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SUPREME COURT OF VIRGINIA
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IN THE

Supreme Court of Virginia

AT RICHMOND

4

RECORD NO. 800148

ROSE MARY McCOY STURGILL

Appellant

v.

VIRGINIA CITIZENS BANK

Appellee

JOINT APPENDIX

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MOTION FOR JUDGMENT

TO THE HONORABLE GLYN R. PHILLIPS, JUDGE OF SAID COURT:

Now comes the plaintiff, Rose Mary McCoy (Sturgill), Administratrix of the Estate of Rufus V. McCoy, Jr., and moves this honorable Court for a judgment against the defendant, Virginia Citizens Bank, in the amount of thirteen thousand seven hundred forty-eight dollars and fifty eight cents ($13,748.58), with interest thereon from December 6, 1976, which said amount is due and owing from the defendant to the plaintiff because of the following:

I.

That the plaintiff's decedent, Rufus V. McCoy, Jr., departed this life on December 4, 1976, and the undersigned plaintiff qualified as the Administratrix of the Estate of Rufus V. McCoy, Jr., in the Circuit Court for Dickenson County, Virginia, on December 7, 1976.

II.

That at the time of his death, the said Rufus V. McCoy, Jr., (R. V. McCoy, Jr.), had an individual account with the defendant, Virginia Citizens Bank, being account number 10 0291 0,

day of November 19 76
Judge Clerk

which said account was opened on March 28, 1975, and closed on December 7, 1976, as shown by Exhibit 1 attached hereto.

III.

That on December 6, 1976, the defendant, Virginia Citizens Bank, did with full knowledge of the death of the plaintiff's decedent, and after receiving express instructions from the plaintiff not to honor any checks on the account, honor check number 144, dated December 6, 1976, drawn on the account by one Kay McCoy, in the amount of $13,748.58, as shown by Exhibit 2 attached hereto.

IV.

That the act of the defendant, Virginia Citizens Bank, in paying unto the said Kay McCoy the sum of $13,748.58 on the account of R. V. McCoy, Jr., after the actual knowledge of the death of the said R. V. McCoy, Jr., and after being expressly requested not to do so, was wrong and as a result thereof the undersigned plaintiff has been damaged in the amount of $13,748.58 plus interest since December 6, 1976.

Wherefore, the undersigned plaintiff, Rose Mary McCoy (Sturgill), Administratrix of the Estate of Rufus V. McCoy, Jr., respectfully moves this honorable Court for a judgment against the defendant, Virginia Citizens Bank, in the amount of $13,748.58 plus interest at the legal rate from December 6, 1976, plus her taxable Court costs expended herein.

ROSE MARY McCOY (STURGILL),
Administratrix of the Estate
of Rufus V. McCoy, Jr.

BY COUNSEL

STURGILL AND STUMP, "P.C."
ATTORNEYS AT LAW
464 PARK AVENUE
P. O. BOX 770
NORTON, VIRGINIA 24273

BY: Elizabeth S. Sturgill
ELIZABETH S. STURGILL
COUNSEL FOR PLAINTIFF

FINAL ORDER

This cause came to be heard on September 7, 1979, upon the Motion for Judgment filed by the Plaintiff against the Defendant; upon the Grounds of Defense filed by the defendant; upon the appearance of the parties in person, and by counsel; and the evidence was heard ore tenus by the Court, the parties having waived jury trial;

Thereupon the Plaintiff presented evidence, and rested.

Whereupon, the defendant moved evidence of the plaintiff be stricken and that judgment be entered in favor of defendant and that motion was argued by counsel.

UPON CONSIDERATION WHEREOF, the Court does hereby strike the evidence of the plaintiff and dismisses the Motion for Judgment filed by the plaintiff against the defendant. The Court does further order that the Motion for Judgment filed by the plaintiff be and the same hereby is dismissed with prejudice to the plaintiff.

The plaintiff, by counsel, having indicated her intention to apply to the Supreme Court of Virginia for a Writ of Error, it is ORDERED that a copy of the transcript be made a part of the record herein and it further appearing unto the Court that no further action is required of this Court, it is ORDERED that

the case be placed among the ended cases pending the plaintiff's petition for a writ of error.

ENTER this Final Order this 5th day of November, 1979.

JUDGE

REQUESTED:

BUDDY H. WALLEN
COUNSEL FOR VIRGINIA CITIZENS BANK

SEEN AND OBJECTED:

ELIZABETH S. STURGILL
COUNSEL FOR PLAINTIFF

ASSIGNMENTS OF ERROR

1. The Circuit Court erred in striking the evidence of the plaintiff and entering judgment for the defendant.

2. The Circuit Court erred in holding that the bank account in question was a joint account.

3. The Circuit Court erred in holding that the Virginia Citizens Bank had no liability imposed upon it by releasing the bank account funds to Kaye Stanley McCoy.

