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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 II

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1 back intact.

2 THE COURT: Your witness, please, Mr.

3 Pearsall.

4 Will this be a very extensive examination?

5 I would like to get him before lunch if at all

6 possible.

7 MR. PEARSALL: I think it will be very

8 short, Your Honor.

9 MR. PARIS: No comment.

10 THE COURT: Thank you, Mr. Paris, I will

11 take judicial notice.

12 NOTE: At this time the witness was sworn.

13 THE COURT: Good afternoon, sir. Nice to

14 have you, sir.

15

16 WILLIAM A. MONCURE, JR., a witness called

17 by the attorney for the plaintiffs, having first been duly

18 sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. PEARSALL:

21 Q Will you state your name, age, and occupa-

22 tion?

23 A William A. Moncure, Jr.; age 73; occupation

24 retired judge. Occupation no occupation - retired. I was a

25 judge.

1 Q Judge Moncure, I pass up to you a file that
2 purports to be a matter in the Circuit Court of the City of
3 Richmond Division I and ask you if you will very briefly
4 acquaint yourself with it and see if you can identify it.
5 NOTE: At this time a file was passed to
6 the witness.
7 A The file you presented to me has on the
8 top page in the file a Bill of Complaint involving a Chancery
9 Court of the City of Richmond.
10 Q Were you the Judge of the Chancery Court?
11 A At this time, in June of 1971.
12 Q And you were Judge of that court.
13 A I was Judge of that court at that time.
14 Q And you are intimate with the way the files
15 are maintained there. Would you leaf through, very quickly,
16 and see if this appears to be the file of that proceeding?
17 THE COURT: Will counsel stipulate that
18 that is the file?
19 MR. PARIS: Yes, sir.
20 BY MR. PEARSALL: (Continuing)
21 Q Then I won't pursue that question.
22 A I am quite sure it is.
23 THE COURT: It is stipulated.
24 BY MR. PEARSALL: (Continuing)
25 Q Judge Moncure, I sent to you what has been

1 marked in this proceeding as Plaintiffs' Exhibit I and I ask
2 if you have ever seen it before?
3 A Yes, I have seen that before.
4 Q Will you state to the Court when is the
5 first time you ever became aware of the existence of that
6 writing?
7 A As well as I can recall when Mr. Snoddy -
8 now Judge Snoddy - showed it to me after, I think, this case
9 was ended.
10 MR. PEARSALL: Witness with you.
11 THE COURT: Any cross-examination, Mr.
12 Kauffman?
13 MR. KAUFFMAN: May I have a brief moment,
14 Your Honor?
15 THE COURT: Yes, sir.
16 MR. KAUFFMAN: No questions, Your Honor.
17 THE COURT: Any questions, Mr. Paris?
18 MR. PARIS: No, sir.
19 THE COURT: Anything further, Mr. Pearsall?
20 MR. PEARSALL: No, Your Honor.
21 I think probably the question of the Court
22 that I sense in this question being directed to me
23 should be responded to.
24 THE COURT: You are very perceptive, Mr.
25 Pearsall.

1 I don't want to keep Judge Moncure, but my
2 question has to be: Why was he called and why was
3 he waiting so long?
4 MR. PEARSALL: He was kept waiting, Your
5 Honor, because he volunteered that he would await
6 the orderly presentation of the case. I said I
7 would be happy to call him out of order, but he
8 said to unfold the case and put him on in the proper
9 chronological sequence.
10 The reason for no intensive interrogation
11 of Judge Moncure is simply this --
12 THE COURT: Excuse me. Let's not keep him
13 any longer.
14 You are free to leave.
15 JUDGE MONCURE: My time is of the court.
16 THE COURT: All right, sir.
17 You may go ahead.
18 MR. PEARSALL: There is a Code section
19 which prohibits a court - a Judge - from testifying
20 as to matters that occurred before him. It occurs
21 in the criminal section of the Code and it would
22 appear that it doesn't apply to charges of this type
23 of fraud upon the court. Unfortunately our Supreme
24 Court has ruled on that statute to say that it
25 applies in civil cases and it isn't confined to a

1 criminal case.

2 In light of that it would possibly intro-
3 duce error into this record to interrogate Judge
4 Moncure on matters that came before him. So, I
5 confined my question. This did not come before and I
6 established that it did not come before him - the
7 July 16th agreement. There would be a possibility
8 that error or a writ would not be granted in the
9 matter inasmuch as the statute - the modification
10 of the statute - prohibits the interrogation of a
11 judge. That has been interpreted to apply to civil
12 cases. That occurred while this case was pending.
13 By its express terms it does not apply to a case
14 then pending, but again, Your Honor, it seemed that
15 the case, to me, would be without creating the
16 possibility of error and as Your Honor knows the
17 case has been around since 1971 and it ought to be
18 concluded.

19 That is the reason I have carefully not
20 interrogated Judge Moncure for matters that occurred
21 before him while he was sitting - that might create
22 a problem.

23 That may be an error of judgment on my part,
24 but it seems to be the wiser course and the natural
25 inclination. Having stated that fully with the

1 possibility of the charge of error - whether it
2 constitutes it or not - I did not interrogate him
3 further.
4 THE COURT: Thank you very much, Mr.
5 Pearsall. I appreciate the explanation.
6 May Judge Moncure be excused?
7 MR. PEARSALL: Yes.
8 I would like to thank the Judge again for
9 his willingness to sit so long.
10 JUDGE MONCURE: As I told you, I think it
11 should be done in proper presentation and taken up
12 in order.
13 THE COURT: We are at five after 1:00. The
14 Court would inquire as to whether this would be an
15 appropriate time to take --
16 MR. PEARSALL: It would as far as I am
17 concerned.
18 MR. PARIS: Yes, sir.
19 THE COURT: Any objection to taking a
20 lunch recess?
21 MR. KAUFFMAN: Never object to lunch.
22 THE COURT: Why don't we take a lunch
23 recess now and come back to this room at 2:30 to
24 resume the trial of this matter.
25 Bring in any witnesses that are in the hall.

NOTE: At this time the witnesses entered the courtroom.

THE COURT: Are all of the witnesses in the courtroom?

THE SHERIFF: Yes, sir.

THE COURT: Ladies and gentlemen, we will now take a luncheon recess and stand in recess until 2:30. We will begin the trial of this case at that time.

During this recess, as well as any other recesses that we may take this afternoon or tomorrow - should we go over, you are cordially reminded that you are not to discuss the case with any person or remain at any place where the case is being discussed. Please do not allow any person to discuss your testimony with you.

We will stand in recess until 2:30.

NOTE: At 1:07 p.m. court stood in recess until 2:30 p.m. at which time the hearing continued, viz:

THE COURT: Mr. Pearsall, you may continue.

MR. PEARSALL: Thank you. We call Mrs. Gracie Swan.

THE COURT: Mrs. Swan, step forward.

NOTE: At this time the witness was sworn.

1 GRACIE TAYLOR SWAN, a witness called by the
2 attorney for the plaintiffs, having first been duly sworn,
3 testified as follows:
4 DIRECT EXAMINATION
5 BY MR. PEARSALL:
6 Q Will you state your name, occupation, and
7 relationship to William E. Swan?
8 A Gracie Taylor Swan, homemaker, his wife.
9 Q Wife of William E. Swan.
10 A Yes.
11 Q Mrs. Swan, has it been your practice to
12 keep a diary of matters that happen in and about your home?
13 A Yes, sir, I have been keeping a diary for
14 several years.
15 THE COURT: Mr. Pearsall, all of that --
16 MR. PEARSALL: I will not introduce all of
17 that, Judge.
18 THE COURT: Does she keep a diary of all
19 matters in and about the home?
20 MR. PEARSALL: I think we will get a sample
21 of what homemakers jot down in their diaries.
22 THE COURT: This is not a prevalent practice
23 among homemakers.
24 MR. PEARSALL: No.
25 NOTE: At this time some books were passed

1 to the witness.
2 BY MR. PEARSALL: (Continuing)
3 Q Mrs. Swan, are the books that I have
4 caused to be handed to you diaries that you have been keeping?
5 A (Nodded head in an affirmative manner.)
6 Q The court reporter can't record a nod. You
7 have to answer "yes or no."
8 A Yes.
9 Q May I have those back?
10 NOTE: At this time the books were returned
11 to the attorney.
12 MR. PEARSALL: Judge, may I approach the
13 witness as an ease in handling the papers?
14 THE COURT: Why don't you do that, Mr.
15 Pearsall. Go right ahead.
16 MR. PEARSALL: Thank you, Your Honor.
17 BY MR. PEARSALL: (Continuing)
18 Q I take the diary that is labeled 1969 and
19 ask you if there is an entry on November 23, 1969, about the
20 death of Marie Swan?
21 A Yes.
22 Q And what does it say about the death of
23 Marie Swan?
24 A Marie Swan died at 4:45 a.m.
25 Q Is it your belief that on the basis of this

1 note in your diary that that was the occasion of Mrs. Swan's
2 death?
3 A Yes.
4 Q Is it your practice to maintain these
5 diaries relatively contemporaneously with the events? That
6 is on the same day or very shortly after the same day that
7 something occurs that you put in the diary? The writing and
8 the occurrence occurred very closely together.
9 A Yes.
10 Q Would you make entries at different times
11 during the day?
12 A Yes, sometimes early in the morning and
13 at the end of the day I enter again.
14 Q Did you at my request compare some Xeroxes
15 I had made of your diary of 1971 to verify the fact that I
16 had correctly reproduced certain pages therein?
17 A Yes.
18 Q Are these the pages (indicating) that we
19 reviewed this morning for that purpose?
20 A Yes.
21 MR. PEARSALL: I would like to hand these
22 to the witness, Your Honor.
23 THE COURT: All right, sir.
24 Have counsel seen them?
25 MR. KAUFFMAN: We will stipulate that Mr.

1 Pearsall correctly Xeroxed the pages. There is no
2 question about that.
3 THE COURT: All right.
4 NOTE: At this time some pages were passed
5 to the witness.
6 MR. PEARSALL: There are certain marginal
7 notations that have been made on the pages and
8 although I would introduce them in evidence they are
9 to be withdrawn and new fresh copies - without
10 marginal notations - put in.
11 MR. KAUFFMAN: The marginal notations are
12 through no fault of his and are not Mr. Pearsall's.
13 MR. PARIS: Before we go any further with
14 this lady's diary, I do not believe that this is any
15 kind of exception to hearsay. It certainly would
16 not fall under the traditional short authority rule
17 as records kept in the ordinary course of business
18 and the fact that this lady made certain entries in
19 her diary is not only irrelevant but not corrobo-
20 rative of any particular fact that it may or may not
21 have occurred and I think it would be irrelevant to
22 even discuss it.
23 THE COURT: Why don't we withhold ruling
24 on the objection until I hear what the questions are
25 and I will take up the objection at that time.

1 MR. PEARSALL: I will hold my response until
2 that time, Your Honor.
3 THE COURT: Go right ahead.
4 BY MR. PEARSALL: (Continuing)
5 Q Would you take the pages - which I have
6 handed you - in the sequence in which I have handed them to
7 you.
8 I will have to have those and let you look
9 at the diary.
10 MR. PEARSALL: May I approach the witness?
11 THE COURT: Yes, sir.
12 BY MR. PEARSALL: (Continuing)
13 Q You give me those back and take the diary.
14 Now, would you read the entry of May 8?
15 A All of it?
16 Q Yes.
17 A Cloudy and early morning and pretty warm
18 and windy. We went to Kings Market in the evening. Rosa,
19 and Richard came that night. Moved Zan from nursing home to
20 the hospital.
21 Q Is that the typical type of entry you made
22 from day to day?
23 A Yes.
24 Q And on the basis of that would you be pre-
25 pared to take oath that Zan was moved from the nursing home to

1 the hospital on Saturday May 8?
2 A Yes.
3 Q In order to shorten your testimony and to
4 keep from having to read the full entry each day, I will read
5 you selected portions of it that are pertinent to this.
6 May 9. Sunday, May 9. Got message that
7 Zan died early that morning.
8 NOTE: At this time Mr. Kauffman stood.
9 THE COURT: Just a minute.
10 Yes, sir?
11 MR. KAUFFMAN: May it please the Court, I
12 think this is most irregular and most improper. The
13 normal way to examine a witness, as I understand the
14 Virginia --
15 THE COURT: You object to foundation or
16 form of the question.
17 MR. KAUFFMAN: You can ask if they remember
18 and if she does not then she has an opportunity to
19 refresh her recollection from any notes she may have
20 taken contemporaneously, but to ask the Court to
21 introduce a diary of a year's time and make it
22 admissible - I don't think that is the law of
23 Virginia and I object to it.
24 THE COURT: Mr. Pearsall, do you want to be
25 heard?

1 MR. PEARSALL: If it please the Court, I
2 haven't responded as I thought the Court would con-
3 tinue to --
4 THE COURT: He is objecting now on a
5 different basis. He's saying that before she resorts
6 to notes you ought to test her independent recollec-
7 tion.
8 I think he is basically right; isn't he?
9 MR. PEARSALL: We can pursue the route to
10 try to protest the fallibility or infallibility as
11 to events, but when she said she made a con-
12 temporaneous note of the events and was prepared
13 to say under oath the basis of the contemporaneous-
14 ness that that was when it occurred and it seemed
15 to be a much more direct way in establishing the
16 sequence of events of what happened.
17 THE COURT: Let's try it the usual way and
18 see if she has any independent recollection and then
19 we can resort to any memorandum she may have.
20 BY MR. PEARSALL: (Continuing)
21 Q Without resorting to any writings in front
22 of you, can you say upon what date Zan died?
23 A It was May 9.
24 Q Of what year?
25 A 1971.

1 Q What date was he buried?
2 THE COURT: What is the relevancy of all
3 of this? Are these facts in dispute, Mr. Pearsall,
4 - the date the man died and was buried and so forth?
5 MR. PEARSALL: May it please the Court, I
6 don't think the facts are in dispute, but I am
7 trying to give the context of certain dealings
8 between the parties.
9 THE COURT: That is perfectly all right,
10 if it has not been stipulated - stipulate the day
11 the man died and was buried. You can stipulate
12 that from the record as to what it was and if
13 counsel takes issue then we can hear proof on it -
14 if it's relevant.
15 BY MR. PEARSALL: (Continuing)
16 Q I see a note on May 12 that Bill went back
17 to Freddie's a little while after Zan was buried.
18 Is that according to your recollection?
19 A Yes.
20 Q Do you --
21 MR. PARIS: I am sorry to keep objecting.
22 How in the world could she possibly know
23 that Bill went to Freddie's unless she accompanied
24 him? It has to be hearsay.
25 THE COURT: Do you know of your own

1 knowledge that occurred?
2 MRS. SWAN: He told me. Bill told me.
3 THE COURT: I sustain the motion.
4 MRS. SWAN: I knew he left home going there.
5 BY MR. PEARSALL: (Continuing)
6 Q Did he tell you where he was going?
7 A Yes, he did.
8 THE COURT: I will sustain the objection.
9 BY MR. PEARSALL: (Continuing)
10 Q Did you accompany Bill to Richmond at the
11 time he closed out the savings accounts?
12 A Yes.
13 Q Do you know when that was?
14 THE COURT: Mr. Pearsall, --
15 A It was in May.
16 THE COURT: -- that fact is not in dispute;
17 is it? Can we get to those points that this witness
18 can help us on that are in issue?
19 Is it contested that he closed out the
20 accounts? There is no contest over that; is there?
21 MR. PEARSALL: May it please the Court, my
22 problem is that I have objections to lay the ground-
23 work for what the witness can recall and then when
24 I get to the $64 question I can't ask the question
25 because no groundwork has been laid.

1 THE COURT: All I am raising is: Can we
2 get to the things in contest? There is no contest
3 that Bill didn't close the accounts out; is there?
4 So, why are we worrying about that?
5 MR. PEARSALL: My next questions --
6 THE COURT: Let's get to the next question.
7 Maybe that will help us.
8 BY MR. PEARSALL: (Continuing)
9 Q Did you go with Bill when he went to
10 Shirley's on that date?
11 A On that day, yes.
12 Q What transpired on the visit to Shirley's
13 on the day that the bank accounts were closed out in Richmond?
14 A Well, we only had a short visit and Bill
15 had asked her about the bill that he was to pay for the
16 nursing home.
17 Q Continue. Did he get the bill? Did your
18 husband get from Shirley Throckmorton the bill for the
19 nursing home?
20 A She said there was some question about the
21 bill.
22 Q Did she refuse to give it to him?
23 MR. KAUFFMAN: Why can't she answer the
24 first question: Did she give him the bill?
25 MR. PEARSALL: May it please the Court, we

1 have the witness badgered in such a fashion that
2 she doesn't know whether to answer or not. I am
3 trying to elicit from her what happened.
4 THE COURT: Can we stipulate that Mrs.
5 Throckmorton would not give Bill the bill?
6 MR. KAUFFMAN: I don't think I have
7 badgered the witness and she didn't give her the
8 bill.
9 THE COURT: They will stipulate that she
10 didn't give her the bill.
11 What was the next question, Mr. Pearsall?
12 BY MR. PEARSALL: (Continuing)
13 Q What did you and your husband do when you
14 couldn't get the bill for the nursing home from Shirley
15 Throckmorton?
16 A We came by the nursing home. We went in
17 the office and checked about the bill and paid it with the
18 check from Zan's checking account.
19 MR. PARIS: We stipulate the bill was paid
20 and there is a letter in there that I assume he
21 will try to introduce. I object to it as being
22 hearsay. It's just -- I can't help it. I am not
23 badgering anybody. I have to object to things that
24 are not admissible.
25 THE COURT: He hasn't offered anything else,

1 yet. Are you going to offer both of those?
2 MR. PEARSALL: No, Judge. I will try to
3 get the context in another way.
4 MR. KAUFFMAN: We stipulate that the bill
5 has been paid.
6 THE COURT: I understand that both counsel
7 will stipulate that the bill has been paid to the
8 nursing home.
9 MR. PEARSALL: And that the check bounced?
10 THE COURT: Is there any question about that?
11 Will you put somebody on that the check bounced?
12 MR. KAUFFMAN: The man testified on cross-
13 examination --
14 THE COURT: Mr. Kauffman, you are not
15 willing to stipulate - or are you willing to stipulate?
16 MR. KAUFFMAN: It's uncontradicted -- I
17 don't think he has a bill that said it's paid. I
18 will not stipulate that the check bounced. I don't
19 know that.
20 THE COURT: Mr. Pearsall, lay it out. If
21 counsel obviously knows that the check bounced --
22 MR. PARIS: It did bounce.
23 THE COURT: If you are not willing to
24 stipulate I will let him take the time of this Court
25 and you all and let him lay it out.

1 MR. KAUFFMAN: Mr. Paris remembers that it
2 bounced, so I will agree.
3 THE COURT: Let's be reasonable, gentlemen.
4 Please go forward.
5 BY MR. PEARSALL: (Continuing)
6 Q Was there anything that you and your
7 husband ascertained from the nursing home that gave you any
8 basis whatsoever for understanding why Mrs. Throckmorton
9 would not give you the bill and there was any question of
10 the bill?
11 MR. PARIS: That would have to be a response
12 of hearsay, if Your Honor please.
13 THE COURT: It would have to, Mr. Pearsall.
14 I sustain the objection.
15 MR. PEARSALL: I have asked if they found
16 any basis whatsoever, Your Honor, and I have not
17 asked them to quote anybody.
18 THE COURT: I will sustain the objection.
19 Somebody would have had to have told them at the
20 nursing home.
21 BY MR. PEARSALL: (Continuing)
22 Q When you returned to your home, in Buck-
23 ingham, did you hear anything from anyone in the family?
24 A Yes.
25 Q From whom did you hear?

A Freddie called that afternoon.

Q Did he talk to you?

A Yes.

Q What did he tell you?

MR. PARIS: Objection.

MR. KAUFFMAN: Hearsay.

THE COURT: Objection sustained.

MR. PEARSALL: May it please the Court, I find it next to impossible to put this case on. If I ask one side of a conversation what happened and try to ask the other side what happened I can't get either side together. I am not trying to find out whether Freddie Swan was telling the truth or not telling the truth. All in the world I wanted to do was show what position Freddie Swan took relative to this matter with this person with whom he took that position and it's of high probative value and material to the whole subject of this litigation.

THE COURT: Fred Swan is not a party to this litigation; is he?

MR. PARIS: No, sir.

MR. PEARSALL: No.

THE COURT: There is no way you can have one witness to take the witness stand and testify two ways to a conversation and offer some of it

1 unless you bring in an exception to the hearsay
2 rule.
3 MR. PEARSALL: Exception is the verbal act.
4 The fact that Freddie took a position is --
5 THE COURT: I don't know how else I can
6 tell you, Mr. Pearsall. I will have to sustain --
7 MR. PEARSALL: May I vouch the record?
8 THE COURT: All right, sir.
9 BY MR. PEARSALL: (Continuing)
10 Q Vouching the record, would you state what
11 Freddie told you at the time he called when you got to your
12 home?
13 A I answered the phone and he asked was Bill
14 there and Bill was out at the time and he said that the City
15 court called him from Richmond and they were trying to get
16 up with Bill and he seemed to be awfully upset.
17 Q Did he tell you what the City court wanted?
18 A No, he didn't.
19 Q Did he say it related in any way to your
20 visit to Richmond?
21 A He didn't say. He just said there was bad
22 news that the law wanted to know if he could get up with Bill
23 and I told him Bill would be home in a few minutes and I was
24 sure the law could find him.
25 Q Was that the end of the conversation?

