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# Record No. 2361

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IN THE

## Supreme Court of Appeals of Virginia AT RICHMOND

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W. B. SNIDOW, Guardian Ad Litem for WILLIAM  
E. FERRELL

vs.

FIRST NATIONAL BANK OF NARROWS, ADMINIS-  
TRATOR OF R. M. ALVIS, DEC'D., ET ALS.

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From the Circuit Court of Giles County, Va.

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P E T I T I O N

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*To the Honorable Justices of the Supreme Court of Appeals of  
Virginia:*

Your petitioner, W. B. Snidow, Guardian ad litem for William E. Ferrell, respectfully represents that he is aggrieved by a final decree of the Circuit Court of Giles County, Virginia, entered on the 20th day of August, 1940, in a chancery suit therein pending wherein the Mountain Trust Bank, a Corporation, was the original complainant praying the court to require the First National Bank of Narrows, a corporation, Administrator of R. M. Alvis, deceased, and William E. Ferrell, an infant, to interplead and assert their respective rights to five shares of the

capital stock of the said Mountain Trust Bank, of the par value of five hundred dollars, which is claimed by the said First National Bank of Narrows, as administrator of R. M. Alvis, deceased, as a part of the estate of the decedent, and by the said infant as a gift, and in which said interpleader proceeding the said administrator was adjudged to be the plaintiff and the said infant as the defendant.

A transcript of the proceedings in the said cause in the said court is herewith filed.

### STATEMENT OF FACTS

R. M. Alvis, a citizen and resident of Giles County, died in the said county on September 25th, 1938, at a little past the age of seventy nine years. He was a bachelor and left surviving him a niece, Clarice Alvis Anderson, a resident of California, as his sole heir at law. In the year 1931 he had executed a will to which there had been added codicils at various times thereafter. This will was subsequent to its being probated adjudged invalid for violating the rule against perpetuities, in a proceeding had for the purpose in the said court. In this will there was no mention of the said five shares of stock in the Mountain Trust Bank, nor of this infant defendant. The stock had been originally mentioned in the will but all mention of it had been erased as stated in the answer of this infant defendant by his guardian ad litem.

The deceased lived with one R. L. Shrader and only about one half mile from the home of Everette E. Ferrell. This  
2\* Everette E. Ferrell had \*two children, one of which was named William E. Ferrell, and who was about eight years old at the time of the death of R. M. Alvis. To this boy, William E. Ferrell, the said R. M. Alvis was very much attached and had been for some three or four years before his death. Mr. Alvis had stated on various occasions, and to various people, that he intended to "leave" this child something to help him through school. He was frequently at the home of Ferrell, and this child was often his companion in his hunting and other pastimes.

On November 1st, 1937, R. M. Alvis, the deceased, endorsed an assignment of five shares of stock in the Mountain Trust Bank to the said William E. Ferrell, the infant defendant,

and signed his name to the said endorsement in the presence of one W. D. Trout, who was the Teller at the First National Bank of Narrows, and had the said Trout to sign his name as a witness to his signature to the said endorsement. (Dep. Trout R. P. 36). This certificate of stock along with other papers, including the will mentioned, was placed by the deceased, in a safety deposit box which the deceased held in the said bank. This was done a little short of one year before Mr. Alvis's death.

But some months thereafter, and it is quite apparent from the short letter from Alvis to the bank which was found in his box after his death, and which is copied into the deposition of A. E. Shumate on page 52 of the record, that it was on January 21st, 1938, Mr. Alvis got out his papers and wrote some letters and did some "figuring" in Mr. Shumate's office in the bank of which Mr. Shumate was the president. It is reasonable to think that it was on this day because Mr. Shumate says that he was doing this writing and figuring in his office, and at that time told him what he wanted done "after his death".

What occurred on that day is stated by Mr. Shumate as follows:

3\* "My recollection about that is this: that on possibly the last visit of Mr. Alvis to the bank when I was present, he came in my office and wrote or did something, figuring or writing, I think he possibly wrote a letter or two, and he said to me that he was leaving certain things in that box which he wanted us to mail out, certain letters, *after his death*, and that the instructions \*were in one of those letters. I kidded him about the fact that he would outlive all of us, and I said something to the boys in the bank about Uncle Ralph thinking he was going to die, and that he was leaving certain things there for us to carry out for him."

And just preceding that part of his deposition Mr. Shumate said:

"As I recall he left the key and told me he was leaving the key. I think he left it with Tom Johnson. That is my recollection. (That Tom Johnson was) Assistant Cashier."

Mr. Shumate said in answering this question:

"Mr. R. M. Alvis, the deceased, then did a short while before his death direct you that you would find these things in that lock box after his death, and that you were to see that they were mailed out in due course, did he?"

And his answer is:

"That is my recollection for our reason for going in to the box. We were trying to carry out his wishes."

And it is further proved by P. H. Hale, the Cashier of the bank, that there was found in this box, after the death of Mr. Alvis, a letter in a large envelope stamped with a three cent stamp addressed to William E. Ferrell, Chapel, Virginia, in care of Everett E. Ferrell and Eula Ferrell, and that on October 1st, following Mr. Alvis's death on September 25th, 1938, he did deposit in the Post Office at Narrows the said letter, which letter is proved by the deposition of Everette E. Ferrell to have been received for the said William E. Ferrell on October 3rd, 1938.

When this letter was opened it contained the stock and a letter, undated and unsigned, but in the handwriting of the said R. M. Alvis, addressed to "Dear Billy", meaning this infant defendant, in which it was written that he was giving him five shares of stock in the Mountain Trust Bank. The stock certificate had been assigned over to William E. Ferrell by an endorsement bearing the date November 1st, 1937. The donee was told in this letter, "*I am giving you some stock*", and that "the Narrows bank will tell daddy how to get this stock transferred to you". And in pursuance of that Everette E. Ferrell took the stock and the letter to the bank to be advised about it being regularly transferred on the books to his boy. Mr. Hale, the Cashier, erased the name of Everette E.

Ferrell who had been named in the endorsement to transfer the stock \*leaving it blank in that respect. The stock certificate was held for some days by the bank and no effort was made by it to have it transferred, but after ten days or two weeks it was at the demand of Everette E. Ferrell, returned to him, and he sent it to the Mountain Trust Bank and asked that it be transferred on the books to the said William E. Ferrell, by which time the said Mountain Trust Bank had been informed of the adverse claims to this stock.

The facts may be further stated to be that R. M. Alvis endorsed over this stock on the first day of November, 1937, to William E. Ferrell, this infant defendant, in the following words: "For value received, I hereby sell, assign and transfer unto William E. Ferrell five shares of the capital stock represented by the within certificate and do hereby irrevocably constitute and appoint Everett E. Ferrell to transfer the said stock on the books of the within named company, with full power of substitution in the premises."

It will be noted that in the assignment of the certificate itself is contained the words that what is done is "*irrevocably*" done.

This certificate with the letter was put into an envelope, sealed, stamped with a three cent stamp, (a sufficient postage to transmit it in the mails), and addressed to William E. Ferrell, in care of his father and mother, at Chapel, Virginia, and that R. M. Alvis, the deceased, on January 21st, 1938, some nine months before his death, went into the office of Mr. A. E. Shumate, the President of the First National Bank of Narrows, and told him that he was putting certain letters in his lock box and that he was leaving the key thereto with the bank and that "after his death" he wanted the bank to mail the letters to the persons to whom they were addressed.

It will be noted that Mr. Alvis did not say "in case of my death" or use any other language which would import a contingency or a condition, but the injunction was direct and unequivocal, and was to be effectuated at a certain time which would inevitably come, and in his case, (being then nearly 5\* seventy nine years old), not in the very distant future, \*of which fact he was evidently conscious as evidenced by the impression he made upon Mr. Shumate which caused him to tell "the boys in the bank about Uncle Ralph thinking he was going to die." And in this connection Mr. Shumate notified "the boys in the bank" that Mr. Alvis was leaving certain things there for the bank to carry out for him.

It is also seen from the record that Mr. Alvis in his will which has been referred to had nominated the bank as his executor.

The facts are simplified by the replication of the administrator where it says: "It is no doubt true that the feeling of R. M. Alvis toward the said William E. Ferrell was affection-



ate, and that he intended to make him a gift of the bank stock in question in this case."

So when we discuss the law applicable to the case we start out with the material fact *admitted* that the donor intended to make the gift to this infant defendant. His intention to give thus admitted, we submit that his acts, words, and writings, both before and after November 1st, 1937, prove his intention to deliver as well, and if by what he said and did, he intended to deliver the gift, he did deliver it within the meaning of the law, and thereby fully executed the gift. (*Hunt v. Brent*, 1 Va. Dec 258: *Leftwich v. Early*, 115 Va. 323 (328): *Mumpower v. Castle*, 128 Va. 1. The acts, words, and writings, of Mr. Alvis shown by the record will be presumed to be in furtherance of his admitted intention to give, for one is presumed to intend that which is the natural and probable consequence of his acts. And the natural and probable consequences of Mr. Alvis's acts, words, and writings are forcefully demonstrated by what the bank actually did "after his death", for Mr. Hale, the cashier, said that in mailing the letters he thought that was "natural thing to do" and that they were trying to carry out his wishes, meaning that they were trying to carry out Mr. Alvis's intentions.

The question in this case is, "was there a delivery of the certificate of stock to William E. Ferrell." The trial court held that there had not been a delivery of the gift and that the  
6\* transaction was ineffective \*as a gift either *inter vivos* or *mortis causa*, for a lack of delivery.

### ASSIGNMENT OF ERROR

The petitioner assigns as error the ruling of the court in invalidating the gift.

There is in the record, at the instance of the administrator, the written opinion of the trial court from which it appears the reasons assigned by the court for it's rulings are not convincing, and are contrary to well settled principles as fixed by the decisions of this court upon every point in the case.

### ARGUMENT

The decree purports to be based upon the case of *Yancey v. Field*, 85 Va. 758, and *Shankle v. Spahr*, 121 Va. 598, when

neither case is determinative of this case, nor does this petitioner controvert anything which is held in either of them, on the contrary we rely on much that is said in both of them. It certainly can not be contended that a gift can be valid without delivery, but all of the authorities everywhere hold that "delivery" may be either *actual* or *constructive*.

The much relied on case of *Yancey v Field*, supra, was an entirely different case from this one. There it was sought to uphold a gift when there was no claim of delivery, and it was admitted both in the pleadings and in the evidence that there was no delivery. And in that case the court only decided that a gift was not valid without delivery. Judge Lewis delivered the opinion in that case. In *Thomas v. Lewis*, 89 Va. 1, it was sought to make something out of that case and Judge Lewis delivered a short concurring opinion concerning what had been said in *Yancey v. Field*, and said:

"The appellees themselves admitted that there had been no delivery of the subject matter, that, as the court said, was decisive of the case, whether as an intended gift *inter vivos* or *mortis causa*: Reference, however, was made in the opinion to some of the general principles of the common law relating to gifts, attention being called to the necessity of a delivery in all cases. And as illustrative merely, or rather to call attention to the fact that the common law requirement of delivery in case of a verbal gift had been incorporated in our statute law, the statute was referred to."

7\* \*The statute referred to by Judge Lewis was Sec. 2414 Code 1887. (5142, Code 1919) which has since been held in *Bank v. Holland*, 99 Va: 495, (503) not to apply to choses in action, and that as to them "in the nature of things" there can be no present possession of a thing which lies merely in action; that the bond or note, etc., is not the "thing" but merely the evidence of it; that the possession required by that statute could only be predicated of some visible, tangible thing.

Certainly there is not anything in the case of *Yancey v. Field*, which militates against this petitioner for it was there said "as illustrative merely" that:

"As to what constitutes a sufficient delivery of possession, there is some conflict of authority. The question generally depends upon the nature and situation of the thing to be delivered, and is therefore to be determined upon the peculiar circumstances of each case. There may, however, be a constructive delivery."

