CLERK
SUPREME COURT OF VIRGINIA
RECEIVED
DEC 28 1979
RICHMOND, VIRGINIA

223 Va 164

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 790755

ALMA KITCHEN, ET. AL.
Appellants

v.

SHIRLEY S. THROCKMORTON, ETC., ET. AL.
Appellees

JOINT APPENDIX

Volume I

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MCCAUL, GRIGSBY & PEARSALL
P.O. Box 558
Richmond, Va. 23204

Counsel for Appellant

Leonard A. Paris, Esq.
TAYLOR, HAZEN, BRYANT & KAUFFMAN
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Richmond, Va. 23219

Counsel for Appellee

LAWYERS PRINTING COMPANY 7th & Franklin Bldg. Richmond, Virginia 23219 (804) 648-3664

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BILL TO SURCHARGE AND FALSIFY

Plaintiffs move that the account of Shirley S. Throckmorton, Administrator of the Estate of Alexander H. Swan, deceased, now before the Commissioner of Accounts for settlement, be surcharged and falsified in the respects and for the reasons indicated by the following sequence of events:

1. On January 4, 1968, Alexander H. Swan opened with his nephew, William E. Swan, joint accounts in Franklin Federal Savings & Loan Association of Richmond, Richmond Federal Savings & Loan Association of Richmond, The Bank of Virginia and First & Merchants National Bank [Exhibits A, B, C, and D], and on January 6, 1968, advised Mr. and Mrs. William E. Swan that he had thereby consummated an arrangement previously discussed with William E. Swan [Exhibit E].

2. On May 17, 1969 Alexander H. Swan turned his automobile over to William E. Swan. In the presence of his brother, Frederick W. Swan, Alexander H. Swan delivered to William E. Swan on December 7, 1969, his coin collection, and on May 4, 1971 delivered his watch and directed William E. Swan to deposit $2,550.00 from the Franklin Federal account in their joint checking account at First & Merchants National Bank to pay some bills [Exhibits D-14 and F]. Frederick W. Swan was with William E. Swan when the deposit was made.

3. Alexander H. Swan died intestate on May 9, 1971, in the City of Richmond, Virginia, having theretofore created an inter vivos oral trust by the understanding and agreement with William E. Swan to the following effect:

(a) He had deposited his money in joint accounts with William E. Swan to be sure that it was handled like the creator wanted and because he could not

trust his brother, Frederick W. Swan. Any residue of the accounts at his death was to be applied first to the payment of the creator's bills, secondly to pay to Ouida S. Adcock and Shirley S. Throckmorton the sum of three thousand dollars each, with the remainder to be divided into four equal parts, one to be paid to Frederick W. Swan, his brother, another to Alma Kitchen, his sister, another to Carrie Swan, his sister-in-law, and the fourth part to William E. Swan, his nephew [Exhibit J];

(b) The creator's coin collection, watch and automobile previously delivered, were to be kept by William E. Swan as gifts to him.

4. On June 3, 1971, William E. Swan verified the balance in the First & Merchants account #11-04-8103 at $3,535.81 [Exhibit G], and drew a $1,796.09 check on this account for payment of the final nursing home bill of Alexander H. Swan [Exhibits D-14 and G-1]. This seemed to disturb Shirley S. Throckmorton and her father, Frederick W. Swan. William E. Swan did not know that Shirley S. Throckmorton had just cashed on June 3, 1971 a check on the same account for $3,400.00 [Exhibit H].

5. On June 3, 1971, William E. Swan closed out savings account #11-22261-9 at The Bank of Virginia in the amount of $9,414.40 [Exhibit C], and account #16-42786 at Franklin Federal Savings & Loan Association in the amount of $18,021.64 [Exhibit A], and account number S/A 23427 in Richmond Federal Savings & Loan Association in the amount of $20,565.32 [Exhibit B], all in the joint names of Alexander H. Swan and William E. Swan, and, after telling Mr. DeWitt Evans, Cashier of The Farmers National Bank at Appomattox, Virginia of the trust and on his advice, deposited the checks so received in a Special Account newly opened on June 4, 1971 in the name of William E. Swan or Gracie T. Swan, or the survivor [Exhibit I], and executed the memorandum of directions to Gracie T. Swan [Exhibit J], to dispose of the account as provided in the trust of which he was trustee, if his death should occur before this business were settled.

6. On June 4, 1971, after making this deposit William E. Swan went

to the home of Frederick W. Swan and told the latter what he had done and that he was then prepared to distribute the accounts according to Alexander H. Swan's directions, with which said Frederick W. Swan was already familiar. Frederick W. Swan refused unless William E. Swan were to give Shirley S. Throckmorton $5,000.00 instead of $3,000.00. William E. Swan would not accede to this.

7. On June 6, 1971, Frederick W. Swan demanded of William E. Swan that the latter give him a blank check on the account at First & Merchants National Bank. William E. Swan also refused this demand.

8. On the night of June 7, 1971, Frederick W. Swan called William E. Swan and asked him to come to the home of the former on June 8, 1971. William E. Swan complied and found Frederick W. Swan and Shirley S. Throckmorton present. Shirley S. Throckmorton advised that she would not accept less than $10,000.00, and Frederick W. Swan demanded a check for $17,000.00. William E. Swan again refused, representing all the while that he was prepared to settle according to the instructions of Alexander E. Swan.

9. On June 9, 1971, Shirley S. Throckmorton [who was a trust beneficiary, but not a distributee under the law pertaining to intestacy], qualified as Administrator of the estate of Alexander H. Swan, deceased, before the Clerk of this Court, stating that the qualification was for the purpose of suit.

10. On that same date, Shirley S. Throckmorton, as Administrator of the estate of Alexander H. Swan, deceased, executed a written authorization to Robert E. Pembleton, Esquire, to represent her in her claims as Administrator against William E. Swan, for which Pembleton was to be paid a fee of one-third of anything obtained by the estate from William E. Swan [Exhibit K].

11. By checks drawn on the First & Merchants account on June 10, 1971 [Exhibits D-15, D-16 and D-17], William E. Swan paid the bills he had

received from Adney K. Sutphin, M. D. [Exhibit L], Allied Ambulance Service, Inc. [Exhibit M], and West End Orthopaedic Clinic [Exhibit N].

12. On June 11, 1971, Shirley S. Throckmorton, having been fully informed by William E. Swan that he acknowledged that he held the former property of Alexander H. Swan, deceased, for the benefit of himself and others, including Shirley S. Throckmorton and her father, Frederick W. Swan, according to the instructions of Alexander H. Swan, deceased, falsely made affidavit that William E. Swan had converted to his own use the proceeds of the aforesaid accounts in The Bank of Virginia, Richmond Federal Savings & Loan Assocation and Franklin Federal Savings & Loan Association, which he had deposited as aforesaid in the special account in the Farmers National Bank at Appomattox, Virginia; falsely made oath that, if the properties of Alexander H. Swan were not produced and preserved by the Court, irreparable harm would result; and through such deliberate deception of the Court, sought and obtained restraining orders against any disbursing of funds in the bank accounts and directing the Sheriff to seize and deliver to her the 1964 Chevrolet automobile, the coin collection and the Hamilton watch; all such being without notice to or knowledge of William E. Swan, until he was served with the restraining order on June 14, 1971, and the Bill of Complaint on June 15, 1971.

13. Meanwhile, on June 12, 1971, William E. Swan had applied the $1,003.06 proceeds of an insurance policy on the life of Alexander H. Swan, of which William E. Swan was the named beneficiary, to the burial expense of Alexander H. Swan [Exhibit O].

14. Promptly upon receipt of such order and Bill of Complaint, William E. Swan, along with Alma S. Kitchen, Ouida S. Adcock, Gladys S. Kesterton, Doris S. Rosser, Corrine S. Kidd, Hugh Swan and Carrie Swan, [be-

ing all the heirs at law and/or beneficiaries under the terms of the inter vivos trust of Alexander H. Swan other than Frederick W. Swan and Shirley S. Throckmorton] acting through John R. Snoddy, Esquire, their attorney, readily agreed that they had no objection to completion of the expressed wishes of Alexander H. Swan as to the trust fund being carried out by Shirley S. Throckmorton's making distribution as Administrator of the residue of said fund [after disbursement therefrom under the direction of the Court for debts, administration expenses, taxes and legitimate claims as though the fund were a part of the estate], according to the terms of the inter vivos oral trust instead of according to the law pertaining to intestacy; it being represented to John R. Snoddy by Shirley S. Throckmorton through her counsel, Howard C. Vick, that there would be involved in such alternate method of completing distribution by her as Administrator in place of William E. Swan as trustee only the usual administrative charges incurred under the supervision of the Commissioner of Accounts and the Court, and a reasonable fee to Howard C. Vick and Robert E. Pembleton to be fixed by the Court commensurate with services actually rendered to the Administrator in distributing said fund pursuant to said agreement.

15. Thereafter the insufficiency of the First & Merchants account to satisfy the checks William E. Swan had drawn thereon to pay the bills, occasioned by the prior cashing by Shirley S. Throckmorton of the $3,400.00 check, became known [Exhibit P].

16. The agreement to conclude the carrying out of the wishes of Alexander H. Swan, that were known by all parties to have been expressed by him, rather than to distribute the property mentioned herein as though Alexander H. Swan had died intestate as to such property, was later incorporated in a writing prepared by Messrs. Vick and Pembleton dated July 16, 1971 [Exhibit Q], without there ever being any intimation to your plaintiffs that

Shirley S. Throckmorton had made any agreement with counsel about fee or that she would seek approval of the Court that Messrs. Vick and Pembleton be paid one-third of the estate. Such agreement was contrary to the representation to John R. Snoddy that counsel for Shirley S. Throckmorton would receive compensation commensurate with the legal service rendered in completing distribution pursuant to the agreement. Such representation was an essential part of the inducement for your plaintiffs' agreement to this alternate method of completing the distribution.

17. At the time of agreement to this alternate method of completing the carrying out of the recognized wishes of Alexander H. Swan, it was further agreed by Messrs. Vick and Pembleton, representing Shirley S. Throckmorton and her father, Frederick W. Swan, with John R. Snoddy, representing all other parties to the agreement, that no Answer to the Bill of Complaint was necessary as the Court had only to supervise performance of the agreement about which there was no factual or legal controversy, that accordingly no Answer would be filed, and that Messrs. Vick and Pembleton would attend to the preparation and submission of Orders appropriate to carry out the intent of the agreement.

18. Pursuant to this understanding between counsel, on August 12, 1971, Shirley S. Throckmorton procured the entry and service of an order directing the delivery of all assets to Shirley S. Throckmorton, as Administrator, with which order all parties complied [Exhibit R and S].

19. As was expected, this order of August 12, 1971 routinely recited the omission of William E. Swan to file responsive pleadings. As was clearly not expected, disclosure was never made to the Court by Shirley S. Throckmorton or her counsel that (a) the parties had entered into the agreement of July 16, 1971 [Exhibit Q] whereby it was determined by all interested parties that the administrator would distribute the fund theretofore

held in trust by William E. Swan to the beneficiaries of such trust, subject only to the payment of debts, administration expenses, taxes and legitimate claims as though the fund were for such purpose a part of the estate, and that (b) there had never been the slightest indication by William E. Swan that he had converted the trust fund to his own use.

20. Despite the aforementioned agreement between counsel for the administrator and John R. Snoddy, Jr. as then counsel for plaintiffs, Shirley S. Throckmorton filed on that same date, namely August 12, 1971, a second and separate petition and on the basis thereof obtained entry of an order by which the Court approved the payment of one-third of the entire estate of Alexander H. Swan to Robert E. Pembleton and Howard C. Vick for "locating and recovering assets belonging to said estate." John R. Snoddy, Jr., and his clients were entirely without knowledge of this second petition and order, which were in violation of the understanding and agreement of the parties, until discovery of the same through a reference thereto in the First and Final Accounting [Exhibit T] made more than one year later. Plaintiffs allege that this action of Shirley S. Throckmorton was deceptive and constituted a deliberate fraud upon the Court in that there was concealed from the Court (a) the initial and continuing declaration by William E. Swan that he held said property of Alexander H. Swan (with the exception of certain tangibles) upon an inter vivos trust for the benefit of himself and others; (b) the readily assented to oral agreement by William E. Swan and all interested persons, whether benefiting from or excluded by the clearly expressed wishes of Alexander H. Swan in establishing this trust, that completion of execution of the trust be carried out through Shirley S. Throckmorton; (c) the July 16, 1971, writing thereafter entered into by all parties confirming such oral agreement; (d) that such property formed the corpus of an inter vivos oral trust and never actually constituted a part of the estate

of Alexander H. Swan or was subject in law to debts, administration expenses or legitimate claims except to the extent of such agreement; (e) that the only authority of Shirley S. Throckmorton as administrator to make any expenditure or distribution whatever of or from said fund arose under the agreement memorialized on July 16, 1971, whereby expenditures were to be made only "in accordance with this agreement and under the direction of said Chancery Court of the City of Richmond"; (f) that these plaintiffs were induced to enter into said agreement both at the time of the oral agreement and the subsequent writing of July 16, 1971 by the representation of Shirley S. Throckmorton and her counsel to John R. Snoddy that such fund would be subject only to debts, administration expenses, taxes and legitimate claims as if the trust fund were a part of the intestate's estate, and then be distributed to the beneficiaries of said trust according to the terms thereof rather than according to the law pertaining to distribution of intestate property; that the nature and location of the assets which were held by William E. Swan as trustee of Alexander H. Swan were known to Shirley S. Throckmorton at the time she qualified as personal representative on June 9, 1971; and (g) that the agreement between Shirley S. Throckmorton and Messrs. Vick and Pembleton to pay to them one-third of approximately $50,000.00 to "discover and recover" these assets was made when she knew the existence and precise location thereof and that the said William E. Swan purported to hold them pursuant to the terms of the trust and not in his own right. Your plaintiffs also allege that between June 9 or June 11, 1971 and the immediate agreement of all the parties that execution of the trust of Alexander H. Swan, which had already been commenced by William E. Swan as trustee, be completed by the administrator under the terms of the agreement and the supervision of the Court, it was impossible that Messrs. Vick and Pembleton could have expended $17,670.29 in time and effort "to locate and recover assets belonging to said estate." They further allege that the said Shirley S. Throckmorton and her counsel were all under a fiduciary duty to

make a full disclosure to this Honorable Court in requesting entry of said order of August 12, 1971, which said duty they violated.

22. Your complainants accordingly allege that (a) the said Shirley S. Throckmorton and her counsel did not discover or locate the items held by William E. Swan pursuant to the terms of the trust of Alexander H. Swan, as the existence and location of the same were already known to her and (b) that such sums were not recovered for the estate in that the same were recognized by all parties as not belonging to the estate and as being subject to distribution to the interested persons in accordance to the terms of the trust and not according to the laws of intestate succession.

WHEREFORE your complainants pray that for her flagrant breaches of fiduciary duty and deliberate deception of the Court Shirley S. Throckmorton forfeit and be required to refund all commission heretofore taken by her; that she be required to reimburse to the fund she is distributing solely by virtue of said voluntary agreement the $17,670.29 wrongfully paid therefrom to Robert E. Pembleton and Howard C. Vick in deliberate deception of the Court, in fraud of the parties making the agreement, and contrary to its expressed terms; that she be required to refund to William E. Swan so much of his $1,003.06 advance on the funeral expenses of Alexander H. Swan as he shall not have been reimbursed by the Railroad Retirement Board; that she be required to distribute all sums received from William E. Swan after payment of the decedent's debts to Alma S. Kitchen, Carrie R. Swan, Frederick W. Swan and William E. Swan, in accordance with the terms of said agreement of July 16, 1971; that she be required to pay the reasonable attorney's fees of the complainants occasioned by the necessity for filing this bill of complaint, and that for any omission or inability of Shirley S. Throckmorton so

to act, the United States Fidelity and Guaranty Company, as surety on her bond, be required by the Court promptly to give full satisfaction.

Alma S. Kitchen

William E. Swan

Corrine S. Kidd

Doris S. Rosser

Ouida S. Adcock

Gladys S. Kesterton

Hugh Swan

Carrie R. Swan

McCaul, Grigsby & Pearsall
1005 United Virginia Bank Building
Richmond, Virginia 23219
Counsel for Plaintiffs

EXH. NO. A 16-12786

FRANKLIN FEDERAL SAVINGS AND LOAN ASSOCIATION
OF RICHMOND

SAVINGS AND DIVIDENDS	WITHDRAWALS	DATE	BALANCE
16,835.26		JAN 4 68	16,835.26 *
379.79		OCT 16 68	17,214.05 *
387.32		MAY 5 69	DIV 17,601.37 *
JUN DIV 396.03		SEP 12 69	17,997.40 *
100.00		NOV 10 69	18,097.40 *
DEC DIV 405.58		FEB 3 70	18,502.98 *
150.00		FEB 3 70	18,652.98 *
23.93		MAR 10 70	18,676.91 *
60.00		MAR 10 70	18,712.98 *
CHK DIV 225.77		SEP 14 70	18,938.75 *

DIVIDENDS CREDITED JUNE 30TH AND DECEMBER 31ST

JUN DIV 236.73		SEP 14 70	19,175.48 *
245.72	- Mar. 71	MAY 4 71	DIV 19,421.20 FN
239.69	- Sept. 70	MAY 4 71	DIV 19,660.89 FN
242.68	- Dec. 70	MAY 4 71	DIV 19,903.57 FN
603.84		MAY 4 71	CHK 20,507.41 FN
	2,550.00	MAY 4 71	CHK 17,957.41 *
64.23		JUN 3 71	18,021.64 FN
	18,021.64 -	JUN 3 71	.00 *

PLEASE NOTIFY THE ASSOCIATION OF ANY CHANGE
IN YOUR ADDRESS

A - Pg. 2

No. 16-42788

THIS CERTIFIES THAT

Mr. Alexander H. Swan and
Mr. William E. Swan
11 N. Linden St.
Richmond, Va. 23220

as joint tenants with the right of survivorship

holds a Savings Account representing share interests in FRANKLIN FEDERAL SAVINGS AND LOAN ASSOCIATION OF RICHMOND, subject to its charter and bylaws, the Rules and Regulations for the Federal Savings and Loan System, and to the laws of the United States of America.

FRANKLIN FEDERAL SAVINGS AND LOAN ASSOCIATION
OF RICHMOND

FOUR LOCATIONS TO SERVE YOU

HOME OFFICE
Seventh and Broad Streets

VILLAGE BRANCH
Three Chopt and Patterson

AZALEA BRANCH
4829 Azalea Mall

SOUTHSIDE BRANCH
510 Belt Blvd.

EXH. NO. B — No. 23427

	DATE			DIVIDENDS	WITHDRAWALS	SAVINGS PAYMENTS	BALANCE	
1	JAN 4-68					$12,541.01	**18,541.01	83
2	[illegible]-3-68			*[illegible]			*[illegible]	J-
3	APR 30-69			*[illegible]			*18,384.74	J-
4	MAY 30-69				*2,000.00		*16,884.74	* D-
5	SEP 11-69	[illegible] 30-69		*416.89			*17,301.63	J-
6	SEP 11-69				*2,000.00		*15,301.63	* E-
7	JUN 23-70	SEP-30-69		*189.94			*15,491.57	J-
8	JUN 23-70	DEC-30-69		*183.96			*15,675.53	J-
9	JUN 23-70					*3,500.00	*19,175.53	* [illegible]
10	JUN-3-71	MAR 31	70	*224.98			*19,400.51	J-
11	JUN-3-71	JUN 30	70	*242.51			*19,643.02	J-
12	JUN-3-71	SEP 30	70	*245.54			*19,888.56	J-
13	JUN-3-71	DEC 31	70	*248.61			*20,137.17	J-
14	JUN-3-71	MAR 31	71	*251.71			*20,388.88	J-
15	JUN-3-71	To Date	71	*176.44			*20,565.32	J-
16	JUN-3-71				20,565.32		*******.00	* E-
17								
18								
19								
20								
21								
22								
23								
24								

98-N-PEM

ALWAYS BRING OR MAIL THIS BOOK WITH EACH TRANSACTION

PLEASE NOTIFY THE ASSOCIATION OF ANY CHANGE IN YOUR ADDRESS

No. 23427

RICHMOND FEDERAL SAVINGS AND LOAN ASSOCIATION
RICHMOND, VIRGINIA

SAVINGS CERTIFICATE

THIS CERTIFIES THAT ALEXANDER H. SWAN OR WILLIAM E. SWAN

holds a Savings Account representing share interests in Richmond Federal Savings and Loan Association, subject to its charter and by-laws, the Rules and Regulations for the Federal Savings and Loan System, and to the laws of the United States of America.

WITNESS the authorized signature of officer or employee of the Association hereto.

Dated at Richmond, Va., this 1 day of JANUARY, 1960

RICHMOND FEDERAL SAVINGS AND LOAN ASSOCIATION

OCT. 16, 1956
INSURANCE COVERAGE
INCREASED TO $15,000

Authorized Signature

CERTIFICATE OF INSURANCE OF ACCOUNTS ISSUED BY THE FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

Federal Savings and Loan Insurance Corporation

Certificate of Insurance No. 1708

This is to Certify that

Richmond Federal Savings and Loan Association

has become an insured institution, as is provided in Title IV of the National Housing Act, as amended, providing for the insurance of accounts, and that, so long as it complies with the provisions of said title of said act, it may represent itself as an insured institution, and its insured members shall be entitled to protection on their insured accounts as is provided in said act, as follows:

"Sec. 405. (a) Each institution whose application for insurance under this title is approved by the Corporation shall be entitled to insurance up to the full withdrawable or repurchasable value of the accounts of each of its members and investors (including Individuals, Partnerships, Associations, and Corporations) holding withdrawable or repurchasable Shares, Investment Certificates, or Deposits, in such institution; except that no member or investor of any such institution shall be insured for an aggregate amount in excess of $10,000.

(b) In the event of a default by any insured institution, payment of each insured account in such insured institution which is surrendered and transferred to the Corporation shall be made by the Corporation as soon as possible either (1) by cash or (2) by making available to each insured member a transferred account in a new insured institution in the same community or in another insured institution in an amount equal to the insured account of such insured member: Provided, that the Corporation, in its discretion, may require proof of claims to be filed before paying the insured accounts, and that in any case where the Corporation is not satisfied as to the validity of a claim for an insured account, it may require the final determination of a court of competent jurisdiction before paying such claim."

Executed in Washington, District of Columbia, the 21st day of Sept., 1939

Federal Savings and Loan Insurance Corporation

Attest: J. Francis Moore *Secretary*

By Josh R. Davis *Chairman*
Home Loan Bank Board

Originally Issued April 9, 1937.

EXH. NO. C

OFFICE _____ ACCOUNT No. 11-22261-9

IN ACCT. WITH Alexander H. Swan or William E. Swan

	DATE	WITHDRAWAL	DEPOSIT	INTEREST	BALANCE	TRANS.
JAN	4 68		4,868.45		4,868.45	BW-1
1						
SEP	11 69	[illegible]		99.23	5,047.17	BW-2
SEP	11 69	[illegible]		100.67	5,147.84	BW-2
JAN	25 70	[illegible]		103.25	[illegible]	[illegible]
JAN	25 70	[illegible]	[illegible]		[illegible]	[illegible]
FEB	6 70		2,100.00		5,851.19	BW-4
SEP	14 70	[illegible]		159.91	9,011.10	BW-2
JAN	3 71	[illegible]		203.31	9,214.31	[illegible]
JAN	3 71	[illegible]		199.06	9,413.37	[illegible]
JAN	3 71			1.03	9,414.40	BW-1
JAN	3 71	[illegible]			[illegible]	[illegible]
JAN	3 71	9,414.40			.00	BW-1
13						
14						
15						
16						
17						
18						
19						
20						
21						
22						

THE BANK OF VIRGINIA

SAVINGS DEPARTMENT

NOTICE—This book should be presented at this bank at least once in each year so that it may be posted, the interest entered and the balance shown. In making withdrawals, always present your passbook—we decline to pay unless you do. Please do not draw a check against this account unless this passbook is attached.

