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Clerk, Supreme Court of Appeals
Richmond, Va.

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Record No. 5148

In the Supreme Court of Appeals of Virginia at Richmond

EMMA McGRUE, EXECUTRIX, ETC., ET AL.

v.

JOAN S. BROWNFIELD

FROM THE CIRCUIT COURT OF CULPEPER 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. 5148

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 2nd day of March, 1960.

EMMA McGRUE, EXECUTRIX, &C., ET AL., Appellants,

against

JOAN S. BROWNFIELD, Appellee.

From the Circuit Court of Culpeper County

Upon the petition of Emma McGrue, Executrix of the estate of Josephine S. Bradley, deceased, Emma McGrue, individually, and Roland Stewart an appeal is awarded them from a decree entered by the Circuit Court of Culpeper County on the 7th day of December, 1959, in a certain chancery cause then therein depending wherein Emma McGrue, Executrix, etc., and another were plaintiffs and Joan S. Brownfield was defendant; upon Emma McGrue, individually, and Roland Stewart, 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, no bond being required of the executrix.

RECORD

* * * * *

COPY OF SUBPOENA IN CHANCERY.

The party upon whom this writ and the attached paper are served is hereby notified that unless within twenty-one (21) days after such service, response is made by filing in the Clerk's Office of this Court a pleading in writing, in proper legal form, the allegations and charges may be taken as admitted and the Court may enter a decree against such party, without further notice, either by default or after hearing evidence.

Appearance in person is not required by this subpoena.

Done in the name of the Commonwealth of Virginia, this 16th day of October, 1958.

C. T. GUINN, Clerk
By MARGARET BROWN,
Deputy Clerk.

JAMES H. RABY, p. q.
The Raby Building
1000 Pendleton Street
Alexandria, Virginia
(Office Address)

page 2 }

* * * * *

Filed in the Clerk's Office the 16 day of October, 1958, with Exhibit "A" attached.

Teste:

C. T. GUINN, Clerk
By MARGARET BROWN, D. C.

BILL FOR THE CANCELLATION OF DEED.

To the Honorable C. Champion Bowles, Judge of said Court:

Your plaintiffs respectfully represents as follows:

1. That during the month of September, 1958, Josephine

S. Bradley, departed this life, after having first made her last will and testament, which was afterwards duly probated in the Clerk's office of Culpeper County, Virginia, and under said Will Emma McGrue was named Executrix of the estate and one of the beneficiaries, and qualified as such.

2. That in Deed Book No. 151 pages 75 and 76 of the land records of Culpeper County, Virginia is recorded a deed bearing date of August 6, 1958 made by Josephine Stuart Bradley to Joan S. Brownfield, which deed is made a part of this Bill marked "PLAINTIFF'S EXHIBIT A."

3. That on the date of said deed, to-wit: August 6, 1958 Josephine Stuart Bradley, deceased was aged, infirm and ill and by *reaon* thereof wholly incapacitated from attending properly to her business affairs and was not capable of *executed* any such deed and that if she did in fact sign the aforesaid instrument that the defendant fraudulently took advantage of her and procured her to sign such deed, the said Josephine S. Bradley, deceased, not knowing or understanding the contents or purport of the instrument.

page 3 } 4. Plaintiff further alleges that there was no consideration whatsoever for said conveyance.

5. Your plaintiff further alleges that any further consideration mentioned in said instrument, to-wit: "This conveyance is made subject to a life estate in and to the tract or parcel of land herein conveyed, which said life estate is reserved by the said party of the first part, etc." in the light of the true facts is ludicrous and contrary to the facts and truth, in that Josephine Stuart Bradley owned the said real estate and had sufficient income and loving relatives who were able to provide for her.

In consideration whereof, your plaintiff prays as follows:

A. That the Court declare the above-mentioned conveyance void, and decree that the defendant produce said writing and deliver it up to be cancelled.

B. And that meanwhile the said Joan S. Brownfield may be enjoined and restrained from conveying in trust, mortgaging or selling and conveying the above-described property or any part of it;

C. And that proper counsel fees may be allowed to counsel of record for your plaintiff for the institution and prosecution of this suit.

EMMA McGRUE, EXE. (Seal)
EMMA McGRUE (Seal)

JAMES H. RABY
Attorney for Plaintiff
The Raby Building
1000 Pendelton Street
Alexandria, Virginia.

Emma McGrue, as Executrix of the estate of Josephine S. Bradley, deceased and individually, the plaintiff named in the foregoing Bill being duly sworn says that the several matters and things set forth in the above said Bill are true to the best of her knowledge and belief.

EMMA McGRUE.

Subscribed and sworn to before me this 16th day of October, 1958 at Culpeper, Virginia. My commission expires 9-15-62.

JAMES H. RABY
Notary Public.

page A-1 } C. C. B.

"PLAINTIFF'S EXHIBIT A."

THIS DEED made and entered into this the 6th day of August, 1958, by and between JOSEPHINE STUART BRADLEY, (sometimes known as Josephine Stewart Bradley) as party of the first part, and JOAN S. BROWNFIELD, as party of the second part.

WTNESSETH: That for and in consideration of the sum of Ten Dollars ($10.00), cash in hand paid and other good and valuable consideration, paid by the party of the second part to the said party of the first part, the receipt of which is hereby acknowledged, the said party of the first part, subject to the reservations hereinafter contained, does hereby bargain, sell, grant, transfer and convey WITH GENERAL WARRANTY OF TITLE, unto Joan S. Brownfield, party of the second part, all of that certain tract or parcel of land, with all buildings and improvements thereon and appurtenances thereunto belonging, situated, lying and being about 1-1/2 miles north of the Town of Culpeper, Culpeper County, Virginia, on the east side of the road leading from Culpeper to Rixeyville (Route 229), adjoining the land of Dorsey, Summers, and W. A. Kite, and containing four (4) acres, more or less.

The tract or parcel of land herein conveyed is the same

tract or parcel of land which was conveyed to the party of the first part by James J. Stewart et als., by deed dated the 18th day of April, 1936, and recorded in the Clerk's Office of Culpeper County, Virginia, in Deed Book 95, page 397, less and except a strip thereof which was conveyed to the Commonwealth of Virginia for road purposes, by deed dated the 21st day of February, 1950, and recorded in the aforesaid Clerk's Office in Deed Book 125, page 392.

Reference is herewith had to the abovementioned deeds for a more complete and accurate *descriprion* of the land herein conveyed.

THIS CONVEYANCE IS MADE SUBJECT TO A LIFE ESTATE IN AND to the tract or parcel of land herein conveyed, which said life estate is reserved by the said party of the first part, and is further subject to the right of Roland Stuart, sone of the party of the first part, who shall have the right to occupy one of the dwellings on the said tract or parcel of land for and during the term of his natural life, after the death of the party of the first part with the understanding that the party of the second part, at the time of the death of the party of the first part, shall have the privilege of selecting which dwelling the said Roland Stuart will have the right to occupy during the term of his natural life. The party of the first part shall not be required, subsequent to the delviery of this deed, to pay for the real estate taxes or insurance on the said real estate, but the same will be the obligation of the party of the second part.

page A-2

THE PARTY OF THE FIRST PART COVENANTS AS FOLLOWS, to-wit: That she has the right to convey said land to the grantee; that she has done no act to encumber said land and that the same is free from all encumbrances; that the grantee shall have quiet and peaceful possession of said land and that she will execute such other and further assurances of title to said land as may be requisite.

WITNESS the following signature and seal.

JOSEPHINE STUART BRADLEY (Seal)

Witness to signature:

J. B. Hudson, Jr.
E. H. Brownfield
Roland Stuart

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

I, J. B. Hudson, Jr., a Commissioner in Chancery in and for the Circuit Court of the County of Culpeper, State of Virginia, do certify that Josephine Stuart Bradley, whose name is signed to the foregoing deed, bearing date on the 6th day of August, 1958, has personally appeared before me and acknowledged the same in my County and State aforesaid.

Given under my hand this 6th day of August, 1958.

J. B. HUDSON, JR.
Commissioner in Chancery.

Virginia:

In Culpeper County Circuit Court Clerk's Office, This Deed was this 6th day of August, 1958, filed here and page A-3 } having been duly acknowledged is admitted to record at 2:45 P. M.

Teste:

C. T. QUINN, Clerk.

Virginia:

In Culpeper County Circuit Court Clerk's Office.

I, C. T. Guinn, Clerk of the Circuit Court in and for the County and State aforesaid, do hereby certify that the foregoing and attached is a true copy of the deed from Josephine Stuart Bradley to Joan S. Brownfield, which is recorded in this office in Deed Book No. 151, pages 75 and 76.

Given under my hand this 10th day of October, 1958.

Teste:

C. T. GUINN, Clerk
By MARGARET BROWN
Deputy Clerk.

page 4 }

PROOF OF SERVICE.

* * * * *

Returns shall be made hereon, showing service of Subpoena in Chancery issued Oct. 16, 1958, with copy of Bill of Complaint filed Oct. 16, 1958, attached:

Executed on the 21 day of Oct., 1958, in the City of Charlottesville Virginia, by delivering a true copy of the above mentioned papers attached to each other, to Joan S. Brownfield in person.

R. C. PACE
Sergeant, City of Charlottesville, Va.
By NORMAN KELSO,
Deputy Sergeant.

(Use the space below if a different form of return is necessary)

Returned and filed the 24 day of October, 1958.

C. T. GUINN, Clerk
By MARGARET BROWN
Deputy Clerk.

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* * * * *

ORDER.

This cause came on this day to be heard upon motion of Counsel for the defendant that she be granted additional time within which to file responsive pleadings.

And it appearing to the Court that it is pertinent and proper that the extension of time be granted, the Court doth order that the defendant be, and she hereby is, granted leave to file such pleadings as she may deem pertinent and proper within thirty days from the date of entry of this Order.

Enter:

C. CHAMPION BOWLES, Judge.

Date: 11/5/58.

I ask for this:

HAROLD H. PURCELL, p. d.

* * * * *

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* * * * *

Filed Dec. 4, 1958.

C. T. GUINN, Clerk
By MARGARET BROWN
Deputy Clerk.

DEMURRER.

Now comes the defendant, Joan S. Brownfield, by Counsel, and submits the following demurrer to the Bill in Equity filed by Emma McGrue, Executrix of Estate of Josephine S. Bradley, Deceased, and Emma McGrue, Individually, in the above-styled cause:

1. That, as appears from the Complainant's Bill, all proper parties are not before the Court in this cause.
2. That if Josephine S. Bradley was incompetent at the time she made the deed she was incompetent at the time her Will was drawn.
3. That the complainant does not allege mental incompetence on the part of the decedent. Although the word "fraudulently" is used in the Bill of Complaint, she does not state in what manner the decedent was defrauded.
4. That it is not shown in the Bill of Complaint that a valid Will has been probated.

Wherefore, your undersigned respondent prays that the said Bill be dismissed.

Your respondent reserves, however, leave to amend this Demurrer within a reasonable time.

Given under my hand this 1st day of December, 1958.

JOAN S. BROWNFIELD
By HAROLD H. PURCELL
Counsel.

page 7 } State of Virginia,
County of Louisa, to-wit:

Harold H. Purcell, Attorney for Joan S. Brownfield, being duly sworn, says that the allegations contained in the foregoing Demurrer are true, except so far as they are therein stated to be upon information, and that in so far as they are therein stated to be upon information he believes them to be true.

Given under my hand this 1st day of December, 1958.

HAROLD H. PURCELL.

Taken, sworn and subscribed to before me this 1st day of December, 1958, in said County of Louisa, State of Virginia. My Commission expires on the 6th day of March, 1960.

JOSEPHINE H. NEAL
Notary Public.

I hereby certify that a copy of the foregoing Demurrer was this day mailed to Mr. James H. Raby, Attorney at Law, The Raby Building, 1000 Pendelton Street, Alexandria, Virginia, Attorney of record for the complainant.

Given under my hand this 1st day of December, 1958.

HAROLD H. PURCELL
Attorney for Defendant.

page 8 }

* * * * *

Filed Dec. 4, 1958.

C. T. QUINN, Clerk
By MARGARET BROWN
Deputy Clerk.

ANSWER.

The Answer of Joan S. Brownfield to the Bill of Complaint filed in the Circuit Court of Culpeper County, Virginia, by Emma McGrue, Executrix of Estate of Josephine S. Bradley, Deceased, and Emma McGrue, Individually.

Your respondent, for Answer to the said Bill of Complaint, or so much thereof as she is advised it is material she should answer, answers and says:

1. That she neither admits nor denies the allegations contained in Paragraph 1 of the Bill of Complaint but demands strict proof thereof.
2. That she admits the allegations contained in Paragraph 2 of the Bill of Complaint.
3. That she denies the allegations contained in Paragraph 3 of the Bill of Complaint.
4. That she denies the allegations contained in Paragraph 4 of the Bill of Complaint.
5. That she denies the allegations contained in Paragraph 5 of the Bill of Complaint.
6. That she denies that the complainant is entitled to the relief prayed for in the prayer of the Bill of Complaint.
7. That your respondent reserves the right to amend this pleading or file additional pleadings within a reasonable time.

And now having fully answered the said Bill of Complaint, your respondent prays to be hence dismissed with page 9 } her reasonable costs by her in this behalf expended.

Given under my hand this 1st day of December, 1958.

JOAN S. BROWNFIELD
By HAROLD H. PURCELL
Counsel.

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

Harold H. Purcell, Attorney for Joan S. Brownfield, being duly sworn, says that the allegations contained in the foregoing Answer are true, except so far as they are therein stated to be upon information, and that in so far as they are therein stated to be upon information he believes them to be true.

Given under my hand this 1st day of December, 1958.

HAROLD H. PURCELL.

Taken, sworn and subscribed to before me this 1st day of December, 1958, in said County of Louisa, State of Virginia.

My Commission expires on the 6th day of March, 1960.

JOSEPHINE H. NEAL
Notary Public.

I hereby certify that a copy of the foregoing Answer was this day mailed to Mr. James H. Raby, Attorney at Law, The Raby Building, 1000 Pendleton Street, Alexandria, Virginia, Attorney of record for the complainant.

Given under my hand this 1st day of December, 1958.

HAROLD H. PURCELL
Attorney for Defendant.

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* * * * *

DECREE.

This cause came on this day to be heard upon the Bill of Complaint filed by the complainant and the Demurrer filed by Joan S. Brownfield, by Counsel.

And it appearing to the Court that Roland Stewart and Augustus Bradley are necessary parties in this cause and should be made parties to this cause.

The Court doth adjudge, order and decree that the said Demurrer be, and the same hereby is, sustained, but leave is granted to the said complainant to amend her Bill of Complaint to bring the necessary parties before the Court in this cause.

Enter:

C. CHAMPION BOWLES, Judge.

Date: 2/25/59.

I ask for this:

JAMES H. RABY, p. q.

I ask for this.

HAROLD H. PURCELL, p. d.

* * * * *

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* * * * *

Filed in the Clerk's Office the 20 day of March, 1959, with attached certificates.

Teste:

C. T. GUINN, Clerk
By MARGARET BROWN, D. C.

* * * * *

AMENDED BILL FOR THE CANCELLATION OF DEED.

To the Honorable C. Champion Bowles, Judge of said Court:

Your plaintiffs respectfully represents as follows:

1. That during the month of September, 1958, Josephine S. Bradley, departed this life, after having first made her last will and testament, a copy of which is hereto attached, marked Exhibit A, which will was duly probated in the Clerk's Office of Culpeper County, Virginia, and under said Will, Emma McGrue was named Executrix of the estate of Josephine S. Bradley, deceased.

2. That under the last will and testament of the said Josephine S. Bradley, deceased, Emma McGrue and Roland Stewart were named as beneficiaries.

page 12 } 4. That the next of kin of the said Josephine S. Bradley are: Roland Stewart, son, and only child and Augustus Bradley, widow, if he is living. His present whereabouts are unknown. He deserted the said deceased before her death and he has been made a party defendant to this cause. Roland Stewart is a plaintiff to this cause.

5. That in Deed Book No. 151 pages 75 and 76 of the land *records* of Culpeper County, Virginia is recorded a deed bearing date of August 6, 1958 made by Josephine Stuart Bradley to Joan S. Brownfield, one of the defendants herein, which deed is made a part of this Bill marked "Plaintiff's Exhibit A."

6. That on the date of said deed, to-wit: August 6, 1958 Josephine Stuart Bradley, deceased was aged, infirm and ill and by reason thereof wholly incapacitated from attending

properly to her business affairs and was not capable of executing any such deed and that if she did in fact sign the aforesaid instrument, that defendant, Joan S. Brownfield, fraudulently took advantage of her and procured her to sign such deed, the said Josephine S. Bradley, deceased, not knowing or understanding the contents or purport of the instrument.

7. Plaintiffs further allege that there was no consideration whatsoever for said conveyance.

8. Plaintiffs further allege that any further consideration mentioned in said instrument, to-wit: "This conveyance is made subject to a life estate in and to the tract or parcel of land herein conveyed, which said life estate is reserved by the party of the first part, etc." in the light of the true facts is ludicrous and contrary to the facts and truth, in that Josephine Stuart Bradley owned the said real estate and had sufficient income and loving relatives who were able to provide for her.

9. There are or may be other persons interested in the subject to this cause whose names are unknown, page 13 } as alleged in *in* the caption after the name of the defendant, Augustus Bradley.

In consideration whereof, your plaintiffs pray as follows:

A. That the Court declare the above-mentioned conveyance void, and decree that the defendant produce said writing and deliver it up to be cancelled.

B. And that meanwhile the said Joan S. Brownfield may be enjoined and restrained from conveying in trust, mortgaging or selling and conveying the above-described property or any part of it;

C. And that proper counsel fees may be allowed to counsel of record for your plaintiffs for the institution and prosecution of this suit.

EMMA McGRUE (Seal)
EMMA McGRUE, ADM. (Seal)
ROLAND STEWART (Seal)

JAMES H. RABY
Attorney for Plaintiff
The Raby Building
1000 Pendleton Street
Alexandria, Virginia.

page 14 } Roland Stewart, a plaintiff named herein, after being first duly sworn says that the several matters and things set forth in the foregoing Bill are true to the best of his knowledge and belief.

ROLAND STEWART.

Subscribed and sworn to before me this 18th day of March, 1959. My commission expires April 2, 1959.

MAGGIE B. SPELLER
Notary Public.

page 15 } Emma McGrue, a plaintiff named herein, after being first duly sworn says that the several matters and things set forth in the foregoing Bill are true to the best of her knowledge and belief.

EMMA McGRUE, Exr.

Subscribed to before me this 18th day of March, 1959. My commission expires April 2, 1959.

MAGGIE B. SPELLER
Notary Public.

page 16 } CERTIFICATE.

I hereby certify that a copy of the foregoing Amended Bill for the cancellation of Deed was this day mailed to Mr. Harold H. Purcell, Attorney at Law, Louisa, Virginia, Attorney of record for the defendant, Joan S. Brownfield.

Given under my hand this 18th day of March, 1959.

JAMES H. RABY
Attorney for Plaintiffs.

Exhibit "A" with Amended Bill.

I, Josephine Stewart Bradley, of Culpeper, County, Virginia do make this my last will and testament hereby revoking any will or wills heretofore made by me.

First; I wish all my funeral expenses paid and all just debts as soon as possible after my decease.

Second; I give and devise my real estate located in Culpeper

County, Va. to Rolland Stewart*m* my son for his lifetime.

Third; I give and bequeath all of my personal and household property to my son Rolland Stewart.

Fourth; I give and bequeath the sum of one dollar ($1.00) to my husband Augustus Bradley.

Fifth; I give unto my sister-in-law Emma McGrue a home for her lifetime.

Sixth; After the death of my son Rolland Stewart and my sister-in-law Emma McGrue the home shall then be given to Antioch Baptist Church, Culpeper, Va. to be used as a parsonage.

Seventh; I hereby nominate and constitute and appoint Emma Mc.Grue as executrix to this my last will and testament wthout bond.

Witnessed my hand and seal this 16th; of June 1953.

Signed Josephine Bradley

Witness Mortimer M. Marshall
Witness Roy D. Jackson

I hereby declare that the above witnesses to the above will appeared before me a Notary Public in Culpeper County, Va. this 16th; day of June 1953 and caused their signatures and this seal affixed by me this 16th; day of June 1953.

RUTH WEST MARSHALL
Notary Public.

My commission ex*peirs* April 19th; 1955.

A Copy—Teste:

MARGARET BROWN
Deputy Clerk.

(Probated in Culpeper Co. Circuit Court Clerk's Office, Oct. 3, 1958).

(SEAL OF NOTARY).

C. C. B.

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* * * * *

Affiant believes that the defendant, Augustus Bradley is not a resident of the State of Virginia and his last known postoffice address is Culpeper, Virginia.

JAMES H. RABY.

Subscribed and sworn to before me in the County of Culpeper, Virginia, this 18th day of March, 1959.

MAGGIE B. SPELLER
Notary Public.

page 18 } Virginia:

In the Circuit Court of Culpeper County, March 20, 1959.

* * * * *

ORDER OF PUBLICATION.

