214 Va. 59

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Clerk, Supreme Court of Appeals
Richmond, Va.

8117

IN THE

SUPREME COURT OF VIRGINIA

EDWARD B. DRAPER,

Appellant,

vs.

PIEDMONT TRUST BANK, et als

Appellee, et als

APPEAL FROM THE
CORPORATION COURT
FOR THE
CITY OF MARTINSVILLE, VIRGINIA

APPENDIX

MORRIS H. FINE, Esquire
Fine, Fine, Legum & Fine
720 Law Building
Norfolk, Virginia 23510

Attorney for Appellant

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#1

VIRGINIA: IN THE MARTINSVILLE CORPORATION COURT

PIEDMONT TRUST BANK
Church Street
Martinsville, Virginia

NANCY LEE LAWRENCE, an infant
who sues by her mother and next
friend, Mildred H. Lawrence
1608 Chatham Heights
Martinsville, Virginia

RHONDA HOLLAND, an infant who
sues by her father and next
friend, Willard D. Holland
30 Hillcrest Avenue
Martinsville, Virginia

TERESA LAW JOHNSON
Stultz Road
Martinsville, Virginia

GREG JOHNSON, an infant who sues
by his mother and next friend,
Teresa Law Johnson
Stultz Road
Martinsville, Virginia

BETTY ANN BUCKNER
Ferrum
Virginia

DONNA CURRY, an infant who
sues by her mother and next
friend, Frances H. Curry
Route 2
Ridgeway, Virginia,

Petitioners

VS.

EDWARD B. DRAPER
8505 Chapin Street
Norfolk, Virginia

ANGELA LUCAS
Waynesboro
Virginia

DENNIS T. LUCAS
Waynesboro
Virginia

ETHEL HOLLAND DRAPER
1826 Stratford Place, S. W.
Roanoke, Virginia

REVA CONNER POFF
1534 Washington Street, East
Charleston, West Virginia

PETITION

RAYMOND CONNER III
3019 Willow Road
Roanoke, Virginia 24015

BARBARA CONNER POWERS
Route 2
North Vassolboro, Maine 04962

DOYLE CONNER
1534 Washington Street, East
Charleston, West Virginia 25311

KATHRYN CONNER
1534 Washington Street, East
Charleston, West Virginia 25311

ARLINE CONNER BECK
1512 Ohio Street
Waynesboro, Virginia 22980

GERALDINE CONNER LUCAS
1196 Blandford Street
Staunton, Virginia 24401

ADELINE CONNER GOOD
Route 1, Box 369
Shenandoah, Virginia 22849

DEWEY A. CONNER
302 George Street
Staunton, Virginia

PAULINE CONNER BOLTON
218 42nd Street
Gulfport, Mississippi 39501

FANNIE COOPER HOLLAND
Route 2
Axton, Virginia

STAFFORD HOLLAND
Route 1
Axton, Virginia

RANDOLPH HOLLAND
Flint
Michigan

DELEPHINE H. BROWN
Route 1
Axton, Virginia

EULA CLARK HOLLAND SHELTON
Route 2
Axton, Virginia

WILLARD D. HOLLAND
30 Hillcrest Avenue
Martinsville, Virginia

JAMES M. HOLLAND
Route 2
Axton, Virginia

BOBBY M. HOLLAND
Route 2
Axton, Virginia

MILDRED H. LAWRENCE
1608 Chatham Heights
Martinsville, Virginia

FRANCES H. CURRY
Route 2
Ridgeway, Virginia

UNKNOWN HEIRS-AT-LAW
OF MAGGIE H. HODGES,

Respondents

Your Petitioners respectfully show unto the Court as follows, to-wit:

1. That Maggie H. Hodges, late of Martinsville, Virginia, died testate on April 25, 1968, and her Will, dated the 8th day of January, 1966, was admitted to probate on the 28th day of April, 1968, in the Clerk's Office of the Martinsville Corporation Court in Will Book 15, Page 445, a copy of which is hereto annexed, marked Exhibit "A", and made a part hereof.

2. All legatees under the aforesaid Will except those receiving specific items of personal property are parties hereto. All of the heirs-at-law of Maggie H. Hodges are named Respondents herein. She had five (5) brothers and sisters and they are represented in this proceeding as follows:

(a) Berta H. Conner, a sister, is now deceased as is her husband, Clyde R. Conner. She had six (6) children and the five (5) surviving children are Arline Conner Beck, Geraldine Conner Lucas, Adeline Conner Good, Dewey A. Conner, and Pauline Conner Bolton. Berta H. Conner had one son, who is now deceased, Clyde Ray Conner, Jr., who left surviving him four (4) children, to-wit: Clyde Raymond Conner III, Barbara Conner Powers, Doyle Conner, and Kathryn Conner. The wife of Clyde Ray Conner, Jr., Reva, also survives him and has remarried to become Mrs. Reva Poff.

(b) Lloyd Holland, a brother, predeceased Maggie H. Hodges, unmarried.

(c) Ethel Holland Draper, a sister of Maggie H. Hodges, still survives and is a party respondent to this suit.

(d) Rorer Holland, a brother, has passed away leaving his wife, Fannie Cooper Holland, surviving him along with three (3) children, to-wit: Stafford Holland, Randolph Holland and Delephine H. Brown.

(e) Willard Drowey Holland, a brother of Maggie H. Hodges, has passed away, leaving his wife, Eula Clark Holland, surviving along with five (5) children, to-wit: Willard D. Holland, James M Holland, Bobby M. Holland, Mildred H. Lawrence, and Frances H. Curry.

(f) There may be other unnamed heirs-at-law of Maggie H. Hodges unknown to your Petitioners and if so your Petitioners pray that they be made a party to this suit.

Your Petitioners are of the opinion that all but six (6) of the Respondents are over the age of twenty-one (21) years and are sui juris. Certain of the Petitioners are under the age of twenty-one (21) years and they pray that no order shall be entered to their prejudice.

3. Your Petitioner, Piedmont Trust Bank, in accordance with the third full paragraph of the Will of Maggie H. Hodges, has proceeded to sell all of her property after honoring the specific tangible personal property legacies mentioned on the second page of her Will, and now holds in its hands the sum of $23,413.59 (less allowable costs and fees and the expenses of this proceeding) for distribution to the pecuniary legatees and/or heirs-at-large of Maggie H. Hodges.

4. The Will of Maggie H. Hodges contains conflicting language in that it directs that the residue of the estate of Maggie H. Hodges "be sold and divided into shares to go to our nieces and nephews as followering." and then proceeds to set forth certain pecuniary amounts beside the names of designated individuals (e.g. "Nancy Lee Lawrence - niece of Maggie H. Hodges, Chatham Heights, Martinsville, Va. $500.00"). Other beneficiaries have both "share" language and pecuniary amounts set forth (e.g. "Edward B. Draper, nephew of Maggie H. Hodges, 8505 Chapin St., Norfolk, Va. - 2 such shares or $1000.00"). In addition, some of the parties named as recipients of these

amounts are grandnephews or grandnieces rather than nephews or nieces of either Maggie H. Hodges, or her husband, Dennis R. Hodges.

5. Your Petitioners verily believe and aver that the said Will should be construed and that the Executor thereunder should be directed to divide the residue of the estate of Maggie H. Hodges, after payment of the costs of this proceeding, into eleven (11) equal shares and thereafter distribute such shares as follows:

Edward D. Draper	2 shares
Nancy Lee Lawrence	1 share
Angela Lucas	1 share
Dennis T. Lucas	1 share
Rhonda Holland	1 share
Teresa Law Johnson	2 shares
Greg Johnson	1 share
Betty Ann Buckner	1 share
Donna Curry	1 share

WHEREFORE, your Petitioners pray that all Respondents be given proper notice of this proceeding; that a guardian ad litem be appointed to represent and protect the interests of the infant Respondents named in the Will of Maggie H. Hodges, to-wit: Angela Lucas and Dennis T. Lucas. That a second guardian ad litem be appointed to represent and protect the interests of the infant Respondents not named in the said Will, to-wit: Raymond Conner III, Barbara Conner Powers, Doyle Conner and Kathryn Conner (your Petitioners are not advised of the ages of these Respondents); that the Will of Maggie H. Hodges be construed, that the distributees named in the preceding paragraph of this Petition be declared the owners of her total estate and that your Petitioner, Piedmont Trust Bank, be directed to distribute her estate accordingly; and that such orders be entered as to this Court and equity seem meet.

PIEDMONT TRUST BANK

NANCY LEE LAWRENCE

RHONDA HOLLAND

TERESA LAW JOHNSON

GREG JOHNSON

BETTY ANN BUCKNER

DONNA CURRY

BY James H. Ford
Counsel

A Copy,

Teste: Jesse D. Clift
Clerk.

FORD, SWEZEY & BECK
ATTORNEYS AT LAW
9 CHURCH STREET
MARTINSVILLE, VA. 24112

ANSWER

NOW COMES the defendant, Edward B. Draper, and respectfully represents unto the Court as follows:

1. The allegation contained in Paragraph 1 is admitted as true.

2. The allegations contained in Paragraph 2 (a through f) are neither admitted nor denied and the defendant calls for strict proof as your defendant is without facts.

3. The allegation contained in Paragraph 3 is neither admitted nor denied and the defendant calls for strict proof.

4. The allegation contained in Paragraph 4 is denied except that the language contained in the Will is contained in Exhibit A.

5. Defendant denies the allegation contained in Paragraph 5 as the conclusion of law, and further states by way of an affirmative statement that the executor under the law of Virginia, should take notsides and ask for guidance only; and further states that the language of the Will speaks for itself and does not contain the interpretation put on by the petitioners by way of the affirmative statement, defendant states that the devises to people other than your defendant and Teresa Law Johnson were specific devises of $500.00 each.

THEREFORE, your defendant would be entitled to larger amounts than as stated in this petition by the petitioners.

WHEREFORE, your defendant prays that the Court dismiss the petition of the petitioners; that no fees be approved to the executor or petitioners since they are taking sides as advocators and the law does not permit fees for executors taking positions, and that since the executors are taking positions in this matter

that they be removed; that they be required to forfeit all fees for administrating the estate and your defendant be given other further relief.

EDWARD B. DRAPER

By_____
Of Counsel

MORRIS H. PINE
720 Law Building
Norfolk, Virginia 23510

CROSS CLAIM

And for a Cross Claim, your petitioner states as follows:

1. That the defendant, Edward B. Draper, adopts Paragraph 1 of the petition.

2. Your defendant adopts other paragraphs relative to determining defendants should they be proper, but asks the Court to determine proper defendants.

3. That the defendant was named by the testator along with Teresa Law Johnson, as beneficiaries of two (2) shares each of the remaining amount of the estate of the testator.

4. That Nancy Lee Lawrence, Angela Lucas, Dennis T. Lucas, Ethel Holland Draper, Reva Conner Poff, Raymond Conner, III, and Barbara Conner Powers, be given specific devises of $500.00 each.

WHEREFORE, your defendant prays that all the proper parties be made a party to this suit; that the Court give interpretation to the Will of decedent; and that the defendant be awarded attorney's fees and court costs; and that the petitioner be granted no attorney's fees and court costs because they have taken a position which is not in law proper; that the executor forfeit its fees in this cause; that the Court declare that Peidmont Trust Bank, Nancy Lee Lawrence (infant), Rhonda Holland (infant), Greg Johnson (infant), Betty Ann Buckner, Donna Curry (infant), Angela Lucas, Dennis T. Lucas, Ethel Holland Draper, Reva Conner Poff, Raymond Conner, III, Barbara Conner Powers, Doyle Conner, Kathryn Conner, Arline Conner Beck, Geraldine Conner Lucas, Adeline Conner Good, Dewey A. Conner, Pauline Conner Bolton, Fannie Cooper Holland, Stafford Holland, Randolph Holland, Delephine H. Brown, Eula Clark Holland Shelton, Willard D. Holland, James M. Holland, Bobby M. Holland, Mildred H. Lawrence, Frances H. Curry, and Unknown Heirs-

At-Law of Maggie H. Hodges, be given specific devises of $500.00 each and that Edward D. Draper and Teresa Law Johnson share in the remainder of the estate, share and share alike.

