handed over to the trust, but the

right was reserved to each of the Hills to withdraw any portion, or all of it, at any time they chose, in their own sole discretion?

A. Yes, sir, it was not under the control of the trustee.

Q. They didn't have to ask the trustee to get his permission?

A. No, sir.

Q. Or to account for the use and disposition?

A. No, sir, simply give the trustee notice and take the property.

Q. Did you explain that right thoroughly to the two women who were with you in your office?

A. I thought I did.

Q. I believe you made a special effort to explain the powers of appointment to them?

A. Those two provisions—I tried to explain the operation of them to them.

Q. And when you explained it, what did they say?

A. They said that is what they wanted.

Q. Now, during the time that those two ladies were in your office, did either one of them ever tell you that a contract had been entered into between the Hills and Mrs. Luck for the performance of services by Mrs. Luck?

page 67 } A. No, sir, I don't recall any such statement ever having been made to me, or any inference about it.

Q. Nothing was ever said that there was any agreement between them of which these wills were to be the result?

A. No, sir, I knew nothing about that.

Q. Mr. Barrett, did you hear any discussion about Mrs. Luck making a reciprocal will with the Hills?

A. Yes—yes.

Q. Did she, in fact, make a reciprocal will?

A. Well, if I may state what her will contains—I have a draft of it—I prepared a will for her, but I would like her permission—

By Mr. Muse: Permission is granted—no question about it, Mr. Barrett.

A. (continuing)—for stating what her will contains.

Q. First, state whether the will was prepared out of the same conference?

A. Yes, sir.

J. M. Barrett.

Q. The same conference you had with the two ladies you just described?

A. Yes, sir.

Q. And will you tell the Court what the provisions of her will were?

A. Well, in the first instance, she gives all of her personal effects to Erskin L. Hill and Irene L. Hill or the survivor, as their free and absolute property—incomes, household furniture, etc. Then she gives the balance of her
page 68 } estate the residue—to the Colonial American National Bank as Trustee. She directs the Trustee to collect the income from the estate and to pay the income in convenient installments to Erskin L. Hill and Irene L. Hill, or the survivor, for the balance of their lives. In addition to the payments of income, she gives Erskin L. Hill and Irene Hill, or the survivor, in their sole discretion, the right to withdraw and use so much of the principal of her trust estate as might from time to time be in the hands of the bank. Then she provides that the trust shall terminate upon the death of the last survivor of Erskin L. Hill or Irene L. Hill, and that they shall respectively—I mean the last survivor, shall have the power of appointment to dispose of this property, and if that is not exercised, then all of her property in the trust estate is to go to "my mother, Willie E., Mrs. J. W. Hill, for her life, and at her death, in fee and absolutely to my brother-in-law, W. O. Holloway and his heirs." And it further provides that in the event the trust is held for the mother, Mrs. Willie E. Hill, that it shall terminate upon the death of the mother and that whatever is left shall go to W. O. Holloway and his heirs.

Q. Mr. Barrett, insofar as Irene and Erskin Hill are concerned in that will, they *what* what is tantamount—the right to use the entire estate if they survived Mrs. Luck?

A. Yes, sir, that is correct.

Q. Do you recall any conversation between Mrs. Irene Hill and Mrs. Luck concerning the reason why all of these wills were to be executed in a *simultatneous* operation?

A. Mr. Smith, I can't recall that they stated any
page 69 } reason for that to me.

Q. Do you know whether there was any agreement between them?

A. No, I know of no such agreement.

By Mr. Smith: Your Honor, I would like to enter a copy of that will into the record.

By Mr. Muse: I would like to have a copy, too.

Q. Do you have a copy of it?
A. No, sir, I don't have any save my file copies, but if I can make copies, or if they can be made here, I will be glad to have it done. I don't like to let this copy go out of my file if I can avoid it.

By Mr. Smith: Can't we agree the photostat copy will be put into the record?
By the Court: Stipulation photostat copy may be introduced at a later date.

A. Do you want me to get photostat copies?

By Mr. Muse: Yes, sir, if you will.
By Mr. Barrett: How many do you wish?
By Mr. Muse: One.

By Mr. Smith: (Continuing)
Q. Mr. Barrett, how many wills were executed in your office, if any?
A. Mr. Smith, I am quite positive—I can't recollect wholly on this point since it has been since 1953. I believe no one of these wills was executed in my office.
Q. Certainly Mr. Erskin Hill's will was not, page 70 } because he was unable to be there?
A. Yes, sir.
Q. I don't know myself, so I show you this will and ask you if the witnesses are familiar to you (Hands will to witness)?
A. Yes, Miss Parrott, the first witness, is an employee of the Colonial Bank and Miss Vera Updike is also an employee of the Colonial Bank, and obviously Mr. William Pierce was an employee.
Q. And so far as you know then, this was not done in your office?
A. I am positive it was not, though I have no absolute recollection—I want to make that clear.
Q. These people on Mrs. Irene Hill's will are employees of the Colonial American National Bank?
A. Yes, sir.
Q. Did you have anything to do with the execution of Mrs. Luck's will?
A. No, sir—wait just one second—no, sir, I believe not.

J. M. Barrett.

Q. And you don't know when or where it was executed?

A. Well, I have here in my file copy of the names of the witnesses, and the date allegedly on which the will was executed.

Q. And that date was what?

A. I can't verify that that is true—it was not made in my presence.

Q. The date was what, on your copy?

A. On Mrs. Luck's will was the 22nd of September, 1953.

Q. Was that the date that Mrs. Irene Hill also

page 71 } executed *executed* her will?

A. That is the date I have it, yes, sir.

Q. And are the witnesses on the will of Mrs. Luck the same witnesses as those who witnessed the will of Mrs. Irene Hill?

A. No, they are not.

Q. In what regard are they different?

A. Mrs. R. A. Becker appears as a witness on the will of Mrs. Luck and doesn't appear as a witness on the will of Mrs. Hill.

Q. How about the other two witnesses?

A. Miss Parrott and William N. Pierce are also witnesses to Mrs. Hill's will.

Q. Do you know Mrs. R. A. Becker?

A. Yes, I am sure I do—reasonably sure she is an employee of the Colonial Bank—I verily believe—or was, at that time, anyhow.

Q. Now, Mr. Barrett, at no time in your office, as I understand your testimony, did either of these ladies, Mrs. Hill or Mrs. Luck, mention anything to you about any contractual relation between them?

A. If they did, Mr. Smith, it has entirely gone out of my recollection, and I don't believe—I believe I would have made some note of it in here had it been discussed.

Q. I was going to ask you that—there is nothing in your notes to show that you were attempting to give any contractual application between these people?

page 72 } A. No, sir, I don't believe I knew anything about it.

Q. And when you explained the power of appointment both of these women declared that is what we want?

A. Yes, sir.

By Mr. Smith: That is all, your Honor.

By the Court: I would like to ask one or two questions.

J. M. Barrett.

Q. As I understand it, you weren't present when any of the three wills were witnessed or executed?

A. I am quite sure I was not, your Honor.

Q. But your records show that Mrs. Luck's will and Mrs. Hill's will apparently were executed on September 22, 1953, is that correct?

A. That is what is written in here in Mr. Copenhaver's handwriting, *incidently;* we try wherever we can to get that information where wills are executed outside of our office.

Q. What did you—what date do you have for Erskin L. Hill's will?

A. That is the 22nd of September, 1953.

Q. Erskin's?

A. Wait a minute—yes, that is the date this copy bears.

By Mr. Muse: May I interrupt to say this—I have Erskin Hill's original will here dated September 23, 1953.

A. The certificate is also dated the 23rd.

By Mr. Smith: How is Irene Hill's, your Honor?

A. Wait just a minute—I may have misled you on that date. It is correct, the 23rd of September—I am sorry the two wills were put together here.

page 73 } Q. All right, sir; now, then I believe under the wills as drawn by you, under clause 1 each of the testators exercised in that clause the power of appointment in favor of the other, isn't that correct?

A. In clause 1?

Q. Yes, sir, you take the will of Erskin L. Hill, for example—the concluding sentence in clause 1 reads in the copy—"I hereby exercise the power of appointment granted to me under the will of my wife, Irene L. Hill, for such power as necessary for the payment of my debts and funeral expenses." He exercised that power?

A. A limited exercise of that power of appointment.

Q. In each one?

A. Yes, sir.

Q. Do you have on your copy of the will of Erskin L. Hill the witnesses?

A. Yes, sir.

Q. I believe on the copy I have the first witness is Cleon W. Hill, one of the respondents to this suit, is that correct?

A. Cleon W. Hill is listed here as a witness, yes, sir.

Dr. Ira Hurt.

By the Court: Any other questions anyone has of Mr. Barrett while he is here?

By Mr. Muse: I have not.

By Mr. Smith: I would like to ask him another question if I may.

Q. Mr. Barrett, when these people were in your office—these two ladies—discussing the estates to be devised or considered in preparation of these wills, do your notes
page 74 } show that they considered the amount of the estate or what it consisted of?

A. No, sir, I believe not; let me refer to my notes, if you will please (refers to notes)—no, they spoke only in terms of their entire estate. My notes don't disclose anything as to what their estate consisted of.

Q. There was no difference disclosed to you between real estate or personal property?

A. No, sir.

Q. And no attempt made to distinguish between any real estate or personal property under the wills?

A. No, sir.

Witness stands aside.

DR. IRA HURT,

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

DIRECT EXAMINATION.

By Mr. Muse:

Q. Will you state your name, please, sir?

A. Ira Hurt.

Q. You are a doctor, I believe—medical doctor?

A. Yes, sir.

Q. Your office in Roanoke City?

A. Yes, sir.

Q. How long have you been practicing medicine?

A. Since 1920.

By Mr. Smith: We will waive qualifications of the Doctor.

By Mr. Muse: I was just identifying him, really.
page 75 } May I sit over here, Judge, to keep the witness from looking over this way and everybody can hear better?

Dr. Ira Hurt.

By the Court: Yes, sir.

Q. Dr. Hurt, were you acquainted with Erskin Hill and his wife, Irene?
A. Yes, sir.
Q. Were you their family doctor?
A. Yes, sir.
Q. Approximately how long had you been their family doctor—just in round years?
A. Well, probably twenty-five years.
Q. Were you their family doctor up to the time of Mrs. Irene's death, which took place July 15, 1957?
A. Yes, sir.
Q. What was Mrs. Hill's condition a few months prior to her death?
A. Mrs. Hill had, we found, a cancer of the tongue in November, 1956. She had had radiation treatment at University of Virginia—she started November 30, 1956; she had to go back again in February, 1957 for continuation of that treatment. Mrs. Hill was also addicted to the use of alcohol, and the two together, of course, by that time—after February—the two together had pulled her physical condition down.
Q. February, 1957?
A. February, 1957.
Q. Had Mrs. Hill been addicted to the excessive use of alcohol for a number of years?
page 76 } A. For many years, yes, sir.
Q. Was she an alcoholic?
A. How is that?
Q. Was she an alcoholic?
A. Alcoholic, yes, sir.
Q. Now, on June 5, 1957 she and Erskin Hill, her husband, executed a deed conveying Bonniebrook—when I use the expression "Bonniebrook" do you know what I am referring to?
A. Yes, sir.
Q. To Cleon W. Hill, his brother, and Verna S. Hill, the wife of Cleon. State whether or not in your opinion on June 5, 1957 Mrs. Irene Hill was in mental condition to know that she was executing such deed?

By Mr. Smith: I object on the grounds it has not been shown the Doctor saw here on that date—saw her before that date immediately or just what.

Dr. Ira Hurt.

Q. How long were you seeing her?
A. Beg your pardon?
Q. How long were you seeing her?
A. Well, I had seen her not so often from February until say in June. I saw her—she was admitted to the hospital the last time on June 20th. I saw her about 10 or 12 days before that, and I had not seen her for several weeks before that visit.
Q. Several weeks before you had seen her—before June—what was her mental condition?
page 77 } A. When I saw her—well, physically, Mrs. Hill was very thin. She could not walk without holding to chairs or something in the room—she often fell. Mentally, she was retarded. She spoke slowly; she recognized people, and most of her remarks were intelligible. Occasionally she would say something that was irrelevant to the conversation with which you were talking, but most of the time she was all right, but her judgment, I feel for a couple months before she died, was markedly impaired, due to the effect of long illness, of cancer, of radiation treatments, and of extremely excessive use of alcohol. She had been told as to alcohol to drink all she wanted and what she wanted and she did—so I feel her judgment was most impaired as far as any business matters were concerned.
Q. On June 5, from what you had observed of her mental condition before June 5th, and shortly after you said?
A. Yes, sir.
Q. Do you think on June 5th she was mentally able to enter into a business transaction?
A. I don't think she could have exercised proper judgment in a transaction.

By Mr. Muse: Take the witness.

CROSS EXAMINATION.

By Mr. Smith:
Q. Do your notes show that you made any house visits around June 5th—picking this date out of the hat?
A. I was not there June 5th to my knowledge. It was about 12 days before June 20th that I saw her.
page 78 } Q. How do you fix that date, Dr. Hurt?
A. Because at that time I was called by the family to come to see her, they thought she was—they felt

like she was just about to die and wanted to send her to the hospital.

Q. That was 12 days—

A. Before the 20th of June.

Q. And what is the significance about the 20th of June?

A. That is the date she was admitted to the hospital—then we finally took her. I went to see her—and she objected strenuously to being moved and we let her go for another 12 days.

Q. Now, from what did she die, Dr. Hurt—from the cancerous condition, or from something resulting from the alcohol?

A. She died actually as a complication—she had a terminal fever which was brought on I think from a little Flu; I think she had Flu and in her weakened condition and the cancer and alcoholism—malnutrition—all entered into her death.

Q. At no time prior to her going to the hospital would you say she was insane?

A. No, sir, I don't think she was insane.

Q. You think the illness, perhaps, impaired her judgment somewhat—is that what you mean?

A. I think the illness and her use of alcohol both impaired her judgment.

Q. That is generally true of most excessive users, is it not?

A. Yes, sir.

page 79 } Q. Do you believe she knew what property she owned?

A. I think she did, yes, sir.

Q. Do you think she knew her relatives and friends?

A. Yes, sir, she recognized people—she knew people.

Q. And she knew who were her friends and who were her relatives, and who were strangers?

A. I think that could be a little open question. In her condition at that time, I think she was posssessed with a lot of antagonisms and prejudices, and things of that sort, that she might designate—

Q. I am referring more, doctor, to her ability to know that Erskin was her husband—she knew that?

A. Oh, yes.

Q. She knew that Cleon was her brother?

A. Was her brother-in-law.

Q. And that Mrs. Luck was her sister-in-law?

A. Yes, sir.

Dr. Ira Hurt.

Q. She knew this up until the day she died, didn't she?
A. I think she did, I would say up close to the day she died, any way.
Q. Certainly before you took her to the hospital she did?
A. Yes, sir.
Q. Now, Doctor, while you are here—I may be making him my witness for this purpose, and if so, I am perfectly willing to do that—I want to ask you some questions about Erskin—
page 80 } his condition has not been described to the Court—will you tell the Court his physical condition and how it came about?
A. Yes, sir.

By Mr. Smith: First, I think we will stipulate that he has been the physician of Mr. Hill all these same years?
By Mr. Muse: I raise no objection to that; I meant to go into it—overlooked it.

Q. Tell us about the onset of his illness and how it has affected him?
A. Right now, I don't remember the date of Mr. Hill's illness, but he suffered a cerebral hemorrhage and as a result of that he is paralyzed on his right side. Also as a result his speech center was affected so that he is unable to convey his thoughts by speech. He knows what he wants to say but he can't say it—can't put it in words.
Q. Can he read?
A. Can't read.
Q. Can he write?
A. Can't write.
Q. In other words, do you say he knows what he is doing and where he is?
A. Yes, sir.
Q. His mind is good?
A. Mind is all right.
Q. He just doesn't have the ability to express himself in conversation, is that correct?
A. That is right.
Q. And neither can he talk in phrases?
page 81 } A. He can say yes and no, and many times even then he says the wrong word—it comes out—he means to say one thing, comes out another.
Q. In other words, he says yes when he means no?
A. That is right.

Dr. Ira Hurt.

Q. But, Doctor, his mind, in your opinion, is clear?
A. His mind in my opinion is clear.
Q. He knows what property he owns?
A. Yes, sir.
Q. He knows who his relatives are?
A. Yes, sir.
Q. Is he crippled so he can't walk?
A. No, sir, he does not walk—he uses a wheel chair.
Q. Do you believe he could testify as you are testifying?
A. Well, he could answer questions if they would involve yes and no answers.
Q. Except for when he might be inadvertently saying the wrong word?
A. If he says the wrong word, he will recognise it himself and probably after a while you can get out of him that he answered wrong.
Q. If you know he answered wrong?
A. If you know he answered wrong, yes, sir.
Q. And Doctor, he could not state a phrase or an expression or attempt to describe a situation of any kind?
A. No, sir.

page 82 } By Mr. Smith: That is all—do you want to ask any questions?
By Mr. Muse: No—that is all.

By the Court:
Q. Might ask Doctor how long Mr. Hill's condition as you describe has existed?
A. Since his original attack of cerebral hemorrhage in—I don't remember the date—but it has been some eight or ten years ago—

By Mr. Muse: 1948.

Q. —since 1948 you would say his condition has been about the same?
A. About the same, yes, sir.

By the Court: Any other questions of Dr. Hurt?
By Mr. Muse: No, sir; thank you, Doctor.

Witness stands aside.

MRS. CECEILA HILL LUCK,
a witness of lawful age, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Muse:

Q. Will you state your name, please—you are going to have to make a little effort to speak a little louder so Mr. Smith can hear and we all can hear you.

A. All right.

Q. How old are you, Mrs. Luck?

A. Fifty-eight.

Q. I believe you are a widow?

page 83 } A. I am a widow.

Q. When did your husband die?

A. In 1950—July.

Q. Did you all have any children?

A. No, we had no children.

Q. Where were you living at the time of his death?

A. At the time of his death I was living in Roanoke.

Q. You had previously lived in Bluefield?

A. We had previously lived in Bluefield, West Virginia.

Q. Were you born and reared in Roanoke City?

A. Yes, sir.

Q. Spent your life here?

A. During my married life I lived in Bluefield, West Virginia.

Q. Who was your mother and father?

A. My father was William Hill; my mother was Sallie Frances Hill.

Q. What relation are you to Erskin Hill?

A. I am his sister.

Q. How old is Erskin?

A. He is sixty-four.

Q. I believe you are also a sister of Cleon Hill?

A. Yes, I am.

Q. Approximately how old is he?

A. Fifty-two.

Q. You are familiar with Bonnie Brook?

A. Yes, I am familiar with Bonnie Brook.

page 84 } Q. Is that the home of your brother, Erskin Hill?

A. Yes, that is his home.

Q. How long has he lived there?

A. He bought it thirty years ago and excepting the time he was in the service and out of town, he has spent his life there.

Ceceila Hill Luck.

Q. By whom was Mr. Hill employed?
A. N. & W.
Q. When I use the word "Mr. Hill" I am talking about Mr. Erskin Hill?
A. Yes, sir.
Q. In what Department?
A. Car Record.
Q. How old was he when he first went to the N & W, do you know?
A. Seventeen.
Q. During his lifetime was he interested in military matters?
A. Yes, he was; in the first World War, he was on the border of Mexico—was in the Second World War.
Q. After his war service ended, did he go back to the N. & W.?
A. Yes, he went back to the N. & W.
Q. Now, he was stricken with cerebral hemorrhage what year?
A. 1948.
Q. Since that time has he been totally incapacitated insofar as work is concerned?
page 85 } A. Yes, 100% disability.
Q. What income does he have?
A. He has over $500 a month.
Q. Made up of what source?
A. His disability retirement from the service from the army and his N. & W.
Q. Is how much?
A. $382.00.
Q. From the army?
A. Yes, I think he has N. & W. $122.
Q. How many children in the Hill family?
A. Seven.
Q. How many of them are living?
A. Seven.
Q. All living?
A. All living.
Q. How many boys and how many girls?
A. Four girls and three boys.
Q. Now, do you have any other member that is disabled?
A. Yes, I have—Ashby has Parkinson disease.
Q. Is he able to get out very well?
A. He goes out every day, but he is not able to stay out long at a time.

Ceceila Hill Luck.