The object of this suit is to declare a deed of conveyance purported to be made by Josephine S. Bradley, deceased to Joan S. Brownfield dated August 6, 1958 and recorded among the land records of Culpeper County, Virginia in Deed Book 151, pages 75 and 76, to be void, and decree that the defendant, Joan S. Brownfield, produce said writing and deliver it up to be cancelled.

And affidavit having been made and filed that Augustus Bradley, if he be living, is not a resident of the State of Virginia and that his last known address was Culpeper, Virginia; and the bill stating that there are or may be persons interested in the subject matter of this suit whose page 19 } names are unknown and making them parties defendant by the general description of "parties unknown," and affidavit having been made and filed that they are unknown, such unknown parties be any person that may have any interest in the subject matter of this suit.

It is ordered that the said nonresident, Augustus Bradley, if he be living, and the said persons made defendants by the general description of "parties unknown" do appear within ten days after due publication of this order and do what is necessary to protect their interests.

It is further ordered that the foregoing portion of this order be published once a week for four succesive weeks in the Culpeper Star-Exponent, a newspaper published in the County of Culpeper, and that a copy be posted at the front

door of the Courthouse of this county within ten (10) days after the entry of this order of publication.

JAMES H. RABY, p. q.
The Raby Bldg.
Alexandria, Va.

* * * * *

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* * * * *

ANSWER.

The Answer of Joan S. Brownfield to the Amended Bill of Complaint filed in the Circuit Court of Culpeper County, Virginia, by Emma McGrue, etc., et al.

This respondent, for answer to the said Amended Bill of Complaint, or so much thereof as she is advised it is material she should answer, answers and says:

1. That she neither admits nor denies the allegations contained in Paragraphs 1, 2 and 4 of the Amended Bill of Complaint, but demands strict proof thereof.
2. That there is no Paragraph 3 in the Amended Bill of Complaint, and this respondent cannot answer the same.
3. That she admits the allegations contained in Paragraph 5 of the Amended Bill of Complaint.
4. That she denies the allegations contained in Paragraphs 6, 7 and 8 of the Amended Bill of Complaint.
5. That she neither admits nor denies the allegations contained in Paragraph 9 of the Amended Bill of Complaint, but demands strict proof thereof.
6. That she denies the complainants are entitled to the relief prayed for in the prayer of the Amended Bill of Complaint.
7. That this respondent reserves the right to amend this pleading or to file additional pleadings within a reasonable time.

And now having fully answered the said Amended Bill of Complaint, this respondent prays to be hence dismissed with her reasonable costs by her in this behalf expended.

page 21 } Respectfully submitted this 20th day of March, 1959.

JOAN S. BROWNFIELD
By HAROLD H. PURCELL
Counsel.

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

Harold H. Purcell, Attorney for Joan S. Brownfield, being duly sworn, says that the allegations contained in the foregoing Answer are true, except so far as they are therein stated to be upon information, and that in so far as they are therein stated to be upon information he believes them to be true.

Given under my hand this 20th day of March, 1959.

HAROLD H. PURCELL.

Taken, sworn and subscribed to before me this 20th day of March, 1959, in said County of Louisa, State of Virginia.

My Commission expires on the 6th day of March, 1960.

JOSEPHINE H. NEAL
Notary Public.

I hereby certify that a copy of the foregoing Answer was this day mailed to Mr. James H. Raby, Attorney at Law, The Raby Building, 1000 Pendleton Street, Alexandria, Virginia, Attorney of record for the complainants.

Given under my hand this 20th day of March, 1959.

HAROLD H. PURCELL
Attorney for Joan S.
Brownfield.

Filed in Culpeper Co. Circuit Court Clerk's office, March 21, 1959.

C. T. GUINN, Clerk
By MARGARET BROWN, D. C.

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* * * * *

CLERK'S CERTIFICATE.

I, C. T. Guinn, Clerk of the Circuit Court of the said county, do hereby certify that I posted a copy of the Order of Publication on the bulletin board at the front door of the Courthouse within ten days from the entry of this order; that I mailed no copy thereof as addresses the defendants required by Section 8-71 of the Code of Virginia, and that I delivered a copy to the Editor of Culpeper Star-Exponent for publication.

Given under my hand, this 23rd day of March, 1959.

C. T. GUINN, Clerk
By MARGARET BROWN
Deputy Clerk.

ORDER OF PUBLICATION.

ORDER OF PUBLICATION tts VIRGINIA: IN THE CIRCUIT COURT OF CULPEPER COUNTY, March 20, 1959.

Emma McGrue, Executrix of the estate of Josephine S. Bradley, deceased.
Emma McGrue, Individually
Roland Stewart—Plaintiffs.

against

ORDER OF PUBLICATION JOAN S. BROWNFIELD, Box 733, Charlottesville, Virginia. *AGUSTUS* BRADLEY, if he be living, who was the husband of Josephine S. Bradley, and he deserted her prior to her death in Culpeper County, Virginia, and the said Augustus Bradley has not been heard from since and any and all other persons who may have an interest in the subject of this suit whose names are unknown are made party defendants by the general description of "parties unknown" Defendants.

The object of this suit is to declare a deed of conveyance purported to be made by Josephine S. Bradley, deceased, to Joan S. Brownfield, dated August 6, 1958, and recorded among the land records of Culpeper County, Virginia, in Deed Book 151, pages 75 and 76, to be void, and decree that the defendant, Joan S. Brownfield, produce said writing and deliver it up to be cancelled.

known," and affidavit having made and filed that Augustus Bradley, if he be living, is not a resident of the State of Virginia and that his last known address was Culpeper, Virginia; and the bill stating that there are or may be persons interested in the subject matter of this suit whose names are unknown and making them parties defendant by the general description of "parties unknown," and affidavid having been made and filed that they are unknown, such unknown parties be any person that may have any interest in the subject matter of this suit.

It is ordered that the said non-resident, Augustus Bradley, if he be living, and the said persons made defendants by the general description of "parties unknown" do appear within ten days after due publication of this order and do what is necessary to protect their interests.

It is further ordered that the foregoing portion of this order be published once a week for four successive weeks in the Culpeper Star-Exponent, a newspaper published in the County of Culpeper, and that a copy be posted at the front door of the Courthouse of this county within ten (10) days after the entry of this order of publication.

A Copy—Teste:

C. T. GUINN, Clerk
By MARGARET BROWN
Deputy Clerk.

JAMES H. RABY, p. q.
The Raby Bldg.
Alexandria, Va.

* * * * *

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* * * * *

DECREE OF REFERENCE.

This cause, which has been regularly matured, set for hearing and docketed, came on this day to be heard upon the Bill of Complaint and Exhibits filed therewith; upon the demurrer filed by the defendant and the decree sustaining the demurrer and granting leave to the complainants to amend; upon the amended bill of complaint; upon the Answer of Joan S. Brownfield to the amended bill of complaint; upon

proper proof of the due execution of the order of publication against Augustus Bradley and any and all persons who may have an interest in the subject of this suit, whose names are unknown, and who are made parties defendant by the general description of Parties Unknown, ten days having elapsed since the completion thereof, and they still failing to appear, answer, plead or demur; and was argued by Counsel.

Upon Consideration Whereof, this cause is referred to S. A. Cunningham, who is hereby appointed one of the Commissioners in Chancery of this Court, who will inquire and report, as follows:

1. The lands of which Josephine Stuart Bradley died seized and possessed.

2. Whether or not the deed dated August 6, 1958, from Josephine Stuart Bradley to Joan S. Brownfield, of record in the Clerk's Office of the Circuit Court of Culpeper County, Virginia, in D. B. 151, pages 75 and 76, should be set aside on the ground of mental incapacity on the part of the grantor, lack of consideration, or fraud in the inducement.

page 24 } 3. What are the liens against the property described in the said deed, in the event the said deed is set aside, and the liens, if any, against the said property if the deed is not set aside.

4. The interest of Roland Stewart in the said property, if any, and the interest of Augustus Bradley in the said property, if any.

5. Whether all proper parties are before the Court in this cause.

6. Any other matter, specially stated, which the Commissioner may deem pertinent or which any party may request to be so stated.

But before proceeding to execute the reference the Commissioner shall give notice of the time and place fixed for executing the same by mailing a copy of the said notice to Counsel of record and by posting a copy at the front door of the Courthouse at Culpeper, Virginia, at least five days prior to the taking thereof.

And the said Commissioner shall report to the Court his findings hereunder.

Enter:

C. CHAMPION BOWLES, Judge.

Date: 5/11/59.

I ask for this:

HAROLD H. PURCELL, p. d.
Attorney for Joan S. Brownfield.

Seen:

JAMES H. RABY, p. q.

* * * * *

page 25 } ORDER OF PUBLICATION.

ORDER OF PUBLICATION tts VIRGINIA: IN THE CIRCUIT COURT OF CULPEPER COUNTY, March 20, 1959.

Emma McGrue, Executrix of the estate of Josephine S. Bradley, deceased
Emma McGrue, Individually
Roland Stewart—Plaintiffs.

against

ORDER OF PUBLICATION JOAN S. BROWNFIELD, Box 733, Charlottesville, Virginia. *AGUSTUS* BRADLEY, if he be living, who was the husband of Josephine S. Bradley, and he deserted her prior to her death in Culpeper County, Virginia, and the said Augustus Bradley has not been heard from since and any and all other persons who may have an interest in the subject of this suit whose names are unknown are made party defendants by the general description of "parties unknown" Defendants.

The object of this suit is to declare a deed of conveyance purported to be made by Josephine S. Bradley, deceased, to Joan S. Brownfield, dated August 6, 1958, and recorded among the land records of Culpeper County, Virginia, in Deed Book 151, pages 75 and 76, to be void, and decree that the defendant, Joan S. Brownfield, produce said writing and deliver it up to be cancelled.
known," and affidavit having made and filed that Augustus Bradley, if he be living, is not a resident of the State of Virginia and that his last known address was Culpeper, Vir-

ginia; and the bill stating that there are or may be persons interested in the subject matter of this suit whose names are unknown and making them parties defendant by the general description of "parties unknown," and affidavid having been made and filed that they are unknown, such unknown parties be any person that may have any interest in the subject matter of this suit.

It is ordered that the said non-resident, Augustus Bradley, if he be living, and the said persons made defendants by the general description of "parties unknown" do appear within ten days after due publication of this order and do what is necessary to protect their interests.

It is further ordered that the foregoing portion of this order be published once a week for four successive weeks in the Culpeper Star-Exponent, a newspaper published in the County of Culpeper, and that a copy be posted at the front door of the Courthouse of this county within ten (10) days after the entry of this order of publication.

A Copy—Teste:

C. T. GUINN, Clerk
By MARGARET BROWN
Deputy Clerk.

JAMES H. RABY, p. q.
The Raby Bldg.
Alexandria, Va.

I, Walter B. Potter, publisher of the Culpeper Star-Exponent, a weekly newspaper, published in the Town of Culpeper, County of Culpeper, State of Virginia, do hereby certify that the annexed Order of Publication, in the suit of Emma McGrue *against* Joan S. Brownfield was published in said newspaper once a week for 4 successive weeks, beginning on March 26, 1959, and ending on April 16, 1959.

Given under my hand this 17th day of June, 1959.

WALTER B. POTTER
Publisher
By A. K. POTTER
CULPEPER STAR-EXPONENT

Fee $37.40.

* * * * *

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* * * * *

Commissioner's Report and all attached papers filed in Culpeper Co. Circuit Court Clerk's Office, Sept. 9, 1959.

C. T. GUINN, Clerk
By MARGARET BROWN
Deputy Clerk.

To: James H. Raby, Esquire, Counsel for Complainants; Harold H. Purcell, Esquire, Counsel for Joan S. Brownfield, all persons having an interest in the subject matter of this Cause:

You and each of you are hereby notified that the undersigned Commissioner in Chancery of the Circuit Court of Culpeper County, acting in obedience to a decree of reference entered in the above styled chancery cause on May 11, 1959, will on June 17, 1959, commencing at 10 o'clock A. M., at the Court House of Culpeper, County, Culpeper, Virginia, proceed to take, state and report unto the Court the accounts as therein directed, which are as follows, to-wit:

1. The lands of which Josephine Stuart Bradley died seized and possessed.
2. Whether or not the deed dated August 6, 1958, from Josephine Stuart Bradley to Joan S. Brownfield, of record in the Clerk's Office of the Circuit Court of Culpeper
page 27 } County, Virginia, in D. B. 151, pages 75 and 76, should be set aside on the ground of mental incapacity on the part of the grantor, lack of consideration, or fraud in the inducement.
3. What are the liens against the property described in the said deed, in the event the said deed is set aside, and the liens, if any, against the said property if the deed is not set aside.
4. The interest of Roland Stewart in the said property, if any, and the interest of Augustus Bradley in the said property, if any.
5. Whether all proper parties are before the Court in this cause.
6. Any other matter, specially stated, which the Commissioner may deem pertinent or which any party may request to be so stated.

When and where you and each of you are required to attend and present such evidence, books, papers, vouchers or other evidence as will enable the undersigned to comply with the said decree of reference.

Respectfully,

S. A. CUNNINGHAM
Commissioner in Chancery.

We acknowledge due, legal and timely service of the foregoing notice.

JAMES H. RABY
Counsel for Complainants.

HAROLD H. PURCELL
Counsel for Joan S. Brownfield.

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* * * * *

To: The Honorable C. Champion Bowles, Judge:

Your undersigned Commissioner in Chancery respectfully reports unto the Court that acting in obedience to a decree of reference entered in the chancery cause of Emma McGrue, Executrix, etc., against Joan S. Brownfield, et als., on May 11, 1959, your Commissioner proceeded to give notice as therein directed by posting a copy of the notice for the taking of these accounts at the Front Door of the Court House of Culpeper County for more than five days prior to the date fixed for the taking of these accounts and by having James H. Raby, counsel for Complainants, and Harold H. Purcell, counsel for Joan S. Brownfield, acknowledge service of the said notice, which will more fully appear from a copy of said notice, showing such acknowledgments of service, which is herewith returned to be read along with and as a part of this report.

page 29 } Your Commissioner further reports that on June 17, 1959, commencing at 10 o'clock A. M., at the Court House of Culpeper County, Culpeper, Virginia, that being the date, time and placed fixed in said notice, your Commissioner proceeded to hear the depositions of witnesses on behalf of complainants and on behalf of the defendant, Joan S. Brownfield, which said depositions have been re-

duced to writing and are herewith returned to be read along with and as a part of this report.

Your Commissioner further reports that after having carefully and maturely considered the said depositions, and after having examined the records in the Clerk's Office of your Honor's Court, your Commissioner is of opinion and reports unto the Court as follows:

Account 1: Being an account of the lands of which Josephine Stuart Bradley died seised and possessed.

Your Commissioner reports that this inquiry cannot properly be answered until your Commissioner has answered the inquiry in Account 2 below, and, therefore, this inquiry will be considered and answered along with Account 2 below.

Account 2: Being an account showing whether or not the deed dated August 6, 1958, from Josephine Stuart Bradley to Joan S. Brownfield, of record in the Clerk's Office of the Circuit Court of Culpeper County, Virginia, in D. B. 151, pages 75 and 76, should be set aside on the ground
page 30 } of menal incapacity on the part of the grantor, lack of consideration, or fraud in the inducement.

Your Commissioner reports that Josephine Stuart Bradley, a very old colored woman, whose age at the time of the transactions involved in this suit is not definitely known, but who was certainly in her eighties, having a son sixty-seven years of age, was in the year 1956 seised and possessed of a certain tract or parcel of land lying in Catalpa Magisterial District, Culpeper County, Virginia, about one and a half miles north of the Town of Culpeper, being the same land, or the residue thereof, which had been conveyed to her father Albert Stewart by deed from L. P. Rogers, dated January 11, 1889, and recorded in the Clerk's Office of your Honor's Court in Deed Book 23, page 95, and which had been conveyed to Josephine Stuart Bradley, by Deed from James J. Stewart and others, purporting to be the sole heirs at law of Albert Stewart except Josephine Stuart Bradley, by deed dated April 18, 1936, and of record in said Clerk's Office in Deed Book 95, page 397, and supposed to contain 4 acres, more or less, less a strip of land conveyed to the Commonwealth of Virginia for road purposes, by deed dated February 21, 1950, and recorded in said Clerk's Office in Deed Book 125, page 392. That this tract of land has located upon it one residence of about six rooms, and a smaller dwelling of three
page 31 } rooms, the evidence does not disclose what utilities these dwellings have, nor does it disclose the state of repair of same.

Your Commissioner further reports that the said Josephine

Stuart Bradley sometime in the year 1956 entered into a contract with E. H. Brownfield, a general contractor engaged in the repair, remodelling, and construction of dwelling houses and other buildings, for certain repairs to be made to the dwellings on said tract of land, at the contract price of $400.00, and that in pursuance of this contract the said Brownfield undertook and did certain repair work to said buildings and upon the completion of this work Josephine Stuart Bradley executed a deed of trust under date of March 6, 1956, conveying the aforesaid tract of land to J. L. Fray and J. B. Hudson, Jr., Trustees, to secure a bond of even date payable on demand to Bearer for the sum of $400.00; that in addition thereto on the same date Josephine S. Bradley executed an installment note for the sum of $471.96, payable to Edward H. Brownfield, under the terms of which the said note was payable in 36 equal monthly installments of $13.11, the first payment falling due and payable at The Culpeper National Bank, Culpeper, Virginia, on April 15, 1956; that the said note was endorsed by Edward H. Brownfield at the Culpeper National Bank; that this installment note represented the contract price for the said repair work of $400.00 page 32 } plus $71.96 interest.

Your Commissioner further reports that the evidence shows that no part of the said installment note or said Bearer Bond, principal or interest, have been paid, the said Josephine Stuart Bradley having defaulted on the payment due on April 15, 1956, of $13.11 and each subsequent monthly installment and the said Brownfield as endorser of the installment note required to repay the same to the Bank; that thereafter the said Brownfield made periodic visits to the home of Josephine Stuart Bradley in an effort to collect the said obligation and on such occasions was made various promises by Josephine Stuart Bradley as to the payment of the said obligation, first, that she had a sale for a portion of her property, including the smaller dwelling house, for sufficient to satisfy the said obligation and to furnish her with monies, which she herself was in need of; that this proposed sale was not consummated due to a defect in the title of Josephine Stuart Bradley, and that she at various times had C. M. Waite and Jeffries & Jeffries, attorneys practicing at the Culpeper Bar, attempting to clear her title so that the sale might be made; that, in any event, the sale was not consummated; that after this sale fell through Josephine Stuart Bradley then advised the said Brownfield that she was attempting to have some of her relatives aid her in the payment of this obligation; that after sometime elapsed she was

unable to secure the money in this manner and
page 33 } finally sometime in March, 1958, Josephine Stuart
Bradley advised the said Brownfield that she had been unable to raise the money to satisfy the obligation and that she would convey him the said tract of land in satisfaction thereof, reserving unto herself and her son, Roland Stewart, a life estate therein, if he would accept such a conveyance; that the said Brownfield agreed to accept such a conveyance and accordingly had a deed drawn by his attorneys, Messrs. Fray & Hudson, of the Culpeper Bar, which he presented to Josephine Stuart Bradley for her signature; that upon being presented with the said deed the said Josephine Stuart Bradley advised the said Brownfield that she was expecting Emma McGrue, one of the complainants in this suit, to visit her within a short time and that she would prefer waiting until after this visit before executing this deed, and the said Brownfield agreed to wait until after such visit. The evidence is not clear as to the exact date when this visit was to occur or did occur, but shows that sometime after this agreement the said Brownfield received a communication from Josephine Stuart Bradley advising him not to come to see her at the appointed time.

Your Commissioner further reports that on August 6, 1958, the said Brownfield again went to the home of Josephine Stuart Bradley, at which time Josephine Stuart Bradley
advised him that she had been unable to raise the
page 34 } money to satisfy the obligation due him and that
she saw nothing left to do except to make the deed as had been previously suggested; that, thereupon, the said Brownfield, having left the deed previously drawn at his home in Charlottesville, Virginia, went to the offices of his attorneys, Fray & Hudson, and had another deed prepared, which the said Brownfield in the company of J. B. Hudson, one of the members of said firm, and a Commissioner in Chancery of your Honor's Court, took the said deed to the home of Josephine Bradley Stuart, where the same was executed by the said Josephine Stuart Bradley, acknowledged before the said Hudson, and delivered to E. H. Brownfield and in addition to the said acknowledgment the signature of Josephine Stuart Bradley was witnessed by the said J. B. Hudson, E. H. Brownfield and Roland Stuart, the son of the grantor; that on the same day the said deed was duly admitted to record in the Clerk's office of your Honor's Court, at 2:45 P. M., and is of record in Deed Book 151, page 75.

Your Commissioner further reports that the original of said deed is exhibited in evidence and shows that the grantee therein is Joan S. Brownfield, whom the evidence shows to

be the wife of said E. H. Brownfield; that the consideration stated in said deed is the sum of $10.00, cash in hand paid and other good and valuable consideration, paid by the party of the second part unto the party of the first part page 35 } and conveys the said tract of land with general warranty of title and contains the following reservation:

"This conveyance is made subject to a life estate in and to the tract or parcel of land herein conveyed, which said life estate is reserved by the said party of the first part, and is further subject to the right of Roland Stuart, son of the party of the first part, who shall have the right to occupy one of the dwellings on the said tract or parcel of land for and during the term of his natural life, after the death of the party of the first part, with the understanding that the party of the second part, at the time of the death of the party of the first part, shall have the privilege of selecting which dwelling the said Roland Stuart will have the right to occupy during the term of his natural life. The party of the first part shall not be required, subsequent to the delivery of this deed, to pay for the real estate taxes or insurance on the said real estate, but the same will be the obligation of the party of the second part."