FIRST & MERCHANTS NATIONAL BANK
STATEMENT

EXH. NO. D

STATEMENT DATE	CLOSING DATE	ACCOUNT NUMBER
06-10-69	07-09-69	11-04-5103

DIAL 771-2773

FOR INFORMATION REGARDING YOUR ACCOUNT

1 6

A H SWAN OR
WILLIAM E SWAN
WINGINA VA

BALANCE LAST STATEMENT	WE HAVE ADDED NUMBER	WE HAVE ADDED DEPOSITS TOTALING	WE HAVE SUBTRACTED NUMBER	WE HAVE SUBTRACTED ITEMS TOTALING	WE HAVE SUBTRACTED SERVICE CHARGE	RESULTING IN A BALANCE OF	ITEMS ENCLOSED
279654	1	19540	4	201237		97957	4

CK = CHECK LS = LIST DP = DEPOSIT MC = MISCELLANEOUS CHARGE SC = SERVICE CHARGE
DB = OTHER DEBITS CR = OTHER CREDITS MINUS SYMBOL = OVERDRAWN ACCOUNT

DATE	CHECKS DEBITS	CHECKS DEBITS	DEPOSITS CREDITS	BALANCE
06/17	3.34CK			2,793.20
06/27	9.18CK			2,784.02
07/02			195.40DP	2,979.42
07/03	3.44CK			2,975.98
07/03	1,996.41CK			979.57

✓

No. _____

_____ 19 ____

69-1
510

PAY TO THE ORDER OF _____ $ _____

_____ DOLLARS

FIRST & MERCHANTS NATIONAL BANK
RICHMOND, VIRGINIA

A. H. OR WILLIAM E. SWAN

016

_____

D. pg. 2

Nov. 25 19

Jack Patterson

(Cash)

	DOLLARS	CENTS
L. BRO'T FOR'D		
T DEPOSITED		
TOTAL		
T THIS CHECK	50	00
L. CAR'D FOR'D		

PAY TO THE ORDER OF

FIRST & MERCHANTS NATIONAL BANK
RICHMOND, VIRGINIA

A. H. O

⑆05 10⑈000 1⑆ 1 1 04 8 10 3⑈

D. pg. 3

No. _____

Dec. 28 72 19__

Home Beneficial Life Insurance Co.

Premium on Policy

Or # 184-907 up 12-28-72

	DOLLARS	CENTS
Bro't For'd	1508	09
12-9-70 Dep't Deposited	500	00
Total	2308	09
This Check	9	18
Car'd For'd	2298	71

PAY TO THE ORDER OF _____

FIRST & MERCHANTS NATIONAL BANK
RICHMOND, VIRGINIA

A. H. OR W

⑆0510⑈0001⑆ 11 04 8103⑈

Dpt 4

	DOLLARS	CENTS
Bro't Fo'rd	2273	77
Deposited	355	00
Total	2623	77
This Check		
Car'd Fo'rd	2621	77

1-14 19

PAY TO THE ORDER OF

FIRST & MERCHANTS NATIONAL BANK
RICHMOND, VIRGINIA

A. H. C

⑆051000013⑆ 11 04 8 10 3⑈

D pg 5

1-18 19

Stratford Hall
Nursing Home
Room & Board
Thru 1-31-71

	DOLLARS	CENTS
BROT FOR'D	2621	97
DEPOSITED		
TOTAL		
THIS CHECK	389	00
CAR'D FOR'D	2232	97

PAY TO THE ORDER OF

FIRST & MERCHANTS NATIONAL BANK
RICHMOND, VIRGINIA

A. H. OR WI

⑆0510⑈0003⑆ 11 04 8103⑈

D pg. 6

Feb. 5th 1971

Stratford Hall
Nursing Home
Room, & Board
Thru 2-28-71

	DOLLARS	CENTS
BAL'T FOR'D	2232	97
DEPOSITED		
TOTAL		
THIS CHECK	456	36
CAR'D FOR'D	1776	61

PAY TO THE ORDER OF

FIRST & MERCHANTS NATIONAL BANK
RICHMOND VIRGINIA

A. H. OR

⑆051000016⑈ 11 04 8103⑈

D pg. 7

3-15 1971

	DOLLARS	CENTS
BRO'T FOR'D	1746	61
DEPOSITED	250	00
TOTAL	1996	61
THIS CHECK	[illegible]	[illegible]
CAR'D FOR'D	[illegible]	[illegible]

PAY TO THE ORDER OF

FIRST & MERCHANTS NATIONAL BANK
RICHMOND, VIRGINIA

A. H. OR

⑆0510⑈0001⑆ 11 04 8103⑈

D pg. 8

3-27 19

City of Richmond Va.

Telephone Tax

	DOLLARS	CENTS
Bal'c For'd	1[illegible]	[illegible]
Deposited	[illegible]	[illegible]
Total	[illegible]	[illegible]
This Check	[illegible]	[illegible]
Cr'd For'd	1[illegible]	[illegible]

PAY TO THE ORDER OF

FIRST & MERCHANTS NATIONAL BANK
RICHMOND, VIRGINIA

A. H. OR V.

⑆05 30⑈000 ⑆ 11 01 8 80 8⑈

D Pb 9

3-27 1971

Filmnal

Personnel Service

Federal

Income Tax 1970

	DOLLARS	CENTS
BRO'T FOR'D	174	04
DEPOSITED		
TOTAL		
THIS CHECK	2 15	00
CAR'D FOR'D	1529	04

PAY TO THE ORDER OF

FIRST & MERCHANTS NATIONAL BANK
RICHMOND, VIRGINIA

A. H. O

⑆0510⑈000 ⑆ 11 04 8 10 3⑈

D 8.10

	DOLLARS	CENTS
BROT FORD	1529	34
DEPOSITED		
TOTAL		
THIS CHECK	9	20
CARD FORD	1571	54

PAY TO THE ORDER OF

FIRST & MERCHANTS NATIONAL BANK
RICHMOND, VIRGINIA

A. H. O

⑆0530⑈000⑆ 66 04 8 6 0 3⑈

D Pg. 11

3-29 1971

	DOLLARS	CENTS
BAL'D FOR'D	1519	64
DEPOSITED		
TOTAL		
THIS CHECK	9	18
BAL'D FOR'D	1510	46

PAY TO THE ORDER OF

FIRST & MERCHANTS NATIONAL BANK
RICHMOND, VIRGINIA

A. H. OR WILL

⑆0510⑈000⑆ 11 04 8⑆03⑈

Dp8. 12

	DOLLARS	CENTS
Spot For'd	[illegible]	[illegible]
Deposited		
Total		
Less Check	[illegible]	[illegible]
Carr'd For'd	[illegible]	[illegible]

PAY TO THE ORDER OF

FIRST & MERCHANTS NATIONAL BANK
RICHMOND, VIRGINIA

A. H. OR WILLI

⑆05 10⑈000 1⑆ 1⑆ 04 6 10 8⑈

D pg. 13

2-13 1971

	DOLLARS	CENTS
BRT FORD	[illegible]	[illegible]
DEPOSITED		
TOTAL		
S CHECK	[illegible]	[illegible]
BRD FORD	[illegible]	[illegible]

CHECK PAYABLE OF PAYABLE

No

19

PAY TO THE ORDER OF

FIRST & MERCHANTS NATIONAL BANK
RICHMOND, VIRGINIA

A. H. OR WILLIAM E. SWA

⑆0510⑈0001⑈ 11 04 8103⑈

Pg. 14

6-3 1971

Ft. H. & Hall

Mulay Home

	DOLLARS	CENTS
Bal. For'd	995	81
Deposited	2,560	00
Total	3,553	91
This Check	1796	09
Bal. For'd	1739	72

PAY TO THE ORDER OF

FIRST & MERCHANTS NATIONAL BANK
RICHMOND, VIRGINIA

A. H. OR WILLIAM E.

⑆051000016⑈ 11 04 8103⑈

D pg. 15

6-10 1971

Miss Ambulance Service, Inc.

	DOLLARS	CENTS
BROT FOR'D	1,739	72
DEPOSITED		
TOTAL		
THIS CHECK	1.750	
CARD FOR'D	1,1.72	22

CHECK PAYABLE BY AMERICA

PAY TO THE ORDER OF

FIRST & MERCHANTS NATIONAL BANK
RICHMOND, VIRGINIA

A. H. OR WILLIAM

⑆05 10⑈000 ⑆ 11 04 8 40 3⑈

D Pg. 16

6-10-1971

	DOLLARS	CENTS
Bal Fwd	1,672	22
Deposited		
Total		
This Check	45	00
Bal Fwd	1,627	22

PAY TO THE ORDER OF

FIRST & MERCHANTS NATIONAL BANK
RICHMOND, VIRGINIA

A. H. OR WILLIAM E. SW

⑆051000093⑆ 11 04 8103⑈

D Pg. 17.

6-10 1979

Admon B.

Griffin,

	DOLLARS	CENTS
Bal'ce Fwd	1,627	22
Deposited		
Total		
This Check	138	60
Bal'ce Fwd	1,488	62

PAY TO THE ORDER OF

FIRST & MERCHANTS NATIONAL BANK
RICHMOND, VIRGINIA

A. H. OR WILLIAM

⑆0510⑈0001⑆ 11 04 8103⑈

D pg. 18

	DOLLARS	CENTS
Brought Forward	1,455	62
Deposited		
Total		
This Check		
Balance Forward		

NO. _____

_____ 19 _____

PAY TO THE ORDER OF _____ $ _____

_____ DOL

FIRST & MERCHANTS NATIONAL BANK
RICHMOND, VIRGINIA

A. H. OR WILLIAM E. SWAN

⑆0510⑈000 1⑆ 11 04 8 10 3⑈

EXH. NO. E

Richmond, Va.
1-6-65

Dear Bill, Grace, Billy & Mrs. Taylor,

Received your nice card, and we appreciated it very much. I told Marie I got a letter from you all, but I haven't told her about Mr. Gaine. She is about the same and so am I. I am glad Billy is better. Hope he is o.k by now. Tell him hello for both of us. Marie was real glad to hear from you all and she sends love to all, and says to come to see her when you can. It is cloudy and cold here today and the weather man says rain or snow. Hope we don't have a snow and you have to get out on the roads tonite.

I hope Mrs. Taylor is feeling better and give her my best regards. Also best regards to Tom & Kate. I have fixed everything like I told you I was going to do and I believe I told you Willie has the keys to everything. Will tell you all the details when I see you. Hope it won't be long. Write soon I am always glad to hear from all of you up there and it is pretty lonesome around here.

Come whenever you can. With love, as ever

Jan

A. H. SWAN
11 N. LINDEN ST. APT. 2
RICHMOND, VA.

Mr. & Mrs. W. E. Swan
Rt. 1 Box 12
Buckingham Va.
23921

Salt some away every payday.....

FIRST & MERCHANTS NATIONAL BANK

Mark of personal service in Virginia

Your Savings add up faster that way

EXH. NO. F

20.1

THE BANK SYMBOL, TRANSACTION NUMBER, DATE AND AMOUNT OF YOUR DEPOSIT ARE SHOWN BELOW

58-1 5712 MAY 4 2,550.00 DS

EXH. NO. G

Lucas E
Swan

11-04 8103

3,535.81

STATEMENT

STRATFORD HALL NURSING HOME

EXH. NO. 6-1

2125 HILLIARD RD. RICHMOND,VA.,23228
TELEPHONE (703) 266-9666

BILL TO

ALEXANDER H SWAN
7707 WOODMAN ROAD
RICHMOND VA 23228

REG

CHARGES OR PAYMENTS INCURRED AFTER BILLING DATE WILL APPEAR ON NEXT STATEMENT RENDERED.

PATIENT NAME	ADMISSION NUMBER	ADMISSION DATE	DISCHARGE DATE	BILLING DATE
SWAN ALEXANDER H	01295	11/25/70	05/08/71	MAY 20 71

DATE OF SERVICE	CODE	SERVICE RENDERED	CHARGES	CREDITS
		BALANCE FORWARD	2,302.37	
05/08/71		ROOM DISCHARGE CREDIT		600.00
05/20/71		PHARMACY	52.72	
05/20/71		LAB	30.00	
05/20/71		2 WHEELCHAIR	.86	
05/20/71		4 GLYCERINE SWABS	.60	
05/20/71		42 2 CC SYRINGES	5.04	
05/20/71		BEAUTY CHARGE	4.30	

Paid 6-3-71 B. Shaw

RETAIN FOR YOUR RECORDS

AMOUNT DUE	$ 1,796.09

EXH. NO. H

No.

PAY TO THE ORDER OF Richard D. and Shirley S. Lockwood May 8 1971 $3400.00

Three Thousand Four Hundred 00/100 DOLLARS

FIRST & MERCHANTS NATIONAL BANK RICHMOND, VIRGINIA

A. H. OR WILLIAM E. SWAN

A H Swan

⑆0510⑈0001⑆ 11 04 8103⑈ ⑈0000340000⑈

Copy of Check
Paid by Shirley S. Lockwood
Paid by Shirley S. Lockwood

N ACCOUNT WITH

THE FARMERS NATIONAL BANK

APPOMATTOX, VA.

NAME WILLIAM E. SWAN
OR GRACIE T. SWAN
ADDRESS OR THE SURVIVOR
SPECIAL ACCOUNT
ROUTE 1 BOX 12
BUCKINGHAM VIRGINIA

EXH. NO. I

STATEMENT FOR THE MONT

OF

PLEASE EXAMINE AT ONCE. IF NO ERROR IS REPORTED WITHIN TEN DAYS THE ACCOUNT WILL BE CONSIDERED CORRECT.

CHECKS	DEPOSITS	DATE	BALANCE
	48,001.36	JUN 4	48,001.36*
001.36		AUG 16	.00*

EXH. NO. II

DEPOSITED IN THE
Farmers National Bank
of Appomattox
FOR ACCOUNT OF
William E. Swan
or Gracie T. Swan
or The Survivor
Special
Route 1 Box 12 Buckingham Va.
Appomattox, Va., June 24 1971

PLEASE LIST EACH CHECK SEPARATELY

	DOLLARS	CENTS
CURRENCY		
SILVER		
CHECKS AS FOLLOWS		
Bank of Virginia	9414	40
Farmers National Bank	18,021	64
Richmond Nat. Lime	20,565	32
	48,001	36
9,414.40 Δ		
18,021.64		
20,565.32		
48,001.36*		
Total $	48,001	36

SEE THAT ALL CHECKS AND DRAFTS ARE ENDORSED

3B Care Deposit Ticket Not Negotiable

2) 702

Cashier

APPOMATTOX PRINTING CO., APPOMATTOX, VA. 327250-0

039

THIS STATEMENT IS FURNISHED YOU INSTEAD OF BALANCING YOUR PASS BOOK. IT SAVES YOU THE TROUBLE OF BRINGING YOUR PASS BOOK TO THE BANK AND ...G FOR IT TO BE BALANCED. THESE STATEMENTS WILL BE FOUND VERY CONVENIENT TO CHECK UP AND FILE. ALL ITEMS ARE CREDITED SUBJECT TO FINAL PAYMENT.

EXH. NO. J

June 4, 1971

If death should occur to me before this business is settled, I hereby give my wife, Gracie T. Swan permission to carry out these wishes of Alexander H. Swan,

Ouida Adcock $3000.00
Shirley Prochnow $3000.00
The balance to be divided in four equal parts,
Fredrick W. Swan (Brother)
Alma Kitchen (Sister)
Carrie Swan (Brother's wife)
William E. Swan (Nephew)
I witness this to be his true wishes,

(Witness)

William E. Swan

EXHIBIT "A"

EXH. NO. K

AUTHORIZATION TO ACT AS ATTORNEY

Robert E. Pembleton
Attorney at Law
107A Markel Building
5310 Markel Road
Richmond, Virginia 23230

I hereby request and authorize you to represent me, as my attorney in fact and in law, in my claims against William E. Swan and against all additional persons, firms, or corporations, who may appear to be liable for ~~personal injuries which were received by me on or about~~ Estate of A. H. Swan

_____, 19____.

As compensation for your services as my attorney, I agree to pay you 33 1/3 per cent of the proceeds of any recovery, whether obtained as a result of suit or compromise.

I understand that I am to reimburse you, whether there is a recovery or not, for any sums paid by you for investigation, preparing my claims for trial, and Court costs.

Name Lucy S. Pembleton
~~Title~~ Administratrix
of A. H. Swan & wife

I agree to act as attorney on the above-named basis.

Dated 6/9/71

041 Robert E. Pembleton, Attorney

By check

EXH. NO. 1

No.

6-14 1971

Received of Warren E. Swan

One Hundred Thirty Eight & 60/100 DOLLARS

for A. H. Swan

Treatment

$138 Adney K. Sutphin, M.D.

D—DIAGNOSTIC SURVEY
E—EXAMINATION
K—ELECTROCARDIOGRAM
L—LABORATORY
P—PROCTOSCOPY
R—REPORT

STATEMENT

ADNEY K. SUTPHIN, M.D.
LEE MEDICAL BUILDING
1805 MONUMENT AVE. RICHMOND 20, VIRGINIA
TELEPHONE EL 8-9954

Mr. A. H. Swan,
7707 Woodman Road,
Richmond, Virginia 23223

PLEASE DETACH AND RETURN WITH YOUR PAYMENT

LAST BALANCE SHOWN IS AMOUNT DUE

DATE OF SERVICES	PROFESSIONAL SERVICES	DATE OF BILLING	CHARGE	PAID	BALANCE
[illegible]	[illegible]		20		195 —
[illegible]	[illegible]		20 —		215 —
[illegible]	Stop [illegible]		— —		
[illegible]	NH		10 —		225 —
[illegible]	NH V		10 —		235 —
[illegible]	NH V		10 —		245 —
[illegible]	NH V		10 —		255 —
[illegible]	NH V		10 —		265 —
[illegible]	NH V		10 —		275 —
[illegible]	NH V		10 —		285 —
[illegible]	NH V		10 —		295 —
[illegible]	NH V		10 —		305 —
[illegible]	NH V		10 —		315 —
[illegible]	NH V		10 —		325 —
[illegible]	[illegible] (Medicare Payment)			8/20	237.60
[illegible]	NH V		10 —		247.60
[illegible]	[illegible] (Medicare)			4/20	227.60
[illegible]	NH V		10 —		217.60
[illegible]	[illegible]		10		227.60
[illegible]	[illegible]		25 —		252.60
[illegible]	[illegible] (Medicare)		10		262.60
[illegible]	[illegible] (Medicare)			124.20	138.60
[illegible]	[illegible] Medicare Payment			[illegible]	

Mr. A. H. Swan,
7707 Woodman Road,
Richmond, Virginia

FOR PROFESSIONAL SERVICES

$ 138.60

ELGIN 8-9954

RICHMOND, VA. 23220, 6-9-71 19

ADNEY K. SUTPHIN, M.D.
LEE MEDICAL BUILDING
1805 MONUMENT AVENUE

042

Rental and Sales
Complete Line Of
Hospital Equipment

Oxygen and
Oxygen Therapy Equipment

ALLIED AMBULANCE SERVICE, Inc.

PHONE 355-7433—2416 CHAMBERLAYNE AVENUE
RICHMOND, VIRGINIA 23222

EXH. NO. M

DATE: 4/29/71 CALL No. 7135

Mr. Alexander H. Swan
2609 Hanover Avenue
Richmond, Virginia

IF RECEIPT IS REQUIRED
RETURN BOTH COPIES WITH SELF ADDRESSED STAMPED ENVELOPE

4/29/71 7135

Ambulance service from Stratford Hall
to 900 N. Hamilton St. and return $45.00

EXH. NO. M

JUN 1971 2117 ALLIED AMBULANCE SERVICE, INC.

ALLIED AMBULANCE SERVICE, Inc.

---

l and Sales
lete Line Of
tal Equipment

Oxygen and
Oxygen Therapy Equipment

ALLIED AMBULANCE SERVICE, Inc.

PHONE 355-7433—2416 CHAMBERLAYNE AVENUE
RICHMOND, VIRGINIA 23222

DATE: 5/8/71 CALL No. 7701

Mr. Alexander E. Swann
7707 Woodman Road
Richmond, Virginia

IF RECEIPT IS REQUIRED
RETURN BOTH COPIES WITH SELF ADDRESSED STAMPED ENVELOPE

5/8/71 7701

Ambulance service from Stratford Hall Nursing Home
to St. Mary's Hospital $22.50

JUN 1971 2117 ALLIED AMBULANCE SERVICE, INC.

043

ALLIED AMBULANCE SERVICE, Inc.

PAYMENTS NOT REFLECTED ABOVE STATE YOUR CLAIM WILL BE PAID YOU DIRECT BY TRUSTEE

DATE	DESCRIPTION	CHARGES	CREDITS	AMOUNTS
4 27 71	OFFICE X-RAYS	3500		3500
4 27 71	INITIAL OFFICE VISIT	1000		4500

EXH. NO. N

1. HUSBAND 2. WIFE 3. SON 4. DAUGHTER 5. OTHER

WEST END ORTHOPAEDIC CLINIC

PAY THIS AMOUNT $ 4500

FOR INSURANCE CLAIMS SEE REVERSE SIDE

DUNKUM FUNERAL HOME
BOX 24 PHONE: 933-4321
DILLWYN, VIRGINIA 23936

EXH. NO. D

NO. 002261

DATE June 1st, 1971

RECEIVED FROM William E. Brown

One Thousand-Three and 7/10 DOLLARS $ 1003 07

FOR Funeral of Alexander Hugh Brown

AMOUNT OF ACCOUNT $ 1367.27

AMOUNT PAID ..... $ 1003.07 THANK YOU.

BALANCE DUE ..... $ 364.21

CASH ☐ CHECK ☑ M. O. ☐

DUNKUM FUNERAL HOME

BY A B Bessel

FORM NO. 1793

EXH. NO. P

STRATFORD HALL

NURSING HOME

2125 HILLIARD ROAD, RICHMOND, VIRGINIA 23228 ☐ (703) 266-9666

June 15, 1971

Mr. William E. Swan
Route 1, Box 12
Buckingham, Virginia
23921

Dear Mr. Swan:

On June 10, 1971, your check for $1,796.09 was returned to our Home Office with a notice that there were not sufficient funds in your account to cover the amount of the above mentioned check. This leaves the account of Alexander Swan (Patient # 1295) with a balance of $1,796.09.

Your prompt attention to this matter will be greatly appreciated.

Sincerely,

Jo Ellen Stuart, R.N.

Jo Ellen Stuart, R.N.
Administrator

JES/enm

A HANOR CARE HOME

EXH. NO. Q

THIS AGREEMENT, made as of the 16th day of July, 1971 and between Shirley S. Throckmorton, Alma S. Kitchen, Frederick W. Swan, Ouida S. Adcock, Gladys S. Kesterson, Doris S. Rosser, Corinne S. Kidd, Hugh Swan, William E. Swan and Carrie R. Swan;

WHEREAS, Alexander H. Swan died intestate on May 9, 1971 leaving as his heirs-at-law, Alma S. Kitchen, a sister; Frederick W. Swan, a brother; and William E. Swan, Corinne S. Kidd, Doris S. Rosser, Ouida S. Adcock, Gladys S. Kesterson and Hugh Swan, all children of a deceased brother, William W. Swan; and

WHEREAS, although the said Alexander H. Swan did not leave a will directing the disposition of his estate upon his death, the parties hereto were aware of his wishes as to how his estate should be distributed, and now desire to enter into an agreement to carry out the wishes of the decedent.

NOW, THEREFORE, WITNESSETH, that all parties hereto agree as follows:

1. All assets of the Estate of Alexander H. Swan, deceased, shall be turned over to Shirley S. Throckmorton, Administrator of said Estate, who qualified as such in the Chancery Court of the City of Richmond, Virginia on June 9, 1971, for administration and distribution in accordance with this agreement and under the direction of said Chancery Court of the City of Richmond.

2. Shirley S. Throckmorton, as Administrator shall pay all debts, administration expenses, taxes and legitimate claims against said Estate.

3. After the payments provided for in paragraph two above the estate shall be distributed as follows:

(a) The 1964 Chevrolet automobile, titled in the name of Alexander H. Swan, shall be delivered over to William E. Swan.

