

1910-004

Chancery Causes

R. Y. Baker, trustee vs W. T. Fergusson & al
Petition of J. F. Purvis, admr of Margaret E Purvis
Petition of R. Y. Baker, trustee

Folder 1

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Dsh of Wright County

Other surnames: Elms,
Young [Reliance Brick Company]
Warren, Turner, Wilson, Kerr
[National Bank of Commerce
of Norfolk], Williams, Elms
Ferguson, Purvis, Jones,
White, Elliott, Betts,
Thomas

R. Y. Baker, Substituted
Trustee

-vs-

W. T. Fergusson et als.

Complainant's Bill.

Filed Second May Rules, 1908.

2nd May rules 1908

Process returned executed
Bill filed - Decree nisi

3rd May rules 1908

Answer of Chat. Bank of
Commerce filed - Other
defts failing to appear plead
ans or demur - Case set
for hearing.

VIRGINIA,

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY.

R. Y. Baker, Substituted Trustee,

-v-

W. T. Fergusson, Proscilla Baker, The National Bank of Commerce of Norfolk, George H. Warren, Reliance Brick Company, Incorporated, Agnes L. Turner, E. H. Williams, Administrator D. B. N. of N. F. Young, Deceased, Trustee, and W. P. Wilson, Trustee.

To the Honorable B. D. White, Judge of said Court:

Your complainant, R. Y. Baker, Substituted Trustee, humbly complaining, showeth to your Honor the following case:

That by their certain deed dated on the first day of May, in the year 1905, Harriett S. Elm~~s~~ and B. S. Elm~~s~~, her husband, granted unto N. F. Young, Trustee, the following property, to-wit: "All that certain tract, piece or parcel of land, lying and being in Isle of Wight County, Virginia, on the public road leading from Smithfield to Bacon's Castle, and bounded as follows; begin on said road, at the point where Purvis or Doyle fence is now located, leaves said public road, and thence in an easterly direction along said fence to the James River, thence up the said river shore to the lands of W. H. Wooley, thence around said Wooley fence to the James River, and thence continuing along said river to the lands of James Wells and thence in a westerly direction along the lands of the said James Wells and W. T. Madera to the said public road and thence along said public road in a southerly direction to the place of beginning", together with all stock, fixtures, implements and machinery of all sorts placed on said farm by the said Harriett S. Elm~~s~~ and B. S. Elm~~s~~, and used in connection with the same, in trust to secure to the holder thereof, ratably, and without preference, the payment of three certain notes, made by the said Harriett S. Elm~~s~~ and B. S. Elm~~s~~

and described as follows: One payable to the order of W. T. Fergusson one year after date for the sum of \$1,700.00; One payable to the order of Margaret E. Purvis, two years after date, for the sum of \$1,500.00, and another payable to the order of the said W. T. Fergusson three years after date, for the sum of \$800.00, or the payment of any note or notes that might be thereafter made in renewal, extension or curtailment of the said notes.

That in said deed it is covenanted and agreed that if default should be made in the payment of the said debt in whole or in part, or the interest thereon, the said Trustee should, as soon thereafter as he should be requested by the said creditors therein secured, or their assigns, so to do, sell the above granted property at public auction, at such time and place and upon such terms and conditions as the said trustee might deem expedient, after having given notice of the time and place of sale in the manner prescribed therein. And that out of the proceeds of such sale, after paying all expenses attending the execution of said trust, the said trustee should pay to the said creditors secured, or to their assigns, the debt aforesaid, with interest thereon, or so much thereof as might then remain unpaid, and the balance, if any, pay "to the said grantor, or her assigns."

That in said deed the said Harriett S. Elms covenants that she will during the continuation of the trust keep insured the buildings on the said land, or in the event of her failure so to do, that the said trustee might cause the same to be insured at her expense. And she further covenants that she will warrant generally the property thereby conveyed and will pay all taxes, levies and assessments on said property so long as the said trust shall last. And the said grantors waive the benefit of the homestead exemption as to said debt and contract. And that it is

further agreed in said ^a deed that upon the payment in full of the said debt and interest a good and sufficient deed of release, as to said encumbrance, will be executed at the proper costs and charges of the "grantor aforesaid".

That said deed is signed, sealed and acknowledged by the said Harriett S. Elms and B. S. Elms, and that it was admitted to record in the Clerk's Office of this Court on the 11th day of May, 1905. All of which will more fully appear by reference to a duly certified copy of said deed, filed herewith, marked "EXHIBIT A", and asked to be taken and read as a part of this bill.

That by their certain deed dated on the 12th day of February, 1907, and recorded in the Clerk's Office of this Court on the 1st day of March, 1907, a copy of which is filed herewith, marked "EXHIBIT B", and asked to be taken and read as a part of this bill, the said Harriett S. Elms and B. S. Elms, he husband, granted the aforesaid real estate, "together with the brick plant, machinery and equipment and all buildings and other improvements and appurtenances thereon" to the Reliance Brick Company, a Corporation, subject to the following liens, to-wit: Balance due George H. Warren, as evidenced by a certain deed of trust from W. T. Ferguson etc to N. F. Young, Trustee for the said George H. Warren; to the balance due upon the liens secured by the deed of trust first mentioned above; and to the amount of a note payable to Agnes L. Turner and secured by a deed of trust to W. F. Wilson, Trustee, dated on the first day of May, 1906, and duly recorded.

That the said N. F. Young, the trustee named in the deed of trust first mentioned above, having departed this life, your complainant, by an order of the Circuit Court of Isle of Wight County, entered on the 7 day of ~~September~~ ^{October}, 1907, was appointed trustee in the place of the said N. F. Young.

That default having been made in the payment of the said debt in part, and in the interest thereon, your complainant, as substituted trustee in said deed, at the request of Prescilla Baker, the assignee of Margaret E. Purvis, one of the creditors secured therein, and after having given notice of the time and place of said sale in the manner prescribed therein, did, on the second day of December, 1907, at the Court House of Isle of Wight County, the same being Court Day, sell the property mentioned in said deed of trust, at public auction. And that at said sale, Agnes L. Turner being the highest bidder became the purchaser thereof for the sum of \$4,025.00.

Your complainant is advised that the said note of \$1,500.00, payable to the order of the said Margaret E. Purvis, is now held by the said Prescilla Baker, who claims to be the assignee of the rights of the said Margaret E. Purvis therein, and that the said note of \$1,700.00, payable to the order of the said W. T. Fergusson has been curtailed by the payment thereon of the sum of \$700.00, that a new note has been given for the balance of \$1,000.00, and that said note of \$1,000.00, attached to the original note of \$1,700.00, is now held by the National Bank of Commerce of Norfolk, and that said Bank claims to be the holder in due course of said note, and so entitled to share in the distribution of any funds realized from the sale of the said property, under the deed of trust aforesaid, wherein your complainant is substituted trustee. And that the said W. T. Fergusson claims that he is entitled to receive in full the amount due him as one of the creditors secured in the said deed of trust before the said note of \$1,000.00, or any portion of it, is paid. But your complainant is advised that the sum for the said property was sold at the sale thereof is not sufficient to pay off and discharge in full the claims of those who now hold the said notes

secured under the said deed of trust, or in their stead, such notes as have been given in renewal, extenuation or curtailment of said notes, after paying the expences attending the execution of this trust, and after paying to the said George H. Warren the balance due him and secured by the deed of trust on said land hereinbefore mentioned, which your complainant is advised is prior in date to the deed of trust under which the said several notes aforesaid were secured.

Your complainant has not collected from the said Agnes L. Turner the said sum of \$4,025.00, nor has he executed to her a deed for the said land.

In tender consideration whereof, and forasmuch as your complainant is without remedy in the premises save by the aid of this honorable Court of Chancery, wherein matters of this nature are alone and properly cognizable, he prays that the said W. T. Fergusson, Prescilla Baker, The National Bank of Commerce of Norfolk, George H. Warren, Reliance Brick Company, Incorporated, Agnes L. Turner, E. H. Williams, Administrator ~~et~~ de bonis non of M. F. Young, Deceased, Trustee in the aforesaid deed of trust from the said W. T. Fergusson etc to the said M. F. Young, Trustee for George H. Warren; and W. P. Wilson, Trustee in the aforesaid deed of trust to W. P. Wilson, Trustee for Agnes L. Turner, may be made parties defendant to this bill and required to answer the same, though answers under oath are expressly waived; that your complainant may be instructed how he shall execute this trust; that this cause may be referred to one of the Commissioners of this Court, and that said Commissioner may take, state and report to Court an account of all liens upon the property conveyed in the deed of trust in which your complainant is substituted trustee, together with their dignities and priorities; that he may ascertain and report as to who

are now the holders of the notes secured in said deed of trust, whether the same or any of them have been renewed or curtailed, and if so, who are now the holders of such notes given in renewal or curtailment; that the rights of the holders of both the original and renewal notes to share in the distribution of any funds realized from the sale of the said property under the deed of trust aforesaid may be ascertained and reported, together with all other matters relevant and pertinent; that your complainant's attorney may be allowed a reasonable fee for his services herein, to be paid out of such funds; and that your complainant may have all such other, further and general relief in the premises as the nature of his case may require, or to equity may seem meet.

And your complainant will ever pray, etc.

R. Y. Baker, Substituted Trustee,

By Counsel.

 _____, F. C.

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BAKER, SUBSTITUTED TRUSTEE,
VS.
W. T. FERGOUSON, ET ALS.

PETITION.

Filed May 24/1910

LAW OFFICES OF
NELMS & McMURRAN
SUITE 401 SILSBY BUILDING
NEWPORT NEWS,
VIRGINIA

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY, VIRGINIA:

BAKER, SUBSTITUTED TRUSTEE,

VS.

W. T. FERGUSSON, ET ALS.

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Your Petitioner, J. F. Purvis, respectfully represents unto your honor that on the 9th day of October, 1910, he qualified, in the County Clerk's Office of Isle of Wight County, Virginia, as administrator of Margaret E. Purvis and as such administrator became entitled to all of the goods and chattels of which the said Margaret E. Purvis died seized and possessed; that among the assets of the said Margaret E. Purvis there was a note made by Harriett S. Elmes and B. S. Elmes, bearing date May 1, 1905, executed by the said Harriett S. Elmes and B. S. Elmes and payable to the said Margaret E. Purvis two (2) years after date, with interest from date, payable semi-annually, for the sum of Fifteen Hundred Dollars (\$1,500.00), a copy of which said note, with all endorsements thereon, is herewith filed, marked "Exhibit A." and prayed to be read as a part of this petition;

That he has read the bill and proceedings in this cause; that it is not true that the said note of Fifteen Hundred Dollars (\$1500.00, above described is held by the said Prescilla Baker as alleged in the said bill, or in any other wise, but that it is now held by your petitioner as said administrator.

Your Petitioner alleges that the said National Bank of Commerce has no interest whatever in the said funds arising from the sale of the said lands set out and described in the said Bill. Your Petitioner, therefore, prays that the said

money arising from the sale of the said land to Agnes L. Turner may be paid over to W. T. Fergusson, George E. Warren and you Petitioner, according to their respective priorities and interests.

Your Petitioner further prays that your honor will grant unto to him all such other further and general relief as the equity of his petition may require or to equity may seem meet.

And your Petitioner will ever pray, etc.,

J. F. Purvis

By Alister McMurran
his counsel.

A. J. Adams, Sub. Justice

vs

R. J. Ferguson & Co

Petition of R. J. Adams
Substituted Justice.

1st. September rules. Process
issued for this petition returned
executed. Petition filed. Decree
nisi.

BOHANNAN & SHEWMAKE

LAWYERS

SURRY, - - VIRGINIA.

Virginia,

In the Circuit Court of Isle of Wight County.

R. Y. Baker, Substituted Trustee.

vs.

W. T. Fergusson, et al.

To the Honorable B. D. White, Judge of the said Court.

Your petitioner, R. Y. Baker, substituted Trustee, respectfully represents that by a decree entered in vacation on the twenty-fourth day of May, 1910, in the above styled suit, it was, among other things, adjudged, ordered and decreed that Agnes L. Turner, the purchaser of the property in these proceedings mentioned, should deposit to the credit of your Honor's Court in the Merchants & Farmers' Bank of Smithfield, Virginia, interest on the sum of (\$4,025.00) four thousand and twenty-five dollars, from the third day of September, 1908, until the date of payment, to-wit January 23, 1909, and all monies received by the said Agnes L. Turner for rent from the said land, or any part thereof, from the first day of January, 1908, until the third day of September, 1908.

Your petitioner further represents that he has through his attorney requested the said Agnes L. Turner to deposit the said interest, and the rents so received in Bank in accordance with the terms of the said decree, but that she, the said Agnes L. Turner, has failed to do so. That the failure on the part of the said Agnes L. Turner to make this deposit, as aforesaid, is greatly hindering and delaying your petitioner in making a final settlement in this cause, and depriving those entitled to receive the funds, which should come into his hands, from the use thereof.

That the amount of interest on the sum of (\$4,025.00) four thousand and twenty-five dollars, from the third day of September, 1908, to the twenty-second day of January, 1909, is (\$93.25) ninety-three dollars and twenty-five cents, and that the rent received by the said Agnes L. Turner from the land, from the first day of January, 1908, until the third day of September, 1908, is at least, (\$12.00) twelve dollars. That, in as much as, these amounts should have been paid immediately upon the entering of the aforesaid decree, the said Agnes L. Turner should now pay interest thereon, from the said twenty-fourth day of May, 1910, until the date of payment.

In tender consideration whereof, and for as much as your petitioner is without remedy in the premises save by the aid of this Honorable Court, wherein, the aforesaid suit is now pending, he prays that such decrees and orders may be entered in this cause, as may be necessary to carry into effect the aforesaid provision of the decree, entered herein, on the twenty-fourth day of May, 1910, and specifically, that the property purchased by the said Agnes L. Turner, from your petitioner, as aforesaid, or so much thereof as may be necessary to pay the amount now due by the said Agnes L. Turner, as ascertained by the said decree, together with the interest thereon, may be sold, that the said Agnes L. Turner may be made a party defendant to this petition, and required to answer the same, though not under oath, such answer being expressly waived, and that your petitioner may have all such other, further and more general relief as the nature of his petition may require, or to equity may seem meet. And your petitioner will ever pray, etc.

H. Y. Baker, substituted Trustee.

By Counsel.


P. P.

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In the Circuit Court
of Isle of Wight Co.,
Virginia

R. Y. Baker, Substi-
tuted Trustee.

vs.

W. J. Ferguson et als.

Separate Answer
of National Bank
of Commerce of
Norfolk, Virginia

3rd May ruled 1908
Filed
Dist. Johnson

BROOKE & ~~Brooke~~
ATTORNEYS-AT-LAW
CITIZENS BANK BLDG., NORFOLK, VA.

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY
V I R G I N I A.

R. Y. Baker, Substituted Trustee

vs.

W. T. Ferguson, Priscilla Baker,
The National Bank of Commerce of Norfolk,
George H. Warren, Reliance Brick Company,
Incorporated, Agnes L. Turner, E. H. Wil-
liams, Administrator D. B. N. of N. F.
Young, Deceased, Trustee, and W. R. Wilson,
Trustee.

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)
) ANSWER
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The separate answer of the National Bank of Commerce of Norfolk, Virginia, to the bill of complaint exhibited against it and others by R. Y. Baker, Substituted Trustee.

The National Bank of Commerce, one of the defendants in the above entitled cause, for answer to the said bill of complaint, or so much thereof as it is advised is material for it to answer, makes answer and says:-

That it is not advised of the truth of the allegations contained in the said bill of complaint and neither affirms nor denies the same, save as to the allegation set forth in paragraph two on page four of the above mentioned bill, that W. T. Ferguson is entitled to receive in full the amount of his note of \$800.00 before the note of \$1000.00, or any part thereof, now held by this defendant, is paid. This defendant emphatically denies the above allegation and affirms that it is the holder in due course of said note for \$1000.00; that said note of \$1000.00 is of equal dignity with W. T. Ferguson's note for \$800.00; and that it is secured by the same deed of trust in which the said note of W. T. Ferguson for \$800.00 is secured and therefore entitled to a pro rata share in the pro-

ceeds obtained from the sale of the land by the trustee named
in the said deed of trust.

And now having fully answered complainant's bill,
this defendant prays to be hence dismissed with its costs
in this behalf expended.

The State Bank of Commerce
of Norfolk
by *W. W. Lashier*

Proctor & Proctor
pd.

6 1/2

ANSWER

OF
PRISCILLA BAKER.

Baker Trustee
vs
Fergusson et al

Filed July 24/1908
Dist. A. S. Johnson
cc

LAW OFFICES OF
NELMS & McMURRAN
NELMS BUILDING
NEWPORT NEWS, VA.

THE ANSWER of PRISCILLA BAKER, one of the defendants to the Bill of complaint exhibited against her and others in the Circuit Court of Isle of Wight County, Virginia, by R. Y. Baker, substituted Trustee.

This defendant now, and at all times hereafter saving and reserving to herself all benefit and advantage of exception, which can or may be taken to the many errors, uncertainties and insufficiencies in the said bill contained, for answer thereto, or to so much thereof as she is advised, is material or necessary for her to answer, this defendant answering, says:

That true it is that Harriett S. Elms, and B. S. Elms, her husband, granted unto N. F. Young, Trustee, the property mentioned and described in the complainant's bill, for the purposes therein set out.

That this defendant believes the allegations contained in the second paragraph in regard to the sale by the said Harriett S. Elms and B. S. Elms to The Reliance Brick Company to be true, but this defendant is not advised as to whether the Reliance Brick Company is a corporation or partnership.

This defendant admits that N. F. Young has departed this life and R. Y. Baker was substituted as Trustee in his stead.

This defendant admits as true that the complainant, as substituted Trustee, at the request of this defendant, the assignee of Margaret E. Purvis, one of the creditors secured thereunder, sold the said property, and that

Agnes L. Turner became the said purchaser as stated in this paragraph of said bill.

This defendant admits that it is true that the said \$1,500.00 note, payable to the order of Margaret E. Purvis, is now held by her, and that she is not advised as to the allegations that the note of \$1,700.00 payable to W. T. Fergusson has been curtailed by the payment thereon of \$700.00, and a new note given for the balance of \$1,000.00; but denies that the said note of \$1,000.00 attached to the original note of \$1,700.00 is now held by the National Bank of Commerce of Norfolk.

This defendant denies that the said Bank obtained the said note in due course, or purchased it in any way whatsoever, and denies that the said Bank is entitled to share in the distribution of the funds realized from the sale of the property under the deed of trust aforesaid.

And this defendant further alleges that the said note has been paid and cancelled and has no vitality or life whatsoever.

This defendant alleges that she is entitled to receive in full the amount due her, as one of the creditors secured in the said deed of trust before the said note of \$1,000.00 alleged as claimed to be held by the National Bank of Commerce is paid in whole or part.

This defendant believes that it is true that said property did not sell for sufficient to pay off in full this defendant's claim, and the claim of W. T. Fergusson, and the said note of \$1,000.00, after paying the lien of George H' Warren, but alleges that said property did sell for sufficient to pay in full this defendant's claim and the claim of W. T. Fergusson after paying the prior lien due George H. Warren.

This defendant further alleges that the conduct of the National Bank of Commerce of Norfolk, Virginia, has been such as to estop it from making any claim whatsoever to share in the distribution of the funds arising from the sale under said deed of trust.

And now having fully answered the complainant's bill, this defendant prays hence to be dismissed with her reasonable cost in this behalf expended.

Priscilla Baker
by counsel

Alfred M. Murrain
per

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ANSWER

OF

W. T. FERGUSSON.-

Baker Institute
vs

Ferguson et al

Filed July 24th 1908
Attest *[Signature]*

LAW OFFICES OF
NELMS & McMURRAN
NELMS BUILDING
NEWPORT NEWS, VA.

THE ANSWER OF W. T. FERGUSSON, one of the defendants to the Bill of complaint exhibited against him and others in the Circuit Court of Isle of Wight County, Virginia, by R. Y. Baker, substituted Trustee.

This defendant now, and at all times hereafter saving and reserving to himself all benefit and advantage of exception, which can or may be taken to the many errors, uncertainties and insufficiencies in the said bill contained, for answer thereto, or to so much thereof as he is advised, is material or necessary for him to answer, this defendant answering, says:

That true it is that Harriett S. Elms, and B. S. Elms, her husband, granted unto N. F. Young, Trustee, the property mentioned and described in the complainant's bill, for the purposes therein set out.

That this defendant believes the allegations contained in the second paragraph in regard to the sale by the said Harriett S. Elms and B. S. Elms to The Reliance Brick Company to be true, but this defendant is not advised as to whether the Reliance Brick Company is a corporation or partnership.

This defendant admits that N. F. Young has departed this life and R. Y. Baker was substituted as Trustee in his stead.

This defendant admits as true that the complainant, as substituted Trustee, at the request of Priscilla Baker, the assignee of Margaret E. Purvis, one of the creditors secured thereunder, sold the said property, and that Agness L. Turner became the said purchaser as stated in this

Paragraph of said bill.

This defendant admits that it is true that the said \$1,500.00 note, payable to the order of Margaret E. Purvis, is now held by Priscilla Baker, and that the note of \$1,700.00 payable to this defendant, has been curtailed by the payment thereon of \$700.00, and a new note given for the balance of \$1,000.00; but denies that the said note of \$1,000.00 attached to the original note of \$1,700.00 is now held by the National Bank of Commerce of Norfolk.

This defendant denies that the said Bank obtained the said note in due course, or purchased it in any way whatsoever, and denies that the said Bank is entitled to share in the distribution of the funds realized from the sale of the property under the deed of trust aforesaid.

And this defendant further alleges that the said note has been paid and cancelled and has no vitality or life whatsoever.

This defendant admits and alleges that he is entitled to receive in full the amount due him, as one of the creditors secured in the said deed of trust before the said note of \$1,000.00 alleged as claimed to be held by the National Bank of Commerce *in whole or part.*

This defendant believes that it is true that said property did not sell for sufficient to pay off in full this defendant's claim, and the claim of Priscilla Baker, and the said note of \$1,000.00, after paying the lien of George H. Warren, but alleges that said property did sell for sufficient to pay in full this defendant's claim and the claim of Priscilla Baker after paying the prior lien due George H. Warren.

This defendant further alleges that the conduct of the National Bank of Commerce, of Norfolk, Virginia, has been such as to estop it from making any claim whatsoever to share in the distribution of the funds arising from the sale under said deed of trust.

And now having fully answered the complainant's bill, this defendant prays hence to be dismissed with his reasonable cost in this behalf expended.

W. J. Ferguson

Attest: M^e Munn
Ad.

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY, VIRGINIA:

R. Y. BAKER, SUBSTITUTED TRUSTEE,

VS.

W. T. FERGUSSON, ET ALS.

The answer of Prescilla Baker, one of the defendants in the above entitled cause, to a petition filed in this cause by J. F. Pervis, Administrator of Margaret E. Pervis, claiming to be entitled to receive the proceeds from a certain note for Fifteen Hundred Dollars (\$1,500.00), described in his said petition; for answer thereto, or to so much thereof as she is advised is material or necessary for her to answer, this defendant answering, says:-

That she has read the said petition of the said J. F. Pervis, Administrator of Margaret E. Pervis, with copy of note thereto attached;

That when she filed her answer in this cause on July 24, 1908, she fully believed that the said note was her property;

That she now believes that her mother, the late Margaret E. Pervis, intended this note should be her property, but that she is advised that the present right to collect the said note is in J. F. Pervis, as Administrator of Margaret E. Pervis, and as such he has a legal right to receive the proceeds from the same.

And now having fully answered she prays to be dismissed, etc.

Prescilla Baker

Baker ed. Inster
or
W. J. Ferguson

Answer of
Russell Baker

Petition of
J. F. Purvis

The Commonwealth of Virginia,

Sgt of the City of Norfolk
To the ~~Sheriff of the County of Isle of Wight~~, Greeting:

WE COMMAND YOU that you summon W. T. Fergusson, Priscilla Baker; The National Bank of Commerce of Norfolk, George H. Warren, Reliance Brick Company, Incorporated; Agnes L. Turner; E. H. Williams, administrator d.b.n. of the estate of N. F. Young, deceased, trustee; and W. P. Wilson, trustee,

to appear at the Clerk's office of the Circuit Court of the County of Isle of Wight at the rules to be held for the said Court, on the 3rd. Monday in May, 1908, to answer a bill in chancery, exhibited against them in our said court for by R. Y. Baker, substituted trustee,

And have then there this writ. Witness NATHANIEL F. YOUNG, Clerk of our said court, at the court-house, the 15 day of May, 1908, and in the 12¹³² year of the Commonwealth.

Nathanial F. Young
Dist. *Nathanial F. Young*

Executed in the City of Norfolk
this the 16th day of May
1908 by signing copies hereof
as H M Keen, Cashier of
The National Bank of Commerce
and D Homer Hayden, Pres-
ident of Reliance Brick Com-
pany, the said H M Keen
and D Homer Hayden
being in and residents of
said City at the time of
such signing, where their
place of business are located

J. J. Lamer Esq
City of Norfolk
by N A Thompson Esq

By W. Bates, Sub Justice

vs. {

SUBPOENA
IN
CHANCERY.

W. J. Ferguson et al

J. Gordon Shannon p. q

To 3rd May Rules,

County Court.

1908

B 33119

The Commonwealth of Virginia,

Elizabeth City

To the Sheriff of the County of ~~Isle of Wight~~, Greeting:

WE COMMAND YOU that you summon W. T. Fergusson; Priscilla Baker; The National Bank of Commerce of Norfolk; George H. Warren; Reliance Brick Company, Incorporated; Agnes L. Turner; E. H. Williams, administrator d.b.n. of N. F. Young, deceased, trustee; and W. P. Wilson, trustee.

to appear at the Clerk's office of the Circuit Court of the County of Isle of Wight at the rules to be held for the said Court, on the 3rd. Monday in May, 1908, to answer a bill in chancery, exhibited against them in our said court for by R. Y. Baker, substituted trustee,

And have then there this writ. Witness NATHANIEL E. YOUNG, Clerk of our said court, at the court-house, the 15th. day of May, 1908, and in the ~~12~~¹³2nd. year of the Commonwealth.

N. E. Young
Dut. *N. E. Young*

By Order Sub. Tral

vs. } SUBPOENA
IN
CHANCERY.

W. T. Fergusson et al

J. Gordon Pollockon p. q.

To 2nd May Rules,
Circuit Court.

1908

B 33119
W. T. Fergusson being found
at his usual place of
abode & executed this 16th day of
May 1908 by
swearing a true copy of
the within written
mandate in Robt. C.

Fergusson his son above
the age of sixteen years
of age. R. W. Curtis Sheriff
By T. S. Curtis Dept. Sheriff.

R. S. Baker, Sub Trustee

vs. } SUBPOENA
IN
CHANCERY.

W. J. Ferguson et al

J. Gordon Shannon p. 9

To J. M. May Rules,
Circuit Court.

1908

Executed May 16th 1908,
by delivering a true copy
of the within process to
E. H. Williams adm. & b. n.
of N. F. Young decd, W. P. Wilson
Trustee, Priscilla Baker, Geo.
H. Warren & James L. Thomas
in person in the County of
Isle of Wight

W. A. Edwards
Att. of Isle of Wight Co.

The Commonwealth of Virginia,

To the Sheriff of the County of Isle of Wight, Greeting:

WE COMMAND YOU that you summon H. J. Ferguson, Priscilla Baker,
The National Bank of Commerce of Norfolk, Va.
H. Warren, Release Brick Company, Inc. Agnes
L. Turner, E. H. Williams, administrators d. b. n
of N. F. Young, deceased, Trustee, and W. P. Wilson,
Trustee

to appear at the Clerk's office of the County Court of the County of Isle of Wight
at the rules to be held for the said Court, on the 3rd Monday in May 1908,
to answer a bill in chancery, exhibited against them in our said court for
by Priscilla Baker, Substituted Trustee

And have then there this writ. Witness NATHANIEL F. YOUNG, Clerk of our said court, at
the court-house, the 15th day of May 1908, and in the 12th
year of the Commonwealth.

N. F. Young
Clerk
Out. Johnson

COMMONWEALTH OF VIRGINIA.

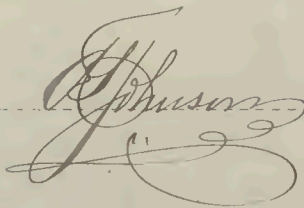
TO THE SHERIFF OF ISLE OF WIGHT COUNTY—Greeting;

We command you that you summon Agnes L. Turner

to appear at the Clerk's Office of the Circuit Court of the County of Isle of Wight at the rules to be holden for the said Court on the 1st. Monday in ~~August~~, Sept, 1910, to answer a ^{petition} ~~bill~~ in chancery exhibited against ~~her~~ in our said Court by R. Y. Baker, substituted Trustee, and plaintiff in the suit of Baker, Substituted Trustee, etc. against W. T. Fergusson et als?, in the said court now pending and undetermined.

And have then and there this writ.

Witness, A. S. JOHNSON, Clerk of our said Court, at the Court-house, this 30th day of August, 1910, and in the 135th year of the Commonwealth.

 Clerk.

Executed the within process this 2^d of
September 1910, by serving a true copy
thereof on Mrs. Agnes L. Turner in person
at her residence in the County of
Solano Wright.

W. A. Edwards, Shff.
By R. Augustus Edwards.

D. J.
Baker Reg. Rec.
Travis H.

20 3
in Day.

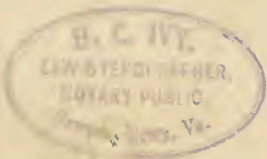
W. T. Ferguson not.

5. 1st Dept. Recs
1910

IN THE CLERK'S OFFICE
OF THE COUNTY OF SOLANO
CIRCUIT

COUNTY OF SOLANO
FILED
Sept 1910

5
Robert H. Field
Just. Johnson - cert



IN THE CIRCUIT COURT OF THE COUNTY OF
ISLE OF WIGHT, VIRGINIA.

-----X
 BAKER, et als.)
 VERSUS)
 FERGUSSON.)
 -----X

DEPOSITIONS OF
H. M. KERR and W. T. FERGUSSON,
taken before A. S. Johnson, Special Commissioner.

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IN THE CIRCUIT COURT OF THE COUNTY OF
ISLE OF WIGHT, VIRGINIA.

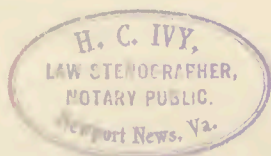
-----X
 BAKER, et als.,
 VERSUS
 FERGUSSON.

Depositions of H. M. Kerr and W. T. Fergusson,
 taken, at Norfolk, Virginia, at the office of Messrs.
 Brooke & Brooke, on the 24th day of July, 1908, before
 A. S. Johnson, Special Commissioner in the above cause,
 appointed by decree of the Circuit Court of Isle of Wight
 County, entered on the _____ day of _____, 1908.

PRESENT:

MR. D. LAURENCE BROOKE,
 Counsel for the National Bank of
 Commerce, of Norfolk, Va., and
 others;

MR. W. J. NEIMS,
 Counsel for W. T. Fergusson.



H. M. KERR,

being duly sworn, deposes and saith as follows on
Direct Examination.

(BY MR. BROOKE):

1 Q. Mr. Kerr, state your name and occupation?

A. H. M. Kerr, Cashier of the National Bank of Commerce,
Norfolk, Virginia.

2 Q. How long have you been Cashier of the National Bank
of Commerce?

A. Since January 1st, eighteen hundred and ninety-eight.

3 Q. Since January 1st, eighteen hundred and ninety-eight?

A. Yes, sir.

4 Q. Mr. Kerr, I hand you a note for Seventeen Hundred Dollars,
dated May 1st, 1905, payable one year after date to the
order of W. T. Fergusson, signed by D. S. Elms, and
endorsed by W. T. Fergusson and W. T. Fergusson, agent. I
also hand you a note, attached to the first note, for
One thousand Dollars, payable ninety days after date,
and bearing date May 1st, 1906, to the order of W. T.
Fergusson, on the Farmers' Bank of Mansemond, at
Suffolk. The first note was on the Bank of Smithfield,
and signed by Harriett S. Elms, and endorsed without
recourse by W. T. Fergusson, and will ask you who is now,
if you know, the holder of that note?

A. Well, we are the holders of the note ---

BY MR. NELMS (interrupting): One minute, if you
please. Objected to as irrelevant and immaterial,-

the notes, now being dead, and of no effect.

(BY MR. BROOKE, continuing):

✓ 5 Q. Go ahead, answer the question.

A. I say we are the holder of the notes.

✓ 6 Q. You are the holder of the notes ?

A. Yes, sir.

✓ 7 Q. Has this note, or either of these notes, been paid?

BY MR. NELMS: Same objection.

A. They have not.

✓ 8 Q. They have not been paid?

(Same objection.)

A. No, sir.

✓ 9 Q. Now, Mr. Kerr, explain, if you will, why one of these notes is for Seventeen hundred dollars, and the other one is for One Thousand Dollars?

(Same objection.)

✓ A. Well, the one thousand dollar note is the note given for which the one thousand dollar note is given for a renewal--- I mean is a renewal of the Seventeen hundred dollar note.

✓ 10 Q. The one thousand dollar note is a renewal of the seventeen hundred dollar note?

(Same objection.)

A. Yes, sir.

✓ MR. BROOKE: Now, I offer in evidence these two notes, to be filed with Mr. Kerr's deposition, and marked "Exhibits B. & C. 1."

MR. NELMS: Same objection as last noted.

MR. BROOKE: Do you want these two notes filed, themselves, or copies of them?

COMMISSIONER JOHNSON: We will file the originals.

(Said notes are accordingly marked and filed with the papers of this suit.)

(BY MR. BROOKE, continuing):

Q. Mr. Kerr, will you please explain how the National Bank of Commerce came into possession of these notes?

MR. NELMS: Same objection as last noted.

A. Yes. I would like to explain that matter at some length, so our friend, Mr. Nelms, will understand the situation. I think it was in September, when Mr. ^aHidden, of Betts and ^aHidden, came to me, and he says "I have discovered a clay bank up near Smithfield ---

(BY COMMISSIONER JOHNSON):

Q. That was in September of what year?

A. (continued): In September, nineteen hundred and six, - possibly a month before this transaction took place, and he said "it is owned by a man by the name of Elms; and I have had the clay tested, and I find it to be very valuable clay, and I believe -- I believe if we can secure control of it it will be a very valuable adjunct to the corporation." He says "It will take about Fifteen Hundred Dollars to take up a matured note that is secured on the property, and provide Five Hundred Dollars of working capital." "Well" (I says) "Hidden, what sort of security do you propose to give me, if I

were to consider a loan of that sort?" "Well", (he says) "I will give you my notes, with Betts's endorsement, with a mortgage to secure the notes." I told him that that would not be at all satisfactory, and that I would not consider the loan under those conditions. I asked him then, if we took up and carried this matured note which Mr. Fergusson was kicking about (apparently collected the money for) ^{if that}, would relieve the situation and enable them to arrange their finances, and enable them to take the note up themselves. Well, he did not know whether it would or not. Well, I asked him to have Mr. Elliott, who was his attorney, or the attorney for the corporation, to come in the Bank and see ~~me~~ me, and I would see if the thing could not be arranged in some manner. Mr. Elliott came in, in I think about a week, and I told him what Messrs. Betts & Hiden wanted to do, and I was unable to do it, but I was willing to take up this note, and carry it, for One Thousand Dollars, if that would help him, and if he would be prepared to undertake to preserve the lien that would not be impaired by any chance, and if he would like for me to do that, to come in and notify me. He came in and notified me that the matter was in shape. They had instructed the Farmers' Bank of Wassemond to send the note down to me. They came in there one day (Mr. Fergusson did), and wanted to know about the note, and I told him that we were still holding it. And he came in again, I think, and he said he had been advised that the money would be forthcoming on this note. I had not then had a final interview with Mr.