Your Commissioner further reports that during the month of September, 1958, the said Josephine Stuart Bradley died and on October 3, 1958, her last will and testament was duly admitted to probate in the Clerk's Office of your Honor's Court, under the terms of which the said decedent devised her real estate in Culpeper County, Virginia to her page 36 } son, Roland Stuart, for his lifetime; she then devised all her personal and household property to Roland Stuart, and the sum of $1.00 to her husband, Augustus Bradley, and under the *firth* clause of said will she devises to her sister-in-law, Emma McGrue a home for her lifetime, and under the sixth clause of said will provides: "After the death of my son, Roland Stuart and my sister in law Emma McGrue the home shall then be given to Antioch Baptist Church, Culpeper, Va., to be used as a parsonage." This will is dated June 16, 1953.

Your Commissioner further reports that Emma McGrue, who was named as executrix under this will, duly qualified as such and on the 16th day of October 1958, instituted this suit for the purpose of setting aside the deed of August 6, 1958 to Joan S. Brownfield.

Your Commissioner further reports that the complainants

in their amended bill allege (1) that at the time of the execution of said deed the said Josephine Stuart Bradley was aged, infirm and ill and by reason thereof wholly incapacitated from attending properly to her business affairs and was not capable of executing any such deed; (2) that if she did in fact execute the said deed, that defendant, Joan S. Brownfield, fraudulently took advantage of her and procured her to sign such deed, the said Josephine S. Bradley, not knowing or understanding the contents or purport of the in-
page 37 } strument; and (3) that there was no consideration whatsoever for the said conveyance.

Your Commissioner further reports that the defendant, Joan S. Brownfield, in her answer denies all of the said allegations.

Your Commissioner further reports that the complainants called as a witness Dr. Elijah Barber, a medical doctor in the general practice in Culpeper County, who testified that he had treated Josephine Stuart Bradley for the last fifteen years and treated her during her last illness; that from June, 1958, until she died her physical condition was very poor; that during that time "at times from time to time she was incapable of transacting any business due to her physical condition because of senility, degeneration and poor circulation, which made her incapable from carrying on normal business;" that in his opinion she was not mentally capable of signing any deed on August 6, 1958. On cross examination the witness testified that his diagnosis of her case was cardiovascular disease, she having heart disease, diseased blood vessels and liver, from which she had been suffering for a period of ten to fifteen years; that at times she knew what she was doing and frequently had lucid moments; that he did not see her on August 6, 1958. On redirect examination the witness testified that from June 1958, she could not carry on a good general conversation. On recross exami-
page 38 } nation the witness further testified that "There were times you could talk to her and she was fairly clear mentally, but I would say definitely not capable of carrying on a normal conversation; probably she would talk a little while and then off she would go. In other words, there was a break in the conversation. Of course, you could catch her at times when you would talk to her a few minutes and she would be very normal." That according to the records of the witness he had seen the decedent on August 3rd and again on August 7th, but had not seen her on August 6th and did not know whether that was one of her good days or one of her bad days.

Your Commissioner further reports that the complainants

next introduced the testimony of Mortimer M. Marshall, who testified that he had had experience in selling and appraising property in Culpeper County and that the fair market value of the property involved in this suit was $5000.00, that this was a fee simple value and that in his opinion the reservation of two life estates would not decrease this value; that in view of the age of the parties in his opinion $5,000.00 was a liberal price.

Your Commissioner further reports that the complainants then called Reverend Robert C. Davis, who testified that he was pastor of the Church, which the said decedent was a member, attending regularly and taking an active page 39 } part up until she became physically unable to do so; that during her illness he had visited her as much as twice a week; that from June, 1958 until she died "Her condition then was very serious and to my mind she was very feeble; she was just like a child and there were times—sometimes when I visited her she was asleep and I didn't even want to bother her, but she was very feeble and like a child." That she was perfectly willing to do anything asked of her; that the witness resides in Washington, D. C., and that the occasions on which he saw the decedent he either made special trips to Culpeper County to see her, or saw her on his regular weekly visits.

Your Commissioner further reports that the Complainants next called Roland Stuart, son of the decedent, who testified that he lived with his mother on the property involved in this suit; that on August 6, 1958, E. H. Brownfield came to visit his mother, who was in bed at the time he first came; that Brownfield told his mother he was going to bring a deed and shortly thereafter left, and thereafter, returned again to the home in the company of another gentleman, whom the witness could not identify; that upon returning his mother was set up in bed and told to sign the deed and Mr. Brownfield steadied her hand while she signed it; that no money was passed at the time of the execution of the deed; that the deed was not read to his mother before she signed page 40 } it; that after his mother had signed the deed that the witness then signed the deed, but didn't know why he signed it. On Cross examination the witness testified that Mr. Brownfield had done certain work on the dwelling house; that the witness was not in a position to help his mother financially, having no income of his own; that he was present in the room when the deed was signed, but he did not hear Mr. Hudson, the attorney, read the deed to his mother; and denied that any explanation of the deed was made to his mother; that his mother was told it was a deed; that the

witness made no objection to his mother signing the deed and that he did not understand the nature of the transaction.

Your Commissioner further reports that the complainants called Ruth Walker, a neighbor of Josephine Stuart Bradley, who testified that she visited the decedent approximately every day during the last two years of her life, when she was ill; that during the last year the decedent was getting worse all the time and that about three months prior to her death she was getting worse all the time and was "more in the baby stage" in that she could not do for herself, and her mental condition was bad; that sometimes the decedent was bright and then again she was off in a daze; and in the opinion of the witness in the month of August, 1958, she was not capable of transacting any business, because of the condition of her health. On cross examination the witness testi-
page 41 } fied she was not present when the deed was exe-
cuted and that no mention of the deed was ever made to her by the decedent or by Roland Stuart.

Your Commissioner further reports that Edward H. Brownfield was called as a witness by the Defendant, Joan S. Brownfield, and testified to the contract for the repairs taken by his agent, the completion of the work, the taking of the deed of trust, bond and installment note and the events leading up to the taking of the deed of August 6, 1958, as have been heretofore related; that on August 6, 1958, he went to the home of Josephine Stuart Bradley for the purpose of making collection of the obligation due him and that he was then told by her that she had decided to make the deed conveying the property, reserving a life estate for herself and her son; and that the witness then returned to Culpeper where he had the deed drawn by his attorneys and that he then returned with Mr. Hudson to the home of Josephine Stuart Bradley for the purpose of having the deed executed; that they went to her bed room; that the deed was explained to her and she read the deed and it was read to her by both the witness and Mr. Hudson; that the said Bradley then asked sundry questions about taxes and other things and after a comprehensive explanation and comprehensive understanding she executed the deed; that Roland Stuart was present during the entire time the deed was being read, explained and
page 42 } executed by his mother and that he then signed the
deed as a witness to his mother's signature; that prior to the execution of the deed the decedent had asked questions relative thereto as to what privileges, other than the life estates, would accrue to her and was told that the only benefits that would so accrue would be the necessary upkeep of the property such as taxes and fire insurance and necessary

repairs, after which she asked would the witness pay her burial expenses and was told that he would not; that the witness was unable to recall whether any mention was made at that time with reference to a life estate to Emma McGrue, but that on several occasions, prior to that time, she had asked if the life estate could be continued to Emma McGrue and the witness had told her he was unwilling to continue the life estate other than in favor of Roland Stuart; that in addition to the consideration stated in the deed that the consideration for the deed was the satisfaction of the deed of trust to secure the obligation due to the witness; that the witness had directed that the deed be drawn to his wife, Joan S. Brownfield, instead of to himself; that the witness felt that the decedent "understood it (the deed) one hundred per cent; it was very comprehensively explained to her and she asked some very comprehensive questions in regard to it, and it was presented in its full formidability, I would say, in the extent of its bindingness on her, and she
page 43 } understood it."

Your Commissioner further reports that the witness further testified that he didn't recall steadying the decedent's hand as she executed the deed; that she was lying in bed in a prone position when the witness and Mr. Hudson first entered the room and that she had turned on her side and signed the deed.

On cross examination the witness testified that he had known the decedent since March, 1956, when she had executed the deed of trust and had been to her home on probably ten or twelve occasions for the purpose of making collection of the obligation due to him; that at the time of the making of the contract to repair the dwelling house and at the time the work was done he did not know that Josephine Stuart Bradley had an incompetent spouse, but that he later learned that her husband was an inmate of a mental institution in Northampton, Massachusetts; that at the time of the execution of the deed of trust he had had the title to the property examined and according to the certificate from the examining attorney the title was a merchantable title minus the interest of the husband of decedent; that the decedent had stated she would convey the property to the witness and that he had directed that the deed be made to his wife as a husband's act of benevolence to his wife; that the decedent did not know his wife and had never seen her; that no money
page 44 } was passed at the time of the execution of the deed of August 6, 1958, and that the main consideration therefor was the satisfaction of the deed of trust obligation due to the witness and the reservation of the life estates;

that the deed of trust had not been released of record and the installment note and bond secured by the deed of trust are still in the possession of the witness, the same being filed as exhibits with his deposition; that he had not foreclosed the trust because the decedent did not want him to do so; that she offered to convey the property to him with a life estate for herself and her son, and he felt it was charitable not to foreclose the trust since he knew the property would not bring enough to pay the obligation if advertised for sale under the trust in the questionable state of the title; that he felt that the cloud on the title would clear itself in time when the husband of decedent dies.

Your Commissioner further reports that on redirect examination the witness testified that the reason the deed of trust had not been released of record was that he had expected to do so on his next visit to Culpeper and that in the meantime he received notification of this suit, and after that he had elected not to mark the same satisfied.

Your Commissioner further reports that the defendant called as a witness, J. B. Hudson, Jr., a competent and reputable attorney at law, practicing at the bar of your Honor's Court, who testified that the firm of Fray & page 45 } Hudson, of which he is a member, had from time to time done legal work for E. H. Brownfield, and that on August 6, 1959, at the request of Mr. Brownfield he had drawn the deed involved in this suit and that he had then accompanied Mr. Brownfield to the home of Josephine Stuart Bradley; that upon arrival there they were taken to the bedroom where Josephine Bradley was, the witness did not recall whether at the time of their arrival she was lying on the bed or sitting on the edge of the bed, but that during the time the deed was being executed by her she was sitting on the edge of the bed; that Roland Stuart was present during the time the deed was being read, explained and executed by his mother; that the witness' purpose in being present was to take the acknowledgment to the deed, that he realized she was a woman of considerable years and the witness desired to satisfy himself that she knew what she was doing when she signed the deed, and it was, therefore, discussed at great length; that the deed was read to her, explained to her and she was asked if she understood the nature of the transaction and that Roland Stuart was likewise asked if he understood the nature of the transaction and that they both answered in the affirmative; that Josephine Bradley asked questions with reference to the deed, and the witness recalled specifically that she had asked Mr. Brownfield if he would pay her burial

expenses and that Mr. Brownfield had replied that
page 46 } he could not do so; that the witness was definitely
of the opinion that she had the mental capacity to understand the transaction, and that if he had not been of this opinion he would not have taken the acknowledgment of her signature nor permitted her to sign the deed.

Your Commissioner further reports that on cross examination the witness testified that when he went in the room where Josephine Stuart Bradley was that he had explained to her his purpose in being there; that the deed was then read to her by the witness and after some discussion it was executed by her; that the deed of trust was mentioned and discussed, but the witness could not recall by whom, except that he had not done so himself, but assumed by the process of elimination that it was Mr. Brownfield; that the witness had never seen Josephine Stuart Bradley before, but that he had on one occasion talked with her over the telephone, and in answer to this question the witness answered as follows:

"Q. So, after you had read the deed to her finally she did sign it, is that true?

"A. You are saying, the manner in which you ask the question indicates to me that she was urged in some way to sign, 'finally she signed it'; that was not the situation at all. I might say this that at the time Josephine Stuart Bradley signed the deed I was very definitely of the opinion that she
understood everything that was contained in this
page *21* } deed, and that she understood everything about the
life estates, the fact that after her death Roland could stay in one of the houses, and as to who paid the taxes and insurance."

Your Commissioner further reports that the witness testified on redirect examination that in 1956 he had examined the title to the property involved in this suit for E. H. Brownfield; that his title notes indicate that on March 5, 1956, he had a telephone conversation with Josephine Stuart Bradley, and was advised by her that she was married to Samuel Bradley; that there had been no divorce, and that he had been confined in a mental institution in Northhampton, Massachusetts; that the deed from the heirs of Albert Stuart conveying the property involved in this suit to Josephine Stuart Bradley sets forth the names of his heirs and the information recited there would be sufficient, if true, to give Josephine Stuart Bradley a fee simple title; that his title notes further show that on March 5, 1956, she advised that she had three other brothers and sisters, who died in infancy,

but that not being willing to accept this statement without an affidavit, he had made an exception as to the heirs of Albert Stuart in his certificate of title.

Your Commissioner further reports that the defendant called G. W. Mitchell, who testified that he was Treasurer of Culpeper County and that the tract of land in-
page 47 } volved in this suit was assessed for taxation for the year 1958 in the name of Josephine Stuart Bradley and that according to the records in his office the land was assessed at $120.00 and the buildings at $960.00, making a total assessment of $1,080.00; that this assessment was made in 1955, effective in 1956, and that the assessment was made on the ratio of 40% of actual value; that in his opinion the reservation of a life estate would normally decrease the value of property.

Your Commissioner further reports that with the exception of Roland Stuart the testimony of none of the witnesses has been attacked and impeached; that Roland Stuart's testimony as to the events which transpired at the time of the execution of the deed of August 6, 1958 is entirely contrary to that of E. H. Brownfield and J. B. Hudson, Jr., and judging from his demeanor, manner of testifying and the fact that he appeared to your Commissioner to be of limited intelligence, his testimony can be given little, if any, credence by your Commissioner; that, therefore, the testimony of E. H. Brownfield and J. B. Hudson, Jr., must be accepted as to the events which took place at that time.

Your Commissioner further reports that the evidence of all the other witnesses who testified in the case is entirely credible and he finds no reason to disbelieve the evidence of any of them.

page 48 } Your Commissioner further reports that this brings us to a consideration of the grounds alleged in the bill for the setting aside of the deed of August 6, 1958, and your Commissioner will consider them in the order stated in the bill.

Your Commissioner further reports that the law in Virginia on the question of mental capacity required to execute a valid legal instrument is well settled and is concisely stated in 5 Michie's Juris. Section 7 page 694, as follows:

"The test of legal capacity to enter into a given transaction is the party's mental ability to understand the nature and consequences of that transaction *at the time he is entering into it.* More specifically, the grantor must be capable of recollecting the property he is about to dispose of, the manner of

disposition and the persons to whom the conveyance is being made."

Your Commissioner further reports that the burden of showing mental incapacity is upon the complainants; they have attempted to carry this burden by the testimony chiefly of Dr. Barber, and also by the testimony of Rev. Davis and Mrs. Ruth Walker; the testimony of Dr. Barber clearly shows that there were times when Josephine Bradley had lucid intervals, and while he testified that in his opinion at no time was she capable of transacting business, neither page 49 } he nor the *the* other witnesses were present at the time of the execution of the deed, and there is no positive evidence that any of them even saw her during that day. In contrast to this the evidence of E. H. Brownfield and J. B. Hudson, Jr., is clear and definite that she was mentally capable of understanding and did in fact understand the nature and consequences of the transaction at the time she was entering into it; that it was read and explained to her and that she asked pertinent questions pertaining thereto.

Your Commissioner further reports that in addition to the evidence of the witnesses, in viewing the situation as it confronted Josephine Stuart Bradley on August 6, 1959, it is seen that she was an elderly colored woman, in very bad health, confronted by an obligation secured by a deed of trust, which she could not meet, and, therefore faced with the possibility that her home might be sold; she had endeavored to raise the money with which to meet this obligation first by a sale of a portion of her property, and failing in this, by having relatives assist her in paying the obligation. It is further to be seen that she had previously *mad* a will, by which she left a life estate in the property to her son, Roland Stuart, and a home for her sister-in-law Emma McGrue, and at their deaths provided that the property should go to the Antioch Baptist Church to be used as a parsonage.

Looking now to what she attempted to accom- page 50 } plish and accomplished by the deed of August 6, 1958; she requested and received a life estate for herself, which assured her of a home during her last days; she requested and received a life estate in one of the dwellings for her son, Roland; she requested and was denied a life estate for Emma McGrue; and she requested that the grantee pay her burial expenses, which was refused. So, that it is seen that with the exception of the final disposition of her property she accomplished or attempted to accomplish by the deed everything that she had provided for in her will.

Can it be said that one, who bargains in this manner in the making of a deed does not have the mental ability to understand the nature and consequences of the transaction at the time he is entering into it? Or that he does not recollect the property he is about to dispose of, the manner of disposition and the persons to whom the conveyance is being made? Your Commissioner thinks not, especially when these facts are viewed in the light of all the other evidence, and the burden which the complainants must carry.

Your Commissioner, therefore, reports unto the Court that Josephine Stuart Bradley did on August 6, 1958, at the time of the execution of the said deed, have the mental capacity to enter into the same.

Your Commissioner further reports that coming now to the question of whether there was fraud in the induce-
page 51 } ment in obtaining the deed of August 6, 1958.

Your Commissioner further reports that it is well settled law that fraud is divided into two classes (1) actual fraud, and (2) constructive fraud. Actual fraud must be proven by clear, convincing and cogent evidence. No actual fraud is proven, or in fact attempted to be proven, and, therefore, the complainants must rely upon constructive fraud to set aside the said deed.

Your Commissioner further reports that the rule applicable to cases of constructive fraud has been stated in the case of *Fishburne* v. *Ferguson*, 84 Va. 110, 4 S. E. 575, and followed in the later cases of *Cook* v. *Hayden*, 183 Va. 203, and *Bibby* v. *Thomas*, 165 Va. 248, 182 S. E. 226, as follows:

"Whenever there is a great weakness of mind in a person executing a conveyance of land arising from age, weakness or any other cause, though not amounting to absolute disqualification, and the consideration given for the property is grossly inadequate, a court of equity will upon proper and seasonable application of the injured party or his representatives or heirs, interfere and set the conveyance aside, since from these circumstances imposition or undue influence will be inferred."

Your Commissioner further reports that he has examined each of the cases referred to above and also the
page 52 } cases cited by counsel for complainant of *Owens* v. *Ownes*, 196 Va. 966, 86 S. E. (2nd) 181 and *Jackson* v. *Seymour*, 193 Va. 735, 71 S. E. (2nd) 181, and *Waddy* v. *Ennis*, 154 Va. 615, in which involved the question of constructive fraud, and each of the cases involved an entirely different factual situation from that existing in this case. In

each of the cases the grantees occupied a position of peculiar trust and confidence to the grantor, either by standing in the position of a trustee, or by being closely related to the grantor and acting as an advisor, or by living in the same household and caring for the grantor, and in each of these cases, with the exception of the case of *Waddy* v. *Ennis*, the Court held that where the grantor, without any necessity on his part, executed a conveyance for a grossly inadequate purchase price, that the deed should be set aside.

Your Commissioner further reports that in no case, which he has been able to find, or which has been cited by counsel for the respective parties, has the Court applied this doctrine where the grantor and grantee were strangers and dealing as were the parties in this case.

Your Commissioner further reports that there is not the slightest indication in the evidence that there was any misrepresentation of any material fact by E. H. Brownfield or J. B. Hudson to Mrs. Bradley or that there was any pressure brought to bear upon her to execute the deed, in page 53 } fact the evidence is to the contrary, Brownfield having testified that he had previously had such a deed drawn and at the request of Mrs. Bradley had not insisted that it be executed and had waited a period of some months before going back to see her again and that she then advised him that she saw nothing to do but to execute the deed, and that he then had the deed of August 6, 1958 drawn; there is no evidence that there was any relationship of trust and confidence between Mrs. Bradley and E. H. Brownfield, the evidence being that they had only known each other in connection with the contract out of which this transaction grew.

Your Commissioner further reports that what has been said in this regard assumes that the consideration for the deed was grossly inadequate and such as to shock the moral sense of mankind. The evidence as to the value of the property conveyed, consists of the testimony of Mortimer M. Marshall, who testified that the property had a fee simple value of $5,000.00, and the evidence of G. W. Mitchell, who testified that the property had an assessed valuation $1,080.00, which represented 40 per cent of actual value, which would make the actual value $2,700.00. It is well, known, however, that assessments are frequently somewhat low, and the evidence of Mr. Mitchell shows that in Culpeper County the assessments are low, the assessment was made in 1955 and it is reasonable to assume that the value of property page 54 } within a mile and a half of the Town of Culpeper on a primary road would have increased some in

value between 1955 and 1958. Your Commissionuer is, therefore, of opinion and reports unto the Court that the fee simple value of the property conveyed was between $4,500.00 and $5,000.00 at the time of the conveyance.