1 A ~~He hung the phone up.~~

2 Q What did you all do with the money that you
3 withdrew from Richmond? And when did you do it?
4 A We took it to the Farmers' National Bank
5 in Appomattox.
6 Q On what day did you take it?
7 A I don't remember.
8 MR. PARIS: That is not disputed.
9 A (Continuing) The next day after we with-
10 drew it from the bank here. We went early the next morning
11 and talked to Mr. Evans.
12 THE COURT: All right. Just a moment.
13 Your next question, Mr. Pearsall.
14 BY MR. PEARSALL: (Continuing)
15 Q When you talked to Mr. Evans, what did you
16 all do about the money?
17 A Well, Bill discussed the whole situation
18 with him and told him exactly what Zan had told him.
19 THE COURT: Just a minute.
20 The question was: What did you do with the
21 money?
22 MRS. SWAN: Oh, excuse me. We deposited
23 it in the bank.
24 THE COURT: Your next question.
25 She deposited it in the bank, or they

1 deposited it.

2 What is your next question, please?

3 BY MR. PEARSALL: (Continuing)

4 Q Did you make any record of the transaction?

5 A Yes.

6 Q What record did you make?

7 A I wrote out a form on a piece of paper of

8 how --

9 THE COURT: Is there any dispute about this

10 area, Mr. Pearsall? The fact that they took the

11 money out and the fact that he deposited the money.

12 MR. KAUFFMAN: I think that the letter,

13 Your Honor, ruled to be inadmissible - or the state-

14 ment - Number H, Your Honor which you refused.

15 THE COURT: Mr. Pearsall is running this

16 case. He is -- What are you looking for?

17 MR. PEARSALL: I'm looking for H and I can't

18 find it.

19 THE COURT: All right. Here it is.

20 MR. PEARSALL: Would you hand it to the

21 witness, please?

22 NOTE: At this time a paper was passed to

23 the witness.

24 BY MR. PEARSALL: (Continuing)

25 Q Have you ever seen it before, Mrs. Swan?

1 A Yes.
2 Q Who prepared it?
3 A I did.
4 Q Why did you prepare it?
5 A Because Mr. Evans, the banker, advised me
6 to do it.
7 MR. KAUFFMAN: Same objection, Judge.
8 THE COURT: All right.
9 You may continue, Mr. Pearsall.
10 BY MR. PEARSALL: (Continuing)
11 Q When was the next time your husband had
12 any contact with Mr. Freddie Swan?
13 A It was a few days after this.
14 Q Did he, on that day, have any contact with
15 Mr. Swan?
16 A Yes.
17 Q Other than that date that you opened up the
18 bank account and prepared this memorandum, when was the next
19 time that your husband had any contact with Mr. Freddie Swan?
20 A It was a few days later.
21 Q Could you look at your diary and be any more
22 precise?
23 A (Reviewing diary.) Bill stopped by to see
24 Freddie on June 6.
25 Q What day of the week was that?

1 A Sunday.
2 Q When was the next time, after that, that
3 your husband went to see Mr. Freddie Swan?
4 A June 8th.
5 Q Did you see your husband when he came back
6 from Freddie Swan's?
7 A Yes.
8 Q Had the matter apparently --
9 MR. PARIS: Objection, Judge. There is no
10 way --
11 A My husband was awfully upset --
12 THE COURT: Objection sustained. It calls
13 for a conclusion on the part of the witness, Mr.
14 Pearsall.
15 BY MR. PEARSALL: (Continuing)
16 Q Would you look at your diary and see if you
17 recorded any such conclusion --
18 THE COURT: Even if she did it would be
19 objectionable, Mr. Pearsall. She is not qualified
20 to make those kinds of determinations. She may say
21 what he looked like and his mannerisms and how he
22 acted.
23 BY MR. PEARSALL: (Continuing)
24 Q Without stating whether your husband was
25 upset or not, state to the Court all of the things that you

1 observed that caused you to recall it that he was upset.
2 What did you observe? What was his manner?
3 What was his state of mind? Did he demonstrate that he was --
4 Just state to the Court what you saw that
5 caused you to make this entry.
6 A Well, he seemed to be so nervous. He said
7 that he had tried to talk --
8 THE COURT: Don't tell us what he said. He
9 asked you to describe what you saw as far as your
10 husband was concerned.
11 BY MR. PEARCALL: (Continuing)
12 Q How long have you lived with your husband?
13 A 29 years.
14 Q Do you generally find yourself sensitive
15 to his emotional state? Or completely insensitive to it?
16 A Sensitive.
17 Q Did you observe him in a state of calmness?
18 Or any other state?
19 A No calmness there.
20 Q What happened after your husband got back,
21 Mrs. Swan? What happened the remainder of the day?
22 A Well, he called Freddie back and asked him
23 would he reconsider --
24 MR. PARIS: Objection, Judge, again.
25 THE COURT: I'll sustain the objection.

1 BY MR. PEARSALL: (Continuing)
2 Q After he talked to Freddie, what did your
3 husband do?
4 MR. PARIS: If Your Honor please, --
5 THE COURT: All right. Mr. Pearsall, you
6 keep saying "after you talked to Freddie." There
7 is no evidence that he talked to Freddie. That was
8 all hearsay and I have sustained the objection and
9 you keep going right back to "after he talked to
10 Freddie."
11 MR. PARIS: If we were to take all of the
12 objections literally there is no way on God's green
13 earth you could prove anything here as to who was
14 there when her husband talked to somebody.
15 MR. PEARSALL: The fact that he said it is
16 something that she observed.
17 THE COURT: I will sustain the objection,
18 Mr. Pearsall.
19 BY MR. PEARSALL: (Continuing)
20 Q What did you and your husband do thereafter?
21 MR. PEARSALL: Please note my respectful
22 objection on the basis of the verbal act we are
23 talking about.
24 THE COURT: All right.
25 A We went to see Judge Snoddy.

BY MR. PEARSALL: (Continuing)

Q Why did you go see Judge Snoddy?

A After he called Freddie back and he wasn't agreeable to making the settlement we got up --

Q What did you all say to Judge Snoddy?

A Bill explained it to him and he told him that he would be glad to help him out and take the case.

Q Thereafter, did your husband tend to the payment of any bills for Alexander Swan?

A He paid Dr. Sutphin and Allied Ambulance.

Q Were you present at the time he wrote the checks?

A Yes.

Q Do you generally tend to most of the writing for your husband?

A Yes.

Q Did your husband have bills for which he wrote the checks, or you wrote the checks for him? Did you have invoices or bills?

A He had bills, yes.

Q I hand you some bills, or invoices, and state that they were attached to the Bill of Complaint. I ask if these are the ones you are talking about? Are they the ones you are talking about?

A As well as I remember, they are.

1 MR. PEARSALL: I offer them --
2 MR. KAUFFMAN: What purpose, Judge?
3 I don't know of any relevant objection. I just
4 don't know for what relevant purpose they are being
5 introduced.
6 THE COURT: What relevancy?
7 MR. PEARSALL: To show that Mr. Swan, as
8 required by Mr. Alexander Swan, was proceeding with
9 the handling of Mr. Alexander Swan's affairs in
10 paying the bills and preparing to carry out the
11 wishes of Mr. Alexander Swan.
12 THE COURT: All right. Any objection if
13 it comes in under that theory of relevancy?
14 MR. PARIS: No.
15 THE COURT: They will come in as Cumulative
16 Exhibit L for the plaintiffs.
17 MR. KAUFFMAN: I think you already have an
18 L.
19 THE COURT: The last note I have is the
20 short note to Judge Snoddy from Mr. Pembleton.
21 MR. KAUFFMAN: Excuse me, Your Honor.
22 THE COURT: All right. For the record
23 then there are a group of exhibits the top will be
24 a receipt for $138.60 and they are all stapled
25 together.

1 Next question, Mr. Pearsall.
2 BY MR. PEARSALL: (Continuing)
3 Q State whether or not your husband received
4 any payment by Home Beneficial Life Insurance under the policy
5 on the life of Alexander Swan.
6 A He received an insurance policy.
7 Q The payment under the insurance policy.
8 A The payment, yes.
9 Q What did he do with it?
10 A As well as I remember it the one he paid
11 over to the funeral home --
12 Q I ask you if you have seen that (indicating)
13 paper before?
14 A Yes.
15 Q What does it represent?
16 A Receipt for the payment of the funeral
17 expenses.
18 Q Was it with the proceeds of this insurance
19 policy?
20 A Yes.
21 MR. PEARSALL: I offer it.
22 THE COURT: All right. Hearing no objec-
23 tion it will come in as Plaintiffs' Exhibit M.
24 BY MR. PEARSALL: (Continuing)
25 Q After seeing Judge Snoddy - following your

husband's visit to Mr. Freddie Swan - when did you next see Judge Snoddy?

A That was several days later before --

Q Can you fix in your mind what was the event or occasion that caused you to go on that particular day?

A To get him to represent my husband.

Q You had already seen him at Sprouses Corner and he agreed to represent you. Do you recall why, on that particular day, that you saw him next - that you went to see him on that particular day? Will you look at your diary on date of June 14 and see if that refreshes your recollection?

A I have: We went to see Jack after Bill came in from work.

Q You don't need to read it. Having read it, is your recollection refreshed as to why you saw him on that particular day, June 14?

A That's the day that the Sheriff came and we got the old money and the car and watch.

Q And is that the reason on that particular day you went to see Judge Snoddy?

A Yes.

Q Now, did you, on that occasion -- Go in more detail about Judge Snoddy as to what the situation was.

A Well, I don't really remember. I just don't have a record of all of this.

1 Q Did you thereafter receive any more court
2 papers?
3 A Yes.
4 Q What did you do with them?
5 A As well as I remember Bill carried them to
6 Judge Snoddy.
7 Q Did you all, thereafter, hear from Judge
8 Snoddy as to his handling of the matter?
9 A Yes.
10 Q What was to be the handling of this matter
11 that was reported to you?
12 A Well, he came down here to check with these
13 lawyers to see what the situation was and why they had sent
14 the Sheriff up there after these things and --
15 Q Did he report to you a solution to the
16 matter?
17 MR. KAUFFMAN: Judge Snoddy?
18 MR. PARIS: Judge Snoddy already testified.
19 THE COURT: It's hearsay through this
20 witness and I will sustain the objection.
21 BY MR. PEARSALL: (Continuing)
22 Q Did you all receive a paper to be signed
23 reflecting this disposition of the matter?
24 A Yes.
25 Q What was done with the paper?

1 A It was signed by all of the parties.
2 Q What was done with it then?
3 A Are you speaking of the agreement?
4 Q Yes.
5 A Well, Bill took it to all of the parties
6 and they all signed it and it was returned to Judge Snoddy.
7 Q Prior to the death of Mr. Swan, did you
8 have any knowledge as to what was to be done with the joint
9 accounts with Mr. Swan and your husband?
10 A Yes.
11 Q From whom did you learn what was to be done
12 with the joint accounts?
13 A My husband, William.
14 Q Did you learn it from anyone else? Did you
15 ever hear Zan say?
16 A Yes.
17 Q What did Zan say about the joint accounts?
18 MR. KAUFFMAN: Judge, it's hearsay as far
19 as taking the position it's the same objection.
20 Whatever Zan said was hearsay.
21 Mr. Pearsall has had William Swan to
22 testify to it over objection and the Court has
23 taken it under advisement.
24 THE COURT: I will let Zan's statement come
25 in. She can corroborate if she wants to.

1 MR. KAUFFMAN: Same objection.
2 THE COURT: All right, sir.
3 BY MR. PEARSALL: (Continuing)
4 Q What did Zan say in your presence as to
5 what was to be done with the joint accounts?
6 A $3,000 to go to Bill's sister, Ouida Adcock,
7 and $3,000 to Shirley S. Throckmorton, and the rest to be
8 divided into four parts - William E. Swan, Alma Kitchen,
9 Carrie Swan, and Frederick Swan.
10 MR. PEARSALL: Witness with you.
11 THE COURT: Mr. Kauffman, any questions?
12 MR. KAUFFMAN: May I see the last two
13 exhibits?
14 NOTE: At this time some papers were passed
15 to the attorney.
16
17 CROSS-EXAMINATION
18 BY MR. KAUFFMAN:
19 Q Mrs. Swan, these bills that you have testi-
20 fied your husband paid, I believe, were dated - the receipts
21 are dated - June 14 on the one receipt and June 14 on the
22 second receipt and the other one is not dated; is that
23 correct? Is the receipt dated June 14?
24 A Well, he paid these bills along that time.
25 Q The question is, ma'am, is the receipt

1 dated June 14?
2 A As well as I remember it is.
3 Q Just look at the top of the receipt and
4 read the date on which it was paid, please, ma'am. Not the
5 bill - the receipt.
6 A It looks like a 6. It's kind of scratched
7 over.
8 Q 6-14 is what is says.
9 A It's kind of scratched through. It looks
10 like a 6 to me.
11 Q Is that June 14? Does that say 6-14 right
12 there (indicating), ma'am?
13 A Yes.
14 Q Does this one say June 12, ma'am?
15 A That is a 12.
16 Q Does it say J-u-n-e, June 12?
17 A J-u-n-e.
18 MR. PEARSALL: Mr. Kauffman, I will
19 stipulate that whatever appears on them appears on
20 them.
21 THE COURT: All right.
22 BY MR. KAUFFMAN: (Continuing)
23 Q Were you present when your husband paid
24 these bills?
25 MR. PEARSALL: May it please the Court, that

1 is not the testimony and I object very strenuously
2 to it being mischaracterized.
3 THE COURT: I don't believe she was there.
4 MR. KAUFFMAN: How would it be admissible?
5 I took the position we have continuing objections
6 to hearsay testimony. I thought that the reason
7 that it was admissible was because she was to be
8 there with him.
9 THE COURT: She never said she was there.
10 MR. KAUFFMAN: Mr. Pearsall is punching
11 his finger to a copy of a paper we objected to her
12 testifying to from the diary and the fact that she
13 made mention of the fact of what Bill told her.
14 We objected continually to that and I thought she
15 testified, when she was handed the bills, that she
16 was present at the various payings.
17 THE COURT: Let's put it in proper
18 perspective.
19 The witness testified that the bills were
20 paid. Nobody asked if she was there or how she
21 knew about it.
22 If you want to inquire into that area and
23 ask that the exhibits be stricken --
24 BY MR. KAUFFMAN: (Continuing)
25 Q Were you present when the bills were paid?

1 A No, sir. This doctor bill and ambulance
2 were paid by check.
3 Q Did you write the check?
4 A Yes.
5 Q Did you mail the check?
6 A Yes.
7 Q Do you have the canceled checks?
8 A They are somewhere. I turned in some of
9 them --
10 Q The receipt?
11 A -- to the lawyer.
12 Q Mr. Pearsall has the canceled checks.
13 A Judge Snoddy had some of them.
14 Q The funeral bill, Exhibit M, that you
15 testified to; were you present when that was paid?
16 A No, sir.
17 Q Did you write the check?
18 A No.
19 MR. KAUFFMAN: I move the exhibit be
20 stricken.
21 THE COURT: Let's hear from Mr. Pearsall.
22 What about M? Do you have personal
23 knowledge it was paid? Do you have any personal
24 knowledge that the funeral bills were paid? Or are
25 you relying on somebody else's statement to you that

1 it was paid?

2 MRS. SWAN: Bill told me that he paid it

3 out of the insurance check.

4 THE COURT: Mr. Pearsall, do you want to

5 be heard on that? It appears to me that M ought

6 to come out. If she paid L she has personal

7 knowledge about that.

8 The Court will remove M from the record

9 and mark it refused and it will stay in the file

10 as part of this proceeding, but "refused" as far as

11 evidence is concerned.

12 Any other questions, Mr. Kauffman?

13 MR. KAUFFMAN: No further questions.

14 THE COURT: Mr. Paris?

15 MR. PEARSALL: I respectfully object and

16 except to the ruling of the Court inasmuch as verbal

17 accounts of recordings as to what she was doing at

18 the time. I will demonstrate that by interrogating

19 this witness about entries in the diary which have

20 been objected to so strenuously and I suggest that

21 she did not testify to that on direct.

22 THE COURT: Put it in the proper perspective.

23 I believe we are to go into cross-examination,

24 counsel, on the other side. If you want to put it

25 in redirect and try to establish it you certainly

1 can do so.
2 Mr. Paris, any cross-examination of the
3 witness?
4
5 CROSS-EXAMINATION
6 BY MR. PARIS:
7 Q You testified on May 8, 1971, that Zan was
8 moved from the hospital to the nursing home; is that correct?
9 A Yes.
10 Q You testified to that; is that correct?
11 A Yes.
12 Q You weren't there; were you? You weren't
13 physically present when he was transferred; is that right?
14 A No, I wasn't there.
15 Q So somebody told you that he was there.
16 A (Nodded head in an affirmative manner.)
17 Q Somebody told you that he was there and
18 that he was transferred.
19 A Yes.
20 Q And yet you said you were willing to take
21 an oath that that was an absolute fact; didn't you? When you
22 didn't even know it to be so.
23 A Shirley told us.
24 Q Well, you weren't there.
25 A No, I wasn't present.

1 MR. PARIS: That is all.
2 THE COURT: All right, sir.
3 Anything on redirect, Mr. Pearsall?
4
5 REDIRECT EXAMINATION
6 BY MR. PEARSALL:
7 Q Would you look at your diary under date of
8 Thursday, June 10, 1971? Does that refresh your recollection
9 at all as to how the Allied Ambulance Service and Dr. Sutphin
10 in the Orthopedic Clinic were paid?
11 A Mailed check on that day to Allied Ambulance
12 Service and Dr. Sutphin.
13 THE COURT: The Court has ruled that is
14 admissible. It is eminent that the Court thought
15 that it should be refused and there is no need to
16 rebut it as to L.
17 MR. PEARSALL: I had understood --
18 THE COURT: No, sir. L is still in
19 evidence.
20 MR. PEARSALL: May I see M, Your Honor?
21 THE COURT: All right, sir.
22 M is the receipt from the funeral parlor.
23 BY MR. PEARSALL: (Continuing)
24 Q Do you know how much the insurance payment
25 was that your husband received from Home Beneficial on account

1 of the policy on Zan's life?
2 A I can't remember exactly. I have a record
3 of it, but I don't remember.
4 Q You have a record with you now?
5 A No, I do not.
6 Q I believe I asked if you recognized that,
7 which you identified as Exhibit M. Do you recognize it?
8 A (No response.)
9 Q Have you ever seen it before?
10 A Yes.
11 Q On what occasion had you seen it before?
12 A I don't remember the exact time.
13 Q What did it represent to you at the time
14 you saw it?
15 A The payment on the funeral expenses.
16 Q Although you were not present at the time
17 the payment was made you subsequently came into possession
18 of that receipt; is that correct? Have you had that in your
19 possession before?
20 THE COURT: Mr. Pearsall, --
21 A I just don't really remember.
22 THE COURT: -- there is no way you will be
23 able to get that document in through this lady. She
24 testified she did not pay the bill and has no per-
25 sonal knowledge.

1 MR. PEARSALL: I respectfully differ that
2 she had no personal knowledge and I was trying to
3 draw out the personal knowledge she had.
4 THE COURT: Anything else on rebuttal?
5 BY MR. PEARSALL: (Continuing)
6 Q In the handling of paperwork, is it your
7 custom for you to do all of the writing and keeping track
8 of papers for your husband?
9 A Yes.
10 Q And did you keep track of the receipts
11 relative to the payments of debts after Alexander Swan died
12 for your husband?
13 A Yes.
14 Q Was this among the receipts --
15 MR. KAUFFMAN: Judge, --
16 THE COURT: All right. We are still where
17 we were when we started. It's still not in evidence.
18 MR. PEARSALL: I respectfully object.
19 THE COURT: The objection will be noted in
20 the record.
21 Any other questions of Mrs. Swan?
22 MR. KAUFFMAN: No, sir.
23 THE COURT: You may step down.
24 Will she be called later in the trial?
25 MR. PEARSALL: I think not.

1 THE COURT: She may stay in the courtroom
2 then.
3 MR. PEARSALL: Maybe, in view of the fact
4 that we have such strenuous objection, I better have
5 her outside of the courtroom.
6 THE COURT: Please return to the corridor.
7 Your next witness, Mr. Pearsall.
8 MR. PEARSALL: I call Mrs. Carrie Swan.
9 THE COURT: Mrs. Carrie Swan to the stand,
10 please.
11 NOTE: At this time the witness was sworn.
12
13 CARRIE R. SWAN, a witness called by the
14 attorney for the plaintiffs, first having been duly sworn,
15 testified as follows:
16 DIRECT EXAMINATION
17 BY MR. PEARSALL:
18 Q Will you state your name and relationship
19 to William E. Swan and Alexander H. Swan?
20 A Bill Swan's mother and Zan Swan is my
21 brother-in-law and my name is Carrie Swan, Mrs. Carrie Swan.
22 Q Did you, prior to the death of Alexander
23 Swan, become aware of joint bank accounts in his name and
24 that of William E. Swan?
25 A Yes, I did.