Elliott, but I had had a talk with him in which he intimated that this matter was in shape. I was not going to take the matter up unless they had made the arrangements to provide the funds for working-capital and developing the property of the clay-bank. And Mr. Fergusson came in there, and I asked him to get hold of Mr. Hiden, or Mr. Betts, that I wanted to know if they were able to complete their arrangements to develop the property. And they brought Mr. Betts down there,-- and I think Mr. Elliott notified me at the same time, that they had taken the precautions to provide for the working capital and developing of the property, and that they didn't think they needed any funds; that the bricks on the place could be sold and enough capital provided for to provide for the development of it. Then it was that I told Mr. Betts that we would take the notes up, and then we took these notes. That is the history of it.

12 Q. Mr. Kerr, ---

MR. NEIMS: This answer is further objected to because immaterial and irrelevant.

12 Q. (continued): Mr. Kerr, can you explain why the note for Seventeen Hundred Dollars, which is endorsed by W.T.-Fergusson, and by W. T. Fergusson, agent, was endorsed--- I will change that.- Mr. Kerr, can you explain why the One Thousand Dollar note bears the endorsement without recourse, signed by W. T. Fergusson, when the original note for Seventeen Hundred Dollars bears Mr. Fergusson's

endorsement in blank?

MR. NELMS: Same objection as heretofore made to the questions and answers.

A. Well, the amount that was due on the original note of \$1,000.00--this is a renewal of the original note, which was held to protect the lien of the property; and, necessarily, that one thousand dollars which was actually due, and this endorsement was necessarily required to preserve the lien when the notes were taken up. It came up in that shape from Suffolk.

13 Q. From Suffolk?

A. Yes, sir.

14 Q. I think I asked you whether or not these notes had been paid?

MR. NELMS: Same objection as heretofore noted.

A. Yes, sir.

✓ 15 Q. (BY MR. BROOKE, continuing): Mr. Kerr, this note is secured by a deed of trust on a farm ---

(Same objection.)

A. (interposing): I am so advised, yes, sir.

✓ 15 Q. (continued) --- as appears on the note, does it not?

(Same objection.)

A. Yes, sir.

✓ 16 Q. Do you know whether that was secured by the deed of trust given by Harriett S. Elms and D. S. Elms to N. F. ^{Young} Baker, Trustee, to secure the purchase price of the property?

(Same objection as last noted.)

V
A. That was so reported to me by Mr. Elliott, who looked into the matter.

MR. HELMS: Same objection as last noted, and further objected to as hearsay.

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MR. HELMS: Without waiving any right of objection heretofore taken, counsel for Mr. Fergusson and Mrs. Baker proceeds to cross examine the witness.

1 XQ. I understand, Mr. Kerr, that the amount you claim as due the Bank is one thousand dollars ---

A. (interposing): One thousand dollar note.

2 XQ. And not the seventeen hundred dollars ?

A. Oh, no, just the one thousand dollars.

3 XQ. I notice on this note of one thousand dollars, the numbers 41,155, and 43,944, and just beneath these two numbers, "The Farmers' Bank of Nausemond, Suffolk, Virginia", and the same words again,-- these words being beneath the numbers above mentioned, respectively. Will you tell me what that signifies?

A. Well, I should judge --- I don't really know, but I should judge that was his collection numbers. He sent it down here. A great many banks have a way of registering their collections by the number. And that is what it seems to be.

4 XQ. And when he sent them down here, he stamped it on there as his number?

A. Yes. It came originally, if you will notice, to me

to Norfolk ---I didn't know, until it came to us -- in April, or when it came. I presume that came to us too, but I don't remember. And that may have had a reference to the original number.

5 XQ. Have you any record which will give that information?

A. No, indeed; this absolutely has no reference or relevancy to our business at all.

6 XQ. I mean have you any record that will disclose the time of arrival, in April, whether it was sent to you direct from the Farmers' Bank of Hansemond, or whether it came through some other Bank in the City of Norfolk?

A. I could not tell that. There is nothing in it for ---

7 XQ. That is what I mean?

A. There is nothing in it to show that.

8 XQ. But I understand you to say these numbers here are collection numbers?

A. They are collection numbers presumably.

9 XQ. And the note for one thousand dollars was sent to you direct?

A. Yes.

10 XQ. But the note for Seventeen Hundred Dollars, in April, you are unable to say?

A. Yes. If I may explain to you I will go ~~at~~ a little further.

(Witness here explains to Commissioner and Counsel present, which the stenographer is advised not to take.)

11 XQ. This note, I understand, came to you in its present condition, when you received it, Mr. Kerr?

A. That is my recollection, yes.

12 XQ. You gave no instructions about the matter whatever, as I take it?

A. How?

13 XQ. I mean to say that when it came to you, it simply came to you from the Farmers' Bank of Nansemond, just as it is,-- no change made on it?

A. I could not say. I don't recall now whether any part of that endorsement was made in our office or not. My impressions are that they had been made in Suffolk a few days previous to that, and sent down to Norfolk in that shape. But I am not entirely clear as to that.

14 XQ. I observe on the back of this one thousand dollar note the following words, in red ink: "Coll. for Collateral. A.T.C. of W.T.F. Agent." Do you know what that means? or is that your handwriting?

A. Well, I can only venture an opinion as to that.

15 XQ. I don't wish you to express an opinion unless you know something about it.

MR. BROOKE: Ask him if he made it.

WITNESS: Well, now, if you will let me explain. That is unquestionably a note made in the Farmers' Bank of Nansemond. I think I recognize it as made by one of the clerks up there. It had nothing to do with any reference to our office.

16 XQ. That is what I wanted ---

A. Yes, I just wanted to make it perfectly plain.

- 17 XQ. When this note was paid by you what did you do --
- A. What ?
- 18 XQ. When this ~~xxxxxxxxxxxxxxxx~~ note was paid by you, what did you do with the one thousand dollars?
- A. It was never paid, or what you say taken up. It is credited by the Farmers' Bank of Mansfield, as endorsing, in the first instance.
- 19 XQ. Well, when it was taken up by you, as last stated, what did you do in the way of entry on your books?
- A. It was simply an entry made on our tickler sheets, that the accounts must be properly credited.
- 20 XQ. Will you be good enough to show me this record, at my request. Will you please read from your tickler ---I here hand ~~xxxx~~ you your bank record of November 16th, 1906, and ask you if you will kindly read the items referred to there, and in their respective classifications, reading the classifications, and then the names?
- A. Well: "Maker and endorser, H. S. Elms. For whose credit, Farmers' Bank of Suffolk, one thousand dollars. Elms's interest \$32.05. Elms's interest \$24.00." Now, these were paid off by that note,-- these together with the two checks. (Indicating.)
- Q. (BY MR. BROCKE): The interest, you mean ?
- A. The interest, I mean, by check. I am sure.
- (BY MR. NELMS, continuing):
- 21 XQ. I understand you that you made that entry on your tickler ---
- A. Yes.
- 22 XQ. (Continued) --- On the pages of which you now hold in

- your hand ?
- A. Yes.
- 23 XQ. Showing the money -- the deposits made -- had been sent you by the Farmers' Bank of Nansmond, was to be remitted to the Farmers' Bank of Nansmond; is that correct?
- A. No; that simply shows that when this note was taken up, the Farmers' Bank of Nansmond had received credit for the principal sum, and this was simply a memorandum for the bookkeeper, who credits it on the Farmers' Bank of Nansmond. It is simply an explanation. In other words, it is a memorandum. That is all it is.
- 24 XQ. I think that means the same thing. I just want to get at it in its proper form ---
- A. Yes.
- 25 XQ. I understand that memorandum is a memorandum made for bookkeeping purposes, in that book ?
- A. Yes, that is it.
- 26 XQ. And that, from that, the Farmers' Bank of Nansmond was given credit for the one thousand dollars for this note?
- A. The Farmer's Bank of Nansmond was given credit for one thousand dollars.
- 27 XQ. For this note?
- A. Of which that note is an offset, yes.
- 28 XQ. I think I understand you right, but I want to be certain, Mr. Kerr. I understand that Mr. Fergusson, according to your recollection, of which you are not positive, -- but that is, to the best of your recollection ---
- A. Yes.

29 XQ. (Continued): As to this case ---

A. Yes.

30 XQ. That your recollection is that he called to see you ?

A. Several times.

31 XQ. He called to see you several times?

A. Yes.

32 XQ. About this note which was lying there in your Bank?

A. Yes.

33 XQ. Had been sent there before by the Farmers' Bank of Nansemond?

A. Yes.

34 XQ. And the claim he made on the day the note was taken up by you, as you say ---

A. Yes.

35 XQ. When he called you ~~on~~ on, you were, at that time, quiet and pleasant about the situation, and you asked him to find Betts & Hiden for you?

A. Here was the idea: Let me illustrate it for you ---

36 XQ. (interposing): But that was the situation, was it not ?

A. Yes.

37 XQ. And then he went to find Betts & Hiden, and came back down to your Bank, whereupon, after conference with Mr. Betts, or Mr. Hiden, whichever one came down to the Bank, you told Mr. Fergusson: "All right." Is that about the situation?

A. No, I don't exactly understand any such phase of the

question as that. Mr. Fergusson came in the Bank and said the money was supposed to be forthcoming. Sometime since this matter was taken up with them, and this note carried, and was projected upon Betts & Hiden receiving enough money for capital purposes. I referred the matter of Mr. M. C. Elliott ---

38 XQ. (interposing): Pardon me. You didn't meet Mr. Fergusson?

A. No, I am just trying to show you why I sent for these gentlemen, and first ascertaining the degree of security they wanted to offer. I wanted to feel sure ---

39 XQ. (interposing): Pardon me for interrupting you again. But I want to get at what occurred on that particular day?

A. Well, I am coming to that. They said -- I don't suppose it will injure this case for me to explain, but I want you to thoroughly understand. I have nothing in the world to keep back. I just want you to understand how it happened. I turned it over first to Mr. Elliott, to ascertain the degree of security for the note first, and then to look into the organization of it if necessary, of the new company to provide sufficient funds to provide for a working capital to properly work this clay bank.. Mr. Elliott reported the matter, and in the first instance he gave me a memorandum. He had looked up the records of the property, and gave me a memorandum of the notes they were supposed to have secured on that property -- the effects of the Company--

and what was on a first mortgage; and I think this was a second mortgage. I am not sure but what he said there was a second mortgage, and "You are secured upon the mortgage when this amount was deducted". That is what he told me.

MR. HELMS: So much of the foregoing answer as purports to relate what Mr. Elliott ~~says~~ stated, is objected to as hearsay evidence.

A. Well, it was from a memorandum to me at the time. And he told me, also, that he had looked into the matter, and they could provide working capital enough from the sale of the bricks ---

MR. HELMS: Pardon me for interrupting you again, but the statements relating to what Mr. Elliott said are objected to, because the court will not consider it.

A. (Continued): Well, if you will not take it down, I will explain it to you. As I recall it, on the occasion of Mr. Fergusson's last visit, I suggested that I would like to talk to Mr. Betts, or Mr. Hiden, or both. And Mr. Fergusson, according to my recollection, went to the office of Betts & Hiden and brought them down to my office.

40 XQ. Do you recall which one of the firm came down?

A. Probably both. I don't know. I don't recall. I then found that the matter had been so arranged that my taking up this note would accomplish the desired result.

The adjustment was then made, that the interest which had accrued, as I recall it, by Messrs. Betts and Hiden, or either of them,-- I don't know which one it was,-- but that was paid to me by those gentlemen, and I took the note for the principal sum of One Thousand Dollars.

41 XQ. You found out, I take it, from Messrs. Betts & Hiden, in your conference with them on this occasion, that the note had been adjusted?

A. No, there was no reference to this note at all.

42 XQ. From whom did you get that information?

A. I got that information from Mr. Elliott.

43 XQ. From Mr. Elliott?

A. Yes, sir.

44 XQ. Mr. Elliott was not present?

A. He either telephoned me, between the time Mr. Fergusson called, and his going up stairs, or while Mr. Fergusson was out, or immediately on his return, I have forgotten which.

45 XQ. But what I want to get at, Mr. Elliott was not present at this visit in that room?

A. I don't recall that he was. He may have been. I may be mistaken as to that. It is two years ago.

46 XQ. I understand that all of this matter between yourself and Betts & Hiden, in the matter of arranging this note, and with Mr. Elliott, was all done at the instance of Messrs. Betts & Hiden, who were largely interested in this brick-- What is the name of that Brick Company? THE Alliance

Brick Company?

A. There was no such thing as the ^{the} Alliance Brick Company at that time. I imagine they were anxious to provide some means of controlling the output of the plant; and that is what they professed to be anxious ~~about~~ to do.

47 XQ. Well, do you know why they were interested in having this note taken up?

A. Well, this is the explanation that was made to me. Now this could not be testimony - - -

48 XQ. (interposing): What I want to get at, is what explanation was given to you by Betts & Hiden?

MR. BROOKE: Well, you objected just now to his testifying about what was told him.

MR. NEIMS: I will ask this question:

49 XQ. Mr. Kerr, the handling of this One Thousand Dollar note by you was done, as I understand it, at the instance of Betts & Hiden?

A. Yes; they wanted to know if it would not relieve the situation by taking that up and carrying it.

50 XQ. The bill in this suit alleges that the deed of trust which secured this original note of Seventeen Hundred Dollars, of which the One Thousand Dollars is a renewal of part, also secured the payment of the note of \$1500.00 to Margaret E. Purvis, and another note of \$800.00 to W. T. Fergusson; these, together with the one thousand dollars, would make \$3300.00,- besides the deed of trust to George H. Warren. I presume that in the report made to you by Mr. Elliott, who made an examina-

tion for you, that these facts were disclosed to you, showing that amount of monies due upon the land; is that correct?

A. I think that is my recollection.

51 XQ. Your idea, I gather from ~~you~~ what you stated, was that you were willing to aid Messrs. Betts & Hiden in controlling the output of the Alliance Brick Company, ~~from this firm~~ either then formed, or to be formed, provided that they had sufficient working capital to handle the operating-end; and believing, - after your investigation of the subject by Mr. Elliott and through Messrs. Betts & Hiden, that you would be reasonably well secured in the advancing of the one thousand dollars, above referred to, and having been convinced that they could operate the plant, or were provided with means to operate the plant, or would obtain means from the operation sufficient to carry themselves along, that then you would let them have the funds; is that correct?

A. No, not exactly. I was willing to take up and carry this note ---

MR. BROOKE (interrupting): One minute. When you say "take up and carry", explain what you mean.

I don't think Mr. Helms understands exactly what you intend by that.

A. (Continued): I mean I was willing to pay the Farmers' Bank of Nansmond one thousand dollars for this note and carry it myself in such a way --- in other words, the lien was not to be paid. It was simply to be preserved,

and I was simply to carry it along.

MR. HELMS: Answer objected to as being immaterial and irrelevant. Now please answer my question?

(Stenographer reads 51 XQ.)

A. No; I was willing to take this note up and carry it for a while, - the lien unimpaired, - provided ~~we~~ ^{they} were able to find sufficient funds to successfully operate the plant.

52 XQ. Did you have any conference with Mr. Elms in regard to this matter?

A. Good Lord, I don't know. I saw him once, the first or second time Hiden talked to me about this. He had Elms with him, I think. I never saw him after that. I may have seen him in the office, but I had no conference with him that I recall.

53 XQ. Mr. Kerr, I understand the only record made of this note of \$1,000.00, in your Bank, is the record which you have shown from your tickler as a memorandum for the bookkeeper, and the credit given to the Farmers' Bank of Nansmond, and the settlement of account with them, allowing them credit for the same, in the usual course of your business; is that correct?

A. That is the original entry pertaining to this matter, - the original memorandum made covering this transaction.

54 XQ. What I want to get was, Are there any other entries in the books?

A. There is not an entry, Mr. Helms, that would illustrate

this matter. There are other entries in the book, but that is as late as any. That is the original entry in reference to this matter.

55 XQ. Well, if you don't mind stating what other entries were made, it will aid me in the examination of other parties.

A. I am perfectly willing.

56 XQ. I know you are.

A. This entry was simply made as an offset to this note, you understand. Now, there are no other entries made on our books, you understand, so far as the notes are concerned. In other words, this credit explains the credit end of it, and the note is good for itself. Now, is that perfectly plain?

MR. NELMS: So far, so good.

WITNESS: Yes.

57 XQ. That simply deals, however, with the credit end.

A. And the note end -- the note stands for itself.

58 XQ. What I wish to get at, though, is the other side.

A. That is just exactly what I am explaining to you there. That offset is the credit on there. (Indicating).

59 XQ. But what I wish to get, Mr. Carr, is the debit side, as related to Betts & Hiden.

A. The debit side as related to Betts & Hiden?

60 XQ. Yes.

A. The only way in the world I could get at it would be to examine their individual accounts and see if they gave me checks covering their interest up to the time I took this note up and began carrying it. That would not have

any bearing, because I have already testified to that fact.

61 XQ. Well, what other entries could there be?

A. None, Mr. Nelms. There is one side of the proposition, (indicating), and there is the credit side there (indicating).

62 XQ. Well, that is what I asked, and you didn't answer directly. That is what I was trying to get at.

A. Well, there are no other entries, except special records. That is the original memorandum on one side commences and ends on one side, representing the debits; and that credit was on the other side representing the credit (indicating).

63 XQ. When you put this note in your call loans, you were looking to somebody ---

A. (interposing): I was looking to the property for the payment of the note --- the security that the deed of trust gave for the loan.

64 XQ. That may be so ---

A. Yes.

65 XQ. (Continued): But the point I want to get at is, To whom did you expect to go when you wanted this money?

A. Why, I expected to resort to the property, if it was not paid me.

66 XQ. By whom?

A. If it was not paid me by any of the parties in interest in the matter.

67 XQ. Well, who?

A. The law entitled the holders of the other notes to the first mortgage. That point has never come up for active discussion at all, because I felt reasonably secure that the security was behind the note, and I was willing to wait awhile and give the property a chance to work up.

68 XQ. Yes; but as a matter of fact, Mr. Kerr, you didn't expect to call on me for the payment of that note?

A. Individually, no, sir.

69 XQ. As a matter of fact, you didn't expect to call on Mr. Fergusson for that money?

A. No, because the note was over-due, and endorsed.

70 XQ. And you hardly knew Mr. Ellis in the matter. You didn't expect to call on him?

A. I expected that note to be paid, if it were ever paid me, out of the property, or by these gentlemen who had been instrumental in ~~inducing~~ inducing me to take the note up in the first instance.

71 XQ. Exactly. Then you were looking to them to take care of the note. You were looking to Betts & Hiden to protect that property?

A. No indeed. I was looking to them if they ever could get in a position to pay it, but I was looking for the property to pay the note.

72 XQ. That may be true in your own mind, but the point I want to get at is, You negotiated this loan at the instance of Betts & Hiden?

A. I took it up with these parties to aid the development

of the property ---

73 XQ. (interposing): But I say you negotiated the note, in the first place, at the instance of Messrs. Betts & Hiden?

A. The initial request was made by those gentlemen, but I was not willing to take it up until I was satisfied as to the security.

74 XQ. I understand; but now, when you got ready for that money, whom would you have communicated with?

A. I would have communicated, as I repeatedly did, with these gentlemen, to know what they were doing with the property.

75 XQ. Did you call on them to pay the One Thousand Dollars?

A. No, I didn't call on them to pay the One Thousand Dollars, because I knew it was not worth while.

76 XQ. You knew they were not financially able to pay it, did you ?

A. I knew they were not financially able to pay it, and I wanted to know if they would return the property, and whether we would have to resort to ~~the~~ a sale to get the property. I talked about that phase of the matter with Mr. Betts, I think, because I had carried it for a year and I wanted my money.

77 XQ. And you called on them for it?

A. No, I didn't call on them for it; I wanted to know what the situation was.

MR. BROOKE: Whether or not to sell the property.

WITNESS: Yes, that is it.

78 XQ. I know that Banks are always willing to advertise property to be sold for their benefit. Now, do you wish to go down in the record there that you didn't call on, or ask, Betts & Hiden to look after this paper and take it up, so that you would not have anything further -- to have to do with it?

A. No. I am frank to tell you that, during the time that I had carried this loan, I would call on Betts & Hiden, and have them tell me what they were doing in the operation of the plant, and what they were doing with it, and when all the notes would be taken up and re-financed. It was already taken up and re-financed, and I was simply carrying it along to a period where they might take it up, and refinance it themselves. There was no reason for my doing so, when I was getting damned tired of carrying the paper.

79 XQ. You were getting tired of carrying the paper?

A. I am frank to tell you that I don't think these gentlemen were personally in the financial funds to take this note up and carry it themselves.

MR. BROCKE: Counsel for the holder of these notes, and for the Alliance Brick Company, has allowed Mr. Nelms, counsel for Fergusson, to widen his scope in the cross examination of Mr. Kerr along this line, as he has alleged in his answer that the Bank of Commerce is estopped to claim this note as being secured by the property, but he objects to further

examination, or cross examination, along these lines, as being immaterial and irrelevant.

MR. NELMS: Counsel asks the question, Don't Brooke & Brooke represent the Alliance Brick Company also?

MR. BROOKE: Yes.

MR. NELMS: Now, if you will just state it down here, who you represent in this matter,-- you represent Betts & Hiden's interest in the Alliance Brick Company?

MR. BROOKE: Yes,-- in this transaction.

MR. NELMS: It may save us some depositions, for the benefit of the Commissioner as well as our own.

30 XQ. (BY MR. NELMS, continuing): To what date has interest been paid on this note?

A. I would have to look at our interest accounts to find out. I think there is probably a years' interest, or more, due on that note now.

31 XQ. Do you recall how many ^{times} ~~payments~~ Betts' & Hiden have paid the interest?

A. Only at the time, I think, that I took the note over.

MR. NELMS: Now, by consent of counsel, we will go by the Bank and let Mr. Kerr state that date.

WITNESS: I can tell it exactly. That is the only thing I forgot to look at this morning.

32 XQ. The bill alleges, Mr. Kerr, that the Alliance Brick Co., purchased this property of Elms, and as a part of the

purchase price, were to pay the amounts that were secured at that time, namely, the 12th day of February, 1907. Please advise me if Messrs. Betts & Hiden told you, or informed you, of the conditions of their purchase that relates to assuming these obligations? If you wish to see ---

MR. BROOKE (interposing): ^{first} Objected to as immaterial, the second objection, entirely hearsay. I would like for you to pass on that Mr. Johnson. It seems to me we are taking up a whole lot of unnecessary time.

MR. HELMS: I think it is perfectly material.
(Objection overruled.)

(Question read.)

(Pause.)

MR. BROOKE: Answer it. If you have any information of your own on that subject, answer it.

A. No, I have not. I have no knowledge of that kind on the subject.

83 XQ. The matter that the the subject of the discussion with you at that time was, they were simply discussing as to Betts & Hiden, and not the Alliance Brick Co.? The matter of dealing with the Brick Company was to be an after consideration?

A. Distinctly.

REDIRECT EXAMINATION.

1 Q. (BY MR. BROOKE): Mr. Kerr, I just want to ask you two or

three questions. In the first place I want you to explain what you meant by taking up a note and carrying it. I simply want you to explain it.

A. My taking over the note without cancellation or any impairment of the lien.

2 Q. You mean you took it up for collection then?

✓ A. Took it up and continued to carry it.

MR. HELMS: Objected to because immaterial and irrelevant.

✓ 3 Q. Mr. Kerr, would you have taken up this note if it had been unsecured?

(Same objection.)

A. No, I would not.

4 Q. Mr. Kerr, when a note is sent to your Bank, by any bank, for collection, what records or entries appear on your books in connection with it?

(Same objection.)

A. We have, ordinarily, a letter of enclosure -- the letter enclosing the item. And within the past two or three years we have --- within the last year we have changed our system. We now have a register on which the note is registered, the date it has been closed, and the treatment, whether it has been protested or not.

5 Q. What I mean is, as I understood before, you said you credit the bank with that amount, when it is sent to you, even though the note itself has not been paid ---

A. No, we don't do that with every note we receive, because if we did - - -

6 Q. (interposing): Well, of course. But, in regard to this particular note, you credited the Bank of Suffolk?

(Same objection as last noted.)

A. I think the Farmers' Bank of Mansfield was credited on the 16th of November, and received it on the 13th, I think-- the 13th or 14th. I am not sure which.

7 Q. And when you received this One Thousand Dollar note, it bore the endorsement of Mr. Fergusson, without recourse?

(Same objection.)

A. My recollection is, the note, when it came, bore that,-- without recourse. If it didn't have it then it was supplied.

8 Q. Now, as I understand it, this note for Seventeen Hundred Dollars was the original note, and secured by a deed of trust on a farm (which was a notation made on the margin of the note) in Isle of Wight County?

(Same objection.)

A. I so understand.

9 Q. And that there was a curtail of seven hundred dollars made?

(Same objection.)

A. Yes, sir.

10 Q. And there was a note of One Thousand Dollars given on the same property?

(Same objection.)

A. Yes.

REGROSS EXAMINATION.

MR. NEILS: Without waiving right of exceptions heretofore noted, Counsel proceeds to re-examine the witness:

1 Q. You were asked your method of handling collection items?

A. Yes.

2 Q. Was this note in controversy,-- this one thousand dollar note,-- handled in the usual form of collections ?

A. It was handled in the form we are handling it now, Mr. Neils.

And further this deponent saith not.

-----000-----

W. T. FERGUSSON,

being duly sworn, deposes and says as follows on Direct Examination.

(NOTE. BY MR. NELMS): Counsel for W.T.Ferguson and Mrs. Pricilla Baker, before the taking of the deposition of H. M. Kerr, tendered to counsel for the National Bank of Commerce and Messrs. Betts & Hiden, the answers of W. T. Ferguson and Mrs. Pricilla Baker, with request of the Clerk of the Court, who is the Commissioner in this case, to file the same.)

1 Q. (BY MR. NELMS): State your name, age, residence and occupation?

A. W. T. Ferguson; age 61, Hampton is my residence.

2 Q. Mr. Ferguson, in the bill in this cause, it is alleged that you were secured by a deed of trust bearing date on the first day of May, 1905, executed by Harriett S. Elms and D. S. Elms, in the following amounts: to the extent of one note, payable one year after date in the sum of Seventeen hundred dollars, and Mrs. Margaret E. Purvis secured in the sum of Fifteen Hundred Dollars, payable two years after date; and you secured in the sum of Eight hundred Dollars, payable three years after date; and also to secure the payment of any note or notes that might be given in renewal, extension or curtailment of the said notes. These notes bore

interest from date. ^{still} Please state if you are the owner of the \$300.00 note ---

A. (interposing): Yes, I am.

2 Q. (Continued): And up to what date has the interest been paid, and has any interest ever been paid on the \$300.00 note?

A. Paid on the eight hundred dollar note up to the ~~first~~ date of the payment of the thousand dollars. But I don't remember just what date that was. I think - - -

3 Q. (interposing): Do you mean that interest was paid on the Eight Hundred Dollar note which you are secured?

A. I am not sure about that. It was in the Bank. But I think it was.

4 Q. Can you tell by looking at the note?

A. No, sir; I don't know whether I could tell or not.

5 Q. Have you any way of getting at the exact date the interest was paid on that note?

A. No, sir, except through the payment of the thousand dollars. I am confident, though, the interest was paid up to that date.

6 Q. You are confident the interest was paid up to the date of the payment of the thousand dollar note?

A. Yes.

7 Q. By that date, do you refer to the day on which the remittance was made for that note by the National Bank of Commerce, of Norfolk?

MR. BROOKE: Objected to as leading.

A. Yes.

8 Q. (BY MR. HELMS, continuing):
Mr. Fergusson, I want to ascertain, as nearly as I can, the date to which you have received the interest on the Eight Hundred Dollar note secured to you under the deed of trust from Mr. Elms and Mrs. Elms, - The date of the transaction to which Mr. Kerr has just testified as having been taken place in the National Bank of Commerce, that you called there in regard to the One Thousand Dollar note of Mr. Elms, and the date that he gave credit to the Farmers' Bank of Nauset is the 16th day of November, 1906. Now, have you received interest up to that date, or later than that?

A. Not anything later than that, but I am not positive up to that date. But if you will let me I will make you a statement of the whole seventeen hundred dollar note.

9 Q. We will come to that as we come along. Up to what date do you think you have received interest on that note?

MR. BROOKE: He said he had received interest up to the time the transaction in regard to the thousand dollar note took place in the National Bank of Commerce, which was the 16th of November.

10 Q. (BY MR. HELMS, continuing): Now, Mr. Fergusson, will you please give an account of your transactions in regard to the Seventeen Hundred Dollar note secured, and which I herewith hand you, to which is attached a Thousand Dollar, 90-day renewal note, - both of which have been filed with the Commissioner in this cause, with Mr. H. M. Kerr's deposition?

A. Well, when this \$1700.00 note became due, or a day or

two before it became due, Mr. Elms came to my house that night and seemed to be very much disturbed over the Seventeen hundred Dollar note. He said he had been to the Farmers' Bank of Nansemond, and that he wanted to renew it for a thousand dollars. Pay seven hundred dollars and interest, and renew it for three months for a thousand dollars.

BY MR. BROOME: All the testimony of Mr. Fergusson, in which he stated what Mr. Elms told him, is objected to on the ground of hearsay.

(BY MR. NEIMS, continuing):

11 Q. Had you discounted this note with the Farmers' Bank of Nansemond, or did you have it there in any other way?

A. There as collateral.

12 Q. Collateral on what?

A. My own note that I had given them.

13 Q. All right. Proceed with the history of the note?

A. And, as I started to explain, Mr. Elms wanted to renew it for one thousand dollars, and pay seven hundred dollars and interest. I told him that would be all right, that I would do it; and he renewed the note. And Mr. Jones, holding the seventeen hundred dollar note, as collateral, required that he still hold the seventeen hundred dollar note, and pin the other one to it, which was all satisfactory to Elms. And when the thousand dollar note became due he didn't pay it, and it went on so in that way for some little time; and I went up to see

Elms, and when I got there he was not there, but Mrs. Elms --- It was really her note, and I went to her especially, and she told me that the note would be paid before the next night, that Mr. Elms was then in Norfolk - - -

MR. BROOKE (interposing): Objected to. It seems to me to be hearsay.

WITNESS: It is no hearsay about that. It seems to me that is positive evidence on the subject.

MR. HELMS: Go ahead.

A. (Continued): She told me he was in Norfolk - - -

MR. BROOKE: One minute. Mr. Commissioner, I would like to have you pass on that.

(Commissioner overrules the objection, for the reason he desires all the information he can get on the transaction.)

A. (Continued): She told me that he was in Norfolk, and that he was making arrangements to pay the note, and it would be paid before the next night. When I got home that night Mr. Elms was at my house, and he told me he had made all arrangements to pay the note, and to please advise the Bank in Suffolk --- the Farmers' Bank of Mansfield, in Suffolk, -- to have the note sent down to the Bank of Commerce in Norfolk, which I done. I 'phoned Mr. Jones to send the note down there, -- not only to send that one, but he said he thought he had made arrangements to pay them both ---

14 Q. You hear Mr. Elms told you that ?

A. Yes. That is as well as I remember. I could not tell you positively, because it has been a long time ago. I don't know whether you can count it as evidence or not, but that is as well as I remember the transaction. But I came over to Norfolk with Elms the next day, and I think I saw Messrs. Betts & Hiden, and they were the parties who told me they were going to pay the money ----
(BY MR. BROOKE, interposing):

Q. What is that? Repeat that?

A. I came over here to Norfolk the next day and saw Messrs. Betts & Hiden, and they were the parties that told me were going to pay the money. And the note was sent down here.

MR. BROOKE: Same objection to that as last noted.

A. (Continued): And several days elapsed, as well as I remember ----

15 Q. (BY MR. NELMS, interposing): "Down here", where?

A. To Norfolk.

16 Q. The National Bank of Commerce?

A. Yes, sir. And Mr. Jones telephoned me again and said "These notes have never been paid", or "I have not gotten credit for them, and you had better come over and see the Bank of Commerce and see what has been done with them, and whether or not they are going to be paid, or if not, let them be returned to me.

(BY MR. BROOKE, interposing):

Q. What day was that interview with ----

A. (interposing): I could not tell you the date to save

my life. This was shortly before November 16th. I don't think it was more than a day or two, because I was acting on that. I generally try to attend to such things promptly when there is as much involved as it was with me; and I had borrowed money and was using that as collateral. So I came over here and saw Mr. Kerr.

(BY MR. NELMS):

17 Q. You mean Mr. Kerr, the Cashier of the National Bank of Commerce?

A. Yes. I think that was the first time I ever met him, though I am not sure about that. And he says, "Mr. Fergusson, the money is all right whenever Messrs. Betts and Hiden says 'pay it'". He says "The money is all right, and you better go down and see them, and if they say so it will be done right away." And I went up there and saw Messrs. Betts & Hiden, and one of them, which I think was Mr. Betts, as well as I remember, got in the elevator with me and went right down, and as I remember it, he said to Mr. Kerr: "It is all right, pay it". And that settled it, so far as that went. And I got a letter from Mr. Jones stating that the collateral note "has been paid".

MR. BROOKE: The testimony in reference to the statements contained in the letter is objected to until the letter is produced.

18 Q. (BY MR. NELMS, continuing): Have you that letter, Mr. Fergusson?

A. I have got that letter; yes.

19 Q. Let me have it, please?

A. Well, I have not got it with me, but it just said "the collateral note has been paid."

MR. NELMS: I will file the letter with the Commissioner. If you desire to examine him on that afterwards, you can do so.

20 Q. Nothing was said on that occasion by Mr. Kerr, or Messrs. Betts & Hiden, about your looking to them, was there?

A. No, sir.

21 Q. Did you have any occasion to write to any person in regard to the payment of this note after this conversation at the National Bank of Commerce between you and Mr. Betts or Hiden and Mr. Kerr?

A. No, sir. I promised Mrs. Baker, who was interested in the affair, the day I went to see Mrs. Elms, that if my note was paid I would write her immediately, and when I got home, she says "Don't forget that, because that is of interest to me". And I sat down and wrote her that my note had been paid, and she need not give herself any uneasiness." I thought the note was perfectly good then.

MR. BROCKE: Same objection as last noted.

A. (Continued): This eight hundred dollar note, - I did not state that part. The day I saw them here, when they paid the one thousand dollar note, they asked me to let it remain there and not have it sent back, - they expected to take up the eight hundred dollar note. But that staid here thirty days, I think, before it was ever sent back.

22 Q. Who told you that?

A. Mr. Hiden, or Betts, I don't remember which.

23 Q. One or the other of them told you to let it stay there, on the day the \$1,000. note was paid?

A. To let the note stay here at the National Bank of Commerce, they expected to make arrangements to pay the note. Not only that, but all of the notes. ✓

24 Q. What is that?

A. Not only that, but all of the note.

25 Q. Mr. Fergusson, you have been present this morning at the taking of the deposition of Mr. H. M. Kerr?

A. Yes, sir.

26 Q. The Cashier of the National Bank of Commerce?

A. Yes, sir, of Mr. Kerr. Well, I was here pretty near all the while. I stepped out just a minute.

27 Q. You heard ~~xxx~~ ^{his} testimony in regard to the negotiations which he had with Messrs. Betts & Hiden, exclusive of the date to which you have just referred, as to what took place, and the day the thousand dollar note was paid, and his negotiations with Mr. Ellibtt and his conversations with Mr. Elms. Please state whether or not you had any knowledge whatever of any of these conferences or any of this negotiating?

A. Any of what?

28 Q. State whether or not you had any knowledge whatever of any of these conferences, between any of these parties prior to the payment of this note?

A. I ~~didn't~~ ^{didn't} know anything in the world about any of their

meetings, until Mr. Betts remarked that day that they were trying to make a deal with Mr. Elms, or had made it previously, but it had not been fully signed up.

29 Q. And I asked you if you had any knowledge of any of these conferences to which Mr. Kerr has testified?

A. I have not.

30 Q. You were not informed about anything which transpired in regard to the matter, and you know nothing except about what occurred on the 16th, except what you have testified to?