Your Commissioner further reports unto the Court that the consideration stated in the deed is the nominal consideration of $10.00 and other valuable consideration, which the evidence shows was the satisfaction of the obligation secured by the deed of trust, which at the date of the deed amounted to $400.00 with interest from March 6, 1956; that in addition to this the grantee was required to pay the taxes, which E. H. Brownfield testified amounted to more than $50.00, the insurance, the amount of which is not shown, and, of course, to pay such future taxes and insurance as might accrue during the life tenancies.

Your Commissioner further reports that in addition to these tangible considerations there was the intangible consideration that Josephine Bradley was in ill-health and her declining years and faced with the starke reality and possibility that the property might be sold under the deed of trust and she thus deprived of her home, and her son, 67 years of age, who was without income, likewise deprived of his home. What such a consideration would be page 55 } worth to a person so situated it is difficult to say, but certain it is that Josephine Bradley was faced with a situation where she was compelled to make the best deal she could make under those circumstances and the evidence is clear that she attempted to make and did make the best deal she could under those circumstances.

Your Commissioner further reports that viewing the transaction from the standpoint of the grantee; she was accepting a conveyance of property in effect two life estates imposed upon it, and while it is true that Josephine Bradley was then in advanced years and ill health, and in fact lived only approximately a month after making the deed, her son, to whom the right to occupy one of the houses on the premises was reserved, was then 65 years of age, and as to him it was in effect a contract of hazard; he might have died within a short time or he might have lived, as his mother did, to an advanced age, and so long as he lived the grantee would not have had a title, which was merchantable for anything like the fee simple value of the property. In addition to this there was the outstanding contingent right of courtesy of Augustas Bradley, the husband of Josephine Bradley, and while the evidence is not clear, there is some inference of additional outstanding interests in other persons, claiming as heirs of Albert Stuart and the possibility that a chancery

suit might become necessary to clear the title. If
page 56 } the grantee elected to hold the property during the
life tenancies. then she was faced with the obligation to pay the taxes, insurance and necessary maintenance and so long as Josephine Bradley lived would have received no income therefrom, and at her death, the only income that could be received during the life of Roland Stuart would have been the rentals from one of the houses located on the premises.

Under these circumstances can it be said that the consideration for the deed was grossly inadequate, such as to shock the moral sense of mankind? For a woman of Josephine Bradley's age to be uprooted from the home, in which she had probably lived most of her life, at a time when she was ill, in fact her last illness, would indeed have shocked the moral sense of man kind, and the arrangement whereby she were permitted to spend her last days in the home she had occupied for so long, and to permit her son to remain there during the rest of his lifetime was one to be desired by the moral sense of mankind.

Your Commissioner, therefore, reports unto the Court that there was no fraud, actual or constructive, in the inducement for the execution of the deed of August 6, 1958.

Your Commissioner further reports that this brings us to the question of whether or not there was grossly inadequate
consideration for the deed of August 6, 1958.
page 57 } Your Commissioner further reports that the
question of the consideration for the deed of August 6, 1958, has been largely considered and answered in what has been heretofore said with respect to fraud in the inducement.

Generally the law in Virginia is thus stated in the case of *Planters National Bank* v. *Heflin Co.*, 166 Va. 166, 184 S. E. 216:

"Mere failure of consideration or want of consideration will not ordinarily invalidate an executed contract. The owner of the historic estate of "Blackacre" can give it away, and he can sell it for a peppercorn. Courts, though they have long arms, cannot relieve one of the consequences of a contract merely because it was unwise. They are not guardian in general to the people at large, but where inadequacy of price is such as to shock their conscience equity is alert to seize upon the slightest circumstance indicative of fraud, either actual or constructive."

Your Commissioner reports, as has been heretofore stated, that there is no evidence of the slightest fraud, either actual

or constructive in the procurement or inducement of the deed, and, therefore, in the absence of such proof a court of equity is powerless to disturb the same.

Your Commissioner further reports in this regard that counsel for complainants objected to the evidence of E. H. Brownfield as to the actual consideration for the deed on the ground that the other party thereto was deceased and his testimony was uncorroborated. The law does not require corroboration in every detail in such a situation, but if his evidence is corroborated in any material respect that is all that is required.

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Your Commissioner, being of the opinion that the testimony of E. H. Brownfield is substantially corroborated by the testimony of J. B. Hudson, Jr., reports that this objection is not well taken.

Your Commissioner, therefore, reports unto the Court that the deed of August 6, 1958, should not be set aside on the ground of mental incapacity on the part of the grantor, lack of consideration, or fraud in the inducement, and, therefore, that Josephine Stuart Bradley died seised and possessed of no lands or the interest in any such lands, the life estate reserved to her in said deed having terminated upon her death.

Account 3: What are the liens against the property described in the said deed, in the event the said deed is set aside, and the liens, if any against the property if the deed is not set aside.

Your Commissioner reports that in the event the said deed is set aside then E. H. Brownfield is entitled to a lien on the said real estate by reason of the lien of his deed of trust in the amount of $400.00, with interest thereon from March 6, 1956 until paid, and also entitled to recover the amount paid by him for any taxes due and assessed against said property, and any amount paid by him for the insurance premiums on fire insurance upon the buildings located on the said premises; that the said Brownfield as the holder of the bond secured by the said deed of trust had a right to pay the said taxes and insurance and recover the same as a part of his lien, and that in the event the deed should be set aside that he should be returned to the same position that he occupied at the time the same was executed.

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Your Commissioner further reports that there are no other liens of record in the Clerk's Office of your Honor's Court by deed of trust, mortgage, delinquent taxes, judgment lien, or otherwise binding the same real estate.

Your Commissioner further reports that in the event the said deed is not set aside then there are no liens binding the said real estate.

Account 4: Being an account showing the interest of Roland Stuart in the said property, if any, and the interest of Augustus Bradley in the said property, if any.

Your Commissioner further reports that the interest of Roland Stuart in the said property if the deed is not set aside is set forth in the deed of August 6, 1958, as fol-
page 60 } lows: " * * * And is further subject to the right of Roland Stuart, son of the party of the first party, who shall have the right to occupy one of the dwellings on the said tract or parcel of land for and during the term of his natural life, after the death of the party of the first part, with the understanding that the party of the second part, at the time of the death of the party of the first part, shall have the privilege of selecting which dwelling the said Roland Stuart will have the right to occupy during the term of his natural life."

Your Commissioner reports that the evidence does not show whether the grantee in said deed has exercised the privilege of selecting the dwelling which the said Roland Stuart should occupy, but in view of the fact that this suit was instituted within less than a month after the death of Josephine Bradley, your Commissioner reports that she should be given an opportunity to exercise this privilege upon the conclusion of this suit.

Your Commissioner further reports that in the event that the said deed is set aside, then under the will of Josephine Stuart Bradley the said Roland Stuart is entitled to a life estate in the said real estate, subject to the right of Emma McGrue to have a home upon said premises during her lifetime, as provided in the said will.

Your Commissioner further reports that in the
page 61 } event the said deed is set aside and an appeal should be taken from the Clerk's order of probate of the will of Josephine Stuart Bradley, the 12 months period allowed by law for such appeal not having yet expired, and that on such appeal the order of probate be set aside, then Preston Stuart would have an interest in the said real estate as an heir at law of his mother.

Your Commissioner further reports that in the event that the said deed should not be set aside Augustus Bradley, the husband of Josephine Bradley, in the absence of any showing that he had deserted the said Josephine Bradley during her lifetime without just cause, is entitled to a right of courtesy in the said real estate.

Your Commissioner further reports that in the event the said deed is set aside, and the said Augustus Bradley does not renounce the provisions made for him in the will of

Josephine Bradley, that he would have no interest in the said real estate; that in the event the said Augustus Bradley should renounce the provisions in the said will made for him, or that the Clerk's order of probate be set aside upon appeal, in the absence of any showing that he deserted Josephine Stuart Bradley in her lifetime, then the said Augustus Bradley would have a right of courtesy in said land; that as to the interest of Augustus Bradley what has been said is based upon the assumption that he is still living, and, of course, if he be dead his interest has been ex-
page 62 } tinguished.

Account 5: An account showing whether or not all proper parties are before the Court in this cause.

Your Commissioner reports that the original bill in this cause was filed by Emma McGrue, individually and as Executrix of the Estate of Josephine S. Bradley; that upon a demurrer filed by the defendant, Joan S. Bradley, the Court ordered that Roland Stuart and Augustus Bradley were necessary parties and granted the complainant the right to amend; that, thereupon, Roland Stuart joined Emma McGrue, individually and as such Executrix and filed their amended bill to which they made as parties defendants, Joan S. Brownfield and Augustus Bradley; that the process issued against Joan S. Brownfield has been returned duly executed upon her and she has appeared and filed her answer to such amended bill; that Augustus Bradley was proceeded against by Order of Publication and an affidavit was made and filed by counsel for complainants, which is as follows:

"Affiant believes that the defendant, Augustus Bradley, is not a resident of the State of Virginia and his last known postoffice address is Culpeper, Virginia."

That the Commonwealth's Order of Publication awarded upon this affidavit has been posted and published as required by law.

Your Commissioner further reports that Section 8-71 of the Code of Virginia provides as follows:

page 63 } "On affidavit that a defendant is * * * not a resident of this State or that diligence has been used by or on behalf of the plaintiff to ascertain in what County or Corporation he is, without effect, or that process directed to the officer of the County or Corporation in which he resides, or is, has been twice delivered to such officer more than ten days before the return day and been returned without

being executed, an order of publication may be entered against such defendant.

"An in any suit in equity when the bill states that there are or may be persons interested in the subject matter to be divided or disposed of, whose names are unknown, on affidavit of the fact that such parties are unknown an order of publication may be entered against such unknown parties."

Your Commissioner further reports that Rule 2:6 (b) of the Rules of Court provide:

"A return by the officer of the County or Corporation in which a defendant resides that the papers have been in his hands for service for 21 days and that he has been unable to make service, together with an affidavit by or on behalf of the plaintiff that the defendant's last known place of address was in that County or Corporation shall afford a basis for an order of publication being deemed equivalent to "process twice delivered more than ten days before the return day and returned without being executed."

page 64 } Your Commissioner further reports that the complainants in the amended bill alleged that there are or may be other persons interested in the subject of this suit and made such persons parties defendant as "Parties Unknown."

Your Commissioner further reports that it affirmatively appears from the evidence of J. B. Hudson, Jr., that he was advised by Josephine Stuart Bradley on March 5, 1956 that Augustus Bradley was at that time an inmate in a mental institution in Northampton, Massachusetts, and that no Guardian *ad Litem* has been assigned to protect and defend his interest in this suit.

Your Commissioner further reports that he is extremely doubtful as to the sufficiency of the affidavit for the order of publication as to Augustus Bradley; the affidavit states that he is a non resident of Virginia, but states that his last known post office address is Culpeper, Virginia, and does not state that due diligence has been used by or on behalf of the plaintiff to ascertain in what County or Corporation he is, without effect; nor have the provisions of the statute or the Rules of Court been complied with. However, your Commissioner is of opinion that it appearing from the evidence that he was in 1956 an inmate of a mental institution, that it is necessary that a Guardian *ad Litem* be assigned to protect page 65 } and defend his interest and that no such Guardian *ad Litem* having been appointed and answered

that the said Augustus Bradley is not properly before the Court in this cause.

Your Commissioner is further of the opinion that the affidavit as to the "Parties Unknown" not having been made in accordance with the Statute that the publication as to them is without effect.

Your Commissioner, therefore, reports unto the Court that all proper parties are before the Court in this cause with the exception of Augustus Bradley and the "Parties Unknown."

Account 6: Being any other matter, specially stated, which the Commissioner may deem pertinent or which any party may request to be so stated.

Your Commissioner reports that he does not deem it pertinent to report upon any other matter, nor has he been requested to state any such matter by any party in interest.

Your Commissioner further reports that he has given notice in writing to James H. Raby, counsel for complainants and Harold H. Purcell, counsel for Joan S. Brownfield, that he will file this report in the Clerk's Office of your Honor's Court on September 9, 1959, as will more fully appear from a copy of said notice, which is herewith returned to be read along with and as a part of this report.

Respectfully submitted,

S. A. CUNNINGHAM
Commissioner in Chancery.

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Commissioner's Office,
Louisa, Va., September 4, 1959.

James H. Raby, Esquire,
Attorney at Law,
Raby Building,
Alexandria, Va.

Harold H. Purcell, Esquire,
Attorney at Law,
Louisa, Va.

You and each of you are hereby notified that the undersigned Commissioner in Chancery of the Circuit Court of Louisa County, acting in obedience to a decree of reference entered in the chancery cause of Emma McGrue, Exis., etc., *v.* Joan S. Brownfield, et als., on May 11, 1959, will file his report as such commissioner in the Clerk's Office of the Circuit Court of Culpeper County on September 9, 1959.

Respectfully,

S. A. CUNNINGHAM
Commissioner in Chancery.

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* * * * *

MEMORANDUM OF LAW ON BEHALF OF THE COMPLAINANT.

Complainants files the following as Memorandum of Law in the above styled cause.

CASES:

Bibby v. *Thomas,* 182 S. E. 226.
Webb v. *Inghan,* 29, W. Va. 389, 1 S. E. 816.
Todd v. *Sykes,* 33 S. E. 517
Owens v *Owens,* 196 Va. 966, 86 S. E. (2nd) 181.
Cook v. *Hayden,* 183 Va. 203, 31 S. E. (2nd) 625.
Jackson v. *Seymour,* 193 Va. 735, 71 S. E. (2nd) 181.

STATUTES:

Section 8-286 of the 1950 Code of Virginia as amended.

JAMES H. RABY
Counsel for Complainants.

I hereby certify that I mailed a copy of the above pleading to Mr. Harold H. Purcell, attorney of record for defendant to his address: Louisa, Virginia on the 1st day of July, 1959.

JAMES H. RABY.

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* * * * *

MEMORANDUM OF LAW ON BEHALF OF THE DEFENDANTS.

The defendants file the following as a Memorandum of Law in the above styled cause:

Wampler v. *Harrell*, 112 Va. 635.
Huff v. *Welch*, 115 Va. 74, pages 87 through 89.
Price's Executor v. *Barham*, 147 Va. 478.
Howard v. *Howard*, 112 Va. 566.
Davis v. *Alderson*, 125 Va. 681, at page 693.
Porter, et als., v. *Porter, et als.*, 89 Va. 118.
M. J., Vol. 5, page 694—Mental Capacity.
M. J., Vol. 5, pages 698, 699, 700 and 701.
M. J., Vol. 10, pages 164 and 165.
Cheek v. *Marshall*, 138 Va. 643.
Whitehorn v. *Hines*, 1 Munford 557.
Keister v. *Cubine*, 101 Va. 768.
Tabb v. *Willis*, 155 Va. 836.
Core v. *Core's Adm'rs.*, 139 Va. 1.
Jenkins v. *Trice*, 152 Va. 411.
Rixey v. *Rixey*, 103 Va. 414.
Miller v. *Rutledge, et als.*, 82 Va. 867.
Minor's Institute, page 572.
Beverley v. *Walden*, 20 Grattan 147.
M. J., Vol. 5, Section 14, page 701.
page 69 } *Linbrook Corporation* v. *Rogers*, 158 Va. 181.
Swan v. *Swan's Ex'r.*, 136 Va. 496.
M. J., Vol. 5, Section 65, page 738.
Martin v. *Hall*, 115 Va. 358.
Echard v. *Waggoner*, 126 Va. 238, at page 242.
Hickman's Ex'or., v. *Trout*, 83 Va. 478, at page 498.
Stonebraker v. *Hicks*, 94 Va. 618.

Respectfully submitted this 8th day of July, 1959.

HAROLD H. PURCELL
Attorney for Defendants.

I hereby certify that a copy of the foregoing Memorandum of Law on behalf of the defendants was this day mailed to Mr. James H. Raby, Attorney at Law, The Raby Building, 1000 Pendleton Street, Alexandria, Virginia, Attorney of Record for the complainants.

Given under my hand this 8th day of July, 1959.

HAROLD H. PURCELL
Attorney for Defendants.

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* * * * *

June 24, 1959.

Mr. S. A. Cunningham
Judge of County Court
Louisa, Virginia

Dear Judge Cunningham:

Re: Emma McGrue et al. *v.* Joan Brownfield, et al.

With reference to the above styled case in which you are commissioner, I have decided against presenting any further testimony in this case. Therefore you may file your report any time at your earliest convenience.

I am

Very truly yours,

JAMES H. RABY.

JHR:mbs

Copy to

Mr. Harold Purcell
Attorney at Law
Louisa, Virginia

page 71 } THIS DEED made and entered into this the 6th day of August, 1958, by and between JOSEPHINE STUART BRADLEY, (sometimes known as Josephine Stewart Bradley,) as party of the first part, and JOAN S. BROWNFIELD, as party of the second part,

WITNESSETH: That for and in consideration of the sum of Ten Dollars, ($10.00), cash in hand paid and other good and valuable consideration, paid by the party of the second part to the said party of the first part, the receipt of which is hereby acknowledged, the said party of the first part, subject to the reservations hereinafter contained, does hereby bargain, sell, grant, transfer and convey WITH GENERAL WARRANTY OF TITLE, unto Joan S. Brownfield, party of the second part, all of that certain tract or parcel of land, with all buildings and improvements thereon and appurtenances thereunto belonging, situated, lying and being about 1 1/2 miles north of the Town of Culpeper,

Culpeper County, Virginia, on the east side of the road leading from Culpeper to Rixeyville (Route 229), adjoining the land of Dorsey, Summers and W. A. Kite, and containing four (4) acres, more or less.

The tract or parcel of land herein conveyed is the same tract or parcel of land which was conveyed to the party of the first part by James J. Stewart, et als., by deed dated the 18th day of April, 1936, and recorded in the Clerk's Office of Culpeper County, Virginia, in Deed Book 95, page 397, less and except a strip thereof which was conveyed to the Commonwealth of Virginia for road purposes, by deed dated the 21st day of February, 1950, and recorded in the aforesaid Clerk's Office in Deed Book 125, page 392.

Reference is herewith had to the abovementioned
page 72 } deeds for a more complete and accurate description
of the land herein conveyed.

THIS CONVEYANCE IS MADE SUBJECT to a life estate in and to the tract or parcel of land herein conveyed, which said life estate is reserved by the said party of the first part, and is further subject to the right of Roland Stuart, son*e* of the party of the first part, who shall have the right to occupy one of the dwellings on the said tract or parcel of land for and during the terms of his natural life, after the death of the party of the first part, with the understanding that the party of the second part, at the time of the death of the party of the first part, shall have the privilege of selecting which dwelling the said Roland Stuart will have the right to occupy during the term of his natural life. The party of the first part shall not be required, subsequent to the delivery of this deed, to pay for the real estate taxes or insurance on the said real estate, but the same will be the obligation of the party of the second part.

THE PARTY OF THE FIRST PART COVENANTS AS FOLLOWS, to-wit: That she has the right to convey said land to the grantee; that she has done no act to encumber said land and that the same is free from all encumbrances; that the grantee shall have quiet and peaceful possession of said land and that she will execute such other and further assurances of title to said land as maybe requisite.

WITNESS the following signature and seal.

JOSEPHINE STUART BRADLEY (Seal)

Witness to signature:

E. H. BROWNFIELD
ROLAND STEWART

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

page 73 } I, J. B. Hudson, Jr. a commissioner in chancery, in and for the Circuit Court of the County of Culpeper, State of Virginia, do certify that Josephine Stuart Bradley, whose name is signed to the foregoing deed, bearing date on the 6th day of August, 1958, has personally appeared before me and acknowledged the same in my County and State aforesaid.

Given under my hand this 6th day of August, 1958.

J. H. HUDSON, JR.
Commissioner in Chancery.

Virginia:

In Culpeper County Circuit Court Clerk's Office, This deed was this 6th day of August, 1958 filed here and having been duly acknowledged is admitted to record at 2:45 P. M.

Teste:

C. T. GUINN, Clerk
By NELLIE M. BYWATERS, D. C.

Virginia, Culpeper County. Recorded in Deed Book 151 Page 75, 6th day of Aug., 1958.

* * * * *

page 74 } Culpeper, Virginia, March 6. 1956.

$471.96

In accordance with the schedule on the back hereof I promise to pay to the order of Edward H. Brownfield Four Hundred Seventy-one and 96 Dollars for value received payable in 36 installments of the amounts and at the dates shown in the schedule on the back hereof, with interest after maturity, negotiable and payable without offset at The Cul-

peper National Bank, Culpeper, Va. The note becomes immediately due and payable in the event of non-payment at maturity of any installment scheduled on the back hereof.

We, the makers and endorsers, each hereby waive the benefit of the exemption under the homestead laws as to this debt, and agree, in default of payment at maturity, to pay ten per centum on the face of this note for attorney's fee for collection, and hereby waive demand, presentment, protest, notice of presentment, notice of protest, and notice of non-payment and dishonor hereof.

JOSEPHINE S. BRADLEY

No. 3430 Address Culpeper, Va.