And again it is said in that case "as illustrative merely", that:

"The only difference between a gift *inter vivos* and a *donatio mortis causa* is that the latter is made under the apprehension of death; and to it certain implied conditions subsequent are annexed, upon the happening of any one of which the donation is defeated; that is to say, it is defeasible (1) by actual revocation by the donor in his lifetime; (2) by the donor's survival of the apprehended peril; (3) by his outliving the donee; and (4) by the occurrence of a deficiency of assets necessary to pay the debts of the donor after his death. *In all other respects the two classes of gifts stand upon the same footing.*" (Italics supplied).

And again it is said in *Thomas v. First National Bank*, 166 Va. 497. citing R. C. L.

"With respect to the gifts known to the law as *inter vivos* and *mortis causa*, it may be said that they have many essential elements in common, and that the rules of law applicable to rights under them are frequently applied interchangeably. There is no distinction between these two classes of gifts as to the necessity of the intent to transfer title and the delivery of the property etc."

The two classes of gifts *standing upon the same footing* the question of what constitutes "delivery" may be determined from the rulings of the courts in cases where the subject matters of controversy is of either class, and what the courts say concerning one or the other is applicable to either class of gifts, and it may be deduced from all the cases that there is no difference in the quality of the delivery which is required to

8\* make the gift valid, whether it be a gift *inter vivos* or *mortis causa*, and in the very case of *Yancey v. Field*, *supra*,

so much relied on, and in the very part quoted by the trial court these words occur: "In this respect there is no distinction between the two classes of gifts above mentioned." Nor is there any difference between the quality of the delivery of any article of personal property by way of a gift, either *inter vivos* or *mortis causa*, and the delivery of a deed for real estate. There must be a delivery in either, and in all cases, to make the gift, or the deed, effectual.

The question, then, to be determined in this case is: "Was there delivery?"

Upon the question involved the case of *Innis v. Potter*, 130 Minn. 320: 153 N. W. 604: 3 A. L. R. 896, is similar, and upon the matter of the delivery of a deed being of the same character of delivery as the delivery of an article of personal property it is said:

"Nor do we see any reason why the rules as to delivery to a third person, with direction to deliver to the donee on the death of the donor, should not apply to personal as well as to real property. Delivery is, of course, necessary to give effect to a gift, but so it is to give effect to a deed. If valid delivery may be made to a trustee in case of a gift of a deed of real property, why not in case of a gift of personal property? Not only do we think there should be no distinction between the two classes of property in this respect, but we are equally convinced that it is the settled law in most of the states of the Union that no such distinction does exist. (citing cases).

We accordingly hold that the owner of personal property may make a valid gift thereof, with the right of enjoyment in the donee postponed until the death of the donor, if the subject of the gift be delivered to a third person, with instructions to deliver it to the donee upon the donor's death, and if the donor parts with all control over it, reserves no right to recall, and intends thereby a final disposition of the property given."

The question before the court in that case as stated by the court was:

"Is it competent for a person to make a gift of personal property by delivery of the subject of the gift to a

trustee where the delivery by the trustee to the donee and the beneficial enjoyment by the donee are postponed until the death of the donor."

And in that case the court held that a certificate of stock which contained an absolute assignment to the donee was placed in an envelope sealed with direction endorsed on the envelope that it be delivered to the donee "only in case of the death 9\* of Warren Potter", and which was \*delivered to J. A. Casey with the direction to deliver it according to directions in case of the death of the donor, and the court held the gift valid as a gift *inter vivos* and vesting in the donee when delivered to Casey but the enjoyment postponed till the death of the donor.

It is interesting to note there was cited the Virginia case of *Sterling v. Wilkinson*, 83 Va. 791, and the Minnesota court did not approve of the significance given to the language under discussion in the case referred to, which was nearly identical with that then before the court. But it will be observed that in discussing that case Judge Lacy, at page 798, distinguishes the language "in case of his death" and "at my death", the first implying a condition, and asking the question why the donor did not say "at my death", which was a certainty. The language used by Mr. Alvis, as it comes from Mr. Shumate, is "after his death", the import of which is the same as "at my death" or "when I die."

It is contended that the donor delivered this stock to the First National Bank of Narrows to be delivered to William E. Ferrell after his death, and that such delivery to William E. Ferrell would relate back to when it was delivered to the bank: that when he delivered it to the bank he had endorsed thereon an absolute assignment over his own signature and witnessed that he had done so "irrevocably"; that it was not material that the donor did not tell the bank officers what was in the envelope, because what was in it was sealed up and so marked as to identify it, and to indicate just what he wanted done with it; that the bank in order, as its officers expressly state, to carry out the expressed intention, desires, and directions, did deliver the stock to the infant in the manner and by means it was directed to employ to effect the delivery; that when it was deposited in the Post Office after the donor's death and was in due course transmitted to the infant defendant the delivery to

him related back to the day and time in the bank when the donor told Mr. Shumate to do that express thing.

Though we have cited *Innis v. Potter, supra*, there is no 10\* particular \*reason for going beyond our own jurisdiction for authority on the subject. There are several Virginia cases dealing with the identical questions involved in this case.

The administrator contends, and the trial court held, that the delivery to the bank was a delivery to the agent of the donor, if there was any delivery at all, and not to the trustees for the donee. But counsel and trial court are in error. In *Johnson v. Colley*, 101 Va. 414 (420) it is held:

"Delivery may be made to a third person under such circumstances as to create an agency merely; as where the donor retains dominion or control over the thing given. If, however, the delivery is made to a third person for the use of the donee, or under such circumstances as to indicate that the donor relinquishes all right to or control of the thing given, and intends to vest a present title in the donee, the gift will be sustained.

Where one, in view of impending dissolution, clearly and intelligently manifests an intention to make a present gift of personal property to another, and in consummation of his intention makes such a delivery to a third person for the use of the intended donee as he is then capable of making considering the character and situation of the property, the person to whom delivery is thus made will be presumed, in the absence of countervailing circumstances, to take the property as the trustee for the intended donee, and not as agent for the donor. (citing cases).

In the case at bar the object of the donor's bounty was a child of tender years. He was a man of intelligence and business experience and doubtless knew that this child was too young to be intrusted with the large sum of money he desired to give her, and for this reason he turned to his friend and adviser, in whom he appears to have great confidence, and placed the money in his hands as the surest means of securing the same for the use and benefit of this little child upon whom his last earthly solicitude was lavished. There being no countervailing circumstances, one who thus receives property for another must

be held to be the trustee of the intended donee, and not the agent, merely, of the donor."

What was said in that case is very applicable to the case that is now before the court because there was a mere child who was the beneficiary in this and that case. And what is said in the last paragraph quoted is in line with what the donor is said to have told L. A. Shrader, as related in his deposition on page 31 of the record. Mr. Shrader said: "He said if he gave it to him where he could get ahold of it that maybe his father would run through with it, and he said if he left it so he couldn't get hold of it, it wouldn't do him any good, and he just didn't know how to leave it." And that statement was made to Mr. Shrader prior to November 1st, 1937, the date of the assignment.

11\* \*Entertaining that feeling, what did the donor do? He assigned this stock to this child believing that the infant could not dispose of it in his infancy, and telling him to keep it as long as he lived, and only use the dividends to buy ewe lambs from his father, etc., and leaving it with the bank to be delivered to him, and with the direction that the bank would attend to its transfer etc., and being so left that he could only use the dividends during his infancy.

But the administrator contends, and the trial court held, that the gift did not vest in the lifetime of the donor. This petitioner says that it did vest in the lifetime of the donor, and that it vested in the donee the day and time of the delivery to the bank, and that it was a delivery to the bank when it was deposited in the lock box and the box locked and the key there-to turned over to the bank to be used to open the box "after his death" with the specific direction that therein would be found certain letters which the bank was to mail out to the persons addressed.

The case of *Schreckhise v. Wiseman*, 102 Va. 9, is authority for this position, where the case of *Frank v. Frank*, 100 Va. 627, is cited and quoted from, saying:

"Where a deed is left with a third person with instructions to hold it until the grantor's death, and then to deliver to the grantee, the weight of authority seems to be in favor of the doctrine that if there is no reservation by the grantor of the privilege of recalling the deed before his death, but if he delivers it to the depository with the ab-

solute and final determination that it shall take effect when the contingency of his death happens, it will become operative upon its delivery, after his death, to the grantee, and such delivery will relate back to the prior delivery for the purpose of passing the grantor's title."

But it is said that the donor did not divest himself of all dominion and control over the stock because he could have gone back and taken the key from the custody of the bank, and that the bank would have no right to refuse to give him the key. Petitioner contends and insists that within the meaning of the law he did divest himself of all dominion and control of this stock. And it is submitted that what the courts mean when they say that the donor must divest himself of all dominion and control, that they mean all *immediate* dominion and <sup>1-2</sup>\* control, that the \*subject of the gift must in some way, actually or constructively, pass from the donor by some act or token showing that he has parted from it physically, but does not mean that there must be an exclusion of every possible means of resuming the possession. It can not be denied that the stock was out of the immediate possession of the donor in this case, and that the donor put it out of his possession by his own act when he locked it up in a lock box in the bank and turned the key to that lock box over to the bank with the direction and instruction, without reservation or condition, what to do with the letter containing it "after his death" given to the officers of the bank. But the administrator seeks to avoid that by saying that the donor could have reclaimed the key at any time. That he could have done, but he never did. The evidence can be searched from cover to cover and there will not be found a word implying a reservation of the right to reclaim it, or any evidence of an intent to ever resume possession of it, and simply because he had the *power* to resume dominion and control, if he did have such power after having "irrevocably" assigned the certificate, does not make the delivery any the less effective. This court has held in the case of *Thomas v. Lewis*, 89 Va. 1, at page 68, and quoting from New York and Mass. courts, and said:

The situation, relation, and circumstances of the parties and the subject of the gift may be taken into consideration in determining the intent to give, and the fact as to delivery. *A total exclusion of the power or means of resuming possession by the donor is not necessary.*"



And in *Payne v. Payne*, 128 Va. 33 (50), which was a case involving the delivery of a deed, the court said:

"While the authorities agree in the general statements of the principles which control, they are not in accord in the application of these principles to the facts of particular cases. Indeed, it may be conceded that a very large number of modern cases from courts of the highest authority might be cited which are inconsistent with several of those herein referred to; but this from *Newton v. Bealer*, 41 Ia. 339, appeals to the reason, and has ample support in many adjudged cases; "Where one who has the mental power to alter his intention, and the physical power to destroy a deed in his possession, dies without doing either, there is, it seems to us, but little reason for saying that his deed shall be inoperative simply because during life he might have done that which he did not do. It is much more consonant with reason to determine the effect of the deed by the intention existing up to the time of death, than to refuse to give it effect because the intention might have been changed."

13\* \*And it is also held in *Innis v. Potter*, *supra*, that the power or means of resuming dominion and control is not determinative.

Also see *Giddings v. Giddings*, (Vt.) 31 Am. Rep. 682.

In the case at bar there was no word, or any circumstances, from which it could be inferred that the donor intended any reservation of the right, or had any intention, to recall the key or resume possession of the certificate of stock on which he had endorsed an assignment, and the very endorsement over his witnessed signature shows and states that what he was doing in this regard was *irrevocable*. And Mr. Shumate says that the conversation with him was the last time he was in the bank so far as he knew, and no one else ever said that the donor was ever in the bank after the day of the conversation with Mr. Shumate, the president of the bank. And about two months before Mr. Alvis's death he told both the father and mother of this child "that he had it fixed".

This court's attention is called to a statement in the court's opinion which is not borne out by the evidence. It is said: "He left the key to his lock box with Johnson, Assistant Cashier of

the bank, not when he put the stock in the box, but as a custom, as I gather from the evidence, and with no direction to Johnson to deliver the stock to Billy." Mr. Shumate testified that: "I recall he left the key and had told me he was leaving the key. I think he left it with Tom Johnson. This is my recollection." There is absolutely no evidence in the case to prove that the key was left as a custom, but what if it had been a custom, what difference could that make in the case. He certainly left it there that time, and when he could have taken it with him if he had wanted to do so, and the bank could not have prevented his doing so, but he left it that time for a specific and expressed purpose. And what significance can be attached to the fact that Mr. Alvis did not say anything to Johnson, Assistant Cashier, he left the key with Johnson but he went to the President and responsible officer of the bank and told him what he wanted done "after his death", and President Shumate went forthwith and "told the boys in the bank" that Mr. Alvis was leaving certain things there for the 14\* bank to carry \*out for him.