Q. How long has he had that disease?
A. He has had that about 12 years.
Q. Now, have you been looking after Erskin and
page 86 } his wife while she was living?
A. Since October, 1950 I have.
Q. Instead of me asking question after question, maybe we can make better time, and it will be more understandable if you will just take up in your own words now, when you first began to look after Erskin and his wife.
A. I lost my husband in July, 1950 and I had been very close to Irene and to Erskin all of my life, so after I lost my husband, I spent a great deal of time with them—I took Erskin for drives three—four—five times a week, and in October of that year they just sorta turned things over to me and wanted me to do practically everything for them. They wanted to go to Florida, so I took them to Florida and we stayed in Florida two months and they liked it quite a bit—and they decided they wanted to go down there and live.
Q. Who paid the expenses of that?
A. On that trip expenses divided three ways—so I returned home and I was not living with them—I was living with my sister.
Q. Which one?
A. Mrs. Holloway, and I took them again the following spring—I took them to Florida—and late that summer I took them to Florida and in 1952 during the summer months I took them to Florida, and in 1953 I took them to Florida in October.
Q. May I interrupt at this point—were those trips vacation trips for you?
page 87 } A. No, sir, they were not. I took care of two invalids; by '53 she was an invalid—she had fallen and broken her knee, she was walking with a cast on up to her hip and also two crutches.
Q. How long did she continue to use the cast and crutches?
A. She used the cast I think three *monts;* then she used the crutches for more than a year, and she never did give up her cane—always had to use a cane. As Dr. Hurt said she could not walk unless she held on to something.
Q. That condition lasted how many years, having to hold on to something to walk?
A. Since 1953 when she broke her knee—she was never able to walk without assistance from then until she died.
Q. These trips to Florida, who looked after them?
A. I did.

Ceceila Hill Luck.

Q. Did that give you any opportunity for recreation yourself?

A. No, other than I was in a place I could enjoy the sunshine. I had no time to have fun and pleasure—I had no time for myself, because I spent all my time with them, and mostly driving him around because he enjoyed driving—he enjoyed going out every day—I took him out every day in Florida. Mrs. Hill didn't go—didn't want to go—she did not want to go—she was not interested in driving.

Q. Was she addicted to alcohol?

A. Yes, she was.

Q. To what extent?

page 88 } A. Well, for the past 7 years she drank practically one-fifth a day; during the last year of her life she did not consume that much because she was too ill to drink that much.

Q. I interrupted you when you said in 1952 you were in Florida?

A. I went October, 1953 and stayed until April, 1954, and after that trip she was not able to go to Florida again although I did take her south for four, five or six days—went to Charleston, S. C. My sister went with me and we decided then that would be the last trip because we had to practically carry her, and of course, Erskin was in a wheel chair—he had to be handled, and the two of us decided between the two of us—we could not even manage them.

Q. How long has he been using a wheel chair?

A. He has been using a wheel chair since 1948.

Q. Is he able to walk at all?

A. No, he can't walk at all.

Q. Well, now, you have brought this suit here on the basis of an alleged agreement between you and Erskin and his wife—pick up that portion of it and discuss it?

A. All right' in 1953 in August, 1953—I was under such a terrific strain doing for both these people—I didn't have any time of my own—

Q. Were you being compensated in any way?

A. No way whatsoever—I was using my car and paying all the expenses—even buying my gas; I was going practically every day from South Roanoke to the country up to Bonnie Brook.

Q. Were there some servants or helpers?

page 89 } A. Yes, they had some help.

Q. Who looked after them?

A. Well, at the very beginning they had a colored man,

and then they had a couple—they had a white couple—then it was a white girl, and also had Marie Bratton.

Q. Who supervised them?

A. I did.

Q. How often did you go there?

A. Well, I went there—the first few years I went three and four times a week; during the past 4 years I went every day—I didn't miss a day—if I missed one day I was ill—only reason I didn't go. One year before Irene died we had someone living out there in the home with her—Mrs. Jennings—but I still went every day because it took both of us to take care of both of the people who were ill.

Q. Now, go back to 1953?

A. Yes, in August, 1953 I was pretty well worn out and I was under a terriffic emotional strain and I felt like I just could not go on and give my life to those two, so I decided I was going to Florida to live, so I packed my trunk—I talked it over with my family and with my mother and I packed my trunk—had everything ready to go to Florida and my mother said "I would go and I would not say anything to Erskin and Irene about it because they won't want you to go, and they won't let you go" and I said I can't walk out without *taking* it over with them, so I went out after I had packed my trunk—I went out to Bonnie Brook, I told him what I was going to do and at first they thought I was only teasing; I page 90 } said no, my trunk is packed, I am going and Irene said "Why, why"; I said well, I just feel like I want to get settled, I am not getting any younger and my husband has been dead for several years, I feel like I need to get something to do so I will be able to take care of myself when I am old. Irene cried—she says "Who is going to take care of us, we can depend on you and we don't have anyone in the world that we can depend on but you." I said well, Irene, I feel like I can't do it, just making a nervous wreck out of me, it is costing me a lot of money, I am not getting anything out of it: I told her that and she says "Well, if you won't go, we will leave you everything that we have at our death—we will give you everything if you will stay and take care of us" and I said Irene, I can't live with you, and she says "I don't want you to live with me, I just want you to see we would get the care we need and that Erskin gets everything he needs and can still go out for drives, that is his life—all the pleasure he has other than playing a few cards once in a while."

Ceceila Hill Luck.

Q. Was Erskin there?

A. He was, he kept saying "no, no, no, no" I could not leave, that is what he meant. I says I will think about it, I will let you know; I went to mother and I told my mother and my mother said "Don't do it" and said "You will be sorry"—

By Mr. Smith: I object—that is hearsay.

Q. Mr. Smith objected, you can't state what your mother said, you can say whom you talked to, etc.?

A. I talked to my mother—I talked with my mother.

Q. Did she give you any advice—you can't re-
page 91 } peat what she said.

A. I can't tell you what she said if I can't repeat it, because she did not want me to do it.

Q. All right; did you have a trunk?

A. I borrowed a trunk from my sister, Mrs. Finley.

Q. Is she here today to testify?

A. Yes, she is here, and I made arrangements with my brother-in-law to ship it to me after I went to Florida and got settled.

Q. What brother-in-law is that?

A. Bill Holloway.

Q. He teaches school?

A. Yes, he teaches school; I asked him how much he thought it would cost to ship the trunk and he said "I don't know where you are going to be, but you leave the truck and I will send it and pay for it and you can send me a check."

Q. What did you do?

A. I thought about it and I thought after all they didn't have anyone—Irene was in a horrible condition—Erskin depended on me to do everything for him, and I said I will do it.

Q. Said what?

A. I will stay in Roanoke, I will take care of you; she said "Let's go down and make the will, I believe in doing things quickly and getting them over with"; she said "Let's go down tomorrow and attend to the wills" and I said all right, if that
is what you want. The next morning I went to
page 92 } Bonnie Brook and I took her down to the bank to
have the wills drawn up; she stated just exactly what she wanted, and on the way back she turned to me and said "Since we are making wills, why don't you make a will and leave us everything you have" and I said well, Irene, I don't have very much to leave, but I said "Why"? She said "Because if you should die the Hills are going to have

to take care of us—no one else would be bothered with two invalids" and she said "the Hills will eventually get it" and she said "I think that will be the safe way to do it," and I said that is all right with me, just so everyone is taken care of is all that is necessary, so I did that.

Q. That is the will Mr. Barrett spoke of?

A. We went home and she told Erskin what she had done, and he was quite pleased; he kept patting me on the shoulder —my name is Cecelia—he calls me "C"—he kept patting me on the shoulder and saying "C, C, C" because he was completely happy knowing he would have me there to take care of him.

Q. Were you present when Irene executed her will?

A. Yes, I was.

Q. Was that executed in the Colonial American National Bank?

A. Yes.

Q. How about your brother Erskin's will?

A. They told us at the bank he need not come down—would have to put him in a wheel chair to undertake to come down town and hard to manage—I don't remember whether it was Mr. Pierce or who, said he could have witnesses out page 93 } at Bonnie Brook and have the will signed out there.

Q. Were you present when the will was signed?

A. I was present.

Q. Was it read to him?

A. I read the will myself to him when we went home that afternoon and that evening when the will was signed Irene looked over at Erskin and says "Now, this is the way you want it, isn't it" and he said "Yes, yes, yes, yes."

Q. Well, now, did you give up your trip to Florida?

A. I gave up my trip to Florida. I did go to Florida but I took them with me.

Q. I really meant did you give up moving to Florida?

A. Yes, I gave up my trip to Florida to go down there to live, yes.

Q. Since then what did you do and what have you done for Erskin and his wife, Irene ?

A. Well, I have done so many things—I will have to start from the beginning, I presume. I took care of all their personal belongings.

Q. You mean pajamas?

A. Pajamas and gowns.

Ceceila Hill Luck.

Q. You mean you washed them?

A. I washed their gowns and pajamas—I did all of Irene's shopping for her; I took Erskin out four and five times a week in the car.

Q. Why didn't you take Irene?

page 94 } A. She didn't want to go, and if she ever went she would go two or three blocks and then she would want me to turn around and take her home; Irene was not in a condition to ride—she was not interested in driving—she would much rather stay at home and live her life to suit herself.

Q. Who bathed her?

A. I bathed Erskin most of the time; Irene could bathe herself most of the time until just before she died, but I cleaned her false teeth—I don't think during the past 5 years she ever touched her teeth—she depended on me to do that for her; if there was anything I disliked it was that, but I did it.

Q. Who supervised the help?

A. I did.

Q. How about the cleaning and things of that sort around there?

A. The days when we didn't have help I did all of the dish washing and emptied the ash trays; I didn't run the sweeper and do any of the heavy cleaning because we always had someone to do that, but I did do all the light things and kept everything running smoothly to the best of my ability.

Q. Who drew the checks against Erskin's bank account?

A. Irene did until she fell and she had a concussion and went blind temporarily. She was blind, oh, possibly a month and for three months she could not see well enough to write and when she went blind there was no way to use the money to pay the bills and Erskin had said over and over

page 95 } to me that he wanted me to write the checks. I had a difficult time explaining to him I could not just write a check—would have to go to the bank and have it attended to properly, so finally I was paying the bills out of my own moneys, the bills that were necessary, so he insisted, so I called one of my sisters, Mrs. Finley and I said now, you see what he wants, I said I don't want to go into that—I want a witness before I do that Erskin said "Yes, yes" so we went to the bank together and made arrangements that I could write checks with Irene, although Irene regained eyesight enough that she could write some checks.

Ceceila Hill Luck.

Q. Who did your brother and his wife depend on to look after them?

A. They depended on me and me only, other than the help they had in the home.

Q. After Irene died, what did you do then?

A. Last May before Irene died in July, I moved to Bonnie Brook and Irene was quite ill and she was so ill she would not stay in the bed, she would get out and crawl on the floor. 'At that time I had no one to help me—Mrs. Jennings had left—I was there alone, and of course she was ill, she wanted something every two hours at least—she wanted broth. I would heat broth for her—take her a glass of milk—take her ice cream, and of course, needless to say she did not touch it because she was in no condition to drink and the minute I would turn around and leave the room she would get out of bed, crawl across the floor and I would have to pick her up and put her in the bed—she was not able to walk and get in the bed alone.

Q. So you moved out there?

page 96 } A. I moved out there the latter part of last May.

Q. And have been living there since?

A. I have been living there since last May.

Q. Mrs. Luck, Cleon is your brother?

A. Yes, Cleon is my brother.

Q. Did any other members of your family know about your agreement that you have discussed relating to the agreement between Erskin and his wife and yourself?

A. Yes, I discussed it with every member of my family.

Q. Including Cleon?

A. Including Cleon, yes.

Q. Do you know whether Irene and Erskin have discussed it with other members of your family?

A. Yes, I know that she had.

Q. This deed in question from Erskin and Irene to Cleon and his wife conveying Bonnie Brook, when did you first learn about that, and how did you learn it?

A. I learned about it the 28th or 29th of June; a friend called me and said "What is this I hear about Erskin selling Bonnie Brook" and I said he has not sold Bonnie Brook, and she said "Yes, he has, you are mistaken, Cleon bought it" and I said I know Cleon didn't buy Bonnie Brook and she said "He did, it is in the paper, I saw the notice"; I said I don't believe it. I immediately went to the telephone and called Cleon and I said what is this about your buying Bonnie

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Brook, he said "Well, I did" and I said "where
page 97 } did you get money to buy Bonnie Brook, and he
said "Well, I really didn't buy it, but it was deeded and recorded and it was in the paper and don't you read the paper?" and I said I think that is the worst thing I ever heard of and hung up. At that time the one thing that flashed through my mind was the fact that Erskin had been living for the day to go to Florida and buy a piece of property down there because he always feels better in Florida, but I didn't think about—or it didn't dawn on me what it would mean to me—I was thinking about Erskin. After I thought about it possibly an hour or two, I thought after all I am involved, too, so I went back to the telephone and I called Cleon and said if you are going to get Bonnie Brook then you can move out and take the responsibility that goes with it. He said "That is what I want to do, I want to retire and move to Bonnie Brook and take care of brother for his money."

Q. What was Cleon doing at that time?

A. He was working for OPO.

Q. That is a men's clothing store?

A. Men's clothing store, yes.

Q. How long had he been working there?

A. I don't know.

Q. What type of work does Cleon do?

A. He sells men's clothing, but I don't know how long he had been with OPO.

Q. What is he doing now?

A. He is with Steins now, I have been told—I don't know definitely—I have been told he is with Steins.

Q. That is a men's clothing shop, too?

page 98 } A. I think it is, so shall I continue?

Q. Yes?

A. So I called my two sisters—I called Mrs. Holloway—she had heard it in the meantime—she had heard about the deed, so she and Mrs. Finley called Cleon and asked him to come to Mrs. Holloway's home and he went.

Q. Were you there?

A. I was not there.

Q. You can't tell what happened if you weren't there.

A. I am not going to do that—I don't know what they said, but after that he came up to Bonnie Brook and when he came to the door I said you aren't welcome here, I don't want you in this house as long as I am here, I said anvone what did what you did—and walked into my brother's house and took my brother's home from him, you aren't welcome here;

he says "If you will just keep quiet and listen—that is what I came to talk to you about" just like that; I said all right, I will keep quiet; he said "I did wrong, but in order to make it right with you" he said "I will deed Bonnie Brook to you if you will will it to me, but you will have to give me the $70 it cost me"—I presume it cost him $70 to get the deed—I don't know about that—I don't know what he meant by the $70; I said I don't want you to deed Bonnie Brook to me, it belongs to Erskin, and if I did that I would be as guilty as you—I don't want it—I want you to give it back to Erskin, it is his home and it belongs to him; he says "All right, I will do that" and I said well, you will have to do it with Mr. Muse—you will have to go to his office and let him page 99 } handle it; he says "well, I will do that"; I says will you go to Mr. Muse's office and let him handle it, and he said "Yes." I called Mr. Muse—Mr. Muse was out of town; I called the next day—he was still out of town—I asked to speak with his Secretary and I said this is an urgent matter and I must get in touch with someone, some member of the firm, and she said "I will put you in connection with Mr. Coxe"—

By Mr. Smith: Object to that; I don't believe it has anything to do with this suit.

By Mr. Muse: I don't believe it is necessary to go into that.

A. (Continuing) All right, so in the meantime Mr. Muse came to town and Cleon went out of town and while he was out of town Irene died, so when Cleon returned to town I said everything is arranged for you to go to Mr. Muse's office—I told Cleon Mr. Muse is in town and everything has been arranged for you to go to his office and give the property back to Erskin; he said "I have changed my mind, and even if I would, Jackie won't sign the papers."

Q. Who is Jackie?

A. Jackie is Verna, his wife. I said I will have you in court, and if you get up on that stand, I will make a monkey out of you.

By Mr. Smith: I object to this—I don't see what it has to do with the case.

By the Court: Overrule your objection; that is a part of the contract we are still talking about it—that is why we are here today—go ahead.

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By Mr. Smith: We except.

page 100 } Q. During the last several years, and I will take any number of years—anybody else can—but I will start with 5 years—in the last five years what has Cleon done—what kind of work or services has Cleon rendered his brother—he claimed in his answer he had done as much as you have done.

A. Cleon did a little yard work.

Q. How often?

A. When we were in Florida he spent quite some time—I think—we were in Florida one time for six weeks—I am sure he worked in the yard—the yard was in very good condition when we returned.

Q. Go ahead?

A. And last spring he helped his wife's niece's husband work in the yard one day—I remember that distinctly. We didn't pay Cleon, we did pay Allen Amos, who is related to his wife.

Q. That was last spring?

A. That was just before Irene died.

Q. In 1957?

A. In 1957—before Irene died.

Q. What else did he do?

A. He helped me put some Celotex on in a room 8 x 10 x 6-1/2 and it has 10 windows in it, so there was *no* very much wall space for it—for the Celotex, but he did help me put that on but we never finished it—we started in March—he was so slow—in June when Mrs. Jennings moved in it had not been completed and it still has not been completed.

Q. What else did he do?

page 101 } A. He and a friend of his painted a floor on the dancing pavilion—we call it dancing pavilion—it was a pavilion where we had picnics.

Q. How big is it?

A. About 20 x 12—he and this friend of his painted the floor.

Q. How long did it take him to do it, do you know?

A. Took a very short time—I don't know just exactly, but I know some part of it they didn't finish and next morning I went done and finished it, but I should say took them three hours.

Q. How often did he work in the yard while Erskin's wife was there? While Erskin and his wife were there?

A. While Erskin and his wife were there he did not work

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in the yard other than the times when they were out of town—they had someone to work in the yard—they had someone to do the yard work.

Q. During the years you have been supervising and taking care of Erskin and his wife, has Cleon done anything out there while the Hills were there of any consequence?

A. During the 7 years I have had the responsibility of them and have been taking care of them, he has done nothing. In 1956 I was ill a few days and I asked him to go out twice and give Erskin a bath and I know he did that—twice I know that.

Q. And helped paint the little dancing pavilion?

A. Helped paint the dancing pavilion.

Q. Which took three or four hours?

A. The floor of it.

page 102 } Q. And helped you to put in a part of Celotex?

A. Celotex, yes.

Q. In addition he may have cut the grass a few times?

A. Yes.

Q. Other than that during the years you have looked after Erskin and his wife has he done anything else of any consequence?

A. Erskin used to be able to take two or three steps and walk down with the help of someone and Cleon did put up a rail—the rail was very weak and I asked him to put a rail up and he put a rail up on one side of the two steps that go down to the yard.

Q. Anything else you think of Mrs. Luck that you want to tell the Court?

A. I think that just about covers everything, Mr. Muse.

Q. Let me glance at my notes here just a minute. Are the members of your family—your father's family—you men and women now—

A. Yes.

Q. Your family are yourself. Erskin, Jean—

A. Yes, she lives in Atlanta, Ga.

Q. Beulah Holloway—where does she live?

A. She lives in Roanoke.

Q. Is she here as a witness?

A. She is here.

Q. Audrey Finley?

A. She is here—she lives in Roanoke.

Q. And Cleon, one of the defendants?

page 103 } A. He is my brother.

Q. Ashby who has Parkinson's disease?

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A. Ashby is ill.

Q. When did Mrs. Erskin Hill die?

A. July 15, 1957.

Q. Did you take at any time Mrs. Irene Hill to the University of Virginia for treatment?

A. Yes, we took her—she had the cobalt treatment—radiation treatment as Dr. Hurt called them.

Q. When was that?

A. Took her down in November.

Q. How long did she stay?

A. She stayed until the 3rd day of January and she went back in February.

Q. In this suit you have brought one of the prayers is that the Court require this property to be conveyed back to Erskin Hill?

A. Yes.

Q. Is that your wish?

A. That is my wish.

Q. For the reasons you have testified to?

A. For the reasons I have testified to, yes, sir.

Q. Tell us something about the mental condition of Erskin—does he understand very easily?

A. He understands if you speak to him very slowly and he does not become confused, he understands; but if there is a lot of commotion and confusion then he does not page 104 } know what anyone is talking about.

Q. Is he able to carry on a conversation like we are talking?

A. Oh, no; he says yes and no; he says words—he can't make phrases nor sentences, but he says yes and no, and words—he will say a word—cat, dog, or house or chair. Sometimes he means a chair and he will say a house—he does not always say the words that he means.

Q. Do I understand if he has quiet—no confusion—you can talk to him and make him understand?

A. You can talk to him and make him understand—that is if he is not mentally tired; if he is mentally tired then he just doesn't understand anything.

Q. Have you talked to Erskin about this suit—this transaction?

A. Yes, I talked to Erskin about the suit.

Q. Do you know what his wishes are with respect to the property?

By Mr. Smith: I object to that.

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By the Court: Statement of defendant would be admissible.