The following cause came on to be heard on this the 7th day of September, 1979, at 9:30 A.M., before the Honorable Glyn R. Phillips, Judge of the Circuit Court of Dickenson County, sitting at Clintwood, Virginia, when the following proceedings were had.

Mrs. Ruth Jones Greiner, Certified Shorthand Reporter and Registered Professional Reporter, was duly sworn.

Both sides announced ready. The witnesses were duly sworn and excluded under the rule.

MR. WALLEN: Mr. Vanover is the representative of the Bank.

THE COURT: You are entitled to one.

MR. WALLEN: I just wanted it on the record as to who he was and what he is doing here.

MS. STURGILL: I Have no objection.

ROSE MARY MCCOY STURGILL

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. STURGILL:

Q Would you state your name, please.

A Rose Mary McCoy Sturgill.

Q Are you the widow of R. V. McCoy, Jr.?

A Yes.

Q Did you qualify as administratrix of the estate of R. V. McCoy?

A Yes.

Q Is this a certificate of qualification of where you qualified as administratrix?

A Yes, it is.

Q What is the qualification date?

A December 7, 1976.

MR. WALLEN: We will stipulate for the record that she is properly qualified.

THE COURT: It will be admitted in evidence as Plaintiff's Exhibit No. 1.

(PLAINTIFF'S EXHIBIT 1 was marked for identification and filed.)

BY MS. STURGILL:

Q This suit was brought in your capacity as administratrix of the estate of R. V. McCoy?

A Yes, it was.

Q Who are the heirs of R. V. McCoy?

A Myself and my son.

Q What date did Mr. McCoy die?

A Saturday, December 4, 1976.

Q How did you learn that your husband had an account at the Virginia Citizens Bank?

A Well, he had written a check on that account and also the funeral director had brought me the contents of his pockets and the checkbook was in it.

Q What date did you actually receive the checkbook, do you recall?

A Yes, it was on Sunday, December 5.

Q What action, if any, did you take with respect to that bank account?

A Early Monday morning, at 9:00, or not more than five minutes after nine I called the bank and asked them not to honor any checks written after his death on that account.

Q Would you please relate to us who at the bank you talked to.

A I talked to Mr. Vanover. I told him who I was and that Bud had died on Saturday and asked him not to honor any checks written after that date on that account.

Q Did you subsequently go to the bank with your certificate of qualification as administratrix and request the bank records?

A Yes, I did.

Q Were you told at that time that the account

had been closed?

A Yes.

Q Were any records given to you?

A The only thing they gave me at that time was a copy of the note that Bud owed there.

Q Were any records later obtained?

A Yes, by Court order.

Q Is this a copy of that order?

A Yes.

Q What is that? What date is on that order?

A Third day of June, 1977.

THE COURT: It will be admitted into evidence as Plaintiff's Exhibit No. 2.

MR. WALLEN: We have no objection.

(PLAINTIFF'S EXHIBIT 2 was marked for identification and filed.)

BY MS. STURGILL:

Q What did you receive as a result of the court order?

A Copies of cancelled checks, bank statements, copies of deposit slips, signature card.

Q Was a copy of the account card received?

A Yes, that is right.

Q Is that a copy of the account card that you were given?

A Yes, it is.

MS. STURGILL: We would like to introduce this.

MR. WALLEN: I have no objection.

THE COURT: It will be admitted in evidence as Plaintiff's Exhibit No. 3.

MS. STURGILL: She needs to testify from it.

THE COURT: Let me just mark it.

(PLAINTIFF'S EXHIBIT 3 was marked for identification and filed.)

BY MS. STURGILL:

Q Looking at this account card that has been made Exhibit No. 3, how is the account listed on the card?

A It is R. V. McCoy, Jr., Individual Account.

Q Whose Social Security number appears on the account?

A R. V. McCoy, Jr.'s Social Security number.

Q How many authorized signatures are there?

A Two.

Q Is there any notation as to when the second signature was added?

A This is on the back, October 11, 1976.

Q Is there any kind of Social Security number any place on the card for Kay McCoy.

A No.

Q Was there a copy of a check dated December 6, 1976 drawn by Kay McCoy for $13,748.58 furnished to you by the bank?

A Yes, there was.

Q Is that a copy of the check?

A It is.

MS. STURGILL: We would like to offer this as Plaintiff's Exhibit No. 4.

MR. WALLEN: No objection.

THE COURT: It will be admitted as Plaintiff's Exhibit No. 4.

Who was the second person on the authorization that didn't have the Social Security number? I didn't see that, on Plaintiff's Exhibit No. 3.

THE WITNESS: Kay McCoy.

(PLAINTIFF'S EXHIBIT 4 was marked for identification and filed.)