(b) The sum of $3,000.00 shall be paid over to Ouida S. Adcock.

(c) The sum of $3,000.00 shall be paid over to Shirley S. Throckmorton.

(d) After the distributions as provided for in sub-paragraphs (a), (b), and (c) herein, the balance of the Estate shall be divided into four equal shares with one share to be distributed to each Alma S. Kitchen, Carrie R. Swan, William E. Swan and Frederick W. Swan.

4. Each of the parties hereto does hereby release, relinquish and quit claim any and all claims, of whatsoever nature, against the Estate of Alexander H. Swan and waive any and all rights to any assets of the Estate or to the Estate itself, except such distributions as a party might be entitled to under this agreement.

Witness the following signatures and seals:

Shirley S. Throckmorton (Seal)
Shirley S. Throckmorton

_____ (Seal)
Alma S. Kitchen

Frederick W. Swan (Seal)
Frederick W. Swan

_____ (Seal)
Ouida S. Adcock

_____ (Seal)
Gladys S. Kesterson,

_____ (Seal)
Doris S. Rosser

_____ (Seal)
Corinne S. Kidd

_____ (Seal)
Hugh Swan

_____ (Seal)
William E. Swan

_____ (Seal)
Carrie R. Swan

Notary's acknowledgment for each.

State of Virginia
_____ of _____

I, _____, a Notary Public in and for the City/County aforesaid, in the State of Virginia, do hereby certify that Shirley S. Throckmorton, whose name is signed to the writing above bearing date of 16th day of July, 1971, this day acknowledged the same before me in my City/County aforesaid.

My Commission expires _____
Given under my hand this _____ day of _____, 1971.

Notary Public _____

Q-pg. 3

State of Virginia

_____ of _____

I, _____, a Notary Public in and for the City/County aforesaid, in the State of Virginia, do hereby certify that Alma S. Kitchen, whose name is signed to the writing above bearing date of 16th day of July, 1971, this day acknowledged the same before me in my City/County aforesaid.

My Commission expires _____
Given under my hand this _____ day of _____ 1971.

_____
Notary Public

State of Virginia

_____ of _____

I, _____, a Notary Public in and for the City/County aforesaid, in the State of Virginia, do hereby certify that Frederick W. Swan, whose name is signed to the writing above bearing date of 16th day of July, 1971, this day acknowledged the same before me in my City/County aforesaid.

My Commission expires _____
Given under my hand this _____ day of _____ 1971.

_____
Notary Public

State of Virginia

_____ of _____

I, _____, a Notary Public in and for the City/County aforesaid, in the State of Virginia, do hereby certify that Ouida S. Adcock, whose name is signed to the writing above bearing date of 16th day of July, 1971, this day acknowledged the same before me in my City/County aforesaid.

My Commission expires _____
Given under my hand this _____ day of _____ 1971.

_____
Notary Public

Q pg. 4

State of Virginia

_____ of _____

I, _____, a Notary Public in and for the City/County aforesaid, in the State of Virginia, do hereby certify that Gladys S. Kesterson, whose name is signed to the writing above bearing date of 16th day of July, 1971, this day acknowledged the same before me in my City/County aforesaid.

My Commission expires _____
Given under my hand this _____ day of _____ 1971.

_____
Notary Public

State Of Virginia

_____ of _____

I, _____, a Notary Public in and for the City/County aforesaid, in the State of Virginia, do hereby certify that Doris S. Rosser, whose name is signed to the writing above bearing date of 16th day of July, 1971, this day acknowledged the same before me in my City/County aforesaid.

My Commission expires _____
Given under my hand this _____ day of _____ 1971.

_____
Notary Public

State of Virginia

_____ of _____

I, _____, a Notary Public in and for the City/County aforesaid, in the State of Virginia, do hereby certify that Corinne S. Kidd, whose name is signed to the writing above bearing date of 16th day of July, 1971, this day acknowledged the same before me in my City/County aforesaid.

My Commission expires _____
Given under my hand this _____ day of _____ 1971.

_____
Notary Public

Q pg. 5

State of Virginia

_____ of _____

I, _____, a Notary Public in and for the City/County aforesaid, in the State of Virginia, do hereby certify that Hugh Swan, whose name is signed to the writing above bearing date of 16th day of July, 1971, this day acknowledged the same before me in my City/County aforesaid.

My Commission expires _____
Given under my hand this _____ day of _____, 1971.

_____
Notary Public

State of Virginia

_____ of _____

I, _____, a Notary Public in and for the City/County aforesaid, in the State of Virginia, do hereby certify that William E. Swan, whose name is signed to the writing above bearing date of 16th day of July, 1971, this day acknowledged the same before me in my City/County aforesaid.

My Commission expires _____
Given under my hand this _____ day of _____, 1971.

_____
Notary Public

State of Virginia

_____ of _____

I, _____, a Notary Public in and for the City/County aforesaid, in the State of Virginia, do hereby certify that Carrie R. Swan, whose name is signed to the writing above bearing date of 16th day of July, 1971, this day acknowledged the same before me in my City/County aforesaid.

My Commission expires _____
Given under my hand this _____ day of _____, 1971.

_____
Notary Public

EXH. NO. R

CHARLES S. VALENTINE
JOHN S. DAVENPORT, III
RICHMOND MOORE, JR.
R. WESTWOOD WINFREE
C. DENNY WHITE
CHARLES L. REED
HENRY T. WICKHAM
F. ELMORE BUTLER
WILLIAM R. COGAR
JOHN F. KAY, JR.
ANGUS H. MACAULAY
JOHN W. EDMONDS, III
JAMES C. ROBERTS
ANDREW J. ELLIS, JR.
JOHN P. ACKERLY, III
COLLINS DENNY, III
WILSON E. SHERIDAN
THOMAS E. CROSLEY, JR.
MICHAEL ARMSTRONG
BOWLMAN T. BOWLES, JR.

C. COTESWORTH PINCKNEY
F. CLAIBORNE JOHNSTON, JR.
MATTHEW N. OTT, JR.
PATRICK M. McSWEENEY
PHILIP J. BAGLEY, III

LAW OFFICES

MAYS, VALENTINE, DAVENPORT & MOORE

1200 ROSS BUILDING P. O. BOX 1122

RICHMOND, VIRGINIA 23208

TELEPHONE (703) 649-0751

JOHN RANDOLPH TUCKER
(1923-1954)

COLLINS DENNY, JR.
(1926-1964)

DAVID J. MAYS
(1934-1971)

HORACE H. EDWARDS
M. POPE TAYLOR
COUNSEL

September 2, 1971

FILE NO. 6300-Q

Howard C. Vick, Esq.
Suite 107 A, Markel Building
5310 Markel Road
Richmond, Virginia 23230

Throckmorton v. Swan

Dear Mr. Vick:

Please find enclosed herewith Cashier's Check of First & Merchants National Bank in the amount of $131.31 payable to Shirley S. Throckmorton, Administrator Estate of Alexander H. Swan.

Yours very truly,

CCP

C. Cotesworth Pinckney

35:35

Enclosure

cc: Mr. William E. Swan
Mr. William E. Weatherford, Jr.

EXH. NO. 5

The FARMERS NATIONAL BANK

69-552
514

APPOMATTOX, VIRGINIA, Aug. 13, 1971 No.

PAY TO THE ORDER OF Estate of Alexander H. Swan — $48,041.36

Forty Eight Thousand One and 36/100 — DOLLARS

FOR Bank Debt to
Ashby L. Brookmeyer, Admr.
Estate of Alexander H. Swan

William E. Swan

⑆0514⑈0552⑆ ⑈0004800136⑈

THE ESTATE OF ALEXANDER H. SWAN, DECEASED
BY SHIRLEY S. THROCKMORTON, ADMINISTRATOR

EXH. NO. 1

RECEIPTS

1971

6/25	Sale of U. S. Bonds	270.00
6/30	Income Tax Refund	62.00
8/17	Farmers National Bank of Appomattox	40,001.[illegible]
8/17	Robert E. Pendleton Escrow Account	3,400.00
9/15	First & Merchants National Bank	151.[illegible]
9/15	Sale of coin collection, watch, bowl and ring	535.00
10/28	St. Mary's Hospital - Refund of overpayment	110.27
11/2	U. S. Government - Social Security	61.20
12/31	U. S. Government - Social Security death benefits	253.00
		$52,639.35

DISBURSEMENTS

1971

7/30	Bank Service Charge	1.03
8/17	Allied Ambulance Service, Inc. - Service to A. H. Swan on 4/29/71 and 5/3/71	67.50
8/17	St. Mary's Hospital - Last Illness	114.[illegible]
8/17	Dr. Adney K. Sutphin - Medical services of last illness	100.00
8/17	West End Orthopaedic Clinic	[illegible]
8/17	Stratford Hall Nursing Home	1,7[illegible]
8/17	W. A. Hartman - Engraving on grave marker	12.50
8/17	Robert E. Pendleton and Howard C. Vick, Attorneys - Fee as per Court Order of 8/12/71	17,[illegible]
8/17	Shirley S. Throckmorton - Costs advanced Court costs $50.00, Clerk's fee for qualification $5.00, death certificates $6.00	61.00
8/17	Shirley S. Throckmorton - Payment on account of administrator's fees	3,000.00
8/20	Dunkum's Funeral Home	3[illegible]
8/20	Robins Insurance Agency, Inc. - Bond for Administrator	150.00
8/20	E. E. Wardner, Clerk of Chancery Court - City tax and Clerk's fee	102.[illegible]
8/25	McDonald Wolfford, Commissioner of Accounts - Commissioner's fee and fee of clerk for recording	3.00
9/10	Howard C. Vick - Fee for sale of coin collection and watch	[illegible]
9/20	Guido S. Adcock and John R. Snoddy, fee attorney - Payment in accordance with agreement of 7/16/71	3,000.[illegible]
9/20	Shirley S. Throckmorton - Payment in accordance with agreement of 7/16/71	3,[illegible]

9/13	Bureau of Vital Statistics - 2 copies of death certificate	4.00
11/18	H. E. Warriner, Clerk of Chancery Court - Additional Clerk's fee	[illegible]
1972		
1/17	Howard C. Vick - Legal services to Administrator	[illegible]
1/17	Shirley S. Throckmorton - Balance of fee to Administrator	[illegible]
1/21	Treasurer of Virginia	[illegible]
1/21	H. E. Warriner, Clerk - 1 copy of order and authorization to act as attorney	[illegible]
		$29,856.85

SCHEME OF DISTRIBUTION:

To McDonald Wolford - Commissioner of Accounts	[illegible]
To Alma S. Kitchen per agreement of 7/16/71	5,682.62
To Carrie R. Swan per agreement of 7/16/71	5,682.62
To Frederick W. Swan per agreement of 7/16/71	5,682.63
To William H. Swan per agreement of 7/16/71	5,682.63
	$22,682.50

Shirley S. Throckmorton
Administrator

ORDER

On motion of the plaintiffs by counsel, objected to by counsel for the defendants, the bill of complaint herein shall be deemed amended in the following respects:

1. The words "To Surcharge And Falsify" are stricken from the caption.

2. The following is substituted as the opening paragraph:

"Plaintiffs petition this Honorable Court to set aside and nullify its order of August 12, 1971, entered in the suit of Shirley S. Throckmorton, Administrator of the Estate of Alexander H. Swan, deceased v. William E. Swan, the Farmers National Bank of Appomattox and First & Merchants National Bank, which order approved and ratified a contract between her as Administrator and her attorney for her to pay her attorney one-third of anything coming into her hands as Administrator, and which said order plaintiffs allege was obtained by Shirley S. Throckmorton in fraud upon this Honorable Court. The plaintiffs do further petition that said Shirley S. Throckmorton be required to perform her agreement with the plaintiffs dated July 16, 1971 (a copy of which is attached hereto as Exhibit Q), showing unto the Court their grounds for this bill of complaint the following sequence of events:"

3. The following is substituted as the prayer of the bill of complaint:

"WHEREFORE your complainants pray that the aforesaid August 12, 1971 order of this Honorable Court obtained by Shirley S. Throckmorton in flagrant disregard of her fiduciary duty and in deliberate fraud and deception of the

Court be set aside and nullified; that she not be allowed a credit in the distribution she is making solely by virtue of said voluntary agreement of July 16, 1971 for the $17,670.29 wrongfully paid therefrom to Robert E. Pembleton and Howard C. Vick in deliberate fraud and deception of the Court, in fraud of the parties making the agreement, and contrary to its express terms; that she be required to reimburse to said fund said $17,670.29 with interest; that in distribution pursuant to said voluntary agreement she be required to refund to William E. Swan so much of his $1,003.06 advance on the funeral expenses of of Alexander H. Swan as he shall not have been reimbursed by the Railroad Retirement Board; that in said distribution she forfeit and be required to refund all commission heretofore taken by her; that she be required to distribute all remaining sums received under said voluntary agreement from William E. Swan, after payment of the decedent's debts, to Alma S. Kitchen, Carrie R. Swan, Frederick W. Swan and William E. Swan, in accordance with the terms of said agreement; that she be required to pay the reasonable attorney's fees of the plaintiffs occasioned by the necessity for filing this bill of complaint, and that for any omission or inability of Shirley S. Throckmorton so to act, the United States Fidelity and Guaranty Company, as surety on her bond, be required by the Court promptly to give full satisfaction."

ENTER: 5/24/74

_____
Judge

I ask for this:

_____
Of Counsel for the Plaintiffs

Seen and objected to:

_____
Of Counsel for the Defendants

Circuit Court
OF THE
City of Richmond

March 8, 1979

JAMES EDWARD SHEFFIELD
JUDGE

JOHN MARSHALL COURTS BUILDING
800 EAST MARSHALL STREET
RICHMOND, VIRGINIA 23219

RECEIVED
MAR 9 1979
McCaul, Grigsby & Pearsall

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A. James Kauffman, Esq.
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Richmond, VA 23219

Leonard A. Paris, Esq.
White, Cabell, Paris & Lowenstein
523 East Main Street
Richmond, VA 23219

Re: Case No. D-6680
Alma S. Kitchen, et al
v.
Shirley S. Throckmorton, Administrator, et al

Gentlemen:

I apologize for the length of time that it has taken this Court to resolve the issues presented in the captioned case, however, the delay was unavoidable due to the status of the Court's trial and opinion calendar.

Upon thorough review of the record, I have concluded that the plaintiff has failed to prove by a clear, cogent and convincing evidence any fraud on the part of Mrs. Throckmorton as Administratrix of the Estate of Alexander H. Swan, deceased, or that she deviated from the standard of care and competence required of her in the performance of her duties.

I am further of the opinion that the evidence establishes that if any fraud or misconduct was perpetrated by the attorneys that she employed in her fiduciary capacity, it cannot, on the evidence here, be imputed to her personally.

For the foregoing reasons, I have entered an order, a copy of which is enclosed, sustaining the defendants' motions to strike the evidence of the plaintiff for the reasons stated by the defendants in the record, and for the above stated reasons, thereby dismissing the captioned suit.

Very truly yours,

James Edward Sheffield

JS/js
Enclosure

O R D E R

THIS CAUSE came on today's date on the defendants' motions to strike the plaintiff's evidence, and upon due consideration and for the reasons set forth in this Court's Letter of Opinion dated March 8, 1979, it is hereby ORDERED that the defendants' motions to strike the plaintiff's evidence are granted and this cause is dismissed against each of the named defendants in the caption hereof, and plaintiff's exception to the Court's action is duly noted.

The Clerk shall forward a copy of this Order to all counsel of record and note the date of mailing hereon.

Jessie M. Haddon D.C.

A true and certified copy
EDWARD G. KIDD, CLERK

By Jessie M. Haddon
Deputy Clerk

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THE ERRORS ASSIGNED AND THE QUESTIONS PRESENTED

Errors Assigned

I

The Court erred in failing to recall that the plaintiffs' evidence showed that the fraud practiced by the Administrator in her dealings with the Court appointing her was established by clear, cogent and convincing evidence, and in concluding that the Administrator had not deviated from the standard of care and competence required of her in the performance of her duties.

II

The Court erred in failing to require of the Administrator full candor in her dealings with the Court and in substituting, for her traditional burden of proof of such candor, a burden on the plaintiffs to prove her fraud by clear, cogent and convincing evidence.

III

The Court erred in concluding that if any fraud was perpetrated, it was by her attorneys and could not be imputed to her.

IV

The Court erred in refusing to withdraw from the Administrator and her surety any protection from the secret August 12,1977 Order; in not denying her commission; and in not requiring her to pay attorney's fees, or to pay interest on plaintiffs' full distributive shares in the funds she agreed to distribute.

V

The Court erred in not directing the Administrator to honor the claim of William against the fund for the $1,003.36 advanced by him on the funeral expenses of Alexander H. Swan.

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND, DIVISION I

ALMA S. KITCHEN
WILLIAM E. SWAN
CORRINE S. KIDD
DORIS S. ROSSER
OUIDA S. KESTERSON
HUGH SWAN
and CARRIE R. SWAN,

Plaintiffs

v.

SHIRLEY S. THROCKMORTON, Administrator of the Estate of Alexander H. Swan, deceased
and
UNITED STATES FIDELITY & GUARANTY COMPANY,

Defendants

The discovery deposition of DeWITT EVANS, taken pursuant to Notice and agreement of counsel, before D. McGuire, a Notary Public for the State of Virginia at Large, at the offices of McCaul, Grigsby & Pearsall, 320 Mutual Building, 9th and Main Streets, Richmond, Virginia, on December 6, 1977; said deposition taken pursuant to the Rules of the Supreme Court of the State of Virginia.

APPEARANCES:

John W. Pearsall, Esquire, of McCAUL, GRIGSBY & PEARSALL, 320 Mutual Building, 9th and Main Streets, Richmond, Virginia, counsel for the plaintiffs;

Leonard A. Paris, Esquire, of WHITE, CABELL, PARIS & LOWENSTEIN, 523 East Main Street, Richmond, Virginia, counsel for the defendant, Shirley S. Throckmorton;

A. James Kauffman, Esquire, of TAYLOR, HAZEN, BRYANT & KAUFFMAN, Suite 1104 - Seven Hundred Building, 700 East Main Street, Richmond, Virginia, counsel for the defendant, United States Fidelity & Guaranty Company.

Deposition taken

December 6, 1977

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	DIRECT	CROSS	REDIRECT	RECROSS
DeWitt Evans	5	12	20	-
Questions by Mr. Pearsall to vouch the record	24			

EXHIBITS

	Page
Plaintiffs' Exhibit U Checkbook of The Farmers National Bank, Account No. 0514 0552, bearing the word "special" in red on each check	28
Defendants' Exhibit No. 1 Court Order of the Chancery Court of the City of Richmond, dated the 11th day of June, 1971, styled Shirley S. Throckmorton, Administrator of Estate of Alexander H. Swan, deceased, versus William E. Swan and The Farmers National Bank of Appomattox and First & Merchants National Bank	28

MR. PEARSALL: This is a deposition taken to be used in the trial as an accommodation to Mr. DeWitt Evans against whom witness subpoena had been issued for appearance on the 15th of December, but who said that he had a trip planned and it would be a good accommodation to him if he could just come to Richmond and give this brief deposition rather than testifying at trial. That was agreeable to all counsel.

MR. KAUFFMAN: That is correct.

MR. PEARSALL: So we will have a very brief deposition.

Mr. Evans, while we are waiting for the deposition to start, I submitted to you two or three pieces of paper to ask you to familiarize yourself with them, to see if you could identify them.

Now, what I handed you are manifestly xeroxes in a couple of instances, but what do they purport to be xeroxes of?

MR. EVANS: I see a deposit slip on a checking account, Farmers National Bank, a customer's statement of checking account.

MR. PEARSALL: Now, are those two combined on what is labeled, stamp labeled Exhibit I?

MR. EVANS: Yes, sir.

MR. PEARSALL: And is the deposit slip labeled Exhibit -- I cannot read it.

MR. EVANS: Neither can I.

MR. PEARSALL: It is with the Bill of Complaint. We can furnish that later.

NOTE: After a brief off-record discussion, the witness is sworn.

DeWITT EVANS, a witness of lawful age, first being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PEARSALL:

Q Would you state your name and occupation and residence?

A DeWitt Evans, banker, Appomattox, Virginia.

Q With what bank in Appomattox, Virginia, are you connected?

A The Farmers National Bank.

Q What are your responsibilities with The Farmers National Bank?

A I am President of the bank.

Q Now, continuing on with these papers that bear Exhibit I, and this Exhibit S with the Complaint, will you state in greater detail what this is?

A This is deposit slip on checking account with Farmers National Bank, Appomattox.

Q Is that in your handwriting?

A Yes, sir.

Q Now, can you state, what were the circumstances of your having written up that deposit slip?

A Mr. William Swan and his wife, customers of the bank, came to the bank that afternoon and deposited funds that it was apparent were drawn on Richmond institutions, in a checking account. Inasmuch as they had a personal checking account, this was put into a new account, so marked and indicated as a special checking account.

Q Now, I understand you to say that you prepared this deposit slip.

A Yes, sir.

Q What was the occasion for your preparing the deposit slip? What did Mr. Swan tell you

about it?

A He said these funds --

MR. PARIS: I object to what Mr. Swan said.

MR. KAUFFMAN: I am going to object to hearsay. Anything that Mr. Swan says is hearsay.

MR. PEARSALL: Mr. Swan is a party.

MR. KAUFFMAN: Yes, sir, but Mr. Swan can testify as to anything he said. Mr. Evans can testify to what he said or what he did, but not to what Mr. Swan said, because that is clearly hearsay as to Mr. Evans.

MR. PEARSALL: But if it were in the form of an admission, you would think it was not hearsay.

MR. KAUFFMAN: Not against the plaintiff. He can't lift himself up by his bootstraps.

MR. PEARSALL: You can let the Court rule on it.

MR. KAUFFMAN: This is not before a jury, but I think it is improper to have hearsay.

Q Don't tell me what Mr. Swan told you

1 at the time, but state how you happened to open the
2 account and what you understood you were doing with the
3 account. Don't quote Mr. Swan.
4 A Well, as previously indicated, this
5 was put into a new account, even though Mr. Swan had a
6 personal account and had had a personal account for
7 years. This was put into a new account and marked
8 "special" to identify it and separate it from his per-
9 sonal funds.
10 Q Did you understand this was his
11 personal funds or not?
12 A He told me these funds --
13 MR. KAUFFMAN: I'm going to object
14 to what he told you now.
15 MR. PARIS: Don't quote Mr. Swan.
16 WITNESS EVANS: How am I going to
17 put it, sir?
18 MR. KAUFFMAN: Sir, you can testify
19 to anything you know of your own knowledge,
20 but not to what anybody told you.
21 Q Was it your understanding in opening
22 this account that these were Mr. Swan's funds or not his
23 funds?
24 A These were funds in his custody, but
25 not his funds, it was my understanding.

Q Now, you say that these were funds drawn on Richmond banks. Looking at the deposit slip, is your recollection refreshed at all as to what they were?

A Well, it shows they were drawn on the Bank of Virginia, Franklin Federal Savings, and Richmond Federal Savings.

Q Now, the date of that account being opened, can you determine that from the deposit slip?

A It looks like it says June 4, '71.

Q Now, what was the style of the account? In what name was it opened?

A William E. Swan and/or Gracie T. Swan or the survivor, special account, Route 1, Box 12, Buckingham, Virginia.

Q Now, did you do anything relative to this account in order to cause its nature to be special, other than the way that it was put on the deposit slip?

A It was opened as a new account, marked "special", and he was given a special checkbook, so designated.

Q Is that the paper in front of you?

A Yes, sir.

Q And is that a regular checking book

of your bank?

A It is a regular checking book, but indicated as "special" because we have numerous customers who have more than one account, and this was to designate other than a personal account.

Q Now, was that account subsequently closed?

A Yes, sir.

Q Looking at the papers in front of you, was your recollection refreshed? Does that assist you? Can you state how that account was closed?

A It was closed by withdrawal, payable to the estate of Alexander H. Swan.

Q And is that a xerox of the check?

A Yes, sir.

Q And the check was signed by whom?

A William Swan.

Q And the legend on it?

A It says, "Bank draft to Shirley S. Throckmorton, Administrator of the Estate."

