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Record No. 5235

In the Supreme Court of Appeals of Virginia at Richmond

JEAN A. JONES

v.

MARY ELIZABETH GAYLE JONES HENSON

FROM THE CIRCUIT COURT OF ORANGE 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. 5235

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday the 10th day of October, 1960.

JEAN A. JONES, Appellant,

against

MARY ELIZABETH GAYLE JONES HENSON, Appellee.

From the Circuit Court of Orange County

Upon the petition of Jean A. Jones an appeal and *supersedeas* is awarded her from a decree entered by the Circuit Court of Orange County on the 5th day of August, 1960, in a certain chancery cause then therein depending wherein Reginald Lamont Jones, Jr., an infant, who sued by Elizabeth M. Jones, his mother and next friend, was the original plaintiff and Mary Elizabeth Gayle Jones, an infant, etc., now Mary Elizabeth Gayle Jones Henson, was defendant; upon the petitioner, or some one for her, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of four hundred dollars, with condition as the law directs.

And upon further consideration whereof, it is ordered that Mary Elizabeth Gayle Jones Henson return the infant, Gilbert Warren Jones, to the custody of Jean A. Jones by delivering the said infant to the said Jean A. Jones at her home in Orange County, Virginia, within ten days after receipt of a copy of this order by the said Mary Elizabeth Gayle Jones Henson, or her attorney.

And it is further ordered that the said infant, Gilbert Warren Jones, shall remain in the custody of the said Jean A. Jones until the further order of this court.

Which is ordered to be certified to the said circuit court, and copies thereof sent by registered mail to the said Jean A. Jones, Mary Elizabeth Gayle Jones Henson, and their attorneys of record.

RECORD

* * * * *

page 13 } This agreement made and entered into this the 26th day of September, 1951, by and between Reginald L. Jones, Jr., party of the first part, and Mary Elizabeth Gayle Jones, party of the second part, and Mrs. W. H. Jacobs, party of the third part,

WITNESSETH:

(1) That whereas the said Reginald L. Jones, Jr., party of the first part and Mary Elizabeth Gayle Jones, party of the second part, are husband and wife but are now living separate and apart, and expect to continue so to live; and,

(2) That whereas there was born of this marriage one child, Gilbert Warren Jones, aged two years, who is now in the possession, custody and control of one, Mrs. W. H. Jacobs, party of the third part, who lives in the town of Orange, Virginia; and,

(3) That whereas the party of the first part and the party of the second part have agreed that at present the said child shall remain in the custody, care and control of the said Mrs. W. H. Jacobs, party of the third part, with Reginald L. Jones, Jr., party of the first part, providing maintenance and support for said child; and,

(4) That whereas the said party of the first part and the said party of the second part have agreed that so long as this separation shall continue the said Reginald L. Jones, Jr., party of the first part, shall not be required to furnish maintenance and support for the said Mary Elizabeth Gayle Jones, party of the first part, and that the said Mary Elizabeth Gayle Jones, party of the first part, shall provide maintenance and support for herself.

Now therefore, for and in consideration of the premises and the mutual undertakings and covenants herein set forth, the said Reginald L. Jones, Jr., party of the first part and the said Mary Elizabeth Gayle Jones, party of the second part, do covenant and agree with each other as follows:

(A) That Gilbert Warren Jones, infant child aged two years born of this marriage, shall continue to re-
page 14 } main in the custody, care and control of Mrs. W. H. Jacobs, party of the third part, until the said party

of the first part and the said party of the second part shall mutually agree to a different custody for said child; and,

(B) That so long as the said child shall remain in the custody, care and control of Mrs. W. H. Jacobs, the said Reginald L. Jones shall provide adequate maintenance and support for the said child; and,

(C) That so long as the parties hereto shall live separately and apart that the said Reginald L. Jones, Jr., party of the first part, shall not be required to furnish any maintenance and support for Mary Elizabeth Gayle Jones, party of the second part, and that Mary Elizabeth Gayle Jones, party of the second part, shall provide maintenance and support for herself; and,

(D) That the said Mrs. W. H. Jacobs, party of the third part, agrees that she will not at any time in the future assert any right or claim to the custody of said child by virtue of this agreement or by virtue of her having had possession of said child under this agreement; and that she, the said Mrs. W. H. Jacobs, party of the third part, will at any time deliver the possession of said child unto the said party of the first part and the said party of the second part, or to whomever they might direct.

(E) That this agreement shall be executed in triplicate and shall be binding upon the parties hereto until the terms hereof are changed or modified by mutual agreement of the parties of the first and second parts.

Witness the following signatures and seals.

REGINALD L. JONES, JR. (Seal)
MARY ELIZABETH GAYLE JONES (Seal)
MRS. W. H. JACOBS (Seal)

page 15 } State of Virginia,
County of Orange, to-wit:

I, Eugenia Moyer, a notary public, of and for the County of Orange in the State of Virginia, do hereby certify that Reginald L. Jones, Jr., Mary Elizabeth Gayle Jones, whose names are signed to the foregoing agreement, have this day personally appeared before me and acknowledged the same before me in my County and State aforesaid.

Given under my hand this 26 day of September, 1951.
My commission expires May 10, 1953.

EUGENIA MOYER
Seal Notary Public.

S. PAGE HIGGINBOTHAM
Orange, Virginia.

Filed by leave 12-5-51.

B. M. J.

* * * * *

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* * * * *

DECREE.

This cause came on this day to be heard upon the bill of complainant duly filed and matured; on the answer of A. Stuart Robertson, Jr., Guardian *Ad Litem* for Mary Elizabeth Gayle Jones; on the answer of Mary Elizabeth Gayle Jones by A. Stuart Robertson, Jr. her Guardian *Ad Litem;* upon the answer in proper person of Mary Elizabeth Gayle Jones; on the order entered in this cause on December 5, 1951 directing that the evidence in this suit be submitted *ora tenus* before the court; on the evidence and exhibits submitted in open court on December 5, 1951, the said A. Stuart Robertson, Jr., Guardian *Ad Litem* for Mary Elizabeth Gayle Jones, Elizabeth M. Jones, mother and next friend of Reginald Lamont Jones, Jr., Reginald Lamont Jones, Jr. and Mary Elizabeth Gayle Jones being present, and was argued by counsel.

WHEREUPON it appearing proper so to do, the court takes under consideration the question of granting the relief asked for in the said bill of complaint. And the court doth ADJUDGE, ORDER and DECREE that Gilbert Warren Jones, the son of the parties to this cause, shall be temporarily left in the custody of Mrs. W. H. Jacobs, 148 West Main Street, Orange, Virginia, in accordance with the terms of the

agreement made by his parents and which is dated September 26, 1951 and filed as an exhibit in this cause marked "Defendant's Exhibit #1."

And further the court doth ADJUDGE, ORDER and DECREE that Reginald Lamont Jones, Jr. shall pay to A. P. Beirne, counsel for the defendant, the sum of page 18 } $50.00, and to A. Stuart Robertson, Guardian *Ad Litem* for the defendant, the sum of $25.00 to all of which the complainant duly excepted.

Enter 12-5-51.

BURNETT SMITH, JR., Judge.

* * * * *

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* * * * *

DECREE.

This cause having been duly matured, docketed and set for hearing came on to be heard upon Complainant's Bill of Complaint, with duly certified copy of marriage license and certificate of the time and place of marriage by the person who performed the ceremony, attached thereto as an exhibit, duly filed herein on the 11th day of October, 1951; upon proof of service returned and filed in this cause on October 17, 1951, with copy of said Bill of Complaint attached, by delivering a true copy thereof on October 17, 1951, to the defendant, Mary Elizabeth Gayle Jones by the Sheriff of Orange County, Virginia; upon order of the Clerk appointing A. Stuart Robertson, Jr., a discreet and competent attorney at law, guardian *ad litem* for the defendant; upon the answer of the defendant in her own right, by the guardian *ad litem* duly filed herein; upon the answer of the guardian *ad litem* duly filed herein; upon the separate answer of the defendant by her regular attorney duly filed herein; upon order of the Court to hear this cause *Ore Tenus;* upon the evidence adduced in open Court by the Complainant on December 15, 1951, after which the Complainant rested his case and the Defendant, declining to introduce evidence on her behalf, rested her case; upon order of the Court entered on December 6, 1951, taking the entire matter under advisement, ordering that the custody page 22 } of the infant child continue with Mrs. W. H. Jacobs pursuant to an agreement heretofore entered into

between the parties prior to the institution of this proceeding, and ordering the complainant to pay the guardian *ad litem* a fee of $25.00 and to pay the defendant's independent attorney a fee in the sum of $50.00, to all of which order the complainant duly excepted; and upon motion subsequently made by the complainant for leave to introduce additional evidence relative to custody of the infant child, and leave being granted, upon such additional evidence on behalf of both the complainant and the defendant, presented to the Court at said hearing on February 8, 1952.

From all of which it appears to the Court that the complainant and the defendant voluntarily separated pursuant to a separation agreement and that the defendant was not guilty of cruel and inhumane treatment nor of actual or constructive desertion, as alleged in the Bill of Complaint, and that neither the complainant nor the defendant is entitled to custody of the child at this time,

NOW, THEREFORE, it is ordered, adjudged and decreed that the Complainant's prayer for a divorce a *mensa et thoro,* later to be merged into an absolute divorce, be and it herewith is denied, that the Complainant's prayer for custody of the infant child be and it herewith is denied, that the complainant's Bill of Complaint be and it herewith is dismissed, and that Gilbert Warren Jones, the infant child of the complainant and the defendant be and he herewith is placed in the care and custody and under the supervision and control of Mrs. W. H. Jacobs in the Town of Orange, County of Orange, Virginia, pursuant to the terms and provisions of the agreement entered into on September 26, 1951 between the complainant, the defendant, and Mrs. W. H. Jacobs, which agreement is modified to the extent that the sum of money to be paid to Mrs. Jacobs by the Complainant is page 23 } $30.00 per month instead of $50.00 per month, and the defendant is herewith directed to pay the sum of $20.00 per month to Mrs. Jacobs, and the agreement is further modified to the extent that either the complainant or the defendant may, at reasonable times, take the child out of the home of Mrs. Jacobs for short period of time in the daytime, conditioned upon first obtaining the consent and approval of Mrs. Jacobs on each such occasion, but in no case is the child to be taken or retained from the home of Mrs. Jacobs at night, and in all other respects the said agreement is incorporated in this decree by reference and is made a part hereof. To all of which the Complainant duly excepted for the reasons stated in the record and as being contrary to the law and the evidence.

It further is ordered that this cause be retained on the active docket with leave reserved to the parties hereto to make application to this court for further orders as authorized by law.

3-31-52.

BURNETT SMITH, JR., Judge.

Seen and excepted to:

HIGGINBOTHAM & FRY by
Attorneys for the Complainant.

Seen:

A. STUART ROBERTSON, JR.
Guardian *ad litem.*

BEIRNE & LERNER
Attorneys for the Defendant.

* * * * *

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* * * * *

DECREE.

This cause came on to be heard upon all the papers formerly filed, entered, and read; upon the evidence previously presented in open Court; and upon additional evidence presented in open Court on May 29, 1952 in the presence of the parties, their attorneys and the guardian *ad litem* of Mary Elizabeth Gayle Jones, infant; and was argued by counsel.

Upon consideration whereof and it appearing to the Court independently of the admissions of the parties hereto that the said parties, who are members of the white race and neither of whom is in military service, were lawfully married on April 23, 1949 at Fredericksburg, Virginia; that at the commencement of this suit the said parties were domiciled in and were actual *bona fide* residents of the State of Virginia and had been such actual *bona fide* residents of the State of Virginia for at least one year next preceding the commencement of this suit; that the parties last cohabited as husband

and wife in the County of Orange, Virginia; that on the 24th day of September, 1951, the defendant, Mary Elizabeth Gayle Jones, without cause or justification willfully deserted and abandoned the complainant, and cohabitation since has not been resumed, and the Court being of the opinion that the complainant is entitled to a divorce a *mensa et thoro* on the grounds of wilful desertion and abandonment;

page 26 } NOW, THEREFORE, it is ordered, adjudged and decreed that Reginald Lamont Jones be, and he hereby is, granted a divorce a *mensa et thoro* from Mary Elizabeth Gayle Jones, which may upon proper application, be merged into an absolute divorce two years from the date of the desertion, should no reconciliation meanwhile be affected.

IT IS FURTHER ordered that Gilbert Warren Jones, the infant child of the complainant and the defendant, be, and he herewith is, placed in the care and custody and under the supervision and control of Mrs. W. H. Jacobs in the Town of Orange, County of Orange, Virginia, pursuant to the terms and provisions of the agreement entered into on September 26, 1951 between the complainant, the defendant, and Mrs. W. H. Jacobs and heretofore modified by the Court to the extent that the sum of money to be paid to Mrs. Jacobs by the complainant shall be $30.00 per month instead of $50.00 per month and the defendant shall pay the sum of $20.00 per month to Mrs. Jacobs for the support of said child, and either the complainant or the defendant may, at reasonable times, take the child out of the home of Mrs. Jacobs for short periods of time in the day time, conditioned upon first obtaining the consent and approval of Mrs. Jacobs on each such occasion, but in no case is the child to be retained from the home of Mrs. Jacobs at night, and the agreement as above modified is incorporated in this decree by reference and is made a part hereof. The divorce herein granted to the complainant, Reginald Lamont Jones, shall in no way militate against the interest of the defendant as to the custody of the said child.

This cause is continued.

Enter:

BURNETT SMITH, JR., Judge.

Dated 6-5-52.

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* * * * *

ORDER.

This cause came on this day to be heard upon all proceedings heretofore had and decrees entered herein; upon the Petition of Reginald Lamont Jones, Jr. duly filed herein on November 5, 1954; upon evidence taken *ore tenus* before this Court on November 29, 1954 pursuant to Order entered herein on November 22, 1953, in the presence of Mary Elizabeth Gayle Jones Henson, who is now 21 years of age, in person and by her counsel, and in the presence of Reginald Lamont Jones, Jr. in person and by counsel and in the presence of Mrs. W. H. Jacobs, and was argued by counsel.

And it appearing unto the Court from said evidence that the prayer of the Petition of Reginald Lamong Jones should be granted, it is the order of this Court that the custody of Gilbert Warren Jones, the infant child or Reginald Lamong Jones, Jr. and Mary Elizabeth Gayle Jones Henson, be and it hereby is removed from the custody of Mrs. W. H. Jacobs where it was placed by previous order of this Court and the same be placed with Reginald Lamong Jones, Jr., complainant and petitioner herein.

It is the further order of this Court, however, that actual transfer of custody from Mrs. W. H. Jacobs to Reginald Lamont Jones, Jr. shall not take place until Reginald Lamont Jones, Jr. has obtained a suitable home of his own and until the said Reginald Lamont Jones, Jr. shall further demonstrate to the Court his ability to provide proper

page 45 } religious training for said child. It is therefore ordered that this cause be continued with the child remaining in the custody of Mrs. W. H. Jacobs under the previous order of this Court until January 24, 1955, at 2:00 o'clock P. M. at which time Reginald Lamong Jones, Jr. shall if he be so advised present further evidence upon question of his having obtained a suitable home and upon the question of his ability to provide proper religious training for said child.

It is the further order of this Court that the matter of the right of Mary Elizabeth Gayle Jones Henson to the custody of said child has not been adjudicated in this proceeding

and this decree shall in no way prejudice her right to present her *dlaim* for custody of said child.

Enter:

C. CHAMPION BOWLES, Judge.

Date: 11/30/54.

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MEMORANDUM OF THE COURT.

This cause originated as a divorce proceeding filed October 11, 1951. The parties were married April 23, 1949, at which time the husband was 18 years of age and the wife 15 years of age. The suit was instituted on behalf of the husband by his next friend and a guardian *ad litem* was duly appointed and filed his answer for the wife and she answered in proper person.

The parties had one child, a son, born November 28, 1949, whose name is Gilbert Warren Jones. Husband and wife, who were living separate and apart, entered into an agreement dated September 26, 1951, with Mrs. W. H. Jacobs in which they agreed, "that at present the said child shall remain in the custody, care and control of the said Mrs. W. H. Jacobs, * * *, with Reginald L. Jones, Jr., party of the first part, providing maintenance and support for said child; * * *." By decree dated December 5, 1951, this agreement was approved by the Court.

On February 8, 1952, the evidence was heard *ore tenus* by the Court and the Complainant's Bill of Complaint was dismissed by Decree dated March 31, 1952. This decree contained the following language:

"From all of which it appears to the Court that the Complainant and the Defendant voluntarily separated pursuant to a separation agreement and that the Defendant was not guilty of cruel and inhuman treatment nor of actual or constructive desertion, as alleged in the Bill of Complaint, and that neither the Complainant nor the Defendant is entitled to custody of the child at this time."

The child was left by the Court with Mrs. Jacobs.

By decree entered April 7, 1952, the decree entered on March 31, 1952, "as relates to the matter of divorce," was vacated and set aside. On June 5, 1952, the Com-
page 89 } plainant was granted a divorce *a mensa,* but the custody of the child was left with Mrs. Jacobs. An absolute divorce was granted by decree of September 29, 1952.

The husband filed his petition on November 5, 1954, asking for custody of his infant son and alleged that he had remarried and his former wife had also remarried. Evidence *ore tenus* was heard on November 29, 1954, and an order was entered on November 30, 1954, awarding the custody of the infant son to the father.

This order provided:

"* * * that actual transfer of custody from Mrs. W. H. Jacobs to Reginald Lamont Jones, Jr. shall not take place until Reginald Lamont Jones, Jr. shall further demonstrate to the Court his ability to provide proper religious training for said child.

The infant child was again left in the custody of Mrs. Jacobs and the cause was continued to January 24, 1955. This decree further provided:

"It is the further order of this Court that the matter of the right of Mary Elizabeth Gayle Jones Henson to the custody of said child has not been adjudicated in this proceeding and this decree shall in no way prejudice her right to present her claim for custody of said child."

A decree was entered on January 26, 1955, transferring the actual custody of the child from Mrs. Jacobs to the father, with the right of the mother "to see and visit the child at any and all reasonable times and shall have the right to have said child with her at any and all reasonable times, provided, that the child not at any time be taken beyond the borders of the State of Virginia."

This is a brief summary of this proceeding up to the time of the instant case.

The present wife of the father, Reginald L. Jones, Mrs. Jean A. Jones, filed her petition May 23, 1960, asking for the custody of the infant child, Gilbert Warren Jones. It appears from the petition that the father, Reginald L. Jones was killed on May 14, 1960, in an automobile accident. Mrs. Elizabeth J. Baxter, mother of the deceased father and

grandmother of the infant child, appeared on June 20, 1960, and an order was entered on that date giving temporary custody to Jean A. Jones, until July 1, 1960, on page 90 } which date the matter was set to be heard. Mrs. Baxter filed her petition on June 30, 1960. Mrs. Mary Elizabeth Henson, mother of the infant child appeared with counsel on July 1, 1960, the day of trial and it was agreed and stipulated by the attorneys for all the petitioners that she could file her petition as of that date.

The evidence was heard *ore tenus,* but a Court reporter was present and took the evidence of the witness, however, insofar as I know, the evidence has not been transcribed.

There is no material conflict in the evidence. Mrs. Jean A. Jones, stepmother of the infant child, presented some fifteen witnesses, including herself, and offered others, but the Court declined to hear further accumulative evidence. They all testified that she was a fit and proper person to have the custody; that she and her deceased husband lived on her parent's place in a trailer; that she is the mother of a nineteen months old son; that she is twenty-seven years of age; that Gilbert Warren Jones, the child, is very fond of this little boy; that she had been a good mother to her stepson; that she has well provided for all his wants and needs; that he has done splendidly in school and that she loves him as her own child.

Gilbert Warren Jones, age ten years, testified in chambers and told the Court that he loved his stepmother and half-brother and preferred to stay with them and attend school in Orange; that he would like to visit his grandmother, Mrs. Baxter, in the summer vacation months and that he did not remember his mother.

Mrs. Elizabeth J. Baxter, the grandmother, presented some nine witnesses, including herself, and they all gave her a good reputation and testified that she was a fit and proper person to have the custody of her grandson; that she had a nice home in Fredericksburg, Virginia; that she was a faithful member of her church; that her financial resources were ample to care for, support and educate the child; that she loved the child; that her son, the deceased father, had asked her to take the child "if anything happened to him"; that she is forty-five and her husband is thirty-two years of age.

page 91 } Mr. James L. Baxter, husband of the grandmother, testified that he would be glad to take the child in his home and treat him as a son; that they have no children.

Mrs. Jacobs, who had formerly had custody of the child,

believed that it would be for the best interest of the child to be placed with its grandmother, Mrs. Baxter.

Mrs. Mary Elizabeth Henson, the mother, presented some seven witnesses including herself, and her present husband, and all of these witnesses testified that Mr. and Mrs. Henson were perons of good moral character; that they were fit and proper persons to have custody of the child; that they now live in an apartment in Alexandria, Virginia; that their income is sufficient to provide for the child; that the mother is now twenty-seven years of age; that her husband is willing to take the child and furnish him a home.

Mrs. Henson denied any acts of immorality and says that she and her husband are happily married; that her reason for not visiting the child was because of embarrassment and slight received from the present Mrs. Jones; that she called for the child two or three times, but he was not at home.

Filed by consent of counsel was a paper writing marked "Henson Exhibit A" signed by thirty-nine residents of the Richardville, Virginia, community, "We, * * *, do herewith state that we have known Mr. and Mrs. Donald Henson for a number of years and we believe that they are proper people to be awarded the custody of Mrs. Henson's son, Warren Jones."

These people, of course, were not before the Court for cross examination and observation.

Mrs. Jean A. Jones, the stepmother, contends that she stands *in loco parentis* to the child. It is not denied that she cared for the welfare of the child, but she did go as the wife of the child's father who had custody of the child and not otherwise as a parent.

page 92 } "Whether a stepchild bears such a relation to his stepfather (stepmother) as to place the latter *in loco parentis,* is dependent upon the facts of each particular case." *Doughty* v. *Thornton,* 151 Va. 785 at 792.