A. That is all I know anything about.

31 Q. Mr. Fergusson, have you related the entire conversation--- Did Mr. Kerr, on this 16th day of November, when you say the Bank paid the note, or the note was paid at the Bank,--were you acquainted at that time with any of the facts touching the negotiations to which Mr. Kerr has testified as having been had with Mr. Betts and Hiden and Mr. Elliott?

A. I don't know anything about it at all.

32 Q. All you know is what you have testified to?

A. That is all I know.

CROSS EXAMINATION.

(BY MR. BROOKE):

1 Q. Mr. Fergusson, this note of one thousand dollars,--this renewal note is endorsed by you without recourse?

A. I don't know who put that on there.

2 Q. Who put it on there?

A. I could not tell you to save my life.

3 Q. You didn't put that "without recourse" on there?

A. No, I didn't do it.

4 Q. Mr. Fergusson, you say that note has been paid?

A. The way I understand, it has been paid. I got my money for it.

5 Q. Will you look on that, and see if you can see anything on there which would indicate it has been paid, or stamped paid, or anything?

MR. NELMS: Objected to as the note speaks for itself.

A. No.

6 Q. (BY MR. BROOKE, continuing): Mr. Fergusson, I believe you have testified that you sold this piece of property to Harriett S. Elms ---

A. Yes, sir.

MR. NELMS : Objected to, not because counsel is not stating what the witness testified to, but the record speaks for itself, and is the best evidence.

7 Q. (BY MR. BROOKE, continuing): Mr. Fergusson, I think I understood you to say that Mr. Betts had told you that this thousand dollar note was not paid?

A. That Mr. Betts told me so.

8 Q. Yes.

A. No, sir, you misunderstood me. I told you I went there with Mr. Betts, to the Bank, and he told Mr. Kerr that it was all right and to pay it. And Mr. Kerr had told me, before I went after him, that was why he concluded that the money was all right, just to be ordered by Messrs.

Hiden and Betts.

9 Q. Well, you don't know whether it was ever actually paid or not?

A. I know my account was credited up with it. I know that much.

10 Q. Your account where?

A. At the Farmers' Bank of Mansfield.

11 Q. Well, Mr. Fergusson, as a matter of fact, when one bank sends a note to another bank for collection, does not the bank which receives the note credit the other bank with that amount?

MR. HELMS: Objected to as irrelevant and immaterial.

A. Certainly it does.

12 Q. (BY MR. BROCKE, continuing): So, in that event, you would have gotten credit for it whether the note had been paid or not?

(Counsel for Fergusson notes the same objection as last above.)

A. No, sir; not ~~xxxxxx~~ at all. Mr. Jones would never have credited it until the note had been paid.

13 Q. He would not have credited it until it had been paid?

(Same objection.)

A. No, sir.

(BY COMMISSIONER JOHNSON):

Q. Mr. Fergusson, you stated just now that you were told to leave the eight hundred dollar note there, and they expected

to pay it shortly. Who told you ?

- A. Messrs. Betts & Hiden. Mr. Betts as well as I remember.
I don't say positively.

REDIRECT EXAMINATION.

(BY MR. WELMS):

- 1 Q. Mr. Fergusson, was Mr. Elliott the attorney for Betts & Hiden, present at the conversation between you and Mr. Kerr and Mr. Betts or Mr. Hiden, whichever it was, on the day of the payment of the note?

A. No, sir.

- 2 Q. Do you know Mr. Elliott?

A. I have met him some two or three times, I believe, but I don't believe I would know him if I saw him now.

- 3 Q. You know that he was not there on that occasion that day?

A. He was not there that day.

RECROSS EXAMINATION.

(BY MR. BROCKE):

- 1 Q. If you don't know him, Mr. Fergusson, how do you know he was not there?

A. Well, he didn't come in in the conversation, any way.

- 2 Q. Well, would you say he was not there?

A. No, he was not there.

- 3 Q. You base your statement that he was not there simply from the inference that he didn't say anything?

A. I am speaking of the time we were there discussing the matter. He was not there unless he was back in the back

part of the Bank some where. He was not there when I got Mr. Kerr and Mr. Betts to go down there. If I remember right he just came and went and told him. He was standing, I think, in the aisle.

(BY MR. HELMS):

Q. You three were all the persons there?

A. We were the persons there at the time I was there. I don't say he was not back in the Bank. He may have been in the Bank.

and further this deponent saith not.

The further examination into this matter is here adjourned to the 3rd day of September, to meet at such place as may be agreed upon.

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Stenographer's fee \$17.50.

Depositors of
H M Kera
W J Ferguson

24 July 1908

Baker, Trustee, vs. Fergusson et als.

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The witness, W. H. Jones, Jr., being duly sworn, deposes and says:

By Mr. Nelson
Question- Please state your residence and occupation?

Answer- Suffolk, Va. Cashier of the Farmers Bank of Mansomond.

Q. You are W. H. Jones, Jr.?

A. Yes.

Q. Mr. Jones, Mr. W. T. Fergusson has testified in this suit that he deposited with you, as collateral security, a note for seventeen hundred dollars (\$1700.00) executed by Harriet S. Elmes and B.S. Elmes, which note was afterwards reduced to \$1000.00. Will you please state your connection with this note and what became of it?

A. According to our records, and my recollection, this note was pledged to the Farmers Bank of Mansomond as collateral security for a loan made by it to Mr. W. T. Fergusson, on November 12th., 1906. We forwarded the note for collection-

(Counsel for the National Bank of Commerce objects to witness testifying that the note was sent to the National Bank of Commerce for collection, as the endorsement on the note has its own legal effect, and objects to witness trying to vary it by parol testimony.)

On November 12th., 1906, our records show that we sent this note to the National Bank of Commerce for collection, and on November 17th. we charged the amount plus \$32.57 interest collected on same to the National Bank of Commerce, having received from that bank credit advice under date of November 16th. The amount was then placed on our books to the credit of the collateral account of Mr. W. T. Fergusson, which amount was afterwards applied to Mr. Fergusson's regular account, out of which he had paid the amount due the bank.

Q. You say that you received credit advice from the National Bank of Commerce concerning this note. What do you mean by Credit advice?

A. It is an acknowledgement of the payment of the item and the disposition of the proceeds.

Q. Have you the memorandum or letter of advice from the National Bank of Commerce concerning the collection and disposition of this fund?

A. I have.

Q. Will you please file that letter with your deposition?

A. This is my record and I do not care to part with it, but will file a copy.

(It is agreed that the copy may be received in lieu of the original and be herewith filed as "Exhibit A." with Mr. W. H. Jones, Jr's deposition.)

Q. I note that on the bottom of this letter of advice there is a memorandum in regard to another note. I will simply ask that a copy of the whole be filed as a part of your evidence?

A. I will do so.

Q. Mr. Jones, what do the words, "For collection" mean in your dealings between you and the Bank of Commerce in this sentence which appears on this sheet of paper, "Exhibit A", above mentioned?

A. "You are credited as proceeds for collection all items as stated below". ?

A. (Counsel for the National Bank of Commerce objects to witness testifying as to the meaning of "For collection" as it has a well established meaning in law, and needs no interpretation.)

A. In forwarding items to corresponding banks all that are not taken as cash and included in the cash items are listed for collection, and separate advices are expected on each item so listed.

Q. Do I understand that this memorandum "Exhibit A", your letter, is an acknowledgement concerning collection items rather than cash items? Is that correct?

A. It is.

Q. I notice on the left hand margin these words- "Your No. or date", and beneath that- "11/12 41155"; extended into the next column- "H. S. Elmes, etc." Please tell me what these numbers "11/12 41155" mean?

A. It means the date of the letter enclosing the item, and the collection number appearing on the item itself. That collection number refers to our record and is for the convenience of the bank to which the advice is sent.

Q. I understand then that the number "41155" is your number of the item, and that the "11/12" is the date of the transmission by you ^{to} ~~and~~ the National Bank of Commerce?

A. That is right.

Q. Then, as I understand it, the date that this item was sent to the National Bank of Commerce was the 12th. day of November, 1906; that the Bank of Commerce reported on it on the 16th. day of November, 1906, and that it was received by you, according to the memorandum filed, on November 17th., 1906?

A. That is correct.

Q. For what purpose did you send this note to the National Bank of Commerce?

A. We sent it for collection.

(Same objection as taken above)

Q. Did you sell this note to the National Bank of Commerce or to any other person or corporation?

A. We did not.

(Same objection)

Q. Will you kindly file with your deposition a blank form of collateral note used by you during the past four years?

A. I will file the note in common use today, which I believe to be substantially the same that has been in use for several years, although I am not positive as to whether any changes have been made.

Q. Please state whether or not Mr. Fergusson had any past due paper in your bank from the 11th day of November, 1906 to the 18th. day of November 1906?

A. I have looked over-

(Counsel for the National Bank of Commerce
objects to the question as immaterial and
irrelevant)

A. I have looked over our records, and to the best of my knowledge and belief he did not at that time have any past due note.

Q. Between these dates, or concerning any of Mr. Fergusson's collaterals due at this time did you call upon Mr. Fergusson for any additional collateral for his loan he had from you?

A. I do not recollect, but I am under the impression that we did not.

Q. Did you ever sell any collateral to any person or corporation left with you as collateral security for any loan by Mr. W. T. Fergusson or Mrs. E. L. Fergusson?

(Same objection as first taken)

A. I have no recollection nor do our records show that we sold any collateral pledged to this bank by Mr. W. T. Fergusson or Mrs. E. L. Fergusson.

CROSS EXAMINATION BY MR. BROOKE.

Q. Mr. Jones, the note for \$1000.00 at present bears the endorsement of W. T. Fergusson without recourse- Did the note bear that endorsement when handed to you by Mr. W. T. Fergusson?

(Objected to as immaterial and irrelevant and not ~~is~~ responsive to any matter brought out on examination in chief.)

A. I am confident that it did not; otherwise I would not have accepted it as collateral.

Q. Mr. Jones, did this note after it was deposited with you by Mr. Fergusson ever come into Mr. Fergusson's possession again?

A. I should think not. It appears to have continued in our possession.

---Without waiving any right or exception heretofore taken, counsel for Mr. Fergusson and Mrs. Baker proceeds to re-examine the witness---

Q. You have stated, Mr. Jones, that you are confident you did not receive the note in question bearing the words "Without recourse". Is that from your particular memory of this particular transaction, or do you make this statement from your general practice in regard to these matters?

A. I make it from my general practice with regard to acceptance of collateral for notes, and not from any particular recollection of this particular transaction.

Further this deponent saith not.

W. H. Jones

R. Y. Baker

vs.

W. T. Fergusson, et al.

Depositions. *Proposed*

*Elbert White
Proculla Bates
JA Bates*

19 Nov 1908

In the Circuit Court, Isle of Wight County, Virginia,
R.Y. Baker, Substituted Trustee, against W. T. Fergusson
and others.

The depositions of Priscilla Baker and others taken before
me, Waverly Thomas, a Notary Public, in and for the County of
Isle of Wight, Virginia, pursuant to agreement by Counsel at the
office of George K. Nelms in Smithfield, Virginia, on the 19th
day of November, 1908.

Present: H. Lawrence Brooke,

Counsel for the Natl. Bank of Commerce, of Norfolk.

J. Gordon Bohanan,

Counsel for Substituted Trustee.

E.H. Williams,

Counsel for Mrs. Agnes L. Turner.

W.J. Nelms,

Counsel for W. T. Fergusson and Mrs. Priscilla Baker.

WITNESS: Elbert White (Colored)

(BY BOHANAN.)

- 1 Q. What is your name, age and residence?
A. Elbert White; about 43 years; on Mr. Elms land that was.
- 2 Q. Are you at present renting this property?
A. Yes sir.
- 3 Q. From whom?
A. Mrs. Agnes L. Turner.
- 4 Q. How long have you been renting this property from Mrs.
Turner?
A. From the second month after Xmas., this year. She told
me then she did not have any right to it until she saw
the parties and looked further on.
- 5 Q. Have you any receipts from Mrs. Turner showing the pay-
ments of this rent?
A. No more than the receipts of my rent.
- 6 Q. Have you got these with you?
A. Yes sir. (Witness here hands four (4) receipts signed by

Mrs. A. L. Turner to the Attorney)

- 7 Q. I have here four (4) receipts signed by Mrs. A. L. Turner, dated, one on the 29th of January, 1908, one on the 23rd of May, 1908, one on the 21st of August, 1908, and one on the 31st of October, 1908. Please state whether or not these receipts were given to you by Mrs. Turner for payments made by you on property which you rent from her?
- A. Yes sir.
- (RECEIPTS referred to above are marked E. W. 1,2,3, & 4 are here filed)
- 8 Q. Are you familiar with the boundaries of the Purvis, Doyle and Elms tract of land in this County?
- A. Yes sir.
- 9 Q. Is the house or lot of land which you rent from Mrs. Turner a part of this tract of land?
- A. Yes sir.
- (BY NELMS)
- 1 Q. You said something about Mrs. Turner telling you she could not rent you the property until she saw something further. What do you mean by that?
- A. She told me she did not know exactly what she could do about renting this property until she could see further on.
- 2 Q. When was that conversation?
- A. Before I rented it from her at all.
- 3 Q. How long have you been living in this house?
- A. Since last year in March.
- 4 Q. You first rented from Mr. Elms?
- A. Yes.
- 5 Q. How came you to say anything to anybody about your rent?
- A. Miss Agnes had bought the place then I wanted to know how could I rent it.
- 6 Q. Was that before Xmas., or afterwards?
- A. Afterwards.

7 Q. How long after that conversation was it before she rented the place to you?

A. About a month.

8 Q. Did she then come to you or did you go to her about it?

A. She sent for me.

9 Q. What did she tell you on that occasion?

A. She told me I could stay there and take care and look after the place for \$1.50 a month.

10 Q. Did you accept those terms?

A. Yes.

11 Q. Did you stay there?

A. Yes.

12 Q. Did you look after the place?

A. I did all I could.

(Exam. by MR. WILLIAMS)

13 Q. Did anybody else live on the place?

A. Yes, another family.

14 Q. How long have they lived there?

A. Over two or three years.

15 Q. Are you a farmer?

A. No sir.

16 Q. Has the land been cultivated this year?

A. No sir.

17 Q. Do you keep up the fences?

A. No sir.

18 Q. Do you look after the Brick kiln?

A. Yes sir'

19 Q. And the fences are all broken up and not attended to?

A. No sir.

MR. NELMS: Objected to as immaterial and irrelevant and not responsible to anything brought out in direct Exam.

20 Q. At the time you had been living there with Mr. Elms, a year and a half; when did they leave?

A. I think they went away a little before Xmas., about a month.

21 Q. As I understand it you were living there on the place when it was sold and when Mr. Elms left nobody was looking after things there?

A. No more than what I did.

22 Q. Mrs. Turner having bought the property came to you and told you she did not know whether she had the right to rent it to you or not and that you could stay there and look after it until she could find out whether she had the right to rent the place to you or not?

A. Yes sir.

(REDIRECT EXAM. BY J. G. BOHANNAN)

1 Q. You have said something about the depreciation and value of this property in your cross-examination, is it not true that some of the property that was on this place was taken away by Mrs. Turners' order?

A. It was sir.

2 Q. Did you take it away?

A. Yes sir by her orders. I took away belts and things I could get loose from there, I took home to take care of.

3 Q. When was this, Elbert?

A. In the same month I rented the place.

WITNESS, PRISCILLA BAKER, being duly sworn, deposes and saith as follows:

1 Q. What is your name?

A. Mrs. Priscilla G Baker.

2 Q. You are the wife of Mr. J. A. Baker?

A. Yes.

3 Q. Do you hold a note dated the first day of May, 1905, drawn by Harriet S. Nelms and payable to the order of Margaret E. Purvis, payable two (2) years after date, with interest from date and secured by Deed of Trust

from H.S. Elms and B.S. Elms of even date therewith to N. F. Young, Trustee; the land being situated at or near Fergusson's Wharf, Virginia?

A. Yes.

4 Q. On or about November 10, 1906, did you have any conversation with Mr. W. T. Fergusson with reference to the payment of the \$1,000. note, balance due him by H.S. Elms and secured by that same Deed of Trust as your note, the same being the balance of the \$1200.00 note payable one year after date; and also with reference to your own note, if so, please state the substance of that conversation?

(COUNSEL for the Natl. Bank of Commerce objects to witness testifying as to this conversation as it is purely heresay.)

A. Mr. Fergusson was up in behalf of our note, Elms had not settled the note. Mr. Fergusson saw Mrs. Elms and Mrs. Elms promised to meet him in Norfolk on a certain day. Mr. Fergusson wrote me it had been paid in full and that my note was all O. K. which was the next one due.

(COUNSEL for the Natl. Bank of Commerce objects to witness testifying as to the contents of the letter as the letter is the best evidence and asks that this testimony be stricken out)

5 Q. Mrs. Baker have you this letter to which you refer?

A. No I have not.

6 Q. Have you looked for it?

A. Yes, I looked for it?

7 Q. Did you find it?

A. I did not.

8 Q. Where is it?

A. In ashes I reckon.

9 Q. I understand then, that Mr. Fergusson told you that Mrs. Elms had informed him that she would meet him in Norfolk; do you remember whether or not the time that you received the letter from Mr. Fergusson saying that the note had been paid and that your note was O. K. whether or not the time that you received the letter was about the time that Mrs. Elms was to meet Mr. Fergusson in Norfolk?

A. It was after the time she met him in Norfolk. I got the letter the same week.

10 Q. Did Mr. Fergusson in his letter say whether or not Mrs. Elms met him according to her appointment?

A. Yes sir.

(COUNSEL for the Natl. Bank of Commerce makes same objection as above)

11 Q. Do I understand that Mr. Fergusson came up to Fergusson's Wharf when you had this conversation with Mr. Fergusson in reference to the note due him by Elms or the note due you by Mrs. Elms?

A. He was interested in the note due him.

12 Q. Had he anything to do with your note?

A. No.

13 Q. How came Mr. Fergusson to write you anything about your note then?

A. Because he said that if his note was paid in full, the balance was good for your note and mine was the next note due.

.(COUNSEL for the Natl. Bank of Commerce objects on the grounds that the testimony of witness is heresay.)

14 Q. Did you make any request that he write you?

A. Yes sir.

15 Q. What was your request?

A. To write me if Mrs. Elms paid him.

16 Q. Do you remember about when this occurred?

A. I do not.

- 17 Q. Did you instruct Mr. R.Y. Baker, Substituted Trustee, to sell the property?
- A. Yes.
- 18 Q. Were you present at the sale?
- A. No.
- 19 Q. Did you have any person there representing you?
- A. Yes.
- 20 Q. Who was this person?
- A. J. F. Purvis.
- 21 Q. He is your ~~step~~-father?
- A. Yes.
- 22 Q. Did you give him any instructions as to the amount he was to bid?
- A. Yes.
- 23 Q. What were those instructions?
- A. \$3,300.
- 24 Q. Had you believed that the note of \$1,000. which Mr. Ferrgusson wrote you had been paid, had not, in fact, been paid, and the same was still a lien upon this property would you have bid a higher price?
- A. I would.
- (COUNSEL for the Natl.Bk.of Commerce objects on the ground that the testimony is leading)
- 25 Q. How much more would you have been willing to pay?
- A. \$4,500. Forty-five hundred dollars.
- 26 Q. The land in question was sold by Baker for \$4,025.00 which included Mr. Warren's lien; did your bid of \$3,300. include the Warren lien or in addition to the Warren lien?
- A. It included the Warren lien.
- 27 Q. Do you mean by that, that you were willing to pay simply the \$3,300. for the property and also pay the Warren lien or that you were willing to pay \$3,300.?
- A. We were willing to pay \$3,300. for the property.

- 28 Q. What was your object in bidding \$3,300.?
A. Simply because I wanted to pay it.
- 29 Q. Was that amount bid with any view of protecting your note or simply because you wanted the farm?
A. Of protecting my note.
- 30 Q. Did you know anything or not about a claim at that time claimed to have been held by the Natl. Bank of Commerce of Norfolk?
A. I did not.
- 31 Q. Had you known that there was a claim held by the Natl. Bank of Commerce of Norfolk against this property, amounting to \$1,000. would you have increased your bid or not?
A. I would if I had known there was that against it.
- 32 Q. Was your husband, J.A. Baker, in attendance upon this sale?
A. No.
- 33 Q. When you gave your step-father these instructions was Mr. J A Baker present?
A. Yes sir.
- 34 Q. What would have been your object in running the property up and bidding more had you known of the claim of the Natl. Bank of Commerce.?
A. To have protected my note.
- 35 Q. Would ^{you} have run the property up sufficiently high enough to protect it had you known of this claim?
A. I would.
- 36 Q. Did you have any knowledge of this claim of the Natl. Bank of Commerce?
A. No.
- 37 Q. When did you first learn of that?
A. When they could not give Miss Agnes a deed.
- 38 Q. About what time has interest been paid on that note?
A. November 1st, 1906.

39 Q. Do you know who has been in possession of this farm for the year 1907- and 1908?

A. The Elms in 1907 and 1908 this year Miss Agnes has it.

40 Q. How do you know that Mrs. Turner has been in possession of it?

A. Simply by renting.

41 Q. How do you know she has rented it to tenants?

A. I have heard her say that she rented it.

42 Q. Do I understand you to say that you heard Mrs. Turner say she was renting it?

A. Yes.

43 Q. Which place on the property did she tell you she had rented?

A. The dwelling house and a tenement house to Elbert White.

CROSS EXAM: BY MR. BROOKE-

1 Q. Mrs. Baker when you say that you did not know anything about the note held by the Natl. Bank of Commerce, you mean, I presume, that you did not know that the Natl. Bank of Commerce was the holder of the \$1,000. note you do not mean to say that you did not know that this \$1,000.00 note was one of the three notes secured by the Deed of Trust to N. F. Young?

A. I did not know there was any note but my note and Mr. George Warren's note and the \$800.00 note, balance due Mr. Fergusson.

2 Q. All the information that you have on the subject as to whether or not the \$1,000. note now held by the Natl. BK. of Commerce had been paid was derived from either conversation or letters from Mr. Fergusson?

A. Mr. Fergusson did not write me anything about a note being due the Natl. Bank of Commerce.

3 Q. What note was it that Mr. Fergusson went to Norfolk to see about?

A. Mr. Fergussons's \$1700. note.

4 Q. Now Mrs. Baker, all the information that you have in reference to the payment of the \$1700. note was derived either from conversation with or letters from Mr. Fergusson?

A. Yes, he wrote me so.

(BY MR. WILLIAMS:)

1 Q. You said something in your direct examination that they could not give Mrs. Turner a deed, do you know the reason why they could not or did not give Mrs. Turner a deed?

A. They said it was down at the Bank of Commerce with the note.

(MR. NELMS: Objected to as irrelevant and immaterial)

2 Q. Who said that?

(SAME OBJECTION)

A. I do not know, it was said at the CourtHouse the day of the sale.

3 Q. You were not at the CourtHouse?

A. No.

4 Q. Whom did you hear say they could not give a deed to Mrs Turner on that account?

A. Mr. R Y Baker and Mr. Purvis told me the deed could not be given on account of some dispute with the Natl. Bank of Commerce.

(MR. NELMS: Objected to as heresay)

5 Q. It must have been sometime after the sale when you heard Mr. Baker and Mr. Purvis make this statement, can you not refresh your memory and tell us about what time that you heard this statement made?

A. I do not remember.

6 Q. You also knew that Mrs. Turner was demanding a deed and was ready to comply with the terms of the sale?

A. No.

7 Q. Were you one of the parties who claimed that the farm did not sell for enough and who offered to put in an up set bid?

A. No sir.

8 Q. When have you seen the Elms farm?

A. This morning.

9 Q. Is the farm worth as much to-day as it was a year ago?

A. No.

(BY NELMS: Question objected to as not responsible ^{NS} in the matter of the examination in chief.)

MR. J A BAKER, being duly sworn, deposes and saith as follows:

1 Q. You are the husband of Mrs. Baker, are you not?

A. Yes.

2 Q. Were you present at any conversation between Mr. W T Fergusson and Priscilla Baker with reference to the \$1,000 note due by Mrs. Elms secured by Deed of Trust on the farm in controversy?

(BY BROOKE: Objected to on the ground that witness answer is based entirely upon heresay)

A. No.

3 Q. Have you seen any letter from Mr. Fergusson to Mrs. Baker with reference to this \$1,000. note due by Mrs. Elms?

A. Yes, I have seen a letter.

4 Q. State the substance of that letter?

(BY BROOKE: Objected to on the ground that the letter is the best evidence)

A. As near as I recollect the wording of the letter was that Mr. Fergusson had received this \$1,000. and that my wife's claim was all O. K.

5 Q. Were you present at the conversation between your wife and her step-father, Mr. Purvis, when instructions were given as to the bidding of this place?

A. Yes.

6 Q. What instructions were given?

A. I do not remember exactly the amount, it was somewhere between \$3,300. and \$3,500. We estimated that amount would cover all the three notes.

7 Q. State what three notes?

A. Mr. George Warrens' note of \$1200.00 without interest, Mr. Purvis note of \$1500.00 without interest and Mr. W T Fergussons' note of \$800. not due at the time of sale.

8 Q. Was any estimate made as reference to the cost?

A. No, just made that bid.

9 Q. Was anything said at that time about any additional amount being bid?

A. No sir.

10 Q. Mr. Baker, I hand you a letter marked J.A.B. and ask if you received that letter from Mr. Fergusson? *Letter filed as exhibit*

A. I did.

DIRECT EXAM. BY J. Gordon Bohannon, Counsel for the Trustee:

1 Q. Mr. Baker how far do you live from the Elms' property mentioned in these proceedings?

A. The house I live in is fifty (50) yds., from the boundary line; the property adjoins.

2 Q. Who has been in possession of this property since January 1st, 1908?

A. Mrs. Turner.

3 Q. What acts of ownership has she done with reference to this property?

A. She has rented out places on it and she tried to rent the land out.

4 Q. Who are the tenants of these places?

A. She rented the dwelling house to W A Brown, fisherman, J.A. Jones, who was a driver at that time for Coleman Bros.

the dwelling house is now rented to B. C. Carnean, and the tenement house to Elbert White, he has had possession all the yr.

5 Q. Do you know of your own knowledge that these houses were renting to the parties whose names you have mentioned by Mrs. Turner?

A. I do, she told me she had rented them.

6 Q. Has any property been moved off the premises since the 1st of Jan., this year?

A. Yes, but it is only heresay; Mrs. Turner told me she had all belts &c. removed from the brick kiln, and some wire moved off the place and carried up to her house for safe keeping.

7 Q. Are you familiar with the terms under which this property was sold?

A. I do not know what was announced at the Courthouse.

8 Q. What was your understanding of the terms of this sale prior to the day of this sale?

A. That it had to bring as much as \$3300. cash to cover the notes then due, and to cover the cost of the sale.

9 Q. Do you know when and how he preferred payments to be made?

A. NO, I do not know.

MR. R Y BAKER, being duly sworn, deposes and saith as follows:

1 Q. What is your name and residence?

A. R.Y. Baker; near Surry Courthouse.

2 Q. Are you the same Mr. R Y Baker mentioned in this suit and the Substituted Trustee in the Deed of Trust referred to?

A. I am.

3 Q. At whose request did you sell this property?

A. At request of Mrs. J A Baker and Mr. Geo. Warren.

4 Q. Do you recall the date of the sale, Mr. Baker?

- A. December 2, 1907.
- 5 Q. Who purchased the property?
- A. Mrs. Ages L. Turner.
- 6 Q. At what price?
- A. \$4,025.
- 7 Q. You were, of course, present at the sale?
- A. I was.
- 8 Q. Please state what were the terms of that sale?
- A. \$3,300. cash, the balance, or the \$800. note, to be paid when due, which became due in May. I mean the \$800. note held by W T Fergusson.
- 9 Q. Do you know what notes were embraced in the \$3,300. which were to be paid cash?
- A. Mr. Geo. Warrens' note of \$1200. and Mrs. Purvis note of \$1500.00.
- 10 Q. I now hand you a Deed ~~of~~ dated September 1st, 1908, signed by R Y Baker as Substituted Trustee, conveying the property mentioned in this suit to Agnes L. Turner, please state whether or not you signed this deed and whether or not on the day mentioned therein?
- A. Yes, I did sign it on the first of Sept. 1908.
- 11 Q. Do you know what was done with this deed that you signed?
- A. I do not.

BY consent of E.H. Williams, Counsel for Mrs. Agnes Turner, it was made to appear of record that on the 3rd of Sept. 1908, Counsel for R.Y. Baker, Substituted Trustee, wrote Mr. Williams as follows: " Mr. E H Williams, Smithfield, Va. Dear Sir:

The deed for the Elms property has been duly executed, and I have it in my possession ready for you. Let me know about what time you expect to be ready to pay the consideration, \$4,025.00, and I will send the deed

to the Merchants and Farmers Bank to be held in escrow until the money is paid. I do this because a part of the money is to be deposited in that bank. "

Yours truly,

And that in response to the letter from him, dated Sept. 14th, 1908, this deed was forwarded to the Merchants and Farmers Bank of Smithfield to be held in escrow until the sum of \$4,025.00, the purchase price of the property, was paid, the deed being sent to the Bank on the 15th of September.

(BY MR. WILLIAMS:)

- 1 Q. Mr. Baker, the terms of the sale was that the cash payment was to be made upon the delivery of a good deed, is that true?
A. Yes, upon delivery of the deed.
- 2 Q. The delay in this matter was not in any manner occasioned by Mrs. Turner failing to comply with the terms of the sale, was it?
A. The delay has been occasioned by Mrs. Turner on several occasions, by her failing to sign and return papers to my Atty.
- 3 Q. What papers?
A. The paper that you sent about the deed.
- 4 Q. Didn't Mrs. Turner or her Attorney, on the day of this sale tell you as Trustee, that just as soon as you executed the deed to her that she would comply with the terms of the sale?
A. Mrs. Turner said she would not be ready until the 15th of December, that she had a note to be paid on the 15th of Dec.
- 5 Q. And on that day she would be willing to comply with the terms of the sale?
A. Yes.
- 6 Q. Is it a fact or not that you did not execute this deed to

Mrs. Turner, because there had been some threats by parties interested in putting in an up-set bid?

- A. It was on account of a dispute about the notes rather than upon an up-set bid.

(REDIRECT EXAM. BY J. GORDON BOHANNON:)

- 1 Q. Under whose advice were you acting in not executing this deed before the rights of the several note holders had been ascertained?

- A. Under the advice of Mr. J. Gordon Bohannon, my Attorney.

AND further this deponent saith not.

Signature waived by consent of Counsel.

STATE OF VIRGINIA,
COUNTY OF ISLE OF WIGHT, TO WIT:

I J. Waverly Thomas, a Notary Public in and for the County aforesaid, in the State of Virginia, do certify that the foregoing depositions of Mrs. Priscilla Baker, R.Y. Baker, J. A. Baker, and Elbert White, were duly taken before me, stenographically, in my presence, and afterwards reduced to writing, at the time and place in the caption thereto mentioned, and for the purpose therein stated. And I further certify that the signatures of the witnesses to said depositions were waived by counsel.

GIVEN UNDER my hand 2nd day of November, 1908.

J. Waverly Thomas

NOTARY PUBLIC.

*Depositions
of Mrs. M. J. Baker \$7.00
T. & B. by Helms & M. M.*

4

4

By Baker, Esq

3

is of Depositions

H. T. Ferguson et al

Filed 1/19/1909

Jas A Baker
By Baker

4

Mr James A Baker having been
formerly sworn, was recalled and
deposed as follows.

Quoted by J. E. Bohannon.

Mr. R. Y. Baker has stated, that about
the last of December 1907, or the 1st of
January 1908 - he sent Mrs Turner a
message by you to take possession of
the Elms property, and that he
(R. Y. Baker) would give her (Mrs Turner)
the deed as soon as the matter was
straightened up with the other parties
interested, please state whether or not
this is true; and if so whether or not
you delivered this message to Mrs Turner;

(A.) by Mr Baker.

Yes; I do not remember whether
it was about the last of December, 1907 or
the first of January 1908 I delivered
the message from R. Y. Baker to
Mrs Turner.

(Q.) Did she, ^{with the} or not take possession
soon thereafter?

(A.) She did.

Q, What, in your opinion, is a fair annual rental value of the E. E. property?

(Deuster objected to by Mr. Miller for its reason ~~insufficient~~ that the answer would be irrelevant or immaterial.)

~~No reply~~

A., About one hundred and seventy five (\$175) - Dollars.

Q. Are you, or are you not at present, renting a portion of the property from Mrs. Turner? and if so please state when you rented, how many acres, for what consideration and whether or not there is any house on the part so rented by you?

A. Yes, I have rented about twenty two acres, sometime in November 1908 for fifty dollars per annum. There is no building upon the part I rent.

Deuster by Mr Williams.

Mr Baker. did you not sometime during the month of February or March, 1908. deliver to Mrs Turner a message either from the trustee or his Atty. telling her not to have anything else to do with the property as an upset bid was expected to be made by Mr Ferguson and others?

(A) I did not.

(Q) Did you at any time deliver, or cause to be delivered to Mrs Turner such message, or one similar thereto

(A) I did not.

(Q) Was this place cuttivated during the year 1908-?

A. No.

84

(2) Was the place rented out during the first part of 1908 - or any part thereof?

"Q" Yes. The house was rented to Jim Jones and W.A. Brown, and one tenent house was rented by Elbert White.

2. Mr Baker, as a matter of fact, just after you delivered Mr R.G. Baker's message to Mrs Turner, the farm was rented out to different parties for the year 1908? and these parties left the place sometime about the latter part of February or the first of March 1908? is this so?

(A) I do not know.

(2) Do you know, whether or not any tenents left in or about this time?

(A) I do not.

Q. who were the tenants upon this place the 1st of March 1908?

A. I do not know.

Q. were there any tenants upon the place at that time?

A. I do not remember of any except Elbit White.

Q. Elbit White did not cultivate any land, did he?

A. Not that I know of.

Q. Is it not generally understood among land owners, that in order to make six per cent upon their money, they must receive enough from the rental of their land to amount to 10 per cent. for their money invested?

Objected to by Council for Trustee

6

on the ground that it is immaterial
and immaterial, and that the
proper foundation therefor has not
been laid,

(A), I do not know,

(Q), If I pay 1000 Dollars for a farm
what rental should I receive for
a year to enable me to clear 6
per cent on my investment, &

Objected to for reasons above stated,

(A), I do not know,

2. Then you are not qualified to say
what rent Mrs. Turner should receive
per year, in order to make 6 per
cent on her investment, & are you

(A), No.

Q. You would not be willing to give 50 Dollars for the rent which Mrs Turner received for this place during the year 1908. would you?

(Objected to by Counsel for trustee. as the ground that it is irrelevant and that it is not shown in evidence that the witness knew how much Mrs Turner received for rent for this property for the year 1908.)

(A.) As I do not know how much she received. I am not willing to say whether or not I would give 50 Dollars or not.

Q. Then the place must not have been rented for the year 1908. so far as you know. Because if it has been rented Mrs Turner shall have received somewhere in the neighborhood of \$175⁰⁰, is this true?

Objected to by Council for trustee.
as (argumentative.)

(A.) The land was not entered at
as I know of. but houses were
rented. I have seen receipts ~~from~~
~~ET~~ for rent held by E. T. Pool.

~~Objected to~~

(2) Do you remember whether or not
the receipt was for trash or rent?

A: The receipt was for \$300 for rent
of one acre for trash privileges.

Resolution passed by Council.

J. M. Baker

R. Y. Baker, having been duly sworn before
was recalled: and deposed as follows,
th. Deed by J. A. Bohannon Atty for R. Y. Baker
Trustee.

Did you, directly or indirectly deliver
the possession of the Elmer property to
Mrs. Agnes L. Tressor after the sale thereof?

Answer, by Mr. Baker

I did, about the last of December 1907 or
the first of January 1908. Send Mrs. Tressor
a message by J. A. Baker, to go ahead
and take possession of the Elmer property,
and that I would give her the deed
as soon as the matter was straightened
up with the other parties interested.