EDWARD B. DRAPER

By _____
Of Counsel

MORRIS H. FINE
720 Law Building
Norfolk, Virginia 23510

I hereby certify that a true copy of the foregoing Cross Claim is being mailed to James H. Ford, Esquire, 9 Church Street, Martinsville, Virginia, 24112, attorney of record for the petitioners on this 8th day of December, 1969.

_____
Morris H. Fine

VIRGINIA
In City of Martinsville Corporation Court
Clerk's Office.
Received and Filed this the
19th Day of Dec 1969
at 3:00 PM
Teste Jesse D. Clark Clerk

VIRGINIA: IN THE CORPORATION COURT FOR THE CITY OF MARTINSVILLE

PIEDMONT TRUST BANK, et al., Petitioners,	)	
vs.	)	ANSWER TO CROSS-CLAIM OF ETHEL HOLLAND DRAPER
EDWARD B. DRAPER, et al., Respondents.	)	

Now comes the Petitioner, Piedmont Trust Bank, for answer to the "Cross-Claim" heretofore filed by Ethel Holland Draper by counsel and states as follows:

1. Allegation No. 1 requires no answer as it is your Petitioners' own allegation.

2. In response to Allegation No. 2 of the Cross-Claim, Piedmont Trust Bank here repeats its original prayer that the Court determine whether all proper parties are before the Court in this proceeding.

3. In response to Allegation No. 3, the undersigned Petitioner states that this allegation has been properly raised by the answer hereinbefore filed in behalf of Ethel Holland Draper in the original action brought by your Petitioner and that this issue can be determined in that proceeding and hence the Cross-Claim should be dismissed in this respect; and your Petitioner here repeats its original prayer that the Court shall determine the proper disposition of the funds now in the hands of your Petitioner, Piedmont Trust Bank, as Executor of the Estate of Maggie H. Hodges.

4. The undersigned Petitioner verily believes that Ethel Holland Draper is a sister of the decedent and one of the heirs-at-law of Maggie H. Hodges. Your Petitioner also states that it has qualified as Executor as alleged in its original Petition to administer the Estate of Maggie H. Hodges. Your undersigned Petitioner denies that it is an advocate for any party in this proceeding and hereby reaffirms its request in its original Petition to the Court to construe the Will of Maggie H. Hodges and direct it, your under-

signed Petitioner, as Executor of the Estate of Maggie H. Hodges as to the proper distribution of such estate.

5. Your Petitioner further alleges and states that Nancy Lee Lawrence, an infant; Rhonda Holland, an infant; Teresa Law Johnson; Greg Johnson, an infant; Betty Ann Buckner and Donna Curry, an infant, all joined in the original Petition with your undersigned Petitioner in an attempt to facilitate the early disposition of the issues raised in the original Petition filed in this matter; but the Answers and "Cross-Claims" filed by Ethel Holland Draper and Edward B. Draper, respectively, by Counsel, have raised matters not originally contemplated by those Petitioners, and before entry of any order on the Cross-Claim to their detriment, they should be allowed ample opportunity to appear, to file appropriate pleadings, and otherwise protect their interests. Counsel for undersigned Petitioner has no authority to further represent the aforesaid Petitioners (other than your undersigned Petitioner) beyond the filing of the original Petition in which they were joined as a matter of convenience only.

6. Your Petitioner further states and alleges that the "Cross-Claim" should be dismissed as being improper in that (a) it is in the nature of a cross-bill against co-defendants which can be filed only with leave of Court, which leave has not been obtained by the Respondent, Ethel Holland Draper; and (b) it does not allege matters which cannot be considered and appropriately disposed of in proceedings on the original Petition filed by your undersigned Petitioner herein and any answers which may be filed thereto (including the one filed by Ethel Holland Draper, by Counsel).

WHEREFORE, your Petitioner prays that notice of this answer be given to the other original Petitioners in this matter, that the "Cross-Claim" of Ethel Holland Draper be dismissed at her expense, and that your Petitioner and all parties affected thereby be reimbursed by Ethel Holland Draper for all expenses, costs and fees including reasonable attorney's fees incurred by them relative thereto; that the other Petitioners in the original cause be allowed to file such pleadings as they may deem proper; and further that

this Court examine the pleadings in this cause and, upon appropriate notice to all parties affected thereby, enter such orders as it may deem necessary to join and properly align all parties having an interest in the Estate of Maggie H. Hodges and as shall be necessary to enable this Court to determine the proper distribution of the funds now held by your undersigned Petitioner as the proceeds of her estate.

PIEDMONT TRUST BANK

By James H. Ford
Counsel

CERTIFICATE

I hereby certify that a true copy of the foregoing Answer has been mailed to Lawrence C. Musgrove, 306 Shenandoah Building, Roanoke, Virginia 24001, Attorney of Record for Ethel Holland Draper; and to Morris H. Fine of the Law Firm of Fine, Fine, Legum & Fine, Law Building, Norfolk, Virginia 23510, Attorney of Record for Edward B. Draper, on this 3rd day of January, 1970.

James H. Ford
James H. Ford

VIRGINIA
In City of Martinsville Corporation Court
Clerk's Office.
Received and Filed this the
5 Day of Jan 1970
at 11:50 AM
Teste Jesse D. Clift Clerk

VIRGINIA: IN THE MARTINSVILLE CORPORATION COURT

PIEDMONT TRUST BANK, et al., Petitioners,	)	
vs.	)	ANSWER TO "CROSS-CLAIM" OF EDWARD B. DRAPER
EDWARD B. DRAPER, et al., Respondents.	)	

Now comes the Petitioner, Piedmont Trust Bank, for answer to the "Cross-Claim" heretofore filed by Edward B. Draper by counsel and states as follows:

1. Allegation No. 1 requires no answer as it is your Petitioner's own allegation.

2. Allegation No. 2 cannot be answered precisely since it is imprecisely drawn. However, your Petitioner, Piedmont Trust Bank, here repeats its original prayer that the Court determine whether all proper parties are before the Court in this proceeding.

3. Your Petitioner admits that Edward B. Draper and Teresa Law Johnson are mentioned in the Will in the following language: "Edward B. Draper, nephew of Maggie H. Hodges, 8505 Chapin Street, Norfolk, Virginia, 2 such shares or $1,000.00 . . . . Teresa Law Johnson. niece of Dennis R. Hodges, Stultz Rd. City, 2 such shares or $1,000.00" but your Petitioner further alleges that the language preceding the section of Mrs. Hodges' Will in which the above language appears provides that her property be "sold and divided into shares to go to our nieces and nephews as following." Your Petitioner here requests that this Honorable Court determine the proper interpretation of these two seemingly conflicting provisions.

4. Your Petitioner neither admits nor denies Allegation No. 4 of the "Cross-Claim" but requests this Honorable Court to examine such evidence as may be offered by the parties hereto and determined the truth or falsity of this allegation.

5. Your Petitioner further states that the "Cross-Claim" should be dismissed as being improper in that (a) it is in the nature of a cross-bill against co-defendants which can be filed only with leave of court, which leave has not been obtained by the defendant, Edward B. Draper; (b) it does not allege matters which cannot be considered and appropriately disposed of in proceedings on the original Petition filed by your undersigned Petitioner herein and any answers which may be filed thereto (including the one filed by Mr. Edward B. Draper by counsel); (c) the prayer of the "Cross-Claim" is improper in that it asks this Court to decree specific "devises" (sic) to parties not mentioned in Mrs. Hodges' Will (including your undersigned Petitioner) and perhaps even to parties not capable of specific identification in this proceeding.

6. Your Petitioner further alleges and states that Nancy Lee Lawrence, an infant; Rhonda Holland, an infant; Teresa Law Johnson, Greg Johnson, an infant; Betty Ann Buckner and Donna Curry, an infant, joined in the original Petition with your undersigned Petitioner in an attempt to facilitate the early disposition of the issues raised in the original Petition filed in this matter; but the Answer and "Cross-Claim" filed by Edward B. Draper, by counsel, has raised matters not originally contemplated by those Petitioners, and before entry of any order on the Cross-Claim to their detriment they should be allowed ample opportunity to appear, file appropriate pleadings, and otherwise protect their interests. Counsel for your undersigned Petitioner has no authority to further represent the aforesaid Petitioners, other than your undersigned Petitioner, beyond the filing of the original Petition in which they were joined as a matter of convenience only.

WHEREFORE, your Petitioner prays that notice of this Answer be given to the other original Petitioners in this matter, that the "Cross-Claim" of Edward B. Draper be dismissed at his expense, and that Edward B. Draper be required to reimburse your Petitioner and all parties affected thereby for all expenses, costs and fees including reasonable attorney's fees, incurred by them

relative thereto; that the other Petitioners in this original cause be allowed to file such pleadings as they may deem proper; and further that this Court examine the pleadings in this cause and, upon appropriate notice to all parties affected thereby, enter such orders as it may deem necessary to join and properly align all parties having an interest in the estate of Maggie H. Hodges and as shall be necessary to enable this Court to determine the proper distribution of the funds now held by your undersigned Petitioner as the proceeds of her estate.

PIEDMONT TRUST BANK

By James H. Ford
Counsel

C E R T I F I C A T E

I hereby certify that a true copy of the foregoing Answer has been mailed to Morris H. Fine of the Law Firm of Fine, Fine, Legum & Fine, Law Building, Norfolk, Virginia 23510, Attorney of Record for Edward B. Draper, on this 23rd day of December, 1969.

James H. Ford
James H. Ford

VIRGINIA
In City of Martinsville Corporation Court
Clerk's Office.
Received and Filed this the
24th Day of December 19 69
at 11:15 A. M.
Teste Jane D. Clift Clerk

VIRGINIA: IN THE MARTINSVILLE CORPORATION COURT

PIEDMONT TRUST BANK, et al., Petitioners,	)	
vs.	)	NOTICE
EDWARD B. DRAPER, et al., Respondents.	)	

To: Edward B. Draper
c/o Fine, Fine, Legum & Fine
Law Building
Norfolk, Virginia 23510

You are hereby notified that the undersigned Petitioner, Piedmont Trust Bank, by counsel, will on the 15th day of January, 1970, at 2:30 o'clock P.M., or as soon thereafter as he may be heard, move the Martinsville Corporation Court to amend the pleadings in this cause and to effect a realignment of the parties, if the Court shall deem such to be necessary in order to enable it to bring this matter to a speedy and proper conclusion, in any manner deemed wise by the Court, including, specifically:

1. An amendment constituting Nancy Lee Lawrence, an infant; Rhonda Holland, an infant; Teresa Law Johnson; Greg Johnson, an infant; Betty Ann Buckner, Donna Curry, an infant, Respondents in this action and allowing them adequate time to file such pleadings as they may deem necessary in this cause; and

2. Amending Paragraph 5 of the original Petition to allege as follows:

"5. Your Petitioner, Piedmont Trust Bank, verily believes and avers that the said Will should be construed, the recipients of all of the property of Maggie H. Hodges now held by your Petitioner be determined, and your undersigned Petitioner, the Executor of her Estate, be directed to divide the residue of the Estate of Maggie H. Hodges, after payment of the cost of this proceeding, and distribute it to those persons determined by this Court to be legally entitled thereto."

