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Clerk, Supreme Court of Appeals
Richmond, Va.

Record No. 5206

In the Supreme Court of Appeals of Virginia at Richmond

EDITH F. FURR

v.

MILDRED ARNOLD

FROM THE CIRCUIT COURT OF FAIRFAX 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. 5206

VIRGINIA:

In the Clerk's Office of the Supreme Court of Appeals at the Supreme Court of Appeals Building in the City of Richmond on Thursday the 21st day of July, 1960.

EDITH F. FURR, Plaintiff in Error,

against

MILDRED ARNOLD, Defendant in Error.

From the Circuit Court of Fairfax County

Upon the petition of Edith F. Furr a writ of error and *supersedeas* is awarded her by one of the Justices of the Supreme Court of Appeals on July 21, 1960, to a judgment rendered by the Circuit Court of Fairfax County on the 26th day of February, 1960, in a certain action at law then therein depending wherein Mildred Arnold was plaintiff and the petitioner 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 three thousand dollars, with condition as the law directs.

RECORD

* * * * *

In the Fairfax County Court of Fairfax County, Virginia.

Edith F. Furr having filed an affidavit of substantial defense, and having paid the accrued and removal costs, this case is removed to the Circuit Court of Fairfax County, Virginia.

Given under my hand this 27th day of May, 1959.

J. MASON GROVE, Judge.

Filed in Circuit Court Clerk's Office May 27, 1959.

THOMAS P. CHAPMAN, JR.
Clerk Fairfax County, Va.

* * * * *

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* * * * *

In the County Court of Fairfax County, Virginia.

MOTION FOR REMOVAL.

Comes now Defendant, Edith F. Furr, in the above case and this cause being within the amounts provided by the removal provisions of the Code of Virginia, Defendant prays that the cause be removed to the Circuit Court of Fairfax County on the ground that Defendant has a substantial defense to the claim.

EDITH F. FURR.

Subscribed and sworn to this 26th day of May, 1959. My commission expires March 6, 1962.

JOHN T. HAZEL, JR.
Notary Public.

JESSE, PHILLIPS, KLINGE & KENDRICK
By JOHN T. HAZEL, JR.
Counsel for Defendant
Jesse Building, Fairfax, Virginia.

* * * * *

page 3 } AFFIDAVIT.

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

This day personally appeared before me, the undersigned Notary Public, EDITH F. FURR, who made oath and stated that she is the Defendant in a certain suit brought against her by Mildred Arnold and that to the best of her knowledge and belief she is not indebted to the Plaintiff, Mildred Arnold, for any sum whatsoever.

EDITH F. FURR.

Subscribed and sworn to this 26th day of May, 1959. My commission expires March 6, 1962.

JOHN T. HAZEL, JR.
Notary Public.

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* * * * *

In the County Court of Fairfax County.

AFFIDAVIT.

This day, in the County of Fairfax, Mildred Arnold, personally appeared before me, John L. Wann, Jr., a Notary Public of and for the County aforesaid, in the State of Virginia, and made oath that she is the Plaintiff mentioned in the suit with which this affidavit is filed; that to the best of her belief the amount of the claim is Two Thousand Dollars ($2,000.00), and that said amount is justly due: and that the Plaintiff claims interest thereon from April 10, 1958: that to the best of her knowledge and belief the said Defendant is not a member of the Armed Forces of the United States.

MILDRED ARNOLD.

Subscribed and sworn to before me this 13th day of May, 1959, in testimony whereof I have hereunto set my hand the day, month and year aforesaid.

JOHN L. WANN, JR.
Notary Public.

My Commission expires Mar. 25, 1962.

page 5 } Civil Docket No. 59-2130

THE COMMONWEALTH OF VIRGINIA.

To the Sheriff or any Constable of Fairfax County—Greeting:

You are hereby commanded to summon Mrs. Edith F. Furr, Route 3, Vienna, Va. to appear before the Fairfax County Court of Fairfax County, at Fairfax, Virginia, on the 28th day of May, 1959, at 10 o'clock A. M., to answer the complaint of Mrs. Mildred Arnold, Route 1, Box 659, Annandale, Virginia for non-payment of $2,000.00 with interest from April 10, 1958, together with attorney's fee, due by the Defendant to the Plaintiff as a result of a breach of a verbal contract and failure to pay a check dated April 10, 1958, in the amount of $2,000.00 drawn on the Vienna Trust Company by the Defendant and made payable to the Plaintiff.

Given under my hand this 15th day of May, 1959.

THOMAS P. CHAPMAN, JR., Clerk
By CHRISTINE M. CASH, Deputy Clerk.

RALPH G. LOUK
Attorney at Law
Fairfax, Virginia.

(on back)

CIVIL WARRANT, JUDGMENT AND EXECUTION.

Mrs. Mildred Arnold, Route 1, Box 659, Annandale, Virginia,

v.

Mrs. Edith F. Furr, Route 3, Vienna, Va.
Set for 5/28/59.

RALPH G. LOUK
Attorney for Plaintiff.

Executed in Fairfax County, Virginia, this 20th day of May, 1959, by serving a true copy of the within Civil Warrant,

and/or attached affidavit, on Mrs. Edith F. Furr in person.

JOHN E. TAYLOR, Sheriff
By THOS. C. DAVIDSON, Deputy.

* * * * *

page 5A } In the Circuit Court of Fairfax County, Virginia.

* * * * *

Came this 29th day of December, 1959 Defendant, by counsel, and moved that this action be removed from the trial docket and continued on the ground that the testimony of one Emma R. Jones was necessary to the Defendant's case and that the said Emma R. Jones was out of the State and not available for service of subpoena. And it appearing to the Court that the trial date had been set July 20, 1959 and further no subpoena had been issued requesting the said Emma R. Jones to appear as a witness, the Court was of the opinion that the Defendant's motion should be denied. Now therefore, it is

ORDERED, DECREED AND ADJUDGED that the motion of Defendant for a continuance be, and it hereby is, denied, to which counsel for Defendant excepted.

ARTHUR W. SINCLAIR, Judge.

December 29, 1959.

Nunc Pro Tunc May 31st, 1960.

* * * * *

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NOTICE OF MOTION.

To: Ralph Louk, Counsel for Plaintiff, Fairfax, Virginia:

PLEASE TAKE NOTICE that on the 19th day of February, 1960, at 10:00 o'clock, a. m., or as soon thereafter as counsel may be heard, counsel for the Defendant will move the Circuit Court of Fairfax County, Virginia, in its Court-

room at Fairfax, Virginia, to set aside the verdict rendered by a Judge of this Honorable Court, sitting without a Jury on January 7, 1960, and for entry of judgment for the Defendant and further for suspension of the entry of any final order in this matter.

JESSE, PHILLIPS, KLINGE & KENDRICK
By JOHN T. HAZEL, JR.
Counsel for Defendant, Jesse Building, Fairfax, Virginia.

Filed Feb. 3, 1960.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court of Fairfax County, Va.

* * * * *

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* * * * *

NOTICE.

To: John T. Hazel, Jr., Counsel for Defendant, Fairfax, Virginia:

You are hereby notified that on the 19th day of February, 1960 at 10:00 o'clock A. M., or as soon thereafter as the matter may be heard, that I will move the Circuit Court of Fairfax County, Virginia, in its Courtroom at Fairfax, Virginia, to enter the enclosed order in this case.

RALPH G. LOUK
Attorney for Plaintiff, Court House, Fairfax, Va.

Filed Feb. 16, 1960.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court of Fairfax County, Va.

* * * * *

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* * * * *

This case came on to be heard the 7th day of January, 1960, upon the Civil Warrant #59-2130 and Affidavit of the Plaintiff filed on May 13, 1959 in the Fairfax County Court, upon the Motion for Removal and Affidavit of Defense filed by the Defendant on May 26, 1959, issue thereby being joined and both the Plaintiff and Defendant, by Counsel, having waived trial of the issue herein by Jury and elected and requested that all matters of law and fact be submitted to the Court for hearing and determination without the intervention of a Jury.

Thereupon, the Plaintiff presented her evidence to the Court and upon the conclusion of the Plaintiff's case a motion to strike the Plaintiff's evidence was made by the Defendant's counsel, whereupon argument and ruling on the said motion was deferred until the conclusion of the Defendant's case and the Defendant thereupon presented her evidence to the Court and upon the conclusion of the Defendant's case, the Defendant thereupon renewed her motion to strike the evidence which motion was denied and the Court, after having heard all the evidence of both the Plaintiff and Defendant and upon argument of counsel, found in favor of the Plaintiff, in the sum of Two Thousand and No/100 Dollars ($2,000.00), with interest thereon at 6% from January 7, 1960.

page 9 } WHEREUPON, the Defendant moved prior to the entry of this order to set aside the verdict of the Court to which motion Plaintiff excepted and the Court after hearing argument of Counsel denied the said motion of the Defendant, and it is therefore;

ADJUDGED and ORDERED that judgment be and hereby is entered for the Plaintiff against the Defendant in the sum of Two Thousand and No/100 Dollars ($2,000), with interest at 6% from January 7, 1960 with costs charged to the Defendant, to which decision and order counsel for the Defendant duly excepted.

AND THIS ORDER IS FINAL.

Enter February 26, 1960.

ARTHUR W. SINCLAIR, Judge.

I ask for this:

RALPH G. LOUK
Counsel for Plaintiff.

Seen and excepted to:

JOHN T. HAZEL, JR.
Counsel for Defendant.

* * * * *

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* * * * *

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

To the Clerk of the Circuit Court of Fairfax County, Virginia.

PLEASE TAKE NOTICE that the undersigned intends to file a petition for an appeal from the final decree entered in the above suit on the 26th day of February, 1960, and the undersigned relies on the following assignments of error:

1. That the Court erred in refusing to allow a continuance upon motion duly made by counsel for Defendant on December 29, 1959, in order to secure a deposition of Mrs. Emma R. Jones.
2. That the Plaintiff's evidence was not in conformity with the pleadings in that this action was specifically based upon an alleged verbal contract, the Plaintiff's remedy being solely at law, whereas evidence and law proper only in chancery were relied upon in the Court's decision.
3. That the Court erred in admitting testimony relating to funds which came into the possession of the Defendant from sources other than the check of Mr. Reuben R. Jones.
4. That the verdict of the Court sitting without a jury was contrary to the law and evidence.

JOHN T. HAZEL, JR.
Counsel for Defendant.

Filed Apr. 22, 1960.

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court of
Fairfax County, Va.

* * * * *

Fairfax, Virginia
Thursday, January 7, 1960.

The above-entitled matter came on to be heard, pursuant to notice, at 10:00 o'clock a. m.

Before: Honorable Arthur W. Sinclair, Judge.

Appearances: John T. Hazel, Jr., Esquire for the Defendant.
Ralph Louk, Esquire and Guy Farley, Esquire for the Plaintiff.

page 2 } PROCEEDINGS.

The Court: You may proceed.

(Mr. Louk opened on behalf of the plaintiff.)

(Mr. Hazel opened on behalf of the defendant.)

Mr. Louk: I would like to call Mrs. Furr as an adverse witness for the plaintiff.
I would like a rule on the witnesses, too, Your Honor.
Mr. Hazel: Mr. Gamble is our only witness.
I understand Mr. Louk is calling Mrs. Furr as an adverse witness?
The Court: Adverse witness.

Whereupon,

EDITH FURR,

the defendant, was called as a witness by and on behalf of the plaintiff and, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Louk:
Q. Would you state your name and address to the Court, please?
A. Edith Furr. Tyson's Corner.
Q. Would you speak a little louder?
A. Edith Furr. Tyson's Corner.
page 3 } Q. How long have you lived there?
A. I have lived there twenty-some years.
Q. Directing your attention to April 10, 1958, did you give a check to Mrs. Mildred Arnold?

Edith Furr.

A. Yes, I did.

Q. Would you look at this check and see whether or not this is the check?

A. It is.

Q. What was your purpose in giving that check to Mrs. Arnold?

A. Because Mrs. Arnold was to get $2,000 out of a $3,500 check that my brother sent, personal check, and she said that in case something happened to me she wouldn't have anything to show that she was to get the $2,000 and I wrote this check.

Q. Now, the $3,500 check that you mentioned, when did you get that?

A. Mrs. Arnold gave it to me.

Q. Do you have that with you?

A. I believe the attorney has it.

Q. I show you this check.

A. That is my brother's check.

Q. Dated April 2, 1959?

A. That's right.

Q. Who is it made payable to?

A. '58.

page 4 } Q. I mean '58. Who is it made payable to?

A. It is made payable to me.

Q. When did you get it?

A. The morning of receiving the notice of his death and through Mrs. Arnold—first that I had even seen the check.

Q. All right. And what did you do with that $3,500 check?

A. Mrs. Arnold tried to get me to go to Falls Church Bank. Of course, I was too upset. I couldn't go there with the check so I took it to Vienna Trust Company.

Q. What time?

A. Well, it was before the bank opened. I should say maybe about five minutes—

Q. To nine?

A. To nine.

Q. Why would there be any more hardship to go to Falls Church Bank than Vienna Bank?

A. I didn't know anyone at Falls Church Bank. I wasn't in any condition to go through a lot of red tape. That is why I went to Vienna Bank.

Q. What do you mean, red tape?

A. Well, I didn't know. It is a large amount of money. I didn't know whether they would ask questions or not and I wasn't in any condition to take the check down there. In

Edith Furr.

fact, I could hardly get to Vienna Bank. I had to
page 5 } have help dressing and all.