By Mr. Smith: It has already been testified to he can't talk, your Honor.

By the Court: I think I will have to admit that, being a party defendant.

By Mr. Smith: Exception on the grounds that Mrs. Luck lives with him alone in the house now, takes care
page 105 } of him, he is bound to be influenced by that; that he can't do more than answer and sometimes his answers aren't responsive to the questions, and he is probably incapable of testifying but he could have been brought here as a witness—if he could express it to her, he could express it to the Court.

By the Court: He has been served with process and is one of the defendants in the suit, and an answer has been filed on his behalf, so proceed to answer the question.

Q. Do you know what his wishes are with respect to the property?

By Mr. Smith: May I further add this—I don't believe it is relevant since it is an issue to set aside the deed.

By the Court: The Court will call attention to the fact that counsel has filed an answer on behalf of Erskin L. Hill, and there is no point—or no point has been raised in the pleadings or otherwise as to his mental disability, and secondly—being an adverse party defendant, I think any statements he may have made concerning his interest in the suit would be admissible and they will be admitted for that purpose. Proceed.

By Mr. Smith: Exception.

A. I talked with him about his wishes, yes, and he has always said yes, he wants Bonnie Brook back; as a matter of fact I was going to say he wanted to sell Bonnie Brook several months ago, he took an idea he wanted to sell Bonnie Brook—I tried to explain it to him he could not sell Bonnie Brook—he didn't own it—I could not impress upon him he
page 106 } did not own it—he was quite upset—he wanted me to call the real estate man; he went to the telephone—of course, he can't telephone, he can't call, took the receiver off the hook; he screamed and made it so unpleasant for me—I talked with him at some length and told him he could not sell it, and that Mr. Finley was coming out that evening for dinner and he would explain it to him, and when Mr. Finley came out—Mr. Finley is my brother-in-law—I says sit

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down and explain it to him that he can't sell Bonnie Brook, so he did, and when I told him that he said "Call Cleon, call Cleon" so he made me call Cleon and when Cleon went out to the cabin he tried to tell Cleon what he wanted and Cleon pretended he did not understand and Cleon says "Do you know what he wants" and I says yes, he wants you to give his home back to him, and Cleon says "He didn't tell you anything because he can't talk" and Cleon says "Well, I am not going to do it" and said "she took it to Court and could not win it so now she wants me to give it to her"—he did say that. It had not been to court then.

Q. Had not been tried?

A. Erskin seems to understand, although every day he talks about selling Bonnie Brook and going to Florida.

Q. By reason of *leaving* with him as you have and even with his inability to express sentences, are you able to understand what he is trying to get over?

A. Yes, I have been with him so long, Mr. Muse, I can understand I can just about understand everything he wants, and he doesn't give up; if I don't understand he tries to make me understand. Sometimes maybe it will take him page 107 } 30 or 40 minutes and he gets provoked with me, and I then will think about it and concentrate and maybe it will come to me what he wants, and then I will tell him and he is so pleased I know what he is talking about.

Q. Is there anything else you think of that I have not asked you that might be pertinent to the case?

A. No, I can't think of anything.

By the Court: Before you proceed, let me ask a question—I think it would be better before you proceed on cross examination.

Q. As I understand you moved in Bonnie Brook May, 1957?

A. Latter part of May.

Q. Where were you on June 5, 1957 when this deed was executed?

A. I was in Virginia Beach. Mrs. Jennings stayed there 5 days—I was on the verge of a nervous breakdown—I told Mrs. Jennings I had to leave town for a few days to get away from the responsibility and she says "You go, I will stay here and I won't leave" so it was executed while I was at Virginia Beach—I was out of town for five days.

Q. That is what I wanted to know. Also, can your brother, Erskin L. Hill sign his name?

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A. No, he makes an "X"—just an "X".

Q. Now then, the copy of the deed that is filed in the pleadings, as well as the copy of the will contained his signature?

A. Yes, but his wife held his hand and wrote that—his wife held his hand.

Q. I don't have the original deed, I only have a
page 108 } typewritten copy.

A. His wife held his hand—she said it would be better—that is what the lawyer told us to do, just let someone guide his hand to write his name. He did not make an "X"—you have to have two witnesses to an "X" and you have to hold his hand to make an "X"—can't make an "X".

Q. Were you present when he did sign the will?

A. I was, yes.

Q. And from the copy that is in the file, it appears that the witness to the will was Cleon W. Hill?

A. Yes, he was one of the witnesses.

Q. Who is Audrey Owen Hill?

A. She is my sister-in-law—she is here.

By the Court: Suppose we take a brief recess before we proceed with the cross examination.

After recess, Mrs. Luck is—

CROSS EXAMINED.

By Mr. Smith:

Q. Mrs. Erskin Hill—I will call them by their first name because everybody is here—Erskin was stricken with his blood clot, or whatever it was that caused his illness, about 1948, is that correct?

A. That is correct.

Q. And from that time on he was in the same condition he is in now, physically?

A. Yes.

Q. In the wheel chair and rather helpless?
page 109 } A. Yes.

Q. Now, you at that time, were living with Mrs. Holloway, you say?

A. Yes.

Q. And I believe there was another person—

A. My mother and Mr. and Mrs. Holloway and I were the only ones there.

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Q. And that was in South Roanoke?
A. In South Roanoke.
Q. And was it then you started making trips out to help out the Hills—Erskin and Irene?
A. Not in 1948—no, in 1950.
Q. Your husband died in 1950?
A. In 1950.
Q. And that gave you more time to lend to this sort of thing, is that right?
A. Yes.
Q. Did you go out there once or twice every week or three times?
A. I went out—at the very beginning two or three times at the very beginning after I lost my husband, he died in July.
Q. And that continued up until these wills were drawn, is that correct?
A. That continued—and then I went more often than 2 or 3 times because Erskin was becoming a little spoiled to have me around and he wanted to take a drive every day, but I could not go every day, but I did take him 3—4—and 5 times a week.
That was in 1948?
page 110 } A. Not '48—'50.
Q. '50 up until—
A. Up until the present time.
Q. Up until you moved in there?
A. Yes.
Q. Do you recall the date you moved into the Hill home and have been there since?
A. Not the exact date, no—I really don't.
Q. Wasn't it after Irene's death?
A. No, it was not.
Q. I understand you were there about two weeks before she died?
A. I was there three weeks before she died—I don't know just exactly the date.
Q. She died on the 15th of July?
A. Yes, on the 15th of July.
Q. She was in the hospital from July 1st, as I understand you on direct testimony?
A. I don't remember the dates; I remember when she died and I remember I was in the home and took care of her before I took her to the hospital.
Q. For about a week you say?
A. At least a week, yes.

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Q. Now, going back to your activity then from 1950 up until the date these wills were made in 1953 you were there two or three or four times a week at the time is that correct?

A. That is correct.

page 111 } Q. And all during that time, of course, there was other help there, permanently?

A. No, not permanently, no.

Q. Weren't there lots of other people there to help out?

A. Not permanently, though.

Q. They came in every day?

A. Not every day but once a week.

Q. Just once a week?

A. Once a week at the very beginning.

Q. And then in 1953 the wills were made as you have described, and then you continued these periodic visits up until you moved in just before Irene's death, is that correct?

A. Yes, that is correct.

Q. After the wills were executed did your activity increase any, or was it about the same as it always had been?

A. My activity increased.

Q. You state about that time when these wills were made you were pretty bad off yourself, with regard to your nerves?

A. No, you misunderstood me, I said I had been under extreme emotional strain and I went out of town for five days.

Q. During this period from 1953 when these wills were made up until you moved in shortly before July 1st, had you gone away on any trips?

A. I moved in before July 1st.

Q. I said before July 1st.

A. Had I gone on any trips?

page 112 } Q. Yes?

A. Oh, yes, I had been on a number of trips.

Q. Where did you go?

A. Well, in 1950—in February, 1950, I took a trip to the West Coast and in January, 1956 I took a two weeks cruise in February.

Q. That was in the Caribbean?

A. And in 1957 I took a two weeks cruise with permission of my brother and Irene because they felt like I needed to go away, and I wanted to cancel my reservation at the very last minute, and especially in 1956, because Irene had fallen two nights before I left and was quite ill, and my two sisters, Mrs. Holloway and Mrs. Finley said "You have to go, you need a change and you will have to go" and said "Don't worry about Irene, we will take care of her", so I went.

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Q. You went to Florida and went on the Caribbean cruise?
A. Yes.
Q. Did you go on two Caribbean cruises?
A. Two, yes.
Q. Did you go to Florida with Cleon?
A. I took Cleon to Florida, he was ill and unemployed—I felt like the trip would do him good.
Q. How long were you there?
A. Three weeks.
Q. Three weeks on that trip—who did the chores around the house during that time?
A. That was Marie Bratton, the colored girl.
page 113 } Q. During all of those trips?
A. No one Marie Bratton was there, but my sister, Mrs. Finley, went every day and did the things I did when I was in town.
Q. How many trips to Florida did you make—one with Cleon—and the earlier ones you made with others?
A. With Erskin and Irene?
Q. No, without Erskin and Irene?
A. Yes, I was there one week in 1955, I presume it was February, 1955, without Erskin and Irene.
Q. And went with Cleon, of course?
A. I went with Cleon, but we did not go in February—I have forgotten the month—we went in March.
Q. They are the two Florida trips and the one you took yourself earlier, make three trips to Florida?
A. I didn't take one by myself to Florida.
Q. I understand you to say in 1950 you were in Florida?
A. In 1950 I took Erskin and Irene—in October, 1950.
Q. With Erskin and Irene?
A. With Erskin and Irene.
Q. Then the two trips to Florida were without Erskin and Irene?
A. That is right.
Q. And then the two Caribbean cruises were without Erskin and Irene?
A. That is right.
Q. Now, Mrs. Luck, your family is a rather close knit family, is it not?
page 114 } A. We have been.
Q. Have been, and the children were all friendly as far as you know up until this transaction?
A. We were always very close and very fond of each other.

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Q. You and Cleon went to Florida together—you were very friendly, were you not?

A. Why, yes.

Q. And that was what year?

A. I think it was in 1955.

Q. 1955; now did Cleon come out to see Erskin frequently?

A. No, he did not.

Q. Did the other children?

A. Yes.

Q. All the others did, but Cleon didn't?

A. Not frequently now—not too frequently—not every day if that is what you mean.

Q. I don't mean every day—I say two or three times a week?

A. No, Cleon didn't and the rest of the family didn't come two or three times a week, but usually nearly every Sunday the family would come—Cleon would come in about once a month—unless he wanted something—if he wanted something special he would come.

Q. You described before a number of occasions he came out and did some work around the place and brought somebody with him, is that right?

page 115 } A. I didn't describe a number of occasions; I said he did some yard work one atfernoon; he put a rail up one afternoon.

Q. Put a Celotex ceiling up?

A. He helped put the Celotex ceiling up—covered the wall and the ceiling.

Q. You also said he came out and bathed him? ?

A. Twice in 1956 when I was ill—he went out twice and gave him a bath.

Q. Twice all he ever bathed him?

A. Twice I recall; I am sure years ago he bathed Erskin before I came to Roanoke, that was before I had anything to do with Erskin and Irene and started taking over and doing things I have been doing since 1950.

Q. And you think you had the large share of the responsibility up until—

A. What is that?

Q. Did you have the longest share of the responsibility from 1950 until you moved in?

A. Yes, I had it.

Q. And since you moved in you have been there continuously, have you not?

A. I have had three evenings out since the day I moved in

other than the ten days when my nephew was ill in Atalanta and I went to Atlanta for ten days with my sister, but my brother was well taken care of.

page 116 } Q. I want to go back to this occasion when you were going to Florida. You say you planned to move there to live?

A. Yes, I planned to go there to live.

Q. And you borrowed a trunk to pack in?

A. I did.

Q. And at that time you talked to Irene about it, is that right?

A. I told her I was going.

Q. Was that when you made the contract you contend you had with her?

A. That is when she cried and begged me not to go.

Q. Was anyone there besides you and Irene?

A. Erskin and I and Irene.

Q. Was Erskin present when the agreement was first made?

A. He was present.

Q. You think he fully understood what the agreement was?

A. Yes, I think he understood.

Q. And then the three of you were present?

A. The three of us were present, yes.

Q. That was in August, I believe you say?

A. That was in August when I packed my trunk.

Q. And then you said something about she wanted you to go right down and get it done immediately?

A. She did.

Q. You actually waited a month?

A. I waited a few days to make my decision; I didn't know whether I was going to go to Florida, or what to

page 117 } do; I was torn between a desire to go and I felt a responsibility towards them since they didn't have anyone to take care of them. As I said before Irene had broken her knee and she was walking with a cast.

Q. So you and Irene then went down to the Trust Department of the Colonial Bank?

A. We did.

Q. Whose idea was it to choose the bank—yours or Irene's?

A. Erskin, I think—that is the only bank he has ever dealt with.

Q. It is because it was Erskin's bank—because he decided to go there?

A. It is also mine since I have been in Roanoke.

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Q. So you went to see Mr. Pierce?
A. We went to see Mr. Pierce.
Q. Did you discuss the matter thoroughly with Mr. Pierce —you and Irene?
A. Irene told Mr. Pierce that we intended to spend most of the time in Florida—I had promised to take them to Florida because they liked Florida, the weather was so pleasant down there and the way things were at Bonnie Brook they weren't able to go out and I had promised to take care of them.
Q. You say Irene told Mr. Pierce?
A. Irene told Mr. Pierce that.
Q. That you had promised to take care of them?
A. That I had promised to take care of Erskin and Irene.
Q. You are certain of that?
page 118 } A. I am sure—I am certain of that.
A. And did you also tell Mr. Pierce that these wills were being drawn as a result of that promise?
A. No, I am sure we didn't go into that, but Irene and Mr. Pierce discussed it at length the fact that he had lived in Miami, or his father lived in Miami—I don't know whether he had lived there or not—but they discussed at some length how lovely Florida is, and she explained to him the condition of her husband, and he said "That is the place for you to be if you have illness in the family."
Q. Did you also say you were going to make a will at the same time leaving your property to them?
A. I didn't only say I would but I did.
Q. You didn't only say you would but you did?
A. Yes, I did.
Q. And you told Mr. Pierce you were going to make a will leaving everything you had to them and they were making one leaving everything to you?
A. That is correct.
Q. In other words, they were to be reciprocal wills?
A. That is correct.
Q. Mr. Pierce discussed with you very thoroughly the type of clauses that should be put in the wills to accomplish that?
A. Mr. Pierce discussed it with us—I don't know much about legal affairs—I left it to his judgment to do what he thought was best for all of us, and Irene did, too.
Q. He prepared a set of notes and sent you to
page 119 } Mr. Barrett to do the legal work, is that true?
A. That is correct.
Q. And both of you left and took the notes to Mr. Barrett's office?

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A. That is correct.

Q. And both of you were present when this matter was discussed with Mr. Barrett?

A. That is correct.

Q. Did Mr. Barrett discuss with you what a power of appointment was and what it was to accomplish?

A. He explained everything to us—I knew the gist of it, but I am sure I didn't understand all the legal terms, but I knew what I wanted, Irene knew what she wanted, so that is what we had.

Q. You knew when the wills were being prepared what they contained and what they would do?

A. Yes.

Q. You knew, of course, if Erskin should die Irene had the right to use up the entire estate if she wanted to?

A. Yes, I knew that.

Q. And you knew she had the right to withdraw any portion of it?

A. Yes, I knew that.

Q. And you knew if she died she could leave it to anyone she pleased by the power of appointment?

A. Yes.

Q. But if she failed to leave it to anyone she pleased, you got it?

page 120 } A. I knew that.

Q. And they were the terms you agreed upon?

A. They were the terms we agreed upon.

Q. Now, you have already stated in answer to a question for Mr. Muse that Erskin had an income of $500 a month and detailed how that income was derived, is that correct?

A. That is correct.

Q. I believe he also has about a twenty four or twenty five thousand dollar life insurance payable to the estate now, isn't that correct?

A. That is not correct so far as I know; if he has it I don't know it.

Q. You don't know anything about it?

A. I don't know anything about twenty five or thirty thousand dollars worth of life insurance, no.

Q. How much do you know?

A. I know he has $10,000 government insurance, he has $4,000 Metropolitan and that is all I know about.

Q. $14,000 is all you know about?

A. That is all I know about.

Ceceila Hill Luck.

Q. And that was payable to Irene, was not it?
A. Yes.
Q. And it will now go into his estate since she has predeceased him?
A. That is correct.
Q. And he also owns a Cadillac automobile, doesn't he?
A. Yes, he has a Cadillac automobile.
page 121 } Q. He has a savings account of some around $4,000 does he not?
A. Yes, he has.
Q. Does he have any other assets that you know of?
A. Yes, he owns some property that is being paid on each month, but two of the men have practically been paid off—there is not much due on them now.
Q. I believe Cleon owes him about $3,000?
A. I don't know how much Cleon owes him, but I know he still owes him on a piece of property that he has.
Q. Is it in the thousands—two or three thousand?
A. Yes, I believe so.
Q. If he should die today or tomorrow, that would pass to you under the will, isn't that correct?
A. Yes, that is correct.
Q. The insurance money, bank accounts receivables in the estate and all, do you know how much that would total?
A. I have not figured that because I have not thought about him dying.
Q. You don't know how much it is?
A. I had not thought about that.
Q. Certainly the total would exceed the value of Bonnie Brook, wouldn't it?
A. As I said before—I had not thought about it—I had not thought about him dying, I had not thought about how much there would be; my sole concern now is to keep him happy and satisfied.
page 122 } Q. Now, in your will, you propose to leave everything you had to the Hills, or the survivor of the two of them?
A. That is right.
Q. And at that time what did your estate concist of?
A. Not very much of anything.
Q. Didn't your husband leave you $10,000?
A. No.
Q. He did not?
A. No, he did not; he left me some bonds and I cashed $600

of them to take Cleon to Florida when he was ill; also cashed some bonds when I went on my cruises.

Q. You know what the total of your estate is?

A. No, I don't know.

Q. Can you give the Court any idea—will it exceed $10,000?

A. No, it will not.

Q. Will it be less than $5,000?

A. Yes, it is less than five.

Q. Now?

A. Now.

Q. At the time you made the will leaving it to the Hills, what was the amount of it?

A. I had a car which was in very good condition and I had about $7,000.

Q. And that was what you proposed to leave to them?

A. That is what I proposed to leave to them.

Q. In return for the will they were making you?

page 123 } A. No, not in return, there was no return about it, I just did it because Irene wanted to leave everything to me for the services that I rendered her over a period of years.

Q. For the services you had rendered to her?

A. I had and was going to and promised to do.

Q. And you were to leave yours for what reason to her?

A. She told me—she asked me to do it, she said "If you should die some of the Hills is going to have to take Erskin and me, no one else will take care of two cripples," and she said "The Hills will get it anyway, so just as well keep it all in the family"—that is what she said.

Q. She did not suggest you leave it to your brothers and your sisters?

A. No.

Q. To divide it equally among them?

A. No, she did not suggest that.

Q. Mrs. Luck, on June 5, 1957 which was a month and ten days prior to Irene's death, you were then not living at the Hill home full time, were you?

A. Well, I said I moved in around the first of June—was the 5th of June the day the deed was made?

Q. That is right?

A. I was at Virginia Beach as I stated before, I was out of town for 5 days—Mrs. Jennings was there.

Q. When you said "out of town" you meant away from your home?

Ceceila Hill Luck.

A. Your Honor, I had spent so much time up
page 124 } there, I don't know whether I lived there or not,
I had spent all my time there, and whether or not I slept there at night, I don't remember—I went because I I went every day.

Q. As a matter of fact you were living in South Roanoke with Mrs. Holloway and your other family when you went away to Virginia Beach, were you not?

A. Yes, I was.

Q. That is true—visited the Hills frequently?

A. Yes, every day.

Q. But you were living in South Roanoke?

A. Yes, I was living in South Roanoke.

Q. And you went to Virginia Beach from South Roanoke?

A. Yes.

Q. And you came back from Virginia Beach and this bad illness with Irene occurred after you came back, isn't that correct?

A. I don't know what you mean by this "bad illness"?

Q. Getting ready to send her to the hospital?

A. Irene had been ill since last October—that October.

Q. I understand, but Dr. Hurt said she got so bad on the first of July he sent her to the hospital—were you living there then?

A. I was living there alone with her, I am the one who called the doctor—Dr. Hurt, and she had had a hemorrhage that day. I called Dr. Hurt and he said "I will have an ambulance out there in fifteen minutes"—I was living there alone with her, yes.

