Return to
FILE COPY
Supreme Court of Appeals
Richmond, Va.

209 VA 684

Record No. 6840

In the
Supreme Court of Appeals of Virginia
at Richmond

SEABOARD CITIZENS NATIONAL BANK OF NORFOLK, EXEC., ETC., ET AL.

v.

HILDA C. REVERE

FROM THE CIRCUIT COURT OF THE CITY OF NORFOLK

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 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. 6840

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Friday the 1st day of December, 1967.

SEABOARD CITIZENS NATIONAL BANK OF NORFOLK, EXECUTOR OF THE LAST WILL AND TESTAMENT OF D. D. JONES, DECEASED, THOMAS H. JONES AND ROBERT W. JONES, Appellants,

against

HILDA C. REVERE, Appellee.

From the Circuit Court of the City of Norfolk
Clyde H. Jacob, Judge

Upon the petition of Seaboard Citizens National Bank of Norfolk, Executor of the last will and testament of D. D. Jones, deceased, Thomas H. Jones and Robert W. Jones an appeal is awarded them from a decree entered by the Circuit Court of the City of Norfolk on the 14th day of July, 1967, in a certain chancery cause then therein depending, wherein, Hilda C. Revere was plaintiff and the petitioners were defendants.

And it appearing from the certificate of the clerk of the said court that a suspending and *supersedeas* bond in the penalty of $15,000, conditioned according to law, has heretofore been given in accordance with the provisions of sections 8-465 and 8-477 of the Code, no additional bond is required.

RECORD

* * * * *

page 1 }

* * * * *

BILL OF COMPLAINT

TO THE JUDGES OF THE COURT AFORESAID:

Your complainant, Hilda C. Revere, respectfully shows unto the Court the following case:

1. D. D. Jones, late of the City of Norfolk, State of Virginia, departed this life on April 20, 1965. By his last will and testament, admitted to probate by the Clerk of the Circuit Court of the City of Norfolk on May 4, 1965, he gave and bequeathed to your complainant his one-third interest in the partnership known as CIRCLE SERVICE STATION, at Main and Jackson Streets, in the City of Norfolk, Virginia. The defendant Seaboard Citizens National Bank of Norfolk duly qualified as Executor.

2. CIRCLE SERVICE STATION was a co-partnership, consisting of the testator and of the defendants Thomas H. Jones and Robert W. Jones, his sons, which was dissolved by the death of the testator. The partnership articles provided, that in the event of dissolution of the partnership by reason of the death of one of the partners, the surviving partners should have the right to purchase the interest of the retiring partner, "the value of such interest to be determined by an accounting." The surviving partners

page 2 } have stated that it is their intention to exercise their right to purchase the interest of the testator, but they contend that the correct interpretation of the word "accounting" used in the partnership articles above quoted from, is that the book value of the testator's interest determines the amount they are required to pay for such interest. Books of account were maintained by the partnership, under the supervision of the testator, until his death on April 20, 1965, at which time the capital account of the partners showed a credit balance in favor of the testator in the amount of $13,410.21. On April 30, 1965, ten days after the death of the testator, the defendants Thomas H. Jones and Robert W. Jones, surviving partners, unlawfully and without justification, caused the capital account of the testator to be

charged with the sum of $10,000.00, and their capital account to be credited in an equal amount, thereby falsifying the books of account of the partnership and reducing the apparent equity of the testator in the partnership assets in the amount of $10,000.00.

3. Your complainant alleges that the action of the defendants Thomas H. Jones and Robert W. Jones in causing the partnership books to be altered, and thereby reducing the apparent interest of the testator in the partnership assets, was fraudulent, and should be set aside. She alleges further that the value of the testator's interest in the partnership assets is to be determined by their actual value in accordance with the provisions of § 50-42 of the Code of Virginia, and not by a computation based on the book value as claimed by the defendants Thomas H. Jones and Robert W. Jones.

4. As above shown, the defendant Seaboard Citizens National Bank of Norfolk is the Executor of the testator, and its counsel, as such Executor, is also counsel for the defendants Thomas H. Jones and Robert W. Jones, sons of the testator and beneficiaries under his will. In such circumstances it was deemed improper to call upon the Executor to bring suit, since a conflict of interest exists, and for this reason your complainant brought suit, as the real party in interest.

Being without remedy, save in a court of equity, where matters of this kind are alone cognizable, your complainant prays that Seaboard Citizens National Bank of Norfolk, Executor of the last will and testament of D. D. Jones, deceased, Thomas H. Jones, and Robert W. Jones, be made page 3 } parties defendant to this bill, and be required to answer the same, but not under oath, answer under oath being hereby waived; that this cause be referred to one of the Commissioners in Chancery of this Court with directions to take, state, and settle an account, showing the value of the interest of your complainant in the co-partnership known as CIRCLE SERVICE STATION, bequeathed to her by the last will and testament of D. D. Jones, deceased, as of the date of the death of D. D. Jones; that your complainant be awarded judgment for that amount to constitute a lien on the partnership assets, and that in lieu of interest your complainant be decreed one-third of the partnership profits since the death of the testator as provided by § 50-42 of the Code

of Virginia; and that your complainant have such other and further relief, as to equity may seem meet, and the nature of the case may require.

HILDA C. REVERE
By Counsel

WILLIAM L. PARKER
Virginia National Bank Building
Norfolk, Virginia

MICHAEL B. WAGENHEIM
Virginia National Bank Building
Norfolk, Virginia

Counsel for Complainant.

Filed in the Clerk's Office the 3rd day of May, 1966.

Teste:

W. R. HANCKEL, Clerk
VIRGINIA MANNING, D.C.

* * * * *

page 7 }

* * * * *

ANSWER

The defendants in answer to the Bill of Complaint filed against them say as follows:

1] The allegations in paragraph one are admitted. The allegations in paragraph two, except those contained in the last sentence thereof, are admitted. The first sentence in paragraph four is admitted. All other allegations in the Bill of Complaint are denied.

2] The defendants allege that the value of the partnership interest of the testator is to be determined by an accounting and that such interest has been determined by an accounting and such interest is Three Thousand Four Hundred Ten Dollars and Twenty-One Cents ($3,410.21). The defendants admit that the books of the partnership showed a credit balance in favor of the testator in the amount of Thirteen Thousand Four Hundred Ten Dollars and Twenty-One Cents ($13,410.21), at the time of his death, but the defendants allege

that such credit balance was in error and that it has been corrected to show the correct credit balance.

WHEREFORE, your defendants pray that the Bill of Complaint filed against them be dismissed, and that if it is necessary for evidence to be heard herein, that it be heard by the Court *ore tenus,* rather than by a Commissioner

page 8 } in Chancery as the only issue of any substance herein is the correctness of the credit balance of the testator as shown on the partnership books, and this issue can be heard properly, conveniently and at little expense by the Court.

SEABOARD CITIZENS
NATIONAL BANK OF
NORFOLK, etc. et als.,

BY M. T. BOHANNON, JR.
Of Counsel

Filed 7-26-66.

ELNORA A. GARD, D.C.

* * * * *

page 12 }

* * * * *

AMENDED ANSWER

The defendants hereby amend their previous answer to the Bill of Complaint filed against them as follows:

1. The partnership interest of the testator as determined by an accounting as required by the partnership agreement is One Thousand Six Hundred Ninety-One Dollars Forty-Four Cents ($1,691.44) rather than Three Thousand Four Hundred Ten Dollars Twenty-One Cents ($3,410.21) as previously alleged.

2. The defendants admit that the books of the partnership showed a credit balance in favor of the testator in the amount of Thirteen Thousand Four Hundred Ten Dollars and

Twenty-One Cents at the time of his death, but the defendants allege that such credit balance was in error and should be corrected to show the correct credit balance.

SEABOARD CITIZENS
NATIONAL BANK OF
NORFOLK, etc. et als.

BY M. T. BOHANNON, JR.
Of Counsel

Filed 10-14-66.

CLYDE ANNEHAUSER, D.C.

* * * * *

page 13 }

* * * * *

REPORT OF THE COMMISSIONER IN CHANCERY

To The Honorable Judges of said Court.

The undersigned Commissioner in Chancery to whom was referred the above styled cause by Decree of Reference entered therein, August 30, 1966, respectfully reports that pursuant to said Decree he proceeded to take such evidence as was necessary to execute the same, after first giving notice, as required by law, to all Counsel of record, of the time and the place for the execution of the said Decree.

The evidence was taken in the Board Room of the Seaboard Citizens National Bank, Main Street, Norfolk, Virginia, on October 11, 1966, which evidence is returned herewith and filed, together with the Exhibits, numbered 1 to 6, inclusive, introduced by Counsel for the Complainant and the Exhibits numbered 1 to 10, inclusive, introduced by Counsel for the Defendants.

Messrs. William L. Parker and Michael B. Wagenheim represented the complainant and Messrs. Marshall T. Bohannon, Jr. and Eastwood D. Herbert represented the defendants.

The Memorandum for the complainant filed with the Commissioner on January 9, 1967, and the Memoran-
page 14 } dum for the Defendants filed on February 3, 1967, are likewise returned herewith and filed with the papers in this cause.

By the terms of the said Decree, the Commissioner was directed to take, state, and settle an account, and report to the Court upon the following matters:

First: *"A copy of the partnership articles, and of each financial statement of the partnership, beginning with the year* 1955, *and including the last such statement compiled, of D. D. Jones, Thomas H. Jones, and Robert W. Jones, partners trading as "Circle Service Station." Whether the defendants Thomas H. Jones and Robert W. Jones, surviving partners continued the operation of the partnership business after the death of D. D. Jones, and whether they are still operating said business. If the Commissioner shall find that the business of the partnership has been discontinued, then the date of such discontinuance, together with an account of all transactions of the defendants, Thomas H. Jones and Robert W. Jones affecting the partnership since the death of the late D. D. Jones, and in particular an account of any and all entries, made on the books of account of the partnership, since the death of D. D. Jones by the defendants, or at their direction."*

Second: "An account of the partnership assets and liabilities, and its net worth as of the date of the death of D. D. Jones; with a statement of the amount due and owing the complainant, Hilda C. Revere, by virtue of the bequest to her of his one-third interest in the partnership known as 'Circle Service Station', made in the last Will and Testament of D. D. Jones."

page 15 } *Third: "An account of all errors of omission or commission by the defendants, Thomas H. Jones and Robert W. Jones, as surviving partners, in their accounting of the partnership aforesaid."*

Fourth: "Any other matters pertinent to this cause which any party may request or which the Commissioner shall deem relevant, including any other issues raised by the pleadings."