Q Of Alexander H. Swan?

A Yes, sir.

Q And that was under date of August 13, 1971?

A Yes, sir.

Q Do you have any personal knowledge of the circumstances of the account being closed?

A The bank was approached by attorneys for the estate, with Court Order for the withdrawal of these funds.

Q What was the bank's response?

A That we did not have the signature of the Administratrix or of the holder of the funds, and that we would require a signature of the holder of the funds.

Q Did you get in touch with Mr. Swan?

A I did, by telephone.

Q And as a result of that contact with Mr. Swan, what did you require of him?

A He subsequently came in and signed a withdrawal. He was not -- let me put it this way: At the time of the request of withdrawal, there were no persons present representing the account other than counsel, and the Administratrix wasn't present and neither was Mr. Swan. I just determined it was good business that the people who deposited the money or representatives of the estate sign a withdrawal.

Q So you got in touch with Mr. Swan and had him come in and sign a withdrawal?

A Right.

1 Q And this was the form that you
2 wanted it done?
3 A Made payable to the estate, and a
4 bank draft was issued for the withdrawal or as a result
5 of the withdrawal, payable to the Administratrix. In
6 other words, counsel wanted something other than a
7 personal check, so we accommodated them by issuing a
8 bank draft.
9 MR. PEARSALL: (To counsel) At the
10 conclusion of this, I probably will vouch
11 something in the record, but witness with you
12 at this point.
13
14
15 CROSS-EXAMINATION
16 BY MR. KAUFFMAN:
17 Q Mr. Evans, you have numerous kinds
18 of accounts at The Farmers National Bank, don't you?
19 A Right.
20 Q Was this in the nature of an escrow
21 account?
22 A It was my understanding that this
23 money was put on the checking account, waiting advice
24 of disposition of the funds, and in that sense, it was.
25 An escrow account ordinarily carries the third party or

1 disinterested party. This was not, in that sense, an
2 escrow account, as I would define it.
3 Q All right. And it also wasn't a
4 trust account either, was it --
5 A No, sir.
6 Q -- because it didn't bear any legend
7 of trustee or of any Court qualification papers with it,
8 did it?
9 A No, no papers.
10 Q And normally when you have a trust
11 account, you have a Court Order establishing a trustee,
12 don't you?
13 A That was the reason it was marked a
14 special fund, because we had no light to go by to deter-
15 mine any better designation.
16 Q So you merely just had a special
17 account between a man and his wife, with right of
18 survivorship?
19 A Right. But please understand me:
20 These funds were separated, both by identity and by
21 account, from their personal account that they already
22 had with the bank and had maintained for a number of
23 years.
24 Q Well, I can open any number of
25 accounts with you, can't I --

A Right, right.

Q -- as long as I have got a separate account number on each separate account.

A These do not have numbers, but they just have titles.

Q But I could conceivably have twenty-five separate, distinct accounts with your bank, could I not --

A Right.

Q -- just as Mr. Swan had two separate, distinct accounts?

A He had two separate checking accounts, yes.

Q But this one did have right of survivorship with his wife?

A Yes, sir.

Q And were any withdrawals made from this account from the time it was opened, I believe you said June 4,'71, until it was closed on August 13, '71?

A No, sir; no, sir.

Q Were you ever served with a copy of the Court Order of the Chancery Court of the City of Richmond, directing that these funds be turned over to the Administrator?

A The day the attorneys arrived, they

1 brought the Court Order with them.
2 Q And that was given to you?
3 A Yes, sir.
4 Q And that Court Order directed that
5 these funds be turned over to the Administrator?
6 A The Administrator, right.
7 Q But you felt that it would be prudent
8 if you had a signature of the people that opened the
9 account?
10 A Or that the Administrator be present.
11 The Administrator did not show up. I had nothing to
12 show other than the Court Order, and the Court Order had
13 a lot of delineations in it.
14 Q But you were protecting the bank,
15 were you not?
16 A Right.
17 Q In trying to get Mr. Swan's signature,
18 that was your concern, wasn't it?
19 A I was trying to protect both the
20 customer and the bank, yes, sir.
21 I don't know that it is necessary,
22 but this is what was served on me. (Denoting a Court
23 Order) And it was served by only legal representatives
24 of the estate. There was no personal representative of
25 the estate, neither was the holder of the funds in ques-

1 tion, which was our customer. The only person that we
2 were concerned with was our customer, and he was not
3 present.
4 Q You were concerned about the bank
5 being responsible though, too, weren't you?
6 A Sir?
7 Q You were concerned about the bank
8 being responsible?
9 A I was concerned about the bank and
10 the customer. They were the only two things that were
11 concerning me.
12 But I had never released funds to
13 an attorney, because he said he represented somebody,
14 without having something to support it. That is what
15 was served on me. (Denoting Court Order)
16 MR. PEARSALL: Mr. Evans, we will
17 let the court reporter mark it and I will run
18 a xerox copy off it and give it to you.
19 WITNESS EVANS: You are perfectly
20 welcome to, but he asked me about what notice,
21 and that's all the notice.
22 MR. PEARSALL: So that is the with-
23 drawal by the bank of the check that has been
24 identified as Exhibit S?
25 WITNESS EVANS: Yes.

1 Q So that this check signed by William
2 E. Swan, Exhibit S, was not a voluntary withdrawal by
3 Mr. Swan, but pursuant to Court Order you received and
4 the request of the attorneys representing the estate,
5 and was merely done by Mr. Swan for his protection and
6 for your protection at the bank?
7 A If I might ask a question: I don't
8 understand not being voluntary.
9 Q What do you mean, Mr. Evans?
10 A All I am saying is that as far as
11 I know, when I called and told him they were there, he
12 came immediately. I don't know whether he knew they
13 were there or not; I didn't ask him.
14 Q He didn't precipitate this though,
15 did he?
16 A He didn't come with them. I don't
17 know who precipitated what; they just appeared, cold,
18 after lunch one day and handed me that and said, we want
19 to withdraw this money. And I said, well, who are you,
20 and do you have anything to identify you to show who you
21 are, and away from home.
22 MR. PARIS: (To Mr. Kauffman) That
23 is getting away from the subject, Jim.
24 BY THE WITNESS: (Continuing)
25 A As a banker, I could have picked it

1 up off of somebody's desk. And you said voluntarily.
2 Q My question is this: Mr. Swan didn't
3 precipitate this?
4 A He did not come.
5 Q You brought him into it by a tele-
6 phone call?
7 MR. PEARSALL: Brought him into it?
8 I am not sure your question is clear.
9 MR. KAUFFMAN: Brought him into the
10 transaction.
11 A The only thing I was questioning --
12 you want me to say whether it was voluntary or not. I
13 have no idea.
14 Q Fine. That is a good answer.
15 A I have no idea, because I wasn't on
16 the other end of the phone. The boy works for the
17 Highway Department. He was at work. I don't know
18 whether it was voluntary or not. You understand what I
19 am saying? I can't say that it was voluntary or in-
20 voluntary.
21 Q Well, you would say if he came into
22 the bank --
23 A He came immediately, without any
24 question.
25 Q But if he came into the bank with the

check, you would have honored it with no question?

A Certainly.

Q And that would have been a voluntary withdrawal?

A As far as I was concerned, this was voluntary in every respect.

Q Did you read the Court Order, Mr. Evans?

A Yes, sir.

MR. KAUFFMAN: Thank you. I have no further questions.

MR. PARIS: I have no questions.

WITNESS EVANS: But the Court Order distinctly said that the Executors --

MR. KAUFFMAN: Wait a minute now.

(To Mr. Pearsall) John, you can ask him any questions you want. He is not being responsive to any questions.

MR. PEARSALL: You opened it up.

MR. KAUFFMAN: You can ask him anything you want to. I have rested. You can ask him anything you want to now.

WITNESS EVANS: I tried to be responsive, sir.

MR. KAUFFMAN: But now this rambling

on about something, I don't think is responsive to my question.

MR. PEARSALL: I think it is. I will give him ample chance to say it.

MR. KAUFFMAN: You can ask him any questions you want.

REDIRECT EXAMINATION

BY MR. PEARSALL:

Q Mr. Evans, when he asked you if you had seen the Court Order and you answered yes, and you started to add some more, what were you trying to add?

A The Court Order, as I interpret it, instructed that the money --

MR. KAUFFMAN: I object to that because the Court Order speaks for itself.

MR. PEARSALL: He has got a perfect right to say how he interpreted it.

MR. KAUFFMAN: May I see the Court Order?

MR. PEARSALL: Yes, sir, you sure can. He is not being called upon to construe a legal document; he is being called upon to explain his actions. You spent right much

1 time on explaining his actions.
2 MR. KAUFFMAN: No, sir. He was
3 asked to construe the document, not his actions.
4 That was the basis of my objection.
5 MR. PEARSALL: That wasn't the ques-
6 tion.
7 MR. KAUFFMAN: I know it is not the
8 question. It is not responsive anyway. I
9 asked him if he read the document, and he said
10 yes. Now he wants to explain how he construed
11 it, and that has nothing to do with the issues,
12 how he construed the document.
13 MR. PEARSALL: You asked him,
14 inquiring into his actions, why he did it.
15 MR. KAUFFMAN: No, sir. I asked him
16 if he read the document. That is all I asked
17 him.
18 MR. PEARSALL: The record will speak
19 for itself.
20 BY THE WITNESS: (Continuing)
21 A This says that William E. Swan and
22 The Farmers National Bank are enjoined -- and it said
23 forbidden; it's been struck out and it wasn't initialed,
24 and then it says, written in with a pen, restrained --
25 from disbursing, withdrawing, alienating or diminishing

1 any monies or funds on deposit with The Farmers National
2 Bank of Appomattox, Virginia, in the name of William E.
3 Swan or any nominee for him, until the further order of
4 this Court. (Looking toward Mr. Paris)
5 MR. PARIS: (Pointing toward Mr.
6 Pearsall) That's the man asking the questions.
7 BY THE WITNESS: (Continuing)
8 A And I didn't feel it was proper to
9 turn the money over to the gentlemen who purported to be
10 attorneys, but I had nothing in the world to go by but
11 this. (Denoting Court Order) To deliver a customer's
12 money, I had just not been in practice of doing it with-
13 out a qualification or the Administratrix being present
14 or having the signature. I had no signature.
15 Q Now, Mr. Evans, I believe you stated
16 that you tended to the opening of the account.
17 A Yes, sir.
18 Q Did you do so after Mr. Swan gave you
19 an explanation of what he wanted to do with the money?
20 A Yes, sir.
21 Q And was it your recommendation that
22 it be handled in this particular way?
23 MR. PARIS: Objection. You are
24 leading the witness, and I object to that.
25 BY MR. PEARSALL: (Continuing)

1 Q Did Mr. Swan come up with the notion
2 of it being a special account or did you make that
3 recommendation?
4 MR. PARIS: That's not much better.
5 A He said --
6 MR. KAUFFMAN: I am going to object
7 to anything Mr. Swan said because it is hear-
8 say, Mr. Evans.
9 MR. PARIS: (To Mr. Pearsall) Did
10 you say you were going to vouch the record
11 after he got through with this?
12 MR. PEARSALL: I didn't want to
13 interrupt the deposition.
14 Q Don't tell me what Mr. Swan said to
15 you, but what was it that caused you to think that it
16 should be special rather than any other kind of account?
17 A That the funds would be kept separate
18 from his personal funds, that was the simple understand-
19 ing that I had.
20 Q Now, did you state whether or not
21 you gave him any further advice in this matter, other
22 than opening it as a special account?
23 A I told him that he would do well to
24 inform his people, his relatives, that these funds were
25 there on deposit, and if he didn't have a Will, he ought

to indicate, at least to his wife, whose money this was.

MR. PEARSALL: (To counsel) Did you-all want any recross before I start to vouch the record?

MR. PARIS: I don't have any questions.

MR. KAUFFMAN: I just want to make sure we get a copy of the Order. He took it back to read it.

MR. PEARSALL: I will, at the conclusion of this, run off copies and give everybody a copy.

MR. KAUFFMAN: (Denoting court reporter) Just give her a copy.

MR. PEARSALL: We are going into a vouch of the record, and would you so indicate, Madam Court Reporter.

QUESTIONS ASKED BY MR. PEARSALL TO VOUCH THE RECORD:

Q In the course of Mr. Swan's coming to you to open this account, did you develop any belief as to what was the purpose of the funds being deposited?

A Well, my understanding was, it was for safekeeping.

Q And did you or did you not develop

any belief as to whether they were regarded by Mr. Swan as his own personal funds?

MR. KAUFFMAN: I am going to object to that. That calls for a legal conclusion, and that is one of the ultimate issues before this Court.

MR. PEARSALL: (To Witness Evans) Go on and answer the question. His objection is in the record.

A It was my understanding that these funds belonged to kinsmen, and were in his custody until some resolution evolved or came forth as to their disposition.

Q Now, was that understanding the reason why you told him it should be a special account?

MR. PARIS: Now, I object to this because he has answered this question at least three times. He stated that the reason he made it a special account was so that it would be separate from his regular checking account.

A Mr. Swan requested that it be a separate account; it was not my suggestion, sir. For whatever worth -- special, this happened to be a little red rubber stamp that we use for designating funds different from a person's regular account. Mr. Swan,

when he first approached us, was to say that, I want to put this money here, but I don't want it mixed with my money, and it will stay here until I call for it, but I want it kept separate, and how can I do it?

Whether it had been marked special or through using some other title or agent, I didn't think it was a legal question at the time, because I had no qualification, no certificate, no Court Order. Here was a man who just had some funds and wanted them kept separate from his funds until such time as he authorized their disposition.

That is the reason I called him, sir, on the phone and asked him if he was ready to withdraw the money; that there were some attorneys up there who had a Court Order for the money, and I hadn't heard anything from him.

MR. PARIS: Mr. Pearsall, don't you think we really understand fully and completely what the man has said? Now, this is going on and on and on, and I don't see any reason for it.

MR. PEARSALL: This is in the vouch, and if you find it burdensome, I will pick up that part of the tab.

MR. PARIS: I appreciate it. Well,

it is burdensome. Go ahead.

BY THE WITNESS: (Continuing)

A But I didn't realize, whatever I did, the legality of it would be questioned. As far as I know, Farmers National is relieved of any liability. The withdrawal certainly said it was dismissed when we issued that draft.

MR. PEARSALL: No further questions.

MR. PARIS: I don't have any questions.

MR. KAUFFMAN: I don't have anything further.

MR. PEARSALL: He was testifying to this. He had it in his hand. I want it as an exhibit.

MR. PARIS: It is just a rubber stamp saying it is special.

MR. PEARSALL: You can argue anything you want.

MR. PARIS: I am not arguing.

WITNESS EVANS: It wouldn't make any difference if it were typed or stamped. We just happened to be a small, country bank, and we didn't have a printing machine to print a special check, and that's the way we indicated

special checks.

NOTE: At the close of the deposition, after a brief off-record discussion, the following exhibits were marked:

A checkbook of The Farmers National Bank, Account No. 0514 0552, bearing the word "special" in red on each check, is marked as Plaintiffs' Exhibit U.

Court Order of the Chancery Court of the City of Richmond, dated the 11th day of June, 1971, styled Shirley S. Throckmorton, Administrator of Estate of Alexander H. Swan, deceased, versus William E. Swan and The Farmers National Bank of Appomattox and First & Merchants National Bank, is marked as Defendants' Exhibit No. 1.

And further this deponent saith not.

SIGNATURE WAIVED BY AGREEMENT OF COUNSEL AND THE WITNESS.

1
2 STATE OF VIRGINIA,
3 CITY OF RICHMOND, To-wit:
4
5 I, D. McGuire, a Notary Public for the State
6 of Virginia at Large, of qualification in the Clerk's
7 office of the Circuit Court of the City of Richmond,
8 Division II, and the court reporter who took down in
9 shorthand and transcribed the deposition of DeWitt
10 Evans, when given on December 6, 1977, at the offices
11 of McCaul, Grigsby & Pearsall, 320 Mutual Building,
12 9th and Main Streets, Richmond, Virginia, do hereby
13 certify that the deposition was duly taken pursuant
14 to Notice and agreement of counsel, and for the
15 purpose hereinbefore set out in the caption hereto.
16 I further certify that the witness was duly
17 sworn by me before the giving of this deposition, that
18 the signature of the witness to this deposition has
19 been waived by the express agreement of counsel and
20 the witness, and that counsel were notified of the
21 filing of the deposition in the Clerk's office as of
22 this date, and that I am in no way related to nor
23 employed by any of the parties, the witness, or
24 counsel, and have no interest in the outcome of this
25 matter.

I further certify that there were two exhibits entered and filed during the taking of this deposition, said exhibits being attached to the original transcript of the deposition, and that the deposition was truly taken and is here accurately transcribed.

Given under my hand this the 13th day of December, 1977.

My Commission expires
November 23, 1979.

ORIGINAL SIGNED
D. McGUIRE

D. McGuire - Notary Public

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND - DIVISION I

ALMA S. KITCHEN, WILLIAM E. SWAN, CORRINE S. KIDD, DORIS S. ROSSER, OUIDA S. ADCOCK, GLADYS S. KESTERSON, HUGH SWAN, and CARRIE R. SWAN, Plaintiffs, vs. SHIRLEY S. THROCKMORTON, Administrator of the Estate of Alexander H. Swan, Deceased and UNITED STATES FIDELITY & GUARANTY COMPANY, Surety, Defendants.	:

The complete transcript of testimony and other incidents in the above when heard on the 29th and 30th days of March, 1978, before The Honorable James Edward Sheffield, Judge.

1 APPEARANCES:

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3 9th and Main Streets
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4 Richmond, Virginia
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By: A. James Kauffman, Esquire
12 and
J. Stephen Roberts, Esquire
13 Counsel for United States Fideltiy
& Guaranty Company.
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1 I N D E X

2

	Direct	Cross	Redirect
William E. Swan	10	70	87
	282	--	--
John R. Snoddy, Jr.	90	110	--
William A. Moncure, Jr.	116	--	--
Gracie Taylor Swan	123	150	156
Carrie R. Swan	159	--	--
Alma S. Kitchen	163	--	--
Shirley S. Throckmorton	167	--	--
	233	242	--
Richard L. Throckmorton	217	219	228

1 E X H I B I T S

2 Plaintiffs' Page

3 A -- Franklin Federal Savings & Loan Association Passbook. 16
4
B -- Richmond Federal Savings & Loan Association
5 Passbook. 16
6 C -- Bank of Virginia Passbook. 16
7 D -- First and Merchants National Bank statement with attached checks. 16
8
E -- Letter of January 6, 1968 addressed: Dear Bill,
9 Grace, Billy, and Mrs. Taylor, signed Zan. 18
10 F -- F&M deposit slip for $2,550. 37
11 G -- Farmers' National Bank of Appomattox statement deposit slip with machine tape. 37
12
H -- Letter signed by William E. Swan dated June
13 4 6, 1971. 47
14 I -- Agreement of July 16, 1971 signed by all 10 people. 69
15
J -- Typewritten note of information from William
16 E. Swan from Judge Snoddy's file. 95
17 K -- Memorandum to "Jack" (Snoddy) from "B" (Bob Pembleton) dated August 4. 104
18
L -- Group of bills with receipt. 145
19
M -- Receipt for payment of funeral expenses. 146
20
N -- Check from Alexander H. Swan to Shirley S.
21 Throckmorton. 168
22 O -- Authorization to act as attorney signed F.W. Swan.
23 P -- Admission Number 3 of Shirley S. Throckmorton. 6/7/77 265
24 Q -- Two page handwritten document. (Shirley) 280
25

1 March 29, 1978
2 10:00 a.m.
3 THE COURT: All right, gentlemen, are we
4 ready to proceed?
5 MR. PEARSAL: Yes, sir.
6 THE COURT: The case before the Court this
7 morning is Alma S. Kitchen's and others versus
8 Shirley S. Throckmorton and others.
9 Are there any motions before we begin?
10 MR. KAUFFMAN: Unless all of the parties
11 here are parties plaintiffs and defendants I move
12 for separation of witnesses. I count eight plain-
13 tiffs and --
14 THE COURT: All right.
15 Persons who are named as parties in this
16 litigation please stand. If you are a plaintiff or
17 defendant please stand.
18 NOTE: At this time the parties stood.
19 THE COURT: Gentlemen, I assume other per-
20 sons seated are witnesses.
21 MR. KAUFFMAN: That is correct, sir.
22 THE COURT: All witnesses, other than
23 parties please stand.
24 If you are going to be a witness and you are
25 named as a party plaintiff or defendant please stand.

1 There has been a motion made that the
2 witnesses be excluded from the courtroom.
3 MR. PEARSAL: Excuse me, Your Honor. I
4 think something escaped my attention.
5 Judge Snoddy advised me that Gracie Swan
6 is a witness but not named as a party.
7 You should stand at this time.
8 THE COURT: Make sure all of your witnesses
9 are now standing who are not named parties in the
10 case.
11 The motion has been made that the witnesses
12 be excluded and the Court will grant the motion.
13 I will ask all witnesses to leave the court-
14 room and not to return to the courtroom until such
15 time that you are called to testify in this matter.
16 Will all witnesses leave the courtroom and --
17 MR. PEARSAL: Would that include the
18 instruction that they are not to --
19 THE COURT: Perhaps we ought to start again.
20 I am going to try, in the course of this
21 trial, not to talk when you are talking. I will be
22 courteous to you in that regard. When you are talk-
23 ing I will not talk and I will ask you to do the
24 same when I am talking.
25 Mr. Pearsal has also asked all witnesses be

1 instructed not to discuss their testimony outside of
2 the courtroom and do not discuss your testimony with
3 any person once you have testified.
4 I will ask you to leave the courtroom and
5 remain outside of the courtroom until such time you
6 are again called to testify. I will ask all wit-
7 nesses to remain separated while you are outside of
8 the courtroom.
9 Witnesses, please leave the courtroom.
10 NOTE: At this time the witnesses left the
11 courtroom.
12 THE COURT: Will counsel make sure that all
13 of your witnesses who are not plaintiffs or defen-
14 dants are not now in the courtroom. If there are
15 such witnesses they will not be allowed to testify,
16 if they remain in the courtroom.
17 All right. Are we ready to proceed?
18 MR. PEARSAL: I think that is true, but
19 bear with me one moment.
20 That is correct.
21 THE COURT: Are there any opening state-
22 ments by the plaintiffs?
23 MR. PEARSALL: I think we have agreed no
24 opening statements are necessary unless Your Honor
25 cares to have them.

1 THE COURT: Thank you, gentlemen.

2 MR. PEARSALL: Yes.

3 MR. KAUFFMAN: Yes.

4 THE COURT: Mr. Pearsall, please call your

5 first witness.

6 MR. PEARSALL: May I approach the bench or

7 have the Sheriff hand the documents - the file in

8 the Chancery Court - and obtain the exhibits which

9 were attached to the complaint inasmuch as they are

10 clearer than Xerox.

11 THE COURT: What do you want done with

12 520-1?

13 MR. PEARSALL: That the Court take judicial

14 notice consistent with the facts.

15 THE COURT: The Court will take judicial

16 notice of Chancery Number 520-1, which is the record.

17 MR. PEARSALL: I have withdrawn the exhibits

18 that were attached to the complaint in order to use

19 them as exhibits to be introduced through witnesses.

20 THE COURT: You may proceed.

21 MR. PEARSALL: Pursuant to the Court in (ph)

22 Chandler Hammer I asked the Court to take cognizance of the

23 De bene esse deposition of Mr. DeWitt Evans that

24 has been filed with the Court.