3. That the prayer of the aforesaid Petition be amended to state

as follows:

"WHEREFORE, your Petitioner prays that all Respondents be given proper notice of this proceeding; that a guardian ad litem be appointed to represent and protect the interests of the infant Respondents named in the Will of Maggie H. Hodges, to-wit: Nancy Lee Lawrence, Rhonda Holland, Greg Johnson, be appointed to represent and protect the interests of the infant Respondents not named in the said Will, to-wit: Raymond Conner, III, Barbara Conner Powers, Doyle Conner and Kathryn Conner (your Petitioner is not advised of the ages of these Respondents); that the Will of Maggie H. Hodges be construed, that the proper and legal distributees of her Estate be determined and that your Petitioner, Piedmont Trust Bank, be directed to pay the costs of this proceeding, including reasonable attorney's fees and Executor's commissions, and distribute the residue of the Estate of Maggie H. Hodges to such distributees in such proportions as this Court shall deem proper; and that such other orders be entered as to this Court and equity seem meet."

4. That the pleadings hereinbefore filed by this Petitioner be otherwise modified as the Court may determine to be necessary to enable it to make an equitable determination upon the issues involved in this cause.

PIEDMONT TRUST BANK

By James H. Ford
Counsel

C E R T I F I C A T E

I hereby certify that a true copy of the foregoing Notice has been mailed to Morris H. Fine of the law firm of Fine, Fine, Legum & Fine, Law Building, Norfolk, Virginia 23510, Attorney of Record for Edward D. Draper, on this 23rd day of December, 1969.

James H. Ford

James H. Ford

VIRGINIA
In City of Martinsville Corporation Court
Clerk's Office.
Received and Filed this the
24th Day of December 19 69
at 11:54 A.M.
Teste Jesse D. Clift Clerk

FORD, SWEZEY & BECK
ATTORNEYS AT LAW
9 CHURCH STREET
MARTINSVILLE, VA. 24112

VIRGINIA:

IN THE CORPORATION COURT OF THE CITY OF MARTINSVILLE

PIEDMONT TRUST BANK, ET AL	)	
vs.	)	ANSWER
EDWARD W. DRAPER, ET UX	)	

TO THE HONORABLE FRANK L. RICHARDSON, JUDGE OF SAID COURT:

The Answer of Betty Ann Buckner to a Petition filed by Piedmont Trust Bank of Martinsville, Virginia, a Cross-Claim of Ethel Holland Draper, and a Petition of Edward B. Draper, filed in reference to the Will and Estate of Maggie H. Hodges, deceased:

(1.) The said Betty Ann Buckner being one of the devisees named in the said Will.

(2.) It is obvious from the reading of the Will of the said Maggie H. Hodges that she desired that her Estate "real, personal or mixed, to be sold and divided into shares to go to our nieces and nephews...". It is evident from the reading of this Will that she intended that no person share in the proceeds of her Estate except her nieces and nephews, and that her entire estate, regardless of the value placed on "a share", whether it be more than $500.00 or less than $500.00, should go to said nieces and nephews.

(3.) The said Betty Ann Buckner respectfully requests that the intention of the said Maggie H. Hodges be carried out and that the proceeds

from her entire estate be divided and distributed according to the names and shares as set forth in said Will.

RESPECTFULLY:

BETTY ANN BUCKNER

By _____
Counsel

CERTIFICATE OF MAILING

I, B. A. Davis, III, Attorney for Betty Ann Buckner, do hereby certify that I have this the 19 day of January, 1970, mailed a true copy of the foregoing Answer to James H. Ford, Attorney at Law, Martinsville, Virginia, Mr. Lawrence Musgrove, Attorney at Law, 306 Shenandoah Building, Roanoke, Virginia, and Morris H. Fine, 720 Law Building, Norfolk, Virginia.

_____

LAW OFFICES
DAVIS, DAVIS, DAVIS,
& RAINE
ROCKY MOUNT, VA.

VIRGINIA
In City of Martinsville Corporation Court
Clerk's Office.
Received and Filed this the
14th Day of January 1970
at 9:00 A.M.
Teste _____ Clerk

I Maggie Holland Hodges of Henry County Virginia, being of sound and disposing mind & memory do here by make publish and declare this to be my last will and testament.

First I desire that all my just debts be paid, including expenses of my last illness and funeral expenses the same as my beloved husband, Dennis R. Hodges.

In the event that my sickness and cure does not dispose of all my property, during my life time, then I do direct what ever remains of my property, real personal, to be sold and divided into shares to go to our nieces and nephews as following.

I appoint as executor the Piedmont trust bank.

Maggie H. Hodges
Jan. 8, 1964.
Maggie H. Hodges

Witnessed by -
Nancy L. Dettmar
Mary Lou Atkins
Patty D. Stroud

Exhibit "A"

Edward J. Draper, Nephew of Maggie H. Hodges
8505 - Chapin St. Norfolk Va.
2 such shares or
$1,000.00

Mary Holland Faith
Mary Lee Lawrence - niece of Maggie H. Hodges
Chatham Hgts. Martinsville Va. $5.00.00

Angela Lucas, niece of Maggie H. Hodges
Waynesboro, Va. $5.00.00

Dennis T. Lucas, $5.00.00
Waynesboro Va. nephew of Maggie H. Hodges

Rhonda Holland. niece of Maggie H. Hodges
Martinsville. Va. $5.00.00

Teresa Lee Johnson. niece of Dennis R. Hodges
Study Rd. City. 2 such shares or $1,000.00

Greg Johnson - nephew of Dennis R. Hodges
Study Rd. $5.00.00

Betty Ann Buckner. niece of Dennis R. Hodges.
Fenwick Va. $5.00.00

Donna Cuny. niece of Maggie H. Hodges.
City - $5.00.00

I also desire Teresa Lee Johnson to get the antique clock, glass ware that came from Dennis R Hodges family Greg Johnson to get antique watch of Dennis R. Hodges and tool chest.

Mildred Holland Lawrence Crotched bed spread.

Helen Warren English. friend + Neighbor
1229 Chatham Hgts. City - Oval Mirror

I appoint as executor the Piedmont Trust bank.

Maggie H. Hodges
Jan, 8. 1966

Dennis R. Hodges only true nephew named in will

Daughter of Mildred Holland Lawrence who was niece of Decedent

Rhonda - daughter of Donald Conner Lucas who is daughter of Bola Conner Lucas niece of Decedent

Rhonda - daughter of Mildred D. Holland P. who was niece of Willie Mae C. Holland, brother of Decedent

Teresa Lee Johnson - niece of Dennis R. Hodges & Brenda

Greg Johnson - nephew of Dennis R. Hodges & Brenda

niece of Dennis R. Hodges

son of Teresa Lee Johnson

niece of Maggie, sister of Mildred

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VIRGINIA: IN THE CORPORATION COURT OF THE CITY OF MARTINSVILLE

269-1865

PIEDMONT TRUST BANK, et al., Petitioners,	)	
vs.	)	ORDER
EDWARD B. DRAPER, et al., Respondents.	)	

This cause came on this day to be heard upon the papers hereinbefore filed and upon the Notice of its Motion to Amend its Petition hereinbefore filed by the Petitioner, Piedmont Trust Bank, which was served on all parties who have filed other pleadings in this cause, to-wit: Ethel Holland Draper and Edward B. Draper; and which notice was also served upon Nancy Lee Lawrence, an infant, Rhonda Holland, an infant, Teresa Law Johnson, Greg Johnson, an infant, Betty Ann Buckner and Donna Curry, an infant, all of whom were Co-Petitioners in the original Petition; Betty Ann Buckner having appeared by counsel, Ethel Holland Draper having appeared by counsel, Willard D. Holland having appeared in behalf of Rhonda Holland, his daughter, Mildred H. Lawrence having appeared in behalf of Nancy Lee Lawrence, her daughter, and Teresa Law Johnson having appeared in person, Edward B. Draper having been served with notice but failing to appear; and it was argued by counsel.

It appears to the Court that none of the parties present in person or represented by counsel opposed Petitioner's Motion to Amend the original Petition herein as is set forth in the Notice and in accordance with the issue raised in the Demurrer hereinbefore filed by Ethel Holland Draper by counsel;

It is now therefore ORDERED, ADJUDGED and DECREED that the Petitioner's Motion to Amend the Petition is hereby granted and it shall amend its Petition in the following manner:

(1) An allegation shall be included specifically setting forth the interest and standing of the Petitioner, Piedmont Trust Bank, as fiduciary under the Will of Maggie H. Hodges;

(2) The Petition shall be amended to make Nancy Lee Lawrence, an infant, Rhonda Holland, an infant, Teresa Law Johnson, Greg Johnson, an infant, Betty Ann Buckner, and Donna Curry, and infant, Respondents in this action; and

(3) Paragraph 5 of the original Petition shall be deleted and the following allegation shall be substituted therefor:

FORD, SWEZEY & BECK
ATTORNEYS AT LAW
9 CHURCH STREET
MARTINSVILLE, VA. 24112

> ".... Your Petitioner, Piedmont Trust Bank, verily believes and avers that the said Will of Maggie H. Hodges should be construed, the recipients of all of the property of Maggie H. Hodges now held by your Petitioner be determined and your undersigned Petitioner, the Executor of her estate, be directed to divide the residue of the Estate of Maggie H. Hodges, after payment of the costs of this proceeding, and distribute it to those persons determined by this Court to be legally entitled thereto." and

(4) The prayer of the aforesaid Petition shall be amended to state as follows:

> "WHEREFORE, your Petitioner prays that all Respondents be given proper notice of this proceeding; that a guardian ad litem be appointed to represent and protect the interests of the infant Respondents named in the Will of Maggie H. Hodges, to-wit: Nancy Lee Lawrence, Rhonda Holland, Greg Johnson, Donna Curry, Angela Lucas and Dennis T. Lucas. That a second guardian ad litem be appointed to represent and protect the interests of the infant Respondents not named in the said Will, to-wit: Raymond Conner, III, Barbara Conner Powers, Doyle Conner and Kathryn Conner (your Petitioner is not advised of the ages of these Respondents); that the Will of Maggie H. Hodges be construed, that the proper and legal

distributees of her Estate be determined and that your Petitioner, Piedmont Trust Bank, be directed to pay from her estate the costs of this proceeding, including reasonable attorney's fees and Executor's commissions, and distribute the residue of the Estate of Maggie H. Hodges to such distributees in such proportions as this Court shall deem proper; and that such other orders be entered as to this Court and equity seem meet."

And it is further ordered and decreed that the Petition as amended shall be served upon all parties respondent therein who shall thereafter have the usual statutory time within which to file their respective responsive pleadings if they so desire. It is further ordered that Betty Ann Buckner, Ethel Holland Draper, and Edward B. Draper, having all filed pleadings herein by counsel, shall not be required to file new pleadings in response to the Amended Petition but may rely upon the pleadings hereinbefore filed to the extent that they are responsive to the Amended Petition in all future proceedings herein. The Court hereby specifically acknowledges waiver of the privilege of endorsement of this Order by Lawrence C. Musgrove, Attorney for Ethel Holland Draper, and B. A. Davis, III, Counsel for Betty Ann Buckner; and the Court hereby finds that Morris H. Fine, Attorney for Edward B. Draper, having received timely notice of Petitioner's Petition to Amend his original Petition and having not appeared or responded has waived his right to object to the foregoing amendments.

Entered this 12th day of February, 1970.