Q. She helped you?

A. No, she didn't. Mrs. Gamble did.

Q. Haven't you been friends with Mrs. Arnold for some time?

A. Not close friends. I knew her through my brother but never really close.

Q. Just aside, did you ever call at 4:30 in the morning when it was snowing and say you couldn't get your car out?

A. No, I never called her at 4:30; I wasn't up at that time.

Q. Did you ever call her in the middle of the night—4:30—5:00 o'clock in the morning, and said, "I need some help?"

A. No.

Q. Never did that?

A. I can't remember doing that.

Q. You endorsed the check on the back?

A. I did.

Q. —that morning, and deposited it to your account, is that right?

A. That's right.

Q. What was your—you gave the check to her, did you tell her anything about it, make any statement to her about it?

A. What do you mean?

page 6 } Q. What was your purpose in giving it to her?

A. The $2,000 check?

Q. Yes.

A. Because she wanted something to have in case something happened to me or to show that $2,000 was due her out of this check.

Q. You knew she was going to deposit it?

A. No, I didn't know that.

Q. Did you have any discussion that she was not?

A. No.

Q. Pardon?

A. No, there was no discussion about depositing the check at all. It was just that she wanted something in case something might happen to me.

Q. You intended that she get $2,000?

A. I did, out of this check, yes.

Q. All right. After that, then, did you receive any other money?

Edith Furr.

Mr. Hazel: At this point, I would like before the witness answers that question to raise my objection on what other money Mrs. Furr might have received. An individual may receive money from many sources. I think we have here both circumscribed by the pleadings and even beyond the pleadings a specific situation which is based on this check, and this $3,500 check. I don't believe that the fact that
page 7 } Mrs. Furr obtained money from any other source has any relevance to this case that we have here. A $3,500 check which was delivered to Mrs. Furr was made out to Mrs. Furr, and Mrs. Furr was to give a portion of the money to be received, if that check cleared, to Mrs. Arnold. She gave Mrs. Arnold a $2,000 check of her own based on that. That is the size of the case before us. I don't see any other moneys that Mrs. Furr may have obtained is at all relevant to the case before us, or even material or relevant, either one.

Mr. Louk: If the Court please, there has been no answer filed to the pleadings at all. This is a negotiable instrument. Consideration is presumed. I assume the defense is going to be a lack of consideration, and for that reason I think the circumstances in which this check and other moneys were paid to Mrs. Furr is material to the case and I think that there can be no question that we can go into the history of this whole transaction.

Mr. Hazel: I believe there is an answer filed. There is an affidavit with our removal statement that Mrs. Furr is not indebted.

Mr. Louk: I said that because I assume the defense is lack of consideration which, of course, is a presumption that it is; of course, if he says there is consideration, then of course there would be objectionability, I think.

The Court: I think at this stage of the case it
page 7A } is admissible, Mr. Hazel.

Mr. Hazel: I would like to note an exception and continued objection to introduction of testimony which would be directed toward any other transaction or any other funds which Mrs. Furr may have received.

The Court: All right, sir; the record will note that.

By Mr. Louk:

Q. This was on April 10, 1958, that you received the check from Mrs. Arnold that you have just identified and—

A. That's right.

Q. —and the check that you gave her?

Edith Furr.

A. That's right.

Mr. Louk: I would like to offer the check of April 10, which was first identified by Mrs. Furr as Plaintiff's Exhibit No. 1.

The Court: That is the check in the amount of $2,000?

Mr. Louk: Yes, Your Honor.

The Court: It will be marked Exhibit No. 1 for the plaintiff.

Mr. Louk: And the check dated April 2, in the amount of $3,500 which was given to Mrs. Furr on that morning of April 10 as Plaintiff's Exhibit No. 2.

The Court: Number 2.

page 8 } (The documents referred to were marked, respectively, Plaintiff's Exhibits Nos. 1 and 2, and were received in evidence.)

Mr. Louk: Notice of protest of the $3,500 check is here and I have the notice of protest of the $2,000 check which I have already offered in evidence as part of Exhibit 1.

The Court: The protest notice has just been made a part of the exhibits themselves.

By Mr. Louk:

Q. On April 12 of 1958, did you receive check from the Falls Church Bank in the amount of $3,500?

A. It would be a Saturday. My sister-in-law's brother came by the house after the funeral and he did bring me a check, yes.

Mr. Louk: May we approach the bench for a minute?

(At a bench conference, the following occurred:)

Mr. Hazel: We have copies of them and I presume there would be no objection to using the originals today for the sake of legibility and putting the substituted copies in later.

The Court: That is agreeable with the Court.

Mr. Louk: Yes, we would be glad to do that.

Mr. Hazel: Copies are perfectly legible.

Mr. Louk: Maybe we can introduce the copies and—

The Court: I would go ahead and introduce the page 9 } copies if you gentlemen are satisfied.

Mr. Louk: All right. Sometimes these copies

are a little hard to read and I thought since I had the originals—

(Proceedings were resumed in open court.)

By Mr. Louk:

Q. I show you check on Falls Church Bank dated April 12, 1958, number 56-210, which is cashier's check referred to in your last answer?

A. That's right.

Q. It was received by you on April 12?

A. Yes.

Q. 1958, on a Saturday?

A. Yes, the date of his funeral, yes.

Q. About what time?

A. Oh, I guess around maybe 6:30—7:00 o'clock.

Q. Who did you receive it from?

A. Mr. Nelson Rankhorn.

Q. Was Mr. Rankhorn any relation to Mr. Jones, the deceased?

A. A brother of Mrs. Jones. He says, "I took the liberty of stopping at Falls Church Bank. This is a little something we wanted you to have."

Q. Did you know who it came from?

A. What do you mean? I knew it was left to me by my brother.

page 10 } Q. Left by your brother?

A. Yes.

Mr. Louk: I would like to offer this in evidence, a copy of the check, Plaintiff's Exhibit No. 3.

The Court: Check for $3,500 dated April 12, 1958 is admitted as Plaintiff's Exhibit No. 3.

(The document referred to was marked Plaintiff's Exhibit No. 3 and received in evidence.)

By Mr. Louk:

Q. After receiving the check, that you just stated, did you have a conversation with Mrs. Arnold?

A. Yes, I told her that—

Q. When did you make that conversation?

Mr. Hazel: Before the witness answers this question I would like the record to show that I object to the introduction

of Plaintiff's Exhibit No. 3. Mr. Louk and I agreed to stipulate as to its validity but I object to its introduction as indicated previously.

The Court: All right, sir. The objection will be overruled and exception noted.

By Mr. Louk:

Q. You talked to Mrs. Arnold. Did you make the call?

A. Yes, I believe I did call and I told her—

Q. What was your purpose in calling her?

page 11 } A. I told her that the brother had stopped by there with this check.

Q. And?

A. Well, the purpose of making the call, she had been there during the day and I just told her that he had stopped by with a check.

Q. Was that the reason you called her? Did you tell her anything about the check, make any statements?

A. Not that I remember. I don't remember exactly what was said. I just said that the check was left there by this Nelson Rankhorn.

Q. Why did you think it was important to call her for that purpose, to tell her for that specific purpose?

A. I don't know that I did call her to tell her about the check, altogether. I think that there was talk about the funeral and—I just don't remember what the conversation was all about now. But during the conversation I did tell her about this check.

Mr. Louk: That's all.

CROSS EXAMINATION.

By Mr. Hazel:

Q. Mrs. Furr, how long had you known Mrs. Arnold?

A. Well, I guess I heard of her before I actually knew her. I would say maybe five or six years. Maybe talking to her on the telephone or something if I called my brother

page 12 } at her place or something like that. I have only been to Mrs. Arnold's house once or twice and that was when my brother was there and asked me to come over there.

Q. How did you come to be introduced to Mrs. Arnold?

A. My brother brought her to my home.

Edith Furr.

Q. Would you describe very briefly the relationship between your brother and Mrs. Arnold?

A. Well, Mrs. Arnold was a very good friend of his and had been for years. I just don't know the length of time that they did know each other.

Q. Was Mr. Jones married to anyone when you first knew Mrs. Arnold?

A. Oh, yes; yes, indeed.

Q. How long had he been married to his wife at the time of his death?

A. Thirty-some years.

Q. Did Mr. Jones have occasion—

A. —or longer.

Q. Did Mr. Jones have occasion to visit you frequently?

A. My brother?

Q. Your brother.

A. He would come up here and supposedly to stay at my place and yes, that is after he moved to Norfolk.

Q. Where did he usually stay when he came up here?

A. Well, a number of times at Mrs. Arnold's.

page 13 } Q. Where did he usually stay when he came up here?

A. Well, a number of times at Mrs. Arnold's.

Q. When your brother came up, did you all discuss your affairs, your finances and the work situation and so on?

A. Yes.

Q. Did you rely on him heavily for advice?

A. Yes, indeed, after my husband's death he—I don't know what I would have done without him.

Q. What sort of things did he do for you in helping you?

A. Well, he, at the time of my husband's death he took care of the settlement of my home and—I don't mean that he paid. He seen to it that my home was clear through the money that my husband had left me. And, well, he advised me in different things. He also told me that at his death he wanted me to have $5,000 in case something should—

Mr. Louk: If the Court please, I don't know what the purpose of the question is—I don't even remember the question or whether the answer is responsive to the question, but she is his witness and I object to that answer that she is now beginning to give because I assume there is no foundation for it. She said something about her brother said, so and so. I don't know what it was or where it was. I don't remember the question now.

Edith Furr.

Mr. Hazel: The matter of the brother's intended disposition of his estate has been thoroughly opened up, it
page 14 } seems to me, by Mr. Louk. A number of questions have been directed about what he wanted to do with various sums of money which were on deposit, particularly in Falls Church Bank. I certainly feel that the whole estate situation has been opened up insofar as relating to these ladies are here today. I can certainly ask some questions that would, perhaps, lay more of a foundation for this answer.

The Court: Suppose you rephrase the question, Mr. Hazel.

By Mr. Hazel:

Q. Well, Mrs. Furr, inviting your attention to the first part of April of 1958, or perhaps the last day or two of March of 1958, did your brother visit you at any time in that period?

A. Yes, he came to my home, I think it was on a Saturday before he went into the hospital.

Q. What did he have to say? What did you feel the purpose was when he came to your home?

A. He came there and had a talk with me. He sat down and told me about entering the hospital. That was the first I had heard of it.

Mr. Louk: If the Court please, I don't know who was present at that conversation. I think, by my statement, that Mrs. Arnold was present at that time, but I assume this is cross examination which he is going into and per-
page 15 } fectly all right with me but there will be conversation in which we will, of course, be allowed to have Mrs. Arnold testify as to what Mr. Jones told her. We get into a hearsay element here but if he wishes to do that it is all right with us.

The Court: If there is no objection, go right ahead.

By Mr. Hazel:

Q. Go ahead.

A. Mr. Hazel, I was alone at the time of my brother's visit. He told me that he wanted me to have $5,000 and I says, "Now, if anything should happen and I get this $5,000, do you want me to give Mrs. Arnold $2,000 of it?"

He says, "No, I don't; that is for you." He says, "You may need that." And he says, "I am getting a loan." He says, "I am going to Falls Church Bank when I leave here." And he says, "I am getting a loan," and, he said, "Out of that

loan you are to give Molly $2,000 and you are to get $1,500," which, with that check, that certified check, and the $1,500 would have made my $5,000.

Q. Now, when did your brother go back to Norfolk?

A. Well, I am not sure. He left my home and presumably, I guess, to Mrs. Arnold's.

Q. Did you hear from him by mail after he left?

A. Yes. When he was telling me all this, I said, "Rib, don't you think that it would be best for that to be in
page 16 } black and white?" He was just telling me and I was afraid something might go wrong, knowing that he was married and all. I didn't know what my sister-in-law would do.

Q. Did you receive any letters from him or any correspondence?

A. Yes, I did.

Q. What was the content of the correspondence? What sort of thing did he say?

A. Well, it has been quite a while. I haven't seen the letter recently, but I think in the letter he said, I think he mentioned $5,000, and also about the check at Falls Church Bank for $3,500.

Q. Did you subsequently hear that your brother had died?

A. I beg pardon.

Q. Did you subsequently hear that your brother had died?

A. I heard through a friend of the family's that he had died.

Q. Do you remember what time of day and the date that you heard this?

A. I guess it was about 5:30.

Q. In the morning?

A. Yes.

Or maybe a little later.

page 17 } Q. What did you do when you heard this?

A. Of course, I went all to pieces because on a Tuesday I had, I flew down there to the hospital to see him, at Norfolk, and he was telling me that he was going home at the end of the week, and that he would be all right, and at that time I told him, I says, "You are going to be all right, Rib." I kept thinking this was a note that he had.

I said, "How about if I go to Falls Church Bank and take care of that, cancel it," because, well, I didn't see any reason for him waiting to—

Q. This was after the operation had been performed?

A. This was after the operation.

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Q. It looked like he was going to get better?

A. He says, "No, hang on to that check. Nobody can cash it unless you endorse it. You haven't endorsed it, have you?"

I said, "No, I haven't."

Q. You thought at that time that he was on the way to recovery when you left Norfolk?

A. Oh, yes; yes, indeed.

Q. At 5:30 in the morning on the tenth of April you heard rather abruptly and suddenly that he had died that night?

A. That's right.

Q. What did you do then?

page 18 } A. Well, I believe I called Mrs. Arnold first and told her that is what he wanted, that he had died. Then I called the Gambles and told them.

Q. Mrs. Furr, what had Mr. Jones told you, if anything, about Mrs. Arnold and what you should do in the event you wanted to discuss anything with somebody?

A. Yes, he told me that if anything happened to him that I could always go to her and talk to her just like I could talk to him, although I don't know—I just didn't feel like I could talk to her like I could my brother. But that is what he said.

Q. Who were the Gambles?

A. Well, Mr. Gamble's wife is—his wife is niece of my husband.

Q. You called them immediately and advised them?

A. Yes, they knew my brother very well.

Q. Did you see Mrs. Arnold on that date, the tenth of April?

A. On the tenth, yes. She came to the house and I believe the Gambles arrived almost at the same time.

Q. Do you recall what time that was? Approximately.

A. No, I have no idea what time it was.

Q. Had you got dressed at that time?

A. When I got word of his death, I was getting ready to go to work, and I was about dressed except maybe

page 19 } putting on my dress.