BY MS. STURGILL:

Q Is the check that was just admitted into evidence as Plaintiff's Exhibit No. 4 the check upon which the

1 motion for judgment you brought as administratrix is founded?
2 A Yes, it is.
3 Q Now the name signed on the check is that of
4 Kay McCoy, is that correct?
5 A Yes.
6 Q Was she, in fact, married to your husband?
7 A She was not.
8 Q Did your husband borrow $15,000 from anyone
9 prior to his death?
10 A He did.
11 MR. WALLEN: I object to that as being irrele-
12 vant.
13 THE COURT: Objection will be overruled for
14 the time being. Give her an opportunity to see for
15 what purpose.
16 BY MS. STURGILL:
17 Q Has judgment been entered against you as
18 administratrix in the amount of $15,000, fees plus cost?
19 A Yes.
20 Q Was that court case styled C & C Coal, Incor-
21 porated, against Rose Mary McCoy, Administratrix of the
22 Estate of R. V. McCoy, Jr.?
23 A Yes.
24 Q Is this a final order that was entered in that
25

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case on July 21, 1978?

A Yes, it is.

THE COURT: For what purpose is this being offered?

MS. STURGILL: We were going to show that the money that was in the account, the large sum, we are going to go back and take the account to the bank and show that once this money was borrowed, it raised the amount that was in his account by this amount during that whole period of time.

MR. WALLEN: We would object to that. It seems to me that the issue is very clear here: Does Virginia Citizens Bank have an obligation, a duty to honor that check, and if they honored it, do they have any liability for honoring it. It doesn't make any difference if Mr. McCoy got this money from bootlegging or got it from an income tax refund or what the source of the money is.

THE COURT: What effect does it have on the -- I understand you say it increases the amount of the account, but what difference would that make? I am not trying to interrogate you.

MS. STURGILL: Our point was that the money had been put in there, borrowed on the basis of a

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note, a note which the administratrix later had to have a judgment against her for which she was responsible and she is claiming this money as administratrix for the estate.

THE COURT: I will let it in. I am not sure as to whether or not at this stage that it is material. For the time being, I will let that evidence in.

MR. WALLEN: We would object, Your Honor.

MS. STURGILL: That will be Exhibit No. 5.

THE COURT: Plaintiff's Exhibit No. 5.

(PLAINTIFF'S ECHIBIT 5 was marked for identification and filed.)

BY MS. STURGILL:

Q According to the bank records that you obtained, what did the bank account show during the period of time from July until your husband's death in December, as far as amounts?

A Not less than after the day that he had borrowed the money, not less than $10,000 and within six days afterwards, never less than $12,000.

Q Prior to the day that you said not less than $10,000, what had the amount of the account been?

A $807 and some few cents.

Q Are you asking the Court to grant you judgment against the defendant for $13,748.58, with interest from December 6, 1976?

A Yes.

Q On what basis are you asking judgment be granted in your favor?

A Because the bank wrongfully paid out this account.

MR. WALLEN: If Your Honor please, we object to that.

THE COURT: I sustain the objection. That would be the duty of the Court to decide, whether or not it is wrongful.

BY MS. STURGILL:

Q Is it your contention that the bank, by paying out $13,748.58 on the account of R. V. McCoy, after actual knowledge of death and after you gave a stop order, damaged you in the amount of $13,748.58, plus interest?

A Yes.

MS. STURGILL: That is all the questions I have.

CROSS EXAMINATION

BY MR. WALLEN:

Q Mrs. McCoy, prior to his death on December 4,

I think it was, 1976 --

A Yes.

Q Did you have much contact with Mr. McCoy?

A I spoke to him on the phone practically every day.

Q Did he relate to you any concern about his health?

A Not any concern about his heart or anything like that. Something that --

Q Did he have any fear of imminent death, that he was going to die right soon?

A No.

Q As far as you know, he considered himself to be in fairly good health for a man of his age?

A Yes.

Q What was his age?

A At the time of his death, 46.

Q You think that those statements in regard to his health are true for let's say from the period of October 11, 1976 through to the time that the account was closed out and for some time prior to that?

A Now what was that question again? That his health was good?

Q As far as you knew and as far as he knew, he

1 considered his health to be good on or about October 11,
2 1976 and for some time prior to that and some time after
3 that?
4 A Yes.
5 Q The check and the records that were furnished
6 to you by Virginia Citizens Bank and particularly the check
7 that was used to close out the account, do you have that
8 check, Mr. Clerk?
9 Did you get all the checks in this account?
10 A All they gave me. I don't know if that is
11 all of them or not.
12 Q Did you look through them?
13 A Yes, I have.
14 Q Does it cover a pretty good period of time?
15 A Yes, it covers the time from March '75, I
16 believe.
17 Q From March of '75 until October 11, 1976, do
18 you recall what the checks looked like? Was there any dif-
19 ference in the checks after October 11, 1976 as compared to
20 prior to that date?
21 A Any difference in the checks?
22 Q Yes.
23 A Yes.
24 Q What was the difference?
25

A Well, there was a difference in the writing. I could always tell Bud's writing.