1 Q Did you know what the nature of the accounts
2 was and the purpose of the accounts?
3 A Yes, I did.
4 Q And how did you learn of the nature and
5 purpose of the accounts?
6 A Bill told me and that is why --
7 Q Did anyone else ever tell you?
8 A Zan himself.
9 Q And what did Zan tell you was the purpose
10 of the accounts and how they were to be handled?
11 A He just wanted each one to have equal shares
12 of his belongings.
13 Q You will have to be a little more specific.
14 What was to be done with the bank accounts after Marie Swan
15 died? We won't go back into ancient history.
16 A Left in Bill's charge. He had been in
17 charge of Zan's business for several years and he wanted him
18 to see that his wife stayed in the hospital.
19 Q After his wife died, what was Bill to do
20 with the bank accounts?
21 A Well, just --
22 Q After Marie Swan died, what was Bill to do
23 with the bank accounts?
24 A Just to be left alone until Zan's death
25 and after Zan's death --

1 Q What was to be done with them on Zan's
2 death?
3 A Divided in four equal parts after giving
4 Shirley and Ouida $3,000 each.
5 Q Who were the persons to get one-fourth
6 each of the residue?
7 A Myself and Bill and Freddie and his sister
8 Alma.
9 Q Alma Kitchen?
10 A Alma Kitchen.
11 Q Did you ever have any conversation with
12 Zan about his car?
13 A Well not any more than when he was at home
14 and visited us frequently and he told us right there at home
15 in the presence of two or three of us that Zan was to have
16 his car -- Bill was to have his car and he give Bill his
17 car and he told us that right there at home in front of
18 several.
19 Q Do you know whether anybody else in the
20 family became aware of what was to happen to the bank accounts?
21 MR. PARIS: That would obviously call for
22 a hearsay response, Your Honor, and I object.
23 THE COURT: Not necessarily, Mr. Paris, it
24 wouldn't necessarily call for one if she told them -
25 that wouldn't be hearsay. The question is: Were any

1 members aware and she says "yes" and that is not
2 objectionable.
3 BY MR. PEARSALL: (Continuing)
4 Q At the death of Alexander Swan, did the
5 family understand what was to be done with the --
6 THE COURT: That is objectionable.
7 A Yes.
8 THE COURT: Just a minute. I sustain that
9 objection. It calls for a conclusion, Mr. Pearsall.
10 Also, it may call for a hearsay answer.
11 BY MR. PEARSALL: (Continuing)
12 Q What was your understanding as to who was
13 to clean up the affairs of Alexander Swan upon his death?
14 A Well, it was Bill. He was left in charge
15 of everything to straighten up everything and he told him
16 how he wanted to do it - exactly what he wanted done.
17 MR. PEARSALL: Witness with you.
18 THE COURT: Cross-examination.
19 MR. KAUFFMAN: No questions.
20 MR. PARIS: I don't have any.
21 THE COURT: All right. You may step down.
22 Thank you very much.
23 Next witness, Mr. Pearsall.
24 MR. PEARSALL: I call Mrs. Alma Kitchen.
25 NOTE: At this time the witness was sworn.

1 ALMA S. KITCHEN, a witness called by the
2 attorney for the plaintiffs, having first been duly sworn,
3 testified as follows:
4 DIRECT EXAMINATION
5 BY MR. PEARSALL:
6 Q Will you state your name and relationship
7 to William E. Swan and Alexander H. Swan, deceased?
8 A Alma Kitchen.
9 What was the other question?
10 Q What is your relationship to William E. Swan?
11 A He is my nephew.
12 Q And Alexander H. Swan, deceased?
13 A He is my brother - or was my brother.
14 Q Did you ever have any conversation with
15 your brother, Alexander Swan, about his car?
16 A I didn't have any real conversation with
17 him, but I hear him say that he was giving his car to Nephew
18 William because he wanted him to take care of his business for
19 him.
20 Q Were you submitted -- Strike that question.
21 THE COURT: Which one is it, Mr. Pearsall?
22 The agreement?
23 MR. PEARSALL: The agreement, yes, Your
24 Honor.
25 Will you hand it to the witness?

1 NOTE: At this time a paper was passed to
2 the witness.
3 BY MR. PEARSALL: (Continuing)
4 Q Mrs. Kitchen, have you ever seen that before?
5 A Yes, sir.
6 Q Is that your signature on it?
7 A Yes, sir.
8 Q Did you have any understanding as to how
9 the bank accounts -- Let me back up, excuse me.
10 Were you aware of the fact that your nephew,
11 William Swan, and your brother, Alexander Swan, had joint
12 bank accounts?
13 A Yes, sir.
14 Q Were you aware of what was to be done with
15 the joint bank accounts?
16 A Well, William came to me after Alexander's
17 funeral and told me how they were to be divided and everything
18 about it.
19 Q Does that agreement that you signed agree
20 with what you understood was to be done?
21 A Yes, sir.
22 Q Except it was to be done by Shirley
23 Throckmorton rather than William E. Swan.
24 A Yes, sir.
25 Q Is that the basis on which you signed it?

1 A Yes.
2 MR. PEARSALL: Witness with you.
3 THE COURT: Cross-examination.
4 MR. KAUFFMAN: I have no questions.
5 MR. PARIS: I have no questions.
6 THE COURT: No questions for the defense.
7 You may step down.
8 Your next witness.
9 MR. PEARSALL: I would like to entertain
10 the possibility of shortening --
11 MR. PARIS: Is everybody going to say the
12 same thing? If Mr. Pearsall is vouching to the
13 Court that the remaining witnesses that he intends
14 to put on the stand are going to say substantially
15 the same thing - no more no less - then the last two
16 we would be willing to stipulate to their testimony
17 and not ask any cross-examination.
18 THE COURT: Thank you, very much, Mr. Paris.
19 MR. PARIS: You are welcome.
20 THE COURT: Mr. Pearsall, would that be
21 their testimony, were they to take the witness stand
22 - no more no less than the last two witnesses?
23 MR. PARIS: We think so, Your Honor.
24 THE COURT: Do you want a short recess to
25 look at that?

1 MR. PEARSALL: No, I think I can do it
2 very quickly here. I don't know that the remaining
3 witnesses would be called to make any different
4 statement about the automobile, but other than that
5 they would make the same statements.
6 THE COURT: All right.
7 Who are the witnesses? How many others
8 would there be?
9 MR. PEARSALL: Would each of you stand up
10 that has not testified?
11 This (indicating) is Hugh Swan, brother of
12 William E. Swan.
13 This (indicating) is Mrs. Doris Rosser,
14 sister of William E. Swan.
15 This (indicating) is Ouida Adcock, sister
16 of William E. Swan.
17 (Indicating) Gladys Kesterson, sister of
18 William E. Swan.
19 (Indicating) Corrine Kidd, sister of
20 William E. Swan.
21 THE COURT: All right, sir.
22 Thank you very much. We appreciate your
23 effort to shorten the trial.
24 It's through the courtesy of opposing
25 counsel that we were able to accomplish that.

1 MR. PARIS: Thank you, sir.
2 MR. PEARSALL: I would like to call Shirley
3 Throckmorton as an adverse witness.
4 THE COURT: Mrs. Shirley Throckmorton,
5 please come forward, who has been called by the
6 plaintiffs as an adverse witness.
7 NOTE: At this time the witness is sworn.
8
9 SHIRLEY S. THROCKMORTON, a defendant called
10 as an adverse witness by the attorney for the plaintiffs,
11 first having been duly sworn, testified as follows:
12 DIRECT EXAMINATION
13 BY MR. PEARSALL:
14 Q Will you state your name and relationship
15 to Alexander H. Swan?
16 A I am Shirley Swan Throckmorton and I am
17 niece of Alexander Swan, deceased.
18 Q And your father's name is?
19 A Frederick Winston Swan.
20 MR. PEARSALL: May I approach the witness?
21 THE COURT: Go right ahead.
22 NOTE: At this time Mr. Pearsall approached
23 the witness.
24 A paper was passed to the witness.
25

BY MR. PEARSALL: (Continuing)

Q Mrs. Throckmorton, there has been handed up to you an exhibit with the Bill of Complaint and I ask you if you have ever seen it before?

A Yes.

Q What is it?

A A check my uncle gave me before he died.

Q And did you cash the check?

A No, because he gave it to me on Friday afternoon and he died on Sunday morning. So I was not able to cash it. It was later after the banks were closed and I couldn't.

Q Yes.

A Why, I did not cash it until later because I was very close with my uncle --

Q But you did cash it later.

A Yes, I did.

Q That is all I need to know that you did cash it.

A Yes, sir.

Q You can give any examination by your own counsel. You can give any further explanation you want to.

MR. PEARSALL: That is all I have.

THE COURT: The check will come in as Plaintiffs' Exhibit N, as in "new."

1 BY MR. PEARSALL: (Continuing)
2 Q Mrs. Throckmorton, I asked if you had ever
3 seen the paper handed to you -- It is a Xerox not an original
4 paper. That is a Xerox of an original paper and I ask if
5 you recognized the handwriting?
6 A Yes, sir.
7 Q Is that your handwriting?
8 A Yes, it is.
9 MR. PEARSALL: May I approach the witness,
10 Your Honor?
11 THE COURT: Yes, sir.
12 NOTE: At this time the attorney approached
13 the witness.
14 MR. PEARSALL: It's not very long, Your
15 Honor, and I want to interrogate about it.
16 BY MR. PEARSALL: (Continuing)
17 Q On Sunday morning, May 9, Alexander expired
18 and doctor called and asked my father to meet him at St.
19 Mary's Hospital. My father called Bill and asked if he would
20 like to go with him and he come up to my father's came up I'm
21 not sure and he and Bill and my husband, Richard, came to
22 Richmond to get Dr. Sutphin. When they returned Bill told me
23 that when all of bills came in to call and he and my father
24 called him and father said they would come down and change
25 the savings account and checking and pay the bills and

1 dealings like Alexander had wanted it.
2 Did you write that?
3 A Yes, I did.
4 Q And that is true.
5 A Yes.
6 Q Then it continues that that was the arrange-
7 ment until June 3 and that was the arrangement until June 3rd.
8 A Yes, it was.
9 Q Now, what was the arrangement until June
10 3rd?
11 A Well, my father, Frederick Swan, and
12 William Swan was supposed to go down and take the money out
13 and change it into a checking after all of the bills had come
14 in and pay all of the bills and all of the expenses that he
15 had - my uncle had - and distribute the money.
16 Q And how was the money to be distributed?
17 A With the -- You want me to go by the
18 agreement as we have signed or beforehand?
19 Q I am referring now to what you wrote here
20 that that was the arrangements. I want to know what the
21 arrangements were that you are referring to.
22 A Now, as my uncle told me - I was not present
23 when he told my father and Bill, but he told me alone --
24 Q What did he tell you?
25 A He said he wanted Mrs. Adcock to have $3,000

1 and myself $3,000 and he wanted the residue divided three ways
2 - to William E. Swan, Alma Kitchen, and Frederick W. Swan.
3 Q Divided three ways?
4 A Yes, sir.
5 Q That was the arrangement until June 3rd;
6 is that right?
7 A Yes.
8 Q And that is what you meant here.
9 A Yes, until the agreement was signed that it
10 would be split four ways including Mrs. Carrie Swan.
11 Q Until the agreement was signed. Now, explai
12 what you mean by that.
13 A Well, I mean that it was my uncle and those
14 were his wishes to me and then when the agreement was signed
15 by all parties connected with William E. and myself and my
16 father Frederick W. Swan to have it go $3,000 to Mrs. Adcock
17 and $3,000 to me and divided the rest four ways - after all
18 of the bills and expenses had come out.
19 Q Now, if it was going three ways, why were
20 you agreeable to it going four ways?
21 A Well, Mr. Vick called me and asked me to
22 come over to his office and he told me that Judge Snoddy had
23 contacted him and said that Bill would not release the money
24 unless his mother could have a fourth of it and he says: How
25 do you feel about it? And I said: That is not the way it was

supposed to go which my uncle had told me, but as far as I am concerned it's all right so he asked me to contact my dad - Frederick W. - and he said it was all right and we signed the agreement.

Q Well, what changed? You wrote that was the arrangement until June 3rd. What, on June 3rd, changed it? Had any agreement been signed between you all?

A (No response.)

Q On June 3rd?

A I'm not sure what date the agreement was signed.

Q Let me assist you in that regard.

A All right. Thank you very much.

NOTE: At this time a paper was passed to the witness.

Q I send up to you Plaintiffs' Exhibit I which has been testified to previously as the agreement and ask if you recognize that to be the agreement?

A Well, I am sorry I really can't answer. What I have there as far as June 3rd is concerned --

Q Let me hand it back to you and see if you read it a little more carefully at your leisure if it will come back to you.

A I may have dated it wrong myself.

No, I'm sorry I can't -- I can't answer

1 that to be truthful to you because I don't know.
2 Q June 3rd, so far as you know, did anything
3 occur to change it from being split three ways to being split
4 four ways?
5 A No, as I said that is what my uncle told me
6 and just in my presence and so I have no -- I don't know what
7 he said in the presence of my father and Bill because I was
8 not there. This is the date I have down here that Bill and
9 his wife Grace came to my home and asked for the bills.
10 Q Why was it you didn't give them the bills?
11 A I told them I had them all except the
12 nursing home and there was a discrepancy.
13 Q What was the nature of the discrepancy?
14 A Medicare. I had talked with Mrs. Hare at
15 Stratford Hall and she said that she wasn't sure that Medicare
16 was going to cover all of that and she could not give me a
17 bill until she had found out that and she sent off two letters
18 pertaining to that and she should hear at any time.
19 Q Had you cashed the $3,400 check by that
20 time?
21 A No, I don't remember what date I cashed it
22 but it was later on - you mean to June 3rd as I have May 3rd,
23 but I think it should have been June 3rd.
24 Q Haven't you stricken it over to make it
25 June?

A I evidently made a mistake.

Q It's May struck out and June put over top of it.

A Yes, sir.

Q Isn't it in the same handwriting?

A Yes, it's my handwriting.

Q You first wrote May 3rd and struck it over and made it June 3rd.

A Yes, I did.

Q As of June 3rd, had you cashed the $3,400 check?

A Yes, sir, I believe I did.

Q Did you have any idea why in the world how much money was in the bank account on which the check was written?

A No, I did not.

Q But you knew there was $3,400 less than before you cashed the check.

A This was a gift that he gave to me.

Q I'm not arguing that.

A I didn't question what my uncle had in his account.

Q That had nothing to do in the world with the reluctance of your turning the nursing home bills over; did it?

1 A No, sir. I was going by what Mrs. Hare had
2 told me. She was in charge of the billing and Medicare in
3 the nursing home.
4 Q And you have no explanation as to why there
5 was a certain arrangement upon the death of Mr. Swan and that
6 continued until June 3rd. You don't know what changed it on
7 June 3rd.
8 A No, sir, I don't. If I did I would answer
9 it.
10 MR. PEARSALL: That is all I wanted to
11 interrogate this witness for as an adverse witness,
12 Your Honor.
13 THE COURT: Does counsel desire to interro-
14 gate her now?
15 MR. PARIS: No, sir, not right now. Thank
16 you.
17 THE COURT: All right.
18 You may step down.
19 Next witness for the plaintiffs.
20 MR. PEARSALL: Plaintiffs rest, Your Honor.
21 THE COURT: All right. Do you have a
22 motion?
23 MR. PARIS: Yes, sir.
24 THE COURT: Let's take about a five minute
25 recess.

1 indulgence.

2 Mrs. Throckmorton's husband is here to

3 testify to one incident that will take approximately

4 three or four minutes and he operates a truck on

5 the road and he can't be here tomorrow.

6 Would you indulge me to let me put him on?

7 THE COURT: Mr. Pearsall?

8 MR. PEARSALL: I have no objection.

9 THE COURT: Thank you, Mr. Pearsall.

10 The motion to strike is under advisement.

11 NOTE: At this time the witness was sworn.

12

13 RICHARD L. THROCKMORTON, a witness called

14 by the attorney for the defendants, first having been duly

15 sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. PARIS:

18 Q Please state your name, sir.

19 A Richard L. Throckmorton.

20 Q And what is your relation to Shirley

21 Throckmorton?

22 A Husband.

23 Q Where are you employed, Mr. Throckmorton?

24 A IT&T - Continental Baking Company.

25 Q What is your age?

A 44.

Q All right, sir, do you know William E. Swan?

A Yes, sir.

Q Do you know all of these folks here (indicating)?

A Yes, sir.

Q Through your wife?

A Yes, sir.

Q Did you know Alexander Swan?

A Yes, sir.

Q How did you know him?

A Through my wife. It was my wife's uncle.

Q Did they visit frequently? Did she visit him frequently?

A We looked after him fairly well in the nursing home down there. We went down there two or three times a week while he was in the nursing home and looked after his needs and so forth.

Q Is that because you were in Richmond and the rest of the family was in Buckingham?

A Yes, sir. I was close by and I could get him to carry him to haircuts and get his medicine and so forth.

Q Moving quickly now, briefly, to the 3rd of June, did you and your wife and her father, Frederick Swan,

1 have a visit from Mr. and Mrs. William E. Swan?
2 A Yes, sir.
3 Q What was the purpose of the visit as stated
4 by Mr. Swan?
5 A He told -- He come up and discussed about
6 what was going to be done with the money and he come out and
7 said that the end was the same as it was as if it was mine
8 and my wife's account and that all of the money would belong
9 to him and that he could do what he wanted to with it.
10 Q Was that after some discussion?
11 A Yes, sir.
12 Q He stated that the money was his and that
13 he was going to do with it what he wanted to do with it.
14 A Yes, sir.
15 MR. PEARSALL: I object to the summation.
16 THE COURT: All right, sir.
17 We will rest on what his original --
18 MR. PARIS: I have no further questions.
19 THE COURT: All right, sir.
20 Any cross-examination, Mr. Pearsall?
21
22 CROSS-EXAMINATION
23 BY MR. PEARSALL:
24 Q Do you recall, Mr. Throckmorton, your wife
25 being asked to deliver any bills that she had relative to --

A They come by my house a couple of days before that and asked about the bills and we didn't have them all together at the time - that was my understanding - and we told them so and his wife got mad and they stormed out. I didn't understand at the time because they had agreed previously to that that Mr. Swan and him was coming down and settle the whole thing as soon as we could get the bills all straightened out.

Q You refer to two separate incidents. Would you separate them out for me one which occurred on June 3rd?

A June 3rd was the night around the table. This was before say June 1st or something when Bill Swan and his wife Grace come to my house the day that they withdrew the money from the account.

Q Now, on June 3rd, they had withdrawn the money from the bank account and came by your house and asked for the bills and Gracie got really mad; is that correct?

A At the time I didn't know they had drawn the money out of the account. They didn't mention it.

Q When did you learn they had withdrawn it out on June 1st?

A When he told us on June 3rd.

Q That he had withdrawn it out on June 1st.