Frank S. Richardson Jr.
Judge

I have requested the foregoing Order:

James H. Ford

James H. Ford, p.q.
Ford, Swezey & Beck
9 East Church Street
Martinsville, Virginia 24112

CERTIFICATE

I hereby certify that a true copy of the foregoing Order has been mailed to Lawrence C. Musgrove, 306 Shenandoah Building, Roanoke, Virginia 24001, Attorney of Record for Ethel Holland Draper; Morris H. Fine of the Law Firm of Fine, Fine, Legum & Fine, Law Building, Norfolk, Virginia 23510, Attorney of Record for Edward B. Draper; and to B. A. Davis, III, of the Law Firm of Davis, Davis, Davis & Raine, Rocky Mount, Virginia 24151, Attorney of Record for Betty Ann Buckner, on this 16th day of February, 1970.

James H. Ford

James H. Ford

RECORDED IN
Chancery BOOK 9 PAGE 107

FORD, SWEZEY & BECK
ATTORNEYS AT LAW
9 CHURCH STREET
MARTINSVILLE, VA. 24112

VIRGINIA: IN THE CORPORATION COURT OF THE CITY OF MARTINSVILLE

PIEDMONT TRUST BANK, EXECUTOR UNDER
THE WILL OF MAGGIE H. HODGES, DECEASED
Church Street
Martinsville, Virginia,
Petitioner,

vs.

AMENDED PETITION

EDWARD B. DRAPER A
8505 Chapin Street
Norfolk, Virginia

ANGELA LUCAS A
Waynesboro
Virginia

DENNIS T. LUCAS A
Waynesboro
Virginia

ETHEL HOLLAND DRAPER
1826 Stratford Place, S.W.
Roanoke, Virginia

REVA CONNER POFF
15342 Washington Street, East
Charleston, West Virginia

RAYMOND CONNER, III A
~~3019 Willow Road~~
~~Roanoke, Virginia 24015~~ 17 Lakeview Apt. 1-C Hampton, Virginia

BARBARA CONNER POWERS A
Route 2
North Vassolboro, Maine 04962

DOYLE CONNER A
1534 Washington Street, East
Charleston, West Virginia 25311

KATHRYN CONNER A
1534 Washington Street, East
Charleston, West Virginia 25311

ARLINE CONNER BECK
1512 Ohio Street
Waynesboro, Virginia 22980

GERALDINE CONNER LUCAS
1196 Blandford Street
Staunton, Virginia 24401

ADELINE CONNER GOOD
Route 1, Box 369
Shenandoah, Virginia 22849

DEWEY A. CONNER
302 George Street
Staunton, Virginia

PAULINE CONNER BOLTON
218 42nd Street
Gulfport, Mississippi 39501

FANNIE COOPER HOLLAND
Route 2
Axton, Virginia

STAFFORD HOLLAND
Route 1
Axton, Virginia

RANDOLPH HOLLAND
Flint
Michigan

DELEPHINE H. BROWN
Route 1
Axton, Virginia

EULA CLARK HOLLAND SHELTON
Route 2
Axton, Virginia

WILLARD D. HOLLAND
1341 Hillcrest Avenue
Martinsville, Virginia

JAMES M. HOLLAND
Route 2
Axton, Virginia

BOBBY M. HOLLAND
Route 2
Axton, Virginia

MILDRED H. LAWRENCE
1608 Chatham Heights
Martinsville, Virginia

FRANCES H. CURRY
Route 2
Ridgeway, Virginia

NANCY LEE LAWRENCE, an infant
c/o Mildred H. Lawrence
1608 Chatham Heights
Martinsville, Virginia

RHONDA HOLLAND, an infant
c/o Willard D. Holland
1341 Hillcrest Avenue
Martinsville, Virginia

TERESA LAW JOHNSON → moved to:
Stultz Road
Martinsville, Virginia

Rte 3, Box 3664
Shannon Hills
Ridgeway, Va.

GREG JOHNSON, an infant A
c/o Teresa Law Johnson
Stultz Road
Martinsville, Virginia

BETTY ANN BUCKNER A
Ferrum
Virginia

DONNA CURRY, an infant A
c/o Frances H. Curry
Route 2
Ridgeway, Virginia

UNKNOWN HEIRS AT LAW
OF MAGGIE H. HODGES,

Respondents.

Your Petitioner respectfully shows unto the Court as follows, to-wit:

1. That Maggie H. Hodges, late of Martinsville, Virginia, died testate on April 25, 1968, and her Will, dated the 8th day of January, 1966, was admitted to probate on the 28th day of April, 1968, in the Clerk's Office of the Martinsville Corporation Court in Will Book 15, Page 445, a copy of which is hereto annexed, marked Exhibit "A", and made a part hereof. Pursuant to nomination contained in the Will, Piedmont Trust Bank of Martinsville, Virginia, qualified as Executor and proceeded to collect and administer her Estate.

2. All legatees under the aforesaid Will except those receiving specific items of personal property are parties hereto. All of the heirs-at-law of Maggie H. Hodges are named Respondents herein. She had five (5) brothers and sisters and they are represented in this proceeding as follows:

(a) Berta H. Conner, a sister, is now deceased as is her husband, Clyde R. Conner. She had six (6) children and the five (5) surviving children are Arline Conner Beck, Geraldine Conner Lucas, Adeline Conner Good, Dewey A. Conner, and Pauline Conner Bolton. Berta H. Conner had one son, who is now deceased, Clyde Ray Conner, Jr., who left surviving him four (4) children, to-wit: Clyde Raymond Conner, III, Barbara Conner Powers, Doyle Conner, and Kathryn Conner. The wife of Clyde Ray Conner, Jr., Reva, also survives him and has remarried to become Mrs. Reva Poff.

(b) Lloyd Holland, a brother, predeceased Maggie H. Hodges, unmarried.

(c) Ethel Holland Draper, a sister of Maggie H. Hodges, still survives and is a party respondent to this suit.

(d) Rorer Holland, a brother, has passed away leaving his wife, Fannie Cooper Holland, surviving him along with three (3) children, to-wit: Stafford Holland, Randolph Holland and Delephine H. Brown.

(e) Willard Drewey Holland, a brother of Maggie H. Hodges, has passed away, leaving his wife, Eula Clark Holland, surviving along with five children, to-wit: Willard D. Holland, James M. Holland, Bobby M. Holland, Mildred H. Lawrence and Frances H. Curry.

(f) There may be other unnamed heirs-at-law of Maggie H. Hodges unknown to your Petitioner, and if so your Petitioner prays that they be made a party to this suit.

Your Petitioner believes that certain of the heirs-at-law of Maggie H. Hodges who are Respondents are under the age of twenty-one (21) years; and that certain of the Respondents who are named in the Will of Maggie H. Hodges are under the age of twenty-one (21) years; and, therefore, that at least one separate guardian ad litem should be appointed for each group of infant Respondents.

3. Your Petitioner, Piedmont Trust Bank, in accordance with the third full paragraph of the Will of Maggie H. Hodges, has proceeded to sell all of her property after honoring the specific tangible personal property legacies mentioned on the second page of her Will, and now holds in its hands the sum of $23,413.59 (less allowable costs and fees and the expenses of this proceeding) for distribution to the pecuniary legatees and/or heirs-at-large of Maggie H. Hodges.

4. The Will of Maggie H. Hodges contains conflicting language in that it directs that the residue of the estate of Maggie H. Hodges "be sold and divided into shares to go to our nieces and nephews as followering," and then proceeds to set forth certain pecuniary amounts beside the names of designated individuals (e.g. "Nancy Lee Lawrence - niece of Maggie H. Hodges, Chatham Heights, Martinsville, Va. $500.00"). Other beneficiaries have both "share" language and pecuniary amounts set forth (e.g. "Edward B. Draper, nephew of Maggie H. Hodges, 8505 Chapin St., Norfolk, Va. - 2 such shares or $1000.00"). In addition, some of the parties named as recipients of these amounts are grandnephews or grandnieces rather than nephews or nieces of either

Maggie H. Hodges, or her husband, Dennis R. Hodges.

5. Your Petitioner, Piedmont Trust Bank, verily believes and avers that the said Will should be construed, the recipients of all of the property of Maggie H. Hodges now held by your Petitioner be determined, and your undersigned Petitioner, the Executor of her Estate, be directed to divide the residue of the Estate of Maggie H. Hodges, after payment of the cost of this proceeding, and distribute it to those persons determined by this Court to be legally entitled thereto.

WHEREFORE, your Petitioner prays that all Respondents be given proper notice of this proceeding; that a guardian ad litem be appointed to represent and protect the interests of the infant Respondents named in the Will of Maggie H. Hodges, to-wit: Nancy Lee Lawrence, Rhonda Holland, Greg Johnson, Donna Curry, Angela Lucas and Dennis T. Lucas. That a second guardian ad litem be appointed to represent and protect the interests of the infant Respondents not named in the said Will, to-wit: Raymond Conner, III, Barbara Conner Powers, Doyle Conner and Kathryn Conner (your Petitioner is not advised of the ages of these Respondents); that the Will of Maggie H. Hodges be construed, that the proper and legal distributees of her Estate be determined and that your Petitioner, Piedmont Trust Bank, be directed to pay from her Estate the costs of this proceeding, including reasonable attorney's fees and Executor's commissions, and distribute the residue of the Estate of Maggie H. Hodges to such distributees in such proportions as this Court shall deem proper; and that such other orders be entered as to this Court and equity seem meet.

This Amended Petition is being filed pursuant to order and decree of this Court entered after notice and hearing held January 15, 1970, and in compliance with said order and decree shall be served upon all Respondents herein by one of the appropriate methods provided by law for such cases.

PIEDMONT TRUST BANK

By _____
Counsel

CERTIFICATE

I hereby certify that a true copy of the foregoing Amended Petition has been mailed to Lawrence C. Musgrove, 306 Shenandoah Building, Roanoke, Virginia 24001, Attorney of Record for Ethel Holland Draper; Morris H. Fine of the Law Firm of Fine, Fine, Legum & Fine, Law Building, Norfolk, Virginia 23510, Attorney of Record for Edward B. Draper; and to B. A. Davis, III, of the Law Firm of Davis, Davis, Davis & Raine, Rocky Mount, Virginia 24151, Attorney of Record for Betty Ann Buckner, on this 16th day of February, 1970.

James H. Ford

James H. Ford

VIRGINIA
In City of Martinsville Corporation Court
Clerk's Office.
Received and Filed this the
16th Day of February 1970
at 4:50 P.M.
Teste Jessie D. Cobb Clerk

FORD, SWEZEY & BECK
ATTORNEYS AT LAW
9 CHURCH STREET
MARTINSVILLE, VA. 24112

VIRGINIA: IN THE CORPORATION COURT OF THE CITY OF MARTINSVILLE

PIEDMONT TRUST BANK, EXECUTOR UNDER
THE WILL OF MAGGIE H. HODGES, DECEASED
Church Street
Martinsville, Virginia,

Petitioner,

vs.