At the outset it may be stated that there is no conflict or dispute as to the facts which constitute the basis of this controversy.

D. D. Jones died testate April 20, 1965. By his last will, admitted to probate by the Clerk of this Court on May 4, 1965, he bequeathed to Hilda C. Revere, the complainant herein, his one-third interest in the partnership known as Circle Service Station, at the southwest corner of Main and Jackson Streets in the City of Norfolk, Virginia. The defendant, Seaboard Citizens National Bank duly qualified as

Executor. A copy of the will of the decedent has been introduced and is marked "Complainant's Exhibit #1".

The partnership was composed of the said late D. D. Jones and his sons, Thomas H. Jones, and Robert W. Jones, two of the defendants herein. Each partner had an equal interest in the partnership. The interests of Thomas H. and Robert W. Jones had been acquired by gift from their father, D. D. Jones. The partnership agreement, dated January 1, 1952, has been filed and is marked "Defendant's Exhibit #10.

For fifteen years or more the complainant had kept the books of the partnership and since 1953, Vernon
page 16 } N. Winquist, a member of the firm of Edmondson, LedBetter and Ballard, Certified Public Accountants, had been the accountant for the partnership.

At the direction of D. D. Jones, the decedent, Hilda C. Revere, the complainant, on June 30, 1955, made an entry on the books of the partnership which credited D. D. Jones with $1,500.00 and debited the defendant, Thomas W. Jones, with a like amount.

On August 27, 1955, an entry was made titled "withdrawal of funds by D. D. Jones" in the sum of $3,000.00. $2,000.00 of this amount was charged to account of Thomas H. Jones and $1,000.00 was charged to the account of Robert W. Jones.

On September 30, 1958, an entry was made, also designated "withdrawal of funds by D. D. Jones" in which the account of Thomas H. Jones was debited with $1,800.00 and the account of Robert W. Jones was debited with $700.00.

On November 30, 1964, an entry was made, likewise entitled "withdrawal of funds by D. D. Jones", of $3,000.00. This sum was charged to the account of Robert W. Jones.

All of these entries were made by the complainant at the instance and by the directions of the decedent. The net result was to charge the interest of Thomas H. Jones in the partnership with $5,300.00 and to charge the interest of Robert W. Jones with $4,700.00.

On April 30, 1965, ten days after the death of D. D. Jones, Vernon N. Winquist, the accountant for the firm, charged the partnership books by reversing the above entries. The result being that he charged the decedent's account
page 17 } with $10,000.00, credited the account of Thomas H. Jones with $5,300.00 and credited the account of Robert W. Jones with $4,700.00.

According to the testimony of Mr. Winquist, the reason for making the alteration, adjustment, or change in the partnership books was that, following the death of D. D.

Jones, he (Mr. Winquist) told Robert W. Jones that his account was approximately $3,000.00 less than the others, primarily due to a charge against him made in November 1964. Robert W. Jones stated that he had no knowledge of any such charge and requested him to examine the books to determine if there were other similar charges. This resulted in a review of the books of the firm and of the capital accounts of the partners, all of which was reported to the Executor through its Trust Officer, H. Thomas Fennell, now deceased.

The books of the partnership were kept at the office of the firm at Boush and Main Streets by the complainant, under the supervision of the decedent. There is no suggestion that they were hidden or concealed in any way. They were audited annually by Vernon N. Winquist, the accountant for the firm, who prepared the annual statements which he delivered each year to the partnership office, with a letter addressed to the partners. These statements reflected the annual income of the partnership, the assets and the capital account of the partners.

Four of these annual statements have been introduced in evidence, "Complainant's Exhibits #3, #4, #5 and #6 and cover the years ending December 31, 1961, December 31, 1962, December 31, 1963 and December 31, 1964.

page 18 } $7,000.00 of the entires, alleged to be improper by the defendants, were made in 1955 and 1958.

The capital account of the partners, as shown by the financial statement for 1961, shows that the interest of the partners was less than $300.00 apart at that time. It was not until 1963 and 1964 that there was any material difference in the partners capital accounts. In 1963, T. H. Jones was charged with a withdrawal of $415.36 which was credited to D. D. Jones, and R. W. Jones was charged with a withdrawal of $1,115.47 which was deducted from his interest. In 1964, the $3,000.00 withdrawal was deducted from the capital account of R. W. Jones.

The Decree of Reference is quite broad and comprehensive. In addition to its calling for financial statements of the partnership since 1955, and all transactions affecting the partnership since the death of D. D. Jones, it directs the Commissioner to determine the net worth of the same, as of the date of the death of D. D. Jones, and the amount due the complainant by virtue of the bequest to her of the one-third interest in the partnership. In addition, it directs a report on the errors of omission or commission of the surviving partners and any other pertinent matters.

In the opinion of the Commissioner, counsel for the defendants is correct in asserting that the only issue of any substance in this suit, is the correctness of the credit balance of the decedent as shown by the partnership books and a proper accounting between the partners is the only material issue.

The determination of this matter is to be resolved by the application of the law and the equities to the facts
page 19 } before the Court.

Counsel for the complainant has dwelt in some length on the proprietary of a beneficiary under the Will bringing this suit. Technically, it is not a suit by the Executor of D. D. Jones against the surviving partners. However, it is, in the opinion of the Commissioner, such a suit and the complainant is entitled to the benefit of §8-286 of the Virginia Code, providing that "In an action or suit by or against a person who, for any cause, is incapable of testifying, or by or against the *commitee,* trustee, executor, administrator, heir, or other representative of the person so incapable of testifying, no judgment or decree shall be rendered in favor of an adverse or interested party founded on his uncorroborated testimony".

The authorities cited by counsel for the complainant in their Memorandum, sustained this position, and the Court in overruling the defendants demurrers, has already settled the point.

Your Commissioner has reviewed the testimony of all of the witnesses and the exhibits introduced on behalf of both the complainant and the defendants, and has carefully considered the memoranda filed by counsel for the litigants, and is of the opinion that the correct credit balance of the decedent in the partnership, is the sum of $12,359.97, shown by the financial statement of the accountant for the year ending December 31, 1964, to which should be added the net income belonging to the estate of the decedent for the period of January 1, 1965 to April 30, 1965, of $519.45, and to which also should be added the amount of $530.79, which latter sum represents the "Additional Investment" of the de-
page 20 } cedent, the same being shown by the "Balance Sheet" of the firm, filed as Defendants' Exhibit #1, making a total of $13,430.21, from which should be deducted the withdrawal of November 30, 1964, of $3,000.00, leaving the correct credit balance of the decedent's estate in the partnership at $10,410.21.

The said "Balance Sheet of April 30, 1965, Defendant's Exhibit #1", would then be adjusted as to the Capital Account, as follows:

D. D. Jones	T. H. Jones	R. W. Jones		
$10,410.21	$11,058.22	$11,202.82	=	$32,671.25

The $3,000.00 entry of November 30, 1964 is, in the opinion of the Commissioner, in a different category from all of the other entries. It is evidenced by a check dated October 9, 1964, payable to the order of D. D. Jones and deposited to his account "Defendants' Exhibit #7". The financial statement for 1964, as compiled by V. N. Winquist was not presented to the firm until February 15, 1965, just a few days more than two months prior to the death of Mr. D. D. Jones.

It could hardly be said that Robert W. Jones, to whose account this item was charged, had sufficient time to examine or analyze this statement and voice any objections to the same. He emphatically denied receiving any of the money, although he did admit that in 1964 he received $25,000.00 from his father to make the down payment on his home.

His testimony is corroborated by the check itself and by the complainant to the extent that she testified that she made the entries. It is further corroborated by Thomas H. Jones

page 21 } who testified that the endorsement of the check for deposit to the account of D. D. Jones was in the handwriting of the complainant.

As to all of the other entries your Commissioner is of the opinion that the position of counsel for the complainant is well taken in that the burden of proof rests upon the defendants to overcome the presumption that the books of the partnership were correct before the alteration by Mr. Winquist on April 30, 1965, and they have failed to meet this burden of proof.

The Commissioner is of the opinion that Messrs. T. H. and R. W. Jones are chargeable with the knowledge of the partnership accounts. Whether they actually saw the financial statements is immaterial. The accountant took them or sent them to the partnership office each and every year. They knew, or should have known, what the books contained and their failure to take any steps to assert their rights until after the death of the one person who was in a position to contradict them, *estops* them from claiming that the books were in error.

Mr. Thomas H. Jones knew beyond any question that the books were audited annually by Mr. Winquist. Each year, according to the testimony of the accountant, he would call for the necessary information as to whether the partnership had made or lost money, so that he could make out his tax returns. Mr. Winquist also prepared the tax returns for

Mr. R. W. Jones.

The evidence fully justifies the conclusion that even if the surviving partners had seen the financial statements, which they deny having seen, they would have done nothing about them, certainly during their father's life-time.

page 22 } Mr. Thomas H. Jones testified that the Service Station was his father's "baby" and Mr. Robert W. Jones went even further and stated (page 36) that "whatever he (speaking of his father) wanted to do was perfectly all right".

In addition to the gift of their respective interests in the partnership property, both sons testified to their father's generosity. It is difficult to believe, from the evidence, that the decedent would have caused improper or fraudulent entries to have been made in the partnership books.

The Commissioner is in accord with the position taken by counsel for the defendants that this proceeding does not establish the amount due the complainant, but the relative interest of the partners in the partnership, and the price at which the surviving partners can purchase the share of the complainant. The surviving partners are under no obligation to purchase her interest, and if the partnership is liquidated, the assets should be distributed in accordance with the respective interest of the partners, as determined by the Court.

