218 Va. 240

SUPREME COURT OF VIRGINIA

RECORD NO. 760710

ELWOOD H. BARTLETT AND
LOUISE ALDERMAN BARTLETT

Appellants

v.

BANK OF CARROLL

Appellee

APPENDIX

C. Thomas Burton, Jr.
Hunter, Fox & Trabue
P. O. Box 12247
Roanoke, Virginia 24024

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SUPREME COURT OF VIRGINIA

ELWOOD H. BARTLETT and LOUISE ALDERMAN BARTLETT,	)	
Appellants	)	
v.	)	APPENDIX
BANK OF CARROLL,	)	
Appellee	)	

MOTION FOR JUDGMENT

The Plaintiffs, Elwood H. Bartlett and Louise Alderman Bartlett, by counsel, do respectfully move the Court for judgment against the Defendant on the grounds and in the amount as herein set forth.

1. The Plaintiffs are husband and wife and residents of Grayson County, Virginia.

2. The Defendant is a corporation organized and existing under the laws of Virginia with its principal office located in Carroll County, Virginia, and is and was at all times material to this action authorized under the provisions of Chapter 2, Title 6.1, of the Code of Virginia, Virginia Banking Act, to engage in the banking business in the State of Virginia and to exercise all powers permitted by the laws of the State of Virginia.

3. The Defendant's rights, duties, obligations and liabilities to its customers and depositors, including the Plaintiffs herein, are governed at least in part by the terms and provisions of Title 8.4 of the Code of Virginia,

Uniform Commercial Code--Bank Deposits and Collections, and the laws of the State of Virginia.

4. On January 3, 1974, the Plaintiffs opened a joint checking account with the Defendant bank in the names of Mr. or Mrs. Elwood H. Bartlett and deposited therein the sum of $30,078.53.

5. On January 3, 1974, the Plaintiffs opened a joint savings account with the Defendant bank in the names of Mr. or Mrs. Elwood H. Bartlett and deposited therein the sum of $800.00.

6. Subsequent to the said deposits, the Plaintiff Louise Alderman Bartlett, in accordance with Va. Code §8.4-213, drew checks on her joint checking account, the total aggregate sum of said checks amounting to $21,445.31.

7. On or about January 12, 1974, and subsequent thereto, the Defendant bank did intentionally and wrongfully dishonor each of the said checks and did intentionally and wrongfully debit the Plaintiffs' joint checking account in the amount of $30,078.53.

8. On or about January 25, 1974, the Defendant bank did wrongfully debit the Plaintiffs' joint savings account in the amount of $800.00

9. Such actions on the part of the Defendant bank constituted willful and malicious conduct and a gross indifference to the consequences and the rights of its depositors, the Plaintiffs.

10. As a proximate result of the said wrongful dishonors, the Plaintiffs suffered actual and consequential

damages in the amount of $500,000.00 and in the following particulars:

A. Wrongful conversion of the Plaintiffs' moneys in the amount of $30,878.53.

B. Extensive and substantial damage to the credit and business standing of the Plaintiffs resulting in both personal and business losses.

C. The Plaintiffs were forced to sell certain property at a substantial loss of profit.

D. The Plaintiffs were placed in a financial position which prompted particular creditors to take possession of their collateral, thereby resulting in a substantial loss of profit to the Plaintiffs.

E. The business suppliers of the Plaintiffs have wholly eliminated or substantially reduced their discount privileges and have modified their credit arrangements and terms, both resulting in losses of profits to the Plaintiffs.

F. The Plaintiffs were forced to give to certain creditors a security interest in previously unencumbered property.

G. Substantial interest has been paid or has become payable by the Plaintiffs to their creditors.

H. The Defendant bank in wrongfully dishonoring the Plaintiffs' checks retained the use of the moneys for its own benefit, and the Plaintiffs are therefore entitled to interest on the said moneys

at the highest rate allowed by law for such banking institutions.

I. Said wrongful dishonor amounted to an imputation of wrongdoing against the Plaintiffs and an attack upon their character, reputation and integrity.

J. The Plaintiffs have had to pay and anticipate payment in the future substantial legal fees.

11. Under the facts alleged herein, the Plaintiffs are entitled to punitive and exemplary damages in the amount of $500,000.00.

WHEREFORE, the Plaintiffs do move that the Court enter judgment against the Defendant bank in the amount of One Million Dollars ($1,000,000.00) together with interest thereon from January 12, 1974, and their costs in this behalf expended.

Dated: August 12, 1974

ANSWER OF THE BANK OF CARROLL

The Bank of Carroll, for answer to the motion for judgment filed against it by Elwood H. Bartlett and Louise Alderman Bartlett says:

(1) The allegations of Paragraphs 1 and 2 of the motion for judgment are correct.

(2) The Bank of Carroll denies that it intentionally and wrongfully dishonored checks of the Plaintiffs, and that it intentionally and wrongfully debited the Plaintiffs' joint

checking account and the Plaintiffs' joint savings account.

(3) The Bank of Carroll denies that it engaged in willful and malicious conduct with a gross indifference to the rights of the Plaintiffs.

(4) The Defendant knows nothing of the damages allegedly sustained by the Plaintiffs and, if material, calls for strict proof of the same.

(5) All allegations of the motion for judgment not expressly admitted herein are denied.

Dated: October 4, 1974

RULING BY JUDGE ARTHUR SUSTAINING THE DEFENDANT'S MOTION TO STRIKE THE PLAINTIFF'S EVIDENCE
(Record, Vol. 1 at 255-257, Bartlett v. Bank of Carroll)

Ladies and Gentlement of the jury, counsel agree that at this stage it becomes the responsibility of the court to make certain rulings of law and that these rulings will to a large measure resolve the issues in the case so that you will not have to make a decision on this matter. That is why we have taken such a long while, the court has been considering the issues and trying to reach a decision.

Now, plaintiffs in this case rely on Section 8.4-402 of the Virginia Code alleging that the defendant bank wrongfully dishonored their checks. The plaintiffs, however, it appears from the evidence knew that the Hampton deposit was being made pursuant to an order of this court. They knew that the order placed certain restrictions upon the holder of the fund, yet they participated in depositing the funds contrary to the order of the court. While

Mr. and Mrs. Bartlett were not parties to the suit of Hampton v. Hampton they were aware of the ruling of the court in that case. The same attorney represented them and Mrs. Hampton.

Mr. and Mrs. Bartlett now complain that the Bank of Carroll has caused them damage by the dishonor of these checks. The Bartletts were co-authors of their own difficulty. The bank dishonored the Bartlett checks, yes, but in the view of the court it did not wrongfully dishonor them because the plaintiffs cannot take advantage of a situation of their own making. The bank acted reasonably and seasonably and in my view should not be liable to the plaintiffs for their alleged damages. The plaintiffs contend that this case should be decided within the narrow confines of the rules laid down by the Uniform Commerical Code. The issues are confusing, to say the least, and it is my considered opinion that under all the peculiar facts and circumstances of this case the bank did act, as I have already stated, reasonably and seasonably. It is the opinion of the court, therefore, that the defendant's motion to strike plaintiffs evidence and for summary judgment should be and it is hereby granted.

Ladies and Gentlemen of the jury, I don't want you to feel that your two days here have been wasted. They have not been. You have been a very important part of this trial. The court thanks you for your attendance but because of the peculiar nature of the case it became one of law rather than fact for the court and in a case of this kind the court makes

the decisions, the jury does not have to make them. For that reason you do not have to decide the case and you are excused. You are to return here on December 15th at nine o'clock. You are free to go. Thank you.

NOTICE OF APPEAL
AND
ASSIGNMENTS OF ERROR

Counsel for Elwood H. Bartlett and Louise Alderman Bartlett, the Plaintiffs in the above-styled case in the Circuit Court for Carroll County, Virginia, does hereby file their notice of appeal from the Order entered in this case on February 2, 1976, and does set forth the following assignments of error:

1. The Court erred in refusing to dismiss the jury panel and calling a new panel.

2. The Court erred in refusing to allow Elwood H. Bartlett to testify as to his relationship with his grandmother, Sadie B. Hampton.

3. The Court erred in refusing to allow Elwood H. Bartlett to testify as to his expected loss of business income resulting from the defendant's actions.

4. The Court erred in refusing to allow Louise Bartlett to testify about certain creditors contacting her and her husband after the actions of the bank.

5. The Court erred in refusing to allow the Plaintiff to seek to impeach the testimony of Lonnie Pulliam, Jr.

6. The Court erred in allowing Joe Lawson to

testify about what Lonnie Pulliam, Sr., had told him to communicate to Sadie B. Hampton.

7. The Court erred in not allowing counsel for the Plaintiff to lead Lonnie Pulliam, Sr., as an adverse witness.

8. The Court erred in not allowing counsel for the Plaintiffs to propound a legal question pertaining to banking to Lonnie Pulliam, Sr.

9. The Court erred in not allowing counsel for the Plaintiffs to dispute the testimony of Lonnie Pulliam, Sr.

10. The Court erred in not allowing Steve Senic to testify for the purpose of impeaching Lonnie Pulliam, Jr.

11. The Court erred in allowing The Honorable Jack S. Matthews to testify.

12. The Court erred in allowing the introduction of and the testimony pertaining to the Decree entered January 31, 1974, in the matter of Sadie B. Hampton v. Griggs Hamptonand to the related decrees which were introduced as Defendant's Exhibit No. 7.

13. The Court erred in finding that the Plaintiffs participated in depositing the funds contrary to the order of Judge Matthews.

14. The Court erred in finding that the same attorney represented the Plaintiffs and Mrs. Hampton.

15. The Court erred in finding that the Bank acted reasonably and seasonably and therefore should not be liable to the Plaintiffs for their alleged damages.

16. The Court erred in sustaining the Defendant's motion to strike the Plaintiffs' evidence and entering summary

judgment in favor of the Plaintiffs.

17. The Court erred in failing to sustain the Plaintiffs' motion to enter summary judgment in their behalf on the question of liability and to submit the questions of damages to the jury.

Counsel does further state that the transcript of the trial which was ordered to be made a part of the record in the case was filed with the Clerk of this Court on February 17, 1976, and, therefore, no transcript or statement of facts, testimony or other incidents of the case will be hereafter filed.

Dated: February 28, 1976

ELWOOD H. BARTLETT AND
LOUISE ALDERMAN BARTLETT

By_____
Counsel

C. Thomas Burton, Jr.
Hunter, Fox & Trabue
P. O. Box 12247
Roanoke, Virginia 24024

CERTIFICATE

I, C. Thomas Burton, Jr., counsel for Appellants and duly qualified to practice in the Supreme Court of Virginia, do hereby certify that three copies of the foregoing Appendix were mailed to Stuart B. Campbell, Jr., Esq., Campbell, Young & Hodges, P. O. Box 320, Wytheville, Virginia, 24382, counsel for Appellee, this ____ day of November, 1976.

_____

1.
2.
VIRGINIA: IN THE CIRCUIT COURT OF CARROLL COUNTY
3.
4. ELWOOD H. BARTLETT AND
LOUISE ALDERMAN BARTLETT
5.
6. VS MOTION FOR JUDGMENT
Proceedings in Trial
7. BANK OF CARROLL
8.
9. BEFORE HONORABLE R. WILLIAM ARTHUR, JUDGE OF THE TWENTY-
10. SEVENTH JUDICIAL CIRCUIT AT HILLSVILLE, VIRGINIA ON
DECEMBER 10 AND DECEMBER 11, 1975:
11.
12.
13. APPEARANCES: ELWOOD H. BARTLETT AND LOUISE ALDERMAN
14. BARTLETT, in person
15. and by
16. KENNETH E. TRABUE, ESQ. AND C. THOMAS BURTON,
ESQ., THEIR COUNSEL
17. BANK OF CARROLL AND
18. S. B. CAMPBELL, JR., ESQ. AND THOMAS G.
19. HODGES, ESQ., ITS COUNSEL
20.
21. Reported by: Mrs. Cloatine H. Henley
22. P. O. Box 183
Hillsville, Virginia 24343
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26.

1.

2. I N D E X

3. Page

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6.

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18.

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25. Mr. Burton 243,249,252

26. RULINGS BY THE COURT: 74,87,138,255

EXCEPTION TO RULING: 257

1. The Court Reporter was sworn.
2. The Clerk called thirteen jurors to the jury box.
3. THE COURT: Ladies and Gentlemen, the case that we will try
4. here today is entitled Elwood H. Bartlett and Louise Alderman
5. Bartlett vs Bank of Carroll.
6. So you will have a general idea of what the case is
7. about back in January, 1974 the bank dishonored certain
8. checks of the Bartletts and it is alleged caused them certain
9. loss in connection with that dishonor and in January, 1974
10. the bank wrongfully dishonored the plaintiffs' joint savings
11. account. It is alleged that as a result of this action
12. by the bank the plaintiffs sustained damage to their credit,
13. etc. Let me ask you first whether any of you are related
14. by blood or marriage to Elwood H. Bartlett and to Louise
15. Alderman Bartlett?
16. Are any of you employed by the Bank of Carroll?
17. Do any of you own stock in that bank?
18. Have you heard this case discussed at all?
19. Were you even aware the case was pending until you came
20. here this morning?
21. You all indicated in the negative.
22. You haven't read anything about it? You haven't heard any-
23. thing on the radio? You haven't heard your friends and
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1. neighbors talk about it?
2. Then, may I assume that none of you have formed an opinion
3. about it, if you haven't heard of it?
4. Do you have any feeling of bias or prejudice against either
5. party? You indicate you do not.
6. Are any of you--do you have any deposits either savings
7. or checking accounts in the Bank of Carroll? You all
8. indicated you do not.
9. You have already said you don't own any stock in the bank.
10. Do any of you owe the bank any money?
11. Have any of you had any business dealings with the plaintiffs,
12. Elwood Bartlett or Louise Alderman Bartlett?
13. Do either of them owe any of you any money?
14. For the record I will say that in answer to these questions
15. some of the jury are shaking their heads in the negative but
16. others are silent and I take it by their silence you are
17. answering in the negative or the affirmative as the case
18. may be. For instance, I asked if the plaintiffs owe you
19. any money. Those of you who didn't say anything I take it
20. they do not.
21. I am going to mention some of the people who will probably
22. testify in this case. I am going to ask if you are so
23. closely associated with them in business dealings or other-
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1. wise that you feel you could not sit on this case? One of
2. the witnesses will be Judge Matthews who presides over this
3. Court. Do you have any feelings or business dealings at all
4. to make you feel that the fact he is testifying in the case
5. might sway you one way or the other? Would you treat his
6. testimony the same as any other witness?
7. Mr. A. A. Campbell, a lawyer from Wytheville, will
8. probably testify. Are any of you clients of his and would
9. be persuaded by his testimony one way or the other?
10. Mr. Raleigh Cooley, who is a lawyer in town, Mayor of the
11. town. What is your situation with him? Would his testimony
12. influence you one way or the other?
13. Lonnie Pullium, Jr., Lonnie Pullium, Sr., the same questions?
14. Mrs. Sadie Hampton, Mr. Steve Scenic, Mr. Joe Lawson?
15. Ladies and Gentlemen, I ask you one final critical question.
16. Do you know of any reason, whether I have asked the question
17. or not, why you could not sit on this jury and give the
18. plaintiffs, Elwood H. Bartlett and Louise Alderman Bartlett,
19. and the defendant a fair and impartial trial based solely
20. upon the law and the evidence you will hear in this court-
21. room? Can all of you do that if you are selected as jurors?
22. The Plaintiff is seated to your left, Ladies and Gentlemen.
23. Their counsel are Mr. Trabue and Mr. Burton of the Roanoke
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1. Bar. The Bank of Carroll is represented by the gentlemen
2. to your right and the bank's counsel are Mr. S. B. Campbell
3. and Mr. Thomas Hodges of the Wytheville Bar.
4. THE COURT TO COUNSEL: Gentlemen, are there any questions?
5. MR. TRABUE: No, Your Honor.
6. MR. CAMPBELL: No, Your Honor.
7. THE COURT: Members of the jury, I want to ask you one more
8. question. You will recall I asked earlier if you had heard
9. this case discussed. The Court is advised that perhaps
10. this morning a Mr. Ottie Padgett may have talked to some
11. members of the panel. I don't know whether they are sitting
12. in the box. I am going to ask specifically if any of you,
13. the thirteen here, have discussed the case with Mr. Ottie
14. Padgett?
15. JASON ALLISON: He said it was something to do with the bank.
16. THE COURT: Did he discuss the facts of the case with you?
17. MR. ALLISON: No.
18. THE COURT: What is your name?
19. A- Jason Allison.
20. SONNY IROLER: I was present.
21. THE COURT: I will ask each of you gentlemen the extent
22. of the conversation. Were you engaged in a conversation
23. discussing this case or just a casual comment made in passing?
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1. SONNY IROLER: It was a casual comment.
2. THE COURT: What did Mr. Padgett say?
3. A- He just said it was against the Bank of Carroll. He
4. didn't mention the plaintiffs name.
5. THE COURT: You understand why we have to be so careful
6. about these matters. We don't want any appearance of any
7. impropriety. I will ask you gentlemen again if that
8. conversation would affect you gentlemen in either way for
9. or against these parties?
10. SONNY IROLER: No, sir.
11. JASON ALLISON: No, sir.
12. THE COURT: I will tell you no one is to discuss this case.
13. You are not to allow anyone to talk to you about it. If
14. anyone attempts to do so you come to me.
15. MR. TRABUE: See you in chambers, Your Honor?
16. THE COURT: O. K.
17. IN CHAMBERS: Mr. Ottie Padgett was called into the Judge's
18. Chambers and being first duly sworn by the Court testifies
19. as follows:
20. EXAMINATION BY MR. TRABUE:
21. Q- Mr. Padgett, what is your address?
22. A- Rt. 1, Box E4, Hillsville.
23. Q- What is your employment?
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1. A- Newspaper Reporter for Galax Gazette.
2. Q- Are you here today to report the process of this trial
3. in the newspaper?
4. A- Yes, but the paper won't come out until next week.
5. Q- Did you approach one or more of the jury this morning and
6. discuss this case with them in any way?
7. A- I started out the hall, went down to the treasurer's
8. office. Some gentlemen were out in the hall. Something
9. was asked what the case was about. I said, "The Bank of
10. Carroll case, I understand." I said, "Something about
11. some money."
12. Q- Did you use the words "Court contested funds"?
13. A- I don't remember that. Somebody asked me, said, "It is
14. not about embezzlement?" I said, "I don't think so."
15. Q- You were present when the jury panel was called by
16. Judge Arthur?
17. A- Yes.
18. Q- Were they sitting in the box when you had occasion to
19. go in the jury room to discuss the jury list with someone?
20. A- Yes.
21. Q- At whose request did you go to the jury room?
22. A- Glenn Jackson's.
23. Q- Who is he?
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1. A- President of the Bank of Carroll.
2. Q- For what purpose were you called in there?
3. A- They asked me about two names they didn't know, none of
4. them knew.
5. Q- Neither one of them were the people you had spoke to?
6. A- No. Mrs. Lintecum, they asked me about her and they asked
7. me about a Mr. Coulson. He may have been there. I didn't
8. talk with him. The only two I talked to were Mr. Allison
9. and some other fellow. I happened to know Jason. I have
10. known him for several years.
11. MR. TRABUE: Your Honor, I move that the panel be dismissed
12. and that a new panel be called. If it is necessary to
13. move for a mistrial.
14. THE COURT: I overrule the motion for obvious reasons and
15. it is apparent that Mr. Padgett made a casual reference to
16. two of the veniremen out in the hall as to the nature of
17. the case, made some general reference to some suit involving
18. some money and that is all. The statement that Mr. Padgett
19. has made here is under oath and is corroborated by the
20. statements made by the two veniremen in question. The
21. Court asked the two to tell the Court about the conversation,
22. if any, with Mr. Padgett. The two said they merely asked
23. him what case was going to be tried, that the names of the
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1. plaintiffs weren't even mentioned and that there was no
2. conversation at all about the facts of the matter. Gentlemen,
3. I think it would be wrong and an insult really to these
4. people to grant this motion.
5. MR. TRABUE: We accept it and move that the two jurymen in
6. question be dismissed.
7. THE COURT: As I announced earlier I want to avoid any
8. appearance of impropriety and the Court is advised that the
9. conversation was overheard by one or both of the plaintiffs
10. so I imagine the plaintiff is a bit disturbed about the
11. conversation, although I personally feel there is nothing to
12. it. Out of the abundance of caution I will abide by my
13. former announcement and I will excuse these two gentlemen,
14. Mr. Allison and Mr. Iroler, and call two of the other
15. veniremen in their stead.
16. MR. CAMPBELL: Defendant by counsel would object on the
17. grounds there is absolutely no showing of any impropriety
18. on the part of no one. I want to ask these gentlemen if
19. you are going to make any further objections to any discuss-
20. ion with officials of the bank in selecting jurors.
21. MR. TRABUE: I am going to object to the calling of any
22. persons that are employees of the bank. I am going to
23. object to the calling of any people to go in that room.
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1. I think it gives the appearance of enmity and my clients,
2. who are layman, don't fully understand these proceedings.
3. I well recognize this jury selection procedure is not one
4. that I am accustomed to. I have never seen it done, Judge,
5. in any court that I have practiced in. It is unusual to
6. break up in separate rooms and come out in the courtroom
7. to select the jury once the panel has been called.
8. MR. CAMPBELL: I will refrain. I don't want you to move
9. for another mistrial.
10. THE COURT: It is practice for most courts for the counsel
11. to ask if they can retire to rooms to consider the list
12. simply so they can talk audibly to each other in the absence
13. of the jury and carefully go over the list and decide what
14. strikes to make. I have never heard the question raised
15. before. It seems to me it would be a better procedure than
16. to have counsel sitting before the jury and whisper to each
17. other.
18. MR. TRABUE: I appreciate the Court's position but to call
19. out of the audience a person who happens to be a newspaper
20. reporter and well known I think gives an appearance of
21. enmity.
22. (The Court and Counsel returned to the courtroom)
23. THE COURT: (To Mr. Allison and Mr. Iroler)
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1. You heard about the conversation and the Court is satisfied
2. that you gentlemen have not done anything improper but as
3. I also announced I want to be absolutely as careful in
4. your selection as I know how to be. Out of an abundance of
5. caution, gentlemen, I am going to excuse you.
6. (Mrs. Helen Mink and Mr. James Bryant Hanes were called
7. as jurors)
8. THE COURT: You both were in the courtroom when I explained
9. to the others what this case is about?
10. A- Yes, sir.
11. Q- The plaintiffs are Elwood Bartlett and Louise A. Bartlett.
12. Are you related by blood or marriage to either Elwood
13. Bartlett or Louise Alderman Bartlett?
14. A- No.
15. Q- Have you heard this case discussed?
16. (Mrs. Mink had heard the case discussed and was excused.)
17. (Mrs. Vera Sue Shockley was called as a juror and was
18. examined by the Court as follows:)
19. THE COURT:
20. Q- What is your name?
21. A- Vera Shockley.
22. Q- I believe I asked if you were in the courtroom when I
23. explained to the other jurors what the case was about?
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1. A- Yes.
2. Q- And you are aware that the plaintiffs are Elwood H.
3. Bartlett and Louise A. Bartlett?
4. A- Yes.
5. Q- And the defendant is the Bank of Carroll?
6. A- Yes, sir.
7. Q- Are you related by blood or marriage to Elwood H. Bartlett
8. or Louise A. Bartlett?
9. A- No.
10. Q- Are you an employee of the bank?
11. A- No.
12. Q- Have you heard this case discussed by anybody?
13. A- No. The woman you turned off told us what the case was
14. about.
15. Q- To what extent?
16. A- She just said it was something about the bank.
17. Q- Did she say anymore than that?
18. A- No.
19. Q- Did you know the Bartletts were parties to the suit?
20. A- No, never heard of them.
21. Q- Did you know anything about what the case was about?
22. A- No.
23. Q- This is the only time you have heard the case mentioned?
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1. A- Yes.
2. Q- Based on whatever it is that you have heard have you
3. formed or expressed an opinion concerning the case?
4. A- No.
5. Q- Do you feel any bias or prejudice against either party?
6. A- No.
7. Q- Are you a depositor of the bank?
8. A- No.
9. Q- Are you a stockholder?
10. A- No.
11. Q- Do you owe the bank any money?
12. A- No.
13. (Mr. Hanes was examined by the Court as follows:)
14. THE COURT:
15. Q- Have you formed or expressed an opinion concerning this
16. case?
17. A- No.
18. Q- Are you a depositor of the bank?
19. A- No.
20. Q- Stockholder?
21. A- No.
22. Q- Do you owe the bank any money?
23. A- No.
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1. Q- Have you had any business dealings with the Bartletts?
2. A- No.
3. Q- Do they owe you any money?
4. A- Are you either friends of the Bartletts?
5. MR. HANES: I am a friend of the Bartletts.
6. Q- Do you feel that friendship would influence your decision
7. in this case?
8. A- Yes.
9. (The Court and counsel retired to chambers where it was
10. agreed one party would strike Mr. Hanes.)
11. The Court and Counsel returned to the courtroom. The jury
12. was stricken and sworn. The witnesses were separated.
13. OPENING STATEMENT BY MR. BURTON:
14. May it please the Court, the ladies and gentlemen of
15. the jury, my name is Tom Burton. Mr. Trabue has already
16. been introduced to you by the Court. We are counsel for
17. the plaintiff in this matter. You have already met
18. Mr. Campbell and Mr. Hodges who represent the defendant.
19. The opening statement that I will make I would like
20. to explain to you is not evidence in this case but is simply
21. a statement by counsel briefly outlining the facts his
22. client hopes to prove and the statements he makes are
23. certainly not to be considered by you as evidence. To give
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1. you a little background, Mr. Elwood H. Bartlett and his wife,
2. Louise Alderman Bartlett, are the plaintiffs in this matter
3. and both are residents of the City of Galax and have grown
4. up in this locality. Mr. Bartlett's various businesses are
5. operated out of Galax and Carroll County. They grew up
6. here all their lives. The suit has been brought against
7. the Bank of Carroll alleging that the bank wrongfully dis-
8. honored checks which Mr. and Mrs. Bartlett drew on their
9. bank account at the Bank of Carroll and as a result of
10. that they suffered substantial damages.
11.
12. In order to give you a little background into the suit
13. I think I should advise you that Mr. Bartlett--the cause
14. of this action originally arose and Mrs. Sadie Hampton is
15. also a resident of Carroll County and is Mr. Bartlett's
16. grandmother, inherited some property through her husband's
17. will, the late Mr. Clayton Hampton. The will read in part
18. that all of the residue and personalty of his personal
19. property was left to his wife for life with the power to
20. live off the income and the right to use the property
21. itself as she saw fit for her comfort during her lifetime
22. and at the end of her life the will provided that any
23. remaining property would go to his son, Griggs Hampton.
24. There was quite an amount of controversy about the will and
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1. actually what the interpretation meant as far as what
2. Mrs. Hampton could do with her property and as a result of
3. this controversy a suit was brought to sell her property.
4. This was back in 1973. A suit was brought to sell the
5. property. Several hearings were had over that suit and the
6. court order was entered the property would be sold which
7. was done and her grandson bid in all the property and the
8. bid price was approved by the court and the property was
9. deeded over to Mr. Bartlett.
10. Prior to the sale of the property, of course,
11. Mr. Bartlett and Mrs. Hampton were living on the farm and
12. the evidence will show that he was providing for her; that
13. he was providing transportation, money for her, improving
14. the farm in the form of buildings and barns and various and
15. other materials which the evidence will tend to show to
16. improve the value of the property and as a result of these
17. improvements the court felt that Mr. Bartlett was entitled
18. to approximately $19,000.00 for the amount of the improve-
19. ments he had put in the real estate. Consequently, when
20. the real estate was sold to him the $19,000.00 that the
21. court had decided was attributable was adjusted off of the
22. bid in price and as a result the balance of $72,000.00 was
23. paid in by Mr. Bartlett. After all the costs of the suit,
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1. attorneys fees, auction costs and other costs which were
2. allocated to the suit the court entered the order that the
3. balance of the proceeds of $48,000.00 should be deposited
4. in a proper banking institution with instructions to pay
5. the income to Mrs. Hampton and with instructions to use the
6. principal so much of the money that she felt was necessary
7. for her wants and comfort.
8.
9. This order was entered in the fall of 1973 and follow-
10. ing that the money in check was paid over to Mrs. Hampton's
11. attorney and deposited in his bank account. On or about
12. January 3, 1974 Mrs. Hampton and her attorney contacted
13. Mr. Lonnie Pullium, Jr., who at that time was an official
14. of the Bank of Carroll. He was contacted by telephone and
15. read the court order over the phone and asked if he would
16. be willing to take this deposit of money in a checking
17. account for Mrs. Hampton and he advised the parties that he
18. had no problem with the order and he would be glad to take
19. the deposit and in fact would hold the bank over until they
20. arrived. He was asked if he would require a certified
21. check from Mr. Ward and he said no. Subsequent to that
22. Mrs. Hampton and her grandson, Mr. Bartlett, arrived at the
23. bank. This money was endorsed over by Mrs. Hampton and
24. deposited in the Bank of Carroll on January 3, 1974 in
25.
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1. the presence of Mr. Pullium, Jr., deposit slips were filled
2. out, part of the money was put into a checking account and
3. part in a savings account. At the same time the bank wrote
4. two checks on this account which had just been set up which
5. Mrs. Hampton executed payable to her grandson, Mr. Bartlett.
6. The total amount of the checks was approximately $30,000.00.
7. Mr. Bartlett in turn endorsed these checks over and deposited
8. them with Mr. Pullium at the Bank of Carroll in his own
9. checking account. Following this deposit all on the same
10. day Mrs. Hampton gave a letter to the bank authorizing them
11. to pay from her savings account the sum of $800.00 each
12. month to a savings account which Mr. Bartlett in turn opened
13. on that day. In accordance with her instructions the bank
14. did open a savings account and deposited the sum of $800.00
15. in it.
16. Now, Mr. and Mrs. Bartlett, after making this deposit
17. were never told by anyone at the bank on the day the deposit
18. was made that they could not draw any checks on the account,
19. there was no agreement that there was any provisional
20. settlement made on the opening of the account and any strings
21. attached to the money whatsoever. Mr. and Mrs. Bartlett
22. were of the opinion as of that date and at least no later
23. than January 5, 1974 that they had the right to withdraw
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1. the money. Following the deposit in their checking account
2. on January 5, 1974 they began to write checks to their
3. creditors. They wrote a number of checks, a total of twenty-
4. six checks and each check to different creditors, either
5. business or personal obligations.
6.
7. On the 8th of January the Bank of Carroll received a
8. letter from Mr. Archie Campbell from the firm of Campbell &
9. Campbell in Wytheville advising the bank he represented
10. Mr. Griggs Hampton and he understood some money had been
11. deposited in Mrs. Sadie Hampton's account and if the bank in
12. any way misused those funds he was going to look to the bank
13. for any damages his client might suffer.
14.
15. On Friday, the 11th of January, the bank apparently
16. decided that after receiving this letter that it was some
17. great concern to them and they were going to try to stop
18. all the transactions that had taken place since the 3rd of
19. January. Mr. and Mrs. Bartlett were never contacted by
20. anybody at the bank prior to the decision or consulted on the
21. decision making processes. Mr. Lonnie Pullium, who was the
22. first person in the bank to open and read the letter was in
23. Richmond and he was contacted by his father, Mr. Pullium, Sr.
24. and he was told when he read the letter he didn't consider
25. it was of any concern to the bank. There was a message
26.

1. sometime on the 11th left at the home of the Bartletts
2. that there was some problem about the checks and they should
3. contact the bank. On the 12th of January a credit memorandum
4. was written by the bank crediting back to the account of the
5. Bartletts all of the checks that the bank had received by
6. that time. At the same time a debit memorandum was executed
7. by the bank, on the 12th of January, withdrawing all of the
8. money out of Mr. and Mrs. Bartlett's checking account leaving
9. a balance in the checking account of zero. The first actual
10. knowledge that this was being done was received by the
11. Bartletts through the mail advising them they were returning
12. the checks and were debiting their account with the full
13. amount of deposit that was made on January 3, 1974 and
14. advising that this was being done because the funds were
15. being contested.
16. All of the checks that had been written by Mr. and Mrs.
17. Bartlett were out, they were either in the hands of the
18. creditors or received by the bank. The checks will show these
19. items were received by the bank and the ledger sheet will
20. show these dates also. Eleven of the checks were listed on
21. this original credit memo which left about fifteen checks
22. unexplained as far as the Bartletts were concerned although
23. they knew they had a zero balance bank account at the bank.
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1. It was not until sometime after that the rest of the checks
2. were returned by the bank, sometime after January 22, 1974.
3. The evidence will show that the bank had an order
4. entered by the court, by Judge Matthews of the Circuit Court,
5. authorizing them to hold all of the funds of Mrs. Hampton
6. that they had on deposit. This order was entered by
7. Judge Matthews on the 22nd of January. Mr. and Mrs. Bartlett
8. were never advised or consulted or told in any way that
9. anyone at the bank was approaching the judge about this
10. matter nor was he given any opportunity at anytime to
11. present any evidence on his part to the court. The order
12. was entered completely without his knowledge and subsequent
13. to the order the balance of the checks they had written
14. were returned to their creditors. Following this, as you
15. can well imagine, Mr. and Mrs. Bartlett were forced with
16. the situation where they had outstanding checks which they
17. had written, a considerable amount of money, approximately
18. $19,000.00, knowing they had written these checks in good
19. faith and knowing now the bank was stopping payment and
20. returning them to their creditors. They began picking up
21. the checks, trying to negotiate what they could with the
22. creditors and trying to explain that all of them had been
23. made in good faith and were doing everything they could
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1. to make the checks good. Some of the checks were returned
2. "Court contested funds", others were returned marked "no
3. account." The notations put on the checks varied. There
4. seemed to be no consistency why they were returned.
5. Mr. and Mrs. Bartlett decided at this point, following
6. the action by the bank, and throughout all of this, of course,
7. they were dealing with their creditors, to consult with an
8. attorney and decided the best way to get any relief would
9. be to get a judgment against his grandmother, have her come
10. into court and admit that she owed them, then he could
11. garnishee the bank. One thing led to another and during
12. 1974, the spring up through July these matters were heard.
13. Mrs. Hampton did in fact come into court and confess she
14. owed the money, a garnishment summons was served on the
15. Bank of Carroll and a final order was entered in July, 1974
16. directing the bank to pay over to Elwood Bartlett under the
17. judgment the amount of money that had originally been on
18. deposit there. The actions which Mr. and Mrs. Bartlett
19. took after this were the only ones that were available to
20. them. This suit has been brought to recover all damages
21. which the Bartletts suffered as a result of the wrongful
22. dishonor of these checks. We are seeking and asking that
23. the jury find the bank liable to the plaintiffs for the
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1. wrongful dishonor and that they compensate the Bartletts
2. for the damages they suffered. There were business losses,
3. loss of profits. Mr. Bartlett had several businesses in
4. this area, some of which you are familiar with. He
5. operated the school bus franchise. When this happened he
6. was relying on the sum of $30,000.00 to pay off creditors
7. and he was paying creditors and he was attempting to make
8. these obligations good. When the bank did what it did it
9. completely pulled the skids out from under him. He has
10. creditors descending from all directions wondering why he
11. had negotiated these checks because there was no money and
12. no account. The evidence will show that there were sub-
13. stantial damages, not only in his business but personal
14. life. He suffered extreme mental anguish as a result of
15. damage to his reputation, damages to his credit both business
16. and personal as a result of what the bank did. He has
17. incurred substantial legal expenses both in trying to force
18. the bank to pay over what he felt was justly due through
19. the confessed judgment procedure, also in this action. His
20. mental anguish was so extreme that he underwent medical
21. treatment and as a result of that underwent some actual
22. surgery. I think the evidence will show that every element
23. of the damages which Mr. Bartlett suffered following what
24.
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1. the bank did and is continuing to incur are a direct result
2. of what the bank did and he should be compensated for them.
3. We are also seeking punitive damages. The Court will
4. instruct you on what punitive damages mean to a party.
5. These damages are sought not to reimburse Mr. and Mrs.
6. Bartlett any losses they suffered. They are sought to
7. punish the defendant for the actions they have taken and to
8. deter the bank and others from taking similar actions in
9. the future. It is to make an example of the defendant
10. and if the actions are such that warrant the recovery of
11. punitive damages. There is going to be an awfully lot of
12. testimony in this trial. It is going to be technical and
13. will seem at times very confusing and unnecessary. I simply
14. ask that all of you bear with us. We are going to be
15. quoting Code sections and presenting a lot of exhibits. It
16. is a technical area of the law and I simply ask that you
17. view the evidence fairly and the testimony of the witnesses
18. fairly and that you reach a verdict which we feel will be
19. fair and just. Thank you for your attention.
20.
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1. OPENING STATEMENT BY MR. CAMPBELL:

2. May it please the Court and you ladies and gentlemen
3. of the jury, I am Stuart Campbell. I am representing the
4. Bank of Carroll. The purpose of making a statement to you
5. is to tell you what the case is about and in this case
6. Mr. and Mrs. Bartlett are suing the Bank of Carroll for a
7. million dollars, claiming that the Bank of Carroll acted
8. willfully and maliciously and recklessly in handling their
9. account. The evidence will be directed to those points and
10. I will review the facts briefly for you.