The facts in this case do not justify the conclusion that the stepmother stood *in loco parentis.*

Mrs. Elizabeth J. Baxter, the grandmother, cites the cases of *Sutton* v. *Menges,* 186 Va. 805 and *Phillips* v. *Kiraly, Jr.* 200 Va. 345. Neither of these cases support the claim of Mrs. Baxter, because there is no evidence to show that the mother is not a fit and proper person to have the care, custody, and control of her child. The evidence shows that each of the petitioners are proper persons and this is not contradicted. The *Sutton* v. *Menges* case, *supra.,* states the rule to be:

"To separate a child from its parents, the evidence of their unfitness must be cogent and convincing."

* * * * *

"Indeed, the common law right of a father to keep with him his legitimate children, when the mother is dead, is not questioned."

The case of *Phillips* v. *Kiraly, Supra,* states the rule at page 351, to be:

"It is almost universally held that the welfare of the child is the paramount and controlling consideration in determining who shall have the custody of the child. The strong presumption is that the best interests of the child will be served by placing it in the custody of its natural parents or surviving parent, unless such parents are unfit or unsuitable."

Is Mrs. Henson, the mother, entitled to the foregoing presumption? As before stated, there is no evidence of her unfitness or unsuitability. In the case of *Merritt* v. *Swimly,* 82 Va. 433, the Court states that the rule ceases where the parent is unfit or unsuitable or where the right has been abused, or the right has been transferred, and it is not for the best interest of the child that the parent should resume it. In the *Phillips* v. *Kiraly* case, *supra.,* the Court in discussing the Merritt Case and the *Sutton* v. *Menges Supra.* said:

page 93 } "The facts and circumstances of each of those cases differ from those here. In most of them there was a voluntary relinguishment or abandonment by the father of his right to custody, a prolonged period of actual residence by the child with another custodian, or the father was shown to be an unsuitable person to have the custody."

* * * * *

"The burden of showing existence of circumstances which would deprive the parents of the right to custody is on the person opposing the right, and the evidence justifying the separation of a child from its parents must be cogent and convincing."

There is no evidence of abandonment or a voluntary re-

linquishment by the mother. The custody was awarded to the father with visitation rights to the mother. She testified why she had stopped seeing the child. Her testimony was not contradicted; therefore it must be taken as true. The other petitioners have not carried the burden of proof placed upon them. There is no evidence of unfitness of the mother or that she voluntarily relinquished or abandoned her rights to the child. The other petitioners relied upon their own fitness to have custody and this is not sufficient to overcome the presumption in favor of the natural parent.

"In the absence of evidence of abandonment or transfer of his rights, a natural parent who is of good character and a proper person to have the custody of the child and reasonably able to provide for it is entitled to the custody as against other persons, although such others are much attached to the child, and the child is attached to them, and prefers to remain with them, and they are in all respects suitable to have the custody of the child and able to support and care for it, and even though they are of larger fortune or able to provide for the child more comfortably than the parent, or to care for it better, or to give it a better education than the parent can afford." 14 M. J. p. 91, Section 7, *Pierce* v. *Jeffries,* 103 W. Va. 410, 137 S. E. 651.

The stepmother, Mrs. Jean A. Jones, had practically been the mother to this infant ten year old boy. She loves him and he loves her and her little boy. His welfare has been well provided for by this stepmother and the boy's father up to and subsequent to the father's untimely death. To separate this family unit is dreadful to consider, however, the death of the father occasioned this. The boy wishes to remain with his stepmother and she wants, with all her love and affection, for him to remain.

page 94 } The grandmother, Mrs. Elizabeth J. Baxter, loves her grandson as only a grandparent can. She would willingly give her time and fortune for his every good and welfare. She has a nice home in which to rear him. Her only son's sad death impell her to make every lawful effort to secure custody of the child. The child loves her and would like to continue to stay with her in the summer vacation months.

This is a Court of law and equity, and the law, as it is understood to be, must be applied, notwithstanding the sorrow and heartaches that sometimes result from our conclusions.

It is the opinion of this Court that the stepmother and

the grandmother have not proved a case as required by law to award them, or either of them, the custody of the infant child. It follows from the cited case law governing such cases that the natural parent, the mother, Mrs. Mary Elizabeth Henson, is entitled to the custody of her son, Gilbert Warren Jones, and it is so decided.

If it can be arranged, the Court would be disposed to grant to the stepmother and the grandmother very liberal visitation rights, provided such rights did not interfere with the education, maintenance and welfare of the child.

The attorneys may prepare and present an appropriate order.

C. C. B.

7/13/60.

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* * * * *

MOTION AND PETITION TO REHEAR.

Comes now Jean A. Jones and represents unto the Court as follows:

1. That upon receiving notice that the custody of the child has been awarded to its mother, your Petitioner communicated this decision to the child, whereupon, the child reacted violently and became nervous and upset. Gilbert Warren stated that he would not live with his mother, whom he does not know, and that he was determined to stay with your Petitioner; that the child's health is being affected adversely by the decision of the Court and your Petitioner believes that if the decision of the Court is carried out by using physical force upon the body of the child, Gilbert Warren's health will be irreparably harmed. Your Petitioner asks for a rehearing in order that this evidence, which at the trial was unobtainable, may be considered.

2. That upon seeing the attitude of Gilbert Warren towards leaving the home of your Petitioner, your Petitioner deemed it advisable to have the child examined by a child psychiatrist; accordingly, Gilbert Warren was seen on July 16, 1960 and July 18, 1960 by Dr. Lucy S. Hill, an outstanding expert in her field, for an evaluation of Gilbert Warren's emotional status. Dr. Hill, in her report states as follows:

"Gilbert Warren Jones, born November 28, 1949, was seen on July 16th, and on July 18th, for an evaluation of his emotional status.

"Gilbert Warren is a nice looking blue eyed child, with light brown hair, who is well cared for, neatly dressed, and is cooperative. He is serious, seldom smiles, appears calm and self-assured. He is a child of high average, normal intelligence, who is, despite his poise, sensitive, page 96 } anxious, tense, and insecure. Some of this is undoubtedly due to the recent trauma associated with the violent death of his father and the hospitalization of his step-mother.

"I would consider that Warren's best interest could not be served by removing him from the home which he has known for approximately the past six years, where he has a half brother, where he is familiar with the people in the home, dependent upon them, and is in a community which he has begun to feel he is a part of, and where he has found friends and has achieved in school. Being taken away from this environment which represents the most security that he has known, and being placed in an entirely strange environment where he actually does not know anyone, would certainly increase his anxiety. I can recommend very strongly, I believe, that he be permitted to remain in the home of his stepmother if this is at all possible."

Gilbert Warren's emotional insecurity was not observed until after the hearing and consequently no evidence on this subject was presented. Your Petitioner asks for a rehearing in order that this evidence, which at the trial was undeveloped, may be considered.

3. Your Petitioner further represents unto the Court that, whereas, the Court apparently gave much consideration to the proceedings involving the divorce and the custody of the child in 1951, 1952, 1954, and 1955; and, whereas, the Court on the day of the hearing declined to view the transcript of the testimony taken in this divorce suit in 1951, and again declined to consider the transcript offered in letter of counsel dated July 6, 1960; and, whereas, the transcript contains full evidence as to the adultery of Mary Elizabeth Gayle Jones (Henson), and should have been considered by the Court in passing upon the suitability of the mother to have the custody, your Petitioner now offers the said transcript as a proper part of the record in this case and asks the Court to consider this transcript before a final Order is entered; that the Court erred in not considering the transcript and this error should now be corrected by granting a rehearing.

4. The Court in its opinion found that the step-mother did not stand in *loco parentis* to the child. Jean A.
page 97 } Jones was not allowed to complete her evidence. After presenting a number of witnesses, the Court declined to allow her to present further evidence that would be cumulative. Counsel assumed that all points at issue for which Jean A. Jones was contending had been fully proven and the Court intimated as much, yet the Court held against her on this issue. Jean A. Jones moves the Court for a rehearing to allow her to present evidence on this issue which she was prohibited from presenting on the day of the trial.

5. At the hearing when Jean A. Jones commenced to present evidence as to the prior history of the mother, the Court stated that it was not interested in what happened at the time of the separation of the parents of the child, but was interested in the present conduct of the mother. The Court erred in taking this position and your Petitioner asks for a rehearing to present additional evidence as to the charge of adultery, and additional evidence showing that the mother is not a suitable person to have the custody of the child. Where the welfare of a child is concerned, if there are facts that were not developed at the hearing that bear upon the suitability of the person to whom the child was awarded to have the custody of the child, the Court should hear such evidence.

Wherefore, your Petitioner offers as a part of the record in this case the transcript of the testimony taken herein on December 5, 1951, and moves the Court to consider the transcript, to grant a rehearing for the purpose of considering the matters herein presented and to take further evidence upon the suitability of the mother to have the custody of the child, and she will ever pray.

JEAN A. JONES
S. P. HIGGINBOTHAM
Counsel.

Filed in open court 25 July 1960.

H. C. DeJARNETTE, Clerk.

* * * * *

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* * * * *

ANSWER TO MOTION AND PETITION TO REHEAR.

Mary Elizabeth Gayle Jones Henson for answer to the motion and petition to rehear filed by Jean A. Jones, would state as follows:

(1)—That this case was fairly heard on the merits; that ample opportunity was given to all parties to present their evidence in open Court and that during the trial of the case one of the contentions on behalf of Jean A. Jones was the fact that Gilbert Warren Jones was a very stable young boy who was well adjusted. The contention that his health is being effected adversely by the decision of the Court leads to only one logical conclusion which is that pressure is being brought to bear on this young man by Jean A. Jones and her family for the purpose of having his health impaired in order that the Court might reconsider its decision.

(2)—After the Court rendered its opinion, the child was taken to a psychiatrist for an examination according to the motion and petition. The undersigned submits that before Jean A. Jones did something so radical the Court, in whose breast rests the responsibility of the future welfare of Gilbert Warren Jones, should have been consulted and also the other counsel in the matter should have been so advised.

page 100 } Certainly, the natural mother and guardian should have been given an opportunity to have been heard.

Had Jean A. Jones elected to cooperate with the Court and had Jean A. Jones had the welfare of Gilbert Warren Jones at heart, she would not have carried this child for such an examination, but, to the contrary, she would have endeavored to make the transition of the custody as painless as possible and not try to adversely disturb the emotions of Gilbert Warren Jones to such an extent that the separation from her of the young boy will be more difficult than the separation would have been had she cooperated.

As Mary Elizabeth Henson understands the opinion of the Court, as late as 1955, the Court stated that the right of Mary Elizabeth Henson to the custody of this child had not been adjudicated and the decree entered on January 24, 1955, should in no way prejudice her right to present her claim for custody of the child. If nothing that has gone on before in this proceeding that can prejudice her right to the custody of the child, it is useless to go beyond that year for the purpose of casting aspersions on the character of Mary Elizabeth Henson, when it was fully proved in open Court on July 1.

1960 that Mary Elizabeth Henson is a fit and proper person to have the custody of her own child.

(3)—During the trial of the case, Mary Elizabeth Henson relied upon her strong legal position and strong natural position that she had as far as the custody of the child was concerned. The Court ruled in her favor. The decision of the Court should have been accepted in good grace by page 101 } Jean A. Jones in order that she would have an opportunity to demonstrate her sincerity in contending that the child's welfare was her primary concern. It now becomes evident that the child's health and welfare is being endangered while he remains with Jean A. Jones, and it is submitted that the developments occuring after the opinion was rendered by the Chancellor now makes it absolutely necessary that Gilbert Warren Jones be taken from the home of Jean A. Jones at the earliest possible opportunity, in order that his welfare might be protected.

It is felt that the Court, with its long experience in matters of this kind, can easily see that had Jean A. Jones elected to assuage any fears that Gilbert Warren Jones might have had because he was leaving her home, the transition would be relatively painless. Jean A. Jones has contended that she always has been a good influence for the boy. If true, she has failed in her duty to him. After all, this is not the first time that Gilbert Warren Jones has left the home of his stepmother. He has been spending his summers in Fredericksburg, Virginia, with his grandmother.

If Jean A. Jones succeeds in retaining the custody of the infant as a result of the tactics which she has pursued after the opinion was rendered against her, then it would appear as if it would be extremely difficult for any person seeking custody of their own infant child to ever be successful against the individual who might have the physical custody of the child. The opportunity for perpetrating a fraud on the proper person to receive the child's custody is quite evident.

Your undersigned concludes by stating that no new matter is alleged in the petition and motion that reflects page 102 } upon the present suitability of the natural mother, that the motion and petition to rehear should be denied, and that the welfare of Gilbert Warren Jones compels his early departure from the home of Jean A. Jones in furtherance of the opinion of the Court heretofore rendered.

MARY ELIZABETH GAYLE
JONES HENSON
By J. L. FRAY
Of Counsel.

I hereby certify that on this 27th day of July, 1960, I mailed a true and exact copy of the above pleading to all counsel of record.

J. L. FRAY.

Filed 7/28/60.

H. C. DeJARNETTE, Clerk.

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* * * * *

SUMMARY OF POINTS DECIDED.

1. That after reading and carefully considering the testimony taken in this divorce suit in 1951, mentioned in paragraph 3 of Jean A. Jones' Motion and Petition for Rehearing, the court finds no reason to grant a rehearing and the motion is denied.

2. That all of the evidence taken and considered is insufficient to deny Mary Elizabeth Gayle Jones Henson, mother and surviving parent of the infant, Gilbert Warren Jones, custody as between her and other persons.

3. That the Court is without authority to fix and enforce visitation rights between the surviving natural parent and other persons. This can only be accomplished by agreement with the surviving parent.

4. That Jean A. Jones was allowed temporary custody of the infant child, Gilbert Warren Jones, until July 1, 1960; that pending further proceedings, if any, said infant, Gilbert Warren Jones, is placed with its natural parent, Mary Elizabeth Gayle Jones Henson.

The foregoing Summary of Points Decided should be embodied in the Final Decree in this cause.

C. C. B.

8/2/60.

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* * * * *

This cause came on this day to be heard upon the papers formerly read, upon the petitions for the custody of Gilbert Warren Jones heretofore filed by Jean A. Jones, Elizabeth Jones Baxter and Mary Elizabeth Gayle Jones Henson, upon the evidence heard *ore tenus* on July 1, 1960, upon the opinion of the Court rendered on the 13 day of July, 1960, upon the motion and petition to rehear filed by Jean A. Jones, upon the answer to same filed by Mary Elizabeth Gayle Jones Henson and was argued by counsel.

UPON CONSIDERATION of all of which, and the Court being of the opinion that the evidence is insufficient to deny Mary Elizabeth Gayle Jones Henson the custody of Gilbert Warren Jones, it is ADJUDGED, ORDERED and DECREED as follows:

(1)—The petition and motion to rehear is denied;
(2)—The permanent custody of Gilbert Warren Jones is awarded to Mary Elizabeth Gayle Jones Henson, his mother;
(3)—Jean A. Jones is hereby directed to deliver Gilbert Warren Jones to his mother, Mary Elizabeth Gayle Jones Henson at the front door of the Court House in Orange County, Virginia; and
(4)—Jean A. Jones having indicated an intention of appealing to the Supreme Court of Appeals, the Court doth grant a stay of execution of this decree for a period of thirty (30) days from the date of the entry of this decree.

Enter:

C. CHAMPION BOWLES, Judge.

Date: 8/5/60.

Seen and requested except the granting of the stay of execution in paragraph (4), to which stay exception is taken.

J. S. HUDSON, JR.
of counsel for Mary Elizabeth Gayle Jones Henson.

* * * * *

page 105 } EXCEPTIONS.

Jean A. Jones, by counsel objects and excepts to the entry of the above decree and failure to grant a new trial on the following grounds:

(1)—That the ruling of the Court is contrary to the law and the evidence as is without evidence to sustain it for the following reasons:

(a)—The mother abandoned and relinquished her rights to the child.
(b)—The stepmother stood in *loco parentis* to child, and the welfare of the child demands that the custody be awarded to the stepmother and not to the natural mother.
(c)—That the natural mother is an unfit person to have the custody.

(2)—The exclusion of certain evidence offered:
(3)—The admission of certain evidence objected to.
(4)—The failure to rehear as requested in motion and petition.
(5)—All other rulings of the Court objected and excepted to during the trial and pendency of the case, or appearing of record.

Seen and object and excepted to for the above reasons:

S. P. HIGGINBOTHAM
Atty. for Jean A. Jones.

Aug. 5, 1960.

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* * * * *

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

The Petitioner, Jean A. Jones, does herewith file with the Clerk her Notice of Appeal and Assignments of Error as follows:

I—NOTICE OF APPEAL.

This is notice that the Petitioner, Jean A. Jones, appeals to the Supreme Court of Appeals of Virginia from the Order of the Circuit Court of Orange County rendered in this cause on August 5, 1960.

II—ASSIGNMENTS OF ERROR.

1. The Trial Court erred in finding that Mrs. Henson did not abandon and relinquish her rights to the child.

Mrs. John M. Coleman.

2. The Trial Court erred in finding that Jean A. Jones, the Petitioner, did not stand in *loco parentis* to the child.

3. The Trial Court erred in finding that Mrs. Henson is a fit person to have the custody of the child.

4. The Trial Court erred in finding that it was to the best interest of the child that its custody be given to Mrs. Henson.

5. The Trial Court erred in refusing to grant the Motion and Petition to Rehear because (a) the additional evidence tendered demonstrated that Mrs. Henson is not a fit person to have the child, (b) the additional evidence tendered showed that it is contrary to the best interest of the child that its custody be awarded to Mrs. Henson.

page 107 } 6. The Court erred in not awarding the custody of the child to Jean A. Jones.

7. The Trial Court erred in precluding the Petitioner herein, during the course of the hearing, from introducing additional evidence showing that she stood in *loco parentis.*

8. The Trial Court erred in its ruling, appearing of record, relative to the order of proceeding with proof in the case and the rights of counsel to open and close argument.

JEAN A. JONES
By VANCE M. FRY
Counsel.

HIGGINBOTHAM & FRY
Orange, Virginia
Attorneys for Petitioner Jean A. Jones.

Circuit Court of Orange County, Virginia.
Filed Aug. 5, 1960.

GLADY E. D. SMITH, Dep. Clerk.

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page 7 }

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MRS. JOHN M. COLEMAN,
a witness for the Petitioner, Jean A. Jones, being first duly sworn, was examined and testified as follows:

Mrs. John M. Coleman.

page 8 } DIRECT EXAMINATION.

By the Court:
Q. Let me have your name.
A. Mrs. John M. Coleman.

By Mr. Higginbotham:
Q. Mrs. Coleman, where do you reside?
A. In Orange.
Q. And what is your occupation?
A. Teaching.
Q. And how long have you been teaching?
A. Twenty-two years.
Q. As a teacher did you have the occasion to teach Mrs. Jones—Jean A. Jones, she was Jean Alger?
A. Yes, I had Jean in high school.
Q. How long ago was that?
A. I believe her last year was '48—'49.
Q. Have you on occasion seen her since then?
A. Yes, I see her here in Orange occasionally.
Q. Will you describe to the Court her manner, her disposition, her dress, and in general what type of person she is?
A. Well, Jean has always been quiet, courteous, nicely dressed; I have never known anything that was not complimentary to Jean.
Q. Did she do well in school?
page 9 } A. Jean was not too interested when she got to High School.
Q. Now Mrs. Coleman, did you have her in the Scouts?
A. Yes, I had her in the Girl Scouts.
Q. How did she do there?
A. She was a very good scout.
Q. Where do you teach?
A. I teach in the Orange County High School.
Q. You don't teach at Unionville?
A. No, but I did teach there when I knew Jean.
Q. From all that you have known about her and observed about *here,* would you say that is a proper person to have the custody of a ten year old child?
A. So far as I know she is.

Mr. Higginbotham: Thank you.

Sylvia Alger.

CROSS EXAMINATION.

By Mr. Somerville:

Q. Mrs. Coleman, will you answer my questions, please?

A. Yes.

Q. Was it 1948 and 1949 when you last knew this young woman very well?

A. Yes, it was.

Q. And since then you have seen her on occasions?

A. That is true.

Q. You haven't had any intimate contact with page 10 } her since then?

A. No, not since school.

Q. You know nothing about her manner or behaviour for the past eleven or twelve years, other than what you observed on infrequent meetings?

A. That is true.

Q. You haven't visited in her home?

A. No, I haven't.

Q. Do you know anything about her marriage relationship with her husband?

A. No, I do not.

Q. So, what you are saying is that you knew her as a pupil some years ago, but that since then you have really had very little contact with her?

A. That is true.

Q. Did she graduate from school?

A. No, sir, she did not.

Q. How far did she go?

A. Jean has had, I believe, a part of the second year in high school; that I think is accurate.

Q. You stated, I believe, that she was not too interested in school work?

A. No, sir, she was not.

* * * * *

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* * * * *

MRS. SYLVIA ALGER,

another witness for the Petitioner, Jean A. Jones, being first duly sworn, was examined and testified as follows:

Sylvia Alger.

DIRECT EXAMINATION.

By the Court:
Q. What is your name?
A. Sylvia Alger, Mrs. Ammon Alger, either one.

By Mr. Higginbotham:
Q. Mrs. Alger, you are the mother of Jean A. Jones?
A. Yes, I am.
Q. I believe Jean A. Jones was married to Reggie Jones?
A. That is right.
page 12 } Q. And Gilbert Warren Jones is the child of Reggie and Mary Elizabeth Gayle Jones Henson?
A. That is true.
Q. I believe Reggie Jones and his first wife were divorced?
A. That is right.
Q. Then Reggie married your daughter?
A. Yes.
Q. Do you recall when they were married?
A. They were married six years in August.

The Court: They were married when?

A. It will be six years in August.
Q. Where did they live after they were married?
A. In an apartment—well, for the first few months they lived at my home.
Q. Then where did they live?
A. Then when they got Warren they got an apartment.
Q. Where was the apartment?
A. Mrs. Russell Matthews, here in Orange.
Q. After they moved from the apartment where did they live?
A. In the trailer in my yard.
Q. In the trailer in your yard; and where were they living at the date of Reggie Jones' death?
A. In the trailer.
page 13 } Q. I believe he was killed in an accident on May 14th?
A. That is right.
Q. Of this year?
A. Yes.
Q. When did Gilbert Warren come to live with Reggie Jones and Jean A. Jones?
A. In January of '55.