Q Was there any difference in the printing?

A Yes, on some of them there was another name added.

Q What name was added?

A Kay McCoy.

Q Kay McCoy?

A Yes.

Q Was that on the face of the check?

A On some of them, yes.

Q In fact, after October 11, that being the date which the signature was added, all of them are different, all of them have her name on the face of the check?

A No, there are some in there signed by him that do not have her name on it, dated after that.

Q Those are the ones written right after October 11?

A Yes, and he had written me checks with only his name on it after October 11.

Q Now do you know Kay Stanley?

A I have seen her at Bud's funeral, but I don't know if I would recognize her now.

Q Is it fair to say that at this time any

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question Mr. McCoy and Kay Stanley held themselves out to the public to be husband and wife?

A Apparently they did.

Q They were living together?

A Yes.

Q They socialized together? She took the name McCoy?

MS. STURGILL: I object. I don't -- I am not sure that Rose Mary is able to answer those kind of questions.

THE COURT: If she knows, she may answer.

A I don't know if she socialized or anything. All I know is that they were living together.

BY MR. WALLEN:

Q As far as you were concerned, they held themselves out to the public to be husband and wife?

A Well, all I know they were living together. I don't know what they told the public.

MR. WALLEN: I believe that is all, Your Honor.

THE COURT: Anything further?

MS. STURGILL: No, not at this time.

THE COURT: Thank you very much.

(Witness excused.)

MS. STURGILL: At this time we would like to

1 call Mr. Vanover under the rules of cross examination.
2 THE COURT: All right.
3
4 JIMMY WILSON VANOVER
5 having been duly sworn, was examined and testified as follows:
6 DIRECT EXAMINATION
7 BY MS. STURGILL:
8 Q State your full name.
9 A Jimmy Wilson Vanover.
10 Q What is your occupation?
11 A I am President of the Virginia Citizens Bank.
12 Q As President, I take it you are the chief
13 operating officer of that bank?
14 A That is correct.
15 Q When did you first learn of Mr. McCoy's death?
16 A On the date that he died. That would be
17 December 4.
18 Q How did you learn of his death?
19 A I was working in my office at the time that he
20 died.
21 Q You were, I believe, able to look out and see?
22 A That is correct.
23 Q Went out and questioned and found out that he
24 had died?
25

A That is right.

Q Mrs. McCoy called you on December 6 and told you not to take any action with regard to R. V. McCoy's account?

A That is correct.

Q Could I have the account card back.

This is the account card in regard to the account of R. V. McCoy, Jr. This is marked as an individual account, is it not?

A It is marked as an individual account, but that can be one or more individuals.

Q But it is marked as an individual account?

A That is correct, which it can be one or more.

Q Whose name did the account appear in?

A It is in the account of R. V. McCoy, Jr. and Kay McCoy.

Q Isn't it a fact that only R. V. McCoy, Jr.'s name appears on that account?

A This is when the account was opened. He opened it in his own name and later on when he came to the bank and told us that he was married, he brought in Mrs. Kay McCoy and had her added to the account, which made it a joint account.

Q Isn't it a fact on the back the notation states

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that a signature was added?

A That is when her signature was added to the account, that is correct.

Q On October 11, 1976?

A That is right.

Q There is no notation whatsoever on that account card, is there, that shows that the account was changed in any way?

A Not on the signature card, but it was --

Q I am just asking you with regard to this.

A With regard to the signature card, that is correct.

Q The only thing that was changed is that another signature was added?

A A signature was added and her name was added to the card.

Q Where is her name added to the card?

A Here is her signature (indicating).

Q Doesn't it state up above this that this is only an authorized signature down below?

A This was an amendment of the original card.

Q Correct, stated on the back to add another signature, is that correct?

A To add another signature and another name.

2 Q It doesn't say that, does it?
3 A Not on the card.
4 Q Is there a Social Security number anywhere on
5 the account for Kay McCoy?
6 A No, there is not, but it is only required to
7 have one.
8 Q There is only his?
9 A That is correct. We require only one.
10 Q Isn't it a fact that this was an individual
11 account with two people that could draw on that individual
12 account?
13 A No, ma'am, that was not the way it was set up
14 at the bank. It was set up as a joint account when Mr.
15 McCoy and Mrs. McCoy came in that day.
16 Q You are stating back -- according to this card
17 only, it simply states on the back that another signature
18 was added, is that not correct?
19 A Signature was added authorizing her to be a
20 joint recipient of the account.
21 Q That is not what it says. It is still marked
22 as individual account, no changes were made anywhere on the
23 card, simply another signature was added?
24 A Another signature was added to make it a joint
25 account.