Q. 2. What was your understanding as to
the time, or times, at which the purchase
money was to be paid? and if there
was to be more than one payment?
Please state how much was to be paid
at each time,

(1) The cash payment was to have been made about the middle of December 1907. of about \$3200⁰⁰, and the note of \$500⁰⁰ of H. J. Ferguson. due in or about the 1st of May 1908.

(2) Was there anything said about the payment of interest?

(A) Mrs. Turner wanted to know if she would be required to pay interest from the 1st of December 1907 up to the 15th of December, or time of the cash payment. I told her we would not expect her to pay interest for the 15 days.

(2) Was it, ^{was it} or not your understanding that if the cash payment ^{was not} made on the date agreed, ^{interest} it was to be charged thereon?

(A) That was my understanding.

(2) Please state why it was, that the deed to Mrs Durson was not executed before someone in September 1908?

(A) By advice of Mr Bohannon my Council. ~~I was delayed from getting the~~ I did not get the deed until I could get the consent of all the parties interested.

Inquire by Mr Williams -

Mr Baker, at the time of the sale which was December 7th 1907 - was it not understood that Mrs Durson was to pay you the cash payment on the delivery of the deed,? and was it not also understood that the deed was to be executed by you on or before the 16th of December 1907

(A) It was.

Q) Did not Mrs. Tresser or her Attorney on the day of sale, tell you that she would be ready in ten days from that date to comply with the terms of the sale?

A) Yes sir.

Q) Of course the cash payment did not become due until the deed was executed, and delivered, is this true?

A)

I think the cash payment should have been made when Mrs. Tresser was given possession of the property.

Q) Upon what reasons do you base your answer to the last question?

A). Because Mrs. Tresser has had the use of, and benefit from the property.

21

Mr Baker. I shall prove by the Bank Officials of the Merchant and Farmers Bank of Somersfield Vt that Mrs Turner has had sufficient money at their Bank. lying idle since December 16th 1907. to pay for the land. I shall prove by Mrs Turner that the money was there for that purpose, and that she has been ready, willing and anxious, at all times since the date of sale to pay the purchase price, of the land as soon as a good deed was delivered to her, admitting the fact that she had possession of the property since the first day of January 1908; Do you think it would be right and just to compel her to pay interest under such circumstances;

Justin objected to by Counsel for Trustee or the General. that it is argumentum, and that

it asks his opinion of the
 justice of a certain course of
 conduct, under circumstances
 about which there has been
 not a word of evidence in this
 case,

(A) I do think Mrs Turner should
 be willing to pay interest as she
 has her possession of this property.

~~1. Is it not a fact?~~

2. Mr Baker, you of course did not
 expect Mrs Turner to pay you the
 cash for this place before you
 had delivered her the deed for same,
 did you?

(A) On the date of the sale, I expected
 Mrs Turner to pay the cash on
 delivery of the deed -

I, when the deed was delivered on Sept 15th 1908 - in "escrow" to the Merchants and Farmers Bank; did you expect, and demand that Mrs Durner should pay interest on the purchase price, from January 1st, 1908 - to that date?

(A.) I left this matter with my Council.

(2) Since you declined to answer and referred the matter to your Council, without swearing your Council, I am going to ask him to answer this question.

In reply to above question. Council says - That he does not know what the intention of Mr R. Y. Baker was at the time in question, but that Council sent the deed to the said Bank, on the 15th of September 1908

and herewith files the original of his letter to the Bank, which accompanied the deed, it will be seen from this letter ^{#A} that interest is not demanded before this however. Council had prepared a decree, in which a provision was made for the payment of interest by Mrs Turner; this decree was sent to Mr Mills, who was to send it to Bowke and Brooke, who in turn were to forward it to Mr Millican, of this fact I advised Mr Millican, by letter dated June 29-1908. Mr Millican replied, under date of July 1, 1908, saying that he did not think that his client should pay interest on the purchase price, I then wrote him, suggesting that he mark out that part of the decree, which provided for the payment of interest, stating that we would leave that to be

determined later, this decree
with the interest provisions

struck out was entered, Aug 27
1908 - The deed was prepared

soon thereafter, on September 14 -
1908 - Mr Williams wrote me

to forward deed to the Merchants
and Farmers Bank, as soon as
possible. I did this on Sep 15 -

1908 - as previously explained,
this will account for the fact
that the Bank was not
instructed to collect interest
upon the delivery of the deed.

It was understood however, that
striking out the interest provisions
in the said decree, was not to
prejudice any right which
the trustee might hereafter
demand or collect such interest,

Re. direct by J. B. Bohannon

(Q.) Mr. Baker, at the date of the sale you expected that the deed was to be executed by the 16th of December¹⁹⁰⁷ did you not?

(A.) I did.

(Q.) Did Mrs. Turner or her attorney state any reason for wishing for ten days time, within which to comply with the terms of the sale?

A. Mrs. Turner ~~to~~ said that she had a note payable about the 15th of December 1907 which would enable her to make the cash payment on the property. —

2. You have stated that the cash payment of \$3200.⁰⁰ ~~to~~ was to be made about the middle of December 1907. Was this

was this payment to be conditioned upon the delivery of the deed - on that date? or was it an absolute promise to pay, made by Mrs Turner, on a date suited to her convenience, nothing being said about the deed?

A. ~~There was a promise of~~

It was understood that Mrs Turner was to pay the cash payment on the 16th of December 1909 -

~~There was no condition of that kind~~
~~This was the date suited to Mrs Turner's~~
~~convenience~~

There was no condition of the kind but was suited to Mrs Turner's convenience, on that date.

Q. What I want to get at is this; Do you understand that Mrs. Durner, was to pay the \$3200.⁰⁰ on this date, whether you had the deed prepared or not;

A. This is what I understood, that Mrs. Durner was either to pay it to me or deposit either to my order or check.

Re. cross-examination by
Mr. Williams -

Q. Mr. Baker: was it not understood that December the 16th, 1907 was set as the date to close of these matters in order to allow you time in which, to have the deed prepared and to allow Mrs. Durner time in which to collect the necessary money, to make the cash payment;

A. yes, I was,

Q. You promised to have the deed prepared and delivered on that date?

A. I promised that I would try to have it ready on that date.

Q. Where were you to meet on that date? Did you meet? and if not, why not?

A. we were to meet in Davenport at Mr. McIllean's office. We did not meet, by advice of my Council - not to give the deed until we had the consent of all parties interested

Q. Mr Biker; have you at any time demanded of Mrs Turner the amount of the purchase price of this property? if so when?

A. I left this matter with my Council Mr Bohannon.

Q. As you are not prepared your Council will answer, ~~is it~~

Answer, by Mr Bohannon -

I have had no correspondence with Mrs Turner direct.

The depositing of the deed in Bank in escrow, and the notification of Mr Willeams, Council for Mrs Turner of this fact, would constitute a demand for the purchase money.

In addition to this, on Oct 10 1908 I wrote Mr Willeams - in part - in these words -

"I hope that you will do what you can to get Mrs Turner to clear the matter as soon as possible for we would like to have the money in hand".

I have on other occasions made personal requests ^{of} Mr Willeas the payment of this money. I understood from him that on account of the sickness of his Client Mrs Turner, the matter was delayed.

2. Mr Birchman. Is it not a fact that you did not make any demand or request of the money from our uncle after the ~~execution~~ ^{execution} and delivery of the deed in escrow?

A. That is true,

Q. Mr Bohner, then acting for the trustee, had Mrs Turner make an unconditioned promise to make the Cash payment on Dec 15 - 1907 - you could hear, and would I have demanded the payment on that date, would you not?

A. As a matter of law - undoubtedly I could have made demand on her, but as a matter of fact, I do not now recall that my client advised me of the fact. That any such agreement had been made between himself and Mrs Turner my first connection with the case was that of advisory Council to the Trustee, in the proper distribution of the proceeds of the sale. and I knew little or nothing regarding the agreement between him and Mrs Turner, as to how, or when, the purchase money was to be paid.

R. M. Baker

State of Virginia. } To wit:
County of Isle of Wight, }

I, W. F. Howle, a notary public for the county of Isle of Wight, in the state of Virginia, do certify that the foregoing depositions were duly taken, reduced to writing (signatures of witnesses waived by council) at the time and place therein mentioned, pursuant to the annexed notice.

In witness whereof I have hereinto set my hand, at Fergusson's Wharf, Va. afforesaid, this 14th day of January, 1909.

My term of office expires February 28th, 1910

W. F. Howle
Notary-Public.

See also \$375

R.Y.Baker.Trustee.)
 V)
Agnes.L.Turner.) Deposition.
)

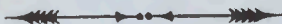
The depositions of James.A.Baker, and others, taken before me ,
W.E.Howle. a notary public for the County of Isle of Wight, and
State of Virginia. pursuant to notice hereto annexed, at Fergus-
son's Wharf, in the County of Isle of Wight, on the 14th day of
January, 1909, between the hours of One and six P.M. to be read as
evidence on behalf of Agnes.L.Turner in a certain suit in equity,
depending in the circuit court of Isle of Wight County, wherein
Agnes.L.Turner is defendant and R.Y.Baker.Trustee, is plaintiff.

Present.

E.H.Williams. Attorney for defendant.

J.G.Bohannon, Attorney for plaintiff.

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STENOGRAPHER'S MINUTES.



IN THE CIRCUIT COURT OF THE ISLE OF WIGHT COUNTY, VA.

R. Y. BAKER, Substituted
Trustee,

v.

W.T.FERGUSON et als.

Before

D.S. Phlegar, a Notary Public

In Chancery

Norfolk, Virginia, January 30, 190⁹.

INDEX.

WITNESSES.	DIRECT.	CROSS.	RE-DIRECT.	RE-CROSS.
M. C. Elliott,	2	11	--	--

MONTESS & CLARKE CO., 61 MADRAU ST., N. Y.

D. S. PHLEGAR,
SHERIF AND REPORTER
532-638 LAW BLDG., NORFOLK, VA.
BELL PHONE 504

D. S. PHLEGAR
SHORTHAND REPORTER
532-533 LAW BLDG.
NORFOLK, VA.

JKF

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IN THE CIRCUIT COURT OF THE ISLE OF WIGHT COUNTY, VA.

-----*

R.Y.BAKER, Substituted Trustee, *

v.

In Chancery

W. T. FERGUSON et als.

-----*

The deposition of M.C.Elliott, taken before me, D.S. Phlegar, a Notary Public for the City of Norfolk, in the State of Virginia, pursuant to agreement of counsel, at the office of D.S.Phlegar, 532-533 Law Building, Norfolk, Virginia, January 20, 1909, to be read as evidence on behalf of the National Bank of Commerce, of Norfolk, Virginia, one of the defendants.

PRESENT:

Mesars Brooke & Brooke (Mr.Brooke) representing the National Bank of Commerce and Reliance Brick Company.

Mr.W.J.Nelms, representing W.T.Ferguson and Mrs. Priscilla Baker.

-----oOo-----

D.S.Phlegar,
Shorthand Reporter,
Norfolk, Virginia.

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M. C. ELLIOTT, being duly sworn, testified as follows:

Examined by Mr. Brooke:

Q. Mr. Elliott, state your name, age and occupation?

A. Name Milton Courtwright Elliott; age 29 years; occupation at present receiver for the National Deposit Bank, of Philadelphia, Pa; formerly an attorney-at-law of Norfolk, Virginia.

Q. Mr. Elliott, when did you leave Norfolk?

A. I left Norfolk, on or about December 1, 1907.

Q. Mr. Elliott, while attorney-at-law in Norfolk, were you counsel for the Betts-Hayden Construction Company?

BY MR. NELMS: Objected to as immaterial and irrelevant.

A. I was.

By Mr. Brooke:

Q. Were you acquainted with Mr. Betts and Mr. Hayden?

A. I was.

BY MR. NELMS: The same objection.

By Mr. Brooke:

Q. This is a suit brought by R.Y.Baker, substituted trustee, in the Chancery side of the Circuit Court of Isle of Wight County, in which the trustee asks in what manner and to what persons he shall pay the proceeds of the sale of property

D. S. PHLEGAR
SHORTHAND REPORTER
532-533 LAW BLDG.
NORFOLK, VA.

JKF

M C Elliott

1 formerly belonging to B.S.Elms and wife. The National Bank
2 of Commerce, of Norfolk, Virginia, claims to be a holder of
3 a note for \$1,000, which its claims is secured by deed of
4 trust on this property. Do you know anything about the
5 transfer of this note to the Bank of Commerce?
6

7 BY MR. NELMS: Same objection.

8 A. I do.

9 By Mr. Brooke:

10 Q. Please state all you know about it?

11 BY MR. NELMS: The same objection.

12 A. Mr. I. B. Betts and D.Homer Hayden, were the president
13 and vice-president respectively, of the Betts-Hayden Construction
14 Company. I had been employed as counsel for the Betts-Hayden
15 Construction Company, and had procured their charter, and
16 arranged the by-laws, and so forth of that company. Some
17 time after this company was organized, Messrs Betts and
18 Hayden came to me, and explained that they had arranged to
19 purchase from H.S.and B.S.Elms a one-half interest in a
20 certain brick property, located some where on the James
21 River.

22 BY MR. NELMS: Further objection is made to any
23 statement to the witness, as being hearsay, in
24 addition to that heretofore made.

25 Witness: They further explained that their agreement was
26 substantially as follows: That this property that was owned

1 by Mrs. H. S. Elms was encumbered by certain mortgages or deeds
2 of trust which had been given to secure the deferred payments
3 of the purchase price of the property; that in consideration
4 of Mrs. Elms and Mr. Elms conveying a one-half interest in
5 the property, Messrs Betts and Hayden were to arrange to pay
6 off these encumbrances. I then explained to them that the
7 only practical method of accomplishing this was to organize
8 a company, the title of the property to be conveyed to this
9 company subject to the outstanding mortgages or deeds of trust;
10 that as and when these payments were made by Messrs Betts and
11 Hayden, stock, in proportion to these payments, should be
12 conveyed by Mrs. Elms and Mr. Elms, who were to hold the
13 stock until these payments were made. Accordingly, I pro-
14 ceeded for them, and for Mr. and Mrs. Elms to organize what
15 was known as the Reliance Brick Company. After its organiza-
16 tion, Mrs. Elms, in whose name the bulk of the stock was issued,
17 conveyed to Messrs Betts and Hayden a proportion based on the
18 payments made by them. I recall that at that time there were
19 outstanding mortgages, some in the name of Mrs. Agnes L. Turner,
20 and some in the name of W.T. Ferguson, and, I think, a further
21 mortgage in the name of Margaret E. Purvis. One of these
22 notes became due, secured by one of the deeds of trust or
23 mortgages referred to, and was extended by the holder. This
24 was either the note of Mrs. Purvis or Mrs. Turner. Subsequent-
25 ly a note of W.T. Ferguson became due. Messrs Betts and Hayden

D. S. PHLEGAR
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NORFOLK, VA.

JKE

M C Elliott

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1 then consulted me about some method of taking care of this
2 note. They stated that they were not in a position to pay
3 the note off, and that they had approached Mr. H.M.Kerr,
4 of the National Bank of Commerce, with a view to arranging
5 with him to carry this note for them until they could raise
6 the money and pay it off. A short time after this Mr. Kerr
7 consulted me as to whether or not he would become the pur-
8 chaser of the security, as well as the note, if he arranged
9 to let these men have the money for this note. I told him
10 that if the note was endorsed to him, without recourse, or
11 if the title to the note was transferred to him, and was
12 not paid by the maker, that he would take it subject to the
13 same security that the present holder had. I do not recall
14 specifically what the transactions were with reference to
15 the handling of this note, but my recollection is that the
16 note was then held by a Suffolk Bank, and that it had been
17 sent on to the Norfolk Bank, namely: the National Bank of
18 Commerce; that after negotiations, extending over perhaps
19 two or three days, it was arranged that the National Bank
20 of Commerce was to remit to the Suffolk Bank for this note,
21 and was to hold it as collateral security for a note of
22 Messrs Betts and Hayden until they could arrange to take
23 it up. I recollect that after we had had one or two con-
24 ferences on this subject, Mr. Kerr telephoned to the Suffolk
25 Bank that the note would be handled in this way. I, of course,
26

1 do not undertake to testify as to the conversation between
2 Mr. Kerr and the Suffolk Bank, but my recollection is perfect-
3 ly distinct that the note was endorsed without recourse, and
4 that the National Bank of Commerce was to hold it as collateral
5 security for an indebtedness due it by Messrs Betts and Hayden
6 until the same could be paid. My recollection is further
7 perfectly distinct that as and when this note or the obliga-
8 tions referred to, which were encumbrances on the property
9 purchased, were paid by Messrs Betts and Hayden, that stock
10 in proportion to these payments was to be transferred by Mrs.
11 H.S. and Mr. B.S. Elms to Messrs Betts and Hayden, and that this
12 transfer was to take place by delivery of this stock to me,
13 and that I, in turn, was to deliver the stock to Messrs Betts
14 and Hayden. I am also positive that no transfer ever took
15 place of any stock on account of these payments, because
16 the transfer books remained in my possession, and no transfers
17 were made after the purchase of this note by the National
18 Bank of Commerce from the Suffolk Bank, or the maker or holder
19 thereof.
20

21 BY MR. WELMS: This answer is objected to as being
22 immaterial and irrelevant, because it is hearsay
23 in part, and because it expresses an opinion.

24 By Mr. Brooke:

25 Q. Mr. Elliott, was there a deed given by Harriett S. and
26 Burton S. Elms to the Reliance Brick Company for this property?

1 BY MR. NELMS: Objected to as the deed is the best
2 evidence, and because it is irrelevant and immaterial
3 in any event.

4 A. There was. This deed was the result of the agreement
5 referred to in my first answer that the property was to be
6 conveyed by H.S. and B.S. Elms to the Reliance Brick Company;
7 that the stock of that company was to be issued to Mrs. H.S.
8 Elms, who was, in fact, the real owner of the property, and
9 that stock was to be transferred to Messrs Betts and Hayden
10 as and when the payments on the encumbrances were made by
11 them. The deed which I hold in my hand was drawn by me as
12 attorney for both parties to this transaction, and I offer
13 it in evidence as exhibit A.

14 BY MR. NELMS: The introduction of this deed is
15 objected to as immaterial and irrelevant.
16

17 By Mr. Brooke:

18 Q. Mr. Elliot, I hand you a paper which purports to be an
19 agreement between Harriet S. Elms and Ira B. Betts and D.
20 Homer Hayden, in reference to this property, dated February
21 12, 1907, and ask you whether that agreement was ever consummated,
22 and whether this is the original?

23 BY MR. NELMS: Objected to as irrelevant and immaterial.

24 A. As stated in my previous answer, the negotiations between
25 Mr. and Mrs. Elms and Messrs Betts and Hayden consumed some
26 little time, but it was finally agreed that a company should be

1 organized, the title to the property conveyed to this company,
2 and the stock issued to Mrs. Elms, who, in turn, would issue
3 it to Messrs Betts and Hayden, as and when payments were made.
4 This agreement was reduced to writing, and is embodied in
5 the paper which I herewith hand you.

6
7 BY MR. NELMS: Statement of witness as to what
8 the paper contains is objected to as the writing
9 is the best evidence; also that the writing itself
10 is immaterial and irrelevant.

11 NOTE: This paper is offered in evidence by counsel
12 marked exhibit B.

13 By Mr. Brooke:

14 ✓ Q. That is the original? A. That is the original.

15 BY MR. NELMS: The same objection.

16 By Mr. Brooke:

17 ✓ Q. Was this company ever incorporated? A. Yes, sir.

18 BY MR. NELMS: Objected to as irrelevant and
19 immaterial.

20 By Mr. Brooke:

21 Q. What was the name of the company?

22 BY MR. NELMS: Objected to as irrelevant and
23 immaterial.

24 A. The Reliance Brick Company.

25 By Mr. Brooke:

26 Q. I hand you a paper which purports to be a carbon copy of

1 the certificate of incorporation of the Reliance Brick Company,
2 and will ask you whether that is a carbon copy of the certifi-
3 cate, and whether the Reliance Brick Company was incorporated
4 on that certificate?

5 BY MR. NELMS: Objected to as irrelevant and
6 immaterial, and not the best evidence.

7 A. Yes, this certificate was drawn up by me, and forwarded
8 by me to the Clerk of the Corporation Commission of the State
9 of Virginia, and is a carbon copy of the certificate that was
10 forwarded.
11

12 NOTE: The same is filed in evidence marked exhibit
13 C.

14 BY MR. NELMS: Objected to as irrelevant and
15 immaterial.

16 By Mr. Brooke:

17 Q. Mr. Elliot, what position did you occupy with this company,
18 if any?

19 BY MR. NELMS: Objected to as immaterial and
20 irrelevant.

21 A. I was counsel for the company, and one of the directors.

22 By Mr. Brooke:

23 Q. You have testified that when the indebtedness of Mrs.
24 Agnes L. Turner became due, that there was an arrangement
25 made by Mrs. Elms with Mrs. Turner to extend the time of payment.
26

1 BY MR. NELMS: Objected to as immaterial and
2 irrelevant.

3 A. I am not clear in my recollection as to whether it was Mrs.
4 Purvis or Mrs. Turner, but one of those arranged for an ex-
5 tension.

6 By Mr. Brooke:

7 Q. I hand you a paper which purports to be an agreement for
8 an extension, signed by Mrs. Turner, and will ask you if
9 this is the extension to which you refer?

0 BY MR. NELMS: The same objection.

11 A. Yes, sir.

12 NOTE: The same is offered in evidence marked
13 exhibit D.

14 BY MR. NELMS: The same objection.

15 By Mr. Brooke:

16 Q. I think you have already testified that there was no stock
17 issued to Betts and Hayden by Mrs. Elms when this transaction
18 in reference to the money being sent to the Bank of Suffolk
19 by the National Bank on account of this thousand dollar note
20 was made?

21 BY MR. NELMS: Objected to as not the best evidence.

22 A. The stock books were in my possession at the time, and
23 no transfer could have taken place without my knowledge.

24

25

26

D. S. PHLEGAR
SHORTHAND REPORTER
532-533 LAW BLDG.
NORFOLK, VA.

JKF

M C Elliott

11

1 CROSS EXAMINATION

2 By Mr. Nelms: Without waiving any right of exception hereto-
3 fore taken, counsel proceeds to cross examine the witness,
4 and here gives notice to counsel for the National Bank of
5 Commerce and for the Reliance Brick Company to produce the
6 stock book of the Reliance Brick Company, and states that he
7 would like to interrogate this witness on the books after
8 seeing them.

9 NOTE: Witness states that he had possession of the
10 books referred to, but is not positive at present
11 whether they are in his possession, or not. If so,
12 they are located in the City of Washington, and
13 he will endeavor to find and produce them.

14 Q. Was the deed dated February 12, 1907, a consummation of
15 the agreement exhibit B, filed with your deposition?

16 A. The deed marked exhibit A was made pursuant to exhibit
17 B, but was not a consummation of the agreement, since the
18 agreement provides that the payments shall be taken care of
19 by Messrs Betts and Hayden, and stock issued as and when these
20 payments are made. The agreement, therefore, marked exhibit
21 B, was never fully consummated, but the deed marked exhibit
22 A was made pursuant thereto.

23 Q. I notice exhibit B filed with your deposition, the agreement,
24 refers to an agreement of November 16, 1906. Did this agreement
25 which is filed supersede all the conditions contained in the
26

1 agreement of November 16, 1906?

2 A. I cannot state whether it superseded the agreement until
3 I have read the agreement filed as exhibit B.

4 BY MR. NELMS: Counsel here calls upon counsel for
5 the Reliance Brick Company and the National Bank of
6 Commerce to produce the agreement that the witness
7 may examine the same and reply.

8 NOFB: Counsel produces the agreement referred to,
9 and hands it to counsel for W.T. Ferguson and Mrs.
10 Priscilla Baker.

11 Witness: The agreement entered into on the 12th day of
12 February, 1907, seems to be an exemplification of the agreement
13 dated November 16, 1906, in that the agreement of November
14 16, 1906, provided that upon the payment to H.S. and B.S. Elms
15 of a certain amount and one half interest of the property
16 referred to is to be conveyed, whereas the agreement of
17 February 12, 1907, provides the manner in which these payments
18 are to be made, and the amount of stock to be conveyed to
19 Messrs Betts and Hayden as and when payments are made.

20 Q. Then, do I understand that both agreements were in effect
21 at the same time?

22 A. My understanding of the agreements, both of which are in
23 evidence, is that so far as the agreement of February 12,
24 1907, is inconsistent with the agreement of November 16, 1906,
25 the agreement of February shall supersede the other agreement,
26

1 but where the agreements are not inconsistent they shall be
2 taken as a whole.

3 NOTE: Memorandum of agreement dated November 16,
4 1906, is filed marked exhibit E.

5 BY MR. NELMS: This agreement is likewise objected
6 to as irrelevant and immaterial.

7 Q. (By Mr. Nelms) To whom did Mr. Kerr telephone in
8 Suffolk?

9 A. As stated in my previous answer, I
10 do not attempt to give details of the transaction between the
11 National Bank of Commerce and the Suffolk Bank, but my
12 recollection is, after our conference, Mr. Kerr was to take
13 up the matter of the handling of this note with the Suffolk
14 Bank, and that it was not purchased by the National Bank of
15 Commerce until after he had been in communication with the
16 Suffolk Bank as to the manner in which it was to be handled.
17 I have no independent recollection of just what the conversa-
18 tion between Mr. Kerr and the Suffolk Bank consisted of.

19 Q. Were you actually present when the conversation was held?

20 A. I cannot say I was. My recollection is indistinct on
21 that point, but it is more or less distinct that there was a
22 conversation, because the question of whether the National
23 Bank of Commerce was to purchase the note at all was left in
24 **obeyance** for some little time.

25 BY MR. NELMS: Further objection is made to Mr.
26 Elliott's testimony on this point in the examination

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in chief as hearsay.

Q. (By Mr. Nelms) I presume the stock books which I called for, will show just what stock was issued, and to whom it was, will it not? A. Yes.

Q. What was the actual amount of stock issued by this company to all parties? A. I cannot recall without looking at the charter, but the minimum amount was issued.

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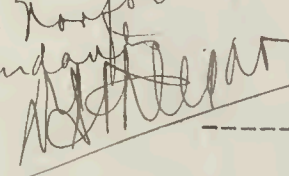
VIRGINIA,
City of Norfolk, to-wit:

I, D.S.Phlegar, a Notary Public for the City of Norfolk,
in the State of Virginia, certify that the foregoing deposi-
tion of Milton Courtwright Elliott was duly taken and sworn
to at the time and place and for the purpose in the caption
mentioned, signature thereto being waived by counsel.

Given under my hand this 5th day of February, 1909.



Notary Public for the City of Norfolk,
Virginia.

Fee \$ 5-60
Paid by National Bank
of Commerce Norfolk
one of defendants


-----000-----

Reported by
Transcribed by
Compared by

Handwritten initials:
R.A.P.
J.S.F.
L.S.H.

STENOGRAPHER'S TRANSCRIPT.

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Revised from D.S. P. by ar.
Notary Public, in and
Dec. 29/1909

Det. *[Signature]*
[Signature]

M. D. Brown

D. S. PHLEGAR
SHORTHAND REPORTER
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NORFOLK, VA.

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IN THE CIRCUIT COURT OF THE ISLE OF WIGHT COUNTY, VIRGINIA.

-----*

R. Y. BAKER, Substituted Trustee, *

v. * IN Chancery.

W. T. FERGUSON et als. *

-----*

The deposition of I.B.Betts, Jr., taken before me, C.L. Hendry, a Notary Public for the City of Norfolk, in the State of Virginia, by consent, at the office of D.S.Phlegar, 532-533 Law Building, Norfolk, Virginia, April 29th, 1909, to be read as evidence on behalf of the National Bank of Commerce, of Norfolk, Virginia, one of the defendants.

PRESENT:

Messrs Brooke & Brooke (Mr.Brooke) representing the National Bank of Commerce and Reliance Brick Company.

Mr.W.J.Nelms, representing W.T.Ferguson and Mrs. Priscilla Baker.

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D.S.Phlegar,
Shorthand Reporter,
Norfolk, Virginia.

1 By Mr. Brooke:

2 Q. Who are the officers of this company?

3 BY MR. NELMS: It is agreed that any objection
4 that may be interposed here as to immateriality
5 and irrelevancy may be made at bar to have the
6 same effect as if here interpolated after each
7 question.

8 (Question read) A. Mr. J. Homer Hayden,
9 President. B. S. Elms was Manager, and Mr. Milton C. Elliott
10 general counsel.

11 By Mr. Brooke:

12 Q. Where was the home office of this company?

13 BY MR. NELMS: Objected to as the record of the
14 company is the best evidence of the facts sought
15 to be ascertained.

16 A. Norfolk, Virginia.

17 By Mr. Brooke:

18 Q. For what purpose was this corporation organized?

19 BY MR. NELMS: Same objection as above.

20 A. For the purpose of manufacturing common brick.

21 By Mr. Brooke:

22 Q. What lead to the organization of this company?

23 A. BY MR. NELMS: Same objection.

24 A. Mr. Hayden and myself desired to purchase a part interest
25 in the property.
26

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1 By Mr. Brooke:

2 Q. What property? A. The property belonging
3 to Mr. and Mrs. Elms at Ferguson Wharf.

4 Q. That is in Isle of Wight County?

5 A. Isle of Wight County. For the purpose of acquiring
6 half interest in the property, by the advice of counsel, we
7 formed the Reliance Brick Company, a corporation of the State
8 of Virginia.

9 Q. Was this property ever conveyed to the Reliance Brick
10 Company?

11 BY MR. NELMS: Same objection.

12 A. Yes, sir.

13 By Mr. Brooke:

14 Q. So that up to the time of sale, under the deed of
15 trust, the Reliance Brick Company was the owner of the
16 property? A. Yes.

17 Q. What became of the indebtedness of the property - I
18 mean by that who assumed the indebtedness?

19 BY MR. NELMS: Same objection.

20 A. Reliance Brick Company.

21 By Mr. Brooke:

22 Q. Do you remember what liens there were on this property?

23 A. I don't remember the amount. There was a note held by
24 Mrs. Agnes Turner, and the estate of Margaret E. Purvis and
25 George Warran, and two notes by W. T. Ferguson, and some
26 bills for machinery.

- 1 Q. Why was this property sold by the Trustee under the
2 deed of trust? A. I believe through the
3 agency of Mrs. Agnes Turner; when her note came due, she re-
4 fused to extend, and foreclosed.
- 5 Q. Mrs. Agnes Turner?
6 A. I believe Mrs. Agnes Turner.
- 7 Q. What was the first note secured by the deed of trust
8 that came due on the property?
9 A. Mrs. Turner's note was the first one due, and Mrs. Elms
10 had her extend the time of payment on it.
- 11 Q. What second note came due?
12 A. The note of W.T. Ferguson.
- 13 Q. When that came due what did you do?
14 A. I tried to get Mr. Ferguson to extend the time of pay-
15 ment, but he refused, and Mr. Hayden and myself called on
16 Mr. Kerr, of the National Bank of Commerce, and asked him
17 if he would not purchase this note, which he consented to do,
18 on the advice of Mr. Elliott, that the deed of trust covering
19 same was sufficient to cover the amount of the note, and
20 under Mr. Elliott's advice Mr. Kerr purchased the note, on the
21 condition that Mr. Ferguson endorse it without recourse.
- 22 BY MR. NELMS: Objected to for the reasons above
23 stated.
- 24 By Mr. Brooks:
25 Q. Was that note ever endorsed without recourse?
26 A. Yes.

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1 Q. By whom, do you know? A. W.T.Ferguson.

2 BY MR.NELMS: Same objection.

3 By Mr.Brooke:

4 Q. How do you know it was endorsed by him without re-
5 course?

6 A. Either Mr.Kerr - Mr.Elliott
7 telephoned to the Bank of Nansemond, I believe, to have Mr.
8 Ferguson endorse the note without recourse and send to Mr.
9 Kerr at the Bank of Commerce, and when the note arrived it
10 had the endorsement without recourse of W.T.Ferguson, and
11 his name signed to it.

12 BY MR.NELMS: Objected to as hearsay, and for
13 the reasons heretofore stated.

14 By Mr.Brooke:

15 Q. When Mr.Kerr bought the note, what occurred then?

16 A. Mr.Kerr purchased the note, and held it, and nothing
17 further was done about it until we were notified that the
18 property was going to be sold.

19 Q. What other note came due after the Ferguson note?

20 A. I am not sure what note it was that forced the sale
21 of this property. I think the Agnes Turner note.

22 Q. There was a note which came due, after the Ferguson
23 note, which was not met, and on account of which the property
24 was sold?

25 A. Yes.

26 Q. Did you have any communication with Mr.Ferguson, about
the time that the property was to be sold, actually sold,

1 or just before sold?

2 A. Yes; I talked with him over the phone, and he stated
3 that he would probably be in Smithfield at the time of the
4 sale, and subsequently informed me that he had instructed
5 some one in Smithfield to bid the property in, and go as far
6 as \$5,000, but the person whom he asked to bid for him was
7 bidding for somebody else.

8 BY MR. NELMS: Same objection, as hearsay.

9 By Mr. Brooke:

10 Q. Do you know whether Mr. Ferguson ever saw this note,
11 when in the possession of the National Bank of Commerce,
12 after it was sent there by the Bank of Nansemond?

13 A. Yes, sir.

14 Q. Explain the occasion?

15 A. After or before the property was sold, Mr. Ferguson
16 called at my office, and I went to the Bank of Commerce
17 with him, and procured the note so that he could see it,
18 which he did.

19 Q. Was that the time you saw the endorsement without re-
20 course written on it? A. Yes.

21 BY MR. NELMS: Same objection.

22 By Mr. Brooke:

23 Q. Did Mr. Ferguson make any comment about the endorsement
24 without recourse? A. No.

25 Q. Or deny he had made the endorsement on it?

26 BY MR. NELMS: The same objection, and further

as leading.

1 A. No.

2 By Mr. Brooke:

3 Q. Did Mr. Ferguson make any contention that the note had
4 been paid, and the debt - -

5 BY MR. NELSM: I object; don't lead him.

6 By Mr. Brooke:

7 Q. When Mr. Ferguson saw this note did he make any comment
8 about it?

9 BY MR. NELMS: Objected to.

10 A. He asked me how the note was taken care of, and I told
11 him Mr. Kerr had purchased the note to save the foreclosure
12 of the property, and held it upon the fact that the deed of
13 trust was sufficient security for the note.

14 By Mr. Brooke:

15 Q. Was this conversation to which you refer which occurred
16 between you and Mr. Ferguson at the Bank of Commerce, when the
17 note was exhibited to Mr. Ferguson, was it before or after
18 the sale of the property?

19 A. Before the sale.

20 Q. Were you present at a meeting held in Mr. M. C. Elliott's
21 office, in the Law Building, in the spring of 1908, in
22 reference to this matter?

23 A. Yes.

24 Q. In reference to the sale of the property at Smithfield?

25 A. Yes, sir.

26 Q. Will you state who was at the meeting, and what occurred,

✓ 1 and when it took place, as near as you can?

2 BY MR.NELMS: Same objection.

3 A. The meeting took place, as near as I can recall, about
4 the first part of April, 1908.

5 By Mr.Brooke:

6 Q. Why do you fix upon that date?

7 A. Why do I fix upon that date? Because I know it was
8 not but a few weeks before I moved out of the adjacent office,
9 to Mr.Elliott's, and I moved out about the 20th of April, and
10 those present at that meeting were Mr.Bohannon, Mr.Baker,
11 representing the estate of Margaret E. Purvis, Mr.W.T.
12 Ferguson, and I don't remember whether you were there or not,
13 but I believe you were.