A He didn't say what day, but I presume that he had because they come to Richmond that day and said they

1 paid --
2 Q I am hopelessly confused, Mr. Throckmorton.
3 Would you go back and if there is one
4 incident tell me and if it is one tell me and if it is three
5 tell me. If it is 13 tell me it is 13.
6 A I am talking about two incidents.
7 Q Start at the first.
8 A I answered your question. The question you
9 asked related to the first incident. The first thing that I
10 answered related to the second incident - the one he asked me
11 about the second and you asked me the question about the
12 first incident.
13 Q Since I professed to be confused, will you
14 tell me what happened on June 1st?
15 A Bill Swan and his wife came by my house to
16 get the bills from my wife.
17 Q Who else was present besides you and your
18 wife?
19 A So far as I know just the rest of my family.
20 Q Well, what constitutes the rest of your
21 family and were they present in the room in which all of this
22 transpired?
23 A Small children. I don't really remember,
24 they probably were in and out.
25 Q So basically the adults were you and your

1 wife --
2 A Certainly.
3 Q And on June 1st Gracie Swan and William Swan
4 came to your house and asked for the bills.
5 A Right.
6 Q And Gracie Swan got mad or irritated or
7 upset.
8 A Yes, because we hadn't received the bills.
9 Q You had not received the bills.
10 A All of his mail come to my house.
11 Q And on June 1st when the bills were requested
12 they weren't delivered because you didn't have them.
13 A Right.
14 Q It wasn't a matter of having them and
15 saying that they can't be delivered because they have to be
16 straightened out.
17 A We didn't have them all.
18 Q What were you missing?
19 A I didn't interfere with the bills at all.
20 My wife takes care of that kind of stuff and I earn a living.
21 Q You are professing to testify as to what
22 happened and I want to know what you know.
23 MR. PARIS: This is beyond the scope if
24 they are talking about the bills and so forth as
25 I don't know that the scope of my direct examination

1 covered that. I think he is limited on cross-
2 examination to the matters I brought up and relevant
3 matters that I asked him in that regard.
4 We are going into all this bill situation
5 which has absolutely nothing to do with the questions
6 I asked and I don't think it's proper.
7 MR. PEARSALL: May it please the Court, on
8 cross-examination if he asks about what happens at
9 a particular time I am entitled to develop the con-
10 text of it. I didn't expect to find two occasions,
11 but I found two occasions - so I have to explore
12 two occasions.
13 THE COURT: If you want to make him your
14 witness on those two occasions you certainly can do
15 that, but I believe you are limited to what was
16 brought out on direct examination unless you want
17 to bring out something on impeachment.
18 MR. PEARSALL: I respectfully submit that
19 the incidents of Gracie and Bill coming by the home
20 and discussing the settlement of the matters is
21 something that was opened up and he cannot compart-
22 mentalize it. I am entitled to find out what was
23 discussed at that time.
24 THE COURT: Mr. Pearsall, as a matter of
25 fact, what does it matter? Once they all entered

1 into the agreement does it really matter? Once they
2 sit down and sign the notarized agreement?
3 MR. PEARSALL: May it please the Court, I
4 don't want to have in the record something from which
5 it could be argued at a later time that the actions
6 were entirely appropriate.
7 THE COURT: This case is not about
8 appropriate actions; is it? It's about enforcement
9 of an agreement and fraud upon the Court. I think
10 a lot of questioning is irrelevant and beyond the
11 scope of the record.
12 MR. PEARSALL: May I vouch the record as
13 long as the witness will not be available again?
14 THE COURT: All right. You may do so.
15 MR. PEARSALL: Vouching the record then.
16 BY MR. PEARSALL: (Continuing)
17 Q Mr. Throckmorton, on June 1st, why was it
18 that your wife would not give Mr. and Mrs. William Swan the
19 bills that made her upset?
20 MR. PARIS: Judge, he --
21 A We didn't have them.
22 THE COURT: Just a second.
23 He is vouching the record. I will let him
24 do that.
25 MR. PARIS: I am going to say he answered

1 the question so many different ways --
2 MR. PEARSALL: That is what I am exploring
3 - the different ways he answered, Your Honor.
4 MR. THROCKMORTON: We didn't have them all.
5 We was just waiting for them all to come in.
6 BY MR. PEARSALL: (Continuing)
7 Q There wasn't any discrepancy that you knew
8 about in the bills.
9 A I knew nothing about the bills outside of
10 what mail come to the house.
11 Q How did you --
12 A It wasn't none of my business what bills
13 he had outside of what come in. They were given them accord-
14 ing to the agreement of him and Mr. Swan and they wanted to
15 settle it.
16 Q How did you know they were not --
17 A My wife said they were not come in.
18 Q Your wife said that?
19 A That is enough for me. The other, I heard.
20 Q The other you heard where?
21 A You are talking about the second instance
22 and I take my wife's word for that that the bills had not
23 come in. I do not go to the mailbox and fumble through the
24 mail.
25 Q Now on June 3rd you learned that they had

1 withdrawn the money on June 1st from the savings account.
2 A That is when he told me that the money was
3 his and he would do as he pleased with it. He did not make
4 the statement directly to me but to the group I was sitting in.
5 Q Who was in the group?
6 A My mother-in-law, father-in-law, my wife,
7 myself, and his wife.
8 Q Who are your father and mother-in-law?
9 A Mr. and Mrs. Swan.
10 Q What are their given names?
11 A Fred and --
12 Q Mr. and Mrs. Frederick Swan?
13 A Uh-huh.
14 Q That is sufficient. In their presence Mr.
15 William Swan told you that he had on June 1st closed out the
16 savings account; is that right?
17 A He said he closed it out and he had the
18 money and that he would do with it as he pleased.
19 Q Did he say he closed out the savings account
20 on June 1st?
21 A He said he got the money on June 1st.
22 Q He closed them out on June 1st.
23 A (Threw up his hands.)
24 Q Is that what he told you?
25 A He said he got the money. He didn't put it

1 in the words "closed it out."
2 Q Where did he get the money? Did he dig it
3 up out of the road?
4 MR. KAUFFMAN: I think that is very
5 argumentative.
6 THE COURT: I sustain the objection. I
7 have given him some latitude, but can you bring this
8 to a close? Any further questions?
9 A I don't remember the words he used.
10 BY MR. PEARSALL: (Continuing)
11 Q Was there any discussion in your presence
12 as to how the money should be distributed?
13 A Yes, sir.
14 Q And what was that?
15 A $3,000 to my wife, $3,000 to Ouida Adcock,
16 and a third to Bill - Mr. Swan - and Alma and Frederick.
17 Q Now, who said that in your presence?
18 A Bill and Mr. Swan both said that in my
19 presence that that is what Alexander Swan told them he
20 wanted done.
21 Q William Swan said in your presence that it
22 would be split three ways after taking $6,000 off the top.
23 A And expenses, yes, sir.
24 MR. PEARSALL: That completes the vouch,
25 Your Honor.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. PARIS:

Q That of course was before this date?

A Yes, sir.

Q That he said the money was his.

A Yes, sir.

MR. PEARSALL: I have further questions. I understood him to say that was the date --

THE COURT: Before the agreement was signed; is that correct?

MR. THROCKMORTON: Yes, sir.

MR. PARIS: That is all.

THE COURT: All right. Gentlemen, we will meet at 8:30 in the morning barring any unfortunate difficulty.

NOTE: Court recessed at 5:15 p.m.

1 conclusion had I thought the Court was going to do
2 anything but having it under advisement and await
3 briefs. I don't think we ought to wait the writing
4 of the evidence. I think the briefs ought to be in.
5 I could get mine in in ten days and with a comparable
6 period of time for the plaintiffs I would have plenty
7 of time before April 30th.
8 MR. PARIS: You say ten days. It depends
9 on what kind of matters I have on my desk when I
10 get back. I can get it promptly and as soon as I
11 can.
12 THE COURT: I am sure you will.
13 MR. PARIS: I call Mrs. Throckmorton.
14
15 SHIRLEY S. THROCKMORTON, the defendant
16 called as a witness in her own behalf, having previously been
17 duly sworn, testified as follows:
18 DIRECT EXAMINATION
19 BY MR. PARIS:
20 Q Would you please state your name - you are
21 still under oath - again for the record? State your name and
22 address.
23 A Shirley Swan Throckmorton, 7707 Woodman
24 Road.
25 Q What is your relationship to Alexander H.

1 Swan?
2 A Neice.
3 Q What is your relationship to Frederick Swan?
4 A I am his daughter.
5 Q And he is the brother of Alexander Swan;
6 is that correct?
7 A Yes, sir.
8 Q Getting right to the point, Mrs. Throckmorton,
9 what prompted you and your father to go to consult with Mr.
10 Pembleton?
11 A I went up to my father's to take the bills.
12 I went back to the nursing home to try to straighten out the
13 bill that there was and there was a discrepancy and I talked
14 with Mrs. Hare after Mr. William Swan and his wife had been
15 to my home and she said that they had already been and paid
16 the bill. She told them that it was not straightened out
17 yet.
18 MR. PEARSALL: I object to hearsay.
19 THE COURT: All right.
20 MR. PEARSALL: I would like to have that
21 stricken.
22 THE COURT: Objection sustained. The
23 objection is sustained and the record shall be
24 stricken as to that part of the testimony that is
25 not her own and refers to what somebody else told her.

1 MR. KAUFFMAN: Judge, may I say that I
2 think that is properly in evidence because Mr.
3 Pearsall listened to the same testimony when he put
4 her on and there was no objection from us. I don't
5 think he can get it in.
6 THE COURT: If he didn't object to it
7 yesterday he waived it and --
8 MR. PARIS: Judge, it is totally and com-
9 pletely immaterial anyway.
10 THE COURT: Thank you, Mr. Paris.
11 BY MR. PARIS: (Continuing)
12 Q Mrs. Throckmorton, you have been in the
13 courtroom now all day yesterday realizing what other people
14 say is not admissible if it's hearsay. So you just tell us
15 what if anything Mr. William Swan did or said to you that
16 caused you to consult with Mr. Pembleton. We are not talking
17 about bills or any of that. We are talking about what caused
18 you to consult with Mr. Pembleton.
19 A I was at my father's home - my husband and
20 myself --
21 Q Where was that?
22 A Buckingham County.
23 Q All right.
24 A And Bill came up and --
25 Q When you say -- There are a lot of

1 different parties involved in this case.
2 A William.
3 Q You used the name "William Swan" or what-
4 ever it might be.
5 A William Swan came up and I gave him the
6 bills and he said - we were in a discussion about the agree-
7 ment - the money belonged to him and that it was in a joint
8 account and that the money belonged to him and he made an
9 example of myself and my husband sitting there. He says you
10 and Richard have your money, I am sure, in joint account.
11 It's just as much yours as it is his. I said I think --
12 Q Just tell us what he said, please.
13 A The money belonged to him and he was going
14 to keep it.
15 Q So what did you do then?
16 A Well, he was told that it was supposed to
17 be distributed in the way my uncle wanted it done and that
18 it would be taken to court and it was explained to him that
19 if it had to go to court that it would take a lot out of the
20 estate and he said he realized that, but the money still
21 belonged to him and he was going to keep it.
22 Q What did you do? Did you go see anyone or
23 consult anyone?
24 A I went to Mr. Pembleton.
25 Q You and your father?

1 A Yes.
2 Q Did you, I assume, tell him the situation?
3 A Yes.
4 Q Now, you talked to Mr. Pembleton and Mr.
5 Vick at the same time. Or did you talk to Mr. Pembleton?
6 A We talked at first to Mr. Pembleton.
7 Q Did you enter into -- Strike that.
8 I will withdraw the question.
9 Did you discuss any fee arrangement with
10 Mr. Pembleton and Mr. Vick - either or both?
11 A Yes, we did.
12 Q Would you tell the Court what that fee
13 arrangement was?
14 A We told him we did not want to put a lot of
15 money into it because we did not know if we could get it back
16 in the estate or not and it was on a contingency basis.
17 Q Did he explain what a "contingency basis"
18 was?
19 A They told me usually they would rule a
20 third, but it was up to the Judge to decide what their fee
21 would be if they got it back into the estate and if they got
22 nothing back there would be nothing - no fee.
23 Q No fee whatsoever.
24 Now, you subsequently entered into this
25 agreement; is that correct?

A Yes, sir.

Q Were you in any conversations that Mr. Vick or Mr. Pembleton - either or both - had with Judge Snoddy?

A No, I was not.

Q You were, of course, advised of the agreement.

A Yes, I was. I was advised each time that Judge Snoddy and Mr. Vick talked or Mr. Pembleton and Judge Snoddy talked. They would call me and let me know what was going on.

Q Were you in court when the Judge approved the one-third fee arrangement?

A Yes, sir, I was.

MR. PEARSALL: I object.

MR. PARIS: What do you object to?

THE COURT: Just a minute. Let him state his objection.

MR. PEARSALL: We have by virtue of very precise request for admission the statement of this witness that she in no way was privy to what went on and I object to her now making a statement contrary to her admissions and I invite the Court to read those admissions.

MR. PARIS: Amended supplement answers to Admission Number 3.

THE COURT: All right, Mr. Pearsall. I will hear you. She says here she did not obtain the entry of the order and that it was obtained by her counsel and consequently any such service was arranged by counsel. She did not exhibit to the Court the agreement and was unaware that presentation to the Court was made by her counsel and she did not know the law governing estates and she relied on her attorney.

MR. PEARSALL: The request for admission read this way, Your Honor --

THE COURT: Just a minute. This said that she was in court on the day. That is the question before her. This does not address itself to that.

MR. PEARSALL: If the Court please, there is no way after something is said to object before it is said. You have to make a timely objection. We have a request for admissions directed to finding out what was revealed to the Court and the response to the request for admissions she says that she was unaware of representations made to the Court by her counsel.

THE COURT: I will overrule the objection. The question was: Was she in court. That question is not covered in this request for admissions.

1 MR. PARIS: I don't think her answers will
2 be inconsistent with what that says.
3 BY MR. PARIS: (Continuing)
4 Q Were you in court when the fee arrangement
5 was approved?
6 A In the Judge's chambers, yes, sir.
7 Q Were you in there? Let me withdraw that.
8 Tell the Court what happened when you went
9 to --
10 A Mr. Vick and I went to the Court. Mr. Vick
11 asked me to wait outside and he would call me in. He went
12 into Judge Moncure's chambers. I would say he was there
13 approximately three to four minutes and opened the door and
14 told me to come in. I did.
15 Q So, were you aware or were you made aware
16 at any time of anything that was said in the Judge's chambers
17 while you were not in there?
18 A No, sir.
19 Q All right. And then the Judge approved the
20 fee arrangement.
21 A Yes, he did.
22 MR. PARIS: You may cross-examine.
23 MR. PEARSALL: Does Mr. Kauffman want to
24 examine?
25 THE COURT: Do you have any questions, Mr.

1 Kauffman?

2 MR. KAUFFMAN: Yes, sir.

3 Do you want me to go first?

4 THE COURT: Yes, sir, then he will cross

5 on all of the testimony.

6

7 DIRECT EXAMINATION

8 BY MR. KAUFFMAN:

9 Q Let me ask you, as administrator of this

10 estate did you prepare or have prepared an inheritance tax

11 return?

12 A No, my attorneys did.

13 Q Your attorney did that. Did you sign it?

14 A Yes.

15 Q As administrator?

16 A Yes.

17 Q Were all bills of the estate paid by you

18 that you can determine?

19 A Yes, they were.

20 Q Can you tell us whether or not you were

21 ever presented with a bill by William E. Swan? Were you ever

22 presented with a claim from Dr. Sutphin, M.D. or Allied

23 Ambulance or for x-rays performed on behalf of your uncle?

24 A I paid those.

25 Q You paid those?

A Yes.

Q How about the funeral home, were you ever --

A The balance --

Q Were you ever presented with a bill or claim by William E. Swan to reimburse him for any amount he allegedly paid?

A Not other than what he is asking for on this suit.

Q My question is: Did he make a claim to you? Did he ever make a claim as administrator for you to pay him?

A No.

MR. KAUFFMAN: Thank you, ma'am, I have nothing further.

MR. PEARSALL: May it please the Court, I ask that all requests or questions in admissions and all responses be in evidence.

MR. KAUFFMAN: I object, Your Honor. He rested his case.

MR. PEARSALL: They brought it out.

MR. KAUFFMAN: I think it comes too late.

THE COURT: It didn't come too late. He can go into interrogation and he can offer it on cross-examination if it's of an impeaching nature.

MR. KAUFFMAN: Impeaching nature, but he wants to introduce lock, stock and barrel anything

1 orderly and my objections understandable to the
2 Court I would like to proceed with examination of
3 this witness.
4 THE COURT: Why don't you do that, Mr.
5 Pearsall.
6 Thank you very much for your help.
7 BY MR. PEARSAL: (Continuing)
8 Q Mrs. Throckmorton, did I understand that
9 you yourself as administrator paid the doctor and ambulance
10 and the x-rays for Alexander H. Swan?
11 A Yes, sir, that is correct.
12 Q Had that not already been paid prior to
13 your qualifying?
14 A Yes, but the checks were called back in.
15 Q The checks were called back in.
16 A Yes, sir.
17 Q You mean there weren't sufficient funds.
18 A No, that was not it. They were asked to
19 be turned back in from the people that they were paid to by
20 William E. Swan after the money was back in the estate and
21 I repaid them.
22 Q So they refunded the money to you and you
23 repaid them.
24 A That is correct. The checks were returned
25 back.

1 Q The check was turned back in to you as
2 administrator pursuant to your request.
3 A By my attorneys' request.
4 Q So the payment made by William E. Swan you
5 caused to be returned to you and you paid them to the original
6 recipients.
7 A Yes, my attorney called them back in and
8 I repaid them.
9 Q You are aware that William E. Swan had
10 taken the Home Beneficial policy and applied that to the
11 funderal bill; were you not?
12 A Yes, my father was present with him at the
13 funeral home at the time that happened.
14 Q Now, at the time of the July 16, 1971,
15 agreement and so that you will know exactly what I am talking
16 about and there will be no confusion, I send to you what has
17 been marked as Plaintiffs' Exhibit I and ask if you are
18 familiar with that? Have you ever seen that agreement before?
19 A Yes, sir, I have.
20 Q Is your signature on it?
21 A Yes, sir, it is.
22 Q Now, at the time that that agreement was
23 executed by all of the parties had you, as administrator,
24 already signed an agreement with Mr. Pembleton to pay him
25 one-third of the estate?

1 A On a contingency basis, yes.
2 Q You had already signed that agreement with
3 him?
4 A Yes.
5 Q At the time that this agreement was signed.
6 A Before this was signed.
7 Q That is what I say, by that time you had
8 already done it.
9 A Yes, sir.
10 Q Had you done that on June 9, 1971?
11 A I'm not sure of the exact date.
12 Q I show you a Xerox copy of that which was
13 marked as Exhibit A to your petition to authorize payment to
14 them and was filed with Exhibit K with the Bill of Complaint
15 and ask you if you recognize that?
16 A Yes, I do.
17 Q Is that the agreement you are talking about
18 that you signed with Mr. Pembleton?
19 A On a contingency basis.
20 Q To pay him on a contingency basis.
21 A Yes.
22 Q How did you sign it?
23 A 33 and one-third percent of the proceeds
24 of any recovery whether obtained as a result of suit or
25 compromise.

1 Q Now, remember the manner in which you
2 executed that. Who was making that promise to Mr. Pembleton?
3 A I was as administrator.
4 Q Will you read exactly what you have said
5 there and how you signed it?
6 A Now, exactly where do you want me to read?
7 I understand that I am to reimburse you --
8 Q Where your signature appears.
9 A Shirley S. Throckmorton, Administrator.
10 Q What else is there?
11 A Alexander H. Swan.
12 Q What else is there?
13 A I can't -- Alexander H. Swan and I can't
14 make out that word.
15 Q Is the word "niece"?
16 A Yes, it could be.
17 Q Did you promise Mr. Pembleton to give him a
18 third of whatever you obtained?
19 A Well, I did not write "administrator
20 Alexander H. Swan and niece" on there. I only signed my name.
21 I do not remember anything in regard to the word "niece."
22 Q Now you signed your name, but you didn't
23 put anything else on there.
24 A No, sir, I did not. I am not -- That is
25 not my handwriting and I do not recall anything pertaining to

1 the word "niece."
2 Q Do you recall anything pertaining to the
3 word "administrator"?
4 A Oh, yes. As I said it was on a contingency
5 basis.
6 Q Is it your contention that the word "niece"
7 was added thereafter you signed it?
8 A No, I would say that I would not say either
9 way because I don't know.
10 Q But you certainly had no intention to give
11 Mr. Pembleton a third of what you would get as niece.
12 A No, indeed - as niece.
13 Let me explain a little more specifically
14 so I can answer you correctly.
15 Q So we understand each other fully. You have
16 affirmed to the Court that this is an agreement that you
17 entered into as of the date that appears on it - June 9, 1971;
18 is that correct?
19 A Right, yes, sir.
20 Q And that the undersigned, or the person who
21 represented by the pronoun "I," requests Mr. Pembleton to
22 represent you and you are going to pay Mr. Pembleton a third
23 of any recovery that's obtained and you signed it with your
24 name and in the capacity as administrator as indicated on
25 there and your relationship as niece as indicated on there.

1 A Yes.
2 Q That sounds to me like you are agreeing --
3 MR. PARIS: Objection. That is argu-
4 mentative.
5 THE COURT: Objection sustained as to the
6 formation of the question.
7 MR. PEARSALL: Well, it's entirely
8 appropriate, Your Honor, as whether they had any
9 intentions as "niece" --
10 THE COURT: It certainly is. What it
11 sounds like to you, respectfully, is not the
12 crucial issue. You may rephrase the question in
13 another way.
14 MR. PEARSALL: I was simply trying to be
15 helpful to the witness and to explain the thrust
16 of my question. I will quit trying to be helpful.
17 BY MR. PEARSALL: (Continuing)
18 Q Tell me why you signed with the word "niece"
19 on it.
20 A I did not sign "niece" as that is not my
21 handwriting. I signed it Shirley S. Throckmorton. I was
22 administrator and I agreed under a contingency basis to pay
23 one-third on a contingency basis to Mr. Pembleton and Mr.
24 Vick --
25 Q Had you --

1 A -- as administrator.
2 Q Had you already qualified?
3 A As administrator out of the estate not to
4 pay him anything as niece of my uncle.
5 Q Had you qualified on the estate at that
6 time?
7 A No, I had not.
8 Q So you were signing it --
9 A No, -- Wait. I don't know. I am sorry.
10 I can't recall if this drawn up before I was qualified or
11 later that day. I am not sure, to be frankly honest with you.
12 Q Now, who sought out Mr. Pembleton? Did you
13 know Mr. Pembleton ahead of time?
14 A Yes, I knew Mr. Pembleton.
15 Q Did your father know Mr. Pembleton?
16 A Yes, and so did my deceased uncle.
17 Q And you and your father went to see Mr.
18 Pembleton.
19 A That is correct.
20 Q Did your father enter into an arrangement
21 to pay Mr. Pembleton a third --
22 MR. PARIS: Objection.
23 A No, indeed.
24 MR. PARIS: This is totally irrelevant to
25 the issue in the case.