Q. What time did you usually go to work?

A. I get out on the road about 6:30.

Q. When Mrs. Arnold arrived at your home, what did she have to say?

A. Well, of course she was shocked to hear of my brother's death, I think. And, I don't know, there was just a lot of crying.

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Q. Were you upset?
A. Oh, yes.
Q. Were you crying?
A. Still upset from it.
Q. Do you remember whether she said anything about a check or not?
A. Well, she had the check with her and she did want me to go to Falls Church Bank with the check but I couldn't go.
Q. Why couldn't you go?
A. Because I was too upset and I didn't know anyone at Falls Church Bank. I thought maybe I would have to answer questions or go through a lot of red tape about the check, being that it was such a large amount. I just didn't know. And I wasn't up to it.

Q. How long did Mr. Gamble stay that morning,
page 20 } do you remember?

A. No; I guess, I don't know whether he was here more than fifteen minutes or a half hour.
Q. Did you later go over to the Vienna Trust Company?
A. Yes.
Q. Do you have a personal account there?
A. Mrs. Gamble helped me get my hair fixed and face fixed and Mrs. Arnold took me over to the bank.
Q Do you remember anything that Mr. Gamble said about the checks on that occasion?

Mr. Louk: I object.
Mr. Hazel: Mr. Gamble is here and is going to testify.
Mr. Louk: It is a self-serving statement.
Mr. Hazel: Your witness; you called her.
The Court: Was this in the presence of the defendant? Was Mrs. Arnold present?
The Witness: At that time, yes, sir.
The Court: Objection overruled.

By Mr. Hazel:
Q. What did Mr. Gamble say at that time?
A. He said that he took the check and looked at it—he said, "It looks all right, but," he says, "I would wait," he says, "wait." And I don't know whether he said anything about Falls Church Bank or not, but anyhow he said, "Wait"

And if I did cash it to see if it cleared.
page 21 } Q. Mrs. Furr, did you later put that check in your account for collection on that date?
A. Yes, I took it to the bank.

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Q. Why did you do it?

A. Well, under my brother's orders. He said if anything happened to him to take the check at once to the bank. He told me, Falls Church Bank.

Q. Why did you go to Vienna Trust Company?

A. As I said, I didn't know anyone at the Falls Church Bank and I was too upset.

Q. Did Mrs. Arnold encourage you to go to Vienna Trust Company?

A. No, she didn't. She wanted me to go to Falls Church Bank but I couldn't.

Q. Why not?

A. The whole time I was on the way up to Vienna and in the bank I was crying and all to pieces.

Q. Did you talk to Mrs. Jones, the widow of your brother on the date of his death?

A. No.

Q. When did you next see her?

A. She and her brother and sister-in-law stopped at my house on a Fridaly. They came up here. That was the day after his death. At that time, my brother from New Jersey had come to stay with me so I wouldn't be alone, I was so upset.

page 22 } Q. Have you seen her since that date?

A. Once, at the funeral.

Q. When did you receive notice that the check, yours, in the amount of $2,000 had not cleared the bank?

A. Well, it was several days. I don't know the date but it was several days later.

Q. There is testimony that check was given you on the date of the funeral. Did you know when you received that check that the check for $3,500 and the check for $2,000 which have been introduced into evidence by the plaintiff had not cleared?

A. The check my brother sent?

Q. Yes.

A. No, I didn't know that. It was several days later that I found out that the check didn't clear.

Q. Now, Mrs. Furr, when you saw Mrs. Arnold on the morning of your brother's death, prior to the time that she gave you the check, did you owe her any money at all for anything?

A. No, indeed.

Q. Had she ever lent you any money?

A. No.

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Q. Had she ever done any work for you?
A. No.
Q. Were you *ineebted* to her in any way for any
page 23 } thing?
A. I beg pardon.
Q. Were you indebted to her in any way for anything?
A. No, no.
Q. Between the time that she gave you the $3,500 check and the present day for that matter, have you become indebted to her for anything excluding the possibility that this check of $2,000 represents a debt?
A. No, I haven't.
Q. Has she ever performed any services for you during that period?
A. No.
Q. When Mrs. Arnold learned that the $2,000 check which you had given her failed to clear, what did you hear from her?
A. She came to the house and told me that—no, no—I believe I called her and told her that the check, the $3,500 check, had not cleared. Then she came to the house and she says, "You have got to make that $2,000 check good."
I says, "Well," I says—I believe I called Mr. Gamble.
Q. Speak up just a little bit.
A. I believe I called Mr. Gamble and I told him about the check not clearing. Mrs. Arnold was at the house. And Mr. Gamble said—

Mr. Louk: I object.
The Court: Objection sustained.
page 24 } Mr. Hazel: Mr. Gamble is here. If she called Mr. Gamble, I would think perhaps anything Mr. Gamble said could be—
The Court: It is hearsay, isn't it, Mr. Hazel?

By Mr. Hazel:
Q. Did you have any other discussions with Mrs. Arnold about the check?
A. Oh, Mrs. Arnold called me several times, especially early in the morning when I was getting ready for work, get-ready to go out on the road, and got me very upset about the check. And I told her that I was doing all I could. That was after I had gone to Mr. Phillips trying to collect on the check, I thought, in order to give her the $2,000. My inten-

tions all around was getting the $2,000 for her. That is the reason, the one reason I went to a lawyer.

Mr. Hazel: I have no further questions, Your Honor.

RE-DIRECT EXAMINATION.

By Mr. Louk:

Q. You say you and Mrs. Jones did not see each other except the day of the funeral?

A. Mrs. Jones?

Q. Yes.

A. No, she and her brother and his wife stopped by home on Friday before the funeral.

Q. The eleventh?

page 25 } A. Yes.

Q. You and Mrs. Jones were not on too good terms, were you?

A. Well, no. My sister-in-law was never very pleasant to me.

Q. You and Mrs. Arnold up to that time were on good, friendly terms, very good friends?

A. We talked on the telephone. Never—I wouldn't say real good friends.

Q. Did you ever go to, out to dinner with her?

A. Beg pardon?

Q. Did you ever go out to dinner with her?

A. Yes, we did go to dinner at the Vienna and to the movies once. I believe once.

Q. How many times had you been out to dinner with her?

A. Couple of times.

Q. Over how many years?

A. Well, that was maybe two years.

Q. That's after your brother left, after your brother left this area, Mr. Jones?

A. Yes, I believe so.

Q. Do you remember having coffee with her at Willston? She works over at the Medical Center as a receptionist at Willston?

A. I know; my doctor is over there. Yes, I do

page 26 } believe I did run into her at the Drug Fair and have coffee with her one day.

Q. After you went down to Norfolk?

A. There was another girl with me.

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Q. After you had been down to Norfolk to see Mr. Jones in the hospital?

A. Yes; that was another time I stopped by there on my way from the airport to tell her his condition.

Q. Do you remember going out to the cemetery with her on Monday, April 14?

A. After he was buried, we did drive over there one afternoon, I believe.

Q. Whose suggetion was that?

A. I really don't remember.

Q. You wouldn't remember whether you called her and asked her?

A. I called her.

Q. To go out to the cemetery with you?

A. I don't know whether she was just at the house and we decided right over there or not. I don't know if there was any phone call made or not.

Q. You don't remember that?

A. No, I don't.

Q. You remember the day of the funeral having her put a ring on his finger?

page 27 } A. The day of the funeral I gave the ring, I thought, to Mrs. Gamble and I don't know if Mrs. Gamble or Mrs. Arnold put the ring on his finger because I was at home.

Q. Mrs. Arnold was with you during this time?

A. Not at that time.

Q. That morning?

A. She was by the house, but I was at home and Mrs. Gamble, I handed the ring to Mrs. Gamble.

Q. Did Mrs. Arnold leave with Mrs. Gamble?

A. Beg pardon.

Q. Did Mrs. Arnold leave with Mrs. Gamble? From your house, to go to the funeral house, Money and King in Vienna?

A. They left, I believe, together. I didn't see them drive away from the house. But I don't—

Q. Whose car was it?

A. I don't know whether she was riding with someone else or not. It was Mrs. Arnold's car that she was in, of course, but I wasn't at the window watching them. I was back in the bedroom.

Q. Did she bring a fur cape back from the funeral home for Mrs. Gamble?

A. I believe she did.

Q. Mr. Jones saw her when he came up here during the

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time he was in Norfolk and saw you on several occasions. How often would he come up here is what I am getting
page 28 } at?

A. Oh, I would say every two, three weeks, something like that.

Q. Would you see Mrs. Arnold then?

A. Not every time, no. He had her over at the house on several different occasions, I don't know how many times.

Q. Your testimony here is that you and Mrs. Arnold were not good friends?

A. We were never really close. I knew her through him. As I say, I was never to Mrs. Arnold's home but once or twice.

Q. All right. Getting back to this discussion of March, Saturday or Sunday prior to his going in the hospital on Tuesday, in which you testified that Mr. Jones was present, was Mrs. Arnold there?

A. No. My brother was alone when he came to me and discussed this.

Q. What time was it?

A. I believe it was in the afternoon, maybe about 1:30 or 2:00 o'clock.

Q. Did you see Mrs. Arnold that day at all?

A. I don't think so.

Q. Did you see Mrs. Arnold over that week-end at all?

A. I don't know. He would come over there; he used my car some and would come over there and I don't know if that is the time that he took us to Hogate's for dinner or not.

Q. You and Mrs. Arnold?
page 29 } A. He had my car.

Q. And you and Mrs. Arnold?

A. Yes. He was—

Q. How did he get up there this week-end? How did he come up from Norfolk?

A. He would, the last part of his visits he would fly up.

Q. Did you meet him at the airport?

A. No. I met him, I believe, once or twice over there.

Q. No, no. I am just referring to the week-end prior to his entering the hospital?

A. Oh, did I—

Q. Tuesday.

A. No, I didn't meet him, no.

Q. Do you know how he got up here?

A. Well, he flew up to the airport and I don't know if he got a taxi from there or not.

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Q. You know if Mrs. Arnold picked him up?

A. Well, I know that she has picked him up on different times but I don't know about that particular time.

Q. You don't remember that, whether she did or did not?

A. Not at that time, no.

Q. You don't remember whether she brought him to your house?

A. At that time?

page 30 } Q. On that week-end.

A. No.

Q. You don't remember how he got to your house?

A. No, I don't.

Q. You don't remember how he got to your house?

A. Well, I really don't remember. If I went, he called and asked me to come over there, I know, one day. I don't know if it was then or not. I really don't. And that he took my car. He used my car on different occasions when he was up here.

Q. Not on different occasions. On this week-end, if you know.

A. I don't remember.

Q. Do you remember having discussion with Mrs. Arnold and yourself and Mr. Jones at all about this arrangement?

A. What arrangement?

Q. That he discussed that you were to get $1,500 and Mrs. Arnold was to get $2,000—the three of you together?

A. I don't remember discussing that at all about the check. He was alone there and told me what he would like and would I see that she got the $2,000 out of the check and I said that I would.

Q. Out of what check?

A. Out of that $3,500 check that was sent, mailed to Mrs. Arnold.

page 31 } Q. This was a discussion prior to the check being mailed. So you said on your direct testimony there was a note, no check. Did he discuss with you a note or a check?

A. I said that I didn't know if it was a note or a check. I had never seen the thing until Mrs. Arnold brought it to the house.

Q. I am not going into that. You had a discussion—he had a discussion with you, according to your testimony, in which he set up something. Would you tell the Court exactly what the discussion was?

A. The discussion with my brother?

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Q. Yes.

A. He said he was going to Falls Church Bank and he was going to get a loan. He said he was going to have it insured, a note, and he said that he was going to write to me and I didn't know what he was mailing up. I didn't know what procedure to take.

Q. Just tell me the discussion you had. You were testifying as to what he said. Tell me exactly what he said.

A. That he was going to send this money up and would I see that she got $2,000 out of what he sent and I said that I would. And then I went to telling him that he had better put it in black and white.

Q. Mrs. Arnold wasn't there at that time?

A. No, she wasn't. I was alone in the house page 32 } with my brother at that time.

Q. Mr. Jones?

A. That's right.

Q. Now, he told you he was going to get a loan at the Falls Church Bank and he was going to get it insured for $5,000?

A. That's right.

Q. And he was going to do what, send you some money?

A. He said I was to give her $2,000 out of this check and the $1,500 was to go to me to make up a $5,000 that he wanted me to have at his death.

Q. That was $7,000 altogether?

A. What do you mean? $3,500 and $1,500.

Q. Plus two for Mrs. Arnold.

A. I was to give her the $2,000 and then I was to get the $1,500 out of the check. That is what I said.

Q. It is $5,000 at the Falls Church Bank which he specifically told you out of that loan?

A. I didn't get, he didn't send a check for $5,000.

Q. What did he say about that?

A. What do you mean?

Q. How were you going to get $5,000, is what I am suggesting.

A. Because he said that he wanted me to have $5,000 at his death.

page 33 } Mr. Hazel: I object to counsel arguing with the witness. If counsel wants to ask questions rather than argue with the witness, it seems to me it is proper.

Mr. Louk: This is not argument, Your Honor; this is a transaction which I am sure is most important to this case. I cannot get heads or tails of what her understanding was.

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The Court: You testified that your brother stated that he wanted you to have $5,000.

The Witness: Yes, sir.

The Court: Out of the $3,500 check you were to have $1,500?

The Witness: That's right.

The Court: He never stated to you where you were to receive any other money to make up the difference between $1,500 and $5,000?

The Witness: Yes, my sister-in-law was to give me.