(on back)

The undersigned hereby consent that the time for payment of installments on this note may be extended without notice after maturity.

Edward H. Brownfield

card in 1st

No.	Date Due	Pay't	Amt. Pd.	Date Pd.	Prin.
1.	4/13/56	$13.11	$		$
2.		for			
3.		36			
4.		mos.			

* * * * *

page 75 } THIS DEED OF TRUST made this 6th day of March, 1956, by and between JOSEPHINE STUART BRADLEY as party of the first part, and J. L. Fray and J. B. Hudson, Jr., Trustees, who are authorized to act singly or jointly, as parties of the second part.

WITNESSETH: That for and in consideration of the sum of Ten Dollars, cash in hand paid by the parties of the second part to the party of the first part, the receipt of which is hereby acknowledged, the said party of the first part does hereby grant and convey, WITH GENERAL WARRANTY OF TITLE, unto the parties of the second part, as trustees, all of the following described real estate, with all buildings and improvements thereon, or which may hereafter be placed

thereon, and all appurtenances thereunto, to-wit: Situated, lying and being about 1 1/2 miles north of the Town of Culpeper, Culpeper County, Virginia, on the east side of the road leading from Culpeper to Rixeyville (Route 229), adjoining the land of Dorsey Summers and W. A. Kite, and containing four (4) acres, more or less.

The lot or parcel of land herein conveyed is the same lot or parcel of land that was conveyed to the party of the first part by James J. Stewart et als., by deed dated the 18th day of April, 1936, and recorded in the Clerk's Office of Culpeper County, Virginia, in Deed Book 95, page 397, less and except a strip thereof which was conveyed to the Commonwealth of Virginia for road purposes, by deed dated the 21st day of February, 1950, and recorded in the aforesaid Clerk's Office in Deed Book 125, page 392.

Reference is herewith had to the above mentioned deeds, for a more complete and accurate description of the land herein conveyed.

In trust, however, to secure the payment of the following described obligation [s], to-wit: One certain negotiable promissory bond, of even date herewith, in the principal sum of Four Hundred Dollars, ($400.00), with interest at the rate set forth therein, and made and executed by the party of the first part. Said bond is payable on DEMAND to the order of BEARER, at the offices of Fray and Hudson, 102 S. West Street, Culpeper, Virginia, or at such other place as the holder thereof may designate in writing from time to time. Said note provides for the waiver of the Homestead Exemptions as to the debt evidenced thereby and further waives demand, presentment, protest, notice of presentment, notice of protest, and notice of non-payment and dishonor.

No defect in the title held by the Trustees or being sold by them shall be grounds for delaying the sale of this property under this trust by injunction or otherwise.

page 76 } Culpeper, Virginia
March 6, 1956.

$400.00

FOR VALUE RECEIVED, I promise to pay ON DEMAND, to the order of BEARER, the sum of Four Hundred Dollars, ($400.00), together with interest from date at the rate of six per cent per annum until paid, and payable at the offices of Fray and Hudson, 102 S. West Street, Culpeper, Virginia, or at such other place as the holder hereof may designate in writing from time to time.

The maker and endorser hereof waives the benefit of the homestead exemptions as to the debt evidenced by this bond, and further waives demand, presentment, protest, notice of presentment, notice of protest, and notice of non-payment and dishonor hereof.

This bond is secured by a deed of trust of even date herewith and delivered by the maker hereof to J. L. Fray and J. B. Hudson, Jr., Trustees, conveying certain real estate therein described, and duly recorded in the Clerk's Office of Culpeper County, Virginia.

WITNESS the following signature and seal this 6th day of March, 1956.

JOSEPHINE STUART BRADLEY (Seal)

page 77 } The grantors herein expressly covenant and agree that as to the debt hereby secured "exemptions are waived"; that "insurance required" is $.....; that "renewal or extension permitted"; that "right of anticipation reserved" that the said debt shall "be subject to all upon default"; and that advertisement required is three consecutive issues of a newspaper published in the county of Culpeper, Virginia

It is further understood and agreed by the grantors herein that they assume all of the covenants, duties and obligations imposed by Section 55-59 and section 55-60 of the Code of Virginia and any amendments thereto; that the Trustees herein and the beneficiary or beneficiaries hereunder shall have all the rights, powers and securities conferred by said Sections of the Code of Virginia; and that said Sections of the Code of Virginia shall control in the construction and execution of this trust in all respects unless herein expressly otherwise provided.

It is also understood and agreed by the Grantors and Trustees hereto that the beneficiary or beneficiaries shall have all the rights, powers and privileges as conferred by Section 26-49 and Section 26-54 of the Code of Virginia and any amendments thereto.

Witness the following signature[s] and seal[s].

JOSEPHINE STUART BRADLEY (Seal)

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

I, Dorothy L. Gilbert, a Notary Public in and for the State and County aforesaid do certify that Josephine Stuart Bradley, whose name[s] is/are signed to the foregoing deed of trust dated the 6th day of March, 1956, has/have this day personally appeared and acknowledged the same before me in my State and County aforesaid.

My Commission expires Nov. 7, 1959.
Given under my hand this 6th day of March, 1956.

DOROTHY L. GILBERT
Notary Public.

(on back)

Virginia:

In Culpeper County Circuit Court Clerk's Office, This Deed of Trust was this 8th day of March, 1956 filed here and having been duly acknowledged is admitted to record at 12:10 P. M.

Teste:

C. T. GUINN, Clerk.

Josephine Stuart Bradley

TO: DEED OF TRUST

J. L. FRAY and J. B. HUDSON, JR., Trustees

Virginia, Culpeper County Recorded in Deed Book 142 Page 425, 8 day of March 1956.

* * * * *

page 78 }

* * * * *

EXCEPTION TO REPORT OF COMMISSIONER IN CHANCERY.

To: The Honorable C. Champion Bowles, Judge:

Exceptions taken by the plaintiffs to the report of Commissioner S. A. Cunningham, to whom this cause was referred by decree made herein on May 11, 1959, and which report bears date of September 9, 1959.

FIRST EXCEPTION.

For that said commissioner found that Josephine Bradley did on August 6, 1958 execute the deed in question and that on said date she had the mental capacity to execute such deed.

SECOND EXCEPTION.

For that said commissioner found that there was no fraud in procuring the signature of Josephine Bradley on said deed by defendant, Joan S. Brownfield or her husband, E. H. Brownfield.

THIRD EXCEPTION.

For that said commissioner found that there was adequate consideration for the deed.

FOURTH EXCEPTION.

For that said commissioner found that the testimony of E. H. *Brownfiled* as to the actual consideration for the deed was corroborated.

page 79 } WHEREFORE the said plaintiffs do except to the said report of the said commissioner and pray that their said exceptions may be sustained, and that the said report may be corrected in the manner indicated by said exceptions.

EMMA McGRUE, etc. et al.
JAMES H. RABY
By Counsel.

JAMES H. RABY
Attorney for Plaintiff
The Raby Building
1000 Pendleton Street
Alexandria, Virginia.

CERTIFICATE OF SERVICE.

Copies of the above Exceptions to the Report of Commissioner In Chancery were mailed, postage prepaid, on the 11th day of September, 1959 to Harold H. Purcell, *Esqure,* Counsel for Joan S. Brownfield and S. A. Cunningham, Commissioner in Chancery, Louisa, Virginia.

JAMES H. RABY.

Filed September 12, 1959.

C. T. GUINN, Clerk
By MARGARET BROWN
Deputy Clerk.

* * * * *

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* * * * *

FINAL DECREE.

This cause came on this day to be heard upon the papers formerly read; upon the decretal orders formerly entered; upon the Report of S. A. Cunningham, Master Commissioner, dated September 9, 1959, notice of the return and the filing of which was duly given and certified, in accordance with the provisions of Section 8-256 of the Code of Virginia of 1950, as amended; upon the exceptions to the Report filed by Emma McGrue, Executrix, etc., et als., by Counsel; and was argued by Counsel.

And the Court having thoroughly considered the exceptions filed in this cause to the Master Commissioner's Report, the evidence of the witnesses and the oral argument of Counsel;

The Court doth order that the said Master Commissioner's Report be, and the same hereby is, approved, ratified and confirmed.

And it appearing to the Court, in accordance with the Master Commissioner's Report, that the deed dated August 6, 1958, from Josephine Stuart Bradley to Joan S. Brownfield, of record in the Clerk's Office of the Circuit Court of Culpeper County, Virginia, in D. B. 151, pages 75 and 76, is a good and valid deed, and that the same should not be set aside on the ground of mental incapacity on the part of the grantor, lack of consideration, or fraud in the inducement;

The Court doth order that the said deed dated August 6, 1958, is a good and valid deed, and that the same is not set aside.

page 81 } And it further appearing to the Court that a life estate was reserved for Roland Stewart, son of the said Josephine S. Bradley, in one of the dwellings located on the said tract of land for and during the term of his natural life, and that the said Joan S. Brownfield, at the time of the death of Josephine S. Bradley, was to select the dwelling the said Roland Stewart was to have to occupy during the term of his natural life;

The Court doth order that the said Joan S. Brownfield shall select the dwelling the said Roland Stewart will have the right to occupy within Thirty Days from this date.

To all of which action by the Court the complainant, by Counsel, duly excepted and noted an appeal.

Enter:

C. CHAMPION BOWLES, Judge.

Date: 12/7/59.

I ask for this:

JAMES H. RABY, p. d.

Seen:

....., p. q.

I ask for this:

HAROLD H. PURCELL, p. q.

* * * * *

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* * * * *

To Harold H. Purcell
Attorney at Law
Louisa, Virginia

You are hereby notified that on the 21 day of December, 1959 between the hours of ten and twelve o'clock noon or as

soon thereafter as counsel may be heard, in the Circuit Court Room of Culpeper County, Virginia, the undersigned will tender to the Honorable C. Champion Bowles, Judge of the Circuit Court of Culpeper County, Virginia the STATEMENT OF FACTS of the evidence in the above styled cause, including all exhibits, stipulations and exceptions, and respectfully ask the Honorable C. Champion Bowles to certify the same as a true copy of the evidence presented in the above style cause.

JAMES H. RABY
Counsel for Plaintiffs
The Raby Building
1000 Pendleton Street
Alexandria, Virginia.

I hereby certify that I mailed a copy of the above notice Mr. Harold H. Purcell, Attorney for the Defendant, Louisa, Virginia on the 12th day of December, 1959.

JAMES H. RABY
Counsel for Plaintiffs.

I hereby certify that I received the above notice this 21 Dec. 1959.

HAROLD H. PURCELL, p. q.

Filed Dec. 14, 1959.

C. T. GUINN, Clerk
By MARGARET BROWN
Deputy Clerk.

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* * * * *

NOTICE OF APPEAL AND ASSIGNMENTS OF ERRORS.

To the Clerk of the Circuit Court of Culpeper County:

Counsel for plaintiffs in the above styled case in the Circuit Court of Culpeper County, Virginia, hereby gives notice of appeal from the decree entered in this cause on December 21st, 1959, and sets forth the following assignments of error:

1. The Court erred in refusing to set aside the Report of the Commissioner in Chancery as being contrary to the law and the evidence, without evidence to support it, and plainly wrong, and not entering final judgment for the plaintiffs and entering final judgment for defendant, Joan S. Brownfield.

2. The Court erred in refusing to grant the plaintiffs the relief prayed for in their petition and other pleadings filed herein.

JAMES H. RABY
Counsel for Plaintiffs.

I certify that a copy of the foregoing Notice of Appeal and Assignments of Error was mailed to Mr. Harold H. Purcell, Attorney for Defendant, Joan S. Brownfield on the 8th day of January, 1960 at his office in Louisa County, Virginia.

JAMES H. RABY
Attorney for Plaintiffs
The Raby Building
1000 Pendleton Street
Alexandria, Virginia.

Filed in Culpeper County Circuit Court Clerk's Office January 9th, 1960.

MARGARET B. BROWN, Clerk.

* * * * *

The depositions of Dr. Elijah Barber and others taken before S. A. Cunningham, Commissioner in Chancery of the Circuit Court of Culpeper County, pursuant to notice given by the said Commissioner, in the Court Room of the Circuit Court of Culpeper County, Culpeper, Virginia, June 17, 1959, commencing at 10 o'clock A. M. To be read in evidence in aid and support of the report of said S. A. Cunningham, Commsisioner, filed in the above styled chancery cause now depending in the Circuit Court of Culpeper County, in obedience to a decree of reference entered therein.

Present: James H. Raby, Esquire, counsel for Complainants;

Harold H. Purcell, Esquire, counsel for Defendant, Joan S. Brownfield.

page 2 } Mr. Purcell: I am going to ask for the separation of the witnesses. We don't have anybody here but Mr. Brownfield.

Mr. Raby: Where is the defendant?

Mr. Purcell: Do you mean where is the Defendant, Joan S. Brownfield?

Mr. Raby: Yes, she is the defendant.

Mr. Purcell: I believe each party has the right to have one party present.

Mr. Raby: Not in this, she is the defendant in this case, and, therefore, only a person, who is a party to the suit has a right to be here.

Mr. Purcell: Under those circumstances if you object to Mr. Brownfield being present—

Mr. Raby: I certainly do.

Mr. Purcell: All right, I will ask Mr. Brownfield to step outside.

DR. ELIJAH BARBER,

a witness for the complainants, being first duly sworn, deposes and says as follows:

DIRECT EXAMINATION.

By Mr. Raby:

Q. You are a practicing physician in Culpeper County?

A. That is right.

page 3 } Q. How long have you been practicing?

A. Twenty-seven years.

Q. Where did you finish your schooling, Doctor?

A. Howard University.

Q. And your practice is a general practice?

A. That is right.

Q. And you have been in Culpeper practicing for how long?

A. Twenty-seven years.

Q. And you finished Howard University what year?

A. 1930.

Mr. Raby: Are you satisfied with that Mr. Purcell, as to his qualifications?

Mr. Purcell: I think that he is qualified.

Q. Now Doctor, state your full name, please?

A. Elijah Barber.

Q. Dr. Barber, did you know Josephine S. Bradley?

Dr. Elijah Barber.

A. I did.

Q. Did you have occasion at any time to be her physician?

A. I did.

Q. How long had you treated her?

A. Well, I treated her for the last fifteen years from time to time.

Q. Let's put it this way: Did you treat her page 4 } during her last illness?

A. I did.

Q. When was that?

A. That was from August 1957 until her death in September, 1958.

Q. Do you know approximately how old she was?

A. She was an elderly lady, eighty, I think.

Q. She said she was eighty years old?

A. Eighty years old.

Q. What was her physical condition during the year 1958 beginning say from June?

A. Very poor, very poor physical condition; her physical condition was very poor.

Q. Would you say that from June, 1958 until she died she was capable of transacting any business?

A. No, I would say this: That from June, 1958, at times from time to time she was incapable of transacting any business due to her physical condition because of senility, degeneration and poor circulation, which made her incapable from carrying on normal business.

Q. She signed a paper purporting to be a deed in August, I think in 1958, and you say from June—Would you say in August, 1958, she was mentally capable of signing any deed?

A. I would say she was not, no.

page 5 } Q. Now, her general attitude, you say she was eighty years old, did she act like a grown person or a child or how did she act?

A. Well, one time she would be probably grown, the next time she would be a child.

Q. Would it be her habit to do anything you would ask her to do, or what would she do?

A. At times she would, at other times she wouldn't.

Mr. Raby: Your witness.

CROSS EXAMINATION.

By Mr. Purcell:

Dr. Elijah Barber.

Q. Dr. Barber, what was the diagnosis of her case? What did she die of?
A. Cardio-vascular disease.
Q. She had heart disease?
A. She had heart disease, diseased blood vessells and liver.
Q. And she had been suffering from that for sometime?
A. Ten years, ten to fifteen years.
Q. And you feel that at times she knew what she was doing and at times she didn't?
A. That is the testimony I gave.
Q. In other words she had lucid moments?
A. Quite frequently, yes.
Q. And like all elderly people, who have that con-
page 6 } dition, some days she would be getting along fairly well and other days she would not be getting along at all well?
A. That is right.
Q. Do you have your records with you as to the days that you visited her? Do you have a record of the actual days that you made visits to her?
A. Yes, I have. I have made visits—more visits than the records I have, because living right across the street from her, I just walked across the street quite often to see her when I wasn't actually making any visit.
Q. Did you see her on the 6th of August, 1958?
A. No, I didn't.

Mr. Purcell: I have no further questions.

RE-DIRECT EXAMINATION.

By Mr. Raby:
Q. Doctor, let me ask you just one question: Could she from June, as you said just now, from June, 1958, would you say she could hold a good general conversation?
A. No, I would say no.
Q. That was from June until she died?
A. Yes.

Mr. Raby: All right, sir.

RE-CROSS EXAMINATION.

By Mr. Purcell:

Mortimer M. Marshall.

Q. I gather from your testimony that there were
page 7 } times during that period of time when she was all right?

A. There were times you could talk to her and she was fairly clear mentally, but I would say definitely not capable of carrying on a normal conversation; probably she would talk a little while and then off she would go. In other words there was a break in the conversation. Of course, you could catch her at times when you would talk to her a few minutes and she would be very normal.

Q. And since you didn't see her on the 6th of August you don't know whether that was one of her good days or one of her bad days, do you, Doctor?

A. I couldn't tell.

Mr. Purcell: That is all.

RE-DIRECT EXAMINATION.

By Mr. Raby:

Q. Doctor, when did she die?

A. September 23rd, I believe.

Mr. Raby: That is all.

By the Commissioner:

Q. Do your records show when you saw her prior to August 6th?

A. I saw her August 7th.

Q. How about before August 6th?

A. I saw her August 3rd.

By Mr. Raby:

page 8 } Q. Doctor, will you give the Commissioner permission to sign your name to this depositions?

A. Yes.

And further this deponent sayeth not.

DR. ELIJAH BARBER.

MORTIMER M. MARSHALL,

another witness for the Complainants, being first duly sworn, deposes and says as follows:

Mortimer M. Marshall.

DIRECT EXAMINATION.

By Mr. Raby:

Q. Mr. Marshall, have you had any experience in appraising property in Culpeper County?

A. I have.

Q. And do you sell property, too and appraise it?

A. Yes, sir.

Q. I will ask you have you seen this property up there in the name of Josephine Bradley?

A. I have.

Q. And have you inspected it?

A. Yes, I have.

Q. What would you say was the value of that property as it is now?

A. Well, around $5,000.00.

Q. $5,000.00?

page 9 } A. Yes, sir, probably more.

Q. Would that $5,000.00 be the minimum?

A. Yes, sir.

Mr. Raby: Your witness.

CROSS EXAMINATION.

By Mr. Purcell:

Q. Now let's see, are you in the real estate business?

A. No, sir.

Q. Do you own property of your own?

A. Yes, sir.

Q. And have you bought or sold any property in the vicinity of this particular house and lot or houses and lot?

A. I haven't bought any. I found a buyer for a piece of property out there a couple of months ago, the Lesco people.

Q. Just what does this property that belonged to Josephine Stewart Bradley consist of?

A. One large residence of about six rooms.

Q. A large residence—

A. Yes, sir.

Q. Of six rooms?

A. Around six rooms.

Q. And then there is a three room house on it?

A. Yes, sir.

Mortimer M. Marshall.

Q. And the three room house, that is separate?
page 10 } A. Yes, sir.
Q. Are there any out buildings?

A. There was a chicken house or something like that, but no other out buildings, and there is approximately three and a quarter to four acres of land right on the highway.

Q. Now, you are saying that this property has a valuation of $5,000.00. You are considering the fee simple valuation, aren't you?

A. Oh, yes.

Q. The entire interest?

A. Yes.

Q. Is it not true that the reservation of one life estate or two life estates would decrease its valuation?

A. I don't think so, property is increasing out that way all the time.

Q. If you were going to purchase that property knowing that you couldn't get possession of it during the lifetime of one or more persons, would you pay as much for it as you would and get the immediate possession?

A. Well, the person, who is interested, at his age, I think $5,000.00 is a very liberal offer.

Q. In other words, Mr. Roland Stewart has offered to pay $5,000.00 for it?

A. Oh, no, but he has a life interest and I think the property would bring more than $5000.00 now. There are
page 11 } some lots on the highway that would bring $1,000.00 apiece, may be $1500.00. In fact she offered it to the family that bought the Lesco property for $1500.00.

Q. You don't feel that a life estate or two life estates would in any way decrease its value?

A. No, sir.

Mr. Purcell: I have no further questions.

RE-DIRECT EXAMINATION.

By Mr. Raby:

Q. Mr. Marshall, may the Commissioner sign your name to this deposition when it is written up?

A. Oh, yes.

And further this deponent sayeth not.

MORTIMER M. MARSHALL.

REVEREND ROBERT C. DAVIS,
another witness for the complainants, being first duly sworn, deposes and says as follows:

DIRECT EXAMINATION.

By Mr. Raby:

Q. Are you a minister?

A. Yes, sir.

Q. Rev. Davis, did you know Mrs. Josephine Stewart Bradley?

A. I knew her very well, I was her pastor.

page 12 } Q. Did you visit her?