14 Q. Mr.Ferguson was there, you are positive of that?

15 A. Yes.

16 Q. What was the object of that meeting?

17 BY MR.NELMS: Same objection.

18 A. To try to find - to have Mr.Bohannon expend the time
19 of the turning of the property over to the purchaser, so that
20 Mr.Ferguson, or Mr.Hayden and myself could find a purchaser
21 for the property, that would give more for it than it was
22 sold for, and Mr.Ferguson stated that he thought he could
23 find a purchaser for it, and stated in that same meeting he
24 had instructed his representatives in Smithfield to bid
25 \$5,000 at the time of the sale.

By Mr.Brooke:

✓ 26 Q. Did the Trustee give you any longer time?

1 BY MR.NELMS: Same objection.

2 A. Yes, sir, and Mr.Bohannon extended the time for two
3 or three weeks.

4 By Mr.Brooke:

5 Q. I believe it was testified before that there was no
6 upset bid put in? A. No.

7 Q. Did Mr.Ferguson, at that meeting, make any contention
8 that the note held by the Bank of Commerce was not rightly
9 held by them? A. No.

10 BY MR.NELMS: Same objection.

11 By Mr.Brooke:

12 Q. Or it had been paid and the debt extinguished?

13 BY MR.NELMS: Same objection.

14 A. No.

15 CROSS EXAMINATION

16 By Mr.Nelms: Without waiving any right of exception
17 heretofore taken counsel proceeds to cross examine the
18 witness.

19 Q. Mr.Betts, please state what occurred between you and
20 Mr.Elliott and Mr.Kerr in regard to this note, that is now
21 in controversy, claimed to be held by the National Bank of
22 Commerce?

23 A. I thought I had already testified to that. When the
24 note became due, when Mr.Ferguson's note became due I tried
25 to get Mr.Ferguson to extend the time of payment, and I
26 went to Mr.Elliott for advice, and when we found out that

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I. B. Betts, Jr.

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1 we could not procure an extension of time from Mr. Ferguson,
2 Mr. Elliott personally went to see Mr. Kerr at the National
3 Bank of Commerce.

4 Q. Were you with him?

5 A. I walked around to the bank with him. I did not go
6 into Mr. Kerr's office. I went upstairs and he took the
7 matter up with Mr. Kerr, and persuaded Mr. Kerr to purchase.

8 Q. Don't tell what Mr. Elliott told you, just what you know
9 of your own knowledge?

10 A. Well, that afternoon, or the following day, I was in
11 the office of Mr. Elliott while he was telephoning to the
12 Bank of Suffolk asking them to have Mr. Ferguson endorse the
13 note without recourse and send to Mr. Kerr, at the National
14 Bank of Commerce.

15 Q. How do you know he was talking to the Bank of Suffolk?

16 A. He picked up the long distance phone and asked central
17 to give him the Bank of Suffolk.

18 Q. And asked the Bank of Suffolk to do what?

19 A. That Mr. Ferguson endorse the note without recourse and
20 send to the Bank of Commerce, at Norfolk, Virginia, to Mr.
21 Kerr.

22 Q. Then what happened?

23 A. Mr. Kerr purchased the note.

24 Q. How do you know that? A. I know it is in
25 the possession of the Bank of Commerce, and Mr. Kerr told me
26 personally that he would purchase the note, on the advice of

1 Mr.Elliott, that the security against it was sufficient.

2 BY MR.NELMS: This answer, and all this witness'
3 testimony as to the purchase of the note is object-
4 ed to as hearsay.

5 By Mr.Nelms:

6 Q. I understand that you heard Mr.Elliott ask, over the
7 long distance telephone, that the Bank of Suffolk be given
8 him, and then you heard him say - -

9 BY MR.BROOKE: Bank of Suffolk?

10 Witness: Bank of Nansemond, in Smithfield.

11 By Mr.Brooke: In Smithfield?

12 Witness: Bank of Nansemond in Suffolk.

13 By Mr.Nelms:

14 Q. Pick up the long distance telephone, and asked central
15 to give him the Bank of Nansemond, and then said have Mr.
16 Ferguson endorse the note, without recourse, and send it to
17 the National Bank of Commerce at Norfolk; is that correct?

18 A. Yes; I recall now - -

19 Q. Then you do not undertake to say who was at the other
20 end of the telephone? A. No.

21 Q. Now, what do you know about this note, after that, of
22 your own knowledge?

23 A. I recall I was in the National Bank of Commerce with
24 Mr.Elliott, and Mr.Kerr, and asked Mr.Kerr if he would not
25 purchase this note, and he turned to Mr.Elliott, and asked
26 him if the deed of trust was sufficient to secure him against

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1 any loss on the note, and Mr.Elliott advised him that he
2 could purchase it without any danger of loss, if he could
3 get Mr.Ferguson to endorse without recourse, and Mr.Kerr in-
4 structed Mr.Elliott to make that arrangement with the Bank
5 of Nansemond, at my request.

6 Q. Make what arrangement?

7 A. Have Mr.Ferguson endorse the note without recourse, and
8 send to the bank.

9 BY MR.NELMS: As to what occurred as to advice
10 by Mr.Elliott to Mr.Kerr it is objected to as im-
11 material and irrelevant.

12 BY MR.BROOKE: You asked him to tell you what
13 occurred between Mr.Elliott and Mr.Kerr, and then
14 when he tells you you object.

15 By Mr.Nelms:

16 Q. Is that all of your own personal knowledge that you know,
17 in connection with the holding of this note by the National
18 Bank of Commerce?

19 A. Two or three days after Mr.Kerr told me he had received
20 the note, and had purchased it.

21 BY MR.NELMS: Objected to as hearsay.

22 By Mr.Nelms:

23 Q. You did not see the note, did you?

24 A. Yes, I have seen the note.

25 Q. When did you see it? A. When Mr.Ferguson
26 called at my office, and asked me to show him the note, I

1 took him around to the Bank of Commerce, and they produced
2 the note.

3 Q. That was how long after the note had been received by
4 the Bank of Commerce? A. I can't state

5 exactly, probably four or five months.

6 Q. You do not know anything personally, as to the purchase
7 of this note, or how it came into the hands of the National
8 Bank of Commerce, except that Mr.Kerr told you that he had
9 purchased the note, do you?

10 A. Except that he told me he had purchased the note, and I
11 saw the note in his possession, and Mr.Ferguson had nothing
12 more to say about it, after he received the money for it.

13 Q. I say that is all you know, you know nothing further
14 about the actual details between the two banks?

15 A. No.

16 Q. And these facts which you have just related are all the
17 facts that you know, which make you think that the National
18 Bank of Commerce purchased the note; is that correct?

19 A. Except Mr.Elliott stated over the phone to the repre-
20 sentative of the Bank of Nansemond that the Bank of Commerce
21 would purchase the note if endorsed without recourse.

22 Q. What words, exact words, did Mr.Elliott use, in his
23 conversation with the Bank of Nansemond; do you undertake
24 to use the exact words that were used that day?

25 A. No.

26 Q. Did he not simply say have Mr.Ferguson endorse the note

1 without recourse, and send it down to the National Bank of
2 Commerce; you do not undertake to relate a definite conversa-
3 tion that took place, two years ago, what language was used,
4 do you? A. Not by any means.

5 Q. He may have said endorse it and send it down, and it
6 will be paid or purchased, or taken care of - in other words,
7 the idea was that if the note was endorsed without recourse,
8 that when it got here the National Bank of Commerce would take
9 care of it, and Mr. Ferguson would get his money; was not that
10 the idea?

11 BY MR. BROOKE: That is not what he testified to.

12 A. Yes, that is about it.

13 By Mr. Nelms:

14 Q. Why were you taking such an active interest in looking
15 after this note? A. Because the agreement
16 between the Reliance Brick Company and Mr. and Mrs. Elms was
17 that we were to take care of the indebtedness against the
18 property.

19 Q. Why were you concerned about taking care of this indebted-
20 ness, when the Reliance Brick Company was the owner of the
21 property, and had assumed the obligation?

22 A. I was an officer of the company, and was doing it for
23 the company.

24 Q. Were you a stockholder? A. Yes.

25 Q. To what extent? A. Mr. Hayden and I were
26 the owners of a half interest in the Reliance Brick Company.

1 I was the owner of one-fourth personally.

2 Q. And Mr. Hayden was the owner of the other fourth, I
3 take it? A. Yes.

4 Q. Suppose Mr. Kerr does not get his money from this land,
5 are you willing to pay Mr. Kerr this \$1,000, or your approximate
6 proportion of it?

7 A. I assume it is my duty to pay him.

8 Q. You told him as much, didn't you? A. No.

9 Q. Did you tell him that when you were trying to negotiate
10 the loan with him? A. There was no agreement
11 made between Mr. Kerr and myself.

12 BY MR. BROOKE: I object. In your cross examina-
13 tion you put words in there which he has not
14 testified to. There has been no testimony as to
15 any loan made at all.

16 BY MR. NELMS: I am cross examining, and I have a
17 right to ask the question.

18 By Mr. Nelms:

19 Q. Who conducted the negotiations with Mr. Kerr; did you,
20 or was it Mr. Elliott for you?

21 A. I was with Mr. Elliott most of the time when we had any
22 meetings in regard to this note.

23 Q. How many times was that note sent to Norfolk by the Bank
24 of Nansemond? A. I don't know. As far as I
25 know once.

26 Q. Don't you recall that it was sent there once, and Mr.

1 Ferguson saw you about it, and you had expected to fix it
2 up in some way, but did not, and it was afterwards recalled,
3 and then later on sent down, and then taken up?

4 A. If it was sent to Norfolk before the final receipt of
5 the note, I don't know of it.

6 Q. You never saw the note, until, I understand, some months
7 after it was in the hands of the National Bank of Commerce?

8 A. No.

9 Q. What was the occasion of Mr. Ferguson seeing that note,
10 when you took him to the Bank of Commerce to show it to him?

11 A. He did not state what his reason was, for wanting to see
12 the note, except that he just expressed a desire to see the
13 note, and I took him around there.

14 Q. You have recently had a pretty severe attack of typhoid
15 fever, have you not? A. Yes.

16 Q. How long were you ill? A. How long was I
17 ill?

18 Q. Yes? A. I was taken sick on September
19 13th, 1908, and left the Protestant Hospital December 1st,
20 1908.

21 Q. Was your attack a pretty aggravated attack, or mild
22 attack? A. Very severe attack.

23 BY MR. BROOKE: Objected to as immaterial.

24 By Mr. Helms:

25 Q. Unconscious any of the time? A. Never.

26 BY MR. BROOKE: Further objected to, for the

1 same reason.

2 By Mr.Nelms:

3 Q. Who was your attending physician?

4 A. Dr.Burnley Lankford.

5 Q. Where was Mr.Ferguson when you say you had this conversa-
6 tion with him over the phone?

7 A. In Newport News.

8 Q. What was the subject of the conversation?

9 A. I asked him if he could not extend the time of the
10 payment of the note, that is the time of the payment of
11 the note in question.

12 Q. Was that all the conversation you had over the phone?

13 A. He stated that he could not extend the time.

14 Q. That was the only conversation you had over the phone
15 with Mr.Ferguson?

16 A. I had another con-
17 versation over the phone with him prior to the sale of the
18 property. I asked him if he could not meet me at Smith-
19 field, and try to make some arrangement whereby we could
20 put the sale off, and prevent them from selling the
21 property.

21 Q. Was that after the property was advertised?

22 A. Yes, sir.

23 Q. What was his reply to that?

24 A. He would try and get there the following day. I don't
25 remember when I told him - when I was going up, and he
26 said he would try and meet me there.

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I.B.Betts, Jr.

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1 Q. Did he meet you? A. No.

2 Q. You had no further conversation with him about the sale,
3 over the phone, or otherwise, until after the sale?

4 A. No.

5 Q. When did Mrs.Purvis' assignee, or Mrs.Baker, or Mr.
6 Bohannon, or Mr.Baker say anything to you about foreclosing
7 the deed of trust first? (Pause) First with reference
8 to the time that this note in dispute came into the hands
9 of the National Bank of Commerce?

10 A. I don't know.

11 Q. Before or after? A. The notice of fore-
12 closure took place - I heard of the notice of foreclosure
13 at the time the Bank of Commerce obtained possession of the
14 note.

15 Q. Had there been any threatened foreclosure prior to that
16 time? A. No.

17 Q. Do you know the whereabouts of Mr.and Mrs.Elms at this
18 time? A. I do not.

19 Q. You did not see Mr.Ferguson write the words "without
20 recourse" on this note, did you? A. No.

21 Q. When you first went to Mr.Kerr with relation to taking
22 care of the situation, what were your first negotiations
23 with him, was it as to borrowing money, or securing a loan
24 from him, or what was the nature of the negotiation?

25 A. Well, it was more in the nature of advice, he being an
26 experienced man in banking affairs. I asked him what we

1 could do about it, and he suggested that Mr.Elliott be
2 consulted, and the outcome of the consultation was that he
3 would purchase the note.

4 Q. That was between you and Mr.Elliott and Mr.Kerr?

5 A. Yes, sir.

6 Q. Have you since told Mr.Kerr you were going to see he
7 was protected, and his bank would not be loser by it?

8 A. No.

9 Q. Ever had any conversation with Mr.Kerr about it at all?

10 A. No.

11 Q. Did you ask Mr.Kerr to lend you \$1,000, or thereabouts,
12 at the beginning of this negotiation?

13 A. I went to Mr.Kerr with the intention of borrowing the
14 money, but he refused me flat-footed.

15 Q. At whose request did you understand that the sale was
16 made, whose note, Turner, Ferguson or Purvis?

17 A. I don't recall whether Turner or Purvis. I am sure
18 not Ferguson.

19 RE DIRECT EXAMINATION

20 By Mr.Brooke:

21 Q. You testified that the first note that came due was
22 the Turner note, and it was extended?

23 A. Yes.

24 Q. The second note was the Ferguson note, and it was in
25 regard to that note all this transaction occurred between
26 the Bank of Commerce and the Bank of Nansemond?

1 A. Yes.

2 Q. What note was it that came due next; you have testified
3 the third note that came due was the note of Margaret E.
4 Purvis' estate. What was done with that note?

5 A. The third note was the one that caused the foreclosure
6 of the property.

7 Q. Mr. Betts, you have stated to Mr. Nelms that you were a
8 stockholder of the Reliance Brick Company; what did you
9 mean by that; did you mean you were actually in possession
10 of the shares of stock?

11 BY MR. NELMS: Objected to, as the witness has
12 already stated as clearly as can be done, and you
13 ought not to lead the witness in this connection,
14 as he originally testified on this score

15 A. Mr. Hayden and I wanted to purchase a half interest in the
16 property for \$6,000, and on advice of Mr. Elliott we combined
17 our interest and formed the Reliance Brick Company.

18 By Mr. Brooke:

19 Q. I understand all that. Was any stock actually issued
20 to you?

21 A. The stock of the company - -

22 BY MR. NELMS: Objected to, as the witness has
23 already testified on this score.

24 A. (Continued) The stock of the company, the entire
25 stock of the company, was given into the hands of Mrs. Elms,
26 and our portion of the purchase of the property was to be

1 paid by taking care of the notes standing against the prop-
2 erty, and as we took these notes up we were to receive a like
3 amount of stock certificates from Mrs.Elms.

4 By Mr.Brooke:

5 Q. Have you ever received any stock from Mrs.Elms?

6 BY MR.NELMS: Objected to.

7 A. No.

8 By Mr.Brooke:

9 Q. Though you say you were a stockholder in the company,
10 are you in possession of any of the stock of the company?

11 A. No.

12 Q. Has any stock ever been issued to you by Mrs.Elms?

13 BY MR.NELMS: Same objection.

14 A. No.

15 By Mr.Brooke:

16 Q. Was there any agreement between you and Mr.Hayden and
17 Mr. and Mrs.Elms for the issuance of stock in this company?

18 BY MR.NELMS: Same objection.

19 A. There was a written agreement signed by Mr.and Mrs.Elms
20 and Mr.Hayden and myself, that the stock was to be turned
21 over to us as we took up the notes.

22 BY MR.NELMS: Objected to. The agreement itself
23 is the best evidence.

24 By Mr.Brooke:

25 Q. Whom do you mean by "we"?

26 A. Mr.Hayden and myself.

1 Q. When this transaction took place between the National
2 Bank of Commerce and the Farmers Bank of Nansemond of
3 Suffolk, by which the Bank of Commerce came into possession
4 of the \$1,000 note, was any stock contributed on account of
5 that transaction?

6 BY MR.NELMS: Same objection.

7 A. No.

8 By Mr.Brooke:

9 Q. Mr.Betts, Mr.Nelms, upon cross examination in reference
10 to the conversation that occurred in your presence, over
11 the phone between Mr.Elliott and some representative of the
12 Bank of Nansemond, asked you whether you remembered the exact
13 words and conversation, and you replied you did not. He
14 also asked you, in that question, if it was not likely that
15 the conversation that actually occurred was that if the note
16 was sent to the Bank of Commerce, endorsed without recourse
17 by Mr.Ferguson, they would take it up and pay it - do you
18 remember the conversation? A. Yes.

19 Q. Do you know whether Mr.Elliott stated over the phone
20 to the representative of the Bank of Nansemond - -

21 BY MR.NELMS: Don't put words in his mouth.

22 By Mr.Brooke:

23 Q. I will put the question this way: What was your under-
24 standing of the conversation that occurred between Mr.Elliott
25 and the representative of the Bank of Suffolk with reference
26 to this note?

D. S. PHLEGAR
SHORTHAND REPORTER
532-533 LAW BLDG.
NORFOLK, VA.

NMB

I.B.Betts, Jr.

24

1 BY MR.NELMS: Objected to as immaterial and
2 ifrelevant.

3 A. If they could get Mr.Ferguson to endorse without recourse
4 they could send the note to the Bank of Commerce, and they
5 would purchase it, but if they could not get it endorsed
6 without recourse they need not send it.

7 BY MR.NELMS: Further objected to, as that is only
8 what he understood, and not what was actually said.

9 By Mr.Brooke:

10 Q. Did Mr.Elliott tell the representative of the Farmers
11 Bank of Nansemond that if the note was sent to Norfolk it
12 would be paid by the National Bank of Commerce?

13 BY MR.NELMS: Same objection.

14 A. He told them that the National Bank of Commerce were
15 purchasers of the note.

16 By Mr.Brooke:

17 Q. Are you certain Mr.Elliott did not say the National Bank
18 of Commerce would pay the note? A. Yes.

19 Q. When Mr.Nelms asked you, in his cross examination, whether
20 it was not likely that the conversation was, to the effect,
21 that the Bank of Commerce would take it up, or pay it, you are
22 certain that the word "pay" was not used, that he did not say
23 if the note was sent to Norfolk it would be paid by the
24 National Bank of Commerce?

25 BY MR.NELMS: Same objection.

26 A. Yes.

1 By Mr. Brooke:

2 Q. And your understanding, then, in spite of the answer you
3 gave to Mr. Nelms in regard - in reference to the conversation - -

4 BY MR. NELMS: Don't lead him.

5 By Mr. Brooke:

6 Q. --- was that if the note was sent to the Bank of Commerce
7 it would be bought by the National Bank of Commerce, and
8 not paid?

9 BY MR. NELMS: Same objection.

10 A. Yes.

11 By Mr. Brooke:

12 Q. You have stated, in your cross examination, that you
13 first applied to Mr. Kerr for a loan of \$1,000, and he flat-
14 footed refused?

A. Yes.

15 Q. When this transaction occurred between the Bank of Commerce
16 and the Farmers Bank of Nansemond, by which the Bank of
17 Commerce came into possession of this note, did Mr. Kerr in-
18 timate to you, in any way, or say to you, or tell you, that he
19 looked to you for the payment of the \$1,000 to him?

20 BY MR. NELMS: Objected to as immaterial of irrelevant

21 A. No.

22 By Mr. Brooke:

23 Q. Do you know how Mr. Kerr expected to get that \$1,000 back
24 that he paid for the note?

25 BY MR. NELMS: Same objection.

26 A. By the deed of trust that secured the note.

1 By Mr. Brooke:

2 Q. He was looking to the security of the note, and not to
3 you?

A. Yes.

4
5 RE CROSS EXAMINATION

6 By Mr. Nelms: Without waiving the right of exception.

7 Q. How do you know?

8 A. He refused to loan me any money to take the note up.

9 Q. And is that your only way of knowing?

10 A. He purchased the note for the bank, and has never asked
11 me for any money to cover him, or any proceedings to cover
12 him against any loss on the note.

13 Q. Are you solvent or insolvent at the present time?

14 A. Insolvent.

15 Q. How long have you been insolvent?

16 A. Ever since I was sick in the hospital.

17 Q. Were not you insolvent at the time you were seeking to
18 negotiate the loan; in other words, were not your liabilities
19 more than your assets at that time? A. No.

20 Q. How soon after that was it your insolvency was an assured
21 fact to yourself?

22 A. When I left the hospital.

23 Q. Not until after you left the hospital?

24 A. Not until after I left the hospital.

25 Q. Did Mr. Hayden have anything to do with this negotiation?

26 A. Very little.

- 1 Q. You have stated your only reason for knowing that Mr.
2 Kerr looked to the deed of trust for his payment?
3 A. Yes.
4 Q. When did Mr. and Mrs. Elms leave this section?
5 A. I don't know.
6 Q. Was it before or after this conversation which took
7 place between Mr. Elliott and the Bank in Suffolk?
8 A. After.
9 Q. How long after?
10 A. I don't know. I know it was after the sale.
11 Q. I want you to say, verbatim, just what was said over
12 the telephone. You have stated that you remember just what
13 Mr. Elliott did say, and you have stated that you would not
14 undertake to say what the conversation was over the telephone
15 several years - some two years ago. Now, is not it a fact -
16 I refer to the conversation that you say Mr. Elliott had with
17 the Bank of Mansmond, in your office - -
18 A. In his office.
19 Q. In his office. Do you mean to say that you can, at this
20 late day, tell just what conversation was had on that occasion?
21 A. I cannot state the exact words, but I know what the in-
22 tention - what the meaning of the conversation was.
23 Q. What you were concerned about was postponing the payment
24 of that note; is that correct? A. Yes.
25 Q. So when that was accomplished your mind was satisfied; is
26 that correct? A. Yes.

1 Q. Your attention was directed, in that matter, simply
2 to getting the payment postponed; is that correct?

3 A. Yes.

4 Q. Mr.Elliott was seeking to accomplish that, was he not?

5 A. Yes.

6 Q. Now, is not it a fact that you are relating what you
7 recollect of that conversation, more by the fact that you had
8 a conversation with Mr.Kerr and with Mr.Elliott, relative to
9 the purchase of the note, and that what you thought he was doing
10 was arranging about a purchase, rather than the actual wording
11 of his conversation, which took place?

12 A. Yes.

13 Q. Were you in the bank the day that the note was received
14 by the bank from the Bank of Suffolk, or did you see it when
15 it actually came into the bank?

A. No.

16 Q. And knew nothing of the matter, after this conversation
17 in Mr.Elliott's office, until some time, some weeks after,
18 was it not?

A. Yes.

19 Q. In fact, I believe you did not know, so far as actually
20 seeing the situation, about it until you saw the note with
21 Mr.Ferguson?

22 A. Yes.

23 Q. You knew you were no longer bothered about it, and you
24 thought the matter had been arranged after this conversation
25 between Mr.Elliott and the Bank of Suffolk, is not that correct?
26 You gave yourself no further uneasiness concerning it; that

1 is the idea, isn't it? A. Yes.

2 Q. What, if anything, did Mr.Hayden have to do with this
3 transaction? A. I believe he went
4 with me to Mr.Kerr the first time. When we tried to get Mr. ✓
5 Kerr to make us the loan of \$1,000, and he refused. I believe .
6 that was all Mr.Hayden ever had to do with it.

7
8 RE RE DIRECT EXAMINATION

9 By Mr.Brooke:

10 Q. Where is Mr.Hayden? A. I don't know.

11 Q. Is he in Norfolk? A. No.

12 Q. When did he leave Norfolk, do you know?

13 A. Some time last summer.

14 Q. With whom did the idea originate of getting possession,
15 or purchasing this brick property at Smithfield?

16 BY MR.NELMS: Objected to as immaterial and
17 irrelevant.

18 A. Mr.Hayden and myself.

19 By Mr.Brooke:

20 Q. You made the statement to Mr.Nelms just now that you
21 were insolvent; what did you mean by that?

22 A. My expenses while in the hospital, and loss to my business,
23 I could not take care of, have amounted to bills that have
24 exceeded my assets:

25 Q. Then you are at present in debt?

26 A. Yes, sir.

1 Q. You are not in bankruptcy? A. No.

2 Q. Are you working now? A. No.

3 (Signature waived).

4 -----oOo-----

5
6
7 STATE OF VIRGINIA,

8 City of Norfolk, to-wit:

9 I, C.L.Hendry, a Notary Public for the City of Norfolk,
10 in the State of Virginia, do certify that the foregoing
11 deposition of I.B.Betts, Jr., was duly taken and sworn to
12 at the time and place, and for the purpose in the caption
13 mentioned, and that signature thereto was waived by consent
14 of counsel.

15 Given under my hand this 3rd day of May, 1909.

16
17 C. L. Hendry
18 Notary Public.

18 Fee: \$12.25-

19 -----oOo-----

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21
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26

R. G. Baker, Sub. Justice
vs.
Ferguson et al.

Deposition of
W. A. Ferguson, Recalled.

Subd May 6/1909

VIRGINIA,

In the Circuit Court of Isle of Wight County,

R. Y. Baker, Substituted Trustee,

-vs

W. T. Fergusson et als

To the Honorable B. D. White, Judge of said Court.

The undersigned, R. Y. Baker, substituted trustee in a certain deed of trust from Harriett S. Elms and B. S. Elms, her husband, to W. F. Young, trustee, upon whom, by a decree in the above styled cause, entered therein on the 27th day of August, 1908, certain duties were enjoined, respectfully begs leave to report to Court, that as ^{was} he was advised that said decree had been entered he notified Agnes L. Turner, the purchaser of the property in these proceedings mentioned that he was ready to receive the sum of four thousand and twenty-five dollars, the agreed purchase price, and to deliver to her a good and sufficient deed for said property, as in said decree he was directed, and suggested that said deed be placed in the Merchant's and Farmer's Bank, Smithfield, Virginia, to be held by it in escrow until the said sum of four thousand and twenty five dollars was fully paid. That by a letter dated on the fourteenth day of September, 1908, he was requested to forward the said deed to the said bank to be so held, and that on the fifteenth day of September, 1908, he did comply with said request and lodge the said deed in the said bank to be held in escrow until the said purchase money was fully paid. That said deed remained in bank continuously from the said fifteenth day of September, 1908, until the 22nd day of January, 1909, when the said sum of four thousand and twenty-five dollars was paid, and the deed delivered. Of the money so collected

the said trustee has deposited the sum of \$2,000.00 in the Savings Department of Schmelz Brothers, Bankers, Newport News, Virginia, and the balance in the said Merchant's and Farmer's Bank, Smithfield Virginia, and has taken from the former a pass book, and from the latter a certificate of deposit, showing that the said amounts have been duly deposited and are held subject to the order of the Court in this cause.

The said pass book and the said certificate of deposit are returned to Court along with this report.

All of which is respectfully submitted.

N. G. Baker
Substituted Trustee.

R. Y. Baker, Substituted Tr.

V.....

W. T. Fergusson et als

Trustee's Report

Filed February 15th, 1909

W. T. F.

The witness W. T. Ferguson being recalled deposes as follow;
Examination by Mr. Nelms.

Q. Mr. I. B. Betts Jr., states in his deposition on page five, as follows; "I tried to get Mr. Ferguson to extend the time of payment but he refused and Mr. Hayden and myself called on Mr. Carr etc"/ His reference was to the thousand dollar note then due you by Mr. and Mrs. Elms. please state if Mr. Betts or Mr. Hayden tried to get you to extend the time of payment of that note.

A. Mr. Betts nor Mr. Hayden I never knew of heard of them up to that time, I dont think, but on that day Mr. Elms came to my house and asked me to have my bank send it down to Norfolk to the Bank of Commerce and the note would be paid. They did not up to that time/

Counsel for the National Bank of Commerce and the Reliance Brick Company Inc., moves that the testimony of the witness as to the statements made by Mr. Elms to him be stricken out as purely hearsay.

Q. Did they ever ask you to extend the time of the payment of that note.

A. I have no recollection of their ever having asked me.

Q. You stated above that Mr. Elms came to your house on that day. On what day do you refer to?

A. As well as I remember it it was the very day the note was due, or the day after, as well as I remember it was the very day. This is what I meant by that day.

Q. Were you requested by Mr. Elms to have your bank send down to the Bank of Commerce for payment any other note on the occasion he requested you to have sent the thousand dollar note.

Objected to first, on the ground that the question is leading, and second, on the ground that the answer would be hearsay testimony.

A. I was. A note for eight hundred dollars which I had which was not due and would not be for a year.

This eight hundred dollar held by me was secured by the same deed of trust. I phoned Mr. Jones to send them both down there.

Q. Mr. Betts on page seven states that you saw this thousand dollar note when the same was in the possession of the National Bank of Commerce and that it was after or before the property was sold, please state if this occurrence took place in fact, if at all, after or before the property was sold.

A. After.

Q. Are you sure of this. A. I am.

Q. What was the occasion of your going there to see the note

A. After the sale I heard that Mr. Betts or the Bank of Commerce had put in a claim for this note and I went to see MR. Betts and told him I would like to see the note. He told me to go to the Bank of Commerce and they would show it to me. They examined and said they did not have the note but that Mr. Betts had it. I went back to Mr. Betts and Mr. Betts stated that they did have it and that if I would go back with him around there he thought he could find it. And I went with him and they did find it. And that was the first time I ever saw the note since I sent to the Farmers Bank fo Nanseandd for collection.

Counsel objects to witness stating that note was sent to Bank of Commerce for collection as he is attempting to vary the terms of a valid written instrument. Counself also moves that the statement of the witness as to what was told him at the Bank of Commerce in regard tonthe location of the note be stricken out as purely hearsay.

Q. Did you have any telephone conversation with Mr. Betts prior to the sale of the farm.

Question objected to as leading.

A. No sir.

Q.

(See report out by for 3rd page)

Cross examination By Mr. Brooke.

Q. Mr. Ferguson which was the first secured note that became due as a lien on this brick property in Smithfield.

A. The note to me for seventeen hundred dollars was the first one.

Q. This note for seventeen hundred dollars that you refer to was one of three notes was it not? that was given to you to secure the purchase price of this property?

A. Yessir. There were only two notes to me.

Q. At the time this property was sold were there any other liens against it in the shape of deeds of trust.

A. Yes sir.

Q. There were notes secured by deeds of trust prior to the time you sold to Elms. A. Yes.

Q. Do you know how many there were.

A. Only one note to George H. Warren.

Q. As a matter of fact wasnt that note prior to the first of your notes that bacame due.

A. Yes sir, prior in payment but not in time. of maturity.

Q. When this property was bought by the Reliance Brick Company, the records show that it assumed the indebtedness on the property at that time; from your testimony the note held by Geore Warren would be the first one that bacame due, isnt that so.

A. This line of examination is objected to for the reason that the record speaks for itself and that it is not responsive to examination in chief.

A. Well, by agreement it was not, my note was due ahead of that and was to be paid first that was the agreement.

Q. Mr. Ferguson do you know which note was the first note that bacame due after the property was bought by the Reliance Brick Company.

A. Mrs. Purvis' note, I am under the impression, I couldnt say positively.

Q. Do you know what the Reliance Brick Company did when that note became due, whether it was paid or whether the time was

extended.

Objected to as immaterial and irrelevant? and not responsive to examination in chief.

A. It was not paid. I dont know whether the time was extended or not. I dont think so, though.

Q. You state that neither Mr. Betts nor Mr. Hayden acting for the Reliance Brick Company tried to get you to extend the time of payment of your note when it became due.

A. I have no recollection of it at all.

Q. Did you have any conversation with Mr. Betts over the telephone before this property was sold to Mrs. Turner under the deed of trust in which Mr. Baker was trustee?

A. No.

Q. Isnt it a fact, Mr. Ferguson, that Mr. Betts telephoned to you and asked you to meet him in Smithfield either on the day of the sale or prior to the sale in order to have the sale postponed.

A. Positively , NO.

Q. You never had any conversation at all with Mr. Betts over the phone.

A. Yes, I did after the sale.

Q. Mr. Ferguson, after the sale of this property, were you present in Mr. Elliot's office on the 7th floor of the Law Building at a meeting held there for the purposes of putting in an upset bid.

A/ Yes sir.

Q. Who was there?

A. Mr. Baker and myself and Mr. Brooke, I think Mr. Bohannon was there. That is all I remember. Mr. Betts was there.

Q. Didnt you make a statement there that if you could have attended the sale you would have been willing to have paid five thousand dollars and that you had instructed some one there to bid up to that amount for you.

Objected to as immaterial and irrelevant and not responsive to examination in chief.

A. That is my recollection.

Q. At that meeting, weren't you requested to try to find a purchaser for this property who would put in an upset bid.

Same objection.

A. I was.

Q. Mr. Bohannon, the attorney for the trustee, gave you about two or three weeks, I think, in which to find the purchaser, isn't that so.

Same objection.

A. I think so, there was some time given, I don't recollect the time.

Q. Did you make an attempt to find a purchaser to put in an upset bid for this property.

A. I don't remember making any special effort, I think that Mr. Baker was the man who was more especially requested than myself.

Q. But you were on the lookout for a purchaser.

Same objection.

A. Yes, I was willing to aid all I could.

And further this deponent says aeth not.

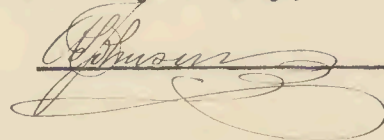
Signature waived.

By agreement of counsel ~~xxx~~ captions, signatures and ~~copy~~ verifications to the depositions heretofore taken are waived.

Defer deposition \$100

The foregoing depositions were taken before me, A. S. Johnson, Commissioner in Chancery of the Circuit Court of the County of Isle of Wight at the office of W. J. Nelms, in the City of Newport News, Virginia, by agreement of counsel for W. T. Fergusson and The National Bank of Commerce.

Given under my hand this 6th. day of May, 1909.

 Comr.

Rep. Baker, Sub. Trustee. Plaintiff
vs.
Furgerson et al. - Defendants.

Depositions of J. Waverly Thomas, witness, taken before me,
Geo. F. Whitley, a Commissioner in Chancery for the Circuit Court for the County of Allegheny
West Virginia, on the 22nd day of May, 1909, in pursuance
of an agreement at the office of E. Williams in the County and
State aforesaid, between the heirs of J. and C. P. W. to be
read in evidence in a suit in which Rep. Baker Sub.
Trustee is plaintiff and Furgerson et al. are defendants,
this deposition to be read in the help of Mrs. Agnes Lu Turner
plending in the Circuit Court for the County and State aforesaid.

J. Waverly Thomas a competent witness, being duly sworn,
deposes as follows:
Q. Mr. Thomas what is your name, age, residence and
occupation?

A. J. Waverly Thomas, Smithfield, W. Va., age 39,
Coshier Merchant & Farmers Bank.

Q. Mr. Thomas will you please state whether
or not Mrs. Agnes Lu Turner had sufficient
funds in your bank during the month of
December, 1907, to pay the purchase price
for the land for me, viz. \$4200.00 and how
long this amount remained in your
Bank?

A. Yes, she was fully prepared to make
that payment. The funds remained
in bank until some time during
January, 1909. The fund might have varied
between \$3700.00 & \$4200.00. But she had ample
funds to pay it at any time.

By Mr. Bohannon:

Cross Examination:

Q I had you here with letter marked J.W. #1. Please examine the same and state whether or not it was written by you on the date which it bears and whether or not notice to Mr. Williams, was actually mailed on that date?

A. Yes - and Mr. Williams was notified on that date over phone.

Q Please state on what date this deed was actually taken up?

A. Some time about the middle of January, 1909.

Signature waived.

State of Virginia.