Sylvia Alger.

Q. January of '55, and they were living where at that time?

A. In the apartment; they lived in the apartment.

Q. How long after that was it before they moved to the trailer?

A. Well, they have been down there three years, it was three years in April.

Q. Now, will you tell the Court who looked after Gilbert Warren during these three years?

A. Jean.

Q. What did she do?

A. She done everything.

Q. What did she do?

A. She did everything that has been done; she sent him to school, she loved him, she took care of him, and went with him to his scout meetings, and everything that a mother would do for a child.

Q. Do you know how she regards the child?

page 14 } A. As her own.

Q. Do you know how the child regards her?

A. As his mother, he refers to her as his mother.

Q. Who looked after the child most, Mrs. Jones or Reggie?

A. Jean.

Q. Did you assist in any way in looking after the child?

A. Well, I helped when she was working, I looked after him when she was working.

Q. Mrs. Alger, have you had any experience in looking after children?

A. Oh, yes, I have for years.

Q. Have you looked after other people's children?

A. Yes, sir.

Q. Whose children have you looked after?

A. Mrs. Leslie Lloyd's, Mrs. Percy Jones Payne and Billy Colvin's little boy.

Q. Have they stayed in your home some?

A. Yes, they have.

Q. I believe you live right next door to the trailer, the trailer is on your property?

A. That is right.

Q. Mrs. Alger, do you know whether or not Gilbert Warren has been happy living in this home?

A. Yes, he has.

page 15 } Q. Is he now happy living there?

A. Perfectly happy.

Q. Who lives with Jean and Gilbert Warren?

Sylvia Alger.

A. The baby.
Q. And whose baby is that?
A. Jean's and Reggie's.
Q. That would make this baby and Gilbert Warren—
A. Half brothers.
Q. Are those children—What is the relationship between those two children?
A. They love each other, they are devoted to each other.
Q. How does Gilbert Warren do in school?
A. Fine.
Q. What religious training does he receive?
A. He goes to the Baptist Church and Sunday School.
Q. How often?
A. Well, of course, after his father died he didn't go right away, but Warren goes to Sunday School regularly.

Mr. Higginbotham: You may cross examine.

By the Court:
Q. How old is Jean?
A. Jean?
Q. Yes.
A. Twenty-seven.

page 16 } The Court: Go ahead.

CROSS EXAMINATION.

By Mr. Coleman:
Q. Mrs. Alger, this trailer is in your yard, is it not?
A. That is true.
Q. What size trailer is it?
A. It is, I think, forty-eight feet long, eight feet wide, and has two bed rooms, a bath, living room and kitchen.
Q. Does your daughter, Mrs. Jones, live in the trailer there?
A. Yes.
Q. Now, they have been living there how long?
A. It was three years in April.
Q. Three years in April. Now during the summer months where has Gilbert Warren been staying?
A. For the last two summers he stays with his grand-mother.
Q. The grand-mother you are referring to now is Mrs. Baxter?

Sylvia Alger.

A. Mrs. Baxter.
Q. How long would he stay?
A. Well, he stayed during his vacation from school.
Q. In other words, he remained with her from the time he got out of school in June until he went back in
page 17 } September?
A. Sometimes he would, but his mother and daddy went to see him nearly every week.
Q. But he was with his grand-mother?
A. Yes, he was with his grand-mother.
Q. Now, it is true also that Mrs. Jones, this is her second marriage, is it not?
A. That is true.
Q. Who was her first husband?
A. Wilbur Morris.
Q. And they were divorced?
A. That is right.
Q. Mrs. Alger, did Mrs. Baxter visit up there with her son and her grand-child?
A. Yes, she come up sometimes.
Q. That was during the winter months, of course, when the child was not with her?
A. Yes.
Q. Does she show great affection for the child?
A. Well, of course, she is his grand-mother and naturally she loves him.
Q. And the child was always affectionate toward her, too?
A. Yes.
Q. When the child was with her, she bought clothes for it and took care of it, didn't she?
page 18 } A. Well, he always carried clothes with him when he went down there, but Mrs. Baxter always gave him some.
Q. Have you been to Mrs. Baxter's home?
A. Several times.
Q. You know where it is located then, of course?
A. Yes.
Q. It is a very attractive and nice home, isn't it?
A. Oh, yes, it is a nice home.
Q. Now, when *you* daughter and her husband, Mr. Jones, were living here in Orange in the Apartment, Gilbert Warren was living with them, at that time, wasn't he?
A. That is right.

Sylvia Alger.

Q. Mrs. Baxter would visit them here when they were living in Orange, wouldn't she?

A. Well, I guess so, because I was living up there, but I think she visited some.

Q. When they moved down to your place was that the first time they bought the trailer?

A. That is right.

Mr. Coleman: All right, thank you.

CROSS EXAMINATION.

By Mr. Fray:

Q. Mrs. Alger, you have seen a lot of Warren, of course, haven't you?

A. I have, oh, yes.

Q. Did Mrs. Jones work?

page 19 } A. Do you mean Jean?

Q. Yes.

A. Yes, she worked some.

Q. When did she cease her job?

A. When she got pregnant with her baby.

Q. This last one?

A. She never has had but one.

Q. She hasn't worked since the young baby was born?

A. No, except one week.

Q. How old is the youngest baby?

A. Nineteen months old.

Q. You have done a lot for Warren, I assume, haven't you?

A. Yes, I say when Jean worked I did a lot for him, yes, just as I would for my own.

Q. And since Reginald's death you have done a lot for Warren?

A. Well, I have been with them all the time since his death, with Jean and Warren.

Q. And in the future do you contemplate taking care of him, too?

A. Sure, I am going to do what I can to help Jean with Warren.

Q. Do you expect that to be a right big job?

A. No, I don't think it is a big job.

page 20 } Q. Warren isn't too much trouble, then?

A. No.

Sylvia Alger.

Q. Since Reginald's death, you have, of course, attended to him in place of his mother, is that correct?
A. Yes.
Q. And you have taken him on trips since Reginald's death?
A. Yes.
Q. You have taken him to Sunday School?
A. He goes to Sunday School himself.
Q. And in the future you would help raise him?
A. That is true, I would do all I can to help Jean.

Mr. Fray: That is all.

RE-DIRECT EXAMINATION.

By Mr. Higginbotham:
Q. Mrs. Alger, let me ask you this: Did Mrs. Henson come to see this child, the natural mother come to see the child at all while the child was living there on your premises?
A. Not until after Reggie's death.
Q. Not until after—
A. Reggie died.
Q. When she came did the child know her?
A. No.
Q. What day of the week was Reggie Jones killed?
A. Saturday night, May 14th, shortly after two.
page 21 } Q. Did any of the parties here visit you on that day?
A. Which do you mean?
Q. Mrs. Baxter?
A. Yes.
Q. What was the purpose of that visit?
A. I called her Saturday night when I found it out and some come to the house around ten o'clock.
Q. What was said by her concerning the child?
A. When she come in Warren was setting by Jean. When she come in she said, "Something has to be done with this child, and I am going to see if I cannot get him myself, because I don't want Mary Elizabeth to have him.

The Court: That is Mrs. Henson?

A. Yes.

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By the Court:

Q. Mrs. Alger, in answering some of the questions by the attorneys you said that you would assist Jean in caring for the child. Do you mean from a financial standpoint?

A. Oh, no, I mean just in the care of my hands.

Q. Do you know Jean's financial status as to being able to provide for the child?

A. Yes, she can.

Q. She is unemployed?

A. Well, she can take care of him financially.

Q. Do you mean she has sufficient resources to take care of him?

page 24 } A. Yes.

Q. To take care of him to what extent and for how long?

A. Well, I don't know all about Jean's business, but I mean her money matters and all.

Q. If you don't know that is all right. Of course, she may testify.

A. Yes.

* * * * *

MRS. JEAN A. JONES,

a witness in her own behalf, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Higginbotham:

Q. Now, you are Jean A. Jones?

A. Yes.

Q. How old are you, Jean?

A. Twenty-seven.

Q. Mrs. Jones, first the Court has raised or asked the question about your ability to support your family. Your husband was covered under the Social Security Act, was he not?

A. That is right.

Jean A. Jones.

Q. And he paid in that the maximum amount
page 25 } that was allowable under the act, in other words
he made over a hundred dollars a month, didn't he?

A. That is right.

Q. Have you investigated as to the amount of Social Security benefits that will be forthcoming?

A. It is approximately seventy-two for each child, and I think it is around $80.00 for me.

Q. It is around $72.00 for each child and about $80.00 for you?

A. That is right.

Q. Now, you are living in this trailer, are you not?

A. Yes, I am.

Q. I believe the more fashionable term is mobile home?

A. Yes.

Q. That is paid for, isn't it?

A. Yes, sir.

Q. That belonged to your husband?

A. That is right, he had insurance on him that if anything happened to him it would be automatically paid for.

Q. If you were able to continue to live in the trailer, could you support your family on the income from Social Security?

A. I am sure I could.

Q. Would you be able to rent an apartment and live on the income from Social Security?

A. Yes.

page 26 } Q. I believe your deceased husband had $5,-
000.00 in an insurance policy in which you were beneficiary?

A. Yes.

Q. So, you will have that money coming to you?

A. Yes.

Q. And there will also be some money coming from your husband's estate?

A. Yes, sir.

Q. Now, Mrs. Jones—First Gilbert Warren is your step son, is that right?

A. Yes.

Q. Did you and Reggie have any children?

A. We have Jack, nineteen months old.

Q. When did Gilbert Warren*t* come to live with you and Reggie?

A. 1955, in January.

Q. January, 1955?

Jean A. Jones.

A. That is right.
Q. Where has he lived since?
A. With us, his daddy and I.
Q. During the summer, too?
A. He spent the past two summers with his grand-mother, and the summer before that, I think it was a few weeks, I am not sure.

Q. I believe your last answer was that he had
page 27 } spent the last two summers—
A. With his grand-mother.
Q. And the summer before that he spent—
A. The summer before that he spent several weeks with her that summer.
Q. While he was with the grand-mother did you take any interest in him?
A. We went to see him.
Q. How often?
A. Oh, I don't know, sometimes I didn't go, but his Daddy went mostly ever Sunday and a lot of the times I would go with him.
Q. How old was *Gilber* Warren when he came to live with you?
A. He was five.
Q. What did you do for him from that time on up to the present? Tell the Court what you have done for him.
Q. He joined the Cub Scouts and I went to his pack meetings with him; I went to church and some to Sunday School with him, and cared for him like he was mine.
Q. Did you wash his clothes?
A. I did.
Q. Did you have to feed him any?

The Court: Did you have to what?
Mr. Higginbotham: Feed him.

page 28 } A. For the first two years we had him I had to feed him a lot of times.
Q. Who would bathe him?
A. I did.
Q. How did you regard Gilbert Warren?
A. As mine.
Q. How did you treat him compared to the way you treated your own child, that is now nineteen months old?
A. No different.
Q. How does Gilbert Warren feel toward you?

Jean A. Jones.

A. Like his mother.

Q. Mrs. Jones, there are now living in your home two half brothers, is that right?

A. Yes, sir.

Q. Gilbert Warren and your own child. How do you feel about those two half brothers being separated?

A. They love each other dearly.

Q. Do you feel that it would be for their welfare that they be separated?

A. I think it would ruin both of them; they have lost their daddy and it would upset both of them.

Q. Mrs. Jones, at the time of this occurrence, your husband's untimely death, I believe you were then pregnant, were you not?

A. Yes, sir.

page 29 } Q. Has anything happened since that?

A. I lost the baby.

Q. Mrs. Jones, how do you feel toward Mrs. Baxter?

A. I like Mrs. Baxter all right, and I think that she would want to see both of the children.

Q. And if the Court should see cause to grant the custody of the child to you, would it be your pleasure to have Mrs. Baxter visit both of the children?

A. Yes.

Q. And to have the two children visit her in her home?

A. Yes, sir.

Q. She is the grand-mother of both of these children?

A. Yes, sir.

Q. Is there any feeling in your heart against Mrs. Henson?

A. No, sir.

Q. If the Court should see fit to grant you the custody of this child, would you have any objection to having this child visit Mrs. Henson?

A. No, I wouldn't.

Q. Or having Mrs. Henson visit the child at your home?

A. No, sir.

Q. Mrs. Jones, how does Gilbert Warren do in school?

A. He does fine. I have his report cards with me.

Q. Do you have them?

page 30 } A. Yes, sir.

Q. Could I see them?

A. They are in my bag.

Note: Here the witness hands certain papers to counsel for the petitioner.

Jean A. Jones.

Mr. Higginbotham: Your Honor, we would like to introduce these.

The Court: Read them into the record.

Mr. Higginbotham: This is Gilbert Warren Jones' report card showing that he is in the Fourth grade and that on all of his ratings, clothes, habits, attitude involving health, work and social, that he received an S, which is the highest rating on the card. That in all of his subjects he received four A's, three A minuses and two B's.

Q. Who prepares him for school?
A. I do.
Q. How do you prepare him for school?
A. Clean and neat.
Q. Who helps him with his lessons?
A. He doesn't need much help.
Q. He is a bright boy, isn't he?
A. He is bright.
Q. What religious training is he receiving?
page 31 } A. He goes to the Pamunkey Baptist Church, attends Sunday School, and he, I think it was week before last, attended Bible School at Unionville Christian Church.
Q. Who prepares him for church?
A. I do.
Q. Who goes with him?
A. I do most of the times and sometimes I cannot go.
Q. Mrs. Jones, I believe that Reggie Jones had a half brother?
A. Yes, sir.
Q. How old was that child?
A. It was four.
Q. Did you have occasion recently to take that half brother, after the father's death, into your home?
A. Yes, sir.
Q. And how long did you keep that child?
A. We kept him almost a year, it was almost a year.
Q. Who looked after that child?
A. I did.
Q. That child now has been adopted, is that right?
A. Yes, sir.

The Court: What child is that?

Mr. Higginbotham: That is a child Mrs. Potts will testify

Jean A. Jones.

concerning, it is a half brother of the father of
page 32 } these children, a half brother of Reggie Jones.
The Court: All right.

Q. When did you first learn of Reggie's death?
A. I was at work that night, I just had started to work that week; I had worked from Monday until Saturday.
Q. Have you ever worked at the Orange Knitting Mills?
A. Yes, I have.
Q. After Reggie's death when did you first see Mrs. Baxter?
A. Saturday morning.
Q. What was the purpose of her visit?
A. Well, of course, we had to go to the Funeral Home, and she said something had to be done about Warren, something had to be straightened out about Warren and she wanted him.
Q. Then what happened next?
A. She asked Warren to go with her, he told her, "No," that he wanted to stay with me.
Q. All right, did you see her later that day?
A. Yes, she came back Saturday Evening and she wanted to take him and he still wanted to stay with me.

Note: At this point the child, Gilbert Warren Jones was brought into the Court Room.

Q. Is this Gilbert Warren?
A. Yes.

page 33 } Mr. Higginbotham: Bring the little boy, too.

Q. Is that the other little child?
A. Yes, sir.

Mr. Higginbotham: All right, Mrs. Alger will you take them back out.

Q. Did you later see Mrs. Baxter concerning Gilbert Warren at your home?
A. She came back Sunday to get Warren and she carried him with her.
Q. Did she say anything about when she was going to bring him back?
A. He was supposed to come back Monday.

Jean A. Jones.

Q. Did you have anybody else come to see you that day?
A. Sunday I did.
Q. Who.
A. Bill Scaife wanted me to come down there Monday and sign papers.
Q. Was the child brought back on Monday?
A. No.
Q. Mrs. Jones, Mrs. Henson, the natural mother, does the child know her?
A. No, she didn't come to see him until after Reginald's death.
Q. Were you there when she came?
page 34 } A. Well, I had been in the hospital for a week, I was there on Monday when she came to see him.
Q. Do you feel that it would be for the best interest of these two children to be kept together?
A. I think so.

Mr. Higginbotham: That is all. May I ask one other question?
The Court: Yes.

Q. Mrs. Jones, I believe it has been testified to here that you live there in the yard with your mother?
A. That is right.
Q. If the Court should see cause to grant you the custody of this child, who would look after this child, you or your mother?
A. I would, sir.

By the Court:
Q. Mrs. Jones, this mobile home, whose land is it on?
A. On my mother's and father's land.

The Court: All right.

CROSS EXAMINATION.

By Mr. Coleman:

* * * * *

page 37 }

* * * * *

Jean A. Jones.

Q. Now, have you been advised that if Gilbert Warren is given to either his grand-mother or his natural mother rather than you, that these Social Security benefits that you have spoken about and testified about will be curtailed so far as you are concerned?

A. Of course.

Q. You know that, don't you?

A. Yes.

Q. And the income from the Social Security would be cut down so far as you are concerned?

A. That is right.

Q. Tell me this: With these two young children, have you plans for their future education?

A. Of course, I have.

Q. How would you propose to finance them if you are not working?

A. Well, I am supposed to get the insurance if I had to work I would work to send them to college, if that is

page 38 } what you mean.

Q. But you have testified, have you, as to all the assets that you have. For example, you have the life insurance, that was left you, is that correct?

A. Yes, sir.

Q. And whatever the Social Security Benefits are that might come to you, you would have that?

A. Yes, sir.

Q. Do you know of anything else that you could say you had?

A. I don't think money means everything.

Q. I understand that, but I am getting at that one angle.

A. No, I have nothing else.

Q. The trailer or the mobile home that you live is separate and apart, of course, from your father's house, although it is in the yard?

A. Yes, sir.

Q. And approximately how far do you live from the Town of Orange?

A. Approximately five miles.

Q. Do you own an automobile?

A. Yes, sir, I have my husband's automobile.

Q. You have his car.

Jean A. Jones.

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page 40 }

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CROSS EXAMINATION.

By Mr. Fray:

Q. Mrs. Jones, is there anything owing on the automobile?

A. No, sir.

Q. What model is it?

A. '55 Chevrolet.

Q. How much insurance is it that you are getting from Mr. Jones?

A. Well, I am supposed to get $5,000.00.

Q. Now, you were working, I believe, in the week prior to your husband's death?

A. Yes, sir.

Q. Had you resumed your job at the knitting mill?

A. No, I had gone to work for Bobby Darnell, it is a little plastic place next to Spring Garden Cleaners.

Q. Were you working there as a clerk in the cleaners?

A. It is next to the cleaners, it is a little plastic place there.

Q. What were your duties?

A. I worked on a machine.

Q. You were working on a plastic machine?

A. Yes, putting these little tabs on this blue page 41 } plastic sheets.

Q. Had you gotten a permanent job with him?

A. No, he said that unless he had another contract that they wouldn't work; they just worked—oh, I think they just worked two more weeks.

Q. Do you hope to go back to work there?

A. I don't think so.

Q. Well, don't you feel you need some money to supplement your income?

A. If I need money to take care of my children I will go back to work.

Q. That would mean, of course, that you would not be at home during the day time?

A. I said if I needed to go back to work I would.

Q. Now Mrs. Jones, this boy, Reggie's half brother, lived with you all in the trailer?

Jean A. Jones.

A. Yes, sir.
Q. How old was he?
A. He was four years old.
Q. Four years old and that meant that you and your husband and three children were all living in the trailer?
A. That is right.
Q. Do you have brothers and sisters?
A. No, I don't.

Q. Mrs. Jones, you married Reggie Jones about
page 42 } 1955, didn't you?

A. It was in '54, it would be six years in August.
Q. What?
A. It was in '54.
Q. And you had previously been married?
A. Yes, sir.
Q. And you are how old now?
A. Twenty-seven.
Q. Twenty-seven now. Well, it is only natural to assume, isn't it, that you may remarry?
A. That hasn't come into my mind, my husband has only been dead—
Q. I know, this is a very delicate matter, but you are an attractive young woman, and isn't it natural to assume that you may remarry?
A. I have no idea.
Q. You have no idea?
A. No, sir.
Q. It would be natural, wouldn't it, for you to fall in love with another man?
A. I don't know that.
Q. Whose employment may make it necessary for you to leave Orange County, even, isn't that true?
A. As I say nothing like that has entered into my mind; I don't have any idea about anything like that.

page 43 } Q. But you concede that lots of young widows do remarry, don't they?

A. Yes, sir.
Q. And there would be no reason you could be prevented from remarrying?
A. No, it would not be anything to prevent it, but as I say I have no idea of that.

Mr. Fray: That is all.

RE-DIRECT EXAMINATION

By Mr. Higginbotham:

Q. Mr. Jones, just one other thing. Reggie's father had an estate of in the neighborhood of $25,000.00, didn't he?

A. I think so.

Q. And Reggie was one of the two children?

A. Yes, sir, and his half brother.

Q. He and his half brother. So you will have something coming from that estate?

A. Yes, sir.

Q. And Reggie's children will have something coming from that estate?

A. Yes, sir.

* * * * *

page 44 } MRS. RUTH POTTS,

another witness for the Petitioner, Jean A. Jones, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Higginbotham:

Q. You are Mrs. Ruth Potts, Superintendent of Public Welfare or Orange County, are you not?

A. That is right.

Q. Mrs. Potts, how long have you been engaged in social work?

A. About fifteen years.

Q. How long have you been head of the Department here in Orange?

A. Seven years in September.

Q. As Superintendent of Public Welfare, do you deal in problems of child care and custody of children?

A. Yes, I do.

Q. You have that in relation to adoptions, don't you?

A. Yes.

Q. Did the question of custody and adoption of Reggie Jones' half brother come up recently in this County?

A. Yes, and it was held in this Court.

Q. Did you have this child—Was the child in such condition that it needed a home immediately?

Ruth Potts.

A. Yes, the child was abandonned on the streets
page 45 } and I was trying to locate relatives, and Mr.
Reginald Jones, Jr., was then employed at the A&P Store and I was informed by Mr. Davis that he was his half brother, and they took this boy, Michael, age four, in their home and he was placed by our agency on November 27th, and the child remained there until April 27th.

Q. Before you placed the child there, did you have occasion to investigate this home?

A. No, because it was an emergency, I didn't investigate the home; the child was placed immediately but the investigation was done within a couple of days following it, of course, it was a temporary placement, and the half brother was interested, Mrs. Reginald Jones.