25 THE COURT: I understand there is no

1 objection from any counsel to this; is that true?
2 MR. KAUFFMAN: That is correct.
3 THE COURT: The discovery deposition of
4 DeWitt, D-e-W-i-t-t, Evans are now before the Court
5 as part of the record as De bene esse depositions
6 for all purposes with the exception of those items
7 that have been objected and excepted to within the
8 deposition themself by counsel. All right, Mr.
9 Pearsall.
10 MR. PEARSALL: If Your Honor please, I
11 would like to reserve the opportunity at the con-
12 clusion of the matter rather than hold up the Court
13 at this point to argue the objections and have the
14 Court rule on the objections made at the time of
15 the taking of the depositions.
16 THE COURT: All right, Mr. Pearsall. That
17 shall be done.
18 MR. PEARSALL: As shall be reflected, there
19 was the court reporter's error in typing discovery
20 depositions. They were scheduled as De bene esse.
21 MR. KAUFFMAN: That is correct, Your Honor.
22 THE COURT: Thank you, very much.
23 MR. PEARSALL: Did I understand the Court
24 to tell me to proceed?
25 THE COURT: Yes, sir, you were proceeding

1 from the moment you stood. You may continue.
2 MR. PEARSALL: I call Mr. William E. Swan.
3 Does the Court want to swear all of the
4 witnesses at one time?
5 THE COURT: I would prefer to do it
6 separately.
7 NOTE: At this time the witness was sworn.
8 THE COURT: Be seated in the witness chair.
9
10 WILLIAM E. SWAN, a witness called by the
11 attorney for the plaintiffs, having first been duly sworn,
12 testified as follows:
13 DIRECT EXAMINATION
14 BY MR. PEARSALL:
15 Q Will you state your name, age, and occupa-
16 tions?
17 A William Edward Swan. I work with the
18 Highway Department. I was born November 7, 1924.
19 Q How old does that make you?
20 A 53.
21 Q Would you speak up a little bit. It's
22 difficult to hear you. Perhaps the microphone could be
23 moved a little closer to you.
24 A I'll sit a little closer.
25 Q Would you state your relationship to

1 Alexander H. Swan, the deceased?
2 A He was my uncle.
3 Q That is your mother's brother.
4 A My mother's --
5 Q Your father's brother.
6 A My father's brother.
7 Q Your father's brother.
8 A Yes.
9 Q Did you at any time -- State whether you
10 did at any time have joint accounts with Alexander H. Swan.
11 A Yes, I did.
12 Q Will you state how this came about?
13 A Well, he approached me and asked me if I
14 would agree to do this and I told him I would.
15 MR. PARIS: I object to any statement made
16 to him by Alexander Swan as being pure hearsay.
17 THE COURT: Mr. Pearsall.
18 MR. PEARSALL: May it please the Court, I
19 think we are going to have to get on top of this
20 right at the very outset.
21 We here will be developing, Your Honor
22 knows, the existence of an inter vivos trust created
23 by Alexander H. Swan in connection with these joint
24 bank accounts. The statement by Swan, whether true
25 or false, is highly relevant as a verbal act.

We are not calling upon this witness to quote Mr. Swan to prove that what Mr. Swan says is true or false. We are asking this witness to say what Mr. Swan said to him, which is variously described as part of the res gestae or verbal acts. It's not introduced for anything more than the fact that it was said.

THE COURT: Not for the truth?

MR. PEARSALL: Not for the truth of what Mr. Swan said, but the fact that Mr. Swan said it.

THE COURT: What is your position?

MR. PARIS: If that is the situation I think that it is perfectly proper. I think, as we get into his statement to you, that he is offering this to establish an inter vivos trust. Obviously, from his bill, he is asserting that Alexander Swan intended for any conveyance of property by him to this gentleman was for the purpose of establishing an inter vivos trust and that goes to a factual matter not just a verbal act upon which he acted.

I don't think it's hearsay.

THE COURT: All right. For the moment then I will rule that, upon counsel's representation that it is being offered not for the truth of what he asserts, I will allow it in on that situation. It

would not be hearsay, but once it's being offered for what it asserts we may have to look at your objection in that regard.

It's proper for him to testify now, Mr. Pearsall, based on your representation that you are merely offering to show that the statement was made but not for the truth of what it asserts.

MR. PEARSALL: Thank you, Your Honor.

MR. KAUFFMAN: I didn't say anything about what Mr. Pearsall said. I represent a different client and I would like to note my objection. I think it's a self-serving statement by party plaintiff as to his interpretation. He is lifting himself by his own boot.

THE COURT: I will overrule the objection.

MR. KAUFFMAN: Note my exception.

MR. PEARSALL: I have a response when it is necessary.

THE COURT: I have ruled with you, so it is not necessary to respond.

MR. PEARSALL: I didn't want to be prevented from responding at a later time.

THE COURT: I know you will take every opportunity that is available to you.

MR. PEARSALL: Thank you for the indulgence,

1 Your Honor.
2 BY MR. PEARSALL: (Continuing)
3 Q Will you continue with relating the cir-
4 cumstances of how you happened to have joint accounts with
5 Alexander H. Swan?
6 A Well, at the time his wife was in the
7 hospital and he didn't know what could happen to him so he
8 come to me and asked me if I would do this.
9 Q Stop a moment and tell what his wife's name
10 was and what hospital she was in.
11 A Marie Swan in the Westbrook Hospital here
12 in Richmond.
13 Q Does that mean she was under mental dis-
14 ability?
15 A No, no, not in a way. She was just an
16 invalid.
17 Q Continue.
18 A He came to me and asked if I would be
19 willing to do this for him - to put a joint account in the
20 bank with him and me. I told him I would rather him get
21 somebody else to do it and he said he didn't have anybody
22 else that he could depend on to do this. So he goes to
23 Richmond and gets the things fixed up - the cards - and
24 brings them back to me and I signed them and he fixed it up
25 with the bank.

1 Q Mr. Swan, I hand you what has been marked
2 and filed with the complaint Exhibits A, B, C, and D and I
3 ask if you recognize those?
4 A I do.
5 Q And what do these represent?
6 A These represent books of savings accounts
7 and checking accounts - Swan's accounts.
8 Q Are they the accounts that were opened in
9 the circumstances to which you have just related?
10 A Yes.
11 Q Now, did they represent your money in any
12 sense of the word?
13 A No.
14 Q And why did you say that he wanted you to
15 have the right to check on those accounts?
16 A Well, --
17 THE COURT: Just a minute. He has not
18 testified to any right to check on any account,
19 Mr. Pearsall. He has us to the point of opening
20 the account, but I don't think he testified to any
21 right to check or supervise the account.
22 MR. PEARSALL: I will offer these exhibits,
23 Your Honor.
24 THE COURT: Noting your objection, gentle-
25 men, I will admit the documents.

1 Let me have them and we will put them on
2 the record. We will note Mr. Paris' and Mr.
3 Kauffman's objection.
4 MR. PARIS: Will this be Number 3, Judge?
5 THE COURT: These will be numbered the same
6 as they are in the record so we don't get it con-
7 fused.
8 The first two things he admitted and one
9 was taken under judicial notice by the Court was
10 the De bene esse deposition. It came into the
11 record as they were read. They were not marked as
12 exhibits and will not be unless you want them to.
13 MR. PARIS: No.
14 THE COURT: The passbook from Franklin
15 Federal Savings and Loan Association will be Exhibit
16 A.
17 The passbook from Richmond Federal Savings
18 and Loan Association will be Exhibit B. The pass-
19 book from the Bank of Virginia will be Exhibit C.
20 The statement from First and Merchants National Bank
21 with attached checks will be Exhibit D.
22 All right, you may continue, Mr. Pearsall.
23 BY MR. PEARSALL: (Continuing)
24 Q Now, these papers which you have identified
25 and have been introduced in evidence as Exhibits A, B, C, and

1 D reflect the opening of accounts to which you refer.
2 A Yes.
3 Q Under those arrangements, did you have the
4 right to check on those accounts?
5 A Yes.
6 Q And why were you being given that right by
7 Mr. Swan?
8 A So I -- If anything should happen to him
9 I would be able to carry on his business and keep his wife
10 in the hospital.
11 Q I hand you what has been marked with an
12 exhibit for the complaint as Exhibit "E" and ask if you
13 recognize that?
14 A I do.
15 Q What is it?
16 A This is a letter from my uncle.
17 Q How was your uncle Alexander H. Swan known
18 in family circles?
19 A We always called him Zan.
20 Q Z-a-n.
21 A That's right.
22 Q You said this is a letter from Uncle Zan?
23 A That is true.
24 Q What does it relate?
25 MR. PARIS: I think our objections are

1 continuing on that.
2 THE COURT: All right, sir. Your objection
3 is noted and overruled.
4 The letter speaks for itself, however, Mr.
5 Pearsall.
6 MR. PEARSALL: I was just trying to tie it
7 in with testimony. I recognize that it does.
8 I will offer it.
9 THE COURT: The letter will be identified
10 as Exhibit E and I am noting the exception of Mr.
11 Paris and, also, Mr. Kauffman.
12 BY MR. PEARSALL: (Continuing)
13 Q I will read you a portion of that letter
14 and ask if you can state what that meant to you at the time
15 you received it.
16 The letter is dated January 6, 1968.
17 MR. KAUFFMAN: Judge, I think the Court
18 can read the letter. I don't think Mr. Pearsall
19 has to read it.
20 THE COURT: He is asking a different ques-
21 tion as to what it meant to him and only he can
22 testify about that.
23 BY MR. PEARSALL: (Continuing)
24 Q "I have fixed everything like I told you I was
25 going to do... Will tell you all the details when I see you."

1 When you received that letter, what did you
2 think he was referring to?
3 A Well, I didn't really know at the time, but
4 I figured he was aiming to fix his bank accounts up so that
5 we both could carry his business on.
6 Q Did you go to Richmond to sign any signature
7 cards in order to be able to --
8 A No, sir.
9 THE COURT: Just a minute, Mr. Pearsall.
10 I am a little confused. Did you know what
11 the language meant? Or didn't you?
12 MR. SWAN: I did know.
13 THE COURT: What did you mean by your
14 statement that you didn't know at the time?
15 MR. SWAN: I didn't exactly understand what
16 it meant there at one time.
17 THE COURT: Your witness, sir.
18 BY MR. PEARSALL: (Continuing)
19 Q Mr. Swan, see if you can clarify for the
20 Court your prior response.
21 Have you received a letter saying: I have
22 fixed everything like I told you I was going to do and will
23 tell you what the details are when I see you?
24 Had you received the details at that time?
25 A No, I hadn't.

1 Q And when did you receive the details?
2 Did you understand to what he was referring?
3 A Yes, I did.
4 Q Now, how did the signature cards get your
5 signature on them?
6 A He brought them up there and I signed them
7 - brought them to Buckingham, where I live.
8 Q Now, when he asked you to allow him to open
9 up accounts - joint accounts - so that you could take care of
10 his wife in the event he died first, did he offer to pay you
11 for doing this?
12 A No, he didn't offer to pay me. At the time
13 he said he would make it worth my while if I did though do
14 this.
15 Q Did he make it worth your while? There-
16 after did he do anything for you relating to this?
17 A Relating to this?
18 Q Relating to serving him. How did he make
19 it worth your while, if he did?
20 A Well, by leaving me a part in this, I guess.
21 Q Did he give you anything or pay you anything?
22 A No, sir.
23 Q He never gave you anything whatsoever.
24 A No, sir.
25 Q Did he ever discuss with you his coin

1 collection?

2 A No, not particularly. Just told me to pick

3 it up and it was mine.

4 MR. KAUFFMAN: Judge, this is --

5 BY MR. PEARSALL: (Continuing)

6 Q He told you to pick it up and it was yours.

7 A Yes.

8 MR. KAUFFMAN: We are getting into establish-

9 ment of the alleged oral trust and here we have gotten

10 into the truth of what the man is saying now and I

11 have the indulgence of the Court to say here again

12 that not only do we have hearsay, but we are attempt-

13 ing to establish the oral trust by hearsay testimony.

14 Mr. Pearsall is establishing his case on the theory

15 it's not offered for the truth of it but to show that

16 it's part of the res gestae, but it is circuitous,

17 Judge. This has got to be true if this is the oral

18 trust they are attempting to establish. Therefore,

19 when you get his compensation - I will get the coin

20 collection as compensation - this is the oral trust

21 we are here pursuing.

22 So, you have to renew my objection at this

23 point, Your Honor. I think we have gone beyond the

24 point.

25 THE COURT: All right, Mr. Kauffman.

1 Mr. Pearsall.

2 MR. PEARSALL: May it please the Court, if
3 one person says to another: Here is my coin collec-
4 tion it is yours and that other who made that state-
5 ment is quoting by the person to whom it's given
6 that is the classic and proper way of establishing
7 the making of a gift and the receipt of a gift.

8 Now, it's offered for the purpose of show-
9 ing that that statement was made accompanied by
10 that delivery and that is the act - that is the
11 entire verbal act - that is significant, his part
12 of res gestae. It is a fully recognized exception
13 to the hearsay rule - a verbal contract. Regardless
14 of what the donor has in his mind it's yours. The
15 fact that he said it's yours is the significant
16 thing. It's the outward overt act on the part of
17 the person. It's a verbal act and a recognized
18 exception to the hearsay rule.

19 THE COURT: Based on that argument, Mr.
20 Pearsall, every statement would be a verbal act.

21 MR. PEARSALL: I respectfully differ with
22 the conclusion Your Honor has reached.

23 As I understand the hearsay rule a narrative
24 of what someone else -- A narrative that someone
25 else is telling it may not be established by quoting

1 that person, that is the truth of the narrative,
2 that is the typical hearsay rule.
3 I am not asking him to relate some narrative
4 that somebody else told him to prove the accuracy of
5 that narrative. All I am asking him to relate is
6 that which was said to him. It's not hearsay as
7 to him. He was there. He was an eyewitness.
8 THE COURT: But it's a statement somebody
9 else said out of court which is being offered for
10 the truth of what it asserts --
11 MR. PEARSALL: Excuse me, Your Honor. I
12 thought you were through.
13 THE COURT: Let me see if I understand
14 what you are saying.
15 You want the witness to testify that a
16 deceased person told him that he would give him a
17 coin collection.
18 MR. PEARSALL: That he did give it to him.
19 THE COURT: That he did give it to him for
20 some compensation that he rendered for him.
21 All right. The statement that this gentle-
22 man makes, who is not here now, was made out of
23 court. The party was not under oath and was not
24 available for cross-examination and it is now being
25 offered for the truth of what it asserts. Is that

1 true, Mr. Pearsall?
2 What is missing in the little narrative?
3 MR. PEARSALL: Not the truth of what it
4 asserts, but the fact that it was asserted.
5 In other words, it's highly germane. I
6 don't mean to keep interrupting you --
7 THE COURT: That's all right. Go ahead.
8 MR. PEARSALL: It's highly germane to
9 whether an act occurred for an eyewitness to testify
10 that the act did occur the act of saying that this
11 did occur this man is testifying from firsthand
12 knowledge that it did occur. He is not quoting
13 somebody who is giving a narrative statement for
14 the truth of that narrative statement.
15 I respectfully request, Your Honor, that I
16 be allowed to brief this matter, if Your Honor has
17 any question.
18 THE COURT: What I am going to do is: I
19 will hear the evidence. Not having a jury here I
20 will say to you that I am supposed to be able to tell
21 the difference between what is admissible and what is
22 not - as I understand the law. Maybe I am entirely
23 wrong, but the Supreme Court has told me that before
24 and I assume they will help me again.
25 MR. PEARSALL: We are all in that boat,
Your Honor.

1 THE COURT: If the statement is made out of
2 court and is being offered in court for the truth
3 of what it asserts that statement is hearsay, unless
4 it meets one of the exceptions to the hearsay law
5 it is inadmissible and I will hear the evidence and
6 reserve ruling until I have heard all of the evidence.
7 MR. PEARSALL: All I am affirming to the
8 Court is his exception to the hearsay rule because
9 it's not being offered for the truth of the narrative.
10 THE COURT: It is not being offered for the
11 truth of what it asserts, not even hearsay?
12 MR. PEARSALL: I agree with you and I also
13 have to agree with Professor Wigmore Wiggins that a lot of
14 things are mischaracterized as hearsay as they are
15 by nature not hearsay and referred to as exceptions.
16 When they are not true exceptions at all the hear-
17 say rule doesn't touch them.
18 THE COURT: Let's hear the evidence. We
19 don't have a jury and, supposedly, the Court can
20 excise out which is admissible and not admissible
21 and is not tainted by having heard it.
22 MR. KAUFFMAN: For the record, I object.
23 THE COURT: You have a continuing objection.
24 MR. PARIS: I would like to make one
25 clarification.

1 We are referring to the statement - part
2 of the res gestae - which is not applicable. It's
3 as excited or spontaneous utterances under the
4 White case and I don't think that is a proper
5 exception.
6 MR. PEARSALL: Our response -- I could say
7 that res gestae is so much an abused term nobody
8 knows exactly what it is.
9 MR. PARIS: I do.
10 THE COURT: You used it first.
11 MR. PEARSALL: The reason I used it was to
12 invite Your Honor's attention that res gestae is
13 not only an excitable act but the context of what
14 I am establishing and the context is that somebody
15 - this man - heard it and he is an eyewitness and
16 an earwitness.
17 THE COURT: Let's hear it all and I will
18 make a ruling.
19 Do you want the last question read? Or
20 what?
21 MR. PEARSALL: I think he answered that
22 question.
23 BY MR. PEARSALL: (Continuing)
24 Q Did Zan give you anything else?
25 A He gave me his automobile.

1 Q Did he give you anything else?
2 A That was all.
3 Q In whose possession was his watch at the
4 time he died?
5 A It was in mine.
6 Q Why was it in yours?
7 THE COURT: Mr. Pearsall, please, I will
8 have enough trouble deciding this on admissibility
9 of evidence rather than that which is inadmissible.
10 That is a leading question, sir.
11 BY MR. PEARSALL: (Continuing)
12 Q Now, did Zan's wife survive Zan? Or did
13 he die first?
14 A She died first.
15 Q State whether or not, after she died, he
16 gave you any further instructions about these joint accounts.
17 A After she died? Oh, yes, I was to divide
18 the estate in four different ways giving my sister Ouida
19 $3,000 and Shirley Throckmorton $3,000.
20 Q You will have to make a clearer statement
21 to the Court.
22 I don't understand from what you said how
23 the bank accounts were to be handled. Would you stop and
24 take your time and state what the instructions were from Zan
25 as to what you were to do with the bank accounts, sir?

1 A Well, I were first to give my sister $3,000.
2 Q What sister?
3 A Ouida.
4 Q What is the last name?
5 A Ouida Adcock.
6 Q All right.
7 A And Shirley S. Throckmorton $3,000 and the
8 residue four ways with my mother --
9 Q Whose mother?
10 A Carrie Swan and my aunt, Alma Kitchen.
11 Q That is two-fourths.
12 A And Frederick Swan part and me part,
13 William E. Swan.
14 Q And Freddie is who?
15 A Freddie is my Uncle Zan's brother.
16 Q Did you ever tell anyone else what your
17 obligation was relative to these joint accounts?
18 A Yes, I told my whole family.
19 Q Enumerate, for me, who you mean by "whole
20 family."
21 A My brother Hugh.
22 Q Brother Hugh Swan.
23 A Yes. And Doris Rosser and Corrine Kidd
24 and my mother.
25 Q What is the mother's name?

1 A Carrie Swan. And my aunt, Alma Kitchen,
2 and Ouida S. Adcock and Gladys Kesterson.
3 Q Mr. Swan, I hand you what has been marked
4 as Exhibit F with the Bill of Complaint and ask if you
5 recognize that?
6 A Yes, I do.
7 Q What is that?
8 A This is a receipt from the bank where I
9 deposited $2,550.
10 Q What bank did you deposit it in?
11 A First and Merchants Bank.
12 Q Was that a checking or savings account?
13 A That was --
14 Q Just take your time and compose yourself,
15 Mr. Swan. It is obvious that you are nervous now.
16 MR. PARIS: I don't think that is so
17 obvious at all and I don't think it should be in
18 the record that he is confused or anything. He
19 has answered the questions pretty well.
20 THE COURT: All right, sir.
21 I will strike from the record the comment
22 that "it's obvious that he is nervous" as an obser-
23 vation of counsel and not necessarily in evidence.
24 BY MR. PEARSALL: (Continuing)
25 Q Now, was the First and Merchants a checking

1 account or savings account?
2 A It was a checking account.
3 Q Now, where did the money come from that
4 went into the checking account?
5 A It came from Zan.
6 Q Did Zan take it out of his pocket?
7 A He received checks for his money which I
8 deposited.
9 Q Where did you get the money that you put
10 in First and Merchants?
11 A I got it from Zan at his nursing home.
12 Q Was anyone with you when you went to the
13 nursing home?
14 A Freddie was with me.
15 Q Your uncle?
16 A That is right.
17 Q Did he go with you to the bank?
18 A Yes.
19 Q And he was there when you deposited the
20 money in the First and Merchants.
21 A Yes.
22 Q What is the date of that deposit?
23 A I can't see it too good. May 4th, May the
24 4th.
25 Q Now, you said Freddie was with you at the

bank. Was he also with you at the nursing home?

A Yes, he was.

Q Did Zan discuss with you and Freddie anything about the joint banking accounts?

A Yes, he did.

Q What did he say to you all?

A Well, he told Freddie the way he wanted me to distribute it out if anything should happen to him.

Q What was that way that he told you and Freddie on that day?

A Well, that I should give Ouida Adcock $3,000; Shirley Throckmorton $3,000; my mother, Carrie Swan, $4,000 - I mean a part in it all; Alma Kitchen, his sister, a part in it all; and Freddie Swan, a part in it; and myself, William Swan, a part.

Q What were the size of those four parts?

A You mean the amount the share would have been?

Q No, not the amount. What portion? What part were you supposed to give to each one?

A Well, it was to be divided - after the $6,000 came out - four ways.

Q Four equal ways?

A Four equal ways.

Q Did Zan stay in the nursing home for an

1 indefinite period after May 4th?
2 A He stayed there a right good while after
3 that. I am not sure how long it was.
4 Q Do you know when he went to St. Mary's
5 Hospital?
6 A No, sir, I'm not sure.
7 Q Do you know whether he died in the nursing
8 home or St. Mary's Hospital?
9 A It was in St. Mary's Hospital.
10 Q Did you attend the funeral?
11 A Yes, I did.
12 Q Did the family, as a whole, attend the
13 funeral?
14 A Yes.
15 Q Did you have any discussion with the family
16 as to what you were to do with the bank accounts at the
17 family gathering in connection with the funeral?
18 A Afterwards you mean or --
19 Q At any time after Zan died.
20 A Yes, yes, after he was buried we did.
21 Q What was that discussion that you had?
22 A Well, I just told them all that I wanted
23 it done how he wanted it distributed and so forth.
24 Q Who was going to attend to it?
25 A I was.

Q Now, did you, thereafter, proceed to carry out those instructions?

A I did.

Q Would you relate the circumstances of what you did in carrying out those instructions?

A Well, I was working on a job a while after that and I tried to get some time off from my work. I came to Richmond and drew all of the money out of the bank, except the savings account.

Q Except what?

A The savings account, which I left in the bank.

Q Which savings account did you leave in the bank?

A First and Merchants.

Q Was that a savings account or a checking account?

A Savings account.

Q First and Merchants was a savings account.

THE COURT: He has already answered that, Mr. Pearsall. He said it was a savings account.

MR. PEARSALL: May it please the Court, he previously testified it was a checking account.

THE COURT: Don't tell him what he testified. He said it was a savings account and we are

1 stuck with a savings account.
2 BY MR. PEARSALL: (Continuing)
3 Q Pick up the narrative as to what you did.
4 Start all over, if you want to.
5 A I would like to start all over, if I may.
6 I forgot what I was at.
7 THE COURT: You were at the point you with-
8 drew money out of the bank.
9 What did you do after you drew money out
10 of the bank?
11 MR. SWAN: I came to Richmond and drew all
12 of the money out on the savings account and carried
13 it to Buckingham to Farmers' National Bank where I
14 deposited it for distribution in the four parts.
15 BY MR. PEARSALL: (Continuing)
16 Q Did you do anything else while you were in
17 Richmond, Mr. Swan?
18 A I went by Shirley Throckmorton's to pick
19 up what bills she had there and she refused to give them to
20 me. She said that the nursing home where he was staying had
21 to get something straight so after leaving Shirley's - which
22 she wouldn't give me the bills - I went by the nursing home
23 and got the bill and wrote the check for the nursing home
24 bill.
25 Q What account did you write the nursing home

1 bill on?
2 A You mean in town?
3 Q On which bank account did you write the
4 check for the nursing home bill?
5 A The savings account.
6 Q What savings account, Mr. Swan?
7 A I mean the checking. I said savings - I
8 mean the checking account.
9 Q Do you know the difference between a
10 "checking account" and a "savings account"?
11 A Oh, yeah.
12 Q Which bank account did you write the check
13 on for the nursing home bill?
14 A (No response.)
15 Q Which account did you close and take the
16 money to Farmers'?
17 A I closed out the savings account.
18 Q How many accounts did you close out?
19 A I closed out three from three different
20 banks.
21 Q And that left one account open.
22 A A checking account, that's right.
23 Q And is that the one you wrote the check to
24 the nursing home on?
25 A That's correct.