In presenting this case to the trial court the guardian ad litem cited and relied on as authority upon the subject of delivery, *Thomas v. First National Bank*, 166 Va. 497, and the court in it's opinion comments on that case. A part of that comment is this: "It is plain that the court was of the opinion that these facts did not constitute a delivery of the stock and bond so as to make a valid gift, because the decision of the case turned on whether Thomas had delivered to his wife the key to this box. The trial court held that he did not, and that the attempted gift was ineffective; but the appellate court held that he did deliver the key to his wife, and by doing so delivered the stock."

How the trial court could so construe that case as not to sustain the position of petitioner, and that there was no delivery in the case at bar, is a question which the petitioner leaves with this court. The trial court is saying that it is plain that this court was of the opinion that there was no delivery of the stock by Thomas to his wife, but nevertheless it held that there was a delivery of it to her because he had delivered to her the key. In the case of *Snidow v. Brotherton*, 140 Va. 187, this court held that delivery of a key to a third party was a good delivery of the subject matter to the intended donee.

The Thomas case was a gift *causa mortis* because Thomas said to his wife when he gave her the keys that if anything happened to him they would mean a great deal to her, and the court held that there had been a delivery and sustained the gift as a gift *mortis causa*. And in that case the assignment was in blank, but in the case at bar the assignment was complete to the said William E. Ferrell, signed by the donor and witnessed by Trout.

The trial court says in it's opinion: "It is regrettable that the wishes of Mr. Alvis in this regard cannot be carried out." It was clearly his "wishes", and admitted to be his intentions to give the stock to this child, and it is submitted that his words, acts, and writings prove his intentions to deliver, and that he did consummate the gift by delivery.

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15\* But the trial court adds: "but to do so would violate a principle which has been long established.

It is submitted that the decisions of this, and other courts, and the law of this Commonwealth, demonstrates that no principle would be violated by carrying out the admitted intentions of Mr. Alvis to make this gift to this child, but on the contrary to deny the gift to this child from his friend would not only be "regrettable", but would violate principles which have been long established, and instead of letting a hard case make bad law, as the administrator contends, the affirmation of this decree would be the application of bad law to a good case.

And in the trial court's opinion is cited *Shankle v. Spahr*, 121 Va. 598, and quoting: "There must be words of *present* gift as well as delivery." It is submitted that the very language of the letter to the boy is, "I am giving you some stock", is in the present tense, and that when the stock actually came into his hands after Mr. Alvis's death his possession related back to the day and time when it was turned over to the bank in the manner and by the means hereinbefore setforth, *Frank v. Frank*, *supra*, *Schreckhise v. Wiseman*, 102 Va. 9.

"Delivery of personal property is essential to a gift, whether *inter vivos* or *causa mortis*, but it is not essential in either case that it be simultaneous with the words of donation." *Thomas v. First National Bank*, 166 Va. 497.

Your petitioner, as guardian ad litem for the infant defendant, William E. Ferrell, for the reasons herein stated prays that

he may be granted an appeal from the said decree, and that it may be reviewed and reversed, and a decree entered confirming the gift to the said infant, William E. Ferrell. And your petitioner certifies that in his opinion an appeal from the said decree is necessary for the protection of the estate of the said infant defendant and for that reason no bond should be required of him.

And your petitioner will ever pray etc.

W. B. SNIDOW,  
Guardian ad litem for William E. Ferrell.

JAMES L. WARREN  
W. B. SNIDOW,  
Counsel for Petitioner.

16\* \*We, W. B. Snidow and James L. Warren, attorneys at law practicing in the Supreme Court of Appeals of Virginia, do hereby certify that in their opinion the decree of the Circuit Court of Giles County, Virginia, in the case of Mountain Trust Bank v. First National Bank of Narrows, Administrator of R. M. Alvis, deceased, wherein William E. Ferrell, an infant, was a party defendant, and against whom there was an adverse decree, should be reviewed by the Supreme Court of Appeals of Virginia; and we do further certify that we have this day delivered a copy of this petition to Farrier and Farrier, the attorneys representing the said administrator in the said Circuit Court of Giles County, and that we then informed said attorneys that we were immediately filing the said petition with the Honorable Herbert B. Gregory, an Associate Justice of the said Court, at Roanoke, Virginia; and that in the event that an appeal is granted that we shall use the said petition as our opening brief in the argument of the said cause in the said court.

Witness our hands this the 26th day of August, 1940.

W. B. SNIDOW,  
Pearisburg, Virginia.  
JAMES L. WARREN,  
Narrows, Virginia.

Received Aug. 26, 1940.

*H. B. G.*

September 3, 1940. Appeal awarded by the Court. No.  
bond required.

*M. B. W.*

# RECORD

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Virginia:

In the Circuit Court of Giles County.

Mountain Trust Bank

vs. In Chancery

First National Bank of Narrows, Administrator of  
R. M. Alvis, Decd., et al.

Pleas before the Circuit Court of the County of Giles, at the Court House thereof, on the 20th day of August, 1940.

Be it remembered that heretofore to-wit: At Rules held in the Clerk's Office of said Court on the 1st Monday in September, 1939, came the Mountain Trust Bank by its Counsel, and filed its Bill in Chancery against First National Bank of Narrows, Administrator of R. M. Alvis, Deceased, et al, which said Bill and all proceedings had thereon in said Court, are in the words and figures following, to-wit:

## BILL

To Honorable A. C. Buchanan, Judge of said Court:

The above named complainant respectfully represents to the court the following state of facts as the basis for the relief hereinafter prayed for:

1. Complainant bank is a Virginia corporation, lo-  
page 2 ] cated and doing business in the city of Roanoke,  
Virginia; defendant First National Bank of Nar-  
rows, Administrator of R. M. Alvis, deceased, is located and  
doing business in the town of Narrows, in Giles County, Vir-  
ginia; and defendant William E. Ferrell is a resident of the said  
county of Giles.

2. R. M. Alvis, who was a citizen of the county of Giles, departed this life on or about Sept. 25, 1938, leaving a last will and testament, dated October 14, 1931, in which the said First National Bank of Narrows was named as executor thereof, which will was probated before the clerk of the circuit court of Giles County, on October 5, 1938, and said bank qualified as executor thereof, on the same day.

The said will was declared null and void, and was set aside by the circuit court of Giles County, on the 17th day of February, 1939, by a decree that day entered in the chancery cause therein pending in the name of Clarice Alvis Anderson vs. First National Bank of Narrows, Executor of R. M. Alvis, deceased, et al, and by the same decree, the said First National Bank of Narrows was appointed administrator of R. M. Alvis, deceased, and it qualified as such administrator on February 27, 1939.

3. Complainant is advised, and on such advice alleges that the said R. M. Alvis kept a safe deposit box in the said First National Bank of Narrows; that after his death, and when said box was opened, there was found there a large stamped envelope addressed in the hand writing of the said R. M. Alvis, to William E. Ferrell, at Chapel, Virginia, which is in page 3 ] Giles County, which stamped envelope so addressed, was deposited by one of the officials of said bank, in the United States Post Office, in the town of Narrows.

On the 31st day of October, 1938, complainant received through the United States mail, a certificate, No. A-55, for five shares of the capital stock of complainant bank, of the par value of \$100.00 per share, which certificate had been issued to the said R. M. Alvis on the 20th day of July, 1926, on the back of which certificate, when so received by complainant, was an endorsement signed by R. M. Alvis and his signature witnessed by W. D. Trout, under date of Nov. 1, 1937, whereby the said R. M. Alvis sold, assigned and transferred the same to the said William E. Ferrell; and along with said stock certificate was a letter from Everett E. Ferrell, the father of the said William E. Ferrell, requesting that said stock be transferred by complainant to the said William E. Ferrell, who, as complainant is advised and alleges, is an infant under age of twenty-one years.

4. In the meantime, or at about that time, complainant was advised by the said First National Bank of Narrows in its

then capacity as executor of R. M. Alvis, deceased, that it claimed said stock as part of the estate of the said R. M. Alvis; and after said First National Bank of Narrows had been appointed administrator of the said R. M. Alvis, deceased, as hereinabove shown, it advised complainant bank that it still claimed said stock as part of the estate of the said R. M. Alvis.

5. In view of the conflicting claims to said stock, on the one hand by William E. Ferrell, and on the other  
page 4 ] hand by First National Bank of Narrows, Administrator of R. M. Alvis, deceased, and not being advised as to what it should do in the premises, complainant has made no disposition of said stock, but still holds said certificate in its possession, and it stands ready and willing to make such disposition thereof as the court may direct; and complainant alleges that it has no interest whatever in said stock, other than to make such disposition thereof as the court may deem proper, and may direct by an order or decree entered of record.

The premises considered, and being advised that it has the right so to do, in order to avoid possible vexatious litigation in which it has no interest except as above set forth, complainant comes into this court of equity and files this bill and prays that the said First National Bank of Narrows, Administrator of R. M. Alvis, deceased, and William E. Ferrell, an infant under the age of twenty-one years, be made defendants thereto; that a guardian ad litem be appointed for the said infant defendant; that the said defendants, the said infant defendant by his guardian ad litem, be required to answer said bill and set forth their respective claims to the subject matter thereof, and to interplead each other and have their said claims settled and adjusted in this case, and without cost to complainant; and that complainant have such other and further relief as it may be entitled to have in the premises; and as in duty bound, complainant will ever pray, etc.

MOUNTAIN TRUST BANK.

By Counsel.

FARRIER & FARRIER, p. q.

page 5. ] State of Virginia.

City of Roanoke, to-wit:

I, R. B. Adams, a Notary Public for the city aforesaid, in the State of Virginia, do hereby certify that R. B. Gunn, Presi-



dent of Mountain Trust Bank, the complainant in the foregoing bill, this day personally appeared before me in my said city and made oath that he verily believes that all the statements and allegations contained in said bill are true.

My commission expires on the 23rd day of June, 1940.

Given under my hand this the 21st day of August, 1939.

R. B. ADAMS.

Notary Public

And in said Court on the 26th day of September, 1939.

### DECREE

This cause came on this day for a preliminary hearing on complainant's bill of interpleader, filed in the clerk's office of this court at first September rules, 1939, and on process issued thereon, service of which was duly accepted by defendant First National Bank of Narrows, administrator of R. M. Alvis, deceased, by M. P. Farrier, its attorney; and the court appointed W. B. Snidow guardian ad litem for the infant defendant, William E. Ferrell, who thereupon, by leave of the court, filed a formal answer for the said infant defendant, and the matter was argued by counsel.

Upon consideration whereof, the court is of opinion that complainant is entitled to the relief prayed for in page 6 ] its bill; and that the defendants should be required to interplead each other and have their respective claims to the subject matter of the bill, settled and adjusted herein without cost or expense to the said complainant.

It is, therefore, adjudged, ordered and decreed that the said defendants, First National Bank of Narrows, administrator of R. M. Alvis, deceased, and William E. Ferrell, by his said guardian ad litem, do interplead each other herein, by proper answers in which they shall set forth their respective rights and claims to the five shares of bank stock mentioned in complainant's bill, so that the same may be settled and adjusted between them in this cause, and that, in the issue to be made by said answers, the said First National Bank of Narrows, administrator of R. M. Alvis, deceased, shall be treated and considered as complainant, and the said William E. Ferrell as defendant, and that the answer of the said First National Bank of Narrows,

administrator as aforesaid, be filed in the clerk's office of this court within 30 days after the date of entry of this decree, and that the answer of the said William E. Ferrell, by his said guardian ad litem, be filed in said clerk's office within 30 days thereafter; and the court deeming the same proper, it is ordered and decreed that the said complainant, Mountain Trust Bank, do hold and safely keep the said bank stock mentioned in its bill, subject to the future order of this court.