I went to see them and they were living in the trailer, the trailer is a very large one, although it has only two bed rooms they have a sofa in the living room that you can make into two beds and they can sleep easily six people comfortably in the trailer.

Q. Now, is the trailer and the Alger home located in a good neighborhood?

A. Yes, I would say in a good neighborhood.

Q. Are there many homes around?

A. Yes, it is very thickly populated.

Q. Are there other children in the community for these children to play with?

page 46 } A. Now that I do not know.

Q. First I will ask you how frequently did you visit there in the trailer and visit Mrs. Jones?

A. In the six months that Michael was in the Jones' home I visited approximately twenty-five or twenty-six times. I had to get to know Michael and what was the best for him, and also we were willing to pay board for Michael but Mr. and Mrs. Jones did not want board for the child; the other expenses, medical, phychological, etc., were paid from the Estate of his Father, the Welfare Department did not spend any money on Michael whatsoever.

Q. What did you find concerning Jean A. Jones in your visits there?

A. The times I visited the trailer, which I have said was approximately twenty-five or twenty-six times in the six months period, Mrs. Jones was always at home, she was not working during that period. My interest, as I have said, was Michael, I did not see Gilbert but on one occasion; whenever the home was visited, naturally with three children in

the home, Mrs. Jones was busy with ironing the clothes for the children, preparing meals for them, and any natural things around the home that a mother would do that demanded the care of three children. The home was always neat, and I should think that that was quite a task with three children in a trailer, but I have never been there when it
page 47 } wasn't homey and pleasant. Mrs. Jones was neat in appearance, Michael, whom I always saw, was neat and dressed well.

On one occasion I went to the home, which was the occasion I did see Gilbert, when I went in Mrs. Jones was sitting at the little dining room table and Gilbert was standing by her and she was making some icing for the cake for him to take to his Boy Scout meeting that night and she was going with him to the meeting. I asked her if she was taking him and she said she was. Gilbert was dressed nicely on that day, and there was certainly a nice, friendly feeling between Mrs. Jones and Gilbert. As I said I do not know Gilbert, that is the only time I ever saw him.

Q. Did you learn how Mrs. Jones regarded Gilbert?

A. Well, she spoke of him, that he was in school and she was always interested in his clothes; several times she would say "I am working on Gilbert's clothes, ironing them, getting him ready for school, "but my interest was in Michael and not in Gilbert, so I didn't go into the things I went into with Michael with Mrs. Jones.

Q. Mrs. Potts, based on your experience in dealing with social problems, and based on what you saw and observed of Jean A. Jones, how would you rate her as being qualified to have the custody of this child?

A. Well, as far as I know, I would say I certainly saw no evidence of anything detrimental to the child in
page 48 } the home whatsoever, and the physical condition of the home was good, and I saw nothing that I would say or could say that would be detrimental.

Q. It is all complimentary?

A. As far as I know.

Q. Do you have an opinion as to whether or not she would be a suitable person to have the custody of Gilbert Warren?

A. As far as I know she would be, but I do not know much about Gilbert.

Q. I see, but as far as Mrs. Jones is concerned?

A. Yes.

Q. Mrs. Potts did you see the little eighteen months old child here this morning?

Ruth Potts.

A. Yes.

Q. Based on your experience as a social worker how do you feel about these two children being separated or their staying together?

A. As I have said, there are many things in regard to what is best and what is not best for a child and I do not know Gilbert. I don't believe in families being broken up, but we do it because it is best for the child. I would not be able to say because I do not know what is best for Gilbert, all I know is the physical condition, in other words, of Mrs. Jones' home, which is good; I have not investigated in
page 49 } regard to Gilbert and I would not like to make a statement.

Mr. Higginbotham: That is all.

CROSS EXAMINATION.

By Mr. Somerville:

Q. Mrs. Potts, I would like to clear up for my benefit and possibly for other persons concerning the situation here regarding Michael Jones.

Now, as I understand it *Michale* Jones is the half-brother of Reginald Jones, deceased?

A. That is right.

Q. And Michael Jones is not related to Mrs. Baxter, the grand-mother of this little boy we are talking about today?

A. No.

Q. So, there is no blood ties or connection between Mrs. Baxter and the boy you mentioned, Michael Jones?

A. No.

Q. Your connection with Reginald Jones and his wife, Jean Jones, came about solely as a result of your interest and concern in Michael Jones, did it not?

A. That is correct.

Q. And I believe you stated that the placement of Michael with this family was something that had to be done rather quickly?

A. That is correct.

page 50 } Q. Without an investigation being made?

A. That is correct.

Q. And the placement was of a temporary nature?

A. That is correct.

Q. I believe you stated for about six months?

A. That is correct, however, I might add that I did talk

to Mr. Jones in regard to the adoption of Michael, but he felt that it was not wise.

Q. Now, in connection with the matter that is before the Court today you have had no direct contact or have made no investigation of Mrs. Baxter, the grand-mother, or the natural mother of this child?

A. No.

Q. So, you are not in a position to state whether either one of these other two parties is a fit person or competent to have the custody of this little boy?

A. No, I do not know them in any way.

Q. And in reaching any conclusion you would have to know something about that, wouldn't you?

A. Yes, a great deal.

Q. And do I take it then, you are saying to the Court that by virtue of your profession and your normal routine that you are not in a position to express an opinion as to what would be best for this child?

A. No, I am not, I don't know the child, I do not
page 51 } know the other parties and I think that every
avenue in regard to planning for a child has to be
looked into. I certainly couldn't make any statement.

Mr. Somerville: Thank you.

CROSS EXAMINATION.

By Mr. Fray:

Q. Mrs. Potts, in regard to Mrs. Reginald Jones, you have seen her down there, of course?

A. Of course, a number of times.

Q. And she is a very attractive young lady, isn't she, physically?

A. Very attractive and a very fine person and very conscientious person in regard to the children.

Q. And this boy Gilbert Warren is ten years old?

A. That is correct.

Q. Don't you think that this boy should also have in the home the influence of a father or some male influence there in the home? Don't you think that is best?

A. It depends on who the male influence is.

Q. But all other things being equal a boy needs a father, doesn't he?

A. Yes, if it is the right kind of father. Of course, we, in our work, try always to place a child in a normal home situa-

tion with mother, father, brother and sister, if possible. I mean those are the things that we look for.

page 52 } Q. That is true. You would be very reluctant to place a young child in a home that didn't have a father, wouldn't you?

A. We wouldn't do it.

Q. Now Mrs. Potts, as you have stated Mrs. Jones is an attractive lady, and, of course, it is conceivable that she would remarry, isn't that true?

A. Now, I am not very much on predicting what would happen. I don't know.

The Court: You are not a matchmaker, are you?

A. No, sir, far from it.

Mr. Fray: That is all.

Mr. Somerville: May I ask one more question which I overlooked?

The Court: Yes.

By Mr. Somerville:

Q. Mrs. Potts, I believe you mentioned something in your direct examination about payments, which were made on account of Michael from his father's estate?

A. That is correct.

Q. Did you obtain sufficient information to tell the Court what the size of his father's estate is or how much might be realized from it?

A. Well, Mr. Scaife is handling that he wrote me

page 53} and sent me some papers this week, he is not quite sure the exact amount, but he thinks it will be around $4,000.00, that Michael will receive from his father's estate.

Now, as I said, he is paying some incurred bills of Michael's from that, of course, Michael now is in adoption placement and after we have his teeth fixed there will be no other cause to use that fund. That is what I understand from Mr. Scaife now, Mr. Gibson was handling the estate and he died and Mr. Scaife was his partner and he took over the estate—the handling of the estate.

Q. As Administrator?

A. Yes.

Q. So, you understand that there is about $4,000.00 for

Samuel J. Patton.

Michael and by the same token about $4,000.00 to Reginald's Estate?

A. I wouldn't know that, the only thing I know is what Mr. Scaife has told me in regard to Michael.

Q. Do you know how many children there are?

A. Two children.

Q. So, you take $4,000.00 and multiply it by two?

A. I still wouldn't know, the only thing I know is what Michael will receive. I have no right to or no interest in what Mr. Jones gets.

Mr. Somerville: That is all.

RE-DIRECT EXAMINATION.

page 54 } By Mr. Higginbotham:

Q. Michael was well taken care of by Jean, wasn't he?

A. Excellently taken care of; she was very interested in him. On several occasions—once he had a very bad cold and they called me immediately and wanted to take him to the doctor; she personally clothed him, she was interested in seeing that he had proper clothes to go to Sunday School, he went to Sunday School regularly along with Gilbert, and she was very interested in Michael, and she really was quite upset when I removed Michael from the home. I think she has an out-going feeling to children and is capable of giving love to a child.

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SAMUEL J. PATTON,

another witness for the Petitioner, Jean A. Jones, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Higginbotham:

Q. State your name please.

A. Samuel J. Patton.

Q. You are a graduate of the University of Virginia, are you not?

A. That is right.

page 55 } Q. And a former coach here?

A. That is right.

Samuel J. Patton.

Q. You are now connected with the Orange Knitting Mills?

A. That is correct.

Q. In your capacity as a representative of Orange Knitting Mills, did you have occasion to become acquainted with Jean A. Jones?

A. Yes, I did.

Q. How long did you know her in that relationship?

A. She was employed by us in July—on July 21, 1952 and from that date.

Q. Did she work regularly?

A. She worked regularly as we worked at the mill, she was employed and worked when we worked; she was always there when there was an hour's work there.

Q. Did you get to know her very well while she worked there?

A. We had the normal associations of an employee at the mill and I would say I knew Jean as well, if not better, than some of the others because of her personality.

Q. Tell the Court what you saw and observed of her in that capacity?

A. As far as Jean's work was concerned at our mill she was one of our top employees, her work and co-
page 56 } operation were of the highest standards; we could trust Jean with any type work in the mill and expect it to be done and know it would be done. She operated on production rates and hers was about the highest in the mill.

Q. Tell the Court about her morals?

A. Mr. Higginbotham, in the Orange Knitting Mill there have been very few occasions when there would be any question about anybody's morals. Her reputation with the people she worked for and the people she worked with was of the highest type.

Mr. Higginbotham: You may cross examine.

CROSS EXAMINATION.

By Mr. Somerville:

Q. Mr. Patton, your connection was limited solely to the work at the mill?

A. Solely. I will say this, Mr. Somerville: That I know Jean as an individual, I have met her on the street, I see

her go about on her trips into town and things of that nature, that is the only contact I have had with her other than her work at the mill.

Mr. Somerville: Thank you.

RE-DIRECT EXAMINATION.

By Mr. Higginbotham:

Q. She was always neat, clean and courteous, page 57 } wasn't she?

A. Extremely so, Mr. Higginbotham.

Mr. Higginbotham: All right, sir.

CROSS EXAMINATION.

By Mr. Fray:

Q. Mr. Patton, how much did Mrs. Jones make?

A. As I stated earlier she was a productive worker, she was a production worker and it depends on the type of work and the amount of time put in what they make. You are referring to her average?

Q. Yes.

Q. I couldn't say to the penny, as a matter of fact I couldn't say to the dollar, but I would estimate that she would earn probably fifty or fifty-five dollars on a full weekly basis.

Q. Is that what the job pays now?

A. She is not working now.

Q. I know, but a similar job?

A. A similar job would pay that at least.

Q. What hours did she work?

A. I believe she worked from 7:30 until 4.

Q. In the day time?

A. Yes.

Q. What is the practice down there as to the shifts?

A. We very seldom ever work any women except during the day shift.

page 58 } Mr. Fray: I see, from 7:30 to 4. All right, sir, that is all.

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CHARLIE HENSHAW,
another witness for the Petitioner, Jean A. Jones, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Higginbotham:
Q. You are Charlie Henshaw?
A. Right.
Q. How long have you lived in Orange?
A. About ten and a half years.
Q. Since you have been living here have you had the occasion to know Jean A. Jones?
A. I have slightly, yes, sir.
Q. Have you seen her and observed her in town?
A. I have, I have been in her home.
Q. Tell the Court what you know of her manner, disposition, behaviour and general suitability to have custody of this child?
A. All I know, Mr. Higginbotham, I have never seen the young lady that she wasn't neat, clean and spick and span, and she always seemed to be very polite and friendly. I never saw anything about her that wasn't all right.
page 59 } Q. Have you seen her in her relations to this child?
A. I don't recall having seen it in Town, I have in her home.
Q. What does it seem to be?
A. I thought it was wonderful.
Q. Was it like parent and child?
A. I thought it was until this thing came up here.

Mr. Higginbotham: That is all.

CROSS EXAMINATION.

By Mr. Somerville:
Q. What was the occasion for your visit in the home?
A. I was there one time at the time her husband died. I was called by her employer to know if I had my car and if I did, would I run her home, apparently at the time she hadn't gotten word that her husband had been killed, and it was on Saturday, I believe I am correct.
Q. What other occasion?
A. I have been by there on little insurance deals.
Q. You have made calls in connection with your business?
A. Correct, a call.

Charlie Henshaw.

Q. One call?
A. One call.
Q. How many other times?
A. That is all.
Q. Your home observation is limited to those
page 60 } two times?
A. That is correct, yes, sir.
Q. How long have you known this young lady?
A. Of course, I have seen her around Orange, I would say five or six years, I don't say I personally know her, but just like you see people on the street and knowing her in the home that one time on an insurance call.
Q. Your observation and what you are saying is about what you would say about most of the people you come in contact with?
A. I wouldn't say about all, you have some hoboes and drunks.
Q. Let's say the majority, then?
A. As I say, the girl always appeared to be neat, clean and respectful.
Q. Would you say the same thing about my wife?
A. I definitely would.
Q. And Mr. Higginbotham's wife?
A. Yes, sir.
Q. And the other gentlemen in the Court?
A. I don't know a lot of these gentlemen's wives, so I couldn't say anything.
Q. How many children do you have, Mr. Henshaw?
A. None.
Q. You, then, don't consider yourself an expert on the suitability of anyone to have the custody of a
page 61 } child?
A. I wouldn't say I was.
Q. And you don't feel you are in a position to express an opinion on that, do you?
A. No, sir.

Mr. Somerville: That is all.

CROSS EXAMINATION.

By Mr. Fray:
Q. You went down and told Mrs. Jones about her husband?
A. No, sir, I didn't.
Q. What were the circumstances for meeting her?

Doris K. King.

A. You are speaking about the time her husband was killed?

Q. Yes, sir.

A. I was at the Rescue Squad Building that morning.

Q. Here in Orange?

A. Here in Orange and the telephone range and I answered it and her foreman told me he had just heard on the radio where Mr. Jones had been killed and that his wife was working, this is at the plastic place, and that she hadn't heard it and he didn't have his car and he asked me if I had my car and I told him I did, and he asked me to come down there and go with him to take her down to her home on Route 20.

Q. I see, she at the time was working at the plastic place?

A. She was there at the plastic place, I am just
page 62 } assuming she was working.

Q. I see, about what time of the day was that?

A. I will say between seven thirty and eight o'clock.

Q. When had Mr. Jones been killed?

A. I don't know, I know they had a wreck sometime may be in the vicinity of midnight, whether he was killed outright, I don't know.

Q. In what county was the wreck, do you know?

A. It was out four or five miles, I would say, out of Fredericksburg, I don't recall the County.

* * * * *

MRS. DORIS K. KING,

another witness for the Petitioner, Jean A. Jones, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Higginbotham:

Q. Will you state your name, please?

A. Doris K. King, Mrs. Douglas King.

Q. What is your age?

A. Twenty-five.

Q. Do you have any children?

A. Yes, sir, I have three.

Q. Do you know Jean A. Jones?

page 63 } A. Yes, sir, I know her very well.

Q. How long have you known her?

A. Oh, between twelve and fifteen years.

Q. Have you visited in her home?

A. Yes, I have.

Doris K. King.

Q. How often?
A. Quite frequently.
Q. Has she visited in your home?
A. Yes, sir, she has.
Q. Have you seen her in her relationship with Gilbert Warren?
A. Yes, sir, I have, frequently.
Q. Would you state to the Court what kind of mother she is to Gilbert?
A. She is a wonderful mother and the relationship between her and the boy is the same as me and my sons.
Q. Now, do you know who has looked after Gilbert Warren in the past five years?
A. Jean has.
Q. In what manner has she looked after him?
A. Well just as I have my children, she loves him; she keeps him clean; he is a courteous child, he has very good manners; he was a nice child and he was very well cared for.
Q. Do you know who prepared him for school?
A. Jean did.
page 64 } Q. Does he receive any *religous* training?
A. Yes, sir, we go to the same church, Pamunkey Baptist.
Q. Who sees that he gets to the church?
A. Jean does, she is a very patient mother, much more so than I am; I have never heard her raise her voice to either of the children; there is no partiality shown between the children; she loves them equally the same that way, the same as between my two boys.
Q. Does she make any difference between the children?
A. No, sir.
Q. Based on all you know, have seen and heard concerning Jean and concerning Gilbert, can you tell the Court how you feel as to her being a suitable person to have the custody of Gilbert Warren?
A. I think Jean is a wonderful mother, she is a good influence on the children, and she sees to their *religous* training and they are very properly cared for, and the children—well they are just fine children, they are lovely, but they aren't spoiled, of course, the children are spoiled to a certain extent, but they are not spoiled to the extent they are bad, they are just lovely children and well cared for, just as we love our children and care for them, and if I didn't know he wasn't her own I wouldn't know it.

Mr. Higginbotham: This is all.

Doris K. King.

page 65 } CROSS EXAMINATION.

By Mr. Somerville:

Q. Mrs. King what was your maiden name?

A. Knight.

Q. Have you lived in Orange County all of your life?

A. Yes, sir.

Q. And your husband's name is Douglas King?

A. Douglas King.

Q. Was he with Reginald Jones at the time of the accident in which Reginald was killed?

A. He was—he was.

Q. How old are your children?

A. Three, five and nine.

Q. How long have you been married?

A. It will be ten years this August.

Q. Do you find that these children have need for a father?

A. Well, of course, they need their father, but if something were to happen to him I would feel as a mother I could take care of my children.

Q. But you do feel they need their father badly?

A. All children do. I know that if my husband were deceased and my children were taken away I don't think it would be good for the children.

Q. Do you feel that as a boy approaches the teen
page 66 } age that he needs a father even more than ever?

A. Yes, he does need a father, but I think to take a child away from its mother, which the boys seems to feel toward Jean as a natural mother, and I think that would harm him a great deal, because I have observed him, he does love her, he is very affectionate to her.

Q. Have you experienced in your own family the need from time to *tome* of the father?

A. Yes, sir, you always do, it is something if you need it you take for granted, but if he were taken away from me I think I could raise my children; I think it is hard to do, but if you really try it is very possible.

Mr. Somerville: That is all.

CROSS EXAMINATION.

By Mr. Fray:

Q. You say your husband was with Mr. Jones when he was killed?

A. Yes, sir, he was.

Q. Do you know where they were going?

A. They had been to a dance and this man, who knew Reggie, had gotten into trouble with the police and his wife was without a car or the car keys to get down town to her husband and the wife knew Reggie and she asked if he would carry her down town to the police station, and knowing her he said he would, and they went down town to the Police Station and Mr. Irving at the Police Station
page 67 } told them that her husband was gone, so, they went back to the dance hall and sat around a little while, and so, then they went back down to the Police Station and her husband still wasn't there, so they were taking her back to the dance hall when the accident happened.

Q. Where was the dance hall?

A. I am not real sure, I have not been there, but is somewhere in Spotsylvania County five or six miles out of Fredericksburg.

Q. Mr. Reggie Jones and your husband left together to go to the dance?

A. Yes, they did.

Q. Did they do that frequently?

A. This was the third time they had done it.

Q. They left you and Mrs. Jones at home?

A. Yes, sir.

* * * * *

MRS. ROBERT L. MAY,

another witness for the Petitioner, Jean A. Jones, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Higginbotham:

page 68 } Q. What is your name, please?

A. Mrs. Robert L. May.

Q. Where do you live?

A. I live three miles out of Orange on the Fredericksburg Road.

Q. How far do you live from Jean Alger or Jean A. Jones?

A. I would say approximately a mile and a half.

Q. Do you know Jean A. Jones and Gilbert Warren?

A. Yes, I do.

Q. How long have you known them?

Mrs. Robert L. May.

A. I have known Jean since she was in school—in grade school—you know I have seen her at school and just known her, you know, and I have known the boy since Jean and her deceased husband took him into their home.

Q. In what capacity have you known them?

A. Well, I am Jean Jones Sunday School teacher, and I teach her and she has been coming—she had been coming regularly to church until she got pregnant with her child, the latest one, of course, she was sick and all of us know the many things we have to do if we have children, I have got four and I can understand after the child was born why she didn't come as regularly as she had.

Q. Do you know whether Gilbert Warren receives any religious training?

page 69 } A. Yes, he did. My husband is also a Sunday School teacher and he is often assembled with Warren and I have always heard him say what a brilliant child and polite child Warren is, and a child anxious to take *religous* training.

Q. Have you also visited in the home?

A. I have approximately four times and every time I have been there it has been just as clean as could be, the children always seemed happey and everything has been fine, and as has been stated before if I hadn't known it I would have *through* Warren was definitely Jean's boy.

Q. Based on what you have seen and heard and observed concerning Jean do you consider that she is a proper person to have the custody of this child?

A. Well, as far as I have seen or had her in my class room, she is interested in the road she wants to bring her children up in, a christian home, and I definitely feel she would be a proper person to take those children. Of course, I have only visited in the home four times and I couldn't tell you about their home life, but from what I have observed myself I think she would be the proper person.

Mr. Higginbotham: That is all.

CROSS EXAMINATION.

By Mr. Somerville:

Q. Mrs. May, you don't know anything about the other two parties in this proceeding, the grand-mother

page 70 } Mrs. Baxter, or the natural mother, Mrs. Henson, do you?

Mrs. Robert L. May.

A. This is the third time I have seen Mrs. Baxter, and I have never seen Mrs. Henson before in my life.

Q. So, you know nothing about their qualifications?

A. I know nothing.

Q. Then, you wouldn't attempt to tell the Court what the Court ought to do in this matter?

A. Definitely not, of course, not.

Q. You have four children?

A. I have four daughters.

Q. You have no sons?

A. No, sir, no sons.

Mr. Somerville: That is all.

CROSS EXAMINATION.