The Court: I think that is Mr. Louk's question, so go ahead.

The Witness: $3,500.

By Mr. Louk:

Q. Are you testifying now that based on the conversation you had with Mr. Jones, are you testifying based on certain events?

A. I am telling you what Mr. Jones had to say to page 34 } me.

Q. All right. What did he say to you?

A. And I also said, "Do you want Molly to have $2,000 out of that money if the, whatever it is you have, doesn't go through?"

He said, "No," he says, "I want you to have the $5,000. You may need it."

Q. "Doesn't go through?" What did he mean by that?

A. Well, he said he was getting a note or something. I really didn't know what he was going to do.

Q. You didn't know at that time that a check, even a check was being sent? All you knew, that money was being sent?

A. I knew that he was going to the Falls Church Bank to make some sort—

Mr. Hazel: I object to what—

Mr. Louk: I can understand his objection but this is important because I think that is the whole essence of the case, that the reason she is justified in not giving this money to Mrs. Arnold is because she is trying to figure up in her mind that she is to get all of it, but I think it is very pertinent to say at this time, if it doesn't go through, and repeating conversation with Mr. Jones prior to she knew whether she was getting a check or what money. I think it is based on subsequent—

Edith Furr.

The Court: Objection overruled.
page 35 } Mr. Hazel: Exception.

By Mr. Louk:

Q. What did you mean, "Doesn't go through?"

A. I didn't know what arrangements he was making, really. I didn't know just what—

Q. You said Mr. Jones said at that conversation on that day, "if it doesn't go through."

A. Well, I was trying to do the right thing by Molly. If he wanted me to give the $2,000 to her out of the $5,000 that I was to get that he talked about, I was willing to give it to her. But he said, "No."

Q. When the check came for $3,500 to Molly, it wasn't for $5,000, was it?

A. No, it was for $3,500, and it bounced.

Q. Didn't it concern you as to where the other $1,500 was?

A. It concerned me as much as $1,500 in it.

Q. Pardon?

A. It concerned me of losing $1,500.

Q. If you were to get $5,000 and Mrs. Arnold was to get $2,000, didn't it concern you that you were only getting $1,500 of the $3,500 check, that the amount—

A. That is all I was supposed to get out of that check.

Q. You were?

A. That's right.

page 36 } Q. He didn't tell you how much he was going to make the check for, did he, in this conversation?

A. He told me that he was sending $2,000.

Q. This is a letter to you?

A. He told me he was sending $2,000 for her and he wanted me to have $1,500 to make up the $5,000 that I was to get.

Q. This was in a letter to you, was it not?

A. I believe so.

Q. I am going into the conversation, the alleged conversation you had with Mr. Jones in private as to $5,000. I am talking about that conversation and not what happened after that. You said that Mr. Jones told you that he went to the Falls Church Bank to borrow $5,000 to insure?

A. That's right.

Q. Which in fact he did and that—

A. I don't know that he told me that he was getting $5,000. He said he was going to the Falls Church Bank to get a loan. I don't think he named $5,000 at that time to me.

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Q. You didn't testify to that on direct?
A. Not $5,000.
Q. You haven't testified to that before?
A. I don't know.

Mr. Hazel: If there is question about prior testimony, I would like to ask that we let the reporter read it.

Mr. Louk: The Court has heard the evidence.
page 37 } If the Court wants to do it, it is all right, but I want to be sure she understands what she is saying.

The Court: Overrule the objection.
Mr. Louk: All right.

By Mr. Louk:

Q. When you got this money from Mrs. Jones's brother of $3,500, I believe your testimony was that you don't remember whether you called Mrs. Arnold to talk about the money in detail or not. I believe you testified you called Mrs. Arnold.

A. Yes, I did, and—

Q. You told her you received this check and that was the primary—

A. We talked about the funeral and different things and I did tell her that the brother has stopped there and left this check and there was other people at my home at the time. They heard the conversation.

Q. Did you discuss with her that: Don't worry, Molly, if the other check isn't good, you will get $2,000 of this?

A. No.
Q. You don't remember that?
A. No.
Q. Or you didn't say it?
A. I don't remember ever saying that to her.
Q. You don't remember or you didn't say it?

A. I meant that if that check went through she
page 38 } would get the $2,000. That is why I went to a lawyer trying to get that straightened out.

Q. I understand you went to a lawyer. When did you first go to a lawyer about this?

A. After I knew the check had bounced.
Q. You hadn't gone to a lawyer prior to April 10?
A. Oh, no.
Q. You had not?
A. April 10, before his death?
Q. Pardon.

Edith Furr.

A. Before his death?
Q. Yes.
A. No.
Q. At the time you called her, you talked to her and told her you got a $3,500 certified check?
A. That's right.
Q. Is that right?
A. Right.
Q. And you don't remember whether you said to her, "Don't worry, I will see that you get $2,000 out of this if the other one doesn't clear?"
A. No, I told her that I would try to get the money and she called me on the telephone in the mornings and several times and I told her that I was waiting to hear from the lawyer.
page 39 } Q. I want to be specific on the conversation that you had with her.

Mr. Hazel: The witness has already said three times, I believe, that she didn't say.
Mr. Louk: She has rambled in answer to my questions.
Mr. Hazel: She rambles if she doesn't agree to words you put in her mouth?
The Court: Rephrase the question.

By Mr. Louk:
Q. On April 12, Saturday, when you called Mrs. Arnold and told her you had received a $3,500 check on the Falls Church Bank, by the brother of Mrs. Jones—
A. That's right.
Q. —did you tell her that if the other check does not clear, I will give—don't worry, I will give you the $2,000 out of this one?
A. No; and there was people right there at the time when I talked to her.
Q. They were listening to your conversation?
A. They are in New Jersey, but if it need be—
Q. You told your lawyer about this, didn't you?
A. Well, I guess I did. I told him everything that there was. I don't know if he asked me that exact question or not.
page 40 } Q. You felt that you should call Mrs. Arnold when you had company in the house and tell her about this check?

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A. It was the family. It was a sister-in-law and brother that was there from New Jersey.

Q. You gave that importance to call her up at that time?

A. They heard me call her.

Q. Now, you realize—the letter, what did Mr. Jones say in the letter to you?

Did he write you a letter saying he would send a check to Mrs. Arnold?

A. Yes.

Q. What did he say?

A. He said that he had sent—I don't know that he stated that he sent a check, or did he? All right, he let me know that he had sent either a check or whatever it was to Mrs. Arnold and if anything happened to him, I was to cash it and give her $2,000 out of that check. But Mrs. Arnold called me several days before and wanted me to go to the bank before he was even dead to cash that check.

Q. When was that conversation?

A. She called me the day that she received that check and she says, "Edith, I received a registered letter with a check in it. That was the first I had heard about the check. And she says, if I come up for you at lunch time, will page 41 } you go to the Falls Church Bank with me to cash it?" And I said, "No." I says, "Rib doesn't want that check cashed unless something happens to him." I refused to do it.

So then when I went to Norfolk, I told Rib and he says, "You have not endorsed the check, have you?"

And I says, "No."

He says, "Nobody can cash that check unless you do." He says, "Just hold on to it."

Q. "Hold on to it?"

A. I said, "I don't have it; Mrs. Arnold has it."

Q. You were a little concerned about that check?

A. I happened to be off that day and it must have been the day after the check was mailed, whatever date is on that, maybe the third.

Q. You were a little—

A. You can verify that day being off through the telephone company.

Q. You were worried about that check, weren't you?

A. What do you mean?

Q. You were worried about the check that Mrs. Arnold had?

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A. Well, I wasn't going to cash it unless something—I was trying to do exactly what my brother wanted me to do.

Q. Why didn't you do exactly like he wanted you to do and go to the Falls Church Bank?

page 42 } A. Because I was in no condition. I lost my husband in '56. That made a wreck of me. And losing him, that was more than I could almost take.

Q. In this letter to you from your brother, you said that he told you that it was a check, cash it at his death.

A. When I was at Norfolk?

Q. Pardon?

A. What do you mean?

Q. The letter to you.

A. This is the first time I knew it was a check, Mrs. Arnold told me and called me and told me she had received the letter with the check.

Q. Had you received a letter from Mr. Jones, your brother?

A. Not then, no.

Q. Did you receive it the next day?

A. Well, now, maybe; I don't know. And he explained the reason he sent the check to her was because that I couldn't be reached and she could where she worked there.

Q. What?

A. I couldn't be reached at my work but she could be reached at any time where she worked. He made the check out to me and mailed to her.

Q. So that who could reach—

A. My brother couldn't—the letter—it was regis-

page 43 } tered; they couldn't reach me at my work but they could reach Mrs. Arnold at any time at hers.

Q. He told you that?

A. Yes, he did.

Q. Before he sent it?

A. He told me that, that was the reason for sending it to her.

Q. In the letter or in the verbal conversation?

A. In the verbal conversation.

Q. With him when you and he were by yourselves?

A. I think this was told to me when I visited him at the hospital in Norfolk.

Q. Up until the time Mrs. Arnold called you saying she had the check, there was no discussion with either of you, with the three of you, about this?

A. I don't remember that the three of us sat down and discussed this plan, no.

Edith Furr.

Q. You are testifying as to the fact he talked with you on that week-end. That is the first time you ever heard about it, wasn't it, the $2,000 that he wanted you to have the money, that he was going to the hospital?

A. That was the first I heard.

Q. It would be that Saturday or Sunday.

A. I was only here for two days.

Mr. Hazel: The witness clearly stated she didn't
page 44 } remember discussing that.

Mr. Louk: I just want to be sure that she does not remember, or that she is testifying it didn't happen because I think if she did not remember, then I am going to try to refresh her memory. This is cross examination, Your Honor, of his witness.

Mr. Hazel: Not my witness. This is an adverse witness.

Mr. Louk: There is a difference between not remembering and not happening.

The Witness: Your Honor, so many things have happened to me that I have forgotten a lot of things.

The Court: I can appreciate that.

Mr. Louk: May I proceed?

By Mr. Louk:

Q. On this, you still don't remember whether the three of you sat down and discussed this plan on the week-end that he was here?

A. Well, I won't say, no, and I won't say, yes, because I really don't remember doing that.

Q. But you do remember talking with him?

A. I remember my brother coming there at the house and telling me what he wanted me to do.

Q. But you don't remember his talking about any time other than the two of you together that weekend?

page 45 } A. No, I can't say I do.

Q. The letter that you got from Mr. Jones, do you have that here?

A. My attorney has it.

Q. You don't remember the instructions in the letter to you from Mr. Jones?

A. I believe in the letter it says that I am to get $3,500 from a sister-in-law, the check, and Mrs. Arnold is to get $2,000 or Molly is to get $2,000, and I was to keep the $1,500. I think the letter may state that.

Edith Furr.

Q. Did he also tell you to go to the bank and cash it immediately?
A. Yes, he did.
Q. Endorse it on the back?
A. I know enough to endorse it on the back to cash a check, but he did tell me to take the check to Falls Church Bank.
Q. Did he refer to a discussion in that letter that you three had had or that—
A. I didn't hear you.
Q. Does it say anything there about his wife, Emma?
A. Yes, I believe he stated that she didn't know about this check that he sent up here to Mrs. Arnold for me to cash.
Q. Did he also say in that letter that he had told his wife you were to receive $3,500?
page 46 } A. Well, now, he had discussed, he had called me over to his home.
Q. In that letter, Mrs. Furr, did he say in that letter?
A. In that particular letter, she was to give me $3,500, sister-in-law, at his death. Is that what you asked me?
Q. Yes.
A. She was to give me $3,500, the sister-in-law.
Q. Pardon?
A. The sister-in-law was to give me $3,500 at his death.
Q. Who was the sister-in-law?
A. Emma R. Jones, his wife.
Q. Said in the letter to you in which you discussed the check sent to Mrs. Arnold that she was to give you $3,500?
A. My letter states that my sister-in-law is to give me $3,500 at his death, I believe.
Q. That was the letter to you?
A. Yes.
Q. Do you have any objection if that letter is put in evidence?

Mr. Hazel: I think that is an *imporoper* question.
The Court: Objection sustained.

By Mr. Louk:
Q. Did he call you, "Irish?"
A. Yes, he did.
page 47 } Q. Do you remember this? "Irish, I sent the check I was talking to you about to Molly as I wanted to have the letter registered with that amount of money in it."

Edith Furr.

Mr. Hazel: Before the witness answers that question, I think she is entitled to know what that is supposed to be.

The Court: Objection sustained.

By Mr. Louk:

Q. In the letter to you from Mr. Jones, that we had been discussing, in which he wrote to you explaining that he had sent a $3,500 check to Mrs. Arnold, made payable to you, in that letter there was only one letter to you with that, wasn't there?

A. That's right.

Q. In that letter, did he say this:

"Irish, I sent the check I was talking to you about to Molly as I wanted to have the letter registered with that amount of money in it."

Is that familiar?

A. That's right.

Q. "The check is made to you and as you know, $2,000 is to go to Molly and $1,500 to you."

A. That's right. I don't deny the $2,000 at all. I have been trying to get the $2,000 for her.

Q. "Needless to say, if anything did happen to me, get the money from the Falls Church Bank as soon as
page 48 } possible. All you have to do is take the check down, endorse it by signing on the back and get the money."

A. Yes.

Q. "I have told Emma that you are to receive $3,500."

A. That's right.

Q. "But I haven't told her I have mailed you a check."

A. That's right, because he didn't want—he got that loan in order to give Mrs. Arnold the $2,000 and her not knowing about it.

Q. Is that right?

A. Sure. My sister-in-law gave me the $3,500.

Q. "However, I am sure you won't get a chance to spend any money at this time" and so forth.

A. That's right.

Q. Did you see the letter, then, that Mrs.—

Mr. Hazel: At this point I would like the record to show that that reading, that recitation of Mr. Louk, is not from any letter but from notes he had prepared.