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ANSWER OF GUARDIAN  
AD LITEM

The answer of William E. Ferrell, an infant under the age of twenty one years, by W. B. Snidow, his guardian ad litem, to a bill in chancery exhibited against him and others in the Circuit Court of Giles County, Virginia, by the Mountain Trust Bank.

For answer to the said bill, the said William E. Ferrell by his guardian ad litem, answers and says, that by reason of his tender years, he does not know whether or not he should answer the said bill at this time or whether he should answer it at all till the court has fixed the relation of the parties in this proceeding, and whether he should take the part of defendant or that of complainant; all of which he submits to the court.

He confides his rights and his interests to the court, and prays that nothing be done and no order or decree may be made to his prejudice.

And now having asked to the court to shape the pleadings in this case he prays that after such decree has been entered that he may then file such other and further pleading as the nature of the case may require or the court direct.

WILLIAM E. FERRELL,

By W. B. SNIDOW,

His Guardian Ad Litem.

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ANSWER of WILLIAM E. FERRELL  
BY HIS GUARDIAN AD LITEM

The separate answer of William E. Ferrell, an infant under the age of twenty one years, by W. B. Snidow, his guardian ad litem, assigned to defend him in this suit, to a bill of

complaint exhibited against him by Mountain Trust Bank, a corporation, in a certain interpleader proceeding instituted against the said First National Bank of Narrows, Adm'r. of R. M. Alvis, dec'd. and William E. Ferrell in the Circuit Court of Giles County, and in which said suit, the court has, by a former decree, held that the said First National Bank of Narrows, Adm'r. as aforesaid shall be considered the plaintiff against this defendant.

This respondent, reserving to himself the benefit of all just exceptions to the said bill, and to the pleading styled an Answer heretofore filed by the said First National Bank of Narrows, Adm'r. of the estate of R. M. Alvis, dec'd and for answer to the said original bill, and to the answer filed by the said Administrator, as aforesaid, says: that he is an infant under the age of twenty one years, and that my reason of his tender years and infancy he is incapable of understanding or of taking care of his rights and interest in the premises. He, therefore, by his guardian ad litem aforesaid, commends himself and his rights and interest to the protection of the court, and prays that no decree may be pronounced which will tend to his prejudice.

And further answering says that it is true that the page 9 ] late R. M. Alvis owned and held five shares of the capital stock of the Mountain Trust Bank, which was of the par value of one hundred dollars per share, and that he did by a certain writing endorsed thereon assign and set over the said five shares of stock to this respondent, William E. Ferrell, and this respondent alleges and avers that it was his intention and purpose to give the said five shares of stock to this respondent, and that he did give and deliver the same to this respondent in the way and manner hereinafter set forth.

The said R. M. Alvis, dec'd. was a bachelor and a man of some means with no relative nearer than a niece, the Clarice Alvice Anderson mentioned in the answer of the said administrator, who is a resident of the State of California, and has been for some years prior to the death of the said R. M. Alvis, and since her marriage to Anderson.

The said R. M. Alvis very often spent weeks, and even months, at the home of the respondent's parents where he was always welcome and kindly treated without any charge for board, and this was particularly true in the later years of his life. At the time of his death he was seventy nine years of age. The said R. M. Alvis always professed to be very fond of this respondent and showed his affection for him in many ways,

and this kindly feeling was returned in generous measure by this respondent. And the letter which is copied into the answer of the said administrator shows the feeling entertained by the deceased for this respondent, was affectionate and page 10 ] manifests a reason why he should thus give to him the shares of stock which are the subject of this suit.

The said administrator in its answer sets forth the facts correctly insofar as it goes but there are other material facts connected with the manner of the gift which are not fully and clearly stated, and this respondent would like to amplify the statement contained in the said answer of the said First National Bank of Narrows, Admr.

The deceased did keep a box in the said First National Bank of Narrows in which he kept his valuable papers. In this box after the death of R. M. Alvis was found a will which he had executed October 14th, 1931, to which he added various codicils on various dates thereafter, and by which said will it is apparent that he did not intend to bequeath the said five shares of stock in the Mountain Trust Bank to any body and that he did not intend to dispose of them by his said will at all. This is manifested by the fact that the original will was a typewritten document, prepared by an attorney, and the said five shares of stock had been mentioned in the will and with an indelible pencil all mention of them had been cancelled and erased, and certain codicils were also appended to the said will in the handwriting of the deceased, and with the same character of pencil; and the endorsement of the stock over to this respondent was also written in the handwriting of the said R. M. Alvis with the same kind of a pencil, if not the very same pencil. As stated in the answer of the administrator, this certificate of stock had been duly endorsed over to this respondent, and Everett E. Ferrell, the father of this respondent, was named with power to complete the transfer of the said stock to this respondent, which said assignment was witnessed by one W. D. Trout, who was then an employee of the said First National Bank of Narrows. The date of this endorsement was November 1st, 1937, less than a year before the death of the said R. M. Alvis, who died September 25th, 1938.

The said R. M. Alvis after having endorsed over the said certificate of stock, wrote with his own hand with the same inevitable indelible pencil, a letter, the copy of which is in-

incorporated in the answer of the said Administrator, in which he says: "I am giving you some stock which I think is a good investment." He put this letter and the stock, endorsed as aforesaid, in an envelope (of the kind sold by the postoffices on which the stamp is indented) stamped sufficiently to transmit the same in the mails to-wit: a three-cent stamp, and sealed the same and addressed the said envelope to this respondent, "in the care of Everett E. Ferrell, or Eula Ferrell, Personal", who were the parents of this respondent, at the post office at "Chapel Va.", which was the post office at which this respondent's parents always received their mail. On the upper left hand corner of this envelope in his handwriting, appeared the words "R. M. Alvis, Narrows, Va." All of which writing was with the indelible pencil. This enclosed envelope was then placed in the said safety deposit box together with other papers and documents of the deceased, the box locked and the key thereto delivered to and left with the said First National Bank of Narrows, and it is not known that the said R. M. Alvis was ever back in the said safety deposit box after the said 1st day of November, 1937. Having left the said stock endorsed in a sealed envelope, with the clear declaration in his own handwriting that he was giving the same to this respondent, in the custody of the said First National Bank of Narrows and turning over the key to the box in which he had placed it, to the said bank, taken together with the direction in the said letter contained that: "The Narrows Bank will tell Daddy how to get this transferred to you", this respondent avers that there was such a delivery of the said certificate of stock as to pass title thereto to this respondent; and that due to the fact that this respondent is an infant of very tender years, who being only 7 years old on November 1st, 1937, it was certainly not practicable to deliver actual physical possession to a child of such tender years, and some one must necessarily be, by force of the circumstances, constituted a trustee for this respondent.

This respondent denies the averment in the answer of the said Administrator of R. M. Alvis, dec'd. that the said R. M. Alvis had the possession of the said stock at the time of his death; the language used in the said answer is: "that he left said stock certificate in said box, where it was wholly under his dominion and control up to the very time of his death." This respondent avers and charges that the custody and possession

was not in the said R. M. Alvis at the time of his death, nor was it ever in his physical possession after he wrote the letter and endorsed the stock over to this respondent, but on the page 13 ] contrary was in the physical possession of the First National Bank of Narrows, for the reason that the said bank had the possession of the building in which the box was, and it had the key to the box in which this certificate rested, and that R. M. Alvis could not have obtained possession of it without the return of the key to the box to him by the said First National Bank of Narrows. This respondent avers and charges that it was the intent and purpose of R. M. Alvis to constitute the said First National Bank of Narrows a trustee to see that this respondent came into actual possession of the said certificate of stock, and that what the officers of the said bank did in the premises after the death of R. M. Alvis, was just what the deceased expected to do, viz: deposit that stamped envelope with its contents in the Post Office at Narrows so that in due course it would be delivered to this respondent.

This respondent avers and charges that by the expressed intention, and the acts of the said R. M. Alvis, he did give, and transfer and deliver full title to the said five shares of stock to him, and that now and ever since the 1st day of November, 1937, he has been the legal and equitable owner of the said five shares of stock that are the subject of this litigation, and he prays that this answer of h's by his guardian ad litem may be treated as a cross bill against the said First National Bank of Narrows, Administrator of R. M. Alvis, dec'd. insofar as it may be proper so to do, and that he may be decreed the five shares of the capital stock of the Mountain Trust Bank, and that the said bank be required to transfer the same page 14 ] to him on its books as is required by law, and in accordance with the assignment thereof on the back thereof by the said R. M. Alvis on the first day of Nov., 1937.

And having fully answered he prays that he may be hence dismissed with his reasonable costs in this behalf expended. And he will ever pray etc.

W. B. SNIDOW,

Guardian ad litem for William E. Ferrell.

JAMES L. WARREN,

W. B. SNIDOW,

Counsel for William E. Ferrell.

ANSWER AND PLEADING OF FIRST NATIONAL BANK  
OF NARROWS, ADMINISTRATOR OF R. M.  
ALVIS, DECEASED

Now comes the said First National Bank of Narrows, Administrator of R. M. Alvis, Deceased, hereinafter called the Administrator, in pursuance of a decree entered in the above styled cause on Sept. 26, 1939, and answers the bill of interpleader filed by the above named complainant, and for answer thereto, and by way of setting up its claim and right to the five shares of bank stock mentioned in said bill, the said Administrator says as follows:

FIRST: It is true, as stated in paragraph 1 of said bill, that the said Mountain Trust Bank is a Virginia corporation, located and doing business in the City of Roanoke, Virginia; that the said First National Bank of Narrows is located and doing business in the town of Narrows, in Giles page 15 ] County, Virginia, and that the said William E. Ferrell is a resident of the said county of Giles.

SECOND: It is true, as stated in paragraph 2 of said bill, that R. M. Alvis, who was a resident of the county of Giles, died on or about Sept. 25, 1938, leaving a will dated Oct. 14, 1931, which was probated by the clerk of the Circuit Court of Giles County, on Oct. 5, 1938, and that the said First National Bank of Narrows, the executor named in said will, qualified as such executor on the said 5th day of October, 1938; and it is also true, as alleged in the second clause of said paragraph, that said will was set aside and annulled by the Circuit Court of Giles County, by a decree entered by said court on Feb. 17, 1939, in the chancery cause of Clarice Alvis Anderson vs. First National Bank of Narrows, Executor of R. M. Alvis, Deceased, et al. and that by the same decree, said bank was appointed administrator of the said R. M. Alvis, Deceased, and that it qualified as such administrator before the clerk of said court, on February 27, 1939.

THIRD: It is true, as stated in the first clause of paragraph 3 of said bill, that the said R. M. Alvis kept a safe deposit box in the said First National Bank of Narrows; that when said box was opened, after the death of the said R. M. Alvis, there was found therein a large stamped envelope addressed in

the hand writing of the said R. M. Alvis, to the said William E. Ferrell, at Chapel, Virginia, and that said stamped and addressed envelope was deposited by one of the officials of said bank, in the United State Post Office, in the town of Narrows.

In this connection, the Administrator says that when page 16 ] said envelope was so found, it was sealed, and was stamped and addressed as above stated, and that when it was so deposited in the Post Office at Narrows, none of the officials of said bank had any knowledge whatever, of the contents of said envelope; however, some days thereafter, the officials of said bank were informed that when the said envelope was received by the said William E. Ferrell, it was found to contain a certificate for five shares of the capital stock of the said Mountain Trust Bank, as described in the second clause of paragraph 3 of the bill filed in this case, which certificate had been issued to the said R. M. Alvis on July 20, 1926, and that on the back of said certificate was an endorsement signed by the said R. M. Alvis under date of Nov. 1, 1937, and his signature witnessed by W. D. Trout, which endorsement was in the nature of an assignment and transfer of the bank stock represented by said certificate, to the said William E. Ferrell; and the administrator admits it to be true, as stated in the second clause of said paragraph 3 of said bill, that said certificate was sent by Everett E. Ferrell, the father of William E. Ferrell, to the said Mountain Trust Bank, with a letter requesting that the same be transferred to the said William E. Ferrell, who was an infant under the age of 21 years, and that said certificate and letter were received by said bank on Oct. 31, 1938.