1 THE COURT: I sustain the objection. We
2 are far afield in the issue. What we are concerned
3 about is fraud upon the Court.
4 What her father's relationship with Mr.
5 Pembleton was is certainly remote; is it not?
6 MR. PEARSALL: Throughout the entire liti-
7 gation, starting with the motion in chambers before
8 the case, there has been an attempt to keep me from
9 developing the context of this proceeding by which
10 $17,000 was paid for doing nothing.
11 Now I am trying to show the context and
12 part of the context is the fact, according to my
13 belief which I am prepared to establish, that we
14 have a loose type of arrangement with Frederick
15 Swan and Mrs. Throckmorton in her capacity as
16 administrator and as niece.
17 THE COURT: What is the relevancy of the
18 father's arrangement and his connection with Mr.
19 Pembleton? How does that help us in this situation?
20 MR. PEARSALL: Your Honor, I am going to
21 demonstrate before I am through, I think, that the
22 whole matter was a charade from start to finish.
23 Now, I would prefer not going beyond that and I give
24 you the actor and plot.
25 THE COURT: I will hear it subject to your

being able to show its relevancy and I know the defendants object. I will note their objection on the record.

We have 25 minutes, Mr. Pearsall. We will try an injunction case in that time and start a jury case at 10:00.

Can we get on to the nut of your case?

BY MR. PEARSALL: (Continuing)

Q At the time you entered into the arrangement to pay Mr. Pembleton a third of whatever was recovered, did your father also do that?

A He was with me.

Q And he signed a similar arrangement.

A I believe he did.

NOTE: At this time a paper was passed to the witness.

Q Is that the arrangement that your father signed at the same time?

A Yes, sir.

MR. PEARSALL: I ask it be admitted.

MR. KAUFFMAN: I object to the admission, Judge.

THE COURT: Objection sustained. It has no relevancy whatsoever. It is offered and refused. Let me have the document, please.

1 Mr. Pearsall, your next question, please,
2 sir.
3 BY MR. PEARSALL: (Continuing)
4 Q At the time of the July 16, 1971, writing
5 which you previously identified it was your intention to ask
6 the Court to allow Messrs Vick and Pembleton a third of the
7 property coming to your hands for administrating.
8 A No, sir. It was not my intention to ask
9 him to give them a third. It was for him to set an amount
10 he thought they should have.
11 Q It was not your intention to ask the Court --
12 MR. KAUFFMAN: He asked the question and
13 he didn't like the answer and he is going to
14 rephrase it.
15 THE COURT: Read the question back.
16 NOTE: At this time the last question was
17 read back.
18 MR. PEARSALL: I will withdraw the question.
19 BY MR. PEARSALL: (Continuing)
20 Q Did you sign a petition asking the Court
21 to authorize you to pay one-third of the monies in your hand
22 to Messrs Vick and Pembleton?
23 MR. PARIS: He has introduced, himself,
24 the court record and the court record as you read
25 yesterday said that the petition was to approve the

1 contract --

2 THE COURT: All right.

3 MR. PARIS: -- and that is exactly what it

4 says and that is a misquotation of the evidence.

5 THE COURT: Objection sustained. The record

6 speaks for itself, Mr. Pearsall.

7 BY MR. PEARSALL: (Continuing)

8 Q I want you to reconcile for me your state-

9 ment that you did not intend to ask the Court to pay them

10 one-third of the estate and yet you signed a petition to the

11 Court asking that the Court approve the payment of one-third

12 of the estate to them.

13 MR. PARIS: That is not an appropriate

14 question to ask her to reconcile and to answer two

15 questions. He may ask her questions but not to ask

16 her to reconcile.

17 THE COURT: He can ask: Can she reconcile.

18 BY MR. PEARSALL: (Continuing)

19 Q Can you reconcile your statements that you

20 did not intend to ask the Court to pay one-third and you

21 signed a petition to pay them one-third?

22 A I signed the paper for one-third, but it

23 was on a contingency basis and that the Judge would decide

24 if they would get a third or what he thought they should get

25 for the work they had done.

1 Q So you did not expect the Court to pay them
2 a third except upon explanation of why they should be paid a
3 third.
4 MR. KAUFFMAN: That calls for a conclusion
5 - what she expected the Court to do.
6 THE COURT: Judgment. The objection is
7 overruled. She can certainly state what she thought.
8 A Because I felt it was up to the Judge to
9 make a ruling on what he felt the attorneys should get.
10 BY MR. PEARSALL: (Continuing)
11 Q Did you feel it was proper for the Court to
12 have any understanding from you whatsoever what they had done
13 and why they were entitled to it?
14 A He had quite an amount of understanding of
15 what Mr. Vick and Mr. Pembleton had done.
16 MR. PEARSALL: May it please the Court --
17 THE COURT: That is not responsive to his
18 question. Did you understand the question?
19 BY MR. PEARSALL: (Continuing)
20 Q Did you feel that the Court was entitled to
21 receive, from you in making decisions as to pay them one-third,
22 information as to what they had done and what the circum-
23 stances were?
24 A Sir, before him he had papers of what they
25 had done and he made the ruling. I was not asked what --

1 Q My question: Did you feel like he ought to
2 know in order to exercise his judgment as to how much ought
3 to be paid them?
4 A Certainly, yes, sir.
5 Q Did you make any effort to tell him?
6 A He was told by Mr. Vick.
7 Q How do you know?
8 A I sat there in the court --
9 MR. PEARSALL: May it please the Court --
10 THE COURT: Let her finish the answer.
11 A (Continuing) I sat there in chambers when
12 he awarded the one-third and heard Mr. Vick go through the
13 papers with him of what he and Mr. Pembleton had done to get
14 the money back into the estate.
15 THE COURT: All right. Gentlemen, we have
16 a problem.
17 Mr. Pearsall, what do you want to do? Go
18 ahead?
19 MR. PEARSALL: May it please the Court, I
20 request that that answer be stricken as inconsistent
21 with the very carefully obtained responses for
22 admissions. To isolate exactly what we were being
23 confronted with it's inconsistent with requests for
24 admission --
25 THE COURT: Why not let the admission be

1 introduced and let the trier of the facts determine
2 the credibility?
3 MR. PARIS: The proper way would be to go
4 through questions and answers with her.
5 THE COURT: What do you want to do? I will
6 strike it. I will strike her answer if that is what
7 you want me to do.
8 MR. PEARSALL: I would like it stricken as
9 being inconsistent with requests for admissions.
10 THE COURT: Which request for admission are
11 you talking about? The last one? The third one, I
12 believe, is the one where she said she didn't know
13 anything about what went on between Vick and the
14 Judge.
15 MR. PEARSALL: She said that in several,
16 Your Honor. That is the reason I am trying --
17 The third, Shirley S. Throckmorton was
18 unaware of what representations were made to the
19 Court by her counsel.
20 THE COURT: All right, sir.
21 You want her answer in court now stricken
22 and you want to introduce that admission.
23 MR. PEARSALL: That's right.
24 THE COURT: I will grant the motion and
25 the record will strike her present answer as to

1 what she observed and what Vick said to Judge
2 Moncure in chambers in response to the inquiry of
3 whether or not they should be paid and the employ-
4 ment contract ratified. Instead I will substitute
5 her admission Number 3.
6 MRS. THROCKMORTON: Would I be out of order
7 to ask you --
8 THE COURT: Judgment.
9 Our rules may seem too strict to you at
10 times, but that is the way we have to do business.
11 We can only respond to questions and answers from
12 counsel.
13 All right, Mr. Pearsall, what is your next
14 question?
15 MR. PEARSALL: May it please the Court,
16 relative to that, since all of the requests were
17 aimed at the same thing - that precise thing - as
18 to what representations were made to the Court, I
19 also request response Number 1 filed -- Well, let's
20 see now. I will just leave it at Number 3, Your
21 Honor.
22 THE COURT: All right. Number 3 is now in
23 evidence as it relates to her present testimony and
24 that will be Exhibit Number P.
25 You may continue, Mr. Pearsall.

1 MR. PEARSALL: Yes, sir, Your Honor. Bear
2 with me a moment, if you will.
3 NOTE: At this time some papers were passed
4 to the witness.
5 BY MR. PEARSALL: (Continuing)
6 Q Mrs. Throckmorton, I sent to you some papers
7 and ask if you recognize the handwriting and I represent to
8 you they are not originals but Xeroxes.
9 A I believe this is the same one you showed
10 me yesterday.
11 Q Do you recognize it being your handwriting?
12 A Yes.
13 Q Will you read to the Court what you wrote
14 if what you wrote was true? Take your time to read it to
15 yourself first to affirm whether or not it was true and if
16 it was true read it to the Court.
17 MR. KAUFFMAN: I think you can read. You
18 are the trier of the facts and he can ask if it's
19 true or if anything is untrue. I don't think she
20 ought to read it to the Court in that manner.
21 THE COURT: Do you have an objection?
22 MR. PARIS: Secondly, if Your Honor please,
23 I am unaware of the relevancy of this particular
24 writing as regards to the issue in the case, Number
25 1. And Number 2 I certainly -- It's improper

1 cross-examination because it's not related to any
2 matter which I brought up on direct.
3 THE COURT: Let me see what the document
4 says.
5 MR. PARIS: I was very restrictive in my
6 direct examination. I was very restrictive in my
7 area --
8 THE COURT: Mr. Kauffman went over to some
9 other --
10 MR. KAUFFMAN: Funeral bills.
11 THE COURT: -- proper execution of her
12 duties as administrator broadly.
13 All right, Mr. Pearsall, I believe we have
14 gone into most of these matters before; have we not?
15 What is the relevancy of going into them now?
16 MR. PEARSALL: To reiterate examination
17 that Mr. Paris tried to conduct - according to his
18 own characterization - was aimed at having Mrs.
19 Throckmorton say that the reason Mr. Pembleton was
20 consulted was that Mr. William E. Swan refused to
21 make any settlement whatsoever and said that the
22 money was entirely his. That is a general con-
23 clusionary statement. I want to explore the occasion
24 which he said that and precisely what he did say and
25 what she has heretofore said about what happened.

THE COURT: I will rule it's not relevant at this time.

I think we have gone into this matter before and I see no need to go into it again. It's not really pertinent to the issues involved and I see no need to go into it any further, Mr. Pearsall.

MR. PEARSALL: May I vouch the record? In view of the shortness of the Court's time; may I do it at another time?

THE COURT: You can vouch the record if you will, but I fail to see the relevancy - the real issue - in the case. She did hire the man. What are you trying to establish through this witness and this document? I just don't see the necessity for doing it.

We have gone into it. She has testified from it. She has not varied her statement in those regards.

What is the relevancy --

MR. PEARSALL: I will give her an opportunity to vary her testimony.

THE COURT: See if you can cover it very swiftly, if you will.

BY MR. PEARSALL: (Continuing)

Q Mrs. Throckmorton, did William E. Swan at

1 any time say to your father in your presence that he was
2 prepared to settle the Alexander H. Swan matter by deliver-
3 ing $3,000 to you and $3,000 to Mrs. Adcock and a fourth in
4 the ways heretofore described - in your presence?
5 A No, sir.
6 Q Never made any such suggestion.
7 A No, he was willing at the beginning.
8 Q Well, let's find out when the beginning was.
9 A When my uncle first died he was willing to
10 go along and he and daddy - my father, Frederick Swan - was
11 supposed to handle it all and do it together and I was
12 supposed to assist them with the bills.
13 Q And what was that that they were going to
14 do together?
15 A They were coming to Richmond to take the
16 money out of the bank and change it from savings to checking.
17 I was to acquire the bills and get those straight for them.
18 Q And what was to happen with the rest?
19 A All of the funeral expenses were to be paid.
20 His bills were to be paid. Then the money was to be dis-
21 tributed.
22 Q How was it to be distributed? How much to
23 whom?
24 THE COURT: Just a minute, Mr. Pearsall.
25 I am sorry, sir.

I am still of the opinion that unless you are contesting the employment of an attorney in any case I don't see how this line of questioning is relevant.

Are you taking issue with the hiring of the firm in the first place? Is that your point that you are trying to establish that she should not have hired an attorney?

MR. PEARSALL: If Your Honor please, I would like to answer you out of the presence of the witness.

THE COURT: All right, sir.

Mrs. Witness, would you please step outside. Please do not discuss your testimony with any person outside.

NOTE: At this time the witness left the courtroom.

THE COURT: All right, sir.

MR. PEARSALL: May it please the Court, I want to show through this witness that she knew where the money was at the time she qualified.

THE COURT: Right.

MR. PEARSALL: For the purpose of the suit to locate the money.

THE COURT: Right.

MR. PEARSALL: That she represented to the

1 MR. PEARSALL: It was opened up by his
2 questioning why they went to see the attorney and
3 getting the answer that he wanted.
4 Now, strangely on yesterday when she was
5 asked what change occurred on June 3rd she didn't
6 know if any change that occurred on June 3rd.
7 THE COURT: Bring the witness back.
8 Mr. Pearsall, I will give you some latitude
9 to go ahead and interrogate this lady, but I will
10 say I think we are going over old ground and it is
11 highly irrelevant but I don't want to foreclose you
12 from making your record.
13 You do the best you can do with it.
14 We will stop in ten minutes and demean
15 the jury in the next case.
16 NOTE: At this time the witness returned
17 to the witness stand.
18 BY MR. PEARSALL: (Continuing)
19 Q Now, you stated, Mrs. Throckmorton, how
20 William Swan started out as to what was going to be done
21 and you stated that -- Did you state that William Swan
22 agreed at that time to pay one-third or was he insisting on
23 one-fourth at that time?
24 A It was not said before me. He was just
25 agreeable for he and my father to do it together but they did

1 not say before me what was to be done.
2 Q When did that change?
3 A Well, when he appeared to change is when
4 he came to my home - he and his wife - and that's when it
5 appeared to have changed. His attitude was completely differ-
6 ent.
7 Q Other than mind reading and taking skin
8 tests to determine what a person's emotional state is, what
9 did he overtly do that told you that he was going to settle
10 as you understood previously he was going to do?
11 A Because he was down that day to tend to
12 some business with the money and the estate and my father was
13 supposed to accompany him and he was asked if he had stopped
14 by to bring my dad and he said he did but he was not at home.
15 Q So you infer from the fact that --
16 MR. PARIS: Let her finish her answer.
17 BY MR. PEARSALL: (Continuing)
18 Q Had you finished your answer? Did you want
19 to add more? Add more if you want.
20 A If I am allowed to.
21 Q Certainly.
22 A My mother was present. She also asked why
23 my father had not come and he said he was not at home.
24 Q Have you finished your answer?
25 A Yes.

1 Q Now, from the fact that your father was not
2 brought by William Swan to Richmond at the time he was attend-
3 ing to the affairs of Alexander Swan you inferred that
4 William Swan was not going to settle.
5 A No, not that day, no, sir.
6 Q What on that day made you know that William
7 Swan was not going to settle?
8 A I did not know on that day.
9 Q What made you think, on that day, that he
10 wasn't going to settle?
11 A Am I allowed to say what I think?
12 THE COURT: That is what he asked you.
13 A (Continuing) From, I say, his reactions
14 when he was in my home.
15 BY MR. PEARSALL: (Continuing)
16 Q And what were his reactions that made you
17 think that he had changed from being agreeable to settling
18 to determining that he wasn't going to settle?
19 A From the way he acted.
20 Q How did he act, Mrs. Throckmorton? What
21 did he do?
22 A He was very evasive of anything that was
23 said and when they asked for the bills I may add that his
24 wife used very abusive and vulgar language to me in my own
25 home.

1 Q And what did that have to do with whether
2 William E. Swan was going to settle in the manner that he
3 said he was going to settle?
4 A Well, he certainly wasn't in the same mood
5 and attitude that he had been in before.
6 Q But he didn't tell you on that day --
7 A No, he did not on that day, no, sir.
8 Q When did he tell you that he was not going
9 to settle?
10 A Several days later.
11 Q And what were the circumstances of that?
12 A I believe I answered that before to you.
13 He came to my father's home --
14 Q Right.
15 A -- and we were sitting at the dining room
16 table and my father asked him at first where the watch was
17 of my uncle --
18 Q And what did he say?
19 A I have given it to Alma Kitchen and daddy
20 said that was fine. Of course that was my father's sister.
21 Q Now, tell me what happened in your presence
22 in your father's home that told you that William Swan was not
23 going to make any settlement and was claiming the money him-
24 self.
25 A Because that is exactly what he said that the

1 money belonged to him. Seven people have told me it's mine
2 and I am going to keep it. That is what made me believe that
3 he meant exactly what he said.
4 Q Did he in any way indicate that he would
5 not settle under any circumstances?
6 A No, he did not.
7 Q Did he in any way indicate to you, or to
8 your father, that he was going to consult Judge Snoddy and
9 find out from Judge Snoddy what the circumstances were?
10 A He never mentioned Judge Snoddy at the
11 home, no.
12 Q Now, would you read the bottom half of the
13 second page? In the interest of moving along --
14 THE COURT: Why not let her read it aloud?
15 Read it aloud and let's all hear it.
16 A Starting with what point?
17 MR. PEARSALL: May I approach the witness
18 in order to move this along?
19 THE COURT: Yes, sir.
20 NOTE: At this time the attorney approached
21 the witness stand.
22 MR. PEARSALL: May I just read it aloud
23 and have her verify it?
24 THE COURT: Do you have any objection?
25 MR. PARIS: Yes, sir. Judge, I submit it

1 doesn't make any difference whether she did or did
2 not hear anybody say they were consulting Judge
3 Snoddy. It's irrelevant.
4 THE COURT: I agree, but I will let him put
5 it in anyway.
6 MR. PEARSALL: No wonder, Your Honor -- It's
7 the wrong page.
8 BY MR. PEARSALL: (Continuing)
9 Q Would you read this: June 8 -- That is
10 the date you are talking about; isn't it?
11 A Would you like me to read it aloud?
12 THE COURT: Yes.
13 A (Continuing) Bill Swan said in the presence
14 of myself and my father that Alexander Swan had only put his
15 account in his name to protect his wife Marie Swan when she
16 was in Westbrook Sanatorium and that he did not want to send
17 her to a State institution. He also said he had not worked
18 for any of the money nor had Alexander Swan given it to him,
19 but that it was in his name and that it was his and he added
20 I have asked seven people and they say it's mine. F. W.
21 Swan asked him about the coins and he said there are $20
22 gold pieces and some other gold pieces. F. W. Swan gave Bill
23 the unpaid bills in the amount of $281.10 of which I have
24 given my father F. W. Swan. F. W. Swan asked him to settle
25 and he said he did not have any checks with him. That he

1 would go home and get the checks and come back, but he did not.
2 He called later and told my father -- I can finish that for
3 you I don't need to read it.
4 BY MR. PEARSALL: (Continuing)
5 Q I would like for you to read it.
6 A And told my father if he wanted to know
7 anything he could call Jack Snoddy, but that was on the
8 telephone not in the presence at the table.
9 Q Now, Bill Swan, according to your notation
10 there, on June 8 was going to go home to get the checkbook
11 but he didn't get the checkbook and he didn't come back.
12 A That is right.
13 Q He phoned and said if you want to know
14 anything talk to Jack Snoddy; is that correct?
15 A That is correct.
16 Q Now, what in that is a statement by Bill
17 Swan: I will not settle under any circumstances?
18 A Sir, as I just read before, as I testified
19 before, he said the money belonged to me. Seven people have
20 told me so.
21 Q But he also said --
22 A And he said he was going to keep it.
23 Q And he also said I will go home and get
24 the checkbook.
25 MR. PARIS: That is argumentative.

1 THE COURT: I sustain the objection.
2 MR. PEARSALL: I offer it --
3 THE COURT: I have two pages. Is this all
4 of the document?
5 MR. PEARSALL: Yes, sir.
6 THE COURT: Were there other pages?
7 MR. PEARSALL: She had the wrong page. I
8 had given her the wrong page.
9 THE COURT: Then the exhibit will be Q
10 which is admitted into evidence and noting the
11 defendants' objection. It is a two-page handwritten
12 document.
13 Next question, Mr. Pearsall.
14 BY MR. PEARSALL: (Continuing)
15 Q At the time you were talking to Bill Swan
16 in your father's home in Buckingham County on June 8th you
17 knew that Bill Swan had put the money in his name in the
18 bank at Appomattox.
19 A No, sir, I did not.
20 Q When did you learn that?
21 A When Mr. Vick told me where it was.
22 Q And did you know -- Did you have any idea
23 where the bank accounts were in Richmond prior to that?
24 A Uh, yes, uh --
25 Q How did you know that?

1 A Because when I went with my uncle to the
2 hospital he asked me to go to the bank and to get the cards
3 that the next day Alma Kitchen and Bill Swan and Carrie Swan
4 were supposed to come and he said he don't want to see any-
5 one. He said I would like for you to call them and tell them
6 not to come, but tell Bill to come and to bring my bank books.
7 He says I would like for you to go to the banks, get the cards,
8 bring them to me, and Monday morning call Mr. Pembleton to
9 come to the hospital.
10 Q Now in none of your conversations in your
11 home or in Buckingham County did you have any intimation
12 whatsoever as to whether the bank accounts in Richmond had
13 been closed or whether they were still intact in Richmond.
14 A No, not until he admitted that he had
15 taken the money and admitted that he had taken the money.
16 Q When did that happen?
17 A Well, to me it was the night - afternoon -
18 at my father's home.
19 Q So on June 8 he admitted to you that the
20 money had been moved.
21 A Yes, sir.
22 MR. PEARSALL: No further questions.
23 THE COURT: Any questions?
24 MR. PARIS: No further questions.
25 THE COURT: No questions.