The Court: All right.

Edith Furr.

Mr. Louk: She identified it as being the words in the letter.

The Court: That's correct.

By Mr. Louk:

Q. Did you see the letter that Mrs. Arnold received from Mr. Jones?

page 49 } A. Yes, she did show it to me.

Q. There were two letters, were there not?

A. Yes, but don't ask me what was in it. I don't remember. I think it was on the order of the one I received as far as I—I think it may have been on the order of the one I received. I am not—

Q. I show you the letter dated April first, made out to "Dear Hunsie-Boo" and signed, "Love, H. B." or "Reuben R.". Would you look at the letter and tell me if that is the letter that you saw.

A. It is his writing.

Q. That is the letter that Mrs. Arnold showed you?

A. This check is to be divided $2,000 to you and $1,500 to Edith—yes.

Q. When did she show you that letter?

A. I believe the—maybe the day of his death, I am not sure.

Q. That was the letter which the check was with it?

A. Yes, I guess so.

Q. All right. In that letter it says—I will read it all so it will refresh you when we get down to the sentence I am interested in.

"Dear Hunsie-Boo: I am about ready to leave for the Norfolk General Hospital. I want to get this check off so I can have it registered. I sure don't feel as if I

page 50 } needed a hospital. All I need is you. Hope you are feeling much better by now. Will write you a long letter after I get in. Molly"—Molly refers to Mrs. Arnold, doesn't it?

A. That's right.

Q. "Molly, as you and Edith both know, in the event this operation does not go okay, this check is to be divided $2,000 to you and $1,500 to Edith."

A. That's right, personal check.

Q. In this letter he says, "As you and Edith both know." He is *writng* that to Molly. Does that refresh your recollection that the three of you discussed this on that week-end?

Edith Furr.

A. We didn't discuss it on the week-end. I talked to her alone and he also talked to me. We didn't have to be together for her to know.

Q. You didn't have the conversation together?

A. No.

Q. "However, don't figure on spending it yet as I feel as if everything is going to be all right, so don't worry. But just in case, this will help. I have got to leave now. Will write you later."

You read that letter?

A. That's right.

Mr. Louk: I would like to offer this in evidence.

The Court: Number 3. Number 4; sorry.

page 51 } (The document referred to was marked Plaintiff's Exhibit No. 4 and received in evidence.)

By Mr. Louk:

Q. Did you see the other letter of April second?

Mr. Hazel: What is the date of that first letter?

The Court: April 1, '58.

By Mr. Louk:

Q. She showed you that letter?

A. Yes, I believe she did.

Q. There was nothing held back between you two at this time, was there?

A. Well—

Q. You exchanged letters freely?

A. Well, of course, I showed her my letter, knowing that he was going to the hospital, and all; knowing his condition, yes.

Q. On the second page of that letter, it says: "Also, I mailed you registered letter with a check mailed to Edith for $3,500."

This is the letter the day after the first letter?

A. Sure.

Q. "So I have just finished the letter to her telling her of this."

A. Yes.

page 52 } Q. "And in the event anything does happen, have her cash that check as soon as possible and divide it as I have stated."

Edith Furr.

A. That's right. I tried to do that.

Q. You say the reason for this was she could be contacted easier than you?

A. That is what he said, yes, because I am at work and I work over town and there is no way of me getting a registered letter.

Q. You believe that?

A. That is what he said.

Q. But did you believe it?

A. I don't know. I have never received a registered letter over there.

Mr. Hazel: I object to that question. We are talking about a dead man and the counsel is asking the witness whether she believes something that he said about a registered letter.

The Witness: No doubt that I could.

The Court: Objection sustained.

By Mr. Louk:

Q Now, did you ask him why he was giving her $2,000?

A No, it was no affair of mine He made his money. If he wanted to give somebody $2,000, that was his business, none of mine.

page 53 } The Court: I don't want to cut anybody off, but isn't the defense in this case now that this defendant testifies her brother wanted her to have $5,000; that the reason that the plaintiff has not received $2,000 is that the plaintiff was to receive $2,000 out of this $3,500; that there were no funds; there were insufficient funds.

Mr. Hazel: Precisely. I don't think this is relevant.

The Court: And for that reason the plaintiff has not been paid the $2,000?

Mr. Hazel: That's right. And I don't know of any evidence about the five. He could have said he wanted his sister to have a million dollars. I don't think it makes any difference. He gave specific checks, $3,500 to Mrs. Arnold which was delivered to Mrs. Furr and made out to Mrs. Furr; said he wanted her to get from that check $2,000 to Mrs. Arnold.

Now, the check that he gave failed after his death when he was prevented from collection; through no fault of Mrs. Furr that check had no money. Mrs. Furr had given her personal check for $2,000 to guarantee Mrs. Arnold that if

something happened to Mrs. Furr, supposedly everything would go through. That is the size of this case. I frankly cannot understand the theory.

* * * * *

page 57 } PROCEEDINGS.

Mr. Louk: No further questions of this witness. We have a stipulation.

Mr. Hazel: I would like a very brief examination.

The Court: All right.

Thereupon,

EDITH FURR,

defendant, resumed, and testified further as follows:

DIRECT EXAMINATION.

By Mr. Hazel:

Q. You indicated that you received a telephone call several days before your brother's death.

A. That is right. It was the day she received the letter.

Q. You don't remember how many days before his death that was. Do you?

A. No, I don't. About April 3rd, wasn't it?

Q. I don't know. Was it before your visit to Norfolk?

A. Oh, yes. I told him about it.

Q. And what was the gist of that conversation?

A. Well, I happened to be off that day, and she called me and asked me if she came over on her lunch hour, would I go to the Falls Church Bank with her and cash the check? I said, "No." I didn't want to cash it unless something happened to him.

page 58 } Mr. Hazel: That is all.

CROSS EXAMINATION.

By Mr. Louk:

Q. Where was this conversation?

A. Mrs. Arnold called me on the telephone from her office.

Q. Where were you?

A. I was home that day. That can be confirmed through the telephone company, if necessary.

Edith Furr.

Q. You said it. What did she say on the telephone?

A. She said to me, "Edith, I received the check. If I come over at lunch time, will you go to the Falls Church Bank and cash this check," and I said, "No, because he didn't want it cashed unless something happened to him." When I went to Norfolk, I told my brother.

Q. How long was this after?

A. What do you mean, "How long?" It happened before he was operated on.

Q. Before he was operated on?

A. The day she received the registered letter?

Q. When was he operated on?

A. I think about the 9th. Wasn't it?

Q. When was this day?

A. No, no, I am wrong. I don't know what day he was operated on, frankly.

page 59 } Q. When was this day?

A. The day she received the registered letter.

Q. The day she received it?

A. The day she received the letter, she called and told me she had just received this letter.

Q. When did you receive your letter?

A. I don't know the exact date.

Q. Before that or after it?

A. It was just prior to him going to the hospital, I think. I suppose the date is on the letter.

Q. I don't have your letter. Did you receive your letter before she received her letter?

A. I really don't know.

Q. You don't know?

A. No, I don't.

Q. Didn't you testify before you received your letter?

A. What letter are you speaking of now, the personal letter or the registered letter?

Q. How many letters did you receive?

A. I received the one letter.

Q. That is the one I am talking about. Did you receive that before she received hers?

A. I don't know. You are speaking of the registered letter? I think I received my letter after.

Q. You received it after?

page 60 } A. I think. I am not sure.

Q. Don't you remember testifying she received the letter before you received any?

Edith Furr.

A. Evidently, she received the registered letter first, and then I got my letter later. I am not sure of that, of course.

Mr. Louk: That is all.
Mr. Hazel: I have no further questions.
The Court: All right, Mrs. Furr, you can step down.
Mr. Louk: Your Honor, we have the note that has been referred to in the testimony, and the statement of account of the Falls Church Bank. I agreed to stipulate, your Honor. He agreed to stipulate to the entry.
Mr. Hazel: I am stipulating only to the documents, and their validity. I am continuing to object to the situation, with the exception of the fact that it is an account of Mr. Jones.
The Court: That objection will be overruled.
Mr. Hazel: Exception noted.
The Court: The Statement of Account will be Plaintiff's Exhibit No. 5.

(The Statement of Account, marked Plaintiff's Exhibit No. 5, was received in evidence.)

Mr. Louk: The account of Mr. and Mrs. Ruben Jones, and the Liability Ledger of Ruben and Emma Jones.
page 61 } The Court: That will be Exhibit No. 6.

(The Account and Liability Ledger were marked Plaintiff's Exhibit No. 6 for identification, and received in evidence.)

Mr. Louk: The note drawn by Mr. and Mrs. Jones on April 1st, payable to the Falls Church Bank.
The Court: That will be Exhibit No. 7.

(The note marked Plaintiff's Exhibit No. 7 for identification, was received in evidence.)

Mr. Louk: Check drawn by Emma Jones on the Falls Church Bank, payable to the Falls Church Bank, on which the certified check was issued, which was Exhibit No. 3.
The Court: That will be Exhibit No. 8.

(The check, marked Plaintiff's Exhibit No. 8 for identification, was received in evidence.)

Mr. Louk: And the Will of Ruben Jones.

Mr. Hazel: A copy of Mr. Jones' will and all papers are probated.

The Court: Exhibit No. 9.

(The will, marked Plaintiff's Exhibit No. 9 for identification, was received in evidence.)

Mr. Louk: This is a certificate, a copy of that, which is filed.

Mr. Hazel: Yes, I think the clerk's certificate from Norfolk is among them.

Mr. Louk: No. 9, by stipulation is it April 2nd?

page 62 } The Court: No. 10.

(The certificate, marked Plaintiff's Exhibit No. 10 for identification, was received in evidence.)

Mr. Louk: No. 10 is the April 2nd letter from Mr. Jones to Mrs. Arnold, which was discussed in the testimony of Mrs. Furr, on cross examination. Is that agreeable?

Mr. Hazel: Yes.

Thereupon,

MILDRED ARNOLD,

plaintiff, was called as a witness in her own behalf, and after having been first duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION.

By Mr. Louk:

Q. Tell the Court your name.

A. Mildred Arnold.

Q. Your address?

A. Mailing address is Route 4, Box 659, Annandale, Virginia.

Q. How long have you lived there, Mrs. Arnold?

A. Eighteen years.

Q. When did your husband die?

A. In April, 1944.

Q. Did you work prior to his death?

A. Yes, I did. I started working in June of 1942.

page 63 } Q. Where?

A. At the Naval Torpedo Station in Alexandria.

Mildred Arnold.

Q. Did you have occasion to work with, or come in contact with one, Ruben R. Jones?

A. Yes, he was a supervisor at the Naval Torpedo Station.

Q. Is that where you first met him?

A. Yes, sir.

Q. How about Mrs. Furr, when did you first meet her?

A. Well, I met her years later, probably five or six years later.

Q. From that time on, what was the relationship between you and Mr. Jones and Mrs. Furr? Will you describe it to the Court?

A. Well, Mr. Jones and I were very good friends, and I only knew Edith through Mr. Jones, and he took me over to her house occasionally.

Q. Mrs. Furr, where did she live?

A. Pardon?

Q. Where did she live?

A. She lived at Tyson's Corner.

Q. When did her husband die? Do you know?

A. I think he passed away two or three years before Mr. Jones. I don't know exactly when.

Q. Did there come a time when Mr. Jones left for Norfolk to live, to live in Norfolk, or live in that area?

A. That was about two years before his death.

page 64 } Q. Two years?

A. Approximately.

Q. All right. Did you see him any during those two years before his death?

A. Yes, sir, I did.

Q. How frequently, and under what circumstances?

A. Well, he came up on business occasionally, oh, probably at first, every two or three months. Then he would come up every three or four weekends.

Q. And you would see him on those occasions?

A. That is right.

Q. Did you see him in the company of Mrs. Furr, on any of those occasions?

A. Several times.

Q. What was the relationship between the three of you? Did you ever go out together?

A. Yes, we would go out to dinner, several times. Mr Jones would take Edith and myself out to dinner.

Q. Directing your attention to January, 1958, some three or four months before his death, did he have any conversation

with you regarding the amount of money that he wanted you to have in the case of his death?

A. Not the exact amount, but he stated several times he wanted to leave some money to me. He also stated it to me on—

page 65 } Mr. Hazel: Before the witness goes on, I realize some conversations about various things between the decedent and other individuals have been allowed in, on prior occasions, but it was on agreement.

The Court: I am not going to allow any testimony on what the decedent said to Mrs. Arnold.

Mr. Louk: If the Court please, the conversations we objected to, were conversations between Mrs. Furr and Mr. Jones, by themselves, and suggested to the Court that it was objectionable and hearsay, and we said if they were allowed, or if that was what he intended to do, that we intended to do the same thing, and hearing no objection from Mr. Hazel, I don't think there was any question about the equity of the thing.

The Court: Is it material that Mr. Jones told her that he wanted to leave her some money? It has been admitted that she was to have $2,000.00 from the proceeds of this $3,500.00.

Mr. Louk: The only purpose of that particular question was to say that the first time he thought of it was three or four months before his death. The next question I was going to ask was the specific question about this $2,000.00. The next question—

The Court: I just wanted to say, "I don't know whether it was material." The $2,000.00 was—she said it was out of the proceeds of that check which was not paid.

page 66 } Mr. Louk: She said also he agreed to leave her $5,000. That testimony will be refuted. That is not the case; that she was to get $5,000.00, is not the fact, as we know it, and the conversations that she and Jones had, developed. She and Mrs. Arnold had the conversation with Mr. Jones, Mrs. Furr, Mrs. Arnold and Mr. Jones. There was a conversation between all three of them, which we have gone into, and a conversation between her and Mr. Jones, which we feel we have to go into.