11. As Mr. Burton told you there was a law suit over in
12. Grayson County, I believe Mrs. Hampton was a resident of
13. Grayson or Galax, to construe her husband's will.
14. Mrs. Hampton's husband, Mr. Clayton Hampton, had left a will
15. in which he said he left everything to her for her life to
16. use the income and that if she needed any money for her
17. comfort, maintenance and support she could use it. She be-
18. came very fond of her grandson, Mr. Bartlett, and she agreed
19. to sell him the farm which had been left by her husband for
20. about half what it was worth. A question was raised as to
21. whether or not she could do that under the will and she in-
22. stituted a suit and Mr. Bartlett will tell you that he
23. suggested that she do that. She instituted a suit in Grayson
24.
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1. County against her son, Mr. Griggs Hampton, who was to
2. inherit everything she hadn't used and the court said
3. alright, if you want to get rid of the farm you can't do
4. it with the private deal with your grandson but we will
5. put it up at public auction and sell it and the court will
6. control the fund. Instead of Elwood being able to get the
7. farm from his grandmother for $40,000.00 he bid it in for
8. some $70,000.00 at the auction sale. The court after that
9. sale, and this again is the Circuit Court of Grayson County,
10. entered a decree which will be introduced saying that
11. Elwood Bartlett had bought the farm for $72,100.00 and that
12. he has complied with the terms of the sale and paid the
13. entire sum into court and then saying that the auction
14. expenses should be taken out. During this proceeding Elwood
15. and Mrs. Hampton had said, well, I want to get some $30,000
16. for looking after her for these two years and his improve-
17. ments. The Court went and looked at the farm and said he
18. had made improvements and he was entitled to the sum of
19. $19,000.00 to be deducted from the purchase price of the
20. farm and then the court said this, "The Court has not passed
21. or ruled upon the sums of money spent by the said Elwood
22. Bartlett on the personal needs and at the personal direction
23. of the Complainant, Sadie B. Hampton and does not at this
24.
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1. time adjudicate as to what sum or sums of money, if any,
2. remain due and owing by the complainant to the said
3. Elwood Bartlett". It directs that Mrs. Hampton deposit
4. $9,000.00 from a transaction between her and her son, Griggs,
5. and the net proceeds of sale of $48,736.45 or $57,736.45.
6. It is ordered that this money be deposited in a proper bank-
7. ing institution under the terms and conditions hereinafter
8. set forth. This is the language, "It is therefore ADJUDGED,
9. ORDERED and DECREED that the aforesaid remaining balance of
10. $57,736.45 be placed in a proper banking institution with
11. instructions to pay the income therefrom to Sadie B. Hampton
12. for her lifetime and so much of the corpus as she shall find
13. necessary for her comfort and maintenance, and at her death
14. to pay the remainder to Griggs A. Hampton."
15. Ladies and Gentlemen, that order says two things, one,
16. that Elwood Bartlett had paid the money into Court and the
17. Court was ordering that the money be deposited in a bank
18. under those terms. Well, on the 3rd of January Mr. and Mrs.
19. Bartlett and Mrs. Hampton went to Mr. James Ward's office,
20. who is their lawyer in Galax and Mr. Bartlett had gotten a
21. loan in order to buy the farm and that was closed, and
22. instead of paying the money into court as this order says
23. Mr. Ward gave Mrs. Hampton his check on the bank of Virginia
24.
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1. for the $48,736.45 and they agreed that they didn't want
2. Mr. Griggs Hampton to know what was going on between them
3. so they couldn't use either bank in Galax where some of the
4. relatives worked and they would come up here to Hillsville
5. where nobody knew anything about it and so Mr. James Ward
6. called young Mr. Pullium, who was then working in the bank,
7. and said Mrs. Hampton wants to deposit $48,000.00 and she is
8. going to deposit another $9,000.00 under a court order and
9. will you take the deposit. He said yes. I think Mr. Burton
10. misspoke himself when he said Mr. Ward said do you need a
11. certified check. Mr. Ward said, "Do you need a certified
12. copy of the order?", and so they came up and they had a
13. check drawn on the Bank of Virginia in Galax signed by
14. Mr. Ward for the $48,000 and Mrs. Hampton says I want to
15. deposit this check and the bank took it on a deposit slip
16. which says roughly that she is not- they gave her provisional
17. credit and she is not entitled to check it out. The banker
18. will tell you that if she had said, "I want that $48,000.00
19. in cash" in no case they wouldn't have. This was a check
20. that would have to go to the Federal Reserve Bank. It
21. would take time for it to clear. Then Mrs. Hampton said I
22. want to give Elwood some money. She drew two checks payable
23. to Elwood, one for $12,500.00 and one for $17,578.53, making
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1. a total of $30,078.53 and that was deposited on a deposit
2. ticket and again the contract between the bank and the
3. depositor says that the bank is accepting those funds pro-
4. visionally subject to collection. Obviously, if something
5. happened or payment was stopped on the check Mrs. Hampton
6. was given the check she gave Bartlett wouldn't clear.
7.
8. Mr. Archie Campbell,who had represented Mr. Griggs Hampton
9. throughout the proceedings will tell you that he had gone
10. over to Galax for the closing of the transaction to see that
11. the funds were properly deposited, that they hadn't been able
12. to get the loan through when they went over at the end of
13. December so he asked Mr. Ward to let him know when they were
14. ready to close the deal and apparently Mr. Ward didn't let
15. him know and on January 8, 1974 Mr. Campbell wrote this
16. letter to the Bank of Carroll:
17.
18. "I understand from Mr. James Ward, attorney for Mrs.
19. Hampton, that she has deposited already in the Bank of Carroll
20. County the sum of $48,736.45 and will be depositing an
21. additional $9,000.00 pursuant to the decree entered in the
22. Circuit Court of Grayson County on November 23, 1973, a copy
23. of which I enclose herewith.
24.
25. As attorney for the defendant, Griggs A. Hampton, I
26. call your attention to the provisions on page 3 of that

1. decree insofar as you are concerned, "with instructions to
2. pay the income therefrom to Sadie B. Hampton for her life-
3. time and so much of the corpus as she shall find necessary
4. for her comfort and maintenance, and at her death to pay the
5. remainder to Griggs A. Hampton". I assume you have the
6. account listed in that manner. This is further to advise
7. you that in the event you shall fail in executing the above
8. provision in the nature of a trust for her comfort and
9. maintenance, Griggs Hampton will look to your bank for any
10. diminution of the account. Very truly yours,".
11.
12. Now, the evidence will be that young Mr. Pullium who
13. had opened the account had gone down to Richmond with
14. Mr. Geisler for the inauguration of the governor and this
15. letter was not opened until on Friday, the 11th, and his
16. father went in and checked his office and saw this letter and
17. he opened it and read it, and he looked at the decree and he
18. called his son in Richmond and finally got him and talked to
19. him and Jerry Geisler both and he said tell me about this
20. account, was it a Court check and young Pullium said no, it
21. was Mr. Ward's check. Mr. Pullium will tell you when he saw
22. this decree it had been paid into court and when he saw this
23. other he called Mr. Raleigh Cooley, who is an attorney for
24. the bank, he is also chairman of the board, he said, "Raleigh,
25.
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1. what do I do?" Raleigh said, "What happened?" He said,
2. "Well,she has checked out over $30,000 to Elwood Bartlett
3. and he is writing checks on it which are coming to the bank
4. and here this letter says we are going to be sued and the
5. money was suppose to be paid into court and here is Mr. Ward"
6. and Raleigh said, "I am going to call Judge Matthews and I
7. am going to ask him what to do." He tried to get him that
8. afternoon and he couldn't get him. They made the decision
9. and Mr. Lawson that afternoon called Mrs. Bartlett and told
10. her there was a question about these deposits and that the
11. bank is now probably going to have to take some steps. They
12. prepared so they could go either way. If the Judge said
13. this is perfectly o. k. they would honor the checks. If the
14. Judge said it wasn't o. k. they weren't going to honor them.
15. On Saturday morning, the 12th, Mr. Cooley talked to
16. Judge Matthews on the phone and he was amazed at what had
17. gone on about these checks and he said, "Get that money back"
18. so on Saturday, the 12th, the bank sent the Federal Reserve
19. Bank in Richmond a telegram saying that the checks made by
20. the Bartletts were being returned.
21. MR. TRABUE: I am sorry to interrupt, I object to counsel
22. reading from information not already in evidence.
23. MR. CAMPBELL: I thought we stipulated the telegram and the
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1. bank records.
2. MR. TRABUE: This is an opening statement.
3. THE COURT: Has this been stipulated?
4. MR. CAMPBELL: Yes.
5. MR. CAMPBELL: It said the checks were being returned
6. "alleged Court contested funds." There will be as Mr. Burton
7. said a good deal of evidence but I think His Honor's duty is
8. to enlighten you as to the law in this case. We are of the
9. opinion that the greater bulk of these checks the bank un-
10. questionably had a right to send them back as soon as there
11. was a question about that payment. The bank was between a
12. rock and a hard place. Here is one fellow saying if you pay
13. that money out we are going to see you are liable; the
14. Bartletts didn't say that they were going to threaten any
15. law suits and Judge Matthews telling them to get that money
16. back. We believe, Ladies and Gentlemen, that you will find
17. that the bank did exactly what it should have done. As far
18. as damages are concerned His Honor will instruct you on that
19. at the proper time. We believe that there will be none.
20. The only thing the Bartletts could be entitled to would be
21. interest on this money during the three or four months that
22. they were deprived of it. They eventually got it back under
23. an order from another judge who substituted for Judge Matthews
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1. hearing the final determination of the other case. The
2. merits of that case, the right and wrong of that we submit
3. are not material here. I only mentioned it to explain why
4. the bank acted as it did. After you have heard all the
5. evidence we believe you will find that the bank acted proper-
6. ly as it should have done under the circumstances and you
7. will find a verdict for the defendant.
8.
9. SADIE HAMPTON
10. Sadie Hampton, a legal and competent witness, after first
11. being sworn, testifies as follows:
12.
13. DIRECT EXAMINATION BY MR. BURTON:
14. Q- Would you state your full name, please?
15. A- Sadie B. Hampton.
16. Q- Where do you live?
17. A- Oldtown Section, beyond Galax.
18. Q-Is that in Grayson County?
19. A- In Grayson. I live over there with Elwood on his land.
20. Q- How long have you lived there?
21. A- Two years.
22. Q- Where did you live before that?
23. A- In Galax. He bought my place. Before I married I lived
24. in Galax.
25. Q- How long did you live at Galax?
26.

1. A- I went there in 1912.
2. Q- Did you and your husband live there?
3. A- We lived at the old homeplace where Elwood lives now.
4. Q- Was your husband Clayton Hampton?
5. A- Yes, sir.
6. Q-He is deceased?
7. A- Yes, sir.
8. Q- When did Mr. Hampton die?
9. A- September 5, 1969.
10. Q- And has his will been probated?
11. A- Yes.
12. MR. CAMPBELL: To save time I think we can stipulate that.
13. MR. BURTON: I would like to get it in the record.
14. MR. CAMPBELL: We will stipulate the will and let it be marked
15. as plaintiff's exhibit No. 1.
16. (Will received and marked Plaintiff's Exhibit No. 1.)
17. Q- What is your relation to the plaintiffs, Mr. and Mrs.
18. Bartlett?
19. A- He is my grandson.
20. Q- Would you briefly outline for the Court and the jury
21. your relationship with Mr. Bartlett following the death of
22. your husband?
23. A- Well, I don't know just what you mean.
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1. Q- Let me rephrase that, after your husband died did you
2. and your grandson, Elwood Bartlett, or did he in any
3. way provide for you?
4. MR. CAMPBELL: I am willing to stipulate that their relation-
5. ship has been very close, that she has lived with Elwood
6. for the past two years; they are matters that have been
7. adjudicated in the case of Sadie B. Hampton vs Griggs
8. Hampton. I certainly hope we are not going to be here a
9. week.
10. THE COURT: In light of this stipulation maybe you can
11. shorten your questions on the relationship.
12. Q- Mrs. Hampton, would you briefly outline for the court
13. and the jury your relationship with Elwood after the
14. death of your husband?
15. Q- I stayed there at the homeplace for awhile and then I
16. sold the place to Elwood and I was living in a trailer
17. over at Bryn Mawr Village and he came to me and wanted
18. me to move over there and he would take care of me and
19. I did.
20. Q- Did he make improvements to the farm?
21. A- Yes, several improvements.
22. MR. BURTON: Your Honor, I would like to get the court
23. order that was entered November 23rd approving the sale.
24.
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1. THE COURT: Any objection to introducing it?
2. MR. CAMPBELL: None whatsoever.
3. MR. BURTON: This is the final decree, Plaintiff's Exhibit
4. No. 2- decree entered on the 23rd of November, 1973 in the
5. matter of Sadie B. Hampton vs Griggs Hampton.
6. Q- Mrs. Hampton, on January 3, 1974 did you owe your grandson,
7. Mr. Bartlett, any amount of money at all?
8. A- I don't know just the dates. I owed him some money on
9. improvements on the place but I don't have any date.
10. Q- You say improvements. I will try to refresh your memory.
11. On January 3, 1974 did you owe him any money for anything
12. other than improvements and expenses that he had paid
13. while you were living with him?
14. A- He was taking care of me. I paid for that. He was
15. taking care of me.
16. Q- Do you recall being in Mr. Ward's office on January 3,
17. 1974?
18. A- I don't remember the date.
19. Q- Do you recall being in his office at anytime after the
20. farm was sold and the money was paid and you all were
21. going to try to settle the sale of the farm?
22. A- You mean between me and Griggs.
23. Q- Mr. Ward was representing you?
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1. A- Yes.
2. Q- Do you recall meeting with him?
3. A- Yes, I met with him several times.
4. Q- Do you recall meeting with him after the farm was sold
5. to Elwood before you received any money?
6. A- Yes.
7. Q- Who else was present?
8. A- If it was the meeting I am thinking of Collin Campbell
9. was there.
10. Q- Which meeting are you referring to?
11. A- The one in which we made the settlement with my son.
12. MR. CAMPBELL: Again, Mr. Burton, if it will help I will
13. stipulate they went to Mr. Ward's office on January 3rd and
14. he gave them the check.
15. Q- It has been stipulated on January 3rd, 1974 you had a
16. meeting at Mr. Ward's office with Elwood and his wife.
17. Do you recall that meeting?
18. A- I think so.
19. Q- Do you recall what took place?
20. A- I don't believe I do.
21. Q- Do you recall Mr. Ward making any telephone calls to the
22. bank on that date?
23. A- I believe that was the date.
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1. Q- Do you recall going over to the Bank of Carroll on that
2. date?
3. A- Yes, if that is the date.
4. Q- You do remember going to the Bank of Carroll?
5. A- I remember going to the bank but I don't remember the date.
6. MR. BURTON: I think we can stipulate it was the 3rd.
7. MR. CAMPBELL: Right.
8. Q- Do you recall who you met there?
9. A- Lonnie Pullium, Jr.
10. Q- Who else was present?
11. A- There wasn't anybody when we went but he called Mr. Cooley.
12. MR. CAMPBELL: Again, we will stipulate that Mr. and Mrs.
13. Bartlett and Mrs. Hampton brought the check of Mr. Ward to
14. the bank.
15. Q- Mrs. Hampton, do you recall anything that happened on the
16. day that you opened your bank account with the Bank of
17. Carroll?
18. A- No, I don't.
19. MR. BURTON: By agreement of counsel we can stipulate certain
20. bank records, deposit slips, bank ledgers.
21. MR. CAMPBELL: Right.
22. MR. TRABUE: Your Honor, can we have a moment with Mr. Campbell
23. and get his in order?
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1. THE COURT: Yes.
2. MR. BURTON: You will stipulate these two checks they are
3. her signature and they were endorsed on that day and de-
4. posited in the bank?
5. MR. CAMPBELL: Yes, sir.
6. Q- Mrs. Hampton, after your accounts were opened in January
7. then you wrote two checks to your grandson, Elwood?
8. A- Yes.
9. Q- Do you recall the purpose of writing those checks?
10. A- One of them was to pay my expenses. I had been living
11. with them and being taken care of.
12. Q- Was that the $17,500 check?
13. A- Yes.
14. Q- Do you recall what the other one was for?
15. A- To pay for the house trailer.
16. Q- Do you recall whether or not that one was for $12,000?
17. A- Yes.
18. Q- And the other was for expenses and maintenance?
19. A- Yes.
20. Q- Was this the money you felt you owed him at that time?
21. A- Yes.
22. Q- And did you write those checks at your own free will
23. without any pressure?
24.
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1. A- Yes.
2. MR. CAMPBELL: I think all those matters have been aired in
3. the other suit.
4. MR. BURTON: I think they may be relevant.
5. Q- Did you write any checks?
6. A- Yes, I wrote several checks. I had a checking account
7. there. I wrote all that I needed.
8. Q- I take it from you- what did you do after you opened your
9. account, did you go back home?
10. A- Yes.
11. Q- Did you have any further contact with the bank?
12. A- Yes.
13. Q- What do you recall the first contact you had after you
14. opened your account?
15. A- The first one I had was when I went over there and asked
16. for my money and they wouldn't give it to me.
17. MR. BURTON: I think we can stipulate when they were contacted.
18. MR. CAMPBELL: Yes.
19. Q- Mrs. Hampton, was the first notice you received from the
20. bank in anyway after you opened your account was when you
21. received a notice that your account was being frozen?
22. A- I went to the bank to draw my money out of the bank and
23. this young Mr. Pullium was there and he said he would
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1. have to tell his father and when they come they had
2. Mr. Cooley with them and they told me the money had been
3. frozen.
4. Q- Do you recall the date?
5. A- No.
6. Q- Was it a couple of weeks after the deposit had been made?
7. A- No, it was longer than that I think.
8. Q- After you were notified by the bank that your funds were
9. being frozen that is when Elwood got the confessed judg-
10. ment and you went into court and admitted you owed him?
11. A- Yes.
12. MR. CAMPBELL: I submit that this is irrelevant to this
13. case.
14. MR. BURTON: It is relevant to show some of the loss resulted
15. from that. I think if counsel will stipulate the confessed
16. judgment was entered on a certain date.
17. MR. CAMPBELL: I object to its relevancy and also object
18. to the court entering a decree on January, the relevancy
19. of that decree.
20. THE COURT: This is a copy of the decree?
21. MR. CAMPBELL: Yes.
22. THE COURT: I will get the date and have it identified.
23. Q- Mrs. Hampton, have you continued to live with Mr. Bartlett
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1. since?
2. A- Yes, sir. I live there now. I don't live in the house
3. with them. I live in the trailer.
4. Q- Does he continue to provide for you?
5. A- Yes.
6. Q- Are you paying him for this, reimbursing him?
7. A- Yes.
8. Q- Since you have lived with him I take it you visit with
9. them often?
10. A- I take my meals there most of the time.
11. Q- Have you noticed any change in his personality since the
12. bank action back in January, 1974?
13. A- He hasn't been well.
14. Q- Would you describe just briefly his outward appearance?
15. A- He was worried and it made him nervous and upset.
16. Q- What do you mean?
17. A- You could tell he was worried and upset by the way he
18. talked.
19. Q- Did he talk about it?
20. A- Yes, he talked to me. He didn't feel good and things
21. like that.
22. Q- Did he talk about his business?
23. A- Yes, he talked some.
24.
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1. Q- Do you recall any conversation?
2. A- Well, as far as the money he said he didn't know what
3. he was going to do.
4. Q- You felt like you owed it to him?
5. A- I certainly did.
6. CROSS EXAMINATION BY MR. CAMPBELL:
7. Q- Mr. Ward had been representing you and Elwood all along
8. in trying to get the farm sold to Elwood?
9. A- Yes.
10. Q- And he handled the payment of the money to you when
11. Elwood settled up on the farm?
12. A- Yes.
13. Q- And then you remember that you were notified by the bank
14. that they had frozen your money?
15. A- Yes.
16. Q- And then you and Mr. Ward had some hearings before
17. Judge Matthews and he entered orders from time to time
18. to pay you certain amounts of money?
19. A- He did.
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1.
2. ELWOOD H. BARTLETT

3. Elwood H. Bartlett, a legal and competent witness, after
4. first being sworn, testifies as follows:

5. DIRECT EXAMINATION BY MR. TRABUE:

6. Q- Mr. Bartlett, would you state your full name?

7. A- Elwood Herman Bartlett.

8. Q- What is your age?

9. A- 36.

10. Q- Where were you born and raised?

11. A- Grayson County.

12. Q- What part of Grayson County?

13. A- Oldtown Section.

14. Q- Lived there most of your life?

15. Q- With the exception of when I was in service.

16. Q- When were you in service?

17. A- 69 to 72.

18. Q- When did you become married?

19. A- 65.

20. Q- Who is your wife?

21. A- Louise.

22. Q- How old is Louise?

23. A- 29.

24. Q- Do you have any children?

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1. Q- Boys or girls?
2. A- One boy and one girl.
3. Q- You are the grandson of Sadie Hampton who has previously
4. testified?
5. A- Yes, sir, I am.
6. Q- And how long have you and Mrs. Hampton lived on the same
7. property?
8. A- Practically all of my life. I was born and raised on a
9. section of the property only about a half a mile from her
10. homeplace. Actually I have been on the farm all my life.
11. Q- The house you are presently living in is the same house
12. we are talking about that was previously owned by
13. Mrs. Hampton's husband, Clayton Hampton?
14. A- Yes.
15. Q- And was Griggs Hampton ever a resident of that house?
16. A- Griggs lived there all his life also with the exception
17. of when he went in service. After my grandfather died he
18. moved in to take care of my grandmother. He lived there
19. and took care of her until there got to be some contro-
20. versy about how he was treating her.
21. MR. CAMPBELL: I don't think that has anything to do with
22. this.
23. JUDGE ARTHUR: What is the relevancy of this?
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1. MR. TRABUE: If it please the Court, I think Mr. Campbell
2. in his opening statement was trying to show there was some
3. conspiracy between Elwood and his grandmother. I just want
4. to show what this money was used for and what it was deposit-
5. ed for.
6. THE COURT: You are getting rather far afield. I am going
7. to sustain the objection so far as going into an account of
8. the relationship between this lady and her grandson is
9. concerned.
10. Q- Can you explain to the jury the circumstances under which
11. you and your grandmother came to live together?
12. A- The reason how this came about my wife had a broken leg
13. and had a cast on around a year and my grandmother came
14. to live with us and stayed about five or six or seven
15. months.
16. MR. CAMPBELL: I stipulated earlier that the relationship
17. between Elwood and his grandmother was very close. He lived
18. with her for two years. I would like to get along with the
19. issues in this case if we could.
20. MR. TRABUE: If it please the Court, Mr. Campbell suggested
21. in opening statement that Elwood was trying to get this farm
22. for half price, trying to show that some relationship other
23. than that existed.
24.
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1. MR. CAMPBELL: I think it will speak for itself.
2. THE COURT: You may proceed.
3. A- She came to the trailer and took care of my two kids and
4. my wife. We were happy with her and apparently she was
5. with us because she said she was happier there than at
6. home.
7. Q- Apparently your grandmother and you discussed the farm?
8. A- She got to wanting to buy my trailer. She said, "If you
9. want to sell the trailer I want to buy it." I was planning
10. on buying my aunt's house. I was trying to negotiate on
11. my trailer. She was trying to work something out on
12. account of her husband being in the Veterans Hospital.
13. Griggs came to me and also my aunt wanting to buy my
14. trailer when he found out I wanted to sell it. In the
15. meantime the phone rang and my wife called me to the
16. phone--
17. MR. CAMPBELL: We are now in hearsay.
18. THE COURT: Sustain the objection.
19. Q- Did you and your grandmother agree on the purchase price
20. of this trailer?
21. A- Yes we did. She asked me if I would consider buying the
22. farm. I asked what was going on. Naturally, I didn't
23. know what was taking place. She says, "I am going to
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1. sell the farm." I said, "I don't know whether I can afford
2. it or not." I said, "You find out what you want for the
3. farm. I will see whether I could afford it." Apparently,
4. she already had done this. She pulled it out of her pocket
5. book and said, "I would like to have $40,000." I said,
6. "I couldn't afford that." She said, "I would like to have
7. the trailer." I thought about that. I said, "I will see
8. what I can do. I will let you know." She said, "I don't
9. have time for that. I have got to know now." I said, "I
10. don't know whether I can come up with the difference in the
11. money." She said, "I will tell you what I will do. If you
12. will take care of me and pay all of my expenses, my hospital
13. expenses and give me $50.00 a month to live off of and in-
14. clude the trailer we will trade." I said, "O. K." So we
15. traded. This went on two years. I paid $55.00 for her;
16. $25.00 for the trailer space, sent her to Florida twice
17. with my mother and step-father, flew her down one time,
18. paid for everything, her medicine, doctor bills, everything.
19. Then it came up there and it was contested and we had to
20. sell the farm. We tried to get a ruling and couldn't.
21. Q- It went to auction, is that correct?
22. A- What happened they wanted to contest the sale of the
23. property, said I bought it for half price. We hired a
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1. lawyer, hired an attorney, etc., went to court four or five
2. different times, never did have a hearing, then they figured
3. up the fastest way to get it settled; it was about to drive
4. my grandmother up the wall, the fastest way was to put it
5. up for public auction and if I wanted to buy it back with
6. taking the expenses that I had on the place and what I had
7. already paid her and her living expenses off of the purchase
8. price. So that is the way it happened. We put it up and
9. I deducted the amounts.
10. Q- Were you a party to the suit pending in Grayson County?
11. A- No, that was between Griggs Hampton and my grandmother.
12. Q- Because they were the potential heirs under your grand-
13. father's will?
14. A- Yes.
15. Q- Did you at anytime approach the Bank of Carroll about
16. borrowing money to buy that farm before the auction?
17. A- I went to the Bank of Carroll. In fact, I called
18. Lonnie Pullium, Jr. and he came to the farm and we got
19. together on the facts and figures. I had listed the
20. figures on my grandmother, also on the trailer cost and
21. everything we had done. I said, "I will be getting this
22. amount back." He said, "Looks great, I think I can
23. handle that." About a week before the sale I called him
24.
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1. back and asked if it was alright and he said, "No, we can't
2. handle that right now."
3. Q- What reason did he give you?
4. A- Lack of money.
5. Q- Did they at that time tell you that your credit had been
6. disapproved?
7. A- No.
8. Q- How did you get the money to buy the farm?
9. A- Through the bank I had been doing business with.
10. Q- What was the purchase price?
11. A- $72,000.
12. Q- Did anyone else bid on the farm?
13. A- Yes, we sold it in lots and sections and then put it all
14. together. It only came to about $63,000 or $64,000, then
15. this Adams Equipment Company, Adams, himself, bid against
16. me up to $72,000.
17. Q- Who was the Judge handling the case?
18. A- Judge Matthews.
19. Q- At some point in time did Judge Matthews go to the farm
20. and take a look at your equipment or the conditions?
21. A- Yes, he came out to the farm with Mr. Archie Campbell and
22. my grandmother's attorney, Jim Ward. We looked over the
23. farm.
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1. Q- Had you paid any of your money to put improvements on it?
2. A- Yes, sir. I thought it was mine. I built a barn that
3. cost $12,000. I built quite a bit of fencing.
4. MR. CAMPBELL: This decree shows that the Court said that
5. Mr. Bartlett paid $19,500 for improvements. Is there any
6. reason to go into that?
7. MR. TRABUE: I thought the jury might want to know the
8. explanation.
9. A- It totalled out to some $27,000 or $28,000, total bill
10. which I had presented but they wouldn't allow the entire
11. amount, they could only take the actual expenses on the
12. farm, the personal was up to her.
13. Q- Did Judge Matthews ever tell you or did he ever tell
14. Mrs. Hampton in your presence that she could not reimburse
15. you for any expenses that the two of you had agreed upon?
16. A- No, sir.
17. Q- What was the price that you and your grandmother had
18. agreed upon for the trailer?
19. A- $12,500. There was some controversy due to the fact that
20. $12,500 is a lot of money for a mobile home. I was in
21. the mobile home business. We bought the most expensive
22. trailer that they have which is all electric, awnings,
23. bath and a half, king size beds and those things, under-
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1. penning. She had her a real nice trailer. Because we were
2. selling mobile homes we wanted to show this one.
3. Q- You and your grandmother did agree upon a price of
4. $12,500?
5.
6. A- Yes.
7. Q- Was that to be the trailer she was to live in?
8. A- If she came to the farm and that is what she decided
9. she wanted to do.
10. Q- What business were you in or what did you do for a living
11. prior to January 3rd?
12. A- I was in American Station, I had East Side car wash, I
13. was in the City School Bus operation and I had a fifteen
14. year franchise with the City of Galax , I had two tractor-
15. trailers on the road.
16.
17. Q- I am speaking of prior to going to the Bank of Carroll
18. on January 3rd. Is it a fact that you did have creditors
19. which you owed that needed to be paid in connection
20. with both your business and personal life?
21. A- Yes.
22. Q- Tell us what happened on January 3rd and you went to
23. Mr. Ward's office? What brought on the conversation with
24. Mr. Ward in the first place?
25. A- He was the one that was to deposit the money for my
26.