Is that all of the defendants' evidence? Mr. Kauffman, is that all of your evidence?

MR. KAUFFMAN: Yes, sir, I rest, Your Honor.

THE COURT: All right. Any redirect evidence, Mr. Pearsall?

MR. PEARSALL: Mr. William E. Swan.

THE COURT: All right. What we will do is select the jury in the next case and I will take a brief recess and I will hear from Mr. Swan.

I will ask counsel to retire from the bench and we will hear the next case.

NOTE: At 10:08 a.m. a recess was taken until 10:42 a.m. following which the hearing continued, viz:

WILLIAM E. SWAN, a witness called by the attorney for the plaintiffs, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PEARSALL:

Q Mr. Swan, state whether at the time that you met with Mrs. Shirley S. Throckmorton and her father, Mr. Frederick Swan, at Mr. Swan's home in Buckingham County if they knew that you had moved the bank accounts from

1 Richmond and were prepared to settle?
2 A That's right, they were told the next day
3 after I --
4 Q Who was told?
5 A Freddie, my mother Carrie Swan, and Alma
6 Kitchen were told.
7 Q Now, on June 8 did you make that known to
8 Shirley Throckmorton?
9 A No, I didn't. Yes, I did - on June 8, yes.
10 Q Now, state whether or not on June 8 you
11 took any position or made any statement indicating that you
12 were not prepared to settle according to the wishes of
13 Alexander Swan.
14 A No, sir.
15 Q State whether or not you gave any indica-
16 tion whatsoever that you considered the money to be yours
17 and you were going to keep it.
18 A None whatsoever.
19 Q Relate to the Court, as fully as you can
20 recall in the order in which it happened, everything that
21 happened on the afternoon and evening of June 8, 1971.
22 A Well, I went by Freddie's house and I
23 didn't know what they wanted. Anyway I got into the kitchen
24 table and Freddie wanted me to write a check for $17,000 and
25 make it payable to Frederick Swan and so I told him --

1 MR. PARIS: Judge, this testimony was
2 elicited on the plaintiffs' case in chief and I
3 would object to rehashing it over and over.
4 Obviously it's back to hearsay evidence and every-
5 thing else from Freddie.
6 MR. PEARSALL: May it please the Court,
7 this is a rebuttal witness to go into explicit
8 details something that was summarized by Mrs.
9 Throckmorton in her defense testimony and I am
10 attempting to have this witness tell explicitly
11 in detail something that happened in the sequence --
12 THE COURT: I will allow rebuttal testimony.
13 Let him rebut the principal points that we are
14 concerned about, Mr. Pearsall, in response to
15 specific questions, if you would.
16 MR. KAUFFMAN: My objection is that what
17 Freddie said was hearsay.
18 THE COURT: I sustain the objection as to
19 what Freddie said as being hearsay. He can say
20 what he did.
21 MR. PEARSALL: I take it your ruling
22 excludes anything that has been testified to before.
23 THE COURT: You can rebut with this witness,
24 as I understand the law the statements made on
25 cross that are relevant to the inquiry here. He

1 cannot testify to hearsay evidence, but anything
2 that he wants to rebut he certainly can do it.
3 BY MR. PEARSALL: (Continuing)
4 Q Did you state whether or not by your phone
5 call to Frederick Swan telling him that he could get in touch
6 with Judge Snoddy and you were intending on using any
7 expression to indicate that you treated the money as yours
8 and that you were not going to make any settlement?
9 A No, sir.
10 THE COURT: Mr. Pearsall, if it would help
11 at all I will take judicial notice of the fact that
12 he is going to controvert every statement made by
13 the other parties, that he was ready to settle,
14 and that his position is that he was ready to
15 settle and he was also ready to settle in accordance
16 with the deceased's desires.
17 MR. PEARSALL: Thank you, Your Honor.
18 THE COURT: If he testified until tomorrow
19 he would still say that he was ready to settle as
20 laid out by the deceased.
21 MR. PARIS: I don't have any questions.
22 MR. PEARSALL: That is all.
23 THE COURT: I think I also understand your
24 position that it would be $3,000 to each Ouida
25 Adcock and Shirley Throckmorton and the rest would

C. D. 520 E. F. Drawer #6

Alexander H. Swan Admr. vs. William E. Swan et al

BILL OF COMPLAINT

TO THE HONORABLE WILLIAM A. MONCURE, JR., JUDGE:

Now comes Shirley S. Throckmorton, Administrator of the Estate of Alexander H. Swan, deceased, qualified before this Court in such capacity on June 9, 1971, and sets forth the following as and for her Bill of Complaint:

1. That 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 Ouita S. Adcock, Gladys S. Kesterson, and Hugh Swan, all children of a deceased brother, William W. Swan.

2. That at the time of the death of Alexander H. Swan, decedent owned a certain 1964 Chevrolet automobile titled in his name, a rare and valuable coin collection, a 21-jewel gold Hamilton railroad watch as well as three savings accounts and one checking account, all located in the City of Richmond, Virginia.

3. That subsequent to the death of Alexander H. Swan, the defendant, William E. Swan, wrongfully converted to his own use and took possession of the automobile, coin collection, watch and numerous valuable books, records and papers belonging to the Estate which he is presently holding at his home in Wingina, Buckingham County, Virginia, despite demands upon him and against the rightful claim of your Administrator and the heirs-at-law of Alexander H. Swan, all of which the defendant, William E. Swan has refused to deliver to the plaintiff.

4. That the decedent, at the time of his death on May 9, 1971, owned and maintained a joint checking account with the bank of the defendant, First & Merchants National Bank in Richmond, Virginia, upon which, for the sole purpose of the convenience of the decedent, the defendant, William E. Swan, was permitted to make such withdrawals as decedent might from time to time direct; the balance in such checking account presently totals One Hundred Thirty One and 81/100 ($131.81) Dollars.

5. That on the date of decedent's death, decedent also owned and maintained joint savings accounts in Franklin Federal Savings and Loan Association, Richmond, Virginia; Richmond Federal Savings and Loan Association, Richmond, Virginia and The Bank of Virginia, Richmond, Virginia, upon which, for the sole purpose of the convenience of the decedent, the defendant, William E. Swan, was permitted to make such withdrawals as decedent might, from time to time direct; that on June 3, 1971, the defendant, William E. Swan, withdrew Eighteen Thousand Eighty Eight and 48/100 ($18,088.48) Dollars plus interest from May 9, 1971 to June 3, 1971 from Franklin Federal Savings and Loan Association, Twenty Thousand Five Hundred Sixty Five and 32/100 ($20,565.32) Dollars from Richmond Federal Savings and Loan Association and the sum of Nine Thousand Four Hundred Fourteen and 40/100 ($9,414.40) Dollars, from the Bank of Virginia, all of the funds belonging to the decedent; that plaintiff has been reliably informed and therefore alleges that the defendant, William E. Swan, has converted said funds to his own use and has deposited said funds to his own account in the Bank of the defendant, The Farmers National Bank of Appomattox, Virginia.

6. In view of the foregoing, plaintiff verily believes and alleges that an emergency exists and that if the properties of the estate are not produced and preserved by this Court, irreparable harm will result and the Administrator will be unable to properly administer said Estate or account for assets belonging thereto,

WHEREFORE, plaintiff prays:

A. That a seizure order be issued forthwith by this Court directing the Sheriff of the County of Buckingham, Virginia, to take from defendant, William E. Swan; physical possession of the 1964 Chevrolet automobile titled in the name of the decedent, the coin collection, gold railroad Hamilton watch as well as all books, records and papers belonging to the decedent and any other assets to which the Administrator is entitled, said Sheriff to deliver up such property and assets to the Administrator or counsel for the Estate upon request by either of them.

B. That an order be issued forthwith and served on the President of the defendant, The Farmers National Bank of Appomattox, Virginia and upon the defendant, William E. Swan, enjoining and forbidding either of said defendants from disbursing, withdrawing, alienating or diminishing of any of the monies or funds on deposit with The Farmers National Bank of Appomattox, Virginia, in the name of William E. Swan or any nominee for him and enjoining the defendant, William E. Swan from disbursing, withdrawing, alienating or diminishing any monies or funds belonging to the Estate in possession or on deposit to the account or accounts of the defendant, William E. Swan, wherever located, until the further order of this Court.

C. That an order be issued forthwith and served on the President of the defendant, First & Merchants National Bank, Richmond,

Virginia and upon the defendant, William E. Swan, enjoining and forbidding disbursement, withdrawal, alienation or diminution of any of the aforementioned monies or funds on deposit in Account Number 11-04-8103 in First & Merchants National Bank of Richmond, Virginia, until the further order of this Court.

THE ESTATE OF ALEXANDER H. SWAN, DECEASED

By Shirley S. Throckmorton
Shirley S. Throckmorton,
Administrator

STATE OF VIRGINIA

COUNTY OF HENRICO, to-wit:

This day came Shirley S. Throckmorton, Administrator of the Estate of Alexander H. Swan, Deceased, and made oath that the above allegations of the Bill of Complaint are true and correct to the best of her knowledge, information and belief.

Signed and sworn to before me this 11th day of June, 1971.

My commission expires August 19, 1974.

Edith M. Wilson
Notary Public

Howard C. Vick, p. q.
Howard C. Vick
5310 Markel Road
Richmond, Virginia 23230

Robert H. Pembleton, p. q.
Robert H. Pembleton
5310 Markel Road
Richmond, Virginia 23230

ORDER

This day came the plaintiff, ~~[illegible]~~ of the Estate of Alexander H. Swan, dec'd, ~~[illegible]~~ Shirley S. Throckmorton, Administrator, by counsel, and filed her ~~its~~ Bill of Complaint, under oath, which alleges that the defendant, William E. Swan, has wrongfully converted to his own account the sum of Eighteen Thousand Eighty Eight and 48/100 ($18,088.48) Dollars, plus interest from May 9, 1971 to June 3, 1971 owned by decedent and previously on deposit with Franklin Federal Savings and Loan Association, the sum of Twenty Thousand Five Hundred Sixty Five and 32/100 ($20,565.32) Dollars owned by decedent and previously on deposit with Richmond Federal Savings and Loan Association, and the sum of Nine Thousand Four Hundred Fourteen and 40/100 ($9,414.40) Dollars owned by decedent and previously on deposit with the Bank of Virginia, and has placed said sums to his own account with the defendant, The Farmers National Bank of Appomattox, Virginia, and that despite demand on the said William E. Swan, he has failed and refused to deliver said funds of the Estate to the Administrator, Shirley S. Throckmorton. Said Bill of Complaint further alleges that an emergency exists and that if the defendants, The Farmers National Bank of Appomattox, Virginia and William E. Swan are not enjoined and restrained ~~forbidden~~ from disbursing, withdrawing, alienating or diminishing such funds, irreparable harm will be suffered by the plaintiff, and was argued by counsel.

The Court, after due consideration, finds that an emergency does exist, and that irreparable harm may be suffered by the Estate if said

funds are not preserved intact.

It is, therefore, ORDERED and DECREED that the defendants, William E. Swan and The Farmers National Bank of Appomattox, Virginia, be, and they hereby are enjoined and ~~forbidden~~ restrained from disbursing, withdrawing, alienating or diminishing any monies or funds on deposit with The Farmers National Bank of Appomattox, Virginia, in the name of William E. Swan or any nominee for him, until the further order of this Court.

It is further ORDERED that the defendant, William E. Swan, be, and he hereby is enjoined and ~~forbidden~~ restrained from disbursing, withdrawing, alienating or diminishing any funds belonging to the Estate of Alexander H. Swan, or previously in the name of Alexander H. Swan or William E. Swan, now in the possession of, or on deposit to the account or accounts of William E. Swan or any nominee for him, wherever located, until the further order of this Court.

It is further ORDERED that a copy of this order be served on each of the defendants, William E. Swan and The Farmers National Bank of Appomattox, Virginia.

It appearing proper so to do, no bond is required.

~~Enter.~~

Enter 6-11-71

We askfor this:

Howard C. Vick, p.q.
Howard C. Vick
5310 Markel Road
Richmond, Virginia 23230

Robert E. Pembleton, p.q.
Robert E. Pembleton
5310 Markel Road
Richmond, Virginia 23230

Entered JUN 11 1971

O. B. 203 Page 68

ORDER

This day came the plaintiff, ~~[illegible]~~ Shirley S. Throckmorton, Administrator, of the Estate of Alexander H. Swan, by counsel, and filed her ~~its~~ Bill of Complaint, under oath, which alleges that there is a checking account on deposit with the defendant, First and Merchants National Bank, Richmond, Virginia, under account number 11-04-8103, in the names of A. H. Swan or William E. Swan, containing the sum of One Hundred Thirty One and 81/100 ($131.81) Dollars, which funds are the property of the plaintiff, that an emergency exists and that if the defendants, First & Merchants National Bank and William E. Swan are not enjoined and restrained ~~forbidden~~ from disbursing, withdrawing, alienating or diminishing such funds, irreparable harm will be suffered by the plaintiff, and was argued by counsel.

The Court, after due consideration, finds that an emergency does exist, and that irreparable harm may be suffered by the Estate if said funds are not preserved intact.

It is therefore, ORDERED and DECREED that the defendants, First & Merchants National Bank and William E. Swan be, and they hereby are, enjoined and restrained ~~forbidden~~ from disbursing, withdrawing, alienating or diminishing any monies or funds in account number 11-04-8103 until the further order of this Court.

It is further ORDERED that a copy of this order be served

on each of the defendants, William E. Swan and First and Merchants National Bank.

It appearing proper to do so, bond shall not be required.

Enter 6-11-71

We ask for this:

Howard C. Vick, p.q.
Howard C. Vick
5310 Markel Road
Richmond, Virginia 23230

Robert E. Pembleton, p.q.
Robert E. Pembleton
5310 Markel Road
Richmond, Virginia 23230

Entered JUN 11 1971

O. B. 203 Page 70

ORDER

This day came the plaintiff, ~~Estate of Alexander H. Swan,~~ of the Estate of Alexander H. Swan, deceased, Shirley S. Throckmorton, Administrator, by counsel, and filed herein ~~its~~ her Bill of Complaint, under oath, which Bill of Complaint alleges that the defendant, William E. Swan, is in possession of a 1964 Chevrolet automobile, a coin collection, a 21-jewel Hamilton Railroad watch and valuable books, records and papers belonging to the plaintiff, and that despite demand on the said William E. Swan, he has failed and refused to deliver the aforesaid property of the Estate to the Administrator, Shirley S. Throckmorton. Said Bill of Complaint further alleges that an emergency exists and that if the aforesaid property is not delivered up to the said Administrator, irreparable harm will be suffered by said Estate, and was argued by counsel.

The Court, after due consideration, finds that an emergency does exist and that irreparable harm may be suffered by the Estate unless possession of the aforesaid property is delivered up to the Administrator, Shirley S. Throckmorton, by the defendant, William E. Swan.

It is therefore, ORDERED and DECREED that the Sheriff of the County of Buckingham, Virginia, be and he hereby is, directed to serve a copy of this order on the defendant, William E. Swan forthwith, and to forthwith seize and take possession of one 1964 Chevrolet automobile titled in the name of Alexander H. Swan, deceased, one coin collection, one 21-jewel Hamilton Railroad watch, and all books, papers and records of the Estate of Alexander H. Swan, now in the possession of the said

William E. Swan and deliver said properties to Shirley S. Throckmorton, Administrator of the Estate of Alexander H. Swan or to counsel, for the plaintiff.

It appearing proper so to do, no bond is required

Enter 6-11-71

Enter: / /

Judge

We ask for this:

, p.q.

Howard C. Vick
5310 Markel Road
Richmond, Virginia 23230

, p.q.

Robert E. Pembleton
6310 Markel Road
Richmond, Virginia 23230

A copy,

Teste Clerk

By Deputy Clerk.

- 2 -

Executed this 14th day of JUNE 1971

in Buckingham County by delivering a true copy of this within

ORDER to WILLIAM E. SWAN in person.

H. B. ADAMS
Sheriff, Buckingham County

By Donald Davis
Dep. Sheriff

Alexander H. Swan's Admr.

vs

William E. Swan et al

Serve on:

William E. Swan,
Wingina,
Buckingham County, Va.

ORDER

This day came the plaintiff, ~~Estate of Alexander H. Swan, deceased,~~ of the Estate of Alexander H. Swan, deceased, Shirley S. Throckmorton, Administrator, by counsel, and filed herein ~~its~~ her Bill of Complaint, under oath, which Bill of Complaint alleges that the defendant, William E. Swan, is in possession of a 1964 Chevrolet automobile, a coin collection, a 21-jewel Hamilton Railroad watch and valuable books, records and papers belonging to the plaintiff, and that despite demand on the said William E. Swan, he has failed and refused to deliver the aforesaid property of the Estate to the Administrator, Shirley S. Throckmorton. Said Bill of Complaint further alleges that an emergency exists and that if the aforesaid property is not delivered up to the said Administrator, irreparable harm will be suffered by said Estate, and was argued by counsel.

The Court, after due consideration, finds that an emergency does exist and that irreparable harm may be suffered by the Estate unless possession of the aforesaid property is delivered up to the Administrator, Shirley S. Throckmorton, by the defendant, William E. Swan.

It is therefore, ORDERED and DECREED that the Sheriff of the County of Buckingham, Virginia, be and he hereby is, directed to serve a copy of this order on the defendant, William E. Swan forthwith, and to forthwith seize and take possession of one 1964 Chevrolet automobile titled in the name of Alexander H. Swan, deceased, one coin collection, one 21-jewel Hamilton Railroad watch, and all books, papers and records of the Estate of Alexander H. Swan, now in the possession of the said

William E. Swan and deliver said properties to Shirley S. Throckmorton, Administrator of the Estate of Alexander H. Swan or to counsel, for the plaintiff.

It appearing proper so to do, no bond is required

Enter 6-11-71 Judge

Enter

We ask for this:

p.q.
Howard C. Vick
5310 Markel Road
Richmond, Virginia 23230

p.q.
Robert E. Pembleton
6310 Markel Road
Richmond, Virginia 23230

A copy,

Teste: Clerk

By Deputy Clerk.

Executed this 14th day of JUNE 1971

in Buckingham County by delivering a true copy of this within

ORDER to WILLIAM E. SWAN in person.

H. B. ADAMS
Sheriff, Buckingham County

By Donald Davis
Dep. Sheriff

Alexander H. Swan's Admr.

vs

Wolliam E. Swan et al

Serve on:

William E. Swan,
Wingina,
Buckingham County, Va.

ORDER

This day came the plaintiff, ~~Estate of Alexander H. Swan, deceased~~ of The Estate of Alexander H. Swan, deceased, Shirley S. Throckmorton, Administrator, by counsel, and filed her ~~its~~ Bill of Complaint, under oath, which alleges that there is a checking account on deposit with the defendant, First and Merchants National Bank, Richmond, Virginia, under account number 11-04-8103, in the names of A. H. Swan or William E. Swan, containing the sum of One Hundred Thirty One and 81/100 ($131.81) Dollars, which funds are the property of the plaintiff, that an emergency exists and that if the defendants, First & Merchants National Bank and William E. Swan are not enjoined and restrained ~~forbidden~~ from disbursing, withdrawing, alienating or diminishing such funds, irreparable harm will be suffered by the plaintiff, and was argued by counsel.

The Court, after due consideration, finds that an emergency does exist, and that irreparable harm may be suffered by the Estate if said funds are not preserved intact.

It is therefore, ORDERED and DECREED that the defendants, First & Merchants National Bank and William E. Swan be, and they hereby are, enjoined and restrained ~~forbidden~~ from disbursing, withdrawing, alienating or diminishing any monies or funds in account number 11-04-8103 until the further order of this Court.

It is further ORDERED that a copy of this order be served

Joe A. Mayo
Dep. Clerk.

on each of the defendants, William E. Swan and First and Merchants National Bank.

It appearing proper to do so, bond shall not be required. ~~Enter.~~ / /

Enter 6-11-71 Judge

We ask for this:

, p.q.
Howard C. Vick
5310 Markel Road
Richmond, Virginia 23230

p.q.
Robert E. Pembleton
5310 Markel Road
Richmond, Virginia 23230

A copy,

Teste: E. E. Warriner Clerk

By Lois A. Knapp Deputy Clerk.

Executed this 14th day of JUNE 1971

in Buckingham County by delivering a true copy of this within

ORDER to WILLIAM E. SWAN in person.