MR. WALLEN: Your Honor, she has a transcript of a proceeding which occurred in General District Court. It was taken by my secretary and for the record, as far as I am concerned, it is a true and accurate transcript of the proceedings that occurred in General District Court.

THE COURT: Since you are offering it, I assume you don't offer it to the fact that his secretary took it?

MS. STURGILL: No.

MR. WALLEN: It is in another case.

BY MS. STURGILL:

Q Do you recall testifying on August 16, 1978 in General District Court with regard to another case?

A Yes, ma'am, I do.

Q At that time is it not a fact that you stated that if it had been a joint account, it would have been so marked as joint on this card?

A I don't know exactly, ma'am, what my testimony would have been at that time. But this account was set up with all criteria the morning that signature was added as a joint account.

Q We are just asking you to testify from this card.

2 A From the card, the account was in the name of
3 R. V. McCoy, Jr. when it was set up. He later came in and
4 added a second name, which gave authorization to the second
5 person to make deposit or withdrawal and it became in my
6 view a joint account.
7 Q That is a legal opinion. All I am asking --
8 A I believe that is what it is, Mrs. Sturgill,
9 but it is still my opinion.
10 Q At this point all that was done, a signature
11 was added. There was no notation put on as an individual
12 account, is that not correct?
13 MR. WALLEN: We have been through this before.
14 I will stipulate for the record that what she is
15 saying is exactly what happened. The card speaks for
16 itself, I believe.
17 THE COURT: The card will speak for itself.
18 BY MS. STURGILL:
19 Q Yes. What I am trying to get at, didn't you
20 state in August of '78 that if it had been going to be a
21 joint account, that even though this card did not have a
22 place for joint account, you would write "Joint" in on it?
23 A No, ma'am, I don't remember saying that.
24 Q Let me ask you to read from this, please.
25 A It is too far for me to read.

THE COURT: Just ask him: Were you asked this question and did you give this answer.

BY MS. STURGILL:

Q All right, the question was, were you asked this question: "Now you just used the same card that he had used before and just added another signature on it, is that correct?"

A That is correct.

Q Was your answer at that time: "This is the card, Mrs. Sturgill, we were using at that particular time."

A Right.

Q Were you also asked the question: "You wouldn't use that on a joint account?"

A And my answer is exactly --

Q "We were using this at the time.

"Q On a joint account?

"A We would write 'joint'."

A I don't remember that, but if that is my testimony, I would say that is what I said. I do not remember that part.

MS. STURGILL: That is all.

THE COURT: Do you desire to offer that transcript?

MS. STURGILL: Yes.

THE COURT: It will be admitted as Plaintiff's Exhibit No. 6.

(PLAINTIFF'S EXHIBIT 6 was marked for identification and filed.)

THE COURT: Anything else?

MS. STURGILL: No, sir.

THE COURT: Any questions?

CROSS EXAMINATION

BY MR. WALLEN:

Q Mr. Vanover, I believe this is the original signature card that the Judge has a copy of?

A Yes, sir.

Q What was the date that this account was opened?

A March 28, 1975.

Q When did the bank open?

A We opened in November 25, 1974. This is our old type signature card.

Q When the account was opened, was this the only signature card you were using in the bank?

A Yes.

Q It has in the upper right-hand corner, I believe Ms. Sturgill called your attention to it, a place for three types of accounts?

A Yes.

Q Would you read those accounts.

A A firm account, which would mean an account to a business; an individual account, which would mean an account to one or 50 individuals, one or more; or a special account. It would be a special account to a company or to an individual.

Q Church account?

A Church account, political account.

Q Church account. Okay. The firm account would be something, some entity other than a person?

A That is correct.

Q The individual account would be people?

A People.

Q This was checked individual account when Mr. McCoy came in?

A Yes.

Q Had he been banking with you some time?

A Yes.

Q Did you see him regularly, either in the bank or on the street?

A Yes.

Q Do you recall when he came in and the account was changed?

A Yes. He not only came in, but he called me. I had two conversations with Mr. McCoy. He called me to inform me that he had married Mrs. Stanley, Kay Stanley, and he said, "I will be bringing Mrs. Stanley, Kay, in the bank to add her name and make it a joint account."

I said, "Fine."

He physically brought her into the bank, went back into my bookkeeping department, had this change made and stopped back in my office and told me that he had made it.

MS. STURGILL: I am going to object to all that testimony, business records would speak for themselves.

MR. WALLEN: He is standing there with the business record in his hand.

MS. STURGILL: I am aware of that and it speaks for itself.

THE COURT: Of course, the record has already been introduced to indicate what he stated, part of what he stated.