1. grandmother. I had been taking care of my grandmother.
2. Through all this she had gotten real feeble and needed help.
3. We went with her.
4. Q- You were with her?
5. A- Me and my wife. We went to Jim Ward's office that day
6. to make the payment.
7. Q- And what happened?
8. A- He said, "I am really busy today and I will call the
9. bank." We decided it was a new bank and none of our
10. relatives in it.
11. Q- Mr. Ward had the money in his trust account or collection
12. account?
13. A- Trust account.
14. Q- What bank?
15. A- Bank of Virginia.
16. Q- Did you have relatives working there?
17. A- Yes, Wanda Bartlett.
18. Q- How is she related?
19. A- My aunt, my grandmother's daughter.
20. Q- Griggs' sister?
21. A- Yes.
22. Q- You all decided, your grandmother and you together,
23. decided the funds were going to be put in the Bank of
24.
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1. Carroll. Did the fact that Mrs. Bartlett worked at the
2. Bank of Virginia have a bearing on that decision?
3. A- We had numerous occasions where our business had gotten
4. out, no way to pinpoint who did it, and so that is the
5. reason we didn't do business with the Bank of Virginia.
6. Q- Because of your relatives?
7. A- Yes, and in the First National Bank I had a first cousin,
8. Wanda's daughter, was in the note department there, and
9. some of my business had gotten out of there and got
10. to the rest of the family.
11. Q- And so you apparently related this to Mr. Ward and did he
12. make a call to someone in the bank?
13. A- Yes, and I enjoyed doing business with the bank. I liked
14. the people. My wife has a cousin that works at the
15. Bank of Carroll. We thought it would be a good relation-
16. ship to move it out of town.
17. Q- Who is your step-father?
18. A- Steve Senic.
19. Q- Is he a stockholder in the Bank of Carroll?
20. A- Yes.
21. Q- In any event you obtained a check from Mr. Ward and made
22. the arrangements by telephone through Mr. Ward and
23. brought it up to the Bank of Carroll?
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1. A- Yes, sir, I did.
2. Q- May I show you Exhibit No. 4 which is a check on Ward's
3. collection account of $48,736.45 payable to Sadie B.
4. Hampton?
5. A- Yes, sir.
6. Q- Do you recognize that as the check Mr. Ward gave you?
7. A- Yes.
8. Q- Were you asked to take any other documents up to
9. Mr. Pullium's office?
10. A- Yes, they wanted us to take a copy of the court order.
11. Q- The order that came after the sale of the farm?
12. A- Yes.
13. Q- And that is Exhibit No. 2. And was there any other
14. document that you took up? I am referring to a letter
15. from Archie Campbell?
16. A- Yes, there was one they sent.
17. Q- At first they had appealed this decision then they wrote
18. a letter, "After full consideration, and recognizing the
19. fact that Judge Matthews was clearly in error to allow
20. the amount which he did to Elwood Bartlett for improve-
21. ments to the property, we have determined not to petition
22. for a writ of error in the Supreme Court"?
23. A- We took that with us to show that there wasn't going to
24.
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1. be an appeal.
2. Q- Did you discuss with Mr. Pullium after you got to the bank,
3. did he ask you any questions about the decree? Did he
4. read it in your presence?
5. A- We handed it to him. Jim Ward when he called asked if he
6. wanted a certified copy. He said no, that wasn't necessary.
7. Q- Did you know whether there was any reason to why Mr. Ward
8. asked if it needed to be certified at all?
9. A- No.
10. Q- Had you and Sadie agreed ahead of time as to what was to
11. be done with her funds with relation to the expenses she
12. owed you?
13. A- She had agreed for me to come along. My wife was going
14. to take her. She said, "No, I would like to get this
15. settled up." That is the reason I was with her. My wife
16. was going to take her.
17. Q- That check from Mr. Ward was deposited and some funds
18. were put in Mrs. Hampton's checking account and some in
19. savings account and at that time did you open an account
20. in your name and your wife's?
21. A- Yes, sir.
22. Q- I will show you Exhibits 5 and 6 and will ask you to
23. identify those?
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1. A- $17,578.53, that is the total expenses that had accrued
2. during the two years she was with me, we paid all her
3. expenses, bought her a new TV, this was all the expenses;
4. then the $12,500 was for the mobile home itself.
5. Q- Who typed these checks?
6. A- The bank.
7. Q- In your presence?
8. A- No, sir, I believe he had one of the secretaries do that.
9. Q- And these are checks that were drawn on the account that
10. Mrs. Hampton had just opened?
11. A- Yes.
12. Q- They were payable to you and deposited in the bank of
13. Carroll?
14. A- Yes, sir.
15. Q- Did you deposit those checks at that time?
16. A- Yes.
17. Q- I will show you Exhibit No. 7 which is a copy of Mrs.
18. Hampton's deposit showing a check of $48,736.45, that was
19. done while you were there on January 3rd?
20. A- Yes, sir.
21. Q- I show you Exhibit 8 which is a deposit slip on the Bank
22. of Carroll, there are two deposit slips, one for Mrs.
23. Hampton for $35,736.45. Is that correct?
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1. A- I imagine it is. I am not too familiar with the figures
2. here.
3. Q- And also this deposit of January 3rd shows two checks, one
4. for $17,578.53 and one for $12,500.00 totalling your
5. account $30,078.53?
6. A- Yes.
7. Q- And on that same day what was the agreement made between
8. you and the Bank of Carroll and Mrs. Hampton so far as
9. opening a savings account and monthly deposits to follow
10. thereafter?
11. A- My grandmother continued to want me to take care of her.
12. She wanted me to move the trailer. She wanted to pay me
13. for this. She wanted to put $800.00 in savings account
14. each month and then I would have this to fall back on to
15. use.
16. Q- May I show you Exhibit No. 10 which is a credit to a 5%
17. savings account of $800.00. Is that a copy of the bank
18. record which established the savings account?
19. A- Yes.
20. Q- May I show you a passbook, Exhibit No. 14, Mr. and Mrs.
21. Elwood Bartlett for $800.00?
22. A- Yes.
23. Q- That is what you got from the bank?
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1. A- Yes.
2. Q- This is Exhibit No. 11 which is the agreement signed by
3. Mrs. Hampton authorizing the $800.00 withdrawal in the
4. future?
5. A- Yes.
6. Q- Mr. Bartlett, was there any discussion between you and
7. Mr. Pullium whether or not there was any restrictions on
8. when you could draw checks against your deposit?
9. A- Oh, no.
10. Q- No verbal communication?
11. A- He gave us a check book and all. We had to order check
12. books. He just gave us some fold up type checkbooks.
13. Q- I gather you left the bank and went on home and proceeded
14. to pay your creditors?
15. A- Yes, sir.
16. Q- Who issued the checks, you or your wife?
17. A- My wife. She would be more familiar with the checks, at
18. least at the time they were written. When I had to go
19. pick them up I got familiar with them.
20. Q- When were you first informed that something was strange
21. with the deposit?
22. A- I believe my wife told me on Friday night or Saturday,
23. it was Saturday afternoon. She said, "The bank has called
24.
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1. and bounced all our checks."
2. Q- That was Saturday, January 12th?
3. A- Yes.
4. Q- Nine days after the initial deposit?
5. A- Yes.
6. Q- What did you do?
7. A- I didn't do anything right then, sat down and took the
8. load off my feet. I was very upset. I had never been
9. into anything like this.
10. Q- Did you know whether they had paid some of the checks or
11. all of the checks?
12. A- I had no idea. They said they were sending back our
13. checks. She just came and told me when I walked in the
14. house and there I was. I didn't know where to go, no
15. hole to get in or anything.
16. Q- When did you first have contact with the bank?
17. A- I think I called on Monday and talked with Lonnie Pullium.
18. Q- Senior or Junior?
19. A- I am not sure. I know I tried to get in touch with him,
20. anyway, I called and asked what happened. He said, "I
21. am not really sure." I believe that was on Monday or
22. Tuesday after the week-end.
23. Q- The first conversation was with Mr. Pullium. Was there
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1. any discussion about Judge Matthews in that first conversation?
2. A- No, I don't remember any conversation about Judge Matthews
3. until it was later on in the week I am sure.
4. Q- Was it you and your wife that eventually received some
5. of the checks back in the mail?
6. A- They came in the mail. We were trying to get enough money
7. together and get out and see the people we had given the
8. checks to.
9. Q- Let me show you an envelope, Exhibit No. 18, postmarked
10. January 12, 1974 and Exhibit No. 16 which was a note
11. from the Bank of Carroll referring to the two checks of
12. Sadie and a note, a credit memo, of the same date that
13. shows various checks redeposited to your account?
14. A- Yes.
15. Q- Enclosed in that envelope were the two checks from
16. Mrs. Hampton to you which were your original deposit?
17. A- Yes.
18. Q- Shown on Exhibit No. 16?
19. A- Yes.
20. Q- At that time had the bank sent any of the checks back to
21. you that you had issued to your creditors?
22. A- No, sir.
23. Q- They came back at a later date?
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1. A- Yes.
2. Q- Is this your handwriting on each of these deposits?
3. A- Yes, I went down the list and tried to figure out who
4. they were written to so I could contact them.
5. Q- That shows a total of $18,000 worth of checks you
6. figured out. When was that received?
7. A- I am not really sure, Monday or Tuesday.
8. Q- Apparently what happened was they had taken the money
9. from your account which Mrs. Hampton had given you and
10. taken it out of your account and put it somewhere else
11. and bounced $18,000 worth of checks?
12. MR. CAMPBELL: I think you can see they put it back in
13. Mrs. Hampton's account.
14. Q- Now, there is an order that was entered on January 22nd,
15. 1974 by Judge Matthews and it is endorsed by Raleigh
16. Cooley and it appears to be prepared by Mr. Cooley
17. on his stationery. Were you present when Judge Matthews
18. signed this order?
19. A- No, sir. I didn't know anything about it.
20. Q- And this is still saying "In the Circuit Court of Grayson
21. County. Griggs A. Hampton vs Sadie Hampton". Were you
22. aware of any court proceeding that was going on?
23. A- No, didn't know anything about this until a couple of
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1. months after that.
2. Q- Did Raleigh Cooley ever contact you and tell you that he
3. was going to see Judge Matthews and try to get this matter
4. straightened out?
5. A- No.
6. Q- Did Mr. Pullium?
7. A- Lonnie Pullium did say he would try to get in touch with
8. Judge Matthews and talk to him.
9. Q- When was that?
10. A- Either on Monday or Tuesday. He said Raleigh is to talk
11. to the Judge over on the street corner or something.
12. That seems like it was on up in the week.
13. Q- Were you ever given notice of any hearing before any Judge
14. in connection with the reversal of these checks?
15. A- No.
16. Q- Prior to January 22nd?
17. A- No.
18. Q- To your knowledge was Mrs. Hampton?
19. A- No, sir.
20. Q- At a later time did additional facts come out?
21. A- Yes, we had several conferences with the bank, calling
22. them up and checking on checks that had been sent back, etc.
23. Then they sent the remainder of the checks. I am not
24.
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1. sure what date.
2. Q- We have talked about the notations on the $18,000. There
3. are an additional sixteen checks totalling $3,304.44.
4. Did you get a credit memo from the bank on those checks
5. or did they just come back in the mail without any
6. explanation?
7. A- I think they just came back in the mail. I can't remember.
8. Q- Did you ever receive in the mail, when the checks came
9. back was a regular bank ledger statement enclosed?
10. A- No, sir, not as I remember.
11. Q- Did you have to go to any creditors to pick up checks?
12. A- Yes, we went to practically all of them. There was a few
13. I couldn't go to like Bank Americard. There were a lot
14. of them came to me. I didn't have to go to them.
15. Q- Let me show you a list of checks. I think this has been
16. introduced. May I show you a list of checks totalling
17. $18,141.31 and a list of checks totalling $3,304.44,
18. total of twenty-seven checks $21,445.75. Over on the left
19. hand corner is the date of the check, the name of the
20. creditor and the amount of each check?
21. A- Yes, sir.
22. Q- Under the first series of checks, there are eleven of
23. them, do you recall whether or not those are the checks
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1. that were returned to you and your wife around the 11th or
2. 12th?
3. A- This is a list of checks. The checks didn't come with it.
4. It was a paper showing the amount of each check and the
5. total. We had to look back at the check book.
6. Q- What I would like for you to do is go down this list of
7. creditors and tell the jury any difficulty you had with
8. these creditors?
9. A- We had problems with all of them. Some of these people
10. were more impatient than others. V & H Heating and Sheet
11. Metal had just put in an air conditioner for $2,012.88,
12. he was just faced without the $2,012.88 himself.
13. Q- Did you have to borrow money to cover these checks?
14. A- Yes.
15. Q- Who from?
16. A- Some from the bank, some from my step-father and mother.
17. Q- Were any of these checks in connection with your trucking
18. business?
19. A- This oil company, all of these BAnk Americard and Master-
20. charge were. We were out on the road buying fuel.
21. Q- Elk's Club?
22. A- No, that is personal.
23. Q- What is B & B Equipment and Leasing?
24.
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1. A- Truck expenses.
2. Q- Did you cover all of those checks ultimately?
3. A- Most of them. We have some that were nice enough to hold
4. off and we are paying so much on them.
5. Q- As a result of not having the funds to pay your creditors
6. what happened to your business and you personally so far
7. as your creditors were concerned? What was the effect of
8. having this money brought down on you?
9. A- The worse thing, it was the snowball thing, it wasn't
10. just these checks. Everybody I owed whether it was past
11. due or not they wanted their money. It just put everybody
12. in on me at the same time. The word was that I was bank-
13. rupt, these checks had come back and I went bankrupt.
14. Q- Do you know what the creditors had been told by the bank
15. as the reason for returning the items?
16. MR. CAMPBELL: The notations on the items speak for themselves.
17. MR. TRABUE: I will be glad to introduce them.
18. MR. CAMPBELL: I will agree you can introduce them as
19. collectively Exhibit 25 if you want to.
20. Q- Without going through each check will you tell us, rather
21. than do that let's circulate the checks to the jury.
22. Were the reasons shown on these checks?
23. A- Yes, some of them "Contested Funds", "Court Contested
24.
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1. Funds", one of them, the Elks Club "No Account at all."
2. Q- What happened to the busing business?
3. A- At the time this happened I had made different arrangements.
4. I was in hopes we could clear things up and I could go
5. ahead and take care of my trucking and bus. I was going
6. to drive my own truck. I had men working. My step-father
7. was operating the station. I was going to drive my own
8. truck to California. I had let all my men go. I tried
9. to keep my truck and pay on it along as I could. In March
10. I had to sell my tractor. Adams Equipment agreed to pur-
11. chase it back, so I let the tractor go and trying to get
12. money and the interest and all of these different things.
13. I had bought a new bus and paid $3000 for five years and
14. it came down to this court thing and I didn't have the
15. money to pay that final payment. B & B Leasing agreed to
16. buy the bus off of me, they wanted their franchise back.
17. I couldn't protect my franchise because I didn't have
18. money to pay for my bus and pay for my franchise.
19. Q- Do you have any idea what you were making?
20. A- I couldn't tell you what we were netting total. It would
21. vary from year to year. The older a bus gets the more
22. maintenance is. You never could tell. I had been
23. paying for the bus, up to this time I was keeping it up.
24.
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1. Q- You were forced out of the trucking business?
2. A- Bus business and about every other business.
3. Q- In connection with the service station what was the effect
4. of these bank checks?
5. A- Well, I had a lot of people that knew me and knew I
6. wanted to pay my obligations to them. When they got these
7. checks and heard that I was going bankrupt they wanted to
8. close the account. I wanted to pay them. In fact, I
9. swapped gas accounts in order to pay off the checks.
10.
11. Q- Did you lose any favorable credit terms with any of the
12. suppliers of the service station?
13. A- I imagine I did. Very few accounts are put on credit,
14. before that we had some open accounts.
15. Q- Prior to January 3rd you had open accounts with whom?
16. A- We had a car wash hooked on and that was on open account,
17. $1600 and some dollars.
18.
19. Q- Did you lose any discount that you use to be entitled to
20. because of any effect on your credit?
21. A- It would be hard to say. I didn't have the heart to ask
22. anyone for an account. I try to pay for what I get. I
23. just limited the amount I got.
24. Q- Have any of those creditors listed on those checks re-
25. fused you credit?
26.

1. A- I haven't asked for any.
2. Q- Have you had to pay interest?
3. A- Yes, on practically all of these accounts plus the money
4. I borrowed to pay them off. For about thirty days we
5. tried to get it settled. They had deducted $30,000 plus
6. I had the $21,000, I didn't like the idea of going to
7. my step-father, going in debt to him, eventually, that
8. that is what I had to do.
9.
10. Q- How has this experience affected you personally, Mr.
11. Bartlett?
12. A- I don't know. I feel real good that I survived. I think
13. it has affected me mentally. Where I use to try to be
14. nice to people, my wife and kids and all, I catch myself
15. storming out at them. In fact, me and my wife had quite
16. a bit of problems over it.
17.
18. Q- Have you had any health problems as a result of this?
19. A- I was in the hospital. The Doctor put me on Valium and
20. some other medication for nerves and sent me to a special-
21. list in Winston- Salem.
22. Q- You have had some surgery?
23. A- Hemorrhoids.
24. Q- MR. CAMPBELL: Did we cause that?
25. A- It was quite a strain.
26.

1. MR. TRABUE: You are not saying the hemorrhoids were caused
2. by the Bank of Carroll?
3. A- No, but like I said it was caused by strain. I don't
4. know whether it was physical or mental.
5. Q- Have you had any discussion at anytime with Raleigh Cooley
6. or Lonnie Pullium or Joe Lawson concerning what happened
7. in January, 1974?
8. A- Yes, I talked at length to Lonnie Pullium, Jr. In fact,
9. I asked him about it and he told me that he had received
10. the letter and thought nothing about it. He was going to
11. Richmond. He went to Richmond and while he was there
12. his father called him and told him about it. He told
13. him he had read the letter and he "felt like punching
14. Archibald in the mouth" when he got the letter. Other
15. than that, no.
16. Q- Did Mr. Lawson ever discuss with you any part of the
17. case or anything concerning Judge Matthews?
18. A- I don't recall ever talking to Joe Lawson. I might have,
19. I don't remember.
20. Q- Were you present during any discussion with Mr. Cooley
21. concerning Judge Matthews and when he had been contacted,
22. what Mr. Cooley's efforts were?
23. A- Yes, we were in the office or something after this
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1. happened, me and my step-father went over here to find out.
2. We went over and had a meeting in Mr. Pullium's office and
3. they said they finally got in touch with Judge Matthews
4. on the following Wednesday, that was after the 12th, he
5. ordered them to do this.
6. Q- Did Mr. Cooley ever make any statement to you as to
7. whether he tried to reach Judge Matthews on Saturday?
8. A- Yes, he said he tried numerous times but he was out of
9. town. He got in touch with him the following Wednesday
10. after this happened on the 12th.
11. Q- Mr. Bartlett, if you had been able to keep your tractor-
12. trailer or your tractor and if it had not been repossessed
13. what is your best estimate of the amount of money that
14. you could have earned per week driving that tractor-
15. trailer deducting for expenses?
16. MR. CAMPBELL: I would like to object to that, Your Honor,
17. and I would like to state my objection in the absence of
18. the jury.
19. THE COURT: Jury, would you retire to your room, please.
20. MR. CAMPBELL: If Your Honor please, this is going into a
21. recovery for anticipated profits. The witness's testimony
22. is that he had fired all his drivers before this happened,
23. that he had anticipated driving the truck himself so that was
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1. a new venture. The Virginia Case 213 Page 765, Mullen vs
2. Brantley lays down the rule there in which they reversed
3. for allowing anticipated profits in a new business or
4. operation and in that case they referred to a case they had
5. decided somewhat earlier in which a man was suing for loss
6. of profits for a filling station which he was going to open
7. in the same area in which he was operating other filling
8. stations and the Court said that although that was true
9. it would be speculation to allow any evidence or to base
10. any element of damages on it. Here Mr. Bartlett has testified
11. that he was going to operate his truck himself. He had not
12. operated it himself. We have no basis on which to base any
13. recovery of anticipated profits. He had terminated his
14. former business. He said he had fired his drivers. We
15. respectfully submit that under Mullen vs Brantley this is
16. pure speculation and conjecture. The rule is where there
17. is an established business on which one can base previous
18. operations but in a new business you are not permitted to.
19. MR. TRABUE: I think the testimony will show that Mr.
20. Bartlett had driven the truck himself to California when
21. other drivers were unable to do so. If Mr. Bartlett is
22. going to replace a driver that makes X number of dollars
23. that is equivalent to what Mr. Bartlett is going to make.
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1. THE COURT: Let's ask Mr. Bartlett.
2. MR. TRABUE: Mr. Bartlett, have you driven?
3. A- Yes, I had drove a truck. I was in the Sea Bees. I had
4. drove for Higgins Oil Company.
5. Q- Prior to January 3, 1974, how much were you paying your
6. drivers?
7. A- Nine cents a mile, they would average $6500, they would
8. go to Seattle and San Francisco.
9. Q- Out of that nine cents a mile what did that driver have
10. to pay?
11. A- It is according to how he wanted to live on the road.
12. He didn't have to buy anything except what he ate.
13. Q- Did your company buy the gasoline and oil?
14. A- Yes, this is an amount paid to the driver. We had two
15. drivers. We expect the drivers to stay on the road.
16. Q- Would each of them be paid nine cents a mile?
17. A- One nine and one eight and a half.
18. Q- When you took those trips that was nine cents less?
19. A- Yes, in fact it saved me a lot more than that. We didn't
20. stop. We drank a cup of coffee and went on.
21. Q- Can you give us your best estimate of how many trips
22. you made prior to January 3rd?
23. A- I would say at least seven or eight.
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1. THE COURT: How many?
2. A- I drove seven or eight, where people wanted to be off.
3. I let them off Christmas and ran the trip myself to
4. San Francisco.
5. Q- Prior to January 3rd you had already made the decision
6. to let your drivers go and you would drive yourself?
7. A- Yes, in fact we had already laid them off. My wife had
8. gotten familiar enough she could go to school and pick
9. up the bus and she was going to look after that while
10. I run the truck operation.
11. Q- Your expenses would have been the same?
12. A- The insurance would have been the same, the cost of fuel
13. and this type thing would be the same. You couldn't drive-
14. most states you drive eight or ten hours and then off, the
15. single operator can only drive the eight or ten hours.
16. Q- What is your best estimate that your total mileage would
17. be per week, amount of loss, if your plans had gone
18. through?
19. A- I don't really know. This fellow, Lawrence, who operates
20. running a single operation, I was talking to him. It is
21. shorter trips but it pays more per mile.
22. Q- What is your best estimate of your expected income from
23. this endeavor?
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1. A- I couldn't guess what I would have made. I am only
2. telling you what he was grossing out $65,000 or $70,000
3. a year. You could make at least $20,000 a year but I
4. really don't know how much I could have made.
5.
6. MR. TRABUE: Your Honor, this is the best evidence we have
7. on that subject.
8. THE COURT: If Mr. Bartlett had had experience at all with
9. his new plan so that he could give us a figure. In his
10. last statement he tells the Court that this really was a
11. guess based on what somebody told him about how his operation
12. worked. I think it is speculative and not predicated upon
13. any definite facts and I so rule.
14.
15. Q- Mr. Bartlett, were you caused to pay any attorney fees
16. during the court proceedings and the law suit that went
17. on to get the money from your grandmother?
18. A- I was. Collin Campbell, I paid him $2,000. The fee was
19. $500.00 and he came back with a check wrote out for
20. $2,000.
21. Q- My question is how much did you pay Collin Campbell?
22. A- $2,000.
23. Q- Do you know the amount that you lost, the amount of the
24. investment that you had in the truck that you lost when
25. your truck was repossessed?
26.

1. A- I only owed $16,000 on the truck. I paid $25,000 for it,
2. wound up paying Adams Equipment $10,000. I really don't
3. know what the full value of the truck was at the time we
4. sold it. I only had it a year. When I first got the
5. truck I had to rebuild the engine, the air compressor
6. went out on the road, International had to rebuild the
7. engine.
8.
9. Q- Did they claim any deficiency balance over and above
10. the truck?
11. A- They took the truck back because he had a buyer that
12. paid a lot more.
13. Q- You suffered a loss of equity in the truck?
14. A- Yes, I paid $5,000 down. I wound up owing over and above
15. $10,000 I paid Adams Equipment.
16.
17. Q- Did your wife keep most of the figures on that operation?
18. A- Yes, sir, she did.
19. Q- Did the Bank of Carroll ever reimburse you the $800.00
20. that was in the savings?
21. A- I was running the filling station and my wife and grand-
22. mother came over to get the money, apparently they did,
23. I am sure they paid that.
24.
25. Q- In July when the matter came up, I believe we figured it
26. out on the total amount, from that the lawyer got $2,000

1. and Griggs Hampton got $2,000, why was he to get $2,000?
2. A- We was to pay my grandmother $2,000 and the attorney got
3. $2,000.
4. Q- Do you know the amount of money out of your original
5. deposit that you actually got back in July?
6. A- $22,000 and some odd dollars, $24,000 maybe.
7. MR. CAMPBELL: We object to anything he had to pay Griggs
8. Hampton to settle another suit.
9. THE COURT: What he had to pay out in attorney fees or
10. Griggs Hampton in another suit wouldn't come out.
11. MR. TRABUE: If it please the Court, may I show you this?
12. IN CHAMBERS:
13. MR. TRABUE: Your Honor, it has been our position in this
14. case and is our position in the case that the funds that
15. were deposited to open the Bartlett account on January 3,
16. 1974 was withdrawn, came from Sadie's account in the Bank of
17. Carroll on a Bank of Carroll check to Mr. Bartlett, was
18. deposited, was posted to the ledger, was paid and under the
19. Uniform Commercial Code under a midnight deadline those
20. funds are vested to the Bartletts as a matter of right and
21. after January 5th it was the same as cash and that no one
22. had any right to reverse those funds and to take it away
23. from the Bartletts. To this day those funds have not been
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1. placed back in their entirety in the Bartletts account.
2. Because the bank wrongfully dishonored the original deposit
3. as well as all the checks the Bartletts had to go through
4. a suit against Mrs. Hampton to get judgment confessed and
5. then garnishee the bank and the net amount that they have
6. recovered out of that initial deposit is $24,505.46. The
7. original deposit has never been replaced. So far as the
8. Bartletts are concerned the only amount of money they got
9. back was that $24,505.46. That money was cash on
10. January 5th.
11. THE COURT: You say the bank has paid the $24,505.46 back
12. to Mrs. Hampton?
13. MR. TRABUE: Because of the nature of the garnishment
14. proceeding the bank had to pay the money out to the Bartletts.
15. MR. BURTON: That paper is just a copy that was sent by
16. Collin Campbell to the Bartletts explaining how the money
17. was being disbursed. I don't think that was a court order.
18. MR. CAMPBELL: Our position is No. 1- that the bank never
19. converted Sadie Hampton's check into cash under any theory.
20. Mr. Trabue relies on a section of the Commercial Code which
21. says a bank is both depositor and payor; that the person
22. depositing has a right to check on that account within a
23. certain length of time, too, that is one that is based on
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1. the theory that the bank can verify whether or not the bank
2. on which it is drawn has sufficient funds to pay that check.
3. We take the position that the origin of all the funds was
4. Sadie Hampton's check from Jim Ward. Until that check had
5. cleared Bartlett could not draw on his account, otherwise,
6. you would have check kiting all over the place.
7. Secondly: When the bank was informed that there was a
8. question as to whether Sadie should have written those checks
9. to Elwood and Judge Matthews instructed them to get the money
10. back that about $21,000.00, those checks had come to the
11. bank on the 11th and the bank had for whatever reason it
12. wanted the right under the Commercial Code to dishonor those
13. checks prior to December 12th which it did and said, "Alleged
14. Court Contested Funds". The posting process had not been
15. completed, etc. Ultimately an order was entered on July
16. 2nd directing the Bank of Carroll to pay to Elwood Bartlett
17. $29,005.46 which they did pay to Elwood Bartlett. Your
18. Honor will recall that this order was held up for some little
19. time between Griggs Hampton getting a motion to set aside
20. the confession of judgment, to getting a motion to appoint
21. a committee for Mrs. Hampton and there was still discussion
22. over Clayton Hampton's will. This order says, "It further
23. appearing that the parties have settled all matters in
24.
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1. controversy" and the way this decree was agreed on one
2. of the conditions was that Griggs Hampton be paid $4,000
3. which he was paid, apparently Elwood and Mrs. Hampton split
4. it between them. We say that has nothing to do whatsoever
5. with the dishonor of these checks by the bank because that
6. litigation was on an entirely different subject, it involved
7. the same money but what he had to pay to settle that rather
8. than appeal it was no fault of the bank if they did dishonor
9. his checks. There is no connection between the bank dis-
10. honoring his checks and his dispute with Griggs Hampton.
11. MR. TRABUE: Your Honor, he would never have been in that
12. suit had the bank not dishonored the deposit in the first
13. place. The funds that went into the Bartlett account were
14. drawn on the Bank of Carroll. The bank could have put
15. restrictions on the account but it did not.
16. MR. CAMPBELL: The deposit slip says it is accepted for
17. collection and credited subject to final payment.
18. MR. TRABUE: It was paid and posted.
19. MR. CAMPBELL: It couldn't have been until there was money
20. in Mrs. Hampton's account to pay.
21. MR. TRABUE: The Court has got to rule on this as a matter
22. of law, whether the Bartletts had a right to draw on those
23. funds as of the 5th without any reversing of the process.
24.
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1. It is our position it was a matter of cash when they
2. allowed that deposit from another account in their bank, as
3. of the passing of midnight it was their money as if it had
4. been put in cash in the first place. That is our position.
5. We think that is exactly what the code says. We think this
6. is a position the Court is going to have to rule on.
7. MR. CAMPBELL: Yes, sir, at some point.
8. MR. TRABUE: So far as our position on damages I think we
9. would agree that the bank is entitled to at least an offset.
10. It is our position that if the checks had not been dishonor-
11. ed in the first place they would never have had to have
12. gone through any of these proceedings.
13. MR. CAMPBELL: I think we can clear that up when we put
14. counsel for Griggs Hampton on the stand.
15. THE COURT: There was this bill in chancery involving the
16. construction of the will, sale of real estate, in later
17. stages there was a confession of judgment and a garnishment
18. proceeding against the bank and then when I got into it
19. I ruled, I construed the will and ruled on Mrs. Hampton's
20. competency. There was considerable litigation that your
21. client was involved in.
22. MR. CAMPBELL: Griggs A. Hampton vs Elwood Bartlett;
23. Elwood Bartlett vs Sadie B. Hampton.
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1. MR. BURTON: That case was to set aside the confessed
2. judgment.
3. MR. TRABUE: If on the 5th of January the Bartletts had
4. taken cash and we say they had a right to do that.
5. THE COURT: Even if the Bank of Virginia check was dishonored?
6. MR. TRABUE: The Bartlett account was based on the Hampton
7. account and the Hampton account was based on Ward's check
8. drawn on the Bank of Virginia. The 5th of January they
9. could have taken the cash out and put it in another bank.
10. Bartlett would never have been any defendant in any of this
11. litigation.
12. THE COURT: Let's assume that I rule that you are right.
13. How much damage are you claiming under this statement of
14. account?
15. MR. TRABUE: The difference between $24,505.46 and $30,078.53.
16. THE COURT: This attorney's fee of $2500.00?
17. MR. CAMPBELL: The boy has testified it was $2,000.
18. THE COURT: What about Collin Campbell's $2,000. How is the
19. bank liable for that?
20. MR. TRABUE: Because if the checks had not been dishonored
21. in the first place he would not have been a party to any
22. of this litigation.
23. MR. CAMPBELL: You don't think Griggs would have come after
24. him?
25.
26.

1. MR. HODGES: If you back up to November 23rd the question
2. was still open as to Bartlett and the $12,000 on the trailer.
3. THE COURT: What I have to really decide is this issue of
4. whether or not this was in effect a cash transaction so
5. that the Bartletts could have drawn their money out on
6. January 5th?
7. MR. BURTON: There are several issues involved; whether or
8. not they had the right to draw that money out. The defendants
9. have taken the position that the check Mrs. Hampton gave to
10. Mr. Bartlett was never paid. There are other ways the
11. checks can be paid. If the bank makes a provisional settle-
12. ment and does not revoke it by statute or by clearing house
13. agreement that is final payment.
14.
15. MR. CAMPBELL: You don't suggest that we paid this in cash?
16. MR. BURTON: If you look at the language of the Code section
17. the bank in order to dishonor those two checks that Mrs.
18. Hampton gave Elwood had until midnight of the following day
19. to either return the two checks or items but not complying
20. with that they no longer have the right to dishonor the
21. checks.
22.
23. MR. CAMPBELL: Are you arguing that had Jim Ward's check, had
24. he stopped payment on his check that the bank would have
25. owed Elwood $30,000.00?
26.

1. MR. BURTON: That's right. Under Uniform Commercial they
2. have got until midnight the following day to dishonor any
3. item. If they didn't want Bartletts to write checks when
4. the check was presented to them for deposit they should
5. have said "withhold the items." The Code is very clear. It
6. says they have a matter of right to withdraw those and if
7. what the defendant is saying is true that means that the
8. bank could technically hold your checks as long as they
9. had possession and return them at anytime.
10. MR. CAMPBELL: Because the posting process hasn't been
11. completed.
12. MR. TRABUE: They didn't even pretend to dishonor the checks
13. until January 12th and Ward's check had cleared by that time.
14. MR. TRABUE: This is the issue, Your Honor.
15. THE COURT: Nobody has said anything about the bank proceeding
16. at Judge Matthews' order, written or verbal, and I believe
17. there was some testimony that Jim Ward called the bank and
18. read part of the decree over the phone and asked should he
19. bring along a certified copy. So apparently everybody was
20. aware that these were suppose to be court funds, court
21. account. If that is true, are you saying that we should
22. just ignore the decree directing how this money should have
23. been deposited and treat it as though the decree never
24.
25.
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1. existed, just as though Mrs. Hampton and the Bartletts had
2. come in.
3. MR. TRABUE: I think that was a final decree, that case was
4. off the record.
5. THE COURT: Didn't that decree say it was suppose to be paid
6. into court and deposited and the income paid to her for her
7. life and the remainder to her son?
8. MR. TRABUE: She could take the principal out. It was the
9. language of the will.
10. THE COURT: When Bartlett was aware of it, he knew all
11. about it. Are you taking the position that that has nothing
12. to do with this case?
13. MR. BURTON: I think if the court order had said put in a
14. trust account, it didn't, it didn't say to put in a court
15. account. I think it should have said this money has to be
16. put in a trust account and if someone, either Jim Ward,
17. or someone had written a check not complying with the
18. court order, which we don't think he did in this case, and
19. written a check to Mrs. Hampton and she in turn deposited
20. it in the Bank of Carroll and then wrote a check to Mr.
21. Bartlett and all of this was against the court order that
22. after the midnight deadline the Bartletts acquired certain
23. rights to that money and the bank or the other parties who
24.
25.
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1. were interested their recourse would be against another
2. party. They had the right at that time to draw that money
3. out. Once that money got into his hands the way it did he
4. acquired certain rights by law.
5. THE COURT: If Bartlett had been an innocent party I would
6. have no problem. He knew about the provisions of the other
7. decree and now you are saying he had a right to ignore that
8. court order and make arrangements with the bank regardless
9. of the court decree.
10. MR. BURTON: He had, if he did ignore the court he had
11. certain rights.
12. THE COURT: That is what I want to see, if he had the same
13. rights as an innocent party.
14. MR. TRABUE: It was placed in the bank, the bank was in-
15. structed, it wasn't deposited the way the court ordered it
16. but she had the right under the court order to use it for
17. her necessities, even under the court order she had the
18. right.
19. THE COURT: It was handled loosely.
20. MR. CAMPBELL: If that order says the money has been paid
21. into court and Jim Ward gives her that check and turns her
22. loose and gives them a copy of the order.
23. THE COURT: He just wrote a check and handed it over to her
24.
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1. and expected her to take care of it.
2. MR. TRABUE: How could it have been set up?
3. THE COURT: Life tenant I suppose.
4. MR. TRABUE: She still had the right to draw it out.
5. THE COURT: The intent of the Court was that she withdraw
6. it for her needs.
7. MR. CAMPBELL: What about the checks that came in on the
8. 11th?
9. MR. TRABUE: They had been posted.
10. MR. CAMPBELL: The posting process hadn't been completed.
11. MR. BURTON: They had already posted Mrs. Hampton's check.
12. MR. CAMPBELL: When the Judge says you get that money back.
13. MR. BURTON: How was the process of posting not completed?
14. MR. CAMPBELL: They only came in on the 11th.
15. MR. BURTON: Why did you return them?
16. MR. CAMPBELL: The Judge said to return them.
17. MR. BURTON: What you said there were no funds at all to
18. Mrs. Hampton.
19. MR. CAMPBELL: Mrs. Hampton has brought no suit for dishonor
20. of her checks.
21. MR. BURTON: The Code says that customers are entitled to
22. all damages for checks wrongfully dishonored.
23. MR. CAMPBELL: It also provides if it is done by mistake
24.
25.
26.