The Administrator was also informed that when the said envelope was so received by William E. Ferrell, there was found therein, along with said stock certificate, an undated and unsigned letter in the hand writing of the said R. M. Alvis, a copy of which was furnished to the said Administrator, who was then the executor of the will of R. M. Alvis, page 17 ] as hereinabove shown, and before it was appointed as Administrator of the said R. M. Alvis, which letter read as follows:

"Dear Billy: I am giving you some stock which I think is a good investment. When you get older you can look back and see that Uncle Ralph liked you just like he always told you he did. Billy, I want you to buy a ewe lamb from your daddy each year and swap your male lambs to daddy for his ewe lambs



and get daddy to keep them on the shares and that way you and daddy will soon have a nice bunch of sheep.

Billy, I want you to give some of this money to Dorothy as you know that I Liked Dorothy too. Billy, I hope you will never learn to use tobacco in any form. Billy I want you to keep this stock as long as you live as I think it will pay you a good dividend each year. The Narrows bank will tell daddy how to get this stock transferred to you.

Everett I hope you will help Billy to do these things as you know that I like every bone in his little body, and I will be glad if you will keep this letter until he grows up and let him read it himself as I hope he will always think of me as one of his best friends.

Eula you see that he has good warm underclothes".

The Administrator is advised that, by virtue of said letter and the said assignment on the back of said stock certificate, the said William E. Ferrell claims said bank stock as a gift to him by the said R. M. Alvis.

FORTH: It is true, as stated in paragraph 4 of said bill, that at about the time said stock certificate was sent to said Mountain Trust Bank as hereinbefore shown, the Administrator, in its then capacity of Executor of the will of R. M. Alvis, notified said bank that it claimed the said bank stock as part of the estate of the said R. M. Alvis; and that after said will had been set aside and annulled and after it had been appointed administrator of the said R. M. Alvis, De-  
page 18 ] ceased, the Administrator, in its then capacity as such, notified said bank that it claimed said bank stock as part of the estate of the said R. M. Alvis; and that on account of the conflicting claims to said stock, the said Mountain Trust Bank has made no transfer or disposition of said stock certificate, and is holding the same subject to the order of this court.

FIFTH: In support of its claim to said bank stock as a part of the estate of the said R. M. Alvis, the Administrator says that the said R. M. Alvis had access to the said safe deposit box that he kept in the said First National Bank of Narrows, at any and all times, and that he left said stock certificate in said box, where it was wholly under his dominion and control up to the very time of his death, so that there was no deliv-

ery thereof by the said R. M. Alvis to the said William E. Ferrell, either actual or constructive.

SIXTH: The Administrator is advised, and here alleges, that, even though there was an intention on the part of the said R. M. Alvis to give said bank stock to the said William E. Ferrell, yet the intended gift must fail for want of sufficient delivery thereof to constitute a gift, either *inter vivos* or *causa mortis*, of the said bank stock to the said William E. Ferrell, and that, therefore, the said bank stock constitutes a part of the personal estate of the said R. M. Alvis, and should be awarded to the Administrator by a proper decree entered in this cause.

FIRST NATIONAL BANK OF NARROWS,  
FIRST NATIONAL BANK OF NARROWS,  
Administrator of R. M. Alvis, Deceased,  
FARRIER & FARRIER,  
Its Attorneys.

page 19 ] REPLICATION AND ANSWER  
TO CROSS BILL

And now comes the said First National Bank of Narrows, administrator of R. M. Alvis, deceased, and replies generally to the answer of the infant defendant, William E. Ferrell, by W. B. Snidow, his guardian ad litem, filed in the clerk's office of this court on 2nd Nov. Rules, 1939, and also answers so much of said answer as may be treated as a cross bill, and for answer thereto, says as follows:

(1) It may be true, as therein stated, that the said R. M. Alvis spent considerable time, especially in the latter years of his life, in the home of the parents of the said William E. Ferrell and that he was always welcome and kindly treated and was charged nothing for board; however, this respondent is advised and alleges that even though those things be true, such facts could have no possible bearing on the issue in this case. And it is no doubt true that the feeling of R. M. Alvis toward the said William E. Ferrell was affectionate, and that he intended to make him a gift of the bank stock in question in this case; however, this respondent is advised and alleges that no matter how strong was his affection for the said William E. Ferrell and no matter how strong was his intention and desire to make him a gift of said bank stock, such affection and intention

were not sufficient to constitute a gift, and that the intended gift thereof to the said William E. Ferrell must fail for want of sufficient delivery of said stock.

page 20 ] (2) This respondent is advised and alleges that it is absolutely immaterial to the issue in this case, whether the said R. M. Alvis did, or did not, mention, either directly or indirectly, the bank stock in issue here, in his will referred to in the answer of defendant William E. Ferrell, and in the bill in this case, and especially is it immaterial for the reason that said will was dated Oct. 14, 1931, while the endorsement on the back of the stock certificate, purporting to transfer it to William E. Ferrell, was not executed until Nov. 1937, more than six years after the date of said will.

(3) It may be true that when R. M. Alvis rented the safe deposit box at First National Bank of Narrows, he left his key to said box with said bank, and it is true that said bank had and kept one master key and that said box could only be opened by the use of both of said keys, but even though the said R. M. Alvis did leave his key with the bank, that fact gave the bank no control whatever, of the contents of said box, and did not deprive the said R. M. Alvis of the full and absolute dominion over and control of whatever securities he may have from time to time placed in said box, because of the fact that the bank would have been compelled to open said box for the said R. M. Alvis at any time, at his request, and give him full and complete access to the contents thereof; and this respondent denies that the placing of said stock certificate in said box, in a sealed envelope addressed to William E. Ferrell, constituted a delivery thereof to him, or to said bank as his agent, or that

page 21 ] such acts constituted said bank a trustee for the said William E. Ferrell in any sense whatever, and especially is this so for the reason that none of the officials of said bank had any knowledge whatever of the contents of said envelope when it was taken from said box, after the death of R. M. Alvis, and deposited in the Post Office at Narrows, as alleged in this respondent's original answer filed in this case; and this respondent denies that the depositing of said envelope in the Post Office constituted a delivery of said bank stock to the said William E. Ferrell by said bank in its capacity as personal representative of R. M. Alvis, deceased.

*E. E. Ferrell*

FIRST NATIONAL BANK OF NARROWS,  
Adm'r. of R. M. Alvis, Deceased.

By FARRIER & FARRIER,  
Its Attorneys.

### DEPOSITIONS

The depositions of E. E. Ferrell, et al, taken before me, Grace S. Warren, at the law office of James L. Warren, in the Town of Narrows, Giles County, Virginia, on April 26, 1940, by agreement of parties, to be read as evidence in behalf of William E. Ferrell, in that certain chancery suit pending in the Circuit Court of Giles County, Virginia, in the name of Mountain Trust Bank vs. First National Bank of Narrows, Adm'r. of R. M. Alvis, et al.

#### PRESENT:

W. B. SNIDOW, Guardian Ad Litem for the infant defendant, William E. Ferrell, and  
By counsel, James L. Warren.

page 22 ] M. P. FARRIER and A. L. FARRIER, Counsel  
for First National Bank of Narrows, Adm'r. of  
R. M. Alvis, deceased.

E. E. FERRELL, being first duly sworn, deposes and says:

Questions by Mr. Snidow:

Q. Please state your name, age and occupation and place of residence?

A. E. E. Ferrell, age 42, farmer, and reside at Chapel, Giles County, Virginia.

Q. What relation are you, if any, to William E. Ferrell, the infant defendant in this case?

A. I am his father.

Q. What is William E. Ferrell's age at this time?

A. He is 8 years old.

Q. When was he 8 years old?

A. The 12th of November, 1939.

Q. Did you know R. M. Alvis in his lifetime?

A. Yes, sir, I have known him all my life.

*E. E. Ferrell*

Q. What opportunity did you have to know him well?

A. Well, I have been around him all my life. He has been at home off and on.

Q. Did he often visit your home?

A. Yes, sir, he came there off and on.

Q. Did he ever stay at your house any length of time?

A. He did in the day time, never at night.

Q. Did he frequently take his meals at your house?

page 23 ] A. Yes, sir, he has eaten many a meal there. When just us men folks were there working in the saw mill he ate there a lot.

Q. What was the feeling between Mr. Alvis, the deceased, and this child of yours, William E. Ferrell?

A. He was sick one time and Uncle Ralph, we called him Uncle Ralph, came over and he carried him around all the time, and when he would leave the child cried over him and he seemed to fall in love with him right then.

Q. Did Mr. Alvis, the deceased, own any property? Was he fairly well off?

A. He used to own some property. He sold Mr. Shrader there a place he owned.

Q. Did he have any family?

A. No, sir, he never married that I know of.

Q. I believe it is stated in the answer in this case that he was about 79 years old at the time of his death?

A. Yes, sir, I think that is what he claimed he was.

Q. Where was he staying at the time of his death?

A. With R. L. Shrader.

Q. Was he making that his home?

A. He made that his home for a long time.

Q. How far was that from your home?

A. Just a short piece, about 1-4 of a mile.

Q. Was he sick any length of time before he died?

page 24 ] A. No, sir, I don't guess he was. Nobody knew it if he was.

Q. Did he ever talk with you and say anything about giving any of his property to this defendant, William E. Ferrell?

A. Yes, sir, he told me he was leaving enough to put him through school.

Q. When did you have that conversation?

*E. E. Ferrell*

A. Not over two months before he died.

Q. Had you ever heard him say anything before that about leaving the child anything?

A. Lots of times.

Q. How long before his death?

A. At least two months.

Q. I mean, state as nearly as you can when he first said anything about leaving something to this boy?

A. Something like three years.

Q. Did he leave the boy anything?

A. He claimed he did. He told me he had it fixed.

Q. How did you first get information that he had actually left five shares of stock in the Mountain Trust Bank to William E. Ferrell?

A. He didn't say how much he left. Just enough to put him through school. I didn't know how much until I got the letter out of the Post Office.

Q. Then the letter, which you say you got out of the Post Office, was the first information which you had of what he had actually done in the way of giving this stock to William E Ferrell?

page 25 ] A. I didn't know until then. He had said he had it fixed up.

Q. I show you a letter of two pages, 1 and 2, written with a lead pencil and not dated or signed, and ask you if this is the letter which you received through the mail?

A. Yes, sir, it is.

Q. I will ask you to file this letter with your depositions and ask the Notary to endorse it as filed as an Exhibit with your testimony.

A. I herewith file the same.

Q. I hand you an envelope addressed to William E. Ferrell, Chapel, Virginia, and in the upper left hand corner of the envelope there is the name of R. M. Alvis, Narrows, Virginia. In the lower left hand corner on the said envelope are the words, "In care of Everett E. Farrell or Eula Ferrell, Personal". In the upper right hand corner appears the regular United States postage stamp 3c, and post marked "Narrows, October 1, 3 P. M., 1938, Virginia". Is this the envelope in which you received the letter which you have just filed with your answer?

A. Yes, sir.

*E. E. Ferrell*

Q. Was this letter sealed at the time you received it?

A. Yes, sir.

Q. There also appears on the said envelope on the reverse side thereof the postal stamp showing its receipt at the Post Office at Chapel, Virginia, October 3, 1938. That is the Post Office at which you received this communication, was it?

A. Yes, sir.

Q. I ask you to file this envelope as an exhibit with your deposition?

page 26 ] A. I herewith file the same.

Q. What else besides the letter which you have filed was in this envelope when you received it?

A. A bank certificate.

Q. Where is that certificate of stock now?

A. In the Mountain Trust Bank of Roanoke, Virginia.

Q. How did the Mountain Trust Bank get it?

A. I sent it, or had it sent.

Q. Who did you have send it for you?

A. Preacher Auvil.

Q. I notice in this letter which you have filed, near the top of page 2, it is stated, "The Narrows Bank will tell Daddy how to get this stock transferred to you". When this stock and letter was received what did you then do?