County of Dale of right to wit:

I, Geo. F. Whitley, a Commissioner for the Circuit Court for the County of said, in the State of Virginia, do hereby certify that the foregoing depositions were duly taken, reduced to writing before me, at the place and time herein mentioned, pursuant to agreement.

Given under my hand this 22nd day of May, 1909.

Geo. F. Whitley,
Commissioner in Charge

See 1 hrs 1.50

Turner

11

R.Y. Bates. Sub Trustee
vs. Report of Commissioners in Chy
W.D. Dergunson et al

Filed Oct 1st 1909

The note payable to Margaret E. Purvis, for fifteen hundred dollars. It is not in evidence whether or not any interest has been paid on this note, but the commissioner understands from counsel for the holder of the note that the interest has been paid, in part. The trustee, in paying this note, should have reference to the note before paying off same and ascertain just what amount of interest is due upon the same.

The last mentioned notes are payable without priority, the one over the other.

3rd. The note of Agnes L. Turner for ten hundred and fifty dollars, with interest from date.


If the ruling of the Court in Cussen vs. Brandt (supra) is considered by the Court to be the proper law applicable to this case, then the one thousand dollar note, claimed to be now held by The National Bank of Commerce, and mentioned above as having been paid at the said bank for Mess Betts & Hayden, should be paid after the notes of Purvis and Fergusson for fifteen hundred dollars and eight hundred dollars, respectively, and before payment of the note for ten hundred and fifty dollars, payable to Agnes L. Turner.

So far as appears in evidence the proper parties to this suit are before the Court.

As to the question of payment of interest on the purchase price of the property at the sale of the trustee by the said Agnes L. Turner, from the date of the purchase to the time that payment was actually made to the said trustee, your commissioner is of opinion that the evidence taken on behalf of the said Agnes L. Turner, and also the evidence taken to support the contention of both W. T. Fergusson and The National Bank of Commerce, shows that the said trustee did not know whether he was going to make a deed for the property to the said Agnes L. Turner for a long time, as there is evidence of looking for an upset bid by some one, or such a course being in contemplation by some of the parties

in interest, which could not have been kept from Mrs. Turner; and, also that the said Agnes L. Turner was ready and willing to make the payment at any time that the said trustee would deliver her a deed. In the light of the facts presented, while it being very true that the better course for the said Agnes L. Turner to have pursued in the matter was a tender of the payment for the said land, specifically, to the trustee, it is clear that it was the intention of her or her attorney so to do on the day of sale when the trustee was informed that he could get the money in a few days, your commissioner is of opinion that she should not be required to pay such interest unless the deed had been presented to her by the said trustee with reasonable assurance that no re-sale was contemplated, after it was decided, (if ever such was true) by the said trustee, that no attempt to resell the property would be made.

Respectfully submitted,



Commissioner in Chancery.

an Easterly direction along said fence to James River, thence up the River shore to the lands of W. H. Wooley, thence around the said Wooley place to James river and thence continuing along said River shore to the land of James Wells, and thence in a Westerly direction along the lands of the said James Wells and W. T. Madera to the said public road, and thence along said public road in a Southerly direction to the place of beginning". * * * * *

"in consideration of the sum of five thousand and five hundred dollars paid as hereinafter set out, to-wit: three hundred dollars in cash to W. T. Fergusson. Two Thousand and Five Hundred Dollars to be evidenced by notes payable to W. T. Fergusson, Fifteen Hundred Dollars to be evidenced by note and made payable to Margaret E. Purvis, all three of said notes to be secured by a deed of trust of even date herewith to be executed by Harriett S. Elms and B. S. Elms her husband, and twelve hundred to be paid by Harriett S. Elms to Geo. H. Warren, that being the amount now due by W. T. Fergusson to Geo. H. Warren and secured to be paid by a deed of trust on the land herein conveyed. The said Harriett S. Elms assuming and agreeing to pay off and discharge said deed of trust lien debt to Geo. H. Warren". (Deed Book No. 71, page 497.)

That on the same date the said Harriett S. Elms and B. S. Elms, her husband, executed a deed of trust conveying the said property to N. F. Young, in trust to secure to the holders thereof ratably and without preference the one over the other, the payment of three negotiable promissory notes, each of said notes made by said H.S. Elms and B. S. Elms, payable at the Bank of Smithfield, Virginia, each bearing interest at the rate of six per centum per annum, payable semi-annually, and waiving the benefit of the Homestead Exemption, and the right being reserved by the said H. S. Elms and husband to anticipate the payment of any or all of said notes

before maturity. One note payable to W. T. Fergusson one year after date for \$1,700.00; one payable to Margaret E. Purvis two years after date for \$1,500.00; and one payable to W. T. Fergusson three years after date for \$800.00. (Deed Book 72, page 43)

This deed of trust is also given to secure the payment of any note or notes given in renewal, extension or curtail of the said notes, but does not show, specifically whether it is intended for the said notes to bear interest from date or from maturity; and, in the absence thereof it is presumed, of course, that they bear interest from maturity.

H. S. Elms and B. S. Elms, her husband, by their deed bearing date May 1st. 1906, conveyed the said tract of land to W. P. Wilson, in trust to secure to Agnes L. Turner the payment of the sum of \$1,050.00, evidenced by one note of even date, payable ninety days after date, bearing interest from date.

Harriett S. Elms and B. S. Elms, her husband, by their deed bearing date the 12th. day of February, 1907, conveyed the property herein mentioned to Reliance Brick Company, a Corporation, subject to the following liens,

"Balance due George H. Warren, one thousand, two hundred dollars (\$1200.00), on purchase price, as evidenced by deed of trust duly of record referred to in the deed from W. T. Fergusson, et al. to Harriett S. Elms, recorded in Deed Book 71, page 497.

Note due Margaret E. Purvis for one thousand five hundred dollars (\$1500.00) payable two years after date with interest at six per cent (6%) payable semi-annually, secured by a deed of trust to N. F. Young, dated May 1st., 1905 and duly recorded.

Balance of note for one thousand, seven hundred Dollars (\$1700.00)

payable to W. T. Fergusson one year after date, with interest at six percent (6%), secured by Deed of Trust to N. F. Young dated May 1st., 1905 and duly recorded. Seven Hundred Dollars (\$700.00) having been paid on this note leaves a balance due of One Thousand Dollars (\$1000.00).

Note for Eight Hundred Dollars (\$800.00) payable to W. T. Fergusson three years after date, with interest at six percent (6%), secured by Deed of Trust to N. F. Young dated May 1st., 1905 and duly recorded.

Note payable to Agnes L. Turner for One Thousand, fifty Dollars (\$1050.00), secured by Deed of Trust to W. P. Wilson dated May 1st., 1906, and duly recorded! (Deed Book 75, page 125.)

N. F. Young the Trustee named in the deed of trust from the said Harriett S. Elms and husband, securing the debts mentioned above departed this life sometime in the month of June 1905; and, upon the petition of the heirs of Margaret E. Purvis the Circuit Court of the said County, on the 7th. day of October, 1907, substituted R. Y. Baker in the place and stead of the said N. F. Young, deceased as trustee in the said deed of trust.

The said R. Y. Baker, substituted Trustee as aforesaid, default having been made in the payment of some of the obligations mentioned in the said deed of trust, upon being required so to do, it appears from the evidence, by the heirs of Margaret E. Purvis deceased, exposed the said property to sale by public outcry at the Courthouse of the said County on the 2nd. day of December, 1907 at which sale Agnes L. Turner became the purchaser thereof at the sum and price of four thousand and twenty five dollars, and the said trustee, not being fully advised as to the proper distribution of the proceeds of said sale, has filed his bill, in this suit,

praying to be directed as to the proper distribution of the funds in his hands derived from the sale of the property mentioned in the bill.

The main questions involved and submitted in the evidenced filed herewith, are:

(a) Whether or not the note for one thousand dollars, either bought or paid by The National Bank of Commerce, on the 16th. day of November, 1906, is now a lien upon the property mentioned in the bill and should be paid out of the funds in the hands of the said trustee, and if the transaction relating to the said note was a sale when the same shall be paid with reference to priority?

(b) Whether or not Agnes L. Turner, the purchaser of the property in the bill mentioned, shall pay interest on the purchase price from the time of the sale thereof, by the said trustee, to the time that she actually paid therefor and received deed for same?

Your Commissioner believes that he cannot make a proper report, without taking up the evidence and entering into some discussion of same, and, therefore, begs the indulgence of the Court.

It appears that on the 12th. day of November, 1906, some one communicated with the Farmers Bank of Nansemond, which said bank held the said note as collateral security for a loan made by it to the said W. T. Fergusson (it being a renewal of the note mentioned in the deed of trust aforesaid for seventeen hundred dollars, payable to the said W. T. Fergusson, it having been curtailed to one thousand dollars), and directed that it be sent down to The National Bank of Commerce for collection. (testimony of cashier Jones, page 3) for collection. As to who directed the note mentioned to be sent to The National Bank of Commerce the evidence submitted is conflicting in the extreme. Mr. H. M. Kerr, the cashier of The National Bank of Commerce, (page 5 of his testimony) states that they (meaning Betts & Hayden, and Elliott, their counsel, instructed the Farmers Bank of Nansemond to send the note down to The National Bank of Commerce. Mr. Elliott (page 5 of his testimony) states that he does not recall, specifically, what the transactions were with reference to the handling of the said note, but that his recollection

is that the note in question was in the Suffolk Bank (which was true) and that it had been sent to The National Bank of Commerce; and that after negotiations extending over a period of two or three days it was arranged that The National Bank of Commerce was to remit to the Suffolk Bank for this note and was to hold it as collateral security for ~~the~~ a note of Mess Betts & Hayden until they could arrange to take it up. (Why should The National Bank of Commerce hold a note they had remitted for as collateral for a note of Mess Betts & Hayden if it was the owner of the note?)

It will be further observed, from the testimony of Mr. Elliott (page 5) that he had no recollection of communicating with the Farmers Bank of Nansemond with reference to having the note sent to Norfolk, but that it was his recollection that Mr. Kerr did it.

It will also be observed that Mr. Betts, in his testimony, (page 11) positively states that he was present in the office of Mr. Elliott when he, (Elliott) called the Suffolk bank and asked that the note be sent down to The National Bank of Commerce.

Your commissioner believes that the testimony of Mr. Elliott should be given great weight and more consideration that will be given to the testimony of Mess. Kerr and Betts. Mr. Elliott was the legal adviser of both of the parties mentioned and was better advised of the proper course to pursue and it cannot be believed that he would have called for the note to come to the Norfolk bank unless he had done so at the request (of some character) of the owner of the note, who was Fergusson.

Mr. W. T. Fergusson, (page 34 of his testimony) states that when he was notified by Elms that if he would send the note to The Norfolk bank that it would be paid he immediately telephoned to the Farmers Bank of Nansemond to send it down, and when it was not paid he went down to see why not. It appears that Mr. Fergusson, being the owner of the note, was the proper party to have it sent down. In fact, your Commissioner does not understand why the Farmers Bank of Nansemond would have sent it down except at his request, either by himself or of some one for him. The testimony of the cashier of The Farmers Bank of Nansemond seems to be more in line with the statement of Mr. Fergusson, and your Commissioner is forced to believe that the note was sent to the Norfolk bank at the request of Mr. Fergusson.

The foregoing facts are stated to show what your Commissioner believes to be the intention of the parties at the time of the transaction.

It will be noted that it nowhere appears in the testimony that neither Mr. Kerr, the cashier of The National Bank of Commerce, nor Mr. Elliott, his legal adviser, nor any one else, although Fergusson called at The National Bank of Commerce several times after the note had been sent down to it by the Farmers Bank of Nansemond, said a word to him, (Fergusson) about the purchase of the note.

It appears that Mess. Betts & Hayden were general contractors, and if so, in their building operations they had use for a great number of brick, and especially so about the time of this transaction, as the Exposition building was then in progress (This fact is not mentioned in the evidence but is true, nevertheless). The property in the Bill and proceedings of this suit mentioned is a clay bank on James River, in Isle of Wight County which H. S. Elms had purchased and placed thereupon a brick plant. As will be observed in the foregoing mention of the several trust deeds when she bought the property she did not pay cash for it, in fact, but very little cash. It appears that the note in question, at the time of this transaction, was long past due, and Mr. Kerr states in his testimony (page 5) that Fergusson was "kicking", and we infer that he was demanding the payment of the note past due. Harriett S. Elms, not being in financial funds to take up the note, sent her husband, B. S. Elms, out to look for some, and probably having had or desiring to have dealings with Mess. Betts & Hayden, Elms made application to them for assistance. After making tests of the clay, Betts & Hayden decided that if they could acquire a part interest in the property that they could make something out of it and proceeded to make the arrangement to get the note mentioned paid. They not being in financial funds to do this without assistance made application to The National Bank of Commerce for help. Mr. Kerr tells us that he refused when they made application for a loan to pay the note, but that after consulting their attorney, who he made his own attorney for the purpose of this transaction, he decided that he could handle the matter for them. It will be noted that when Betts & Hayden first went to Mr. Kerr with reference to the negotiations they clearly attempted to borrow the money to pay off the note, and the evidence does not show that either Elms or Fergusson was afterwards notified that they could not make the borrow

as they had expected they could do, which they evidently did expect, or else they would hardly have made the application. If they had so told Elms it is very probable ~~that~~ he would have said nothing to Fergusson about the matter, or if he had that Fergusson would have done nothing as it would hardly have been to his advantage to remove the note from Farmers Bank of Nansemond to The National Bank of Commerce when it does not appear that he was ^{not} getting as much money upon it as collateral at the Farmers Bank of Nansemond as he could get at The National Bank of Commerce, and unless the note was intended to be paid your Commissioner fails to see the advantage that would have accrued to Fergusson by the transaction.

Unless the note was being paid your Commissioner cannot see that Mrs. Elms could have been benefitted by such a transfer, as the note would still have remained a lien upon the property. Such a transaction would have had the effect to give Betts & Hayden something for nothing. It will be noted in this connection (see contract filed with testimony of Elliott) that Betts & Hayden were to pay off the outstanding liens upon the property mentioned and when they had done so a half interest in the land should be conveyed to them. To carry out this purpose an agreement in writing was entered ^{into} on the very day that remittance was made for the note to the Farmers Bank of Nansemond, providing that a company should be organized to which the property should be conveyed and that when Betts & Hayden had paid off the deed of trust liens, and some other obligations, amounting to more than the original purchase price of the property, that a conveyance should be made to them for a half undivided interest in the said property. So, from all these facts, it is clear to your commissioner that the only reason that Elms was giving Betts & Hayden an interest in the property was because she needed help in operating the brick plant, and the help she needed was financial help and not assistance in the actual mechanical operation of the plant, for it nowhere appears that Betts & Hayden were to do any of this, but it does appear that B. S. Elms was to be the general manager. Betts & Hayden would probably ^{have} marketed the brick. To make a long story short your Commissioner believes that Betts & Hayden thought they had found a good thing and were willing to pay off this indebtedness mentioned.

in the said agreement for a half interest in the property; and Mrs. Elms, in order to get the liens discharged ~~was~~ willing to give a half interest in the property, but she would hardly have been willing to this just for the consideration of holding the payment of the liens in abeyance for some little time, for interest was all the time accumulating. The fact that it nowhere appears that Elms or Fergusson were told of the inability of Betts & Hayden to pay off the note leaves us to believe that Elms informed Fergusson that the note would be paid if sent down, and that he was never advised differently. Evidently when Elms left Betts & Hayden, that was his impression, because, as stated before, they went after a loan, but were refused, which Elms and Fergusson never knew the details of.

It is quite true that Mr. Kerr, the cashier of The National Bank of Commerce desired to retain the security, as his testimony with reference to his inquiries made of Mr. Elliott are not contradicted. Mr. Elliott tells us that he advised Mr. Kerr how this might be done, but Mr. Elliott does not tell us that it was, in fact, done.

Mr. Kerr, as cashier of The National Bank of Commerce, held a position which the law holds to strict accountability for its transactions in a case of this kind. The note came to him with a restricted endorsement upon it, namely "coll for collateral etc. of W.T. F. Agt." and also bore certain collection numbers as will be noted. (The note in question is filed with the testimony of Kerr & Fergusson, numbered 1.).

It is also true that the said note ~~bore~~^{bears} an endorsement as follows: "without recourse, pay to the order of Farmers Bank of Nansmond" and is signed by W. T. Fergusson. Mr. Fergusson states that he did not put "without recourse" on the note, and while the testimony is not specific, it is believed that the other part of the endorsement here mentioned was placed on the note at the time it was deposited in the Farmers Bank as collateral, as this is the usual custom in such cases with some banks which your Commissioner has had dealings with. Under ordinary circumstances such an indorsement would transfer title to a note (with "without recourse" left off), but it is not believed that such is the case when it also bears restricted endorsements or a restrictive endorsement coupled with the collection numbers of another bank, and that bank, too, not being even the owner of the note, and never claimed to be the owner of it. The endorsement "for collection" should have been

enough notice to Mr. Kerr to have put him on his guard with reference to a purchase. He must have known that the note was at the Farmers Bank of Nansemond as collateral, and he must also have known the Mr. Fergusson was the owner of the note. In view of the fact, as he states, that Fergusson was in to see him several times, is it not reasonable to believe and assume that he should have negotiated with him (Fergusson) about the sale and purchase of the note, if so intended, and have the collection endorsements and numbers erased and such an indorsement placed on same as would have made and unquestionable transfer of the note. Your Commissioner believes that had Mr. Elliott's advice been followed, or had Mr. Elliott been called in with reference to the actual transfer of the note, as well as what could have been done, that either it would have been a purchase, properly made, or that the note would have gone back to the Farmers Bank of Nansemond to be put with the collateral account of Mr. Fergusson had he not intended to make a sale of it, which is exceedingly doubtful that he intended so to do in view of the statements made above.

In order for there to have been a sale there must have been a seller. It does not appear at all clear to your Commissioner that there has been a seller. Hence, there could have been no purchaser. Your Commissioner has not been unmindful of the evidence brought out by the attorney of The National Bank of Commerce with reference to the actions of Fergusson after the sale of the land in question, but it is believed that the actions of all the parties, before the transfer of the note from one bank to the other, must govern, and not the subsequent actions. People may think that they have made errors and try to cure them or do some act that will be to their advantage after a transaction, ~~but~~ and especially is it true with people who do not know the law and do not take the time or trouble and are disposed to make the expenditure to be advised concerning the law, and probably such is the case here, but your Commissioner believes that it does not alter any opinion that Mr. Fergusson, and Elms too, could and probably did, reasonably have had after Mr. Elms notified ~~th~~ Mr. Fergusson to send the note down to The National Bank of Commerce for ~~payment~~ payment, as payment was evidently the purpose, from the testimony of both Mess. Fergusson and Jones, the latter the cashier of The Farmers Bank of Nansemond. Mr. Jones seems to understand, even at the time of the taking of his testimony, that it was

a payment, and we cannot believe that he was sufficiently in interest to be biased in his testimony between the bank and Mr. Fergusson, for, no doubt the conduct of his business is such that he could not afford to be and we do not believe, in any sense, that he has ever been disposed to be biased in any matter of this character, certainly not in the testimony submitted in this case.

In the case of Citizens Bank v. Lay, 80 Va. Rep. 436, the Court of this State held that "payment of a note at bank is either a sale or a discharge thereof. A sale it cannot be without the bank's consent. And where the note is paid by a stranger, bound for its payment at maturity, the note is actually discharged, and cannot be reissued by him so as to bind the parties thereto, or to keep alive a deed of trust executed to secure it, except with the knowledge and consent of those parties."

Here the question arises-- was the note paid at the Farmers Bank of Nansemond? It is quite clear that it was. Was it a sale? Clearly not, for the bank had no right to sell it as it was not the owner. Nothing in the evidence shows that the note for which it was held as collateral was past due, and if not the Farmers Bank of Nansemond had no right to sell it, and no one should have known this better than Mr. Kerr. This case also holds that where a note is paid by a ~~stranger~~ stranger bound for its payment at maturity, the note is actually discharged. Is it not true in this case that Betts & Hayden were bound for the payment of this note, by their agreement and that The National Bank of Commerce did the paying for them at their instance and request? Your Commissioner believes that the act of the National Bank of Commerce has the effect to invoke this rule of law, and that its action was a discharge of the note in question, and that the note has been paid and that their only remedy, if any, is against Betts & Hayden, and not that they have a right to be paid anything out of the funds in the hands of the said trustee. These conclusions are reached after taking the position that Elms made application to Betts & Hayden for help and they agreed to help him, and he, in turn, notified Mr. Fergusson to send the note to The National Bank of Commerce for payment, which your Commissioner believed Mr. Fergusson understood, but probably Mr. Kerr was ignorant of, in detail, and that the note was paid or taken up, if Mr.

Kerr will have it so, without Mr. Fergusson having been advised of the inability of Betts & Hayden to borrow the money and pay the note, and also without any attempt being made by Mr. Kerr to make the purchase of Mr. Fergusson, the owner of the note.

The case of Cussen vs. Brandt, 97 Va. page 1, and also reported in 75 Am. St. Rep. page 762, is also relied on by counsel for Mr. Fergusson to help him out of the difficulty. The same rule of law stated above would have the same application, so far as Fergusson is concerned, as the rule in Cussen vs. Brandt. The rule in the latter case provides for the mistake of Mr. Kerr and says he can come in for payment after the note of Fergusson, which is payable after the one thousand dollar note in question is paid, and the other notes secured by the same deed of trust.

Your Commissioner has read this case, carefully, and has also read the other cases noted at the foot of this case in 75 Am. St. Rep. page 770, and his position taken in the first instance is strengthened.

Your Commissioner has no doubt, however, but that all of the debts mentioned in the first deed of trust should be paid before The National Bank of Commerce can receive anything at all, but he believes, as stated above, that Bank v. Lay applies and that its act was a discharge of the note for Betts & Hayden.

Your commissioner, therefore, reports that he finds the following liens against the property, which should be paid in the order in which they are stated:

1st. A lien of twelve hundred dollars, evidenced by a note, payable to George H. Warren.

It does not appear in the evidence from what time interest is due on this note, and it is recommended that the trustee be required to have the note produced before payment and pay the interest according to what the note shows is due.

2nd. The note of eight hundred dollars, payable to W. T. Fergusson, with interest thereon from the 16th. day of November, 1906, it appearing that interest was paid on this note at the time of payment of the one thousand dollar note by The National Bank of Commerce for Betts & Hayden.

VIRGINIA: IN THE CIRCUIT COURT OF THE COUNTY OF ISLE OF WIGHT.

R. Y. Baker, Substituted Trustee

vs) Chancery

W. T. Fergusson, et als.

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REPORT OF COMMISSIONER.

TO HONORABLE B. D. WHITE, JUDGE OF THE CIRCUIT COURT OF THE COUNTY OF ISLE OF WIGHT, VIRGINIA.

The undersigned, one of the Commissioners in Chancery of Your Honor's Court, to whom has been referred the papers in this cause for the execution of the decree entered herein on the 1st. day of June, 1908, respectfully reports that on the 28th. day of July, 1908, in the office of Mess. Brooke & Brooke, in the City of Norfolk, Virginia, by consent of counsel for all the parties in this cause, he began the taking of depositions to be read as evidence in this cause, which have been, from time to time after the date aforesaid, further taken until the same have now been completed; and, after a review of the evidence so taken and filed your commissioner begs leave to make the following report:

On the 1st. day of May, 1905 W. T. Fergusson and wife, by their deed of that date, conveyed to Harriett S. Elms a certain tract or parcel of land lying in the said County of Isle of Wight and State of Virginia, described in said deed as:

"All of that certain tract, piece or parcel of land lying and being in Isle of Wight County, Va., on the Public road leading from Smithfield to Bacon's Castle and is bounded as follows; Begin on the said road at the point where the Purvis or Doyle piece as now located leaves the said public road and thence in

In the Circuit Court of the
County of ¹²¹Wright, Va.

R. M. Baker Sub. Justice
vs } In Chancery
W. T. Fergusson et al

Exceptions of R. M. Baker
Sub. Justice vs W. T.
Fergusson Priscilla
Baker, to Commission
Johnson's Report, filed
Oct 1st, 1909.

Filed May 24/1910

In the Circuit Court of Isle of Wight County, Virginia.

R. Y. Baker, Substituted Trustee &c.

vs.) IN CHANCERY.

W. T. Fergusson, etals.

EXCEPTIONS OF R. Y. BAKER, SUBSTITUTED TRUSTEE, AND W. T. FERGUSSON AND PRISCILLA BAKER, THE PLAINTIFF AND TWO OF THE DEFENDANTS RESPECTIVELY IN THE ABOVE STYLED CAUSE, TO THE REPORT OF A. S. JOHNSON, COMMISSIONER IN CHANCERY, FILED IN THIS CAUSE ON THE FIRST DAY OF OCTOBER, 1909.

These exceptants except to the report of the Comissioner A. S. Johnson, filed in this cause on October 1st, 1909, -

For that the said Comissioner reports that Mrs. Agnes L. Turner should not be required to pay interest on the purchase price of the property purchased by her and set forth in these proceedings from the date of the said sale to the time of the payment by her of the purchase price thereof.

R. Y. Baker, Substituted Trustee &c

By James Deane
His Attorney.

W. T. Fergusson

By Wm. M. Murray
His Attorneys

Priscilla Baker,

By Wm. M. Murray
Her Attorneys

In the Circuit Court of Judge
of Wight County.

R. Y. Baker, Sub. Tr.
vs. } In Chancery
W. T. Fergusson, et al.

Exceptions to the report
of Commissioner C. S.
Johnson, by the National
Bank of Commerce of Nor-
folk, vs. & Reliance Brick
Co. Inc. of Norfolk, Va.

Filed May 24 - 1910

In the Circuit Court for Isle of Wight County, Virginia.

R. Y. Baker, Sub. Tr.)
)
vs.) In Chancery.
)
W. T. Fergusson, et als.)

Exceptions taken by the National Bank of Commerce, a corporation, of the City of Norfolk, Va. and the Reliance Brick Company, Inc., also of the City of Norfolk, Va., two of the above named defendants, to the report of A. S. Johnson, a commissioner in chancery of this Court, to whom this cause has been referred by an order heretofore made herein on the 1st day of June, 1908, which report was filed on the 1st day of October, 1909.

For that the said Commissioner has held that, the transaction by which the National Bank of Commerce of Norfolk, Va. acquired the \$1000.00 note in said report mentioned, constituted a payment of the said note and an extinguishment of the lien on the property in said report mentioned, and that it is not entitled to share in the distribution of the proceeds derived from the sale of the said property.

National Bank of Commerce, Inc.

by Brooke & Brooke
 Its attys.

Reliance Brick Company, Inc.


by Brooke & Brooke
 Its attys.

Baker. Jul. Trs
vs { Repts for cert deposits
Ferguson et al

—

Surry, Va., June 16, 1910.

Received of A. S. Johnson, Clerk of the Circuit Court of Isle of Wight County, a certificate of Deposit dated January 22, 1909, for (\$2025.00) twenty hundred twenty-five dollars, issued by the Merchants & Farmers' Bank, Smithfield, Va., and payable to the order of the Circuit Court of Isle of Wight County, in the suit of R. Y. Baker, substituted Trustee against W. T. Fergusson and others, and a Pass-book issued by Schmelz Bros. Bankers, showing a Deposit as of January 25, 1909, of (\$2,000) two thousand dollars, payable to the order of the Circuit Court of Isle of Wight County.



Attorney for R. Y. Baker, Substituted Trustee

\$13.80

Newport News, Va., June 18, 1910.

Received of J. Gordon Bohannon, attorney for
R. Y. Baker, substituted trustee, the sum of thirteen dollars
and eighty cents, in payment of Stenographers' fees paid by
us in the suit of Baker, Trustee vs. Fergusson and others,
as follows:

Ethel Tuke.....	\$7.00
H. C. Ivey.....	5.30
Miss Brinkley.....	1.50
	<u>\$13.80</u>

Walter M. Munroe Atty.

W. H. Foster

~

August 1-13



Refers to Foster
W. H. Foster, Attorney
for R. J. Foster, Foster

Filed Oct 3rd 1910

Dist. of Columbia

~ ~ ~ ~ ~
"

Virginia,

In the Circuit Court of Isle of Wight County.

Baker, Substituted Trustee

vs

W. T. Fergusson, et als.

To the Honorable E. D. White, Judge of said Court.

The undersigned, J. Gordon Bohannon, attorney for R. Y. Baker, Substituted Trustee, respectfully begs leave to report to Court, that in obedience to the provisions and directions of a decree entered in the above styled cause on the 24th day of May, 1910, he did, upon leaving his receipt therefor, withdraw from the papers in said cause the Certificate of Deposit and the pass books, showing the deposit^s in the Merchants and Farmers' Bank of Smithfield, Virginia, and in the Bank of Schmelz Brothers, Bankers, Newport News, Virginia.

That on or about September the 16th of this year, Agnes L. Turner deposited in the Merchants and Farmers' Bank of Smithfield, Virginia, to the credit of the undersigned, interest on the sum of \$4,025.00, from the 3rd day of September, 1908, to January 22, 1909, and all moneys received by her for rent from the said farm, from the first day of January, 1908, until the third day of September, 1908, together with interest thereon from the date of the said decree, and the costs upon the petition filed herein at the first September Rules, 1910, amounting in the aggregate to \$108.33.

The undersigned has made distribution of the funds in said banks as follows, that is to say:

To A. S. Johnson, Clerk of this Court or to the parties entitled thereto, the taxed costs of this suit, including a fee of \$100.00 for his report herein as Commissioner, less the costs of

of the depositions taken by the National Bank of Commerce in this cause.

To J. Gordon Bohannon, as a fee for his services herein, the sum of \$150.00.

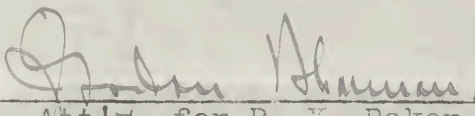
To R. Y. Baker, the sum of \$230.05.

To G. F. Whitley, attorney for George H. Warren, the sum of \$900.00, with interest thereon from the 19th day of December, 1894, until the date of the said decree, less the sum of \$362.64, partial payments made to said George H. Warren, as shown by statement.

To Nelms and McMurrin, attorneys for W. T. Fergusson, eight-twenty-thirds ($8/23$) of the balance of said funds in said banks, and to Nelms and McMurrin, attorneys for J. F. Pervis, administrator of Margaret E. Pervis, fifteen-twenty-thirds ($15/23$) of such balance.

A detailed statement of the receipts and disbursements of the undersigned is shown in the account which accompanies this report, and with said account are filed statements from the said banks, letters from the Clerk of this court, showing the amount of costs in this suit, and vouchers for the disbursements aforesaid.

All of which is respectfully submitted.


Att'y. for R. Y. Baker, Trustee.

W. S. Johnson, Sub. Justice

vs

J. S. Johnson & Co

Refund of Interest
Hessman, Attorney.

J. Gordon Bohannan, Atty. for R. Y. Baker, Substituted Trustee
 In Account with
 Funds in suit of Baker, Trustee vs Fergusson et als

To amount deposited in Bank of Schmelz Brothers, Bankers,
 with interest.....\$2108.55

To amount deposited in Merchants and Farmers'
 Bank, Smithfield, Virginia, with interest... 2137.95

To amount deposited in Merchants and Farmers'
 Bank, by Agnes L. Turner, as follows:

Interest on \$4,025.00.....	\$93.25	
Rent.....	12.00	
Interest on above items.....	2.08	
Costs upon petition.....	1.00	108.33
		<u>\$4354.83</u>

By amount paid A. S. Johnson, Clerk		116.51
By amount paid S. R. Buxton, depositions		1.00
By amount paid W. E. Howle		3.75
By amount paid J. Waverly Thomas		2.00
By amount paid George F. Whitley		1.50
By amount paid Nelms & McMurran		13.80 *
By amount paid Sheriff of Isle of Wight		3.00
By amount paid A. S. Johnson for Sheriff of Elizabeth City		.50 *
By amount paid A. S. Johnson for Sergeant of Norfolk		1.00 *
By amount paid J. Gordon Bohannan, fee		150.00
By amount paid R. Y. Baker, Commissions on sale...\$101.25		
Expenses.....	<u>28.80</u>	230.05
By amount paid George F. Whitley, Atty. for Geo. H. Warren...	1370.61	
		<u>\$1893.72</u>

By amount in bank to balance	<u>\$2461.11</u>	
		<u>\$4354.83</u>
To balance brought down	\$2461.11	
By amount paid Nelms & McMurran, Attys.		
for W. T. Fergusson, 8/23		856.04
By amount paid Nelms & McMurran, Attys.		
for J. F. Pervis, Admr., 15/23		1605.07
	<u>\$2461.11</u>	<u>\$2461.11</u>

PLEASE EXAMINE AND REPORT WITHIN TEN DAYS.

R. A. Baker vs. W. J. Ferguson et al. Court of Chancery of High Co

Dr. IN ACCOUNT WITH **SCHMELZ BROTHERS, BANKERS, NEWPORT NEWS, VA.** Cr.

1891	June 15	Deposit	2000
	June 30	Interest	33 33
	June 31	"	4066
	June 1	" to date	3456

Balance 210855

210855

210855

June 7 Balance \$210855.

W. P. WILSON, PRESIDENT

B. P. GAY, VICE-PRESIDENT

J. WAVERLEY THOMAS, CASHIER

The Merchants and Farmers Bank

INCORPORATED

AUTHORIZED CAPITAL STOCK, \$50,000.00

Smithfield, Va., June 21, 1910.

J. Gordon Bohannon Esq.,
Surry, Va.

Dear Sir:-

As per your request of today, Will say that the amount of interest on \$2025.00 which was deposited with us by the Circuit Court of Isle of Wight Co. on Jan. 22, 1909 and drew interest at the rate of 4% to June 14th. 1910 is \$112.95.

Yours very truly,

J. Waverley Thomas

Cashier.

J. Waverley Thomas

2025
112.95

2137.95

CLERK'S OFFICE
OF ISLE OF WIGHT COUNTY,
ISLE OF WIGHT, VA.
ALBERT S. JOHNSON, CLERK.

June 13th. 1910.

Mr. J. Gordon Bohannon,
Sufry, Va.

Dear Bohannon:

I am enclosing, herewith, copies of ~~final~~ decree in Baker, Sub. Trustee, etc. vs. Fergusson et als. I figure the cost in the suit to be as follows:

Writ tax,.....	\$ 1.50
Clerk fees,	14.51
Sheriff fees,	4.00
Stenographer's fees,	50.10
Commissioner's fee,	100.00

The Clerk should be paid the writ tax and his fees less the sum of \$8.50 which was entered by you as a deposit at the institution of the suit.

The Sheriff fees should be divided as follows: Sheriff of Isle of Wight \$2.50, Sheriff of Elizabeth City, 50¢, Sgt. of City of Norfolk, \$1.00

The Stenographer's fees should be divided as follows: S. R. Buxton \$1.50, W. E. Howle, \$3.75, George F. Whitley, \$1.50, D. S. Phlegar \$17.85, Ethel M. Tuke \$7.00, H. C. Ivy \$17.50 and Miss Brinkley \$1.50. I think Mr. Phlegar was paid by The National Bank of Commerce and is not a charge upon the funds of this suit, and I think you will consider that it so appears from the decree. The proposition of commissioner's fee less a certain amt. being costs of depositions taken by National Bank of Commerce is interpreted by Mr. Nelms in a letter to mean that I shall tax \$100.00 for the Commissioner and tax the other costs, omitting to tax the costs of the depositions of The National Bank of Commerce for taking their depositions in this cause. This will omit any reference to the pay of Mr. Phlegar from the funds in your hands. ~~Miss Tuke's fee~~ Mr. Nelms has paid Miss Tuke as appears from her receipt filed in the papers and should be reimbursed. H. C. Ivy's fee of \$17.50 should be curtailed \$12.20, that being the amount of the depositions taken for the Bank of Commerce, proportioned by me in accordance with the interpretation put upon the decree by the letter of Mr. Nelms which I file with the papers, together with a copy of this letter. Miss Brinkley has been paid, I think, by Mr. Nelms.