1 Q When did you -- What did you do with the
2 money that you had withdrawn from the savings account?
3 A I put it in the Farmers' National Bank at
4 Appomattox.
5 Q When did you do that?
6 A I don't recall the date on that.
7 Q How does it relate to the time that you
8 took it from the bank in Richmond?
9 A The day following the day I deposited it
10 in Farmers' National Bank.
11 Q When you deposted it in Farmers' National
12 Bank, did you put it in your account there?
13 A I put it in a special account, not my
14 account.
15 Q What did you tell Mr. Evans at the time
16 you opened the account?
17 A Well, I told what I was to do with the
18 money and that I would like to have it with a special account
19 - not just mine - and he said it was a good idea. So that
20 is the way we fixed it up.
21 Q Did he attend to opening the account for you?
22 A Yes.
23 Q I hand you what has been marked as Exhibit
24 F with the Bill of Complaint and ask if you recognize that?
25 A I do.

1 Q And what is it?
2 A This is the receipt for the money I
3 deposited in Farmers' National Bank.
4 Q That is the deposit slip.
5 A That is the deposit slip.
6 Q And this was the account that Mr. Evans
7 attended to opening up for you.
8 A Yes.
9 MR. PEARSALL: I offer it.
10 THE COURT: All right, sir. Let me have
11 the receipt for the $2,500.
12 MR. PEARSALL: I am sorry I thought I
13 offered it.
14 THE COURT: Do you want that in evidence?
15 MR. PEARSALL: Yes.
16 THE COURT: That will come in as Exhibit F.
17 The document that the witness has just
18 identified as being a receipt from the Farmers'
19 National Bank - which exhibit is an adding machine
20 tape and looks like a bank statement and another
21 document attached to it, three documents altogether
22 - would come into evidence as Exhibit G.
23 BY MR. PEARSALL: (Continuing)
24 Q Mr. Swan, I hand you what has been filed
25 with the complaint as Exhibit J and ask if you recognize that?

1 I suggest it's self-serving.
2 MR. KAUFFMAN: Judge, may it please the
3 Court.
4 Furthermore, we hear an alleged oral trust
5 was created by Alexander Swan and according to the
6 testimony of Mr. William Swan he was going to be
7 the trustee and now this document is Mr. William
8 Swan appointing his wife Gracie Swan as a substitute
9 trustee which is self-serving and so outside the law.
10 The trustee cannot appoint a successor trustee any-
11 way. I think it's a further attempt to lift them-
12 selves up by their own boot straps of self-serving
13 documents to prove an oral trust and goes one step
14 beyond my prior objection by creating insult to
15 injury and by building on hearsay and self-serving
16 statements on hearsay and self-serving statements
17 and I think this is clearly inadmissible.
18 It's not a memorial or anything except an
19 after-the-fact excuse for something that was done.
20 THE COURT: Mr. Pearsall, any reply?
21 MR. PEARSALL: If it please the Court, as
22 to self-serving and declaration against interest --
23 Here is a man with accounts in his name which he is
24 free, under the law, as so far as it relates to
25 accounts is concerned to withdraw the money. His

A I do.

Q And whose handwriting is that on the body of the paper?

A The bottom of the paper?

Q The body of the paper. Who wrote it?

A My wife.

Q And whose signature is it?

A It's my signature.

Q And what was the occasion of that being written? Why was that written?

A This was so if anything happened to me --

MR. PARIS: Judge, --

THE COURT: Just a minute.

Do you have an objection, Mr. Paris?

MR. PARIS: Yes, sir. This note, that you can read, is a self-serving statement to further establish this alleged oral trust. All it is is saying: I give to my wife the right to carry on what I want to do later on. Obviously it is being offered to explain why Exhibit G, the deposit, is to me or my wife - William Swan or Gracie Swan, his wife - the survivor. This obviously is to explain that which is to bolster his position which his position was as the recipient of the oral trust or whatever.

1 I suggest it's self-serving.
2 MR. KAUFFMAN: Judge, may it please the
3 Court.
4 Furthermore, we hear an alleged oral trust
5 was created by Alexander Swan and according to the
6 testimony of Mr. William Swan he was going to be
7 the trustee and now this document is Mr. William
8 Swan appointing his wife Gracie Swan as a substitute
9 trustee which is self-serving and so outside the law.
10 The trustee cannot appoint a successor trustee any-
11 way. I think it's a further attempt to lift them-
12 selves up by their own boot straps of self-serving
13 documents to prove an oral trust and goes one step
14 beyond my prior objection by creating insult to
15 injury and by building on hearsay and self-serving
16 statements on hearsay and self-serving statements
17 and I think this is clearly inadmissible.
18 It's not a memorial or anything except an
19 after-the-fact excuse for something that was done.
20 THE COURT: Mr. Pearsall, any reply?
21 MR. PEARSALL: If it please the Court, as
22 to self-serving and declaration against interest --
23 Here is a man with accounts in his name which he is
24 free, under the law, as so far as it relates to
25 accounts is concerned to withdraw the money. His

1 withdrawal was honored by the bank. He has the
2 money in his possession. He takes it to the bank
3 and states what he was supposed to be doing relative
4 to it and this is the declaration against his
5 interest. It is not a self-serving declaration.
6 Clearly it is against his interest so that argument
7 is met by that.
8 Additionally we have a contemporaneous
9 memorandum that he was about to explain the occasion
10 of its arising and the objection was made. This is
11 a contemporaneous memorandum of what he was to do
12 with the money and how it was to be handled in the
13 event that something happened to him.
14 THE COURT: Contemporaneous to what other
15 events?
16 MR. PEARSALL: With his opening up the
17 account as a special account.
18 I was going to elicit from this gentleman
19 as to how it happened to be written at the time the
20 account was made.
21 THE COURT: All right, sir.
22 I sustain the objection to the evidence
23 as being overall self-serving. It may be derogatory
24 to his interest as far as the immediate account and
25 to the overall.

1 I will note your exception.

2 MR. PEARSALL: I would like an opportunity
3 to vouch the record as to what this exhibit is and
4 how it came into existence.

5 THE COURT: You may do that now for con-
6 tinuity, if you want, and you would be vouching
7 the record right now through the witness and you may
8 do it now if you want.

9 MR. PEARSALL: Thank you, Your Honor. That
10 would make it more orderly.

11 BY MR. PEARSALL: (Continuing)

12 Q Mr. Swan, would you proceed to tell the
13 Court how this writing, the occasion of this writing, came
14 into existence? How it was written and why it came into
15 existence.

16 A Because if something should have happened
17 to me it would have been kind of difficult for anybody to
18 take it over so my wife wrote this memorandum out here to
19 have in case something should happen to me.

20 Q Had you discussed the writing of any such
21 memorandum with Mr. Evans?

22 A Yes, he said we should have something.

23 MR. PARIS: I object.

24 MR. KAUFFMAN: I object.

25 THE COURT: All right. It's not responsive

A It did.

Q And did you act on it?

A Yes, sir.

Q And this is the writing that was prepared on that occasion on account of that suggestion?

A Yes.

MR. PEARSALL: I offer it as part of the vouch, Your Honor.

THE COURT: All right, sir.

MR. PEARSALL: And I take it it will be given a number and marked rejected so we can later refer to it.

THE COURT: We will assign it the next number for continuity. This is an exhibit that carries Caption "J." June 4, 1971, and it is marked Exhibit H.

BY MR. PEARSALL: (Continuing)

Q Now, after you had been to the bank and opened up the special account, did you see any members of your family, other than your wife, thereafter?

A After I had deposited the money?

Q Yes.

A Yes, I went by and saw Freddie and explained to him where the money was and that I had it ready for distribution. I went by to see my mother, Carrie Swan --

1 Q Before we leave Freddie, will you state what
2 the conversation between you and Freddie was as to your dis-
3 tribution pursuant to this?
4 A Well, I told him that I had the money ready
5 to write the checks for and he wouldn't -- He wouldn't agree
6 to anything. Then he told me that he would like to give
7 Shirley $5,000 - which I wouldn't agree to.
8 MR. KAUFFMAN: I object to what Freddie told
9 him to --
10 THE COURT: Is Freddie a party?
11 MR. KAUFFMAN: No, sir.
12 THE COURT: We have problems with him.
13 What is the basis for admissibility of what
14 he told Freddie?
15 He can state what he told Freddie, but we
16 get a problem as to what Freddie told him.
17 MR. PEARSALL: Again, Your Honor, I think
18 we will have to resolve it on brief.
19 If Freddie, regardless of whether it's true
20 or false, says, as I understood the witness just to
21 say, that he wanted his daughter Shirley to have
22 $5,000 --
23 THE COURT: Mr. Pearsall, --
24 MR. PEARSALL: That fact is highly germane
25 to this gentleman's conduct thereafter and whether

1 that was Freddie's desire or not his desire he
2 articulated that desire to this man in this man's
3 presence and he is relating what this man said. That
4 is a verbal act, Your Honor, and it's not offered --
5 THE COURT: So we can move the thing along,
6 I understand your objection.
7 MR. PARIS: I have a further objection.
8 I think that this man is claiming that he
9 is the beneficiary or the trustee under this oral
10 inter vivos - alleged oral - trust. What possible
11 relevancy could it make at all to the substance of
12 this case or his conduct because once he goes to
13 one of the beneficiaries and says this is what I will
14 do and they said that they objected - what difference
15 does it make if they object and they want somebody to
16 have more money than this other money? I can't see
17 the relevancy.
18 THE COURT: What relevancy?
19 MR. PEARSALL: The relevancy -- The object
20 here and the person for whom he was attempting to
21 get additional money brought the action in the
22 Chancery Court of the City of Richmond. The paper -
23 of which you have there - and it gives the context
24 of that action --
25 THE COURT: What would be the relevancy of

him objecting, in any case? That is the basis of Mr. Paris' objecting. Why do we have to know about the dialogue to resolve the issue in this case - the dialogue between he and Freddie?

MR. PEARSALL: Your Honor, I don't want to transgress by making an opening statement at this juncture, but we have to try to show the relevancy. We have the affirmation by this witness that he had a certain responsibility relative to these accounts and that he went to one of the persons to whom he was to give money - who was the father of the person to whom he was to give money - and he encountered objection about the execution of that.

Now, the sequence of events that flowed from that to the litigation to the handling of the litigation is all germane to establishing whether or not Shirley Throckmorton as administrator was justified in paying 17 odd thousand dollars out in connection with this.

I don't know how to show it to Your Honor except to take it a step at a time.

THE COURT: What I will do then, Mr. Paris, is go ahead and let him adduce this testimony subject to your showing that it's relevant through some other testimony, Mr. Pearsall.

1 MR. PEARSALL: Thank you, Your Honor.
2 MR. KAUFFMAN: Note my objection please.
3 THE COURT: All right, sir.
4 The same ruling subject to him being able
5 to connect it. I will let it in.
6 MR. KAUFFMAN: My objection is based on the
7 fact that Shirley brought the lawsuit that Mr.
8 Pearsall is talking about and he is eliciting hearsay
9 statements of Freddie to show what prompted Shirley
10 to do something and I think that is doubly inadmis-
11 sible and Freddie is here to testify.
12 THE COURT: All right. I will hear it,
13 gentlemen, noting your exceptions to the Court's
14 ruling.
15 Go ahead, sir.
16 BY MR. PEARSALL: (Continuing)
17 Q I am really not sure where we were. Had
18 you finished telling me what position Freddie took with you
19 on that day after you had made the deposit and told him you
20 were ready to distribute the deposited funds?
21 Do you feel like you have left out anything?
22 Say it now. I don't know whether you have or not. I am not
23 really sure what you have said.
24 THE COURT: Tell us again what Freddie
25 said after you told him what you were going to do.

1 MR. SWAN: I went by there and he wanted
2 the $5,000 for Shirley and I told him that is not
3 what was in the agreement. So, that was it. I
4 wasn't going to do it.
5 BY MR. PEARSALL: (Continuing)
6 Q Did you have any conversation with Freddie
7 thereafter?
8 A Yes, I did.
9 Q Do you recall what the next occasion was
10 that you talked with Freddie?
11 A Well, he wanted me to meet him up at his
12 home on Tuesday - I don't remember the date.
13 Q Did you see him between this date that you
14 made the deposit in the bank and that Tuesday?
15 A I saw him on a Sunday and I don't recall
16 the date.
17 Q What happened on the Sunday?
18 A Well, he said he was going to Richmond to
19 see Shirley.
20 Q Did he tell you anything other than, "I am
21 going to Richmond to see Shirley"? What was the nature of
22 your conversation?
23 Mr. Swan, we were not there. You have to
24 tell us.
25 A It was about this money, money deal.

1 Q What did he say about the money?
2 A Well, he said he would go and see Shirley
3 about the $5,000 and he felt it was agreeable to her and I
4 told him I wouldn't settle for that because it wasn't right.
5 So then he came back and then that was the next meeting we had
6 was on a Tuesday.
7 Q Tell me what happened on the next meeting.
8 A I worked that day. I came home from work.
9 Q You worked on Tuesday?
10 A That's right, came home from work and they
11 cornered me and wanted me to write them a check for $17,000.
12 Q Write them a check for $17,000.
13 A Freddie Swan a check for $17,000.
14 Q Was there any discussion about what Shirley
15 Throckmorton was to get?
16 A No, there wasn't.
17 Q What did you say about writing a check to
18 Freddie for $17,000?
19 A I told him I couldn't do that that I
20 wouldn't do that and that it wasn't in the agreement the way
21 that Uncle told me to do.
22 Q So was the session a friendly one?
23 A It was to start out with, but it didn't get
24 friendly toward the last and I got upset and left after that.
25 I got upset and left.

1 Q Before you got upset and left, did you have
2 any further contact with Freddie?
3 A Yes, I called him again that night to see
4 if he had changed his mind and if he wanted to settle it up
5 and he said I had gotten him out of bed and he was mad and I
6 said I was sorry about that and asked if he wanted to settle
7 up and he said: No, sir, never. I said: You talk to Jack
8 Snoddy. I said I was going to see Judge Snoddy and that was
9 the last conversation I had.
10 Q Did you go see Judge Snoddy?
11 A Yes, I went the same night.
12 Q Did you -- What was the nature of your
13 conversation with Judge Snoddy?
14 A I went to see Judge Snoddy and he wasn't at
15 home. I finally found him at Sprouses Corner in a restaurant
16 in Buckingham.
17 MR. PARIS: Objection. There is nc possible
18 way that this could have any relevancy to this case
19 at all as to what he told Judge Snoddy and what Judge
20 Snoddy told him. It's hearsay. It's irrelevant.
21 It has nothing to do with the issue in this case.
22 THE COURT: All right, sir.
23 Mr. Pearsall.
24 MR. PEARSALL: May it please the Court, it's
25 certainly not hearsay for this man to say what he

said to Judge Snoddy and the relevance, Your Honor, is to develop the context in which litigation was brought for which a man was paid $17,000 and I have to show that context.

THE COURT: You have to tie it down a little bit more than that, otherwise we will take all of the evidence. Some of it possibly is not relevant.

Counsel made objection as to relevancy. What is the relevancy of his conversation to Snoddy and Snoddy's conversation to him? What does it help to prove?

MR. PEARSALL: We will prove through this witness and Judge Snoddy what was the course of events which were interrupted and intercepted by this litigation for which attorneys were paid $17,000 for doing nothing, Your Honor. That is the relevance.

THE COURT: I will admit it subject to your being able to tie it in.

Please let Judge Snoddy testify, he is here, as to what he said and not through this witness.

MR. KAUFFMAN: Please note my objection.

THE COURT: Objection noted.

It will be admitted subject to him being able to show the relevancy of it.

MR. KAUFFMAN: Thank you, Your Honor.

1 BY MR. PEARSALL: (Continuing)
2 Q When did you see Judge Snoddy again?
3 A I am not --
4 Q What was the occasion, not necessarily the
5 date?
6 A Well, I went and discussed the case with him
7 and told him I would like for him to represent me.
8 Q That was that evening?
9 A That was that evening.
10 Q Now, thereafter that evening on what
11 occasion did you see Judge Snoddy again?
12 A I went to see him in his office in Dillwyn.
13 Q Why did you go to Dillwyn? Why did you go
14 see him in his office in Dillwyn?
15 A Because we couldn't talk in the restaurant
16 and I wanted to give him full details of the case.
17 Q Had anything happened between your seeing
18 him at the restaurant and the time you saw him in Dillwyn?
19 A I got served a court order about an auto-
20 mobile and money and a watch. I carried this to Judge Snoddy.
21 THE COURT: I am sorry. You got a court
22 order that says what?
23 MR. SWAN: To turn the automobile in plus
24 the old coins.
25 THE COURT: Over to who?

1 MR. SWAN: Over to the court, which I did.
2 MR. KAUFFMAN: Did he also say the watch?
3 MR. PEARSALL: He did not say anything about
4 a watch.
5 I would like to have the transcript read
6 back. I am confident he did not say anything about
7 a watch.
8 THE COURT: Objection is withdrawn.
9 MR. KAUFFMAN: The objection is not to
10 what the witness said, but what counsel said in
11 leading the witness.
12 MR. PEARSALL: I think, in view of the
13 attack on counsel, it is necessary to have it read
14 back.
15 NOTE: At this time the reporter read back
16 the last answer.
17 THE COURT: The witness did say "a watch."
18 What is your next question?
19 BY MR. PEARSALL: (Continuing)
20 Q Did I understand you to say you turned the
21 items over to the Sheriff?
22 A I did.
23 Q Did you show this order to Judge Snoddy?
24 A Yes.
25 Q Did you develop, with Judge Snoddy, what the

1 situation was about insofar as you knew?
2 A Yes.
3 Q What did you tell Judge Snoddy was the
4 situation relative to Alexander Swan's bank accounts and these
5 items?
6 A You mean --
7 Q What did you tell Judge Snoddy when you went
8 to see him as your lawyer?
9 A Well, I told him how everything was to be.
10 Q Mr. Swan, I appreciate your trying to answer,
11 but that is meaningless to the Court and to me - that you told
12 him what everything was supposed to be. You will have to be
13 more specific. What did you tell Judge Snoddy? It may be
14 repetitious as we have heard it a lot of times, but what did
15 you tell Judge Snoddy? That is what the Court has to under-
16 stand. Take your time and tell him what you developed with
17 Judge Snoddy with the circumstances about which you consulted
18 Judge Snoddy.
19 A I don't -- I can't understand --
20 Q All right. Did you make any statement to
21 Judge Snoddy about the automobile, the watch, and the coins?
22 A No more than I told him -- You mean after
23 the court order came?
24 Q Yes. What did you tell him?
25 A I told him that they were given to me.

1 Q Now, what did you tell Judge Snoddy about the
2 bank accounts that were in your joint names?
3 A Well, I told him how my uncle had fixed them
4 and how they were to be divided and everything.
5 Q Is what you told him about how your uncle
6 had fixed them and how they were to be divided what you have
7 already told the Court previously?
8 A Yes.
9 Q Did you receive any other papers from the
10 court?
11 A I received some different papers - two
12 different times.
13 Q What did you do with those?
14 A I turned them over to Judge Snoddy.
15 Q Thereafter, did Judge Snoddy report to you
16 of any conversation that he had had with counsel of Shirley
17 Throckmorton?
18 A Would you ask that again?
19 Q All right. I am having difficulty communi-
20 cating with you.
21 I am using words that apparently don't mean
22 anything to you.
23 Did Judge Snoddy, after you had consulted him
24 and told him what the circumstances were, report back to you
25 about his handling of the matter? Did he give you any report

about what he was doing?

A Oh, yes. He kept me posted.

Q What did he tell you he was doing?

A Well, he was --

MR. PARIS: Judge --

THE COURT: Objection sustained, Mr. Pearsall. What is your next question, Mr. Pearsall? Judge Snoddy is here and that is pure hearsay. There is no exception to that, Mr. Pearsall. What is your next question, sir?

MR. PEARSALL: I respectfully object to the ruling.

THE COURT: All right. The record will note your objection, sir.

BY MR. PEARSALL: (Continuing)

Q Did Judge Snoddy ask for your concurrence in any -- Did he ask you to agree to anything?

MR. PARIS: We are back --

THE COURT: Same objection and same ruling. Objection sustained.

BY MR. PEARSALL: (Continuing)

Q Did Judge Snoddy bring you anything to sign?

A Not that I remember.

Q Did you ever sign any agreement?

A I signed an agreement, yes.

1 Q Where did you get it from to sign it, Mr.
2 Swan?
3 A Oh, Judge Snoddy. I didn't quite catch that.
4 Q I know you are not understanding me and that
5 is our problem.
6 Would you tell me what agreement Judge Snoddy
7 brought you to sign?
8 A Well, since Shirley had been appointed
9 administrator we all signed an agreement for her to do so
10 and she would do like it was meant to be done.
11 Q And how was it meant to be done?
12 A Divided in four ways and $3,000 to my sister
13 Ouida and $3,000 to Shirley. That is the way it was signed
14 and notarized.
15 Q Now, did Judge Snoddy ask you whether that
16 was agreeable before he brought the paper to you?
17 MR. PARIS: Objection.
18 A Yes.
19 THE COURT: Objection sustained. The
20 record will reflect that the last answer should be
21 excised from the record as that is hearsay.
22 MR. PEARSALL: May it please the Court, I
23 respectfully object and except to my being unable
24 to show the entire context of the formation of this
25 agreement.

1 Judge Snoddy is here and will testify, but
2 that is only one-half of the coin. When I ask
3 Judge Snoddy what Mr. Swan did I will get the objec-
4 tion that Mr. Swan is here and he can testify.
5 I am asking if this gentleman received from
6 his attorney advice and what he did on the advice -
7 based on that advice - and how the agreement came
8 into existence. I am entitled to show by both
9 participants, Your Honor --
10 THE COURT: Thank you, Mr. Pearsall.
11 The objection is sustained and your exception
12 is noted to the Court's ruling.
13 BY MR. PEARSALL: (Continuing)
14 Q Did you do anything with the agreement
15 other than sign it itself?
16 A I carried it around to each party and had
17 it signed and notarized.
18 Q Mr. Swan, I hand you a paper and ask you to
19 ignore the "V" placed by me in the upper right-hand corner
20 as not being on the paper at any time prior to my placing it
21 there. I ask if you recognize what that is?
22 A This is the agreement that we all signed
23 that Shirley Throckmorton share it up.
24 Q And you took it to each one of your brothers
25 and sisters and had them sign it and your aunt and such as

1 that?

2 A Yes.

3 Q What did you do with it after you had it

4 signed?

5 A I turned it back to Judge Snoddy.

6 MR. PEARSALL: Do I understand the ruling

7 of the Court to be that I cannot ask this witness

8 as to what he understood he was doing when he took

9 an agreement around and had it signed?

10 THE COURT: No, sir, that question has not

11 been asked yet.

12 MR. PEARSALL: I will ask it then.

13 BY MR. PEARSALL: (Continuing)

14 Q What did you understand that you were

15 agreeing to in asking your brothers and sisters to agree to

16 and having them sign this?