The Court: The conversations between all three of them. certainly. Because there was no objection to one, doesn't mean that the other is admissible over objection.

Mr. Louk: It wasn't my purport, your Honor, to put it on that basis. It was my purpose in making the objection

to indicate to the Court that if it were allowed in this case, we intended to use it, assuming that the Court agreed to that, and Mr. Hazel agreed to that. I assumed we could go into the same conversations about the identical set of circumstances. I am surprised.

The Coort: Is it the same conversation?

Mr. Louk: The same type of conversation about the $2,000.00 check, the $3,500.00, $2,000.00 to her and $1,500.00 to Mrs. Furr.

The Court: I will allow you to ask it.

Mr. Hazel: Note an exception, your Honor.

page 67 } By Mr. Louk:

Q. Mrs. Arnold, did there come a time when you and Mrs. Furr and Mr. Jones had a discussion about this initial payment, $3,500.00 given you?

A. Yes, sir. We discussed that the last weekend he was up here, just prior to his operation.

Mr. Hazel: Your Honor, will you please note in the record a continuing objection?

The Court: Yes.

By Mr. Louk:

Q. Where did this discussion take place between the three of you?

A. At my home.

Q. Where did you see Mr. Jones first on that weekend?

A. Where did I see him first?

Q. Yes, where did you meet him?

A. I met him at the airport.

Q. Did he come to your house then from the airport?

A. Yes, he did.

Q. Then was Mrs. Furr there at the time, or did she arrive later?

A. She arrived later.

Q. How did the conversation come up?

A. Well, he said to Edith that he wanted—he said, "I want Molly to have some money after my death."

page 68 } He said, "The only way I can figure how to give it to her so Emma doesn't know about it, is to write a check to you for you to cash and give her the money after my death," and he said, "I will write a check for $3,500.00." He said, "$2,000.00 of that is to go to Molly, and you are to have the $1,500.00."

Mildred Arnold.

Q. Now, what did Edith say at that time, or what was the conversation so far as Edith was concerned as to what she was to do?

A. Well, Edith immediately started crying. and said *said,* she would see to it that I got whatever he wanted me to have, but she said she didn't want any of his money. All she wanted was for him to stay alive. She wasn't interested in the money. She wanted him to stay alive.

Q. Did she give any other conversation as to what she wanted him to do, a letter?

A. She said she would like it all in writing what she was supposed to do. She wanted it in writing.

Q. Was anything mentioned as to the amount of money, or where the money was?

A. He did tell us that he had taken out a loan at the Falls Church Bank and deposited it to his account. He had also taken out an insurance on the loan.

Q. How long was that meeting together? Was that the only thing discussed, or what else, if anything?

page 69 } A. I think Edith was at my home perhaps two hours. Of course, we talked about his coming operation. He was going to the hospital.

Q. Then did you have a further talk with him after she left? Did you have any more talk with him after she left with Mr. Jones?

A. You mean about the money?

Q. About the money.

A. I don't think so. He just said he was going to mail the check to me. He was going to make it payable to Edith, but he was going to send it to me so I would take good care of it so it wouldn't be cashed until after his death.

Q. Was there anything said at that time as to why it was made payable to Edith and delivered to you in the way that Edith couldn't have reached, that Mrs. Furr testified to?

A. He said he was going to make the check payable to Edith. The reason for that is because he didn't want Mrs. Jones to know I was getting the money, so he made the check out to Edith. The reason he was sending it to me was to take good care of it so it couldn't be cashed before his death.

Q. That was the weekend before he went into the hospital?

A. That is right.

Q. Did he leave on a Sunday?

page 70 } A. Yes, he went back Sunday.

Q. And went in the hospital when? I show you this letter, Plaintiff's Exhibit.

Mildred Arnold.

A. I think he went in the hospital on the 2nd of April.

Q. I show you this letter which is Plaintiff's Exhibit No. 4. Does that refresh your recollection as to when he went into the hospital?

A. Well, this is the date, April 1st. He says in here he is about ready to leave for the hospital.

Q. And this letter of April 2nd—

A. This is evidently written from the hospital, because he says he has passed all his tests with flying colors.

Q. Did you receive both of those letters?

A. Yes, sir, I did.

Q. Upon receiving the letter of April 1st, there was a check in it. Is that correct, or April 2nd, whichever one it was?

A. I think the check was in the April 2nd letter.

Q. Would you look at Plaintiff's Exhibit No. 2, and see whether or not that is the check?

A. Yes, sir, that is the check.

Q. It is dated what day?

A. Dated April 2nd.

Q. Upon receiving that check in those two letters. page 71 } did you have any conversation with Mrs. Furr about it?

A. Only that I let her know that I had the check; that I had received it.

Q. What did she say to you at that time? Did she call you, or you call her?

A. No, I think I called her and told her I had received the check.

Q. Did she make any comment?

A. I don't remember whether she made any comment about the check at that time or not.

Q. When was the next conversation you had with her after you received that check?

A. The only thing that I can remember is when she came back on a Tuesday after seeing Mr. Jones at the hospital.

Q. That would be Tuesday before his death—

A. Before his death.

Q. —or Thursday?

A. He died on Thursday. This was the previous Tuesday.

Q. All right.

A. She said that Mr. Jones had said to hold onto the check. He would pick it up the next time he came up here.

Q. Did she tell you anything about why he said that?

A. She had asked him what we were supposed to do about

the check that I had. He said, "Tell Molly to hold onto it."

Q. Had she reported on his condition prior to
page 72 } her saying that?

A. Yes, she said he was getting along fine, getting along real well.

Q. Where was that conversation?

A. Well, when she came back from the airport, she stopped at my office, and we went down to the drug store and had a cup of coffee, and that is where the conversation took place.

Q. Had you ever told her that you wanted to cash the check before?

A. No, I never did.

Q. Any doubt in your mind about that?

A. None whatsoever, because I knew that check wasn't to be cashed until his death. I wouldn't have dared to try to cash it before then.

Q. After that talk with Mrs. Furr, what was the next thing that happened, so far as the check and the money, et cetera, were concerned?

A. You mean the day she came back from the airport?

Q. Yes.

A. Well, I think that is all we talked about the check that day.

Q. Were your relations good at that time? How would you describe it?

A. Yes, we were real friendly at that time.

page 73 } Q. Had you been out with each other?

A. Yes, we used to go to the movies, and out to dinner together. She called me and asked me to meet her at her home. Had dinner at the Vienna Restaurant several times. She called me and said she was treating me to dinner. She paid for it.

Q. Did she lean on you at all, or look to you for advice, during this time?

A. While he was living in Norfolk, she called me one morning. It was about the weather, before he had gone to the hospital. I think it must have been about five or five-thirty in the morning, and she called me and told me her driveway was so full of snow she wasn't able to get her car out. I said, "Why in the world was she calling me at that time in the morning, because I couldn't do anything about her snow in her driveway?"

Q. Did she confide in you any?

A. Yes, she did.

Q. In what way?

Mildred Arnold.

A. Well, there was some difficulty she was having at her office. It was rather unpleasant and wasn't making her feel very happy about it. She confided in me about it. Mr. Jones and I both tried to advise her what to do about it.

Q. Did Mr. Jones know that you and she were
page 74 } good friends?

A. I think he hoped that we were.

Q. What then happened on April 10, 1958?

A. Well, I had a telephone call. I think it must have been about 6:30 in the morning, and Edith was crying and trying to tell me that her brother had passed away; that she was all upset about it. She was alone over there, and asked me to come over.

She also said, "What are we going to do about the check? You will please bring that check with you. We have to go to the bank. Rube told us to take that check to the bank as soon as we heard of his death." I dressed and went to her house.

Q. What time was that?

A. I think I got to her house about seven or seven-thirty.

Q. Who was there when you got there?

A. She was alone. I pulled into the driveway and went in the house, and Mr. and Mrs. Gamble came in.

Q. What was her condition?

A. She was very upset, and she was crying and very nervous.

Q. When you arrived, and I assume had some conversation, who brought up the subject of the check, if anyone did?

A. Mrs. Furr did.

Q. Are you sure about it?

page 75 } A. "Molly," she said, "do you mind if I tell Mr. Gamble about this check that he wrote?" She said, "I would like to get his advice about what to do about it." I said, "Well, I don't think we need anybody else's advice. All we have to do is do what Ruben asked us to do. Take the check to the Falls Church Bank and get it cashed."

Mr. Gamble said, "I don't think she is in any condition to go to the Falls Church Bank. Her eyes are all red. It would be much better to take it to her own bank and put it in her account."

Q. What did you say about it? What was said? What developed?

A. I didn't like the idea that she would take the check to the Vienna Bank, because Mr. Jones was very emphatic about

the fact that we should take this check to the Falls Church Bank immediately after his death and cash it.

Q. So, go ahead.

A. Well, I tried to persuade her to take it to the Falls Church Bank, bue she wouldn't. She said she would take it to her own bank.

Q. Did she indicate any concern about going to her own bank?

A. No, none.

Q. Did she do it on your urging, go to her own bank, or did she do it of her own accord?

page 76 } A. She did it of her own accord.

Q. It was to her interest to get the check in the bank as soon as possible?

A. Yes, that is what she said. "I want to do what Rube asked me to do. I want to get this to the bank as soon as it opens."

Q. What happened then?

A. Well, she got in my car and we drove over to the Vienna Bank and waited in the car a few minutes until the bank opened. She went in and endorsed the check and deposited the check to her checking account.

Q. Were you with her?

A. Yes, sir, I was.

Q. Did she indicate, make any statement that she didn't want to do it?

A. No, she didn't.

Q. Was anything said then about the check to you at that point, or any discussion?

A. Well, we went back to her house. She sat at the dining room table and wrote out a check for the $2,000.00, and gave it to me.

Q. Voluntarily?

A. Voluntarily.

Q. Is that this check?

A. Yes, that is the check.

page 77 } Q. I mean Plaintiff's Exhibit No. 1. Then after that, after she wrote that check out, what happened? Did you receive a phone call?

A. Oh, yes, I did. The telephone had been ringing quite a lot that morning, and Edith said to me, "Answer it for me. I don't want to talk to anybody right now," and it was Mr. Gamble, and he asked me if Edith had cashed the check. He would take care of it.

Q. Go ahead.

Mildred Arnold.

A. He asked me if she had gone to the Vienna Bank. I said, "Yes, she did." She had deposited the check to her account, and she wrote a check for $2,000.00 and gave it to me.

Q. Was Edith there at that time?

A. He said, "Oh." I said, "She wrote a check for $2,000.00." He said she wasn't supposed to do that. I said, "Why not?" "She was supposed to wait a couple of days before giving you that check."

Q. Did you stay there any longer the day of the 10th?

A. She got a phone call from Falls Church that her brother had arrived. We picked up her brother and went back to Edith's house, and Mrs. Gamble, in the meantime, had gone home to prepare food for Edith's company, and she came back with the food, and we had some lunch, and Mr. Jones' brother, Clifford, and I were sitting at the kitchen
page 78 } table and talking over a cup of coffee, and I stayed on there until about 7:30 in the evening.

Q. All right. That was on Thursday, April 10th?

A. That is right.

Q. What did you do with your check for $2,000.00 then?

A. Well, on Friday, the 11th, I went back to work, and I deposited the check at my bank, the Mount Vernon Bank. I deposited it to my checking account.

Q. On the 12th of April, did you then see Mrs. Furr?

A. Yes, I did. I went out to her house the morning of the 12th, and I stopped there. I was on my way to the funeral parlor at Vienna. I stopped at Edith's house, and she had a Masonic ring. She said she had been out and seen Rube, and he wasn't wearing his Masonic ring. She said this ring belonged to her husband, Clarence. Would I take it with me and have the funeral director put it on his hand, and when I came out there, Mrs. Gamble was there and she had a fur cape that she asked me would I take it back and give it to Edith. Edith was borrowing Mrs. Gamble's fur cape for the funeral.

Q. Did you go to the funeral?

A. Yes, sir, I did.

Q. All right. Then did you stay at Mrs. Furr's house the day of the funeral?

A. No. I was only there a short time, to pick
page 79 } up the ring and take it out and bring the cape back to her.

Q. After that then, did you get a phone call? What was the next conversation you had with Mrs. Furr?

Mildred Arnold.

A. The next time I talked to Edith was when she called me and told me about the certified check for $3,500.00.

Q. Was that the same day?

A. The same day, later that day.

Q. The day of the funeral?

A. Yes.

Q. What did she say?

A. "Molly, my brother's wife stopped off here and gave me a certified check for $3,500.00," and she said, "I don't know why." I said, "I think I know why." Rube said in his letter that he had told Mrs. Jones that Edith was to have $3,500.00, and he told Mrs. Jones that so she wouldn't—so she would know why the check for $3,500.00 was written to Edith when the cancelled back came back to her.

Q. You told that to Edith? Is that right?

A. That is right, but I said he hadn't told Mrs. Jones that he had written the check, so not knowing about the check, that he had given you, she gave you the certified check for that amount.

Q. What did she say?

A. Well, she said she didn't know what would happen to the first check. She said if the first check didn't go page 80 } through the bank, she would see to it that I got $2,000.00 from the money for the certified check.

Q. Are those her exact words?

A. Those are her exact words.

Q. Was there anything else discussed in that conversation, anything else, or was that the purpose of the conversation?

A. I think that was the purpose of the conversation. I don't remember discussing anything else.

Q. When you told her that—

A. Except, I do remember she did say something about the flowers that Rube had.

Q. —you had seen his letter to her?

A. That is right. I saw that on the 10th.

Q. That was the day that she saw your letters?

A. That is right.

Q. Were you referring to the letter in which he told Emma that she was to receive $3,500.00, but he hadn't mailed her a check?

A. Yes.

Q. That was in his letter to her?

A. Yes, that is right.

Q. That was on Saturday, the 12th?

A. That is right.

Mildred Arnold.