MR. WALLEN: Your Honor, in Stevens v. Sparks, 205 Va. 128, at Page 135, the Supreme Court has said again for I don't know how many times that the intention of the depositor is what controls this case.

His testimony about --

THE COURT: I didn't exclude it.

MR. WALLEN: That is why I am offering it.

THE COURT: Go ahead.

BY MR. WALLEN:

Q Did Mr. McCoy ask the bank to do anything in regard to the checks?

A You are talking about the checks -- yes, to have personalized checks printed with R. V. McCoy and Kay McCoy printed on them.

Q Was that done?

A Yes.

Q The bank offered him those checks?

A Yes.

Q Have you looked through these, Mr. Vanover?

A Yes.

Q Is it fair to say that those were the checks issued on this account before and after all this took place?

A That is correct.

Q They are the same records you offered Mrs. Sturgill?

A Yes, photostat copies.

MR. WALLEN: Do you have any objection to the introduction of all this?

MS. STURGILL: Let me look at it just a minute.

MR. WALLEN: Copies of checks.

MS. STURGILL: No objection.

THE COURT: They will be admitted in evidence as Defendant's Exhibit No. 1.

(DEFENDANT'S EXHIBIT 1 was marked for identification and filed.)

BY MR. WALLEN:

Q I started to ask you, did you know Mr. McCoy very well?

A Yes.

Q Was there any indication as far as the bank was concerned that Mr. McCoy was in ill health at the time?

A No, sir, in fact we had approved a loan for him to build a new home.

Q Would you have done that, if you thought he was getting ready to die?

A No, sir.

Q Who did he make that application in the name of?

A To R. V. McCoy, Jr. and Kay McCoy.

Q And the purpose of that loan?

A Was to build a new home.

Q Was it ever acted on?

A No, he deceased before -- the loan was approve but he deceased before the finalization was made.

Q What was the bank's understanding in regard to the relationship of Kay McCoy, Kay Stanley and R. V. McCoy, Jr.?

A They were husband and wife.

Q They lived together?

A Yes.

MS. STURGILL: I object to that.

THE COURT: Objection overruled, if he knows.

BY MR. WALLEN:

Q Where did they live?

A They lived next door to the bank in the Lyndon Mullins Apartments.

Q Do you know when they were married?

A No, sir, I do not.

Q This account was changed according to your records --

A According to my records, October 11 of '76.

Q And he died December --

A The 4th of '76.

Q Now were there any deposits made to that account after this transaction in October of '76?

A I believe from our records there were.

Q Do you know who made those deposits?

A No, sir, I could not say truthfully who made the deposits.

Q Were there checks drawn on that account after that?

A Yes.

Q According to those records, drawn both by R. V. McCoy and Kay McCoy?

A By both individuals.

Q Do you recall the Monday morning following his death?

A Yes, I do.

Q Who was in your bank when it opened up?

A Mrs. Kay Stanley McCoy.

Q What did she have?

A She had withdrawal for the amount of money that was in the account.

Q Did she do that? Did she withdraw it all?

A Yes, she did.

Q This was after you had knowledge that Mr. McCoy had died?

A That is correct.

Q Now in relation to when that check was pre-

sented at the bank, when did you talk with Mrs. Sturgill?

A Later in the day. It was the same day. It was on Monday, the 6th of December. Yes, the 6th of December, but it was Mrs. Kay Stanley McCoy who was at my bank the first thing, and the best that I remember maybe Mrs. McCoy could remember, too, I think she called about 10:30. It was before noon, but Mrs. Rose Mary called to say was I aware that Bud was dead and I told her that I was, and that he had an account, she asked if he had an account at our bank, and would I not give out any information on the account, that she was qualifying as administratrix of his estate and I said all right. But at that time the account had already been closed and zeroed out. There was no other information furnished to anyone on the account until the court petition has us by court order, and we turned the records over to her and to her attorney. She brought the qualifying certificate in to us, I believe. She did inform me before noon on Monday the 6th that she would be qualified.

MR. WALLEN: I have no other questions on cross examination.

MS. STURGILL: I have a few more questions.

REDIRECT EXAMINATION

BY MS. STURGILL:

Q When Rose Mary called you concerning the account

at your bank, did you tell her that this account had been closed?

A No, I did not.

Q What is your statement as to what she said to you concerning that account? What did she ask you to do?

A To not give any information out on the account.

Q Didn't she ask you to not honor any checks?

A The check had been honored.

Q But that is not what I am asking. Did she ask you not to honor any checks?

A That is correct. I would give the lady the benefit of the doubt. I would say she said that.

Q Did you honor checks after that date?

A No, ma'am.

MS. STURGILL: That is all I have right now.

(Witness excused.)

THE COURT: Do you want a little break before you go ahead?

MS. STURGILL: No, sir.

MR. WALLEN: Have you rested?

MS. STURGILL: Yes.