Q. Then after her death, you continued your permanent residence there?

page 125 } A. Yes.

Q. And you have resided there continuously since that time?

A. Yes, I have.

Q. Now, as you said before, your relationship with Cleon and your other brothers and sisters had always been good, and theirs with you—isn't that correct?

A. That is correct.

Q. And there was absolute love and affection between all of you?

A. We have always been a very close family.

Q. That is right, and nothing occurred to upset that until this deed was given by Irene and Erskin to Cleon, isn't that correct—was not that what broke the apple cart?

Ceceila Hill Luck.

A. We have had family quarrels.

Q. Bitterness?

A. We have never had money before to fight over, if that is what you mean?

Q. But you and Cleon are now not very good friends, are you?

A. All I want is justice—there is no bitterness; all I want is justice.

Q. But you feel very bitter towards Cleon and towards his wife?

A. I don't feel badly towards Cleon and towards his wife —I am sorry for them, but I don't feel badly towards them.

Q. I thought you said a while ago you didn't
page 126 } want him in the house?

A. I told him that when he walked out there; I have mellowed since that—that has been a year ago almost.

Q. You have mellowed since then?

A. Some; some—it was all so new and so unexpected and such a shock until I just could not quite grasp what it was all about.

Q. Did you get angry because you thought you were being done out of the property you had coming to you—did you get angry because you thought Cleon had done his brother badly, or just what?

A. I was upset because I knew Erskin wanted to leave Bonnie Brook, and I was upset to think Cleon would go in and do that thing to two people who were invalids; that is the thing that upset me—I didn't think about myself.

Q. Mrs. Luck, the thing I am trying to say is the doctor has testified and you have agreed with him, that the condition of Erskin Hill has not changed since 1948; now it was all right for you to get a will whereby you inherited his entire estate, but it is not all right for Erskin to give a piece of property to another brother whom he loved, if he wished; how do you explain that?

A. Well, as I told you yesterday when you were out at my home, I can't explain it.

By Mr. Muse:

Q. You can or can not?

A. I can't explain it.

Q. You don't know of any threats or intimida-
page 127 } tions that Cleon practiced on Erskin?

A. So far as the wills are concerned, Mr. Smith, there was an objective in that because Erskin and Irene didn't

have any one to take care of them. Both of them were invalids and they needed help, and they needed it badly and I was available; and I presume if another sister had been there—anyone who could go in and take care of them, they would have done the same thing for them, but I just happened to be available and I was the one.

Q. Did you consider Erskin had no right after he entered into this agreement you say you had with him to reward any other member of the family if he wanted to?

A. I don't think any member of the family had any right to go in and take his home from him.

Q. Even if he wished to give it to him?

A. If he wished it, yes.

Q. He certainly did it?

A. It seems as though someone did it.

Q. At that time you weren't living there?

A. As I said before, I spent so much time there—whether or not I lived there made no difference; I spent all my time there, every day and part of the night.

By Mr. Smith: That is all.

By Mr. Muse: Stand aside.

Witness stands aside.

page 128 } MARIE BRATTON,

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

DIRECT EXAMINATION.

By Mr. Muse:

Q. State your name, please?

A. Marie Bratton.

Q. You know Erskin Hill and his wife, Irene?

A. Yes, sir.

Q. How long did you work for them?

A. Six years.

Q. When did you quit?

A. Well, I quit—I have been working for them all along.

Q. Working for them now?

A. Yes, three or four times a week.

Q. I didn't know—I thought you had quit?

A. No, I have not quit completely.

Marie Bratton.

Q. How long have you been working for them?

A. Six years.

Q. You have been sitting in the room here when this case is being tried?

A. Yes.

Q. Just tell us generally what Mrs. Luck did during the six years you have been there?

A. Well, Mrs. Lucks have did all for Mr. Hill and Mrs. Hill; she would take them on the trip to Florida, she would do for them—no one else did for them but her—she just come right in after Mrs. Hill got sick—she come right
page 129 } in and went to doing for them because Mrs. Hill—she was not able to do anything—she was an alcoholic, she was not interested in the home—nothing.

Q. During the six years you have lived there and before Mrs. Hill's death, how often would Mrs. Luck come out there?

A. Mrs. Lucks come out there every day unless she was sick or something. or could not come—she would come out there every day and do for them.

Q. What would she do when she got there?

A. She would look after Mrs. Hill and Mr. Hill, clean the house, help clean the house—she did everything, the cooking and all for them. She was just a mother to them as I can see.

Q. How often did Mr. Cleon Hill come out there?

A. I never did see him out there—Mr. Cleon—the whole six years I was out there; he never did come out there, no more than when his niece died they all met out there—I didn't know him until this morning.

Q. First time you had seen him?

A. First time I had seen him—since he came out there when his niece died—they all met out there and went from there to the funeral home.

Q. How many days a week did you work out there during the six years?

A. Sometimes I would work two days a week.

Q. And the other times, how many times would you be there?

A. One day a week, but most of the time I worked two days a week.

Q. The past six years?

page 130 } A. Yes, during the whole six years—and sometimes three.

Q. And the only time you ever saw Mr. Cleon was the day the whole family met there—

Marie Bratton.

A. He was there when his niece died and the whole family met there to go to the funeral; I have never seen him out there doing nothing—Mrs. Luck did everything.

Q. Did Mrs. Hill make any statement to you about what they were going to do with the property?

A. Her and I was talking one day and she says we believe in wills—

By Mr. Smith: May I object to that for the record? Mrs. Hill's and Mr. Hill's admissions or statements to her aren't proper.

By the Court: You have not objected heretofore; of course, this is a statement that requires corroboration, but it has already been testified to without objection; I will overrule your objection at this point.

By Mr. Smith: Exception.

Q. I don't know what she is going to testify to, I don't know whether it has been testified to or not.

A. Mrs. Hill was talking about a will, and I said well, while you are willing, will me something; she said "We believe in wills" and I said to Mr. Hill who was you going to make your will to when you die and he said—I can understand what he says—Mr. Hill said "Going to make our will to Mrs. Luck because she is the onliest one do for me". I aint seen him out there doing nothing—I don't see why he wants Bonnie Brook.

Q. Did Mr. Erskin Hill make any statement?

A. Yes, I said who do you want your will to and

page 131 } he says "C-C-C".

Q. Can you understand Mr. Erskin Hill?

A. Every word,—maybe take me three or four minutes to understand what he says, but I know what he is talking about.

Q. You end up knowing what he means?

A. Yes, sir, everything. And they always said they wanted Mrs. Luck to have Bonnie Brook because she is the onliest one did for them.

By Mr. Muse: That is all.

By Mr. Smith:

Q. Marie, you have been there six years—that puts you back to 1951 or '52, is that right?

A. Yes, that is right.

Q. And you work one day a week and sometimes two days a week?

Marie Bratton.

A. Yes, sometimes three—and sometimes work on Saturday.

Q. Did you ever go a long period without working at all?

A. What?

Q. Did you ever go two or three weeks and not work any?

A. I worked every week.

Q. And you worked every week for six years?

A. Yes.

Q. What days do you work?

A. On Thursdays.

Q. You work on Thursdays?

A. Yes.

page 132 } Q. Is that your cleaning day, on Thursday?

A. That is my main day on Thursday.

Q. And you are still employed by Mrs. Luck now?

A. Yes, I work two or three times a week—I works through the week sometimes.

Q. You say you never saw Mr. Cleon there except one time?

A. I have not seen him there—I don't know Mr. Cleon—I have not seen him there but once when his niece died—they all met there.

Q. You must not have been there the days Mrs. Luck described him being out there and going out and bathing him a couple times—you weren't there—Mrs. Luck said he came out there a couple times and bathed him?

A. I was not there.

Q. He came out there and fixed a ceiling—you weren't there then?

A. I remember Mrs. Hill said he came out there, but I was not there the day he came.

Q. Came out and fixed a railing so he could hold on to?

A. He ain't been there since I have been there.

Q. Came out there with another man and helped in the yard—didn't see that either?

A. I have not seen him raking no leaves.

Q. Mrs. Luck says he was out there?

A. Maybe he is, but he was not there the day I was there.

Q. You were there on Thursday?

page 133 } A. Yes, I was there on Thursday and sometimes Monday and Thursdays—I work sometimes three days a week—and also sometimes I just work Mondays, and then again I may work all week.

Q. And your hours are what?

A. What?

Louise Leonard.

Q. What are your hours?
A. What do I make a day?
Q. No, what hours do you work on Thursday?
A. On Thursday I go 8:30 and work sometimes until 3:30, and sometimes 6—sometimes go home at 6—just according to how Mrs. Hill would be.
Q. Three-thirty or six?
A. Yes.

By Mr. Smith: All right, that is all.

Witness stands aside.

MRS. LOUISE LEONARD,
a witness of lawful age, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Muse:
Q. Will you state your name, please?
A. Mrs. Louise Leonard.
Q. Where do you live?
A. Tampa, Florida.
Q. How long have you lived in Tampa, Florida?
A. Since 1948.
Q. Were you acquainted with Mrs. Irene Hill
page 134 } and are you acquainted with Mr. Erskin Hill?
A. Yes, sir.
Q. Suppose you speak a little louder and tell the Court' how you became friends of theirs?
A. Well, my first husband and Col. Hill were in the same regiment.
Q. In the army?
A. Yes, and when he was taken ill and went to the sanitorium I lived with the Hills at Virginia Beach.
Q. Your husband?
A. My first husband.
Q. You lived with Mr. and Mrs. Erskin Hill?
A. At Virginia Beach.
Q. How long did you live there?
A. Two or two and a half years.

Louise Leonard.

By Mr. Smith: I can neither hear or see—will you speak up a little louder?

A. I have such a cold.

By Mr. Smith: I realize she had a cold.
By the Court: How do you spell your name—I didn't get it?

A. L-e-o-n-a-r-d.
Q. How long did you say you lived with Erskin Hill and his wife?
A. Two or two and a half years.
Q. Were you and they friends?
A. Yes, sir.
Q. Knew each other well?
page 135 } A. That is right.
Q. And you live in what part of Florida?
A. Tampa.
Q. Tampa Florida; on any occasions did you see Mr. and Mrs. Hill in Florida?
A. Yes, when they came down—when Mrs. Luck brought them down to St. Petersburg beaches.
Q. Did you have any conversations with Mrs. Irene Hill with reference to what she proposed to do with what she had—what she and Mr. Hill were to do with it?
A. On two occasions.
Q. Just relate it to the Court?

By Mr. Smith: May I object, your Honor?
By the Court: You can note your objection and I will admit it.
By Mr. Smith: Exception.

A. On two occasions she discussed this particular matter with me, once at the beach and once at my home, and she told me that she had left everything to "C"—she and Erskin had, because she was the only one they had to look after her and then she was in no condition to do for herself or for Erskin and they had to have someone they could depend upon and that was the agreement they had entered into.
Q. That was what?
A. The agreement they had entered into.

Louise Leonard.

Q. Did she relate that agreement to you?
A. Yes, she did.
Q. What was it?
A. She had left everything to C"C—she and
page 136 } Erskin, if she would look after them as long as they lived.
Q. Was Mr. Hill present at these conversations?
A. At one time, at my house.
Q. Did he concur in what was said?
A. Yes, he did.

By Mr. Smith: Don't lead the wtiness, Mr. Muse, please.
By Mr. Muse: I am sorry.

Q. Did Mr. Hill make any indications—
A. He says "Yes, yes, yes, yes."
Q. He says "Yes, yes" to what?
A. He was talking when Irene was talking to me about leaving everything, Erskin said "Yes, yes."
Q. Do you think he understood what she was talking about?
A. Yes, I do.
Q. Did you have an opportunity to observe what services, if any, that Mrs. Luck rendered on those trips?
A. Yes, I did.
Q. Tell us what they were?
A. She had to do everything of a personal nature for Mr. Hill—for Erskin—because he can't go to the bath room himself, and took care of his personal toilet—she has had all of that, and of course, see that he gets in his chair and helps him out of his chair, tie his shoes—well, most everything.
Q. How about with respect to Irene?
A. Well, Irene, when she was at the beach she was using a cane and got around very poorly and C had to
page 137 } take care of her almost like she did Erskin in seeing she was fed and taken care of.
Q. Is your basic friendship with the Erskin Hills rather than for the Hill family?
A. I have known the Erskin Hill family longer than I have the rest of the family.
Q. How does your relationship with respect to closeness compare with respect to Erskin Hill as to the other Hills?
A. Well, I have known Mrs. Luck for about 8 or 10 years. I have known the Erskin Hills maybe longer than that, they used to visit at Virginia Beach—the whole family would come down there intermittently—I don't know her as well.

Mrs. T. W. Fleschman.

Q. Do you have any personal interest in this matter?
A. No, sir.
Q. Did you come from Florida for the purpose of testifying in this case?
A. Yes, I did.

By Mr. Muse: Take the witness.
By Mr. Smith: No questions, your Honor.

By the Court:
Q. Mrs. Leonard, when was this last conversation that you had with Mr. and Mrs. Hill?
A. They came down in October.
Q. Of what year?
A. 1953, and they were there until April of 1954, I think when the Colonel's mother died in April, I think, of that year.

By Mr. Muse:
Q. When was the second conversation?
page 138 } A. It was around when they first got down there.
Q. That same trip?
A. Yes, that same trip.

By Mr. Muse: Thank you.

Witness stands aside.

MRS. T. W. FLESCHMAN,
a witness of lawful age, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Muse:
Q. Will you state your name, please?
A. Mrs. T. W. Fleschman.
Q. Where do you live?
A. 1209 Summitt Ave., Wasena, S. W.
Q. How old are you?
A. I am 56 years old.
Q. Do you have any children?
A. I have two.
Q. What are their ages?

Mrs. T. W. Fleschman.

A. I have a boy 37 years old and I have a son 25 and I have 6 grandchildren.

Q. Do you live in Roanoke City?

A. Yes.

Q. What does your husband do?

A. He is with the Railway Express Co.

Q. Do you know Mr. and Mrs. Erskin Hill?

A. Yes.

page 139 } Q. Do you know the other members of the Hill family?

A. Yes.

Q. Are you friends of theirs?

A. Yes.

Q. How long have you known them?

A. About thirty years.

Q. Did Irene ever make any statement to you as to what they were going to do with their property and why?

A. Yes.

Q. Just tell us about it, please?

A. Well, Irene told me that she and Erskin were leaving C Bonnie Brook and everything they had and in return C was going to look after them.

Q. Did she ever make that statement more than once to you?

A. Yes, she did.

Q. More than twice?

A. Yes, she did, she made it several times.

Q. Was Mr. Erskin Hill present at any time?

A. No, no he never was present.

Q. Do you remember what year these statements were made in—any of them—or do you?

A. No, I don't; it has been in the past 5 years—I don't remember just when at all.

Q. You had no reason to remember?

A. No, none whatsoever.

Q. Do you have any interest in this case?

A. No.

page 140 } By Mr. Smith: No questions, but we wish to renew our objection.

By the Court I understand your objection.

By the Court:

Q. Mrs. Fleschman, where were some of those statements made, do you recall the place?

Mrs. Audrey Owen Hill.

A. At Bonnie Brook.

By Mr. Muse:

Q. How often did you go to Bonnie Brook?

A. Oh, I have been to Bonnie Brook in the past 5 years sometimes two and three times a week.

Q. Why would you go?

A. I would go with Mrs. Luck when she would go out in the day to do her looking after the family.

Q. Did you have any opportunity—I am sorry I didn't go into this in chief, Mr. Smith—did you have any opportunity of observing what Mrs. Luck would do when she was out there?

A. Oh, yes.

Q. Tell us what she would do?

A. Well, she would look after her brother.

Q. Doing what?

A. In bathing, and his clothes and his food and keeping his room straight and his clothes straight and his clothes cleaned—she did everything.

Q. How about for Irene?

A. Well, she looked after Irene, too; she always did the kitchen chores when she went up—always had a pile of dishes to wash and a lot of cooking to do, and a lot of food to see to and go and buy for them and take to them—she did all of those things.

page 141 } Q. Am I correct in interpreting your testimony the fact you were there many, many times?

A. Many, many times.

Q. Did you ever see Mr. Cleon Hill there when you were there?

A. Oh, yes, I have seen him.

Q. Did you ever see him doing any work?

A. Yes, I believe I saw him when they were putting in that cabin celotox—yes, I think I saw him when he was doing that.

By Mr. Muse: Take the witness.

By Mr. Smith: No questions.

Witness stands aside.

MRS. AUDREY OWEN HILL,

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

Mrs. Audrey Owen Hill.

DIRECT EXAMINATION.

By Mr. Muse:

Q. State your name, please?

A. Audrey Owen Hill.

Q. What is your age?

A. Forty-eight.

Q. Whom are you married to?

A. Ashby P. Hill.

Q. Is he one of the brothers of the Hill family?

A. Yes.

Q. Is he sick?

A. Yes, he has the Parkinson's disease.

page 142 } Q. Has had it several years?

A. It was discovered in 1949.

Q. Did you know Mr. and Mrs. Erskin Hill?

A. Yes, I did.

Q. Are you familiar with Bonnie Brook?

A. Yes, I am.

Q. Have you been there many times?

A. Quite a lot.

Q. Are you familiar with any activities of Mrs. Luck with respect to Bonnie Brook and the Hills?

A. Yes, I am, because when Mrs. Luck lived with us she had to go up there every day.

Q. How long did she live with you all?

A. Talking about years—I can't tell because I have lived there since 1952.

Q. Lived where?

A. With the Hills.

Q. And Mrs. Luck lived there herself for a while?

A. Yes, she lived there, I thought it was for about a month before Irene died that Mrs. Luck went up there.

Q. And did you and Mrs. Luck live in the same house until then?

A. Yes, we did.

Q. Did you have an opportunity of knowing the frequency with which Mrs. Luck went to Bonnie Brook?

A. Yes, I did—I know she went every day un-

page 143 } less something unusual happened.

Q. Have you been at Bonnie Brook on occasions when Mrs. Luck was there?

A. Well, I work and I probably have, of course on a Thursday, or in the summer, but I didn't go with her every day, but I of course, knew she was there.

Beulah Hill Holloway.

Q. On those occasions that you know about, did you have any opportunity to know what Mrs. Luck did?

A. Yes, I did.

Q. You have heard these other witnesses testify, is what they have testified to true?

A. Yes, she washed all kind of dishes because whenever I was there the sink was always full, and she prepared food, prepared personal things for Erskin and Irene both personal toilet and so on for them quite frequently, and when Irene was able she took her to the beauty parlor to get her hair fixed and stayed with her until she had her appointment and brought her back home; that was at first before she broke her leg, and sometimes maybe after that.

Q. Did Irene ever have any conversation with you with respect to the *dispostion* of her property—as to how they were going to dispose of it?

A. Once.

Q. When?

A. One time.

Q. About when was that?

page 144 } A. Before the will, she told me she was talking about going to Florida—I think—I am not quite sure about that—we were talking—we were up stairs, and she said "Of course, I am going to leave everything to C—we are going to leave everything to C" I think it was just before she went to Florida and once afterwards when I was talking to her she said "Of course, we have left everything to C because she is going to look after us."

By Mr. Muse: Take the witness. Thank you, Mrs. Hill.

By Mr. Smith: No questions.

MRS. BEULAH HILL HOLLOWAY,

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

DIRECT EXAMINATION.

By Mr. Muse:

Q. Will you state your name, please?

A. Beulah Hill Holloway.

Q. Are you a sister of Mrs. Luck?

A. Yes, I am.

Q. And a sister of Mr. Erskin Hill and Cleon?

A. Yes, sir, I am.

Beulah Hill Holloway.

Q. Do you have a cold, or something?
A. No, I don't have a cold—no, I don't have a cold.
Q. Did you go out to Bonnie Brook?
A. Yes, I did.
Q. Frequently?
A. Always over week ends because I work and I could not come during the week.
Q. Work for the N & W?
A. Yes, I do.
page 145 } Q. How long have you worked there?
A. Thirty-five years.
Q. What Department?
A. Car Record.
Q. And you went out every week end?
A. Always went out every week and lots of other nights; at one time brother could call before this new phone went in, and when Irene would be ill and down and could not get up, he would dial a number of times at midnight and we have gone out there—Mr. Holloway and I and Mrs. Luck, too,—at the time she was not with them.
Q. Beg your pardon?
A. The time she was not living there.
Q. Did Mrs. Luck live with you?
A. Yes, she did.
Q. How long?
A. She lived there from the time her husband was ill.
Q. Until how long after he died?
A. She has been living up until she went to Bonnie Brook—this is '58—of course, it must have been '49 I would say.
Q. In other words, do I understand from the time she came back to Roanoke until she moved to Bonnie Brook just before Irene's death, she lived with you?
A. Yes, she lived with me.
Q. Continuously?
A. Yes.
page 146 } Q. Did you have an opportunity to know the frequency with which she went to Bonnie Brook?
A. Yes, I do.
Q. How often would she go?
A. At times she would have to go every day—just depend on the conditions of things out there, and then other times she would go every other day; then she got so she practically had to stay out there all the time.
Q. Then she finally moved out there?
A. Yes, she finally moved there.