A. I visited her quite often.

Q. Could you say how often you did visit her say from 1957 until she died?

A. When she was quite sick I visited her quite often, as much as twice a week. I have driven from Washington to see her. I am always interested in my members especially when they are sick, as sick as she was.

Q. Did you visit her in 1958?

A. I did.

Q. What was her condition from 1958, say in June until she died?

A. Her condition then was very serious and to my mind she was very feeble; she was just like a child and there were times—sometimes when I visited her she was asleep and I didn't even want to bother her, but she was very feeble and like a child.

Q. When you say a child, do you mean she did—

Mr. Purcell: Objection. Please don't lead the witness.

Q. What do you mean by like a child?

A. Well, you know—I mean she was like an obedient child; she was perfectly willing to do anything you asked her to do. Many times I offered her Communion when I thought she was in no condition to take it, but if you urged her she

page 13 } would do it.

Q. Do you know approximately how old she was?

A. I don't know, but I thought—I can't say definitely, but I think she was a pretty elderly lady; I felt she was in her eighties, in fact I knew she was. I don't know, but I learned—

Q. That is your general observation?

A. Yes, sir, she was an elderly lady, yes, sir.

Q. You didn't know anything about her signing a deed did you?

Reverend Robert C. Davis.

A. No, I didn't.

Q. Now her financial condition, was she in any condition that she couldn't support herself or do you know what her livelihood was?

Mr. Purcell: I don't know if he knows that.

Q. Do you know whether or not she was in a financial condition that she had to ask for anybody to give her aid?

A. All I know is that she never did ask for anything, any aid or anything. The only thing we did we would do normally for anyone, even if they were rich, we would send her some things from the offering at the church.

Q. She never asked the Church for any financial aid?

A. She never asked the Church for anything when I was there.

page 14 } Q. How long have you been there?

A. Five years.

Q. And she was a member?

A. She was a member and I might add this: She was a faithful member until she was sick. If I am wrong, if I saying too much, I know both of you will stop me. Not only was she a faithful member with her presence but with her financial support. As a Minister I have to consider finances too.

Mr. Raby: Your witness.

Mr. Purcell: I have no questions.

By Mr. Raby:

Q. Reverend, May the Commissioner sign your name to this deposition when it is finished?

A. Indeed so.

CROSS EXAMINATION.

By Mr. Purcell:

Q. Let me go back and ask you one or two questions. Reverend, you say she made contributions to your church?

A. Yes, sir.

Q. And she made those contributions up pretty close to her death?

A. Let me put it like this: I believe even during her sickness, while she was unable to attend the church

page 15 } she still made her contributions, and I might add this, too: Whenever I visited her when she was

able to do so, she would give me some eggs or something like that, and for which I was grateful.

Q. You felt that she knew what she was doing when she made those contributions to the church and you, didn't you?

A. I feel pretty sure she knew what she was doing.

Q. You didn't feel that the Church should give back the contributions which she gave, did you?

A. Give back the contributions, like money?

Q. You didn't feel the Church should return those contributions, did you?

A. I felt at the time that she gave the contributions that she knew what she was doing, I say that was before she became so sick.

Mr. Purcell: All right, that is all.

RE-DIRECT EXAMINATION.

By Mr. Raby:

Q. When did she stop giving those contributions?

A. Now, when she became very sick and failed to attend the Church, then I don't know about the contributions. I don't have any way of knowing about that but the Church records and Church Treasurer would know about that.

Q. Would you say from June, 1958, until the date she died did she give any contributions to the Church?

page 16 } A. I would be afraid to say because I don't know. I can say this much. May I clarify myself? When she was able to come to Church she gave the contributions; when she became sick in her bed the contributions stopped.

By the Commissioner:

Q. I am a little confused by your answer now in view of your previous answer. I will read you your previous answer. (Here the answer appearing on lines 24 and 25 of page 14 and line 1 through line 4 of page 15 was read)

Do you wish to change and clarify the previous answer by stating that you do not know that?

A. I am afraid I would have to clarify that. I said then that I believed, I don't know that. I know that when she did attend church that she did.

Q. Do I gather from your testimony that you live in Washington?

A. Yes, I do.

Roland Stewart.

Q. So that your visits to her were on the occasions when you were in Culpeper County?

A. My visits were sometimes made specifically for her. I came down as I often do, make special trips just to visit those that are real sick.

By Mr. Raby:

Q. How often was that?

A. During her serious illness, during the three
page 17 } or four months she was real sick before she died
I would make a couple of trips from Washington a week to see her. I was afraid she wouldn't live until Sunday. I *cam* on Tuesday and sometimes Thursday and on Sundays. Sometimes I didn't even come in to Culpeper, because I have to work; that was the sacrifice I made.

Mr. Raby: That is all.

And further this deponent sayeth not.

REV. ROBERT C. DAVIS.

ROLAND STEWART,

another witness for the Complainants, being first duly sworn, deposes and says as follows:

DIRECT EXAMINATION.

By Mr. Raby:

Q. State your name?

A. Roland Stewart.

Q. You live in Culpeper County?

A. Culpeper County.

Q. Mrs. Josephine Stewart Bradley was that your mother?

A. That is right.

Q. Did you live with her?

A. That is right.

Q. Do you know anything about your mother signing a deed? Were you at home on August 6th?

A. Yes.

page 18 } Q. Did anybody come there?

A. Brownfield.

Q. Mr. Brownfield. Did he come to see your mother? Was she up or in bed?

A. In bed.

Roland Stewart.

Q. When he came there what did he say to her?
A. He was going to bring a deed.
Q. Did he say he was going to bring a deed?
A. Yes.
Q. Did he say anything else to her at that time?
A. No.
Q. What did he do then?
A. We left there and come to town.
Q. Did he come back again?
A. Yes.
Q. When he came back again—
Q. He brought another gentleman with him.
Q. What did he do then?
A. He told her to sign it, set her up in bed.
Q. He helped to set her up in bed?
A. Yes.
Q. And told her to sign?
A. He held her hand and steadied her hand.
Q. So she could sign it?
A. Yes.
page 19 } Q. Did he give her any money or anything?
A. Not a nickel.
Q. He didn't give her anything?
A. Not five cents.
Q. Before she signed that paper did he read it to her?
A. No, he didn't read it.
Q. After she signed it did you sign it?
A. I signed it.
Q. Who told you to sign it?
A. Mr. —
Q. They told you to sign it?
A. They told me to sign.
Q. Did they tell you why you were signing it?
A. No, they didn't tell me why I was signing.
Q. Did you know why you were signing it?
A. I didn't.

Mr. Raby: I want to offer this in evidence, this certified copy of the deed.

The Commissioner: It is exhibitted with the bill, just let it remain there. I will mark it as Complaina'ts Exhibit 1.

Q. You say that there was another man with Mr. Brownfield?

Roland Stewart.

A. They brought another gentlemen out there when he come back.

page 20 } Q. Did you know him?

A. I didn't know him.

Q. Did Mr. Brownfield visit your mother at any time prior to the two times you are talking about?

A. No.

Q. Had you ever seen him before?

A. No.

Q. While your mother was sick had you seen him there before this particular time?

A. No, sir.

Mr. Raby: That is all.

CROSS EXAMINATION.

By Mr. Purcell:

Q. Now how long were you with your mother prior to her death? How long had you been living in Culpeper County?

A. I had been living here all my life.

Q. Were you here in 1956?

A. 1956.

Q. Were you here in 1957?

A. I was here in 1957.

Q. Mr. Brownfield had made considerable repairs on the buildings out there, had he not?

A. Yes.

Q. Did he also build a building out there?

A. No.

Q. He just repaired the buildings out there?

page 21 } A. That is right.

Q. And put siding on them?

A. That is right.

Q. And repaired the windows and doors and that sort of thing?

A. He didn't repair any windows.

Q. How about the doors?

A. No doors.

Q. How about the porches?

A. No porches.

Q. How about the roof?

A. No roof.

Q. When was that that he was doing that?

Roland Stewart.

A. I just don't remember what year it was. I don't know what year it was, I know he done the work.

Q. Do you know whether or not Josephine Bradley, your mother, paid him for it or not—for the work he did?

A. No, I don't know that.

Q. Do you know whether or not she gave a deed of trust on the property to secure the money that she owed him for that work out there? You don't know about that?

A. No.

Q. But you were there in 1956 or approximately that time when the work was done, is that correct?

A. That is right.

page 22 } Q. Did Mr. Brownfield come back to see her ever in your presence to ask her about the payment of the money that was due him?

A. No.

Q. Do you know whether or not or did you ever write a letter for her or did she have anybody write any letters to Mr. Brownfield about the money that was owing to him?

A. No.

Q. Were you in a position to help your mother pay for any money she was owing, if it were owed?

A. No.

Q. You had no income of your own?

A. No.

Q. You say you were there on the 6th of August when this deed was signed?

A. That is right.

Q. Didn't you hear Mr. Hudson, the Attorney involved, read this deed to your mother?

A. No.

Q. You didn't hear him do that?

A. I was in the room.

Q. You were out of the room?

A. I was in the room.

Q. And you didn't hear him read it at all?

A. No.

page 23 } Q. Was there any explanation made to your mother about the deed?

A. No.

Q. Nothing was said about the deed?

A. No.

Q. Was anything said about leaving you a life estate in the property?

A. No.

Roland Stewart.

Q. Nothing was said about that?
A. No, sir.
Q. Was anything said about her husband Augustus Bradley? Was anything said about him?
A. No.
Q. Was anything said about Emma McGrue in any way?
A. Yes, they spoke of Emma McGrue.
Q. Was not the conversation along the line that she hadn't sent the money to pay for the work that had been done on the property?
A. How is that?
Q. Was anything said about her not having sent the money to pay for the work that had been done on the place?
A. They didn't say anything about any money.
Q. Now, did you understand that a life estate had been reserved in part of this property for you?
A. I didn't understand that.
page 24 } Q. Did you understand that your mother had reserved a life estate in the property?
A. I didn't understand that.
Q. Did you understand that after this deed was made that Mr. Brownfield was going to pay for the taxes on the property and insurance on the property?
A. He didn't pay any taxes on it.
Q. Was there anything said about that on August 6th?
A. No.
Q. Was anything said on August 6th about the payment of your monther's funeral expenses?
A. No.
Q. You heard no remarks along that line?
A. No, sir.
Q. Is there anything wrong with your hearing?
A. I can't hear so good.
Q. You can't hear so good. How long were Mr. Brownfield and Mr. Hudson out there talking with your mother?
A. They didn't stay there but a short while.
Q. A short while?
A. Yes.
Q. Would you say five or ten minutes?
A. Something like that, yes.
Q. Something like that. You say Mr. Brownfield said he was going to town to get a deed, is that correct,
page 25 } when he was out there that morning?
A. That is right.

Roland Stewart.

Q. When he came back did he tell her he had brought the deed?

A. Brought the deed.

Q. Then she signed the deed in your presence and Mr. Hudson's presence and Mr. Brownfield's presence, did she not?

A. Yes, wasn't but two of them out there, Mr. Brownfield and I didn't know the other gentleman.

Q. And they told her it was a deed, did they not?

A. Yes.

Q. And she understood it was a deed, didn't she?

A. I don't think she did.

Q. Did your mother have a bank account?

A. I think—yes.

Q. Did she draw on it or did you draw on it?

A. She drawed on it, I didn't draw on it.

Q. Did she sign any checks and give them to you?

A. No, indeed; no sir.

Q. She was pretty careful in doing that, wasn't she?

A. Yes, indeed.

Mr. Purcell: I have no further questions.

By the Commissioner:

Q. When they were there executing this deed, you say that your mother wasn't capable of understanding what it was?

page 26 } A. That is right.

Q. Did you object or tell these gentlemen that she couldn't execute this deed?

A. No.

By Mr. Purcell:

Q. Did you raise any objection at all at that time to her signing the deed, you knew that the deed was being given because she was unable to pay the expenses of the repair of the property, didn't you? Didn't you know that?

A. I didn't understand it.

By Mr. Raby:

Q. Are you willing for the Commissioner to sign your name to the deposition when it is finished?

A. Yes.

Ruth Walker.

And further this deponent sayeth not.

ROLAND STEWART.

MRS. RUTH WALKER,
another witness for the Complainants, being first duly sworn, deposes and says as follows:

DIRECT EXAMINATION.

By Mr. Raby:
Q. State your name please.
A. Ruth Walker.
Q. Where do you live?
A. I live on Rixeyville Road just about a mile
page 27 } and a half out of Culpeper, somewhere around that.
Q. Did you know Mrs. Josephine Bradley?
A. Yes, I did; I have known her all my life.
Q. Did you live near her?
A. I lived across from her, opposite from her, right near her.
Q. Did you notice that she was sick or had been sick?
A. Oh, yes, I knew she had been sick.
Q. Did you visit her?
A. I visited her every day.
Q. Did you visit her—How long approximately had she been sick?
A. Oh, around about two years; the last year she was getting worse all the time and around about three months she was getting worse all the time. I would say she was getting more in the baby stage the last three months.
Q. That was the last three months prior to her death?
A. That is right.
Q. You say that she was in the baby stage, what do you mean by that?
A. You know a baby cannot do for themselves, and her mental condition was bad.
Q. You say her mental condition was bad?
A. Yes.
Q. Do you know approximately how old she was?
page 28 } A. Well, she was much older than I, I couldn't say, I must say around in her eighties.
Q. You aren't near eighty, are you?
A. No, I say I don't know, I know she was right up there.

Ruth Walker.

Q. She conveyed a deed in August, 1958, did you visit her in the month of August, 1958?

A. Oh, yes, I was always there in and out, all the months and all the time, in August I was there too.

Q. Did you have occasion to observe her reactions to her people?

A. Well sometimes she was bright and then again she was off in a daze like.

Q. Could she hold a general conversation?

A. Well no, not too much.

Q. Do you think that she was capable of transacting any business in the month of August, 1958?

A. I do not.

Q. Why would you say that?

A. Well, because her health, due to her health, etc., I just don't fell she was capable of transacting business.

Mr. Raby: Your witness.

CROSS EXAMINATION.

By Mr. Purcell:

Q. Can you give us any dates that you visited page 29 } her in August of 1958?

A. Well, I cannot give the exact dates, no, sir, but I was over there every day mostly. I have been going over there all my life in and out.

Q. Can you name the days in August you were over there?

A. Every day, that takes in every day in the week and month, day and night, because she needed somebody.

Q. Were you over there when this deed was signed?

A. No, I was not.

Q. Was any mention of this deed made to you by her or by Roland Stewart?

A. No, sir.

Q. She didn't discuss her business with you?

A. No, she didn't, not that, anyway.

Mr. Purcell: I have no further questions.

By Mr. Raby:

Q. May the Commissioner sign your name to this deposition when it is transcribed?

A. What I have said?

Q. Yes.

A. Oh, yes, I am willing to do that.

And further this deponent sayeth not.

MRS. RUTH WALKER.

Mr. Raby: That is our case. We rest now and page 30 } reserve the right to call rebuttal witnesses.

The Commissioner: I think the record should show Roland Stewart's age.

ROLAND STEWART,
recalled, deposes and says as follows:

DIRECT EXAMINATION.

By Mr. Raby:
Q. Roland how old are you?
A. Sixty-six.

And further this deponent sayeth not.

ROLAND STEWART.

Mr. Purcell: My motion is to strike the Complainant's evidence, there being insufficient evidence of mental incapacity on the part of Josephine Bradley at the time the deed was drawn and there being insufficient evidence of any fraud, fraud having been alleged and there being no clear and cogent evidence to that effect.

I do not believe that there has been sufficient evidence to justify the Court in setting aside a deed as drawn.

Realizing that motion must be addressed to the page 31 } Court we are going ahead with our evidence at this time to conclude this hearing, but in order to protect the record I desire for that motion to be made a part of the record.

EDWARD S. BROWNFIELD,
a witness on behalf of the Defendant, Joan S. Brownfield, being first duly sworn, deposes and says as follows:

Edward S. Brownfield.

DIRECT EXAMINATION.

By Mr. Purcell:

Q. Mr. Brownfield, how old are you?

A. Thirty-five.

Q. And what is your business, sir?

A. I am a general contractor.

Q. And how long have you been in the general contracting business?

A. Fifteen years.

Q. In 1956, did you do some work—

Mr. Raby: I object to what he did in 1956, I have filed a suit about this deed and I object to anything that happened in 1956. This deed was made to Joan S. Brownfield and it says nothing about that so I object to anything that happened in 1956.

Mr. Purcell: May it please the Commissioner,
page 32 } he has alleged lack of consideration for this deed
and certainly I can show the consideration for the deed and how this transaction arose.

Mr. Raby: I further say this: Mr. Brownfield is not a party to this suit, Joan S. Brownfield is the defendant in this case, Joan S. Brownfield is not here. Surely he cannot come in and say what the consideration was for this deed made to her; she says in here what the consideration was and she give the parties a life estate, which was binding on Mrs. Brownfield not on Mr. Brownfield.

The Commissioner: The record should show his answer. He may answer.

Q. (Continued) on property belonging to Josephine Bradley here in Culpeper County?

A. Yes, sir.

Q. What essentially did that work consist of? What work did you do on her property at that time?

A. Well, essentially the work on the property at the time was to reside the dwelling house adjacent to the one in which she lived with asbestos siding.

Q. Was she able to pay you for that work?

A. Well, we never take a contract from someone we don't think is going to pay; as it turned out Mrs. Bradley didn't pay; I don't know whether she was unable to pay or not, but she expressed the thought that she was unable to pay.

Edward S. Brownfield.

page 33 } Q. And was a deed of trust taken to secure the payment of a bond, which secured you for the work, which you had done?

A. Yes, sir.

Q. And that deed of trust was under date of the 6th of March, 1956, securing a bond for $400.00, is that not correct?

A. That is correct, if the dates are right, I know that is the amount.

Q. I hand you that deed of trust and ask you if she executed that deed of trust and that bond at that time?

A. Yes, this is the deed of trust.

Q. Following that date were any payments made on the bond secured by this deed of trust?

A. No, sir.

Mr. Purcell: I expect I should introduce this into evidence.

Mr. Raby: I am objecting to that going in evidence, let the record show that.

Note: The bond and deed of trust are marked as Defendant's Exhibit 1.

Q. She was unable to make any payments?

A. Yes, sir.

By the Commissioner:

page 34 } Q. That is principal or interest?

A. Any payments at all. If I could clarify the terminology, she said she was unable, I cannot tell whether she was unable to make them or not, she didn't make them.

By Mr. Purcell:

Q. Did you contact her on several occasions with reference to making payments?

A. Yes, she was contacted frequently in reference to the payments not being made and the note being delinquent.

Q. Did she make any arrangements in that regard? Did she make any statements as to how she contemplated paying it?

A. The principal object, which I subsequently understood, in repairing the property adjacent to the dwelling house in which she lived was to repair that property as a merchantable item of sale and either through error or misapplication or interpretation of title background she had sale for that property, which would have cleared up her obligation and

given her some additional capital, which she expressed the thought that she needed, and she had Mr. Waite, an attorney here in Town, working on the sale; there was a buyer for the property, at least she told me there was a buyer for the property and Mr. Waite was trying to straighten it out, and it appeared there was an error in the title about some nieces or nephews or some relations—

Mr. Raby: I am objecting to this line of testimony. This person is dead and there wasn't a contract, this is page 35 } more or less an uncorroborated statement that the party made and she is dead.

Q. You may proceed Mr. Brownfield. At any rate that sale didn't go through, did it or not?

A. No, they were unable to make title to the potential purchaser.

Q. Is that a part of the property conveyed to Joan S. Brownfield by deed dated the 6th of August, 1958?

A. That would be a matter of law and survey. It was purported by Mrs. Bradley to be her property. Now there was a question if it was her property or wasn't her property that I don't know. I do know that both houses were supposed to be her property, the small house and the house in which she lived.

Q. And both were purported to be conveyed to you or rather to Joan S. Brownfield?

A. That is right.

Q. And Joan S. Brownfield, is your wife is she not?

A. That is correct.

Q. So that transaction, which didn't go through for the sale of one of the houses on the property, what took place after that?

A. Well, Mrs. Bradley explained to me, and I might say that my impression of Mrs. Bradley was that she page 36 } was a very honest person and desirous of paying her obligations and limited only by her income and circumstances at the time. She said that she wanted to protect me for the money that she owed and that she was going to try and arrange to get this money from her relatives or heirs to clear up the title, and I am not certain but I believe she said that after Mr. Waite's death that she had another attorney here in Town, by the name of Jeffries trying to clear the matter up for her. Any way, she introduced the thought that in her inability to meet the obligation she would

Edward S. Brownfield.

be glad to let the property come to me in return for a life estate for herself and her son; that was, oh, I would say late in '57 or early in '58 that she introduced that situation and we continued on with it for awhile, hoping she could raise this money.

From her remarks, sometime in late '57 or early in '58 she decided it was futile to attempt to raise the money and told me she wanted to go ahead and make provision to protect me and convey the property and reserve these life estates, and I had a deed drafted at that time to that effect, I cannot remember when it was, but I believe it was in March or April '58, if my memory serves me correctly. The deed was taken down to Mrs. Bradley and presented to her for her consideration, at which time she said she would like to have a couple more weeks, that she was momentarily
page 37 } expecting Mrs. McGrue to come down, I believe in May of that year, and I told her it was perfectly all right.