A. I took it to the Narrows Bank.

Q. And what did you have the bank to do for you in reference to it?

A. I took it there and told them I wanted them to send it to the Mountain Trust Bank for me and they said that they didn't have time to do it for a few days and for me to leave it. I left it and went back in 5 or 6 days and they said they got a letter from Mr. Farrier to hold it, and they said they would fix it up. They said they would fix it up in a few days and about 10 days later I got a letter and I went down and they said they couldn't get it fixed up. I took it and went to see Dr. Kelley at Pearisburg Bank, and he asked me why the Narrows Bank wouldn't fix it and then he told me to see Mr.

page 27 ] Farrier. I went to see Mr. Farrier and he told me he was on the other side. I brought it back home and I was talking to Preacher Auvil one day and he said to send it in myself, so he fixed up a letter and I sent it in myself.

*E. E. Ferrell*

Q. I understand you to say that you left the certificate of stock several days at the Narrows Bank but that at the end of this time they returned it to you and you yourself sent, or had it sent, to the Mountain Trust Bank asking that they transfer the stock to William E. Ferrell. Is that correct?

A. Yes, sir.

Q. So that you did have the stock in your possession and it remained in your possession until the time you handed it to the Narrows Bank and in your possession again after the Narrows Bank returned it to you?

A. Yes, sir, I got it out of the Narrows Bank. Percy asked me to give him the letter and I said I would provided he would give me a receipt for it. I never gave them the letter, he wouldn't give me a receipt.

Q. It is a fact, is it not, that the Mountain Trust Bank has the certificate of stock at this time?

A. Yes, sir, I suppose they have. They wrote to me and said they did.

Q. On the back of this certificate of stock was there an assignment and the designation of an attorney to transfer the stock to William E. Ferrell?

page 28 ] A. I believe there was, yes, sir.

Q. Was there any erasure made by an officer of the Narrows Bank in that assignment?

A. Well, Percy just said my name wasn't supposed to be on there and he rubbed it out. He said it wasn't any good on there. Donald Trout was a witness to it.

Q. You mean Percy H. Hale rubbed out your name on the assignment?

A. Yes, sir.

Q. I believe he is the Cashier of the First National Bank of Narrows, the complainant in this case, is he not?

A. Yes, sir.

Q. Was your name, Everett E. Ferrell, in the certificate named and designated as the attorney to transfer the said stock from R. M. Alvis to William E. Ferrell?

A. Yes, sir.

Q. And was it your name, as attorney to transfer the stock, that you say Mr. Hale rubbed out?

A. Yes, sir.



*Mrs. Eula Ferrell*

NO CROSS-EXAMINATION

And further this deponent saith not.

Signature waived.

MRS. EULA FERRELL, being first duly sworn, deposes and says:

Questions by Mr. Snidow:

Q. Mrs. Ferrell, are you the mother of William  
page 29 ] E. Ferrell, the defendant in this case?

A. Yes, sir.

Q. I believe it has been stated that he was 8 years old last November, is that correct?

A. Yes, sir.

Q. What day in November?

A. The 12th.

Q. Did you know R. M. Alvis in his lifetime?

A. Yes, sir, I knew him all of my life.

Q. How many children have you?

A. Two.

Q. Did Mr. Alvis and this boy, William E. Ferrell, have much association together, and what was the feeling between them?

A. Well, they just played together like kids. He was there almost every day and sometimes twice, and he just played with the boy like a child. He would take him hunting with him.

Q. Did you ever hear Mr. Alvis say anything about leaving any of his property or money or anything of value to William E. Ferrell at the time of his death?

A. He told me he was leaving him enough to put him through school.

Q. About when did he first make a statement of that kind to you?

page 30 ] A. About two months before he died. He told me that he was going to leave him enough to put him through school but didn't say how. And about two months before he died he told me he had it all fixed and said for me to be sure and keep good warm clothes on him.

*L. A. Shrader*

Q. About how long before Mr. Alvis' death was it that you first heard him say anything about it?

A. I imagine it was about three years. It was right after my little boy was sick, he said he was going to leave him something but didn't say for certain. But then he came back and said it was all fixed up.

Q. I hand you a letter which has been filed as an exhibit with the deposition of your husband, E. E. Ferrell, and ask you if you saw that letter shortly after Mr. Alvis' death?

A. Yes, sir.

Q. Was it in this envelope which is also filed as an exhibit?

A. Yes, sir.

Q. What was in the envelope with that letter?

A. A certificate from a Roanoke Bank.

Q. For how many shares of stock?

A. Five.

Q. I believe your other child is named Dorothy, and is a daughter?

A. Yes, sir.

Q. It has been stated in the record that Mr. Alvis was about 79 years old at the time of his death. Was that correct?

A. Well, I couldn't tell you. I don't know but  
page 31 ] that was what they told me he was. I don't really know.

NO CROSS-EXAMINATION

And further this deponent saith not.

Signature waived.

MR. L. A. SHRADER, being first duly sworn, deposes and says:

Questions by Mr. Snidow:

Q. Mr. Shrader, please state your age, occupation and place of residence?

A. Age 63, farmer, and reside at Chapel, Giles County, Virginia.

Q. Did you know R. M. Alvis in his lifetime?

A. Yes, sir.

Q. How long had you known him?

*L. A. Shrader*

A. 30 years or more.

Q. How far do you live from E. E. Ferrell, the father of William E. Ferrell, the defendant in this case?

A. About one mile.

Q. Did you ever have any conversation with R. M. Alvis in his lifetime with reference to leaving anything to William E. Ferrell?

A. I have.

Q. When did you first hear him say anything about that?

A. Two or three years, he talked to me different times about it.

Q. What did he say?

A. He told me he was leaving Billy some money, page 32 ] enough to school him and he didn't know just how to fix it. He said if he gave it to him where he could get ahold of it that maybe his father would run through with it and he said if he left it so he couldn't get hold of it it wouldn't do him any good, and he just didn't know how to leave it.

Q. When did he make those statements? Was it before November, 1937?

A. It was about three years before his death that he first talked to me about it, and then he talked later on about it, but never did tell me just how he had fixed it.

Q. Do you remember whether he ever said anything to you about it after November, 1937, which was about 11 months before his death?

A. I don't remember that he did.

Q. Mr. Alvis was a man who owned some property, was he not, at the time of his death?

A. I never knowed what he owned.

Q. What business was he engaged in?

A. Well, he had some money in different investments but there wasn't many people knowed just what shape Ralph had his stuff in. He lost right much money.

Q. Did he have a family?

A. No, sir.

Q. He was never married, was he?

A. Not that I know of.

Q. Do you know whether or not it is true that his page 33 ] nearest relative was a niece, Mrs. Anderson?

A. I suppose it was.

*Robert L. Shrader*

Q. And he had no other niece or nephew, nor did he have a brother or sister living at the time of his death?

A. No, sir.

NO CROSS-EXAMINATION

And further this deponent saith not.

Signature waived.

MR. ROBERT L. SHRADER, being first duly sworn, deposes and says:

Questions by Mr. Snidow:

Q. Please state your age, occupation and place of residence, Mr. Shrader?

A. Age 73, farmer, reside at Chapel, Virginia.

Q. Did you know R. L. Alvis in his lifetime?

A. Yes, sir.

Q. How old was he at the time of his death?

A. He was a little past 79. His birthday was on the 8th day of September and he died on the 25th day of September.

Q. I believe Mr. Alvis died at your home, did he not, Mr. Shrader?

A. Yes, sir, he did.

Q. Had he been making that his home?

A. He had been there with me up in 20 years. He  
page 34 ] would be gone on little run-arounds, maybe gone a week and right back.

Q. I believe he was unmarried, had no family, was he not?

A. No, sir, no family.

Q. And you say he would frequently go away and stay a few days?

A. Yes, maybe a week, maybe not so long, and right back.

Q. When he was away that way he would be generally visiting around among his friends?

A. Yes, sir, I know most he was.

Q. In what business was Mr. Alvis engaged in his lifetime?

A. Well, in the lumber business until he got up in years. The last few years he got so he wasn't able to do much.

Q. What property did he have at the time of his death?

A. I don't know.

W. D. Trout

Q. I mean by property, did he have money, bonds and things of that kind?

A. I didn't know about his business.

Q. How far do you live from E. E. Ferrell?

A. About 1-2 of a mile, hardly that.

Q. Do you know what feelings were on the part of Mr. Alvis to ward William E. Ferrell, the son of E. E. Ferrell?

A. Only thing I would hear him talk of Billy. He seemed to think a heap of him.

Q. Did you ever hear him say he was going to leave him something?

A. Yes, sir, different times I heard him say that he was going to leave him something.

page 35 ] Q. When did you first hear him talk about that?

A. Around three years before his death.

Q. You say he frequently spoke during that time that he was going to leave him something?

A. It was something like two months before he died he was at my house and he told me he was going to leave him something to educate himself.

Q. I believe the boy is now just between 8 and 9 years old?

A. I guess so. I see him every few days.

#### NO CROSS-EXAMINATION

And further this deponent saith not.

Signature waived.

W. D. TROUT, being first duly sworn, deposes and says:

Questions by Mr. Warren:

Q. Will you please state your name, age, occupation and place of residence?

A. W. D. Trout, age 29, Teller, reside at Narrows, Va.

Q. Where are you employed, Mr. Trout?

A. First National Bank of Narrows, Virginia.

Q. Did you know Mr. Ralph M. Alvis in his lifetime?

A. I did.

Q. How long did you know him?

A. 6, 8 or 10 years.

Q. Did he do his banking at the First National Bank of Narrows?

*W. D. Trout*

A. He had an account with us, yes.

page 36 ] Q. Did he keep his valuables in your bank?

A. He had a safety deposit box there.

Q. Some time prior to the death of Mr. Alvis, did you have an occasion to witness his signature to some papers there in the bank?

A. I did.

Q. Will you please state the nature of this act for him?

A. He just asked me to witness his signature on a stock certificate, it looked like. I didn't examine the papers, he just wrote his name.

Q. Did you sign your name to the paper as a witness?

A. I think so.

Q. Did you observe the paper which you were witnessing?

A. Not closely. Naturally you look at anything, I think it was a certificate. I didn't examine it closely.

Q. How long was this before Mr. Alvis died?

A. I have no idea.

Q. Could you state whether it was 6 months or a year?

A. I have no idea whatsoever. It was a good while before he died.

Q. The assignment on this certificate of stock in question appears to have been done November, 1937, was it about that time you think it was that you witnessed his signature?

A. I wouldn't say for certain. It was a while before he died. It was possibly that time.

Q. Who was present with you and Mr. Alvis, if anyone, at this time?

A. I don't think there was anyone. Others were working the bank but we were upstairs.

page 37 ] Q. Did Mr. Alvis have his safety deposit box with him at that time?

A. I think so, safety deposit box and papers in the box, lying on the table.

Q. Did Mr. Alvis sign the paper which appeared to you as a certificate of stock in your presence?

A. Yes, sir.

Q. Have you, since that time, and since the death of Mr. Alvis, seen the certificate of 5 shares of stock in the Mountain

*P. H. Hale.*

Trust Bank of Roanoke, Virginia, on which stock is Mr. Alvis' name and your name as witness?

A. I don't think I have seen it.

### CROSS EXAMINATION

By Mr. Farrier:

Q. Mr. Trout, did you observe what Mr. Alvis did with this paper after you signed it as a witness?

A. No, sir.

Q. What did he do with his safety deposit box after you signed this paper.

A. I went on back down stairs and I don't know. He possibly stayed up there a while and brought it back down stairs.

Q. Do you recall his bringing the safety deposit box back and having someone put it back?

A. No, sir.

Q. I believe you said you had gotten it out on different occasions?

page 38 ] A. Yes, sir.

Q. When Mr. Alvis would come to the bank and desire to get into his box and ask the bank officials to allow him to do so, who would let him into the vault?