In compliance with the Statute, the Commissioner has given notice of the filing of this report by mailing a copy of the same to all counsel of record.

All of which is respectfully submitted.

RICHARD W. RUFFIN
Commissioner in Chancery

Taxable Costs:
Any amount due the Clerk;
Any amount due the Reporter;
Fee of $500.00 requested by the Commissioner, which costs should be divided equally between the complainant and the defendants.

* * * * *

Filed 2-10-67.

CLYDE ANNEHAUSER, D.C.

page 24 }

* * * * *

EXCEPTIONS TO REPORT OF THE COMMISSIONER IN CHANCERY

* * * * *

The defendants herein hereby except to the following findings of the Commissioner in Chancery contained in his report forwarded to the Court:

1.] That there is no suggestion that the partnership books were hidden or concealed in any way. (Report Page 5)

2.] That the partnership books were audited annually by Vernon N. Winquest. (Report Page 5)

3.] That the complainant is entitled to the benefit of Va. Code § 8-286. (Report Page 7)

4.] That the correct credit balance of the decedent in the partnership is the sum of $12,359.97. (Report Page 19)

5.] That the adjusted capital accounts of the partners are, D. D. Jones — $10,410.21, T. H. Jones — $11,058.22, R. W. Jones — $11,202.82. (Report Page 8)

6.] That the burden of proof is upon the defendants in this case and that they have failed to meet any burden of proof. (Report Page 9).

7.] That the surviving partners are chargeable with knowledge of the partnership accounts and that it is immaterial whether or not they ever saw the financial reports or statements and that they knew or should have known what the books contained and that their failure to take any page 25 } steps to assert their rights until after the death of their father *estops* them from correcting the books. (Report Page 9).

8.] That the evidence justifies the conclusion that the surviving partners would have done nothing about the financial statements if they had seen them. (Report Page 9)

9.] That it is difficult to believe from the evidence that the decedent would have caused improper or fraudulent entries to have been made in the partnership books. (Report Page 10)

10.] That costs should be divided equally between the complainant and the defendants.

11.] The defendant further excepts the Commissioner's Report for failing to report that the partnership books showed:

(a) that on June 30, 1955, the sum of $305.75 was improperly credited to the account of D. D. Jones and charged against the account of T. H. Jones.

(b) that on June 30, 1955 $82.46 was improperly credited to the account of D. D. Jones and charged against the account of T. H. Jones.

(c) that on July 22, 1955 $544.56 was improperly paid to D. D. Jones and charged against the account of T. H. Jones.

(d) that on July 29, 1958 the sum of $786.00 was impropely paid to D. D. Jones and charged against the account of T. H. Jones.

12.] The defendant further excepts to the commissioner's report in that it failed to report that the reversing entries made by Mr. Winquest were proper.

The defendants, THOMAS H. JONES and ROBERT W. JONES, further state that in the event the Commissioner's report is sustained by the Court, they do not wish to purchase the partnership interest of D. D. Jones, but wish to liquidate the Corporation and distribute its assets pro ratably.
page 26 }

Respectfully submitted,
SEABOARD CITIZENS
NATIONAL BANK, Executor of
D. D. Jones,
THOMAS H. JONES
ROBERT W. JONES

By M. T. BOHANNON, JR.
Of Counsel

* * * * *

page 27 }

* * * * *

DECREE CONFIRMING REPORT OF COMMISSIONER IN CHANCERY

This cause came on this day to be again heard; upon the papers formerly read; upon the report of Richard W. Ruffin, Esquire, Commissioner in Chancery, filed in this cause on February 10, 1967; upon the exceptions of the complainant, Hilda C. Revere, to said report; and upon the exceptions of the defendants to said report; and was argued by counsel.

Upon consideration whereof, the Court doth,

ADJUDGE, ORDER AND DECREE AS FOLLOWS:

1. The exceptions of the complainant, and of the defendants to said report, are overruled, and the report is approved and confirmed; to which action of the Court the complainant and the said defendants objected and excepted.

2. The Court finds, as found by the Commissioner in Chancery, that the credit balance of the decedent in the partnership is the sum of $12,359.97, as shown by the financial statement of the accountant for the year ending December 31, 1964, to which should be added the net income to which the estate of the decedent is entitled, for the period of January 1, 1965 to April 30, 1965, amounting to $519.45, plus the sum of $530.79, designated "Additional Investment" on the "Balance Sheet" of the firm filed as defendants' Exhibit No. 1, making a total credit of $13,410.21; from which should be deducted the withdrawal of November 30, 1964, of $3,000.00, leaving a net credit balance of the decedent's estate in the amount of $10,410.21. The capital accounts of the partners, as of April 30, 1965, will then stand as follows:

D. D. Jones	T. H. Jones	R. W. Jones	Total
$10,410.21	$11,058.22	$11,202.82	$32,671.25

page 28 } 3. Should the defendants, Thomas H. Jones and Robert W. Jones, as surviving partners, elect to exercise the privilege reserved to them in the Articles of Partnership of purchasing the interest of the decedent, they shall manifest their election to do so within thirty days from the date of the entry of this decree, by filing an appropriate response in the papers of this cause, failing which, on the motion of the complainant to that effect, a receiver will be appointed to liquidate the partnership. Should the surviving partners elect to purchase the interest of the decedent they shall complete the purchase without delay, and if the parties are unable to agree upon the amount to be paid, they are directed to make this fact known to the Court, which will then determine the amount.

4. The defendants having indicated their intention to apply to the Supreme Court of Appeals of Virginia for an appeal, the execution of this decree shall be suspended for a period of sixty days upon the defendants, or someone for them, executing bond before the Clerk of this Court, with surety approved by said Clerk, conditioned according to law, in the penal sum of $15,000.00.

And this cause is continued.

Seen:
WILLIAM L. PARKER, Counsel for Complainant:

Seen & excepted:
W.T. BOHANNON, JR., p.d.

Enter July 14, 1967. C. H. J.

* * * * *

page 29 }

* * * * *

NOTICE OF APPEAL

The defendants hereby give Notice of Appeal from the decree entered on July 14, 1967, confirming the report of the Commissioner in Chancery.

ASSIGNMENT OF ERROR

The defendants hereby assign the following errors herein:

1. The Court erred in overruling the exceptions of the defendants to the Commissioner's report.
2. The Court erred in holding that the credit balance of the decedent in the partnership was in the amount of $12,359.97 as shown by the financial statement of the accountant for the year ending December 31, 1964.
3. The Court erred in holding that to the credit balance of the decedent in the partnership should be added income in the amount of $519.45 plus the sum of $530.79 designated "additional investment" on the "Balance Sheet" of the firm filed as defendant's exhibit Number One.
4. The Court erred in holding that there should be deducted from the total credit of the decedent, in the amount of $13,410.21, the sum of $3,000.00 leaving the net credit balance of the decedent's estate at $10,410.21.
5. The Court erred in holding that the capital accounts of the partners as of April 30, 1965, were as follows—D. D. Jones $10,410.21; T. H. Jones $11,058.22; R. W. Jones $11,202.82.

page 30 } 6. The Court erred in entering its decree of July 14, 1967.

SEABOARD CITIZENS
NATIONAL BANK OF
NORFOLK, Executor, etc. et als

By M. T. BOHANNON, JR.
Of Counsel

Filed 9-5-67.

VIRGINIA MANNING, D.C.

* * * * *

Depositions taken before Richard W. Ruffin, Esquire, Commissioner in Chancery, at the Board of Directors Room, Seaboard Citizens National Bank, Main Street, Norfolk, Virginia, at 10:00 o'clock A.M., October 11, 1966, to be used in evidence in the above entitled cause pending in the Circuit Court of the City of Norfolk, Virginia.

APPEARANCES:
Mr. William L. Parker and Mr. Michael B. Wagenheim Attorneys for the Complainant

Mr. M. T. Bohannon, Jr. and Mr. Eastwood D.
Dep. Herbert Attorneys for the Defendants

page 2 } Mr. Parker: I think it is fully set out what our intention is so far as we know at this point.

Mr. Bohannon: The basic controversy is the correctness of certain changes we made in the partnership books. These changes total $10,000. We intend to make additional changes since we have not done so, but we're going to do so, and they total an additional $1,700 and some cents, and Mr. Winquist will be able to testify concerning those. Also we, the surviving partners, do not intend to purchase the third share of Miss Revere unless these changes are allowed; they will liquidate the partnership if they are not allowed.

Mr. Parker: We then object to any additional changes in the partnership accounts as not within the pleadings in the case. This is something entirely new and not a matter before the Commissioner. It would have to be brought into the pleadings by something in the nature of an amended answer

or cross bill, I would think, but it is certainly not in here now. You can't do it just in this manner, or out of a clear sky without any previous notice, without any basic pleadings in the matter.

Mr. Bohannon: As you pointed out to me on numerous occasions, this is an accounting and we're going to show the correct accounts of the partnership which will involve more changes than we previously advised you about. It is within the decree you had entered over my objection which

Dep. page 3 } is quite comprehensive and asked Mr. Ruffin to go into completely the partnership accounting.

Mr. Wagenheim: If Your Honor please, the pleadings should set forth what their position is and what they expect to assert in this litigation. Certainly can't come here and on a verbal statement change the complete complexion of the litigation Decree is right broad and seems to call for a complete accounting.

Mr. Bohannon: We'll file such additional pleadings.

Commissioner: As far as I'm concerned it may be deferred temporarily and go ahead. Note Mr. Wagenheim's and Mr. Parker's exceptions.

Mr. Parker: I have here a Xerox copy of the Will of Mr. D. D. Jones, signature appears indistinct. This is not certified.

Mr. Herbert: We have no objection to it.

Mr. Parker: I'll introduce this.

Commissioner: Marked plaintiff's exhibit number 1.

Mr. Parker: I would like to ask whether or not the books and records which I requested in my letter have been produced and are now available.

Mr. Herbert: They're in here.

Mr. Parker: Will they be delivered to the Commissioner in Chancery?

Mr. Bohannon: If he wants them.

Mr. Parker: Think that'll be necessary. How ex-

Dep. page 4 } tensive are they?

Mr. Bohannon: There they are.