By Mr. Fray:

Q. Do you know whether Mrs. Jones had any objections to her husband going out to dances and leaving her at home?

A. Well, of course, I do not, but I certainly wouldn't want mine doing that.

Mr. Fray: You wouldn't want yours doing that, I see. Thank you.

RE-DIRECT EXAMINATION.

By Mr. Higginbotham:

Q. May I ask you one other question? You say you have four children?

page 71 } A. Four daughters.

Q. What age?

A. I have a daughter thirteen, one eleven, one seven and one nine months.

Q. What would be your reactions to a child being taken from a home that he has lived in for five and a half years and placed in a new home?

A. I think it would be just terrible, I really do, because there is a lot to consider in a child and especially a child that age.

Q. What, Mrs. May, do you think is the effect of having two half brothers live together and the possibility of separating them?

A. Well, I just think it would be bad because of what I have observed, I think the two boys seem very, very close and look

like they love each other dearly, and since they do not have a father I feel like it would be wonderful to keep the children together.

* * * * *

LESLIE LLOYD,
another witness for the Petitioner, Jean A. Jones, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

page 72 } By Mr. Higginbotham:

Q. What is your name, please?
A. Aubrey L. Loyd.
Q. Mr. Lloyd, what is your age?
A. Thirty-eight.
Q. And you work for the W. A. Sherman Company?
A. That is right.
Q. How long have you worked there?
A. Thirteen years.
Q. And you are married?
A. Yes, sir.
Q. Do you have any children?
A. I have one girl, eleven.
Q. How close do you live to Mrs. Jones?
A. About the length of this Court House.
Q. Are you the next door neighbor?
A. That is right.
Q. Has Mrs. Jones visited in your home?
A. Mostly every day.
Q. And Gilbert Warren?
A. That is right.
Q. Have you all visited in her home?
A. That is right.
Q. What kind of mother is Jean to Gilbert Warren?
A. Just like her own son, just as fine as she
page 73 } can be, she takes care of him and treats him just like her own son.
Q. Is the child well taken care of—cared for?
A. Just as good as mine or yours or anybody else's.
Q. Do you know how the child feels toward Mrs. Jones?
A. The little boy and my little girl play together and he says he loves Jean and wants to stay with Jean; that is what the two children talk to each other.

Leslie Lloyd.

Q. Do you know how the two little children regard each other, the two little boys?
A. Just like brothers.

Mr. Somerville: I object to that, Mr. Higginbotham is leading the witness.
Mr. Higginbotham: I stand on that question.
The Court: The question now is the relationship of the two half-brothers. If you had objected earlier it would have been good.
Mr. Somerville: We don't like to keep objecting.

Q. What is the relation between these two brothers?
A. They love each other; they play together, the biggest boy takes care of the little boy, and they play fine together. My girl and those two boys they play together most every afternoon.

Q. Based on what you know concerning Mrs. Jones, how do you feel as to her suitability to have the custody of this child?
page 74

A. I think she should have, she has raised him since he was a small kid and taken good care of him, and I think she should continue.

Mr. Higginbotham: Thank you, sir.

CROSS EXAMINATION.

By Mr. Somerville:
Q. Mr. Lloyd, do you know the other two parties, Mrs. Baxter and the natural mother?
A. I have never met the natural mother, but I have met Mrs. Baxter.
Q. Do you know anything about their qualifications?
A. No more than the day—on Saturday morning she came after Pete was killed, she come in talking about the boy right then when the mother was in a state of shock.
Q. In other words, she was very much interested in her grand-son?
A. I don't think she had to be interested that much.
Q. I am asking you not what you think, I am asking you whether Mrs. Baxter is interested in the child?
A. Yes, there is some feeling with her.
Q. You have a daughter thirteen?
A. Eleven.

C. H. Crist.

Q. Based on your experience you feel there is a
page 75 } need for a father in the home, don't you?
A. Not the way Mrs. Jones is taking care of the boy around the house; I think she would get along fine with him.
Q. You don't think the boy would need a father?
A. I think Mrs. Jones has raised him as her son just the same as her son, I think she could get along without it.
Q. This play that these two boys and your daughter have, it is the normal way that children play together, is that right?
A. That is right, they play in my yard and play in Mrs. Alger's yard.

* * * * *

C. H. CRIST,
another witness for the Petitioner, Jean A. Jones, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Higginbotham:
Q. You have been sworn?
A. Yes, sir.
Q. Mr. Crist, state your name, age, residence and
page 76 } occupation?
A. My name is C. H. Christ, my age is sixty-nine and I am a farmer.
Q. I believe you are also connected with the REA, aren't you?
A. Yes, sir.
Q. In what capacity?
A. I am Director of the Virginia Electric Cooperative, with headquarters in Bowling Green, and I have been for twenty-two years.
Q. How many children and grand children do you have?
A. I have two children and five grand children.
Q. What church do you attend, Mr. Crist?
A. North Pamunkey Baptist Church.
Q. Do you know Mrs. Jean A. Jones?
A. Yes, I do.
Q. How long have you known her?
A. I would say since about '52 or '53.
Q. And in what way have you known her?

C. H. Crist.

A. Well, in our church we have two men, they are not ushers, but they are kind of hosts and meet outside and welcome the people as they come in and see that they have seats. We are ushers in one sence and I am a Sunday School Teacher and her husband was one of my Sunday School pupils up until his death.

page 77 } Q. Tell the Court what you have seen and observed concerning Jean A. Jones?

Mr. Somerville: May it please the Court, we take the position that we have become very accumulative. We have had four or five witnesses concerning the church and immediate community. We are now bringing in witnesses on the same thing and on the same question whether the step-mother is a suitable person to have the custody of this child.

We take the position that this is accumulative and there must be an end to it, either with this witness or the next witness.

That is the basis of our objection.

The Court: Of course, this particular witness has testified that he is her Sunday School Teacher.

Mr. Somerville: No, sir, not her Sunday School Teacher.

The Court: No, her deceased husband's Sunday School Teacher.

How much more of this do you have, Mr. Higginbotham? That is to the fitness of Mrs. Jones?

Mr. Higginbotham: I have, your Honor, fifteen

page 78 } or twenty other witnesses.

The Court: As to the fitness?

Mr. Higginbotham: Yes. Now, if your Honor has noticed, I have been very short in my examination, but if the Court wishes to limit me I have one or two more witnesses I would like to put on.

The Court: Let's finish with this witness and if you can pick out some that are very important, one or two, that will be within reason. I don't want to have everybody here in Orange County testify just because they may know the lady. These other parties may decide to go to Fredericksburg or Alexandria and do the same thing.

Mr. Higginbotham: Your Honor, they have had the same right as I did.

The Court: I am not criticising that.

Q. Go ahead, Mr. Crist.

A. Would you read back that question?

Note: Here the last question was read to the witness by the reporter.

Q. (Continued) And her suitability to have the custody of this child?

A. In the capacity of host to the church, or usher
page 79 } or whatever you want to call it, I have been
struck with the affection that Pete Jones' boy has had for her. I noticed it before they were married, they used to come to Sunday School together, he brought the boy to Sunday School, and then he brought Jean A. Jones and the little boy, and the little boy has been, so far as I could see, just like a son of hers even before they were married; she seemed to be very attentive right on up until the last time they were at church.

* * * * *

P. C. DAVIS,
another witness for the Petitioner, Jean A. Jones, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Higginbotham:

Q. You are P. C. Davis, Deputy Sheriff of Orange County?

A. Yes, sir.

Q. How long have you known Jean A. Jones?

A. Ten or twelve years.

Q. Have you ever had occasion to visit in the home of Jean and Reggie?

A. No, sir.

page 80 } Q. Have you ever had the occasion to be there?

A. Yes, sir.

Q. You have had the occasion to be there?

A. Yes, sir.

Q. Did you have the occasion to observe the home and the way it was kept, and Mrs. Jones' relationship to Gilbert Warren?

A. I never looked inside the house.

Q. Have you seen and observed Gilbert Warren and Jean Jones in town together?

A. I cannot say that I have.

Q. Do you know what Jean A. Jones reputation is for being a good mother to this child?

M. R. Pickett.

A. I haven't heard anything else.

Q. You haven't heard anything else?

A. I haven't heard anything being wrong with her being a mother to the child.

Q. Based on your observation and what you have heard concerning Jean A. Jones, what do you have to say with reference to whether she is a fit and suitable person to have the custody of this child?

Mr. Somerville: We object, this is accumulative and this witness has indicated that he does not have sufficient information upon which to answer the question.

page 81 } The Court: I don't think the witness is qualified to answer the question.

Q. Do you think, Mr. Davis, that you know enough about her from what you have seen and heard to give the Court an opinion as to her suitability to have custody of this child?

A. I don't see how I can.

* * * * *

M. R. PICKETT,

another witness for the Petitioner, Jean A. Jones, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Higginbotham:

Q. State your name, please.

A. M. R. Pickett.

Q. I believe you are President of the Chamber of Commerce here?

A. That is right.

Q. And you also run Leggett's Department Store?

A. That is correct.

Q. In your capacity as manager of that store have you had occasion to see and observe Jean A. Jones and Gilbert Warren Jones together in your store?

page 82 } A. I have. I believe the little lady, Mrs. Jean A. Jones, she has a very active charge account with us for a little more than three years.

The Court: She pays her bills?

G. R. Jones.

A. She pays her bills and does all the shopping for the boy and is there to select the merchandise.
Q. Do you know how she regards this little boy?

Mr. Somerville: I object to his going any further.
The Court: Read the question back.

Note: Here the question was read by the reporter.

The Court: The objection is overruled, if he knows he may state it.
Mr. Somerville: He may state what he observed, not what he thinks she may feel.

A. I have observed she was treating the boy—in fact I thought it was really her boy until I was told different less than a year ago.
Q. Do you know how this little boy has been dressed?
A. I have been knowing the little boy since he was living in the trailer up there with his real mother, and he has been especially well dressed for the last three or four years.
Q. And I believe you say she buys his clothes?
page 83 } A. That is correct.

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G. R. JONES,
another witness for the Petitioner, Jean A. Jones, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Higginbotham:
Q. State your name please?
A. George Randolph Jones.
Q. I believe you are a merchant at Thornhill—
A. No, it is Orange.
Q. On 522?
A. That is right.
Q. And what is your relationship to Reggie Jones?
A. He is my nephew.
Q. Your brother married Mrs. Baxter?
A. That is right.
Q. Mr. Jones, do you know Jean A. Jones?
A. Yes, sir.

Oscar Wyatt.

Q. Have you seen her and observed her in her relationship to this boy?

page 84 } A. No, I cannot say that I have.

Q. How have you known her, Mr. Jones?

A. Well, she has been attending the same church I do, she and the boy both, and Reggie, practically every Sunday.

Q. Can you state how the boy has been cared for?

A. Apparently he looks like he has been well cared for, he looks like he is happy with the situation the way it is—I don't know.

Mr. Higginbotham: All right, sir.

CROSS EXAMINATION.

By Mr. Somerville:

Q. Mr. Jones, you really don't know too much about this situation, do you?

A. No, sir, not any more than I have told you.

* * * * *

OSCAR WYATT,

another witness for the Petitioner Jean A. Jones, being first duly sworn, was examined and testified as follows:

The Court: If this is accumulative after this witness I am going to sustain your objection to any further accumulative testimony.

DIRECT EXAMINATION.

page 85 } By Mr. Higginbotham:

Q. State your name, please.

A. Oscar Wyatt.

Q. Where are you employed?

A. I am not employed right now.

Q. You are retired?

A. Yes, sir.

Q. Where do you live, Mr. Wyatt?

A. Rhoadesville.

Q. Are you related to Jean A. Jones?

A. No blood relation, no, sir, I am through marriage.

Q. Your wife and Mrs. Alger are sisters, I believe?

A. No my wife and Mrs. Alger are first cousins.

Oscar Wyatt.

Q. Did you know Jean A. Jones well?
A. Yes, sir.
Q. Have you visited in her home?
A. I have been in her home, yes, sir.
Q. Have they visited in your home?
A. Yes, sir, they have visited my home.
Q. Based on your knowledge of her tell the Court concerning her suitability to have the custody of this child?
A. I don't think it could be any better than it is; I think that Jean is a wonderful mother to him; she seems to think as much of the little boy in question as she does her own son and treats him the same.

page 86 } Mr. Higginbotham: That is all.

CROSS EXAMINATION.

By Mr. Somerville:
Q. Mr. Wyatt, you don't know anything as to the suitability of the other two parties, do you?
A. No, sir, I don't.
Q. As far as you know they be extremely well qualified?
A. Yes, sir.
Q. If they were your opinion would be the same as far as they are concerned?
A. Yes, sir.

Mr. Somerville: That is all.
Mr. Fray: No questions.

The witness stood aside.

Mr. Higginbotham: Is the Court cutting me off now?
The Court: As to accumulative evidence.
Mr. Higginbotham: We wish to take exception to the ruling of the Court.
The Court: Do you have any other phase of the case to present?

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GILBERT WARREN JONES,
a witness on behalf of the Petitioner, Jean A. Jones, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By the Court:
Q. You stood up this morning when the other were sworn, didn't you?
A. Yes, sir.
Q. What is your name?
A. Gilbert Warren Jones.

Mr. Higginbotham: Judge, we are perfectly willing for the Court to examine the child if the Court thinks it is desirable or we will proceed either way.
The Court: Let me just examine him a little bit and then I will let you take up. I am not going into the facts.

Q. When will you be eleven?
A. This November, the 28th.
page 88 } Q. The 28th?
A. Yes, sir.
Q. Has anybody been talking to you about what you should tell me today?
A. No, sir.
Q. Has anyone suggested to you that if you were a witness you should say certain things?
A. No, sir.
Q. Has your step-mother suggested to you that there is anything you should say?
A. No, sir.
Q. Has your grand-mother suggested anything?
A. No, sir.
Q. Have you talked to your mother today?
A. No, sir, I haven't talked to my mother today, I haven't talked to my grand-mother either today.
Q. Have you talked to any of the lawyers today?
A. No, sir.
Q. You haven't talked to any of them?
A. No, sir.

The Court: All right, Mr. Higginbotham.

By Mr. Higginbotham:
Q. Gilbert Warren, you have a little brother, how old is your little brother, do you know?

Gilbert Warren Jones.

A. He is—let me see—
page 89 } Q. If you don't know it is all right.

The Court: I think he is around—

A. He is nineteen months old.

The Court: You are right.

Q. Do you help look after your little brother?
A. Yes, sir.
Q. How do you feel toward your little brother?
A. Well, I love him, and I think he loves me.
Q. Do you like to go to school?
A. Yes, sir.
Q. Do you make pretty good grades?
A. Yes, sir.
Q. Who was your teacher last year?
A. Mrs. Boxley.
Q. Your teacher is here today?
A. Yes, sir.
Q. Have you spoken to her?
A. I haven't talked to her, I spoke to her this morning.
Q. But you haven't talked to her?
A. No.
Q. Gilbert Warren, do you have any playmates where you live?
A. I play with my next door neighbor and a little girl up the road, I play with her sometimes.
page 90 } Q. Do you like it there where you live?
A. Yes, sir.
Q. You like it down at your grand-mother's, too, don't you?
A. Yes, sir.
Q. Mrs. Baxter is good to you?
A. Yes, sir.
Q. How does Jean treat you?
A. She is good to me, too.
Q. Do you love Jean?
A. Yes, sir.
Q. If you were given your choice, Gilbert Warren, where would you want to live?
A. Well, I would like to live where I am living now with my step-mother.
Q. Do you go to Sunday School?

Gilbert Warren Jones.

A. Yes, sir.
Q. Do you go to church?
A. Yes, sir.
Q. Do you belong to the Boy Scouts or Cub Scouts?
A. I belong to the Cub Scouts.
Q. Do you have as good a clothes to *where* as the other boys?
A. Yes, sir.
Q. Are you kept as clean as they are?
page 91 } A. Yes, sir.
Q. And you say you are happy where you are?
A. Yes, sir.
Q. Do you like to visit your grand mother in the summer time?
A. Yes, sir.
Q. Do you still want to do that?
A. Yes, sir, I would like to.
Q. Now, do you know Mrs. Henson. your real mother?
A. No, sir, I know of her, but I don't know her not exactly.
Q. When did you see her recently? Was it shortly after your father died?
A. Yes, sir.
Q. When she came to your house, did you know her?
A. No, sir.
Q. You didn't know who she was?
A. No, sir.
Q. Do you know her husband?
A. I have seen him but I don't know him.

Mr. Higginbotham: I believe, Judge, that is about all I want to ask Gilbert Warren.

CROSS EXAMINATION.

By Mr. Coleman:
Q. Gilbert Warren, were you down to your
page 92 } grand-mother's last summer?
A. Yes, sir.
Q. How long did you stay?
A. I believe I stayed the whole time during school vacation.
Q. And you were there with her the summer before, weren't you?
A. Yes, sir.
Q. Do you like it there?
A. Yes, sir.

Gilbert Warren Jones.

Q. What did you do while you were there?
A. Well, I did different things; I played with the children down there.
Q. There were children in the neighborhood, weren't there?
A. Yes, sir.
Q. Did your grand mother take you with her when she went out riding or in the automobile?
A. Yes, sir.
Q. Let me ask you this question: I just want to get this clear, Judge.
Gilbert Warren, around your home where you now live and your grand-mother and grand-father Alger live, do you go to their home very often?
A. My grand-mother's and grand-father's?
page 93 } Q. Yes.
A. Yes, sir.
Q. How do they treat you?
A. Well, they treat me real nice.
Q. What?
A. They treat me good.
Q. Is there any disagreement or fussing that you hear?
A. Well, may be once in awhile that my grand-mother and grand-father disagree on some things.
Q. Is there a disturbance about that?
A. Yes, sir.
Q. What is the nature of those disturbances?
A. Sometimes it is over different things, sometimes my grand-father deals in cattle and sometimes may be he looks for a bill or something and doesn't find it and he says that my grand-mother might have misplaced it or something like that.
Q. Is there ever any discussion or disturbance about drinking too much?
A. Well it might be once in awhile, but not very often; it hasn't been any very lately.
Q. But you have heard of that, haven't you?
A. Yes, sir.
Q. Who were these discussions about his drink-
page 94 } ing between?
A. What was the question?
A. Who did you hear talking about his drinking? Would it be your grand father and your step mother, or who would it be?
A. Well, it would be my grand mother and my mother might say something once in awhile, my step mother.

Gilbert Warren Jones.

Q. Does that happen very frequently?
A. No, sir.
Q. Gilbert Warren, this gentleman here, Mr. Somerville, and this gentleman, Mr. Scaife, sitting next to me and Mr. Fray, have you talked to any of them or to me?
A. What do you mean, since this has happened?
Q. Yes.
A. Well, I haven't exactly talked to them, I have seen Mr. Scaife.
Q. Where was he?
A. Well, I saw him down at my grand-mother's, he came down to see them one time.
Q. Did he talk to you?
A. He might have said something, but I don't remember what it was.
Q. But you haven't talked to any of the others?
A. No, sir.

The Court: Did Mr. Scaife talk to you anything about this trial?

page 95 } A. No, sir.
Q. Did Mr. Higginbotham ever talk to you about it—anything about the trial?
A. Well, he asked me one day, he wanted me to tell what I wanted to do about it, and he told me to make up my own mind about what I wanted to do.
Q. Where were you when he told you that?

The Court: When Mr. Higginbotham talked to you.

A. I came up here to talk to him.
Q. To his office?
A. Yes, sir.
Q. And who brought you?
A. Well, my grand-father and my step mother and grand-mother.

The Court: Let's clarify that, do you mean your step mother and grand-mother Alger?

A. Yes, sir.

Questions by the Court:
Q. Do you ever have any spending money?

Gilbert Warren Jones.

A. Yes, sir.
Q. Who gives you your spending money?
A. Well, my mother—well sometimes and my grandmother.
Q. You mean your step mother?
page 96 } A. My step mother.

The Court: The reason we have to be so careful about that is because all of them are in this case.

Q. Does your grand-mother give you spending money sometimes?
A. Yes, sir.
Q. Does your step mother object to your having any spending money?
A. No, sir.
Q. Does your step mother drink?
A. No, sir.
Q. Does she ever have any beer or whiskey around the home?
A. Well my father would bring it sometimes.
Q. I am talking about since your father died?
A. No, sir, there hasn't been any.
Q. And your grand father, Alger, does he drink?
A. Well, he does sometimes, but he doesn't do it any more since this accident happened.
Q. Does your grand mother, Alger, drink?
A. No, sir.
Q. You spoke of sometimes they have some disagreements, do they ever use any curse words?
A. Well, once in awhile they might, but it would
page 97 } have to be a right big *fus*.
Q. Do they have right big fusses?
A. May be once in awhile they might.
Q. Tell me about those big fusses.
A. Well, my grand-father would probably come home late and he would want some supper and then my grand-mother would get it, and then he would get mad for some reason and there might be something down on the floor or something.
Q. And they would use curse words?
A. What?
Q. And who used the curse words?
A. May be once in awhile he might, but I don't think I have ever heard it, if I did I don't remember it.
Q. Do they ever pass any licks?
A. Well, sometimes.

Gilbert Warren Jones.

Q. You have seen that, have you?
A. Yes, sir.
Q. You have seen your grand-mother, Alger, and your grand-father, Alger, get in a fight?
A. Yes, sir.
Q. What did they do?
A. Sometimes I would stay for a little while and then I would leave.
Q. How many times have you seen them do that?
A. I don't know.
page 98 } Q. Do you mean by that it is more than you can remember?
A. I don't remember exactly.
Q. The number of times, has it been right many times or just a few times?
A. Well, kind of in the *midle.*
Q. Would you step mother be there sometimes when it would happen?
A. She wouldn't be over at the house, but she would be over at the trailer.
Q. Did it ever happen over the trailer?
A. I believe it did, one time, once or twice it might have happened.
Q. Once or twice over at the trailer?
A. Yes, sir.
Q. Would any of them be drinking at the time?
A. Well, my grand-father might.
Q. Have you ever seen your step mother take a drink?
A. No, sir.
Q. Has she ever used any curse words toward you?
A. No, sir.
Q. Have you seen your grand-mother, Baxter, when she was visiting up there, have you ever seen her take a drink?
A. No, sir.
Q. Have you ever heard her use curse words?
page 99 } A. No, sir.
Q. You get bad sometimes, don't you, and need correcting?
A. Yes, sir.
Q. Who corrects you?
A. Well, when I am up at Fredericksburg my grand-mother or grand-father and when I am at home my step mother.
Q. When you are up at Fredericksburg how do they correct you?