A. Any of the force.

Q. Do you know whether or not Mr. Alvis kept the key to his safety deposit box?

A. I do not know.

And further this deponent saith not.

Signature waived.

P. H. HALE, being first duly sworn, deposes and says:

Questions by Mr. Snidow:

Q. Please state your name, age, occupation and place of residence?

A. P. H. Hale, age 44, Cashier of the First National Bank of Narrows, Narrows, Virginia.

Q. How long have you been Cashier of the First National Bank of Narrows?

A. 18 years I believe.

*P. H. Hale*

Q. I believe the First National Bank of Narrows qualified as Administrator of the estate of R. M. Alvis, deceased, did it not.

A. Yes, sir.

Q. How long did you know R. M. Alvis, in his  
page 39 ] lifetime?

A. Anyway for the 18 years I have been in the bank and possibly longer.

Q. He did business at your bank, did he?

A. Yes, sir.

Q. Were you related to R. M. Alvis?

A. If I was, it was very distant.

Q. Then you were distantly related?

A. I imagine, I think we were.

Q. I hand you a letter and envelope which have been filed as exhibits with the depositions of E. E. Ferrell and ask you to state whether or not you are familiar with the hand writing of R. M. Alvis, deceased?

A. I rather think that I am familiar enough with the writing to identify that as Mr. Alvis' writing.

Q. Both in the letter and the envelope?

A. Yes, sir.

Q. Have you seen that letter before?

A. Yes, sir.

Q. Under what circumstances?

A. Well, I believe Mr. Ferrell gave me the letter the first time I had read it some time after it was mailed, a few days, and I read the letter at the time.

Q. The envelope in which that letter was inclosed, you have seen that before this time?

A. As I best remember the envelope was in his box, sealed and addressed as it is, and I just put it in the mail.  
page 40 ] Q. You mailed it, apparently from the post mark,  
on October 1, 1938?

A. Yes, sir.

Q. Where did you say you found it?

A. This letter was in his safety box.

Q. After his death?

A. Yes, sir.

Q. How long after his death?



*P. H. Hale*

A. I believe he died on the 25th day of September, 1938, and that would be 6 days after his death.

Q. Then you mailed it on the same day it is post marked?

A. I imagine so.

Q. That is the day on which you went into his box?

A. Yes, sir.

Q. Had the bank qualified as Executor at that time?

A. I am not positive of the date of that qualification. I believe we qualified the day before or that morning.

Q. At whose instance and request did the bank qualify as Executor of the estate of R. M. Alvis?

A. As I best remember that he named the bank as executor of his will.

Q. How did the bank know that it had been named as executor in his will?

A. It occurs to me that that will had been left in Mr. A. E. Shumate's possession.

Q. Did he have it in his possession, or was it in the safety deposit box?

page 41 ] A. It was in his possession.

Q. Was Mr. Shumate present when the safety deposit box was opened?

A. I couldn't positively say about that. I am not sure.

Q. Mr. A. E. Shumate, to whom you refer, is the President of the First National Bank of Narrows, and was president of the bank at the time in question, was he not?

A. Yes, sir.

Q. Who was present with you when the safety deposit box was opened?

A. As I best remember, Dewey Coburn, Bob Friend, and Harold Hale. They were the appraisers.

Q. How did you get into the box? It was locked, was it not? Who gave you the key wherewith to get into the box?

A. I believe the depositors key was left in the possession of Mr. T. S. Johnson, Assistant Cashier.

Q. And it was with that key you entered the safety deposit box?

A. Yes, sir.

Q. What did you find in the box when you got into it?

A. We found just his general papers. The box was opened in the presence of these gentlemen, his appraisers, and it

*P. H. Hale*

was for their benefit the box was opened and inventory taken.

Q. What that letter, under the cover filed along with it, in that box when it was opened?

A. The envelope was, I can't say that this letter was, because the envelope was sealed.

page 42 ] Q. And what did you say you did with it?

A. I just put it in our mail box where we accumulate mail for mailing.

Q. And it was conveyed by the bank to the Post Office and mailed?

A. Yes, sir.

Q. Why did you do that?

A. Because the envelope was sealed and addressed to this Mr. William E. Ferrell, Chapel, Virginia, and we concluded it was something for him rather than for us.

Q. Was it stamped?

A. It was in an envelope on which the stamp was printed into it.

Q. The bank did not stamp and mail the envelope, but you found it in the box all ready stamped and ready to be mailed, is that correct?

A. That's right.

Q. And why do you say you mailed it?

A. Because it was addressed to William E. Ferrell and sealed and we concluded it was something for him rather than for us.

Q. Did you conclude that Mr. Alvis intended that you should do that?

A. I should say that we did. We didn't give it any particular thought at the time.

Counsel for the Administrator objects to the foregoing question and the answer thereto on the ground that the answer seems to be on a mere conclusion.

Mr. Snidow, Guardian Ad Litem, answering the objection says that this witness, while called and sworn for the defendant, William E. Ferrell, is in fact by virtue of his position  
page 43 ] as Cashier and officer of the bank, is to all intents and purposes a party to the suit now before the Court.

*P. H. Hale*

Q. Then you thought that it was the natural thing to do to mail the letter as it was addressed and you did so?

A. Yes, sir.

Q. And shortly thereafter Mr. E. E. Ferrell, the father of William E. Ferrell, came to see you and brought this letter?

A. Yes, sir, he did.

Q. Near the top of page 2 of that letter is this language, "The Narrows Bank will tell Daddy how to get this stock transferred to you." Did Mr. Ferrell ask your assistance in getting this stock transferred to his son?

A. He did.

Q. He had the certificate along with him with the letter and envelope did he?

A. Yes, sir, he did.

Q. Did that certificate of stock show an assignment of it to William E. Ferrell?

A. It did.

Q. In what language? Have you a copy of the assignment there?

A. I have a copy of the assignment copied from the certificate by Mr. R. B. Gunn, President of the Mountain Trust Bank in Roanoke, "For value received, I hereby sell, assign and transfer unto William E. Ferrell five shares of the capital stock represented by the within certificate and do hereby  
page 44 ] irrevocably constitute and appoint . . . . . to transfer the said stock on the books of the within named company, with full power of substitution in the premises." dated November 1, 1937, signed R. M. Alvis, in the presence of W. D. Trout.

Q. I note in the copy which you have just read the name of the attorney is blank. Do you know why the assignment does not show at this time the name of the attorney designated by him to transfer the stock?

A. Well, as generally accepted in transferring stock, it is not necessary to appoint an attorney or somebody to handle it for him.

Q. As a matter of fact was not the name of E. E. Ferrell or Everett Ferrell in that blank and did you not rub it out?

A. I believe, as I remember, that I did. I explained to him that it was not necessary for his name to be there.

Q. But his name was there and you yourself erased it?

*P. H. Hale*

A. I think so, yes, sir.

Q. Then, I believe, that it was shortly after that that you were informed that there would be a controversy over the matter and there was nothing more about it by you or did you take up the matter with the Mountain Trust Bank?

A. I don't remember whether I sent the stock in for Mr. Ferrell or just what happened. However, I had sent in a copy of our qualification as Executor to the Mountain Trust Bank and they were the ones that came back and mentioned about the stock.

Q. The bank did qualify as Executor on or before page 45 ] the 1st day of October, 1938?

A. It occurs to me that we did on the 28th day of September. I just don't remember the date.

Q. And after that, on the 1st day of October, you mailed this letter as you have stated?

A. Yes, sir.

Q. And a few days thereafter it was brought back to you by Mr. E. E. Ferrell. You kept it in your possession for a few days did you—the certificate of stock?

A. After Mr. Ferrell brought it back? I just don't remember whether Mr. Ferrell left it with me or not.

Q. Anyway, if he had left it with you, you returned it in a few days into the possession of Mr. E. E. Ferrell, didn't you?

A. Evidently we didn't send it in for Mr. Ferrell to the Mountain Trust Bank, because on the 7th of November, Mr. Gunn writes me "On November 1 we received from Mr. E. E. Ferrell a certificate for five shares of stock in this bank, standing in the name of R. M. Alvis signed by him and witnessed by W. D. Trout, payable to William E. Ferrell, together with request to transfer the stock in the name of William E. Ferrell, who we understand is a minor."

Q. So that if E. E. Ferrell did leave the stock with you when he showed you the letter which is in evidence, you subsequently returned the stock to Mr. E. E. Ferrell?

A. Evidently we did.

page 46 ] CROSS EXAMINATION

By Mr. Farrier:

Q: Mr. Hale, the record in the Clerk's Office of Giles

*P. H. Hale*

County and the record in this suit shows that the First National Bank of Narrows qualified as Executor of R. M. Alvis, on October 5, 1938, and this envelope seemed to have been mailed on October 1, 1938, so according to the Court record the First National Bank of Narrows could not have been Executor of R. M. Alvis on the 1st day of October, 1938. How do you account for that?

A. As I best remember it, we went, or I did, to qualify as Executor, Mr. Snidow, the Clerk, asked me what he was worth in order to determine the tax on it and I freely told him I couldn't estimate it without having appraisal made and I think he gave me the form for the appraisers to sign to qualify them and when I went back up there the date dated from the day I delivered the appraisal to them.

Q. I believe you said that in the direct examination that you thought that Mr. A. E. Shumate had the will in his possession. Do you have any definite recollection about that, where the will was?

A. Evidently Mr. Shumate seemed to know that Mr. Alvis had left the will directing the bank as executor and I can't say just from where it was produced but he seemed to have the information from Uncle Ralph that he had named the bank as executor.

Q. So when the safety box was opened and this addressed, sealed and stamped envelope was found you did what you thought was the best thing to do, drop it in the mail?  
page 47 ] A. Yes, sir.

Q. Did you have any idea what was in the envelope?

A. No, sir.

Q. Had Mr. Alvis ever said anything to you before that about it?

A. No, sir.

Q. With reference to his safety deposit box, he had the right to access to that box at any time, did he not?

A. Yes, sir.

And further this deponent saith not.

Signature waived.

The further taking of these depositions is continued by

*A. E. Shumate*

agreement of the parties, to be resumed at the same place on the 8th day of May, 1940.

May 8, 1940.

Present: The same parties as on the 26th day of April, 1940.

A. E. SHUMATE, being first duly sworn, deposes and says:

Questions by Mr. Snidow:

Q. Please state your name, age, occupation and place of residence?

A. A. E. Shumate, age 60, President of the First National Bank of Narrows, and reside at Pearisburg, Virginia.

Q. How long have you been President of the First National Bank of Narrows?

A. I think since January 1920.

Q. Did you know Ralph M. Alvis in his lifetime?

A. I did.

page 48 ] Q. How long had you known him?

A. Most of my life.

Q. Was he a customer of the bank of which you are President?

A. He was.

Q. It has been stated in the depositions formerly taken that Mr. Alvis had a lock box in your bank. Do you know whether or not that is true?

A. That is correct.

Q. Do you know whether or not R. M. Alvis made a will?

A. He did.

Q. Where was that will after his death?

A. In his lock box, to the best of my knowledge.

Q. Did you, as an official of the bank, go into the lock box after his death?

A. My recollection is that I did.

Q. How did you get in it? It is the custom, is it not, for the depositor to have the key?

A. As I recall he left the key and had told me he was leaving the key. I think he left it with Tom Johnson. That is my recollection.

*A. E. Shumate*

Q. Is Tom Johnson, you refer to, did he hold any position with the bank?

A. Assistant Cashier.

Q. The bank then had the key and the box was opened?

Do you remember just when it was opened—what page 49 ] day?

A. No, I do not, I don't remember the day but it was after we had heard of his death. Possibly my first visit to the bank after his death.

Q. What reason did you have for opening the box?

A. My recollection about that is this. That on possibly the last visit of Mr. Alvis' to the bank when I was present, he came in my office and wrote or did something, figuring, or writing, I think he possibly wrote a letter or two, and he said to me that he was leaving certain things in that box which he wanted us to mail out, certain letters, after his death, and that the instructions were in one of those letters. I kidded him about the fact that he would outlive all of us and I said something to the boys in the bank about Uncle Ralph thinking he was going to die and that he was leaving certain things there for us to carry out for him.