17 MR. PARIS: I am objecting to this, if Your

18 Honor please. What is in the mind of this witness --

19 First of all you have got a written document which I

20 assume is going to be introduced. The written docu-

21 ment is very clear and unequivocal insofar as what

22 it states, Number 1. Number 2, in order to say:

23 What did you understand? You are trying to get

24 indirectly what you can't get directly. That would

25 be that you have to have some communication from

1 someone in order to formulate some understanding
2 that obviously is not on the paper. If he is going
3 to testify to something outside of what the paper
4 writing says I would object on both grounds as to
5 what he thought as being totally and completely
6 immaterial.
7 THE COURT: You may have to lay some founda-
8 tion, Mr. Pearsall, but certainly his intention may
9 be relevant, counsel, even though there is a written
10 document.
11 If the proper foundation is laid --
12 MR. PARIS: We are going out of the parole
13 evidence rule. You have to establish an additional --
14 THE COURT: I will sustain the objection at
15 this time as the foundation having not been laid.
16 Mr. Pearsall.
17 MR. PEARSALL: I will try again, Your Honor.
18 THE COURT: All right, sir.
19 MR. PEARSALL: I thought I had understood
20 Your Honor, apparently I had not.
21 BY MR. PEARSALL: (Continuing)
22 Q Prior to your taking this writing to your
23 family - other members of your family - to get their signature,
24 had you any understanding as to how the litigation was being
25 handled? What was the disposition of it? What was happening

1 to the matter that Judge Snoddy was handling for you?
2 MR. PARIS: We are getting back to the same
3 thing.
4 THE COURT: I don't think he understands
5 the question.
6 Do you understand the question?
7 MR. SWAN: Not thoroughly.
8 MR. PEARSALL: If Your Honor please, here
9 is my difficulty.
10 THE COURT: Just a minute. I don't want
11 you to tell me about your difficulty with this
12 witness.
13 MR. PEARSALL: I would be happy for him to
14 leave the room. I would love for him to leave the
15 room so I can say to the Court what I want to say.
16 THE COURT: Let's rephrase the questions so
17 we can move on without him having to go outside.
18 BY MR. PEARSALL: (Continuing)
19 Q Did Judge Snoddy tell you what was the
20 proposal for getting rid of the matter he was handling for you?
21 A (Nodded head in an affirmative manner.)
22 MR. KAUFFMAN: (Mr. Kauffman stood up.)
23 THE COURT: I sustain the objection.
24 MR. KAUFFMAN: Thank you, Your Honor.
25

1 BY MR. PEARSALL: (Continuing)
2 Q What did you think you were doing to get
3 rid of the matter?
4 MR. PARIS: Objection.
5 THE COURT: That doesn't vary the terms of
6 the written instrument.
7 He can testify to that.
8 MR. PEARSALL: Read the question back to
9 the witness.
10 NOTE: At this time the reporter read the
11 question to the witness.
12 THE COURT: Do you understand the question?
13 MR. SWAN: I thought the agreement that
14 Shirley Throckmorton were setting up and getting it
15 straightened out.
16 BY MR. PEARSALL: (Continuing)
17 Q Take those words that you have just given
18 to the Court and put a little more meaning into them. What --
19 MR. PARIS: Judge, I am afraid that is
20 obviously an improper question.
21 MR. PEARSALL: May it please the Court, we
22 are dealing with a witness that is having a great
23 deal of trouble understanding me first and articulat-
24 ing second. He made a summary statement and I think
25 I would like to have him -- I would like to have the

words read back.

We are making a great capital of the witness' inability to understand the question.

THE COURT: All of us need to simmer down a few minutes.

Mr. Pearsall asked the statement be read back.

NOTE: At this time the reporter read back the answer and Mr. Pearsall's following comments.

MR. PARIS: I am not mad and upset at all. I am just trying to do a job for my client. It is not taking personal offense. If anybody objects to what I say -- First of all, I would submit to the Court that is a leading question insofar as suggesting to him that he has left something out or -- His statement is clear and he testified before when he said that we signed the agreement and my understanding was that the reason we signed the agreement was so that Shirley Throckmorton would be the administrator and dispose of the estate as we all had agreed upon.

Now, I don't know what else we can discuss along those lines.

THE COURT: It's proper for counsel to ask the witness to elaborate on this statement. I will

1 sustain the objection in that what Mr. Pearsall said
2 was not a question and was not a directive to him to
3 elaborate.
4 If you want him to elaborate, would you
5 please ask him to elaborate and then we can move on.
6 MR. PEARSALL: First off I want to invite
7 the Court's attention that this witness has not said
8 that which Mr. Paris said he said.
9 THE COURT: I am not concerned about what
10 Mr. Paris said about the evidence. The evidence
11 will stand on its own merits.
12 If you would please ask the next question
13 that you would like we may be able to move on.
14 BY MR. PEARSALL: (Continuing)
15 Q Will you make one more attempt in saying to
16 the Court in what way you thought the matter was being dis-
17 posed of as to what was being done to dispose of it?
18 A You mean after Shirley had --
19 Q Mr. Swan, let me get you on focus. You
20 took an agreement around to get it signed. Now, what did you
21 think that the parties were doing in signing the agreement?
22 Why were they signing? How were they getting rid of the
23 matter?
24 A They thought if they would sign it it would
25 be going according to the plan like it should - that it would

be settled up.

Q What do you mean by the words "going according to the plan like it should"? Do you mean "like it should"?

A Like I say they told me to set it up.

THE COURT: I understand what the witness is saying, Mr. Pearsall.

MR. PEARSALL: It was my fear that the Court didn't. That is the reason I was pressing this.

Witness with you.

MR. KAUFFMAN: May we have a short recess?

THE COURT: All right, sir.

How much recess will you need?

MR. KAUFFMAN: About five minutes.

THE COURT: We will stand in recess about five minutes then.

I will caution the witness not to discuss his testimony with any person and do not remain in any place where the case is being discussed.

MR. PEARSALL: When the witness stood up I was reminded that it has not been introduced in evidence. The paper that he identified has not been introduced into evidence.

THE COURT: The last exhibit was H so that would be I.

1 For the record: This is a typed - appears
2 to be typed - statement five pages long and dated
3 the 16th of July, 1971.
4 Court will stand in recess.
5 NOTE: At 11:40 a.m. court stood in recess
6 until 11:53 a.m. after which the hearing continued,
7 viz:
8
9 CROSS-EXAMINATION
10 BY MR. KAUFFMAN:
11 Q Mr. Swan, as I understand your testimony,
12 you testified that your uncle, Alexander H. Swan, gave you
13 oral instructions some time in 1968.
14 A I am not sure of the dates, but he did give
15 me instructions.
16 MR. KAUFFMAN: May I see Exhibit A, please,
17 Your Honor?
18 THE COURT: A?
19 MR. KAUFFMAN: Yes, that is the first one.
20 NOTE: At this time a paper was passed to
21 the attorney.
22 BY MR. KAUFFMAN: (Continuing)
23 Q Well, now, Exhibit A shows the bank accounts
24 were opened in January of 1968, I believe, or thereabouts;
25 is that correct, sir? In January of '68, I believe, the first

1 one on top shows that the account was opened in January of
2 '68.
3 A What the book shows, that is right.
4 Q That would be about the time you were told
5 by your Uncle Alexander H. Swan of his intent with this oral
6 trust.
7 A Yes.
8 Q All right, sir. This was done by your
9 Uncle Alexander merely as a convenience in case something
10 happened to him so you could take care of his money.
11 A That is true.
12 Q And then you testified, I believe, that you
13 were supposed to get a car and a watch and a coin collection.
14 MR. PEARSALL: May it please the Court,
15 I don't think he has testified he was supposed to.
16 I think he testified he was given it.
17 BY MR. KAUFFMAN: (Continuing)
18 Q Your testimony is you were given those.
19 A That's right.
20 Q Your testimony is you were given those in
21 January of '68 at the time you were apprised of this oral
22 trust.
23 A (No response.)
24 MR. PEARSALL: He didn't catch the question.
25 THE COURT: He didn't understand the

1 question. Rephrase it.
2 BY MR. KAUFFMAN: (Continuing)
3 Q At the time your Uncle Alexander H. Swan
4 advised you of the oral trust and at the time you signed the
5 signature card, was the car actually given to you then?
6 A Not then, no, sir.
7 Q Because your Uncle Alexander was still
8 driving the car around; wasn't he?
9 A He drove it on different occasions.
10 Q You didn't get the car until after he went
11 into the nursing home; did you?
12 A I had the car before then.
13 Q And you gave it back to him.
14 A That's right.
15 Q And when he went into the nursing home you
16 got the car.
17 A That is true.
18 Q That was about two years later; wasn't it?
19 A I am not sure of the time.
20 Q You allege in your Bill of Complaint that
21 you got the car on December 7, 1969. Excuse me, excuse me.
22 I am sorry on March 17, 1969. So that would be approximately
23 a year later, if that is correct; would it not?
24 A (Nodded head in an affirmative manner.)
25 Q It was sometime after that - wasn't it? -

1 that you received the coin collection?
2 A Yeah, I guess it was after that.
3 Q In fact it was again after your Uncle
4 Alexander was in the nursing home that you got the coin
5 collection from his house; didn't you?
6 A I am not sure where he was at that time.
7 Q But you got the coin collection from his
8 house.
9 A Not from his house.
10 Q From whose house?
11 A From Frederick Swan.
12 Q From Frederick Swan's house?
13 A That's right.
14 Q And the watch also was acquired sometime
15 later, I believe in May of '71 - which was two years later.
16 A I am not familiar with the time the watch
17 was acquired at the Stratford Hall Nursing Home where he was.
18 Q If the Bill of Complaint filed in this case
19 says that you acquired the watch on May 4, 1971, would you
20 have any reason to think that incorrect?
21 A I am not sure.
22 Q And so while he was in Stratford Hall
23 Nursing Home is when you got the watch.
24 A That's correct.
25 Q But you don't know how long after you were

1 told of the agreement or of the oral trust that was.
2 A No, I wouldn't remember that.
3 Q Now, when your uncle, Alexander H. Swan,
4 told you of what he desired to be done you said you went back
5 and told your entire family and you started enumerating the
6 people that you told; is that correct?
7 A My family, I did.
8 Q But you didn't tell Shirley; did you?
9 A I didn't see Shirley. She was in Richmond.
10 I was 79 miles in the country and her father --
11 MR. KAUFFMAN: That is not responsive,
12 Judge.
13 MR. PEARSALL: If the Court please, he has
14 a perfect opportunity to explain the answer.
15 THE COURT: He should answer the question
16 first and you may ask him for some explanation, if
17 you like.
18 Did you tell Shirley?
19 MR. SWAN: No, I didn't tell Shirley.
20 MR. KAUFFMAN: Thank you.
21 BY MR. KAUFFMAN: (Continuing)
22 Q And it was thereafter that the money was
23 withdrawn - and you introduced a bank deposit slip, which is
24 your Exhibit F - in 1971 and you went to the nursing home to
25 get the authorization to make that withdrawal; did you not?

1 A Did I go to the nursing home to --
2 Q How was that withdrawal authority --
3 MR. PEARSALL: May it please the Court,
4 I am confident that the interrogator is mixed up
5 here. He is asking for withdrawal after death and
6 he said: Did you go to the nursing home.
7 BY MR. KAUFFMAN: (Continuing)
8 Q Was that withdrawal made after death or
9 before death?
10 A The withdrawal -- I don't quite understand.
11 Q When did you withdraw the $2,550 and deposit
12 it in First and Merchants?
13 MR. PEARSALL: I thought he was asking --
14 A I don't know when it was.
15 BY MR. KAUFFMAN: (Continuing)
16 Q That was before your uncle died.
17 A Yes.
18 Q And he told you to do that.
19 A Yes.
20 Q And that was about the same time you got
21 the watch; wasn't it?
22 A I am not sure. I wouldn't answer that
23 because I am not sure.
24 Q But you testified at that time you went to
25 the nursing home with Freddie.

1 A Oh, yeah, I went with Freddie to the nursing
2 home.
3 Q Now, after - after your uncle, Alexander
4 H. Swan died you closed out three bank accounts.
5 A I did, yes, sir.
6 Q And you took the money up to the bank in
7 Appomattox and opened up an account.
8 A Yes, and gave them the names.
9 Q Why did you not put it in Dillwyn?
10 A I was doing business in Farmers' National.
11 Q You went to Appomattox and opened up the
12 account.
13 A Yes.
14 Q And the account was opened up by you.
15 A That is correct.
16 Q Did your uncle, Alexander, say that he
17 wanted your wife, Grace, to be trustee of this money?
18 A No, he didn't discuss that.
19 Q But a joint account with right of survivor-
20 ship was opened with your wife.
21 A That's right.
22 Q Now, you testified that you had some con-
23 versation with your Uncle Freddie; is that correct?
24 A Well, I did on several occasions, yes.
25 Q But Shirley wasn't present during any of the

1 conversations; was she?
2 A She was there on this Tuesday I was telling
3 you about that they wanted to write the check for $17,000.
4 Q On one occasion she was present.
5 A She was present.
6 Q Did you hire Judge Snoddy to represent you?
7 A I did.
8 Q And were you relying on him to tell you
9 what to do?
10 A I was.
11 Q Did Judge Snoddy tell you how much he was
12 going to charge you?
13 A Small fee. He didn't tell me to be exact.
14 Q And so you relied on him entirely in how
15 the thing would be handled.
16 A That is correct.
17 Q You were served with various court papers
18 in the proceeding here in Richmond; were you not?
19 A I was on two different occasions served
20 papers.
21 Q And you took the papers and turned them
22 over to Judge Snoddy as soon as you received them.
23 A I did.
24 Q You did nothing further with regard to
25 them.

1 A I didn't do anything. I just turned them
2 over to him. He was my attorney.
3 THE COURT: Any further questions, Mr.
4 Kauffman?
5 MR. KAUFFMAN: Let me check one thing,
6 Your Honor.
7 I have nothing further.
8
9 CROSS-EXAMINATION
10 BY MR. PARIS:
11 Q Is there any reason you didn't qualify as
12 executor or administrator of the estate?
13 A Any reason why I didn't?
14 Q Yes.
15 A He didn't leave it like that.
16 Q He didn't leave it like that.
17 A He put the money in joint banking accounts
18 like it's there.
19 Q Isn't it a fact that you refused to qualify
20 because you don't want to be bonded?
21 A I didn't refuse to qualify because he
22 didn't ask me. He merely asked me to do this.
23 Q And you had -- You discussed this with
24 everybody in your family.
25 A I did.

1 Q Exactly after he died.
2 A I did.
3 Q You discussed and told what you were going
4 to do and everybody was in agreement.
5 A That's right.
6 Q Why then would you go around and ask every-
7 body, especially Freddie Swan and Mrs. Throckmorton, if they
8 approved what you were doing? And you said that everybody
9 agreed.
10 A After what?
11 Q Why did you drive all of the way to Richmond
12 to talk to Mr. Swan about the agreement?
13 A I didn't know Mr. Swan was living up in
14 the country.
15 Q You met him up there.
16 A He was living there and Shirley was living
17 in Richmond.
18 Q But you went to see him.
19 A Oh, yes, I did.
20 Q You had already talked to him.
21 A I told him when I put the money in the bank
22 I had it ready for distribution and --
23 Q You told him at the funeral.
24 A I didn't tell him that at the funeral.
25 Q You didn't testify that you talked to

1 everybody at the funeral?
2 A Not at the funeral, no, sir.
3 MR. PEARSALL: May it please the Court, he
4 couldn't have told them he had the money in the
5 funeral.
6 THE COURT: He is asking if he did testify
7 to that, Mr. Pearsall.
8 BY MR. PARIS: (Continuing)
9 Q I am not asking about the money in the
10 bank. I am asking you: Didn't you testify in answer to Mr.
11 Pearsall's question that you saw everybody in the family at
12 the funeral?
13 A Oh, yes, I did.
14 Q Did you further tell, in your answer to
15 his question, that you told the members of the family
16 Alexander Swan's instructions?
17 A Not at the funeral.
18 Q You didn't.
19 A No, sir.
20 Q When did you tell them?
21 A Later on.
22 Q How much later on?
23 A I don't remember that. That has been quite
24 a while ago and I don't remember any date.
25 Q Was it days later?

1 A Well, days -- I would say days, yeah.
2 Q Did you discuss a fee with Judge Snoddy?
3 A Did I discuss the case?
4 Q A fee with Judge Snoddy. Did he say how
5 much he would charge you?
6 A He merely said he would charge me a small
7 fee. He didn't discuss any specified amount.
8 Q Had you ever used Judge Snoddy before?
9 A I never had any occasion. I never been
10 in court before.
11 Q You never used a lawyer before.
12 A No.
13 Q So you wouldn't know what a small fee was
14 or whether it was a lot of money.
15 A I trust Judge Snoddy. I have known him all
16 my life.
17 Q Again, in answer to Mr. Kauffman's questions,
18 you left everything up to Judge Snoddy.
19 A That is correct because he was my attorney
20 at that time.
21 Q Right.
22 When did you first tell Frederick Swan -
23 that is Alexander Swan's brother - about Alexander Swan's
24 instructions to you?
25 A When did I tell him? He was told by

Alexander Swan.

Q When?

A At the nursing home.

Q With you?

A With me.

Q No objection was made by him at that time.

A No, not a bit.

Q Did you go and see -- After Alexander died, did you go and see Fred the day that he objected because Mrs. Throckmorton was not going to get $5,000? Or did he come to see you?

A Did I go the same day?

Q Yes, sir.

A I did see him the same day.

Q Did you go to see him? Or did he come to see you?

A I went to see him.

Q For what purpose?

A He had some war bonds and I was interested about the war bonds. I had the war bonds $175 worth.

Q That is the reason you went to see him.

A I carried them because he wanted them.

Q And then you got into a discussion.

A Not too much.

Q You said he wanted Shirley to get $5,000.

1 A He did, but that wasn't that day.
2 Q The day you talked with him about --
3 A I don't remember the dates because that has
4 been four or five years ago.
5 Q Well, listen to my question.
6 The day that Fred objected because Mrs.
7 Throckmorton was not going to get $5,000, - or that he wanted
8 her to get $5,000 - did you go to see him that day? Or did
9 he come to see you?
10 A I went to see him.
11 Q Why?
12 A Well, I wanted to get this thing straightened
13 out and settle it up.
14 Q It was all settled up.
15 A No, it wasn't. The money was still in the
16 bank and the checks had not been written.
17 Q Did you have to see Frederick Swan to get
18 the checks written?
19 A I did to get his agreement to take his part.
20 Q Why would you have to get his agreement
21 when you claim you have been appointed --
22 A He wouldn't agree to anything.
23 Q Listen to my question.
24 I said: Why would you have to get the
25 beneficiary of the trust -- Why would you have to get their

1 agreement when you were already sitting up here claiming that
2 you have been given explicit instructions that these are your
3 obligations and if you have obligations, why would you have
4 to ask somebody if that was all right?
5 A I wouldn't know -- I don't exactly under-
6 stand what you are talking about.
7 Q Let me ask you again and try it a different
8 way. You have testified - have you not? - that Alexander
9 Swan gave you specific instructions?
10 A He did, yes.
11 Q And you felt a legal and moral obligation
12 to carry out these instructions.
13 A I did.
14 Q Is that correct?
15 A That is correct.
16 Q And anything other than those instructions
17 you would have been violating the agreement.
18 A That's right. I wouldn't have gone along
19 with it.
20 Q If that is the case then and you told us
21 briefly that Freddie was at the nursing home when you were
22 given those instructions --
23 A He was.
24 Q Why would you go to Freddie and ask him if
25 he would agree to it?

1 MR. PEARSALL: May it please the Court, I
2 don't think this witness testified to that and I
3 object to stating a question in the form contrary
4 to testimony. The testimony was he went to see
5 Freddie and said he was ready to make distribution.
6 There is no testimony that he went to see Freddie
7 and asked what he wanted.
8 THE COURT: I will overrule the objection.
9 Do you understand the question, sir?
10 MR. SWAN: Yes.
11 THE COURT: Can you answer the question?
12 MR. SWAN: Well, just -- I didn't go to
13 him to ask about the agreement to settle up. I went
14 and told him I was ready to settle up.
15 BY MR. PARIS: (Continuing)
16 Q You were ready to settle up.
17 A I was ready.
18 Q The money was in the bank.
19 A The money was in the bank.
20 Q And you were ready to settle up.
21 A That's right.
22 Q Any question to why did you go to someone
23 and say I am ready to settle up? Why didn't you go and
24 settle up?
25 A I was. I could have done it right then,

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1 settle up. His statement was that he wouldn't settle
2 up.
3 BY MR. PARIS: (Continuing)
4 Q In order to settle it, all you had to do
5 was draw the checks and distribute it; is that right?
6 A That is true.
7 MR. PARIS: Okay.
8 I have no further questions.
9 THE COURT: Anything on redirect, Mr.
10 Pearsall?
11 MR. PEARSALL: One question.
12
13 REDIRECT EXAMINATION
14 BY MR. PEARSALL:
15 Q Mr. Swan, had you, or had you not, told
16 members of your family, living up in the country, what Zan's
17 wishes were relative to the joint accounts prior to his death?
18 A No, I hadn't.
19 Q Prior to Zan's death you had never told them
20 what the accounts were --
21 MR. PARIS: He answered it once, Judge.
22 THE COURT: I believe he answered, Mr.
23 Pearsall.
24 MR. PEARSALL: I have him on redirect
25 examination.

1 THE COURT: The witness has answered that
2 question. He says: No, he had not told them prior
3 to his death.
4 MR. PEARSALL: He has in previous testimony--
5 THE COURT: Wait a minute, Mr. Pearsall.
6 I hate to cut you off.
7 I respectfully tell you not to telegraph
8 to this witness what his prior testimony has been.
9 You asked a question and he answered you
10 directly.
11 If you want to ask him some other question
12 on redirect you certainly have the right to do it.
13 As I understand the testimony he had not
14 told them prior to death.
15 MR. PEARSALL: But, Your Honor, may the
16 witness be excused while I argue the matter?
17 THE COURT: There is no need to argue. I
18 heard what he said and you heard what he said. If
19 you have other questions go ahead on.
20 MR. PEARSALL: The purpose of redirect is
21 rehabilitation in confused --
22 THE COURT: You had him on redirect to
23 clear up the problem that he had and he gives you an
24 answer on redirect that is unequivocal.
25 MR. PEARSALL: I am not sure he understood

1 the question.

2 NOTE: At this time the reporter read back

3 the last question and answer.

4 THE COURT: What is your next question?

5 BY MR. PEARSALL: (Continuing)

6 Q Had you ever discussed the joint accounts

7 with relatives of your family prior to Zan's death?

8 A Yes, yes.

9 Q Did you tell them what the understanding

10 was with Zan?

11 A Yes, I did.

12 MR. PEARSALL: Now, may it please the Court,

13 we have two diametrically opposed --

14 THE COURT: We have a witness testifying

15 with two different ways.

16 MR. PARIS: Objection.

17 THE COURT: The Court will determine the

18 credibility of the witness, Mr. Pearsall, like it

19 does in most cases where there is not a jury sitting.

20 MR. PEARSALL: No further questions.

21 THE COURT: All right, sir.

22 Do you gentlemen have any further questions?

23 MR. PARIS: No further questions.

24 MR. KAUFFMAN: No, sir.

25 THE COURT: You may step down. You may

return to counsel table, if you like.

Who is your next witness, Mr. Pearsall?

MR. PEARSALL: I call Judge Snoddy.

NOTE: At this time the witness is sworn.

JOHN R. SNODDY, JR., a witness called by the attorney for the plaintiffs, first being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PEARSALL:

Q Will you state your name, age, and occupation?

A John R. Snoddy, Jr.; 57; Circuit Court Judge.

Q Prior to your assumption of the bench, were you ever consulted by William E. Swan?

A Yes, sir.

Q Do you recall the occasion, or the event, of your being consulted?

A Yes, sir. I think the first time that they saw me it was at a restaurant at Sprouses Corner. I was there and I don't recall whether it was at lunch or at dinner and they came by and gave me some idea of what the situation was and what they wanted to talk to me about and I told them that I would help them, but could not go into the case at that time and would give them an appointment as soon as I

1 could.

2 Q When did you see them next?

3 A Oh, I guess it was a week or so after that.

4 I am sure it was after some papers had been served on them.

5 Q Now, whom did you see?

6 A Bill Swan and Mrs. Swan, Gracie Swan, was

7 the first ones that talked with me.

8 Q What did you understand was the nature of

9 the problem of which you were consulted?