Gilbert Warren Jones.

A. Well, they tell me not to do it any more.
Q. Do they ever get a switch after you?
A. No, sir.
Q. How about your step mother, does she have to switch you sometimes?
A. Well, she has done it when I needed to have a whipping, she has whipped me.

The Court: All right.

CROSS EXAMINATION.

By Mr. Fray:
Q. Gilbert, does your grand-daddy, Baxter drink?
A. Well, he has tasted it before.
Q. What?
A. I have seen him taste it before, he drank about a half a can, may be.
Q. A half of can?
page 100 } A. Yes, sir.

By the Court:
Q. You mean of beer, I reckon?
A. Yes, of beer, I have seen him one time.
Q. This grand-father Baxter, you are speaking of, he is not really your grand-father, he is your grand-mother's second husband.
A. Yes, sir.

The Court: Are there any further questions of this young man?
Mr. Higginbotham: Yes, sir.

RE-DIRECT EXAMINATION.

By Mr. Higginbotham:
Q. Gilbert Warren, why is it you would rather stay with Jean than with your grand-mother?
A. Well, I have been with my mother—my step mother longer than I have with my grand mother. Well, I stay with my mother and I am used to staying—with my step mother, I mean—more than I am with my grand mother.
Q. You want to stay with your little brother, too?
A. Yes, sir.

Reverend M. A. Timberlake.

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page 101 }

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REVEREND M. A. TIMBERLAKE,
a witness on behalf of the Petitioner, Mrs. Elizabeth Jones Baxter, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Coleman:

Q. Will you state your name, your age and your residence and your profession, please?

A. M. A. Timberlake, age forty-two, 111 Laurel Avenue Fredericksburg.

Q. And your profession?

A. Baptist Minister.

Q. Mr. Timberlake, what church at present are you pastor of?

A. Spottswood Baptist Church.

Q. Where is Spottswood Baptist Church located with reference to Fredericksburg?

A. It is about a mile from the City Limits.

Q. From the City Limits?

A. Yes, sir.

Q. You live, I believe on Laurel Avenue, is that correct?

A. That is correct.

page 102 } Q. How long have you been pastor of Spottswood Baptist Church?

A. From the very beginning, we started the work there.

Q. How long has that been?

A. That will be five years next month—pardon me, five years in August.

Q. Mr. Timberlake, do you know Mrs. Elizabeth Baxter and her husband, James Baxter?

A. I do.

Q. How far do they live from you?

A. About two blocks.

Q. Are they members of your church?

A. They are.

Q. How often do you see them?

A. Most every Sunday.

Q. Will you tell his Honor, here, just what part Mr. and

Reverend M. A. Timberlake.

Mrs. Baxter taken in the church work? How they attend church or anything connected with it?

A. Well, I would like to say they are very active in our church. Mrs. Baxter is Assistant Sunday School Teacher of one of the adult classes; they are very generous contributors of the Spottswood Baptist Church.

The Court: That is right important in the Baptist Church.

A. Amen, Brother.

page 103 } Q. Mr. Baxter, does he attend church on Sundays with his wife?

A. He works shift work, and, of course, he cannot get there every Sunday because of that.

Q. Do you visit in the home?

A. I do.

Q. Will you tell, his Honor, now just what type of home they have and from your observations what type people they are, and how they conduct themselves in their home?

A. Mr. and Mrs. Baxter have one of the best homes from appearance in our community. I feel that they are fine Christian people, both Mr. and Mrs. Baxter. I have visited in the home some twenty or twenty-five times, I have had meals there on several occasions; I have taken other ministers with me to the home, they likewise have had meals in the Baxter home.

Q. How do they conduct themselves toward each other?

A. I think in the very way that husband and wife should; they attend church together when Mr. Baxter, of course, is off, and I feel that there is a great deal in common between them, both in their work and also, of course, in their relationship in the home.

Q. Mr. Timberlake, have you been to the home during the last summer or summer before last when Gilbert Warren, Mrs. Baxter's grand-son, was there?

page 104 } A. I have seen Gilbert Warren only one time, as I recall, when he was with Mrs. Baxter, and that was at the Spottswood Grocery Market; at that time Mrs. Baxter was making a purchase there, and, of course, the little boy was with her.

Q. Did he seem to be happy at that time?

A. He did.

Q. From your knowledge of the home of Mr. and Mrs. Baxter, not only in their *religous* work, but in their own

relations and in the neighborhood in general, what, in your opinion, would Mrs. Baxter be as a mother to this child?

A. I have observed in Mrs. Baxter some qualities of what I consider of the very highest type character. For instance, it seems she has a great deal of love within her life, her personality is outstanding and I feel this that she is a woman of the very highest type.

Q. Is there anything at all about her that you have noticed, which would lead you to believe that this child would not receive the very best of training if she had custody of him?

A. I think, to the contrary, that she would certainly give the child the very best education and the very best in the way of love. I feel that certainly she would be an outstanding grand-mother to her grand-child.

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page 133 }

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MRS. ELIZABETH JONES BAXTER,

a witness in her own behalf, being first duly sworn, was examined and testified as follows:

page 134 } DIRECT EXAMINATION.

By Mr. Coleman:

Q. Please state your name, your age, your residence and your occupation?

A. Elizabeth J. Baxter, forty-five, I live at 207 Southgate Avenue, and my occupation is real estate broker.

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page 136 }

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Q. After he got the custody of the child and after his second marriage what was the relationship between you and the child and your son and his wife?

A. Well, the relationship between my son and the grand-child was close always, the step mother, I had nothing to do

with her and my son and their affairs, but I didn't care for the way she treated the grandson.

Q. After they had been married for sometime

page 137 } did the child visit you in the summer?

A. He visited me nearly all of '56—I mean just a very little while in '56 in the summer. '57 he stayed the whole summer; '58, the whole summer, and '59, the whole summer.

Q. You say the whole summer, do you mean from the time the school closed in June until it opened in September?

A. Yes, sir.

Q. And where did you keep the child during that time?

A. At my home at 207 Southgate Avenue.

Q. Who looked after the child during those summers?

A. Well, when I was showing just real estate that I didn't have to walk, I took the child with me, if there was walking and I had to show a tract of timber, I either hired someone to stay with him or I left him with Mrs.Sanford.

Q. Was that very often?

A. No, sir, I don't get a chance to sell timber very often.

Q. During this period have you contributed anything toward the support of the child in the way of clothing, medical attention or anything of that sort?

A. I certainly have. He was sick every summer I had him down home, he had a cough and I took him to Dr. Little,

a pediatrician, and had him checked over. He had

page 138 } red measles in the summer of '56 and was extremely ill and we thought we were going to have to put him in the hospital, and I paid every cent of the doctor's bill.

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page 139 }

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Q. Mrs. Baxter, if this child is awarded to you—the custody of this child is awarded to you, can you tell the Court why you want it so desparately and what you intend to do in the training of the child?

A. Yes, I will. I want him desparately because I love him with all my heart, he is the son of my only child.

Elizabeth Jones Baxter.

page 140 } My son was down home on several occasions and he said to me, "If anything ever happens to me, I want you to go get Gilbert Warren immediately from up at his step-mother's and bring him home with you and raise him and educate him;" I want to do everything I can for the child and expect to do it, and when it comes time to do it, I expect to give him a college education.

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page 141 }

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CROSS EXAMINATION.

page 142 } By Mr. Higginbotham:

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page 143 }

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Q. Jean doesn't drink does she?
A. I never saw her drink.
Q. Then you would say she doesn't drink?
page 144 } A. I didn't say she didn't, I say I never saw her.

The Court: Who is that you are referring to?
Mr. Higginbotham: Jean Jones.
The Court: You say you have never seen her drink?

A. I have never seen her drink.
Q. She is good to the child, isn't she?
A. She doesn't give the child the love and affection it should have.
Q. Didn't give what?
A. The love and affection a mother should give a child.
Q. Doesn't she wash his clothes?
A. I don't know. I gave them the washing machine. I think Mrs. Alger washes the clothes.
Q. She took him to church, didn't she?
A. His father took him, she went along on occasions.

Elizabeth Jones Baxter.

Q. And she raised the child as her own, didn't she?
A. No, sir, I don't think she did.
Q. And the child regards her as his mother?
A. A child can be taught a lot.
Q. Do you have a kindly feeling toward Jean?
A. I don't have a thing against Jean but one thing, that is she didn't treat Gilbert as she should have treated him, and this didn't start when my son died, either.
page 145 } Q. You never saw her do anything wrong, did you?
A. I never saw her do anything right for Gilbert.
Q. Did she fuss at him?
A. She fussed and was awful disagreeable.
Q. And did she abuse him?
A. I didn't see her abuse him, she was just disagreeable.
Q. She was not kind to him?
A. She told me that she knew she was too impatient with Gilbert, but she was nervous, that was before her child was born.
Q. That little boy is also your grandson?
A. Yes, and I love him.
Q. You are interested in him?
A. Yes, I am.
Q. And you are interested in him just as much as you are your other grandchild?
A. Yes, I am interested in that child, I haven't seen as much of him as I have Gilbert Warren, but I do love him because he is my son's child.
Q. They are the same blood kin?
A. Yes, sir.
Q. And naturally you want to do all you can for both of them?
A. My home is open to Jean or Jack at any
page 146 } time, but only Jean and Jack.
Q. And you would like to see those children grow up together, wouldn't you?
A. I would like for them to see each other, I would like for them to love each other.
Q. And the best way to do that is for them to stay together, isn't that right?
A. I wouldn't say that.
Q. You came up and tried to take the child the day of Reggie's death, didn't you?
A. Because my son told me to go get him immediately.

Elizabeth Jones Baxter.

Q. And you thought it was imperative, even before the burial?

A. I certainly did.

Q. And then when you couldn't get the child you went home and came back the *say* day?

A. No, I didn't go back the same day.

Q. And the child told you that he didn't want to go with you, didn't he?

A. The child was scared to death.

Q. Mrs. Baxter, didn't the child tell you on that occasion that he didn't want to go with you?

A. Yes, he told me that, but he was told to say that.

Q. Who told him?

A. His step mother, his step grandmother.

page 147 } Q. Under the circumstances, with death in the family they told the child what to say?

A. Yes, they told the child to say that.

Q. How do you know that?

A. Because he was always crazy to go home with me and crazy to stay at my house.

Q. So you think that because of that they told him to say that?

A. I certainly do think so.

Q. When do you think they told the child that?

A. Before I got there.

Q. They didn't know you were coming, did they?

A. Oh, yes, she did, she called me and asked me to come. Mrs. Alger called me and told me that they had bad news, she said, "Pete has been killed."

Q. Do you mean that you thought that they thought you were coming to get the child?

A. They knew I was going to want to take him. That isn't the first time I wanted to take the child.

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page 149 }

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Q. You don't have any doubt but that Jean would take care of this child, do you?

A. Yes, I do.

Q. Do you have any doubt she is going to take good care of the other grandchild?

Elizabeth Jones Baxter.

A. That is her own child.

Q. And you base that on what you have already observed as to Jean?

A. Yes, I certainly do.

Q. You have heard these witnesses testify—

A. I cannot help what the witnesses say, I know what I have seen with my own eyes and heard with my
page 150 } own ears.

Q. You are right positive about this, aren't you?

A. I am telling the truth.

Q. You would be right harsh with this child, wouldn't you?

A. No, I wouldn't, I raised a good boy and raised him under difficulties. I have never been harsh with anybody's child, my own or anyone else's.

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page 151 }

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Q. As I understand if the Court doesn't give you exactly what you want, that is the custody of the child, that you will wash your hands of the whole thing?

A. I am not going up to that place again, I have been my last time.

Q. In other words, you don't want to see the children?

A. I want to see the children, but my house is wide open.

Q. But you won't go there?

A. No, sir, not so long as she is at her mother's.

Q. Suppose she got an apartment somewhere else?

A. I would visit him, but I want to have the
page 152 } child, I want him to have the affection he needs.

Q. And as I understand it if you do not get the child that you are not willing to help with his education?

A. I wouldn't want to say I would or would not, it depends on the circumstances in which she is living; we don't know that.

Q. Her circumstances since she married Reggie have been above reproach, haven't they?

A. I don't know any harm of Jean, I have told you that from the beginning.

Elizabeth Jones Baxter.

Q. And the child would be perfectly safe, wouldn't he?
A. The child would, I don't say the children.
Q. Why do you make the distinction?
A. One time Jean told me that Reggie loved that little boy so good that it actually made her hate the child.
Q. Say that again.
A. I said that Jean told me that Reggie loved and made so much of that child, that it made her actually hate that little boy.

Mr. Fray: While little boy are you referring to?

A. The stepson.
Q. That is made her actually hate the stepson?
A. She certainly said it.
Q. You are also bitter against Mrs. Henson, page 152-A } are you not?
A. I didn't appreciate the way I caught her acting with Lonergan, and I got mad at the time, I have gotten over it now, I don't hold malice in my heart for anyone.
Q. And if the child comes to live with you, you don't want Mrs. Henson to visit the child, do you?
A. Yes, I do.
Q. Do you want the child to visit Mrs. Henson?
A. Yes, I do.
Q. You don't want him to visit Jean?
A. Yes, he can visit Jean.
Q. But you don't want her to have the custody of him?
A. I certainly don't.

Mr. Higginbotham: That is all.

CROSS EXAMINATION.

By Mr. Fray:
Q. I take it then that you would permit Mrs. Henson to come and take the child and keep it for awhile?
A. I certainly would, I think she should have him and I think that he should know his mother, I certainly do.

By Mr. Higginbotham:
Q. Mrs. Baxter, there was one time when this child needed some help, wasn't there?
A. I have always helped this child.

Blanche Jacobs.

Q. There was a time when the young child was put out in the home of a stranger, wasn't it?

page 153 } A. Yes, I came to you at the time, you were Reggie's lawyer, and asked could I take him and you told me that I wasn't married and I did not have an established home and there was no way for me to get him and there was no use for me to ask it.

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page 154 } Q. Have you had occasion to employ a private investigator or detective to investigate Mrs. Henson?

A. Yes, sir.

Q. They conducted an investigation of her life down at Alexandria, didn't they?

A. Yes, sir.

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page 161 } MRS. BLANCHE JACOBS,

another witness for the Petitioner, Mrs. Elizabeth Jones Baxter, being first duly sworn, was examined and testified as follows:

Q. Will you state your name, your address, and your occupation and your age, please?

A. Well, my name is Blanche Jacobs, and my present address is 2221 Hill Street, Charlottesville, but my home is right here on Main Street in Orange; I own my home here and my age—

The Court: You don't have to tell that.

A. Sixty-nine, I don't care.

Q. What is your occupation, Mrs. Jacobs?

A. Well, I take care of an elderly gentleman, you might say I am a practical nurse.

Q. How long have you been doing that?

A. I have been there almost five years.

Q. In that one home?

A. In that one home, yes.

Q. Are you acquainted with Warren Gilbert Jones?

A. I say I am, I took care of him for several years.

Q. When did you first know him?

Blanche Jacobs.

A. They brought him to live in a trailer in my yard when he wasn't but three months old.

Q. Who do you mean when you say "they"?

A. His mother and daddy, and he stayed there
page 162 } until January, after he was five in November.

Q. During that time did you have the care and custody of the child under the terms of any Court order?

A. I did.

Q. And will you describe those circumstances?

A. Well, the husband and wife were divorced and Judge Miller put him in my custody without asking me if I would take him, but he knew I would. I had him and Judge Miller told me that I was only responsible to the Court, he made me feel that I was directly responsible to the Court for my decisions and everything.

Q. You say Judge Miller put the child in your custody without asking you. Had the child been staying with you on an unofficial basis prior to that?

A. Yes, it really started in August, I may not be entirely right, it has been so long, and I don't have any records.

Q. August of what year?

A. No, I don't know exactly, "Bee" went to work and she asked me to keep him until her husband came from work and I did, that was my first experience with the custody of the child, that wasn't custody that was just keeping him; then, when the home broke up—

Q. When was that?

A. In September, I think; it has been so long.
page 163 } Q. Do you remember the year?

A. Let me see—He was twenty-two months old, I know that, and they came to me in '50, so it must have been in '51. I kept the child really for Mrs. Henson, because she asked me to, until the home broke up.

Q. The child lived with you from that time when he was age twenty-two months?

A. I think that is correct.

Q. Until he was how old?

A. Five years and two months. Won't it in '55?

Q. From the time he was just not quite two years old until the time he was a little over five years old?

A. That is right.

Q. In other words, it was three or four months in excess of three years?

A. Four.

Blanche Jacobs.

Q. Will you state to the Court, who, if anyone, assisted you and aided you in your care of this child?

A. How do you mean?

Q. I mean—

A. Please, may I just tell it and may be I will answer your question?

Q. Please do.

A. The father lived in the trailer and you might say he assisted in a way because I went to Sunday School
page 164 } and Church on Sunday mornings and he would take him on Sunday morning and keep him while I went to Sunday School and church.

Q. How long did he live there?

A. Let me see, he lived there until the following October, a year—he lived there a little over a year.

Q. That was after his wife left?

A. Yes.

Q. And subsequent to that time, who, if anyone, assisted you in caring for the child?

A. No-one.

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Q. Do you know Mrs. Jean Jones?

A. Yes, slightly, I only knew *here* from the fact that Reggie married her.

Q. Did you know her before they were married?

A. Oh, yes, I knew them. I will tell you, they had a birthday party down there for the little boy after Reggie went down there to live and they asked me to come to it and I went because of Warren, and you might say that is my only contact.

Q. Knowing all of these parties as you do, and knowing the child particularly, do you have any opinion as to how his interest would best be served by an award of his custody in this case?

A. I don't think it is permissible for me to give an opinion, is it?

Let me tell you this—

Q. Would you answer that question, please?

A. I don't think I can, can I?

Blanche Jacobs.

page 167 } The Court: Yes, you may answer it.

A. Excuse me, "Bee," but I think his grand-mother ought to have him.

By the Court:

Q. We are not talking about who ought to have the child, we are trying here to determine the best interest of the child.

A. That is what I want.

Q. The question is, since you know all three of the parties, do you have any opinion, which would serve the best interest of the child?

A. That is so hard when I look at the mother. Let me tell you, the Grand-mother came there and looked after the child when he was a baby and she looked after "Bee."

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CROSS EXAMINATION.

By Mr. Higginbotham:

page 168 } Q. Mrs. Jacobs, you haven't observed Jean in relation to this child, have you?

A. No, Mr. Higginbotham, I don't think—

Q. Did she talk to you one time about this child?

A. Yes, she did, over the telephone.

Q. Tell Judge Bowles what she said.

The Court: Who is she?

Mr. Higginbotham: Jean A. Jones.

A. It was about three years after they took him and every time I would come home I would try to let him know something about me, I would call him up or go by on a Sunday after I got here, but I called him up. Yes, I did, I talked to her and I felt much better about him after I talked to her.

Q. What did she say?

A. I asked her if she was enthused about Christmas and she said, "Yes, I am, because he is so excited."

Q. Who was she talking about?

A. Warren. She didn't call his name, but said "he," she said, "I love him and I never want to have any children of my own, I just want us to do all we can for Warren." I

said, "Jean, you have made me very happy—" I had never seen them together, and I said, "You make me very happy when you tell me you care for the child." I have never seen them together.

Q. Never?

page 169 } A. Only one time, I called them across the street, they were going into the movie and my daughter had a little young baby, and the boy was emotionally upset and I didn't talk to him because he looked like he was about ready to cry and I didn't say a word because I knew he was home-sick.

Q. Do you mean he wanted to come back to you?

A. It was some little time—let's see, it was about six months after.

Q. And you haven't seen Jean in the last three years?

A. Oh, yes, I have been down there, I have been down to see Warren and he would not be home and she would tell me he was down at his grand-mother's.

Q. That was in the summer time?

A. Yes, I visited with her and saw the baby and saw her.

Q. Did she appear to care for the child?

A. She appeared perfectly natural and normal, yes. You know a step mother's job is not always an easy job, but I do think that the ties of blood are strong.

By the Court:

Q. Mrs. Jacobs, when you said you would go down Jean would say that the child had gone to visit his grand-mother, which grand-mother?

A. Mrs. Baxter. She said that the minute school

page 170 } is out he wants to go down there and I went twice and couldn't see him either time.

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ALMER JAMES GAYLE,

another witness, being called on behalf of the Petitioner, Elizabeth Gayle Jones Henson, being first duly sworn, was examined and testified as follows:

Almer James Gayle.

page 172 } DIRECT EXAMINATION.

By Mr. Fray:

Q. Please state your name, age and occupation.

A. Almer James Gayle, fifty-nine years old, I will be sixty the first of October.

Q. What is your occupation, Mr. Gayle?

A. Carpenter.

Q. Do you also have a farm?

A. Yes, sir.

Q. Where is that farm located?

A. It is located four miles east of Richardsville.

Q. You are at what is commonly known as Eley's Ford?

A. Eley's Ford, right at Eley's Ford, right on the river.

Q. Mr. Gayle, does your son in law, Mr. Donald Henson, engage in any farming operations to your knowledge?

A. Yes, he does, on my place.

Q. On your place?

A. Yes, sir.

Q. Will you explain to the Court what those operations consist of?

A. Well, he works for the Safeway people and on week ends and holidays when he is at home he is always doing something, and he asked me about farming some on this place of mine and I told him it would be all right, that I page 173 } had it rented to wasn't doing anything much, so I just let him farm and he has some Black Angus cattle and some sheep, and he has bought himself quite a bit of farm machinery, such as a tractor, plow, cultivator, and I just say he is an ideal young man.