Mr. Parker: I can see them from here.

MR. VERNON N. WINQUIST, a witness called by the complainant, having been first duly sworn, is examined and testified as follows:

By Mr. Parker

Q. Will you state your name, your place of residence, and your occupation?

Mr. Vernon N. Winquist

A. Vernon Winquist, Norfolk, Virginia.

Q. Did you give your initials?

A. Vernon N. Winquist, Norfolk, Virginia. My occupation is CPA.

Q. You're a Certified Public Accountant, are you not?

A. Yes, sir.

Q. And you have been the accountant for the partnership involved in this case known as the Circle Filling Station, have you not?

A. Yes, sir.

Q. For how long?

A. For approximately six, seven years insofar as my personal knowledge of it is concerned.

Dep. page 5 } Q. Has your firm been the accountant for this partnership for a longer period of time?

A. Yes, they have.

Q. And has it been the accountant for this firm as far back as 1955?

A. Yes, sir, it has.

Q. I believe that you have prepared annually, your firm now I'm referring to, financial statements of the Circle Service Station as of December 31st of each year, and can you say whether or not copies of those financial statements are among these records?

A. They are. I have, or one copy; I don't think they're in here, but I have copies of most of those we've prepared over the years. I don't know if I have all of them. We did not prepare statements for every year but we did for a majority of the years.

Q. For how long?

A. For a majority of the years involved.

Q. Can you state what years you prepared these financial statements?

A. I cannot state exactly what years. I can give you the years that I have copies of statements we prepared.

Q. What years do you have?

A. 1953, 1954, 1957, 1961, '62, 1963, 1964, and April 30th of 1965.

Dep. page 6 } Q. What was the first year that you called there going back in a period of time?

A. 1953.

Q. '53?

A. Yes.

Q. '55?

Mr. Vernon N. Winquist

A. I do not have a copy for '55.

Q. Was one prepared?

A. I'm not certain that it was or not. It may have been but I couldn't find our copy if we had prepared it.

Q. Could you examine what is there and state whether or not it's among these records that are produced here?

A. I have examined these and it is not among those.

Mr. Parker: Are those records available, Mr. Bohannon?

Mr. Bohannon: He brought all we have.

Mr. Parker: And you do not have any financial statements other than these Mr. Winquist has testified to?

Mr. Bohannon: That's correct.

By Mr. Parker

Q. Who kept the books of the Circle Service Station over the years that you are familiar with?

A. Miss Hilda Revere to the best of my knowledge.

Dep. page 7

Q. For how long a period of time did that cover?

A. It covered all the years that I'm familiar with.

Q. It covered how long?

A. All of the years that I'm familiar with their transactions.

Q. And how long was that?

A. It would be a minimum of five to six years, and it would probably extend beyond that.

Q. Following the death of Mr. D. D. Jones did you undertake to make certain entries on the books of, accounts of Circle Service Station, partnership known as Circle Service Station, the net effect of which was to reduce the equity of the deceased partner by $10,000?

A. I did.

Q. Will you examine this statement and let me know whether or not that is an accurate statement of what you did first?

A. Yes, it is. This, by the way of explanation, charges the deceased partner with a thousand dollars in credits, the other two with the sum total of that amount.

Q. Well, let's begin at the beginning. The first of these entries which you sought to correct was a journal entry dated June 30, 1955, which credited Mr. D. D. Jones with $1,500 and debited Mr. T. H. Jones with a like amount. Is that correct?

Dep. page 8

A. That is correct.

Mr. Vernon N. Winquist

Q. Was there any other detail on the books and records of the corporation to explain that entry?

A. No, there was none that I remember.

Q. Now, what was the effect of your adjustment which you made on April 30, 1965?

A. It was to reverse that entry.

Q. So that you then debited Mr. D. D. Jones, the deceased partner, you debited his account by $1,500 and credited the surviving partner, T. H. Jones, with $1,500?

A. Yes, sir.

Q. The next entry appears to be dated August 27, 1965 and it is titled "withdrawal of funds by D. D. Jones," and it appears to have been a debit to T. H. Jones of $2,000 and a debit to R. W. Jones of $1,000, and what was the result of your adjustment made on April 30, 1965 so far as that book entry was concerned?

A. It was a reversal of that entry.

Q. So that you credited Mr. T. H. Jones with $2,000, and you credited Mr. R. W. Jones with $1,000 and you debited the account of the deceased partner by $3,000 to balance the books. Is that correct?

A. That is correct.

Dep. page 9

Q. Now, the next entry that appears here on the books of the corporation is dated September 30, 1958 and it is designated "withdrawal of funds" by D. D. Jones," and the entries consist of a debit to the account of T. H. Jones amounting to $1,800, and a debit to the account of R. W. Jones in the amount of $700, and what was the effect of your adjustment made on April 30, 1965 so far as those entries are concerned?

A. A reversal of those.

Q. So that you credited the account of T. H. Jones with $1,800, and you credited the account of R. W. Jones with $700, and in order to balance the books you debited the account of the deceased partner by $2,500. Is that correct?

A. Yes, sir, that is correct.

Q. Now, the next item appears to be dated October 9, 1964 and the entry is "withdrawal of funds by D. D. Jones," $3,000 charged by journal entry on there, seems to be obscured here, something 30, '64. Does your copy show that?

A. 11, I believe mine is.

Q. 11/30/64, so that is November 30, 1964, $3,000 debited to R. W. Jones. Is that correct?

A. That is correct.

Mr. Vernon N. Winquist

Q. Now, what was the effect of your adjusting entry made on April 30, 1965 so far as that entry was concerned?

A. It was reversed.

Q. So that the account of Mr. R. W. Jones was credited with $3,000 and the account of the deceased partner was debited in a like amount in order to balance the books. Is that correct?

Dep. page 10

A. That is correct.

Q. Now, this statement then reflects as the effect of what you did on April 30, 1965 after the death of Mr. D. D. Jones, the third partner, that you debited his account by $10,000, you credited the account of Mr. T. H. Jones with $5,300, and you credited the account of Mr. R. W. Jones by $4,700. Is that correct?

A. Yes, sir.

Q. What was your authority for making those adjustments on the books on April 30, 1965?

A. The normal procedure to make adjusting entries would be if you find an item that requires adjustment that you would adjust it. We discussed this matter with Mr. Herbert and he said if you have determined that these amounts were not received by the individuals concerned to go ahead and make the adjustment.

Q. Why did you find it necessary to take up with Mr. Herbert a journal entry going back to June 30, 1955? Had you gone through all of the books of this partnership back to 1955?

A. Not extensively, but I had reviewed these items.

Q. Why did you review them?

Dep. page 11

A. Because when I had made a preliminary determination of the account balances of the individual partners I called Mr. Robert Jones and told him his account was approximately $3,000 less than the others and I said it was primarily the result of a charge in October or November of 1964. And he said for what purpose and I told him about the circumstances and he said he got no amount of money and wanted to know why, or how, it could be charged and wanted to know if there were any items similar in nature to that, and that is when I began to review the capital accounts of the partners.

Q. You had been handling the accounts of this partnership for some five years at that time, had you not?

A. Yes, I had.

Q. I hand you a financial statement of D. D., T. H., and R. W. Jones, trading as Circle Service Station, Norfolk,

Virginia as of December 30, 1961, and that is accompanied by a letter on the stationery of Edmondson, LedBetter and Ballard dated February 17, 1962, addressed to Messrs. D. D., T. H., and R. W. Jones, trading as Circle Service Station, Norfolk, Virginia, reading as follows: "Gentlemen, we have reviewed the recorded financial transactions of the Circle Service Station, Norfolk, Virginia, for the 12 months ended December 31, 1961 and have prepared and submit herewith the following described statements: Exhibit A, Income for the 12 months ended December 31, 1961; Exhibit B, Balance Sheet, December 31, 1961. Net profit for the year 1961 amounted to $2,142.10, a considerable improvement over the net loss of $2,550.96 sustained for the *proceeding* years. Amounts presented on the accompanying statements are set forth without verification from sources other than company records, accordingly we are not in a position to express an opinion on the financial statements taken by the whole. Respectfully submitted, Edmondson, LedBetter and Ballard, Certified Public Accountants." I'll ask you to examine that signature and say whether or not you signed it, signed the letter?

Dep. page 12

A. Yes, I did.

Q. You prepared the statement?

A. I reviewed the statement and signed the letter that accompanies it, yes.

Mr. Parker: Now, I would like to introduce that. First, before I get to this, I want to introduce the statement in evidence titled "Dates of Entries Reflecting Charges to Capital Accounts of T. H. and R. W. Jones."

Commissioner: Marked plaintiff's exhibit number 2.

Mr. Parker: Now I would like to introduce as plaintiff's exhibit number 3 the financial statement as of December 31, 1961 to which I have just referred.

Dep. page 13

Commissioner: Marked plaintiff's exhibit number 3.

By Mr. Parker

Q. And I hand you next a similar statement with a similar letter similarly signed as of December 31, 1962 and ask you whether or not you signed that letter?

A. I did.

Mr. Parker: I would like to introduce this in evidence.

Commissioner: Plaintiff's exhibit number 4.

Mr. Vernon N. Winquist

By Mr. Parker

Q. I hand you next a similar statement as of December 31, 1963 with a similar letter dated March 3, 1964, similarly signed and ask you to examine that and state whether or not you signed that letter?

A. I did.

Mr. Parker: I would like to introduce this in evidence appropriately marked as an exhibit

Dep. Commissioner: Plaintiff's exhibit number 5.

page 14 } By Mr. Parker

Q. I hand you next a statement as of the close of business on December 31, 1964 with a letter similarly addressed and ask you, and signed, and ask you to examine that and state whether or not you signed that letter?

A. I did.

Mr. Parker: I'd like to introduce this in evidence appropriately marked.

Commissioner: Marked Plaintiff's exhibit number 6.

By Mr. Parker

Q. Had you prepared any similar statements prior to '61?

A. I cannot say for certain. I personally did not. I did not have supervision over the account until approximately 1960 or '61. And that was after the death of Mr. Edmondson in our firm and that is when I began supervision of this account; I don't know the exact date, I can't give that to you exactly.