EDWARD B. DRAPER
8505 Chapin Street
Norfolk, Virginia

ANGELA LUCAS
Waynesboro
Virginia

DENNIS T. LUCAS
Waynesboro
Virginia

ETHEL HOLLAND DRAPER
1826 Stratford Place, S.W.
Roanoke, Virginia

REVA CONNER POFF
15342 Washington Street, East
Charleston, West Virginia

RAYMOND CONNER, III
3019 Willow Road
Roanoke, Virginia 24015

BARBARA CONNER POWERS
Route 2
North Vassolboro, Maine 04962

DOYLE CONNER
1534 Washington Street, East
Charleston, West Virginia 25311

KATHRYN CONNER
1534 Washington Street, East
Charleston, West Virginia 25311

ARLINE CONNER BECK
1512 Ohio Street
Waynesboro, Virginia 22980

GERALDINE CONNER LUCAS
1196 Blandford Street
Staunton, Virginia 24401

ANSWER TO AMENDED PETITION

ADELINE CONNER GOOD
Route 1, Box 369
Shenandoah, Virginia 22849

DEWEY A. CONNER
302 George Street
Staunton, Virginia

PAULINE CONNER BOLTON
218 42nd Street
Gulfport, Mississippi 39501

FANNIE COOPER HOLLAND
Route 2
Axton, Virginia

STAFFORD HOLLAND
Route 1
Axton, Virginia

RANDOLPH HOLLAND
Flint
Michigan

DELEPHINE H. BROWN
Route 1
Axton, Virginia

EULA CLARK HOLLAND SHELTON
Route 2
Axton, Virginia

WILLARD D. HOLLAND
1341 Hillcrest Avenue
Martinsville, Virginia

JAMES M. HOLLAND
Route 2
Axton, Virginia

BOBBY M. HOLLAND
Route 2
Axton, Virginia

MILDRED H. LAWRENCE
1608 Chatham Heights
Martinsville, Virginia

FRANCES H. CURRY
Route 2
Ridgeway, Virginia

NANCY LEE LAWRENCE, an infant
c/o Mildred H. Lawrence
1608 Chatham Heights
Martinsville, Virginia

RHONDA HOLLAND, an infant
c/o Willard D. Holland
1341 Hillcrest Avenue
Martinsville, Virginia

TERESA LAW JOHNSON
Stultz Road
Martinsville, Virginia

GREG JOHNSON, an infant
c/o Teresa Law Johnson
Stultz Road
Martinsville, Virginia

BETTY ANN BUCKNER
Ferrum
Virginia

DONNA CURRY, an infant
c/o Frances H. Curry
Route 2
Ridgeway, Virginia

UNKNOWN HEIRS AT LAW
OF MAGGIE H. HODGES,

Respondents.

NOW COMES the Defendant, Edward B. Draper, and for Answer to Amended Petition respectfully represents unto the Court as follows:

1. The allegations contained in Paragraph 1 are neither admitted nor denied, as respondent is not acquainted with the facts therein.

2. The allegations contained in Paragraph 2 are neither admitted nor denied, as respondent is not acquainted with the facts therein.

3. The allegations contained in Paragraph 3 are neither admitted nor denied, as respondent is not acquainted with the facts therein.

4. Respondent Edward B. Draper adopts the allegations of his answers in cross-claim previously filed.

5. Respondent adopts the answers in cross-claim previously filed and denies that there is any ambiguity on conflicting language. Respondent further alleges that since petitioner has become an advocator by reason of his former pleadings, petitioner is bound by it and no fees should be accorded either the petitioner or its attorneys.

6. As for an affirmative pleading respondent adopts cross-bill previously filed with the Court.

WHEREFORE, having fully answered, respondent prays that he be given relief as set forth in his answers and cross-claim.

EDWARD B. DRAPER

BY _____
Of Counsel

MORRIS H. FINE, of
Fine, Fine, Legum & Fine
720 Law Building
Norfolk, Virginia

I hereby certify that on the 9th day of March, 1970, I mailed a true copy of the foregoing Answer to Amended Petition to James H. Ford, Esquire, Ford, Swezey & Beck, 9 Church Street, Martinsville, Virginia, counsel of record for petitioner, Piedmont Trust Bank, and all other parties.

_____
MORRIS H. FINE

VIRGINIA
In City of Martinsville Corporation Court
Clerk's Office.
Received and Filed this the
10th Day of March 1970
at 5:00 P.M.
Teste _____ Clerk

LAW OFFICES
FINE, FINE, LEGUM
& FINE
LAW BUILDING
NORFOLK, VIRGINIA 23510

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VIRGINIA: IN THE CORPORATION COURT OF THE CITY OF MARTINSVILLE

PIEDMONT TRUST BANK, EXECUTOR UNDER THE WILL OF MAGGIE H. HODGES, DECEASED,	PETITIONER,	
vs.		ANSWER TO AMENDED RESPONSIVE PLEADING FILED BY EDWARD B. DRAPER
EDWARD B. DRAPER, et al.,	Respondents.	

Now comes the Petitioner, Piedmont Trust Bank, and for answer to "Answer to Amended Petition" hereinbefore filed by Edward B. Draper, by counsel, the Petitioner hereby adopts its pleadings hereinbefore filed in full response to the affirmative portions of the "Answer to Amended Petition" filed by Edward B. Draper, by counsel, and the Petitioner herein prays that it be given relief as set forth in its previous pleadings.

PIEDMONT TRUST BANK,
EXECUTOR UNDER THE WILL OF
MAGGIE H. HODGES, DECEASED

By James H. Ford
Counsel

James H. Ford
FORD, SWEZEY & BECK
9 East Church Street
Martinsville, Virginia

C E R T I F I C A T E

I hereby certify that a true copy of the foregoing Answer to Amended Responsive Pleading filed by Edward B. Draper has been mailed to Lawrence C. Musgrove, 306 Shenandoah Building, Roanoke, Virginia 24001, Attorney of Record for Ethel Holland Draper; Morris H. Fine of the Law Firm of Fine, Fine, Legum & Fine, Law Building, Norfolk, Virginia 23510, Attorney of Record for Edward B. Draper; and to B. A. Davis, III, of

the Law Firm of Davis, Davis, Davis & Raine, Rocky Mount, Virginia 24151, Attorney of Record for Betty Ann Buckner, on this 31st day of March, 1970.

James H. Ford

James H. Ford

VIRGINIA
In City of Martinsville Corporation Court
Clerk Office.
Received and Filed this the
31 Day of Mar 1970
at 4:55 PM
Teste: [illegible] Clerk

VIRGINIA:

IN THE CORPORATION COURT OF THE CITY OF MARTINSVILLE

PIEDMONT TRUST BANK, EXECUTOR UNDER THE WILL OF MAGGIE H. HODGES, DECEASED Church Street Martinsville, Virginia	)	269-1865
vs.	)	ANSWER TO AMENDED PETITION
EDWARD W. DRAPER, ET AL	)	

TO THE HONORABLE FRANK I. RICHARDSON, JUDGE OF SAID COURT:

The Answer of Betty Ann Buckner to an Amended Petition filed by Piedmont Trust Bank of Martinsville, Virginia, a Cross-Claim of Ethel Holland Draper, and a Petition of Edward B. Draper, filed in reference to the Will and Estate of Maggie H. Hodges, deceased:

(1) The said Betty Ann Buckner being one of the devisees named in the said Will.

(2) It is obvious from the reading of the Will of the said Maggie H. Hodges that she desired that her Estate, "real, personal or mixed, to be sold and divided into shares to go to our nieces and nephews...". It is evident from the reading of this Will that she intended that no person share in the proceeds of her Estate except the nieces and nephews named in said will and that her entire estate, regardless of the value placed on "a share", whether it be more than $500.00 or less than $500.00, should go to said nieces and nephews in the proportion and manner as set forth in said will.

The said Betty Ann Buckner respectfully requests that the intention of the said Maggie H. Hodges be carried out by Order of this Court and that the proceeds from her entire estate be divided and distributed to the persons named and as set forth in said Will.

RESPECTFULLY:

BETTY ANN BUCKNER

By _____
Counsel

CERTIFICATE OF MAILING

I, B. A. Davis, III, Attorney for Betty Ann Buckner, do hereby certify that I have this the 17 day of February, 1970, mailed a true copy of the foregoing Answer to Amended Petition to James H. Ford, Attorney at Law, Martinsville, Virginia, Mr. Lawrence Musgrove, Attorney at Law, 306 Shenandoah Building, Roanoke, Virginia, and Morris H. Fine, 720 Law Building, Norfolk, Virginia.

_____

VIRGINIA
In City of Martinsville Corporation Court
Clerk's Office.
Received and Filed this the
18th Day of Feb. 1970
at 11:00 A M
Teste _____ Clerk

VIRGINIA: IN THE CORPORATION COURT OF THE CITY OF MARTINSVILLE

PIEDMONT TRUST BANK, EXECUTOR UNDER THE WILL OF MAGGIE H. HODGES, DECEASED Petitioner	)	ANSWER OF GUARDIAN AD LITEM
vs.	)	
EDWARD B. DRAPER, ET AL, Respondents	)	CHANCERY NO. 269-1865

The Answer of J. Grady Monday, individually and as Guardian Ad Litem for Nancy Lee Lawrence, Greg Johnson, Rhonda Holland, Angela Lucas, Dennis T. Lucas and Donna Curry, believed by the Petitioner in this Cause to be infants, in the Corporation Court of the City of Martinsville, Virginia, is as follows:

This Respondent individually and as Guardian Ad Litem assigned to protect the rights and interests of Nancy Lee Lawrence, Greg Johnson, Rhonda Holland, Angela Lucas, Dennis T. Lucas and Donna Curry, in this Cause hereby answers the Petition and Amended Petition hereinbefore filed and says that Nancy Lee Lawrence, Greg Johnson, Rhonda Holland, Angela Lucas, Dennis T. Lucas and Donna Curry are believed to be under the age of 21 and therefore legally unable and incompetent to protect their own interests in this proceeding, and further that neither he nor his infant wards know the truth or falsity of allegations contained in the aforesaid Pleadings and Cross-Bills filed thereto, and they confide the interest of the aforesaid infants to the protection of this Court and pray that no Decrees or Orders may be entered by the Court that would be detrimental to their rights.

And now, having fully answered the Petitioner's Petition and Amended Petition, these Respondents pray to be hence dismissed with their reasonable cost by them in this behalf expended and that all further Decrees and Orders be entered for the protection of their rights and interest herein, as aforesaid.

The undersigned Guardian Ad Litem hereby reserves unto the aforesaid infants the right to file individual answers in proper person if they are competent and desire to do so under applicable law of this case.

NANCY LEE LAWRENCE
RHONDA HOLLAND
DENNIS T. LUCAS
GREG JOHNSON
ANGELA LUCAS
DONNA CURRY

By J. Grady Monday
J. Grady Monday,
FOR HIMSELF AND AS
GUARDIAN AD LITEM
FOR THE ABOVE PERSONS

STATE OF VIRGINIA,

CITY OF MARTINSVILLE, TO-WIT:

J. Grady Monday, as Guardian Ad Litem for Nancy Lee Lawrence, Greg Johnson, Rhonda Holland, Angela Lucas, Dennis T. Lucas and Donna Curry, the infant Respondents named in the foregoing Answer, and for himself, being duly sworn, says that the facts and the allegations therein contained are true, except so far as they are therein stated to be on information, and that so far as they are therein stated to be upon information, he believes them to be true.

J. Grady Monday
J. Grady Monday
Guardian Ad Litem

Taken, sworn to and subscribed before me a Notary Public, in and for the City of Martinsville, within the State of Virginia, in my City aforesaid, this the 19th day of January, 1970.

My Commission expires: May 19, 1974

Cathy Orrell
Notary Public

C E R T I F I C A T E

I hereby certify that a true copy of the foregoing Notice with its attached exhibit, has been mailed to Lawrence C. Musgrove 306 Shenandoah Building, Roanoke, Virginia, 24001, attorney of record for Ethel Holland Draper; Morris H. Fine with the law firm of Fine, Fine, Legum & Fine, Law Building, Norfolk, Virginia, 23510, attorney of record for Edward B. Draper; and to B. A. Davis, III, of the law firm of Davis, Davis, Davis & Raine, Rocky Mount, Virginia, 24151, Attorney of record for Betty Ann Buckner; and James H. Ford, Ford, Swezey and Beck, attorney for Piedmont Trust Bank, Martinsville, Virginia; and Warren M. Shaw, Chief Tassel Building, Church Street, Martinsville, Virginia, 24112, Guardian Ad Litem for Raymond Conner III, Barbara Conner Powers, Doyle Conner and Katherine Conner, including the unknown heirs of Maggie H. Hodges, deceased on this 19th day of January, 1971.