H. B. ADAMS
Sheriff, Buckingham County

By Arnold Davis
Dep. Sheriff

ORDER

This day came the plaintiff, ~~Estate of Alexander H. Swan, deceased~~ of the Estate of Alexander H. Swan, deceased, Shirley S. Throckmorton, Administrator, by counsel, and filed ~~its~~ her Bill of Complaint, under oath, which alleges that the defendant, William E. Swan, has wrongfully converted to his own account the sum of Eighteen Thousand Eighty Eight and 48/100 ($18,088.48) Dollars, plus interest from May 9, 1971 to June 3, 1971 owned by decedent and previously on deposit with Franklin Federal Savings and Loan Association, the sum of Twenty Thousand Five Hundred Sixty Five and 32/100 ($20,565.32) Dollars owned by decedent and previously on deposit with Richmond Federal Savings and Loan Association, and the sum of Nine Thousand Four Hundred Fourteen and 40/100 ($9,414.40) Dollars owned by decedent and previously on deposit with the Bank of Virginia, and has placed said sums to his own account with the defendant, The Farmers National Bank of Appomattox, Virginia, and that despite demand on the said William E. Swan, he has failed and refused to deliver said funds of the Estate to the Administrator, Shirley S. Throckmorton. Said Bill of Complant further alleges that an emergency exists and that if the defendants, The Farmers National Bank of Appomattox, Virginia and William E. Swan are not enjoined and ~~forbidden~~ restrained from disbursing, withdrawing, alienating or diminishing such funds, irreparable harm will be suffered by the plaintiff, and was argued by counsel.

The Court, after due consideration, finds that an emergency does exist, and that irreparable harm may be suffered by the Estate if said funds are not preserved intact.

It is, therefore, ORDERED and DECREED that the defendants, William E. Swan and The Farmers National Bank of Appomattox, Virginia, be, and they hereby are enjoined and ~~forbidden~~ restrained from disbursing, withdrawing, alienating or diminishing any monies or funds on deposit with The Farmers National Bank of Appomattox, Virginia, in the name of William E. Swan or any nominee for him, until the further order of this Court.

It is further ORDERED that the defendant, William E. Swan, be, and he hereby is enjoined and ~~forbidden~~ restrained from disbursing, withdrawing, alienating or diminishing any funds belonging to the Estate of Alexander H. Swan, or previously in the name of Alexander H. Swan or William E. Swan, now in the possession of, or on deposit to the account or accounts of William E. Swan or any nominee for him, wherever located, until the further order of this Court.

It is further ORDERED that a copy of this order be served on each of the defendants, William E. Swan and The Farmers National Bank of Appomattox, Virginia.

~~Enter.~~ It appearing proper so to do, no bond is required.

Enter 6-11-71 Judge

We ask for this:

Howard C. Vick, p.q.
Howard C. Vick
5310 Markel Road
Richmond, Virginia 23230

A copy,

Teste: Clerk

Robert E. Pembleton, p.q.
Robert E. Pembleton
5310 Markel Road
Richmond, Virginia 23230

By Deputy Clerk.

PROOF OF SERVICE

Returns shall be made hereon, showing service of subpoena in chancery issued June 11, 1971, with copy of Bill of Complaint filed June 11, 1971, attached:

The Farmers National Bank of Appomattox,
Appomattox, Virginia.

EXECUTED 15 day of June 1971, by delivering a true copy of the within Complaint to Bill Hunter, Farmers National Bank in person in Appomattox Co

L. L. Stanley
SHERIFF, APPOMATTOX COUNTY, VA

BY C A Reynolds DEPUTY SHERIFF

filed June 17-1971
Lois A. Mapp
Deputy Clerk.

ORDER

This day came the plaintiff, ~~Estate of Alexander H. Swan, deceased~~ of the Estate of Alexander H. Swan, deceased, Shirley S. Throckmorton, Administrator, by counsel, and filed ~~its~~ her Bill of Complaint, under oath, which alleges that the defendant, William E. Swan, has wrongfully converted to his own account the sum of Eighteen Thousand Eighty Eight and 48/100 ($18,088.48) Dollars, plus interest from May 9, 1971 to June 3, 1971 owned by decedent and previously on deposit with Franklin Federal Savings and Loan Association, the sum of Twenty Thousand Five Hundred Sixty Five and 32/100 ($20,565.32) Dollars owned by decedent and previously on deposit with Richmond Federal Savings and Loan Association, and the sum of Nine Thousand Four Hundred Fourteen and 40/100 ($9,414.40) Dollars owned by decedent and previously on deposit with the Bank of Virginia, and has placed said sums to his own account with the defendant, The Farmers National Bank of

EXECUTED 14 day of June 1971, by delivering a true copy of the within Notice to The Farmers National Bank of Appomattox to DeWitt T. Evans in person in Appomattox County, Virginia.

L. L. Stanley
SHERIFF, APPOMATTOX COUNTY, VIRGINIA

By J. G. Richardson DEPUTY SHERIFF

Attorney clerk

Appomattox, Virginia, and that despite demand on the said William E. Swan, he has failed and refused to deliver said funds of the Estate to the Administrator, Shirley S. Throckmorton. Said Bill of Complant further alleges that an emergency exists and that if the defendants, The Farmers National Bank of Appomattox, Virginia and William E. Swan are not enjoined and restrained ~~forbidden~~ from disbursing, withdrawing, alienating or diminishing such funds, irreparable harm will be suffered by the plaintiff, and was argued by counsel.

The Court, after due consideration, finds that an emergency does exist, and that irreparable harm may be suffered by the Estate if said funds are not preserved intact.

It is, therefore, ORDERED and DECREED that the defendants, William E. Swan and The Farmers National Bank of Appomattox, Virginia, be, and they hereby are enjoined and restrained ~~forbidden~~ from disbursing, withdrawing, alienating or diminishing any monies or funds on deposit with The Farmers National Bank of Appomattox, Virginia, in the name of William E. Swan or any nominee for him, until the further order of this Court.

It is further ORDERED that the defendant, William E. Swan, be, and he hereby is enjoined and restrained ~~forbidden~~ from disbursing, withdrawing, alienating or diminishing any funds belonging to the Estate of Alexander H. Swan, or previously in the name of Alexander H. Swan or William E. Swan, now in the possession of, or on deposit to the account or accounts of William E. Swan or any nominee for him, wherever located, until the further order of this Court.

It is further ORDERED that a copy of this order be served

on each of the defendants, William E. Swan and The Farmers National Bank of Appomattox, Virginia.

It appearing proper so to do, no bond is required.

Enter 6-11-71 Judge

We ask for this:

Howard C. Vick, p.q.
Howard C. Vick
5310 Markel Road
Richmond, Virginia 23230

R. E. Pembleton, p.q.
Robert E. Pembleton
5310 Markel Road
Richmond, Virginia 23230

A copy,

Teste: E. G. Warriner Clerk

By E. G. Warriner Deputy Clerk.

Lois A. Mapp, Deputy clerk

Form 650—1,500 Books 5/1/68

R 10378

RECEIPT FOR FEES COLLECTED

County of Appomattox Virginia June 16, 1971

Received of Edith M. Wilson $1.25

One and 25/100 DOLLARS

For Bill of Complaint (Type of Service or Process) On June 15, 1971 (Date of Service)

In matter of Swan vs Swan, et al

Peggy H. Rogers Deputy Sheriff—Sergeant Clerk

ORIGINAL—TO PAYER

PROOF OF SERVICE

Returns shall be made hereon, showing service of subpoena

in chancery issued June 11, 1971, with copy of Bill of Complaint

filed June 11, 1971, attached:

Mr. Weatherford Mgr. Commercial Recs.
6/15/71

First and Merchants National Bank,
827 East Main Street,
Richmond, Virginia.

EXECUTED IN THE CITY OF RICHMOND, VIRGINIA, THIS 15TH DAY OF June, 1971 BY DELIVERING A COPY OF THE ABOVE MENTIONED PAPERS ATTACHED TO EACH OTHER.

TO: Mr. Weatherford

THE: Mgr. Commercial Recs. OF:

First Merchants National Bank

PLACE OF BUSINESS OF SAID

First + Merchants National Bank BEING

IN SAID CITY.

JAMES H. YOUNG
SHERIFF CITY OF RICHMOND, VA.

By: David F. Eller
DEPUTY SHERIFF

June 16-1971
Lois A. Mapp
Deputy Clerk.

ORDER

This day came the plaintiff, ~~Estate of Alexander H. Swan,~~ of the Estate of Alexander H. Swan, deceased, ~~deceased~~, Shirley S. Throckmorton, Administrator, by counsel, and filed her ~~its~~ Bill of Complaint, under oath, which alleges that there is a checking account on deposit with the defendant, First and Merchants National Bank, Richmond, Virginia, under account number 11-04-8103, in the names of A. H. Swan or William E. Swan, containing the sum of One Hundred Thirty One and 81/100 ($131.81) Dollars, which funds are the property of the plaintiff, that an emergency exists and that if the defendants, First & Merchants National Bank and William E. Swan are not enjoined and restrained ~~forbidden~~ from disbursing, withdrawing, alienating or diminishing such funds, irreparable harm will be suffered by the plaintiff, and was argued by counsel.

The Court, after due consideration, finds that an emergency does exist, and that irreparable harm may be suffered by the Estate if said funds are not preserved intact.

It is therefore, ORDERED and DECREED that the defendants, First & Merchants National Bank and William E. Swan be, and they hereby are, enjoined and restrained ~~forbidden~~ from disbursing, withdrawing, alienating or diminishing any monies or funds in account number 11-04-8103 until the further order of this Court.

It is further ORDERED that a copy of this order be served

Teste: [illegible] Deputy Clerk.

on each of the defendants, William E. Swan and First and Merchants National Bank.

It appearing proper to do so, bond shall not be required. ~~Enter.~~ / /

Enter 6-11-71 [illegible] Judge

We ask for this:

[illegible], p.q.
Howard C. Vick
5310 Markel Road
Richmond, Virginia 23230

[illegible] p.q.
Robert L. Pembleton
5310 Markel Road
Richmond, Virginia 23230

A copy,

Teste: [illegible] Clerk

By [illegible] Deputy Clerk.

Alexander H. Swan's Admr.

vs

William E. Swan et al

Serve on:

First and Merchants National
Bank,
Richmond, Virginia.

Mr. P'Pool for to
Mr. Weatherford
Mgr. of Commercial Acct.
6/14/71 E

TED IN THE CITY OF RICHMOND, VIRGINIA
4 DAY OF June, 1971 BY
ING A COPY OF THE WITHIN NAMED
Order
Mr. Weatherford
Mgr. of Commercial Acct. OF:
st & Merchants Natl. Bank
OF BUSINESS OF SAID
st & Merchants Natl. Bank BEING
JAMES H. YOUNG
SERGEANT CITY OF RICHMOND, VA.
By: [illegible]

346

PROOF OF SERVICE

Returns shall be made hereon, showing service of subpoena in chancery issued June 11, 1971, with copy of Bill of Complaint filed June 11, 1971, attached:

William E. Swan,
Wingina,
Buckingham County, Virginia.

Not finding WILLIAM E SWAN at HIS usual place of abode, BUCKINGHAM CO, VA., the above mentioned papers attached to each other, were executed on the 15th day of JUNE, 1971, in the County of Buckingham, Virginia, by delivering a true copy of same to MRS. WILLIAM E. SWAN, whom I found at the usual place of abode, a member of HIS family above the age of sixteen years, and by giving information of its purport to HER.

H. B. ADAMS
SHERIFF, COUNTY OF BUCKINGHAM, VA.
BY Donald Davis DEPUTY SHERIFF

Lois a. Mapis
Asst. Clerk.

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.
(1928-1964)
DAVID J. MAYS
(1934-1971)

HORACE H. EDWARDS
M. POPE TAYLOR
COUNSEL

June 30, 1971

FILE NO. 6300-Q

Mr. E. E. Warriner, Clerk
Richmond Chancery Court
City Hall
Richmond, Virginia 23219

Re: Shirley S. Throckmorton, Administrator of Estate of Alexander H. Swan, deceased v. William E. Swan, The Farmers National Bank of Appomattox, and First & Merchants National Bank

Dear Mr. Warriner:

Enclosed for filing is the Answer of First & Merchants National Bank in the above-styled case.

Yours very truly,

C. Cotesworth Pinckney

C. Cotesworth Pinckney

35:85

Enclosure

cc: Mr. William E. Weatherford, Jr.

ANSWER OF FIRST & MERCHANTS NATIONAL BANK

The defendant First & Merchants National Bank answers the Bill of Complaint filed by the plaintiff herein:

1. It has no knowledge or information sufficient to form a belief as to the factual matters and allegations set forth in paragraphs 1, 3, 5, and 6.

2. It has no knowledge or information sufficient to form a belief as to the factual matters and allegations set forth in paragraph 2, except that it admits that Alexander H. Swan, deceased, did, on May 9, 1971, maintain a joint checking account with defendant William E. Swan at First & Merchants National Bank in Richmond, Virginia.

3. It admits that on May 9, 1971, Alexander H. Swan maintained with defendant William E. Swan a joint checking account at First & Merchants National Bank in Richmond, Virginia; that by the terms of the deposit contract, William E. Swan was permitted to make withdrawals from said account; and that the balance in such checking account now totals One Hundred Thirty-One and 81/100 Dollars ($131.81).

4. It has no knowledge or information sufficient to form a belief as to whether or not Alexander H. Swan owned the joint checking account described in the above paragraph, what the purposes were for which William E. Swan was entitled to make withdrawals therefrom, or whether or not there was any agreement between Alexander H. Swan and William E. Swan limiting the rights of William E. Swan to make any withdrawals therefrom.

WHEREFORE, Defendant First & Merchants National Bank moves that it be permitted to pay the funds on deposit in the above-described account to William E. Swan, or that it be permitted to pay the money to the Court and be discharged as a party to this proceeding.

FIRST & MERCHANTS NATIONAL BANK

By C. Cotesworth Pinckney

Of Counsel

C. Cotesworth Pinckney
Mays, Valentine, Davenport & Moore
1200 Ross Building
P. O. Box 1122
Richmond, Virginia 23208

CERTIFICATE

I certify that copies of the foregoing Answer of First & Merchants National Bank were mailed to Howard C. Vick, Esq. and Robert E. Pendleton, Esq., 5310 Markel Road, Richmond, Virginia 23230, counsel for the plaintiff; William E. Swan, Wingina, Buckingham County, Virginia; and W. A. Hunter, Cashier, The Farmers National Bank of Appomattox, Appomattox, Virginia 24522, on June 30, 1971.

C. Cotesworth Pinckney

C

Comp. Form 650—1500 Books 9/1/69

REC(FOR FEES COLLECTED T ( )40

County of Buckingham Virginia 8 — 16 — 1971

Received of Harold Wilk $ 1 26/100

One & 26/100 DOLLARS

For Order
Type of Service or Process

On 8 - 14 - 1971
Date of Service

In matter of Sloane vs Swan

By Virgil Sayre H.B. Adams Sheriff
Deputy—Sheriff—Sergeant

ORIGINAL — TO PAYER

Executed this 14 day of Aug 19 71

in Buckingham County by delivering a true copy of this within

Order to William E. Brown in person.

H B Wood

Sheriff, Buckingham County

By D A Shumaker Jr.

Dep. Sheriff

ORDER

This cause came on to be heard this date upon the Bill of Complaint filed herein and the Answer of First & Merchants National Bank, no Answer having been filed by the other parties hereto, and upon the several orders previously entered herein on June 11, 1971.

It appearing to the Court that in compliance with the order of this Court of June 11, 1971, a 1964 Chevrolet automobile, a coin collection, a 21-jewel Hamilton Railroad watch, and other papers and records of Alexander H. Swan, deceased, have been delivered into the possession of counsel for the plaintiff; and

It further appearing to the Court from the Answer of First & Merchants National Bank, filed herein, that that bank is holding funds in a joint checking account in the names of the decedent, Alexander H. Swan and the defendant, William E. Swan, in the amount of $131.81; and

It further appearing to the Court from the Bill of Complaint filed herein by the plaintiff, which Bill of Complaint is taken as confessed by the defendants, William E. Swan and The Farmers National Bank of Appomattox, they having failed to appear or file responsive pleadings, that on June 3, 1971, the defendant, William E. Swan, withdrew the sum of $18,088.48 plus interest from May 9, 1971 to June 3, 1971 from Franklin Federal Savings and Loan Association, the sum of $20,565.32 from Richmond Federal Savings and Loan Association and the sum of $9,414.40 from the Bank of Virginia, which funds were the property of the decedent, Alexander H. Swan, and which funds were subsequently placed on deposit

with the defendant, The Farmers National Bank of Appomattox, by the defendant, William E. Swan.

It is, therefore, ORDERED and DECREED that the plaintiff, Shirley S. Throckmorton, Administrator of the Estate of Alexander H. Swan, deceased, appear before the Clerk of this Court, and enter into a bond in the amount of $10,000.00 with ~~corporate~~ surety to be approved by the Clerk, and upon the entering into such bond by the plaintiff, it is further ORDERED and DECREED that the defendants, William E. Swan and First & Merchants National Bank pay over to the plaintiff or her counsel, the sum of $131.81 and that the defendants, William E. Swan and The Farmers National Bank of Appomattox pay over to the plaintiff or her counsel other funds, plus accrued interest, hereinabove referred to. Upon the making of such payments as herein directed, the defendants, First & Merchants National Bank and The Farmers National Bank of Appomattox shall stand dismissed as parties in this matter.

Entered 8/12/71

Judge

We ask for this:

p.q.
Robert E. Pembleton
5310 Markel Road
Richmond, Virginia

p.q.
Howard C. Vick
5310 Markel Road
Richmond, Virginia 23230

Seen:

John W. Edmonds, III
Of counsel for First & Merchants National Bank

Entered AUG 12 1971

O. B. 203 Page 251

ORDER

This cause came on to be heard this date upon the Bill of Complaint filed herein and the Answer of First & Merchants National Bank, no Answer having been filed by the other parties hereto, and upon the several orders previously entered herein on June 11, 1971.

It appearing to the Court that in compliance with the order of this Court of June 11, 1971, a 1964 Chevrolet automobile, a coin collection, a 21-jewel Hamilton Railroad watch, and other papers and records of Alexander H. Swan, deceased, have been delivered into the possession of counsel for the plaintiff; and

It further appearing to the Court from the Answer of First & Merchants National Bank, filed herein, that that bank is holding funds in a joint checking account in the names of the decedent, Alexander H. Swan and the defendant, William E. Swan, in the amount of $131.81; and

It further appearing to the Court from the Bill of Complaint filed herein by the plaintiff, which Bill of Complaint is taken as confessed by the defendants, William E. Swan and The Farmers National Bank of Appomattox, they having failed to appear or file responsive pleadings, that on June 3, 1971, the defendant, William E. Swan, withdrew the sum of $18,088.48 plus interest from May 9, 1971 to June 3, 1971 from Franklin Federal Savings and Loan Association, the sum of $20,565.32 from Richmond Federal Savings and Loan Association and the sum of $9,414.40 from the Bank of Virginia, which funds were the property of the decedent, Alexander H. Swan, and which funds were subsequently placed on deposit

Lois A. Mayo
Deputy Clerk.

with the defendant, The Farmers National Bank of Appomattox, by the defendant, William E. Swan.

It is, therefore, ORDERED and DECREED that the plaintiff, Shirley S. Throckmorton, Administrator of the Estate of Alexander H. Swan, deceased, appear before the Clerk of this Court, and enter into a bond in the amount of $40,000.00 with ~~corporate~~ surety to be approved by the Clerk, and upon the entering into such bond by the plaintiff, it is further ORDERED and DECREED that the defendants, William E. Swan and First & Merchants National Bank pay over to the plaintiff or her counsel, the sum of $131.81 and that the defendants, William E. Swan and The Farmers National Bank of Appomattox pay over to the plaintiff or her counsel other funds, plus accrued interest, hereinabove referred to. Upon the making of such payments as herein directed, the defendants, First & Merchants National Bank and The Farmers National Bank of Appomattox shall stand dismissed as parties in this matter.

~~Enter:~~ Enter W. Graves 8/12/71

A Copy,
Teste: E. E. Warriner, Clerk

By Lois A. Marks Deputy Clerk

PETITION

TO THE HONORABLE WILLIAM A. MONCURE, JR., JUDGE:

The plaintiff, Shirley S. Throckmorton, Administrator of the Estate of Alexander H. Swan, represents to the Court as follows:

1. That on June 9, 1971, the plaintiff employed Robert E. Pembleton and Howard C. Vick as attorneys to represent her in an attempt to recover and conserve assets of the Estate of Alexander H. Swan.

2. That the plaintiff entered into a written contract of employment with counsel, a copy of which contract is attached hereto and marked as Exhibit "A."

WHEREFORE, the plaintiff prays that the Court approve and ratify the aforesaid contract of employment of Robert E. Pembleton and Howard C. Vick, as counsel for the plaintiff.

Shirley S. Throckmorton
Shirley S. Throckmorton,
Administrator of the Estate of
Alexander H. Swan, Deceased

Robert E. Pembleton, p.q.
Robert E. Pembleton
5310 Markel Road
Richmond, Virginia 23230

Howard C. Vick, p.q.
Howard C. Vick
5310 Markel Road
Richmond, Virginia 23230

of this date.
Florence W. Wood
Deputy Clerk.