Q. Did you ever have occasion to discuss with Mr. T. H. Jones or Mr. R. W. Jones the question of their balances in here?

A. I never have until shortly after April 30 of

Dep. 1965.

page 15 } Q. 1965?

A. That is correct.

Q. And that was after the death of Mr. D. D. Jones. Is that correct?

A. That is correct.

Q. Now, it would be necessary in the natural course of events for the individual partners to report profits, their share of the profits of this partnership each year would it not?

A. Yes, it would.

Mr. Vernon N. Winquist

Q. And they would have to know that in order to determine what to report would they not?

A. Yes, they would.

Q. Who gave you the authority to make this adjustment on April 30, 1965?

A. No one in—I made it because of the differences that arose as a result of my review of the records as I did some other adjustments in connection with the partnership statement.

Q. Why didn't you review those records prior to that time?

A. Because there was no—insofar as the accounts are concerned are you speaking; I was requested to.

Q. I'm asking you why you made these adjustments on April 30, 1965 and did not undertake to do so sooner?

Dep. page 16 } A. They were not of knowledge to me or my firm insofar as requiring adjustment until that date.

Q. How did it come to your knowledge then?

A. I discussed the matter with Mr. Robert Jones and he said that his account was $3,000, or somewhere near that figure, less than the others and that it had resulted from a charge the previous October or November of 1964 and he said for what purpose. There was, he had no knowledge of any charge on that date and he requested that I examine the accounts to determine if there were any other similar charges and that is the result of the review.

Q. Who authorized you to make the review?

A. I was requested by the Executor to prepare statements as of, the Executor of Mr. D. D. Jones's estate, to prepare statements as of April 30 to determine the partnership interests.

Q. You mean by the Seaboard Citizens National Bank?

A. Yes.

Q. Who in Seaboard Citizens National Bank requested you to?

A. Mr. Fennell.

Q. Did you report this to Mr. Fennell or to Mr. Jones?

Dep. page 17 } A. I reported it to the Seaboard Bank. I don't know whether Mr. Fennell, Mr. Fennell became sick and I'm not certain whether he was there when I completed it or not, but I reported it to the

Mr. Vernon N. Winquist

Bank.

Q. You have any discussions with Mr. T. H. Jones?

A. Yes, I did.

Q. What caused you to have discussions with him?

A. Because at the time I was reviewing Mr. Robert Jones's account I also found items that affected his account.

Q. Weren't these items reflected on these various statements over the years?

A. In each year that we prepared a statement they were, yes.

Q. So that on each one of those statements that we have reviewed here and have been introduced in evidence, beginning with the statement as of December 31, '61 and ending with the statement as of December 31, '64, those items were reflected on the statements, were they not?

A. Yes, they were.

Q. And it never occurred to you to make any investigation of them until after the death of Mr. D. D. Jones. Is that correct?

A. We had no reason to make any before that, we assumed that they were proper.

Q. Same information was on there, wasn't it?

Dep. page 18 } A. The same information was on the records but we had no knowledge that it wasn't authorized by all partners prior to his death.

Mr. Parker: Witness is with you.

By Mr. Bohannon

Q. You mentioned the April 30, '65 statement. Have you got that?

A. Yes.

Q. Does that reflect the $10,000 adjustment?

A. Yes, it does.

Mr. Bohannon: We would like to introduce that, sir. Have you seen this?

Mr. Parker: No, I haven't seen it.

Commissioner: When did Mr. Jones die?

Mr. Herbert: He died April 24, 1965.

Miss Revere: April 20th he died.

Mr. Parker: I have no objection.

Commissioner: Marked Defendant's exhibit number 1.

Mr. Vernon N. Winquist

By Mr. Bohannon

Q. Since preparing that statement have you found other items which should be corrected in the capital accounts of the partners?

Dep. page 19

A. Yes, I have.

Q. And I'll show you, is this the list of the total adjustments which are to be made to the capital accounts?

A. Yes, it is.

Q. We'll introduce that in evidence but would you mark on it, the only changes are in the account of T. H. Jones. Is that correct?

A. That is correct.

Q. And D. D. Jones. Now this first sheet of paper which we'll introduce in evidence, the account of Robert Jones, there is no change from what you previously testified. Is that correct?

A. No change in the amounts.

Commissioner: Marked defendant's exhibit number 2.

By Mr. Bohannon

Q. Now, would you point out on the second sheet of paper the additional changes that you have made and mark them on this paper which will be exhibited so that they can be picked out?

A. I'll mark with an X.

Q. Now, can you tell us which items you're marking so everybody can mark their copy.

Dep. page 20

A. Items 1 and 2, $305.75, $82.46; item 4, $544.56, and item 6 in the amount of $786.

Mr. Bohannon: We'll introduce that.

Commissioner: Be defendant's exhibit number 3.

By Mr. Bohannon

Q. Now, why will these additional changes be made?

A. They are amounts that after discussion with Thomas H. Jones are determined funds that he did not receive and represent charges that he had no knowledge or authority, I mean gave no authority for making to his account.

Q. All right, sir. Now, we'd like to take each of these changes which you have made, we'll start with the Robert

Mr. Vernon N. Winquist

Jones account, and the first item of $1,000. Now, you have written on here that that was a check, 1965, payable to cash for $3,000, charged to T. H. Jones in the amount of $2,000, and to R. W. Jones in the amount of $1,000, endorsed by D. D. Jones Transfer and credited to the personal account of D. D. Jones.

Mr. Wagenheim: That's not on this new paper that you just introduced.

Mr. Bohannon: Yes, sir, first item on Robert Jones. I'm going to just go down the list and have him explain each one.

Dep. page 21

Mr. Wagenheim: Mr. Commissioner, understand we have never seen this paper before. We have not had an opportunity to show it to our client.

Mr. Bohannon: We introduce this in evidence.

Commissioner: Defendant's exhibit number 4.

By Mr. Bohannon

Q. Now, this check explains the first entry on the R. W. Jones sheet, and which entry does it explain on the T. H. Jones sheet?

A. It is item number 5, under the same date.

Q. $2,000, here it is. This check explains the first item on the Robert Jones account and this item on the Thomas Jones account. Now, sir, this check was deposited to the D. D. Jones Transfer and Warehouse Company account. That is correct is it not, Mr. Winquist?

A. Yes, it is.

Q. Now, you know how that was credited on the D. D. Jones Transfer and Warehouse Company account?

A. Yes, it was.

Q. How was that credited?

A. To the account of D. D. Jones.

Dep. page 22

Q. Do you have that copy of that entry with you?

A. have a copy of the account, the distribution of the credits and charges in the officer's account and—

Q. You have another copy?

A. I do not have another copy of that.

Q. Well, can you point out on this where that—

A. It is credited as of August or approximately the same date as it was drawn.

Q. Now, what's this a copy of?

A. This is a copy of the general ledger, of one of the

general ledger accounts on D. D. Jones Transfer and Warehouse Company, Inc.

Q. Was this $3,000 check the only explanation for that entry to Mr. D. D. Jones's credit?

A. Yes.

Q. On the Warehouse Company account?

A. That's right.

Mr. Bohannon: All right, sir, we offer this in evidence.

Commissioner: Defendant's exhibit number 5.

By Mr. Bohannon

Q. Now, sir, moving down to the second item on the Robert Jones account which is a $700 credit to his account, and you referred to check number 229 in the amount of $2,500, $700 of which was charged to Robert and $1,800 of which was charged to Thomas. Now, is that the last entry to the Thomas Jones sheet?

Dep. page 23

A. Yes, it is.

Q. So it's the second entry on the Robert Jones account and the last entry on the Thomas Jones sheet. Now, I'll show you, is that the check to which you refer, sir?

A. Yes, it is.

Mr. Bohannon: We offer that in evidence.

By Mr. Bohannon

Q. That was deposited to the account of D. D. Jones. Is that correct?

A. That is correct.

Commissioner: Defendant's exhibit number 6.

By Mr. Bohannon

Q. That is the personal account of D. D. Jones as shown by the endorsement on the back. You recognize the handwriting on the back?

A. The handwriting appears to be that of Hilda Revere.

Mr. Wagenheim: I didn't hear.

A. I said it appears to be that of Hilda Revere; I'm not a handwriting expert, however.

Dep.

page 24 } By Mr. Bohannon

Q. Now, sir, the last entry on your Robert Jones sheet refers to a $3,000 item. Now would you explain that, sir.

A. That is represented by journal entry that is credited to the account of D. D. Jones and charged to the account of Robert H. Jones, or Robert W. Jones, excuse me.

Q. What was the date of it, sir?

A. On November 11, 1964. On October 9, 1964 check number 3821 was drawn to the order of D. D. Jones in the amount of $3,000 and was charged to the drawing account of D. D. Jones, and this check was endorsed "For deposit only to the account of D. D. Jones."

Q. Is this the check, sir?

A. Yes, it is.

Mr. Bohannon: We offer that in evidence.

Commissioner: Defendant's exhibit number 7.

By Mr. Bohannon

Q. Was there any other explanation you could find in examining the books?

A. None.

Q. For this entry. There was no entry in the partnership accounts for this particular check, that being other than this?

Dep. page 25 } A. There was a journal entry for a charge from one account and a credit on the other in the partnership records.

Q. All right, sir. Now that takes care of all the proposed changes in Robert Jones's account; we've covered all of those?

A. Yes, sir.

Q. Now, turning to the Robert Jones account, I mean the Thomas Jones account, we've covered the last entry, and the $2,000 entry. Starting at the top, the June 30, 1955, $305.75, what was the explanation?

A. There was no explanation for that.

Q. Well, what was the entry initially?

A. It was an entry to charge the account of Thomas H. Jones and credit the account of D. D. Jones for $305.75.

Q. Was there any explanation for this entry?

A. No.

Q. Now, the second entry, the second change of $82.46. What was the original entry?

A. It was a similar entry charging the account of T. H. Jones for $82.46 and crediting the account of D. D. Jones for the same amount.

Q. And was there any explanation?

A. No explanation.

Dep. page 26 } Q. And those two entries will be, the changes will reverse those entries. Is that correct?