10 A Mr. Swan advised me that his Uncle, whom

11 I knew slightly, Zan had died and that prior to that time he

12 had told him to put his money in a joint account with him and

13 that he had been looking after his business and he had told

14 him what he wanted him to do with it.

15 Q What did his uncle want him to do with it?

16 A He wanted him to --

17 MR. KAUFFMAN: I would like to interpose

18 my objection. I don't think there is objection as

19 to what Judge Snoddy said up to a point about what

20 he wanted to do and that he put the money in a joint

21 account and telling what to do with it. He gets

22 too specific as to what was told there. That is

23 compounded hearsay from Zan who is dead and William

24 who is telling it to Judge Snoddy. I think it's

25 purely hearsay.

1 THE COURT: Do you want to be heard?
2 MR. PEARSALL: It's highly germane as to
3 what was the posture of the parties in this litigation
4 in which $17,000 was paid out and to find out what
5 was the matter and that Judge Snoddy was asked to
6 handle it and how he handled it.
7 BY MR. PEARSALL: (Continuing)
8 Q Judge Snoddy, at the time did you have any
9 memorandum made?
10 A Yes.
11 THE COURT: Is this testimony being offered
12 for the truth of what it asserts, Mr. Pearsall?
13 MR. PEARSALL: It's being offered not to
14 prove that what Mr. Swan told him was a fact but for
15 the fact that it was told to him and it was on the
16 basis of what was told to him that he proceeded to
17 represent Mr. Swan.
18 THE COURT: All right. I will overrule
19 the objection.
20 MR. KAUFFMAN: Note our exception.
21 THE COURT: Note your exception, sir.
22 A (Continuing) He advised me and a note was
23 made at that time - if I can find it here -- It has been so
24 long I hope you will bear with me.
25

1 BY MR. PEARSALL: (Continuing)
2 Q Take your time, Judge Snoddy.
3 A It has been so long since this thing was --
4 If you could see my handwriting you would understand why,
5 but my secretary typed out a little note at the time. I
6 think it's probably -- I am sorry, Judge.
7 Q Just take your time, Judge, and find it.
8 A I can recall what it was because I went over
9 it last night. It was a typewritten slip which the secretary
10 made and I wrote at the bottom of it taken by my secretary
11 from William Swan.
12 Q Just take your time, now, to find it.
13 The probability is that your file is
14 organized from front to back rather than back to front or
15 something like that, sir.
16 A Yes.
17 Wanted Ouida Adcock to have the sum of
18 $3,000. Shirley Throckmorton the sum of $3,000. Remainder
19 to be divided into four parts: Frederick W. Swan to get one-
20 fourth. Alma Kitchen to get one-fourth. Carrie Swan to get
21 one-fourth (sister-in-law). William E. Swan to get one-fourth.
22 If any complaints are made forget about them and leave it in
23 William E. Swan's name. He gave coin collection, watch and
24 automobile to William E. Swan. After paying all of the bills,
25 William Swan was to pay out the two bequests of $3,000 and

other to be divided into four parts. Put the money in William Swan's name to be sure it was done like he wanted. Could not trust his brother.

That is the information my secretary took down at that time.

Q In your presence?

A Yes, sir.

MR. KAUFFMAN: Continuing objection, Your Honor, that it's hearsay statements of Zan and objecting to it not being the statement of Mr. William E. Swan.

THE COURT: Objection overruled.

MR. PARIS: Same objection.

THE COURT: Same ruling and exceptions noted.

MR. PEARSALL: I would like to offer that, Your Honor.

THE COURT: Is it agreeable, gentlemen, that we may substitute a copy for going in the record so that the Judge may keep his file intact?

MR. KAUFFMAN: I will have no objection to the introduction.

THE COURT: Do you have any objection to the copy?

MR. KAUFFMAN: Just object to the

1 introduction of the document not the copy.
2 THE COURT: Objection is overruled based
3 on the narrow ruling that it is not being offered
4 as to the truth but that it asserts to show why he
5 did what he did.
6 You may continue, Mr. Pearsall.
7 MR. PEARSALL: I would like to call for
8 Exhibit H.
9 THE COURT: All of them are down there
10 (indicating).
11 BY MR. PEARSALL: (Continuing)
12 Q Judge Snoddy, I hand you what has been
13 marked as Plaintiffs' Exhibit H and ask if you have ever seen
14 that before?
15 A Yes, sir, it was --
16 MR. PARIS: Just a minute, if Your Honor
17 please, you have already ruled that is not admis-
18 sible and I assume that any testimony with regard
19 to that document would not be admissible.
20 THE COURT: Let me see the document, Mr.
21 Sheriff.
22 NOTE: At this time the Sheriff passed a
23 paper to the Court.
24 THE COURT: What is your question to this
25 witness as to this Exhibit H, Mr. Pearsall?

1 MR. PEARSALL: How it came into his
2 possession and when he saw it.
3 THE COURT: How it came into his possession?
4 MR. PEARSALL: When it came into his
5 possession.
6 THE COURT: That question is not inadmis-
7 sible. (The witness can answer, if he knows,
8 JUDGE SNODDY: It was turned over to me at
9 the same time by Mr. and Mrs. William Swan.
10 BY MR. PEARSALL: (Continuing)
11 Q With what explanation?
12 THE COURT: Just a moment.
13 I sustain the objection as to the
14 explanation.
15 JUDGE SNODDY: All right.
16 THE COURT: Do you want to vouch the
17 record as to the explanation?
18 MR. PEARSALL: Yes, I think that would be
19 in order.
20 THE COURT: For the record you are merely
21 vouching it as to what it would have been had the
22 Court allowed it on the record.
23 JUDGE SNODDY: They stated that they put
24 in the special account in Farmers' National Bank
25 in Appomattox and Mr. DeWitt Evans who was the

banker then, who was head of the bank, advised them that something might have happened and they told him what they wanted to do with the money - how it would be made out - and they said something might happen to Mr. Swan so he should write something down so it could be carried out in the event something happened to him and at that time it was done. That was written down similar to what my statement that I took was.

MR. PEARSALL: Now, leaving the vouch, Your Honor --

THE COURT: All right, sir.

BY MR. PEARSALL: (Continuing)

Q I believe you stated that they brought to you a paper that had been served on William Swan; is that correct?

A That's right.

Q What was the general thrust of the paper?

A It was an order for him to turn over certain things to the Sheriff. As far as I believe it was a gun -- I mean a coin collection, an automobile, and a watch and then I don't know if it was the same day or not but they gave me a paper that had been served on them and it was not a Bill of Complaint it was an order and an order stating that they should not dispose of any of their funds that were in the

1 Appomattox bank.
2 Q Did you ever get a copy of the Bill of
3 Complaint?
4 A At a later date -- I think that was served
5 several days thereafter.
6 Q What action did you take on behalf of them
7 in connection with this matter?
8 A The next day or so I was in the courthouse
9 at Buckingham and I ran into Mr. Vick and Mr. Pembleton and
10 they were there at that time to pick up the coin collection,
11 the car, and the watch. I explained to them what the situation
12 was that there was no problem about the money that the money
13 was all being held in escrow to be done with exactly as this
14 boy had been told or as he told me he had been told to dis-
15 pose of it and that the other parties - that Mr. Swan and
16 Mr. Frederick Swan and them - knew that and that the reason
17 that it hadn't been paid out was that Mr. Swan wanted more
18 money than he was supposed to get under that note and so
19 forth and that he had been -- Or the advice that had been
20 given Mr. Bill Swan --
21 Q Did you have any further contact with
22 Messrs Vick or Pembleton?
23 A They said: Well, come on and go --
24 MR. KAUFFMAN: Which I will object to what
25 Mr. Vick and Mr. Pembleton said, Your Honor.

THE COURT: I will sustain that objection. That is hearsay.

JUDGE SNODDY: All right.

I advised them as to that and then I advised them that I was in and out of court at that time but was in the courthouse building - I was Commonwealth Attorney at the time - and I said I will be down and see you all in a few days. I will call you right away and be in to see you and we can get this matter straightened out and the Deputy Sheriff told them --

BY MR. PEARSALL: (Continuing)

Q Did you go to see them?

A Yes, I went down. I called and made an engagement and went down to see Mr. Vick and Mr. Pembleton and everything was very, very friendly.

Q What was the substance of the understanding you reached?

A Well, the substance was this: That I raised the question that $3,400 of the money had been gone because when Mr. Swan wrote a check to pay the nursing home for Mr. Zan Swan after his death the check had been returned insufficient funds and that he had just checked a few days before that and there was $3,500 in there and that was a check for some $1,700, or something like that, and it was returned

for insufficient funds and so he found out that Mrs. Shirley Throckmorton had cashed a check for $3,400 thereby depleting the account so that there were insufficient funds. I said that will have to be put back in the pot and they agreed to that. Further we went ahead and we agreed --

Q What was going to be the disposition of the matter, Judge Snoddy?

A Exactly like Mr. Swan had told me. Exactly that was the agreement that it be done exactly that way. The only difference was that Mr. Swan was still to get the automobile. The only difference was that Mr. Swan had advised me he didn't care and that the coin collection could be sold and the watch and the rest of it was agreed that it would be handled exactly like Mr. Swan had told me Mr. Zan Swan had advised him he wanted it done.

Q Now, in reaching this understanding, had you been confronted with any contrary position by Messrs Vick and Pembleton?

A No.

Q This was a disposition not readily reached without any concessions having to be made by anyone.

A No, the only --

Q Was William Swan to make the distribution?

A There was this concession - it made no difference to us who made the money out as long as it went

1 the way it was supposed to go. Since Mrs. Shirley Throckmorton
2 had qualified we saw no reason why she shouldn't go ahead as
3 administrator and dispose of it - distribute the money -
4 exactly as it was supposed to have been distributed by Mr.
5 Swan.
6 Q Did Messrs Vick and Pembleton's clients
7 have any different view as to how it was supposed to be
8 distributed?
9 A They didn't make them known to me, if
10 there were.
11 Q So, what was the outcome of your meeting
12 as far as something to report to your client in Buckingham
13 County?
14 A It was -- There was to be an agreement
15 drawn up and Howard Vick was to draw it up exactly as I just
16 told you and his clients would sign it. I wanted them to
17 sign it before a Notary and it was to be sent to me and I
18 would have all of my clients - who are the heirs and so
19 forth --
20 Q On the risk of being repetitious, what was
21 the understanding that was embodied in that agreement?
22 A It was that this was to be done instead of
23 passing down --
24 Q Judge Snoddy, instead of saying "this was
25 to be done instead of" - tell me the precise agreement.

1 A The agreement reached was that $300 was
2 to be paid to Ouida Adcock --
3 Q $300?
4 A $3,000 to Ouida Adcock; $3,000 to Shirley
5 Throckmorton and $3,400 was to be put back that Mrs.
6 Throckmorton had already cashed the check and I was later
7 informed - Pembleton told me - that it was in an escrow
8 account and it would be put in the pot and then the other
9 was to be divided in four equal parts to William Swan, Mrs.
10 Carrie Swan, Mrs. Kitchen, and to Frederick Swan.
11 Q Now, did you report this as a disposition
12 of the matter to your clients?
13 A I did and they advised me that they would
14 sign such an agreement that that is all they wanted.
15 Q Did you ask Mr. William Swan to get con-
16 currence with the rest of the family before the agreement
17 was prepared?
18 A Yes, sir.
19 Q Did he report that he had gotten the
20 agreement of the rest of the family?
21 A Yes, sir.
22 Q Did you ask Mr. Vick to prepare the agree-
23 ment then?
24 A Yes.
25 Q Did he prepare such an agreement?

A He prepared such an agreement. I have a note back from Mr. Pembleton that Mr. Vick was out, would be out, of the office for a week or so but as soon as he got back that it would be prepared and an order would be prepared and, I believe also, in that note he said that the $3,400 had been put into an escrow account and they would send me the agreement as soon as Mr. Vick returned to his office.

MR. PARIS: May I see that? Okay.

MR. PEARSALL: It's already in.

BY MR. PEARSALL: (Continuing)

Q I hand you what has been introduced in evidence as Plaintiffs' Exhibit I and ask if you recognize that?

A Yes, sir.

Q What is it?

A That is the agreement that Mr. Vick drew up and had Mrs. Shirley Throckmorton and Frederick Swan to sign and send it to me to be circulated by William Swan to be signed. However, the one they sent me had not been notarized - had not been signed before a Notary - and I gave this to Mr. William Swan and he took it and circulated it and brought it back to me signed by all of the parties that I was representing.

Q Now, you say that you received a handwritten

1 note from Mr. Pembleton. Would you look in your file and see
2 if you have that note?
3 A Yes, sir.
4 MR. PEARSALL: I ask that it be marked as
5 an exhibit.
6 MR. PARIS: May I see it first?
7 JUDGE SNODDY: Yes, sir.
8 NOTE: At this time a paper was passed to
9 defendant's counsel.
10 THE COURT: Any objection, gentlemen?
11 MR. PARIS: No, sir.
12 THE COURT: All right. The exhibit will
13 come into evidence as Plaintiffs' Exhibit K. For the
14 record it is dated 8-4 from Robert E. Pembleton.
15 All right you may continue, Mr. Pearsall.
16 MR. PEARSALL: If I may have the exhibit
17 I will interrogate the witness.
18 NOTE: At this time the exhibit was passed
19 to plaintiffs' counsel.
20 BY MR. PEARSALL: (Continuing)
21 Q It's very brief, Your Honor, in order to
22 interrogate him I would like to read it.
23 "Jack, Howard is out for the rest of this
24 week. The car is here at the office and Mr. Swan can pick it
25 up whenever he wishes. Howard will prepare the order on his

1 return. Copy of signed agreement enclosed. I have the $3,400
2 in my escrow account. Regards 'B'" The "B" was for Bob
3 Pembleton.
4 Now, was that the conclusion of the settle-
5 ment as far as you were concerned?
6 A Yes, except that I had asked that an order
7 making this -- An order confirming and verifying this con-
8 tract be entered because we were going right in the face of
9 the statute of dissent and distribution and I felt that that
10 should be made a part of the record since a suit had already
11 been brought.
12 Q Is that the order to which you understood
13 Mr. Pembleton to be referring that Mr. Vick would prepare on
14 his return?
15 A Yes, sir.
16 Q Were you furnished a copy of any such order?
17 A No, sir, none was ever entered.
18 Q Were you furnished a copy of any orders
19 that were entered in the matter?
20 A No, sir.
21 Q When did you learn whether or not there
22 were any orders entered in the matter?
23 A I had to write numerous times and my clients
24 were getting out of hand. They could not understand why I
25 could not distribute the money and that it had been so long

1 and I was advised that they would be able to pay it out after
2 six months and that they would not be able to pay it before
3 six months because the Commissioner of Accounts would not
4 allow them to do so. I have a letter to that effect from
5 Mr. Vick and so I kept writing and they kept putting me off.
6 So finally I got a letter from them, I believe it was in July
7 - something like that - of the next year, with checks payable.
8 Prior to that time they paid $3,000 to Quida Adcock, prior to
9 that time.
10 Q Had they paid that through you?
11 A I believe they did. I don't recall.
12 Q Had you also, in the meantime, become aware
13 of the fact that the money had been withdrawn from the
14 Farmers' National Bank and delivered to the administrator?
15 A Yes, sir, I directed Mr. Bill Swan to do
16 that as soon as the agreement was reached and that was done.
17 Q You were saying what you received in your
18 file.
19 A I received checks.
20 Q Take your time and find them.
21 A On June 21st, 1972, I received a letter:
22 "Dear Jack, I am enclosing a copy of first and final account-
23 ing of the estate of Alexander H. Swan along with the checks
24 and receipts which we would appreciate your having endorsed
25 and returned to us. Thank you so much for your cooperation."

He sent me these checks for $5,682.63 payable to William E. Swan and John R. Snoddy, Jr., Attorney; Carrie R. Swan and John R. Snoddy, Jr. her attorney; to Alma Kitchen and John R. Snoddy, Jr. her attorney; and a copy of the first and final accounting in which I saw that 17,000 and some dollars had been paid out as a fee to Messrs Vick and Pembleton and a further fee down in there. I only have a copy here because I think you filed it with the original suit. There was a further charge - an additional charge, an additional fee - I think for representing the administratrix My clients would not take the checks. They had been led to believe they were going to get considerable more than that knowing what the amount of the money was.

Q I hand you what is filed with the Bill of Complaint as Exhibit T and ask you if that is the account?

A That is the account. That is the first time that I knew anything about there being any fee of attorneys' fees as per court order 8-12-71 which would have been the year before that.

Q Had you ever seen a copy of that order?

A No, sir.

Q Had you ever been told any such order had been entered?

A No, sir. I asked Mr. Vick and Mr. Pembleton. I said: What kind of fee are you all going to charge your

1 clients? I don't want to be out of line with mine and so
2 forth. I was told that it would be reasonable and the Court
3 would set it.
4 Q Did you ever receive any advice whatsoever
5 that they were going to court to have their fee set?
6 A That was after this had already been done.
7 Q That was after the agreement had been
8 signed --
9 A Yes, sir.
10 Q -- that you had the conversation.
11 A Yes, oh, yes.
12 Q Did you ever have an intimation whatsoever
13 that Messrs Vick and Pembleton had any agreement relative
14 to fee from Mrs. Throckmorton?
15 A No, sir. After I got this and my clients
16 did not - or would not - take the money I went and came down
17 to Richmond and went to the court and found the paper and
18 found in them copies of an agreement which was signed by Mrs.
19 Throckmorton, supposedly, on the same day that she qualified
20 allowing them one-third of the estate.
21 Q Had this ever been a subject matter of any
22 conversation whatsoever with you?
23 A No, sir.
24 Q Any intimation whatsoever?
25 A No, sir. There would have been no agreement

1 if that had been --
2 THE COURT: Let me see if I understand you,
3 Judge.
4 Did you find this agreement between her
5 and her attorney prior to the agreement between all
6 of the heirs?
7 JUDGE SNODDY: Oh, no, sir.
8 THE COURT: It was after.
9 JUDGE SNODDY: I found that out, sir, after
10 the final accounting, which was a year later. A
11 year after the order had been entered paying them
12 and everything else.
13 BY MR. PEARSALL: (Continuing)
14 Q Had you received any notice whatsoever that
15 Messrs Vick and Pembleton were going to apply to the Court
16 for an allowance of fee?
17 A No, sir.
18 Q Did you think the allowance of $17,000 was
19 reasonable?
20 A No.
21 MR. KAUFFMAN: I object to that.
22 JUDGE SNODDY: That would be my opinion.
23 THE COURT: Objection sustained.
24 You probably would be an expert now at
25 setting fees, but at that time --

1 MR. KAUFFMAN: I think he would have to
2 qualify it as to Buckingham County, Judge.
3 MR. PEARSALL: Witness with you.
4
5 CROSS-EXAMINATION
6 BY MR. KAUFFMAN:
7 Q Judge Snoddy, you testified that Mr.
8 William E. Swan came to see you first at a restaurant and
9 thereafter made an appointment to see you and at that appoint-
10 ment he explained to you an oral agreement with his uncle,
11 Alexander - or Zan - Swan. Did you ever advise Mr. Swan
12 that he should qualify as administrator of his uncle's estate?
13 A I told him that someone would have to
14 qualify as administrator. At that time the 30 days had not
15 run and there was no way that anyone between this group there
16 would have been in agreement as to who would serve as
17 administrator.
18 Q You thereafter found out that Shirley
19 Throckmorton had qualified.
20 A Yes, sir. She qualified the day after the
21 30 days ran out or several days thereafter.
22 Q When this agreement was entered into, that
23 you have identified -- Maybe you still have it, sir. Yes,
24 sir, you still have it.
25 A Yes, sir.

1 Q You kept it?
2 A It was entered into --
3 THE COURT: Mr. Kauffman, which agreement
4 are you talking about? The one between Vick and
5 Pembleton --
6 MR. KAUFFMAN: Dated July 5, 1971. What
7 is the exhibit number?
8 JUDGE SNODDY: Exhibit I.
9 BY MR. KAUFFMAN: (Continuing)
10 Q In the first paragraph it says - does it
11 not? - that "all assets of the estate of Alexander H. Swan,
12 deceased, shall be turned over to Shirley S. Throckmorton,
13 administrator of said estate, who qualified as such in the
14 Chancery Court of the City of Richmond, Virginia, on June 9,
15 1971, for administration and distribution in accordance with
16 this agreement and under the direction of said Chancery Court
17 of the City of Richmond."
18 A Yes, sir.
19 Q You realized at that time that an inheri-
20 tance tax return would have to be filed.
21 A Yes, sir.
22 Q And an accounting would have to be filed.
23 A Yes.
24 Q And a bond premium would have to be obtained.
25 A Yes.

1 Q And normal things of administration of
2 estate would have to be done.
3 A Yes, sir.
4 Q So that the estate at that point cannot
5 have been handled in the way that Alexander Swan had directed
6 William Swan under the oral agreement.
7 A Until he became administrator.
8 Q But he never intended to become administrator.
9 A He didn't say whether he would or would not.
10 I took it that he would agree upon someone.
11 Q And you never discussed any of this with
12 Shirley Throckmorton.
13 A Never saw Shirley Throckmorton. Today is
14 the first I have seen her.
15 Q You said that Howard Vick referred - or
16 Bob Pembleton referred - to an order. Wasn't he referring
17 to the order dismissing the lawsuit he brought and to get
18 the money from the bank in Appomattox? Is that the order he
19 would have entered?
20 A No, sir, he would have an order -- It was
21 agreed between us at the time that he would have an order
22 entered ratifying and agreeing to this distribution to be
23 ratified by the Judge in this case.
24 Q Now, wasn't an order ultimately entered
25 dismissing the bank as party defendant and directing money to

be turned over to Shirley Throckmorton and your client was served with a copy of that?

A He was served with a copy of that.

Q And that dismissed the lawsuit.

A The lawsuit was still pending.

Q It dismissed the lawsuit as to the bank.

A As to the bank. The other was still pending.

Q But wasn't that order one of the orders you all had discussed?

A No, sir.

Q It was not?

A No, sir.

Q But you did serve a paper --

A Yes, it was served on him and he brought it to me. I never served any copies on Messrs Vick and Pembleton. The first time I saw the order I came and found them out in July.

Q You were delivering a copy of the Bill of Complaint.

A Yes.

Q And no response was filed.

A It was agreed that I was not going to.

Q No response was filed by you.

A It was agreed when we entered into the agreement that it would not be necessary and that everything

had been worked out and that this agreement would be ratified by the Court and that that would be the disposition of the matter.

Q And so when you got the -- When you got the first and final account the amount showed that the Court had ordered the fee to be paid to Pembleton and Vick. Did it show in the accounting?

A It states Robert E. Pembleton and Howard R. Vick, attorney fees as per court order 8-12-71, $17,629.

Q That is what prompted you to go look at the court record.

A Yes, sir.

Q And that is the court order that had been entered at that time.

A Yes.

CROSS-EXAMINATION

BY MR. PARIS:

Q You mentioned your clients and their clients. What did you understand to be or who did you understand Messrs Vick and Pembleton to represent?

A Mr. Fred Swan and Mrs. Shirley Throckmorton.

Q And, of course, Fred Swan would be the recipient of one-fourth of the balance after the specific requests were paid.

A Yes.

MR. PARIS: That is all I have.

THE COURT: Anything on redirect?

MR. PEARSALL: No redirect.

THE COURT: So we are clear on 8-12-71, you did represent William Swan at that time.

JUDGE SNODDY: Yes, sir.

THE COURT: When the particular court order was entered.

JUDGE SNODDY: Yes.

THE COURT: May Judge Snoddy be excused, gentlemen? Or will he be called later?

MR. PEARSALL: Yes, Your Honor.

THE COURT: You are perfectly free to stay with us if you like, but I am sure there are other things you would like to be about and we are so very honored to have you here.

Let me have the exhibits.

Mr. Pearsall, would you make sure that these two exhibits - or the ones that came in from his file, K and J that we have received copies for - are returned to Judge Snoddy so he may have them back for his files.

MR. PEARSALL: Judge Snoddy will leave me his file and I will place copies in it and get it