Q. He works during the week in Maryland, doesn't he?

A. Yes, sir, he works for Safeway.

Q. And he lives in Alexandria?

A. He lives in Alexandria.

Q. With your daughter?

A. Yes, sir.

Q. Have you been there?

A. I have been there and spent the night and week ends.

Q. Is it a nice home?

A. Yes, sir, a nice home. I have a nice home but it is better than mine: it is in a nice neighborhood.

Q. How many bed rooms does it have?

A. They have two bed rooms.

Q. I know they have two bed rooms, but do they have any other sleeping arrangements they can use?

A. Yes, I call it—they have a big sofa bed, when they open it up it is just like a bed.

By the Court:

Q. Do they have any children, Mr. Gayle?

A. No, sir, only Warren, her boy, they have page 174 } custody of at the present time.

Q. But there are no children by the second marriage?

A. No.

Mr. Fray: That is all.

CROSS EXAMINATION.

By Mr. Higginbotham:

Q. Do you know Jean A. Jones?

A. No, sir, I have seen her twice, I have seen her this morning and she came down to my place, her and Reggie, soon after the separation of he and my daughter and wanted to give the child to them and before she could get the lawyer to fix the papers he backed out; and before they separated he begged I and my wife to take him, they were going to separate. I told my wife that he was just running on his foolishness. He said, "No. I am not." And I said, "You had better quit that stuff before you get it into your head." Sure enough, he said, "No, if you will adopt him I will give him to you." Sure enough in a few weeks they separated.

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DONALD HENSON,

another witness for the Petitioner, Elizabeth Gayle Jones Henson, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Fray:

Q. Mr. Henson, what is your employment?

Donald Henson.

A. I am produce checker for Safeway Stores, Incorporated, in Maryland.

Q. How long have you been married to your wife, Elizabeth?

A. It will be seven years the 24th of December.

Q. Have you all lived down in Alexandria all that time?

A. All but about six months.

Q. Where were you then?

A. I beg your pardon. We lived with her in laws when we first married—my in laws, and upon graduation from school we moved to Washington to stay with my Aunt temporarily, and then after going to work we moved to Alexandria.

Q. Were you raised in the Richardsville neigh-
page 176 } borhood?

A. Yes, sir.

Q. In Culpeper County?

A. Yes, sir.

Q. And that is where this young lady was raised, too, your wife?

A. She moved to Richardsville when she was approximately eight years old.

Q. How much do you make on your job, Mr. Henson?

A. I make $100.00 per forty hours.

Q. Every forty hours you make $100.00?

A. Guaranteed.

Q. How long have you been on that job?

A. It will be six years the 6th day of this month.

Q. You are rated a permanent employee?

A. Yes, sir.

Q. Have you been able to supplement that income with farm activities?

A. I think so, I don't keep a record, but I am not going in the hole.

Q. Do you supplement your food from the farm?

A. Well, not exactly, I raise only crops that will benefit my livestock.

Q. Are you willing to have this boy brought into your home?

A. Yes, sir.

page 177 } Q. Is your wife now working?

A. No, sir.

Q. When did she stop her employment?

A. Thursday evening at 2:30.

Q. Thursday, June 30th?

A. 2:30 Thursday evening.

Donald Henson.

Q. Last Thursday evening?
A. Yesterday.
Q. Where was she working?
A. Howard Johnson's.
Q. Was she a waitress or a hostess?
A. She was relief, where-ever in the restaurant they needed somebody, from manager down to dish washer.
Q. Do you have a neighborhood school there where you live in Alexandria?
A. Yes, sir.
Q. How far is it from your apartment to where the Grammar School is?
A. Half a block up and half a block down.
Q. Mr. Henson, at my request did you talk to some of the folks around Richardsville?
A. Yes, sir.
Q. Did I prepare a petition to be signed by them concerning you two people as proper parents?
A. Yes, sir.
page 178 } Q. Do you have that petition with you?
A. Yes, sir, you have it there.
Q. Approximately how many names did you get on it?
A. Sixty-five.

Mr. Higginbotham: Just a moment, Mr. Fray. Your Honor, we really don't object to the petition, but we think this trial ought to go according to orderly procedure, and we feel that such a petition is not proper.
The Court: You are objecting for the sake of orderly procedure. Is that your only reason?
Mr. Higginbotham: Yes, I think the rules of evidence ought to be followed.
The Court: Is there any objection to it, gentlemen? Suppose you look it over. The objection is obviously good, you couldn't get it in unless it is agreed to.
Mr. Coleman: Your Honor, I don't see any objection to it.
Mr. Higginbotham: Your Honor, if they don't object, I won't either.
Mr. Fray: Then, if there is no objection we will file it.
The Court: Yes, if there is no objection.

page 179 } Q. Mr. Henson, since the death of Reginald Jones, have you *endeavoured* or *your* and your wife *endeavoured* to see Warren?
A. Yes, sir.

Donald Henson.

Q. Will you kindly tell us about those visits you have made for the purpose of seeing Gilbert Warren?

A. Well, we went to see Warren on Saturday and on Monday—

Q. Is this after the death?

A. It was a week after the death of the father, after the funeral, and we come to see Mr. Higginbotham and Mr. Fry in order to get permission to take Warren home with us and keep him for the day. At which time Mr. Higginbotham told us it would be all right on the Monday following, if we took him and didn't keep him over night. So, we went back to get Gilbert Warren to take him to spend the day with us and at that time his stepmother, and his grand-mother, Mrs. Alger, had left to see Jean, who was in the hospital and on the following Saturday we went back with the same intention only to find out that Warren had been sick and out of school for a day or so and we couldn't have him that Saturday.

We went back on Monday—I stand to be corrected but I don't think they were at home on Monday; then we went back on the following Saturday and I have forgotten what the reason was—I don't remember what the page 180 } reason was, but we went back a couple of times. We went back on Monday and I took him out only one time, I brought him to Orange and at that time I bought him some little hand tools to work in flowers, because he liked *flours* so much; and we have not seen him for the last week.

Q. But practically every week end you all *endeavoured* to see him, is that true?

A. We did.

Mr. Fray: Your witness, Mr. Higginbotham.

Mr. Higginbotham: I don't believe I have any questions your Honor.

I will ask him one question.

CROSS EXAMINATION.

By Mr. Higginbotham:

Q. Have you and your wife visited this child during the past five years?

A. I have been to see Warren twice.

Q. Where?

A. I went to see him at Mrs. Alger's.

Q. When?

Annie Ricker.

A. On Saturday not too long after the trial when they said Mr. Jones could keep him. I went to the A&P to see Mr. Jones to get permission to carry Warren with us down to my step-father—my father in law's, excuse me, for the week end, we were going to be off, and he told me at page 181 } that time he couldn't let him go, because the Judge had told him that he shouldn't let him out of his custody, but I assured him I would carry him to church, but he still said, no.

Q. But your wife had a right to visit him and have him visit her?

A. Yes, I came twice, but never could get him on week ends.

Q. You never did exercise that right, and when you came after Reggie's death, the child didn't know your wife, did he?

A. No, sir.

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MRS. ANNIE RICKER,

another witness for the petitioner, Elizabeth *Gyle* Jones Henson, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Fray:

Q. Please state your name and residence?

A. Mrs. Annie Ricker, Richardsville.

Q. You are right much older than these Hensons, aren't you?

A. Quite a bit.

page 181-A } Q. Mrs. Ricker, how long have you known Donald Henson and his wife, Elizabeth?

A. All of their lives.

Q. Have they been neighbors of yours?

A. Well, the Hensons have, they lived just about in sight of Richardsville, my place, and we saw each other quite frequently, and I have been in Donald's home quite a lot, and he has been in our home and so has his mother, and we have just been neighbors all along.

Q. Now Mrs. Ricker, do these young people come up from Alexandria frequently? Do you still see them?

A. Yes, they come up you know, they attend the different activities in the neighborhood.

Q. From your knowledge of Mr. and Mrs. Henson do you consider them to be suitable people to have the custody of this boy, Warren Jones?

A. I certainly would think so, I see no reason why they wouldn't be; they are very *inteligent,* they are industrious and energetic.

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page 182 } MRS. OCTAVIA HARDING,

another witness for the Petitioner, Elizabeth Gayle Jones Henson, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Fray:

Q. Please state your name and residence, Mrs. Harding?

A. Mrs. Octavia Harding, Richardsville, Virginia.

Q. How old are you, Mrs. Harding?

A. Forty-three.

Q. Have you known Mr. and Mrs. Donald Henson in the past?

A. Well, I have known Donald all his life and Mrs. Henson practically all her life.

Q. Do you still see them when they come home on week ends?

A. Well, practically every week end, because they come to my house almost as much as they do to their mother's.

Q. From your knowledge of these people do you think they would be suitable people to have in their home Warren Jones, whom we have been discussing here today?

A. I certainly do; I don't see any reason why not.

Mr. Fray: Your witness, Mr. Higginbotham.

CROSS EXAMINATION.

By Mr. Higginbotham:

Q. Do they have a nice home?

page 183 } A. I have never been to their home because he works away from home, and I work the same as they do.

Ella Walker.

Q. You said that Mr. Henson is a nice boy?
A. He certainly is, he has always been nice.
Q. He would make the child a good father?
A. Yes, I don't see why not.
Q. Do you think he would be devoted to the boy?
A. He certainly would, he loves children.
Q. Do you think Mrs. Henson would bee a good mother to this child?
A. I think any mother would be to her own child.
Q. Do you have children, Mrs. Harding?
A. I have two.
Q. What would you think of separating those two children? You wouldn't think much of it, would you?
A. Well, they are separated right now.
Q. They are?
A. I have one of them married.
Q. If you had two young children, two brothers, you would think they should all grow up together, wouldn't you?
A. Well, not every time, because lots of times they cannot take care of them, and a lots of times they have to be separated so they can have a nice home.
Q. Other things being equal you would think it would be advantageous, wouldn't you?
page 184 } A. I don't think so, not every time.
Q. I said other things being equal—
A. Because I have a sister that was separated from me.
Q. You think that is a wise sort of thing?
A. Yes.

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MRS. ELLA WALKER,
another witness for the Petitioner, Elizabeth Gayle Jones Henson, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Fray:
Q. Mrs. Walker, please state your name and residence?
A. Mrs. Ella Walker, Richardsville, Va.
Q. Mrs. Walker, I believe you and your husband run a store down there, do you not?
A. Yes, we do.

Ella Walker.

Q. Have you known Mr. and Mrs. Donald Henson most of their lives?

A. Yes, I certainly have.

Q. Now, in your opinion do you feel that they are suitable people to have in their home this Warren Jones and raise him?

page 185 } A. Yes, sir, I do, for they are two good people.

Q. Do you think that the fact that this lady being the child's natural mother is a favorable circumstance for her?

A. I do.

Mr. Fray: All right, Mr. Higginbotham.

CROSS EXAMINATION.

By Mr. Higginbotham:

Q. Mrs. Walker, the ages of ten, eleven and twelve is a crucial age, isn't it, for children?

A. Yes, it is.

Q. And they should have as much peace of mind and as little moving about as possible, shouldn't they?

A. I don't have any children so I just don't know.

Mr. Higginbotham: That is all.

CROSS EXAMINATION.

By Mr. Coleman:

Q. Mrs. Walker, you live at Richardsville, is that correct?

A. Yes.

Q. Now Mrs. Henson and her husband have lived in Alexandria for how long?

A. Since—I don't know—several years.

Q. Did you say seven or several?

A. Several years.

page 186 } Q. Have you ever visited in their home in Alexandria?

A. No, sir.

Q. You have not?

A. No, I have not.

Q. Do you know where they are living in the City?

A. No, I don't know where they are living in Alexandria.

Ella Walker.

Q. How many children do you have?
A. I don't have any.
Q. Did you sign this petition?
A. Yes, sir.
Q. The one that has been introduced here?
A. The one that the Henson boy had, I signed that.
Q. Was that in your store?
A. Yes.
Q. All of them signed it there?
A. Yes.
Q. Was it left in the store for people to sign it?
A. Oh, no, it wasn't left in the store.

By the Court:

Q. Mrs. Walker, you have stated that you think that Mr. and Mrs. Henson would be good to the child and they would have a proper home. Can you go a little more into detail about what kind of training the child would get with Mr. and Mrs. Henson, that is from the standpoint of education, *religous* training and all of the things which go to page 187 } make up a home life of a child and its parents? Can you go into it in a little more detail?

A. Well, I do think they would make a good home for the child.

Q. Do you know what education Mr. Henson has or Mrs. Henson?

A. Yes, Mr. Henson finished high school, I think she finished high school, Mrs. Henson, but I know Mr. Henson finished high school.

Q. Do you know which church, if any, they may attend?

A. Well, I don't know what church they attend now because they are not living there.

Q. Do you know whether they are church going people or not?

A. I think they are—I think they are.

Q. Do you know anything about the Hensons and their moral life and their habits?

A. No.

Q. You know nothing about it?

A. No, I know nothing about that.

Q. Do you know whether they are accustomed to drinking, partying and rioting, or anything like that?

A. No—No, I don't think so.

Q. You don't think so?

A. No, I know not.

page 188 } Q. Do you know whether they are or not?

A. No, I don't think so; they didn't use to be, and I don't think they are now.

Q. I am not trying to confuse you, but none of this has been brought out.

Did Mr. Henson attend any church when he was at Richardsville?

A. Yes.

Q. What church did he attend?

A. The Baptist Church.

Q. Do you know whether he was a communicant or member of any church?

A. Yes, I do, he was a member at Lignum.

Q. What about his wife?

A. What do you mean? Was she a member of church?

Q. Yes, do you know?

A. No, she didn't go to church at Richardsville, she went to church over at Elley's Ford, they were closer to that church.

Q. Do you know whether either one, particularly, Mrs. Henson, has had any experience with children?

A. No, I don't know if she has; I guess she has, her sister has some children.

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page 189 } DONALD HENSON,

recalled as a witness for the petitioner, Elizabeth Gayle Jones Henson, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Fray:

Q. Mr. Henson, do you drink?

A. No, sir.

Q. Does your wife drink?

A. No, sir.

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MRS. IVA CLORE,

another witness for the Petitioner, Elizabeth Gayle Jones Henson, being first duly sworn, was examined and testified as follows:

Iva Clore.

DIRECT EXAMINATION.

By Mr. Fray:

page 190 } Q. Mrs. Clore, I believe you lived down at Richardsville and are somewhat older than Mr. and Mrs. Henson, is that correct?

A. Yes, I do.

Q. I believe you have raised a daughter, haven't you?

A. Yes, I have.

Q. Is your daughter married now?

A. Yes, sir.

Q. Mrs. Clore, have you known Mr. and Mrs. Donald Henson for sometime?

A. Well, I have known Donnie all my life and I have known Mrs. Henson for a long time.

Q. Tell the Court what kind of people they are?

A. As far as I know I couldn't say a word in the world against Donnie or Mrs. Henson either one. I have never known anything wrong against either one and I have lived near them and known about them practically all their lives, and I have a daughter and Mrs. Henson used to visit in my home many times and as far as I know she has always been a lady.

Q. Do you consider them to be suitable people to have this boy?

A. I certainly do; I think they are the ones to have the child.

Mr. Fray: Your witness, Mr. Higginbotham.

page 191 } CROSS EXAMINATION.

By Mr. Higginbotham:

Q. Madam, do you know why Mrs. Henson hasn't visited her child and allowed her child to become a stranger to her in the last five years?

A. No, I don't.

Q. Do you know why she would do that?

A. No, I do not, because they were married and came to Orange to live.

Mr. Higginbotham: Thank you, ma'm.

Elizabeth Gayle Jones Henson.

CROSS EXAMINATION.

By Mr. Coleman:

Q. They have been living in Alexandria, Mr. and Mrs. Henson, for quite some years, haven't they?

A. Yes, since they have been married.

Q. Have you visited them down there?

A. No, I haven't visited them in Alexandria, but I have visited them at his father's.

Q. Do you know where they are living?

A. No, I don't.

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page 192 } MRS. ELIZABETH GAYLE JONES HENSON, a witness in her own behalf, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Fray:

Q. Please state your name and age?

A. Mrs. Elizabeth Henson, twenty-seven.

Q. Mrs. Henson, in a divorce cause now pending here in Orange County you lost the custody of your son, Warren, how old were you at the time?

A. I don't even *known* to tell you the truth, Mr. Fray. I couldn't tell you the year, I guess I was fifteen—fifteen or sixteen years old.

Q. How old were you when you were married?

A. Fifteen.

The Court: I believe there was something said about this divorce decree being about '51.

Mr. Fray: It speaks for itself, the record does.

The Court: I would like to refresh myself on that.

It has been about ten years ago, that would make you around seventeen, if that is true?

A. Yes, sir.

page 192 } By Mr. Fray:

Q. Mrs. Henson, have you been, up until recently, employed?

A. Yes, sir, up until this past Thursday.

Elizabeth Gayle Jones Henson.

Q. What did you do?

A. I turned in my resignation so if I do get the custody of my child I can stay at home and be with him.

Q. Describe to the Court, now, just what type of apartment you have?

A. Well, it is a one bed room apartment, and then I have a living room, which has a sofa in it that can be opened up to make it into a bed, and I have a kitchen, dining room, and a bath and a hall way.

Q. Would you be in a position to acquire larger quarters if you are given the custody of Warren?

A. Yes, sir, I have already checked on it and they do have two bed room apartments there where I live and we can get one of them.

Q. Do you drink, Mrs. Henson?

A. No, sir.

Q. Have you saved some of the money you have made?

A. Some of it, yes, sir.

Q. Do you feel that you could give this boy a good home there in Alexandria?

A. Yes, sir.

page 193 } Q. How about his education, what would you do about his schooling now?

A. Well, there is a school just about a good block from where we lived that he could go to school there and then later on if he wanted to go to college we could arrange to—

The Court: Later on what?

A. If he wanted to go to college we could arrange that, too.

Q. After the divorce or during the divorce the custody of this child was awarded to Mrs. Jacobs, that is correct, isn't it?

A. Yes, sir.

Q. While the child was with Mrs. Jacobs did you visit the child?

A. Yes, sir, we did.

Q. How long have you been married to Mr. Henson?

A. Going on seven years.

Q. And both you and Mr. Henson did go to see the child at Mrs. Jacobs?

A. Yes, sir, we did.

Elizabeth Gayle Jones Henson.

Q. Did you take the child anything?
A. We used to buy clothes and carry up there and take him things and go on picnics and take him with us.
Q. I believe in 1955, is that correct Mr. Jones
page 194 } got custody—

Mr. Higginbotham: January 26th, 1955, that is right.

Q. What has been the situation as far as your visiting Warren since your husband remarried—your former husband?
A. Well, to start with when we would pass Mr. Jones and his wife, Jean, on the street, I have had her turn around and poke her tongue at me and make faces, and they were not friendly after the trial, which is understandable to a certain extent. My husband and I did come up twice to see him and they always had some excuse so we couldn't see him, and we couldn't see driving all the way up here and then not being able to see him, that is why we didn't come.
Q. Do you love this boy?
A. Yes, sir, if I didn't I wouldn't be here.
Q. Are you asking the Judge, Mrs. Henson, to give to you the complete custody of this child?
A. Yes, sir, I am.
Q. Would you be willing to have Mrs. Baxter or Mrs. Jones, there, come and visit with the child or take him away for reasonable periods?
A. Yes, sir.

Mr. Fray: Your witness.
Mr. Higginbotham: Your Honor, we move the
page 195 } the Court to allow us to examine her in Chambers.
Mr. Fray: We have no objection, if your Honor please.
Mr. Coleman: Of course, we don't have any objection.
The Court: All right, further examination will be conducted in chambers.

Note: Thereupon, the Court and counsel, together with the witness, retired to chambers, where the following proceedings were had:

Mr. Fray: I would like to ask Mr. Higginbotham one question.

Elizabeth Gayle Jones Henson.

Are you intending now to ask her about some alleged indiscretions of some years ago?

Mr. Higginbotham: I intend to ask her why she lost the custody of the child originally and cross examine her on that.

Mr. Fray: If your Honor please, we feel he is making her his witness for this part of the case, and I would like to point out to the Court the case of *Judd* v. *VanHorn*, 195 Va. 988, which is a case concerning the custody of a child, and we feel it is this one on all fours, and from an inspection page 196 } of that case it can be seen that the burden of showing the existence of circumstances, which would deprive the father of the right of the custody of his son, is upon the party opposing such right.

This case is a case where the custody was originally in the mother, and the father, after the mother's death petitioned against the grandparents.

Our position now is this: This now becomes their case and they are supposed to introduce their case in chief when they were in here this morning.

As a matter of fact the Court says and goes on further speaking of the surviving parents right:

"That the surviving parents right with respect to the custody and control of his minor child never should be denied or interferred with except for the most cogent and convincing reasons, and if the surviving parent is a satisfactory person he is entitled to custody of the child, and the burden of showing different is on those alleging it."

Now, they have to show that in chief, that this page 197 } lady is not a suitable person to have the custody of her child; they have to show that in chief because that is where the burden of proof is. So, consequently, he has to make her his witness now. What he is trying to do now constitutes indirectly rebuttal evidence.

The Court: Now, you have the case before you, you are familiar with it. As a general principle of evidence I would be certainly inclined to think that that would be correct, but be that as it may, in a case of this kind if the party, who is a party to the suit has not testified, not been called, although she could have been called, of course, as an adverse party, but if there is anything that may affect the future welfare of this child due to the immorality of one of the petitioning parties for the custody, then the Court should know it, whether

it comes out on direct examination or cross examination, and I believe this would be an instance in which the general rule would not apply.

I am going to let it come out.

Mr. Fray: All right, sir, note an exception,
page 198 } please, sir.

CROSS EXAMINATION.

By Mr. Higginbotham:

Q. Mrs. Henson, I have not cross examined you, have I?

A. No, sir.

Q. You haven't visited this child during the last five and a half years, have you?

A. That is right.

Q. When the child was awarded to your husband, Mr. Jones, didn't you say up here at Mrs. Lucas' house the day of the Court's judgment that you didn't ever want to see the child again?

A. Not that I can recall, no, sir.

Q. That was your attitude after the Court rendered its decision, that you didn't want to ever see the child again, wasn't it?

A. No, sir, it was not.

Q. The child was removed from your custody because of your conduct with other men, isn't that correct?

A. To tell you the truth I couldn't tell you; I couldn't tell you one word that was in the divorce papers, if I could read it I still wouldn't know.