Q. Two days after the death?

page 81 } A. That is right.

Q. What was the relationship between Mrs. Jones and Mrs. Furr, such as friendship or otherwise?

A. They weren't very friendly. They didn't like each other very well.

Q. Did Mr. Jones know that?

A. Yes, he did.

Q. When was the next time you heard from Edith? This was on the day of the funeral, I mean.

A. She called me on the following Monday at work and asked me what I was doing at lunch time, and would I come back and meet her at the cemetery. By the way, I went to the funeral at the funeral parlor, but I didn't go to the cemetery on the day of the funeral. She called me and asked me to meet her at the cemetery, so she could show me the location of Mr. Jones' grave.

It was on that day that she said, "I did what I was supposed to do. I carried out his wishes." She said she felt that she had done her duty.

Q. All right. At that point, was there any doubt in your mind that she intended to pay you the $2,000.00?

A. Was there any doubt in my mind?

Q. That she intended to give you the $2,000.00.

A. No, I thought she would give it to me.

Q. That was the 14th. How many days later, or

page 82 } within how much time did you talk with her again?

A. The next time I talked with her, was when she called me and told me that she had a notice from the bank that there were insufficient funds in the checking account, and the check wasn't any good.

Q. That what?

A. That the check that Mr. Jones had written, wasn't good; that there wasn't enough money in the bank to cover it.

Q. What did you say to that, if anything, when she called you?

A. Oh, I remainded her of the fact that she had promised to see to it that I got the $2,000.00. It was at that time that she said, "I have changed my mind. I am not giving you $2,000.00 from the money from the certified check."

Q. Did she at any time indicate that she wanted to give you $2,000.00?

A. Yes, she had told me previously.

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Q. I mean after that. Did she ever mention anything to you about $5,000.00?

A. No.

Q. Or that she was to get $5,000.00?

A. No, never.

Q. Until she got $5,000.00, she wasn't going to give you any money. In other words, until she got another $3,500.00, she wasn't going to give you $2,000.00.

page 83 } A. She wasn't planning to give me $2,000.00 at any time, because she said the original check that had been made out to her, was supposed to take care of my $2,000.00, was null and void, and therefore, she didn't have to give me $2,000.00 at any time, and she wasn't about to.

Q. Was your relationship with Mr. Jones such that had he indicated to her that she was to get $5,000.00, that he would have told you?

A. I think he would have.

Mr. Hazel: I object to that question, purely speculative.
The Court: Objection sustained.

By Mr. Louk:

Q. At any time, from the time you received the check, until the morning of the 10th, did you ever suggest that you cash the check?

A. No, never, never.

Q. When she went up to the teller, where she cashed the check at the Vienna Bank and deposited the $3,500.00, what was her attitude, or behavior or manner, or composure?

A. Before she left the house, she wore some glasses to hide her red eyes. She had been crying quite a bit. She was fairly composed when she got to the bank. She didn't seem to be too nervous.

Q. Signed her name?

A. She signed her name, cashed the check and

page 84 } deposited it.

Q. Did Mrs. Furr ever suggest to you any other procedure for getting this check to the Falls Church Bank, such as waiting and going to the Falls Church Bank later on in the afternoon?

A. No.

Q. She wanted to do it early?

A. She wanted to do it early, because Rube had said to get it to the bank as soon as she could.

Mildred Arnold.

Q. Now, in the will, you haven't seen the will?
A. No, I haven't.
Q. Or didn't know anything about it?
A. No.
Q. In the will, that was made on the 9th of April, 1934, with two codicils dated March 30, 1958, he says at the end of the second codicil, "Note, Falls Church Bank, is insured and will be paid at my death." Had he told you that in the conversation with the three of you present?
A. He had taken out a note and had it insured.

Mr. Hazel: I object to it.

By Mr. Louk:
Q. Just the $3,500.00, he didn't say anything about the balance over the $3,500.00, as to the note?
A. No, he didn't.
Q. Did he ever talk to you about the disposition
page 85 } of his estate after his wife died?
A. No, he didn't.

Mr. Hazel: I object to that again on the same ground.
The Court: I don't think it is material.
Mr. Hazel: I don't think it is material anyway.
The Court: Objection sustained.
Mr. Louk: There is a section under the first codicil that all the remaining estate is to be willed to my sister, Edith.
Mr. Hazel: The record speaks for itself.
The Court: That is in the record, of course.
Mr. Louk: That is all.

CROSS EXAMINATION.

By Mr. Hazel:
Q. Mrs. Arnold, you indicated that you were very good friends with Mr. Jones. Did you ever have any business relationship, I mean?
A. No.
Q. Was he ever indebted to you for anything in a business sense?
A. Not in a business sense, no.
Q. His entire relationship with you was a social one?
A. That is right.
Q. Did he often stay at your house when he came to Wash-

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ington?

page 86 } A. Yes, he did. That is right.

Q. Indicating to his wife in Norfolk that he had stayed at Mrs. Furr's house?

A. I don't know what he indicated.

Q. You don't know what he indicated?

A. No.

Q. You have testified that there was a discussion between yourself and Mr. Jones and Mrs. Furr at your house sometime during this last visit of the deceased to Washington. Exactly what day was it?

A. Well, it was that weekend. It either the Saturday or the Sunday.

Q. When did he come to Washington?

A. I think he arrived Saturday morning.

Q. Where did he stay while he was here?

A. He stayed at my place.

Q. You don't remember whether it was Saturday or Sunday that this visit occurred?

A. I don't remember whether Edith came over on a Saturday or on a Sunday, but he went back home on Sunday. It might have been shortly before he left.

Q. At your house?

A. That is right. I took him to the airport.

Q. He stated in this visit, that he had gone to the Falls Church Bank and done certain things. Would that

page 87 } have made it Saturday afternoon?

A. He would have had to go to the bank on Saturday morning.

Q. You feel this was after he went to the bank and made whatever arrangements he intended to make?

A. That is right.

Q. Mrs. Furr came over that day. How did Mrs. Furr get there?

A. She has a car. I don't remember whether she drove over in her car, or Mr. Jones drove over and got her.

Q. How did she get over there? Did you call and invite her?

A. Yes, we invited her over.

Q. You don't remember whether he went to get her, or she came?

A. I can't remember. It was two years ago.

Q. How long did she stay?

A. She was there several hours.

Q. Discussed anything but estate and property?

Mildred Arnold.

A. We discussed his condition, his kidney stone, and his operation.

Q. How did Mrs. Furr get home? Do you remember?

A. I can't remember. If I am not mistaken, she had her car and drove over.

page 88 } Q. You do recall that sometime during that conversation that Mrs. Furr apparently didn't want to talk about money. All she wanted was, "For you to stay alive, Ruben."

A. That is right.

Q. She wasn't too much interested in this financial business. She was more interested in her brother's health, and all this other stuff was in passing. That would be a pretty fair statement of it. Wouldn't it?

A. She got all upset when he started talking about his death. She said she would do anything at all he requested her to do.

Q. What do you mean, "upset," crying?

A. Started to cry.

Q. She said, "All I want is to see your health improved, all I am interested in."

A. The fact that he spoke of his death, upset her.

Q. Did she listen very intently about this financial discussion that went on?

A. He explained to her that he was going to write this check, and he more or less got her to promise that she would take—

Q. What do you mean, "More or less"?

A. Well, he asked her if she would see to it that I got the $2,000.00; that he was giving her $1,500.00 to see to it that I got $2,000.00.

page 89 } Q. That was what you meant by "more or less"? Do you really think she understood what he was talking about, or was even listening?

A. Yes, I did.

Q. You understood it clearly?

A. Yes, sir, and I think she did, too.

Q. As I recall the situation, Mrs. Furr visited Norfolk sometime after her brother's operation, and on the way back from the airport, she stopped by your place and wanted to talk with you and advise you about her brother's condition?

A. That is right.

Q. Prior to her visit, was that registered letter with the check received prior to her visit or after the visit?

A. Before the visit.

Mildred Arnold.

Q. On the day you received the check, you did call her up?

A. I don't remember whether I called her or she called me.

Q. I think you testified she called you.

A. I let her know I had the check.

Q. What did you say about the check?

A. That is all I said.

Q. What did you call her up about?

A. Just to tell her I had received it.

Q. Did you really have thoughts that this check
page 90 } could be cashed?

A. None whatever.

Q. What did she say?

A. I knew Mr. Jones too well to think of doing such a thing.

Q. What did Mrs. Furr say when she was advised that you had this $3,500.00 check? You had her on the telephone, and you said, "I just got the $3,500.00 check, made out to you?"

A. No, I didn't say that.

Q. What did you say to her?

A. I said, "I received the check at the office."

Q. You didn't suggest that she come down and have coffee with you or lunch?

A. Oh, no.

Q. What were Mrs. Furr's comments on the way back from the airport about Mr. Jones' condition?

A. She was delighted. Said he was doing real well.

Q. Had you called the hospital to see how the operation came out?

A. No, I didn't.

Q. Did you make any inquiry of the hospital when he was down there?

A. No, I didn't call down there at all, because I knew
Edith was flying down there in the morning, and
page 91 } she said as soon as she got back—

Q. Were you concerned about his condition at all?

A. Yes, I was.

Q. While he was in the hospital?

A. Yes, I was very concerned.

Q. Didn't make any inquiry?

A. No, because it is sort of useless to call a hospital. I worked for thirteen doctors. The less calls you make at a time like that, the better off the hospital staff is.

Mildred Arnold.

Q. The next time after the coffee-hour visit at the airport, the time you saw Mrs. Furr, was on the date of Mr. Jones' death?

A. Would you mind repeating that?

Q. The next time, after the airport return, the visit when she returned from Norfolk, the next time you actually saw Mrs. Furr was when you went to her house on the date of his death?

A. That is right.

Q. You found her there crying and quite emotionally disturbed around 7:30 in the morning?

A. She was threatening suicide over the telephone, when she called that morning. That is why I made a special effort to get to her as soon as I could.

Q. You knew she had lost her husband just a few
page 92 } months before?

A. No.

Q. Do you remember whether anyone else was there when you got to the Furr house?

A. No, she was there alone.

Q. Would you say she relied tremendously on her brother, Ruben Jones?

A. Not tremendously. He would advise her, and after her husband's death, and also—

Q. Did she look to anyone else for advice?

A. To anyone besides Mr. Jones?

Q. Besides Mr. Jones.

A. Well, she was very close to her brother, Clifford Jones.

Q. Those were about the only two she was close to?

A. Those were about the only two she was close to.

Q. Did you know whether or not Mr. Jones helped with the straightening out of her husband's estate when her husband died?

A. I don't know. He went over there and went over some papers with her.

Mr. Louk: Will you speak a little louder?

By Mr. Hazel:

Q. And Mrs. Furr was so wrought up when you arrived at her house that she threatened she was consider-
page 93 } ing suicide?

A. That is right.

Q. How long after your arrival did Mr. Gamble arrive?

A. A matter of a few minutes.

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Q. How long did Mr. Gamble stay?

A. Oh, I really don't know, not really very long, because he said he had to open up his shop.

Q. Was there any conversation about any sort of check or financial affairs when he was there?

A. When Mr. Gamble came in, Edith said, "Molly, do you mind if I tell Tinky"—she calls him Tinky—"If I tell him about this check that you have?" I said I didn't think it was necessary to tell him about it; that all we had to do was to do what Mr. Jones had requested us to do.

Q. To do what?

A. To do what Mr. Jones had told us to do.

Q. What was that again?

A. That was to take the check to the Falls Church Bank as soon as the bank opened.

Q. And then over your objection, did Mrs. Furr talk with Mr. Gamble while you were there about this check?

A. Yes, she did.

Q. What did Mr. Gamble say? Do you recall?

A. He said, "Edith isn't in any condition to take this check to the Falls Church Bank. She is all upset, and she isn't in any condition to take it to the Falls Church Bank."

page 94 } He told her to take it to the Vienna Bank, her own bank, and put it in her checking account.

Q. Did you suggest that she go on to the Falls Church Bank immediately?

A. Yes, sir, I did.

Q. I thought you suggested a few minutes ago that she didn't go to the Falls Church Bank.

A. Yes, I did. I told her that isn't what Rube told her to do; that she was to take it to the Falls Church Bank.

Q. Why did Mrs. Furr want to take it to the Vienna Bank?

A. She knew the people there and felt more at ease at the Vienna Bank than at the Falls Church Bank.

Q. She was weeping at that time?

A. Yes, she was.

Q. Then you apparently went to the Vienna Bank with Mrs. Furr at some point. When did you get to the Vienna Bank?

A. We got there a few minutes before nine. We waited there a few minutes before it opened.

Q. How did you happen to go so early to the Vienna Bank?

A. She wanted to be there early, at the bank.

Q. You didn't suggest that she hurry down to the bank and be there when it opened?

Mildred Arnold.

A. No, I didn't.

page 95 } Q. The $3,500.00 check from the decedent was deposited to Mrs. Furr's account. You watched while she went through the technicalities?

A. That is right.

Q. Did you ever ask her, or suggest to her that because of this rather nebulous arrangement, that if anything happened to Mrs. Furr, that you would be out of luck?

A. No, sir.

Q. That thought didn't enter your head?

A. No.

Q. Did it ever enter your head that if anything happened to Mrs. Furr, that you would be out of luck on the $2,000.00, if anything happened to her?

A. No.

Q. The thought never crossed your mind?

A. No.

Q. After you got home from Mrs. Furr's, was that when the check was given to you, the $2,000.00?

A. That is right.

Q. What were the circumstances? How did Mrs. Furr happen to do that?

A. She went in the house, got out her check book, sat down at the dining room table, and wrote out the check.

Q. You never suggested that she do this?

A. No, I didn't.

page 96 } Q. You never suggested at any time that Mrs. Furr give you the check?