I also enclose, herewith, certificates of deposit of the funds deposited by you in the several banks mentioned in the papers in this cause, and for which you will please return receipts as soon as convenient.

I have sent a copy of this letter to Mr. Nelms for his guidance. You better confer with him with reference to the payment of the stenographer's fees, for he may have paid more of them.

I shall be very glad to receive check for \$100.00, and

1.50
2.75
1.50
7.00
17.85
17.85
1.50

50.10

17.50

12.20

6.30

20.05

17.85

12.20

50.10

CLERK'S OFFICE
OF ISLE OF WIGHT COUNTY,
ISLE OF WIGHT, VA.
ALBERT S. JOHNSON, CLERK.

check for the balance of clerk's fees and writ tax, less the amount of deposit made by you as mentioned, as soon as it may be convenient for you to send it.

I trust the information contained herewith and herein may enable you to make final disposal of this matter.

The National Bank of Commerce has expressed no intention since the entry of the decree, so far as I have been informed, of appealing the case and I suppose they will not.

With kindest regards, I am,
Cordially yours,

A handwritten signature in cursive script, appearing to read "A. S. Johnson".

Clerk.

CLERK'S OFFICE
OF ISLE OF WIGHT COUNTY.
ISLE OF WIGHT, VA.
ALBERT S. JOHNSON, CLERK.

Baker, Sub. Trustee
vs) Chancery
Fergusson et als.

June 23rd. 1910.

Mr. J. Gordon Bohannon,
Surry, Va.

My dear Bohannon:

I am advised by Waverly Thomas that he intended to charge for his services as Notary Public for taking some depositions in the suit of Baker, Trustee, vs. Fergusson et als. I had no knowledge of this fact when the costs were taxed, and am now going to ask you to kindly enter Mr. Thomas for \$2.00 for his services therein. Miss Tuke took the evidence, I think, all of it, but before Mr. Thomas.

Thanking you for your kind attention, I am,

Cordially yours,



Clerk.

Number, Substituted Trustee v Ferguson et al

\$116.01

Isle of Wight, Va., June 18, 1910.

Received of J. Gordon Bohannon, attorney for R. V. Baker, substituted Trustee, the sum of (\$116.01) one hundred sixteen dollars, and one cent, in full of accounts due as follows:

Writ Tax.....	\$	1.50
Clerk's Fee.....		14.51
Commissioner's Fee.....		100.00
Total	\$	<u>116.01</u>

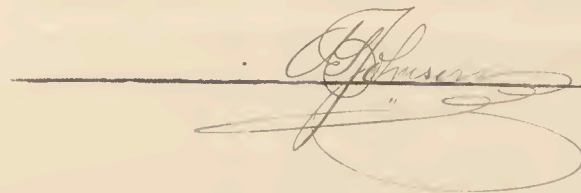
J. G. Bohannon

Clerk of the Circuit Court of Isle of Wight County,
and Commissioner in Chancery for said Court.

50 cts.

Isle of Wight, Va., Sept. 1910

Received of J. Gordon Bohannon, attorney for R. Y. Baker, trustee, the sum of fifty cents, in full of Clerk's fees on the filing of the petition of R. Y. Baker, trustee vs. Agnes L. Turner, in the suit of Baker, trustee vs. Fergusson and others.


Clerk.

\$2.00

Smithfield, Va., Sept. 23 1910.

Received of J. Gordon Bohannon, attorney for
R. Y. Baker, trustee, the sum of two dollars, in full of fee
due me for depositions, in the case of Baker, trustee vs.
Fergusson and others.

J. Wardley Thomas,
N. P.

\$1.00.

Newport News, Va., June 18, 1910.

Received of J. Gordon Bohannon, attorney for R. Y. Baker, substituted Trustee, the sum of (\$1.00) one dollar, in full of the amount due me for Stenographer's fee, in the suit of R. Y. Baker, substituted Trustee against Fergusson and others.

J. R. Bohannon

\$3.75.

Fergusson's Wharf, Va., June 18, 1910.

Received of J. Gordon Bohannon, attorney for R. Y. Baker, substituted Trustee, the sum of (\$3.75) three dollars and seventy-five cents, in full of Stenographer's fee, due me in the suit of R. Y. Baker, substituted Trustee against Fergusson and others.

W. E. Hinkle

Thanks

S 150²

Sunday June 18 1910

Received from John W. Mason, atty for R. Y. Nelson
one hundred and fifty Dollars.
for in Nelson, Sub Trustee v Ferguson
et al

John W. Mason, atty

\$201.75

Survey 9 - June 21 1910

Received from John W. Hannon, Atty for R. Y. Baker & Co.
Two hundred and one and $\frac{25}{100}$ Dollars.

for commissions on sale of land - first

under decree in Baker vs Ferguson & Co.

R. Y. Baker

\$1.50.

Smithfield, Va., June 18, 1910.

Received of J. Gordon Bohannon, attorney for R. Y. Baker, substituted Trustee, the sum of (\$1.50) one dollar and fifty cents, in full of the amount due me for Stenographer's Fee in the suit of Baker, substituted Trustee against Fergusson and others.

Geo. R. Whitley,

\$2.50

Smithfield, Va., December 26, 1908.

Received of J. Gordon Bohannon, Attorney for R. Y.
Baker, substituted Trustee, the sum of (\$2.50) two dollars and
fifty cents in payment of Sheriff's fee in the suit of R. Y.
Baker, substituted Trustee against Fergusson and others.

W. A. Edwards

Sheriff of Isle of Wight County.

50 cts.

Smithfield, Va., Sept. _____ 1910.

Received of J. G. Bohannan, attorney for R. Y. Baker,
substituted Trustee, the sum of fifty cents, as fee for ser-
vice of process on Agnes L. Turner to answer petition filed
at fist September rules 1910.

W A Edwards
Sheriff of Jefferson Co Va

\$28.80.

Surry, Va., September _____ 1910.

Received of J. Gordon Bohannon, attorney for R. Y. Baker, substituted trustee, the sum of twenty-eight dollars and eighty cents, in full of expenses incident to the settlement of the Trust arising under a certain Deed of Trust, from Harriett S. Elms and B. S. Elms to N. F. Young, trustee, as follows:

Insurance assessments.....	\$17.00
Serving notice on E. H. Williams.....	.50
Paid for typewriting notices.....	1.00
Serving notice on Harriett S. Elms.....	.50
Paid for Auctioneer's fees.....	5.00
Paid for writing Deed.....	<u>4.80</u>

28.80

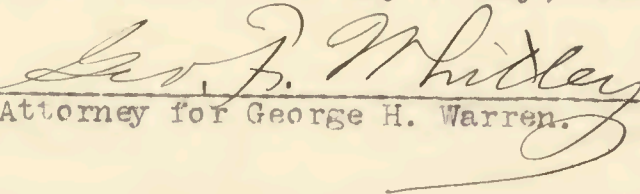
R. Y. Baker

Substituted Trustee.

\$1370.61.

Smithfield, Va., June 18, 1910.

Received of J. Gordon Bohannon, attorney for R. Y. Baker, substituted Trustee, the sum of (\$1370.61) thirteen hundred seventy dollars, and sixty-one cents, in full of the amount ordered to be paid George H. Warren, or G. F. Whitley, his attorney, by decree in the suit of R. Y. Baker, substituted Trustee, against Fergusson and others, entered on the twenty-fourth day of May, 1910.


Attorney for George H. Warren.

1275.35
95.26

1370.61

\$856.04

Newport News, Va., Sept. 23rd 1910.

Received of J. Gordon Bohannon, attorney for R. Y. Baker, trustee, the sum of eight hundred and fifty-six dollars and four cents, in full of the amount due W. T. Fergusson, and ordered to be paid out of the funds in the suit of R. Y. Baker, substituted trustee vs. Fergusson and others.

W. T. Fergusson
Attorneys for W. T. Fergusson.

\$1605.07.

Newport News, Va., Sept. 23^d 1910.

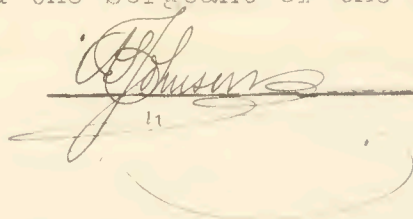
Received of J. Gordon Bohannon, attorney for R. Y. Baker, trustee, the sum of one thousand six hundred five dollars and seven cents, in full of amount due J. F. Pervis, admr., and ordered to be paid out of the funds in the suit of R. Y. Baker, substituted trustee vs. Fergusson and others.

Wm. M. Murray
Attorneys for J. F. Pervis, Admr.

\$1.50

Isle of Wight, Va.

Received of J. Gordon Bohannon, attorney for R. Y. Baker, Trustee, the sum of one dollar and fifty cents, which was paid upon the institution of the suit of Baker, Trustee vs. Fergusson, and others, for service of process by the Sheriff of Elizabeth City County, and the Sergeant of the City of Norfolk.

A handwritten signature in cursive script, appearing to read "J. H. Johnson", is written over a horizontal line. Below the signature, there is a small handwritten number "11".

Clerk.

Baker, Sub. Trustee
vs) Chancery
Fergusson et als.

June 23rd. 1910.

Mr. J. Gordon Bohannon,
Surry, Va.

My dear Bohannon:

I am advised by Waverly Thomas that he intended to charge for his services as Notary Public for taking some depositions in the suit of Baker, Trustee, vs. Fergusson et als. I had no knowledge of this fact when the costs were taxed, and am now going to ask you to kindly enter Mr. Thomas for \$2.00 for his services therein. Miss Tuke took the evidence, I think, all of it, but before Mr. Thomas.

Thanking you for your kind attention, I am,

Cordially yours,

Clerk.

June 13th. 1910.

Mr. J. Gordon Bohannon,

Sufry, Va.

Dear Bohannon:

I am enclosing, herewith, copies of ~~final~~ decree in Baker, Sub. Trustee, etc. vs. Fergusson et als. I figure the cost in the suit to be as follows:

Writ tax,.....	\$ 1.50
Clerk fees,	14.61
Sheriff fees,	4.00
Stenographer's fees,	50.10
Commissioner's fee,	100.00

The Clerk should be paid the writ tax and his fees less the sum of \$8.50 which was entered by you as a deposit at the institution of the suit.

The Sheriff fees should be divided as follows: Sheriff of Isle of Wight \$2.50, Sheriff of Elizabeth City, 50¢, Sgt. of City of Norfolk, \$1.00

The Stenographer's fees should be divided as follows: S. R. Buxton \$1.00, W. E. Howle, \$3.75, George F. Whitley, \$1.50, D. S. Phlegar \$17.85, Ethel M. Tuke \$7.00, H. C. Ivy \$17.50 and Miss Brinkley \$1.50. I think Mr. Phlegar was paid by The National Bank of Commerce and is not a charge upon the funds of this suit, and I think you will consider that it so appears from the decree. The proposition of commissioner's fee less a certain amt. being costs of depositions taken by National Bank of Commerce is interpreted by Mr. Helms in a letter to mean that I shall tax \$100.00 for the Commissioner and tax the other costs, omitting to tax the costs of the depositions of The National Bank of Commerce for taking their depositions in this cause. This will omit any reference to the pay of Mr. Phlegar from the funds in your hands. ~~in Miss Tuke's name~~ Mr. Helms has paid Miss Tuke as appears from her receipt filed in the papers and should be reimbursed. H. C. Ivy's fee of \$17.50 should be curtailed \$12.20, that being the amount of the depositions taken for the Bank of Commerce, proportioned by me in accordance with the interpretation put upon the decree by the letter of Mr. Helms which I file with the papers together with a copy of this letter. Miss Brinkley has been paid, I think, by Mr. Helms.

I also enclose, herewith, certificates of deposit of the funds deposited by you in the several banks mentioned in the papers in this cause, and for which you will please return receipts as soon as convenient.

I have sent a copy of this letter to Mr. Helms for his guidance. You better confer with him with reference to the payment of the stenographer's fees, for he may have paid more of them.

I shall be very glad to receive check for \$100.00, and

check for the balance of clerk's fees and writ tax, less the amount of deposit made by you as mentioned, as soon as it may be convenient for you to send it.

I trust the information contained herewith and herein may enable you to make final disposal of this matter.

The National Bank of Commerce has expressed no intention since the entry of the decree, so far as I have been informed, of appealing the case and I suppose they will not.

With kindest regards, I am,

Cordially yours,

Clerk.

CARBON COPY

W. J. NELMS

L. A. MCMURRAN

NELMS & MCMURRAN
ATTORNEYS AT LAW
SUITE 401
SILSBY BUILDING
NEWPORT NEWS, VA.

June 3d, 1910.

Mr. A. S. Johnson,
Isle of Wight, Virginia.

Dear Sir:-

I have yours of May 3d. You are to get full \$100 for your fee. The Judge desires in taxing the cost, that you include in that cost, no part of the cost of the deposition taken by the Bank of Commerce. The Bank of Commerce has paid this bill and the Judge refuses to allow that cost to come out of the funds. In the case of Clay Ivy's bill noted at the bottom of the Ferguson and Kerr deposition, the Judge desires you to apportion these, taxing as a part of the cost to be paid out of the fund, the deposition of W. T. Ferguson, and to tax against the Bank of Commerce the deposition of Mr. Kerr, and to apportion these amounts according to the number of pages in each deposition.

I will be glad if you will send to Mr. Bohannon a certified copy of the decree, and excerpts of the decree to the two Banks. If the Bank of Commerce has executed the bond in ten days from the date of the decree, make excerpts which you will send the Banks, apply to the cost of the suit, including yours and Bohannon's fees, and the Warren judgment. If the Bank of Commerce has not executed the bonds, then the excerpts will be as to all of the items to be checked for.

I wish you would advise both the Bank and me as to whether the Bank has executed the bond.

N/M

Yours very truly,

W. J. Nelms

14.51

1.50

4.00

50.10

100.00

WFO 2.50

City Co 50

WFL 1.50

Handwritten notes at the top right of the page.

Main body of handwritten text, appearing to be a list or ledger entries.

Bottom section of handwritten text, possibly a continuation of the list or ledger.

BOHANNAN & SHEWMAKE
LAWYERS
SURRY, VIRGINIA

June 4, 1910.

Mr. A. S. Johnson,
Isle of Wight, Va.

Dear Sid:-

I am in receipt of a letter from Colonel Nelms, enclosing copy of his letter to you of the 3rd inst.

When I was in Norfolk about two months ago, a decree in this matter was agreed upon, and I have been waiting to hear from Judge White, before making any distribution of the money. Please send me a copy of any decree that has been entered, or that will be entered at this term, and let me know whether the Bank of Commerce has executed the bond required, within, the time specified. As it is not likely that anything will be done at this term, I see no necessity of my coming to Isle of Wight on Monday.

Please tell Mr. George Warren for me that the money will be sent him just as soon as copies of the decree are sent out.

With kindest personal regards, I am,

Very truly yours,

John Sheppard

B/R.

R. Y. Baker, Substituted Trustee

-vs-

W. T. Fergusson et als.

*I have seen this decree
W. J. Allen atty
for W. T. Fergusson
Resilla Baker,*

DE C R E E

COR. No 6 of 557

Enter this decree,

June 1, 1908.

[Handwritten signature]

And the said Commissioner shall ascertain and report as to the right of the holders of both the original and renewal notes to share in the distribution of any funds realized from the sale of the aforesaid property under the deed of trust aforesaid.

And take, state and report such other accounts as any party to this cause may require to be taken, stated and reported, or which to him may seem relevant and pertinent; and recommend to the Court what will be a reasonable fee to be paid to the complainant's attorney for his services herein, out of the funds in this cause.

*Whether the proper parties to this cause
are properly before the Court.*

VIRGINIA,

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY.

R. Y. Baker, Substituted Trustee *

-vs- *

W. T. Fergusson, Prescilla Baker, *
The National Bank of Commerce of *
Norfolk, George H. Warren, Reli- *
ance Brick Company, Incorporated, *
Agnes L. Turner, E. H. Williams, *
Admr. D. B. N. of N. F. Young, *
deceased, Trustee, and W. P. Wil- *
son, Trustee. *

This cause came on this day to be heard upon the bill of the complainant, regularly matured at rules, and the exhibit filed therewith, proof of service of proper process on the above named defendants, all of whom, with the exception of the said National Bank of Commerce of Norfolk, have failed, and still do fail, to plead, answer or demur to said bill, and upon the separate answer of the said National Bank of Commerce of Norfolk, Virginia, and was argued by counsel.

On consideration whereof, the Court doth adjudge, order, and decree that this cause be, and the same is, hereby referred to one of the Commissioners of this Court, who is hereby ordered and directed to take, state and report to Court the following accounts, to-wit:

An account of all liens upon the property mentioned in the bill in this cause, and conveyed in that certain deed of trust to N. F. Young, Trustee, dated on the first day of May, 1905, in which R. Y. Baker is substituted trustee, together with their dignities and priorities.

An account showing who are now the holders of the notes originally secured in said deed of trust, and whether the same, or any of them have been renewed or curtailed, and if so, who are now the holders of such notes given in renewal or curtailment.

Virginia,

In the Circuit Court of Isle of Wight County,

In Vacation, ~~July~~, 1908,

on the 27th day of August 1908.

R. Y. Baker, Substituted Trustee

-v- In Chancery

W. T. Fergusson et als.

This cause, which by consent of all parties, either in person or by counsel, hereentered of record, in vacation, is submitted to the Judge of this Court for such decision and decrees therein in vacation as might be made in term, came on this day to be further heard upon the papers formerly read, and was argued by counsel.

Upon consideration whereof, it appearing to the ^{Judge of this} Court that R. Y. Baker, substituted trustee in that certain deed of trust from Harriett S. Elms and B. S. Elms, her husband, to N. F. Young, Trustee, a copy of which is filed with the bill in this cause, and therein called "Exhibit A", did, on the second day of December, 1907, sell the property mentioned in said deed, at public auction, to Agnes L. Turner, for the sum of four thousand and twenty-five dollars (\$4025.00), but that he has not collected from the said Agnes L. Turner the said sum of \$4,025.00, nor executed to her a deed for the said property, the Court doth adjudge, order and decree that the said sale, so made by the said trustee, be, and the same is hereby ratified and confirmed; and the said trustee is hereby ordered and directed to collect from the said Agnes L. Turner the said sum of \$4,025.00, ~~with interest thereon from January 1st, 1908, the said Agnes L. Turner having been in possession of said farm since that date,~~ and upon its receipt to execute and deliver to her a good and sufficient deed for the said property so sold as aforesaid. And of the money so collected the said trustee shall deposit the sum of \$2,000.00 in the bank of Schmelz Bro-

thers, Bankers, Newport News, Virginia, and the balance in the Merchants and Farmers Bank, Smithfield, Virginia, taking from each a certificate of deposit for the respective amounts, payable to the order of the Court in this cause, which said certificates the said trustee shall return to Court, along with a report of his proceedings under this decree.

All of which is certified to the Clerk of the Circuit Court of Isle of Wight County to be entered in the Chancery order book.

P. D. White
Judge of the ~~twenty-eighth~~ judicial circuit of Virginia.

Court of Isle of Wight County.

To the Clerk of the

Circuit Court of Isle of Wight County.

Virginia: Clerk's Office of the Circuit Court of the County of Isle of Wight August 28th. 1908 the foregoing vacation decree was received from the Judge of this Court and entered of record

Teste,

J. H. ...
C.C.

8

R. Y. Baker, Substituted Tr.

-v-

W. T. Fergusson et als.

I ask for this decree,

R. Y. Baker, Sub. Tr.,

By John Johnson, Atty

We consent to this decree,

W. T. Fergusson and
Prescilla Baker,

By Alvin McMurran

The National Bank of Commerce
of Norfolk, and

The Reliance Brick Co., Inc.,

By Brother & Brother attys.

Agnes L. Turner,

By E. H. Willis

E. H. Willis
Mr. D. B. N., of N. F.
Young, deceased, Trustee.

G. H. Warren
N. O. Wilson, Trustee.

Enter this decree,
August
July __, 1908.

R. Y. Baker, Substituted Tr.

-vs-

W. T. Fergusson et als

DECREE

C.O.B. No 6 of 600

I ask for this decree,

John Williams

Att'y for R. Y. Baker,
Substituted Trustee.

Enter this decree,
February 12, 1909.

J.D.W.

Virginia,

In the Circuit Court of Isle of Wight County.

R. Y. Baker, Substituted Trustee

-v-

W. T. Fergusson et als

This cause came on this day to be further heard upon the papers formerly read, and upon the report of R. Y. Baker, substituted trustee, this day filed by leave of Court, showing how he has performed the duties enjoined upon him by a decree entered herein on the 27th day of August, 1908, with which report are returned the pass books and certificate of deposit mentioned therein, and was argued by counsel. * *

Upon consideration whereof, the Court approving said report, doth adjudge, order and decree that the same be, and it is, hereby confirmed.

Paker. Sub. 7.
15 3 Decem.
Ferguson et al.

C. O. B. No 7
Page 27

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY, VIRGINIA.

In Vacation on the 24th day of May, 1910.

BAKER, SUBSTITUTED TRUSTEE,

vs.

W. T. FERGUSSON, ET ALS.

This day came J. F. Pervis, Administrator of Margaret E. Pervis, Deceased, by counsel and asked leave to file his petition in this cause, which leave is granted and his said petition is accordingly filed; and,

Also came Prescilla Baker, by counsel, and asked leave to file her answer to said petition of J. F. Pervis, which said leave is granted, and the said answer is accordingly filed.

Thereupon this cause came on this day to be again heard on the papers formerly read; on the petition of the said J. F. Pervis, Administrator of Margaret E. Pervis, this day filed by leave of Court; on the answer of Prescilla Baker thereto, this day filed by leave of Court; on the report of A. S. Johnson, Commissioner in Chancery, filed in this cause on October 1, 1909, and the exceptions of the National Bank of Commerce and the Reliance Brick Company, Incorporated, to the said report; on the exceptions of R. Y. Baker, Substituted Trustee, and W. T. Fergusson and Prescilla Baker to said Commissioner Johnson's Report filed October 1, 1909; on motion of W. T. Fergusson, Prescilla

Baker and J. F. Pervis to sustain their objections made at the time of taking depositions and now at bar and insisted on and relied upon and for the reasons set forth in said deposition and at bar, and to strike out and reject said questions and answers, to-wit:

The deposition of H. M. Kerr to Questions and Answers as follows:-- Direct Examination, Numbers 4, 5, 6, 7, 8, 9, 10, 11, 12, 15, and 16.

Re-direct Examination:-- Questions and Answers Numbers 2, 3, 7, 8, 9 and 10.

I. B. Betts, Jr.:-- The following Questions and Answers:--

Page 5, lines Nos. 13 to 21;
Page 6, lines Nos. 1 to 26;
Page 7, lines Nos. 23 to 26;
Page 8, lines 3 to 15;
Page 9, lines Nos. 1 to 26;
Page 10, lines Nos. 1 to 15;
Page 11, lines 1 to 26;
Page 12, lines Nos. 13 to 26;
Page 13, lines Nos. 1 to 24;
Page 23, lines Nos. 23 to 26;
Page 23, lines Nos. 10 to 26;
Page 25, lines Nos. 6 to 26;
Page 26, lines Nos. 1 to 4;

M. C. Elliott's Deposition.

Page 7, lines Nos. 17 to 26;
Page 8, lines Nos. 1 to 26;
Page 9, lines 1 to 26;
Page 10, lines 1 to 23;
Page 13, lines 1 to 26.

Which said motion the Court refused to pass upon,

deeming it only necessary to pass upon the Commissioner's report and the exceptions thereto; on the statement made at bar this day showing the following:

Amount received from Agnes L. Turner, \$4025.00

Court
Amount deposited to the credit of ^{*Court*} the Merchants & Farmers' Bank of Smithfield, Va., Jan. 22, 1909,\$2025.00

Amount deposited to the credit of the Court in Schmelz Bros. Bank, Newport News, Va., Jan. 25, 1909, 2000.00

To interest on \$2025, 95.25

To interest on \$2000, 94.73

Interest to be paid by Agnes L. Turner from Sept. 3, 1908, to Jan. 22, 1909, on \$4025, 92.57

Total, \$4308.15

BY COST OF SALE October 6, 1905, 203.05

Proceeds of Sale, Less Expenses, \$4078.10

The amounts each of the parties in interest should receive:

GEORGE H. WARREN - DEBT:

Amount of debt, \$900.00

Interest from Dec. 19, 1894, to Apr. 6, 1910, 826.20

Total, \$1726.20

Subject to a credit of 362.64

Balance due George H. Warren being, \$1363.56.

BALANCE, \$2714.54

And was argued by counsel.

On consideration whereof the Court doth overrule the said exceptions of the ^{*and the Reliance Trust Company, Incorporated,*} National Bank of Commerce, to Commission^r Johnson's report, and doth adjudge, order and decree that

the said report be and the same is hereby confirmed in so far as the same affects the claim of the National Bank of Commerce and doth decree that the said exceptions of W. T. Fergusson, Prescilla Baker and J. F. Pervis, Administrator of Margaret E. Pervis, and R. Y. Baker, Substituted Trustee, be and the same are hereby sustained, in part; as to the date from which Agnes L. Turner should pay interest on the amount of purchase price of the said farm;

And it appearing that the said funds arising from the sale of said farm will not amount to sufficient to pay the first lien held by G. H. Warren and the said W. T. Fergusson and J. F. Pervis, Administrator of Margaret E. Pervis, the Court doth further adjudge, order and decree that the said National Bank of Commerce has no claim or interest in and is not entitled to share in the distribution of the proceeds arising from the sale of the said farm mentioned in the bill and proceedings; and that the said Agnes L. Turner do deposit to the credit of this Court, in the Merchants and Farmers' Bank of Smithfield, Virginia, interest on \$4025, from the 3d day of September, 1908, until the date of payment, to-wit: January 22, 1909, and all moneys received by the said Agnes L. Turner for rent from the said farm or any part thereof, from the 1st day of January, 1908, until the 3d day of September, 1908.

And the court being of opinion that the costs of this suit, including fee of \$100.00 allowed A. S. Johnson, Commissioner, and the fee of \$150.00 allowed J. Gordan Bohannon, including the costs of the sale made by R. Y. Baker, Trustee, are a first lien upon the fund to the credit of this cause, and that the amount of the debt due George H. Warren is a second lien upon the same, and that the amount due W. T. Fergusson and J. F. Pervis, administrator of Margaret E. Pervis, are a third lien upon the said fund to the credit of

this cause; the court doth adjudge, order and decree that R. Y. Baker, substituted trustee, or J. Gordan Bohannon, his attorney, do, upon leaving his receipt therefor, withdraw from the papers in this cause ^{the} certificate of deposit, and the pass book showing the deposits in said banks, and make distribution of the funds in said banks as follows, that is to say:

To A. S. Johnson, Clerk of this Court, taxed costs of this suit, ~~including~~ ^{and} a fee of \$100.00 for his report herein, ^{as Commissioner} less the cost of the depositions taken by the National Bank of Commerce in this cause;

To J. Gordan Bohannon, as a fee for his services herein, the sum of \$150.00;

To R. Y. Baker the sum of \$230.05;

To George H. Warren, or G. F. Whitley, his attorney, the sum of \$900.00, with interest thereon from the 19th day of December, 1894, until the date of this decree, less the sum of \$362.64, partial payments made to George H. Warren as shown by statement this day filed;

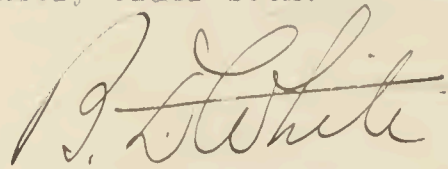
It appearing from the said report and the said notes that there has been paid on the said note of \$800.00 held by W. T. Fergusson, and note for \$1500.00 held by J. F. Pervis, administrator of Margaret E. Pervis, interest to the first day of November, 1906, it is further adjudged, ordered and decreed that the said R. Y. Baker, Trustee, or J. Gordan Bohannon, his attorney, do pay to W. T. Fergusson, or Nelms and McMurrin, his attorneys, eight-twenty-thirds (8/23) of the balance of said funds in said banks and to be deposited therein by Agnes L. Turner, and to J. F. Pervis, administrator of Margaret E. Pervis, or to Nelms and McMurrin, his

attorneys, fifteen twenty-thirds (15/23) of such balance.

And the said R. Y. Baker, or J. Gordan Bohannon, his attorney, make report of his proceedings
The National Bank of Commerce having indicated that

Concurrence

it desires to apply to the Supreme Court of Appeals of Virginia for an appeal from this decree, it is adjudged, ordered and decreed that the operation of this decree, in so far as the same authorizes the payment of funds to J. F. Pervis, Administrator of Margaret E. Pervis, or W. T. Fergusson, be and the same is hereby suspended for a period of Sixty (60) days from date hereof, to allow the said National Bank of Commerce to perfect the said appeal; but before the said National Bank of Commerce shall have the benefit of this suspension, it shall enter into a bond, with ~~approved security~~ ^{surety} to be approved by the Clerk of this Court, in the penalty of \$3000.00, conditioned for the payment of all damages which the said W. T. Fergusson and J. F. Pervis, administrator of Margaret E. Pervis may sustain if the said National Bank of Commerce shall fail to prosecute its appeal, or if it shall be refused an appeal by the Supreme Court of Appeals of Virginia. All of which is certified to the Clerk of this Court to be entered in the Chancery order book.



Virginia: Clerk's Office of the Circuit Court of the County of Isle of Wight May 24th. 1910, this vacation decree was received and entered of record.

Teste,

Clerk

Virginia,

In the Circuit Court of Isle of Wight County.

Baker, Substituted Trustee

vs

W. T. Fergusson, et als.

This day came J. Gordon Bohannon, attorney for R. Y. Baker, substituted Trustee, and presented to the court his report, showing how he has performed the duties enjoined upon him by a decree entered herein on the twenty-fourth day of May, 1910, from which it appears that there has come into his hands the sum of four thousand three hundred fifty-four dollars and eighty-three cents (\$4,354.83), all of which he has disbursed in accordance with the provisions of the said decree, receipts for which disbursements are filed with said report, together with the letters and statements herein referred to.

Thereupon this cause came on this day to be again heard upon the papers, formerly read, upon the petition of R. Y. Baker, Trustee, filed herein at the first September Rules, 1910, and upon the said report of J. Gordon Bohannon, attorney, this day filed by leave of court, and was argued by counsel.

Upon consideration whereof, the court doth adjudge, order and decree that said report be, and the same is hereby confirmed, no exceptions having been filed thereto, and it appearing to the court that Agnes L. Turner has deposited in the Merchants & Farmers' Bank, Smithfield, Virginia, the interest and rent, which she was directed by the said decree to deposit therein, and with it the interest thereon and costs upon the said petition; and it further appearing that the said J. Gordon Bohannon, attorney, has in all respects complied with the provisions and directions of the

said decree, and that the costs of this suit have been paid:
and it further appearing that nothing remains to be done in this
cause, it is adjudged, ordered and decreed that the same be re-
moved from the docket, and that the papers therein be filed
among the ended causes of this court.

43 Box 55

Dolan, T. J.

Ferguson & Co

First Series.

1910

Oct. 3.

Enter.

B. J. W.

C. O. B. 7 - Page 40

B. S. Elms, (SEAL)

State of Virginia,

County of Elizabeth City, to-wit:

I, H. H. Kimberly a Notary Public for the County aforesaid, in the State of Virginia, do certify that Harriet S. Elms and B. S. Elms, whose names are signed to the writing above bearing date on the 1st. day of May in the year nineteen hundred and five, have acknowledged the same before me in my County aforesaid.

Given under my hand, this 4th. day of May in the year, 1905.

H. H. Kimberly, Notary Public.

My commission expires May 27th. 1907.

Virginia: In the Clerk's Office of the Circuit Court of County of Isle of Wight, on the 11th. day of May, A. D. 1905, this Deed was received, and, upon the certificate of acknowledgment thereto annexed, admitted to record.

Teste, N. F. Young, C. C.

A copy, Teste,

Johnson Clerk.

In for copy of 5/1

R. M. Baker
 Swedish Lumber

v.

W. S. Ferguson & Co.

————— in —————

"Exhibit A," filed with
 Commissioner's bill
 —————

unpaid, and the balance, if any, to the said grantor, or her assigns.

And the said Harriett S. Elms covenants that she will, during the continuance of this trust, and at her own proper costs and charges, keep insured the buildings upon the aforesaid lot or parcel of land against casualties by fire in some good insurance company, in a sum not less than one thousand (\$1000.00) dollars, and assigns the policy of insurance thereof to the said N. F. Young, who shall hold the same as additional security for the payment of the debt aforesaid and if she the said Harriet S. Elms shall fail to keep the said buildings insured as aforesaid, then the said N. F. Young may cause the same to be insured at the expense of the said Harriett S. Elms and the premium of such insurance shall, if not paid by the said grantor, upon the request of the holders of holders of said notes be a charge upon the trust property aforesaid, and in case any money becomes payable under such insurance policy, the said Trustee may collect the same, and, if so directed by the said holders of said notes shall distribute the amount so collected as if it were the proceeds of a sale under this deed. The said Harriett S. Elms covenants that she will warrant generally the property hereby conveyed and will pay all taxes, levies and assessments upon said property so long as this trust shall last. And the said grantors hereby waive the benefit of their Homestead exemption as to the aforesaid debt and obligation, and as to this contract.

And it is further agreed that upon the payment in full of the debt or debts and notes, as to both principal and interest secured by this deed, a good and sufficient deed of release, as to this encumbrance, will be executed at the proper costs and charges of the grantor aforesaid.

Witness the following signature and seal:

Harriet S. Elms, (SEAL)

IN TRUST, To secure to the holders thereof, ratably and without preference, the one over the other, the payment of three certain negotiable, promissory notes, each of said notes being made by said Harriet S. Elms and B. S. Elms, payable at the Bank of Smithfield, Virginia each bearing interest at the rate of 6% per annum, payable semi-annually, and waiving the benefit of the homestead exemption, and the right being reserved by the said Harriet S. Elms and B. S. Elms to anticipate the payment of any or all of said notes before maturity.

One of said notes is payable to the order of W. T. Fergusson one year after date, for the sum of \$1,700.00, one payable to the order of Margaret E. Purvis, two years after date, for the sum of \$1,500.00 and one payable to the order of W. T. Fergusson three years after date for the sum of \$800.00 and this trust is also to secure the payment of any note or notes that may hereafter be made in renewal, extension or curtailment of the said notes.

And it is covenanted and agreed that if default be made in whole or in part in paying either the principal or interest, of the said debt the said N. F. Young, Trustee, shall, so soon thereafter as he shall be requested by the said creditors herein secured, or their assigns so to do, sell the above granted property at public auction, at such time and place, and upon such terms and conditions, as he, the said N. F. Young, Trustee, may deem expedient, having first given notice of such time and place of sale, for at least ten days, by advertisements in one or more public places in Isle of Wight County, Virginia, and out of the proceeds of such sale, after paying all the expenses attending the execution of this trust, including commissions on said proceeds of sale, to the said Trustee, at the rate of five per cent, shall pay to the said creditors secured, or their assigns, the debt aforesaid, with interest thereon, or so much thereof as may then remain

Harriett S. Elms, et vir.

To) Trust Deed.