In August at the time the actual deed was executed I happened by the property and I stopped in to see what progress was being made in paying the obligation and Mrs. Bradley said that no progress had been made and she didn't see anything else to do other than go along and make the property over to me if I would give a life estate to herself and Roland. As a matter of fact she asked me to enlarge it to the extent of giving a life estate to Mrs. McGrue, and I told her I would not like to extent an estate over that length of time, not having met Mrs. McGrue or known her.

I then went back, not being in Culpeper too often, I came back from Mrs. Bradley's home to Fray & Hudson's law offices here and they had a copy of the original deed that I had at home, I didn't carry it with me, so they made me another deed, dating it on that date and Mr. Hudson and I went to Mrs. Bradley's home and explained the deed to her and she executed the deed and we, of course, recorded it and considered it a finished transaction at that time.

Q. That was on August 6th?

A. Whatever the date is, I cannot remember to the day but it was in August, I am sure.

Q. Now, when you saw her on that day in the presence of Mr. Hudson, would you state to the Court as clearly
page 38 } as you can exactly what was done and what was said by all parties?

A. On several prior visits to Mrs. Bradley's home—

Edward S. Brownfield.

Mr. Raby: Just a minute, he said that day, he didn't say prior to that day. He asked you what happened that day.

A. On that particular date after Mrs. Bradley told me she had decided to go through with the transaction I came back into Culpeper and had the deed drafted, as I heretofore stated, and Mr. Hudson and I went down to Mrs. Bradley's home and she was in the left bed room, I guess you would call it, as you walk in the front door and we went in and she read the deed and it was read to her and explained to her and she asked us very much and sundry questions about taxes and one thing and another and after a comprehensive explanation and comprehensive understanding she executed the deed, and I believe that was about all.

Q. Who read the deed to her?

A. I believe I read the deed once and I believe Mr. Hudson read the deed to her once and then I believe she probably asked questions and Mr. Hudson answered most of them since he is a lawyer and I am not.

Q. Was Roland Stewart in the room at that time?

A. Yes, I believe he signed the deed, I am not sure.

Q. He put his name on the deed as a witness to the deed?

page 39 } A. Yes, if it is there, I thought I recollected him signing it.

Q. She was in bed at the time, was she not?

A. Yes, sir.

Q. Would you state to the Court just what, as you recollect, questions she asked in reference to the deed?

A. Well, the main question she asked was what other privileges might accrue to her other than this life estate under this deed, and I told her the only benefits that would accrue to her were necessary upkeep on the property, such as taxes and fire insurance or should anything come up that would make the house uncomfortable to her living there. After that she asked would I pay her burial expenses and I told her "No, I wouldn't pay her burial expenses."

Q. Did she say anything about Emma McGrue?

A. I cannot recall, I believe that she had asked on two or three *ocassions* if the life estate could be continued to Emma McGrue and I told her I wouldn't be interested in continuing the life estate pass Roland Stewart.

Q. The deed called for a life estate in Roland Stewart?

A. Yes, sir.

Q. After her death?

Edward S. Brownfield.

A. That is what she wanted. She said that Roland was her only kin or close kin.

Q. Was anything said about Augustus Bradley?

page 40 } A. No.

Q. What was the consideration for this deed?

A. Well the actual consideration was the elimination of the obligation she was presently owing to me, and of course, the continuing of the upkeep; she was back a little in her taxes and her fire insurance had expired; other than that there was no money consideration, other than what she owed me.

Q. At your direction this deed was drawn to your wife instead of you, was it not?

A. Yes, sir.

Q. Did you feel that she thoroughly understood what she was doing when she signed this deed?

A. I felt like she understood it one hundred per cent; it was very comprehensively explained to her and she asked some very comprehensive questions in regard to it, and it was presented in its full formidability, I would say, in the extent of its bindingness on her and she understood it.

Q. And did Mr. Hudson also explain it to her?

A. Yes, sir.

Q. Is this the deed that she signed?

A. Yes.

Q. Now, there has been some testimony *her* about your signing her name to the deed.

Mr. Raby: There is no testimony on that.

The Commissioner: Roland Stewart testified

page 41 } that Mr. Brownfield steadied her hand.

Q. Let me put it this way: Did you in any way steady her hand when she signed the deed?

A. I cannot remember, I don't think so. I believe, as I recall, Mrs. Bradley was lying—I am sure she was in bed in a prone position when we got there and she turned to her side and wrote her name. It looks pretty scribbly, but that is her name written by her.

Q. And you and Mr. Hudson and Roland Stewart all witnessed her signature as well as having it notarized, did you not?

A. Yes, sir.

Mr. Purcell: I want to introduce this deed in evidence.

Edward S. Brownfield.

Note: The deed is marked as Defendant's Exhibit 2.

Mr. Purcell: All right, witness with you.

CROSS EXAMINATION.

By Mr. Raby:

Q. Mr. Brownfield, how long had you known Mrs. Bradley?

A. From sometime after the execution of the deed of trust of 1956, sometime after the 6th of March, 1956.

Q. From the 6th of March, 1956 until 1958, how often did you see her?

A. Oh, I would say probably I have seen her ten page 42 } or twelve times.

Q. Did you go to her house and visit her?

A. I stopped by her house, I guess you would say it was a happy combination of a visit and a collection effort.

Q. How was that?

A. I had to go by to see her about getting paid on the note.

Q. Do you have that note?

Mr. Purcell: I believe it is part of that deed of trust.

Mr. Raby: You had to have her sign a note to secure in that deed of trust.

Mr. Purcell: That is the note attached to the deed of trust.

Q. This is her signature, you say all this is Josephine Bradley's signature?

A. Yes, sir, that is her signature.

Mr. Purcell: I have an installment note here, too.

Mr. Raby: That is what I want to see.

Mr. Purcell: That has not been offered, but I will be glad to offer it and since you have asked about it may I offer in evidence an installment note that went along with the deed of trust note.

page 43 } Note: The note is marked as Defendant's Exhibit 3.

Q. And this is also—

A. It is the bond we referred to.

Q. This is the note and she signed both of them?

Edward S. Brownfield.

A. Yes, sir.

Q. And hasn't anything been paid on that?

A. No, sir, other than what I paid as endorser.

Q. You paid whom?

A. I was endorser on it at the bank, so I paid all of it.

Q. Did you put it in the bank—Did you put this note in the bank?

A. Yes.

Q. What bank did you put it in?

A. Culpeper National.

Q. I think you said you had been a general contractor for how long?

A. Fifteen years.

Q. Fifteen years, and you repair houses, etc., in that line, do you not?

A. Well, we build houses and repair them and alter and remodel, most anything in the general contracting line.

Q. Do you attempt to remodel the house before you find out the title is good or not?

page 44 } A. Ordinarily no.

Q. Why did you do it in this particular case?

A. In this particular case I believe with no malice aforethought or intent to defraud, Josephine Bradley failed to inform us that she had an incompetent spouse and we subsequently learned of the existence of this spouse by word of mouth and for that reason I endorsed the note to the bank with recourse, knowing it was a vulnerable instrument and I wouldn't want to endorse a vulnerable note to the bank.

Q. So, you didn't make any investigation about the credit of the person or the financial statement of the person before you started doing the work?

A. We investigated the title.

Q. You say you investigated the title and on your direct examination you said there was some question about the title, is that right?

A. We investigated the title.

Q. Did you say on direction examination you had found some other heirs, who live in Chatham, I believe?

A. Yes, there is a question about the title to the property.

Q. When you found that out why did you continue with your work?

A. Because at the time we didn't know there was

page 45 } a question about the title to the property.

Q. I thought you said that as a general con-

tractor that before you started to do the work that you examined the title to the property?

A. According to the examining attorney, we have a certificate from the examining attorney that the title is a merchantable title minus a dower interest, the dower interest was not known to us until after the work was done.

Q. How much did she owe you?

A. $400.00.

Q. Just $400.00. You talked to her about this deed did you not? You say you did?

A. Yes, sir.

Q. And she told you she wanted you to give her a life estate in it?

A. Yes, sir.

Q. And she was going to convey the property to you?

A. She wanted a life estate for herself and Roland.

Q. And she would convey the property to you?

A. Yes.

Q. Then, why didn't you convey it to yourself instead of your wife?

Mr. Purcell: Well now—

Mr. Raby: Wait a minute.

Mr. Purcell: May it please the Court, I object
page 46 } to that question, the beneficial owner of a note or of a consideration has the right to direct—

Mr. Raby: Mr. Commissioner, he is explaining that is not objecting.

Mr. Purcell: To whom a deed may be made. It is a perfectly normal transaction for a man, who has a debt owed to him, if that is used for the consideration for the transfer of property, to direct that the property be made to his wife, son or some other person, and that has no material significance in this case or in this transaction.

A. The only answer I could give was a husband's act of benevolence to his wife; I just directed it to be made in her favor.

Q. Mrs. Bradley was dealing with you, wasn't she, dealing directly with you?

A. She owed me the money.

Q. I say, she was dealing directly with you?

A. Yes.

Q. And she told you she would convey the property to you, didn't she?

Edward S. Brownfield.

A. I don't know, I don't exactly follow what your question is.

page 47 } Q. You don't. You said Mrs. Bradley owed you money and she told you she couldn't pay you and that she would convey the property to you if you would give her a life estate?

A. She said she would let me have the property.

Q. And deed it to you?

A. I don't know, she used the word property.

Q. She said she would let you have it?

A. Yes.

Q. She didn't say she would let your wife have it, did she?

A. She didn't know her at all.

Q. Your wife didn't know her, did she?

A. No.

Q. So Mrs. Bradley did believe she was dealing directly with you?

A. She was dealing with me.

Q. You said Mrs. Bradley owed you $400.00, why didn't you put that in this deed.

A. What is in the deed?

Q. There is nothing in it about this $400.00, is there?

A. What is the consideration?

Mr. Purcell: I ask that the witness be allowed to see the deed.

Mr. Raby: All right.

page 48 } A. I didn't draw the deed, I guess I don't know why the lawyers always put $10.00, but we have deeds to property worth thousands of dollars worth of considerations that way.

Q. As a matter of fact you didn't give her anything, did you?

A. Did I give her anything?

Q. Yes, that particular day the deed was executed?

A. There was no money involved at all.

Q. That $400.00, you say on this trust, you didn't release that; have you ever released it?

A. No, indeed.

Q. So that trust is still against the property, isn't it?

A. Oh, yes.

Q. And you have her note, don't you? You have her note?

Edward S. Brownfield.

A. I have these notes, this deed of trust and the note.

Q. You could file suit against her on those notes, couldn't you?

A. I could have by election collected my money through the execution of my trust and foreclosure of the property many months prior to Mrs. Bradley's death.

Q. Why didn't you do that?

page 49 } A. Because of the fact that Mrs. Bradley first off didn't want me to foreclose; she offered to give me a life estate or rather a deed to the property with a continuing life estate for herself and her son, and I just felt that it was charitable not to foreclose under the deed of trust, since I knew the property would not bring enough to pay the deed of trust.

Q. You don't think that property would bring enough to pay the deed of trust?

A. Not when advertised as a questionable title.

Q. You don't think that property would bring enough to pay off that deed of trust?

A. I don't think the property would have brought $400.00, advertised in the condition of the title; there are very few people that I know that will buy a cloudy title.

Q. If the property was not worth $400.00, why did you take the deed to the property?

A. Because I think like all things in time a cloud on the title will clear up as clouds in the sky will do and that the title would be good.

Q. The only reason you did that was because you think that the cloud on the title will be cleared?

A. There is not any question that the title will be cleared when Augustas dies.

Q. Do you know how many acres are in that

page 50 } place?

A. No, I don't.

Q. You did some work on the property, you can—

A. I don't recollect, I can tell you if I look at the deed. Can I see the deed? (Here deed is handed to the witness). Four acres.

Q. How much work have you done in Culpeper County?

A. Oh, considerable.

Q. When you went to Mrs. Bradley's to do this work, did you have a contract with her? Did you have a contract for this work you told me that you did on her house? Did you have a contract?

A. Oh, yes.

Edward S. Brownfield.

Q. Do you have a copy of that?
A. No, not with me.
Q. You don't have a copy?
A. Not with me.
Q. Did the contract provide that you were supposed to be paid when you finished the job?
A. No, the contract called for securing a loan with a deed of trust on the property to be paid in monthly installments in accordance with the note, I think thirteen dollars and some cents a month.
Q. After this Mrs. Bradley signed that deed on the 6th of August, did you see her any more before she died?
A. No.
page 51 } Q. About how old was Mrs. Bradley?
A. I doubt that even Mrs. Bradley would answer that question; she struck me as a person of great vanity.
Q. She was a pretty old lady, wasn't she?
A. It is reasonable to assume with a son sixty-seven years old that she was pretty well along in years.
Q. She was sick in bed when you went there to have her sign that deed, wasn't she?
A. Yes, she was in bed and feeling poorly.
Q. Prior to the 6th of August, when did you go there?
A. Oh, I couldn't recollect. I know she had told me to come down in June to take care of the matter with her, I believe, and then she wrote or had one of her correspondents write me not to come down that something was wrong; I don't know what it was, but she wrote or one of her correspondents wrote me and I didn't come. So, I expect it was prior to that date when I had seen her.
Q. You didn't go to see her in June, did you?
A. I don't believe so, no.
Q. When did you go to see her again?
A. In August.
Q. In August? On the 6th of August?
A. Yes, the day she executed the deed.
Q. The day she executed the deed and so you hadn't seen her—in other words, you don't know when you
page 52 } had seen her, do you prior to June of 1958?
A. I wouldn't want to say because it would be hard for me to say. I know I had seen her, but I couldn't tell you whether it was April, May, June or July or when.
Q. But you hadn't been to see her from April until August?
A. Oh, yes, I had been to her house at times, but I don't know when.

Edward S. Brownfield.

Q. You just said you were supposed to go in June and somebody wrote you not to come?
A. I believe that was the date.
Q. You don't mean that isn't what you said?
A. I mean exactly what I said. I am a little confused now. Whatever I said I mean.

Mr. Purcell: That isn't what he said.
Mr. Raby: Read the record back.

Note: At this point the Commissioner stated his recollection of the witness' testimony.

Mr. Raby: I don't feel the Commissioner ought or anybody else ought to tell him what he said in his testimony when I am cross examining him.
The Commissioner: All right proceed with your cross examination.

page 53 } Q. Your note called for payment on demand?
A. Yes, sir.
Q. Did you ever demand that payment?
A. The note was used as a collateral instrument.
Q. No, I didn't ask you that.
A. Payment was demanded for delinquent payments by the Culpeper National Bank; when payments became delinquent they demanded that she make those payments.
Q. Did you ever make demand on Mrs. Bradley for that payment?
A. Well, it would depend on how you would interpret demand. I think when you go to a person's home to collect money that is certainly a demand.
Q. I didn't ask what you mean or what you think demand means, Mr. Brownfield. You have been in business fifteen or twenty years, making notes, and you know when you present a note and ask for the full amount or you are going to make collection that *that* is a demand. Demand means the whole amount, you know that, don't you? Did you ever go to her and make demand for the payment of the note?
A. I made no formal demand to her in writing.
Q. Mr. Brownfield, you say on direct examination that she asked you to bury her?
A. No.

Edward S. Brownfield.

Q. What did you say?
page 54 } A. I didn't say that.
Q. What did she say?
A. She asked me if I would pay for her burial expenses?
Q. She was good and sick then, wasn't she?
A. Well, I don't know how sick she was, she was in bed.
Q. And do you know about how long she had been in bed?
A. No, I don't know how long she had been in bed.
Q. Now, you said on direct examination that you read the deed to her and Mr. Hudson read the deed, is that right?
A. That is right, my recollection—I know the deed was read and reread and explained and re-explained; whether Mr. Hudson read it once and I read it once I don't remember.
Q. You were there, you know whether you read it, don't you?
A. I know I read it once to her.
Q. Why was it necessary for both of you to read the deed to her?
A. I think it is necessary many times to give people a full and comprehensive explanation of legal terminology to read it and explain it more than once or certain phases of it.
Q. In her physical condition and age, do you think she could understand the legal terminology of it?
A. If I didn't think she was a hundred per cent comprehensive, I wouldn't have had the deed executed.
page 55 } Q. She told you on the 6th of August for you to go to get the deed, did she not?
A. Yes, I had no deed when I went there.
Q. And you went back and did you tell her what you were going to put in the deed?
A. Yes.
Q. What did you tell her you were going to put in the deed, just that you were going to give her a life estate?
A. I was going to give her a life estate and as a matter of fact I thought Roland's name was Preston at the time.
Q. Did she tell you his name?
A. No.
Q. Why did you think his name was Preston?
A. I don't know, I just always thought his name was Preston. I believe, isn't it Roland Preston Stewart?

Mr. Raby: He doesn't answer questions now?
Q. So you went back and you told her you were going to give her a life estate. Didn't she have a life estate in that property without your giving it to her?

Edward S. Brownfield.

A. She had a fee simple.
Q. She owned it?
A. Yes.
Q. She didn't need for you to give her a life estate did she?
page 56 } A. No, I guess not, interpreting it that way I wasn't actually giving her anything.
Q. So you don't go around giving people life estates in their own property, do you?
A. Well, there you get into a question of law, that I cannot answer.
Q. That is a question of fact?
A. As to how a lawyer draws a deed.
Q. I am not talking about law. You can answer that question, I am asking do you do that, go around giving people life estates in their own property. That is not any question of law.

Mr. Purcell: Of course, a lot of these questions that are totally and completely immaterial. If you would phrase your question in a different manner, I think the witness would be glad to answer it.
Mr. Raby: I cannot do anything but speak perhaps broken English and ask questions. He said he is a general contractor and what his general custom of going around taking life estates for people in their own property. I don't know anything else I could say.
Mr. Purcell: Well the sole question, Mr. Raby, is was the life estate reserved by her when she gave this deed
page 57 } to him or was it not.
Mr. Raby: I think the Commissioner in this case is to take the evidence as it is presented and if any objection is to be taken to it, the defendant can or plaintiff can take exception.
The Commissioner: The Commissioner will state that he cannot instruct the witness to answer the question, further because the question as asked the witness if he gives life estates. The witness was taking a deed he received the deed with a life estate reserved and if he didn't wish to accept it he could have done so.
Mr. Raby: It seems to me the Commissioner seems to have some interest, I don't know whether he has; I don't understand the Commissioner's attitude toward the evidence.

Q. I am going to ask you this question: How many people

you have owing you money within the last two years, how many people have you owing you money for work done and they couldn't pay you and you had them convey their property—

Mr. Purcell: I will object to that as being totally immaterial.

page 58 } A. For the last fifteen years, since I have been in the contracting business, this is the first and only instance.

Q. And there was only owed on that property $400.00 and the trust was signed in 1956, I think, was it not?

A. Yes, sir.

Q. And you waited until 1958 before you went to have this party, Josephine Bradley, convey the property to you?

A. No, sir, I waited until Mrs. Bradley was ready to make the conveyance, that she had expressed as an earlier desire.

Q. Did you have to wait?

A. Did I have to wait?

Q. Yes.

A. I guess may be I could have gone down there and badgered here into signing a deed in 1957, but I wanted her to sign the deed or not sign the deed based on her own feeling in that matter, when it was convenient.

Q. Why did you at any time have to have her sign a deed? Why didn't you execute your authority under your trust?

A. Because she asked me to accept the conveyance of the property as payment for her obligation in view of the fact that she was unable to meet it through other means.

Mr. Raby: I want the record to show, Mr. Commissioner that I am objecting to all this testimony coming page 59 } from this witness on the ground that it is uncorroborated, the deed speaks for itself what consideration was given.

Mr. Purcell: Of course, let the record also show that counsel for the defendant does not feel that the counsel for the complainant can object to questions which he has asked.

Q. You said there was no money given her at the time she signed that deed?

A. Absolutely none.

Q. Would you accept your $400.00 trust on that property?

Edward S. Brownfield.

Mr. Purcell: Objection, as being immaterial.

A. I have considerably more than that invested in it now.
Q. You have considerably more than that invested? That doesn't answer the question. Is your answer that you would accept the $400.00 trust?
A. My answer is that I wouldn't accept $400.00.
Q. You said you had considerably more invested. Do you know how much more you have invested in it?
A. Well, in actual cash in hand I guess, or out of hand, I cannot remember how accurately, but I think forty or fifty dollars in fire insurance and I paid the back taxes, page 60 } which amounted to fifty some dollars; then I have got my own time and I guess the defense of this action. I don't know what that is worth, if anything.

Mr. Raby: I want to reserve the right to get a handwriting expert to examine these. (Referring to Deed of Trust, bond and installment note)

Q. You say these are her signatures?
A. Yes, sir.

Mr. Raby: I want to get a check on these before you file your report.