J. Grady Monday
J. Grady Monday

VIRGINIA: IN THE CORPORATION COURT OF THE CITY OF MARTINSVILLE

PIEDMONT TRUST BANK, EXECUTOR UNDER THE WILL OF MAGGIE H. HODGES, DECEASED Petitioner	)	
vs.	)	ANSWER OF GUARDIAN AD LITEM
EDWARD B. DRAPER, ET AL, Respondents	)	CHANCERY NO. 269-1865

The Answer of Warren M. Shaw, individually and as Guardian Ad Litem for Raymond Conner III, Barbara Conner Powers, Doyle Conner and Katherine Conner, believed by the Petitioner in this Cause to be infants or in the armed services of the United States, and all the unknown heirs of Maggie H. Hodges, deceased, in the Corporation Court of the City of Martinsville, Virginia, is as follows:

The Respondent individually and as Guardian Ad Litem assigned to protect the rights and interests of Raymond Conner III, Barbara Conner Powers, Doyle Conner and Katherine Conner and the unknown heirs of Maggie H. Hodges, deceased, in this Cause hereby answers the Petition and Amended Petition hereinbefore filed and says that Raymond Conner III, Barbara Conner Powers, Doyle Conner and Katherine Conner are believed to be under the age of 21 or in the Services of the Armed Forces of the United States therefore legally unable and incompetent to protect their own interests in this proceeding and further that neither he nor his wards know the truth or falsity of the allegations contained in the aforesaid Petition and Amended Petition or any other responsive pleadings and Cross-Bills filed thereto, and they confide the interest

of the aforesaid infants and unknown heirs of Maggie H. Hodges to the protection of this Court and pray that no Decrees or Orders may be entered by the Court that would be detrimental to their rights.

And now, having fully answered the Petitioner's Petition and Amended Petition, these Respondents pray to be hence dismissed with their reasonable cost by them in this behalf expended and that all further Decrees and Orders be entered for the protection of their rights and interests herein, as aforesaid.

The undersigned Guardian Ad Litem hereby reserves unto the aforesaid infants, members of the Armed Forces of the United States, and unknown heirs, the right to file individual answers in proper person if they are competent and desire to do so under the applicable law of this case.

RAYMOND CONNER III
BARBARA CONNER POWERS
DOYLE CONNER
KATHERINE CONNER
UNKNOWN HEIRS OF MAGGIE H. HODGES, DECEASED

By Warren M. Shaw
Warren M. Shaw,
FOR HIMSELF, AND AS
GUARDIAN AD LITEM FOR
THE ABOVE PERSONS

STATE OF VIRGINIA,

CITY OF MARTINSVILLE, TO-WIT:

Warren M. Shaw, as Guardian Ad Litem for Raymond Conner III, Barbara Conner Powers, Doyle Conner

and Katherine Conner, named in the foregoing Answer, and for himself, being duly sworn, says that the facts and the allegations therein contained are true, except so far as they are therein stated to be on information, and that so far as they are therein stated to be upon information, he believes them to be true.

Warren M. Shaw
Guardian Ad Litem

Taken, sworn to and subscribed before me a Notary Public, in and for the City of Martinsville, within the State of Virginia, in my City aforesaid, this the 19th day of January, 1974.

My Commission expires: 2/20/78.

Patricia L. Painter
Notary Public

C E R T I F I C A T E

I hereby certify that a true copy of the foregoing Notice with its attached exhibit, has been mailed to Lawrence C. Musgrove 306 Shenandoah Building, Roanoke, Virginia, 24001, attorney of record for Ethel Holland Draper; Morris H. Fine with the law firm of Fine, Fine, Legum & Fine, Law Building, Norfolk, Virginia, 23510, attorney of record for Edward B. Draper; and to B. A. Davis, III, of the law firm of Davis, Davis, Davis & Raine, Rocky Mount, Virginia, 24151, Attorney of record for Betty Ann Buckner; and J. Grady Monday, Guardian Ad Litem and attorney of record for Nancy Lee Lawrence,

Rhonda Holland, Dennis T. Lucas, Greg Johnson, Angela Lucas and Donna Curry; and James H. Ford, Ford, Swezey and Beck, Attorney for Piedmont Trust Bank, Martinsville, Virginia, 24112; this 19th day of January, 1971.

Warren M. Shaw

VIRGINIA
In City of Martinsville Corporation Court
Clerk's Office.
Received and Filed this the
19th Day of January 1971
at 2:00 P.M.
Teste Josie D. Clift Clerk

FORD, SWEZEY & BECK
ATTORNEYS AT LAW
9 CHURCH STREET
MARTINSVILLE, VA. 24112

VIRGINIA: IN THE MARTINSVILLE CORPORATION COURT

PIEDMONT TRUST BANK Church Street Martinsville, Virginia Petitioner VS: EDWARD B. DRAPER ET ALS 8505 Chapin Street Norfolk, Virginia Respondents	REPORT OF COMMISSIONER IN CHANCERY

TO THE HONORABLE FRANK I. RICHARDSON, JR., JUDGE OF SAID COURT:

Your undersigned Commissioner respectfully reports that pursuant to a decree pronounced in the above styled cause entered on January 18, 1971, of your Honor's Court, your Commissioner attended at the time and place so appointed and in the presence of the parties in interest as appeared, did proceed to take and state the following accounts as required by said decree.

1. "Whether the proper parties before this Court in this Cause to enable it to effect an appropriate and complete disposition of the assets now in the hands of the Petitioner belonging to the Estate of Maggie H. Hodges."

The proper parties are before the Court.

2. "Whether the decedant, Maggie H. Hodges, intended to make specific pecuniary legacies of definite amounts from her estate with the remainder of her Estate intentionally or unintentionally passing under the rules of intestacy to her heirs at law; or whether she intended that her entire Estate be divided into shares and distributed to the persons named in her Will; or

whether she intended that some of those persons named in her Will should receive specific pecuniary gifts while others that she named therein should receive shares of the Residue after deduction of the aforesaid specific pecuniary gifts; or whether she intended by the words of her Will to accomplish some other disposition of her estate."

In any case in which the construction of a will is involved, the cardinal rule of construction is that the Testator's intent must be sought. "The intent of the testator is the cardinal rule in the construction of wills, and if that intent can be clearly conceived and is not contrary to some positive rule of law, it must prevail." (Harrison on Wills and Administration, Vol. 1, page 366) The Virginia cases have re-stated this rule down through the years and Virginia law still makes this rule of construction paramount. Another rule which Virginia law gives application with almost equal force is that when a person makes a will, in absence of evidence to the contrary, the natural presumption is that he intends to dispose of all of his property thereby; that he did not intend to die intestate as to any of his estate. There is no contest in this case as to whether the writings of Maggie H. Hodges (Exhibit A), dated January 8, 1966, constituted a valid will by which she attempted to dispose of her property remaining in her estate at death.

Your Commissioner submits that a careful reading of this will reveals an intent of Mrs. Hodges to dispose of all of her estate, that she did not intend to die intestate as to any portion thereof. This intent is supported in the first instance by the making of a will. The will makes disposition of certain specific items of personal property to named persons. It directs that "whatever remains of my property, real, personal, or mixed, to be sold and divided into shares." All of this supports an intent to

completely dispose of the estate. Your Commissioner submits that this construction must then prevail unless it can be found to be contrary to law to give it this application. The inquiry then arises as to the effect of the use of the words "nieces" and "nephews" on Page 1 in the dispositive clause when in fact someof the persons named on Page 2 were in fact grand-nieces and grand-nephews. More specifically would the finding that the gift to a grand-niece is valid when the word niece is used in the will, be contrary to the law and therefore render these several gifts invalid so as to require this portion of the estate, these shares, to pass as intestate property. This construction would be contrary to the above presumption that she intended to die testate as to all property. Your Commissioner finds that the granting of a share of the estate to a grand-niece or grand-nephew when the descriptive word used was niece and nephew would not be repugnant to the law of Virginia. This finding is not made unmindful of the case of White vs. Old, 75 S. E. 182. In the White case it was held that the words "niece or nephew" did not embrace "grand-nieces" and "grand-nephews", "unless an intention to use them in another sense manifestly appears." The manifest intent of Mrs. Hodges in this case does appear from an examination of the document. It is true that Mrs. Hodges directed that her estate be sold and divided into shares and divided between nieces and nephews. But in this case, unlike the White Case, she does more than just use parenthetical language. On Page Two of the will she sets forth the names of the nieces and nephews upon whom she bestows her gifts and she again calls them niece or nephew of either she or her deceased husband. This reveals an intent for these adjectives to be given more than the ordinary grammatical meaning of son or daughter of sister or brother. Admittedly this conclusion could not be reached under the White Case if only the words niece and nephew had been

used and the name of the beneficiary had not been set forth. The setting forth of the names of the persons who were the objects of her bounty indicate an intent to use the words niece and nephew in a broader sense to include grand-niece and grand-nephew. This construction is permissable in order to give effect to the intent of the testator (American Jurisprudence, Wills, Vol. 57 Page 904).

The above construction then leads to the conclusion that the language on Page One of the Will, "sold and divided into shares to go to our nieces and nephews as following" should be found to be the method by which this estate should be settled, as being the true intent of Mrs. Hodges. Your Commissioner concludes that the intent of the testator by the insertion of the amounts of $500.00 after the name of certain beneficiaries and $1,000.00 after the name of two others along with the language of two shares, was for the purpose of showing the number of shares to be received by that person rather than a specific amount of money. Two shares are designated as having the value of $1,000. The amount of $500.00 is under the names of others, but the word share is not there written. Obviously this was done to show the intent that this beneficiary is to receive only one-half the amount as does the beneficiary with two shares, or $1,000.00. To restrict the interpretation of these legacies to the specific amount of money inserted would require that a portion of this estate pass under the laws of intestacy, contrary to the found intent of the testator. It is interesting to note that one of the true nieces, Betty Ann Buckner, did not receive two shares as did the other true niece and nephew. She receives a single share, designated by showing the sum of $500.00, along with grand-nieces and grand-nephews. This supports the finding that not only was it the intent to divide her estate into shares and make disposition by this method,

but also that she was using the word niece in a broader sense to include grand-nieces in that this niece was given one share as were grand-nieces. Your Commissioner has made an exhaustive search of the Virginia law for some authority that would require a different finding on this issue and has found none.

Therefore, Your Commissioner makes the following finding as to the questions set forth in Paragraph 2 of the Decree of Reference:

a. Maggie H. Hodges did not make specific pecuniary legacies of definite amounts from her estate.

b. That none of the estate passes according to the laws of intestacy.

c. That she intended for her estate to be divided into shares with Edward Draper and Teresa Law Johnson receiving two shares each and the other named persons receiving a single share.

3. "Into what proportions or shares and/or amounts should the assets now in the hands of the Petitioner be divided and to whom it should be distributed."

This inquiry is answered above.

4. "Whether there are any facts to substantiate the alleged improprieties referred to in the Answer and Cross-bill filed by Edward B. Draper as a result of which this Court should disallow fees and commissions to the Petitioner and its attorneys."