A. That is correct.

Q. Now, the next one, the $1,500 item. Is the same true of that?

A. The same procedure is true of that. It was an entry charging the account of Thomas H. Jones for $1,500 and crediting the account of D. D. Jones in the same amount.

Q. And the change will reverse that?

A. That is correct.

Q. Were those original entries all dated June 30, '55?

A. Yes, they were.

Q. Now, the next entry for $544.56, what is the explanation for that?

A. On July 22, 1955 check number 1398 was drawn payable to the order of cash in the amount of $544.56. The check indicates that it was cashed at the Southern Bank of Norfolk and it was charged to the account of Thomas H. Jones.

Q. Why did you make that, why do you make this change?

A. Mr. Thomas H. Jones said he never received the money, had no knowledge of it previously and did not authorize such a charge to his account.

Q. Was the same true of the previous three entries?

Dep. page 27 } A. Same is true of the previous three entries.

Mr. Parker: Mr. Commissioner, at this point I want to make it plain that at the conclusion of this witnesses testimony I shall object to all of his statements based on hearsay testimony. I haven't done it as he has proceeded but I will make it at the conclusion of his testimony and I'm not waiving my objections.

By Mr. Bohannon

Q. Is that the check?

A. Yes, it is.

Mr. Bohannon: We offer that in evidence.

Commissioner: Marked defendant's exhibit number 8.

Mr. Vernon N. Winquist

By Mr. Bohannon

Q. Now, the next entry of $2,000 you have already explained, leaving the only entry unexplained of July 29, '58, change of $786. Now, what was the original entry and the explanation for the change?

A. Check number 2187 payable to the order of cash and endorsed by Hilda Revere was cashed at the Southern Bank of Norfolk and was charged to the account of Thomas H. Jones.

Dep. page 28 } Q. Is this the check, sir?

A. Yes, it is.

Mr. Bohannon: We offer in evidence.

Commissioner: Marked defendant's exhibit number 9.

By Mr. Bohannon

Q. Now, sir, Judge Parker in questioning you brought out that the partnership from year to year would make money or lose money which would have to be reported on the income tax returns of the partners. Now, did you have any personal knowledge of how Thomas Jones found out whether the partnership made money or lost money?

A. On various years, and probably all years since I began supervising the work, he would call me sometime in April and request the amount of income or loss that he should report in his individual return.

Q. Did he have any other knowledge to your knowledge?

Mr. Parker: Object to that question. It is not within this *witnesses* knowledge.

By Mr. Bohannon

Q. How did Robert Jones find out if you know?

A. We prepared his individual return in our office and he found out when he received his return as near as I know.

Dep. page 29 } Q. Did your office ever send to either of D. D. Jones's sons financial statements?

A. No, sir.

Q. Where did they go?

A. They went to either Mr. Jones direct, Mr. D. D. Jones direct, or to his address at 225 Main Street.

Q. Is that where the partnership business was operated?

A. Yes, it was.

Q. And whose office was that?

Mr. Vernon N. Winquist

A. That is the office of, as near as I know, Circle Service Station, is where the office of Circle Service Station is.

Q. I mean the people. Do you know which people had offices there?

A. Well, Mr. D. D. Jones had an office there for part of that time.

Q. And how about Miss Revere?

A. Miss Revere did as well, yes, part of that time.

Q. And the two sons?

A. Not to my knowledge.

Q. I think that's all.

Dep. page 30 } Mr. Wagenheim: We reserve the right, Mr. Commissioner, to cross examine this gentleman at a later date after we have had an opportunity to examine these papers that we have just seen for the first time.

Mr. Parker: I want to record my objection to all of the answers of this witness not based on personal knowledge on his part but based on statements made to him by Robert W. Jones and T. H. Jones or any other person other than the books and records themselves, and what they contain, and I want that objection to apply to all answers that this witness made in the course of direct examination or cross examination by the other side, or direct examination by the other side.

Commissioner: Note Mr. Parker's objection.

Mr. Bohannon: We feel we were opening the door by asking Mr. Winquist why he made these adjustments.

By Mr. Bohannon

Q. You discussed each of these changes with the two surviving partners, did you not, the sons of D. D. Jones?

Dep. page 31 } A. Yes, sir, I did.

Q. And none of them professed any prior knowledge of these charges against their accounts until you brought it to their attention did they?

A. That is correct.

Q. That's all.

Commissioner: Thank you, Mr. Winquist.

Mr. Parker: I'd like to examine Mr. R. W. Jones as an adverse witness and adverse party.

Mr. R. W. Jones

MR. R. W. JONES, having been first duly sworn, is examined and testified as follows:

By Mr. Parker

Q. Mr. Jones, how did you acquire your interest in the partnership of Circle Service Station?

A. It was given to me by my father.

Q. And that was the manner in which your brother also acquired his interest?

A. As far as I know.

Q. Did you ever acquire any estate of any kind that was not given to you by your father?

A. Yes, sir.

Dep. page 32

Q. What was the estate that you acquired otherwise?

A. Quite a bit of life insurance.

Q. Life insurance?

A. Right.

Q. And you paid for that in what way?

A. Out of the salary.

Q. And where did you get your salary from?

A. Mr. D. D. Jones Transfer and Warehouse.

Q. And who was the owner of D. D. Jones Transfer and Warehouse?

A. Mr. D. D. Jones.

Q. That was your father?

A. Right.

Q. And you received a salary from that concern, I suppose?

A. That's correct.

Q. Were you a stockholder in the company?

A. It's only up about two years ago I became a stockholder.

Q. What was the amount of salary you were receiving?

A. To start with or when?

Q. Over the years. When did you first begin to work?

Dep. page 33

A. I started $125 on up to $180.

Q. A week?

A. A week.

Q. Up to $180?

A. Right.

Q. When did you first begin working for them?

A. September, 1956.

Mr. Bohannon: What is the relevancy of this, Judge Parker?

Mr. Parker: The relevancy will appear in the course of my examination.

By Mr. Parker

Q. You worked for them continuously during that length of time?

A. That's correct.

Q. In addition to your salary has your father advanced money for you from time to time?

A. As a gift.

Q. I didn't ask you that question. I asked you whether or not he advanced money.

A. He has given me gifts, yes.

Q. Has he handed you money? Cash?

A. No.

Q. Checks?

A. Checks, yes.

Dep. page 34 } Q. For what purpose?

A. Many purposes over the years. Christmas.

Q. What's that?

A. Many purposes. I mean this covers a long period of time.

Q. When did you build your home?

A. I bought a home about three years ago.

Q. What did you pay for it?

A. $55,000.

Q. Where did you get the money to pay for it?

A. My father advanced me 25 of it.

Q. $25,000 of it?

A. Um huh.

Q. Advanced by your father?

A. Right.

Q. Approximately three years ago?

A. Approximately three years ago.

Q. That would make it 1963?

A. Let's see, I believe it was summer of '64. Right.

Q. You paid $55,000 you say for it?

A. Right.

Q. And your father advanced you $25,000?

A. Correct.

Q. And where did you get the balance?

Dep. page 35 } A. That's being financed by the individual I bought it from.

Mr. R. W. Jones

Q. That's secured by a mortgage on the property?

A. That's correct.

Q. And you have to make periodic payments on that?

A. That's correct.

Q. And you have a wife and children?

A. Correct.

Q. And your maximum salary during that period was $180 a week?

A. Just before Dad died. Frankly I don't quite remember, seems to me it was $180, possibly 85 maybe. I don't remember the exact figure.

Q. Was it necessary for your father to supplement your salary in order for you to have enough money to keep going with a $55,000 home, mortgage payments to meet, a wife and children?

A. Not supplement, no, sir. I received an increase in salary but it wasn't a supplement from him to my salary.

Q. You got an increase in salary?

A. Right.

Q. Amounting to how much money?

A. Seems to me it was about $50 a week. I don't remember the exact figure.

Q. Books of the company—

Dep. page 36 } A. Would reflect that.

Q. Reflect what the company pays you, would it not?

A. Correct.

Q. Did you ever charge anything to your father in the way of purchases?

A. Yes, sir.

Q. What would you purchase and charge to him?

A. Oh, I had to purchase some clothing.

Q. At Shulman and Company?

A. That's right.

Q. And any other charges that you made to his account?

A. Not that I can think of.

Q. Did your wife make any charges to his account?

A. No, sir.

Q. Did this practice of charging your clothes to his account prevail over the years?

A. Well, from the time I started in school, I mean through the years of course.

Q. And you kept on?

A. It was something between the two of us frankly.

Mr. R. W. Jones

Q. Did it ever occur to you how your father kept his books in this partnership during his lifetime?

A. No, whatever he wanted to do was perfectly all right.

Dep. page 37 } Q. You acquiesed in however he handled his books?

A. Pardon?

Q. You acquiesced in however he handled his books?

A. I never questioned him about his books on the service station.

Q. Why didn't you question him?

A. Frankly, in his later years the service station seemed to be his primary interest and it gave him something that he could look after.

Q. Well, he had given you a third interest in it, had he not?

A. He had.

Q. And given your brother a third interest?

A. Right.

Q. And each year you were reporting the profit that was made by it on your income tax return?

A. That's correct.

Q. And you never asked to examine any one of these financial statements?

A. Never.

Q. You never asked your father any questions about it?

Dep. page 38 } A. No, sir, not about the station.

Q. You waited until he died before you became at all interested in how he kept his books?

A. That's correct. I left it—

Q. No further questions.

By Mr. Bohannon

Q. When was the Circle Service Station made into a partnership, do you recall?

A. I believe it was about 1953. I was in the Service at the time.

Q. And at that time you were given a third interest and your brother was given a third interest, and your father retained a third interest. He had owned all prior to then. Is that correct?

A. Correct.

Mr. R. W. Jones

Q. Now, did you ever see any of these financial reports prior to your father's death?

A. No.

Q. How did you find out how much profit or loss to put on your tax return?

A. I received my tax return from Edmondson, LedBetter and it would have the profit and loss statement, not a statement, but showing in the tax return how much the station made for the year?

Dep. page 39 } Q. Did you have any other way of finding out?