Beulah Hill Holloway.

Q. Have you been to Bonnie Brook when Mrs. Luck was there?
A. Oh, yes.
Q. You heard these other ladies testify as to what she did?
A. That is right.
Q. I am just trying to save time—would your testimony be any different from that?
A. Just be the same.
Q. Did Mrs. Irene Hill ever make any statements to you concerning the *dispostion* of the property?
A. Yes, she did, because she told me she asked my sister to take care of her, that everything she had would certainly go to her and she was making her will that way, and she did not only tell me once but several times—she talked about it more when she was able.
Q. Was Erskin ever present when that conver-
page 147 } sation took place?
A. Yes, he wasn't all the time, but at times.
Q. Did he give any indication of his wishes?
A. Only thing he could say was "Yes, yes, yes"—agreed with what Irene would say, you see.
Q. Were you of the opinion that he understood?
A. Yes, he did understand—I know he understood because we understood each other because we were together so much we all got so we knew what he was saying.

By Mr. Muse: Take the witness.

CROSS EXAMINATION.

By Mr. Smith:
Q. Mrs. Holloway, you say you were told that they were going to leave everything to Mrs. Luck?
A. Yes.
Q. When was that?
A. I don't know the dates of anything, I could not say, but not only one time, but several times.
Q. Was it back as early as 1953?
A. Oh, yes.
Q. It was?
A. It was.
Q. Let me ask you this, Mrs. Holloway—if that be true, will you tell the Court when you first found out that these wills were actually in existence?

Mrs. Audrey Hill Finley.

A. Well, in fact, I don't know when they were made, I don't know, I can't recall.

Q. You will recall an incident that happened
page 148 } down on the market when you and Mrs. Finley were together when you were in your car or Mrs. Luck's car?

A. I didn't understand.

Q. Mrs. Holloway, I want to direct your attention to an occasion which I think you know about, when Mrs. Luck and Mrs. Finley were on the market, Mrs. Luck was doing some shopping and Mrs. Finley found these wills in the car, and called you and told you about it—do you remember that?

A. No, sir.

Q. You have no recollection of that at all?

A. No, I don't think she did.

Q. You don't think she did?

A. In fact, I don't remember a thing about that.

Q. You recall nothing about them?

A. No, I was not with them—I don't know about the will.

Q. Who first told you that these wills were in existence?

A. Mrs. Hill told me that she had made her will.

Q. Mrs. Irene Hill?

A. Mrs. Irene Hill told me that she had made her will.

Q. Did you ever hear it from Mrs. Finley?

A. No, I did not.

By Mr. Smith: That is all.

By Mr. Muse:

Q. One question I overlooked—were you present when Erskin executed his will?

A. Yes, I was there.

Q. Do you remember that occasion?
page 149 } A. Yes.

Witness stands aside.

MRS. AUDREY HILL FINLEY,
a witness of lawful age, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Muse:

Q. State your name, please?

Mrs. Audrey Hill Finley.

A. Audrey Hill Finley.
Q. You are a sister—
A. Yes, I am a sister of Erskin, Cleon and Mrs. Lucy.
Q. *You* maiden name was Audrey Hill?
A. Audrey Hill.
Q. Where do you live?
A. Greenwood Road, S. W.
Q. Are you married?
A. Yes.
Q. How long have you been married?
A. Thirty-three years.
Q. What is your age?
A. My age—56.
Q. How, how often did you go to Bonnie Brook?
A. Well, at times I would have to out maybe every day and then things would smooth out and seem to be a little better and move along a little smoother and I would not go out maybe but once or twice a week, and then after Mrs. Luck took over, of course, I didn't go quite as often, but I always would go once a week—usually on week ends or sometime during the week.

page 150

Q. Did you have an opportunity of knowing the frequency with which Mrs. Luck went to Bonnie Brook?
A. Oh, yes.
Q. How would you know that?
A. Because we always have been so close together and if Mrs. Luck didn't feel well and could not make the trip, I took over; that was always understood because the other sister working and it left Mrs. Luck and I to carry on, and when she could not go I would take over.
Q. Would that happen very often?
A. Not too often.
Q. Something was said that Mrs. Luck took some trips—are you familiar with those trips?
A. When she took the trips it would always fall on me, I would carry the responsibility and look after brother and Irene and if it were necessary and things became too bad, I would call the doctor and see that they were taken care of.
Q. Did Mrs. Luck need to get away occasionally?
A. Oh, yes, who wouldn't under a condition like that—you would go nuts if you didn't.
Q. Have you been out there on many occasions when Mrs. Luck was there?
A. Oh, yes, uh, huh.

Mrs. Audrey Hill Finley.

Q. You have heard these other witnesses describe—many of them—as to the type of services Mrs. Luck
page 151 } rendered to Erskin and his wife?

A. Just about what the others said, only I do know that Mrs. Luck gave brother baths and also Mrs. Hill. I have seen her pick Mrs. Hill up and put her in the tub and give her a bath and when she could not do that she gave her sponge baths, and then she and she and I together have picked her up bodily and bathed her, and taken care of her and put her back in bed.

Q. Describe the situation out at the Erskin Hill home—are there many problems connected with taking care of them, or was it an easy job?

A. No, would you think it was easy taking care of a man in a wheel chair and the other three-fourths time in bed, or walking with a cane—no one to even prepare meals. Mrs. Luck would go out and fix the meals and see that brother ate, and if Irene didn't want to eat at that time she would fix it so she too, could go to the table and eat and then she would go back next day and clean up the dishes when they didn't have help.

Q. Did you ever see Cleon do any work out there?

A. Very seldom.

Q. Did Mrs. Hill and your brother ever discuss with you anything about disposition of property?

A. Oh, yes, several times.

Q. Just relate it?

A. Well, Irene talked with me about the will before it was drawn up—what they were talking about doing, and then after it was taken care of, and she said C has agreed to take *sold* responsibility of us as long as we live and
page 152 } see that we get attention—medical attention and in every way she would be responsible and care for us, and I agreed with them—I thought it was the right thing to do.

Q. What was Erskin and his wife going to do in regard to that?

A. What were they going to do—they made the will and of course to that brother said "Yes, yes."

Q. Can you understand him pretty well yourself?

A. Oh, yes, pretty much; there are times when you have to figure it out and go back and ask him if he means such and such a thing; if he does not he will say no; if he does he will

say yes; then you repeat what you have said and he will say "yes, yes."

Q. Kind of a trial and error process?

A. Yes.

Q. When I say the Hill family I am talking about the brothers and sisters.

A. Brothers and sisters together.

Q. Were they very close?

A. We have always been very close—we have always discussed things and if one maybe got in a little difficulty, we would discuss it pro and con; no, we never had any secrets from each other until this came up and it was the only secret we ever had in the family and Cleon made it a secret—he did not discuss any of this with us.

Q. Was it any secret in the Hill family as to the page 153 } agreement between Mrs. Luck and Erskin?

A. No, because I think at times it was discussed with us individually and then of course, we would be together and we talked about it, and everybody thought it was the right thing to do.

Q. Do you know whether Cleon had knowledge of this?

A. Why certainly, he had knowledge of it.

Q. How about his wife?

A. Well, I am sure she did, too; I am sure he discussed things with her. I would think a husband would discuss things with his wife.

Q. So I understand there was nothing secret about it?

A. Not until this came up—it was all kind of a shock and blow to all of us when we heard what Cleon had done behind our backs.

By Mr. Muse: Take the witness.

CROSS EXAMINATION.

By Mr. Smith:

Q. Mrs. Finley, a moment ago you were telling Mr. Muse about going out and helping yourself, is that correct?

A. Oh, yes, I would have to.

Q. You went real often did you not?

A. Yes, I would go when Mrs. Luck was not able to go, I would go and do, too, and lots of times we would go out together—she had the responsibility, though.

Mrs. Audrey Hill Finley.

Q. You went almost every week ends and sometimes two or three days a week?

page 154 } A. Yes, when Mrs. Luck could not go, I would go and take over because they had to have personal attention.

Q. Did you personally go as much as two or three times a week?

A. Oh, yes, at times I have.

Q. You mean after Mrs. Luck took over, you mean after she moved out there?

A. No, I mean after she took over way back in—well, after they made the agreement that she was to carry on the responsibility and then, of course, some of it fell on my shoulders.

Q. You didn't go out after that?

A. Certainly I went out—sure I went out after that, you don't think I stopped going?

Q. I didn't mean that, I mean with the frequency you had been going?

A. Not as often unless Mrs. Luck would have to have a change, or take a trip, and then I would go because that was understood between us that I would carry on the responsibility while she was gone, and she could go away relieved and relax and come back ready to take over again.

Q. Were you living in the same house with Mrs. Luck?

A. Oh, no.

Q. Where do you live?

A. I live on Greenwood Road, S. W.

Q. Can you help me out any on what I was asking Mrs. Holloway about?

page 155 } A. I never heard of that; I don't remember of meeting Mrs. Luck on the market, and I definitely didn't see Mrs. Holloway.

Q. Did you see any wills in the seat of the car?

A. No, I didn't see any wills on the seat of the car—in fact, it was in my car and we drove to the bank when they were put in the bank, but as far as finding them on the seat of the car, there was not any finding them—I just drove them to the bank to put them in.

Q. Drove who to the bank?

A. Well, to be exact, it was Mrs. Luck and Irene.

Q. Was this after the wills were executed?

A. Oh, yes.

Q. And did you see them there then as you drove them to the bank?

A. Yes, I saw them.
Q. Did you read them?
A. No, why would I want to read them?
Q. I just asked you—you didn't read them?
A. I read the one but the second one I didn't.
Q. Which one did you read?
A. The one—Irene's will and the way it was drawn.
Q. You read Irene's will?
A. Yes.
Q. Did you then call Mrs. Holloway about it?
A. I most assuredly didn't.
Q. You didn't?
A. No.
page 156 } Q. Did you tell anybody about it?
A. No, why should I—everybody knew about it—I didn't have to tell them.
Q. Apparently just been executed?
A. Well, it was talked about what they were going to do, and then they did it.
Q. But you called nobody?
A. No, I didn't call anybody.
Q. And that is when they took them to the bank and put them in the vault, is that it?
A. I didn't get out of the car, I let them out and then I went back and picked them up, and I guess that is what they did with them, I was driving the car and I didn't get out, and I circled around and came back and picked them up.

By Mr. Smith: That is all.

RE-DIRECT EXAMINATION.

By Mr. Muse:
Q. I meant to ask you this on direct examination—were you a witness to Erskin's will?
A. Yes, I think I was.
Q. I don't believe you were?
A. No, I was not a witness on that.
Q. Do you know whether or not—or do you know anything about whether or not Mrs. Luck intended going to Florida—moving to Florida?
A. Oh, yes, she had discussed it and talked about it because she wanted—as she said she was not getting any
page 157 } younger, she would like to be settled and get a little job and have an income—in fact, she bor-

rowed a trunk from me and had it all packed ready to go and I saw it—all she had to do was close the lid and lock it up, and Bill Holloway was to ship it to her, and then, of course, after brother and Irene realized what she was going to do, they asked her not to go and so she changed her plans and didn't go at that time.

By Mr. Muse: We have no further questions.

Witness stands aside.

By Mr. Muse: I had asked Mr. Holloway to come, but it was not convenient for him to get off; I am going to rest—the other witnesses I have will be cumulative.

By Mr. Smith: May we adjourn at this time?

By the Court: Yes, adjourn until 1:30 p. m. for lunch.

AFTERNOON SESSION.

The following evidence was introduced on behalf of the defendant:

MR. CLEON W. HILL,

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

DIRECT EXAMINATION.

By Mr. Smith:

Q. You are Mr. Cleon W. Hill?

A. That is right—2315 S. Jefferson.

Q. Are you a brother to Erskin L. Hill?

A. I am.

page 158 } Q. And a brother-in-law, of course, of Mrs. Irene Hill?

A. Yes.

Q. And your wife is Mrs. Verna S. Hill?

A. That is right.

Q. Mr. Hill what is your position in the Hill family—are you the youngest—next to the youngest?

A. Next to the youngest.

Q. And there are three boys?

A. Three boys, four girls.

Q. Now, I don't want to be repetitious of all that is already

in the record, but your brother, Erskin, was stricken in 1948?

A. Correct.

Q. With an illness which left him paralyzed?

A. Right.

Q. And unable to speak?

A. Yes, sir.

Q. Except in words—monosyllables?

A. Monotone.

Q. Were you living in Roanoke at the time of his illness at the onset of it?

A. Yes.

Q. Were you living in Roanoke when he was stricken?

A. Yes.

Q. And was his illness in Roanoke City—was he living here at the time he became sick?

page 159 } A. He lived in the county, at Bonnie Brook.

Q. After his illness, did you take an interest in him, and if so, state briefly what you did for your brother?

A. Well, it went on for months—for weekends I would always bathe him, used to go up, pick him up, put him in the tub, bathe him, shave him—besides other work that I did around the place.

Q. And over what lengthy period of time have you done this sort of thing?

A. Well, as far as the bathing and shaving I stopped that sometime ago, but work around the place has been continuous.

Q. And what is the nature of the work you did around the place?

A. I cleaned the yard, raked, burned leaves, cut trees, trimmed all the roses, I repaired the back porch and steps, put braces in the front, worked in the swimming pool, shoveling out dirt and sand.

Q. The pool is in the creek—dammed up?

A. That is right, at home.

Q. Was that an annual task of getting the pool ready?

A. I always helped every year—I think I missed year before last year.

Q. Have you ever painted—things of that sort?

A. Painted quite a bit; last year my son-in-law painted the inside himself and was paid for it.

Q. And you never received any compensation in page 160 } the way of money or anything for what you did?

A. None whatsoever.

Cleon W. Hill.

Q. Your sister, Cecelia, Mrs. Luck—was she there frequently?

A. Yes, quite often.

Q. Did she do things around the house to help the Hills out?

A. She did.

Q. What was the nature of the things she would do?

A. She always worked around inside; of course, I didn't see everything which she did, but I know she prepared meals quite often; I don't know that she ever cleaned the house up any.

Q. Did she buy groceries?

A. If she bought groceries, I never did see her. Most of the time Irene ordered her own groceries, or when they had a housekeeper, I think they just ordered them and had them delivered.

Q. You are talking about the period of 1950 until after Irene's death?

A. Yes.

Q. Shortly before Irene's death, I believe Mrs. Luck went to live with Erskin, is that correct?

A. I think Mrs. Luck went in there maybe a week or ten days before her death, as well as I remember; I think she moved in at the time I was out of town, but Irene died on the 15th.

Q. 15th of July?

A. July and she has been there since then.

Q. What year was that?

page 161 } A. 1957.

Q. 1957, and she has lived continuously with Erskin since the day she went in prior to Irene's death?

A. Correct.

Q. Now, at the time of the deed which has been described in the bill of complaint from Erskin and his wife to you, was she living there then at the time the deed was executed?

A. No.

Q. She was not—where was Mrs. Luck living then?

A. Mrs. Luck at the time was living in Roanoke.

Q. In South Roanoke with her sister?

A. Yes.

Q. Now, Mr. Hill, there has been offered in evidence two documents, the wills of Erskin L. Hill and Irene L. Hill. Your name appears as a witness on the will of Erskin L. Hill; you have looked at the document, have you not?

A. Yes.

Cleon W. Hill.

Q. It is your signature?
A. That is my signature.
Q. Do you know about when it was done, or anything about the occurrence of the signing of this will?
A. I don't recall of ever signing it any place in the company of anybody, or where it could have been.
Q. But it is your signature?
A. That is my signature.
Q. You just don't recall when or where you signed it?
A. No, sir.
page 162 } Q. Do you believe when you signed this will you read it?
A. I didn't read it.
Q. You didn't read it?
A. No, sir.
Q. Of course, you know now what its contents are, do you not?
A. That is right.
Q. When was the first time that you found out what the will provided?
A. When my sister, Mrs. Holloway, told me.
Q. Mrs. Holloway told you?
A. Yes.
Q. She has been on the stand before you, has she not?
A. That is correct.
Q. Do you remember when that was—approximately when?
A. Spring of 1946.
Q. Spring of 1946—you mean '56?
A. '56.
Q. Tell the Court if you will what circumstances were they which brought this will to your attention and something of its contend*s* with Mrs. Holloway—what happened?
A. I was doing some work up at the cabin at the time and Mrs. Holloway told me.
Q. She was present, she was there, too?
A. Mrs. Holloway told me—says—"I don't see why you do this work because you will get nothing out of it." I says well, I don't want anything out of it—I says what
page 163 } do you mean and she says "Well, the will is made and everything is left to C"—who is Mrs. Luck.
Q. You call her "C" just like the letter "C"?
A. That is right.
Q. Where did this *conveesation* take place—was it in the yard?
A. In the yard at Bonnie Brook.

Cleon W. Hill.

Q. Do you remember the day if the week—week end?
A. If I recall it was on a Sunday.
Q. Sunday—all right?
A. Sunday afternoon.
Q. What else did she tell you about it there?
A. Where else?
Q. What else did she tell you then?
A. She told me—I asked her how she found it out, she says another sister Mrs. Finley had found it in the car while they were shopping and had read the will and Mrs. Finley told Mrs. Holloway—Mrs. Finley had told Mrs. Holloway and Mrs. Holloway told me that in 1946.
Q. 1956?
A. '56, I keep saying '46.
Q. That was in the spring of that year?
A. Right.
Q. So that would be two years ago from now?
A. Correct.
Q. And that was the first you knew about the contents of the will?
A. Contents of the will.
page 164 } Q. All right, now, did you continue to go to see your brother and help him out all you could?
A. I did.
Q. You work, do you not, Mr. Hill?
A. I work, yes.
Q. Where do you work?
A. Work at Steins Clothing Co.
Q. Do you work a full week?
A. Six days a week.
Q. Were your visits then limited to *wee* end visits, or did you go out at night?
A. Quite a few times I went at night.
Q. Now, I want you to tell the Court something of the steps that led up to the execution of this deed to you of a remainder interest in Bonnie Brook after Erskin's death—when was the subject first brought up?
A. The subject was first brought up—it was on a Sunday—I don't recall the date—around approximately the first of May of 1947.
Q. 1957?
A. 1957.
Q. You are stating in the forties—what happened—who brought up the subject?

Cleon W. Hill.

A. Well, I can tell exactly how it happened. My wife—I was at the cabin at the time and I think we were swimming and my wife came down to me and said Erskin and Irene were very upset and I asked what it was about and page 165 } said well, let's go up and see, so they were very upset, and got to talking about things, how they had been made, how things were, etc., and they wanted to change them.

Q. Did they mean their wills?

A. Their wills.

Q. All right?

A. And I insisted that we didn't want new wills made and they talked and talked and we forgot about it at that time—that was about Sunday; maybe Tuesday or Wednesday I went up and I was finishing up some cement steps and Irene brought the subject up again. This went on—Irene mentioned it to me approximately 5 times, and she says she wanted me to have Bonnie Brook, she says "I have always wanted you to have Bonnie Brook" and she says "When are you going to bring a lawyer up," so I got a lawyer and took him up and had the papers fixed at her insistence and also Erskin's.

Q. And was this deed executed in the presence of the lawyer and the notary public?

A. Notary Public and the lawyer.

Q. You contend that this matter then was brought up before you at least five times before you consented to have it done?

A. That is correct.

Q. At that time, now, Mrs. Luck was not living at the house at all?

A. Mrs. Luck was not living at the house then.

Q. Who was taking care of Erskin and Irene—page 166 } who was there?

A. Mrs. Jennings I think was there at the time.

Q. Is she a housekeeper they employed?

A. That is right, she lived on the place—on the property.

Q. And this deed was properly recorded in the court house?

A. It was.

Q. Mr. Hill, you and your family have been very harmonious?

A. Always very close together.

Q. Were there any bad discords between you that you know of up until this deed was executed?

Cleon W. Hill.