The original petition filed in this cause by Executor's Counsel petitioned the Court to decree the disposal of this estate in a manner suggested therein. It is the duty of the Executor in a case of this kind to seek guidance and direction of the Court rather than become an advocate. However, before any evidence was taken and prior to the pleadings becoming finalized

and the parties being at issue, the position of the Executor was changed by amended pleadings. Your Commissioner finds that the position taken by Executor initially has not resulted in harm or injury to the estate nor to any of the parties in interest. Mr. Turner, employee of Executor, stated in depositions filed in this cause that Executor has never intended to represent any preference among the various members of the family. There is no evidence that would indicate to the contrary, nor that the Executor has not performed its duties in a competent manner. Your Commissioner recommends, therefore, that the fees and allowances to Executor and its Attorney, which is a matter of discretion by the Court, should be allowed.

"Any other matters specially stated or germane to this proceeding which the Commissioner may deem pertinent or which any party may request to be stated."

Your Commissioner has answered all questions which appear to be necessary in order to accomplish the purpose of this suit.

Nothing further being required under this inquiry and nothing else remaining to be done in this cause, this report is respectfully submitted this 30 day of July, 1971.

Kenneth M. Covington, Commissioner in Chancery for the Corporation Court of Martinsville City

Statement of Cost:

Commissioner In Chancery Fee	$300.00
MacMar, Inc. (Recording & Transcribing Testimony)	136.20

Enclosures:

1. Depositions
2. Statement of MacMar, Inc.

I certify that a true copy of the foregoing report has been mailed to Counsel of Record in the foregoing cause.

I further certify that the above statement of costs are correct.

Kenneth M. Covington, Commissioner in Chancery for the Corporation Court of Martinsville City

Sworn and subscribed before me this 30th day of July, 1971.

Jessie D. Cobb
Clerk of Corporation Court of Martinsville City, Virginia

VIRGINIA
In City of Martinsville Corporation Court Clerk's Office.
Received and Filed this the 30th Day of July 1971
11:30 A M
Teste Jessie D. Cobb Clerk

VIRGINIA: IN THE CORPORATION COURT OF THE CITY OF MARTINSVILLE

PIEDMONT TRUST BANK, EXECUTOR U/W OF MAGGIE H. HODGES, ET ALS	)	
VS:	)	O R D E R
	)	Chancery Cause No. 269-1865
EDWARD B. DRAPER, ET ALS	)	

This cause came on this day to be heard upon the papers formerly read; the report of the Commissioner filed on July 30, 1971; the exceptions of respondent, Edward B. Draper; the petition of Complainant, Betty Ann Buckner, requesting that Commissioner's Report be affirmed; the exception to the Commissioner's Report by respondent, Ethel Holland Draper; and was argued by counsel.

On consideration whereof, the Court does hereby ORDER that Paragraphs One (1) and Four (4) of the Commissioner's Report be, and they are hereby affirmed; and that Paragraphs Two (2) and Three (3) of said Commissioner's Report be, and they are hereby rejected.

Upon the consideration of the evidence in this cause, the Court can not construe the language in the holographic Will of Maggie H. Hodges as being so clear to hold that it was her intention to divide the residue of her estate in shares to the beneficiaries named in said Will. In considering subject will from its four corners it is difficult to ascertain with any degree of certainty as to what scheme of distribution the testatrix had in mind at the time she wrote her will. After providing for the payments of her debts, including medical and funeral expenses,

she directed that her remaining property be sold and divided into shares to go to our nieces and nephews as following. Then she lists nine persons designating them as nieces and nephews of her

husband or herself and giving an address and listing $500 opposite each name, except two (2) of the nine (9) she listed "2 such shares or $1,000." In reviewing the nine (9) persons listed one is a niece and one is a nephew and the remainder are grand nieces and grand nephews. If the testatrix had desired to distribute the residue of her estate to the nine (9) listed persons, then why did she put a dollar amount opposite their name? Did she put the dollar amount to limit the amount each was to receive or was this to be the value of each share, or was this to be a ratio as to how her estate was to be divided? Where she listed $1,000 opposite two (2) of the nine (9) names, she also added the language, "2 such shares or $1,000." Why did the testatrix use this language with the $1,000 bequest when she used no such language with the $500 bequest? The respondent, Edward B. Draper, argues that by using such language the testatrix intended to leave $500 to each of the seven persons named in the Will and the residue of her estate was to be divided into four (4) shares and two (2) such shares would be distributed to Teresa Law Johnson, and two (2) such shares to be distributed to Edward B. Draper. Or, could

the reason be that at the time the testatrix wrote her will that she estimated the total value of her estate after payment of debts and medical expenses would not exceed $5,500, or did she intend to distribute the residue of her estate or a total of $5,500? Certainly if the testatrix had disposed of her residuary estate by leaving one (1) share to seven (7) of the persons named, and two (2) shares to two (2) of the persons named, then her intention would have been clearer, but when she puts $500 with no reference to shares and puts $1,000 with reference to two (2) such shares her intention is not so clear.

In the construction of Wills, the first inquiry is into the meaning of the testatrix. When the intention of the testatrix is ascertained, that is the governing principal and must prevail unless it violates some rule of law. It is equally well-settled that the intention of the testatrix must be expressed in the Will. The intention must be collected from the words of the Will, for the object of construction is not to ascertain the presumed or supposed but the express intention of the testatrix, that is, the meaning which the words of the Will, correctly interpreted, convey. It is not proper for the Court to venture into speculations as to what the testatrix may have intended. Conjecture can not be permitted to usurp the place of judicial construction, nor supply what the testatrix has failed sufficiently to indicate. The Court in construing a will, must determine what the testatrix meant by what she said, not by what it might be supposed she intended to say or should have said.

The Court is aware of the presumption against intestacy, however, the intention of the testatrix to dispose of her estate must be manifested with legal certainty, otherwise the title of the heir or heirs at law will prevail. The heir is not to be disinherited unless by the express words or necessary implication. Partial intestacy is not favored, but it does occur, and when it does, it can not be wiped away.

The subject Will, as written, shows a clear intention of the testatrix to bequeath the amount opposite each named beneficiary, however, any intention beyond this is unclear. It is therefore, ORDERED, and the Court so finds that the testatrix, Maggie H. Hodges, made specific pecuniary legacies of definite amounts with the remainder estate passing under the intestate laws of the Commonwealth of Virginia to her heirs at law. The heirs atlaw are listed in the depositions and if the executor has any difficulties in ascertaining who they are and the amount that they are to receive, then the executor can petition the Court for a further adjudication in this regard.

For the purpose of the record the Court does hereby overrule Exceptions One (1) through Four (4) filed by the respondent, Edward B. Draper. Since the Commissioner did not rule upon Exception No. 4, the Court Will now comment upon the same. Exception No. 4 states that the Commissioner erred when he failed to recommend an attorney's fee for the counsel representing Edward Draper. The record does not show, nor has the counsel for Edward Draper shown that he has benefitted the estate or brought new property into the estate, nor has his efforts benefitted any of

the other parties other than his client. In fact the record would show that the services of said attorney were for the sole benefit of his client, Edward Draper. Under such circumstances, the Court denies the request for attorney's fee to the counsel for Edward Draper.

The Clerk of this Court is hereby directed to mail a copy of this Order to the following listed attorneys: James H. Ford, Law Offices Ford, Swezey and Beck, Martinsville, Virginia, 24112; Mr. Lawrence C. Musgrove, Attorney at Law, 306 Shenandoah Building, Roanoke, Virginia,24011; Mr. B. A. Davis, III, Law Offices Davis, Davis and Raine, Rocky Mount, Virginia, 24151; Mr. Morris H. Fine, Law Offices Fine, Fine, Legum and Fine, Law Building, Norfolk, Virginia, 23510; Mr. Warren M. Shaw, Attorney at Law, Martinsville, Virginia, 24112; Mr. J. Grady Monday, Law Offices Monday & Monday, Martinsville, Virginia, 24112.

Enter this 29th day of February, 1972.

Frank S. Richardson Jr.
Judge

RECORDED IN
Chancery BOOK 9 PAGE 845

#19

VIRGINIA: IN THE CORPORATION COURT OF THE CITY OF MARTINSVILLE

PIEDMONT TRUST BANK, EXECUTOR
U/W OF MAGGIE H. HODGES, ET ALS

CHANCERY NO. 269-1865

VS.

EDWARD B. DRAPER, ET ALS

NOTICE OF APPEAL

NOW COMES Edward B. Draper, by counsel, pursuant to Rule 5:6 of the Supreme Court of Appeals of Virginia and does hereby give Notice of Appeal from the entry of Final Decree of the Corporation Court of the City of Martinsville dated February 29, 1972.

EDWARD B. DRAPER, Et Als

By _____
Of Counsel

ASSIGNMENTS OF ERROR

NOW COMES Edward B. Draper, by counsel, pursuant to Rule 5:5 Rules of the Supreme Court of Appeals of Virginia and does hereby designate his assignments of error in that the Honorable Chancellor erred as follows:

1. By entering the Final Decree dated February 29, 1972 which is contrary to the law and evidence.

2. In determining that the testator intended to make a specific devise of the designated amounts and shares beside the names of the devisees and dying intestate as to the residue.

3. In not determining that some designated devises should receive specific gifts and these after the Edward Draper and Teresa Law Johnson receive the residue of estate.

4. In determining that counsel for Edward A. Draper was not entitled to a reasonable counsel fee when he was forced by the words of the testator to hire counsel to defend himself.

5. In determining that Piedmont Trust Bank and its counsel were entitled to fees after they had taken an adversary position when the original suit was brought in this cause.

EDWARD B. DRAPER, et als

By _____
Of Counsel

I do hereby certify that a true copy of the foregoing was mailed this 20th day of March, 1972 to the following: B. A. Davis, III, Esquire Rocky Mount, Virginia; James H. Ford, P. O. Box 1289, Martinsville, Virginia; Warren M. Shaw, Chief Tassel Building, Martinsville, Virginia, Grady Monday, Martinsville, Va. and Lawrence C. Musgrove, Danville, Virginia

_____
MORRIS H. FINE

The first witness, Mr. Tom Turner, being first duly sworm by the Commissioner in Chancery, deposes and says as follows:

DIRECT EXAMINTION

By Mr. Ford:

Q. Mr. Turner will you please state your full name and what your employment is?

A. My name is Thomas W. Turner, Vice President and Trust Officer at Piedmont Trust Bank.

Q. Mr. Turner as an officer at Piedmont Trust Bank are you familiar with the will of Maggie Holland Hodges? I show you a document, an attested document which indicates it's recorded in book 15 page 445 of the Corporation Court clerk's office in the will of Maggie Holland Hodges and of the clerk's order admitting its probate?

A. Yes sir, it is.

Mr. Fine: It speaks for itself.

Mr. Ford: We will put this as Exhibit A for the convenience of the Commissioner and the Court.

Q. Will you state on the assumption from this document then you have qualified as executor of the estate of Maggie Holland Hodges, is that correct?

A. That is correct.

1 Q. Have you entered upon the execution of the
2 administration of the will?
3 A. We have.
4 Q. What has been done to this date?
5 A. Of course, after qualification we did the
6 necessary things in any ordinary administration. The
7 will set forth several bequests which were handled and
8 receipts taken therefrom those persons receiving
9 the bequests as set out in the will. And we converted the
10 balance of the estate tangible personal property and the
11 home to cash which we are holding at the present time.
12 Q. Have you been able to distribute any of the
13 cash persuant to the terms of the will?
14 A. We have not.
15 Q. Will you state for the record why you have not?
16 A. Well, the basic reason, of course is that the
17 distribution under the will was certainly not clear to the
18 bank as executor and we felt that we needed assistance in
19 this matter. That's the reason why we employed Mr. Ford as
20 Attorney to assist us in taking whatever steps necessary
21 to let us know what the distribution was to be made in
22 this case.
23 Q. Do you have any preference as to the distribution
24 as who the recipients are?
A. No sir.