A. No.

Q. Now, on August 27, '57, your father drew a check for $3,000 and charged $1,000, drew this check on Circle Service Station and charged $1,000 against your account. Now, do you know the occasion for that?

A. I do not.

Q. Had your father advanced you any funds?

A. I don't recall. I've never seen a check, or seen a check written on the Circle Service Station for personally—

Q. Did he give you $1,000 himself immediately prior to or immediately thereafter? 1957.

A. 1957?

Q. August 27, '57.

A. I don't recall it.

Q. Now, on September 30, '58 your father took $2,500 out of the Circle Service Station and charged $700 against your account. Do you know anything about that?

A. No, I do not.

Q. Do you know of anything which could have given rise to that $700 charged against your account?

A. No.

Q. Now, on November 11, 1964 there's a $3,000 charge against your account and credited to your father's account. Did you have any knowledge of that?

Dep. page 40 } A. Nothing.

Q. Do you know of any explanation for it?

A. 1964?

Q. November 11, 1964.

A. I do not.

Q. Judge Parker asked you about your charging clothes at Shulman's from time to time. What exactly was the arrangement you had with your father?

A. It's hard to explain. It is, I was the youngest member of the family and Dad just sorta felt like, I got the feeling that he wanted somebody still to feel a bit dependent on him,

and we did have a just say almost a joke that I'd go down occasionally and keep his account open. That's what I'd tell him; just a sentimental feeling more than anything else.

Q. You have any idea how much these charges might have amounted to from time to time, or how often you did it?

A. It was normal, I'd say maybe once or twice maybe around $80; I doubt if it was ever any more than that.

Q. Once or twice how often?

A. Since I've been in Norfolk, ten years.

Q. You remember when the last time was that you did this?

A. I'd say probably '64, I'm not real sure.

Dep. page 41 } Q. Did your father ever indicate that this would be repaid; did you ever give him a note?

A. No. In fact, I bought him merchandise down there and have given it to him.

Q. At Shulman's?

A. At Shulman's.

Q. No further questions.

Mr. Parker: I call Mr. T. H. Jones.

MR. T. H. JONES, having been first duly sworn, is examined and testified as follows:

By Mr. Parker

Q. You're the son of the late D. D. Jones, are you not?

A. Right, older son.

Q. You also are one of the partners of the Circle Service Station, are you not?

A. Right.

Q. How did you acquire your interest in the Circle Service Station?

A. Through a gift at the time of the formation of the station as a partnership.

Q. From whom?

Dep. page 42 } A. From Mr. D. D. Jones.

Q. From whom?

A. D. D. Jones.

Q. Your father?

A. Right.

Q. How long have you been employed by the D. D. Jones Transfer Company?

A. Full time since '46. Prior to that after school, Saturdays since I was 15 back in '35.

Mr. T. H. Jones

Q. And what are you now receiving in the way of a salary from that concern?
A. Is this of any importance to this Court?

Mr. Parker: I object to the witness answering this way.
Commissioner: Answer the question.
A. $24,000 a year.

Mr. Parker
Q. What were you receiving during your father's lifetime?
A. Starting at $65 a week in 1946, ranged during his lifetime up to $18,000 a year.
Q. And when did that reach $18,000 a year?
A. The last year of his life.
Q. 1964?
Dep. page 43 } A. 1963 I would say; '64, yeah that's right, the last full year of his life was '64.
Q. And what had you been receiving for the years just prior to that?
A. Approximately $1,000 a month.
Q. Had you received money from time to time from your father in addition to your salary?
A. Personally, no. Any monies I received extra was a company, Transfer and Warehouse Company bonus, on a Transfer and Warehouse Company check.
Q. Your father was the owner of the warehouse company was he not?
A. Two-third owner. I was a third owner since 1955.
Q. And how did you get to be an owner?
A. Through a gift from D. D. Jones.
Q. Your father gave you that interest in the company?
A. That's correct.
Q. Have you got a home?
A. I have.
Q. When did you build it?
A. 15 years ago.
Q. And what did it cost you?
A. About $18,000.
Dep. page 44 } Q. And where did you get the money to buy it?
A. Earned it bitterly.
Q. How much did you pay for it at the time?
A. Cost $18,000 to build.
Q. You built it?
A. I built it myself, yes, contracted it.
Q. And you earned, you saved the money up?

Mr. T. H. Jones

A. I put, I couldn't say how much I put up, it was probably not less than four or five thousand. The rest was paid off in earned income. They were bitter years, they were hard years financially.

Q. Who did you pay it to?

A. The Equitable Life Insurance Company had the mortgage on it.

Q. And you paid that mortgage off out of your salary?

A. No, not entirely off. I paid up to about $15,000.

Q. And where did you get the rest?

A. When I say I paid I meant I paid that off over the years. At the time that I sold that house about four years ago it had amassed quite an equity to me.

Q. You bought another home then?

A. Built another home, right.

Q. What did that cost you?

Dep. page 45 } A. $39,000.

Q. And how did you pay for that?

A. The equity from the first home and my good friends at the Seaboard loaned me $30,000 to pay the balance off, which I'm still paying. I owe them approximately $27,000.

Q. No further questions.

Mr. Bohannon: Judge, have you seen the partnership agreement?

Mr. Parker: Yeah, I have a copy of it.

By Mr. Bohannon

Q. Mr. Jones, is that a copy of the partnership agreement?

A. To my knowledge. I never remember seeing the partnership agreement.

Mr. Bohannon: You want us to have this identified, or shall we just introduce by agreement?

Commissioner: This is the Circle Service Station.

Mr. Parker: You might ask him if he signed it, says he never saw it.

A. I didn't say I never saw it; to my knowledge that's my signature.

Dep. page 46 } Mr. Bohannon: We offer this in evidence.

Commissioner: Marked Defendant's exhibit number 10.

Mr. T. H. Jones

Mr. Parker: Let the original go in the record.

By Mr. Bohannon

Q. Now, sir, did you ever get the annual financial reports prepared by Mr. Winquist or his firm?

A. Never did.

Q. Did you ever see them?

A. Never did.

Q. How did you find out how much to report for your income taxes?

A. Either Mr. D. D. or Vernon Winquist would give me the information which was incorporated in my own personal tax, income tax.

Q. They did not prepare your return?

A. No, my father-in-law is a CPA and he prepared it for me.

Q. Now, on June 30, '55 your father credited himself with $305.75 and charged that against your account. Did you receive any such sum from your father?

A. No.

Q. Had you received any sum like that in that time?

Dep. page 47 } A. Not that I recall.
Q. Did you have any knowledge of this entry?
A. No.

Q. Now, on the same date there are two other entries, one in the amount of $82.46 and one in the amount of $1,500. Did you have any knowledge of these entries?

A. No.

Q. Did you receive any such sums from your father?

A. No.

Q. On July 22, I believe, 1955 a check drawn on Circle Service Station, 1398, to the order of cash, signed by your father; did you receive this check, sir?

A. No, I did not.

Q. This is exhibit number 8. Did you receive any such sum from your father?

A. No.

Q. Did you have any knowledge of this charge on your account?

A. No.

Q. That was in the amount of $544.56. Now, on August 27, '57 there was a $3,000 check on Circle Service Station drawn by your father and credited to his account at the Transfer and Warehouse Company. Did you have any knowledge of that transaction?

Mr. T. H. Jones

A. No.

Dep. page 48 } Q. Did you receive $2,000 which was charged against your partnership account?

A. No.

Commissioner: Whose writing is that?

A. I couldn't tell you, sir.

Commissioner: On two checks.

By Mr. Bohannon

Q. On July 29, 1958 check, Circle Service Station payable to cash, endorsed by Miss Revere in the amount of $786 was charged against your account. Did you give Miss Revere any such sum?

A. No, I had no knowledge of it.

Q. Did you receive any such sum from her or from your father?

A. No.

Q. You had no knowledge of the transaction?

A. Not at all.

Q. On September 30, '58 there was a $2,500 check payable to cash deposited to your father's account of which $1,800 was charged against your account. Did you have any knowledge of that?

A. No.

Q. Did you receive any such sum from your father?

A. No.

Dep. page 49 } Q. Did you know anything about it?

A. No.

Q. Now, the Circle Service Station is located at the end of Boush Street or West Main Street. Is that correct?

A. Right.

Q. Now, who ran the station?

A. The station normally had a manager who physically operated it. Mr. D. D. kept up with it as Bod said, it was his baby, he watched out for it. At times when he wasn't around, troubles arose, it became either my duty or my brother's duty to fall in and handle such situations. The station has often been broken into. It has often required extra time beyond the normal time we assigned to our Transfer and Warehouse Company duties.

Q. When did your father make his office there?

A. He made, originally of course, his office was at the end

Mr. T. H. Jones

of West Main Street. We built a warehouse over in South Norfolk and he moved his offices over there for probably seven years.

Q. What seven years were those?

A. They were the years of, I'd say, '56, 7, 8, 9, 60, 1, and 2, perhaps 3. No, I guess '62 would be the end of that and then due to the cramped condition in our office in South Norfolk he moved back to West Main Street where he had a large office available and it was also convenient to the service station.

Dep. page 50

Q. What was Miss Revere's connection with the partnership?

A. She was the bookkeeper.

Q. How long has she been such?

A. I would say 15 years or more.

Q. Now, who handled the writing of checks and deposits for the partnership?

A. Miss Revere primarily I believe wrote the checks. On occasion there were other girls there who would make deposits; Miss Revere's sister for one, and a friend for another.

Q. Do you recognize your father's signature on these checks?

A. I wouldn't question the D. D. Jones signature.

Q. What was his procedure in signing checks? Do you know that?

A. Whenever he anticipated being out of town he would sign up a half dozen or more of these checks in blank, and leave them in Miss Revere's possession.

Q. Do you know who filled out the body of any of these checks?

A. I couldn't declare or swear, but I would think, I'm confident that one is Miss Revere.

Dep. page 51

Q. That's 3821, exhibit 7.

A. I'm confident this one is.

Q. That's exhibit 6.

A. I believe all four of those, and I wouldn't doubt but that the other one is.

Q. The one in question is exhibit 11. All of the others you feel are hers. On exhibit 9 is that her signature on the back?