A. There had never been in the family at any time other than that.

Q. And when did the trouble start between you and the other brothers and sisters?

A. After the deed was executed.

Q. Did you go on trips with "C," your sister?

A. I did, to Florida.

Q. When was that?

A. Last of March—last week of March and the first two weeks of April, 1955.

Q. Did you visit quite often and were you frequently with the other members of your family?

A. Always have been.

Q. Now, can you tell the Court something about Mr. Erskin Hill's estate other than the cabin and the land—what other estate has he—is he now possessed of?

page 167 } A. Erskin's estate stands either nineteen or twenty thousand dollars worth of insurance and he has four thousand dollars on the last count, I understand he and Irene explained to me, comes from the N&W at his death,—what that is I do not know—approximately $24,000 in insurance, and the last that I saw of his savings account he had approximately $3,800 on savings.

Q. Did you see the book with Erskin?

A. I did, that was 1956—I have not seen it since then. Then he has his retirement from the N&W and the retirement also from the army.

Q. And that amounts to how much a month?

A. He also has income from property. I don't know the exact figures, but I think it will run more than $500 a month.

Q. Is the owner of an automobile?

A. He owns a Cadillac car.

Q. And the cabin is completely furnished, I take it is it not —has furniture in it?

A. Yes, the cabin is completely furnished, all modern conveniences.

Q. Mr. Hill, your sister "C" has alleged that there existed between her and Erskin and Irene a contract by which they agree to leave her everything that they have in return for her taking care of them; did you know anything about that agreement?

A. I have never heard of a contract.

Q. When was the first you ever heard of it?

Cleon W. Hill.

A. I didn't get the question, are you speaking of the contract?

page 168 } Q. The contract she contends she has that she is suing on today, when was the first you learned there was such a contract?

A. When this suit was filed, she claimed there was a contract; I have never heard of one.

Q. You never knew of any contract prior to that time?

A. None what so ever.

Q. During the time *fromk* 1950 up until "C" moved into the house with Erskin, was she frequently away on trips?

A. Yes, she took quite a few big week ends—anywhere from 2 to 7 days, going to Bluefield, W. Va. to see her friends; she had at least two trips to Florida, a couple Southern cruises, and she was gone for some time to California, Arizona and California.

Q. Now, since she has found out about this deed and called you about it, have you been able to visit whenever you please at the home?

A. I have visited several times, but I have been insulted and ordered out every time that I walked on the property.

Q. Have you seen your brother, Erskin, since that time?

A. Yes, I have.

Q. Is he frequently with you?

A. Has been.

Q. What is the most recent visit you have had with your brother?

A. I would say five weeks ago.

Q. Were you friendly with Irene up until she died?

A. Irene and myself were very close, just like a brother and sister. We were quite fond of each other.

page 169 } Q. Was your wife frequently with Irene and with Erskin?

A. Always has been, yes, very friendly.

Q. Mr. Hill, how long did your brother own Bonnie Brook—when did he buy it, if you know, or approximately when?

A. If I recall correctly the property was bought with partners around May, 1927, and I think Erskin later took over—approximately 30 years.

Q. Have you been a frequent visitor there all during that time?

A. Continuous—in fact, I lived there for month after month.

Q. Have you always had an interest in Bonnie Brook?

Cleon W. Hill.

A. I certainly have, I work and the time I have I put in there.

Q. It is quite a big lot, is it, that the property is located on?

A. Yes.

Q. Is that the yard that you raked the leaves from and cleaned up?

A. I raked the whole place, trimmed flowers, and taken care of it.

Q. Do you know how much acreage is in the lot?

A. Well, as I recall now around 1-7/8 or 1.7.

Q. 1.7 acres?

A. Yes.

Q. At the date that the deed was executed to page 170 } you, do you believe that Irene was in her right mind when that was done, that she knew what she was doing?

A. She certainly was.

Q. Your sister has alleged she was out of her mind or something of that nature; was she sober?

A. She was sober in her last few months. She was unable to swallow because she had cancer of the tongue and she would say "Give me a drink" and then set it down and say "I can't drink it like I used to"—take one *sup;* where she used to take 10 drinks she would only take one, and her mind is just as clear as mine.

By Mr. Smith: Witness with you.

CROSS EXAMINATION.

By Mr. Muse:

Q. Mr. Hill, you lived with your brother Erskin, at Bonnie Brook when?

A. Lived with him?

Q. Before you were married?

A. I did.

Q. Live with him after you were married?

A. No.

Q. When were you married?

A. 1937.

Q. So you have not lived at Bonnie Brook since 1937?

A. No.

Cleon W. Hill.

Q. Well, now, this work you did out there—what time of days or weeks would you do it?

page 171 } Q. On Sundays, over holidays—every holiday.

Q. Was it customary for many of the Hill family to come out to see him on Sunday?

A. Yes, I think we all did.

Q. For years, or certainly since he has been disabled, Mrs. Finley, Mrs. Luck, Mrs. Owen Hill and members of the Hill family went out on Sunday, didn't they, to see Erskin?

A. Yes.

Q. Went most every Sunday, didn't they?

A. Yes, I think they did—not every Sunday, naturally.

Q. Practically every Sunday?

A. Yes, practically every Sunday.

Q. And most of the work you did around there was generally done on Sunday?

A. That is correct.

Q. Don't you think some of those people would have seen you working out there on Sunday?

A. I am sure they would have, if they have not had a lapse of memory.

Q. You have heard them testify?

A. Yes.

Q. And you explain their failing to remember your working out there on Sunday to a lapse of memory on their part?

A. Could be.

Q. How often would you work on Sunday?

page 172 } A. Even last spring I worked every Sunday and quite a few nights until I left the first of July on a trip—last spring—in the spring of '46.

Q. You mean '56?

A. '56—the spring before, quite a few nights. I was putting in a ceiling in the cabin.

Q. What kind of ceiling?

A. Where we were closing it in.

Q. Is that the one Mrs. Luck was talking about?

A. Yes, the same thing.

Q. Same thing?

A. Same thing.

Q. You were helping her, were you not, or she was helping you—both of you working together?

A. We worked together.

Q. That job never was finished was it?

A. Also completely around the room, that was all enclosed and lathed.

Cleon W. Hill.

Q. How big is that room?
A. The room is approximately, I would say, 10 x 12 or 13.
Q. The job you are talking about now is the one Mrs. Luck testified to when she was on the stand about you and she fixing with Celotex?
A. Yes, sir.
Q. And you fixed a railing out there?
A. I put in a post and fixed a railing which had been broken—cracked.
page 173 } Q. And you and someone else—was it your son-in-law, did the painting on the dance pavilion?
A. My wife's nephew—we painted the floor one night.
Q. How long did it take you to paint it?
A. Oh, approximately 2-1/2 hours.
Q. Was he paid for his services?
A. No, sir.
Q. What else did you do out there—what else did you do out there at Bonnie Brook?
A. What else?
Q. Yes?
A. So many small things that you have in a home, you can find so many small things to do. I can elaborate on quite a few of them. I took an old door, made a runway down to take his wheel chair on. The next trip up I brought the rubber matting to put on there to keep from sliding. I put up the post which you mentioned before, I cut the tree down and trimmed it to make the post out of; I went down the fence, the rose bushes were approximately 6 feet thick with 2 feet of leaves completely over the yard. I could not rake in one day's time, I could not rake the place and burn it—that would be a place half the size of this room, which took me approximately I will say one month.
Q. One month how often?
A. Every day—this was not just one time, I have done this every year.
Q. Every day for a month?
A. Yes, I stayed up there while they were in
page 174 } Florida, this is going back to 1953. Every year I have raked this yard, trimmed around it, trimmed the trees, cut down trees where body was dead, pulled them out and had a bon fire.
Q. Is that fall or spring doing?
A. Most of it done in spring—some late fall.
Q. Who cut the grass out there, generally?
A. Who cut the grass?

Cleon W. Hill.

Q. Yes?

A. Last year my son-in-law cut it most of the time and got paid for it, and before that they had a colored man who used to do it. He never worked only cutting around the grass, he was not worth a hurrah. I worked on the other side. I did personally that myself.

Q. And did the work you did out there, the work you did generally was on week end, was not it, would you say?

A. In the spring time when you hit the 30th day of May—I worked all day last 30th day of May, and in the meantime was many odd things to do—I was always doing it.

Q. How often did you go out there?

A. How often?

Q. Yes?

A. I would average once a week or sometimes on an average of four times a week—three and four times.

Q. What years did you average 3 and 4 times a week?

A. Going back that far, I would say past seven or eight years. I didn't average 4 times in the winter time, but in the spring time and summer, I was continuously out there.

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Q. Well, Mr. Hill, you mean in 1956, 1955 and '54 and '53 you were out there three or four times a week?

A. Not in the winter time at all.

Q. All right, excluding the winter time, from the beginning of spring until the end of fall, do I understand you were—

A. Anywhere from 2 to 4 times a week.

Q. And each time you were out there, you would be working?

A. I was out there you might say working around at night time fixing this and fixing that. I sealed in the walls around the inside of the cabin which had rotted out; see, all these things can be done at any time, which I did.

Q. Who would be out there at night time when you were there?

A. Irene and Erskin.

Q. Anybody but them?

A. That was all except through 1956 and 1957 they had a housekeeper who lived in the small cabin.

Q. Would she see you doing all this work?

A. Did who see me doing it?

Q. The housekeeper?

A. Housekeeper was there only a little over one year, 1956 through June of last year—up to the first of June of last year.

Cleon W. Hill.

Q. You would go out generally on Sundays how about Saturdays?

A. I work Saturdays.

Q. You work Saturdays?

page 176 } A. Yes, sir.

Q. So your going would be on Sundays and at night time?

A. That is correct.

Q. Were you ever out there when Mrs. Luck was there?

A. Plenty times, sure.

Q. You have heard these witnesses describe Mrs. Luck's work and services—did they describe it accurately?

A. Yes, sir, they did.

Q. In your answer and I am sure your lawyer based his answer on what you told him, you said "These defendants, in that regard affirmatively allege that the defendants, Cleon W. Hill and Verna S. Hill did in fact, continually render valuable services and assistance to Erskin and Irene Hill over the past ten years, equal to or greater than those rendered by the plaintiff." Do you think that is a correct statement, do you think you rendered more assistance than Mrs. Luck did?

A. It is a correct statement in different ways. Mrs. Luck rendered her services in a different way entirely than from what I did. The work which I did was manual labor, you might say, outside work.

Q. Well, now, Mr. Hill, do I understand you to testify that you knew nothing about the agreement that these witnesses have testified to between Mrs. Luck and Erskin and his wife?

A. I knew nothing about a contract, whatsoever.

Q. Do or did you know anything about an agreement that Erskin and his wife had with Mrs. Luck that if she would take care of them, look after them, she would be

page 177 } entitled to Bonnie Brook and what else they had at her death?

A. I knew of no agreement whatsoever until I had read the wills.

Q. Did you hear it discussed?

A. Never: I knew nothing about it until Mrs. Holloway told me what had happened.

Q. And when was that?

A. In the spring of 1956.

Q. What did Mrs. Holloway tell you in the spring of 1956?

A. About this will which had been made and Mrs. Finley

had explained it to her, and she told me about it.

Q. What did she tell you?

A. She said "I don't see why you are continually doing this work for her because you will never get anything out of it because wills have been made and everything has been left to Mrs. Luck."

Q. That was in when—1956?

A. 1956.

Q. What part of 1956?

A. In April or May when I was working up at Bonnie Brook, she told me standing beside the small cabin in the yard.

Q. April or May of 1956; now did she or Mrs. Holloway tell you why Mr. and Mrs. Hill was leaving their property to Mrs. Luck?

A. No, sir.

page 178 } Q. Didn't tell you why?

A. No, sir.

Q. But told you they had done so?

A. That the wills had been made and everything was left to Mrs. Luck.

Q. Well, now, this deed to you is dated June 5, 1957, I believe?

A. That is right.

Q. So, when this deed was executed you knew that wills had been made by Erskin Hill and his wife leaving whatever they had as you understood, to Mrs. Luck?

A. Yes.

Q. Now, after this deed had been executed, did you discuss with any of the rest of the members of your family the fact you had taken a deed to Bonnie Brook?

A. I did not.

Q. Why?

A. The first thing—I had not thought of it, and none of these wills which had gone on before had ever been discussed or even told to me, whatsoever.

Q. By the way, the Hill family is a pretty close family—you all have been pretty close during the years?

A. No one in the City of Roanoke ever been any closer than we have.

Q. Didn't it strike you it would have been a natural thing, having taken a deed to Bonnie Brook which was

page 179 } the home of your brother, to have discussed it with your sisters and the other members of your

Cleon W. Hill.

family like Mrs. Finley and Mrs. Holloway and Mrs. Luck, and the members of your family?

A. At no time did they ever discuss any of the former operations that went on with me.

Q. So you were taking a deed to Bonnie Brook and it didn't occur to you to discuss it with any of your family?

A. I took the deed to Bonnie Brook because Irene and Erskin wanted me to have it.

Q. But wouldn't it have been natural to have expected you to have discussed that with your sisters and brother?

A. No more so than it would have been natural that they discuss the other matters with me before.

Q. When Mrs. Luck called you and asked you if you had taken a deed to Bonnie Brook—

A. I told her yes.—she called me on the phone.

Q. Didn't she ask you something to the general effect "Why didn't you let them know" or something of that sort—and did you reply "Don't you read the newspapers?"

A. I did not.

Q. Didn't make any such a statement like that?

A. I did not.

Q. What statement did you make then, Mr. Hill?

A. Because I didn't see it in the paper myself and I didn't know how she found it out.

Q. She didn't tell you?

A. She said one of her friends had called her
page 180 } and told her and she said she did not believe it.

Q. What did you say?

A. I said it is true.

Q. Did you go up to her home—at least to Bonnie Brook a short time after that conversation—telephone conversation at which at first Mrs. Luck said you could not come in, and you are supposed to have said "Well, I want to talk to you"—did that happen?

A. I did.

Q. What conversation did you have on that occasion with her?

A. Just as she put it—I told her just quiet down, let's talk it over; if there has been a wrong, I said we will right it. I said let's get it straight.

Q. Did you tell her that you knew you had done wrong—did you tell Mrs. Luck you knew you had done wrong, or words to that effect?

A. No, sir, I still don't think I have done anything wrong.

Cleon W. Hill.

Q. All right, just give us the conversation that you had with Mrs. Luck on that occasion?

A. Give you the conversation concerning what?

A. Concerning Bonnie Brook.

A. Well, we went out on the porch, we talked it over—took me 15 minutes to get her quieted down.

Q. Why was she upset?

A. She thought I had pulled something on her, page 181 } which I had not because it had been deeded to me.

I said, now listen, we will take it this way—I will deed the property to you with the reservation clause that if I outlive you it automatically will be mine, I says you can still have it.

Q. And she wanted you to reconvey it back to Erskin, did she not?

A. After about 15 minutes she kinda agreed to that, or that that would be all right, so two or three days later she had changed her mind and said she was going to see that it was deeded back to Erskin.

Q. On that occasion did she not insist on it being deeded back to Erskin, rather than to her—didn't she insist on you deeding it back to Erskin?

A. She did not insist on that; she agreed on the first talk I had with her sitting on the front porch, that I deed it back to her with the clause in it in case I outlived her that it would automatically be mine.

Q. And you refused to deed it back to Erskin, did you not?

A. She changed her mind, so I didn't go any farther—I refused at the time.

Q. Beg your pardon?

A. I refused because she had changed her mind.

Q. You were unwilling and are unwilling now to deed it back to Erskin?

A. Yes, since it has gone this far.

Q. You didn't pay anything for that property, did you?

A. Five Dollars for a transfer.

Q. You say Irene's mind was perfectly clear on page 182 } this occasion?

A. It was.

Q. Was her mind just as clear as it always had been?

A. I saw Irene, I will say average of five days out of every 7 of last spring, that is at night. I was going up there every night practically, and Irene's mind was just as clear at the beginning as it was at the end—the last time I saw her.

Cleon W. Hill.

Q. You heard Dr. Hurt testify this morning?
A. I did.
Q. Do you think he is mistaken as to her mental condition?
A. Dr. Hurt had not seen her at this time, and he testified as well as I remember that after she was—just before she was taken to the hospital—
Q. That may be your recollection of it, but to you her mind was perfectly clear?
A. To me her mind was clear.
Q. Who took the lawyer up there?
A. I did.
Q. Whom did you take?
A. I took Bob Guerrant was the lawyer and his secretary is a Notary Public and my wife.
Q. Was that in the day time or night time?
A. That was at night time.
Q. What time of night was it?
A. As well as I remember, I picked them up in town and brought them up in the car, as well as I remember about 8 o'clock—we must have been up there about 8:30.

page 183 } Q. Was the housekeeper there at the time—was anybody there except Erskin and Irene?

A. If the housekeeper was there—Mrs. Jennings—she was in her own apartment, the small house in the back.
Q. She spent the nights there—Mrs. Jennings?
A. Mrs. Jennings spent the night out in the small cabin.
Q. You didn't see her that night, did you?
A. I don't recall whether I saw her or not. Mrs. Jennings never did sit around with the family; usually when they got to talking she would get up and leave.
Q. Well, now, where did Mr. Guerrant get the description for the deed, was the deed signed that night?
A. Yes, yes, transferred over.
Q. Had he already drawn the deed?
A. Yes.
Q. Had he already drawn it?
A. Yes.
Q. Who gave him information to draw it?
A. Got it from the courthouse here.
Q. Who gave Mr. Guerrant the information about the fact Mr. and Mrs. Erskin Hill wanted to convey this Bonnie Brook to you?
A. I gave him the information.
Q. You told him the terms of it?
A. That is correct.

Cleon W. Hill.

Q. And asked him to draw it?

A. That is correct.

page 184 } Q. And he drew it, he actually drew it before he ever saw or talked with Mr. and Mrs. Erskin Hill, did he not?

A. We had been up before.

Q. Who is that?

A. The same four of us.

Q. I didn't know about that, tell us about that?

A. We had been up before.

Q. When?

A. This was approximately one week before this deed was signed.

Q. Who had been up there?

A. The same four.

Q. What was the occasion of that trip?

A. They had company this night, we were going to talk it over, and Irene knew what we were there for and Irene laughed about it and *sye* says "Well, come back later on."

Q. So the first trip you didn't talk with them about the deed?

A. Didn't.

Q. Did they have the deed with them the first trip—deed had already been written?

A. Yes, sir.

Q. Am I correct in understanding this, that you gave Mr. Guerrant the information that you wanted in the deed—the information about the deed, and that his Notary Public—did she work for him?

A. I understand she did.

page 185 } Q. And you and your wife—the four of you—came out that night to the Hills?

A. Correct.

Q. And they had some company—who was there, do you remember?

A. Mrs. Luck was there.

Q. Mrs. Luck was there that night?

A. Yes.

Q. And nothing was said—was there anybody else there except Mrs. Luck—was anybody else there that night except Mrs. Luck?

A. I am trying to recall; it seems as though someone else was there, but I can't say who they were, I don't know.

Cleon W. Hill.

Q. And there was no conversation about the deed in front of Mrs. Luck?

A. No, because there was company there, but I don't recall who it was.

Q. Are you certain there was other company there?

A. Positive.

Q. But you don't know who they were?

A. Just trying to think (witness hesitates)—no, sir.

Q. Certainly you said nothing to Mrs. Luck about why you were there?

A. No, sir.

Q. Then you came back about a week later?

A. Yes.

page 186 } Q. And that was when the deed was signed?

A. That is correct.

Q. And acknowledged. I think I recall your saying that Mrs. Irene Hill said that they were dissatisfied—what were they dissatisfied about?

A. Irene made the remark that they had messed themselves up by leaving everything that they had in the will like they had, and she says "I have been sorry of it ever since" and she says "I would like to make some changes."

Q. What other change did she want to make?

A. She insisted that we make a complete new will, which I told her I would not do because under the condition Mrs. Luck was to receive the estate, and she deserved the income, but she said "Well, Bonnie Brook"—she says "I have always wanted you to have Bonnie Brook" like that and Erskin says "Yes, yes, yes" and so after insistence we had the papers made up.

Q. Go back for me again—maybe I didn't quite catch it—what was it you said about they wanted to make a new will and you didn't want them to do it—for what reason?

A. Because Mrs. Luck was taking care of them and going up and back—they wanted me to make a complete will and take over everything.

Q. And you would not do it for what reason?

A. Because I told them Mrs. Luck was coming up and helping them and all that, and she says "I want you to have Bonnie Brook."

Q. I thought you said a few minutes ago—may-

page 187 } be I am wrong—something to the general effect you told them you would not make a new will because Mrs. Luck—

A. Because she deserved some of it.

Cleon W. Hill.