MR. WALLEN: We would move for entry of a directed verdict in favor of the Defendant.

. . . Thereupon, counsel presented argument on

the motion . . .

THE COURT: Anything further?

MR. WALLEN: No, Your Honor.

THE COURT: I think in this case the evidence is uncontradicted that in October of 1976 R. V. McCoy, Jr. brought to the bank Kay Stanley and had her name placed on the paper and authorized the bank to accept her signature as being one person who could write checks on this particular joint account. This is evidenced by one of the exhibits filed here on behalf of the Defendant, being the checks showing checks having been written both by R. V. McCoy, Jr. and by Kay Stanley McCoy.

The Court is of the opinion that Section 6.1-72, which has been referred to as controlling in this particular case, in that same section in King v. Merriman, 196 Va. 844 was quoted as Section, at that time, Section 6-55, the King v. Merriman case having been cited on March 7, 1955. In reading on Page 850 in King v. Merriman a quotation of 6-55, it appears that the language of 6-55 is identical to the language as shown in the present code being 6.1-72, and the code in effect at the time of the transaction in 1976. In that section, which is quoted both in King

v. Merriman also in Colley v. Cox, 209 Va. 811, in that section reads specifically: "When a deposit has been made or shall hereafter be made in any bank or trust company transacting business in the State under the names of two or more persons payable to either or payable to the survivor or any survivor, such deposit or any part thereof or any interest or dividend thereon may be paid to any of such persons, whether the other or others be living or not, and the receipt or acquittance of the person so paid shall be a valid, sufficient and complete release and discharge of bank or trust company or any payment so made."

Of course, the last sentence was added some several years after the original statute and that was the term "deposit shall include certificates of deposit heretofore and hereafter issued." Therefore, the contractural arrangement as stated in the cases and the intention of the parties is very important and governs in both deposits and regular deposits, savings account or certificates of deposit.

In the footnote to 6.1-72, and they are quoting from King v. Merriman, it is said: "This section establishes no presumption as to the ownership of

money as between two persons named in a joint savings account with or without an extended right of survivorship.

So the Court takes the position it doe 't matter whether the right of survivorship is involved or not. It is manifestly for the protection of the bank and not declaratory of the rights of depositors in the fund as between themselves. Each depositor is merely given the right to receive payment out of the funds of the bank during his lifetime in the survivor right after the death of the other person. The bank is discharged of liability for any payment so made, and they cite there King v. Merriman and also cite the case which I have previously mentioned, Colley v. Cox, 209 Va. 811, which contains the same information.

Now to comment on Section 8.4405 of the code, the Court is of the opinion that that section applies only to checks written, in this particular case, only applies to checks written by R. V. McCoy, Jr. and that it would not apply to Kay Stanley McCoy on this particular joint account.

I think the purpose of the statute is clear, that it is not intended to hold the bank liable, and

as stated in the cases, this section is solely for the benefit, well, I can say benefit -- it is solely as the Supreme Court has said, for the protection of the banks.

Let me say this, as stated in all the cases in the footnotes, and in Colley v. Cox and King v. Merriman, this does not adjudicate the rights as between Kay Stanley McCoy and the estate. This section merely protects the bank, so the Court is going to grant the motion for directed verdict, or strike the evidence of the Plaintiff, whichever way you see fit, without and with specifically stating that the rights of the parties, and I say the rights of the parties, I am talking about Rose Mary McCoy Sturgill and Kay Stanley, and as shown on the account Kay Stanley McCoy, is not in any way adjudicated. Those rights still remain.

In other words, whatever procedures the administratrix sees fit to follow the rights as between Kay Stanley and the estate of R. V. McCoy, Jr. is not being adjudicated and could not be adjudicated in view of these decisions.

In other words, it would then become a question of fact as to who would be entitled to the money as

between those parties. This is merely, and I think the Court has no alternative but to strike the evidence of the Plaintiff and direct the verdict in favor of the Defendant Virginia Citizens Bank in this case, based solely on the law, and without in any way adjudicating the rights of the parties, that is the estate and Kay Stanley.

It is interesting to note that these two sections, the one section with reference to which the Court just quoted, 6.1-72 is repealed effective July 1, 1980. It is obvious that the legislature has in mind changing these sections, but until July 1, 1980, I have no way of knowing at this time or none of us, I suppose, know why they are repealing this section.

It is either to change the situation or to clarify it or to say how accounts ought to be set up.

This situation has come up in numerous cases. This Court decided a similar case on this same tenor 11 years ago, shortly after the decision in Colley, which was on April 28, 1969, in the Circuit Court of Russell County, in which the Court held the same ruling. That case, and without inviting future litigation, that case then was adjudicated thereafter between the rights of the parties to the proceeds of

the funds. I think here the real issue, I think the bank is exempt and is not liable, based on this statute. That leaves the real issue to be decided as to whom should receive the funds at some subsequent date.