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 ~~Shirley S. Throckmorton~~
~~Address~~ Administrator
of A. H. Swan & Niece

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

Dated 6/9/71

Robert E. Pembleton. Attorney

ORDER

This day came the plaintiff, in person, and by counsel, and filed herein her Petition in which she prayed that the Court approve and ratify a contract entered into between the plaintiff and Robert E. Pembleton and Howard C. Vick, under which the said Robert E. Pembleton and Howard C. Vick were employed as counsel for Shirley S. Throckmorton, Administrator of the Estate of Alexander H. Swan, to locate and recover assets belonging to said Estate.

UPON CONSIDERATION WHEREOF, the Court doth hereby approve and ratify the aforesaid contract.

Enter Warner 8/12/71

Judge

We ask for this:

Shirley S. Throckmorton
Shirley S. Throckmorton
Administrator of the Estate of
Alexander H. Swan, Deceased

, p.q.
Robert E. Pembleton
5310 Markel Road
Richmond, Virginia 23230

Howard C. Vick, p.q.
Howard C. Vick
5310 Markel Road
Richmond, Virginia 23230

Entered AUG 12 1971
O. B. 203 Page 253

Howard C. Vick
Attorney at Law

Suite 107 A, Markel Building
5310 Markel Road
Richmond, Virginia 23230
703 / 282-7671

September 21, 1971

The Honorable William A. Moncure, Jr., Judge
Chancery Court of the City of Richmond
City Hall
Richmond, Virginia 23219

RE: Swan's Administrator v. Swan et al

Dear Judge Moncure:

I am enclosing a sketch of an Order to be entered in the above case. You will remember that the previous Order directing the payment of moneys to the Administrator by Farmers National Bank of Appomattox and First & Merchants National Bank provided that upon payment, those two defendants would stand dismissed from the suit. You will also remember that William E. Swan did not file an answer in this matter. Under these circumstances, I did not feel that anyone else need endorse the order other than me.

If this meets with your approval, please enter it for me.

Very truly yours,

Howard C. Vick

Howard C. Vick

HCV:emw
Enclosure

ORDER

This day came the plaintiff, by counsel, and represented to the Court that the purposes for which this suit was instituted have been accomplished and prayed that the cause ~~matter~~ be dismissed;

Whereupon, upon consideration thereof, it is ORDERED and DECREED that this suit ~~and matter~~ is hereby dismissed with prejudice as to all parties.

And nothing further remaining to be done herein, it is ORDERED that this cause be stricken from the docket and placed among the ended causes of this Court.

Enter Warren 9/22/71

Enter: / /

Judge

I ask for this:

Howard C. Vick, p.q.

Howard C. Vick
5310 Markel Road
Richmond, Virginia 23230

Entered SEP 22 1971

O. B. 203 Page 399

✓ 1 copy

EXH. NO. A

No. 16-42786

FRANKLIN FEDERAL SAVINGS AND LOAN ASSOCIATION
OF RICHMOND

SAVINGS AND DIVIDENDS	WITHDRAWALS	DATE	BALANCE
16,835.26		JAN 4 68	16,835.26 *
378.79		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 *
93.93		MAR 10 70	18,746.91 *
60.00		MAR 10 70	18,712.98 *
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
239.69	- Sept. 20	MAY 4 71	DIV 19,660.89
242.68	- Dec. 20	MAY 4 71	DIV 19,903.57
603.84		MAY 4 71	CHK 20,507.41
	2,550.00	MAY 4 71	CHK 17,957.41 *
64.23		JUN 3 71	18,021.64
	18,021.64	JUN 3 71	.00 *

PLEASE NOTIFY THE ASSOCIATION OF ANY CHANGE
IN YOUR ADDRESS

T & A.

A - Pg. 2

No. 16-42783

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					$18,541.01	**18,541.01	*B
2	[illegible]-6-68			*[illegible]			*[illegible]	J-
3	[illegible]30-69			*[illegible]			*16,394.74	J-
4	[illegible]30-69				*2,500.00		*16,894.74	* D-
5	SEP 11-69	To [illegible]30-69		*416.89			*17,301.63	J-
6	SEP 11-69				*2,000.00		*15,301.63	* E-
7	[illegible]26-70	Sept-30-69		*183.94			*15,491.57	J-
8	[illegible]26-70	Dec-30-69		*183.96			*15,675.53	J-
9						*3,500.00	*19,175.53	* D-
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								

96-N-REV1

ALWAYS BRING OR MAIL THIS BOOK WITH EACH TRANSACTION

PLEASE NOTIFY THE ASSOCIATION OF ANY CHANGE IN YOUR ADDRESS

π & B

B pg. 2

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 4 day of JANUARY, 1966

RICHMOND FEDERAL SAVINGS AND LOAN ASSOCIATION

OCT. 16, 1966
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. 1703

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. 403. (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., 19 50

Federal Savings and Loan Insurance Corporation

Attest: J. Francis Moore *Secretary*

By Oscar R. Davies *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-4
1						
SEP	11 69	JAN INT		99.23	5,047.17	BW-2
SEP	11 69	JAN INT		100.67	5,147.84	BW-2
JAN	26 70	INT		103.25	5,251.[illegible]	[illegible]
JAN	26 70	TW	1,500.00		6,751.[illegible]	[illegible]
FEB	6 70		2,100.00		8,851.19	BW-4
SEP	14 70	JAN. INT.		159.91	9,011.00	BW-2
JAN	3 71	JAN INT		203.31	9,214.31	[illegible]
JAN	3 71	JAN INT		199.06	9,413.37	BW-1
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.

Tab C

FIRST & MERCHANTS NATIONAL BANK

STATEMENT

EXH. NO. D

BEGINNING DATE	ENDING DATE	ACCOUNT NUMBER
06-10-69	07-09-69	11-04-8103

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	DEPOSITS TOTALING	WE HAVE SUBTRACTED: NUMBER	ITEMS TOTALING	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
07/09	1,996.41CK			979.57

✓

TED

No. _____

68-1
510

_____ 19 _____

PAY TO THE ORDER OF _____ $ _____

_____ DOLLARS

FIRST & MERCHANTS NATIONAL BANK
RICHMOND, VIRGINIA

A. H. OR WILLIAM E. SWAN

367

⑆0510⑈0001⑆ 11 04 8103⑈

D. pg. 2

Nov. 25 19[illegible]

Jack Pattison

(Cash)

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

PAY TO THE ORDER OF

FIRST & MERCHANTS NATIONAL BANK
RICHMOND, VIRGINIA

A. H. OR

⑆05 30⑈000 3⑆ 1 1 04 8 30 3⑈

D. pg. 3

	DOLLARS	CENTS
BRO'T FOR'D	1508	09
2-4-70 T DEPOSITED	500	00
TOTAL	2308	09
T THIS CHECK	9	11
CAR'D FOR'D	2299	11

PAY TO THE ORDER OF

FIRST & MERCHANTS NATIONAL BANK
RICHMOND, VIRGINIA

A. H. OR WI

⑆0510⑈0001⑆ 11 04 8103⑈

D pg. 4

1-14 19

	DOLLARS	CENTS
BRO'T FOR'D	2293	91
DEPOSITED	325	00
TOTAL	2623	91
THIS CHECK		91
CAR'D FOR'D	2621	77

PAY TO THE ORDER OF

FIRST & MERCHANTS NATIONAL BANK
RICHMOND, VIRGINIA

A. H. OI

⑆0510⑈000 ⑆: 11 01 8 10 3⑈

D pg. 5

1-19 19

Healthcare Trade
Nursing Home
Room & Board
Jan 1-31-71

	DOLLARS	CENTS
BRO'T FOR'D	2631	77
DEPOSITED		
TOTAL		
THIS CHECK	399	00
CAR'D FOR'D	2232	77

PAY TO THE ORDER OF

FIRST & MERCHANTS NATIONAL BANK
RICHMOND, VIRGINIA

A. H. OR WIL

⑆0510⑈0001⑆ 11 04 8103⑈

D pg. 6

Feb. 5th 1971

Stratford Hall
Rent Dining Room
Room & Board
Thru 2-28-71

	DOLLARS	CENTS
BRO'T FOR'D	2237	97
DEPOSITED		
TOTAL		
THIS CHECK	490	36
CAR'D FOR'D	1746	61

PAY TO THE ORDER OF

FIRST & MERCHANTS NATIONAL BANK
RICHMOND VIRGINIA

A. H. OR

⑆0540⑈0001⑆ 11 04 8403⑈

D PS·7

3-15 1971

	DOLLARS	CENTS
BROT FOR'D	1746	61
DEPOSITED	250	00
TOTAL	1996	61
THIS CHECK	[illegible]	[illegible]
CARD 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

	DOLLARS	CENTS
BRO'T FOR'D	1709	12
DEPOSITED	[illegible]	[illegible]
TOTAL	[illegible]	[illegible]
THIS CHECK	24	15
CAR'D FOR'D	1724	02

PAY TO THE ORDER OF

FIRST & MERCHANTS NATIONAL BANK
RICHMOND, VIRGINIA

A. H. OR W

⑆0510⑈0006⑆ 11 04 5603⑈

D P8 9

3-27 1971

Criminal

Personnel Suits

Federal

Income Tax for 1970

	DOLLARS	CENTS
BRO'T FOR'D	1744	04
DEPOSITED		
TOTAL		
THIS CHECK	215	43
CAR'D FOR'D	1529	61

PAY TO THE ORDER OF

FIRST & MERCHANTS NATIONAL BANK
RICHMOND, VIRGINIA

A. H. O

⑆0510⑈0001⑆ 11 04 8103⑈

D p8.10

3-27 19

	DOLLARS	CENTS
BROT FOR'D	1524	34
DEPOSITED		
TOTAL		
THIS CHECK	4	20
CARD FOR'D	1519	14

PAY TO THE ORDER OF

FIRST & MERCHANTS NATIONAL BANK
RICHMOND, VIRGINIA

A. H. O

⑆05 10⑈000 5⑆ 5 4 04 8 10 3⑈

D Pg. 11

3-29 1971

[illegible] Life Ins. Co.
[illegible] Insurance Co.
Premium on policy
[illegible] 1:25 pm

	DOLLARS	CENTS
BRO'T FOR'D	1519	64
DEPOSITED		
TOTAL		
THIS CHECK	9	14
CAR'D FOR'D	1510	50

CHECK PRINTERS OF AMERICA

PAY TO THE ORDER OF

FIRST & MERCHANTS NATIONAL BANK
RICHMOND, VIRGINIA

A. H. OR WILLI

⑆0510⑈0001⑆ 11 04 8103⑈

D.p8. 12

	DOLLARS	CENTS
Brot Ford		
Deposited		
Total		
This Check		
Bard Ford		

PAY TO THE ORDER OF

FIRST & MERCHANTS NATIONAL BANK
RICHMOND, VIRGINIA

A. H. OR WILLIA

⑆05 10⑈000 5⑆ 11 04 6 10 3⑈

D pg. 13

	DOLLARS	CENTS
Bal. For'd	[illegible]	[illegible]
Deposited		
Total		
This Check	[illegible]	[illegible]
Bal. For'd	[illegible]	[illegible]

No.

19

PAY TO THE ORDER OF

FIRST & MERCHANTS NATIONAL BANK
RICHMOND, VIRGINIA

A. H. OR WILLIAM E. SWA

⑆0510⑈0001⑆ 16 04 8103⑈

Pg. 14

6-3 1971

Hill & Hill

Nursing Home

	DOLLARS	CENTS
SPOT FOR'D	995	81
DEPOSITED	2,550	00
TOTAL	3,535	81
THIS CHECK	1776	09
BAL'D FOR'D	1759	72

PAY TO THE ORDER OF

FIRST & MERCHANTS NATIONAL BANK
RICHMOND, VIRGINIA

A. H. OR WILLIAM E. S

⑆0510⑈0001⑆ 11 04 8103⑈

D pg. 15

6-10-197[illegible]

[illegible] Corporation
[illegible]ville, Inc.

	DOLLARS	CENTS
[illegible] FORD	4,739	72
[illegible] DEPOSITED		
[illegible] TOTAL		
[illegible] CHECK	1,756	
[illegible] PAID	4,772	22

PAY TO THE ORDER OF

FIRST & MERCHANTS NATIONAL BANK
RICHMOND, VIRGINIA

A. H. OR WILLIAM

⑆0580⑈0006⑆ 11 04 8[illegible]

D pg. 16

2 _____

6-10- 1971

Post Exhibit
Exhibition
Charges

	DOLLARS	CENTS
Bal. Fwd	1,672	22
Deposited		
Total		
This Check	145	00
Bal. Fwd	1,527	22

N

_____ 19

PAY TO THE ORDER OF _____

FIRST & MERCHANTS NATIONAL BANK
RICHMOND, VIRGINIA

A. H. OR WILLIAM E. SW

⑆051000018⑈ 11 04 8 10 3⑈

D Pg. 17

6-10 1979

Wilmer Z.

Guthrie,

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

CHECK PRINTERS OF AMERICA

PAY TO THE ORDER OF

FIRST & MERCHANTS NATIONAL BANK
RICHMOND, VIRGINIA

A. H. OR WILLIAM

⑆0510⑈0001⑆ 11 04 8103⑈

D pg. 18

NO. _____

$ _____

_____ 19__

_____ _____ 19 _____

68/51

PAY TO THE ORDER OF _____ $ _____

_____ DOL.

	DOLLARS	CENTS
Bal. Fwd	4,455	62
Deposited		
Total		
This Check		
Bal. Fwd		

FIRST & MERCHANTS NATIONAL BANK
RICHMOND, VIRGINIA

A. H. OR WILLIAM E. SWAN

⑆0510⑈0001⑆ 11 04 8103⑈

EXH. NO. E

Richmond, Va.
1-6-65

Dear Bill, Grace, Billy & Mrs. Taylor,

Received your nice card, and we appreciate it very much. I told Marie I got a letter from you all, but I haven't told her about Mr. Harris. 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

Jane

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

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

385 TT 2/E

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 M 5 7 1 2 MAY 4 2,5 5 0.00 DSS

TT 47

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 MONTH 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	11 JUN 4	48,001.36*
001.36		11 AUG 16	.00*

EXH. NO.

DEPOSITED IN THE
Farmers National Bank
of Appomattox
FOR ACCOUNT OF
William E. Swan
or Gracie T. Swan
or The Survivor
"Special"
Rt 1 Box 12 Buckingham Va.
Appomattox, Va., June 4 1971

PLEASE LIST EACH CHECK SEPARATELY

	DOLLARS	CENTS
CURRENCY		
SILVER		
CHECKS AS FOLLOWS		
Bank of Virginia	9414	40
Franklin Federal Sav	18,021	64
Richmond Fed. Savings	20,565	32
	48,001	36
9,414.40 △		
18,021.64		
20,565.32		
48,001.36 *		
Total $	48,001	36

Not Good

SEE THAT ALL CHECKS AND DRAFTS ARE ENDORSED

38 Duplicate Deposit Ticket — Not Negotiable

By J.D.E. Cashier

APPOMATTOX PRINTING CO. APPOMATTOX, VA 327252-0

387

T & G

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 ...ING 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.

THIS AGREEMENT, made as of the 16th day of July, 1971 by 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.

TT 5-I

Witness the following signatures and seals:

Shirley S. Throckmorton (Seal)
Shirley S. Throckmorton

Alma S. Kitchen (Seal)
Alma S. Kitchen

Frederick W. Swan (Seal)
Frederick W. Swan

Ouida S. Adcock (Seal)
Ouida S. Adcock

Gladys S. Kesterson (Seal)
Gladys S. Kesterson,

Doris S. Rosser (Seal)
Doris S. Rosser

Corinne S. Kidd (Seal)
Corinne S. Kidd

Hugh Swan (Seal)
Hugh Swan

William E. Swan (Seal)
William E. Swan

Carrie R. Swan (Seal)
Carrie R. Swan

Notary's acknowledgment for each.

State of Virginia
County of Henrico

I, [illegible], 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 8/20/74
Given under my hand this 16th day of July, 1971.

Notary Public [illegible]

State of Virginia
County of Buckingham

I, Kirk S. Wood, 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 July 24th 1972
Given under my hand this 28th day of July 1971.

Kirk S. Wood
Notary Public

State of Virginia
County of Henrico

I, [illegible], 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 8/20/74
Given under my hand this [illegible] day of July 1971.

[illegible]
Notary Public

State of Virginia
County of Amherst

I, Luther D. Wood, 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 Sept 12 1972
Given under my hand this 28 day of July 1971.

Luther D. Wood
Notary Public

State of Virginia
County of Campbell

I, Frances B. Morris, 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 October 30, 1971
Given under my hand this 28 day of July 1971.

Frances B. Morris
Notary Public

State Of Virginia
County of Appomattox

I, H T Williams, 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 July 9-73
Given under my hand this 28 day of July 1971.

H T Williams
Notary Public

State of Virginia
County of Buckingham

I, Rich D. Wood, 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 July 24th 1972
Given under my hand this 28th day of July 1971.

Rich D. Wood
Notary Public

State of Virginia

City of Lynchburg

I, F. C. Thomas, 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 Feb. 12, 1974
Given under my hand this 28th day of July, 1971.

F. C. Thomas
Notary Public

State of Virginia

City of Lynchburg

I, F. C. Thomas, 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 Feb. 12, 1974
Given under my hand this 28th day of July, 1971.

F. C. Thomas
Notary Public

State of Virginia

County of Buckingham

I, Kish S. Wood, 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 July 24th 1972
Given under my hand this 28th day of July, 1971.

Kish S. Wood
Notary Public

wanted Ouida Adcock to have the sum of $3,000.00

Shirley Throckmorton the sum of $3,000.00

remainder to be divided into four parts:

Frederick W. Swann to get 1/4

Alma Kitchen to get 1/4

Carrie Swann to get 1/4 (sister-in-law)

William E. Swann to get 1/4

if any complaints are made forget about them and leave it in Wm. E. Swann's name

he gave coin collection, watch and automobile to William E. Swann

after paying all his bills, William Swann was to pay out the two bequests of $3,000.00 and other to be divided into four parts

put the money in William Swann's name to be sure it was done like he wanted. Could not trust his brother.

Note taken by my sec, when Wm Swann first came & my opinion after uncle died. JKA.

TSJ

5

SHORT-CUT NOTE

ROBERT E. PEMBLETON
LAW OFFICES
5310 MARKEL ROAD, SUITE 107 A
RICHMOND, VIRGINIA 23230

TELEPHONE 282-7671

FROM:

DATE: 8/4

ATTENTION:

TO: Jack

SUBJECT: Swan, et als.

MESSAGE Howard in court for the rest of this week — the case is here at the office of Mr. Swan has filed its involvement he knows — Howard will prepare the order on his return. Copy of signed agreement enclosed. I have the $3700.00 in my escrow account — Regards

SIGNED: RS

REPLY

DATE: SIGNED:

HISTACOUNT CORP., MELVILLE, N.Y. 11746 FORM NO. SK-1

THIS COPY FOR PERSON ADDRESSED

TEK

V

THIS AGREEMENT, made as of the 16th day of July, 1971 by 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.

V

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 _____

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

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

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. L

No.

6-14 1971

Received of William E. Swan

Ten Thousand Two Hundred Fifty and 00/100 DOLLARS

For A.H. Shaw

Treatment

$10250 Adney K. Sutphin, M.D.

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

O. CES	PROFESSIONAL SERVICES	DATE OF BILLING	CHARGE	PAID	BALANCE 1750.00
70	[illegible]		80		195—
[illegible]	[illegible]		20—		215—
70	Stress Hear H.		—		
70	NHV		10—		225—
70	NHV		10—		235—
70	NHV		10—		245—
70	NHV		10—		255—
70	NHV		10—		265—
71	NHV		10—		275—
71	NHV		10—		285—
71	NHV		10—		295—
71	NHV		10—		305—
71	NHV		10—		315—
71	NHV		10—		325—
71	[illegible] Check (Transfer Balance)			9/20	237.50
71	NHV		10—		247.50
71	[illegible] Check (Mission)			4/6/69	247.50
	NHV		10—		247.50
	[illegible]		10		[illegible]
	[illegible]		10		[illegible]
	[illegible] (Mission)		10		262.50
	[illegible] (Aetna)			12/20	138.60

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

FOR PROFESSIONAL SERVICES

$ 138.60

ELGIN 0-9934

RICHMOND, VA. 23220, 6-9-73

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

40

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

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

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

V

PAYMENTS MADE AS PROVIDED IN ABOVE STATE [illegible]

DATE	DESCRIPTION	CHARGES	CREDITS	AMOUNTS
[illegible]	[illegible]	35.00		35.00
[illegible]	INITIAL OFFICE VISIT	10.00		45.00

EXH. NO. N

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

WEST END ORTHOPAEDIC CLINIC

PAY THIS AMOUNT $ 45.00

FOR INSURANCE CLAIMS SEE REVERSE SIDE

EXH. NO. H

77-2168

No.

PAY TO THE ORDER OF Richard S. and Shirley S. Thornton May 8 19 71 53-1 / 510

Three Thousand Four Hundred 00/100 DOLLARS $3400.00

FIRST & MERCHANTS NATIONAL BANK
RICHMOND, VIRGINIA

A. H. OR WILLIAM E. SWAN

A H Swan

⑆0510⑈0003⑆ 11 04 8403⑈ ⑈0000340000⑈

Shirley S. Thornton
Richard S. Thornton

TEN