Q. Why did you think she deserved some of it?
A. Because she had been going up there. I think Mrs. Luck spent a lot of time up there.
Q. You say Mrs. Luck deserved some of it and still you didn't know anything about any agreement whereby Mrs. Luck was to get anything?
A. At this time through the will which had been told me I knew about the agreement.
Q. What agreement?
A. That the will was leaving everything to her.
Q. Why—why were they leaving everything to her?
A. It was never explained to me, I had never read the will at that time.
Q. You assumed they were leaving everything to her because of the work she was doing for them?
A. I imagine so—maybe just for the love of it, maybe they just loved her that much, I don't know.
Q. Mr. Hill, you really knew and believed—did you really believe that that will was made as you were told, leaving everything to Mrs. Luck because of what Mrs. Luck was doing for the Hill's—did you?
A. What Mrs. Luck was supposed to do for them—knew that?
Q. You knew that?
A. Knew that—yes, I knew that.
page 188 } Q. How did you know that?
A. It had been explained to me.
Q. What was explained to you?
A. Mrs. Holloway had told me the contents of it to that extent.
Q. That Mrs. Luck was to take care of them in the future?
A. I think that is the way it was.
Q. That is what you understood Mrs. Holloway to say?
A. I believe that is the way I understood it.
Q. So, in effect, Mr. Hill, you understood from Mrs. Holloway, that Mr. and Mrs. Erskin Hill had made wills leaving, as you understood from Mrs. Holloway, everything they had to Mrs. Luck, and that Mrs. Luck was to take care of them thereafter as long as they lived; you understood that, didn't you—you just said that, have not you?
A. I think so—right.
Q. And you understood all of that before you ever took the deed to Bonnie Brook, didn't you, because Mrs. Holloway's conversation was with you in 1956?
A. That is correct.

Cleon W. Hill.

Q. And when Mrs. Irene Hill wanted to make an entirely new will, did she tell you what she wanted to put in it?

A. She did not; I didn't go into the details about it because I refused it.

Q. You refused to have any part of it?

A. Yes.

page 189 } Q. And because you remembered what Mrs. Holloway had told you, didn't you?

A. I didn't think of it that way.

Q. You refused to have anything to do with a new will because of what Mrs. Holloway had told you, didn't you—is that the reason you didn't have anything to do with a new will?

A. I don't know whether that would or not. I think the reason why I refused it for the simple reason that—well, I would not know how to put that myself.

Q. I sure can't do it for you.

A. That is correct, you can not. I guess just like I repeat—I think Mrs. Luck had performed certain duties up there and was entitled to a part of it.

Q. Why were you willing to deed Bonnie Brook back to Mrs. Luck at first, deed Bonnie Brook to Mrs. Luck, if she would leave it to you at her death?

A. Because my family had been very close together and Mrs. Luck and myself have been unusually close together. I felt if I had done something to harm Mrs. Luck that I would deed it back to right the wrong which had been done, and after Mrs. Hill—Irene Hill and Erskin Hill said they wanted me to have it—always wanted me to have Bonnie Brook, that I would keep down an argument or any trouble in the family if I would deed it back to her under that condition.

Q. But you weren't willing to deed it back to Erskin Hill?

A. I was until she started all of this.

page 190 } Q. What do you mean "until she started all of this"?

A. She insisted the first week that she had already gone to the lawyer, so I said all right, if you have changed your mind, I can, too, and also I will not deed it back.

Q. Were you ever willing to deed it back to Mr. Erskin Hill—Bonnie Brook?

A. Not after it had been given to me.

Q. That is what I thought.

A. The will—

Q. After you once got the deed in your possession you

were never thereafter willing to deed it back to Erskin Hill, were you?

A. I asked Erskin in front of Mrs. Luck, I said "Do you want me to deed this property back to you" and he says "No, no, no" and hit his chest.

Q. You did that in front of Mrs. Luck?

A. I certainly did.

Q. Who else was present—anyone else present except you and Mrs. Luck?

A. My wife.

Q. Just the three of you?

A. The three of us and Erskin.

Q. You didn't see Erskin yesterday?

A. Yesterday?

Q. Yes, sir.

A. I did not.

page 191 } By Mr. Muse: I didn't think you did; I think that is all.

By the Court:

Q. Just a minute, Mr. Hill—I don't quite understand this evidence of yours in regard to the will of Erskin Hill. You say this is your signature, but you have no recollection of signing it?

A. I have no recollection of signing that any place or at any time or before anyone; that is my signature.

Q. And you have no recollection signing it in the presence of Audrey O. Hill, W. L. Holloway and Erskin L. Hill?

A. I certainly have not.

Q. Do you think someone put your name on this document?

A. No, that is my name, I signed that paper. In my family I never ask questions because my family has always been very close together.

Q. One of the questions that would be asked you should this will be probated would be did you sign it and did you sign it in the presence of the testator, Mr. Erskin L. Hill and the other two attesting witnesses; what would your answer be?

A. My answer I don't recall signing that at any time in the presence of any of those.

Q. Now, then another question—as I understand your evidence Mrs. Irene Hill and Erskin L. Hill both wanted you to have Bonnie Brook?

A. That is correct.

Cleon W. Hill.

Q. Then why did you have the deed prepared to you and Verna S. Hill as tenants by the *entirities,* so in page 192 } case you didn't live, she would get it—your wife?

A. They insisted that they always wanted me to have it, and they said Jackie.

Q. Oh, but that is the first time you mentioned Jackie—is just now.

A. Jackie is my wife.

Q. But heretofore you have been talking about they wanted you to have it?

A. That is correct.

Q. But the deed is prepared—

A. In the name of the two.

Q. To either one of you that outlives the other, isn't that correct?

A. Yes, sir.

By the Court: All right.

By Mr. Muse:

Q. Mr. Hill, this will that you signed—Erskin's will that you signed, you have absolutely no recollection of the occasion at all of your signing it?

A. I do not.

Q. You don't remember anybody who was present, or anything at all?

A. No, sir.

Q. In other words, you mind is blank so far as this will is concerned?

A. I have signed papers, I am sure, for Mrs. Luck before, on maybe one or two other occasions, and the page 193 } family being so close together, I never asked questions. I would have done so for Erskin or Irene, or anybody else in the family at any other time without reading the document.

Q. And you didn't know it was a will being signed?

A. I did not, sir.

Q. As a matter of fact, you have no recollection of it at all?

A. I have no recollection of that.

Q. I show you what purports to be the original will of Erskin Hill—

By Mr. Smith: Is it any different than the copies you have introduced?

Cleon W. Hill.

By Mr. Muse: No, this happens to be the original.

Q. That is in fact, your signature?
A. That is my signature.
Q. Isn't the slightest doubt about that?
A. No doubt about it.
Q. That is your writing, is it not?
A. Yes, sir.

By Mr. Smith: He has not denied that—the third time he has admitted it, I think.

Q. In other words, you admit that is your signature?
A. That is correct.
Q. And you made it?
A. That is correct.
Q. You have no recollection of making it?
page 194 } A. No, sir.
Q. Let me see if I can refresh your memory in this respect, Mr. Hill. Do you remember Mr. Holloway—you know Mr. Holloway, of course—he is your brother-in-law?
A. Yes.
Q. Well, his name is likewise signed to this will—are you acquainted with his signature—do you know his signature when you see it?
A. I don't think I would.
Q. If this will is signed by you and Mr. Holloway and Mrs. Owen Hill in the presence of Mrs. Lucy and Mrs. Irene Hill—Erskin's wife—don't you think you would have remembered?
A. I certainly do because I don't even recall of ever signing any papers in front of Irene L. Hill or these people you mention.
Q. Would it refresh your memory any if I asked you if Mrs. Irene Hill didn't read this will to her husband, explain it to him and ask him if that is what he wanted after which the three of you signed your name—does that refresh your memory?
A. Not in front of me, the will has never been read to me.
Q. If you, as you admit your signature is on this will along with other people, if you have no recollection whatever of even signing it and no recollection of anybody else being present, isn't it equally as likely that you would forget, you would forget signing it, that you would forget the
page 195 } other people who might have been present at the time?

Cleon W. Hill.

A. I don't think so.

Q. How do you account for that fact that your name is on that will?

A. I am sure I have signed papers before. I will give you an incident. I was in Mrs. Luck's bedroom one night and she says "I have some papers that I want signed, want to get signed, and I need a witness—will you sign it" and I says certainly and I walked to her dresser, put my signature on it lying on her dresser and didn't read the papers.

Q. Do you remember signing it, though?

A. That paper, yes, I don't know what it was.

Q. But you do remember signing it?

A. That one paper.

Q. But here is a will that you have no recollection whatever of ever putting your name on?

A. That is correct.

Q. You don't remember Mrs. Irene Hill reading this will to her husband?

A. At no time was any will ever read in front of me.

Q. You don't remember Mr. Holloway being present if he were present?

A. No, sir.

Q. Nor Mrs. Luck?

A. No, sir.

Q. Nor Mrs. Owen Hill?

A. I do not.

page 196 } Q. If all those people were present, do you think you would have forgotten it?

A. I think I would have recalled it.

By Mr. Muse: That is what I would think; I think that is all.

Witness stands aside.

By Mr. Smith: May it please the Court, we have finished with the witnesses which we have—we would like to call Mr. William N. Pierce, who has already been mentioned in the evidence, tomorrow morning at 9:30 and that should conclude the taking of the defendant's testimony. If Mr. Muse wants to go ahead on any rebuttal, we can take it now, or wait until tomorrow.

By Mr. Muse: I will go ahead with some now; I have one witness, Mr. Holloway, he is a teacher—I think it will be more

convenient for him to come a few minutes in the morning than today because he can't get here Judge, until after 4 o'clock; that would wait we would have to wait for him to come.

By the Court: Do you have any other rebuttal witnesses that you can put on—if you would like to do that—with that understanding it will be out of order to that extent.

By Mr. Muse: Yes, your Honor.

The following evidence was introduced in Rebuttal:

MRS. CECELIA LUCK,

recalled.

DIRECT EXAMINATION.

By Mr. Muse:

Q. You are Mrs. Luck, the plaintiff in this case?

page 197 } A. Yes, I am.

Q. Now, Mrs. Luck, were you present when Erskin Hill signed his will?

A. Yes, I was.

Q. Explain to us the circumstances—who was present, and what was done?

A. Mrs. Hill read the will to Erskin and I had previously read it to him and we both had explained it to him, but after the witnesses arrived, Mrs. Hill—

Q. What Mrs. Hill now?

A. Mrs. Irene Hill, Erskin's wife, read the will to everyone present, and when she finished she turned to Erskin and said "Is this the way you want it" and he said "Yes" and Irene said "Is this in accord with everyone of the witnesses here" and the witnesses said "Yes" and then they signed it.

Q. Was Cleon present?

A. Cleon was present.

Q. Who all were present?

A. Mr. Holloway, Mrs. Holloway—she was not a witness but she was in the room, Erskin and Irene, and Mrs. Audrey Owen Hill and Cleon.

Q. When did the witnesses sign their names on that occasion?

A. On that occasion after the will was read to every one.

Q. When did Erskin sign his name?

A. He signed it in the presence of everyone.

Cecelia Luck.

Q. Anyone help him sign his name?

page 198 } A. Irene directed his pen—you have to do that when he writes an "X"—you have to hold his hand and help him make an "X"; she held his hand when he signed his name.

Q. Is he able to write without help?

A. No, not at all, no.

Q. Mrs. Luck, Mr. Cleon Hill as I recall, testified in effect that he offered to convey the property to you—Bonnie Brook, I mean, if you would agree it would go to him at your death, is that a correct statement?

A. That is correct, yes, he said "I have done wrong, but to make it right with you, I will deed Bonnie Brook to you if you will will it to me" and I immediately said I don't want you to deed Bonnie Brook to me, I said if I would do that, I would be as guilty as you—I want the property to go back to Erskin.

Q. When you were on the stand this morning, you made some statement to the general effect that Erskin's wife—Erskin and his wife, could give Bonnie Brook to whomever they wanted; did you make such a statement?

A. Please repeat that.

Q. When you were on the witness stand this morning did you make a statement to the general effect that Erskin and his wife could give Bonnie Brook to whomever they wanted?

A. After they made the will and after I agreed to devote my life to them, I did not expect them to give Bonnie Brook or anything they had, other than to me; that is the reason I stayed in Roanoke to take care of them—I certainly didn't expect them to give any part of the property to

page 199 } them.

Q. What was your understanding, or did you have any understanding or belief, if you didn't perform your duties—if you didn't take care of them according to your agreement?

A. We didn't discuss what would happen if I didn't take care of them because they were so sure I would take care of them we didn't discuss what would happen if I didn't.

Q. Do you know what would have happened if you had not taken care of them?

A. No, I don't know what they would have done if that is what you mean. I was the only one available to take care of them; it is most difficult to get anyone to take care of two invalids.

Cecelia Luck.

Q. Would you have stayed in Roanoke and performed your services that you have performed and given up your intention to move to Florida in the absence of the agreement you testified to?

A. No, sir, I would have gone to Florida if they had not promised that if I would take care of them they would leave me everything they had; I was looking out for my future one way or the other, and while it has been the most difficult task anyone ever had, I can certainly say I have fulfilled it.

Q. Mrs. Luck, what is Erskin's present health condition other than his inability to walk and talk?

A. He is in excellent health; he feels well, he enjoys life; I take him driving at least three times a week.

Q. This condition that he has today—is it any worse than it was shortly after he had this hemorrhage?

A. No, his condition is not worse.

page 200 } Q. Do you have any reason to believe he is going to die any time soon?

A. Not the slightest, he gets more out of life more than anyone I know—he enjoys everything that we do together.

Q. Mrs. Luck, you, of course, have heard Cleon testify?

A. Yes.

Q. That the first he knew about the will, etc. was from Mrs. Holloway in 1956, is that correct?

A. No, I discussed it with Cleon at length as I discussed it with every member of my family because I was undecided about what I should do and whether I wanted to do it—I did not know whether I wanted to give up my life for two invalids, or whether I wanted to be out on my own and make a life for myself; I discussed it with Cleon.

Q. Is there any doubt in your mind about that?

A. There is no doubt whatsoever, none whatsoever.

Q. Do you know when you discussed it with him?

A. That was after Irene and I had the conversation about when she cried and begged me not to leave, she said I was the only person they had to depend on.

Q. Was the conversation with Cleon in which you made a report—was that before or after the wills were drawn?

A. That was before the wills were drawn, but I was discussing it with every member of the family whether or not I should take over the responsibility.

Q. Or go to Florida?

A. Or go to Florida.

page 201 } By Mr. Muse: I think that is all.
By Mr. Smith: No questions.

By the Court:

Q. As I understand it you are now living at Bonnie Brook with Mr. Erskin Hill?

A. That is right.

Q. And that you take him riding several times a week and that he is in good health?

A. He is in excellent health.

Q. Why wasn't he here today?

A. He is in a wheel chair—there was some debate, I do not know why he was not brought in. I told Mr. Smith yesterday if he wanted him, I would arrange to have him come in—he has to be carried in a wheel chair everywhere he goes.

Q. There was no particular reason except for carrying him in a wheel chair?

A. I had nothing to do with that.

Q. I thought being in charge of him, or taking care of him, you would be the logical person to ask?

A. I told Mr. Smith I would arrange to bring him down here if he would arrange to bring him up here—if he wanted him, I told him I would have to bring him early, he could not stay all day—he sleeps a great deal.

Q. Had he been here, he could have understood, as I understand from you, all of the evidence that has been given?

A. If you talk very slowly and there is no commotion or confusion, he can understand.

page 202 } By Mr. Smith:

Q. Mrs. Luck, you have to direct your questions to him, do you not, to make him understand?

A. That is true.

Q. He could not stay out here in the court room and have any appreciation of what is said?

A. That is what I said during the confusion.

By the Court: I thought some explanation should be in the record.

Witness stands aside.

MRS. GERTRUDE JENNINGS,

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

Gertrude Jennings.

DIRECT EXAMINATION.

By Mr. Muse:

Q. State your name, please?

A. Mrs. Gertrude Jennings.

Q. How old are you?

A. Fifty-one.

Q. Do you know Erskin Hill and his wife?

A. Yes, sir.

Q. How long have you worked out there?

A. I am not working there now; I worked from the spring—early summer of 1956 until around the last of May or 1st of June, 1957. I did not know either one before I went there.

Q. In other words, you went there in the spring of 1956 and left in the spring of 1957?

A. Yes, or early summer—somewheres—I don't

page 203 } remember the date.

Q. Do you know Mr. Cleon Hill?

A. Yes, sir.

Q. How often did he come while you were there—how often?

A. When they were fixing up the little cabin for us to live in, he came out there several times a week and helped Mrs. Luck with it.

Q. Helped who—Mrs. Luck, you say?

A. Yes, then after that they came occasionally out there at nights and on Sunday—oh, several of the family would come out and sometimes they came and Mr. and Mrs. Holloway would be there, and sometimes would be nearly all out there.

Q. How many times a week would you say Mr. Cleon Hill came out there while you were there and worked?

A. I would say Sundays were my day off unless it was some special reason.

Q. I am talking about other times than Sunday?

A. He would come out occasionally at night and fix some little things that needed fixing, and some of the other family did the same thing.

Q. Mr. Holloway?

A. Yes and Mr. Finley.

Q. Mr. Finley?

A. Yes.

Q. Was there any difference really between what Mr. Hollo-

way did and Mr. Finley did and what Mr. Cleon
page 204 } Hill did?

A. Well, for instance, one fixed the stove in the cabin, the other one put in the shower—that was Mr. Finley and Mr. Holloway, and Mr. Cleon then helped fixing up with the room and he came out there sometimes and helped with the yard occasionally. As I say most of the time I think most of them came on Sundays and I was not there—*may* day off.

Q. Were you there at the time Mrs. Irene went to the hospital when she died?

A. When she died, or at Charlottesville?

Q. When she died?

A. No, I had asked to leave because I wanted to come into Salem for my boy to go to high school.

Q. What time did you leave?

A. It was, oh, sometime around the middle of June, I believe. I had a chance to get an apartment.

Q. June, 1957?

A. Yes.

Q. What was her mental condition—Mrs. Irene Hill?

A. She got to the point where she would imagine—for instance, Mr. Hill had a TV and she would yell out to cut that thing off where I can't hear it, or cut it off when he would be in another room and didn't have it on and imagine other people would be in the room talking—would call me "Jenny, who is that in there" and I says not a soul in the world. She would imagine, for instance, Dr. Hurt when he come out, she would name off a long list of food she had not touched a
mouthful of good—she would say she had eaten
page 205 } it—and I would say I can't get her to eat a thing.

Q. What month was that in?

A. Well, she never did exactly eat a good meal the whole year I was there.

Q. I am talking about her imagining things?

A. A few months before I left—I say along in the spring and early summer.

Q. Not too long before you left?

A. That is right.

Q. Of 1957?

A. Yes.

By Mr. Muse: Take the witness.

Audrey Hill Finley.

CROSS EXAMINATION.

By Mr. Smith:

Q. Was this condition you describe going on every minute or was it just an occasional thing?

A. No, it would be now and then.

Q. But most of the time she was lucid?

A. And sometimes she would mumble—talk to herself.

Q. That was just occasions that you would notice?

A. She would simply go and come as far as I can tell—I don't know too much about anything like that.

Q. When she was not under these illusions, she would be all right?

A. At times she talked sensibly, at times—and sometimes she was just silly.

Q. Was she drinking?

A. Strange thing, she would never drink before me. Now, I never drink or smoke—she referred to it one time and said "I am ashamed of this, that is why I didn't want you to see me do it."

page 206

Q. In other words, she was drinking, but didn't want you to see her?

A. No, she did not want me to see her.

Witness stands aside.

MRS. AUDREY HILL FINLEY,

recalled.

DIRECT EXAMINATION.

By Mr. Muse:

Q. You are the Mrs. Finley who testified this morning?

A. Yes.

Q. Did you have any discussion with Cleon as to his signing Erskin's will as a witness?

A. Yes, we discussed it and I said "You sign the will" and he said "Yes, I did."

Q. When was that?

A. That was a short time after it was drawn up.

Q. What else did he say?

A. And I said did you read it, he said "No, I didn't read it," but he said "I signed it."

Audrey Hill Finley.

Q. Did you ever have any discussion—any discussion of the contents of the will in the presence of Cleon?

A. Yes, we have—we all discussed it—*avout* everything being taken care of and drawn up in this agreement and the will with brother and Irene so that Mrs. Luck
page 207 } would carry the responsibility and care of them. We discussed it with Cleon, discussed it with all the family—he definitely knew it.