Mr. Ford: I have no further questions.

CROSS EXAMINATION

BY MR. FINE:

Q. Mr. Turner, the pleading filed on behalf of the bank which was signed by Mr. Ford indicates that the bank did have a preference at the time the pleadings were filed. Is the bank now changing its position?

A. No sir the bank has never had any preference. We have turned this over to Mr. Ford as attorney for the estate to let him make the decisions as who the heirs were. It makes no difference to us.

Q. Were you aware that Mr. Ford had filed a pleading on behalf of the bank taking a position?

A. I've read most of the pleadings, yes sir.

Mr. Fine: I have no further questions.

CROSS EXAMINATION

BY MR. MUSGROVE:

Q. Mr. Turner, as a matter of information I am not completely familiar with the inventory that has been filed. At the time you liqueidated the personal property was this done by public auction or how was the personal property liquidated?

A. No sir it wasn't. It was done by private sale.

1 We had two well known furniture dealers in Martinsville
2 come in and make appraisals, give us prices on all this
3 furniture. Then we pulled the family together and gave
4 them choices of whatever they wanted and sold the balance of
5 whatever they didn't want. A lot of it was sold to various
6 members of the family.

7 Q. You gave all members of the family notice of this?

8 A. Yes sir. They were all present as a matter of
fact.

9 Q. Including her only sister Mrs. Draper, Ethel
10 Draper?

11 A. Mrs. Draper was not there in person, I don't
12 believe, possibly her daughter maybe was there. I really
13 don't remember.

14 Q. But the property was sold at the appraised value
15 to these members of the family and the balance of it was
16 sold to outsiders of the family at the appraised value.
17 Is that correct?

18 A. Yes sir.

19 Mr. Musgrove: I just wanted
20 that as a matter of information.
21 That's all I have.
22 Commissioner: Mrs. Buckner would
23 you care to ask Mr. Turner any
24 questions in regard to his
testimony?

1 Mrs. Buckner: I do not desire
2 to ask any questions of Mr.
3 Turner.
4 BY MR. FORD:
5 Q. Mr. Turner do you authorize the Commissioner of
6 Chancery to sign your name to these depositions after they
7 have been transcribed?
8 A. Yes sir I do.
9 Commissioner: Looking through
10 the file in this case, Mr. Turner
11 it is my understanding that after
12 initial petition was filed on
13 behalf of Piedmont Trust Bank
14 by Mr. Ford that that petition
15 was later amended and a new
16 petition was filed in which no
17 position was taken. Is that
18 correct?
19 Mr. Turner: That is correct.
20 Commissioner: What is the current
21 assets in the hands of the
22 executor to be distributed?
23 Mr. Turner: As of today, Mr.
24 Covington, 2,444 shares of our
fixed income fund which at the
last evaluation was 9.52 of

course this will change some, what but not a great deal on our next valuation date, but that total is $23,266.88. And we have income cash in the amount of $1,241.35 and the principal cash overdraft in the amount of $10.00. Total $24,498.23. And that is all that comprises the estate which would be distributed as such time as we are directed to do so.

RE-DIRECT EXAMINATION

BY MR. FORD?

Q. Have you been in contact with local members of the family to obtain information as to who the other members of the family might be?

A. Yes, I've talked on various occasions with Mrs. Mildred Lawrence and Mrs. Teresa Johnson with regard to this.

Q. Do you know Mrs. Curry?

A. I've met Mrs. Curry when we first got in to this, but I have not been in contact with her.

Q. She is a member of the family?

A. Yes sir.

Mr. Ford: No further questions.

1 Commissioner: Any further
2 questions, gentlemen?
3 (negative answer)
4 Mr. Turner: I might make one
5 further statement. Of course,
6 this cash figure I gave you
7 does not take care of any
8 Virginia Inheritance Tax that
9 might still be due. We have
10 not filed a return because we
11 have been unable to do so
12 because of the suit. And the
13 bank's commission has not been
14 taken. As far as I know all
15 other debts have been paid.
16 And the expense of this
17 proceeding has not been paid
of course.
18 RE-CROSS EXAMINATION
19 BY MR. FINE:
20 Q. You sold the house, though didn't you?
21 A. Oh yes.
22 Q. How were you able to sell the house without
23 filing a return.
24

A. That's no criteria. You can sell a house without filing an Inheritance Tax Return:

Q. Did you give some assurances to the parties to whom you were going to sell it that you were going to pay the inheritance tax when it became due? If it did become due?

Mr. Turner: I'm not sure I follow you, Mr. Fine

Mr. Fine: It's not relevant.

AND FURTHER THIS DEPONENT SAITH NOT.

THOMAS W. TURNER

By: Kenneth M. Coyle

Commissioner in Chancery

The second witness, Mrs. Francis H. Curry, being second duly sworn by the Commissioner in Chancery, deposes and says as follows:

DIRECT EXAMINATION

BY MR. FORD:

Q. Will you state your full name for the record please?

A. Francis Holland Curry.

Q. Mrs. Curry, are you related to Mrs. Maggie Hodges?

A. Yes, I'm her niece.

1 Mrs. Buckner: She indicates
2 that she does not desire to
3 testify.
4 Commissioner: Gentlemen one of
5 the inquiries in the decree of
6 reference relates to the
7 improprieties in the pleadings
8 filed by the executor as to
9 whether or not the Commission
10 should be disallowed----is there
11 any evidence that you gentlemen
12 desire to put in to the record
13 in that regard? Any matter you
14 want to state for the record at
15 this time.
16 Mr. Fine: If your Honor please.
17 I think impropriety is probably
18 to strong a word for the situation
19 that we have before us. And
20 certainly there are no improprieties
21 as such. But, I don't think that
22 the executor in its function in
23 protecting all of the parties who
24 might be an heir or who might not
be an heir should be an advocate to
take one side or the other.

1 Apparently the amended position
2 it even felt the same way and so
3 amended the petition or pleading
4 so that it asked for guidance. I
5 might say that I have looked up
6 some law in this particular
7 question that the court would have
8 before it and find that it is a
9 discretionary matter with the
10 court and Commissioner to
11 recommend. I would further ask
12 on behalf of my client and I
13 find some substantial law to the
14 effect that where there is
15 confusion and ambiguity in a
16 will such as we have before us
17 here today that there is
18 substantial law to the effect
19 that all of the attorneys should
20 be awarded attorneys fees, it
21 being the thought that the
22 confusion was created by the
23 testator and testator's estate
24 should pay for having brought
this confusion and ambiguity

1 and having caused the attorneys
2 and heirs to come into court. I
3 would give the court some
4 authority on this so it could go
5 onto the record. In 96 Corpus
6 Juris Secundum at page 810, section
7 1096c, we find this statement,
8 "When fees payable to all Parties.
9 In many jurisdictions it has been
10 held that where it is necessary to
11 obtain the construction of a
12 will all parties to the will are
13 entitled to a reasonable
14 allowance for counsel fees out of
15 the estate." And it goes on for
16 several pages, the theory behind
17 of course that the problem was
18 brought about by the testator,
19 herself in this particular
20 instance and if she had been
21 specific or had spelled out her
22 intent without confusion so it
23 would not have had to be
24 construed the heirs and the
parties would not have to have
had attorneys.

1 So I would urge that position on
2 the court.
3 Commissioner: Do you have any
4 Virginia authority, Mr. Fine?
5 Mr. Fine: I have Virginia
6 authority to say that the matter
7 that the attorneys fees is
8 discretionary. But that is about
9 the extent of Virginia authorities
10 on the attorneys fees.
11 Commissioner: This probably
12 would be a matter that would be
13 argued to the court at the time
14 that the Commissioner in Chancery
15 submits his Report, rather than
16 a matter that I might decide for
17 the court.
18 Mr. Fine: It would seem like a
19 matter that the Commissioner would
20 properly pass along a recommendation
21 to the court.
22 Commissioner: I certainly will
23 inquire into it.
24 Commissioner: Mr. Musgrove is
there any matter that you want

1 to put into the record with
2 regard to this item 4 in the
3 decree of reference relating to
4 the---.
5 Mr. Musgrove: It was my feeling
6 at the time of the original
7 complaint was filed, the same
8 as Mr. Fine, that it was improper
9 for the executor to become an
10 advocate for anyone. And had
11 they persisted in that then I
12 would have strongly urged that
13 there was an improper position
14 and should be denied the fees
15 and regular allowances. However,
16 in view of the fact that they did
17 amend and come in seeking only
18 the aid and guidance of the court
19 which I feel it proper then we
20 would not feel we should persist
21 in that course. I feel like now
22 they are handling it proper and
23 should be awarded the proper
24 commission and regular allowances.
Had they persisted in their original

1 course I would have strongly
2 urged to the contrary.
3 Mr. Ford: I assume that Mr. Fine
4 is not going to offer any evidence
5 on the prayer of his cross claim
6 where he requested that all these
7 parties receive $500.00 apiece,
8 including Piedmont Trust Bank?
9 Mr. Fine: I think that is a
10 question of law, frankly, whether
11 or not----.
12 Commissioner: I think this
13 depends on the construction of
14 the will and what the findings
15 will be in regard. Gentlemen if
16 there is no further testimony we
17 will conclude the taking of this
18 deposition.
19 Mr. Musgrove: Would you care to
20 have any memorandum of authorities
21 on the various positions prior to
22 the filing of your report. If so,
23 I would be glad to file one,if you
24 don't feel like you need it then
of course I don't care about

1 doing that extra work.
2 Commissioner: The memorandum
3 that either of you gentlemen
4 might want to file in support of
5 your last position that you've
6 taken in this matter I certainly
7 would be glad to consider it
8 prior to rendering the report in
9 this case. I would request that
10 you get this in as soon as
11 possible I anticipate contact
12 with Mr. Davis unless he wants
13 to take additional evidence
14 I will assume that all the
15 evidence is in and proceed to
16 render the report. But, I ask
17 you to do this as soon as possible
18 and we would welcome any assistance
19 that you might give us in this.
20 Mr. Fine: I am prepared to argue
21 today, if you care to hear from
22 me, if not I'll be glad to write
23 a memorandum if its not placing
24 to much burden on you.
MR. SHAW: Are you going to pass

1 on the fee of all parties, as
2 well as the attorneys, and also
3 the fee of the bank?
4 Commissioner: Well, I think its
5 customary, for practice in this
6 area for the court to allow----
7 Mr. Fine, is suggesting that the
8 Commissioner in making this
9 report, make some recommendation
10 to the court with regard to
11 payment of counsel fees out of
12 the estate, if I understand his
13 position correctly. I frankly,
14 do not know at this time whether
15 I will be in the position to make
16 such a recommendation. I certainly
17 want to explore the propriety of
18 me doing that and the authority
19 that Mr. Fine might have submitted
20 and might submit prior to the
21 report. So, I couldn't answer
22 that question at this time, Mr.
23 Shaw.
24 Mr. Ford: Mr. Commissioner, you
might let the record state whether

1 or not the two guardians ad
2 Litem in this item wish to
3 offer witnesses on behalf
4 of their client.
5 Commissioner: I understand from
6 both of them no. And you have
7 now confirmed that.
8 Mr. Ford: Gentlemen, one other
9 comment on the record. The three
10 witnesses to the will are employees
11 of Piedmont Trust Bank and are
12 available for examination if any
13 party would like to examine them.
14 They know nothing of the content
15 of the will or the intention that
16 has been taken. But I tender
17 those witnesses to the Commissioner
18 and other attorneys if they wish
19 to examine them.
20 Commissioner: Thank You.
21
22
23
24