1. you are limited very much in your damages, same section,
2. if the wrongful dishonor is by mistake. Go ahead and let
3. this evidence in and you can tell the jury what the measures
4. of damages are.
5. (The Court and Counsel returned to the courtroom.)
6. THE COURT: Members of the jury, the Court and counsel have
7. been arguing the admissibility of certain evidence that you
8. will hear here. The Court has not ruled on the admissibility
9. of the evidence but to save time the Court is going to
10. present the evidence and later the Court will make a ruling
11. as to whether or not it is proper. If it is improper I
12. will direct you to disregard it:
13. DIRECT EXAMINATION BY MR. TRABUE CONTINUES:
14. Q- Mr. Bartlett, may I show you a settlement statement in the
15. proceeding of Elwood Bartlett vs Sadie Hampton and will
16. refer you to the next to the last line which says "check
17. to Elwood Bartlett $24,505.46. Is that the amount you
18. received after going through the confession of judgment
19. and garnishment proceedings to get the money back and
20. represented your original deposit?
21. A- Yes, sir.
22. Q- Mr. Bartlett, is there any other damages that you claim
23. to have suffered as a result of the action of the Bank
24.
25.
26.

1. of Carroll?
2. A- Nothing only losing my business and interest on money
3. and this type thing, what it has done to me personally.
4. Q- What do you mean by what it has done to you personally?
5. A- Character and reputation and also physical.
6. CROSS EXAMINATION BY MR. CAMPBELL:
7. Q- Mr. Bartlett, I have a few questions? You are operating
8. the farm now?
9. A- Yes, I am.
10. Q- And you paid some $72,000 for it?
11. A- Yes.
12. Q- And that is taking right much of your time?
13. A- Sometimes it does.
14. Q- Of course, you weren't operating that farm because you
15. had just bought it back in 1973?
16. A- I had been on the farm almost four years, I had lived
17. on the farm two years prior to that.
18. Q- You weren't spending much time there?
19. A- Oh, yes, we had men out there.
20. Q- Your employees that you were paying through the service
21. station, were they working on the farm?
22. A- Plus me being there.
23. Q- Was I not correct, Mr. Bartlett, when I told the jury
24.
25.
26.

1. earlier that you and your grandmother had agreed for you to
2. buy the farm for $40,000?
3. A- We had agreed on $45,000.
4. Q- You were going to give her the trailer and give her a
5. little each month?
6. A- $45,000 and deducting the trailer it was $27,000 and when
7. I didn't feel like I had the money she told me as long
8. as I would take care of her and give her $50.00 a month.
9. Q- There was a question raised as to whether your grandmother
10. had a right to do that?
11. A- Yes.
12. Q- And the Court had the farm appraised, didn't it?
13. A- I am not sure.
14. Q- There was a proceeding in the Court and the Court said
15. that deal between you and your grandmother wasn't going
16. through?
17. A- No, sir.
18. Q- The Court didn't enter a decree?
19. A- After we went into court we agreed to do this.
20. Q- The Court entered an order, you were participating in it
21. at all times?
22. A- Yes.
23. Q- And your grandmother employed Mr. Ward?
24.
25.
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1. A- Yes.
2. Q- At your suggestion?
3. A- I felt like he was a good lawyer.
4. Q- When we took your deposition you told me you suggested
5. she get Mr. Ward and institute this proceeding to get the
6. matter cleared up?
7. A- I don't remember.
8. Q- Isn't that right?
9. A- I told her I thought Mr. Ward was a good attorney.
10. Q- You also suggested that she bring the suit against Griggs
11. to see what could be done about the farm, that was your
12. suggestion?
13. A- That was his suggestion.
14. Q- That's what you all told him you wanted to do?
15. A- That was him and her.
16. Q- You know, Mr. Bartlett, that there was a great deal of
17. dispute over whether or not $12,500 was a fair price
18. for the trailer?
19. A- Yes, sir.
20. Q- And there was also a dispute over the amounts that you
21. were claiming your grandmother owed you for support,
22. isn't that right?
23. A- On whether it was personal or farm, yes.
24.
25.
26.

1. Q- And finally you all agreed you would be allowed $19,500
2. credit on your purchase of the farm?
3. A- I took that judgment with the understanding that she
4. would pay me her personal expenses herself.
5. Q- That was a side understanding?
6. A- Judge Matthews made the statement he would pay for the
7. actual expenditures on the farm and that was all, he
8. went out to look at it.
9. Q- Don't you remember his saying that if that money is put
10. in one of the banks in Galax some of the Hamptons will
11. know about any unusual expenditure and we will find out
12. about it?
13. A- No, I don't remember. All I remember him stating that
14. if she wanted to buy a Rolls Royce and a $40,000 brick
15. home and hire me to drive it I could, that it was her
16. money.
17. Q- He was very surprised when he found out she had written
18. you these checks?
19. A- I haven't talked to him.
20. MR. TRABUE: Object to Mr. Campbell suggesting that Elwood
21. had a conversation with Judge Matthews and suggesting the
22. context of that conversation.
23. THE COURT: Sustain the objection.
24.
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1. Q- You were at various hearings up in Independence?
2. A- Yes.
3. Q- And Judge was mad at Jim Ward?
4. A- Yes and he did not discuss it with me. I offered to
5. make a suggestion and he told me to keep my mouth shut.
6. Q- You heard all of that?
7. A- I heard what little controversy.
8. Q- You heard enough to know there was considerable contro-
9. versy?
10. A- I went up there three times and couldn't testify, they
11. did what they wanted to.
12. Q- The reason you went to Jim Ward's office on the 3rd of
13. January was to help her because she couldn't get along
14. too well?
15. A- Yes, she wanted me to go along and help her.
16. Q- You went there to settle up and get a deed to the farm
17. and settle up with Mr. Ward?
18. A- Yes.
19. Q- You weren't there to help her up the steps?
20. A- I believe those checks were sent to Mr. Ward's office
21. the day before. We went to the bank. She signed those
22. checks.
23. Q- You had to be there for the closing?
24.
25.
26.

1. A- I am not positive.
2. Q- Don't you think this was all done the same day?
3. A- No, sir, I don't remember. We had some controversy on
4. the loans that were combined, the FHA and First National
5. Bank.
6. Q- Mr. Bartlett, that order back in November said that your
7. grandmother was to deposit $48,000 coming from the sale
8. of the farm and an additional $9,000?
9. A- Yes.
10. Q- She didn't deposit the $9,000?
11. A- No, sir.
12. Q- That was because she had loaned it to you?
13. A- Yes, she loaned me $6,000.
14. Q- And didn't Judge Matthews require her to put that $9,000
15. in the bank and you had to come up with $6,000?
16. A- Yes.
17. Q- And that was after you made the deposit?
18. A- Yes.
19. Q- And this didn't come out of any money you got from your
20. grandmother? This was $6,000 you were able to raise in
21. addition?
22. A- Yes.
23. Q- Even after the bank had sent these back you were able
24.
25.
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1. to raise $6,000?
2. A- I believe I borrowed $6,000 from my mother and step-father.
3. Q- You got the $6,000 and gave it to your grandmother?
4. A- Yes.
5. Q- Mr. Bartlett, these checks, on Jan. 9th one of the checks
6. in controversy was a check to your step-father for
7. $6,105.00?
8. A- Yes, sir.
9. Q- Was that to pay him the $6100.00 you borrowed from him to
10. pay your grandmother?
11. A- Yes. That didn't have anything to do with this claim.
12. Q- What was that?
13. A- Paying off a note I had.
14. Q- And is it fair to say Mr. Bartlett that you were present
15. at all the discussions between your grandmother and
16. Mr. Ward?
17. A- At all discussions, no, I wasn't.
18. Q- Of course, she went by herself?
19. A- No, my wife took her.
20. Q- You knew everything that was going on all the time?
21. A- It was pretty obvious what was going on.
22. Q- You knew there was controversy over these amounts of money
23. your grandmother was going to pay?
24.
25.
26.

1. A- I had got a sale notice.
2. Q- Did you tell anybody in the bank that there was contro-
3. versy over this money when you made these deposits?
4. A- No, I think I discussed with Lonnie Pullium, Jr. what
5. had happened but so far as controversy over the money
6. we was putting in the bank no, because we thought we had
7. it sewed up.
8. Q- Then your grandmother confessed judgment in your favor
9. and Griggs brought a suit to set that aside?
10. A- I brought judgment, yes I did.
11. Q- And do you remember coming to court over in Wytheville?
12. A- Yes.
13. Q- And over at Independence?
14. A- Yes.
15. Q- And Griggs was saying that he was entitled to more money?
16. A- My lawyer had that done. Judge Matthews said we didn't
17. ask him to rule whether it was a legal sale.
18. Q- He entered a decree on April 24th?
19. A- That was after they had agreed, My attorney, Ward, said
20. they agreed to sell it.
21. Q- You said he was advising you?
22. A- They agreed to resale it.
23. Q- This $800.00 a month, I believe you testified that was to
24.
25.
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1. be an emergency fund for your grandmother in case she got
2. sick?
3. A- I said that was to be used for her upkeep. I still take
4. care of her. We take her everywhere we go.
5. Q- I didn't ask you that?
6. A- It was going to be used for that.
7. Q- I thought you answered Mr. Trabue you were putting that
8. "in case of sickness we could fall back on it"?
9. A- We would have.
10. Q- Why was it necessary to put that in your name, she had
11. money?
12. A- We would have used that. If she had got in the hospital
13. or something who was going to take care of her. If she
14. had dropped dead who would take care of her.
15. Q- She would have had money in her account to bury her?
16. A- She almost needed it when her son threatened to shoot her.
17. Q- And the bank notified your wife and she told you that
18. they were having to return all these checks?
19. A- She was so upset when I got home she was crying.
20. Q- I thought you said the bank notified you Saturday after-
21. noon?
22. A- Right, when I got home she told me.
23. Q- You got the reason in the letter?
24.
25.
26.

1. A- Court contested funds; alleged court contested funds.
2. Q- It says on that credit memo that they sent you, "We are
3. re-depositing the following checks to your checking account
4. in view of alleged court contested funds. These funds
5. apparently are not subject to withdrawal without court
6. approval"?
7.
8. A- She wrote the checks on the 3rd and this was the 12th.
9. Q- On the 4th you wrote V & H Heating and Sheet Metal a
10. check for $2,012.88; Maybelline Dalton- $9.13; Sears
11. Roebuck- $105.60; that's on the 5th; Roses- $12.73; Dixon
12. Lumber Company- $929.51, you wrote checks on the 7th, 9th,
13. 10th, 11th and 12th, they were written all along during
14. that period?
15.
16. A- Yes.
17. Q- If your grandmother hadn't paid you the money how were
18. you going to pay your debts?
19. A- If we hadn't been tied up in court. I had spent two
20. years before over selling the farm again.
21. Q- How were you going to pay your debts?
22. A- I could have sold equipment. I wouldn't have remodeled
23. my house if I had known this was going to happen. I
24. sold $10,000 worth of timber to build my house. After
25. this happened I sat with the whole side out of it because
26.

1. we didn't have money to finish it.
2. Q- You didn't have the money before your grandmother gave
3. it to you?
4. A- No, but when you have to pick up those checks.
5. Q- If your grandmother had not left you this money you could
6. not have paid your debts?
7. A- I would not have paid $72,100 for that farm and done the
8. work I did if I had thought they wouldn't pay me back
9. what I had already spent, no, sir, I would not.
10. Q- Although the Court order said $19,000?
11. A- The Judge said he would not decide that.
12. Q- The Judge said he would not rule on her personal expenses?
13. A- He said it was entirely up to her. He couldn't make her
14. pay it.
15. Q- I believe you said you didn't know anything about the
16. Judge freezing this money until two months later?
17. A- We didn't find out there had been a court order issued
18. until two months later.
19. Q- On the 31st of January the Court entered an order telling
20. the bank to pay your grandmother so much a month?
21. A- I wasn't here.
22. Q- Somebody asked for it?
23. A- They were bouncing her checks, too, her Blue-Cross, Blue-
24.
25.
26.

1. Shield.
2. Q- Somebody came to the Judge on the 31st of January?
3. A- It was neither of us.
4. Q- You knew about it when she started getting the money?
5. She was to be paid so much a month, you knew about that?
6. A- I am not familiar with that.
7. Q- The order of January 31st?
8. A- I think she had outstanding checks, they paid them.
9. Q- I understood she was to be paid that for living expenses.
10. Then you had a hearing in Independence in March?
11. A- I am not really sure of the date.
12. Q- There was no doubt in your mind that the bank had not
13. paid this money because of contest about the court?
14. A- There was some doubt in my mind what they did prior to
15. notifying me.
16. Q- They did notify you?
17. A- Not until after we wrote the checks. They had cleared
18. our creditors and was sent back to the bank. I can show
19. you on the back of the check if you like.
20. Q- I say there was no question in your mind as to why the
21. bank had sent the checks back?
22. A- Yes, the Court has ruled it was my money, that is why we
23. went to court.
24.
25.
26.

1. Q- It took another court proceeding to determine that?
2. A- Yes.
3.
4. LOUISE A. BARTLETT
5. Louise A. Bartlett, a legal and competent witness, after
6. first being sworn, testifies as follows:
7. DIRECT EXAMINATION BY MR. BURTON:
8. Q- State your full name?
9. A- Louise A. Bartlett.
10. Q- Mrs. Bartlett, you are married to Elwood Bartlett?
11. A- Yes.
12. Q- What is your age?
13. A- Twenty-eight.
14. Q- How long have you lived in Galax?
15. A- Since I was seven years old.
16. Q- How long have you and Mr. Bartlett been married?
17. A- Ten years.
18. Q- You have lived in Galax that entire time?
19. A- Yes.
20. Q- Would you briefly outline for the Court and the jury
21. whether or not you assisted your husband in his business
22. ventures and what your job was?
23. A- I stayed at home and I worked out and kept the books and
24. records. If he had to be out of town I went to the service
25.
26.

1. station. I even drove some of the busses.
2. Q- Did you act as his bookkeeper?
3. A- Yes.
4. Q- Are you familiar with the day to day decisions that were
5. made in the business and did you assist him with making
6. those decisions?
7. A- Yes.
8. Q- Do you recall the events that have been testified to,
9. particularly Mrs. Hampton's suit to sell her farm and the
10. court proceedings that were held under that?
11. A- Yes, I went to several of the hearings. They talked about
12. at first compromising; they offered us to settle for the
13. work we had done and nothing in comparison to what we had
14. spent on the farm so after some discussion they decided
15. to go ahead and put the farm up at public auction.
16. Q- Was there any statement made by the Court after the
17. order was entered in November of 1973 about how Mrs.
18. Hampton was to spend any of the proceeds of the sale?
19. A- No. Archie Campbell kept trying to get him to put it
20. in a trust fund. He said it was her money. He also
21. wanted it put in a bank in Galax and later he said she
22. could put it in any bank she wanted to.
23. Q- Do you know why Mrs. Hampton decided on the Bank of Carroll?
24.
25.
26.

1. A. She did't want to do any banking in Galax. Hillsville
2. was close. Elwood's step-father has stock in the Bank
3. of Carroll and even though we tried to borrow the money
4. and they refused we planned on doing our banking there.
5. Q- Did either you or Elwood attend all the conferences
6. Mrs. Hampton had with Mr. Ward?
7. A- Yes.
8. Q- You understood Mr. Ward was representing Mrs. Hampton?
9. A- Yes.
10. Q- Would you briefly relate to the jury and the Court exact-
11. ly what you recall about the events on January 3, 1974?
12. A- We went down to Jim Ward's office and the check from
13. FHA was there and I wrote the check on First National
14. Bank for the balance. Jim called the Bank of Carroll to
15. see if we could bring our money over. They were getting
16. ready to close, they would hold the bank over. I had
17. a list of personal expenses of Mrs. Hampton and asked
18. Jim to look at it and he said, "No, that is completely
19. your own business." We had listed expenditures on the
20. farm and personal expenses. Judge Matthews only made
21. his decision on the expenditures on the farm. It was
22. our understanding that she could pay for the trailer and
23. the personal expenses herself. There was never any
24.
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26.

1. question in my mind that she wasn't to do that or that
2. we had done anything illegal.
3. Q- You stated that Mr. Ward called the bank. Do you recall
4. what time it was?
5. A- We left, it was getting close to three o'clock because
6. I picked my children up at school.
7. Q- You went directly from Mr. Ward's office?
8. A- Yes.
9. Q- Do you recall his telephone conversation to the bank?
10. A- All I remember he did ask if they wanted a certified
11. copy of the order and they said no.
12. Q- And did he read it to the bank?
13. A- Part of it.
14. Q- Do you recall whether he read the part about it being
15. deposited in a banking institution?
16. A- I believe he did.
17. Q- Who did you meet with at the bank?
18. A- Lonnie Pullium, Jr.
19. Q- Did you have your list at that time on the personal
20. expenses that you all had calculated?
21. A- Yes.
22. Q- Did Mr. Pullium see it?
23. A- I had it with some other papers. I don't know if I
24.
25.
26.

1. offered them to him or not.
2. Q- Was it at this time Mrs. Hampton endorsed over her check?
3. A- Yes.
4. Q- Would you outline, please, how Mrs. Hampton came to write
5. two checks to Elwood?
6. A- $12,500 for the Mobile home; $17,578.53, that was for
7. the expenses of moving, the septic system, water line,
8. her personal expenses, getting her hair done, anything
9. she needed, she went to Florida a couple of times.
10. Q- Were these expenses you and your husband had paid for her?
11. A- Yes.
12. Q- That is what you and Mrs. Hampton agreed upon she owed
13. you?
14. A- Yes.
15. Q- Can you explain also the arrangement of the $800.00
16. savings account which was set up at the same time?
17. A- The reason we put it in the savings account was so that
18. it would be there. We had planned on taking care of her.
19. It was there if she got sick and wasn't able to buy her
20. own medicine then we would use it for that. It was for
21. our protection as well as hers.
22. Q- This was when she gave the bank a letter authorizing
23. them to transfer $800.00 a month to your account?
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1. A- Yes.
2. Q- Were there any questions raised?
3. A- We went into detail with Mr. Pullium as to how we
4. wanted to do it.
5. Q- Who prepared the two checks Mrs. Hampton signed to
6. Elwood?
7. A- Mr. Pullium took them out and had them typed and brought
8. them back.
9. Q- Did Mr. Pullium make any statement to you about you
10. not writing any checks?
11. A- We thought we could write them right then if we wanted to.
12. Q- After you left the bank did you proceed to write checks
13. on that account?
14. A- I did the next day.
15. Q- Your husband has testified, Exhibit 24, twenty-seven
16. checks which have been introduced. Can you look down
17. through and see if you are able to identify those?
18. MR. CAMPBELL: We know they are the checks she wrote,
19. Mr. Burton.
20. Q- Mrs. Bartlett, there is a list of checks which has
21. previously been introduced, the dates are in the left
22. corner, but it is you who signed the checks and mailed
23. them to your creditors?
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1. A- Yes.
2. Q- Were any of them delivered personally?
3. A- Yes, the first one was. The majority of them were in
4. the mail. Some of them were handed, the next one,
5. Maybelline Dalton, I went to a Tupperware party, I wrote
6. a check. The Sears was delivered, the Roses, Dixon
7. Lumber Company; the Smith Oil Company- this man has been
8. waiting for his money; then in a few days Bank Americard,
9. Master Charge, Margaret Jennings, I went to pick up the
10. checks and said, "I am sorry, it wasn't my fault."
11. MR. CAMPBELL: Does it make any difference, Mr. Burton?
12. Q- You either delivered those or deposited them in the mail?
13. A- Yes.
14. Q- Is this a complete list of checks that you drew on the
15. checking account?
16. A- That is all the checks I wrote. There are three I could
17. not get back.
18. Q- The first set are these eleven checks you received from
19. the bank on Monday, the 14th?
20. A- Yes.
21. Q- When were you first advised by the bank that they were
22. going to dishonor your checks?
23. A- When they called and then we got the checks back.
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1. Q- How were you advised?
2. A- Joe Lawson called about two o'clock and he asked for
3. Elwood. He said, "Mr. Pullium is terribly upset, he has
4. got a letter from Archie Campbell and apparently the
5. funds Mrs. Hampton paid you all were not for her use, get
6. in touch with Judge Matthews and Jim Ward." We still
7. had no idea they were going to bounce the checks. I went
8. to the mailbox and got the mail and walked the floor
9. until he got there.
10. Q- Did he make any statement about any conference or meeting
11. with Judge Matthews?
12. A- Nothing, that is all he said.
13. Q- The sixteen checks,when were you notified by the bank
14. that they were being dishonored?
15. A- The creditors started calling and coming by, they were
16. knocking on my door. The man from Smith Oil sat in the
17. driveway for two hours waiting on Elwood.
18. Q- Were all these checks returned by the bank to the payee?
19. A- Yes.
20. Q- Who picked them up?
21. A- Elwood and I did.
22. Q- How long did it take you?
23. A- A couple of months.
24.
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26.

1. Q- Do you recall statements that the creditors made to you
2. when you were picking these checks up?
3. A- The V & H, he was very upset. He had just started
4. business.
5. MR. CAMPBELL: Your Honor, I would object about the effect
6. on them.
7. THE COURT: Let's go as far as it is relevant, not the
8. effect it had on creditors.
9. A- I was making the statement he was very upset and he was
10. upset with me because we had had do work and gave him a
11. check and it had bounced. I got letters from people.
12. Most of the places, Sears, Bank Americard, who had a
13. charge when your check was bounced. They were bouncing
14. all over the country. It was unreal, it really was.
15. Q- Do you recall any specific remarks that were made by
16. creditors when you picked up the checks?
17. A- Nationwide Insurance, the insurance was cancelled. We
18. had a terrible time getting insurance back. We picked
19. up as many as we could as quickly as we could. Dixon
20. Lumber Company and Vass-Kapp, they were $800 or $900
21. and people called and called and called. We would go
22. down and talk to them. We did have a date set for the
23. hearing and we would think it would be over. We would
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1. tell them the date. Elwood would go to court and set and
2. know absolutely nothing and come back. People thought we
3. had lied because it was over and over and over.
4. Q- Did any of the creditors ever question about the, quote
5. "Alleged court contested funds"? Did they ever question
6. what that meant?
7. A- I just tried to tell them. The "No Account", we paid
8. $5.00 for the Christmas package. That was late coming in.
9. Some of the small checks hurt me more, like the one
10. where I had paid for my son's Cub Scout.
11. Q- How did you explain to the creditors what had happened?
12. A- I tried to tell them I had deposited the money and there
13. was some mistake. We had deposited it thinking it was
14. ours and the bank made a mistake, that we had the money
15. in the bank. They would say, "Sure you did."
16. Q- Did any of the creditors threaten you with law suits?
17. A- The Smith Oil Company, Dixon Lumber Company, Vass-Kapp
18. really pushed us; H & H Plumbing & Heating, they were
19. out at our house every day until we got them paid.
20. Q- Have you been able to pay those checks?
21. A- We eventually picked them up.
22. Q- Over what period of time did it require you to pick
23. them up and pay them?
24.
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1. A- Just as soon as we could, as we had money. We sold
2. cattle, anything we could get our hands on, got money
3. out of the kids savings, we didn't have any money to
4. live on either.
5. Q- Were there any other creditors other than the ones to
6. whom you wrote these checks?
7. MR. CAMPBELL: Your Honor, I object, if they owed people
8. before or after, that is not relevant.
9. MR. BURTON: I think it is very relevant because some of
10. damages were the other creditors upon hearing of these
11. dishonors wanted their money.
12. THE COURT: If you can tie it in.
13. Q- Mrs. Bartlett, did any other creditors other than the
14. ones to whom you wrote these checks, contact you after
15. the bank dishonored these checks?
16. A- Yes, we had bought some tires at Coulson Tire Company on
17. a thirty day account and the man was out there the next
18. week.
19. Q- What did they do when they came to see you?
20. A- They wanted to know. Even places we had been making
21. payments. We always tried to build ourselves, we tried
22. to keep up with every penny and put it where it would be
23. the best use, always lived on a tight budget, there was
24.
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1. nowhere to go for the money.
2. Q- Did any of these creditors make any statement to you
3. about the bank's action?
4. MR. CAMPBELL: If he wants to get to where they took any
5. action to cost these people money it may be relevant.
6. MR. BURTON: I am attempting to show that some creditors
7. other than creditors to whom they wrote checks contacted
8. them and put pressure on them.
9. THE COURT: I understand but you are having a time getting
10. to it.
11. Q- Did any creditors contact you and tell you the reason
12. they were contacting you was because they had heard
13. about the bank dishonoring these checks?
14. A- Mink Motor Sales was one. They come to the station and
15. took it out in gas. Twin County Motor Company put press-
16. ure on us, too.
17. Q- Do you know why they contacted you?
18. A- They did not go into detail but all of a sudden every-
19. body we owed money to was coming to see us or knocking
20. on the door.
21. MR. CAMPBELL: I move that that be stricken.
22. THE COURT: Disregard that.
23. Q- Mrs. Bartlett, do you have an account with a Nolen Oil
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1. Company?
2. A- Yes.
3. Q- What is the status of that account? Has the account been
4. paid?
5. A- All but about $100.00.
6. Q- How is it being paid?
7. A- $100.00 a month.
8. Q- Who was their agent?
9. A- George Cooley.
10. Q- Mrs. Bartlett, after the bank took these actions and
11. after you received these notices that they were dis-
12. honoring the eleven checks, debiting your account, did
13. you receive any notice of any hearing before Judge
14. Matthews or have any knowledge such a hearing was being
15. held?
16. A- No.
17. Q- When did you have any knowledge that an order had been
18. entered?
19. A- I don't remember. I came with Mrs. Hampton on the 18th.
20. She was going to withdraw her money from the Bank of
21. Carroll. We talked to Lonnie Pullium, Jr. and he
22. called his father and Raleigh Cooley and Raleigh had
23. talked to Judge Matthews and he said for her to get in
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1. touch with Jim Ward and have him to get in touch with him.
2. Q- You never received any type of notice from anybody about
3. any hearing?
4. A- No.
5. Q- From your knowledge of your books, yours and your hus-
6. band's books, did you all have to pay any additional or
7. any interest on any of these accounts that were dishonored?
8. A- Yes, our payments at the bank, we could only pay the
9. interest, we couldn't pay the principal. The interest
10. ran up because of that.
11. MR. CAMPBELL: Your Honor, please, if Mrs. Bartlett can
12. state any additional interest she had to pay on the accounts
13. because of the dishonor of the checks I would not object
14. but I must object to any interest that they had to pay be-
15. cause they didn't have any money to pay, money they had
16. borrowed to buy the farm. It would only be interest she
17. had to pay on these accounts she wrote checks for.
18. MR. TRABUE: Because the checks were dishonored she was
19. unable to pay the principal amount, she had to make extra
20. interest payments.
21. THE COURT: If the witness can tie it in.
22. Q- (Handing list to witness) Would you identify that for
23. us?
24. A- It is a list of interest we paid on accounts.
25.
26.

1. Q- Can you briefly state each interest payment?
2. A- Steve Senic, money we borrowed from him. The others are
3. accounts, Higgins Oil Company $39.49, interest on account;
4. Vass-Kapp, $25.19; Southern States, F & M; farm machinery,
5. payments on farm machinery- April 1, 1974- not able to
6. make the payment until July, interest $144.00; Bank
7. Americard- $20.88; First National Bank $1.325.08.
8. Q- What is the First National Bank interest?
9. A- We had used all of our money that we had and all money
10. we had coming in and, therefore, we were not able to pay
11. the principal. The bank allowed us to only pay the interest.
12. Q- If the bank had not dishonored these checks would you
13. have had this interest?
14. A- No.
15. MR. CAMPBELL: She is testifying about interest in April and
16. May and the court had this in litigation and the dishonoring
17. of these checks would have no connection if the court had
18. tied up the money. If the court had attached their bank
19. account they would be in the same shape, has no connection
20. with that.
21. Q- I am going to pass this and get this list later on and
22. go over it with you. Mrs. Bartlett, has this dishonoring
23. checks, has it had any effect on your husband or you
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1. personally that you have been able to notice, your marriage
2. relationship?
3. A- Yes.
4. Q- Can you just briefly explain what you mean?
5. A- I think both of us are under a strain. I don't think
6. either of us will be able to settle back down to the
7. life we had. He yells at the kids. He never, never
8. yelled at the kids. I think it has hurt him a lot more
9. than it has me.
10. CROSS EXAMINATION BY MR. HODGES:
11. Q- I have been trying to get one thing in my head all day.
12. Maybe you can help me. You knew all along that momey
13. was in controversy?
14. A- Yes.
15. Q- You knew from the time you sold the place on?
16. A- No, sir. I knew it was until we brought that money to
17. the Bank of Carroll, then I didn't know.
18. Q- You were aware of what was in the court decree?
19. A- I read it.
20. Q- You were aware the court decree provided the funds were
21. to be placed in the court?
22. A- When I read it I may have missed that part.
23. Q- You knew all along that there was a controversy over
24.
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1. the amount of the money you all were to get as a result
2. of taking care of your husband's grandmother?
3. A- Upon until the point I told you, I meant January 3rd.
4. Q- Why was January 3rd the date? What changed your mind?
5. A- Because it had been in court up until that time and the
6. money was paid and the money was deposited in the bank
7. in our name.
8. Q- Did you think it was peculiar that the court would enter
9. a decree that the money be put in a proper banking
10. institution if she was to do whatever she wanted to
11. with it?
12. A- I thought she could spend it for her support.
13. Q- When did Mrs. Hampton lend you all the $6,000?
14. A- Sometime after we bought the land.
15. Q- Was it after you had bid in the farm or before the court
16. entered the decree or afterwards?
17. A- I don't recall.
18. Q- She lent you the $6,000 and later on the court ordered
19. her to put that back?
20. A- Yes.
21. Q- And you went to your step-father?
22. A- My husband's.
23. Q- And he borrowed the money and you put it back?
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1. A- Yes.
2. Q- What I am getting at, your husband had several businesses
3. going, you had the trucking business, service station
4. business, busing business, these were all income pro-
5. ducing businesses weren't they?
6. A- Yes.
7. Q- I don't understand why he didn't have a cent of money?
8. A- Because we kept all the money tied up.
9. Q- Did you have it so tied up that you were completely
10. dependent on on money that was in controversy until
11. January 3rd?
12. A- No, sir, we had cattle we could have sold; we had machinery
13. we could have sold.
14. Q- Did you not have another bank account?
15. A- We had an account in Galax. We didn't have $30,000.
16. Q- Did you have enough to pay the Cub Scout dues?
17. A- I had that bank book. I could have written it out of
18. that one.
19. Q- O. K., the bill for $8,000 to Smith Oil Company, how
20. old was that bill?
21. A- That was the pay off on the station.
22. Q- How long had you owed that?
23. A- I am not sure.
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1. Q- That wasn't a bill that had just come about?
2. A- Part of it was.
3. Q- Didn't you have any type of reserve at anytime to cover
4. these larger bills?
5. A- No.
6. Q- You were completely dependent upon money that had been
7. in controversy for two years?
8. A- We were very dependent on it; that was what hurt so
9. bad when we finally got it and paid these things and
10. that is why it hurt so bad.
11. Q- When you came down here, when you were in Mr. Ward's
12. office on January 3rd you were there when he called
13. Lonnie Pullium, Jr., you were there when he read the
14. decree to him, then you went down to the bank and were
15. you present there at the bank also?
16. A- Yes.
17. Q- And you were the one the bank called on Saturday, the 12th?
18. A- Yes.
19. Q- What did the bank tell you?
20. A- Mr. Lawson asked to speak to Elwood first and he said
21. Mr. Pullium had gotten a letter from Archie Campbell
22. and was upset, that it appeared Mrs. Hampton's funds were
23. not to be withdrawn, for her to get in touch with Mr. Ward.
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1. Q- Did he say all the checks were being sent back?
2. A- No.
3. Q- Is your husband incorrect when he says you told him all
4. the checks were being sent back? You didn't tell your
5. husband who just testified to that?
6. A- I don't know. You know it has been so long. I don't
7. know whether I remember as well as he does.
8. Q- When the bank called you and said they were freezing
9. that account you knew all the checks were coming back,
10. didn't you?
11. A- No, I did not.
12. Q- What is the total of the number of checks that came back?
13. A- Twenty-seven.
14. Q- Total amount of $21,445.73?
15. A- Yes.
16. Q- Can you tell us, please, why you didn't pay all these
17. checks off when you got the $24,000.00 later on?
18. A- We paid interest. We had other bills. We paid most
19. of them.
20. Q- You didn't have any other funds with which to pay these?
21. A- It would have taken the $24,000. We had other bills.
22. We came up with most of it by selling what we did have.
23. (Court was adjourned until 9:30 A. M. on December 11, 1975)
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1.
2. LONNIE PULLIUM, JR.
3. Lonnie Pullium, Jr., a legal and competent witness, after
4. first being sworn, testifies as follows:
5. DIRECT EXAMINATION BY MR. TRABUE:
6. Q- State your name, please?
7. A- Lonnie L. Pullium, Jr.
8. Q- What is your age?
9. A- Twenty-six.
10. Q- Where do you live?
11. A- Eden, North Carolina.
12. Q- Were you previously employed by the Bank of Carroll?
13. A- Yes.
14. Q- What day did you start working for them?
15. A- May 2nd, 1972.
16. Q- Shortly after the bank had opened?
17. A- Yes.
18. Q- And I believe the Bank was formally opened around
19. March 15th?
20. A- Yes.
21. Q- Prior to that where were you employed?
22. A- United States Army.
23. Q- What was your first position with the Bank of Carroll?
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1. A- Teller.
2. Q- Prior to that had you had any banking experience?
3. A- Some teller and messenger.
4. Q- What bank?
5. A- Eden.
6. Q- How far did you go in college?
7. A- Three years.
8. Q- Did you take any banking courses in college?
9. A- No.
10. Q- Did you have any formal banking experience or training
11. before you went to work in the Bank of Carroll?
12. A- No.
13. Q- What was your first position with the Bank of Carroll?
14. A- Teller.
15. Q- Did you eventually become an officer in the bank?
16. A- January 1, 1973.
17. Q- What was your position?
18. A- Cashier.
19. Q- Did you move up after that?
20. A- Yes.
21. Q- What was your next position?
22. A- Assistant Vice-President.
23. Q- What date was that?
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1. A- January 1, 1974 and January, 1975 I was promoted to
2. Executive Vice-President.
3. Q- Are you related to Lonnie Pullium, Sr.?
4. A- Yes.
5. Q- You are his son?
6. A- Yes.
7. Q- Was Mr. Pullium president of the bank when it opened?
8. A- Yes.
9. Q- Was he also on the board?
10. A- Yes.
11. Q- Did you own any stock in the Bank of Carroll?
12. A- Not prior to going to work. There was one thousand shares,
13. two hundred to be mine per year, two hundred per year for
14. five years.
15. Q- You ultimately acquired one thousand shares?
16. A- Yes.
17. Q- Do you recall when you first became acquainted with
18. Mr. and Mrs. Bartlett?
19. A- Yes.
20. Q- Was that in August, 1973?
21. A- Yes.
22. Q- What brought that relationship on?
23. A- Mr. Bartlett came to the office to put in an application
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1. for funds to buy a farm.
2. Q- Did you attempt to assist Mr. Bartlett in obtaining a
3. loan?
4. A- Yes.
5. Q- Did you go out to the farm and look at it?
6. A- Yes, I spent a couple of hours out there.
7. Q- Did you talk to Mr. and Mrs. Bartlett about the financing?
8. A- Yes.
9. Q- Did they explain to you at that time the difficulty they
10. were having over the purchase of the farm?
11. A- Yes.
12. Q- Did they tell you they needed to come up with cash for
13. the farm, it was going to be sold at auction?
14. A- Yes.
15. Q- Did you attempt to make a loan for them?
16. A- Yes.
17. Q- Did you ever give them any indications that the loan
18. would be approved?
19. A- No, I told them it looked like the loan was going to be
20. approved. I just did not know how much money he was
21. going to borrow, he didn't know either.
22. Q- Had you requested a credit report?
23. A- Yes, I did not do the actual credit report.
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1. Q- Mr. Lawson did that?
2. A- Yes.
3. Q- Did you see the credit report?
4. A- I am sure I did.
5. Q- Did you feel that the Bartletts would be satisfactory for
6. the loan in any amount you calculated?
7. A- Yes.
8. Q- Did you obtain any permission from the board to make
9. that loan?
10. A- I would not have been authorized to make that amount of
11. loan. The loan went to the board.
12. Q- What did the board tell you?
13. A- At that time we were young and people didn't have a lot
14. of trust in the bank. They were suspicious. We had --
15. We had some of the county's money and some money from
16. individuals on savings and did not have the money to loan.
17. Q- Was your father on the board at that time?
18. A- Yes.
19. Q- Was Raleigh Cooley on the board?
20. A- Yes.
21. Q- Were both of them consulted concerning this loan?
22. A- Yes.
23. Q- Didn't your father tell you that the bank could not
24.
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1. approve the Bartlett's credit?
2. A- No, sir.
3. Q- Weren't you instructed to tell the Bartletts the loan had
4. been disapproved because of their credit?
5. A- No, sir.
6. Q- If your father has testified to that effect he is
7. incorrect?
8. A- As a matter of fact I was instructed to tell them we
9. did not have the money.
10. Q- Is it your testimony that the Bartlett's credit was not
11. disapproved by the bank?
12. A- I may not have been in the room at the time. I was
13. instructed to tell them we did not have the money.
14. Q- So far as you know their credit was good?
15. A- Not perfect but we could have made a loan.
16. Q- Didn't the Bartletts tell you there was some contro-
17. versy over the funds?
18. A- I know there were controversies between the family but
19. so far as funds I don't remember that.
20. Q- Did they tell you that when the farm was sold they ex-
21. pected to get some money from grandmother for expenses
22. they had incurred?
23. A- Yes.
24.
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26.