CROSS EXAMINATION.

By Mr. Smith:

Q. You mean he knew the existence of a contract?

A. He knew the existence of a contract.

Q. He knew probably the existence of the will—that is what you discussed with him, wasn't it?

A. Call it will or contract, or whatever it is.

Q. Anyhow, you talked to him about what was in the will and what was provided, did you not?

A. Yes.

Q. Did you read it in his presence?

A. I was not with them when they signed it; I read the will later—I was not there when it was drawn up—I was not there when it was signed.

Q. Where did you read it?

A. I took them to the bank as I stated this morning, that is when Cleon said I found them in the car. I did not find them in the car—I had them in the car and I drove them to the bank and I read it before we got down there and I circled around and picked them up later.

Q. What did you do—stop and read it?

A. I read it before we got down there, before we started out.

Q. Before you left home you read it?

A. Yes.

Q. You knew what was in it?
page 208 } A. Yes.

Q. And you say you discussed it with Cleon?

A. Yes.

Q. Did you tell him what was in the will?

A. I said everything has been willed to C, including Bonnie Brook, and she gets it for the services she is going to render Erskin and Irene during their lifetime.

Q. It didn't say that in the will?

A. Maybe it didn't say it in the will—*ay* I put it in my words.

Audrey Owen Hill.

Q. But he told you he did not even read the will, didn't he?

A. I asked him did he read the will and he said "No, I didn't read the will." Why wouldn't he read it?

Q. That is what I want to know—why was it necessary to ask him when you knew he was a witness on it and these other people said they read it in his presence?

A. If I signed my name to something, I would definitely want to know what I was signing—I think most people do.

Q. You misunderstand what I say— these other ladies say it was read out loud in front of everybody?

A. In front of everybody that was there—witnesses to the will.

Q. That would include Cleon?

A. Yes.

Q. And you knew he was a witness?

A. Yes, I knew he was a witness.

page 209 } Q. Because you read it, too?

A. Yes.

Q. Later on you came in and asked Cleon about it and he says "I have not read it"—did you explain what was in it?

A. He was bound to have known what was in it if it was read at Bonnie Brook when they all signed it.

Q. That was before any trouble came up?

A. That was.

Q. Didn't he tell you then "I signed it, but I didn't read it" and you explained what was in it?

A. Not word for word.

Q. Generally what it was all about?

A. That is right.

Q. He would not have wanted it explained to him if he had read it?

A. You ask him.

By Mr. Smith: That is all.

Witness stands aside.

MRS. AUDREY OWEN HILL,

recalled.

DIRECT EXAMINATION.

By Mr. Muse:

Q. State your name please?

Audrey Owen Hill.

A. Audrey Owen Hill.

Q. Are you one of the witnesses to Erskin Hill's will?

A. Yes, I was, that is right—that is my signature and I was in there when Irene and Erskin and I think

page 210 } Mr. Holloway, I am sure he signed after me, and we had a bridge table and this was all signed—I knew the contents of the will but I didn't pay much attention to what was done about it, other than I remember perfectly Irene saying to Erskin "Now, this is what you want, Erskin —this is what you want" and he says "Yes, yes, yes" and he looked very relieved over it that it was all settled and we all signed it, but as far as remembering anything else much about it, I don't.

Q. Was Cleon there?

A. I think he was.

Q. Did he sign it?

A. I think all three of us signed together—if I were allowed to ask him, I would ask him—it seems to me I signed and Bill Holloway signed right under me, and Irene and Erskin sat right at the table—that is at the time it was signed, we had a bridge table and I was quite aware of the contents in it—I knew exactly what it was all about and why I was there to sign it.

Q. Were you there for the purpose of signing it?

A. Yes, I was—I knew what it was—what it was all about—what we were doing so we would all be relieved of the responsibility of Erskin and Irene.

Q. Your recollection is Cleon was there?

A. I thought so—I thought so. I can remember perfectly of seeing Irene and Erskin and Bill and I was sitting here and we all signed, and the last thing she said over again was "Now, this is what you want, Erskin, this is what you want" and he said "Yes, yes, yes."

page 211 } Q. Do you remember in what order you signed or not?

A. It seemed to me that Mr. Holloway signed after me.

Q. Mr. Holloway signed after you?

A. Mr. Holoway signed after me, I think that is the way it is on the will; really, Mr. Muse, I can't say that I remember about these things—I don't have a very good memory any way, and those things passed out of my mind, but I definitely remember—

By Mr. Muse: That is all.

Audrey Owen Hill.

CROSS EXAMINATION.

By Mr. Smith:

Q. That has been about 6 years ago?

A. That has been probably—was it in 1953?

Q. You are there real often as many of the family?

A. I work, I don't get there very often.

Q. You go week ends in the summer?

A. Yes, spend weeks up there and spend week ends up there.

Q. On this particular occasion were there a group of people there and these witnesses selected out of the group, or were you the only ones there?

A. As I remember it Erskin, Irene and Bill Holloway and my husband might have been there—now, I don't remember for sure, and I was there, and I think Cleon was there, but I actually must admit I don't remember whether my husband was there or not, but I do remember we were all at the table at the same time and the will was discussed.

Q. You say you knew what was in the will?

page 212 } A. I certainly know the contents of the will.

Q. Before you signed it?

A. I certainly did, it was talked over at home before I went up there to sign it, but it was a great relief to all of us to realize somebody would be able to take care of Erskin and Irene.

Q. Yes, I am sure it was—you have no actual independent recollection of Cleon being there at that time?

A. I can't say positively that he was there, but it seemed like to me that maybe he took me over there—I don't remember. If he didn't, then I don't remember how I got there.

Q. You didn't go with Mr. Holloway?

A. I don't remember my husband being there.

Q. Did you go with Mr. Holloway, perhaps?

A. I might have.

Q. Do you remember his specifically being there?

A. Yes, I do—I think he was there; no, I won't say I remember specifically, but of all of us there, I do remember Mr. Holloway signed it, and I am almost positive I remember that Cleon signed; I am almost positive.

Q. Let me ask you this—were there some high balls served that evening?

A. No.

Audrey Owen Hill.

Q. None at all?
A. No, I didn't stay that long.
Q. Irene didn't sign anything, did she?
A. She helped Erskin sign.
page 213 } Q. She did not have to sign her will?
A. I don't know whether she signed any; no, no highballs were served, I came right in attended to that business, stayed a short while and talked and left.
Q. There was no lawyer there, or anybody to instruct you on how you should do, or what you should do?
A. No.
Q. Just the members of the family?
A. No, the family knew what it was about.
Q. I am talking about the execution of the will—there was no professional there to show you how to sign the will or tell you how to do it?
A. No.
Q. Do you know there are right strict rules about signing wills?
A. No, no, I thought witnesses should sign a will without knowing anything about the will.
Q. No one attempted to instruct you where you should be, and what you should say, or anything of that nature?
A. No, indeed.
Q. Did you read the attestation clause of the will?
A. No, I could have read everything in it, but wills to me are a whole lot of parties of the first part and parties of the second part and third part, and I am sorry to say I was not interested in anything but seeing it was all done so we would not have the responsibility of it.

page 214 } By Mr. Smith: That is all.

Witness stands aside.

By Mr. Muse: We rest for the time being.
By the Court: Any further evidence today?
By Mr. Smith: No, sir.
By the Court: Adjourn until 9:30 tomorrow morning.

Court is reconvened at 9:30 A. M. May 9, 1958.

MORNING SESSION.

Rebuttal evidence continuing:

MR. WILLIAM OSCAR HOLLOWAY,
a witness of lawful age, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Muse:

Q. State your name, please sir?

A. William Oscar Holloway.

Q. What do you do?

A. Teach school—vocational school Jefferson High School.

Q. How long have you been teaching in Jefferson High School?

A. Eighteen years.

Q. Are you the husband of Mrs. Holloway that testified yesterday?

A. Yes, sir.

Q. As such you are the brother-in-law of Erskin Hill?

A. Yes, sir.

page 215 } In other words, you married *Buelah* Hill?

A. Yes, sir.

Q. Your name appears as a witness to Erskin Hill's will. I show you, Mr. Holloway a will dated September 23, 1953, to which the name of Erskin L. Hill is signed to it, and witnesses Cleon W. Hill, Audrey Owen Hill and W. O. Holloway and ask you if that is your signature?

A. Yes, sir.

Q. Did you make it?

A. Yes, sir.

Q. Will you explain to the Court the circumstances under which this was done—just explain what was done, and where, etc.?

A. Mrs. Luck called Mrs. Hill—Mrs. Audrey Hill and myself there and wanted us to come up there and witness the will—we were at home and I took Mrs. Audrey Hill in the car and she and I went up there, and Mr. Hill—he was sitting there—we got up there first, and I sat there a while—they were talking—I read the will—I can't remember what was in it now, exactly, but I remember reading it and we was waiting on Mr. Hill to come up there.

Q. What Mr. Hill?

A. Mr. Cleon Hill, the one that witnessed it, and when he got there, we signed it, and then I left right after that—Mrs. Audrey Hill and myself left and come on home.

Q. Did Mrs. Irene Hill make any statement?

A. Well, at the time before the will was signed she asked

Erskin there if that was the way he wanted it and he said "yes, yes, yes" just like that.

page 216 } Q. You think he understood what he was doing?

A. I think so, I think he understood that as well as he does anything else.

By Mr. Muse: Take the witness.

CROSS EXAMINATION.

By Mr. Smith:

Q. Mr. Holloway, were there other people there besides the ones you have named?

A. There was Mr. and Mrs. Erskin Hill and Mrs. Audrey Hill, and myself and Cleon is all that I remember that was there.

Q. All you remember was there—if anybody else was there you don't know?

A. If anybody else was there I can't remember them.

Q. Do you remember Mr. Hill signing the will?

A. We all signed it there.

Q. Did Mr. Erskin Hill sign it in your presence?

A. No, *hd* did not sign it in my presence, his signature was on there.

Q. Are you sure Mr. Cleon Hill was there—you are pretty sure he was there?

A. Yes, I sat there and read the will and we *waiting* until he came up.

By Mr. Muse:

Q. Was Mrs. Luck there?

A. Oh, yes, I forgot her—she was there—I remember that.

Witness stands aside.

page 217 } By Mr. Muse: We rest.

The following evidence was *officered* on behalf of the Plaintiff:

MR. W. N. PIERCE,

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

W. N. Pierce.

DIRECT EXAMINATION.

By Mr. Smith:

Q. You are Mr. William N. Pierce?

A. That is correct.

Q. In what profession are you engaged?

A. I am an attorney.

Q. I believe you are in the partnership of Hopkins & Pierce, is that correct?

A. That is correct.

Q. And your offices are in the City of Roanoke?

A. They are.

Q. Mr. Pierce, what particular branch of the law do you and Mr. Hopkins engage in?

A. Generally tax practice, tax planning—budget planning.

Q. The firm specializes in estate work and taxation, is that correct?

A. That is correct.

Q. Mr. Pierce, how long have you and Mr. Hopkins been in partnership?

A. A year and five months.

Q. Prior to your going into partnership with Mr. Hopkins, whom were you engaged with?

page 218 } A. Trust Officer at the Colonial American National Bank in Roanoke.

Q. How long were you the trust officer at the Colonial American?

A. Four years.

Q. Were you the Trust officer in the year 1953?

A. Yes, I was.

Q. I direct your attention to the month of September, 1953, and ask you if Mrs. Cecelia Luck and Mrs. Irene Hill came into the Trust Department of the Colonial Bank for the purpose of having some estate matters settled?

A. Yes, they did.

Q. And were they referred to you as Trust Officer of the bank?

A. Yes, they were.

Q. Did you take notes of the interview that you had with them?

A. I made some notes and a memorandum of what their desires were.

Q. Is that a common practice in the Trust Department when people ask for advice?

A. Yes, it is.

W. N. Pierce.

Q. And were those memoranda and notes filed among the records?

A. My recollection is that they were turned over to the attorney sho drew the wills that were desired.

Q. Have you checked those notes recently at our page 219 } request?

A. Yes, I have.

Q. Will you please state to the Court what the purpose of the visit was in your own words—what your conversation with Mrs. Luck and Mrs. Irene Hill was?

A. When the two ladies came in, they expressed as all of them explained to me that Mr. Hill was incapacitated and could not come down to the bank and that anything that had to be done would have to be done at their home where he was located, and then they stated that the purpose was to have all three wills—Mr. and Mrs. Hill's and Mrs. Luck's wills drawn in accordance with their wishes, and my recollection is—and my notes indicate—that Mrs. Hill talked first and outlined the wishes of Mr. and Mrs. Hill with regard to their respective wills, and then after they finished Mrs. Luck told me what she would like said in her will, and then subsequent to that, and with the notes that I had, they were turned over to an attorney I believe with whom they had been previously acquainted, although I am not sure of that, to draw the wille.

Q. Was that attorney Mr. J. M. Barrett?

A. Yes.

Q. Were these conversations which you had in the presence of Mrs. Luck—all of them?

A. Yes, both ladies were together every time that I talked with them.

Q. Now, starting with Mrs. Hill, what was her explanation to you as Trust Officer of the bank as to the disposition of her property?

page 220 } A. Well she had a customary desire as far as generally speaking goes. She wanted to leave all her property to Mr. Hill and he wanted to leave all his property to her, with each of them to use it as long as they lived as they saw fit, and then if anything remained at the death of the survivor, it was to go to Mrs. Luck.

Q. Now, the will carried with it a power of appointment at the death of the last survivor. Did you go into that with them or was that Mr. Barrett?

A. My recollection was that whenever we got that sort of

request, I asked them—the individuals—and in this case I am reasonably certain I asked Mrs. Hill—whether or not the survivor—Mrs. Hill, if she were the survivor, or Mr. Hill, if he were the survivor, would be able to dispose of the property, spend it, or do whatever he wanted to with it or she wanted to with it if the other one had died and her answer was in the affirmative, and that resulted in my making a note with regard to a full power of appointment, so that we could have that point straight when the matter went to an attorney.

Q. And the power of appointment which is set forth in the will, empowered the survivor to direct other people than Mrs. Luck as the beneficiary after the death of both Mr. and Mrs. Hill?

A. It is a general power—has no restriction at all. As I understood they could dispose of it any way they wanted to—the survivor wanted to.

Q. And you sent them then to Mr. Barrett, is that correct, with your notes?

page 221 } A. Yes.

Q. Did you see them after that, Mr. Pierce?

A. My recollection is that I saw them the second time but I am not certain, concerning the second time. I remember seeing both ladies very well, but my recollection is not certain as to whether I saw them the second time. The reason I say I think I saw them a second time is because whenever this procedure followed through, the attorney usually referred the wills drawn back to the bank.

Q. I show you here the signatory page of Mrs. Irene L. Hill's will—it indicates you were a witness, together with two ladies who have been identified as employees of the bank?

A. That is correct.

Q. Do you have any recollection of the will having been executed in your office?

A. That appears to me to be the second time—my recollection would be I saw them the second time.

Q. And for that purpose?

A. Yes.

Q. Do you have any independent recollection of any discussion of the contents of the will at that time, or was it merely a session to sign it?

A. I don't have any recollection of the discussion of the contents other than to see that these were in the order they were desired.

W. N. Pierce.

Q. Now, when these ladies came into your office, was there anything said to you—I am talking about when
page 222 } they came in the first time—was there anything said to you about any contractual relationship between the Hills and Mrs. Luck?

A. I don't recollect any and my notes don't show that there was any.

Q. Was there anything said—I believe you already testified they were going to make reciprocal wills?

A. Yes, after Mrs. Hill finished, then Mrs. Luck said she wanted to leave her property to the Hills—they were going after the death of the survivor, to leave whatever they had to her and she wanted to do that for them. They all seemed to be in accord with regard to it.

Q. You are an experienced lawyer in estate planning—I ask you this—if these parties had stated to you that there had been a contractual relation between them would you have noted it in your notes?

A. Yes, I would.

Q. For what reason?

A. For the purpose of having them execute a written contract if such could be done.

Q. And there is nothing in your notes at all to indicate that either one mentioned anything about any contractual relations?

A. No, and I don't recollect any such mention.

Q. The wills that you recommended weren't drawn out to carry out a contractual relationship—one was not bound to leave the other property?

A. To my knowledge no, they weren't.

By Mr. Smith: Take the witness.

page 223 } CROSS EXAMINATION.

By Mr. Muse:

Q. I understand your testimony, they made it plain, Mr. Erskin Hill and Mrs. Irene Hill made it plain to you that she and her husband wanted what they had to go to the survivor and then to Mrs. Luck?

A. That is correct.

Q. And Mrs. Luck wanted to do the same thing?

A. That is correct.

Q. And you have no recollection as to why they told you

they wanted it that way, but they were certainly fixed in their desires?

A. That is correct.

Q. And made it plain that Mrs. Irene Hill's case—what she had she wanted to go to Erskin, her husband, to be used any way—he needed it and what was left at his death, shall go to Mrs. Luck?

A. That is right.

Q. And reverse?

A. That is correct in their language.

By Mr. Muse: That is all, thank you sir?

Witness stands aside.

By Mr. Smith: We rest.

By the Court: All sides rest?

By Mr. Muse: Yes, sir.

By the Court: Now, then, as I understand it, Mr. Smith, you have made the request or motion that the page 224 } record be transcribed before any argument is made, and you have also requested the right to make an oral argument, and as I understand you don't oppose their motion?

By Mr. Muse: No, I don't oppose their motion.

By the Court: Accordingly, we will wait until Miss Mary can write the record up, at which time if you gentlemen will get in touch with me, we will arrange a time for argument.

By Mr. Smith: I suppose it would be appropriate also if we have any motions concerning the evidence, we could make them at that time—not limited just to argument?

By Mr. Muse: I have no objections.

By the Court: Will be all right to consider any motions at that time—motions that could be made at the conclusion of all evidence, of course. After Miss Mary writes the record up—I don't know how many copies you anticipate making, I would like to have access to it before I hear your arguments?

By Mr. Muse: We will see you are furnished a copy.

By the Court: And while you have furnished authorities, they have dealt primarily with a plea of the statutes of fraud and a demurrer. If you have any other authorities you intend to submit in the argument, I would like to have advance notice of that.

By Mr. Muse: We will do that and be glad to exchange with you our authorities.

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR OF CLEON W. HILL AND VERNA S. HILL.

To Roy K. Brown, Clerk of the Circuit Court of the County of Roanoke:

Pursuant to the provisions of Rule 5:1, Section 4, the defendants, Cleon W. Hill and Verna S. Hill, file this notice of appeal from the final decree of the Circuit Court of the County of Roanoke, Virginia, entered in the above-styled cause on the 5th day of January, 1959. These defendants assign as error the following:

1. The overruling by the court of the plea of the statute of frauds made by these defendants on the pleadings before the taking of the evidence.

2. The failure of the court to sustain the objection of these defendants to the testimony of Marie Bratton insofar as it related to admissions, statements or declarations of Irene L. Hill or of Erskine L. Hill.

3. The failure of the court to sustain the objection of these defendants to the testimony of Louise Leonard insofar as it related to admissions, statements or declarations of Irene L. Hill or of Erskine L. Hill.

4. The failure of the court to sustain the objection of these defendants to the testimony of Mrs. T. W. Flesch-
page 229 } man insofar as it related to admissions, statements or declarations of Irene L. Hill or of Erskine L. Hill.

5. The failure of the court to sustain the motion of these defendants, made in writing at the conclusion of all the evidence, to strike from the evidence the testimony of any and all witnesses insofar as it relates to or describes any statements, admissions or declarations of Irene L. Hill or of Erskine L. Hill.

6. The adjudication by the court that it has not been shown satisfactorily in the evidence that Erskine L. Hill was incapable of testifying within the meannig of Section 8-286 of the Code of Virginia of 1950.

7. The failure of the court to sustain the motion of these defendants to strike all of the evidence of the complainant on the ground that the said evidence shows clearly that the statute of frauds prohibits the granting of the relief sought.

8. The findings of fact made by the court in its final decree and designated therein as findings of fact (1) through (7).

9. The final decree of the court setting aside the conveyance of Bonnie Brook from Erskine L. Hill and wife to Cleon W. Hill and Verna S. Hill, dated June 5, 1957, and directing reconveyance of said property to Erskine L. Hill, the said decree being contrary to the law and the evidence in the case.

Given under my hand this 13th day of February, 1959.

CLEON W. HILL
VERNA S. HILL
By EVANS B. JESSEE
Counsel.

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Filed in the Clerk's Office Circuit Court of Roanoke County Va., Feb. 14, 1959.

Teste:

N. C. LOGAN, Dep. Clerk.

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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