Q. Mr. R. M. Alvis, the deceased, then did, a short while before his death, direct you that you would find these things in that lock box after his death and that you were to see that they were mailed in due course, did he?

A. That is my recollection for our reason for going into the box. We were trying to carry out his wishes.

Q. And that was done by mailing the letters as he had wished, was it?

A. There was an open letter in the box addressed to us as I recall, and one of the things that the letter requested was that we should not notify Clarice but mail her a letter. There was a letter to her along with some other letters. Clarice's letter was in the letter which contained the letter to us and requested for us to not let her know about his death until it was too late for her to come to his burial.

Q. Do you still have that letter which was addressed to the Bank?

A. I am not sure. I don't think we ever mailed the let-

*A. E. Shumate*

ter to Clarice because it was unnecessary because she had been informed of his death by some one else.

Q. Will you please ascertain whether or not the letter which was addressed to the bank can now be found?

A. I am not sure this the letter. The other letter I have in mind may be a recollection of a conversation instead of a letter.

## CROSS EXAMINATION

By Mr. M. P. Farrier:

Q. It is true is it not, Mr. Shumate, that in the conversation you had with Mr. Alvis, as mentioned by you in the direct examination, he told you that his will was in his safety deposit box?

A. Yes, he told me, as I recall, that he was entrusting everything to us to look after and take charge of, and among those things were his will and certain letters to be mailed out.

Q. And he told you that his will was in his safety deposit box?

A. As I recall he told me everything pertaining to it was in his box.

Q. It is also true, that when his box was opened direction after his death that his will was found in his box?

A. I think all of the papers were in the box as best I remember. I don't think he had any papers in the  
page 51 ] bank that was outside of the box. That is my thought about it.

Q. He had not left the will with you personally?

A. No, sir.

Q. It is also true, is it not, that in the will he named the bank as Trustee and Executor of the will?

A. Yes, sir.

Q. And it is also true, is it not, that the will was set aside by the Circuit Court of Giles County, and that the bank was then appointed Administrator of the Estate?

A. Yes, sir, that is correct.

Q. When Mr. Alvis told you or suggested to you that he didn't want you to notify Clarice in time for her to come to his burial, that Clarice mentioned by him was his neice, Clarice Alvis Anderson?



*A. E. Shumate*

A. Yes, sir, she was his niece. I don't recall that he told me that. He told me the letter was in there and the letter notified me not to tell her. He did tell me that he was leaving certain letters in the box that he wanted me to see were mailed out.

Q. Clarice then lived in southern California, did she not?

A. That is correct.

Q. He did not indicate to you why he did not want her notified until later?

A. No, sir, I don't think he discussed that with me, and that was simply referred to in his letter.

Q. Mr. Shumate, I hand you one of the letters which it seems that was found in Mr. Alvis' box after his page 52 ] death and about which you spoke a few minutes ago, which letter is dated January 21, 1938, and will ask you to read that letter and let the stenographer copy it into this deposition.

A. "Narrows, Virginia January 21, 1938

To Narrows Bank: Dear Sirs: Please do not pay any of my bequests until my estate is perfectly clear. Yours very truly, R. M. Alvis."

Q. That was one of the letters that was found in his box, was it not?

A. I think so.

## RE-DIRECT EXAMINATION

By Mr. Snidow:

Q. In the will which was subsequently invalidated by the Court, there were numerous bequests set forth therein, were there not?

A. There were.

Q. The five shares of stock in the Mountain Trust Bank were not mentioned in the will, were they?

A. They were not.

Q. Clarice Alvis Anderson was the deceased's niece and his sole heir at law, was she not?

A. So far as I know.

And further this deponent saith not.

Signature waived.

It is stipulated and agreed between counsel for the First National Bank of Narrows, Administrator of R. M. Alvis, de-

ceased, and counsel for W. B. Snidow, Guardian Ad  
page 53 ] Litem for William E. Ferrell, infant, that the record in the Clerk's Office of the Circuit Court of Giles County, shows that the said First National Bank of Narrows qualified as Executor under the purported last will and testament of R. M. Alvis, deceased, on October 5, 1938.

And in said Court the 20th day of August, 1940.

### DECREE

This cause came on this day to be heard on the papers formerly read, and on the answers of First National Bank of Narrows, Administrator of R. M. Alvis, deceased, and of the said William E. Ferrell, by W. B. Snidow, his guardian ad litem, filed in pursuance of the decree entered in this cause on Sept. 26, 1939, upon replication thereto, and on depositions of witnesses, taken on behalf of the said William E. Ferrell, and was argued by counsel.

Upon consideration whereof, the court is of opinion, for reasons stated in writing and hereby made a part of the record, that there was not such delivery by R. M. Alvis, of the certificate for five shares of the capital stock of Mountain Trust Bank, mentioned and described in complainant's bill, to the said William E. Ferrell or his agent, as the law requires to constitute a gift, and that the intended gift of the said bank stock to the said William E. Ferrell must fail for want of delivery; and the court is further of opinion that the complete title to said bank stock passed to First National Bank of Narrows, Administrator of R. M. Alvis, deceased, immediately upon its appointment and qualification as such administrator.  
page 54 ]

It is, therefore, adjudged, ordered and decreed that the said William E. Ferrell take nothing, and that the said Mountain Trust Bank, in whose possession the said stock certificate is, shall cause the five shares of its capital stock represented thereby, to be transferred on its books, by its proper officers, to the said First National Bank of Narrows, Administrator of R. M. Alvis, deceased, and shall likewise cause a proper certificate to be made out therefor, and delivered to said administrator.

It is further adjudged, ordered and decreed that the said administrator of R. M. Alvis, deceased, when said certificate for said stock is delivered to it, shall proceed to sell the same at

the best obtainable price, and out of the proceeds thereof, pay the costs of this suit, other than the costs incident to the taking of the said depositions, but including a fee of \$40.00 to W. B. Snidow, guardian ad litem for William E. Ferrell, and a fee of \$50.00 to Farrier & Farrier, the attorneys conducting this suit on behalf of the complainant and the said administrator; or the said administrator may, if it deems it best to do so, pay said costs and guardian ad litem fee and attorney fee out of other funds in its hands to be administered, and that said administrator is not liable for any of the costs incident to the taking of said depositions.

MEMO: The said William E. Ferrell, by W. B. page 55 ] Snidow, his guardian ad litem, expressing his intention to apply to the Supreme Court of Appeals of Virginia for an appeal from the foregoing decree, on his motion, the execution thereof is suspended for a period of sixty days from the date of entry of this decree, in order that he may present his petition for such appeal, and thereafter until such petition is acted on by the said Supreme Court of Appeals, if such petition is actually filed within the time above specified.

### OPINION

It is my opinion that there was not such delivery of the stock in question in this case as to make a valid gift, either *inter vivos* or *causa mortis*.

This statement in the opinion of Judge Lewis, in *Yancey v. Field*, 85 Va. 758, has never been questioned, in Virginia, so far as I am informed:

"The authorities uniformly hold that to render a gift effectual, the thing given, or the means of obtaining it, must be delivered to the donee or to his agent, and accepted by him. The donor must divest himself of all dominion and control over it, and in this respect there is no distinction between the two classes of gifts above mentioned. In either case actual delivery, or its equivalent, is indispensable."

In the case here the stock certificate was placed in an envelope, which was sealed, duly stamped and addressed to William E. Ferrell, along with a letter to him, stating that page 56 ] the writer (Mr. Alvis) was giving him some stock.

This letter Mr. Alvis put in his lock box in the Narrows Bank, along with his will and other papers. It was

found there after his death. The assignment on the back of the certificate was duly signed by Mr. Alvis, dated November 1, 1937, nearly a year before he died, duly witnessed, and with the name William E. Ferrell inserted as assignee. But he told nobody about having assigned this stock. He did make some statements that he was going to leave Billy something, enough to put him through school, and about two months before he died he said he had it all fixed. He told L. A. Shrader that he was leaving Billy some money, enough to school him, but he didn't know just how to fix it, that if he gave it to him so he could get hold of it, maybe his father would run through with it, and if he left it so he could not get hold of it, it wouldn't do him any good, and he just didn't know how to leave it.

While he put the envelope in his lock box in the Bank, he did not tell anybody that this stock was in it. He left the key to his lock box with Johnson, Assistant Cashier of the Bank, not when he put the stock in the box, but as a custom, as I gather from the evidence, and with no direction to Johnson to deliver the stock to Billy.

Mr. Shumate testified that Mr. Alvis told him he was leaving certain things in his lock box, certain letters, that he wanted "us" to mail out after his death, and that he, Shumate, said something to the boys in the Bank about Mr. Alvis  
page 57 ] thinking he was going to die, and that he was leaving certain things there for us to carry out "for him"; and he further testified that Mr. Alvis told him that he was entrusting everything to "us" to look after and take charge of, and among those things were his will and certain letters to be mailed out.

This was not such delivery to the donee or to his agent as the law requires. The Bank was certainly not the agent of the donee. If there was any delivery at all it was to an agent of the donor. But it did not amount to that. Mr. Alvis merely left the stock in a letter in his lock box. He did not surrender possession of the key to this box. He left it with an officer of the bank, but he had access to the box as long as he lived. He did not "divest himself of all dominion and control" over the stock. At any time before his death he could have made any other disposition of the stock that he desired.

In *Thomas v. First National Bank*, 166 Va. 497, Thomas assigned a certificate of stock in blank, duly witnessed; at the

same time he signed a memorandum stating that the stock and a certain bond were the property of his wife. The stock certificate, the bond and the memorandum he placed in a plain white envelope which was sealed and addressed in Thomas' handwriting to his wife. This envelope was placed in a lock box in Thomas' safe in which his private papers were kept. It is plain that the court was of opinion that these facts page 58 ] did not constitute a delivery of the stock and bond so as to make a valid gift, because the decision of the case turned on whether Thomas had delivered to his wife the key to this box. The trial court held that he did not, and that the attempted gift was ineffective; but the appellate court held that he did deliver the key to his wife, and by doing so delivered the stock.

In the case at bar there was no delivery of the stock or of the means of obtaining it either to the donee or to any agent of the donee. The elements of a valid gift stated to be essential in *Yancey v. Field* have not been shown to exist. It is regrettable that the wishes of Mr. Alvis in this regard cannot be carried out. But to do so would violate a principle which has been long established.

To sustain the alleged gift here would also violate another rule. *Shankle v. Spahr*, 121 Va. 598, approves the rule that "There must be words of *present* gift as well as delivery. The one without the other is insufficient. Though there be actual delivery, yet if the words of gift accompanying the delivery indicate an intention on the part of the donor not to confer on the donee the power of taking physical possession of the thing until the donor's death, then the proceeding is an abortive testamentary act and not a gift."

It is entirely plain that it was the intention of Mr. Alvis not to confer on Billy the power of taking physical possession of this stock until Mr. Alvis had died. His instructions to the Bank were not to mail the letters until after his page 59 ] death. It was an ineffective testamentary act.

The stock therefore passed to the administrator, and a decree may be presented so holding.

A. C. BUCHANAN, Judge.

Tazewell, Va.

July 29, 1940.

CLERK'S CERTIFICATE

Virginia, Giles County, to-wit:

I, F. E. Snidow, Clerk of the Circuit Court of the County aforesaid in the State of Virginia, do hereby certify that the foregoing writing is a true and correct transcript of the record and proceedings in a certain Chancery cause pending in said Court in the name of Mountain Trust Bank vs. First National Bank of Narrows, Admr. of R. M. Alvis, Decd. et al, with all things touching the same as fully and wholly as they appear of record in my said office.

I further certify that notice of application for transcript of this record was waived by Counsel for the plaintiff.

Given under my hand this the 21st day of August, 1940.

F. E. SNIDOW,  
Clerk.

Fee \$20.00.

A Copy Teste:

J. M. KELLY,  
Deputy Clerk.

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