1. Q- Did they discuss with you in August of 73 that Mrs.
2. Hampton had agreed to buy the Mobile home for $12,500?
3. A- Yes, sir.
4. Q- Did you have any other conversation or contact with the
5. Bartletts between August 73 after the loan was turned
6. down and January 3, 1974?
7. A- I don't think so, not to my knowledge.
8. Q- Tell the jury and the court your recollection of the
9. events of January 3rd so far as the deposits were
10. concerned?
11. A- I had a phone call from an attorney, James Ward, in
12. Galax asking me if I would like a deposit of some
13. amount of money from Mrs. Sadie B. Hampton. I said I
14. thought she was going to deposit the money where they
15. borrowed the money. He said, "She seems to like you
16. and wants you to have the money." I said, "I will be
17. glad to." He said, "By the way, there is a court order.
18. Do you want it?" I said, "Do I need it?" He said,
19. "I will send you one." That afternoon Mr. and Mrs.
20. Bartlett and Mrs. Hampton came to the bank. Mrs. Hampton
21. had a check for $48,000 for deposit. I think I took
22. some $13,000 and put into a savings account and the
23. remainder of those funds in the checking account in the
24.
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1. name of Sadie B. Hampton.
2. Q- There was another account opened, too?
3. A- Right, but not involving these funds.
4. Q- Let me review those three accounts. $13,000.00 was put
5. into a 5% savings account in the name of Sadie B. Hampton;
6. $35,736.45 was put into a checking account for Sadie B.
7. Hampton and there were some other checks, another add-
8. itional $4,137.56 that was put in a 6% savings account?
9. A- Right, that may have been in the form of cash, I don't
10. remember.
11. Q- What else occurred?
12. A- At that particular time after I had set the accounts up
13. for Mrs. Hampton she asked me if I would write some
14. checks out to Elwood or Mr. and Mrs. Elwood Bartlett,
15. one was for a Mobile home $12,500 and some more for
16. expenses, I think the total was about $30,000 worth of
17. checks that I wrote to Mr. and Mrs. Bartlett.
18. Q- Let me show you Exhibit No. 1?
19. A- I typed this out and wrote in those figures.
20. Q- Everything on the check was put there by you with the
21. exception of what?
22. A- With the exception of the reason for the check and the
23. signature.
24.
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1. Q- Mr. Bartlett- did he endorse that check at that time?
2. A- Yes.
3. Q- Was that in your presence?
4. A- Yes.
5. Q- I show you Exhibit No. 5 which is a check on Mrs. Hampton's
6. account?
7. A- Everything is my typing except Mrs. Hampton's signature
8. and Mr. Bartlett's signature.
9. Q- I show you a stamp that appears on your bank, in a little
10. block stamped. What does it say?
11. A- Paid, Bank of Carroll.
12. Q- Would you look carefully and tell the jury what date it
13. was marked paid?
14. A- January 3rd, 1974 on both of them.
15. Q- That was the same date that all this transaction took
16. place?
17. A- Yes.
18. Q- Did you see a copy, or did you read through a copy of
19. the November, 1973 court decree that was sent to you?
20. A- Yes.
21. Q- In your banking experience as it was in January, 1974
22. had the Bank of Carroll ever participated in any court
23. funds? Had you had any experience with the infant's
24.
25.
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1. settlement funds?
2. A- Yes, the clerk of court had brought them over.
3. Q- You were familiar with that type only once?
4. A- I never actually participated. The head teller usually
5. did that.
6. Q- That was a check from the clerk of the court?
7. A- I didn't look.
8. Q- You were familiar with fiduciary accounts?
9. A- Just what you can do and could not do.
10. Q- As Assistant Vice-President of the Bank of Carroll you
11. were familiar with fiduciary accounts?
12. A- Not specifically, I knew what I could do and could not
13. as far as letting the money go.
14. Q- As you reviewed the court order did it give you any
15. problem as to how these checks should have been handled?
16. THE COURT: Did the Bartletts bring a court order with them.
17. A- They brought a court order with them.
18. Q- They brought also a letter of December 29, 1973 indicat-
19. ing that there would be no appeal of the case?
20. A- There was a letter. I don't remember what it said.
21. Q- You are familiar with the letter?
22. A- Yes and the court order.
23. Q- And at that point you had knowledge from Mr. and Mrs.
24.
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1. Bartlett from the discussion in August of the problem over
2. the expense money and the remainder?
3. A- Yes, I knew she was going to buy the trailer. I did not
4. know until this particular day about the upkeep, that I
5. was going to draft the account $800.00 a month.
6. Q- You did know about the expenses?
7. A- I knew they were going to be reimbursed by the court for
8. money spent on the farm, on the barn, etc.
9. Q- And as a banker you read that order to see if it imposed
10. any duty on the bank?
11. A- As I remember it was to be placed in an account for
12. Sadie B. Hampton to be used for her lifetime.
13. Q- It was your understanding the bank let her have the
14. right to draw on that account?
15. A- My understanding it would be perfectly legal for me to
16. accept the money.
17. Q- Do you remember Mrs. Bartlett telling you that Jimmy
18. Ward said if there was any question about the sufficiency
19. of the funds or Mr. Ward's check you could call the
20. Bank of Virginia and verify it?
21. A- I don't think I questioned that.
22. Q- So far as you were concerned there was no doubt about
23. Mr. Ward's check being sufficient and proper?
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1. A- Right.
2. Q- Did you agree upon any restrictions with Mrs. Hampton
3. as to when she could draw on her account?
4. A- Only on the 6½%.
5. Q- So far as you were concerned you did not agree to any
6. restrictions to be placed on her to prevent her from
7. drawing on her account while waiting for the Ward check
8. to clear?
9. A- No.
10. Q- Was there any agreement between you on behalf of the
11. bank and the Bartletts as to whether they had to wait
12. for any length of time for the checks to clear before
13. they wrote checks on their account?
14. A- No.
15. Q- If they had asked for cash would you have given that to
16. them?
17. A- No.
18. Q- Would you have given $500.00 cash?
19. A- A lot of that would have been on what particular mood
20. I was in that day. I had no prior banking experience
21. with the Bartletts.
22. Q- If Mrs. Hampton instead of writing this check to
23. Elwood and Elwood depositing his $12,500 had written
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1. it for $12,000 or $12,250 and a separate check to Elwood
2. for $250.00 would you have cashed that check?
3. A- I probably would have called the bank to see if the
4. check was good.
5. Q- What about $50.00?
6. A- The bank would not question that bank.
7. Q- Which bank?
8. A- The Bank in Galax. I would have somehow come around
9. with an agreement with them that the money would have
10. to be there a certain amount of time.
11. Q- How many days?
12. A- At least three days.
13. Q- Even under your own practice in existence at that time
14. then either Mrs. Hampton or Mr. and Mrs. Bartlett could
15. have pulled out all the money out of that account after
16. three days?
17. A- As far as I was concerned.
18. Q- That would have been by the 6th?
19. A- Yes, it takes three days for a check to clear.
20. Q- There is also a clearing house rule?
21. A- I don't know, right now I think it is twenty-four hours.
22. Q- Now, when a depositor brings money to the Bank of
23. Carroll an account is set up in their name, is that right?
24.
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1. A- Yes.
2. Q- It is posted to a ledger?
3. A- Yes.
4. Q- What is the bank's practice insofar as mailing statements
5. and returning checks or items to the depositors?
6. A- They are mailed once a month.
7. Q- What day of the month are those mailed?
8. A- We stuff the envelopes, get everyone's account ready and
9. on the last day of the month, usually keep them and pass
10. them out, keep them four or five days and pass them out
11. and then mail them.
12. Q- They are stuffed and put together on the last day of the
13. month?
14. A- Yes.
15. Q- And go out four or five days thereafter?
16. A- Yes.
17. Q- Isn't the bank required by law to send the checks and
18. paid items to the depositors once a month?
19. MR. CAMPBELL: Your Honor, I have listened to a great deal.
20. Mr. Pullium has testified he is not familiar with banking
21. laws. I don't see any purpose in Mr. Trabue asking
22. Mr. Pullium what the law requires.
23. THE COURT: Do you know what the law or your practice was?
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1. A. I know what the practice was, I don't know the law.
2. Q- Was it the bank's practice to send all depositors the
3. statement which is a copy of the ledger?
4. A- No, sir, only active accounts.
5. Q- It was the bank's practice on all active accounts to send
6. out a statement and paid items once a month?
7. A- Yes.
8. Q- What if during the period of the month, the beginning of
9. the month the account is active and on the last day of
10. the month it has been closed out, is it not the practice
11. of the bank to send the customer a statement of any items
12. that have been active sometime during that month?
13. A- Yes.
14. Q- Do you know what happened to the ledger card of Sadie
15. Hampton?
16. A- For which month?
17. Q- January, 1974?
18. A- No, sir.
19. Q- You were with the bank when a motion was sent to produce
20. copies of all the records?
21. A- Yes.
22. Q- Do you recall at that time the bank could not locate the
23. ledger?
24.
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1. MR. CAMPBELL: We still cannot find it.
2. Q- That would be the summary that would show the date these
3. checks were posted on the deposit of Mrs. Hampton, is
4. that correct?
5. A- Yes.
6. Q- And that would be the statement that would show any
7. subsequent reversal of the transaction?
8. A- Yes.
9. Q- And that is not available?
10. A- To my knowledge, no, at the time I left the bank.
11. Q- Do you know whether the statement of account for any
12. items on the Bartlett accounts were mailed to the
13. Bartletts in the normal course of business?
14. A- I have no idea.
15. Q- Did you receive a letter from Archie Campbell dated
16. January 8, 1974?
17. A- Did I receive one, no, sir. Someone received one. I
18. don't know whether it was addressed to me or not.
19. Q- You went to Richmond that week-end, around the 9th or 10th?
20. A- Sometime in that area.
21. Q- Before you went to Richmond did you not read a letter
22. from Archie Campbell concerning Sadie's account?
23. A- I read a letter from Archie Campbell the date Mrs. Hampton
24.
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1. came in.
2. MR. CAMPBELL: Would you show him the letter and ask him
3. if he saw that letter.
4. Q- I show you Exhibit 15, a letter January 8, 1974 with
5. reference to Sadie B. Hampton. Did you see that letter
6. before you went to Richmond?
7. A- I don't think I saw this letter until I came back from
8. Richmond.
9. Q- Isn't it a fact that you subsequently had a discussion
10. with Mrs. Bartlett and told her that you had seen that
11. letter, thought nothing of it and went on to Richmond,
12. that your father had called you Saturday evening upset
13. and you told your father you didn't think it was anything
14. to worry about?
15. A- I don't remember seeing this letter until I came back
16. from Richmond. He opened the letter and read it to me.
17. Q- You don't recall making a statement in the presence of
18. Mr. Campbell and Mr. Burton and me that before going to
19. Richmond you had seen that letter?
20. A- No, sir, I do not.
21. MR. TRABUE: May Mr. Campbell and I approach the bench,
22. please?
23. (The Court and counsel retired to chambers)
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1. MR. TRABUE: Your Honor, for purposes of impeachment and
2. reflecting upon the credibility of this witness, this is
3. an important point in this case, I would like to ask
4. Mr. Pullium whether he has ever plead guilty to a felony,
5. and this is a proceeding in the United States District
6. Court, his guilty plea to embezzlement from the Bank of
7. Carroll. I didn't want to do it before taking the matter
8. up with the court.
9. THE COURT: You want to empeach your own witness?
10. MR. CAMPBELL: Mr. Trabue called him as a witness. He did
11. not call him as an adverse witness. He is a former employee
12. of the bank. He has no interest in the bank whatsoever now.
13. I don't know under what rule Mr. Trabue can empeach his
14. own witness.
15. MR. TRABUE: I ask the Court to consider him as an adverse
16. witness.
17. THE COURT: He hasn't been adverse except maybe on one
18. point as to whether he seen Archie Campbell's letter before
19. he went to Richmond. Up to that point you were getting
20. along fine.
21. MR. CAMPBELL: Mr. Trabue knew he was going to answer it
22. that way because that is the way he testified in the
23. depositions.
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1. THE COURT: If that is true I can't declare him adverse.
2. He is your witness. You can't empeach him.
3. (The Court and counsel returned to the courtroom where
4. direct examination continued as follows:)
5. Q- Mr. Pullium, did the Bank of Carroll have a microfilm
6. device or a process of making copies of items or all the
7. items that passed through the bank?
8. A- Yes.
9. Q- And pursuant to a motion to produce did you assist in
10. collecting the documents that were to be supplied by the
11. bank to us as attorneys for the Bartletts?
12. A- Yes, sir, I am sure I did.
13. MR. CAMPBELL: They have already been introduced in evidence.
14. MR. TRABUE: Not the copies.
15. MR. CAMPBELL: I will agree you can put them in, too, if we
16. can get along.
17. MR. TRABUE: Will you stipulate that is a correct copy?
18. MR. CAMPBELL: Certainly.
19. Q- I show you a zerox copy that was furnished to counsel
20. for plaintiff. Do you recognize that?
21. A- Yes.
22. Q- I notice that the original checks have got a bank stamp
23. on them with the words "Not". The zerox copy which was
24.
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1. produced pursuant to motion just says "Paid"?
2. A- Yes.
3. Q- Do you know how it came to be that the copies produced
4. are not copies of the original checks or can you explain
5. why the word "Not" is not on the copies produced?
6. A- "Not" is a hand stamp. Whether a check is good or whether
7. it is bad it is marked paid.
8. Q- Can you tell us when the zerox copies of these checks
9. were made?
10. A- No.
11. MR. CAMPBELL: Can we stipulate and it is clear in the
12. evidence you have already taken that these checks were by
13. direction of the Court and Mr. Pullium testified in his
14. deposition and the "not" was hand stamped later. These were
15. photo copies.
16. MR. TRABUE: Will you stipulate that the word "not" was
17. placed on them January 12th.
18. MR. CAMPBELL: I don't know why it was not on there January
19. 12th.
20. MR. TRABUE: I would like to offer these as an exhibit.
21. (Plaintiff's Exhibit No. 26 received and marked filed.)
22. Q- After the checks had been dishonored did you have any
23. subsequent conversations with Elwood Bartlett?
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1. A- Yes.
2. Q- What were those conversations?
3. A- I don't remember how many conversations I had but I don't
4. know whether I actually called Elwood but I received
5. calls from him. Of course, he wanted to know what was
6. going on. I don't think he had talked to anyone person-
7. ally. I think his wife had talked to bank officials.
8. He wanted to know what seemed to be the problem. I told
9. him there seemed to have come up a problem as to whether
10. this money had been properly handled by the bank and by
11. the attorneys and Mrs. Hampton and I didn't know what was
12. going to come about but I thought everything would work
13. out and he would get his money.
14.
15. Q- Do you remember telling him the court hadn't let you know
16. anything yet?
17. A- Right.
18. Q- When did that conversation occur, after January 12th?
19. A- Probably 14th or 15th.
20. Q- Sometime after the 12th?
21. A- Of course, I guess we had several conversations after
22. that until it was all settled.
23.
24. CROSS EXAMINATION BY MR. CAMPBELL:
25. Q- Mr. Pullium, you were not in Hillsville and you did not
26.

1. participate in any of the discussions concerning what was
2. to be done with Mrs. Hampton's and Mrs. Bartlett's checks?
3. A- No, sir.
4. Q- Your father did telephone you and ask you what sort of
5. check opened this account?
6. A- Yes.
7. Q- And you told him it was a check on Jim Ward?
8. A- Yes.
9. Q- He wanted to know if it was a court check?
10. A- Yes, sir, he did.
11. Q- Mr. Bartlett had told you back in August, didn't he
12. that when the farm, from whatever the farm brings he
13. would automatically get $32,500, aren't those your notes?
14. A- Yes, sir.
15. Q- And would you just read that statement right to the
16. jury?
17. A-"From whatever farm brings he automatically gets back
18. $32,500 for work and improvements and $12,500 for Mobile
19. home which his grandmother is going to buy from him."
20. Q- That says nothing about support and maintenance?
21. MR. CAMPBELL: I would like to introduce that as Exhibit 1.
22. (Exhibit No. 1 received and filed.)
23. Q- He had not told you there was going to be any contro-
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1. versy about whether he got $32,000?
2. A- No.
3. Q- He said he automatically got the $32,000?
4. A- Right.
5. Q- When Mrs. Hampton came in with Mr. Ward's check had
6. Mr. Ward told you there were any restrictions on what
7. she could do with this money?
8.
9. A- No, sir, no restrictions.
10. Q- And he mentioned the court order and said you might need
11. it and you might not. He didn't consider it very
12. important?
13. A- That's correct.
14. Q- And you didn't consider it very important?
15. A- That's correct.
16. Q- And when Elwood had told you he was automatically going
17. to get $32,000 you didn't think there was anything
18. unusual about the $30,000 being written, did you?
19. A- No, sir.
20. <u>RE-DIRECT BY MR. TRABUE:</u>
21. Q- The notes referred to on that exhibit go back to
22. discussions before he was turned down on the loan, is
23. that correct?
24. A- Yes, sir.
25.
26.

1. Q- You don't know what happened after that so far as the
2. $19,500 that he was allowed by the court for improve-
3. ments on the farm?
4. A- What do you mean I don't know what happened after that?
5. Q- Do you know anything about the $19,500 the court was to
6. allow him for improvements on the farm?
7. A- No, I just knew, he showed me what he had done to the
8. farm and to the house and what he said the court was
9. going to allow him to get back. He said he had been
10. and talked to Judge Matthews.
11. Q- And $19,500 and $12,500 is $32,000?
12. A- Right.
13. Q- That is pretty close to the figure you wrote down?
14. A- Yes.
15. MR. CAMPBELL: RE-CROSS:
16. Q- He automatically gets back $32,500; $19,500 for work
17. and improvements on the farm and $12,500 for Mobile hone.
18. What did you think he was talking about work on the farm?
19. A- Barns, fences, tractor, feed and pasture. It just
20. looked real good out there. He was telling me how he
21. had worked and it looked good.
22. Q- He did tell you in August that he expected to be re-
23. imbursed for expenses paid to support his grandmother?
24. A- Yes.
25.
26.

1.
2. JOE LAWSON
3. Joe Lawson, a legal and competent witness, after first
4. being sworn, testifies as follows:
5. DIRECT EXAMINATION BY MR. TRABUE:
6. Q- Mr. Lawson, will you state your full name, please?
7. A- Joseph C. Lawson.
8. Q- What is your age?
9. A- Forty-five.
10. Q- For whom are you employed?
11. A- Bank of Carroll.
12. Q- What is your official position?
13. A- Executive Vice-President.
14. Q- How long have you worked for the Bank of Carroll?
15. A- Since March, 73.
16. Q- Prior to that time did you have any banking experience?
17. A- No.
18. Q- What was your first position with the Bank of Carroll?
19. A- Head Teller.
20. Q- Have you gone to any schools and had any banking training?
21. A- Not banking. I had fourteen years with a loan company
22. here in Hillsville, finance company.
23. Q- Mr. Lawson, were you involved in any way in the initial
24. deposit?
25.
26.

1. A- No, sir.
2. Q- When did it first come to your attention there was a
3. problem?
4. A- I believe it first came to my attention that we had
5. received a letter from Mr. Campbell, the first time
6. I had any knowledge of any controversy.
7. Q- Do you recall when that was?
8. A- No.
9. Q- What day of the week?
10. A- No, sir.
11. Q- At any point were you given any instructions as to what
12. was to be done and who to call?
13. A- Yes, Mr. Pullium told me to call Mrs. Hampton and
14. Mr. Bartlett. Originally I thought it was the 11th.
15. I checked my record last night, it was the 12th.
16. Q- You previously testified you were positive it was Friday
17. evening?
18. A- I was positive and had I testified yesterday I would
19. have said that. Apparently, he must have called
20. Mr. Geisler, there was a phone call to Mr. Geisler on
21. the 11th.
22. Q- Wasn't the decision made on Friday evening to dishonor
23. the checks?
24.
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1. A- I don't know.
2. Q- Didn't you previously testify that the decisions were
3. made on Friday evening?
4. MR. CAMPBELL: Would you refer me to the page?
5. MR. TRABUE: Page 162.
6. MR. CAMPBELL: What line?
7. MR. TRABUE: 14. "The one thing I want to be sure, you are
8. positive it was Friday evening? A- Yes, I am positive. I
9. am under oath." Is that your answer?
10. A- That was my belief until yesterday afternoon, that was
11. my belief.
12. Q- Page 18, "And you know then that the bank had made up
13. its mind that the checks were going to be returned?
14. A- I don't know when the bank made up their mind."
15. A- I don't know.
16. Q- But it was Friday?
17. A- It was not Friday. It was Saturday. I made the phone
18. call on the 12th. I had no authority to make any
19. decisions. I only followed instructions.
20. Q- Do you recall being at the bank on Friday afternoon
21. working late?
22. A- We always work late on Friday afternoon.
23. Q- Were you instructed on Friday afternoon to participate
24.
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1. in debiting and crediting this account?
2. A- No.
3. Q- Were you consulted about what should or should not be
4. done with the checks that had been posted to the ledger?
5. A- No.
6. Q- Did you ever participate in that?
7. A- No, sir.
8. Q- Did you ever have any discussion with Judge Matthews?
9. A- No, sir.
10. Q- Were you told on Saturday that anyone else had had any
11. discussion with Judge Matthews, Saturday, the 12th?
12. A- I don't recall what date it was. Mr. Cooley said he
13. had been in touch with Judge Matthews.
14. Q- Mr. Cooley told you what Judge Matthews had said?
15. A- No, I don't think so. Mr. Cooley advised me I believe
16. on Saturday that we would have to send the checks back.
17. Q- That you would have to send the checks back?
18. A- That we would have to send the checks back unless the
19. controversy was cleared up.
20. Q- Did you send the checks back?
21. A- No.
22. Q- Do you recall on Monday or Tuesday going to Mr. Pullium
23. and asking him what to do with the checks?
24.
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1. A- I didn't have anything to do with the checks. The only
2. thing I did was call Mr. and Mrs. Bartlett and Mrs.
3. Hampton and send a telegram to the Federal Reserve Bank,
4. that is all I had to do with the checks.
5. Q- On Tuesday or Wednesday you did not go to Mr. Pullium
6. and say, "What are we going to do with the checks?"
7. A- Not to my knowledge, no.
8. Q- Did you ever attend or were you ever asked to attend any
9. hearings before Judge Matthews?
10. A- No.
11. Q- Have you ever had any discussion with Mr. and Mrs. Bartlett
12. concerning this problem other than that one telephone
13. call?
14. A- I talked to Mrs. Bartlett.
15. Q- What did you tell her?
16. A- I told her apparently there was some controversy over
17. the deposit and we would have to send the checks back.
18. I don't know what else.
19. Q- Did Mr. Cooley tell you he thought there was going to be
20. a hearing with Judge Matthews on Monday?
21. A- Not to my knowledge.
22. Q- You wouldn't have been able to tell her that?
23. A- I said the checks would be sent back unless the problem
24.
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1. was resolved?
2. Q- As of Saturday when you called her the problem had not
3. been resolved?
4. A- No.
5. Q- Did you tell her anyone had been in touch with Judge
6. Matthews?
7. A- No.
8. Q- As of the 12th there was at least a balance of $9,000
9. after deducting all the other checks that were going to
10. be returned?
11. A- I don't know. I had nothing to do with the case other
12. than what I have told you.
13. Q- Did you tell Mrs. Bartlett that all of the checks were
14. going to be returned?
15. A- I didn't distinguish between the checks. I didn't know.
16. Q- Did you know the checks which had already been paid on
17. Mrs. Hampton's account, checks to the Bartletts, were
18. going to be reversed?
19. A- No.
20. Q- So Mr. Pullium or no one else at the bank told you to
21. attempt to explain the situation?
22. A- No, sir. I could not have explained, I had no knowledge
23. of it. I couldn't have advised them one way or the other
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1. or the bank.
2. Q- So the Bartletts had no way of knowing whether anybody
3. had seen the Judge, you just didn't tell them anything?
4. A- No.
5. Q- Did you offer any help?
6. A- No, I couldn't help them.
7. Q- Were your instructions to talk to Mrs. Hampton?
8. A- Mr. Pullium said to call Mrs. Hampton. I couldn't get
9. her.
10. Q- Do you know whether anybody else in the bank called
11. Mrs. Hampton?
12. A- No.
13. CROSS EXAMINATION BY MR. CAMPBELL:
14. Q- Mr. Lawson, you had a telephone bill or something in
15. your pocket?
16. A- Yes, I looked this up after Mrs. Bartlett testified. I
17. thought she was making a mistake.
18. Q- To 236-5012?
19. A- Yes.
20. MR. CAMPBELL: We would like to introduce in evidence
21. this bill as Defendant's Exhibit No. 2.
22. (Exhibit No. 2 received and marked filed.)
23. Q- Is the bank's number 728-3111?
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1. Q- Mr. Pullium wrote out a memo to you about what to tell
2. Mrs. Hampton?
3. A- Yes, sir.
4. Q- I show you this piece of paper and will ask you if that
5. is what Mr. Pullium gave you?
6. A- Yes, sir.
7. Q- Whose handwriting is that?
8. A- Mr. Pullium's.
9.
10.
11. Q- I notice you have there 236-5012, whose handwriting
12. is that?
13. A- My handwriting.
14. Q- The number 23-4714. Whose number is that?
15. A- I don't know. I was thinking that was Mrs. Hampton's.
16. I was to call both of them.
17. MR. CAMPBELL: I would like to introduce this as Defendant's
18. Exhibit No. 3.
19. (Defendant's Exhibit No. 3 received and marked filed)
20. MR. TRABUE: For what purpose? He said he did not get in
21. touch with Mrs. Hampton.
22. MR. CAMPBELL: It has the Bartlett's telephone number on it.
23. I am going to ask him to read what Mr. Pullium wrote him.
24. Do you object?
25.
26.

1. MR. TRABUE: Yes.
2. THE COURT: On what grounds?
3. MR. TRABUE: On the grounds he has already said what he
4. said the conversation was with the Bartletts. What he was
5. told to tell Mrs. Hampton has nothing to do with it.
6. THE COURT: Was this a letter or what he read?
7. MR. CAMPBELL: This is what Mr. Pullium gave Mr. Lawson and
8. told him to communicate that message and the telephone
9. number of the Bartletts is on this.
10. THE COURT: Go ahead.
11. Q- Mr. Lawson, you said Mr. Pullium gave you this and told
12. you what you were to tell them?
13. A- Yes.
14. Q- It says, "Mrs. Hampton, the Court apparently is contest-
15. ing the distribution of the funds you deposited with us.
16. Therefore, we must hold all the funds until the court
17. tells us what to do. Any funds you want to give Elwood
18. or anyone else must be approved by the court. Therefore,
19. just tell your lawyer to call Mr. Raleigh Cooley. They
20. can try to work things out between them. Your $48,736.45
21. is with us and safe, but you must have court approval
22. to spend it." That was given to you on the 12th of
23. January?
24.
25.
26.

1. A- Yes.
2. Q- Now, I show you a printed note and will ask if you
3. recognize that?
4. A- This is my handwriting.
5. Q- Who did you make that note to?
6. A- I am not sure, Mr. Campbell, apparently it must have
7. been to Mr. Pullium. I was to get in touch with him.
8. Q- That was done on Saturday the 12th. We would like to
9. introduce this as Defendant's Exhibit No. 4.)
10. (Note received and marked Defendant's Exhibit No. 4.)
11. Q- And would you read to the jury what you wrote?
12. A- "Raleigh said to send all Elwood Bartlett's checks back."
13. Q- Who is Raleigh?
14. A- Mr. Cooley.
15. Q- He was attorney for the bank?
16. A- Yes.
17. Q- I show you a telegram send the Federal Reserve Bank,
18. Richmond, Virginia, dated Jan. 12th, 1:30 P. M.?
19. A- I sent the telegram.
20. Q- That is the one you sent?
21. A- Yes.
22. Q- Mr. Pullium instructed you to send that telegram?
23. A- Yes.
24.
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1. Q- And it reads, "Federal Reserve Bank, Richmond, Virginia.
2. Non-Payment follows: Alleged Court contested funds:
3. $6,105; $8,000; $2,012.88 Mrs. Elwood Bartlett. Telephone
4. follows on 1014-74. Bank of Carroll." And that was your
5. connection with the whole transaction, was to take the
6. message from Raleigh, send the telegram and tell Mr. and
7. Mrs. Bartlett and Mrs. Hampton what Mr. Pullium told you
8. to tell them?
9. A- Yes.
10. RE-DIRECT BY MR. TRABUE:
11. Q- This note that appears to be addressed to Mrs. Hampton,
12. that was not communicated to Mrs. Hampton by you?
13. A- No.
14. Q- What portion of this?
15. A- I was to tell both parties.
16. Q- It doesn't say that?
17. A- No.
18. Q- Were you to call Elwood and tell him the $48,000 was safe?
19. A- No.
20. Q- You didn't call Elwood and tell him?
21. A- I was to call and tell what Mr. Pullium said.
22. Q- This $48,000 was safe, Elwood and/or Mrs. Hampton,
23. Elwood had $30,000, was it safe?
24.
25.
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1. A- Any money is safe.
2. Q- Did you tell Mrs. Bartlett that the money had all been
3. taken out of their account and put back in Sadie's
4. account?
5. A- No.
6. Q- When you told the jury you said the $48,000 was safe,
7. that was the $48,000 of Sadie's, you didn't say anything
8. about that to Mrs. Bartlett?
9. A- I have no knowledge of whether I said that.
10. Q- When was this written out?
11. A- It must have been Friday, it could have been Saturday.
12. Q- You don't know whether it was written Friday or Saturday?
13. A- No.
14. Q- When was it given to you?
15. A- Apparently on the 12th.
16. Q- But it could have been given to you on the 11th to do on
17. the 12th?
18. A- It could have been.
19. Q- Was it laid on your desk or given to you?
20. A- Mr. Pullium probably gave it to me.
21. Q- You are not sure?
22. A- No.
23. Q- There is nothing in this note that would give you an
24.
25.
26.

1. instruction to clarify with either Mrs. Hampton or the
2. Bartletts what had been done with the money that had already
3. been paid to creditors, was there?
4. A- No.
5. Q- This note, "Raleigh said to send all Elwood Bartlett's
6. checks back." When did you get that?
7. A- I am not sure.
8. Q- Who did you get it from?
9. A- Mr. Cooley could have talked to me, might have called me,
10. I am not sure how Igot the message.
11. Q- Why did you write it down?
12. A- To have a future reference.
13. Q- So you were writing this down?
14. A- Yes.
15. Q- I suppose if Raleigh had said the Judge said send them
16. back you would have said the Judge said send them back?
17. A- Yes.
18. Q- Mr. Campbell refers to Mr. Cooley being the bank's
19. attorney, he was also a major stockholder and Director
20. of the Board?
21. A- Yes.
22.
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1.
2. LONNIE PULLIUM, SR.
3. Lonnie Pullium, Sr., a legal and competent witness, after
4. first being sworn,testifies as follows:
5. DIRECT EXAMINATION BY MR. TRABUE:
6. Q- Would you state your full name, please?
7. A- Lonnie Leo Pullium.
8. Q- You are Lonnie, Jr.'s father?
9. A- Yes.
10. Q- And what is your age?
11. A- Fifty-five.
12. Q- Where do you reside?
13. A- Eden, North Carolina.
14. Q- Where are you presently employed?
15. A- I am not employed.
16. Q- Have you previously been employed by the Bank of Carroll?
17. A- Yes.
18. Q- What was your position?
19. A- President and on the Board of Directors.
20. Q- Were you one of the founders of the bank?
21. A- Yes.
22. Q- Did you own stock in that bank?
23. A- Me and my wife together own5000 shares, I think 2500
24. apiece.
25.
26.