A. No. She said she wanted to do exactly as Rube asked her to do. "He asked me to give you the $2,000.00. That is what I am doing."

Q. You understood that the $2,000.00 was to come out of the $3,500.00 check that you delivered to Mrs. Furr?

A. Yes.

Q. There was no question in your mind that it was part of that check?

A. That is right.

Q. That was the transaction. That was the deal.

A. The money was in the Falls Church Bank. I knew that Mr. Jones had deposited the money in the Falls Church Bank.

Q. When that $3,500.00 check from Mr. Jones to Mrs. Furr was cashed, you were to get $2,000.00?

A. He paid her $1,500.00. The $1,500.00 that he was giving her was to see that I got $2,000.00 after his death.

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Q. Out of that check?
A. So far as I know, to the best of my knowledge.
Q. Did he ever pay her that $1,500.00?
A. He was paying her $1,500.00 out of that $3,500.00.
Q. He gave her the check for $1,500.00, but did he ever give her $1,500.00?
page 97 } A. No.
Q. Did he ever give her $3,500.00?
A. He gave her a check.
Q. He gave her a check that was returned "insufficient funds."

Mr. Louk: He is arguing with this witness.
Mr. Hazel: I am asking this witness whether or not Mr. Jones ever gave her any money, to her knowledge, whether she knows it.
The Witness: That check wasn't taken to the Falls Church Bank, like Mr. Jones said she should do. He said, "Take it to the Falls Church Bank as soon as you hear of my death, and cash it," but she didn't do it. She took it to her bank, and put it in her checking account. She didn't cash the check like she was told to do.

By Mr. Hazel:
A. And like you asked her to do it?
A. I didn't ask her to do it. It was in her letter.
Q. I think you asked her to take it on that day?
A. I said, "I don't see why you have to tell Mr. Gamble about the check."
Q. You didn't want Mr. Gamble to know about this check?
A. It didn't make any difference to me. It was between the three of us. It was something confidential, and
page 98 } she was supposed to keep the confidence, so why drag in another party.
Q. Because it is in the Court's and public knowledge, I don't know about this confidence, but nevertheless, you didn't want Mr. Gamble to know about it?
A. It didn't make any difference to me.
Q. You apparently didn't want it. Why didn't you want him to know?
A. It didn't make any difference whether he knew about it.
Q. Did the thought enter your mind that if he knew about it, he might put a stop to it, and that unless that check was

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cashed that morning in the Falls Church Bank, you might never see that $2,000.00?

A. That is what Mr. Jones told me, to have it cashed as soon as they heard of his death.

Q. You knew there was a need to get that check to the Falls Church Bank as soon as she could?

A. That is what he said.

Q. Do you know that the account in the Falls Church Bank was in a joint account between Mr. and Mrs. Jones?

A. No, I didn't.

Q. Then you went to the funeral parlor and listened to the service and didn't go to the grave?

A. That is right.

page 99 } Q. Mrs. Furr called your office later that evening?

A. That is right.

Q. And advised you that Mrs. Jones, the widow's brother-in-law or brother had delivered the check?

A. That is right.

Q. You didn't have any idea that Mrs. Jones might deliver that check?

A. Mrs. Jones respected his wishes, usually, and if he had asked her to see to it that Edith got $3,500.00, I am sure that she would have given the $3,500.00 to Edith.

Q. Even though they weren't too friendly?

A. That is right.

Q. There wasn't such hostility that it would prevent Mrs. Jones from doing what her husband wanted her to do?

A. That is right.

Q. You knew that her husband had asked her to give some money to Mrs. Furr?

A. I knew that he had told her that he wanted Edith to have $3,500.00, and the reason he told her that Edith was to have $3,500.00, and didn't tell her that he had already written a check for that amount, was so that when this check came back to Mrs. Jones, she would know what it was all about.

Q. It might have been possible he wanted her to have $3,500.00, anyhow.

A. I don't think so. I will tell you why I don't

page 100 } think so. When he said to me, "I want to see that you get some money after my death. I am going to ask Edith to see to it that you get it," I said, "I don't think it is a wise way to go about it. What is to prevent Edith from refusing to give me the money?" He said, "I

will make out a certified check to her, and I will send it to you to hold until my death. Then you take it to her and cash it and take out the the $2,000.00.'' I said, ''Why are you only giving her $1,500.00 and $2,000.00 to me?'' He said, ''Because you need it. She doesn't handle her money wisely. Only the other day, she threw $300.00 away on a Slenderella Course. I told her not to do that. She doesn't take care of her money.''

Q. You testified that Mrs. Furr was to get $1,500.00 for seeing that you got it?

A. That is right.

Q. And you testified that Mr. Jones also wanted to leave money to Mrs. Furr because they were sister and brother?

A. When did I say that?

Q. That wasn't the inference that was to be drawn, that he wanted to leave her some money?

A. No.

Q. I am asking you if that isn't a proper inference.

A. He said he was going to write this check for $3,500.00, $2,000.00 was to go to me and $1,500.00 to Edith.

Q. But he didn't say that was all he was going
page 101 } to give to Edith?

A. No, he implied it.

Q. But he didn't say it?

A. That was the reason he gave when I asked, ''Why only $1,500.00?''

Q. Did you ever do any work for Mrs. Furr?

A. No.

Q. Did you ever perform any services for her, of any kind?

A. No, I haven't.

Q. Have you ever loaned her any money?

A. Oh, I think I loaned her a couple of dollars the day we met at the cemetery.

Q. Other than that, did she ever owe you any?

A. No.

Q. Did she owe you anything at the time she gave you the $2,000.00, excepting what might have been owed as a result of the passage or the delivery of the $3,500.00?

A. No.

Mr. Hazel: That is all.

Mr. Louk: That is our case.

The Court: All right. You may step down.

Mr. Hazel: At this time, I move to strike all of the plaintiff's testimony.

William Henry Gamble.

(Oral argument by counsels for plaintiff and defendant on motion).

page 102 } The Court: Mr. Hazel, if you want to submit the case on your motion to strike, of course, I will rule on it. If you have other evidence that may be of benefit to the case, I will withhold the ruling on the motion.

Mr. Hazel: I would like to put one other witness on, Mr. Gamble.

Thereupon,

WILLIAM HENRY GAMBLE,

was called as a witness on behalf of the defendant, and after having been first duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION.

By Mr. Hazel:

Q. Will you state your name, sir?

A. William Henry Gamble.

Q. Are you acquainted with Mrs. Arnold, the lady at the far end of the table?

A. Yes.

Q. Are you also acquainted with Mrs. Furr, the lady near me?

A. Very well.

Q. How long have you known Mrs. Arnold?

A. A very short time. To my knowledge, I have only met her once or twice.

Q. How long have you known Mrs. Furr?

A. Many, many years, many years.

page 103 } Q. Did you know a Mr. Ruben Jones—

A. I did.

Q. —who died in April, 1958? Was he any relation to you?

A. Relation to me?

Q. Yes, sir.

A. I don't believe so.

Q. How did you happen to learn of his death?

A. Through the sister, Mrs. Furr.

Q. Do you remember the day? Does April 10, 1958 sound about right to you?

A. Sounds about right to me, about, close to a year ago.

William Henry Gamble.

Q. Do you recall the evidence on that date, from the moment you learned about the death? Will you please describe to the Court just what you did?

A. Mrs. Furr called me early in the morning. I can't recall exactly how early, but I believe I arrived at her home somewhere in the neighborhood of about seven o'clock.

Q. She had called you that morning?

A. That morning early.

Q. Was anyone else there with you when you arrived?

A. Mrs. Arnold was there.

Q. Did you see Mrs. Arnold arrive?

page 104 } A. I don't recall. I believe she was there. She might have arrived at the same time. I don't recall, but in either event, she was there at the same time.

Q. Would you describe what transpired during your visit there on the morning of April 10th?

A. I was called by Mr. Furr, and told that her brother had died. When I got there, between Mrs. Furr and Mrs. Arnold, there was a check and a letter in question.

Q. What was the condition of Mrs. Furr, before going into that? How did she appear to you, emotionally?

A. She was very very upset.

Q. How would you describe her actions?

A. Very nervous, cried, upset in general.

Q. Go ahead, and what was said between the three of you.

A. They showed me this letter and the check. I recall the check was for $3,500.00. The letter stated that $2,000.00 of that check would go to Mrs. Arnold, and $1,500.00 to Mrs. Furr. Mrs. Furr wanted to know my advice about handling the statement.

Q. Who brought the matter up? Who initiated the conversation?

A. I think Mrs. Arnold was more or less boxing the issues.

Q. Do you remember exactly what she said?

page 105 } A. Not exactly, no, sir.

Q. As close as you could get it, what did she say.

A. She was concerned about getting her part of the check.

Q. How did she bring it up when you first mentioned it? What was the gist of her statement?

A. She wanted to get the check cashed so she could get her part of it. I am not in the banking business. I wasn't too

familiar, so I told Mrs. Furr to wait until I got advice on it, after which, I would call her back.

Q. Was anything else said about the check while you were there?

A. Possibly. I don't recall exactly at the moment.

Q. How long did you stay there?

A. Possibly twenty minutes.

Q. When did you next talk to either Mrs. Furr or Mrs. Arnold?

A. I talked to Mrs. Furr about—somewhere in the neighborhood of two hours. After that, after I left, I called her and told her I had been advised—

Mr. Louk: I object.

By Mr. Hazel:

Q. Did you talk to Mrs. Arnold that day?

A. No, sir.

Q. Didn't have any conversation with her at all?

A. Not after I left the house.

page 106 } Q. Did you later talk to Mrs. Arnold about this matter?

A. Yes, sir. Mrs. Arnold called me once or twice after that, sometime after that. I don't recall how long after that morning.

Q. What did she say when she called you that time?

A. She still wanted to know what was going to be done about the $2,000.00 check which had returned from Mrs. Furr's bank as insufficient funds. I told her to wait to see what the will specified; that he did have a will at that time. The attorney had learned that there was a will, and each time I told her the same thing, to wait to see what was in the will.

Mr. Hazel: I have no questions.

Mr. Louk: I have no questions.

The Court: All right, Mr. Gamble, you may go.

Mr. Hazel: At this time, I suppose I should take the stand and be sworn. I would like to comment that shortly after this—

Mr. Louk: If the Court please, I object right now.

Mr. Hazel: Early in the day, Mr. Wright sometime in the testimony indicated that Mrs. Furr contact someone in the firm, and what she did about this.

Mr. Louk: He is testifying. I object to anything—

The Court: There has been testimony.

Mr. Hazel: This is in the nature of rebuttal testimony.

The Court: I don't think it is admissible at
page 107 } this stage. I don't think you can testify. Is that
the defendant's testimony?

Mr. Hazel: That concludes our testimony.

The Court: Argument on the motion?

Mr. Hazel: I would like a little rebuttal.

The Court: All right.

Mr. Hazel: With the exception of the comments on the presumption and burden of proof, which I think is clearly on the plaintiff, I have no further argument.

The Court: As I understand the defendant's theory of this case, it is that if she had obtained the $3,500.00 from the account of the decedent and his wife in the Falls Church Bank, as a result of the payment of the $3,500.00 check, drawn by the decedent, payable to the defendant, and deposited at the Vienna Trust Company, then the plaintiff would be entitled to receive the $2,000.00.

Mr. Hazel: I didn't go into that. I didn't intend to make that implication.

The Court: Is that then denied? As a matter of fact, if the $3,500.00 check of the decedent, payable to Mrs. Furr had cleared the Falls Church Bank, this case would not be here. Is that it?

Mr. Hazel: That is right, your Honor. It would not be here if that had cleared, but I certainly did not mean to
imply I had come into any agreement of what
page 108 } would have happened. Yes, I think that if the
check had cleared, the case wouldn't be here.

The Court: That is correct, because out of the proceeds of the $3,500.00, Mrs. Furr would have paid Mrs. Arnold $2,000.00.

Mr. Hazel: That is right, but I don't think that had any particular relevancy in the case we have before us, because that would have been an executed gift, and Mrs. Furr would have received the funds which the check was supposed to have given her.

The Court: I think that is true. I think we are in agreement on that; that if the original check had cleared the Falls Church Bank, we wouldn't have a lawsuit at all.

Mr. Hazel: Yes, sir. That is right.

The Court: Now comes the question. To me, does it matter whether the $3,500.00 which was finally obtained by the defendant, resulted from the payment of the decedent's check, drawn to the defendant, or that it come into the defendant's hands through the proceeds of the check, drawn as the result

of the will on the account and which proceeds were then delivered by the defendant.

The check, itself, is merely an instrument or a vehicle by which the $3,500.00 was to be drawn out of the Falls Church Bank. In considering that, we look not at the page 109 } check but at the bank account, itself, from which the $3,500.00 was removed.

Now, if there is a failure of consideration in this case for the payment of the $3,500.00 check drawn by the decedent, I don't believe that defense should be available to Mrs. Furr, because the failure of consideration was caused by Mrs. Furr. The $3,500.00 which Mrs. Furr received is the same $3,500.00 which the decedent placed in the Falls Church Bank, with the understanding that Mrs. Furr was to receive $1,500.00 of it, and the plaintiff was to receive $2,000.00, and it seems to me it is only legal, equitable and justice for Mrs. Arnold to receive that $2,000.00. For the reasons stated. Judgment will be entered.

Mr. Hazel: Note an exception, please.

The Court: All right.

(Whereupon, at 5:00 o'clock, p. m., the hearing was concluded.)

REPORTER'S CERTIFICATE.

I, Isabel Warner, Reporter, do hereby certify that this is a true and correct transcript of the testimony and proceedings in the above-entitled cause.

ISABEL WARNER
Reporter.

A Copy—Teste:

H. G. TURNER, Clerk.

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