N. F. Young, Trustee, for holders of notes.

THIS DEED, made this 1st. day of May in the year nineteen hundred and five, between Harriett S. Elms and B. S. Elms, her husband of the town of Edgartown in the State of Massachusetts parties of the first part and N. F. Young, of Isle of Wight County, Virginia, Trustee, party of the second part; WITNESSETH: That the said parties of the first part do grant unto the said N. F. Young, Trustee the following property, to-wit: all that certain tract, piece or parcel of land lying and being in Isle of Wight County, Virginia, on the public road leading from Smithfield to Bacon's Castle, and bounded as follows, begin on said road at the point where Purvis or Doyle fence as now located, leaves the said public road and thence in an easterly direction along said fence to the James river, thence up the said river shore to the lands of W. H. Wooley, thence around said Wooley fence to the James River, and thence continueing along said river to the lands of James Wells and thence in a Westerly direction along the lands of said James Wells and W. T. Madera to the said public road and thence along said public road in a Southerly direction to the place of beginning. This tract of land is supposed to contain about one hundred and seventy five acres, but is conveyed by the boudaries given and not by the acre. It being the same land this day conveyed to the said Harriett S. Elms by and for W. T. Fergusson and wife, which and is to be recorded simultaneously with this Deed of Trust. And the said Harriet S. Elms and B. S. Elms, her husband so also convey unto the said N. F. Young, trustee all stock, fixtures, implements and machinery of all sorts placed on said farm by the parties of the first part, and used in connection with the same.

dated May 1st. 1905 and duly recorded.

(4) Note payable to Agnes L. Turner for One thousand fifty dollars (\$1050.00), secured by deed of trust to W. P. Wilson dated May 1st. 1906, and duly recorded.

And the said parties of the first part covenant that they have the right to convey the said property, that they have done no act to encumber same other than above specified, and that they will execute such further assurances to title as may be necessary.

In witness whereof, they have hereunto affixed their signatures and seals on the day and date ^{above} written.

Harriet S. Elms, (SEAL)

Burton S. Elms, (SEAL)

I, Rosa T. Bilisoly, a Notary Public in and for the City of Norfolk, State of Virginia, do certify that this day, Harriet S. Elms, and ~~Burton~~ S. Elms, her husband, the parties whose names are signed to the above deed, bearing date the 5th. day of February, 1907, personally appeared before me in my City aforesaid, and acknowledged same.

Given under my hand this 12th. day of February, 1907.

Rosa T. Bilisoly, Notary Public

My commission expires on the 12th. day of July, 1910.

Virginia: Clerk's Office of the Circuit Court of Isle of Wight County, this 1st. day of March, 1907, at one o'clock P. M. this deed was received, and, with the certificate annexed, admitted to record.

Teste, _____ A. S. Johnson, Clerk.

A copy,

Teste, A. S. Johnson Clerk.

Dr. J. D. Baker
Substituted under

11.

Dr. J. Ferguson & Co

"Substituted Dr." paid with
complaints will

Deed Book No. 75, page 124.

Harriett S. Elms, et vir.

To) Bargain and Sale.

Reliance Brick Co., a Corporation.

THIS DEED, Made and entered into this, the 12th, day of February, A. D. 1907, by and between Harriett S. Elms and B. S. Elms, her husband, both of Isle of Wight County, State of Virginia, parties of the first part, and the "Reliance Brick Company", a corporation created and organized under the laws of Virginia, party of the second part,

WITNESSETH: That for and in consideration of Twenty Thousand Dollars (\$20,000.00) in common stock of the, ^{said} "Reliance Brick Company", to be issued to the said Harriet S. Elms before the delivery of this deed, receipt whereof is hereby acknowledged, and of other good and valuable consideration, the said parties of the first part grant, with general warranty, subject to the liens hereinafter specified, the following described property, to-wit: "All of that certain tract, piece or parcel of land lying and being in Isle of Wight County, Virginia, on the public road leading from Smithfield to Bacon's Castle, bounded and described as follows: Beginning on said road at the point where the Purvis or Doyle fence as now located, leaves the said public road, and running thence in an easterly direction along said fence to the James River, thence up the River shore to the land of W. H. Wooley thence around said Wooley place to the James River and thence continuing ^{up said River shore to the land of James Wells: and thence in a westerly direction} along the lands of the said James Wells and W. T. Madera to the said public road, and thence along said public road in a southerly direction to the place of beginning; all of which will more fully appear from a plat to be made showing courses

and distances to be recorded as a part of this conveyance. This tract of land is supposed to contain about one hundred and seventy five acres, but the same is sold by the boundaries given and not by the acre, the same being a portion of the land purchased by the said W. T. Fergusson of W. T. Doyle's estate, and by him conveyed to the said Harriett S. Elms by deed dated May 1st., ~~1906~~¹⁹⁰⁵, and duly recorded in the Clerk's Office of said County in Deed Book 71, page 479, which deed is hereby referred to and made a part of this conveyance; together with the brick plant, machinery, and equipment, and all buildings and other improvements and appurtenances thereon"

To have and to hold unto the said "Reliance Brick Company", its successors and assigns forever.

This deed is made subject to the following liens now outstanding against the property, to-wit: Balance due George H. Warren, One Thousand, two hundred dollars (\$1200) on purchase price, as evidenced by Deed of Trust duly of record referred to in deed from W. T. Fergusson et al to Harriet S. Elms, recorded in Deed Book 71, page 497.

(1) note due Margaret E. Purvis for One Thousand, five hundred dollars (\$1500.00) payable two years after date, with interest at six per cent (6%) payable semi-annually, secured by Deed of Trust to N. F. Young, dated May 1st., 1905, and duly recorded..

(2) Balance of note of One Thousand, seven hundred dollars (\$1700.00) payable to W. T. Fergusson one year after date, with interest at six per cent (6%), secured by deed of Trust to N. F. Young, dated May. 1st. 1905 and duly recorded. Seven hundred dollars (\$700.00) having been paid on this note leaves a balance^{due} of One Thousand dollars (\$1000.00).

(3) Note for eight hundred dollars (\$800.00) payable to W. T. Fergusson three years after date, with interest at six per cent (6%), secured by Deed of Trust to N. F. Young

Margaret E. Purvis.

Received Oct. 28th, 1905, Forty-five Dollars, interest on the within note.

M. E. Purvis.

By The Bank of Smithfield,
A. S. B. Cashier.

Rec'd May 2, 1906, Forty-five dollars interest on the within note.

M. E. Purvis.

By The Bank of Smithfield,
Cofer.

Rec'd 11/17/07--Forty-five (45\$) Dollars interest on this note.

A. S. Barrett, Cash.

For Acct
Mrs. M. E. Purvis.

Secured by DEED OF TRUST of even date herewith on
farm in Isle of Wight Co., Virginia.

To M. F. Young, Trustee.

\$1500 & Interest.

Norfolk, Va., May 1, 1905.

Two years after date we promise to pay
to the order of Margaret E. Pufvis

Fifteen Hundred ----- Dollars,

with interest from date hereof, till paid, at six per
centum per annum, payable semi annually at The Bank
of Smithfield, Smithfield, Va., without defalcation, for
value received. And we, maker and endorser, do hereby
waive the benefit of our Homestead Exemption as to this
debt. The right is reserved to anticipate the payment
of this note before maturity.

No. _____ Due 5/1/07.

Harriet. S. Elmes.

B. S. Elmes.

No. 20535

Secured by DEED OF TRUST of even date

here with on *part* of *W. J. Ferguson Co., Va.*

to *A. J. Young* Trustee.

4/13
\$ *1700⁰⁰*

One year

Estab No 1 B of
Norfolk, Va., *May 1* 190*5*

after date *we* promise to pay

to the order of *W. J. Ferguson*
Seventeen hundred Dollars,

with interest from date hereof, till paid, at six per centum per annum, payable *semi*
annually at *The Bank of Smithfield, Smithfield Va* without defalcation,

for value received. And we, maker and endorser, do hereby waive the benefit of our
Homestead Exemption as to this debt. *The right is reserved to anticipate*

the payment of this note before maturity.
No. *20535* Due *5/1* *H. S. Elmes*
P. S. Elmes

W. J. Ferguson

W. J. Ferguson
Agt

For love ab
Dr. J. Ferguson ab

1/2

APR 8 1866

NOV 12 1866

PAID TO THE ORDER OF

Webster received
Pay to the order of
The Farmers Bank
of Nancemond
W. J. Ferguson

Call for Callual
etc of W. J. A. G.

NOV 12 1901
THE BANK OF BANKER

The Bank of Smithfield, Va.

Exhibit Mr. [unclear] due how 5/1/06 11/1/06 credit will be July 30

\$1000⁰⁰/₁₀₀

Smithfield, Va., May 1 1906

Ninety

days after date I promise to pay to the order of

W. J. Ferguson

Negotiable and payable

at The ~~Farmers Bank of Dansemond, Suffolk,~~ Bank of Smithfield, Smithfield, Va.

One Thousand

Dollars

With costs of collection and, if collection be made by an attorney, including his fee, in case payment of this note shall not be made at maturity.

without offset for value received. And the maker and endorser hereby waive the benefit of the Homestead Exemptions as to this contract.

No. *MP* Due

Harriet S. Elmes.

N. Beeson, President,
Tazwell Taylor, Vice-Pres't.

H. M. Kerr, Cashier.

M.C. Forebec, Ass't Cashier.
F.A. Porter, Ass't Cas. Per.

Capital and Surplus \$750,000.00

THE NATIONAL BANK of COMMERCE,

Norfolk, Va.

11/16

1906

(copy)

7 Farmers Bank of Nausumond, Suffolk, Va.

You are credited as proceeds for collection of items stated below.

Your No. or Date		Amount.	Expenses	Proceeds.
11/12	H.S. Elmes Out to date			✓ 1000
41155	Interest to Nov 1 on note H.S. Elmes 800. ⁰⁰			✓ 32 57
	Whole last named note for call, at the suggestion of endorser who states that it will likely be paid in a day or two.			✓ 24

Received
Nov 17, 1906
Farmers Bank of Nausumond

The Farmers Bank of Mansemond

Edward E Holland,
PRESIDENT.

G. W. Truitt,
VICE PRESIDENT.

Wm. H. Jones, Jr.,
CASHIER.

Suffolk, Va., December 19th., 1906.

Mr. W. T. Fergusson,
Hampton,
Va.

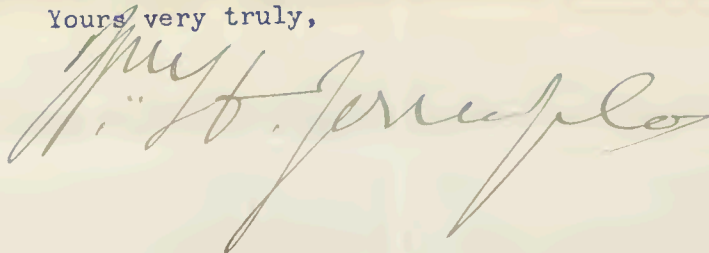
Dear Sir:-

The \$1000.00 collateral note, notice of which you returned to us this morning, has, as you of course know, been paid.

Notices of the maturity of notes are always written on the day the notes are recorded in our office, and such notices are filed away to be sent out two, three or possibly four weeks before the due date of the paper. When, therefore, payment is anticipated, the notices go out, as a rule, just the same.

Sorry to have troubled you.

Yours very truly,



36	44	64	121	144
144	144	448	484	9
<u>144</u>	<u>49</u>			<u>432</u>
36	637			
<u>504</u>				

read with Jones day

R. Y. Baker. Sub Trustee
vs Chaucery
Ferguson et al

10/23/1908

Depositions of
Mrs Jones Jan

\$.....

SUFFOLK, VA.,

190.....

.....promise to pay to THE FARMERS BANK OF NANSEMOND, SUFFOLK, VA., or order, negotiable and payable with-
out offset, at said Bank,DOLLARS.

for value received; having deposited with said Bank as collateral security for the payment of this Note.....

.....
with such additional collaterals as may, from time to time, be required of its President or Cashier, and which additional collaterals
.....hereby promise to give at any time on demand. If these additional collaterals be not so given when demanded, then this
Note to be due; and rebate of interest taken shall be allowed on payment prior to maturity. And.....hereby give to said
Bank, its President or Cashier, full power and authority to sell and assign and deliver the whole or any part of said collaterals, or
any substitutes therefor, or any additions thereto, at public or private sale, at the option of said Bank, or its President or Cashier, or
of either of them, on the non-performance of the above promises, or any of them, or at any time thereafter, and without advertising
or giving to.....any notice, or making any demand of payment.

IT IS ALSO AGREED that said collaterals may from time to time, by mutual consent, be exchanged for others, which shall
also be held by said Bank on the terms above set forth; and that if.....shall come under any other liability or enter into any
other engagement with said Bank, while it is the holder of this obligation, the net proceed of the sale of the above securities may
be applied either on this Note, or any other of.....liabilities or engagements held by said Bank, as its President or Cashier
may elect; and we, the maker or makers, hereby waive the benefit of our homestead exemptions as to this debt and contract.

Σ W-1

C. W. 1.

Jan 29, 1908

Received of Elbert White one
dollar & fifty cts in work for
one month sent up to Feb. 1st
1908

Agnes L. Turner

Jan 29 1908

Σ. N. - 2

E. W. 2

Σ. N. - 2

Received of E. Wood White one
dollar + fifty cents for the
month of April
Mrs. Agnes L. [unclear]
May 23rd 1908

Poor Quality Original. Best Possible Capture

Σ Ν. 3

Ε. Ν. 3

1802

1803

Received of E. West White three
dollars for rent for June & July
Mrs Agnes L. Linn

Aug 21st 1908

Σ. 11 - 4

E. 22. 4

Account received of Albert White
Two dollars & 85^{cts} in cash
& work on his three months rent
which still leave him one dollar
& sixty five cts in debt to me
Oct 31 1908 Agnes L. Turner.

Sept. 3, 1908.

Mr. E. H. Williams,
Smithfield, Va.,

Dear Sir:

The deed for the Elms property has been duly executed, and I have it in my possession ready for you. Let me know about what time you expect to be ready to pay the consideration, \$4,025.00, and I will send the deed to the Merchants and Farmer's Bank to be held by it in escrow until the money is paid. I do this because a part of the money is to be deposited in that bank.

Yours truly,

J. F. B. 1.

File

Smithfield, Va
Nov. 26th - 1908

Messrs. Helms & Mc Murran
Newport News, Va

Dr. To Miss Ethel M. Luke
For services rendered in taking
depositions on November 19th - 1908 -
for Mr. W. J. Helms.

Seven Dollars (\$7.00)

Received payment Nov. 26 - 1908 -
"Ethel M. Luke"

J. C. B.

THE YORKTOWN HOTEL.
EUROPEAN PLAN.

ONE SQUARE FROM JAMESTOWN EXPOSITION
GROUNDS.

W. T. FERGUSSON,
PROPRIETOR.

PINE BEACH, VA. Nov 8th, 1907.

Mr. J. A. Baker,

Dear Sir, yours of the
23rd to hand and in
reply will say that the
first note of Mrs. Clark
was paid in full.

Yours Truly
W T Fergusson

Exp. 100 # A''

IN RE

SURRY COUNTY

J. GORDON BOHANNAN

LAWYER

SURRY, VIRGINIA

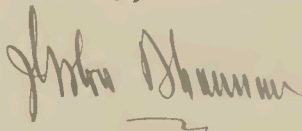
Sept. 15, 1908.

Merchants and Farmers Bank,
Smithfield, Va.,

Gentlemen:

I am inclosing herewith deed from R. Y. Baker, Trustee, to Agnes L. Turner. The sum of \$4,025.00 is due on this property, and I desire you to hold it in escrow until the same is paid. Upon payment of same the deed may be delivered to Mrs. Turner or to her attorney. Of the amount so paid you will please place \$2,025.00 on certificate of deposit payable to R. Y. Baker, Trustee, and send me a cashier's check for \$2,000.00, payable to the same party. Please acknowledge receipt of this deed, and advise Mr. E. H. Williams that you have it in hand.

Yours truly,



Harnett S. Evans et al
vs
to y. dec. of B. B.
Release Birch Co. & Corp.

Exhibit 4

	124
March	7
June	73
124	

Exhibit A
MST

20.00
1.50
1.00
22.50

Exhibit A
with deposition of M. Elliott
Baker } Jan 30/09
Ferguson } MST
MST

Filed 7/9/1909
Jus. [Signature]
Clerk

THIS DEED, Made and entered into this, the 12th day of February, A. D. 1907, by and between Harriet S. Elmes and B. S. Elmes, her husband, both of Isle of Wight County, State of Virginia, parties of the first part, and the "Reliance Brick Company", a corporation created and organized under the laws of Virginia, party of the second part,

WITNESSETH, That for and in consideration of Twenty thousand Dollars (\$20,000.00) in common stock of the said "Reliance Brick Company", to be issued to the said Harriet S. Elmes before the delivery of this deed, receipt whereof is hereby acknowledged, and of other good and valuable considerations, the said parties of the first part grant, with general warranty, subject to the liens hereinafter specified, the following described property, to-wit

"All of that certain tract, piece or parcel of land lying and being in Isle of Wight County, Virginia, on the public road leading from Smithfield to Bacon's Castle, bounded and described as follows: Beginning on said road at the point where the Purvis or Doyle fence as now located leaves the said public road, and running thence in an easterly direction along said fence to the James River, thence up the River shore to the land of W. H. Wooley, thence around said Wooley place to the James River and thence continuing along up said river shore to the land of James Wells and thence in a Westerly direction along the lands of the said James Wells and of W. T. Madera to the said public road, and thence along said public road in a southerly direction to the place of beginning: all of which will more fully appear from a plot to be made showing courses and distances, to be recorded as a part of this conveyance. This tract of land is supposed to contain about One Hundred and seventy-five acres, but the same is sold by the boundaries given and not by the acre, the same being a portion of the land purchased by the said W. T. Ferguson of W. T. Doyle's estate, and by him conveyed to the said Harriet S. Elmes by deed dated May 1st., 1905, and duly recorded in the Clerk's Office of said county in Deed-book 71, page 479, which deed is hereby referred to and made a part of this conveyance; together with the brick plant, machinery, and equipment, and all buildings and other improvements and appurtenances thereon"

TO HAVE AND TO HOLD unto the said "Reliance Brick Company", its successors and assigns forever.

This deed is made subject to the following liens now outstanding against the property, to-wit:

Balance due George H. Warren, One thousand, two hundred Dollars (\$1200.00) on purchase price, as evidenced by Deed of Trust duly of record referred to in deed from W. T. Ferguson et al to Harriet S. Elmes, recorded in Deed-book 71, page 497.

(1) Note due Margaret E. Purvis for One thousand, five hundred Dollars (\$1500.00) payable two years after date, with interest at six percent (6%) payable semi-annually, secured by Deed of Trust to N. F. Young, dated May 1st., 1905 and duly recorded.

(2) Balance of note for One thousand, seven hundred Dollars (\$1700.00) payable to W. T. Ferguson one year after date, with interest at six percent (6%), secured by Deed of Trust to N. F. Young dated May 1st., 1905 and duly recorded. Seven hundred Dollars (\$700.00) having been paid on this note leaves a balance due of One thousand Dollars (\$1000.00).

(3) Note for Eight hundred Dollars (\$800.00) payable to W. T. Ferguson three years after date, with interest at six percent (6%), secured by Deed of Trust to N. F. Young dated May 1st., 1905 and duly recorded.

(4) Note payable to Agnes L. Turner for One thousand, fifty Dollars (\$1050.00), secured by Deed of Trust to W. P. Wilson dated May 1st., 1906, and duly recorded.

And the said parties of the first part covenant that they have the right to convey said property, that they have done no act to encumber same other than above specified, and that they will execute such further assurances to title as may be necessary.

IN WITNESS WHEREOF, they have hereunto affixed their signatures and seals on the day and date above written.

Harriet S. Elmes, (Seal)

Burton S. Elmes, (Seal)

I, Rosa T. Bilisoly, a Notary
Public in and for the City of Norfolk, State of Virginia, do certify
that this day, Harriet S. Elmes and B. S. Elmes, her husband, the
parties whose names are signed to the above deed, bearing date the
5th day of February, 1907, personally appeared before me in my
City aforesaid, and acknowledged same.

Given under my hand this ¹²th. day of February, 1907.

Rosa T. Bilisoly
Notary Public.

My commission expires on the 12th day of July, 1910.

Virginia: Clerk's office of the Circuit Court of Isle of Wight County,
this 1st. day of March, 1907, at one o'clock P. M. this deed was re-
ceived, and, with the certificate annexed, admitted to record.

Teste, W. H. Johnson Clerk.

1000
500

6000

1102.40
1060.
3710.

5872.40

5500
320
5820
5830

Exhibit B
.52P

Exhibit B
with depts of McElliott
Baker Jan 30/09.
to Ferguson / ~~Walter~~ RA

Filed 7/9/1909
Dist. ~~Johnson~~
Clerk ~~Clark~~

C E R T I F I C A T E O F I N C O R P O R A T I O N .
OF
RELIANCE BRICK COMPANY, INC.

This is to certify that we do hereby associate ourselves to establish a corporation, under and by virtue of the provisions of an Act of the General Assembly of the State of Virginia, entitled "An Act Concerning Corporations", which became a law on the 21st day of May, 1903, for the purposes and under the corporate name hereinafter mentioned, and to that end we do by this our certificate set forth as follows:

(1) That the name of the corporation shall be "RELIANCE BRICK COMPANY, INC."

(2) That the principal office shall be located in Norfolk, Virginia.

(3) That its purposes shall be to carry on and conduct a general manufacturing business of brick and other building material used for the general purposes of construction, and to cultivate, for general farming purposes, such land as it may own which is not used for its construction business, and to sell the product of such farm lands; also to sell or manufacture such lumber as it may desire, either from its own land or as agent for any other person, partnership or corporation.

(4) That the stock of said Company shall not exceed \$50,000.00 in all, nor be less than \$15,000.00, issued at the discretion of the Board of Directors in two classes, common and preferred, the par value of each to be \$100.00 per share.

(5) That the names and residences of the officers or directors, who for the first year shall have the management of the corporation's affairs, or until their successors shall be elected, by the stockholders, shall be as follows:

OFFICERS.

D. Homer Hayden, Norfolk, Va., President.
B. S. Elms, Isle of Wight Co., Va., Vice President &
General Manager.
Ira B. Betts, Norfolk, Va., Secretary & Treasurer.

DIRECTORS.

Ira. B. Betts, Norfolk, Va.
D. Homer Hayden, Norfolk, Va.
B. S. Elms, Isle of Wight County, Va.
H. S. Elms, Isle of Wight Co., Va.
M. C. Elliott, Norfolk, Va.

(6) That this Company shall have power to hold stock in any other corporation, or to sell or convey this property, or to lease to, merge and consolidate with any other Company or Corporation.

(7) The corporation shall at no time hold in fee more than 1,000,000 acres of land.

VIRGINIA:

CORPORATION OF THE CITY OF NORFOLK, TO-WIT:

This day personally appeared before me,
, a Notary Public in and for the City of Norfolk,
State of Virginia, D. Homer Hayden, Ira B. Betts and H. S.
Elms, whose names are signed to the foregoing certificate, and
acknowledged the same as their act and deed.

Witness my hand this day of November, 1906.

Notary Public.

VIRGINIA:

IN THE CORPORATION COURT OF THE CITY OF NORFOLK.

The foregoing Certificate of Incorporation of the
"RELIANCE BRICK COMPANY, INC." was presented to me, Allan R.
Haeckel, Judge of the Corporation Court of the City of Norfolk,
and has been examined by me, and I now certify that the said
Certificate is, in my opinion, signed and acknowledged according
to an Act of the General Assembly of Virginia, entitled
"AN ACT CONCERNING CORPORATIONS", which became a law on the
21st day of May, 1903.

Given under my hand this day of November, :1903:

Judge of Corporation Court of the
City of Norfolk.

In Re.

Exhibit 2^c

Exhibit C with
depos of McEllhatt
Baker Jan 30/09
Derguson
[Signature]

Filed 7/9/1909
Dut. *[Signature]*
C. C. Fk

LAW OFFICES
BROOKE & ELLIOTT,
CITIZENS' BANK BUILDING,
NORFOLK, VA.

Memorandum of agreement by and between I. B. Betts and D. Homer Hayden, of the City of Norfolk, State of Virginia, parties of the first part, and Harriet S. Elmes, of Isle of Wight County, Virginia, party of the second part.

WHEREAS, pursuant to agreement between the parties hereto, entered into on November 16th., 1906, the said Harriet S. Elmes has this day transferred to I. B. Betts and D. Homer Hayden fifty (50) shares respectively or one hundred (100) shares in the aggregate of the common stock of the Reliance Brick Company, Inc., this being one-half (1/2) of the outstanding capital stock of said Company, and

WHEREAS, in accordance with said agreement, the parties of the first part have paid the sum of Eight hundred Dollars (\$800.00) in cash and have arranged for the payment of One thousand Dollars (\$1000.00) on note to W. T. Ferguson referred to in the agreement of November 16th., and now held by the National Bank of Commerce, and

WHEREAS, the parties of the first part have advanced to the said Harriet S. Elmes the further sum of \$ 236.56 in cash so that there remains to be paid the sum of \$ 3963.44 as balance of purchase price of Six thousand Dollars (\$6000.00) of said stock,

NOW, THEREFORE, the parties of the first part hereby agree to pay the sum of \$ 3963.44 as follows, that is to say:

(1) Upon maturity of note due Margaret E. Purvis, secured by Deed of Trust on property conveyed by Harriet S. Elmes to Reliance Brick Co, and payable May 1st., 1907-----
This amount to be applied to the payment of said note by the said Harriet S. Elmes, or in case of an extension being procured, so much as paid by I. B. Betts and D. Homer Hayden to Harriet S. Elmes to be applied on payment of said note.

1500.00

1590

(2) Upon maturity of note held by W. T. Ferguson, secured by Deed of Trust on Property conveyed and payable May 1st., 1908-----

800.00

208

(3) Upon maturity of note due George H. Warren, secured by Deed of Trust on said property, and payable May 5th., 1908 -----

1200.00

1572

3500

3710

1000

1000

1000

1000

(4) Balance -----
 to be paid to Harriet S. Elmes and
 applied by her to the payment of note
 due Agnes L. Turner for \$1000.00
 secured by Deed of Trust and having
 already matured. This payment to be
 made when the said Harriet S. Elmes
 shall be required by the said Agnes
 L. Turner to pay for the principal
 of said note.

\$ 463.44

This agreement further WITNESSETH, That, in order to
 secure to the said Harriet S. Elmes the payment of the indebtedness
 above referred to and assumed by the said parties of the first part,
 the said I. B. Betts and D. Homer Hayden hereby deposit with the
 said Harriet S. Elmes 84 shares of the common stock of the said
 Reliance Brick Company as collateral security for the payments above
 referred to; it being understood that in the event of default in
 said payments and in case no extension is allowed by the holders of
 the notes referred to, that the said Harriet S. Elmes may sell for
 cash so much of said stock as may be necessary to meet said payments
 in which default is made, after giving five (5) days' notice to
 the said parties of the first part of her intention so to do.

It is further agreed by the said Harriet S. Elmes that
 when the note to W. T. Ferguson for One thousand Dollars (\$1000.00)
 is paid and surrendered to her cancelled, so that the Deed securing
 this debt may be released, she will deliver to the parties of the
 first part 8 shares respectively of stock; *16 in the aggregate*

That, when the payment for the note of Margaret E. Purvis
 is made to her by the said parties of the first part, she will
 deliver to them 12 shares respectively of stock; *24 in the aggregate*

That, when the payment for the note of \$800.00 due W. T.
 Ferguson is made to her, she will deliver 7 shares re-
 spectively to the parties of the first part; *14 in the aggregate*

That, when the payment for the note to George H. Warren of
 \$1200.00 is made to her, she will deliver to the parties of the first
 part 10 shares respectively of said stock; *20, in the aggregate*

That, when the payment is made for the note of Agnes L.
 Turner, she will deliver 5 shares respectively of the

said common stock. *10 shares in the aggregate*

It is further understood and agreed by the parties hereto that the right to all dividends and all voting rights of said stock shall be and remain the property of the said parties of the first part until default is made in the payments hereto, in which case the parties of the first part agree to assign to the purchaser of so much of said stock as may be necessary to pay such default upon the request of the said Harriet S. Elmes as above provided.

It is further understood and agreed by the parties hereto that all other debts or liens now outstanding against said property not covered by the above referred to \$6000.00 shall be paid by the said party of the second part, and that the interest on said debts not included in the said \$6000.00 shall be paid by the party of the second part.

And the party of the second part hereby transfers, conveys and assigns to the parties of the first part the one hundred thousand (100,000) bricks now located on the property conveyed to the said Reliance Brick Company in accordance with agreement of November 15th., 1906.

IN WITNESS WHEREOF, the parties hereto have each affixed their signatures and seals on this, the 12th. day of February, 1907.

J. B. Betts (Seal)

D. Homer Hayden (Seal)

Harriet S. Elmes (Seal)

_____ (Seal)

Witness:

Exhibit

In Re.

Exhibit 3

Exhibit B with
deposition of McElliot

Baker Jan 30/09.

Derguson

~~McElliot AP.~~

Filed 2/9/1909

W. T. Barron & Co. Attorneys

LAW OFFICES
BROOKE & ELLIOTT,
CITIZENS' BANK BUILDING,
NORFOLK, VA.

Executed in Duplicate

MEMORANDUM OF AGREEMENT between Harriet S. Elms, of Isle of Wight County, State of Virginia, party of the first part, and Ira B. Betts, ^{Jr.} and D. Homer Hayden, of the City of Norfolk, State of Virginia, parties of the second part;

WHEREAS the party of the first part is the owner of certain properties, situated in Isle of Wight County, consisting of One Hundred and Seventy-five (175) acres of land, more or less, purchased from W. T. Ferguson, Emma L. Ferguson and others, under deed dated May 1st, 1905, together with a certain brick plant thereon, used and operated for the purpose of manufacturing building brick; and

WHEREAS the party of the first part has agreed to sell and convey to the parties of the second part an undivided one-half interest in the above named property and plant, on the terms and conditions hereinafter set out; and

WHEREAS the said party of the first part still owes a part of the purchase price of the above named property and certain other debts, the whole being more particularly described as follows: W. T. Ferguson, \$1800.00; George Warren, \$1200.00; Mrs. Agnes Turner, \$1040.00; and the estate of Mrs. Margaret E. Purvis, \$1500.00; all of the above being secured by deed, or deeds, of trust on the property above referred to; and

WHEREAS the said party of the first part owes, in addition to the above, the sum of Four Hundred Dollars (\$400.00) on part of the machinery of said plant, secured by reservation of title of said machinery, so that in the aggregate the indebtedness of the party of the first part does not exceed Six Thousand Dollars (\$6000.00);

NOW, THEREFORE, the party of the first part hereby agrees with the parties of the second part that, in consideration of the sum of Six Thousand Dollars (\$6000.00), to be

paid as hereinafter provided, she will convey to the said parties of the second part a one-half interest in all of the above described property and plant, and will deliver to the parties of the second part one hundred thousand (100,000) bricks on the said property; the same to be and become immediately the property of the parties of the second part. The payment of the Six Thousand Dollars (\$6000.00) above referred to shall be as follows, that is to say: -

(1) The note of W. T. Ferguson for \$1000.00, now due and held by the National Bank of Commerce, shall be paid by the parties of the second part.

(2) That the parties of the second part shall pay in cash to the party of the first part the sum of Eight Hundred Dollars (\$800.00), which sum shall be used by the party of the first part to pay off \$800.00 of the above referred to indebtedness.

(3) That the other notes above referred to, to George Warren, Mrs. Agnes Turner and Mrs. Margaret Purvis, shall be paid by the parties of the second part when they severally become due.

The party of the first part further agrees that, upon the payment to her of the said \$800.00 and the payment of the \$1000.00 note now due to W. T. Ferguson, she will immediately convey all of the above described property and premises to a corporation, to be organized upon the terms to be agreed upon by the parties hereto, and will deliver to the parties of the second part one-half of the capital stock of said Company, the amount of the total issue to be determined by mutual agreement. Said stock to be delivered, however, upon the execution of agreement by the parties of the second part, assuming the above referred to indebtedness, and, in the case of default in the payment of any of the foregoing notes or debts, the party of

the first part shall have a lien against said stock so delivered to the parties of the second part, who agree to deliver so much of said stock for sale to the party of the first part as may be necessary to pay off said debt in which default is made.

It is further agreed that the plan of organization of said Company shall be agreed upon by the parties hereto, and it is the purpose of such organization to convey to the parties of the second part a one-half interest in said property, conditioned upon the said Betts and Hayden assuming the debts above referred to. The party of the first part expressly agrees that said Company shall be free of all liens or debts other than those above stipulated.

In witness whereof all the parties hereto have each affixed their signatures and seals, on this the 16th day of November, 1906:

Harriet S. Elmes, (SEAL)

A. B. Betts Jr (SEAL)

D. Homer Hayden (SEAL)

WITNESS: *M. Elliott*
B. S. Elmes

Since above was written one Bay C. Bannell has made claim to certain of above described property on account of Commission claimed to be due for sale of brick. It is expressly understood by parties hereto that the said Harriet S. Elmes will defend any suit brought on account of said claim & that the property to be conveyed to Betts & Hayden shall not be subjected to payment of any portion of said claim.

Witness { *M. Elliott*
 B. S. Elmes

Harriet S. Elmes,
A. B. Betts Jr
D. Homer Hayden

Exhibit A

Agnes L. Turner

to) Agreement

Harriett S. & B. S. Elms.

Exhibit A

1st
March
Clear
126
75

Exhibit D with
depo of M.C. Elliott
Baker Jan 30/09
Jerguson
Feb 29/09
Test

20
75
1.75

February 15th 1907

This article of writing is to certify that, I, Agnes L. Turner the holder of one negotiable note of one thousand & forty dollars, & due of Trust in Harriet S. Elms & B. S. Elms dated the 1st day of May 1906 & payable in ninety days after date, - Have agreed ~~to extend~~ that as they are making some effort to meet all the other payments of principals & interest on their property, & so long as they will keep up the prompt payment of interest, semiannually, on my note, I will extend the payment there of till the first of November 1907. Nineteen hundred & seven. Agnes L. Turner

E. H. WILLIAMS,
ATTORNEY AT LAW,
ROOM NO. 6, MITCHELL BUILDING,
SMITHFIELD, VA.

September 14, 1908.

Mr. J. Gordon Bohannon,
Surry, Va.

Dear Sir:-

Please forward the deed in the Elms matter to the Merchant's
and Farmer's Bank as soon as possible. Mrs. Turner is coming in
from the same, and I am anxious that the same should be here when she
comes in.

Thanking you for the same, I am,

Yours very truly,

E. H. Williams,

Per



By course of E. H. Williams and
John Adamson, it will be
is filed as an exhibit in the suit of
Arthur, Turner vs.
Ferguson & Co

It is regretted, however,
that Mrs. Turner
was with
them, and
the deed
was intended
in the purchase
price, and that
the beneficiaries
were desiring
intent.

W. P. WILSON, PRESIDENT

B. P. GAY, VICE-PRESIDENT

WAVERLEY THOMAS, CASHIER

The Merchants and Farmers Bank

INCORPORATED

CAPITAL STOCK. \$50,000.00

J. M. J.
#1

Smithfield, Va., Sept. 17, 1908.

Mr. J. G. Bohannon,
Surry, Va.

Dear Sir:-

Your favor of Sept. 15, '08 enclosing deed from R. Y. Baker, Trustee to Agnes L. Turner, has been received; and, is held in escrow until the said amount of \$4,025.00 is paid.

We are mailing notice to E. H. Williams that same is in our hands. When the money is paid over to us we will make disposition according to your request.

Yours very truly,

Waverley Thomas

Cashier.

I, E. T. Poole do hereby make oath that to my personal knowledge, Mrs Agnes. L. Turner has been in possession of the farm known as the Doyle or Elms farm, adjoining the Fergussonvs Wharf property, since last spring, and that she did rent or lease me one acre of land for the purpose of getting pine trash therefrom, for the sum of Three (3) Dollars , sometime during the Mon'h of Marth or April, of this year. 1908.

Signed,

E. T. Poole

State of Virginia,

County of Isle of Wight. To Wit:

Subscribed and sworn to before me this 18th day of November, 1908, In tetimony whereof I have hereunto set my hand the day, month, and year afforesaid. My term of Office expires February, 28, 1910,

D. E. Hinkle

Notary-Public.

Rep. Boston Parkers Reg
In Chamber
Fugitive State Reg

Deportation Papers
Shawmut