A. Appears to be.

Q. Would you recognize her signature?

A. I recognize it as being hers.

Q. Do you know who endorsed exhibits 6 and 7?

Miss Hilda C. Revere

A. I couldn't say; it appears to be the same though written with a different pen.

Q. Is that your father's signature?

A. No, definitely it is not my fathers.

Mr. Parker: Let me see those two you have just referred to, the two deposited to the account.

A. I have never known my father to make a deposit.

Mr. Parker: I'd like to direct the Commissioner's attention to the fact that those are both endorsed for deposit to D. D. Jones. No evidence of fraud.

Mr. Bohannon: I'm not saying there is any fraud. We just want to show that your client knows what was going on.

Dep. page 52 } Mr. Parker: You let it drop there, the endorsement read "for deposit of D. D. Jones" and that's what apparently happened.

Mr. Bohannon: No further questions.

By Mr. Parker

Q. Who draws the checks that come in to the D. D. Jones Transfer, paid out by the D. D. Jones Transfer Company?

A. Our current bookkeeper.

Q. And the checks that come in and are deposited, who endorses it?

A. Endorsed by stamp by either the bookkeeper or one of the people in the bookkeeping or accounting offices.

Q. Do you think there's anything unusual, then, in the fact that these checks are drawn by Miss Revere who was a bookkeeper, or endorsed to the deposit of D. D. Jones by Miss Revere who was the bookkeeper?

A. I think it's customary practice, it's following the practice of the station.

Dep. Q. No further questions.

page 53 } Mr. Parker: Miss Revere, will you take the stand, please?

MISS HILDA C. REVERE, the complainant, having been first duly sworn, is examined and testified as follows:

By Mr. Parker

Q. You are the Hilda C. Revere, plaintiff in this case are you not?

Miss Hilda C. Revere

A. Yes, sir.
Q. Where do you live, Miss Revere?
A. At 642 Maury Avenue, Norfolk.
Q. Norfolk, Virginia, and you're the Hilda C. Revere referred to, or beneficiary in the Will of the late D. D. Jones are you not?
A. Yes, sir.
Q. What connection did you have with the Circle Service Station?
A. I kept the books for the Circle Service Station.
Q. For how long a period of time?
A. 20 years.
Q. Did you make the entries which have been testified to here beginning with the journal entry of June 30, 1955 crediting D. D. Jones with $1,500 and charging T. H. Jones with $1,500, which was corrected by an adjustment on April 30, 1965?

Dep. page 54

A. Yes, sir.
Q. At whose direction did you make that entry?
A. At Mr. D. D. Jones's.

Commissioner: Which exhibit are you looking at now, Mr. Parker?
Mr. Parker: I'm looking at complainant's exhibit number 2 and reading the items there which were the subject matter of an adjustment on April 30, 1965.

By Mr. Parker
Q. Did you make the entry referred to on this exhibit as dated 8/27/57 marked "withdrawal of funds by D. D. Jones," and showing a debit to T. H. Jones of $2,000, and a debit to R. W. Jones of $1,000?
A. Yes, sir.
Q. And at whose direction did you make those entries?
A. Mr. D. D. Jones.

Mr. Bohannon: Wouldn't her testimony be similar as to each one of these entries?
Mr. Parker: Yes.
Mr. Bohannon: We can save a lot of time without going through each one.

Dep. page 55

By Mr. Parker
Q. Did you make—
A. I made all of the entries that have been questioned.

Miss Hilda C. Revere

Q. And did you make them all at the request of Mr. D. D. Jones?

A. Yes, sir.

Q. Did you do anything in connection with the records of this business or its financial transactions that you were not authorized to do or directed to do by Mr. D. D. Jones?

A. No, sir, never.

Q. Did Mr. Jones ever make any statements to you as to his reasons for making these charges at anytime against his sons?

Mr. Bohannon: We object to this.

Mr. Parker: And I might say that under the statute where the interest of a decedent is involved, and I can put my hands on it if the Commissioner requires it, that when the opposite party testifies as has been the case here, then hearsay testimoney declarations of the decedent are admitted into evidence.

Dep. page 56 } Commissioner: All right.

Mr. Parker: And both of these other parties to the partnership have testified.

By Mr. Parker

Q. Did Mr. Jones make any statements to you from time to time as to his reasons for making these charges?

A. Well, he said that was about the only way he would ever get the money that he had advanced the boys.

Q. That he advanced to his sons?

A. That's right.

Q. Speaking of both of them?

A. That's right, would be to charge it to those accounts.

Q. When this matter was called to your attention did you go to see Mr. Winquist?

A. Yes, sir, I did.

Q. What explanation did he give you of what he had done on April 30, 1965 so far as these books are concerned?

A. He told me that Thomas Jones requested it and directed him to make these changes, that he said he didn't get the money and so I, he also said that—no, I said to him, I said, "Well, looks like to me it's a mighty poor time to be questioning something after Mr. D. D. Jones is gone."

Dep. Mr. Bohannon: I object, no need to state that.

page 57 } By Mr. Parker:

Q. Did he give any explanation—

Mr. Bohannon: Are you going to contradict him? You should have warned him while he was testifying.

Mr. Parker: I'm not proceeding to contradict.

Mr. Bohannon: Note my objections.

By Mr. Parker

Q. What explanation did he give you as a reason for making this so-called adjustment as of 4/30/65 which resulted in decreasing the equity of the decedent by $10,000, increasing the equity of Mr. T. H. Jones by $5,300 and increasing the equity of R. W. Jones by $4,700?

A. He said they claimed they didn't get the money and so he changed the books.

Q. No further questions.

By Mr. Bohannon

Q. At the time you were employed by Circle Service Station you also were employed by the D. D. Jones Transfer and Warehouse Company. Is that correct?

Dep. page 58 } A. Yes, part of the time.

Q. And your salary totaled around $600 a month. Is that correct?

A. I made $120 a week for the D. D. Jones Transfer and $200 a month for keeping the books at the gas station.

Q. About $700 a month?

A. The last year.

Q. Now, did you ever receive any gifts from Mr. Jones?

Mr. Parker: I object to that, it's not material here.

Commissioner: Note the objections and answer the question, Miss Revere.

By Mr. Bohannon

Q. Did you ever receive any gifts from Mr. Jones?

A. Yes.

Q. Did he not give you gifts continually from time to time, money or other things?

A. No, I wouldn't say that.

Q. On this exhibit 9, check endorsed by yourself, is this not a gift to you?

A. No, sir, it was not.

Q. What was it?

Miss Hilda C. Revere

Dep. page 59 } A. Well, it was a check that I got cashed and took the cash to Mr. D. D. Jones.

Q. You gave that cash to Mr. D. D. Jones. Is that correct?

A. Well, certainly, I signed the check—

Q. That's your signature on the back?

A. That's correct.

Q. And you made the entry charging this against the account of Thomas Jones?

A. That's correct.

Q. Did you tell Mr. Thomas Jones about it?

A. I didn't tell Mr. Thomas Jones anything, I didn't see Mr. Thomas Jones.

Q. You never told either of the sons about any of these entries that were made, did you?

A. They never asked.

Q. Where did you get these financial reports that Judge Parker introduced in evidence?

A. Where did I get them?

Q. Yes.

A. I got them from my office, I got a copy of every financial statement not only of the Transfer Company but the service station.

Q. And you never sent, you took them with you when you left?

Dep. page 60 } A. No. I had copies given to me by Mr. D. D. Jones every year. I didn't have to take them.

Q. Did you ever give a copy to either of the sons?

A. The mail was addressed to Mr. D. D. Jones; he distributed the statements.

Q. Do you have any personal knowledge, other than what your testimony has been, of any of these changes on the accounts of either of the sons?

A. What was that question again?

Q. We have made some additional, we are making some additional changes which weren't on that first sheet you looked at and they're marked—

Mr. Parker: I submit, Mr. Commissioner, the witness should have an opportunity to examine these statements. We, the counsel, haven't had a chance.

Commissioner: She'll be given an opportunity to examine the statement.

Mr. Wagenheim: We've never seen them before this morning, and Miss Revere has never seen them.

By Mr. Bohannon

Dep. page 61 } Q. I made an X on exhibit 3 on four items. Look at each of those items and let me know if you have any personal knowledge of those items other than them being entries you were directed to make by Mr. D. D. Jones.

A. That was, every one of them at the direction of Mr. D. D. Jones.

Q. You have no other knowledge of them?

A. No, I have not.

Q. That's all, Miss Revere.

Mr. Parker: Mr. Commissioner, that's our case so far as we're concerned. After the testimony is written up, and incidentally, we'd like to have a copy. Original to the Commissioner and a copy to me.

Mr. Herbert: We would also like to have a copy.

Mr. Parker: We'd like to have an opportunity to argue the case.

Mr. Bohannon: We don't anticipate any additional evidence unless something turns up when we look at the record. Right at the moment we do not anticipate any additional evidence.

Commissioner: We'll wait until the testimony is written up and you'll be given an opportunity to argue.

page 61-A } STATE OF VIRGINIA
CITY OF NORFOLK, to-wit:

I, Richard W. Ruffin, Commissioner in Chancery, do certify that the foregoing depositions of Vernon N. Winquist, Robert W. Jones, Thomas H. Jones and Hilda C. Revere were duly sworn to before me and taken before me at the time and place and for the purpose in the caption set forth.

Given under my hand this 19 day of Dec., 1966.

RICHARD W. RUFFIN
Commissioner in Chancery

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

INDEX TO RECORD

	Page
Appeal Awarded	1
Record	2
Bill of Complaint	2
Answer of Defendants	4
Amended Answer of Defendants	5
Report of the Commissioner in Chancery	6
Exceptions to Report of the Commissioner in Chancery	13
Decree—July 14, 1967	14
Notice of Appeal and Assignments of Error	16
Proceedings	17
Witnesses:	
Depositions of:	
Vernon N. Winquist	18
R. W. Jones	34
T. H. Jones	39
Miss Hilda C. Revere	45
Certificate of Commissioner in Chancery	50