Q. You recall the instance over on Pelliso Avenue, don't you?

A. Yes, sir, I recall it—
page 199 } Q. Between you—
A. Earl Lonergan, yes, sir.

Q. You now realize that was wrong, don't you?

A. It never was proven true, only by word of mouth.

Q. Mrs. Baxter here was one of the witnesses to that, wasn't she?

A. Yes, sir, and her son and her son's boy friend.

Q. And Harold Nicholson and Marshall—

A. Who is Harold Nicholson?

Q. He is one who testified in that case, isn't he?

A. I couldn't tell you.

The Court: Was this original divorce granted on the ground of adultery?

Elizabeth Gayle Jones Henson.

A. No, sir.

Mr. Fray: No, sir, it was on the ground of constructive desertion.

Mr. Higginbotham: That is all.

The Court: Are there any questions?

Mr. Somerville: I would like to ask a few questions.

CROSS EXAMINATION.

By Mr. Somerville:

Q. You stated in the Court Room that you had not been to visit your son because of the attitude expressed towards you?

page 200 } A. That is right.

Q. State to the Court what the attitude of Jean A. Jones has been.

A. Do you mean right now?

Q. Right now and—

A. Since Reginald died she was real nice, she has been just as nich as could be, and Mrs. Baxter has too. I cannot say a thing against either one, but Jean's mother and father came over to see me after Reggie had died and they were just as nice as could be and said Jean wanted to see me and all.

We came up to see Warren and she wasn't at home the first time we came, she had gone to the hospital. The next time we came she was still in the hospital. The next time she had come home long enough to pack her clothes and go to Washington or Maryland somewhere. The next time I came she had just come home from Washington or somewhere and had gone back to see the doctor, and actually during the whole time I have seen her one time; she has been nice the time I saw her.

Q. I mean before that?

A. Before that, I never seen her but two or three times and she did even admit to my husband that she did have ill feelings on account of what had been said about me by Reggie and Mrs. Baxter when the trial was going on about the custody of the child.

page 201 } Q. Do you, yourself, know anything of the situation under which your former husband has been living with his second wife?

A. Only what she has told me.

Q. Who is she?

Elizabeth Gayle Jones Henson.

A. Jean A. Jones.
Q. Have you ever been down there?
A. Yes, sir, every week end since Reggie died.
Q. I mean before that.
A. No, sir, I know what she has told me, but I have no proof other than what Mrs. Jones, herself, told me and my husband and that is just hearsay.

Mr. Fray: I think you can tell what she told you.

A. She told me her and Reggie weren't getting along, that Reggie was running around all the time, and I told her, "I know when he was married to me he did the same thing."

Mr. Higginbotham: If the Court please, Reggie is dead and I don't think that is proper.

A. I know that is what she told me about the condition of her marriage.
Q. She stated that they were not having a happy marriage?
A. That is the way she put it to me, yes, sir.
Q. What church have you been attending?
page 202 } A. None, I have been working since my husband I got married. The first eight months I didn't work, we lived in Washington, and then we moved to Alexandria and I worked at Howard Johnson's, I had to work on week ends, but since I have quit I will be able to go to church now.
Q. You really have no church affiliation? You haven't had any close ties with the church, have you?
A. When I am off from work I go to church.
Q. You do? Where do you go?
A. Elley's Ford Baptist Church.
Q. But you haven't been making that a regular practice?
A. No, because I have had to work, I was working and I either had to quit work and stay at home and go to church or work one, but I am not working now and if you would like I would invite you down to Eley's Ford Church for all day service and dinner on Sunday.

Mr. Somerville: That is all I have, sir.

Elizabeth Gayle Jones Henson.

RE-DIRECT EXAMINATION.

By Mr. Fray:

Q. I don't know whether you stated for the record your present age.

A. Twenty-seven.

Q. And that was some ten years ago that you and your former husband were divorced?

A. Yes, sir.

page 203 } Q. And this incident—

Mr. Fray: Although we don't waive our objection and exception, but rely thereon strictly, we would like to ask this question.

Q. Had you and your husband, Reginald Jones, separated at the time of this instance?

A. Yes, sir, we had been separated quite awhile.

The Court: Do you want to put "alleged" in that question.

Mr. Fray: Alleged incident, yes, sir. That is all.

By the Court:

Q. Mrs. Henson, I have been wondering all day about this divorce action. You see, I wasn't on the bench when this divorce was granted, I think Judge Miller granted the divorce.

A. Yes, sir.

Q. And even if I had been I wouldn't remember it that long back.

Of course, in that case your husband was awarded custody of this little boy, and now, I understand from your testimony or the statement of your counsel that the divorce was granted on the ground of constructive desertion and not adultery.

A. Yes, sir.

page 204 } Q. But it has been brought out in the examination that you may have—you needn't admit it, you certainly don't admit and you may deny it, that at that time when you were approximately seventeen years old that there may have been some question of your moral conduct. It was brought into question, wasn't it?

A. It was brought into question, yes, sir.

Q. What I am more interested in now is not what you may have done or not done when you were seventeen years old, but

Jean A. Jones.

I want to know something about your moral life, you and your husband both, for that matter, since you are asking for custody, now and in the past several years. What has been your conduct morally?

A. Well, my husband I both, since we have been married, we have been very happy, and I don't think he has ever stepped out on me, not that I know of, and I certainly haven't on him.

Where I have been working the past six years I know a lot of men and a lot of women, but I still haven't found a man that can hold a light to my husband; he is the best. We may have our disagreements, everybody does, as far as that is concerned.

Q. You must realize that even though you are the natural mother of this child, if I thought for one moment, and I am not suggesting you are, but if I thought for one page 205 } moment you were an immoral person, I wouldn't give you custody of this child, and that applies to any other petitioners, of course.

Now, you tell me that you are living a good, clean moral life?

A. Yes, sir.

Q. You know now if that is not true that these other parties will have an opportunity to go into that?

A. They can check all they like and as long as they like, which I think Mrs. Baxter has already done to a certain extent, I understand.

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page 207 }

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MRS. JEAN A. JONES,

recalled by counsel for Elizabeth Gayle Jones Henson, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Fray:

Q. Mrs. Jones, since your husband's death, you have had a right rought time of it, haven't you?

A. I certainly have.

Q. You have been hospitalized?

Jean A. Jones.

A. That is right.

Q. And on how many occasions have you been
page 208 } hospitalized?

A. Twice.

Q. Where were you in the hospital?

A. University Hospital.

Q. University of Virginia Hospital?

A. Yes, sir.

Q. The first time you went to the hospital, how long did you stay?

A. It was about a week.

Q. Did you come back home?

A. Yes, sir.

Q. And then you had to return to the hospital for treatment?

A. Yes, sir.

Q. Your nerves have been giving you a lot of trouble since then, haven't they?

A. Of course.

Q. And today you preferred not to stay here in the Court Room on account of your physical condition, that is true, isn't it?

A. Yes, sir.

Q. You stated this morning that you would be willing for Warren to visit with Mrs. Baxter and his natural mother, Mrs. Henson, is that true?

A. Yes, sir.

Q. Would you have any objection, owing to the
page 209 } situation of your health, for Mrs. Henson to take
Warren on down to Mr. Gayle's, or over to Alexandria for awhile, while you recuperate?

A. That is his mother, I know.

Q. Ma'm?

A. That is his mother, I know that, sir. (witnesses pauses) Do you mean that I wouldn't see Warren any more?

Q. No, I didn't say that.

The Court: May be you had better read the question back.

Note: Here the reporter read the question back to the witness.

A. If Warren wants it that way.

* * * * *

page 214 }

* * * * *

MRS. SYLVIA ALGER,

another witness in rebuttal, called by Petitioner, Jean A. Jones, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Higginbotham:

Q. Mrs. Alger, in chambers, it has been suggested that perhaps your husband is given to drink. Is that so?

A. Not now he isn't; he did at one time; he drank some beer.

Q. How do you and your husband get along?

A. We get along just fine; we have been mar-

page 215 } ried thirty-six years.

Q. Do you have any arguments?

A. Who doesn't have arguments?

* * * * *

JEAN A. JONES,

recalled as a witness in her own behalf, in rebuttal, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Higginbotham:

Q. Mrs. Jones, I have just one question. It has been testified here that on one occasion you said that Reginald made so much fuss over Gilbert Warren that it made you actually hate Gilbert Warren?

A. That is out of all reason.

Q. Did you ever make such a statement?

A. I love Gilbert Warren, I never said such a thing.

The Court: That answers it.

* * * * *

Reginald Lamont Jones.

EXTRACT FROM JEAN A. JONES EXHIBIT.

Virginia:

In the Circuit Court of Orange County.

Reginald Lamont Jones, Complainant,

v.

Mary Elizabeth Gayle Jones, Defendant.

Transcript of testimony heard *ore tenus* before the Honorable Burnett Miller, Jr., Judge of the Circuit Court of Orange County, at Orange, Virginia, December 5, 1951.

* * * * *

REGINALD LAMONT JONES,
the first witness for the complainant, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Fry:

* * * * *

Exh.
12/5/51
page 11 }

* * * * *

Exh.
12/5/51 Q. Did you see them together after that?
page 12 } A. Yes, sir.
Q. When was that?
A. Saturday morning the 29th.
Q. Of September 1951?
A. Yes, sir.
Q. When did you see them then?
A. I got two people to go with me on this occasion and my mother.
Q. Who were these people?
A. Marshall Nicholson and Harold Nicholson. We drove

in Harold Nicholson's car and Marshall drove; we pulled the car in behind the Suddith Buick place and mother stayed in the car and Marshall and Harold and myself got out and went behind the Amoco station and waited and they came out of the mill together and got in the car and went on up about a block from where Mrs. Bartlett lives and parked their car—

Q. Why did they park the car there?

A. Well in the meantime she had moved to Barletts, we went on by and they were parked there, we went on by and parked our car where they couldn't see it and Marshall and Harold and myself got out and walked up behind their car.

Q. Where were your wife and Earle Lonigan at that time?

Exh. 12/5/51 page 13 } A. Sitting in his car. Then a car drove up and parked behind them and Earle started his car up and went somewhere and came back and parked in the same place. We tried to watch them but there is a street light there and we were afraid they would see us, so we went on back to the car and Marshall and Harold and myself got back in the car with mother, so Marshall drove on around by them to see whether they noticed the car or not and they didn't notice it so we came on back and parked right opposite them, Marshall, Harold and Mother and I were laying down in the car so they wouldn't see us; then Marshall got out and started—

Q. What did you see while you were in the car?

A. She was laying back with her head back kind of against the door and window and he was up on her.

Q. How long were you watching them there?

A. Approximately fifteen minutes.

Q. What were they doing?

A. She would pull his head up and kiss him every once in the while, his head was down on her breast.

Q. What did you do then?

A. When Marshall got out and Mother and all of us got out, Mother was in front and Harold and I were behind her, Mother opened the door and we through the light over on them.

Q. What sort of light?

A. A flash light.

Q. What happened then?

Exh. 12/5/51 page 14 } A. Earle Lonigan rolled over underneath the steering wheel.

Q. What happened then?

A. All of us came out of the car and went over and opened their car.

Elizabeth M. Jones.

Q. Which side was that on?
A. On the right side.
Q. What did you see when you opened the door?
A. He was sitting under the wheel and his pants were open and his shirt tail was sticking out.

* * * * *

Q. Did you make any remarks to either one of them, Mr. Jones?
A. She told me before I said anything, she said, "What have you got to do with this, you and I are through." And Earle Lonigan said, "We haven't been doing anything."

* * * * *

Exh.
12/5/51
page 15 }

* * * * *

A. I said "Earle don't tell me no damned lie, I have watched you before." And Mother told him, "You should be ashamed of yourself, I thought you came from a good family of people," and he said, "I am ashamed of myself and I am sorry and it won't happen again."
Q. What happened after that with respect to that incident?
A. Well after we stood there and talked a little while we went on and left them there together.

* * * * *

Exh.
12/5/51
page 21 }

* * * * *

MRS. ELIZABETH M. JONES,
a witness for the complainant, being first duly sworn was examined and testified as follows:

Elizabeth M. Jones.

DIRECT EXAMINATION.

By Mr. Fry:

* * * * *

Exh.
12/5/51
page 26 }

* * * * *

Q. Don't tell what he told you. Did you see the defendant in the presence of Earle Lonigan after that time?
A. Yes, sir.
Q. When was the next occasion?
A. Friday morning.
Q. Friday morning following the Wednesday morning?
A. Yes, sir.
Q. Where did you see them then?
A. I saw them come out of the silk mill, come down and go to the automobile, he unlocked the door—
Q. What time of morning was that?
A. It was 2 o'clock when they came out of the silk mill. He unlocked the door and pushed it together again and he embraced her.
Q. Who was with you?
A. Reggie.
Q. What occurred after that?
A. They got in the car and drove up in front of her rooming house.
Q. Did you watch them there?
A. Yes.
Q. How long did you watch them?
A. I say about thirty-five minutes.
Q. Did you see them in the presence of each other after that?
A. Yes, sir.
Q. When was the next occasion?
A. Saturday morning.
Q. Saturday following the Friday you have just related?
A. Yes, sir.

Exh.
12/5/51
page 27 }

Blanche S. Jacobs.

Q. Where did you see them then?

Exh. 12/5/51 page 28 } A. I saw them come out of the silk mill together get in the car and go to the other rooming house she was at Mrs. Bartlett's and park.

Q. Who was with you on this occasion?

A. Marshall, I don't remember his last name and Harold Nicholson and Marshall and Reggie.

Q. What did you observe there, if anything?

A. I didn't observe anything except they were parked in the car, but after Marshall pulled the car across the street from them and got out then I saw him on top of her loving her and hugging her.

Q. What did you do?

A. I got out of the car, too, the flashlight and flashed it on them and he rolled over and rolled underneath the steering wheel and she sat up.

Q. Did you say anything to them?

A. Yes I did.

Q. What did you say?

A. She told me, "I thought you weren't going to have anything to do with this."

Q. Did you speak to Lonigan?

A. Yes I did. I said, "Earle, I am ashamed of you, I thought you come from a good family of people," He said, "I am sorry, I am ashamed of myself."

Exh. 12/5/51 page 29 } Q. Did you observe their appearance in the car?

A. Yes I did.

Q. Will you describe their appearance?

A. He had his shirt tail out and his pants open.

Q. What was the appearance of your daughter in law, the defendant?

A. She was just sitting up in the car.

* * * * *

Exh. 12/5/51 page 32 }

* * * * *

MRS. BLANCHE S. JACOBS,

another witness for complainant, being first duly sworn, was examined and testified as follows:

Blanche S. Jacobs.

DIRECT EXAMINATION.

By Mr. Fry:

* * * * *

Exh.
12/5/51
page 33 }

* * * * *

Q. Have you ever heard the defendant, Mrs. Jones, use any profane language?

A. I have.

Q. On what occasions did you hear her do that?

A. The first time was one Sunday morning, she was in the kitchen with me, Reggie and the little boy that live there was out in the yard passing ball and she went out to her trailer and the ball passed over her head or close to her, it didn't hit her and she turned on him and used terrible language.

Q. Could you repeat that language?

Exh. 12/5/51 page 34 } A. Oh you don't want me to talk like that. Do I have to? Excuse me. Should I?

Q. Just let it go. Was that soon after they came there or how long?

A. No that was not soon after, that was probably in the spring, it seemed like it was during school, it must have been the late spring.

Q. Have you heard her use any profane language to Reggie since that time?

A. Yes I have.

Q. Have you heard her use it seldom or frequently?

A. Well I would hear her fussing, I don't hear well and I didn't want to hear it. I objected to her talking like that, and I told her the first time I wouldn't have it, that I didn't like for people to talk like that and I didn't want it in my yard, so I tried not to hear it.

Q. Did you hear it?

A. On one occasion I heard the words that were said and I called her in my living room and I told her that when she got mad, why didn't she write him a note, if she couldn't keep from using such language.

Q. Did you hear any other words used?

A. Only a couple of times I heard words and expressions

used, but I had complaints of it from people who stayed at my home.

Exh. 12/5/51 page 35 } Q. How frequent were these complaints?

A. It got so it was often.

* * * * *

Exh. 12/5/51 page 36 }

* * * * *

Q. Since September 26th have you had the child in your possession all the time?

A. Entirely.

Q. Has the defendant, Mrs. Jones, visited the child during that time?

Exh. 12/5/51 page 37 } A. Yes.

Q. Will you state how often she has visited the child?

A. Well in the beginning she came most every day for probably a week and then she came about once a week for awhile, recently she has let as much as two weeks go by without coming to see him.

Q. On these visits how long would she stay?

A. Three, five and one time seven minutes.

Q. How do you remember so exactly how long she would stay?

A. Because I noticed it, I tried to get her to stay and play with him and keep her contacts with him as a mother.

Q. Would she do that?

A. No, not until yesterday.

Q. What was the condition of the child on the Monday morning when they brought him there under the agreement? Was he well?

A. He was sick when she brought him, she told me he had been sick and throwing up all night long.

Q. That was on Monday?

A. Yes.

Q. When was the next time after that that she saw him?

A. She came on Tuesday.

Q. Did she inquire about the child?

A. She took him up and held him in her lap and said I

Blanche S. Jacobs.

believe he has a fever, and I said I know he has.

Exh. 12/5/51 page 38 } Q. How long did she stay on that occasion?

A. About three minutes.

Q. When was the next occasion she came?

A. She was in the yard twice on Wednesday, but did not come in the house.

Q. Did she ask about the child?

A. No, sir.

Q. You stated that she came nearly every day the rest of that week and stayed short periods of time. How often has she been to see him in the last month?

A. Well she told me the other day she came one day and I was asleep, but she missed two weeks at two intervals, I think, I am not positive, because I had stopped paying too much attention to it, but what hurt me she didn't come to see him on his birthday.

Q. When was his birthday?

A. The 28th on Wednesday.

Q. What month?

A. November.

Q. Did she send him a present?

A. She brought one Monday.

Q. What Monday was that?

A. That was day before yesterday; I thought may be she would send him a card, but she didn't.

Q. Did she ever feed the child while she was there?

Exh. 12/5/51 page 39 } A. No, I suggested to her on Monday after she had been away a week, she came and wanted to take him down the street and I told her no, it was time for him to have his lunch, because I have tried to get him on regular eating habits, and I asked her if she wouldn't like to feed him and give him his bath, that is what I would have wanted to have done and she said, no, she didn't have time.

Q. Has she ever fed him or given him a bath since he has been put in your care?

A. No.

Q. You say she spent sometime with him yesterday?

A. Yes.

Q. About how long did she spend with him?

A. I don't know, I expect she was there twenty or twenty-five minutes.

Q. Is that the only occasion—

Blanche S. Jacobs.

A. That she has ever spent any time with him. In the meantime he has learned to talk and he just says everything and he is so cute and I regretted that she wouldn't stay with him.

Q. Did anyone ever come with the defendant when she came?

A. Almost every time.

Q. Who were they?

A. I don't know the girls.

Exh. Q. Would it be some girl?

12/5/51 A. Yes, different ones.

page 40 } Q. Mrs. Jacobs before you took charge or were given custody of the child, was the child receiving proper attention?

A. In my opinion no.

Q. I mean in your opinion.

A. And I was glad they had taken him to this pediatrician.

Q. Did the child have any established habits when you received him?

A. None at all.

Q. Does he have any now?

A. Everyone he is supposed to have.

Q. What were some of those?

A. He tells me for his sanitary habits every time almost without exception, his BMs are established at certain times and he comes and tells me just as a child that age should do. He gets his bath at certain times, he sleeps his regular times, takes his food and eats what he is supposed to eat.

Q. None of that was taking place when the child was delivered into your care?

A. Not a one, he had a bottle, and he slept with a bottle all night long.

Q. Have you ever heard Mrs. Jones' make any statement with respect to whether or not she wanted the child?

A. Yes, I heard her say but you often hear a mother say that.

Exh. Q. What did she say?

12/5/51 A. She said she wouldn't have had it, if she could have helped it, but you often hear mothers say that.

Q. How many times have you heard her say that?

A. I heard her twice.

Harold Nicholson.

* * * * *

Exh.
12/5/51
page 50 }

* * * * *

HAROLD NICHOLSON,
another witness for complainant, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Fry:

* * * * *

Exh.
12/5/51
page 52 }

* * * * *

Q. When did you first see Earle Lonigan and Mrs. Jones together on this occasion you are talking about?

A. It was at this Amoco station down next to the silk mill on the right.

Q. When did you first see them there?

Exh. 12/5/51 page 53 } A. Well we parked our car behind Suddith Buick and walked across the field and waited on a little embankment until she got off from work at 2 o'clock. At about five after two they come on up to the car, talking about something, I couldn't hear what they were talking about; they got in the car and drove off and we went back to my car and got in and drove on up and parked on Peliso Street about a block or half block from where she was staying and when we got there we saw his car was parked on Washington Street. We tried to walk up to the car on our feet, but there was a street light there and we were afraid we would be seen, so we got back in the car and Marshall drove and drove around the block and came back and parked the car on Peliso and we walked on up behind the car and tried to get to the car, but we couldn't get very close, and about that time the preacher came by and parked on down

the street below them and Earl pulled out and went I would say a block or two and came back and parked again in that same place, and then we went back to our car and got in and Marshall, my brother, drove it and we went around the block and parked on the opposite side of the street from where they were. Mrs. Jones, Reggie and myself lay in the back seat and Marshall drove up on the right-hand side right opposite where Earle had parked and we sit there and watched them and we saw Earle on top of her and saw him moving up and down, and Mrs. Jones got out with the flashlight and went across the street and Reggie and myself were right behind her, and opened the door and Earl was sitting under the steering wheel and his pants were unbuttoned.

Exh. 12/5/51 page 54 } Q. Did Mrs. Jones make any statement?

A. Mrs. Jones, said, "Earle I am surprised at you."

Q. I am talking about the defendant in this case?

A. She said, "Reggie, you don't have nothing to do with me now, we are through."

Q. What else was said by either Earle Lonigan or the defendant?

A. Mrs. Jones said, "I am surprised at you, I thought you came from a better family than that." And Earle said, "I am ashamed of myself," and said, "It will never happen again." At first Earle said "Reggie, we haven't done a thing out of the way," and Reggie said, "Don't lie to me, I saw you down the street the other night." Earle said, "I am sorry, it will never happen again."

Q. What happened after that? Did you all leave?

A. Yes, we left them there.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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