1. Q- Tell us what your banking experience was prior to March,
2. 1972?
3. A- I was employed with Wachovia prior to World War II, then
4. I went to Walnut Cove, in July, 1948 I became an assistant
5. examiner and did that until February, 1960, then I went to
6. Rocky Mount as Assistant Vice-President of Peoples Bank;
7. in February, 1963 I went to Eden with a trust company,
8. stayed there until officially May of 72.
9.
10. Q- Have you had any special banking courses?
11. A- No, I enrolled for some, I never did take them.
12. Q- Did you flunk them?
13. A- I think I did.
14.
15. Q- I think you told me before you signed up for two or three
16. and flunked?
17. A- Yes.
18. Q- Do you consider yourself experienced in banking practices?
19. A- Pretty much so.
20. Q- Did you know all about the banking laws, Uniform Commer-
21. cial Code as it applies to banks?
22.
23. A- The Uniform Commercial Code is new to me but the Clearing
24. House Rule is the only thing I ever knew. You pointed
25. out it was the midnight rule, the twenty-four clearing
26. house rule, I did know that.

1. Q- Before when we took depositions you had never heard
2. of the midnight rule?
3. A- I have never worked for a bank who was a member of the
4. Federal Reserve except Walnut Cove.
5. Q- The Bank of Carroll was a member of the Federal Reserve?
6. A- No.
7. Q- Who was it in the Bank of Carroll who had all the know-
8. ledge of banking practices? Who was it that was employed
9. by the bank?
10. A- I was suppose to have more knowledge than anyone else.
11. Q- You were suppose to know the time and terms under which
12. any cash item or check is paid?
13. A- Yes.
14. Q- The Bank of Carroll is a member of the Federal Depositors
15. Insurance Corporation?
16. A- Yes.
17. Q- That is different from this other thing you are talking
18. about?
19. A- Yes.
20. Q- When did you first have any knowledge of any of the
21. financial circumstances of the Bartletts?
22. A- You mean as to loan application or these checks?
23. Q- The loan application?
24.
25.
26.

1. A- I believe I have read it was August of 73 when Elwood
2. made an application to the bank for a loan.
3. Q- And were you sitting on the board that was to consider
4. approval or disapproval?
5. A- Yes.
6. Q- Did you turn down the loan?
7. A- Yes.
8. Q- For what reason?
9. A- Because he was overextended and there was a judgment.
10. Q- You didn't believe his credit was good?
11. A- Right.
12. Q- Did you tell Lonnie that?
13. A- No, we told Lonnie to give the polite answer which was
14. quite often used in banking.
15. Q- Lonnie testified as far as he was concerned his credit
16. was alright?
17. A- Right.
18. Q- But you were of a different opinion?
19. A- The whole board was of a different opinion.
20. Q- The Bartletts weren't told the truth about why that
21. loan was declined?
22. A- They were given sufficient explanation.
23. Q- You just didn't come out and tell the Bartletts the truth,
24.
25.
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1. that the reason was their credit?
2. A- They probably knew.
3. Q- They had been told by Lonnie that their credit was alright?
4. A- I don't know.
5. Q- Lonnie had told the board that he had been out and
6. appraised the land and it would be worth the loan?
7. A- I will not dispute what you are saying because I don't
8. know the details that much.
9. Q- When is the next time you found out, did there come a
10. time when you were told there had been a substantial
11. deposit made in your bank relating to Mrs. Hampton and
12. the Bartletts?
13. A- Yes.
14. Q- When was that?
15. A- The only thing I can do is guess, probably two days
16. after the deposit was made.
17. Q- But after the deposit was made and before Mr. Campbell's
18. letter of January 8th was received?
19. A- Yes.
20. Q- Do you know whether or not the Bartletts or Mrs. Hampton
21. were given any gift for making those deposits?
22. A- Oh, no.
23. Q- Was the bank giving away Christmas hams then?
24.
25.
26.

1. A- We gave a few, yes.
2. Q- Was Mrs. Hampton given a ham and the Bartletts a ham?
3. A- If I had known I would be in trouble.
4. Q- Would it make any difference if you knew the ham wasn't
5. any good?
6. MR. CAMPBELL: Your Honor, I object to that.
7. THE COURT: No harm is done but can we stick to the issues.
8. Q- Did you receive a letter January 8th from Archie Campbell?
9. A- Yes.
10. Q- What were the circumstances under which you got it?
11. A- My son went to Richmond on January 11th and as I had
12. completed the work I had in my office sometime in the
13. afternoon I went into Lonnie, Jr.'s office to take care
14. of the work that was in his office and I opened the mail
15. and I ran across this letter from Mr. Campbell.
16. Q- What did you do with the letter?
17. A- I read it and looked at it and didn't know what to do
18. and tried to call Mr. Cooley and finally I got him and
19. he said, "I am eating supper but I will be right down."
20. He came down and we went over it and tried to call
21. Lonnie and we finally got him. I can't remember what
22. hour but before they went to supper. I asked about this
23. deposit.
24.
25.
26.

1. Q- What did he tell you?
2. A- What I was interested in was knowing whose check it was.
3. He told me the same thing that he had told me previously,
4. some days before that it was Ward's, what I was trying
5. to do was verify whose check it was.
6. Q- You said he told you previously whose check it was?
7. A- Yes.
8. Q- So you had known it was Mr. Ward's?
9. A- I didn't pay too much attention. I was hoping that he
10. was going to say it was a court settlement but unfort-
11. unately he said it was James Ward's personal check.
12. Q- Personal check?
13. A- James Ward's collection account.
14. Q- Did you have the decree before you at the time?
15. A- I had the copy that Mr. Campbell had sent in that letter.
16. Q- Did you pull out the bank file and get out the ledger
17. accounts?
18. A- Yes, but I can't tell you the hour of the week I pulled
19. the copy of the decree that Lonnie had received previous-
20. ly. I did finally find it but I don't know the date or
21. hour, there is no way I can remember.
22. Q- What did Lonnie tell you on the telephone about his
23. knowledge of the circumstances?
24.
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1. A- Practically nothing. I was wanting to verify the check.
2. Q- Didn't Lonnie tell you he had seen the decree and he
3. didn't think there was anything improper?
4. A- Yes, but the first thing I told him in banking was not
5. to practice law.
6. Q- But nevertheless he told you he didn't think there was
7. anything wrong?
8. A- He said he didn't see anything wrong with it. I told him
9. "Just like I told you in the banking business you don't
10. practice law."
11. Q- What did you do then?
12. A- Raleigh and Mr. Lawson and myself sat around the bank
13. for ten or fifteen minutes and we just sort of put the
14. thing aside until the next day.
15. Q- Weren't you going out of town the next day?
16. A- No.
17. Q- You weren't planning to spend all Saturday morning in the
18. bank?
19. A- I could have.
20. Q- Didn't you have other plans?
21. A- Not to my knowledge.
22. Q- What all was done on Friday night?
23. A- Verification of the check.
24.
25.
26.

1. Q- Pulled the ledgers?
2. A- Yes.
3. Q- Didn't you pull out the Uniform Commercial Code?
4. A- No.
5. Q- Didn't Mr. Cooley say you spent a lot of time reviewing
6. the code to figure out what to do?
7. A- Yes.
8. Q- If Mr. Cooley were to say he was relying on you for the
9. banking practice was he correct or incorrect?
10. A- There is a possibility we pulled out that little book,
11. little banking law thing, and look at it but so far as
12. a regular law book.
13. Q- You all get the Banking Law Journal?
14. A- We got the one put out by the State of Virginia.
15. Q- Do you recall there is a publication called Banking Law
16. Journal?
17. A- It may be there but I didn't read it.
18. Q- You didn't read it: it comes out monthly?
19. A- I believe it did come through the bank.
20. Q- It was kept in your office?
21. A- No.
22. Q- Friday night did you pull the ledgers out and see what
23. happened?
24.
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1. A- Yes.
2. Q- Do you know to this day what happened to Sadie's ledger
3. sheet?
4. A- No.
5. Q- It just disappeared?
6. A- I have no idea.
7. Q- You are aware the bank had lost Sadie's ledger sheet?
8. A- I believe at the depositions we said there was a copy,
9. my last day in the bank was Oct. 31, 1974, the same day
10. of the depositions.
11. Q- That was your last day?
12. A- I went back in the bank to get my personal belongings,
13. that was my last day.
14. Q- Did you know that during the time we were taking your
15. deposition?
16. A- No.
17. Q- You found out shortly after the depositions had been
18. concluded?
19. A- I am afraid I did.
20. Q- My question again, on Friday night did you and Mr. Cooley
21. and Mr. Lawson pull out the ledger sheets and study them
22. and see what checks had been written?
23. A- To my knowledge we pulled everything.
24.
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1. Q- You found that the two checks, Exhibit 6 and Exhibit 5,
2. drawn on the Bank of Carroll on Mrs. Hampton's account
3. to the Bartletts had been posted as paid on the Hampton
4. account on January 3rd and you found that the two checks
5. had been posted as of January 3rd as a credit to the
6. Bartlett's account?
7. A- If that is my prior deposition, yes.
8. Q- If we had Mrs. Hampton's ledger can we assume that it
9. would show that this item had been posted as paid on
10. her?
11. A- No question, they had been posted to her account.
12. Q- When was the "not" stamp put on these?
13. A- They could have been put on there on the 12th.
14. Q- Could it have been put on there on January 11th?
15. A- I don't think so.
16. Q- Why don't you think so?
17. A- The clerks put this on and the clerks had already gone.
18. Q- So you left instructions Friday night that the word "not"
19. was to be put on them?
20. MR. CAMPBELL: I think you are putting words in his mouth.
21. MR. TRABUE: Your Honor, may I lead him as an adverse
22. witness?
23. THE COURT: Don't lead the witness.
24.
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1. Q- When was the decision made to put the "not" on these
2. two checks?
3. A- After Raleigh Cooley had told us that he had contacted
4. Judge Matthews and that Judge Matthews had instructed him
5. to get that money back and the accounts were frozen.
6.
7. Q- Saturday morning?
8. A- Yes.
9. Q- Did you Friday night call the Bartletts?
10. A- No.
11. Q- Did you try to call the Bartletts?
12. A- No.
13. Q- Did you try to call Sadie Hampton?
14. A- No.
15. Q- Did you try to call Archie Campbell, the attorney?
16. A- No, I called the bank's attorney, Mr. Cooley. I don't
17. know when we discovered these checks.
18. Q- On Friday night did you from the ledger sheet determine
19. that multiple items had been paid on the Bartlett's
20. account?
21. A- Yes.
22. Q- Did you review the dates that the ledger showed that
23. they had been paid?
24. A- Yes.
25.
26.

1. Q- And as for the large number of checks they were posted
2. on the ledger on Friday night at midnight?
3. MR. CAMPBELL: Would you show him the ledger?
4. Q- May I show you the Bartlett's ledger, Exhibit 13, on
5. January 8th the account balance was down to $27,000;
6. items of $9.13; $2,012.88; $105.60; $45.00; $12.73 had
7. been paid, is that correct?
8. A- They had been posted to the account.
9. Q- Was notice of dishonor given on any of those checks?
10. A- Not until the 12th.
11. Q- Who was the notice given to?
12. A- The Feds.
13. Q- The midnight deadline had passed, had it not?
14. A- On those items, yes.
15. Q- The telegram to the Federal Reserve refers to what checks,
16. $6,105?
17. A- Yes.
18. Q- That wasn't one of the checks we talked about?
19. A- No.
20. Q- $8,000, that is not one of them?
21. A- No, it was posted on the 11th I believe.
22. Q- The items that were discussed you said you gave notice
23. to the Feds. Will you please explain to the jury what
24.
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1. you mean?
2. A- As far as the Bank of Carroll was concerned the Federal
3. Reserve was one thing, it was a clearing house.
4. Q- What was the purpose of the clearing house?
5. A- To clear the checks between the banks.
6. Q- For example, take a check for $8,000 drawn on the
7. Bartlett's account to Smith Oil Company. How does the
8. Federal Reserve enter into it?
9. A- He would make a deposit in Wachovia Bank & Trust Company
10. just like you would make a deposit except that deposit
11. first goes to Wachovia and then it goes back in Federal
12. Reserve and the Federal Reserve sends it to the bank on
13. which the check was drawn.
14. Q- That works as to checks that are drawn on one bank and
15. presented for deposit or collection on another bank?
16. A- Clearing House.
17. Q- For transactions between different banks?
18. A- Yes.
19. Q- If a check is drawn on the Bank of Carroll and deposited
20. in the customer's account in the Bank of Galax on the
21. same day it doesn't go through the clearing house?
22. A- No, sir.
23. Q- Your telegram to the Feds, you sent three checks to the
24.
25.
26.

1. clearing house?
2. A- Yes.
3. Q- But you didn't send any of the other checks to the clearing
4. house?
5. A- No, May I tell you why, the Feds don't require you to
6. notify them of the return of anything of $1,000 or less.
7. Q- But dishonor on those items that had been posted on the
8. 8th was not given until the 12th?
9. A- Right.
10. Q- That is past the midnight deadline, is that correct?
11. A- Yes, sir.
12. Q- The other items, $6,1005.00; $50.00; $929.51; $8,000,
13. $863.46 had been posted to the Bartlett's account on
14. January 11th?
15. A- Correct.
16. Q- That was on a Friday?
17. A- Yes.
18. Q- That evening those checks had cleared the clearing house
19. and were in the possession of the Bank of Carroll?
20. A- No, on those items I think we had Saturday to notify the
21. Feds. Those checks came to the bank. A check comes in
22. on Friday morning it is posted to the account on Friday
23. afternoon.
24.
25.
26.

1. Q- Those checks were in the bank's possession on Friday
2. afternoon?
3. A- Yes.
4. Q- When did you give that to Joe?
5. A- Saturday.
6. Q- Saturday morning?
7. A- Yes.
8. Q- Did you see Raleigh Cooley Saturday morning?
9. A- There is a good possibility I did although I can't say.
10. Q- Wasn't your best recollection that it wasn't until
11. after you had left the bank Saturday morning that you
12. talked to Raleigh Cooley by telephone and had a
13. discussion about his conversation with Judge Matthews?
14. A- We were awaiting Raleigh's return call. I talked to
15. Raleigh many times.
16. Q- It was after you left the bank and you talked to him?
17. A- I was at my son's home.
18. Q- You didn't talk to Raleigh until after you left the
19. bank and were at your son's home?
20. A- I got up and worked early on this.
21. Q- Wasn't it after you left the bank and were at your
22. son's home that you left this note?
23. A- I am not sure.
24.
25.
26.

1. Q- Didn't you all make your contingent plans Friday
2. night as to what to do in the event the Judge went
3. one way or the other?
4. A- I don't believe we did.
5. Q- I thought when we talked about this before you said
6. the plans were set up to go either way?
7. A- I don't recall.
8. Q- Do you know when you gave that note to Mr. Lawson?
9. A- I think it was Saturday.
10. Q- Do you know whether you gave it to him before or after
11. you got the message, you had talked to Raleigh?
12. A- I think I had talked to Raleigh at that time.
13. Q- But you don't know?
14. A- I am pretty sure I had.
15. Q- What did Raleigh tell you about the Judge?
16. A- He said, "I am afraid the Judge is going to take these
17. funds from us. He has instructed us to freeze the
18. account and get the funds back together."
19. Q- Did he tell you all of that?
20. A- Yes.
21. Q- He said, "I feel the Judge is going to take the funds
22. from us." That doesn't sound to me like an instruction
23. from the court, it sounds to me like an impression
24.
25.
26.

1. from Raleigh Cooley as to what he was thinking the Judge
2. might do?
3. A- He told me to freeze the funds.
4. Q- What does that mean?
5. A- He told me to get all the funds together and freeze the
6. account and send the checks back. He said the Judge
7. said not to let these funds get out of our hands.
8. Q- A lot of funds were already out of your hands?
9. A- At most $2200.00.
10. Q- So far as Sadie's account $32,000 was out?
11. A- I can't interpret the law. My impression it was not
12. that way.
13. Q- Did Raleigh Cooley tell you that the Judge had said
14. freeze Bartlett's account or did he make any distinction
15. between the accounts?
16. A- It was my understanding all the accounts.
17. Q- It was your understanding or was that clarified?
18. A- Based upon our several discussions I thought I knew
19. what he meant.
20. Q- Your previous testimony, Page 53, Line 21, "I don't
21. recall where I was when I talked to him but I talked
22. to him"?
23. MR. CAMPBELL: Would you back up and begin with Line 18.
24.
25.
26.

1. MR. TRABUE: Let's go back to 12, "Saturday, the 12th,
2. right, and if you ask me if I left at 10:00 or 12:00, I
3. don't know, but I rather think it was about 10:00 or
4. 11:00. I think it was before the bank closed but I left
5. instructions what to do. I left instructions that if
6. Raleigh said to return those checks, that's what we
7. should do and Raleigh, in the meantime, had talked to the
8. Judge and I don't recall where I talked to Raleigh, whether
9. it was over the telephone, it wasn't in person. I don't
10. recall where I was when I talked to him but I talked to
11. him and he said, "The judge is going to take those funds
12. from us." He said, "I feel the judge is going to take
13. those funds from us."?
14. A- That's correct.
15. Q- Page 54, "When did you write out the memorandum?"
16. "Saturday morning after I had talked to Raleigh."
17. A- It was on Saturday.
18. Q- When you use the term "freeze" doesn't that mean stop
19. things where they are?
20. A- I interpreted Raleigh's comments that we were to get
21. them back together.
22. Q- Irrespective of whether they had been paid and irres-
23. pective of creditors?
24.
25.
26.

1. A- I took it he meant to get them all back together and
2. hold them until we heard from the judge.
3. Q- Did you and Raleigh give any consideration to the
4. Bartletts and what effect this action might have on them?
5. A- From the very outset our whole thinking revolved around
6. one thing, to contact the court and do what the court said.
7. Q- The whole thinking was to follow the court's instructions?
8. A- Raleigh wasn't sure what the decree meant, he wanted the
9. court to tell him.
10. Q- The decree says, "It is, therefore, ordered the
11. $57,736.45 be placed in a proper banking institution".
12. That had been done?
13. A- I won't interpret any of that. That was the decision
14. of my attorney. I did the best I could to read it.
15. Q- The fund had been placed in a banking institution?
16. A- Yes.
17. Q- The Bank of Carroll is a proper banking institution?
18. A- Yes.
19. Q- You were aware of the instructions to pay the income
20. from those funds for life?
21. A- Not until Saturday.
22. Q- The bank was aware because of Lonnie?
23. A- As to Lonnie's ability to interpret--I would not try to
24.
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1. interpret the court order. I would call our attorney.
2. Q- When someone brings in $30,000 cash and establishes
3. an account with the Bank of Carroll, whose funds are
4. those?
5. A- They belong to the one who deposits them in accordance
6. with what he told us to do with them.
7. Q- It is not the bank's fund, it is the customer's fund?
8. A- Yes.
9. Q- The Bank of Carroll certainly gives to the community or
10. attempts to give to the community a sense that if some-
11. one deposits funds in that bank they will be taken care
12. of for the benefit of the customer?
13. A- Yes.
14. Q- Louise and Elwood were depositors in your bank?
15. A- I would say yes.
16. Q- They had an account?
17. A- Yes.
18. Q- And they put some $30,000 in it?
19. A- Yes.
20. Q- And those items were marked paid on January 3rd?
21. A- Yes.
22. Q- And after the 5th of January they had a right to draw
23. on them as a matter of right?
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1. MR. CAMPBELL: He is asking Mr. Pullium a legal question.
2. THE COURT: I sustain the objection.
3. Q- When a deposit is established such as the Bartletts
4. on January 3rd from a check drawn on another account
5. in the Bank of Carroll and the transaction takes place
6. within the Bank of Carroll and does not involve any
7. intermediary bank do those depositors as a matter of
8. right have a right to drawn on those funds?
9. A- Our practice is this, was to send the check back in
10. twenty-four hours and as to when that person could
11. come in and get the cash on that check it would have
12. probably been several days later.
13. Q- Lonnie testified it would be three days?
14. MR. CAMPBELL: He said at least three days.
15. Q- Do you know the number of days?
16. A- Sometimes it requires more time than others. The more
17. money involved the more precautions you take.
18. Q- Did the Bartletts have a right to cash on January 5th?
19. A- We would go over to the bank who was handling the check
20. to make sure the thing was paid.
21. Q- You would go to the Bank of Virginia?
22. A- We would probably go over there.
23. Q- How about January 7th? Would you have gone over on
24.
25.
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1. January 7th?
2. A- Oh, certainly.
3. Q- This is the check that established the deposit and was
4. paid on January 7th?
5. A- Yes.
6. Q- By the Merchants & Farmers Bank of Galax?
7. A- Yes, the Bank of Virginia.
8. Q- So if the Bartletts had wanted to take out the entire
9. balance on January 7th and you had gone over there
10. and they could have shown you this had been paid you
11. would have given them the cash?
12. A- Yes.
13. Q- The Bartletts could have cleaned out that account on
14. January 7th?
15. A- If I had made the trip over there and seen this infor-
16. mation.
17. Q- If the Bartletts had come in the bank and wanted to do
18. that you would have had to have done that?
19. A- Yes, I would have gone with them.
20. Q- Did you consider on the evening of Friday, the 11th or
21. the morning of Saturday, the 12th, give any consideration
22. to the status of the Bartletts account and whether it
23. had been paid or not?
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1. MR. CAMPBELL: I think Mr. Trabue has asked that question
2. the third time.
3. THE COURT: I believe he has.
4. Q- What, if anything, did the bank do to try to protect
5. the Bartletts so far as the checks they had written
6. creditors?
7.
8. A- Nothing was said outside the bank personnel or directors
9. until after the judge told Raleigh what to do. There-
10. fore we would not have made any effort to contact any-
11. body until the judge told us because we didn't know
12. which way we were going.
13. Q- You didn't even call the Bartletts to tell them you
14. were going to talk to the judge?
15.
16. A- No.
17. Q- Afterwards Mr. Lawson was given some information to call
18. the Bartletts and they were not told exactly what was
19. happening?
20. A- We were telling them that the funds were being contested
21. in court and as quickly as the court gave us instructions
22. we would abide by the court's decision immediately.
23. Q- Did you invite them to appear before the court to
24. participate in the solution of the problem?
25.
26. Q- The only contact we had with the Bartletts to my know-

1. ledge was on Saturday afternoon when Mr. Lawson was suppose
2. to have given them the information in this memorandum here.
3. Q- You gave the instructions to the personnel at the bank
4. as to what to put on the checks that were being returned
5. to creditors?
6. A- Yes.
7. Q- What were those instructions?
8. A- Alleged Court Contested Funds.
9. Q- Did you later find out that the instructions were not
10. carried out on those checks?
11. MR. CAMPBELL: I think the one to the Elks Club is the only
12. one, that says, "No account."
13. MR. TRABUE: That's correct.
14. Q- Mr. Pullium, a series of checks that have already been
15. introduced in evidence, what were your instructions?
16. A- Alleged Court Contested Funds.
17. Q- Those were the instructions you left for the personnel
18. to put on them?
19. A- Yes.
20. Q- I will show you a series of fourteen checks and what
21. does it say on those fourteen checks?
22. A- One of them says, "Contested Funds."
23. Q- That's correct, they say "Contested Funds." Is that
24.
25.
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1. consistent with your instructions?
2. A- No.
3. Q- What efforts were made to see that your instructions
4. were carried out so the creditors would know what
5. happened?
6. A- The only thing I did was write this memorandum to
7. Mr. Lawson.
8. Q- What supervision did you exercise over the people in the
9. bank to be sure your instructions were followed when
10. the checks were returned to creditors?
11. A- What did I do?
12. Q- Yes?
13. A- Nothing.
14. Q- The check to the Elks Club says "No account." Was that
15. in accordance with your instructions?
16. A- No, it is not in accordance with my instructions but
17. have you determined that this check probably came back
18. through the bank the second time and my instructions
19. were probably a couple of months old and the employees
20. had overlooked the fact it was suppose to be "Alleged
21. Court Contested Funds."
22. Q- Were there any funds in that account after the 12th?
23. A- No.
24.
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1. Q- When did the bank return the ledger to the Bartletts,
2. monthly statements?
3. A- We render the statements on the last day of each month.
4. They are mailed by the 5th or 6th.
5. Q- Did you know, Mr. Pullium, that the statements for the
6. Bartletts account were never mailed to them and the first
7. time they saw them was after the then law suit?
8.
9. MR. CAMPBELL: I think Mr. Trabue is arguing with the wit-
10. ness.
11. THE COURT: Don't argue with the witness.
12. Q- Did you understand on Saturday there was to be a hearing
13. before the court on Monday?
14. A- Raleigh told me there was.
15. Q- Was there a hearing?
16. A- You must remember after I turned it over to our attorney
17. I did nothing. If we got a telephone call I answered
18. that. As far as I am concerned after the checks went
19. back and Raleigh Cooley instructed that I made no further
20. decisions in the matter.
21.
22. MR. CAMPBELL: We will stipulate that Mr. Pullium was never
23. at a hearing.
24. Q- There was an order entered apparently at the request of
25. the bank of Carroll on January 22, 1974 by Judge Matthews,
26.

1. were you up here before Judge Matthews?
2. MR. CAMPBELL: I think we will stipulate he was never
3. up here.
4. THE COURT: He can hear.
5. Q- Did you know that Mr. Cooley was requesting the entry
6. of this order?
7. A- The only thing I know Mr. Cooley told me the judge was
8. going to have a hearing on Monday. After that I attended
9. no hearing. I paid very little attention to the proceedings.
10. Q- This is the order of January 22, 1974?
11. A- An order like this did come to the bank but all I did
12. was to refer it to the attorney.
13. Q- To your knowledge did any official of the bank except
14. Mr. Cooley appear before the court?
15. A- I believe Lonnie, Jr. did go to one hearing.
16. Q- Leading up to the order of January 22nd?
17. A- I don't know about that.
18. Q- Did you give any instructions to Joe Lawson or to any
19. other employee of the bank, or did you, yourself, make
20. any effort to call any of the payees on the Bartletts
21. checks to explain to them ahead of time what was going
22. to happen?
23. A- No.
24.
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1. Q- Did you attempt to call Archie Campbell?
2. A- No, I turned it over to our attorney and told him.
3. Q- Friday night?
4. A- It was in his hands after Friday night as to the decision.
5. Q- Did you talk to Jerry Geisler?
6. A- Yes, I talked to Jerry on Friday night, they said they
7. hadn't been to dinner.
8. Q- Jerry Geisler was the bank's attorney also?
9. A- Yes.
10. Q- At anytime prior to January 22nd, 1974 did the bank pay
11. Raleigh Cooley any fees for legal services rendered?
12. A- The only time Raleigh would get any fee was if he drew
13. a deed of trust for the bank. He also got director's fee.
14. Q- Prior to January 22nd the only monies that Raleigh Cooley
15. was paid were in his capacity for attending board meetings?
16. A- Yes.
17. Q- In the meeting with Mr. Cooley on Friday, the 11th, did
18. not Mr. Cooley tell you he was not familiar with banking
19. practices and the Uniform Commercial Code?
20. A- It is quite likely.
21. Q- Did you understand that he did not pretend to have any
22. expertees in the banking law?
23. A- I think that is true.
24.
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1. CROSS EXAMINATION BY MR. CAMPBELL:
2. Q- Mr. Trabue asked you if you would have paid cash to the
3. Bartletts and you said you would not unless the Bank of
4. Virginia had confirmed that Mrs. Hampton's check was good?
5. A- Yes.
6. Q- Would you have also looked at the court order before you
7. paid $30,000 in cash to Mr. Bartlett?
8. A- I would not have paid anything when I looked at the
9. court order.
10. Q- When Mr. Trabue asked you he left out an important
11. matter of the court order?
12. A- Right.
13. Q- If you had seen the court order you would not have
14. paid any funds?
15. A- I would not have paid any.
16. Q- Regardless of midnight or twenty-four hours or anything
17. else?
18. A- No time.
19. Q- Mr. Pullium, whatever you did in regard to these checks
20. you did on instructions from the court as related to you
21. by your attorney, Mr. Raleigh Cooley?
22. A- Exactly.
23.
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1. RE-DIRECT BY MR. TRABUE:
2. Q- You said you would not have paid out the funds with
3. that court order?
4. A- Not until my attorney told me.
5. Q- But the court order was in the hands of the bank, the
6. Executive Vice-President knew of it and the funds were
7. paid out?
8. A- The bank did not have full knowledge of it.
9. Q- The Executive Vice-President of the bank had full know-
10. ledge of all the facts leading up to that?
11. A- As to his knowledge you will have to ask him. I don't
12. think he was capable of interpreting the order.
13. Q- You re-acted to the letter from Archie Campbell- the
14. court order, isn't that a fact?
15. A- If I receive a letter from any attorney contesting
16. anything the first thing I would do would be to call
17. our attorney.
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1. RALEIGH M. COOLEY

2. Raleigh M. Cooley, a legal and competent witness, after
3. first being sworn, testifies as follows:
4. DIRECT EXAMINATION BY MR. TRABUE:
5. Q- Mr. Cooley, will you state your full name, please?
6. A- Raleigh Minor Cooley.
7. Q- Your age?
8. A- Fifty-two.
9. Q- Your profession?
10. A- Lawyer.
11. Q- How long have you been a lawyer?
12. A- Passed the bar in August, 1950.
13. Q- And you practice where?
14. A- In Hillsville since June of 51.
15. Q- Are you politically inclined?
16. A- I had political ambitions but I wasn't too successful.
17. Q- Are you mayor of Hillsville?
18. A- Yes.
19. Q- What connection do you have with the Bank of Carroll?
20. A- Stockholder and member of the board and chairman of the
21. board, one of the organizers and founders of the bank.
22. Q- The bank was founded when?
23. A- March, 1972- when it began business.
24.
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1. Q- How much stock do you own?
2. A- 5000 shares.
3. Q- Does the bank have general counsel?
4. A- We are, Jerry Geisler and I have served as counsel for
5. the bank since its beginning. I suppose you would say
6. we are general counsel.
7. Q- Prior to January 22, 1974 have you ever been paid any
8. fees for legal services rendered to the Bank of Carroll?
9. A- No, I haven't received any compensation as such.
10. Q- What is the function of the Board of Directors of the
11. Bank of Carroll?
12. A- It is the standard function which is the policy making
13. of the bank, we are like any other directors.
14. Q- Is the board of directors responsible for the major
15. decisions- employment of the executive president?
16. A- Yes.
17. Q- So far as chairman of the board one of the duties is to
18. supervise and manage the affairs of the board, call the
19. meeting to order?
20. A- I presided over the board of directors.
21. Q- Does the board meet to approve certain loans?
22. A- Certain loans, beyond the authority the executive officers
23. have.
24.
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1. Q- In your capacity as attorney have you and do you-- have
2. you advised the bank with reference to the banking laws
3. of the Commonwealth of Virginia?
4. A- I have done some. I haven't been called too much on
5. purely banking laws, it is on real estate law.
6. Q- Would it be an essentially correct statement that until
7. the Bartlett matter came on Friday and Saturday, the 11th
8. and 12th of January, you had not advised the bank as to
9. the banking laws in Virginia?
10. A- There would be very little to that point.
11. Q- In January, 1974, were you familiar with the Uniform
12. Commercial Code as it applies to bank deposits and
13. collections?
14. A- It was very new legislation, I knew some of the basic
15. law. I couldn't recognize myself as an authority. I
16. don't say I was totally familiar with it.
17. Q- In January, 1974 were you familiar with the midnight
18. deadline or when an item is paid or an item is posted?
19. A- I hadn't specifically dealt with this thing up to that
20. point. I had had checks returned in my personal deal-
21. ings that had been gone for ten days or so and come
22. back. I knew there is a time when banks have to make
23. decisions and they have to be returned. To say that
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1. I was familiar with all the law, I hadn't dealt with this.
2. Q- Did you advise Mr. Pullium on January 11th and 12th, did
3. you give the bank advice as to the legal consequences?
4. A- I advised the bank beginning about six o'clock on
5. January 11th and running on through, even up until now
6. for that matter.
7. Q- Did Mr. Pullium rely upon your advice as to interpreting
8. the transactions on the ledger sheets of the Bartlett
9. and Hampton accounts, as to whether those items had been
10. paid?
11. A- Mr. Pullium was, of course, a banker and, of course, had
12. some knowledge of banking laws. I advised him between
13. two courses and he followed the advice I gave him. Now,
14. whether-there wasn't any question at the time, some of
15. those checks came in on the 11th and I don't think there
16. was any question. We weighed between the requirements
17. here and the other requirements of this decree and chose
18. to follow the decree as best we could.
19. Q- When was that decision made?
20. A- The several decisions were made sometime as far as I was
21. concerned, sometime that night.
22. Q- Friday, the 11th?
23. A- This was somewhere in the neighborhood of 8 and 9 o'clock,
24.
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1. I advised Mr. Pullium to proceed to initiate the return
2. of these checks. I had attempted to get hold of Judge
3. Matthews and I couldn't get hold of him that night. I said,
4. "I will get hold of him at the earliest possible time and if
5. he says to go ahead and pay these checks we will do it and
6. I will let you know what he says." I felt that at that
7. time that there wouldn't be enough done that we couldn't
8. reverse the reverse process but I felt that we had the
9. obligation to get the bank back under this decree that was
10. entered in the Circuit Court of Grayson County.
11. Q- That decision was essentially made Friday night?
12. A- It wasn't to the point of recall but unless something
13. else developed, we got some additional information, and
14. the information that we wanted to find out was what
15. Judge Matthews had in mind from this decree.
16. Q- You couldn't tell from the decree what Judge Matthews
17. had in mind?
18. A- I felt there were definite restrictions put on the bank.
19. Q- The bank was not mentioned in the decree?
20. A- I assumed the decree had been written because it says
21. the fund will be placed in a proper banking institution.
22. So far as I was concerned we were a proper bank and we
23. were under instructions. The instructions to pay the
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1. income therefrom to Sadie B. Hampton for her lifetime and
2. so much of the corpus as she shall find necessary for her
3. comfort and maintenance and at her death to pay the remainder
4. to Griggs Hampton, I didn't think those were idle words put
5. in there to fill up space. My idea was to get hold of
6. Judge Matthews and find out.
7.
8. Q- Who were you trying to protect?
9. A- The bank.
10. Q- Did you make any effort to protect the Bartletts?
11. A- They were depositors and I called Jim Ward and advised
12. him that I had talked to Judge Matthews and he had in-
13. structed us to recover these funds, that they were
14. improperly paid to Mrs. Hampton and for us to get this
15. money back.
16.
17. Q- In this order it says with instructions to pay the
18. income to Sadie B. Hampton for her lifetime and so much
19. of the corpus as she shall find necessary?
20. A- Right.
21. Q- In plain language didn't that give her the right to pay
22. so much?
23. A- I didn't give it that loose an interpretation. If the
24. court did not mean for us to exercise some control.
25. I had this decree of November 23rd; I had Mr. Archie
26.