Q. How much was she supposed to pay you a month on that property?
A. $13.11, I think it was.
Q. You didn't put that in the record you drew? Did you put the monthly payments in?
A. No, we don't customarily put the monthly payments in the trust.
Q. Why is this trust here for $400.00 and this note for $471.96?
A. The trust is a demand bearer bond for $400.00 plus interest at six per cent and depending on the customer's ability to pay we break that down and add the interest to the installment note, and then divide that by the number of months the customer wishes to pay on it. That is page 61 } the procedure we follow in those notes.
Q. I notice up here you have 4-15-56 $13.11 and then you have got the next line 2/4, do you know what that is?
A. Yes, sir. If I might see that I could probably explain

Edward S. Brownfield.

that to you, Mr. Raby. This is the indication of the starting off mark. As you can see in the face of this note it doesn't give any place for the first payment to start. This note was taken on March 6th and it is customary to give 30 days for the first payment and her first payment was scheduled to come on the 15th of April. This is just a guide. If she had paid it 4-15 and 5-15 and so on down to the end of the year, it would start all over. That is just a guide to indicate when payments start so they can send the notices out.

Mr. Raby: I think that is all. We can get photostatic copies of that.

The Commissioner: You may have an opportunity to have photostats made.

RE-DIRECT EXAMINATION.

By Mr. Purcell:

Q. Mr. Brownfield, the deed of trust for the $400.00 has never been marked satisfied. Would you state to the Court why this has never been marked satisfied?

A. Well prior to the time that it was going to be marked satisfied, you see my visits to Culpeper aren't too
page 62 } frequent and between the time of this transaction and the time I was going to be down here and mark the thing satisfied Mrs. McGrue and a lady from Baltimore, Mrs. Stewart, I believe, we got a notification of this litigation, so I just didn't do anything about it after that.

Mr. Purcell: That is all.

RE-CROSS EXAMINATION.

By Mr. Raby:

Q. Under this deed Mr. Hudson was Trustee?

A. Mr. Fray and Mr. Hudson.

Q. They were your lawyers?

A. They do all my legal work in Culpeper County.

By the Commissioner.

Q. You testified that you had information prior to the time you did this work of a defect in the title; from whom did you receive this information?

A. I may have testified erroneously. I don't believe I said it was prior to the time I did this work. At the time this contract was taken by an agent or salesman of mine he

Edward S. Brownfield.

brought me the information as to the chain of title of the property, which information was based on the information he got from Mrs. Bradley. At which time, as I say I am sure without any intent to defraud, she stated that she was the owner of the property and because—I don't know how many people knew that she had a husband, but at
page 63 } any rate she didn't divulge anything to indicate she did have a husband and when Mr. Hudson look at the title he told me Mrs. Bradley had a good title to the property. We had done our work and after we got our deed of trust signed we found that there was a Mr. Bradley, who was in a institution somewhere up north, in Massachusetts, I believe; he had never been around here. I cannot tell you whether Mr. Hudson got that information or whether we got it from the neighbors, but it was after the work was completed, it was after the trust was executed, as far as I know.

Then on the other piece of property that Mrs. Bradley stated that she owned, I really don't have any definite information that there are other heirs, other than the fact that Mrs. Bradley was trying to sell it and couldn't sell it and Mr. Waite was trying to clear it up, and of course, Mr. Waite had an untimely death. May be there were some other relatives or something.

Q. What other property is that? That is what is confusing me.

A. That is what is confusing me, because I thought I was dealing with one piece of property, because the little house that is adjacent is on another tract of land, because that is what she told me was confused with other heirs, nieces and nephews as I say over in Chatham.

By Mr. Purcell:

page 64 } Q. Do you know whether in the chain of title this four acre tract came from two other tracts or one other tract or three tracts?

A. I don't know what the derivation of title is.

Mr. Raby: I want the record to show my objection to all his statements because as I said before it is hearsay and uncorroborated testimony of a person being dead.

Q. Do you authorize your signature to this deposition?

A. Yes, sir.

And further this deponent sayeth not.

E. H. BROWNFIELD.

J. B. HUDSON, JR.,
another witness for the Defendant, Joan S. Brownfield, being first duly sworn, deposes and says as follows:

DIRECT EXAMINATION.

By Mr. Purcell:
Q. Your name is J. B. Hudson?
A. Junior.
Q And how old are you, sir?
A. Thirty-eight.
Q. And how long have you been practicing law, Mr. Hudson?
A. Since 1949.
page 64 } Q. And where did you obtain your law degree?

Mr. Raby: I will accept his qualifications he is well qualified, so I will accept that as a lawyer.

Q. I hand you a deed dated the 6th of August, 1958, from Josephine Stewart Bradley to Joan S. Brownfield, marked as Defendant's Exhibit one in this case and ask you if you prepared that deed?
A. I did.
Q. And did you also acknowledge the signature to that deed?
A. I did, as Commissioner in Chancery.
Q. And when was that done?
A. That was on the 6th day of August, 1958.
Q. Where was it done?
A. It was done at the home of Josephine Stewart Bradley about one and a half miles north of Culpeper.
Q. Will you state the facts surrounding the signing of that deed and what took place at the signing of that deed?
A. Well, I don't recall exactly why I went except that Mr. Brownfield said he needed an acknowledgment, and my recollection is that our notary was busy so I went out with him.
We went to her home and I am quite certain that Roland Stewart, who is named in the deed, came to the
page 65 } door; E. H. Brownfield, who was with me, and I were led into a room to the left after you enter the door where Josephine Stewart Bradley was in the bed. I don't recall whether she was lying down when we went in or sitting on the edge of the bed, but I do know that during the time of this particular transaction she was sitting on the edge of the bed. Roland Stewart, her son, was present. When

I went there it was, of course, rather obvious why I was there, she was a woman of considerable years and so, in order to ascertain in my own mind whether she knew what she was doing when she signed the deed we discussed the circumstances at great length.

Q. By that do you mean you discussed—

Mr. Raby: Just a minute. Let him explain it, not you.

Mr. Purcell: All right.

A. During the time we were there the deed was read to her, explained to her; she was asked if she understood the nature of the transaction; her Son, Roland Stewart, was in the room during the entire time, and he was asked if he understood the nature of the transaction and they both answered in the affirmative.

Later, after Josephine Stewart Bradley died, Roland Stewart was in my office and he stated to me that he was not present during the time that this took place, but at that particular time I corrected him and insisted that he page 66 } was present during the entire time. Those are generally the circumstances.

Q. Did Josephine Bradley ask any questions as you were explaining the deed?

A. There were some questions asked, I don't recall the specific questions, with reference to the interpretation of the deed, because it was my opinion that she understood what was read to her and the nature of the transaction.

I do recall one specific question that impressed me and that was the question or to the effect that after discussing this question she tried to get Mr. Brownfield to pay for her burial expenses, which Mr. Brownfield said he couldn't do. Any other question that she may have asked was relating to the deed itself, which when I signed the acknowledgment I was thoroughly convinced she definitely understood the transaction.

Q. From your conference with her there that day, would you state to the Court in your opinion whether or not she had the mental capacity to understand the transaction?

A. I definitely was of the opinion that she had the mental capacity to understand the transaction. I might add that had I not thought that she had that mental capacity I would not have acknowledged her signature or permitted her to sign it.

J. B. Hudson, Jr.

Mr. Purcell: Witness with you.

page 67 } CROSS EXAMINATION.

By Mr. Raby:

Q. Mr. Hudson, how long have you known Mr. Brownfield?

A. How long?

Q. Yes, approximately.

A. Let me take a guess and say about three years. When Mr. Brownfield took a deed of trust on Josephine *Steart* Bradley's property, that was I believe one of the first transactions that I had with him, which was in 1956.

Q. You and your firm have acted as his counsel at various times, haven't you?

A. With respect only to real estate deals in Culpeper, Fauquier County and Madison County—adjoining Counties.

Q. You have worked with him. Now, in dealing with him and his property and business, how many acknowledgments have you acknowledged in deeds in Culpeper?

A. How many have I personally taken?

Q. And acknowledged as Commissioner?

A. I don't know that I have acknowledged any deeds, because as far as I know this is the only piece of property, which he has purchased in the County; he has taken deeds of trusts on numerous pieces and I may have taken an acknowledgment or two, but I don't think so, because I am usually Trustee in those particular instruments.

Q. In your firm you have a notary, do you not?

page 68 } A. Yes.

Q. Usually she takes the acknowledgments of deeds, etc., doesn't she?

A. She certainly takes all in the office, if she is there, quite often she goes out in the country to take acknowledgments, quite often I do, and quite often Mr. Fray does.

Q. I think you said—Was the door closed or the door open when you went there?

A. I don't recall.

Q. There is a porch there, isn't there, with a screen door?

A. I think there is a porch; I would say this: My recollection is there was not a completely open door, there may have been a screen in front of it and the inside door may have been closed or not.

Q. You say you knocked at the door?

A. I assume so.

Q. And when you went in she was in the bed?

A. Yes, she was.
Q. Lying down?
A. I don't know.
Q. You don't know?
A. I don't know whether she was lying down or sitting up when we went in. My recollection is—

page 69 } Q. You said, I believe, that she did get up and sign this deed?

A. Sitting on the edge of the bed.
Q. How was she sitting? Were her feet down on the floor?
A. I don't recall exactly where her feet were, but from the position she was in, I assume her feet were on the floor or resting on a chair. I don't think her feet were up on the bed.
Q. You say you went in there and you all talked about this deed. What did you discuss? What did you say to her.
Q. My recollection is that I explained to her my purpose for being there.
Q. What did you tell her your purpose was?
A. My purpose was to obtain her signature to this deed. That is why I went there.
Q. What else did you tell her?
A. I don't recall all the conversation that we may have had. I think I made the statement that I was there for that particular purpose.
Q. Do you know that?
A. I am quite confident, that normally would be the first thing I would tell anybody anyhow.

Q. After you told her that, did you give her the

page 70 } deed?

A. I don't recall.
Q. Who gave her the deed, you or Mr. Brownfield?
A. I don't recall. Let me put it this way: I recall that the deed was read to her, as I mentioned before, and after there was an understanding of what the deed meant, she signed the deed.
Q. Who read the deed to her?
A. I read the deed to her.
Q. You did?
A. Yes, sir.
Q. And wasn't anything in the deed about giving the life estate—you saw the deed, you drew the deed?
A. Yes, sir.

J. B. Hudson, Jr.

Q. And after you read the deed to her what did you do? Give it to her to sign?

A. No, no, I won't say the deed was handed to her immediately after it was read, because I do recall asking her if she understood what was taking place.

Q. You remember that?

A. Very definitely, because I remember turning around then to Roland Stewart and asking him if he knew what was taking place and understood the transaction.

Q. And he said yes?

A. Yes. I might say this: There was some conversation about the deed of trust, which was in default, as I

page 71 } recall, and which was discussed.

Q. Your discussion about this deed of trust being in default, who raised that question?

A. I don't think I did.

Q. You do remember that something was said?

A. I remember something was said.

Q. Who raised that question?

A. I don't know who raised the question.

Q. Who would know it?

A. I assume—Well the only thing I could say, Mr. Brownfield, Josephine Bradley or I mentioned the deed of trust.

Q. What was said about the deed of trust?

A. I don't recall. The fact that there was a deed of trust on the property.

Q. All you can remember is that it was mentioned that there was a deed of trust on the property?

A. Yes.

Q. Did you say how much the deed of trust was for?

A. I don't recall.

Q. All right, then. But no decision was reached or made about the deed of trust, all you can remember was that something was said about default in the debt.

A. Don't misunderstand me. The deed of trust was discussed and was mentioned. It was clear in my mind that she understood the deed of trust was going to be paid

page 72 } off.

Q. Who told her that?

A. I assume Mr. Brownfield.

Q. He was there with you?

A. Yes.

Q. Did you hear him tell her that?

A. My recollection is that he did. I know I didn't tell her I was going to pay it off.

J. B. Hudson, Jr.

Q. You say Mr. Brownfield told her he was going to pay off the deed of trust?

A. I didn't say I recollected that Mr. Brownfield told her he was going to pay it off. My recollection is that she was told that.

Q. Who told her?

A. I didn't tell her, I assume Mr. Brownfield was the only one who could.

Q. I don't mean what you assume—

A. Okay, I didn't tell her.

Q. You say you didn't tell her, and you don't know who told her, so what you are saying is just an assumption?

A. Let me get back. I am trying to answer your question by the process of elimination. I know I didn't tell her I was going to pay it off. I know Roland Stewart didn't tell her, but I know that someone in the room told her it was going to be paid off.

Q. And you assume it was Mr. Brownfield?

page 73 } A. I cannot tell you any more than I have already said.

Q. You drew this deed?

A. I did.

Q. You knew there was a trust on the property?

A. I did.

Q. Why didn't you put that in the deed?

A. Because it was my understanding when the deed was signed that the deed of trust was going to be released.

Q. Who told you that?

A. Mr. Brownfield.

Q. Did he ever release it?

A. I don't know that.

Q. While you were there he didn't give her any money did he?

A. No.

Q. You say this lady was a very old lady?

A. Very old?

Q. And she was sick?

A. I don't know what the state of her health was.

Q. Now, your conversation, you say you told her or somebody in the room told her the deed of trust was going to be paid. What else did they tell her?

A. Well, she was told that Mr. Brownfield would pay the

taxes and pay the insurance.

page 74 } Q. Mr. Brownfield told her that?

A. I didn't say that Mr. Brownfield told her that; I think I told her.

Q. It is set forth here.

A. In the deed I believe.

Q. The deed speaks for itself. You say you told her that Mr. Brownfield would pay the taxes and insurance?

A. I read the deed to her.

Q. And you told her he was going to pay it off?

A. Yes. I assume Mr. Raby was speaking about taxes and insurance and it was explained to her that according to the deed Mr. Brownfield would be required to pay the necessary taxes and insurance on this property subsequent to the conveyance.

Q. So, in conveying the property she thought she was conveying the property to Mr. Brownfield, didn't she?

A. I don't know.

Q. You don't know?

A. I don't know. I will put it this way, the deed was read to her in the name of Joan S. Brownfield.

Q Did she know Joan S Brownfield?

A. I don't know.

Q. You don't know whether she knew who Joan S. Brownfield was.

Mr. Purcell: He has already answered that.

page 75 } Q. Had you ever seen her before?

A. Not that I know of. I spoke to her on the telephone on one occasion.

Q. Was Roland standing up or sitting down when you were reading that deed to her? You don't remember that?

A. I won't say for certain, but I believe he was standing.

Q. So, after you had read the deed to her finally she did sign it, is that true?

A. You are saying, the manner in which you ask the question indicates to me that she was urged in some way to sign, "finally she signed it"; that was not the situation at all. I might say this that at the time Josephine Stewart *Bradely* signed the deed I was very definitely of the opinion that she understood everything that was contained in this deed, and that she understood everything about the life estates, the fact that after her death Roland could stay in one of the houses, and as to who paid the taxes and insurance.

Q. You said that after you all talked about it and before she signed the deed you had explained it to her and told her these things and after that you read the deed?

A. And she was asked if she understood it, etc., and Roland was asked if he understood it, and after there was a definite understanding as to the conditions of the deed, then page 76 } she signed it.

Q. Mr. Hudson, you can remember that specifically that you asked her if she understood and asked Roland if he understood, why can't you specifically remember that and these other things you can't remember.

Q. I can only answer your question by the passage of time and I consider these *thing* as important in the signing of any deed, but in the signing of a deed, where who was standing or whether he was sitting or standing I do not consider too important.

Mr. Raby: That is all.

RE-DIRECT EXAMINATION.

By Mr. Purcell:

Q. Mr. Hudson, a question has arisen pertaining to the title to this property, in reference to whether or not there were any outstanding interests. Did you examine the title to this property?

A. I did, in 1956 in connection with the deed of trust.

Q. Do you know whether or not there were any outstanding interest in reference to this property?

A. There was at that time.

Q. And what did that interest consist of?

A. I have a notation here.

Q. You have your title notes before you, do you not?

A. I do. I have a notation that indicates to me page 77 } on March 5, 1956 I had a telephone conversation with Josephine Stewart Bradley. In examining my file I find that when I was preparing to draw the deed of trust on this property I had no information as to whether she was a widow or married, and according to these notes I called her on the telephone and she advised that she was married to Samuel Bradley; that there had been no divorce, and I notice in my file by his name Northampton, Massachusetts, which as I recall was his last known whereabouts; it seems to me I have another note; I have a note here that he

had been confined in a mental institution in Northampton, Massachusetts, which information I received from her.

Q. In the chain of title to this property, does this four acres involved, is it split up into two or more tracts as it goes back?

A. According to my notes Josephine Stewart Bradley obtained four acres from the heirs of Albert Stewart by deed dated April 18, 1936, in Deed Book 95, page 397. This deed recited that *once* acre had been sold to Matt Carrington; Albert Stewart acquired 5 acres from L. P. Rogers by deed dated January 11, 1889, and recorded in Deed Book 23, page 95. So it appears that the 4 acre tract is a part of the 5 acre tract. I didn't trace the title back any further.

Q. Did you make any investigation to determine whether or not all the Stewart heirs conveyed that property

page 78 } to Josephine Bradley?

A. Do you mean Albert Stewart?

Q. I believe you said the heirs conveyed it to her.

A. The deed from the purported heirs of Albert Stewart sets forth the names of his heirs and the information recited there would be sufficient, if true, to give Josephine Stewart Bradley a fee simple title. I have a note that on March 5, 1956, she advised that she had three other brothers and sisters, who died in infancy, and not being willing to accept that without an affidavit I made an exception as to the heirs of Albert Stewart and so stated on my title certificate.

Q. Did you in your examination understand that Mr. Waite had been working on this title in some way to clear it up?

A. I don't recall that.

By the Commissioner:

Q. So far as the records are concerned do the records in the Clerk's Office of this County indicate that Josephine Stewart Bradley owned any other real estate other than this four acres?

A. I will answer this way: I have nothing in my file that would indicate that she owned any other land. However, my attention was directed to this land in my title examination. We have been referring to this land as 4 acres, it was four acres but a portion of the frontage was taken by

page 79 } the Highway Department some years ago, which actually might leave less than four acres.

Q. Do you authorize the Commissioner to sign your name to this deposition?

A. I do, sir.

And further this deponent sayeth not.

J. B. HUDSON.

G. W. MITCHELL,
another witness for the Defendant, Joan S. Brownfield, being first duly sworn, deposes and says as follows:

DIRECT EXAMINATION.

By Mr. Purcell:

Q. Mr. Mitchell, you are Treasurer of Culpeper County, are you not?

A. That is right.

Q. And you have been Treasurer here for how long?

A. Twenty-nine years.

Q. Do you have listed on your Land Books four acres of land in the name of Edward H. Brownfield or Josephine Stewart Bradley?

A. Josephine Stewart Bradley is the way it is listed for 1958.

Q. Is that four acres?

A. Four acres, that is correct.

page 80 } Q. And in what District is that located?

A. Catalpa District.

Q. Would you state for the Court the assessed value of that land according to your records?

A. The land is assessed at $120.00, and the buildings at $960.00, making a total assessment of $1,080.00.

Q. Can you tell us in general what percantage of actual valuation your assessed valuation usually is?

A. When this assessment was made in 1955, effective in 1956, it was passed or supposed to have been forty per cent of the actual value; that is the basis the assessor's worked on as I understood it.

Mr. Purcell: Witness with you.

CROSS EXAMINATION.

By Mr. Raby:

Q. That was made in 1955. How often do you assess property?

G. W. Mitchell.

A. Every six years.
Q. That was made in 1955?
A. 1955, that is right.
Q. Do you have the two houses separated or is it just put in one sum?
A. They have it all in one.
Q. It has got two houses.
A. It is probably listed as two in the Commis-
page 81 } sioner's Office, where this is made up; they have a file card and it probably has two on there, but they only give us one total.
Q. That would be the assessed value of the two?
A. That is right.
Q. And you have four acres there for $120.00?
A. That is correct, $30.00 an acre. Our assessments are low.

Mr. Raby: That is all.

RE-DIRECT EXAMINATION.

By Mr. Purcell:
Q. Are you familiar with the particular property?
A. I am not, I know where it is about.
Q. You are in general familiar with real estate in this County?
A. Yes, sir.
Q. Does the reservation of a life estate normally decrease the fee simple value of property?
A. I had a case this year of a delinquent life estate and run into right much difficulty with it, I think I am going to work it out. Life estates, I think, would have a tendency to decrease the value to some extent, because there are so many things that are involved, I think you know what I mean, Mr. Purcell.
Q. Do you authorize the Commissioner to sign
page 82 } your deposition?
A. Yes, sir.

And further this deponent sayeth not.

G. W. MITCHELL.

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

The foregoing depositions of Dr. Elijah Barber, Martimer M. Marshall, Reverend Robert C. Davis, Roland Stewart, Mrs. Ruth Walker, Edward H. Brownfield, J. B. Hudson, Jr., and G. W. Mitchell, were duly taken, sworn to and subscribed at the time and place and for the purpose stated in the caption.

Given under my hand this 26th day of June, 1958.

S. A. CUNNINGHAM
Commissioner in Chancery.

page 83 } Virginia:

In the Circuit Court of Culpeper County.

Emma McGrue, Executrix, et al., Plaintiff,

v.

Joan S. Brownfield, et als., Defendants.

The foregoing depositions are a true and correct copy of the evidence taken in the above styled case.

Received and Signed
Dated: 12/21/59.

C. CHAMPION BOWLES, Judge.

A Copy—Teste:

H. G. TURNER, Clerk.

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