I assume that litigation, if brought, would have to be between the estate and Kay Stanley. And without in any way commenting on how the case would go, the Court couldn't at this time comment on that. That is another case, another set of facts, and whatever the facts are in that case, the litigants would have a right to determine which party is entitled to the proceeds.

In view of this situation, I might also say that in another case in Russell County, which was a nursing home case, the same issue with reference to certificates of deposit was decided by this Court and decided on the same basis here. There was not any liability on the bank, but then at that particular time, Sam Coleman was the attorney -- Mr. Cecil Quillen -- and the rights were later adjudicated as between the parties, as to which one was entitled to the funds.

Every case that this Court has been involved

with reference to this statute, the Court has been compelled to follow the statute and to hold the bank not liable. I think, without commenting -- I think 6.1-72 or 73 has a great deal to do with the situation. The Court does feel that the intention of the parties is usually controlling and if the parties come in and put themselves out as husband and wife, I think the Court would have to be inclined, if a decision had to be based on that particular statute, that the bank is not required, and to my knowledge, I have never known of someone having to bring a marriage certificate to the bank when you set up a joint account. I think it would be putting a great burden upon the bank and maybe it might be the invasion of privacy, and we won't go into that, on the parts of the individuals.

The Court, therefore, is striking the evidence of the Plaintiff and directing the verdict in favor of Virginia Citizens Bank.

. . . Thereupon, at 10:55 A.M., the hearing in this matter was concluded. . .

Trial Exh #1
Plaintiff's Judge
Sept. 7, 1975

Certificate Of Qualification

STATE OF VIRGINIA:
DICKENSON COUNTY CLERK'S OFFICE

I, Teddy Bailey Clerk of the Circuit Court and County aforesaid, do hereby certify that Rose Mary McCoy was on December 7, 1976 duly appointed by the Clerk of the Circuit Court of Dickenson County as Administratrix of Estate of Rufus V. McCoy, Jr. and entered into bond in the penalty of $ 20,000.00, together with Eliza Carico his-her surety therein conditioned according to law. And the said Rose Mary McCoy this day took and subscribed the oath prescribed by law.

Given under my hand this Dec. 7, 1976.

Juanita Anderson
~~CLERK~~ — DEPUTY CLERK

Pl. Ex #2

VIRGINIA:

IN THE CIRCUIT COURT FOR DICKENSON COUNTY

ROSE MARY McCOY, ADMINISTRATRIX OF THE ESTATE OF RUFUS V. McCOY, JR., DECEASED — PETITIONER

VS:

ORDER

VIRGINIA CITIZENS BANK — DEFENDANT

This date came the Petitioner, by counsel, upon the verified Petition and Notice properly served upon the defendant, and the defendant, by counsel, and the Court, having received the verified Petition and having heard argument of counsel for both parties, being of the opinion that the relief prayed for in the Petition ought to be granted, it is, therefore,

O R D E R E D

That the defendant, Virginia Citizens Bank, provide the Petitioner, Rose Mary McCoy, Administratrix of the Estate of Rufus V. McCoy, Jr., Deceased, with all information and records pertaining to account number 0514-0335 10 0 291 0, including checks, deposits, account records and all transactions in said account.

Enter this Order this the 3rd day of June, 1977.

044 /s/ Glyn R. Phillips
JUDGE

REQUESTED:

STURGILL AND STUMP, "P.C."

BY: Wm. J. Sturgill
WILLIAM J. STURGILL
COUNSEL FOR PETITIONER

SEEN:

E. Buddy Wallen
BUDDY WALLEN
COUNSEL FOR DEFENDANT

A COPY TESTE:

Lizette T. Mullins D.C.
CLERK

& STUMP
S AT LAW
AVENUE
VA. 24273

9-7-79 Pt 4 #3

Issued. Judge

S.S. No. 230-36-7876

Firm Account [ ]
Individual Account [X]
Special Account [ ]

R. V. McCoy, Jr.

Acct. # 10 0291n0

To the VIRGINIA CITIZENS BANK:

I hereby agree that this account shall be subject to, and that I will be bound by, the RULES AND REGULATIONS Governing Accounts in the Virginia Citizens Bank, relating to accounts generally and to checking accounts, as they may have been amended from time to time, and acknowledge advice that copies thereof are available to depositors upon request at each of your offices.

You are authorized to recognize any (* one) of the signatures below in the payment of funds or the transaction of any business for this account.

(*Indicate number of signatures required.)

Date 3/28/75

Mr. R. V. McCoy Jr.
Mrs.
Miss x Kaye McCoy

Box 734, Clintwood, Virginia 24228

Closed 12-7-76

Def. # 2

Kaye McCoy's Signature added Oct. 11, 1976

Pl. EXH. 7

2.00