1. Campbell's letter of January 8th. Between the two documents
2. I at that point felt that the court meant for this money
3. to be put in an account under the control of the bank and
4. if Mrs. Hampton would come in and say that she needed money
5. for this and that, if she had come and instead had said,
6. "There was a man from New York called me and wants to sell
7. me some stock in a gold mine in Alaska" the bank would be
8. under a decree to hold the money and not pay it to her.
9. Q- Is there anything in this decree that says the funds are
10. not to be paid out except by order of court?
11. A- No, but it says the corpus- so much as she shall find
12. necessary for her comfort and maintenance.
13. Q- Mr. Cooley, have you ever seen an order before establish-
14. ing a fiduciary account that does not contain the language
15. that the funds shall not be paid out except on order of
16. this court?
17. A- Any I have written.
18. Q- In your twenty years of practice have you ever seen a
19. decree like this?
20. A- No, I must confess this is different from any I have seen.
21. Q- The Bank of Carroll was not a party to the action of
22. Hampton vs Hampton?
23. A- No, at the time this money was brought to us the bank
24.
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1. so far as I know had no knowledge of a suit, no knowledge
2. of Clayton Hampton's will. Elwood had been in on a loan,
3. we needed no knowledge of the suit.
4. Q- Let's go back to that loan for just a moment. Were you
5. aware the Bartletts had made an application for a loan
6. in August of 73?
7. A- It was discussed, yes.
8. Q- You were on the board at that time?
9. A- Yes.
10. Q- That the application was presented?
11. A- If it was an application.
12. Q- Did you participate in the turning down of that loan?
13. A- Yes.
14. Q- For what reason was the loan turned down?
15. A- I don't remember the details but it was partially because
16. we felt it was overextended, there were liabilities that
17. we couldn't justify.
18. Q- Did you consider that there was a judgment outstanding
19. against Mr. Bartlett?
20. A- It was understood.
21. Q- Did you inquire to find out whether that judgment had
22. been paid?
23. A- No.
24.
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1. Q- Did you know that Lonnie Pullium had inquired and
2. learned that the judgment had been paid?
3. A- I don't recall whether that was mentioned or not. I
4. don't remember how much the judgment was. Our opinion
5. was it was a little bit out of proportion.
6. Q- Did you give any advice to Mr. Pullium on Friday evening
7. as to whether or not the bank had a legal right to
8. charge back the deposit of approximately $30,000 set up
9. in the Bartlett account?
10. A- I won't directly say that, I probably said it would be
11. one way or the other so far as the Uniform Commercial
12. Code. The way I looked at the thing we were coming at
13. a high speed to the forks of the road and we had to go
14. one way or the other. I knew we had hazards, legal
15. involvement going either way. There were possibilities
16. of that. My advice was get this money back if you can.
17. Q- Did you advise the bank as to whether or not they had
18. the right to charge back deposits made to the Bartletts
19. account from the account of Mrs. Hampton?
20. A- I won't say I said they had a right.
21. Q- Did you tell the bank that in your opinion those items
22. had been paid and cannot be reversed?
23. A- I didn't tell them anything as to whether they could be
24.
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1. reversed or charged back legally.
2. Q- So the bank did not rely upon your advice as to whether
3. they could charge those back? They made that decision
4. as a bank?
5. A- My advice to the bank was to recover this money if they
6. could.
7. Q- Was it to recover the money whether it is legal or not?
8. A- I didn't give any specifics.
9. Q- Did you take the position of the bank freezing things
10. as they were and not doing anything until you heard
11. from the court?
12. A- The whole process was definitely set back in reverse when
13. Judge Matthews said recover the money.
14. Q- When did you talk to Judge Matthews?
15. A- Saturday evening.
16. Q- When did this telephone conversation take place?
17. A- That would be the 12th, less than three minutes, the bill
18. is twenty cents.
19. Q- That is a minimum charge?
20. A- I thought it was. I got one the other day for nine cents.
21. Q- In that three minute conversation will you tell us what
22. you told Judge Matthews?
23. A- Basically I told him that Sadie Hampton had come to the
24.
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1. bank and deposited some $48,000 and that she had checked
2. out $30,000 to Elwood and Louise Bartlett.
3. Q- Did you tell the Judge that it was handled by Lonnie?
4. A- I am not certain I mentioned Lonnie. That Elwood had
5. checked some $18,000 against his account and Judge
6. Matthews, his first expression was what were they doing
7. down here in the Bank of Carroll. It was his under-
8. standing the money was to be put in the Bank of Virginia.
9. Q- Did you ask him if that was his intention why the decree
10. didn't show the Bank of Virginia?
11. A- I didn't discuss that. He wanted to know if I had talked
12. to Ward on it. I told him I had not.
13. Q- Did he ask whether you had talked to Archie Campbell?
14. A- I am not sure that Archie Campbell was discussed. I
15. told him Archie Campbell had written us a letter that
16. we were not suppose to pay the money out in this manner.
17. Q- Did you call Archie Campbell?
18. A- Archie was in the legislature. He was there inaugurating
19. the governor.
20. Q- Did you call the Bartletts?
21. A- No, my call was to Jim Ward. I think it was Monday
22. morning.
23. Q- I would like to know what efforts were made, what action
24.
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1. or consideration of the fact that the Bartletts and
2. Mrs. Hampton were depositors in the Bank of Carroll, what
3. considerations were given to them before you called
4. Judge Matthews?
5. A- What I did myself--it was my understanding that night
6. that Joe Lawson was going to call the Bartletts. I am
7. inclined to think he wasn't going to call until after
8. I made contact with Judge Matthews.
9. Q- Was Mr. Lawson advised that night to make the call at
10. sometime to Mr. and Mrs. Bartlett and Mrs. Hampton?
11. A- I think it was understood sometime. It might have been
12. that night. It was my understanding Mr. Lawson was
13. going to inform the Bartletts.
14. Q- Mr. Lawson was given instructions before the judge was
15. even contacted to make this contact and what to tell the
16. Bartletts?
17. A- This was going to be Joe's job when the time came. We
18. figured- we didn't know just when this thing would
19. actually be. I don't recall the exact time. We were
20. going to call the Bartletts and inform them.
21. Q- You were going to talk to the Bartletts before you
22. talked to the judge?
23. A- No.
24.
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1.
2. Q- The decision had been made before you talked to the
3. judge to contact the Bartletts, is that what you are
4. telling me?
5. A- It was my advice to Mr. Pullium that night to get the
6. money back unless he heard something different from me
7. and I was going to get hold of Judge Matthews at the
8. earliest time that I could. I don't recall or say for
9. a fact what instructions we gave Joe Lawson. I do know
10. in the process of Friday and Saturday we were going to
11. advise everybody.
12.
13. Q- Before Judge Matthews was called were the Bartletts
14. contacted by anyone in the bank or was anyone in the
15. bank instructed to call them and tell them there was a
16. problem and they were going to talk to the judge about it?
17. A- I don't know for a fact that there was, we discussed it.
18. Q- Joe's instructions were in the writing telling him what
19. to do?
20. A- I think these instructions were left by Mr. Pullium and
21. he was told to do it Saturday morning after he heard
22. from me.
23. Q- You think the instructions were written Friday night?
24. A- I didn't see them. I didn't see the instructions.
25. Q- Mr. Cooley, did you and Mr. Pullium on Friday night and
26.

1. Saturday morning discuss what the consequences would be
2. of bouncing $18,000 of checks to the Bartletts' creditors?
3. A- It was mentioned that, of course, it was serious bus-
4. iness to return checks, that was discussed that night.
5. The whole thing was we were searching for information
6. and trying to find out what in the world was going on.
7. As I said I have never seen a court order written like
8. this one was written. It plainly says that the money
9. was paid into court. Here we got a check and I called
10. Lonnie Pullium, Jr. and the first inquiry I made, I
11. said, "Does this check say a Commissioner in Chancery?"
12. He says, "No, it is a personal check on Ward." I asked
13. "Was it a check on Mr. J. Phil Bennington, Clerk of Court?"
14. He said,"No, a personal check on Ward." I couldn't see
15. how money that was paid into court was out of any
16. personal checking account.
17. Q- On Friday night did you look up the checks that Sadie
18. had written to the Bartletts to see what they were for?
19. A- No.
20. Q- Did you try to find out whether the money Sadie had paid
21. to her grandson were for personal expenses?
22. A- No.
23. Q- Did you make any inquiry as to whether or not those
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1. expenses were for the comfort and maintenance of Sadie?
2. A- No, I never inquired.
3. Q- Did you ask Lonnie if he knew what they were about?
4. A- I didn't talk to Lonnie Pullium, Jr. Joe or somebody
5. else had the conversation, it was re-layed to me.
6. Q- Lonnie Pullium knew that these expenses from Sadie to
7. the Bartletts were for things that were proper under the
8. language of the decree.
9. A- This decree leaves this matter sort of open. The court
10. says it doesn't pass on these items.
11. Q- The court doesn't have a right to pass on them or not?
12. A- I don't know whether the court had a right to pass on
13. them or not. It says, "The Court does not pass or rule
14. upon the sums of money spent by the said Elwood Bartlett."
15. Q- The last paragraph, "And nothing further remaining to be
16. done in this cause, it is ordered that the same be strick-
17. en from the docket of this Court, to all such action of
18. the Court the Defendant, by counsel, objected." Requested
19. by Mr. Ward; Seen and objected to by Mr. Campbell."
20. And the bank had a letter saying there would be no
21. appeal taken in the sixty days, is not that a fact?
22. A- If the bank had this letter from Mr. Campbell saying
23. that they were not going to take the appeal I did not
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1. know of it.
2. Q- You now know the bank had that letter all along?
3. A- I am not sure. I know the reason the money was paid
4. out Mr. Campbell had agreed not to appeal the case.
5. He wasn't going to appeal it and, therefore, the court
6. could go ahead and make dispostion of the money.
7. Q- Then I gather in answer to my previous questions that
8. no efforts were made by the bank to contact Sadie, to
9. contact Louise or Elwood or Mr. Ward, and no calls were
10. made to see: 1. Whether they had an explanation.
11. 2. Whether the expenses and the improvements of the
12. fund being transferred to the Bartletts was an item
13. for Sadie's comfort, and 3. That the bank took no
14. action, no effort, to give any consideration for the
15. problems that were going to face the Bartletts and
16. Sadie Hampton before contacting Judge Matthews?
17. A- We wanted to give everybody all the consideration that
18. we could give and we had no intention of hurting anybody.
19. The sole objective that we had in doing what we were
20. doing was to get the bank in conformity with the decree
21. which we thought we were suppose to comply with and our
22. place to go to find out what to do was to Judge Matthews.
23. I tried to get Judge Matthews that night. I could not.
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1. I got him the next morning, I would say somewhere in the
2. vicinity of nine o'clock. At this point the bank had taken
3. no action so far as I know. It was my advice that unless
4. we had some additional information that we should return
5. the checks and if we did find out there was something that
6. would change it then we would do differently and when I
7. talked to Judge Matthews he said we were right. His in-
8. structions were to stop everything, recover this money, and
9. put it back so that he could handle it. The end of his
10. conversation was, "I will be down Monday and we will work
11. the matter out." At that point I simply thought there was
12. a mistake in the way the money was handled and it wouldn't
13. be any problem once the parties got back together.
14. Q- If your feeling was there was a mistake there would not
15. have been any problem?
16. A- If there was a mistake it was not to be paid to Sadie
17. but put in a bank account the bank would have charge of.
18. I yet would interpret this decree that the court intended
19. this to be put in a bank with restrictions upon the
20. account.
21. Q- You are making reference to things you have found out.
22. The court has ruled that we had an absolute right to
23. that money?
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1. A- Right, but this night I never knew Clayton Hampton; I
2. didn't know there was any suit involving his will. I
3. was reading a court order. I had no knowledge there
4. had apparently been a real family argument and division.
5. Q- Tell me about the three minute telephone concersation
6. and what facts you had given to Judge Matthews so that
7. he could make a decision?
8. MR. CAMPBELL: If the Court please, he has asked that and
9. Mr. Cooley has answered.
10. THE COURT: He has answered it.
11. Q- Did you tell Judge Matthews that the initial deposit of
12. $30,000 had been paid and drawn upon?
13. A- I told him some $18,000 had been drawn upon, if I
14. remember the figures.
15. Q- Did you tell Judge Matthews you had inspected the ledger
16. and there was a problem as to whether or not the
17. Bartletts checks could legally be debited off their
18. account?
19. A- I am not sure. I don't believe we discussed it then.
20. I did tell him these had been checked out.
21. Q- Did you tell Judge Matthews there was a problem as to
22. whether or not some of the checks had already cleared
23. and had been paid?
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1. A- I don't really think there was much discussion on that.
2. I did say that there were checks of $18,000 at that time
3. Elwood had checked the account for.
4. Q- Mr. Cooley, do you recall that you, Mr. Pullium, Jr.
5. Mr. Burton and I had a conversation and do you recall
6. telling us that you couldn't get the judge at that time
7. and you were unable to reach him over the week-end and
8. you finally reached him on Monday or Tuesday?
9. A- I was down in your office.
10. Q- First, did you tell us that?
11. A- No, I didn't tell you that exactly. At the beginning we
12. were under attack from the Griggs Hampton side, Griggs
13. and Archie Campbell were threatening to sue us. They
14. were looking to us for any diminution of this bank fund.
15. After we recovered the money and got it back I figured
16. we were free from the threat from that side. I didn't
17. think the bank was under any threat. We were holding
18. the money and were going to pay it to whoever the
19. court said to. I, more or less, didn't try to remember
20. these transactions. When I was down in your office I
21. hadn't refreshed my memory as to what took place. I
22. told you that I got hold of Judge Matthews at the earliest
23. possible time and my memory was it was Monday or Tuesday
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1. of that week. Sometime later I really felt we were under
2. threat, possibly from the other side. I am compelled to
3. tell a little hearsay- right out at the end of the building
4. I told Judge Matthews I didn't recall when I talked to him.
5. He said, "You called me Saturday morning." I said, "I had
6. better see." I said, "But how can I find out." I said,
7. "I will look at my long distance telephone calls." I
8. made a long distance telephone call to Judge Matthews on
9. January 12th. (Producing telephone bill.)
10. Q- Are you referring to the 1-12 to Galax, which one is
11. Judge Matthews?
12. A- 3290.
13. Q- Was this the call to the judge on January 7th?
14. A- I don't think I made that. There is a call to his
15. number. My brother's number is the same as mine.
16. Q- Is it possible your brother called the judge on the 11th?
17. A- No, because those are the only two calls in January
18. and I know I made one.
19. Q- 11th or 12th?
20. A- 11th, there is a call here on the 7th and I didn't make
21. that call. The call I made was on the 12th. I made
22. one to 236-2771- Jim Ward.
23. Q- After you talked with the judge on Saturday morning
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1. did you tell Mr. Pullium that you had reached the judge?
2. A- Yes, I communicated to Mr. Pullium, maybe he called
3. me. I communicated to him the conversation that I had
4. had with Judge Matthews and his directions were to
5. recover the money.
6. Q- Didn't you tell Mr. Pullium that you felt the judge was
7. going to take the funds from the bank?
8. A- I don't know whether I used that. He was going to get
9. the funds back and we wanted him to take them. We didn't
10. want the funds.
11. Q- Didn't the judge tell you to freeze everything and we
12. will have a hearing?
13. A- I think his language "Stop everything and get all the
14. money back." He said he would be down here Monday or
15. the first of the week.
16. Q- And you were going to have a hearing Monday morning?
17. Didn't you tell Mr. Pullium the judge said he was going
18. to have a hearing on Monday?
19. A- I don't think I said he was going to have a hearing on
20. Monday. I think I said he was going to be down here.
21. When he did come down he said, "You all proceed like I
22. told you. We are going to have a hearing on that."
23. At a later time when I went back to the bank Joe Lawson
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1. was raising some question as to whether- does the judge
2. want us to pay back all of this. I came back and talked
3. to him again.
4. Q- Isn't it a fact that Joe Lawson came to you and asked
5. you what to do about the checks that were held?
6. A- He said he wanted to make sure that the previous direct-
7. ions were the ones to follow.
8. Q- He told you he was still holding the checks?
9. A- I am sure I was informed where the checks were. I told
10. Judge Matthews here that I felt that we could pay any
11. of these checks he wanted to pay. We could reverse the
12. reverse process. The thing wasn't out of our hands.
13. We could go either way. He came back and said, "Get the
14. money back" and it wasn't interpreted to mean that we
15. were to be partial.
16. Q- At that point following January 12th you had oral
17. instructions from the judge to take some action?
18. A- Yes.
19. Q- You knew the case of Sadie B. Hampton was off the docket
20. in the Circuit Court of Grayson County?
21. A- I think it was.
22. Q- The bank was not a party to any action involving Louise
23. and Elwood Bartlett?
24.
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1. A- No.
2. Q- Do you know of any rule of court where the court has
3. a right to enter a decree instructing a bank to hold
4. funds without a hearing for the parties involved?
5. A- I don't suppose I did.
6. Q- There is a rule of court that requires notice to the
7. attorneys and to the parties?
8. A- Are you asking me a question of law?
9. Q- I am asking if there is a rule that requires notice to
10. the parties?
11. A- Yes.
12. Q- There is a rule of court saying that that is necessary?
13. THE COURT: Gentlemen, let's don't guess at it. Here it
14. is, read it.
15. Q- You are familiar with Rule 1:13 which says, :
16. "Drafts of orders and decrees shall be endorsed by
17. counsel of record, or reasonable notice of the time
18. and place of presenting such drafts together with
19. copies thereof shall be served by delivering or mailing
20. to all counsel of record who have not endorsed them.
21. Compliance with this Rule and with Rule 1:12 may be
22. modified or dispensed with by the court in its discretion."
23. Are you familiar with that Rule?
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1. A- I claim to be a lawyer. I don't know all the law.
2. Q- I will show you the order that was drafted and it shows:
3. Virginia: In the Circuit Court of Grayson County:
4. Sadie B. Hampton vs Griggs A. Hampton, and endorsed by
5. you as attorney for the bank. I believe you prepared
6. that on your stationery at the request of Judge Matthews?
7. A- That's right. He said he felt the bank ought to have
8. something to show it wasn't acting on its own, it was
9. acting on his authority. He dictated to me.
10. Q- Was counsel for Sadie Hampton advised that the order
11. was going to be entered?
12. A- I didn't advise them.
13. Q- Was counsel for Griggs Hampton advised?
14. A- No.
15. Q- What standing does the Bank of Carroll have to ask for
16. that decree?
17. A- He entered the decree because we felt that there ought
18. to be something to protect the bank so that the bank
19. was not acting on its own, it was acting under his
20. authority.
21. Q- Mr. Lawson discussed with you the checks they were holding
22. and you conferred with the judge and went back and told
23. Mr. Lawson to go ahead and send the checks back to the
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1. creditors?
2. A- Yes.
3. Q- Did you give the bank any instructions that they should
4. call these creditors and advise them to minimize the
5. effect on the Bartletts?
6. A- It was my understanding the Bartletts were being advised.
7. At that particular time my point was to make sure we
8. were doing what Judge Matthews said and that we weren't
9. making any mistake.
10. Q- Did the bank ever institute a hearing so all the parties
11. could be heard?
12. A- The bank didn't file any suit or anything. I was led
13. to believe by Judge Matthews that it wasn't necessary,
14. that there had been arrangements made. The bank was
15. just holding the money and as quick as something was
16. settled we would pay it.
17. Q- This came up after January 31st?
18. A- The fact that they were going to have a hearing was
19. earlier than that. I had anticipated it would be within
20. a week, that the parties would be brought together.
21. Q- The bank didn't file a petition for a declaratory
22. judgment?
23. A- No.
24.
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1. Q- They could have couldn't they?
2. A- Yes.
3. Q- What would you have advised the bank to do if the bank
4. statements had been returned to the Bartletts and to
5. Mrs. Hampton before you received Archie Campbell's letter?
6. A- This is a hypothetical situation. It is going to be
7. impossible for me to put myself back in the position
8. as to what I did. I guess instead of being sued by
9. Elwood we would have been sued by Archie and Griggs,
10. if we went one way we got sued by one party, if we went
11. the other we got sued by the other party.
12. Q- Griggs Hampton wasn't a depositor in your bank?
13. A- To the extent of this remainder I guess he was.
14. Q- Was Griggs Hampton a depositor?
15. A- No.
16. Q- So when the problem came to protecting Archie Campbell's
17. client or Jim Ward's clients what the bank decided to do
18. was to protect the bank with complete disregard to
19. Sadie Hampton and the Bartletts?
20. A- We were doing the best we knew how under the circumstances
21. and we weren't meaning to hurt anybody.
22. Q- You gave Judge Matthews in three minutes enough infor-
23. mation to protect the bank, you didn't give any infor-
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1. mation to protect the Bartletts?
2. A- We were searching for information.
3. Q- Why didn't you search with Mrs. Hampton, with the
4. Bartletts, with Ward?
5. A- I really doubt if they would have given us information
6. we could have put credence in. I am sure the judge was
7. totally familiar with the case, was totally familiar
8. with the background and I figured that he knew enough
9. about it to do what he wanted to do.
10. CROSS EXAMINATION BY MR. CAMPBELL:
11. Q- Mr. Cooley, to sum up all this testimony is it fair to
12. say that when you were acquainted with the problem and
13. you realized these funds were suppose to be paid into
14. court you were going to court to see what to do?
15. A- Correct.
16. Q- And you were going to be governed by what the court
17. told you?
18. A- Correct.
19. Q- Can you tell me where in that final decree it says the
20. funds are to be paid into court?
21. A- "Upon consideration thereof, it is Adjudged, Ordered
22. and Decreed that a sale of the subject realty to
23. Elwood Bartlett for the sum of $72,000 be ratified and
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1. confirmed and it further appearing to the Court that
2. Elwood Bartlett has complied with the terms of said sale
3. by paying the entire sum into the Court it is hereby
4. Ordered that the General Warranty deed conveying said
5. property be delivered to the said Elwood Bartlett."
6. Q- That simply says that the funds have been paid to the
7. Court?
8. A- Right, I didn't figure how come she had a check with
9. court money on the personal account of Mr. Ward.
10. Q- Where in the decree does it say the distribution of the
11. funds is to be paid into court?
12. A- That is what I am saying. The decree says here that the
13. fund was paid into court and, therefore, it was under the
14. jurisdiction of the court, that is what I assumed.
15. Q- The court says, "Therefore, it is Adjudged, Ordered and
16. Decreed that the following sum shall be deposited in a
17. proper banking institution?
18. A- The fund I suppose was going to be deposited from the
19. court account.
20. Q- Where in the decree does it say the distribution of the
21. fund is to be paid into court?
22. A- We were in court according to the decree.
23. Q- It says the distribution shall be made to a proper
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1. banking institution?
2. A- I think so.
3. Q- That is where the money was put?
4. A- Not all of it, some $48,000.
5. Q- There was some more money?
6. A- They put $9,000 a little later. On January 3rd the
7. $48,000 was what was brought to the Bank of Carroll.
8.
9. (Court recessed for lunch until 2:00 P. M., then proceeded
10. as follows:)
11.
12. STEVE SENIC
13. Steve Senic, a legal and competent witness, after first
14. being sworn, testifies as follows:
15. DIRECT EXAMINATION BY MR. BURTON:
16. Q- State your name, please?
17. A- Steve Senic.
18. Q- Where do you reside?
19. A- Oldtown, Galax.
20. Q- How long have you lived there?
21. A- Lived around Galax since 38.
22. Q- Are you related to the plaintiff?
23. A- He is my step-son.
24. Q- Are you familiar with the Bank of Carroll?
25. A- Yes.
26.

1. Q- Are you a depositor?
2. A- No, I own stock.
3. Q- Are you aware of the dishonor of the checks that was
4. made by the Bank of Carroll?
5. A- Yes.
6. Q- How did those dishonors come to your attention?
7. A- Elwood told me about them.
8. Q- What did you do after you were told?
9. A- I thought about it for two or three days. Being a minor
10. stockholder I wanted to know and I came over and talked
11. to Lonnie Pullium, Jr.
12. Q- Do you remember when you came over?
13. A- Just a few days after he got the checks.
14. Q- Received the checks or the notice that they were going to
15. dishonor them?
16. A- Received a notice from the bank.
17. Q- You went to the bank?
18. A- Yes.
19. Q- Who did you meet with?
20. A- Lonnie Pullium, Jr.
21. Q- Will you please relate to the court the conversation
22. you had with him?
23. A- Yes, I went in the bank and I told Lonnie, I said, "I am
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1. just a minute stockholder in this bank but I would like
2. to know why the checks were dishonored. He said, "I had
3. a court order." I said, "I would like to see it." He said
4. "I was in Richmond." He said, "My father called me and
5. said, "Why in the hell didn't you tell me about the letter
6. you got?" Lonnie told me he told his father he didn't
7. think it would amount to anything.
8. MR. CAMPBELL: Is the purpose of this testimony to repute
9. the evidence of your witness.
10. MR. BURTON: The purpose is to support the testimony of
11. Mr. Pullium who says he had received the letter and left
12. it open on his desk not considering it very important.
13. Mr. Pullium has testified that he did not recall opening
14. the letter, he remembers leaving it still in the envelope
15. on his desk and he was called by his father in Richmond.
16. THE COURT: You are not undertaking to empeach the test-
17. imony of one of your own witnesses.
18. MR. BURTON: I am trying to support the testimony of one
19. of my own witnesses.
20. THE COURT: You are undertaking to empeach the testimony
21. of Mr. Pullium, Jr. who was your witness.
22. MR. BURTON: I would rephrase it. Mr. Pullium in his
23. testimony has attempted to empeach Mr. Bartlett.
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1.
2. THE COURT: You can't empeach the testimony of your own
3. witness. You have had this throughout this case but I
4. understand how it has come about. I believe you indicated
5. you would call this witness as a rebuttal witness.
6. MR. TRABUE: In a case of this type they are very much a
7. part of this lawsuit, we have to call adverse witnesses in
8. order to show what went on. It actually went on in the
9. absence of the plaintiff and on those points Lonnie Pullium,
10. Jr. was an adverse witness.
11.
12. THE COURT: I sustain the objection simply on the ground
13. that Mr. Pullium was your own witness. He was not called
14. as an adverse witness. He was not treated as an adverse
15. witness. Now you undertake to empeach his testimony by
16. another witness.
17. MR. TRABUE: If it please the Court, may we reserve the
18. right later in chambers for the purpose of the record to
19. ask for a stipulation as to what his testimony would have
20. been, for the purpose of the record.
21.
22. THE COURT: Yes, sir.
23. MR. TRABUE: Plaintiffs rest.
24.
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1.
2. JUDGE JACK M. MATTHEWS
3. Judge Jack M. Matthews, a legal and competent witness, after
4. first being duly sworn, testifies as follows:
5. DIRECT EXAMINATION BY MR. CAMPBELL:
6.
7. Q- Would you state your name, please?
8. A- Jack M. Matthews.
9. Q- Are you a Judge of the Twenty-Seventh Judicial Circuit?
10. A- Yes I am.
11. Q- In that capacity, Judge Matthews, did you preside in the
12. case of Sadie B. Hampton vs Griggs Hampton in the Circuit
13. Court of Grayson County?
14.
15. A- I did.
16. Q- There has been introduced in evidence as Exhibit 2 a
17. final decree entered on the 26th of November, 1973 in
18. that case. You are familiar with that?
19. A- Yes I am.
20. Q- Judge Matthews, that decree recites that Elwood Bartlett
21. has been the highest bidder on the sale of the Clayton
22. Hampton farm and that he had paid the purchase price into
23. court. Do you know whether or not that money was actually
24. paid into court?
25.
26. A- There was some delay in financing through some govern-
mental agency was my information and I understood that

1. there was.
2.
3. Q- Now, that decree also provides that the net proceeds
4. of sale are to be deposited in a banking institution
5. with instructions to pay the income to Sadie Hampton
6. for life and such of the corpus as she shall find
7. necessary for her comfort and support. In the proceeding
8. was counsel for Mrs. Hampton advised by you as to what
9. items would probably be construed as necessary for her
10. support and maintenance?
11. A- He was. We had numerous conferences about it.
12.
13. Q- That was Mr. James Ward?
14. A- Yes.
15. Q- That decree also refers to certain claims for past
16. maintenance and support by Elwood Bartlett?
17. A- I understand it does, yes, sir.
18. Q- Did the Court rule on those claims?
19. A- The Court did.
20. Q- How so?
21. A- Just what they were entitled to.
22. Q- The decree says he shall be paid $19,500, is that correct?
23. A- Correct.
24. Q- And does not order any sums paid for past maintenance
25. and support?
26.

1. A- That is correct.
2. Q- When you say in the decree, Judge Matthews, that she
3. shall find necessary, did that apply to past support
4. or future support?
5. A- Future support.
6. Q- When did you find, Judge, that a check had been given to
7. Mrs. Hampton for the net proceeds of the sale and it
8. had been put in the Bank of Carroll?
9. A- As I said there was some delay and I made some inquiries
10. and I don't know just when it was put in there.
11. Mr. Raleigh Cooley called me and talked to me about it
12. and when I found out the money had not been put in there
13. as I had directed that is when I became very much interest-
14. ed in it to see that the decree was complied with.
15. Q- What instructions did you give Mr. Cooley?
16. A- I told Mr. Cooley in no uncertain terms that he should
17. not pay these checks until I could get hold of Mr. Ward.
18. Q- He had informed you that Mrs. Hampton had written checks
19. to Mr. Bartlett?
20. A- Yes, he told me that a check, maybe I am wrong, it was
21. a check to start with.
22. Q- Wasn't it in fact two checks totalling $30,000?
23. A- That startled me a little more. All the parties knew
24.
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26.

1. it, your kinsman had been very vehement as to how this
2. matter should be handled.
3. Q- Do you recall when Mr. Raleigh Cooley called you?
4. A- Frankly, I don't. I know he called me and I was down
5. here and sometime later I entered an order. I stopped
6. Mr. Ward's check and his fee.
7. Q- That was a check that Mrs. Hampton had written for
8. $2,000?
9. A- Yes, sir. I told Mr. Cooley until this matter was
10. straightened out not to pay any checks. Of course, that
11. disturbed Mr. Ward.
12. Q- I show you a decree entered under the style of Sadie
13. B. Hampton vs Griggs Hampton entered on the 31st of
14. January?
15. A- Yes, sir, that was a decree in order to have the parties
16. conform to what I directed and so Mrs. Hampton could
17. have some money for her normal use according to the
18. other decree.
19. MR. CAMPBELL: We would like to introduce this decree as
20. Defendant's Exhibit No. 7.
21. (Decree received and marked Exhibit No. 7)
22. MR. TRABUE: I object. It is not relevant.
23. THE COURT: The Court will take judicial notice. Gentlemen,
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1. I think these decrees together complement each other and
2. show the paths that the case took after the first decree
3. in November, 1973. I shall allow them. Nos. 1, 2 and 3
4. as Defendant's Exhibit No. 7.
5. (Nos. 1, 2, and 3 received and marked Defendant's Exhibit
6. No. 7.)
7. Q- Judge Matthews, I show you the decree of January 31st
8. which recites that it come on to be heard upon the
9. petition of Sadie B. Hampton to withdraw certain funds
10. and what did the court order that she could draw out
11. of these funds that were in the bank?
12. A- At the rate of $500.00 per month due and payable on the
13. 1st day of each month and the remaining on savings account
14. at the highest rate it could be.
15. Q- So all these funds had been recouped by the bank who
16. justified the administration under various decrees, is
17. that correct?
18. A- That is correct.
19. Q- Then there is an order entered February 5th, 1974 and
20. what is the tenor of that, Sir?
21. A- "It appearing to the Court that by order entered January
22. 31st, 1973, Three Thousand Dollars ($3,000.00) was
23. deposited in a Special Account for the use of Sadie B.
24.
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1. Hampton.
2.
3. On consideration whereof it is ordered that the Bank
4. of Carroll pay any and all checks signed by Sadie B. Hampton
5. out of said Three Thousand Dollars and this order shall
6. constitute authority for said bank to pay said checks.
7. Enter this order this February 5th, 1974."
8. Q- Final order entered March 14, 1974. Would you tell
9. the jury what that says?
10. A- "This day came Sadie B. Hampton, by Counsel, and moved
11. the Court to withdraw certain sums of money heretofore
12. placed in the Bank of Carroll until further order of
13. this Court and was argued by Counsel.
14.
15. On consideration whereof and it appearing to the
16. Court that the said Sadie B. Hampton is in need of said
17. moneys for her support and maintenance it is therefore
18. ADJUDGED, ORDERED and DECREED that the sum of $5,000.00
19. out of the sum of $54,736.45 heretofore deposited in the
20. Bank of Carroll, Hillsville, Virginia, at the highest
21. rate of interest for a 30 day period be deposited in the
22. account of Sadie B. Hampton in said bank; and it is
23. further ADJUDGED, ORDERED and DECREED that the sum of
24. $2,000.00 out of the aforesaid sum of $54,736.45 be
25. paid to James T. Ward, Counsel for the said Sadie B.
26.

1. Hampton, as reasonable attorney fees in this cause; and
2. the remaining sum of $47,736.45 be redeposited in said
3. savings account in said bank at the highest rate of interest
4. for 30 day periods or until further order of this Court.
5. And this cause is continued. Enter this Order this 14th
6. day of March, 1974."
7. Q- And did you instruct the Bank of Carroll through
8. Mr. Cooley to take whatever steps were necessary to
9. get this money back in Mrs. Hampton's account?
10. A- I certainly did and I went to Mr. Ward and quarreled
11. with him over the way this had been handled.
12. CROSS EXAMINATION BY MR. TRABUE:
13. Q- Is it true that the decree entered by you in November,
14. 1973 was ordered to be stricken from the docket and
15. the matter ended?
16. A- I don't know. If it says so it does.
17. Q- And at that time, I am referring to November, 1973, when
18. did this decree become final?
19. A- I suppose twenty-one days after it was entered.
20. Q- What was the appeal period?
21. A- I guess four months.
22. Q- Was it sixty days that is final?
23. A- Yes, sir.
24.
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1.
2. Q- Is it not true that sixty days following November 23, 1973
3. this decree was absolutely final?
4. A- That's right but it hadn't been complied with.
5. Q- Yes, sir, and did Sadie B. Hampton or Griggs A. Hampton
6. ever file a motion to put the matter back on the docket?
7. A- Not that I know of.
8. Q- I believe in response to Mr. Campbell's question what
9. your instructions were to Mr. Cooley you said he should
10. not pay any checks until you could get hold of Ward?
11. A- I said, "Don't pay those checks. We will straighten it
12. out. That is not what my understanding was." I told
13. Mr. Cooley not to pay the checks.
14.
15. Q- Did Mayor Cooley tell you that the checks that had been
16. paid by the Hampton account had been marked on the ledger?
17. A- I don't believe I know that.
18. Q- Did he tell you the status of what had happened so far
19. as the Bartletts?
20. A- When I found out it wasn't in accordance with my order
21. or what I thought it was I told him to get the money back.
22. Q- Did he discuss with you what to do with checks that had
23. already been paid?
24. A- He may have. I don't know.
25.
26.

1. ARCHIE CAMPBELL

2. Archie Campbell, a legal and competent witness, after first
3. being sworn, testifies as follows:
4. DIRECT EXAMINATION BY MR. HODGES:
5. Q- State your name, please, Sir?
6. A- A. A. Campbell.
7. Q- And Mr. Campbell, are you from Wytheville and practice
8. law in Wytheville?
9. A- Yes, I do.
10. Q- Did you represent- in the case of Sadie B. Hampton vs
11. Griggs Hampton, did you represent Griggs Hampton?
12. A- Yes, I did.
13. Q- With reference to the funds that Sadie B. Hampton was to
14. get with regard to the sale of her farm what was your
15. understanding as to what funds she would get and how she
16. would get them?
17. A- The court ordered an auction sale and my recollection
18. is the property sold for approximately $72,000 from which
19. $3500 more or less commission to Joe Parsons Land Auction
20. Company and $19,000 approximately to be paid to Elwood
21. Bartlett for improvements he had made on the property.
22. Q- That would be deducted from the purchase price of the
23. property?
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1. A- Yes and would leave $57,000.00. At any rate Griggs and
2. his mother made an adjustment on some other money that
3. Mrs. Hampton had received from Mr. Hampton's estate in
4. the amount of $15,000 and she said Griggs owed her
5. $6,000 so there was $9,000 more, making a total of
6. $57,000 that was to be put in the bank and held to pay
7. the income to her and so much of the principal as might
8. be necessary for her maintenance and support.
9. Q- What was your understanding as to how that was to be
10. handled, that $57,000?
11. MR. TRABUE: The decree is self- explanatory.
12. THE COURT: If it were we wouldn't be here. He was one of
13. the attorneys in the case. I think it is proper for him
14. to state what his understanding of the decree was.
15. A- When we were working on the decree with Judge Matthews
16. I recommended that the money be placed in a bank with
17. trust powers, trust department, and the bank could pay
18. the income to her and could advise her as to what
19. she might need for her comfort and support. Judge
20. Matthews- as a matter of fact he said, "Well, just put
21. it in the bank in Galax and her daughter works in the
22. bank and her daughter can check and see that she is not
23. wasting the money so it would be there for her in the
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1. future.
2. Q- Mr. Campbell, after this decree was entered did you
3. at sometime go over to James Ward's office to close
4. out the deal?
5. A- Yes.
6. Q- What occurred at that time?
7. A- I obviously was in correspondence with Jim Ward, the
8. attorney for Elwood Bartlett and Mrs. Hampton, and I
9. went over there in late November to Galax for the closing
10. of Elwood Bartlett's loan at which time it was my under-
11. standing the purchase price for the farm would be avail-
12. able and I went for the purpose of going with Jim Ward
13. and Mrs. Hampton to the bank to explain to the bank the
14. terms under which they were to hold this money but on
15. that day the loan was not ready to be closed so I went
16. on home with the understanding that Jim Ward would let
17. me know when it would be paid and I would go back and
18. we would go to the bank and explain.
19. Q- Did he let you know later on?
20. A- No.
21. Q- When did you first find out it had already occurred?
22. A- I reviewed some notes in my file the other night and
23. noticed that on January 4th I called Jim Ward to find
24.
25.
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1. out when they were going to be able to close the loan and
2. transfer the money, pay the money,and he told me it had
3. already been closed and the money paid to her and she had
4. put it in the bank over here in Hillsville.
5. Q- Was that the last correspondence you had with Jim Ward
6. before you wrote your letter of January 8th to the
7. Bank of Carroll?
8. A- As soon as he told me she had put the money in over here
9. and he had not told me he was giving her the money so
10. that is the reason I wrote the letter to the bank.
11. CROSS EXAMINATION BY MR. TRABUE:
12. Q- Mr. Campbell, are you related to Stuart Campbell?
13. A- Yes.
14. Q- What is that relationship?
15. A- My first cousin.
16. Q- Have you previously been in a law practice with Mr.
17. Campbell?
18. A- Yes, we practiced together for twenty some years and
19. split up last year.
20. Q- What was the date you split up?
21. A- Actually Willis Woods and I formed a new partnership
22. November 15th. Actually you could say I left Campbell
23. & Campbell about August because our office wasn't ready.
24.
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1.
2. Q- With reference to the decree of November, 73, I wonder
3. if you can explain something to me. On page 2 it says,
4. "Complainant has agreed to deposit the sum of $15,000
5. and the defendant, Griggs A. Hampton, has agreed to
6. deposit the sum of $6,000," a total of $21,000?
7. A- Right.
8. Q- Can you tell me why that amount was offset, why was it
9. deducted, the $6,000 deducted from $15,000 and Sadie
10. paying $9,000?
11.
12. A- Because under the will of Clayton Hampton it provided
13. that the money, the income was to be used by Sadie
14. Hampton during her lifetime and so much of the principal
15. as she needed for her support and maintenance. In the
16. negotiations Jim Ward, who represented Mrs. Hampton, and
17. Elwood Bartlett,we agreed between us that of Mr. Hampton's
18. estate she had $15,000.
19. Q- She had taken $15,000 advance?
20.
21. A- She had $15,000 of Mr. Hampton's estate; that Griggs
22. owed his mother $6,000 for sale of livestock, sale of
23. timber and maybe money, so instead of her putting up
24. $15,000 and he putting up $6,000, she put up $9,000.
25. Q- Griggs Hampton got out of paying the $6,000 back to his
26. mother's account?

1. A- To his mother's account or his as the case might be.
2. Q- If he had put it in these funds it would be for the
3. benefit of her and she could have spent it? She had
4. a right to spend so much of the principal as she needed
5. for her maintenance?
6. A- Yes, it did not include giving it away.
7. Q- She could have depleted all the funds?
8. A- The language is here, for her comfort and maintenance.
9. Q- Comfort- she could buy a home, take a vacation; she had
10. a right to spend that money with no guarantee that any
11. money would be left for Griggs?
12. A- She had a right to spend all of the money for her comfort
13. and maintenance.
14. Q- Right and so the amount to be set aside for her comfort
15. and maintenance was $6,000 and Griggs never put that in?
16. A- That was agreed on by her lawyer.
17. Q- Do you think she understood Griggs was getting out of
18. paying that?
19. A- That was agreed between her lawyer, Elwood's lawyer, who
20. was the same person and Griggs wanted it and the parties
21. agreed.
22. Q- You said "Seen and Objected To", I am not sure that you
23. did agree. At that time, November, December and January,
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1974 Griggs was taking the position that his mother was incompetent to use her money as she saw fit?

A- No, sir, I can't give the date but I am sure it is in the record somewhere. Griggs-- I think three of Mrs. Hampton's daughters and a son filed a petition in the court to ask the court to have a committee appointed to look after the money for Mrs. Hampton. Griggs was not one of the petitioners in that suit. One was Elwood Bartlett's mother. They filed a petition in the court asking the court to look after her funds. One of those petitioners was Wanda Bartlett.

Q- Wanda Bartlett is cashier at the Bank of Virginia?

A- One of the banks.

Q- Isn't she the one that you said that Judge Matthews said that her daughter was there?

A- I wanted it put in a trust department.

Q- I thought you suggested that the money could be put in the Bank of Virginia where one of the children could look after it?

A- That was Judge Matthews.

Q- Did you take any action on January 4th other than after you talked to Mr. Ward, other than wait until the 8th and write a letter to the bank?

1. A- I am not sure. Does anybody have a calendar of 1974.
2. The letter as I understood was dated January 8th. On
3. January 8th I would have been in Richmond in the leg-
4. islature and I obviously left on the 7th; the 6th would
5. be Monday. Well, before you go to Richmond for the
6. legislature, before I go I usually have an awfully lot
7. of stuff backed up that has to be taken care of and
8. normally speaking, I am sure it occurred in this case,
9. I would have spent Friday night and all day Saturday
10. and Saturday night and all day Sunday dictating letters,
11. pleadings, and answers to things on a dictaphone which
12. would be written after I left to go to Richmond. It
13. was January 4th I found out they had taken this money
14. and put it in this bank here. I would have written that
15. letter over the week-end.
16. Q- The only thing that was done after you were advised by
17. Mr. Ward you dictated a letter which ultimately went
18. out on the 8th?
19. A- Yes.
20. Q- I think that does show your secretary signed the letter?
21. A- Those are her initials showing she signed it.
22. Q- You didn't call Judge Matthews?
23. A- No, I don't recall that I did.
24.
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1.
2. Q- Did you request a hearing during the week? Did you
3. stay in the legislature in Richmond the next several
4. weeks?
5. A- Yes, it would be the next two months.
6. Q- You did not attend any hearing with Judge Matthews
7. between January 8th and January 22nd over these accounts?
8. A- No, the legislature convened on January 9th and terminates
9. on March 9th.
10.
11. THE COURT: Any rebuttal?
12. MR. TRABUE: No.
13. IN CHAMBERS:
14. Stipulation: It is stipulated that had Steve Senic been
15. permitted to testify his evidence would have been that he
16. met with Lonnie Pullium, Jr. at the bank at which time
17. Mr. Pullium told him that Pullium had received a letter
18. from Mr. Campbell on January 8th and read it and thought
19. nothing more of it and went on to Richmond and that he
20. said to Mr. Senic that he had so advised his father in the
21. telephone conversation and he didn't think it was anything
22. to be concerned with.
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1.
2. MR. CAMPBELL: The Defendant, Bank of Carroll, moves the
3. Court to strike the evidence and enter summary judgment
4. in its favor for reasons the plaintiff failed to make out
5. a case of damages against the defendant; also moves to
6. strike that portion of the motion for judgment relating
7. to punitive damages. Counsel for the plaintiff has stated
8. that they are relying only on their right of action for
9. wrongful dishonor.
10. Virginia Code Section 8.4-402 deals with the bank's
11. liability to customers for wrongful dishonor and says:
12. "A payor bank is liable to its customer for damages
13. proximately caused by the wrongful dishonor of an item,
14. When the dishonor occurs through mistake liability is
15. limited to actual damages proved. If so proximately caused
16. and proved damages may include damages for an arrest or
17. prosecution of the customer or other consequential damages.
18. Whether any consequential damages are proximately caused
19. by the wrongful dishonor is a question of fact to be
20. determined in each case."
21. We take the position quite frankly and simply that
22. there has been no wrongful dishonor. These are the facts
23. and regardless of the complexities and technicalities
24. this is what happened: For some reason just known to him
25.
26.

1.
2. Mr. Ward wrote a check on his own account to Mrs. Hampton
3. for the full amount of the funds which were governed by
4. the decree of the Circuit Court of Grayson County on
5. November 23rd. Mrs. Hampton brought that check to the
6. Bank of Carroll and immediately checked out two-thirds to
7. Elwood Bartlett and his wife, out of some $48,000 she check-
8. ed out $30,000. Your Honor heard the testimony of Judge
9. Matthews that the decree provided it be for her maintenance
10. and support to be applied prospectively. He had not ruled
11. that Elwood Bartlett was entitled to anything except the
12. $19,000 which had been deducted from the purchase price
13. of the farm and that the parties understood that. The
14. evidence is clear that Mr. Ward did not make any attempt
15. to inform any employee of the Bank of Carroll that the
16. bank had any responsibility in connection with these funds.
17. The first notice that the bank had that anybody was claim-
18. ing any responsibility was when Archie Campbell wrote the
19. letter of January 8th which would not have been received
20. in Hillsville before the 9th and may have been received
21. later and was opened and the evidence is clear on that on
22. the 11th of January.
23. Immediately the bank official called Mr. Cooley. He
24. looked up and found that Mrs. Hampton had written large
25.
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1. checks to Elwood Bartlett and that Bartlett in turn had
2. written numerous checks, some of which were coming in, and
3. the greater majority had come to the bank that day, some
4. $2100 had come in prior to the 11th, the rest had come in
5. on the 11th. The source of those funds of Bartletts were
6. Mrs. Hampton's checks. The plaintiff takes the very tech-
7. nical that because those tainted checks were deposited in
8. the Bank of Carroll that somehow vested Bartlett with an
9. absolute right regardless of the source of the funds to
10. draw credit on the account. We contend that the law is not
11. thus, and that the bank had a right to get back funds which
12. had been expended and were suppose to have been paid into
13. court and were expended contrary to the decree of the court
14. and that the bank did what any prudent person should have
15. done and called the Judge of the Circuit Court to say these
16. funds are here, she has drawn out this much money, should
17. we pay them. Judge Matthews stated that he was astounded
18. that this had happened and that he instructed the bank not
19. to pay any checks.
20. Now, we say that this cannot amount to wrongful dis-
21. honor. I think the law is clear that had those checks been
22. forgeries the bank would not have had to honor them regard-
23. less of the twenty-four hours if the forgeries had not been
24.
25.
26.

1. discovered or could not have been discovered with the use
2. of due care. The whole point for the statute on which the
3. plaintiff relies about a depository bank being also a payor
4. bank and they having a right to withdraw is based on the
5. fact that a bank is suppose to know the status of its
6. accounts. Testimony was that they would not have paid cash
7. to Mrs. Hampton on her check nor would they have paid cash
8. to the Bartletts on their checks and they have the right to
9. reverse under 8.4-213: "An item is finally paid by a payor
10. bank when the bank has done any of the following: (a) paid
11. the item in cash (b) settled for the item without reserving
12. a right to revoke the settlement (c) completed the process
13. of posting; process of posting is defined under 8.4-109
14. I believe and this says, "The process of posting means the
15. usual procedure followed by a payor bank in determining to
16. pay an item and in recording the payment including one or
17. more of the following or other steps as determined by
18. the bank:
19. (a) verification of any signature;
20. (b) ascertaining that sufficient funds are available;
21. (c) affixing a "paid" or other stamp;
22. (d) entering a charge or entry to a customer's account
23. (e) correcting or reversing an entry or erroneous
24.
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1. action with respect to the item."
2.
3. If the Court please, the Illinois Court in Brown
4. vs Southshore National Bank of Chicago, 273 NE (2d) 671;
5. this case involved a check which had been drawn on a
6. bank signed John W. or Christine L. Porter by Peter L.
7. Serales. It came back to the bank on February 28th. The
8. bank stamped on the face of that check "Paid in Error."
9. On March 1st the bank sent the check back marked "Not"
10. "Paid in Error." The payee of that check brought an action
11. against the bank claiming all the usual damages, mental
12. anguish, punitive damages, etc. and the court eliminated
13. most of them and entered summary judgment for the bank on
14. the remaining claim and just as our stature the Court said:
15.
16. "It is clear that the process of posting requires
17. several steps. The mere fact that some of those steps
18. were taken does not mean that the process was complete;
19. the affixation of the stamps and entry on the customer's
20. account, also included certain governmental steps of
21. signature verification and if necessary correction or
22. reversal of the erroneous action. The act of the
23. defendant in returning the check to plaintiff's bank
24. demonstrating that the posting process was not completed,
25. regardless of the entry on the statement of account, the
26.

1. stamps placed on the check, because the posting process
2. had not been completed--thus defendant was not obligated
3. to pay.
4. Translating that to our case it goes into a recordax
5. and marked "paid". Later they have a hand stamp and
6. can put "not" in front of the paid and return the item
7. and until that is done the posting process has not been
8. completed. Here on the 11th of January, although the
9. ledger sheet shows these things were there, they had been
10. stamped paid going through the recordax but on the 12th
11. they were stamped "not paid" and so the posting process
12. had not been completed then on Bartlett's checks.
13. Now, to go to Mrs. Hampton's checks, as I said earlier
14. she had no right, the check with which she opened her
15. account-she had no right to write the checks to Bartlett
16. on that account according to the evidence at that time,
17. and, therefore, there was nothing legal about those checks.
18. They were just as if they were unauthorized or forgeries
19. or anything else, and for this Court to hold that sending
20. back checks of that nature for wrongful dishonor I think
21. would do complete violation to the whole idea of banking
22. practice. It would say that if I brought in a check on
23. you and put it in that bank that I might have stolen, that
24.
25.
26.

1. the bank has to pay me cash on it within twenty-four hours
2. is absurd. There certainly must be a time for action when
3. the true facts become known and there was no way for the
4. bank to have found out these true facts. The evidence is
5. they went up to that bank so nobody would know the true
6. facts. We take the position the bank is a completely
7. innocent victim in this case and not liable for any damages.
8. MR. BURTON: I would respectfully move that Mr. Campbell's
9. motion to strike our evidence be overruled. This action
10. was brought under the Uniform Commercial Code which says:
11. "A payor bank is liable to its customer for damages prox-
12. imately caused by the wrongful dishonor of an item. When
13. the dishonor occurs through mistake liability is limited
14. to actual damages proved. If so proximately caused and
15. proved damages may include damages for an arrest or pros-
16. ecution of the customer or other consequential damages.
17. Whether any consequential damages are proximately caused
18. by the wrongful dishonor is a question of fact to be deter-
19. mined in each case."
20. The action was filed under this section asking for
21. damages caused by the bank's wrongful dishonor and we base
22. the wrongful dishonor on 8.4-213 to which Mr. Campbell has
23. already referred. If you look at Sub-section 4 of the
24.
25.
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1.
2. Section 8.4-213 it says, "Subject to any right of the bank
3. to apply the credit to an obligation of the customer, credit
4. given by a bank for an item in an account with its customer
5. becomes available for withdrawal as of right." Sub-section
6. B: "In any case where the bank is both a depositary bank
7. and a payor bank and the item is finally paid, at the open-
8. ing of the bank's second banking day following receipt
9. of the item."
10.
11. There appears to be no question that the Bank of
12. Carroll was a payor bank; there was no conflict in the
13. evidence that the Bartletts were customers of the bank,
14. there is no conflict that there were a depositary bank.
15. The key language in shorter form where a bank is payor
16. and depositary and the item is finally paid.
17.
18. Mr. Campbell is arguing the item is not finally paid
19. and he defines when an item is finally paid, "An item is
20. finally paid by a payor bank when the bank has done any of
21. the following: (a) paid the item in cash (b) settled for
22. the item without reserving a right to revoke the settlement
23. and without having such right under statute, clearing house
24. rule or agreement (c) completed the process of posting the
25. item (d) made a provisional settlement for the item and
26. failed to revoke the settlement in the time and manner

1.
2. permitted by statute, clearing house rule or agreement."
3. In a case where you have a deposit and there is no
4. clearing house involved and the evidence has shown clearly
5. there was no agreement made between them and the bank at
6. the time the account was opened as to when they could or
7. could not draw on that account. The evidence was the
8. deposit was made on January 3, 1974 in a bank that was a
9. depository bank and also a payor bank for those items.
10. The deposit sheet showed it, the ledger showed a credit to
11. those accounts. With regard to Mrs. Hampton's ledger which
12. apparently has been misplaced by the bank it is testified
13. that the two checks she had paid to Mr. Bartlett had been
14. paid so far as the bank was concerned.
15. I think we have shown clearly that we would come under
16. (b) (c) or (d) of Sub-section 1 of that 8.4-213. B says
17. "settled for the item without reserving a right to revoke
18. the settlement and without having such right under statute."
19. Settle means to make an entry. They made the entry on
20. the 3rd. Then go to 8.4-301 Payor Banks, looking at Sub-
21. section (2) that says: "If a demand item is received by
22. a payor bank for credit on its books it may return such item
23. or send notice of dishonor and may revoke any credit given
24. or recover the amount thereof withdrawn by its customer, if
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1. it acts within the time limit and in the manner specified
2. in the preceding subsection." The preceding subsection
3. says it has to be done before midnight of the banking day
4. of receipt.
5. They clearly didn't comply with that. The notice of
6. dishonor was sent out on the 12th at the earliest. I
7. would make a reference under (c) that says "completed the
8. process of posting." Mr. Campbell has referred to the
9. section and defined the process of posting and says it
10. includes one or more of the following steps: verification
11. of signature. The evidence was the signatures were
12. verified- they both were there. The funds in Mrs. Hampton's
13. account were there. Affixed a paid or other stamp--the
14. evidence was that the paid stamp was affixed. The evidence
15. was that the ledger on her account would have shown a debit
16. and paid on the 3rd of January. Correcting an entry or
17. error and he cites in support of that an Illinois case-
18. Brown vs Southshore National Bank; that was not brought for
19. wrongful dishonor but a case brought by a payee on a check
20. and we are bringing this action as depositors not payees
21. on a check. The opinion made no reference to the midnight
22. rule. I think what the opinion was trying to say the cause
23. of action, there is no liability of a bank to a payee.
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1.
2. The process of posting would necessarily I feel
3. under the code have to be completed also within the mid-
4. night rule. If they want to dishonor the items and have
5. marked them paid and verified the signatures and verifying
6. the funds as being available and taking all the steps that
7. we feel are necessary to post that check they still have
8. until midnight and they could do all that within a matter
9. of minutes and hours, they have got until midnight of the
10. following day to dishonor the checks.
11.
12. In subsection (d) of 8.4-213 I would also argue that
13. if the defendant had made a provisional settlement and
14. had made it in the time and manner permitted by statute,
15. I would refer to the midnight rule which says they had until
16. midnight of the following day to return the items and in
17. addition to the Uniform Commercial Code there is a recent
18. case- William J. Kirby v. First and Merchants Bank, 210 Va.
19. 88, this case involved a same similar set of facts as the
20. instant case. A depositor made a deposit of a check in a
21. bank which was also the payor bank. At the same time he
22. received $200.00 in cash and the balance under the check
23. was deposited in his account. The bank attempted after the
24. midnight rule had expired to return that item and dishonor
25. it because there were in fact insufficient funds in the
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1. drawer's account at the bank and the Court spoke to the
2. effect that the process of posting had been completed
3. because the item had been paid in cash and they said that
4. was the reason it had been finally paid and, therefore,
5. those funds became available to the drawer and there was
6. nothing they could do and they said even if it had been
7. provisional the court said they still had to comply with
8. the midnight rule and return the item within midnight of
9. the banking day following the receipt. I think the language
10. clearly supports the facts in this case. The events
11. leading up to the deposits and the events after the 5th
12. as far as the wrongful dishonor I feel is really immaterial
13. as to the right of Mr. and Mrs. Bartlett to draw on that
14. account they had opened on the 3rd.
15. I don't feel that Mr. Campbell's comment that if the
16. court decided there was a wrongful dishonor and that it
17. would allow someone to deposit a stolen or forged check
18. and leave the bank completely unprotected- it simply means
19. the bank has to follow certain rules and they are set out
20. in the code and if you rule this way the court will be
21. saying that where the bank is in possession of any items
22. they can reverse any items and claim that they were never
23. finally paid because the only reason the Bank of Carroll
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1. was able to return those items was because it happened
2. to be the payor and depository. I think the evidence is
3. clear that they had not complied with the code sections
4. that had been imposed on them and that as a matter of law
5. their actions constitute a wrongful dishonor of those
6. checks. They did have a right on the 5th to draw on that
7. account. We would ask that the jury be instructed to
8. that end.
9. MR. TRABUE: If I may add to that the testimony of both
10. of the Pulliums, young Lonnie Pullium said the bank practice
11. was three days; Mr. Pullium said that at least on the 7th,
12. the date that the Ward check actually was paid by the other
13. bank, Bank of Virginia, that he would have had to have let
14. them draw the funds out. He explained what he would do,
15. he would call the bank or go over to the bank but it was
16. obvious from the testimony of both of the Pulliums-
17. Lonnie that by the 6th it was a settled item and Mr. Pullium
18. on the 7th it was a settled item and no question about the
19. sufficiency of the funds and the right of the Bartletts to
20. draw on them. The time limit is a little bit longer than
21. the midnight rule. By the 12th it had been settled and
22. it was too late to dishonor them.
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1. MR. CAMPBELL: This is not an action for the wrongful
2. dishonor of Mrs. Hampton's check. This is an action for
3. the wrongful dishonor of the Bartletts' checks. I want to
4. show Your Honor the ledger sheet of the Bartletts account
5. which shows that, I think I totalled it $2200.00 wrongfully,
6. if you grant the midnight rule and everything else they may
7. have been finally paid but these checks- $6105; $8,000;
8. $929.51; $863.46 came in on Friday, the 11th and they were
9. dishonored on the 12th and granted there was a wrongful
10. dishonor it would only be as to the $2200 which were not
11. finally paid prior to midnight on the day after their receipt.
12. Secondly, the case of Kirby vs First and Merchants
13. National Bank is very different from the case at bar. In
14. that case a company, the Neuse Company, and they had an
15. account with First and Merchants and so did Mrs. Kirby.
16. Neuse gave Mrs. Kirby a check for $2500.00. She took it
17. to the bank and the bank handed her $200.00 in cash and
18. made the notation on the deposit ticket "Cash for DEposit".
19. They then found that Neuse's check was drawn against
20. insufficient funds. Instead of giving a notice the bank
21. called Mr. and Mrs. Kirby on January 5 to advise that the
22. bank had dishonored the check and to request reimbursement.
23. Mrs. Kirby said they would come to the bank to cover the
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1.
2. check but they did not. On January 10 the bank charged
3. Mrs. Kirby's account with $2,500, creating an overdraft
4. of $543.47. On January 18 the bank instituted an action
5. to recover $543.47 from Mr. and Mrs. Kirby.
6. This is not an action for a wrongful dishonor. The
7. bank was trying to get back the difference between what
8. it had and what it had paid out to Mrs. Kirby and the
9. court held that the bank, having made the notation "cash
10. for deposit" had paid it in cash and it could not recover
11. the $543.47. There is no suggestion anywhere that the
12. Bank of Carroll paid any of these checks in cash or indic-
13. ated that they were paying them in cash. The court in its
14. opinion says, "The drawer of a check, and not the holder
15. who receives payment, is primarily responsible" and that
16. the bank's action should have been against Neuse not
17. against Kirby. The court says "A mere mistake is not
18. sufficient to recover it from him. Banks cannot always
19. guard against fraud, it can guard against mistakes." We
20. suggest that the action of Mr. and Mrs. Bartlett in violation
21. of the court's decree amounted to fraud and they acted as
22. only; I don't know what else they could have done when the
23. Judge told them it had been wrongfully deposited and wrong-
24. fully paid out; there would be no wrongful dishonor and the
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2. checks that came to the bank on the 11th were dishonored
3. before midnight on the 12th.
4. THE COURT: What do you gentlemen have to say about the
5. checks on the 11th?
6. MR. BURTON: The argument Mr. Campbell is making is that the
7. bank apparently had the right to dishonor the checks that
8. they received after the 11th if conceding that they dis-
9. honored the first ones.
10.
11. MR. CAMPBELL: I am saying they had the right under the
12. midnight rule.
13. MR. BURTON: What he is saying they had a right under the
14. midnight rule to dishonor the checks on the 11th. The
15. Bartletts as a matter of right had a right to draw on those
16. funds on the second banking day after the deposit was made
17. and Mr. Campbell is saying any checks received after the
18. 11th were returned because there was no money in his account.
19.
20. MR. CAMPBELL: I am saying because they were contested funds.
21. MR. BURTON: In order to make that argument that the bank
22. can return the items received on the 11th because the funds
23. are contested he is saying that the bank at that point
24. can dishonor the two checks that were deposited. Those
25. funds become available as a matter of right under the
26. statute. In the Kirby case the Kirbys took $200.00 in cash,

1. $2300.00 was deposited in their checking account. On
2. January 4th the bank discovered it was drawn on insufficient
3. funds; they called Mr. and Mrs. Kirby and asked them to
4. come by and make reimbursement and they didn't come by
5. and on January 10th the bank charged the Kirby's account
6. $2500.00. It created an overdraft and they brought an
7. action against the Kirby's to recover the overdraft that
8. they charged back. The court held in their favor and the
9. supreme court said the items had been finally paid because
10. part of it had been paid and the bank had no right to
11. charge that back to the Kirby's account and even if it
12. had, I will read the language out of the opinion:
13. "Even if the Bank's settlement for the Neuse check had
14. been provisional, the Bank had the right to charge that
15. item back to Mrs. Kirby's account only if it complied
16. with U.C.C. 4-212-3 and 4-301. Those sections authorize
17. the revocation of a settlement if, before the "midnight
18. deadline", the bank (a) returns the item; or (b) sends
19. written notice of dishonor or nonpayment if the item is
20. held for protest or is otherwise unavailable for return.
21. The Bank concedes that it neither sent written notice of
22. dishonor nor returned the Neuse check before the "midnight
23. deadline". So the Bank had no right to charge the item
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1. back to Mrs. Kirby's account." That is exactly what the
2. bank did, charged the two Hampton checks back to the
3. Bartlett account.
4. THE COURT: Was the Bank of Carroll a collecting bank as
5. to Mrs. Hampton?
6. MR. TRABUE: They were a collecting bank as to Ward's check.
7. MR. BURTON: As to the Bartletts deposit they were not a
8. collecting bank, Your Honor.
9. THE COURT: Can we segregate in this case the Bartlett account
10. from the Hampton account. It was the Hampton account that
11. they were trying to re-establish, of course, in so doing
12. they dishonored the Bartlett's checks. The reason I ask
13. the question I am wondering if this is an issue in this
14. case, the question of whether the action taken by the bank
15. was seasonable, it may not be; if it is it may be an issue
16. in this case for the jury. Mr. Campbell is moving to strike
17. and enter summary judgment for the defendant.
18. MR. BURTON: I was just going to state that 8.4-413 would
19. really have no meaning --I don't see any way you can get
20. around it.
21. THE COURT: Suppose there was no question in this case
22. at all, there was absolutely no question about the proper
23. legality of the court's order but this bank just didn't get
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1. notice of that, didn't know about it until a week after
2. the deposit was made and had set up these accounts and
3. marked the checks paid. Do I understand you to be arguing
4. that under 213 it is just too bad and although they acted
5. honestly and innocently it would get stuck for $57,000?
6. MR. TRABUE: If they had no notice they would have absolute
7. immunity.
8. MR. CAMPBELL: They didn't have notice within twenty-four
9. hours but they did get notice a few days later. As a
10. matter of fact I think the bank was immune from liability
11. under the circumstances of our case. Sadie couldn't com-
12. plain. The only person that may complain or did make
13. any was Griggs Hampton and he wasn't a customer of the bank.
14. (The Court took time to consider then made the following
15. ruling:)
16. RULING BY JUDGE ARTHUR:
17. Ladies and Gentlemen of the jury, counsel agree that
18. at this stage it becomes the responsibility of the court to
19. make certain rulings of law and that these rulings will to
20. a large measure resolve the issues in the case so that you
21. will not have to make a decision on this matter. That is
22. why we have taken such a long while, the court has been
23. considering the issues and trying to reach a decision.
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1.
2. Now, plaintiffs in this case rely on Section 8.4-402
3. of the Virginia Code alleging that the defendant bank
4. wrongfully dishonored their checks. The plaintiffs, how-
5. ever, it appears from the evidence knew that the Hampton
6. deposit was being made pursuant to an order of this court.
7. They knew that the order placed certain restrictions
8. upon the holder of the fund, yet they participated in
9. depositing the funds contrary to the order of the court.
10. While Mr. and Mrs. Bartlett were not parties to the suit
11. of Hampton vs Hampton they were aware of the ruling of the
12. court in that case. The same attorney represented them
13. and Mrs. Hampton.
14.
15. Mr. and Mrs. Bartlett now complain that the Bank of
16. Carroll has caused them damage by the dishonor of these
17. checks. The Bartletts were co-authors of their own
18. difficulty. The bank dishonored the Bartlett checks, yes,
19. but in the view of the court it did not wrongfully dishonor
20. them because the plaintiffs cannot take advantage of a
21. situation of their own making. The bank acted reasonably
22. and seasonably and in my view should not be liable to the
23. plaintiffs for their alleged damages. The plaintiffs con-
24. tend that this case should be decided within the narrow
25. confines of the rules laid down by the Uniform Commercial
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1. Code. The issues are confusing, to say the least, and it
2. is my considered opinion that under all the peculiar facts
3. and circumstances of this case the bank did act, as I have
4. already stated, reasonably and seasonably. It is the opin-
5. ion of the court, therefore, that the defendant's motion
6. to strike plaintiffs evidence and for summary judgment should
7. be and it is hereby granted.
8. Ladies and Gentlemen of the jury, I don't want you to
9. feel that your two days here have been wasted. They have not
10. been. You have been a very important part of this trial.
11. The court thanks you for your attendance but because of the
12. preculiar nature of the case it become one of law rather
13. than fact for the court and in a case of this kind the court
14. makes the decisions, the jury does not have to make them.
15. For that reason you do not have to decide the case and you
16. are excused. You are to return here on December 15th at
17. nine o'clock. You are free to go. Thank you.
18. MR. TRABUE: If it please the Court, the plaintiff respect-
19. fully excepts to the verdict of the Court and to preserve
20. the matter for appeal moves that the verdict be set aside
21. on the grounds the verdict is contrary to the law and the
22. evidence. I would like to adopt as part of the motion the
23. arguments of counsel as the grounds that were presented to
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1. the Court and would like to add we feel the Court has
2. erred in failing to grant the summary judgment.
3. THE COURT: I understand. There is no verdict to set
4. aside. I simply granted a motion to strike the evidence
5. and enter summary judgment for the defendant. However, the
6. Court understands your position and whatever is necessary
7. to protect your interest will be done. Let the record so
8. show, that timely exceptions were made to the ruling of
9. the Court in order that the plaintiffs may preserve their
10. right of appeal. Having said that it naturally follows
11. that the motion is overruled.
12. MR. TRABUE: I will ask counsel for the bank to present an
13. order and preserve the appeal. You might tell them what
14. you want put in the order.
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STATE OF VIRGINIA, AT LARGE

I, Cloatine H. Henley, a notary public in and for the State of Virginia, at Large, do certify that the foregoing proceedings in the Law Action of Elwood H. Bartlett and Louise A. Bartlett vs Bank of Carroll, were taken by me in the Circuit Court of Carroll County, Hillsville, Virginia, on December 10 and 11, 1975, and that thereafter I have duly reduced the same to writing.

Given under my hand this 16th day of February, 1976.

My commission expires December 27, 1976.

NOTARY PUBLIC